

19-7827  
No. \_\_\_\_\_

Supreme Court, U.S.

FILED

MAR 10 2018

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

TERRY O'NELL HALL — PETITIONER  
(Your Name)

VS.

STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals for the Eleventh Supreme Judicial District of Texas  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Terry O'Nell Hall # 1704033  
(Your Name)

French M. Robertson Unit  
12071 F.M. 3522

(Address)

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

(325) 548-9035  
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. DID THE COURT OF APPEALS ERR IN DECIDING PETITIONER'S RIGHT TO DUE PROCESS WAS NOT VIOLATED, WHERE THE VICTIM TESTIFIED ONE WAY DURING HIS TRIAL AND THEN TESTIFIED A DIFFERENT WAY DURING THE TRIAL OF A CO-DEFENDANT?  
i.e., Testified that a gun was used, during Petitioner's trial, but then testified that he didn't remember seeing a gun, during the trial of the co-defendant.
2. DID THE COURT OF APPEALS ERR IN DECIDING PETITIONER'S RIGHT TO FUNDAMENTAL FAIRNESS AGAINST CRUEL AND UNUSUAL PUNISHMENT WAS NOT VIOLATED, WHERE THE VICTIM'S TESTIMONY ABOUT THE USE OF A GUN WAS SUBSTANTIALLY DIFFERENT AT HIS PUNISHMENT HEARING THAN IT WAS AT THE CO-DEFENDANT'S TRIAL, AND THE DIFFERENCE IN THE VICTIM'S TESTIMONY RESULTED IN A DISPARITY IN PUNISHMENT FOR TWO DEFENDANTS CONVICTED OF THE SAME CRIME?

## 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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## TABLE OF AUTHORITIES CITED

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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[ ] is unpublished.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.

**[X] 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,  
**[X]** 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 12/13/2013. 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

- 5th Amendment to the United States Constitution
- 14th Amendment to the United States Constitution

### STATEMENT OF THE CASE

Petitioner was indicted by a Taylor County grand jury on December 8, 2009 for an offense that occurred on July 13, 2009. In a three (3) count indictment, Petitioner was accused of aggravated robbery (Count One), robbery (Count Two), and burglary of a habitation (Count Three). On April 16, 2010, Petitioner entered an "open" plea of guilty to aggravated robbery (Count One), in violation of Texas Penal Code, section 29.03. The offense was a first degree felony. Subsequently, the Court recessed for preparation of a "Pre-Sentence Investigation Report," and then reconvened for a sentencing hearing on June 18, 2010. After hearing evidence, the trial court sentenced Petitioner to twenty-five (25) years incarceration in the Texas Department of Criminal Justice - Institutional Division, making a finding in the judgment that a deadly weapon, a firearm, was used during the commission of the offense.

After his plea, Petitioner filed a Motion for New Trial, which the trial court denied. Petitioner subsequently perfected his appeal, which the Eleventh Supreme Judicial District Court of Appeals of Texas affirmed on March 24, 2011. Thereafter, Petitioner filed a writ of habeas corpus with the Texas Court of Criminal Appeals, requesting an out-of-time Petition for Discretionary Review, which said Court granted. After the granting of a motion for extension of time, Petitioner filed his pro se Petition for Discretionary Review, which said Court refused on December 13, 2017.

Petitioner now respectfully files this Petition for Writ of Certiorari, which is due for timely filing on or before the 13th day of March, 2018. Said petition is hereby timely filed.

### REASONS FOR GRANTING THE PETITION

The Court of Appeals for the Eleventh Supreme Judicial District of Texas has made decisions in direct contradiction with those of the United States Supreme Court.

Mr. William Black, an 82 year old widower, was the victim of a robbery in his home. A woman, Alicia Becerra, came to Black's house supposedly to deliver flowers for Mr. Black's deceased wife. After he invited her inside, two men in masks, Markus Sneed and "Boots" Jones, forced their way inside as well and pushed Black to the floor. The three people continued to exhort him to lie on the floor, while they ransacked the house for valuables. A Crime Stopper's tip led sheriff's investigators to interview Petitioner about this crime. He subsequently confessed that he had orchestrated the offense, though he had never entered the home. Once he admitted his role, Petitioner fully cooperated with authorities. Mr. Black testified in Petitioner's sentencing hearing that one of his assailants exhibited a gun during the robbery. However, later in the jury trial of one of Petitioner's accomplices, Black apparently testified that he did not remember seeing a gun during the robbery.

Petitioner is entitled to due process of law under general principles laid down in the 5th and 14th Amendments to the United States Constitution. Where testimony of a victim-witness from the trial of one defendant is not replicated in the trial of an accomplice, but, instead, is so substantially different in the other proceeding that a different result is reached with the accomplice because of the disparity in the testimony, it may be fairly said, in the first case, that due process was denied. See, generally, Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 (1935) and Pyle v. State of Kansas, 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214 (1942). In Alcorta v. State of Texas, 355 U.S. 28, 78 S.Ct. 103, 2 L.Ed.2d 9 (1957), the petitioner was indicted for murder. He argued the murder of his wife was due to a fit of passion when he discovered her kissing another man, Castilleja, late one night in the latter's car. At trial, Castilleja denied anything had gone on between he and Alcorta's wife, but later, after Alcorta had been convicted of first degree murder with malice, Castilleja bragged he had had sexual intercourse with the wife a number of times, and that he had perjured himself during Alcorta's trial. (Apparently, the prosecutor in that case was complicit in Castilleja's perjury in that he told Castilleja not to volunteer the affair, but to "answer truthfully if ask-

ed."). The Supreme Court held Alcorta was not accorded due process of law because of the perjured testimony.

In the instant case, Mr. Black, the victim-witness, testified at Petitioner's punishment hearing that a gun was brandished during the robbery, by one of Petitioner's accomplices who had entered his home. He spoke of the resultant terror and fear he said he felt on seeing the gun. However, in an accomplice's trial for the same offense in a later trial, Black testified he could not remember seeing a gun during the robbery. The second accomplice's jury gave Petitioner's accomplice a lesser sentence than Petitioner had received for the same crime. In this case, defense counsel did not suggest that the victim-witness intentionally gave perjured testimony in either of the two cases where he testified. Rather, Petitioner asserted that the disparity in sentencing between him and his accomplice resulted whether the testimony was perjured or not.

For purposes of affording Petitioner due process and fundamental fairness in his trial, the facts of the underlying offense were the same in Petitioner's case as they were in his accomplice's. Either a gun was brandished during the robbery, or it was not. The effect of the disparity in testimony was the same as if it were discovered, after the fact, that perjured testimony had been presented in Petitioner's trial. **Alcorta** holds that on that discovery, fundamental fairness and notions of due process demand that Petitioner's punishment be revisited.

The trial court erred in failing to grant Petitioner's motion for a new trial, the Court of Appeals erred in not finding so, and the Court of Criminal Appeals erred in denying discretionary review of said error(s). At the hearing of Petitioner's motion for a new trial, it came to light that Petitioner's accomplice's in the aggravated robbery received substantially less onerous sentences than did Petitioner. That was largely due to the fact that in Petitioner's sentencing hearing the victim testified a weapon (a gun) had been used during the robbery, but in the case of at least one accomplice, in a later trial, the victim testified he did not remember seeing a gun. Because Petitioner was entitled to fair criminal proceedings that were free of perjured testimony just as his accomplice's received, and because Petitioner's proceedings were not free of such testimony, he did not receive the same protections of the law afforded his accomplices. Therefore, his fundamental right to due process of the law was violated.

If a victim-witness testified in Petitioner's trial that a gun was used in the commission of an offense, but in a subsequent trial of an accomplice that victim-witness testified he did not remember seeing a gun, with the result that the accomplice received a more lenient sentence than Petitioner, that disparity evidenced a denial of due process of the law in Petitioner's case.

For the Court of Appeals to find otherwise is err in direct contradiction with the decisions previously reached by the United States Supreme Court, who sets the law of the land.

For that reason, this Honorable Court should grant Certiorari.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Terry O'Neill Hall

Date: March 10, 2018

### Unsworn Declaration:

I, Terry O'Neill Hall, TDCJ # 1704033, being presently incarcerated in the French M. Robertson Unit of the Texas Department of Criminal Justice hereby verify and declare under the penalty of perjury that the foregoing statements are both true and correct, as well as offered in GOOD FAITH.

SIGNED AND EXECUTED on this the 10th day of March, 2018.

Terry O'Neill Hall

Petitioner, Pro Se

Terry O'Neill Hall # 1704033  
French M. Robertson Unit  
12071 F.M. 3522  
Abilene, Texas 79601  
(325) 548-9035