

ORIGINAL

24-7028

Supreme Court, U.S.
FILED

APR 09 2025

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JEFFREY BOWERS - PETITIONER

VS.

STATE OF ILLIONIS - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF ILLINOIS
(NAME OF COURT THAT LAST RULED ON MERITS OF THE CASE)

PETITION FOR WRIT OF CERTIORARI

JEFFREY BOWERS

PO BOX 1000

MENARD, ILLINOIS 62259

QUESTION(S) PRESENTED

1. Whether the suppression of identification was warranted on the grounds that the defendant did not receive a timely post arrest determination for probable cause, and the identification and statement made by Steve Lawrence were made outside the 48 hour window, pursuant to McLaughlin, 500 U.S.44, as guaranteed by the Fourth Amendment of the United States Constitution?
2. Whether the suppression of identification was warranted on the grounds where the defendant was exhibited to the witness at a post-preliminary hearing lineup conducted without notice to and in absence of the defendant's counsel, pursuant to Kirby, 92 S.Ct.1877; Wade 388 U.S. 218, as guaranteed by the Sixth Amendment of the United States Constitution?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

OPINIONS BELOW	Pg. 1
JURISDICTION	Pg. 2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	Pg. 3
STATEMENT OF CASE	Pg. 4
REASONS FOR GRANTING THE WRIT	Pg. 5-17
CONCLUSION	Pg. 18

INDEX TO APPENDICES

- APPENDIX A: DECISION OF THE APPELLATE COURT OF ILLINOIS
- APPENDIX B: DECISION OF THE CIRCUIT COURT OF COOK COUNTY
- APPENDIX C: DECISION OF THE SUPREME COURT OF ILLINOIS

TABLE OF AUTHORITIES CITED

1. Gerstein v. Pugh, 420 U.S. 103	Pg. 5
2. Riverside v. McLaughlin, 500 U.S. 44	Pg. 5
3. Kirby v. Illinois, 406 U.S. 682	Pg. 10
4. U.S. v. Wade, 388 U.S. 218	Pg. 14
5. United States v. Crews, 445 U.S. 463	Pg. 6,9
6. Chapman v. California, 386 U.S. 18	Pg. 7,12
7. Wong Sun v. United States, 371 U.S. 471	Pg. 14,15
8. Taylor v. Kentucky, 436 U.S. 478	Pg. 16

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 judgement below.

OPINIONS BELOW

{X} For cases from **state courts**:

The opinion of the highest state court to review the merits appear at Appendix C to the petition and is unpublished.

The opinion of the Appellate Court of Illinois appears at Appendix B to the petition and is reported at People V. Bowers, 2011 Ill. Unpub. LEXIS 1033 ; 405 ILL. App. 3d 1195; 997 N.E.2d 1007; 375 Ill. Dec. 696 ; 2011 WL 11019169.

JURISDICTION

{X} For cases from state court:

The date on which the highest state court decided my case was January 29, 2005. A copy of that decision appears at Appendix C.

The jurisdiction of this court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Fourth Amendment of the United States Constitution.
2. Sixth Amendment of the United States Constitution.
3. Fourteenth Amendment of the United States Constitution.

STATEMENT OF THE CASE

The defendant was arrested at 7 p.m. on June 25, 2001. On June 27, 2001, after 8p.m., Steve Lawrence identified the defendant in a photo array and gave a statement. After Lawrence's identification, ASA D. Kirk conferred with ASA O'Brien, and two charges of first-degree murder were approved. On June 29, 2001, the defendant made an initial appearance for a preliminary hearing, where a probable cause determination was made. On July 19, 2001, the defendant was identified in a lineup by Derrell Dennis. The defendant's lawyer was not present. Immediately after the lineup, Derrell Dennis and Det. Washburn testified before a grand jury, and the grand jury returned a true bill.

On March 3, 2007, the circuit denied the defendant's pretrial motion to suppress identification, ruling the defendant's right to counsel had not attached at the time of the lineup on July 19, 2001. At trial, Steve Lawrence testified that he was shot by the defendant. Additionally, Derrell Dennis testified that he saw the defendant shooting. On November 11, 2021, the circuit court dismissed the defendant's successive post-conviction petition, ruling, the defendant failed to meet the cause and prejudice test. On September 28, 2023, the appellate court affirmed. On January 29, 2025, the Supreme Court of Illinois denied the Petition for Leave to Appeal in the above cause.

REASONS FOR GRANTING THE PETITION

ARGUMENT 1

Whether the suppression of identification was warranted on the grounds that the defendant did not receive a timely post-arrest determination for probable cause, and the identification and statement made by Steve Lawrence were made outside the 48-hour window, pursuant to *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) as guaranteed by the Fourth

Amendment?

In Gerstein v. Pugh, 420 U.S. 103 (1975), held that the Fourth Amendment requires a prompt judicial determination of probable cause following a warrantless arrest. In County of Riverside v. McLaughlin, 500 U.S. at 56-57, (1991), the Court held that a detention of less than 48 hours is presumed constitutionally acceptable unless the detainee can show that his presentment before a judge was unreasonably delayed. If a suspect is detained more than 48 hours, on the other hand, the government has the burden of demonstrating the existence of a bonafide emergency or other extraordinary circumstance justifying the delay.

PROBABLE CAUSE DETERMINATION

In the present case, the defendant was arrested without a warrant, at 7pm , on June 25, 2001. At noon on June 29, 2001, the defendant was presented for a preliminary hearing where a determination for probable cause was made. Accordingly, 89 hours passed between the defendant's arrest and his initial appearance in court. Therefore, the defendant asserts, his detention violated the Fourth Amendment of the United States Constitution.

EVIDENCE OUTSIDE 48 -HOUR WINDOW

On June 27, 2001, at 1:15 pm, Michael Lawrence and Larry Williams identified the defendant in separate line-ups, and on the same day at 6 pm, Denise Lewis and Tony Wooden identified the defendant in separate line-ups and gave statements. The above witness testimony was circumstantial. (See Exhibit J pg13 of 1 lines 21-26; Exhibit K pg14 of 1 lines 12-21) On the same day, sometime after 8 pm, Steve Lawrence identified the defendant in a photo array as the person who shot him . (See exhibit L pg

UNRELIABLE IN-COURT IDENTIFICATION

This is not to say that the intervening photographic and line-up identifications – both are which conceded to be suppressible fruits of the Fourth Amendment violation – could not under some circumstances affect the reliability of the in-court identifications and render it inadmissible as well. United States v. Crews, 445 U.S 463.

In the present case, the Court's reasoning in Crews controls Steve Lawrence's in-court identification where (a) he testified to having crack cocaine and heroin in his system at the time of the offense (HHHH 22 line 12 – HHHH 23 line 2), (b) he identified a photograph of Anton Grant as (1) a person he didn't recognize, (2) as someone who was not at the scene of the offense at the time of the offense , (3) as being petitioner. (HHHH 38 line 4 – HHHH 39 line 4) Therefore, in all likelihood, this witness' in-court identification stemmed from the suggestive court room setting in which the defendant was obviously the accused. As a result, his in-court identification of the defendant was not reliable.

HARMLESS ERROR ANALYSIS

In deciding what is harmless error, the question for the Court is whether there is a reasonable probability that the evidence complained of might have contributed to the conviction. Chapman v. California, 386 U. S. 18.

In the present case, absent Steve Lawrence's testimony, the jury heard testimony from Denise Lewis, Tony Wooden, Derrell Dennis, and Michael Lawrence. A close inspection of the record shows that Michael Lawrence heard shots but never saw any shooting . Therefore, Michael Lawrence, Denise Lewis, and Tony Wooden were merely circumstantial witnesses, and Lewis and Wooden were thoroughly impeached with prior statements, and Derrell Dennis' testimony was inadmissible which will be argued later.

Therefore, the above testimony combined was not overwhelming where during deliberations, the jury sent two notes, deliberated six and a half hours and returned its verdict within ten minutes, only after being notified of sequester. (JJJJ 116 line 24 – 117 line 19; JJJJ 119 line 6 – JJJJ 121 line 17)

Therefore, in the present case, absent the constitutionally forbidden evidence,

honest fair-minded jurors might very well have brought back a not – guilty verdict. Under these circumstances, a reasonable probability existed that because Steve Lawrence was the only victim and witness that his testimony most definitely was harmful where it contributed to the defendant being convicted.

PREJUDICE AT PROBABLE CAUSE DETERMINATION

Steve Lawrence's identification and statement was prejudicial to the defendant at the probable cause determination where, (a) he was the only victim and eye witness to make a identification and statement, (b) where this evidence had a substantial impact on the determination for probable cause, (c) absent such evidence, a reasonable probability existed, the prosecution would not have had enough probable cause information for a determination, to hold the defendant over for further proceedings because the prior four identifications and statements from Lewis, Wooden, Williams, and Michael Lawrence (all inside 48 hour window) were circumstantial.

PREJUDICE AT TRIAL

Steve Lawrence's trial testimony was prejudicial against the defendant and unforeseeably had a substantial impact and injurious effect on influencing the jury's verdict where, (a) he was the only victim and eye witness to testify, (b) during closing arguments, the prosecution repeatedly referred to Lawrence's testimony . (JJJJ 39 lines 9-15 , JJJJ 40 lines 10-16, 21-JJJJ 41 lines 9, JJJJ 44 lines 8-23, JJJJ 53 lines 13-15,19,20, JJJJ 56 lines 24- JJJJ 57 line 1, JJJJ 87 lines 2-17)

SUPPRESSION OF EVIDENCE

Thus, a violation of McLaughlin's 48-hour rule cannot justify suppression unless the evidence at issue was at a minimum, discovered after the relevant period had passed . See United States v. Crews, 445 U.S. 463. (1980) (suppression analysis generally "begins with the premise that the challenged evidence is in some sense the product of illegal government activity ").

In the present case, Steve Lawrence 's photograph identification, statement, and in-court identification were improperly admitted at trial where the photo identification and

statement were obtained outside the 48 – hour window . Therefore, this evidence should have been suppressed. As a result, the defendant's Due Process right to a fair trial was violated, and his conviction should be reversed, and the case remanded for a new trial.

ARGUMENT 2

WHETHER THE SUPPRESSION OF IDENTIFICATION WAS WARRANTED ON GROUNDS WHERE THE DEFENDANT WAS EXHIBITED TO THE WITNESS AT A POST-PRELIMINARY HEARING LINE-UP CONDUCTED WITHOUT NOTICE TO AND IN ABSENCE OF THE DEFENDANT'S COUNSEL

The initiation of any adversary criminal proceeding (whether by way of formal charge ,preliminary hearing , indictment , information , or arraignment), is a prosecution at which the accused , as a matter of absolute right is entitled to counsel. Kirby V. Illinois 406 U.S. 682.

In the present case , the defendant was arrested without a warrant on June 25, 2001. On June 29 , 2001, the defendant was presented for a preliminary hearing. The defendant asserts , his Sixth Amendment right to counsel at all critical stages attached on June 29,2001.

UNCOUNSELED LINE-UP

In the present case , after preliminary hearing and appointment of public defender Frank Madea (SEE Exhibit T), on July 19,2001, the defendant was in custody at the Cook County Jail. The defendant was pulled out of Division 10 and walked to Division 1 where he was placed in a lineup , without notice to and in absence of his counsel. As a result, defendant was identified. (See Exhibit QQQ pg 8 lines 7-11). The defendant argues, this lineup violated his Sixth Amendment right to counsel at all critical stages.

GRAND JURY

On July 19,2001, immediately after identifying the defendant in a lineup, Derrell Dennis and Det. Washburn testified before a grand jury. (See Exhibit R pg 8 lines 24-pg 9 lines 1-14). After Det. Washburn's testimony , the grand jury returned a true bill. (See Exhibit S pg7 lines 14,15-pg8 line 5).

MOTION TO SUPPRESS IDENTIFICATION

On March 7, 2007, the circuit court denied the defendant's motion to suppress identification, where the court ruled the defendant's right to counsel had not attached at time of lineup on July 19, 2001. (See RRR 3). The defendant argues, the court's ruling was an abuse of discretion.

TRIAL

Derrell Dennis' trial testimony was identical to his grand jury testimony. (See GGGG 234-238; See Exhibit R).

HARMLESS ERROR ANALYSIS

In deciding what harmless error is, the question for the court is whether there is a reasonable probability that the evidence complained of might have contributed to the

conviction. Chapman V. California, 386 U.S. 18.

In the present case, the admission of Dennis' lineup identification, grand jury testimony, and in-court identification overwhelmingly contributed to the defendant's conviction in multiple respects. 1, Where the evidence was not overwhelming because no physical evidence connected the defendant to the offense. 2, Where Steve Lawrence's photo array identification, statement, and in-court identification should have been suppressed, see argument 1. 3, Where Denise Lewis, Tony Wooden, and Michael Lawrence's in-court identifications were not overwhelming because they were circumstantial witnesses. A close inspection of the record reveals Michael Lawrence never actually saw anybody shooting, and Lewis and Wooden were thoroughly impeached with prior statements.(HHHH 49 line 21-HHHH 50 line 8).

In addition, Derrell Dennis' testimony was not overwhelming where, a) during deliberations the jury sent two notes, b) in total the jury deliberated six and a half hours, and c) the jury returned its verdict within ten minutes, only after being notified of sequester. (See JJJJ 116 line 24 -117 line 19;JJJJ 119 line 6-121 line 17).

Under these circumstances, accepting the impact of the improperly admitted evidence, but for its admission, a reasonable probability existed, the outcome of the defendant's trial would have been different.

PREJUDICE AT GRAND JURY

Derrell Dennis' lineup identification was prejudicial where, 1) the results of the lineup was the link to his presence at the grand jury, 2) he was the only eyewitness to testify before the grand jury, 3) the prosecution's case depended entirely on Dennis' grand jury testimony, because without it there would have been no probable cause to indict ,4) as a result, the grand jury returning a true bill and the defendant being indicted "has been come at by exploitation" of the violation of the defendant's constitutional right to counsel at all critical stages. Wong Sun V. United States, 371 U.S. 471

PREJUDICE AT TRIAL

In the present case, Dennis' trial testimony had a substantial impact and injurious effect influencing the jury's verdict where, 1) defendant's counsel was helpless to subject the lineup to effective scrutiny at trial.(See GGGG 239 line 8-GGGG 254 line 10). 2) Defendant was deprived of his right to cross examination, which is a safeguard to his right to confront the witnesses against him. United States V. Wade, 388 U.S.218 3)

During closing arguments, the prosecution repeatedly referred to Dennis' testimony.(See JJJJ 38 line 17,18;JJJJ 39 line 4-9,JJJJ 43 line 24-JJJJ 44 line 7,JJJJ 53 lines 17-20,JJJJ 91 line 3,4, JJJJ 92 line 17,18). 4) The admission of Dennis' testimony violated the defendant's Due Process right to a fair trial.

SUPPRESSION OF EVIDENCE

The proper test to be applied in these situations is that quoted in Wong Sun V. United States, 371 U.S. 471. "Whether granting establishment of primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint."

The first *Wade* factor is the eyewitness' prior opportunity to observe the alleged criminal act. In the present case, although Dennis testified that he had time to observe the offense, it was 1 am and he had been drinking(See GGGG 241 lines 6-GGGG 242 line 9) he ducked in the bushes, (GGGG 249 line 3-8),only had a profile view of the offense(GGGG 244 line 13-GGGG 246 line 12), and this viewing was made under extremely stressful circumstances where multiple guns were going off simultaneously(GGGG 246 line 16-GGGG 249 line 4), which caused him to be nervous

and scared(GGGG 249 line 1-6). This factor clearly weighs against the prosecution.

There is no evidence in the record regarding *Wade* factors 2-5. Therefore, these factors disfavor the prosecution, and weighs heavily in the defendant's favor.

Finally, the sixth *Wade* factor is the length of time between the crime and the identification-- weighs against concluding that Dennis had an independently reliable basis for making the identification. The offense occurred on June 23,2001. Dennis did not view a lineup until July 19,2001. This three-week time span between the offense and identification, when combined with the lack of evidence surrounding the other *Wade* factors compels the conclusion that all of them are on the defendant's side of the scale, and none of them are on the government's.

Accordingly, all evidence derived from the uncounseled lineup, grand jury testimony, and in-court identification should have been suppressed. Therefore, the defendant's conviction should be reversed, and the case remanded for a new trial.

AGGREGATED ERRORS

Trial errors which in isolation are harmless might, when aggregated, alter the course of a trial so as to violate a petitioner's right to Due Process of law. Taylor V.

Kentucky, 436 U.S. 478, 487 n.15, 98 S.Ct. 1930,56

In the present case, considering the aggregated effect of the two principal errors, 1) the improper admission of Steve Lawrence's photograph identification, statement, and in-court identification; 2) the improper admission of Derrell Dennis' lineup identification, grand jury testimony, and in-court identification; given the impact of the testimony of these two witnesses, absent this evidence, it is evident that the evidence against the defendant was not overwhelming where evidence heard by the jury from Denise Lewis, Tony Wooden, and Michael Lawrence were circumstantial, the jury sent two notes, and deliberated six and a half hours, and returned a verdict within ten minutes only after being notified of sequester, shows how Lawrence and Dennis' testimony had an impact on the defendant's trial.

Therefore, it should be concluded that, under the facts of the case at hand, the aggregated effect of the errors were prejudicial, and deprived the defendant of a fair trial.

Accordingly, the defendant's conviction should be reversed and remanded for a new trial.

The importance of the present case on a national level is 1) in the interest of justice for McLaughlin violations, notwithstanding an involuntary statement. 2) That the right to counsel at all critical stages is a fundamental right in this country and to its citizens. The

interest of justice demands a deterrence benefit for such violations. It is in this interest, that no social cost could ever be more substantial or outweigh this principle.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jeffrey Bowers

APPENDIX A