

20-6096 IN THE  
SUPREME COURT OF THE UNITED STATES  
SEPTEMBER TERM 2020  
No.

ORIGINAL

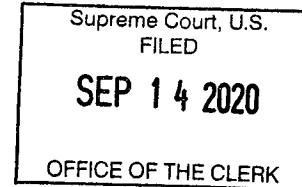
DIEUSEUL BROWN

Petitioner,

VS.

SONJA NICKULAS

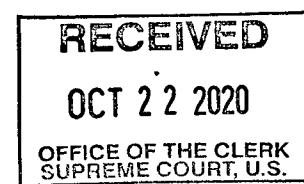
Respondent



PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEAL  
FOR THE 7th CIRCUIT

*DRB*  
Dieuseul Brown  
Reg no.  
2600 N. Brinton Av  
Dixon, Illinois  
61021

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## QUESTION PRESENTED

Whether the Petitioner's claim is Procedurally Defaulted under the Independent and Adequate State grounds Doctrine. Whether the lower courts erred in not finding of favor of Petitioner when the jury did not find the petitioner guilty of first degree murder, but found him guilty of second degree murder. In Illinois, in order to find an individual guilty of second degree murder, he has to be found guilty of first degree murder first, the a jury will consider the mitigating factors.

## PARTIES

The petitioner is Dieuseul Brown, a Prisoner at Dixon Correctional Center in Dixon Illinois. The respondent is Sonja Nickulas, the Warden at Dixon C.C.

## TABLE OF CONTENTS

Question Presented.....	2
Parties.....	2
Table Of Authorities.....	3
Decision Below.....	4
Jurisdiction.....	4
Constitutional and Statutory Provisions Involved.....	4
Statement Of the Case.....	4
Basis for Federal Jurisdiction.....	8
Reasons For Granting Writ.....	6
A. Importance of the Question Presented.....	8
Conclusion.....	13
Exhibits	14
State Appellate Court decision.....	A
Order of the United States District Court.....	B

TABLE OF AUTHORITIES

Duncan v Hanry, 513 U.S. 364.....	8
Smith v Texas, 550 U.S. 297.....	82
People v Jeffries,.....	9
Jackson v Virginia, 443 U.S. 307.....	10
Mullaney v Wilbur, 412 U.S. 684.....	11
720 ILCS 5/9-1(a)(1), Illinois Criminal Procedure.....	4
720 ILCS 5/9-2 (2012) Illinois Criminal Procedure.....	4
North Carolina v Pearce, 395 U.S. 711,.....	12
U.S. v Const. Amends v and XIV.....	12
Tibbs v Florida, 457 U.S.31.....	12
U.S. v Powell, 469 U.S. 57.....	7

DECISIONS BELOW

The decision of the Illinois Third District Appellate Court. Appendix A. The decision of the Illinois Central District Federal court. See Appendix B. And the decision of the United States of Appeals for the 7th Circuit is unreported. It is cited in the table, cite and a copy is attached as appendix C.

JURISDICTION

The judgement of the United States Court of appeals for the 7th Circuit was entered on June 8, 2020, an order denying the Petitioner's Certificate Of Appealability. A copy is attached as Appendix C. Jurisdiction is conferred by 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involved Amendment XIV to the United States Constitution. and the Amendment is enforced by Title 42, Section 1983, the United States Code.

STATEMENT OF THE CASE

The petitioner was charged with two alternative counts of first degree murder for the shooting death of Kelsey Coleman, Count I alleged that the petitioner had committed felony murder, in the Coleman was shot during an armed robbery, in violation of section 9-1(a)(3) of the Criminal Code 720 ILCS 5/9-1(a)(3) (West 2012). Count II alleged that the petitioner had committed the offense of first degree murder by shooting Coleman, knowing that the act created a strong probability of death or great bodily harm that the fact caused the death of Coleman, in violation of section 9-1(a)(2) of the Criminal Code 9-1(a)(2).

The case proceeded to a jury trial before Honorable Judge Brown. Evidence adduced at trial indicated that on April 4, 2013, Coleman had a handyman, John McNulty, was there performing some renovation.

According to McNulty, the back door crashed opened at midnight and the petitioner came in with a gun. The petitioner held a gun to McNulty's head and walked McNulty through the house. Coleman met them in the hallway, and Coleman and the petitioner started wrestling. The fight continued into the kitchen and McNulty heard gunshots. Coleman walked stiffly from the kitchen and told McNulty that he has been shot.

The mother of Coleman's children, melodie Richardson, testified that she heard a loud bang and the petitioner came into her bedroom with a gun pointed at McNulty's head. The petitioner demanded money, and Richardson called out for Coleman. McNulty and the petitioner went back down the hallway and Richardson hid with her daughter in the bedroom closet. While in the police. She came out of her room and saw Coleman staggering down the hallway. When the paramedica arrived, Coleman was already dead. Richardson identified the petitioner from a phot array and McNulty identified the petitioner in a lineup.

The petitioner testified at trial that he went to Coleman's house to buy drugs. He knocked on the back door of Coleman's house and Coleman let him in. Coleman handed drugs to the petitioner, but the two argued over the amount of drugs that was to be purchased. Coleman started throwing punched at the petitioner and the petitioner thought that Coleman was trying to kill him. When the petitioner picked up the gun and fired a warning shot, but that did not stop Coleman. The petitioner testified that he felt that he had no choice but to shoot Coleman, so he fired the gun into Coleman's back, while Coleman was on top of the petitioner on the ground. The petitioner then ran from the house leaving the drugs and money behind.

At the jury-instruction conference, the trial court approved instructions pertaining to self defense and second degree murder. The first degree murder instruction were modified by agreement to differentiate between Count II, and Count I.

After deliberation, the jury returned its verdicts. It did not follow the directions regarding signing only one of the verdict forms relative to first degree murder. The jury signed two verdict forms: not guilty of first degree murder and guilty of second degree murder. The jury was not polled the verdicts were received and entered and the jury was discharged.

The petitioner was sentenced 24 years for second degree murder.

#### REASONS FOR GRANTING WRIT

This court should grant leave to review this case of first impression in Illinois, in which an Illinois Circuit Court Judge accepted a verdict of the guilty of second degree murder, even though the verdict was precluded by the jury's acquittal of first degree murder, an essential element of the charge of second degree murder. Although, as noted by the dissenting Justice this case presents a "quintessential insufficiency of the evidence claim," the majority determined that the petitioner could not request sufficiency of the evidence review for the first time on appeal.

This court should grant leave to appeal because the majority's determination that the petitioner forfeited his claim that he was not proved guilty beyond a reasonable doubt of the offense of second degree murder because the jury explicitly found he had not committed an essential element of that charge first degree murder and squarely conflicts with this court's holding in U.S. v Powell, 469 U.S. 57;

Moreover, the trial court's acceptance of both a not guilty offirst degree murder verdict and guilty of second degree murder verdict, after it had explicitly admonished the jury that it could not even consider second degree murder if it found the petitioner not guilty of first degree murder and seriously challenges the integrity of the process. It should be noted that the Illinois Supreme Court acknowledges "that when a jury returns inconsistent verdicts, the circuit court cannot accept such verdicts, but must require further deliberations from the jury in order to preserve the integrity of the judicial proceedings. People v Almo, 108 Ill.2d 54; This court should grant leave because the trial court's acceptance of the jury's Second degree murder verdict, which was clearly precluded by the not guilty of first degree murder verdict, which seriously impugns the integrity of insufficient to invoke the second prong of plain error analysis in inconsistent with this court's present.

Granting leave to appeal would allow this court to address a matter of first impression in the State of Illinois. In Powell, this court declared that a not guilty verdict does not negate a guilty verdict in cases in which the state alleges multiple claim in multiple counts. This court should grant leave to appeal to consider whether Powell and other cases by this Court applies to this instant case, where a first degree murder case in which the jury's guilty of second degree murder verdict was not inconsistent with the jury's guilty not of first degree murder verdict, but was rather precluded by it.

## BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation pf the Due Process Clause of the 14th to the U.S. Constitution. The Districtcourt had jurisdiction conferred by 28 U.S.C. 1331.

## REASON FOR GRANTING THE WRIT

### A. Importance Of The Question Presented:

Petitioner's Claim Is Not Procedurally Defaulted Under The Indepentent And Adequate State Ground Doctrine.

In Duncan, This court held to exhaust state remedies on a federal claim, a defendant must "fairly present" the claim to the state courts, so that the prosecution has an opportunity to correct the denial of federal rights. A defendant who raises an issue only in terms of state law does not fairly present his federal claims and therefore does not exhaust state remedies. Duncan v Hanry, 513 U.S. 364 (1995);

The lower courts the petitioner's claim was defaulted, thestate appellate court held the petitioner's claim was defaulted because he failed to object to the jury's verdict of guilty of second degree murder. The petitioner properly preserved this claim, when he raised in his post trial motion for a new trial, he stated in the motion, he had not been proven guilty beyond a reasonable doubt. See Ex.A The petitioner's claim is properly preserved notwithstanding the state appellate court's charactarization of the petitioner's claim. The claim the petitioner basically raised is, the jury did not prove him guilty beyond a reasonable doult, which definitely applies to the petitioner's case, when they found him guilty of second degree murder, but not of first degree murder first. This falls under the umbrella of reasonable doubt. The appellate court's holding petitioner forfeited his claim was based on its own misunderstanding of the case and federal law. Smith v Texas, 550 U.S. 297 (2007)

The petitioner further states the failure to consider this claim would result in a fundamental miscarriage of justice. This case is simple, the petitioner was found guilty of second degree murder, but the jury did not find him guilty of first degree murder first, which is an element of second degree murder. Therefore, this court should consider this issue for two reasons (1) This claim is not forfeited when the petitioner preserved his claim when he raised he was not guilty beyond a reasonable doubt in his motion for a new trial. See Ex. There will be a fundamental of miscarriage of justice if this case isn't addressed by this Honorable Court. Petitioner has presented significant amount of evidence his claim was not forfeited in the state or federal courts.

THE PETITIONER'S CONVICTION OF SECOND DEGREE MURDER MUST BE VACATED BECAUSE THE JURY FOUND THE PETITIONER NOT GUILTY OF FIRST DEGREE MURDER. THE LOWER COURTS ERRED IN NOT GRANTING THE PETITIONER A NEW TRIAL IN THIS CASE.

The Illinois statute established a due process violation, in the petitioner's case. The statute of 720 ILCS 5/9-2(a)(2), requires that the state first prove beyond a reasonable doubt all elements of the offense of first degree murder as defined in 720 ILCS 5/9-1; First degree murder charge will be reduced to second degree murder under 5/9-2, only where had proven the elements of first degree murder and the defendant has established mitigating factor by a ~~repondsence~~ of the evidence.

Here in the instant case, the jury found the petitioner guilty of second degree murder, but not guilty of first degree murder. See Appendix A. The Illinois Supreme Court in jeffries, held second degree murder is a lesser mitigated offense of first degree murder may a defendant seek to mitigate the charge to second degree murder. People v Jeffries, 646 N.E.2d

587; The logical corollary is that a defendant need not seek to mitigate first degree murder, if that offense is not proven because guilt of first degree murder is an element of the crime of second degree murder. 720 ILCS 5/9-2, Accordingly, the use of the specific of not guilty of first degree murder a person cannot be found guilty of second degree murder, because first degree murder is the element of second degree murder and because second degree murder is a lesser and mitigated offense of first degree murder.

One of the Illinois Appellate Court Justice, McDade dissented in affirming the petitioner's conviction, and she stated the following:

The The jurors at the end of their deliberations, presented two signed verdicts form, one verdict acquitted Brown (the petitioner) of first degree murder and the second degree murder found him guilty of. The jury acquitted Brown of the first degree murder of Coleman; that acquittal cannot be challenged constitutionally by either the state or defendant. The statute clearly requires, as the first necessary element of proof for second degree murder, that the state prove Brown guilty of first degree murder. The evidence was insufficient as a matter of law to prove him guilty of second degree murder.

I can see no choice but to reverse that conviction. If we do not do so, we will have violated our sworn duty to enforce the law as written and enacted by the legislature.

It is possible, but not certain, that Brown was wrongly acquitted of first degree murder. He is nonetheless legally not guilty. See Ex.

This court has held "the Due Process Clause" requires the state to prove each element of a charged offense beyond a reasonable doubt before a defendant may be convicted. Jackson v Virginia, 443 U.S. 307; In Mullaney, this court considered a case very similiar to the petitioner in this case. This court held a Maine statute that required a defendant charged with murder to be prove, by a preponderance of evidence that he acted in the heat of passion of sudden provocation, in order to reduce the conviction

to manslaughter, though Maine statute and law required the state to prove that the defendant acted intentionally or with ~~and~~ criminal recklessness. The court concluded it improperly shifted that burden by requiring the defendant to prove the absence of heat of passion on sudden provocation. *Mullaney v Wilbur*, 412 U.S. 684;

The *Mullaney* court shows the state was required to prove an element if its part of the charge, which the state failed to do in this case. The second degree murder statute provides:

- (A) A person commits the offense of second degree murder when he or she commits the offense of first degree murder as defined in paragraph (1) or (2) of subsection (a) of Section 9-1 of this Code and either of the following mitigating factors are present:
- (B) at the time of the killing he or she believes the circumstances to be such that, if they existed, would justify or exonerate the killing under the principles stated in Article 7 of this Code, but his or her belief is unreasonable.
- (C) The burden of proof, however, remains on the state to prove beyond a reasonable doubt each of the elements of first degree murder and when appropriately raised, the absence of circumstances at the time of the killing that would justify or exonerate the killing under the principle stated in article 7 of this Code. 720 ILCS 5/9-2 (2012);

In order for a person to be found guilty of second degree murder, he must be found guilty of first degree murder beyond a reasonable doubt. Once the finder of fact finds the petitioner guilty beyond a reasonable doubt of first degree murder, then the burden shifts to the petitioner to prove the existence of the mitigating factors by a preponderance of the evidence.

The jury's acquittal of the petitioner of the charge of first degree murder affirmatively establishes that the jury found that the state failed to prove the elements of first degree murder beyond a reasonable doubt. As the

jury was unable to find the petitioner guilty of first degree murder, it could not then go on to find the petitioner guilty of second degree murder. In deed, once the jury acquitted the petitioner of fist degree murder, it was precluded from even considering second degree murder. This is because the jury failed to find an essential elemant of the second degree murder, mainly, the petitioner committed first degree murder first.

In the jury found that the petitioner had been proven guilty beyond a reasonable doubt of first degree murder, then it should go on to determine whether a mitigating factor had been proven. C243, but because the jury found the petitioner not guilty of first degree murder, the verdict of guilty of second degree murder is without effect.

#### This Was a first Impression In The State Of Illinois

The lower courts was wrong to conclude that while the jury erred by returning inconsistent verdicts, the entry of a conviction inconsistent with an acquittal is not of a constitutional nature and it did not deny the petitioner a substantial right. See Appendix B. Had the lower courts had not found forfeiture, it would have been required to vacate the defendant's conviction of second degree murder. without question, the petitioner cannot be retried for first degree murder because the jury expressly acquitted him of that charge. North Carolina v Pearce, 395 U.S. 711, (1969) After a defendant is acquitted of an offense, double jeopardy prohibits a subsequent prosecution for that offense; U.S. Const. Amends V and XIV; Ill Const. 1970 art. I, § 10. And given that the jury found that the state failed to prove the elements of second degree murder, first degree murder, remand for a new trial on the charge of second degree murder is also prohibited because double jeopardy bars retail if the conviction is reversed due to the insufficiency of the evidence. Tibbs v Florida, 457 U.S. 31 (1982)

Thus, the petitioner ask that this court grant him leave to file a Writ before this Honorable--Court to address his federal constitution violation. The petitioner is innocent and have been acquitted of first degree murder therefore, he cannot be guilty of second degree murder in this case. The petitioner ask this Court to allow his Leave for Writ Of Certiorari.

#### CONCLUSION

The petitioner ask and pray this Court grant him Leave to File his Writ Of Certiorari in this case. Mr. Brown is innocent and this is because he has been found not guilty of first degree murder, but of second degree murder, which the petitioner has to be first found guilty of first degree murder, which he was acquitted of, therefore, he's acquitted of second degree murder.



Dieuseul Brown