

No. 15-5004

**IN THE
SUPREME COURT OF THE UNITED STATES**

***LAWRENCE JACOBS JR.*, PETITIONER,**

v.

***STATE OF LOUISIANA*, RESPONDENT.**

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

1. The State's Opposition Brief Does Not Contest That The First Question Presented Involves An Important Unresolved Issue, Squarely Before This Court.

The State's *Opposition Brief* (BIO) does not contest that that the first question presented – *Does the Eighth Amendment prohibit sentencing a child to life without the possibility of parole?* – involves an important unresolved issue, squarely before this Court. Nor does the BIO suggest that petitioner falls outside the class of defendants subject to QP I, or that the issue is moot, or that it is procedurally barred.

Indeed, the BIO does not contest that this Court in *Miller v. Alabama* left open the question whether “the Eighth Amendment requires a categorical bar on life without parole for juveniles.” 132 S. Ct. 2455, 2469 (2012). The BIO does not argue or even address the evolution of the standards of decency, demonstrated in

the evidence marshalled in the petition, that nine states have recently amended their laws prohibiting the imposition of a life sentence without the possibility of parole on a juvenile offender since 2012. *See* Pet. at 11-12.

Though the BIO argues, at 7, that “in the event this Court determines that *Miller* applies retroactively, petitioner presumably would seek to be resentenced in accordance with *Montgomery*,” Petitioner suggested that this Court grant certiorari on the question presented, and address the straightforward claim whether the Eighth Amendment prohibits the imposition of a life sentence without the possibility of parole. By reference, Petitioner incorporates the factual and legal argument raised in the *Amicus Brief of the Charles Houston Institute for Race and Justice* filed on behalf of neither party in *Montgomery v. Louisiana*, (14-280), which asserts that “[a] more straightforward way to resolve the case would be to answer the question this Court has explicitly left open: whether ‘the Eighth Amendment requires a categorical bar on life without parole for juveniles.’” *Id.* at 2.

2. The State's Opposition Brief Acknowledges That The Second Question Presented Involves An Important Issue That This Court May Well Want To Consider

With regard to the second question presented – *Does the Eighth Amendment prohibit sentencing a child to life without the possibility of parole for a homicide offense which does not require the prosecution to prove that the child personally killed or intended to kill?* – the BIO does not assert that this is an unimportant or an inappropriate issue to consider. The BIO argues that Petitioner’s case is not the appropriate vehicle to address the question because the evidence below did not *foreclose* or *rule out* the possibility of Petitioner’s involvement in the homicide; the

BIO argues that this Court should grant certiorari in another case rather than this one. *See* BIO at 5 (“Should this Court choose to consider the issue petitioner presents, respondent respectfully submits that this is not the case”).

The BIO acknowledges that Petitioner was prosecuted “under the theory of principles [sic] which [did] not require the prosecution to prove he personally killed or intended to kill” and that the evidence of culpability was based upon “ambiguous facts.” The state Court of Appeal found that Lawrence Jacobs was convicted as a principal, not as the actual shooter:

Because defendant knowingly participated in the execution of the crime, i.e. aggravated burglary, during which two people were killed, we find that he is a principal to the resulting crime, i.e. second degree murder, even if he did not fire the fatal shots.

State v. Jacobs, 67 So. 3d 535, 554 (La.App. 5 Cir. 2011).

Although he was prosecuted and convicted as a principal, the BIO argues that petitioner is outside the class of defendants who would be entitled to the relief warranted under QP 2 because petitioner has failed to prove that he did not kill or intend to kill the victims in this case. Putting aside the question of the burden of proof,¹ no evidence introduced at petitioner's trial indicated that he killed or intended to kill the victims. The State's BIO predicates this rendition of culpability upon the Louisiana Supreme Court's decision in Mr. Jacobs' co-defendant's case.

¹ A recent opinion from the Michigan Court of Appeals holds that the "Sixth Amendment mandates that juveniles convicted of homicide who face the possibility of life without the possibility of parole have a right to have their sentence determined by a jury." *State v. Skinner*, 2015 Mich. App. LEXIS 1631 (Mich. Ct. App. Aug. 20, 2015). Petitioner need not cast his net that wide, in seeking a holding that where the state prosecuted a juvenile for second degree or felony murder, it must establish specific intent to kill beyond a reasonable doubt before the imposition of a life sentence without the possibility of parole is constitutional.

See *State's BIO* at 2-3 (citing facts based upon "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."). Indeed, part of the BIO's argument is based upon the allegations of the lawyer for petitioner's co-defendant. See also *id* at 3-4 ("When Bridgewater sought relief from this Court, his attorney represented that the ballistics evidence" ... supported Mr. Bridgewater's statement that codefendant Jacobs was armed with a .38 caliber revolver and shot both victims." *Petition for Certiorari*, p. 9; *Bridgewater v. Louisiana*, 02-7809, 537 U.S. 1227 (2003))). Notably, neither the untrustworthy statements of Bridgewater (which were not admitted at Mr. Jacobs' trial), nor the statements of Bridgewater's attorney in filing a petition with this Court, nor even the opinion of the Louisiana Supreme Court in the severed case of Roy Bridgewater constitute evidence presented against petitioner.

Putting aside these disputes concerning the factual allegations in the *State's BIO*,² it is uncontested that petitioner fits squarely within the class of juveniles sentenced to life imprisonment without the possibility of parole where the state did not establish specific intent to kill or cause great bodily harm.⁴ This is the class of

² Whatever the legal propriety of relying on assertions from other proceedings to establish the culpability of petitioner, in this case, the assertions are factually inaccurate. While the State's BIO cites to the *Bridgewater* decision for the claim that "two different two different types of bullets were fired into the victims" (State's BIO at 5), in Petitioner's trial, the ballistic evidence squarely indicated that it was impossible to tell whether more than one gun was fired. R. 4294. The coroner's testimony also indicated that it was impossible to tell whether more than one shooter was involved. R. 4230-31.

⁴ Ultimately, the State's BIO asserts that it prosecuted petitioner for second degree murder "in compliance with *Roper v. Simmons*, 543 U.S. 551 (2005). State's BIO at 1. But

individuals adumbrated in Petitioner's question presented, and in the substance of the petition.

3. The State's Opposition Brief Wrongly Argues That This Court Should Deny Certiorari Because Montgomery Is Pending

The BIO asserts that this Court should deny certiorari because the Court has already granted certiorari in *Montgomery v. Louisiana*, No. 14-280. The opposite is true. Mr. Jacobs' conviction became final on October 1, 2012. *See Jacobs v. Louisiana* 133 S.Ct. 139 (2012). This was ninety-five days *after* this Court issued an opinion in *Miller v. Alabama*, 132 S. Ct. 2455 (2012). As a result, at that time Mr. Jacobs' conviction became final, his sentence to two consecutive mandatory life sentences was illegal. To the extent the court decides not to reach the issue of QP I, whether a life sentence imposed upon a juvenile always violates the Eighth Amendment, or QP II, whether a life sentence imposed upon a juvenile convicted as a principal to second degree murder violates the Eighth Amendment, the proper course is for this Court to grant certiorari, vacate the judgment and remand the case for consideration in light of *Miller v. Alabama*. *See, e.g., Mauricio v. California*, 133 S. Ct. 524 (2012) ("Petition for writ of certiorari to the Court of

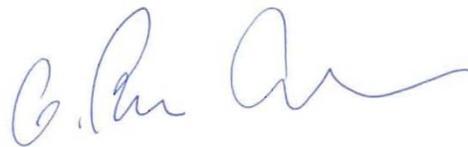
nothing in *Roper* prevented the state from prosecuting petitioner for first degree murder under La. R.S. 14:30 without seeking capital punishment; nor was the State prevented from prosecuting petitioner under La. R.S. 14:30.1 (A) (1) (when the offender has a specific intent to kill or to inflict great bodily harm). Having chosen to include pursue a claim of culpability under La. R.S. 14:30.1(A)(2) (felony murder) and La. R.S. 14:24 (principals), the State cannot complain that petitioner is not within the class of offenders described in QP II. Whether the State could consent to a grant of a new trial, and then pursue a prosecution under a theory of La. R.S. 14:30 (A) (1), is beyond the ken of this petition; but were that to occur, the state would then bear the burden to prove the elements alleged beyond a reasonable doubt.

Appeal of California, Second Appellate District. Motion of petitioner for leave to proceed in forma pauperis and petition for writ of certiorari granted. Judgment vacated, and case remanded to the Court of Appeal of California, Second Appellate District, for further consideration in light of *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455, 133 L. Ed. 2d 407 (2012).”); *Blackwell v. California*, 133 S. Ct. 837 (2013) (same); *Wilson v. Texas*, 133 S. Ct. 108 (2012) (same); *Bear Cloud v. Wyoming*, 133 S. Ct. 183 (2012) (same); *Whiteside v. Arkansas*, 133 S. Ct. 65 (U.S. 2012) (same); *Guillen v. California*, 133 S. Ct. 69 (2012) (same).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully Submitted,



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Dated: August 24, 2015

CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 24th day of August, 2015, pursuant to Supreme Court Rules 29.3 and 29.4, the accompanying Reply in Support of a Writ of *Certiorari* was served on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing these documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

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