

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Rafael Kennedy — PETITIONER
(Your Name)

vs.

People of The State of IL et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

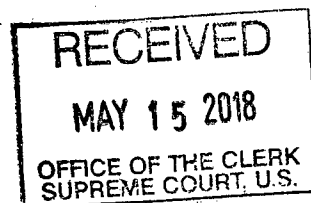
PETITION FOR WRIT OF CERTIORARI

Rafael Kennedy S-16679
(Your Name)

P.O. Box 99
(Address)

Pontiac, IL 61764
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

- (1.) When a reviewing court makes an opinion, on what it believes a jury could rationally conclude; is not that in itself depriving me my right for a trial with a jury that is fair and impartial?
- (2.) When a reviewing court makes an opinion that "there is some evidence that exists, that establishes the defendant committed a lesser offense" shouldn't that alone be the qualification for the lesser included offense instruction to have been warranted during Jury Instructions on the Trial Court Level?
- (3.) When a case involves the proof of intent and the evidence in that case also meets the foundation of a lesser offense without the need of proving intent, Is it fair to depend on one element which is needed to prove the greater offense and lesser offense to establish intent?

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☐ is unpublished.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☐ is unpublished.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 C 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 Fourth District of Illinois court appears at Appendix (A) to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

(1.)

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 1-18-2018.
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).

(2)

Constitutional and Statutory Provisions Involved

- The Seventh Amendment: The Right to a Jury Trial
720 ILCS 5/12-3.05 (e)(1) (West 2014)

- See [Appendix A] and [Appendix E] for Provisions
Cases Page

- People v. McDonald, 2016 IL (118882) Appendix E
and cases cited by People v. McDonald

- Kansas Fike Test

- Petition For Leave To Appeal (unpublished) 122896 N/A

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STATEMENT OF CASE

Recently the Supreme Court of Illinois addressed the issue of the standard review when reviewing a trial court's decision denying a Defendant's proposed lesser included offense instruction. See *People v. McDonald* 2016 IL 118882 77 N.E.3d 26, 412 Ill. Dec 858 7240590 WL. The way the standard is being utilized contradicts Law and deprives individuals their constitutional right to have a fair and impartial Jury Trial. There is several situations in law where courts have determined what it believes a rational Jury would conclude or would not conclude, and in most instances this is justified. The standard brought forth in (*McDonald*) invades the Province of Jury Trials, Evidence is to be weighed by the Jury and in cases where intent has to be proven, but can not be proven by direct evidence it is left up to the Jury to come to a certain conclusion, the McDonald Standard does not allow Laws and Defendant's Rights to be carried properly. This standard will forever contradict law, And I'm petitioning to this court to do something about it and consider my idea to fix this problem and for this court to establish a new standard of Review and name it after myself if that's not asking too much, let me further explain.

(4.)

STATEMENT OF CASE

I believe making it a mandatory rule that all Trial Courts must allow All Defendant's their proposed lesser included offense instructions if in fact adduced from the accumulation of evidence that the lesser offenses' elements and foundation are met; This approach will guarantee no contradictions of law and will provide all Defendants the full capacity of their right to have a Jury Trial in a way. Where there is any evidence that exists and could be relied on, the Jury should be able to determine what the State has proven beyond a reasonable doubt! But please consider things this way, if at the point of the conclusion of trial that the Judge or ~~Prosecution~~ feels as if Justice was not carried out for example; if the Jury decided that the Defendant is not guilty of the greater offense but guilty for the Lesser included offense a Petition to a higher court will warrant a review of things. It is not the Province of the court to weigh or reweigh evidence but it is proper for a court to determine whether such needed evidence exists. When a Jury Trial is the selected form of trial it is important to allow all Defendants to exercise that right to the fullest.

Reasons For Granting The Writ

If I'm not mistaken many other courts such as Kansas' Supreme Court approaches the issue of the warranting of a lesser included offense instruction much differently than The Supreme Court of Illinois. I've explained how Illinois' approach contradicts law, but if the U.S Supreme Court compares Illinois' approach with Kansas' approach it would be apparent that Kansas' approach should be adopted by Illinois. The Supreme Court of Kansas requires the trial court to examine the allegations of the charging document and the evidence which must be adduced at trial to prove the charged crime and the lesser included offense and where evidence exists that can be called into question the jury must be instructed on both charges and the decision is left up to the jury. Illinois' McDonald standard is being used to guide deliberations in other words it doesn't provide a fair trial. See [Appendix A] in its entirety it is uncontroverted that the victim was shot in the knee with a firearm, with me being charged with a First Degree Attempted Murder the Proof of Intent to Kill is needed [See Appendix A ^{page -16-} paragraph 68 and 69] Where the court determined that just because the victim was shot at that alone proves intent to kill, That same element is needed to establish the foundation of an Aggravated Battery with a Firearm, is it not? [See Appendix A page 15 paragraph 65 and 64.]

Reasons For Granting The Writ

First the court states to resolve the claim it must determine whether the trial court abused its discretion by determining that there was not "some evidence." Okay well in the very next sentence the court concluded that in fact there certainly was some evidence. This ~~is~~ has to be fixed because its back and forth. Besides that its important for a Greater offense and a Lesser included offense to have similar elements but its wrong to later use one of those similar elements to prove how the offenses differ. For instance in my case a firearm was used to cause bodily harm while being discharged which establishes a foundation for both Attempted Murder and Aggravated Battery with a Firearm. This mentioned above is another reason. Impraying this court considers, to grant this writ, Cases that come down to Intent should warrant special treatment because its not right to state evidence is not sufficient enough ~~only~~ the Jury should be able to make such determination. The unavailability of the third option "may encourage the jury to convict for an impermissible reason. For when the evidence establishes that I was guilty of a serious, violent offense but leaves some doubt as to an element a third option should be mandatory.

(7.)

Reasons For Granting The Writ

Lastly, I understand that this court does not establish procedural rules for states except when mandated by the Constitution. I've tried my best to explain how my Constitution Right for a Jury Trial not only that but a Fair Jury Trial has been deprived and not only my right but every Defendant in the whole State of Illinois that has ran into this situation in question. Arguably the Illinois Supreme Court Majority is not even applying their own law properly, since it holds that a Defendant is entitled to an instruction on his theory of the case if there is some foundation for instruction in the evidence and, if there is such evidence, it is an abuse of discretion where the Jury isn't instructed properly. The Illinois' Standard in question is not only contradicting but it will continue to cause confusion between Justices, so it is important that this issue is addressed on a National Level. And if that alone will not get the U.S Supreme Court to Grant The Writ please consider that my situation did in fact deserve the lesser included offense instruction, and Grant me Relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rafael Kennedy 516679

Date: May 6, 2018

(9.)