

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

TONYA MALLETT-RATHELL – PETITIONER

VS

STATE OF MICHIGAN – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

MICHIGAN COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does a trial court violate a criminal defendant's constitutional rights when it enters an inconsistent verdict?
2. Does an appellate court violate a criminal defendant's constitutional rights when it replaces the trial court findings with its own?

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the Michigan Supreme Court appears at Appendix D to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was June 27, 2017. A copy of that decision appears at Appendix D.

A timely petition for rehearing was thereafter denied on the September 12, 2017, and a copy of the order denying rehearing appears at Appendix E.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution prohibits states from denying any person within its territory the equal protection of the laws. This means that a state must treat an individual in the same manner as others in similar conditions and circumstances.

MCL 750.136b states that a person is guilty of child abuse in the fourth degree if the person's omission or reckless act causes physical harm to a child or the person knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, regardless of whether physical harm results.

MCL 750.81(1) states that a person is guilty of assault and battery if the person intentionally commits a battery or make the victim reasonably fear an immediate battery.

STATEMENT OF THE CASE

Petitioner was acquitted of felonious assault because she was found to have not behaved with intent but recklessly yet still convicted of assault and battery which similarly requires intent.

A verdict is inconsistent when it "cannot be rationally reconciled" with the court's factual findings. *People v Ellis*, 468 Mich 25, 26: 658 NW2d 142 (2003). As to the child abuse in the fourth degree (MCL 750.136b(7)) conviction, the verdict is inconsistent because child abuse in the fourth degree based on a reckless act requires that physical harm result which did not occur in the this case. As to the assault and battery (MCL 750.81(1)) conviction, the verdict is inconsistent because intent is required which was not found in this case.

Petitioner's constitutional right to equal protection of the law was violated when she was convicted based on less than all the elements of the crime charged.

REASONS FOR GRANTING THE PETITION

1. Petitioner's has been denied her constitutional right to equal protection of the law as well as her constitutional right to have a decision based on the record.
2. No criminal conviction should stand which is not supported by law.
3. A manifest constitutional error occurs when the trial court convicts based on less than all the elements of the crimes charged.
4. A manifest constitutional error occurs when the appellate court replaces the trial court's factual findings with its own.
5. Summary reversal is usually reserved for cases where "the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981).
6. This case meets the criteria for summary reversal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin A. Ruff". The signature is written in a cursive, flowing style with a large initial 'K' and 'R'.

November 17, 2017