

20-7579

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED  
JAN 19 2021  
OFFICE OF THE CLERK

DONALD PHILLIPS — PETITIONER  
(Your Name)

VS.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIRST COURT OF APPEALS, SUPREME JUDICIAL DISTRICT, TEXAS  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DONALD PHILLIPS  
(Your Name)

TDJC#02262911, Wynne Unit, 810 FM 2821  
(Address)

Huntsville, TX 77349  
(City, State, Zip Code)

9362959126  
(Phone Number)

## QUESTION(S) PRESENTED

1. Is it proper or a violation of the 6th Amendment due process law for a defense attorney to discover that during testimony in trial one of the jurors was found to have been wearing earphones during witness testimony, and the defense attorney was made aware of this by the judge, but the defense attorney made no motions and took no action nor placed the incident on record? There is proof of this.
2. Is it proper or a violation of the 6th Amendment due process law for a prosecutor to target a hold-out juror when the vote is 11 guilty, 1 not guilty, and the hold-out, not guilty juror is being accused of being "mentally disabled" and ". . . can't make a sound decision?" So, the juror can't make a sound decision because the juror doesn't agree with the prosecution, or for that matter, the defense? And, the judge was made aware of this, no alternate was chosen and again the defense attorney made no motions.

## 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:

### IDENTITY OF PARTIES AND COUNSEL:

1. Presiding Judge at Trial:  
The Honorable Judge Leslie Yates (Visiting)  
182nd District Court  
1201 Franklin  
Houston, TX 77002

2. Attorney for the State:  
James Murphy  
1201 Franklin  
Houston, TX 77002

3. Attorney for Defense:  
Conley Gregg Goodrum  
TBN:24046500  
Attorney at Law  
16225 Park Ten Place Drive, Suite#500  
Houston, TX 77084  
Phone #713-578-3333

### RELATED COURT CASES:

\*Judd v. State,  
951 So.2d 103 (Fla. App. 2007).

\*Thompson v. State,  
873 So.2d 481 (Fla. App. 2004).

\*Erlsten v. State,  
842 So.2d 967 (Fla. App. 2003).

\*Kelley v. State,  
805 So.2d 88 (Fla. App. 2002).

\*State v. Burns,  
800 So.2d 106 (La. App. 2001).

\*People v. Evans,  
710 P.2d 1167 (Colo. App. 1985).

\*Spunaugle v. State,  
946 P.2d 246 (Okla. Crim. App. 1997).

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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
United States v. Rosenthal, 266 F.Supp.2d 1068 (N.D.Cal. 2003) (" Rosenthal ")	
United States v. Sherrill (C.A.6, 2004), 388 F.3d 535	
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## STATUTES AND RULES

6TH Amendment to the Constitution of the United States  
14TH Amendment to the Constitution of the United States

## 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 [txcourts.gov/Case.aspx?cn=01-19-00398-CR&coa=coa01](http://txcourts.gov/Case.aspx?cn=01-19-00398-CR&coa=coa01),  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the 182nd District Court, Harris Cty, TX court appears at Appendix B to the petition and is

- reported at <https://www.hcdistrictclerk.com/eDocs/Public/Search.aspx?ShowFF=1>,  
 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 10/21/2020. A copy of that decision appears at Appendix A.

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. 6th Amendment to the U.S. Constitution**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

### **2. 14th Amendment to the U.S. Constitution**

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**United States v. Sherrill (C.A.6, 2004), 388 F.3d 535**

**3. According to United States v. Sherrill (C.A.6, 2004), 388 F.3d 535, a sleeping juror is a form of misconduct; if that's the case, so would an inattentive juror wearing earphones. How can that juror render an "impartial" decision if he/she is missing vital testimony because he/she has earphones plugged into his/her ears?**

**4. United States v. Rosenthal, 454 F.3d 943 (9th Cir. 2006)**

During deliberations, a juror called a lawyer friend to ask advice. The lawyer responded that the juror should follow the court's instructions, explaining that she could get into trouble if she did not. The Ninth Circuit held that this outside influence tainted the verdict. Learning that she "faced trouble" for a particular conclusion was an improper influence on the jurors' deliberations. A juror who fears retribution might change his or her determination of the issue for fear of being punished.

**5. United States v. Peters, 349 F.3d 842 (5th Cir. 2003)**

During deliberations, the foreman sent out a note indicating that he was "not going to take insults and I ask to be relieved." The parties agreed that the judge could talk to the juror in chambers alone. During the course of the meeting, however, the conversation between the court and the juror included a revelation about the current status of deliberations (11 – 1), the prospects of a mistrial (including a discussion akin to an Allen charge), and even a short explanation of the law, i.e., a substantive charge on the law. Conviction reversed.

**6. United States v. Scisum, 32 F.3d 1479 (10th Cir. 1994)**

Just before the jury returned to announce its verdict, one of the jurors told a marshal that she could not join the others in the courtroom to announce the verdict. The juror spoke privately with the judge and expressed a desire not to face the defendant with the verdict (apparently because of her dissatisfaction with the verdict, not because of fear). The judge gave the juror a Kleenex and suggested she step in the restroom. This was an improper ex parte communication with a juror which required that the conviction be reversed. Among other problems was the failure of the trial judge to alert the attorneys that this communication had occurred so a hearing could be conducted to determine if there was any prejudice. At a minimum, counsel should have been notified immediately that the juror was in distress and a hearing could have been held to question the juror about her problem.

## STATEMENT OF THE CASE

### 1ST ERROR:

I do not believe I, Donald Phillips, received a fair and impartial trial and due process of law under the 6th and 14th Amendments to the Constitution because, first, during the trial, my attorney, Conley Goodrum, reluctantly informed me and four other family members that the judge, the prosecutor and himself were aware of a juror who was wearing earphones either during witness testimony and deliberations or both. We were informed at the end of the day on Wednesday, May, 15, 2019—this was the third day of trial. I don't know if the juror had been wearing earphones for the Monday and Tuesday testimonies; I was not told. Mr. Goodrum did not say how long the juror had been wearing the earphones or how much testimony he missed and no inquiry was conducted by anyone to assure me that this particular juror heard all testimony given at my trial. In short, on Wednesday, May 15, 2019, at the end of the day, the prosecutor, defense and judge had gathered and were talking. My family, sisters Diane, Debra and Lisa and my mother were still in the courtroom. We waited until Mr. Goodrum was leaving and my sisters pressed him to tell us what they were talking about. When we all got out of the courtroom on the 1st floor, Mr Goodrum said that he wasn't supposed to tell us or discuss it but "off the record" a juror was seen wearing headphones and didn't listen to my testimony. We were all stunned! Then Mr. Goodrum said he couldn't discuss who it was but that we may know; then, he walked away.

### 2ND ERROR:

After trial and during jury deliberations, we discovered that it was 11 to 1 for guilty. There was a hold-out juror for not guilty. My sisters and I overheard in court the prosecutor speaking to the judge in an attempt to get the hold-out juror dismissed and appoint an alternate by claiming that the hold-out juror has a mental disability and cannot make a decision. Instead, the judge insisted that the jury continue to deliberate until they had a decision. Threatening to dismiss a juror because that juror has made a decision that you don't agree with is tampering with the jury. The juror had made a decision for not guilty with a reasonable doubt. Was the hold-out juror aware that the prosecutor wanted to dismiss him/her, and in order to save embarrassment and relieve stress and pressure voted guilty.

### **REASONS FOR GRANTING THE PETITION**

I respectfully request that the Court grant this discretionary review for certiorari because this particular case involves a unique set of circumstances involving incidents that occurred inside the courtroom but not examined to the fullest for my behalf by the court or state that represent or provide for me the Constitutional right to an impartial jury and due process of law. As stated, the fact that a juror who had already been in two days of trial and might have had headphones or earphones on the whole time should have been objected to and placed in the court record, but it was not! ( United States v. Sherrill (C.A.6, 2004), 388 F.3d 535). I was allowed no redress of this issue except to be told by my attorney not to say anything because he might get into trouble (United States v. Scisum, 32 F.3d 1479 (10th Cir. 1994) . Incidents like this could have a profound effect on our national judicial system causing a sincere distrust in how criminal courts decide to handle a jury.

Secondly, what occurred in this trial, 182nd Disict Court, cause #1503378, is the same verdict that occurred in my first trial—a hung jury. Except for the fact that a juror in the 182nd in my second trial might have been pressured into changing a "not guilty" vote to a "guilty" vote because of a potential threat of being removed from the jury for an unrealistic mental disability or mental disorder (United States v. Rosenthal, 454 F.3d 943 (9th Cir. 2006); (United States v. Peters, 349 F.3d 842 (5th Cir. 2003). This kind of behavior in the criminal court cannot be allowed. The national impact it could have on our citizens who want to trust in the judicial system and our jury process could be severely weakened.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Donald Phillips

Date: January 10, 2021