20-8099

NO.

IN THE
SUPREME COURT OF THE
UNITED STATES

JOSEPH REINWAND,
Petitioner-Appellant,

v.

SUSAN NOVAK,
Respondent-Appellee.

ORIGINAL

"on petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit"
U.S.C.A. Case NO. 20-1839

PETITION FOR
WRIT OF CERTIORARI

Dated: 03-25-2021

Joseph Reinwand
Stanley Correctional
100 Corrections Drive
Stanley, WI. 54768

QUESTION PRESENTED

1. Whether the Seventh Circuit Court of Appeals Failed to Apply the Law on Deceased out-of-court testimonial Statements by a Non-testifying Witness. Thereby Denying Reinwand's Sixth and Fourteenth Amendments to the United States Constitution and This Court's Decision's on Confrontation Rights and a Fair Trial.

2. Whether the Seventh Circuit Court of Appeals failed to Grant a Certificate of Appealability by Failing to Apply it's own Identical Case on point where the Court Granted in that Case a Certificate of Appealability and Eventually Reversed that Case Granting the Writ of Habeas. see Jensen v. Clements, 800 F.3d 893 (7th Cir. 2015) (and 2019).

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CITATIONS OF OPINIONS AND ORDER

The opinion and order of the United States Court of Appeals, Seventh Circuit denial of a Habeas Corpus 28 U.S.C. § 2254 Petition for Rehearing, Opinion and Order of the United States Court of Appeals, Seventh Circuit denial of a Habeas Corpus 28 U.S.C. § 2254 Petition, Opinion and Order of the United States District Court denial of Habeas Corpus 28 U.S.C. § 2254 Petition.

JURISDICTION STATEMENT

The Jurisdiction for this Court over the Petition is invoked under 28 U.S.C. § 1254 and the United States Constitution Article III § 2. The Petition is timely filed pursuant to 28 U.S.C. § 2101(c), allowing 90 days to file and the Supreme Court Rule 13 that allows the time to file from the date of the denial of the rehearing Motion.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution in relevant part.

The Fourteenth Amendment of the United States Constitution in relevant part Due Process and Equal Protection.

Statutory Provisions, 28 U.S.C. § 2101, 28 U.S.C. § 2253, 28 U.S.C. § 2254.

REASON FOR GRANTING PETITION

The Seventh Circuit Court of Appeals departed from the accepted and usual course of 28 U.S.C. § 2254 Habeas Corpus Proceeding's that are necessary for and adequate Appeal Process. The seventh Circuit went against this Court's and there own Controlling Cases on DECEASED OUT-OF-COURT Statements by a nontestifying Witness and allowed the state to admit and use that Deceased person's OUT-OF-COURT Statements to get an unjust Conviction of the Defendant.

The Seventh Circuit when faced with the same Confrontation Violation in another Case stood firm and protected that defendant's right's, but when it comes to Reinwand in this current Case, the seventh Circuit turned a deaf ear to Reinwand's Confrontation Rights. see (Jensen v. Clements, 800 F.3d 893 (7th Cir. 2015)).

The other Circuit's such as the California Court of Appeals reversed a Murder Conviction because the State Superior Court erred by allowing the Deceased OUT-OF-COURT Statements into evidence. see People v. Quintanilla, 2020 Cal. App. Lexis 177 (Cal. Court of Appeals 2020).

It is for these reasons and the following Reinwand should be Granted the Writ of Certiorari by this Honorable Court. It is hoped and believed that this Court will not turn a deaf ear to Reinwand's Confrontation Right's like the Seventh Circuit did.

This is a Constitutional Error of the First Magnitude.

CONSTITUTIONAL VIOLATIONS

The Sixth Amendment to the United States Constitution and Made Applicable to the States via the Fourteenth Amendment provides in all Criminal Prosecutions the accused shall enjoy the Right...to be confronted with the Witnesses against him, Reinwand's Confrontation Right was Violated and he was denied a Fair Trial because this Right was Violated.

The Sixth Amendment prohibits the introduction of testimonial statements by a nontestifying witness, unless the witness is unavailable to testify, and the defendant has had a prior opportunity for cross-examination. see Ohio v. Clark, 135 S.CT. 2173 (6-18-2015). The Sixth Amendment secures to the accused the Right to be Confronted with the witness against him. This Right applies equally in Federal and State prosecutions. see Pointer v. Texas, 380 U.S. 400, 403 (1965), and means more than being allowed to confront the witness physically, Davis v. Alaska, 415 U.S. 308, 315 (1974).

This Court has repeatedly held that the "main and essential purpose of Confrontation is to secure for the opponent the opportunity of Cross-Examination", see Delaware v. Van Arsdall, 475 U.s. 673, 678 (1986); Chambers v. Mississippi, 410 U.S. 284, 295 (1973) ("referring to the Rights to Confront and Cross-Examine witnesses as long...recognized as essential Due Process"). Smith v. Illinois, 390 U.S. 129, 131 (1968) ("referring to Denial of Cross-Examination as Constitutional Error of the First Magnitude"). quoting Brookhart v. Janis, 384 U.S. 1, 3 (1966); Douglas v. Alabama, 380 U.S. 415, 418 (1965) ("Summarizing Supreme Court precedent as holding "that a primary interest secured by the Sixth Amendment is the Right of Cross-Examination"). Cross Examination is an essential and Fundamental Requirement for the kind of fair trial which the Country's Constitutional Goal, Pointer, 380 U.S. at 405. It is the principal means by which the believe-ability of a witness and the truth of his Testimony are tested.

It is clearly established in a Constitutional Right that the Sixth Amendment limits the Trial Court's ordinary discretion to limit Cross-examination. This Court has held that ordinary rules of evidence must give way when they prevent a defendant from presenting evidence central to the defense, including through Cross-Examination. Olden v. Kentucky, 488 U.S. 227, 232 (1988); Van Arsdall, 475 U.S. at 679-80; Davis, 415 U.S. at 319; and Chambers, 410 U.S. 295-98. (Finding that States could not apply common-law evidentiary rule to limit Cross-Examination of key Witness); id. at 302 (Finding that hearsay rule cannot be applied mechanistically when it undermines Fundamental elements of the Defense).

The Confrontation Clause guarantees an opportunity for effective Cross-Examination, not Cross-Examination that is effective in whatever way the State deems okay to convict, Delaware v. Fensterer, 474 U.S. 15, 20 (1985).

The California Court held that Deceased Out-of-Court Statement under the Hearsay Exception is an Error, and the Trial Court's Error was not Harmless. People v. Quintanilla, 2020 Cal. App. Lexis 177; also see Crawford v. Washington, 541 U.S. 36, 53-54 (2004).

The principal evil at which the Confrontation Clause was directed was the Civil-Law mode of Criminal procedure, and particularily its use of exparte examinations as evidence against the accused, Crawford, 541 U.S. at 50.

A statement is Testimonal if made under circumstances which would lead an objective witness reasonably to believe that the Statement would be available for use at a later trial. see United States v. Sweeney, 70 MJ 296, 301 (C.A.A. F. 2011) quoting Crawford, 541 U.S. at 51. In making this determination the Court has asked whether it would "be reasonably foreseeable to an objective person that the purpose of any individual statement ...is Evidentiary.

In this Case 12 Witnesses were called by the State and each Witness testified about the Deceased Witnesses Statement to the Jury.

Alice Conwell testified D.M. visted her shortly before his death. D.M. told her that if anything happened to him that she and others should look to Reinwand. D.M. said that more then once D.M. expressed some fear of Reinwand, at (321:218-219 trial transcript).

Ethan Bauer testified that D.M. talked to him the evening immediately before his death. D.M. told him he was worried about his father, defendant Reinwand. D.M. told him he was worried that Reinwand would harm him in some form or fashion. D.M. said Reinwand had threatened his life. D.M. ask him whether he believed Reinwand would kill him. at (32:240-246 trial transcript).

Todd Biadasz testified he spoke with D.M. and he spoke about his visitation and mediation issues. D.M. told him that Reinwand was going to harm him in some way. D.M. told him that Reinwand "said he was going to shoot him in the temple and he could get away with it" D.M. repeated this "a Couple of times". D.M. said that if anything happened to him that it was Reinwand. (321:305).

Michael Steger testified D.M. told him about his visitation issues in late February. D.M. told him that he was afraid Reinwand was going to hurt him and one day D.M. told him that he believed Reinwand would kill him. D.M. told him that he had arguments with Reinwand. D.M. told him that Reinwand tried to make him angry. (324:197 trial transcript).

Martin Baur testified about his conversation with D.M. shortly before his death. D.M. told him that if he came up dead, the police should dig deeper because it would look staged. D.M. told him Reinwand would be responsible for his death. (325:147-160 trial transcript).

Cynthia Fellows testified she was told by D.M. that Reinwand had told him he could kill him if he wanted to. (326:178-179 trial transcript).

Jodi Biadacz testified she spoke with D.M. shortly before his death and D.M. told her he was scared of Reinwand and that if anything happened to him, that Reinwand would be the person responsible for it. (321-22-25 trial trans)

Michelle Meister testified D.M. told her Reinwand threatened him and that D.M. would get visits with his daughter over defendant's dead body. She testified D.M. told her that if he pressed for visits with his daughter, Reinwand told him he would never see her again. She testified that D.M. believed that Reinwand was out there and that he would kill him. (321-65 trial transcript).

Renee Steger testified that D.M. feels like he may be threated. he feels like reinwand was going to come after him if he continued to purse visitation. She testified D.M. expressed concerns about Reinwand on multiple occasions and that he appeared agitated about the situation. (321-167 trial transcript).

Monica Cline testified D.M. testified to her he felt threatened, that if he was to pursue his visitation with his daughter, that his life would be on the line and he took it serious. She testified she spoke with D.M. before his death. She testified D.M. told her two days prior to her last discussion with D.M., and D.M. said he had a heated argument with Reinwand. D.M. told her reinwand showed up at his residence, argued with him for a while and he left, he told D.M. that if he pursued any kind of visitation, that D.M.'s life was on the line. (321-186-196 trial transcript).

The Sixth Amendment to the United States Constitution made applicable to the States via the Fourteenth Amendment, Pointer v. Texas, 380 U.S. 400, 403 (1965), and it provides that "in all criminal prosecutions the accused shall enjoy the Right...to be confronted with the Witness against Him". In Crawford v. Washington, 541 U.S. 36, reviewing the Clauses Historical underpinning this Court held that it Guarantees a defendant's Right to Confront those "who bear testimony , against him. Where is Reinwand's Guaranteed Right.

A Witnesses testimony against a defendant is thus inadmissible unless the Witness appears at trial, or if the witness is unavailable the defendant had a prior opportunity for Cross-Examination. Crawford v. Washington, 541 U.S. 36 (2004); State Constitution Article I § 6 Civil Rights Law.

In Crawford, this Court held that "Testimony" Statements not previously subjected to Cross-Examination are Inadmissible against a Criminal defendant. This Court said a Witnesses testimony against a defendant is inadmissible unless the witness appears at trialor, if the witness is unavailable the defendant had a prior opportunity for Cross-Examination. Certification and Affidavits, which fall within the Core Class of testimonal Statements covered by the Confrontation Clause. The precise testimony that would be expected to be provided if called at trial.

In short, the lack of a live Witness for the defense to Confront, eliminated defendants opportunity to contest a "decisive piece" of evidence against him. This is exactly the evil the Confrontation Clause was designed to prevent.

In the wake of this Court's decision in Crawford, the Confrontation Clause returned to it's traditional mode of operation, that is to a procedural provision that forbids the Government from introducing "testimonal Hearsay in place of live testimony at trial.

As a Starting point, this Court has noted that "testimony" is a solemn declaration or affirmation made for the purpose of establishing some fact.

A Witness is considered to be a Witness "against" a defendant for purposes of the Confrontation Clause.. .if his testimony is part of the body of evidence that the jury may consider in assessing guilt, see Cruz v. New York, 481 U.S. 186, 198 (1987).

In Jensen v. Clements, 800 F.3d 893, 894 (7th Cir. 2015) the Wisconsin trial court just like in this case amitted testimonal Hearsay Evidence under a forfeitur by wrongdoing analysis. This Court and the Seventh Circuit Reversed Jensen's case sending the Case back for a New Trial and the Order say's the State trial Court cannot use the Inadmissible testimony.

This Court in Giles v. California, 554 U.S. 353, 376 (2008) decided the disputed testimonal evidence was erroneously admitted. More important in Giles, this Court decided that the Statements made by Witnesses that the victim told them prior to her death, was indeed Testimonal. The Court in Jensen's Case Granted him a New Trial, finding the Testimonal from the Grave Hearsay Statements admitted at his trial deprived him of his Right to a Fair Trial.

The State Court in this present Case decided that the testimony of the Witnesses may have Violated Reinwand's Sixth Amendment Right to Confrontation. however that Violation is deemed Harmless Error. How can 11 or 12 Sixth Amendment Right Violation in one trial be ruled Harmless when there is no physical evidence of guilt. Reinwand's Confrontation Rights was Violated 12 times, and this Court has held that this type of Violation cannot be ruled Harmless.

The Controlling precedent by this Court as a rule say's "if an OUT-OF-COURT Statement is Testimonal in Nature, it may not be introduced against the accused at trial, period not to admit it and then later rule it harmless. In Crawford, admission of testimonal Statements of an unavailable victim Violated the Confrontation Clause if the victim was unavailable and the defendant had no prior opportunity to Cross-Examination. reinwand had no prior opportunity.

In Reinwand's case, the victim was unavailable twelve times and the twelve Statements was testimonal, thereby violating reinwand's Confrontation Right of the Sixth Amendment 12 times, and dening Reinwand twelve times the Right to counter the States key piece of evidence.

Statements are Testimonal if made under circumstances which would lead an objective Witness reasonably to believe that the Statements would be available for use at a later trial, Crawford 541 U.S. at 51. also see State v. Van Dyke, 2015 WI. App 30 at *P17 Footnotes, quoting, :regardless we conclude a Statement is testimonal if it was formalized material similar to an affidavit" Everyone of the statements here by nature were formalized similar to an affidavit.

The Seventh Circuit cited Crawford in deciding Jensen's Case but failed to reach the same Case for Reinwand"s review. This Court said it applies to Witnesses against the accused--in other words, those who bear testimony, see also Richardson v. Griffin, 2017 U.S. App Lexis 14603 at *9.

In Giles v. California, 554 U.S. 353, 376 (2008) it States abridging the Constitutional Rights of Criminal defendants is not in the State's arsenal. Applying the Crawford and jensen holding to reinwand's case, with no doubt the Satements that Baur and 11 other State Witnesses made was inadmissible testimony and everyone of those Witnesses was answering what the Government had asked them, and Reinwand's counsel objected to each testimony. The Statements went to the core fact the State was trying to prove, thus toward guilt.

The State Court and the two Federal Courts all misapplied the Harmless Error analysis. On direct Appeal, the Harmless Error standard is whether the Error was Harmless beyound a reasonable Doubt, but the test is different in Collateral proceedings in Federal Courts such as Reinwand's. see Davis v. Ayala, 135 S.CT. 2187,2197 (2015) When reviewing a State Court judgment in a Habeas Corpus proceeding, the Court ask whether the error. "had substantial and injurious effect or influence in determining the Jury's Verdict. Fry v. Pliler, 551 U.S. 112, 116 (2007), quoting Brecht, 507 U.S. at 631, also see Jensen v. Clements, 800 F.3d 893, 902-903 (7th Cir. 2015); Rhodes v. Dittman, 2018 U.S. App Lexis 25577 (7th Cir. 2018) (applying the Harmless Error analysis error analysis in Habeas review of Confrontation Clause Violations).

The Harmless Error Standard is not the same as a review for whether there was sufficient evidence at trial to support a verdict, see Jensen, 800 F.39 at 902. The inquiry cannot be merely whether there was enough evidence to support the result, apart from the phrase effected by the error, quoting Kotteakos, 328 U.S. 750 at 764-65. The District Court and the State Courts both misapplied the Harmless Error Standard on this Case. The question is rather, even so, whether the Error itself had substantial influence. This requires more than a reasonable possibility that the Error was Harmless. see Ayala, 135 S.CT. at 2198, quoting Brecht, 507 U.S. at 637. It requires the Court's to find the defendant was actually prejudiced by the Error, quoting Calderon v. Coleman, 525 U.S. 141, 146 (1998).

The State Supreme Court and the Federal District Court in this Case both misapplied the Harmless Error Analysis and Standard based on evidence to support the results, Reinwand, 2019 WI 25 at ¶ 46, and ¶ 66. This Court has decided that this type of Review by the District Court is not the Correct Standard in a Direct Appeal for Harmless Error Analysis, see Davis, 135 S.CT. at 2197; and Rhodes, 2018 U.S. App Lexis 25577 (7th Cir. 2018).

The State Court has already decided the Witnesses testimonal Violated Reinwand's Sixth Amendment Right on the Confrontation Clause but decided to misapply the Law and hide behind the Harmless Error Standard, saying the error was harmless. The Courts in these Cases have a long standing precedent, that "inadmissible Evidence is always prejudicial", see United States v. Thomas, 321 F.3d 627, 630 (7th Cir. 2003); Jensen v. Clements, 800 F.3d 893 (7th Cir. 2015); see also Smiley v. Mccaughtry, 495 F. Supp. E.D. Wis. 2007, holding that "improperly admitted evidence is not harmless). The Testimony in the Case at hand was inadmissible and always prejudicial thus it was also improperly admitted by the Court so it is also not Harmless.