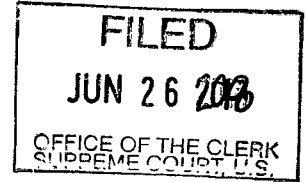


18-9817  
No. \_\_\_\_\_

ORIGINAL



\_\_\_\_\_  
IN THE

SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

DETERRYON KELLY \_\_\_\_\_ — PETITIONER  
(Your Name)

vs.  
THE STATE OF TEXAS

\_\_\_\_\_ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE SIXTH DISTRICT OF TEXAS

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

PETITION FOR WRIT OF CERTIORARI

DETERRYON KELLY  
\_\_\_\_\_

(Your Name)

TELFORD UNIT  
3899 STATE HWY. 98  
\_\_\_\_\_

(Address)

NEW BOSTON, TX 75570  
\_\_\_\_\_

(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

**QUESTION(S) PRESENTED**

**GROUND ONE**

CAN EVIDENCE MEET THE LEGAL SUFFICIENCY STANDARD OF JACKSON V. VIRGINIA IF THE EVIDENCE RELIED UPON FOR CONVICTION IS PRIMARILY SPECULATIVE AND INFERENCE STACKING?

## LIST OF PARTIES

- [x] 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:

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	5
CONCLUSION.....	6

## INDEX TO APPENDICES

APPENDIX A	DECISION OF THE COURT OF APPEALS FOR THE SIXTH DISTRICT OF TEXAS
APPENDIX B	DECISION OF THE COURT OF CRIMINAL APPEALS OF TEXAS
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Jackson v. Virginia, 443 U.S. 307 (1979)

5

In re Winship, 397 U.S. 358 (1970)

5

### STATUTES AND RULES

### 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☐ is unpublished.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 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 4/11/18.  
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 6/24/19 (date) on 4/25/19 (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. Amend. XIV U.S. Const.



## **STATEMENT OF THE CASE**

Petitioner was convicted on October 3, 2016 following a jury trial and sentenced to automatic life without parole. A Motion for New Trial was timely filed, as was a Notice of Appeal. On November 17, 2017, the Court of Appeals for the Sixth District of Texas, Texarkana affirmed Petitioner's conviction. Petitioner filed a timely Petition for Discretionary Review with the Texas Court of Criminal Appeals. (hereinafter "TCCA"). The TCCA denied the petition on April 11, 2018.

## REASONS FOR GRANTING THE PETITION

The holding of the State courts below that the elements of the offense could be legally and sufficiently proven through speculation and inference stacking is in conflict with this Court's decision in Jackson v. Virginia, 443 U.S. 307 (1979) and In re Winship, 397 U.S. 358 (1970), both of which hold that the government must prove every element of an offense beyond a reasonable doubt. In Petitioner's case, the jury was allowed to convict Petitioner of Capital Murder despite the fact there was insufficient evidence to prove that the child complainant died from blunt force trauma.

With regard to the cause of death, the facts did not line up with the State's theory that the child died due to a beating.

Petitioner, the child, "J.S.", and the child's mother Jameshia Cooks were all staying as guests at the Best Western motel in Marshall, Texas. J.S. was 22-months-old. Cooks was pregnant with Petitioner's child. (Reporter's Record of Trial, Volume 4, pp. 162, 192-193, 194-195). Petitioner and J.S. left the room so that Jameshia could take a bath. During that time, Petitioner took J.S. to the motel's laundry room to use vending machines that were located there. Petitioner wanted to buy a snack for J.S. (Vol. 4, RR 166-167, 198). While using the vending machines, the item purchased got lodged in the machine, and Petitioner banged the machine to dislodge the product.

When Petitioner left the laundry room, he and J.S. were observed in the lobby using a computer.

J.S. was found later unresponsive after he was placed in bed by himself. Petitioner and Cooks said that when they went to check on him, they discovered J.S. had fallen between the bed and a nightstand.

However, based on a silhouette seen on a surveillance camera pointed at the laundry room, the State's theory of the case was that the silhouette showed Petitioner kicking J.S. and that J.S. was dead when he was in the laundry room from the kicks.

The jury drew inferences upon inferences, despite the evidence that the desk clerk observed J.S. moving while in the lobby with Petitioner, that Petitioner must have kicked J.S. to death, based on the silhouette.

Such inference stacking deprived Petitioner of his right to be proven guilty beyond a reasonable doubt based on factual evidence and not upon inference stacking and speculation which contradicted objective evidence.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Deterran Kelly

Date: 6-15-19