

18-6691

NO. _____

IN THE

~~ILLINOIS~~ SUPREME COURT OF THE UNITED STATES

DELILAH MCCURTIS-PETITIONER

VS.

GLEN AUSTIN - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DELILAH MCCURTIS

1096 1350TH STREET

P.O. BOX 1000

LINCOLN, ILLINOIS 62656

Supreme Court, U.S.
FILED

AUG 06 2013

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QUESTION(S) PRESENTED

- 1) WHERE PETITIONER WAS DENIED A FAIR TRIAL WHERE THE STATE INTRODUCED EACH OF THREE KEY STATE WITNESSES PRIOR INCONSISTENT STATEMENTS WHICH WERE UNNECESSARILY DUPLICATIVE OF EACH OTHER AMOUNTED TO INADMISSIBLE PRIOR CONSISTENT STATEMENTS?
- 2) WHERE PREJUDICIAL ERROR THE STATE TO CALL AS ITS FIRST WITNESS (VICTIM'S MOTHER)?
- 3) WHERE THE PETITIONER WAS DENIED A FAIR TRIAL BY INEFFECTIVE ASSISTANCE OF COUNSEL?
- 4) WHERE THE JURY QUESTION AS TO SECOND DEGREE MURDER INSTRUCTION?

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 CVASE 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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PEOPLE V. JOHNSON, 383 ILL.APP. 3D 585, 608 (1ST DIST. 2008)
PEOPLE V. ENOCH, 122 ILL.2D 176 (1988)
PEOPLE V. BLAIR, 215 ILL.2D 427 (2005)
PEOPLE V. EMERSON, 97 ILL.2D 487 (1983)

STATUTES AND RULES

725 ILCS 5/115-10.1
730 ILCS 5/5-4.5-2.0 (A)

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 A 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☒ is unpublished.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 C 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☒ is unpublished.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☐ is unpublished.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 _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MAY 18, 2018.

☒ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

SIXTH AMENDMENTS-

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY TRIAL AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICTS 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 COMPLUSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

FOURTEENTH AMENDMENTS-

TO THE UNITED STATES CONSTITUTION WHICH PROVIDES 'NOR SHALL ANY PERSON BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW. WITHOUT FUNDAMENTAL FAIRNESS SUCH AS A FAIR TRIAL, .OPPORTUNITY TO BE HEARD AND CONFRONT WITNESSES AGAINST YOU.

PREJUDICIAL ERROR THAT STATE TO CALL AS IT FIRST WITNESS (VICTIM'S MOTHER).

PETITIONER FEELS IT WAS BIAS TO CALL THE VICTIM MOTHER TO TESTIFY BECAUSE IT SHOW TO THE JURY ANGER, HATE AND PASSION WHEN THE VICTIM MOTHER CANNOT ATTEST TO THE PETITIONER INNOCENCE OR GUILT OR CHARACTER TO THE CRIME. SUBSEQUENTLY, THE FIRST WITNESS WAS IN THE COUTROOM DURING THE PETITIONER TESTIMONY ON THE STAND. DURING THE PETITIONER TESTIMONY THE STATE FIRST WITNESS (VICTIM'S MOTHER) YELLED OUT INFLAMMTORY COMMENTS SUCH AS "YOU MURDERED, LIAR, SO ON AND SO FORTH". JURORS WAS INSTRUCTED BY THE JUDGE TO DISREGARD THE OUTBURST BUT GIVEN THE WEIGHT THE STATE'S FIRST WITNESS ALLOWING HER TO BE THE FIRST WITNESS FOR THE STATE IN A CIRCUMSTANTIAL FIRST DEGREE MURDER CASE SHOULD ONLY BE DEEMED AS ERROR THAT WOULD SERIOUSLY INFLAME AND PREJUDICE THE MINDS OF THE JURY AGAINST THE PETITIONER.

DENIED A FAIR TRIAL BY INEFFECTIVE ASSISTANCE OF COUNSEL-

PETITIONER STATES NO WITNESS CALLED ON HER BEHALF, NO INVESTIGATION ON BEHALF OF THE PETITIONER, NO CHALLENGE TO POTENTIALLY PARTIAL AND PREJUICED JUROR DURING JURY SELECTION, NO CHALLENGE OR OBJECTION TO STATE'S FIRST INFLAMMATORY AND PREJUDICIAL WITNESS, NO INTRODUCTION OR ADMISSION OF KNIFE RECOVERED ON SCENE AS TO PROVIDE EXCULPATORY AND/OR MITIGATING FACTORS, IE, MUTAL COMBAT, SUDDEN PASSION, PROVOCATION, IN SUPPORT OF PETITIONER'S ARGUMENT OF SELF DEFENSE.

JURY QUESTION TO SECOND DEGREE MURDER INSTRUCTION--

PETITIONER STATES THE TRIAL COURT AND PETITIONER'S COUNSEL ERRED IN REGARDS TO A QUESTION PRESENTED BY THE JURY DURING DELIBERATION REGARDING SECOND DEGREE MURDER

INSTRUCTION THERE MITIGATING FACTOR. PETITIONER FEELS EVEN WHEN A JURY IS PROPERLY INSTRUCTED ITS THE TRIAL COURT DUTY TO POSED THE QUESTION BEFORE THE COURT.

WRITTEN DRAFT OF THE SPECIFIC RESPONSE-

PETITIONER CONTENDS THAT FAILURE OF DEFENSE COUNSEL IN GOOD FAITH AS AN ADVERSARY OF THE STATE FAILED TO PROVIDE THE COURT WITH WRITTEN DRAFT OF SPECIFIC RESPONSE THE DEFENSE WANTED THE TRIAL COURT TO GIVE THE JURY LEND ADDITIONAL SUPPORTS TO THE PETITIONER'S CLAIM THAT THERE WAS INEFFECTIVE COUNSEL OR REPRESENTATION OF COUNSEL DURING THE PROCEEDINGS.

COERCION AND FALSE STATEMENTS-

PETITIONER WAS DENIED A FAIR TRIAL WHERE THE STATE INTRODUCED EACH OF THREE KEY WITNESSES' PRIOR INCONSISTENT STATEMENTS WHICH WERE UNNECESSARILY DUPLICATIVE PRIOR CONSISTENT STATEMENTS.

STATEMENT OF THE CASE

PETITIONER, DELILAH MCCURTIS, WAS CHARGED WITH MURDER IN CONNECTION WITH THE STABBING DEATH OF LATOYA JONES. FOLLOWING A TRIAL, A JURY FOUND THE PETITIONER GUILTY OF MURDER. THE COURT SUBSEQUENTLY SENTENCED THE PETITIONER TO TWENTY-SEVEN YEARS IMPRISONMENT. MARY JONES TESTIFIED AT TRIAL THAT SHE WAS LATOYA JONES' MOTHER. MARY SAW LATOYA ON OCTOBER 15, 2005, AND LATOYA WAS FINE. THE NEXT TIME MARY SAW LATOYA WAS DEAD.

SHAKEMA TAYLOR TESTIFIED THAT ON OCTOBER 15, 2005, SHE WAS TWELVE-YEARS-OLD AND LIVED WITH HER COUSIN, LATOYA JONES, AT 4908 WEST QUINCY. ON THAT DAY, AROUND 12:30 A.M., SHE AND LATOYA WERE WALKING HOME FROM HELEN JONES', ANOTHER COUSIN HOUSE. THEY WERE WALKING DOWN JACKSON TOWARD LEAMINGTON AND WHEN THEY APPROACHED THE GAS STATION THEY STOPPED BECAUSE LATOYA HAD BEEN COMPLAINING ABOUT HER FEET. THEY THEN CONTINUED WALKING DOWN JACKSON. AT ONE POINT, SHAKEMA OBSERVED APPROXIMATELY SIX PEOPLE, FOUR WOMEN AND TWO MEN, AT A BUS STOP AND IT SOUNDED LIKE THEY WERE ARGUING BECAUSE THEY WERE SCREAMING AT EACH OTHER. AS SHAKEMA AND LATOYA GOT CLOSER, SHAKEMA OBSERVED THE PETITIONER LEAVE THE GROUP AND WALK DOWN JACKSON TOWARDS LEAMINGTON. THE PETITIONER WAS IN FRONT OF SHAMEKA AND LATOYA TALKING ON HER PHONE. SHAKEMA HEARD THE PETITIONER ASK FOR "PINKIE", AND THEN ASK, "WHERE EVEVYBODY AT" AS THE PETITIONER TURNED DOWN LEAMINGTON. SHAKEMA WAS THE PETITIONER WALK TOWARDS THEM. THE PETITIONER WAS WITH ONE AFRICAN AMERICA MAN AND TWO AFRICAN AMERICAN GIRLS, ONE WHO WAS LIGHT SKINNED AND HEAVY SET AND THE OTHER WHO WAS DARK, SHORT AND PREGNANT. THE TWO WOMEN AND ONE MAN HAD NOT BEEN WITH THE PETITIONER AT THE BUS STOP. THE PETITIONER APPROACHED SHAKEMA AND LATOYA. THE PETITIONER HAD A BRICK IN HER LEFT HAND AND THEN PICKED UP A GLASS BEER BOTTLE. THE OTHER GIRLS WHO HAD BEEN AT THE BUS STOP WERE NO LONGER THERE.

SHAKEMA TESTIFIED THAT THE PETITIONER APPROACHED HER STATED, "TALK THAT STUFF NOW." SHAKEMA RESPONDED, "WHAT ARE YOU TALKING ABOUT?" AND LATOYA TRIED TO TELL THE PETITIONER THAT SHE AND SHAKEMA WERE NOT THE GIRLS THE PETITIONER HAD BEEN ARGUING WITH AT THE BUS STOP. BEFORE SHAKEMA COULD GET ALL HER WORDS OUT, THE PETITIONER HIT SHAKEMA IN THE HEAD WITH A GLASS BOTTLE AND RAISED THE BRICK LIKE SHE WAS GOING TO HIT LATOYA. SHAKEMA RAN ACROSS THE STREET AND AS SHAKEMA RAN, THE PETITIONER THREW THE BOTTLE AT HER. WHEN SHAKEMA REACHED THE OTHER SIDE OF THE STREET, SHE LOOKED BACK AND SAW THE LIGHT SKINNED HEAVY SET GIRLS FIGHTING LATOYA.

SHAKEMA TESTIFIED THAT SHE RAN A LITTLE FARTHER, LOOKED BACK, AND SAW THE PETITIONER WAS BEHIND LATOYA AS LATOYA AND THE LIGHT SKINNED GIRL FOUGHT. THE PETITIONER RAISED HER HANDS IN THE AIR AND THEN CAME DOWN ON LATOYA BACK ACCORDING TO SHAKEMA. THE PETITIONER AND THE OTHER WERE WALKING QUICKLY AWAY FROM LATOYA AND LATOYA WAS STUMBLING AROUND. CHICAGO POLICE OFFICER JACKOWSKI TESTIFIED THAT HE WAS WORKING WITH HIS PARTNER, OFFICER BUNION, ON OCTOBER 15, 2005, JUST AFTER 12:30 A.M., WHEN HE RECEIVED A CALL ABOUT A PERSON STABBED AT JACKSON AND LEAMINGTON. JACKOSKI WAS THE FIRST OFFICER ON THE SCENE AND HE FOUND LATOYA LYING ON HER BACK WITH HER ARMS ABOVE HER HEAD

AND HER CLOTHES IN HER HANDS IN THE PARKWAY. LATOYA WAS STILL BREATHING WHEN JACKOSKI ARRIVED BUT DIED SHORTLY THEREAFTER WHILE STILL ON THE SCENE. AFTER SEVERAL EYEWITNESS AND INVESTIGATION THE PETITIONER WAS SUBSEQUENTLY CHARGED AND FOUND GUILTY OF FIRST DEGREE MURDER AND SENTENCED TO TWENTY-SEVEN YEARS IMPRISONMENT.

REASONS FOR GRANTING THE PETITION

THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT HAS DENIED THE PETITIONER. PETITIONER CONTENDS SHE HAS SEVERAL DEEMED MERIT BECAUSE OF THE RECANTING WITNESSES' ORAL STATEMENTS, HANDWRITTEN STATEMENTS AND TESTIMONY BEFORE THE GRAND JURY WERE PROPERLY ADMITTED AS PRIOR INCONSISTENT STATEMENT AND COERCION OF WITNESSES. THERE WAS INEFFECTIVENESS ASSISTANCE OF COUNSEL DENIED BY A FAIR TRIAL AND PREJUDICIAL ERROR THAT THE STATE CALL AS IT FIRST WITNESS (THE VICTIM'S MOTHER) WHO WAS NOT AT THE SCENE OF THE CRIME. JURY QUESTION TO SECOND DEGREE MURDER INSTRUCTION WAS ERRED. THE PETITIONER CONTENDS THAT SHE WAS PROTECTING HER LIFE (SELF-DEFENSE) SHOULD HAVE BEEN A FACTOR. SHE DID NOT PREMEDITATED THE MURDER (HAVING BEEN THOUGHT AT SOME POINT BEFORE BEING COMMITTED) WHICH THAT IS NOT THE CASE.

THE PETITIONER CONTENDS THAT HER TWENTY-SEVEN YEAR SENTENCE FOR THE MURDER OF LATOYA JONES WAS EXCESSIVE GIVEN HER AGE, LIMITED EDUCATIONAL BACKGROUND, LACK OF A CRIMINAL HISTORY, STRONG FAMILY TIES, HE RPOTENTIAL FOR REHABILITATION, AND THE TESTIMONY OF TWO WITNESSES WHO TESTIFIED TO HER GOOD CHARACTER.

THE PETITIONER PRAYS THAT THE SUPREME COURT GRANTS HER WRIT OF CERTIORARI.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED,

Debrah McEntis

DATE: 8 - 6 - 18