

IN THE
UNITED STATES SUPREME COURT

RAPHAEL DIMENICK SAM, * 20-6331
(PETITIONER)

VS.

* CAUSE No. 18-29123, 18-29124

LORIE DAVIS,
DIRECTOR OF TDCJ-ID,
(RESPONDENT)

ORIGINAL

PETITION FOR
WRIT OF CERTIORARI

CHALLENGE TO THE CRIMINAL DISTRICT
COURT OF JEFFERSON COUNTY, TX.,
TRIAL CAUSE NOS. 18-29123; 18-29124

FILED

SEP 15 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Respectfully Submitted,

RAPHAEL DIMENICK SAM
PETITIONER, Pro Se
TDCJ #2248490
DARRINGTON UNIT
59 DARRINGTON RD.
ROSHARON, TX. 77583

QUESTIONS OF THE ISSUES PRESENTED

1. WHETHER OR NOT THE LOWER COURT ERRED AND ABUSED HIS DISCRETION IN NOT DETERMINING THE TRIAL COURT REVERSIBLY ERRED FOR ALLOWING "VICTIM IMPACT STATEMENT AND VICTIM IMPACT EVIDENCE," OVER OBJECTION, DURING GUILT/INNOCENCE PHASE OF TRIAL;
2. WHETHER OR NOT THE LOWER COURT(S) ERRED AND ABUSED ITS DISCRETION IN NOT FINDING THE ISSUANCE OF AN "AFFIRMATIVE FINDING" ON USE AND EXHIBITION OF A "DEADLY WEAPON" SHOULD HAVE BEEN OMITTED FROM JUDGMENT;
3. WHETHER OR NOT THE LOWER COURT ERRED AND ABUSED ITS DISCRETION IN NOT DETERMINING SENTENCE(S) WERE CRUEL AND UNUSUAL, IN COMPARISON TO OTHER DEFENDANTS SIMILARLY SITUATED

TABLE OF CONTENTS

PAGE

I. QUESTION OF THE ISSUES PRESENTED,	i	
II. TABLE OF CONTENTS,	ii, iii	
III. INDEX OF AUTHORITIES,	iv, v, vi	
IV. LIST OF ALL PARTIES,	vii	
V. REQUEST FOR ORAL ARGUMENTS,	viii	
VI. PETITION FOR WRIT OF CERTIORARI,	1	
VII. JURISDICTION,	2	
VIII. PLEA FOR LIBERAL SCRUTINY,	2	
IX. PROCEDURAL HISTORY OF CASE,	2-3	
X. STATEMENT OF THE FACTS,	3-7	
XI. GROUNDS FOR REVIEW,	7-8	
XII. POINT OF ERROR (No. 1) (RESTATED),	8	
THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR IN PERMITTING THE USE OF "VICTIM IMPACT STATEMENTS" DURING THE GUILT/ INNOCENCE PHASE OF TRIAL		
ARGUMENTS, AUTHORITIES AND DISCUSSIONS,		8-11
XIII. POINT OF ERROR No. 2, (RESTATED),	12	
THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ITS		

TABLE OF CONTENTS, CONT'D:

PAGE

ISSUANCE OF AN AFFIRMATIVE
FINDING ON USE AND
EXHIBITION OF A DEADLY WEAPON

ARGUMENTS, AUTHORITIES AND DISCUSSIONS, . . . 12-16

XIV. POINT OF ERROR NO. 3 (RESTATE), 16
THE LOWER COURT ERRED AND
ABUSED ITS DISCRETION IN
NOT FINDING THE PUNISHMENT
ASSESSED WAS CRUEL AND UNUSUAL

ARGUMENTS, AUTHORITIES AND DISCUSSIONS, . . 16-18

XV. PRAYER FOR RELIEF, 18

XVI. AFFIDAVIT, 19

XVII. CERTIFICATE OF SERVICE . . . 19

XVIII. ADDENDUM ADDENDUM

INDEX OF AUTHORITIES

PAGE

AUBIN V. STATE, 2019 Tex. App. Lex. 2101,
(Tex. App. 2019), 11

BOOTH V. MARYLAND, 482 U.S. 496 (1987), 10, 11

DISOTELL V. WARDEN, 2010 U.S. Dist. Lex. 55439,
(C.A. 5-2010), 10

ESPINOSA V. STATE, 194 S.W. 3d 703,
(Tex. App. Hou 2006), 8

GARZA V. STATE, 2014 Tex. App. Lex. 11856,
(Tex. App. TEXARKANA 2014), 9

HAINES V. KERNER, 92 S.Ct. 594 (1972), 2

LA FLEUR V. STATE, 106 S.W. 3d 91,
(Tex. Cr. App. 2003), 15

LANE V. STATE, 822 S.W. 2d 35,
(Tex. Cr. App. 1991), 9

MILLER-EL V. STATE, 782 S.W. 2d 892,
(Tex. Cr. App. 1990), 9

PAYNE V. TENNESSEE, 501 U.S. 803 (1991), 10, 11

POLK V. STATE, 693 S.W. 2d 391,
(Tex. Cr. App. 1985), 14, 15

INDEX OF AUTHORITIES, CONT'D:

PAGE

SIMPSON V. STATE, 488 S.W. 3d 318,
(Tex. Cr. App. 2016), . . . 17

SLACK V. MC DANIEL, 120 S.Ct. 1595 (2000), . . . 12

SOLEH V. HELM, 463 U.S. 277, (1983), . . . 17

WILLIAMS V. TAYLOR, 120 S.Ct. 1495, (2000), . . . 12

U.S.C.A.:

AMEND. 5, . . . 2, 7, 10
AMEND. 6, . . . 9
AMEND. 8, . . . 7, 17, 18
AMEND. 14, . . . 2, 7,
10, 17.

RULES OF SUPREME COURT:

RULE 10, . . . 2, 16
RULE 14, . . . 2

ARTICLES:

ART. 9.31, U.T.C.A., . . . 17
ART. 9.32, U.T.C.A., . . . 17
ART. 9.33, U.T.C.A., . . . 17
ART. 20.04, U.T.C.A., . . . 9
ART. 29.03, U.T.C.A., . . . 9
ART. 42.03, U.T.C.A., . . . 10, 11

INDEX OF AUTHORITIES, CONT'D:

PAGE

OTHER:

CIVIL PRACTICE REMEDIES CODE,	19
28 U.S.C. § 1746,	19

ADDENDUM:

COURT OF APPEAL OPINION,	ADDENDUM
PETITION FOR DISCRET. REVIEW RULING,	ADDENDUM

LIST OF ALL PARTIES

1. 9TH COURT OF APPEALS
MCKEITHEN, STEVE, C.J.
KREGER, CHARLES, J.J.
JOHNSON, LEANNE, J.J.
2. Crim. District Judge
Hon. JOHN B. STEVENS, JR.
3. APPELLANT COUNSEL
Hon. JOSHUA ZIENTEK
4. STATE COUNSEL, APPEAL
Hon. WAYNE G. THOMPSON
5. STATE TRIAL COUNSEL
Hon. MICHAEL LAIRD
6. ~~DEFENSE~~ TRIAL COUNSEL
Hon. THOMAS BURBANK
7. APPELLANT / PETITIONER
RAPHAEL DIMENECK SAM

REQUEST FOR ORAL ARGUMENT

PETITIONER REQUEST AN ORAL ARGUMENT
ONLY IF THIS COURT DEEM IT NECESSARY.

IN THE
UNITED STATES SUPREME COURT

RAPHAEL DIMENICK SAM, *
(PETITIONER)

VS.

*

CAUSE NO. 18-29123, 18-29124

LORIE DAVIS,
DIRECTOR OF TDLJ-ID,
(RESPONDENT)

*

PETITION FOR
WRIT OF CERTIORARI

CHALLENGE TO THE CRIMINAL DISTRICT
JEFFERSON COUNTY, TX.

TRIAL CAUSE NOS. 18-29123, 18-29124

PETITION FOR
WRIT OF CERTIORARI
AGAINST STATE COURT

TO THE HONORABLE JUDGES OF SAID COURT:

PLEASE TAKE NOTICE THAT, COMES NOW,
RAPHAEL DIMENICK SAM, PETITIONER, PRO SE, IN
THE ABOVE STYLED AND NUMBERED CAUSE, FILE
THIS HIS "PETITION FOR WRIT OF CERTIORARI",
IN GOOD FAITH, CONTENDING DUE PROCESS AND
THE INTEREST OF JUSTICE WOULD BE BEST SERVED
BY THIS HONORABLE COURT GRANTING THE SAME,
AND IN SUPPORT THEREOF, YOUR PETITIONER
WOULD SHOW UNTO THIS HONORABLE COURT THE
FOLLOWING GROUNDS AND REASON:

I. PLEA FOR LIBERAL SCRUTINY

THAT YOUR PETITIONER RESPECTFULLY REQUESTS FOR THIS HONORABLE COURT TO CONSTRUCT SAID PETITION LIBERALLY, AS REQUIRED IN THIS COURT'S RULING IN HAINES V. KERNER, 92 S.Ct. 594, (1972), AND ITS PROGENY. YOUR PETITIONER IS A LAYMAN AND LACKS THE SKILLS AND KNOWLEDGE TO DRAFT SAID PETITIONER'S WRIT WITH THE FORMAL PLEADING DEMANDED OF ATTORNEYS.

II. JURISDICTION

THAT THIS HONORABLE COURT HAS JURISDICTION TO ENTERTAIN SAID "PETITION" PURSUANT TO THE DICTATES OF RULES OF THE SUPREME COURT, RULES 10 (A) (B); RULE 14; U.S.C.A., AMENDMENT 5; 14.

III. PROCEDURAL HISTORY OF CASE

THAT YOUR PETITIONER WAS CHARGED AND INDICTED FOR THE OFFENSES OF AGGRAVATED ROBBERY AND AGGRAVATED KIDNAPPING ON APRIL 11, 2018. SAID OFFENSE WAS ALLEGED TO HAVE OCCURRED MARCH 24, 2018. TRIAL COMMENCED BEFORE A JURY AND PETITIONER WAS CONVICTED JANUARY 31, 2019. JURY ASSESSED PUNISHMENT IN CAUSE NO. 18-29124 - AGGRAVATED ROBBERY, AT LIFE IMPRISONMENT. AND NINETY-NINE YEARS IMPRISONMENT IN CAUSE NO. 18-29123 - AGGRAVATED KIDNAPPING, RESPECTIVELY. SAID SENTENCES RAN CONCURRENTLY. YOUR PETITIONER APPEALED. BOTH CHARGES WERE TRIED CONCURRENTLY. THE APPEAL WAS ADVANCED

to the 9th Court of Appeals, located in Beaumont, Texas,
Cause Nos. 09-19-0040-CR and 09-19-0041-CR. ON

JANUARY 22, 2020, said Court affirmed the trial

Court's conviction. Your Petitioner, asserting the

Court of Appeals erred and abused its discretion

in addressing Petitioner's claims, advanced a Petition

for discretionary review to the Texas Court of

Criminal Appeals, Cause No. PD-0139-20. Said

P.D.R. was refused, without written explanation, on

6/17/20.

Petitioner now advances this as "Petition for writ

of certiorari," in good faith, contending his conviction

was obtained in breach of the United States Consti-

tution, usurpation of this Court's exercise of its

superior power to correct a fundamentally

flawed ruling by the State Court.

IV.

STATEMENT OF THE FACTS

THAT YOUR PETITIONER WAS UNLAWFULLY ACCUSED

OF COMMITTING THE OFFENSES OF AGGRAVATED ROBBERY

AND AGGRAVATING KIDNAPING RESPECTIVELY, CAUSE NOS.

18-29123 AND 18-29124. SAID OFFENSES WERE ALLEGED

TO HAVE OCCURRED MARCH 24, 2018. THE OFFENSES

STAMPEDED FROM PETITIONER'S EFFORTS TO DISRUPT

A BURGLARY IN PROGRESS, OF A HOME BELONGING

TO HIS X-GIRLFRIEND, LOCATED AT 1625 AVENUE I,

BEAUMONT, TEXAS. (K. III - 104).

THE RECORD EVIDENCE ESTABLISHES YOUR

PETITIONER, AND NOT THE ALLEGED COMPLAINANT,

T. CASTRO, MADE THE 911 CALL TO THE BEAUMONT

POLICE DEPARTMENT TO REPORT A BURGLARY OF HIS

GIRLFRIEND'S HOME. (K. III - 162-104; 175-176).

IT IS AGAINST HUMAN NATURE, AS WE KNOW IT, FOR

A CRIMINAL DEFENDANT TO CALL 911 AND THE

POLICE ON HIMSELF. MOREOVER, THE RECORD

EVIDENCE REFLECTS YOUR PETITIONER, IN MAKING THE 911 CALL, GAVE EXCITED UTTERANCE IN HIS EFFORTS TO COMMUNICATE THAT HE NOT THE ALLEGED VICTIM, WAS UNDER ATTACK BY THE BURGLARY SUSPECT, AND THE DISPATCHER NOTED PETITIONER WAS YELLING FOR HELP. (R. III - 175, 176). PETITIONER, IN HIS EFFORT TO SEEK POLICE INTERVENTION, EXPRESSED THE BURGLARY SUSPECT, (THE ALLEGED COMPLAINANT), WAS ATTACKING PETITIONER AND THAT THE TWO WERE ENGAGED IN A FIGHT. (ID.). IN FACT BEFORE THE POLICE ARRIVED ON THE SCENE, THEY RECEIVED INFORMATION FROM DISPATCH THAT IT WAS COMPLAINANT, NOT PETITIONER, WHO WAS COMMITTING A CRIME. (R. III - 152). WHEN POLICE ARRIVED AT THE SCENE, THEY FOUND THE COMPLAINANT BLEEDING WITH A GUN NEARBY. PETITIONER AND COMPLAINANT AND THAT THE TWO APPEARED TO BE STILL FIGHTING. (R. III - 152, 194). PETITIONER ASSETS IT WAS THE ALLEGED COMPLAINANT WHO FIRED OUT THE GUN AND THAT IT WAS COMPLAINANT'S GUN, WHO SOUGHT TO UTILIZE HIS GUN IN AN ATTEMPT TO ESCAPE FROM PETITIONER WHO TRIED TO SUBDUCE HIM AFTER CATCHING THE ALLEGED COMPLAINANT IN THE ACT OF BURGLARIZING HIS GIRLFRIEND'S HOME. THE VERSION THAT TURNED FROM PETITIONER BEING THE VICTIM TO THE COMPLAINANT BEING THE VICTIM COMES FROM THE COMPLAINANT. HE ASSAULTED ME, (THE COMPLAINANT), WAS RUNNING FOR HELP TO GET AWAY FROM PETITIONER WHO WAS CHASING AFTER HIM. (R. III - 116, 117). PETITIONER CHASED AFTER THE ALLEGED COMPLAINANT BECAUSE HE WAS CAUGHT IN THE ACT, INSIDE THE HOME OF HIS GIRLFRIEND'S HOME AND SOUGHT TO ESCAPE WITH PETITIONER ARRIVED AT SCENE. (R. III - 159, 190). PETITIONER INFORMED THE OFFICERS THE HOME THE ALLEGED

COMPLAINANT WAS CAUGHT BURGLARIZING BELONGED TO HIS GIRLFRIEND. (R. III - 161). MS. ROUGAN HAD PREVIOUS PROBLEMS WITH BURGLARIES OF HER HOME. (R. III - 191). YOUR PETITIONER WAS ATTEMPTING A DEFENSE OF PROPERTY OF HIS GIRLFRIENDS HOME AFTER SEVERAL PREVIOUS BURGLARIES. IN ADDITION, PROOF THAT A BURGLARY MAY HAVE OCCURRED, ON DATE OF INCIDENT, POLICE NOTED DOOR TO MS. ROUGAN'S HOME WAS AJAR AND THERE WERE WOOD SPLINTERS ON DOOR AND ON GROUND, WHICH WAS EVIDENCE OF SOME TYPE OF FORCED ENTRY INTO HER HOME. (R. I - 166). PETITIONER CONTENTS HE WAS CHASING AFTER THE ALLEGED COMPLAINANT SOLELY IN DEFENSE OF HIS GIRLFRIENDS HOME WHERE HE, TOO, ONCE RESIDED FOR 8 MONTHS. (R. III - 159; 190). EVEN THOUGH PETITIONER WAS NOT LIVING WITH HIS X-GIRLFRIEND AT TIME OF OFFENSE, HE RESIDED AT HIS MOTHER'S HOUSE WHO LIVED NEARBY. (R. III - 181; 191).

WHEN POLICE ARRIVED AT SCENE, THE ALLEGED COMPLAINANT WAS BLEEDING AND HIS GUN WAS NEARBY. (R. III - 152). THE TWO WERE STILL FIGHTING. (R. III - 194). THE ALLEGED COMPLAINANT SOUGHT TO GRAB HIS GUN. THE FIRST OFFICER WHO ARRIVED AT CRIME SCENE WITNESSED THE ALLEGED COMPLAINANT NEAR HIS GUN. SAID OFFICER WAS SPECIFICALLY AND POINTEDLY TELLING THE ALLEGED SUSPECT, WHOSE GUN WAS NEAR HIM, TO NOT GRAB THE GUN BUT HE DID ANYWAY. (R. III - 195). CASTRO WAS ORDERED TO LET THE GUN GO. HE EVENTUALLY RELEASED THE GUN AFTER BEING COMMANDED TO DO SO. (R. III - 195). THE OFFICER KICKED AWAY THE GUN AFTER THE ALLEGED COMPLAINT RELEASE IT. (ID).

After Castro released the gun that he had to be ordered to release, he became belligerent and hostile. The officer, who was rightly focused in on Mr. Castro as the suspect, had to get physical with the suspect by striking him three times just to get Castro to lay down to be handcuffed. Also, in light of Mr. Castro's refusal to comply with the officers command to lay down to be handcuffed and fearing Castro would pick up the gun, the officers had to laser Mr. Castro to stop his aggression and hostile behavior. (R. III - 153). Bullets to the gun were also found nearby. (R. III - 210). Petitioner never sought to run from the police when they arrived and complied to their many requests. (R. III - 206). Moreover, it was your petitioner, and not the alleged complainant, who explained, over and over, how irrational he was that the police arrived, and that it was Castro who he caught burglarizing his former residence and girlfriend's current housing. (R. III - 197). The entire case subsequently flipped from Mr. Castro being viewed as the criminal into his now being viewed as the complainant. The officers at crime scene erroneously concluded that petitioner, who had the alleged complainant's cell phone (which he used to make the 911 call) and "watch" (which he offered to petitioner to let him escape), was the criminal and not Castro, and now, Castro became the one assaulted and robbed, and now - because solely due to petitioner having possession of the complainant's cell phone and watch. (R. III - 158). Petitioner gave the officers a reasonable explanation why he was in possession of the complainant's robbery and that the gun found at scene of crime was Castro's gun, which

is why he tried so hard to retrieve [his] gun. Eventually, the police erroneously concluded Petitioner is the suspect and not Castro. From this wrongful analysis by the initial responders, (Police Officers), your Petitioner was now viewed as the criminal and not Castro. (R. III - 202). Consequently, and solely due to an error in judgment by the first responding officers, your Petitioner was charged with Aggravated Robbery and Aggravated Kidnapping, in spite of the gun belonging to Castro, and after being found guilty, as charged, was assessed punishment at life imprisonment and 99 years, respectively. (R. V - 29).

IV. GROUND'S FOR REVIEW

CERTIORARI SHOULD BE GRANTED IN LIGHT OF THE FOLLOWING GROUND'S AND REASONS, TO WIT:

1. THE LOWER COURTS ERRED AND ABUSED ITS DISCRETION IN NOT FINDING THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR IN NOT FINDING USE OF "VICTIM'S IMPACT STATEMENT" DURING GUILT/INNOCENCE PHASE OF TRIAL, INFRINGED UPON PETITIONER'S 5TH 6TH 8TH AND 14TH AMENDMENT RIGHTS;

2. THE LOWER COURTS ERRED AND ABUSED ITS DISCRETION IN NOT FINDING THE TRIAL COURT'S ISSUANCE OF AN AFFIRMATIVE FINDING ON USE AND EXHIBITION OF A DEADLY WEAPON VIOLATED PETITIONER'S 5TH AND 14TH AMENDMENT RIGHTS;

3. THE LOWER COURTS ERRED AND ABUSED ITS DISCRETION IN NOT FINDING PETITIONER'S PUNISHMENT BREACHED THE 8TH AMENDMENT PROTECTION AGAINST "CRUEL AND UNUSUAL PUNISHMENT."

VI

POINT OF ERROR NO. 1 RESTATED

THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR IN PERMITTING THE USE OF "VICTIM'S IMPACT STATEMENT" DURING GUILT/INNOCENCE PHASE OF TRIAL

ARGUMENTS, AUTHORITIES AND DISCUSSIONS

THAT IT HAS BEEN LONG RECOGNIZED "VICTIM'S IMPACT STATEMENTS" MAY BE ADMISSIBLE, AFTER CONVICTION AND DURING PUNISHMENT PHASE OF TRIAL. ESPINOSA V. STATE, 194 S.W. 3d 703, (TEX. APP. HOUSTON [14TH DIST.] 2006). MOREOVER, RELEVANT VICTIM IMPACT STATEMENTS AND EVIDENCE [MAY] INCLUDE PHYSICAL, PSYCHOLOGICAL, OR ECONOMIC EFFECTS OF CRIME ON A VICTIM OR A VICTIM'S FAMILY. ESPINOSA, 194 S.W. 3d AT 711.

IN THE CASE AT BAR, WHEN THE VICTIM WAS TESTIFYING, THE PROSECUTOR INQUIRED AS TO WHETHER HE GOES OUT AT NIGHT AFTER THE INCIDENT OR ALLOWS HIS FAMILY TO GO OUT AT NIGHT. (R. III-136). THE DEFENSE OBJECTED THAT IT WAS NOT RELEVANT. (R. III-136). THE PROSECUTION RESPONDED THAT THE TESTIMONY GOES TO THE VICTIM'S MENTAL INJURIES. (R. III-137). THE TRIAL COURT RULED THAT IT ALLOWS A "FULL EXPLORATION OF THE EXTENT OF THE INJURIES BECAUSE IT IS AN ELEMENT OF THE

OFFENSE. IT CAN BE VIEWED SINCE IT ALLEGES THE ELEMENT OF INTENTIONALLY AND KNOWINGLY OR RECKLESSLY CAUSING BODILY INJURY AND THAT IS ALLOWED TO BE EXPLORED AS LONG AS IT IS WITHIN THAT ELEMENT. (R. III-137). THE COURT WAS MISTAKEN! THE ELEMENTS OF BOTH AGGRAVATED ROBBERY, (ART. 29.03), AS WELL AS AGGRAVATED KIDNAPPING, (ART. 20.04, V.T.C.A.), DOES NOT INCLUDE "MENTAL INJURY" A VICTIM MAY HAVE ENDURED, BUT "BODILY" INJURY. MOREOVER, OUTSIDE THE CONTENT OF HOMICIDE CASES, VICTIM-IMPACT TESTIMONY IS GENERALLY DEFINED AS EVIDENCE REGARDING THE PHYSICAL OR PSYCHOLOGICAL EFFECTS OF A CRIME ON VICTIMS THEMSELVES. SEE LANE V. STATE, 822 S.W. 2d 35, 41 (TEX. CR. APP. 1991). ALTHOUGH VICTIM-IMPACT TESTIMONY MAY BE ADMISSIBLE DURING THE PUNISHMENT STAGE, TEXAS LAW FIND IT GENERALLY INADMISSIBLE DURING GUILT/INNOCENCE PHASE. MILLER-EL V. STATE, 782 S.W. 2d 892, 895 (TEX. CR. APP. 1990) (VICTIM'S TESTIMONY ABOUT FUTURE HARDSHIP AS PARAPLEGIC WAS IRRELEVANT ON GUILT ISSUE AND THUS INADMISSIBLE OVER OBJECTION).

IN GARZA V. STATE, 2014 TEX. APP. LEXIS 11856, (TEX. APP. - TEXARKANA 2014), THE APPELLANT WAS CONVICTED OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON INVOLVING FAMILY OR DATING VIOLENCE. THE TEXARKANA COURT OF APPEALS FOUND ERROR WHERE VICTIM IMPACT EVIDENCE WAS ADMITTED, OVER OBJECTION, DURING GUILT/INNOCENCE PHASE OF TRIAL. THE TRIAL COURT ALLOWED INADMISSIBLE EVIDENCE OF HOW THE OFFENSE AFFECTED THE VICTIM'S LIFE, JUST AS HE DID IN THE INSTANT CASE THAT IS BEFORE THIS HONORABLE

United States Supreme Court. The evidence of "Mental Injuries" is not an element of AGG. Robbery or AGG. Kidnapping and should not have been admitted by the trial court.

The evidence that was admitted was text books victim impact evidence and was inadmissible. Hence, Federal Courts also held "Victim Impact Evidence is to be considered at sentencing. Robbott v. Ward of LA.

Cox. Inst., 2010 U.S. Dist. Lexis 55439, (CA. 5 - 2010). Furthermore, the United States Supreme Court limits use of victim's impact evidence during sentencing, and gives no permissibility for its use during

guilt/innocence phase. See Booth v. Maryland, 482 U.S. 496, (1987); Layne v. Tennessee, 501 U.S.

808, (1991).

Consideration of possible future impact on victim during guilt/innocence, derived

your reliance of due process and his right to a fair trial. U.S.C.A. Am. 5, 14. Your

Petitioner asserts he was prejudiced by the

intro of victim impact statements into trial

guilt/innocence, that the jury

was caused to erroneously speculate on

future harm and impact on victim and/or

his family, and the jury was caused to

erroneously consider factors outside

the elements of the charged offense.

Petitioner concedes the constitution provides

no bar to the admission of victim impact

statements during the sentencing phase

of trial, but focuses upon its admission

during guilt phase. Layne, 501 U.S. at 827.

IN ADDITION, TEXAS LAW ART. 42.03 C.C.P.

VICTIM IMPACT STATEMENTS, AND ITS CONSIDERATION, DURING THE PUNISHMENT PHASE OF TRIAL, BUT THERE EXIST NO TEXAS STATUTE THAT PERMITS ITS USE DURING THE GUILT PHASE OF TRIAL. SEE AUBIN V. STATE, 2019 TEX. APP. LEX. 2101 (2019). HENCE, THE STATE'S USE AND INTRO. OF VICTIM IMPACT STATEMENTS, OVER OBJECTION, DURING GUILT, IS NOT PERMISSIBLE UNDER ART. 42.03 SUPRA. ITS USE FURTHER CONFLICTS WITH SUPREME COURT PRECEDENT ~~AND~~ HIGHLIGHTED IN BOOTH, SUPRA; PAYNE, SUPRA. (EXPLAINING ADMISSIBILITY OF VICTIM IMPACT STATEMENTS DURING PUNISHMENT PHASE, ONLY. HENCE, THE COURT PERMISSIBILITY OF VICTIM IMPACT STATEMENT DURING GUILT OVER OBJECTION, CONFLICTS WITH THE U.S. CONSTITUTION AND FEDERAL LAW, AS DETERMINED BY, THE U.S. SUPREME COURT. SEE WILLIAMS V. TAYLOR, 120 S. CT. 1495 (2000); SLACK V. MC DANIEL, 120 S. CT. 1545 (2000).

THIS COURT SHOULD FIND THE LOWER COURT ERRED AND ABUSED ITS DISCRETION IN NOT FINDING REVERSIBLE ERROR, EXTRANEOUSLY CONCLUDING ERROR IS NOT IN RECORD WHEN RECORD EVIDENCE ESTABLISHES THE SAME, AND WHEN SAID ERROR BREACHES STATE, FEDERAL AND SUPREME COURT PRECEDENT, AS ARGUED, SUPRA, WARRANTING REVERSAL.

WHEREFORE, PREMISES, ARGUMENTS AND AUTHORITIES CONSIDERED, PETITIONER PRAY FOR THE GRANT OF CERTIORARI, AND TO HAVE SAID CASE REMANDED TO LOWER COURT FOR APPROPRIATE RESOLUTION. ALTERNATIVELY, PETITIONER PRAYS FOR ANY OTHER, FURTHER OR DIFFERENT RELIEF, IN THE INTEREST OF JUSTICE. IT IS SO PRAYED FOR.

VII.

POINT OF ERROR No. 2 RESTATED

THE TRIAL COURT ERRED IN ITS
ISSUANCE OF AN AFFIRMATIVE
FINDING ON USE AND EXHIBITION
OF A DEADLY WEAPON

ARGUMENTS, AUTHORITIES AND DISCUSSIONS

PETITIONER CONTENDS, ON THE OUTSET, AS ARGUED IN POINT OF ERROR No. 1, AT NO TIME WAS HE IN POSSESSION OF A GUN DURING THE COMMISSION OF THE OFFENSE. THE ALLEGED COMPLAINANT LOST [HIS] GUN IN THE STRUGGLE AND FIGHT HE HAD WITH PETITIONER. THE RECORD EVIDENCE ESTABLISHES THE GUN WAS FOUND BY THE FIRST RESPONDING OFFICERS NEAR MR. CASTRO, ON THE GROUND, WITH LOOSE BULLETS ON THE GROUND. (R. III - 152; 194). AFTER THE POLICE ARRIVED AT SCENE, THE PETITIONER AND MR. CASTRO WAS STILL FIGHTING. (R. III - 104). THE FIRST OFFICER WITNESSED MR. CASTRO NEARER TO THE GUN THAN PETITIONER, AND COMMANDED MR. CASTRO TO NOT GRAB THE GUN. CASTRO, IN SPITE OF THE OFFICER'S COMMAND, SOUGHT TO GRAB THE GUN ANYWAY. (R. III - 195). THE EVIDENCE ESTABLISHES IT WAS HE, NOT PETITIONER, WHO POSSESSED THE GUN. PRIOR TO OFFICER'S ARRIVAL, THE DISPATCHER WHO RECEIVED PETITIONER'S 911 CALLED, NOTED YELLING AND EXCITED UTTERANCES. (R. III - 154-155). YOUR PETITIONER SOUGHT TO EXPLAIN TO DISPATCH AS WELL AS OFFICER AT SCENE THAT MR. CASTRO HAD A GUN AND SOUGHT TO SHOOT PETITIONER, RESULTING INTO THE STRUGGLE

FOR THE GUN, AND CAUSING PETITIONER, IN AN ACT OF SELF DEFENSE, TO PULL OUT HIS KNIFE, AFFLICTING NON-LIFE THREATENING WOUNDS ON MR. CASTRO. MR. CASTRO, AFTER RETRIEVING HIS GUN, DID NOT RELEASE IT UNTIL THE OFFICER DEMANDED HE DO IT. SHORTLY THEREAFTER, THE OFFICER KICKED THE GUN AWAY FROM MR. CASTRO. (R.II-195). IT WAS MR. CASTRO WHO HAD TO BE STRUCK THREE (3) TIMES AND TAZED BY OFFICERS AT THE CRIME SCENE, JUST TO GET HANDCUFFED. IT WAS PETITIONER WHO CONTINUOUSLY GAVE THANKS TO THE POLICE FOR THEIR ARRIVAL, DUE TO CASTRO'S CONDUCT AND ACTS, INCLUDING HIS PULLING OUT HIS GUN. (R.II-197) CASTRO'S NON-COMPLIANCE AND REBELLION TO POLICE AT SCENE IS NOT CONSISTENT WITH SOMEONE ROBBED AND KIDNAPPED. IN SHORT, PETITIONER CONTENTS HE'S CHARGED WITH FELONY POSSESSION OF FIREARM, USED TO PERFECT A ROBBERY AND KIDNAP, DUE TO THE ERRONEOUS CHOICE OF ARRESTING OFFICERS AT CRIME SCENE, WHO OPINED DUE TO PETITIONER'S POSSESSION OF MR. CASTRO'S PHONE AND WATCH, PETITIONER SHOULD BE CHARGED AND NOT MR. CASTRO. ARRESTING OFFICERS MADE NO ATTEMPT TO VERIFY PETITIONER'S VERSION OF THE EVENTS AND/OR WHO WAS THE OWNER OR POSSESSOR OF THE GUN. BECAUSE OF THE OFFICERS MISTEAKS, LACK OF AND ADEQUATE INVESTIGATION, AND THEIR OWN BIAS, YOUR PETITIONER IS CAUSED TO SUFFER THE ONUS OF A CRIMINAL CONVICTION FOR OFFENSE(S) HE DID NOT COMMIT AND FOR ATTEMPTING TO ABORT A BURGLARY OFFENSE BY COMPLAINANT.

ARRESTING OFFICERS OUGHT NOT BE ABLE TO IGNORE DISPATCH CALLS REPORTING A CRIMINAL AND CRIMINAL ACTIVITIES, ONLY TO HAVE THE REPORT TURN ON THE CALLER. DUE TO POLICE BAD JUDGMENT, POOR INVESTIGATION AND BIAS AGAINST AFRICAN-AMERICANS.

THAT AFTER TRIAL, AND IN THIS 2ND POINT OF ERROR, THE TRIAL COURT ERRED IN ITS DENIAL OF PETITIONER'S MOTION IN ARREST OF JUDGMENT WHERE THE JUDGMENT IS INVALID BECAUSE THERE IS AN AFFIRMATIVE FINDING THAT A DEADLY WEAPON WAS USED OR EXHIBITED IN THE COMMISSION OF THE OFFENSE WHEN IT WAS NOT APPROPRIATELY PLEADED.

PETITIONER FILED A MOTION FOR NEW TRIAL AND IN ARREST OF JUDGMENT, AFTER CONVICTION, ON MARCH 1, 2019, (R. I. SUPP. REC. pg. 4-9). PETITIONER ARGUED, INTER ALIA, THE JUDGMENT IS INVALID BECAUSE THERE IS AN AFFIRMATIVE FINDING ON THE USE OF A DEADLY WEAPON IN COMMISSION OF OFFENSE, WHEN DEADLY WEAPON WAS NOT PROPERLY PLEADED IN THE INDICTMENT. (TR. - 5; R. 1st SUPP. 4-9).

IN SUPPORT OF PETITIONER'S ARGUMENT, HE RELIES UPON THE CASE OF POLK V. STATE, 693 S.W. 2d 391, (TEX. CR. APP. 1985), AND RELATED CASES. IN POLK, THE COURT OPINED WHERE THE JURY IS THE TRIER OF FACT, THE [TRIAL COURT] MAY NOT PROPERLY ENTER AN AFFIRMATIVE FINDING CONCERNING A DEFENDANT'S USE OR EXHIBITION OF A DEADLY WEAPON, UNLESS;

1. THE DEADLY WEAPON OR FIREARM HAS BEEN SPECIFICALLY PLEADED AS SUCH,

(USING THE NOMENCLATURE "DEADLY WEAPON") IN THE INDICTMENT, (APPLIES WHEN THE VERDICT READS "GUILTY AS CHARGED IN THE INDICTMENT");

2. SPECIAL ISSUE IS PERMITTED AND SUBMITTED AND ANSWERED AFFIRMATIVELY

THERE WOULD BE NO MORE VERDICT THAT AMOUNTED TO OR NECESSARILY IMPLIED AN AFFIRMATIVE FINDING OF USE AND EXHIBITION OF A DEADLY WEAPON, OVERRULING ALL PRIOR CASES THAT PERMITTED AN IMPLIED AFFIRMATIVE FINDING "DEADLY WEAPON WAS NOT SPECIFICALLY PLEADED IN CAUSE NO. 18-29124. YOUR PETITIONER'S CASE IS FACTUALLY SIMILAR TO POLK, SUPRA, IN THAT THE TRIAL COURT ENTERED AN AFFIRMATIVE FINDING OF USE OR EXHIBITION OF A DEADLY WEAPON WHEN 'DEADLY WEAPON' WAS NOT SPECIFICALLY PLEADED IN INDICTMENT."

BECAUSE THERE WAS NO SPECIFIC DEADLY WEAPON ASSERTION IN THE INDICTMENT, AND NO SPECIAL ISSUE SUBMITTED TO JURY DURING PUNISHMENT, THE TRIAL COURT'S ISSUANCE OF A DEADLY WEAPON FINDING "AS CHARGED IN THE INDICTMENT," CONFLICTS WITH TEXAS HIGHER COURT RULING IN POLK, SUPRA. THE LOWER COURT CITED AND RELIED UPON LAFLEUR V. STATE, 106 S.W.3D 91, (TEX. CR. APP. 2003), TO DENY PETITIONER RELIEF. IN LAFLEUR, IT WAS DETERMINED HE, TOO, REQUIRES A SPECIAL ISSUE TO BE INCLUDED IN THE JURY CHARGE AND FOR THE INDICTMENT TO ALLEGE "DEADLY WEAPON." HENCE, LAFLEUR, SUPRA, WAS MISPLACED.

CONSEQUENTLY, REVIEW FROM THE UNITED STATES SUPREME COURT IS WARRANTED ON THIS ERROR, AS JURIST OF REASON WILL FIND THE TEXAS LOWER COURT ERRED IN ITS RULING AND WOULD ENCOURAGE PETITIONER TO PROCEED FURTHER FOR RESOLUTION ON THE MERIT OF PETITIONER'S CLAIM.

WHEREFORE, PREMISES, ARGUMENTS AND AUTHORITIES CONSIDERED, YOUR PETITIONER PRAYS THIS COURT WOULD DETERMINE THE LOWER COURT DID NOT FOLLOW STATE COURT PRECEDENT, WARRANTING THIS COURT'S INTERVENTION, AS STIPULATED IN RULE 10. PETITIONER PRAYS THIS COURT WOULD REVERSE THIS CASE ON THIS POINT; REMAND SAID CASE BACK TO TRIAL COURT, OR ALTERNATIVELY, ANY OTHER, FURTHER OR DIFFERENT RELIEF THIS COURT DEEM IS JUST AND PROPER. IT IS SO PRAYED FOR.

VIII. POINT OF ERROR No. 3 (RESTATE)

THE LOWER COURT ERRED AND ABUSED ITS DISCRETION IN NOT FINDING THE PUNISHMENT ASSESSED WAS CRUEL AND UNUSUAL

ARGUMENTS, AUTHORITIES AND DISCUSSIONS

THAT IT HAS BEEN LONG RECOGNIZED THE 8TH AMENDMENT GUARANTEE PROTECTS A DEFENDANT AGAINST CRUEL AND UNUSUAL PUNISHMENT. U.S.C.A., 8TH; 14. SOLEM V. HELM, 463 U.S. 277 (1983). MOREOVER, AS THE COURT NOTED

ON PAGE 8 OF ITS RULING, TO DETERMINE IF A SENTENCE IS GROSSLY DISPROPORTIONATE TO A PARTICULAR DEFENDANT'S CRIME, WE CONSIDER (1) THE SEVERITY OF THE OFFENSE IN LIGHT OF THE HARM CAUSED OR THREATENED TO THE VICTIM; (2) THE CULPABILITY OF THE DEFENDANT, AND (3) THE DEFENDANT'S PRIOR ADJUDICATED AND UNADJUDICATED OFFENSES.

SIMPSON V. STATE, 488 S.W. 3d 318, 323, (Tex. Cr. App. 2016). IN THE RARE CASE IN WHICH THIS THRESHOLD COMPARISON LEADS TO AN INFERENCE OF GROSS DISPROPORTIONALITY, WE THEN COMPARE THE SENTENCES OF DEFENDANT WITH OTHER DEFENDANTS IN TEXAS, AND SENTENCES IMPOSED FOR SAME CRIME IN OTHER JURISDICTIONS. (Id.)

PETITIONER ASSERTS HIS LIFE SENTENCE PLUS 10,000 FINE FOR AGG. ROBBERY, AND CONCURRENT 99 YRS. SENTENCE, IS CRUEL AND UNUSUAL PUNISHMENT, IN THAT, OTHER DEFENDANTS IN DIFFERENT COUNTIES, CHARGED WITH AGG.

ROBBERY AND ~~AGG.~~ KIDNAPPING, DID NOT RECEIVE LIFE IMPRISONMENT PLUS \$10,000.00 FINE AND 99 YRS. TO RUN CONCURRENTLY.

PETITIONER'S PUNISHMENT IS DISPROPORTIONATE, WHEN COMPARED TO OTHER OFFENDERS SIMILARLY CHARGED AND PUNISHED.

SIMPSON, SUPRA. PETITIONER LISTED EXAMPLE CASES IN BRIEF TO ESTABLISH HIS CLAIM.

MOREOVER, YOUR PETITIONER ASSERTS HE WAS THE ORIGINAL VICTIM. THE POLICE WHO ARRIVED AT SCENE BELIEVED COMPLAINANT'S VERSION AND IGNORED ALL EVIDENCE TO CONTRARY THAT INCULPATES THE ALLEGED COMPLAINANT. PETITIONER HAD TO WRESTLE A GUN AWAY FROM HIM, TO DEFEND HIS LIFE, AS WELL AS HIS X-GIRLFRIEND PROPERTY. ART. 9.31, 9.32, 9.33, V.T.C.A. NO CRIMINAL DEFENDANT WITH

SEVERAL PRIORS, WOULD CALL 911 ON HIMSELF; AND AGAINST HIMSELF. CONSEQUENTLY, PETITIONER ASSERTS, BASED ON THE FACTS OF THE CASE, THE PUNISHMENT IS DISPROPORTIONATE AND CONSTITUTE AN 8TH AMENDMENT BREACH.

WHEREFORE, PREMISES ARGUMENTS AND AUTHORITIES CONSIDERED, PETITIONER PRAYS THE COURT WOULD FIND THE PUNISHMENT WAS DISPROPORTIONATE AND EXCESSIVE, BASED ON FACTS OF CASE. PETITIONER PRAYS FOR RELIEF ON THIS GROUND AND THE OTHER GROUNDS. IT IS SO PRAYED FOR.

Respectfully Submitted,

Raphael SAM

RAPHAEL DIMENICK SAM

PETITIONER, PRO SE

DOCS # 2248490

DARRINGTON UNIT

59 DARRINGTON RD.

ROSHARON, TX. 77583