No. 20-1475

In The
SUPREME COURT OF THE UNITED STATES

WES PERKINS,
Plaintiff – Appellant – Petitioner,
v.

JOHN MISCHTIAN, Judge, County Court at Law 2,
Bell County, Texas, et al.,
Respondents – Appellees – Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI
WITH APPENDIX A

WES PERKINS
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Questions Presented

Statutory Challenge

1. Is the TEX. TRANSP. CODE "unconstitutional," as applied?

Referral, *Roell*, and Rule 4(m)

2. Was dismissal abusive?

Post-dismissal relief

3. Was it abusive to deny Rule 60(b) relief?

Statutory Challenge
Compelled Arbitration

4. Is PITMAN Disqualified?

Parties to USCA5 Proceedings

Appellant

WES PERKINS
pro se

Appellees

No official appearance at trial or on appeal.

- **JOHN MISCHTIAN**, Judge, County Court at Law 2, Bell County, Texas, Officially and Individually; and
- **BELL COUNTY, TEXAS.**

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(For TRANSP. CODE challenge)

Directly Related Proceedings

20-50707.

- Trial

W.D.Tex., No. 1:20-CV-296
PERKINS v. MISCHTIAN, and
BELL COUNTY, TEXAS.
Dismissed: Jul. 17, 2020 (Docs. [24], [25])
Rule 60(b) Denied: Aug. 21, 2020 (Doc. [29])

- Appeal

USCA5, No. 20-50707
PERKINS v. MISCHTIAN, and
BELL COUNTY, TEXAS.
Affirmed: Mar. 11, 2021

Proceedings Inexorably Intertwined

20-50678.

- Trial

W.D.Tex., No. 1:20-CV-70
PERKINS v. BREWSTER (DMV), CITY OF AUSTIN, MORGAN, MANLEY, HALLMARK, SOUTHSIDE WRECKER, and YEAKEL.
Dismissed: Jul. 24, 2020 (Docs. [56], [57])

- Appeal

USCA5, No. 20-50678
PERKINS v. BREWSTER (DMV), CITY OF AUSTIN, MORGAN, MANLEY, HALLMARK, SOUTHSIDE WRECKER, and YEAKEL.
Still pending.

20-50682.

- Trial

W.D.Tex., No. 1:20-CV-493
PERKINS v. LIPSCOMBE, and TRAVIS COUNTY, TEXAS.
Dismissed: Jul. 20, 2020 (Docs. [17], [18])

- Appeal

USCA5, No. 20-50682
PERKINS v. LIPSCOMBE, and TRAVIS COUNTY, TEXAS.
Dismissed: Dec. 31, 2020.
[S.Ct.U.S. No. 20-1325.]

Perkins's Petition for
a Writ of Certiorari to USCA5

Citations below

None.

Jurisdiction

(i) Date Affirmed.
20-50**707** ("296") (Mischtian).
Mar. 11, 2021. [+90: Jun. 9, 2021]

(ii) Extension(s).
None.

(iii) Rule 12.5.
N/A

(iv) Statutes, Jurisdiction.
28 U.S.C. §§ 1254(1), 2101(c).

(v) Statutory challenges, Rule 29.4(b), (c).
S.G., Texas's A.G. both Served.

Primary Statutory Provisions

Challenged as applied.
TEX. TRANSP. CODE § 502.001(45) ("**vehicle**").

28 U.S.C.A. §§ 636(b) (W.D.Tex.: mere existence of (scope of) office is ipso facto universal consent to arbitration); (b)(1)(A) (W.D.Tex. defies this jurisdictional prohibition on referring dispositive matters); (c)(1), (c)(2) (W.D.Tex. construes this, with (b)(1)(A), to compel consent to elevating arbiter to "master").

Standard misapplied.
28 U.S.C.A. § 455(a).

Statement of the Case

Jurisdiction – W.D.Tex.

28 U.S.C.A. §§ 1331, 1367.

Setting – the Belton case

During direct appeal of "Case 1" (Travis County), *see* No. 16-680 (*see also* No. 20-1325), Perkins terminated the last of the "Certificate of Title" trusts in his name. Ex. E (Dec. 6, 2016), in essentially all trial Records since, is the last of the letters (to DMV). Ex. USPS-5 confirms delivery as of Dec. 9.

The Belton "transportation" stop occurred on Dec. 16, 2016. Basis? Perkins's clearly visible *non*-DMV-approved taggage. The untrained officer then *arrested* Perkins for alleged failure to identify.

The JP falsely "found" Probable Cause via rubber stamp, not any actual evidence or analysis.

YEAKEL compelled Perkins's illegal arrest claim into arbitration. The demand period on that still unadjudicated claim has restarted repeatedly.

COUNTY has advanced the "witch hunt" policy via the JP, the prosecutor's office, and MISCHTIAN.

Perkins's pre-trial jurisdictional challenges took a couple of years to exhaust. At trial, in Jan. 2019, MISCHTIAN denied Perkins his full Discovery, bulldozed the evidence, and accepted the panel's conclusion of guilty. The direct appeal is still pending. [1]

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[1] *See* (1) Nos. 03-19-356-CR, 03-19-357-CR (3d.CoA, Austin). Additional direct appeals still pending: (2) Probation revocation (from "Case 1") (No. 03-19-339-CR); and (3) "Case 3" (No. 03-20-231-CR).

Jurisdictional facts – state proceedings

No "transportation."

Perkins wasn't "carrying passengers or cargo."

Perkins wasn't (1) removing people and/or property (2) from one place to another (3) *for hire* (4) under the choice of law of "this state."

No "consent."

As of the stop, and key, here, as of the date of trial (after ***two years*** of Notice via jurisdictional challenge), STATE had no evidence of "consent."

No Probable Cause.

Perkins gave Notice of his *non*-consent to Sixth Plank (TRANSP. CODE) policy via display of *non*-DMV-approved taggage (which was never mentioned per *Brady*, i.e., never recognized as exculpatory).

The focus – MISCHTIAN flash-jailed Perkins

MISCHTIAN set sentencing for a couple months after trial. At sentencing, even though Perkins's cash Bond from trial was still fully operational, MISCHTIAN ordered new/more Bond. In this, "So, you want to challenge *my* jurisdiction, huh?" political power-play episode, MISCHTIAN ordered Perkins ***jailed*** pending completion of that new/more Bond.

That new/more P.R. Bond has since vanished, confirming that the existing Bond sufficed all along.

Here, Perkins sues MISCHTIAN for illegal arrest, harassment, etc. MISCHTIAN had no jurisdiction for trial; thus, even less for sentencing; thus, even *less* for this "witch-hunt" advancing, political power-play flash-jailing episode, *especially* regarding Bond. [2]

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[2] *Cf.* "Case 3" (Travis County). After trial, BARRERA had Perkins *report in* with the Sheriff, to confirm Bond. No arrest; no jail; in and out, 5 min.

Inexorably intertwined procedurally

In W.D.Tex., Perkins proclaims his non-consent to arbitration in each "civil case's" case style.

"70."

YEAKEL is a named party. Case assigned to PITMAN. Service completed.

Perkins's *Roell* Notice and participation cessation followed PITMAN's compelling arbitration in "296" (this one).

"296" (this one).

Despite "70," "296" was originally assigned to YEAKEL. YEAKEL, eternally addicted to compelling *pro se* cases into arbitration, referred all issues to the un-consented-to magistrate (arbiter) "at filing."

Roell Notice; participation ceased. Service didn't happen. Non-consent reasserted.

YEAKEL *did* transfer the case, but he never withdrew his referral "order." PITMAN didn't either.

This case is the focal point of PITMAN's Disqualification. Motion referred to EZRA. With PITMAN off the case, Perkins promptly requested Summons and initiated Service. But, EZRA's denying the motion reinstated PITMAN, tanking all three cases.

Perkins reasserted *Roell* and stopped.

The still-active divorce proceeding (D-1-FM-20-2604, Travis County "Judicial Pool") was in its very early stages as the deadline for appeal arrived. Perkins missed it by one day. Corrected immediately. Moreover, PITMAN had no jurisdiction, i.e., was/is Disqualified, given his perpetuation of YEAKEL's, even W.D.Tex.'s, compelled arbitration policy. Still, PITMAN denied Rule 60(b) relief.

"493" (LIPSCOMBE).

See No. 20-1325.

Argument

Statutory Challenge

1. Is the TEX. TRANSP. CODE "unconstitutional," as applied?

Consent cannot be compelled. *Lozman*, 568 U.S. 115 (2013).

Referral, *Roell*, and Rule 4(m)

2. Was dismissal abusive?

Perkins pled the facts.

Twombly, 550 U.S. 544 (2007) (abrogating *Conley*, 355 U.S. 41 (1957)), and *Iqbal*, 556 U.S. at 677-80 (applying *Twombly*).

MISCHTIAN never had jurisdiction.

STATE never had standing, not from the moment of that stop, and not two years later at trial, either. Asserting only terms of legal conclusion, STATE neither pled nor proved "transportation" *or* "consent." STATE had no evidence of "**vehicle**;" hence, no injury in fact, no case or controversy.

Politically emphasized assertion of jurisdiction.

MISCHTIAN, championing the "witch hunt" programme in BELL COUNTY, at least regarding Perkins, wasn't limited by his oath or the law. In his very intentional effort to emphasize ***politically*** the consequences for challenging ***his*** jurisdiction, MISCHTIAN ordered Perkins jailed pending new/more Bond relative to the appeal.

Since MISCHTIAN never had jurisdiction, neither did the advisory panel. There's no lawful conviction, thus sentencing, of anything.

Checking in with the Sheriff? Sure. But sitting in jail all day? Pure, unmitigated political harassment under the disguise of confirming Appeal Bond.

Abuse by W.D.Tex.

YEAKEL's referral is illegal. PITMAN perpetuated that problem. Per *Roell*, Perkins could "consent" or stop. Perkins stopped. So, PITMAN dismissed, joining LIPSCOMBE and MISCHTIAN in *punishing* Perkins for refusing to consent.

YEAKEL exercised jurisdiction he *never* had by compelling Perkins into arbitration. PITMAN did the same by refusing to withdraw YEAKEL's illegal referral. Then, by dismissing, PITMAN refused to exercise the jurisdiction he *did* have.

Post-dismissal relief

3. Was it abusive to deny Rule 60(b) relief?

Perkins corrected immediately the deadline issue regarding the appeal. His reason for missing it first time around ranks high on the list for excusable.

PITMAN lost jurisdiction, generally, when he joined the W.D.Tex. conspiracy to compel arbitration.

Statutory Challenge
Compelled Arbitration

4. Is PITMAN Disqualified?

Thematic compelled consent.

PITMAN *punished* Perkins, via dismissing, in part for challenging *his* jurisdiction, and in part for challenging state court jurisdiction. That compelled consent policy illustrates plainly that, as applied in W.D.Tex., §§ 636(b), (c) are "unconstitutional."

Construing § 636 *in pari materia.*

The mere existence of the office of "magistrate" (arbiter) in no way means ipso facto that all parties to all (*pro se* plaintiff) cases consent to arbitration.

Perkins overtly objected. Thus, YEAKEL never had jurisdiction to refer *any*thing, period. § 636(c); *Gamba*, 553 U.S. 1050 (2008); *Gomez*, 490 U.S. 858 (1989), citing ***Ford***, 824 F.2d 1430 (**5th Cir. 1987**) ("grave constitutional questions"); *Kalan*, 274 F.3d 1150 (7th Cir. 2001); ***Mendes Junior Int'l Co.***, 978 F.2d 920 (**5th Cir. 1992**) (§ 636 requires consent). *See also Volt Info. Sciences, Inc.*, 489 U.S. 468 (1989).

Moreover, § 636(b)(1)(A) prohibits, *jurisdictionally*, referral of dispositive issues. It's even worse "at filing." What YEAKEL, even W.D.Tex., effectively intends is compelled consent to elevating the arbiter to "special trial master" "at filing," in abhorrent, grandiose defiance of § 636(b)(1)(A) and § 636(c).

YEAKEL, a party to "70," *did* transfer "296," but he never withdrew his (illegal) "at filing" referral "order." Perkins moved that PITMAN do so; PITMAN refused, joining the W.D.Tex. conspiracy.

Perkins documented (YEAKEL's and) PITMAN's Disqualification, but EZRA, too, advances W.D.Tex.'s District-wide compelled arbitration policy.

§ 455(a).

Typically, the analysis is of "(fair and) impartial," but we never arrive there. There's no "trial," *at all.*

What is "trial?" That process, commenced "at filing," by which the Nominated, Confirmed, Appointed, and assigned § 451 judge enters the rulings.

Per W.D.Tex.'s District-wide compelled arbitration policy, "trial" is annihilated; it's all shipped out the back door of the courthouse to the arbiters.

Relief Requested

1. Grant this petition.
2. Vacate USCA5's ruling.
3. Vacate PITMAN's dismissal.
4. Grant Rule 60(b) relief and Reinstate.
5. Declare TEX. TRANSP. CODE "unconstitutional," as applied.
6. Declare 28 U.S.C.A. §§ 636(b), (c) "unconstitutional," as applied.
7. Remand to W.D.Tex. with instructions that YEAKEL, PITMAN, *and* EZRA shall not participate.
8. Award costs; and
9. Grant all other relief applicable.

Respectfully submitted,

/s/ Wes Perkins
WES PERKINS