

NO. 19-6839

IN THE

SUPREME COURT OF THE UNITED STATES

PATRICK RICARDO SMITH

VS

PETITIONER

BARBARA D. UNDERWOOD ET AL

RESPONDENTS

PETITION FOR REHEARING PURSUANT
TO RULE 44

PATRICK RICARDO SMITH 0378802

P.O. Box 155

BUNN, N.C. 27508

FRIDAY MARCH 13, 2020

STATEMENT OF REHEARING

THIS PETITION FOR A REHEARING IS BEING FILED IN GOOD FAITH AND FOR NOT FOR DELAY OR OTHERWISE.

QUESTIONS PRESENTED

DID THE NEW YORK COURT VIOLATE THE 6TH AMENDMENT CONFRONTATION CLAUSE BY PERMITTING THE PROSECUTION TO INTRODUCE A FORENSIC LAB REPORT CONTAINING A TESTIMONIAL CERTIFICATION MADE FOR THE PURPOSE OF PROVING A PARTICULAR FACT THROUGH THE IN COURT TESTIMONY OF A LAB TECHNICIAN WHO DID NOT MAKE THE CERTIFICATION OR APPROVED THE TESTING?

DOS THE DETERMINATION IN NEW YORK STATE LAW VIOLATE THE 6TH AMENDMENT

QUESTIONS PRESENTED CONT.

RIGHT TO A JURY TRIAL BY PERMITTING JUDGES TO IMPOSE ENHANCED SENTENCES BASED ON FACTS NOT FOUND BY A JURY?

DID THE NEW YORK COURTS DISREARD THE HOLDING IN BLAKEY V. WASHINGTON, WHERE IT WAS HELD THAT, IN THE CONTEXT OF MANDATORY SENTENCING UNDER STATE LAWS, THE 6TH AMENDMENT RIGHT TO A JURY TRIAL PROHIBITS JUDGES FROM ENHANCING CRIMINAL SENTENCES BASED ON FACTS OTHER THAN THOSE DECIDED BY A JURY OR ADMITTED BY THE DEFENDANT?

DID THE NEW YORK COURT VIOLATE THE 5TH AND 6TH AMENDMENTS BY ALLOWING THE JURY TO BE SELECTED FROM A VENIRE THAT WAS NOT COMPOSED OF A FAIR CROSS-SECTION OF THE COMMUNITY IN WHICH THE TRIAL WAS HELD?

LIST OF PARTIES

PATRICK RICARDO SMITH, PRO-SE
PETITIONER - APPELLANT.

BARBARA D. UNDERWOOD - ATTORNEY
GENERAL FOR THE STATE OF NEW YORK

TIMOTHY MCKOY - ADMINISTRATOR OF
FRANKLIN CORRECTIONAL CENTER,
NORTH CAROLINA, - APPELLEES

RELATED CASES

BLAKEY V. WASHINGTON

BULLCOMING V. NEW MEXICO

CRAWFORD V. WASHINGTON

CUNNINGHAM V. CALIFORNIA

DUBEN V. MISSOURI

MELLENDEZ-DIAZ V. MASSACHUSETTS

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CASES

BLAKELY V. WASHINGTON 542 U.S. 296,
306 (2004) PAGES iii, iv, v, 3, 4, AND 6

BULLCOMING V. NEW MEXICO 131 S. CT 2705,
2710 (2011) PAGES iv, v, AND 5

CRAWFORD V. WASHINGTON 541 U.S. 36, 51-62,

68 (2004) PAGES IV, V, 3, AND 4
CUNNINGHAM V. CALIFORNIA 549 U.S. 270,
274 (2007) PAGES IV, VI, 4, AND 6
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STATUTES AND RULES

28 USC 2101

RULE 44

OTHER

(HC) DENOTES HABEAS CORPUS

(T.T.) DENOTES TRIAL TRANSCRIPT

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR REHEARING

PETITIONER RESPECTFULLY PRAYS THAT A
WRIT OF CERTIORARI ISSUE TO REVIEW
THE JUDGEMENT BELOW.

OPINIONS BELOW

THE MANDATE OF THE UNITED STATES
COURT OF APPEALS APPEARS AT APPENDIX
E-F OF THE FOREGOING PETITION.

THE OPINION OF THE UNITED STATES
DISTRICT COURT APPEAR AT APPENDIX
A-B OF THE FOREGOING PETITION,
AND IS REPORTED AS SMITH V.
SCANEIDERMAN, NO. 13-CV-8423 NSR
WL 3917606 AT SDNY SEPT. 5, 2017

Jurisdiction

THE DATE ON WHICH THE U.S. COURT OF APPEALS DECIDED MY CASE WAS AUGUST 1, 2019

A TIMELY PETITION FOR REHEARING WAS DENIED BY THE U.S. COURT OF APPEAL ON OCTOBER 1, 2019 SEE APPENDIX F

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 USC 1254 (1)

ON DECEMBER 4, 2012, THE HIGHEST STATE COURT TO DECIDE MY CASE WAS THE NEW YORK STATE COURT OF APPEALS SEE APPENDIX H

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 USC 1257 (2)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION AMENDMENTS 5th, 6th AND
14th AMENDMENTS 28 USC 2101, 28 USC
2254, 28 USC 1254(1), 28 USC 1257(2)
BLAKEY RULE, CRAWFORD RULE AND
RULE 44

STATEMENT OF THE CASE

TESTIMONIAL EVIDENCE OF DNA WAS
BOLSTERED AT THE PETITIONER'S TRIAL, IN
THAT, THE WITNESS TESTIFIED TO DNA LAB
REPORTS THAT WAS ANALYZED, REVIEWED
AND APPROVED BY THE WITNESS' SUPERVISOR
- AND AS TO WHAT THE SUPERVISOR LOOKS FOR
IN ORDER TO APPROVE. WHEREFORE, PET-
ITIONER'S U.S. CONSTITUTIONAL RIGHT TO
THE CONFRONTATION CLAUSE HAS BEEN VIOLATED

THE PETITIONER'S RIGHT UNDER THE U.S.
CONST. 5th, 6th AND 14th AMENDMENT WERE
VIOLATED BY THE TRIAL COURT AFTER HIS JURY
TRIAL, BY SENTENCING HIM TO THE MAXIMUM
SENTENCE OF TWENTY (20) YEARS AND IN
CONTRAST TO THE RULINGS OF THIS COURT

IN BLAKEY V. WASHINGTON AND CUNNINGHAM V. CALIFORNIA

THE PETITIONER WAS DENIED HIS 6TH AMENDMENT RIGHT TO BE TRIED BY A JURY OF HIS PEERS, IN THAT, HIS JURY WAS NOT SELECTED FROM A FAIR CROSS-SECTION OF THE COMMUNITY. THE PETITIONER'S VENIRE WAS COMPRISED OF ONE HUNDRED AND ONE (101) VENIREMEN, WHEREBY, ONLY ELEVEN (11) AFRICAN AMERICANS, ROUGHLY TEN (10%) PERCENT, WERE IN ATTENDANCE AND FAR FAR BELOW THE FOURTEEN POINT TWO (14.2%) PERCENT OF THE AFRICAN AMERICANS WHO RESIDE IN WESTCHESTER COUNTY, THE COMMUNITY WHERE THE PETITIONER WAS TRIED.

REASONS FOR GRANTING THIS PETITION

IN CRAWFORD V. WASHINGTON 541 U.S. 36, 51-62, 68 (2004) IT WAS HELD THAT TESTIMONIAL EVIDENCE THAT IS

IS NOT LIVE IS INADMISSIBLE. THE ACCUSED HAS A RIGHT TO BE CONFRONTED WITH THE ANALYST WHO MADE THE CERTIFICATION. SEE *BULLCOMING V. NEW MEXICO* 131 S. CT 2705, 2710 (2011)

WESTCHESTER COUNTY'S LAB TECHNICIAN JENNIFER REILLY TESTIFIED AT THE PETITIONER'S TRIAL ABOUT THE TESTS CONDUCTED ON PETITIONER'S DNA SAMPLES AND THE RESULTS THAT WERE APPROVED BY HER SUPERVISORS ELAYNE SWARTZ AND ROBERT ADAM AND WHAT IS REQUIRED FOR THEIR APPROVAL.

IT IS THAT HIGHER-LEVEL APPROVAL, THAT FORMAL STAMP OF LEGITIMACY ON THE TECHNICIANS WORK THAT WAS IMPERMISSIBLY CONVEYED TO THE JURY WITHOUT THE PETITIONER HAVING THE OPPORTUNITY TO CROSS-EXAMINE THE SUPERVISORS WITH REGARD TO REILLY'S WORK AND THEIR APPROVAL OF HER - WORK.

THUS, THIS HEARSAY TESTIMONY VIOLATED THE PETITIONER'S RIGHT TO THE

DUE PROCESS OF LAW AND THE CONFRONTATION CLAUSE OF THE 5TH AND 6TH AMENDMENT OF THE U.S. CONSTITUTION. SEE MELENDEZ -- DIAZ V. MASSACHUSETTS 129 S. CT 2527, (2009)

THE PETITIONER WAS DENIED HIS RIGHT TO A FAIR TRIAL BY HIS PEERS, IN THAT, THE TRIAL COURT FAILED TO SUBMIT ANY AGGRAVATING FACTORS TO THE JURY IN THE PETITIONER'S TRIAL, WHEREBY, SENTENCING THE PETITIONER TO THE AGGRAVATING SENTENCE OF TWENTY (20) YEARS, THE MAXIMUM AMOUNT OF PUNISHMENT FOR THE CHARGED OFFENSE.

BLATELY V. WASHINGTON 542 U.S. —, 159 L.ED. 2d 403 (2004) IDENTIFIES AND CLARIFIES THE APPLICATION OF THESE FUNDAMENTAL CONSTITUTIONAL PROTECTIONS.

THE MAXIMUM PUNISHMENT A JUDGE MAY IMPOSE SOLELY ON THE BASIS OF FACTS REFLECTED IN THE JURY VERDICT OR STIPULATED TO BY THE DEFENDANT, MUST BE PRESENTED TO A JURY AND

PROVEN BEYOND A REASONABLE DOUBT.

THE TRIAL COURT FAILED TO PRESENT THE PETITIONER'S CRIMINAL HISTORY TO THE JURY AFTER THE VERDICT OR THE COURT'S FINDINGS THAT WOULD DEEM HIM TO BE A SECOND VIOLENT FELONY OFFENDER, NOR DID THEY SUBMIT ANY AGGRAVATING FACTORS TO THE JURY. THUS, SENTENCING THE PETITIONER TO THE MAXIMUM SENTENCE ALLOWED ~~TO~~ FOR A SECOND VIOLENT FELONY OFFENDER

HAD THE PETITIONER EVEN BEEN SENTENCE AT THE BOTTOM OF THE AGGRAVATING RANGE, HE WOULD HAVE RECEIVED A SENTENCE FAR LESSER THAN HE DID.

IN CUNNINGHAM V. CALIFORNIA 549 U.S. 270, 274 (2007) IT WAS REAFFIRMED THAT JUDGES COULD NOT ENHANCE A DEFENDANT'S SENTENCE BASED ON FACTORS NEITHER CHARGED IN AN INDICTMENT FOUND BY A JURY, NOR PROVEN BEYOND A REASONABLE DOUBT, IN THAT SUCH WAS A VIOLATION OF THE 5TH AND

6TH AMENDMENTS OF THE U.S. CONSTITUTION.

By official statistical standards, WESTCHESTER COUNTY NEW YORK AT THE TIME OF THE PETITIONER'S TRIAL WAS COMPOSED OF FOURTEEN POINT TWO (14.2%) PERCENT BLACK OR AFRICAN AMERICAN. SEE (HC) EXHIBIT B.

WHEREFORE, THE PETITIONER SHOULD HAVE HAD AT LEAST FOURTEEN (14) VENIREMEN OF THE SAME RACE AS HIS TO SELECT FROM IN THE SELECTION PROCESS.

HAD THE PETITIONER HAD THIS FOURTEEN POINT TWO (14.2%) OF AFRICAN AMERICAN ON THE VENIRE THAT RESULTED IN BEING TRIED BY AN ALL WHITE JURY, SUCH WOULD ~~AA~~ NOT HAVE BEEN A VIOLATION OF HIS CONSTITUTIONAL RIGHTS, IN THAT, HE WAS AFFORDED AN OPPORTUNITY TO SELECT FROM A FAIR CROSS-SECTION OF THE COMMUNITY. SEE DUREN V. MISSOURI 439 US 357.

SUCH IS NOT THE CASE HERE. THE PETITIONER WAS NOT AFFORDED THIS OPPOR-

tunity, thus, the 5th, 6th and 14th Amendments were violated

This error is structural and should preclude an harmless error analysis nor should it be held to the stringent standard of law that discriminatory intent be shown.

UNINTENTIONAL DISCRIMINATION DOES NOT SATISFY THE CLAUSE OF THE 5TH, 6TH AND 14TH AMENDMENTS. DUBEN (SUPRA)

CONCLUSION

FOR THE REASONS STATED ABOVE THE PETITIONER RESPECTFULLY REQUESTS THAT THIS COURT GRANTS CERTIORARI REVIEW, GRANTS A NEW TRIAL AND OR RE-SENTENCING.

DATED Friday MARCH 13, 2020
BUNN, N.C.

Patrick O'neal