

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Dominic Robinson — PETITIONER
(Your Name)

vs.

STATE OF MISSISSIPPI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MISSISSIPPI SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

~~Atty~~ Dominic C. Robinson
(Your Name)

P.O. Box 1419
(Address)

Leakesville, MS 39451
(City, State, Zip Code)

(Phone Number)

IN THE SUPREME COURT OF THE UNITED STATES

DOMINIC L. ROBINSON

APPELLANT

VS.

CAUSE NO. 2014-KA-0038-SCT

STATE OF MISSISSIPPI

APPELLEE

PETITION
FOR
WRIT OF CERTIORARI

BY: Mr. Dominic L. Robinson

(APPELLANT)

MR. DOMINIC L. ROBINSON,

M.D.C. # 192006,

S.M.C.I. # 2, BLDG. # C-1,

P.O. BOX # 1419,

LEAKESVILLE, MS. 39451

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SUPREME COURT, U.S.

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:

(i) The STATE OF MISSISSIPPI as RESPONDENT.

Domine Robinson
PETITIONER

CERTIFICATE OF INTERESTED PARTIES

THE UNDERSIGNED COUNSEL (PROSE OF RECORD), CERTIFIES THAT THE FOLLOWING BELOW LISTED PERSONS, DOES HAVE AN INTEREST IN THE OUT-COME OF THIS CASE. THESE REPRESENTATIONS ARE MADE, THAT THE HONORABLE MISSISSIPPI SUPREME COURT, MISSISSIPPI APPEALS COURT, AND/OR THIS HONORABLE SUPREME COURT OF THE UNITED STATES MAY EVALUATE POSSIBLE DISQUALIFICATIONS OR RECUSAL.

- 1.) HONORABLE JUDGE MR. DALE HARKEY - Jackson County Circuit Courthouse, State of Mississippi
- 2.) HONORABLE J.A. MR. ANTHONY LAWRENCE - Jackson County Circuit Courthouse, State of Mississippi
- 3.) HONORABLE MISSISSIPPI ATTORNEY GENERAL MR. JIM HOOD
- 4.) HONORABLE ATTORNEY MR. RICHARD C. CONANT, ATTORNEY MR. ANTHONY N. LAWRENCE, III, MR. GEORGE S. SHADDOCK, AND ATTORNEY MRS. KATHLYN ROSE VAN BUSKIRK (TRIAL ATTORNEYS)
- 5.) HONORABLE ATTORNEY MR. HUNTER N. AIKENS - Mississippi Office of State Public Defender
- 6.) Appellant MR. DOMINIC C. ROBINSON

Mr. Dominic C. Robinson
(Appellant)

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QUESTIONS PRESENTED

- (i) Whether JURY INSTRUCTIONS-14A WAS IMPROPER?
- (a) Whether POST-MIRANDA SILENCE TO IMPEACH PETITIONER WAS ERROR?

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PETITION FOR WRIT OF CERTIORARI

INTRODUCTION:

This PRESENTLY CASE at bar, is where the Appellant Mr. Dominic L. Robinson, is truly "Innocent" of this CAUSE, where Appellant turned himself in to the custody of the Pascagoula Mississippi Police Department, and where Appellant does herein truthfully assert and states with MERITS of facts by law to this Honorable United States Supreme Court, that Appellant's Petition For Writ Of CERTIORARI should legally be granted for the RELIEF that Appellant seeks, when by no MEANS did Appellant AGGRAVATE ASSAULT (shoot) any of the five (5) law-abiding citizens (Jonathan Woods, Ara Osgood, Anguaneshia Thomas, Dawonshea Wells, and Jessica Woods) on 06 March 2011 at the CREME DE LA CREME Night Club in Moss Point, Mississippi, when the Appellant was ARRESTED and charged for five (5) counts of AGGRAVATED ASSAULT, after turning himself in to the custody of the said police department as mentioned.

That on 21 August 2012, the Grand Jury of Honorable Jackson County Circuit Court indicted the Appellant for the said five (5) counts of Aggravated Assault, in violation of Mississippi Code Annotated Section 97-3-7(2)(b), for the alleged shooting of the said citizens at the said night club, when Count-I was for the alleged shooting of Jonathan Woods, Count-II was for the alleged shooting of ARA Osgood, Count-III was for the alleged shooting of Anquaneshia Thomas, Count-IV was for the alleged shooting of Dawonshea Wells, and Count-V was for the alleged shooting of Jessica Woods.

That on July 14 through 16, 2014, after trial proceedings, and while Honorable Circuit Court Judge Dale Harkley, presiding, the Appellant was found guilty within the said Court by the Grand Jury, and Appellant was sentenced to serve a total of thirty (30) years in the custody of the Mississippi Department of Corrections, when the said trial court sentenced Appellant in Count-I and Count-II to serve concurrent sentences of twenty (20) years in the custody of the MDCC, the trial court sentenced Appellant in Count-V to serve a sentence of

Twenty (20) years, consecutively to the sentences in Count I and II, with ten (10) years in Count V suspended, and five (5) years of post-release supervision

That the said trial court denied Appellant's motion for new trial, and the Appellant's motion for rehearing, was also denied by the Honorable Mississippi Supreme Court, but in support of Appellant's behalf, defense, and the relief he seeks, the Honorable Presiding Justice Judge Mr. Jim Kitchens, does legally and respectfully stated that He dissent and would REVERSE and REMAND for a new trial for this case at bar, "SEE Attached Herein Brief Of The Appellant, Supplemental Brief Of The Appellant, Reply Brief Of The Appellant, Motion For Rehearing, Brief For The Appellee, Affirmed Order From The Honorable Mississippi Supreme Court, and PLEASE With All Respect Fully View Page 37 through 40 Pages Of Said and/or Attached Order For Opinion Of Honorable Kitchens, Presiding Justice, Dissenting With Honorable King, J., Whom Joins This Opinion.

"For The Record", in this case at bar, not one of the

Key-Witness WAS EVER called for trial in the Appellant's behalf and defense, to allow the Appellant his DUE PROCESS Rights for an fair trial, when such witness AS Ms. Angela Wilson and Mr. EIGEN Burt's testimony would have caused an "NOT GUILTY VERDICT" in the Appellant's behalf, due to the true fact, that Ms. Wilson would have testify that she did witness Appellant leaving the premises of the CREME de la CREME Night Club before any shooting took place, and Mr. Burt's is Appellant's Alibi witness, whom also wasn't called to testify at trial for this case at bar. "SEE Exhibits A and B", which ARE legal letters dated 24 April 2014 and 19 May 2014, that was submitted to the trial court by Appellant's Attorney Mr. George S. Shaddock, which is clearly an act of ineffective assistance of counsel, due to said Attorney didn't subpoena witness (Ms. Wilson and Mr. Burt's) to trial for Appellant's defense.

That the State violated Appellant's DUE PROCESS Rights by negligence or carelessness for loss of critical physical exculpatory evidence, which cause the Appellant to be denied his rights to present a complete defense, due to the Moss Point Mississippi Police Department Detective

SAVAGE stating that they misplace and/or loss all the forty-five (45) caliber and nine (9) millimeter bullets, bullet fragments, and shells, that was found, confiscated, and placed in their possession as evidence, which came from the said shootings at the CREME de la CREME Night Club's crime scene (Club's Door or Etc.) and also from the hospital, where the Doctors retrieved a forty-five (45) bullets from the victims such as Miss Jessica Woods, when all said bullets was turned-over to the possession of the said police department for evidence, but said bullets don't exist for this case at bar, for some unlawful and unjustify reasons, when said Detective gave testimony to the extent, that it was nobody fault that the evidence (Bullets or Etc.) in the property room was lost, when Appellant must now object, due to it's police duty and responsibility to label, secure, protect, and hold all evidence for trial procedures, and the State is held to a higher standard of procedure and ethics, so if this evidence wasn't lost, misplaced, or thrown away, it would have shown facts and grounds, that it was two (2) shooters in this case at bar and not the Appellant. By law, this evidence had exculpatory value due to the victims stated they

WERE shot with a forty-five (45) caliber WEAPON, but the investigators claim they collected all nine (9) millimeter casting.

That the trial court violated Appellant's DUE PROCESS Rights by limiting cross-examination of Mr. Damion Kimble concerning his biased motive for giving testimony favorable to the State, when Mr. Kimble was given consideration in his sexual battery charge for giving testimony favorable to the State, which should have been available for evidence in his cross-examination, pursuant to Mississippi Rules Of Evidence - Rule # 607 attacking witness (Mr. Kimble) credibility, Rule # 608 attacking truthfulness or untruthfulness of said witness, and Rule # 609 impeachment by evidence of said witness criminal conviction.

That the State violated Appellant's DUE PROCESS Rights by knowing and allowing false and perjured testimony from witness (Miss. Carmen Thompson), whom is an employee of the said club as an security guard, and whom gave perjured testimony by stating under oath, that she (Miss. Thompson) didn't shoot her weapon, when evidence and testimony of witness (Darius

Wright), whom is also an employee of the said club as an security guard, did give contradiction statement, due to him stating that Miss. Thompson did shoot her weapon, which trial Attorney and state should have attacked witness (Miss. Thompson) prior statement, pursuant to Mississippi Rule Of Evidence - Rule # 613, which wasn't done in this case at bar. Also, at no time, was Miss. Thompson or her weapon was tested for gun powder residue!

That the State violated the Appellant's Due Process Rights, by soliciting false information, during final closing remarks, by saying witness (Jessica Woods) identified the Appellant as the shooter, when during early investigation reports and her (Miss. Woods) testimony, she stated that she didn't see the shooter and only saw the barrel of a gun.

Nevertheless, viewing the transcript of this case at bar, witness Darius Wright and Carmen Thompson testified by stating, that there was two(2) shooting and another guy inside the said club was shot, when there are no police or hospital reports to verify said statement.

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 NA to the petition and is

- ☐ reported at NA; 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 NA to the petition and is

- ☐ reported at NA; 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 N/A to the petition and is

- ☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

- ☐ reported at N/A; 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 N/A.

☐ 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (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 4-19-2018.
A copy of that decision appears at Appendix order DENYING Appeal

☐ A timely petition for rehearing was thereafter denied on the following date: July-26-2018, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on D (date) in Application No. CA D.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- (1) THE 5TH AMENDMENT OF THE UNITED STATES CONCERNING THE DUE PROCESS CLAUSE WAS DENIED TO PETITIONER.
- (2) THE DUE PROCESS CLAUSE OF ARTICLE-3-SECTION (14) OF THE MISSISSIPPI CONSTITUTION WAS DENIED TO PETITIONER.
- (3) THE RIGHT TO A FAIR TRIAL UNDER THE SIX (6) AMENDMENT WAS DENIED TO PETITIONER.
- (4) THE STATUTORY RIGHT TO A FAIR TRIAL UNDER ARTICLE-3-SECTION (26) WAS DENIED TO PETITIONER.

STATEMENT OF THE CASE

IN JULY 2014, A JACKSON COUNTY JURY FOUND DOMINIC C. ROBINSON GUILTY OF THREE COUNTS OF AGGRAVATED ASSAULT, AND HE WAS SENTENCED TO SERVE A TOTAL OF THIRTY (30) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS.

REASON CERTIORARI SHOULD BE GRANTED

Reason One: Jury Instruction Was Improper

The Honorable Presiding Justice Judge Jim Kitchens - des-
serving, by stating He Respectfully dissent, and He would
REVERSE and REMAND for a new trial, due to jury instruc-
tion S-14A erroneously singled out the identification
testimony of Darius Wright, and amounted to a comment on
quality and weight of his testimony. The Prosecutor also
used Appellant's exercise of his rights to remain silent to
impeach his trial testimony about his whereabouts at the
time of the shooting, which constituting plain error. Appellant
ASSENT at trial, it was undisputed that during the early
morning hours of 16 March 2011 that someone fired multiple
gun shots toward the entrance door of the CREAM de la
CREAM Night Club in Moss Point Mississippi. The critical
question was whether that person was the Appellant?
Darius Wright and several other witnesses identified Appellant
as the culprit, but Darius Wright was the only eye-witness
to the shooting, who known Appellant before that night, and
whom grown up with the Appellant in the Moss Point Area.

The State requested and the trial court granted instruction S-14A that provided the following...

The court instructs the jury that the burden is on the State to prove beyond a reasonable doubt the offense was committed and that the Appellant was the person who committed it. You have heard evidence regarding the identification of the Appellant as the person who committed the crime. In this connection you should consider the witness opportunity to observe the criminal act and the person committing it, including the length of time the witness had to observe the person committing the crime, the witness state of mind, and any other circumstances surrounding the event. You should also consider the witness certainty or lack of certainty, the accuracy of any prior description, and the witness credibility or lack of credibility, as well as any other factor surrounding the identification. You have heard evidence during the trial that the witness Darius Wright identified the Appellant. The identification of the Appellant by a single eye-witness as the person who committed the crime, if believed beyond a reasonable doubt, can be enough evidence to convict the Appellant. It is for you to determine the reliability of any identification and give it the weight it deserves.

Appellant submit to this Honorable Court that instruction S-14A reminded the jury that Parisus Wright had identified the Appellant, and that if it believed his identification of the Appellant as the shooter beyond a reasonable doubt, it could convict, the Appellant argues that instruction S-14A was erroneous, because it emphasized the evidence that Parisus Wright in particular had identified Appellant as the culprit. The Judge in any criminal cause and/or case, shall not sum up or comment on the testimony or charge the jury as to the weight of evidence. "SEE Miss. Code Ann. Section 99-17-35 (REV. 2015) A jury instruction should not be given if it singles out certain evidence in a manner amounting to a comment on the weight of the evidence." SEE *Manuel Vs. State*, 667 So. 2d 590-592 (Miss. 1995) "A jury instruction also should not comment on the quality of the evidence." SEE *Howell Vs. State*, 860 So. 2d 704-745 (Miss. 2003) "In Appellant Review, this Court reads jury instructions as a whole, and if the instructions fairly announce the applicable law and create no justice, this Court will find no reversible error." SEE *Davis Vs. State*, 18 So. 3d 842-847 (Miss. 2009), but if the trial court abused its dis-

rection by granting an erroneous jury instruction, we will not hesitate to reverse." See *Moody Vs. State*, 202 So. 3d 1235-37 (Miss 2016)" The problem with instruction S-14A was that although there were numerous eye-witnesses to the shooting, it focused the jury's attention on the State's strongest eye-witness **Darius Wright**, the only eye-witness who previously had known the Appellant, when every other eye-witness stated that they had not known the Appellant before the shooting, but that the shooter was the same person who had been thrown out of the club earlier that night and identified as the Appellant. Therefore, the Appellant argues while it was permissible to instruct the jury on the law that the identification testimony of a single eye-witness, if believed beyond a reasonable doubt, was sufficient to convict, it was impermissible for the instruction to suggest that the most believable witness was the State's strongest witness **Darius Wright**. The Honorable Presiding Justice Judge Mr. Jim Kitchen found that jury instruction S-14A commented on the weight and quality of the evidence, and that the trial court abused its discretion by granting it. Justice Judge Kitchen, stated that He observe that it is beyond

question that both the Prosecution and Appellant's own Attorney viewed the instruction S-14A as a suggestion that the jury should find Darius Wright's testimony to be especially weighty! At the jury instruction conference, Appellant's Attorney objected to the said instruction on the basis that it single out Darius Wright from the group of eye-witnesses. Appellant's Attorney, stated that jury instruction S-14A would seem all right to him, if it wasn't singling-out Darius Wright. The Trial Judge response indicated its view that instruction S-14A singling out Darius Wright was a feature, not a problem. The problem with the Trial Judge's statement is this case at bar hinges on the identification by Darius Wright, that's in evidence... it continue to focus the jury's attention on this witness Darius Wright, and the Trial Judge overruled the objection. Appellant assert that the Judge should not be in the business of focusing the jury's attention on this or any other portion of the evidence, when it's improper. Appellant ask, move, and request that this Honorable Court does grant this Writ Of Certiorari as The Honorable Justice Judge Mr. Kitchen and Honorable Justice Judge Mr. King would have.

During closing Arguments, the Prosecutor twice drew the jury's Attention to instruction S-14A, by stating Ladies and Gentlemen, we have eye-witness as I said. I'll bring your Attention to this jury instruction. Here you go, Ladies and Gentlemen, the identification of a defendant by a single eye-witness as a person who committed the crime, if believed beyond a reasonable doubt, can be enough evidence to convict. I submit to you, Darius Wright, he identifies him. This comment by the Prosecutor not only was suggestive, but highly prejudicial and improper. The Prosecutor went on to state, now if this was just, if I had just brought Darius Wright in here and that was the only witness you'll heard from, I'd still be telling you that if you believe him that's proof beyond a reasonable doubt, because it is. Ms. Van Buskirk showed you the instruction. The Honorable Presiding Justice Judge Mr. Jim Kitchen, stated that jury instruction S-14A, was intended to be and operated as a judicial comment on the weight and quality of Darius Wright testimony, and Justice Judge Mr. Kitchen also stated that the instruction erroneously placed undue emphasis upon the testimony of the State's strongest witness. Appellant's jury was improperly in-

structured, and Justice Judge Mr. Kitchen stated He would REVERSE and REMAND for a new trial. Appellant request this Honorable Court to grant this request for Writ Of Certiorari.

Reason Two: Appellant's Post-Miranda Silence

Miranda Vs. Arizona - 384 U.S. 436-86 S.Ct 1602

161, Ed 2d 694 (1966)

The Honorable Presiding Justice Judge Mr. Jim Kitchen and Justice Judge Mr. King would REVERSE and REMAND this CASE AT BAR for a new trial, by stating the ERROR here WAS plain, clear, and obvious one, because the error violated Appellant's fundamental due process rights, resulting in a manifest miscarriage of justice. "See Mississippi Rules Of Appellate Procedure #28(A)(3), when a defendant's substantive or fundamental rights are affected, the Mississippi Supreme Court will notice a plain error not identified or distinctly specified." "See Cazart Vs. State, 226 So. 3d 574-581 (Miss. 2017)". Plain error analysis requires a determination of whether there is an error that is some deviation from a legal rule, and whether the error is prejudicial in its effect upon the outcome of the trial court pro-

ceedings, Appellant herein assert and state to this Honorable Court, that after Appellant's arrest, the police did read my Miranda rights, and Appellant immediately invoked my rights to remain silent, when the right to remain silent and right against self-incrimination is guaranteed by the Federal and State Constitution. U.S. Const. V, Miss. Const. Art. 3, Section 26, and the United States Supreme Court has condemned as a violation of due process. The government's use of an accused exercise of the right to remain silent to impeach his trial testimony. "SEE *Doyle Vs. Ohio*, 426 U.S. 610-619 96 S.Ct. 2240-49 L.Ed. 2d 91 (1976). In *Doyle* the U.S. Supreme Court held that if an accused under arrest was given a Miranda warning, and told that he had a right to remain silent, and that the accused did remain silent, that the government thereafter could not use his choice of remaining silent as a weapon during his trial testimony cross-examination to last suspicion on his guilt or innocence. "SEE *Puckett Vs. State*, 737 So. 2d 322-350 (Miss. 1999). The State is not allowed to use the exercise of a fundamental constitutional right by the accused as a weapon to convict him. In *Doyle* held that it would be fundamentally unfair and

A deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial. In *EMERY VS. STATE*, 869 So.2d 405-406 (Miss. 2004), the Prosecutor elicited testimony on cross-examination about the defendant's whereabouts on the night of the crime. The Court found that the issue was whether the trial court committed reversible error by allowing the Prosecutor to imply to the jury that EMERY'S post-arrest silence was an indication that he was untruthful and by implication an indication that he committed the crime. In this case at bar, Appellant's case bears a striking resemblance to EMERY as in EMERY the Prosecution impeached Appellant by eliciting his admission that the trial was the first time he had spoken about his whereabouts on the night of the crime, because Appellant had exercised his right to remain silent. The Prosecutor's use of his post-miranda silence to impeach Appellant and imply his guilt violated Appellant's Federal and State Constitutional Due Process Rights.

CONCLUSION

Appellant Dominic C. Robinson conclude by asserting that there are two (2) significant errors occurred in this case. Instruction S-14A singled out the identification testimony of Jarius Wright for special attention by the jury, constituting an improper comment on the quality and weight of the evidence, and a plain error occurred when the Prosecutor used Appellant post Miranda silence to impeach his trial testimony that he was traveling to Mobile at the time of the shooting, because these two (2) errors should not be allowed to stand. Appellant throws himself on the mercy of this Honorable Court and prays that this Writ Of Certiorari is granted.

Respectfully Submitted,
Mr. Dominic C. Robinson
(Appellant)