

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GREGORY C. DACANAY,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For Writ of Certiorari
To The Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

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I. QUESTION PRESENTED

Whether law enforcement officers, despite their answers to *voir dire* questions, can be fair and impartial jury members in a criminal trial in order to satisfy the requirements of the Sixth and Fourteenth Amendments to the United States Constitution regarding a defendant's right to a fair trial by an impartial jury and in order to avoid structural error in the trial.

II. TABLE OF CONTENTS

| | | |
|-------|--|-----|
| I. | Question Presented | i |
| II. | Table of Contents | ii |
| III. | Table of Authorities | iii |
| IV. | Petition for Writ of Certiorari | 1 |
| V. | Opinions Below | 1 |
| VI. | Jurisdiction | 1 |
| VII. | Constitutional Provisions Involved | 2 |
| VIII. | Statement of the Case | 2 |
| | 1. Factual Background | 5 |
| IX. | Reasons for Granting the Writ | 9 |
| X. | Conclusion | 18 |
| XI. | APPENDIX | |
| | Order, Appellate Court of Illinois, Second District, September 22, 2020 | 1a |
| | Order, Supreme Court of Illinois, January 27, 2021 | 15a |
| | Relevant Statute | 16a |

III. TABLE OF AUTHORITIES

CASES

| | |
|--|---------------|
| <i>Apprendi v. New Jersey</i> , 530 U.S. 466, 120 S. Ct. 2348 (2000) | 3 |
| <i>Arizona v. Fulminante</i> , 499 U.S. 279, 111 S. Ct. 1246 (1991) | 3 |
| <i>Batson v. Kentucky</i> , 476 U.S. 79, 106 S. Ct. 1712 (1986) | 3 |
| <i>Blakely v. Washington</i> , 542 U.S. 296, 124 S. Ct. 2531 (2004) | 3 |
| <i>Chapman v. California</i> , 386 U.S. 18, 87 S. Ct. 824 (1967) | 3 |
| <i>Ellis v. State</i> , 736 S.E.2d 412 (Ga. 2013) | 12 |
| <i>In re Winship</i> , 397 U.S. 358, 90 S. Ct. 1068 (1970) | 15, 16 |
| <i>Neder v. United States</i> , 527 U.S. 1, 119 S. Ct. 1827 (1999) | 3, 4 |
| <i>Patton v. Yount</i> , 467 U.S. 1025, 104 S. Ct. 2885 (1984) | 2 |
| <i>Pena-Rodriguez v. Colorado</i> , 137 S. Ct. 855 (2017) | 9, 10, 16, 17 |
| <i>People v. Cole</i> , 54 Ill. 2d 401, 298 N.E.2d 705 (1973) | 4, 10, 11, 17 |
| <i>People v. Downs</i> , 2015 IL 117934, 410 Ill. Dec. 239, 69 N.E.3d 784 | 15 |
| <i>People v. Ringland</i> , 2017 Ill. 119, 484, 89 N.E. 3d 735, 17 Ill. Dec. 876 (2017) | 12 |
| <i>Ramos v. Louisiana</i> , 140 S. Ct. 1390 (2020) | 3 |
| <i>Rivera v. Illinois</i> , 556 U.S. 148, 129 S. Ct. 1446 (2009) | 9 |
| <i>State v. Gaines</i> , 688 So. 2d 679 (La. Ct. App. 4th Cir. 1997) | 14 |
| <i>State of West Virginia v. Marshall West</i> , 200 S.E.2d 859 (1973, W. Va.). 72 A.L.R.3d 895 * 4. | 12, 13 |
| <i>Sullivan v. Louisiana</i> , 508 U.S. 275, 113 S. Ct. 2078 (1993) | 3, 15 |
| <i>Washington v. Recuenco</i> , 548 U.S. 212, 126 S. Ct. 2546 (2006) | 3, 4, 13, 15 |

STATUTES

| | |
|----------------------|----|
| 705 ILCS § 305 | 12 |
|----------------------|----|

CONSTITUTIONAL PROVISIONS

United States Constitution,
 Amendment VI *passim*

United States Constitution,
 Amendment XIV *passim*

IV. PETITION FOR WRIT OF CERTIORARI

Gregory C. Dacanay, by and through his attorney, Salvatore C. Miglore, respectfully petitions this Honorable Court for a writ of certiorari to review the judgment of the Illinois Appellate Court, Second District in affirming Mr. Dacanay's conviction. Mr. Dacanay's Petition for Leave to Appeal to the Illinois Supreme Court was denied.

V. OPINIONS BELOW

The decision by the Illinois Appellate Court, Second District, affirming the aggravated criminal sexual abuse conviction of Gregory C. Dacanay, is reported as *People v. Dacanay*, 2020 IL App (2d) 190533-U. However, this is an unpublished opinion and cannot be cited as authority pursuant to Illinois Supreme Court Rule 23. The Supreme Court of Illinois denied Mr. Dacanay's Petition for Leave to Appeal on January 27, 2021 (Ill. Sup. Ct., January 27, 2021, Docket #126558). The Illinois Appellate Court, Second District, decision is attached at Appendix ("App.") 1a and the Supreme Court of Illinois denial of Mr. Dacanay's Leave to Appeal is attached at App. 15a.

VI. JURISDICTION

The Illinois Appellate Court, Second District, Affirmed the trial court's decision on September 22, 2021. Mr. Dacanay's Petition for Leave to Appeal to the Supreme Court of Illinois was denied on January 27, 2021. Mr. Dacanay invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this Petition for writ of certiorari within ninety (90) days of the Supreme Court of Illinois' denial of his Petition for Leave to Appeal.

VII. CONSTITUTIONAL PROVISIONS INVOLVED

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.

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 laws.

VIII. STATEMENT OF THE CASE

This is a case involving solely a federal question regarding an impartial jury. It has long been held that the U.S. Constitutional standard that a juror is impartial only if s/he can put aside his/her opinions and prejudices in order to render a verdict based solely on the evidence presented is a standard defined by federal law. *Patton v. Yount*, 467 U.S. 1025, 104 S. Ct. 2885 (1984). Although *Yount, supra*, dealt with pre-trial publicity in connection to a fair trial, its holding is instructive on the instant issue presented. The *Yount* court held that the only way to test juror impartiality is to find out if potential jurors had such fixed opinions that they could not judge the guilt of a defendant impartially. *Id.* at 1. The essential question is: what is the proper procedure to determine juror impartiality? This question is answered by 1) Questioning a prospective juror and having the trial judge being satisfied by the answers, and 2) observation of demeanor and body language. Both of these

procedures rely heavily on the trial judge's discretion. The Petitioner maintains that this much reliance on a trial judge's discretion to such an essential process is flawed and that instead, more uniform rules should be established that would be applicable throughout state and federal courts with respect to law enforcement on criminal juries.

Regarding this Court's holdings as to the Sixth and Fourteenth Amendments regarding the right to a fair trial and impartiality, this Court has held that such requirements are primarily based on 'Batson issues,' (*Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986)) pre-trial publicity, and improper findings of guilt based on an incorrect burden of proof in a criminal trial. This Court also considered cases where a defendant was found guilty when an essential element of the case was not part of a jury's verdict and was not proved beyond a reasonable doubt. *Washington v. Recuenco*, 548 U.S. 212, 126 S. Ct. 2546 (2006); *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000); *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004); *Sullivan v. Louisiana*, 508 U.S. 275, 113 S. Ct. 2078 (1993); *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020). Structural errors based on federal constitutional violations are not harmless, regardless of any overwhelming evidence to support a conviction, if such errors are deemed to be a structural deficiency. Such deficiencies erode the integrity of verdicts, the integrity of the judicial process, and trust in our criminal justice system. *Chapman v. California*, 386 U.S. 18, 87 S. Ct. 824 (1967); *Neder v. United States*, 527 U.S. 1, 119 S. Ct. 1827 (1999) quoting *Arizona v. Fulminante*, 499 U.S. 279, 111 S. Ct. 1246 (1991). Hence, the question is not simply

based on independent state law, the answer rests solely on the heart of the Sixth and Fourteenth Amendments. All of the above-mentioned cases and others are considered structural errors based on federal law, not state law issues, for the reasons discussed *infra*.

This Court deems most constitutional errors in state court trials to be harmless if the defendant was represented by competent counsel and if a trial was held by an impartial jury. Therefore, there is a strong presumption that a constitutional error is a harmless error. Thus, this Court has rarely held that an error is structural and requires automatic reversal. However, in cases requiring automatic reversal, such an error renders the criminal trial fundamentally unfair and unreliable in determining a defendant's guilt or innocence. *Recuenco*, 548 U.S. 212 at 10 citing *Neder*, 527 U.S. 1 at 9. The Petitioner respectfully maintains that the instant matter is a rare occurrence and should be addressed by this Court as a structural error based on the Sixth and Fourteenth Amendments to the U.S. Constitution. The issue of law enforcement officers serving on criminal juries is not a question of an adequate and independent state ground.

For over 200 years, Common Law jury qualifications barred law enforcement officers from serving on criminal juries in various states, including Illinois. Then, in 1973, *People v. Cole*, 54 Ill. 2d 401, 298 N.E.2d 705 (1973) removed the per-se bar to law enforcement serving on criminal juries or presumption that law enforcement officers are unfit to serve on such juries to ensure impartiality, instead vesting a judge with sole discretion as to whether or not to remove such officers for cause within

certain parameters based on *voir dire* direct examination. This Court has never examined the issue of law enforcement officers serving on criminal juries relative to the fair trial and impartiality rights set forth in the Sixth and Fourteenth Amendments to the U.S. Constitution. This case presents the question of whether law enforcement officers, despite their answers to *voir dire* questions, can be fair and impartial jury members in a criminal trial in order to satisfy the federal constitutional requirements of a defendant's right to a fair trial by an impartial jury and fundamental fairness. In this case, the police officer was also the jury foreman. This was not harmless error and simply a question of state law; the inclusion of the police officer on the jury directly caused a structural defect, irrespective of any overwhelming evidence of the Petitioner's guilt. This structural defect cast substantial doubt on the reliability of the verdict.

1. Factual Background

Mr. Dacanay ("the Petitioner") has been married for approximately twenty (20) years and has two (2) children. He holds a college degree, has completed specialized education in physical training/sports conditioning, and has held high-level supervisory positions within his profession, all to the satisfaction of his superiors. He had no employment disciplinary records and no prior criminal history.

This Petition pertains to a criminal matter regarding an alleged incident on April 14, 2018, which allegedly occurred at a gym/athletic facility ("the gym"). The Petitioner was forty-two (42) years of age and working at the gym as a trainer and

supervisor at the time of the alleged incident. The alleged victim ("G.M.") was sixteen (16) years of age and also working at the gym at the time of the alleged incident. The Petitioner was accused of oral copulation with G.M. in a training room at the gym. During the investigation following G.M.'s report to the police, a police investigator messaged the Petitioner through Snapchat, posing as G.M. During these Snapchat conversations, the Petitioner sent the investigator a photograph of his sex organ via Snapchat. He also answered the investigator's questions during Snapchat conversations, portions of which were as follows:

INVESTIGATOR LIBERIO [as G.M.]: have you been thinking about giving me another blowjob

DEFENDANT: Ha maybeereeeee

* * * *

INVESTIGATOR LIBERIO [as G.M.]: no just freaking a little but ok

DEFENDANT: Lol. Ur fine.

U want it again

?

Wait so shud i vanish?

INVESTIGATOR LIBERIO [as G.M.]: you'll give me another blowjob?

DEFENDANT: U have to b more discreet when u chat. Lol

During questioning with investigators, the Petitioner denied any wrongdoing but admitted to sending the above Snapchat messages.

The Petitioner was charged with two (2) counts of Aggravated Criminal Sexual Abuse (both Class 2 Felonies) – person 5+ years older than victim – victim 13-16. The Indictment as to Count I stated that the Petitioner committed Aggravated Criminal Sexual Abuse when he allegedly committed an act of sexual conduct with G.M. by

touching G.M.'s sex organ for the purpose of sexual gratification or arousal of G.M. or the Petitioner. The Indictment as to Count II stated that the Petitioner committed an act of sexual penetration when his mouth allegedly touched G.M.'s sex organ for the purpose of sexual gratification or arousal of the alleged victim or the Petitioner.

The Petitioner filed a Motion in *Limine* to Bar Certain Evidence and Testimony at Trial, which specifically pertained to barring photographs/ screenshots of Snapchat communications taken by an investigator from being presented as evidence at trial. This Motion in *Limine* was denied as to 1) barring a photograph of sex the Petitioner's sex organ, 2) barring evidence or testimony regarding surveillance video from the gym, and 3) barring Snapchat photos and conversations taken from the Petitioner's cell phone. The Petitioner also filed a Motion to Suppress Statements Regarding Certain Snapchat Messages Pursuant to 720 ILCS § 5/114-11, which was also denied.

After a jury trial, the Petitioner was found guilty of 2 Counts of aggravated criminal sexual abuse, the alleged victim being a juvenile. During *voir dire* and after the Petitioner exercised all peremptory challenges, a police officer from a different police department than the one involved in the case being tried was questioned. This officer, identified as Juror 94, had been so employed for about seven and a half years. During this time, the officer worked in a juvenile investigations unit, but did not investigate child abuse specifically. The officer had also been an evidence technician and in this capacity had attended to a crime scene involving a criminal sexual assault case less than a year prior to serving on the Petitioner's jury. Although said most recent crime scene processed by the officer did not involve a juvenile, the officer had

previously investigated over ten (10) criminal sexual assault cases. The trial court sentenced the Defendant to thirty (30) months of sex offender probation, one-hundred and twenty (120) days in the DuPage County Jail with two (2) days of credit, and lifetime sex offender registration.

The Petitioner had utilized all peremptory challenges prior to the police officer and therefore moved to excuse the officer for cause. The Court denied this motion, citing that the officer had answered all questions from the Court, the State, and the Petitioner appropriately. The Court also noted that the officer's demeanor and answers let the Court to believe that he was being truthful. The Petitioner's request for additional peremptory challenges was denied, an issue based solely on state law and therefore excluded in the question presented in this Petition. The officer also served as the foreperson.

During *voir dire* examination of the officer, the Petitioner attempted to determine how the officer would approach deliberations and examine evidence presented a trial. The officer mentioned a "reasonable person" agreeing with him and the Petitioner asked what he meant by "reasonable person." The Petitioner also asked the officer if he was equating "reasonable person" with probable cause or the "beyond a reasonable doubt" standard. During this examination, most of the State's repeated objections were sustained. The Petitioner was not permitted by the Court to ask the officer to explain his meaning of a "reasonable person." The Petitioner's counsel was not allowed to question the officer regarding the officer's opinion as to the standards of proof beyond a reasonable doubt and probable cause to arrest. The

Petitioner was not allowed to explore whether the officer could be a fair and impartial juror; his answers indicated that he equated probable cause for an arrest with reasonable doubt to convict. Illinois has no patterned jury instructions for the definition of reasonable doubt and parties are forbidden to define this constitutionally protected standard for a jury.

On direct appeal, Dacanay renewed his argument that his Sixth and Fourteenth Amendment rights in the U.S. Constitution had been violated by 1) having a police officer on the jury, departing from common law juror qualifications without a reasonable basis, and 2) being precluded from further examination of the officer regarding his definition/understanding of reasonable doubt as opposed to a reasonable person agreeing with him. The Second District Appellate Court did not address the Petitioner's arguments regarding the Common Law not being superseded by any Illinois state law and that the law should be interpreted to guarantee a defendant a fair trial by an unbiased jury in relationship to and pursuant to the Sixth and Fourteenth Amendments to the U.S. Constitution, especially considering a confused understanding of reasonable doubt by the jury foreman.

IX. REASONS FOR GRANTING THE WRIT

Firstly, because the genesis of this Petition involves a structural error in the jury trial, matters of federal law in relationship to the Sixth and Fourteenth Amendments are at issue. Therefore, it is proper for this Court to review the issues set forth in the instant Petition. *Rivera v. Illinois*, 556 U.S. 148, 129 S. Ct. 1446 (2009) and *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017).

The Petitioner's criminal trial was fundamentally unfair and produced structural errors because the trial court violated the Sixth and Fourteenth Amendments to the United States Constitution in that: 1) the police officer (Juror 94) was allowed to serve on the jury, in context with the facts of the case, in violation of the Sixth and Fourteenth Amendments and Illinois law based on the abuse of discretion standard; and 2) the jury improperly applied the reasonable person standard in reaching their verdict, as opposed to applying the constitutionally required reasonable doubt standard.

In essence, *People v. Cole*, 54 Ill. 2d 401, 298 N.E.2d 705 (1973), the case in Illinois that changed 200 years of Illinois Common Law, left the issue of law enforcement serving on criminal juries to the Court's discretion, along with Illinois statute 705 ILCS § 305/1 *et al.* At common law, there were certain direct or indirect relationships or connections that may have existed between a juror and a party to the litigation and/or a witness that were so direct or indirectly prejudicial that a juror would be presumed biased and therefore disqualified. Since 1973, these types of relationships are permitted under *Cole*, 54 Ill. 2d 401 if the trial judge is satisfied in his complete discretion. In short, the *Cole, supra* majority had no compelling policy or legal basis in law to remove the common law disqualification of law enforcement on criminal juries. Before the decision in *Cole, supra* it was unnecessary to establish that a bias actually existed because there was a presumption of bias regarding police officers on criminal juries. In *Cole, supra* the Illinois Supreme Court was not concerned with the above-stated types of relationships but acknowledged that such

relationships existed. In doing so, the Court disregarded the constitutional protections guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution. The Petitioner asserts that *Cole*, 54 Ill. 2d 401 violates the principles of stare decisis.

The below-stated dissent by Justice Schaefer in *Cole* must be the current legal standard in order to guarantee criminal defendants their right to a fair trial by an impartial jury as required by the Sixth and Fourteenth Amendments:

"This statement seems to suggest that the answers of a prospective juror as to his subjective frame of mind determines his qualification to serve as a juror. If this was true, there would be no useful function for the judge to perform. It is not true, and it is the duty of the judge to appraise the prospective juror's frame of mind and to base his ruling upon that appraisal. I am further of the opinion that the appellate court properly based its ruling in part upon the statement, often reiterated by this and other courts, that "[i]t was a cardinal rule at common law that jurors, to be qualified as impartial, should stand indifferent between the parties and be wholly free from even the suspicion of bias." (People v. Cravens, (1941), 375 Ill. 495,497; see also, State v. Jackson (Revenell), (1964), 43 N.J. 148, 156-161, 203 A.2d 1,5-8, cert. denied (1965. 379 U.S. 982, 13 L. Ed. 2d 572, 85 S. Ct. 690, and cases cited therein.) To the extent that the majority opinion has attempted to depreciate the requirement that jurors be wholly free from the suspicion of bias, it has taken a long step backward."

However, at a minimum, the Sixth and Fourteenth Amendments require the proper application of the standard in cases where liberty interests and life time sex offender registration are at issue. The Petitioner did not want the police officer to define reasonable doubt. Instead, he inquired with the officer as to whether or not he differentiated between probable cause and reasonable doubt.

The statutory scheme contained in 705 ILCS § 305/1 *et al.* does not supersede the common law, but instead supplements it by Illinois law. 705 ILCS § 305/*et al.* cannot limit the Common Law disqualification, but only add to the Common Law, as it does to assist trial courts. See *People v. Ringland*, 2017 Ill. 119, 484, 89 N.E. 3d 735, 17 Ill. Dec. 876 (2017). Due process, impartiality, and a fair trial must be the priority in considering a prospective juror's education, background, and profession. Also, common sense must be applied by acknowledging that, even if a prospective juror says they can be fair and impartial, the case at issue will be viewed through a juror's personal life experiences, education, profession, and biases. Some states, such as Louisiana and Georgia, have statutes mandating that prospective jurors who are in law enforcement or with arrest powers must be excused from jury duty upon motion of a defendant based on the potential for bias. In these states, it appears that bias need not be shown by a defendant in order to exclude a law enforcement officer from a criminal jury. Rather, it is policy to exclude a law enforcement officer as a juror in a criminal case. *Ellis v. State*, 736 S.E.2d 412 (Ga. 2013); *State v. Gaines*, 688 So. 2d 679 (La. Ct. App. 4th Cir. 1997), writ denied, 700 So. 2d 503 (La. 1997). 72 A.L.R.3d 895. The decisions in these cases were based upon the proper application of the preemptive federal standard for the Sixth and Fourteenth Amendments applied against state law.

A case that provides compelling guidance regarding the aforementioned conflict among states is *State of West Virginia v. Marshall West*, 200 S.E.2d 859 (1973, W. Va.). 72 A.L.R.3d 895 * 4. Here, the Court held that there was a common

law rule disqualifying a law enforcement officer from jury duty in a criminal case. In *West*, the prospective juror was an employee of the state public safety department. However, the court indicated that even if a tenuous relationship between a prospective juror and any prosecutorial or enforcement arm of the state government existed, then a challenge for cause should be sustained. Moreover, in reversing the conviction for grand larceny, the lower court committed reversible error in denying the Petitioner's challenge for cause on the grounds that the prospective juror was an employee of law enforcement, the Petitioner being required to exercise all of his peremptory challenges to eliminate the juror from the panel. The court further held in *West, supra*, that common law disabilities regarding jurors remain in effect unless superseded by express statutory terms. The *West* court also indicated that this type of juror disqualification under common law disabilities is prima facie disqualification of a juror of the "same society or corporation of a party," as interpreted at common law. The opinion further stated that "obviously by virtue of the prospective juror's association with law enforcement officials, the juror was subject to potential prejudice, and for that reason, a peremptory challenge should not have been required to disqualify him." According to *West, supra*, the object is to select a panel free from prejudice or even the "reasonable suspicion of prejudice." This complies with the Sixth and Fourteenth Amendments to the U.S. Constitution.

It is asserted that the Petitioner was found guilty by an improper application of the reasonable doubt standard and a faulty application of said standard. *Washington v. Recuenco*, 548 U.S. 212, 126 S. Ct. 2546 (2006). This improper

application caused a structural error, which casts doubt on the integrity of the verdict and denied the Petitioner a fair trial by an impartial jury based solely on the Sixth and Fourteenth Amendments to the U.S. Constitution. This structural error was compounded by the fact that Illinois law forbids an instruction regarding the definition of reasonable doubt.

An investigation of this Court's decisions regarding the Sixth and Fourteenth Amendment relative to an impartial juror claim involving a law enforcement officer serving on a criminal jury, where a structural error was alleged and the officer was the foreperson, reveals that this Court has not examined such a case and there is no precedent set by this Court. The lack of U.S. Supreme Court precedent on this issue is another compelling reason for this Court to hear and decide this issue as it relates to the federal Constitution. This Petition is not simply a request to review a state appellate court's unpublished opinion based on state law on an adequate and independent state ground because it involves significant federal constitutional fair trial guarantees affecting thousands of criminal defendants throughout the entire country. States are conflicted as to whether law enforcement officers should be allowed to serve on criminal juries. In its unpublished opinion, the Second District Appellate Court of Illinois ("Appellate Court") found that no structural error in the trial or violation of the Petitioner's Sixth and Fourteenth Amendment rights had occurred. This finding was based solely on alleged satisfactory answers to perfunctory *voir dire* questions and purported observations of prospective juror's demeanor at the trial court's discretion. The Appellate Court did no analysis

regarding how the Common Law bar to police officers serving on criminal juries interacts with Illinois law allowing such a bar in relative to the Sixth and Fourteenth Amendments.

It also appears that the Appellate Court did not consider whether or not a violation occurred when the trial court limited the defense counsel during *voir dire* regarding the police officer's understanding of the correct standard of proof that should have been applied in the instant matter. Specifically, the police officer's answers seemed to indicate confusion regarding the difference between a "reasonable person" agreeing with him and proof beyond a reasonable doubt. This would violate the holding in *Recuenco*, 548 U.S. 212 and its progeny. Indeed, overwhelming evidence of guilt is irrelevant if there is a structural error. In Illinois, the law and pattern jury instruction 2.05 does not permit a definition of the reasonable doubt standard to be tendered to a jury. *People v. Downs*, 2015 IL 117934, 410 Ill. Dec. 239, 69 N.E.3d 784; Illinois Pattern Jury Instruction 2.05. Therefore, it is unknown if the jury applied the correct standard of proof or followed the Court's instructions because the police officer/foreman confused probable cause with reasonable doubt during *voir dire* and the Petitioner was limited in questioning him in this regard. While there is no constitutional right to a reasonable doubt instruction, it is clear that the proper application of the reasonable doubt standard is critical to satisfying the Sixth and Fourteenth Amendments. *Louisiana*, 508 U.S. 275 at 3, 7.

In accord is *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068 (1970). In this case, it was held *inter alia* as a matter of federal constitutional law (i.e. due process) based

on the Fourteenth Amendment that a New York juvenile law only required proof by a civil preponderance of the evidence when a juvenile was charged with a criminal offense. The State of New York classified the juvenile proceeding as a civil proceeding. However, this Court has found that process to be unconstitutional at the adjudicatory phase when a juvenile is charged with a criminal offense. Hence, due process of the Fourteenth Amendment requires proof beyond a reasonable doubt. Further, it was reasoned, *inter alia*, that the adjudication of guilt based on a civil standard of proof for a criminal offense, where a person can be deprived of their liberty or given lifetime sex offender registration, is a Fourteenth Amendment lack of fundamental fairness. The Petitioner respectfully maintains that the basic principles of federal law applied in *Winship* also apply to the instant matter. Serious, life-altering consequences attach to this matter, such as the deprivation or restriction of liberty and lifetime sex offender registration. At issue are also consequences regarding how the Petitioner can gain/retain employment, where he can live, whether or not he can attend family gatherings, and if he can spend time with his children to foster the close relationship with them that is vitally important to the Petitioner.

A jury verdict cannot be impeached based on statements made during jury deliberations, which of course are confidential. *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017) held, *inter alia*, that in the context of a “Batson” challenge, a juror who was a former police officer who sat on a criminal jury and passed a note to other jurors indicating a certain racial stereotype regarding Hispanic’s propensities for violence towards females. The defendant in *Colorado*, *Id.* was Hispanic. In general,

defendants are not allowed to invade the sanctity of jury deliberations pursuant to an established, long-held Common Law rule called the “no impeachment rule.” However, in this case, even though a state “no impeachment rule” applied to *Pena-Rodriguez v. Colorado*, the Court yielded to the federal question of an impartial jury as it relates to fair trial guarantees of the Sixth and Fourteenth Amendments. The opinion in *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017) cites the federal counterpart by analogy to Colorado’s “no impeachment rule,” where a juror cannot testify in court as to any statement made during deliberations (see Federal Evidence Rule 606(h)). The opinion also provides that the common law adopted in the U.S. by states grew alongside the federal constitutional requirements of a fair trial by an impartial jury. In essence, the *Colorado, Id.* holding clearly provided that the state law on no jury impeachment of a verdict must be superseded by the Sixth and Fourteenth Amendments guaranteeing a fair trial by an impartial jury.

Considering the heinous nature of allegations of aggravated sexual abuse toward a minor and the inherent bias that unconsciously attaches to such allegations, it is hard enough to achieve a fair trial by an impartial jury even without a police officer on the jury. This inherent prejudice associated with allegations of sexual abuse are especially poignant in the era of the “Me Too” movement and highly prejudicial media coverage of several high-profile sexual abuse cases (e.g. Harvey Weinstein, Bill Cosby, Jeffrey Epstein, and sex abuse cases within the Catholic church). Additionally, police officers are not the heroes to society today that they were when *People v. Cole*, 54 Ill. 2d 401, 298 N.E.2d 705 (1973) was decided. It is

neither irrelevant nor unfounded to assert serious doubts that a police officer would apply sound and fair judgment in a criminal trial in light of recent, high-profile crimes or alleged crimes involving excessive force, unnecessary force, and murder (e.g. former police officers Jason Van Dyke, found guilty of second degree murder of Laquan McDonald; officer/s in connection with the killing of Breonna Taylor; Derek Chauvin on trial for the murder of George Floyd; and Michael Slager, who was sentenced to 20 years in federal prison for the killing of Walter Scott).

X. CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted. The Petitioner was not tried by an impartial jury as pursuant to the Sixth and Fourteenth Amendments to the United States Constitution because a police officer was permitted to serve on the jury after the Petitioner used all of his peremptory challenges and his motion to remove said juror for cause was denied by the trial court. The police officer was selected as the jury foreman and the jury deliberated for less than two (2) hours. Moreover, the trial court denied the Petitioner's counsel the opportunity to inquire with the police officer during *voir dire* as to what the officer associated with a "reasonable person standard" regarding the reasonable doubt standard required to convict a defendant in a criminal trial.

The Petitioner maintains that the jury applied an improper standard to convict him, which was dictated by the police officer/foreman. Regardless of any perceived overwhelming evidence of the Petitioner's guilt, a structural error occurred in the trial, which denied the Petitioner a fair trial by an impartial jury. Lastly, the policy

and decisions pertinent to this Petition will affect thousands of criminal defendants and their Constitutional right to fair trials by impartial juries. Furthermore, based on a federal constitutional basis, decisions pertinent to this Petition will settle the conflict among states regarding this issue, allowing uniform application by all state courts on this issue that uniformly affects the outcome of criminal trials. Simply put, this issue is too significant and impactful on the outcome of criminal trials, regardless of the state in which such a trial is held, to be decided discretionarily and on the basis of state law independent of rights guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution.

DATED this 15th day of April, 2021.

Respectfully submitted,

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