

22-5436
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

AUG 18 2022

OFFICE OF THE CLERK

Oraine Brown
(Your Name)

— PETITIONER

vs.

State of New Jersey

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Superior Court of New Jersey Appellate Division
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Oraine Brown
(Your Name)

168 Frontage Road, P.O. Box 2300
(Address)

Newark, New Jersey 07114
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

The substantial questions of law and issues that warrants this Court's intervention:

(1) Can a trial judge postpone a trial on its commencement date at the prosecutor's motion for additional discovery without establishing how the opposing party (defendant) failed to comply with any discovery rule pursuant to N.J.C.R. 3:13-3(b)(f)? (1T 3-7 to 5-2)

New Jersey Court Rule 3:13-3(b)(f)

(f) Continuing Duty to Disclose; Failure to Comply. There shall be a continuing duty to provide discovery pursuant to this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, it may order such party to permit the discovery of materials not previously disclosed, grant a continuance or delay during trial, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate.

(2) Can discovery which is available pre-indictment and produced in the prosecutor's office be considered new discovery to the prosecutor on the commencement date of a defendant's trial? (Appendix - F & Appendix - A page 4)

(3) According to *Carbis Sales, Inc. v. Eisenberg*, 397 N.J. (2007) "A motion made at trial for discovery of a particular

document of which the moving party long since had knowledge and which is in any case unlikely to discoverable evidence is obviously so far out of time as to require a denial." So how could this discovery motion be granted, when the motion was made at trial, and the Movant party (State / Prosecutor) long since had knowledge of this report? (1T 3-7 to 5-2) & (Appendix - F)

(4) According to State v. Merlino, 153 N.J. Super. 12,17 (App. Div. 1977), a reviewing court will not overturn a trial judge's decision of whether a defendant was deprived of due process on speedy trial grounds unless the judge's ruling was "clearly erroneous". Since there is no "clearly erroneous" standard set forth the defendant would like his case to set that standard.

(5) Also the defendant would like this court to implement a more specific guideline on how a trial judge can continue or prohibit discovery pursuant to N.J.C.R. 3:13-3(b)(f) which governs the continuation of discovery in New Jersey.

(6) Does the trial judge have a duty to investigate into a juror's regret about his or her verdict prior to a defendant's sentencing hearing? This would be to determine if any jury misconduct occurred during jury deliberation if the juror never gave a reason for the regret pursuant to State v. Weiler, 211 N.J. Super. 602, 609-12, 512 A. 2d 531 (App. Div.), certif.

denied, 107 N.J. 37, 526 A. 2d 130 (1980). (Appendix - G)

(7) If not should the defendant just depend on sheer luck that the reason for the juror's regret might somehow come to light?

(8) Last but not least the defendant would like this court to establish a timeframe for a motion to be made pursuant to N.J.C.R. 1:16-1.

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:

RELATED CASES

None

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TABLES OF AUTHORITIES CITED

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STATUTES AND RULES

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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.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits 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 New Jersey Appellate Division court appears at Appendix A 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 _____.
A copy of that decision appears at Appendix _____.

☒ A timely petition for rehearing was thereafter denied on the following date:
_____ June 14, 2022 _____, and a copy of the order denying rehearing appears at Appendix D.

☐ 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 INCLUDED

1. 6th Amendment; Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

2. 14TH Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. N.J.S.A. 2c:20-7a Receiving Stolen Property

A person is guilty of theft if he knowingly receives (or brings into this State) movable property of another knowing that it has been stolen, or believing that it has probably been stolen.

4. N.J.S.A. 2c:35-10a Possession, use or being under the influence, or failure to make lawful disposition

a. It is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog, unless the substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by P.L.1970, c.226 (C.24:21-1 et seq.).

5. N.J.S.A. 2c:39-5(b) Unlawful possession of weapons

b. Handguns. (1) Any person who knowingly has in his possession any handgun, including any antique handgun, without first having obtained a permit to carry the same as provided in N.J.S.2C:58-4, is guilty of a crime of the second degree. (2) If the handgun is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person it is a crime of the third degree.

6. N.J.S.A. 2c:43-6 Sentence of imprisonment for crime; ordinary terms; mandatory terms.

a. Except as otherwise provided, a person who has been convicted of a crime may be sentenced to imprisonment, as follows:

(1) In the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 10 years and 20 years;

(2) In the case of a crime of the second degree, for a specific term of years which shall be fixed by the court and shall be between five years and 10 years;

(3) In the case of a crime of the third degree, for a specific term of years which shall be fixed by the court and shall be between three years and five years;

(4) In the case of a crime of the fourth degree, for a specific term which shall be fixed by the court and shall not exceed 18 months.

STATEMENT OF THE CASE

The defendant, Oraine Brown, was arrested on April 20, 2019, in the township of Irvington, New Jersey, for unlawful possession of a firearm without a permit, in the 2nd degree, N.J.S.A. 2c:39-5(b), receiving stolen property, in the 3rd degree, N.J.S.A. 2c:20-7A, and possession of CDS (Marijuana), disorderly persons, N.J.S.A. 2c:35-10A.

On June 17, 2019, defendant was indicted on two counts; 2nd degree unlawful possession of a handgun, N.J.S.A. 2c:39-5(b), and 3rd degree receiving stolen property, N.J.S.A. 2c:20-7A.

On January 6, 2020, the defendant's trial was supposed to commence but it got postponed to the following month. (1T 3-7 to 5-2). The reason it got postponed was because the prosecutor motioned that she needed additional discovery even though all discovery was previously made final during a pre-trial hearing on October 29, 2019. (1T 3-7 to 4-2). This motion was granted by the initial trial judge even though the defendant objected by commenting the prosecutor had several opportunities prior to this date and grand jury to obtain this discovery, and that discovery was previously made final. (1T 4-5 to 5-2). The additional discovery motioned for was a fingerprint examination report that was produced on April 22, 2019, in the prosecutor's office. (Appendix-F). According to Carbis Sales, Inc. v.

Eisenberg, 397 N.J. (2007) "A motion made at trial for discovery of a particular document of which the moving party long since had knowledge and which is in any case unlikely to discoverable evidence is obviously so far out of time as to require a denial."

This case got transferred to another judge on February 11th, 2020, where a jury trial commenced before Judge Mayra V. Tarantino, J.S.C., the new trial judge within the Essex County Superior Court of New Jersey. Defendant was convicted by a jury on February 20, 2020, for the sole count of 2nd degree unlawful possession of a firearm without a permit, N.J.S.A. 2c:39-5(b). Within 10 days after the defendant was convicted on February 27, 2020, he filed a motion for a judgment of acquittal pursuant to N.J.C.R. 3:18-2. Within this motion the defendant alleges that the initial trial judge & the prosecutor violated his 6th amendment right to a speedy trial by causing an undue delay in prosecution. State v. Cappadona specifies that four factors should be considered in determining whether or not an indictment should be dismissed for delay in prosecution, namely (1) length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) the prejudice to the defendant resulting from the delay. Within defendant's motion he states that the reason was to allow the State to gain an unfair

advantage at trial, that he objected the prosecutor's motion for additional discovery which demonstrates he asserted his right, and it was prejudice towards the defendant because it allowed even more additional discovery to be admitted than initially motioned for.

New Jersey Court Rule 3:18-2. Motion after discharge of jury

If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made, even if not earlier made pursuant to R. 3:18-1 or it may be renewed within 10 days after the jury is discharged or within such further time as the court fixes during the 10-day period. The court on such motion may set aside a verdict of guilty and order the entry of a judgment of acquittal and may so order if no verdict has been returned.

On July 22, 2020, juror number 12 from the defendant's trial sent an email to the New Jersey Superior Court stating that he has come to regret his verdict without giving any reason.

(Appendix - G)

Defendant's hearing for his motion for a judgment of acquittal was conducted on July 31, 2020, where the trial judge also addressed the email sent by juror number 12. During oral argument the defendant commented the State was privy to this fingerprinting report well prior to the January 6th trial date, all discovery was made final before this trial date was set, this adjournment allowed the State to admit even more discovery than motioned for, and that the State did not meet any of the requirements set by N.J.C.R. 3:13-3(b)(f) to continue discovery which governs the continuation of discovery in New Jersey. (3T

4-14 to 5-10; 6-8 to 11; 7-7 to 8-5).

New Jersey Court Rule 3:13-3(b)(f)

(f) Continuing Duty to Disclose; Failure to Comply. There shall be a continuing duty to provide discovery pursuant to this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, it may order such party to permit the discovery of materials not previously disclosed, grant a continuance or delay during trial, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate.

After oral argument the trial judge addressed defendant's motion by commenting the U.S. Supreme Court established four factors for courts to consider in determining whether defendant's rights to a speedy trial has been violated which are the length of delay, the reason for delay, the defendant's assertion of his right and prejudice to the defendant. (3T 9-3 to 12). In regards to the 1st factor the judge commented no undue delay in bringing this matter to trial under typical Essex County trial calendar, as for the 2nd factor that no indication in the record that the State used adjournments to gain a tactical advantage, regarding the 3rd factor the court said that nowhere in the record did the defendant assert his right to a speedy trial prior to this motion, and lastly that no prejudice was suffered by the defendant because he was free on bail and the discovery was beneficial because it showed no fingerprints where present on the handgun. (3T 9-18 to 10-24). Ultimately the trial judge denied this motion. (3T 16-23 to 25). (Appendix - B)

In regards to the email sent by juror number 12, the trial judge claimed defendant never made a motion pursuant to this email. (3T 17-18 to 18-13). The trial judge also claimed "change of heart is insufficient for a court to investigate the thought processes which induce a particular to join in a verdict." (3T 18-9 to 12). Although the defendant never made a motion pursuant to this email, 9 days isn't adequate enough time to file a motion pursuant to N.J.C.R. 1:16-1 which would allow the trial judge to interview this juror. Also the trial judge cannot claim the juror had a change of heart because the juror never gave a reason for his regret.

New Jersey Court Rule 1:16-1. Interviewing jurors subsequent to trial

Except by leave of court granted on good cause shown, no attorney or party shall directly, or through any investigator or other person acting for the attorney, interview, examine, or question any grand or petit juror with respect to any matter relating to the case.

The defendant's appellate attorney submitted briefs on September 28, 2021, to dismiss the indictment or grant a new trial. This appeal concerned whether a 6th amendment speedy trial violation occurred when the discovery timeline was erroneously extended to benefit the State at trial causing a delay in prosecution and should a post-conviction voir dire be conducted in regards to the email sent by juror number 12 regretting his verdict in this case prior to defendant's sentencing without giving a reason. On October 12, 2021, this appeal was denied by

the Appellate Division which affirmed the conviction and the sentence. (Appendix - A)

The Appellate Division analyzed the speedy trial violation utilizing the four Barker factors. First stating that a 34 day trial postponement was not undue delay where the State sought the adjournment to provide defendant new discovery. Also stating no prejudice in the short delay, as defendant "was not subject to pre-trial incarceration, and was free to handle his personal affairs". Finally, the judges noted that the new discovery contained evidence beneficial to defendant, as it showed no fingerprints were recovered on the handgun. (The Appellate Division affirmed that the defendant asserted his right to a speedy trial.) (Appendix - A pages 4-5)

Response: This was not new discovery because this report was produced on April 22, 2019, within the prosecutor's office two days after the defendant was arrested. (Appendix - F). The last pre-trial conference for this case was on October 29, 2019, so the prosecutor had 6 months to obtain this report which was produced in the Essex County Prosecutor's office, (Appendix - F), where the prosecutor works. Even though the delay was only 34 days both the Court and the prosecutor knew that would be sufficient enough time to allow an expert witness to testify and make this expert report permissible for trial. (1T 3-7 to 4-19). According to N.J.C.R. 3:13-3(b)(1)(I) an expert report and expert witness's name must be furnished 30 days

before trial which both the prosecutor and the Court knew. (1T 3-7 to 4-19).

Defendant was free on bail to handle his personal affairs but that isn't the only consideration under this factor. The courts need to minimize anxiety and concern of the accused, and limit the possibility that the defense will be impaired. On January 6, 2020, the initial trial date, defendant was fully ready to resolve this case but this unwarranted delay sent defendant's anxiety to a peak which was reflected on the record when he questioned the Court about any more possible delays. (1T 5-25 to 6-8). Although defendant's fingerprints were not present on the weapon at hand, the expert witness was able to testify that fingerprints are difficult to extract from handguns and the particular handgun involved in this case. (2T 22-14 to 24-23)

New Jersey Court Rule 3:13-3(b)(1)(I)

names and addresses of each person whom the prosecutor expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Except as otherwise provided in R. 3:10-3, if this information is not furnished 30 days in advance of trial, the expert witness may, upon application by the defendant, be barred from testifying at trial.

As to the second issue, whether a post-conviction voir dire should be conducted in regards to the email sent by juror number 12, the Appellate Division stated; The email, at best, represents an unspecified expression of regret, assuming the author of the email is actually juror number twelve. Its contents allege no "event or occurrence injected into the deliberation in which the capacity for prejudice inheres."

(Appendix - A page 6)

Response: According to State v. LaFera, It may appear odd to recognize a ground for the validation of a verdict while denying a litigant a chance to find out whether such an event perchance did occur. The fate of a defendant is thus made to depend upon sheer luck that the wrongful event somehow comes to light. The weight of the criticism is appreciated, but when contending values clash in their demands, a balance must be struck, and the balance struck is not shown to be a poor one because in some unknowable cases there may be an injustice. Overall the instances of invalidating misbehavior are exceedingly few. State v. Lafera, 42 N.J. 97, 106-107 (1964).

Although the email sent by juror number 12 did not state or allege any juror misconduct or introduction of extraneous factors into the jury's considerations the unknown reason may have lead to an unjust result in this case. (Appendix - G). The defendant's fate should not be left to 'sheer luck that the reason for the regret might somehow come to light.

The thrust of the New Jersey and federal cases on mid-trial allegations of jury misconduct is that the trial judge must make a probing inquiry into the possible prejudice caused by any jury irregularity, relying on his or her own objective evaluation of the potential for prejudice rather than on the juror's subjective evaluation of their own impartiality. See State v. Weiler, 211 N.J. Super. 602, 609-12, 512 A. 2d 130 (1986). Although the trial judge has discretion in the way to investigate allegations of jury misconduct, an adequate inquiry on the record is necessary for the purposes of appellate review. State v. Scherzer, 301 N.J. Super.

363. The trial judge never investigated into juror number 12's regret even though the alleged cause could be due to jury misconduct.

According to State v. Weiler, the trial judge must make a probe inquiry into the possible prejudice caused by any jury irregularity and according to State v. Scherzer, it must be made on the record. It is irregular for a juror to email the court months after a conviction regretting his verdict and requesting information about the defendant. (Appendix - G). The trial judge still had a duty to investigate into juror number 12's reason for regretting his verdict just to verify that no jury misconduct occurred during this trial. This is to ensure that defendant's 14th amendment due process rights are not being violated.

Defendant filed a pro-se motion for reconsideration on October 25, 2021, in regards to the Appellate Division's denial of his direct appeal pursuant to N.J.C.R. 2:11-6. This reconsideration motion addressed all the reasons given by the Appellate Division for denying his direct appeal. On November 24, 2021, defendant's motion for reconsideration was denied by the Appellate Division without stating its reason therefore. (Appendix - E)

New Jersey Court Rule 2:11-6. Motion for reconsideration

(a) Service; Filing; Contents; Argument. Within ten days after entry of judgment or order, unless such time is enlarged by court order, a party may apply for

reconsideration by serving two copies of a motion on counsel for each of the opposing parties and filing nine copies thereof with the Supreme Court, or five copies thereof with the Appellate Division, as appropriate. One filed copy shall be signed by counsel. The motion shall not exceed 25 pages and shall contain a brief statement and argument of the ground relied upon and a certificate of counsel that it is submitted in good faith and not for purposes of delay. The motion shall have annexed thereto a copy of the opinion or order that is the subject thereof. An answer shall be filed only if requested by the court, and within ten days after such request or within such other time as the court fixes therein. The motion will not be argued orally.

On December 10th, 2021, defendant filed a notice of petition for certification with the New Jersey Supreme Court. This petition for certification was a reliance type letter petition which relied on the briefs and motions filed with the Appellate Division during defendant's direct appeal as the substantial questions of law and issues warranting the New Jersey Supreme Court's intervention. On March 22, 2022, this petition for certification was denied by the Supreme Court of New Jersey without stating its reason therefore. (Appendix - C)

On April 8th, 2022, defendant filed a reconsideration petition for certification with the New Jersey Supreme Court pursuant to N.J.C.R. 2:11-6. This reconsideration petition for certification stated the specific substantial questions of law and issues warranting the New Jersey Supreme Court's intervention. On June 14, 2022, this reconsideration petition for certification was denied by the New Jersey Supreme Court

without stating its reason therefore. (Appendix- D). This petition follows.

REASONS FOR GRANTING THE PETITION

In regards to the 6th amendment speedy trial violation that this defendant alleges:

When the initial trial judge on January 6, 2020, the initially scheduled commencement date for defendant's trial, granted the prosecutor's motion to continue discovery this so far departed from the accepted and usual course of judicial proceedings. Continuing discovery is only permissible when a party finds out that an opposing party has failed to comply with their discovery obligations. In this case the defendant complied with all his discovery obligations, so his right to a speedy trial should not be violated because the opposing party (State) motioned for additional discovery which was in their possession especially when defendant objected this motion..

The New Jersey Supreme Court denied a moving party's motion made at trial for discovery of a document which this party long since had knowledge of according to Carbis Sales Inc v. Eisenberg. So why would the Appellate Division of New Jersey divert from this decision in defendant's case when the issue is exactly the same.

The prosecutor, initial trial judge, and the Appellate Division claim that this was new discovery. According to State

v. Robinson, 229 N.J. 44, 71 (2017) "discovery materials in the possession of the police are deemed to be in the possession of the prosecutor". So a discovery material in the possession of the Essex County Prosecutor's Office must be deemed in the possession of defendant's prosecutor whom works at the Essex County Prosecutor's office. This discovery material that was motioned for was prepared within the Essex County Prosecutor's office two days after the defendant was arrested. Just because the prosecutor is too lazy, incompetent, or failed to be diligent in obtaining all discovery materials in her possession in a timely fashion doesn't mean the trial judge can bail her out so that the State can gain an advantage at the expense of a defendant's right to a speedy trial. This court must determine what is considered new discovery after discovery is made final, since a trial judge & the Appellate Division don't know, and the New Jersey Supreme Court ran away from that responsibility by claiming this issue has no merit.

As to whether a post - conviction voir dire should be conducted in regards to juror number twelve's email:

According to the highest court in defendant's state (New Jersey Supreme Court) the trial judge must make a probing inquiry into the possible prejudice caused by any jury irregularity. This court should enforce this trial judge and all

trial judges to comply with their duties.

The defendant understands that no party can directly or indirectly interview any juror subsequent to trial except by leave of court granted on good cause shown which is the accepted and usual course of judicial proceedings. Courts should be able to relax or strike the good cause portion of this rule in extraordinary circumstances. This case should meet that extraordinary circumstance because juror number twelve had an unspecified regret of his verdict in this case which could be a result of jury misconduct or some other illicit act.

Also the trial judge deliberately didn't give the defendant enough time to produce a motion pursuant to this email. The state of New Jersey has yet to set a timeframe that a motion should be made to interview a juror subsequent to trial. This court should invalidate misbehavior in trial judges if other courts fail too and set a timeframe that these types of motions should be made or instruct the State of New Jersey too.

Finally the court could still interview this juror without reversing defendant's conviction. If the juror claimed anything that wouldn't be sufficient enough to overturn the conviction during this interview then the conviction would still stand and this hearing would be harmless. The purpose of the judicial system is to achieve justice so without this post-conviction

voir dire this court may be validating an injustice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Or R

Date: 8/16/22