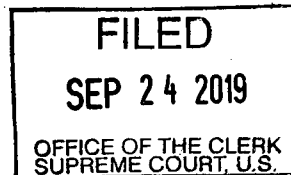


19-641 ORIGINAL
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Dennis Jones — PETITIONER
(Your Name)

vs.

State of Arizona — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Arizona, State Court of Appeals (Arizona)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Dennis Jones #232996
(Your Name)

P.O. Box 5000 Florence/East.
(Address)

Florence AZ 85132
(City, State, Zip Code)

(Phone Number)

Questions Presented

- 1) whether The State Court of last resort Decided an important Federal Question in a way That conflicts With The Decision of This Court, where Petitioner's Sixth Amendment right to Counsel was violated, by (A) Counsel's absence at a "Critical Stage", and (B) His Absence Pervading The Entire Proceeding?
- 2) whether The State Court of last resort Decided an important Federal Question in a way That conflicts With This Court, where (A) The "Show up" Identification was Suggestive (B) Unreliable (C) in violation of Due Process of law?
- 3) whether The State Court Decided an important Question of Federal law in a way That conflicts With This Court Decision implicating Due Process violation, where (A) The Jury returned verdicts That The Essential Elements of Offense Were not Proven, (B) The Judge stated, "In This Case We Have Nothing on Defendants Side as Far as intent" ?
- 4) whether The State court rendered a Decision on a Federal Question in a way That conflicts With This Court Decision where (A) Cumulative Effect of Prosecutorial Misconduct, (B) Combined error of Counsel, Deprived Petitioner of His Due Process right to a Fair trial and Effective Assistance of Counsel?

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:

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 C 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 ARIZONA COURT OF APPEALS court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

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 July 22, 2019.
A copy of that decision appears at Appendix C.

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

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (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

United States Constitution Article V.

No Person shall be held to answer for a Capital, or otherwise infamous Crime, unless on a Presentment or indictment of a Grand Jury, except in Cases arising in the Land or Naval Forces, or in the Militia when in actual Service in Time of War or Public Danger, nor shall any Person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[Article VI]

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 where in the Crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of 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 defense.

[Article IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the People.

[Article XIV]

Section 1. All Persons born or naturalized in the United States, and subject to the Jurisdiction thereof, are citizens of the United States 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.

TABLE OF CONTENTS

OPINIONS BELOW	1.
JURISDICTION.....	2.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3.
STATEMENT OF THE CASE	7.
REASONS FOR GRANTING THE WRIT	12.
CONCLUSION.....	20.

INDEX TO APPENDICES

APPENDIX A Trial Court Ruling RE: P.C.R. SEE R.C.A. at items 305-318.

APPENDIX B ARIZONA COURT OF APPEALS DECISION: P.C.R. REVIEW.

APPENDIX C ARIZONA SUPREME COURT DECISION DENYING REVIEW.

APPENDIX D Indictment stating Elements of Charge, Verdicts Showing Elements not Proven.

APPENDIX E Trial Counsel's Suspension and Sanction For Repeating SAME Conduct
AS DONE IN PETITIONER'S CASE.

APPENDIX F Jury Question Showing THEY were Confused when Deliberating and convicted
Petitioner Based on THE Criminals Conduct, not His own.

APPENDIX G. PROOF THAT EVIDENCE EXIST THAT THE VICTIMS GAVE FALSE TESTIMONY at
Petitioner's Trial To convict Him. THEN GAVE TESTIMONY at Co-Defendant's
Trial That could exonerate Petitioner.

* ARIZ. R. Crim. P. 31.20.(F) motions not Permitted.

No Party may file a motion on order Denying a Petition For Review
By The Supreme Court of ARIZ.

TABLE OF AUTHORITIES Cited

CASES:	PAGE NUMBER.
Anderson v. Butler, 23 F.3d 593, 595 (1 st cir. 1994).	Pg 14
Cox v. Hutto, 589 F.2d 394, 296 (8 th cir. 1979).	Pg 13
Clark v. ARIZONA, 548 U.S. 735, 766 (2006).	Pg 16
Flowers v. Blackburn, 779 F.2d 1115, 1121-22 (5 th cir. 1986)	Pg 15
Hodge v. Hurley 426 F.3d 368, 377 (6 th cir 2005)	Pg 13
In re Winship, 397 U.S. 358, 364 (1970)	Pg 16
JACKSON v. Virginia 433 U.S. 307, 318-19, 99 S.Ct. 2781 L.Ed.2d 560 (1979)	Pg 18
MASSIA v. U.S., 377 U.S. 201, 204 (1964).	Pg 12
Paige v. Schriro, 648 F.Supp.2d 1151 (D.Ariz. 2009) P1178.	Pg 12
Satterwhite, 486 U.S. at 256.	Pg 12
Sandstrom v. Mont 442 U.S. 510, 514 (1979).	Pg 15
Strickland v. Washington, 466 U.S. 668, 687-88, 691-92 (1984).	Pg 19
Sullivan v. Ia 508 U.S. 275, 278 (1993).	Pg 16
U.S. Broxmeyer, 616 F.3d 120, 125 (2d cir 2010).	Pg 12
U.S. v. Cronic 466 U.S. 648, 659 n.25 (1984)	Pg 12
U.S. v. Cormier 468 F.3d 63, 73-74 (1 st cir. 2006).	Pg 13
U.S. v. Cottonam, 88 F.3d 487, 499 (7 th cir. 1996).	Pg 14
U.S. v. Garcia Guizar, 160 F.3d 511, 520 (9 th cir 1998).	Pg 13
U.S. v. Smith, 982 F.2d 681, 684 (1 st cir 1993)	Pg 13
U.S. v. Box Nevils 598 F.3d 1158, 1167 (9 th cir. 2010).	Pg 12
United States v. Wade 338 U.S. at 224, 218, 236-37 (1967).	Pg 12
Patterson v. Gomez, 223 F.3d 959, 962-63 (9 th cir 2000)	Pg 14
People v. Richardson, 222 N.Y. 103, 118 N.E. 514 (1917).	Pg 13
Chzin v. Shumsky, 373 F.3d 978, 983 (9 th cir 2004)	Pg 17
Brown v. Palmer, 411 F.3d 347 (CA.6 2006)	Pg 18

STATUTES And rules

PAGE number

ARIZONA REVISED ~~STATES~~ STATUTE:

§ 13-301.

Pg 17

§ 13-1203. § 13-1204.

Pg 17

§ 13-1902. § 13-1904.

Pg 14. Pg 17

ARIZONA RULES OF CRIMINAL PROCEDURE:

RULE 17.6

Pg 13

RULE 20(a)

Pg 11

RULE 20(B)

Pg 11

Statement of The Case

Petitioner, Dennis Jones, was convicted by a jury of the crime of Armed robbery. He was sentenced to an Aggravated Term of Eighteen Years in Prison by The Maricopa County Court of Phoenix, Arizona, on August 7, 2015.

Petitioner Jones and two co-defendants were charged with two counts of Armed robbery, two Aggravated Assaults and one Misconduct with a Weapon. Mr. Jason Goldstein represented Petitioner. Arresting officers reported that they were informed by the victims, who are husband and wife, that Petitioner was nice and polite to them and that they were under the impression that Petitioner did not know the other two were planning to rob anyone. And that one co-defendant tried to offer Petitioner their property but he refused to accept it. The male victim reported to officers that he heard Petitioner tell the co-defendants to give the property back to the victims at which point they received their items back. See (R.O.A. at item 39) After Petitioner was arrested Officer Samantha Pimentel and Officer Tech Tan performed an unconstitutional, impermissibly suggestive, "show up" identification. victim (1), Roger Mahuwe could not positively identify Petitioner. See (R.T. June 5, 2014 at 124-126) Asante Ashor, victim (2) testified that right after co-defendant, Mills robbed her, he instructed her to get in her car and put her head down, and that she stayed in that position until she "heard" Petitioner's car leave, and that she could not see in Petitioner's car and that Petitioner never got out of the car. See (R.T. June 5, 2014 at 91-95)

Ironically, ASunte identified Petitioner during the "show up" I.D. while no other suspects were present during trial. ASunte even gave a description of what Petitioner was wearing the night of Sept. 1, 2012. SEE (R.T. June 5, 2014 at 95-97).

Officer Samantha Pimintel testified that the victims gave a description of the ~~set~~ suspect and a clothing description "one had on a jersey." - Petitioner. SEE (R.T. Sept. 29, 2014 at 34) ON Sept. 20, 2013 at an identification hearing this same officer testified in the presents of this same prosecutor, that ASunte could not give any description of Petitioner, she could only describe Petitioner as an African American male. Both victims was present at that hearing, both co-defendants and both of their counselors. However, neither Petitioner nor his defense counsel was present. And counsel's absence pervaded the entire proceeding." SEE (R.T. Sept. 20, 2013 at 1-40)

During trial the prosecutor told the jury: [Petitioner "was an active participant and he gets to have accountability for all three of their actions because he was an active participant." SEE (R.T. Oct. 2, 2014 at 53-54)

"Dennis never got out of the car but because he is an accomplice in this crime he gets the actions of Carl and Barnett" SEE (R.T. Id at 26)

"We know these were the three men who robbed Roger and ASunte." SEE (R.T. Oct. 2, 2014 at 20-21)

"The defendant lies" (Id at 22)

Prosecutor: "The DEFENDANT IS ¹Guilty OF ALL THREE OF THESE CRIMES." SEE (R.T. Oct. 2, 2014 at 24). "The DEFENDANT IS ²Guilty OF The Armed robbery." SEE (Id at 27). "Dennis Jones is ³Guilty OF The Armed robbery Against roger, And He's also ⁴Guilty OF Armed robbery Against ASunte, He's also ⁵Guilty OF Aggravated assault Against Both OF Them." SEE (Id at 29). Dennis is ⁶Guilty OF The Armed robberies, He is ⁷Guilty OF The Aggravated ASSAULTS, And He is ⁸Guilty OF The misconduct involving weapons." (Id at 54)

"He gets Full Accountability, gets To HAVE Full Accountability For what They did."

The DEFENDANT IS ⁹Guilty OF Armed robbery. He is ¹⁰Guilty OF Aggravated ASSAULT And He is also ¹¹Guilty OF misconduct with a weapon. This evidence From what I recall And ASunte Told You HAPPEN Should leave You firmly Convicted That The defendant is ¹²Guilty. Thank you. SEE (R.T. at Oct. 2, 2014 at 55)

"How would He know That roger and ASunte were lucky To BE Black? IF HE DID KNOW what was going on. The only way HE KNOWS THAT They ARE lucky To BE Black And That They weren't going To be Shot And Killed REGARDLESS IF They Turned Around And Didn't look at The licence Plate And Didn't call The Police is BECAUSE HE KNEW what was going on. That is why He is an ACTIVE Participant BECAUSE HE is The only one who Told Them You're lucky To BE Black." SEE (Id at 54-55) NOTE: The victims didn't make These statements only The Prosecutor Did. SEE (R.T. SEPT. 24, 2014 at 102-103)

(Eliciting racial Biases) (Indirect comment on Failure To take The Stand.)
(Personal Opinions).

So According To Defendant's Theory Shouldn't Believe It But Even The Defendant Agrees That's What Was Said. He Said That's What He Told Him Before He Drove Off." SEE (Id at 52)
This Was False. SEE (R.T. Oct. 1, 2014 at 36)

"Defendant wants you to believe that Asunt got Her Property Back. . . . Well Defendant (.) NEVER GAVE THAT PROPERTY BACK. That's not What Asunt Told You Because The Evidence Comes From The Stand." SEE (Id at 50) (Comment on Failure to Testify)

"You Have a Stipulation That Was Read To You That The Defendant Does Have a Felony Conviction. He Had Gone Through The Process And He Could Not Possess a Weapon. (Id at 28)

All The Improper Statements Came From The Prosecutor In The State's Closing Argument.

Juror ~~86~~ is Bias Who Believes Law Enforcement Simply Because Their Law Enforcement. SEE (R.T. Sept. 22, 2014 at 50)

After The State Rested In Arguing, The Jury Returned Guilty Verdicts on All Count. SEE (R.T. Oct. 6, 2014 at 1-10).

After The Jury Returned Guilty Verdict, Ironically They Asked The Court, "Are We Answering These Questions With Only Dennis In Mind or ~~Are We~~ An Is He Held Accountable For His Co-Defendants. SEE (R.T. Oct. 6, 2014 at 13-14) See exhibit F) ^{APPENDIX}

Trial Court stated: "There's no evidence Defendant ever threatened anyone Barnett was the one with the gun."

Again Based on the testimony the only thing we might be able to consider is the driving away by way of Aiding."

DUE PROCESS Prohibits instruction requiring jury to Presume ultimate Fact from Predicate Fact. Determining Nature of Presumption Created by Court's instruction requires Attention to words actually spoken to jury. SEE Sandstrom v. Mont, 442 U.S. 510, 514 (1979).

Actual words spoken by Prosecutor:

"Evidence Doesn't show that He threatened, Evidence Doesn't show that the gun was in his hands or that He took the property from their immediate presence or that He was even out of the car. But because He is an active participant He gets the Actions of all three. What Carl did Dennis did, what Mills did Dennis did. He gets to be held accountable for their actions cause they all work together." See (R.T. Oct. 2, 2014 at 51-54).

"Unconstitutional mandatory presumption created by instruction that all participants in crime 'are principals and equal offenders and subject to the same punishment.' SEE Flowers v. Blackburn, 779 F.2d 1115, 1121-22 (5th Cir. 1986);

The elements charged in the indictment the jury found not proven. SEE (R.O.A. at items 35-37) (Appendix D)

Petitioner contends that these are the essential elements of Armed robbery and Agg. Assault, and that the Jury convicted Petitioner because they ~~seem~~ succumbed to the Prosecutor's improper comments and unconstitutional verbally instructed mandatory presumptions that confused the Jury causing them to misapply misapply the reasonable doubt standard. This is shown by the fact that they convicted Petitioner, yet returned verdict that "The essential elements constituting the offense that Petitioner was charged by indictment of committing" were not proven.

This Court holds that "Defendant is innocent unless and until the Government proves beyond a reasonable doubt each element of the offense." See In re Winship, 397 U.S. 358, 364 (1970); see also Clark v. Ariz., 548 U.S. 735, 766 (2006). The Winship reasonable doubt standards apply in both state and federal proceedings. See Sullivan v. La., 508 ^{U.S.} ~~275~~ 278 (1993) (Winship at 370) Justice Harlan noted that the standard is founded on "a fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty one go free. Id. at 372. Petitioner's Due Process right has been violated. The state court of last resort has rendered a decision of an important federal question in a way that conflicts with relevant decisions of this Court and has abandoned its obligations entrusted upon it, of protecting federal constitutional rights of its citizens of which I am one. It is ^{public} ~~national~~ importance for this Court to except jurisdiction and grant the writ not only for Petitioner, but for others

Similarly Situated, why? BECAUSE in criminal cases facts are to be firmly established (beyond a reasonable doubt), not conclusions of law alone. A crime is made up of acts and intent as defined by state law. See Chen v. Shumsky, 373 F.3d 978, 983 (9th Cir. 2004)

The State Court is using, and has used, The Accomplice Theory To convict defendants of criminal offenses without establishing "any" of the ~~proper~~ requisite elements. The offenses petitioner was convicted of are not offenses of strict liability; on the contrary, each one requires "intent." Even The Accomplice Theory itself requires intent. See ARIZ. R. Statute § 13-301) Lower court doesn't agree. See (R.T. Oct. 1, 2014 at 48-51)

1 Arm robbery requires using threats to coerce surrender of property and preventing the owner from retaining the property and using or threatening to use a dangerous weapon - a gun. See ARIZ R. Statute § 13-1901-13-1904.

The victims testified themselves that petitioner helped them get their property back and that petitioner made them feel safe and ^{gave} them courage to ask for their property. See (R.T. 6/5/14 at 107-108); (R.T. 9/29/2014 at 17-18) (Id at 27-32); (R.O.A. at item 39)

Aggravated Assault requires:

1. Causing serious physical injury to another
2. Using a deadly weapon or dangerous instrument. See ARIZ R. Statute § 13-1204

Every charge including The Accomplice Theory requires Intent. See Id. at § 13-301.

- 1) Nothing on Defendants Side as far as intent. (R.T. Oct. 6, 2014 at 18.)
- 2) no evidence Defendant ever Threatened anyone. (Id at 18-20)
- 3) USE OF A DEADLY WEAPON To wit: a Gun Not Proven (Appendix D)
- 4) The OFFENSE CAUSE SERIOUS PHYSICAL INJURY Not Proven. (Appendix D)

These are not simply Sentencing Aggravators These are the ESSENTIAL ELEMENTS OF THE OFFENSE. SEE (Appendix D)

Petitioner contends that the evidence ^{was} construed in FAVOR OF THE Government, yet was still insufficient to establish ~~every~~ ^{EVERY} element OF THE CRIME, Such as The verdict was BASED ENTIRELY ON SPECULATION INSTEAD OF REASONABLE DOUBT AND THERE WAS A TOTAL FAILURE OF PROOF OF THE REQUISITE ELEMENTS AS DEFINED BY STATE LAW. THE EVIDENCE THAT PETITIONER COMMITTED THE CRIME WAS NONE EXISTENT OR MEAGER.

Trial Court: "The only thing we might be able to consider by way of aiding is the driving away and we don't have a jury instruction that deals with that." SEE (R.T. Oct. 6, 2014 at 18-20)

The State Court of Appeals is in conflict with The Federal Court of Appeals This Court, and all prior rulings on this issue. SEE U.S. v. BROCKMEYER, 616 F.3d 120, 125 (2d Cir. 2010); U.S. v. NEVILLS 558, F.3d 1158, 1167 (5th Cir 2010) (en banc); JACKSON v. VIRGINIA 433 U.S. 302, 318-19, 99 S.Ct. 2781, L.Ed. 2d 560 (1979); BROWN v. PALMER, 441 F.3d 347 (CA 6 2006)

Substantive injustice, as State Failed To Prove Elements OF CRIME; Judge states no intent HAS BEEN SHOWN, yet liability HAS BEEN imposed without any element OF Blameworthiness and Sanctions BEAR no Proportional relationship To Defendant's Conduct.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dennis Jones. Dennis Jones.

Date: Sept. 17, 2019