

No. 20-6385

ORIGINAL

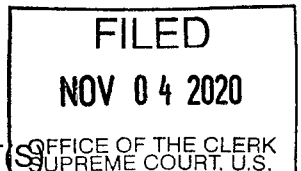
IN THE

SUPREME COURT OF THE UNITED STATES

Jason D. Dexers — PETITIONER
(Your Name)

vs.

STATE of Nebraska — RESPONDENT



ON PETITION FOR A WRIT OF CERTIORARI TO

Nebraska Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jason D. Dexers
(Your Name)

P.O. Box 900
Tecumseh State Correctional Institution
(Address)

Tecumseh NE 68450
(City, State, Zip Code)

(402) 471-0740
(Phone Number)

QUESTION(S) PRESENTED

- 1.) Did the State of Nebraska commit error when it convicted the Defendant of Felony Murder, using the aiding and abetting theory when there is no Principal, as the defendant is the only person convicted? The Defendant thinks so.
- 2.) Did the State of Nebraska commit error when it allowed into evidence a gun which was portrayed as the murder weapon, when ballistics shows it's unclear what make, model, and caliber the murder weapon was? The Defendant thinks so.
- 3.) Did the State of Nebraska commit error when it allowed the Prosecution to make a False Statement during the trial for the defendant? The Defendant thinks so.

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

Roth v. United States, 10 Cir 339 F.2d. 863, 865

Hollin v. Commonwealth 158 Ky 427, 165 Sw. 407

Brecht v. Abrahamson 113 S.Ct. 1710

Napue v. People of State of Illinois 79 S.Ct. 1173

Griglio v. United States 150, 92. S.Ct 763

Melvin DuBose v. Lefevre 619 F.2d. 973

People v. Searcy 2014 WL 1267264

United States v. Langston 970 F.2d. 692

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STATUTES AND RULES

OTHER

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☐ is unpublished.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+B to the petition and is

- ☒ reported at 306 Neb. 429; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Nebraska Supreme Court court appears at Appendix A+B to the petition and is

- ☒ reported at 306 Neb. 429; 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 July 10, 2020
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 10/5/2020, and a copy of the order denying rehearing appears at Appendix B.

☐ 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 14th Amendment U.S. Constitution
(Due Process Fair Trial)

STATEMENT OF THE CASE

The Petitioner herein, was convicted by a jury of felony murder and use of a weapon to commit a felony, on March 29, 2019. Petitioner was sentenced to Life without the possibility of parole for count (1) of felony murder, and for count (2) of use of a weapon to commit a felony 5 years.

On or about the date of January 5th 2018 at the Reign Lounge During the commission of a robbery. Sgt Kyle LeFlore was shot and killed by an Unknown perpetrator.

The Petitioner was arrested as an aider and abetter to this crime. Petitioner was tried and convicted for the actions of another, whom still remains at large and unknown.

Nebraska Supreme Court Affirmed the conviction of the Petitioner on July 10, 2020.

On August 28th, 2020 a timely brief for rehearing was filed. On Oct. 5, 2020 rehearing was over ruled. (4)

Reason for Granting Petition

1) [Question One] Did the State of Nebraska commit error when it convicted the defendant of felony murder, using the aiding and abetting theory when there is no principal, or the defendant is the only person to be convicted?

The Douglas County District Court of Nebraska overlooked the right allotted to the defendant under the 14th Amendment of the United States Constitution to a fair trial.

The Nebraska Supreme Court overlooked the right allotted to the defendant under the 14th Amendment of the United States Constitution to a fair trial.

In reviewing the facts and circumstances of the defendant's case the Nebraska Supreme Court failed to see clearly established Law set by other courts.

The defendant's conviction is a direct violation of his Due Process right which guarantees him a fair trial. The State of Nebraska convicted the defendant of felony murder by use of the

aiding and abetting theory. The prosecution's use of this theory is improper due to there being no principal on the case whom has been convicted with the defendant.

As a prerequisite to aiding and abetting the state is **REQUIRED** to prove that someone has committed the underlying substantive offense. See: *United States V. Langston* 970 Fed. 692

Proof of aiding and abetting a crime will not support a conviction, charging only one with the crime, and it is error to instruct the jury otherwise. See: *Hollin V. Commonwealth* 158 Ky 427 165 S.W. 407

The State of Nebraska erred by prosecuting the defendant using the aiding and abetting theory when the defendant is the only one convicted for this crime. Had the prosecution charged the defendant as the principal there would be no error but being that there is no principal the state can convict, there is no way there can be an aider and or abettor to a crime of any magnitude. This error is cause for reverse.

[See: *People V. Searcy* 2014 WL 1267264]

2.) [Question Two] Did the State of Nebraska commit error when it allowed into evidence a gun which was portrayed as the murder weapon, ballistics shows it's unclear what make, model, and caliber the murder weapon was?

The State of Nebraska overlooked the right of the defendant which is allotted to him by the United States Constitution under the 14th Amendment to Due Process, with its affirmation of the defendant's conviction.

In reviewing the facts and circumstances of the defendant's case the Nebraska Supreme Court failed to see clearly established law set by the United States Supreme Court.

The defendant's conviction is a direct violation of the Due Process rights of the defendant which guarantees the right of a fair trial.

The prosecution's use in its case, a firearm which had no legal standing in this case. Ballistics report was unable to determine the type or caliber of the firearm which was used to kill the victim.

The use of false evidence is a direct violation of the defendant's Due Process rights under the 14th Amendment to the United States Constitution.

Deliberate deception of a court and jurors by presentation of known false evidence is incompatible with rudimentary demands of justice. See: *Giglio v. United States* 150, 92 S.Ct. 763

A conviction obtained through the use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment See: *Napue v. People of State of Illinois* 79 S.Ct. 1173

What matters is the risk that the jury will use the false evidence to convict. The *Napue* Court put the obligation squarely on the prosecution to see that the false evidence is corrected.

A jury that hears evidence merely contradicting cannot be said to know the truth. Nor can mere contradiction reasonably be deemed to be a "correction." See: 79 S.Ct. 1173

The record will show that this Firearm was not found at the residence of the defendant, nor were there any spent casings (empty shell casings) found
(8)

at the scene of the crime. The firearm did not have any finger prints of anyone whom was allegedly involved. This firearm was said to have DNA from the refew of the defendant but was retrieved from an apartment of someone whom the defendant is not acquainted.

The State's attempt to connect the firearm to this crime is a violation of the defendant's right to Due process which is guaranteed by the 14th Amendment to the United States Constitution. It is within its self a reversible error.

3) [Question Three] Did the State of Nebraska commit error when it allowed the prosecution to make a false statement during the trial for the defendant?

The State of Nebraska overlooked the right of the defendant allotted to him by the United States Constitution under the 14th Amendment guaranteeing the defendant a fair-trial.

(9) The defendant directs the courts attention to the B.O.E. starting on page

1770 Line 15 to 25 Continuing on page 1771-1774 in there entirety. This line of questioning is made by the State to collaborate there theory, the point is, the defendalnt was depicted as if he were at the club to stalk pray. This is the furthest from the truth. The use of this camera footage by the State to say that the defendat was pointing out the victim Shows a direct violation of the Due Process Rights of the defendat. The state NEVER corrected this misinformation. The Napue court placed the obligation to correct false testimony on the prosecution. See: Napue v. People of State of Illinois 79 S.Ct. 1173 also See: Giglio v. United States 150, 92 S.Ct. 763

It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendat's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he/she knows to be false and elicit the truth. The district attorney's silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair. See: 79 S.Ct. 1173

1173.

Knowing use by State of perjured testimony deprives the defendant of due process whether prosecutor makes the false statement him or herself or allows false statement to go uncorrected, and it makes no difference that materially false testimony goes only to credibility of the witness.

Conviction must fall if false testimony could in any reasonable likelihood have affected the judgment of jury or if the false testimony used by State in securing conviction may have effect on the outcome of the trial. See *Melvin DuBose v. Lefevre* 469 F2d. 973

The State's use of false evidence shows a direct violation of the defendant's right to a fair trial. The State's ~~fail~~ failure to correct what it knows to be false testimony (the defendant also brings to the courts attention that Both witnesses M. Stockdale and Det. Bakora were witnesses for the State) is when the protection of the right to due process was invoked. The jury relied on this Stalking theory to convict the defendant. This violation alone is cause for reverse.

The Supreme Court Should intervene now
to correct an egregious mis application of
settled law in an area of great public concern.

CONCLUSION

The petition for a writ of certiorari should be granted.

The defendant prays for further briefing and argument on
the issues contained herein.

Respectfully submitted,

Jason [Signature]

Date: Oct. 30, 2020