No. 20-8366

Supreme Court, U.S.
FILED
JAN 19 2021
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IN THE

SUPREME COURT OF THE UNITED STATES

Larry Dean Garrett Jr — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Larry Dean Garrett Jr 34790-001
(Your Name)

U.S. Penitentiary Tucson, P.O. Box 24550
(Address)

Tucson, Arizona 85734
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1) Did the district court err by not suppressing evidence illegally seized with a search warrant aquired by the use of the affiants false statements violating Petitioners Fourth and Fourteenth Amendment rights. (Dec 4, 2017, Final Motion Hr. Tr. 80-120).

2) Did the district court violate the Petitioner's Sixth Amendment right to face his accuser by use of coercion to waive Confrontation Clause by threat of harsher sentence and jury bias chilling his decision to cross-examine the victim (Trial Tr. Vol 3. 401-416)

LIST OF PARTIES

[X] 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

United States v. Larry Dean Garrett, JR., No. 2:16-cr-00327-MHH-JHE-1, U.S. District Court for the Northern District of Alabama, Southern Division. Judgment entered on July 19, 2018

United States v. Larry Dean Garrett, JR., No. 18-13056, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered February 24, 2020.

Larry Dean Garrett, JR., v. Birmingham Police Department, et al., No. 2:17-cv-01563-LSC-JEO, U.S District Court for the Northern District of Alabama, Southern Division. Judgment entered on Nov. 3, 2017.

Larry Dean Garrett, JR., v. Birmingham Police Department, et al., No. 18-11908, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered April 29, 2019.

TABLE OF AUTHORITIES CITED

TABLE OF CONTENTS

INDEX TO APPENDICES

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

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A 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 B 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 ______ 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 ______________________ 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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 24, 2020.

[X] 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 ____________. A copy of that decision appears at Appendix ______.

[ ] 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

The Due Process Clause of the Fifth Amendment:
"No person shall be deprived of life liberty, or property, without due process of law"

The Fourth Amendment:
"particularily describe the place to be searched, and the persons or things to be seized"

The Sixth Amendment:
"In all criminal prosecutions, the accused shall enjoy the right, to be confronted with the witness against him"

STATEMENT OF THE CASE

PROCEDURAL HISTORY:

On September 28, 2016, the petitioner (Mr. Garrett) was indicted on charges of one(1) count of Child Exploitation in violation of Title 18 U.S.C. §2251(a) and (e). (Appendix B, App. 20). On October 20, 2016, Mr. Garrett made his first court appearence and was appointed attorney Stuart D. Albea as counsel. Almost a year later on August 10, 2017, during a hearing regarding the status of his counsel Mr. Albea, Mr. Garrett presented his complaint on the record. (Appendix E, App. 31-32)(Doc. 56). This ex parte portion of the hearing was removed by the court.

Mr. Garrett's complaint states Mr. Albea knew an affiant's false statement was used to secure a warrant and seize evidence against him. After reviewing Mr. Garrett's complaint, the District court assigned him new counsel Jeffrey D. Bramer.

On August 25, 2017, the court's filed Mr. Garrett's written complaint that was read aloud on record August 10, 2017, and Mr. Garrett provided discovery information in support of his claims of false statements by law enforcement, chain of custody violations, tampering of evidence, etc. (Appendix C, App 21-25 and Appendix E, App 29-32). This same day Mr. Garrett filed a 'Motion to dismiss indictment information and complaint', (Appendix E, App 33-37)(Doc. 47), in which he again states his claims. On September 1, 2017, the District court holds a hearing for Mr. Garrett's motion (Doc. 47) at which he chose to represent himself pro se and request for standby counsel Mr. Bramer to assist him.

On September 11, 2017, Mr. Garrett sent notice to the District court that he was pursuing civil actions against law enforcement regarding his claims to the court on record that violated his fourth and fourteenth Amendment rights. (Doc. 72)(civil action: 2:17-cv-1081-AKK-JEO). On October 3, 2017, Mr. Garrett filed a pretrial 'Motion to dismiss', (Doc. 85) and on October 10, 2017, the hearing was held before the District court. On October 30, 2017, Mr. Garrett files a 'Motion to dismiss hearsay statements and relevant evidence', (Doc. 102) to address the false arrest claims again, along with victims competency. (Doc. 104, 'Pretrial Dismissal')(Appendix. D, App. 26-28)

On December 4, 2017, Mr. Garrett introduces at the final pretrial hearing his autopic evidence of the FBI records and a letter from the government signed by Assistant U.S. attorney Erica W. Barnes addressing her interview with the victim(s) dated two weeks before trial. From December 5, 2017, to December 7, 2017, the trial continues and under direction of the judge Mr. Bramer informs Mr. Garrett regarding jury bias for cross-examining the victim if he chose to. After waiving his right to cross-examine the victim after the court warns him, Ms. Barnes uses the victims video testimony in the governments closing arguments, and Mr. Garrett is found guilty of the charge by the jury. (Appendix F, App 38-41)

On July 12, 2018, a hearing is held for Mr. Garrett's motion's challenging jurisdiction, judgment of acquittal and a new trial which were all denied. On July 19, 2018, after the post trial hearing, Mr. Garrett is sentenced to 600 months for one(1) count of Child Explotation Appendix B, App 19)§2251(a)&(e). On October 19, 2018, Mr. Garrett informs the Eleventh Circuit court of appeal's (Appellate court) of his appellate consel William 'Chip' Bradford's (Bradford) conflicting circumstances addressing false arrest and actual innocence. On July 9, 2019 Mr. Garrett file's an ex parte motion to dismiss counsel Bradford for refusal of communication, which was followed with a bar complain on October 23, 2019.

On February 24, 2020, the Appellate court affirmed the District court's decisions and conviction on neither of the pro se issues filed by Mr. Garrett, only issues raised by Mr. Albea and Mr. Bramer, during pretrial. On February 25, 2020, counsel Bradford sends Mr. Garrett a letter informing him he did'nt see any issue's worth pursuing in a re hearing or for a writ of Certiorari therefore he was abandoning the case. Both Mr. Garrett's civil claims against law enforcement for false arrest was dismissed without prejudice in the District court November 3, 2017, and affirmed in the Appellate court on April 29, 2019. On January 29, 2021, this Court time barred the civil petition for a writ of Certiorari by 2 days

REASONS FOR GRANTING THE PETITION

This case, like many cases of its nature more focus than reliability on preception of the evidence and hearsay statem-ents. Law officials are trained to make split second decisions to help uphold the law and protect citizens from from criminals or even themselves in the time of crisis or immediate danger. However, this protection does not fall on law enforcement alone, but the U.S. Constitution and it's Amendments as well. The U.S. Constitution is a safegaurd to help protect the laws of our nation and its citizens alike, even those incarcerated.

In this case, law enforcement was dispatched to a scene and viewed video evidence of a crime being committed on a minor citizen by an offender obscured in the video. Officer's present then contact's their superior's and a detective whom not only directs them to return this evidence of a crime to witness, but this same detective knowingly gives false testimony in their sworn affidavit.

> "A police officer who files a false report may be liable for false arrest if filing the report leads to seizure in violation of the Fourth Amendment even if he did not conduct the investigation himself." Acevedo v. Canterbury, 457 F.3d 721 (7th. Cir. 2006)

The Due Process Clause of the Fifth Amendment states that:

> "No person shall... be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Due Process protects the right not to be sentenced on the basis of false information. Shukwit v. United States, 973 F.3d 903, 904 (11th. Cir. 1992) (per curiam) (Appendix B, App. 20)

The property in this case (a Micro SD memory card) which contained a video that a witness alleged was given to him by the alleged offender in the video of the crime. Other property listed in the affidavit (two laptop(s) computers) were removed from the alleged crime scene by witnesses were held by them and later alleged to be the offenders. The Fourth Amendment requires that warrants:

> "particularly describ[e] the place to be searched, and the persons or things to be seized" U.S. Const. amend. IV

According to the sworn affidavit, it was alleged that the petitioner was identified as the 'possible' suspect by the complainant, whom received the evidence from another witness 'after' law enforcement returned it to his possession over night. Although this does not prove the petioner ever had possessions of the evidence, the affidavit goes on to state the 'complainant also obtained two laptop computers' belonging to the petitioner. The laptops alleged to belong to the petitioner that were removed from the scene and held by witnesses accompanied with the affiants false arrest, puts him at the scene of the crime in possession of evidence that could trigger interstate commerce, thus giving 'Federal' jurisdiction over the case. (Appendix C, App. 21-23)

Here the Fourth Amendment is not only violated, but a citizen (third party) being allowed to hold evidence they collect or from the scene of the crime, to be used at any time to support their or law enforcements claim in an affidavit would trigger the exclusionary rule. Under the exclusionary rule, evidence obtained in violation of the Fourth, Fifth or Sixth Amendments may not be introduced at trial as evidence to support a defendants guilt. The purpose of the exclusionary rule is to deter police misconduct. When a court improperly admits evidence in violation of the exclusionary rule, the courts findings must be reversed unless the error was harmless beyond a reasonable doubt. Chapman v. California, 386 U.S. 18, 23-24 (1967).

REASONS FOR GRANTING THE PETITION (continued)

Suppression may be used as another route to help protect an individuals right report a violation of their Fourth Amendment right. A defendant may challange the validity of the government's affidavit by making a substantial preliminary showing that a false statement was included the warrant affidavit knowingly and intentionally or with reckless disregard for the truth. Franks v. Delaware, 483 U.S. 154, 171-72 (1978). On certiorari, the United States Supreme Court reverse and remanded Franks case. In an opinion it was held that:

(1) Where a defendant made a substantial [redacted] showing that a false statement knowing and intentionally or with reckless disregard for the truth, was included by an affiant in his affidavit for a search warrant, and if the alleged false statement was necessary to the finding of probable cause, the Fourth Amendment required that a hearing be held at the defendants request so that he might challenge the truthfulness of factual statements made in the affidavit, and

(2) if at such hearing the defendant establish by preponderance of the evidence the allegations of perjury or reckless disregard, and, with the affiant's false material set [redacted] side, the affiant's remaining content was insufficent to establish probable cause, the search warrant had to be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

To mandate an evidentiary hearing, the challenger's attack, must be more than conclusory and must be supported [by] more than a mere desire to cross-examine. There must be allegation's of diliberate falsehood or reckless disregard for the truth, and those allegations must be accompanied by an offer of proof.... Allegations of negligence or innocent mistake are in[redacted]ent.

In this case the video of the crime was used to support probable cause that the two laptops removed by witnesses could contain some or more picture's of the crime. Possession of every piece of evidence was only alleged to be in the petitioners possession, therefore if we remove this evidence there is no interstate commerse trigger, leaving only state jurisdiction which falls short of possession. During multiple hearings in the pretrial court, the petitioner introduced motions accompanied by exculpatory evidence of the false arrest, witnessess removing evidence from the scene, and law enforcement breaking chain of custody. The only exception to the exclusionary rule is [redacted]

The good faith exception requires answering the questions of whether a reasonably trained officer would have known that the search was illegal despite the magistrates authorization. There is no good faith if one of the four circumstances exist:

(1). if the issuing magistrate/judge was misled by information in the affidavit that the affiant knew was false, or would have known except for reckless disregard for the truth; (2) where the issuing magistrate/judge wholly abandoned his or her judicial role; (3) where the warrant is based on an affidavit so lacking in indicia of probable cause as to render official belief in its official belief in it's existence entirely unreasonable; and (4) where the warrant is so facially deficient in failing to particularize the place to be searched or thing to be seized that the executing officer cannot resonably presume it to be valid.

Clearly the magistrate/judge was misled by the affiant in their sworn affidavit by alleging the petitioner was arrested by their own department. The affidavit also never stated that evidence was removed from the crime scene by witnesses used in the affidavit and held for five day before law enforcement took possession of it. In fact trial records reveal the evidence (two laptops) actually belong to the victims family and the witness whom contact them with the video. This draws the conclusion about how falsely alleged evidence can easily be used to trigger federal jurisdiction and undermind the Fourth Amendment protection in whole.

Under the exclusionary rule, "evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of illegal search and seizure." United States v. Calandra, 414 U.S. 347, 94 S.Ct. 613, 38 L.Ed 2d. 561 (1974). If a search and seizure violates the Fourth Amendment, the "fruit of the poisonous tree doctrine prohibits the admission of any subsequently obtained evidence, including information, objects or statements." Wong Sun v. United States, 371 U.S. 471, 487-88, 83 S.Ct. 407, 9 L.Ed 2d 441 (1963).

REASONS FOR GRANTIN THE PETITION (continued)

This case presents important issues affecting a substantial class of imprisoned people who suffer from evidence illegally seized and used by use of false statements in an affidavit by witnessess or/and law enforcement, and a violation of the constitutional right to face their accuser. In criminal cases dealing with a crime reliant on a minor victims testimony, confrontation is not only protected by the Sixth Amendment, but its also a powerful tool for both parties in the case.

The Sixth Amendment Confrontation Clause states:

> "In all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witness against him." [redacted] U.S. Const. amend. VI., that "... provides two types of protections f[redacted] criminal defendant: the right to physically face those who testify against him, and the right to conduct cross-examination." Pennsylvania v. Ritchie, 480 U.S. 39, 51, 107 S.Ct. 989, 94 L.Ed 2d 40 (1987); Bobadilla v. Carlson, 575 F.3d 785 (8th.Cir. 2009), @788-789.

The victim's live testimony in this case or any other would confirm what forensic interviews videos would or didn't, such as physical identification for the juror's and the record, testimony to the 'specific conduct' depicted or otherwise alleged, and truthfulness of the victim to rule out coercion. In Crawford v. Washington, 541 U.S. 36, 124 S.Ct 1354, 158 L.Ed. 2d 177 (2004), the court fundamentally altered the role of the Confrontation Clause. Twenty-four years before Crawford, the court collapsed the Confrontation Clause into the hearsay rules of the Federal Rules of Evidence in Ohio v. Roberts, 488 U.S. 56, 100 S.Ct. 2531, [redacted] L.Ed 2d 597 (1980), holding that statements of unavailable witnessess could be admitted, consistent with the Confrontation Clause, if they were reliable. Id[redacted] Wright, 497 U.S. 805, 816, 110 S.Ct. 3139, 111 L.Ed 2d 638 (1990).

Three witnessess whom originally viewed the video in petioners case, gave sworn testimony as to the identity of the offender in the video as the petitioner, but of these three witnessess only one (Kizzy Holmes) was the actual complainant in the initial investigation. Kizzy's role involved, holding the evidence (both the memory card and laptops), delivery and notifying law officials of the evidence in her possession, and most importantly identified another witness hands as the offenders in the video. (Appendix F, App 42-43). This highlights the importance of the victims testimony on record as to whom actually offended them on video and how. (Appendix F, App 45, pp. 578-580)

Again reliability was established by showing that a statement either met a "firm rooted hearsay exception", or bare "particularized guarantee of trustworthyness". Id @ 66. In Crawford the courts replaced the Roberts standard with bright-line rule: The Confrontation Clause prohibits the admission of an out-of-court testimonial statement unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness. Crawford, 541 U.S. @ 59. The Constitution's contempt for unreliable out-of-court statements is clearly established.

> "The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of any adversary proceeding before the trier of fact." Maryland v. Craig, 497 U.S. 836, 845, 110 S.Ct. 3157, 111 L.Ed. 2d 666 (1990).
>
> "When the government seeks to offer a declarants out-of-court statements against the accused, and... the declarant is unavailable, courts must decide whether the Clause permits the government to deny the accused his usual right to force the declarant to submit to cross-examination, the greatest legal engine ever invented for the discovery of truth". Lilly v. Virginia, 527 U.S. 116, 124, 119 S.Ct. 1887, 144 L.Ed. 2d 117 (1999) (qotation and footnotes omitted).

Reliability: Circumstantial Guarantees of Trustworthiness. In evaluating whether a child's hearsay is reliable, the Supreme Court has identified several non-exclusive factors that courts may consider: spontaneity of the statement; consistent repetition of the statements; the mental state of the declarant; the use of terminology unexpected of a child of similar age; lack of motive to fabricate. Idaho v. Wright, 497 U.S. 805, 821-822, 110 S.Ct. 3139, 111 L.Ed 2d 638 (1990). The jury in the petitioners case were asked to consider the victims testimony made in three forensic interview video's recorded almost a year prior to trial. Without live testimony the jurors miss the opportunity to evaluate the victim based on the factors above. The government knew the victim lacked the memory to recall events and the offender of his abuse. (Appendix [redacted] 23)

"If one were to read [the Confrontation Clause] language literally, it would require, on objection, the exclusion of any statement made by a declarant not present at trial" and would "abrogate virtually every hearsay exception." Ohio v. Roberts, 448 U.S. 56, 63, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980). The Supreme Court, however, "has rejected such an extreme interpretation of the Clause." United States v. Ismoila, 100 F.3d 380 (5th. Cir. 1996). If the limit imposed violate the right of confrontation, we must "consider whether the records shows 'beyond reasonable doubt that the error complained of did not contribute to the verdict obtained'" Delaware v. Van Arsdall, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986).

The government in petitioners case understood 'by law' the could not play the minor victims forensic interview video's unless the minor testified. (Appendix F, App. 38, pp 402). The petitioner fully exercized his Six Amendment right for him to cross-examine the witness even after correcting the record regarding misinterperting the governments stipulation. (Appendix F, App 40, pp. 411-412). Petitioner signed stipulation based on Stanby counsel.

Stipulations: Ability to waive Constitutional right of Confrontation does not ordinary carry with it right to insist upon opposite of that right, and although accused would waive his right to be confronted by a witness against him, he could not thereby compel prosecution to try case by stipulation. Stringer v. United States, 380 U.S. 24, 85 S.Ct. 783, 13 L.Ed. 2d 630 (1965). Counsel in criminal cases may waive his clients Six Amendment right to confrontation by stipulating to admission evidence, so long as defendant does not dissent from his attorney's decision, and so long as it can be said that attorneys decision was legitimate trial tactic or apart of prudent trial strategy. United States v. Stephens, 609 F.2d 230 (5th. Cir. 1980).

In Long v. State, 742 S.W.2d 302 (Tex. Crim. App. 1987), the court had held that a conviction could not stand when the child complainant had not testified in the State's case in chief. The minor in this case was present at trial, but while the petitioner was not present the court shared its thoughts about the consequences they would impose if the petitioner exercise his Six Amendment right to cross-examine the minor. (Appendix F, App 38, pp. 404:14-24). THE COURT: "... It's a choice between whether he [Petitioner] does the cross-examination or Mr. Bramer does the cross-examination or whether he has a suggestion for another way he would like to handle cross-examination... He just has options available to him..." MS. BARNES: "But Your Honor wouldn't be telling him you would be viewing him any different no matter which option he selects in terms of sentencing later down that road? You would not hold that against him if he picked one option or another." THE COURT: "Yes, I would." MS. BARNES: "You would. My one concern about that, and as a human being, I completely understand why you would feel that way..."

In Lowery, he was assured of his right to cross-examine the complaining witness, the District Court quoted from pre-Craig, Supreme Court case of California v. Green, 399 U.S. 149, 157, 90 S.Ct. 1930, 26 L.Ed 2d 489 (1970) as support for the proposition that "'the Confrontation is not violated by admitting declarants out-of-court statements, as long as the declarant is testifying as a witness and is subject to a full and effective cross-examination.'" The petitioner exercised his Sixth Amendment right when asked by the court if he wish to cross-examine the minor and if petitioner would conduct the cross-examination. (Appendix F, App 40, pp. 412:16-25, to pp. 413:1-2) (Trial Transcript Vol. 3, Dec 7, 2017) THE COURT: "... You've indicated that you want to cross-examine the victim; is that correct?" DEFENDANT GARRETT: "Yes, ma'am Your Honor." THE COURT: "And so I guess I had a two-prong question. Number one, I was trying to understand -- you have a confrontation clause right to confront any witness the United States call and to confront the victim. So is that the right you want to exercise? Do you want the victim to testify and do you want to have the right to cross-examine the witnesses?" DEFENDANT GARRETT: "Yes, I do, Your Honor."

The State would and the district court did in Long v. State, impermissibly impose on the defendant the Catch-22, so styled by the court of either calling the child-complainant to the stand at the "risk [of] inflaming the jury against [himself]" or avoiding the risk of thus inflaming the jury at the cost of waiving his Constitutional right to confront and cross-examine the key witness against him. As recognized by the court in Lowery, this "no win" burden "unfairly requires the defendant to choose between his right to cross-examine a complaining witness and his right to rely on the State's burden of proof in a criminal case." Such a result is irreconcilable with the alternative confrontational protections blessed by the Supreme Court in Craig.

The court in petitioners case raises the issue of the 'prejudicial effect' on the jurors, based on the evidence presented and if he chooses to cross-examine the victim. (Appendix F, App. 41, pp. 414: 1-10) (Trial Transcript Vol. 3, Dec 7, 2017). THE COURT: "The other issue is simply the prejudicial effect. If the jurors based on the evidence they've heard so far, are leaning toward feeling that you may be guilty and if at the conclusion of all the evidence they have that leaning, the fact that you cross-examine the victim is probably going to be something that really has an impact on the jurors. That's human nature. So that's something I wanted you to be aware of. If you would like the time to talk to Mr. Bramer and make sure you're confidant in your decision about handling the cross-examination of the victim, I'm happy to give you that time."

The Supreme Court has made it clear that federal courts reviewing habeas corpus petitions are to reverse criminal convictions only if the constitutional error substantially and injuriously affected or influenced the verdict. Brecht v. Abrahamson, __ U.S. __, __, 113 S. Ct. 1710, 1714, 123 L. Ed. 2d 353 (1993); See also Lowery v. Collins, 996 F.2d 770 (5th. Cir. 1993). The petitioner, after a brief recess in open court outside the presence of jurors returns from meeting with counsel Bramer whom instructed him as the court requested him during the meeting outside the petitioners presence. (Appendix F, App. 39, pp. 409: 14-21). The fear of the prejudicial effect on the jurors had made petitioner chilled his Sixth Amendment rights. (Appendix F, App. 41, pp. 416: 3-25) (Trial Transcript Vol. 3, Dec 7, 2017). THE COURT: "What are your thoughts?"; DEFENDANT GARRETT: "I'm going to waive that right..."

In United States v. Rodriguez-Martinez, 480 F.3d 303 (5th. Cir. 2007) to determine whether the Confrontation Clause was harmless, "the correct inquiry is whether, assuming that the damage potential of cross-examining were fully realized, a reviewing court might nontheless say the error was harmless beyond a reasonable doubt." We consider "the importance of the witness testimony in the prosecutors case, whether testimony was cumulative, the presence or absence of evidence corroborating or cross-examination otherwise permitted, and, of corse, the overall stregnth of the prosecutions case." Rodriguez-Martinez, 480 F.3d @ 380. The victims video testimony was the 'crux' of the prosecutor's closing arguments. Counsel in Appellate court failed to raise the issues regarding violating the Confrontation Clause.

Effective Appellate advocacy involves winowing out weaker issues and focusing on one or a few issues. Jones v. Barnes, 463 U.S. 745, 751-752 (1983); United States v. Brown, 528 F.3d 1020, 1033 (8th. Cir. 2008) and pregudice must be shown, Brown, Id., 528 F.3d @ 1033, yet if counsel abandons the adversarial process, prejudice is automatically presumed. United States, v. Cronic, 466 U.S. 648, 659-660 (2008) presumption of pregudice exist where 'the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial"; United States v. Cronic, 466 U.S. 648 n. 42 (1984) "District court had jurisdiction to entertain the motion and either deny the motion on its merits, or certify it intentions to grant the motion to the courts of Appeals, which could then entertain a motion to remand the case."

In Shaw v. Collins, the State Case was almost completely built upon Kinshasa's video taped statements. "Take away the videtape, and the State's case falls like a house of cards." All that remains is hearsay which could not have supported a finding that Shaw was guilty beyond a reasonable doubt. The Lowery court implied that the violations in their instant case was more prejudicial than were either the Long or Coy v. Iowa, 487 U.S. 1012, __, 108 S. Ct. 2798, 101 L. Ed 2d 857 (1988), violations because in Lowery the State did not call the child-complainant to testify at all, as such with petitioners case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Harry Dean Garrett Jr

Date: November 19, 2020