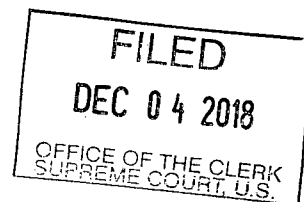


18-7165

No.

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

Drakile Leroy Jones — PETITIONER
(Your Name)

vs.

People of the State of Michigan — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

State of Michigan Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

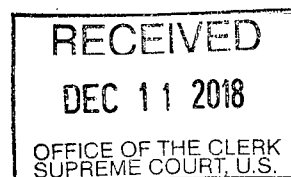
PETITION FOR WRIT OF CERTIORARI

Drakile Leroy Jones #936980
(Your Name)

8585 N. Croswell Rd.
(Address)

St. Louis, MI, 48880
(City, State, Zip Code)

N/A
(Phone Number)



Questions Presented

- I) Whether the decision of the Michigan Court of Appeals conflicts with Crawford v. Washington?
- II) Whether the Michigan Supreme Court's interpretation of Rule 804(b)(3) is so contrary to Williamson v. United States that this Court's supervisory power is required?

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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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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 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 **state courts**:

The date on which the highest state court decided my case was **September 12 2018**.

A copy of that decision appears at Appendix **B**.

☐ 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. _____.

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

Constitutional and Statutory Provisions Involved

28 USCS § 1257 State courts; certiorari

(4) Final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under Constitution or the treaties or statutes of, or any commission held or authority under, the United States.

U.S. Constitutional Amendment. VI

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 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. Constitutional Amendment XIV § 1

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 protections of the laws.

Statement of The Case

Background

Drakile Jones was convicted of first-degree felony murder, armed robbery, and felony firearm (Trial Transcripts [TT], 06/22/2016, verdict 9). Mr. Jones was sentenced to mandatory life for the murder, 25-50 years for the robbery, and the mandatory two years for the firearm (sentencing transcripts, 7/25/2016, 12-13).

At the beginning of trial, defense counsel moved to exclude testimony of what non-testifying co-defendant, Carter, allegedly told Williams; the trial court wanted the matter briefed (TT, 06/13/2016, 4-7). Subsequently, the trial court ruled that testimony was admissible as a statement against interest pursuant to MRE 804(b)(3) (TT, 06/20/2016, 97-110).

Trial

Phillip Pentecost was killed outside of his car on Minock Street in Detroit on January 27, 2016. His car was found on the eastside of Detroit, burned out, on January 28th.

Mr. Pentecost died from two gunshot wounds; one to the upper abdomen, and one to the back of the head (TT, 06/21/2016, 34-36, 40).

Justin Harris testified that he knew Mr. Pentecost and Mr. Jones (TT, 06/16/2016, 13-15). On January 26, 2016, Harris said, he was **home** with a friend and a cousin; they went out for food, and when they returned saw Pentecost's car — running and with the lights on — parked in the driveway (id. at 18-20). Mr. Jones called Harris asking about a "burner", which could mean a weapon, and "hitting ticks", which, Harris said, could mean a robbery or have musical connotations (id. at 21-22, 52).

In the phone conversation Mr. Jones mentioned he was with someone, and when Harris was hesitant to have someone he did not know come over, vouched for the person's loyalty (id. at 22-23).

Mr. Harris said Mr. Jones arrived with the friend asking where the ticks were. Mr. Jones was unarmed but Mr. Harris saw the butt of a handgun, likely a revolver, in the hoodie pocket of Jones' friend (id. at 24-27, 56).

Mr. Harris said that Mr. Jones and his friend left at after 11:30 pm (id. at 28). Harris said he saw them get into Jones' van then went back in the house. He said he looked outside ten or fifteen minutes later and the van was still parked in Harris' driveway (id. at 28-29). Five or ten minutes later Harris said he heard two gunshots. He subsequently looked outside and saw Pentecost's car drive by, then, some distance ahead of Pentecost's car, he saw a van of similar shape and size of Mr. Jones' van driving away (id. at 30-31, 77, 43).

Mr. Harris said he went outside and saw Mr. Pentecost's body on the ground where he was non-responsive and had a visible wound on his head. Harris called 911 (id. at 32-33). Harris said he found a cellphone near Mr. Pentecost's feet and later gave it to police whom he spoke with and gave a statement, but did not mention having seen Mr. Jones (id. at 33, 35). Harris said after police left he received a phone call from Mr. Jones, who said "you didn't hear shit, you didn't see shit, you don't know me" (id. at 36-37).

Taevion Williams testified that January 27th he got a call from his friend Robert Carter sounding "scared" or "frantic" telling Williams that he was "in trouble", and needed somewhere to go (CT. 06/20/2016, 11-114). Carter arrived driving a black Chevy HHR, which he then drove and parked a couple blocks away. Carter then spent the rest of the night at Williams', and in the morning told Williams that Mr. Jones wanted to make some money, that there had been a robbery, and that someone got shot by Mr. Jones (id. at 121-124). Carter told Williams that he did not want to

participate, but Mr. Jones threatened him with a gun, and Carter then participated and took the car (id. at 123). Carter left that afternoon, Williams said, but returned in the evening and wanted Williams' help in burning the car (id. at 125-126).

Appeal

On appeal, a violation of State and Federal Constitutional Guarantees of Due Process and Confrontation was raised, claiming that Carter's statement to Williams was unreliable and the trial court's ruling deprived Mr. Jones of a constitutionally protected opportunity to assess the credibility of Carter in an open-court face-to-face confrontation. The Court of Appeals affirmed convictions holding that Carter's statement to Williams was non-testimonial so it did not implicate the Confrontation Clause and it satisfied MRE 804(b)(3) so the whole statement — including portions that inculcate others — was properly admitted through Williams' testimony (Appendix A). In application for leave to appeal to the Supreme Court, in addition to the argument put forth by appellate counsel in the Court of Appeals, Mr. Jones challenged the proposed statement's admissibility under MRE 804(b)(3). The Supreme Court denied discretionary review. (Appendix B).

Reason for Granting Petition

The petition should be granted for two compelling reasons. First, because the Michigan Court of Appeals has decided an important federal question dealing with the Confrontation Clause of the Sixth Amendment in a way that conflicts with the holding of this Court in *Crawford v. Washington*, 541 U.S. 36 (2004), the exercise of the Court's supervisory power is required.

Second, because granting the instant petition will provide this Court with a vehicle to establish limiting principles for the state courts dealing with statements against interest, that inculcate others, in a way that is more consistent with *Williamson v. United States*, 512 U.S. 594 (1994).

I. The decision of the Michigan Court of Appeals conflicts with *Crawford v. Washington*.

This Court in *Crawford* declined to "spell out a comprehensive definition of testimonial," but stated that "whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial, and to police interrogations." 541 U.S. at 68. This Court then went on and identified specific types of out-of-court statements that are testimonial:

Various formulations of this core class of "testimonial" statements exist: "ex parte in-court testimony or its functioning equivalent -- that is, material such as affidavits, custodial examinations, prior testimony that defendant was unable to cross-examine, or similar pretrial statement that declarant would reasonably expect to be used prosecutorially; extrajudicial statements... contained in formalized testimonial material, such as affidavits, depositions, prior testimony, or confessions; statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial, *id.* at 51-52

9.

The Michigan Court of Appeals however noted Carter's "several inconsistent" statements to police but still found his statement to Williamson non-testimonial. (Appendix A). How can that be, if the statements that they mentioned were testimonial according to Crawford?

"Defendant was interviewed by the police and gave several inconsistent versions of what happened during the robbery and murder. Eventually he blamed the events on Jones, claiming that Jones had forced him to participate in the robbery and then had shot Pentecost." *People v. Carter*, 2018 Mich App LEXIS 299 at 4.

For one they clearly say, "Defendant was interviewed by police", *id.*, that alone made the statements "testimonial" because Crawford said the term applied "at a minimum... to police interrogations". 541 US at 68. In one of the statements Carter told the police, "Drakile shot him." (Appendix D). Then in another "similar pretrial statement [that Petitioner do not have] that declarant would reasonably expect to be used prosecutorially," *id.* at 51-52, Carter told the police that Petitioner "forced him to participate in the robbery and then had shot Pentecost." *Carter*, 2018 Mich App LEXIS 299 at 4.

The Court of Appeals neglected to consider these statements when they dismissed Petitioner's Confrontation claim, but these were clearly testimonial statements, or at least Carter's statements to the police were, and where "testimonial evidence is at issue, the Sixth Amendment demands what common law required: unavailability and prior opportunity for cross-examination." Crawford at 68. Without a prior opportunity for Petitioner to cross-examine Carter about these statements, the trial court violated the Sixth, as well as the Fourteenth Amendment of the United States Constitution, by admitting them through Williams. US Const, AM VI, XIV § 1.

"The Confrontation Clause does not tolerate dispensing with confrontation simply because the court believes that questioning one witness about another's testimonial statement provides a fair enough opportunity

for cross-examination. Although the purpose of the Sixth Amendment rights is to ensure a fair trial it does not follow that such rights can be disregarded because on the whole, the trial is fair. *United States v. Gonzalez-Lopez*, 548 US 140, if a 'particular guarantee' is violated, no substitute procedure can cure the violation. *id.* at 146" - quoting *Bullcoming v. New Mexico* 546 US 647 at 649. It is inconceivable that the protections of the Confrontation Clause can be readily evaded by allowing one witness' hearsay testimony admit another's testimonial statement.

In denying relief to Petitioner on the facts of his case under the argument presented, the decision of the Michigan Court of Appeals is contrary to *Crawford*.

II. The Michigan Supreme Court's interpretation of MRE 804(b)(3) is so contrary to *Williamson v. United States* that this Court's supervisory power is required.

This Court in *Williamson* held that "the most faithful reading of Rule 804(b)(3) is that it does not allow admission of non-self-inculpatory statements, even if they are made within a broader narrative that is generally self-inculpatory... this is especially true when the statement implicates someone else." 512 US at 600-601.

In deciding petitioner's case, the Michigan Court of Appeals followed their Supreme Court in *People v. Taylor*, 482 Mich 368 (2008), which affirmed *People v. Poole*'s interpretation of MRE 804(b)(3); 444 Mich 151 (1993). (Appendix A). *Poole* held:

"Where, as here, the declarant's inculcation of an accomplice is made in the context of a narrative of events, at the declarant's initiative without any prompting or inquiry, that as a whole is clearly against the declarant's penal interest and as much is reliable, the whole

Statement -- including portions that inculpate another -- is admissible as substantive evidence at trial pursuant to MRE 804(b)(3). *id.* at 161

For starters, this Court already rejected the interpretation of the Federal commentary on which Poole relied. See *Williamson* at 602.

This Court recognized in *Williamson* that "the fact that a person is making a broadly self-inculpatory confession does not make more credible the confession's non-self-inculpatory parts. One of the most effective ways to lie is to mix falsehood with truth, especially truth that seems particularly persuasive because of its self-inculpatory nature," *id.* at 599-600. Poole however incorrectly assumed that any statement made in context of a narrative of events that as a whole is against the declarant's penal interest is one that a reasonable person in the declarant position would not have made unless it were true.

This type of thinking allows statements that a person would make even if they were false. In Petitioner's case, for example, the Michigan Court of Appeals said "Carter inculpated himself by stating that he and defendant had been 'looking to make some money'...", then followed Poole and admitted the rest of the statement, where Carter claimed duress, under MRE 804(b)(3). (Appendix A).

A claim of duress is exactly the type of statement that a person would make even if it was false, and it was no way against his interest. In a way it was actually self-exculpatory because it was what Justice Boyle called "a classical attempt to avoid responsibility," *People v. Barrera* 451 Mich 261 (Boyle, J dissent). It was what Judge Guy recognized in *Torpin v. Kassulke*, 26 F.3d 1392 (CA6, 1994), when s/he noted "the declarant's statement was not truly inculpatory; most important although Brown's statement arguably was against her penal interest, a reading of the statement as a whole reveals that Brown's purpose in

Making the statement was to avoid criminal liability to the extent possible not accept it... the rationale supporting the hearsay rule's penal-interest exception—that persons generally 'will not make damaging statements against themselves unless they are true'—therefore does not apply to Brown's statement." *id.* at 1398. And even though the statement was made to a friend and not the authorities, it was the type of statement where "the declarant might well have been motivated to misrepresent the roles of others in a criminal enterprise, and might well have viewed the statement as a whole—including the ostensibly dis-serving portions—to be in his interest rather than against it." *United States v. Sarmiento-Perez*, 633 F.2d 1092, 1102 (CA5, 1981). See *Bruton v. Phillips*, 64 F.Supp.2d 669 at 681 ("This Court does note, however, that the serious misgivings with respects to the distinction between inculpatory hearsay statements made to acquaintances and those made to law enforcement officers. Often there are incentives to misrepresent the truth in conversations with acquaintances, family, and friends that are as powerful as incentives to misrepresent the truth in conversations with authorities. Likewise, there are powerful incentives to tell the truth to authorities that do not necessarily operate in conversations with relatives and friends. Accordingly, there appears to be strong reason to require that defendants be protected from the introduction of inculpatory hearsay statements made during a confession of co-defendant's, regardless of the identity of the persons to whom the co-defendant confesses.")

With the Michigan Supreme Court's interpretation of Rule 804(b)(3), these are the types of statements that are being allowed and this Court even talked about "when part of a confession is actually self-exculpatory." It said, "... the generalization on which Rule 804(b)(3) is founded becomes even less applicable... and mere proximity to other, self-inculpatory statements does not increase the plausibility of the self-exculpatory statements." *Williamson* at 600.

Now there are circumstances where Rule 804(b)(3) does allow statements against accomplices, as this Court noted in *Williamson* "if they are truly self-inculpatory, rather than merely attempts to

Shift blame or curry favor... and this can only be answered in light of all surrounding circumstances," id. at 603-604, but the Michigan Supreme Court's interpretation does not even reflect to this type of partiality. Instead they allow every collateral statement, even if they are so self-serving as to render them unreliable, as you see in Petitioner's case, and the sad part is — it is not just Michigan.

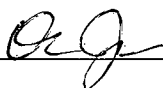
MRE 804(b)(3) is modeled after FRE 804(b)(3) which was enacted by Congress, so the question as to the scope of the rule is a federal question. When the state courts start abusing their discretion to allow statements that are not against a declarant's interest under an against interest hearsay exception the only remedy is for this Court to intervene, especially when this Court already addressed the issue. You would think that the state courts would adhere to this Court's decision when such a question is answered but they are just doing what they want. In doing so highly prejudicial hearsay statements are being admitted and defendants are being subjected to fundamentally unfair trials similar to Petitioner's.

For the reasons stated above, this Court's supervisory power is required.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

Date: 12/4/18