



IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

SEDRICK COURTNEY,
Petitioner,

v.

STATE OF OKLAHOMA,
Respondent

DISTRICT COURT
FILED

MAR 12 2017

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

TULSA COUNTY
Case No. CF-95-2348

Petitioner's Post-Conviction Relief Petition (22 Okl. St. § 1080) and Writ of Habeas Corpus (12 Okl. St. § 1331, Okla. Const. art. II, § 10) Based On Newly-Discovered Exculpatory, Non-Matching DNA Evidence

1. Petitioner, Sedrick Courtney, hereby submits his *Post-Conviction Relief Petition and Writ of Habeas Corpus Based On Newly-Discovered Exculpatory, Non-Matching DNA Evidence*. His motion is presented in good faith and premised on the following facts and points of authority.

2. Courtney stands convicted of the April 6, 1995 armed robbery of Shemita Greer.

a. Two men, who covered their faces with ski masks, kicked in Greer's apartment door, attacked her, and robbed her at gunpoint.

b. Greer suffered a traumatic brain injury as a result of the attack.

c. Greer was positive that the taller assailant, who wore the *black* ski mask, was Courtney Sedrick. Greer said she recognized his voice when he spoke and his skin tone and eyes when he briefly lifted his black ski mask during the offense.

i. Greer knew Courtney because the two had lived in the same apartment complex a year before.

ii. Greer also knew Courtney because her and her boyfriend, Travis Chambers, went on a few double dates with Courtney and his girlfriend before the robbery.

d. Greer said the smaller assailant wore a *green* ski mask.

e. Crime scene personnel recovered the *black* and *green* ski mask outside Greer's apartment.

3. Prior to trial, the State recovered several hairs from both the black and green ski masks and subjected them to DNA testing, but the testing produced no results.

a. Neither the State nor Courtney subjected the hairs to mitochondrial DNA testing because it was not available at the time of trial and did not become generally accepted and routinely used in the scientific community until 1998 and 1999.

4. At trial, the State relied on the hair evidence to secure Courtney's conviction.

a. The State argued that the hairs from the black ski mask could have come from Courtney because he could not be eliminated as a donor of the hairs.

b. The green ski mask contained a single bleached red hair that was microscopically similar to a bleached red hair taken from Courtney's head hair. The State argued it was very unlikely that the bleached red hair came from anyone other than Courtney.

5. Courtney challenged and collaterally attacked his conviction, but obtained no relief.

a. In 2000, Courtney's previous attorney (from the Oklahoma Indigent Defense System) sought DNA testing on the hairs recovered from both ski masks, but the Tulsa Police Department (TPD) informed counsel that the hairs had been destroyed.

6. In 2001, Courtney contacted the Innocence Project, which officially opened his case in late 2007. Shortly thereafter, the Innocence Project contacted the TPD, requesting information regarding the whereabouts of the black and green ski masks as well as the hairs recovered from the two ski masks.

a. The TPD informed the Innocence Project that the masks and hairs had been destroyed.

7. In September 2011, the Innocence Project contacted the TPD again to inquire about the ski masks and hairs, but this time the TPD said it did in fact have custody of the hairs. The TPD did not have the ski masks.

a. Shortly thereafter, the TPD sent the hairs to Orchid Cellmark (Cellmark) in Dallas.

b. Cellmark subjected the hairs recovered from the black and green ski masks to mitochondrial DNA testing – a form of DNA testing not available prior to trial.

c. The mitochondrial DNA testing *excluded* Courtney as a donor of ten hairs recovered from the black ski mask and five hairs recovered from the green ski mask.

i. Nine of the ten hairs from the black ski mask came from one donor.

ii. Four of the five hairs from the green ski mask came from one donor.

8. Based on these newly-discovered exculpatory DNA results, Courtney respectfully moves to have his conviction vacated because the DNA results demonstrate that he is actually innocent (at best) or that this Court can have no confidence in his conviction (at worst).

I. Statement of Facts

A. Pre-Trial Events

9. In February 1996, a Tulsa County jury convicted Sedrick Courtney of robbery with a firearm and first-degree burglary for the April 6, 1995 robbery of Shemita Greer. The trial judge sentenced him to thirty years in prison.

10. According to Greer, around noon time on April 6, 1995, two men wearing ski masks broke into her apartment by kicking in her front door.

a. The shorter of the two men had on a green ski mask and wielded a gun, while the taller assailant had on a black ski mask.¹

b. The taller man in the black ski mask – who Greer identified as Sedrick Courtney – was not wearing gloves.²

c. Once inside, they forced her to lie on the floor as they ransacked the apartment. During the robbery, the two assailants struck Greer in the head, repeatedly kicked her, and ultimately blindfolded her with duct tape.³

d. Once blindfolded, Greer said the taller of the two assailants pistol-whipped her.⁴

e. Seriously injured and fearing for her life as well as her four-month-old niece's life, Greer played dead as the two assailants continued to ransack her apartment.

f. When the two assailants fled Greer's apartment they took nearly \$400 in cash from her purse, four tires, and four tire rims that belonged to her boyfriend, Travis Chambers.⁵

11. Greer said the incident lasted between five and six minutes.⁶

12. After checking on her four-month-old niece, Greer called 911 and Tulsa police officers were dispatched to the scene. After talking with police, Greer was taken to a hospital where she spent three days recovering from a traumatic brain injury.⁷

¹ NT, Trial, 02/07/96, at 208-209. Exs. 1-2.

² *Id.* at 238.

³ *See id.* at 214-217.

⁴ *See id.*

⁵ *See id.* at 225.

⁶ *See id.* at 243.

⁷ *See id.* at 222.

13. Detective Alvin McDonald arrived at the scene and interviewed Greer who told him she recognized the taller of the two men wearing the black ski mask as Sedrick Courtney.⁸ She recognized his voice because she knew Courtney's girlfriend and her (Greer) and her boyfriend occasionally went out with Courtney and his girlfriend.⁹ Likewise, when the taller assailant lifted his black ski mask to cool down, Greer said she saw his eyes, nose, and skin tone and was positive it was Sedrick Courtney.¹⁰

14. Detective Doug Noordyke photographed and processed Greer's apartment as well as the area surrounding around her apartment.¹¹

a. Detective Noordyke search for latent fingerprints and lifted one from the stereo cabinet.¹²

b. He also recovered a black ski mask from the sidewalk east of Greer's apartment and a green ski mask across the street from her apartment sitting atop the tires stolen during the robbery.¹³

15. Despite Greer's positive identification of Courtney on April 6, 1995, the TPD did not arrest Courtney until June 12, 1995.¹⁴ The shorter assailant, who wore the green ski mask was never identified, arrested, and prosecuted.

16. Although Courtney proclaimed his innocence when arrested, he cooperated with the TPD by waiving his *Miranda* rights and voluntarily providing samples of his hair.¹⁵

17. Prior to Courtney's arrest, the TPD Forensic Laboratory recovered several hairs from the black and green ski masks.¹⁶

18. Prior to trial, the TPD Forensic Laboratory sent the hairs to the Oklahoma State Bureau of Investigation (OSBI) for DNA testing.¹⁷

a. Seven hairs had *roots* so OSBI subjected the roots to nuclear DNA testing – which produced inconclusive results.¹⁸

⁸ Ex. 2.

⁹ *See id.* at 199-201.

¹⁰ *See id.* at 215-218; Ex. 2.

¹¹ NT, Trial, 02/06/96, at 162-164; Ex. 3.

¹² *See id.*

¹³ *See id.*

¹⁴ NT, Trial, 02/06/96, at 178; Ex. 4.

¹⁵ Ex. 4.

¹⁶ NT, Trial, 02/06/96, at 182-188; Ex. 5.

¹⁷ *See id.* at 192; Ex. 6

¹⁸ *See id.*

b. OSBI did not perform mitochondrial DNA analysis on the hair *shafts* because mitochondrial DNA testing was not available prior to Courtney's trial in February 1996.

19. Prior to trial, the TPD Forensic Laboratory concluded that Courtney did *not* leave the latent fingerprint on the stereo cabinet in Greer's apartment.¹⁹

20. Prior to trial, Carol Cox of the TPD Forensic Laboratory attempted to compare the hairs lifted from the black and green ski masks to Courtney's hair samples, but could not make a comparison because Courtney's hair samples were too short.²⁰ As a result, she concluded that the unknown head hairs from the black ski mask "can not [sic] be eliminated as having come from Cedric [sic] Courtney."²¹

21. Cox also recovered a single bleached red hair from the green ski mask that was microscopically consistent with a bleached red hair taken from Courtney's head.²²

B. Trial

22. Courtney pled not guilty and went to trial.

23. At trial, the State's case rested primarily on Greer's identification of Courtney.

a. During direct examination, the prosecutor asked Greer, "Ma'am, do you realize that this case *is largely dependent on your identification* of Mr. Courtney today?," to which Greer replied, "Yes."²³ The prosecutor then asked Greer, "Do you know what will happen to you if this jury *believes your identification?*," to which Greer ultimately replied, "I feel like justice will be served."²⁴

b. Greer was "positive" that Courtney was the taller of the two assailants who wore the black ski mask.²⁵

c. Greer also positively identified the black ski mask recovered from outside her apartment as the black ski mask worn by Courtney.²⁶

d. During closing arguments, the prosecutor urged to jury to find Greer's identification reliable.²⁷ The prosecutor said it was "impossible" that Courtney was not one of the assailants:

¹⁹ See *id.* at 193; Ex. 7.

²⁰ See *id.* at 187; Ex. 8.

²¹ Ex. 8.

²² See *id.*

²³ NT, Trial, 02/07/96, at 223 (emphasis added).

²⁴ *Id.* (emphasis added).

²⁵ NT, Trial, 02/07/96, at 200-01, 203, 218-19, 225, 228.

²⁶ See *id.* at 254.

I believe that if you go back there and you consider all that, you'll find it's impossible for that to have been someone other than Sedrick Courtney, same height, same size, same build. That's beyond possibility that another human being could match all of those characteristics.²⁸

e. The prosecutor also argued: "All we know is that there are two people who entered that apartment, two people who wore stocking masks. *And we know that Sedrick Courtney was one of those two people.*"²⁹

24. The prosecutor used the hair evidence from the black and green ski masks to bolster Greer's identification.

a. During closing arguments, the prosecutor acknowledged that the hair evidence was critical to the State: "The hair in the stocking mask. Now, this is *some key evidence really.*"³⁰

b. The State's hair expert, Carol Cox, said she could not exclude Courtney as a donor of the hairs recovered from the black ski mask.³¹

i. Cox, however, undermined Greer's claim that Courtney was the assailant wearing the black ski mask when she said she identified a single bleached red hair from the green ski mask that was microscopically consistent with a bleached red head hair recovered from Courtney.³²

ii. Realizing Cox's testimony undermined Greer's identification, the prosecutor argued during closing arguments that Greer may have "mixed up" who wore what ski mask:

But the key here that Carol Cox did testify to is she said there was something unusual [regarding the bleach hair]. In... [the green] mask[] she found a short bleached red hair, one short bleached red hair among numerous Negroid hairs, okay. And then she testified that she plucked approximately 50 hairs from Sedrick Courtney's head, and of those 50 hairs she found one short bleached red hair, okay.

Now, I think probably the defense is going to point out to you... that she testified [Greer] testified he was wearing the black stocking mask and that Carol Cox testified that the red hair was found in the green stocking mask. I can't deny that. That's true. There are numerous explanations for that... It's entirely possible that.... She got those two stocking masks mixed up.³³

²⁷ NT, Trial, 02/08/96, at 347-350.

²⁸ *Id.* at 381.

²⁹ *Id.* at 347-48 (emphasis added).

³⁰ NT, Trial, 02/08/96, at 351 (emphasis added).

³¹ NT, Trial, 02/06/96, at 188-189; Ex. 8.

³² *Id.* at 188; Ex. 8.

³³ NT, 02/08/96, at 352-53.

iii. The prosecutor also suggested that Courtney may have owned both ski masks or that the unnamed and unidentified co-assailant may have lived with Courtney:

But another very plausible explanation... is that the person he was with may have been somebody he lived with, that both stocking masks may have been [Sedrick Courtney's]. He may have worn both of those stocking masks on any number of occasions prior to that day. So there is a lot of reasons why that red hair may be in the... green stocking mask rather than the black stocking mask. Again, [Sedrick Courtney] could have worn that green stocking mask just the night before.³⁴

iv. Likewise, the prosecutor argued that the red bleached hair likely came from Courtney because it was "very unusual to find one red bleached hair among numerous Negroid hairs both in a stocking mask and on the defendant's head."³⁵

25. Courtney testified and claimed his innocence.³⁶

a. He argued that Greer misidentified him as the assailant in the black ski mask.³⁷

b. He also presented three alibi witnesses, who claimed he was with them between noon and 1 pm on April 6, 1995 – the time during which the offense occurred.³⁸

26. On February 8, 1996, a Tulsa County jury convicted Courtney of robbery with a firearm and first-degree burglary. The trial judge sentenced him to thirty years in prison.³⁹

II. Post-Conviction Proceedings

27. Courtney has unsuccessfully challenged and collaterally attacked his conviction over the last sixteen years.

28. In 2000, Courtney's previous attorney (from the Oklahoma Indigent Defense System) sought DNA testing on the hairs recovered from both ski masks, but the Tulsa Police Department (TPD) informed counsel that the hairs had been destroyed.⁴⁰

29. On April 23, 2001, Courtney contacted the Innocence Project requesting assistance in obtaining DNA testing to prove his innocence. After obtaining documents and transcripts and reviewing Courtney's case, the Innocence Project officially accepted Courtney's case on February 5, 2007.

³⁴ *Id.* at 353.

³⁵ NT, Trial, 02/08/96, at 354.

³⁶ NT, Trial, 02/07/96, at 306-22.

³⁷ NT, Trial, 02/08/96, at 362-65.

³⁸ NT, Trial, 02/07/96, at 256 – 263, 274-82, 290-95, 306-22.

³⁹ NT, Trial, 02/08/96, at 385-86.

⁴⁰ Ex. 10.

30. On August 17, 2007, undersigned counsel sent a letter to the TPD requesting an evidence search for the following items of evidence collected in relation to Greer's robbery and stored under property receipt number AF-1482:

- a. Piece of gray duct tape;
- b. Black ski mask;
 - i. Six slides with hairs and/or fibers mounted from black ski mask;
- c. Green ski mask;
 - i. Six slides with hairs and/or fibers mounted from green ski mask.⁴¹

31. In early 2008, the TPD informed undersigned counsel that the aforementioned evidenced had been destroyed. The TPD, however, did not produce official documentation identifying when the evidence was destroyed, who authorized its destruction, and under what authority was the destruction authorized.

32. In September 2011, the Innocence Project – on a whim – contacted the TPD once more to inquire whether it had the aforementioned evidence. On September 15, 2011, the TPD informed the Innocence Project it still had the hair slides from the black and green ski masks.

33. Once located, the TPD agreed to send the hair slides to Orchid Cellmark (Cellmark) in Dallas, Texas for DNA testing.⁴²

34. On September 22, 2011, Cellmark received the hair slides from the TPD.

- a. Cellmark subjected 10 hairs from the *black* ski mask to mitochondrial DNA testing, which, as mentioned, was not available when the State prosecuted Courtney.

- i. The mitochondrial DNA results *excluded* Courtney from all 10 hairs lifted from the black ski mask.⁴³

- ii. More importantly, 9 of the 10 hairs originated *from the same donor*.⁴⁴

- b. Cellmark subjected 5 hairs from the *green* ski mask to mitochondrial DNA testing, including the single bleached red hair that was microscopically consistent with one of Courtney's hair samples that the State argued most likely came from Courtney.⁴⁵

- i. The mitochondrial DNA results excluded Courtney from all 5 hairs, including the single bleached red hair.⁴⁶

⁴¹ *See id.*

⁴² Ex. 11.

⁴³ Ex. 12.

⁴⁴ *See id.*

⁴⁵ NT, Trial, 02/08/96, at 354.