

24 - 6335

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

NOV - 8 2024

OFFICE OF THE CLERK

MACREASE DELANCE FARMER - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

MACREASE DELANCE FARMER
REG # 40764-044
YAZOO MEDIUM
P.O. BOX 5000
YAZOO CITY, MS 39194

QUESTIONS PRESENTED

- 1) WHETHER COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO NOT ONLY INVESTIGATE THE INFORMATION REGARDING AN ALTERCATION BETWEEN JUROR 27 SON AND DEFENDANT'S SISTER, BUT ALSO FAILING TO QUESTION AND PUT THE DISTRICT COURT ON NOTICE OF THE POTENTIAL BIAS?
- 2) WHETHER THE DISTRICT COURT'S DECISION VIOLATES PETITIONER'S RIGHTS TO HAVE A VERDICT BY AN IMPARTIAL JURY AND AFFECTED PETITIONER'S CONSTITUTIONAL RIGHTS TO FUNDAMENTAL FAIRNESS AND DUE-PROCESS?

LIST OF PARTIES

A LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGEMENT IS THE SUBJECT OF THIS PETITION IS AS FOLLOWS:

PETITIONER

MARCREASE DELANCE FARMER - DEFENDANT

MR. ZACHARY J. BOROWIAK, CJA APPOINTMENT

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TABLE OF AUTHORITIES CITED

U.S. CONSTITUTION

SIXTH AMENDMENT

P. 4, 5

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO 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 WITNESS AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESS IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

FOURTEENTH AMENDMENT, SECTION 1

P. 6

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAW.

CASES

STRICKLAND V. WASHINGTON, 416 U.S. AT 688, 692, 104 S. CT.

P. 4

EVITT'S V. LEICESTER, 469 U.S. 387, 396-97 83 L. ED. 2d 281 105 S. CT. 830 (1985).

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DYER V. CALDERON, 151 F.3d 970, 973 (9TH CIR. 1998).

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UNITED STATES V. MARTINEZ-SALAZAR, 528 U.S. 305, 120 S. CT. 774 782, 145 L. ED. 2d 792 (2000).

P. 5

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 JUDGEMENT BELOW.

OPINION BELOW

FOR CASE FROM FEDERAL COURT:

THE OPINION OF THE UNITED STATES COURT OF APPEALS APPEARS
AT APPENDIX A TO THE PETITION AND IS UNPUBLISHED.

JURISDICTION

FOR CASE FROM FEDERAL COURT:

THE DATE ON WHICH THE UNITED STATES COURT OF APPEAL DECIDED
MY CASE WAS October 16, 2024.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1254(1).

STATEMENT OF THE COURSE OF PROCEEDINGS

APPELLANT WAS CHARGED, VIA INDICTMENT (DOC. #1), WHICH WAS FILED ON DECEMBER 3, 2019. APPELLANT WAS THE SOLE DEFENDANT IN THE INDICTMENT.

APPELLANT FILED A MOTION TO SUPPRESS EVIDENCE (DOC. #5) AND A MOTION TO SUPPRESS STATEMENTS (DOC. #36). ON NOVEMBER 12, 2020 THE MAGISTRATE COURT ENTERED ITS REPORT AND RECOMMENDATIONS, RECOMMENDING THE DENIAL OF APPELLANT'S MOTION TO SUPPRESS STATEMENTS (DOC. #45).

ON JULY 22, 2021, A JURY FOUND APPELLANT GUILTY OF THREE COUNTS OF DISTRIBUTING FIFTY GRAMS OR MORE OF A MIXTURE OR SUBSTANCE CONTAINING A DETECTABLE AMOUNT OF METHAMPHETAMINE, IN VIOLATION OF 21 U.S.C. § 841(A)(1) AND PUNISHABLE UNDER 21 U.S.C. § 841(B)(1)(B)(VIII). ON DECEMBER 9, 2021, APPELLANT WAS SENTENCED TO 210 MONTHS IMPRISONMENT. ON DECEMBER 21, 2021, APPELLANT TIMELY FILED HIS NOTICE OF APPEAL (DOC. #31) PURSUANT TO FED. R. APP. P. 4(B). DIRECT APPEAL WAS DENIED ON APRIL 12, 2023.

APPELLANT FILED WRIT FOR CERTIORARI WHICH WAS DENIED ON OCTOBER 2, 2023. MOTION FOR REHEARING WAS DENIED. APPELLANT FILED MOTION FOR NEW TRIAL ON SEPTEMBER 9, 2021, AND WAS DENIED ON FEBRUARY 20, 2024.

APPELLANT TIMELY FILED MOTION UNDER 28 U.S.C. § 2255 WHICH WAS DENIED ON OCTOBER 16, 2024

STATEMENT OF FACTS

APPELLANT MARCREASE D. FARMER WAS INDICTED BY A FEDERAL GRAND JURY FOR THREE COUNTS OF DISTRIBUTING 50 GRAMS OR MORE OF A MIXTURE OR SUBSTANCE CONTAINING METHAMPHETAMINE, IN VIOLATION OF 21 U.S.C. § 841(A)(1) AND (B)(1)(B)(VIII). THE STATUTORY RANGE OF PUNISHMENT ON EACH COUNT WAS A TERM OF IMPRISONMENT

NOT LESS THAN 5 YEARS AND NOT MORE THAN 40 YEARS.

AFTER HIS MOTION TO SUPPRESS EVIDENCE AND STATEMENTS WERE DENIED, FARMER ELECTED TO PROCEED TO TRIAL. IMMEDIATELY AFTER THE PROSPECTIVE JURORS WERE SEATED, FARMER'S COUNSEL APPROACHED AND MOVED TO STRIKE THE ENTIRE VENIRE PANEL. TR. VOL. 1 AT 12-13. FARMER'S COUNSEL SPECIFICALLY VOICED CONCERN THAT, OUT OF 39 PROSPECTIVE JURORS, ONLY ONE OF THEM WAS AFRICAN-AMERICAN. THE DISTRICT COURT OVERRULED FARMER'S OBJECTION.

LATER THAT MORNING, AS JURY SELECTION CONTINUED, THE DISTRICT COURT ALLOWED THE VENIRE PANEL TO TAKE A SHORT BREAK. DURING THE RECESS, IT WAS BROUGHT TO THE DISTRICT COURT'S ATTENTION THAT VP 27 BELIEVED SHE WAS FAMILIAR WITH AT LEAST ONE MEMBER OF FARMER'S FAMILY. BEFORE RESUMING VOIR DIRE, THE DISTRICT COURT INFORMED THE PARTIES OF THIS DEVELOPMENT.

ALTHOUGH THE DISTRICT COURT AND THE AUSA QUESTIONED VP 27 EXTENSIVELY ABOUT HER FAMILIARITY WITH FARMER AND MEMBERS OF HIS FAMILY, FARMER'S COUNSEL DECIDED NOT TO EXPLORE THIS LINE OF QUESTIONING. IN FACT, FARMER'S COUNSEL DID NOT VENTURE TO ASK A SINGLE QUESTION DURING THE ENTIRE DIALOGUE.

DURING A BREAK IN VOIR DIRE, A CRITICAL CONFLICT OF INTEREST WITH ONE OF THE JURORS WAS BROUGHT TO THE ATTENTION OF DEFENSE COUNSEL, MR. BOROWIAK, BY DEFENDANT'S SISTER, JAHVASHEA FARMER. SEE APPENDIX B - SWORN AFFIDAVIT.

MS. FARMER INFORMED MR. BOROWIAK THAT SHE HAD A PRIOR ALTERCATION WITH VP 27, ANGELA JONES. MR. BOROWIAK WAS INFORMED THAT THIS PRIOR ALTERCATION WAS OVER DEFENDANT'S SISTER FILING FELONY CHARGES FOR THE DESTRUCTION OF PROPERTY AGAINST VP 27, MS. JONES SON. SEE APPENDIX C - MALDEN DEPARTMENT OF PUBLIC SAFETY INCIDENT REPORT.

VP 27, MS. JONES OBSERVED FARMER'S SISTER DISCUSSING MATTERS WITH DEFENSE COUNSEL DURING A BREAK, AFTER WHICH TIME SHE INFORMED THE COURT REPORTER THAT SHE KNEW MR. FARMER'S SISTER. THE COURT CHOSE NOT TO REMOVE VP 27 AND INSTEAD LET A BIAS JUROR SIT ON THE PANEL. AFTER TRIAL, DEFENSE COUNSEL OBTAINED A POLICE

REPORT THAT ADDRESSED CHARGES BEING FILED AGAINST JUROR 11'S SON BY DEFENDANT'S SISTER. COUNSEL ATTACHED THIS REPORT TO THE MOTION FOR RE-TRIAL BASED ON NEW JUROR EVIDENCE SHOWING CREDIBLE BIAS. THE COURT CHOSE TO DENY THE MOTION BASED PARTLY ON THE GOVERNMENT'S MISS-READING OF THE POLICE REPORT. THE POLICE REPORT CLEARLY SAYS MS. FARMER DID WANT TO PRESS CHARGES. SEE APPENDIX C - POLICE REPORT.

REASONS FOR GRANTING THE PETITION

I. CERTIORARI, SHOULD BE GRANTED DUE TO THE APPARENT VIOLATION OF PETITIONER'S GUARANTEED CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND COUNSEL'S FAILURE TO PROTECT PETITIONER'S RIGHTS TO FUNDAMENTAL FAIRNESS AND IMPARTIAL JURY.

DEFENDANT'S POSITION IS THAT COUNSEL WAS NOT FUNCTIONING AS THE COUNSEL GUARANTEED BY THE SIXTH AMENDMENT. AS COUNSEL HAD AN OBLIGATION TO PROTECT DEFENDANT'S FUNDAMENTAL CONSTITUTIONAL RIGHTS. COUNSEL'S FAILURE TO ADVISE THE COURT OF AN ONGOING ALTERCATION CONSTITUTES REPRESENTATION WHICH FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, STRICKLAND, 466 U.S. AT 688.

APPENDIX CLEARLY SHOWS THAT DEFENDANT'S SISTER INFORMED COUNSEL OF THE ONGOING ALTERCATION AND SHE FELT JUROR 11 WOULD USE THIS MOMENT AS A FORM OF RETALIATION AGAINST HER BROTHER THE DEFENDANT. THIS WAS DUE TO AN ONGOING ALTERCATION BETWEEN VENIRE PERSON 27 AND HERSELF, FOLLOWING FELONY CHARGES SHE FILED AGAINST VENIRE PERSON 27 (SON) FOR PROPERTY DAMAGE.

IN LIGHT OF THIS CRUCIAL INFORMATION, COUNSEL HAD AN OBLIGATION TO NOT ONLY PROTECT DEFENDANT'S FUNDAMENTAL CONSTITUTIONAL RIGHTS, BUT ALSO ADVISE THE COURT OF THIS ONGOING ALTERCATION. THE SIXTH AMENDMENT ENTITLES DEFENDANT TO THE EFFECTIVE ASSISTANCE OF COUNSEL NOT ONLY AT TRIAL BUT DURING ALL PROCEEDINGS AS A RIGHT. EVITT'S V. LUCEY, 469 U.S. 387, 396-97 83 L.ED. 2d 281 105 S. CT. 830 (1985).

THE RECORD WILL REVEAL THAT AFTER THE RECESS THERE WAS A SIDEBAR REGARDING VEDIRE PERSON 27, SEE (JURY ITR. VOL. 1 P. 64-72). * UNFORTUNATELY COUNSEL'S UNPROFESSIONAL ERRORS, DEPRIVED DEFENDANT OF A VERDICT BY AN IMPARTIAL JURY AND FURTHER DEPRIVED THE COURT OF AN OPPORTUNITY TO REMEDY THE PROBLEM AND THEREBY AVERT THE POTENTIAL BIAS OR PREJUDICE. THE SIXTH AMENDMENT GUARANTEES CRIMINAL DEFENDANTS A VERDICT BY AN IMPARTIAL JURY. DYER V. CALDERON, 151 F.3d 970, 973 (9TH CIR. 1998). THE BIAS OR PREJUDICE OF EVEN A SINGLE JUROR IS ENOUGH TO VIOLATE THAT GUARANTEE. ACCORDINGLY THE PRESENCE OF A BIASED JUROR CANNOT BE HARMLESS; THE ERROR REQUIRES A NEW TRIAL WITHOUT A SHOWING OF ACTUAL PREJUDICE. DYER, 151 F.3d AT 973, N2. SEE ALSO, UNITED STATES V. MARTINEZ-SALAZAR, 528 U.S. 305, 120 S. CT. 774 782, 145 L. ED 2d 792 (2000).

LOOKING AT THE ISSUE AND THE FACT OF THE ONGOING ALTERCATION, ONE MAY YET LEGITIMATELY QUESTION THE ABILITY OF JUROR 11 TO TRULY BE IMPARTIAL, TO PROVIDE AN BIAS AND UNPREJUDICE VERDICT. THIS IS ONE OF THOSE SITUATIONS THAT NO MATTER HOW MINOR OR HOW FLEETING IT CANNOT BE OVERLOOKED.

II. CERTIORARI SHOULD BE GRANTED IN THIS PARTICULAR CASE BECAUSE OF THE LOWER COURT'S ERRONEOUS DECISION WHICH REPRESENTS A SUBSTANTIAL AND SEVERE HARDSHIP AND FUNDAMENTAL MISCARriage OF JUSTICE, AND IMPORTANCE OF QUESTIONS.

DEFENSE COUNSEL MR. BORDOWIAK WAS NOTIFIED BY MR. FARMER'S SISTER DURING A BREAK IN VIDEORECORDING THAT SHE, JAHVASHEA FARMER, HAD A PRIOR ALTERCATION WITH VP27, MS. JONES. MR. BORDOWIAK WAS INFORMED THAT THIS PRIOR ALTERCATION WAS OVER MS. FARMER FILING CHARGES FOR THE DESTRUCTION OF PROPERTY AGAINST VP27, MS. JONES SON.

VP 27, MS. JONES OBSERVED FARMER'S SISTER DISCUSSING MATTERS WITH DEFENSE COUNSEL DURING A BREAK, AFTER WHICH TIME SHE INFORMED THE COURT REPORTER THAT SHE KNEW MR. FARMER'S SISTER.

THE COURT CHOSE NOT TO REMOVE VP27 AND INSTEAD LET A BIAS JUROR SIT ON THE PANEL. AFTER TRIAL, DEFENSE COUNSEL OBTAINED A POLICE REPORT

* SEE APPENDIX D - JURY ITR. VOL. 1 P. 164-72.

THAT ADDRESSED CHARGES BEING FILED AGAINST JUROR 11'S SON BY DEFENDANT'S SISTER. COUNSEL ATTACHED THIS REPORT TO THE MOTION FOR RE-TRIAL BASED ON NEW JUROR EVIDENCE SHOWING CREDIBLE BIAS. THE COURT CHOSE TO DENY THE MOTION BASED ON THE GOVERNMENT'S MISS READING OF THE POLICE REPORT. HOWEVER, THE POLICE REPORT CLEARLY SAYS MRS. FARMER DID WANT TO PRESS CHARGES, SEE APPENDIX - POLICE REPORT.

CONCLUSION

IN SUM, THE ISSUES ARE (1) IF DEFENDANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO HAVE A VERDICT BY AN IMPARTIAL JURY AND ... RATHER COUNSEL DENIED DEFENDANT HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. (2) ONE MAY YET LEGITIMATELY QUESTION IF COUNSEL'S AND THE DISTRICT COURT'S FAILURE TO STRIKE JUROR 27 CREATED AN UNKNOWN LEVEL OF BIAS, THAT DENIED PETITIONER OF ALL FAIRNESS.

ACCORDINGLY, I RESPECTFULLY REQUEST THAT THIS COURT GRANT THIS PETITION FOR WRIT OF CERTIORARI, IN ACCORDANCE WITH THE RIGHT GRANTED ME BY THE FOURTEENTH AMENDMENT OF EQUAL PROTECTION OF THE LAW.

RESPECTFULLY SUBMITTED.

Marcerease Delancee Farmer

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