

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Eugene Riley III — PETITIONER
(Your Name)

vs.

Stephanie Dorothy Warden, et al.,
Hill Correctional Center — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Eugene Riley III
(Your Name)

P.O. Box 1700
(Address)

Galesburg, IL, 61402
(City, State, Zip Code)

NONE
(Phone Number)

Urgent!
High Profile
Do Review

QUESTION(S) PRESENTED

1. Whether Riley was denied his 6th and 14th Amendment Right to have his jury assisted via instructions on the application of legal principles to the evidence and law, that is - the legal assessment of the separateness of the two alleged events of the crime" whereby they could determine "[t]he whole of the wrong of the crime" of which the State sought to convict/sentence (punish) Riley for; and, if so then whether the 7th Circuit Court of Appeal affirming of the District Court's disposition of the Respondent's position was wrongly decided.
2. Whether the word[s] "two-events", within the term "a legal assessment of the separateness of two events" define: "an occurrence or incident, or gathering or activity"; hence, "[t]he causal-effect of the alleged crime", and if so then in the absence of Riley's jury being able to consider such "[causation]" was not his due process under the 6th and 14th Amendment Violated; and, if so then whether the 7th Circuit Court of Appeal affirming of the District Court's disposition of the Respondent's position wrongly decided.
3. Whether the word "intent", within the term "independent felonious [intent]" indicatively construe "[t]he mental state of Riley"; hence, "[the mens rea]"; and, the word "purpose,"

within the term "independent felonious purpose" construe "[the actus reus]"; and, if so then was not Riley's 6th and 14th Amendment Right Violated where the State failed to prove-or-disprove these elements whereby Riley's jury via instructions could have properly determined his guilt or innocence; and, if so then whether the 7th Circuit Court of Appeal affirming of the District Court's disposition of the Respondent's position wrongly decided.

4. Whether the word[s] "that may be", within the term "a legal assessment of the separateness of two events 'It]that may be' conducted by the trial judge" construe permissiveness (discretion) which [is not] mandatory, thus implying that Riley's jury as well "may have" conduct[ed] by way of "consideration-weighting-and determining" the legal assessment of the separateness of the alleged two events "in order to help them reach a proper verdict of Riley's guilt or innocence in accordance to his 6th and 14th Amendment Rights; and, if so then whether the 7th Circuit Court of Appeal affirming of the District Court's disposition of the Respondent's position wrongly decided.

5. Whether the traditional burden which Our system of criminal justice deems essential in accordance to due process under the 6th and 14th Amendment such as in Riley's case, require the

State to prove beyond a reasonable doubt and thus, the jury to consider, "[t]hat which is - or - is not" where "[t]hat which is - or - is not" will ultimately seal the fate of Riley, rather it is that of his guilt or innocence; and, if so then whether the 7th Circuit Court of Appeal affirming of the District Court's disposition of the Respondent's position wrongly decided.

6. Whether the 7th Circuit Court of Appeals failed to acknowledge that the case of *Space* which It brought to the forefront in Its Order was reversed and done so on a similar-issue likened to Riley's and should have thus served as a supervening development lending reason to Grant Riley's then appeal; and so, Whether the erroneously exemption of elements by Illinois such as in Riley's case violate due process and equal protection of the law and will serve as "an abrogation" to well known and followed U.S. Supreme Court law, thereby alleviating the State's burden to prove essential elements - and - the right of the accused to a jury determination thereof for future peoples criminally - accused of crime, thus, shrinking - frittering - and desecrating the powers and guarantees of Our U.S. Constitution and the tenets of Jurisprudence; so said, Whether One, hence, Riley, regardless of innocence or guilt is deserving of fundamental fairness in accordance to due process and equal protection under the 6th and 14th Amendment of Our U.S. Constitution.

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:

Jacqueline Lashbrook, Warden,
Menard Correctional Center,
Respondent.

and,

Stephanie Dorethy, Warden,
MCC Correctional Center,
Respondent

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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 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 August 6, 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 ~~May 10, 2018~~.
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

U.S. CONSTITUTION, AMENDMENT VI; state that:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the criminal shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONSTITUTION, AMENDMENT XIV; states that:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

Section[s] 2 through 5 omitted.

28 U.S.C. § 2254(d) provides:

An application for a writ of habeas corpus on behalf of a

person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim --

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

This is a Petition for a Writ of Certiorari. Eugene Riley was convicted in the Circuit Court of Cook County on one count of first degree murder and sentenced to a term of 30 years imprisonment. Riley's conviction and sentence were affirmed on direct appeal. Riley petitioned the Illinois Supreme Court for Leave to Appeal, and his petition was denied. Subsequently Riley petitioned for a writ of certiorari before this United States Supreme Court on October 7, 2013, and was denied.

On December 12, 2013, Riley filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. § 2254. Subsequently the District Court denied Riley's petition, and denied him a certificate of appealability. Subsequently on October 3, 2017 the United States Court of Appeals for the Seventh Circuit granted Riley's motion for a certificate of appealability and specifically asked the parties to address [I]ts decision in *Evans v. Dorethy*, 833 F.3d 758, 761 (7th Cir. 2016). Subsequent thereto on August 6, 2018 ~~the~~ United States Court of Appeals affirmed the District Court's judgment.

This Petition now follows.

Eugene Riley was indicted in Cook County Circuit Court, and charged with the murder of Derrion Albert. The State alleged this same offense three different ways: intentional murder, knowing

murder, and felony murder predicated on mob action. Mob action is an Illinois offense that prohibits gathering with others to disturb the peace. The charges arose from an incident where Riley joined a brawl in order to protect his brother, and Albert was killed. The State dismissed the mob action, intentional first degree murder, and strong probability first degree murder counts, leaving only the felony murder count.

The following evidence was adduced at Riley's trial:

On September 24, 2009, Vashion Bullock was suspended from Christian Fenger Academy for arguing with a student from the nearby "Vill" neighborhood. There was an ongoing feud between students from Altgeld Gardens, where Bullock lived, and the Vill. Bullock's mother retrieved him from school, but then realized that his best friend, Silvonus Shannon, did not have a ride home from school. She asked her older son, Riley, to pick up Shannon. Riley, Bullock, and another man named Carl drove to Fenger, spotted Silvonus on 111th Street, and picked him up.

Differing accounts of the events that followed were presented at trial:

Dominic Johnson, a sophomore affiliated with the Vill, was walking eastward down 111th Street with his cousin and three friends. As they were walking, Bullock leaned out of the window of Riley's car and told them "This aint over." They drove past the Agape Center and parked and Bullock and others got out and walked back. Bullock confronted a man named Little Carl and a fist fight ensued. Two larger groups from the Vill and Altgeld Gar-

dens joined in. The fight moved to an area between the wall of the Agape Community Center and a parked car. One of the Vill boys struck the victim, Albert, in the head with a wooden board. Albert got up after being struck, but another boy punched Albert in the side of the head and Albert fell down once again. Shortly thereafter, another man struck Bullock with a board. Shannon then approached and stomped on Albert's head. After Shannon hit Albert, Riley struck Albert in the head with a board. The group from the Vill then chased the group from Attgeld Gardens down 111th Street.

Bullock, a senior at Fenger, testified that after picking up Shannon at School, he heard rocks hit the car window. Riley pulled over, and Bullock got out to inspect the car for damage. Bullock noticed a group of people wearing Fenger uniforms down the street, so he walked over and a fight broke out. A large group of people joined the brawl and Bullock was forced over to an alley by the Agape Community Center. Bullock was able to escape the alley and moved to the middle of the street where the fight continued. Bullock noticed that Riley was defending him as Bullock was struck with bottles, bricks, and wooden boards. A brick hit Bullock in the eye and he lost consciousness. He later woke up in the hospital, having lost vision in his left eye.

Riley testified that he was driving down 111th Street when something struck the car. Riley pulled over and Bullock checked the car for damage. Bullock walked down the street and

started talking to a group from Altgeld Gardens. A man approached Bullock and they began fighting. Riley ran to protect Bullock as a larger group began fighting and Bullock was shoved to an area between a car and a wall of the Agape Community Center. As Riley fought the people in the group beating his brother, Riley was struck in the head with a wooden board. Riley felt dizzy and scared, and backed away. Riley and Bullock were eventually able to escape from between the car and the wall, but people began throwing wooden boards at them and one struck Bullock. Riley and Vashon picked up the boards and chased away the surrounding assailants.

At that point, Riley saw Albert lying on the ground and struck him with a board. Riley acknowledged that when he hit Albert, he did not know where Bullock was and Albert was not a threat. Riley then saw Bullock get knocked unconscious by a brick, so he ran over and deflected further attacks.

Ms. Tawanda Piper, who worked at the Agape Community Center, saw a large group of people gathered outside the Center, about to fight. Ms. Piper called 911 and ran upstairs to seek assistance, and when she came back down she saw Albert get struck with a board, punched in the face, and kicked on the ground. After that a man hit Albert in the head with a board. Ms. Piper then left the receptionist area and brought Albert inside, where he stayed until an ambulance came.

A bystander recorded a video of the incident which was played for the jury.

8. An assistant medical examiner testified that Albert died of cerebral injuries that were caused by blunt head trauma, and that homicide was the manner of death. She could not say which of the blows caused Albert's death.

After the conclusion of evidence defense counsel requested involuntary manslaughter and second degree murder instructions, both of which the court denied. The jury was instructed on self-defense. And defense counsel made no objection to the felony murder instructions.

On May 9, 2011, the jury found Riley guilty of felony murder predicated on mob action, and Riley was sentenced to 32 years in the Illinois Department of Corrections on July 19, 2011.

On appeal Riley argued that (1) the evidence failed to show that the predicate mob action was not inherent in the homicide and had an independent felonious purpose; (2) his Sixth Amendment Right to a jury trial was violated because his jury was not instructed that it could only convict Riley of felony murder if it found that the mob action was committed with a felonious purpose independent of that for the killing, and (3) his attorney was ineffective for failing to object to the defective instructions.

On January 29, 2013, the Appellate Court of Illinois affirmed Riley's conviction. The court found that the State had proven an independent felonious purpose for the mob action, that no error had occurred because an instruction on the existence of an independent felonious purpose was not an instruction on the "elements of the crime charged, [the] presumption of innocence, [or the] burden of

proof." The court further determined that Riley's jury was properly instructed on the elements required for felony murder since it was instructed pursuant to the Illinois Pattern Instructions. Concluding that no error had occurred, the Appellate Court ruled that Riley's institutional error claim was meritless and counsel could not have been ineffective for failing to offer an instruction.

In his petition for Leave to appeal to the Illinois Supreme Court Riley argued that the Appellate Court of Illinois' judgment was in error, and trial counsel was ineffective, where his jury was not instructed on the required elements of independent felonious purpose. The Supreme Court of Illinois denied leave to appeal.

Riley raised these issues in a petition for a writ of certiorari in the United States Supreme Court, which denied the petition on October 7, 2013.

Riley thereafter filed a Petition for a Writ of Habeas Corpus in the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. § 2254 on December 12, 2013, asserting that: He was denied his Sixth Amendment Right to a Jury Determination of his guilt where his jury was not instructed to determine the factual required element of Independent Felonious Purpose; in that, a criminal defendant is constitutionally entitled to a jury determination of factual questions required for conviction. And Trial Counsel was Ineffective where he did not ensure that Riley's jury was instructed to determine the required element of Independent Felonious Purpose.

Accordingly, the District Court rejected the Respondent's argu-

ment that Riley's claim raises only an issue of state law, where it clearly established his federal right under the Sixth Amendment to have a jury determine whether he committed each element of the charged crime. However, the District Court went on by stating that: In Illinois, whether a particular predicate act has an independent felonious purpose, is a question of law for a judge, not a question of fact for a jury. And that Riley's claim of ineffective assistance of counsel must also fail. Thereby denying Riley's Petition for a Writ of Habeas Corpus on March 23, 2017, and simultaneously declining to issue him a certificate of appealability.

Consequently Riley thereafter on October 3, 2017, motioned for a certificate of appealability before the United States Court of Appeals for the Seventh Circuit which ~~it~~ granted and thus, specifically asked the parties to address their decision in *Evans v. Dorethy*, 833 F.3d 758, 761. ~~Riley's claim however~~, consisted of: Riley being denied his Sixth and Fourteenth Amendment Right to a jury determination of every element of felony murder where his jury was not required to determine whether he committed the predicate felony with an independent felonious purpose from the homicide and that the mob action was not inherent in the murder. Subsequently the Seventh Circuit stated that Riley's argument was foreclosed by their precedent in, *Evans v. Dorethy*, Id., wherein they (the Seventh Circuit Court) held that the Morgan inquiry is "a legal assessment of the separateness of two events" that may be conducted by the trial judge, rather

than a factual inquiry that must be submitted to a jury. Thus, affirming the district court judgment on August 6, 2018.

This Petition for a Writ of Certiorari now follows.

REASONS FOR GRANTING THE PETITION

The United States Court of Appeals for the 7th Circuit stated in its Order that: "Riley's argument is foreclosed by its precedent (*Evans v. Dorethy*, 833 F.3d 758, 762 (7th Cir. 2016)) where therein it held that the *Morgan* inquiry in *People v. Morgan*, 758 N.E.2d 813 (Ill. 2001) is 'a legal assessment of the separateness of two events' that 'may be conducted by the trial judge, rather than a factual inquiry that must be submitted to a jury'; and, "Riley challenges that precedent as wrongly decided..."

Notably, Riley's position has not changed, considering the relevant fact-and-truth that "[a] legal assessment of the separateness of two events" [in regard to crime] "yet and still consist of the act[s]" to which the law affixes the conviction/punishment sought by the State, "regardless of the Lingo. And provided the aforetruth it must be acknowledged then that "[a] crime consist of the whole of the wrong upon which the punishment is based," thus, the separateness of two events acted-out in the midst of a crime are "characteristics of crime" and must in the same still consist of the whole of the wrong done, as has been well known throughout the ages of jurisprudence and so stipulated by, The Bishop Treatise at, 1 J. Bishop, *Law of Criminal Procedure*, 50 (2d ed. 1872), stating therein:

That, Crimes, he (Bishop) explained, "consist of those acts to which the law affixes ... punishment," *id.* § 80, at 51, or, stated differently, "a crime consist of the

wrong upon which the punishment is based," *id.*, § 80 at 53.

With regard to the common-law, Bishop explained that his rule was "not made apparent to our understanding by a single case only, but by all the cases," *id.*, § 81, at 51, and was followed "in all cases, without one exception," *id.*, § 84, at 53.

So said, with Bishop being well known established and followed law, for a State-or-Court to now turn away from it contrarily, would thereby be disrupting and an abrogation of what is maxim to law and, thus, to jurisprudence... But, to stipulate to the herein-said (meaning this Honorable U.S. Supreme Court) would be to substantiate the fact that provided a jury-trial, that it would be constitutionally proper in accordance to due process and the equal protection of law under the 6th and 14th Amendment as owed to the accused or any such similarly situated person to allow for their jury to weigh and/or determine and thereby consider the "legal assessment of the separateness of the alleged 'two events'" in regard to the crime, which notab[ly] [they are] to return a verdict of guilt or innocence of the accused on. Now said, provided the aforesaid should certainly bring rise to the fact of law - in that, the means by which Riley's cause has been so far treated is violative of due process and the equal protection of law under the 6th and 14th Amendments, as is the case of *Evans v. Dorethy* which the 7th Circuit hold to be a precedent and of which the 7th Circuit used to foreclose Riley's arguments...

Furthermore, contrary to the respondent's position and the 7th

Circuit's affirmance thereto in conjunction to its holding in *Evans v. Dorethy*, "[a] legal assessment of the separateness of two alleged events" of a crime, [is] basically tantamount to "[t]he application of legal principles to the evidence and law". And being so then, though presently under-recognized, poses the question - "is not jury instructions intended to guide the jury in its deliberations and to assist the jury in reaching a proper verdict through the application of 'legal principles to the evidence and law', " as even the Highest State Court of Illinois has long so stipulated to. See, e.g., *People v. Hester*, 131 Ill.2d 91, 98, 136 Ill. Dec. 111, 544 N.E.2d 797 (1989). As Riley respectfully declares, that it does not take a rocket scientist to figure this point out, that, "[t]he application of 'the legal assessment of the separateness of the two alleged events' should have been provided to Riley's jury to help guide them in their deliberations and to assist them in reaching a proper verdict", just as much as "legal principles to the evidence and law" is provided, which would thereby reflect the allocation of due process and equal protection of the law under the 6th and 14th Amendment which presently the respondent and the 7th Circuit according to *Evans v. Dorethy* are at odds with ~~---~~ serving as a departure from the accepted and usual course of judicial proceedings employed in concert with the precepts of the U.S. Constitution and thus due process... and fundamental fairness, which no court should disregard for any reason, no matter how guilty an accused may seem to be. Constitutional Rights of a criminal defendants are granted to the innocent and guilty alike. See, *Kimmelman v.*

Morrison, 477 U.S. 356, 380, 106 S.Ct. 2574, 91 L.Ed. 2d 305 (1986).

2. Riley vehemently stressed via his arguments that he had been denied his constitutional right to a properly instructed jury, which is no empty technicality and therefore can not be veiled any longer; the respondent and the 7th Circuit Court's view in regard to Riley's jury not being provided proper guidance as to what to consider or not - concerning "characteristics of the crime" frither the constitutional-requisites and rights of Riley and, thereby infers a challenge to the integrity of the judicial process... It is Substantial provided the term "a legal assessment of the separateness of two events", and moreso specific the words "[two events]" - which is used indicatively to determine "an occurrence or incident, or a gathering or activity", hence, "actions" which can in no wise be counted-out or dis-included in the myriad of synonymous phrases to describe "ingredients" necessary to establish the causal-effect of crime, thus, "[t]he causation" while simultaneously defining the "actus reus", both which are essential and fundamental and must be proved to the jury by the State and subsequently explained so whereas they could weigh and consider those characteristics of crime ^{by means} of efficiency via the proper instructions in consideration of the tenets of due process. See, e.g., *Castillon v. U.S.*, 530 U.S. 120, 126 (2000).

3. Provided the use of the term "independent felonious [intent]" as used in the case of *Evans v. Dorethy*, and in Riley's case which

therein undisputedly refers to Riley's "[state of mind]" - i.e., (his "independent" mind free from the influence, guidance, or control of others at the time he carried out [t]he felonious action, aim or purpose) - thus said, since [t]he word "intent" indicative-ly constitute and construes "[t]he state of mind", hence, "[t]he mens rea", certainly then it must - in accordance to due process and equal protection of the law under the 6th and 14th Amendment of Our U.S. Constitution - be essential for the prosecution to "prove-or-disprove" in a trial before a forum of 12 jurors, considering the fact of the State and Federal judicial-systems legal principles declaring that a prosecution has to present proof beyond a reasonable doubt of "every fact" necessary to constitute the crime with which an accused (Riley) is charged, that being - "his (Riley's) independent criminal characteristic". This [is] the law, and has long been squarely adhered to, even by the Great Wisdom of This Honorable U.S. Supreme Court, see, *In re Winship*, 397 U.S. 358, 363, 90 S. Ct. 1068, — (1970).

However, violative of these constitutionally legal principles, the trial court erroneously declined to instruct the jury that the State had to "prove-or-disprove" Riley's "criminal characteristic" and thus, his mental state of "independent felonious intent" whereby the jury could make a determination on Riley's intention in accordance to their constitutional duty, a fundamentally defiling act of injustice at odds with the guarantees of due process and equal protection of the law in accordance to the 6th

and 14th Amendment of Our U.S. Constitution which the District Court stipulated to considering its denial of Riley's Federal Habeas Corpus Petition - and that the 7th Circuit Court wrongly affirmed.

Even the term "independent felonious [pur]pose" as also used; focussing on the word "[purpose]", it unambiguously define "that which one sets before him to accomplish or attain, or, an intention"; therefore it as well construes an element in accordance to "[t]he actus reus" in conjunction to "[t]he mens rea"; and as so is synonymous with "[i]ntent"; which the Highest State Court of Illinois has long stipulated to. See, *People v. Tate*, 316 Ill. 52, 146 N.E. 487.

So said, regardless of how artful the respondent is in the use of language so as to "twist and turn" the phrases:

- legal assessment of the 'separateness of two events';
- 'independent felonious intent'; and,
- 'independent felonious purpose';

merely to secure the benefit of an unconstitutional conviction, given the regard of "[t]hese characteristics of the crime and/or accused", it must be noted, that, [T]his Court itself has previously held that "characteristics of the offense are traditionally treated as elements." *U.S. v. O'Brien*, 560 U.S. 218, 227, 130 S.Ct. 2169, 2176 (2010). And over the years, prior to *O'Brien*, and even afterwards, typically it has been for the jury to determine such elements and/or those "phrases" which in all legal-and-factual respects bear the synonymous-uniform.

4. Considering too, the 7th Circuit's Language in *Elts Order*, that, "the Morgan inquiry is a legal assessment of the separateness of two events 'that may be' conducted by the trial judge..."; provided the precise term: "that may be", also then as well suggest a permissive implication of trial judge discretion - or - a mere permissive directory, which "[is not]" mandatory indifference to the use of the term "[shall]" which This Honorable U.S. Supreme Court in all of its Wisdom is certainly aware of - as should "the lower court[s]" have been, especially provided the legislative use of the word [may], see, e.g., *People v. Reed*, 177 Ill.2d 389, 393, 226 Ill. Dec. 801, 686 N.E.2d 584 (1997); and in regard to the word [shall] being indicative of a mandatory intent, see, e.g., *Culbert v. Young*, 834 F.2d 624, 628 (7th Cir. 1987). Thus, would not this mean then that in accordance to due process and the equal protection of law under the 6th and 14th Amendment that Riley's jury too and in fact "[may have]" as well conducted via considering/weighting/determining the legal assessment of the separateness of the two alleged events of the crime", of which the same jury also were to provide a judgment thereto. That fundamental fairness was owed to Riley then during trial and throughout every judicial proceeding had thereafter, and is still owed to him now, which This Honorable U.S. Supreme Court can provide.

5. In Light of all of the above enumerated showings in conjunction to the following, which well establishes that any absence of the State "proving-or-disproving" elements whereby the jury via instruct-

ions could properly determine Riley's innocence or guilt thereby rendering his trial and conviction fundamentally unfair and violative of the 6th and 14th Amendment of our U.S. Constitution, which by virtue of this Honorable U.S. Supreme Court in all of its wisdom can and will

Sincerely Agree.

Thus said, the rationale of the Riley case requires an analysis

that looks to the "operation and effect of the law and U.S. Constitutional demands as applied and enforced (or not) by the State," and to the interest of both the State and Riley's U.S. Constitutional Rights as

affected by the allocation of the burden of proof. Considering the provision of instructions which thereby a jury is to determine "that

which is as opposed to that which is not" in order to conclude guilt or innocence, in *Winship* the Court emphasized the societal interests in the reliability of jury verdicts:

"The requirement of proof beyond a reasonable doubt (of what is or what is not) has [a] vital role in our

criminal procedure for cogent reasons. The accused

during a criminal prosecution has at stake interests

of immense importance, both because of the possibility that he may lose his liberty upon conviction

and because of the certainty that he would be stigmatized by the conviction...."

Regarding the importance of Riley's case, as well as others now

and in the future, it is critical that the moral force of the U.S. Constitution and criminal law not be diluted by a standard that leaves people in doubt as to what should have been fundamental fairness due

to Riley - or as to his innocence or condemnation (or anothers), thus, the requirement of proof of what is or what is not - is the traditional burden which our system of criminal justice deems essential in accordance to due process under the 6th and 14th Amendment of Our U.S. Constitution, here in Riley's case meaning that, the Judge was required to instruct the jury that the State must prove that (1) the acts underlying the predicate felony (mob action) "were not inherent" in the killing of the deceased victim, Albert, and (2) Riley acted "with [a] felonious purpose independent of murder," which notably is similar to proving - or - disproving any other element of "intent," that being established by adducing evidence of the factual circumstances surrounding the commission of the homicide.

This is not, in any way a disembodiment of the fact that "the offense of felony murder is unique because it does not require the State to prove the intent to kill," as in Riley's case, however though, provided this fact brings rise to this question in turn of "whether the State then in such a situation is therefore required - or should be required - to prove '[t]he lack of [i]ntent to kill' in order to acquire a verdict of guilt for felony murder," and of which on the level the jury should have been instructed on to consider.

So said, as This Honorable U.S. Supreme Court in All of Its Wisdom is Surely and Squarely Aware of, "the requirement of proving a negative '[is not]'" unique in Our system of criminal jurisprudence either." See generally, F. Wharton, A Treatise on the Law of Evidence § 320 (9th ed. 1884); Model Penal Code § 1.13, Comment, p. 110 (Tent Draft No. 4, 1955). Such as in Maine for example,

it itself requires the prosecution to prove the absence of self-defense beyond a reasonable doubt. See, *State v. Millett*, 273 A.2d 504 (1971). And satisfying this burden imposes an obligation that, in all practical effect, is identical to the burden involved in negating "the lack of intent to kill," which the jury should have been instructed to determine in Riley's case for reason that instructions to the jury are not to be judged in artificial isolation, but instead, viewed in the context of the overall charge, as must be - and should have been in Riley's case, in respects of due process and the equal protection of law in accordance to the 6th and 14th Amendment of Our U.S. Constitution. See, e.g., *Boyd v. United States*, 271 U.S. 104, 107, 70 L.Ed. 857, 46 S.Ct. 442 (1926); *Cupp v. Naughten*, 414 U.S. 141, 147, 38 L.Ed.2d 368, 94 S.Ct. 396 (1973).

6. Provided the 7th Circuit Court's statement in its Order in the Riley case, wherein... it ironically stated that: "Riley has not identified any supervening developments that cast new light on the matter," the 7th Circuit therein had also cited to the case of *People v. Space*, 2018 IL App. (1st) 150922 (May 4, 2018), however, failing to acknowledge that the Court therein reversed Space's felony murder based on the State's failure to prove both that the asserted predicate forcible felony of aggravated battery with a firearm (1) had an independent felonious purpose and (2) proximately resulted in the victim's death; Now notably, Riley's argument was basically tantamount to Space's where Riley argued that: "he was denied his 6th and 14th Amendment Right to a jury determination

of every element of felony murder where his jury was not required to determine whether he committed the predicate felony with an independent felonious purpose from the homicide and that the mob action was not inherent in the murder"; however, the 7th Circuit yet and still affirmed the District Court's denial of Riley's Habeas Corpus Petition, while the Space case "should have served as [a] supervening development", so said, [assuming arguendo], "respectfully" - if the Space case was a snake it would have bit the 7th Circuit, in that, certainly ~~due~~ due to the fact that Space was reversed so should have Riley's case been reversed, according to due process and equal protection of the law under the 6th and 14th Amendment.

Thus said, for the sake of due process and equal protection of the law for the future of jurisprudence and every U.S. Citizen - and especially those criminally accused under murder in Illinois, this Honorable U.S. Supreme Court must here and now send a message by intervening as a signal to Illinois in order to prevent any further denials or deprivations of the 6th and 14th Amendment to those owed these Rights as U.S. Citizens and/or criminally accused, because if not, then there is absolute[ly] noth[ing] in the statutory definition of felony murder to "[pre]vent Illinois" prosecutor[s]" from rendering intentional or knowing murder superfluous by, for example, prosecuting every shooting death as felony murder predicated on aggravated discharge of a firearm at the victim; or every death occurring from a fight as

felony murder predicated on aggravated battery, thereby preventing the defense from ever asserting that an accused was only guilty of second degree murder, a mitigated offense based on self-defense or sudden passion, which is inapplicable to felony murder.

So said, nearly all forcible felonies will become predicates to felony murder and element[s] on an offense will become obsolete for the State to prove and for the jury to determine, thereby abrogating and eradicating This Honorable U.S. Supreme Court's holding in cases such as for example:

- *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068 (1970);
- *U.S. v. Gaudin*, 515 U.S. 503 (1995);
- *Sullivan v. Louisiana*, 508 U.S. 275 (1993);
- *Sandstrom v. Montana*, 442 U.S. 510 (1979);
- *Castillo v. U.S.*, 530 U.S. 120 (2000);
- *U.S. v. D'Brien*, 560 U.S. 218 (2010);
- *Jones v. U.S.*, 526 U.S. 227 (1999); or,
- *Alleyne v. U.S.*, 133 S.Ct. 2151 (2013); needless to say

the many-more cases in which used a myriad of synonymous phrases which defined "element[s]" of crime and/or criminal characteristics. Left unchecked, Illinois (the State) will continue to erroneously exempt "elements" in similarly situated cases likened to *Riley's* from due process, thereby alleviating the prosecution's burden to prove every element... and the criminally accused right to a jury determination of every element, by calling them "questions of law," as *Riley* has

been continuously trying to elaborate.

Respectfully, if This Honorable U.S. Supreme Court, being the Highest Court in the body of the Free-Land, were to in the absence of using Its supervisory power to Grant Riley's Writ of Certiorari, instead allow Riley's cause to idly sit as it is, thereby literally affirming all of the previous judicial proceedings had before the breast of the multiple courts (extending from the trial court on up to the 7th Circuit Court) this would serve as a devastating blow to the fundamental precepts of due process and equal protection of law and all that it was effectuated for - not only for Riley but for all of the Peoples of the U.S. by virtue of Citizenship who have an inherent interest in the U.S. Constitution and thus their Rights accorded therein - it would serve as a new tenet of law at odds with the fundamental requisites of the virtues and ideals and intent which the Framers of the U.S. Constitution had in mind in regard to due process and equal protection of the law for all, especially those accused of crime, hence, Riley.

And now, Riley ask of This Honorable U.S. Supreme Court to take into consideration everything which he has been seemingly incumbent to present, along with that which [I]t has held for so long - stating in so many words: "A petitioner's innocence or guilt is beside the point, however, the question is whether his constitutional rights have been preserved." See, *Moore v. Dempsey*, 261 U.S. 86, 87-88, 43 S.Ct. 265, 67 L.Ed. 543 (1923). Accord *Walberg v. Israel*, 766 F.2d 1071, 1078 (7th Cir.)

(Posner, J.), cert. denied, 474 U.S. 1031, 106 S.Ct. 546, 88 L.Ed. 2d 975 (1985) ("Guilty as [Petitioner] undoubtedly is -- unworthy member of the community as he undoubtedly is -- he was (is) entitled to a better procedure."). And reiterating, "Constitutional Rights of criminal defendants are granted to the innocent and guilty alike. *Id. supra* Kimmelman v. Morrison.

Thus said, This Honorable U.S. Supreme Court should Grant Riley his Writ Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Eugene Riley IIIrd

Date: 10 / 16 / 18