

19-7168

No. _____

ORIGINAL

FILED

DEC 24 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

TRACY EUGENE JOHNSON — PETITIONER
(Your Name)

vs.

PEOPLE OF THE STATE OF
ILLINOIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

APPELLATE COURT OF ILLINOIS-THIRD JUDICIAL DISTRICT

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

PETITION FOR WRIT OF CERTIORARI

TRACY EUGENE JOHNSON

(Your Name)

2600 N. BRINTON AVE.

(Address)

DIXON, IL 61021

(City, State, Zip Code)

(UNKNOWN)

(Phone Number)

QUESTION(S) PRESENTED

- 1.) WHEATHER PETITIONER WAS DENIED HIS SIXTH AMENDMENT CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF APPEELLATE COUSEL FAILURE TO RAISE THE VALID AND MERIT-ORIOUS CLAIM THAT THE PETITIONER WAS CONVICTED OF THE CRIME WHEN THERE WAS A REASONABLE DOUBT OF HIS GUILT.

 - 2.) WHETHER PETITIONER WAS DENIED HIS FOURTEENTH AND SIXTH AMENDMENT RIGHTS TO THE DUE PROCESS OF LAW, AND THE EFFECTIVE ASSISTANCE OF COULSEL WHEN THE STATE CONVICTED HIM OF THE OFFENSE OF BURGLARY WHILE FAILING TO PROVE THE ESSENTIAL ELEMENTS OF THE OFFENSE, AND COUNSELS FAILURE TO POINT OUT THIS CLAIMS MERITS IN A POST TRIAL MOTION, AND ON HIS DIRECT APPEAL.
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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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OTHER

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☐ is unpublished.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☐ is unpublished.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 _____ 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 Illinois Appellate Court 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.

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 10/30/2019.
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

- 1.) FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION - DUE PROCESS CLAUSE
REQUIRING THE STATE TO PROVE EVERY FACT NECESSARY TO ESTABLISH THE ELEMENTS
OF THE CRIME CHARGED BEYOND A REASONABLE DOUBT.
- 2.) SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION - RIGHT TO EFFECTIVE
ASSISTANCE OF APPELLATE COUNSEL FAILURE TO RAISE THE VALID AND MERITORIOUS
CLAIM THAT THE PETITIONER WAS CONVICTED OF THE CRIME WHEN THERE WAS A REASONABLE
DOUBT OF HIS GUILT.
- 3.) VIRGINIA, 443 U.S. at 319
- 4.) PEOPLE V. WHEELER, 226 ILL.2D 92, 114 (2007)
- 5.) PEOPLE V. CUNNINGHAM, 212 ILL. 2d. 274, 280 (2004)
- 6.) SMITH, 185 ILL. 2d at 542, 546
- 7.) PEOPLE V. DAVIS, 278 ILL. APP. 3d. 532, 539, 544 (1st. DIST. 1996)
- 8.) PEOPLE V. SCHOTT, 145 ILL. 2d. 188, 206-09 (1991)
9. PEOPLE V. RHODES, 85 ILL. 2d. at 249
- 10.) PEOPLE V. KING, 135 ILL. APP. 3d. at 154
- 11.) ILLINOIS SUPREME COURT RULE 431 (b)
- 12.) PEOPLE V. THOMPSON, 238 ILL. 2d. 598, 607 (2010)
- 13.) PEOPLE V. SEBBY, 2017 IL 119445, ¶ 49
- 14.) PEOPLE V. BELKNAP, 2014 IL 117094

STATEMENT OF THE CASE

Tracy Johnson was charged with burglary in that on May 23, 2013, he, without authority, knowingly entered Jimmie's Rainbow Tavern in Rock Island, with the intent to commit a theft therein (C18). A jury trial was held on April 8-to-9th, 2015.

During voir dire, the trial court admonished the venire of the four principles of law enumerated in Illinois Supreme Court Rule 431 (b) (R446). The judge asked whether they understood that the defendant was presumed innocent, and each potential juror was polled and responded that they understood (R446-448, 464,482-83). The judge also asked the venire whether they understood that the State must prove the defendant guilty beyond reasonable doubt, and each potential juror was polled and responded that they understood. The same process was repeated as to the principles that defendant is not required to present evidence on his behalf, and that the jury could not hold defendant's failure to testify against him.

The state presented the following evidence against petitioner. Jimmie Nettles, who owned the Rainbow Tavern, testified that on May 23, 2013 he went to the tavern because an alarm had gone off. This occurred some time before the tavern opened, which was usually around 9:30 or 10:00pm. (R511). The Police were there when he arrived. At first Nettles said that nothing was missing, but then stated that a bag of quarters, a jar of dimes, a jar of nickles, and a can of pennies were missing (R507-08). He also denied that a \$20.00 bill was missing, but later said that it was missing (R507-08,512). The cash register had an alarm that could be triggered if someone removed a bill from it. Nettles had not given anyone permission to enter the tavern that night and take any money (R508-10).

An upstairs window that had been previously boarded up was found opened. There were no stairs to the roof, and there was an eight-foot drop from the window to the shower stall on the other side of the window. Nettles did not recall whether the police went onto the roof that night. The next day, Nettles stopped a man who was driving by and asked him, to fix the window (R513,517). Nettles had not seen the man before or since then, but he remembered that the man was Mexican (R513-14). The man went up a ladder onto the roof, told him that there were sandals and a bat there, and took the items off of the roof (R514-15).

Nettles did not go up up the ladder because he had a bad knee. He later said that the man only went half-way up the ladder and did not touch the items. Nettles also denied touching the items or showing the bat to a man named Willie Brown. (R515). Nettles called the police and told them about the items (R518-19).

Willie Brown had previously worked on an air conditioning unit on the roof of the tavern in May 2013 (R520-21). He came back to work on the unit at least two other times, but did not remember the exact dates. The second time, Nettles told Brown that someone had broken into the tavern, he asked Brown if he saw anything on the roof the first time he...

was there, but brown did not remember seeing anything (R522). Nettles was holding a bat, but Brown did not know whether it was the bat found on the roof. Brown admitted that when he had been working on the side of the unit near the spot where the items were found, it was very possible he did not notice that the bat and sandals were there because when he was concentrating on something, he did not pay attention to anything else (R524-25). Brown also left his \$80 gauges on the roof the first time he was there, and they were still on the roof when he returned.

Rock Island Police Officer Brett Buchen did not speak to Brown until July 17, almost two months after the incident. During a phone call, Brown told Buchen that he had been on Nettles' roof approximately three days before the alleged incident on May 23. When Nettles spoke to Brown at the tavern, Brown showed him a bat. Buchen also was not sure of the tavern's operating hours but believed that they were not regular (R596).

Rock Island Officer Nicholas Pauley responded to the tavern on May 23, with Officer Barnett. He believed that the tavern was not opened regularly at that time, but knew that when it was opened, it opened late (R531). Nettles told him that a \$20 bill was missing, but said nothing about missing any change. The officers walked with Nettles through the tavern and through the old upstairs apartment. They determined that the point of entry for the break-in was an opened window that hung above a shower stall and that had been previously boarded up from the outside. The police did not go onto the roof, and they could not see onto the roof because the window was too high to see out of. There were no stairs or ladders to climb onto the roof, and it was high enough that someone could not grab onto the roof to climb up.

Rock Island Officer Tyson Nichols, a veteran officer of 23 years, responded to a call from Nettles on May 25 around 12:30 p.m. (R540). At that time, he believed that the tavern was opened only on the weekends, but was not sure if it was operational at the time of the incident. Nettles told him that his tavern had been broken into a couple of days prior, and when he went to fix the window he found items that had been left behind (R540-41). He recalled that Nettles had mentioned

a handyman being involved. Nettles said he had not touched the items. There were no stairs to the roof, so Nichols went up a ladder to see and photograph the items. He testified that three photographs accurately depicted the way the tavern had appeared on May 25.

Nichols described the roof as having another small, steep roof on it that led to a window about eight-feet high. The window looked like it had been boarded up, but one side of the board had been pried back. Nichols photographed a pair of men's slip-on sandals and a aluminum bat found at the bottom of the small roof. Nichols denied asking an evidence tech to process the scene for fingerprints, but after viewing his report, admitted that he had requested it, but the scene was not processed (R554-55).

The bat handle and the sandal straps were processed for DNA profiles and compared to Petitioner's DNA profile (R590-91,604-10). There was a single male DNA profile on the sandals which matched Petitioner's profile. The major profile on the bat handle also matched petitioner's profile, but an unidentified minor profile did not match petitioner (R 621-22). Neither item showed the presence of Nettles's DNA profile. The bat was also processed for fingerprints, but there were no suitable prints to examine.

Nichols dated the paper bags in which he placed items as May 24 (R545-49). The cover sheet for the photographs was dated May 21. Nichols said this was a clerical error because his report stated that he had been dispatched on May 25. Most of the photographs of the items on the roof depicted blue skies and an opened window, while five photographs depicted overcast skies with a boarded up window (E38-42).

Emerald Klemmer, petitioner's niece, alleged that sometime during the summer of 2013, petitioner told her that he had committed the burglary. According to Klemmer, petitioner came to her sister's house and asked Klemmer if she wanted to drink or get high. He told her that he had money because he went to Jimmie's, broke in, and got a lockbox with change in it. Petitioner had with him a little gray, square lockbox (R 570). Petitioner told her that he went up some stairs around the building and went in through a window. She did not remember the date of her conversation with petitioner or the time of day (R568).

Klemmer also admitted that when the police came to her apartment in January of 2014 and asked whether she knew anything about the incident, she said not know anything. The police told Klemmer that she could be charged with felony obstruction of justice if she lied (R571). It was not until December of 2014, when she was arrested and in custody for unlawful use of a credit card, a Class 3 felony, that she told police about what petitioner told her (R561,565,567). Klemmer said that police did not make her an offer in exchange for her testimony, but she did expect a benefit for it (R561-62). At the beginning of the interview, she asked the police whether she could be released without posting bond if she gave them information, and she was subsequently released on her own recognizance. After her family found out about her statement, her grandmother kicked her out of the house (R565). Klemmer admitted that she had lied to police when they first asked her about the incident, but she had not been charged with felony obstruction of justice.

Petitioner moved for a directed verdict, and argued that the presence of his DNA on the items did not show that he had broken into the tavern (R629). He also asserted that Klemmer's testimony had been impeached and that the details of her testimony did not comport with the evidence. The court denied the motion and held that the jury could find guilt because the DNA evidence was found two days after the incident and Klemmer had testified that petitioner told her he committed the offense (R630).

Petitioner presented the testimony of Rock Island Detective Leo Hoogerwerf, who said that he had asked Klemmer in January of 2014 whether she knew anything about the burglary of the tavern, and she said that she did not. He told her that she could be charged with felony obstruction of justice if she lied. In December of 2014, Klemmer was interviewed by another detective and gave an inconsistent statement. (R600). He said that it was not unusual for a woman charged with unlawful use of a credit card and with no prior record to be released on her own recognizance.

During closing arguments, the prosecutor said that he had been "a little confused" by Nettle's testimony (R634-35).

The jury found petitioner guilty of burglary (C163;R660).

REASONS FOR GRANTING THE PETITION

I'm using the Certiorari format to present a problem that exist in different districts of jurisdiction. This honorable court has the opportunity to render clarity on this subject in all jurisdictions, and provide justice for this individual petitioner.

In the case presented the petitioner's Fourteenth Amendment rights were violated by allowing him to be found guilty based upon unreasonable and speculative inferences. This has been a matter of contention in different districts of jurisdiction.

Here the state did not present any direct evidence that petitioner committed the offense. What the state did was presented circumstantial evidence that failed to establish petitioner had committed the offense beyond a reasonable doubt. I humbly ask that this honorable court bring clarity to opposing jurisdictions concerning this matter, for the petitioner and for those others in need of an answer.

The petitioner could be any American citizen deprived of his freedom, solely because it may be easy to do so.

The petitioner agrees that there are overwhelming facts throughout petitioner's case.

It is a "fact" that the State's evidence wasn't discovered by police during their thorough investigation immediately after the offense. But only days later by an individual having access to an exposed roof where items were believed to be found.

It is also a "fact" in the petitioner's case that perjured testimony was submitted by witness Emerald Klemmer. The witness's altering testimony was only believed to be true when it was in support of the State's existing theory that petitioner was the offending party.

It's an absurd thought to believe that anyone would burglarize a business only to flee without their shoes. This issue was never addressed by petitioner's trial nor appellate counsel. Which brings up the violation of petitioner's Sixth Amendment right to Effective Assistance of Counsel.

For these reasons I ask that this petition be granted in the interest of the many prison litigants throughout this country that have been denied their rights based upon different districts of jurisdiction.

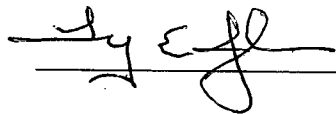
It should never be easy to deprive someone of their freedom, solely because

it can be done without question.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

Date: 12-20-19