

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL CLARK — PETITIONER
(Your Name)

vs.

STATE OF COLORADO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Colorado Court of Appeals; Colorado Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

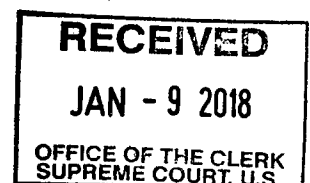
PETITION FOR WRIT OF CERTIORARI

Michael Martin Clark (D.O.C.#159423)
(Your Name)

Fremont Correctional Facility (FCF)
(Address)

Box 999 Canon City, CO 81215
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

- I. WHETHER THE COLORADO COURT OF APPEALS FAILED TO PROPERLY ANALYZE "QUALITY AND QUANTITY" STANDARD SET-FORTH IN JACKSON V. VIRGINIA, 443 U.S. 307 (1979), WHERE THE CASE HINGED ON CIRCUMSTANTIAL EVIDENCE INSUFFICIENT TO SUSTAIN A CONVICTION FOR FIRST DEGREE MURDER BEYOND A REASONABLE DOUBT, AND;
- II. WHETHER THE COLORADO COURT OF APPEALS FAILED TO PROPERLY ANALYZE THE CORRECT STANDARDS AND SUBSTANTIVE LAW APPLICABLE TO CUMULATIVE ERROR.

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:

For the State of Colorado: Cynthia H. Coffman, Attorney General
1300 Broadway, 10th Floor
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OTHER

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☐ is unpublished.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☐ is unpublished.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 B 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☒ is unpublished.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 _____ Colorado Appeals court 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.

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 Oct. 10, 2017.
A copy of that decision appears at Appendix B.

☐ 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

United States Constitution

Amendment XIV

Amendment V

The Due Process Clause to the Fifth and Fourteenth amendments prohibits conviction except by proof beyond a reasonable doubt.

The right to fundamental fairness guaranteed under Due Process prohibits conviction by cumulative error.

Colorado Revised Statute

Colo. Rev. Stat. § 18-3-102(1)(a) (Ann. 2016)

To sustain a conviction for first degree murder, the prosecution must prove that the defendant, "[a]fter deliberation and with intent to cause the death of a person other than himself, ... Cause[d] the death of that person or of another person."

Colo. Rev. Stat. § 18-3-101(3) (Ann. 2016)

The term "after deliberation" means "not only intentionally but also that the decision to commit the act has been made after the exercise of reflection and judgment concerning the act."

STATEMENT OF THE CASE

Michael Clark contends his actual innocence in an eighteen year old murder committed in 1994, when Clark was a 19-year-old college student, couch surfing in and around Boulder, Colorado ~~when the murder occurred.~~ The case against Clark was entirely circumstantial, whereupon review of the record below will show that there was no direct evidence that linked Clark to the murder. See APPENDIX A, Opinion at 4.

Moreover, no one saw the shooter, the police never found the murder weapon, and despite the numerous confrontational and deceptive attempts on the part of law enforcement in their initial investigation in 1994, and again in 2011, the police never extracted a confession. In fact, much of the prosecution's putative evidence in their case-in-chief involved a theory supported by conjecture; a Detective's credibility statement amid trial that Clark had not told the truth, and the supposed confession Clark gave to a jailhouse snitch, cocaine addict, probation violator, and six-time felon, whom the prosecution held as their key-witness, and relied on in the opening statement multiple times.

Clark was initially investigated in 1994 because he was a friend of the victim's daughter, whom, in addition to her brother, was considered suspects in their father's murder. In fact, Clark took care of the victim's cat a month prior to the murder, and admitted to forging the victim's checks and using the funds for costs related to his arrest on a stolen motorcycle with the victim's daughter onboard. Detectives suggested that the son and daughter had the strongest motives to commit the murder of their father because they would receive insurance money. They both took polygraphs, where it was in the examiner's opinion that the daughter engaged in "purposeful non-cooperation," indicating she wanted "to avoid detection of deception in one or more of the areas under investigation." The examiner opined that the son was not telling the truth when he denied planning with anyone to shoot his father.

Nevertheless, Clark maintained his innocence and said he knew nothing about it. All three were investigated, but no one was charged subsequent to the 1994 investigation. The case went cold until 2009 when a Detective reopened the case. This time, with no additional new evidence, focusing solely on Clark as the perpetrator.

However, in the reopened investigation, a Carmex container found in an inconspicuous spot underneath a stairwell outside the victim's apartment the morning after the murder was tested for DNA and compared with Clark's. The exterior of the Carmex produced DNA which could not be linked to Clark. The interior produced an inhibited mixed sample, which when compared to Clark's DNA matched 4 of 16 loci, meaning Clark's paternal lineage could not be excluded as the contributor. The mixed sample contained DNA from at least one other male, and could have contained DNA from two or more other males.

No other DNA was compared against the Carmex sample. Nor was the DNA run through a law enforcement database of known offenders. The sample was tested against a database of only 4,100 people to come up with an estimated probability the Y-STR DNA belonged to Clark's paternal lineage. The DNA analysis said nothing about when the Carmex was left in the stairwell, or when DNA was deposited inside the container.

The circumstantial evidence that appears more inculpatory concerns testimony from an acquaintance of Clark's, whom stated that he had hired a third person to buy Bryco-Jennings brand nine-millimeter pistol from the Pawn shop. A weapons expert testified along with an autopsy report that the victim was likely that this pistol could have fired the full metal jacket ball ammunition a pathologist discovered during the autopsy. This inference was corroborated by a Marine Corps recruiter who testified Clark showed him the pistol and rounds.

In the 1994 police interrogation Clark admitted to buying the pistol, which he kept under the passenger seat of his car by a guy named Luis whom Clark met in Denver's Montbello neighborhood. Clark said he returned to Montbello the next weekend, but could not find Luis leaving the gun with a third person. This interrogation was admitted at trial, and was the linchpin of the prosecution's case, by convincing the jury that Clark's gun was the murder weapon.

In the 2011 police interrogation Clark agreed he got the gun from the acquaintance, but he did not remember what he did with it; it was long ago and a rough time in his life. Clark said he shot the gun in a field once, keeping it unloaded under his car's passenger seat while he briefly possessed it. Clark said he kept the gun because he wanted to seem tough, though he stated he most likely threw the gun in a dumpster near where he was living. Clark said that the gun made him nervous because it wasn't on the "up and up."

At trial, the prosecution cited these discrepancies in Clark's conflicting statements to detectives as evidence of motive and credibility; calling Clark's 1994 explanation an "incredible story," and "complete fabrication." The prosecutor urged the jurors to listen to Clark's 1994 statements, arguing Clark misled detectives about showing the gun to the recruiter. In 2011, Clark admitted that in 1994 he told the acquaintance a made-up story about being stalked, and admitting he told the recruiter made-up "crap" stories about fights and guns to seem "stronger or tougher or something," in abid at bolstering his machismo in hopes to impress the recruiter for enlistment.

Nevertheless, the prosecutions hinged thier motive theory that Clark planned and rapidly carried out the homicide to conceal forgery and check fraud, when writing the victim's checks to himself in handwriting easily distinguishable. And when confronted of this, Clark immediately fessed up.

Despite the prosecution's attempts by reasonable speculation that Clark committed the murder, Clark argued that he could not have left a friends apartment in Denver around 8:50-. . 9:00p.m., saying he had something to do, to travel by car the distance of fifteen miles, that took "anywhere from 20, 25 to probably 45, 50 minuted depending on traffic," to commit the murder. The prosecution presented no evidence of November 1, 1994 traffic conditions.

In 1994, Clark's friend testified that it was "pretty typical of Mike," because, "if he was doing something, whether it was meeting a girl or something else, he would never really get into the minute details about it." Clark was not acting nervous or weird, and when the friend met Clark the next day Clark seemed completely normal.

Clark explained to police he was paged that evening by a girlfriend and went home to call her. He drove to Gunbarrel, watched the end of "Beavis and Butthead," which aired between 9-9:30p.m., and talked with the girlfriend until 10:15p.m. Clark also talked with another girl over the phone. The phone call to the girlfriend was confirmed by both the girlfriend and her mother to have been made at 9:45p.m. at trial. The other girl testified that police never contacted her until 2009 and she could not recall anything.

The victim's girlfriend testified that the night of the murder they were supposed to have dinner with their daughter, who blew it off, though leaving a voicemail, which was concerning, causing the victim to wonder if there was something going on he didn't know about. Around 9:30p.m., during dinner the victim responded to a knock at the door, of which he remarked as sounding like their son knocking. The victim's girlfriend recounted that he looked through the peephole, paused looked at her, opened the door, and was shot multiple times. She called 911 at 9:34p.m.

REASONS FOR GRANTING THE PETITION

Michael Clark did not commit this murder...The wholly circumstantial evidence was insufficient in quality and quantity to support the first-degree murder after deliberation conviction, and the life sentence, beyond a reasonable doubt.

Here, under *Jackson v. Virginia*, 443 U.S. 307 (1979), the lack of sufficient evidence where the prosecution relied upon mere speculation, illations that are unreasonable, insupportable, and overly speculative. *United States v. Spinney*, 65 F.3d 231, 234 (1st Cir. 1995). That is, the case against Clark, when viewed in the light most favorable to the verdict gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged, to which the state courts should have reversed on the proposition that; where an equal or nearly equal theory of guilt and a theory of innocence is supported by the evidence viewed in the light most favorable to the prosecution, a reasonable jury must necessarily entertain a reasonable doubt. *Jackson*, supra.; *United States v. Sanchez*, 961 F.2d 1169, 1173 (5th Cir.), cert. denied, 121 L.Ed. 2d 248, 113 S. Ct. 330 (1992).

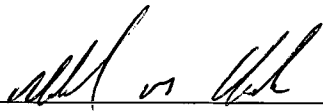
Additionally, this was an exceptionally close case resulting from a reopened cold case investigation, of which even at the time of the trial in 2012 after 18 years of investigation, there was no direct evidence linking Clark to the murder, that given the state of the evidence, the errors cited by the court of appeals required reversal. In fact, the appellate court stated without adequate legal analysis that these errors did not seriously affect Clark's right of fundamental fairness so as to cast serious doubt on the reliability of the conviction. See *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986); *Taylor v. Kentucky*, 436 U.S. 478, 487-88 (1978) (deciding cumulative effect of potentially damaging circumstances as violative of due process guarantee of fundamental fairness).

Therefore, and the above premises considered, Clark prays that this Most High Tribunal exercise its extraordinary jurisdiction by reviewing this case in full view of Clark's federal constitutional guarantees under the Great Charter, to which it is evident that this was a wrongful conviction of an innocent man whom ~~is~~ a devoted husband and father of three children, and does not deserve to languish in prison because of highly publicized case that pressured law enforcement and the prosecution to seal a conviction. See **Berger v. United States**, 295 U.S. 78, 88 (1935) ("The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all: and whose interest is not to win a case, but that justice be done)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Michael Martin Clark

Date: DECEMBER 26, 2017