

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

DAVID BEVERLY - PETITIONER

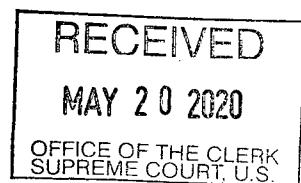
-VS-

PEOPLE OF THE STATE OF ILLINOIS

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF ILLINOIS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. To determine whether petitioner was denied a fair trial when the State presented irrelevant evidence that he posted on Facebook violent rap lyrics before the victim's murder and that his failure to raise this claim during the trial should be excused under the plain error doctrine.
2. To determine whether petitioner was denied a fair trial when the State presented inadmissible other crimes evidence that petitioner has been arrested and convicted on a prior occasion.

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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

The opinion of the Appellate Court of Illinois appears at Appendix A to the petition, unpublished opinion dated August 6, 2019, **People v. Beverly**, 2019 IL App (4th) 160168-U.

Timely rehearing was filed and granted. The revised opinion of the Appellate Court of Illinois appears at Appendix B to this petition, published opinion dated October 2, 2019, **People v. Beverly**, 2019 IL 160168.

The published opinion of the Supreme Court of Illinois denying the Petitioner's petition for leave to appeal appears at Appendix C to this petition, dated

## **JURISDICTION**

The date on which the Illinois Supreme Court decided Petitioner's case was

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner was denied the right to a fair trial pursuant to the Sixth Amendment of the United States Constitution. The Illinois Appellate and Supreme Court decided an important question of federal law in a way that conflicts with relevant decisions of this Court.

## STATEMENT OF FACTS

The Petitioner is an Illinois State prisoner who was charged with the First Degree Murder of Arsenio Carter, pursuant to 720 ILCS 5/9-1(a)(1), after the victim was shot and killed on April 10, 2015. The Petitioner's jury trial began in January of 2016, in which he was ultimately convicted. A direct appeal was filed with the Appellate Court of Illinois, who on August 6, 2019, affirmed his conviction and sentence. **People v. Beverly**, 2019 IL App (4th) 160168 (August 6, 2019) attached hereto as Appendix A. Appellate Counsel filed a timely motion to reconsider which was ultimately granted. On October 2, 2019, the Appellate Court of Illinois vacated Petitioner's sentence and remanded the matter for resentencing with the trial court. However, they affirmed his conviction. See **People v. Beverly**, 2019 IL App (4th) 160168 (October 2, 2019) attached hereto as Appendix B. The Petitioner filed a timely petition for leave to appeal with the Supreme Court of Illinois. On the Supreme Court of Illinois denied his petition for leave to appeal. See **People v. Beverly**, 2019 IL \_\_\_\_\_, attached hereto as Appendix C.

The shooting occurred on April 10, 2015, during a barbecue at Oakwood Trace Apartments, in Champaign, Illinois. The victim's girlfriend, Dreshana Caston, testified that she witnessed the murder. She claimed that she attended the barbecue with her brother, Robert Caston, and Carter (the victim), arrived there in a Dodge Durango between 4 pm and 5 pm. She testified that when they arrived there, they sat in the vehicle talking for about 10 minutes and she recognized several individuals there. Her uncle, Christopher Huggar, came up to her vehicle to say hello. However, they all drove "up the

street" to Caston's grandmother's house.

Caston testified they returned to the barbecue with Caston in the driver's seat, Carter seated front passenger seat, and Robert in the back. They parked in a lot located near Third Street and Burr Oak Court which is located near the Oakwood Trace apartments. When they returned back to the barbecue, Caston saw her ex-boyfriend, Joseph Carter, defendant, and Matt Carter. The first time she saw defendant he was in the group talking and he came around the truck. She claimed she could see his face and recognized his tattoos as well as dreadlocks. She further stated defendant was wearing a black hoodie with the "hood on" but it wasn't drawn tight and his dreads were out. Caston testified that she has seen the defendant on five prior occasions.

Caston testified that she saw Dēveonta Lindsey, an individual she knew from the "neighborhood" and school. During the barbecue Lindsey "pulled her brother to the side and talked to him." After their brief discussion, Lindsey was standing in the back of their vehicle with his hoodie pulled tight as he was staring at their vehicle. Caston described Lindsey as "mean mugging" at them, like he had a problem with them or something. She did not know what Lindsey said to her brother as she could not hear their conversation. When her brother got back into the truck he stated, "Man, I don't know what's going on." Carter (the victim) was sitting in the front passenger seat smoking a cigarette with his window rolled down replied, "Yeah, we need to get ready to go."

Caston testified that defendant then walked up to their vehicle. When asked how she knew it was the defendant, Caston responded "It was David...the defendant, Mr. Beverly." She further claimed she could see "a blue glove on [defendant's] hand...Why would he just be walking around with a blue glove on his hand unless he's going to do something

to somebody?" As Caston attempted to back her car out of the parking space, defendant pulled out a short black gun. As she tried to drive away, defendant allegedly shot in the vehicle at Carter and shot him in the chest. She claimed the defendant was three feet away the vehicle when he shot the gun, at which time she "sped off."

Caston drove Carter to the hospital for medical treatment. Blood was coming out of his chest as she was driving. Carter was unresponsive by the time they arrived at the hospital. Carter subsequently died from a single gunshot wound.

At the hospital, police officers spoke to caston about the identity of the shooter. Caston testified that she "pulled up" defendant's Facebook photo on her cell phone. Caston testified she knew defendant by the nickname "Glocc" and his Facebook name was "Glock Murdablock Krazi." Officer Clinton testified that he was on duty at 6 pm on April 10, 2015, when he received a report of shots fired near "Fourth and Beardsley [Avenue]." Officer Miller testified that he located a single spent shell casing in the parking lot.

Officer Petrilli testified he went to the hospital after the shooting. He secured Caston's car and observed "blood on the passenger side step board" and the "center console area." He testified Caston was "flustered" and "pacing back and forth. She seemed "pretty worked up at the time." He stated Caston showed him a picture of defendant on her phone. Officer Sumption testified he was asked to assist with investigating defendant's Facebook information. He received a photographs of defendant from Secretary of State and IDOC. He was able to compare the photos to the photos in the Facebook profile picture that Caston had shown to officers.

Defendant was arrested the next day after the shooting (April 11

2015). No weapons were found in connection to the shooting. A search warrant was executed on April 13, 2015, at 1302 Brookstone, apartment 102 by Officer Bednarz. Bednarz testified he found two hooded sweatshirts. In a purse, he found a plastic bag containing 9-mm bullets and casings, along with a .40-caliber bullet. However, nothing put defendant in the apartment. Detective Simons testified that he was an expert in cellular forensics and performed an analysis of defendant's cell phone. Simons testified defendant's cell phone number was linked to his Facebook account. He located a Facebook post originating from defendant's cell phone on the day of the murder at approx. 11 am that states "I put it on my soul...u aint goin b da only one wit a headstone my nigga."

The parties stipulated that DNA collected from defendant was compared to DNA taken from the black hooded sweatshirts found in apartment 102, however, the comparison was deemed "inconclusive." Also, they stipulated the 9-mm cartridge casing recovered from the parking lot from the shooting were tested for latent fingerprints, but none were found.

Detective Funkhouser testified at trial that he was primarily responsible for the investigation of Carter's murder. He also investigated a case in which Tarrell Boatman pled guilty to shooting Kytiece Frazier on April 8, 2015. Funkhouser obtained video surveillance footage from Carle Hospital where Frazier was recovering from his gunshot wounds. which depicted defendant inside the hospital at 11 am on April 10, 2015. Funkhouser testified that defendant was wearing a "flat-billed ball cap" with a "black zippered hoodie" and "frosted camouflage pants", which appeared to be the same clothes defendant was wearing when he was arrested with the exception of the fact that he was not wearing the black hoodie. Funkhouser testified that upon searching the defendant he found two blue

gloves in his right front pocket. However, the gloves tested negative to gun shot residue.

Funkhouser obtained video footage of Walmart which showed defendant with his girlfriend, Wendy Driver, entering at 4:38 pm and exiting at 4:44 pm. He further stated the shooting occurred at 6 pm. Funkhouser testified he found a text message on defendant's cell phone "between [defendant] and Cynthia Lubamba that described her picking defendant up at Penera" on the day of the shooting at 6:23 pm. He claimed the "driving time" between Penera Bread and where the shooting occurred was approx. 10-11 minutes.

Funkhouser and Detective Baltzell interviewed Caston. During the first recorded interview with caston she stated that before the shooting at the barbecue "she saw her brother get out of her vehicle and speak with Deveonta Lindsey outside the vehicle". When asked whether Caston told Funkhouser if she overheard her brother and Lindsey discussing another murder that occurred in 2014 involving Rakim Vineyard, Funkhouser responded that he believed Caston "memtioned the Rakim Vineyard murder in relation to the conversation" between her brother and Lindsey. Funkhouser testified that Caston told him two groups of individuals at the barbecue had an "ongoing dispute with Arsenio Carter and Carter's friends over the murder of Rakim Vineyard." Caston's uncle, Christopher Hugger, and his friends including Deveonta Lindsey wanted revenge against Arsenio Carter for the murder of Rakim Vineyard. In fact, Hugger has a tattoo on his neck of Rakim Vineyard and he was in possession of the murder weapon prior to the shooting.

The Court read another stipulation to the jury stating that no gunshot residue was detected on the blue gloves found on defendant's person. At which time the State rested.

The defense called Officer Sebestik who testified he went to the hospital after the shooting and there was a "little bit of chaos" and Caston was covered in a large amount of blood." Caston "was pacing back and forth" and Caston and her brother "appeared to be in hysterics after having just experienced a pretty traumatic incident firsthand." He also stated Caston was "initially uncooperative" but "as cooperative as she could be given the circumstances." When he asked Caston if she had any information about the shooter, "she did not verbally respond" and she "pulled out her cell phone and went to her Facebook page [to show him] a photo of an individual." When he asked caston if "that was who had shot her boyfriend Arsenio she said yes," at which time Caston "again became uncooperative after further questioning," and locked her phone. Caston described the shooter as wearing a black hooded sweatshirt and black jeans with medium dreadlocks. She also claimed the shooter wore rubber hospital gloves and had a tattoo on his face, but "not sure what the tattoo was."

The defense called Wendy Driver who testified to the timeline of events on April 11, 2015, and a friend of the defendant. At 4 pm, Driver picked defendant up from the barbecue and went to Walmart in Champaign so defendant can purchase a shirt, and then hung out at her house for a little while. She eventually drove him to Panera Bread as he was waiting for another ride. On cross-examination, driver testified defendant called her after he was arrested for the shooting.

Defendant testified on his own behalf. He testified that he met Caston in March 2015 at a small party then at a barbecue on his birthday several days later. He denied shooting Carter or even being in the vicinity of where it took place. On the morning of April 10, 2015, Driver took him to the hospital. Afterwards, defendant went back to the

apartment complex and hung out with Tiwanda Winkins who was pregnant with his child. Winkins lived in the same complex as Driver. After an hour or so he left and went to the barbecue. However, at the barbecue he had a disagreement with David Dalton, the guy who the barbecue was for. Defendant testified that he "really had words" with Dalton so he left and did not return. Driver picked defendant up from the barbecue at about 4 pm and asked him to go to Walmart. After Walmart they drove back to Driver's apartment and defendant stayed there for 30-45 minutes. He testified that he left Driver's apartment and went to the home of "Iresha," Frazier's "auntie" who lived on Beslin Street, because he wanted her to drop him off on Kirby Street. However, Iresha had her kids and she couldn't, so he called Driver and asked for a ride to Kirby Street. He explained that he wanted to go to Kirby Street to meet another girl. Driver drove him to the "Panera Bread right along Kirby and Mattis in the plaza" at around 6 pm.

Defendant testified they stayed at Panera Bread for about 10-15 minutes. Lubamba picked him up and dropped him off. The next morning, she picked him back up and drove him to the gas station where he was apprehended by the police. Defendant testified that he had blue latex gloves on him when he was arrested and he took them from the hospital when he was there earlier. He explained that he has eczema on his hands and he wears gloves. Defendant was asked about the Facebook post and he denied it was intended to be a threat or an "expression of being upset about Kytiece Frazier. He explained it was "actually [Frazier's] favorite song" and "since [Frazier] was hurt, he wanted to post something for him. The song was "not really about revenge but it is a violent song. He stated that he knew Frazier was shot two days earlier but he did not know that somebody was in custody yet for the shooting.

The Court read the following stipulation to the jury: "The court has taken judicial notice of the fact that on April 10, 2015 in Champaign, Illinois, Central Daylight Time, sunset was at 7:26 pm." The defense rested.

The State then presented Dreshana Caston as a rebuttal witness. Caston testified that she never saw defendant wear gloves except on the day of the shooting. She further testified that her uncle, Christopher Hugger, sent her a text after the shooting "sorry, that wasn't supposed to happen." However, she claimed not to know what he meant. When asked whether it could have been Hugger who shot Carter, Caston responded "the face I see plays in my head every day, and it is [defendant's] face." She further explained Hugger had no tattoos on his face but did have one on his neck "RIP Rakin." She claimed that there was no possibility that she could mistake her uncle for the defendant.

The State also called Cynthia Lubamba as a rebuttal witness. She testified she did not recall defendant ever wearing gloves. She also clarified that on April 10, 2015, the day of the shooting she picked defendant up from Panera Bread around 7:30 pm that evening.

Funkhouser testified next as a rebuttal witness. He testified he spoke with Driver on April 13, 2015, to discuss defendant's whereabouts on the day of the shooting. Driver told him she was at Walmart with defendant between 5 pm and 7 pm on April 10 (2015). He spoke to her on three occasions and Driver claimed to have only been together for less than a hour that day.

Defendant in surrebuttal, testified Lubamba would not have seen him wearing gloves when they were dating as he only wore gloves outdoors "around grass or dirt. He only spent time with her late at night when he needed a ride or something, or they would get a hotel together.

In closing argument, the State asserted defendant shot and killed Carter in retribution for the shooting of his friend, Kytiece Frazier. They also claimed defendant posted the rap lyrics "Put it on my soul, you ain't goin' be the only one with a headstone" and then took the blue latex gloves from the hospital room. He hung out with some friends before going to the barbecue when he sees his Carter, the guy who is best friends with the fellow who shot defendant's own friend. The State argued defendant put on the glove, then takes out the gun and shoots the victim, and it was just coincidence that he had gloves in his pocket.

Defense counsel argued the lyrics in defendant's Facebook post referencing "headstone" lacked relevance because Frazier was "alive and didn't have a headstone." Further, nobody else at the barbecue identified defendant as the shooter. There was no evidence that connects defendant to the crime. The State's sole witness, Dreshana Caston gave multiple versions of events leading up to the shooting. He stated that defendant was not present when the shooting occurred. However, the jury subsequently found defendant guilty of first degree murder.

On March 3, 2016, trial counsel filed a motion for a new trial, which the trial court denied. The trial court conducted a sentence hearing that same day. Trial court stated defendant's criminal history was "extensive" and sentenced him to 75 years in prison.

On direct appeal, appellate counsel raised four issues. On October 2, 2019, the appellate court held "Neither the admission of defendant's social media post nor testimony regarding other-crimes evidence constituted plain error. In sentencing defendant, the trial court considered an unconstitutionally void prior conviction as a factor in aggravation. People v. Beverly, 2019 IL App (4th) 160168-U.

This petition follows:

## REASONS FOR GRANTING THE PETITION

1. THIS COURT SHOULD GRANT THIS PETITION FOR A WRIT OF CERTIORARI TO DETERMINE WHETHER PETITIONER WAS DENIED A FAIR TRIAL WHEN THE STATE PRESENTED IRRELEVANT EVIDENCE THAT HE POSTED ON FACEBOOK VIOLENT RAP LYRICS BEFORE THE VICTIM'S MURDER AND THAT HIS FAILURE TO RAISE THIS CLAIM DURING THE TRIAL SHOULD BE EXCUSED UNDER PLAIN ERROR DOCTRINE. THE ILLINOIS COURT'S DECISION IN THIS CASE IS IN DIRECT CONFLICT WITH THIS COURT'S PRIOR DECISION

Defendant was denied a fair trial when the State presented irrelevant evidence he posted violent rap lyrics on Facebook shortly before Carter's murder. The State claimed the Facebook post was admissible and was relevant as it goes to his motive and intent to commit murder. Defendant concedes that he failed to object to the challenged Facebook post at trial nor did trial counsel raise the issue in a posttrial motion. However, this forfeiture should be excused under the plain error doctrine.

A reviewing court may consider an unpreserved error in the following circumstances:

"(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error; or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.." People v. Thompson, 238 Ill.2d 631 (2010).

The Appellate Court correctly determined that an error, indeed, occurred when the State introduced defendant's Facebook post stated as follows: "I put it on my soul...u ain't goin b da only wit a headstone my nigga." The State claimed this evidence established defendant's motive and intent. The phrase "you ain't gonna be the only one with a headstone" imply somebody has died. The State alluded to defendant's friend, Frazier, the victim of a prior shooting, on whose behalf he would exact revenge. However, Frazier was very much alive at the time of Carter's murder. As the Appellate Court stated "the State's attempt to connect the rap song lyrics with the circumstances here is somewhat

flawed at the onset. ¶95.

The Facebook post did not identify Carter as being defendant's intended victim. "Threats against a victim are admissible to show malice and criminal intent, but those threats must in some way be linked to the victim." *People v. Williams*, 407 N.E.2d 608 (1980). The rap lyrics were inapt to the circumstances as they existed at the time defendant posted them to his Facebook account because Frazier was alive. Further, it failed to identify the victim, Carter, either expressly, or by inference. The Facebook post were not relevant of any fact of consequence and thus, evidence of the Facebook post was inadmissible.

However, the Appellate Court incorrectly determined that the evidence was not closely balanced to warrant a new trial. There was no evidence that linked the defendant to the murder of Arsenio Carter. Out of the dozens of people who were present during the shooting, the States entire casewas dependant on Dreshana Caston. However, she had a motive to lie. Her uncle, Christopher Hugger, and his guys wanted to retaliate against the victim for the murder of Rakin Vineyard. In fact, Caston testified that Hugger's friend, Devonta Lindsey, had some words with her brother, Robert, behind the truck. After their conversation, Robert returned to the truck and stated they should leave, Caston testified Devonta Lindsey, was staring at them, mean-mugging them. However, Caston never testified that defendant was with Hugger and Lindsey. Common sense would dictate that the individual who was mean-mugging them with his hoodie pulled tight seconds before the shooting occurred, is the same person who walks up and shoots into the vehicle. The defendant had no motive to do the shooting. Clearly, the evidence was closely balanced.

This holding creates a conflict with established law. *Puckett v. United States*, 556 U.S. 129 (2009), to establish plain error, a defendant must show: 1) an unwaived error; 2) that is clear or obvious, rather than subject to reasonable dispute; 3) that affected his substantial rights; and 4) that seriously affects the fairness, integrity or public reputation of judicial proceeding. Thus, the Appellate Court's holding that allows consideration of non-preserved errors in two circumstances: 1) where the evidence is closely balanced, and 2) where the error is so fundamental and of such magnitude that defendant was denied a fair trial, departs from *Puckett*, 556 U.S. at 136.

Here, the Appellate Court cites no authority in determining the evidence was not so closely balanced. Further, the Appellate Court's holding that the evidence is closely balanced is contradicted by the record. The only evidence against the defendant was the testimony of Caston, despite the fact there were numerous people outside who had witnessed the shooting. Plus, the State had no physical evidence. — Contrary to the Appellate Court's decision, the evidence was closely balanced. Accordingly, this Court should grant the Petitioner certiorari and review the prior Court's decision.

2. THIS COURT SHOULD GRANT THIS PETITION FOR A WRIT OF CERTIORARI TO DETERMINE WHETHER PETITIONER WAS DENIED A FAIR TRIAL WHEN THE STATE PRESENTED INADMISSIBLE OTHER CRIMES EVIDENCE THAT PETITIONER HAD BEEN ARRESTED AND CONVICTED ON A PRIOR OCCASION. THE ILLINOIS COURT'S DECISION IN THIS CASE IS IN DIRECT CONFLICT WITH THIS COURT'S PRIOR DECISION

The State presented inadmissible other-crimes evidence where two witnesses called by the State referenced defendant's "mugshot" and an Illinois Department of Corrections (IDOC) picture taken when he was arrested and convicted on a prior occasion. Defendant again concedes to the fact that this error was not objected to at trial or raised in a posttrial motion. However, the evidence in this case was closely balanced and these errors should be reviewed under the plain error doctrine. The initial step under either prong of the plain error doctrine is to determine whether the claim presented on review actually amounts to a clear or obvious at all. *People v. Staake*, 2017 IL 121755 ¶33.

Evidence of other crimes is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit a crime. *People v. Pikes*, 2013 IL 115171, ¶11. It is admissible to show modus operandi, intent, motive, identity, or absence of mistake with respect to the crime with which the defendant is charged. "Evidence of other offenses may also be admissible if the evidence is procured, invited, or acquiesced to by the defendant." *People v. Liner*, 826 N.E.2d 1274 (2005). This Court should exclude evidence of other crimes where its prejudicial effects substantially outweighs its probative value." *People v. Placek*, 184 Ill.2d 370 (1998).

At trial, during cross-examination, trial counsel elicited the following testimony regarding a "mugshot" of defendant:

[Trial Counsel]: Q. "Did [Det. Funkhouseer] show you a picture of [defendant]?  
[Dreshana Caston]: A. Yes

Q. And did you point out-did you say that that was the picture that you thought was the shooter?

A. Yeah, I said that was him.

Q. That was a picture he showed you, correct?

A. The investigator, yes.

Q. Yes, the investigator?

A. It was a mug shot.

Q. Pardon?

A. It was a mug shot."

Here, the State's witness blurted out that it was a mug shot, even though trial counsel never inquired where the photo was from. He simply asked "That was a picture he showed you, correct?" The Appellate Court claimed because trial counsel's questioning elicited Caston's response relating to defendant's mug shot defendant cannot now complain about the testimony. ¶111.

As for the testimony regarding defendant's IDOC photo, Detective Sumption referenced this photo during the State's direct examination when asked about photos he received from the Illinois Secretary of State. Sumption volunteered the testimony of a IDOC photo. However, despite the Appellate Court claiming it was improper, they felt they "cannot say they were sufficient to influence the jury's verdict because the evidence was not closely balanced. ¶112.

The Appellate Court incorrectly determined that the evidence was not closely balanced to warrant a new trial. There was no physical evidence that linked the defendant to the murder of Arsenio Carter. Out of the dozens of people who were present during the shooting, the State's entire case was dependant on Dreshana Caston. However, she had a motive to lie. Her uncle, Christopher Hugger, and his guys wanted to retaliate against the victim for the murder of Rakin Vineyard. In fact, Caston testified that Hugger's friend, Deveonta Lindsey, had

some words with her brother, Robert Caston, behind the truck. Dreshana told Detective Funkhouser that she overheard her brother and Lindsey discussing another murder that occurred in 2014 involving Rakim Vineyard. Lindsey and Hugger believed Arsenio Carter was involved in Rakim's murder. After their conversation, Robert Caston indicated that they should leave. Dreshana testified at that point, Lindsey began to stare at them, mean-mugging them and pulled his hoodie tight seconds before somebody with a hoodie on began shooting at them. At no time did anybody place the defendant with Hugger and Lindsey, nor was there a motive for him to commit the murder. However, Dreshana has a motive to lie. Hugger is her uncle. She implicated the defendant as oppose to the real killer, Hugger and Lindsey. Clearly, the evidence was closely balanced.

This holding creates a conflict with established law. **Puckett v. United States**, 556 U.S. 129 (2009), to establish plain error, a defendant must show: 1) an unwaived error ; 2) that is clear or obvious, rather than subject to reasonable dispute; 3) that affected his substantial rights; and 4) that seriously affects the fairness, integrity or public reputation of judicial proceeding. Thus, the Appellate Court's holding that allows consideration of non-preserved errors in two circumstances: 1) where the evidence is closely balanced, and 2) where the error is so fundamental and of such magnitude that defendant was denied a fair trial departs from **Puckett**, 556 U.S. at 136.

Here, the Appellate Court cites no authority in determining the evidence was not so closely balanced. Further, the Appellate Court's holding that the evidence is closely balanced is contradicted by the record. The only evidence against the defendant was the testimony of Dreshana Caston, despite the fact there were numerous people outside

who had witnessed the shooting. Plus, there was no physical evidence linking the Petitioner to the crime. Further, contrary to the Appellate Court's decision, the evidence was closely balanced. Accordingly, this Court should grant the Petitioner certiorari and review the prior Court's decision.

## CONCLUSION

The Petitioner respectfully prays that this Honorable Court will grant this petition for a writ of certiorari to decide an important question of law that is in conflict with relevant decisions of this Court.

Respectfully submitted,

David Beverly  
David Beverly  
Petitioner-Pro se