

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

OCT 25 2013

ALAN CARLSON, Clerk of the Court

BY: **BRENDA RAAB**, DEPUTY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re GUY DONNELL MILES

G046534

On Habeas Corpus

(Superior Court No. 98 NF2299)

REFEREE'S FACTUAL FINDINGS

Pursuant to an Order issued by the Court of Appeal on or about February 13, 2013, the referee has conducted an evidentiary hearing in the above referenced matter that commenced on August 26, 2013 and concluded on October 18, 2013. The referee heard testimony from eighteen witnesses, reviewed twenty-one admitted exhibits, and considered the arguments of counsel. As directed, the referee now responds to nine questions posed in the initial Order of the Court of Appeal.

Question 1: In In re Hardy (2007) 41 Cal. 4th 977, California's Supreme Court described "newly discovered evidence" as "evidence that could not have been discovered with reasonable diligence prior to judgment." 41 Cal. 4th at 1016. The Supreme Court offered "a confession of guilt by a third party" as an example of such evidence. Applying this definition to the current testimony of Bernard Teamer, the referee finds that this testimony constitutes new evidence. Since, as discussed below, Jason Steward did not testify at the recent hearing, there is no "new evidence" to evaluate as to Mr. Steward.

Question 2: Relying again on In re Hardy's definition of "newly discovered evidence" as set forth above, the referee finds that the declaration of Harold Bailey also constitutes new evidence.

Question 3: Bernard Teamer is Petitioner's co-defendant who was convicted, along with Petitioner, at the conclusion of their joint trial. From the time of his arrest until approximately 2010, the evidence heard by the referee indicates that Mr. Teamer consistently insisted to anyone who asked him—including but not limited to law enforcement, his own attorney and investigator, and representatives of the Innocence Project--that he played no role in the June 29, 1998 robbery. He testified during the

recent hearing that he initially adopted this position because he believed that the case against him was weak and that he would therefore be exonerated at trial. Once he was convicted and imprisoned, he nonetheless continued to maintain his innocence until 2010 when he read a document purportedly executed by Jason Steward in which Mr. Steward indicated that Petitioner was not one of the robbers.

Mr. Teamer recently testified with a dour demeanor that he is a longtime member of the 190 East Coast Crips criminal street gang. He has suffered four prior felony convictions that caused him to be sentenced to state prison. These include convictions for first degree burglary and robbery. He testified during the recent hearing that he planned the June 29, 1998 robbery, and recruited Jason Steward and Harold Bailey to assist him in its commission. They entered the target financial institution, Fidelity Financial Services, to commit the robbery while Mr. Teamer waited nearby because Mr. Teamer had previously done business at Fidelity Financial and he feared that an employee might recognize him if he entered as a robber.

According to Mr. Teamer, Jason Steward was never a 190 East Coast Crip. He was a longtime Farm Dog Crip, which generates obvious questions. Why would Mr. Teamer recruit a member of a rival Crips sect to participate in a robbery with the 190 East Coast Crips? Isn't it more likely that a 190 East Coast Crip who was planning a robbery would recruit as an accomplice a member of his own 190 East Coast Crips gang? Mr. Teamer did not address this issue. As will be discussed further below, Petitioner in his recent testimony confirmed that he was a longtime 190 East Coast Crip.

In 2010, after Mr. Teamer was shown the Jason Steward document, Mr. Teamer contacted Harold Bailey and informed him that the statute of limitations had expired so Mr. Bailey would have no legal exposure if he was identified as one of the robbers. In the opinion of Mr. Teamer, Petitioner does not resemble Harold Bailey, in that Mr. Bailey is considerably larger than Petitioner. Finally, Mr. Teamer testified that since 2005 he has changed the direction of his life. He is married, has eight children, and operates a trucking business in Lancaster, CA.

The referee is troubled by many aspects of Mr. Teamer's testimony that relate to his credibility. He testified that his current religious views began to develop in 1998 and those beliefs are one of the reasons he has now come forward to testify on Petitioner's behalf. However, Mr. Teamer failed for many years after 1998 to make any statement consistent with his current testimony, even when contacted on Petitioner's behalf by representatives of the Innocence Project. Mr. Teamer also testified that he believed that he would face no negative legal repercussions when he decided to confirm Mr. Steward's statement. He also shared that belief with Harold Bailey when the two men spoke. Mr. Teamer and Petitioner are longtime members of the same criminal street gang, the 190 East Coast Crips, which gives Mr. Teamer a motive to fabricate. The referee does not find Mr. Teamer compellingly credible. Nor is his testimony corroborated in any significant way by any other inherently reliable evidence.

Question 4: Jason Steward did not appear to testify during the recent hearing. No actual evidence was produced as to his current whereabouts, and the referee is therefore unable to make any formal finding as to his legal unavailability, but the parties seem to agree that Mr. Steward is currently incarcerated in

Los Angeles County on a homicide charge. The referee therefore had no opportunity to view and evaluate Mr. Steward's testimony. The referee as a result is unable to make any finding concerning his current testimonial credibility.

Question 5: Petitioner is an articulate and thoughtful witness whose testimony is nonetheless burdened with significant legal and logical credibility issues including but not limited to the following. He was a fugitive parolee at the time of the robbery. Much closer in time to the events at issue he admittedly made numerous statements to law enforcement concerning his whereabouts and activities in late June of 1998 that are inconsistent with his current testimony. He had involved himself in serious felony misconduct before June of 1998 which involved acts of moral turpitude. He had a long history of involvement with the same criminal street gang, the 190 East Coast Crips, whose members now admit they were involved in the June 29, 1998 robbery. He admits that he was in fact in southern California on the day of the robbery although he actually lived at the time in Las Vegas, Nevada and seldom came to southern California. As a result, although petitioner speaks well and bears a pleasant demeanor, the referee finds that his testimony has no compelling credibility, nor is it corroborated in any significant way by any other inherently reliable evidence.

Question 6: Harold Bailey did not appear to testify during the hearing. No evidence was produced to prove his current whereabouts, and the referee is therefore unable to make any formal finding as to his legal availability, but the parties seem to agree that Mr. Bailey is now serving an unrelated felony sentence in a state prison in Texas. The referee as a result is also unable to determine his testimonial credibility. The Court of Appeal directed the referee to assess the credibility of Harold Bailey's written declaration, dated February 5, 2010. Two declarations purportedly executed by Mr. Bailey, one typed and one handwritten, were admitted over Respondent's objection as Exhibits 7 and 8. The referee has reviewed the contents of both exhibits in Mr. Bailey's absence. Mr. Bailey's credibility is hotly contested, as is his motivation to make the statements contained in Exhibits 7 and 8. The facial honesty and/or accuracy of these contested statements is not obvious to the referee who has long believed that the credibility of any sworn statement, oral or written, can best be judged only after it has been subjected to the crucible of cross examination guaranteed to opposing parties in criminal matters by the Sixth Amendment. The referee does not find that either of Mr. Bailey's statements is inherently credible or reliable as a declaration against his penal interest since it does not appear from any evidence presented that there is any basis to believe that at the time Mr. Bailey made the statements he had any reason to believe that either might subject him to any criminal liability. Indeed, the evidence is to the contrary. Neither declaration is corroborated by any other inherently reliable evidence. Therefore, absent an opportunity to observe the demeanor of the witness and to evaluate other credibility factors such as those set forth in CALCRIM 226, the referee is unable to find that either of these declarations is credible.

Question 7: The referee heard testimony from eight witnesses who might at least generally be characterized as alibi witnesses: Mable Miles, Charles Miles, D'Andre Miles, Gloria Perry, Patricia Joseph, Shannah Mayfield, Deon Mayfield, and Tasharoh Foy. All but Shannah Mayfield and Deon Mayfield apparently testified at Petitioner's trial which resulted in his conviction. Many have suffered credibility deficits during the years since that trial. For example, Petitioner's son, D'Andre, was an innocent eleven year old child when he appeared as a trial witness. Since that time, life has not been kind to D'Andre

Miles. He has become a committed member of a criminal street gang who has suffered serious felony convictions involving moral turpitude. As might be expected given the passage of time, all of these witnesses have also experienced memory lapses to one degree or another concerning what they now recall about the relevant events of June, 1998. It is therefore difficult to imagine how any of these witnesses might be more credible today than they were when they testified on Petitioner's behalf at his trial. Having said that, the referee has endeavored to evaluate the current credibility of each of these witnesses on a de novo basis and to judge the credibility of each in an absolute, rather than relative, sense.

Mabel Miles is the Petitioner's mother. Although she was not a percipient witness to the robbery, she testified that she believes her son is innocent. She indicated that she has spent a substantial amount of money in an effort to prove it. She knew her son was on parole in 1998, and that his parole officer apparently believed Petitioner was living with her in southern California, when he was in fact living in Las Vegas. She never told her son's parole officer the truth about this situation. She recalls that Petitioner arrived at her house during the early, predawn hours of June 29, 1998 to pick up her grandson, D'Andre, to take him back to Las Vegas. Petitioner stayed only a few minutes and was gone. The referee believes that the witness made a sincere effort to recall events but that her recollection is colored by her unconditional love for her son and her belief that he is innocent. The referee therefore questions the historical accuracy of the memory of this witness. She testified as an alibi witness at Petitioner's trial.

Charles Miles is the Petitioner's father. Although not a percipient witness to the robbery, he also testified that he believes that his son is innocent and he has spent a substantial sum of money in an effort to prove it. He knew that his son was on parole in 1998, and that California parole authorities believed Petitioner was living with him in southern California. He never revealed to parole that his son had left the state for Las Vegas. During that time, Petitioner seldom visited southern California. June 29, 1998 is not a particularly significant date to him. Nonetheless, he recalls that Petitioner arrived at his home in Carson, CA during the early morning, predawn hours of June 29, 1998 to pick up the witness's grandson, D'Andre, in order to take him back to Las Vegas to spend the summer. The referee believes that the witness made a sincere effort to recall events but that his recollection, like that of his wife, is colored by his unconditional love for his son and his belief that he is innocent. The referee therefore questions the historical accuracy of the memory of this witness. Mr. Miles testified as an alibi witness at Petitioner's trial.

D'Andre Miles is the Petitioner's son. He was eleven years old when he testified as an alibi witness at Petitioner's trial. He testified during the recent hearing that in 1998 he lived primarily with his mother in Sacramento, CA but that he sometimes spent time during the summer with his grandparents at their home in southern California. He arrived at his grandparent's house in late June, 1998. The witness was unhappy with this arrangement, however, and therefore telephoned his father to request that Petitioner retrieve him so that father and son could spend the summer together in Las Vegas. Although the witness was at times vague on his time frame, and he has no historical documents to reference in an effort to refresh his memory, he testified that Petitioner arrived in southern California shortly after the telephone call during the early morning hours and the witness was thereafter driven by Petitioner

directly back to Las Vegas. After 1998, the witness became an active member of a criminal street gang, the Piru Bloods. When he was 16, he was convicted of residential burglary. He is now serving an eleven year sentence for a gun related possession for sale case. The referee does not find this witness inherently credible.

Gloria Perry is an old friend of the defendant and his family. Her mother was married to the defendant's grandfather. In her recent testimony, the witness appeared sincere in her often futile effort to recall events from fifteen years ago. She believes that she saw the defendant in Las Vegas on June 28, 1998, when she was at his apartment to have her hair processed, and that he was planning a trip to southern California to pick up his son. She believes she recalls seeing D'Andre Miles at Petitioner's apartment in Las Vegas on June 30, 1998. Her written statements contained in admitted Exhibit 6, which she recognized and authenticated, are somewhat inconsistent with her current testimony. The referee finds the witness to be sincere in her effort to recall fifteen year old events. Nonetheless, her historical accuracy is not apparent to the referee. She testified as an alibi witness at Petitioner's trial.

Patricia Joseph was Petitioner's neighbor in Las Vegas in 1998. In her current testimony she is certain that the defendant was present in his Las Vegas apartment on the evening of June 28, the morning of June 29, and the evening of June 29, 1998. When she was interviewed by law enforcement in 1999 she said that she could not be certain of any of these dates. She is a fragile individual whose daughter was murdered at an unknown time in an unexplained manner. She has also suffered petty theft and welfare fraud/perjury convictions. The witness appeared sincere but the referee does not find her to be inherently credible. She testified as an alibi witness at Petitioner's trial.

Shannah Mayfield is an old friend of the Petitioner who was a member of her wedding party. She was married in July of 1998 and recalls that her groomsmen, including the Petitioner, were measured for their formal wear, and paid for them, in Las Vegas sometime in June of 1998. Her testimony fluctuated with respect to the dates that these events occurred as her memory seems to have faded. The referee found her to be sincere but not particularly helpful. The witness did not testify at Petitioner's trial.

Deon Mayfield is the husband of Shannah Mayfield, and is also an old friend of Petitioner whom Mr. Mayfield testified was a groomsman in the couple's wedding in 1998. He has no current recollection of the date the groomsmen were fitted for their formal wear, or the date when the rentals were paid for. He also appeared to be sincere but provided the referee with no information that was particularly helpful. The witness did not testify at Petitioner's trial.

Tasharon Foy was the property manager of Petitioner's Las Vegas apartment complex in 1998. She rented Petitioner his apartment in late 1997 and thought he was a handsome man. They never dated. Her current recollection of relevant events is vague and her memory was therefore repeatedly refreshed during her recent testimony. Ultimately, she testified that she telephoned Petitioner on June 29, 1998 in an effort to convince him to renew his lease which would soon thereafter expire. She also spoke to him on June 30. She testified that she saw his vehicle parked in its assigned place at the Las Vegas complex during the late afternoon hours of June 29. She testified further that defendant has a distinctive vehicle which she saw almost daily when she was working at the complex. She also testified that she recalled

that the vehicle appeared to be damaged on June 29, and that it had not been damaged on prior days. She appeared to be sincere. Her current ability to recall events is at best problematic. The witness testified as an alibi witness at Petitioner's trial.

None of the remaining witnesses were viewed by the referee as alibi witnesses. They provided information that, in the opinion of the referee, was not particularly responsive to the Court of Appeal's questions, or helpful to the referee. Most provided either foundational or collateral information. For example, Dr. Norah Rudin, a qualified DNA expert, confirmed only that she has reviewed all relevant reports in the case and there is no physical or scientific evidence that she has been made aware of that either implicates or exonerates Petitioner.

Question 8: Harold Bailey is a critical actor in the pending drama since it is alleged that he, rather than Petitioner, participated in the 1998 robbery of Fidelity Financial Services. The referee believes that his evaluation of witness credibility in this case would undoubtedly benefit from hearing the testimony of as many relevant witnesses as possible. With that thought in mind, and recalling the evidence that was presented during the recent hearing, the referee concludes that hearing testimony from Harold Bailey is not essential in that the referee is able to respond to the Court of Appeals' questions and to make credibility determinations with respect to the other witnesses without hearing from Mr. Bailey.

Question 9: Based upon his consideration of all of the evidence presented during the course of this hearing, the referee believes that Petitioner could in fact be innocent of the June 29, 1998 robbery. It is possible. That is, however, not the question presented to the referee. Rather, the legal issue currently is whether evidence has been presented that "undermines the entire prosecution and points unerringly to Miles' innocence..." The referee has not heard such evidence. In reaching this conclusion, the referee is mindful of the standard set forth in cases such as In re Hall (1981) 30 Cal. 3d. 408 and People v. Gonzalez (1993) 51 Cal. 3rd 1179, both of which are cited in In re Hardy, 41 Cal.4th at page 1016. There the Supreme Court ruled that a collateral attack by means of habeas corpus on a criminal judgment can only succeed when new evidence creates a "fundamental doubt on the accuracy and reliability of the proceedings...(Citations omitted) (N)ewly discovered evidence does not warrant relief unless it is of such character 'as will completely undermine the entire structure of the case upon which the prosecution was based.' (Citation omitted)" For the reasons discussed above, the referee cannot and does not conclude that such evidence has been produced here.

CONCLUSION

Based upon his training and experience, the referee believes that eyewitness identifications can be problematic, their validity often depending upon the surrounding circumstances. The referee believes that the same can be said for many confessions and admissions. Indeed, an attorney associated with the Innocence Project at Benjamin Cardozo School of Law has written that "(i)n about twenty five per cent of DNA exoneration cases, innocent defendants made incriminating statements, delivered outright

confessions or pled guilty. These cases show that confessions are not always prompted by internal knowledge or actual guilt, but are sometimes motivated by external influences." Such cautionary language seems applicable to the present case as the parties attempt as best they can to reconstruct history fifteen years after the fact.

Respectfully submitted.

Date:

10/25/13

A handwritten signature in dark ink, appearing to read "Thomas M. Goethals", written over a horizontal dashed line.

Referee

THOMAS M. GOETHALS