

21-7731

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

APR 15 2022

OFFICE OF THE CLERK

Alonzo Bell — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Alonzo Bell
(Your Name)

P.O. Box 1000
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Menard Ill 62259
(City, State, Zip Code)

N/A
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Whether the Appellate Court ERRED in ruling the Circuit Court did not abuse its discretion in admitting Social Media evidence at trial
2. Whether Defendant was Denied His Constitutional right to the effective assistance of counsel
3. Whether Defendants Sentence violates the proportionate Penalties Clause of Illinois Constitution.

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:

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OTHER

28 U.S. § 1257 (A)

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☐ is unpublished.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☐ is unpublished.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 C 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☐ is unpublished.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☐ is unpublished.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 _____

☐ 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 Jan 26, 2022.
A copy of that decision appears at Appendix C.

☐ 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

U.S. CONSTITUTION, AMEND 6, 14th
U.S. SUPREME CT RULE 10-C

STATEMENT OF THE CASE

On July 24, 2017, the day before trial, the state made a motion in limine to admit four posts found on twitter and given to the police by one of the victims of the shooting, Laquita Weatherspoon.

The posts, attached to this petition as exhibits, depicting the following:

- (1). A photograph of a tweet that supposedly mentioned Weatherspoon's nickname, "Quitta." it should be noted the actual tweet mentioned the word "Quita" and does not appear to be a reference to a name, sent from an account labeled "#DumpStreet" with a profile picture that she allegedly identified as one of the shooters. Co-defendant Deandre Brown;
- (2). A tweet that Weatherspoon interpreted as threatening posted by an account labeled "Landlord 20," which the state alleged at trial belonged to the petitioner and which was retweeted by Dumpstreet
- (3). A photo from the DumpStreet account that she believed depicted the petitioner, and his codefendant, and a third person together on Dec 19, 2014 showing all three individuals displaying guns.
- (4). A tweet depicting a photograph of a person alleged to be the petitioner holding two guns. The petitioner objected to the introduction of these photographs, which the court overruled. (See attached exhibits A)

Laquita Weatherspoon testified that on the date of the shooting, that her and Burrell was driving Weatherspoons' Sister's white Mitsubishi, and as they pulled up to 51st and ada about 830 P.M. and they parked on the left Side of the Street when she noticed another car driving slowly on Ada near a Speed bump as if it was driving by. Weatherspoon testified that she was looking at her phone when she heard Burrell say "What" and she looked up to see a man with a gun standing on the passenger side of the car near the hood of the car.

Weatherspoon described the man as short, lighter skinned, with a short haircut and identified the petitioner as this person in court. Weatherspoon testified that she saw the petitioner holding a silver and Black gun with a long clip, and standing in the street, was a darker skinned man with long braids or dreads who weatherspoon identified in court as co-defendant Brown.

weatherspoon testified that the shooters pointed their guns at the car from about four to five feet away, and she jumped into the backseat, and she recalled about thirty shots being fired into the car, and that her and her Boy friend had been shot.

While in the hospital, weatherspoon had access to her phone and received get well messages from people on Social Media. She claimed that she

Saw a tweet from a twitter account with Browns photo as the profile picture that mentioned her nickname. "Quita", and that she screenshotted the tweet, and that the Screen shot showed that the tweet was sent on December 18, 2014 at 11:19 AM. The actual content of the text reads, "#No No ya wnt RichGang or Quita me," with two thumbs down emojis, a 100 percent emoji, various facial-expression emojis, and a gun emoji.

Without any objection from the defense opposing the admittance of this evidence - because it is prejudicial to the petitioner, Weatherspoon was then allowed by the trial court to interpret the text of this tweet via the following exchange with the prosecutor:

Q. When you saw the picture and the emojis what did you take from them to mean?

A. That he was laughing at the incident and he... He's like you want to catch me how we caught her."

Q. He was laughing and that you won't catch me, meaning the Sender you won't catch the Sender like you were caught.

A. Yes.

Weatherspoon testified that she did not immediately tell the police about the tweets because she thought she may be targeted. She also testified that she didn't tell the detectives about the black and silver gun until after seeing the photos on twitter.

The Chicago police reports shows that first responders recorded weatherspoon's first statement taken the night of the shooting. In that statement weatherspoon indicated that the assailants were 20 feet away when they fired multiple shots into the car, and that she couldn't recall how many shots were fired into the car.

The Circuit court ruled that trial counsel's impeachment of weatherspoon should have been better. The court excused the impact on the petitioner's right to a fair trial because impeachment is not done properly by many attorneys."

I was found guilty and sentenced to 52 years

REASONS FOR GRANTING THE PETITION

Petitioner Alonzo Bell has attempted at every stage, to raise claims of constitutional violations when the trial court abused its discretion in admitting social media evidence at trial, as it lacked foundation, and was unduly prejudicial. Trial counsel was also ineffective when he failed to object to this evidence being admitted in trial. These violations are established by the record and is meritorious, a determination that arguable issues were presented by the record creates a constitutional imperative. Penson v Ohio 488 U.S. 75, 83-84 (1988)

Petitioners request for certiorari is due to the Illinois court of appeal arbitrary process for denying petitioners claims in the trial court. The Illinois Appeal courts and trial court lacks due process protections, and denied Petitioners Sixth amendment right to a fair trial

In trial the circuit court overruled the defendant's objection to the admission of the victim, Weather'spoon's interpretation of the tweets that were allowed into evidence

The trial court allowed weatherspoon to testify that while she was in the hospital, she began receiving get well messages on her social media account including her twitter account, weatherspoon testified she got a request to follow her on twitter from someone and she identified the photograph associated with the tweet as being Deandre Brown. weatherspoon testified that the bottom of the tweet indicated that the tweet was sent 12-18-2014. Weather Spoon was also allowed to testify that this tweet was a fair and accurate copy of the tweet she saw while she was in the hospital. The prosecution then engaged in the following colloquy with weatherspoon about that tweet:

Q. when you saw the picture and the emojis what did you take that to mean?

A. That he was laughing at the incident and he's like 'You want to catch me how we caught her?'

Q. He was laughing and that you won't catch me, meaning the Sender. You won't catch the Sender like you were caught.

A. Yes

There was no objection by trial attorney to this testimony. Also again without any objection from his trial attorney weatherspoon was allowed to testify to the following:

Q, When you saw the tweet what did you understand it to mean?

A. That he found out we wasn't dead. But then he like, I guess he is still gonna try. But you can be.

The face of this tweet does not indicate any names associated with this account, it has a small photograph associated with it, and has a hashtag listed as "#DumpStreet@Eubub." The message states, "No No Yu Wnt Rich Gang Or Quitta Me!" with several emojis. There is no indication on this tweet that it was liked or re-posted by anyone, much less the defendant. This social media evidence should not have been allowed to come into evidence.

Petitioner has compared his case to *People v. Kent*, 2017 IL App (2d) 140917 (2017) 31 NE3d 573, in the claims raised in the Illinois Court of Appeals.

In *Kent* a detective testified as to certain Facebook post allegedly made by the defendant. This detective testified to lay a foundation for a Facebook post by testifying that he found a Facebook account associated with a person with the defendant's same first name, and a photograph who the officer testified was of the defendant.

The Kent court noted that the "potential for fabricating or tampering with electronically stored information on a social networking website is high and poses challenges to authenticating printouts from the website Id at 106

Without Proof of an IP address linking a defendant with a certain account, or an admission by a defendant that this was his account, "the mere fact that a Facebook post on a profile with a defendant's alleged alias and photograph happened to exist on the internet for a brief period after the offense does not permit a reasonable conclusion that the post was created by the defendant or on his behalf. In this case, as in Kent, Petitioner did not admit to writing this Tweet or owning that account, and no testimony was offered that it was associated with an IP address registered to this petitioner. As in Kent the only thing establishing the purported identity of this account was testimony from Weatherspoon that the picture associated with the account appeared to be the defendant. This evidence should not have been allowed into evidence.

The Appellate Court found that the trial court did not abuse its discretion in admitting the Social Media evidence because it ruled, unlike Kent the evidence was admitted for identification purposes only. Bell, 2021 IL App (1st) 190366 ¶¶ 52-61.

In this case the evidence went far beyond this limited purpose. the court didn't give a limiting instruction to the jury, and furthermore, due to trial counsel ineffective

assistance of Counsel, the court allowed weatherspoon to testify to what she felt the defendants were trying to say when weatherspoon was allowed to interpret the phrases and emojis associated with these postings.

The statements of the trial court in its opinion stated:

"I allowed the tweets because that's how Miss Weatherspoon got to her identification. I find that extremely relevant for a victim to testify when she makes an identification before a lineup, that that's clear to the jurors how that lineup, not only how the lineup identification was made, but how this identification was made that led to these defendants. ¶16.

The court also stated in its ruling:

"She got this tweet, what it said, not for the truth of what was being said, not that the defendant did it, but what it said and why it led to her to look at pictures and then she identified them, I find it completely relevant and appropriate for the jury to know exactly how this woman who is a single witness got to identify the defendant. It goes to her identification of defendant which was a central issue in this case ¶16.

The Illinois Appellate court in its opinion agreed with the trial court ruling stating that:

We also note that weatherspoon acknowledged that she had no idea who sent those tweets" and "no independent knowledge of whose accounts were" or "who the phone numbers were registered to". The defense was also able to use the evidence of the twitter post to argue that weatherspoon's identifications were suspect because the twitter post caused her to create a memory in her mind." arguing that she recognized defendant and co-defendant from the twitter post and not the actual shooting. And found that the trial court did not abuse its discretion in allowing the social media evidence. 7161.

The petitioner asserts in his direct Appeal, and Petition for Leave to appeal in the Illinois Courts of Appeal, that the courts allowing into evidence social media evidence, tweets, twitter, and Facebook post wasn't properly done and should not have been allowed into evidence People v Kent, 2017 IL App (2d) 140917 wherein the Second District reversed the defendant's first degree murder conviction based on a detective's testimony as to certain Facebook post allegedly made by the defendant. In Kent a detective testified to lay a foundation for a Facebook post by testifying that he found a Facebook account associated with a person with the defendant's same first name, and a photograph who the officer testified was the defendant Id. at 711 54-58.

The Kent court noted that "creating a Facebook account is easy," and that "anyone at least thirteen years old with a valid email address could create a profile." Id. at 71 105.

The Kent court went on to note that the "potential for fabricating or tampering with electronically stored information on a social networking website is high and poses challenges to authenticating printouts from the website" Id. at 11106. Without proof of IP address linking a defendant with a certain account, or an admission by a defendant that this was his account. Again as aforementioned, the only evidence offered establishing the purported identity of the account was testimony from weatherspoon that the picture associated with the account appeared to be the defendant. The Social Media evidence should not have been allowed and the Illinois Court of Appeals should not have agreed with the trial court, and made their own ruling that the trial court decision to allow the social media evidence without proper foundation and authentication, was an abuse of discretion.

Under the United State Supreme Court Rules, Rule 10. Considerations Governing Review on Certiori

Rule 10 (C) States: A State court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be settled by this court, or has decided an important federal question in a way that conflicts with relevant decisions in this court,

CONFLICT OF APPELLATE COURTS DECISIONS

Petitioner has made the argument in both the Illinois Appellate court and the Illinois Supreme court First district, that the trial court abused its discretion in admitting Social media evidence at trial.

Petitioner makes this argument in the Illinois court of Appeal in the first district. Petitioner's case is in direct contrast with People v Kent 2017 Ill App. (2d) 140917 where the Second District reversed the defendant's first degree murder conviction based Facebook post. (SUPRA)

In this case as in Kent, Petitioner didn't admit to writing this Tweet or owning that account, and no testimony was offered that it was associated with an IP address registered to petitioner. As in Kent, the only foundation establishing the purported identity of this account was testimony from Weather Spoon, that the picture associated with the account appeared to be the defendant. This evidence should not have been admitted. Even with a complete comparison of this case and the Kent 2nd District case. The first district court's decision in denying petitioner's claim addressing the procedures of Social Media being admitted into evidence, is in conflict with relevant decisions in the Appellate courts and this court as well, and this court decision in United States v. Vayner 769 F.3d 125 (2d Cir 2014) should review petitioner's claim.

Petitioner filed his petition for leave to appeal on May 5, 2021. While Petitioner's petition was still pending, the Illinois Supreme Court on Nov 18, 2021 came down with *People v. Brand* 2021 IL 125945. Challenging the authentication of social media, agreeing with Kent that anyone can create a fictitious account and masquerade under another person's name. It is also noted in Kent as in Brand that Smith identified six ways in which a Facebook communication could be authenticated.

Even with the Illinois Appellate Courts First and Second Districts conflict in petitioner's decision by the First district and the language in *People v. Brand*. The Illinois Appellate Court and Illinois Supreme Court both erred in their rulings denying Bell's petition on appeal.

Illinois Appellate Court Justice Walker presiding justice dissenting stated that the ~~Twitter~~ Social Media evidence should not have been admitted in evidence at trial (See Appellate court's order Appendix D)

Justice Walker also stated in his dissent pertaining to the witnesses identification and Social Media evidence:

I respectfully dissent because the majority opinion in *People v. Bell* 2021 IL App (1st) 190366, condones trial by innuendo and gives police officers an avenue to tell witnesses which person officers want the witnesses to choose from a lineup.

Justice Walker in his opinion addressed the issues of trial counsel's ineffectiveness and the issue of social media being admitted in People's Bell.

Weather Spoon was asked whether she previously said, "they were like 20 feet away." Weather Spoon answered "no." Defense counsel asked whether she described a shooter as 6 feet tall and 200 pounds. Weather Spoon denied given any such description, when counsel asked whether she told detectives that the shooter had a two-toned gun, this colloquy followed:

A. Yes, I told the detectives when I was in the hospital that it was silver and black.

Q. Is that before you showed them the photographs of the gun?

A. Yes, that is before."

Defense counsel did not present available evidence that Weather Spoon initially said the shooter stood about 20 feet away, that Weather Spoon initially described one of the shooters 6 feet away 200 pounds, and that she told detectives about the two-toned gun only after she saw the picture posted on Twitter. Counsel explained:

"I had a police report in front of me, I'm standing in front of the jury with a police report in my hand and making the point on cross-examination didn't you tell officers so and so, didn't you say this or that, but I made my point in front of the jury holding a police report."

The jury in my experience, once you get that question out, they give me some credibility in that regard.

I got it out in front of the jury and the jury heard it."

Defense counsel admitted that he adopted the strategy of hoping the jurors would draw several inferences from the questions he asked. First he expected them to infer that he held a police report. Second, he expected them to infer, solely from his insinuation, that the report said Weatherspoon saw the shooter from 200 feet away. She described one shooter as 6 feet tall and 200 pounds, and she did not tell detectives about the two-tone gun until some time after she saw the defendants picture on twitter. All counsel got out in front of the jury, "all" the jury heard was his insinuation about the content of a report not in evidence. Counsel expressly preferred insinuation and innuendo to the presentation of available evidence. The majority expressly condones this preference as objectively reasonable choice.

The majority further condones the innuendos, the statements lacking evidentiary support, in the prosecutor's closing argument. The prosecutor started the closing argument:

"You ain't dead yet, but you can be.

What was that laquita said from the witness stand about this tweet?

She said they figured out I'm still alive."

Despite the complete absence about who created the account that sent the tweet or which computer sent the tweet, the prosecutor insinuated that Bell sent the tweets, and then the prosecutors used the tweets as evidence

that Bell threatened Weatherspoon, again with no evidence of the source of the tweets. The prosecutor argued: "We know who those tweets were coming from. If it were not for the tweets, maybe they are never caught."

They are bragging about it. They were threatening the victim."

The tweets here function as evidence Brown and Bell threatened Weatherspoon and bragged about shooting her only if Brown and Bell sent the tweets. *People v. Kent*, 2017 IL App (2d) 140917, and *United States v. Vayner*, 769 F.3d 125 (2d Cir. 2014), discussed the introduction into evidence of social media postings for purposes similar to those for which prosecution used the tweets here in Bell.

The Kent court relied on the reasoning of Vayner. The trial court in Kent allowed prosecutors to introduce into evidence Facebook post from "Luckii" which said leave em dead in his driveway. "Kent 2017 IL App (2d) 140917 ¶ 51. The prosecution claimed that in the post the defendant nicknamed Luckii, admitted shooting the victim who had been shot to death in his driveway. The Kent court reasoned:

The concern over authentication arises because anyone can create a fictitious account and masquerade under another person's name. Anyone can gain access to another's account by obtaining the user's username and password, and consequently, the potential for fabricating or tampering with electronically

Stored information on a social networking website is high and poses challenges to authenticating printouts from the website.

As in *Vayner* the State simply offered no evidence that any of the information on the Facebook post was known or available only to defendant or, at the very least, to a small group of people including the defendant.

The prosecution here presented no evidence to show that Bell posted the tweets, and therefore the prosecution failed to meet the requirements of *Kent* for the use the prosecution made of the tweets. The prosecution's improper insinuation that Bell posted the tweets and threatened Weather Spoon should lead to this court to reverse the convictions.

Justice Walker also stated the affirmance of the convictions here in *Bell* creates a new problem. If police or prosecutors want a witness to identify a known suspect as an offender, they now know they can suggest a specific identification through a disguised account on social media, which they can use to post a picture of the suspect, accompanied by incriminating text, prior to any lineup.

The decision here in *Bell* stands as law, the most objectionable method of pretrial identification may also become the most widespread method of pretrial identification.

without evidence proving that the defendant sent the tweet used in the identification process, the trial court should not have admitted the tweets into evidence. Without proof of the source of the tweets that led to identifying the defendant as the offenders, the court should have questioned the admissibility of weatherspoon's in court identifications of Bell as the shooters.

I cannot condone trial by innuendo. I cannot condone procedures that permit police officers to suggest to a witness the identification of a specific suspect as an offender. Accordingly, I respectfully dissent. (See Appendix D)

People v. Brown 2021 IL App (1st) 190368-4

The Illinois Courts of Appeals in their judgment in People v. Bell, 2021 IL App (1st) 190366, was erroneous there is not due process protections here, as required by the 14th Amendment, which is why the United States Supreme Court should grant certiorari.

ARGUMENT II

PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

In People v. Albanese, 104 Ill. 2d 504, 526 (1984), the Illinois Supreme Court adopted the ineffective assistance of counsel test from Strickland v. Washington, 466 U.S. 668 (1984). A Defendant shows ineffective assistance of counsel and thus his denial of his right to a fair trial under the Sixth Amendment to the United States Constitution, when he shows first that counsel representation fell below an objective standard of

reasonableness and that counsel's shortcomings were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Albanese*, 104 Ill.2d at 525. A defendant must also show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* To make this showing a defendant need not show that the evidence without the errors was sufficient to sustain a conviction rather, a defendant need only show that it is "plausible that the result of the trial would have been different absent counsel's errors."

The *Strickland* standard does not apply where counsel abandons his or her role as counsel and in those instances, a criminal defendant does not need to show prejudice, but may rely solely on the performance standard to establish a new trial. *People v Downs* 2017 IL App (2d) 12156-C ¶¶ 66-68, *United States v. Chronic* 466 U.S. 648, 656-67 (1984)

Trial counsel was ineffective because counsel failed to object and request a mistrial after co-counsel promised in his opening statement that the defendant would not testify, and that "the defense" would not call any witnesses, and failed to object to the introduction of highly prejudicial evidence, failed to prove up impeachment, affirmatively introduced harmful evidence, failed to move for severance, even though a social media post allegedly made by a co-defendant implicated the defendant and was used by state to establish the defendant's guilt?

In Co-defendants opening Statement Co-defendants trial attorney promised the jury that defendant Bell would not testify, and that the defense would not put on any witnesses. In Co-defendants opening Statement. Co-defendants trial counsel told the Jury:

Now, we indicated that the defendants may not testify, and you were instructed by the court and you all agreed that you would not hold it against Deandre and Bell if they fail to testify in this case. You promised, you made a solemn promise and an oath that you would do that. I'll tell you right now, they're not testifying. They don't have to testify. Okay? So let's get that out of the way.

The next thing is evidence. It is presented from the witness stand. Now how can it be presented? In different ways. Number one. we will not call - the defense - one witness. Zero Period none.

Co-defendants attorney doesn't represent Mr Bell, no attorney much less an attorney who does not even represent the client, can promise with absolute certainty, that defendant will choose not to testify. Since this is a decision the client has the absolute right to make after hearing all the evidence. As the Illinois Supreme Court in *People v Patrick* 233 Ill 2d 62 (2009) explained:

The decision to testify ultimately belongs to the defendant but is generally made after consultation with counsel.

Defense counsel's failure to object and request a mistrial was not only unreasonable in fact constituted a complete

abandonment of his role as counsel for the defendant for this reason the defendant should not be required to show prejudice. Down; Supra 2017 IL App (2d) 121156 -c at 11166-68 Chronic Supra. 466 U.S. at 656-67.

Co-defendants trial attorney also promised the jury that they would not call witnesses. Co-defendants trial attorney had no right to speak for defendant Bell and Bell's trial attorney was ineffective for allowing co-defendants trial attorney to make these statements and not object and move for a mistrial.

Trial attorney failed to impeach the States main eye witness and trial attorney also failed to prove up impeachment. As demonstrated in Justice Walkers opinion (Appendix D)

weatherspoon was asked whether she previously said "they were like 20 feet away", weatherspoon answered "no!" defense counsel asked whether she described a shooter as 6 feet tall and 200 pounds, weatherspoon denied given any such description, when counsel asked whether she told detectives that the shooter had a two-toned gun. this colloquy followed:

A. Yes, I told the detectives when I was in the hospital that it was silver and black.

Q. Is that before you showed them the photo's of the gun?

A. Yes, that is before."

Defense counsel did not present available evidence that weatherspoon initially said the shooter was about 20 feet away, that weatherspoon initially described one of the shooters 6 feet away 200 pounds and that she told detectives about the two-toned gun only after she saw the picture posted on twitter.

Trial counsel presented harmful and damaging other crimes evidence, the results of which was the prosecutor in closing arguments using this evidence to argue the Defendant was a generally violent person, prejudicing the defendant denying him effective assistance.

Trial Counsel brought into evidence the fact that the defendant and Brown were stopped by police, they fled the police and left the gun behind, within weeks of the attempt murder. This evidence was actively introduced into evidence by the defense simply to rebut the fact that the twitter photo introduced into evidence, wherein defendant was holding a weapon identified by weatherspon as the attempt murder weapon, was not forensically linked to the shooting at issue. The introduction of this evidence was prejudicial. It allowed the prosecution paint the defendant as a generally violent person, who was familiar with firearms. It allowed the prosecution to use this evidence that Brown and defendant knew each other and were friends, and were caught committing an unrelated crime. The introduction of other crimes evidence, especially those involving a weapon, is normally extreme prejudicial to a defendant. *People v Jackson* 154 Ill. App 3d 241

ARGUMENT

Trial counsel failed to move for Severance, the result of which was the admission into evidence of statements allegedly made by his co-defendant on twitter being used against defendant in a joint trial.

Trial counsel was ineffective for failing to move for Severance, even though the further post introduced in this case were allegedly made by his codefendant and used against the defendants to establish the defendants' guilt. In *Bruton v. U.S.* 391 U.S. 123 (1968), the Supreme Court ruled that the admission of a statement by a non-testifying codefendant that implicates the defendant in the crime at issue violates the defendant's constitutional right to confront witnesses against him. *Id.* at 137.

In this case one of the tweets that allegedly constituted a threat to weatherspoon was made on a twitter account associated with co-defendant Brown (@Dumpstreet). The State took the position at trial that the tweets in evidence contained statements made by Brown that constituted an admission to the crime, and even though there was no indication the defendant had any part in either drafting this message or re-tweeting the messages, the tweets were used to secure an conviction. The Jury did not have to infer that Brown's tweets should be held against the defendant because the witness was able to testify that she interpreted the tweet to be a threat made by the defendants and the State used the tweet against them both in closing arguments.

ARGUMENT

TRIAL COURT ABUSED ITS DISCRETION IN ADMITTING SOCIAL MEDIA EVIDENCE AT TRIAL AS IT LACKED FOUNDATION AND WAS UNDOUBTLY PREJUDICIAL, Additionally and/or Alternatively, defense counsel was ineffective in failing to object to this evidence and the admission of the evidence was plain error.

Defendants Sixth amendment right to a fair trial was violated when the court overruled the defendants objection to the admission of Social Media evidence or

The defendant attempted to bar this evidence from trial by joining in the co defendants Motion in limine and the court acknowledged the prior objection at the time of the admission of the evidence this preserved the objection for appellate review under people v Hudson 157 Ill 2d 401, 435-36 (1993) The Appellate court under Hudson, has authority to hear this claim which was preserved. IF not, then trial counsel was ineffective for not properly preserving his objection to the evidence, and this case should be reviewed under the Strickland Standard. Even though defense counsel objected to the tweets coming into evidence, which was overruled by the circuit court, he did not object to weatherspoon offering her lay opinion about the meaning of the text of the tweets, which constitutes further ineffective assistance of counsel and should also be considered in the totality of the cumulative prejudice Strickland. This issue should also be reviewed alternatively pursuant to the plain error analysis. Because the error is serious

and the evidence, as argued above, is closely balanced. *Herron Supra* 215 Ill.2d at 178

weatherspoon testified that while in the hospital, she began receiving get well messages on her social media account including her twitter account. Weatherspoon testified she got a request to follow her on twitter from someone, as she identified the photos associated with this tweet as being that of Brown, although she never testified as to how she knew this was Brown or how she knew this was his account. She never testified when she took the screenshot, but she did testify that the bottom of the tweet indicates it was sent 12-18-2014 11:19 AM. She testified that this tweet was a fair and accurate copy of the tweet she saw while she was in the hospital. The bottom of tweet supposedly had her nickname "Quitta" although that appears to be a misspelling of "Quitta" and the word also does not appear to be referencing a name. Weatherspoon testified the message was "not written your normal English like you see in facebook or magazine". The Prosecutor then engaged in the following colloquy with Weatherspoon about that tweet:

Q. When you saw that picture and the emojis what did you take that to mean?

A. That he was laughing at the incident and he He's like. You want to catch me how we caught her.

Q. He was laughing and that you won't catch me meaning the sender. You won't catch the sender like you were caught?

A. Yes

There was no objection to this testimony.

WeatherSpoon also noticed that the #DumpStreet account had re-posted a tweet from an account called "LandLord 20" with a profile picture allegedly depicting the defendant. This text of the tweet reads: "You arnt dead yet. Devil emoji, but you can be bot." with 100 percent emoji.

Again without any objection from trial counsel, WeatherSpoon was allowed to read and interpreted the text of this tweet via the following exchange with the prosecutor

Q. When you saw the tweet what did you understand it to mean?

A. That he found out we wasn't dead, but he's like I guess he is still gonna try, but you can be.

The face of this tweet does not indicate any name associated with this account, it has a small photograph associated with it, and has a hashtag listed as #DumpStreet@ebub. The message states #NO NO you wnt Richgang or "Quitta." me. with several emojis, including two thumbs down, a "100" emoji, a crying emoji, a crying emoji, laughing emoji, a sick emoji, what appears to be a no walking emoji and a gun emoji. There is no indication on this tweet that it was liked or re-posted by anyone, much less the Defendant. This screenshot, nor any other screenshot offered into evidence supports

her testimony that the #DumpStreet account requested to follow her.

Weather Spoon was allowed to testify as to the meaning of the tweets. She gave a lay opinion that was conclusory, speculative without foundation, and not at all based on the actual language and emojis contained in the tweet in violation of Ill R Evid. R 901 (B)(1).

Weather Spoon offered no specialized knowledge as to how she knows the meaning behind the words and emojis, and allowing her to give lay opinion as to what she believed the author of this word/emoji Scramble was impermissible. See *People v Crump* 319 Ill App 3d 538 542 (2001). A witness opinion must be confined to statements of fact of which the witness has personal knowledge. In providing her interpretation of what the vague tweet means to her, Weather Spoon went far beyond the scope of a lay witness. Weather Spoon was attempting to give her lay opinion without such specialized knowledge, this too was impermissible, as this would have been a matter left for the jury to decide on its own.

The defendant was severely prejudiced by Weather Spoon's testimony. Since the face of the tweet do not make clear that these statements were threats or admissions, and it was speculative to even opine the text were directed at her based on the use of the term "Quitta," especially when the word/emoji combination in one of the tweets did not appear to be referencing her name, and the other tweet referenced a bot. This

error alone should be sufficient to cause reversal, This Social Media evidence should not have come in at all, in its entirety, and this was due to the Circuit Courts abuse of discretion. This case was controlled by *People v Kent* 2017 IL App (2d) 140917

Argument

Defendants Sentence violates the proportionate penalties Clause of the Illinois Constitution

Pursuant to *People v Butler* 2019 IL 122327 7140-41 a de facto life Sentence for juvenile offenders meaning under the age 18, is any Sentence over 40 years. However at least one appellate court case in Illinois has applied the proportionate Penalties Clause to youthful offenders, over the age 18. *People v House* 2019 IL App (1st) 110580-B. the court overturned the lower court's Sentencing decision determining that the Sentence of two consecutive life Sentences given to a 19 year old violated the proportionate Penalties Clause of the Illinois Constitution Ill Const art 1 SS 11. All penalties must be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.)

The court held that the Sentence failed to properly weigh mitigating factors including but not limited to the defendants age (19), lack of criminal record and minimal culpability as an accomplice rather than perpetrator of the

crime and therefore should be overturned.

Here the Circuit Court strictly adhered to the mandatory minimum when imposing a de facto life sentence of 52 years on the defendant and failed to take mitigating factors such as the defendant's age and criminal history into consideration. The defendant was only 20 years old when he was charged with the crimes at issue in this case. Similar to the defendant in House, Bell had no history of violence. Even the circuit court agreed that the sentence was severe and that she had no other choice, but to give the severe sentence per statute. Petitioner's sentence is in violation of the proportionate penalty clause of the Illinois constitution for that reason defendant's sentence should be reversed the court shall be allowed

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Alonzo Bell

Date: 4-15-2022

Subscribed and sworn to before me on the

15th day of April, 2022
Shelley A. Shevlin
Notary Public

NOTARY

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