

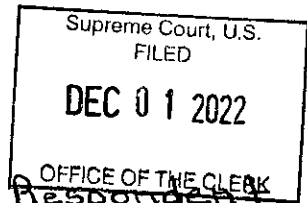
No. ~~22-6352~~

IN THE
Supreme Court Of The United States

Anson Paape, R-61946 - Petitioner

vs.

Illinois Attorney General - Respondent



On Petition For A Writ Of Certiorari To

Appellate Court Of Illinois, Second District

Petition For Writ Of Certiorari

Anson Paape, R-61946
Hill Correctional Center
P.O. Box 1700
Galesburg, IL. 61402

Question Presented,

I. Whether A Criminal Defendant's Due Process Rights Prohibit Government Intentional Use Of False Testimony To Brand Jury Regardless When Discovered.

List Of Parties

All parties appear in the caption of the case on the cover page.

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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

- 1). The opinion of the highest State Court to review the
merits appear at Appendix-A to the petition and is
unpublished. Summary Order filed May 24th, 2022, No. 2-20-0293.
- 2). The opinion of the, State Of Illinois, County of DuPage,
in the Circuit Court of the Eighteenth Judicial Court appears
at Appendix-B to the petition and remains unpublished.

The Order was entered by Judge Jeffery S. Mackay on
Feb. 18th, 2020.

Jurisdiction

- 3). The date on which the highest state court decided
my case was, Sept. 28th, 2022. A copy of that decision
appears at Appendix-C.

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

Constitutional And Statutory Provisions Involved

- 4). United States Constitution, Amend. 5th and 14th Due Process - grand jury proceedings, nor be deprived of life, liberty, or property, without due process of law.

Statement Of The Case

- 5). Petitioner relies upon the state of facts as rendered by the Illinois Appellate Court on Oct. 28th, 2009, (Rule 23 Order, No. 2-07-0658, See: Appx. B, Ex. 4), as did the Circuit Court within the Court's Feb. 18th, 2020, denial order, (See: Appx. - A).
- 6). On July 9th, 2004, defendant was at his house with his wife, Victoria, as well as Mick Murry (victim), Mike Libet, Ron Chwojko, John Dominick, and Natasha Lindsey. Defendant's children were also at the house. Defendant initiated a card game, which prompted defendant, the victim, Libet, Chwojko, and Dominick to go to the basement. Defendant explained that the loser of the card game would have to play "Russian Roulette" then proceeded to hand out an assortment of ammunition. Defendant later changed the rules of the card game, stating that the person sitting to the right of the loser would have to play Russian Roulette.
- 7). After one hand was played, defendant went upstairs to check on a pizza, then returned to the game with a 44. gun in a black holster. Based on the results of the card game, the victim, (Murry), was to play Russian Roulette. The person who loaded the gun was disputed, Defendant was holding the gun and -

then pointed the gun at the victim, who tried to grab the gun, but defendant said; "no, this is my house, I'll do it."

Thereafter, defendant pointed the gun at the victim's head, asked if he was ready, to which the victim responded; "yeah". Defendant then pulled the trigger, the gun discharged, and the victim died as a result of the injuries he sustained. Defendant tried to persuade the other players to come back inside his house because the shooting was fake.

Defendant subsequently fled the scene and was arrested on July 11th, 2004, at a friend's trailer-home. Defendant was indicted on July 29th, 2004, charged with; two counts of First Degree Murder, (720 ILCS 5/9-1(a)(2), West 2004), two counts of obstruction of justice, (720 ILCS 5/31-1(a), West 2004), and violation of bail-bond, (720 ILCS 5/32-10(a-5) West 2004).

Grand Jury Proceedings:

- 8). Relevant to the matter at hand, the grand jury in this case was tasked to assess whether there is adequate basis for bringing charges on First Degree Murder (720 ILCS 5/9-1(a)(2), West 2004), "a person who kills an individual without lawful justification commits first degree murder if, in performing the acts which caused the death"; (2) - "he knows that such acts create a strong probability of death or great bodily harm to that individual or another."

Here, petitioner provided the reviewing court with the grand jury transcript proceedings of Assistant State's Attorney (ASA) Mr. Reidy, and Lead Detective (Det.) Pokrytke, the transcripts included testimony that the victim, -

(Mick Murry), explicitly said to petitioner, "I don't want to do this", prior to being shot, where upon hearing this, petitioner took the gun, placed it to Murry's head, pulled the trigger and shot Murry in the head killing him, (See: Appx. A-1, at P. 9-10).

In contrast to the above stated testimony, petitioner presented multiple police reports, (much being work product of Det. Pokrytke), and eye witness statements from game participants, all stating that Murry was not forced by petitioner to play the game, never refused to play the game at any point, and in fact, that Murry engaged in a argument with another player, (John Dominick), immediately prior to the shooting over which one of the two (Murry or Dominick) would get to hold the gun and pull the trigger. Murry stated; "I get to shoot you", Dominick replied; "Hey, I won, aren't I supposed to do it." It was only at this point did petitioner take the gun from the two other players and stated; "Since it's my house, I'm gonna do it", (See: Appx. Ex. E, at P. 11).

- 9). Additional eye witnesses stated; "that at this point, petitioner held the gun out and then Murry closed his eyes, moved his head forward towards the gun until his forehead touched the barrel, petitioner then pulled the trigger and the gun fired." Witnesses further stated; "Murry made no comments to petitioner before he pulled the trigger", (See: Appx. Ex. E, at P. 11 / Ex. F, at P. 14). FN. 1

FN. 1

It should be noted that appointed Appellate Counsel also advised the Appellate Court, that with a review of this case, Counsel could not locate in the record any support for Det. Pokrytke's testimony that Murry said he didn't want to do this, (See: App. Counsel, Motion To Withdraw, No. 2-20-0293 at P. 23).

10). The State again misled the grand jury through Det. Pokrytke's testimony that; "although defendant, after being arrested, did admit to shooting Murry, defendant also alleged that he placed a spent round into the gun and that possibly one of the kids may have switched it with a live round, (see: Appx. A-1, at P. 15), Det. Pokrytke continued; "However, that none of the teenagers interviewed indicated that the bullets were switched, or that anyone placed a live round in the gun other than Anson Paape (Petitioner)", (See: Appx. A-1, at P. 16-17) .

11). Petitioner argued to the reviewing court, that this too was another deliberate, and intentional, misleading of the grand jury by using false, and even perjured, testimony where Det. Pokrytke, prior to testifying, produced documents including an interview with game participant, John Dominick, who informed the detective that he remembers Mike Libet, (also game participant), had picked up Paape's (petitioner) round and attempted to switch it with his own because he thought the "Silver tip" was cool, (Silver tip being the difference in appearance between a live and spent round), that when Paape saw Libet attempt to switch the round Paape said; "no-no-no...", and took the round back from Libet and placed it on the table, (See: Appx. Ex. A, at P. 1-2) .

12). Det. Pokrytke's testimony is also contradicted on this matter by his report dated two weeks prior to his testimony, that a witness, Shara Kaminski, contacted police regarding information that possibly Mike Libet placed a live round in the gun before Murry was shot, (See: Appx. Ex. B, at P. 6) (Appx. Ex. D, at P. 7) .

It should be noted that ASA Reidy is included within Ex. B, at P. 6 .

- 13). The Fifth Amendment provides that; "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

The purpose of that requirement is to limit a person's jeopardy to offenses charged by a group of his fellow citizens acting independently of either the prosecutor or the judge, Stirone v. United States, 361 U.S. 212, 4 L. Ed. 2d 252, 80 S. Ct. 270 (1960).

Today, the grand jury relies upon the prosecutor to initiate and prepare criminal cases and investigate which comes before it. The prosecutor is present while the grand jury hears testimony; he calls and questions the witnesses and draws the indictment. With that great power and authority there is a correlative duty, and that is not to permit a person to stand trial when he knows that perjury permeates the indictment, United States v. Basurto, 497 F.2d 781 at 10.

Reasons For Granting Petition:

Standard of Review Where Government's Misconduct That Significantly Infringed On The Grand Jury's Ability To Exercise Independent Judgment Was Not Discovered Until After Defendant Was Tried And Convicted.

- 14). A conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourth Amendment.

This Court held in Napue, that the prosecution's use of known false testimony at trial required a -

reversal of the petitioner's conviction. The same result must obtain when the government allows a defendant to stand trial on an indictment which it knows to be based in part upon perjured testimony.

The consequences to the defendant of perjured testimony given at trial, and in fact may be more severe. The defendant has no effective means to cross-examine or rebutting perjured testimony given before the grand jury as he might in court, (Napue v. Illinois, 79 S.Ct. 1173 (1959)).

15). Here, the last court of review began its rejection of petitioner's claim by emphasizing that the defendant was convicted on "knowing" murder, that defendant "knew" his acts created a strong probability of death or great bodily harm, (720 ILLCS 5/9-1(a)(2) West 2004), regardless of whether or not defendant intended to kill the victim, (See: Appx. A, at P.2, Par.4).

16). Petitioner respectfully argues that although the reviewing court emphasized the importance of petitioner's "knowing" or "knew" his acts created a strong probability of death, the reviewing court also ignored the relevancy of the submitted evidence that there remained game participants who told police that Mike Libet in fact attempted to switch the blank round that petitioner initially had, with that of a live round, and that petitioner objected when he saw Libet do so, (See: Appx. Ex. A, at P.1-2).

17). The reviewing court cited, U.S. v. Williams, 504 U.S. 36, 52 (1992), in reminding petitioner that; The State's only duty was to present the grand jury with information that tends to establish probable cause; it need not have presented the grand jury with exculpatory evidence, or evidence to reduce the degree of defendant's culpability, (See: Appx. A, at P.4, Par.8).

18). To be clear, as petitioner submitted to the reviewing court, and remains supported by the record, this is a matter of prosecutorial misconduct and petitioner has no place in the record submitted the argument that the State was obligated to present any particular piece of evidence. Rather, the presentation of the police reports, statements, grand jury transcripts were in order to substantiate that the violation, the alleged misconduct, took place and too; "establish that the violation substantially influenced the grand jury's decision to indict, or if there is grave doubt that the decision to indict was free from the substantial influence of such violations", U.S. v. Mechanik, 475 U.S. 661.

(Also see: Bank of Nova Scotia v. United States, 487 U.S. 250, 108 S.Ct. 2369.)

19). In this case, the government provided the grand jury with two particular pieces of material false information; 1). that the victim (Murry) made a last minute objection to continuing the play of the game and that this objection was disregarded by petitioner. 2). that no evidence was found backing petitioner's switched bullet statement.

Both of these instances should have been considered extremely relevant and material to the grand jury's assessment as to there being adequate basis for First Degree Murder charges under 720 ILCS 5/9-1(a)(2): [k]nowing murder.

Petitioner first argues, that the "act" involved in this case was that of engaging in a modified game of Russian Roulette. Thereby, a reasonable juror may have believed that when Murry (allegedly) told petitioner he no longer wanted to play and petitioner ignored this request and proceeded to raise the gun and pull the trigger, that this was no longer the same "act".

Second, and most relevant, the jury was assessing whether petitioner [k]new this act created a strong probability of death or great bodily harm. The government choose to tell the grand jury about petitioner's statement to police that possibly one of the other game participants switched the blank round with that of a live round. The government then also choose to misinform the grand jury by falsely stating that their investigation produced no evidence the bullets were switched, or that anyone other than petitioner loaded the gun, (see: Appx. A-1, at P.16-17).

As petitioner presented earlier, the government infact possessed substantial evidence in support of petitioner's statement regarding the bullet being switched. Game participant, John Dominick told Det. Pokrytke that fellow game participant, Mike Libet, attempted to switch petitioner's bullet because Libet's bullet looked cool with its silver tip, and when petitioner seen Libet trying to make the switch petitioner objected, (see: Appx. Ex. A, at P.1-2).

Thereby a reasonable juror could have given credit to petitioners statement that possibly the bullet was switched a second time without petitioner's knowledge. Furthermore, if petitioner infact wanted a live round in the gun, why would have petitioner objected to Libet's attempt to switch the bullet as described by participant Dominick, this would be a reasonable assumption.

- 30). Inshort, although the reviewing court stated that it would rely, and agree with, the Circuit Court, "seven page, single-spaced memorandum detailing and rejecting defendant's claims," (see: Appx. A, at P.3, Par. 6). Petitioner argues that, with review of the Circuit Court order, there remains no such detailed analysis of the evidence discussed above, infact the Circuit -

Court stated, when comparing petitioner's exhibits with Det. Pokrytkie's grand jury testimony, the Circuit Court found the two are "consistent". At best, "minor inconsistencies" that do not rise to the level of the State deliberately or intentionally misleading the grand jury, using known perjured or false testimony, or presenting other deceptive or inaccurate evidence, (Appx. B, at p. 6, Par. 7-8).

- 21). Again, petitioner had supplied both reviewing courts with evidence substantiating ASA Reidy and Det. Pokrytkie's participation in the production of the documents, and that when compared with even a liberal analysis, remain inaccurate and misleading to that of the testimony given the grand jury, and furthermore, because of their involvement with production, one could reasonably conclude the government's actions as being deliberate or intentional, as well as substantially influencing the grand jury's decision.

Timeliness Discovery The Violation:

- 22). In regards to the timeliness of petitioner's claim, the last court of review found that; "Defendant's evidence is not new and there is no reason he could not have raised this claim in his original post-conviction petition. Moreover, the grand jury transcript, even if it were new, would not have voided the indictment or changed the result of defendant's trial. Once again, the trial court properly denied him leave", (Appx. A, at p. 4, Par. 9).

23). Petitioner rests upon the previous paragraphs regarding the asserted substantial influence the government's actions had on the grand jury decision. As to the Court's finding that defendant's evidence is not new, and no reason he could not have raised the claim in his original post-conviction petition. Petitioner asserts that the Court's findings ignore both, the record in this case, as well as Illinois statute and caselaw on the matter as follows; 1). Petitioner was represented by Counsel, pretrial (2004) through post-conviction appeal (2015). Illinois Supreme Court Rule 415(c) "Custody of Materials", mandates any materials furnished to Counsel shall remain in his exclusive custody. This rule prohibits petitioner access to the trial file and this remains supported by the record where petitioner submitted to the Circuit Court the communications with Counsel regarding access to the trial file as exhibits within petitioner's motion asking the Circuit Court to permit Counsel to release the file, (see: Appx. A-3, at P.1-12), the Circuit Court denied the motion. 2). Both reviewing courts assert that because the record shows the grand jury transcripts were tendered by the State on Aug. 11th, 2004, they can not be "newly-discovered", (see: Appx. A, at P.3, Par. 6) (Appx. B, at P.4, Par. 7-8). Petitioner asserts that review of pretrial transcripts provide that on Aug. 2nd, 2004, (see: Appx. A-4, at P.1-8), petitioner was initially present and Counsel waived a formal reading of the indictment and entered not guilty plea (Appx. A-4, at P.1-3), the parties then agreed upon Sept. 16th, 2004, as the next Court date.

The case was passed, (A-4, at P.4-5), then called back up later (defendant not present) where ASA Reidy tendered to Counsel a copy of indictment, 7 video tapes, and 559 pages of discovery. The case is then continued to Sept. 16th, 2004, (Appx. A-4, at P.6-7).

The record will reflect that the Aug. 11th, 2004, Court date only appears as a filing date, no transcripts and no defendant present.

24). What is clear from the record stated above, counsel, on Aug. 2nd, 2004, entered petitioner into a plea without hearing a reading of the indictment, without reading the grand jury transcripts, without even possession of any discovery on this case, thereby procedurally, counsel waived any challenge to the grand jury proceedings. FN.2

As well, given the stated circumstances, as supported by the record, petitioner could not have had any knowledge of what took place during the grand jury proceedings, or even that such proceedings took place. Furthermore, petitioner was never personally asked to waive the indictment reading, or entering the plea. (Nor did the Court question counsel in regards to waiving the reading and entering into a plea without yet possessing any discovery in the case).

3). Finally, petitioner provided the reviewing courts with Illinois precedent on "newly discovered evidence", People v. Warren, 2016, IL App. (1st) 090894-L, 130-36; Illinois courts do not always construe this rule strictly, "finding that in the interest of justice, there are occasions when previously discovered evidence will constitute newly-discovered evidence, it would be a miscarriage of justice if defendant were denied his day in court where his allegations and supporting documentation, supported by the record and taken as true at this stage (preliminary post-conviction proceedings) demonstrate that he was unable to put —

FN.2

Petitioner did in fact raise the appropriate ineffective assistance claims regarding trial counsel's failure(s) on this matter, as well as direct appeal counsel's failure to address this matter.

forth exculpatory evidence of his innocence through no fault of his own, and that applying the newly-discovered evidence rule "inflexibly" may work an injustice".

Conclusion:

Petitioner prays that this Court will find that the State Courts erred in the findings that the government conduct petitioner presented, and supported by the record, did not meet the standards of substantial influence set forth by this Court in Mechanic, 475 U.S. 661. As well, that the State Court reliance on the newly discovered evidence rule remains misplaced, and runs afoul of petitioner's United States Constitutional Due Process rights under the 5th and 14th Amendments. Thereby, The petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

X Arson Paape

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Date: Nov. 29th, 2022.