

NOV 23 2021

OFFICE OF THE CLERK

No. _____

21-6638

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL L GIBBONS PETITIONER
(Your Name)

vs.

STATE OF MISSOURI RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MISSOURI STATE SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL L GIBBONS 1844872
(Your Name)

WESTERN MISSOURI CORRECTIONAL CENTER
609 E PENCE ROAD
(Address)

CAMERON, MO 64429
(City, State, Zip Code)

(816) 632-2562 ASK FOR 2 HOUSE
(Phone Number)

AND THEY WILL
CALL BACK ME TO
THE PHONE

ORIGINAL

QUESTION(S) PRESENTED

Given

- 1) Inconsistent statements by the alledged victim
- 2) At least one statement by the alledged victim that is not physically possible
- 3) The 2 main prosecution witnesses contradictory testimony ^{ABOUT} an alledged incident
- 4) The 2 main prosecution witnesses agreeing there is no physical evidence
- 5) A trial judge missed several statements by a potential juror showing they would not be impartial forcing the defense to use a strike to remove them or be assured of at least one guilty vote regardless of evidence or testimony

PAGE 61 AND 63

Is the State of Missouri's Courts rulings and law repugnant enough to this Honorable Court to

- 1) Reestablish the collaboration rule in no physical evidence cases, or at least in cases where the prosecution witnesses contradict each other and no physical evidence exists
- 2) Declare unconstitutional a law that conflicts with the 6th Amendment to the U.S. Constitution

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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

N/A

Table of Authorities Cited

Cases.

Page

Donald J Trump for President, Inc v Sec'y Pennsylvania 630 Fed

Appx. 327

United States v Elonge 2021 U.S. Dist. Lexis 60541

Warmington v Bd. of Regents of The Univ. of Minn. 998 F.3d 789

Perry v St. Francis County 2020 U.S. Dist. Lexis 212552

Philpott v Evenflo Co. 2021 U.S. Dist. Lexis 3988

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This is not even close to a complete list of cases that use the phrase

"must be supported by factual allegations" but the

Petitioner knows this Honorable Court gets the point he is making.

(asking for reestablishment of collaboration rule in no physical evidence

cases which this Missouri case abolished. It never made it to this

Honorable Court or any other Federal one. Incorrect decision of

the Honorable Missouri Western District appeals court refers to it on their

page 47 of Appendix A). . Missouri v Porter, 439 S.W.

3d

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Statutes and Rules

(asking for this to be declared in conflict with the 6th Amendment)

RSMo 494.2. The qualifications of a juror on the panel from

which preemptive challenges by the defense shall not constitute a

ground for a motion for a new trial or the reversal of a conviction or

sentence unless such juror served upon the jury at the defendant's trial

and participated in the verdict against the defendant.

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Other

This Honorable Court's sense of Justice

Long held concept of innocent until proven guilty.

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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 _____ 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 E 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 WESTERN DISTRICT APPeALS court appears at Appendix A to the petition and is

☒ reported at 6/29/2021; 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 _____.

☐ 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 8/31/2021.
A copy of that decision appears at Appendix E.

☒ A timely petition for rehearing was thereafter denied on the following date: 7/27/2021, 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. § 1257(a).

Constitutional and Statutory Provisions Involved

United States Consitution Article 3 clause 2

This Constitution, and the Laws of the United States which shall be made in Persurance thereof, and all Treaties made , or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Constitution Amendment 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have previously accertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and. to have the assistance of counsel for his defense.

MO Statue RSMo 494.480.2

"the qualifications of a juror on the panel from which preemptory challenges by the defense are made shall not consitute a ground for granting of a motion for new trial or the reversal of a conviction or sentence unless such juror served upon the jury at the defendant's trial and participated in the verdict rendered against the defendant"

United States Constitution Amendment 14 section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens 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.

Statement of the Case

On May 17, 2017 the alledged victim made some remarks on social media that she did not want to live anymore. One of her friends called the police to do a wellness check on her. When the police arrived, the defendant welcomed them in. They took alledged victim outside where she said she didn't want "it" to happen again. After she was taken to a hospital she claimed the defendant was sexually abusing her. The defendant was forced to move out that night.

During the resulting investigation, a search warrant was executed on the house the defendant was living in prior to this incident. Nothing even remotely incriminating was found (such as pornography or sex toys) or the prosecution would have presented it at trial. Something else that should be noted is that no rape kit was done, or the prosecution would have presented it as evidence. They did do a STI test, but as the results would have been favorable to the defense, (negative for everything they tested for) the prosecution wisely decided not to use it as evidence.

The alleged victim says other touches occurred as well but, as the Honorable 3rd District Court told President Trump, fails to offer proof, probably because nothing inappropriate happened.. Alledged victim told Tammy Kemp that A.G. knew about 5 other times (which would have been her reporting it to AG.) (trial volume 2 page 396 lines 15-18) but the correct number was 10 times (trial volume 2 page 392 lines 8 -10). Later, alledged victim says the touching once or twice a week (trial volume 2 page 292 lines 8-10). So the number of times of alleged touching mutates from 5 to 10 to 200 to 400. It's like the song lyric "tall tales grow taller on down the line.".

Something else to mention is the alledged victim accidentally called 911 at one point before her false allegations in 2017. The defendant was not home, so if any abuse was really occurring, that would have been the perfect time to report it. (trial volume 2 page 315 lines 1-11).

Suppsedly the defendant threatened alledged victim's younger siblings, but when asked about any threats during the forsenic interview, she denied any threats were made and mentioned the alledged threats for the first time at trial. If the Missouri Attorney General is honest and honorable, they will verify that.

Also during the resulting investigation, a prior incident was mentioned
~~by~~ the alledged victim's mother (herafter referred to as A.G.) was
involved in. On that night A.G. woke up and saw the defendant
standing next to the alledged victim to try to comfort her after a
nightmare. It should be notes that the alledged victim did have
nightmares from time to time (trial volume 2 page 369 lines 21
to trial volume 2 page 370 line 2) and during this incident. (trial
volume 2 page 327 lines 10 to 16). The defendant was not touching
the alledged victim nor even attempting to do so. (trial volume 2 page
369 lines 2 - 8). While the alledged victim may have buttoned up her top
after the defendant left the room, it should be noted that a blanket was
covering the alledged victim (trial volume 2 page 345 lines 22-25) which
would have prevented the defendant from knowing if the top was
unbuttoned or not. under the blanket. Also, the alledged victim says the
defendant put his hands down her pants during the incident (trial page
295, line 13 - 24) but that would be physically impossible with the blanket
covering her. Also of note is during the same section of the trial, she
contadicts fellow prosoctuion witness A.G.'s statement about her
seeing defendant touching alleged victim. Prosecution witness A.G.
even says there is no proof anything even happened. (trial page 347
line 1.3), Nevertheless, the defendant was forced to move out for 3 days.
This is the one and only incident where the prosecution offered enough
details for the defendant to mount a defense, but it does show at least 1 lie
by the alledged victim, and the 2 main prosecution witnesses contradictory
testimony.

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Reasons for Granting the Petition

The reasons for granting the petition is that the important concept of innocent until proven guilty and the 6th Amendment to the the U.S. Constitution is being violated by the State of Missouri and those valid issues are repugnant to this Honorable Court's sense of Justice.

The concept of innocent until proven guilty for criminal cases has been long established. When the Honorable Missouri State Supreme Court incorrectly decided Missouri v Porter, it abolished both the collaboration rule and the need for physical evidence to convict someone of any (including very serious) crimes. Unfortunately, that set the stage for the lower state courts to continue this miscarriage of justice. One of the things the Petitioner prays that this Honorable Court will do is to require proof of guilt in all criminal cases. As it is now in the State of Missouri, all that is required to convict someone of a crime that could cause them to always be under state supervision for life, be imprisoned for life, or, worse yet, be executed, is for one person to wake up one day and falsely accuse someone else of a crime as no physical evidence of said crime would exist and no collaboration witnesses would be required. As this Honorable Court is aware, the 3rd U.S. District Court correctly told President Trump in Donald J Trump for President, Inc. V Sec'y

Pennsylvania 630 Fed Appx. 327 that he needed proof of his voter allegation fraud (which would have resulted in felony charges being filed). The same standard was applied when the Honorable 7th U.S. District Court correctly ruled in United States v Elongé 2021 U.S. Dist Lexis 60541 when it wrote (quoting the Trump case) "Charges require allegations and then proof.". This same standard should also be, in all fairness, applied to someone who is facing a felony charge, if not all criminal cases involving prison time. If President Trump had

collaboration witnesses the 3rd district would not have dismissed his case. If he had physical evidence they would not have dismissed his case. Instead, he was correctly told he needed proof of his claims.

As this Honorable Court is no doubt aware, there are many (over 700 the last time the Petitioner counted!) cases that use the phrase "must be supported by factual allegations" after the Trump case was settled.

In order to prevent potentially innocent people from being wrongfully convicted, the Petitioner prays that this Honorable Court reestablish the witness collaboration rule in cases that there is no physical evidence. The defendant was wrongly convicted of a crime that he did not commit because of lack of a collaboration rule, and that means others were before and still others will be in the future until the collaboration rule is established again for the State of Missouri.

Additionally, the Petitioner prays that this Honorable Court declare
MO Statute RSMo 494.2 (The qualifications of a juror on the panel from

which preemptive challenges by the defense shall not constitute a ground
for a motion for new trial or the reversal of a conviction or sentence unless
such juror served upon the jury at the defendant's trial and participated in the
verdict against the defendant) to be in conflict with the 6th Amendment to
the U.S. Constitution (conflicting part "by an impartial jury") as it allows
jurors who are not impartial to serve if the trial judge missed statements
such as a spouse and mother-in-law were both victims of sexual assault,
adults tend to downplay children's statements concerning sexual abuse,
lawyers put words into mouths of minors involved in court proceedings,
and (most disturbingly!) it would be difficult for them to be fair and impartial
in a case where the defendant is accused of sexual abuse. All of these were
mentioned and dismissed on page 26 of the Honorable Missouri

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Western District Court's direct appeal decision and also ignored by
the Honorable Missouri State Supreme Court when it refused to hear
this case. This forces the defendant to either use a preemptive strike
to remove an unqualified juror (so he has 1 less than the prosecution)
or have a juror who is unqualified and would likely require proof of
innocence to vote not guilty to serve regardless of any lack of proof of guilt
or jury instructions. The way the statute reads, if the defendant lets
the unqualified juror sit on the panel, a guilty verdict is rendered, and
the defendant appeals, it would be brought up that if the defendant truly
felt the juror was not impartial, he could have used a strike to remove
them. That would be a valid point as the statute allows appeals court
judges to hold it against the defendant. For these valid reasons, RSMo
494.2 should be repugnant to this Honorable Court, and be declared in
conflict with the 6th Amendment to the U.S. Constitution.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael C. Hoffman

Date: 11/23/2021