

No. _____

In The
Supreme Court of the United States

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CORTEZ MOORE,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

◆

On Petition For Writ Of Certiorari
To The Supreme Court Of Illinois

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PETITION FOR WRIT OF CERTIORARI

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Cortez S. Moore
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QUESTION PRESENTED

1. Whether the State of Illinois deprived Cortez Moore of a fair trial where during opening argument it repeatedly characterized the testifying officers as “super heroes?”

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Cortez Moore respectfully petitions for a writ of certiorari to review the judgment of the Illinois Supreme Court in this case.

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OPINIONS BELOW

The order of the Supreme Court of Illinois denying review was entered on May 30, 2018.

The order of the Illinois Appellate Court, First District, affirming judgment was entered on December 21, 2017.

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JURISDICTION

On May 30, 2018, the Supreme Court of Illinois denied Cortez Moore Petition for Leave to Appeal the Illinois Appellate Court's decision in this case. This petition for writ of certiorari has been timely filed within 90 days of that order. SUP.CT R. 13.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

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**CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

The Fourteenth Amendment to the United States Constitution provides in relevant part that "No State... shall...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." U.S. Const.amend XIV

STATEMENT OF CASE

Defendant Cortez Moore, along with Ned James, Rashawn Coleman and Henry Sistrunk broke into a south-side of Chicago apartment around 4o'clock in the morning of January 17, 2017. The men attacked the occupants (Khalil Cromwell, Maritza Morales, A.W. and Isaac Andrews) and a baby (Khalil Cromwell Jr.)- into the kitchen, struck the men with a tire iron, duct taped the men's hands and feet, and began ransacking the apartment. A female occupant, A.W. forced, to undress at gunpoint. Defendant, Sistrunk. and James ransacked the apartment in search of money or drugs- neither of which they found- Coleman stood guard over the occupants with a rifle and sexually assaulted A.W.

Neighbors called the police, who arrived to find the apartment door ajar. Hearing shouting inside, the officers burst in to find a man later identified as Rashawn Coleman holding a gun and kicking a man on the floor. Another offender, Ned James, was in the bedroom off the kitchen, initially trying to act like he was just a resident of the apartment. Officer Lisa Burkhalter stopped outside the other front bedroom, where she saw a man later identified as Henry Sistrunk and another man in the shadows before the door was slammed shut.

Additional officers arrived in various vehicles, along both Wentworth Avenue and in the alley behind the building. Officers Niyell Powell and Adrian Polonio pulled up in the alley. They split up on approach, with Powell walking up the south side of the building, and Polonio the north; the building at 5763 South Wentworth was surrounded by vacant lots. As Powell neared the front of the building, a man later identified as Cortez Moore came running around the front of the building. On making eye contact about five

or six feet from Powell, Moore, stopped, turned and ran back to Wentworth, turning north. Powell initially followed, sending a radio dispatch to the officers, and watched as other officers in a squadrol took over the chase.

When reached the front of the building, another squad had arrived, and Powell pointed them in Moore's direction. Powell also noticed a man hanging out a second-floor window. Powell repeatedly ordered the man, Henry Sistrunk, to get back inside.

From his position on the north side of the building, Officer Polonio saw Moore run north on Wentworth. Hearing Powell's dispatch, Polonio chased Moore on the icy sidewalk. Officer Griggs and McKinley Calhoun had just pulled up into the alley when Powell's dispatch came through. They saw Moore running, backed out of the alley, and pursued him north on Wentworth in their squadrol. About halfway up the 5600 block of Wentworth, Moore looked over his shoulder, where Calhoun and Griggs were following him. Moore turned into another empty lot, then appeared to slip. As Moore fell, Calhoun saw him toss him a plastic bag aside.

Griggs immediately handcuffed Moore and patted him down. From a front pocket, Calhoun saw Griggs pull a mask with a "scream" face, a neck wrap and a hard-cased wallet. The officers took Moore back to the scene, where Powell identified Moore as the man he saw running from the building.

Sergeant Terry Hoover arrived at the scene to find Sistrunk crawling through the north vacant lot. Sistrunk's legs were severely injured from his jump out the second-floor window.

The State subsequently charged defendant and his confederates were charged with home invasion, armed robbery with a firearm, and aggravated criminal sexual assault. Sistrunk died while awaiting trial The other codefendants were convicted of all charges

after simultaneous but severed trials- defendant and James by separate juries, and Coleman before the bench. Defendant was sentenced to an aggregate prison term of 80 years.

During opening arguments, the prosecutor began by telling the jury a bit about Khalil Jr. Khalil was 8 months old at the time of the incident and was now 4 years old. The prosecutor argued:

“Khalil Cromwell Jr. is a four year old little boy and like most four- year old little boys he hates to take his afternoon nap, but he love super heroes. Today at age four those super heroes come to Khalil Jr. through his imagination or through animation. But when Khalil Cromwell Jr. was just eight months old baby, he met a couple real heroes. Real live heroes. On January 17, 2011, those real life heroes were Chicago Police Officer. [...] And just as real as those heroes were so was the nightmare that Khalil Jr lived through on June 17th, 2011 along with his mother, father, and their roommates. [sic]

The prosecutor further argued:

“But that’s not it. Because you will get to meet Khalil Cromwell Jr. super heroes. You will hear from the police.”

The State’s theory was that the codefendants shared a common design to rob the victims of drugs and money, and that every act or threat of force by any of them- including Coleman’s sexual A.W.- was an act in furtherance of that common design. The State thus proceeded on accountability theories of guilt as to all charges. Defense counsel argues that defendant who- was arrested about a block away from the apartment, by officers who claimed to see him fleeing from the premises- was never in the victims apartment at all. Rather, he heard a commotion outside as the police arrived, went to see what was going on, and was arrested nearby.

Defendant was found guilty and subsequently sentenced to 40-year concurrent sentences on one count of each home invasion and armed robbery, plus 40-year consecutive sentence on the aggravated criminal sexual assault.

REASONS FOR GRANTING THE PETITION

Due process protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. U.S.Const., amend. XIV; Ill.Const.1970, art. I, § 2; *In re Winship*, 397 U.S. 358, 364 (1970).

Purpose of opening statement is to provide background on objective facts while avoiding prejudicial references. *U.S v. Thomas*, 114 F.3d 228. Opening arguments like closing arguments, should not refer to matters that are not to be presented as evidence. *U.S.v. Taren-Palma*, 997 F.2d 979. An improper opening statement is often sufficient grounds to declare a mistrial. *U.S. v Millan*, 817 F.Supp. 1086. Test for determining existence of prosecutorial misconduct in opening statement is whether remarks in question were improper and whether they prejudicially affected defendant's substantial rights. *U.S. v. Lacayo*, 758 F.2d 1559. Prosecutors may not vouch for credibility of witness by either expressing personal belief in truthfulness of witness or implying that facts not before the jury lend credibility to witness. *U.S. v. Collins*, 223 F.3d 502.

In the case at bar, the prosecutors comments served no other purpose than to inflame the passions and prejudices of the jury, and to inject issues broader than that of guilty and innocence of the accused. *U.S. v. Johnson*, 952 F.2d 565. The State argued facts outside of evidence and matters that are impossible to prove. The State had no witnesses that would testify that Khalil Jr. considered the officers as "superheroes." It defies common sense to even think that the Khalil Jr., was even aware of the officers presence. Furthermore, by characterizing the officers as "superheroes," the State elevated them (officers) beyond humanity. The officers were transformed into mythical beings that never cease to do good. The jury was given a picture of an infant in distress and here comes the Chicago Police Department to save the day.

Though not directly, this impermissible depiction vouched heavily for the officers credibility. It invaded the province of the jury (who solely determine the believability of

witnesses) by intimating that they (the officers) possess powers transcendent to that of a mere mortal that compels credence.

Empirical studies have shown that juries tend to forget the source of the information they remember, and are often unable to recall whether the source of information came from a witness, or from one of the attorneys during the opening statement or closing argument. *See* Saul Kassin and Lawrence Wrightsman, *The American Jury On Trial: Psychological Perspectives* 108-09 (1988) These studies also show that juries treat statements made by counsel in opening statements as fact even though no evidence is later introduced to support the attorney's assertion. *Id.* Harmful impact may also result from improper remarks in an opening statement, caused by a psychological phenomenon known as the "primacy effect," which is a tendency to make snap judgments based on information presented early in the trial. *Id.* at 134. Once juries form a first impression, they often discount or reject facts that challenge their views, and instead fill their trial memories in ways that favor their initial reaction. *Id.* at 134-35.

These cases to lead to one inescapable conclusion: There is no way of knowing if the remarks were in fact not influential in prejudicing the jury in a powerful and lasting way, thus tipping the balance against him.

In a mostly circumstantial case, where no direct evidence placed Moore inside the apartments; none of the victims identified Moore as an intruder, and he was excluded scientifically from the DNA on the mask purportedly found on him; officers contradicted one another on material matters such as if Moore was chased in front of the building by officers, these improper remarks, set the stage for the jury to look beyond these mere inconsistencies and remember that :8 month old baby saved by the superheroes. "

In this decision, Illinois Appellate Court contradicts its own precedent (though milder in impropriety) that the characterization of officers as "heroes" is inappropriate and constitutes error. In *People v. Rivera*, the prosecutors closing argument stated:

"Now Chicago police offices, what is your perception of police officers in our community? You think about that. You know as kids you growing up [sic] you always think about things, you always think about what you wanted to be as boys. They dream about being engineers, company boys, whatever. But they always have one thing every boy I know, every kid I know growing up wants to be a police officer. Everybody looks up to police officers. They're heroes. Everybody when they're growing up as

little kids they think they're running around with little superman outfits under their uniforms."

* * * * *

"That same police officer is also the same guy who goes out there and resuscitates the elderly victim who collapses on the street. He's the same officer who goes out in the alley on Saturday night on midnights in an alley we wouldn't be caught in. He's the one that gets shot at. He's the one that has to go into Cabrini Green when there is family disturbance. He has to go on the South Side and confront the people in the car, a car whose occupants he cannot see clearly at night. These are the same people, ladies and gentleman with what's happening in the streets in our city. With what you see in the news each night, what you read in the paper each day. Perhaps the images is tarnished. It's only your perception that has changed. Maybe they do have a big S on their chest. Perhaps." *People v. Rivera*, 235 Ill.App.3d 536, 540 (1st Dist. 1992)

Though the Illinois Appellate Court did not reverse *Rivera*, because the evidence was not closely balanced, it is instructive because it confirms that characterizing police officers as heroes is improper.

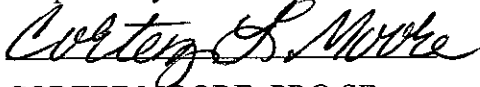
This honorable court should take up this matter to set a clear boundary for prosecutors when referencing officers in opening and closing argument. Officers are made of flesh and blood like all humans and thought they perform a necessary and noble task, are not worthy of more belief than any other witness.

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CONCLUSION

Upon the above-mentioned grounds fundamental fairness and due process requires this request to be granted.

Respectfully submitted,



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APPENDIX A

December 21, 2017 order of the Illinois Appellate Court affirming conviction.