

19-5349 ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
APR 24 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Andrew London

(Your Name)

— PETITIONER

vs.

People of the State of Illinois

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Illinois Appellate Court Third Judicial District

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

PETITION FOR WRIT OF CERTIORARI

Andrew London

(Your Name)

Menard Corr. Ctr.

P.O. Box 1000, Reg. No. M-55245

(Address)

MENARD, ILLINOIS, 62259-0100

(City, State, Zip Code)

N/A

(Phone Number)

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QUESTION PRESENTED FOR REVIEW

I.

whether Certiorari should be granted to determine if the trial court denied Mr. London a fair trial and due process when it allowed the state to present evidence of the defendant's prior "arrests" and compounded that error when it gave a modified jury instruction over the defendant's objection which incorrectly instructed the jury as to how to consider those arrests.

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☐ is unpublished.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☐ is unpublished.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 B 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☒ is unpublished.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 _____ 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☐ is unpublished.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 5-08-2018. A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: July 11, 2018, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including April 27, 2019 (date) on March 04, 2019 (date) in Application No. 18 A 896.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the Constitution provides in pertinent part:

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO... TRIAL, BY AN IMPARTIAL JURY... AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

The Fourth Amendment to the Constitution provides in pertinent part:

NO STATE SHALL... DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW.

STATEMENT OF THE CASE

Petitioner was convicted by an Illinois jury of two counts of first degree murder. Both counts alleged that the petitioner fired a firearm at Jonathan Rubin, thereby causing Rubin's death. Petitioner was sentenced to 25-years' for the murder and 25-years' for the required firearm enhancement. Petitioner's conviction was affirmed on direct appeal in an order dated May 08, 2008, which is attached as Appendix A. A Petition for rehearing was denied on July 11, 2008, which is attached as Appendix B.

Among the arguments petitioner advanced on direct appeal was that the trial court erred in allowing the state to present evidence of the defendant's prior "arrests" and compounded that error when it gave a modified jury instruction over the defendant's objections which incorrectly instructed the jury as to how to consider those "arrests."

The appellate court acknowledged defendant was asked a series of questions about his Miranda rights on cross-examination by the prosecutor. The defendant stated, "Yeah, but this is also first time I've ever been in trouble with the law and I was scared shitless."

Without any kind of explanation being sought the prosecutor and trial court immediately sought to impeach defendant with his prior "arrests." The trial court stated the defendant's answer as a comprehensive denial of ever having engaged in criminal activity, which amounts to an outright lie. "I was not" just some slip of the

longue." Appx. A, @ p 29.

The trial court then allowed the state to impeach the defendant with multiple "arrests" -- some older than 10-years' old AND some as juvenile "arrests" over 10-years' old.

The appellate court found defendant opened the door to impeachment with his prior "arrests" [Appx. A - @ p 29], AND further found that by substituting the term "arrests" for IPI jury instruction "convictions" did NOT MISTAKE the law, Appx. A, @ p 36.

The Illinois Supreme Court denied leave to appeal on November 28, 2018, which is attached as Appendix C. A petition for rehearing was denied on March 08, 2019, which is attached as Appendix D.

This court granted petitioner an extension of time in which to file his writ of certiorari until April 27, 2019, which is attached as Appendix E: U.S.C. number, 18-A-896.

REASON FOR GRANTING CERTIORARI

Certiorari should be granted to determine if the trial court erred in allowing the state to present evidence of the defendant's prior "arrests" AND compounded that error when it gave a modified jury instruction over the defendant's objection which incorrectly told the jury how to consider those "arrests."

DURING CROSS-EXAMINATION THE STATE ASKED THE DEFENDANT WHETHER HE UNDERSTOOD THE MIRANDA WAIVER HE SIGNED WHEN HE GAVE HIS STATEMENT TO THE POLICE. (R.1527) REGARDING THE WAIVER, THE STATE ASKED: "AND YOU UNDERSTOOD IT DIDN'T YOU?" (R.1527) THE DEFENDANT RESPONDED, "Yeah, but this is also the first time I've ever been in trouble with the law and I WAS SCARED shitless." (R.1527) AFTER THE DEFENDANT GAVE THAT RESPONSE, THE STATE IMMEDIATELY ASKED THE TRIAL COURT TO RECONSIDER ITS PRE-TRIAL RULING BARRING IT FROM INTRODUCING EVIDENCE OF THE DEFENDANT'S PRIOR ARREST FOR DRUG OFFENSES. (R.1528) THE TRIAL COURT REVERSED ITS PRE-TRIAL RULING AND LET THE STATE QUESTION THE DEFENDANT REGARDING HIS OCTOBER 31, 2012, ARREST. (R.1528)

IN RESPONSE TO THE TRIAL COURT'S RULING, DEFENSE COUNSEL OBJECTED, STATING THAT THE PREJUDICE OF THIS EVIDENCE OUTWEIGHED ITS PROBATIVE VALUE. (R.1529) THE JUDGE REPLIED THAT WAS WHY HE WARNED DEFENSE COUNSEL ABOUT OPENING TO DOOR. (R.1529) DEFENSE COUNSEL THEN ASSERTED THAT THE STATE SHOULD SIMPLY ASK THE DEFENDANT IF HE HAD BEEN ARRESTED FOR A SEPARATE OFFENSE ON THE SAME DAY HE GAVE THE STATEMENT TO THE POLICE. (R.1537) THE STATE ARGUED THAT IT SHOULD BE ABLE TO INTRODUCE EVIDENCE THAT THE DEFENDANT HAD BEEN ARRESTED 12-TIMES FOR VARIOUS OFFENSES INCLUDING TRAFFIC OFFENSES AND A D.U.I. (R.1539) THE JUDGE AGREED TO LET THE STATE PRESENT THAT EVIDENCE BECAUSE THE DEFENDANT CLAIMED HE HAD NEVER BEEN ARRESTED BEFORE. (R.1543)

EVERY DEFENDANT IS ENTITLED TO HAVE HIS GUILT OR INNOCENCE DETERMINED BY AN IMPARTIAL AND UNPREJUDICED JURY. U.S. CONST.

Amend. XIV; People v Blue, 189 Ill.2d 99, 138 (2000) To protect that right, evidence of other crimes is inadmissible if relevant only to establish the defendant's propensity to commit crimes. People v Lindgren, 79 Ill.2d 129, 137 (1980) Because other crimes evidence involves a defendant's prior bad acts courts have expressed "great concern" that such evidence will "overpersuade" the jury and lead it to convict the defendant because it believes he committed the other acts or is otherwise a bad person deserving of punishment. People v Moore, 2012 Tl App (5th) 100857, ¶ 46. The erroneous admission of evidence of other crimes carries a high risk of prejudice and ordinarily calls for reversal. "Lindgren, 79 Ill.2d at 140. When determining whether a defendant opened the door, the court first determines whether the defendant was "attempting to mislead the jury about his criminal background." People v Harris, 231 Ill.2d 582, 590 (2008).

The Appellate court in addressing the series of questions about defendant's understanding of his MIRANDA rights and the responses given by the defendant states:

"Yeah, but this is also first time I've ever been in trouble with the law and I was scared shitless." The defendant contends that he only meant that he had never been previously interrogated by the police. While this could be true, "it is just as reasonable to construe defendant's answer as a comprehensive denial of ever having engaged in criminal activity, which amounts to an outright lie." Id. at 591. The trial court did

not believe that it was "just some slip of the tongue" based in part on the fact that the defendant was acting "laxly" during his testimony. "The appellate court gives great deference to the trial court's interpretation of a witness's testimony." Id. at 590. The record provides "no basis for disturbing the trial court's conclusion that defendant was attempting to mislead the jury." Id. at 591. The defendant clearly opened the door to a discussion of his prior arrests.

People v London, 2018 IL App (3d) 150793-U at ¶ 29.

Additionally, the court erred by instructing the jury on the use of the arrests when it gave a modified version of Illinois Pattern Jury Instruction (IPI) 3.13 over the defendant's objection. The modified instruction misstated the law and highlighted the overly prejudicial prior-arrest evidence. The improper instruction may have influenced the jury to find that the defendant was guilty based only on the prior arrests and that deprived him of a fair trial.

The judge proposed giving a modified version of IPI 3.13, substituting the word "arrests" for "conviction." (R.1552) Defense counsel objected, stating that arrests do not affect credibility, and that the instruction thus misstated the law. (R.1552) The judge maintained the modified instruction was proper. (R.1552)

The unmodified version of IPI 3.13 reads: "Evidence of a defendant's previous conviction for an offense may be

considered by you only as it may affect his believability as a witness and must not be considered by you as evidence of his guilt of the offense with which he is charged." Illinois Pattern Jury Instruction 3.13. The committee notes indicate that 3.13 should be given only at the defendant's request when evidence of his prior conviction has been introduced. Illinois Pattern Jury Instruction 3.13.

The defendant continuously objected to the court giving the Illinois Pattern Jury Instruction 3.13 (unmodified or modified). Here, the modified IPI 3.13 given misstated the law. Unlike evidence of certain prior convictions, evidence of prior arrests is not admissible for impeachment. People v Bohu, 262 Ill. App. 3d 485, 490 (2d Dist. 2003). While a witness may be impeached by attacking his or her character with proof of a conviction for a felony or any crime that involves dishonesty or false statements, only convictions may be used for this purpose; proof of arrests is not admissible. People v Peronaro, 175 Ill.2d 294, 309 (1997).

The instruction given by the trial court improperly equated arrests with convictions and misstated the law. By giving the modified instruction over the defendant's objection, the trial court improperly directed the jury to consider the defendant's arrests when assessing his credibility. In addition to misstating the law, the instruction compounded the prejudice of the erroneous introduction of the defendant's prior arrests. There is a significant risk that this instruction led the jury to improperly consider that the defendant could not be

believed solely because of his arrest record.

The court denied defendant a fair trial and due process when it let the state introduce the defendant's prior arrests and then instructed the jury, over the defendant's objection, to consider evidence of prior arrests when assessing his credibility. That instruction unduly emphasized highly prejudicial evidence that should not have been admitted and misstated the law. The error cannot be considered harmless because it caused the defendant grave prejudice and the evidence of the defendant's guilt was far from overwhelming.

The appellate court found:

"Here, defense counsel did in fact ask that an instruction be given regarding the limited purpose for which the jury could consider the defendant's prior arrests. He did not object to the inclusion of such an instruction. Instead he objected solely to the scope of the instruction. Stated another way, defense counsel wanted the jury to be instructed on the purpose for which the jury could consider the defendant's prior arrests, but did not like the form of the instruction. London, 2018 WL App (3d) 150793-11, p 34.

We do not find that the instruction misstated that law. As stated above (supra pp 27-30), we have already found that the state was allowed to question the defendant about his previous arrests as the defendant opened the door. Id. p 36.

Your petitioner contends that due to the closeness of the evi-

dence in this case that the state court errors denied him a fair trial and due process. Estelle v McGuire, 502 U.S. 62 (1991).

CONCLUSION

For the foregoing reasons, Andrew Condon pro-se, respectfully requests that a writ of Certiorari be issued to the Appellate Court of Illinois, Third Judicial District.

Respectfully submitted
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