

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Georgia

Orlando Ramirez pro-se — PETITIONER
(Your Name)

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

Grant, Justice — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

In the Supreme Court of Georgia

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

PETITION FOR WRIT OF CERTIORARI

Orlando Ramirez pro-se
(Your Name)

WSP, Po Box 426
(Address)

Dalethorpe ga 31068
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. WAS it An violation of this petitioner 14th Amend, when he his standing to challenge his foreperson selection procedures on equal protection grounds, see *US v Sneed* 729 F.2d 1337, to Attack racial disparity in An grand jury selection of foreperson -- deprived him of his right to a fair trial under the 14th Amendment.
2. DID the Trial Court fail to Adequately instruct the jury on the offense of Aggravated Assault, Mutual Combat on self-defense, and failed to Adequately show Sufficiency of evidence that An Handgun was HAVE ON or within Arm reach, under statute 16-11-106, oega 24-9-205. T. 1238 pg
3. WAS it An Ineffective when Defense Counsel failed to demur to the counts 2, which did not Alleged A crime, Amounted to prejudicial deficient performance because the counts would have to be dismissed, And thus "Contributed" to petitioner conviction on this void counts. To some people it may seem like An fussy essential technicality but they would be wrong, When the state indictment omitted the essential elements of the crime it Alleged And therefore failed to charge petitioner with Any crime at all see the CAUSES in counts 2, 6 from Felony murder essential elements 16-5-1 c Annot 56 ACR 3d 239, 242, And failure to suppress Confession obtained through Custodial interrogation After illegal Arrest was the fruit of his illegal Arrest. and the sentence that were merged or vacated by operation of law, and on the ground that holding the lineup in the absence of the accused counsel, the Petitioner was entitled to the aid of counsel at the lineup, this court should remand this Petitioner to determine whether the in-court identifications were Based on observations of the Accused other than the lineup identification
US v Wade 388 US 218

Attachment

Questions Presented

4. Did the trial court error by violating petitioner statutory right when the state shifted the Burden to the Petitioner to prove beyond a reasonable doubt, in the charged of Intent, Where Presence, When the court gave an improper sequential charge on Intent, Charge #28 concerning Mutual Combat, Motion in Limine Defense Exhibits #27-36, and there was not an proper sequential charge where jury should have been informed it didn't have to find Petitioner guilty of malice and felony murder unless it had determined there were no mitigating factors that would reduce malice murder to Involuntary Manslaughter, ~~the~~ T. 1237 pg

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:

Grant, Justice

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Statutes And Rules

1.

this petitioner 14th Amend was violated when he has standing to challenge his foreperson Selection procedures on equal protection grounds, see US v Sneed - 729 Fed 1337, to Attack racial disparity in an grand jury selection of foreperson. There is no evidence whatsoever upon which the court could base a finding that petitioner knowingly and understandingly waived his right to be indicted by a fair and impartial grand jury from which the members of his racial or Ancestral group have been regularly and Systematically excluded. Violation of Attorney client privileges Applies to grand jury proceeding which violated petitioner procedural and Substantive due process rights, 23 ALR 4th 154 (43), 131 Cal 2d 1123, 50 Cal 2d 902, " 33 Cal 2d 783, " 68 ALR 2d 175, " 47 ALR 259, 83 Cal 2d 1112, " 82 Cal 2d 1053, " 52 ALR 919

2.

There was an Ineffective when Defense Counsel failed to demur to the counts 2 & 6 which was omitted legislation from the indictment, that did not allege a crime, Amounted to prejudicial deficient performance because the counts would have had to be dismissed, and thus " Contributed " to petitioner conviction on this void indictment, see THE CAUSE'S forum 16-5-1c, And 16-11-106b, HAVE ON or within arm reach, which failed to show sufficiency of evidence that An Handgun was HAVE ON or Within arm reach, Also trial court failed to Adequately instruct the jury on the offense of Agg Assault, to show Mutual Combat or self-defense which Trial court failed to charge after requested re Exhibit #27-36, Charge #28. There was not An proper sequential charge where to find Petitioner guilty of malice And Felony Murder unless it had determined there were no mitigating factors that would reduce malice murder to Involuntary Manslaughter, Hyman v State 272 GA 496 56 ALR 3d 239, 242, Carswell v State 251 GA 733 . T. 1238 pg

Statute And Rules

THE Key Words of the Statute Are. HE CAUSES, Annot. 56 ALR 3d 239, 242

The State's indictment omitted the essential elements of the crime it alleged and therefore failed to charge Ramirez with any crime at all. Hyman, 272 ga 496, which was ineffective for failure to demur to an bad indictment which omitted legislation

4.

Once it gave instructions on Intent that "A person will not be presumed to act with criminal intention. But you may find such intention or the absence of it, upon a consideration of the words, conduct, Demeanor, Motive or other circumstances connected with the act for which the accused is being prosecuted, Mutual Combat can be infer, the jury charge as a whole, violated the 14th Amend due process requirement that the state "prove every element of a criminal offense beyond a reasonable doubt, when read in the absence of provocation or justification the petitioner loses his Presumption of Innocence, from this alone Shifted the Burden to the petitioner to prove beyond a reasonable doubt, All this violated his statutory right to a fair trial under the 14th Amend.

Francis v Franklin 421 us 307, 342. T. 1237 pg

Ineffective Assistance of counsel's failure to object to an in-court identification by prosecution central witness as unreliable was not objectively reasonable Thomas v Varner 428 f3d 491, Dodd v state 236 ga 572

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 A to the petition and is

☐ reported at Supreme Court of Georgia; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Superior Court of Whitfield County court appears at Appendix B to the petition and is

☐ reported at Supreme court of Georgia August 2017; 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 March 5, 2018.
A copy of that decision appears at Appendix A.

☐ 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

1-

The Government or petitioner may Challenge An grand jury on the grounds that the jurors were not legally qualified or were improperly selected, summoned, The Jury Composition Rule, under 15-12-1.1, 15-12-40.1 and Service Act of 1968 and the Sixth Amendment require that jurors be selected from A fair-cross-section of the population, To establish A violation of the fair-cross-section requirement of the Sixth Amend, A petitioner must show that the group alleged to be excluded is A distinctive group in the Community the group representation of this group is not fair and reasonable, And The Under representation was due to A systematic exclusion of the group in the selection process challenge can also be brought on due process or equal protection grounds. To prove An equal protection violation, A Petitioner must show that intentional discrimination in the jury selection process resulted in substantial Under Representation of the race or identifiable group to which the petitioner had A close relationship to the excluded jurors And something hindered the excluded of jurors names, from A fair cross-section of the Community; And use of objective criteria for determination of disqualifications excuses, exemptions, And exclusions, which Petitioner has third party standing to Challenges to Avoid Any equal protection grounds and/or Violation of Attorney client privileges Applies to grand-jury proceeding which violated Petitioner procedural and Substantive due process rights. 23 APR 4th 154 (83)

Constitutional And Statutory Provisions Involved

The Powers Court held that voir dire permits a petitioner to establish a relation, if not a bond of trust with the jurors a relation that continues throughout the entire trial. The role of litigants in determining the jury composition provides one reason for wide acceptance of the jury system and of its verdict. In the rare cases in which the explanation for a challenge would entail confidential communication or reveal trial strategy, an In-Camera discussion can be arranged -- see *US v Zolin* 491 US 554. Circumstantial evidence of invidious discriminatory intent in relation to conduct which is alleged to violate the equal protection clause of the 14th Amend may include proof of disproportionate impact.

552. "Use of Peremptory Challenges to exclude persons from jury on basis of race or color. 131 L ed 2d 1123". "Supreme Court's views as to party standing to assert rights of third person (justitii) in challenge Constitutionality of legislation, 50 L ed 2d 902, "Group or class discrimination in selection of grand or petit jury as prohibited by federal Constitution - Supreme Court cases 33 L ed 2d 783". Standing of criminal defendant to Challenge, on const grounds; discriminatory composition of federal grand jury where defendant is not member of class allegedly excluded 68 ACR 175. "Use To peremptory Challenges to exclude Caucasian persons, as a racial group, from criminal jury - post Boston State cases 47 ACR 259. "When is Attorney's representation of criminal defendant so deficient as to constitute denial of federal Constitutional rights to effective Assistance of Counsel. 83 L ed 2d 1112". "Violation of Constitutional rights of defendant in criminal case by unfair practices in selection of grand or petit jury 52 L ed 1053". "Effect of, and remedies for, exclusion of eligible class or classes of persons from jury list in criminal case 52 ACR 919".

ATTACHMENT

Constitutional And Statutory Provisions Involved

1.

Petitioner claims that the list from which Fulton County jurors are selected, and summoned is produced in a manner that violates the Jury Composition Rule under OGA 15-12-40.1, 15-12-1.1, in Petitioner capital murder and approving of jury management protocols employed by Whitfield County, Georgia, which he has standing to challenge his person selection procedures on equal protection grounds and/or the testimony of witnesses sworn in a particular case, Thus it has been said and identified by the clerk as having been convicted of a felony and who have not had their civil rights restored, Among other things, the way in which the Clerk Council obtains ~~data~~ ~~about~~ convicted felons and mentally incompetent persons, and the adoption of a system for assigning a unique identifier for each entry on the master jury list, that were enacted during the May 2014 Term.. *Richs v State* 301 ga 171, *US v Sneed* 129 f.2d 1337..

Constitutional And Statutory Provisions Involved

2.

Failure of State Prosecutor to Disclose Exculpatory Ballistic Evidence As Violating Due Process 95 ALR 5th 611

Right of indigent defendant in state criminal case to assistance of ballistics experts 71 ALR 4th 638

Right of accused in state courts to have expert inspect, examine, or test physical evidence in possession of prosecution, 27 ALR 4th 1188, 34 ALR 3d 1256.

GA. Code Ann 16-11-106.5, Petitioner did not have the gun on him. The evidence was insufficient to demonstrate that the weapon was within arm reach during Commission of the felony, Petitioner did not have immediate access to the weapon. Which was required to sustain a conviction under 16-11-106.5, requires that the weapon be either Have on or within arm reach of the person charged with possessing a firearm during the commission of the felony. Such language conveys a legislature intent that ~~someone~~ charged under this code section has to be the person committing the felony have immediate access to the firearm 16-11-106.5, or have on person a firearm or knife during the commission of or the Attempt to commit a felony. In 1987, however, the statute was amended so as to clarify that such firearm or knife must be, Have on or within arm reach of the person.

Substantial Evidence In reviewing a Challenge for the sufficiency of the evidence. The Appellate court should view the evidence in the light most favorable to support the jury verdict and petitioner no longer enjoys a presumption of innocence. The Appellate court must look for the legislature intent. It must also give words their ordinary and literal court must look for the legislature intent. Moreover. The Appellate court must strictly construe this criminal statute against the state. From the Addition of words, it may be presumed that the legislature did not intend to effect a greater change than is clearly apparent either by express declaration or by necessary implication, Carswell v State 251 Ga 733.

ATTACHMENT

Constitutional And Statutory Provisions Involved

2.

Petitioner contends that the trial court failed to adequately instruct the jury on the offense of Aggravated Assault. He argues that the charge was incomplete as to Aggravated Assault because it did not define an essential element "Assault". In Addition petitioner asserts that the absence of this definition from the final charge allowed the jury to impermissibly substitute criminal negligence for the requisite intent. T. 1238 pg

OCCA 16-5-21 defines that Aggravated Assault is committed when a person "Assault" 1, with intent to murder, to rape, or to rob; 2, with a deadly weapon or with any object, device or instrument which, when used offensively, against a person, is likely to or actually does result in serious bodily injury. "Assault" is defined in occa 16-5-20a, A person commits the offense of simple assault when he or she either; 1, Attempts to commit a violent injury to the person of another; or 2 commits an act which places another in reasonable apprehension of immediately receiving a violent injury; Russ, 216 ga 747 Trial court erred by instructing the jury that it could infer intent to kill from the use of a deadly weapon.

In Petitioner case, the court instructed the jury that "A person commits the offense of Aggravated Assault when that person with a deadly weapon, The applicable pattern jury instruction defining Agg Ass. The court did not charge however the remaining portion of the pattern jury instruction, which would have provided the jury with the Statutory definition of "Assault" Appellant argues that the trial court thus failed to charge the jury on essential elements of the offense of Aggravated Assault. Coney; 290 ga app 364 Maynor v state 257 ga app 153. So how is it impossible to charge the jury with Mutual combat or self-defense when this Bar is known for Criminal Activity and When to say that the Bouncer didn't have an motive of Venetta from past criminal activity At this Bar,

Attachment

Constitutional And Statutory Provisions Included

3.

The key words of the Statute ARE: HE CAUSES, Annot 56 ACR^{3d} 239, 242 OCGA 16-5-1c

In considering the applicability of the felony-murder rule where the killing is committed by someone resisting the felony, numerous courts have adopted the view that for a petitioner to be held guilty of murder, it is necessary that the Act of killing be that of the petitioner and for the Act to be his it is necessary that it be committed by him or by someone acting in concert with him, so from that alone the courts should reverse said conviction cause the indictment was fatally defective as to that counts of indictment # 14-CR-720-B of counts 2 of 6 of felony murder and from that counsel was ineffective for failing to point that out and failure to demur to an said indictment when Counsel failure to demur to the counts, which did not allege a crime or petitioner committed a crime at all, amounted to prejudicial deficient performance because that count would have had to be dismissed and thus contributed to Ramirez conviction on this void count. "The Courts points out that the Sixth Amendment right of a defendant to be given sufficient notice as to the crime he been charged with means that the state must allege every essential element of the crime". The Court says that this may seem to some people like a fussy essential technicality but they would be wrong. The State's indictment omitted the essential elements of the crime it alleged and therefore failed to charge Ramirez with any crime at all. see Smith v Hardrick 266 GA 54; CASy, 249 GA 32. Pittman 302 GA App 531, Williams, 285 GA App 628, Pelt, 275 GA App 467, Youngblood, 253 GA App 327, Howell, 180 GA App 749, Ford, 262 GA 602, Hyman, 272 GA 496 Allows a finding of criminal liability where one intentionally causes some other person to commit the crime under such circumstances that the other person is not guilty of any crime either in fact or because of legal incapacity--

Constitutional and Statutory Provisions Involved
3.

Georgia's felony murder statute provides that "A person also commits the offense of murder when, in the commission of a felony, He Causes the death of another human being irrespective of malice o.c.g.a. 16-5-1 c." The key words of the statute are He causes. Although it is possible to construe these words so as to include those deaths in directly caused by one of the parties, this Court has held that a strict construction of the statute is necessary, requiring that the death "be caused directly by one of the alleged felony murder was a party to the underlying felony or as here, was innocent of any wrong doing. If this result be viewed as a defect in our felony murder statute the remedy lies with the legislature.

STATEMENT OF THE CASE

Constitutional And Statutory Provisions Involved

In Petitioner jury verdict form did not make it clear of determine Any elements of An crime being committed. Once it gave instructions on Intent that "A person will not be presumed to act with criminal intention. But you may find such intention or the Absence of it, upon A consideration of the words, conduct, Demeanor, Motive or other circumstances connected with the act for which the Accused is being prosecuted mutual Combat can be infer, But from that instruction alone will mislead And confuse the jury to make An quick verdict of guilty, CAUSE A jury may have seen some type of Justification or An legal error as to the murder cause the felony murderer and Aggravated Assault charges are based on the same conduct. The Additional jury instructions to the effect that the petitioner is presumed innocent and the state is required to prove every element of the offense beyond a reasonable doubt, when read in the context of the jury charge as a whole, violated the 14th amend due process requirement that the state-prove every element of A criminal offense beyond a reasonable doubt, when read in the Absence of provocation or Justification the petitioner loses his Presumption of Innocence And A reasonable juror may well have thought that the instruction related to different elements of the crime and were therefore not contradictory that he could presume Intent to kill but not the Absence of provocation or Justification, But even if A juror could have understood the "criminal intention" instruction as Applying to the element of Intent that instruction did no more than contradict the immediately preceding instruction, It is much more reasonable to interpret the term "criminal intention" as shorthand for Intention and Criminal negligence the traditional MENS REA requirement. In this view the final sentence informs the jury that whatever else A rebuttable presumption might establish it cannot by itself establish MENS REA OCGA 5-5-24 c Jury instruction, see T. 1237, pg Mullancy v Welsor 421 vs 701, Leary v US 395 vs 32, Jones v Campbell 436 f3d 1303.

REASONS FOR GRANTING THE PETITION

Petitioner seeks relief from this Gov't judgement due to his 14th Amend
const rights were violated when he has standing to Challenge his foreperson
selection procedures on equal protection grounds, SEE US v Sneed 729 Fed 1339
to Attack racial disparity in an grand jury selection of foreperson,

Also Trial courts erred when it omitted legislation from the indictment
when it failed to charge petitioner with any crime at all see HE CAUSES
in count 2 16.5-1c felony murder essential element Annot 56 ALR 2d 239, 242
Trial court failed to Adequately instruct the jury on the offence of
Aggravated Assault and failed to show sufficiency of evidence that an
Handgun was Have on or within arm reach, Trial court erred by violating T. 1237
petitioner statutory right when the state Shifted the Burden to the Petitioner
to prove beyond a reasonable doubt, in the charged of Intent, But failed
to Charge on request from Mutual Combat, charge #28 once there were no
mitigating factors that would reduce malice murder to Involuntary Manslaughter
when the court gave an improper sequential charge on Intent, the jury should
have been informed it didn't have to find Petitioner guilty of malice and felony
murder unless it had determined there were no mitigating factors, Mere Presence
and Mutual Combat should Have been considered... WHERE A Petitioner is convicted
of a crime and where a grand jury never charges the petitioner with an
essential element of that crime a constructive Amendment of the indictment
has occurred, and reversal is warranted. Also Ineffective Assistance of counsel's
failure to object to an in-court identification by prosecution central witnesses
as unreliable was not objectively REASONABLE, Dodd v State 236 qd 572

ATTACHMENT

Reason for Granting The PETITION

This Petitioner Aggrieved by An unlawful search and seizure may move the court -- to suppress as evidence anything so obtained on the grounds that the search and seizure without a warrant was illegal occa 17-5-30 and The Petitioner argue that his seizure was illegal because the police had No probable cause to initially detain and handcuff Without reading him An Miranda ; once requested for An lawyer one should have had opportunity to have one by his side for privilege against self-incrimination, the petitioner was entitled to the aid of counsel at the lineup police took at crime scene, such as the prior opportunity to observe the alleged Criminal Act, the existence of Any discrepancy between Any prelineup description and the Petitioner's actual description Any identification prior to lineup of Another person, the identification by picture of the petitioner prior to the lineup, failure to identify the Accused on A prior occasion, the lapse of time between the alleged Act and the lineup, description, and those facts which despite the absence of counsel, was a violation of his Sixth Amendment, *US v Wade 388 US 218 388 US 811*, *Hall v Kelo 892 F2d 1546* unconstitutional mandatory presumption on element of Intent not cured by contradicting instruction that coercion was A defense, that person will not be presumed to act with criminal intention, nor by proper instruction that state bore burden of proof as to every element of crime, which shifted to petitioner burden of proof on issue of Intent. General Instructions on the presumption of Innocence and the state's burden of proving every element of the charged offense beyond A reasonable doubt are usually insufficient to cure An error. T. 1231 *Caldwell v Bell 288 F3d 845*

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Orlando Ramirez

Date: 3-31-18