

U.S. Supreme Court Backs Federal Appeals Court's Declaration Lawrence Owens' Murder Conviction Is "Nonsense"

The U.S. Seventh Circuit Court of Appeals [has overturned](#) Lawrence Owens murder conviction in Cook County, Illinois on the basis the judge's reason for finding him guilty in 2000 after a bench trial is "nonsense", because it was based on evidence the judge made up out of thin air.

After dark on the evening of September 22, 1999, 17-year-old Ramon Nelson was riding his bike away from a liquor store in Markham, Illinois when he was struck on the head by a wooden stick that could have been a baseball bat. Markham is in Cook County about 20 miles south of Chicago. There was some light from street lamps and nearby buildings.

After hitting Nelson the assailant fled. Nelson was unconscious when he was transported to a hospital. Without regaining consciousness he died the next day as the result of his fractured skull.

In Nelson's coat pockets police found 40 small plastic bags of crack cocaine. The cocaine appeared packaged for individual sale.

Police obtained statements from two persons who claimed to have seen the murder. Maurice Johnnie and William Evans identified Owens from a photo array of six men, and then from a five-man line-up after Owens' arrest. Owens was the only person in both the photo array and the line-up.

When interrogated by the police Owens insisted he did not assault Nelson.

The police investigation discovered no evidence tying Owens to the murder other than the eyewitness evidence, which was relied on to charge him with first-degree murder.

Owens' waived his right to a jury trial. During his bench trial on November 8, 2000 there were significant discrepancies between the testimony of Johnnie and Evans. Evans testified there were two assailants while Johnnie said there was only one, and Evans testified Nelson spoke with his assailants before the assault, while Johnnie testified he didn't. Also, during Evans' testimony he twice pointed to someone else in the photo array as the assailant -- even though Owens was sitting in the courtroom



Lawrence Owens (Ill. DOC)

at the defense table. Evans testified during cross-examination that he had a prior drug conviction for which he was on probation, and he was in custody on another drug charge. He admitted he agreed to testify in exchange for the State recommending probation on his pending drug charge, and continuation of probation on his previous drug conviction.

The prosecution presented no physical or forensic evidence tying Owens to the crime, and no evidence that Owens was involved with drugs or knew Nelson.

Owens' lawyer did not present any evidence in his defense, instead relying on his closing argument the prosecution introduced insufficient evidence to prove Owens guilty beyond a reasonable doubt.

Judge Joseph M. Macellaio found the 27-year-old Owens guilty of first-degree murder, and sentenced him to 25 years in prison.

Owens conviction was affirmed on direct appeal. In 2003 he filed a state post-conviction petition that raised a number of issues he asserted warranted a new trial. His petition included an Affidavit in which [Owens asserted](#) "he was actually innocent of Nelson's murder and that he repeatedly informed his attorney, Frank Rago of that fact. According to Owens, he told Rago that he had an alibi for the night Nelson was murdered and that he had two witnesses who could corroborate that alibi. ... But, Owens says, Rago failed to investigate or interview his alibi witnesses and "forb[ade] [Owens] to testify [sic] in [his] own defense." Owens' petition included affidavits from the two alibi witnesses detailing he was with them at the home of one of the witnesses the evening of the murder.

While his state petition was still pending, Owens filed a federal habeas corpus petition in December 2008. The State moved to dismiss Owens' federal petition based on his failure to exhaust his state court remedies. Owens countered that through no fault of his own his state petition had been languishing undecided for five years. Owens' federal petition was not dismissed and the State was ordered to answer it, although no action was taken to make a ruling on it until the state proceedings had been concluded.

In 2010 the trial court denied Owens' petition, the Illinois Court of Appeal affirmed that ruling, and in September 2011 the Illinois Supreme Court refused to hear his appeal.

The way was cleared for consideration of Owens' federal petition. An evidentiary hearing was held in March 2013 during which Owens' alibi witness and other persons testified. Owens' petition was denied on February 11, 2014 by U.S. District Court Judge Thomas M. Durkin.

The U.S. Seventh Circuit Court of Appeals allowed Owens to appeal Judge Durkin's the on the [single issue of whether](#) "the state trial judge who convicted him based his decision on evidence that did not exist, thus denying him due process of law in violation of the Fourteenth Amendment."

On March 23, 2015 a three-judge panel of the U.S. Seventh Circuit Court of Appeals reversed Judge Durkin's ruling and granted Owens' petition. In *Lawrence Owens v Stephen Duncan*, No 14-1419 (7th cir. 3-23-2015), the opinion authored by Circuit Judge Richard A. Posner [stated in part](#):

"Owens was the only person in the lineup who also was in the photo array, thereby diminishing the probative value of the second identification. ... There were [] discrepancies between the two witnesses' testimony.

No evidence was presented that Owens had known Nelson, used or sold illegal drugs, or had any gang affiliation.

For at the end of the parties' closing arguments the judge said: "I think all of the witnesses skirted the real issue. The issue to me was you have a seventeen year old youth on a bike who is a drug dealer [Nelson], who Larry Owens knew he was a drug dealer. Larry Owens wanted to knock him off. I think the State's evidence has proved that fact. Finding of guilty of murder."

That was all the judge said in explanation of his verdict, and it was nonsense. No evidence had been presented that Owens knew that Nelson was a drug dealer or that he wanted to kill him ... or even knew him—a kid on a bike.

... he [the judge] thought that Owens' knowledge that Nelson was a drug dealer was the fact that dispelled reasonable doubt of Owens' guilt.

... But there was no factual basis of any

Owens cont. on p. 7

Lakesha Lanika Artis Acquitted By Virginia Court of Appeals Of Involuntary Manslaughter In Death Of Her Daughter

The Virginia Court of Appeals on June 2, 2015 [acquitted](#) Lakesha Lanika Artis of involuntary manslaughter in the death of her two-year-old daughter Destiney Riddick in 2011. Destiney died from complications related to her accidental ingestion of an unknown quantity of a prescription drug. Although Artis, and her stepmother and her stepmother's boyfriend were convicted of charges and sentenced to prison related to Destiney's death, none of the medical personal who failed to



babysat Destiney. Bullock noticed the Mentos candy container in his bedroom in which he stored his Suboxone was empty. Suboxone is a prescription drug commonly used to treat opiate addictions.

Bullock and Kimberly asked E.A. – another

properly treat her after she was rushed to the hospital were charged with any crime.

On the afternoon of July 16, 2011 Artis' stepmother Kimberly Denise Artis and her stepmother's boyfriend Steven Wade Bullock

toddler under their care – and Destiney who “ate the candy.” E.A. pointed to Destiney. After Destiney could not be made to vomit, poison control was called. Bullock and Kimberly were instructed to immediately take Destiney to the hospital. Artis was called at work and she rushed to the hospital.

Destiney arrived at the hospital at 6:14 p.m., and during the next hour her vitals were checked four times, with her oxygen level was as low as 92% and her respiratory rate dropped from 22 breaths per minute to a low of 13. Her low levels were subnormal for a child, that is expected to have 20 to 30 breaths per minute, and a blood oxygen level between 95 and 100%. Destiney's vitals were last checked at 7:15 p.m.

Lakesha cont. on page 8

Owens cont. from p. 6

sort, in the trial record or elsewhere, for the judge's finding that Owens knew Nelson, let alone knew or cared that he was a drug dealer. The judge made it up.

...
Nonetheless, to repeat, we can assume that if the evidence of Owens' guilt had been overwhelming, the judge's conjecture that Owens knew Nelson and knew him to be a drug dealer and that Owens was ... himself involved in the drug trade ... could be disregarded as goofy but harmless. But evidence of Owens' guilt was not overwhelming.

Given that the entire case pivoted on two shaky eyewitness identifications, Owens might well have been acquitted had the judge not mistakenly believed that Owens had known Nelson to be a drug dealer and killed him because of it.

The Supreme Court has made clear ... that a judge or a jury may not convict a person on the basis of a belief that has no evidentiary basis whatsoever. Just imagine that the judge in our case had said “I know there's no evidence of guilt, but I also know that prosecutors in the City of Markham never prosecute an innocent person.”

And so we reverse the judgment denying Owens relief and give the state 120 days in which to decide whether to retry him. If it does not decide within that period to retry him, he must be released from prison.

[Click here to read](#) *Lawrence Owens v Stephen Duncan*, No 14-1419 (7th cir. 3-23-2015). The Illinois Attorney General's Of-

fice represents Stephen Duncan, who is the Respondent-Appellee because he is the warden of Lawrence Correctional Center where Owens is imprisoned.

On March 26 the State filed a Motion to Stay Issuance of Mandate pending final disposition of a petition for a writ of *certiorari* to the United States Supreme Court that the State said it intended to file. On March 30 Judge Posner denied the motion, indicating that he thinks the State's writ will be a futile exercise.

On October 1, 2015 the Supreme Court [granted the State's petition](#) for a writ of *certiorari*. The petition was accepted to resolve the “Issue:

Whether the Seventh Circuit violated 28 U.S.C. § 2254 and a long line of this Court's decisions by awarding habeas relief in the absence of clearly established precedent from this Court.”

On January 12, 2016 the Supreme Court held its oral argument. Several justices expressed skepticism about the State's position, and the following exchange occurred between Justice Kagen and the State of Illinois lawyer:

Justice Kagen: But once you say, as I think you said, and I think you properly said, Look, if what the — the judge's various comments on motive was basically taking him over the line, was that that was the basis for the verdict of guilty, that he didn't think that all the evidence, the other evidence was enough and that that was crucial to his finding, then, if I understand you right, [you would say that's a due process vio-](#)

[lution because at that point the verdict of guilty is based on evidence that was never presented.](#)

Ms. Shapiro: If the — if the judge found that the elements had not been proven beyond a reasonable doubt.

Justice Kagen: [Well, the judge is just saying it's not — you know, this is not enough, and it's necessary for me to think about motive as the missing piece.](#) (*Duncan v. Owens*, No. 14-1516 (USSC, 1-12-2016) (Oral arguments, transcript)

The Court issued a unanimous 9-0 *per curiam* opinion eight days later, on January 20, 2016. The one-sentence ruling stated: “The writ of certiorari is dismissed as improvidently granted.” On February 23, 2016 the judgment was issued allowing the Seventh Circuit's ruling to stand.

With the granting of Owens' habeas petition and the reversal of his convictions, the State of Illinois will have to decide whether to dismiss the charges against Owens or attempt to retry him without credible evidence of his guilt.

Source:

[Lawrence Owens v Stephen Duncan](#), No 14-1419 (7th cir. 3-23-2015) (granting state prisoner's federal habeas and ordering new trial)

[Appeals court judge overturns “nonsense” murder conviction.](#) By Tina Sfondeles (Staff writer), *Chicago Sun-Times*, March 24, 2015

[Lawrence Owens v. Marc Hodge](#), No. 08 C 7159 (USDC ND IL, Eastern Div.) (2-11-14, Memorandum Opinion and Order denying federal habeas petition)

[Duncan v. Owens](#), No. 14-1516 (U.S.S.C.) (Docket page)

[Duncan v. Owens](#), 577 U.S. ____ (2016) (“The writ of certiorari is dismissed as improvidently granted.”)

