

Supreme Court of Alabama

RONALD PATRICK SWINEY,

Petitioner,

vs

STATE OF ALABAMA,

Respondent

Case No: 104-073

AMICUS CURIAE FOR

RONALD PATRICK SWINEY

RONALD PATRICK SWINEY v STATE OF ALABAMA

CERTIORARI TO THE SUPERIOR COURT SHELBY COUNTY

INTRODUCTION

The undersigned, Glenn M Larkin MD writes this amicus curiae brief out of concern that justice is being denied to Ronald Patrick Swiney, and urges the court to read what follows seriously.

I have corresponded with Patrick Swiney and his wife Sherry for the last seven years, have reviewed the autopsy protocols of Ronald Pate and Betty Swiney, the trial transcript, the crime scene reports such as they are, and have written both an affidavit and a formal medical-legal report in my capacity as a forensic pathologist.

My interest is to try to correct what I perceive is a gross miscarriage of justice. I therefore ask the court to read what follows critically. I also ask the court to excuse any lapse in form or format, as I am not a lawyer.

It is my opinion as a forensic pathologist to a reasonable medical and scientific certainty after reading the material sent to me that the requested testing of the clothing allegedly worn by Mr Swiney at the time of his arrest will yield results that will tend to exculpate Mr Swiney. My CV is attached I thank the court for its kind indulgence.

G M Larkin MD DABFM FACFE

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DEMOGRAPHIC DATA

Petitioner's NAME	PETITIONER'S PRISON ID #	PETITIONER LOCATION
PATRICK SWINEY	154 406-G79 (DONALDSON PRISON)	100 WARRIOR LANE BESSEMER AL 35023
MY NAME	MY ADDRESS	MY TELEPHONE No
GLENN M LARKIN MD	4815 N SHARON AMITY RD CHARLOTTE NC 28205- 4669	704-531-2981 X 235

NATURE OF THE CASE

This is a case of actual innocence. The state was unable to place the putative killer rifle in Patrick Swiney's hands. It failed to prove a major element of the indictment – “with a rifle”. The prosecution must prove every element of an indictment which it did not. *In Re: Winship*. 378 US 90. Due process requires proof of every fact necessary to constitute a crime beyond a reasonable doubt. The state relied on a false presumption of correctness, as explained below to obtain these convictions, and therefore the convictions are tainted, and due for reversal. The presumption that Patrick Swiney fired the murder weapon is speculation, as there is not any proof to that effect. *Hicks v Oklahoma*, 447 US 343, Conviction cannot be based on conjecture

PROCEDURAL HISTORY

1. Patrick Swiney was convicted in the Shelby County Circuit Court of capital Murder in violation of A Crim code S13A-5-40 (a) (10) murder of two or more people on June 12, 1989
2. The conviction was affirmed on appeal *Swiney v. State* 555 So 2d 201 (Ala crim App 1989)
3. In 1993 Swiney filed a Rule 32 petition which was denied following an evidentiary hearing .
4. The denial was affirmed. *Swiney v State* 662 So 2d 305 (Ala CrIm App. (1994), cert denied/ *Ex Parte Swiney* 668 So 2d 519 (Ala. 1995))
5. An appeal in the United States District Court for the Northern District of Alabama on June 23 1998 A Petition for writ of habeas corpus was denied
6. Certificate of Appeal ability was denied by the 11th circuit court of Appeals on August 13, 1999 (C 5) on August 13 2003
7. Swiney filed a subsequent Rule 32 Petition in the Shelby County circuit Court challenging his conviction under Rule 32 . 1 (e) , Alabama Rules of Appellate Procedure newly discovered evidence of factual innocence (c 159) on January 10 2004
8. Request For Production Of Evidence was filed by Patrick Swiney (C.90) This Rule 32 Petition and the Request For Production Of Evidence were then denied without a hearing and with prejudice on March 7, 2004
9. Appeal to the Alabama Supreme Court for discretionary review was filed March 1 (?) 2005 .
10. Notice of Appeal was filed on or about April 16, 2005
11. Appeal to the Alabama Court of Criminal Appeals was denied January 7, 2005, and a motion to reconsider equally was denied.

SUMMARY OF ARGUMENT

Due to several false presumptions of correctness, as listed below, the conviction of Patrick Swiney is unsafe, and the type of error transcends all procedural bars. *Chambers v Mississippi*. 410 US 284. “Fundamental fairness... - Ronald Patrick Swiney (Patrick Swiney or Swiney) was convicted of two counts of first degree murder in the Circuit of Shelby County on June 12, 1989 and was sentenced to life without parole. He claims actual innocence, of killing Betty Snow Swiney and Ronald Pate with a Rifle. (footnote 1) The state failed to prove a major element of the indictment –“with a rifle” The state relied on a false presumption of correctness as explained below to secure this indictment.

1 See indictment, attached

ARGUMENTS

I

PATRICK SWINEY WAS CONVICTED ON A FALSE PRESUMPTION OF CORRECTNESS BY A STATE WITNESS CONCERNING PRIMER AND EFFLUENT RESIDUE (BOTH CALLED "GSR". THIS FALSE PRSUMPTION OF CORRECTNESS, A MATTER OF FACT WAS STATED BY THE STATE'S FIRE-ARMS EXPERT, PROPAGATED BY THE PROSECUTOR, AND ACCEPTED BY ALL APPELLATES JUDGES WITHOUT UNDERSTANDING THE ISSUE.

II

PATRICK SWINEY WAS CONVICTED BY EVIDENCE THAT HE WAS IN TWO PLACES AT THE SAME TIME, A PHYSICAL IMPOSSIBILITY PROPAGATED BY A FALSE PRESUMPTION OF CORRECTNESS

III

PERTINENT EVIDENCE WAS EITHER NOT COLLECTED BY DR EMBRY OR DESTROYED BY HIM WITHOUT EXAMINATION --- EVIDENCE THAT WOULD HAVE REDUCED THE CHARGE HAD THE GRAND JURY BEEN AWARE OF IT WITHOUT A DOUBT.