

MAY 28 2019

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18-9598

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES GUY - PETITIONER

Vs.

STATE OF OHIO - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Franklin County Court of Appeals Tenth Appellate District

PETITION FOR WRIT OF CERTIORARI

JAMES GUY

P.O. BOX 7010

CHILLICOTHE, OHIO 45601

ORIGINAL

Questions Presented

Questions submitted:

- (1): Did the trial court violate a Muslim defendant's Constitutional Rights under the First, Fifth and Fourteenth Amendments to the United States Constitution when it allowed the State to introduce evidence associating religious beliefs and practices with criminal activity and behavior before a jury in such a manner that its prejudicial effect was outweighed by its probative value?

- (2): Did the trial court violate a defendant's Sixth Amendment right to the United States Constitution of having a impartial jury when the court allowed a juror to stay on a jury panel over objection ,without at least conducting an in camera inspection of this juror after evidence was disclosed that the juror not only provided false information on her questionnaire but also was untruthful during the vior dire process?

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[] is unpublished.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[] is unpublished.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 State v. Guy 2018-Ohio-4836; 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[] is unpublished.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 **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals 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. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was March 6, 2019. A copy of that decision appears at Appendix C.

[] 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. __A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS

The United States Constitution First Amendment prohibits a State from requiring information from an Organization that would impinge on First Amendment associational rights if there is no connection between the information sought and the States interest. *Dawson v. Delaware*, 503 U.S. 159, 112 S. Ct. 1093, 117 L. Ed. 2d 309. See also *Aptheker v. Secretary of State*, 378 U.S. 500, 507, 12 L. Ed. 2d 992, 84 S. Ct. 1659; *Bates v. Littlerock*, 361 U.S. 516, 4 L.Ed.2d 480, 80 S.Ct. 412 (1960).

The Constitution does not erect a *per se* barrier to the admission of evidence concerning one's belief and association simply because those beliefs and associations are protected by the First Amendment *Barclay v. Florida*, 463 U.S. 939, 77 L. Ed. 2d 1134, 103 S. Ct. 3418 (1983).

The Supreme Court in *Zant v. Stephens*, 462 U.S. 862, 77 L. Ed. 2d 235, 103 S. Ct. 2783 (1983) state that an aggravating circumstance is invalid if "it authorizes a jury to draw adverse inferences from conduct that is constitutionally protected," *Id.*, at 885.

The State of Ohio attempted to prevent such prejudicial evidence from entering into a trial with Ohio Evidence Rule 403(A) which states:

Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

However, not every trial court follows this rule and sometimes allows evidence into a trial that should not have admitted. In this case that was exactly what happened. The Prosecution was allowed to introduce extremely prejudicial evidence about Petitioner's religion in connection with association of a criminal group affiliation. The Petitioner had a right to a fair trial with an impartial jury and also had the right to not have his Islamic Religion disrespected all to the Prosecution's benefit.

All United States citizens are guaranteed the First Amendment Right of Freedom of Religion and no religion, for any reason, should be falsely associated with criminal group affiliation. This Supreme Court has the responsibility to see to it that no State courts should allow such practice especially when that practice is used to deny an individual another fundamental right, that is, the right to a fair trial by an impartial jury as guaranteed Sixth Amendment to the United States Constitution.

It cannot be disputed that voir dire is a critical dimension of a criminal trial. Voir dire serves to protect an accused's right to impartial factfinders by exposing possible biases, both known and unknown, on the part of the jurors. See McDonough Power Equipment, Inc. v. Greenwood, 464 U.S. 548, 78 L. Ed. 2d 663, 104 S. Ct. 845 (1984). The effectiveness of voir dire depends upon each potential member's providing valid, relevant information so that both judge and counsel can evaluate the member's qualifications and suitability for court-marital service.

This Supreme Court has articulated a two-pronged test for determining if a new trial is required when an error arises from a juror's failure to disclose information in voir dire: "[A] party must first demonstrate that a juror failed to answer honestly a material question on voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause." McDonough Power Equipment, Inc. v. Greenwood, *supra* at 556. Although McDonough Power is a civil case, federal Courts of Appeals have applied this test to criminal prosecutions, as well. See, e.g., United States v. O'Neill, 767 F.2d 780, 785 (11th Cir. 1985); United States v. McMahan, 744 F.2d 647, 652 (8th Cir. 1984); United States v. Perkins, 748 F.2d 1519, 1521-33 (11th Cir.1984).

In this case, it came out prior to trial that a specific juror failed to disclose during voir dire in the questionnaire that the juror's son was best friends with an undercover police officer who had been convicted and imprisoned based on actions the officer took in his official capacity. Furthermore, Petitioner's shadow counsel also indicated during a conference hearing that he had represented the convicted officer. The trial judge noted the juror did not raise her hand when the prosecutor asked during voir dire whether any potential juror had a relative or friend that was a police officer; and all this is in addition to the trial judge acknowledging that the juror was "my very good friend's mother-in-law, the grandmother of her children." (Tr. Vol. I at 51-52.)

The first prong of McDonough Power Equipment, Inc. was clearly established as it was clear from the record that the juror never mentioned that her son was best

friends with an undercover police officer. As to the second prong it appears that the trial court never attempted to verify rather a "correct response would have provided a valid basis for a challenge for cause." McDonough Power Equipment, Inc. v. Greenwood, supra at 556.

Therefore, the trial court abused its discretion when it failed to make the proper findings set forth in McDonough Power Equipment, Inc. v. Greenwood, supra at 556 and allowed the potential bias juror to remain on the panel instead of removing the juror for untruthfulness during the voir dire proceeding.

Statement of the Case

In this case the Petitioner, James Guy, was indicted for the second time in February of 2016 and charged with One Count of Kidnapping, Two Counts of Trafficking in Drugs, One Count of Possession of Drugs and Two Count of Having Weapons While under Disability. The Petitioner was tried twice the first trial ended in a hung jury. In addition in the first trial there was no evidence presented at trial of Petitioner's religion in connection with gang affiliation and nor did the first trial involve a bias juror.

During voir dire the potential jurors were questioned as to knowing any witnesses, police officers or any party. When it came to light that one of the potential jurors was friends with the judge instead of removing that juror the juror was allowed to stay and ultimately ended up on the jury panel. After jury voir dire however, the judge herself brought up additional evidence that contrary to this particular juror's questionnaire and answers during the voir dire the Judge personally knew this juror has a son who was best friends with a crooked undercover police officer who is currently serving a prison term for crimes committed while on duty. Tr. P. 278-280. Furthermore, my shadow counsel Mr. Mark Collins whom I complained about throughout my entire case also represented this undercover officer.

Amongst the allegations against the Petitioner was that the Petitioner was present during a transaction with an undercover officer and that the Petitioner

didn't permit the officer to leave and held the officer at gun point as the officer was questioned. However, the officer left unharmed after this transaction and all these alleged events took place at 72 S. Wheatland in Columbus, Ohio and this place was leased by Andrew Naus.

During this alleged transaction someone named "Zay" introduced the undercover officer to a second individual as his brother "Stone." After the transaction the undercover officer conducted searches on Trans Union and made a determination based off the name "Stone" and relationship to an Isaiah Guy that the person introduced as "Stone" was James Guy, the Petitioner.

During the second trial, where the Petitioner represented himself, the Petitioner became aware of the prosecution's intention on introducing evidence of the Petitioner's religion and group affiliation so the Petitioner requested (filed a motion in limine) arguing to the Court that the prejudicial effect heavily outweighed any probative value. Nevertheless, the Petitioner's request was denied and the evidence was allowed into trial.

The trial court stated and I quote, "I think it has probative value and again it could have some prejudicial effect but it's not higher than the probative value in this case." Tr. P. 465-466 The prosecution was allowed to introduce evidence that the Petitioner was a Muslim and as part of a Muslim brotherhood is likened to a terrorist. Id. at 480, 561 Interwoven with discussions of the Petitioner being from

notorious city of Chicago and grew up with violent family members who are currently serving life sentences.

Subsequently the jury found the Petitioner guilty of Kidnapping with an attached firearm specification, Trafficking in heroin with a firearm specification, a second count of Trafficking in heroin and Possession of heroin with a firearm specification. The Court would sentence the Petitioner to an aggregate total prison term of twenty (20) years in the Ohio Department of Rehabilitation and Correction.

A timely notice of appeal was filed to the Ohio Tenth District Appellate Court, Case No. 17AP 322, where retained counsel raised ten Assignments of error. The Appellate Court would affirm the conviction and a timely appeal was filed to the Ohio Supreme Court who declined to accept to hear the case. Of the Ten issues presented in the State Courts and the Petitioner submits only two to this Supreme Court.

The first issue in question is the violation of the Petitioner's Constitutional Right to freedom of Religion and group association and to not have that First Amendment Right to be criminalized and presented in such a prejudicial manner. However, the Ohio Court of Appeals held that "*few passing references to [Petitioner's] religious affiliation were not the type of evidence that would evoke a sense of horror or appeal to the jury's instinct to punish.*" See Appendix (A) Ohio Tenth Appellate Court Opinion dated Dec. 6, 2018. Therefore, the State Appellate Court felt that the trial court did not abuse its discretion.

On January 22, 2019 the Petitioner timely appealed the Ohio Tenth Appellate Court's decision to the Ohio Supreme Court Case No. 19-0086. However, on March 6, 2019 the Ohio Supreme Court declined to accept jurisdiction and now the Petitioner is timely filing a Petition for Writ of Certiorari to this Honorable Supreme Court.

REASON FOR GRANTING THE WRIT

In regards to the question presented in this Petition, it is of National importance for this Honorable Court Supreme Court to grant this Petition. The importance of this case is not limited to just the facts of the Petitioner's Constitutional Rights which includes the Freedom of Religion, but also the questions presented in this Petition appeals to the rest of the citizens of this country as the Sixth Amendment to the United States Constitution guarantees "[i]n all criminal prosecutions, the accused shall enjoy the right to * * * an impartial jury..."

The United States Constitution First Amendment prohibits a State from requiring information from an Organization that would impinge on First Amendment associational rights if there is no connection between the information sought and the States interest. Dawson v. Delaware, 503 U.S. 159, 112 S. Ct. 1093, 117 L. Ed. 2d 309. See also Aptheker v. Secretary of State, 378 U.S. 500, 507, 12 L. Ed. 2d 992, 84 S. Ct. 1659; Bates v. Littlerock, 361 U.S. 516, 4 L.Ed.2d 480, 80 S.Ct. 412 (1960).

The Constitution does not erect a per se barrier to the admission of evidence concerning one's belief and association simply because those beliefs and associations are protected by the First Amendment Barclay v. Florida, 463 U.S. 939, 77 L. Ed. 2d 1134, 103 S. Ct. 3418 (1983).

The Supreme Court in *Zant v. Stephens*, 462 U.S. 862, 77 L. Ed. 2d 235, 103 S. Ct. 2733 (1983) state that an aggravating circumstance is invalid if "it authorizes a jury to draw adverse inferences from conduct that is constitutionally protected," *Id.*, at 885.

These said Rights being protected by the United States Constitution as well as States Constitutions (including the State of Ohio) deserves address by this Honorable Court. In order to preserve and safeguard the foundation of this great Nation, this Supreme Court must and should accept the granting of this Petition.

In this matter the Ohio State Supreme Court decline to hear this case, however, the Petitioner case rest on the decision of the Ohio Tenth District Appellate Court's ("Appellate Court") Opinion, which justified the prosecutions prejudicial introduction of the Petitioner's Islamic Religious beliefs to the association of a criminal group affiliation was clearly erroneous because the prejudicial effect outweighed the probative value pursuant to Ohio Evidence Rule 403.

Furthermore, not only did the trial court acknowledge the prejudicial effect of such evidence, but so did the Appellate Court, however, the state appellate court in an attempt to minimize the effect of this prejudicial evidence stated that: "*few passing references to [Petitioner's] religious affiliation were not the type of evidence that would evoke a sense of horror or appeal to the jury's instinct to punish.*" See Appendix (A) Ohio Tenth Appellate Court Opinion dated

Dec. 6, 2018. This however was not the proper standard to be applied. Instead, the proper standard the Appellate Court should have applied to determine admissibility is set forth in Ohio Evidence Rule 403(A) which states:

Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

The purpose of Ohio Evidence Rule 403(A) is to restrict evidence, such as in the case, from being introduced into trial "if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury." The Appellate Court's total disregard of Ohio Evidence Rule 403(A), in rendering its decision as to the prosecution introducing evidence of the use of the Petitioner's Islamic Religion to the association of a criminal group affiliation, and instead used a tougher standard which was improper.

At the same time however, when applying the tougher standard the Petitioner still believes the evidence still should have been restricted from the trial. Not only did the jury hear recorded conversations of the Petitioner explaining my Islamic beliefs as a practicing Muslim, but the jury also heard conversations of the Petitioner's past affiliation with a known criminal organization which included fellowship with criminals involving gang violence in the city of Chicago.

In general the Petitioner's religious beliefs of Islam was introduced in such a way that anyone could easily interpret Islam as being associated with crime, murder, gangs and gun violence. Without conducting an examination of the jury's

ability to remain fair and impartial to this type of evidence – without conducting an in camera examination of the jurors how can anyone know for sure how the jury responded to this particular evidence and how it was presented?

Even in this post 9/11era, Muslims too deserve protection of the United States Constitution and all state laws and rules. The most recent mass killing this year in New Zealand against Muslim women and children show that there are individuals that exist who has the instinct to punish which is motivated by someone else's belief in Islam. Nevertheless, there has been an increase of hate crimes all across the world involving religion and in order to preserve our constitutional freedoms, there must be reasonable restrictions against presenting religious beliefs in a prejudicial manner when the prejudicial effect outweigh its probative value.

The second issue involves the State Court's decision justifying a potentially bias juror which not only violated the Petitioner's United States Constitutional Rights but also amounts to a structural defect and deprived the Petitioner of a fair and impartial jury.

The juror that was allowed over objection not only lied and hid the relationship between her and the undercover police friend but she also failed to acknowledge the relationship between her and my shadow counsel. In addition the trial court also abused its discretion by failing to conduct an examination of the juror concerning her biasness and untruthful dialog during the voir dire process resulting in a due process violation.

It cannot be disputed that voir dire is a critical dimension of a criminal trial. Voir dire serves to protect an accused's right to impartial factfinders by exposing possible biases, both known and unknown, on the part of the jurors. See McDonough Power Equipment, Inc. v. Greenwood, 464 U.S. 548, 78 L. Ed. 2d 663, 104 S. Ct. 845 (1984). The effectiveness of voir dire depends upon each potential member's providing valid, relevant information so that both judge and counsel can evaluate the member's qualifications and suitability for court-marital service.

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also indicated during a conference hearing that he had represented the convicted officer. The trial judge noted the juror did not raise her hand when the prosecutor asked during voir dire whether any potential juror had a relative or friend that was a police officer; and all this is in addition to the trial judge acknowledging that the juror was "my very good friend's mother-in-law, the grandmother of her children." (Tr. Vol. I at 51-52.)

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Therefore, the trial court abused its discretion when it failed to make the proper findings set forth in McDonough Power Equipment, Inc. v. Greenwood, supra at 556 and allowed the potential bias juror to remain on the panel instead of removing the juror for untruthfulness during the voir dire proceeding.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James Guy
James Guy (Pro Se)

Date: 5-21-19