No.: 19-5878 ORIGINAL

In The
Supreme Court Of The United States

Darryl Leon Jackson - Petitioner

Vs.

United States of America - Respondent(s)

On Petition For Writ Of Certiorari

United States Court of Appeals For The Sixth Circuit

Petition For Writ Of Certiorari

Darryl (a.k.a. "Darries") Leon Jackson
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Rogersville, Tennessee 37857
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Questions Presented

1. Whether sentences imposed upon Petitioner are Constitutionally unreasonable & greater than necessary to satisfy the ends of Justice?

2. Whether Petitioner's wife, Mrs. Jessica Jackson's trial testimony was impermissibly compelled?

3. Whether Petitioner, an African-American was in fact indicted by a grand jury from which members of his racial group were unconstitutionally underrepresented, in violation of the Fifth & Sixth Amendments of the United States?

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 judgement is the subject of this petition is as follows:

Mr. John Gregory Bowman, AUSA
Office of U.S. Attorney
Lindsey W. Lane, AUSA
220 West Depot Street, Suite 423
Greeneville, Tennessee 37743

Judge Ronnie Greer, District Judge
6th District of Tennessee
220 West Depot Street, Suite 200
Greeneville, Tennessee 37743

Per Rule 29.4 am sending document to:

The Solicitor General of the United States
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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 judgement below.

Opinions Below

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A-1 to the petition & 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☒ is unpublished.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 & is
☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from State courts:

The opinion from the highest state court to review the merits appears at Appendix ____ to the petition & 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☐ is unpublished.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 & 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 April 3, 2018.

☐ 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: May 28, 2019, & a copy of the order denying rehearing appears at Appendix ____.

☐ An extention of time to file the petition for a writ of certiorari was granted to & including _____ on _____ 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 _____. A copy of that decision appears at Appendix ____.

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

☐ An extention of time to file the petition for a writ of certiorari was granted to & including _____ on _____ in Application No. ____ A ____.

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

Statement Of The Case

The Petitioner, Darries Jackson was found guilty by a jury of the Eastern District of Tennessee of two counts of being a Felon in Possession of Ammunition, 18 U.S.C. § 922(g)(1) & 18 U.S.C. § 924(e). (R. No. 1, Page I.D #1, Indictment; R. No. 143 Page I.D #954-955, Verdict Forms) The Petitioner was sentenced to concurrent life sentences by the district court & a corresponding five-year period of supervised release. (R. No. 171, Page I.D #1082-1087 Judgement)

The Petitioner represented himself during the three-day jury trial. He was appointed "elbow counsel" by the district court. Prior to the commencement of trial, the district court entertained two of the issues presented in this petition. First, the Petitioner moved to dismiss the indictment based upon the exclusion of African-Americans from the Grand Jury & foreperson positions in the Eastern District of Tennessee. (R. No. 43, Page I.D #92-94, motion to dismiss re Grand Jury) Following an evidentiary hearing the district court denied Petitioner's motion. (R. No. 103, Page I.D #269-283, Report & Recommendation; R. 107 Page I.D #299, Order Adopting & Approving over Objection)

The Petitioner also moved to exclude the testimony of his wife, Mrs. Jessica Jackson, or, at minimum, certain of her statements concerning our marital communications. (R. No. 25, Page I.D #46-47, Motion To Exclude Jessica Jackson's Testimony; R. No. 186, Page I.D #2245-2247, 2293-2300, Trial Trans. Vol. 1) The district court denied both motions. (R. No. 186, Page I.D #

2245-2247, 2299-2300, Trial Trans. Vol. 1)

A jury trial began on April 10, 2017, & the government's first witness was the Petition's wife, Mrs. Jessica Jackson. (Id. @ PageID# 2300) Mrs. Jackson told the jury, she, her husband & their three children went to Walmart on October 23, 2014 & that Mr. Jackson, her husband, asked her to purchase ammunition from the store. (Id. @ PageID# 2302-2303) Mrs. Jackson identified herself, her husband Mr. Jackson, & their three small children in a surveillance video in the Walmart store. (Id. @ PageID# 2307) Mrs. Jackson further testified that Mr. Jackson tried the ammunition she had purchased in a handgun - which has never been located - when they returned home, but that that ammunition did not fit. Shortly thereafter, according to Mrs. Jackson, Mr. Jackson informed her that he was returning to Walmart, but it should be noted, that in her testimony, Mr. Jackson never indicated to her his reason for doing so. (Id. @ PageID# 2308-2309) When shown a second surveillance video, Mrs. Jackson again identified Mr. Jackson in the video. (Id. @ PageID# 2311)

Upon Petitioner's return home a second time, Mrs. Jackson testified that Mr. Jackson put some of "the ammunition" in the gun & fired a test shot out of the back door of their home. (ID. @ PageId # 2315). Thereafter, according to Mrs. Jackson, Mr. Jackson placed the ammunition in a nightstand, but a few days later

instructed her to place ammunition in a few other locations around the house. (Id. @ Page ID # 2315 - 2316)

The next government witness was Officer David Griffith of the Morristown Tennessee Police Department. (Id. @ Page ID # 2326) Officer Griffith testified that he executed a search warrant on the Petitioner's home. (Id. @ Page ID # 2327) Officer Griffith also testified that he swabbed this Petitioner's hands for gunshot residue, & that he found ammunition in various locations throughout the Jackson's residence. (Id. @ Page ID # 2330, 2332 & 2333)

The first day of trial concluded with the government authenticating the Walmart surveillance video with a witness from the store in the management department. (Id. @ Page ID # 2338, 2340 - 2342)

Day two of the Petitioner's trial began with the testimony of a Sgt. Todd King, of the Morristown Tennessee Police Department, who executed a search warrant on the Petitioner's family van. (R. No. 187, Page ID # 2367 - 2368, Trial Trans. Vol. II) Officer King testified that he seized "various rounds" of ammunition from the Jackson's vehicle. (Id. @ Page ID # 2370)

Detective Ricky Sanders, also a police officer with the Morristown Tennessee Police Department, testified for the government

about evidence seized by search warrant of the Jackson's residence, including ammunition found in the bedroom nightstand. (Id. @ PageID# 2384-2392)

Next, Lieutenate Vicki Arnold testified that the Petitioner provided her information of his identification while in her custody. (Id. @ PageID# 2416-2418) Lt. Arnold also testified that the Petitioner told her that he was the owner of the van searched in the case. (Id. @ PageID# 2418) On cross-examination, Lt. Arnold admitted that she had had previous interactions with the Petitioner in which she sought charges against him that the prosecution declined to pursue. (Id. @ PageID# 2420) Lt. Arnold was also cross-examined about racial animus displayed towards the Petitioner during their prior interactions, which she denied. (Id. @ PageID# 2433)

Detective John Pruitt, of the Hawkins County Sherriff's Office testified that he interviewed this Petitioner on October 26, 2014, & that at the time, this Petitioner wore a "hoodie & black tennis shoes," & blue jeans. (Id. @ PageID# 2434-2435) This Officer seized the clothing & sent it for testing. (Id. @ PageID# 2434-2437)

Detective David LaFollette, also of the Hawkins County Sherriff's Office, testified next for the government about his involvement with the investigation of the Petitioner. (Id. @ PageID# 2444)

Det. LaFollette testified about the search of the Petitioner's van & items retrieved during the search, including ammunition & a receipt from a local gas station. (Id. @ PageID # 2445 - 2451) Det. LaFollette also testified that he could not identify the Petitioner in a surveillance video from the gas station which was near the Walmart @ issue, but that he could identify him on the Walmart video. (Id. @ PageID # 2469)

James Russell Davis, III, a forensic expert witness for the government testified that testing he conducted on swabs alleged taken of the Petitioner's hands were inconclusive, as he found elements of materials expected in the discharge of a firearm, but not in an amount sufficient to confirm that source. (Id. @ PageID # 2478) Specifically, Mr. Davis testified, in pertinent part:

> Q. As a practical matter, the finding of an inconclusive result, does that indicate that a person has not fired a firearm recently?
>
> A. Basically, inconclussive would have to mean I found material, but I can't say if someone did or did not. It's the answer no one likes. It's inconclusive, I don't know.

(Id. @ PageID # 2481)

Reilly Lewis of the Tennessee Bureau of Investigations

testified that his forensic examination of the sweatshirt seized from this Petitioner contained elements of gunshot residue. (Id.@ PageID#2494) Residue was also found on other articles seized, but only contained at best, two of the three elements present in gunshot residue.

At this point in the trial, a stipulation to the Petitioner's predicate felony offense was read to the jury prior to the government's next witness. (Id.@ PageID#2505)

ATF Agent Bryan Williams was then called to testify that the ammunition at issue in the case had passed internationally & through other states to reach Tennessee. (Id.@ PageID#2511-2512) Afterwhich, the Petitioner moved the court for a judgement of acquittal, which the district court denied. (Id.@ PageID#2540-2541)

The Petitioner called the store manager of Walmart. (Id.@ PageID #2543) And the manager testified about the store's policy of not accepting the return of purchased ammunition. (Id.@ PageID#2551) A store clerk was also called, who testified about his alleged part of interacting with the Petitioner - which he testified that he did not remember, & also he testified about his interactions with authorities investigating the case, as well as one of the videos entered into evidence. (Id.@ PageID# 2551-2553)

The Petitioner next called Officer Morrison of the Morristown Police Department, who testified concerning his interaction with him at the time of Petitioner's arrest. (Id.@ Page ID # 2560-2512) The final witness called by the Petitioner was Gerry Botts, the defense Investigator, who testified that the Petitioner never made incriminating statements to him when they viewed one of the videos, or when they discussed the evidence of the case. (Id.@ Page ID # 2576-2578)

At the conclusion of all the evidence, the Petitioner renewed his oral motion for acquittal, which the district court again denied. (Id. @ Page ID # 2494-2495) The jury returned with guilty verdicts on both counts against the Petitioner. (R. No. 188, Page ID # 2642-2643. Trial Trans. Vol. III)

Reasons For Granting Petition

This Court should grant this Petition for Certiorari to settle an important question of Law regarding the three grounds raised:

1. Whether "Reliance" upon unproven allegations by the Government at both District & Appellate levels violated basic principles of Constitutional & Statutory Construction ?

2. Whether "Clarity" should be restored with the "Legislature Intent" to F.R.E. Rule 501's "Privileged Communications Between Spouses" in cases where "undue compelling" violations occur?

3. Whether the gradually worsening of underrepresentation found in this case is extreme enough under "Bates" to warrant a prima facie systematic exclusion of African-Americans in the Eastern District of Tennessee's qualified jury wheel?

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1. This Petition for Certiorari should be granted because undue reliance upon unproven pending allegations by the government at both District & Appellate levels of Court violated the basic principles of Constitutional & Statutory Construction.

A district court's consideration of a likely pending state court's conviction in sentence calculation held improper under § 3553(a) & Booker, following **similar** decisions in the Third, Fourth, Seventh, Eighth & Tenth Circuits. (See United States v. Malone, 503 F.3d 463 (6th Cir. 2007)), & in the instant case, in the sentencing phase of this case, both courts relied upon unproven pending allegations in their sentencing, & the affirming of the sentencing in this case. (See, R. No. 189, Page ID #2746, Sentencing Trans.) where in pertinent part, the District Court states," the probability that you committed the shooting

of Kathy Ramos is very high." The District Court continued, "... the likelihood that you committed the other one is, is high as well because the ammunition used is the same & both shots, or shootings were from the same firearm." (Id.) "... & I suspect that most people would probably say that a life sentence is appropriate in the case of a defendant who has committed a premeditated first-degree-murder." (Id. @ PageID #2747) The U.S. Court of Appeals for the Sixth Circuit held in it's "opinion", filed April 3, '19, but not yet published, (See App. A-1, this document) in part of the reason for it's decision, the following: "The evidence strongly suggests that Jackson murdered one person, tried to murder another, & nearly shot a two-year-old girl; the district court justifiably placed significant emphasis on such conduct." Page 15 of 17 of that document. The panel went on to state, "Jackson may disagree with the district court's sentencing decision, but it is the essence of discretion that it may properly be exercised in different ways & likewise appear differently to different eyes." United States v. Richards, 659 F. 3d 527, 551 (6th Cir. 2011) - Same page. The "reasonableness" of a criminal sentence is reviewed under an abuse-of-discretion standard. Gall v. United States, 552 U.S. 38, 128 S.Ct. 586, 597, 169, L.Ed 2d 445 (2007) The Petitioner does in fact disagree, but not as the Appeals Court & District Court appears to surmise. To make laws agree with laws is the best modes of interpreting them. And the principal part of everything is the beginning. "While a rebuttable presumption of "reasonableness" (may) exist with respect to sentences falling within a defendant's properly calculated guidelines range, the presumption of reasonableness does not excuse a sentencing court's failure to adhere to

procedural requirements of a reasonable sentence. United States v. Ruvalcaba, 627 F.3d 218, 225 (6th Cir. 2010); United States v. Romanini, 502 F. App'x. 503, 507 (6th Cir. 2012). "A sentence is substantively unreasonable if the district court selects a sentence arbitrarily, bases the sentence on impermissible factors, fails to consider relevant sentencing factors, or gives an unreasonable amount of weight to any pertinent factor." United States v. Camiscione, 591 F.3d 823, 832 (6th Cir. 2010)."

In the instant case, the District Court's "consideration" of a likely pending state charged conviction in this Petitioner's sentencing calculation, should be held improper under § 3553(a), & in "Booker", where in pertinent part, the majority held that:

> "Accordingly, we reaffirm our holdings in Appendi: Any fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty, or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt." United States v. Booker, 543 U.S. @ 244, 125 S.Ct. @ 756; See also, United States v. Tuson, 215 F. App'x. 468, 473 (6th Cir. 2007)

No murder or shooting was proved to a jury, or admitted to by this Petitioner.

Both Courts seem to be focused on the "reasonableness" of the sentences imposed in the instant case, but the Petitioner focuses on the law & the procedual manner of how the District Court impermissively arrived at their sentence & affirming of the same. Even at this writing, the Petitioner, approximately two-years later, has yet to proceed to trial on the state trial for murder & attempted murder, & evidence has surfaced

which was never turned over by prosecution on the federal level, to the defense which may have proved "exculpatory" in that case, as it is proving to be in the state case. The Petitioner therefore, should never have been perceived, for he was/is not yet proven to have "committed premeditated first-degree murder." (PSR ¶¶ 61-62 & Id. @ Page ID # 2747)

The jury in the instant case found the Petitioner guilty of the charges he was indicted on, the District Court sentenced him on charges of which it had not. The Fifth Amendment of the **United States Constitution** clearly states, in pertinent part:

> " No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or an indictment of a Grand Jury..." - The Fifth Amendment

In the instant case, no presentment or indictment was ever filed against the Petitioner/Defendant by the Government for First-degree Premeditated Murder, Attempted Murder, or Reckless Endangerment (his still pending charges at state level), only an indictment filed by the Government on Dec. 8, 2015, charging him with two counts of being in violation of Title 18 U.S.C. § 922(g)(1) & 924(e).

Indeed, a lot of things have passed in the whole of this case, which would not have passed if viewed & considered separately.

Furthermore, the Sixth Amendment guarantees the American Citizen the Right of due process, where it states, in pertinent part:

"... In all criminal prosecutions, the accused shall enjoy the right to... be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor." - The Sixth Amendment

Petitioner's trial contained all of these elements of prosedual correctness; his "bench trial", colored over as a "sentencing hearing" did not, & violated the very principals & principles of the Fifth & Sixth Amendments.

And so, the Constitutional & Statutorial Construction were in fact triggered violations when the artfully coloring over of the "bench trial" as a "sentencing hearing" took place. For it did in fact deprive the Petitioner of his fundamental rights under United States laws of due process. The Petitioner was not prepared to, nor given "fair notice" of, the fact that he was going to a "second trial". In Townsend v. Sain, 83 S. Ct. 745 (U.S. 1963), it states in fact, "extra care should be given to no-lawyers in a litigation to ensure their constitutional rights are guarded." In the instant case, they were not. The errors began with the District Court's giving undue reliance to unproven pending allegations, & then ending in acting out on those unproven allegations. in violation of established law & U.S. Constitutional guarantees.

Error, artfully colored is in many instances more probable than naked truth; & frequently, error conquers truth. Has it conquered in this instance? An error of law injures.

2. Whether "clarity" should be restored with the Legislature Intent to F. R. Evid. Rule 501's "Privileged Communications Between Spouses" in cases where undue compelling violates the right?

The federal courts have recognized two distinct marital or "spousal" privileges under Fed. R. Evid. 501: the "adverse testimony" privilege whereby one spouse may not be compelled to testify against the other on any subject in a criminal proceeding, & the "confidential communications" privilege whereby confidential statements between spouses are inadmissible. See T. Russell, Federal Criminal Trials § 1909 et seq. (2d. ed 1987); Weinstein, Evidence, § 505 (1984).

Like other privileges, the marital privilege with respect to adverse testimony has been narrowed. At one time, the privilege provided simply that either spouse was an incompetent witness in a prosecution against the other. However, in Trammel, 445 U.S. @ 53, the Supreme Court held that only the witness-spouse could assert the marital privilege. Consequently, after Trammel a witness-spouse still may not be compelled to testify, but neither may he or she be prevented from testifying. United States v. Nixon, 418 U.S. 683, 709-10 (1974) also.

The clarity of the Legislature's intent to Fed. R. Evid. Rule 501 on this point's interpretation, appears to have been lost in the instant case by the District Court, for under relevant colloquy the District Court asked in pertinent part:

Q. For whatever (the) reason, do you want today to invoke the privileg against testifying?

A. I'd like to not testify.

Q. Alright.

A. But I don't want to be in trouble.
(Id. @ Page ID # 2294 - 2296)

At this point, the record clearly shows that Petitioner's wife was not finished with her answer, for she adds after being interrupted by the Court:

A. But I don't want to be in trouble.
(Id.) (Emphasis added)

Note that the Court had no misunderstanding of what & who was frightening Mrs. Jackson, & instead of clarifying with her that only her subpoena compelled her presence, the Court unwisely frightens Mrs. Jackson more by launching into what he correctly assessed her fears to be in dialogue:

Q. I don't have anything -- I don't have any part in the decision **whether to prosecute you or not prosecute you,** that's a decision that **has to be made** by the **U.S. attorney or state authority.** The only thing that I can do here today is advise you of the privilege & ascertain whether or not you want to invoke that privilege.

An awkward silence falls over the courtroom, as the Court pauses;

Mrs. Jackson, like a deer caught in the headlights of on-coming traffic, gazes over to the table where both Government & State prosecutors are gazing back, & the Court adds:

"So do you want to testify or not?"

A. I'll testify.
(Id.) (Emphasis added)

An act done by me against my will is not my act. In the instant case, this Petitioner's wife expressed more than trepidation in her not wanting to testify at the trial of her husband, & understandably so, that her reasons were not lost on the Court. (Id. @ 2294) Whether it began as a fear that she would be charged with a crime later by both the government & the state; whether each would expose a secret previously discussed between them that would subject her to hatred, contempt, or ridicule from the general public; or something else was in her view, such as saving her marriage, the District Courts colloquy compelled Mrs. Jackson, inadmissively, to testify, & the Court violates the adverse spousal testimony privilege.

There was no waiver of one's Fifth Amendment right against self-incrimination that was compelled here; it has long been held that coercion can be mental or physical, & whether the holder of the privilege was deprived of the "free choice" to admit, to deny, or to refuse to answer is a relevant consideration. Garrity v. State of N.J., 385 U.S. 493, 496, 87 S.Ct. 616, 618, 17 L.Ed. 2d 562 (1967) The law in this case seems to not forbid many things that yet it has silently condemned.

A statement is not compelled if it is "voluntarily, knowingly, & intelligently" made. Miranda v. Arizona, 384 U.S. 436, 444, 89 S. Ct. 1602, 1612, 16 L. Ed 694 (1966) In the instant case, Mrs. Jackson's statements were compelled, & given out of fear. And rather than elicit further clarification concerning the nature of her "fear of being in trouble", the district court asked her about her communications with the Petitioner. (Id @ Page ID #2299) This was achieved over Petitioner's objections when he was told by the Court to," sit down, sit down, & don't say anything else." (R. No. 186, Page ID #2298, Trial Trans. Vol. 1)

While recognizing application of the privilege in this instance, the district court erred again by admitting the privileged testimony under the "joint activity" exception. (R. No. 186, Page ID #2297, Trial Trans. Vol. 1) The Sixth Circuit has taken care to draw this exception narrowly to concern only "patently illegal activity," stating:

> "By narrowly construing the exception, we are attempting to promote the privacy of marriage & encourage open & frank material communications. **Only** where spouses engage in conversations regarding **joint ongoing or future patently illegal activity** does the public's interest in discovering the truth about criminal activity outweigh the public's interest in protecting the privacy of marriage."

United States v. Sims, 755 F. 2d 1239, 1243 (6th Cir. 1985) (Emphasis added).

The testimony about "communications" rendered in the instant case was not "**patently illegal**" making it quite distinct from many cases allowing for application of this exception to the privilege. For the court, the Legislature's intent on this 501 Rule is clearly unclear. See, Federal Criminal Code & Rules, Rule 501. Privilege in General, where it states:

> " The common law - as interpreted by United States courts in the light of reason & experience - governs a claim of privilege **unless** any of the following provides otherwise:
>
> - **the United States Constitution;**
> - **a federal statue; or**
> - **rules prescribed by the Supreme Court**

(Rule 501. Privilege in General; Rules of Evidence)

all of which finds themselves in conflict with the procedures applied by the District Court in gaining its conviction on the Petitioner. Petitioner's wife, Mrs. Jackson's testimony at trial never revealed that she intended to purchase ammunition because Mr. Jackson could not do so lawfully. But wait, when ruling on admissibility pre trial, the following exchange took place between the district court & the government:

> **The Court:** All right. Will you elicit testimony from her (Petitioner's wife) that at the time she purchased the ammunition she knew that Mr. Jackson was a convicted felon?

Ms. Lane: I would appreciate that would be her testimony, that has been her prior statement. That was provided to Mr. Jackson, he was aware.

The Court: And would it further be your intent to elicit testimony from her that she purchased ammunition on that date **because she knew her husband was prohibited from doing so?**

Ms. Lane: Yes, sir, I appreciate that that would be her affirmation.

(Id. @ Page ID #2297) (emphasis added) Ms. Lane's "**appreciations**", however, never came to occurrence, even with the leading questions by the government @ trial. There is a God, for Mrs. Jackson could not be led to incrimidate herself under questioning at trial level. Ergo, this communication remained privileged & its admission was in violation of the Fifth Amendment of the U.S. Constitution, & the rules prescribed by this Supreme Court under such cases as, United States v. Sims, 755 F. 2d 1239, 1243 (6th Cir. 1985). (Id. @ Page ID #2302-2303) There was no "**joint ongoing or future patently illegal activity**" revealed, uncovered, or otherwise mentioned by Mrs. Jackson in any of her trial testimony, so how is a violation not triggered under the "exception rule", when the exception doesn't apply? This Court should bring clarity to these issues with the Legislature intent on Rule 501 governing privileged communications between spouses & its proper interpretation in the courts.

3. Whether the gradually worsening of underrepresentation found in this case is extreme enough under "Bates" to warrant a per se systematic exclusion of African-Americans in the Eastern District of Tennessee's qualified jury wheel?

This country's commitment to the jury system, enshrined in founding documents like the Declaration of Independence & Bill of Rights, is rooted in the idea that the people should play a central role in the enforcement of societal standards. In reality, however, & in the instant case, racial discrimination in the selection of Grand & Petit juries & their forepersons is a longstanding & enduring feature of the American criminal justice system.

Prior to the Civil War, laws & customs rooted in white supremacy largely restricted jury service to white men. During the "Reconstruction" era that followed the war & the abolishment of slavery, the 14th Amendment declared all natural-born Americans - including African-Americans - citizens with all associated rights & privileges. The "Civil Rights Act" of 1875 included a provision outlawing race-based discrimination in jury service. And, in 1880, our United States Supreme Court, in Strauder v. West Virginia (100 U.S. 303 (1880)), struck down a statue restricting jury service to whites. The progress, however, was short lived.

Southern lawmakers soon stopped passing explicitly discriminatory jury service laws but continued empaneling "all white juries" during the late 19th & early 20th Centuries using highly discretionary practices controlled by white officials. In an era of racial terror - characterized by widespread lynching of African Americans - discrimination in grand & petit jury & foreperson selection allowed all white juries to remain a standard feature

even in largely black counties, empowered lynchers to exact brutal racial violence with impunity & no fear of prosecution or conviction, & rendered the Constitution's promise of full citizenship a hollow guarantee. Judicial intervention was slow & inconsistent. In 1935, our Supreme Court overturned the death sentences of the "Scottsboro Boys" in Norris v. Alabama (294 U.S. 587 (1935)) because black people had been excluded from serving on the trial jury, but then in 1945 the Court **upheld** a Texas county token policy of including exactly one black person on each **grand jury**. By the 1960s & 1970s, the Court adopted & consistently enforced a rule that jury lists & venires must represent a "**fair cross-section of the community**". (A pool of potential jurors need not precisely match the composition of the jurisdiction, but the representation of each group must be fair, & there must not be a systematic exclusion or underrepresentation of any group. A minimal disparity in a particular group's representation, such as an absolute disparity of 10%, will not ordinarily violate this principle unless some aggravating factor exist. See, Black's Law Dictionary, "Fair cross-section requirement" entry.) In response, the **method** of discrimination soon shifted from the composition of the jury pool (but not entirely), to the selection of the final jury.

In 1965, our Supreme Court considered Swain v. Alabama (380 U.S. 202 (1965)), in which the prosecutor had used "**peremptory strikes**" to exclude all six black members of the jury pool, resulting in an all white jury that ultimately convicted & sentenced the black defendant to death. Our Supreme Court's decision upholding the conviction & sentence held that the defense had not sufficiently proven intentional discrimination &

created an insurmountable standard of proof. Over the following twenty-years, **no** defendant ever prevailed on a Swain claim, & all white juries remained a standard feature of many of America's courtrooms.

And then, in 1986, the Court's decision in **Batson v. Kentucky** (476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed 2d 69 (1986)), lowered that standard of proof by creating a two-step system for evaluating claims of racially discriminatory striking. Still law today, Batson has resulted in new trials for many individual defendants but has come nowhere near eradicating racial discrimination in jury selection.

Hopefully, now that I have your attention, it is believed that no one in the history of this cause has carried this burden of proving & showing racial discrimination by perse systematic exclusion of African Americans in the Eastern District of Tennessee than the Petitioner.

This Court recognizes the existence of perse systematic exclusion in 2012 in Bates v. United States, 473 F. App'x 446 (2012), but denied the particular claim before it at the time, based upon data that demostrated under-representation at a lower rate than exists in the instant matter, however, the underrepresention found here is still lower than rates found to be substantial by this Supreme Court. See, Bates vs. U.S., 473; e.g. Castaneda, 430 U.S. at 486-87. The Bates Court stated, "Indeed, an extreme underrepresentation may be enough to establish a per se systematic exclusion." Bates @ 473 F. App'x @ 450

Unlike Bates, however, where the underrepersentation was 13%, here, the nearly 70% underrepersentation is sufficient to establish a perse systematic exclusion in the 6th District. And so disturbing is

this continuing worsening deficit, that Justice Jane B. Stranch was moved to write separately on this issue when it came up for review with the Sixth Circuit Court of Appeals, stating in pertinent part:

> "If the disparity demonstrated in this case continues, the question may merit revisiting in a future case. "Community participation in the administration of the criminal law... is not only consistent with our democratic heritage but is also critical to public confidence in the fairness of the criminal justice system." Taylor v. Louisiana, 419 U.S. 522, 530 (1975)
> - See Appx A-3 of this document.

While Justice Stranch's concurring that "... Jackson has not shown an underrepresentation **extreme enough** to establish a prima facie exclusion...", she does not say that the Petitioner **does not show one**. And by writing separately to express her "concern" in this matter, the question is left to loom in the air, of, "How much more disparity must be demonstrated before the Courts enforce the Supreme Court's standard as found in Bates, & in which the Petitioner's case is lower than in standard sufficiency?

The "systematic exclusion" in the instant matter is demonstrated, just as it was in Duren, v. Missouri, 439 U.S. 357, 366, 99 S.Ct. 664, 669, 58 L. Ed 2d 579 (1979), by a large discrepancy occurring "not just occasionally", but over the past decade of years. As the Duren court stated, "this manifestly indicates that the cause of the underrepresentation was systematic - that is, inherent in the particular jury selection process utilized". Duren, 439 U.S. @ 366, so too is it here.

As Justice Stranch alluded to in her statement, quoting Taylor, it has long been recognized that a jury representing a fair cross-section of the community is an essential tenet of the constitutional administration of justice, & that "restricting jury service to only special groups or excluding identifible segments playing major roles in the community cannot be squared with the constitutional concept of jury trial." Taylor v. Louisiana, 419 U.S. 522, 530 (1975). In the United States v. Miller, 562 F. App'x 272 (6th Cir. 2014), a panel of the 6th Circuit concluded the rate of underrepersentation in the Eastern District of Tennessee following the 2005 & 2009 jury wheels were lower than that which the Supreme Court found substantial. Yet it seems that the wrong lesson has been taken from that court's prior jurisprudence, for as demonstrated by the Petitioner's case, the Eastern District's process has again resulted statistically in worsening underrepersentation since Miller.

Challenges to the racial composition of a jury pool are reviewed de novo. United States v. Miller, 562 F. App'x 272, 280 (6th Cir. 2014); United States v. Ovalle, 136 F.3d 1092, 1100 (6th Cir. 1998). The data in the instant matter distinguishes it from Odeneal, relied upon by the Miller Court, see United States v. Odeneal, 517 F.3d 406, 412 (6th Cir. 2008), because in Odeneal the defendants did not offer evidence regarding the percentage of African Americans in their relevant judicial district. Here, by contrast, the data is well developed in the record & leads to the inescapable conclusion that the percentage of African Americans on this venire was not fair & reasonable when compared to the percentage of African Americans in the district.

Not only that, but the Courts have long recognized as well,

that a criminal defendant's right to equal protection of the laws has been denied when he is indicted by a Grand Jury from which members of a racial group purposefully have been excluded. Rose v. Mitchell, 443 U.S. 545, 556 (1979)

In order to show that an equal protection violation has occurred in the context of Grand Jury selection, the defendant must show that the procedure employed resulted in substantial underrepresentation of this race or of the identifiable group to which he belongs. Castaneda v. Partida, 430 U.S. 482, 494 (1977) And there are situations where a Motion to Quash (or to dismiss) is appropriate, & may be substainable. In Campbell v. Louisiana, 523 U.S. 392 (1989), our Supreme Court held that a white defendant has standing to challenge discrimination against African Americans in the selection of grand jurors. "Regardless of his or her skin color, the accused suffers a significant injury in fact when the composition of the grand jury is tainted by racial discrimination." Campbell, 523 U.S. @ 397

On this issue, in order to show that equal rights violations have occurred, in the context of Grand Jury selection, it is required that the defendant meets a "3-prong-test" laid out in Castaneda. U.S. v. Orville, 136 F. 3d 1092, 1104 (6th Cir. 1998) (applying Castaneda's Equal protection analysis to a defendant's claim under the 5th Amendment).

1. the defendant must "establish that his group is one that is a recognizable, distinct class, singled out for different treatment under the laws, as written, or as applied." Castaneda, 430 U.S. @ 494.

2nd. the degree of **underrepresentation** must be proved by comparing the proportion of the group in the total population to the proportion called to serve as grand jurors, **over a significant period of time.**" Id.

3rd. the defendant must establish that the selection procedure was susceptible to abuse or was not racially neutral.

Once the defendant has shown substantial underrepresentation - as done in the instant case - of his or her group, he has made out prima facie case of discriminatory purpose, & the burden shifts to the government to rebute that case." Id. @ 495

With regard to the Petitioner's Sixth Amendment challenge, the district court found there was "**significant underrepresentation**" of African Americans in the district's jury pool. (R. No. 103, Page ID #280, Report & Recommendation) The district court held, however, that this underrepresentation alone was not dispositive & that absent evidence of "systematic exclusion" of which it found none, the Petitioner's 6th Amendment claim failed also. (Id. @ Page ID # 281-283; R. No. 107 Page ID #299, Order Adopting & Approving over Objection) But an error that is not resisted is approved. And the grand jury that indicted this Petitioner was constitutionally infirm in its racial composition.

For all the reasons stated herein, the Petitioner prays this honorable Court grants this request for Petition for Certiorari.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,
in Jesus Name,

Darryl Leon Jackson

Darryl (a.k.a. Darris) Leon Jackson

Date: August 22, 2019