

**IN THE CRIMINAL COURT OF APPEALS OF TENNESSEE
FOR THE WESTERN DIVISION AT JACKSON**

State of Tennessee,

Appellee,

W2023-01177-CCA-R3-ECN

vs.

Shelby County Criminal Court Case: C1702460

**Jason White,
Appellant.**

**ON APPEAL OF RIGHT FROM JUDGMENT OF THE CRIMINAL
COURT OF SHELBY COUNTY**

Oral Argument Requested

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JURISDICTIONAL STATEMENT

This matter is on appeal as of right, under The Tennessee Rules of Appellate Procedure Rule 3, from a final Order entered on August 10, 2023, denying Appellant’s Writ of Error Coram Nobis. **Vol. 1, Pages 12-14.** Appellant filed a timely Notice of Appeal to the Tennessee Court of Appeals, pursuant to the Tennessee Rules of Appellate Procedure 4(a) (2023). **Volume 1, Pages 15-16.**

Appeal is proper with this Court, and this Court has jurisdiction to hear the issues presented in this appellate brief.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. WHETHER THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT’S WRIT OF ERROR CORAM NOBIS WITHOUT A HEARING.

STATEMENT OF THE CASE

Appellant filed a Writ of Error Coram Nobis on June 28, 2023. **Vol. 1, Pages 1-11.** The State filed no response in opposition. The trial court entered an Order denying the Writ of Error Coram Nobis without a hearing, on August 10, 2023. **Vol. 1, Pages 12-14.**

Based on this denial, Appellant filed a Notice of Appeal with this Court on August 17, 2023. **Vol. 1, Pages 15-16.**

STATEMENT OF FACTS

Appellant filed a Writ of Error Coram Nobis on June 28, 2023. **Vol. 1, Pages 1-11.** The Writ of Error contained the affidavit of co-defendant Kristin Cole **Id.** at 6. Based on the affidavit, co-defendant Cole was now for the first time testifying that Detective Mark Gaia sent text messages from her phone to Petitioner. **Id.** at 9-11.

At trial, 3 text messages were sent from co-defendant Cole's phone to Petitioner, and these text messages were the material evidence that convicted Petitioner, along with the testimony of Detective Gaia. **Vol. 1, Pages 1-11.**

At trial, Detective Gaia admitted to sending the third text message, but not the first two. **Id.**

In addition, co-defendant Cole acknowledged that she did not make this information available to Petitioner earlier, out of fear that she would be moved away like they did Petitioner, who was moved to New Mexico. **See first pages of Vol. 1 with no numbers.**

Co-Defendant Cole's affidavit also asserted that she witnessed Detective Gaia not only sending text messages, but also using her phone to contact co-defendant Montez Mullins. **Vol. 1, Page 6.** This case involved a package containing drugs, that was sent to the home of co-defendant Cole. **Vol. 1, Pages 1-11.** In her affidavit, co-defendant Cole also admitted that the package was sent by co-defendant Montez Mullins. **Vol. 1, Page 6.**

After reviewing the Petition, the trial court denied the Petition without a hearing. **Vol. 1 Pages 12-14.** The trial court concluded that the sworn affidavit of co-defendant Cole did not create new evidence because the trial court determined that she was not credible. In addition, the trial court concluded that since Petitioner had co-defendant Cole's phone records and her Arrest Ticket, he already had the evidence to show that she was not the person who could have sent the text messages. **Vol. 1, Pages 12-14.** This information: and the alleged lack of credibility of co-defendant Cole; and the ability of Petitioner to cross-examine Detective Gaia; was all used as support from the trial court to deny the Petition without a hearing.

The trial court entered an Order on August 10, 2023. **Vol. 1, Pages 12-14.** Petitioner appealed the decision on August 17, 2023. **Vol. 1, Pages 15-16.**

This matter is now properly before this Court for consideration.

ARGUMENT

I. The Trial Court Erred In Denying Appellant's Writ of Error Without A Hearing.

Review of the trial court's application of the law to the facts is a de novo review, with no presumption of correctness. State v. Walton, 41 S.W. 3d 75, 81 (Tenn. 2001).

A writ of error coram nobis lies "for subsequently or newly discovered evidence relating to matters which were not litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial." T.C.A. § 40-26-105(b) (2022); State v. Hart, 911 S.W.2d 371, 374 (Tenn. Crim. App. 1995).

The decision to grant or deny such a writ rests within the sound discretion of the court. Jones v. State, 519 S.W.2d 398, 400 (Tenn. Crim. App. 1974).

On appeal, the trial court's findings of fact will be upheld unless the evidence preponderates against the trial court's findings. Fields v. State, 40 S.W. 3d 450, 456 (Tenn. 2001).

In this case, this matter should be remanded back to the trial court, as it is clear that the trial court has engaged in making witness credibility

determinations, without ever having a hearing to determine the credibility of the witness.

Furthermore, the trial court has misunderstood the law and the facts, as the trial court appears to have equated having information that co-defendant Cole may not have sent text messages at a time she was alleged to, as equivalent to knowing that Detective Gaia either did, potentially did, or most likely committed perjury.

This Court knows and understands that had Petitioner made such a strong allegation, with no statement or information from co-defendant Cole, Petitioner would have failed on that allegation. Petitioner would have been reprimanded for making such a strong statement without any evidence. Petitioner would have been told that the officer testified under oath, and that his testimony would have been presumed to be truthful. The fact that co-defendant Cole was arrested at the time the text messages were sent would have been explained in a way that either stated or suggested that the times listed may have been wrong, or that someone else could have done it, but that the record was too incomplete to reach any conclusions.

Knowing this, and respecting the law, Petitioner did not make the allegations until he actually had evidence of it.

The affidavit of co-defendant Cole makes it clear that Detective Gaia was not being truthful when he testified and has made very serious and material misrepresentations which led to the conviction of Petitioner.

Co-defendant Cole did not come forward sooner based on a fear that she would be shipped away, like Petitioner was. That was a reasonable, and genuine fear. Petitioner was literally shipped to New Mexico. **Vol. 1, first pages that are not numbered.** To the extent that there are questions as to whether this fear was legitimate, a Hearing is necessary to determine her credibility.

With co-defendant Cole being a co-defendant represented by counsel, Petitioner had no way of getting this information sooner.

A Hearing on this matter is vital to the interest of justice. This Court should avoid at all costs a standard which would make witnesses feel comfortable that they could potentially testify falsely to material facts, and know that their conduct will be protected as opposed to reprimanded. Our sacred United States and Tennessee Constitutions would be violated if this were allowed to occur, and both Constitutions are crying out for this Court's protection.

The message that would be sent to the public if this conduct was not further investigated would be a message that justice is not equal, and that no one should expect it to be. Petitioner implores this Court not to adopt or send such a message.

Now that Petitioner is armed with such strong and powerful evidence, it is only right that he receives a new trial in order to use the evidence. There is no real dispute that the evidence is likely to be outcome determinative, and Petitioner can now show that the material witness against him was willing to testify falsely and do anything at all costs to convict him. The jurors need to know this when determining the detective's credibility and Petitioner needs to be able to cross-examine the detective with this newfound evidence.

“The right to explore or examine witnesses for bias is a fundamental right.” State v. Sayles, 49 S.W. 3d 275, 279 (Tenn. 2001).

When dealing with live, in-court witnesses, appellate courts should afford trial courts considerable deference when reviewing issues that hinge on the witnesses' credibility since the trial courts are “uniquely positioned to observe the demeanor and conduct of witnesses.” State v. Binette, 33 S.W.3d 215, 217 (Tenn. 2000).

“[A]ppellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary.” Wells v. Tennessee Bd. of Regents, 9 S.W.3d 779, 783 (Tenn. 1999).

In this case, it is clear that co-defendant Cole has provided information that is material and had never been made available prior to recently.

The trial court found her to not be credible, without ever having spoken to her, or met with her. That invalidates the “credibility determination” made and requires

this Court to remand this matter so that a proper credibility determination can be made.

Although none of us would want to believe and would prefer it not to be true that a police officer would get on the stand under oath and then make material misrepresentations. However, when that occurs, to run from the facts, or to try to wish them away does not protect anyone.

Co-defendant Cole's affidavit, supported by physical evidence, is far more credible than the testimony of Detective Gaia. She receives no benefit whatsoever by providing the affidavit that she did. At a minimum, the case would need to be remanded so that additional findings of fact can be provided as to what would make her affidavit not credible. At what point did she state something not supported by the facts and the evidence?

In contrast, if co-defendant Cole is going to be declared not credible without ever having a hearing to make credibility determinations, Petitioner would seek a declaration, supported by the facts and the evidence, as to why Detective Gaia is credible no matter what. That way the public at large can feel comfortable that decisions are being made in a manner that protects all citizens of their Constitutional rights.

In addition, Petitioner never had the information in the affidavit of co-defendant Cole previously, and at no point was any evidence or information he had equivalent to the evidence and information in the affidavit.

The trial court seems to suggest that Petitioner could have shown that co-defendant Cole was arrested at the time the text messages sent based on the phone records and Arrest Report, and since Petitioner had those things prior to trial, then there was no new evidence.

The trial court appears to be stating that having information that someone was in jail, or arrested, at the times text messages are reflected to be sent, is equivalent to knowing that the State's key witness was testifying falsely under oath, and that he was the one in fact sending text messages on the co-defendant's behalf, even though he denied having done so.

There was never a jury instruction by the trial judge telling the jurors that Detective Gaia testified falsely. Instead, the jurors were instructed that witnesses are presumed to have told the truth and to try to reconcile their testimony.

So, it is not accurate to suggest that Petitioner had sufficient evidence to show the jurors that Detective Gaia was not only the one sending text messages from co-defendant Cole's phone, but that he used her phone also, and she witnessed this with her own eyes.

To word it another way, if what the trial court is suggesting is accurate, then the State should be able to point to evidence or information that existed at the time of the trial and assert that based on that information it is clear that Detective Gaia was sending the text messages, and that it is clear that he testified falsely when he said otherwise.

Had that information been known, the State would have had an ethical duty to disclose the information to the trial court and Petitioner, and it never did.

Therefore, this information either was not known, or known but withheld by the State. In either scenario, Petitioner should not be the one punished for the conduct.

It is always disheartening when key evidence is withheld from the defense, and once it is discovered, the response is to ignore the conduct because it allegedly would not have made a difference.

The evidence is always important enough to hide, but it then gets described as harmless or irrelevant the second the defense discovers it.

Petitioner is asking this Court to put an end to that narrative with the Opinion in this case.

Furthermore, Petitioner is seeking an extremely reasonable remedy. Petitioner is seeking an opportunity to be able to have a trial in which all material and relevant information can be presented to a jury of his peers. In other words,

this should not even be opposed by the State, as Petitioner is seeking to have his constitutional rights protected.

CONCLUSION

Wherefore, premises considered, Appellant moves this Court to reverse the ruling of the trial court and to remand this matter back to the trial court so that a Hearing can be conducted on these serious allegations contained in the sworn affidavit provided on this matter.

CERTIFICATE OF COMPLIANCE

I, Terrell Tooten, certify that this brief has been submitted in compliance with Supreme Court Rule 46 regarding electronic filing and there are 2,444 words.

CERTIFICATE OF SERVICE

I hereby certify that this brief has been served on all parties through the electronic filing system on this the 4th day of December, 2023.

Respectfully Submitted,

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