

24-7378

No. _____

FILED

FEB 15 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

MARGARITA LEANDS

— PETITIONER

(Your Name)

vs.

ALLEN DILLS, WARDEN

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF GEORGIA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MARGARITA LEANDS

(Your Name)

P.O. BOX 709

(Address)

ALTO, GEORGIA 30510

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. WAS IT INEFFECTIVE ASSISTANCE OF COUNSEL OF APPELLATE COUNSEL'S FAILURE TO ARGUE THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO ARGUE THE ADMISSION OF DISCRIMINATORY FALSE EVIDENCE OF DEFENDANT'S ALLEGED GANG MEMBERSHIP OR ASSOCIATION VIA TESTIMONY OF STATE'S WITNESS, JOE AMERLING, WITHOUT ANY FOUNDATION OR PERSONAL KNOWLEDGE?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

- SUPREME COURT OF GEORGIA
- SUPERIOR COURT OF HABERSHAM COUNTY

RELATED CASES

- LEANOS V. STATE, 814 S.E. 2d 332 (2018)
— JUDGMENT ENTERED — MAY 07, 2018

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OTHER

- JAILS.FASTCASE.COM

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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 HABERSHAM COUNTY SUPERIOR 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☒ is unpublished.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 NOVEMBER 19, 2024.
A copy of that decision appears at Appendix A.

☐ 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

- U.S. CONSTITUTION, AMENDMENT VI (1791)

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 WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE.

STATEMENT OF THE CASE

IN MARCH 2015 LEANOS WAS INDICTED IN HALL COUNTY SUPERIOR COURT. INDICTMENT NUMBER 15-CR-313-C. FOR ALLEGING FELONY MURDER, CRIMINAL ATTEMPT TO COMMIT ARMED ROBBERY AND PARTICIPATION IN CRIMINAL STREET GANG ACTIVITY.

LEANOS WAS CONVICTED BY A JURY ON ALL COUNTS IN OCTOBER 2015. SENTENCED TO LIFE FOR FELONY MURDER, CRIMINAL ATTEMPT WAS MERGED. 10 YEARS TO SERVE ON CONSPIRACY AND 15 TO SERVE 5 AND 15 YEARS PROBATION FOR PARTICIPATION IN CRIMINAL STREET GANG ACTIVITY.

LEANOS' DIRECT APPEAL WAS DENIED ON MAY 07, 2018

- LEANOS V. STATE, 814 S.E.2d 332 (2018)

LEANOS FILED HER HABEAS CORPUS PETITION IN AUGUST 2022 AND AMENDED HER PETITION IN JULY 2023.

LEANOS' HABEAS CORPUS PETITION WAS DENIED IN OCTOBER 2023 AND AN APPEAL ALSO DENIED IN NOVEMBER 2024.

TRIAL COUNSEL, LEONARD PARKS, CLAIMS HE WAS BEING STRATEGIC IN FAILING TO CHALLENGE GANG EVIDENCE.

HOWEVER, PROPER INQUIRY ASKS NOT WHETHER COUNSEL'S CHOICES WERE STRATEGIC, BUT WHETHER THEY WERE REASONABLE.

- ROER V. FLORES-ORTEGA, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed2d 985 (2000)

THE ONLY EVIDENCE OF GANGS CAME FROM STATE'S WITNESS, JOE AMERLING AND VALENTIN HERNANDEZ.

AMERLING TESTIFIED THAT LEANOS WAS ASSOCIATED WITH GANGS BOE23 AND SUR13 AND FURTHER TESTIFIED THAT LEANOS MOTHERED A SON BY A KNOWN GANG MEMBER, CESAR YANEZ.

LEANOS' YOUNGEST SON IS IN FACT FATHERED BY A BASIC CIVILIAN, DAVID VAUGHAN, WHO IS WELL ESTEEMED AND RECOGNIZED BY THE COMMUNITY.

HERNANDEZ TESTIFIED THAT LEANOS CALLED HIM TO TELL HIM TO CALL HER CO-DEFENDANT MISTY MORAN.

AT TRIAL MORAN TESTIFIED THAT SHE HAD NO KNOWLEDGE HERNANDEZ AND LEANOS EVEN KNEW EACH OTHER.

PARKS DID NOT OBJECT TO AMERLING'S TESTIMONY, NOR INVESTIGATED VALIDITY OR TRUTH BEHIND HERNANDEZ'S TESTIMONY EITHER. THERE WAS NOTHING IN DISCOVERY THAT INDICATED ANY OF THE CRIMES HAD TO DO WITH GANGS.

PARKS STATED THAT HE BELIEVED HE HANDLED THIS ISSUE IN

STATEMENT OF THE CASE (CONTINUED)

THE MOTION FOR DIRECTED VERDICT AND CLAIMED HE EVEN ARGUED THE DIRECTED VERDICT, THEN WAS SHOCKED WHEN SHOWN HE NEVER MADE A MOTION FOR DIRECTED VERDICT AT TRIAL. WHEN THE STATE RESTED, THE TRIAL COURT ASKED PARKS IF HE HAD ANYTHING TO TAKE UP AND HE STATED, "I WISH." NO DIRECTED VERDICT MOTION WAS EVER MADE.

COURTS HAVE NOT HESITATED TO FIND INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMMENDMENT WHEN COUNSEL FAILS TO CONDUCT A REASONABLE INVESTIGATION INTO ONE OR MORE ASPECTS OF THE CASE AND WHEN THAT FAILURE PREDJUDICES HIS CLIENT.

• TOWNS V. SMITH, 395 F. 3d 251, 2005 WL 27148 (6TH CIR. 2005)

— THE COURT FOUND THAT TRIAL COUNSEL'S FAILURE TO CONDUCT A RESONABLE INVESTIGATION VIOLATED THE PETITIONERS SIXTH AMMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

APPELLATE COUNSEL, ARTURO CORSO, RAISED AN ISSUED ON APPEAL THAT GANG CHARGES SHOULD BE SEVERED.

THE SUPREME COURT DENIED THIS ISSUE BASED ON CORSO NOT EXAMINING TRIAL COUNSEL, PARKS, IN REGARDS TO HIS DECISION NOT TO MOVE TO SEVERE. SO THE SUPREME COURT OF GEORGIA NEVER RULED ON WHETHER THE SEVERANCE WAS PROPER. CORSO'S APPEAL SHOWS THAT HE WANTED TO RAISE ERROR WITH ADMISSION OF GANG EVIDENCE AND ARGUED THAT IT WAS DAMAGING BUT IT IS EASILY FOUND THAT CORSO HAD NO STRATEGIC OR REASONABLE EXCUSE FOR FAILING TO RAISE THIS ISSUE.

EVIDENCE SHOWS THAT MORAN SHOT VICTIM AND LEANOS DROVE MORAN HOME. THREE CO-DEFENDANTS TESTIFIED AT TRIAL. GONZALEZ GAVE DIFFERING TESTIMONIES AS WELL AS MORAN OF WHETHER LEANOS KNEW OF A PLAN TO ROB ANYONE OR WAS SIMPLY ASKED FOR A RIDE. BOTH MORAN AND GONZALEZ STATED AT SOME POINT THAT THEY DID NOT WANT LEANOS TO KNOW OF THE PLAN OR SHE WOULD NOT GIVE THEM A RIDE.

IN DISCOVERY MORAN INITIALLY TOLD INVESTIGATOR JOE AMERLING THAT SHE WAS AT HOME ASLEEP AND IT WAS NOT HER BUT LEANOS WHO COMMITTED MURDER.

THE THIRD CO-DEFENDANT, MONDRAGON TESTIFIED THAT LEANOS KNEW NOTHING OF ANY PLAN AND WAS NOT INVOLVED.

THE FOURTH CO-DEFENDANT, ADAMS WAS NEVER CALLED AS A WITNESS.

STATEMENT OF THE CASE (CONTINUED)

THIS MAKES THREE EYEWITNESSES HAVING TESTIFIED. ONE WAS CONSISTENT THAT LEANOS WAS UNAWARE OF THE CONSPIRACY. THE OTHER TWO GAVE DIFFERING VERSIONS AT DIFFERENT TIMES.

GONZALEZ GAVE A VIDEO CONFESSION THAT LEANOS WAS AWARE OF EVERYTHING AND AT TRIAL HE TESTIFIED THAT LEANOS WAS NOT TO BE TOLD, OTHERWISE THEY WOULD HAVE NO RIDE.

WHAT MAKES THIS DETERMINATION SO COMPELLING IS THAT IF LEANOS WERE IN FACT ASSOCIATED WITH OR A MEMBER OF ANY GANG THE OTHER CO-DEFENDANTS WOULD MUCH MORE LIKELY HAVE HAD LEANOS AS PART OF THEIR CONSPIRACY.

MERE PRESENCE AT THE SCENE OF A CRIME IS INSUFFICIENT EVIDENCE TO CONVICT ONE OF BEING A PARTY TO A CRIME; PROOF THAT THE DEFENDANT SHARES A COMMON CRIMINAL INTENT WITH THE ACTUAL PERPETRATORS IS NECESSARY.

- ROBINSON V. STATE 298 GA. 782 S.E. 2d 657 (2016)
- BELSAR V. STATE 276 GA. 577 S.E. 2d 569 (2003)

IN PREVIOUS CASES STATE PROVED THAT DEFENDANTS WERE MEMBERS OF OR ASSOCIATED WITH A GANG BY SHOWING DEFENDANTS WEARING CLOTHING OR SYMBOLS ASSOCIATED WITH GANG OR THROUGH ADMISSION BY DEFENDANT OF BEING A MEMBER.

• IN THE INTEREST OF D.M. 307 GA. APP. 706 S.E. 2d 683 (2011) — DEFENDANT WORE BLACK BANDANA ASSOCIATED WITH GANG AND ADMITTED MEMBERSHIP.

• IN THE INTEREST OF C.P. 296 GA. APP. 675 S.E. 2d 287 (2009) — DEFENDANT ADMITTED MEMBERSHIP, WORE COLORS ASSOCIATED WITH THE GANG, AND CARRIED A PAPER DEPICTING CODES AND SYMBOLS.

STATEMENT OF THE CASE (CONTINUED)

- MORRIS V. STATE, 340 GA. APP. 295, 797 S.E.2d 207 (2017) — STATE PRESENTED FACEBOOK POSTS BY DEFENDANT WHICH HE DISPLAYED HAND SYMBOLS, SIGNS, LANGUAGE, AND TATTOOS ASSOCIATED WITH THE GANG.

- TAYLOR V. STATE, 331 GA. APP. 577, 771 S.E.2d 224 (2015) — SHOWN BY STATE THAT DEFENDANT "HUNG OUT" WITH GANG MEMBERS PREVIOUSLY.

LEANOS MET MORAN THROUGH MORAN'S NEPHEW. DAVID, WHO IS THE FATHER OF LEANOS' SON.

LEANOS MET GONZALEZ, MONDRAGON, AND ADAMS ON MARCH 15, 2015 FOR THE FIRST TIME AND ONLY TIME.

REASONS FOR GRANTING THE PETITION

1. WAS IT INEFFECTIVE ASSISTANCE OF COUNSEL OF APPELLATE COUNSEL'S FAILURE TO ARGUE THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO ARGUE THE ADMISSION OF DISCRIMINATORY FALSE EVIDENCE OF LEANOS' ALLEGED GANG MEMBERSHIP OR ASSOCIATION VIA TESTIMONY OF STATE'S WITNESS, JOE AMERLING, WITHOUT ANY FOUNDATION OR PERSONAL KNOWLEDGE?

THE SUPREME COURT OF GEORGIA HAS MADE CLEAR THAT THE COMMISSION OF AN ENUMERATED OFFENSE BY THE DEFENDANT IS NOT ITSELF SUFFICIENT TO PROVE THE EXISTENCE OF A CRIMINAL STREET GANG.

- RODRIGUEZ V. STATE, 284 GA. 803, 808 (2), 671, S.E. 2d 497 (2009)

- O.C.G.A. § 24-14-6 – "THE PROVED FACTS SHALL NOT ONLY BE CONSISTENT WITH THE HYPOTHESIS OF GUILT, BUT SHALL EXCLUDE EVERY OTHER REASONABLE HYPOTHESIS SAVE THAT OF THE GUILT OF THE ACCUSED."

STATES EVIDENCE MUST BOTH BE CONSISTENT WITH THE HYPOTHESIS OF GUILT AND MUST EXCLUDE EVERY OTHER REASONABLE HYPOTHESIS. EVEN AS TESTIMONY MAY PROVIDE CIRCUMSTANTIAL EVIDENCE OF LEANOS' GANG MEMBERSHIP OR ASSOCIATION AND THAT CREATES A STRONG SUSPICION OF GUILT, MERE SUSPICION IS INSUFFICIENT TO SUPPORT A CONVICTION.

- IN RE E.A.D., 271 GA. APP. 531, 532, 610 S.E. 2d 153 (2005)

- IN RE INTEREST OF T.W., 810 S.E. 2d 582 (GA. APP. 2018) — DEFENDANT CONDUCTED IN SOCIALIZING AND ACCEPTED A GUN FROM GANG MEMBERS AND WHILE THAT MIGHT CREATE A MERE SUSPICION THAT HE WAS AFFILIATED, SUCH CIRCUMSTANTIAL EVIDENCE IS ILLEGALLY SUFFICIENT TO MEET THE STATES BURDEN OF ESTABLISHING PROOF THAT DEFENDANT WAS A MEMBER OF OR ASSOCIATED WITH A GANG.

- JONES V. STATE, 292 GA. 656, 659-660 (1)(6), 740 S.E. 2d 590 (2013) — CONVICTION WAS REVERSED WHERE STATE FAILED TO PROVE THAT DEFENDANT WAS A MEMBER OF OR ASSOCIATED WITH, IN ANY WAY, A CRIMINAL STREET GANG.

REASONS FOR GRANTING THE PETITION (CONTINUED)

• IN THE INTEREST OF A.G., 317 GA. APP. 730 S.E. 2d 187 (2012) — CONVICTION WAS REVERSED BECAUSE THE EVIDENCE WAS INSUFFICIENT TO PROVE DEFENDANT WAS A MEMBER OF OR ASSOCIATED WITH A CRIMINAL STREET GANG.

• IN RE J.H., 12 FCDR 46,313 GA. APP. 410 S.E. 2d 616 (GA. APP. 2011) — CONVICTION WAS REVERSED BECAUSE STATE FAILED TO PRODUCE SUFFICIENT EVIDENCE OF ALLEGED GANG ASSOCIATION.

THE PREJUDICIAL EFFECT OF GANG EVIDENCE LEADS TO CONCLUSION THAT THERE IS REASONABLE PROBABILITY OF A DIFFERENT OUTCOME HAD THIS ISSUE BEEN RAISED OR ARGUED.

THE ONLY EVIDENCE OF GANGS CAME FROM WITNESSES' FALSE TESTIMONY NOT FACTUAL PHYSICAL EVIDENCE.

• GONZALEZ - SOBERAL V. UNITED STATES, 244 F.3d. 273 — "FAILURE TO USE DOCUMENTARY EVIDENCE TO IMPEACH STATE'S WITNESS, STATED CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL WHERE NO OTHER EVIDENCE OTHER THAN WITNESS TESTIMONY TIED DEFENDANT.

CLEARLY TRIAL COUNSEL PARKS HAD OPPORTUNITY TO CHALLENGE THE STATES WITNESSES AND FAILED TO DO SO AS WELL AS APPELLATE COUNSEL CORSO FAILED TO CHALLENGE TRIAL COUNSEL'S PARKS HARMFUL ERRORS.

IT COULD HAVE EASILY BEEN ADMITTED INTO EVIDENCE LEANOS' SON'S BIRTH CERTIFICATE OR EVEN CALLED HER SON'S FATHER TO TESTIFY AS A CHARACTER WITNESS.

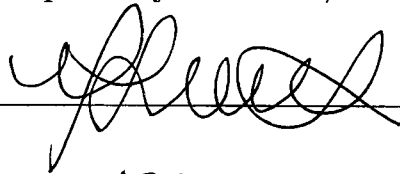
AMERLING'S HEARSAY TESTIMONY OF LEANOS' SON BEING FATHERED BY CESAR YANEZ GOES AGAINST PROPER RULING THAT IT WAS ADMISSIBLE WITHOUT SOLID PROOF OR HAVING CESAR YANEZ PRESENT TO DEFEND HIMSELF OF BEING ACCUSED OF FATHERING A CHILD BY SOMEONE. HE DOES NOT KNOW.

THUS, THIS CASE IS ENTIRELY BASED ON HEARSAY AND IS CIRCUMSTANCIAL.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "R. L. ...", written over a horizontal line.

Date: APRIL 28, 2025