

No. 18-9430

ORIGINAL

Supreme Court, U.S.
FILED

MAY 08 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER-2018

BOBBY RAY TURNER

— PETITIONER

(Your Name)

vs.

THE STATE OF TEXAS, et.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Tr. Ct. no. 16F0481-102

COA no. 06-18-00034-CR

COURT OF Criminal Appeals of Texas, case no. PD-1208-18

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

PETITION FOR WRIT OF CERTIORARI

BOBBY RAY TURNER

(Your Name)

2665 Prison Road 1, Eastham Unit.

(Address)

Lovejoy, Texas 75851

(City, State, Zip Code)

(936) 636-7321

(Phone Number)

QUESTION(S) PRESENTED

Whether A State Judge's personal conviction from personal experience is legally sufficient to support a Felony conviction?

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

Federal — 28 U.S.C. § 1257(a)
 Tex. Crim. Code Proc. § 30.02

OTHER United States Constitution - Fifth and Fourteenth Amendments

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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 _____ 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☐ is unpublished.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 .

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 02-13-2019.
A copy of that decision appears at Appendix A .

☐ A timely petition for rehearing was thereafter denied on the following date: NA , 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 NA (date) on NA (date) in Application No. NA A NA .

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

*The Fifth And Fourteenth Amendments of the United States
Constitution....*

STATEMENT OF THE CASE

In Cause no. 16F0481-102 (06-17-00025-CR), A Bowie County Grand Jury indicted Bobby Ray Turner (Defendant) on August 4, 2016, C.R. At 19. The indictment was filed with the clerk on August 4, 2016, C.R. At 19. The precept to serve a copy of indictment was file-stamped September 8, 2016. C.R. At 23. Defendant was arrested on May 24, 2016. C.R. 15. Indictment was filed August 4, 2016. C.R. At 5. A Bowie County Grand Jury indicted Defendant on Burglary of A Habitation with A prior felony conviction under § 30.02. C.R. At 19.

Defendant filed A Bail Motion on September 8, 2016. Volume 3, R.R. At 5, C.R. At 20. Defendant filed A Pro Se Motion to Recuse Public Defender on October 3, 2016. C.R. At 27. The trial judge filed an order denying such on October 31, 2016. C.R. At 30. The State filed A Motion to Amend the indictment on November 28, 2016. C.R. At 48. Defendant filed A Waiver of Jury trial on November 28, 2016. C.R. At 53.

The bench trial began on December 15, 2016. Volume 10, R.R. At 5. The Victim, Sean Reynolds, testified that he was A resident on Clara Sorsby Street in Bowie County, Texas. Volume 10, R.R. At 10. The vehicle was backed up to his garage and the co-defendant begged the victim not to call the Police. Volume 10, R.R. At 11. Co-defendant and defendant left and quickly came back, so that co-defendant could speak with victim again. Volume 10, R.R. At 13. When he left for the gas station, his garage door was closed. Volume 10, R.R. At 17. The victim was missing A leaf blower, A D.V.D. case, tools, drill, carpenter square and A few odds and ends. Volume 10, R.R. At 18. Defendant walked from the driver side to passenger side. Volume 10, R.R. At 11.

Bowie County Deputy Nicholas Moses found the truck and co-defendant A short distance away. The co-defendant was standing by the car. A zippered tool bag belonging to victim was found on the tree line. Volume 10, R.R. At 35. Defendant fled and was found in A chicken coop after manhunt. Volume 10, R.R. At 33-34. He found bolt cutters in the front cab of the truck. Volume 10, R.R.

STATEMENT OF THE CASE

At 31. Moses stated tools found were commonly used for residential burglaries. Volume 10, R.R. At 32. Defendant motions the court for a instructed verdict. Volume 10, R.R. At 62. The trial court denies the instructed verdict motion. Volume 10, R.R. At 62. Defendant waived his Fifth Amendment Constitutional right and testified at the guilt/innocence phase. Volume 10, R.R. At 63. The morning of the alleged burglary, Defendant called Co-defendant to request he take him to get some food in return. Defendant would give him gas money. Volume 10, R.R. At 68. Defendant states that Co-defendant is a paid informant. Volume 10, R.R. At 84. Defendant acknowledges past felony convictions. Volume 10, R.R. At 95-97. Defendant re-urges in the instructed verdict. Volume 10, R.R. At 106. The trial court finds Defendant guilty after providing several reasons for the verdict. Volume 10, R.R. At 112-116.

The State introduces Defendant's past criminal convictions during the punishment phase. Volume 11, R.R. At 5. State rests on punishment. Volume 11, R.R. At 6. Defense rests. Volume 11, R.R. At 8. The trial court sentences Defendant to (20) twenty years. Volume 11, R.R. At 13-14. The trial court filed the judgement on December 16, 2016. C.R. At 61. Defendant filed his Notice of Appeal on January 10, 2017. C.R. At 65.

REASONS FOR GRANTING THE PETITION

A. Conflict With Decisions of other Courts

The holding of the court below, from the State of Texas highest court - Texas Court of Criminal Appeals (TCCP); That A Judge may violate A defendant's Due-Process rights under the Fifth and Fourteenth Amendments by utilizing extrajudicial sources to obtain A verdict on some other basis, other than from the facts put forth during the course of the trial is 'objectively unreasonable' and in contradiction to the following cases: United States v. Grinnell Corp., 384 U.S. 563, 583 (1966); Richardson v. Deatherman, 537 F.3d 466, 474 (5th Cir. 2008); Which further conflicts with this court's precedent decision under Jackson v. Virginia, 443 U.S. 307, 318-19 (1979), due to the state court's error on the ruling of evidence to properly support a felony conviction of Burglary of a Habitation.

In furtherance, the Texas Court of Criminal Appeals has held, that "The decisions of the Supreme Court of the United States are authoritative and binding onto the court of Criminal Appeals in cases having the same or similar fact situation." Ex Parte Al-Abridge, 334 S.W. 2d 161, 169 Tex. Crim. 395 (Tex. Cr. App. 1959).

B. Importance of the Questions Presented

The case presents A fundamental question of the interpretation of this court's decision in Jackson v. Virginia, 443 U.S. 307, 318-19 (1979), concerning whether A trial court judge in making a judicial determination on guilt and innocence as the trier of facts, can be based on A judge's own personal experience to support A felony conviction, rather than direct evidence within the record.

REASONS FOR GRANTING THE PETITION

In the Petitioner's case there was "no-evidence" establishing that he knew or was intentionally involved in the Alleged Burglary of A Habitation put forth by the State. During the delivery of the verdict, the trial Judge stated he was relying on his personal experience.

The matter is further compounded by the fact that, A Judge's personal experience fundamentally contravenes the U.S. Supreme Court's holding under Jackson v. Virginia, Supra, 'Sufficiency of the evidence' standard of review. For over (40) years this Court has continued to express that any review regarding the constitutionality of the trial court's verdict must rest upon the question of: "Could any rational trier of fact could have found essential elements of the crime beyond a reasonable doubt, after reviewing the evidence in the light most favorable to the verdict." id. at 318-19.

As a matter of law a Defendant is entitled to an impartial and fair trial. A fair minded jurist is not allowed to infer from personal experience to reach a verdict. The jurist must infer from the evidence, or evidence and circumstantial evidence as a whole put forth at the trial to draw a rational conclusion. The importance of the question imposed by the Petitioner draws upon the issue that there is a difference of opinion from the lower Federal District Courts and state courts of the 49-states, and 1-District; that a clear decision is now needed to reach conformity with this Court's precedent. As noted by the Texas Supreme Court, a proper legal sufficiency review "prevents jurors from substituting their opinions for undisputed truth." City of Kelley v. Wilson, 168 S.W. 3d 802, 814 (Tex. 2005). The Texas Court of Criminal Appeals and the Texas Supreme Court are two distinctive different entities. However, the views show a difference of opinion within the State of Texas.

C. Disqualification and Recusal

After Petitioner-Turner rested on Guilt-Innocence phase, the trial Judge stated several reasons for finding him (Turner) guilty.

REASONS FOR GRANTING THE PETITION

D. Evidence Acquired From the Trial Judge on the Record

1. The Trial Judge believed Petitioner's testimony was partial truth and non-truth. (10 R.R. 112).
2. Defendant could not escape the law of Parties. (Id.)
3. He could not find Turner guilty on Criminal Trespass-Class-A misdemeanor. (10 R.R. 113).
4. Someone who has permission to enter would not have to tear the garage off. (Id.)
5. Defendant fled scene and the reasons for not staying were reasons a criminal would come up with, not a law abiding citizen. (10 R.R. 116)
6. The tool bag hidden in the wooded area was an indicator of guilt, despite the court's not knowing who hid the tools. (10 R.R. 114-15).
7. The Trial Judge stated Petitioner's conspiracy testimony was not credible because people can't keep secrets. (10 R.R. 115-16).

Footnote 2.) Law of Parties was never addressed in no pre-trial hearings, nor the indictment. See Vasquez v. State, 389 S.W. 3d 361, 166-67 (Tex. Crim. App. 2012); Dinkins v. State, 894 S.W. 2d 330, 339 (Tex. Crim. App. 2010). If a definition or instruction on a legal theory of law such as the Law of Parties is given in the abstract portion of the charge, the application paragraph must set out all of the conditions to be met before a conviction under such theory is authorized. In the current case Petitioner-Turner was never told, nor his attorney was never told that Petitioner-Turner was charged with law of the Parties, until the day of the trial. Which did not give Petitioner-Turner and attorney a chance to prepare against the alleged Law of the Parties charge. Turner's co-defendant-Alison coped out to a Plea-Agreement of two 5 yrs. sentences of Burglary of a Habitation running concurrent. Further more, in verse 4.) the trial judge states: Someone who has permission to enter would not have to tear the garage door off, despite not knowing who opened the garage door. Although the victim stated that he saw co-defendant-Alison with his property coming from his garage. Petitioner-Turner repeatedly stated that he did not have any knowledge co-defendant-Alison was going to victim's

REASONS FOR GRANTING THE PETITION

E. Evidence Acquired from the Trial Judge's Personal Knowledge

1. During Trial Judge time as a Police Officer, District Attorney, and Judge he stated people with bolt bits in a vehicle within easy to reach, were often arrested for similar charges as Turner. (10 R.R. 112-16).
2. The tools found in Alison's truck were burglary type tools. (Id.)
3. Mr. Turner's statements about getting food didn't sound very likely because of the trial court's familiarity with the scene of the crime and surrounding area. (10 R.R. 114-15).
4. The Trial Judge stated that he grew up a quarter mile away. (Id.)
5. The Trial Judge stated that the street Clara Sorsby was named after a State Representative. (Id.)
6. The Trial Judge stated that he used to play along those streets as a kid. (Id.)

Footnote Continued from previous page: -Renolds house to commit a burglary. The State never provided any evidence showing Turner: touched or possessed, at any time, any of the items taken; 2.) Appropriated or attempted to appropriate any of the items, or; 3.) Touched Renolds garage door, or any part of Renolds home; OR; 4.) Acted with intent to promote burglary, or; 5.) Committed a act which encouraged, directed, aided or attempted to aid Alison... on the record. Further more, legal sufficiency of evidence tests the quality of the evidence and the level of the evidence and the level of certainty it engenders in the fact finder's mind, not the quantity. Brooks v. State, 323 S.W. 3d 893, 917 (Tex. Crim. App. 2010), A trier of fact finder is allowed to draw multiple reasonable inferences that are supported by the evidence, but is not allowed to draw conclusions based factually unsupported inferences or presumptions. Hooper v. State, 214 S.W. 3d 9, 16-17 (Tex. Crim. App. 2007). The Petitioner Turner contends that trier of fact did not rationally give reasonable inferences to the evidence as you can see from the record above. Jackson v. Virginia, 443 U.S. 307, 318-19 (1979), the trial court is to consider all of the evidence presented at trial in the light most favorable to the verdict, and determine whether, based on that evidence presented, could a rational trier of fact have found each of the essential elements of the crime beyond a reasonable doubt, in this case the trier of fact did not... on the record.

Thus, the trial court's verdict was not based upon the sufficient facts or evidence which would support a felony conviction for Burglary of a Habitation beyond a reasonable doubt, here in Petitioner-Turner's case the trier of fact finder did not give inferences as to the witnesses testimony, nor the evidence weight as a whole to be given into evidence.

CONCLUSION

For the foregoing reasons this Court should grant this 'Writ-Certiorari' and Petitioner respectfully requests this honorable Court find the evidence used legally insufficient to sustain Turner's conviction. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bobby Ray Turner

Date: 05-08 -2019