

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Marcus Lacey — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

APPELLATE COURT OF ILLINOIS (1st Dist)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Marcus Lacey - M46078
(Your Name)

Menard C.C., P.O. Box 1000
(Address)

Menard, IL 62259
(City, State, Zip Code)

(Phone Number)

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☐ is unpublished.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☐ is unpublished.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 C to the petition and is

- ☒ reported at People v. Lacey, 2017 IL App (1st) 142352-U; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Appellate Court of Illinois court appears at Appendix A to the petition and is

- ☒ reported at People v. Lacey, 2017 IL App (1st) 142352-U; 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☐ is unpublished.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 1-18-18.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
was not Filed

☐ 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).

QUESTION(S) PRESENTED

- 1) Whether the Appellate Court of Illinois erred in its ruling when it misapprehended the evidence presented at trial when it over looked crucial evidence supporting Petitioner's subjective unreasonable belief that he was justified in shooting victim. Thus denying Petitioner a fair trial.
- 2) Whether the Appellate Court of Illinois erred in its ruling denying Petitioner his right to a fair trial. A trial in which the trial court's instructions to the jury were not only confusing and misleading, but the judge omitted critical language relevant to the only disputed issue at trial from the definitional instruction of first degree murder.
- 3) Whether the Appellate Court of Illinois erred in its ruling denying Petitioner his right to a fair trial. A trial in which the trial judge erroneously denied Petitioner's request that the jury be given an instruction as to a non-initial aggressor, not having a duty to retreat.
- 4) Whether the Appellate Court erred in its ruling when it denied Petitioner the right to competent representation in trial. A trial in which the trial judge in a Krankel hearing allowed the state to actively participate. Compromising the objective nature of the hearing, making it adversarial.

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:

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TABLE OF AUTHORITIES CITED

CASES:

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STATUTES AND RULES

United States Constitution
(amendments 6th and 14th) + (5th)

OTHER

Illinois Constitution (1970, Act. I § 2)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

* Amendment VI of the United States Constitution provides that all criminal prosecutions of 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 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.

* Amendment XIV of the United States Constitution section one provides that 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 where in 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.

STATEMENT OF THE CASE

After the trial, the jury found Petitioner guilty of First degree murder for shooting Erick Harris and personally discharging a firearm approximately causing the death to another. Petitioner testified that he shot Erick Harris in self-defense.

Three events took place on March 29, 2010 prior to the Petitioner shooting Harris in self defense. First, there was a Fight at the carwash. Second, a shooting on North Hamlin Avenue. Third, a standoff with pistols drawn and aimed at each other on Ridgeway and Huron. Those events involved Petitioner and various members of a group of people that included Charles Jackson, Erick Harris, Kori Jamison, Harris' girlfriend and John Jackson, the uncle of Charles. At trial, four occurrence witnesses testified for the State - Charles and John Jackson, Jarmel Brown and Kori Jamison, all of whom had felony convictions. Other state evidence included nonoccurrence witnesses, and surveillance and POB videos. Petitioner, Jonathan Smith and officer Ted Reykjalinn testified for the defense.

Petitioner testified that Kevin Terry used his car and returned it with damaged rims. Petitioner called Kevin and during the conversation Kevin said he would pay for the damaged rims on petitioner's car.

After arriving at the carwash, Petitioner walked up to the corner where a group of people were gathered, and Charles Jackson walked up to Petitioner and pushed him. This led to a fight between Petitioner and Charles which had to be broken up several times before Petitioner could leave the carwash. Petitioner testified that after leaving the carwash he went to Lester's repair shop to pick up his automobile. Petitioner testified that while he was driving he saw Erick Harris driving Charles Jackson's van with Charles and Patrick inside. Petitioner testified that Erick Harris tried to cut him off, and Charles exited the vehicle and fired several shots at Petitioner.

Petitioner testified that he drove to Ridgeway and Huron to hang out around the area as he would usually do, and while he was there standing near his car, Charles and Erick drove up with John Jackson in John's work Van and they got out of the van, Charles and Erick pulled out their guns and aimed them at Petitioner, who ran for cover on the side of a building where he pulled out his gun and pointed it in their direction. John testified that Petitioner called him over. Petitioner testified that he called John over in order to defuse the situation; stating on the stand that nobody would shoot because they would not want to hit John. John testified that he got into

Petitioner's car and they drove away. Petitioner testified that he dropped John off in the general area of John's house and drove away. Petitioner testified that while he was still in the general area of Ferdinand and Hamlin five minutes after dropping John off, he received a call from John telling him to come to the house to talk.

Petitioner testified that as he approached the stoplight on Ferdinand he saw Charles with a group of people standing outside of the house. Petitioner in fear for his life because of the events that unfolded earlier decided not to drive down that street. Petitioner testified that as he was pulling off, he heard someone call him by his nick name (Sweet Pea); so he pulled over and saw Erick Harris reaching for his gun and Petitioner in fear for his life shot Harris in self defense.

REASONS FOR GRANTING THE PETITION

* The Petitioners conviction for first degree murder must be vacated because the State failed to disprove that Petitioner acted in self defense. Petitioner establish by the preponderance of the evidence that he believed his actions were justified, even if that belief was unreasonable.

The evidence at trial showed that Petitioner had a series of three altercations with Charles Jackson and a group of his friends, including Erick Harris. The evidence at trial showed that shortly after the standoff (the third incident), John Jackson, who acted as the peacemaker in the third incident called Petitioner and told him to come by. When Petitioner drove to the corner of John's block he saw a group of people standing around and decided not to drive down that block, and before pulling off he heard his nickname being called and saw Erick Harris reaching for a gun, at which time Petitioner shot Harris and drove away. The State had the burden of proving that Petitioner was not acting in self defense. The evidence, however does not do so.

The State's witnesses' claims that Harris was unarmed were not credible because they did not originally acknowledge that they saw the shooting, let alone that

Erick Harris was unarmed when he was shot; their testimony fails to establish that they could see what Harris was doing at the time of the shooting; and the versions of what happened before and after the shooting and about the preceding events were inconsistent with each other, their own prior statements, and the surveillance and POD videos. Because the State's evidence failed to prove that petitioner did not shoot Harris in self defense, his conviction for first degree murder must be reversed.

Due process protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. U.S. Const., Amend. XIV; In Re Winship 397 U.S. 358, 364 (1970) In assessing the sufficiency of the evidence, the inquiry is whether, after reviewing the evidence in light most favorable to the State a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979). If a conviction is to be sustained, it must rest on the strength of the People's case and not on the weakness of the defendant's case.

The fact finder's acceptance of testimony and assessment of the witnesses' credibility, while due deference, are not conclusive nor do they bind the reviewing court. It is the duty of the Court to carefully consider the evidence and reverse judgement if the evidence is not sufficient to create an abiding conviction of guilt.

The guidance of the United States Supreme Court is needed to ensure that the lower court's analysis does not run contrary to establish law. Here, the Appellate Court of Illinois held that Petitioner did not establish by the preponderance of the evidence that he believed his actions were unreasonable justified. However, the fundamental flaw in the Appellate Court's analysis pertaining to this issue misapprehended the facts and over looked crucial evidence supporting Petitioner's claim. The Appellate Court ruling completely ignored the events that transpired but the Erick Harris shooting. Those three events mentioned in Petitioner's statement of the case contributed to Petitioner's unreasonable belief that he was justified in shooting Harris. The Petitioner was subject to a series of violent and threatening altercations involving Charles Jackson and Erick Harris.

* The Petitioner was denied his right to a fair trial, where the trial Court's instructions to the jury were not only confusing and misleading, and the judge omitted critical language relevant to the only disputed issue at trial from the definition instruction of first degree murder and erroneously denied Petitioner's request that the jury be given an instruction as to a non-initial aggressor not having a duty to retreat.

The purpose of jury instructions is to provide the jury with correct legal principles that apply to the evidence, thereby allowing it to reach the proper conclusion based on the applicable law and the evidence as presented. The Petitioner is entitled to have a jury instruction on their theory of the case and generally an instruction is warranted if there is even slight evidence to support it. Petitioner's theory of the case was self defense and in the alternative second degree murder and there was much more than even the slightest evidence to support Petitioner's request. However, the Appellate Court ignored the events that preceded the Harris shooting. The Court ignored that Erick Harris was associated with the group of people involved in those preceding events.

The Appellate Court ignored Petitioner's testimony that he saw Erick Harris reaching for a black gun when he shot Erick. The Appellate Court ignored Jonathan Smith's testimony that he saw Erick carrying a heavy object near his waist. The Appellate Court ignored the corner store surveillance video that showed there was a dark object under the front right side of Erick's body near his waist, which was removed before the people arrived. The video showed Erick handing the object to a girl in a white coat, who then passed said object out of the door. In other words, this is plain error and the Appellate Court failed to correct this error which denied Petitioner his right to a fair trial in violation to the 6th and 14th amendments of the United States Constitution.

* Petitioner was denied his 6th amendment right under the United States Constitution to the competent representation at trial in violation of due process of law. Where the trial Judge in a hearing to determine counsel's competence allowed the State's participation which compromised the objective

nature of the hearing, making it adversarial. A criminal defendant is guaranteed the effective assistance of counsel U.S. Const., amend. VI and XIV. A defendant is deprived of the effective assistance of counsel when: 1) Counsel's performance was deficient in that it fell below an objective standard of reasonableness; 2) The deficient performance prejudiced the defense in that counsel's errors deprived the defendant of a fair trial with a reliable result. Strickland v. Washington, 466 U.S. 668, 687 (1984) Prejudice is shown when counsel's errors so prejudice the defense as to undermine confidence in the outcome of proceedings or deprive defendant of a fair trial. Here, counsel was ineffective for failing to investigate, failing to call Patrick Jones as a corroborating witness, failing to introduce surveillance video. Because the record demonstrates possible neglect, the trial court erred for denying Petitioner's motion without appointing new counsel, and the Appellate Court erred for affirming petitioner's appeal on this issue as the state was allowed to participate in an adversarial role against a pro-se litigant at a Krankel inquiry was insufficient, violating Petitioner's 5th, 6th and 14th amendment rights of the United States Constitution.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marius Fung

Date: April-5-2018