

In The
SUPREME COURT OF THE UNITED STATES

NOVEMBER TERM, 2017

CASE NO: 2017 _____

DARRELL F. BRYAN - PETITIONER

VS.

COMMONWEALTH OF KENTUCKY - RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF KENTUCKY

PETITION OF WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

Darrell F. Bryan (hereinafter petitioner) petitions for a writ of certiorari to review the judgment of the Kentucky Supreme Court, rendered in the direct appeal of the petitioner for his First Degree Murder conviction. The judgment was affirmed by the Kentucky Supreme Court by a bare majority, because of a difference of opinion on whether the constitutional violations raised on the direct appeal were "harmless error" or not.

The error itself was determined by a 7-0 vote. The "harmless" classification was only joined by four (4) total votes. Chief Justice Minton dissented and was joined by two (2) other Justices. A subsequent rehearing was denied on August 24, 2017, This motion

is what follows.

QUESTIONS PRESENTED

1. Where petitioner received a Fifty (50) year sentence for capital murder based upon incomplete self-defense instructions, the petitioner was denied exculpatory jury instructions for the "imperfect self-defense" pursuant to KRS 503.120 (1). The Supreme Court of Kentucky agreed unanimously (7-0), that it was in fact error to exclude this exculpatory instruction in a capital murder trial, however, the bare majority found it to be harmless error to do so. Chief Justice Minton dissented, joined by Justices Keller and Wright. Should the Court of last resort be able to deny a unanimously agreed upon violation of this petitioner's 6th and 14th Amendments right to present a defense based on that majority's designation of "harmless error," or be held to the standard set out in Chapman v. California, by this United States Supreme Court, of "harmless beyond a reasonable doubt"(?) Will that preserve this petitioner's rights to Due Process?

2. Where appellant raised specific Constitutional Violations of the 5th, 6th, and 14th Amendments, for the prolonged display of this petitioner in prison garb, handcuffs, and shackles during the guilt phase of his capital murder trial for an excess of Thirty (30) plus minutes, via this petitioner's video statement. This was over trial counsel's objection. There was no ad-

monition given to disregard the prison garb and chains and the video was played. Can the Court of last resort be fair in its analysis to determine that the error was harmless under the 5th, 6th, and 14th Amendment violations displaying this petitioner in prison garb and chains, which is contrary to the United States precedent under Deck v. Missouri, where Justice Kennedy states, "Through control of a defendant's appearance, the state can exert a powerful influence on the outcome of the trial"(.) as harmless error?

LIST OF PARTIES

A list of all parties to the proceeding in the Court whose judgment is subject to this petition appear in the caption of the case on the cover page.

TABLE OF AUTHORITIES

Williams v. Commonwealth, 2014 Ky. Unpub., LEXIS 94
Kyle v. Commonwealth, 2015 Ky.. Unpub., LEXIS 23
Barbour v. Commonwealth, 204 S.W. 3d 606, 612 (Ky. 2006)
Deck v. Missouri, 544 U.S. 622, 125 S. Ct. 2007, 161 L.Ed. 2d 953 (2005)
Brecht v. Abranmson, 507 U.S. 619, 113 S. Ct. 1710, 123 L. Ed. 2d 353 (1993)
Chapman v. California, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)
Estep v. Commonwealth, 663 S.W. 2d 213, 216 (Ky. 1983)
Sargent v. Shaffer, 467 S.W. 3d 198, 204 (Ky. 2015)
Bryan v. Commonwealth, 2017 Ky. Unpub. LEXIS 8

Kotteakos v. United States, 328 U.S. 750 (1946)

United States Constitution Amendments V, VI, and XIV

Kentucky Revised Statute 503.120 (1)

Kentucky Revised Statute 503.050

Kentucky Revised Statute 503.050 (1) & (2)

Rules of Criminal Procedure 9.24

Rules of Criminal Procedure 9.54 (1)

28 United States Code Service § 2111

OPINIONS BELOW

The Opinion of the Kentucky Supreme Court (Pet. App. A1-A15)

JURISDICTION

The Judgment of the Supreme Court of Kentucky was entered on March 23, 2017 (Pet. App. A1), the Order Denying Petition For Rehearing was entered August 24, 2017 (Pet. App. B1). The jurisdiction of this honorable Court is hereby invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution guarantees that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indic-

ment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

USCS Fed Rules Evid R 404. Character Evidence; Crimes or other acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses. Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by defendant in a criminal case, the prosecutor must:

(A) provide a reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

(B) do so before trial - or during trial if the court, for good cause, excuses lack of pretrial notice.

Estep v. Commonwealth, 663 S.W. 2d 213, 216 (Ky. 1983)

Deck v. Missouri, 544 U.S. 622 (May 23, 2005)

Barbour v. Commonwealth, 204 S.W. 3d 606, 612 (Ky. 2006)

Kyle v. Commonwealth, 2015 Ky. Unpub. LEXIS 23 (Ky. 2015)

The United States Constitution, Sixth Amendment, states that "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 defense.

Section One (1) of the Fourteenth Amendment to the United States Constitution states that "All persons 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 of 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."

Rules of Criminal Procedure (RCr) 9.54 (1), states that,

"It shall be the duty of the court to instruct the jury in writing on the law of the case, which instructions shall be read to the jury prior to the closing summations of counsel. These requirements may not be waived except by agreement of both the defense and the prosecution."

Chapman v. California, 386 U.S. 18 (February 20, 1967)

Brecht v. Abrahamson, 607 U.S. 619 (April 21, 1993)

Williams v. Commonwealth, 2014 Ky. Unpub., LEXIS 94

These Constitutional and Statutory Provisions Involved correlate and pertain to this Writ of Certiorari.

STATEMENT OF THE CASE

Darrell Bryan, the appellant, and a co-defendant participated in a drug deal on October 13, 2012. The appellant claims that an argument ensued and the victim pulled a gun out of his hoodie pocket. Out of fear the appellant engaged in a fight with the victim and when they hit the ground the appellant grabbed a bat that was laying nearby and hit the victim four times. After that, the appellant ran to where his girlfriend was waiting in a van. The victim later died as a result of the injuries sustained.

The defense argued self-defense, and there was enough evidence to support the claim with testimony from the victim's brother, and his roommate, where they claimed that the victim carried

guns and most likely had a gun with him that night. The defense's theory rested on the whole law of the self-defense statute, including that of imperfect self-defense (KRS 503.120 (1)), which the trial Court refused to allow an instruction supporting that theory. The Supreme Court of Kentucky disagreed with the trial Court and ruled that it was indeed error not to include that aspect of self-defense. In fact, they were unanimous in their verdict (7-0).

However, a bare majority (4-3) found it to be a harmless error (RCr 9.24). Chief Justice Minton found this ruling to be perplexing, because it is an exculpatory instruction which this appellant was entitled to, and ultimately preserve his due process rights and his rights to present a defense under the 6th and 14th Amendments of the U.S. Constitution.

Further, this appellant brought up specific constitutional violations in his direct appeal under the 5th, 6th, and 14th Amendments of the U.S. Constitution for being displayed in front of the jury in a capitol murder trial in prison garb, handcuffs, and shackles, where this appellant was prejudiced by this error.

While evidence suggested that he was a drug addict, his defense was pinned on the jury believing that he acted in self-defense (KRS 503.050 (1) & (2)), and evidence that he was a dangerous criminal undercut that defense.

The trial gave no admonition to the jury instructing them to disregard his prison garb and chains which were in view continuously for an extended period of Thirty (30) plus minutes,

over the trial attorney's objections. This again was dismissed as a mere harmless error. With a direct claim of a constitutional violation, a harmless error designation is not proper as set out by the United States Supreme Court, and should be looked at through a different scope than Kotteakos v. United States.

These two major violations and the improper scope used to decide the level of error, severely prejudiced this appellant and denied him an opportunity to have a fair and just re-trial without the prejudicial errors hindering his due process.

REASONS FOR GRANTING CERTIORARI

There is a conflict in the Commonwealth of Kentucky's application of standards set out in place to protect Constitutional errors from a "harmless error" designation. When it was determined by the Kentucky Supreme Court that there was an abuse of discretion and that the jury, in the appellant's capitol murder trial, should have been instructed on "all of the law," (RCr 9.54 (1)), see Sargent v. Shaffer, where it states that "The trial court must instruct the jury upon every theory reasonably supported by the evidence. Each party to an action is entitled to an instruction upon his theory of the case if there is evidence to sustain it."

The Supreme Court of Kentucky decided (7-0) that the appellant did deserve that specific instruction of imperfect self-defense, in which this appellant's defense was dependant on this specific instruction.

However, the bare majority (4-3) determined it was "harmless error" to do so. This is a blatant violation of the appellant's 6th and 14th Amendment right to present a defense and due process, in which the harmless error designation should have been a "harmless error beyond a reasonable doubt" designation as set out in Chapman v. California, "The federal harmless-error statute, 28 U.S.C.S. § 2111, emphasises an intention not to treat as harmless those constitutional errors that 'affect substantial rights' of a party. An error in admitting plainly relevant evidence that possibly influenced the jury adversely to a litigant cannot be conceived as 'harmless.'"

Further in Chapman, it states "In order for an error involving the denial of a Federal Constitutional right to be held harmless in a state criminal case, the reviewing court must be satisfied beyond a reasonable doubt that the error did not contribute to the defendant's conviction."

In the case at bar, Chief Justice, of the Kentucky Supreme Court, Minton dissented, citing that this appellant was denied an exculpatory instruction and was joined by two (2) other Justices (Keller and Wright). This would be enough to overturn the murder conviction based upon the reasonable doubt standard spoke of in Chapman, and held up in Brecht v. Abrahamson.

In the case at bar, the trial court's denial of the imperfect self-defense instruction prejudiced the jury by not giving the theory of the act as it was perceived by this appellant, from his point of view. As long as there is evidence to support

a theory, no matter how far fetched, case law is replete with standards that it is for the jury to decide the relevancy and truthfulness, not the Judge. The Judge in this case abused his discretion, in denying the exculpatory instruction of imperfect self-defense (KRS 503.120 (1)).

In Brecht, supra, it states that "The state bears the burden of proving that an error passes muster under this standard." Speaking of the "harmless error beyond a reasonable doubt" designation. Here the issue was merely dismissed without even citing Kotteokos.

Without the correction of this Supreme Court of the United States, this issue will likely recur. Kentucky is among the top in overturned convictions based on loosely applied constitutional law. The Chief Justice, Minton, had it right in his dissent, see Bryan v. Commonwealth, where Justice Minton states "...the trial court's failure to allow an instruction for imperfect self-defense was a glaring omission. As a matter of law...".

This same issue of "harmless beyond a reasonable doubt" also correlates to the first question spoke of in this writ of certiorari. See Williams v. Commonwealth.

THE KENTUCKY SUPREME COURT'S REASONING IS FLAWED,
THE STANDARDS AND STATUTES SET OUT IN CHAPMAN AND
HELD UP IN BRECHT BETTER INSTRUCT ON HOW TO
CLASSIFY CONSTITUTIONAL ERRORS. THIS WILL BE THE
SAME WITH DECK V. MISSOURI.

In the case at bar, this appellant was displayed in front of the jury in his capitol murder trial in prison garb, han cuffs, and shackles, via, his recorded statement. This was over the objection of his trial attorney (FRE 404 (b)). There was not an admonition given to disregard the appellant's prison garb and restraints. Where the Supreme Court of Kentucky references Estep v. Commonwealth, the case at bar does not match up. In Estep, the defendant was shown in a picture briefly and an admonition was given to the jury. In the case at bar, the appellant was shown continuously for an excess of (30) plus minutes, deliberately to show the appellant's demeanor and no admonition was given. The Court acted over an objection by the trial counsel and had the means to play the recording without the video, and the same demeanor could be gleaned from the voice inflection and tone.

The Court of last resort determined that Bryan was prejudiced by this error. While he was a drug addict, his defense was pinned on the jury believing that he acted in self-defense (KRS 503.050 (1) & (2)), and displaying him in this manner undercut that defense by inferring that Bryan was a dangerous criminal. See also Kyle v. Commonwealth, and Deck v. Missouri, where Justice Kenedy states, in judgment, "Through control of a defendant's appearance, the state can exert a **powerful influence** on the outcome of the trial." (emphasis added).

Deck, further states that "The constitution forbids the use of visible shackles during the penalty phase, as it forbids use during the guilt phase unless that use is justified by an

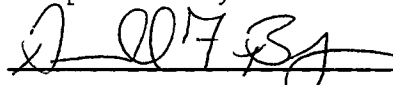
essential state interest, such as court room security, specific to defendant on trial.

In the case at bar, there was no demonstration of the extra prejudicial need for the jury to view this appellant in prison garb, hand cuffs, and shackles that could not have been gleaned by a more non-prejudicial means. Deck further states that "The defendant need not demonstrate actual prejudice to make out a due process violation." Which in turn would need a "harmless beyond a reasonable doubt" (28 U.S.C.S. § 2111) designation, which is a far stricter scope then what was used in the case at bar.

Without any correction from this United States Supreme Court, the blatant disregard for Constitutional standards will continue unchecked and the impacted litigants will continue to grow.

In conclusion, this appellant Darrell Franklin Bryan, prays this honorable and Supreme Court of the United States of America finds good and justifiable cause to correct and rehabilitate the discretions that are causing American citizens to suffer an indiscriminate amount of injustices relating to Constitutionally protected Amendments.

Respectfully submitted,



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Submitted by first-class mail on this 20th day of November, 2017.