

No. 19-8529

ORIGINAL

Supreme Court, U.S.
FILED

MAY 14 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

DARRYL W. CAIN — PETITIONER
(Your Name)

vs.

RANDEE REWERTS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Darryl W. Cain #3S1791
(Your Name)

10274 Boyer Road
(Address)

Carson City, MI 48811
(City, State, Zip Code)

—
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the remarks during prosecutor's rebuttal of injecting personal opinion & Vouching for its key witnesses credibility an "invited response" or "invited reply" to defense Counsel's argument.
2. Whether Objection to Summation Can be made & Was Counsel ineffective for failure to object.
3. Whether the personal opinion & Vouching for the Credibility by the prosecutor of the States witness have its place at trial & rose to the level of a due process violation.
4. Whether the review to raising ineffective assistance of Counsel for failure to object to a claim of prosecutorial misconduct a Constitutional issue that is generally reviewed *de novo*.
5. Whether any alleged prejudice from the prosecutor's remarks were cured by the trial Courts general jury instructions.
6. Whether the petitioner was denied a fair trial when the trial Court pierced the veil of judicial impartiality & essentially directed a guilty verdict in front of the jury.
7. Whether Constructive possession alone enough to establish probable cause ~~because mere proximity~~.
8. Whether a Motion to Suppress evidence was timely made prior to trial.
9. Whether petitioner was provided an opportunity for full and fair litigation of a claim under the Fourth Amendment.

10. Whether, after proved an unreasonable delay, the burden of proof shift to the Government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance to justify the delay.
11. Whether the last reasoned Court's order is ambiguous as to whether it denied Petitioner's claims of ineffective assistance of counsel due to a procedural default or denied on the merits.

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LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

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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 B 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 November 27, 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: February 18, 2020, and a copy of the order denying rehearing appears at Appendix C.

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 _____. 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

THE UNITED STATES CONSTITUTION, AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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 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.

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 laws.

STATEMENT OF THE CASE

The petitioner's claims were denied by the United States district Court without a reasonable determination in light of the facts presented on the record. See (Appendix B).

The Sixth Circuit Court of appeals affirmed the denial of Certificate of appealability for the reasons stated by the district court. See (Appendix A).

A timely motion for rehearing was also denied. See (Appendix C).

REASONS FOR GRANTING THE PETITION

A. Conflicts with Decisions of other Courts

Question one: The decision of the Courts below is in conflict with the decision of another United States Court of appeals on the same important matter of "invited response" or "invited replies". See *United States v. Nanny*, 745 F. Supp 475 (1989); *United States v. Young*, 470 U.S. 1 (1985).

Question two: The Courts holding that Counsel was not ineffective for failure to object is directly contrary to the holding in *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's failure to object to prosecutor's rebuttal of injecting her personal belief & Vouching for the credibility of the States witness deprived petitioner a fair trial & is Objectionable pursuant to 1. Criminal Law Deskbook P.1906 Objections to Summation #6 Interjection of personal opinion and belief; ABA Standards for Criminal Justice Prosecution Function & Defense Function; ABA Code of Professional Responsibility DR7-106(4).

Question three: The decision of the Courts holding is in conflict with another Court of appeals on the same important matter. The Comments of Vouching implied that the prosecutor had facts of the credibility and truthfulness of its witnesses testimony that misled the jury. See *United States v. Causey*, 834 F.2d 1277, 1283 (6th Cir. 1987).

Question four: The decision of the Courts below has decided an important question

of federal law that has not been, but should be settled by this Court. The standard of review should have been review de novo instead of plain error on the ineffective assistance of counsel failure to object to prosecutorial misconduct.

Question five: The decision of the Courts below has decided an important question of federal law that has not been, but should be settled by this Court. Whether general jury instructions enough to eradicate from the minds of the jury improper comments by the prosecutor. There were no curative instructions to the jury.

Question Six: The decision of the Courts below is in conflict with the decision of another Court of appeals of the United States on the same important matter of trial Court misconduct. The rule is settled that in a Criminal case the judge may not direct a verdict of guilty no matter how conclusive the evidence. *United Brotherhood of Carpenters and Joiners of America v. United States*, 330 U.S. 395, 408 (1947); *Boatright v. United States*, 105 F.2d 737, 740 (8th Cir. 1939); *Kondar v. United States*, 164 F.91 (7th Cir. 1908).

Question Seven: The decision of the Courts below is in conflict with another United States Court of appeals on the same important matter that mere proximity alone is sufficient to convict for possession and enough to establish probable cause. See *United States v. Robertson*, 833 F.2d 777, 783 (9th Cir. 1987); *United States v. Griffin*, 684 F.3d 691, 696 (7th Cir. 2012); *Ybarra v. Illinois*, 444 U.S. 85, 92 (1979).

Question eight: The decision of the Courts below is directly contrary to the holdings in *United States v. Crismon*, 905 F.2d 966 (6th Cir. 1990); *United States v. Oldfield*, 859 F.2d 392 (6th Cir. 1988) and *United States v. Sachs*, 801 F.2d 839 (6th Cir. 1986) petitioner made a timely motion to suppress evidence prior to trial & issues should not have been deemed waived.

Question nine: The decision of the Courts below is directly contrary to *Stone v. Powell*, 428 U.S. 463 (1976) petitioner's 4th Amendment claims were frustrated & the State did not provide full & fair opportunity to litigate claims.

Question ten: The decision of the Courts below is directly contrary to the holding in *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) petitioner proved an unreasonable delay the burden of proof to justify the delay rested on the government.

Question eleven: The decision of the Courts below is in conflict with the holding in *Henderson v. Palmer*, 730 F.3d 554 (6th Cir. 2013) being summarily denied is being denied on the merits MCR 6.504(b)(2); MCR 6.508.

B. Importance of the Questions Presented

The issues/claims in this case presents a fundamental question of the interpretation of this Court's decision in all the United State Supreme Court Cases mentioned in this Writ, Because of the fact that the lower Courts have seriously misinterpreted. The questions presented is of great public importance because it affects hundreds of appellate cases alike. In view of the large amount of litigation over the state of Michigan's proceedings, guidance on the questions is also of great importance because it affects their ability to receive fair decisions in appellate proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Darryl D." followed by a surname, is written over a horizontal line.

Date: May 14, 2020