

No.

Supreme Court, U.S.
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QUESTIONS

GROUND ONE- Was LaVon Oden's Sixth Amendment Confrontation Clause right to directly confront witnesses; the right to cross examine adverse witnesses violated, when the trial court erred as a matter of law by allowing witness Darryl Craig's identification of Oden as the shooter and the contents of Craig's text messages?

GROUND TWO- Did the Trial Court error as a matter of law by overruling Oden's motion for mistrial; and Abuse its discretion when the trial court prevented trial counsel from cross-examining witness Curtis Boston about his admitted out of court conversations with witness Darryl Craig, while in lockup, in which Boston stated Craig influenced his testimony?

GROUND THREE- Was LaVon Oden's Sixth Amendment right to the effective assistance of counsel; and Oden's Sixth Amendment right to confront witness Darryl Craig violated, when trial counsel failed to object to hearsay evidence? If a petitioner is denied effective cross-examination, would that be a constitutional error of the First magnitude and no amount of showing or want of prejudice could cure it?

GROUND FOUR- Was LaVon Oden's Sixth Amendment right to the effective assistance of counsel violated, when trial counsel conceded to the guilt of the petitioner?

GROUND FIVE- Was LaVon Oden's Sixth Amendment right to the effective assistance of counsel violated, when trial counsel failed to file a motion to suppress the identification by Robert Johnson of Oden as the shooter?

GROUND SIX- Was LaVon Oden's Fourteenth Amendment right violated, when prosecutorial misconduct rendered petitioner's trial fundamentally unfair?

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

Brookhart v. Janis, 384 U.S. 1, 3(1996)
Bruton v. United States, 391 U.S. 123
Chambers v. Miss., 410 U.S. 284
Moore v. United States, 429 U.S. 20
Lee v. Ill., 476 U.S. 530
Davis v. Alaska, 415 U.S. 308(1974)
Lockhart v. Fretwell, 506 U.S. 364, 372, 122 L.Ed.2d 180, 113
S.Ct. 838(1993)
Smith v. Illinois, 390 U.S. 129, 131(1968)
Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 80 L.Ed.
2d 674
U.S. v. Cronin, 466 U.S. 648, at 659(May 14th 1984)
United States v. Perez, 22 U.S. (9 Wheat) 579

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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 Oden v. Turner, 2020 U.S. App. Lexis 2106 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 Oden v. Warden, North cent, corr, complex, ²⁰¹⁹U.S. Dist 206937; 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 State v. Oden, 2016 Ohio App Lexis 3817; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ 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.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 7th, 2020.

☐ 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 September 23, 2016.
A copy of that decision appears at Appendix A .

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SIXTH AMENDMENT- 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 the assistance of counsel for his defence.

The Confrontation Clause of the Sixth Amendment- The confrontation clause of the sixth amendment may prohibit the admission of hears evidence against a criminal defendant when the defendant lacks the opportunity to cross examine the out of court declarant. However the admission of the out of statements does not violate the confrontation clause if the declarant testifies at trial and is subject to cross examination.

FOURTEENTH AMENDMENT_ Section 1(citizens of the united states), 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 law

STATEMENT OF THE CASE

Proceedings in lower courts;

Petitioner, LaVon Oden was indicted in Hamilton County, Ohio on February 19, 2013. On April 29, 2015, petitioner was convicted by a jury. On May 18, 2015, Petitioner was sentenced by the trial court of murder with firearm specification, three counts of aggravated robbery with firearm specification and having weapons while under a disability. He was sentenced to 63 years to life imprisonment. A timely notice of appeal was filed by appointed appellate counsel on June 22, 2015.

Appellate jurisdiction was declined September 23, 2016. Oden filed pro se an application for reopening under Ohio Appellate Rule 26(B). The first District denied the application on the merits. Oden took no appeal to the Supreme Court of Ohio. Oden filed his petition by placing it in the prison mail on June 7, 2018. A Magistrate Judge recommended that the petition be denied. Oden filed objections to the report, which the District court overruled in dismissing the petition, January 2, 2020.

Oden's motions for reconsideration and to take judicial notice were also denied. Oden's Application for Certificate of Appealability was denied, motion for in forma pauperis status is denied, as moot on July 7, 2020.

Relevant facts of the case;

Witness Robert Johnson and Curtis Boston testified at the trial identifying Oden as the shooter. Witness Darryl Craig did not testify, but hid text messages leading up to the incident were introduced as evidence, as well as his identification of Oden as the shooter, without objection.

Robert Johnson identified Oden as the shooter 6 days after the incident, but when he spoke to the police on the night of the incident, he could not identify the shooter. During Johnson's February 5th interview Johnson stated he thinks "Spud" is the shooter. Johnson admitted he did not mention Boston was present at the incident during either interview.

Curtis Boston admitted he did not agree to testify against Oden until he was offered a 12 year deal. Boston admitted he sent a text message to a friend that said "Bra if I get locked up say 'Whiteshit' [referring to the petitioner] told you that he r [fobbed them and shot[]

Several crimestoppers tips came in identifying Boston as the shooter and that Boston was bragging about the incident on facebook. Boston testified he was incarcerated for this murder charge as well as a seperate aggravated robbery from december of 2012 which did not involve this petitioner.

Boston admitted to speaking with Barryl Craig while in lock up about the case which helped him remember some facts about the case when trial counsel made an attempt to delve into the conversation between Boston and Craig in order to discern what was discussed; the prosecution objected and the trial court sustained the objection.

Further, During the questioning of Boston, trial counsel stated I'm agreeing that "LaVon was the shooter". Trial counsel in the closing argument stated, "Boston's testimonials shows that whoever did the shooting it was not purposeful nor intentional.

Prosecuter Mr. Tharp stated, the defendant has contact over and over with Boston, telephone calls prior to the robbery. Prosecuter Ms. Trantor stated and avnt a very important point, your going to see texts from the defendant 20 minutes after the shooting trying to get rid of a gun.

Robert Lenoff, a firearms examiner, testified there were no guns submitted for comparison.

Petitioner states these facts contains material needed for the consideration of the questions presented, which are;

- 1) The Trial Court Erred as a matter of law by allowing hearsay evidence to be admitted.
- 2) The Trial Court Erred as a matter of law by overruling the defendant's motion for a mistrial; and preventing counsel's inquiry.
- 3) Petitioner was denied the effective assistance of counsel for failing to object to hearsay statements; and the denial of effective cross examination.
- 4) Petitioner was denied the effective assistance of counsel when counsel stated the defendant was guilty of a lesser charge without the defendant's approval of this tactic; and counsel was ineffective for conceding to the guilt of this petitioner without the defendant's approval.
- 5) Counsel was ineffective for failing to file a motion to suppress the identification by Robert Johnson prior to trial.
- 6) Prosecutorial misconduct rendered defendant's trial fundamentally unfair.

REASONS FOR GRANTING THE PETITION

Reason 1) The Trial Court Erred in allowing hearsay evidence;

In the First District Court of Appeals Opinion, the court stated that Although much of this evidence was inadmissible hearsay, we cannot say, in light of the significant, admissible evidence of guilt, that the results of the trial would have been different absent its admission, and that a reversal is necessary to avoid a manifest injustice.

The lower courts opinion was erroneous, because the court, failed to adjudicate the significant admissible evidence of guilt they claimed existed to sustain this petitioner conviction. This adjudication is needed to support the courts decision of the harmless error analysis. Petitioner swears to this court, that if the harmless error analysis is performed, the court would clearly determine, from the facts of the evidence, that the courts harmless error analysis was not properly applied to this issue of importance. (see GROUND ONE in habeas petition)

Further, the Magistrate Judge found this ground for relief was forfeited by procedural default when trial counsel made no contemporaneous objection. Petitioner states GROUND THREE ineffective assistance of counsel claim is "CAUSE" to excuse this procedural default.

Therefore, the lower court has decided this federal question in a way that conflicts with relevant decisions of the U.S. Supreme Court. (See, Bruton v. United States, 391 U.S. 123; Moore v. United States, 429 U.S. 20; Lee III, 476 U.S. 530.

Reason 2) The Trial Court Erred by overruling defendants motion for a mistrial;

The First District Courts Opinion stated; "We overrule because the Appellant demonstrated neither that Boston had discussed what had been testified to in court in violation of the order nor that a fair trial was not possible.

The lower courts opinion was erroneous, because, in fact, it was the trial court that prevented the petitioner from demonstrating any possible prejudice both at trial and the appellate court. The trial court did so, when they prevented the necessary questioning to determine if any prejudicial influence occurred to Boston's testimony.

Trial counsel was prevented from performing the necessary adversarial testing" to demonstrate prejudice. This establishes an instance of the third prong Cronick standard of review which "occurs when counsel is placed in circumstances in which competent counsel very likely could not render assistance.

The appellate court did not come to their decision with consideration as to whether prejudice should be presumed. See U.S. v. Cronick, 466 U.S. 648, at 659 (May 14th 1984).

Since this petitioners convictions were based solely on the testimony of these witnesses, the violation of the separation

order was so significant that a fair trial was no longer possible. The trial court therefore abused its discretion by overruling the motion and preventing counsel's inquiry. (See U.S. v. Perez 22 U.S. (Wheat) 579, 6 L.Ed. 165.)

Reason 3) Petitioner was denied effective assistance of counsel for failing to object to hearsay statements; Petitioner was denied effective cross examination;

In the First District Opinion, the court stated the record fails to disclose a reasonable probability that, but for the alleged omissions of trial counsel, the results of Oden's trial would have been different.

The lower court's opinion was erroneous, because the court already determined, much of this hearsay evidence was inadmissible. ~~THEREFORE~~, the first prong requiring the petitioner to show that counsel's representation fell below a reasonable standard has already been determined and this court can proceed to the "prejudice prong."

If this court was to proceed to the prejudice prong, a court must ask whether counsel's performance renders the result of the trial unreliable or the proceeding fundamentally unfair. (See Lockhart v. Fretwell, 506 U.S. 364, 372, 122 L. Ed. 2d 180, 113 S.Ct. 838) Citing Strickland v. Washington 466 U.S. at 687.

Prejudice can be demonstrated under the Strickland standard because the hearsay evidence that was introduced influenced the jury in drawing the conclusion of guilt.

In addition, no specific showing of prejudice was required in Davis v. Alaska, 415 U.S. 308, because the petitioner had been denied the right of effective cross examination which would be a constitutional error of the first magnitude and no amount of showing or want of prejudice can cure it. Smith v. Illinois, 390 U.S. 129, 131, Brookhart v. Janis, 384 U.S. 1, 3 quoting U.S. v. Cronin, 466 U.S. 648, at 659.

In this case the petitioner was denied the right to effectively cross examine witness Darryl Craig, if prejudice is to be presumed in a situation denying the petitioner to effective cross examination, as demonstrated above, then prejudice must be presumed in this case. If prejudice is to be presumed then the appellate court's application of the Strickland standard in requiring the outcome of the trial to be different was erroneous. The appellate court clearly did not review the case taking into consideration the Cronic exceptions. The lack of the ~~ADVERSARIAL~~ testing of the hearsay evidence by trial counsel rendered the trial proceedings fundamentally unfair. When trial proceedings are fundamentally unfair prejudice has been demonstrated pursuant to Cronic, Lockhart, and Strickland. The lower court's opinion conflicts with relevant decisions of this court.

Counsel was Ineffective for Failing to renew the motion for mistrial:

Had counsel renewed the motion for a mistrial at the conclusion of the trial; the court may have conducted the necessary inquiries into this issue to determine the actual effect on the proceedings. This issue could have been better addressed once all the relevant facts were presented; Therefore, counsel should have renewed the issue at the conclusion of the trial.

Reason 4,5,6) The district court found Oden's three claims of Ineffective assistance of Appellate counsel to be procedurally defaulted because he did not appeal to the Ohio Supreme Court. However, this was not the fault of the petitioner.

The lower courts opinion was erroneous, because, In order for appeal the application of reopening to the Ohio Supreme Court, the petitioner must receive a copy of the Appellate Courts opinion. It is the responsibility of the clerk of courts to mail the opinion to the petitioner once the case has been ruled upon.

In this instance one of two possibilities occurred either; the clerk of Hamilton County never mailed the opinion to the petitioner; or the staff at NCCI failed to deliver the opinion to the petitioner. In either event Oden was unaware of the final judgement that was rendered by the court of appeals. If this is so, then the Clerk is in error.

Action or inaction by prison officials impeding the petitioners efforts to comply with a State's procedural rule may constitute "CAUSE" to excuse a procedural bar. Maples v. Stegall, 340 F. 3d 433, 438-39, 2003 Fed.App. 0296p (6 cir. 2003). Hartman v. Bagley 492 F. 3d 347, 358 (6 cir. 2007).

Nevertheless, "the existence of cause for a procedural default must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's effort to comply with State's procedural rule". Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 91 L. Ed. 2d 397, Edwards v. Carpenter, 529 U.S. 446, 451, 120 S.Ct. 1587, 146 L.Ed. 2d 518.

The petitioner pleads with this court to order Hamilton County First District Court of appeals, through an affidavit, to prove the court mailed the opinion to this petitioner. The prejudice to the petitioner is the denial of review of his Application to reopen both in the Ohio and U.S. Supreme Court, a review the petitioner is otherwise entitled to. These claims demonstrate substantial errors that occurred during trial that would entitle this petitioner to habeas relief in a form of a new trial.

Based off "CAUSE" being shown; the lower courts decision to deny relief due to procedural default was in error. The lower courts opinion was and is in conflict with relevant decisions of the U.S Supreme Court.

The National Importance of having the Supreme Court decide these question's involed; The lower courts decision conflicts with relevant decisions of this court. These questions goes beyond the particular facts and parties involved;instead; These question focuses on issues of importance dealing with unfair constitutional violations, which is in fact, the U.S. Supreme Court's primary concern.

The importance of the case to me and other's similarly situated; This case is important to me and others because,Without the opportunity of review in this court, me and others would be at the discretion of the lower courts unprincipled decisions. The Supreme Court's review and discretion is essential to cases with issues as such as mine and others simply cause,it may be an issue of liberty and death.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LaVon Oden

Date: 9-28-20