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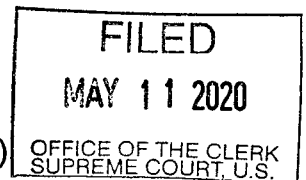
ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Bandy P. Chaudron — PETITIONER
(Your Name)

vs.

State of Texas — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

Texas Court of Appeals Seventh District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bandy Philip Chaudron
(Your Name)

21 FM 247
(Address)

Huntsville, Tx 77320
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- I. IS THE DUE ~~PROCESS~~ CLAUSE VIOLATED WHEN TRIAL COURT ALLOWED EVIDENCE, KNOWING THAT LAW ENFORCEMENT BROKE PROCEDURE OF ART. 38.20 C.C.P. PHOTO LINEUP IDENTIFICATION, BY CREATING A VERY SUGGESTIVE IDENTIFICATION BY SHOWING A PHOTO OF THE DEFENDENT TO THE WITNESS RIGHT BEFORE SHOWING THE PHOTO LINEUP?
- II. IF DISPUTED FACTS RAISED BY THE EVIDENCE OF THE ACTUAL LEGALITY OF THE POLICE STOP ARE IN VIOLATION OF ART. 38.23(A) TEXAS CODE OF CRIMINAL PROCEDURE SHOULD A REQUESTED JURY INSTRUCTION BE GRANTED?
- III. WOULDN'T IT BE LEGALLY INSUFFICIENT TO SUPPORT A JURY VERDICT OF TRUE TO A DEADLY WEAPON ALLEGATION BY MEANS OF A MOTORVEHICLE IF NO ONE WAS HURT OR EVEN PUT IN HARMS WAY?

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:

396th District Court Tarrant County Texas, Trial Court

RELATED CASES

Chaudron V. State, No. 1521449 D (Crim. Trial 2018) Judgement entered (June 27 2018)

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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☐ is unpublished.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☐ is unpublished.

☒ 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 396th District Crim. 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 Feb. 12, 2020.
A copy of that decision appears at Appendix C.

☐ 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

1. This case involve the Fourteenth Amendment to the United States Constitution, which provides, in relevant part, that "No state may deprive any person of life, liberty, or fairness without due process of law.
2. The stop, detention and arrest violated the Fourth and Fourteenth Amendments to the United States Constitution, Article I, Section 9 of the Texas Constitution.

STATEMENT OF THE CASE

A) OFFICER Justin Reynolds with the Fort Worth Police Department was on duty working traffic patrol in a school zone. Officer Reynolds testified that he observed a vehicle driving at a speed he believed to be in excess of the posted 20 mile per hour school zone speed limit. As a result, he signaled for driver to pull over. Driver stopped and presented a passport that was not his, and gave different names and dates of birth.

Officer Reynolds testified that after this initial contact and while he was attempting to determine the drivers identity, the driver drove off. In doing so, Officer Reynolds described driver as having backed into his unoccupied motorcycle. Afterwards driver can then be observed on video accelerating forward going around the location occupied by Officer Reynolds, you can clearly hear Officer Reynolds say, "Im not hurt." On the video, it does not appear that there are any vehicles or traffic in the location to where driver directed his vehicle with perhaps the exception of unoccupied parked cars along the curb line. Also appears that driver backed up to avoid hitting Officer Reynolds.

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B) 1) Fort Worth Police Detective Cody Guzman prepared a photospread lineup and obtained an arrest warrant for Appellant. From the evidence provided by the State, it is apparent that witness J. Reynolds was shown a picture suggesting the Defendant - Chaudron was the actor involved in the incident. The picture was shown to the witness prior to and within close proximity of the photo array. This information was known to the Fort Worth Police Department at the time of the photo array. It is not proper police procedure to show a witness a photograph prior to a photo array.

2) Before trial Chaudron moved to suppress evidence. (Probable Cause to Stop & Arrest, and the Identification of the Defendant) Chaudron v. State, No. 15214490 (396th District Court, Tarrant Co.)

A) The Initial Stop, Detention, and Subsequent Arrest of the Defendant: That stop, detention, arrest, and post-arrest search of the Defendant was illegal since such was made without probable cause or reasonable suspicion of criminal activity in violation of the Fourth and Fourteenth Amendments to the United States Constitution, Article I, section 9 of the Texas Constitution, and Chapter 14 of the Texas Code of Criminal Procedure.

B) THE Photo Array Identification of the Defendant:

Section 38.20 of the Texas Rules of Criminal Procedure outlines the basic procedures police agencies must follow when conducting photo line ups in the State of Texas

Conner v. State, 67 S.W. 3d 192, 200 (Tex. Crim. App. 2001), citing Stovall v. Denno, 388 U.S. 293 (1967)) states that if these procedures are not followed, then the "a pre trial identification may be so suggestive and conducive to a mistaken identification that the subsequent use of that identification at trial would deny the Defendant his right to due process."

Perry v. New Hampshire, 132 S. Ct 716 states that a trial judge must screen the evidence for reliability pre-trial. If there is a "very substantial likelihood of irreparable misidentification," then the judge must disallow presentation of the evidence at trial. Simmons v. United States, 390 U.S. 377, 384 (1968), also Gambou v. State, 296 S.W. 3d 574 (582) (Tex. Crim. App. 2009) lays out a totality of the circumstances test in determining whether the out of court identification procedure was impermissibly suggestive and gave rise to a likelihood of irreparable misidentification.

3) The underlined section of B.1) of this statement is the argued facts and the tainting of the photo array lineup. Outcome the suppression of evidence was denied. If looking at a picture before looking at a photo lineup is not an unnecessary suggestive procedure employed by the police, then what exactly is. And that's exactly what Officer Reynolds did.

4) Following Chaudron's plea of not guilty, trial proceeded before a jury. Following presentation of evidence, and

testimony of other officers that were not present when the offense occurred, the jury returned its verdict of guilty as to the Evading Arrest Detention Vehicle, also the jury answered a special issue regarding the allegation that the vehicle used was a deadly weapon to be True. Trial court entered judgement that Chandron be sentenced to thirty (30) years to be served in the Texas Department of Criminal Justice.

On Appeal, Chandron v. State, No. 07-18-00295 (Tex. App. - Amarillo 2019), argues in his brief that the evidence was legally insufficient to support a finding that a deadly weapon was used during the commission of the offense (Point of Error Number One)

Argument: This is actually a case of avoiding putting the officer in harms way. Note; If the Driver was actually trying to hit the Officer, he would have placed the vehicle in drive from the start and sped at the officer, which in that case Officer Reynolds would not have had time to get out of the way. Instead driver placed his vehicle in reverse, running into the unoccupied police motorcycle, just to avoid hitting Officer Reynolds or any other vehicle objects or persons by driving around him.

The trial court submitted a special issue to the jury regarding the deadly weapon allegation. The jury found it to be true by its "We Do" verdict. At the conclusion of the evidence on the issue of guilt, Appellant made his motion for

instructed verdict. The trial court denied Appellants motion. The appeal court affirmed

Also on appeal from above mention and on petition for Discretionary Review Chaudron v. State, No. PD-1232-19 (2020) Question for Review and Second Error: Appellant was Denied A Requested Jury Instruction of Disputed Facts raised by the Evidence in Violation of Article 38.23(A) Texas Code of Criminal Procedure regarding the lawfulness of the traffic stop. The requested charge was denied.

Legal Argument: Appellant argues that the trial court erred in refusing to submit a jury charge concerning the legality of the police stop based on a purported traffic violation. There was a factual dispute raised in the evidence in the case which required resolution by the jury. The charge against Appellant - Chaudron required the state to prove that Officer Reynolds was "attempting to lawfully arrest or detain the defendant." The lawfulness of the stop was a required element of the charged offense. Negating the exception, i.e. "unlawfulness" is part of the state's burden of proof. Aljos v. State, 555 S.W. 2d 444 (Tex. Cr. App. 1977) (on rehearing). It is an essential element of the evading arrest offense that the attempted arrest was lawful.

The State argued that Appellant did not identify to the trial court that it was the time of the traffic stop that was in dispute. The Court of Appeals disagreed pointing to the colloquy at trial on this issue. However, the Court of Appeals, completely ignores the trial evidence in reaching its conclusion that there was no evidence to support Appellants claim at trial. Nowhere in the Court of Appeals opinion does it mention the testimony of Officer Reynolds that he was not sure what the time was, that the time is

important since at 9:30 the slower speed ended and drivers speed would not be a law violation. Further Officer Reynolds concede that there were No dispatch records to support that the time of the stop was before 9:30 and that the records showed a "call out" time of 9:40. Also Officer Reynolds quoted in trial that he did not know what time he pulled the vehicle over. But wouldn't the "call out" time be at the beginning of the stop when he called the stop in. Officers should be on point and have to abide by the rules also.

Reasons For Granting the Petition

This court should use this case, and grant this petition because the Texas criminal justice system, Law Enforcement, and Lower Criminal Courts are erroneous in several ways and have violated the Fourth and Fourteenth Amendments to the United States Constitution and the fairness required by the Due Process Clause and also several articles of the Texas Codes of Criminal Procedures

The Court of Appeals has decided an important question of state and federal law in a way that conflicts with the applicable decisions of the Court of Criminal Appeals. Texas Rules of Appellate Procedure 66.3(c). The Court of Appeals decision conflicts with the mandatory

requirement of Article 38.23(a) of the Texas Code of Criminal Procedure. Texas rules of App. Procedure 6b.3(d).

Art. 38.23(a) C.C.P. states, No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.

The State argued that Appellant-Chaudron did not identify to the trial court that it was the time of the traffic stop that was in dispute. The court of Appeals disagreed pointing to the colloquy at trial on this issue. There was a conversation at trial that Officer Reynolds conceded that there were no dispatch records to support that the time of the stop was before 9:30 and the records showed a "call out" time of 9:40

The Court of Appeals decision is in conflict with the decisions of this Court. Id.; William v. State, 547 S.W.2d 18 (Tex. Crim. App. 1977). The lawfulness of the stop is a required element of the charged offense. Negating the exception, i.e. "unlawfulness" is part of the State burden of proof. Alejos v. State, 555 S.W.2d 444 (Tex. Crim. App. 1977). The Court of Appeals' decision misapplies and misconstrues the requirement of Article 38.23(a) Texas Code of Criminal Procedure.

which provides:

In any case where the legal evidence raises an issue hereunder, the jury shall be instructed that if it believes, or has a reasonable doubt, that the evidence was obtained in violation of the provisions of this Article, then and in such event, the jury shall disregard any such evidence so obtained.

The terms of the statute are mandatory, and when an issue of fact is raised, a defendant has a statutory right to have the jury charged accordingly. Madden v. State, 242 S.W. 3d 504, 509-10 (Tex. Crim. App. 2007).

2. Applicable Texas and U.S. Law Governing Eye Witness Identification

Law Enforcement and Trial Court violated petitioners Fourteenth Amendment's Due Process Clause and also Section 38.20 of the Texas Code of Criminal Procedure which outlines the basic procedures police agencies must follow when conducting photo line-ups in the State of Texas. When Officer Reynolds looked or shall I say was shown a photo of Defendant-Chandron right before he looked at a photo lineup was not only suggestive but resulted in such unfairness that it infringed (the defendant's) right to due process of law, and was for sure Improper police protocol. In Perry v. New Hampshire, 132 S. Ct. 716 states that a trial judge must screen the evidence for reliability pre-trial and disallow presentation if there's a very substantial likelihood of irreparable misidentification. Simmons v. United States, 390 U.S. 377, 384 (1968). Perry v. New Hampshire, writ of certiorari No. 10-8974 state that A primary aim of excluding identification evidence obtained under unnecessarily suggestive circumstances, the Court said is to deter law enforcement use of improper lineups, showups, and photo arrays in the first place. See 432 U.S. at 112. The Stovall line of cases is premised on a "substantive due process" right to

"fundamental fairness." See, e.g., *id.*, at 299 (concluding that whether a suggestive identification "resulted in such unfairness that it infringed (the defendant's) right to due process of law" is "open to all persons to allege and prove"); *Manson v. Brathwaite*, 432 U.S. 98, 113 (1977) ("The standard, after all, is that of fairness as required by the Due Process Clause of the Fourteenth Amendment").

The evidence is undisputed, the facts are extreme, and the constitutional violation is patently obvious.

For the reasons herein alleged, Petitioner pray this court grant this Petition.

Conclusion

The Petition for a writ of Certiorari should be granted.

Respectfully Submitted,

Randy Philip Chandron

Date: May 11, 2020