

APR 29 2019

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No. 19-5620

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2018

DAMIERU HYDE,
petitioner,

v,

STATE OF ILLINOIS,
Respondent,

On petition for a writ of certiorari
to the Illinois Appellate Court for
the First District

PETITION FOR WRIT OF CERTIORARI

Damien Hyde #MS2963
In proper person
Menard Correctional Center
P.O. Box 1000
Menard, IL 62259

ORIGINAL

QUESTIONS PRESENTED

petitioner Damien Hyde, was charged and convicted with first degree murder of Tommy Pointer and the attempted murders of Cardell Alexander and Tierra Huff in connection with a shooting on April 9, 2009. State witness Brandi Sprayer made a pre-trial statement describing an incident surrounding the shooting of which she had no personal knowledge. During the trial the state confronted Brandi with her pre-trial statement, a statement she testified was untrue and had been coerced. The statement relayed that petitioner had told Brandi that he had fired some shots at some people. Over defense counsel's objections, the trial court allowed the state to introduce this statement as substantive evidence that petitioner confessed to the crime. The questions presented are:

1. Does the admission of coerced statements by non-defendant witnesses deprive a defendant of due process of law, when they are used during a criminal trial as substantive evidence of an accused guilt. This question was raised, but left unanswered by this court in *Turner v. Pennsylvania*, 338 U.S. 62, 65-66, 69 S.Ct. 1352, 93 L.Ed. 1810 (1949). Since then, the First and Tenth circuit hold that placing in evidence a coerced statement of a witness in a criminal case who is not a defendant or a potential defendant nevertheless violates a constitutional right of defendant, though obviously not his right not to be forced to incriminate himself. Other jurisdictions, such as the state of Wisconsin, and the Fifth circuit exclude such a statement only

QUESTIONS PRESENTED - continued

it it is unreliable, which requires that a higher level of coercion be shown. Still other courts, including the Seventh Circuit, do not think that there is an exclusionary rule applicable to third-party statements, though they would reverse a conviction if it rested entirely on a coerced statement that was completely unreliable. Only the state of Illinois hold that, no independent determination is necessary to ascertain the reliability or voluntariness of a non-defendant witness' coerced prior statement, as long as it is otherwise admissible under section 115-10.1 of Illinois Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.1 (West 2018)).

a. If so, does section 115-10.1 of Illinois code of criminal procedure of 1963, violate due process for failure to provide individuals accused of a crime, adequate safeguards to challenge the voluntariness of a non-defendant witness' prior statement to the police or grand jury, before it is introduced as substantive evidence at trial?

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II.

Section 115-10.1 of Illinois Code of Criminal Procedure of 1963

(725 ILCS 5/115-10.1 West 2018) Violates due process because it fails to provide individuals accused of a crime adequate safeguard to challenge the voluntariness of a witness' prior statement to the police or grand jury before it is introduced as substantive evidence at trial.

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PETITION FOR A WRIT OF CERTIORARI

Damien Hyde, respectfully petitions for a writ of certiorari to review the judgment of the Illinois Appellate Court First District in *People v. Hyde*, 2018 IL App(1st) 152644-4 (Lampkin, Hall and Rochford, JJ.).

OPINIONS BELOW

The summary order of the Illinois Supreme Court denying leave to appeal is cited herein as appendix A. The opinion order of Illinois appellate court is not reported (but is available at 2018 IL App(1st) 152644-4) and is cited herein as appendix B.

JURISDICTION

The Appellate Court of Illinois affirmed petitioner's conviction and sentence August 31, 2018. (Appendix B). The Supreme Court of Illinois denied leave to appeal January 31, 2019. (Appendix A). This court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

STATUTES AND RULES INVOLVED

TAS ILCS 5/115-10.1:

Sec. 115-10.1. Admissibility of Prior Inconsistent Statements. In all criminal cases, evidence of a statement made by a witness is not made inadmissible by the hearsay rule if

(a) the statement is inconsistent with his testimony at the hearing or trial, and

(b) the witness is subject to cross-examination concerning the statement, and

(c) the statement --

(1) was made under oath at a trial, hearing, or other proceeding, or

(2) narrates, describes, or explains an event or condition of which the witness had personal knowledge, and

(A) the statement is proved to have been written or signed by the witness, or

(B) the witness acknowledged under oath the making of the statement either in his testimony at the hearing or trial in which the admission into evidence of the prior statement is being sought, or at trial, hearing, or other proceeding, or

(C) the statement is proved to have been accurately recorded by a tape recorder, video tape recording, or any other similar electronic means of sound

recording.

Nothing in this section shall render a prior inconsistent statement inadmissible for purposes of impeachment because such statement was not recorded or otherwise fails to meet the criteria set forth herein.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution states in pertinent part: "no person shall ... be deprived of life, liberty or property without due process of law; ...". U.S. Const. amend V

The Fourteenth Amendment to the United States Constitution states 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

STATEMENT OF THE CASE

Damien Hyde, referred to here as petitioner, was charged and convicted in connection with the shooting death of Tommy Pointer and the attempted murders of Cardwell Alexander and Tierra Huff. (C. 20, 63-64). Two state witnesses ("Cardell" and "Tierra") identified the petitioner as the person who shot them and the deceased. (R. 7129 69-74; QQ 110-113). Both of these witnesses gave a prior statement to the police in which they denied any knowledge of the offender who shot them and the deceased. (R. 7129 78-79). At trial, this was acknowledged by the witnesses themselves (R. 7129) and officer Ernest Myslinski. (R. 55131-34). Both witnesses admitted that they identified petitioner as the shooter after interviews with police detectives. (R. 7129 69-74; QQ 110-113).

Another state witness, Brandi Spayer testified that in April 2009, petitioner and her were living together in Chicago Heights, along with Brandi's two young daughters. (R. 123-125). Petitioner was the father of Brandi's four-month-old daughter, Camora. (R. 124-125). Brandi testified that on April 10, 2010, petitioner returned home and told her they needed to leave because people were making threats against them and their lives were in danger. (R. 129-131). Brandi and petitioner packed their belongings, and drove to Des Moines, Iowa to stay with Brandi's mother for awhile. (R. 132-134). A week-and-a-half later, Brandi and her children returned

back to Chicago to attend traffic court and visit the doctor. (R. 134-135). Brandi was then apprehended in court by Chicago Heights police officers. (R. 137). According to Brandi, the police took her to a room off of the court room, took her purse and searched her. (R. 148). Two Chicago Heights detectives then took her to the police station and placed her in an interrogation room. (R. 149-150). They took her car keys, and she was not free to go. (R. 150). When asked about the officers behavior during the interrogation Brandi said: "The officers treated her like crap... They were mean, They were rude, They were yelling, screaming in my face, I had no personal space... They were threatening me." (R. 148-152). Brandi stated that the officers called her and petitioner "pieces of shit" and told her that they had known petitioner since he was a little boy and that "he is going to go down for this - However they get him, they are going to get him." (R. 162).

Brandi testified that at one point, during a bathroom break one of the officers lead her down a pitch-black stairwell, told her to take off her jewelry because she was gonna be charged as an accomplice to murder. if didn't agree to say what the police told her to say. (R. 164-165). These threats scared Brandi. (R. 152). According to Brandi, the police denied her several requests to make a phone call and provided her with an account of the shooting. (R. 152-153). The police further threatened that if she did not cooperate Illinois Department of children and Family

services (DCFS) would take her children. (R. 152). Brandi testified that her statements to police were not voluntary and she was afraid of losing her children and being charged with a crime she didn't commit if she refused to sign the statement written by the prosecutor. (R. 171; RR 53-54).

During Brandi's trial testimony, the prosecutor confronted her with the pre-trial statement she made to police line-by-line. (R. 140-41). Defense counsel objected to the introduction of Brandi's prior statement because it was hearsay. (R. 141). The trial court overruled this objection. (R. 141). The trial court then allowed the state to continue introducing Brandi's prior statements, including her prior statement that petitioner had told her he had fired some shots at some people. (R. 142-146). The state then called the police department prosecutor as a witness. (R. RR 47). The state then asked him to read Brandi's entire "statement" aloud for the jury. (St. Exh. 14; R. RR 58-59). Again, defense counsel objected, but the court allowed it in as substantive evidence. (R. 134-45, RR 58-70; R. 55 98). Subsequently, the defense requested a mistrial because the admission of the statement was improper. (R. 55 4-5). The trial court denied the motion. (R. 55 5). In rebuttal closing argument, the prosecutor argued over defense counsel's objection that petitioner's remarks to Brandi was tantamount to an confession. (R. 7780-81).

Prior to jury deliberations, the state moved to have

the prior hand written statement sent to the jury room, but defense counsel objected stating: "[T]he whole issue behind her statement was the voluntariness of it. She never signed what she said in that statement, and we have a standing objection regarding any of her statement going back there to the jury." (R.TT105). The trial court ruled that it would not allow the jury to have this statement unless the jury requested it. (R.TT106) In the jury's first note, they requested this handwritten statement. (R.TT107) Over objection by defense counsel, the trial court allowed the jury to have the handwritten statement during deliberations. (R.TT107-108).

After resuming deliberations the jury sent a second note that said, "Guilty 4, Not Guilty 3, Undecided 5." (C.208; R.TT109). Within 4 hours of deliberation the jury sent another note that said, "4 Guilty 3 Not Guilty. At this point we are deadlocked and do not see a possibility of change." (C.208). After reviewing instructions from the judge, the jury tendered another note 3 hours later asking for a definition of "Reasonable Doubt." (C.206; R.TT112-115). The judge responded, (R.TT113; C.202) but eventually sequestered the jurors for the night. (R.TT114-116).

The jurors restarted their deliberations the next morning and within 25 minutes the jury sent their fifth note that said, "We have been deadlocked at 11 guilty and 1 not guilty. There is no prospect of the 12th juror voting guilty." (C.207; R.1113) The parties disputed over whether a prim instruction should

be given. (R. 115-65). The trial court decided to refrain from giving the instruction and ordered the jurors to continue their deliberations. (R. 1117).

A short while later, the jury sent another note, asking, "With the lack of physical evidence connecting the defendant to the crime or crime scene, is eyewitness [sic] testimony from one person legally sufficient to prove guilt beyond a reasonable doubt?" (C. 207; R. 1117). The trial court answered in the affirmative and within minutes the jury notified the court that it had reached a verdict. (R. 11110; C. 210). The jury found petitioner guilty of first degree murder and two attempted first degree murders. (C. 211-13). Petitioner was sentenced to an aggregate prison term of 125 years in prison. (C. L. 211-215; R. 66636).

On appeal, Illinois Appellate Court in an unpublished opinion found that, the trial court abused its discretion in allowing the handwritten statement to go back to the jury during deliberations, only because it did not meet the reliability requirements of section 115-10.1(c)(2)(A) of the Code of Criminal Procedure. *People v. Hyde*, 2018 IL App (1st) 152644-U ¶¶ 53, 58. The Appellate court made no mention concerning the statement's voluntariness, but went on to determine that any abuse in the admission of the statement was harmless error. *Id.* at ¶ 59. The Illinois Supreme Court denied petitioner's petition for leave to appeal on January 31, 2019.

COMPELLING REASONS FOR GRANTING REVIEW

- I. This Court should grant the writ of certiorari to decide the question left unanswered by this Court in *Turner v. Pennsylvania*, 383 U.S. 62 (1949). Whether the admission of a coerced third-party statement induced by a government official is unconstitutional as substantive evidence against a criminal defendant at trial.

This case presents the question of whether the admission at trial of a coerced out-of-court statement from a non-defendant witness may violate a defendant's right to a fair trial as guaranteed by the due process clauses of the Fifth and Fourteenth Amendments. U.S. Const. amend. V; XIV. The constitutional underpinnings for this factual scenario initially surfaced before this Court in *Turner v. Pennsylvania*, 383 U.S. 62, 65-66, 67 S.Ct. 1352, 93 L.Ed. 1810 (1949), but because the facts there rendered the constitutional issue a "wholly hypothetical question", this Court declined to decide the matter. See *Turner*, 383 U.S. at 66: "At this stage, ..., this is a wholly hypothetical question, which as a constitutional issue, we ought not hypothetically to answer.").

Since then, some of the lower courts who have taken up the question hold that, placing in evidence a coerced statement of a witness in a criminal case who is not a defendant or potential defendant nevertheless violates a constitutional right of the defendant, though obviously not his right not to be forced to incriminate himself. E.g., *United States v. Gonzales*, 164 F.3d 1285, 1289 n.1 (10th Cir. 1999); *LaFrance v. Bohlinger*, 499 F.2d 29 35-36 (1st Cir. 1974). Other jurisdictions, such as the State of Wisconsin, and the Fifth Circuit Court

of Appeals exclude such a statement only if it is unreliable, which requires that a higher level of coercion be shown. E.g. *State v. Samuel*, 643 N.W. 2d at 431-32; *United States v. Merkt*, 764 F.2d 266, 273-75 (5th Cir. 1985).

Still other courts, including the seventh circuit court of Appeals, do not think that there is an exclusionary rule applicable to third-party statements, though they would reverse a conviction if it rested entirely on a coerced statement that was completely unreliable. *State v. Vargas*, 420 A.2d 809, 814 (R.I. 1980); *People v. Badgett*, 10 Cal.4th 330, 41 Cal. Rptr. 2d 635 (Cal. 1995); *Buckley v. Fitzsimmons*, 20 F.3d 789, 794-95 (7th Cir. 1994). Only the state of Illinois holds that, no independent determination is necessary to ascertain the reliability or voluntariness of a non-defendant coerced out-of-court statement, so long as it is otherwise admissible under section 115-10.1 of Illinois code of criminal procedure (725 ILCS 5/115-10.1). E.g. *People v. Smith*, 365 Ill. Dec. 326, 978 N.E. 2d 324, 348 (App 1st Dist. 2012).

The Federal and state Appellate courts' sharply divided views on this significant question of constitutional law demonstrates the need for this court's further guidance. see U.S. Supreme Court Rule 10(c). After all, the divergent views engendered in these decisions are not merely about applying settled law to facts; rather, it shows that the law is not settled at all. This court should allow the writ of certiorari to resolve this conflict and tension in the lower courts the appropriate treatment and focal point of inqu-

ity courts must adhere to when evaluating the admissibility of a coerced statement from someone other than the defendants themselves; for purpose of due process. And in doing so, this Court should make clear that the Tenth and First circuit Court of Appeals approach in *Gonzales* and *LaFrance*, new closer to this Court's precedent on the forbidden use of an coerced statement to secure a conviction and advances our society's interest in fundamental fairness than the other holdings. see e.g. *Rogers v. Richmond* 365 U.S. 534, 540-541 (1961) (The use of coerced statements, whether true or false, is forbidden because the method used to extract them offends constitutional principles.) (emphasis added); *Jackson v. Denno*, 378 U.S. 368, 377 (1964).

For instance, one line of cases conclude that courts need not treat coerced statements of non-defendant witnesses the same way as coerced statements of defendants. *United States v. Merkt*, *supra*; *State v. Samuel*, *supra*. These jurisdictions hold that when a defendant seeks to suppress an allegedly involuntary witness statement, the coercive police misconduct at issue must be egregious such that it produces statements that are unreliable as a matter of law. 764 F.2d at 275; 643 N.W.2d at 426. The problem with this proposition is that, by requiring that the alleged coercion be so egregious as to be unreliable, these courts have engrafted an extraneous factor onto the due process analysis. As this Court has explained many times before in the past, the only inquiry lower courts must make for federal due process purposes is whether the individual's

will was overborne at the time the statement was extracted. see Chambers v. Florida, 309 U.S. 227; Watts v. Indiana, 388 U.S. 49, 52; Latta v. Benno, 347 U.S. 556, 558; Harris v. South Carolina, 388 U.S. 68; Spano v. New York, 360 U.S. 318; Lynum v. Illinois, 372 U.S. 528, 535 (1963). Which this court has recognized can occur by either physical intimidation or psychological pressure, Townsend v. Sain, 372 U.S. 293, 307 (1963).

To be sure, the egregiousness of the coercion of the non-defendant witness, is of no moment to a state or federal court's reviewing the defendant's due process claim. This is the teaching gleaned from this court's precedent. And this makes sense because to espouse the former view, would allow the admission of statements that are not the product of egregious coercion but that are nonetheless completely involuntary. Because egregiousness is an extraneous factor not necessarily determinative of voluntariness, it is at odds with this court's precedent and should be rejected. Malloy v. Hogan, 378 U.S. 1, 7 (1964) ("We have held inadmissible even a confession secured by so mild a whip as the refusal, under certain circumstances, to allow a suspect to call his wife until he confessed" (citing Haynes v. Washington, 373 U.S. 503, 83 S.Ct. 1336 (1963))). Furthermore, the touchstone of due process has never hinged solely on reliability, rather in the context of coerced statements, this court has placed greater emphasis on the 'strongly felt attitude of our society that important human values are sacrificed where an agent

of the government, in the course of securing a conviction, wrings a confession out of an individual against his will, see e.g. *Black-son v. Dando*, 378 U.S. 308, 380 (1964).

Still another reason why this court should endorse the ratification of the others, stems from their misguided view that an exclusionary rule should not apply to the admission of a coerced non-defendant witnesses out-of-court statements. *Buckley v. Fitzsimmons supra*, *State v. Vargas supra*, *People v. Badgett supra*, telling us none of these decisions offer any persuasive reasoning to refute the principal that if due process does not permit one to be convicted upon his own coerced confession, then why should it allow him to be convicted upon a confession wrung from another by coercion. Certainly, methods offensive when used against an accused do not magically become any less offensive when exerted against a witness. *Clinton v. Cooper*, 149 F.3d 1142, 1158 (10th Cir. 1997). This view does not comport with this court's precedent and should be rejected. Finally, the minority view and practice that controls in the state of Illinois, dictates that a challenge to the admission of a non-defendant witnesses coerced out-of-court statement on grounds of due process, has no legal significance at all. In fact, it is regarded as outright frivolous. see *People v. Carlos*, *People v. W.E. ad 1182 (1995)*, *People v. Purley*, *W.E. ad 1449 (1995)*, *People v. Baker*, *W.E. ad 1039*, *People v. Smith*, 978 N.E.2d 347, 348 (2012).

Indeed, this narrow approach to due process principals in the context of government action that threatens individual liberty, is so far afield established precedent in this court that, arguably it can be regarded as an unreasonable application of federal law as dictated by this court. cf. *Williams v. Taylor*, 529 U.S. 362, 407 (2000); *Malinowski v. Smith*, 509 F.3d 328, 335 (7th Cir., 2007) (state court acts unreasonably when it refuses to extend a clearly established principle to a new context where it should apply). For these reasons, this court should grant the writ of certiorari to clarify that a challenge to a conviction sustained by the use of a non-defendant witnesses coerced out-of-court statement, is cognizable under the fifth and Fourteenth amendments to the U.S. constitution; otherwise criminal defendants similarly situated to petitioner here, will remain without recourse in the law for their meritorious claims of constitutional deprivations.

Furthermore, it is difficult to perceive how petitioner's rights to due process and a fair trial had not been jeopardized by the introduction of Brandi Sprayer's out-of-court statements. (St. Exh 14) statements that had been made only after the police had told her that she would be made an accomplice to a crime, and her children taken from her, if she did not "cooperate." (R. 164-165; R. 152). These threats were made after she was illegally detained inside a homicide interrogation room. (R. 149-50). Where she was ambushed by detectives and told she could not leave. (R. 148; R. 164-165).

where she was verbally abused and there was no friend or adviser to whom she could call. (R. 148-153; 169) she was terrified (R. 152) and had no reason not to believe that the police had ample power to carry out their threats. Viewed in that light, the police misconduct was patently coercive. see *Lynn v. Illinois*, 372 U.S. 528, 534 (1963) (finding coercion where law enforcement officers deliberately preyed upon the maternal instincts of a mother by inculcating fear that she will not see her child in order to elicit cooperation). For these reasons, this court should go on to hold that the investigative methods employed by the police here, resulted in a fundamentally unfair trial.

II. Section 115-10.1 of Illinois code of criminal procedure (2015 ILCS 5/115-10.1 (West 2018)) violates due process because it fails to afford individuals accused of a crime adequate safeguards to challenge the voluntariness of a witness' prior statement to the police or grand jury before it is introduced as substantive evidence at trial.

It is firmly established that a state slights its obligation to provide due process of when it fails to implement appropriate procedures necessary to hold down the risk of error- especially when the risk is increased by unauthorized acts of public officials. *Parratt v. Taylor*, 451 U.S. 537, 538-43 (1981). see also *Zinerman v. Burch* 494 U.S. 113 (1990) (the principals of *Parratt* applies to deprivations of liberty as well as deprivations of property); *Hudson v. Palmer*, 468 U.S. 517, 530-36 (1984) (the principle of *Parratt* applies to intentional as well as negligent deprivations). In the state of Illinois, the legislature has determined that a prior inconsistent statement not only serves

the traditional limited function of discrediting trial testimony, but may serve as substantive evidence if it meets the requirements of section 115-10.1 of the Code of Criminal Procedure of 1963, see 725 ILCS 5/115-10.1 (West 2018). This rule constitutes the only example of the incorporation of a statute into Illinois rules of evidence.

According to the legislature the statute is meant to advance the goal of preventing a turncoat witness from merely denying an earlier statement when that statement was made under circumstances indicating it was likely to be true. See *People v. White*, 403 W.E.2d 994, 1006 (IL App. 1st Dist. 2011). And while the statute is adequately tailored to prevent the loss of liberty from a non-defendant witness' prior statement that does not satisfy the foundational requirements outlined in subsections (a), (b), (c) (1) (a) (A) (B) and (c). E.g. *People v. Simpson*, 2015 IL 116512 97-98 27-34; *People v. McCarter*, 385 Ill. App. 3d 919-929, 932 (1st Dist. 2008). The same is not true, for circumstances where a non-defendant witness' prior statement is the product of physical or psychological coercion. See *People v. Smith*, 978 W.E.2d 324, 348 (2012) (no independent determination of a prior statement's reliability or voluntariness is required under section 115-10.1)

Decidedly, if "reliability" was Illinois' legislature chief concern for the exclusion of prior statements that didn't come within the ambit of the statute's subsections, then the same level of concern was warranted to provide protection from the use of prior statements involuntarily given. After all, it cannot be gainsaid that

involuntary statements have been excluded as evidence not only for reasons of their repugnant character, but also because of the danger of unreliability, *Spano v. New York*, 360 U.S. 315, 320-21 (1959). Given that the "reliability" aspect of coerced-statements is an element of trial practice, *Arizona v. Fulminante*, 499 U.S. 279, 306-312 (1991), petitioner and other similarly situated defendants, should be entitled to the same level of due process protections from the loss of liberty threatened by the use of a non-defendant witness' coerced prior statement, as they would their own or a co-defendants, see *LaFrance v. Bonlinger* 499 F.2d 29, 34 (1974). In the latter situation, this court has held that due process requires a hearing to test the voluntariness of the statement before it is presented to a jury for determination of guilt or innocence, see *Jackson v. Denno*, 378 U.S. 368, 377 (1968) ("Defendants have constitutional right... to have a fair hearing and reliable determination on the issue of voluntariness, a determination uninfluenced by the truth or falsity of the statement.") (emphasis added); *Lego v. Twomey*, 404 U.S. 477, 484-485 (1972) (same). And since a statement coerced from an accused is neither less trustworthy than one from a witness nor more offensive to society's sense of fairness, it would seem illogical invariably to require a Jackson hearing in the latter case but never in the former. *LaFrance* 499 F.2d at 35 (1974).

This court should grant writ of certiorari to clarify that at a bare minimum, due process requires that petitioner and other similarly situated defendants are entitled to a separate hearing in state court

on questions of voluntariness of non-defendant witnesses prior out-of court statements. See, e.g. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985) ("The root requirement of the Due Process clause" is "that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest".) In Illinois the practice born from the application of section 115-10.1 of the code to prior inconsistent statements, places the responsibility of assessing not only witness credibility, but also witnesses' claims of coercion on the jury. See *People v. White*, 963 N.E.2d 994, 1004 (1st Dist. 2011); *People v. Melecio*, 89 N.E.3d 874, 893-95 (1st Dist. 2017); *People v. Wiggins*, 40 N.E.3d 1197, 1205 (1st Dist. 2015); *People v. Campbell*, 37 N.E.3d 891, 898-900 (1st Dist. 2015). Tellingly, both *Jackson* and *Lego* reject the practice of combining into a single jury question this issue of coercion and that of the statements weight and reliability. *Jackson*, *supra* at 382-383 n.10; *Lego*, *supra* at 486.

For these reasons, this court should go on to conclude that Illinois via section 115-10.1 of its code of criminal procedure of 1963, fails to provide judicial procedures adequate to guard against the use of a non-defendant witness' prior statement that is, the product of physical or psychological coercion.

III. The questions presented are recurring issues of national importance that warrant this court's immediate resolution.

The ubiquitous practice of prosecuting criminal offenses with evidence of a non-defendant witness' prior statement allegedly extracted by means of coercion, raises issues of great practical importance and constitut-

ional significance meriting this court's intervention. The issue of whether a criminal defendant has constitutional standing based on the use of a non-defendant witness' coerced statement at his trial has arisen, and is likely to recur, with frequency. This court has acknowledged the importance of this issue in the *Turner* decision. *Turner v. Pennsylvania*, 338 U.S. 62 (1949). Although this court ultimately left the question unanswered, see 338 U.S. at 65-66 (1949), substantial conflict and tension remains in the federal and state courts below on the appropriate inquiry that controls the outcome of these claims.

Resolving this issue is even more critical in the face of a conviction founded, in large part, on the purported misconduct of law enforcement officials like the one petitioner was subject to here. When a state legislature passes a law like section 115-10.1 of Illinois code of criminal procedure of 1963, to exploit the substantive use of prior statements made by turn coat witnesses in the face of repeated and rampant complaints from its citizens concerning torture, abuse and other related forms of misconduct they have experienced at the hands of law enforcement officials at large, see "Investigation of Chicago Police Department" by United States Department of Justice Civil Rights Division and United States Attorney's Office Northern District of Illinois, January 13, 2017, see also "Cook County: Racism and Injustice in America's largest criminal court" by Nicole Gonzalez Van Cleave, its citizens should have some procedural safeguards to protect against the use of evidence gleaned from these elements of a roughish environment. There can be no doubt that

citizens accused of serious crimes are named significantly by coercive police tactics that induce a witness to make false statements such as those perpetrated by Chicago Heights detectives here, and those statements are admitted against defendants at trial. Even if an individual defendant's harm is slight, the injury incurred to the masses as a whole from this illicit practice is enormous.

In the state of Illinois, alone, the reality of this damage is illustrated by the constant stream of post-conviction petitions and civil law suits detailing these similar accounts. To wit: (just to name a few) people v. serrano, 2016 IL App(1st) 133493 (witnesses forced to falsely accuse suspect and others); people v. montanez, 2016 IL App(1st) 133746 (same); people v. Rimodova, 2013 IL App(1st) 101476; people v. Tyier, 39 N.E.3d 1042 (1st Dist. 2015) (same); people v. Hoard, 618 N.E.2d 808 (1993) (same); people v. Williams, 2014 IL App(1st) 11295-U (same); people v. Reyes, 2014 IL App(1st) 11295-U (same); Chatman v. City of Chicago, 2015 U.S. Dist. Lexis 28702; Wiggins v. Barge, 173 F.R.D. 226 (N.D. Ill. 1992); Evans v. City of Chicago, No. 04 CV 03570 (N.D. Ill.) (same); Hill v. City of Chicago, No. 06 CV 00722 (N.D. Ill.); Anderson v. Devine, No. 06 CV 00954 (N.D. Ill.) (same). Cit-

zens accused of serious crimes must be able to challenge the admission of these prior statements wrought from coercive police tactics, and procedural safeguards such as those established by this court in Jackson are critical to ensuring citizen protection.

CONCLUSION

For the foregoing reasons, petitioner Damien Hyde respectfully

request that the petition for a writ of certiorari be granted.

Respectfully submitted,

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