No. 18-7825

IN THE

SUPREME COURT OF THE UNITED STATES

TREVONTE JENKINS — PETITIONER, *pro se*

vs.

STATE OF OHIO — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

THE OHIO COURT OF APPEALS, EIGHTH APPELLATE DISTRICT

PETITIONER'S MOTION FOR REHEARING OF THE ORDER DENYING HIS PETITION FOR WRIT OF CERTIORARI PURSUANT TO USCS Supreme Ct R 44

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NEW POINTS TO BE ADDRESSED IN THE MOTION FOR REHEARING

The Respondent has provided the Court with a Motion for Rehearing pursuant to USCS Supreme Ct R 44. Petitioner respectfully submits the following issues not directly addressed in the Writ of Certiorari that may impact the Court's decision to deny the Writ rendered on June 3, 2019:

1. Coercion of the witness – The lone eyewitness in this case was coerced—either knowingly or unknowingly—to point to Petitioner as the perpetrator of the crimes in this case. The Court should accept this case for review to address the issue of improper coercion of a witness by law enforcement.

2. Coordination to prevent a fair identification – The only eyewitness was prevented from making a non-suggestive, blinded, fair and neutral identification in this case due to the planned and coordinated efforts of law enforcement. The Court should accept this case for review to address the issue of governmental conspiring that prevent proper pretrial procedures which affect constitutionally required fundamental fairness.

LIST OF PARTIES

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

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INTRODUCTION

The Petitioner seeks relief from the denial of his Writ of Certiorari entered by the Court on June 3, 2019.

> Petition for rehearing of denial of petition for certiorari was part of appellate procedure authorized by Rules of Supreme Court, subject to requirements of predecessor to Rule 44 on rehearings; right to such consideration was not to be deemed an empty formality as though such petitions would as matter of course be denied; denial of petition for certiorari should not be treated as definitive determination in Supreme Court, subject to all consequences of such an interpretation.
> *Flynn v. United States* (U.S. 1955), 75 S Ct 285, 99 L Ed 1298.

Petitioner seeks relief from prejudice he suffered from an unconstitutional first-time in-court identification procedure orchestrated by Ohio law enforcement officers, who also participated in coercion of the only eyewitness to falsely identify Petitioner as the perpetrator in this case..

PETITIONER'S ARGUMENTS IN SUPPORT OF A REHEARING

I. THE COURT SHOULD GRANT REVIEW TO ADDRESS THE UNFAIR ASPECT OF COERCION BY POLICE OFFICERS IN THE PRETRIAL SETTING THAT PROMOTE OVERLY SUGGESTIVE FIRST-TIME IN-COURT IDENTIFICATIONS.

In Petitioner's case, there was only one eyewitness represented to have actually witnessed the crime. The witness did not provide a pretrial identification, or even a cursory description, of the perpetrator.

The witness was known to police a significant time prior to trial. When the police contacted the witness, he was told by police "We got the guy." TrT., pg. 703.

This would be an affirmation of guilt of any person[1] who would be sitting at the defense table at trial, and was highly prejudicial. An appropriate approach to the witness would have been to ask him to confirm the identity using neutral language unrelated to guilt or innocence.

This Court "has recognized the inherently suspect qualities of eyewitness identification evidence." *Watkins v. Sowders*, 449 U.S. 341, 350 (1981) (BRENNAN, J., dissenting). Such evidence is "notoriously unreliable," ibid.; see United States v. Wade, 388 U.S. 218, 228 (1967); *Manson v. Brathwaite*, 432 U.S. 98, 111-112 (1977), and has distinct impacts on juries. "All the evidence points rather strikingly to the conclusion that there is almost nothing more convincing than a live human being who takes the stand, points a finger at the defendant, and says, 'That's the one!'" E. Loftus, Eyewitness Testimony 19 (1979). See *Ariz. v. Youngblood*, 488 U.S. 51 (1988), f.n. 8.

This finding makes it even more clear how prejudicial the acts of the police were in this case when the witness pointed at Petitioner at trial, having been previously told by police that the only defendant in the courtroom would be "the guy," who then stated, "That's the one!" id.

The Court could certainly make a ruling delineating prejudicial procedures such as this from the broader issue of first-time in-court identifications and the high possibility of prejudice from this suggestive procedure.

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[1] There were no co-defendants in this case.

II. THE COURT SHOULD GRANT REVIEW TO ADDRESS THE COORDINATION OF LAW ENFORCEMENT TO PREVENT PROPER AND FAIR PRETRIAL IDENTIFICATIONS THAT RESULT IN NO OTHER ALTERNATIVE THAN A FIRST-TIME IN-COURT IDENTIFICATION THAT IS UNNECESSARILY SUGGESTIVE AND PREJUDICIAL.

The Court should hear the issue to address the pretrial conduct of the police that prevented Eanes, the State's only eyewitness, from providing a pretrial identification of the perpetrator, either by statement or a neutral, blinded photo array. The set up for the first-time in-court identification was planned and carried out by police. Other witnesses, who were not "eyewitnesses," such as Bobak and Cunningham, were administered a blinded identification procedure consisting of a six photo array. It is surely odd that law enforcement officers did not administer any type of identification procedure to Eanes. It was discovered at trial that this was intentional. The chief detective in the case testified that he was "requested that no photo lineup be shown to [Eanes]" by "[his] bosses and the prosecutor and the city prosecutor" because "so much time had passed." TrT., pgs. 1034, 1040.

The planned omission of a pretrial identification of the perpetrator is something the Court may choose to address, as it was done for no other purpose than prejudicing the defense. Cross-examination cannot cure the impropriety of a witness' belief, even when wrong, in front of a jury who had already heard him identify the defendant as the culprit.

The tactic of orchestrating the prevention of a pretrial identification by the only eyewitness is evidence of *prima facie* misfeasance and smacks strongly of

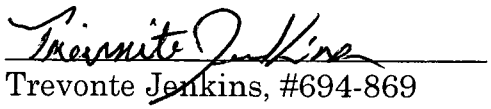
malfeasance. Petitioner cannot think of a more tainted and prejudicial procedure than that perpetrated by the coordination of law enforcement officers. This resulted in an identification that was found by the trial court to be unnecessarily suggestive, but still claimed to be reliable.

The actions of the State are unsupportable under any standard of fundamental fairness, especially in light of the procedures in place under the applicable law and the scientific evidence presented in the Petition.

CONCLUSION

The Petition for Writ of Certiorari should be granted review due to the ground presented herein and Petitioner should be provided a fair trial where the improper orchestrations of law enforcement officers and the resultant tainted evidence should be omitted.

Respectfully submitted,



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