No. 19-7237

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Christopher Croom, pro se — PETITIONER
(Your Name)

People of The vs.

State of Illinois, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Appellate Court of Illinois, 3rd Judicial District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Croom
(Your Name)

P.O. Box 1000
(Address)

Menard, IL. 62259
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I

Does a defendant Knowingly waive the right to Conflict-free Counsel when the trial Court merely admonishes the defendant that a conflict exists, Without telling the defendant how the Conflict could impact defense Counsel's ability to represent him?

Does it matter that the admonishments administered to the defendant were produced and delivered to the Judge by an adverse party involved in the Conflict of interest Situation?

II

IS it proper for a Trial Judge to disregard a request to do an inquiry of a possibly biased juror who was not forthcomingly honest during Voir Dire when it is brought to the courts attention during deliberations?

Does it matter if this request for an inquiry of the juror came from the State or the Defense when the Constitutional Rights of the defendant are at Stake either way

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:

① Supreme Court of Illinois
Supreme Court Building
200 East Capitol Ave.
Springfield, IL. 62701-1721

Supreme Court Case No: 124900

② Appellate Court of Illinois
Third Judicial District
Appeal Case No: 3-16-0553

③ John Pepmeyer, Knox County States Attorney
200 S. Chrry St.
Galesburg, IL. 61401

Trial Case No: 14-CF-288

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CASES

II

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[ ] is unpublished.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 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 Illinois Appellate 3rd district court appears at Appendix A to the petition and is

[ ] reported at 2019 IL App (3d) 160553-U; 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 Sep. 25, 2019 ~~May 7, 2019~~.
A copy of that decision appears at Appendix B C.

[ ] 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

I 6th Amendment, right to Counsel, which includes right to Contract free counsel.

II 6th Amendment, right to a fair trial by an impartial Jury.
14th Amendment, Due Process.

STATEMENT OF THE CASE

On September 12, 2014 Christopher L. Croom, Defendant, was charged by superseding indictment with four counts of First degree murder and one count of unlawful possession of a weapon by a felon(UPWR) (C27-29). It was alleged that on or about August 13, 2014, Defendant, without lawful justification, caused the death of Melvin Buckner by stabbing him in the arm and chest, intending to kill or do great bodily harm to Melvin (Count 1). Knowing such act would cause Melvin's death (Count 2). Knowing such act created a strong probability of death or great bodily harm (Count 3), and while committing a forcible felony (Count 4). With respect to the UPWF charge, it was alleged that Defendant possessed a knife and used it illegally (C27-29).

ISSUE 1

During a hearing on September 22, 2014, Defendant was present with his Public Defender (PD) , James Harrell. Assistant State's Attorney (ASA) David Hansen represented the state. The court presented the defense with a copy of the indictment and set a date for arraignment (R16-20).

During a hearing on September 24, 2014, P.D. Harrell appeared on defendant's behalf and ASA Hansen appeared for the state (R24-27).

At a status hearing on January 16, 2015 ASA Hansen appeared in court on behalf of defendant (R.37-38). The following exchange occurred concerning Hansen's prior employment as an ASA.

MR. HANSEN: The only other issue, Judge, is as you know I was a former Assistant State's Attorney. I did appea4r for the state a couple of times at an arraignment and I -- I think at another court date in this case, and I've spoken to Mr. Croom about that and explained, you

know, potential conflict and such as far as me fully and-- vigorously representing him now, and he is comfortable and okay with me being his Public Defender and would waive any potential conflict, but I just wanted you to admonish him the same on the record, Judge--

THE COURT: Okay

MR. HANSEN: To make sure that is true.

THE COURT: All right. Ms. Tanner, does the state have any objection to the matter being continued on the defense request to the April 20 trial date?

MS. TANNER: We do not.

THE COURT: Okay and Mr. Croom, do you understand that when somebody who was a prosecutor becomes a Public Defender it-- it's happened before-- the general rule is that if they were intimately involved in the case there would be a conflict. If they were only tangentially involved in the case, there's a waiverable conflict, and you could waive that and have him continue to represent you. Is that what you wanted to have happen?

THE DEFENDANT: Yes sir.

THE COURT: Okay. So I'll leave Public Defender Hanson to attend to this case.... (R38-39).

On October 5, 2015, the state notified defendant of its intent to seek an additional 15 years imprisonment on the basis that defendant was armed with a firearm during the commission of first-degree murder (c129-30).

The same day, Assistant Attorney Generals Jonathan Mckay and Robert Hollinshead entered their appearances as special prosecutors and co-counsel with Knox County State's Attorney John Pepmeyer (R68-70). Hansen informed the court that his office would be retaining

outside counsel. Chris Kanthak, to assist Hansen with defendant's representation (R75). The court and the parties then addressed Hansen's representation of defendant for a second time:

MR. PEPMEYER: For the record, your Honor, I would show the court an acknowledgment and waiver of conflict that we hope Mr. Croom will review and acknowledge in open court.

THE COUR: Okay

MR. PEPMEYER: We felt like quite honestly at an earlier hearing, the issue was broached for consideration. The admonishments, we felt, were probably less than they should be, that why we're doing this.

THE COURT: Okay. All right. Mr. Croom, just so that we don't have any misunderstandings later, and so that you're clearly aware of what was going on with Mr. Hansen when he was in the State's Attorney's Office, and so that you clearly understand your right to have an attorney who would have no prior conflict, they've asked me to admonish you so that you would understand and acknowledge that David Hansen, who's the Public Defender of Knox County, was previously employed by the Knox County State's Attorney's Office as an Assistant State's Attorney at the time the case was initiated.

That you understand and acknowledge that although the State's Attorneys of Knox County never designated Mr. Hansen to be the Assistant State's Attorney assigned to handle the case, as part of his duties, he nevertheless performed the following actions in that case: He did not present the evidence in the case to the Grand Jury of Knox County, but he did appear on behalf of the State when the Grand Jury reported its actions to the court on September 12, 2014. At which time, the case was continued for arraignment to September 24.

And he appeared on behalf of the State September 24, and the case was continued for arraignment on October--to October 1.

And he appeared on behalf of the State on October 1, 2014 when you were arraigned on the charge and pled not guilty.

And they'd like you to understand and acknowledge that because he was a former prosecutor who had some personal involvement with the prosecution of the case, a per se conflict of interest exists, and understand and acknowledge that under the Sixth Amendment of the Constitution, you have the right to an attorney who has no conflicts of interests; and understanding the situation and rights in this case. You may waive the right to be represented by an attorney who is not a former prosecutor and who had some personal involvement in this case and ask that Mr. Hansen continue to represent you in this case.

Having heard what I just said, do you want Mr. Hansen to continue as your attorney?

THE DEFENDANT: Yes, Sir.

THE COURT: Okay. Do you have any questions about that?

THE DEFENDANT: No, sir. I reviewed the terms.

THE COURT: I'm sorry?

THE DEFENDANT: No, sir. I-- I've reviewed it already.

THE COURT: Okay. Then I'll have you please sign at the bottom acknowledging that here in open court.

(Defendant complies)(R76-79)

The written waiver signed by defendant provided that he understood the following: Hansen was previously employed as a Knox County ASA when this case started; Hansen appeared on behalf of the State when the grand jury reported its actions on September 12;

Hansen appeared on behalf of the State in court on September 22 and September 24 when the case was continued for arraignment; Hansen appeared on behalf of the State on October 1 when defendant was arraigned; a Per se conflict existed because Hansen was a former prosecutor who had some personal involvement with the prosecution of this case; and defendant had a Sixth Amendment right to an attorney with no conflicts of interest. The written waiver also provided that defendant was waiving his right to be represented by an attorney who was not a former prosecutor with some personal involvement in this case and that he wanted Hansen to continue to represent him(C128).

During trial, defendant attempted to file a misconduct motion with the court (Attached Exhibit A) which defense counsel refused to adopt. (Trial transcripts pages 574-576). This motion demonstrated, among other things, the personal relationships and refusals to act on misconduct by defense counsel Hansen. The Court placed this motion in the records but refused to hear it because defendants with counsel can't have "hybrid representation and file motions without counsel" adopting" them. The court also opined, "I don't know what you said in'em, but they need to look that over very carefully before they fulfill their role as gatekeeper to determine what should or shouldn't be filed, and also to determine whether or not those-- they have a separate responsibility to make sure that any motions that they adopt would not subject them to sanctions." Apparently the court was more concerned about possible ramifications to the counsels involved, than the rights of the defendant.

The court conducted a jury trial beginning on April 19, 2016, and ending on April 26, 2016 (R342 et seq.). The state elected to nolle prosequi count IV (felony murder) (C577).

ISSUE 2

During voir dire, the Court asked the venire whether anyone knew Latoya Wright, a potential witness (R674-78). Juror Tammie Miller told the Court that she knew Latoya Wright because she attended church with her about five times in the previous year (R678-79). She had no social involvement with Latoya aside from "sight or very casual conversation" (R679). There was nothing about Latoya's membership at her church that would make her more or less credible than anyone else (R680). Juror Miller said she could be fair and impartial notwithstanding her knowledge of Latoya (R68). Later, in response to questioning by the State, Miller stated that she also knew Latoya's mother and brother (R716). Members of Miller's family who attended the church were also friends with Latoya and her family. Their families were friends (R716-17). Miller reiterated that she could be fair and impartial (R718). Miller was ultimately accepted as a Juror (R751).

At trial, the state presented testimony from three occurrence witness, one of which was Latoya Wright (Melvin Buckners best friend) (R883-1146).

Later during deliberations, the prosecution disclosed to the Court that a staff member of the State's Attorney's Office discovered that Juror Tammie Miller was the mother of Blair Haynes. Blair had been married to Rogeria Haynes. Rogeria had obtained an order of Protection against Latoya Wright (state's occurrence witness), and Rogeria was a defendant in an aggravated-battery case where Latoya was the victim. Moreover, the alleged motive for the battery was Latoyas multi-year relationship with Juror Tammie Miller's son, Blair Haynes. The prosecution explained that Juror Miller never disclosed this information during voir dire when asked about how she knew Latoya. The state requested that Miller be questioned and replaced with an alternate juror (R2158-61). Defense counsel requested a mistrial (R2162). In response

the state opposed a mistrial and argued that "she should probably be questioned by the court about her relationship with Ms. [Latoya] Wright" (R2164).

The court opined that it had "no idea" why Juror Miller did not disclose the information concerning her son and Latoya (R2164). The court noted that during voir dire, Juror Miller swore that she could be fair and impartial (R2165). The court then said, "Whether or not this case would reach a verdict is now moot because while you're looking at me, the bailiff signaled me that a verdict has arrived. So I would say that all those objections have been noted. You can poll the jury at the end of the case, but I'm gonna receive this verdict, and that is gonna be that" (R2165).

The jury found the defendant guilty of First-degree Murder (Counts 1 and 3). If found that the state failed to prove that defendant had a firearm during the commission of the Murder. And it found defendant guilty of Unlawful Possession of a Weapon by a felon (Knife) (C572-77; R2169-70).

Defendant filed a motion for a new trial on May 13, 2016, and amended the motion on August 9, 2016 (C577, 597-602). Defendant argued, inter alia, that the court erred when it addressed the issue involving Juror Miller and should have declared a mistrial (C597-602).

On August 12, 2016, the trial court denied defendants post-trial motion and sentenced defendant to 55 years' imprisonment for first-degree murder (C603; R2223-28, 2335).

Defendant filed a motion to reconsider sentence on August 29, 2016 (C610), which the court denied on September 14, 2016 (C622; R2346).

Notice of appeal was filed on September 14, 2016 (C624-25). The office of the State-Appellate Defender was appointed (C626).

On February 14, 2017, The Illinois Appellate Court, 3rd District, allowed leave for defendants instanter filing of an amended notice of appeal (A4-5).

On August 24, 2018, the Defendants Brief and Argument and supporting documents were filed with the Clerk of the Appellate Court.

On December 12, 2018, the state filed its brief and supplemental Appendix of Plaintiff-Appellee People of the State of Illinois.

On January 10, 2019, the Defendant's Reply Brief for Defendant-Appellant was filed.

On May 7, 2019, the Appellate Court affirmed Christopher Croom's conviction in a Rule 23 order. No. Petition for rehearing was filed. A copy of the Appellate Court's judgment is appended to this petition. In this, Appellate Courts decision, the court says, "Defendant contends he is entitled to a new trial because the Circuit Court failed to conduct an evidentiary hearing into Juror Miller's impartiality" (page 10). This is not what defendant contended. Defendant contended that because the Circuit Court failed to do an inquiry after the State presented non-conjectural evidence of falsehood by Juror Miller, while trial was still in progress and an alternate juror could have been seated, is why defendant is entitled to a new trial. That an evidentiary hearing would be proper if this evidence was brought to the courts attention after trial was concluded. People v. Mitchell, 121 Ill App. 3d 193 (1993).

On May 29, 2019, a petition for leave to appeal was filed with the Illinois Supreme Court.

On September 25, 2019, the Supreme Court of Illinois denied to review. (Unpublished) appended to this petition.

No petition for rehearing was filed.

REASONS FOR GRANTING PETITION

1.

The United States Constitution guarantees defendants right to counsel. The right to counsel includes the right to conflict free representation. The Judicial Districts of the Appellate courts of Illinois have a split of authority when deciding this issue.

The Supreme Court has made clear that for a defendant to knowingly waive his or her right to conflict-free counsel, the trial court must admonish the defendant as to the existence of the conflict and its significance. What is not clear, as evidenced by the split of authority in the Judicial Districts of Illinois Appellate Courts is to what extent a trial court must admonish a defendant of the conflict's significance.

A per se conflict of interest exists where defense counsel previously served as a prosecutor in the same criminal proceeding against the defendant. People v. Fields, 2012 IL. 112438 Sec. 18; People v. Lawson, 163 Ill 2d. 187, 217-18 (1994); People v. Kester, 66 Ill. 2d 162, 167-68 (1977). In the instant case, there was a per se conflict because defendant's trial Attorney, David Hansen, was a former prosecutor who appeared on behalf of the state in the early stages of this case (R16-39, 76-79). "Unless a defendant waives his right to conflict-free representation, a per se conflict is automatic grounds for reversal." Fields, 2012 IL. 112438, Sec. 18.

It is well established that a defendant must be admonished as to "the significance of the possible conflict" for a waiver to be made knowingly. See, e.g. Lawson, 163 Ill. 2d at 218; People v. Olinger, 112 Ill. 2d 324, 339 (1986) (Stating the same); Kester, 66 Ill. 2d at 167-68 (same); People v. Stoval, 40 Ill. 2d 109, 114 (1968) (same). The Illinois Appellate Court has stated that the trial court need not "Painstakingly detail every potential ramification of a potential

conflict" for the defendant. Olinger, 112 Ill. 2d at 339-40. However, it has also stated that a court's admonishments should allow the defendant to understand how the conflict could affect the representation. See, e.g. Lawson, 163 Ill. 2d at 218; Stoval, 40 Ill 2d at 114.

How a trial court should accomplish this is unclear. There is a split of authority among the Judicial Districts of the Illinois Appellate Courts on this issue.

One view, that of the Third Judicial District, is that telling the defendant that a conflict exists and why it exists (i.e., the court tells the defendant the factual basis for the conflict) is enough to admonish the defendant of the conflict's significance. See People v. Jackson, 2018 Il App. 3d 170125.

In "Jackson", the defendant was represented in a stipulated bench trial, and then again on retrial following a direct appeal, by attorney Edward Jaquays, a part-time Public Defender who also worked in private practice. At the time of the retrial, attorney Nicole Moore was an associate at Jaquays's Private Law office. Moore had previously worked as a prosecutor in the case, having litigated a Motion to Suppress in the trial court, which the defendant ultimately won on direct appeal. Jackson, 2018 IL. App. 3d. 170125. Before the retrial, the state asked the defendant to waive the conflict on the record. The trial court advised the defendant that Moore had previously worked as a prosecutor on the case but was currently working as an attorney in Jaquays's office. The defendant said he understood but added that Jaquays had not discussed the matter with him. The court gave the defendant a few minutes to talk to Jaquays about the "situation" off the record. When the parties went back on the record, the court asked the defendant if he had any concerns. The defendant said "No, I'm fine. He explained to me the situation." The defendant acknowledged that he had no concern and was "all right."

On appeal, the Third Judicial District of Illinois held that "the trial court adequately admonished the defendant as to the conflict and its significance." The Appellate Court explained that the trial court had advised the defendant about Moore's work in the case as a prosecutor and her current position as Jaquays's associate and that the defendant said he was "fine with it." This case being distinguishable from the instant case, because in the instant case, it was the direct representation by the defense counsel, (Hansen), who has the conflict.

In contrast to "Jackson", and the instant case, the Second, Fourth, and Fifth Judicial Districts of Illinois have expressed a different view: The trial court must explain to the defendant, in a way the defendant might understood, how the conflict could impact counsel's ability to zealously represent the defendant. Merely telling the defendant that a conflict exists, and why it exists, is not enough. See e.g., People v. Acevedo, 2018 IL. App. 2d 160562; People v. Poole, 2015 IL. App. (4th) 130847; People v. Coleman, 301 Ill App. 3d 290, 291-94, 301-302 (5th dist. 1998).

For example, a per se conflict existed in Acevedo because defense counsel represented one of the State's occurrence witnesses. Acevedo, 2018 IL. App. (2d) 160562. Defense counsel told the court that he had addressed the following with the defendant: The Conflict, its ramifications, what he expected the occurrence witness to say at the defendant's trial, and "how it affects him and his rights." Id. The Court admonished the defendant that there was a "per se conflict of interest", which meant that defense counsel represented both the defendant and a State's witness. The defendant said he understood. Id. The court told the defendant "this is very serious" and added, "because of that representation, there are issues that may or may not come up during the course of his representing you." The defendant said he understood and confirmed that he discussed "those" with defense counsel. Id. The court told the defendant that he could

have a new attorney if he felt that the conflict would affect him in a "bad way." The defendant said he understood and that he had discussed "all those scenarios" with defense counsel. Id. The defendant said he understood and that he had discussed "all those scenarios" with defense counsel. Id. The defendant said he wanted to proceed with the same attorney and agreed that he would waive any objection. Id. At the court's urging, the defendant confirmed that he was not under the influence of any drug or alcohol and that he did not have any difficulty understanding the concepts that they had discussed. Id.

The Second district held that the defendant's waiver was not made knowingly. Id. The court opined, "Although the record makes clear that defendant was aware of the existence of the conflict, the record does not establish that defendant was advised of the significance of the conflict." Id. (emphasis original). The court explained the basis for its conclusion: The record does not reveal the specifics of the discussions between counsel and defendant. Counsel never explained to the court what information he had provided to the defendant concerning the ramifications of the conflict. Nor did defendant indicate that he knew the possible impact that the conflict could have on counsel's ability to zealously represent him. The court told defendant that the conflict was "serious" and that there were "issues that may or may not come up", but it never explained to defendant, in a way he might understand, how the conflict could impact counsel's representation of him... For instance, the court never advised defendant that, due to counsel's representation of [the state's witness], counsel could be reluctant to cross-examine [the state's witness] in a way that would be adversarial to her case but beneficial to defendant's.

This case being virtually indistinguishable from the instant case. Only in Acevedo, he was admonished more heavily than defendant in the instant case was. In the instant case, the trial court admonished defendant that a per se conflict existed and told defendant why: Hansen had

appeared as a prosecutor. Defendant responded that he understood these things (R38-39, 76-79; C128). Nothing in the record illustrates that defendant was informed of how the conflict could affect Hansen's representation.

Under the view of the law taken by the Second, Fourth, and Fifth Judicial Districts of Illinois, defendant did not knowingly waive his right to conflict-free counsel because the trial court did not properly admonish him of the conflict's significance. However, the Appellate court in this case did not apply this view of the law as stated in "Jackson" and concluded "The Court's admonishments that a conflict existed and its detailed explanation of Hansen's participation as a former ASA are sufficient to inform defendant of the nature and significance of the conflict." People v. Croom, 2019 IL App. (3d) 160553-U.

In regards to the admonishments in "Lawson", the Court said, "It cannot be said, based on this record, that defendant was ever informed of the significance of the possible conflict here so that he might understand how it could affect, even subtly his representation. Under such circumstances, there is no valid waiver by defendant of his right to representation free from any conflict of interest." Lawson, 163 Ill. 2d. 187, 217-18 (1994). Stoval, 239 N.E. 2d. 441. Kester, 66 Ill. 2d. 162, 167-68 (1977).

Also, what makes the instant case distinguishable from Jackson, Kester, Lawson, Coleman, and any other case quoted in any brief filed by any party in this case, is the fact that the admonishments that were administered to the defendant, were produced and given to the Judge to administer, by the state (R76-79). The state being the adverse party to whom the conflict of interest involves.

This courts guidance is needed for multiple reasons regarding this issue. It should grant this petition to resolve the split of authority in the judicial districts of Illinois so there is a

uniform legal standard in Illinois and across the country for the waiver of the right to conflict free counsel in criminal cases.

This court should grant this petition to ensure that when defendants do waive the right to conflict-free counsel, they do so knowingly, with an understanding of how their attorney's conflict could affect the representation. The view of the law taken by the Third Judicial District in Jackson, and now the instant case, fails to do so. Merely telling a defendant that a per se conflict exists and why it exits does not tell a defendant how the conflict could affect his representation. For example, it does not explain to a defendant that counsel has ties to another person or entity that may, even subliminally, prevent counsel from zealously asserting the defendant's position and acting in the defendant's best interest. The Supreme Court has apparently never decided this particular issue exactly as it is to set precedent, and as evidenced by it occurring twice in two years in the same Judicial Districts in Illinois alone, it will obviously be a recurring issue, that is of some import.

Lastly, this courts guidance is also needed to demonstrate whether it is proper for the trial court to accept and admonish the defendant to admonishments produced and given to the court by a direct adverse party to a conflict of interest situation. Instead of admonishing the defendant how the court sees fit and properly explaining the significance and subtle ways, the conflict could affect defense counsels representation.

REASONS FOR GRANTING PETITION

2.

The United States Constitution guarantees defendants right to trial by an impartial jury. The Appellate Court of Illinois has deviated from this constitutional guarantee.

Nonconjectural evidence of a potentially biased juror was presented to the trial court, by the state, during jury deliberations (R2158-61). This was evidence of juror Miller's failure to divulge pertinent information regarding her son's multiyear dating relationship with state's witness Latoya Wright. After being asked several times by the state and defense, juror Miller never divulged this information. "A defendant's right to a fair and impartial jury is the Constitutional cornerstone of our Judicial System." People v. Gaston, 125 Ill App. 3d 7, 11, 80 Ill. Dec. 519, 465 N.E. 2d 631 (1984). As the Appellate Court in Gaston stated, "This right should be guarded zealously; neither a trail Judge's inadvertent omissions, nor a juror's failure to divulge possibly pertinent information, nor trial attorney's laxness can be allowed to impair this fundamental right." Gaston.

"The trend of authority is to exclude from Juries all persons who by reason of their business or social relations, past or present, with either of those parties, could be suspected of possible bias ***." Hunter Trial Handbook for Illinois Lawyers sec. 15.14 (5th Ed 1983).

In the instant case, the Trial Judge did not provide the defendant with an opportunity for meaningful inquiry into the relationship in question. Without some evaluation of the juror, the trial judge was unable to conclusively determine whether that juror was in fact bias. The lack of this opportunity adversely impacts upon defendant's right to an impartial jury. People v. Kuntu, 188 Ill. 2d 157 (1999).

Many case laws dictate an inquiry should have been conducted. However, defendant has been unable to procure any precedent pertaining to these circumstances happening during deliberations. "Where voir dire is still in progress or just completed, an inquiry is called for where facts contradicting answers given on voir dire come to the attention of trial court."

People v. Mitchell, 121 Ill App. 3d 193 (1984). Also People v Kurth, 34, Ill. 2d 387, 216 N.E. 2d 154, (1966). People v Peterson, 15 Ill. App. 3d 110, 303 N.E. 2d 514, (1973). People v. Rohwedder, 106 Ill. App. 2d 1, 245 N.E. 2d 282, (1969) and People v. Green, 217 Ill. Dec. 973, 668 N.E. 2d 158 (Ill. App. 1st dist 1996), all support the proposition urged by the defendant that, where information showing prejudice or potential prejudice of a seated juror is brought to the attention of the court during or immediately after voir dire, the proper procedure would be further inquiry by the court. In Kurth, Peterson, and Mitchell the court found that it was reversible error to foreclose such inquiry, or interrogation and remanded the cause for a new trial. The Appellate court in the instant case has ruled in direct contrast from these judgments.

That the trial court erred in not doing an inquiry into the juror should not be in question. In Peterson, "It is the failure to inquire that, in our opinion, constitutes the error." "We believe that in the case before us it was likewise imperative that the determination of the impartiality of the juror in question should not have been allowed to hand in the balance on conjecture when inquiry could have resolved the issue and, if necessary, an alternate juror could have been seated." Peterson.

What is clear from the record in the instant case is that the trial court left in the air for conjecture the question of whether juror Miller intentionally withheld the information about her sons dating relationship with the witness and or was indeed biased.

THE COURT: "Okay let me go ahead and rule on this.

First of all during voir dire, Ms. Miller did indicate that she had some passing familiarity with some of the listed witnesses she did not specifically or explicitly disclose the-- any of the information that you indicated. However, it--it is kind of presumptuous of me or any of us to decide whether or not that was done purposely or inadvertently. Perhaps Ms. Miller is estranged

from her son we have no idea the reason behind that." (R2164). Therefore, you do an inquiry to figure out the reason behind that.

What is not clear from past precedent is the proper procedure when this type of information is brought to the courts attention during jury deliberations. Should there be an inquiry, (as the state requested) and juror Miller dismissed and an alternate juror seated. Should there be a mistrial (as the defense requested), since this possibly biased juror could have tainted the jury. Alternatively, trial continued and a post-trial hearing conducted, (which Appellate court denied). In addition, if it matters that the state was the counsel that produced this Nonconjectural evidence to the court.

It is undisputed that "The bias or prejudice of even a single juror would violate Defendants right to a fair trial." United States v. Hendrix, 549 F.2d 1225, 1227 (9th cir. 1977).

"One important mechanism for ensuring impartiality is voir dire, which enables the Parties to probe potential jurors for prejudice. For voir dire to function, jurors must answer questions truthfully." Dyer v. Calderon, 151 F. 3d 970 (9th cir. 1998).

"We do not condone any lying by jurors; perjury is perjury. We are concerned here, however, with the rights of the defendant, not with whether the juror may be prosecuted for a deliberate lie during voir dire." Clark v. United States, 289 U.S. 1, 11, 53 S. Ct, 465 77 L.Ed. 993 (1933).

This Courts guidance is needed in setting precedent for the circumstances of the instant case regarding a juror not divulging pertinent information during voir dire when specifically asked. Whether it matters if the State or Defense presented this evidence. The proper procedure to handle the situation if it was brought to the courts attention during deliberations, not "during voir dire or directly afterwards", as precedent has ruled on already.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christ dom

Date: 12-26-19