

NO. _____

In The
Supreme Court of the United States

DANIEL D. BASILE III,
Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

On Petition for Writ of Certiorari to
the Supreme Court of the State of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Illinois Supreme Court's holding in this case weakens the shield function of the grand jury process by inappropriately altering the standard for establishing a substantial denial of due process set forth in *United States v. Mechanik* and *Bank of Nova Scotia v. United States*.

Whether the appropriate remedy for substantial denials of due process in grand jury proceedings is dismissal of the Indictment with prejudice as a deterrent to prosecutorial misconduct.

RELATED PROCEEDINGS

Supreme Court of the State of Illinois
Docket No. 129026

PEOPLE OF THE STATE OF ILLINOIS, Appellant,

V.

DANIEL D. BASILE III, Appellee.

Citation: 2024 IL 129026

Entered on: October 3, 2024

Reproduced at Pet. App. 1a

Illinois Appellate Court, Second District
Docket No. 2-21-0740

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff/Appellant,

V.

DANIEL D. BASILE III,

Defendant/Appellee.

Citation: 2022 IL App. (2d) 210740, 203 N.E. 3d
410, 461 Ill. Dec. 256

Entered on: September 23, 2002

Reproduced at Pet. App. 40a

Winnebago County Circuit Court for the
Seventeenth Judicial Circuit
Docket No. 2019 CF 2828

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,

V.

DANIEL D. BASILE III, Defendant.

Docket No. 2019 CF 2828

Entered on: 11/23/2021

Reproduced at Pet. App. 52a

NO OTHER PROCEEDINGS OR CASES EXIST
BETWEEN THE PARTIES

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PETITION FOR WRIT OF CERTIORARI

Daniel D. Basile III, by and through his attorney, Mark A. Byrd, respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of Illinois.

LOWER COURT PROCEEDINGS

Supreme Court of the State of Illinois

Docket No. 129026

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Docket No. 2019 CF 2828

Entered on: 11/23/2021

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JURISDICTION

Mr. Basile invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the judgment of the Supreme Court of Illinois, which was entered on October 3, 2024.

CONSTITUTIONAL PROVISIONS INVOLVED
U.S. CONST. AMEND. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due

process of law; nor shall private property be taken for public use without just compensation.

U.S. CONST. AMEND. XIV, § 1

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 laws.

STATEMENT OF THE CASE

Petitioner Daniel D. Basile III was Indicted by a Winnebago County Illinois grand jury in a two-Count Bill of Indictment charging him in both Counts with committing the offense of criminal sexual assault against Jane Doe based on her inability to consent due to intoxication. Vol. 1, C 22-23. (**Note:** All citations herein are to the common law record in the Illinois Supreme Court or to the Petitioner's Appendix, cited as Pet. App. 1a - 82a). During the investigation phase of the case, Basile met with Rockford Detective Vince Kelly and another Detective. In that meeting, which was both

audio and video recorded and lasted for over an hour, Basile admitted to having consensual sex with Jane Doe, but repeatedly denied that she was unable to consent due to intoxication. Further, Basile explained to Detective Kelly that she directed him to where she lived when he drove her home from the bar, retrieved her keys from her purse, discussed having intercourse with him, gave him direction during the encounter as to her likes and dislikes, and at all times was lucid and indicated that she wanted to have consensual sex with him. Vol. 1, E 2.

Before the grand jury, Detective Kelly was the State's only witness, and Basile was the only name mentioned in the testimony other than the alleged victim Jane Doe. His name appeared at least ten times in the brief period of Detective Kelly's testimony. *See* Pet. App. 76a-82a. After he completed his testimony, the State invited questions from the grand jurors, and one of them responded. The following exchange occurred:

Juror: Besides that she said that this occurred, was there any other evidence that he actually did this to her?

Kelly: I'm not sure I completely understand the question.

Juror: You said the person was extremely intoxicated, correct?

Kelly: Correct.

Juror: How do we know that the person she said did this to her did it to her?

Kelly: He told me he did.

Juror: That is all I needed to know.

Pet. App. 80a - 81a.

The Assistant State's Attorney handling the case made no effort to correct the record and Detective Kelly failed to clarify that Basile admitted to having consensual sex with Jane Doe, but repeatedly denied that she lacked the ability to consent due to intoxication. Petitioner filed a motion to dismiss the indictment with prejudice in the circuit court, alleging that the State had engaged in prosecutorial misconduct by suggesting to the grand jury that Basile had confessed to the crimes alleged when he in fact repeatedly denied them. Basile further alleged that the false and deceptive testimony that he had confessed to the crimes resulted in the grand jury being unduly influenced in its deliberations, and that there was grave doubt that the decision to indict was free from the substantial influence of the false testimony, thereby constituting a substantial denial of Basile's due process rights. Volume 1, C. 147.

While the State maintained that the grand juror's questioning was directed at the identity of the Defendant as the perpetrator as opposed to other possible perpetrators, Defendant noted that in the very short proceeding and transcript, the name "Daniel Basile" or just "Basile" appeared no less than ten times, and no other possible perpetrators were named other than Daniel Basile, rendering identity of the alleged assailant a non-issue before the grand jury. Pet. App. 76a - 81a. Following

briefing and arguments, the circuit court agreed and granted Basile's motion to dismiss with prejudice and denied the State leave to re-indict. Pet. App. 52a-74a. The circuit court reasoned that "no reasonable grand juror" would have "been unclear on who 'the person' who 'did this' to Jane Doe was." Pet. App. 67a. Further, the trial court found that the defendant had "demonstrated clearly and unequivocally that prosecutorial misconduct directly affected the Grand Jury's deliberations, resulting in the return of the two count Bill of Indictment against Basile." Pet. App. 73a -74a.

The State filed a certificate of impairment and appealed to the Illinois Appellate Court, Second District. Volume 1, C-182-185. Following briefing, the appellate court unanimously affirmed the circuit court's decision to grant the motion with prejudice. Pet. App. 40a-51a. The appellate court agreed with the circuit court that there was prosecutorial misconduct through false and uncorrected testimony that Basile had confessed to the crimes, and that the State's action of admitting the false testimony and inaction in failing to correct it resulted in an actual and substantial denial of Basile's due process rights because the evidence offered by the State was weak enough that the "grand jury would not have indicted defendant apart from Kelly's deceptive and inaccurate testimony." Pet. App. 48a-50a. The second district appellate court further noted that the impact of the false testimony regarding a confession was "manifest in the grand juror's comment that defendant's confession to Kelly was "all [the juror] needed to know." Pet. App. 50a.

In its rejection of the State's argument that the colloquy between the grand juror and Detective Kelly suggested confusion and that the questions of the grand juror indicated uncertainty over Basile being the alleged perpetrator of the criminal sexual assaults on Jane Doe, the unanimous appellate court panel articulated that the "operative verbiage of the grand juror's question" was directed not at identity but rather at "what other evidence established the sex as sexual assault." Pet. App. at 48a. The panel further found that in light of the grand juror's question being directed not at identity but rather at strength of the evidence, "Kelly's answer that defendant 'told [Kelly] he did' can only be interpreted as meaning that defendant had confessed to the crime." *Id.*

The State then petitioned the Illinois Supreme Court for leave to appeal, which was granted. Following briefing and argument, the Illinois Supreme Court in a 4-3 ruling reversed the circuit and appellate courts. Pet. App. 20a. In so holding, the majority indicated that there were multiple interpretations of the grand juror's questions, only one of which could lead it to affirm the lower courts and therefore Defendant had failed to establish that prosecutorial misconduct in fact occurred during the grand jury proceedings. Pet. App. 20a - 25a. The majority found that the wording of the grand juror's questions were vague and confusing, and that the confusing nature of the questions impeded defendant's ability to prove that there was in fact prosecutorial misconduct during the proceeding. *Id.* Finally, the majority held that because the State had

established sufficient facts to support a finding of probable cause before the grand juror's questioning of Detective Kelly occurred, the Defendant could not clearly establish that the grand jury as a whole was impacted during its deliberations by the colloquy, or that there was substantial doubt that the return of a true bill was not influenced by the alleged misinformation that Defendant had confessed to the crime. In light of those findings, the court reasoned that Defendant had failed in demonstrating that he suffered substantial prejudice to his due process rights. Pet. App. 26a, 29a.

The three dissenting justices in the Illinois Supreme Court disagreed, and concluded that Basile had clearly and unequivocally established that substantial denial of his due process rights occurred through the false testimony that he had confessed to the crime. Pet. App. 32a-39a. The dissenting judges agreed that the misconduct of the State was "unequivocally clear", and that the trial court's dismissal of the indictment with prejudice was done "with certainty that the proceedings denied defendant's due process rights." Pet. App. 32a - 33a.

In support of its opinion in dissent, the panel found that under the standards set forth in *Bank of Nova Scotia v. United States*, 487 U.S. 250, 256 (1988) and *United States v. Mechanik*, 475 U.S. 66, 78 (1986), the grand juror's final comment after hearing Kelly's false testimony that Defendant had confessed stating "[T]hat's all I needed to know" unequivocally established that Kelly's statement "convinced" the grand jury to indict. Pet. App. 33a,

35a. Overall, the dissent concluded that the deterrence function of a dismissal with prejudice was warranted on the facts of this case and that the trial court did not abuse its discretion in so holding. Pet. App. 38a, 39a. The majority opinion in this case, the dissent stated “weakens the function of the grand jury as a shield against the State and condones cursory, perfunctory, and ill-prepared grand jury presentments.” Pet. App. 37a.

The Opinion of the Illinois Supreme Court was entered on October 3, 2024 Pet. App. at 1a., and Basile timely filed this Petition for Writ of Certiorari within 90 days of the entry of the Illinois Supreme Court Opinion being filed.

REASONS FOR GRANTING THE WRIT

Since the inception of grand juries in our criminal justice system, the intent of the Fifth Amendment’s framers was for the process not only to serve as a sword for the State in seeking to indict individuals believed to have committed felony offenses, but also to serve as a shield for the individual against the power of the State when the power of prosecution is being abused to pursue reckless and improvident charges against an individual citizen. Throughout American jurisprudence, the concept of the shield function of grand juries has been repeatedly reaffirmed. *United States v. Mechanik*, 475 U.S. 66, 74, (1986):

The second, and no less important, task of the grand jury is to ‘serve the

invaluable function in our society of standing between the accuser and the accused, whether the latter be an individual, minority group, or other, to determine whether a charge is founded upon reason or dictated by an intimidating power or by malice and personal ill will.’

Mechanik, at 74 (O’Connor, J., concurring).

See also United States v. Mandujano, 504 U.S. 564, 571 (1976):

[t]he Grand Jury continues to function as a barrier to reckless or unfounded charges. ‘Its adoption in our Constitution as the sole method for preferring charges in serious criminal cases shows the high place it held as an instrument of justice.’

Citing *Costello v. United States*, 350 U.S. 359, 362 (1956).

Essential to its shield function is the requirement that grand juries act independently and free from undue influence. Challenges seeking dismissal of an indictment based on prosecutorial misconduct before a grand jury require a showing of actual, substantial prejudice to the Defendant. In evaluating whether dismissal is warranted, this Court in *Bank of Nova Scotia v. United States*, 487 U.S. 250, 263 (1988) adopted the standard set forth

in Justice O'Connor's concurring opinion in
Mechanik:

[d]ismissal of the indictment is appropriate only 'if it is established that the violation substantially influenced the grand jury's decision to indict,' or if there is 'grave doubt' that the decision was free from the substantial influence of such violations.

Mechanik, at 78.

It is against this legal backdrop that Petitioner Daniel Basile seeks a Writ of Certiorari to the Illinois Supreme Court. Basile respectfully submits that the record supports the finding that his Fifth and Fourteenth Amendment rights to due process were violated by prosecutorial misconduct before the grand jury in this case, and that the misconduct substantially interfered with the independent consideration of the grand jury in a manner which establishes grave doubt that its verdict was free from the substantial influence of the false and uncorrected testimony of Detective Kelly that the Defendant had confessed to committing criminal sexual assault against Jane Doe.

**THE COURT SHOULD GRANT CERTIORARI
BECAUSE THE ILLINOIS SUPREME COURT'S
RULING LEFT UNABATED WEAKENS THE
SHIELD FUNCTION OF GRAND JURIES.**

Defendant respectfully submits that the majority opinion of the Illinois Supreme Court in this case supplants Justice O'Connor's standard set forth in *Mechanik* for establishing substantial prejudice to a defendant's due process rights with a different standard. The standard suggested by the majority instead allows the lower courts to scour the grand jury transcript to determine whether in the light most favorable to the State and after setting aside the alleged misconduct, the grand jury was presented with sufficient evidence that if believed, established probable cause notwithstanding the influence the misconduct likely had on deliberations.

Such a standard eviscerates the shield function of the grand jury system as a whole by allowing courts to ignore clear evidence of the misconduct's influence on deliberations. Three of the seven justices in the Illinois Supreme Court issued a strong dissent in this case which agreed with Petitioner's argument that the majority decision "weakens the function of the grand jury as a shield against the State and condones cursory, perfunctory, and ill-prepared grand jury presentments." Pet. App. At 37a.

According to the dissent, the majority essentially ignored clear evidence of the influence the false confession testimony had on the grand

jury's deliberations. The effect the false testimony had upon deliberations is evidenced by the final statement of the grand juror upon learning that Basile had confessed to the crime, when the juror stated "that's all I needed to know." Pet. App. 33a, 35a.

Every day throughout the United States thousands of grand juries are convened at both the state and federal levels to present evidence in support of indictments without which no individual may be prosecuted for a capital or infamous crime. In order to preserve the invaluable function of the grand jury as an independent body charged with insuring that baseless and groundless prosecutions are not maintained, it is essential that the panel be free from intimidation and misinformation based on prosecutorial misconduct that "substantially influenced the grand jury's decision to indict, or if there is grave doubt as to whether it had such effect." *United States v. Mechanik*, 485 U.S. 66 (1986)(O'Connor, J., concurring). Following the ruling of the Illinois Supreme Court in this case, however, lower courts must disregard the false or deceptive testimony as well as the undoubted influence it had on the grand jury's decision to indict if there is any evidence, however weak, that would sustain probable cause if believed by the grand jury.

Petitioner respectfully submits that Justice O'Connor's concurrence in *Mechanik* and the standard set forth therein is the appropriate standard, as it allows for assessment of the likelihood of substantial prejudice to due process

rights in such situations even where there might have been other evidence presented albeit weak that could support probable cause. Given the fact that the colloquy between the grand juror and the testifying detective did in fact occur, its impact upon deliberations should not be ignored as suggested by the Illinois Supreme Court's majority in this case. In further support of this argument, it is worth noting that of the eleven lower court justices and judges who have heard this case to date, seven of the eleven have agreed with Petitioner's position and concluded that the standard set forth in *Mechanik* and *Bank of Nova Scotia* was met by the Petitioner. Unfortunately for the Petitioner, the four who disagreed comprised the majority of the Illinois Supreme Court's opinion in this case. That notwithstanding, the fact remains that the grand juror's questions were, according to the circuit court, the unanimous panel of the Illinois appellate court, and the three justice dissent in the Illinois Supreme Court, indicative of weak evidence unlikely to sustain probable cause until the grand jury as a whole was falsely told by Detective Kelly that the defendant had confessed. Pet. App. 35a, 49a - 50a, 65a - 66a. To preserve the integrity of the shield function of the grand jury system and to provide guidance to lower courts throughout the United States Defendant respectfully maintains that this Court should grant his Petition for Writ of Certiorari.

**THE PETITION SHOULD BE GRANTED
BECAUSE THE INFLUENCE DETECTIVE
KELLY'S FALSE TESTIMONY HAD ON GRAND
JURY DELIBERATIONS IS SUPPORTED BY
CONFESSION EVIDENCE BEING THE
STRONGEST EVIDENCE THE STATE CAN
PRESENT AGAINST A DEFENDANT.**

It is well settled throughout our land that the strongest evidence that a prosecutor can present is evidence in the form of a confession. *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991). As noted by the three dissenting Justices in the Illinois Supreme Court in this case, “a confession is the most powerful piece of evidence the State can offer, and its effect on a jury is incalculable.....[t]he majority’s implication that Kelly’s answer could have meant anything less damning is unsupported by the record.” Pet. App. 36a. Despite the power that testimony of a confession will undoubtedly have on a grand jury, The Illinois Supreme Court’s ruling in this case excuses even intentional perjured testimony of a confession, so long as the prosecutors include evidence which, if believed by a grand jury, would be sufficient to convict. Such a result is untenable, shocks the conscience, and cannot be countenanced by this Court consistent with upholding the traditional shield function of the grand jury within our criminal justice system.

Furthermore, the Illinois Supreme Court’s ruling creates a scenario where it becomes impossible for a defendant like Basile to demonstrate actual and substantial prejudice

despite false and arguably perjured testimony being presented against him. Taken at face value, this ruling would allow every prosecution going forward to present to the grand jury evidence of a confession, regardless of its falsity, so long as there is the weakest of evidence presented supporting probable cause. Defendant respectfully submits that if this Court allows such a precedent to stand it will likely result in the deprivation of substantial due process rights for scores of individuals targeted by indictments going forward while simply ignoring the fact that grand jurors will each and every time be influenced by testimony of a confession in a way that casts grave doubt over the sanctity of grand jury proceedings and influence-free deliberations.

This Court should grant Defendant's Petition for Certiorari, and through its ultimate ruling in this case make clear for prosecutors, defense counsels, and judges across the country what the appropriate constitutional standards are for assessing prosecutorial misconduct in grand jury practice and when the deterrence function of the rule justifies dismissal of an indictment with prejudice or without the ability to re-indict. Petitioner prays this Honorable Court recognizes the significance of maintaining the shield function of the grand jury system and opts to grant his Petition for Certiorari in this case lest the standard for establishing substantial prejudice set forth by the Illinois Supreme Court be adopted by lower courts in contravention of this Court's holdings in *Mechanik* and *Bank of Nova Scotia* to the detriment of all defendants facing grand juries going forward.

CONCLUSION

For the foregoing reasons, Daniel D. Basile III respectfully requests that this Court issue a Writ of Certiorari in this case.

Respectfully Submitted,
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/S/

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December 31, 2024