

OCT 22 2021

OFFICE OF THE CLERK

No. _____

21-7048

IN THE

SUPREME COURT OF THE UNITED STATES

Christopher Gerken — PETITIONER
(Your Name)

VS.

Appellate Court of Illinois, Second District — RESPONDENT(S)
ON PETITION FOR A WRIT OF CERTIORARI TO

Appellate Court of Illinois, Second District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Gerken
(Your Name)

P.O. Box 1000
(Address)

Menard, Illinois, 62259
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- Was Christopher Gerken's constitutional right to a fair trial violated when a juror read a newspaper article containing information that was barred from being heard in trial via a motion in ~~limine~~ Limine.
- Was Christopher Gerken's right to a fair trial violated when a prosecution witness, a police officer, after emotional testimony while leaving the witness stand and in full view of the jury walked up to the victim's family and began to hug and cry with each member of the family.
- Did the Circuit Court abuse its discretion in denying defense's motion for a mistrial after the prosecution's witness was observed hugging and crying with the victim's family.
- Did the Appellate court err in not remanding Christopher Gerken back to the Circuit Court for a new trial.

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

Illinois Appellate Court's Decision

APPENDIX B

Illinois Supreme Court Denying Review

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

People v. Keegan, 52 Ill. 2d 147 (1971)
People v. Hryciuk, 5 Ill. 2d 176 (1954)

STATUTES AND RULES

OTHER

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 A to the petition and is

- ☐ reported at 2021 IL App (2d) 170839-U; 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 _____.

☐ 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 January 20, 2021.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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

United States Constitution, 6th Amendment

STATEMENT OF THE CASE

On October 7, 2015 Defendant was charged with First Degree Murder in the October 6, 2015 shooting death of Matthew Clark. On November 17, 2015 defendant was indicted on four counts of First Degree Murder, Aggravated discharge of a firearm, and two counts of unlawful possession of a weapon by a felon.

On June 12, 2017 the defense Filed a motion in limine to exclude the use of prior convictions to impeach the defendants credibility. The trial court ruled on June 23, 2017 that the defendants conviction for concealment of a homicide was admissible for purposes of impeachment but his conviction for aggravated unlawful use of a weapon by a felon was inadmissible because it could create a biased jury.

On August 4, 2017 The Daily Chronicle published an article about the upcoming trial. In the article it talked about details of the crime, the defense's plan to claim self defense, and talked

extensively about the pre trial rulings made in the June 23, 2017 motion in limine.

The defendants jury trial began on August 7, 2017. When it came to light that prospective jurors had been talking about and some even reading the Daily Chronicle article that was published over the weekend before the start of the trial the defense filed a motion for mistrial.

After both the defense and prosecution agreed to reexamine all the already selected jurors the motion for a mistrial was denied.

Of the 8 previously selected jurors 7 had little or no knowledge of the case. Juror 5 did state that she had read the article over the weekend. Defense counsel opted to keep juror #5 on the jury and continue jury selection.

Following opening statements the prosecution called to the stand DeKalb Police Officer Jeff Weese, who testified his events of the response to the 911 call on October 6, 2015.

After responding to the scene of the shooting officer Weese rode with the victim to the

hospital and testified to the moments leading up to Clark's death. Throughout Officer Weese's testimony he was crying on the stand, at one point causing the trial court to pause for him to collect himself. When his testimony concluded Officer Weese after leaving the witness box on his way out of the courtroom walked up to the family of the victim and in full view of the jury began to hug and cry with each member of the victim's family one by one.

Seeing what was happening the state requested a recess. During the recess the defense filed a motion for a mistrial due to the actions ~~of~~ of officer ~~and~~ Weese after he left the witness box. The trial court denied the motion for mistrial, in stating "I don't think it rises to whether or not the defendant has been prejudiced so much that because of a display of human emotion at seeing someone pass away would be so prejudicial as to warrant a mistrial."

The jury was admonished that sympathy should not influence them.

After closing arguments the jury was instructed on the charges in the indictment, as well as Second Degree Murder and Self Defense.

The defendant was found Guilty of First Degree Murder and Aggravated Discharge of a Firearm.

On September 11, 2017 Defendant filed a motion for a new trial arguing the denial of the mistrial motions. On October 10, 2017 the motion for a new trial was denied and the defendant was sentenced to 60 years imprisonment. Notice of Appeal was filed the same day.

On January 20, 2021 the Illinois Appellate Court, Second District Affirmed the conviction and sentence of the defendant.

On May 26, 2021 the ILLINOIS SUPREME COURT Denied Defendants Petition For Leave To Appeal. The Mandate of the Supreme Court will issue to the Appellate Court on 6/30/2021

REASONS FOR GRANTING THE PETITION

Christopher Gerken did not receive a fair trial. The trial court specifically granted a motion in Limine by defense counsel to bar the jury from hearing about previous convictions in the defendant's background on the grounds it could create a biased jury. For there to be an empaneled juror to have read the newspaper article ~~containing~~ containing this pretrial ruling and information denied Christopher Gerken his right to a fair trial.

Secondly, for a police officer for the prosecution to testify and be allowed to stop on his way out of the courtroom following his emotionally charged testimony that already caused a disruption in the proceedings and hug and cry with each member of the victim's family in front of the jury in open court is not fair to the accused. The defense's mistrial motion should have been granted.

No person regardless what they're accused of should have to sit in a trial where a crying police officer can hug and cry with the victim's family in front of the jury and then it be said that they received a fair trial, especially when the evidence was closely balanced.

Christopher Gerken prays that this court grant his petition for Writ of Certiorari and instruct on further proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher Gerken

Date: October 21, 2021