22-7654

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Juan Louis Caballero — PETITIONER
(Your Name)

vs.

Bobby Lumpkin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

Juan Louis Caballero
(Your Name)

McConnell Unit, 3001 S. Emily Dr.
(Address)

Beeville, Texas 78102-8583
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

The United States Court of Appeals for the Fifth Circuit and the United States District Court for the Western District of Texas has entered a decision in conflict with a decision by a state court of last resort and this Court's prior holdings, and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

1.) Can the lower federal courts indiscriminately deny a(timely) filed federal habeas corpus (2254) of Newly Discovered Evidence wherein the newly discovered evidence proves that the District Attorney's office outright lied to have petitioner convicted, on the jury's main question during deliberations, wherein petitioner has proof by way of three police reports that he did not attack complainant with a knife? Moreover, petitioner has proof of his Innocence by way of new discovered e-mail.

2.) Can a state high court completely abrogate this Court's precedential ruling under the sufficiency of the evidence (Jackson v. Virginia) of 1979 and use ex post facto / retro-active law from 1965 (Johnson v. State, 397 S.W. 2d 424) to uphold petitioner's unlawful conviction, wherein the federal courts are condoning the use of ex post facto and retroactive case law from 1966?

3.) Can the federal courts refuse to make the state high court answer the use of perjured (false and misleading) testimony wherein such offensive use was used to convict petitioner and a New Change in Court Law of the State lowered the threshold of perjury in this precedential case, Ex parte Chavez (Tex. Crim. Ap. 2012)

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

Johnson v. State, 397 S.W. 2d 424, 425-26 (Tex. Crim. App. 1966).
Caballero v. State, 292 S.W.3d 152 (Tex Crim. App 2009); Published.
Ex parte Chavez, 371 S.W.3d 200, 208 (Tex. Crim. App. 2012).

Brady v. Maryland, 373 U.S. 83 (1963); U.S. Const. Amend. V & XIV.

Napue v. Illinois, 360 U.S. 264 (1959); U.S. Const. Amend. V & XIV.

Schlup v. Delo, 512 U.S. 298 (1995); U.S. Const. Amend. V & XIV.

Jackson v. Virginia, 443 U.S. 307 (1979)

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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 A to the petition and is

[ ] reported at N/A; 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 N/A; 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 February 17, 2023.

[ ] 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: 3/16/2023, and a copy of the order denying rehearing appears at Appendix D.

[ ] 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

This case involves Newly Discovered Evidence discovered by petitioner's habeas corpus counsel in October of 2020 in the Bexar County Criminal District Attorney's hard-drive labeled "Work Product," which pellucidly proves petitioner's Actual Innocence and that his conviction was obtained through the use of highly inflamatory perjured testimony that compelled the jury to convict appellant with no evidence of a sexual nature. Which is in violation of the Fifth and Fourteenth Amendments to the United States Constitution's guarantee of Due Process and Equal Protection of the laws of the United States of America.

Because petitioner has actual proof by way of three police reports and an e-mail in possession of the Bexar County Criminal District Attorney's Office which was material to his conviction, the District Attorney's Office had a duty to turn over the remaining two police reports, e-mail and other statements from complainant which proves that petitioner did not attack complainant with a knife as they told the jury. This is in violation of this Honorable Court's precedential cases of Brady v. Maryland, Napue v. Illinois, petitioner's Fifth and Fourteen Amendments to the U.S. Constitution. Absent the lies of petitioner "grabbing" complainant's arm and holding a knife to her; along with the e-mail stating that two district attorneys were only charging me for "intent to commit sexual assault" because of his "prior record." This case also involves a new change in state court law. The federal courts refuse to compell the state high court to answer this Newly Discovered Evidence writ based on Actual Innocence. Schlup v. Delo, 512 U.S. 298 (1995).

STATEMENT OF THE CASE

Petitioner filed his first state habeas corpus in December 2010. It was denied without written order, although two serious constitutional violations were readily apparent; ex post facto / retroactive case law used to uphold the Sufficiency of the Evidence under Jackson v. Virginia wherein the state high court and the federal courts abrogate Jackson for an obscure and outdated state case, Johnson v. State, 397 S.W. 2d 424, 425-26 (Tex. Crim. App. 1966), see Caballero v. State, 292 S.W. 3d 152 (Tex. App. San Antonio, 2009), wherein they quote Johnson v. State, twice; and perjured testimony, wherein the trial court under the state habeas actually said, in relation to displaying and attacking the complainant with a knife, "Although the complainant might have been perjuring herself about Caballero holding a knife in his hand, they were only minor misstatements." This is shocking to the conscience, and this case requires this Court's supervisory power to compel the lower courts to stop discriminating against petitioner. Furthermore, the State courts of Texas are using petitioners published case to uphold other defendants' cases wherein Johnson v. State, 397 S.W. 2d 424 is stating that no evidence of a sexual nature is required to uphold a conviction, which is ex post facto / retroactive law, thereby the state abrogating Jackson v. Virginia, 443 U.S. 307 (1979) and substituting archaic case law in violation of petitioner's Fourteenth Amendment to the United State Constitution and his Civil Rights.

In February of 2020, petitioner's family hired an experienced

attorney to find the two police reports that petitioner's family were unable to procure. In October of 2020 attorney Dante E. Dominguez went into the prosecutor's file and hard drive marked "Work Product" and found the two remaining police reports that conclusively prove petitioner did NOT have a knife in his hand, and an e-mail between two charging prosecutors, Linda White and Robert McClure stating they will charge petitioner with burglary of a habitation with intent to commit sexual assault, "... in light of his prior record...."

Petitioner on January 19, 2022 received a bench trial hearing for his Newly Discovered Evidence writ, wherein he claimed Actual Innocence, Brady v. Maryland violations and false and misleading Testimony that led to his conviction. (see Appendix E). The three police reports and e-mail were thoroughly and concisely gone through by counsel and petitioner in front of the trial judge. Yet, she inexplicably refused to talk about the falsity of the knife that petitioner was allegedly "brandishing" and attacking the complainant with, that they hammered to the jury, and to which was the sole issue for the jury to consider for conviction, as they sent a note to the trial judge asking, "Whom had the knife; the complainant or the defendant?" And of course, petitioner was convicted on this egregious false and misleading testimony. (see Appendix E, pages 14-16, pp. 21-24, ppgs 26 & 27). This denial of petitioner's Constitutional Rights and the Court's precedential case of Napue v. Illinois, 360 U.S. 264 (1959) is a direct affront by the lower state and federal courts to usurp this Honorable Court's supervisory power. The state high court "Denied Without Written Order" petitioner's state writ (Newly Discovered Evidence), and the trial court nor the state high court ever ruled it a "successive writ" as the U.S. District Court and U.S. Court of Appeals for the Fifth

Circuit have overstepped their boundaries. It has been readily apparent that the issues raised on petitioner's "successive writ" are directly attributable to the Newly Discovered Evidence that bolsters and proves that petitioner was convicted by a deceived jury. The lower federal courts are clearly exercising their authority in an arbitrary and capricious manner in order to protect the wrongdoing of the state lower courts and the Bexar County District Attorney's office. They have outright lied to have petitioner convicted and are colluding to violate petitioner's Due Process rights, Equal Protection of the Laws and his Civil Rights. This is disturbing and shocking to the conscience that United States of America Courts would commit Human Rights Abuses to someone they do not like. Obviously, the state and federal courts are objectively unable to rule in an objective manner due to petitioner's "no contest" plea to sexual assault, which petitioner vehemently maintains his innocence on, in 1994. This Honorable Court has steadfastly maintained that any form of DISCRIMINATION is against the Fourteenth Amendment's Due Process Clause and Equal Protection of the Laws for any American Citizen. Because of this extraordinary issues in this case that affects the Integrity of United States of America Courts, petitioner humbly through the Grace of God asks this Honorable Court to exercise its Judiciary Powers to instill confidence and integrity back into the courts to stop this madness.

The state and federal courts have all been given multiple copies of all three police reports and the damning e-mail by the Bexar County District Attorney's office, so they conspire to

Keep petitioner out of their courtrooms. The federal District Court judge, Orlando Garcia, steadfastly refuses to acknowledge that petitioner's current 28 U.S.C. § 2254 is a Newly Discovered Evidence writ and unbelieveably states that petitioner "failed to make a substantial showing of the denial of a federal right." And the U.S. Court of Appeals simply parrots petitioner's claims, without speaking about the police reports, and uses the same legal jargon as the Western District of Texas. It is disturbing that these Courts have engaged in conspiracy, obstruction of justice and engaging in organized crime in order to protect the illegal activity of the Bexar County Criminal District Attorney's office, to keep the state courts from answering his writ and to violate his Due Process and Civil Rights.

Moreover, petitioner has brought forward a New Change in the State Court Law, Ex parte Chavez, 371 S.W.3d 200, 2008 (Tex. Crim. App. 2012) which lowered the threshold of "Perjury," into "False and Misleading Testimony" that was material to a defendant's conviction. And as stated earlier, it was the "brandishing" and "attacking" the complainant with a Knife, nowhere in the record prior to trial, that had petitioner convicted. This is because the jury's sole question for conviction or not was, "Whom had the Knife, the complainant or defendant?" And of course it was lied upon that I attacked with a Knife when three police reports say differently. However, the trial Court, the state high court refuse to keep this evidence in an open forum to violate the U.S. Constitution, U.S. Supreme Court precedent and petitioner's Civil Rights. Petitioner has more than proven his allegations and humbly asks this Court for its intervention?

REASONS FOR GRANTING THE PETITION

It is imperative that this Honorable Court exercise its judicial authority and power to compel the lower courts to follow the United State Constitution, U.S. Supreme Court precedential case law and stop discriminating against petitioner simply because they don't like me. The courts are not to be misused for vigilante justice but to arrive at impartial and objective justice, which is sadly not the case here.

If this is not disturbing in itself, petitioner's case, Caballero v. State, 292 S.W. 3d 152 (Tex. Crim. App.; San Antonio 2009) has been quoted at least ten times in other Texas cases to uphold defendants' cases. Petitioner's case is rotten and standing on a foundation of sand to begin with as his case was upheld from an obscure state case from 1965, Johnson v. State, 397 S.W. 2d 424 (Tex. Crim. App. 1966), in which such archaic terms as "rape" were still used and is after this Court's precedential ruling on Sufficiency of the Evidence cases and said case, Johnson, states that evidence is not needed to convict for burglary with intent to rape; thereby making it a conviction based on "thought crime," in line with George Orwell's 1984. This is disturbing. And it is certainly post Jackson v. Virginia, 443 U.S. 307 (1979), which petitioner's conviction is based on retroactive and ex post facto law. This is in violation of petitioner's Fourteenth Amendment's Due Process Clause and Equal Protection of the Laws. Petitioner's PUBLISHED case will cause many more rotten apple convictions to be upheld on Thought Crime.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Juan Louis Caballero

Date: May 17th, 2023