

No. 20-8236

In the
Supreme Court of the United States

Brady Ray
Petitioner

vs.

ORIGINAL

Commonwealth of Kentucky
Defendant

On Petition for Writ of Certiorari to

FILED
JAN 29 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

United States Appeals Court for the sixth Circuit
Name of Court that Last Ruled on Merits of Your Case

Petition for Writ of Certiorari

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Questions Presented

1. Did Kentucky Supreme Court Violate Section C of USCS of Supreme Ct. R. 10 and therefore the Fourteenth Amendment of the United States Constitution when Denying Direct Appeal issue on Direct Verdict of Robbery First Degree.
2. Did Kentucky Supreme Court violate Section C of USCS of Supreme Ct. R. 10 and therefore the Fourteenth Amendment of the United States Constitution when Denying Direct Appeal issue on Direct Verdict on Wanton Endangerment.
- 3a Did Kentucky Supreme Court violate Section C of USCS of Supreme Ct. R. 10 and therefore the Fourteenth Amendment of the United States Constitutional when Denying Direct Appeal issue on palpable Error at Sentence Phase.
- 3b Did Kentucky Supreme Court violate Section C of USCS of Supreme Ct. R. 10 and therefore the Fourteenth Amendment of the United States Constitutional when Denying Direct Appeal issue on palpable Error at Sentence Phase.

List of Parties

All Parties appear in the Caption of the cover page

All Parties do not appear in the caption of the cases 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:

Table of Contents

Opinions	
Below.....	1
Jurisdiction.....	1,2
Constitutional and Statutory Provisions Involved.....	2
Statement of The Case.....	2,3,4,5
Reasons for Granting the Writ.....	6,7,8,9,10
Conclusion.....	9

Index to Appendices

Appendix A Order from Kentucky Supreme Court Denying Direct Appeal

Appendix B Final Judgment and Sentence of Guilty verdict from Trial

Appendix C

Appendix D

Appendix E

Appendix F

Table of Authorities Cited

Cases In Re Winship 397 US 358,364 (1970).....	5,6
Jackson -v- Vrígina 443 US 307, 316 (1979).....	5,7
Millikan -v- Commonwealth 341 SW 3d 103 (Ky 2011).....	7
Napue -v- Illinois 360 US 264, 269 (1959).....	8,9
Allen -v- Commonwealth 286 SW 3d 221 (Ky 2009).....	8
Ernest-v- Commonwealth 160 SW 3d 744, 758 (Ky 2005).....	8
Martin -v- Commonwealth 207 SW 3d 1,3 (Ky 2006).....	8
Scheenbachler -v- Commonwealth 95 SW 3d 830, 836 (Ky 2003).....	8
Brady -v- Maryland 373 US 83,87 (1963).....	9,10
United States -v- Agurs 427 US 97,103 (1976).....	9,10
Taulbee -v- Commonwealth 438 SW 2d 777, 779 (Ky 1969).....	9
Statutes and Rules USCS of the United States Supreme Court Rule 10.....	5,6,7,8,9,10
Rules of Criminal Procedure 10.26.....	8
Kentucky Revised Statute 515.020.....	6
Kentucky Revised Statute 508.060.....	7
Other	
United States Fourteenth Amendment	5,6,8,9

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 to Petition

and is

reported at _____; 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 United States Court of Appeal 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 18 USC § 1254 (1).

For Cases from State Courts:

The Date on which the highest state court decided my case was November 19 2020
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 Application No. _____.

The jurisdiction of this Court is invoked under 28 USC § 1257.

CONSTITUTIONAL AND STATUTORY PROVISION PROVISIONS INVOLVED

The Constitutional Amendment involved in this case is the Fourteenth Amendment of the United States Constitution. That States all persons born or naturalized in the United States states, and subject to the jurisdiction there of, are citizens of the United States and of the State where in they reside. No state shall make or enforce any law which 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 any person within its jurisdiction the equal protection of the law.

STATEMENT OF CASE

Appellant Brady Ray and Tracey Hargrove were childhood sweet hearts who reconnected later in life and were married in May of 2016 [Vr. 11/27/18; 1:43:39-1:44:55]. They remained married for six months. Brady and Tracey moved in with Tracey's father in August of 2016 after Tracey mother passed away. [Vr. 11/27/18; 1:46:00-1:46:30]. After they moved in Brady and Tracey painted the house, did some landscape and Brady build a wheel chair ramp for Jerry Adams. [Vr 11/27/18; 1:47:15-1:48:05]. They did not pay rent; Jerry Adams paid all the bills.

Brady became hooked on pain medication and, when Tracey discovered that he was abusing pain medication she asked him to leave [Vr. 1/27/18; 1:45:32-1:47:15]. On the night in November of 2016 When she asked him to leave Tracey alleged that Brady dragged her across bedroom. [Vr. 1/27/18; 1:46:32-1:47:15]. She sought and was granted an emergency protective order. (EPO).

Brady and Tracey both knew that the divorce was set to be finalized on February 1st 2017, [Vr11/27/18; 2:23:41-2:24:30] Prior to the incident in this case, Brady texted Tracey that he had lost his job and that he was going end it tonight. [Vr. 11/27/18 1:53:30- 1:54:45].

It was 3:00 or 4:00 Am when Tracey heard a noise in the house [Vr 11/27/18; 1:53:30-1:54:45] she and her nine year old Son were asleep in a bedroom on one end of the house. She assumed the noise was her paralyze father falling out of his bed, on the other end of the house. She heard glass breaking. Tracey jumped up and went down the hallway where she encountered Brady coming through the living room with a hammer in his hand. [Vr 1/27/18; :56:04-1:57:00] She turned to go back to her room, and Brady struck her on the back of her head, on her shoulders, and down her back. She fell and Brady started kicking her.

Tracey's son got up and came to the door of the bedroom, begging Brady to stop. [Vr. 11/27/18; 1:57:00-1:57:48] Brady told her son that he would not hurt him but that he was going to kill Tracey. Tracey told her son to go back to bed. Her son went back into the bedroom and called 911 and hid in the closet. [Vr 11/27/18; 1:57:48-1:58:18] Brady told Tracey that if she did not go with him, he would kill her father with a hammer. [Vr. 11/27/18; 1:58:18-1:59:01]. She refused, and Brady took off down the hall toward her fathers room. Tracey grabbed his leg and managed to pull his shoe off . She then scooted herself into the bedroom. Once in the bedroom she closed and locked the door. [Vr 1:59:01-:59:50].

Jerry Adams testified that around 4:00 Am he heard a noise that he thought someone shooting at his back door. [Vr 11/27/18; 3:37:50-3:39:34]. HE heard the glass brake then heard someone

walking through the glass. Mr. Adams heard Tracey say Brady what are you doing here? [Vr 1/27/18; 3:39:34-3:40:03]. He also heard Tracey's son begging Brady to stop hitting his mother. [Vr 1/27/18 3:40:03- 3:40:27]. Mr Adams tried to call 911 and also tried to punch in the combination to open the gun safe by his bed. [Vr. 11/27/18; 3:41:20- 3:42:03].

Mr. Adams then heard Brady running down the hall and saying I'm going to kill your father. [Vr 11/27/18; 3:42:10-3:44:40]. Brady came into the his room with a hammer in his right hand. He came over to the bed. He raised the hammer and said "I gonna kill you too, you son of a Butch." At that moment, Tracey closed and locked the bedroom door to her bedroom. When Brady heard that he took off running back down the hall.

Inside the bedroom, Tracey's son gave her the phone and she spoke to 911 operator. [Vr. 11/27/18; 1:59:50-2:00:36]. Brady came to the door and beat the handle off the Door to get in. Tracey went to the window, opened it and pushed her son out. She jumped out behind him.

Tracey and her son ran across the street to her neighbor's house. [Vr 11/27/18; 2:00:36-2:01:21]. She could hear Brandy running behind her. Brady Grabbed her by the hair and pulled her off the neighbor's porch. He grabbed her phone and broke it on the porch railing.[Vr 11/27/18; 2:01:21-2:01:44]. Tracey believed that Brady had killed her dad. [Vr 11/27/18; 2:02:21-2:02:35].

The neighbor came to the door with a gun [Vr 11/27/18; 2:01:21-2:01:44]. Tracey and her son went inside the neighbors house. [Vr 11/27/18; 2:00:36-2:02:21]. The neighbor told Tracey that Brady went back into her house.

Later when Tracey went to leave for the hospital, she discovered that her purse was missing. [Vr 11/27/18; 2:03:00-2:04:24]. There was approximately \$800.00 in cash, credit cards and her driver license in her purse. Charges were made to Holiday Inn Express and Marathon Fuel the charges were made by Brady Ray. [Vr 11/27/18; 2:25:25-2:25:55].

Although Tracey original believed that she had broken bones, it turn out that she did not. [Vr

1/27/18; 2:06:23-2:06:41].

Brady Ray fled and was eventually apprehended in Tennessee, where he waived extradition and agreed to be returned to Kentucky. [Vr. 11/27/18; 11:25:25- 11:33:06], 9:52:19-9:54:40].

Following a jury trial in Graves Circuit Court, Brady was found guilty of Attempted Murder, Robbery First Degree, Wanton Endangerment First Degree, and Violation of EPO/DVO TR II, (312-316). He received a sentence of Twenty years each on the crimes of Attempted Murder, Burglary First Degree Robbery First Degree, five Years on Wanton Endangerment and one year for violation of EPO/DVO. He received an aggregate 65 year sentence.

REASONS FOR GRANTING THE PETITION

1 Petitioner asserts that Kentucky Supreme Court violated **Section (c) of USCS of Supreme Ct. R. 10** that states A state court or a United States Court of Appeals Has decided an important question of Federal question in a way that conflicts with relevant decisions of this court. And therefore the united States Fourteenth Amendment that states that States all persons born or naturalized in the United States states, and subject to the jurisdiction there of, are citizens of the United States and of the State where in they reside. No state shall make or enforce any law which 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 any person within its jurisdiction the equal protection of the law. Which the Court did when the Court did not follow Published United States Court Law for Direct Verdict. See In. re Winship, 397 US 358, 364 (1970) Where the United States Supreme Court held that: This basic principle of criminal law was underscored in Jackson-v- Virginia 443 US 443 US 307, 316 (1979). No person shall be made to suffer the onus of a criminal conviction except upon sufficient proof-defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense. And there was never any evidence presented that Brady went to rob Tracey and in the middle of the theft used or threaded

force. Therefore Brady went only for the sole purpose of killing Tracey.

Kentucky Revised Statute 515.020 states the Element for Robbery First Degree is a person is guilty of Robbery in the First Degree when in the course of committing theft, he uses or threatens the immediate use of physical force upon another person with intent to accomplish the theft. No evidence to this was present at trial.

The Commonwealth presented evidence that Brady Ray broke into Tracey Hargrove's house with a hammer, with the explicitly stated intent to kill her. Not that he wanted money. Also while there he also stated his intent to kill her father. There was evidence that Brady was upset at his pending divorce from Tracey Hargrove. [Vr. 11/27/18; 1:53:30-1:54:45] There was never any evidence presented that it was his intent to use or threaten the use of force in furtherance of a theft. [Vr. 11/27/18 2:01:21-2:01:44].

Because there was no evidence presented that the element of Robbery First Degree was committed by the Plaintiff and the Kentucky Supreme Court upholding the conviction was in a clear violation of section **(c) of USCS Supreme Ct. R 10** and the conviction should be vacated.

2 Petitioner asserts that Kentucky Supreme Court violated **Section (c) of USCS of Supreme Ct. R. 10** that states A state court or a United States Court of Appeals Has decided an important question of Federal question in a way that conflicts with relevant decisions of this court. And therefore the united States Fourteenth Amendment that states All persons born or naturalized in the United States states, and subject to the jurisdiction there of, are citizens of the United States and of the State where in they reside. No state shall make or enforce any law which 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 any person within its jurisdiction the equal protection of the law. Which the Kentucky Supreme Court did when the Court did not follow Published United States Court Law for Direct Verdict. See In. re Winship. 397 US 358, 364 (1970) Supra

Jackson-v- Virginia 443 US 443 US 307, 316 (1979) Supra

In **Kentucky Revised Statute 508.060** it states a person is guilty of Wanton Endanger in the First Degree when under circumstances manifesting extreme indifference to the value of human life he wantonly engages in conduct which creates a substantial danger of death or a serious physical injury to another person. No evidence was presented of conduct which creates a substancted danger of death only threats to do it.

The evidence presented by the Commonwealth was that Brady Ray having broken into Jerry Adam's house went into his bedroom raised a hammer and threatened to kill him. [Vr 11/27/18; 3:42:10-3:44:40]. There was never any evidence presented that it was his intent to kill Jerry Adams. Just that he threaten to kill him in an attempt to get Tracey to go with him.[Vr. 11/27/18; 1:57:00-1:57:48].

In this case Brady Conduct amounts to a mere threat to Kill Jerry Adams. The Kentucky Supreme Court has set what constitutes terroristic threatening and what constitutes Wanton Endangerment in the First Degree. See **Mullikan-v- Commonwealth** 341 S.W.3d 99, 103 ____ (Ky. 2011). Where the Kentucky Supreme Court held: That terroristic threatening requires a threat to commit a crime, but Wanton Endangerment requires conduct placing others at serious risk. Which none of the evidence ever showed.

Thus because of their own ruling in 2011 in thereafter Mullikan case and that the elements of Wanton Endangerment First Degree was not committed by the Plaintiff and the conviction and the Kentucky Supreme Court upheld and illegal conviction the **USCS Supreme Ct. R. 10 section (c)** was violated and therefore the conviction should be violated.

3A Petitioner asserts that Kentucky Supreme Court violated **Section (c) of USCS of Supreme Ct. R. 10** that states A state court or a United States Court of Appeals Has decided an important question of Federal question in a way that conflicts with relevant decisions of this court. And therefore the united

States Fourteenth Amendment that states All persons born or naturalized in the United States states, and subject to the jurisdiction there of, are citizens of the United States and of the State where in they reside. No state shall make or enforce any law which shall make or enforce any law which shall abridge the privileges or immensities 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 any person within its jurisdiction the equal protection of the law. Which the Kentucky Supreme Court did when the Court did not follow Published United States Court Law for Palpable Error. In Napue -v- Illinois, Where the United States Supreme Court held that: Appellant request Palpable Error review under **Rcr 10.26** because the error affected the fairness and integrity of the sentencing phase rendering it shocking or Prudentially intolerable.

The Kentucky Supreme Court stated the same about Prudentially intolerable in Allen-v-Commonwealth, 286 S.W. 3D 221, 226 (KY 2009); Ernest -v- Commonwealth 160 S.W. 3D 744, 758 (KY 2005); Martin -v- Commonwealth 207 S.W. 3D 1,3 (Ky 2006); and Scheenbachler -v- Commonwealth, 95 S.W. 3D 830, 836 (Ky 2003) as the United States Supreme Court did in Napue -v- Illinois, 360 US 264, 269 (1959) Supra. But then violated their own ruling and the ruling of the United States in Napue -v- Illinois 360 US 264, 269 (1959) Supra. When denying Direct Appeal in this case Because when this court up held that the Commonwealth was wrong at sentencing phase when Probation and Parole Officer Joshua Whitfield to testify at the hearing for Parole eligibility for first degree Wanton Endangerment charge was 15%. [Vr. 11/27/18; 3:18:35-3:19:05] But then stated that the statement did not change the out come of the proceeding. Because no one can know what the Jury was thanking after the Probation and Parole officer Joshua Whitfield testified. So at the very least least the Kentucky Supreme Court should have vacated the sentence. This not happening created a palpable error with Parole Officer statement at sentencing. So Napue -v- Illinois was violated and the **Kentucky Supreme Court Ct. R. 10** was violated because of the error of the Kentucky Supreme,e Court cert Should be Granted in this case and the case vacated.

3B Petitioner asserts that Kentucky Supreme Court violated **Section (c) of USCS of Supreme Ct. R. 10** that states A state court or a United States Court of Appeals Has decided an important question of Federal question in a way that conflicts with relevant decisions of this court. And therefore the United States Fourteenth Amendment that states All persons born or naturalized in the United States states, and subject to the jurisdiction there of, are citizens of the United States and of the State where in they reside. No state shall make or enforce any law which shall make or enforce any law which shall abridge the privileges or immensities 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 any person within its jurisdiction the equal protection of the law. Which the Kentucky Supreme Court did when the Court did not follow Published United States Court Law for Palpable Error. See Napue -v- Illinois 360 US 264, 269 (1959) Supra; Also Brady -v- Maryland, 373 US 83, 87 (1963) Where the United States Supreme Court held that Clearly in the instant case the prosecution either knew or should have known that the maximum parole eligibility is twenty years for three twenty years sentences and a five year sentence ran together for sixty five years imprisonment is not twenty four years. Also see United States -v- Agurs 427 US 97,103 (1976).

The Kentucky Supreme Court up held the same about prejudice is presumed. See Taulbee -v- Commonwealth 438 S.W. 2D 777, 779 (KY 1969). Where the Kentucky Supreme Court said the Appellant is entitled to a new sentencing phase. When the "maximum sentence has been imposed by the verdict" Prejudice is presumed.

So thus the Commonwealth created a palpable error when he told the jury to give him sixty Five years and he would not be eligible for parole for twenty four years when it was twenty years. But the Kentucky Supreme Court stated that they felt that it was only a mistake made by the Commonwealth. But yet again the damage was done and the Fourteenth Amendment of the United States Constitution and **Section (c) of USCS of the Supreme Ct. R. 10** was violated along with Napue -v- Illinois 360

US 264, 269 (1959) Supra; Also Brady -v- Maryland, 373 US 83, 87 (1963) and United States -v- Agurs 427 US 97,103 (1976). and the Kentucky Supreme Court allowing the error to stand violated section (c) of USCS Supreme Ct. R 10.

CONCLUSION

WHEREFORE, for the foregoing reason the Plaintiff Respectfully Request that this Honorable Court grant his Writ of Certiorari.

Respectfully Submitted

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