

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KACEY LEWIS,
PETITIONER

Vs.

THOMAS CAVANUGH, JAMES DICKEY, ROBERT LIQUINDOLI,
RESPONDENT(S)

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

PETITION FOR WRIT OF CERTIORARI

KACEY LEWIS, PRO SE
PRISONER NO. 165480
MACDOUGALL CORRECTIONAL INSTITUTION
1153 EAST STREET SOUTH
TEL: NONE
FAX: NONE
E-MAIL: NONE

QUESTION(S) PRESENTED FOR REVIEW

DOES THE FUNDAMENTAL FAIRNESS CLAUSE IN THE FOURTEENTH AMENDMENT ENTITLE A PLAINTIFF IN A CIVIL CASE TO HAVE A DIFFERENT JUDGE ASSIGNED AT A NEW TRIAL, OTHER THAN THE JUDGE THAT PRESIDED OVER HIS FIRST JURY TRIAL, IN WHICH THE JUDGMENT WAS VACATED BY THE COURT OF APPEALS AND REMANDED BACK TO THE DISTRICT COURT FOR FURTHER PROCEEDINGS?

DID THE COURT OF APPEALS ERR IN DENYING THE PETITIONER'S MOTION FOR REASSIGNMENT SEEKING AN ORDER DIRECTING THE DISTRICT COURT TO REASSIGN HIS CASE TO ANOTHER JUDGE ON REMAND?

LIST OF PARTIES

KACEY LEWIS,

Plaintiff-Appellant,

V.

THOMAS CAVANUGH, JAMES DICKEY,
AND ROBERT LIQUINDOLÌ,

Defendants-Appellees,

CITY OF WATERBURY, MICHAEL
GUGLIOTTI,

Defendants.

FOR APPELLANT: Kacey Lewis, pro se, Suffield, Connecticut

FOR APPELLEES: Joseph A. Mengacci, Office of the Corporation
Counsel, City of Waterbury, Waterbury,
Connecticut

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	5
CONCLUSION	9

INDEX TO APPENDICES

APPENDIX A	COURT OF APPEALS AUG 9 2017 ORDER
APPENDIX B	DISTRICT COURT'S RULING DENYING RECUSAL MOTION
APPENDIX C	DISTRICT COURT'S RULING DENYING RECONSIDERATION MOTION

TABLE OF AUTHORITIES

CASES	PAGES
<u>Barlow v. Commissioner of Correction</u> , 166 Conn.App.408(2016):.....	6
<u>Hinman v. Rogers</u> , 831 F. 2d 937(10th Cir.1987).....	7
<u>Liljerber v. Health Servs. Acquisition Corp.</u> , 486 U.S. 847(1988).....	7
<u>Liteky v. United States</u> , 510 U.S. 540(1994).....	7
<u>State v. Hartley</u> , 75 Conn. 104(1902)	6
<u>State v. DeGennaro</u> , 147 Conn. 296(1960):.....	6
<u>Turner v. United States</u> , 515 U.S. 1104(1995):.....	7
<u>United States v. Brown</u> , F.2d, 467(5th Cir.1976) :.....	9
<u>United States v. Cooley</u> , 1 F.3d 985(10th Cir.1993):.....	7
<u>United States v. Kimball</u> , 73 F.3d 269(10th Cir.1995)	7
STATUTES AND RULES	
28 U.S.C. 455(a)	7,8
CONN.GEN.STAT. 51-183c.	2,6

OPINIONS BELOW

The Order of the United States Court of Appeals appears at Appendix A and is unpublished. See **Lewis v. Waterbury**, No. 15-3238 (CA 2 NY.Aug. 9, 2017), ECF NO. 202.

The Order(s) of the District Court appear at Appendix B & C and are unpublished. See **Lewis v. Waterbury, et al**, No. 3:10-cv-112-VLB(D.Conn. Nov, 21 2017), ECF NO. 282; Id. ECF NO 296.

JURISDICTION

On August 9, 2017, the United States Court of Appeals entered an Order denying Petitioner's motion for reassignment. Petitioner learned about the denial Order on October 4, 2017. No motion for rehearing was filed in this case. An extension of time to file this writ of certorari was granted to including January 8, 2018 on December 6, 2017 in Application No. 17A614. The jurisdiction of this court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. FOURTEENTH

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 or 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.

28 U.S.C. 455(a)

Any Justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

CONN. GEN. STAT. 51-183c. Same judge not to preside at new trial.

No judge of any court who tried a case without a jury in which a new trial is granted, or in which the judgment is reversed by the Supreme Court, may again try the case. No judge of any court who presided over any jury trial, either in a civil or criminal case, in which a new trial is granted, may again preside at the trial of the case.

STATEMENT OF THE CASE

Petitioner Kacey Lewis (hereinafter also "Mr. Lewis") a prisoner in the custody of the Connecticut Department of Correction, filed the civil rights action pro se in the United States District Court for the District of Connecticut, pursuant to 42 U.S.C. Section 1983. The Respondents are Thomas Cavanugh, James Dickey, and Robert Liquindoli. At the time of the events at issue in this case, the Respondents were each active members of the Waterbury Police Department. In his law suit, Petitioner sought to recover compensatory and punitive damages and injunctive relief for the Respondents alleged deprivation of Mr. Lewis' rights. In his complaint filed on January 26, 2010, Mr. Lewis alleged that, at the time of his arrest on July 21, 2009, the Respondents Thomas Cavanugh and Robert Liquindoli used unreasonable force upon his person to effectuate his arrest and take him into custody. Mr. Lewis also alleged in his complaint that after he was arrested and taken to the Waterbury Police Dep't, the Respondent James Dickey subjected him to unconstitutional conditions of interrogation and detention. See **Lewis v. Waterbury, et al**, No. 3:10-cv-112-VLB(D.Conn:Aug.3.2010), ECF NO.14. Additionally, Mr. Lewis alleged that the Respondent's violated his constitutional rights when denying him prompt medical treatment. Id. ECF No. 14, pages 2-3. The Respondent's denied the Petitioner's allegations and raised qualified immunity as their affirmative defense. Id. ECF No.28, p.9, para. 1. The case was tried, and the jury rendered its verdict on September 30, 2015 in favor of the named Respondents. Id. ECF No. 191.

THE APPEAL

On October 13, 2015, the Petitioner, proceeding pro se, appealed to the United States Court of Appeals for the Second Circuit where he raised three evidentiary claims, a claim challenging the jury instructions, and a claim arguing the District Court abused its discretion in denying his motion to modify trial schedule. **See Kacey Lewis v. Thomas Cavanugh, et al**, No. 15-3238 (CA 2 NY. July. 25. 2016), ECF NO. 111, p.7. The Court of Appeals did not reach the Petitioner's evidentiary challenges or his challenge to the jury instructions, because the Court concluded that the District Court abused its discretion in denying Mr. Lewis' continuance, and remanded the case back to the District Court for that reason. Id. ECF No. 181-1, p.5. On May 3, 2017, the Petitioner filed a Motion for Re-assignment with the Court of Appeals asking the Court to enter an order directing the District Court to ~~reassign case to another judge~~, other than the Hon. Vanessa L. Bryant, the Judge who presided in the first jury trial before the judgment was ~~vacated~~ and remanded. Id. ECF NOs. 186, 190. On June 6, 2017, the Respondent's filed a motion objecting to Petitioner's motion(s) for reassignment. Id. ECF NO. 193.; and the Petitioner filed a reply to the Respondent's objection motion. Id. ECF NO. 196. On October 4, 2017, the Petitioner called the second circuit clerk's office to inquire whether the court had entered an order on his reassignment motion, and he was told by the clerk that the court denied his motion on August 9, 2017. However, Petitioner never received any notice from the second circuit on the court's 9/9/2017 Order. Id. ECF NO. 204. On October 26, 2017, the Petitioner mailed a motion for extension of time to file writ of certiorari to this court's clerk's office. Said motion was returned

to Petitioner unfiled. The Petitioner resent his time extension motion on November 20, 2017; and it was presented to Justice Ginsburg who on December 6, 2017, extended the time to and including January 8, 2018 for Petitioner to file his writ of certiorari. Re: **Kacey Lewis v. Thomas Cavanugh, et al.** Application No. 17A614.

REASONS FOR GRANTING THE WRIT

This case is appropriate for review (1): because the United States Court of Appeals for the Second Circuit's order denying the Petitioner's motion for reassignment conflicts with the Connecticut General Statutes Section 51-183c. concerning same judge not to preside at new trial in which the judgment is reversed, either in a civil or criminal case; (2) the Second Circuits decision conflicts with decisions of the Connecticut Supreme Court, concerning same judge not to preside at new trial in which the judgment is reversed; and (3) because the administration of justice is inordinately affected by the Second Circuit's bare conclusion Order denying Petitioner's motion for reassignment.

This case also presents for review the question of whether the fundamental fairness clause in the fourteenth amendment entitles a plaintiff in a civil case to have another judge assigned to his case, at new trial, other than the judge who presided in his first jury trial, in which the judgment was vacated and remanded, when the Court of Appeals concluded the judge abused her discretion at first trial.

This Court should grant the petition and review the decision below.¹

NOTE¹ Although the Petitioner did not address the arguments presented here in exactly the same form in his motion below, it is presumed that the Court of Appeals considered these questions when rendering its Aug 9 2017 bare conclusion decision denying the Petitioners motion for reassignment.

I. THE FUNDAMENTAL FAIRNESS CLAUSE IN THE FOURTEENTH AMENDMENT ENTITLES THE PETITIONER TO HAVE ANOTHER JUDGE ASSIGNED TO HIS CASE, AT NEW TRIAL, OTHER THAN THE JUDGE THAT PRESIDED IN HIS FIRST JURY TRIAL, IN WHICH THE JUDGMENT WAS VACATED AND REMANDED

The fundamental fairness clause in the Fourteenth Amendment implicitly embodies a correlative right of a Plaintiff to have ... another judge assigned to his case, at a new trial, other than the judge that presided in his first jury trial, in which the judgment was vacated and remanded, based upon a finding of a reviewing court that the judge abused her discretion at the first trial.

The Supreme Court of the State of Connecticut has long recognized the principle that no judge who presided over a jury trial in which a new trial was granted should again preside at the trial of such case. See State v. Hartley, 75 Conn. 104, 52 A.615 (1902); State v. DeGennaro, 147 Conn. 2961, 169 A.2d 480, cert.denied 81 S.Ct.116, 364 U.S. 873, 5 L.Ed.2d 95. See also Barlow v. Commissioner of Correction, 166 Conn.App. 408, 142 A.3d 290 (2016), certification granted in part 150 A.3d 680, 323 Conn. 906.

In the State of Connecticut, General Statute 53-183c prohibits a judge who tried a case that is thereafter reversed to try the case on remand broadly applies to judges who have tried case without a jury in which their judgment later is "reversed"; the statute does not restrict its application to cases in which issues to be considered on remand are indential to those that already had been decided by the trial judge. Id. The facts in this case show the Hon. Vanessa L.Bryant presided at trial by jury in the District Court in 2015. After the case was remanded back to the District Court, Petitioner filed a motion for reassignment asking the Court of Appeals to enter an order directing the District Court to reassign his case to another

judge other than Vanessa L. Bryant. On August 9, 2017, the Court of Appeals denied said motion. ("Appendix A").

Because the Court of Appeals have entered an Order that conflicts with decisions of the Connecticut Supreme Court on the same important matter, this Court should grant the petition and review the decision below.

II. THE COURT OF APPEALS ERRED IN DENYING THE PETITIONER'S MOTION FOR REASSIGNMENT, CREATING A CONFLICT WITH THE DECISIONS OF THE CONNECTICUT SUPREME COURT, AND THREATENING THE ORDERLY ADMINISTRATION OF JUSTICE

28 U.S.C. Section 455(a), which requires recusal when "a reasonable person, knowing all of the relevant facts, would harbor doubts about the judge's impartiality." Hinman v. Rogers, 831 F.2d 937, [**3] 939 (10th Cir.1987) (citations omitted); see also United States v. Kimball, 73 F.3d 269,273 (10th Cir.1995).

Under Section 455, factual allegations need not be taken as true and the Court may consider all relevant facts, not only those presented by the moving party. Hinman, 831 F.2d at 939. It covers both "interest or relationship" grounds and "bias or prejudice" grounds, Liteky v. United States, 510 U.S. 540,548,127 L.Ed. 2d 474 114 S.Ct. 1147 (1994), and Section 455(b)(1) requires recusal when a judge has personal bias or prejudice concerning a party.

Under Section 455(a), as noted above, a judge has a duty to recuse herself if she "concludes that sufficient factual grounds exist to cause an objective observer reasonably to question the judge's impartiality." United States v. Cooley, 1 F.3d 985,992 (10th Cir.1993) (citing Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847,861,100 L.Ed. 2d 855,108 S.Ct. 2194(1988), cert. denied sub nom, Turner v. United States, 515 U.S. 1104,132 L.Ed 2d 258, 115 S.Ct. 2250 (1995)).

The inquiry under Section 455(a) "is limited to outward manifestations and reasonable inferences drawn therefrom." 1 F.3d at 993. Although adverse rulings, do not in and of themselves support recusal under Section 455(a), Liteky, 510 U.S. at 555, [**5], recusal in this case is appropriate, because an objective observer would reasonably question Judge Bryant's impartiality, in this case, knowing all the relevant facts, In particular, facts generally known within the District of Connecticut's territorial jurisdiction, i.e, that Judge Bryant abused her Judicial Discretion, in 2014 and 2015, in two(2) cases in which the Petitioner was adversely affected: **Lewis v. Frayne**, No. 3:12-cv-1070-VLB(D.Conn. Dec. 16, 2014), ECF No. 30; **Lewis v. Waterbury**, No. 3:10-cv-112-VLB(D.Conn. Aug.9, 2017), ECF No. 270.

In light of these generally known facts, it cannot be said that a reasonable person, knowing of these facts, would not harbor doubts about Judge Bryant's impartiality in this case. (Petitioner's Motion for Reconsideration at 2), **Lewis v. Waterbury**, No. 3:10-cv-112-VLB (D.Conn. Dec. 8, 2017), ECF No. 295-1; and because the Court of Appeals were aware of these generally known facts, when rendering its 8/9/2017 decision, it becomes clear then, the Court of Appeals erred in denying the Petitioner's motion for reassignment.

In the end, "Within the purview of a fair trial, the judge [herself] is on trial, and must be always aware on that fact. The truth pronounced by Justinian more than a thousand years ago that, "Impartiality is the life of justice," is just as valid today as it was then. Impartiality finds no room for bias or prejudice. It countenances no unfairness and upholds no miscarriage of justice. Bias and prejudice can deflect the course of justice and effect the measures of its judgments. If the judge finds [herself] possessed of those sentiments, [she] should recuse [herself]; or, if [she] does not, confront the likelihood of proceedings under the statute[s] to require [her] to do so."

United States v. Brown, 539 F.2d 467-469 (5th Cir. 1976).

CONCLUSION

WHEREFORE, and for the foregoing reasons, This Court should grant the petition and review the decision below.

RESPECTFULLY, SUBMITTED,
THE PETITIONER

12/26/2017
DATE

Kacey Lewis
KACEY LEWIS, PRO SE
PRISONER NO. 165480
MACDOUGALL, CT
1153 EAST STREET SOUTH
SUFFIELD, CT 06080
TEL: NONE
FAX: NONE
E-MAIL: NONE

PROOF OF FILING AND SERVICE

I hereby declare under the penalty of perjury that on December 26, 2017, I deposited envelopes into the U.S. Mail, with postage prepaid, containing MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI, properly addressed to this courts clerk's office and to the following counsel of record:

Joseph A. Mengacci,
Office of Corporation Counsel
235 Grand Street
Waterbury, CT 06702

Executed on December 26, 2017

Kacey Lewis
Kacey Lewis