

19-6463

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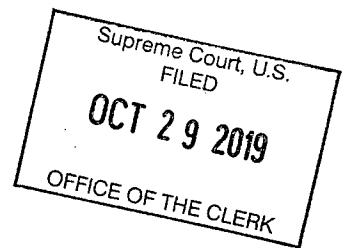
In The  
SUPREME COURT OF THE UNITED STATES

**MICHAEL A. ALBERT**

Petitioner - Pro Se

v.

**The People of the State of New York**  
Respondent



On Petition for a Writ of Certiorari To  
New York State Court of Appeals

**PETITION FOR WRIT OF CERTIORARI**

**Michael A. Albert - DIN # 14B2334**

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## QUESTIONS PRESENTED FOR REVIEW

Question 1: In the Appellate Division, Fourth Department's order, both the decent and majority agreed that Ms. Sheritta Jefferson was an agent of the police. She was given an electronic recording device, told how to operate it, and instructed as to what questions to ask the Petitioner to aid in their investigation. This included the promise and ultimate delivery of sex as a tool of inducement.

However, the 3 Judge majority disagreed with the two judge dissent that (a) there was at least a colorable basis for suppression of the statement because it could easily be inferred from the testimony of Sheritta Jefferson and the recording that the statement was made in exchange for the implicit promise of sexual relations, (b) there was a question of law as to whether the Petitioner's statements to the police agent were voluntary, and (c) the Petitioner had the right to have a jury review the statement as to its voluntariness.

Q1A: In the hand of an agent of the police, can the promise, and ultimately delivery of sex be sufficient inducement to trigger 5<sup>th</sup> and/or 14<sup>th</sup> Amendment protections?

Q1B: Because the police knew that the Petitioner was interested in a sexual relationship with Ms. Jefferson, was their direction to Ms. Jefferson to exploit this sexual interest sufficiently egregious to warrant categorization as "outrageous government conduct" to trigger preclusion of that recording under the 5<sup>th</sup> and/or the 14<sup>th</sup> Amendment?

Q1C: Was the petitioner denied due process, a fair trial, and the right to present a defense when the trial court refused to submit the question of voluntariness to the jury regarding the Sheritta Jefferson recording?

Question 2: Was the petitioner denied due process, a fair trial, and the right to present a defense when the trial court refused to submit the question of the voluntariness of statements he made to police investigators while he was incarcerated on a different matter, his freedom of movement severely curtailed, and the police asked inquisitional questions regarding his role in the shooting death of Jeremy Trim?

Question 3: Under Batson v. Kentucky, 476 U.S. 79 (1986), is the reading of a contemporary African American Author's book sufficiency race neutral to sustain the prosecutor's burden of providing a none-racial excuse for preclusion of an otherwise qualified African-American juror from serving on a jury panel?

## **LIST OF PARTIES**

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- 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

## TABLE OF CONTENTS

<i>Questions Presented For Review</i>	2
<i>List Of Parties</i>	3
<i>Table Of Contents</i>	4
<i>TABLE OF AUTHORITIES</i>	6
<i>Petition For Writ Of Certiorari</i>	7
<i>Opinions Below</i>	7
<i>Jurisdiction</i>	7
<i>Constitutional And Statutory Provisions Involved</i>	8
<i>Statement Of The Case</i>	9
A. The Police Direct And/Or Encourage Sheritta Jefferson to Have Sex With the Petitioner to Induce him To Make Incriminating Statements Regarding the Shooting Death of Jeremy Trim	9
B. Martin Wall Barters For A Reduce Sentence In Return For His Testimony Implicating The Petitioner In The 2006 Shooting Death Of Jeremy Trim	10
C. Without Miranda Warnings, Two Investigators Accuse the Petitioner of Shooting Jeremy Trim during a Custodial Interrogation at Greene Correctional Facility	10
D. The Trial Court Denies Defense Counsel's Motion To Suppress The Statements Made To Investigators At Green Correctional Facility, And Constructively Prevents Any Meaningful Challenge To Sheritta Jefferson's Recording By Improperly Issuing Numerous Protective Orders	11
E. The County Court Rules That The Prosecutor's Peremptory Challenge To A Black Juror Based On His Reading Of A Book By "Sister Souljah", A Main Stream Rapper And Well Respected Community Activist, Was Not Race Based or Pretextual	12
F. On cross examination, Sheritta Jefferson For the First time Admits that She Has Sex with Defendant.	13

- G. The County Court Rejects Defense Counsel's Request For A Charge On Voluntariness Concerning The Recording Made By Sheritta Jefferson, And The Statements The Petitioner Allegedly Made To Investigators At Green Correctional Facility \_\_\_\_\_ 13
- H. The CPL § 330.30 Motion, and Counsel's First Opportunity to Address the Investigators encouragement of Ms. Jefferson to exploit the Petitioner's sexual interest in her to induce inculpatory statements regarding the shooting death of Jeremy Trim \_\_\_\_\_ 14
- I. On Appeal, the two judge dissent holds, amongst other things, that Ms. Jefferson -- at the direction of the police -- used Sex to obtain the Petitioner's inculpatory statements \_\_\_\_\_ 14

***REASONS FOR GRANTING THE PETITION*** \_\_\_\_\_ 15

***ISSUE 1*** \_\_\_\_\_ 15

\_\_\_\_\_ IN THE AGE OF THE "ME TOO" MOVEMENT, AND AS A MATTER OF PUBLIC POLICY, THIS CASE REPRESENTS THE PERFECT PLATFORM FOR THIS COURT TO REGULATE GOVERNMENT AUTHORITIES' USE OF "SEX" AS A TOOL IN THERE INVESTIGATION OF CRIMES \_\_\_\_\_ 15

***ISSUE 2*** \_\_\_\_\_ 16

\_\_\_\_\_ THERE IS A NEED TO PROVIDE GUIDANCE TO SETTLE THE STATE AND CIRCUIT COURT DISAGREEMENTS AS TO WHEN THE ENCOURAGEMENT BY GOVERNMENT AUTHORITIES TO PERFORM SEXUAL ACTS TO FURTHER AN INVESTIGATION CONSTITUTES "OUTRAGEOUS GOVERNMENT CONDUCT" WARRANTING EITHER PRECLUSION OF THE TAINTED EVIDENCE, OR DISMISSAL OF THE INDICTMENT \_\_\_\_\_ 16

***ISSUE 3*** \_\_\_\_\_ 18

\_\_\_\_\_ IN LIGHT OF THE NUMEROUS CIRCUIT AND STATE COURT RULINGS IN CONFLICT, THERE IS A NEED TO SET CRITERIA FOR RESOLVING WHETHER THE POLICE USE OF SEX AS A INVESTIGATORY TOOL RENDERS THE RESULTING EVIDENCE VIOLATIVE OF 5<sup>TH</sup> AND/OR 14<sup>TH</sup> AMENDMENT PROTECTIONS \_\_\_\_\_ 18

***ISSUE 4*** \_\_\_\_\_ 21

\_\_\_\_\_ IN THE CONTEXT OF A HIGHLY SEGREGATED SYSTEM THAT EXIST IN PLACES LIKE ROCHESTER, NEW YORK, THIS CASE REPRESENTS THE PERFECT OPPORTUNITY FOR THIS COURT TO RESOLVE WHETHER AN OTHERWISE QUALIFIED AFRICAN AMERICAN JUROR CAN BE PEREMPTORY CHALLENGED FOR HIS READING OF A BOOK BY A MAIN STREAM ARTIST, WITHOUT FIRST LOOKING INTO THE VERY BOOK THE PROSECUTOR IS CLAIMING CONSTITUTES A RACE NEUTRAL REASON FOR A PREEMPTORY CHALLENGE \_\_\_\_\_ 21

***ISSUE 5*** \_\_\_\_\_ 22

\_\_\_\_\_ THE TRIAL COURT FAILURE TO SUBMIT TO THE JURY THE REQUEST CHARGE TO CONSIDER THE VOLUNTARINESS OF ANY STATEMENT VIOLATED THE PETITIONER'S RIGHT TO A FAIR TRIAL, DUE PROCESS AND IMPERMISSIBLE INTERFERED WITH HIS RIGHT TO PRESENT A DEFENSE \_\_\_\_\_ 22

***CONCLUSION*** \_\_\_\_\_ 23

## TABLE OF AUTHORITIES

### *Cases*

<u>Anchorage v. Flanagan</u> , 649 P.2d 957 (Alaska 1982) .....	18
<u>Batson v. Kentucky</u> , 476 S.Ct. 79 (1976) .....	2, 13
<u>Commonwealth v. Sun Cha Chon</u> , 983 A.2d 784 (Pa. 2009) .....	18
<u>People v. Albert</u> , 171 AD3d 1519, 1523-24 .....	8, 11, 15, 17, 20
<u>People v. Singer</u> , 44 NY3d 241 (1978) .....	11
<u>State v. Putnam</u> , 639 P.2d 858 (Wash 1982) .....	18
<u>State v. Tookes</u> , 699 P.2d 983 (Haw. 1985) .....	18
<u>United States v. Cuervelo</u> , 949 F.2d 559 (2 <sup>nd</sup> Cir. 1991) .....	19
<u>United States v. Miller</u> , 891 F.2d 1265 (7th Cir. 1989) .....	18
<u>United States v. Nolan-Cooper</u> , 155 F.3d 221 (3 <sup>rd</sup> Cir. 1998) .....	19
<u>United States v. Russell</u> , 411 U.S. 423 (1973) .....	17
<u>United States v. Shoffner</u> , 826 F.2d 619 (7th Cir. 1987) .....	18
<u>United States v. Simpson</u> , 613 F.2d 1462, fn. 9 (1987) .....	18, 22

### *Statutes*

28 U.S.C. § 1257(a) .....	8
CPL § 460.20(2)(a)(ii) .....	8
CPL § 65.45(2)(b)(i), (ii) .....	9
CPL § 710.30 .....	14, 15
CPL § 710.30(1) .....	9

### *Constitutional Provisions*

<b>14<sup>th</sup> Amendment, United States Constitution .....</b>	<b>9</b>
<b>4<sup>th</sup> Amendment, United States Constitution .....</b>	<b>9</b>
<b>5<sup>th</sup> Amendment, United States Constitution .....</b>	<b>9</b>

## **PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

### **OPINIONS BELOW**

The opinion of the highest State Court to review the merits appears at Appendix A, which was issued under the special provisions of CPL § 460.20(2)(a)(ii)

This opinion is unpublished

The opinion of the Appellate Division, Fourth Department appears at Appendix B to the petition and is

Reported at People v. Albert, 171 AD3d 1519 (4<sup>th</sup> Dept. 2019)

The Opinion of the Monroe County Court of New York denying Suppression appears at Appendix C to the petition and is

is unpublished

### **JURISDICTION**

The date on which the highest state court decided my case was 05/30/19. A copy of that decision appears at Appendix A.

On \_\_/\_\_/\_\_, this Court gave me until October 27, 2019 to file this application.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **The Fourth Amendment of the United States Constitution provides in relevant part:**

The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures shall not be violated

### **The Fifth Amendment of the United States Constitution provides in relevant part:**

No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of the life, liberty or property without due process of law

### **The Fourteenth Amendment of the United States Constitution provides in relevant part:**

No state shall make or enforce any law that 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

### **The Supremacy Clause of Article VI of the United States Constitution provides in relevant part:**

The Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every state shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding

### **Criminal Procedure Law § 710.30(1) Holds, In Relevant Part, That:**

Whenever the people intend to offer at trial . . . evidence of a statement made by a defendant to a public servant, which statement if involuntarily made would render the evidence thereof suppressible upon motion pursuant to subdivision three of section 710.20 . . . they must serve upon the defendant notice of such intention

### **Criminal Procedure Law § 65.45(2)(b)(i), (ii) Holds, In Relevant Part, That:**

A confession, admission or other statement is “involuntarily made” by a defendant when it is obtained from him . . . by a person acting under [a public servant’s] direction or in cooperation with him. . . by means of a promise or statement of fact . . . which creates a substantial risk that the defendant might falsely incriminate himself, or . . . in violation of such right as the defendant may derive from the constitution of this state or of the United States

## STATEMENT OF THE CASE

### A. The Police Direct And/Or Encourage Sheritta Jefferson to Have Sex With the Petitioner to Induce him To Make Incriminating Statements Regarding the Shooting Death of Jeremy Trim

Sheritta Jefferson was arrested on 07/23/06 at Kohl's Department Store for forgery, identity theft, and possession of a forged instrument. She was brought to the Monroe County Jail. Learning that the Petitioner wanted to have sexual relations with Ms. Jefferson, the police immediately contacted her and made an offer. In return for a lenient sentence, they wanted her to exploit the Petitioner's "sexual interest" in her in order to induce the Petitioner to provide incriminating statements concerning the shooting death of Jeremy Trim.

To help her accomplish this end, the police provided Ms. Jefferson with an audio recorder and instructions on how to use the recording device. They also instructed her on what to say and do to induce the Petitioner to open up to her concerning any incriminating evidence the Petitioner may have concerning the shooting death of Jeremy Trim.

It is interesting to note that during summations the Prosecutor admitted that Ms. Jefferson asked the Petitioner not only "what happened that day" (Appendix C, 225), but that Ms. Jefferson asked the Petitioner to describe the weapon that was used (Appendix C, 228). All common questions that an agent of the police would be instructed to ask to obtain incriminating statements for a targeted suspect. Also of note is the fact that during cross-examination Mr. Jefferson admitted that she told the Petitioner "if you want to be with me you have to talk to me" (Appendix C, 231). Code speak for "if you want to have sex with me, you have to talk to me". Concrete proof that sex was used to induce the Petitioner to provide incriminating information regarding the shooting death of Jeremy Trim.

This conclusion was supported by the dissent in the Appellate Division, Fourth Department. They held that the testimony of Sheritta Jefferson (Appendix C, 247-284) and the contents of the tape recording (Appendices H & I) was sufficient to infer that Ms. Jefferson (under the direction of

the police) made an implicit promise to have sex with the Petitioner in order to induce his statement (see Appendix B)<sup>1</sup>.

According to my Appellate counsel's brief, the recording that Ms. Jefferson made in 2006 contained no mention of name, place or date that a person might have been shot. He also argued that the context of the recording was so vague and unclear that the prosecution, by their own initial theory, said that this recording was not enough to secure an indictment, let alone prove a case at trial (Appendix D, pages 5-6). As a result, from 2006 until 2013 the investigation faltered.

**B. Martin Wall Barters For A Reduce Sentence In Return For His Testimony Implicating The Petitioner In The 2006 Shooting Death Of Jeremy Trim**

In 2013, over six years after the Sheritta Jefferson's recording, the police arrested Martin Wall on a Burglary charge, and asked him if he would like to "play ball with the law" (Quote from "Hurricane" by Bob Dylan). He agreed to cooperate. Not out of a sense of civic duty, but only to save his own neck from a sentence that would have meant 7 to 15 years in State prison. So, after six years, the case against the Petitioner began.

Prior to trial, defense counsel moved for a Singer<sup>2</sup> hearing, arguing that the six years delay was unconstitutional. However, the county court denied the motion (Appendix C, pages 177-180).

**C. Without Miranda Warnings, Two Investigators Accuse the Petitioner of Shooting Jeremy Trim during a Custodial Interrogation at Greene Correctional Facility**

On April 30, 2013, Investigators Benjamin and Mazzala arranged with Greene Correctional Facility to interview the Petitioner, who was then being held on a totally unrelated parole detainer (Appendix C, 9-10). The date for the interview was set for the 9<sup>th</sup> of May.

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<sup>1</sup> In their strongly worded dissent, the Honorable Centra, J., and the Honorable DeJoseph, J. (see People v. Albert, 171 AD3d 1519, 1523-24) asserted that it could easily be inferred from the testimony of Sheritta Jefferson and the recording that any statements made on the recording was made in exchange for the implicit promise of sexual relations (id. at 1524).

<sup>2</sup> See People v. Singer, 44 NY3d 241 (1978)

On May 9<sup>th</sup>, 2013, the Petitioner was told that he had a visit. He was never told that he was being escorted to see two homicide investigators who were waiting to question him about the Homicide of Jeremy Trim (Appendix C, page 9). He thought that he was being called to a regular visit until he was met by two corrections officers who “escorted” the Petitioner to a secured legal visiting room, which was located in a separate area of the facility.

The Petitioner’s two escorts left the Petitioner alone in the room with the homicide investigators. Because he could only leave the room with an escort, who had left the Petitioner, the Petitioner had no choice but to sit and be subjected to questioning, having no freedom of movement.

**D. The Trial Court Denies Defense Counsel’s Motion To Suppress The Statements Made To Investigators At Green Correctional Facility, And Constructively Prevents Any Meaningful Challenge To Sheritta Jefferson’s Recording By Improperly Issuing Numerous Protective Orders**

On 12/17/13, defense counsel submitted a Post Hearing Suppression Motion (Appendix C, pages 169 - 174). In it, he pointed out that the interrogation lasted for 2 hours. He pointed out that because the interrogation occurred in an area of the visiting room that was reserved for secured legal visits, the Petitioner’s movement was restricted to a room the size of a bathroom. He also pointed out that during the suppression hearing the investigators admitted that the defendant was initially uncooperative, did not admit any knowledge of the events, or that his name was in fact “Gotti”. And most importantly, he pointed out that no Miranda warnings were given. Based on these facts, defense counsel argued for suppression (Appendix C, pages 169 - 174). However, the Suppression court denied the motion, finding instead that the statements made to the investigators were voluntarily given (Appendix C, pages 131 - 136).

The statements to Sheritta Jefferson take on quite a different hue. From the date of the indictment, until the start of trial, the existence of the statements made to Sheritta Jefferson concerning the Jeremy Trim shooting were the subject of several protective orders issued by the Court (see Appendix C, page 300-301). Because of this later disclosure, the first opportunity that the defense had to challenge the impropriety of the receipt of that recording, which was obtained on the implicitly promise of sex, was in a CPL § 330.30 motion (C. 188 - 301).

**E. The County Court Rules That The Prosecutor's Peremptory Challenge To A Black Juror Based On His Reading Of A Book By "Sister Souljah", A Main Stream Rapper And Well Respected Community Activist, Was Not Race Based or Pretextual**

On \_\_\_/\_\_\_/\_\_\_, jury selection began. While initially all of the potential jurors in the first juror sweep were in fact white, by the third potential juror sweep, the People had challenged the only two black (female) juror possibilities (T.T. 265)<sup>3</sup>. This constituted the first Batson<sup>4</sup> objection by the Petitioner's defense attorney.

The People then moved to remove the only black male juror, Mr. Graddic, at which time a second Batson challenge was heard (T. 267). When asked for his reasons for challenging Mr. Graddic -- the fourth out of five potential black jurors the prosecutor sought to remove -- the following exchange took place:

Prosecutor: One of the things I asked Mr. Graddic Judge, was what he liked to read in his spare time. I don't know if you are familiar with Sister Souljah, the writings of Sister Souljah

The Court: I'm not.

Prosecutor: She is a black revolutionary-type writer, has a very antigovernment, anti-law and order type views (T. 267).

The trial court sustained the peremptory challenge.

But, as correctly pointed out by Appellate Counsel, Sister Souljah (born Lisa Williamson, 1964), is an American author, activist, recording artist, and film producer. She posses an advanced degree from Cornell University, and an undergraduate degree from Rutgers University. In addition to her advance degrees, she won the American Legion's Constitutional Oratory Contest, a scholarship to attend Cornell University's Advanced Summer Program, and she was partially responsible for getting the State of New Jersey to divest more than one billion dollars of financial

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<sup>3</sup> Citations to "T. \_\_\_" refers to the trial transcripts. However, the Petitioner was never given a copy of the entire trial transcripts. Therefore, the factual references to the Transcripts come from the contents of the Petitioner's Appellate Counsel's Brief (i.e. Appendix D).

<sup>4</sup> See Batson v. Kentucky, 476 S.Ct. 79 (1976)

holdings in then apartheid era South Africa (see Appendix D, pages 19-21). This was arguably not so much radical an action as it was humane and genius.

But despite these clarifications, the Appellate Division upheld the County Court's denial of the peremptory challenge to the only African American Jurors on the case (see Appendix D, pages 19-22).

**F. On cross examination, Sheritta Jefferson For the First time Admits that She Has Sex with Defendant.**

During Sheritta Jefferson's grand jury testimony (see Appendix J), not once does she mention that she had sex with the petitioner in order to lure him into making inculpatory statements regarding the shooting death of Jeremy Trim. Similarly, not once during her direct examination by the prosecutor does she mention anything about having sex with the petitioner on the night of the recording. It was only after she was questioned by defense counsel that she admits that she told the petitioner "if you want to be with me you have to talk to me" (Appendix C). In other words, if the petitioner wanted to have sex with her, he had to tell her what went on that night. Ms. Jefferson ultimately had sex with the Petitioner on the night of the recording.

**G. The County Court Rejects Defense Counsel's Request For A Charge On Voluntariness Concerning The Recording Made By Sheritta Jefferson, And The Statements The Petitioner Allegedly Made To Investigators At Green Correctional Facility**

Although an independent issue from the preclusion that the court should have granted with respect to Sheritta Jefferson's audio recording, because of the lack of CPL § 710.30 notice of that statement (see e.g. Appendix C, pages 188-301), defense counsel asked that the jury be instructed as to the voluntariness of a statement made in exchange for the possibility of sex (or sex itself). The trial court denied the request (T. 556).

Trial counsel also asked for a jury charge regarding the custodial interrogation of the Petitioner by the two investigators while the Petitioner was an inmate at Greene Correctional Facility. This too was denied (see Appendix D, pages 34 - 39).

**H. The CPL § 330.30 Motion, and Counsel's First Opportunity to Address the Investigators encouragement of Ms. Jefferson to exploit the Petitioner's sexual interest in her to induce inculpatory statements regarding the shooting death of Jeremy Trim**

Defense counsel filed an impressive and very substantial Motion pursuant to CPL § 330 motion arguing for reversal on the grounds that the jury should not have heard the testimony of Sheritta Jefferson on the grounds listed in CPL § 60.45 (Appendix C, pages 188 - 301). The County Court denied this motion.

**I. On Appeal, the two judge dissent holds, amongst other things, that Ms. Jefferson -- at the direction of the police -- used Sex to obtain the Petitioner's inculpatory statements**

In a strongly worded dissent, Judge Centra, joined by another justice of the Appellate Division, Fourth Department, voted to reverse the Petitioner's conviction (see People v. Albert, 171 AD3d 1519, 1523-24). They both disagreed with the majority's conclusion that the failure of the People to provide a CPL § 710.30 notice with respect to statements "defendant made to a private citizen who was acting as an agent of the police [did] not warrant preclusion<sup>5</sup> of those statements" (id.). They further opined that there was at least a colorable basis for suppression of the statement because it could easily be inferred from the testimony of Sheritta Jefferson and the recording that the statement was made in exchange for the implicit promise of sexual relations (id. at 1524). They further held that because there is a question of law whether the Petitioner's "statements to the police agent were voluntary", the Petitioner had the "right to have a [jury] review the statement as to its voluntariness" (id. at 1524).

Finally, the dissent argued that because the failure to preclude Sheritta Jefferson's recordings and testimony was not a harmless error, they would vote to reverse judgment, preclude the recorded statements of Sheritta Jefferson, and remand for a new trial on count one.

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<sup>5</sup> As argued in Issue 3, infra, the preclusion rules are synonymous with the term "outrageous government conduct", and both implicate the due process concerns under the 5<sup>th</sup> and 14<sup>th</sup> Amendments. Amendments from which protections from self-incrimination derive.

## **REASONS FOR GRANTING THE PETITION**

This Case represents 3 areas of law that are ripe for this Court's resolution. The first is whether or not the constitution allows the Police to direct one of its agents to use sex to induce a defendant to make incriminating statements, and whether such conduct constitutes "outrageous government conduct" warranting preclusion of the evidence obtained, and/or the dismissal of the indictment.

The second is whether the reading of a book written by a African-American author is sufficiently race neutral to justify the prosecutor's preemptory challenge of an otherwise qualified African- American juror from serving on a petit jury. And the third is what is the threshold requirement for submission of a particular instruction to the jury.

### **ISSUE 1**

**IN THE AGE OF THE "ME TOO" MOVEMENT, AND AS A MATTER OF PUBLIC POLICY, THIS CASE REPRESENTS THE PERFECT PLATFORM FOR THIS COURT TO REGULATE GOVERNMENT AUTHORITIES' USE OF "SEX" AS A TOOL IN THERE INVESTIGATION OF CRIMES**

Where sexual favors are demanded and/or encouraged by officers sufficiently powerful to coerce those under their control into becoming a tool in their investigations, constitutional protections must come into play to regulate its potential for abuse. This sentiment is even stronger, today given the recent emergence of society's desire to seek justice for vulnerable people press into sexual service. Be that trading sex for money, or trading sex for a lesser sentence, or trading sex for a confession.

However, left untouched by the emerging sensitivity to the use of sex as an investigative means of solving their cases is a comprehensive legal analysis from this Court as to the 4<sup>th</sup>, 5<sup>th</sup> and/or 14<sup>th</sup> Amendment ramifications of such conduct. But this case represents the perfect opportunity for this Court to weigh in on a public policy issue that simply must be addressed.

In the instant case at bar there is no question that Sheritta Johnson was an agent of the police. Something that both the Appellate Division dissent and majority agreed. Moreover, there was at least a colorable basis for a fifth (and fourteenth) amendment claim for the preclusion of the statement because it could easily be inferred from the testimony of Sheritta Jefferson and the recording that the statement was made in exchange for the implicit promise of sexual relations (see People v. Albert, 171 AD3d 1519, 1523-24; also see Appendix B). Because this was done with a promise that if Ms. Jefferson performs correctly, she would receive a reduced sentence on her then pending Forgery charges, Rochester investigators essentially pimped-out Ms. Jefferson. Something that in the error of the “Me Too” movement, can no longer be tolerated, and as a matter of public policy, must be evaluated judicially.

When an officer of the law sends out a citizen to engage in sexual favors in exchange for a reduced sentence -- essentially requiring that these women prostitute themselves or suffer imprisonment or some other adverse consequence -- the dignity of the individual, and the moral foundation of the judicial system is placed in the same category as a common pimp. This conduct, however, has been going unchecked for years. And without guidance from this Court, there is a myriad of decisions from both federal and state courts of last resort which have contradictory rulings that deserve resolution by this Court.

## ISSUE 2

THERE IS A NEED TO PROVIDE GUIDANCE TO SETTLE THE STATE AND CIRCUIT COURT DISAGREEMENTS AS TO WHEN THE ENCOURAGEMENT BY GOVERNMENT AUTHORITIES TO PERFORM SEXUAL ACTS TO FURTHER AN INVESTIGATION CONSTITUTES “OUTRAGEOUS GOVERNMENT CONDUCT” WARRANTING EITHER PRECLUSION OF THE TAINTED EVIDENCE, OR DISMISSAL OF THE INDICTMENT

Chief Justice Rehnquist’s oft-quoted dictum in United States v. Russell, 411 U.S. 423, 431-32 (1973), that the Supreme Court “may some day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial process to obtain a conviction” (id.). This Court, however,

has never resolved this dictum in the context of government authorities recruiting a citizen to induce inculpatory statements from an investigations target with the promise and delivery of sex.

Since United States v. Russell, *supra*, was decided, both the state and federal courts of last resort have tackled the issue of government authorities directing their citizen agents to provide sex to the targets of their investigations. But, there is no consensus amongst these Courts as to criteria, boundaries and sanctions for the abuse of such a reprehensible investigative tool.

For instance, state courts of last resort have permitted law enforcement officers to use sex deceitfully to gather information when the suspect crime is prostitution (see e.g. State v. Tookes, 699 P.2d 983 [Haw. 1985][Rejecting an outrageous conduct challenge to deceitful use of sex by civilian volunteer acting at behest of police investigating a prostitution ring]; Anchorage v. Flanagan, 649 P.2d 957 [Alaska 1982][same for use of sex by undercover officer]; State v. Putnam, 639 P.2d 858 [Wash 1982] [same for use of sex by use civilian authorized by police to turn tricks to gather evidence]).

Similarly, Circuit Courts of Appeals have also held that such conduct is permissible (United States v. Miller, 891 F.2d 1265, 1268 [7th Cir. 1989][finding sexual relationship between the defendant and government informant not so outrageous as to warrant dismissal of the indictment]; United States v. Shoffner, 826 F.2d 619 [7th Cir. 1987][sexual relationship between defendant and government informant not a violation of due process]; United States v. Simpson, 813 F.2d 1462 [9<sup>th</sup> Cir. 1987][same]; but see Commonwealth v. Sun Cha Chon, 983 A.2d 784 [Pa. 2009][holding that sending an informant into a house of prostitution on 4 occasions to engage in sexual acts with prostitutes constituted a violation of the due process clause]).

Because this is a nationwide problem which the courts of last resort in both the federal and state court systems have consistently provided inconsistent legal analysis, this case represents the perfect platform upon which this Court could set the appropriate criteria to resolve this issue.

### ISSUE 3

IN LIGHT OF THE NUMEROUS CIRCUIT AND STATE COURT RULINGS IN CONFLICT, THERE IS A NEED TO SET CRITERIA FOR RESOLVING WHETHER THE POLICE USE OF SEX AS A INVESTIGATORY TOOL RENDERS THE RESULTING EVIDENCE VIOLATIVE OF 5<sup>TH</sup> AND/OR 14<sup>TH</sup> AMENDMENT PROTECTIONS

The question of whether due process is violated by outrageous police conduct is a legal question that must be decided by this Court. Indeed, the use of sex as a weapon to fight crime is not only morally reprehensible, but an outrageous act that must not be sanctioned. What we are asking is that this Court look to curbing this conduct by adopting a compromise between two oft-quoted cases on this subject matter. United States v. Nolan-Cooper, 155 F.3d 221 (3<sup>rd</sup> Cir. 1998), and United States v. Cuervelo, 949 F.2d 559 (2<sup>nd</sup> Cir. 1991).

In United States v. Nolan-Cooper, 155 F.3d 221 (3<sup>rd</sup> Cir. 1998), when considering the issue of the use of sex as a weapon to fight crime, the 3<sup>rd</sup> Circuit held that there was no due process violation because the agents did not use sex to induce, reward, or lure Ms. Nolan-Cooper into illegal activity.

In United States v Cuervelo, 949 F.2d 559 (2nd Cir. 1991), the Second Circuit constructed a 3 step initial review process to see if a hearing was warranted. Those steps being:

1. Did the government consciously set out to use sex as a weapon in its investigatory arsenal, or acquiesced in such conduct for its own purposes upon learning that such a relationship existed?
2. Did the government agent initiated a sexual relationship, or allowed it to continue to exist, to achieve governmental ends?
3. Did the sexual relationship take place during or close to the period covered by the indictment and was intertwined with the events charged therein?

After remand, the Cuervelo court suggested that the hearing court then consider the following questions:

1. To what extent is the undercover agent's conduct attributed to the government (i.e. did the government actively or passively acknowledge or encourage the sexual relationship)?
2. What purpose(s) did the agent's sexual conduct serve, if any?
3. Did the agent act on his own initiative or under the direction (or with the approval) of his agency?
4. Who initiated the relationship?
5. When did the alleged sexual relations end?

Here, the record shows that Rochester authorities consciously set out to use sex as a weapon in their investigatory arsenal, as they contacted Ms. Jefferson because of the Petitioner's sexual interest in Ms. Jefferson, and her willingness to provide sex in exchange for essentially what was, a "get out of jail free" card.

Ms. Jefferson asked the Petitioner not only "what happened that day" (Appendix C, 225), but that Ms. Jefferson asked the Petitioner to describe the weapon that was used (Appendix C, 228). Mr. Jefferson also admitted that she told the Petitioner "if you want to be with me you have to talk to me" (Appendix C, 231). Code speak for "if you want to have sex with me, you have to talk to me".

Ms. Jefferson was a guided agent of the police who traded sex to induce the Petitioner to provide inculpatory statement regarding the shooting death of Jeremy Trim. Something that she did with the encouragement and knowledge of the police investigators. And, the relationship ended once Ms. Jefferson received the information that she needed in order to bargain for a more lenient sentence for herself. Under these circumstances, not one, but two justices of the Appellate Division, Fourth Department held that it could easily be inferred that Ms. Jefferson (under the direction of the

police) made an implicit promise to have sex with the Petitioner in order to induce his statement (see Appendix B)<sup>6</sup>.

Under the criteria laid out in Cuervelo, which requires that a defendant introduce evidence demonstrating that the government knew that its undercover agent had engaged or was engaging in a sexual relationship with him or her, this conduct was the type of outrageous government conduct warranting, at the very least, preclusion of the statement.

The Court in Nolan-Cooper, however, held that the requirements in Cuervelo, may in fact be too stringent, and could encourage supervisory agents to turn a blind eye to the conduct of their operatives. Hence, they held that a defendant need only show that the government consciously set out to use sex as a weapon in its investigatory arsenal, or acquiesced in such conduct for its own purposes once it knew or should have known that such a relationship existed. Under this matrix, the Petitioner has made a sufficient showing, supported by the dissent in the Appellate Division (see Appendix B) which supports a finding of the police encouraging its operative (i.e. Sheritta Jefferson) to engage in sex with the Petitioner to further their investigation into the shooting death of Jeremy Trim. Arguably, this type of outrageous government conducts that in the wake of the efficacy of the “Me Too” movement simply must be evaluated for constitutional limitations by this Court.

This case has all of the trimmings for acceptance by this Court. For instance,

- ▶ It involves a topical subject matter which, in the age of the “Me Too” movement, deserves concrete constitutional boundaries to prevent those charged with investigating crimes from pimping out informants desperate to get out of their own legal troubles
- ▶ Its acceptance will allow this Court to settle the above cited differences amongst the state and federal courts with regards to the constitutionality of governmental authorities using sex as a tool in their investigation of crimes

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<sup>6</sup> In their strongly worded dissent, the Honorable Centra, J., and the Honorable DeJoseph, J. (see People v. Albert, 171 AD3d 1519, 1523-24) asserted that it could easily be inferred from the testimony of Sheritta Jefferson and the recording that any statements made on the recording was made in exchange for the implicit promise of sexual relations (id. at 1524).

- It provides a sufficient basis upon which to decide whether preclusion of any statement made to an agent of the state who was encouraged, and/or directed to use sex as a means of obtaining inculpatory statements is warranted under the 4<sup>th</sup>, 5<sup>th</sup> or 14<sup>th</sup> Amendments, and
- It provides a vehicle to resolve whether a defendant has standing to raise a due process violation suffered by a third party, when, as here, the target of the government's activity is a direct victim of the government's conduct (see e.g. U.S. v. Simpson, 613 F.2d 1462, fn. 9 [1987]), and
- It provides a vehicle for this Court to instruct law enforcement officials from across the country that legitimate undercover operations be conducted without government authorities directing and/or encouraging its agents to act like modern day Mata Haris.

As law enforcement officers become more resourceful, and their methods used to extract confessions more sophisticated, this Court's duty to enforce federal constitutional protections also evolves. Taking into account the evolving nature of our nation's sense of decency as expressed in the "Me Too" movement, and the almost universal condemnation of pimping out vulnerable persons for gain -- whether that be financial, or for clearing a case -- there is a public policy need for this Court to resolve this issue of first impression, and nationwide importance.

#### ISSUE 4

IN THE CONTEXT OF A HIGHLY SEGREGATED SYSTEM THAT EXIST IN PLACES LIKE ROCHESTER, NEW YORK, THIS CASE REPRESENTS THE PERFECT OPPORTUNITY FOR THIS COURT TO RESOLVE WHETHER AN OTHERWISE QUALIFIED AFRICAN AMERICAN JUROR CAN BE PEREMPTORY CHALLENGED FOR HIS READING OF A BOOK BY A MAIN STREAM ARTIST, WITHOUT FIRST LOOKING INTO THE VERY BOOK THE PROSECUTOR IS CLAIMING CONSTITUTES A RACE NEUTRAL REASON FOR A PREEMPTORY CHALLENGE

For the sake of economy, the Petitioner here incorporates the Appellate Counsel's Arguments concerning this Point (see Appendix D, pages 19 - 21).

This is needed because since October 16<sup>th</sup>, 2019, the Facility's Legal Research Computers have been down, and have remained down to this day (only working on October 24, 2019).

Also, there has been a series of gang related fights that have shut down certain blocks in the facility, including the housing unit where the Petitioner is housed. Making his only way of getting his work done is via the Facility's Keep Lock Protocols. A system that can take up to three days to get a response.

#### ISSUE 5

THE TRIAL COURT FAILURE TO SUBMIT TO THE JURY THE REQUEST CHARGE TO CONSIDER THE VOLUNTARINESS OF ANY STATEMENT VIOLATED THE PETITIONER'S RIGHT TO A FAIR TRIAL, DUE PROCESS AND IMPERMISSIBLE INTERFERED WITH HIS RIGHT TO PRESENT A DEFENSE

For the sake of economy, I here incorporate the Appellate Counsel's Arguments concerning this Point (see Appendix D, pages 34 - 38).

This is needed because since October 16<sup>th</sup>, 2019, the Facility's Legal Research Computers have been down, and have remained down to this day (only working on October 24, 2019).

Also, there has been a series of gang related fights that have shut down certain blocks in the facility, including the housing unit where the Petitioner is housed. Making his only way of getting his work done is via the Facility's Keep Lock Protocols. A system that can take up to three days to get a response.

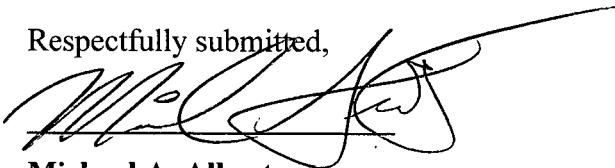
## CONCLUSION

Based on the law and facts articulated above, I am requesting that this Court issue an order granting certiorari on any and all questions and arguments raised above, and for any other and further relief as to this Court may deem just and proper.

***Statement Pursuant to 28 U.S.C. 1746 I declare under the Penalty of Perjury that the Foregoing is true and correct.***

***Signed this 25<sup>th</sup> day of October, 2018***

Respectfully submitted,

  
Michael A. Albert,

Sworn to before me this  
\_\_\_\_ Day of October 2019

No Notary Available 

**AFFIDAVIT OF SERVICE**

State of New York  
County of Clinton) ss.:

I, Michael Albert, first being duly sworn, deposes and says that on the 25<sup>th</sup> Day of October 2019, I did in fact give the attached **Application for Permission to File a Writ of Certiorari** to an officer at Clinton Correctional Facility to be duly carried to the following parties:

**Original and Copy**

Clerk  
United States Supreme Court  
1 First Street, N.E.  
Washington, D.C. 20543

**Copy**

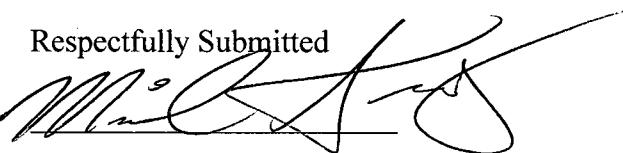
Monroe County District Attorney  
47 S. Fitzhugh Street  
Rochester, New York 14614

NYS Attorney General  
The Capital  
Albany, New York 12224

***Statement Pursuant to 28 U.S.C. § 1746, I Declare, under the Penalty of Perjury under the laws of the United States of America, that the foregoing is True and Correct.***

***Signed this 25<sup>th</sup> day of October, 2019***

Respectfully Submitted



Michael Albert

Sworn To Before Me This

\_\_\_\_ Day of October 2019

No Notary Available *MA*

# CERTIORARI APPENDIX

## TABLE OF CONTENTS

APPENDIX	DATE	# PAGES	DESCRIPTION
<u>A</u>	05/30/19	02	Order (Centra, J), Denying Leave To Appeal to Court of Appeals
<u>B</u>	04/26/19	05	Appellate Division Order Denying Direct appeal
<u>C</u>	05/23/18	301	(Original) State Court Record
<u>D</u>	05/23/18	53	Appellate Counsel's Appellate Brief
<u>E</u>	08/--/18	25	District Attorney's Opposition to Direct Appeal
<u>F</u>	08/25/18	19	Appellate Counsel's Reply to district Attorney's Opposition
<u>G</u>	05/02/19	13	Appellate Counsel's Application, to Dissenting Appellate Division Justice, For Leave To Appeal to the Court of Appeals (with cover letter)
<u>H</u>			Reserved for Copy of Audio Tape of Sheritta Jefferson Recording <sup>1</sup>
<u>I</u>			Reserved for Copy of Transcript of Sheritta Jefferson Recording <sup>2</sup>
<u>J</u>	___/___/___	—	Grand Jury Testimony of Sheritta Jefferson

<sup>1</sup> We are asking that the district attorney be required to supply this to this Court under separate cover

<sup>2</sup> See footnote 1, supra