

No. _____

19-7563

IN THE

SUPREME COURT OF THE UNITED STATES

TERRY GLYNN SPEED

(Your Name)

— PETITIONER

vs.

LORIE DAVIS

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

5th Circuit Court of Appeals

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

FILED

JAN 17 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI

TERRY GLYNN SPEED

(Your Name)

2661 FM 2054

(Address)

TENNESSEE COLONY TEXAS 75884

(City, State, Zip Code)

NIA

(Phone Number)

QUESTION(S) PRESENTED

Question one

On reviewing a claim of a Juror's intent to withhold knowledge of Petitioner, for reasons of Potential racial Prejudice, coupled with consistent Perjured, and conflicting statements made by the Juror during Voir dire and habeas Proceedings, is the reviewing court required to hold an Evidentiary hearing to allow Petitioner to Prove existing racial Prejudice to allow the court to inquire on said Prejudice racial biasness that would warrant a new trial?

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:

RELATED CASES

- The State of Texas v. Terry Lynn Speed Cause no. F46764
- Ex Parte Terry Lynn Speed. Cause no. F46764-A
- Terry Lynn Speed v. Lorie Davis Cause no. 3-16CV1952-B
Cause no. (on Appeal) 18-10491 .

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Statutes

28 U.S.C. § 2254

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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 A 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☒ is unpublished.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☒ is unpublished.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 _____ 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 July 26 2019.

[] 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: September 26, and a copy of the order denying rehearing appears at Appendix B.

[✓] An extension of time to file the petition for a writ of certiorari was granted to and including January 19, 2020 (date) on October 31 2019 (date) in Application No. 19 A 475.

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 _____.
A copy of that decision appears at Appendix _____.

[] 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

6th amendment

"In all criminal Prosecutions, the accused shall enjoy the right to a Speedy and Public trial, by an impartial Jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense."

14th amendment

"All persons born or naturalized in the United States, and subject to the Jurisdiction thereof, are Citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which 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."

28 U.S.C § 2253(c)(2)

"A Certificate of Appealability under Paragraph (1) only may issue if the applicant has made a substantial showing of the denial of a constitutional right."

28 U.S.C. § 2254(d)

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted on the merits in state court proceedings unless the adjudication of the claim

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings.

STATEMENT OF THE CASE

Petitioner is an African American indicted for burglarizing a white owned residence, which ended violently. During trial proceedings, and upon picking jury from a predominate non-Black panel, a venire member, who formally asserted having no knowledge of who Petitioner was during voir dire questioning, before paneling of the jury, finally disclosed not only that he knew Petitioner, but went to high school with him and they were acquaintances. Petitioner was subsequently found guilty and sentenced to ___ years in prison. Reporter's Record 4RR Pages 49, 214, 280-81

On Post-conviction habeas proceedings, Petitioner raised a claim indicating denial of his 6th and 14th amendment rights. He alleged that he informed his trial counsel that Juror Smith (Venire member above) was also known by him and that Smith and his twin (Gary Speed) had a school fight at South West High (during the time blacks were integrated white schools), as the result of racial prejudice. Petitioner contended that due to Smith withholding racial prejudice information to sit on jury possibly affected the outcome of the case and that trial counsel's omission to question Smith upon

the Potential racial information withheld to effectively Utilize Peremptory Strikes or challenge For Causes, denied him the right to a fair trial by an impartial Jury. (Petitioner's State habeas writ Application P. 6-7, memorandum of Law Appendice A, B, C on claims one and two.).

An Evidentiary hearing was requested by Petitioner in the State Court habeas Proceedings to ascertain reasons for Smith's non-disclosure of the fight and racial tension. Petitioner's assertions were supported by affidavits from himself, his twin brother, and his mother who had 1st hand knowledge of events stated. Id.

The State Court, in denying habeas relief, Produced an affidavit from Smith who then alleged under Penalty of Perjury "that he did not know Petitioner" at all in direct contravention to his Voir dire statements. Petitioner was afforded no hearing in which he was present to challenge Smith's statements and contradictions violating his 14th amendment rights to due Process.

On his Federal writ Petitioner alleged that the State Court's decision was unreasonable under 28 U.S.C. § 2254 (d)(1) and (d)(2). He also indicated

the need of an Evidentiary hearing due to the persisting conflict surrounding Smith's contrary statements about knowledge of petitioner and racial prejudice. (Petitioner's federal writ P. 6-7, Memorandum of Law P. 4-14). The District Court accepted magistrate's Report and Recommendation and denied habeas relief. (District Court docket entry 17.21).

In support of obtaining a certificate of appealability to appeal the district court's decision, petitioner made a substantial showing that he was denied opportunity (by the state court) to prove racial prejudice sufficient to warrant a new trial due to the state's foreclosure of the claim based on juror Smith's contradictory statements and that reasonable jurist, when faced with a colorable claim of racial biasness, would require that an Evidentiary Hearing, with petitioner present to determine if racial tension influenced Smith's decision to withhold information, finding the District Court's decision wrong or debatable (Certificate of Appealability P. 1-14).

For lack of an hearing upon Smith's contradictory statements, petitioner was unable to prove the underlying constitutional violation of ineffective

assistance of counsel in which the 5th Circuit denied
COA, determining that Petitioner failed to make
a Substantial Showing of a Constitutional
Violation. Appendix _____.

REASONS FOR GRANTING THE PETITION

The 5th Circuit's denial of Petitioner's Certificate of Appealability is in conflict with this Court's Precedent on the issue (Supreme Court Rule —), and in conflict with other Court of Appeals rulings on the same issue. (Supreme Court Rule —).

Authorities

The 6th Amendment guarantees criminal defendants a fair trial, which assumes in a case tried by a jury, "a jury capable and willing to decide the case solely on the evidence before it." McDonough 464 U.S. 48 (1984) (Plurality Opinion) (quoting Smith v. Phillips 455 U.S. 209, 217 at 554, 108 S.Ct. 846

Thus, the Voir Dire Process allows examination of prospective jurors for possible bias. Demonstrated bias in the responses to questions on voir dire may result in a juror being excluded for cause; hints of bias not sufficient to warrant challenge for cause may assist parties in exercising their peremptory challenges. The necessity of truthful answers by prospective jurors, if this process is to serve its purpose, is obvious. McDonough at 554, 104 S.Ct. 845. This court has reasserted these principles

in Mu'Min v. Virginia, 500 U.S. 434, 114 L.Ed.2d 493
111 S.Ct. 1899 (1991).

Because of the seriousness of the 6th
amendment right to a fair trial by an impartial jury,
this court has unfailingly protected the juryroom
from juror biasness. Irvin v. Dowd 366 U.S. 717
81 S.Ct. 1639, 6 L.Ed.2d 2751 (1967); Parker v. Gladden
385 U.S. 363, 87 S.Ct. 468, 17 L.Ed.2d 422 (1966) (Per
curiam); Murphy v. Florida 421 U.S. 794, 95 S.Ct. 2031
(1975); Turner v. Ohio 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed.
1927 ().

Thus, where a defendant requests that the court
inquire into potential jurors racial bias, the court
is constitutionally required to do so if there
is reasonable possibility that racial prejudice
may influence the jury. Rosales-Lopez U.S. 451
U.S. 182 (1981) (Plurality opinion). Where a defendant
is charged with an interracial violent crime,
the possibility of racial prejudice is presumed
and the duty to inquire is automatic mu'Min
at 424; Turner v. Murray 476 U.S. 28, 35-37 (1986).
E.g. U.S. v. Love 219 F.3d 721, 728-29 (CA 8 Cir 2000) (Court
required to hold further voir dire inquiry into racial
prejudice when reasonable possibility of racial
prejudice existed because feelings of jurors

151911533 (CA11 1984).

Fundamental Question

The Fundamental Question (underlying) is whether a C.D.A. should have been issued where no inquiry was set forth concerning Juror Smith deliberate concealment of knowledge of Petitioner and his persistent lies throughout Voir dire and habeas Proceedings and this issue of racial Prejudice disregarded? This court has recently entertained similar context as here in Tharpy Sellers 583 U.S. (2018) (No. 17-6075).

For Justice to satisfy the appearance of Justice
Offutt v U.S. 348 U.S. 1175 S.Ct 1113 99 LEd 1 (1954),

Petitioner requests that this court Grant Petitioner's motion to Proceed in Forma Pauperis Grant the Petition for Certiorari, vacate the Judgment of the Court of Appeals and remand the Case for further consideration of the Question whether Petitioner is entitled to a COA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Terry Speed

Date: 1-17-20