

18-7525

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DELEXSIA HARRIS

VS.

THE UNITED STATES OF AMERICA

ORIGINAL

Supreme Court, U.S.
FILED

JUL 13 2018

OFFICE OF THE CLERK

ON PETITION FOR WRIT OF CERTIORARI TO:

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
[TAMPA, FLORIDA]

(PRISONER, PRO SE)

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

Should the analysis utilized in, Old Chief v. United States,
519 US 172, 179; 117 S.ct 644, 651 (1997), for suppression of prior
bad acts in relation to application of Federal Rules of Evidence
§403, control in determining whether prejudicial information should
have been excluded in the defendant's trial?

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LIST OF PARTIES

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

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TABLE OF AUTHORITIES

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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

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at
Appendix I to the petition and is

[X] unpublished

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JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was April 2, 2018

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 25, 2018.

The jurisdiction of this Court is invoked under 28 USC § 1254(1).

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CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

• Fifth Amendment (U.S. Const 5th Amendment):

"... a person shall not be required to answer for a capital or other infamous crime unless an indictment or presentment is first issued by a grand jury; no person will be placed in double jeopardy; no person may be required to testify against himself; that neither life, liberty nor property may be taken without due process of law, and; that private property may not be taken for public use, without payment of just compensation."

• Sixth Amendment (U.S. Const 6th Amendment):

"[The Amendment to the Constitution that entitles], the accused in a criminal trial the right to a speedy trial by an impartial jury, to be informed of the charges against him or her, to be confronted with witnesses against him or her, to have compulsory process to obtain witnesses in his or her favor, and to have effective assistance of counsel."

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STATEMENT OF CASE

Several of Delexsia Harris' brothers were charged in federal court with drug and racketeering conspiracies involving multiple murders. The Government alleged that Harris had lied to law enforcement officials, encouraged a witness to provide a false alibi, and threatened those who might testify against her brothers, in an attempt to secure her brothers' acquittal. Harris was eventually convicted of witness tampering and obstruction of justice.

The defendant believes that the district court had abused its discretion when it deemed her request for suppression of evidence concerning Ceola Lazier's murder during her obstruction of justice trial. The Court had determined that without the evidence of Lazier's murder, that was utilized to presumptively reveal Harris' knowledge of the true circumstances surrounding that murder, the jury would have lacked the context necessary to access whether she had obstructed justice. She believes that the district court had abused its discretion in determining that the photographs depicting the murder scene should not have been suppressed, because without them there was an insufficient amount of substantial evidence for the jury to weigh in relation to the defendant's guilt.

Ms. Harris, had challenged the conviction on direct appeal, which the panel had affirmed. She had also requested a panel rehearing; (and rehearing en banc), which was also denied. She now requests a writ of certiorari from the Supreme Court to determine whether she should have been afforded the relief requested, that which is in conflict with the high court's precedent on the same topic (Federal Rules of Evidence §403).

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REASON FOR GRANTING THE PETITION

Federal Rules of Evidence § 403, requires the district court to exclude relevant evidence if its probative value is substantially outweighed by a danger of ... unfair prejudice. However, the district court had failed to suppress all evidence that was unduly prejudicial to the defendant that was in relation to the underlying murder, if the jury would have lacked the context necessary to assess whether she had actually obstructed justice. The Supreme Court had addressed the scope of, Fed. R. Evid. § 403, in its case, Old Chief v. United States, 519 US 172, 179; 117 S.Ct. 644, 651 (1997), for character evidence (prior bad acts), its guidance used in regards of the application of § 403 is relevant here. Old Chief at 179, provides, [w]hile situations will arise which call for the exclusion of evidence offered to prove a point conceded by the opponent, the ruling should be made on the basis of such considerations as ... undue prejudice, rather than any general requirement that evidence is inadmissible only if directed to matters in dispute. -- The principle issue is the scope of a trial judge's discretion under rule §403, which authorized exclusion of relevant evidence when its "probative value" is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Old Chief, relies on the danger of unfair prejudice, which Defendant Harris also relies upon. The term "unfair prejudice" as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure

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the factfinder into declaring guilt on a ground different from proof specific to the offense charged. Unfair prejudice within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.

If the probative value of the evidence was outweighed by undue prejudice it was the court's duty to suppress the evidence as a matter of law. The Government was required to utilize any remaining evidence available to obtain a guilty verdict from the jury.

The Government bears the burden of establishing guilt beyond any reasonable doubt. In this case, the district court had committed a reversible error that had substantially affected the defendant's rights to a fair trial, by the Court's failure to suppress information in regards to Lazier's murder that was unduly prejudicial.

The Court had also abused its discretion in determining what evidence should have been salvaged to permit the jury the ability to procure a finding of guilt. There is no dispute between the parties in this case as to whether Ceola Lazier had been murder.

The sole issue before the court, and for the jury's determination, was obstruction of justice and witness tampering. It was understood that the petitioner was not on trial for murder, however, the Government was permitted to admit five crime scene photographs depicting the aftermath of Lazier's murder. The jury could have determined whether Harris had lied to law enforcement when she had reported how the murder had happened by utilizing the officer witness' testimony, without the gruesome and inflammatory photographs.

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Detective Curulla's testimony about where Lazier's car had come to rest, the location of the bullet holes in the car, and the location of the bullet casings on the road, was sufficiently presented to the jury without being admitted in conjunction with the photographs, which would have more likely than not inflamed the jury's prejudices. In its opinion and judgment, the Court of Appeals, U.S. v. Harris, case no: 17-7646, in relation to the issue of possible Rule § 403 prejudice, provides in part that:

"Even though this evidence undoubtedly was prejudicial to Harris, some degree of prejudice is characteristic of all relevant evidence. See: United States v. King, 713 F.2d 627, 631 (11th cir.) (1983), (In a criminal trial relevant evidence is inherently prejudicial...). In this case, the prejudicial effect of the evidence in question was not so significant that it substantially outweighed the probative value. Thus, the district court did not abuse its discretion by declining to exclude all evidence concerning Lazier's murder."

The Court of Appeals addresses prejudice, but not undue prejudice. The Court addresses prejudice in the sense of harm, but not the unduly harmful effects of such prejudicial evidence. The determination is indeed correct that all relevant -inculpatory- evidence is of itself prejudicial. However, these photographs were undue and unnecessary other than their use for exacerbating the evidence before the jury to unduly prejudice the defendant. The Court further provides in its opinion that only 'one' of the photographs shows Lazier's body inside the car, that 'one' photograph was enough to pull the hearstrings of the jury and to sway their decision in regards to guilt or innocence of the defendant. Even a threshold viewing of these photographs would

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have posed an impermissible risk of jury inflammation. •(footnote) Therefore, the district court had abused its discretion by permitting the Government to admit the crime scene photographs that were not only prejudicial, but unduly prejudicial. Any undue prejudice would have caused her proceedings to become unfair, and violative of constitutional safeguards.

The Supreme Court should grant the defendant's request for certiorari, because the Eleventh circuit, or any other circuit for that matter, does not possess a guideline application of the Federal Federal Rules of Evidence § 403, in relation to the petitioner's circumstances. She, therefore, prays that such relief is granted in questioning whether the analysis used in Old Chief v. United States, 519 US 172, 179; 117 S.ct. 644, 651 (1997) controls in determining whether the analysis utilized for suppression of prior bad acts in relation to application of Federal Rules of Evidence §403, also applies to prejudicial evidence admitted to the jury in the defendant's trial.

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•(footnote) The panel had claimed that the admission of these photographs did not pose an impermissibly 'high' risk of inflaming the jury, albeit its undoubtedly prejudicial effect, but does not determine that those photographs were not unduly prejudicial to the defendant.

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: _____