

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

21 - 6489

IN THE

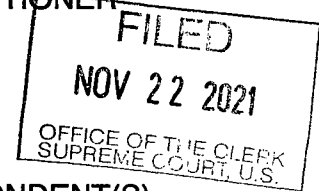
SUPREME COURT OF THE UNITED STATES

**ORIGINAL**

EDUARDE SWANSON <sup>PRO SE</sup> — PETITIONER  
(Your Name)

vs.

BOBBY LUMKIN — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF CRIMINAL APPEALS OF TEXAS  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EDWARD FITZGERALD SWANSON  
(Your Name)

JESTER III UNIT 3 JESTER RD,  
(Address)

RICHMOND, TEXAS 77406  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

QUESTION(S) PRESENTED

IF A JURY CONVICTS A DEFENDANT OF 2<sup>ND</sup> DEGREE FELONY ROBBERY CHARGES DOES THE TRIAL JUDGE HAVE THE AUTHORITY TO MAKE THE CHARGE A FIRST DEGREE FELONY?

IF THE INDICTMENT HAS THREE DISTINCT PARAGRAPHS IS - THAT A VIOLATION OF THE BLOCKBURGER VS. UNITED STATES, 284 U.S. 299 [1932] RULE?

ARE PARAGRAPHS ELEMENTS OF THE CRIME CHARGED IN THE INDICTMENT?

IS THE STATE OF TEXAS'S STATUTORY SCHEME INVALID IT ALLOWS A JURY TO CONVICT A DEFEND. OF SECOND DEGREE OFFENSE BASED UPON ITS FINDING BEYOND A REASONABLE DOUBT?

THEN, IN A SEPARATE PROCEEDING IT - THEN ALLOWS A JUDGE TO IMPOSE PUNISHMENT IDENTICAL TO - THAT TEXAS STATUTE PROVIDES FOR CRIMES OF THE FIRST DEGREE" BASED UPON THE JUDGE'S FINDING BY PREPONDERANCE OF THE EVIDENCE?

## 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

IN THE 137<sup>TH</sup> DISTRICT COURT LUBBOCK  
COUNTY TEXAS  
CRIMINAL COURT OF APPEALS OF TEXAS  
SUPREME COURT OF THE UNITED STATES

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BLOCKBURGER VS. UNITED STATES, 284 U.S.	299 [1932]
GODFREY VS. GEORGIA, 446 U.S.	420 [1980]
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### STATUTES AND RULES

28 U.S.C. 2247	[DOCUMENTARY EVIDENCE]
28 U.S.C. 2253	[APPEAL] B (2) (3)

### 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 CARD IN TOW; 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 \_\_\_\_\_.

☐ 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 10-13-2021.  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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**

[AMENDMENT-5] DUE PROCESS OF LAWS  
[AMENDMENT-6] EFFECTIVE ASSISTANCE OF COUNSEL  
[AMENDMENT-6] IMPARTIAL JURY  
[AMENDMENT-14] DUE PROCESS OF LAWS  
[AMENDMENT-14] EQUAL PROTECTION OF LAWS.

EFFECTIVE SEPTEMBER 01, 2013 TO THE PRESENT  
TEXAS PENAL CODE SECTION 12.42  
STATE JAIL FELONY CANNOT BE FURTHER  
ENHANCED MOTION TO QUASH SHOULD BE GRANTED  
TEXAS PENAL CODE SECTION 12.42 (E) TEXAS  
PENAL CODE C. SUPP. 2012 ONLY REGULAR FELONIES  
CAN BE USED TO ENHANCE OFFENSES DESIGNATED  
BY SECTION 12.42 (B)(C) OR (D), 29.02 (a)(2)

EDWARD F. SWANSON WAS CONVICTED BY THE  
JURY MARCH 03, 2009 AND THEN SENTENCED BY  
THE JUDGE MARCH 04, 2009

THE TEXAS LEGISLATURE AMENDED TEXAS PENAL  
CODE ANN. 12.42 AFTER SWANSON'S CONVICTION.



#### STATEMENT OF THE CASE

EDWARD SWANSON WAS CHARGED BY INDICTMENT, FOR THEFT. THE INDICTMENT NEVER STATES WHAT HE WAS TO HAVE STOLEN.

THE INDICTMENT NEVER STATES ANYTHING ABOUT ROBBERY BUT IT MENTIONS SEVERAL TIMES ABOUT THEFT. ALL THREE PARAGRAPHS MENTIONS THEFT NOT ROBBERY.

SEE UNITED STATES VS. ATTANASIO, 870 F.2d 809 [2d CIRCUIT-1989] NOTING THAT- THE FIFTH AMENDMENT GRAND JURY GUARANTEE IS VIOLATED WHEN EVIDENCE AND JURY INSTRUCTIONS MODIFY THE ESSENTIAL ELEMENTS SET FORTH IN THE INDICTMENT TO SUCH AN EXTENT THAT- THE CONVICTION OFFENSE IS DIFFERENT FROM THAT CHARGED IN -THE INDICTMENT.

INDICTMENT IS -IN TOW WITH THE PETITION FOR WRIT OF CERTIORARI.

## STATEMENT OF THE CASE

EDWARD F. SWANSON WAS CONVICTED OF THEFT ON MAY 03, 2009. SECOND DEGREE FELONY HONORABLE JUDGE DAVID GLEASON DISMISSED THE JURY" JUDGMENT ENTERED ON MAY 03, 2009.

THE PUNISHMENT WAS ASSESSED BY THE COURT JUDGE DAVID GLEASON ON MARCH 04, [2009], WHO THEN ENHANCED THE SENTENCE TO A FIRST DEGREE FELONY ROBBERY CHARGE

STATUTE FOR OFFENSE 29.02(a)(2).

PLEA TO OFFENSE NOT GUILTY,

FINDINGS ON DEADLY WEAPON (NA)

PLEA TO 1ST ENHANCEMENT NOT TRUE [HABITUAL]

PLEA TO 2ND ENHANCEMENT NOT TRUE [HABITUAL]

JUDGE DAVID GLEASON SENTENCED SWANSON TO FIFTY YEARS IN T.D.C.J. C.I.D FOR THEFT CHARGE.

VIOLATING APPENDIX, NEW JERSEY  
530 U.S. 466 [2000]

# STATEMENT OF THE CASE

IN: RE

JONES VS. STATE, 526 U.S. 227 [1999]  
THE SUPREME COURT WAS PRESENTED WITH  
A [CARJACKING] STATUTE "THAT INCREASED  
THE PENALTY IF [SERIOUS BODILY-INJURY  
OCCURRED]. JUSTICE SOUTER'S [OPINION]  
FOR THE COURT], [HELD] THAT SERIOUS  
BODILY INJURY WAS AN ELEMENT RATHER  
THAN MERELY A SENTENCING CONSIDERATION.

APPENDI VS. NEW JERSEY  
530 U.S. 466 [2000]

JUSTICE STEVEN'S DELIVERED THE OPINION  
OF THE COURT.

ANY FACT-THAT INCREASES THE PENALTY  
FOR A CRIME BEYOND A REASONABLE  
STATUTORY MAXIMUM MUST BE SUBMITTED  
TO -A JURY AND PROVED BEYOND A REASON-  
ABLE DOUBT.

HONORABLE DAVID GLEASON VIOLATED  
APPENDI? HE DID NOT FOLLOW THE  
SUPREME COURT'S RULING IN APPENDI

## STATEMENT OF THE CASE

THE SUPREME COURT ALSO [HELD] THAT IT IS UNCONSTITUTIONAL FOR A LEGISLATURE TO REMOVE FROM THE JURY THE ASSESSMENT OF FACTS THAT INCREASE THE PRESCRIBED RANGE OF PENALTIES TO WHICH A CRIMINAL DEFENDANT IS EXPOSED IT IS EQUALLY CLEAR THAT SUCH FACTS MUST BE ESTABLISHED BY PROOF BEYOND A REASONABLE DOUBT.

I'M ASKING THE SUPREME COURT OF THE UNITED STATES TO INVALIDATE THIS TEXAS STATUTE THAT AUTHORIZES A JUDGE TO IMPOSE PUNISH OF - A FIRST DEGREE FELONY AFTER THE JURY HAS CONVICTED A PERSON OF A SECOND DEGREE FELONY. TEXAS DOES NOT THINK THAT APPENDIX VS. NEW JERSEY APPLIES TOWARD THEM.

TEXAS IS CONVINCED THAT - THEY DON'T HAVE TO FOLLOW CONSTITUTIONAL LAW,

## STATEMENT OF THE CASE

PETITIONER EDWARD SWANSON WAS CONVICTED MARCH 03, 2009. SECOND DEGREE ROBBERY, THEFT, ON MARCH THE FOURTH 2009, GIVEN FIFTY YEARS,

ON SEPTEMBER 01, 2013 TEXAS LEGISLATURE'S NEW LAW TOOK EFFECT. SUBSTANTIVE LAW'S TOOK EFFECT TEXAS PENAL CODE WAS AMENDED.

SECTION 12.42 2d DEGREE ROBBERY CHARGE COULD NOT HAVE BEEN ENHANCED GIVEN SWANSON'S CRIME DID NOT INVOLVE THE USE OF A DEADLY WEAPON.

TEXAS PENAL CODE ANN. 12.42 (A)(1) DID NOT PROVIDE FOR ENHANCEMENT OF A NON AGGRAVATED STATE JAIL FELONY WITH ONLY ONE PRIOR NON AGGRAVATED STATE JAIL FELONY CONVICTION.

BECAUSE THE LEGISLATURE AMENDED TEXAS PENAL CODE ANN. 12.42 AFTER EDWARD F. SWANSON'S CONVICTION. THE SENTENCE IMPOSED UPON SWANSON EXCEEDS STATUTORY AUTHORITY IN EFFECT AT-THE TIME.

## REASONS FOR GRANTING THE PETITION

THE STATE OF TEXAS'S STATUTORY "IS IN CONFLICT" WITH ESTABLISHED FEDERAL LAWS AS...  
DETERMINED BY THE UNITED STATES SUPREME COURT AND THE UNITED STATE CONSTITUTION  
[I'M NOT GUILTY OF THIS ROBBERY CHARGE, I'M FACTUALLY INNOCENT OF THIS CRIME,  
THE STATE OF TEXAS'S - STATUTORY SCHEME IS - IN CONFLICT WITH - THAT OF THE UNITED STATES SUPREME COURT PRECEDENT.  
IN: RE APPENDI VS. NEW JERSEY 530 U.S. 466 [2000] CASE WAS REVERSED

THE TEXAS STATUTORY SCHEME ALLOWS A JURY TO CONVICT A DEFENDANT OF SECOND DEGREE FELONY CHARGE.

THEN THAT SAME STATUTORY SCHEME ALLOWS THE JUDGE TO - FIND BY A PREPONDERANCE OF THE EVIDENCE AND RAISE THE CHARGE TO A FIRST DEGREE FELONY. THIS VIOLATES THE RULES SET FORTH IN

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

EDWARD F. SWANSON

Date: NOVEMBER , 2021