

No. _____

In The
Supreme Court of The United States

STATE OF MICHIGAN,

Petitioner,

v.

CHARLES DAMON JONES,

Respondent.

On Petition for a Writ of Certiorari
to The Michigan Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE QUESTION

I.

Irreconcilable jury verdicts are not grounds for relief, and courts are not to speculate as to why a jury returned an inconsistent verdict. Respondent's jury here returned an inconsistent verdict, which the Michigan Court of Appeals speculated was based on confusion and on that basis granted Respondent a new trial. Did the Court of Appeals err in granting relief?

TABLE OF CONTENTS

	<u>Page</u>
Statement of the Question	-i-
Table of Authorities	-iii-
Petition	-1-
Opinions Below	-1-
Statement of Jurisdiction	-1-
Constitutional Provisions Involved	-2-
Statement of the Case	-3-
Reasons for Granting the Writ	-7-
I. Because irreconcilable jury verdicts are not grounds for relief even if they may have been based on confusion or compromise.	-7-
Conclusion	-11-
Relief	-12-
Appendix:	
Michigan Court of Appeals opinions vacating conviction	-1A-
Michigan Court of Appeals order denying reconsideration ..	-33A-
Michigan Supreme Court order denying leave	-34A-

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Dunn v. US</i> , 284 U.S. 390 (1932)	3,8
<i>US v. Powell</i> , 469 U.S. 57 (1984).	7,8,9

FEDERAL STATUTES

28 U.S.C. §1257(a)	1
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STATE CASES

<i>People v. Lewis</i> , 415 Mich. 443 (1982).	3,6,8
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PETITION FOR A WRIT OF CERTIORARI

NOW COMES the State of Michigan, by **KYM L. WORTHY**, Prosecuting Attorney for the County of Wayne, **JASON W. WILLIAMS**, Chief of Research, Training, and Appeals, and **DAVID A. MCCREEDY**, Principal Appellate Attorney, and prays that a Writ of Certiorari issue to review the judgment of the Michigan Court of Appeals, entered in this cause on January 12, 2017, with an order denying leave to appeal by the Michigan Supreme Court on March 7, 2018.

OPINIONS AND ORDERS BELOW

On January 12, 2017, the Michigan Court of Appeals issued a divided opinion vacating Respondent's conviction of second-degree murder. 3A-24A. On February 1, 2017, Petitioner moved for reconsideration, which the court denied on March 16, 2017. 2A. Petitioner then timely filed an application for leave to appeal in the Michigan Supreme Court which was denied on March 7, 2018. 1A.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 USC §1257(a). This petition is timely filed 90 days after the Michigan Supreme Court entered an order, on March 7, 2018, denying the People's application for leave to appeal the Michigan Court

of Appeals' March 16, 2017 denial of Petitioner's motion for reconsideration.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part:

No person shall ... be subject for the same offense to be twice put in jeopardy of life or limb ... nor be deprived of life, liberty, or property, without due process of law.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Respondent gave a gun to his accomplice, Chauncey Owens, so that Owens could gun down a 17-year-old who had slighted him. Respondent and Owens were tried together, with separate juries, and Respondent was convicted of second-degree murder for providing the gun, but acquitted of all weapons offenses. Because the deliberating jury had sent out several notes asking for the critical witnesses' testimony, inquiring about the definition of aiding and abetting, and indicating that they were deadlocked—and because the ultimate verdict was facially inconsistent—the Michigan Court of Appeals vacated the murder conviction, holding that it had to have been the product of confusion or compromise. According to the Court, the Michigan Supreme Court case of *People v. Lewis*, 415 Mich. 443 (1982), an offshoot of *Dunn v. US*, 284 U.S. 390, 52 S. Ct. 189 (1932), required such a result.

The specific historical facts are summarized by Judge Cynthia Stephens' opinion in the Michigan Court of Appeals:

Defendant was convicted of second-degree murder for aiding or abetting Chauncey Louis Owens in the fatal shooting of 17-year-old Jer'ean Blake (the "victim"), who was shot once in the chest outside a party store in Detroit. Testimony indicated that the victim was

outside the party store with a group of friends after school on May 14, 2010. Owens arrived on a moped, had a brief encounter with the victim, and told the victim to remain there and he would be back with something for him. Shortly thereafter, Owens returned in a sports utility vehicle (SUV) with three or four other individuals. Owens shot the victim in the chest and then returned with his companions to his residence, where he encountered his brother, Shrron Hurt. The prosecution's theory at trial was that defendant aided or abetted Owens by supplying him with the gun used to shoot the victim.

Defendant was charged with first-degree premeditated murder, felon in possession of a firearm, and felony-firearm. He was charged with perjury based on his testimony before a one-person grand jury regarding his presence at or knowledge of the shooting during an investigation of another shooting in which his daughter was killed. Defendant was tried jointly with codefendant Owens, but before separate juries.

At trial, the prosecution introduced the testimony of two persons, Jalen Dates and Amber Holloway, who were present at the scene of the shooting, both of whom identified defendant as one of the occupants of the SUV that Owens arrived in before he shot the victim. Neither of those persons had a relationship with defendant. Another witness who was acquainted with defendant, Hurt, also testified that defendant was with Owens when Owens returned to his residence in the SUV shortly after the shooting. The prosecution also introduced statements made by Owens to a fellow jail inmate, Jay Schlenkerman, in the latter part of 2011, and statements made by defendant to another jail inmate, Qasim Raqib, while they were both awaiting court proceedings in December 2011. Those statements were offered to support the prosecution's theory that defendant supplied Owens with the gun used to shoot the victim.

On appeal to the Michigan Court of Appeals, Respondent raised four assignments of error: (1) a hearsay issue, (2) sufficiency of the evidence as to whether Respondent aided the

shooter, (3) great weight of the evidence as to Respondent's role in the murder, and (4) inconsistent verdicts of not guilty on two weapons offenses but guilty of providing the shooter with the murder weapon. The Court held that the hearsay evidence was properly admitted; that the five witnesses who either saw Respondent with the shooter or heard Respondent admit that he provided the gun were enough to prove second-degree murder; and that the evidence did not weigh so heavily in favor of acquittal that it would be a miscarriage of justice to allow the murder conviction to stand.

As to the fourth claim, however, a two-judge majority held that the inconsistent verdicts required the murder conviction be vacated. According to Judge Stephens, with Judge Amy Ronayne Krause concurring in the result only, the notes sent out by the jury during their deliberations, coupled with the inconsistent verdicts, demonstrated that the murder-two verdict was the result of either improper compromise or confusion. And according to Judge Stephens, *People v. Lewis*—ultimately based on the federal due process clause—required relief when “ample evidence” exists that the inconsistent verdicts were the result of compromise or confusion, as opposed to lenity. Judge David Sawyer dissented as to the application of *Lewis* to the murder-two verdict.

The People moved for reconsideration, pointing out that the “ample evidence” relied on by Judge Stephens was not in the record and had not even been mentioned by the Respondent in his brief on appeal. The court denied the motion.

Petitioner then sought leave to appeal in the Michigan Supreme Court, arguing among other things that the Court of Appeals' decision contravened this Court's holding in *US v. Powell*, 469 U.S. 57 (1984). The Michigan Supreme Court denied the application. (Appendix 1a.) This petition for certiorari ensues.

REASONS FOR GRANTING THE WRIT

I. Because irreconcilable jury verdicts are not grounds for relief even if they may have been based on confusion or compromise.

The Michigan Court of Appeals' justification for vacating defendant's murder conviction runs afoul of *US v. Powell*, 469 U.S. 57 (1984), which holds that jury confusion or compromise do not offend due process. In *Powell*, the jury convicted the defendant of several counts while acquitting her of several others; but if she were truly not guilty of the acquitted conduct, she could not rationally have been guilty of the convicted conduct, a point which the prosecution did not dispute. See *id.* at 60, 69. Nevertheless, this Court held that reversal was not warranted, because of "the unreviewable power of a jury to return a verdict of not guilty for *impermissible reasons*." *Id.* at 63 (emphasis added, internal quotations and citations omitted). That is, when a jury returns irreconcilable verdicts, "[i]t is equally possible that the jury, convinced of guilt, properly reached its conclusion on the compound offense, and then though mistake, compromise, or

lenity, arrived at an inconsistent conclusion on the lesser offense.” *Id.* at 65 (emphasis added). But critically, such jury errors are beyond the reach of appellate courts: “inconsistent verdicts should not be reviewable.” *Id.* at 66.

This is because it is never truly clear “whose ox has been gored.” While any defendant will claim that the inconsistency undermines the conviction, the government will reasonably counter that the conviction paves the way for an appeal of the acquittal. But since double jeopardy forecloses the government’s ability to challenge the inconsistency, “it is hardly satisfactory to allow the defendant to receive [relief] on the conviction as a matter of course.” *Id.* at 65. Because the prosecution has to live with inconsistent results, so does the defendant. “[N]othing in the Constitution would require [a different result].” *Id.*

Thus, *Powell* stands for the proposition that irreconcilable verdicts are unreviewable, regardless of the reason therefor. In fact, this Court explicitly rejected the alternative as “imprudent and unworkable,” since “[s]uch an individualized assessment of the reason for the inconsistency would be based either on pure speculation, or would require inquiries into the jury’s deliberations that courts generally will not undertake.” *Id.* at 66. In other words, the constitutional requirement of due process is not offended by irreconcilable verdicts, even if the inconsistency was grounded in mistake or compromise. *Powell* disposes of Respondent’s claim.

Dunn v. US, 284 U.S. 390 (1932), which was cited by the *Lewis* Court, just as explicitly

rejects the reasoning of the Michigan Court of Appeals here. In *Dunn*, the jury convicted on count one, and inconsistently acquitted on counts two and three, since all of the evidence was the same for all the counts. The Court acknowledged that the inconsistent verdict could have been the product of compromise or mistake, but unequivocally stated that “verdicts cannot be upset by speculation or inquiry into such matters.” *Id.* at 394.

Here, the Michigan Court of Appeals engaged in the very speculation rejected by *Dunn* and *Powell*. That in itself constituted error which must be reversed; courts are not to parse a jury’s verdict to determine if it rests on improper grounds. Rather, “the litigants must accept the jury’s collective judgment” and respect the finality of the verdict. 469 U.S. at 67. Certiorari should be granted on that basis alone; otherwise criminal defendants will be encouraged to pry into the jury-deliberation process in search of any possible evidence of “confusion,” opening Pandora’s box in relation to the quantum and category of proof necessary to demonstrate juror confusion, which now at least in Michigan is an appropriate inquiry.

Moreover, even if the Court of Appeals were justified in trying to read the jury’s tea leaves, the court got them wrong. According the Judge Stephens’ opinion, the trial judge’s alleged failure to respond to the jury’s request to provide a clearer definition of aiding and abetting, followed by an inconsistent verdict, proved that the verdict was the result of compromise or confusion. But the trial judge did not fail to respond to the jury’s request to provide a clearer definition of aiding

and abetting. This request was made in conjunction with a request to rehear witness Raqib's testimony and, before the court was able to respond, another request to hear witness Schlenkerman's testimony. After fulfilling the requests to hear the testimony, Judge Skutt stated that same day:

[I]f you think it would be helpful – as I said yesterday, you may submit to one of the Deputies a written list of issues that are dividing or confusing you. It will then be submitted to me and I will attempt to clarify or amplify the instructions in order to assist you in your further deliberations.

The jury did not thereafter request clarification or amplification.

Similarly, Judge Skutt did not fail for two days to provide a review of the testimony from key witnesses against Respondent. The jury asked for transcripts of Hurt, Schlenkerman, and Raqib within their first hour of deliberations, and were told that transcripts were not immediately available, and to rely on their collective memory. The second request was made at 1:58 p.m. on February 11, and again at 3:13 that afternoon (for Raqib specifically). The court played both Schlenkerman's and Raqib's testimony back the next day. The court's opinion ignores the fact that Raqib's testimony was, in fact, played back on the 12th.

Finally, there is no evidence that some jurors who did not believe beyond a reasonable doubt that respondent committed a felony

nonetheless agreed to convict Respondent of the felony in exchange for the agreement of other jurors to acquit the Respondent of felony-firearm and felon in possession. The jury was individually polled after the verdict and each juror agreed that the verdict was theirs. Any contrary finding is pure speculation by the Michigan Court of Appeals. In short, the Michigan Court of Appeals was wrong on both legal and factual grounds.

Conclusion

Respondent was properly found guilty of second-degree murder, and nothing in the US Constitution renders that verdict improper. Certiorari to review the contrary decision of the Michigan Court of Appeals should be granted.

RELIEF

Therefore, the Petitioner requests that certiorari be granted.

Respectfully submitted,

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