

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE)	
)	
v.)	DOCKET NO. 306929
)	
JUSTIN WHALEY,)	JUDGE PATTERSON
)	
Defendant.)	

PETITION FOR WRIT OF ERROR CORAM NOBIS

Defendant, Justin Whaley, by and through his attorney, Lee Davis, pursuant to Tennessee Code Annotated § 40-26-105, hereby petitions this Honorable Court for a writ of error coram nobis in light of newly discovered evidence.

As grounds, on or about March 20, 2024, the Hamilton County District Attorney's Office disclosed to defense counsel that the arresting officer (and key State witness) in this case, Jeremy Wright, was subject to an internal affairs investigation in May of 2023, and found to be untruthful – just prior to the October trial. According to the internal affairs report, dated July 6, 2023, the District Attorney's Office was aware of this investigation before trial and did not disclose such information to the defense. A March 21, 2024, email from the lead prosecutor detailing the March 20, 2024, disclosure is attached hereto and marked as Exhibit A. The July 6, 2023, internal affairs (IA) report is attached hereto as Exhibit B.

As set forth herein, coram nobis relief is warranted because this information qualifies as newly discovered evidence that may have affected the outcome in this case, had it been disclosed before trial.

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FACTS

1. Mr. Whaley was arrested by Officer Jeremy Wright on July 3, 2018, for reckless endangerment following the motor vehicle accident in the above-styled case.
2. After Mr. Whaley's arrest, Officer Wright filled out an affidavit for a search warrant to obtain Mr. Whaley's blood. Therein, Officer Wright averred that he believed there to be probable cause of a DUI violation under Tenn. Code Ann. § 55-10-401, justifying a search warrant for a blood draw. The Affidavit states:

On Tuesday, July 3, 2018, Justin Whaley was involved in a motor vehicle crash, which resulted in the death of the other driver. Mr. Whaley was driving north on Highway 111 in the southbound lane when the head-on collision occurred. I smelled an odor of an unknown intoxicant emanating from Mr. Whaley's person. After being read his Miranda rights, Mr. Whaley admitted to consuming alcohol the night before this event.

See Trial Trans. at 231, Exh. 42.

3. On November 6, 2018, a preliminary hearing was held in Soddy Daisy Municipal Court, during which Officer Wright testified. During his testimony before Magistrate Judge Marty Lasley, Officer Wright admitted that he did not have probable cause for a DUI. *See* Preliminary Hearing Trans. 53-54. However, the magistrate found there to be "very slight probable cause" and the case was bound over to the Hamilton County grand jury—*Id.* at 33.
4. On February 20, 2019, Mr. Whaley was indicted in the above-styled case.
5. On May 3, 2019, defense counsel filed a Motion to Suppress the blood alcohol results.
6. On July 17, 2019, defense counsel filed a Motion to Exclude evidence on the basis that the warrant failed to allege probable cause.

7. On September 25, 2019, Officer Wright testified in a motion hearing relating to Mr. Whaley's arrest and the search warrant for the blood – this time in Hamilton County Criminal Court before Judge Barry A. Steelman. Defense counsel's motions were ultimately overruled. *See* February 3, 2020 Court Order.
8. On September 12, 2023, defense counsel filed a *Franks* Motion to Suppress alleging that the warrant/affidavit included false statements, misrepresentations, and material omissions.
9. On October 3, 2023, the *Franks* motion was addressed at a pre-trial motion hearing, during which time Officer Wright testified again – this time before this Honorable Court. Following this testimony, this Court denied the Defendant's motions to suppress (finding probable cause for the warrant and no false statements/material omissions).
10. The jury trial began on October 23, 2023.
11. At trial, the State's key witness was Officer Jeremy Wright—who again testified, this time before a jury. Officer Wright testified that he smelled “an odor of intoxicant coming from [Mr. Whaley's] person” from the back seat of the patrol car. *See* Trial Trans. 205.
12. On October 27, 2023, the jury found Mr. Whaley guilty of vehicular homicide by intoxication, reckless driving (2 counts), driving on a divided highway, speeding, driving under the influence, and reckless vehicular homicide.
13. On January 22, 2024, this Court sentenced Mr. Whaley to 9 years.
14. On January 26, 2024, defense counsel filed a Motion for New Trial.
15. On March 11, 2024, the Motion for New Trial was heard and overruled by this Court.
16. On March 14, 2024, defense counsel filed a Notice of Appeal.

17. Approximately one week later, on March 20, 2024, defense counsel was contacted by the Hamilton County District Attorney's Office and alerted to the following:
- a. Officer Wright was the subject of an IA investigation with the Soddy Daisy Police Department beginning on or about May 24, 2023. *See Exhibit B.*
 - b. The IA report indicates that, on May 25, 2023, Lieutenant Elrod of the Soddy Daisy Police Department spoke with a complainant who alleged that in 2018, Officer Wright showed an inappropriate nude photograph of himself to her and a juvenile at a Planet Fitness gym. *See id.*
 - c. The IA report further states that on May 25, 2023, after receiving the complaint, Lt. Elrod contacted Hamilton County District Attorney General Coty Wamp and provided the details of the accusation. *See id.*
 - d. The IA report indicates that on May 30, 2023, Lt. Elrod spoke with Officer Wright about this accusation. Officer Wright denied having or showing any such photograph. However, he later admitted to another superior officer, Lt. Jenkins, that he did possess the photograph in question. *See id.*
 - e. In June of 2023, Lt. Elrod found that Officer Wright had potentially engaged in off-duty misconduct and had been untruthful. Lt. Elrod documented these findings to Chief Sneed of the Soddy Daisy Police Department in the IA report dated July 6, 2023. *See id.*
18. This information about Officer Wright and the related IA report were not disclosed to defense counsel until on or about March 21, 2024, nearly ten months after the District Attorney's Office first became aware of the issue and five months after the Defendant's trial. No explanation has been provided for this delay.

19. The IA report provided to defense counsel on March 21, 2024, is not complete. A.D.A. Garrett stated in his email that he had “redacted a portion” of the report relating to another incident involving Officer Wright that A.D.A. Garrett claimed was unrelated to the Whaley case. The IA report, however, bears no markings or obvious redactions, leaving defense counsel with no context as to what was redacted. *See id.*
20. Defense counsel inquired about the redactions, requested information about the other internal investigation, and requested further information about the May 2023 investigation. However, the defense has not received any additional information from the State.¹

LAW & ARGUMENT

The writ of error coram nobis is a mechanism which allows for a remedy for an error occurring at trial related to newly discovered evidence. Tennessee’s writ of error coram nobis statute provides, in pertinent part:

Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were 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.

Tenn. Code Ann. § 40-26-105(b).

The Tennessee Supreme Court has explained that, “[i]n order to qualify as newly discovered evidence under Tenn. Code Ann. § 40-26-105, the proffered evidence must be (a)

¹ Recently, the State gave a copy of the unredacted IA report to the Court to review *en camera*. The defense has yet to be provided with any additional information or a copy of the redacted report with clear markings/obvious redactions for context.

evidence of facts existing, but not yet ascertained, at the time of the original trial, (b) admissible, and (c) credible.” *Nunley v. State*, 552 S.W.3d 800, 816 (Tenn. 2018).

Further, “a petition for a writ of error *coram nobis* need not show that the result of the proceeding *would have* been different had the evidence been available at trial—the petition need only show that the newly discovered evidence, had it been admitted at trial, *may have* resulted in a different judgment. *Id.* at 818 (citing *Vasques*, 221 S.W.3d 514, 525-28) (Tenn. 2007) (emphasis added). Notably, impeachment evidence may constitute newly discovered evidence for the purpose of coram nobis relief when it may have had the effect on the outcome of the proceedings. *Id.* at 528.

In summation, the Tennessee Supreme Court has offered the following procedural guidance:

[T]he trial judge must first consider the newly discovered evidence and be “reasonably well satisfied” with its veracity. If the defendant is “without fault” in the sense that the exercise of reasonable diligence would not have led to a timely discovery of the new information, the trial judge must then consider both the evidence at trial and that offered at the coram nobis proceeding in order to determine whether the new evidence *may have* led to a different result.

Id. at 527.

In applying this standard to the facts of this case, the IA investigation and related findings certainly qualify as “newly discovered evidence” under Tenn. Code Ann. § 40-26-105 because (a) the investigation and findings occurred just prior to trial in the spring/summer of 2023 but were not disclosed to the defense until after trial (and after the motion for new trial/hearing) on March 21, 2024; and (b) the internal affairs investigation report is credible and would have been admissible as impeachment evidence. Ultimately, this newly discovered evidence may have led to

a different result at trial as it affects the credibility of the arresting officer and key witness for the State, Jeremy Wright.

I. IA Investigation and Findings Qualify as Newly Discovered Evidence

- a. IA Investigation evidence existed at the time of trial, but the State did not disclose to the defense until *after* the trial.

Officer Wright allegedly showed a picture of his penis to a minor and her mother in 2018. The IA Investigation took place in May of 2023. Lt. Elrod alerted the Hamilton County District Attorney's Office about the investigation in May of 2023. In June of 2023, Lieutenant Elrod found that Officer Wright had been untruthful and documented this finding to Chief Sneed of the Soddy Daisy Police Department on July 6, 2023.

Meanwhile, the instant case proceeded to trial in October of 2023. The Defendant was without fault in failing to present this evidence at trial, as it was not disclosed to the defense until after the trial on March 20, 2024, despite the District Attorney's Office being aware of the issue months prior to trial.

- b. The IA Investigation and finding of untruthfulness are credible and would have been admissible as impeachment evidence.

As a preliminary matter, it is undisputed that the IA report, part of an official investigation by the Soddy Daisy Police Department, is credible. Furthermore, the IA report and findings of untruthfulness are clearly relevant as they involve the veracity of a key state witness—the arresting officer Jeremy Wright.

The Tennessee Rules of Evidence provide that the “credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness

has been attacked.” Tenn. R. Evid. 608(a). Further, specific instances of conduct may be probative of untruthfulness and may be inquired into on cross-examination provided that there is a jury-out hearing (concerning probative value and that a reasonable factual basis exists for inquiry) and the conduct occurred no more than ten years before the commencement of the prosecution. *Id.* 608(b).

In this case, the IA investigation involved an allegation of inappropriate off-duty conduct and a finding that Officer Wright was untruthful in the course of the investigation. The untruthfulness is classic impeachment material and admissible under 608(a). The Tennessee Supreme Court has made clear that such impeachment evidence may constitute newly discovered evidence for the purpose of coram nobis relief per *Vasques*.

Furthermore, information about the underlying investigation itself (and the conduct about which Officer Wright was untruthful) could have been admissible under 608(b), pending a jury-out hearing, because the untruthfulness occurred just months prior to trial and the underlying misconduct occurred five years prior to trial (and in the very same year of Mr. Whaley’s arrest).

Accordingly, the IA investigation and the findings of untruthfulness related to a key State witness qualify as newly discovered evidence pursuant to Tennessee Code Ann. § 40-26-105 and the Tennessee Supreme Court’s analysis in *Nunley*.

II. This Newly Discovered Evidence Relates to the Veracity of a Key State Witness and May Have Changed the Outcome of the Trial

The credibility of Officer Wright was a significant issue both at trial and at pre-trial hearings. Had this newly discovered evidence of Officer Wright’s untruthfulness been introduced, key blood alcohol evidence may have been suppressed (given the possibility that the underlying warrant was questionable) and/or the jury may have further questioned the officer’s testimony related to impairment (the key issue at trial).

Officer Wright testified **four** times in this case: at the November 6, 2018 preliminary hearing in Soddy Daisy Municipal Court before Municipal Court Judge Marty Lasley, at the September 25, 2019 motion hearing in Hamilton County Criminal Court before Judge Barry Steelman, at the October 3, 2023 pre-trial motion hearing in Hamilton County Criminal Court before this Court, and before a jury at the subsequent trial in late October 2023. The closeness of the decisions was notable in all scenarios.

a. Pre-Trial Hearings

Officer Wright allegedly engaged in misconduct in 2018, the year of Mr. Whaley's arrest. At the 2018 preliminary hearing, the defense challenged the sufficiency of the warrant and, upon cross-examination, Officer Wright admitted that he did not have probable cause for a DUI (though he averred otherwise). *See* Preliminary Hearing Trans. at 53-54. Ultimately, reflecting the closeness of the decision, Municipal Court Judge Marty Lasley found there to be "very slight probable cause." *See* Preliminary Hearing Trans. at 33.

At the September 25, 2019 hearing, the defense moved to suppress the blood draw results on the basis that the four-hour delay in testing rendered the results unreliable and the low level .020g% result rendered extrapolation unreliable. Officer Wright testified in detail about the delay in collecting Mr. Whaley's blood. Ultimately, in a close ruling, Judge Steelman carefully considered Officer Wright's testimony and ruled that Officer Wright's delay in testing was lengthy but was not unreasonable. *See* February 3, 2020 Court Order.

Unbeknownst to the defense, the IA investigation into Officer Wright began in May of 2023, with the findings of untruthfulness documented in July of 2023. *See* Exhibit A. Significantly, two months later, on September 12, 2023, the defense filed a *Franks* Motion to Suppress, alleging that Officer Wright included false statements, misrepresentations, and material omissions in the

search warrant affidavit. This Court heard arguments on this matter and testimony from Officer Wright on October 3, 2023. Ultimately, this Court attributed any deficiencies related to the warrant/affidavit with rookie mistakes or negligence and overruled the motion to suppress.

Of course, if the defense had known about the IA investigation and the related finding of untruthfulness it would have been highly relevant to the pre-trial motions (and would surely have been considered by this Court). Unfortunately, the State not only chose to withhold this information from the defense and this tribunal initially but continued to withhold this information as this high-profile trial approached. Most troubling, this failure to disclose continued even after the defense filed a *Franks* motion. Said Motion focused on the truthfulness/credibility of the arresting officer – the very issue for which the IA investigation calls into question.

In failing to show candor to the Court, the State deprived the Court of critical information to consider in its pre-trial findings. In short, this newly discovered evidence concerning Officer Wright’s credibility may have resulted in different rulings – which may have resulted in suppression of the blood alcohol evidence. In this close case, the suppression of the blood alcohol report may have resulted in a different outcome at trial.

b. Jury Trial

Additionally, had this disclosure been timely, this newly discovered evidence would have been highlighted at trial and the jury may have questioned Officer Wright’s credibility. There was very little evidence of impairment in this case outside of the blood alcohol report. Notably, Officer Wright was one of the only witnesses to testify about impairment, stating that he “smelled an odor of unknown intoxicant emanating from [Mr. Whaley’s] person” while Mr. Whaley was in the back seat of his police car. *See Trial Tran.* at 205. Had the jury been aware of Officer Wright’s

misconduct and documented untruthfulness, they may have questioned his testimony and the verdict may have been different.

Of course, if the blood alcohol report had been suppressed (as outlined above) the outcome of the trial easily could have been different given the limited evidence of impairment outside of the report.

CONCLUSION

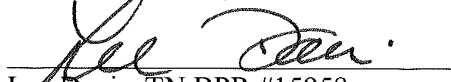
In conclusion, the IA investigation into Officer Wright and finding of untruthfulness amount to newly discovered evidence that may have resulted in a different judgment, warranting coram nobis relief.

WHEREFORE, the Defendant respectfully requests that this Court:

1. Grant this Petition for Writ of Error Coram Nobis;
2. Order the State to produce (for the benefit of the defense and the reviewing court) the complete unredacted IA report or, in the alternative, the complete redacted IA report (with black markings/obvious redactions);
3. Preserve the unredacted IA report in this Court's possession under seal for subsequent review on appeal;
4. Vacate the judgment of conviction and grant the Defendant a new trial; and
5. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

DAVIS & HOSS, PC


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CERTIFICATE OF SERVICE

I, Lee Davis, hereby certify that a true and accurate copy of the foregoing has been served via first class U.S. mail, postage prepaid, and/or via e-mail delivery to the following:

Hamilton County District Attorney's Office
Parker Garrett, Assistant District Attorney
Brian Finlay, Assistant District Attorney
600 Market Street, Suite 310
Chattanooga, TN 37402

On this the 12th day of April, 2024.


LEE DAVIS