No. 19-7633

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Anthony Allen — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Illinois
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Anthony Allen
(Your Name)

P.O.BOX 1700
(Address)

Galesburg, IL. 61402
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. In an action in which the sole claim is whether, in a case in which intent is an element of the crime convicted of, the jury instruction, "the law presumes that a person intends the ordinary consequences of his voluntary acts," violates the Fourteenth Amendment's requirement that the State prove every element of a criminal offense beyond a reasonable doubt?

Answer of the court below: No, the appeal is without arguable merit.

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STATUTES AND RULES

Petitioner,Anthony Allen,respesctfully prays that this Honorable Court issue a Writ of Certiorari to review the judgment below.

I

Opinions

The original judgment of conviction of the Petitioner was appealed to the Appellate Court of Illinois,First Judicial District,Fourth Division,which affirmed the conviction in an unpublished decision and is attached hereto as Appendix "B."

A petition for rehearing of the decision of the Appellate Court of Illinois,First Judicial District was denied in an unpublished decision and is attached hereto as Appendix "C."

The judgment "Motion for Request to Supplement Additional Cases in Support of My Rehearing Petition that Petitioner Already Argued in the Appellate Court of Illinois,First Judicial District was not consider for lack of the Court's jurisdiction on July 1,2019 and is attached hereto as Appendix "C."

The judgment of the decision of the Appellate Court of Illinois,First District was appealed to the Illinois Supreme Court for leave to file a late petition for leave to appeal was allowed on September 24,2019 and is attached hereto as Appendix "D,E"

The judgment of the decision to appealed to the Illinois Supreme Court was denied on November 26,2019 and is attached hereto as Appendix "F."

II.

JURISDICTION

The judgment of the Appellate Court of Illinois,First Judicial District and the Illinois Supreme Court,which makes the jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

III

Constitutional Provisions and STATUTES

1. United States Constitution,Amendment XIV:

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 law.

2. Illinois State Constitution,1970,Article 1,Section 2:

No person shall be deprived of life,liberty or property without the due process of law nor be denied the equal protection of the laws.

3. The Code of Civil Procedure Provides the grounds under which Habeas Corpus Relief is available. These grounds includes:

Where the court has exceeded the limit of its jurisdiction;

Where,though the original imprisonment was lawful,however,through some act omission or event which has subsequently taken place,the party becomes eligible for discharge;

Where the process is defective in some substantial form requires by law;

Where the process,though proper,has been issued in a case where the law does not allow process to issue or orders to be entered for imprisonment or arrest;

Where,though in proper form,the process has been issued in a case to issue or execute the same or where the person having the custody of the prisoner under such process is not the person empowered by law to detain the prisoner;

Where the process appears to have been obtained by false pretense or bribery;

Where there is no general law,nor any conviction if in a criminal proceeding.

735 ILCS 5/10-124.

4. 5/9-1. First degree murder;death peanalties;exceptions,separate hearings; proof;findings;appellate procedures;reversals.

(a) A person who kills an individual without lawful justification commits first degree murder if,in performing the acts which cause the death:

(1) he either intends to kill or do great bodily harm to that individual or another,or knows that such acts will cause death to that individual or another;or

(2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another;or

(3) he is attempting or committing a forcible felony other than second degree murder.

5. United States Constitution,Amendment VI:

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 wherein 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.

STATEMENT OF THE CASE

The case underlying this petition is an action to general verdict. Rather, the issue presented in this petition relates to the interpretation of the Fourteenth Amendment of the United States Constitution that the state prove every element of a criminal offense beyond a reasonable doubt, the instruction was unconstitutional.

Petitioner was charged with armed robbery and 3 different first degree murders subsection (a)(1),(a)(2),and (a)(3) of Section 9-1 of the Criminal Code.

The State alleged that Petitioner robbed a liquor store with co-defendants, while the get-away driver waited outside. After entering the car,officer Dave Sobczyk told the police that he seen 3 people run passed him,one guy carrying something under his jacket,2 guys jump in the back seat of a car,the other one guy jump in the front seat with the driver,then they drove West on Waveland,and he broadcasts or radio transmissions of what had happened so that other police cars in the area could keep their eyes open and look for 4 people driving a white Buick that is no longer in sight. (This transcript pages are for the Direct Appeal R.E68-84 et seq.)

After Petitioner and his co-defendants robbed a liquor store and enter a car two blocks away from the armed robbery,then drove three miles unmolested Lt.Konior stated he saw a similar car,he conceded that Smith was not driving erratically when he first seen us,plus nobody else was hurt as Smith drove through all those other streets. As Smith moved his car to the right and slowed down,Konior thought Smith was going to stop,but Smith suddenly accelered and maneuvered through traffic and broadsided the Pacini's vehicle three miles from the armed robbery and had a car accident,which killed the Pacini's in about 15 seconds,when Smith maneuvered through traffic. (This is the Direct Appeal transcript pages R.E97-123 et seq.)

At the end of trial,we went to discuss jury instruction,during these jury instruction,the State Attorney Thomas Needham stated after the defense cross-examinations both of the state's witnesses that Petitioner never told them that it was their intent for Smith to speed up and go through an intersection,or that it was Petitioner's intent to cause anybody harm. It indicates where the State nolled both counts 1 and 2,which removed from this case any mental state other than--any mental state to commit the underlying felony. (See Exhibit "A")

Petitioner was charged with felony murder. (C.R.0042,this references to common law record and the report of procceedings shall be "C.R. and "R."

respectively.

You'll have a copy--or actually the original of Petitioner's statement, and he's guilty of armed robbery. There is no doubt about that in anybody's mind in this courtroom. (Exhibit "B")

The jury was only given six verdict forms for the charges of first degree murder of Giampiero Pacini,first degree murder of Mara Pacini,and armed robbery. (See Exhibits "C 1-6")

There's nothing in here. There is no requirement that we have to prove in this type of case that he intended to kill these people,or that he thought or had knowledge that some harm might come to some people. (See Exhibit "D 1-2"),and if somebody dies while you're doing that,then you are guilty of murder,whether or not you intended it or wanted it to happen.

Accordingly,comma,you may find the petitioner guilty of first degree murder only if you also find the petitioner guilty of armed robbery. Did you hear the word I emphasized on that instruction? (See Exhibit "E")

In other words,when the acts occur that cause death,is the armed robbery still going on? That's the second element of first degree murder. (See Exhibit "F")

The word,quote,conduct,unqoute,includes any criminal act done in furtherance of the planned and intended act. (See Exhibit "G")

The trial court found petitioner guilty of first degree murders on intentional or knowing murders with mental state,pursuant to Ill.Rev.Stat. 1989,Ch.38,Sec.9-1(a)(1) and armed robbery (C.25,C.L.00069) He was sentenced to natural life on June 14,1993. (C.L.00008)

The jury was instructed on the theory of Accountability at trial,as well as given Felony Murder jury instructions,they found petitioner guilty of first degree murder charg-not on the "Accountability" charge or the "Felony Murder" charge. (C.95-97)

There was no notes or any confusion coming from the jury room and their decision,that the instruction conference was appropriate. (See Exhibit "H")

REASONS FOR GRANTING THE PETITION

Whether in a case in which intent is an element of the crime convicted of,the jury instruction, "the law presumes that a person intends the ordinary consequences of his voluntary acts," violates the Fourteenth Amendment's requirement that the State prove every element of criminal offense beyond a reasonable doubt.

This Petitioner was charged with armed robbery and 3 subsections (a)(1), (a)(2),and (a)(3) of section 9-1 of Criminal Code,defining intentional or knowing murder,he knows that such acts create a strong probability of death or great bodily harm,and felony murder,delinate only the mental state or conduct that must accompany the acts that cause a death. At the end of trial, we went to discuss jury instructions,during these jury instructions,the State Attorney stated that the State Nolled both counts 1 and 2 of section 9-1 of the Criminal Code,which removed from this case any mental state,after the two State witnesses stated that petitioner never told them that it was their intent for Smith to speed up and go through an intersection,or that petitioner's intent to cause anybody harm. (See Exhibit "A") The State proceeded with armed robbery and any mental state to commit the underlying felony,which is felony murder (a)(3). (See Exhibit "A," C.R.00042) Petitioner was wrongfully convicted of 9-1 (a)(1),(C.25,C.L.00007,69) which he was not charged or proven guilty beyond a reasonable doubt.

The lower courts has addressed this issue in the case of People v.Smith, 233 Ill.2d 17,329 Ill.Dec.906 N.E.2d 529 (2009) In Smith,although the evidence has been sufficient to support a verdict of intentional or knowing murder,the general verdict of guilty of first degree murder does not reveal whether the jury actually found Smith guilty of intentional or knowing murder or only felony murder. Specific verdict forms would have made the jury's factual findings clear. Therefore,the error was not harmless and it may not be presumed that the jury convicted defendant of intentional or knowing murder. Id.at 27-28,329 Ill.Dec.331,906 N.E.2d 529. Petitioner's case is so similar to Smith,although the evidence may have been sufficient to support a verdict of intentional or knowing murders,the general verdict of guilty of first degree murders does not reveal whether the jury actually found petitioner guilty of intentional or knowing murders or only felony murder. Specific verdict forms would have made the jury's factual findings clear, therefore,the error was not harmless and it may not be presumed that the jury convicted petitioner of intentional or knowing murders. The jury instruction verdict forms with all the evidence considered together does not logically establish would give to proven facts an artificial and fictional

effect,which extends to every element of the crime. Therefore,petitioner natural life sentences has to be vacated on intentional or knowing murders,so now this petitioner cannot be retried on those crimes of felony murder or accountability again,which will raise double jeopardy concerns,and petitioner should be released "IMMEDIATELY!" Wherefore,petitioner will be left with the armed robbery charged of 30-years,and entitles petitioner to an immediate discharge.

The Code of Civil Procedure provides the grounds under which Habeas Corpus Relief is available. These grounds includes:

> Where the court has exceeded the limit of its jurisdiction;
>
> Where,though the original imprisonment was lawful,however,through some act, omission or event which has subsequently taken place,the party becomes eligible for discharge;
>
> Where the process is defective in some substantial form requires by law;
>
> Where the process,though proper,has been issued in a case where the law does not allow process to issue or orders to be entered for imprisonment or arrest;
>
> Where,though in proper form,the process has been issued in a case to issue or execute the same or where the person having the custody of the prisoner under such process is not the person empowered by law to detain the prisoner;
>
> Where the process appears to have been obtained by false pretense or bribery;
>
> Where there is no general law,nor any conviction if in a criminal proceeding.

735 ILCS 5/10-124.

In People v. Glasper,No.103937,slip op.at 12 (June 18,2009),[***51] the Supreme court emphasized the continued validty of Smith. However,the court also made clear that the type of error involved in Smith was very specific,was a structural error. Glasper,slip op.at 12. The court explained that the error in Smith was that the defendant was [**455] [****332] denied his sixth amendment right to have a jury,rather than a judge,determine his guilt. Glasper,slip op.at 12. Such an error was not subject to harmless error analysis for two reasons: (1) because there was no actual jury verdict to review for harmless error;and (2) because the deprivation of the right to a jury verdict qualifies as a "structural" error. Glasper,slip op.at 12. Thus,the type of error involved in Smith continues to be error and continues to be an automatically reversible error not subject to harmless error analysis.

In People Ex Rel.Daley v. Morgan,94 Ill.2d 41,445 N.E.2d 270 (1983) the State Attorney is vested with "Exclusive Discretion in the Initial and

Management of a Criminal Prosection," which includes "The decision whether to prosecute at all,as well as choose,which of several charges shall be brought." A trial judge may not determine which offense shall be charged,may not accept a guilty plea on such information. See also People Ex Rel.Daley v. Suria,112 Ill.2d 26,490 N.E.2d 1288 (1986);People v. Deems,81 Ill.2d 384,410 N.E.2d 8 (1980)(improper for judge to deny State's motion to dismiss charge,call case to trial,and then enter "acquittal").

Petitioner contends that his case is similar to these case's,where the State Nolled both counts 1 and 2 of Section 9-1 for first degree murder on mental state,(See Exhibit "A") then the trial judge gave the jury first degree murder jury verdict forms,and found petitioner guilty on first degree murders on mental intent or knowing murders. (See Exhibits "C 1-6,C.L.00007,69) The trial judge improperly denied State's Motion to Nolled both counts 1 and 2 of Section 9-1,when he found petitioner guilty on mental state and denied petitioner his sixth amendment right to have a jury,rather than a judge, determine his guilt,which the State removed from this case any mental state to commit murder, (See Exhibit "A") other than any mental state to commit the underlying felony,which is felony murder,that has no mental state. (C.R.00042, See Exhibit "A") Although the jury was instructed on the theory of accountability at trial,as well as given felony murder instructions,they found petitioner guilty of first degree murder charge-not on the "Accountability charge or the "Felony Murder" charge,(C.95-97) therefore,petitioner is entitle to an immediate discharge.

In People v. Herron,215 Ill.2d 167,186-87,830 N.E.2d 467,294 Ill.Dec.55 (2005),our Supreme Court definitively held that "the plain-error doctrine bypasses normal forfeiture principles [***52] and allows a reviewing court to consider unpreserved error when either: (1) the evidence is close,regardless of the seriousness of the error,or (2) the error is serious,regardless of the closeness of the evidence." Thus,the forcus of the second alternative was the "seriousness" of the error. This raises the question of whether a "structural" error automatically a "serious" error under Illinois plain error analysis. Under federal jurisprudence, "structural" errors are so intrinsically harmful that they require automatic reversal;they are not subject to harmless error analysis.See,e.q.,Neder v. United States,527 U.S.1,7,144 L.Ed.2d 35,46,119 S.Ct. 1827,1833 (1999).[***53] In People v. Lewis,234 Ill.2d 32 at 36 (2009),our Supreme Court explained that "[p]lain error marked by fundamental unfairness occurs only in situations revealing a breakdown in the adversary process as distinguished from typical errors," and that "plain error encompasses matters

affecting the fairness of the proceeding and the integrity of the judicial process." Then,in Glasper,our Supreme Court explained that "automatic reversal is only required where an error is deemed 'structural,' i.e.,a systemic error that serves to 'erode the integrity of the judicial process and undermine the fairness of the defendant's trial." Glasper,slip op.at 16,quoting Herron,215 Ill.2d at 186. In Herron,the court used this same definition to describe the type of errors that would constitute plain error under the substantial rights prong of the test. Herron,215 Ill.2d at186. The court specifically stated that "the substantial rights prong [of the plain[**456] [****333] error test] guards against errors that erode the integrity of the judicial process and undermine the fairness of the defendant's trial." Herron,215 Ill.2d at 186.

Because the second prong of the plain error test is satisfied where an error "erode[s] the integrity of the judicial process and undermine[s] the fairness of the defendant's trial," and a "structural" error is also define as an error that "erode[s] the integrity of the judicial process and undermine[s] the fairness of the defendant's trial," "structural" error satisfies the second prong of the plain error test and is always reversible. The trial court violated foregoing State Habeas Corpus Relief grounds which affected the prejudicial impact of proceedings that are irrepable and contravenes the core of fundmental fairness and due process violation. Thus,as shown above,there are issues upon which base an immediate discharge,where petitioner cannot be retried on those crimes again,which will raise double jeopardy concerns.

A. Appellate and Illinois Supreme Court's Decision Conflict's with many Decision of this Court and other Circuits.

Both federal and state courts have held,under a variety of rationales,that the giving of an instruction similar to that challenged here is a fatal to the validity of a criminal conviction. See Chappell v. United States,270 F.2d 274 (CA9 1959);Bloch v. United States,221 F.2d 786 (CA 1955);Berkovitz v. United States,213 F.2d 468 (CA5 1954);Wardlaw v. United States,203 F.2d 884 (CA 1953); State v. Warbritton,211 Kan.506 P.2d 1152 (1973);Hall v. State,49 Ala.App.381, 272 So.2d 590,593 (Crim.App.1973). See also United States V. Wharton,139 U.S.App. D.C.293,433 F.2d 451 (1970).

At trial,petitioner trial counsel concession of petitioner's guilt to the armed robbery,and therefore was not gulity of first degree murders where the fatal collision was not foreseeable,also the trial counsel had objected to these instructions to the jury. (See Exhibits "B,D-G") Wherefore,the State told the jury there is no requirement that we have to prove this type of case. (See

Exhibit "D 1") You'll have a copy or actually the original of petitioner's statement,and he is guilty of armed robbery. There is no doubt in anybody's mind in this courtroom. (See Exhibit "B") You may find the petitioner guilty of first degree murder **ONLY** if you also find the petitioner guilty of armed robbery. **Did you hear the word I EMPHASIZED on that INSTRUCTION**. (See Exhibit "E")

Because the jury may interpreted the challenged violent crimes as conclusive,like the presumption in Morissette v. United States,342 U.S.246,72 S.Ct.240,96 L.Ed.288,and United States v. United States Gypsum Co.,438 U.S.422, 98 S.Ct.2864,57 L.Ed 2d 854,or shifting the burden of persuasion,like that in Mullaney v. Wilbur,421 U.S.684,95 S.Ct.1881,44 L.Ed 2d 508,and because either interpretation would have violated the Fourteenth Amendment's requirement that the State prove every element of a criminal offense beyond a reasonable doubt, the instruction is unconstitutional. Standstrom v. Montana,442 U.S.510,99 S.Ct. 2450,at 2454-2460 (1979).

Petitioner contends that his violent crimes announced to petitioner's jury may well have had exactly the consequences,(the word,quote,conduct,unquote, includes any criminal act done in furtherance of the planned and intended act, See Exhibit "G") since upon finding proof of one element of the crime of armed robbery,and of facts insufficient to establish the second,first degree murder of causing death,feloniously and purposely and with premeditated malice,kill and murder two human being,the jury could have reasonably concluded that it was directed to find against petitioner on the element of intent. Morissette, Supra,at 275,72 S.Ct.at 255,and they invad[e the] factfinding function." United States Gypsum Co.,Supra,at 446,92 S.Ct.at 2878.

Without merit is the State's argument that since the jury did not pass notes or any confusion coming out the jury room for the "Non-IPI" instruction as referring only to petitioner's "conduct," and could have convicted petitioner for his "knowledge" without considering "purpose." First,it is not clear that a jury would have so interpreted "intends," more significantly,it might not have relied upon the tainted "violent acts," at all,it cannot be certain that is what it did do,as its verdict was a general one. (See Exhibits "C 1-6") Standstrom,422 U.S.510,99 S.Ct.at 2459-2460.

In Winship,this Court stated:

> "Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard,we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof

beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charge." Id.at 364,90 S.Ct.at 1073(empasis added). Accord,Patterson v. New York,432 U.S.,at 210,97 S.Ct.at 2327. The petitioner here was charged with felony murder (C.R.00042) and convicted of first degree murders,(C.L.00007,69) he either intends to kill or do great bodily harm to those individuals. Indeed,it was the armed robbery that was the element of the offense at issue in petitioner's trial,as he confessed to the armed robbery, then Smith drove three miles unmolested and was not driving erratically when the police officer first seen us,suddenly Smith accelered and maneuvered through traffic and broadsided the Pacini's vehicle in a car accident in about 15 seconds,that ended up killing the Pacini's,where petitioner was not the driver of the car,so all he could do was tell Smith to stop,which he did. Then during jury instruction the State,stated after the petitioner gave his confessions or statements to the State witnesses after petitioner defense counsel cross-examine them,that petitioner never told them that it was their intent for Smith to speed up and go through an intersection,or that it was petitioner's intent to cause anybody harm,the State removed from this case any mental state. (See Exhibit "A") Thus,the question before this Court is whether the challenged jury instruction verdict forms had the effect of relieving the state of the burden of proof enunciated in Winship on the critical question of petitioner's claim is whether in a case in which intent is an element of the crime convicted of,the jury instruction, "the law presumes that a person intends the ordinary consequences of his voluntary acts," violates the Fourteenth Amendment's requirement that the State prove every element of a criminal offense beyond a reasonable doubt. Where he was not the driver of the car to either intend to kill or do great bodily harm to those individuals or knows that such acts will cause death to those individuals as a passenger in a car,since he don't know what the driver was thinking or never told him to speed up and go through an intersection or to cause anybody harm. Therefore,petitioner first degree murders on mental state should be dismiss, and petitioner should be "IMMEDIATELY DISCHARGE!" Wherefore,petitioner cannot be retried on felony murder or accountability again,which he was charged, (C.R.00042) would raise double jeopardy concerns. There is a question where by reason of lack of jurisdiction over the person or subject matter,or because something has occurred since incarceration of the prisoner,which entitles that person to his release. People Ex Rel.Skinner v. Randolph,35 Ill.2d 589,211 N.E.2d 279,280 (1996). There is a jurisdictional claim involved here with arguable merits,where structural errors include the denial of the right to

counsel,the denial of the right to self-representation,the denial of the right to public trial,and the denial of the right to trial by jury resulting from the giving of a defective reasonable doubt instruction. Gonzalez-Lopez,548 U.S.at 149,165 L.Ed.2d at 420,126 S.Ct.at 2564.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Anthony Allen

Date: DECEMBER 19,2019