

IN THE CIRCUIT COURT OF HARDIN COUNTY
AT SAVANNAH, TENNESSEE

ZACHARY RYE ADAMS
PETITIONER

VS.

STATE OF TENNESSEE

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FILED 2 DAY OF July 2024 AT 8:30 AM PM
TAMMIE WOLFE, CLERK
BY Mrs. Wright Deputy CLERK

NO. 17-CR-10-PC

PETITIONER'S RESPONSE TO STATE'S SUPPLEMENTAL RESPONSE
REGARDING DISCLOSURE and *State v. Clardy*, 2024 Tenn. LEXIS 242 (Tenn. 2024)

I.

DISCLOSURE

The Court asked the State at the June 14th, 2024, hearing if it provided in discovery documentation that Ms. Bonnie Hamm reported what her friend Lisa Sanders told her. The State's subsequent written response was that it did not provide this in discovery. Mr. Adams thus submits the defendant was without error in not finding this evidence. T.C.A. 40-26-105. The State argues that Dr. Katie Spirko's interview was not properly dated; which it was not. However, Dr. Spirko states that she began her work after August of 2023, thus it was within one year of the filing on January 22nd, 2024. Under the new *Clardy* standard announced therein, this ground of the writ of error coram nobis is considered timely filed and is grounds for relief, provided the disclosure is new evidence of actual innocence.

II.

Clardy

The case. The *State v. Clardy*, 2024 Tenn. LEXIS 242 (Tenn. 2024) case helps tremendously the contention that Mr. Adams is entitled to a new trial under the writ of error coram nobis pursuant to T.C.A. 40-26-105. The *Clardy* procedural history is important:

1. Mr. Clardy was convicted of first degree murder and two counts of attempted first degree murder. Prior to his trial, his defense counsel did not ask for ballistic testing on three different caliber casings found at the crime scene: a .40 Smith and Wesson, .9mm and .380 auto that were found at the scene of the crime. Investigators did not recover any of the weapons believed to be used by the assailants in the shooting. *State v. Clardy*, 2018 Tenn. Crim. App. LEXIS 779 (Tenn. Crim. App. 2018). In a post-conviction proceeding though, the .40 Smith and Wesson casings were matched to a Glock 23 that was used in a crime some 11-months after Mr. Clardy's crime and owned by a man named Dantwan Collier. The 9mm cartridge cases were matched to other casings found at the scene of a homicide that involved Dantwan Collier's cousin some 6-months after the underlying crime. Finally, the .380 auto cartridge case found at the scene was matched to a subsequent crime.
2. The Clardy post-conviction relief court denied the request for a new trial. The trial court did not believe that the ballistics match to a firearm used in subsequent crimes by other individuals was sufficient grounds for a new trial. In explaining its decision, the Court opined, "[i]t is far from unusual for handguns to pass from person to person with no record of sale. There were two other individuals not apprehended in this case. Further, a handgun may be handed off or sold. The use of a handgun in a murder might only incentivize such a sale." *Id.* at 7,8.
3. On appeal, the Court of Criminal Appeals summarized the situation further: "This evidence, while certainly exculpatory, does not prove [Clardy's] innocence by clear and convincing evidence. There were three individuals who participated in the shooting in this case. This newly discovered evidence suggest that Dantwan Collier

and/or Thomas Collier may have been involved. However, it does not mean that [Clardy] was not one of the three men. Furthermore, it is possible that [Clardy] possessed one of the firearms before Dantwan or Thomas Collier. So, even though the evidence is exculpatory, it does not prove [Clardy's] innocence by clear and convincing evidence.” *Id.* at *8,9.

4. Not one to give up, Mr. Clardy then procured an affidavit from Mr. Collier stating he was not friends with or knew Thomas Clardy.
5. One year later, Mr. Clardy filed a writ of error citing Mr. Collier's affidavit.
6. In essence, the Supreme Court found Mr. Collier's statement, even if credited by the trial court (which, importantly, the trial court was instructed to do at this stage), did not prove that Mr. Clardy was innocent of the crime.
7. The Supreme Court though added two prongs for the statute of limitations test, both of which help Mr. Adams:
 - a. First, a petitioner who files his writ of error coram nobis after the one-year statute of limitations period may only be tolled only if the petitioner produces new discovered evidence that would, *if true*, establish clearly and convincingly that the petitioner is actually innocent of the underlying crime of which he was convicted. *Clardy*; 2024 Tenn. LEXIS 242, *35 (Tenn. Crim. App. 2024)(emphasis added)¹.

¹ This point cannot be belabored enough to this Court and Counsel apologizes for its repetitiveness. The *Clardy* court continues, “If so, (if the petition is filed within one-year of discovering the new evidence) the coram nobis court should assume arguendo the veracity of the new evidence cited in the coram nobis petition, for the purposes of assessing whether to troll the statute of limitations.

b. Second, and perhaps conspicuously absent from State's reply, is that the Petitioner is required to file the writ of error must no more than one year after it discovers the new evidence of actual innocence. *Id.* at #37.

8. It is helpful to acknowledge that Justice Kirby reminded all that the writ of error "criminal cases in Tennessee (are) considered extraordinary relief and, as can be seen from the above statute, it comes with stringent *statutory* requirements."²

Lisa Sanders Ms. Sanders's statement was provided to the Defendant, through his agents, as they were after Dr. Spirko began work in August of 2023. Thus the second prong of *Clardy* is easily satisfied. The first prong—evidence of actual innocence—is the main issue facing the Court. With Ms. Sanders' the issue is succinct stated: assume it is true that Ms. Sanders saw Terry Britt wearing camouflage (Mr. Clint Bobo saw the abductor wearing camouflage; Transcript pg. 540, line 14) driving in a way to conceal and trying to hide something in the norther Decatur County area on the morning the victim was abducted from her home. Assume further the same man was driving around his 4-wheeler with a "white box" on it. See generally Exhibit 3 and ¶7 and 8. Thus, at this stage where the court has to assume the credibility of the submitted evidence, this evidence proves Terry Britt committed the crime against Ms. Bobo and not Mr. Adams. This is evidence of actual innocence.

Jason Autry: by the State's failure to argue to the contrary, it seems established that the recantation to Dr. Spirko on December on December 22, 2023, as recorded in Exhibit 2A, B(1)(2), and C and outlined in ¶10(a)-(e) was within one-year of Mr. Adams' discovering the

² Mr. Clardy suggested that the tolling analysis was in abrogation of the statute and the Court should keep in place the lower standard of "may have resulted in a different judgment" analysis. His argument ran out of steam though with Justice Kirby reminding the Petitioner that the exception to the statute of limitations was "judge made" and thus the courts, not the legislature, was to define such parameters. *See Clardy* at footnote 11.

same. Again then, the issue is whether Mr. Autry's credible memory of April 13th, 2011, proves Mr. Adams is innocent and his statement that Mr. Adams was an innocent man, taken as true, is clear and convincing evidence of Mr. Adams' actual innocence. The Petitioner ended its amendment to the Petition stating that Mr. Adams is "actually innocent of the charges for which I am convicted and this new evidence proves it or at least that I may have received a different result."³

Here are the words of General Jennifer Nichols in closing to the jury:

I'm no rocket scientist. It doesn't take rocket science to figure out how it happened. How do we know it happened like that? How do you know what happened at the hands of that man? How do you know? I'm not going to go back over everything you heard. Every single one of you was taking notes and listening the last two weeks.

Jason Autry, number 1, told you what he witnessed with his own eyes. He told you what he did. He confessed multiple crimes under oath to you.

Transcript Pg. 2726, line 13-22.

Thus, for this analysis, we have to assume that the pled allegations are true and that was a complete and total falsehood General Nicholes began outlining the ways in which Mr. Adams was guilty to the jury.

³ Clearly under *Clardy*, the latter portion of this paragraph pled in the alternative is not applicable.

Further, here is how General Haggerman summarized the State's vetting of what we now have to believe at this stage in the procedure of this case was totally false:

1 MR. HAGERMAN: Actually, yeah,
2 twofold. As soon as there was made a
3 proffer, Mr. Shoal, the attorney for Mr.
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6 Also, Mr. Autry took agents of
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8 the route that he and Zach Adams drove
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Perhaps Mr. Adams' conviction stemming from fabricated and perjured testimony does not automatically make Mr. Adams actually innocent per the pleadings. However, Mr. Autry not only lied about Mr. Adams' whereabouts at trial, but his recantation—taken as true now procedurally per *Clardy's* guidance—**accounted for both Mr. Adams' whereabouts and innocence.**

On Exhibit 2(a), Mr. Autry stated that “I think me and Zach and were at the river that morning; I'm pretty sure that I met him down there....getting high...my phone records had me in that area...and the only thing I was doing in that are was down at that bar or (inaudible).” He

continues, “we had to add Holly to that story, we already had a story, all we just had to add is just add something.”

It is clear from the entire recantation that it was not that Mr. Autry was unaware of Zach’s guilt or innocence, but rather he knew he was innocent. He summarized, “it was the worst I ever felt in my life coming back knowing that I just put **an innocent man in prison.**” Exhibit 2B(1) at 9:53. Mr. Autry’s taped confession to perjury is presumed true *arguendo* and his eye witness (important in the State’s mind, at least in 2017) recollection establishes that Mr. Adams was and is an innocent man. The State argued he had knowledge of Adams’ guilt because he was together with him during the day; thus for procedural posture we are in now, they cannot credibly argue that Mr. Autry cannot definitively prove his innocence.

Mr. Adams further incorporates all of its arguments in its initial response to the State’s Motion to Dismiss into this brief. The *Clardy* case is quite helpful to Mr. Adams’ request for an evidentiary hearing on his writ. *Clardy* makes it clear that the Court’s job now is *not* to discredit the other inculpatory trial testimony, but assume the newly proffered evidence is true and determine if that is true, does that prove actual evidence. It is difficult to even envision a scenario where it does not, with great respect to the State of Tennessee—who clearly do not want to concede that their well-respected, dedicated and abled prosecutors were just completely lied to and deceived by the man (Mr. Autry) they were trying to kill for a crime he did not commit with an investigation “left open” otherwise. It is to any admirer of justice a morass of regret.

The State continues to point towards other evidence in asking the Court to weigh both sets of evidence at this state, which is not the proper analysis *now*. At the evidentiary hearing, the Court will first focus on what one can expect will be intense cross examination from the State, aided by the very prosecutors who apparently vetted this story. The state further asks the

Court to discredit entirely Mr. Autry's statement that his story was fabricated while relying almost exclusively on so called confessions from various inmates and then-drug addicts. It is, respectfully, disingenuous to say that those inmates and former drug-users' statements standing alone justify guilt beyond reasonable doubt, but an eye witness' alibi's statements to Dr. Spirko can somehow not rise to the lesser clear and convincing evidence standard of innocence.

This case needs an evidentiary hearing on the writ of error. *Clardy* guides us further to the conclusion.

RESPECTFULLY SUBMITTED:



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CERTIFICATE OF SERVICE

The undersigned certifies that he has on the 1 day of AUGUST 2024, sent a true and correct copy of the following to the person(s) listed below in compliance with the Tennessee Rules of Civil Procedure, Rules 5 and/or 5A, by the following indicated method(s):

Jennifer Nichols
Christopher Boiano
District Attorney General
113 West Main Street, 3rd Floor
Gallatin, TN 37066

- U.S.P.S., first-class postage pre-paid
- Via Fax
- Via Email
- Hand-delivery by:
- Certified Mail, Return Receipt Requested



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District Attorney General
113 West Main Street, 3rd Floor
Gallatin, TN 37066

- U.S.P.S., first-class postage pre-paid
- Via Fax
- Via Email
- Hand-delivery by:
- Certified Mail, Return Receipt Requested



DOUGLAS THOMPSON BATES, IV