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21-6694

ORIGINAL

In the

Supreme Court of the United States

Supreme Court, U.S.
FILED

OCT 12 2021

OFFICE OF THE CLERK

LAWRENCE S. BRANTLEY JR.

vs.

**TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE
SERVICE, RESPONDENT**

CASE NO. 2018PA01964

CASE NO. 04-20-00368-CV

Appeal from the Court of Appeals for the Fourth District of Texas at Bexar County, Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did trial court abuse its discretion by allowing witness with no firsthand knowledge of the case to testify, which conflict with the decision in *Oakley v. State*, 346 S. W. 2d 943.
2. Did trial court's decision terminating parental rights using the clear and convincing evidence standard, conflict with the decision in *Colorado v. New Mexico*, 467 U.S. 310 (1984).

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PETITION FOR WRIT OF CERTIORAR

Petitioner Lawrence S. Brantley respectfully submits this Petition for Writ of Certiorari to review the judgment of the Court of Appeal for the Fourth District of Texas, at Bexar County, Texas.

OPINIONS AND ORDERS BELOW

The Texas Supreme Courts orders refusing Discretionary review was denied and unreported, May 14, 2021. The Opinion of the Court of Appeals for the Fourth District of Texas, at Bexar County, Texas is reports as in re X.J.R. Tex. App. LEXIS 247, 2021 WL 112175 (Tex. App. San Antonio, Jan. 13, 2021) and was affirmed on January 13, 2021. The judgment entered by the 408th Judicial District Court of Bexar County, Texas. Order for Termination on July 18, 2020.

JURISDICTION

Petitioner, Lawrence S. Brantley, Petition for Discretionary Review to the Texas Supreme Court was denied on May 14, 2021. Petitioner, Mr. Brantley respectfully invokes the Honorable Courts Jurisdiction under 28 U.S.C. 1257 (1) having timely filed this petition for a Writ of Certiorari within nighty (90) days of the Texas Supreme Court's Judgment.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

- Fourth Amendment - United States Constitution
- Fifth Amendment – United States Constitution
- Eighth Amendment – United States Constitution
- Fourteenth Amendment – United States Constitution
- 18 U.S. Code § 241 – Conspiracy against rights
- 18 U.S. Code § 242 – Deprivation of rights under Color of Law
- Texas Penal Code § 37.09 (a) (1) (d) (1)
- Texas Fam Code § 54.031 (b) (1) (2) (c) (1) (A) (B) (C)
- Texas Fam Code § 101.007
- Texas Fam Code § 104.006 (1) (2)
- Texas Fam Code § 106.001 (b) (1) (D) (E) (O)
- Texas Fam Code § 261.105 (b)
- Texas Fam Code § 261.107(b)
- Texas Fam Code § 261.304 (c)
- Texas Fam Code § 261.308

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV:

The right of the people to be secure in their persons, houses, papers, and efforts, against unreasonable searches and seizure, shall not be violated and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be search, and the persons or things to be seized.

United States Constitution, Amendment V:

In Part: Nor shall any states deprive any person of life, liberty, or property without due process of law.

United States Constitution Amendment VIII:

In Part: Nor cruel and unusual punishments inflicted.

United States Constitution Amendment XIV:

In Part: 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.

Declaration of Independence:

In Part: We hold these truths to be self-evident, that all men are created equal, that they are endowed by the creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.

Texas Constitution Art 1 § 19:

No Citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of land.

STATUTORY PROVISION INVOLVED

Tex. Govt. Code Ann §311.021 (1), (2) –

In enacting a statute, it is presumed that:

- (1) Compliance with the Constitution of this States and the United States is intended.
- (2) The entire statue is intended to be effective

Federal Rules of Evident 803 (1) (2) (3)

- (1) Present Sense Impression – A Statement describing or explaining an event or condition made while or immediately after the declarant perceived it.
- (2) Excited Utterance. – A Statement relating to a startling event or condition, made while declarant was under the stress of excitement that it caused.
- (3) Then-Existing Mental, Emotional, or Physical Condition- A Statement of the declarants then-existing state of mind (such as motive, intent or plan) or emotional, sensory or physical condition (such as mental feeling, pain or bodily health) but not

including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity of terms of the declarant's will.

18 U.S. Code § 241- Conspiracy against rights if two or more persons conspire to injure, oppress, threaten or intimidate any person in any State, Territory, Commonwealth, Possession or District in the free exercise or enjoyment of any right or his having so exercised the same.

Tex. Penal Code § 37.09 (a) (1) (d) (1)

- (a) A person commits an offense if knowing that an investigation or official proceeding is pending or in progress, he:
 - (1) Alters, destroys, or conceals any record, document or thing with the intent to impair its verity, legibility, or availability as evidence in the investigation or official proceedings,
- (d) A person commits an offense if the person:
 - (1) Knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability evidence in any subsequent investigation or official proceedings related to the offense.

Tex. Penal Code § 54.031 (b) (1) (2) (c) (1) (A) (B) (C)

- (b) This section applies only to statements that describe the alleged violation that:
 - (1) Were made by the child or person with a disability who is the alleged victim of the violation; and
 - (2) Were made to the first person, 18 years of age or older, to whom the child or person with a disability made a statement of the violation.
- (c) A statement that meets the requirements of subsection (b) is not inadmissible because of the hearsay rule if
 - (1) On or before the 14th day before the date the hearing begins, the party intending to offer the statement:
 - (A) Notifies each other party of its intentions to do so;
 - (B) Provides each other party with the name of the witness through whom it intends to offer the statement; and
 - (C) Provides each other party with a written summary of the statement;

Tex. Fam Code § 101.007

CLEAR AND CONVINCING EVIDENCE. "Clear and Convincing Evidence" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

Tex. Fam Code § 104.006 (1) (2)

HEARSAY STATEMENT OF CHILD ABUSE VICTIM. In a suit affecting the parent-child relationship, a statement made by a child 12 years of age or younger that described alleged abuse against the child, without regard to whether states are otherwise inadmissible as hearsay, is admissible as evidence if, in a hearing conducted outside the

presence of the Jury, the court finds that the time content and circumstances of the statement provide sufficient indications of the statement reliability and:

- (1) The child testifies or is available to testify at the proceedings in court or in any other manner provided by law; or
- (2) The court determines that the use of the statement in lieu of the child's testimony is necessary to protect the welfare of the child.

Added by Acts 1997, 75th Leg., Ch. 575, Sec. 4, eff. September 1, 1997

Tex. Fam Code § 106.001 (b) (1) (D) (E) (O)

(b) The Court may order termination of the parent-child relationship if the court finds by clear and convincing evidence (1) that the parent has: (D) Knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child. (E) Engaged in conduct which endangers the physical or emotional well-being of the child; (O) Failed to comply with the provisions of a court ordered that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child.

Tex. Fam Code § 261.105 (b)

The department shall immediately notify the appropriate state or local law enforcement agency of any report it receives other than a report from a law enforcement agency, the concerns the suspected abuse or neglect of a child or death of child from abuse or neglect.

Tex. Fam Code § 261.107 (b)

(b) A finding by a court in a suit affecting the parent-child relationship that a report made under this chapter before or during the suit was false or lacking factual foundation may be grounds for the court to modify an order providing for possession of or access to the child who was the subject of the report by restricting further access to the child by the person who made the report.

Tex. Fam Code § 261.304 (c)

(c) Unless the department determines that there is some evidence to corroborate the report of abuse, the department may not conduct the thorough investigation required by this chapter or take any actions against the person accused of abuse.

Tex. Fam Code § 261.308 (a)

(a) The department shall make a complete written report of the investigation.

STATEMENT OF CASE

Lawrence S. Brantley Jr., Petitioner, has been victimized for years by a corrupt system of Judicial misconduct in the Texas Courts, as well as, the Texas Department of Family and Protective Services, a federally funded government agency. These two entities have perpetrated an unconscionable scheme to criminally defraud the United States Government and willfully deprive citizens of the Constitutional rights for the sole intent of kidnapping children and placing them in a foster care just to meet their quarter for financial gain. The Department have conspired to commit fraud by and through fraudulent testimony and going against their own state statutes and the Constitutional Rights of Citizens. The Court has systematically deprived Petitioner of the rights to fair Judicial proceeding.

On June 8, 2020, the State called their witness who under oath, stated, "She isn't the original investigator and that she never seen nor spoken to either child part of this case." The Texas Court of Appeals for the Fourth District of Texas, at Bexar County, Texas; upheld the termination order, stating in Justice Patricia O. Alvarez, opinion "naming Supervisor Dina Schievelbein a credible witness and investigator." Clearly, no court viewed the entire record before rendering judgment. The case in question, was built around out-of-court statements, hearsay testimony and no evidence to support State theory of the alleged physical abuse on a child.

In a suit affecting the parent-child relationship, clear and convincing evidence standard is needed to prove termination of parental rights is warranted. Without at least, by clear and convincing evidence, the State can not prove its allegations, there can be no judgement of favor of the State.

Colorado v. New Mexico 467 U.S. 310 (1984)

Allowing the harm to stand, places a disbelief in our Constitution and government.

REASON FOR GRANTING THE WRIT

This case presents multiple important questions of Federal Constitutional Law concerning the State's handling of parent-rights termination cases. Nearly a century ago, this Honorable Court held that Due Process Clause protects the right of parents to "establish a home and bring up children." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). Since then, this Honorable Court consistently has recognized the primacy of the parent-child relationship, and cast a skeptical eye on government attempts to burden it. See e.g., *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *Quillon v. Wallcott*, 434 U.S. 246, 255 (1978); *Parham v. J.R.* 442 U.S. 584, 602 (1979).

Even in cases yielding divided opinions, this Honorable Court's Justices find common ground in the agreement that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interest protected by the Fourteenth Amendment." *Santosky v. Kramer*, 455 U.S. 745, 744 (1982) (Rehnquist J. dissenting). And Justices who do not view parental rights a constitutionally protected nevertheless concede their place among "The Unalienable Rights" the Declaration of Independence posits are bestowed on all American by "Their Creator", See *Troxel v. Grandville*, 530 U.S. 57 91 (2000) (Scalia J., dissenting)

Nevertheless, both Federal and State Courts generally apply strict scrutiny if a state statute infringes upon a fundamental liberty of right protected under the Due Process Clause of the Fourteenth Amendment. See e.g., *Reno*, 5087 U.S. at 302 (explaining the Due Process Clause) "Forbids the government to infringe certain "fundamental" liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to service a compelling state interest."

Fundamental Rights are rights that are so "implicit in the concept of ordered liberty" that "neither liberty no Justice would exist if they were sacrificed." See *Palko v. Connecticut* 302 U. S. 319, 325, 326, 58 S. Ct. 149, 152.82 L. Ed. 288 (1937); *McKinney v. Pate*, 20 F. 3d, 1550, 1556 (11th Cir. 1994) (en banc). See *Glucksberg*, 521, U.S. at 720, 117 S. Ct. at 2267; *Paul v. Davis*, 424 U.S. 693, 712-13, 96 S. Ct. 155, 166, 47 L. Ed. 2d 405 (1976).

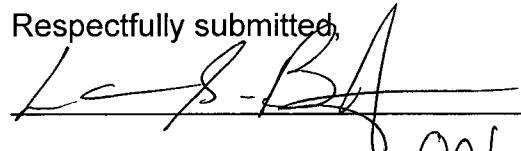
This Petition for Writ of Certiorari should be granted because this case also raises a National problem dealing with the miscarried Justice the Department of Family and Protective Services are placing on families. Children are being kidnapped by the same governmental entity who swore on oath to protect. Any constitution rights that violate those it protects, without rectification is an injustice to the United States Constitution and its subject whose protective blanket protects.

I pray this Petition for a Writ of Certiorari is granted, because no family should be permanently separated with Justice and Due Process.

CONCLUSION

The petition for a Writ of Certiorari should be granted

Respectfully submitted,



October 11, 2021