

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

John Ortega — PETITIONER
(Your Name)

state of Illinois vs.
First District Appellate court RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

John Ortega
(Your Name)

P. O. BOX 112
(Address)

Joliet, Illinois, 60434
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

Under what standards of review do the courts treat video evidence when it impeaches witness testimony, de novo, some deference, or full deference?

LIST OF PARTIES

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

☒ 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:

State of Illinois First District Appellate Court
Illinois Supreme Court

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STATUTES AND RULES

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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 Illinois Appellate First District court appears at Appendix A to the petition and is

- ☒ reported at People v. Ortega 2017 IL App (1st) 143424-V; 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☐ is unpublished.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 22, 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

Due Process; U.S. Const. Amend XIV

In Re Winship, 397 U.S. 358, 364 (1970)

STATEMENT OF THE CASE

The State charged John Ortega with first degree murder. In a bench trial, the judge convicted him of this offense. She sentenced Ortega to 38 years in prison.

Ortega appealed. He argued that video contradicted the State's only witness. In affirming, the appellate court acknowledged that "having reviewed the surveillance video and Martinez' testimony, they do not match perfectly in all respects and at times, appear to be inconsistent. However, it is well-established that the resolution of conflicting and inconsistent evidence is reserved for the trier of fact" *People v. Ortega*, 2017 IL App (1st) 14342

REASONS FOR GRANTING THE PETITION

Due process requires the state to prove each element of an offense beyond a reasonable doubt; including the offenders identity. U.S. Const. Amend. XIV; Ill. Const. 1970 art. I § 2; *In re Winship*, 397 U.S. 358, 364 (1970)

Under the normal standard of review, the reviewing court grants high deference to the factfinder. *Jackson v. Virginia*, 443 U.S. 307, 313 (1979)

When a case usually reviewed deferentially includes only documentary evidence - depositions or video - review is *de novo*. But what of cases with testimony and documents?

This case is a good case to clarify the standard to use when reviewing testimony and documentary (video) evidence, because video deference is central to its fact as it is with many cases across the courts.

In Criminal Courts, some courts review the documents de novo. (People v. Dixon 2015 IL App (1st) 133303

Other courts review documents with some deference. (People v. Shaw 2015 IL App (1st) 123157

Still others fully defer to all evidence. (People v. Spann, 2011 IL App (1st) 083037.

Standards of review should be uniform.

Because there is no application to be used when reviewing testimony and video evidence together, and insufficiency of the evidence cases being common. This court should grant review to resolve this split. This court needs to address the lower courts on how to review the evidence effectively.

Here in this particular case, which is a homicide by vehicle case, Petitioner John Ortega was convicted of First degree murder.

The eyewitness "Martinez" claimed to have witnessed petitioner exit the car's driver side window. But Crime-Scene video showed that the witness was not where he said he was; he claimed to have been standing behind the car (trial transcript pg 73-74) however; the video shows that it is not true and that he would not have had time to get to the spot he would have claimed to been standing at.

Further, the states crime scene photo showing the drivers door open gave less credibility to witnesses testimony, which suggest that the culprit driving the car exited through the door than jumping out the window. (See Exhibit 1) a-b.

The lower courts agreed that the video contradicted the states sole eyewitness in several ways. The court stated "having reviewed the surveillance video and Martinez testimony, they do not match perfectly in all respects and at times appear to be inconsistent. However, it is well-established that the resolution of conflicting evidence is reserved for the trier of fact." People v. Ortega 2017 IL App 151144 143424.

In People v. Rivera, the Illinois courts stated that "while we afford great deference to jury determinations on credibility and demeanor of witnesses, as they are in a superior position to a reviewing court in observing witnesses while testifying (citing People v. Wheeler, 226 Ill. 2d 62, 114-115, 313 Ill. Dec. 1, 871 N.E. 2d 728 (2007)), the primary evidence here is a video clip which the trier of fact is in no better position to view than this court. We are not suggesting the trier of fact is still not afforded substantial deference; however, where certain evidence does not involve credibility determinations or observations of demeanor, the deference afforded is logically less. Rivera, 947 N.E. 2d 836 [14-15]

Because the lower courts apply scrutiny based on a case by case basis, it has failed to conduct a proper standard of review in regards to video evidence.

Due to the high deference standard used in this case, the lower courts did not afford the proper manifest weight to the documentary evidence as it does in other cases.

In reviewing challenges to the sufficiency of the evidence we review evidence, whether direct or circumstantial in light most favorable to the verdict (United States v. Nguyen 28 F.3d 477, 480 (5th Cir 1994)). All credibility determinations and reasonable inferences are to be resolved, if we conclude a rational trier of fact could have found therefrom the essential elements of the

Crime beyond a reasonable doubt (United States v. Villasenor 894 F.2d 1422, 1425 (5th Cir 1990))

The crux of the States case rests solely on witness testimony being consistent with the video evidence, which appellate court disagreed that it did.

Documentary evidence discredits Martinez claim to have viewed the defendants face and undermined his credibility. The video only allows 6 seconds and the witnesses testimony of events to have transpired would have taken 10-20 seconds which video does not allow. The still photograph further undermines the suspect exit the drivers window because the drivers door was wide open.

Petitioner prays that the United States Supreme Court demonstrate to the lower courts the proper standard to review witness testimony and video evidence. To allow the lower courts to be in a superior position to evaluate the evidence in manifest favorable to the verdict without a miscarriage of justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John O'Leary

Date: February 2, 2018
