No._____

In The

Supreme Court of the United States

♦

JEFFERY BOWERS,

Petitioner,

v.

JACQUELINE LASHBROOK,

Respondent.

♦

On Petition For Writ Of Certiorari
To The Seventh Circuit Court of Appeals

♦

PETITION FOR WRIT OF CERTIORARI

♦

JEFFERY BOWERS, *PRO SE*
IDOC# R57158
MENARD CORRECTIONAL CENTER
P.O. BOX 1000
MENARD, ILLINOIS 62259

QUESTION PRESENTED

1. Whether a conflict exists between the holding of the Seventh Circuit Court of Appeals and Appellate Court in case at bar where jury separation after deliberations has begun is reversible error?

2. Whether Appellate Court found issue forfeited for appellate counsel's failure to argue unpreserved issue be reviewed for plain error deprived Petitioner of his Fourteenth Amendment Due Process right to effective assistance of counsel on appeal?

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Jeffery Bowers respectfully petitions for a writ of certiorari to review the judgment of the Illinois Supreme Court in this case.

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OPINIONS BELOW

The Certificate of Appeal denial from the 7th Circuit was entered on October 26, 2018- APPENDIX A

The order of the Supreme Court of Illinois denying review was entered on November 23, 2016- APPENDIX F

The order of the Illinois Appellate Court, First District, and affirming judgment was entered on September 12, 2016- APPENDIX C

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JURISDICTION

On October 26, 2018, the U.S. Court of Appeals, 7th Circuit denied Jeffery Bowers Certificate of Appeal in this case. This petition for writ of certiorari has been timely filed within 90 days of that order. SUP.CT R. 13.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part that "no State shall... deprive any person of life, liberty, or property without due process of law..." U.S. Const.amend XIV.

Habeas Corpus Statute.....28 U.S.C. § 2254

STATEMENT OF CASE

In May 2008, Petitioner was found guilty after a jury trial in Illinois State Court of two counts of first-degree murder for personally discharging a firearm, two counts of attempted first-degree murder, and two counts of aggravated battery with a firearm. After being sentenced to life pin prison, without parole, Petitioner pursued direct relief in the Illinois Appellate Court, which affirmed conviction. See People v. Bowers, 2011 WL 9557996 (Ill.App.Ct. Jan 25, 2011). The Illinois Supreme Court denied leave to appeal. People v. Bowers, 949 N.E.2d 1099 (Ill.2011) (Table).

Petitioner then filed a post-conviction petition arguing the trial court improperly hastened the verdict in this instant case where it informed the jury it would be sequestered. According to Petitioner, appellate counsel was ineffective for 1) failure to argue trial counsel was ineffective for failure to preserve issue, and; 2) failure to argue plain error review of unpreserved issue. See People v. Bowers, 2016 WL 476180 at 3-4 (Ill.App.Ct.Sep. 12, 2016). State trial court dismissed the petition, and the Illinois Appellate Court affirmed decision. Illinois Supreme Court denied Leave to Appeal. People v. Bowers, 65 N.E.3d 843 (Ill. 2016)(Table).

On December 12, 2016, Petitioner filed a habeas corpus petition seeking relief pursuant to 28 U.S.C. § 2254. Petitioner's sole claim was whether appellate court was ineffective for failure to argue unpreserved hastened verdict issue to be reviewed for plain error.

On June 14, 2017, District Court denied. The Court determined Illinois Appellate Court was not unreasonable in neglecting Petitioner's

Strickland claim. [*Id.*, at 8-11.] The Court also determined the Illinois Appellate Court's decision was not contrary to, or an unreasonable application of, any other clearly established Supreme Court precedent. [*Id,* at 11-12.] Finally, the Court concluded that Illinois Appellate Court's fact-finding was not unreasonable under Sec. 2254(d)(2). [*Id* at 12-12] Therefore, the Court denied habeas relief and declined to issue a certificate of appealability.

On June 6, 2017, Petitioner filed a motion for reconsideration of the Court's denial of habeas relief pursuant to rule 59 (e). The District Court denied the motion and declined to issue a certificate of appealability on February 20, 2018.

On March 4, 2018, Petitioner filed for a certificate of appealability in the Seventh Circuit Court of Appeals. The Seventh Circuit Court of Appeals denied petition on October 26, 2018.

REASONS FOR GRANTING THE PETITION

A conflict exists between the Illinois Appellate Courts analysis of instant case and the United States Court of Appeals for the Seventh Circuit ruling in Arciniega and Muscarella, where question of separation of jury after deliberations have begun constitutes reversible error.

1. The United States Court of Appeals for the Seventh Circuit, in Arciniega held "the decision to allow a jury to separate rests with the sound discretion of the district court, and that for separation to constitute reversible error there must be an objection supported by specific reasons and a showing that the defendant was actually

prejudiced by reason of the separation."

2. The record reflects that the jury began its deliberations at about 4:00pm. On Wednesday, January 19, 1977, the government and defense agreed the jury could begin deliberations that same day but that the court would allow them to go home at 9:30pm. Rather than requiring the jury to continue deliberations into the late evening hours. The alternative of adjourning for the day and beginning deliberations the next day was also mentioned by the judge. After some discussion about other matters, the judge was questioned by one of the defense attorneys about the length of time the jury
3. Prior to the time the jury began its deliberations in the afternoon of September 28, 1977, the court indicated that if both the prosecution and the defense agreed, the jury could begin deliberations that same day but that the court would allow them to go home by 9:30pm, rather than requiring the jury to continue deliberations into the late evening hours. The alternative of adjourning for the day and beginning deliberations the next day was also mentioned by the judge. After some discussion about other matters, the judge was questioned by one of the defense attorneys about the length of time the jury would deliberate that evening. The judge repeated that the deliberations would terminate at 9:30pm, "if everyone agrees". U.S. v. Muscarella, 585 f.2d at 252.
4. In the case at bar, at 7:00pm, the court called the parties into the courtroom and stated, "Let the record reflect it is now approximately 7 o'clock. Jurors have been deliberating about six and one half hours

and I don't think they have had dinner; so I have instructed the sheriff to order them to a hotel and we're going to sequester them over the evening and we will have everybody back here at 10 o'clock.

5. Defense Counsel: "May I be heard? It is my position at this point in time. I have no issue with the jury breaking now. They have been at this for I think your Honor stated the amount of time accurately. Judge I'm objecting sequestration at this point in time. I'm asking the case be held over until Monday. Giving that it is Mother's Day weekend and I'm afraid sequestration giving the timing of a holiday will influence their wish to wrap up deliberations quicker. I ask it be held over until Monday and you order them not to watch the news or look at internet news and not to discuss this case with anybody; and not to think about the case in terms of internal deliberations and keep the case out of their minds and come back Monday morning. It is my objection for the record."
6. Court: "Your objection will be noted for the record. We will sequester them until tomorrow morning. Be back here at 10."
7. At approximately 7:10pm the court reconvened the parties and announced that the jury had reached a verdict. The following colloquy then occurred.
8. Court: "When (the jurors) rang the buzzer I was informed that one of the sheriffs (was) in there and the jurors told (him) that all of the forms, they did sign one verdict form wrong."
9. Defense Counsel: "Judge, first of all, it was our understanding that the jurors- the deputies were informed we have a verdict within thirty seconds and that didn't happen, and the buzzer went off at lest when I

saw it about 7:08pm. Apparently in their haste to come up with a verdict to avoid sequestration, that's what I'm hearing, they apparently signed at least one wrong verdict form."

10. The first conflict exists between the legal rule for sequestration, and the trail courts in the case at bar, reason for sequestration. In the case at bar, the trial court stated its reason for sequestration was because of the length of deliberations, and because the jury had not eaten. (see ¶ 4). Jury sequestration is a matter for the exercise of the district court's discretion. It is proper despite a defendant's objection. The reason for this rule is plain, the public, as well as the accused, has a substantial interest in having guilt or innocence decided by a jury free from prejudicial influences. U.S. v Halderman, 559 F.2d 37 (D.C. Circuit 1976), Baker v. U.S., 401 F.2d 958 (D.C. Court 1968); U.S. v. Holovachka 314 F.2d 345 (7th Circuit 1963). Petitioner submits, the length of jury deliberations nor the jury eating dinner, are prejudicial influences.

11. The next conflict exists between Arciniega, Muscarella and case at bar where in Arciniega and Muscarella the court indicated that if the prosecution and defense agreed, deliberations would terminate at agreed time and jury would separate until next day, which is in direct conflict with the instant case where the trial court, sua sponte, ordered jury sequestration over defense counsel objection.

12. The case at bar meets Arciniega standard where 1) trial counsel objected, 2) counsel supported objection with specific reasons, (see ¶5; ¶3), and 3) prejudice was shown where jury reached a verdict within minutes of sequestration order, in addition to signing verdict

form.

13. Petitioner submits, in case at bar, a showing was made jurors were seriously deliberating with two questions at 4:15 and 4:25. For deliberations to span six and one half hour time frame infers difficulty of reaching a unanimous verdict. A jury deliberating eight hours an a very simple factual case may in itself show such difficulty. U.S. v. Beattie, 613 F.2d 763. For deliberations to span six and one half hour time frame shows verdict was not unanimous until failure to let jury separate. Length deliberations following charge as significant factor in detecting coercion. U.S. v. Moore, 429 F.2d at 1307; U.S. v. Rogers, 289 F.2d 433.

14. A State court's factual finding is unreasonable only if it ignores the clear and convincing weight of the evidence. Jean-Paul v. Dovina, 809 F/3d 354. Petitioner contends, the Illinois Appellate Court's finding in instant case was unreasonable where the court ignored committee's comments for Illinois Supreme Court Rule 436(A) in its analysis.

15. Illinois Supreme Court Rule 436(a); In criminal cases, the trial court may, in its discretion, keep the jury together in the charge of an officer of the court, or the court may allow the jurors to separate temporarily outside the presence of a court officer, overnight, on weekends, on holidays, or in emergencies. Comments: The intention of this rule is to allow jurors to go home for an evening, weekend, holiday, or in emergency and dispense with the need to accommodate jurors in a hotel overnight even if the case has been submitted for final deliberations. This proposed rule provides that in appropriate cases

jurors may separate temporarily after being admonished with regard to their duties. it does away with the blanket requirement that they be sequestered and guarded.

16. 1 Modern Federal Jury Instructions – Criminal, P9.06, "Sequestration During Deliberations:" Now that deliberations are about to begin, I have decided that you should remain together and not be separated. This means that you will be eating meals together and that all of your communications with other people- by telephone or otherwise- will be handled for you by the marshals. I understand that his will not be easy for you, but the marshals and the court will be available to offer their assistance whenever possible. If you would like to have your friends or family know where you are, simply give their names and telephone number to the marshal who will make calls for you.

17. Petitioner submits the Federal Instruction 9.06 states the court is to admonish the jury of sequestration before the beginning of deliberations, which was in direct conflict with the case at bar where the court waited until the jury had already been deliberating for six and half hours to sua sponte order sequestration.

18. Petitioner argues, but for the Illinois Appellate Court's ignorance for committee comments, the court would have been alerted, A) due to order given on Friday of holiday meets criteria of "appropriate case"; B) jury in case at bar would have never have been sequestered; C) failure to abide by strictures of comments, trial court abused its discretion with order; D) order's deviation from comments was error; E) error was plain; F) error deprived petitioner of Due Process Rights to fair trial; G) error was prejudicial and affected outcome of

proceedings where it hastened jury's verdict. Therefore, the appellate court's disregard for comments make a showing its fact finding was unreasonable.

19. Under the plain error rule, a reviewing court may review an otherwise forfeited issue pursuant to Illinois Supreme Court Rule 615(a)(eff. Aug. 27, 1999). When a clear or obvious error occurs and 1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against defendant, regardless of the seriousness of the error, or 2) The error is so serious that it affected the fairness of the trial and undermined the integrity of the judicial process, regardless of the closeness of the evidence. People v. Piatkowski, 225 Ill.2d 551, 565(2007). The first step in applying the plain error test is to determine whether any error occurred. Piatkowski, Id., at 565. Defendant bears the burden of persuasion on both the threshold question of plain error, and in establishing at least one of the two prongs to receive review of the unpreserved error. In re M.W., 232 Ill.2d 408, 431(2009).

20. Petitioner argues, error occurred where trial court sequestered jury in violation of committee comments. U.S. v. Olano, 507 U.S. at 731. Under second prong of plain error test, error was prejudicial and affected outcome of proceedings where it interfered with deliberations and where jury hastened to reach verdict. See, e.g., Bank of Nova Scotia v. U.S., 487 U.S. 250; U.S. v. Lane, 474 U.S. 438; U.S. v. Olano, 507 U.S. at 732.

21. Petitioner argues a showing has been made, error in case at bar had merit where it met the threshold question and established second

prong of plain error test which would whereby warranted review of unpreserved error, In re M.W., 232 Ill.2d 408,431(2009). In addition, error called into question the integrity of the jury's deliberations. U.S. v. Atkinson, 297 U.S. 157Petitioner was deprived of basic protections where petitioner was denied of Due Process Right to a fair and impartial trial, whereby proceedings could not reliably serve proper function as vehicle for determination for guilt or innocence where error interfered with deliberations and jury reached the verdict prematurely. See generally, Arizona v. Fulminante, 499 U.S. 279,(quoting Rose v. Clark, 478 U.S. 570). Therefore, criminal punishment cannot be regarded as fundamentally fair, which made error candidate for reversal under Rule 52. See U.S. v. Young, 470 U.S. 1.

22. A line of Illinois cases are particularly persuasive where in the courts employed a totality of the circumstances test to determine whether the language used actually interfered with the jury's deliberation and coerced a guilty verdict. People v. DeFyn, 589 N.E.2d 220. While the length of time a jury deliberated was only one factor to be considered, extremely brief deliberations after a reference to sequestration were held to invite an inference that the reference to sequestration coerced the jury into reaching a verdict. People v. Friedman, 404 N.E.2d 760 (court concluded that the reference to sequestration influenced the jury since the verdict was returned five minutes after the court indicated that the jury would be sequestered). Petitioner submits, applying the totality of the circumstances standard to instant case, a

showing has been made that the court's conclusion in Friedman, with the exception of five minutes, is indistinguishable from the case at bar.

23. Due Process means a jury capable and willing to decide a case solely on the evidence before it and a trial judge ever watchful to prevent prejudicial occurrences, and to determine the affect of such occurrences when they happen. Smith v. Phillips, 455 U.S. at 217. Petitioner argues, in the case at bar, there were no prejudicial occurrences present, such as media publicity, (U.S. v. Chandler, 996 F.2d 1073), importunity or harassment, (U.S. v. Edmonds, 52 F.3d 1080); Amuso, 21 F.3d 1251). A showing of coercion was made where the jury hastily reached a verdict as a reaction to the trial court's sua sponte sequestration order, instead of "deciding the case solely on the evidence before it," depriving petitioner of his Due Process Right to a fair trial.

24. In every case the court should be concerned with whether despite the strong presumption of reliability, the result of a particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results. Strickland, 466 U.S.at 696. Petitioner argues direct appeal counsel's performance fell below professional standards where counsel failed to make argument for plain error of unpreserved issue. Counsel's performance was therefore deficient. A showing has been made, plain error argument had merit and but for counsel's failure a reasonable probability existed issue would have had success. This show the results of petitioner's direct appeal were unreliable. A substantial showing has been made that a

breakdown in the adversarial process occurred where petitioner was deprived of his Die Process right to effective assistance of counsel on appeal. Counsel's performance was prejudicial, meeting prejudice prong of the Strickland test.

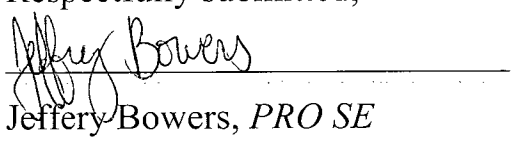
CONCLUSION

Three major conflicts exist between the Seventh Circuit Court of Appeals holding and the Illinois Appellate Court's ruling that grasps the attention and calls for guidance from the highest court in this nation. 1) How the Seventh Circuit of Appeals handled the issue of jury sequestration after deliberations have begun in Arciniega and Muscarella, in contrast to the Illinois Appellate court in case at bar; 2) How the facts of case at bar meet the Arciniega standard in contrast to the appellate court's ruling in the case at bar; 3) How the federal jury instructions and committee comments are indistinguishable for guiding a court on issue of separation in contrast to appellate court's ruling and reasoning in case at bar.

The petitioner seeks leave from this most honorable court to set forth precedent that will resolve this conflict now and for future purposes. In addition, the state of Illinois has repeatedly denied petitioner Due Process of Law under the Fourteenth Amendment to the U.S. Constitution due to ineffective assistance of counsel. The application of Strickland v. Washington standard was unreasonable applied to the facts of the instant case where the state of Illinois failed to employ its committee comments for Illinois Supreme Court Rule 436(A) that is designed to promote fundamental fairness and purportedly coincides with federal constitutional standards.

Petitioner respectfully requests a writ be granted so this honorable court can determine whether the state of Illinois has unreasonable applied Strickland to the facts of this particular case. Upon the above-mentioned grounds fundamental fairness and due process requires this request to be granted.

Respectfully submitted,



Jeffery Bowers, *PRO SE*
IDOC# M53809
Menard Correctional Center
P.O. Box 1000
Menard, Illinois 62259

APPENDIX A

DECISION OF THE UNITED STATES COURT OF APPEALS