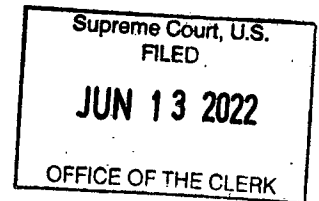


No. 21-8218

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



RAMIK BANKS — PETITIONER
(Your Name)

vs.

THERESA DELBALSO, ET AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RAMIK BANKS
(Your Name)

301 Grey-Line Drive
(Address)

FRACKVILLE PA 17931
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether the United States Court of Appeals for the Third Circuit entered a decision in this case that conflicts with its decision in *Travillion v. Superintendent SCI Rockview*, 982 F.3d 896 (3rd Cir. 2020), decided December 15, 2020, clarifying application of clearly established Federal law announced by the Supreme Court of the United States in *Jackson v. Virginia*, 443 U.S. 307 (1979), regarding the standard of review of challenges to the Sufficiency of Evidence.

LIST OF PARTIES

Petitioner is Ramik Banks, a Pennsylvania State prisoner confined at the State Correctional Institution Mahanoy, 301 Morea Road, Frackville, PA 17932, at inmate No. KM-5391.

Respondent Theresa Delbalso, at the time Petitioner filed his habeas petition, was Superintendent at the State Correctional Institution Mahanoy and had custody of Petitioner.

Respondent District Attorney of Philadelphia County prosecuted Petitioner.

Respondent Attorney General of the Commonwealth of Pennsylvania in an additional Respondent.

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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 judgements below.

OPINIONS BELOW

The 3/30/22 Order of the United States Court of Appeals denying Rehraring appears at Appendix "A"

The 12/2/22 Order of the United States Court of Appeals denying Certificate of Appealability appears at Appendix "B"

The 10/6/20 Order of the United States District Court adopting the Magistrate Judges Report and Recommendation appears at Appendix "C"

The 4/29/20 Report and Recommendation of the Magistrate Judge appears at Appendix "D"

The 3/28/19 Memorandum of the Pennsylvania Superior Court affirming the judgement appears at Appendix "E"

The 10/14/14 Order of this Honorable Court denying Certiorari appears at Appendix "F"

The 3/5/14 Order of the Pennsylvania Supreme Court denying Allowance of Appeal appears at Appendix "G"

The 8/4/13 Memorandum of the Pennsylvania Superior Court affirming the judgement appears at Appendix "H"

JURISDICTION

The Judgement of the United States Court of Appeals for the Third Circuit was entered on March 30, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

The Fifth Amendment to the United States Constitution provides, in pertinent part: No person shall be...deprived of Life, Liberty or Property without due process of law.

U.S. Const. amend. V

STATEMENT OF THE CASE

FACTS

The trial court summarized the facts revealed at trial as follows:

On August 14, 2010, at approximately 1:00 a.m., Robert Lewis was driving his girlfriend, Toccara Levins, home to the 5700 block of Rodman Street in Philadelphia.. Shortly after reaching the intersection of Rodman Street and 58th Street, their path was blocked by Petitioner, who was obstructing the street with his bicycle. Mr. Lewis honked his horn. Petitioner did not react, and Mr. Lewis got out of the car. Ms. Levins asked Petitioner to move out of the street, to which he responded "F**k no" and "I'm not moving out of the street.." As Ms. Levins got back into the car, Mr. Lewis got out of the car. Mr. Lewis approached Petitioner, who said "it is cool, old head." Mr. Lewis then got back into the car, and continued to drive up the street to Ms. Levins house.

After Mr. Lewis got back into the their car and pulled away, Petitioner called his cousin, Anthony Washington. Petitioner then went to a corner store and met up with Mr. Washington, who brought a gun for himself and a .45 caliber handgun for Petitioner. Petitioner and Mr. Washington returned to Rodman Street and approached Mr. Lewis's car, and Petitioner attempted to fire his gun at Mr. Lewis.

The gun jammed and Petitioner ran away from the car, at which point Mr. Lewis got out of the car and chased Petitioner, firing his revolver at him. Petitioner turned around and attempted to fire back. This time the gun worked and Petitioner

succeeded in shooting at Mr. Lewis. As Mr. Lewis limped back to his car, Mr. Washington approached Mr. Lewis and began shooting, hitting him in the head and neck.

Ms. Levins and her sister, Jalisa Kennedy, were inside their home when they heard the gunshots. After the gunshots, Ms. Levins called the police and then ran to find Mr. Lewis, who had collapsed on the corner of 57th and Rodman street. Philadelphia Police Officer Bruce Wright arrived on the scene. Ms. Kennedy approached Officer Wright and told him that she saw two men besides Mr. Lewis out in the street during the gunfire. Officer Wright drove the two women around in his patrol car, canvassing the area in an attempt to locate the shooters. As the car approached the intersection of 56th street and Pine street, Ms. Levins saw Petitioner and identified him as the man with whom Mr. Lewis had gotten into the altercation shortly before the shooting. Petitioner was taken into custody.

Mr. Lewis was taken to the Hospital of the University of Pennsylvania, where he was pronounced dead on arrival. He was shot twice in the head, once in the shoulder, once in the elbow, and once in the leg. Mr Lewis's autopsy revealed that he was shot by bullets from both a .45 caliber handgun and a 9-milimeter handgun. Police recovered eighteen fired cartridge casings from the scene of the shooting. Twelve of the fired cartridge casings came from a .45 caliber handgun, and five cartridge casings came from Mr. Lewis's revolver.

Petitioner was brought to the Homicide Unit of the Philadelphia Police Department. Philadelphia Police Detective John harkins read Petitioner his Miranda warnings, and Petitioner

agreed to be interviewed by the police. Petitioner then denied being present at the scene of the shooting or having anything to do with the shooting. Petitioner was held at the Homicide Unit overnight.

The following morning, Det. Harkins again questioned Petitioner, at which point Petitioner confessed to Det. Harkins that he had shot Mr. Lewis. Petitioner said that he was in the middle of the street "talking to some girls" when Mr. Lewis pulled up in his car and Ms. Levins in the front seat. Petitioner said that Mr. Lewis told him to move out of the way, and that Petitioner tried to walk away, but Mr. Lewis drove up next to him and got out of the car. Petitioner told Det. Harkins that as he backed away from Mr. Lewis, he heard gunshots, and he then turned and began running away. Petitioner told Det. Harkins that he then pulled out his own gun and fired backwards at Mr. Lewis as he ran away. Petitioner denied that there was a second shooter, and claimed that he acted alone in killing Mr. Lewis.

PROCEDURAL POSTURE

On March 15, 2011, Petitioner was charged with first -degree murder, criminal conspiracy, carrying firearm in public streets or public property in Philadelphia, possessing instrument of crime (PIC), and person not to possess, use, manufacture, sell or transfer firearms. Petitioner proceeded to trial on April 16, 2012. The Commonwealth presented testimony from 18 witnesses and Petitioner testified on his own behalf. Following a five-day trial, on April 20, 2012, he was convicted of all charges with the exception of person not to possess, use, manufacture, control, sell or transfer firearms. On that same day, Petitioner was sentenced to a mandatory sentence of life imprisonment without the possibility of parole for the first-degree murder conviction.

On April 30, 2012, Petitioner filed post-sentence motion arguing that the verdict was against the weight of the evidence. The trial court denied Petitioner post-sentence motion on August 10, 2012.

Petitioner filed a direct appeal alleging (1) evidence was not sufficient to support the verdict of first-degree murder, (2) verdict for first-degree murder was against the weight of the evidence, and (3) the Commonwealth did not prove conspiracy. Petitioner's judgement was affirmed by the Pennsylvania Superior Court on April 14, 2013. Commonwealth v. Banks, 2539 EDA 2012 (Pa. Superior 2013). The Pennsylvania Supreme Court denied allowance of appeal on March 5, 2014. Commonwealth v. Banks, 474 EAL 2013.

On November 18, 2014, Petitioner filed a petition pursuant to Pennsylvania's Post Conviction Relief Act (PCRA), 42 Pa.C.S. § 9541 et seq., alleging ineffective assistance of counsel at trial for failing to assert voluntary intoxication defense, request an instruction, object to the Commonwealth's improper closing remark, and the statute upon which Petitioner was sentenced is unconstitutional and void under the vagueness doctrine. Petitioner appointed counsel filed an amended petition on February 9, 2016. By order dated January 16, 2018 the PCRA petition was dismissed.

Petitioner filed a timely Notice of Appeal and presented the following issues on appeal of the dismissal of his PCRA petition: (1) whether the PCRA court erred in holding that his claim that counsel was ineffective for not requesting a voluntary intoxication charge was without merit; (2) whether the PCRA court erred in holding that his claim that counsel was ineffective for not objecting to prosecutorial misconduct during the Commonwealth's closing argument was without merit; and (3) whether Petitioner is serving an illegal sentence. On March 28, 2019 the Pennsylvania Superior Court affirmed the judgement of the PCRA court, finding that Petitioner had waived the claims and that the third claim lacked merit. Commonwealth v. Banks, 356 WDA 2018 (Pa. Super. 2019).

Petitioner filed a pro se Petition for Writ of Habeas Corpus in the United States District for the Eastern District of Pennsylvania on June 14, 2019. Petitioner raised the following claims: (1) insufficiency of the evidence to sustain a conviction of first degree murder; (2) ineffective assistance of counsel for

failing to pursue a voluntary intoxication defense and failing to object to improper comments during the Commonwealth's closing argument; (3) that he was sentenced under a constitutionally vague statute; and (4) ineffective assistance of counsel for failing to object to the expert qualifications of the ballistics analysis and failing to object to a purportedly erroneous jury instruction on witness credibility.

On April 29, 2020, Magistrate Judge Jacob P. Hart, issued a Report and Recommendation to deny the petition for writ of habeas corpus. By order dated October 6, 2020, the Honorable Judge Jeffrey L. Schmehl adopted the Magistrate's Report and Recommendation and denied the habeas petition.

A timely filed appeal to the United States Court of Appeals for the Third Circuit at No. 20-3184, resulted in the denial of Certificate of Appealability by order dated December 2, 2021. A timely filed Application for Rehearing was denied by order dated March 30, 2022.

This timely filed petition follows.

REASON FOR GRANTING THE PETITION

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT ENTERED A DECISION IN THIS CASE THAT CONFLICTS WITH ITS DECISION IN TRAVILLION V. SUPERINTENDENT SCI ROCKVIEW, 982 F.3d 896 (3d Cir. 2020), DECIDED DECEMBER 15, 2020, CLARIFYING APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW ANNOUNCED BY THIS COURT IN JACKSON V. VIRGINIA, 443 U.S. 307 (1979), REGARDING THE STANDARD OF REVIEW OF CHALLENGES TO THE SUFFICIENCY OF EVIDENCE.

In Travillion v. Superintendent SCI Rockview, supra., decided December 15, 2020, during the pendency of the instant case in the District Court, the Third Circuit Court of Appeals clarified application of clearly established federal law announced by this Honorable Court in Jackson v. Virginia, supra., regarding the standard of review for challenges to the Sufficiency of Evidence.

Then a petitioner alleges entitlement to habeas relief by challenging the sufficiency of the evidence supporting his state court conviction, as Travillion did as well as Petitioner here does, the clearly established federal law governing the insufficient evidence claim is the standard set out by this Court in Jackson v. Virginia, Supra. Under Jackson, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, an rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson, 443 U.S. at 319.

This reasonable doubt standard of proof requires the finder of fact "to reach a subjective state of near certitide of the guilt of the accused." Id. at 315 (citinf In re Winship, 397 U.S. 358, 372 (1970)).

It "plays a vital role in the American scheme of criminal procedure," because it operates to give concrete substance to the

presumption of innocence to ensure against unjust convictions, and to reduce the risk of factual error in a criminal proceeding." *Id.* (quoting *In re Winship*, 397 U.S. at 363). A conviction that fails to satisfy the Jackson standard violates due process, see *Jackson*, 443 U.S. at 319, and thus a convicted habeas petitioner is entitled to relief if the state court's adjudication denying the insufficient evidence claim was objectively unreasonable, See *Parker v. Matthews*, 567 U.S. 37, 43 (2012).

In Travillion's case, "Appellees acknowledge that the crux of the Commonwealth's case against Travillion was the fingerprint evidence." They also acknowledge that Ms. Diodati's physical description of the perpetrator did not match Travillion's characteristics, but they argue it was at least close enough not to exclude him. So essentially the only evidence linking Travillion to the crime was the fingerprint evidence on the Manila folder and paper, plus the fact that Travillion's characteristics were, at best, close enough to the witness' description of the robber not to exclude him. That is not enough to reasonably conclude that the Jackson test was satisfied here. Evidence that Travillion's fingerprints were found on the easily movable Manila folder and a paper inside the folder carried into the store by the robber and a witness description of the robber that does not match Travillion but doesn't necessarily exclude him is not sufficient evidence for a rational trier of fact to place Travillion at the scene of the crime at the time the crime was committed beyond a reasonable doubt.

Applying this Court's Jackson standard, in viewing the evidence in the light most favorable to the prosecution, and

drawing all reasonable inferences from the evidence, no rational trier of fact could have found Travillion was the perpetrator of the crims for which he was convicted beyond a reasonable doubt, See Jackson, 443 U.S. at 319. The Third Circuit Court of Appeals concluded the Pennsylvania Court's decision denying Travillion's insufficient evidence claim was an objectively unreasonable application of Pennsylvania's equivalent of this Court's Jackson standard and reversed the Order of the District Court denying habeas relief and remanded for the District Court to issue the writ in connection with his robbery conviction.

Here, Petitioner alleged the verdict of murder in the First Degree is not supported by sufficient evidence where the Commonwealth did not prove beyond a reasonable doubt that Petitioner had a specific intent to kill.

Taken in the light most favorable to the prosecution, the trial testimony revealed that one witness heard a shot but did not see Petitioner. Another witness recounted the victim having some words with a young man on a bike. A passenger in the car being driven by the victim recounted the verbal exchange. She recounted that the victim had a gun upon his person, but did not see the gun until he was lying on the ground, after he had been shot.

Jalisa Kennedy testified she saw the victim fire his weapon, leave the scene but she heard more gunshots. Police transported her through the neighborhood where she identified Petitioner, later denying she said the words that were in her statement.

Petitioner cited the record and presented the following: the undisputed evidence adduced at trial was Petitioner had been drinking alcohol for over four hours before the incident; that he

fell off the bike; and that an hour after the incident that assigned Detective thought he was too intoxicated to provide a reliable and proper statement. Thus, the underlying claim, i.e.,

Here, the Commonwealth's case consisted of three witnesses, one heard a shot, another recounted the victim having some words with a young man on a bike, and the passenger with the victim recounting the verbal exchange and verifying the victim had a gun. This testimony because of its de minimis nature that reliance on it to support a guilty verdict on first degree murder would be a matter of guesswork based on mere suspicion and innuendo. Because this testimony was the crux of the Commonwealth's case, the verdict should not stand.

Applying this Court's Jackson standard, in viewing the evidence in the light most favorable to the prosecution, and drawing all reasonable inferences from the evidence, no rational trier of fact could have found Petitioner was the perpetrator of the crime for which he was convicted beyond a reasonable doubt. See Jackson, 443 U.S. at 319. The Pennsylvania court's decision denying Petitioner's insufficient evidence claim was an objectively unreasonable application of Pennsylvania's equivalent of this Court's Jackson standard.

In these circumstances, Petitioner respectfully submits that the decision of Travillion applies and that the Third Circuit Court of Appeals has failed to properly give effect to this Court's decision in Jackson v. Virginia.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Ramir Banks
Ramik Banks

Dated: 6-6-22