

## Butler's Trial Errors

1. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY WAITING UNTIL SIX DAYS BEFORE TRIAL BEFORE FILING A MOTION TO WITHDRAW, THOUGH HE HAD BEEN FIRED REPEATEDLY MONTHS EARLIER.
  - A. Mary Hutchinson, William Piers' mother, verbally requested Butler to withdraw from representing her son. Mrs. Hutchinson is the person who paid Butler's retainer.
  - B. William Piers directly and unequivocally told Butler that he was fired as his attorney. Piers specifically asked Butler to file a motion to withdraw. This request was made months before the trial date.
  - C. Butler, himself, admits that he knew that his client, and his client's mother, requested that he withdraw from the case. He also admits that the request occurred months before trial.
  - D. Butler argued that it was common for clients to ask him to withdraw, and for him to require that they ask him multiple times before he files a motion to withdraw.
  
2. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY NOT EFFECTIVELY ARGUING THE MOTION TO WITHDRAW AND ASSUMING AN ADVERSARIAL POSITION AGAINST HIS CLIENT.
  - A. At the hearing on his motion to withdraw, Butler argued against his client. Making it seem to the court that the relationship had not been destroyed, or that it was not as bad as Mr. Piers presented it.
  - B. Mr. Butler made some of the following statements during the *Ex Parte* hearing on the request to withdraw:
    - “Unfortunately,... I think to a large degree [Mr. Piers] kind of – maybe he's misunderstood the process to some degree.”
    - “There are a lot of things that you have to deal with at trial strategically.”
    - “We have not neglected Mr. Piers' case, and all along we've . . . tried to explain that this is a very serious situation.”
    - “I've talked with the prosecutor . . . On a number of occasions to try to

see if information that I had received, whether they had anything that remotely resembled it, because if it did, we certainly wanted to work with them in following up on it.”

- C. Meanwhile, Mr. Piers made the following statements, all of which Butler tried to minimize or explain away:

“This is an ongoing problem with counsel, and I don’t believe he has my best interest at heart.”

“Mr. Butler . . . you haven’t acted upon the evidence that I’ve given you or the information, and I have proof to that effect.”

“”[W]hen Mr. Butler has seen me . . . [h]e’s never responded to my questions. He hasn’t provided me any legal counsel.”

“[Mr. Butler,] you haven’t been doing anything.”

“[T]his is simply not true.” (Referring to explanations offered by Mr. Butler.)

“That’s a lie!” (Referring again to explanations offered by Mr. Butler.)

- D. Despite the obvious conflict between Butler and Mr. Piers, Butler concluded his argument by telling the court:

“[I]f the case is to go forward, we’ll be prepared to go forward. That’s the bottom line.”

3. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY CONTINUING TO REPRESENT MR. PIERS AT THE HEARING ON THE MOTION TO WITHDRAW DESPITE HAVING IRRECONCILABLE CONFLICT.

- A. By failing to suggest another attorney represent Mr. Piers in the motion to withdraw, or avoiding his own efforts to argue against the motion, Mr. Butler breached his duty of loyalty and zealous advocacy, given the actual conflict of interest in the matter.
- B. Mr. Piers expressed his conflict with Mr. Butler to the court, clearly and unambiguously, writing down the following:

“[I]t is my firm opinion that . . . who my counsel will be has been mandated by the court, I have not received adequate legal counsel and I do not recognize my forced counsel.”

- C. Rather than acknowledging that a breakdown in representation had occurred, Mr. Butler told the court the following regarding Piers’ allegations:

“Mr. Piers has sent my on a wild goose chance.”

“I wonder, quite frankly, whether [information given by Mr. Piers] is a figment of his imagination or is the truth of the matter.”

“I have to some degree lost some faith in being able to rely on information Mr. Piers has given me.”

- D. In the end, Mr. Butler continued to represent Piers, even accepting the court’s absurd decision to name Butler as Piers’ “court appointed attorney.” Thereby, permitting Mr. Butler to receive money from the government for his incompetence, and failure to represent his client.

4. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO PERFORM ANY INVESTIGATION.

- A. Mary Hutchinson, Piers’ mother, paid Butler \$2,500.00 to conduct an investigation before the trial. Particularly, Butler was asked to use the money to track down an unindicted person, “Adam”, who was likely the person who used a machine gun during the bank robbery.
- B. Butler pocketed the money, and claimed that he did the investigation on his own. Rather than pay for a private investigator, Butler took the money to enrich himself.
- C. Further, Mr. Butler argued to the court the following regarding why he never conducted and investigation for “Adam”:

“You know, . . . I’m going to be honest on the tape. I think to some degree I’ve been sent on a wild goose chase. I’m looking for a person by a first name that I nothing to follow up on. I’ve talked to the prosecutor to see if there’s anywhere in the investigation of the case that this name has come up as the person who would’ve been the person who did the shooting in this case of this weapon at police officers. And the only – quite frankly, the only source of the information is my client, and I’ve got a first name, a name Adam, you know, and go find him and things of that

nature and nothing else to go on. And while I'm sure I don't have the statements of other witnesses that the state is not required to . . . give me until we get close to trial, I've in good faith gone to Mr. Collins and I've asked him, and I believe in good faith he's responded no such thing has come up."

- D. In return for the \$2,500.00 paid to Butler for the investigation, all he did was ask the prosecutor, Mr. Collins, if they knew anything about Adam.
  - E. At trial, Co-defendant Raymond Hubbard, stated clearly that Adam had introduced him to Mr. Piers, and yet, Butler never got any information on Adam prior to trial, despite pocketing \$2,500.00 earmarked for this purpose.
5. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO MOVE TO SUPPRESS MR. PIERS' STATEMENT TO OFFICER BLOODGOOD.
- A. Moments after Mr. Piers' false arrest, the arresting officer Matthew Bloodgood asked Piers several questions, prior to giving him his Miranda warnings.
  - B. When asked questions by Bloodgood, Mr. Piers, likely confused about the questions, stated in response: "Everything is in my name, it's all mine."
  - C. The statement by Piers to Bloodgood were incriminating, and obtained in violation of Piers' Miranda warnings. Butler should have filed a motion to suppress the statement from being presented to the jury. He did not do so.
6. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO MOVE TO SUPPRESS MR. PIERS' VIDEOTAPED STATEMENTS.
- A. After the illegal arrest of Mr. Piers, the police held him at the Anchorage Police Station for eighteen hours in handcuffs in the interrogation room.
  - B. During the time that Piers was held in the interrogation room, he was denied access to his court appointed attorney, Fred Dewey, and Piers was struck by the officers.
  - C. At one point, prior to questioning Mr. Piers. APD detective Nick Vanderveur told Piers that he needed to administer his Miranda warnings. Before doing so, the officer told Piers that this was his only opportunity to present his side of the story.
  - D. Prior to the Miranda warning being given, Piers asked if he could speak with the officer off the record. The officer replied that they could, then turned off the tape

recorder next to Piers. However, the room was installed with video and audio recording equipment, which Vanderveur did not turn off.

- E. When the tape recorder was turned off, Piers stated the following, probably because he was confused or disoriented:

“I know I already turned myself into a criminal and pretty much disgraced my family . . . obviously I’m gone for a long time.”

- F. Despite the clearly incriminating nature of Piers’ statement, when viewed out of context with the events, Mr. Butler made no attempt to suppress the statement prior to trial, and did not object to the statement being presented at trial.

7. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY INCOMPETENTLY CROSS-EXAMINING APD OFFICER DAN REEDER, NEGATING HIS IDENTIFICATION OF HUBBARD AS THE PERSON WHO FIRED THE MACHINE GUN.

- A. During the robbery, for which Mr. Piers was accused of participating, one of the robbers fired a machine gun at APD Officer Dan Reeder. At the trial, Reeder testified that the person who fired the machine gun had a goatee and was wearing a faded Carhartt jacket.
- B. Prior to trial, evidence established that Raymond Hubbard, alleged co-conspirator and government witness, wore a fake goatee and a faded Carhartt jacket. As such, Officer Reeder’s testimony implicated Hubbard, and not Piers, as the shooter. The prosecutor had argued that Piers was the person shooting the weapon.
- C. Despite the positive testimony by Officer Reeder, Mr. Butler pressed him on the issue, eliciting the following exchange during cross-examination:
- Q [by Butler]: And it sounds from your testimony, sir, that you never did see the person who was doing the shooting.
- A [by Reeder]: No.
- Q: Okay. Sir, that’s all the questions I have.
- D. By incompetently cross-examining Officer Reeder, Mr. Butler discredited a witness favorable to his client, Mr. Piers. In the end, Piers was convicted of firing the weapon.

8. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY RESERVING HIS OPENING STATEMENT UNTIL THE END OF THE GOVERNMENT'S CASE, THEN NOT GIVING ONE.
- A. At trial, the prosecution presented its opening statement during which it accused Mr. Piers of committing various criminal acts, and presenting together its argument establishing Piers' guilt.
  - B. In reply to the prosecution's opening statement, Mr. Butler requested that the court inform the jury that "the defense is going to reserve its opening statement to a later time."
  - C. In addition to failing to present Mr. Piers' version of the facts, traditionally presented in the opening argument, Mr. Butler added to his error by declining to present an opening argument at the end of the prosecution's case.
  - D. As a result of Mr. Butler's incompetence, the jury never heard an opening statement in Mr. Piers' defense. The jury only heard from the prosecution.
9. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO CALL CHARACTER WITNESSES.
- A. Prior to trial, Mr. Piers presented Mr. Butler with a list of several individuals from the Anchorage community who were willing and able to testify to Piers' good character, honesty, and history of law-abiding behavior.
  - B. In lieu of calling the character witnesses offered by Mr. Pier, Mr. Butler refused to call a single witness during Piers' defense.
  - C. As a result of Mr. Butler's incompetence, the jury never heard any witnesses speak on behalf of Mr. Piers.
10. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY DENYING MR. PIERS HIS CONSTITUTIONAL RIGHT TO TESTIFY IN HIS OWN DEFENSE.
- A. Mr. Piers had no prior convictions, and told Mr. Butler that he wanted to testify to the jury in order to properly explain the circumstances that implicated him in the robbery.
  - B. Instead of allowing Mr. Piers to testify, Mr. Butler opted to gamble by resting the entire case, and as a result Mr. Piers' life, on Butler's closing argument.

- C. As a result of Mr. Butler's incompetence, the jury never got to hear Mr. Piers present his side of the facts, and so they were only left with the story given by the prosecutors.

11. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO DEVELOP A COHERENT DEFENSE THEORY.

- A. Mr. Butler abandoned his duties of zealous advocacy and effective assistance to Mr. Piers by failing to develop any coherent theory of defense.
- B. Mr. Butler made no effort to defend Mr. Piers. He opted to give no opening statement at the beginning of trial. He then opted to give no opening statement at the close of the prosecution's case. He presented to witnesses in Piers' defense, and presented no evidence in his defense. He refused to allow Piers to take the stand. Rather, Mr. Butler chose to rest Piers' defense at the conclusion of the government's case.
- C. As a result of Mr. Butler's incompetence, the jury was never given any reason to doubt the facts and the story given to them by the prosecution. The jury received nothing to contradict the facts given against Mr. Piers.

12. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO REQUEST A JURY INSTRUCTION THAT TO CONVICT ON THE MACHINE GUN COUNT, THE JURY MUST FIND BEYOND A REASONABLE DOUBT THAT THE SHOOTER KNEW THE WEAPON OPERATED AS AN AUTOMATIC WEAPON.

- A. One of the counts against him (Count Five) was for the "use, carry, and/or possession of a machine gun during the furtherance of a crime of violence). Conviction on the count resulted in a 30 year sentence for Mr. Piers.
- B. The firearm used to support Mr. Piers' conviction on Count Five was a modified semi-automatic Norinco assault rifle, capable of being fired either as a semi-automatic or as a fully automatic weapon.
- C. At trial, Mr. Butler did not request an instruction that required the jury to find beyond a reasonable doubt that Mr. Piers knew the modified weapon could be operated as an automatic weapon.
- D. As a result of Mr. Butler's error, the appellate court reviewed the absence of the jury instruction under a 'plain error' standard, rather than under the *de novo* standard.

13. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY CONCEDED GUILT ON TWO COUNTS DURING THE CLOSING ARGUMENTS.

A. As already established, Mr. Butler decided to not give an opening statement, neither at the beginning of the trial nor at the close of the prosecution's case. As such, Piers' only defense centered around Mr. Butler's closing argument. However, Mr. Butler's closing argument conceded two counts of the charges against Mr. Piers.

B. In his closing arguments, Mr. Butler stated the following:

"We're not here today denying that Mr. Piers was a part of a conspiracy to rob Credit Union 1. There is *no* contesting that. We're not here to do that."

"Yes, ladies and gentlemen, my client was involved in a conspiracy to take money from Credit Union 1 Dimond Branch."

C. As a result of Mr. Butler's incompetence, the jury was told that Piers conspired to commit the crime of robbery and that he was actually involved in the crime. The concessions by Mr. Butler were even more severe given that he gave no opening statement, presented no witnesses, and did not allow Piers to testify at the trial.

14. BUTLER RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO MOVE FOR AN ACQUITTAL UNDER CRIMINAL PROCEDURE RULE 29 ON THE ISSUE OF WHETHER THERE WAS SUFFICIENT EVIDENCE TO SHOW THAT MR. PIERS, RATHER THAN RAYMOND HUBBARD, FIRED THE NORINCO ASSAULT RIFLE.

A. After the conclusion of Mr. Piers' case, Mr. Butler failed to move for an acquittal under Rule 29 that evidence was insufficient to prove that Piers, rather than Hubbard, fired the Norinco assault rifle.

B. By failing to make the motion for acquittal, the Court of Appeals was compelled to apply the plain error standard or manifest injustice standard of review, rather than the *de novo* standard. The *de novo* standard would have allowed new review of the facts in the case, rather than focus merely on whether or not the court made a significant error.

C. As a result of Mr. Butler's incompetence, Mr. Piers had no chance to prevent the jury from deciding the issue of whether he was the person firing the assault rifle.