

No. 19-8619

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

DEON C COBB
(Your Name)

— PETITIONER

vs.

HAROLD W CLARKE,

— RESPONDENT(S)

FILED
MAY 13 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

DEON CHRISTOPHER COBB,
(Your Name)

KEEN MOUNTAIN CORR CENTER
(Address) P.O. BOX 860

OAKWOOD, VIRGINIA 24631
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. Whether The Ruling By The Court Was Contrary To, or Involved an Unreasonable Application of Clearly Established United States Supreme Court Law?

II. Whether The Trial Court's Failure To Make Specific Rulings On An Issue Presented, Violates Due Process?

III. Whether Inadmissible Evidence Can Constitute Conspiracy?

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:

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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 _____ 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☐ is unpublished.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☐ is unpublished.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 "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☒ is unpublished.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 C Chesapeake Circuit 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☒ is unpublished.

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 April 3, 2010
A copy of that decision appears at Appendix "A".

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (date) on N/A (date) in Application No. A N/A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Due Process Clause of The Fourteenth Amendment

2. 28 U.S.C. 2244

3. Federal Rules of Evidence

STATEMENT OF THE CASE

This appeal arises from a case in the Chesapeake Circuit Court in which the Honorable Marjorie Taylor Arrington, Judge of the Chesapeake Circuit Court, accepted not guilty pleas from the appellant to the charges of attempted robbery, 1st degree murder, use of a firearm in the commission of murder, use of a firearm in the commission of robbery, and conspiracy to commit robbery. The case was tried before a jury on November 29, December 1, 2, 5, and 6, 2011. The jury found the appellant guilty of all the charges. On August 21, 2012, the trial court affirmed the jury's verdict and sentenced the appellant to a term of three years on the attempted robbery charge, twenty years on the murder charge, five years on the use of a firearm in the commission of murder, three years on the use of a firearm in the commission of attempted robbery, and three years for the conspiracy to commit robbery charge. Additionally, he received a three year post-release sentence on each of the charges. Those post-release sentences were suspended conditioned upon six months of post release supervision.

The appellant appealed to the Court of Appeals of Virginia, and that Honorable Court granted the petition for appeal. Also, the Court of Appeals granted the motion of the appellant's then-counsel to withdraw as counsel of record and appointed appellant's counsel for direct appeal.

On October 22, 2013, the Court of Appeals issued an opinion affirming appellant's convictions. Appellant timely noted his appeal.

Appellant timely filed post-conviction, state and federal habeas corpus petitions but to no avail.

Lastly, he filed a motion to vacate, pursuant to Code § 19-428 which was subsequently denied at the sentencing court and also at the Supreme Court of Virginia on April 3, 2020. He is now petitioning this Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

The Court of Appeals noted that the trial court made no specific rulings regarding application of the best evidence rule which is contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the United States Supreme Court, and also includes an unreasonable determination of the facts.

It is incumbent upon petitioner to obtain a ruling from the trial court or "there is no ruling for the appeals court to review on appeal, clearly in violation of the due process clause of the Fourteenth Amendment. Here, petitioner argues that the trial court committed "reversible error" which renders his conviction void ab initio particularly because the trial court admitted evidence that was hearsay evidence known as exhibit 21 clearly consisting of records from Verizon telephone company - worker, pertaining to "Text Messages" at 47-49, 55, 56-58, and at 80, 86, Defendant's Motion in Limine). In addition, this issue also violates the Federal Hearsay Rules of evidence.

However, since the trial court admitted exhibit 21 into evidence, thus the records were inadmissible hearsay and should be deemed barred by the Federal Hearsay Rules of Evidence. It is well-settled that when the evidence establishes a prima facie case of conspiracy, and in furtherance of a conspiracy during such conspiracy, and in furtherance thereof, is admissible, in a prosecution for the target crime as substantive evidence against any co-conspirator on trial. However, it is not true if the conspiracy has terminated. It is held that incriminating, inculpatory extrajudicial declarations of a co-conspirator made in the absence of or without the knowledge of the accused, after the conspiracy has come to an end through withdrawal or arrest of the participants, or termination of the plan in success or failure are not admissible in evidence in a criminal trial to prove the guilt of one other than the declarant. Hence, the trial court erred in admitting into evidence, over the defense objection, the Text messages from the number 419-0926- as this is barred by the Federal Hearsay Rules of Evidence, which is obviously contrary to, or involved an unreasonable application of clearly established Federal law as determined by the United States Supreme Court, and includes an unreasonable determination of the facts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dean Calhoun

Date: May 8, 2020