

18-8927

Supreme Court, U.S.
FILED

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No.: _____

In The
**SUPREME COURT OF THE UNITED
STATES**

Lisa J. Gillard, *Petitioner*,

v.

People of the State of Illinois, *Respondent*.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Illinois

PETITION FOR A WRIT OF CERTIORARI

LISA J. GILLARD
Activist-Humanitarian

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*Counsel of Record, Pro Se
Attorney for Petitioner*

ORIGINAL

QUESTION PRESENTED

1. Under *Brady v. Maryland*, 373 U.S. 83 (1963) standard, is suppressing evidence by the state government on bench court's relationship with two complaining witnesses a violation of defendant's due process rights under the Fourteenth Amendment of the United States Constitution?

LIST OF PARTIES

The parties to the proceeding are:

1. Lisa J. Gillard, an individual citizen in the United States.
2. People of the State of Illinois, through the State's Attorney's Office in Cook County, Illinois.

CORPORATE DISCLOSURES

1. Lisa J. Gillard is an individual citizen in the State of Illinois and in the United States of America; and d/b/a THE GILLARD INSTITUTE, INC., L. Jacqueline Gillard, and L. Jacqueline Gillard Films and Entertainment Company.
2. People of the State of Illinois is a body politic.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Lisa J. Gillard respectfully prays that a writ of certiorari issue to review the judgments below.

OPINION BELOW

The opinion of the Illinois Supreme Court appears at appendix A (motion for reconsideration of the order of March 1, 2019, denying petitioner for leave to appeal) is entered on January 31, 2019.

JURISDICTION

The Illinois Supreme Court issued its decision on March 1, 2019. A copy is attached at appendix B. The decision by the Illinois Appellate Court for the First District and Fourth Division is entered on September 28, 2018. A copy is attached at appendix C. The jurisdiction of this Court is invoked under 28 U.S.C, §1257 (a).

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment

The Fourteenth Amendment of the United States Constitution provides in pertinent part: No State shall ... 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. U.S. Const. Amend. XIV, sec. 1.

Section 1964 of 28 Title of the U.S. Code

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct cases therein. 29 U.S.C., § 1964.

STATEMENT OF THE CASE

Petitioner Lisa J. Gillard was convicted and found guilty by bench trial of two counts of resisting a peace officer (720 ILCS, Section 5/31-1(a) (West 2014) and sentenced 10 days in the Cook County Department of Corrections, which the State's Attorney illegally

changed the Court's agreement from (after 2-day court hearings) an I-Bond to a D-Bond after the agreement was made in court with defendant (which ended up 10-days in all); A1 ¶ 2.

This conviction arose out of several verbal and written complaints on mistreatment and discriminatory practices against black minorities and the poor against the Cook County Sheriff's Department for harassment, stalking, false imprisonment, illegal search and seizure, and assaults over a seven month period without a warrant for an arrest or probable cause or excuse in The Richard J. Daley Center and streets of Chicago. Petitioner's complaints lead to several civil suits in the Circuit Court of Cook County,

Petitioner argued in her petition for a rehearing brief that prosecution failed to produce evidence sufficient to convict defendant *pro se* with a charge of a resisting arrest. Further, she maintains that the "court abused its discretion on denying her motion to

vacate the judgment based on newly discovered evidence, that the State failed to prove her guilty beyond a reasonable doubt, and that the trial court judge should have recused himself because of his relationship to the Cook County Sheriff's Department. These accounts in essence show a lack of due process under the Fifth and Fourteenth Amendments of the United States Constitution by the State of Illinois. This case like the prior case *Gillard v. Illinois*, No. 18-6947 has come to a broader proposition; however, in criminal prosecution, every essential element of the offense must be proved beyond a reasonable doubt." *Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000). Due process, as a result, has an independent meaning in criminal convictions.

The reviewing court was mistakenly misguided on the federal provisions on due process rules in the state of Illinois criminal courts systems on this appeal.

Petitioner pointed out in her petition for leave to appeal at the Illinois Supreme Court the same premise of lack of evidence to convict. This

prosecutorial misconduct was a violation of her due process and equal rights protections under the and Fourteenth Amendment of the United States Constitutions. Due Process Clause could protect substantive rights against state infringement. *Bus v. Sebelius*, 132 S. Ct. 2566, 2599-2600 (2012).

Historically, the United States Supreme Court expanded its jurisdiction by holding the states to a substantive due process standard on reasonableness. *Allgeyer v. Louisiana*, 165 U.S. 578 (1897) (“the Court overturned a Louisiana law requiring all corporations doing business with Louisiana residents to pay fees to the state.”); *Lochner v. New York*, 198 U.S. 45 (1905) (“the Court found a maximum-hour statute unconstitutional.”); *Adair v. U.S.*, 208 U.S. 161 (1908) (“the Court voided a federal law barring dismissals of interstate common carriers worker because they were members of unions.”); *Coppage v. Kansas* 236 U.S. 1 (1915) (“the Court invalidated a state law barring yellow dog contracts.”); *Adkins v. Children’s Hospital*,

261 U.S. 525 (1923) (“the Court struck down the minimum- wage-setting powers of a District of Columbia employment commission.”). The predicated factors — such as individual due process and constitutional rights — on the reasonableness standard are the most compelling interests in this present case. Neither segregation nor privacy rights troll any sense of fundamental justice in the Illinois criminal courts, in which Lisa J. Gillard is a party.

Under the *Brady* rule, the Supreme Court ruled that suppression by the prosecution of evidence favorable to a defendant who has requested it violates due process. *Brady v. Maryland*, 363 U.S. 83 (1963). In other words, while reinforcing the *Bagley* holding, which “disavowed any difference between exculpatory and impeachment evidence for *Brady* purposes,” the U.S. Supreme Court went further and found that the 14th Amendment places a duty on the prosecutors “to learn of any favorable evidence known to others acting on the government’s behalf in the case, including the police.” *Kyles v. Whitley*, 514 U.S. 419,

115 S. Ct. 1555, 131 L.Ed.2d 490 (1995); (citing *U.S. v. Bagley*, 473 U.S. 667 (1985)) (“the Court held that prosecution failed to turn over evidence related to the government’s failure to disclose the contacts in discovery did not violate the Due Process Clause. The state was required by due process to disclose evidence that was both favorable to the accused and material to either guilt or punishment, and that impeachment evidence fell within this requirement.”). The regulations on a state court’s substantive due process standards examine civil rights deprivations by state governments, particularly in the criminal cases.

Petitioner now seeks a writ for certiorari from this Court the one most important question presented in this case.

REASON FOR GRANTING THE PETITION

THE STATE AND FEDERAL COURTS ARE DIVIDED TODAY OVER THE BRADY RULE; AND SHOULD DECIDE WHETHER DUE PROCESS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION APPLIES TO CRIMINAL CONVICTIONS WHEN STATE COURTS SUPPRESS EVIDENCE FAVORABLE TO THE DEFENDANT IN A CRIMINAL CONVICTION

The United States Constitution is under attack in the state and federal courts nationwide due to a lack of integrity, due process, equal rights protections, and transparency by the judiciary, particularly for black minorities and the poor. *Smith v. Allright*, 321 U.S. 649 (1944) (“primary elections must be open to voters of all races.”); *Morgan v. Virginia*, 328 U.S. 373 (1946) (“a Virginia law that enforces segregation on interstate buses unconstitutional.”); *Browder v. Gayle*, 142 F. Supp. 707 (M.D. Ala. 1956) (“Bus segregation is unconstitutional under the Equal Protection Clause”); *Schuette v. Coalition to Defend Affirmative Action*, 572 U.S.____ (2014) (“the Court questioned whether a state violates the Equal Protection Clause of the Fourteenth Amendment by enshrining a ban on race- and sex-based discrimination on public university admissions in its state constitution. ”); *Montgomery v. Louisiana*, 577 U.S. ____ (2016) (“the Court held that its previous ruling in *Miller v. Alabama*, 567 U.S. 460 (2012) that

a mandatory life sentence without parole should not apply to persons convicted of murder committed as juveniles, should be applied retroactively”); *Hicks v. United States*, 582 U.S.____ (2017) (“Whatever one’s view on the propriety of our practice of vacating judgments [is] based on positions of the parties.”).

The central aim of the due process doctrine after all is to assure fair procedure when the government imposes a burden on an individual. The doctrine seeks to prevent arbitrary government, avoid mistaken deprivations, allow persons to know about and respond to charges against them, and promote a sense of the legitimacy of official behavior. *Giglio v. United States*, 405 U.S. 150 (1972) (“the Court held that the prosecution's failure to inform the jury that a witness had been promised not to be prosecuted in exchange for his testimony was a failure to fulfill the duty to present all material evidence to the jury, and constituted a violation of due process, requiring a new trial.”); *Carey v. Piphus*, 435 U.S. 247 (1978) (“the Court held that public officials can be held financially

liable for violating a student's due process rights under the Fourteenth Amendment."); *Vitek v Jones*, 445 U.S. 480 (1980) ("the Court found that due process must be afforded before an inmate in solitary confinement was transferred from a state prison to state mental hospital, where he would be forced to undergo behavioral modification. The Court rejected the state's argument that inmates had already lost their liberty, so that transfer from one state institution to another shouldn't trigger a requirement of due process."); *United States v. Windsor*, 570 U.S. 744 (2013) ("the Court held Section 3 of the Defense of Marriage Act, which defines — for federal law purposes — the terms "marriage" and "spouse" to apply only to marriages between one man and one woman, is a deprivation of the equal liberty of the person protected by the Due Process Clause of the Fifth Amendment. The federal government must recognize same-sex marriages that have been approved by the states.").

The U.S. Supreme Court held that "Due Process

Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every facet necessary to constitute the crime charged.” *In re Winship*, 397 U.S. 355 (1970). In criminal prosecution, every essential element of the offense must be proved beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000). The U.S. Supreme Court mandates that the Fourteenth Amendment for proof beyond a preponderance of evidence in terminating parental rights. *Santosky*, 102 S. Ct. at 1402. Due process under the Fourteenth Amendment mandates a higher standard before State may permanently terminate parental rights.” *Santosky v. Kramer*, 102 S. Ct. 1388 (1982). Due process is the critical question before all of us today.

Similarly, in *United States v. Tavera*, 719 F.3d 705 (6th Cir. 2013), the government argued that the defendant or his lawyer “should have exercised ‘due diligence’ and discovered” exculpatory statements given by the defendant’s alleged co-conspirator “by asking [the co-conspirator] if he had talked to the

prosecutor,” *Id.* at 711. Dismissing that contention, the Sixth Circuit acknowledged that “[p]rior to Banks, some courts, including the Sixth Circuit ... were avoiding the Brady rule and favoring the prosecution with a broad defendant-due-diligence rule.” *Id.* at 712. But the court concluded that “the clear holding in Banks should have ended that practice.” *Id.* The court therefore “follow[ed] the Supreme Court in Brady, Strickler, and the recent Banks case” by “declin[ing] to adopt the due diligence rule that the government proposes based on earlier, erroneous cases.” *Id.*

In Illinois, on one hand, Supreme Court of Illinois shows contradictions under state and federal constitutional provisions. *In re Destiny P.* decision, under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-101 (3), 5-603 (1) (West 2016), the trial court found these sections, which do not provide jury trials for first-time juvenile offenders charged with first degree murder, violate the equal protections clause of the U.S. Constitution. U.S. Const., amend XIV, sec. 1; Ill. Const. 1970, art 1, sec. 2. The trial court rejected

respondent's argument that these sections were unconstitutional on due process grounds. The Illinois Supreme Court affirms the decision. *In re Destiny P.*, 2017 IL 120796.

In Illinois, on the other hand, Supreme Court of Illinois states, as follows: "When an Illinois circuit court finds a statute unconstitutional, Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013) gives this court jurisdiction over the appeal. Whether a statute violates the U.S. Constitution is a question of law, which this Court review *de novo*. *People v. Madrigal*, 241 Ill. 2d 463, 366 (2011). Statutes are presumed to be constitutional, and "[t]o overcome this presumption, the party challenging the statute must clearly establish that it violates the constitution." (Internal quotation marks omitted) *People v. Rizzo*, 2016 IL 118599, ¶ 23.

For example, the First Circuit has held that "[e]vidence is not suppressed" within the meaning of *Brady* "if the defendant either knew, or should have known of the essential facts permitting him to take

advantage of any exculpatory evidence.” *Ellisworth v. Warden*, 333 F. 3d 1, 6 (1st Cir. 2003) (en banc) (quotations omitted). Then, the Fourth Circuit, holds that “when exculpatory information is not only where a reasonable defendant would have looked, a defendant is not entitled to the benefit of the *Brady* doctrine.” *United States v. Parker*, 790 F. 3d 550, 561-562 (4th Cir. 2015) (“a *Brady* violation has not occurred if the defense is aware, or should have been aware, of impeachment evidence in time to use it in a reasonable and effective manner at trial”). See *United States v. Roy*, 781 F. 3d 416, 421 (8th Cir. 2015) (“[t]he government does not suppress evidence in violation of *Brady* by failing to disclose evidence to which the defendant omitted); *United States v. Brown*, 650 F. 3d 581, 588 (5th Cir. 2011) (“evidence is not suppressed if the defendant knows or should know of the essential facts that would enable him to take advantage of it); *Ferguson v. Secretary for Dep’t of Corr.*, 580 F. 3d 1183, 1205 (11th Cir. 2009) (“to prevail on a *Brady* claim, [defendant] must establish” that he “did not

possess evidence and could not have obtained it with reasonable diligence”); *Carvajal v. Dominguez*, 542 F.3d 561, 567 (7th Cir. 2008)

The Due Process Clause requires that the procedures used to determine the guilt or innocence of the defendant comport with “fundamental ideals on fair play and justice.” *In re Oliver*, 333 U.S. 257 (1948) (“Due Process ‘represent(s) a profound attitude of fairness between man and [wo]man, and more particularly between the individual and the government.’”); *Solesbee v. Balkcom*, 335 U.S. 9, 16 (1950) (“Due process is that which comports with the deepest notions of what is fair and right and just.”).

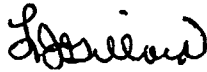
The U.S. Supreme Court must decide on whether a state court must apply due process in criminal convictions or whether a state court may use a broader standard for criminal hearings in Illinois, and reverse order with a \$51 million dollars remedy.

CONCLUSION

The petition for a writ of certiorari should be granted.

1 April, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David J. Green".

Activist and Humanitarian

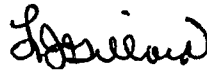
*Counsel of Record, Pro Se
Attorney for Petitioner*

VERIFICATION

I, LISA J. GILLARD, hereby certify that under the penalty of perjury that the statements in this said document is true and accurate to the best of my ability and knowledge.

1 April, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa J. Gillard", written in a cursive style.

Activist and Humanitarian

*Counsel of Record, Pro Se
Attorney for Petitioner*