

No. 18-7641

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED

AUG 15 2018

OFFICE OF THE CLERK

Arturo Huerta — PETITIONER
(Your Name)

vs.

Ron Davis — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Arturo Huerta
(Your Name)

1 Main St
(Address)

SAN Quentin, Ca 94964
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(1) Whether The Natural And Probable Consequence To Convict For Second Degree Murder Fall Within The Jackson V. Virginia "Insufficient Evidence Rule" When its only Stated In Jury Instruction That Confuse The Jury Violating 14th Amend.

(a) The Jackson Standard must Be Applied With Reference To The Substantive Elements, of The Criminal Offense As "Defined" By State Law;

(b) The Natural or Probable Consequence of 2nd Degree Murder Would Violate Principle of Johnson v. U.S. "As, malice is Implied" When The Killing of Another Person is Proximately Caused By An Act, The Natural And Probable Consequences of Which Are Dangerous To Life.

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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 case 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:

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 _____ 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 is unpublished.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 _____ to the petition and is

reported at Huerta v. Davis 2017 U.S. Dist. LEX 133431; 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 is unpublished.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 is unpublished.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 _____.

[] 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_____.
2

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_____.
2

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(1) Constitutional provision under the 14th Amend. As the facts prove to allow a conviction on the natural and probable consequence of an act, violate Johnson v. U.S. Principle and deprive petitioner of Due Process and the state statutory law under Penal Code Sec. 187 do not contain as an element for convicting under second degree murder by natural and probable consequence of any felony that may cause death-like victim rolling in broken glass that cause exsanguination, is not within the statutory provision-

(3)

STATEMENT OF THE CASE

(1) Petitioner Got into Argument with CRACK COCAINE SMOKING LADY FRIEND, BECAUSE I WOULD NOT PROVIDE MONEY FOR HER COCAINE HABIT; SHE BROKE WINE BOTTLE BY THROWING IT AND HITTING PETITIONER AND WHEN PETITIONER GRABBED HER TO STOP, SHE SAID NO, AND BOTH FELL IN THE GLASS ON THE FLOOR, AND SHE LAYED THERE AND I THOUGHT SHE WAS JUST OUT AND TO PREVENT HER FROM CAUSING MORE TROUBLE, PETITIONER TIED HER HANDS, AND TO PREVENT LOOKING AT A CRACK SMOKING FRIEND, I PUT A CLOTH OVER HER FACE; BUT DR. SHAKER OPINED VICTIM DIED FROM EXSANGUINATION DUE TO SHARP INJURIES.

(A) PETITIONER SOUGHT STATE REVIEW FOR INSUFFICIENT EVIDENCE AND STATE COURT DECISION WAS AN UNREASONABLE DETERMINATION OF FACTS, AND HABEAS WRIT WAS SOUGHT IN FEDERAL COURT TO WHICH FEDERAL COURT MAGISTRATE FILED REPORT TO DENY RELIEF; (SEE APPENDIX

STATEMENT OF THE CASE

(A) Petitioner was charged with First Degree Murder; The Substitute Pathologist DR Adel Shaker, Testified That He Believed The Victim's Cause of Death to be EXSANGUINATION Due to Sharp Injuries.

(1) Petitioner TESTIFIED in His own Defense, The Two Had Struggled and Rolled in The BROKEN GLASS, and During The Struggle The Victim Got up, and RAN into A WALL, and Fell.

(2) THERE WAS NO INJURIES TO ANY ARTERIES, or ANY Vital organs. (4 Reporters Transcript (RT) 448-449), - victim had Injuries to Her FACE. They were consistent with FALLING ON BROKEN GLASS, Rolling on it (4RT458), - (A) The INJURIES Could HAVE BEEN ACCIDENTAL. (4RT459) In fact, DEATH FROM EXSANGUINATION Due to Sharp Force Injuries CAN BE ACCIDENTAL. (4RT459)

(b) DR. shaker also REVIEWED The TOXICOLOGY Report GENERATED From Coy's Post Mortem BLOOD SAMPLE. The Report WAS "POSITIVE For COCAETHYLICNE"

STATEMENT OF THE CASE

A mixture of COCAINE AND ETHANOL. (4RT 443, 449)
THE AMOUNT OF COCAETHYLENE IN THE VICTIM'S SYSTEM
WAS TOXIC. (4RT 460)

COCAINE AFFECTS AN INDIVIDUAL'S ABILITY TO
MAKE DECISIONS. IT CAN MAKE A PERSON AGGRESSIVE
AND GIVE A PERSON INCREASED STRENGTH. (4RT 443-444)
(3) THE REPORT PREPARED BY DR. WALLIS, THE PATHOLOGIST
WHO PERFORMED THE AUTOPSY, INDICATED THE SHARP
INJURIES HAD MINIMAL HEMORRHAGING. (4RT
442)

(A) THERE WERE NO INJURIES PENETRATING LIKE A
STAB WOUND. (4RT 448)

THE TYING OF VICTIM'S HANDS WERE, IN DR. SHAKER'S
OPINION, IRRELEVANT TO THE CAUSE OF DEATH. NOR
COULD DR. SHAKER TELL WHETHER THE SCARF HAD ANY
THING TO DO WITH THE CAUSE OF DEATH.

(B) IT REMAINED THE OPINION THAT THE VICTIM DIED FROM
EXSANGUINATION EVEN IF THE TIME FRAME WAS 15 TO 20
MINUTES BETWEEN THE TIME THE FIRST CUT OCCURRED
AND VICTIM WAS FOUND WITHOUT VITAL SIGNS. (4RT 499)

DR. SHAKER OPINED THAT THE COCAETHYLENE COULD BE
A CONTRIBUTING CAUSE OF THE DEATH. (4RT 485)

FROM THE POINT OF VIEW OF MEDICAL CERTAINTY, DR.
SHAKER COULD NOT TELL WHETHER THE COCAETHYLENE
WAS MORE COMPELLING THAN THE SHARP FORCE INJURIES,
OR VICE VERSA, IN VICTIM'S DEATH. (4RT 488)

(C) APPLICABLE LAW AND ANALYSIS
ON A DUE PROCESS CHALLENGE TO THE SUFFICIENCY

STATEMENT OF THE CASE

OF THE EVIDENCE, MEANS A STATE COURT CONVICTION THAT IS NOT SUPPORTED BY SUFFICIENT EVIDENCE VIOLATES THE DU^E PROCESS CLAUSE OF THE 14TH AMEND. AND IS INVALID.

(JACKSON V. VIRGINIA, 443 U.S. 307, AT PP. 313-324)

(4) MURDER IS THE UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT (PENAL CODE SEC. 187(A))

MURDER INCLUDES BOTH ACTUS REUS AND MENS REA ELEMENTS; TO SATISFY THE MENS REA ELEMENT OF MURDER, THE DEFENDANT MUST PERSONALLY ACT WITH MALICE AFORETHOUGHT. TO SATISFY THE "ACTUS REUS ELEMENT" OF MURDER" THE CAUSE OF THE HARM NOT ONLY MUST BE DIRECT, BUT ALSO NOT SO REMOTE AS TO FAIL TO CONSTITUTE THE "NATURAL AND PROBABLE OF THE DEFENDANT'S ACT.

(A) IN IN RE WINSHIP 397 U.S. 358, THE FIRST CASE IN WHICH THIS HONORABLE COURT DIRECTLY ADDRESSED THE "CONSTITUTIONAL FOUNDATION OF THE REQUIREMENT THAT CRIMINAL GUILT BE ESTABLISHED BEYOND A REASONABLE DOUBT.

IN MULLANEY V. WILBUR 421 U.S. 684, WHICH STRUCK DOWN, AS VIOLATIVE OF DU^E PROCESS, THE REQUIREMENT THAT THE DEFENDANT BEAR THE BURDEN OF PROVING LACK OF MALICE; ID. AT 704

MULLANEY AROSE IN THE CONTEXT OF A MAIN STATUTE PROVIDING THAT WHOEVER UNLAWFULLY KILLS A HUMAN BEING WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED, IS GUILTY OF MURDER;

THIS COURT "HELD" THAT IT WAS CONTRARY TO OUR WINSHIP DECISION TO REQUIRE A DEFENDANT

STATEMENT OF THE CASE

ON AN ELEMENT OF MURDER THAT CREATE A PRESUMPTION THAT RELIEVES THE STATE OF ITS BURDEN, AND CONVICTION IS ON INSUFFICIENT EVIDENCE

This Brings Out The Importance of The Question That Every DEFENDANT CONVICTED UNDER An UNCONSTITUTIONAL BURDEN SHIFTING INSTRUCTION SEEK RELIEF, WHETHER THE NATURAL AND PROBABLE CONSEQUENCE TO CONVICT FOR SECOND DEGREE MURDER FAIL WITHIN THE JACKSON v. VIRGINIA INSUFFICIENT EVIDENCE RULE.

(c) WHEN THE UNCONSTITUTIONAL BURDEN SHIFTING OCCUR, IT FINDS A DEFENDANT GUILTY ON INSUFFICIENT EVIDENCE AS SEEN IN FRANKLIN WHO OFFERED SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE TO SHOW LACK OF INTENT, "A PERSON OF SOUND MIND IS PRESUMED TO INTEND THE NATURAL AND PROBABLE CONSEQUENCES OF HIS ACTS;

EVEN THOUGH CALIF. DON'T GIVE A MANDATORY PRESUMPTION, IT ALLOWS FOR A MANDATORY PRESUMPTION "INTEND THE NATURAL AND PROBABLE CONSEQUENCES OF HIS ACTS, AND AS SEEN IN PETITIONER'S CASE" CONVICTION WAS ON INSUFFICIENT EVIDENCE IN VIOLATION OF JACKSON PRINCIPLES WHO SHOT HIS WIFE TWICE AT CLOSE PREDICTABLY FATAL RANGE; SEE PEOPLE v. CARRILLO 104 CAL. APP. 586 "PRESUMED TO INTEND";

(d) THE JACKSON STANDARD WAS NOT APPLIED BY THE FEDERAL DISTRICT COURT WITH REFERENCE TO THE SUBSTANTIVE ELEMENTS

STATEMENTS OF THE CASE

OF THE CRIMINAL OFFENSE;

The Federal magistrate clearly seen from the facts in the record "Statement of Facts" magistrate's finding & recommendations (Appendix "Statement of Facts") Appellant testified in his own defense, and stated that he did not intend to kill the victim, the two had struggled and rolled in broken glass;

(5) The natural or probable consequence of 2nd degree murder would violate principle of Johnson v. U.S.

as "malice is implied" when the killing of another person is proximately caused by an act, the natural and probable consequences of which are dangerous to life;

(A) No hypothetical assumption of potential risk, could be seen from struggle in glass, as the victim had

an enlarged heart, meaning she had high blood pressure;

This could have made the cocaine dose fatal. (4

PT 462) The principle of Mullaney v. Wilbur 421 U.S. 687

"malice aforethought, was to be implied, and in petitioner's case it cause conviction on insufficient evidence

that calls upon this honorable court to solve the

conflict as Franklin v. Francis 720 F. 2d 1206 July

was persuaded that defendant had to produce more than some evidence that he did not intend to kill; the burden shifted impermissibly on an element

essential for malice murder conviction

- Francis v. Franklin 471 U.S. 307 "Instruction on intent violates 14th Amend.'s requirement to prove every element, beyond a reasonable doubt.

STATEMENT OF THE CASE

In order to convict a defendant on 2nd deg. murder the prosecution must prove not only the defendant committed the fatal act, but that he did so with malice aforethought. PENAL CODE SEC. 187, 189, AND SEC. 188 defines "Implied malice" as when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

(b) The burden of persuasion is impermissibly and allowed conviction on insufficient evidence, as rolling in broken glass is not a foreseeable death, as held in Thompson v. Louisville 362 U.S. 199, as even the jurors (Appendix F) asked for degrees of murder, and could have convicted petitioner on voluntary manslaughter. In People v. Garcia 162 Cal. App. 4th 18 defendant struck the victim in the face with the butt of the shotgun, the victim fell, fractured his skull on the sidewalk and died - convicted of voluntary manslaughter.

People v. Butler 187 Cal. App. 4th 998 Dr. Chapman testified victim died from a combination of blunt force head injuries, restraint, asphyxiation and acute cocaine toxicity; convicted of involuntary manslaughter. People v. Dillingen 163 Cal. App. 3d 284 victim died from blunt force trauma, or by cocaine poisoning.

People v. Bryant 222 Cal. App. 4th 1196 involuntary manslaughter.

This Honorable Court can see the fundamental miscarriage of justice, see Statler v. Garcia 78 Fed. Appx 22 "hit victim on forehead with a skillet"; defendant did not have the necessary "mens rea", for implied malice murder;

REASONS FOR GRANTING THE PETITION

(1) Per Principle of Francis J. Franklin 471 U.S. 307 Instruction on Intent, "Violated The 14th Amend. As mandatory presumption shifted to the defendant a burden of persuasion on the intent element of the offense; a person of sound mind and discretion is presumed to intend the natural and probable consequences of his act;

In Calif. The Jury instruction "That has the natural consequences of the act, carries the same burden shifted impermissible as Franklin, that allows a to convict on insufficient evidence, and the legal constitutional question is important to every person convicted under natural and probable consequence, and these words carry precisely the same message of the language condemned in Sandstrom v. Montana 442 U.S. 510, the law presumes that a person intends the ordinary consequences of his voluntary acts, violated the requirements of due process; and as in Mullaney v. Wilbur 421 U.S. 684 malice aforethought is an essential element of murder, unless the defendant proved by a fair preponderance of the evidence that he acted in the heat of passion or sudden provocation.

(A) The conflict is evident Calif. Convict on insufficient evidence with the natural and probable consequence, and this court can grant relief from insufficient evidence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Arturo Huerta

Date: 8 14 18