

No. 18-9768

ORIGINAL

Supreme Court, U.S.
FILED

JUN 13 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Keith Talbert

(Your Name)

— PETITIONER

vs.

People, State of Illinois

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Keith Talbert

(Your Name)

P.O. 100

(Address)

Reg. No. R-45905

Menard IL

(City, State, Zip Code)

62259/0100

N/A

(Phone Number)

QUESTION PRESENTED

Whether Certiorari should be granted to determine if a third party's prior bad acts, admitted under the theory of relevancy, should have been excluded on the principle of unfair prejudice thereby denying him a fair trial in accord with traditional and fundamental standards of due 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☐ is unpublished.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☐ is unpublished.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 People v. Talbot, 2018 IL App (1st) 160157; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Illinois Supreme court appears at Appendix C to the petition and is

☐ reported at N/A; 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☒ is unpublished.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 3-20-2019.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. ____ A N/A.

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

U.S. CONSTITUTIONAL AMENDMENTS

Fourteenth Amendment in pertinent part states:
U.S.C. Fourteenth Amendment:

Section 1. No state shall... deprive any person of life,
liberty, or property without due process of law;...

Sixth Amendment in pertinent part states:
U.S.C. Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the
right... to be confronted with the witnesses a-
gainst him; to have compulsory process for obtaining
witnesses in his favor;...

Fifth Amendment in pertinent part states:
U.S.C. Fifth Amendment:

No person... shall be compelled in any criminal case
to be a witness against himself;...

STATEMENT OF THE CASE

The state charged Keith Talbert with, inter alia, the first-degree murder of Antonio Johnson; the attempt first degree murder of Annette Johnson; and aggravated discharge of a firearm in the direction of Anthony Wardlow. Prior to trial, the court granted the state's motion in limine to admit the prior bad acts of Keith's cousin, Richard Talbert, against the Johnson-Wardlow family. A jury found Keith guilty of all three counts. The trial court sentenced Keith to 61-years' in prison for first degree murder and to a consecutive term of 31-years' for attempt first-degree murder. The trial court also sentenced Keith to a concurrent term of 15 years' for aggravated discharge of a firearm.

REASON FOR GRANTING CERTIORARI

Certiorari should be granted to determine if a third party's prior bad acts, admitted under the guise of relevancy, should have been excluded on the principle of unfair prejudice thereby denying him a fair trial in accord with traditional and fundamental standards of due process.

Petitioner acknowledges "that a violation of state law, does not, without more violate the Federal Constitution. 'A mere error of state law,' we have noted, 'is not a denial of due process.' The Due Process Clause, our decisions instruct, safeguards not the meticulous observance of state procedural prescriptions but rather 'the fundamental elements of fairness in a criminal trial.'" RIVERA v ILLINOIS, 129 S. Ct. 1446, 1454 (2009).

This Court has articulated the general principle that a denial of due process is demonstrated if the action complained of "... violates those 'fundamental conceptions of justice which lie at the base of our civil and political institutions.'" U.S. v LOVASCO, 431 U.S. 783, 790 (1977) (quoting Mooney v Holohan, 294 U.S. 103, 112 (1935)). Thus, the violation of state law, the effect of which is a trial that is fundamentally unfair, gives rise to a cognizable due process violation under the Fourteenth Amendment. Eskelle v McGuire, 502 U.S. 62, 68 (1991) (after ruling that state

law violations are not cognizable, the Court "turned] to the question whether the admission of the evidence violated McGuire's federal constitutional rights"). A common example of a state law violation that may give rise to a due process violation includes the improper admission, or exclusion of evidence. See e.g., Chambers v Mississippi, 410 U.S. 284 (1973).

The Constitution guarantees criminal defendants, "a meaningful opportunity to present a complete defense." Crane v Kentucky, 476 U.S. 683, 690 (1986). This guarantee has its roots in both the due process clause (Chambers, 410 U.S. at 294), and the right to "have compulsory process for obtaining witnesses in his favor" as provided by the Sixth Amendment. Washington v Texas, 388 U.S. 14, 23 (1967). A defendant's right to due process in a criminal trial is, "in essence, the right to a fair opportunity to defend against the state's accusations. Chambers, 410 U.S. at 294. Included within these guarantees is the right to cross-examination (see e.g., Davis v Alaska, 415 U.S. 308, 315-16 (1974)), and to present relevant evidence. Michigan v Lucas, 500 U.S. 145, 111 S. Ct. 1743, 1746-47 (1991). Indeed, "[E]ven rights are more fundamental than that of an accused to present witnesses in his own defense." Taylor v Illinois, 484 U.S. 400, 408 (1988) (quoting Chambers, 410 U.S. at 302). Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging

their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of our process of law. Taylor, 484 U.S. at 409.

Although many of the leading cases from this Court regarding trial/court evidentiary rulings involve the exclusion of evidence -- Washington v Texas,^① Chambers v Mississippi,^② Davis v Alaska,^③ Crane v Kentucky,^④ Rock v Arkansas,^⑤ U.S. v Scheffer,^⑥ and Holmes v South Carolina,^⑦ -- their tenets are equally applicable to situations involving a state trial court's improper admission of certain evidence injurious to the defendant. Ege v Yukins, 485 F.3d 364, 375 (6th Cir. 2007) (emphasis in original). In this context lower courts have stated that due process is violated based on the improper admission of evidence "only if an evidentiary ruling is 'so egregious that it results in a denial of fundamental fairness.'" See e.g., Pierson v O'Leary, 959 F.2d 1385 (7th Cir. 1998) (stating that the improper admission of evidence renders a trial "fundamentally unfair if its prejudicial effect outweighs its probative value" such that its admis-

① Washington v Texas, 388 U.S. 14 (1967)

② Chambers v Mississippi, 410 U.S. 284 (1973)

③ Davis v Alaska, 415 U.S. 308 (1974)

④ Crane v Kentucky, 476 U.S. 383 (1986)

⑤ Rock v Arkansas, 483 U.S. 44 (1987)

⑥ U.S. v Scheffer, 523 U.S. 303 (1998)

⑦ Holmes v South Carolina, 542 U.S. 319 (2006)

sion likely changed the outcome of the trial."), Abrogated on other grounds. See also Labeyrie v Hensley, 324 F.3d 527 (7th Cir. 2003). This determination turns on "whether the evidence is material in the sense of a crucial, critical, highly significant factor. Pierson, 957 F.2d at 1385.

Under Illinois's state law motive is not an element of murder and, therefore, need not be proved, but if the prosecution argues a motive existed for the murder; then, the state is required to prove the alleged motive. In order to establish its alleged motive in this cause the trial court allowed the state to introduce to the jury evidence of alleged prior bad acts of a third person, petitioner's cousin Richard Talbot, who was not charged as a co-defendant in the instant cause. The trial court allowed this evidence in under the principle of relevancy; i.e., "relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." See Illinois Rules of Evidence ("IRE") 401. Utilization of IRE 401 rendered petitioner's trial "fundamentally unfair" where the prejudicial effect of the evidence outweighed its probative value.

In 2011, Annette Johnson lived with her two sons Antonio and Anthony at 732 North Springfield. Antonio was a 15-year old high school student and Anthony had recently been released from prison, where he served a sentence for aggravated robbery. The state's theory at trial was that animosity existed between the Johnson-Wardlaw family and petitioner's

cousin Richard because the family opposed Richard's activity as the neighborhood drug dealer. The trial court granted, over petitioner's objection, the state's motion in limine to present evidence of Richard's prior interaction with the Johnson-Wardlaw family. According to the state, on the afternoon of September 25, 2011, Richard instructed petitioner to shoot members of the family. People v Keith Talbert, 2018 IL App (1st) 160152 p 3.

By the state's theory and admission in the last sentence above, Richard was an accomplice or at least an uncharged co-conspirator.

In contrast, petitioner asserted that he had been misidentified as the shooter. Id. at p 4.

At trial Anthony testified that in 2011, boys who were 12-years old or younger regularly sold drugs in front of his family's home. Richard wanted Anthony to sell drugs for "them," apparently, referring to Richard and his fellow gang members, but Anthony declined. At some point Annette was in a store when Richard indicated he was going to harm Anthony. In addition, Richard was in front of Annette's house, in early September, 2011, when he threatened to burn it down. Petitioner was not at the store when Richard allegedly threatened to harm Anthony nor was he present when Richard allegedly threatened to burn Annette's house down. Hours later, another individual set the home ablaze. Meanwhile, drug sales continued in front of the house. Id. at p 7.

On September 25, 2011, Anthony and Antonio were waiting

outside the house for Annette and Ashley to come home with groceries. Petitioner, who had short dreadlocks and went by the nickname Pee-kee, drove by in a cream or beige Cadillac. Anthony had seen petitioner around the neighborhood but did not know his name at that time. Richard was sitting in the passenger seat of the Cadillac. Richard pointed to Anthony [as the Cadillac drove past] and "[appeared]" to say to petitioner, "that bitch-ass nigger right there." Petitioner looked at Anthony and "Is [hook] his head, like I got you." After the Cadillac left, Annette and Ashley returned home. The Cadillac returned as well, however, only five minutes after it had left. Now alone in the car, petitioner yelled, "hey, Anthony, get your bitch ass out here." Anthony then looked at petitioner, who pointed his gun out the car window and fired five or six shots, striking Antonio in the head and Annette in the arm. Antonio subsequently died.

Id. at p 8.

Although Anthony originally testified that he was not paying attention to whether petitioner's dreadlocks were dyed, Anthony subsequently acknowledged telling the police that the tips of petitioner's dreadlocks were brown. Id. at p 9.

Annette testified that Richard repeatedly came over to speak to Anthony, who wanted nothing to do with Richard. Moreover, Annette testified that in early September, 2011, Richard and an associate of his had words with Anthony outside their home. Richard was angry and exclaimed, "buen the bitch." Hours later, her house was set on fire while the family was home. Annette did not see Richard at the time of the fire. Id. at p 10.

As to the day of the shooting, Annette testified that when she

and Ashley returned home Anthony was talking with Antonio and Annette on the porch when a young, brown skinned man with dreadlocks and a "scar" on his eyebrow approached in a car. Annette identified that young man as petitioner and testified that she had not seen him before. He yelled, "Anthony, with your bitch ass," and fired five or six shots at them. Id. at p 11.

At the hospital Annette told Detective March what she had seen. She also said that the vehicle was light in color, possibly grey or beige, but she was not entirely sure. Id. at p 12, 14, 15

Detective March testified that at the scene, Anthony described the offender as a black male in his twenties and approximately six feet, one inch tall, with a medium complexion. According to Anthony, he had black dreadlocks with brown tips. Anthony testified he had seen petitioner in the neighborhood and his nickname was Pee-Pee. According to Anthony, the offender was driving an older cream-colored, four-door Cadillac and that he fired eight or nine times from the car. Shortly before the shooting, petitioner had driven by the house with a black male named Richard. Id. at p 13

Anthony and Annette subsequently identified petitioner as the shooter from a photo array. From another photo array, Anthony identified Richard as the person with petitioner in the vehicle shortly before the shooting. Id. at p 16.

Darrin Murdock testified that Anthony was known for having a bad attitude, Nicole Payton testified that Anthony was argumentative, and Khadija Pinks testified that she was scared of Anthony, that he was always angry. Id. at pp 20, 21, 22 respectively.

Thus, Anthony's testimony is highly suspect. Because there was no evidence connecting petitioner to

- Anthony was impeached with his prior felony conviction;
- Anthony was impeached by his mother, Anne, who heard 4 or 5 gunshots and the crime scene evidence technician who failed to find any shell casings. Anthony stated 8 or 9 shots were fired.

Even though Richard in the car, with that being established, who saw the alleged first drive by with both petitioner and his residue was found on or in the car. Anthony was the only person in the car, a description of petitioner's car; however, no gunshot by the shooter. Anthony identified the shooter as a beige Anne, who was not sure of the make or color of the car driver reached on their description of the offender.

deedings were solid black. Thus, both eyewitnesses were im- shooter had black deedings whose tips were brown. Petitioner over his left eye. Anthony Wadsworth initially told the police the shooter had a scar over his left eye -- petitioner has no scar Anne Johnson told police at the crime scene that the

charge of a firearm in the direction of Anthony Wadsworth. the attempted murder of Anne Johnson or the attempted dis- no evidence ties petitioner to the murder of Anthony Johnson, cited facts above from the appellate court opinion demonstrate the outcome of the trial. Peterson, 959 P.2d at 1385. As the re-

outcome of its probative value, such that its admission likely changed court allows the admission of evidence whose prejudicial effect a trial is rendered "fundamentally unfair" when the trial

the crime, with on the scene identifications of someone who did not fit petitioner's description, the prosecution had to utilize the prior bad acts of a non-charged third person under the theory of relevancy to the petitioner to the crime.

Simply under the mechanics of the law this non-charged third person, petitioner's cousin Richard Talbert, if subpoenaed to testify would show up at court with his own attorney who would advise him to plead the Fifth Amendment. Or, if he showed up without an attorney the court would be obligated to advise him of that right. As a result of this:

1. Petitioner was denied the right to present witnesses in his own defense. Few rights are more fundamental than that of an accused to present witnesses in his own defense. Taylor, 484 U.S. at 408.

2. Petitioner was denied the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law. Taylor, 484 U.S. at 409.

3. In his criminal trial, petitioner was "in essence denied the right to a fair opportunity to defend against the state's accusations because he was unable to call to testify the non-charged third party. Chambers, 410 U.S. at 294.

4. In its own right Richard Talbert's testimony would have been highly relevant to petitioner's defense. Petitioner was denied the right to present relevant evidence in his defense. LUCAS, 111 S.Ct. at 1746-47.

While the evidence of a non-testifying, non-charged third party's prior bad acts were relevant to the state's case, that

relevancy under the circumstances of this case were more prejudicial to petitioner than probative. Had the trial court not allowed this evidence to be heard by the jury there is a reasonable probability that the results of the proceedings would have been different. The right to call witnesses and to present a defense are fundamental elements of due process of law. Furthermore, due process is violated when the improper admission of evidence denies a petitioner the right to a fair opportunity to defend against the state's accusations or present relevant evidence on his own behalf.

This evidence, which was more prejudicial than probative violated petitioner's due process rights bringing this state law issue squarely before this Court.

CONCLUSION

For the foregoing reasons, Keith Talbert, petitioner pro-se, respectfully requests that a writ of Certiorari be issued to the Appellate Court of Illinois, First Judicial District.

Respectfully submitted,

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