

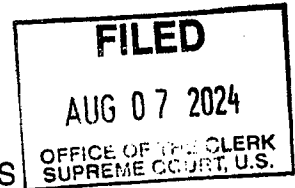
No. _____

ORIGINAL

24-5897

IN THE

SUPREME COURT OF THE UNITED STATES



Justin J. Johnson — PETITIONER
(Your Name)

vs.

Warden Broad River Correctional — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Justin J. Johnson
(Your Name)

Broad River Correctional Inst. 4460 Broad River Rd
(Address)

Columbia, SC, 29210
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1: was allowing investigator to testify via Skype video messenger
Harmless Error?
- 2: Was statement to investigators freely and voluntarily given?
- 3: Was admission of pre-death photos of victims harmless error?
- 4: Was denying petitioner's motion for a mistrial and impanel
a new jury in error of trial judge when two witnesses were
talking about the case in arm's length of jury?

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

See Appendix E

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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 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☒ is unpublished.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☒ is unpublished.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 D 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☒ is unpublished.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 April 2, 2024.

☐ 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: June 10, 2024, 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. 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

Constitution of the United States Amendment V: no person should be deprived of life, liberty, or property, without due process of law. Due process clause

Constitution of the United States Amendment V Self Incrimination clause: no person shall be compelled to be a witness against himself.

Constitution of the United States Amendment VI Jury Trials for Crimes, and Procedural Rights: In all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

On July 7, 2011, the Clarendon County grand jury indicted petitioner Justin J. Johnson on charges of first degree burglary, two counts of murder, attempted murder, possession of a weapon during the commission of a violent crime and kidnapping. On March 6, 2014, Johnson appeared before the honorable William Jeffery Young for pre-trial Jackson V. Denno hearing. Prior to the Voir Dire, defense counsel overheard two of the State's witnesses discussing the facts and merits of the case outside of the courtroom within arm's length of the potential jurors. This was brought to the judge's attention and ruled that no harm was done and denied Johnson's motion for a mistrial and to impanel a new jury. On March 10-14 and 18-20, 2014 Johnson appeared before the same judge and jury for trial on the above offenses. During Johnson's trial solicitors submitted pre-death photographs of the victims over defense counsel's objections that the photographs were irrelevant and unduly prejudicial. It was informed to the court that one investigator would be doing his testimony via Skype Video Messenger because he had moved to Montana. The trial judge allowed this to happen over defense council's objections. During Investigator Moore's testimony the video repeatedly went out and froze. Defense counsel again objected to the admission of the testimony but trial judge still allowed his testimony via Skype. The State presented what they said was a confession given to investigators by Johnson that was recorded during his eleven hour interrogation with investigators. Investigator Moore's testimony via Skype was used to submit the State's claim that the statement was freely and voluntarily given without and improper influence or coercion. In the video it seen and heard when investigators continued to yell at Johnson saying that his story didn't add up to evidence that they themselves made up. When after ten and a half hours into the video they seen that he had not changed his statement they went on to say what they would tell his daughter about him if he didn't change his statement. At that point Johnson repeated the information investigators gave him the past ten hours and that is when they ended the interrogation. Johnson was found guilty on all charges except the attempted murder. In Johnson's Direct Appeal, the court did find that it was in error of the trial court to allow in the pre-death photographs of the victims and in allowing Investigator Moore to testify via Video Messenger but said that both were Harmless error. In Johnson's appeal to the Fourth Circuit Court of Appeals and his Habeas Corpus filing both courts held that these were both harmless errorr.

REASONS FOR GRANTING THE PETITION

1. Was allowing investigator to testify via Skype video messenger Harmless Error?

During Petitioner's trial, it was informed to the court that Investigator Mason Moore would be doing his testimony via Skype Video Messenger because he had moved to Montana. Petitioner's trial lawyer objected to the use of video messenger for witness testimony but the trial judge allowed it. During Investigator Mason Moore's testimony the video repeatedly lost connection and lagged throughout the entirety of it. After the completion of Investigator Mason Moore's testimony, Petitioner's trial lawyer again objected to the use of this testimony but trial judge still allowed it in. Mason Moore's testimony was solely to account for he and Investigator Coker interrogation of Petitioner the day of his arrest.

Allowing Investigator Mason Moore to testify via video messaging could not be considered harmless error in that it was used to submit what the State claimed was their key piece of evidence. Multiple witnesses for the State said they had no knowledge of any evidence that linked Petitioner to the crime. The entirety of the State's case relied on what they claimed was a voluntary confession. If the State could not prove what Petitioner said was a confession that was given without the use of threats or coercive tactics by Investigators then they in fact could not have gone forward with their case. In Petitioner's interrogation video with Investigator Mason Moore and Coker it was clear that Petitioner's was being forced to say that he committed the crime when throughout the first ten and half hours of the interrogation investigator repeatedly lied about evidence and told him that his statement didn't match what was found at the scene. The presence of DNA on the murder weapon that didn't match Petitioner or the known victims in the case proved third party involvement. Trial Tr. 719, 11. 3-15; Trial Tr. 719 11. 16-24; Trial Tr. 720. 11. 7-13. Also in State's Exhibits 87 and 88 a shoe print in the victim's blood that didn't match Petitioner or other known persons at the scene that day all aligned with Petitioner's statement of third party involvement. Trial Tr. 681, 1. 10-684, 1.6; trial Tr. 692, 11. 1-8. Instead of investigating the known evidence or what could be physically proven that day, both investigators only relied on targeting the relationship with Petitioner and his daughter to get him to admit to the crimes that day. Repeated breaks in the video, especially at the exact moment when Investigator Coker was yelling at Petitioner, did not provide the courts with a perfect review of the interrogation to access whether the statement was voluntarily given. See State's Ex. 59 (DVD of Apr 6. 2011 Interrogation). Investigator Coker as seen in the interrogation videos was more aggressive, "the bad cop", while Investigator Moore was the "good cop". The State needed the testimony of Investigator Moore clearly to affirm that the statement they received from Petitioner was done without his will being overborne as Investigator Coker actions in what could be viewed in the video were clearly aggressive.

The particular circumstances in this case, mainly allowing a person to testify to the lawful or unlawful attainment of a statement, only to be able to submit that statement as part of the State's case, then saying it was unconstitutional to have that person testify via video messaging but keep the statement as part of the evidence against another person should not be considered harmless error.

"In assessing whether a constitutional error is harmless, we determine whether the admission of the statement at issue was harmless beyond a reasonable doubt, such that it is clear that a rational fact finder would have found the defendant guilty absent the error." U.S. v. Watson 703 F.3d 684, 698(4th Cir. 2013) (quoting U.S. Poole, 640 F.3d 114, 119-20 (4th Cir. 2011)

"Whether an error is harmless depends on the particular circumstances of the case." *State v. Reeves*, 301 S.C. 191, 193, 394 S.E.2d 241, 243 (1990) "No definite rule governs this finding; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case" *Id* at 193-94, 391 S.E.2d at 243

2. Was statement to investigators freely and voluntarily given?

As stated above, Investigators Moore and Coker both interrogated Petitioner on the day of his arrest. This interrogation was audibly and visually recorded. In the video you can hear and see both investigators pressuring Petitioner to alter his statement. Multiple times the investigators lied about evidence and threatened Petitioner with jail time if he kept with the same story. This went on for more than eight hours without Petitioner changing his statement that someone else was there and that they had committed the murders. When they realized that mentioning his daughter proved to give an emotional response they began to target him psychologically by saying what they would tell his daughter about him and that he would never see her again. They never tried to find out if any of what Petitioner's earlier statements were true. This went on for approximately fifteen minutes before Petitioner said, "I don't know what happen the gun just went off... how could I live with myself knowing I did this? Rather if it was an accident or not." It was at that point the Investigators chose to end the interrogation. No new information was given to Investigators from Petitioner concerning the case only that statement. Both investigators denied making threats or coercive statements to Petitioner but agreed that it was only after talking about his daughter did Petitioner change his story. Coker also agreed that his original story matched the evidence at the scene and that it was countered only by Kaisha's statement and his alleged confession that followed the remarks concerning his daughter. Trial Tr. 398, 11. 8-413, 1. R3; Trial Tr. 472, 1. 4-473, 1. 20; Trail Tr. 495, 1. 17-496, 1; Trial Tr. 507, 1. 24-512, 1. 15.

In State v. Corn, 310 S.C. 546, 426 S.E.2d 324 (Ct. App. 1992), the court found that "veiled threats against his family" amounted to an exertion of improper influence and

rendered Corn's statement involuntary, necessitating reversal of corn's conviction and a new trial.

Bram v. United States, 168 U.S. 532 18 S. Ct. 183, 42 L. Ed. 568 (1897), a confession cannot be obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence.

Coercion can be mental as well as physical and the blood of the accused is not the only hallmark of an unconstitutional inquisition.(quoting Arizona v. Fulminate, 499 U.S. Ct. 1246)

"Coercion is determined form the perspective of the suspect." State v. Miller, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2007)

Statements given pursuant to threats or under inherently coercive circumstances are not admissible. any criminal trial use against a defendant of his involuntary statement is a denial of due process of law. Mincey v. Arizona, 437 U.S. 385, 398-99, 98 S.Ct. 2408 (1978); Minnesota v. Murphy 465 U.S. 420, 427, 104 S.Ct. 1136 (1984)

3. Was admission of pre-death photographs of victim's harmless error?

The trial court admitted pre-death photographs of both victims over defense counsel's objections that the photographs were irrelevant and unduly prejudicial. In South Carolina Court of Appeals Opinion No. 5533 filed January 31, 2018, the court agreed but concluded the admission of the photographs constitutes harmless error in this case. Petitioner argues that in the totality of this case, allowing for unjust prejudice to exist towards a defendant in any criminal case due to the error of admitting pre-death photographs that were submitted solely for that purpose cannot be harmless. In this case where investigators had already proven to look at defendant in a negative light, by not relying on any of the evidence to support the statements made toward the defendant, allowing the jury to develop the same or any level of prejudice toward the same defendant in the same case could not render the defendant a fair trial by an impartial jury. U.S. CONST. AMEND VI; S.C. CONST. ART. I, §14. The photographs were presented at the beginning of trial to gain an emotional response to what had happen to the victims so as to distract the jury from the large amount of forensic evidence that should have be looked at to prove who committed the crime.

4. Was denying Petitioner's motion for a mistrial and impanel a new jury in error of trail judge where two witnesses were talking about the case in arm's length of jury?

Prior to the voir dire of the jury, defense counsel overheard two of the State's witnesses discussing the facts and merits of the case outside of the courtroom within arm's length of potential jurors. Trial Tr. 97, 1. 25-98, 1. 24. Given that this matter was brought to the court's

attention before the jury was even sworn, the trial court should have granted the motion for mistrial. Even if it is indirect or unintentional any contact or communication with the jury about the facts of the case or viewpoints of witnesses especially an Investigator can only be prejudicial.

In a criminal case, any tampering directly or indirectly with a juror during trial about a matter before the court is deemed presumptively prejudicial. Remmer 1. 347 U.S. at 229, 74 S.Ct. 450

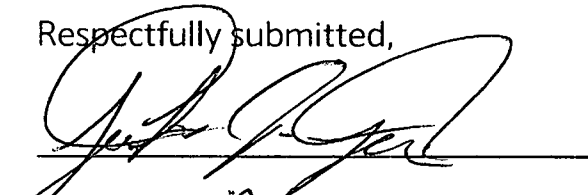
"It is the duty of the trial court to see that a jury of unbiased, fair and impartial persons is impaneled." U.S CONST. AMEND VI; State v. Powers, 331 S.C. 37, 43, 501 S.E.2d 116, 118 (1998)

"In criminal proceedings, the conduct of the jurors should be free from all extraneous or improper influences." State v. Hill, 394 S.C. 312, 320, 714 S.E.2d 879, 883(Ct. App. 2011)

CONCLUSION

The petition for a writ of certiorari should be granted

Respectfully submitted,



Date: Sep. 11, 2024