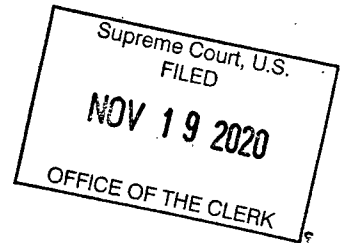


21-5328

ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



JAMES ROBERT DOWTY — PETITIONER, *Pro se*
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

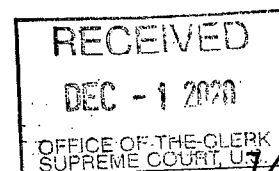
PETITION FOR WRIT OF CERTIORARI

James Robert Dowty #16737-273
(Your Name)

P.O. Box 9
(Address)

Mendota, CA 93640
(City, State, Zip Code)

(Phone Number)



7/27/2021

QUESTION(S) PRESENTED

Whether the District Court Violated the Fourteenth Amendment right to due process of law when the District Court denied a motion for the jury to view the crime scene based on the trial judges own personal Bias beliefs of what the crime scene may or may not hold.

Whether the District Court Violated the Fourteenth Amendment right to equal protection of the laws when the District Court allowed the three Key government witnesses to meet, one witness who was in custody at the time, before trial in light of a sequestration order.

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

There are no known related cases.

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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 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☒ is unpublished.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☒ is unpublished.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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 6, 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: September 29, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 Fourteenth Amendment of the United States Constitution provides:

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 the laws.

18 U.S.C. § 1111 second-degree murder.

18 U.S.C. § 924 (c) (1) (A) (iii) discharging a firearm during the commission of a crime of violence.

STATEMENT OF THE CASE

Petitioner James Dowty was indicted by a Federal grand jury on November 16, 2016 charged with second Degree murder, in violation of 18 U.S.C. § 1111(a) and 1157, and Discharge of a Firearm during the Commission of a Crime of Violence, in violation of 18 U.S.C. § 924(C) (1) (A)(iii). The matter was tried before a jury in May 2017. The jury convicted Petitioner on both counts.

Petitioner filed post-trial motions for judgement of acquittal and for a new trial. The district court denied Petitioner's motions on July 13, 2018. Petitioner was sentenced to 360 months of imprisonment on ~~Dec~~ December 17, 2018. Petitioner filed a timely notice of appeal on December 28, 2018.

On July 20, 2016 at roughly 6:30 A.M. Petitioner James Dowty was arrested at his home, found sleeping in his bed with his two daughters dressed in red sweatpants. The arrest stems from a shooting and killing of a thirteen-year-old girl named T.L. who was walking with her three teenage friends A.D., A.B.C., and Donovan Youngman in Pine Ridge, South Dakota shortly before 4 a.m. the morning of July 20, 2016.

A little before 4 a.m. on July 20, 2016, 13 year old T.L. was shot and killed while she was walking down the street in Pine Ridge, South Dakota, with three friends, Donovan Youngman, age 19, A.B.C. age 17, and A.D. age 15. T.L., along with the three friends had been out partying, smoking marijuana and consuming alcohol obtained from a bootlegger's when the occurrence giving

rise to the charges against petitioner happen.

As the group came across a parking lot out into the street, they noticed another individual out in front of them further down the street. Suddenly, without warning, Youngman, AAL and A.O. testified this individual turned, fired a gun at them, and then ran away. The shot struck T.C. in the abdomen. Pathologist Dr Donald Habbe testified the entry site, a little to the left of T.C.'s belly button, measured about 9mm in size. T.C. subsequently died due to bleeding from the abdominal portion of the aorta artery struck by the bullet as it passed through T.C. Neither the bullet nor the gun from which it was fired was ever found.

Based on the blood stains on the road and a 9mm expended shell casing discovered further down the road from the blood, the government concluded the shooter was 75 yards from T.C. Youngman, AAL and A.O. when the single, fatal shot was fired. Though it was still dark between the hours of 3-4 AM in the morning, the three teenagers identified petitioner as the shooter. They each, however, have a varying description of what the shooter was wearing.

Prior to the commencing of trial the district court allowed the three key government witnesses Youngman, AAL, and A.O. to meet in person in light of an objection by trial defense as witness AAL was in police custody on unrelated charges and under a sequestration order.

A.O. testified she recognized petitioner as the shooter because of the way he was walking and when he turned around, she said she saw his face. A.O. said he had on shorts and his back pack. She said he often wore a backpack but not all the time.

Despite this testimony, R.O. was at first not able to identify Petitioner in the courtroom. Only after the Prosecutor talked to R.O. about how people change and encouraged her to look at Petitioner again did R.O. hesitantly identify Petitioner exclaiming "is that him?" The court noted R.O. had just testified she was related to Petitioner, saw him around Pine Ridge, and it was less than a year after the incident. The court commented "he couldn't have changed that much." R.O. said Petitioner turned around, looked at them, and then quickly turned back around and fired a shot at them.

Donovan Youngman testified unequivocally the shooter wore a hat and black hooded sweatshirt with the hood pulled up over the hat and red or red and white shoes. At the time of the shooting however, Youngman agreed he told BRA special Agent Bennett he was not sure what the shooter was wearing, when talking to law enforcement at the scene and soon thereafter Youngman did not identify Petitioner as the shooter. He referred to him as "that guy". In September 2016, two months after the shooting, Youngman told FBI special Agent Thatcher he could not see the shooter's face. He said the shooter looked like a little kid when he was walking. Youngman said he only saw the shooter's face the moment he turned around to fire and the shooter then walked away with his back toward Youngman.

By the time of trial however, almost a year later, Youngman was now certain the shooter was Petitioner even though he said he had not seen Petitioner before but now said he knew whom he was from around town. Youngman was certain as well the shooter wore a black hoodie, backpack, black sweater, and red and white shoes,

but curiously testified he did not recognize the shooter when he fired, only what he was wearing because it was dark.

Walking down the street with law enforcement officers after the shooting, witness Youngman found a single shell casing laying in the road by an orange sign. Youngman testified that this was where the shooter had been. The shell casing was later determined to be a 9mm caliber.

Witness A.B.C., age 17, testified he "seen a guy with a black sweater and his hood up, backpack... red shoes and trunks," who A.B.C. testified was Petitioner. A.B.C. later added the guy he claimed was Petitioner also wore a hat and his trunks were light blue.

Under cross-examination, A.B.C. admitted he never told Agent Bennett the shooter had on a black hoodie. A.B.C. agreed he had actually told Agent Bennett at the scene the shooter had on a white T-shirt, black hat, low top Nike shoes, blue jeanshorts and white ankle socks. A.B.C. admitted he had never told either Agent Bennett or Agent Thatcher the shooter wore a black hoodie.

A.B.C. said he told Agent Bennett he recognized the shooter because he had on a black backpack. A.B.C. later told Agent Thatcher in September 2016, Youngman first mentioned Petitioner's name. A.B.C. told Agent Thatcher he did not really know Petitioner and had only seen him around one time before.

A.B.C. on his Facebook page, in response to his friends asking

what happen, A.R.L. posted "I don't really know, but I have a name: Jimmy Donly." After T.C. passed away, A.R.L., in response to inquiries about who had shot T.C., A.R.L. posted on his Facebook page IDK - "I don't know?"

A.R.L. testified at the time of the shooting the sun was getting ready to come up but it was still dark out. He said in his testimony he was relying on his memory but was barely able to remember what happened.

Trial defense filed a motion for the jury to view the crime scene, which was denied by the district court. Neither the bullet that killed T.C. and passed out of her body nor the gun from which it was fired have ever been found. The shell casing found later down the street by witness Youngman and T.C.'s shooting are linked, if at all, only by the fact the casing and gunshot entry wound in T.C.'s body were both .9mm - a common caliber.

On these statements, a jury convicted Petitioner of second degree murder and discharge of a Firearm during the commission of a crime of violence. The district court sentenced Petitioner, as the prosecution requested, to 240 months on Count I, ~~second~~ second-degree murder, and a consecutive 120 months, on Count II, discharge of a Firearm during a crime of violence, for a total sentence of 360 months - 30 years. On each of the two counts of conviction, the court also ordered Petitioner to serve concurrent 5 years supervised release.

REASONS FOR GRANTING THE PETITION

Petitioner respectfully submits this Petition for Writ of Certiorari because of the exceptional importance when an individual's Fourteenth Amendment rights are impinged during his trial in his claim of innocence. The decision of the Court of Appeals for the Eighth Circuit is inconsistent with United States v. Comacho, 555 F.3d 695, 702 (8th Cir 2009); United States v. Olano, 507 U.S. 725, 732 (1993); United States v. Lampes, 306 F.3d 577, 580 (8th Cir 2002). Accordingly, Petitioner argues that there is a compelling reason for the United States Supreme Court to consider this case to help set a precedent for other courts so that they not conduct directly contrary to case law and the Fourteenth Amendment.

The District Court found, and the Eighth Circuit affirmed that a District court does not abuse its discretion by denying a viewing request when it would be "time-consuming and cumulative of photographic evidence and the testimony presented at trial." United States v. Scroggins, 648 F.3d 873, 875 (8th Cir 2011) (cleaned up). Further more the Eighth Circuit states "more over, there was no assurance the jury would have encountered a sufficiently similar scene, and the district court was concerned that such a viewing might also "bring in information that is extraneous to any issue" in the case."

Petitioner adamantly disagrees with the court's decision.

As the government's whole case is based on the testimony of these three young witnesses, based on seeing a suspect 75 yards away turn around fire a gun and run off between the hours of 3-4 A.M. in the morning. To present a fair defense to petitioner trial, he asked that the jury be allowed to view the crime scene as a person can not justly show a distance of 75 yards on a one dimensional photo or video. This is very important for a jury to grasp when the weight of one's liberty is at hand, the trial court has inherent power to permit a jury to view places or objects outside the courtroom. United States v. Passos-Paternina, 918 F.2d 979, 986 (1st Cir. 1990). Petitioner recognizes the decision to allow a jury to view a crime scene is one normally within the trial court's wide range of discretion. United States v. Triplett, 195 F.3d 990, 998 (8th Cir. 1999).

The District Court considered the motion for the jury to view the crime scene in a cursory manner at the April 21, 2017, pretrial conference. In which the trial judge made the following personal bias statement which in turn violated Petitioner's right to due process of law. In the Pre Conference transcript 30:2-11 the following statement was made:

"There was also a defense motion to have the jury go to the scene at 5:00 in the morning in Pine Ridge. Now, having been in Pine Ridge at 5:00 in the morning in that part of town for wake services, Billy Mills, and so on, I am going

to deny that motion. We don't need to argue that one, ~~for~~ government counsel. I have no idea what a group of jurors would see at 5:00 in the morning on Main Street in Pine Ridge on any given night, and it could bring in information that is extraneous to any issue in the case. Nice try, but we are not doing that."

The Court reviews a district court's denial of a motion for the jury to view the alleged crime scene for an abuse of discretion. United States v. Scroggins, 565 U.S. 1099 (2011). An abuse of discretion occurs when a relevant factor that should have been given significant weight is not considered, when an irrelevant or improper factor is considered and given significant weight, or when all proper and no improper factors are considered, but the court in weighing the factors commits a clear error of judgment. United States v. Lampo, 306 F.3d 577, 580 (8th Cir. 2002) (cleaned up).

Petitioner vigorously contested the eyewitnesses identification of him at trial. Petitioner sought to have the jurors see for themselves the inherent contradictions and unreliability of the witnesses stories. Petitioner wanted the jury to judge for themselves the likely degree of accuracy of the eyewitnesses stories and their ability to accurately observe details in those conditions. Yet the trial judge by making a judgement on his own personal bias beliefs denied petitioner's motion for the jury to view

the crime scene saying "had no idea what the jurors would see at that time in the morning" that is the whole point of the motion to view the scene. This in turn violated petitioner's right to due process under the Fourteenth Amendment as petitioner was not able to present a complete defense. Furthermore petitioner states his Fourteenth Amendment was violated as to equal protection of the laws when the District Court allowed the three key witnesses to meet before trial in light of a sequestration order and one witness being in police custody on unrelated charges. "A district court's rulings regarding sequestration orders for abuse of discretion, granting wide latitude to the court and requiring the moving party to show ~~prejudice~~ prejudice." United States v. Camacho, 555 F.3d 695, 702 (8th Cir. 2009). To prevail on plain error, a defendant asserting error must prove (1) there was error; (2) the error was plain; and (3) the error affected the substantial rights of the defendant. United States v. Olano, 507 U.S. 725, 732 (1993). During the meeting of the three key witnesses the witnesses were told to not talk about the case, yet during the meeting witnesses Youngman told the key witness who was in custody A.R.C. "Don't worry, we got this Bro". At which time the meeting was broke up. All this occurred moments before the commencement of trial. The court opined "it is entirely unclear what affect they had on the trial testimony." That, of course, is the very point. The court's sequestration order was plainly violated. This violation allowed the prosecution's three

Key witnesses to convey limited signals to one another about their trial concerns. Witness Youngman's statement "Don't worry" represents a affirmation followed by the other ~~have~~ half of his statement "we got this, Bro" is an agreement between the men.

This greatly affected petitioners Fourteenth Amendment of equal protection of the laws. By letting these three witnesses meet before trial they were able to stick to their script in a sense and go on to have mirrored testimony of each other. This affected petitioners substantial rights to a fair trial and violated petitioner's Fourteenth Amendment rights.

CONCLUSION

Petitioner states that there is a compelling reason for the United States Supreme Court to consider this case because it is of exceptional importance when an individual's rights under the Fourteenth Amendment of the United States Constitution ~~are~~ are impinged. Petitioner was denied due process when the district court denied his motion for the jury to view the scene of the crime well making it personal and Bias. Petitioner's rights to equal protection of the law was violated when the District court allowed the three Key witnesses to meet prior to trial in light of a segregation order and the fact that one witness was in police custody at that time.

For all of the foregoing reasons, Petitioner respectfully

submits that this Petition for Writ of Certiorari should be Granted.

Respectfully submitted,

By James Robert Dowty

JAMES ROBERT DOWTY, Pro se

#16737-273

Federal Corrections

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