

No. _____

23-7624

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

FEB 07 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Daniel Geter — PETITIONER
(Your Name)

vs.

U.S.A. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Daniel Geter #46688-007
(Your Name)

U.S.P. HAZELTON, P.O. BOX 2000
(Address)

BRUCETON MILLS WV 26525
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) WAS THE APPELLANTS DUE PROCESS RIGHTS VIOLATED BY THE COURT OF APPEALS WHEN THEY FAILED TO FIND THAT THE PETITIONERS SUBSTANTIAL RIGHTS WERE AFFECTED UNDER CLEAR ERROR ??

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

- SUPERIOR COURT OF D.C. (2018-CF3-004743)
- DISTRICT OF COLUMBIA COURT OF APPEALS (306 A.3d 126; -
NO: 19-CF-0504
2023 D.C. App Lexis 346)

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TABLE OF AUTHORITIES CITED

CASES

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PEOPLE VS. WRIGHT, 37 N.E 3d 1127 (N.Y. 2015)
IBN-TAMAS VS. UNITED STATES, 407 A.2d, 626.
FRAZIER, 387 F.3d AT 1266
FOREMAN VS. U.S., 792 A.2d 1043 (D.C. 2002)

STATUTES AND RULES

NONE

OTHER

NONE

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 306 A.3d 126; 2023 D.C. App. Lexis 346; 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☐ is unpublished.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 2018-CF3-004743; 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☐ is unpublished.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☐ is unpublished.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 December 21, 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: _____, 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: _____, 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

- CONSTITUTIONAL AMENDMENT (5), "NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW."

STATEMENT OF THE CASE

On Dec. 21, 2023 the Court of appeals decided on the admissibility of testimony of a firearms and toolmark examiner connecting specific shell casings to a specific gun. They also consider the admissibility of testimony from two Metro Police Department detectives identifying me Daniel Geter in video surveillance footage even though the government had not established that they had any special ability to make such an identification. The Court of appeals held that neither the examiners testimony connecting specific shell casings to a specific gun nor the detectives identification testimony should have been admitted. But in light of the additional evidence against me, Daniel Geter, they concluded these errors do not require reversal of my convictions of various assault and gun crimes in connection with the nonfatal shooting of Jessica Little.

The Court of appeals is stating that due to the testimony of Ms. Counts and Ms. Little placing me on the scene, and Ms. Counts identifying me as the shooter

at trial the governments Case was strong. Also the testimony from DNA expert stating that although my DNA wasnt a match it was 815 sextillion times more likely it came from me than an unknown person. The last piece of evidence the Court of appeals is stating was strong evidence was incriminating text messages in my phone, stating that I had to hurt a few people and to tell Linda to be consistent with our story. I failed to establish the third prong of the plain error test and affirmed my convictions with respect to the challenged testimony.

To meet this third prong of plain error review it is my burden to show a "reasonable probability" of a different outcome but for the established error.

At trial Ms. Counts placed me on the scene of the crime but also stated that she did not say I shot Ms. Little, making her statements inconsistent based upon the grand jury statements. Counts was impeached with her grand jury statements, and although she stated the prosecutors read the transcripts correctly she still stated she dont recall saying

that and asserted that the transcripts contained things that are not familiar to her.

The second piece of evidence presented at trial that the Court of appeals felt was strong was the testimony of DNA expert Brianna Floryan. DNA expert Brianna Floryan stated that the DNA was not a match to mine but a ratio states that it is 815 sextillion times more likely that the DNA came from me.

In South Carolina the Supreme Court reversed Billy Phillips murder conviction because the state presented improper testimony regarding DNA evidence and provided information to the jury that was simply wrong. In most cases, the risk of confusing or misleading a jury with DNA evidence is low because the DNA evidence is usually straightforward and reliable, and its probative force is "highly persuasive." Because the persuasiveness of DNA is so great upon the minds of jurors, "When DNA evidence is introduced against an accused at trial the prosecutors can take on an aura of invincibility." *People v. Wright*, 37 N.E 3d

1127 (N.Y. 2015). In the instant case DNA expert testified that the probability of someone other than Billy Phillips being the Contributor to the DNA was one in two. This meant any person from half the worlds population could have left DNA. *Ibn-Tamas v. United States*, 407. A.2d 626, States that even when an expert is not speaking to the ultimate facts or issue, he or she cannot testify to matters which the jury itself is just as competent to consider. The more "imprecise and unspecific" an experts proffered opinion is, the greater the risk that it will confuse or mislead the jury. *Frazier*, 387 F. 3d at 1266.

Lastly the Court of appeals mentioned the incriminating text messages found in my phone. Each time a text was sent that was incriminating my trial attorney presented a photo of me with my hands cuffed behind my back. When asked at trial would it be possible for me to send text messages while my hands are cuffed behind me, the detective stated that it would be difficult.

If the inconsistent testimony from ms. Counts, the confusing and misleading DNA testimony, and the incriminating text messages that were being sent while my hands were cuffed behind my back on police video was overwhelming. The jury did not need two detectives who never had an encounter with me other than the day of the shooting to give an unqualified testimony stating I was the shooter in the footage. Nor did the jury need to hear toolmark examiner connecting specific shell casing to a specific gun.

The government at trial linked me to the gun with misleading DNA testimony, and due to the two detectives stating I was the shooter in the video and the toolmark expert stating the shell casings were fired from the gun that was linked to me. More than one error on appeal is the standard for reversal if the cumulative impact of the errors substantially influenced the jury's verdict. See *Foreman v. United States*, 792 A.2d 1043 (D.C. 2002).

Due to the inconsistent statements from ms. Counts, the misleading DNA evidence

and the text messages that were being sent while I was cuffed on video, without those testimonys I find it extremely hard to believe the jury would have found me guilty. The outcome of my trial could have been different, therefore the third prong which states I must show a "reasonable probability" of a different outcome has been proven. (SEE ALSO STATE VS. NEIDER, 170 W. VA 622 (1982))

Respectfully
Submitted
Daniel Geter
Daniel Geter
U.S.P. Hazelton
P.O. Box 2000
Bruceton Mills WV,
26525

REASONS FOR GRANTING THE PETITION

FOR THE REASONS STATED ABOVE, THE PETITION SHOULD BE
GRANTED.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DANIEL EETER

Date: 4-28-24