

NO. **23-7105** **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JAN 10 2024

OFFICE OF THE CLERK

KATHERINE JAMIE BARRETT

PETITIONER

VS.

BLAKE R CHAMBERS, ET AL

RESPONDENT(S)

COMMONWEALTH ATTORNEY OF OHIO COUNTY

ON PETITION FOR A WRIT OF CERTIORARI TO

MOTION FOR DISCRETIONARY REVIEW IN KENTUCKY SUPREME
COURT

PETITION FOR WRIT OF CERTIORARI

KATHERINE JAMIE BARRETT
DOC # 320658
PO BOX 337, 3000 ASH AVENUE
PEWEE VALLEY, KENTUCKY 40056

QUESTIONS PRESENTED

- I. THE PROSECUTOR ENGAGED IN FLAGARANT MISCONDUCT WHEN HE TOLD THE JURY IN CLOSING “THAT THE PRESUMPTION OF INNOCENCE...IS GONE”***
- II. DID TRIAL COURT ERR IN NOT GRANTING JAIL CREDIT, SPECIFICALLY HOME INCARCERATION, PURSUANT TO HOUSE BILL 310 SIGNED INTO LAW ON APRIL 8, 2022?***

LIST OF PARTIES

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

[XX] 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:

**Honorable Daniel Jay Cameron
Attorney General, Office of Criminal Appeals
1024 Capital Center Drive
Frankfort, Kentucky 40601**

**Honorable Preston J. Wade
Kentucky Innocence Project
Law Office of Preston J. Wade
PO Box 1408
Henderson, KY 42419-1408**

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TABLE OF AUTHORITIES CITED

CASES

Coffin v. United States, 156 US 432 (1895)

In Re Winship, 397 U.S. 358 (1970)

Newkirk v. Commonwealth, 937 S.W.2d 690 (1996)

State v. Evans, 260 P.3d 934 (Wash App 2011)

Tamme v. Commonwealth, 973 S.W.2d 38 (KY 1998)

STATUTES AND RULES

United States Constitution, 5th Amendment

United States Constitution, 6th Amendment

United States Constitution, 14th Amendment

Kentucky Constitution, §§ 2

Kentucky Constitution, §§ 7

Kentucky Constitution §§ 11

House Bill 310

<https://apps.legislature.ky.gov/law/acts/22RS/documents/0132.pdf>

KRS 431.517

KRS 532.120

KRS 532.200

RCr 10.26

OTHER

NO. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

KATHERINE JAMIE BARRETT

PETITIONER

VS.

COMMONWEALTH OF KENTUCKY

RESPONDENT(S)

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 "C" to the petition and is

☒ Reported at **Kentucky State Supreme Court (2022-CA-0218-MR)**
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished

The opinion of the **Ohio County Circuit Court (19-CR-00002)**
☐ reported at _____; or,
☐ has been designated for publication but is not yet published; 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. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. THE PROSECUTOR ENGAGED IN FLAGARANT MISCONDUCT WHEN HE TOLD THE JURY IN CLOSING “*THAT THE PRESUMPTION OF INNOCENCE...IS GONE*”

Preservation.

This issue is unpreserved. The Appellant requests review under RCr 10.26.

At closing the prosecutor told the jury,

“By the way, the presumption of innocence at this point in time. You’ve heard the proof, you’ve heard the evidence. You’ve heard this child tell you, in details that I didn’t want to have to get into in mixed company, but we have to, to hold these people accountable. *That presumption of innocence, I would submit to you are gone* because you have heard the proof beyond a reasonable doubt. There is no reasonable doubt what happened in this case. Because this child told you the truth.” (VR: 10/14/2021; 4:24, *et seq.*)

The U.S. Supreme Court has long held:

“The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.”

Coffin v. United States, 156 US 432, 453 (1895), Further, “[I]t is stated as unquestioned in text-books, and has been referred to as a matter of course in the decisions of this court and in the court of the several States,” *Id.* at 454. *The Coffin* Court cited to ancient Roman law with approval, that “it was better to let the crime of a guilty person go unpunished than to condemn the innocent.” *Id.* In Kentucky, “Every person accused of committing a crime is entitled to the presumption of innocence and to have such presumption continue until ***guilt is proven beyond a reasonable doubt.***” *Newkirk v. Commonwealth*, 937 S.W.2d

690, 695 (1996) (emphasis added). Washington State agrees with *State v. Evans*, 260 P.3d 934, 938 (Wash. App. 2011) when the court stated:

“The presumption of innocence continues throughout the entire trial and may only be overcome, if at all, *during deliberations*.” (Internal Citations Omitted).

In, *Evans*, the Washington Court of Appeals reversed because the prosecutor told the jury in closing “that the presumptive innocence ‘kind of stops once you start deliberating.’” 260 P.3d at 938. The *Evans* Court explained the rationale for the reversal: “*The presumption of innocence is the ‘bedrock upon which the criminal justice system stands.’*” *Id.* Further, “[t]he presumption of innocence does not stop at the beginning of deliberations; rather it persists until the jury, after considering all the evidence and the instructions, is satisfied the State has proved the charged crime beyond a reasonable doubt.” *Id.* At 938-939 “[T]he prosecutor’s comment [that the presumption ‘kind of stops’] invited the jury to disregard the presumption once it began deliberating, a concept that seriously dilutes the State’s burden of proof.” *Id.* at 939.

In this case, the prosecutor similarly “invited the jury to disregard the presumption once it began deliberating...” when he told the jury that “the presumption of innocence...is...gone...” The prosecutor’s comment was a serious harmful error of law “that seriously dilutes the Commonwealth’s burden of proof.” To reverse, this Court ***must find that the prosecutor engaged in flagrant misconduct.***

**II. DID TRIAL COURT ERR IN NOT GRANTING JAIL CREDIT,
SPECIFICALLY HOME INCARCERATION, PURSUANT TO
HOUSE BILL 310 SIGNED INTO LAW ON APRIL 8, 2022?**

Preservation.

This issue is unpreserved. The Appellant requests review under RCr 10.26.

Facts.

The fact that Katherine Jamie Barrett was given home incarceration in an Order entered by the Ohio County Circuit Court Judge on March 25, 2019, (a copy of the Order is attached and labeled Exhibit “A”), pursuant to As used in **KRS 532.210.**

Pursuant KRS 532.120 (3) and the Office of the Attorney General, 79-221, it states that:

“Time spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence shall be credited by the court imposing sentence toward service of maximum term of imprisonment. If the sentence is to an indeterminate term of imprisonment, the time spent in custody prior to the commencement of the sentence shall be considered for all purposes as time served in prison.”

Katherine Jamie Barrett is arguing before this Honorable Court that the final judgment stated that no jail credit is allotted because there was no ankle monitor. In April, 2022 The Governor of Kentucky signed in Law *House Bill-310* (Copy of Bill attached as Appendix “D”) amended KRS 532.245 (1) to add the language (in bold below) to clarify

That an ankle monitor is not required to get jail credit...

“...Time spent in pretrial home incarceration pursuant to KRS 431.517 shall be credited against the maximum term of imprisonment assessed to the defendant upon conviction. “ ***Notwithstanding KRS 532.200, a defendant who spent time in pretrial home incarceration pursuant to KRS 431.517 shall not be required to have participated in a global positioning monitoring system program to receive credit...***

STATEMENT OF THE CASE

K.V. alleged her stepfather, Jason Barrett ("Jason"), sexually abused her starting before she turned 16 and continuing until she almost turned 18. She also alleged her mother and Appellant, Katherine Barrett ("Katherine"), knew of the allegations, but did not protect her for the last two of the nine incidents of sexual abuse. Jason and Katherine were indicted and then tried together.

At the time of these allegations, the household consisted of the Barrett's and their 20-year-old daughter (Elizabeth), 17-year-old daughter (K.V.), 12-year-old daughter, 10-year-old son and three-year-old son (Josh). (VR: 10/31/21; 3:09). K.V.'s allegations were not reported until December 6, 2018. (Id. at 3:07). Social services made contact with and interviewed all the Barrett's. (Id. at 3:08-3:09). Even then, K.V. did not make the initial call- rather her then-boyfriend, Josh, told his teacher who called social services. (Id. at 3:08, 3:12).

K.V. testified she met her then-boyfriend, Josh, online. (VR: 10/14/21;10:29). He was a few months older than her and lived in Georgetown. (Id. at 10:29-10:30) K.V. wanted to go stay with him for two weeks around the holidays in December 2018. (Id. at 10:31). At first her parents said yes, and then objected when she wanted to stay longer. (Id.). Their objection was because she was still only 17 years old. (Id.).

Based on the reported allegations, Detective Katie Pate testified the Sherriff's Office mad a welfare check on K.V. at the Barrett residence two days in a row and each time, K.V. confirmed she was fine. (VR: 10/13/21; 3:19). Then they asked the Barrett's to bring K.V. in to see Det. Pate on December 7, 2018. (Id. at 3:19). Based on that conversation, Det. Pate interviewed both Barrett's and all the children were sent to the

Child Advocacy Center to be interviewed. (Id. at 3:20). Pate said Jason admitted to spanking K.V. on the butt. (Id. at 3:21). Katherine admitted to Pate she saw him do it but that it was not sexual. *Id.*

K.V. testified about her allegations of sexual abuse. The first time happened three weeks before she turned 16, when K.V. was asleep in Kathleen's bed and someone touch her inner thigh. (VR: 10/14/21; 9:11, 9:18, 9:19-9:21); see also Jury Instruction 4, TR I, 77.

The second time, K.V. was in the top bunk bed in her bedroom about to fall asleep when she felt Jason touch her upper inner thigh and her butt and Jason claimed he was checking to make sure K.V. was breathing. (VR: 10/14/21; 9:23-9:26); see also Jury Instruction 5, TR I, 79.

The third time, Katherine went to the store and K.V. decided to stay at home and rest, and while she was in her bed, she felt Jason's hand touching her vagina under her clothing. (VR: 10/14/21; 9:27-9:28); see also Jury Instruction 6, TR I, 81.

The fourth time, K.V. had just taken a shower and was getting ready to fall asleep in her top bunk bed when she felt Jason pull her underwear below her butt and rubbed his penis against her butt/upper thigh, while saying, "If you want it, push back." (VR: 10/14/21; 9:29-9:31); see also Jury Instruction 7, TR I, 83.

The fifth time, K.V. was trying to fall asleep in her room on a cold day when she felt Jason lick the top of her breast. (VR: 10/14/21; 9:32-9:34); see also Jury Instruction 8, TR I, 85.

The sixth time, K.V. was falling asleep on the living room couch while recovering from a sprained ankle and she felt Jason touching her vagina over her clothing. (VR: 10/14/21; 9:34-9:35); see also Jury Instruction 9, TR I, 87.

The seventh time, K.V. was sleeping on the living room couch while laundering her bed sheets and she felt Jason's hand go up her leg toward her crotch area. (VR: 10/14/21; 9:36-9:37); see also Jury Instruction 10, TR I, 89.

In the incidents in her bedroom, Elizabeth, K.V.'s older half-sister who slept in the bottom bunk, was not there. (VR: 10/14/21; 9:24, 9:32, 9:34).

At some point when K.V. was around 16, K.V. told her boyfriend and eventually her mom, Katherine. (VR: 10/14/21; 9:39). K.V. testified that Katherine's reaction was to bring Jason and K.V. together and "asked Jason what was going on, and whoever was lying, needed to leave." (VR: 10/14/21; 9:41). K.V. told Katherine she was not lying and Jason did not confess, so Katherine was going to send K.V. to stay with K.V.'s aunt in Pennsylvania until someone confessed. (VR: 10/14/21; 9:41). However, they did not have money for K.V.'s bus fare, so she stayed with Jason and Katherine. (VR: 10/14/21; 9:41).

The eighth time, after she told Katherine, K.V. was in the kitchen washing dishes and as she bent over to put away some dishes in the bottom cabinet, Jason "smacked her butt". (VR: 10/14/21; 9:42); see Jury Instruction 11, TR I, 91. Katherine was in the living room when this happened. (VR: 10/14/21; 9:42). Katherine told K.V. that Jason was just playing, and for K.V. to stop. (VR: 10/14/21; 9:42-9:43).

The ninth and last time, K.V. was in the living room when Katherine called for K.V. from Katherine's room and as K.V. walked past Jason, he "grabbed her butt." (VR: 10/14/21; 9:43); see also Jury Instruction 12, TR I, 93.

In a dated diary entry on her iPod, K.V., 17 at the time of the entry, wrote that she told Katherine, but Katherine did not believe her. (VR: 10/14/21; 9:44, 9:47). K.V. told Detective Pate that once she told her mom about the incidents, "it all stopped." (VR: 10/13/21; 3:25). K.V. confirmed that "it stopped after I told my mother." (VR: 10/14/21; 10:34-10:35).

K.V. claimed Jason did not stop saying inappropriate things to her, such as telling her that her shorts were too short and "her butt cheeks were hanging out" or that her "nips are showing" whenever he saw her not wearing a bra. (VR: 10/14/21; 9:21). There was also an incident where K.V. was taking a bath with Josh (K.V. did not clarify whether she meant her boyfriend or her 3-year-old brother) and Jason came in and "was looking at [her] boobs." (VR: 10/14/21; 9:49).


Jason testified and denied he sexually abused K.V. (Id. at 11:34). Katherine similarly denied knowing about any abuse and explained she never saw Jason touch K.V. inappropriately. (Id. at 1:09). Elizabeth testified she and K.V. shared a bedroom in 2018 and was close. (Id. at 11:18). K.V. never mentioned anything about Jason abusing her. (Id. at 11:22).

The jury found Jason guilty of all nine counts of sexual abuse, and Katherine guilty of two counts of complicity to sexual abuse for the eighth and ninth incidents. (VR: 10/14/21; 5:45-5:47). The jury recommended five years on each count with a total sentence of 20 years for Jason, and five years for Katherine. (VR: 10/14/21; 6:53). The

trial court sentenced Katherine to the recommended five years. TR II, 153-155, attached as Appendix, Tab 1.

Katherine now appeals as a matter of right. Ky. Const. § 115.

Additional facts will be recited in the argument below as needed.


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REASONS FOR GRANTING THE PETITION

The fact that the prosecutor told the jury that the “Presumption of Innocence...is gone...” and a normal lay person could assume that the Commonwealth Attorney was telling them something other than “Everyone is innocent until proven guilty, according to the law” or define the term reasonable doubt.” “Every person accused of committing a crime is entitled to the presumption of innocence and to have such presumption continue until ***guilt is proven beyond a reasonable doubt.***” *Newkirk v. Commonwealth*, 937 S.W.2d 690, 695 (1996) (emphasis added).

The fact that Katherine Jamie Barrett was given home incarceration in an Order entered by the Ohio County Circuit Court Judge on March 25, 2019, (a copy of the Order is attached and labeled Exhibit “A”) *Pursuant KRS 532.120 (3) and the Office of the Attorney General, 79-221*, it states that:

“Time spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence shall be credited by the court imposing sentence toward service of maximum term of imprisonment.

Katherine Jamie Barrett is arguing before this Honorable Court that the final judgment stated that no jail credit is allotted because there was no ankle monitor. In April, 2022 the Governor of Kentucky signed in Law House Bill-310 (Copy of Bill attached as Appendix “D”) amended KRS 532.245 (1) to add the language (in bold below) to clarify that an ankle monitor is not required to get jail credit...

House Bill 310:

.... Notwithstanding KRS 532.200, a defendant who spent time in pretrial home incarceration pursuant to KRS 431.517 shall not be required to have participated in a global positioning monitoring system program to receive credit...”

For these reasons, Movant is requesting that this Honorable Court review this case, and allot her the time credit that was spent on Home Incarceration and review the Prosecutorial Misconduct.

CONCLUSION

The petition for Writ of Certiorari should be granted.

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