

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MarQuis Costic — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Appellate Court of Illinois Third Judicial District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MarQuis Costic
(Your Name)

711 Kaskaskia St., P.O. Box 1000
(Address)

Menard, IL. 62259
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) Was my Sixth Amendment U.S. Constitutional Right, under the Confrontation Clause violated when the prosecution kept interrupting during cross examination of the prosecution key witness, not allowing the defense to properly conductin a cross examination of their key witness whom was a jailhouse informant who was entitled broad latitude to prove credibility and to have the issues submitted to the jury with careful instructions?
- 2) Was the lower courts decision not to challenge the Confrontation Clause under the Sixth Amendment U.S. Constitution plain error?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Illinois Appellate Court - Third Judicial District court appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was Sep. 27, 2017. A copy of that decision appears at Appendix C.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) Prosecution's misconduct is a clear violation of petitioner's Sixth Amendment Right when the prosecution's erroneous objections and the court's sustaining of those objections hindered a proper cross examination of the State's key witness. U. S. C. A., Const., Amendment 6

2) Trial Counsel is now retired but with respect to petitioner's Brief filed in the Third Judicial District of Illinois Appellate Court seeking to vacate the conviction and sentence based on the allegation of ineffective assistance of counsel. U. S. C. A., Const., Amendment 6.

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STATEMENT OF FACTS

On April 30, 2013, defendant Marquis Costic was charged by indictment with first degree murder [720 ILCS 5/9-1(a)(3) (2013)], aggravated battery with a firearm, a Class X felony [720 ILCS 5/12-3.05(e)(1) (2013)], and two counts of mob action, a Class 4 felony [720 ILCS 5/25-1(a)(1) (2013)]. Specifically, it was alleged that on April 7, 2013, Costic shot and killed Treyshawn Blakely without lawful justification and while committing mob action (Count I), knowingly and without lawful justification shot and injured Gerald Embrey (Count II), and without lawful authority and while acting together with another person knowingly disturbed the peace by shooting and injuring Blakely (Count III) and Embrey (Count IV) (C9-12).

A jury was selected on January 7, 2014 (RP6 R26-115), and defendant was tried before that jury on January 8-9, 2014 (RP7; RP8).

Christeia Bonner (RP7 R49) and Kimberly Brock (RP7 R60) testified that they were driving on Butler towards Warren in Peoria on April 7, 2013, when they encountered stalled traffic and a lot of people – more than 50 according to Bonner – in the street up ahead. Some of the people were arguing. Both witnesses saw two African-American men running outside the passenger side of the car, on Butler towards Warren. According to Bonner, the shorter man wore his hair in dreadlocks and the taller man was dark-skinned and may have had braids in his hair. According to Brock, one man was ahead of the other and had longer hair (RP7 R49-53, 61-64).

Bonner saw a man lying on the ground in front of her car and a man

facing her car looking at the man on the ground. She heard a loud noise which may have been a gunshot. She looked in the direction of the noise – to the right of the car – and saw the same two men she had seen previously (RP7 R53-54). They appeared to be wrestling or fighting “back and forth with each other” (RP7 R54-55). She then heard several shots fired in rapid succession. She did not see a weapon. She did not see either of the two men fire any shots. She did not hear them say anything; music was playing in the car. Bonner put the car in reverse and drove away (RP7 R55-58).

Brock heard a lot of gunshots coming from the direction of the two men to her right (RP7 R63). When asked if she saw a gun, she said she saw “something” (RP7 R63-64). She said the shots came from the man in front with the longer hair and were fired into a group of about 20-30 people. She saw a young man’s head fly backwards and saw him fall to the ground (RP7 R64-65). She later called police and told them she was a witness. She was shown two photo lineups totaling 12 pictures and identified photos of the shooter and the other man. She identified Marquis Costic in court as the shooter (RP7 R66-70).

When asked if she saw either man carrying a weapon as they ran by to the right of the car, Brock said she did not see anything at first and was more focused on what was happening in front of her and on Bonner trying to drive in reverse (RP7 R72). When asked if she remembered telling police she saw someone take something from his shirt, Brock said she saw “somebody lift something up,” and she “was a nervous wreck” (RP7 R73). Since the incident occurred, she had tried to forget it (RP7 R73-74).

Gerald Embrey, 18 years old, was walking along Butler on April 7, 2013, when he saw a big crowd of people at Butler and Warren "just going everywhere" (RP7 R28-29). He ran towards the crowd to see what was going on. As he did so, he saw Treyshawn Blakely walking up Warren. Embrey saw Allen Fitzpatrick unconscious and people fighting. He heard several gunshots fired rapidly and saw Blakely get shot in the head and fall to the ground. Embrey then started running away when he was shot in the leg (RP7 R29-34).

Embrey saw both Marquis and Michael Costic heading in the same direction he was – towards the commotion. They were not carrying anything. He passed them before the shots were fired. He saw people fighting but did not see either of the Costics fighting (RP7 R34-39).

Police who responded to the scene encountered a very chaotic situation involving about 50-75 people. None of the potential witnesses were cooperative. Police found 21 spent rifle shell casings but no weapons (RP7 R21-27, 77-91).

Police also executed a search warrant at 1614 Butler on April 7, 2013 (RP7 R91, 110). Marquis and Michael Costic lived at that residence (RP7 R111). Inside a safe in the bedroom, they found an empty box of 50 .223 caliber Remington cartridges, two live .223 caliber cartridges, guns, and documents belonging to Michael. No documents pertaining to Marquis were found in the safe. No fingerprints were found in or around the safe or on any of the objects contained in the safe (RP7 R92-93, 95-97, 111-12).

Dr. John Scott Denton performed an autopsy on Treyshawn Blakely. He opined that the cause of death was a gunshot wound to the back of the head. It

was fired by a high velocity rifle from a distance of more than two feet. Two bullet fragments were recovered from Blakely's head (RP7 R93-94, 132-43).

Illinois State Police forensic scientist Dustin Johnson received 21 fired .223 caliber Remington cartridges that are typically fired by a high-velocity rifle. In Johnson's opinion, all 21 were fired by the same, unknown firearm. No firearm was submitted to him for comparison purposes. Of the two bullet fragments recovered from the victim's head, one was a .22 caliber; the other could not be identified. A .22 caliber bullet is loaded into a .223 caliber cartridge case (RP7 R144-55).

Jared Hanneman was in the county jail awaiting trial on charges of burglary, aggravated battery of a police officer, and controlled substances at the time of defendant's trial, and was previously on probation for other controlled substances offenses. He denied any promises were made to him in exchange for his testimony in this case (RP7 R121-22, 126, 129). He claimed that he met defendant in jail. Defendant told him that he, his brother and some friends left a party and ran into a group of people with whom they had animosity. A fight broke out. Both defendant and his brother were involved in the fight. During the fight, defendant's brother "grabbed" a gun and fired shots into a group of people. Defendant's brother shot and killed Treyshawn Blakely (RP7 R123-25). After the shooting, defendant and his brother left the scene and "went to basically go hide out" (RP7 R125). Defendant said he went to work the next day (RP7 R128). Defendant never told Hanneman that he shot anyone (RP7 R127).

Following the foregoing testimony, the State rested (RP7 R158).

Twila Williams testified for the defense that she was at her mother's house in the 1600 block of Butler on the day in question when her mother said some guys were fighting. Williams went to the front door and saw a group of about 50 people in the streets, including Allen Fitzpatrick, who was staggering and appeared to have been beaten. She went outside and heard shots fired. People were running and screaming. Michael Costic was the shooter. He was with a person she could not identify. That person was not Marquis Costic. She knew the Costic family. She did not see Marquis at the scene (RP7 R164-67, 169, 171). Williams did not tell anyone what she saw until she was arrested at the end of August 2013. At the time of trial, she was in the county jail for violation of probation and retail theft. She had numerous prior theft convictions (RP7 R168, 172).

The defense rested (RP7 R174).

The jury was instructed on, *inter alia*, the principle of accountability (C163). Following closing arguments and deliberations, the jury returned verdicts of guilty of all four charges (C127-30, RP8 R54). In response to a special interrogatory, the jury determined it was not proven that defendant was armed with a firearm (C131, RP8 R54).

At defendant's sentencing hearing on February 26, 2014, the judge imposed consecutive prison sentences of 34 years for first degree murder and 17 years for aggravated battery with a firearm (C234-36, RP9 R55-61).

Defendant timely appealed (C237-38) and argued, *inter alia*, that his murder conviction should be reversed outright, either because he was not proved

guilty of the underlying offense of mob action or because no independent felonious intent was shown in the commission of mob action and murder. The appellate court affirmed in a Rule 23 order issued on April 5, 2017. *People v. Costic*, 2017 IL App (3d) 140218-U (Appendix).

This Petition follows.

REASONS FOR GRANTING THE PETITION

The District Court in this case observed that almost everyone agrees that the Constitutionality of the Confrontation Clause and jailhouse informants usage is an issue that will ultimately have to be decided by the U.S. Supreme Court. There is a square conflict in determining the validity of a jailhouse informant. *Thompson v. Calderon*, 120 F.3d 1045 (CA 9 1997). The best reasoned decision on fact similar to those at issue is *White v. Caplan*, 399 F.3d 18 (1st Cir. 2005). Both well established cases precedent should be recognized that Counsel has a duty to not impede any attempt to challenge a conviction and/or sentence (see ABA Standards for Criminal Justice).

As stated in *Lee v. United States*, 343 U.S. 747, 96 L.Ed 1270, 72 S.Ct. 967 (1952) the case states to the extent that they do, a defendant is entitled to broad latitude to probe credibility by cross-examination and to have the issues submitted to the jury with careful instructions.

Even the veracity need be challenged to establish safeguards of the Anglo-American legal system, leaving the veracity of a witness to be tested by cross examination and to have the issues submitted to the jury with careful instructions. (*Hoffa v. United States*, 387 U.S. 231, 18 L.Ed. 2d 738, 87 S.Ct. 408 (1966))

The United States Supreme Courts should grant this petition to have the lower courts properly instruct the courts of the severity of these issues.

COMPELLING REASONS FOR GRANTING REVIEW

This Court should grant Petition in order to lend guidance to lower courts, prosecutors and defense attorneys as to what must be proved to convict a defendant of mob action. Specifically, this Court should address the prosecution's burden to prove that the defendant acted without authority of law, and should decide whether a defendant can commit mob action without proof that he engaged in aggression.

Marquis Costic was prosecuted for felony murder based on mob action. The State alleged that he and/or his brother shot and killed Treyshawn Blakely while committing mob action. The only evidence at trial that Marquis committed mob action was the testimony of a jailhouse informant that Marquis told him his brother Michael shot Blakely sometime after the brothers encountered a group of people with whom they had animosity and became involved in a fight. Defendant argued on appeal that the jailhouse informant's testimony, even if credible, did not prove mob action because involvement in a fight could simply mean that the brothers were attacked by other people and either defended themselves or did nothing at all. As charged in this case as the predicate for felony murder, mob action required proof that defendant used force or violence disturbing the public peace without authority of law. 720 ILCS 5/25-1(a)(1) (2013). This Court, in *In re B.C.*, 176 Ill. 2d 536, 549 (1997), stated that a conviction of mob violence requires proof "that the defendant was part of a group engaged in physical aggression reasonably capable of inspiring fear of injury or harm."

The court below decided the jury “could reasonably infer” that defendant was an active participant in the fight. According to the court, it was up to the jury to resolve conflicts in the testimony, weigh the evidence and draw reasonable inferences from the evidence. The court also stressed that defendant did not claim self-defense. *People v. Costic*, 2017 IL App (3d) 140218-U, ¶¶ 47-48. The court’s decision essentially allowed the jury to fill in the blanks in the prosecution’s case and to speculate that defendant was the aggressor based on testimony that he became involved in a fight. There were no conflicts to weigh with respect to the alleged mob action; there was only testimony that the Costic brothers became involved in a fight sometime prior to the shooting. And while it is true that self-defense was not raised, the statute nonetheless required proof that defendant acted without authority of law. This case raises important questions about the proof necessary to sustain a mob action conviction. This Court should grant leave to appeal so as to answer those questions.

Defendant alternatively argued on appeal that mob action could not form the basis for felony murder in his case because the evidence failed to prove separate acts and separate felonious purposes underlying the murder and the mob action as required by cases such as *People v. Davis*, 213 Ill. 2d 459 (2004), and *People v. Davison*, 236 Ill. 2d 232 (2010). Mob action requires the unlawful use of force by the defendant. Here, the only use of force alleged in the felony murder charge was the fatal (and only) injury to the decedent. The court below determined that allegation in the indictment was mere surplusage. The court also reasoned the jury could have found defendant engaged in mob action based

on testimony that street fights were occurring at the time of the shooting. 2017 IL App (3d) 140218-U, ¶¶ 52-53. There was no evidence, however, that Marquis Costic was involved in, or was the aggressor in, any of those street fights. There was only testimony, with no specifics, that he became involved in a fight. Furthermore, the jury was specifically instructed that the underlying force for the mob action charge, which formed the predicate for the felony murder charge, was the fatal injury to Blakely. There have not been many cases dealing with felony murder based on mob action, but the court's decision in this case seems to be a broad departure from this Court's decisions in *Davis* and *Davison*. It is therefore important for this Court to grant leave to appeal so as to further define for lower courts, prosecutors and defense attorneys, the elements of mob action and the circumstances under which it can properly form the basis for felony murder.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marguerite Lester

Date: Dec. 14, 2017