

19-6945

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

KEVIN DAMERON — PETITIONER

(Your Name)

VS.

STATE OF ILLINOIS — RESPONDENT(S)

Supreme Court, U.S.
FILED

DEC 06 2019

OFFICE OF THE CLERK

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

KEVIN DAMERON

(Your Name)

CENTRALIA CC P.O. Box 7711

(Address)

CENTRALIA, IL 62801

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE ILLINOIS STATE COURT ERRED IN ITS APPLICATION
OF WELL ESTABLISHED UNITED STATES SUPREME COURT PRECEDENT
DECLARED IN NEIL v. BIGGERS, 409 U.S. 199 (1972)

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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STATUTES AND RULES

None

OTHER

None

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[] is unpublished.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[] is unpublished.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 _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The denial of the Illinois supreme court appears at Appendix B to the petition and is

[x] reported at People v. Dameron, 132 N.E.3d 286; 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[] is unpublished.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 9/25/19.
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

Due Process Clause of the 14TH Amendment to the United States Constitution

STATEMENT OF THE CASE

On May 3, 2014, Devin Lockett was shot outside of a skating rink located on the Southside of Chicago at 87th and Greenwood street.

Kevin Dameron, 16 years old at the time, was arrested on June 9, 2014 (C.33) and charged with five counts of attempted first degree murder and one count of aggravated battery with a firearm. (C.39-46)

Devin Lockett testified that he is 18 years old. (R.P9) On May 3, 2014, he participated in a dance competition at the skating rink. (R.P9-10) Devin left the skating rink around 10:45 pm., shortly before closing time. (R.P11) The exit is through a door at the rear of the rink and then through an alley that leads to 87th Street. (R.P10-11) Devin had been at the rink with Craig Wallace, and Wallace's mother was going to give them both a ride home. (R.P11)

Devin was not with Wallace when he left the rink. (R.P11,P32,P44, T81,T84) Devin stood on the sidewalk along 87th Street, looking up and down the street for Wallace or his mother's car. R.P11,P32) Devin was alone and did not speak to anyone.

As Devin was looking around for Wallace and his mother, Devin spotted a black man with dreads and a dark hoodie approaching him. (R.P12,P35,P38,P44) Because it was dark outside, Devin could not tell the exact color of the hoodie. (R.P35) The hoodie was pulled up over the man's head, and his hair was "blondish and black." (R.P35,T86)

Devin testified that he could see the man's nose and eyes, but his dreads were in front of his face and came down past his shoulders. (R.P13,P44,T86) Devin had seen this man at the rink a couple of times, but did not know him and did not know his name. (R.P14)

The man stopped about five feet away from Devin and did not say anything. (R.P14) He pulled a gun, which looked like an old cowboy gun, from his waist with his right hand and shot Devin twice in the stomach and chest. (R.P14) Devin fell to the ground and did not see the shooter again. (R.P15-16) Devin did not see Wallace during or after the shooting. (R.P33,P44,P46)

About a week after the shooting, while at the hospital, police showed Devin a photo array in his hospital room. (R.P18,P36) Devin viewed six pictures and identified a photo of Kevin as the shooter. (R.P19-20) Devin denied learning anything about the suspect prior to his photo identification. (R.P37) Devin testified that he had not seen anything on Facebook, and his mother had not told him anything about the suspected shooter. (R.P37-38,P43)

Craig Wallace testified that he is 21 years old. (R.S5) On May 3, 2014, he attended the dance competition at the skating rink with Devin. (R.S5-6) At 11:00 pm the event ended, and he and Devin left the rink together. (R.S6-7,S18) They stood in front of a bus stop at 87th Street a few feet from each other, as they waited for his [Wallace's] mother to pick them up. (R.S7,S18) When the shots were fired he was right next to Devin, a few feet away, though he was not looking at Devin. (R.S8,S23) When Wallace heard the shots coming from his right, he turned and ran back up the alley. (R.S8,S23) But before he did, he took a "quick glance" in the direction of the shots and saw a short black man with dreads holding a gun. (R.S9,S23) Wallace identified Kevin in court as the shooter. (R.S10)

Kevin Damerson testified on his own behalf stating that his is 18 years old. (R.T5) On weekends he would go to skating rinks with friends. (R.T6) He would go to whatever rink that was "trending" on Facebook. (R.T7) On May 3, 2014, he was hanging out with friends when one of them, China Carson, suggested going to The Rink (the skating rink located at 87th and Greenwood Street) (R.T7-8,T12) Kevin got ready to go, but his friends were ready, so he left without them. (R.T8) Once at The Rink, he met up with his brother Kirby Dameron and his brother's friends. (R.T9,T48) It was a little before 11:00 pm when the DJ announced that The Rink was closing. (R.T10) He left with Kirby and a big crowd of people heading out. (R.T10-11) Once outside he ran into China who had arrived late but never made it into The Rink. (T.35) He and China were standing near a bus stop and Facing The Rink building. (R.T13) There was a crowd of people on both sides of them, but he did not know any of them. (T13) He noticed one of the men in the crowd directly in front of him unzipped his jacket, as though he was going to fight. (R.T14,T41) A few seconds later, gunshots were fired. (R.T14)

China Carson testified that she is 16 years old, in 2014, she was 14 and friends with Kevin. (R.T35) They still are friends, and they have never dated. (RT53,T72) On May 3, 2014, when she arrived at The Rink she spotted Kevin and went over to talk to him. (R.T54) During the conversation she could hear a crowd of about 20-30 people arguing, but did not think anything of it. (R.T56,T68-70) Kevin was standing close to her as they spoke, on her right side. (R.T54) Then gunshots went off, and she and Kevin ran separate ways. (R.T57)

The Illinois trial court found Kevin guilty of a single count of attempted first degree murder, and aggravated battery with a firearm. (C.43,46: R.T 113)

Timely notice of appeal was filed and Kevin appealed his conviction to the Illinois appellate court. (App. No.1-16-2778) On April 11, 2019, the appellate court issued its order affirming the judgment of the trial court. (Appendix A) Pro se petition for rehearing was denied on May 28, 2019.

Timely petition for leave to appeal to the Illinois supreme court was filed. The Illinois supreme court issued its opinion denying leave to appeal on September 25, 2019. (Appendix B)

REASON(S) FOR GRANTING THE PETITION

THE ILLINOIS COURT ERRED IN ITS CONCLUSION THAT THE WITNESS'S IDENTIFICATION OF DEFENDANT AS THE SHOOTER SATISFIES NEIL V. BIGGERS, 409 U.S. 188

The Illinois court erred in its conclusion that the State's witness's identification of Kevin Dameron as the shooter meets the five factors set forth in Neil v. Biggers, 409 U.S. 188 (1972).

First the Illinois court found that "the witnesses' opportunity to view the defendant weighs in the State's favor." (App. Opin. p. 15-16, ¶37)

However, Devin's own testimony shows that he had limited capacity to make a reliable identification of his shooter. Devin testified that the man who shot him wore a hoodie with the hood pulled up over his head and long dreads covering his face. (R.P35, T86) Devin could only make out the shooter's nose and eyes. (R.P13, P44) Immediately after he was shot, Devin fell and lost sight of the shooter. (R.P. 15-16) Severely injured, he lost consciousness. (R.S58)

The most important Biggers factor is the opportunity to view the offender, Neil v. Biggers, 409 U.S. 188 (1972).

In this case, Devin's opportunity to view the shooter was limited by the nature of the event. Eyewitnesses under such high stress generally make less reliable identifications because "even under the best viewing conditions, high levels of stress can diminish an eyewitness's ability to recall and make an accurate identification."

Sexton v. Beaudreaux, 138 S.Ct. 2555

Thus, the Illinois court erred when crediting Devin's identification of Kevin Dameron as the person who shot him, where the identification fails to meet Biggers factors.

Second, the witness's degree of attention was, as admitted by the appellate court, "lower," Wallace testified that he was not looking in the direction of the shots and only took a "quick glance" at the shooter. Yet, the Illinois court held that this factor does not render his identification unreliable. (App.Opin.p.16, ¶38)

A common problem with eyewitness identifications, as in this case, is "weapon focus." Devin provided few details about the shooter's personal appearance, but he remembered that the weapon looked like an old cowboy gun, and the shooter took it from his waist with his right hand. (R.P15) "When a weapon is introduced into a situation, most witnesses will tend to focus their attention on the weapon, not on the face of the person holding it." People v. Allen, 376 Ill. App.3d 511,525 (1st Dist.2007)

The witness's degree of attention fails to meet the criterion set forth in Biggers.

Third, the Illinois court erroneously held that the accuracy of prior descriptions factor set forth in Biggers is "largely inapplicable here." (App.Opin.p.16 ¶39)

Devin testified that he did not know the identity of his shooter prior to being presented with a photo array for identification. (R.P53-54) He did not know Kevin's name or anything about him. R.P53-54) He did not give the police any description of the shooter, because he was hospitalized immediately after the shooting and was in and out of consciousness. (R.P41-42)

This lapse in time before his identification of Kevin as the shooter shows that the identification could have been influenced and, therefore, fails to satisfy Biggers. Newsome v. McCabe, 319 F.3d 301,305 (7th Cir.2003).

The fourth Biggers factor, the witness's certainty, calls into question Devin's identification of Kevin. The Illinois court erroneously held that the certainty of the witnesses' supports the reliability of the identifications made in this case. (App.Opin. p.16, ¶40)

The Illinois court failed to consider the social media role in this case. Devin's mother, Renee Lockett, testified that the day after the shooting, a group of about 15-20 young people came to see Devin at his hospital room, who was still still "basically unconscious." (R.58) During that visit, the group of kids told Renee that they knew who had shot Devin. (R.59) They told her it was someone with the nickname Noodles. (R.59) A few days later, someone sent her the picture [of Kevin] that was circulating around Facebook of Noodles. (R.67,T16) Renee told the police of this, and also told the kids that if they had more information to contact the police.

China Garson testified that once she got home on the night of the shooting she got on Facebook. (R.T57) She saw a picture of Kevin that was being shared on Facebook, with the caption stating that Kevin was Devin's shooter. (R.T57-58)

Thus, the Illinois court erred in its conclusion that the witnesses' certainty supports the reliability of the identifications made in this case. People v. Franklin, 22 Ill. App. 3d 775, 784 (1st Dist. 1974)

Finally, the length of time between the offense and the identification of Kevin was erroneously decided by the Illinois court. (App.Opin.p.17, ¶41)

About a week elapsed between the shooting and the photo array identification of Kevin. Nothing in the record indicates that Devin made any prior identification of Kevin as the shooter. It was not until after Devin had been visited by numerous young people at his hospital room before his identification of Kevin. The suggestive circumstances of his hospital photo array identification is not reliable. Cf. Manson v. Braithwaite, 432 U.S. 98, 113 (1997) (corrupting effect of the suggestive identification must be weighed against the independent reliability of the identification in determining the exclusion of identification testimony)

The Illinois court erred in its conclusion that the length of time between the offense and the identification weighs in favor of reliability, where Biggers factors are not satisfied.

This Court should issue writ of certiorari to correct the many errors committed by the Illinois court when determining whether the five factors setforth in Biggers have been met.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kim Cameron

Date: 12-5-19