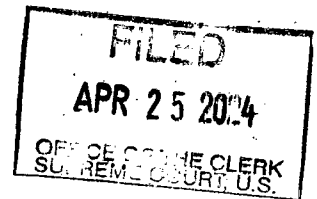


No. 23-7810

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Odell Calvin — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Appellate Court of Illinois, First Judicial District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Odell Calvin A/K/A Julius Jones
(Your Name)

3800 East Main Street
(Address)

Danville Illinois 61834
(City, State, Zip Code)

N/A
(Phone Number)

(1)

QUESTION(S) PRESENTED

#1: AS a matter of First impression,
(IN the absence of good faith) Did the Appellate Court
Error in its holding that unless a defendant can establish
"bad faith" the destruction of potentially useful evidence
is not a denial of Due Process, and that the Trial Judge did
not abuse discretion by not giving a missing evidence instruction
requested by the defense?

#2: Was defendant deprived of a fair trial, fundamental -
Fairness and Due Process? When other crimes evidence "a gun"
as well as the circumstances (arrest) of the other crimes evidence
was admitted improperly onto the defendant's trial on the basis of
(Prosecutorial Misconduct) false, deceitful proffer's as demonstrated
by the record?

#3 Did the Appellate Court Error in its holding, by finding
that though the state committed error, it was "isolated"
although the record clearly reflects that the errors during
"Direct Examination" (Co-victim Jessica Cheval) combined with
the state's closing argument are not isolated and was a moving
force which served no purpose but to inflame the passions of the jury?

(ii)

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:

Original Trial Judge: Judge Matthew Coghlan
Presiding Trial Judge: William B. Raines
Appellate Court Judges...

RELATED CASES

Armed Habitual Criminal,
Possession of a Firearm
Fleeing-Eluding

Case No: 15CR8319

People of the State of Illinois vs. Julius Jones NO: 15CR8319

Circuit Court of Cook County Department - Criminal Division

DISPOSITION

Judgment entered: 2/20/20 (Judge William Raines),
Plea Agreement: 10 yrs concurrent at 50% Percent,



Other crimes Evidence allowed onto my trial for armed Robb.

(iii)

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
People v. Hunt, 2016 IL App.	4th
Arizona v. Youngblood,	11th
Kim v. Mercedes-Benz U.S.A. Inc., 353 Ill. App. 3d 444,	14th
Old Chief v. United States, 519 U.S. 172, 179 (1997)	14th
People v. Hale, 326 Ill. App. 3d 455, 462 (2001)	14th
Brady v. Maryland,	15th
People v. Coleman, 183 Ill. 2d 366, 391 (1998)	15th
People v. Darilla, 236 Ill. App. 3d 367, 383, 603 N.E. 2d (1991)	16th
People v. Carbasal, 2013 IL App. (2d) 111018 29, 397, Ill. Dec. 801,	12th
People v. Clark, 335 Ill. App. 3d 758,	12th

STATUTES AND RULES
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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 _____ 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 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 Illinois 1st Dist. Appellate 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.

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. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 1/24/24.
A copy of that decision appears at Appendix C.

☐ 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 7/20/24 (date) on 5/20/24 (date) in Application No. ____.

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

Final Judgment by Trial Judge entered: 1/24/20
Notice of Appeal Filed: 2/20/20
Direct Appeal Filed ON 5/17/22
(5th District) Appellate Court Affirmed conviction: 9/29/23
P.L.A. Petition for leave to Appeal Filed ON: 10/25/23
Denial of Discretionary Review by Illinois Supreme Court on 1/24/24
Writ of Certiorari Filed/Mailed ON 4/24/24
90 Day Extension of time to Mend "Cert-Petition" granted on 6/20/24

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Denial of Petitioner's 6th Amendment right to a Fair/Impartial trial
Denial of Petitioner's 14th Amendment right to Due Process
Denial of Petitioner's 14th Amendment right to fundamental fairness
Brady violation, 373 (1963)
Supreme Court Rules 725 ILCS 5/114-13 (a)
Illinois Rules of Evidence 1004
Prosecutorial Misconduct - Ill. R. Prof. Cond. 3.3 (a) (1) eff. Jan. 1st (2010)

STATEMENT OF THE CASE

REASONS FOR GRANTING THE PETITION

STATEMENT OF THE CASE

Facts regarding 1st Question Presented:

ON 9/30/14 victims Jessica (Cheral) and victim Rafael (Ceta) were robbed at gun point for their personal belongings and their vehicle (a 1999 beige saturn). ON 10/4/14 while on patrol officer LYNN Meuris and her Partner OFFICER James cabay, ran the license plate of a (1999 beige saturn) they found suspicious at the recovery address OF 6425 S. Lowe (Rear Parking lot). After discovering that this vehicle was evidence, these two officers summoned the assistance of an "Evidence Technician to Process the (1999 beige saturn). Officer Meuris testified that ON 10/4/14 her and her Partner (unsuccessfully) attempted to view video Footage OF the rear Parking lot where the vehicle was recovered. Officer Meuris testified that on 10/4/14, she was informed by "unknown" security personnel to return on 10/5/14 due to building Management being the only one with access to the video surveillance. Officer Meuris testified that on 10/5/14, Prior to arriving to meet with building Management, her along with OFFICER cabay stopped and purchased a USB Port to obtain the video footage. Short time later on 10/5/14, Officer-Meuris testified her and OFF. cabay, met with an "unknown" black male, whom name they did not know, this unknown video-operator, "allegedly" showed these officers video Footage OF an offender whom partially resembled a man, whom these officers had prior contact with.

Evidentiary Hearing on this matter occurred on 9/7/17
The defense called a man (whether Graham), whom testified -
(LOF 18)

See., Transcript 12/11/17, Pg. 6 L. 9-13, The defense then requested for a "negative inference" Jury instruction, indicating to the jurors that the failure of the state to introduce the destroyed video evidence, could be construed against the state, - Pg. 7, L. 14-20, 12/11/17, The court responded to the request by the defense "Be prepared, have the jury instruction prepared and I will consider it at the appropriate time. 12/11/17, Pg. 8 L. 9-11, Prior to trial (Judge Coghlan) was removed from the bench, replaced by Judge William B. Raines..

IN defendant's Appellate Brief, Defense counsel expresses that Judge Coghlan "did not", as Judge Raines found, held that, limiting Officer Meuris' Testimony was the sole remedy given to the defense. Judge Coghlan as cited (12/11/17) Pg. 8 L. 9-11, reserved ruling on whether an instruction should be given. However, Judge William - Raines refusal to give the same instruction was based on a Misapprehension/misunderstanding of the record/law and was arbitrary and thus an abuse of discretion. People v. Hunt, 2016 IL App., Off. Meuris was then allowed to testify to the contents of a video not in evidence, which prejudiced defendant before the observing Jury.

STATEMENT OF THE CASE

Facts regarding 2nd question presented:

"THE GUN" evidence of other crime NO. 15CR0831901 was improperly admitted onto Petitioner's case for Armed Robb., / Aggravated vehicular Highjacking (Case no. 0634201) on the basis of Prejudicial Prosecutorial Misconduct, as Prosecutor - Jessica (McGuire) Presented False Proffers, which served as the moving force to admit "other crimes evidence" (Gun) Case NO. 15CR0831901, onto Petitioner's Armed Robbery trial - Case No. 0634201, Prosecutor McGuire proffered falsely stating that ON 5/23/16, Prosecutors McGuire and Prosecutor - Bob Mack showed the victims of the Armed Robbery, the other crimes evidence "THE Gun" in the presence of both Public Defenders Patricia Vais, and Colleen Gorman, and both victims positively identified the "gun" as the same gun which Petitioner committed the Armed Robbery with, see, The People's "Motion For Joinder" 5/23/16, Pg. 2, Paragraph 4, also see the People's "Motion To Admit" 6/22/16, Page 2, Paragraph 3, again the Prosecutor (McGuire) deceives the court by stating that both victims positively identified the gun as being the same firearm they were robbed with, The defense requested that the state presented all persons present at this alleged "weapons identification procedure" The Prosecutor (McGuire) again proffers falsely to the court, stating that both Public Defenders, Jessica McGuire, and Bob Mack all were present, however the record again reveals Prosecutor - Misconduct, Public Defender Cynthia Bauman, whom was Defense Counsel at the time, shared the same office as (50F18)

Public Defenders Patricia Vais, Groeman Colleen, both of these Public Defenders stated that they were not "present" at No Such Procedure. See, Transcript 2/22/18, Pg. 6, L. 1-18, Defendant filed a motion on 4/3/18, Motion to suppress testimony regarding the identification of a gun or, in the alternative for an evidentiary hearing, the Court, during the hearing on above motion stated as follows: "Assuming the witnesses identified the gun as the one used in the arm robbery, on what basis would the defendant be entitled to an Evidentiary hearing?" Subsequently at trial see, Transcript 5/21/19, Pg. 34, L. 1-4, during direct exam. Victim Cheral was asked if she recognized the gun that was shown to her on 5/23/16, Victim Cheral stated she did not recognize the gun. The defense moved for a mistrial due to the false proffers creating discovery violations, Brady violations, 14th amendment violations, the court stated that the defense motion was premature and that the court would give the state an opportunity to rehabilitate victim (Cheral) statement regarding her failure to ident. the weapon, victim Cheral was never rehabilitated and the court denied the defense motion for mistrial. The court's ruling was an abuse of discretion and arbitrary. Also the Appellate court misinterpret/misread the state's comment for justification of its holding "I had victim/witness back there the whole time, her answers were different answers when she was interviewed in the presence of a victim/witness advocate earlier today, thus the state's proffer contained the evidence it expected to present. The Appellate court ruled that the record did not reflect or indicate that the state presented false proffers but the Appellate court's ruling was in error as the record substantiates clearly. When the prosecutor stated that

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victim/witness had given "different answers" it was not in response to Petitioner's argument of false proffers but instead was a direct response to the argument regarding victim (Gesa) Knowledge of weapons, see, 5/22/19, pg. 104, L. 3-16, Furthermore, even the prosecutor herself (Mrs. McKay) refutes the Appellate court's holding, by stating on a later date, "victim cheral never identified the weapon, I don't believe Jessica cheral ever identified the weapon, and that's what came out at trial"..., so the Appellate court holding was in error and also based on a misunderstanding of the record, see, 6/16/20, pg. 67, L. 24, The Petitioner filed at least 6 motions prior to trial requesting the names of everyone present during the "Gun Identification" that occurred on 5/23/16, the manner and circumstances it was conducted in, any and all statements made by the two victim/witnesses, the state repeatedly represented to the court that no discovery existed outside what was written in their Motion for Joinder, additional evidence was the fact that the same prosecutor (McGuire) had proffered falsely in its motion for Joinder, that the reason the destroyed video evidence was not obtained by Police officers, was because building management was "uncooperative" on 9/7/17, an Evidentiary hearing was conducted and the defense learned that building - Management was in fact "cooperative", on 8/10/18, the defense requested that prosecutor explain the source of her false proffer and prosecutor (McGuire) stated, "no one ever told me that, it was just my own interpretation" see, 8/10/18, pg. 29, L. 12-13, So the pattern of prosecutorial misconduct is extensive, and it is clear from the record that prosecutor (McGuire) proffered falsely and gave "dishonest representations" to the court for favorable rulings, also concealed Brady material, and though the Appellate court also

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held that even if the defendant had discovered this false proffer prior to trial, the evidence in this case is strong enough to preserve confidence in the verdict. (I Disagree) Without the false proffer, the gun, other crimes evidence, along with the extensive prejudicial details of Petitioner's, subsequent arrest, would not have been before the jury, without the abuse of discretion of denying Petitioner due process regarding allowing that officer to testify to contents of a video not in evidence, as well as that officer testifying to having prior knowledge of Petitioner before the jury, without these prejudicial actions depriving Petitioner of a fair trial, the only evidence for the people would be inconsistent description, no physical evidence at all.

STATEMENT OF THE CASE

Facts Regarding 3rd Question Presented:

5/20/19, Day 1 OF trial Opening statements by the People, as the Petitioner's character was compared to the victim's character, the Prosecutor opening statement as follows:

"Some people work hard for a living, they go to work every day, do the daily grind to provide for themselves and to provide for their families. Some people work. Other people take what they want from the people who work. Over the course of this trial you will learn that this defendant is one of the takers.

The prosecution presented no evidence of Petitioner's employment status, and no evidence that defendant "did not" provide for himself and his family.

Then in rebuttal: (Closing statements) Prosecutor stated as follows:

"You know what you heard, poking, don't turn around, don't turn around, what is he saying don't turn around, when he is groping, Jessica's 8 month pregnant body, and no, the fact she is 8 months pregnant makes her 'more sympathetic', makes him 'well, not going to finish that sentence'.

Defense objection:

objection overruled by court:

The Appellate court found error but erroneously deemed (90FR)

this error "ISOLATED" and without justification for reversal, however this error was not isolated and extremely prejudicial and served only to inflame the passions of the jury see, Transcript 5/21/19 (Day 2 Trial) Pg. 18, L. 16-24, Pg. 19, L. 1-15, which substantiates this error was not "Isolated".

REASONS FOR GRANTING THE PETITION

Argument - Destroyed Evidence

The U.S. Supreme Court in *Youngblood v. Arizona*, adopted the "bad faith" rule, regarding potentially useful evidence #1 to limit the extent of police obligation to preserve evidence to reasonable grounds and (2.) confine that obligation to that class of cases where the interest of justice most clearly requires it.

This Honorable Supreme Court should grant and consider as a matter of "First Impression" this petition, to conduct a (weigh) and (measurement) analysis of the "reasonable grounds" upon which evidence shall be preserved, how broad are those reasonable grounds before being deemed "unreasonable" grounds, even in the absence of an impossible obstacle for a defendant to prove "Bad Faith", will justice be neglected by the most superior court of the land, when police officers exhibit a lack of "Good Faith" and do not go about preserving/retrieving evidence in accord with their normal practice?

I call upon this Honorable Supreme Court to take Judicial Notice, for the sake of anyone arrested under the same or similar circumstance(s) as this petitioner, to - allow two police officers, as well as two detectives, to allege that a video existed of an accused, material to a criminal proceeding, and then all law enforcement involved simply make NO attempts to preserve, or obtain the alleged footage.

and as a result, the footage is eventually destroyed in the normal course of business, to then allow a police officer to testify to the contents of that same destroyed video footage, shifts the burden of proof and prohibits an accused from fundamental fairness as well as impede on an accused constitutional right to a fair trial. To deny this petition, would be to give law enforcement a "green light" to allege that a video existed, was reviewed but not obtained by law enforcement, simply because they got caught up in other investigations, would undermine the judicial process, allowing evidence to spoil and be destroyed to this degree of cumulative, negligent acts, in conjunction with the degree of "inadmissible Hearsay" give a clear interpretation of "Bad Faith" but Bad Faith aside at the very least the defense was entitled to the instruction requested by the defense, or a similar instruction, and I'm confident that when the U.S. Supreme Court issued an instruction against the state, it was cases such as this case, that the U.S. Supreme Court had in mind, where no "good Faith" could be found.

The state argued that the video evidence was not under their control and both the trial court, Appellate court agreed. I disagree, Officer testimony (Officer Meuris) testified her and her partner sat with an unknown video operator on 10/5/14, and that this person allegedly showed them video feed of the offender exiting the vehicle (1999 beige saturn) which was stolen. These officers controlled this crime scene and therefore controlled this alleged video footage, on 10/4/14, just one day prior to the alleged video viewing, the state's
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(Proxy) Chicago Police Officer Mauris, called for an (E.T.) evidence technician to come to 6425 S. Lowe to process the stolen vehicle for fingerprints ect. and to gather evidence, The same police officers could of summoned (Evidence Technicians) to help retrieve the video, these officers could of took photos or video of the allege video, could of sought assistance from supervisors, could of obtained a warrant, this alleged video-evidence was unquestionably under Police control, the lack of due diligence creates "doubt" that the allege video-viewing even happened at all. These two Police officers / also two detectives could of retrieved this allege video footage and at the very least the defense was entitled but denied a "negative inference" jury instruction construed against the state's interest. IF officers are allowed to testify to contents of a video, that they allegedly were shown by an unknown video operator, then any citizen of America is allowed to the same conduct, and as long as a defendant can't prove "Bad Faith" then officers have absolutely NO obligation to gather and retrieve evidence, NO good faith would be required by law enforcement when handling evidence, the Appellate court ruling is in error and would establish a blatant prohibition on an accused's right to a fair trial.

REASONS FOR GRANTING THE PETITION

Argument: Prosecutorial Misconduct

Prosecutor (McGuire, Jessica) violated her duty of candor toward the tribunal, Ill. R. Prof. cond. 3.3 (a) (1) eff. JAN 1ST, 2010 attorneys shall not knowingly make false statements of fact or law or fail to correct false statement of material fact or law previously made to tribunal by attorney,

As the record reflect, Prosecutor (McGuire) have a Pattern OF presenting False Proffers in exchange for Favorable Rulings Regarding the admission OF evidence onto my Armed Robbery Trial,

A "Proffer" is used to convince a trial court to admit evidence, and must apprise the trial court, what the offered evidence is or what the expected testimony will be, by whom it will be presented and it's Purpose *Kim v. Mercedes Benz, U.S.A., INC.*, 353 Ill. App. 3d 444, 451, 818 N.E.2d 713 288, Ill. Dec. 778 (2004)

Because the prosecution misled the trial court as to the probative value of the evidence, it's decision to allow admission OF evidence "THE GUN" was made in error based on the prosecution's misleading statements/proffers, the prejudicial impact was devastating, and should of never been admitted in the first place, *Old Chief v. United States*, 519 U.S. 172, 179 (1997)
People v. Hale, 326 Ill. App. 3d 455, 462 (2001)

The False Proffers served as the moving force to Admit
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Other crimes evidence "THE GUN" onto Petitioner's trial for Armed Robbery, the False Proffers also served as the basis for arresting officers on the unrelated case, to come testify to the circumstances of Petitioner's arrest on an unrelated case "THE GUN", extensive testimony by a Police Officer, provided at least 15 pages of testimony before the jury, of Petitioner's fleeing from law enforcement and recovery of a gun (unrelated case), all based on false proffers.

If a prosecutor's "intentional" malicious prosecution is allowed to go uncorrected, then it would give prosecutors across America authority to deprive prisoners of their rights to a fair trial, Due Process, Fundamental Fairness,

The same Prosecutor (McGuire) also committed a Brady-violation by concealing and withholding evidence required by *People v. Coleman*, 183 Ill.2d 366, 391 (1998).

The fact that both victims, were called in and asked to identify an alleged weapon that these witnesses/victims were robbed with and one of the two witnesses did not positively I.D. the weapon as the weapon they were robbed with is surely "material" and Petitioner was entitled to that discovery, wherefore Petitioner was a victim of trial by ambush.

But the

REASONS FOR GRANTING THE PETITION

Argument: Opening/Closing Statements

The cumulative/abundance of errors deprived Petitioner of his right to a Fair Trial, Due Process of Law, as well as Fundamental Fairness, Also the Appellate court erred in its holding of "Isolated Error" I'll address it first:

The Appellate court Found the Prosecutor erred but that it was "Harmless Error" due to being "Isolated" error, the inflammatory comes in closing rebuttal after defendant's Counsel informed the Jury it could not let Cheval's pregnant status inject sympathy and that her client was not charged with a sex crime due to the Prosecution soliciting testimony defined as Sexual Abuse.

IN Rebuttal by the state, the Following:

You know what you heard poking, don't turn around, What is he saying don't turn around when he is groping Jessica's 8 month pregnant body, and no, the fact she's 8 months pregnant makes her more sympathetic, make him - Well, not going to finish that sentence.

Objection,

Overruled.

Moreover, a Prosecutor's misstatements in rebuttal are especially prejudicial because a defendant lacks the ability to respond *People v. Davila*, 236 Ill. App. 3d 367, 383, 603 N.E. 2d 666, 177 Ill. Dec. 596 (1991) Prosecutor's has wide latitude in closing arguments (11/01/18)

Combined with opening statements:

IN which the prosecutor compared the victim

Rafael Cesa "the hard worker, who works to feed his family,
as oppose to defendant who just take from people who work,
Defendant's employment status was never introduced
into the record, nor was evidence that defendant was not
a provider of a family or his family, all jurors were either
retired or still working (employed) the state expressed
" we will hear how defendant put his hands on victim's
(Cheval) Pregnant body,

The Appellate court finding of Isolated error
is untrue as demonstrated by the trial record,

Defendant was only charged with Armed Robbery,
Agg. vehicular Highjack,

Accordingly the cumulative effect of all
combined trial errors denied defendant a fair trial
as well as due process of law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Julius Jones

Date: 6/13/24