

18-8372
No. _____

Supreme Court, U.S.
FILED

JUN 08 2018

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IN THE
SUPREME COURT OF THE UNITED STATES

Dominique Green — PETITIONER
(Your Name)

vs.

Fourth Court of Appeals of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Criminal Appeals of Texas
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Dominique Monta Green
(Your Name)

12071 FM 3522
(Address)

Abilene, Texas 79601
(City, State, Zip Code)

(Phone Number)

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ORIGINAL

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:

1) Appellant

Dominique Green
#2080510
French Robertson Unit
12071 Rm 3522
Abilene, Tx 79601

2) Trial Judge 226th District Court

Honorable Judge Sid Harle
300 Dolores
San Antonio, Tx 78205

3) Trial Counsel

Richard Langlois
217 Arden Grove
San Antonio, Tx 78215

4) Appellant Counsel

Debra L. Parker
111 Soledad Suite 300
San Antonio, Tx 78205

5) District Attorney, Pro tem

For Bexar County
Steven Todd (Trial)
Gloff Barr (Trial and Appeal)
Office of the Texas Attorney
General
P.O. Box 12549
Austin, Tx 78711

6) Court of Appeals for the
Fourth Court of Appeals
District of Texas

Codena-Reeves Justice Center
300 Dolores Rm # 3200
San Antonio, Tx 78205-3037

7) Court of Criminal Appeals of Texas

P.O. Box 12308 Capitol Station
Austin, Tx 78711

QUESTION(S) PRESENTED

QUESTION # 1

Did the Court of Appeals err when it determined that there was legally insufficient evidence to establish an informal marriage between Appellant and Castillo using the wrong standard of review in applying the trial courts ruling involving "mixed questions of law and fact."

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Stengel v. State 2017 Tex. App. LEXIS 2070	7,8,
Jasper v. State 61 S.W.3d 413 Tex. App. 2001	7,8,
Tompkins v. State 774 S.W.2d 195 Tex. Crim. App. 1987	7,9,

STATUTES AND RULES

Tex. R. Evid. 504 (a)(b)	7,
Tex. Fam. Code 2.401 (a)(1)(2)	7,9,10

OTHER

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 _____; 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 B 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 4th Court of Appeals of Texas court appears at Appendix A 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 _____.
The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was January 24, 2018.
A copy of that decision appears at Appendix B.

[X] A timely petition for rehearing was thereafter denied on the following date: February 28, 2018, and a copy of the order denying rehearing appears at Appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

As Appellant's ultimate resolution of "mixed questions of law and fact" pertaining to whether an Informal Marriage took place pursuant to the elements set forth in Texas Family Code 2.401 did not turn on an evaluation of credibility and demeanor. The Court of Appeals should have reviewed the trials court's decision "de novo."

STATEMENT OF THE CASE

Appellant was indicted for the Capital Murder of Reynaldo Guerrero Jr. committed during the course of "attempting to commit and committing robbery, kidnapping, obstruction or retaliation." TEX. PENAL CODE ANN § 19.03 (a)(2) (West Supp. 2016).

On July 12, 2016, the trial court held a hearing on Appellant's motion, asserting that a witness for the state, Barbara Castillo was his wife in an informal marriage in order to invoke a Spousal Privilege concerning communications between them pursuant to TEX.R. Evid. 504. During the hearing on Appellant's motion, Appellant presented the testimony of Barbara Castillo who stated, that Appellant is her husband and that Appellant and Castillo had an agreement to be married, live together pursuant to that agreement, and held out each other to the public representing each other as husband and wife. Castillo also testified that she told others and a friend that her and Appellant believed that they were married and that Appellant held himself out as her spouse. Castillo also stated that her and Appellant planned a ceremonial marriage in the future. Castillo stated that she wanted to invoke the Spousal Privilege and not testify for the state. Appellant also presented the oral interview with Detective Branham in which Appellant refers to Castillo as his wife Barbie, along with the testimony of Octavia Mitchell, Classification Sergeant at the Bexar County Sheriff's Office, who testified that Appellant listed Castillo

as his spouse.

The trial court found the first two elements of the Tex. Fam. Code 2.401, required for an informal marriage, but questioned whether Appellant and Castillo represented their marriage to others. The trial court then found the evidence insufficient to prove an informal marriage between Appellant and Castillo because there was no "outside holding out" evidence.

Trial began in this matter on July 18, 2016. Accomplice witness Michael Ramos, testified that he contacted the deceased Reynaldo Guerrero Jr. about getting drugs for Appellant. Guerrero arrived at 371 Dorie Street where Ramos meets him. They enter the house and is greeted by someone name Jason. Guerrero pulled out a bag of marijuana. Ramos testifies that someone believed by Ramos to be Appellant jumps out with a gun and orders Guerrero to freeze. Barbara Castillo testified that Appellant entered her bedroom with Ramos with a bag of weed, a cell-phone and wallet. Detective Buddy Branham testified that Reynaldo Guerrero Jr. was found deceased in his vehicle bound with several zip ties, in the morning of Dec. 3, 2014. The Detective also found that a speaker box had been taken from Guerrero's vehicle.

The jury found Appellant guilty of Capital Murder and Appellant was sentenced to an automatic term assessed at life imprisonment.

REASONS FOR GRANTING PETITION

Did the Court of Appeals err when it upheld the trial court's finding that there was no informal marriage between Appellant and Castillo pursuant to the Tex. Fam. Code 2.401 and that the Tex.R.Evid 504 Spousal Privilege did not apply because the Court of Appeals incorrectly used the wrong standard of review in applying the trial court's ruling involving "mixed questions of law and fact."

ARGUMENT

The Court of Appeals affirmed the denial of the Tex.Fam. Code 2.401 and the Tex.R.Evid 504 Spousal Privilege in this case using the standard "given the conflicting evidence presented at the evidentiary hearing, and considering the evidence in the light most favorable to the trial court's ruling, " we conclude that Green did not carry his burden of proof to establish a common law marriage with Castillo. (Opinion Pg. 9) This finding did not consider that the trial court's ultimate resolution of this issue did not turn on an evaluation of credibility and demeanor. Given the Court of Appeals should have reviewed this claim using a *De Novo* standard, it has thus decided an important question of state or federal law in a way

that conflicts with the applicable decisions of the Court of Appeals and Court of Criminal Appeals. See *Stengel v. State* 2017 Tex. App. LEXIS 2070 (March 9, 2017 unpublished opin.); (Discussing the Appellate Court standard of review De Novo pure questions of law and fact that do not depend on credibility determinations.) See *Jasper v. State* 61 S.W.3d 413 (Tex. Crim. App. 2001) (Discussing what appropriate standard of review to use in Spousal Privilege Appeal Issues).

Appellant requested a pretrial hearing to determine whether the Tex.R.Evid 504 Spousal Privilege (a)(b) could be invoked by or on the behalf of Barbara Castillo, who Appellant claimed to be his common law wife. Under the Tex.Fam. Code 2.401 (a)(1),(2), as no written declaration of Informal Marriage Under Oath was ever filed, Appellant had to prove by presenting evidence of the elements of what is known as a common law marriage: (i) an agreement to be married; (ii) cohabitation in Texas after the agreement; and (iii) representation to others that the couple is married. The three elements of an informal marriage may be established by circumstantial evidence, as well as direct evidence. *Tompkins v. State* 774 S.W.2d 195 (Tex.Crim.App. 1987).

The trial Court in this case found the first two elements required for an informal marriage, but (questioned) whether Appellant and Castillo represented their marriage to others. Castillo testified that she had told her friend Norma Lira, that she and appellant was married. Castillo also

(Tex. Crim. App. 2001).

If reviewed under a *De Novo* standard as to whether there was evidence in the record of the third element of the Tex. Fam. Code 2.401, which is " representation to others that the couple is married" there is a reasonable probability that the proceedings in this case would have been different. Since *Tompkins v. State* 774 S.W.2d 195, 209 (Tex. Crim. App. 1987) dictates the three elements may be established by circumstantial as well as direct evidence, the record in this case contains sufficient evidence to establish Appellant and Castillo represented to others that the couple was married. This coming from the testimony of Castillo, who testified at the evidentiary hearing fulfilling the elements set forth in the Tex. Fam. Code. 2.401 that she and appellant entered into an agreement to be married, lived together after the agreement and pursuant to that agreement and that she and Appellant held each other out to the public by representing themselves as being husband and wife, as well as direct and circumstantial evidence presented.

The Supreme Court should take this petition up as clarifying what type of standard of review to use in a spousal privilege issue raised on appeal will help the lower courts properly dispose of the trial courts intended mixed questions of law and fact. If the trial court's

Ultimate resolution does not turn to an evaluation of credibility and demeanor, then a De Novo review should be conducted to determine if there is evidence in the record to support a finding of, the third element of Tex. Fam. Code 2.401 " representation to others that the couple is married.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dominique Green

Date: 6-3-2018