EX PARTE: MARCUS A. COOPER

Request of Opinion if 11.07 IS DENIED

May 28, 2016

82,398-03

See Ground 1.# 11.07

RECEIVED IN COURT OF CRIMINAL APPEALS

reindicted cause# Cause#2014-CR10168 AFFIDAVIT to

#1993231 [Appeals Court requesting an, VOLUME 1.

JUN 02 2016

Abel Acosta, Clerk

[Opinion if 11.07 Writ is Denied.]

To honorable clerk an Judges of Appeal Court(-

April 28, 2016 11.07 Was Presented to Appeals Court in Austin, Filed February 16, 2016 with District Clerk. While 11.07 Post conviction Writ is under review I am requsting (if Denied) an notice an statement of (Opinion) why, because 90% of 11.07 are Denied but I have strong grounds an, Direct Appeal officials made Error an Affimed that Appeal. Later on Federal Charges will be made on Officials from 4th Court OF Appeals for Violation of ART 2.03 Neglect of Duty, an Violating TX Penal Code §37.10 Tampering with Governmental Records which is a 3rd Degree felony on the state (Reason) See Federal Law Applicability (Sec B) Time limits Speedy Trial Plain Applicable to persons who are being accused of offense that have not been (indicted) as well as persons who have been indicted. [See Collateral Estopell 2nd indictement Void] Trial Court was not ready for Trial in 120-180 bad timing on State, See Proper remedy was CCP. ARticle 28.061 Dismissal for Delay. See Ground 1# on Writ 11.07. TX Penal Code 37.10 Tampering with Governmental records. It is a felony for state an Clerk to withhold 2nd Refiled Motion Speedy Trial Filed in July, 2014. Motion to Dismiss Failure to Provide a Constitutional Speedy Trial Overruled by Judge another Legal Error, Again Charges will be filed Later on. Sincerely Written

C.C. FILE VOLUME 1. May 28, 2016 Marcus Cooper

EXPARTE:
MARCUS A. COOPER

May 28, 2016

VOLUME 2 ✓ reindicted cause Volume 2 ✓
#1993231 2014-CR10168
[AFFIDAVIT requesting Opinion on 11.07 If Denied]

To the honorable Clerk an Judge of Appeals Court. As I explained in volume 1. of Affidavit I am requesting an Opinion if 11.07 Post Conviction Writ is Denied. In Volume 2. I am asking that the Appeals Court Strongly look an consider Ground 2.# of 11.07, Insufficient Evidence, an Ground 5.# violation TX Penal Code 37.09 Tampering with Evidence. It is a fact that Article 39.14 CCP see Notes of Decision Discovery 14, Discovery 3, I am intitled to Exculpatory Evidence at Trial, The prosicution did not prove my Finger plint on said (Knife) (No Knife) presented at Trial only a (photo of a Knife.) Attorny Defense Attorney objects to Rule 403 Rule of Evidence Discovery 111 required State to disclose (without Request) No Knife only a (photo of knife) also Knife photo was from previous Febuory Acuital 2013-CR11661-which violates TX Penal Code 37.09 Tampering with an Fabricating Evidence, Again, Federal Charges will be filed later on DC 187 Stephen Hilbig, an Prosecutor Kimberly Gonzalez, an DA Nicco LAHood. Again this Volume 2 asking Appeals Court for Opinion on 11.07 if DENIED Final Conclusion: At the least this cause should Thank you C.C. FILE be NON-AGGRAVATED sincerely Written VOLUME 2, May 28, 2016 Marcus Cooper

→ → Revese Side Continues →

Federal CASE Law see
Pennsylvania V. Ritchie, 480, US 39 (1987) Prosecutor duty to turn over excupatory Evidence.
Note in cause 2014-CR10168 namly a (Knife)

SEE Pennsylvania V. Ritchie, 480, U.S. 39 (1987) Prosecutor duty to turn over Exculpatory Evidence namly a(Knife) Finger Print Not on Knife March 30, 2013

Discovery IV

8) If state withholds or redacts information, state must disclose that a portion of request is being withheld or redacted

- Motion to compel requires us to hold hearing to determine whether withholding or redaction is justified
- This can be dispositive, too
- Typical sanction is that state cannot use evidence it failed to disclose

note: Photo's of Knife should have note been used at Trial without actual Real Knife.

Sanction or Rule-note CCP 38.23 Evidence not to be used. State-Prosecutor did not present a (Knife at Trial) only a picture of a knife from previous Accuital Trial. Violation 38.23, also a 3rd Degree Felony

Conclusion-This Ground mean Cause 2014-CR10168 should be Transferred to Non-aggravated

Motion for Appointment of Interpreter

- Art. 28.01(10)
- Art. 28.01 § 2 says if matter not raised by 7 days before hearing is waived
- BUT
- Art. 38.30(a) C.C.P. states when motion is filed or judge becomes aware that Δ or witness doesn't understand English
- AND

1. ✓ Final Conclusion-This Cause 2014-CR10168 Plea Deal was non agg so 3 years was dec Refused by I refused defendant.

2. Final Conclusion-This cause Should be non aggravated at the least.

Motion for Appointment of Interpreter II

- § 57.002(a) Gov't Code states if motion is filed by party or requested by witness
- Court ***shall*** appoint an interpreter
- Denial of due process if Δ doesn't understand proceedings & evidence

CASE LAWS

See Federal CASE Law U.S. Supreme. California V. Trombetta 467 U.S. 479 (1984) Destruction of Exculpatory Evidence to allow complete Defense.

Cox V. Curtin, 698 F. Supp 2d 918 WD Mich 2009) Brady Violation, Prosecutorial Misconduct Ineffective Counsel

Appellate Issues

- Pre-trial rulings are part of trial record (art. 28.01 §2)
- State can appeal ruling that
1) Dismisses complaint (art. 44.01(a)(1))
2) Grants double jeopardy claim (art. 44.01(a)(4))
3) Grants motion to suppress (art. 44.01 (a)(5))
- During appeal, proceedings are stayed (art. 44.01(e))

Motion to Dismiss Failure to Provide a Speed Trial was Presented - Facts are in Motion on Record. Gv Judge Overruled Legal Error Pennsylvania V. Ritchie, 480, US 39 1987) Prosecutor duty to turn over Exculpatory Evidence) Namely a Knife Current Cause

Conclusion

Appellate Issues II

- Δ can appeal any adverse decision after conviction if issue timely raised & preserved
- Can raise jurisdictional issue on appeal for first time

Attorney did object to Rule 403 R of Evidence photo's of (Knife) an Photo of Bloody barage no relevant to current cause. No one was cutt or stabbed. CASE LAW See Pennsylvania V. Ritchie 480, US. 39 (1987) Prosecutor duty to turn over Exculpatory Evidence (namly Knife)

Final Conclusion - Cause # 2014-CR10168 should be transffed from aggravated to non-aggravated

Other Pre-trial motions

- Use of pre-trial is not limited to list in art. 28.01
- Rule 702 (admissibility of scientific evidence)
- Motion to record proceedings/ court reporter
- Submission of special instructions or requests for jury charge
- Designation of expert witnesses & materials upon which they rely
- State's offer extended could result in guilty/no contest plea & waiver of trial

Expert witness Joanna Collins took the stand: note Miss Collins is a Special investigator stated at Trial that there need to be more Evidence to say assault accured. More than DNA need to claim rape.