

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

John Jones — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

John Jones - B45207
(Your Name)

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

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

N/A
(Phone Number)

QUESTION(S) PRESENTED

① Whether the Appellate Court of Illinois' ruling affirming Petitioner's conviction was contrary to established Federal law when the State Failed to prove Petitioner guilty beyond a reasonable doubt where all the crucial witnesses were incredible and impeached

② Whether the Appellate Court of Illinois' ruling affirming Petitioner conviction was contrary to established Federal law where the prosecutor's closing remarks deprived Petitioner of a fair trial.

③ Whether the Appellate court of Illinois' ruling affirming Petitioner's conviction was contrary to established Federal law where the plain error committed by the trial court deprived Petitioner of a fair trial

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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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☐ is unpublished.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☐ is unpublished.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 _____ 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☐ is unpublished.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 Appellate Court of Illinois court appears at Appendix A to the petition and is

- ☒ reported at People v. Jones, 2017 IL App (1st) 150821-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 _____.

☐ 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

* The 5th Amendment of the U.S. Constitution where it states that no person shall be compelled in any criminal case to be a witness against himself.

* The 6th Amendment of the U.S. Constitution: In all criminal prosecutions, the accused shall enjoy the right to a trial by an impartial jury of the State and district wherein the crime shall have been committed.

* The 14 Amendment of the U.S. Constitution: Right to due process and equal protection of the law.

STATEMENT OF THE CASE

Petitioner was arrested on August 19, 2011 and charged with first degree murder. A jury found Petitioner guilty and the court sentenced him to life in prison. The Petitioner's appeal was affirmed by the Appellate Court of Illinois on August 15, 2017. Petitioner filed a petition for rehearing on August 25, 2017. The Appellate Court denied the Petition for Rehearing on September 5, 2017. Petitioner filed a Petition for Leave to appeal to the Illinois Supreme Court on October 18, 2017. The Illinois Supreme Court denied Petitioner's Leave to Appeal on January 18, 2018.

Key State's Witnesses

At trial, the State presented two eyewitnesses who testified that Petitioner was present when Robert Tate was shot on April 12, 2010; Richard Thompson and Keisha Conic. Richard Thompson was in custody at the time of the trial. Prior to taking the stand, Thompson wrote a note to the prosecutor which said that he had been offered 3 years for his current pending case. Thompson's note asked the prosecutor to talk to the State's Attorney on his pending case, and let them know that he has been very helpful in this case so that he could get a sentence of 18 months or one year. Thompson testified that he used several alias names, had 3 felony convictions, and had served time in prison.

Thompson was a heroin addict back in 2010, used heroin every day, and had been an addict for about 12 years. Thompson sold drugs to support his drug habit. Thompson did not talk to the police on the day of the shooting, or anytime after that, until he was arrested on August 6, 2010 on a narcotics charge. His case was dismissed August 24, 2010 following a hearing in which the judge found that there was no probable cause. Thompson admitted during trial that he written a prior statement to defense counsel stating that he was not present when Tate was shot. Thompson also testified that he told defense counsel that he tried to tell detectives that he was not present during the shooting, but they told him he was lying, and he said that he was ~~there~~ because he thought that's what they wanted to hear. Thompson testified that he told defense counsel that when he was arrested on August 6, 2010, he tried to use information he heard in the neighborhood in order to help him get out of trouble.

Thompson testified that on April 12, 2010 at about 6:30 p.m. he was on the corner of Augusta and Aves with Petitioner. Thompson testified that Tate was standing on the opposite corner with a group of guys, across the street from him. Thompson testified that Tate was being very belligerent and talkative, and was making motions towards his waist. Thompson testified that Petitioner ran across the street and went in to the gangway at 1007 N. Aves and came out with a gun.

Tate ran south, Thompson testified that Petitioner ran after him and Thompson stated that he saw Tate collapse.

Keisha Conic, who also testified for the State, was serving a prison sentence at the time of trial, and testified that she had six convictions for drug related offenses. Conic was a heroin addict, and had used drugs most of her life. Keisha Conic testified that on April 12, 2010 she was at home and that on that day she used heroin two or three times. She stated that she was standing in the bedroom of her second floor apartment at 942 N. Aves when she heard a couple of shots. Conic testified that she ran to the front room to look out of the window, and could see Aves and the street Augusta. Conic testified that she saw the right side of a man's face for about 10 seconds and he was wearing a black t-shirt, jeans and a hat. She went down stairs and saw that Tate had ran passed her house, crossed the street, and collapsed on the sidewalk. Other people were out there including Dominique Davis, who lived in the apartment below Conic. When the police arrived Conic gave a general description and originally told police that she heard a single shot and did not see the person who got shot. Conic testified that on August 26, 2013 Petitioner's counsel visited her in prison and she signed a statement. In the statement which Conic read out loud in court she said,

"I am not sure he is the person that was out on the street on April 12, 2010. I only saw the person for a matter of seconds, and it was such a long time before both the photographs and line ups.

Defense Witnesses

Two witnesses, eyewitnesses that is, testified for the defense, Dominique Davis and Latasha Binion. Dominique Davis at the time of trial was 25 years old and a student at the University of Arkansas. Davis testified that on April 12, 2010, she lived at 2942 N. Avers, in Chicago on the first floor apartment below Keisha Conic. Between 6:30 and 6:45 p.m., Dominique arrived home, and was walking in her gate to go up stairs when she heard a loud noise that sounded like a firecracker. Dominique looked around and saw two males in the street north of her, towards Augusta about three or four houses down. They were both running; one went north towards Augusta and the other ran south towards Iowa. The man running south towards Dominique was in purple and the one running north was wearing black. Dominique did not get a good look at the man running southbound other than the fact that he was an African American male. Ms. Davis testified that she saw the man running southbound collapse in the street.

Latasha Binion testified that she was 35 years old and has been employed by the Illinois Department of Employment Security for 14 years. On April 12, 2010 around 6:30 or 7:30 p.m., she was outside on the 900 block of N. Aves visiting Family. Binion was standing outside in the middle of the street with her uncle when she heard two gun shots. Binion looked and saw two men in the middle of the street running. One of the men was running towards her. Binion could not give a clothing or physical description other than their race, which was African American. Binion testified that she could not see the person who went eastbound, she only saw the side of him for a split second, and she did not see where he went. The other person ran toward her and fell to the ground. Binion ~~stayed~~ stayed with him until the ambulance came. Binion was unable to recognize anyone in the photo of the line up at trial.

Jury Instructions

At the jury instruction conference, the court denied the defense's requests to include two non-pattern instructions about reliability of the testimony of drug addicts.

Closing Arguments and Verdict

During closing arguments, the prosecutor made statements about violent crimes on two separate occasions. Without any objections from the defense the prosecutor argued that everyday we hear about numbers, statistics. You read about them in the news; 5 people shot here, 2 people here, 13 shot this week, 4 then... We often hear about these things and read about them, and many times we may feel unsure what to do. Is there any way to stop it, the nonsense... We feel sometimes that what can I do about these shootings that are going on in the city, the state. The jury found Petitioner guilty of First degree murder and found that he personally discharged the firearm.

REASONS FOR GRANTING THE PETITION

⑥ The State failed to prove Petitioner guilty beyond a reasonable doubt where all the crucial witnesses were incredible and impeached; one witness was a drug ^{addict} who had an incentive to protect his drug business, the only other identifying witness was a drug addict whose identification was unreliable, and inconsistent.

The state case rested on the testimony of two witnesses, both were shown to be incredible. First, Richard Thompson, the only eyewitness to the entire crime, identified Jones as the shooter only when it was in his interest to do so. The first time he spoke to police was months after the shooting when he had been arrested on an unrelated drug charge. When he testified at trial he was again hoping the state would help him get a better deal on new pending charges. However, in both of these pending charges, Thompson told defense counsel that he did not witness the shooting, and that he told detectives what they wanted to hear. Second, Keisha Conic, the only other witness to place Petitioner at the scene of the shooting, saw the shooting from a second story window after using heroin at least twice that day made her identification of Petitioner over a year later. Her testimony is incredible because two other witnesses at street level could not make an identification, and she was by her prior statement admitting that she was unsure of the identification.

The state's evidence is insufficient to carry its burden of proof beyond a reasonable doubt, Petitioner's conviction should be reversed. Due process protects defendants from conviction except where the state proves beyond a reasonable doubt every fact necessary to constitute the charged crime. In re Winship, 397 U.S. 358, 364 (1970); U.S. Constitution amends V, XIV. The fact that defendant is probably guilty does not equate with guilt beyond a reasonable doubt. In determining whether the evidence at trial was sufficient enough to support conviction, reviewing courts must decide whether, after considering the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Jackson v. Virginia, 443 U.S. 307, 318-319 (1979)

While reviewing courts must give due consideration to the fact that the fact finder saw and heard the witnesses, courts must still carefully examine the evidence. Accordingly, the fact finder's decision to accept testimony is entitled to great deference but is not conclusive and does not bind the reviewing court. In other words, deference to the fact finder does not require a mindless rubber-stamp to every reasonable doubt argument presented on appeal.

Richard Thompson's testimony, which was the lynchpin of the State's case, is insufficient where he is an incredible witness because he was impeached, had a motive to testify falsely, had an interest in protecting his drug business, and participated in the planning of the shooting. The State's case depended on the testimony of Richard Thompson, the only person to testify that he saw Petitioner shoot Tate, yet his testimony was impeached and incredible for several reasons. First, Thompson's testimony was impeached several times by statements he made to Petitioner's counsel, which were memorialized in a signed, written statement. Despite his claim that he was ~~present~~ ^{present} for the entire shooting, he also told counsel that he was not present when Tate was shot. Thompson testified that he previously stated that he tried to tell detectives that he was not present, but they told him he was lying, and he said he was there because he thought that is what the detectives wanted him to say. He further told or rather testified that he told counsel that he tried to use information he had heard around the neighborhood about the shooting to get himself out of trouble when he was arrested. Thompson's prior statements completely discredit his testimony that Petitioner was there when Tate was shot, and that Petitioner was the shooter.

In addition to Thompson's explicit impeachment, he also had a motive to testify falsely. On both occasions that Thompson alleged that Petitioner was the shooter he was in custody on pending charges. Witnesses with pending criminal charges have special motivations to testify favorably for the prosecution. When it appears that a witness has hopes of a reward from the prosecution, his testimony should not be accepted unless it carries with it an absolute conviction of truth. Finally, Thompson's testimony is discredited by the fact that he was a three time convicted felon, a long time and daily narcotics user at the time he witnessed the crime, and implausibly testified that he had not used heroin for a couple of weeks. The testimony of a narcotics addict is subject to suspicion due to the fact that habitual users of narcotics become notorious liars.

⊛ The prosecutors' remarks in closing argument were improper where they encouraged the jury to consider the societal problem of gun violence instead of the evidence before them, suggesting that the Petitioner's choice to go to trial and not testify constituted fleeing, and called attention to defense counsel's trial strategy while suggesting it was improper, thus depriving Petitioner of a fair trial.

Prosecutors have a duty to protect the constitution rights of all citizens, including the defendant, to whom the prosecutor owes a duty of fairness. The prosecutor's remarks distracted the jury

From considering the evidence before them by encouraging the jury to consider the societal problem of gun violence commenting on Petitioner's invocation of his constitutional rights, and shifting the jury's attention to the motives of trial counsel, while suggesting these motives were improper.

A criminal defendant is entitled to a fair trial before a trier of fact whose decision is not influenced by prosecutorial misconduct. Donnelly v. DeChristoforo, 416 U.S. 637, 642-643 (1974); U.S. Constitution, amendments V, XIV. Thus the State must refrain from presenting improper and prejudicial evidence or argument. When the prosecutor's improper conduct constituted a material factor in the defendant's convictions, the defendant is entitled to a new trial.

The right to a jury trial in criminal cases is guaranteed by the Federal constitution. U.S. const. amends. VI, XIV. In addition, a defendant has a constitutional right not to testify as a witness in his own behalf. The prosecution may not directly or indirectly comment on the defendant's failure to take the stand in his own defense. Here during closing arguments the prosecutor stated that "yes, he is sitting in front of you today and he has sat in front of you in the past several days, but in a sense he is still fleeing." The consequence of the prosecutor's argument is that it potentially biased the jury against Petitioner for asserting his constitutional right at trial.

⊗ The court committed plain error where it failed to properly question the prospective jurors under Illinois Supreme Court Rule 431(b). During voir dire, the trial court failed to ask any of the jurors whether they understood the principles codified in Supreme Court Rule 431(b) and failed to ask three jurors about these principles at all. In this closely balanced case, these failures were plain error. Our Federal constitution guarantees the defendants a fair trial by an impartial jury. U.S. Const. amends. VI, XIV. This includes adequate voir dire to identify unqualified jurors. Morgan v. Illinois, 504 U.S. 719, 729 (1996). The Appellate Court of Illinois' ruling affirming Petitioner's conviction was contrary to established Federal law. Petitioner prays that this Most Honorable grant whatever relief that seems Fair and Just.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John Jones

Date: April 15, 2018