

No. 22-_____

IN THE
Supreme Court of the United States

MARICE NALLS

PETITIONER,

v.

UNITED STATES

RESPONDENT.

ON APPLICATION FOR A SUPERVISORY WRIT TO THE
LOUISIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

- (1) Whether Petitioner's Constitutional right to a fair trial on his charge of aggravated rape was violated when he was tried simultaneously for armed robbery even though the armed robbery charge had prescribed?

PARTIES TO THE PROCEEDING

Marice Nalls and the State of Louisiana are parties to this suit. To date, the State of Louisiana has been represented by the District Attorney's Office for the 19th Judicial District Court.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTIONAL STATEMENT	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	4
SUMMARY OF THE ARGUMENT.....	5
REASONS FOR GRANTING A WRIT OF CERTIORARI.....	5
CONCLUSION.....	9
CERTIFICATE OF SERVICE.....	10
APPENDICES.....	11

TABLE OF AUTHORITIES

<u>Cases</u>		<u>Page</u>
<i>Brecht v. Abrahamson</i> 507 U.S. 619 (1993)		7
<i>Darden v. Wainwright</i> 447 U.S. 168 (1986)		7
<i>Estelle v. McGuire</i> 502 U.S. 62 (1991)		7
<i>Payne v. Tennessee</i> 501 U.S. 808 (1991)		7
<i>State v. Nalls</i> 152 So.3d 164 (La. 2014)		1
<i>State v. Nalls</i> 333 So.3d 1236 (2022)		1
<u>Statutes</u>		
28 U.S.C. 1257		2
<u>Constitutional Provisions</u>		
Fourteenth Amendment		2, 11, 12

OPINIONS BELOW

Marice Nalls was convicted at trial in Louisiana's 19th Judicial District Court in docket number 07-07-0697. He was convicted of Principal to Armed Robbery and Aggravated Rape. Mr. Nalls filed a pro se post-conviction relief application with the trial court on the grounds that his armed robbery case had prescribed at the prosecution was instituted. That application was denied by the 19th Judicial District Court and by Louisiana's First Circuit Court of Appeal. Mr. Nalls was successful in having the Louisiana Supreme Court vacate his conviction and sentence of principal to armed robbery, *State v. Nalls*, 152 So.3d 164 (La. 2014). Thereafter, Mr. Nalls sought a second application of post-conviction relief urging he was denied his constitutional right to a fair trial as to the aggravated rape. Its application was denied by the trial court without a hearing as untimely. Applications for supervisory writs to both the Louisiana Court of Appeals and State Supreme Court were denied, *State v. Nalls*, 333 So.3d 1236 (2022).

This writ of certiorari now follows.

JURISDICTIONAL STATEMENT

Nalls' petition for a *writ of certiorari* centers around the right to a fair trial, when a defendant is prejudiced at trial on one count because he should have never been tried simultaneously for the second count due to prescription issues. The attached Appendix contains Mr. Nalls' adverse rulings from the Louisiana 19th Judicial District Court and the First Circuit Court of Appeals as well as the ruling from the Louisiana Supreme Court vacating his conviction and sentence for

principal to armed robbery. The Appendix also contains his adverse rulings on his first application for post-conviction relief from the 19th Judicial District Court, First Circuit Court of Appeals and Louisiana Supreme Court. As such, jurisdiction is properly vested with this Court pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution affords the accused a right to a fair trial.

STATEMENT OF THE CASE

On June 19, 2007, Mr. Nalls was arrested by the Baton Rouge Police Department for aggravated rape and armed robbery. It was alleged that nearly 10 years earlier, on September 24, 1998, the instant Petitioner, Marice Nalls, and an unknown person went to Warren House on Greenwell Springs Road, Baton Rouge, Louisiana and picked one of the apartments, specifically Apartment #12, to rob and rape the occupant.

On July 26, 2007, Mr. Nalls was charged by Grand Jury indictment of committing aggravated rape and armed robbery on the alleged victim. After a judge trial, Mr. Nalls was found guilty as charged on October 1, 2008, and was sentenced on January 12, 2009, to life without benefits and 15 years to run concurrently.

On November 19, 2014, Mr. Nalls filed a petition for Habeas Corpus Review in the United States District Court, Middle District of Louisiana. On November 7, 2017, a Magistrate Report and Recommendation was filed. On November 17, 2017, an Objection to the Magistrate's Report and Recommendation was filed.

On December 6, 2017, the United States District Court denied Mr. Nalls' Petition for Habeas Corpus, with prejudice as untimely. On December 12, 2017, Mr. Nalls filed his Notice of Appeal in the District Court. On January 8, 2018, the District Court denied IFP and COA.

On January 22, 2018, Mr. Nalls filed an Motion for Certificate of Appealability in the United States Fifth Circuit Court of Appeal, which was granted. On January 30, 2020, the United States Fifth Circuit Court of Appeal reversed the judgment of the federal district court and remanded the case for a ruling on the merits. On August 3, 2020, the district court denied Mr. Nalls' Petition for Habeas Corpus. On September 8, 2020, the district court denied Mr. Nalls' Motion for a Certificate of Appealability.

On October 19, 2020, Mr. Nalls filed a Motion for Certificate of Appealability and Supporting Memorandum to the United States Fifth Circuit Court of Appeal. On July 26, 2021, the motion was denied.

On March 31, 2020, Mr. Nalls filed a second Application for Post-Conviction Relief with claims that focus on having been improperly made to stand trial for a prescribed charge. On June 12, 2020, the Commissioner issued an order requiring Mr. Nalls to provide reasons to justify the successive application considering he filed an application in 2011. On June 30, 2020, Mr. Nalls filed his Answer to Court's Order for Reasons. On April 6, 2021, the Commissioner's Recommendation was filed and recommended Mr. Nalls' application be denied based on the rationale that his claims have been fully litigated in the sense that the Louisiana Supreme Court left

his conviction of aggravated rape untouched when it vacated his conviction of armed robbery for prescription issues. On April 27, 2021, Mr. Nalls filed an objection and traversal to the commissioner's recommendation.

On September 13, 2021, the District Court denied Mr. Nalls' application without a hearing, citing the reasons in the Commissioner's Recommendation. On October 5, 2021, Mr. Nalls filed a supervisory writ with the First Circuit. On December 22, 2021, the First Circuit denied writ. On January 21, 2022, Mr. Nalls filed a supervisory writ with the Louisiana Supreme Court. On March 15, 2022, the Louisiana Supreme court denied writ.

STATEMENT OF THE FACTS

On June 19, 2007, Mr. Nalls was arrested by the Baton Rouge Police Department for aggravated rape and armed robbery. It was alleged that nearly 10 years earlier, on September 24, 1998, the instant Petitioner, Marice Nalls, and an unknown person went to Warren House on Greenwell Springs Road, Baton Rouge, Louisiana and picked one of the apartments, specifically Apartment #12, to rob and rape the occupant.

On July 26, 2007, Mr. Nalls was charged by Grand Jury indictment of committing aggravated rape and armed robbery on the alleged victim. After a judge trial, Mr. Nalls was found guilty as charged on October 1, 2008, and was sentenced on January 12, 2009, to life without benefits and 15 years to run concurrently.

SUMMARY OF THE ARGUMENT

Mr. Nalls was denied the right to a fair trial when he was simultaneously tried for aggravated rape and armed robbery, though the armed robbery charge had prescribed. He was denied the right to a fair trial because the judge was exposed to evidence of the prescribed charge of armed robbery when the judge should have only been tasked with the issue of judging the evidence of the aggravated rape.

On November 7, 2014, the Louisiana Supreme Court granted writ in part stating that trial counsel rendered ineffective assistance when he failed to file a motion to quash on the basis that the time limitations for instituting prosecution on the armed robbery count had prescribed. The application was granted for the sole purpose of vacating Mr. Nalls' armed robbery conviction and sentence. On March 2, 2020, Mr. Nalls filed a second application for Post-Conviction Relief, raising a new issue that, in light of the Louisiana Supreme Court's ruling,

REASONS FOR GRANTING A WRIT OF CERTIORARI

Marice Nalls' right to a fair trial under the due process clause of the Fourteenth Amendment to the United States Constitution was violated when he was tried for aggravated rape and armed robbery, though the armed robbery charge had prescribed. He was denied the right to a fair trial because the judge was exposed to evidence of and had to decide upon the prescribed charge of armed robbery when the judge should have only been tasked with the issue of judging the evidence of the aggravated rape.

Not until after Mr. Nalls was convicted of both aggravated rape and principal to armed robbery did he discovered that the armed robbery charge had prescribed. His attorney at the time, the State, and the trial court failed to notice this improper charge and allowed the case to proceed with a prescribed charge. Mr. Nalls filed a *pro se* post-conviction relief application to have his armed robbery conviction and sentence vacated. He was denied by the trial court and the First Circuit Court of Appeals.

He took a writ to the Louisiana Supreme Court, and on November 7, 2014, the Louisiana Supreme Court granted writ in part stating that trial counsel rendered ineffective assistance when he failed to file a motion to quash on the basis that the time limitations for instituting prosecution on the armed robbery count had prescribed. The application was granted for the sole purpose of vacating Mr. Nalls' armed robbery conviction and sentence. In light of the Louisiana Supreme Court's ruling, Mr. Nalls filed a second application for post-conviction relief raising the issue now before this Court that he was denied a right to a fair trial as to his aggravated rape charge.

At trial, the State formulated a case that suggested Mr. Nalls and a still-unidentified accomplice broke into the victim's apartment in the early morning hours of September 24, 1998. Once inside, they demanded money from the victim, and when she could not find her purse Mr. Nalls raped her while the accomplice stole various items. The State suggested Mr. Nalls and his accomplice stole a television and the victim's purse, containing items such as a checkbook and credit

cards. The checkbook and credit cards were later discovered and returned to the victim by a third party, who had supposedly found them in a field. The testimony presented by the State placed Mr. Nalls as a principal to armed robbery at best, as the unidentified accomplice orchestrated the physical removal of the items stolen.

In the event that evidence is introduced that is so unduly prejudicial that it renders that trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief. *Payne v. Tennessee*, 501 U.S. 808, 825, 111 S. Ct. 2597, 2608, 115 L.Ed.2d 720 (1991) (citing *Darden v. Wainwright*, 447 U.S. 168, 179-183, 106 S. Ct. 2464, 2470-2472, 91 L.Ed.2d 144 (1986)). In conducting this analysis, it is irrelevant whether the evidence was correctly admitted pursuant to state law. *Estelle v. McGuire*, 502 U.S. 62, 67-68, 112 S. Ct. 475, 116 L.Ed.2d 385 (1991). Rather, the court's inquiry is whether the admission violated the Constitution. *Id.* at 68.

Though a significant portion of the evidence centered around the aggravated rape charge, the State supplied evidence relevant to convict Mr. Nalls of principal to armed robbery as well. Certain evidence pertaining to the details of the robbery were not relevant or necessary to prove the elements of aggravated rape. They were necessary simply for the sake of proving the armed robbery charge. The trial court's erroneous admission of the prescribed offense deprived Mr. Nalls of a fair trial. The erroneous admission of this evidence had a substantial and injurious effect or influence on the verdict at trial. See *Brecht v. Abrahamson*, 507 U.S. 619, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993).

Had Mr. Nalls not been on trial for the prescribed crime of principal to armed robbery, that unnecessary evidence may not have been presented to the court. At the very least, the State would have needed to provide Mr. Nalls with notice of intent to introduce evidence relative to the armed robbery under La. Code Evid. R. 404B. This would have at least afforded Mr. Nalls an opportunity to oppose such evidence, demand a *Prieur* hearing, and attempt to limit the scope of evidence presented pertaining to the armed robbery. Had that evidence been inadmissible, a number of things may have been different. Mr. Nalls may have decided to prepare his defense differently or the trier of fact may have perceived the victim's and Mr. Nalls' credibility differently. The opportunity to exclude certain evidence from his trial had the potential to render a different outcome as to the aggravated rape conviction. But Mr. Nalls was denied such opportunity when the trial court, the State and Mr. Nalls' own attorney allowed for him to be improperly tried for the prescribed charge of principal to armed robbery simultaneously with the charge of aggravated rape. For these reasons, Mr. Nalls was denied his right to a fair trial under the Due Process Clause of the Fourteenth Amendment

CONCLUSION

As such, Mr. Nalls was denied his constitutional right to a fair trial and requests his conviction and sentence for aggravated rape be vacated and a new trial be ordered.

Respectfully Submitted,
**MANASSEH, GILL, KNIPE &
BÉLANGER, P.L.C.**

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Dated: June 13, 2022

CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 13th day of June 2022, pursuant to Supreme Court Rules 29.3 and 29.4, the accompanying motion for leave to proceed *in forma pauperis* and petition for a writ of *certiorari* was served on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing these documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

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APPENDICES

APPENDIX A: March 15, 2022 Decision of the Louisiana Supreme Court

APPENDIX B: December 22, 2021 Decision of the Louisiana First Circuit Court of Appeals

APPENDIX C: September 13, 2021 Decision of the 19th Judicial District Court

APPENDIX D: April 13, 2021 Objection and Traverse to the Commissioner's Recommendation

APPENDIX E: April 6, 2021 Recommendations from the Commissioner

APPENDIX F: June 26, 2020 Answer to Commissioner's Order for Reasons

APPENDIX G: June 11, 2020 Commissioner Order

APPENDIX H: February 27, 2020 Post Conviction Relief Application

APPENDIX I: November 7, 2014 Decision of the Louisiana Supreme Court

Respectfully Submitted,
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