

No. 23-7765

IN THE
Supreme Court of the United States

LEON DAVIS, JR.,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

*On Petition for a Writ of Certiorari to the
Supreme Court of Florida*

REPLY BRIEF FOR PETITIONER

THIS IS A CAPITAL CASE

STACY R. BIGGART
Counsel of Record
Special Assistant CCRC-North
Florida Bar No. 0089388
767 Dunham Street
Charleston, SC 29492
(850) 459-2226
stacybiggart@gmail.com

I. The Trial Court's Comments Were Not Harmless Attempts To Seek Candid Responses From Potential Jurors About Their Ability To Serve.

Respondent argued that the trial court's comments to the jury about the uniquely gruesome nature of the photographs of the victims in the pantheon of murder cases are inconsequential because they were made following the close of evidence. BIO at 10. According to Respondent, there is a distinction when such comments seek "candid responses from potential jurors regarding their ability to serve" because "the trial court made clear during jury selection that it would be their job to determine if Davis was guilty and to recommend a sentence." BIO at 10.

Respondent's argument does not address the crux of Petitioner's claim. This was a death penalty trial where the jury would not only be required to determine guilt or innocence but would also be required to recommend a sentence of life or death if they found Petitioner guilty of murder. A defendant's due process rights must be protected at every step of a capital trial. Here, a seasoned trial judge first advised Petitioner's venire of his vast experience with murder cases in his circuit and then candidly admitted that in fifteen years on the bench, he had never had a case so bad that he had to bring in jurors individually and show preemptively show them photographs of the victims' injuries to prequalify them for jury service. If the court aimed to obtain candid responses from jurors regarding their ability to serve, this could have been achieved without all the preamble about his vast experience and the uniquely gruesome nature of Petitioner's case.

Moreover, it does not matter if the judge made the comments before, during, or after the presentation of evidence. His comments were inappropriate and identified Petitioner's case as one of the worst of the worst, one of the narrow categories of the most severe crimes deserving of the death penalty.

Finally, Respondent argued that it did not matter if trial counsel objected to the comments because the court would have overruled the objection anyway. BIO at 10. Should trial attorneys only object if they know the court will rule in their favor? Of course not. Trial attorneys must raise objections even when they assume the court will get it wrong because objections are critical for error preservation. This is a primary tenant of trial advocacy.

II. The Trial Court's Comments About The Gruesome Injuries And The State's Decision To Seek Death Cannot Be Evaluated In Isolation.

Respondent argued that the trial court's comments about the charging decisions of the State were merely an explanation of the "jury's role in determining whether Davis was guilty and explained that the jury would only reach deliberations on the death penalty if it first found Davis guilty of first-degree murder." BIO at 12.

Like the court's comments about the gruesome nature of the victims' injuries, the court could have accomplished this goal without vouching for the State's charging decisions. These two instances of inappropriate judicial comments cannot be evaluated in isolation. Petitioner's case was the most gruesome murder case this trial judge had presided over in his fifteen years on the bench, and although the

State does not seek death in every first-degree murder case, it sought a death sentence in Petitioner's case.

III. Petitioner's Claim Presents A Misapplication Of *Strickland* And Does Not Just Offer A Factual Re-Discussion Of The Issues.

Respondent argued Petitioner's claims are fact-intensive, case-specific, and do not warrant review. BIO, 7. Respondent claimed that the Petition "offers a factual re-discussion of the issues and does not present a misapplication of *Strickland*. BIO, 7.

This is not an accurate description of the claim in Respondent's petition. Petitioner claims that the Florida Supreme Court evaluated each trial judge's comments individually without analyzing their net effect on the jury. Respondent's brief reinforced the lower court's cynical view: *It does not matter if trial counsel objected because the court would have overruled him anyway*. This is not a standard this Court should condone in a shoplifting case, let alone a capital trial. The application of *Strickland* on capital postconviction cases has far-reaching effects across all states that implement the death penalty, especially those cases where evidence of prior bad acts is admitted at trial.

CONCLUSION

This Court should grant a writ of certiorari and review the decision of the Florida Supreme Court.

Respectfully submitted,

/s/ Stacy R. Biggart

STACY R. BIGGART

Counsel of Record

Special Assistant CCRC-North

Florida Bar No. 0089388

767 Dunham Street

Charleston, SC 29492

(850) 459-2226

stacybiggart@gmail.com