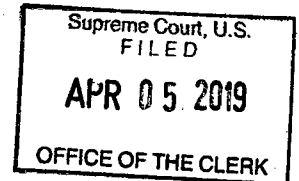


No. 18-8858

CONFIDENTIAL

IN THE
SUPREME COURT OF THE UNITED STATES



ASPEN WARREN
— PETITIONER
(Your Name)

vs.
THE STATE OF TEXAS
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS OF TEXAS, SECOND APPELLATE DISTRICT

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

PETITION FOR WRIT OF CERTIORARI

ASPEN WARREN , TDCJ-ID #2143487

(Your Name)

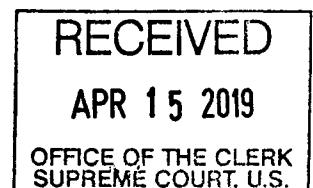
3899 STATE HWY. 98

(Address)

New Boston, TX 75570

(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

IN A MURDER CASE WHERE UNDER STATE STATUTES A JURY NEED NOT BE UNANIMOUS AS TO MANNER AND MEANS AND ARE ALLOWED TO CHOOSE FROM THREE SEPARATE MANNER AND MEANS, MUST THERE BE SUFFICIENT EVIDENCE TO CONVICT UNDER EACH MANNER OR MEANS ALLEGED?

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:

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STATUTES AND RULES

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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☐ is unpublished.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☐ is unpublished.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 A 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☒ is unpublished.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 Texas Court of Criminal Appeals court 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.

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).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 1/16/19.
A copy of that decision appears at Appendix B.

☐ 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 _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

NO CITIZEN SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY
WITHOUT DUE PROCESS OF LAW. U.S. COSNT. AMEND XIV

STATEMENT OF THE CASE

A jury found Petitioner Aspen Warren guilty of murder in the death of Brittany Daniel in a so-called "road-rage" incident. Petitioner was sentenced by the trial court to a sentence of fifty(50) year's confinement.

Petitioner was indicted and tried under an indictment which alleged three separate manner and means from which the jury could convict to find Petitioner guilty. Under Texas statutes, the jury did not need to unanimously agree on manner and means, as long as each believed that the manner and means they chose was proven to them beyond a reasonable doubt. The three choices given the jury in the jury charge were, as follows:

- 1) intentionally and knowingly causing the death of the complainant;
- 2) intended to cause the death of the complainant through causing serious bodily injury by committing an act clearly dangerous to human life; or,
- 3) committed or attempted to commit a felony, other than manslaughter, and in the course of and in furtherance of commission or attempt, or immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual. (Texas Penal Code Annotated § 19.02(b) (West 2011).

Petitioner's argument is as follows.

Assuming, arguendo, that the evidence was sufficient under the first two methods or manners alleged, but not sufficient under the third manner or means alleged, can the jury convict beyond a reasonable doubt if it is possible that one or more of the jurors based their vote for guilt on the third manner or means? Petitioner's argument is that it could not.

Petitioner argued that evidence could not have been sufficient under the third manner and means alleged, because it required proof beyond a reasonable doubt that Petitioner was committing, or attempting to commit, a felony "other than manslaughter."

Under the first two theories of murder, the State was required to prove that Petitioner had "intent" either to cause the complainant's death or "intent" to cause serious bodily injury.

Under the third theory, proof of intent was not required. Petitioner's argument is that, without the requirement of intent, paragraph three is essentially describing "manslaughter." Which the jury could not, according to the charge, base its conviction on. Hence, there is no way the evidence could be sufficient under the third theory, and, therefore, without knowing whether or not jurors relied on that particular manner and means, the evidence is not sufficient to convict.

REASONS FOR GRANTING THE PETITION

Review should be granted because the Texas Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court. (Rule 10, Supreme Court Rules)

Under the Due Process Clause, the prosecution is required to prove beyond a reasonable doubt every element of the crime with which a defendant is charged. See In re Winship, 397 U.S. 358, 364 (1970) (holding that the government must prove "every fact necessary to constitute a crime" beyond a reasonable doubt).

It is an issue of ~~first~~ impression whether a jury, when given multiple theories of manner and means, still must find the evidence sufficient beyond a reasonable doubt as to the manner and means they choose and whether, when the instruction essentially voids one of the manner and means alleged can the jury have found evidence beyond a reasonable doubt when it is unknown which theory the verdict is based on.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Aspen Warner

Date: April 10, 2019