

No. 22-_____

**IN THE
SUPREME COURT OF THE UNITED STATES**

DANIEL JOSEPH DAWSON, *Petitioner*,

v.

JEREMY LARSON, WARDEN, *Respondent*.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- (1) Whether a circuit court can deny a certificate of appealability when the Applicant has made a substantial showing of the denial of important constitutional rights, including the right to effective counsel.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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OPINIONS BELOW

Daniel Dawson respectfully prays that a writ of certiorari issue to review the judgment of the Eighth Circuit Court of Appeals in Case No. 21-2251, entered on October 8, 2021, and made final with the denial of rehearing and rehearing en banc on November 19, 2021. The final judgment denying Dawson's application for a certificate of appealability appears in the Appendix to this petition. Dawson's request for a certificate of appealability followed the final judgment denying his application for habeas corpus relief pursuant to 28 U.S.C. § 2254, which was filed by the United States District Court in the Southern District of Iowa on May 5, 2021, *Daniel Dawson v. Jeremy Larson*, case number 4:20-cv-00041. State court postconviction proceedings were *Daniel Dawson v. State of Iowa*, PCCE 109930 and Iowa Supreme Court No. 17-1679. State court criminal proceedings were *State of Iowa v. Daniel Dawson*, FECR281322 and Iowa Supreme Court No. 06-390.

JURISDICTION

The date on which the United States Court of Appeals for the Eighth Circuit entered judgment was October 8, 2021. A petition for rehearing en banc and petition for rehearing by the panel was denied on November 19, 2021.

The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. section 2253(c)(1): Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court

28 U.S.C. section 2253(c)(2): A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

In 2005, Dawson was charged with first degree murder, willful injury, and domestic abuse assault third offense, after Dawson called 911 to report his girlfriend was injured and possibly dead or dying in their home. (Doc. 37, p. 1). At trial, Dawson explained that he did not mean to stab or kill his girlfriend, Deb Mead. He described that she was reaching for the knife because he thought she was going to attack him with the knife. (Doc. 9-1, p. 79 – 81; Tr. pp. 308, 310-311, 313-314). None of Ms. Mead's prior medical records, mental health records, or arrest records were presented at trial. Dawson's statements captured after his arrest were admitted by the State and cited extensively by the State and subsequent courts as evidence of Dawson's state of mind, and trial counsel did not file a motion to suppress. (State's Ex. 2, 58). The State admitted photographs of Ms. Mead's body at the hospital including State's Exhibits 13, 14, 15, 16, 17, 18, 19. (Doc. 9-1, p. 22 - 23; Tr. p. 77- 82; Supp. Appx. p. 3-9). Several autopsy photos were also admitted at trial, including the exposed right side of Ms. Mead's brain. (Supp. Appx. p. 10-44). There were no objections made to any of these photographs. The criminal complaint against Dawson was also introduced as evidence without objection.

Prior to trial, the defense attorney did not move to dismiss count 3, the domestic abuse assault third offense. But, after the State's evidence, the defense did so move, which was granted because Dawson's 1994 conviction had occurred more than six years prior to the date of the incident. (Doc. 9-1, p. 66; Tr. p. 256). This motion was therefore made *after* the jury heard of Dawson's prior conviction in 1994, and *after* the jury was told Dawson was charged with his third domestic abuse offense. Dawson was convicted of the lesser included offense of murder in the second degree, assault with intent to inflict serious injury, and domestic abuse assault, and sentenced to 52 years in prison.

Dawson filed a direct appeal and then an application for postconviction relief, both of which were unsuccessful.

Dawson then filed an application for habeas corpus relief, seeking to set aside his convictions on the basis that he received ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution. Specifically, he asserted that his trial counsel was ineffective for reasons that included:

- (1) Failing to object to domestic abuse assault third offense.
- (2) Failing to object to evidence at trial, including admission of the criminal complaint as evidence, prior crime evidence and autopsy photos.
- (3) Failing to do discovery or investigate the case.
- (4) Failing to raise an equal protection argument challenge to the State's gender-based challenges of male jurors.
- (5) Failing to file a motion to suppress.
- (6) Failing to argue that second degree murder is a specific intent crime.
- (7) Failing to employ an expert witness to dispute the state's pathologist's testimony.
- (8) Failing to object to prosecutorial misconduct during closing arguments.

No evidentiary hearing was held. In its subsequent opinion, the Court dismissed several claims on the grounds that they were not properly exhausted and that the failure to exhaust should not be excused. The Court denied on the merits Dawson's claims for:

- (1) Ineffectiveness for failures stemming from the improper handling of the prior conviction for domestic assault.
- (2) Ineffectiveness for failing to object to the admission of the criminal complaint as evidence.

- (3) Ineffectiveness for failing to object to the prosecution's gender-based jury selection.
- (4) Failing to file a motion to suppress.
- (5) Failing to argue second degree murder is a specific intent crime.

The district court and the Eighth Circuit panel denied a certificate of appealability.

REASONS FOR GRANTING THE WRIT

I. THE EIGHTH CIRCUIT'S DENIAL OF A CERTIFICATE OF APPEALABILITY CONFLICTS WITH U.S. SUPREME COURT AND EIGHTH CIRCUIT PRECEDENT ON WHEN A WRIT SHOULD BE GRANTED.

The Eighth Circuit's refusal to grant Dawson a certificate of appealability and consider the merits of his appeal is in conflict not only with decisions from Eighth Circuit, but with the United States Supreme Court regarding the grant of certificates of appealability. *See e.g., Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); *Buck v. Davis*, 137 S. Ct. 759 (2017); *Tiedeman v. Benson*, 122 F.3d 518 (8th Cir. 1997). Additionally, the district court ruling improperly decides important constitutional issues that this Court's supervisory power should correct.

Because the district court did not issue a certificate of appealability, Dawson's appeal may not be taken to the court of appeals unless "a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1). Under section 2253(c)(2), a certificate of appealability may only issue if a petitioner "has made a substantial showing of the denial of a constitutional right." *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); *Garrett v. United States*, 211 F.3d 1075, 1076-77 (8th Cir. 2000); *Tiedeman v. Benson*, 122 F.3d 518 (8th Cir. 1997). To make such a showing, (1) the issues must be debatable among reasonable jurists, (2) a court could resolve the issues differently, or (3) the issues deserve further proceedings. *Cox v. Norris*, 133 F.3d 565 (8th Cir. 1997) (citing *Flieger v. Delo*, 16 F.3d 878, 882-83 (8th Cir. 1994)); *see also Miller-El*, 537 U.S. at 335-36 (reiterating standard). A court of appeals should limit its examination at the

certificate of appealability stage to a threshold inquiry into the underlying merit of the claims, and ask only if the district court's decision was debatable. *Buck v. Davis*, 137 S. Ct. 759 (2017).

In summarily denying Dawson's request for a certificate of appealability, the panel improperly failed to acknowledge whether the issues presented were debatable among reasonable jurists. Dawson submits that they are.

First, the State introduced the criminal complaint against Dawson in his criminal trial. This Exhibit 66 read in relevant part:

AFFIDAVIT

I, the undersigned state that the following facts known by me or told to me by other reliable persons form the basis for my belief that the Defendant committed these crimes.

On Thursday, 8-18-05 DAWSON is being charged with the above listed offense due to his involvement in a homicide at 3914 Cody Trail, Davenport, Iowa on 8-18-05.

MURDER 1st DEGREE:

During an argument with his live in girlfriend at their residence DAWSON did stab her with a knife resulting in her death at Genesis East Emergency Room. The killing was done willfully, deliberately and with premeditation.

(State's Ex. 66).

The district court recognized that Exhibit 66 was admitted improperly, and therefore counsel should have objected, but the court concluded there was no prejudice in its admission because the Trial Information as the charging document stated the same language as the complaint and affidavit. (Doc. 37, p. 12-13). But, the jurors were explicitly told in Jury Instruction Number 1,

The Trial Information is the document that formally charges the defendant with a crime and is merely the method by which the defendant is brought into court for trial. It is not evidence.

(Jury Inst. 1; Doc 9-10, p. 183).

Meanwhile they were told that exhibits, such as Exhibit 66, were evidence. (Jury Inst. 7; Doc. 9-10, p. 184).

A reasonable jurist could therefore disagree that the inclusion of the Complaint and Affidavit as an exhibit at trial was harmless and counsel's failure to object was not ineffective assistance of counsel. Dawson should have been granted a certificate of appealability for this reason alone.

The district court also recognized that stipulation of prior conviction for domestic assault was possibly admitted erroneously, but found no prejudice in the jury hearing about the prior conviction because there was evidence of other physical altercations between Dawson and his girlfriend in the record. (Doc. 37, p. 10). In essence, the court found no prejudice for the improper stipulation. A reasonable jurist could also differ on this point.

The district court also denied Dawson's argument regarding his counsel failing to object to the unconstitutional gender-based strikes utilized by the prosecution in its peremptory challenges of men, as well as his own counsel exercising similar gender based strikes. While the district court recognized that such strikes "undermine the integrity of the criminal justice system," (Doc. 37, p. 14), the court went on to apply a standard of prejudice that a reasonable jurist could disagree with. The district court here found that Dawson's testimony somehow rendered the jury selection issue meritless because of a lack of prejudice.

But, the question of prejudice in a *Batson* case is not one of "winning the case" or not, but instead is a consideration of whether the result – which could be the seating of a different jury – would have been different. *See Stevenson v. Wallace*, 2014 U.S. Dist. LEXIS 103033, at *7-8 (MO East. Dist. Ct. 2014) (Conducting an evidentiary hearing on a question regarding jury

selection in a §2254 case, finding “If the Court concludes, following the hearing, that defense counsel’s performance was constitutionally deficient in not moving to strike [the juror] the presumed prejudice in that context will satisfy the prejudice requirement to excuse the procedural default.”) And, to the extent that the cases relied upon by the district court, such as *United States v. Kehoe*, 712 F.3d 1251, 1255 (8th Cir. 2013) support an argument otherwise, they are wrongly decided. At the very least, Dawson deserved an evidentiary hearing on the issue, and a certificate of appealability is warranted.

Additionally, a reasonable jurist could have found that counsel was ineffective in failing to challenge second degree murder as a specific intent crime given that the lesser included offenses to second degree murder were specific intent crimes. In Iowa, assault is a specific intent crime, see *State v. Heard*, 636 N.W.2d 227, 231 (Iowa 2001), while second degree murder is not under *State v. Reeves*, 670 N.W.2d 199, 207 (Iowa 2003). In this case, the state court actually merged Count II (assault with intent to inflict serious injury), a specific intent crime with Second Degree Murder in Count I, a purportedly general intent crime. This merger would make no sense if Second Degree Murder did not include the element of specific intent. Counsel was ineffective for failing to make this argument.

And finally, reasonable jurists could have believed that counsel should have filed a motion to suppress Dawson’s statements made in the back of the police cruiser, because Exhibit 59 shows that Dawson was asked questions prior to being Mirandized, and he answered those questions, and then he continued to talk after being asked those questions. Even though some of the statements were, as the district court found, made without being a direct response to a question, questions were being asked of Dawson during the time frame in between his initial contact with law enforcement, and the Miranda warnings. This warrants a certificate of appealability.

These issues all demonstrate that at the very least, Dawson is entitled to an evidentiary hearing and this matter should be remanded for a certificate of appealability to be granted and the court can consider the merits of Dawson's appeal. Denying Dawson a certificate of appealability in the face of these constitutional issues of exceptional importance sets a dangerous precedent that should not be allowed to stand.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "A. Campbell", is written over a horizontal line.

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