

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CLIFTON JACKSON,	:	
Petitioner,	:	CASE NO.: 1:18CV476
	:	
vs.	:	JUDGE: SOLOMON OLIVER
	:	
WARDEN BRIGHAM SLOAN,	:	MAGISTRATE JUDGE: JONATHAN D.
Respondent.	:	GREENBERG
	:	

PETITIONER CLIFTON JACKSON'S OBJECTION
TO MAGISTRATE'S REPORT AND RECOMMENDATION

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Now comes the Petitioner, Clifton Jackson (hereinafter referred to as Jackson), pro se, and hereby respectfully objects to the Magistrate's Report and Recommendation for the reasons set forth in the Memorandum in Support appended hereto and incorporated by reference herein in the interest of law, justice, equity and good conscience. Jackson moves this Honorable Court to grant the relief sought herein.

Respectfully submitted,

Clifton A. Jackson 10-11-18
Clifton Jackson, #A652-163
Petitioner, pro se
Lake Erie Correctional Inst.
501 Thompson Road
P.O. Box 8000
Conneaut, Ohio 44030

MEMORANDUM IN SUPPORT

Jackson respectfully objects to the Magistrate's Report and Recommendation to Dismiss his instant Federal Habeas Corpus Petition for the reasons it is time barred under §2244(d)(1) for all of the following reasons.

Jackson acknowledges and respects the Magistrate's legal reasoning, principles and case laws within his Report and Recommendation. Jackson also admits that due to his limited legal knowledge and inadequate inmate legal assistance, Jackson has failed to adequately present the necessary arguments to accomplish the relief sought herein. Therefore, Jackson prays that this Honorable Court will liberally construe his petition during the court's de novo review of Jackson's petition.

Jackson does not dispute the Magistrate's time-line of Jackson's court filings herein, but it is paramount to note, that Jackson never intentionally and/or purposely delayed any of his court proceedings, nor prejudice the state with any unfair disadvantage during Jackson's fight to obtain justice in his case.

It is a well known principle of law that a defendant's ignorance of the law is not an excuse for a defendant's shortcomings, however, at the same time the fundamental principles of law is to ensure that justice is served with a fair and impartial legal proceeding that the average American Citizen could have confidence in its outcome.

In this present case, it is important to note, that this Honorable Court instructed the Respondent that even if it presents

a procedural bar argument, for the Respondent to still address the merits of Jackson's Federal Habeas Corpus Petition, which the Respondent purposely and intentionally failed to do. Justice can only be served in this case if the merits of the issues presented herein be addressed to prevent a miscarriage of justice as required by Jackson's Due Process and Constitutional rights.

The fundamental principles of justice requires the search for the truth in any criminal proceeding. The law also requires that the accused be given a fair and impartial legal proceeding, whether trial or plea negotiation, in which every American Citizen can have confidence in the outcome, be it guilt or innocence. Although Jackson made errors in his pursuit for justice in his court filings, the end result must be whether Jackson's due process and Constitutional rights were violated and the only way to resolve that question is for this Honorable Court to address the issues presented herein and judge this case on its merits.

Jackson alleges errors of Constitutional magnitude so egregious, which had a substantial and injurious influence on the proceedings that establishes a fundamental defect which inherently results in a complete miscarriage of justice or an error so egregious that it amounts to a violation of due process. For these reasons, the issues before this Court should be reviewed on their merits and not allow the Respondent to hide behind an unintentional procedural bar.

In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an adequate and independent state procedural rule, federal habeas review of the claim is barred unless

the prisoner can demonstrate cause of the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice. Coleman v. Thompson, 501 U.S. 722, 750, 111 S.Ct. 2546, 115 L.Ed. 640 (1991); Norton v. Sloan, 2017 U.S. App. LEXIS 17597, (6th Cir., Aug. 17, 2017); Ream v. Bunting, 2018 U.S. Dist. LEXIS 32643, (Feb. 28, 2018); McGail v. Noble, 2018 U.S. Dist. LEXIS 26416, (Feb. 20, 2018).

Jackson asserts that it would be truly a miscarriage of justice to allow a procedural bar to prevent this court from addressing the merits of Jackson's instant Federal Habeas Corpus Petition as Jackson has previously stated, the errors contained within his Habeas Corpus Petition are so egregious that they amount to a violation of Jackson's Constitutional and Due Process rights.

Jackson's criminal case was predicated on the false and perjured testimony of two State Troopers (Christopher Beyer and Michael Trader) given at the suppression hearing, then thereafter at trial where the evidence clearly dictates that the offered testimony of the two aforementioned Troopers are lies (The first eleven (11) minutes of State Trooper Beyer's Dash Cam video). Jackson acknowledges that it is miraculous that the state courts have never addressed the conflict between the testimony offered and the dash cam video which Jackson asserts would resolve any disputed facts herein.

The Respondent in this case did not address any of the merits regardless of the fact that it is a miscarriage of justice for Jackson in

this case to serve an eleven (11) year prison term based on evidence that is truly fruits of a poisonous tree. There can be no dispute after watching the dash cam video of Trooper Beyer that this case should have been dismissed at the trial level, and more accurately at the Suppression Hearing.

Jackson implores this Honorable Court to address the merits of this instant Federal Habeas Corpus Petition and not allow the Respondent to continue to hide behind a procedural bar, as previously stated, it would be a fundamental miscarriage of justice to allow this conviction to stand and the lies told by the Troopers to go unaddressed.

In summary of the arguments presented herein:

"The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution prohibit unreasonable searches and seizures, including unreasonable automobile stops." Bowling Green v. Godwin, 110 Ohio St.3d 58, 2006-Ohio-3563, ¶11. When the police stop a vehicle based on probable cause that a traffic violation has occurred, the stop is reasonable under the Fourth Amendment. Id. State v. Thomas, 12th Dist. Warren No. CA2012-10-096, 2013-Ohio-3411.

When detaining a motorist for a traffic violation, "a police officer may detain the motorist for a time period sufficient to allow the officer to issue a ticket or a warning, or to run a computer check on the driver's license, registration and vehicle plates." State v. Coleman, 12th Dist. Fayette No. CA2011-09-020, 2012-Ohio-3630, ¶11, citing State v. Batchilli, 113 Ohio St.3d 403, 2007-Ohio-

2204, ¶12. See also Rodriguez v. United States, 135 S.Ct. 1609, 1615 (2015)(noting that "ordinary inquiries" incident to a traffic stop typically involve "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance"). "In determining if an officer completed these tasks within a reasonable length of time, the court must evaluate the duration of the stop in light of the totality of the circumstances and consider whether the officer diligently conducted the investigation." Batchili at ¶12, quoting State v. Carlson, 102 Ohio App.3d 585-599 (9th Dist. 1995).

Both Ohio courts and the United States Supreme Court have determined that the "exterior sniff by a trained narcotics dog to detect the odor of drugs is not a search within the meaning of the Fourth Amendment to the Constitution." (emphasis added) State v. Grenoble, 12th Dist. Preble No. CA2010-09-011, 2011-Ohio-2343; United States v. Place, 462 U.S. 696, 707, 103 S.Ct. 2637 (1983). See also Illinois v. Caballes, 543 U.S. 405, 125 S.Ct. 834 (2005). "Police are not required to have reasonable suspicion that a vehicle contains drugs prior to conducting a canine sniff of the vehicle during a traffic stop, so long as the duration of the traffic stop is not extended beyond what is reasonably necessary to resolve the issue that lead to the stop and issue a traffic citation." State v. Neal, 10th Dist. Franklin No. 14AP-79, 2014-Ohio-5162, ¶20. However, if the traffic stop is extended in order to allow a drug-sniffing dog to be brought to the scene, "police must have a reasonable suspicion that the vehicle contains drugs in order to justify the continued detention." Id.

The United States Supreme Court recently noted that:

a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, "become[s] unlawful if it is prolonged beyond the time reasonably required to complete the mission" of issuing a ticket for the violation.
Rodriguez, 135 S.Ct. at 1612, quoting Caballes, 543 U.S. at 407.

"The reasonableness of a seizure *** depends on what the police in fact do." Id. at 1616. "The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket *** but whether conducting the sniff prolongs-i.e., adds time to-the stop." Id.

Jackson contends that on June 14, 2011, Trooper Christopher H. Beyer while racially profiling, stopped Jackson for allegedly driving too close to a mobile home, a violation of Ohio law. Yet, after Trooper Beyer stopped Jackson in relation to the alleged traffic violation, Trooper Beyer failed to comply with standard protocol in making a routine traffic stop, including, intra alia, a requirement that he obtain from the driver a valid driver license and the vehicle's credential (as in this case, the rental agreement). This is critical to any appellate review, because Trooper Beyer perjured himself at both the Suppression Hearings held on June 4, 2012 and during the Jury Trial held February 11, 2014, acts of perjury pertinent to this case by clear and convincing evidence in the record, including Trooper Beyer's cruiser audio and video, he still knowingly gave perjured testimony, to-wit:

June 4, 2012, Suppression hearing Transcript, Page 8, Lines 19-22 states:

19. Q. Did this cause you any concern?

20. A. It did. That was kind of odd. So as we further

21. talked there, while I was looking over the documents he

22. handed me, I said, "Well, Where's your cousin?"

Page 9, Lines 10-11 states:

10. ... At that point in time, I was able to look through

11. all the documents. I went back to the vehicle then.

Page 10, Lines 4-9 states:

4. Q. You stated that you walked away from the vehicle then?

6. A. I did. I went back to my vehicle to further look

7. at the rental agreement, which can be a little bit

8. cumbersome and quite large and fine print. I went back

9. took his license and rental agreement back with me.

It is Trooper Beyer's cruiser that is doing the invalidating of this perjured testimony, because the cruiser's audio and video is void of these events occurrence. See **Exhibit A; Suppression Hearing Transcript, Pages 7-10**. The Cruiser's video shows by clear and convincing evidence that Trooper Beyer on June 14, 2011, timelines from 08:40:35 to 08:45:40 are void of the events testified to by Trooper Beyer of June 14, 2011.

It must be noted: between 08:40 to 08:42:08, dash cam confirms Trooper Beyer never obtained driver license or rental agreement for the possibilities of review; Between 08:42 and 08:45:30, again the dash cam confirms Trooper Beyer never obtained driver license or rental agreement for the possibilities of review. (Trooper Beyer testified he took Petitioner's driver license and rental agreement back to his patrol cruiser for further review. Immediately called

for K-9 assistance, attempted to run Jackson's information through L.E.A.D.S. for a background warrant check. At this point, Trooper Beyer alleged L.E.A.D.S. responded with a detailed explanation of why they were out of service, Beyer also testified that another reason extending the traffic stop until the K-9 arrival was the rental agreement was large and cumbersome in fine print. The aforementioned is in direct conflict with the dash cam video). Suppression Hearing Transcript pages 17-19 details that unbeknownst to Jackson, his defense counsel waived the viewing of the entire video which remains Jackson's star key witness. To further highlight the extent of the perjured testimony of Trooper Beyer Suppression Hearing Transcript pages 18-19 states in part:

7. STATE'S EXHIBIT 2 MARKED FOR IDENTIFICATION

9. Q. Trooper Beyer, there is, as I said, what has been

10. marked as State's Exhibit 2 for identification. Did you

11. have an opportunity to review this before this hearing?

12. A. Yes.

25. Q. And whose cruiser recorded this?

Page 19

1. A. Mine.

5. A. This is all from firsthand from my vehicle, my

6. patrol car.

See also Suppression Hearing Transcript page 28, Lines 11-14 which states:

11. Q. So then you pulled him over; he gave you his

12. license, registration, and eventually gave you this rental

13. agreement?

14. A. Yes.

(Exhibit A, Suppression Hearing Transcript)

Jackson asserts that Trooper Beyer's testimony was perjury.

Between 08:45:30 and 08:50, in short confirms Trader Suppression Hearing and Trial Testimony totally conflicts with the dash cam.

- A. At the Suppression hearing on Direct Examination, Trader testified the dog indicated on the vehicle without interference. The dash cam confirms that was a lie.
- B. At trial in 2014 on Cross Examination Trader admits to tapping the vehicle in the identical location where the K-9 scratched alleging a need to get the K-9's attention.
- C. At the Suppression Hearing and trial, Trader testified the vehicle of probable cause was the K-9 indication.
- D. At both the Suppression Hearing and trial, Trader misguided the record regarding the alleged abilities & inabilities of the K-9 being classified "High Prompt Defendant." Trader did testify the K-9 response to alleged narcotics is scratching however he did not notify the record the K-9 prompt command is tapping, nor did Trader notify the record these constitutionally invading concerns is/was highlighted in K-9 Argo Service Record with specific instructions for corrections which both Trader and the State of Ohio Highway Patrol failed to make dating back to 2010 well before the defendant arrest June 14, 2011.
- E. The dash cam confirms Beyer broke into the vehicle with the keys and vehicle remote without a warrant or the defendant's consent.
- F. The dash cam confirms Beyer continually turned his body mic on and off.
- G. The dash cam confirms Beyer and Trader broke into the trunk without searching any other portion of the vehicle internally or externally without legal consent.

On cross examination at the Suppression Hearing Trooper Trader confirms that he is aware the court has found in the past that he and his K-9 are NOT credible means of detecting the odor of cocaine and makes the following response to question in the Suppression hearing transcript page 44, Lines 11-12:

- 10. Q. Your dog did NOT alert to the trunk of the
- 11. vehicle, did it?

12. A. No, he did not.

Exhibit B attached confirms K-9 Argo was constitutionally invading and not qualified to detect the odor of narcotics which was known by the State of Ohio per K-9 service record as of 2010.

Petitioner contends that the investigative stop by Trooper Beyer violated his Fourteenth Amendment right to be free from discrimination on the basis of race. Petitioner asserts that the stop and investigation into his presence on an Ohio Highway was the result of an unconstitutional Ohio State Highway Patrol policy to stop all minorities driving on Ohio's Highways. For evidence of the alleged discriminatory policy, Appellant points to the June 14, 2011, fraudulent report of Trooper Beyer concerning events void of the cruiser's video recording with respect to his standing outside of Petitioner's vehicle reading a rental agreement, or obtaining Petitioner's driver license or the rental agreement being in his hand/hands while walking back to the cruiser. (see Exhibit A). Also the fact that Trooper Beyer openly admitted that he was a part of a "Criminal Patrol Team." Suppression Hearing Transcript, Page 32, Lines 2-25; Page 33, Lines 1-13. (Exhibit A).

Based upon the totality of the circumstances involved during Petitioner's traffic stop hearing, Petitioner contends that Trooper Beyer did not have probable cause, or reasonable justification to extend Petitioner's traffic stop until the K-9 arrived for a dog-sniff.

Additionally, Petitioner asserts he was denied his due process under the Fifth and Fourteenth Amendments when the State withheld exculpatory evidence favorable to the defense.

In this case, Jackson contends that the State has failed to comply with Ohio Crim.R.16 with respect to his request made for the disclosure of all "Brady Material" known or in the custody of the State relating to the L.E.A.D.S. Log and C.A.D. Reports of June 14, 2011 by way of the Brady request filed July 3, 2013, to verify in fact that the L.E.A.D.S. system was down as State Trooper Beyer contends in his "Fraudulent Report," "Suppression Hearing Perjured Testimony," and "Jury Trial Perjured Testimony," which facts concerning the L.E.A.D.S. system being down are void of Trooper Beyer's cruiser audio and video recordings. His testimony at the Suppression Hearing was false as the record does clearly show.

A partial response to the Brady request, which confirmed there were no warrants requested or issued to Trooper Christopher Beyer nor Michael Trader to enter Jackson's vehicle on June 14, 2011. The aforementioned Brady Material violation denied Jackson his due process right to a fair and impartial trial as guaranteed under the United States Constitution.

As Coleman v. Thompson, supra, and its progeny of cases thereafter clearly states, a procedural bar should not prevent a Federal Habeas Corpus court from addressing the merits of issues presented when a fundamental miscarriage of justice will result by the failure to do so. All American Citizens accused of a crime, are guaranteed their Constitutional and Due Process rights, and those rights will be protected by our legal system.

In light of all of the foregoing, a procedural bar can not hide a fundamental miscarriage of justice, especially one of this magnitude as has occurred in this present case.

CONCLUSION

Jackson respectfully objects to the Magistrate's Report and Recommendation to dismiss Jackson's Federal Habeas Corpus Petition as being procedurally time-barred in light of the miscarriage of justice that has occurred in this case. Jackson prays that this Honorable Court will address the merits of the issues presented herein with a de novo review of the matters in the interest of law, justice, equity and good conscience.

Respectfully submitted,

Clifton A. Jackson 10-11-18
Clifton Jackson, #A652-163
Petitioner, pro se
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P.O. Box 8000
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CERTIFICATE OF SERVICE

A true and accurate copy of the foregoing Objection was sent by regular U.S. Mail with proper postage on this 11th day of October, 2018, to the office of Mary Anne Reese, Assistant Attorney General, Criminal Justice Section, 441 Vine Street, Suite 1600, Cincinnati, Ohio 45202.

Respectfully submitted,

Clifton A. Jackson 10-11-18
Clifton Jackson, #A652-163
Petitioner, pro se

I declare under penalty of perjury that the foregoing is true and correct and that this Objection was placed in the prison mailing system on October 11, 2018.

Executed on October 11, 2018.

-12-

Clifton A. Jackson 10-11-18
Clifton Jackson, #A652-163
Petitioner, pro se