

Docket No: 20-6385

IN THE
UNITED STATES SUPREME
COURT

Request for Rehearing of an
order denying a petition
for writ of certiorari

Jason Devers

Petitioner,

V.

State of Nebraska

Respondent.

Jason Devers Pro. Se
P.O. BOX 900
Tecumseh, NE 68450
Tecumseh State Correctional
Institution

IN THE UNITED STATES SUPREME COURT

Jason Devers

Petitioner,

v.

State of Nebraska

Defendant.

Docket # 20-6385

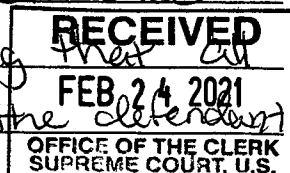
Request for Rehearing of an
order denying a petition for writ
of Certiorari

Brief in support of the
facts and addendum

Questions:

1) Did the state of Nebraska give up its jurisdiction when they dismissed the charges of the ~~Prapat~~ principal leaving only the Defendant to answer for the charge of felony Murder (using Aiding + Abetting theory)?

2) Was Defense counsel ineffective in his assistance at the trial of the defendant when counsel failed to object to the use of any and all evidence which pertained to Larry Goynes being that all charges were dismissed before the trial of the defendant began?



3.) Did the District court of Nebraska violate the right to a fair trial and Due Process rights of the defendant when it allowed into evidence a firearm which was not used in this case nor is the any evidence to say otherwise?

List of Parties

All parties appear on the caption to the case on the cover page.

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Table of Authorities

Cases:

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052
U.S. v. Santana 524 F.3d 851
U.S. v. Langston 970 F.2d 692
Napue v. People of State of Illinois 79 S.Ct. 1173
Melvin Dubose v. Lefevre 619 F.2d 973
Rosemond v. U.S. 134 S.Ct. 1240 (Also 133 S.Ct. 2734)
Smith v. Groose 205 F.3d 1045
United States v. Deych 250 F.Supp.3d 362

Constitutional and Statutory Provisions Statutes and Rules

- Neb. Rev. St. §§ 28-206
- Amendments 5, 14, and 16 of the United States Constitution. (5th Amendment Due process, 16th Amendment right to counsel, and 14th to make applicable to states)

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).

(5)

Statement of the Case

The defendant was convicted by jury of one count Felony Murder and Count two use of a weapon to commit a felony. The defendant appealed his conviction to the Nebraska Supreme Court. On July 10, 2020 the Nebraska Supreme Court affirmed the conviction. The defendant moves to request for a rehearing. On October 5, 2020 the Nebraska Supreme Court overruled the defendant's request for rehearing. On Nov. 4, 2020 the defendant filed a Petition for Writ of Certiorari in this honorable United State Supreme court. This honorable court denied said Writ of Certiorari on January 25, 2021. The defendant request at this time a rehearing so that he may prefect his writ of certiorari in the United States Supreme Court.

Reason For Granting Petition

1) [Question One] Did the State of Nebraska give up it's jurisdiction when they dismissed (All) the charges against the principal, leaving only the defendant to answer the charge of felony murder (using the theory of Aiding + Abetting)

On January 12th, 2018 Larry Goynes was arrested as being the principal in the states case in chief (Felony Murder of Kyle LeFlore). Some time in September the year of 2018 All Charges were dismissed against Larry Goynes due to there being no evidence of him committing any crimes on the night in question.

The state's position at the defendant's trial was that Goynes was the principal and the Defendant aided and abetted Goynes. It is the Defendant's position that without a principle the State must prove the defendant committed every element of this crime. Due to the fact that the defendant lacked the means to carry out the underlying offense of robbery he himself cant be guilty of felony murder. Without a principal there can be no aiding and

(7)

abetting of any crime. In order to use an aiding and abetting theory the state must meet the requirements: Shared intent, mens rea, and that there is a principal and that the principal committed the crime charged. In the States case there is no principal so there can be no shared intent, no mens rea, and no real way to say as of fact that the defendant aided and abetted the robbery and murder of Kyle Leflore.

In an aiding and abetting case, the evidence Must show that the defendant shared in the principal's intent (see: U.S. v. Santana 524 F.3d 851). To be guilty of aiding and abetting is to be guilty as if one were the principal in the underlying offense; Aiding and Abetting is not separate crime but rather linked to underlying offense and shared requisite intent of that offense. Because aiding and abetting is a theory of criminal liability and there can be no aiding and abetting without an underlying criminal offense an indictment that merely alleges a violation of the Federal aiding and abetting statute is ~~is~~ inadequate; if violation of aiding and abetting statute is alleged, some other substantive crime must be described as well. (See: United States v. Dexch 250 F.Supp.3d 362 (8))

The proof Must establish that the offense was committed by someone and that the person charged as an aider and abettor, aided and abetted in its commission.

Where two persons are jointly charged with the commission of an act or offense which it is legally and physically impossible for either party to have committed in any degree without the joint act of the other party, the dismissal of ones charges mean the dismissal of the others charges. Being that there can not be a crime without a principal (a crime and theory of aiding and abetting).

It is said to be legally impossible to aid and abet a crime alone. The State prosecuted the defendant using a aiding and abetting theory, when at the time of the trial the defendant was the only person on the case, giving the jury an improper charge and making the defendants conviction a miscarriage of Justice. It is for the reason listed that the defendant's conviction should be overturned, or given a new trial. The defendant's trial was made to be unfair and in violation of ~~of~~ his Due Process.

2.) [Question Two] Was Defense counsel ineffective in his assistance at the trial of the defendant when counsel failed to object to the use of any and all evidence which pertained to Larry Goynes being that all charges were dismissed before the trial of the defendant began?

On January 12th, 2018 Larry Goynes was arrested and charged with Felony Murder. Sometime in September Goynes charges were dismissed (year 2018). At the trial for the defendant the state used a theory of aiding and abetting. Aiding and Abetting means intentionally to help Someone Else commit the crime charged, (Felony Murder underlying offense of robbery) and a defendant is guilty of aiding and abetting if Someone Else committed the charged crime and the defendant consciously shared the other person's knowledge of the charged crime, intended to help, and took part in the endeavor seeking to make it succeed.

Due to defense counsel's deficiency at the trial of the defendant, the state was able to obtain a conviction, which made the trial

(10)

Unfair. When defense counsel failed to object or point out the fact that Goynes was no longer the principal in this case, counsel denied the jury the opportunity ~~to~~ weigh all the facts. The facts are Jason Devers the defendant is seen leaving the parking lot and at that time there is no robbery taking place nor is there a victim to a deadly shooting. Which means the defendant lacks the means to commit the robbery and killing of Kyle LeFlore.

Had this been made known to the jury the defendant would not have been convicted of Felony Murder (by use of the aiding and abetting theory). This was the job of the defense counsel and his failure has awarded the defendant a life sentence.

(See: Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984))

For ~~these~~ these reasons the defendant request a new trial with instruction for the state, prohibiting that state from using Larry Goynes in there case against the defendant.

3.) [Question Three] Did the district court of Nebraska violate the right to a fair trial and Due Process rights of the defendant when it allowed into evidence a firearm which was not used in connection to this crime?

At the trial for the defendant the state was allowed to introduce into evidence a firearm which was not proven to of had any connection to this crime. The police conducted a ~~Search~~ Search of an apartment located at 5900 NW Raelial Highway Apt# 5016 Omaha NE 68104, the apartment belongs to Marcus L. Williams. During this search of Williams apartment the police discover two handguns and four plastic baggies with marijuana totalling 219.6 grams. Forensic Technicians ran D.N.A. on this firearm which came up negative for the defendant. D.N.A. was a match for Mr. Williams, Ken Vaughn Glass, and his brother Shydale Glass, which happens to be nephews of the defendant (the Glass Brothers).

In order for the state ~~to~~ use this firearm as evidence to obtain a conviction against the defendant they would need to produce into evidence something to prove this firearm was used in connection to this crime of felony murder. If this honorable court will review the record, this court will find that the state lacked any evidence to say this gun was use, seen, or even fired on the night of Kyle Lefore's death.

Being that the state was the first to know that this firearm could not be connected to this crime, made the trial for the defendant unfair and in violation of his due process rights under the 5th and 14th Amendments. Principle that a state may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, ~~does~~ not cease to apply merely because the false testimony goes only to the credibility of the witness, or in this case the false evidence and the impact it may have on the factfinders.

Deliberate deception of a court and ~~jurors~~ jurors by presentation of known false

(13)

Evidence is incompatible with rudimentary demands of justice.

A conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment.

Napue has been understood to impose on prosecutors an obligation to correct prosecution evidence that they know is false.

The defendant asks this honorable court to overturn his conviction due to the unfair prejudice he has suffered from this violation of his right to a fair trial and his right to Due process. This case lacks a principal, a murder weapon, and this defendant lacked means to commit this crime from his position miles down the road. The defendant has suffered at the hands of the state violation after violation of his rights.

(See: Napue V. People of State of Illinois 79 S.Ct. 1173) See Exhibit 1 page 1498 Line 11 to 25 also page 1499 Line 1. See exhibit 2 page 1507 Line 13 to 23

It is for these reasons the defendant prays this honorable court Grants his writ of Certiorari and ask this court to input instruction so the district court does not repeat these same constitutional violations. This conviction is a miscarriage of Justice. The defendant Prays this honorable court will grant a hearing on the matter,

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jason D.

Date: 2/10/21

No. 20-6385

IN THE
SUPREME COURT OF THE UNITED STATES

Jason Devers — PETITIONER
(Your Name)

VS.

State of Nebraska — RESPONDENT(S)

PROOF OF SERVICE

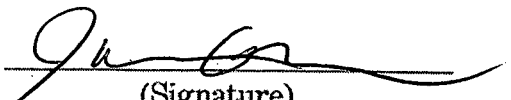
I, Jason Devers, do swear or declare that on this date, February 10, 2021, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Douglas J. Peterson 2115 State Capitol
P.O. Box 98920
Lincoln, NE 68509-8920

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 10, 2021


(Signature)

(16)

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

January 25, 2021

Mr. Jason D. Devers
Prisoner ID #89717
Tecumseh State Correctional Institution
P.O. Box 900
Tecumseh, NE 68450

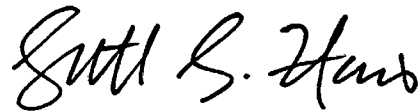
Re: Jason D. Devers
v. Nebraska
No. 20-6385

Dear Mr. Devers:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Harris", written in a cursive style.

Scott S. Harris, Clerk