

No. 21-7229

ORIGINAL

Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

STEVEN A. TALIANI

— PETITIONER

(Your Name)

vs.

PEOPLE OF THE STATE OF ILLINOIS

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE STATE OF ILLINOIS

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

PETITION FOR WRIT OF CERTIORARI

STEVEN A. TALIANI

(Your Name)

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QUESTION(S) PRESENTED

- 1) Does the Illinois Supreme Court's opinion and analysis constitute an unreasonable determination of the facts in light of the Illinois Supreme Court's expansion of the Involuntary Intoxication Statute, 720 ILCS 5/6-3 ?
- 2) Whether the Illinois Supreme Court erred by weighing evidence without first holding an evidentiary hearing, where medical experts could formulate expert opinions as to the "unwarned side-effects of prescription psychotropic medications" ?
- 3) Should Schriro v. Summerlin, 124 S. Ct. 2519 (2004) be applied to relieve a state prisoner of conduct that was once unlawful if the new procedure alters the range of conduct that the law punishes ?
- 4) Should Bousley v. United States, 118 S. Ct. 1604 (1998) be applied to relieve a state prisoner of conduct that a defendant stands convicted of 'an act the law does not make criminal' ?

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:

Kwame Raoul, Attorney General for the State of Illinois
100 West Randolph Street, 12th Floor
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RELATED CASES

- People of the State of Illinois v. Steven A. Taliani
Case Number 94-CF-37, Bureau County, Illinois
Judgment entered July 28, 2017
- People of the State of Illinois v. Steven A. Taliani
Case Number 3-17-0546, Appellate Court of Illinois,
Third District
Judgment entered March 18, 2020
- People of the State of Illinois v. Steven A. Taliani
Case Number 125891, Supreme Court of the State of Illinois
Judgment entered October 7, 2021

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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.

[X] 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 _____; or,
[X] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Illinois' Third District Appellate court appears at Appendix D to the petition and is

[X] reported at 2020 IL App (3d) 170546; 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. 21 A 210.

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

[X] For cases from state courts:

The date on which the highest state court decided my case was October 7, 2021. A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including February 4, 2022 (date) on December 6, 2021 (date) in Application No. 21 A 210.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

720 ILCS 5/6-3 : Intoxicated or Drugged Condition

"A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such conduct is (b) involuntarily produced and deprives him of substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." (WEST 1994)

720 ILCS 5/3-2 : Affirmative Defense

(A) "Affirmative Defense" means that unless the State's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, must present some evidence thereon."

(B) "If the issue involved in an affirmative defense, other than insanity, is raised, then the State must sustain the burden of proving the defendant guilty beyond a reasonable doubt as to that issue together with all the other elements of the offense. If the affirmative defense of insanity is raised, the defendant bears the burden of proving by a preponderance of the evidence his insanity at the time of the offense." (WEST 1994)

STATEMENT OF THE CASE

On July 12, 1994, Steven Taliani, committed the offenses of first degree murder and aggravated battery with a firearm. At the time of the offenses, Taliani was under the care of a psychiatrist, who prescribed the anxiety medication Buspar; and the major depressive disorder medication Desyrel. Taliani was not informed of any potential side effects from the individual medications, nor any potential side effects from the combination use of the prescribed medications. Neither was Taliani provided any medication packet inserts containing any product warnings of the use of these medications.

During pretrial proceedings, trial counsel presented the court with a request that Taliani be examined for his 'fitness to stand trial' by a clinical psychiatrist, and for his mental condition at the time of the offense. Trial counsel advised the court that Taliani was being treated by a psychiatrist at the time of the offense and there were incidents in the jail that indicated Taliani was experiencing a "mental condition." Trial counsel also believed that a fitness examination was necessary based on his own conversations with Taliani. The trial court granted Taliani's petition for a fitness examination. However, inexplicably, the trial court's ordered fitness examination had never been completed. Dr. Robert Chapman, a forensic psychiatrist, examined Taliani only for Taliani's "mental condition at the time of the offense."

After a thorough evaluation, and reviewing "all of the official reports," Dr. Chapman concluded, among other things, that Taliani was experiencing extreme anxiety and appeared to be "quite confused, disorganized, and prone to intense feelings of panic." Additionally, Dr. Chapman found Taliani feeling he was "losing his mind" and reported bizarre and unusual sensory experiences and confused thinking.

Based primarily upon Dr. Chapman's report, trial counsel proceeded to trial with an insanity defense, and after approximately 10 hours of deliberations, a jury found Taliani guilty of both charges. The trial court then sentenced Taliani to an extended term of 70 years of incarceration for first degree murder and a consecutive maximum term of 30 years of incarceration for the charge of aggravated battery with a firearm.

After numerous post trial appeals, where Taliani faced severe obstacles, Taliani's convictions remain affirmed, without any serious adversarial testing.

APPLICATION FOR LEAVE TO FILE A SUCCESSIVE POST CONVICTION PETITION

On May 18, 2017, Taliani filed his pro se Application for Leave to File a Successive Post Conviction Petition (Appendix G). Taliani brought his petition claiming actual innocence based on the newly available -- and retroactive -- affirmative defense of involuntary intoxication based on the unexpected, and unwarned, adverse side effects of his prescribed psychotropic medications.

Specifically, Taliani claimed that it was not until 2006 that the Illinois Supreme Court determined that the plain language of 720 ILCS 5/6-3 allows for an involuntary intoxication defense when a defendant was under the influence of an unexpected adverse toxic side effect of prescription drugs that were unwarned by the prescribing doctor. (Appendix G, pg. 33, ¶21) And not until 2008 that the 4th District Appellate Court of Illinois determined that the affirmative defense could be applied retroactively in a post conviction where the petitioner claimed "actual innocence." (Appendix G, pg. 4, ¶22)

Taliani's Application for Leave to File a Successive Post Conviction Petition was accompanied with medical records from his psychiatrist who prescribed Buspar and Desyrel, drug interaction materials between Buspar and Desyrel, medication information for each prescribed medication, medical reports from the county jail's counseling provider, where it was determined that Taliani

continue with the prescribed Buspar and Desyrel, and Dr. Chapman's Forensic Report. (Appendix G). Additionally, Taliani provided information from the Food and Drug Administration that informs when Buspar and Desyrel are taken together the combination of the drugs can cause "serotonin syndrome." Information that was not available at the time of Taliani's trial in 1994, and was only "developed in the last several years." (Appendix, pg. 4-5, ¶¶25-27)

Taliani claimed to have been suffering from symptoms associated with serotonin syndrome at the time of the offense, including heightened irritability, confusion, altered consciousness, and increased suicidal ideation. Taliani's psychiatrist never advised Taliani that serotonin syndrome was a risk associated with the medications he was prescribing. Taliani continued with this toxic combination of prescribed medications while being housed at the county jail -- prior to the time Taliani was examined by Dr. Chapman -- who undoubtedly found Taliani "could not appreciate the criminality of his conduct or conform his conduct to the law." Dr. Chapman was requested to examine Taliani for the sole determination of his mental condition at the time of the offense, namely, his sanity at the time of the offense.

Taliani claimed that this new affirmative defense -- made retroactive -- was unavailable at the time of his trial in 1994 and that Taliani should be allowed to raise the new affirmative defense at a new trial as an actual innocence claim. That a jury properly instructed would not find Taliani guilty beyond a reasonable doubt once a new trial was granted.

On July 28, 2017, the trial court denied Taliani's Application for Leave to file a Successive Post Conviction Petition, finding; "after reviewing the documents submitted by the defendant, that it does not support a claim of actual innocence because it does not raise the probability that it is more likely true than not that no reasonable juror would have convicted him." (Appendix F) A timely notice of appeal followed the trial court's order.

On appeal to the Appellate Court of Illinois Third Judicial District, appointed counsel argued;

The Trial Court Erred When It Denied Steven Taliani Leave To File a Successive Postconviction Petition Because Taliani Presented a Colorable Claim of Actual Innocence Based On The Newly Available and Retroactive Affirmative Defense of Involuntary Intoxication Resulting From the Unwarned, Adverse Side Effects of Prescription Medication.

(Appendix E, pg. 15-24)

Appellate counsel stressed, "at the time of the offense in 1994, the law required involuntary intoxication to be the result of some external influence, such as a trick, artifice, or force, in order to raise the defense. Thus, had Taliani tried to raise the defense of involuntary intoxication based on the unwarned, adverse side effects of prescription medications, the trial court would have correctly rejected it." (Appendix E, pg. 18-19) Appellate counsel emphasized the Illinois Supreme Court's expanded meaning of "involuntary" to include, "the unexpected and unwarned adverse effect is not a conscious effect of the defendant's will, is not resulting from a defendant's free and unrestrained choice, and is not subject to control defendant's will." (Appendix E, pg. 19)

When the Illinois Supreme Court's decision to expand the Unitentional Intoxication Statute (720 ILCS 5/6-3) retroactivity attached due to the application of a "substantive change in the affirmative defense."

On March 18, 2020, the Appellate Court issued its opinion (Appendix D, pg. 1-13) affirming the trial court in a split-court decision. Specifically, the majority of the appellate court re-characterized Taliani's "new affirmative defense claim" into a claim of newly discovered "evidence". (Appendix D, pg. 8, ¶25) The majority acknowledged Taliani's petition and supporting documentation "may have shown" that Taliani suffered from unwarned side effects of prescription medications at the time of the offense, including serotonin syndrome, heightened irritability, confusion, altered consciousness, and suicidal ideation. (Appendix D, pg. 9-10, ¶¶ 27-29) However, the majority found that it was "not apparent" that these side effects would have deprived Taliani of the capacity to appreciate the criminality of shooting the victims or to conform his conduct to the requirements of the law. (Appendix D, pg. 10, ¶¶ 28-29)

In dissenting, Justice McDade found Taliani "has presented a colorable claim of actual innocence such that he should have been granted leave to file a successive postconviction petition that could have been tested at the second stage. That is, I do not believe "it is clear from a review of the successive petition and the documentation provided by the petitioner that, as a matter of law, the petitioner cannot set forth a colorable claim of actual innocence."'" "That the allegations in the motion for leave to file a successive petition and the supporting documentation indicate that defendant was suffering from unwarned side effects of prescription medications at the time of the offense.

These side effects including heightened irritability, confusion, altered consciousness, and increased suicidal ideation, if severe, these symptoms could have deprived defendant of the substantial capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of the law such that the involuntary intoxication defense would apply. (Appendix D, pg. 12, ¶36) Justice McDade would have reversed the judgment of the circuit court and remand the matter for further postconviction proceedings. (Appendix D, pg. 13, ¶37)

Taliani filed a timely Petition For Leave To Appeal to the Illinois Supreme Court. (Appendix C)

In Talini's appeal to the Illinois Supreme Court, counsel argued;

The Trial Court Erred When It Denied Steven Taliani Leave To File a Successive Postconviction Petition Because Taliani presented a Colorable Claim of Actual Innocence Based on the Newly Available and Retroactive Affirmative Defense of Involuntary Intoxication Resulting From the Unwarned, Adverse Side Effects of Prescription Medication. (Appendix B, pg. 17)

On October 7, 2021, the Illinois Supreme Court filed their opinion in this appeal. (People v. Taliani, 2021 IL 125891)(Appendix A)

The Illinois Supreme Court, like the Appellate Court, misstates and re-characterizes a critical aspect of Taliani's Application for leave to file a successive postconviction petition. The Illinois Supreme court states;

Petitioner acknowledged in the circuit court that an actual innocence claim must be supported by "newly discovered evidence..." (Taliani, 2021 IL 125891, ¶46)(Appendix A, ¶46)

Nowhere in Taliani's application for leave to file a successive postconviction petition does Taliani "acknowledge" that an actual innocence claim must be supported by "newly discovered evidence."

Likewise, the Court states;

"Petitioner claimed that this newly available affirmative defense constituted "newly discovered evidence" for purposes of his actual innocence claim." (Taliani, 2021 IL 125891, ¶46) (Appendix A, ¶46)

Nowhere in Taliani's application for leave to file a successive postconviction petition does Taliani make such a claim. This expansion of Taliani's application for leave to file a successive postconviction petition is an erroneous misstatement of the claim.

Within the Supreme Court's analysis the court states;

"First, we will acknowledge the irregularity of the claim that petitioner has raised. (Taliani, 2021 IL 125891, ¶ 63) (Appendix A, ¶ 63)

The court continues;

"The case before us does not present a 'typical' actual innocence claim. Here petitioner is claiming that newly discovered evidence, i.e., evidence that he was involuntarily intoxicated due to unwarned side effects of prescription medication, persuasively shows that he did not have the requisite mens rea when he committed the crimes for which he was convicted. And, had he presented this newly discovered "evidence", it is more likely than not that the jury would have found that he was involuntarily intoxicated and, as a result, he was not 'legally' responsible for the acts he committed because he did not have the necessary mens rea."
(Taliani, 2021 IL 125891, ¶65)(Appendix A, ¶ 65)

Mystifyingly, the Supreme Court finds;

"This is an unusual claim and appears to be one of first impression. Petitioner has directed this court to no cases from any jurisdiction, nor has this court's research into the matter revealed any such cases, that have held that a newly available defense, which might negate the requisite mens rea element for the offense charged, may provide the basis for a colorable claim of actual innocence capable of being brought under the Post conviction Hearing Act." (Taliani, 2021 IL 125891, ¶66)(Appendix A, ¶ 66)

The court found, "for purposes of this case we will assume that it is theoretically possible for a petitioner to claim actual innocence by challenging either the actus reus or the mens rea elements."
(Taliani, 2021 IL 125891, ¶66)(Appendix A, ¶ 66)

Nevertheless, the Illinois Supreme Court found petitioner did not fit within the framework of a freestanding claim of actual innocence. And thus affirmed the trial court's decision to deny petitioner leave to file a successive postconviction petition.

Illinois state courts have denied Taliani the opportunity to file a postconviction petition -- and have a fair and complete hearing -- to have adversarial testing of his claim tested. Wherein, Taliani would provide the court with expert medical analysis and opinions -- to guide the court on such a complex claim -- necessary for the court to find confidently that Taliani was in fact involuntarily intoxicated at the time he committed these crimes.

Petitioner now makes this timely appeal to the United States Supreme Court with his Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

I.

The Illinois Supreme Court's decision is an erroneous determination of the facts that conflict with United States Supreme Court precedents in Schröiro v. Summerlin, 542 U.S. 348, 124 S. Ct. 2529 (2004) and Bousley v. United States, 523 U.S. 614, 118 S. Ct. 1604 (1998), and the Illinois Court of Appeals in, People v. Alberts 383 Ill. App 3d 374, 890 N.E. 2d 1208, 322 Ill. Dec. 289 (Ill. App. 4th Dist. 2008)

The Illinois Supreme Court has held the ingestion of prescribed medication with negative unwarned side effects could satisfy the "involuntariness" requirement of the affirmative defense of involuntary intoxication. (720 ILCS 6/6-3)(WEST 2006), People v. Hari, 218 Ill. 2d 275, 293, 300 Ill. Dec. 91, 843 N.E. 2d 349, 359 (2006) ("An unexpected and unwarned adverse effect of a drug taken on doctor's orders falls within the ordinary and popularly understood definition of 'involuntarily'.")

This expansion of Section 5/6-3 was further explored by the Fourth District Appellate Court of Illinois in People v. Alberts, 322 Ill. Dec. 289, 890 N.E. 2d 1208, 1216 (Ill. App. 4th Dist. 2008) where the Alberts court held that the new rule announced in Hari, 218 Ill. 2d 275, 300 Ill. Dec. 91, 843 N.E. 2d 349 (2006) to be substantive affirmative defense, therefore fully retroactive in its application.

Illinois follows the rule that a decision that narrows a substantive criminal statute must be given full retroactive effect in collateral attacks. People v. Rodriguez, 355 Ill. App. 3d 290, 823 N.E. 2d 224, 229, 230 (2nd Dist. 2005)(citing Bousley v. United States, 523 U.S. 614, 620-21, 118 S. Ct. 1604, 1609-10)(1998). This is because such changes raise the possibility that a defendant has been convicted of an act that the law does not make criminal. The appellate court acknowledged, Illinois Courts follow the federal doctrine that any decision that narrows the applicability of a 'substantive' criminal statute is fully retroactive. "A rule is substantive rather than procedural if it alters the range of conduct or the class of persons that the law punishes." Schriro v. Summerlin, 542 U.S. 348, 353, 124 S. Ct. 2519, 2523 (2004). "New elements alter the range of conduct the statute punishes, rendering some formally unlawful conduct lawful or vice versa." Schriro Id.

In addressing the important distinction between substantive and procedural, the United States Supreme Court noted that decisions regarding substantive content of criminal statutes "necessarily carry a significant risk that a defendant stands convicted of an 'act that the law does not make criminal'." Bousley, 523 U.S. at 620. And, it is for that reason, a defendant should not be precluded from relying on previous decisions interpreting statutes in a collateral challenge to his arguably questionable conviction. Bousley, 523 U.S. at 621.

The Illinois Supreme Court's decision to expand Section 5/6-3 raises grave doubts about the accuracy of the original judgement. Grave doubts arise with new substantive rules that raise the possibility that "a defendant stands convicted of an act that the law does not make criminal." Bousley 523 U.S. at 620.

It is undisputed that Taliani was ingesting the prescribed psychotropic medications BUSPAR and DESYREL at the time he committed these offenses. And, to find that no evidentiary hearing would be necessary for the trial court to determine Taliani has not raised a colorable claim of actual innocence due to an unintentional intoxication of prescribed psychotropic medications is a "fundamental miscarriage of justice."

In People v. Alberts, 383 Ill. App. 3d 374, 890 N.E. 2d 1208, 322 Ill. Dec. 289 (Ill. App. 4th dist. 2008), the court made it clear, that it will require expert testimony presented at an evidentiary hearing to definitely determine whether the side effects of prescribed psychotropic medications rendered the defendant involuntarily intoxicated as required by statute. Alberts, 383 Ill. App. 3d at 385 (Postconviction petition should proceed to an evidentiary hearing where the trial court can determine whether a Hari defense can be substantiated.)

The Illinois Supreme Court relied primarily upon Schlup v. Delo, 513 U.S. 298, 327 (1995) (Appendix A, pg. 15, ¶ 59) in their holdings, wherein the Schlup court held;

"In Edwards we stated that a colorable claim of actual innocence requires evidence that "raises the probability that it is more likely than not that no reasonable juror would have convicted the petitioner in light of the new evidence."

Schlup Id. raises the "probability" -- not certainty -- of what another jury would do considering all the evidence both old and new.

Schlup Id. introduced "new evidence" in the form of videotapes and affidavits from eyewitnesses, to prove his innocence of the murder of a fellow inmate.

Evolving standards of decency, as well as, modern practice, provides for a more extensive review here. Without adversarial assistance from Taliani's expert representative -- especially when the psychiatric opinions he proffers are based on a much more extensive evaluation -- the factfinder loses the substantial benefit of potentially probative information. The result is a much greater likelihood of an erroneous decision. Ford v. Wainwright, 477 U.S. 399, 106 S. Ct. 2595 (1986).

There can be no serious quarrel with the fact that there is a reasonable probability that the result of Taliani's trial would have been different if the affirmative defense of involuntary intoxication had been raised as a defense, and the jury properly instructed with respect to the unwarned side effects of the prescription psychotropic medications being ingested by Taliani.

The basic requirements of due process include an opportunity to submit evidence and opinions from Taliani's psychiatric experts that would reveal additional scientific information into the prescription psychotropic medications Taliani was ingesting at the time of the offenses -- and the side effects of these medications that Taliani had succumbed to.

Insanity Defense vs. Involuntary Intoxication Defense

Trial counsel for Taliani raised an insanity defense based solely upon Dr. Chapman's Forensic Report. The insanity statute at the time of the offense stated;

"A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks the substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law." 720 ILCS 5/6-2(a)(WEST 1994)

And, although the insanity statute appears to be the same standard required by the involuntary intoxication statute, at the time of the offense the involuntary intoxication statute stated;

"A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition ... (b) is involuntarily produced and deprives him of substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law."

720 ILCS 5/6-3(b)(WEST 1994)

At the time of Taliani's trial in 1994, the law required an involuntary intoxication defense to be the result of some external influence, such as trick, artifice, or force, in order to raise the defense. People v. Rogers, 123 Ill. 2d 487, 508 (1988).

Of importance, acknowledging that the insanity statute and the involuntary intoxication statute each contain similar standards -- they do not contain the same level of proof. A defendant that asserts the affirmative defense of involuntary intoxication -- the burden of proof shifts to the State to prove the defendant was not involuntarily intoxicated -- beyond a reasonable doubt. Moreover, here, the involuntary intoxication defense would require Taliani's jury to be fully instructed on that defense, and the jury would have undoubtedly be presented with new facts regarding prescription medications, their side effects and how those side effects impacted Taliani's mental state, causing him to lack the substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law, at the time of the offense.

II.

The Illinois Supreme Court opinion fails to contain any statement of fact relative to the 4th District Appellate Court's holding in People v. Alberts that the new rule the Illinois Supreme Court announced in People v. Hari contains retroactive application.

Of significant importance is the "glaring absence" of the Illinois Supreme Court's mention of, or citation to, the People v. Alberts, 383 Ill. App. 3d 374, 890 N.E. 2d 1208, 322 Ill. Dec. 289 (Ill. App 4th Dist. 2008) court's holding that Taliani relies upon so heavily in his postconviction. By ignoring the Alberts Id. court holding and perfunctorily rejecting Taliani's claim, the court foreclosed development of the record on Taliani's claim. The Supreme Court did so, despite the significant concerns the Alberts Id. court provided. This "glaring absence" clearly affected the Supreme Court's conclusion.

Why does the Illinois Supreme Court make such a conscious effort to avoid the holding in Alberts Id. ?

The Illinois Supreme Court's decision to avoid the holding in Alberts Id. is patently unreasonable, when Taliani's Leave To File a Successive Postconviction is premised on the Alberts Id. court's holdings.

Taliani contends that the Illinois Supreme Court is being arbitrary and capricious in determining to whom the court will apply the new rule announced in People v. Hari, 218 Ill. 2d 275, 843 N.E. 2d 349, 300 Ill. Dec. 91 (2006), and the retroactive application of the new rule announced in People v. Alberts, 383 Ill. App. 3d 374, 890 N.E. 2d 1208, 322 Ill. Dec. 289 (Ill. App. 4th Dist. 2008).

It is the direct impact of this arbitrary application of this new rule on Taliani that raises Eighth Amendment of the United States Constitution concerns.

The Illinois Courts were required to grant Taliani Leave To File a Successive Postconviction Petition due to the expansion of Section 5/6-3 (Involuntary Intoxication Statute 720 ILCS 5/6-3) and the complex issue presented. Taliani's Postconviction would expand the record to assist the court, since it is well known that "there exist a widespread and increasingly troublesome discomfort among lawyers and judges confronted by a scientific or other technological issues." Jackson v. Pollion, 773 F. 3d 786 (2013).

The Jackson Id. court cited to Parke-Davis & Co. v. H.K. Mulford Co., 185 F. 95, 115 (S.D.N.Y. 1911) where the Park-Davis Id. court stated;

"How long shall we continue to blunder along without the aid of unpartisan and authoritative scientific assistance in the administration of justice?"

Here, in 2021, Illinois Courts continue to blunder along without the aid of unpartisan and authoritative scientific assistance, through evidentiary hearings, in the administration of justice. This blundering is cause for the United States Supreme Court to set precedent in the case before it today, by requiring the state trial courts to hold "full and fair hearings" whenever the claim of unintentional intoxication is raised as an affirmative defense due to the unwarned side effects of prescription psychotropic medications.

Additionally, because the Illinois Supreme court was 'silent' as to the Alberts court holding, it is permissible for the United States Supreme Court to "look through" the last reasoned state court decision. Yist v. Nunnemaker, 501 U.S. 797, 803-804, 115 S. Ct. 2590 (1991).

The last 'reasoned court' here is the Third District Appellate Court of Illinois which opined;

"In Hari, 218 Ill. 2d 275, 292-93, the Illinois Supreme Court held that the involuntary intoxication defense was available to a defendant claiming that he was involuntarily intoxicated due to an unwarned side effect of a prescription medication."

The Illinois Appellate Court reasoned;

"We find that the drugged condition alleged here -- and unexpected adverse side effect of a prescription drug that was unwarned by the prescribing doctor, the [Physician's Desk Reference] or the packet insert -- is 'involuntarily produced' within the plain

meaning of the involuntary intoxication affirmative defense statute."
(Appendix D, pg. 7-8, ¶ 23).

In the instant case, the Appellate Court continued;

"In People v. Alberts, 383 Ill. App. 3d 374, 382 (2008), the Fourth District held that... Hari announced a new rule because it broaden[ed] the scope of the defense of involuntary intoxication beyond the plain language of the statute and [did] not constitute a mere application of existing precedent." The Alberts Id. court further held that the new rule announced in Hari should be given full retroactive effect because it was tantamount to a rule that limits the conduct proscribed by a criminal statute. Id. at 383. Based on the retroactive application of Hari, the Alberts court held that the defendant made a substantial showing of a claim of actual innocence based on his claim that he was involuntarily intoxicated at the time of the offense due to the quantity of psychotropic medication that he was taking. Id. at 380.
(Appendix D, pg. 8, ¶ 24).

It was here, that the appellate court "recharacterized" Taliani's claim to one of "newly discovered evidence" (Appendix D, pg. 8, ¶ 25) when nowhere in Taliani's Leave To File Successive Postconviction Petition (Appendix G) does Taliani make that claim. Taliani's Leave To File a Successive Post-Conviction Petition (Appendix G) brought forth a "New Affirmative Defense" Claim based on the unwarned side effects Taliani had succumbed to while ingesting prescribed psychotropic medications.

The Appellate Court confirms the allegations found in Taliani's Leave To File a Successive Postconviction Petition and supporting documentation may have shown that Taliani suffered unwarned side effects of prescription medication at the time of the offense such that the "involuntarily produced" component of the involuntary intoxication defense was satisfied. (Appendix D, pg. 9, ¶ 27). Which should have been enough to allow Taliani to proceed in filing his Postconviction Petition, where the record could be expanded. Instead, the court 'Raised-the-Bar' for filing Leave To File a Successive Postconviction Petition to include scientific medical opinions as to the "degree" that Taliani lacked the "substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." 720 ILCS 5/6-3(b) (Appendix D, pg. 9, ¶ 27).

Taliani verified the facts stated within his Leave To File a Successive Postconviction Petition with a sworn Affidavit.

Taliani did all he could -- to develop the factual basis of his claim -- at this early stage.

Because Taliani faced this 'far-too-high' of a bar to be granted Leave To File a Successive Postconviction Petition, the record stands devoid of scientific medical opinions that would be necessary to properly assess his claim of unintentional intoxication due to unwarned side effects of prescription psychotropic medications.

A reasonable probability is a probability sufficient to undermine confidence in the outcome. Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052. This determination cannot be made without more detailed knowledge contained within a postconviction and a "full and fair hearing." The Illinois State Courts have unreasonably applied this standard to Taliani.

Without a "full and fair hearing" to develop the record, the appellate court merely created their own conclusions based upon speculation rather than scientific medical opinions. Without further exploration and adversarial testing, Taliani has been deprived due process of law.

Again, Taliani filed for Leave To File a Successive Postconviction Petition and the Illinois Courts have raised the bar for filing "Leave" by requiring Taliani to present "scientific medical opinions" that would not be available until Taliani proceeded to the second and third stages of the Post Conviction Hearing Act -- where a "full and fair hearing" would be conducted.

For these reasons Taliani should be granted an opportunity to advance his claim of involuntary intoxication due to unwarned side effects of prescribed psychotropic medications in further proceedings.

III.

The affirmative defense of unintentional intoxication due to unwarned side effects of prescription psychotropic medications has not been fully settled by the United States Supreme Court.

Under the expansion of Illinois' Involuntary Intoxication Statute (720 ILCS 5/6-3) and the retroactive application of the statute, Taliani has presented a colorable claim of actual innocence due to the unwarned side effects of doctor prescribed psychotropic medications. The condition Taliani suffered was extraordinary and one that the Illinois Courts gave only a cursory review of. The record of Illinois courts' decisions show they did not conduct a "full and fair hearing" on Taliani's claim by imposing too high a bar to Taliani in his request for Leave To File a Successive Postconviction Petition. Taliani provided "scientific medical exhibits" in support of his claim, to warrant the filing of Taliani's Leave To File a Successive Postconviction Petition. Coupled with the Food and Drug Administration's recognition of the unwarned side effects -- by their announcement to place "Black Box Warning Labels" on specific prescribed medications, with these Taliani has adequately developed material facts to obtain an evidentiary hearing for further exploration of his condition at the time of the offense.

Due to the substantial increase in mental health issues plaguing the United States today, and the obscene amounts of prescription psychotropic medications being dispensed -- potentially without warning of serious side effects -- it was first in 2004 when the Food and Drug Administration was faced with this concern, that they stepped in to require manufacturers of selective serotonin reuptake inhibitor antidepressant medications to add "BLACK BOX WARNINGS" to their product labeling, advising that studies have shown an increase in suicidal thinking and behavior among those suffering from psychiatric disorders.

Unfortunately, the Food and Drug Administration's 'warnings' were too late for Talaini, being that his offense occurred in 1994.

The affirmative defense of unintentional intoxication due to prescribed psychotropic medications has been rarely used and has receive scant attention in federal courts, making this issue of national importance for the United States Supreme Court to address this claim today. At a minimum, the United States Supreme Court should set precedent here, by requiring state trial courts to conduct "full and fair hearings" whenever they are faced with the claim of unintentional intoxication due to the unwarned side effects of prescription psychotropic medications -- and insodoing, protecting the citizens from being incarcerated for a crime "that the law no longer makes criminal."

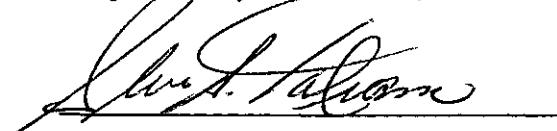
As this Honorable Court continues to hear arguments during this corona-virus pandemic, that pertain to vaccinations, and the mandates for and against them, the Court has also become aware of the mental health issues associated with this pandemic. And, coupled with therapy, many (too many) United States Citizens will be prescribed psychotropic medications -- without warnings of potential side effects, potentially causing more harm than good. Therefore, it is in the national interest that the Court address Taliani's claim of unintentional intoxication due to unwarned side effects of prescription psychotropic medications, and to provide an authoritative determination for future guidance on this very important issue.

CONCLUSION

For the foregoing reasons, Petitioner Steven A. Taliani, respectfully requests the Honorable United States Supreme Court grant his Petition For a Writ of Certiorari by entering that the judgment of the Illinois Supreme Court be reversed and this cause be remanded to the state court for further proceedings, including but not limited to, a "fair and full hearing" on Taliani's claim.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

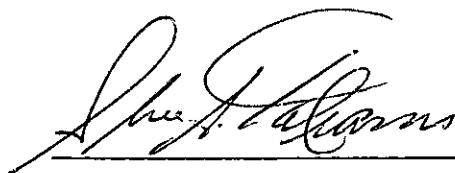


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DATED: February 8, 2022

CERTIFICATE OF COMPLIANCE

I certify that this Petition For Writ of Certiorari conforms to the requirements of Supreme Court Rule 33(2)(b). The length of this Petition, excluding any items identified as excluded within Rule 33 is 28 pages.



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