

20-8355

No. _____

Supreme Court, U.S.
FILED

OCT 02 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JASON KYLE GEE — PETITIONER
(Your Name)

vs.

LORIE DAVIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for The Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jason Kyle Gee #2041996
(Your Name)

12071 FM 3522
(Address)

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

(325) 548-9035
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

Is it a violation of the Fourteenth Amendment, Due Process and Equal Protection Clauses for the state to convict a person of a crime where the elements used in prosecution do not meet the requirements under the statute with which to judge that person guilty?

Is it common practice for any court to utilize the Jackson Standard of Review in claims of insufficiency of evidence to review evidence that legally has no weight in determining a guilty verdict? Specifically, evidence construed as being in favor of the verdict when it is quite the contrary.

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:

RELATED CASES

- *Gee v. State*, No. 2-15-00460-CR, Texas Court of Appeals for the Second District, Judgment entered Apr. 6th, 2017
- *Gee v. Davis*, No. 4:18-cv-469-A, United States District Court for the Northern District of Texas, Judgment entered on Jul. 9th, 2019
- *Gee v. Davis*, No. 19-10895, United States Court of Appeals for the Fifth Circuit, Judgment entered Jul. 13th, 2020

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3-5
STATEMENT OF THE CASE	6-8
REASONS FOR GRANTING THE WRIT	9-13
CONCLUSION.....	13

INDEX TO APPENDICES

APPENDIX A	<i>Decision of The United States Court of Appeals for The Fifth Circuit</i>
APPENDIX B	<i>Decision of The United States District Court of The Northern District of Texas</i>
APPENDIX C	<i>Decision of The Texas Court of Appeals for The Second District.</i>
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Jackson v. Virginia, 443 U.S. 307 (1979)	9, 12
Brinegar v. U.S., 338 U.S. 160 (1949)	12
Lindsey v. State 32 S.W. 768 (1895)	11
Brazzil v. State 28 Tex. Ct. App. 584	11

STATUTES AND RULES

28 U.S.C. § 2254	8, 9
Tex. Court Crim. proc. art. 38.03	9
Tex. Pen. Code § 2.01	9
Tex. Pen. Code § 9.31	3, 4, 10, 11, 12
Tex. Pen. Code § 9.32	4, 5, 10
Tex. Pen. Code § 22.02	5, 6, 9
Tex. Pen. Code § 44.02	10, 11

OTHER

Fourteenth Amendment, U.S. Constitution	3, 9
Supreme Court Rule 10(a)	9

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 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 United States district court appears at Appendix B to the petition and is

☒ reported at 2019 U.S. DIST. LEXIS 113343; 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 _____ 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 _____ 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 July 13th, 2020.

☒ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

Fourteenth Amendment "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Texas Penal Code:

Chapter 9, Justification Excluding Criminal Responsibility
Subchapter C, Protection of Persons

§ 9.31 Self-Defense

(a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force. The actor's belief that the force was immediately necessary as described by this Subsection is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment;

(C) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;

(2) did not provoke the person against whom the force was used;

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of law or ordinance regulating traffic at the time the force was used.

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by

a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c);

(3) if the actor consented to the exact force used or attempted by the other;

(4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor; or...

§9.32 Deadly Force In Defense of Person

(a) A person is justified in using deadly force against another:

(1) if the actor would be justified in using force against the other under Section 9.31; and

(2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:

(A) to protect the actor against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

(b) The actor's belief under Subsection (a)(2) that the deadly force was immediately necessary as described by that subdivision is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the deadly force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or

(C) was committing or attempting to commit an offense described by Subsection (a)(2)(B);

(2) did not provoke the person against whom the force was used;

- (3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

Chapter 22, Assaultive Offenses

§ 22.02 Aggravated Assault

- (a) A person commits an offense if the person commits assault as defined in Section 22.01 (assault) and the person:
- (1) causes serious bodily injury to another, including the person's spouse; or
 - (2) uses or exhibits a deadly weapon during the commission of the assault.

STATEMENT OF THE CASE

On March 29th, 2015, the Petitioner and his girlfriend, Drury, went to a friend's home. Drury sought to exchange two power drills for some methamphetamines. Their friend, Nabors, called an acquaintance, Skinner, who showed up and traded Drury's power drills for some methamphetamines. After Skinner left Nabors's home, Drury claims that she was shorted half a gram of methamphetamines.

Later that day Nabors and his girlfriend were giving the Petitioner and Drury a ride to one of the Petitioner's friends' home. On the way, Nabors spotted Skinner's car at a vacant parking lot and pulled over to talk to him. Then after discussing whatever they (Nabors and Skinner) were discussing the petitioner got out of the truck to ask Skinner, "if he was going to make things right" between him and Drury, at least make up the difference in cash.

The Petitioner saw Skinner reach under his seat and the Petitioner felt scared and pulled out a knife. Skinner drove off. The Petitioner ran to Nabors's truck and as he was approaching, Skinner came back to the scene and was pursuing the Petitioner. Skinner parked his car in front of Nabors's truck and got out of his car and went to the Petitioner as he was entering the truck and then pulled him out. This began a physical confrontation between the two. It was while the Petitioner was being hit with the car door that he used the knife he had to slash Skinner's throat and pierced into Skinner's arm that embraced the car door all in the same stroke. Skinner was rushed to the hospital by his girlfriend, who stayed in the car until Skinner was cut. Skinner was treated for his wound and released that same day.

The Petitioner was indicted for aggravated assault (Tex. Pen. Code §22.02) and the indictment also alleged that the knife he used qualified as a deadly weapon. A jury was panelled and during trial the Petitioner's trial counsel moved for an instructed verdict but that request was denied. The jury was

6.

Charged and given limited instruction and found The Petitioner guilty. The Petitioner was sentenced to 75 years in prison and given a \$10,000 fine.

On direct appeal, The Petitioner was appointed appellate counsel and the counsel raised a legitimate claim that the evidence was insufficient because it did not disprove his claim that he acted in justifiable self-defense.

The Texas Court of Appeals for the Second District affirmed The Trial Court's judgment because The conflict between The Petitioner and Skinner was over "The [Petitioner]'s attempt to obtain methamphetamines, The jury could have rationally found that he was engaged in illegal activity and was not entitled to the statutory presumption," and that The Petitioner admitted that he was high on methamphetamines, which The Court of Appeals stated that was another act of criminal activity to which The Petitioner is not entitled to a claim of self-defense. The Court of Appeals also mistakenly believed that The drug transaction was directly between The Petitioner and Skinner. In The opinion, The appellate court somehow believed that The power drills belonged to The Petitioner and he traded them for The methamphetamines. "According to Nabors, appellant gave Skinner the power tools, and Skinner gave appellant methamphetamine." (After reading The record, Nabors never stated this statement and this was presented to the U.S. District Court).

The Petitioner timely filed a Petition for Discretionary Review in which The Texas Court of Criminal Appeals, The highest court in The State of Texas. The Petition was refused without written order.

The Petitioner then moved to file a Federal Habeas Corpus on The same argument presented on direct appeal: That "The evidence entered at his trial was insufficient to support his conviction as it did not disprove or controvert his claim that he acted in justifiable self-defense." And in The same argument, "The state court's decision denying his claim is an unreasonable application of U.S. Supreme Court precedent because The jury's verdict rested on mere speculation that [his] use of deadly force was not reasonable."

The Federal District Court reviewed the Petitioner's claim by applying the Jackson Standard and reviewed the Texas Penal Codes under Sections 9.31 and 9.32, which are the statutes for self-defense, and concluded that the Petitioner "was engaged in illegal activity. Specifically, he was high on meth-amphetamines... and that the origin of the dispute concerned [Petitioner]'s attempt to obtain methamphetamine." A jury could have rationally found the essential elements of aggravated assault beyond a reasonable doubt and also could have found against [Petitioner] on self-defense beyond a reasonable doubt. The petition was denied. Also, since the Petitioner failed to make a substantial showing of a Constitutional right the court also further ordered a denial of a certificate of appealability.

The [Petitioner] subsequently appealed the District Court's decision to the Fifth Circuit Court of Appeals. Petitioner's sole issue presented was that "The [Petitioner] acted in self-defense and the decision of the state court is based upon an unreasonable determination of the facts in light of the record before a state court. 28 U.S.C. 2254(d)(14)(2)." (The "14" should have been omitted, it is a typo). The Petitioner also added, "IT is debatable among jurists of reason that the decision was contrary to Supreme Court precedent. by unreasonably applying the Jackson Standard" in the review of sufficiency of evidence by the District Court. The Petitioner further argued that the "criminal activity" the state and District courts were weighing should have not been considered to begin with and if the courts properly viewed the facts they would agree that the evidence conclusively establishes reasonable doubt and the acts alleged do not constitute the criminal offense that he was convicted of.

The Fifth Circuit denied the Petitioner's COA "because the [Petitioner] fails to make a substantial showing of the denial of a Constitutional right... He fails to show that jurists of reason could debate the district court's conclusion that the state appellate court did not unreasonably apply Jackson."

REASONS FOR GRANTING THE PETITION

The rules of the Supreme Court state that a review on a writ of certiorari is not a matter of right, but of judicial discretion, and for compelling reasons. The Petitioner is addressing several concerns for this Court to consider: Rule 10(a) - The United States court of appeals has sanctioned such a departure from the accepted and usual course of judicial proceedings by a lower court, as to call for an exercise of this Court's supervisory power.

The Petitioner has been challenging his conviction Pro Se since he filed his Federal Habeas Corpus 28 U.S.C. § 2254. The Petitioner is a layman and is not proficient in the science and arts of law and is asking this Court to construe this petition liberally.

Since the Petitioner's direct appeal, the Petitioner has been claiming that there has been insufficient evidence to uphold a conviction of aggravated assault (Tex. pen. code § 22.02). Under the Fourteenth Amendment, no State shall deprive any person of his liberty without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Petitioner was told on several accounts that he was involved with criminal activity and, thus, was not entitled to a claim of self-defense and since the Petitioner filed his federal writ of habeas corpus he was told he has not presented a substantial claim of a denial of a Constitutional right. Now the Petitioner will make his final attempt to show this Court why he has been denied equal protection of the laws under the Fourteenth Amendment and that the Federal District Court did not fairly apply the Jackson Standard of review just as the state appellate court did as well.

In Texas, all persons are presumed innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. Tex. Code Crim. Proc. art. 38.03 and Tex. Pen. Code § 2.01.

In a situation where a person in Texas claims self-defense, a broad set of statutes are available to that person where

The person has the burden to present some evidence to support his claim of self-defense. Typically, the judge or jury will be given the charging instrument and the statutes involved to determine if that person is guilty of a crime. Did he satisfy the requirements to claim self-defense? Did the jury receive the whole statute of self-defense or just snippets in order to guarantee a conviction?

In this writ, the Petitioner presented the majority of the self-defense statutes under Texas Penal Codes §9.31 and §9.32. This was done to show what was not presented nor even considered by the state. The jury was not shown the other half of §9.32 and the jury was not aware that being under the influence is only a Class C misdemeanor.

Only on direct appeal did the Petitioner present the other half of §9.32, subsection (b) where the Petitioner can defend himself regardless if the other person was exhibiting a deadly threat or not and the requirements for §9.32(b) are virtually similar to 9.31(a). The Petitioner did leave the scene of the incident; whatever provoked Skinner to become hostile. And the Petitioner was removed from a vehicle and, thus, was entitled to use deadly force against Skinner.

But he used an illegal drug earlier that day? The statutes in both §9.31 and §9.32 are identical, as long as the person was not involved in illegal activities worse than a Class C misdemeanor at the time the force was used. Equal Protection of the laws would be to recognize that the Petitioner, during the time of the incident, was only guilty of a Class C misdemeanor. §49.02 of the Texas Penal Code states, "a person commits an offense if the person appears in a public place

while intoxicated to the degree that the person may endanger the person or another."

And §49.02(c) states that an offense in this section is a Class C misdemeanor. So, this isn't enough to deny the Petitioner of the ability to claim self-defense. And all levels of the State Courts of Texas should have known this. The Petitioner would have had to be in possession of an illegal drug and consumed it right then and there at the scene of the conflict to have been guilty of an offense greater than a Class C misdemeanor.

And what about the Petitioner asking Skinner if he would "make things right"? Whether or not that alone can be taken as illegal activity (to obtain more drugs) is for the jury to decide. However, there happens to be several cases where conflicts arose and the two gentlemen parted ways and another renewed the fight and deadly force was used. In these cases, which were decided in the Texas Court of Criminal Appeals, the justices ruled that regardless of who started the conflict when, after the two separate, the other seeks to renew the fight, that one whom the other sought out can defend himself, even if he started the whole thing. See *Linsey v. State*, 32 S.W. 768 (1895) and *Brazzil v. State*, 28 Tex. Ct. App. 584 (1890).

The court found that "though defendant had provoked the original contest, for the purpose of bring on a deadly combat, he must clearly and unmistakably abandon the contest and withdrew from it in good faith." *Brazzil v. State*. This case was reversed and remanded with orders for a jury instruction to be given that when the two persons separate and one returns later that the 2nd encounter is a new conflict, not one continuous one. Today, §9.31(b)

(4)(A) admonishes that if the actor provoked the altercation and abandons the encounter and still ends up having to use force to defend himself, that is a justifiable means of self-defense.

What now is there to show that the Petitioner had no justifiable means to defend himself? What is there to say he had no reason to use deadly force?

To review the evidence in light most favorable to the verdict with these two issues eliminated, what is there to convict the Petitioner of aggravated assault and deny him of his claim of self-defense? The Petitioner was pulled out of a vehicle and in a fist-fight, then it wasn't until he was being beat with a car door that he used the knife. When is it reasonable for anyone, intoxicated or not, to be able to use lethal force?

To prove every element beyond a reasonable doubt, there's now plenty of doubt that the Petitioner is guilty of aggravated assault. Whatever wild hair that spurred Skinner to attack the Petitioner was plucked when the Petitioner fled and Skinner left the parking lot. The standard of review can not view evidence that can and should have been ruled out to uphold a conviction.

In *Jackson v. Virginia*, Justice Stewart stated, "Winnship presupposes as an essential of the due process guaranteed by the Fourteenth Amendment that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence beyond every element of the offense."

This was obviously not the case on how things were handled in the Petitioner's case.

In *Brinegar v. U.S.*, "Guilt in a Criminal Case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to

Some extent embodied in the Constitution... These rules are historically grounded rights of our system developed to safeguard men from dubious and unjust convictions, with unjust forfeitures of life, liberty, and property." Justice Brennan

The Petitioner is not solely blaming The Federal District Court nor The Fifth Circuit Court of Appeals because it is not up to them to be familiar with the Texas penal codes first-hand. These courts believed any misapplications of the laws or statutes would have been resolved beforehand, and, thus, adopted The State's opinion as fair and reasonable.

Will The Court rule in favor of The Constitution and law?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jason Gell

Date: October 1st, 2020