

No. 18-6828

ORIGINAL

Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

Gregg Thomas—Petitioner *Pro se*

vs.

State Of Maryland—Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE MARYLAND COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Gregg Thomas, No. 456-415

NBCI-14100 McMullen Hwy, S.W.

Cumberland, Maryland 21502

QUESTION PRESENTED

- I. Was the evidence sufficient to sustain Petitioner's convictions, and was Petitioner denied his Sixth Amendment Right under the United States Constitution to the effective assistance of counsel where his trial counsel failed to preserve the sufficiency issue for appellate review?

LIST OF PARTIES

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

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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[] is unpublished.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[] is unpublished.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 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[✓] is unpublished.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 Court of Special Appeals 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[✓] is unpublished.

Jurisdiction

The Maryland Court Of Appeals on Petition For Writ Of Certiorari in
Thomas v. State, No. 124, Md. Sept. Term, 2018 dismissed, Unpublished
(July 31, 2018). See Appendix A.

The Court Of Special Appeals Of Maryland, on a Direct Appeal, in
Thomas v. State, No. 610, Md. App., Sept. Term, 2017, *per curiam*,
affirmed (filed April 11, 2018). See Appendix B.

Constitutional And Statutory Provisions

[AMENDMENT V.]

[Rights of Accused in Criminal Proceedings] No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[AMENDMENT VI.]

[Right to Speedy Trial, Witnesses, etc.] 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 crime 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 defence.

[AMENDMENT XIV.]

Section 1. [Citizenship Rights Not to Be Abridged by States] Statute text
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.

Constitution of The State Of Maryland

Declaration Of Rights Article 21

Article 21. Rights of accused; indictment; counsel; confrontation; speedy trial; impartial and unanimous jury.

Statute text

That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty. Annotations

Statement Of The Case

After three mistrials in the Circuit Court For Baltimore City, at a fourth trial on February 6-13, the Honorable Julie R. Rubin, presiding over a jury, convicted Petitioner of attempted murder in the first degree, use of a handgun in the commission of a crime of violence and prohibited possession of a hand gun. On May 15, 2017, the Court imposed a sentence of life for the attempted murder and consecutive sentences of 20 years incarceration for unlawful use of a handgun and 15 years for the illegal possession of a handgun.

An Appeals followed in September 2017, the Court of Special Appeals denied the Petitioner's appeal on April 11, 2018, a Writ of Certiorari was filed within the allowed time on May 14, 2018. Petitioner's Writ of Certiorari to the Court of Appeals was denied on July 31 2018 and this Writ of Certiorari to the United States Supreme Court now follows.

Reasons For Granting The Petition

The State failed to introduce sufficient evidence of identity. For a conviction to be sustained, the State must prove the Defendant's identity as a perpetrator. Despite the lack of evidence to support Petitioner's identity as the shooter, or (possessor of a gun), at the conclusion of the presentation of evidence defense counsel failed to argue a motion for judgment of acquittal "with particularity" as required by Maryland Rule 4-324(a). Counsel's failure to do so denied Petitioner his constitutional right to the effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article 21, of the Maryland Declaration of Rights. This Court may address this issue on direct appeal, because "the critical facts are not in dispute and the record is sufficiently developed to permit a fair evaluation of the claim"; it is well established that a defendant may raise a claim of ineffective assistance of counsel on direct appeal if and only if it conclusively appears on the record that counsel did not provide effective assistance. United States v. Davis, 669 Fed. Appx. 683 (2016). the Strickland standard applies equally to claims of ineffective assistance of counsel

on direct appeal, Smith v. Robbins, 526 U.S. 259 (2000). As "there is no need for a collateral fact-finding proceeding", review of Petitioner's claim by this Court would be appropriate and desirable.

The standard of review for evidentiary sufficiency is "whether any rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt" when the evidence is viewed "in the light most favorable to the prosecution, Jackson v. Virginia, 443 U.S. 307 (1979). The due process clause of the United States Constitution prohibits the Criminal conviction of any person except upon a proof of guilt beyond a reasonable doubt. Therefore a conviction "cannot be sustained on proof amounting only to a strong suspicion or a mere probability." In a case depending upon circumstantial evidence alone the finding of one fact inconsistent with the defendant's guilt is sufficient to raise a reasonable doubt. Holt v. United States, 218 U.S. 245 (1910).

The evidence of trial was not sufficient to sustain Petitioner's convictions. No eye witness identified Petitioner as the shooter of Sgt. McNeil. No ballistics evidence was presented at trial. No cell-site mapping tended to show Petitioner was in the area of the shooting. The only forensic evidence attempting to connect Petitioner were fingerprints on a blue Lincoln Town car driven by Lee Allmond-a fact not in dispute.

Sgt. McNeil, testified that the man who knocked on Higgs automotive and then shot him was more than six feet tall, wore a mask and dark clothing. (T2. 147 -48). Allen Stokes the only witness to actually see the shooting, testified that the shooter stood approximately 5'8" tall and wore a blue hoodie and a red shirt, he did not see the shooters face. (T2. 292-93). Bruce Higgs did not see the shooting, but saw a man in a black hoodie sweat shirt and a "dark dark shirt" ringing the doorbell of Higgs Automotive. (T2. 194). Mr. Allmond testified that Petitioner was wearing a white t-shirt and blue jeans when he lent him his car. Petitioner was not wearing a red shirt, hoodie or mask. (T3. 52; 74). Mr. Stokes also testified he saw the shooter get into a Lincoln Continental (T2. 287-88), which is a total different car from the Lincoln Town car Mr.

Allmond was stopped in.

Immediately after the incident, Higgs told police that the man who knocked on the door was a different man—"kinda chubbier"—than the man he saw in the Lincoln Town car. (T2. 195, 227 & 229). Although Mr. Higgs "identified" Petitioner in a photo array as the driver, he qualified his "identification" as not even 70 percent sure, or about 7 out of 10. (T2. 194-95). At first, Mr. Higgs was not even 70 percent sue that Petitioner was the diver of the Lincoln Town car and not the other person who knocked on the door of Higgs Automotive. Despite all of this, Higgs testified that he could identify the masked man inside a Lincoln Town car as Gregg Thomas in part by his "beady" eyes, from a distance of "20 - 30 yards at nearly 7:00 p.m. in the middle of March, from an incident that occurred roughly three years before trial. (T2. 201-02; 244).

Mr. Allmond did not witness the shooting. Instead, he simply testified that Petitioner invited him to use his Lincoln Town Car and drop it off at his mother's house, (T3. 52). Police could not match the license plate to the blue Lincoln with agricultural tags driven by Mr. Allmond and the blue Lincoln with the Agricultural tags visible in cctv footage from approximately 30 minutes before the shooting of Sgt. McNeil. Instead Detective Vaughn testified that the vehicles had similar patterns of bird excrement, (T3. 185-86).

Higgs testimony was too contradictory and the remaining evidence was too speculative and circumstantial to sustain the convictions. A conviction may rest on circumstantial evidence but not speculation. The State presented no forensic evidence linking Petitioner to the shooting. No eye witness identified the Petitioner as the shooter. No reasonable jury could convict based on the contradictory and inconsistent circumstantial evidence presented at trial. Ultimately because a conviction cannot be sustained upon speculation, conjecture and a contradictory identification and statements. The evidence in this instant case was insufficient.

Counsel's failure to argue the motion for judgment of acquittal "with particularity" denied Petitioner his constitutional right to the effective assistance of Counsel. To prove an ineffective assistance claim under Strickland, a defendant must show; (1) that counsel's performance was

deficient and; (2) that deficient performance prejudiced the defense. In evaluating counsel's performance, there is a strong presumption that counsel's performance falls within the range of reasonable professional assistance. Further, the reasonableness of counsel's performance must be evaluated within the context of circumstances at the time of the alleged error, rather than within the benefit of hindsight. To satisfy the second prong of Strickland, a defendant must show a "reasonable" probability that but for counsel's unprofessional error, the result of the proceeding would have been different. United States v. Sweeatt, 573 Fed. Appx. 292 (2014).

As discussed earlier the critical facts are not in dispute and the trial record is sufficiently developed to permit review by this court of Petitioner's ineffective assistance claim. The determination of whether trial counsel was constitutionally ineffective hinges on two issues: (1) whether trial counsel failed to state "with particularity" why the motion of judgment of acquittal should have been granted, as required by Md. Rule, 4-324(a) and; (2) whether the evidence of identity is sufficient to sustain the convictions. This Court can make both of these determinations from the trial record.

The record clearly shows that trial counsel's failed to argue this sufficiency issue with particularity, stating only that "counsel would submit without argument," (T3. 227-28; 230 denied). It is equally clear that trial counsel's failure to do so was not the result of trial strategy. There is no conceivable reason why as a tactical matter, counsel would not seek his clients acquittal for lack of evidentiary sufficiency of identity as the perpetrator. If not for counsel's deficient performance, a motion for judgment of acquittal would have been granted, as the State failed to prove Petitioner's identity as the perpetrator.

By not arguing this issue, trial counsel failed to preserve appellate review. Counsel should have known that by not arguing the sufficiency issue with particularity, that it would not be preserved for appellate review. In representing a criminal defendant, counsel owes the client a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process, Strickland v. Washington, 466 U.S. 688 (1984). There was no

conceivable trial strategy that would explain counsel's failure to preserve the sufficiency issue for appellate review. Accordingly Petitioner's convictions must be reversed. If the criminal offense charged is clearly inapplicable to a defendant's conduct, and if the only reason for not reversing Petitioner's convictions is the failure of his counsel to argue the issue with particularity at trial, then under the circumstances of this case, Petitioner would be entitled to relief in an appropriate post conviction proceeding collaterally attacking his convictions. Therefore in light of this, fairness and the interest of judicial economy will justify relief on direct appeal.

Conclusion

The Petition for writ of certiorari should be granted.

Respectfully Submitted

Gregg Thomas, Pro Se

Gregg Thomas