

No. 19-6000

ORIGINAL

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Kevin Kelly

— PETITIONER

(Your Name)

VS.

People of the State of Illinois

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Illinois

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

PETITION FOR WRIT OF CERTIORARI

Kevin Kelly

(Your Name)

2500 Rt. 99 S.

(Address)

Mt. Sterling, Illinois 62353

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether the state trial court erred in admitting the testimony of two witnesses for the purpose of showing the defendant's propensity to commit the charged offense?
2. Whether the state trial court denied the defendant his right to compulsory process under the Sixth Amendment by barring the testimony of a defense witness?

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 is unpublished.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 is unpublished.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. Kelly, 2019 IL App (4th) 160598; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

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

reported at 2019 WL 2242087; 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 is unpublished.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 May 22, 2019.
A copy of that decision appears at Appendix B.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Fourteenth Amendment to the United States Constitution.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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.

STATEMENT OF THE CASE

On August 29, 2013, the skeletal remains of Kelsie Blackford were discovered in a remote area by the Sangamon River in Champaign County, Illinois. In July 2015, Kevin Kelly was charged by Champaign County Information with three counts of first degree murder.

At trial, the evidence established that thirty percent of Ms. Blackford's remains were recovered from Bruce Artwick's property, 397 County Road 2650 North, Newcomb Township, Illinois, near where a tributary flowed into the Sangamon River. There were two major groupings of remains, with thirty to fifty yards between them. Officers discovered Ms. Blackford's state identification card and a blue sweatshirt amongst her remains.

An expert in the field of river flow and rescue operations testified that the bends of a river, obstructions, the current, and even the wind, could move a body from one side of the river to the other. He explained that it was impossible to form a precise opinion on where a body entered the river based on where the body was found. In fact, in one instance, he discovered a body five to seven miles from the location where the person was last seen. In regards to the Sangamon River, an investigator observed that sixty bridges and ten culverts crossed the river and the tributaries that flowed into the river.

A forensic anthropologist testified that Ms. Blackford's remains showed evidence of a perimortem sharp force trauma. He opined that the 29 straight-line incisions that he found in five areas on three different bones indicated a potential attempted dismemberment consistant with a knife. He was unable to testify to Ms. Blackford's cause of death. He estimated that Ms. Blackford died sometime between September 2008 and June 2013.

Deanna Blackford, Ms. Blackford's mother, testified that Ms. Blackford abused substances for years and struggled to remain in a rehabilitation

program. On September 25, 2012, Deanna asked Ms. Blackford to move out and dropped her off at a friend's home in Champaign, Illinois.

Mr. Kelly testified that he first met Ms. Blackford through Rodell Williams in late October 2012, while she was working as a prostitute, at the Bay Harbor Apartments in Champaign. While Ms. Blackford stayed with Mr. Kelly a few nights, they were not in an exclusive relationship. According to Mr. Kelly, after his first "date", Ms. Blackford called and asked him to pick her up from Mike Davis's house, which is where she lived until mid-November 2012. Andrew Good, a detective at the Champaign County Sheriff's Office, confirmed that he recovered some of Ms. Blackford's clothing, trinkets, and items from Davis's house.

Mr. Kelly said that Ms. Blackford returned to an in-patient rehabilitation program in November 2012, but that she left shortly after Thanksgiving 2012, and moved in with Lance Leonard in Urbana, Illinois. Mr. Kelly learned about her relocation when Ms. Blackford asked him to pick her up from Leonard's trailer the first week of December 2012.

Mr. Kelly initially told investigators that he saw Ms. Blackford on November 22, 2012, but then later stated that it was December 19, 2012. At trial, he explained that he had more time to think about the exact date when he last saw Ms. Blackford during the later interview, and some of the questions from his initial interview triggered his memory. Mr. Kelly said that he was with Ms. Blackford from December 17-19, 2012. During that week, he put Christmas lights for Kenny Roessler, and Ms. Blackford went with him. Roessler verified that Mr. Kelly put up the lights before Christmas, and that he brought a "young," "skinny," "white" woman with him a couple times, but he was uncertain about the date, time, or year that it happened.

Erik Dawson testified that on December 18, 2012, he gave Ms. Blackford a ride and allowed her to use his cell phone after he saw her walking outside at nighttime in Urbana. He noticed her because she was in shorts and a tank top. Detective Good stated that Ms. Blackford used Dawson's phone to text Mr. Kelly. The message was dated "Tue Dec 18, 8:30 p.m." and read: "Hey. Its [Ms. Blackford] ill meet u at

ciircle k n 5 min. They wouldnt let stay. On cunningham." Mr. Kelly said that when he picked up Ms. Blackford taht night, she was wearing "a hoodie and jeans," and he took her to a friend's, Cindy Roseman's, house. Roseman confirmed that she met Ms. Blackford on one occasion in the second or third week of December 2012, when Mr. Kelly dropped her off. Roseman gave Ms. Blackford warm clothes, which Mr. Kelly described as three sets of jeans and a pair of socks.

Mr. Kelly testified that the next day, December 19, 2012, he dropped Ms. Blackford off at Roseman's house while he continued hanging the lights at Roessler's house. Later that dy, Mr. Kelly took three photos of Ms. Blackford, wearing a blue sweatshirt, with his cell phone. That evening, he and Ms. Blackford purchased "pills." NPLEX records show that Ms. Blackford purchased pseudoephedrine/ephedrine 6:22 p.m. on December 19, 2012 in Champaign, and that Mr. Kelly purchased pseudoephedrine/ephedrine at 6:38 p.m. that same day at a nearby pharmacy.

Mr. Kelly asserted that the night of December 19, 2012, was the first and only night he and Ms. Blackford spent together in his trailer. He told investigators that it was very cold that night. He stated that Ms. Blackford was washing dishes and cleaning up in the kitchen when he went to sleep that night. When he woke up the next morning, Ms. Blackford, his wallet, which contained \$185, and his switchblade, were gone. Mr. Kelly noted that Ms. Blackford had penchant for disappearing for a week or so until she would call and ask him to pick her up.

Mr. Kelly maintained that Ms. Blackford must have called someone to pick her up that night. He testified that he went to several locations the next day to find her. When he could not find her, he went to a Verizon store to obtain his phone records to determine whether Ms. Blackford had called someone from his phone, and then deleted the call. Mr. Kelly said that Ms. Blackford had used his phone in the past, but she did not know his four-digit password. Mr. Kelly acknowledged that he claimed to be Ms. Blackford at the Verizon store, programmed a newly purchased phone in her name, and tested people professing to be her, but he said he did it in an

attempt to find her, and in turn, his wallet.

During one of his police interviews, Mr. Kelly suggested that someone had hacked his phone and erased the calls made by Ms. Blackford. At trial, when the State asked if he had "said that because [he] knew when they looked at [his] phone, there weren't going to be any calls on it," Mr. Kelly responded in the affirmative. But Mr. Kelly contended that someone had changed his voicemail while his phone was in possession of authorities in Indiana. Detective Good testified that the phone was ultimately recovered from Mr. Kelly's parents' residence, and insisted that no one had changed anything in the phone.

Mr. Kelly later clarified that he initially did not believe someone had hacked his phone, but rather that Ms. Blackford erased the numbers she had called. This is because he had noticed there were no unfamiliar incoming and outgoings calls on his phone, which contradicted his online phone records. Mr. Kelly testified that he had checked his online phone records at a friend's, John Dehaven's house because he did not have a computer. Dehaven affirmed that Mr. Kelly would stop by his house to use his computer, but he could not recall specific dates.

Mr. Kelly stated that after checking his phone records, he called many people, such as Dawson. Dawson confirmed that he received numerous calls, and that Mr. Kelly accused him of being with Ms. Blackford when his wallet was stolen, and threatened to call the authorities. In a text message dated "Fri Dec 21, 11:09 p.m. [,]" Dawson asked Mr. Kelly to leave him alone because he was not talking to Ms. Blackford and had not talked to her. When counsel asked Dawson if he recalled talking Ms. Blackford afterwards, he said he may have, and agreed that if he told officers in November 2013 that he had talked to her a few times after his conversation with Mr. Kelly, then it was true. On cross-examination, he qualified that the last time he saw Ms. Blackford was when he gave her a ride, and that even if he had spoken with her after he dropped her off, he could not remember if it was by phone or text.

Mr. Kelly said that he continued to call Dawson and Leonard for a couple of

days. He explained that he saw Ms. Blackford's footprints in the snow at Leonard's house sometime after she disappeared. Mr. Kelly also saw a tire track at Leonard's that matched a tire track that he saw near his trailer, which he photographed the morning after Ms. Blackford disappeared.

Mr. Kelly testified that he contacted other numbers that he noticed on his phone records in an attempt to find Ms. Blackford. He said that he finally stopped looking for her when he found his wallet, intact, with a note, in one of his house slippers inside his trailer a couple days before Christmas 2012. Mr. Kelly explained that the back door of his trailer was always unlocked. Mr. Kelly told investigators that his switchblade was not returned with the wallet. After Mr. Kelly realized that Ms. Blackford "was going through one of those phases" where she would disappear for a week or two, he packed up her personal property, which included the three pairs of jeans that Roseman gave her. Investigators recovered Ms. Blackford's clothing from Mr. Kelly's parent's house because they had cleared out his trailer.

Mr. Kelly's trailer was located at 2725 North 425 East, Newcomb Township, and there were five barns/buildings and cattle on the property, but he only rented out the trailer portion of the property. Mr. Kelly told investigators that he grew up in Mahomet, Illinois, and that he was familiar with the Sangamon River from Fisher, Illinois, to Mahomet. But he asserted that he had never driven from his trailer to the Sangamon River because it was impossible to do so in his car, and he had been told not to do so by the property's landlord. Andy Allen, who rented the property in 2012, said it would have been impossible to drive through the pasture depending on the weather.

Officers located Mr. Kelly's vehicle, and it appeared that the vehicle was initially a factory-painted red vehicle that had been spray painted black. Mr. Kelly told investigators that the vehicle had two mismatched license plates in an effort to evade law enforcement. Mr. Kelly had been arrested on an unrelated matter in Vermilion County, Indiana, on February 10, 2013, and had remained incarcerated

at all times since that date until trial, including on each date he was questioned by members of the Champaign County Sheriff's Department regarding MS. Blackford's case.

Nicki Bolt, an investigator with the Champaign County Sheriff's Office, testified that they developed Mr. Kelly as a suspect in the case early on in the investigation and there were no other suspects at the time. She did not interview Davis, Dawson, or Leonard. But detectives conducted eight interviews with Mr. Kelly between September 2013 and July 2015. In the initial interview, when officers showed Mr. Kelly the photos of Ms. Blackford, he said "[s]he's dead, isn't she?" Later in that same interview, Mr. Kelly turned the pictures of Ms. Blackford upside down. At trial, he explained that it was hard to look at the photograph. The State asked him on cross-examination if he had told investigators during one of the interviews "[O]kay, here is what happened. She did a big shot of heroin, I said Kelsie, stop, and she jumped over that bridge." Mr. Kelly responded, "I don't recall."

Shane Halsema testified that he was housed in the intake dorm of Putnamville Correctional Facility in Indiana with Mr. Kelly in October 2013. According to Halsema, Mr. Kelly said, "he had messed up, done something he shouldn't have done." Mr. Kelly "said that he had a call girl over at his house and that she tried to take some money and things led to other things and he ended up throwing her in the river." According to Halsema, Mr. Kelly said "[h]e could drive back to [the river].*** It was close to his house." Halsema testified that the following day, Mr. Kelly referenced the first conversation and "just asked [him] not to ever mention it to anybody." Halsema stated that he had no knowledge about the situation with Mr. Kelly or the case prior to the conversation. A correctional officer at Putnamville Correctional Facility testified that the intake dorm did have access to telephones and television sets.

On cross-examination, Halsema admitted he initially provided the information to investigators because he wanted something in return for himself. Indeed, Halsema sent numerous letters to the State threatening to "plead the Fifth" if they did

not him out for his testimony. But, according to Halsema, he never received a deal on his case. Mr. Kelly testified that he did have a conversation with Halsema, but he had been interviewed three times by the Champaign County Sheriff's Office by that time, so he talked about the case a lot because it troubled him. Mr. Kelly acknowledged that Halsema must have heard the details of the case from him. ~~Quesada~~

Curtis Wilson testified that he was in the Champaign County Jail in late 2013 for around three months. He met Mr. Kelly at a church service he attended with eight to ten people. Before the service started, he said he overheard Mr. Kelly admit to killing a woman north of Mohamet, and driving her to the river. Wilson did not take Mr. Kelly seriously so he did not contact anyone. But he contacted authorities in August 2015 when he saw on the news that Mr. Kelly was suspected of a murder. Mr. Kelly testified that he did not recall Wilson, but it was possible he was talking about his case in the common area at the bible study because he had been interviewed six times at that point.

The State introduced Theresa Kane's testimony to show Mr. Kelly's propensity to commit domestic violence. Kane testified that she dated Mr. Kelly for seven months in 2009 while she was living in Indiana. She testified that in the summer of 2009 Mr. Kelly took her into the woods, bound her hands tightly, gagged her with a handkerchief, and told her he was going to tie her to a tree and leave her there all night. Mr. Kelly ended up not leaving her there, but she said she was tied up for an hour and a half to two hours.

Kane testified that in the winter of 2009/2010, Mr. Kelly took her to a back road less than a mile into Illinois. She did not have on gloves or a scarf, but he made her get out of the car and he left her in a deserted area. Kane walked roughly an hour before she got to a house. During the walk, Mr. Kelly went back for Kane, but she hid whenever she saw him driving down the road, and she did not answer when he called out her name.

The occupants of the house called Mr. Kelly to pick her up. Kane said Mr. Kelly acted nice when he picked her up, but he later hit her, spit chew at her, and threw

in the back of his truck. She said Mr. Kelly drove to a bridge over a waterway, hit her again, and held her over the side of the bridge by one of her legs. When she said she did not want to die, he pulled her back up and put her in the back of his truck. Right before they reached town, he had her come up to the front of the truck.

Kane testified that in late 2009/early 2010, when they were no longer dating, she went to Champaign with Mr. Kelly to purchase "pills." On the way to Champaign, Kane said she was scared of Mr. Kelly because he removed the battery out of her cell phone. When Kane went into the pharmacy, she said she told the store workers that she was afraid that Mr. Kelly might hurt her, and asked them to hide her until he left or until she could get another ride. When they mentioned calling the police, Kane told them Mr. Kelly had not "done anything yet but [she] was just scared to get back into the car." The store workers hid her for a while, but when Mr. Kelly did not leave, the store workers asked her to leave.

Kane said she ended up walking to Mr. Kelly's friend's, Roseman's house, where she had been numerous times, and stayed there that night. According to Kane, when Mr. Kelly picked her up the next day to take her back to Indiana, he started punching and hitting her once she was in the car, and asked her where her money was. Mr. Kelly drove a few blocks, stopped the car, and told Kane to get into the truck of his car. She said he drove while she was in the trunk of his car for roughly fifteen minutes before he let her get into the front of the car. Kane said she told Roseman about that incident, which Roseman confirmed. Roseman testified that she asked Mr. Kelly about the incident four months after she heard about it, and Mr. Kelly agreed that what Kane had reported was true.

On cross-examination, Kane testified that she was using methamphetamine daily before, during, and after her relationship with Mr. Kelly. She acknowledged that she never reported these incidents with Mr. Kelly to the authorities, but attributed it to her drug use. She admitted having two pending matters in Indiana for theft, and possessing precursors/maintaining a common nuisance. Mr. Kelly denied Kane's allegations.

The State also introduced Adreian White's testimony to show Mr. Kelly's propensity to commit domestic violence. White, an escort, testified that she met Mr. Kelly in 2011 when a friend of hers introduced them. In the year and a half that she saw him, he paid her to spend time with him five or six times, and she saw him about twenty-five times with other escorts. The last time she saw Mr. Kelly, at the beginning of 2013, she ended up hanging out with him for close to three hours. When it did not seem like Mr. Kelly wanted to give her the money for her to leave, she walked over to where the \$250 in cash was located and picked it up. Mr. Kelly pushed her back towards the bed, got on top of her, and started to choke her. When White dropped the money on the floor, Mr. Kelly grabbed the money and left.

On cross-examination, White testified that Mr. Kelly had only put his hands on her that one time. White denied knowing Rodell Williams, and insisted that she was the only one who arranged her clientele. When the State called Williams as a rebuttal witness, he testified that he introduced Mr. Kelly to White, and that Mr. Kelly told him he stopped seeing her because she tried to take his money. Mr. Kelly denied even knowing White, but he said it was possible that he would pay someone for sex multiple times and completely forgot about it.

Williams testified that he also introduced Ms. Blackford and Mr. Kelly, and the three of them partied together in the winter of 2012 at different locations in Champaign and in Terre Haute, Indiana. Williams said at one time, while the three of them were driving to Terre Haute, Mr. Kelly struck Ms. Blackford on the side of the face in the midst of an argument. According to Williams, on a different occasion, Mr. Kelly told him that he held Ms. Blackford "hostage" in a house because she had tried to take his money. Williams described another instance where he and Mr. Kelly saw Ms. Blackford outside at the gas station, and Mr. Kelly jumped out of the car, "choked her up," and threw her in the car "by the neck."

Williams testified that he heard Mr. Kelly threaten Ms. Blackford. Specifically, Mr. Kelly told Ms. Blackford that he would kill her if she did not answer her phone and that "if [he] ain't going to be with [her], nobody will." Williams admitted that

Williams admitted that he never called the authorities and he never tried to protect Ms. Blackford. Mr. Kelly denied ever being in the same car with Williams and Ms. Blackford, and denied all of Williams's allegations.

Kelly Miles testified that Ms. Blackford was an acquaintance of hers in the latter half of 2012, and they did heroin together a couple times a week for a couple of months. Miles said that the first time she met Mr. Kelly, he offered (and eventually paid) a hundred dollars to call him when she saw Ms. Blackford in the Bay Harbor Apartment complex. According to Detective Good, Mr. Kelly mentioned during an interview that he had offered to pay Miles up to a hundred dollars each time to locate Ms. Blackford for him. Mr. Kelly explained at trial that he had offered to pay Miles twenty dollars to find Ms. Blackford in order to locate his wallet, but he was unsure if he paid her or about the specific details of that interaction.

Miles said that at some point, maybe October 2012, she observed bruising on Ms. Blackford's face. Ms. Blackford told Miles that she was at Mr. Kelly's trailer when he got angry, hit her, duct-taped her feet and her hands, and left her for a long time, before eventually releasing her. Miles testified that she asked Mr. Kelly about Ms. Blackford's allegations, and though he denied it, he admitted that it was true a month later.

When counsel asked Miles if she could recall telling officers that the incident with Ms. Blackford and Mr. Kelly occurred five months prior to her September 2013 interview with them (so in April 2013), she said it was possible. Mr. Kelly told investigators that he used Miles to buy and sell prescription pill boxes throughout the area, and that she was upset at him because she "wasn't compensated as she believed she should have been, and as a result of that, she had hard feelings towards him."

Ronald Rhodes testified that he was living with Miles in 2012, and he never saw Mr. Kelly being violent with Ms. Blackford. He testified that he saw Ms. Blackford with a white man in a white car twice in February 2013, once in the apartment parking lot and another time at a nearby gas station. On cross-examination, Rhodes admitted that he initially told the defense investigator that the last time he saw Ms. Blackford

was around Christmas 2012.

Dehaven testified that he had known Mr. Kelly for ten years, and that he saw Mr. Kelly and Ms. Blackford together three or four times in 2012. He said he did not see bruising on Ms. Blackford during those times, and he never saw Mr. Kelly being violent with Ms. Blackford.

Scott Mathews testified that he met Ms. Blackford in 2005 through her grandmother. He bailed Ms. Blackford out of jail in June/july 2012, and she lived with him until August 2012. After he asked Ms. Blackford to move out of his apartment, he saw her in September 2012 with an African American man who went by the street name Chico. He also saw Ms. Blackford in November 2012, right before Thanksgiving, and she had sores on her face, was really skinny, and "didn't act like herself." Based on his observations of her he believed Ms. Blackford was abusing substances again.

Candice Johnson testified that she contacted the authorities in September 2013 when she learned that Ms. Blackford was missing. Ms. Blackford had dated a friend of hers, Davis, in early 2013, and they hung out two to three times. She testified that she saw Ms. Blackford at a Narcotics Anonymous meeting in spring 2013. On cross-examination, she acknowledged that she told officers the last time she saw Ms. Blackford was at the beginning of 2013, and that she might have last seen Ms. Blackford in late 2012 on a warm day. Detective Good, however, confirmed that Johnson told him in September 2013 that she believed she had last seen Ms. Blackford in February or March 2013.

Mr. Kelly unequivocally stated he did not kill Ms. Blackford. But the jury found him guilty of first degree murder.

Posttrial Motions and Sentencing

In May 2016, counsel filed a motion for acquittal, or in the alternative, motion for a new trial. Counsel subsequently filed an amended motion for acquittal, or in the alternative, motion for a new trial on June 16, 2016. Counsel argued, inter alia, that the court erred in allowing Kane and White to testify to alleged incidents of violence, and erred in not allowing Mathews to testify that an African American

male MS. Blackford was seen with in September 2012 was a known drug dealer, and that he knew this through personal knowledge. As to the propensity evidence, the court noted that it had made detailed findings as to Kane's testimony and White's testimony prior to trial, and relied on those findings. In regards to Mathew's testimony, the court found that his testimony was speculation, hearsay, and irrelevant to the time frame. The court denied Mr. Kelly's posttrial motion.

Prior to sentencing Mr. Kelly, the court stated:

"There are significant factors in aggravation that do apply. One of those factors is the effect on the victim, and in this case, the victim's family. Obviously inherent in the offense of murder, it is the most egregious harm anyone can suffer, which is the loss of their life. But here there's an impact on the survivors, and it is evident from the victim impact statement that was read here in court that it is a sizable and immeasurable pain that they are suffering, and will continue to feel the loss of. The court will not denigrate that by reiterating the statement we've just heard, but it's apparent that Ms. Blackford's death at age 23 has left a vacuum for her family, for her parents, and for her son. The knowledge that the family has as to the circumstances of her death and how her remains were treated is something that they'll have to bear as well, and that exceeds what would be inherent in the definition of murder itself."

The court sentenced Mr. Kelly to 60 years' imprisonment.

Counsel filed a motion to reconsider sentence on July 28, 2016, which the court denied.

Direct Appeal

Mr. Kelly filed an appeal with the Fourth District Appellate Court of Illinois on

On appeal Mr. Kelly argued, inter alia, that the trial court erred in admitting White's and Kane's testimony where White was not protected under the Illinois Domestic Violence Act, and the degree of factual dissimilarities between Kane's propensity evidence and the charged offense rendered her testimony more prejudicial than probative. *People v. Kelly*, 2019 IL App. (4th) 160598, paras. 74-82, 91-107 (Turner, J., specially concurring). Mr. Kelly also argued, iter alia, that the trial court erred when it barred Mathews from testifying, and that the trial court erred when it improperly used a factor inherent in the offense of murder in sentencing Mr. Kelly to the statutory maximum. *People v. Kelly*, 2019 IL App. (4th) 160598,

paras. 111-114, 115-117.

This appeal was denied on January 22, 2019.

A Petition For Leave to Appeal to the Illinois Supreme Court was filed on February 26, 2019. PLA was denied on May 22, 2019.

This Petition for Certiorari follows.

REASONS FOR GRANTING THE PETITION

1. The trial court's admission of two witnesses' testimony went against clearly established United States Supreme Court precedent and Court of Appeals precedent where the degree of dissimilarity between the propensity evidence and the charged offense indicated the testimony was more prejudicial than probative.

All criminal defendants are guaranteed a fair trial in state court under the Fourteenth Amendment of the United States Constitution. XIV Amend., U.S. Const.

Standard of Review

The United States Supreme Court reviews state court decisions *de novo*. Cone v. Bell, 556 U.S. 449, 129 S.Ct. 1769(2009).

The Seventh Circuit COurt of Appeals has established a four-part test for admissibility: (1) the evidence is directed toward establishing a matter in issue other than a defendant's propensity to commit the crime charged, (2) the evidence shows that the other act is similar enough and close enough in time to be relevant to the matter at issue, (3) the evidence is clear and convincing, and (4) the probative value of the evidence is not substantively outweighed by the danger of unfair prejudice. United States v. Shackleford, 738 F. 2d 776(7th Cir. 1984).

In this case the State presented two witnesses, Adreian White and Theresa Kane, who testified that at seperate times in 2009/2010 they were physically abused by the Petitioner. Specifically, White testified that the Petitioner "choked" when she was acting as an escort. The State argued that White's testimony bore a high degree of similarity to the charged offense because it involved "choking." (C. 32,48). Kane testified that at one time the Petitioner tied her up and left her in the woods for a time, and another he had hit her.

This testimonial evidence was introduced for no other reason than to show the Petitioner's propensity to commit the charged offense, a practice that is clearly and widely prohibited. See, United States v. Lee, 724 F. 3d 968(7th Cir. 2013) (Reversed for abuse of discretion in allowing propensity evidence); United States v. Daniels, 770 F. 2d 1111, 1116(D.C. Cir. 1985) ("The exclusion of a bad acts evidence is founded not on a belief that the evidence is irrelevant, but rather on a fear that juries will tend to give it excessive weight, and on a fundamental sense that no one should be convicted of a crime based on his or her previous misdeeds."), citing Michelson v. United States, 335 U.S. 469, 475-76, 69 S. Ct. 213(1948); United States v. Bowie, 142 F. 3d 1301(D.C. Cir. 1998)(following Daniels).

The evidence also fails to meet the second Shackleford prong. The State was unable to present any evidence of how the victim was killed or any details of a struggle. There was therefor no basis to believe that she had been treated similarly

to how the two witnesses were allegedly treated. See Shackleford, 738 F. 2d 776; also, United States v. Hudson, 843 F. 2d 1062, appeal after remand 884 F. 2d 1016, rehearing denied, cert. denied 465 U.S. 1015, 104 S. Ct. 1328 (7th Cir. 1988) ("Other crime" evidence of larceny that defendants were alleged to have committed not admissible absent proof that larceny was similar in nature to charged crime.)

In addition, the State was unable to establish a time of death, estimating it to be between two months and five years. This removes any possibility of establishing a proximity of the other crimes evidence to be relevant or probative.

The evidence similarly fails to meet the third and fourth prongs of Shackleford. There was absolutely no physical evidence presented connecting the defendant to the victim's death or remains; no one witnessed the defendant with the victim when she died; no cause or time of death was clearly established; the defendant did not confess. The evidence against defendant consisted of his past relationship with the victim, the proximity of his home to where the victim's remains washed up, and the propensity evidence.

Under no circumstances could this be characterized as clear and convincing evidence of guilt. See United States v. Sumlin, 271 F. 3d 274 (D.C. Cir. 2001) (Other crimes evidence is admissible only if all of teh evidence at thrial is sufficient to support a jury finding that the defendant committed the other crime or act.)

The testimony, in light of this, is however extremely prejudicial. See United States v. Myles, 96 F.3d 491(D.C. Cir. 1996) (Other crimes evidence is always prejudicial to a defendant because it diverts attention of a jury from the question of defednat's responsibility for crime charged to improper issue of his bad character.); United States v. Lavelle, 751 F. 2d 1266 (D.C. Cir. 1985), cert. denied 474 U.S. 817, 106 S. Ct. 62 (Generally, similarity of other bad-acts evidence to charged offenses increases danger that jury will confuse issues necessary to convict defendant.); See also United States v. Myers, 550 F. 2d 1036, 1044(5th/Cir. 1997) ("a concomitant of the presumption of innocence is that a defendant must be tried for what he did, not who he is.")

2. The trial court violated petitioner's Sixth Amendment right to Compulsory Process when it barred the testimony of a witness who would have testified to seeing the victim with a known drug dealer shortly before her supposed time of death.

"The Sixth Amendment guarantees the accused the right to 'have compulsory process for obtaining witnesses in his favor'" Harris v. Thompson, 698 F.3d 609 (7th Cir. 2012), quoting IV Amend., United States Constitution. This, along with the Due Process Clause of the Fourteenth Amendment, embody the right of the accused to present a defense.

Standard of review

The United States Supreme Court reviews state court decisions *de novo*. Cone v. Bell, 556 U.S. 449, 129 S. Ct. 1769 (2009).

At trial the defense sought to call Scott Mathews, who would have testified that he saw the victim with a person he knew as a drug dealer. The State objected to this introduction on the grounds that the evidence was speculative and irrelevant. The trial court agreed.

"The right to offer the testimony of witnesses, and to compel their attendance, ...is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." Washington v. Texas, 388 U.S. 14, 19, 87 S. Ct. 1920 (1967). "Few rights are more fundamental than that of an accused to present witnesses in his own defense." Taylor v. Illinois, 484 U.S. 400, 408, 108 S. Ct. 646 (1988). The Compulsory Process right is an "essential attribute of the adversary system itself," Taylor, 484 U.S. 408, and "imperative to the function of the courts," which "depend on fuller disclosure of the facts, within the framework of the rules of evidence." United States v. Nixon, 418 U.S. 683, 709, 94 S. Ct. 3090 (1974).

In Scheffler, this Court held that the exclusion of defense evidence "abridge[s] an accused's right to present a defense" where the restriction is "'arbitrary' or 'disproportionate to the purposes' [it is] designed to serve," and the evidence "implicate[s] a sufficiently weighty interest o the accused." United States v. Scheffler, 523 U.S. 303, 308-09, 118 S. Ct. 1261 (1998), quoting Rock v. Arkansas, 483 U.S. 44, 56, 107 S. Ct. 2704 (1987). In order to establish that his right to compulsory process was violated by the exclusion of Mathews' testimony, petitioner must show

that (1) the testimony would have been both "material and favorable" to his defense, United States v. Valenzuela-Bernal, 458 U.S. 858, 867, 102 S.Ct. 3440(1982), and (2) that the exclusion was "arbitrary" or "disproportionate" to the evidentiary purpose advanced by the exclusion, Scheffler, 523 U.S. at 308, quoting Rock, 483 U.S. at 56.

Mr. Mathews testified that he saw the victim with a known drug dealer in September 2012, just months before the earliest date of her assumed disappearance and death. Mathews was not allowed to go into the fact that this man was someone he knew through personal knowledge as being a heroin dealer. The trial court, out of the jury's presence, ruled that this would not be allowed in because it was speculative and irrelevant to the time frame as well as hearsay. However, Mathews would have testified to his own knowledge of an event close in time to the alleged death, and such testimony was very relevant to the defendant raising the possibility that this other person may have been involved with Ms. Blackford's death, something he had maintained from the beginning.

It is well established that a criminal defendant may offer evidence that someone else committed the crime for which he is on trial. The defendant attempted to do just that and the trial court denied him this right.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kevin Kelley

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