

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Carl J. Wagner — PETITIONER
(Your Name)

vs.

Tammy Ford / Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Carl J. Wagner 463060
(Your Name)

P.O. Box 679
(Address)

Whiteville, TN 38075
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Was the evidence insufficient to sustain the petitioner's/Appellant's convictions for First Degree Felony Murder and Especially Aggravated Robbery?
- 2) Did the State Court, Tennessee Supreme Court, and the United States Court of Appeals for the Sixth Circuit misapply the "Corpus Delicti" rule by the use of none factual allegations?

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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- APPENDIX D Decision from Carl J. Wagner v. State of Tennessee Supreme Court of Tennessee, at Nashville 2015 Tenn. Lexis 490 No. M2014-01086-SC-R11-PC
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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 E 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☒ is unpublished.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 E 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☐ is unpublished.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 ~~DC~~ 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☐ is unpublished.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 ^{CJW} ~~State of Tennessee Supreme~~ court appears at Appendix ~~DC~~ to the petition and is

☐ reported at _____; 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☐ is unpublished.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 21 Dec 2017.

☐ 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: March 7, 2018, and a copy of the order denying rehearing appears at Appendix F.

☐ 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 12 June 2015. A copy of that decision appears at Appendix D.

☐ 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

U.S. Const. Amend 5

U.S. Const. Amend 14

Tenn. Code Ann. 39-13-202(a)(2)

Tenn Code Ann. 39-13-401 (a)

Tenn Code Ann. 39-13-402 (a)

Tenn. Const. art. I, 8

28 U.S.C. 2254 (d)

28 U.S.C. 2254 (d)(2)

STATEMENT OF THE CASE

Statement of the Case

In 2009, a jury convicted Wagner of second-degree murder, first-degree felony murder committed during the perpetration of aggravated robbery and especially aggravated robbery. Wagner's first-degree murder and aggravated-robbery convictions were based on circumstantial evidence that showed that Wagner shot and killed Adriel Powell during a drug deal and then allegedly took Powell's backpack containing marijuana, that was never recovered as he left the scene. The trial court merged the second-degree murder conviction into the first-degree murder conviction and sentenced Wagner to a term of life imprisonment for first-degree murder and a concurrent 22-year term of imprisonment for especially aggravated robbery.

In his appeal in the Tennessee Court of Criminal Appeals, Wagner argued that the evidence was insufficient to support his convictions. The court of appeals held that under Tennessee's corpus

delicti rule, which specifies that a conviction cannot be founded solely on a defendant's confession and that corroborating evidence must be offered to support the confession, the evidence was insufficient for the jury to convict Wagner of first-degree felony murder and aggravated robbery because the only evidence that Powell possessed a backpack was Wagner's confession. See *State v. Wagner*, No. M2010-00992-CCA-R3-CD, 2011 WL 2893098, at *5 (Tenn. Crim. App. July 20, 2011); see also *State v. Smith*, 24 S.W.3d 274, 281 (Tenn. 2000). The court therefore reversed Wagner's first-degree murder and aggravated robbery convictions but affirmed Wagner's second-degree murder conviction. See *id.* at *6. The Tennessee Supreme Court, however, found that the prosecution presented evidence to corroborate Wagner's statements indicating that Powell had a backpack. The court therefore reinstated Wagner's

first-degree murder and aggravated-robbery convictions. *State v. Wagner*, 382 S.W.3d 289 (Tenn. 2012).

In September 2013, Wagner filed a petition for post-conviction relief in the trial court. The trial court denied the petitioner, the Tennessee Court of Criminal Appeals affirmed, and the Tennessee Supreme Court denied permission to appeal. See *Wagner v. State*, No. M2014-01086-CCA-R3-PC, 2015 WL 739608 (Tenn. Crim. App. Feb. 20, 2015).

In September 2015, Wagner filed a petition for a writ of habeas corpus under 2254 in the district court, raising sufficiency of the evidence, ineffective assistance of counsel, and Fifth Amendment claims. The district court denied Wagner's petition but granted him a certificate of appealability on his claim that the evidence was insufficient to convict him of first-degree felony murder and especially aggravated robbery. We denied Wagner's application

to expand the certification of appealability granted by the district court.

We review de novo a district court's judgment denying a petition for a writ of habeas corpus. See *Burton v. Renico*, 391 F.3d 764, 770 (6th Cir. 2004). To obtain relief under 2254, Wagner must demonstrate that the Tennessee Supreme Court's resolution of his sufficiency claim was contrary to or an unreasonable application of *Jackson v. Virginia*, 443 U.S. 307 (1979), or was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. 2254(d). In reviewing sufficiency of the evidence claims under the Antiterrorism and Effective Death penalty Act, we give the state court's judgment a double layer of deference. See *Brown v. Kenteb*, 567 F.3d 191, 204-05 (6th Cir. 2009). First, we must determine whether, viewing the evidence in the light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See *id.* at 203 (citing *Jackson*, 443 U.S. at 319). Second, even if we conclude that a rational trier of fact could not have found the petitioner guilty beyond a reasonable doubt, we must defer to the state court's sufficiency determination as long as it is not unreasonable. See *id.* (citing 28 U.S.C. 2254 (d)(2)). Wagner's sufficiency claim is based on the alleged absence of evidence proving that Powell had a backpack.

Tennessee's felony-murder statute requires the prosecution to prove beyond a reasonable doubt that the defendant killed another during the perpetration of a robbery. See *Wagner*, 382 S.W.3d at 289 (citing Tenn. Code Ann. 39-13-202 (a)(2)). "Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear." *Id.* at 297 (quoting Tenn. Code Ann. 39-13-401 (a)).

"Especially aggravated robbery" is a robbery with the use of a deadly weapon where the victim suffers serious bodily injury. *Id.* at 297 (citing Tenn. Code Ann. 39-13-403 (a)). Although Wagner claimed self-defense, he admitted that he shot Powell twice as Powell ran by him from the back of the laundry room where the drug deal was taking place after being shot twice at close range by the victim's partner. See *id.* at 299. Wagner also admitted that he did not know whether Powell had "a gun or what" in the alleged bag when he shot him. See *id.*

Accordingly, a rational juror could have concluded that Wagner did not shoot Powell in self-defense. Therefore, both of Wagner's convictions depended on whether the evidence was sufficient to conclude that Wagner robbed Powell by stealing his backpack.

Although the police did not recover a backpack and Wagner did not admit taking one, Wagner did tell the police that Powell had a backpack

but didn't know if the contents was a "gun or what". See id. at 294

Crime scene investigators found Powell's blood smeared on the railing outside of the laundry room along the same oneway path that Wagner, the victim's partner and everyone else who were there before the police arrived to secure the scene. See id. at 290, 298. Since the medical examiner's testimony indicated that Powell's injuries eliminated the possibility that he could have left the laundry room after being shot, see id. at 295, 298, the evidence suggested that Powell's blood was transferred from a fabric on to the railing as Wagner fled but none of Powell's blood was on ~~Mr.~~ Wagner or his clothing. See id. at 298. The court also cited Wagner's admission that he was led to the laundry room to buy marijuana. From Powell and his partner, evidence that no marijuana was found on Powell in the laundry room, and evidence that police found marijuana in Wagner's belongings shortly after the shooting, was insufficient proof to conclude

that Wagner took a alleged backpack with its unknown contents.

Subsequently the court concluded that the evidence was sufficient for the jury to find beyond a reasonable doubt that Wagner committed felony murder and especially aggravated robbery. See id at 298-300.

Although the case against Wagner was largely circumstantial, viewed in the light most favorable to the prosecution, the evidence was sufficient for the jury to find beyond a reasonable doubt that Wagner killed Powell in the course of robbing him of his backpack.

REASONS FOR GRANTING THE PETITION

Reasons for Granting the petition

The District Court failed to make a ruling using the updated Corpus Delicti Standard, and false allegations that the defendant's statement said that the bag contained weed. The one key part of independent corroboration from the petitioner's extra judicial statement was that the backpack contained drugs which was false. See Defendant's statement pg 51, Line 15, the petitioner stated plainly, "so I don't even know if he had a gun in that bag or what" also on pg 51, Line 20, "I don't know if he carried anything in there". The Tennessee Supreme Court overturned the Court of Appeals decision by using a non existent allegation of the defendant's statement that the bag contained drugs and that the drugs were in the defendant's possession to corroborate the entire statement, see 382 S.W.3d 298, 299, 300. All though

the petitioner was not asked directly did he take a bag. The petitioner was asked did he have physical contact with the victim which he stated on pg 46, Line 16, "I ain't touched nobody, like physically touching." Independent evidence that corroborates collateral circumstances surrounding the confession will not suffice to establish trustworthiness. See *State v. Bishop* 431 S.W.3d 22. The Tennessee Supreme Court has determined that the modified trustworthiness standard strikes the proper balance. It combines the traditional Corpus delicti rule's focus on avoiding prosecutions for non-existent crimes with the trustworthiness standard's focus on avoiding prosecutions based on false confessions to actual crimes. Under the modified trustworthiness standard, a defendant's extrajudicial confession is sufficient to support a conviction only if the State introduces "independent proof of facts and circumstances

which strengthen or bolster the confession and tend to generate a belief in its trustworthiness, plus independent proof of loss or injury.

"State v. Lucas, 152 A.2d at 60.26 when the crime is of a type that does not result in a tangible injury, "the corroborative evidence must implicate the accused in order to show that a crime has been committed.

"Smith v. United States, 348 U.S. at 154, United States v. Brown, 617 F.3d at 862-63. The due process clause and equal protection application of the U.S. const. amend 5, U.S. Const, Amend 14, and Tenn. Const. art. I, § 8 require that a new rule for the conduct of criminal prosecution is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final. See State v. Enochs 823 S.W.2d 539 (Tenn. 1991). The case State v. Bishop 431 S.W.3d 22 should be applied retroactively in the petitioner's case due to he was on direct review in federal court after State v.

Bishop 431 S.W.3d 22 was decided. The petitioner had to exhaust all remedies in the State Court before Federal appeal to have direct review of sufficiency of evidence claim.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Paul J. Wagner Jr.
Wagner Carl 463060

Date: 31 May 18