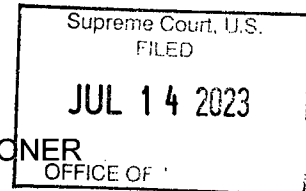


No. 23-5199

IN THE
SUPREME COURT OF THE UNITED STATES

DURON PEOPLES — PETITIONER
(Your Name)



vs.

BOBBI JO SALAMON — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FEDERAL DISTRICT COURT OF PENNSYLVANIA

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

PETITION FOR WRIT OF CERTIORARI

DURON PEOPLES

(Your Name)

1 ROCKVIEW PLACE, BOX A

(Address)

BELLEfonte, PA 16823

(City, State, Zip Code)

NA

(Phone Number)

QUESTION(S) PRESENTED

1. IS FEDERAL DUE PROCESS VIOLATED UNDER THE "COMPULSORY PROCESS" WHERE A FEDERAL COURT CONCLUDES THAT A PETITIONER'S COUNSEL INEFFECTIVE CLAIM LACKS MERIT BECAUSE PETITIONER DID NOT SHOW THAT THE WITNESS WAS WILLING TO TESTIFY AT TRIAL?

2. IS FEDERAL DUE PROCESS VIOLATED WHERE A FEDERAL COURT FINDS HEARSAY REGARDING A SO MURDER CONSPIRACY, SATIFIES THE HEARSAY EXCEPTION BECAUSE IT WAS 'IN FURTHERANCE OF THE CRIME' EVEN THOUGH THE HEARSAY PROVIDER WAS NOT INVOLVED IN THE CRIME AND THE CRIME WAS ESTABLISHED AS BEING COMPLETE?

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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STATUTES AND RULES

OTHER

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 A 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☒ is unpublished.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 B 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☒ is unpublished.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☐ is unpublished.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 _____ 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 March 23, 2023.

☐ 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: May 8, 2023, and a copy of the order denying rehearing appears at Appendix c.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

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: _____, 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. _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Due Process Clause under the Fourteenth Amendment
2. Compulsory Process under the Sixth Amendment

STATEMENT OF THE CASE

According to the state court record: On October 21, 2006 at approximately 9:00am, Eric Coxry entered Jonas Suber's home and fatally shot Suber with a .45 caliber pistol. Following an investigation, the commonwealth charged [Petitioner] with murder, conspiracy to commit murder, burglary, and solicitation of murder. At trial the prosecution presented evidence that Peoples offered Donte Carter \$10,000 to kill Suber in the Fall of 2006, but Carter refused.

In October 2006, Victor Devalia, Marvin Molina, and Petitioner allegedly drove from Georgia to Pennsylvania. On October 20, 2006, the day before the crime, Devalia claimed that he drove Peoples to meet Shamone Woods at a Home Depot and gave him an envelope.

Devalia testified that he, Molina, and Peoples then went to a Regal Movie Theater where Peoples allegedly gave Woods a .45 caliber gun and thereafter the three men left and drove back to Georgia. During the drive, Devalia claimed that he heard Peoples giving Woods orders on killing Suber while they spoke on the phone.

Clarence Milton stated that on October 20, 2006, Woods, Coxry, and Jeremiah Bush came to the home where Milton was staying. Coxry showed Milton a .45 and Coxry told Milton that he had been paid by Peoples \$20,000 to "take care of the whole situation" with Suber.

On October 22, 2006, Bahsera Grove, Suber's widow identified Devalia as the shooter. Devalia was charged for the crime on November 2, 2006, but charges were later dropped.

On November 10, 2006 Detective Kevin Campbell executed a search warrant at Peoples' residence where a box of .45 caliber bullets were recovered, along with a .38 revolver handgun. Police did not find the .45 firearm but lifted a fingerprint from the box that matched Peoples.

On August 25, 2009 Peoples was charged for the homicide. On October 1, 2014 he was convicted by a jury of 1st degree murder and sentenced to life in prison On October 24, 2014.

On April 12, 2016 the State Supreme Court denied a timely filed Allocatur.

On April 4, 2017 Peoples filed his PCRA petition that was dismissed by the PCRA Court and later affirmed by the Superior Court on August 20, 2020.

Peoples' Writ of Habeas Corpus was denied on March 29, 2022. The District Court Overruled Peoples' Objections on December 7, 2022.

On March 23 2023, The 3rd Circuit denied COA and Rehearing on May 8, 2023.

REASONS FOR GRANTING THE PETITION

1. The petition at hand deserves hearing due to the fundamental nature of the constitutional violation. Aside from the highly debatable fact that Petitioner Peoples received an unfair trial; the Compulsory Process question has in recent years been increasingly misapplied and abrogated from the Circuit bench. In 1987 this Honorable Court released the well known *Pennsylvania v Ritchie* case, establishing: "at a minimum, that criminal defendants have the right to the government's assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt". 480 U.S. 39, 56 (1987).

Herein, the Third Circuit found that Peoples claim lacked merit because he did not prove that a material witness in his case was willing to testify at trial. This was a deeply flawed analysis.

Whether a witness is willing to testify is not the proper determinative factor when deciding if trial counsel was ineffective for not using said witness. In assessing trial counsel's performance under *Strickland v Washington*, the reviewing court assesses if counsel had a reasonable strategy for his choice of not calling the witness and if the decision was harmful. Nowhere in *Strickland* or any of its progenies has this Honorable Court or legislature enacted a rule directing a defendant/petitioner to overcome such a hurdle.

In *U.S. v Valenzuela-Bernal*, this Court "imported the materiality requirement from the line of cases beginning with *Brady v Maryland*, into compulsory process clause analysis. Following this line of cases, the Court concluded that evidence is material: only if there is a reasonable likelihood that the testimony could have affected the judgment of the trier of fact". 458 U.S. 858, 867 (1982).

The Sixth Amendment in Peoples' case was violated twice in separate ways. First, the Compulsory Process was ignored, and second, the previous federal courts applied an erroneous standard to *Strickland*, or rather added an extra element to this clearly established federal law.

Even years prior to *Pennsylvania v Ritchie* this Court acknowledged, "the fundamental right of an accused to present witnesses in his own defense is an essential attribute of our adversary system of justice". *Chambers v Mississippi*, 410 U.S. 284, 302 (1973).

2. Granting a hearing to clarify the definition of 'conspiracy to commit murder' is relevant to all citizens across the United States charged with such crime. Herein, the prosecution's theory was that Peoples used a "hit-man for hire" where a jury convicted him based on unconstitutional and prejudicial hearsay evidence.

The Prosecution's chief witness, Clarence Milton testified that the shooter confessed to carrying out the crime and that he was compensated. The Federal Magistrate Court established this fact in its Opinion: "Clarence Milton stated on October 20, 2006, Woods, Coxry and Jeremiah Bush came to the home where Milton was staying. Coxry showed Milton a .45 caliber pistol, and Coxry told Milton that he had been paid \$20,000 to take care of the whole situation with Suber." (Report and Recommendation, p. 2, 3/29/22). This is the only evidence regarding Milton's status in the case.

Coxry was a non-testifying co-defendant though his alleged out of court statement was presented and admitted through Milton. The prosecution concedes that Coxry was speaking of Peoples when he explained that he was taken care of. Since Peoples stood trial alone accused of making payment for the shooting, it was clear to the jury whom Coxry was referencing.

The issue in dispute is whether Milton's hearsay testimony satisfied the hearsay exception because it established a 'furtherance of the conspiracy'. But if the person introducing the hearsay was not considered a part of the so called conspiracy, the testimony is prohibited. The prosecution has never claimed that Milton was involved in any way in this crime.

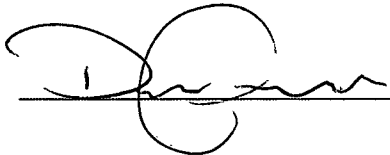
Simply replaying alleged facts of a crime to a non-participating party does not meet the exception. Neither would a claim that the conversation implied secrecy to evade authorities.

This Honorable Court in *Grunewald v United States* 353 U.S. 391, 402 (1957), held that "[a]fter the central criminal purposes of a conspiracy have been attained, a subsidiary conspiracy to conceal may not be implied from circumstantial evidence showing that the conspiracy was kept a secret and the conspiratorss took care to cover up their crime in order to escape detection and punishment ... allowing such a conspiracy to conceal to be inferred or implied from mere overt acts of concealment would result in a great widening of the scope of conspiracy prosecutions, since it would extend the life of a conspiracy indefinitely."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: July 6 2023