

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Michael Small — PETITIONER  
(Your Name)

vs.

Cherry Lindamood — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Sixth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Small  
(Your Name)  
Whiteville Correctional Facility  
1440 Union Springs Road  
P.O. Box 679  
(Address)

Whiteville, TN 38075  
(City, State, Zip Code)

None  
(Phone Number)

QUESTION(S) PRESENTED

1.

Whether the United States Court of Appeals erred when it agreed with the district court "that the claim of ineffective assistance of counsel was without merit, that the claim of insufficient evidence was procedurally defaulted and without merit, and that the sentencing claim was non-cognizable on federal habeas review." (6th Circuit Opinion, p.2). For this question, Petitioner submits his argument in the lower federal courts, as if stated in the "Reasons for Granting the Petition" section verbatim.

2.

Should photo spread identifications, made more than 24 hours after a crime occurs, be excluded as evidence during any criminal trial due to its inerrant unreliability and based on its failure to pass the Daubert test.

3.

Should due process principles require the states to record their interrogations, which would allow the state and federal courts to better determine whether alleged confessions in criminal cases were tainted, unreliable, and/or involuntary.

## 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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## TABLE OF AUTHORITIES CITED

### CASES

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Daubert v. Merrill Dow Pharmaceuticals 5

Jackson v. Virginia 9

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### STATUTES AND RULES

28 U.S.C. 2254 (See attached Opinions)

### OTHER

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 A 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 B 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 \_\_\_\_\_ 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.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 13, 2018.

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 \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

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**

U. S. Const. Am. 4: pp. 8

U. S. Const. Am. 5: pp. 8

U. S. Const. Am. 6: pp. 7

U. S. Const. Am. 14: pp. 7

### STATEMENT OF THE CASE

See Appendix C: The facts of Petitioner's case are stated therein and are incorporated here by reference. The Petitioner, however, does not adopt the findings of the Court of Criminal Appeals outlined in Appendix C.

## Reasons For Granting The Petition

Petitioner respectfully asks this Honorable United States Supreme Court to resolve an extremely important question of law regarding the reliability of:

- (1) Photo spread identifications made more than 24 hours after a crime occurs; and
- (2) Unrecorded confessions by suspected criminal defendants

(1)

Question: Photo Spread Identifications

Should photo spread identifications, made more than 24 hours after a crime occurs, be excluded as evidence during any criminal trial due to its inherent unreliability and based on its failure to pass the Daubert test?

This is an important question of law that the lower courts refuse to answer ... apparently believing that "avoidance" of important legal questions is the answer. Petitioner submits that this is why we have a United States Supreme Court, and he respectfully requests that the highest court in our nation answers this question and would base their answer on the most current scientific studies related to out-of-court photo spread identifications.

If given the opportunity to present this issue, Petitioner will request a highly qualified attorney who will research, gather information, and brief this issue in the proper format that is beyond Petitioner's ability (due to his incarceration) and expertise.

While this issue is certainly important to all defendants in every state, it is extremely important to Petitioner because one person (not the victim of the crime) identified petitioner in a photo spread... seven (7) days after the crime occurred.

(Trial Transcript, pages 27, 47, 48).

In violation of U.S. Const. Am. 14, the admission of this unreliable evidence was a due process violation, resulting in an unfair trial (U.S. Const. Am. 6). Defense counsel for Petitioner failed to call an identification evidence expert witness to rebut the State's proof, which resulted in defense counsel being woefully ineffective in violation of *Strickland v. Washington*,<sup>2</sup> and in violation of U.S. Const. Am. 6. Petitioner felt as if he had to confess to this crime because of this tainted identification, and due to his prior record.

(2)

### Question: Unrecorded Confessions

Should due process principles require the states to record their interrogations, which would allow the state and federal courts to better determine whether alleged confessions in criminal cases were tainted, unreliable, and/or involuntary.

Petitioner submits that every state has the technology and ability to record (audio and video) interrogations. The only reason why they wouldn't make this mandatory in nature would be to conceal 4th and 5th Amendment violations based on unconstitutional police interrogation practices. As in the Petitioner's case, it was a credibility contest between Petitioner and a detective at trial regarding whether Petitioner was coerced into giving a confession (Trial Tr. pp. 67, 85-86, 151-163).

Requiring the States to audio and video-tape confessions would allow the courts to better determine whether police interrogation techniques were overbearing and coercive to an unconstitutional degree. This would not cost the states much money to implement, and it would save the states money by eliminating unneeded litigation because detectives would be forced to use non-coercive interviewing and interrogation techniques, thereby deterring suppression motions.

Had Petitioner not confessed to this crime, there would have been insufficient evidence to convict him under <sup>3</sup>Jackson v. Virginia. Therefore, not only is the resolution of this question important to all criminal defendants, it is extremely important to the Petitioner.

## Conclusion

A failure of this Honorable Court to answer these important questions would:

- A. Continue a custom or propensity of the lower courts to avoid such questions of public interest,
- B. Cost the states millions of dollars in unneeded litigation expenses; and
- C. Cast a cloud of doubt around our Federal and State Judicial Systems to resolve the harder questions that face our nation and its citizens.

Wherefore, premises considered, Petitioner prays that this application would be accepted.

Michael Small

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## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Small

Date: September 28, 2018