

NO. 15-5004

IN THE

UNITED STATES SUPREME COURT

LAWRENCE JACOBS, JR.

Petitioner

versus

LOUISIANA

Respondent

**ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA**

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Petitioner is asking this Court to consider, on the ambiguous facts herein, whether the Eighth Amendment prohibits consecutive life sentences without the benefit of parole to a juvenile offender whose convictions for two homicides could be affirmed under the theory of principles which do not require the prosecution to prove he personally killed or intended to kill.

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STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Petitioner, Lawrence Jacobs, Jr., was indicted for first degree murder. He was convicted and sentenced to death. Finding a violation of Witherspoon v. Illinois, 391 U.S. 510 (1968) and progeny, the Louisiana Supreme Court reversed. State v. Jacobs, 99-1659 (La. 6-29-01), 789 So.2d 1280. He was reindicted for first degree murder, but the charge was reduced to second degree murder in compliance with Roper v. Simmons, 543 U.S. 551 (2005). He was then convicted of two counts of second degree murder and, on each count, sentenced to the mandatory life sentence without benefit of parole, probation or suspension of sentence. The sentences were imposed consecutively. Petitioner's convictions were vacated on appeal. State v. Jacobs, 07-887

(La.App. 5th Cir. 5-12-09), 13 So.3d 677. However, the state's writs were granted by the Louisiana Supreme Court which reversed and reinstated the convictions and sentences. State v. Jacobs, 09-1304 (La. 4-5-10), 32 So.3d 227 (per curiam) reh'g granted in part, 09-1304 (La. 6-18-10), 37 So.3d 994 (per curiam). Upon remand, the appellate court reviewed the remaining assignments of error and affirmed the convictions and sentences. State v. Jacobs, 07-887 (La. App. 5th Cir. 5-24-11), 67 So.3d 535, writ denied 11-1753 (La. 2-10-12), 80 So.3d 468, cert. denied Jacobs v. Louisiana, 133 S.Ct. 139 (2012). State post-conviction relief, which included a claim for relief pursuant to Miller v. Alabama, 567 U.S. ___, 132 S.Ct. 2455 (2012), was denied. State v. Jacobs, 14-1622 (La. 4-17-15), 165 So.3d 69 and Jacobs v. Cain, 2015 WL 2079941, 14-1605 (La. 4-17-15), ___ So.3d ___.

Petitioner has filed an application for federal habeas corpus relief, Jacobs v. Cain, 15-1334 (E.D. of La.), which is stayed pending disposition of this petition for certiorari.

B. STATEMENT OF THE FACTS

On Halloween morning, 1996, petitioner, along with Roy Bridgewater, both juveniles, forcibly and while armed, entered the home of 45 year- old Nelson Beaugh. His 71 year- old mother, Della, was also present in Nelson's family home. During the course of this home invasion, Nelson was shot in the right cheek; this bullet exited at the back of his neck. He was also shot at close range above his left ear by a bullet that lodged in his brain. A third shot entered his left shoulder. His terrified elderly mother was shot behind her right ear resulting in an exit wound in her left cheek. Petitioner and Bridgewater, after helping themselves to Nelson's

property, stole Nelson's van to make their escape. The van was later located in New Orleans.

Investigators lifted two of petitioner's fingerprints from the van. Some of the stolen property was found at the residence of Bridgewater's girlfriend. State v. Bridgewater, 00-1529 (La. 1-15-02), 823 So.2d 877, 886, 887 (on original hearing). Both petitioner and Bridgewater gave inculpatory statements, but each blamed the other for the murders.

ARGUMENT

I.

Petitioner's application should be denied because the facts do not support the basis for his legal claim. He contends that although he was a principal to second degree murder under Louisiana law¹, he was not a shooter. This allegation has not been established nor can it be assumed.

Petitioner said he was armed with a broken gun and that Bridgewater was the actual killer. Jacobs, 67 So.3d at 552. When Bridgewater sought relief from this Court, his attorney represented that the ballistics evidence "... supported Mr. Bridgewater's statement that co-defendant Jacobs was armed with a .38 caliber revolver and shot both victims." (Petition For

¹ La.R.S. 14:30.1 (A)(2) states that second degree murder includes the killing of a human being when the offender is engaged in the perpetration of, inter alia, aggravated burglary or armed robbery even though he has no intent to kill or inflict great bodily harm.

La.R.S. 14:24 defines principals as:

All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals.

Certiorari, p. 9; Bridgewater v. Louisiana, 02-7809, 537 U.S. 1227 (2003)).

When petitioner's conviction was upheld, the Louisiana Appellate court noted ". . . even if defendant did not have a firearm, he could have still been found to be a principal to the aggravated burglary." Jacobs, 67 So.3d at 552, n. 10 (emphasis added). The court made no finding that petitioner, contrary to his contention herein, did not kill or intend to kill. This case bears out Justice Breyer's observation in his concurring opinion (joined by Justice Sotomayor) that in the context of felony- murder, the question of intent is a complicated one. Miller, 132 S.Ct. at 2476.

Accordingly, because the evidence does not show that petitioner did not kill or intend to kill, this case does not present the necessary facts upon which this Court could squarely consider the legal claim petitioner seeks to present herein. In a manner of speaking, petitioner does not have standing to raise the issue.

In Bridgewater's appeal, on original hearing, the Louisiana Supreme Court found that the state failed to exclude a reasonable hypothesis of Bridgewater's innocence; namely, that Jacobs was the sole shooter and that Bridgewater was merely present. The court noted the state's two possible scenarios for finding Bridgewater guilty of first degree murder: (1) Bridgewater and Jacobs both were shooters; or (2) Jacobs was the sole shooter and Bridgewater was a principal. The Court noted the state's concession in its opening statement that "we may never know who fired these shots." Bridgewater, 823 So.2d at 889, 890. Bridgewater's conviction was reduced and the death sentence vacated. Justice Victory dissented, noting that Bridgewater ". . . was present with Lawrence Jacobs in the bedroom with the victims when they were shot." *Id.*, at 905.

On rehearing, the Louisiana Supreme Court granted the state's application and reinstated the first degree murder conviction and death sentence as to Bridgewater. In doing so, the court observed that Bridgewater was charged "for having acted in concert with Lawrence Jacobs. As such, the State had to demonstrate that defendant had the requisite specific intent, not merely that he knew of Jacob's intentions, in the event the jury concluded that Jacobs alone shot the victims." *Id.*, at 910. The opinion, although naturally focusing on Bridgewater's culpability, notes Bridgewater's attempts to place the blame for the two murders on Jacobs. While petitioner would, of course, look askance at that evidence, this Court should note the Louisiana Supreme Court's observation that the ballistic evidence showed that "two different types of bullets were fired into the victims." *Id.*, at 912. The inference, of course, is that there were two guns and, therefore, two gunman. This undercuts petitioner's premise that he was not a shooter. Also, petitioner candidly acknowledges that the state appellate court found the evidence as to the identity of the shooter or shooters was "not conclusive." (Petition, p. 7)

Respondent presents the above not for this Court to conclude that either petitioner was or was not a gunman, or to show that there were two gunman, but rather to show that what petitioner would have this Court accept as fact to support his legal claim - that he was not a gunman and did not kill or intend to kill - is not supported by the record. Thus, his claim to have this Court offer sentencing relief to a juvenile who did not kill or intend to kill does not have a factual basis. Should this Court choose to consider the issue petitioner presents, respondent respectfully submits that this is not the case. Lacking an established factual basis, petitioner presents no more than speculation as a foundation upon which to rest his claim.

II.

Petitioner seeks sentencing relief for juvenile offenders who meet certain criteria.

Petitioner, however, does not meet the criteria. The question presented, on this record, does not meet the requirements of this Court's Rule 10. Thus, this Court's sound practice of denying petitions for certiorari when the facts do not firmly establish that the petitioner has standing to raise the question presented. Vasquez v. United States, 454 U.S. 975, n. 3 (1981) (opinion of Stevens, J., respecting the denial of the petition for writ of certiorari). Nor does it meet the "principal purpose for which we use our certiorari jurisdiction . . . to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." Braxton v. United States, 500 U.S. 344, 347 (1991). Similarly, this Court does not grant certiorari to review evidence and discuss specific facts. United States v. Johnston, 268 U.S. 220 (1925); See Scalia, J., dissenting in Kyles v. Whitley, 514 U.S. 419, 457 (1995) because the Court granted certiorari to consider whether the lower courts were correct as to what the facts showed where the answer was far from clear.

The record does not establish that petitioner did not kill nor that he did not intend to kill. His application, therefore, does not present an appropriate vehicle for this Court to consider the claim he presents. Respondent, therefore, respectfully submits that the record does not support petitioner's contention that ". . . this case presents a clean vehicle to address the substantive question." (Petition, p. 9). His application for certiorari should be denied.

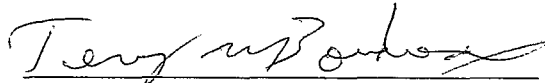
III.

Respondent also submits that this petition should be denied because this Court has granted certiorari in Montgomery v. Louisiana, No. 14-280, to consider whether Miller v. Alabama should be applied retroactively. The state district court denied the relief the petitioner requests because “The Louisiana Supreme Court has ruled that Miller does not apply retroactively in state cases on collateral review.” (See petitioner’s Appendix A, p. 4a). In the event this Court determines that Miller applies retroactively, petitioner presumably would seek to be resentenced in accordance with Montgomery.

CONCLUSION

Respondent respectfully submits that petitioner’s application for certiorari should be denied.

Respectfully Submitted,



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