

No. USAP5 21-40450

IN THE
SUPREME COURT OF THE UNITED STATES

ARGUSTUS CHARLES CHOYCE, PETITIONER

v.

BOBBY LUMPKIN, RESPONDENT

PETITIONER'S OUT-OF-TIME PETITION

~~RECEIVED~~ UNITED STATES SUPREME COURT CLERK

DEC - 7 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITIONER ARGUSTUS CHARLES CHOYCE, in custody in violation of the United States Constitution on the Mark Stiles Unit, makes a plea to the clerk in this out-of-time petition to show the constitutional filed violations of petitioner's 4, 5, 6, and 14 amendments would be a miscarriage of justice to not hear the petitioner claims. This court according to § 2241(c)(3) has power to grant relief, petitioner has not been given a judgment on the merit. Petitioner last chance of hope is in the United States Supreme Court. Petitioner will show a violation of constitutions to get consideration.

I

Petitioner will show a violation of Fourth Amendment of arrest without probable cause/warrant. Attachment #1, a statement made by alleged victim Michelle Harris and Officer Caleb Sleeper signed to be true, as a witness. Attachment #2, the police report made by Officer Sleeper contained false statements and allegations that conflict with the victim's statement, it also showed Officer Sleeper's knowingly and intentionally disregard for the truth. Frank v. Delaware, 438 U.S. 154, 155-56, 165, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). It's a miscarriage of justice Murray v. Carrier, 477 U.S. 478. This Fourth Amendment constitutes an actual innocence showing a violation for the Federal Court to make determination under Schlup v. Delo, 513 U.S. 298, 115 S. Ct. 861.

II

Petitioner will make a showing of Sixth Amendment violation of ineffective assistance of counsel. At pre-trial petitioner made objection to counsel's representation. (4 of 8, pg. 4, 25-pg. 5, 9). The Honorable R. Wesley Tidwell, ruled, "Mr. Meehan has previously been appointed to represent you and will continue in that capacity pending further orders of the court". That makes a showing of a Sixth Amendment violation, U.S. v. Gonzalez-Lopez, 126 S. Ct. 2557 (2006). This will also show the appellant counsel's ineffective assistance to raise viable issues preserved for appeal by objections and when appellant court

agreed with petitioner," that trial court incorrectly convicted petitioner of wrong degree of charge", COUNSEL WAS INEFFECTIVE NOT GETTING A REHEARING TO ASK FOR RESENTENCING FOR THIRD DEGREE FELONY CHARGE. GRAY V. GREER, 778 F.2d 350 (CA 7 1985). CHOYCE V STATE 2018 TEX. APP. LEXIS 7814, 2018 WL 447228 (TEX. APP. TEXARKANA, SEPT 19, 2018)

III

PETITIONER WILL MAKE A SHOWING OF CONSTITUTIONAL VIOLATION TO THE FOURTEENTH AMENDMENT DUE PROCESS OF LAW. A SUBJECT MATTER JURISDICTION CLAIM. ATTACHMENT #3, SHOWS PETITIONER WAS INDICTED JULY 20, 2017, OF (3RD) THIRD DEGREE ASSAULT FAMILY VIOLENCE BODILY INJURY/IMPEDING BREATH. IT'S NO MEDICAL RECORD TO SUPPORT ASSAULT, BODILY INJURY, OR IMPEDING BREATH NO DOCTOR EXAMINATION. ON JANUARY 9, 2018 THE PROSECUTOR PUT IN A MOTION TO AMEND PETITIONER ASSAULT FAMILY VIOLENCE BODILY INJURY/IMPEDING BREATH A THIRD DEGREE FELONY THE MOTION TO AMEND WAS GRANTED 1-9-2018 BY THE JUDGE HONORABLE R. WESLEY TIDWELL. THE CHARGE OF ASSAULT CAUSES BODILY INJURY/IMPEDING BREATH, A SECOND DEGREE, THAT WAS ENHANCED TO A FIRST DEGREE FELONY TO GIVE PETITIONER A LIFE SENTENCE. FIRST, ACCORDING TO THE INDICTMENTS JUDICIAL DETERMINATION WAS DENIED AND HAS CONTINUED TO SHOW A CONSTITUTIONAL VIOLATION OF THE FOUR AND FOURTEENTH AMENDMENTS GERSTEIN V. PUGH, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed 2d 54. THE NEW CHARGE OF ASSAULT CAUSES BODILY INJURY/IMPEDING BREATH WAS AMENDED BY THE PROSECUTOR NOT BY GRAND JURY. EVANS V. CAIN, 577 F.3d 620 (CA 5 2009). IT ATTACHMENT NUMBER THREE

through time be compared it will be clear the trial court's judgment was void, because the amendments made by the prosecutor are render constitutional violations of the Fourth and Fourteenth Amendments which shows jurisdiction was lacking to have petitioner to stand trial. NEMAZIER v. BAKER, 793 F.2d 58, 65 (CA 2 1986). "In general, if a convicted state criminal defendant can show a federal habeas court that his conviction rest upon a violation of the federal constitution, he may well obtain a writ of habeas corpus that requires a new trial, a new sentence, or release". PREISER v. RODRIGUEZ, 411 U.S. 475, 484-485, 93 S.Ct. 1827, 36 L.Ed 2d 439 (1973).

Prayer

WHEREFORE, petitioner, AUGUSTUS CHARLES CHOYCE, pray this out-of-time motion be considered by the clerk and filed in the United States Supreme Court

Respectfully submitted,

Augustus Charles Choyce
AUGUSTUS CHARLES CHOYCE
#2185811
3TLES Unit
3060 FM 3514
Beaumont, TX 77705

Attachment #1 (statement)

CASE NUMBER:

Attachment
#1CHOYCE V. LUMPKIN
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CLARKSVILLE POLICE DEPARTMENT

VICTIM STATEMENT

NAME: Michelle HarrisAGE: 38ADDRESS: 9 BCR 1270 Detroit, MI 75434CONTACT #: 682-459-1270DATE OF BIRTH: 7-16-78DRIVERS LICENSE: ID 02860443

I REALIZE THAT IT IS A VIOLATION OF THE TEXAS PENAL CODE, SECTION 37.08 FOR ME TO MAKE A FALSE REPORT TO A PEACE OFFICER. THAT MEANS TO REPORT AN OFFENSE KNOWING THAT THE OFFENSE DID NOT OCCUR OR KNOWING THAT I HAVE NO KNOWLEDGE ABOUT THE OFFENSE.

I have been assaulted by Arguete Choyce
he started to beat me repeatedly around 1:00 to 7:30 AM
I ran out and left everything my purse with \$420

THE ABOVE STATEMENT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, AND ACCURATELY DESCRIBES THE EVENTS AS I REMEMBER THEM.

Michelle Harris

SIGNATURE OF VICTIM

DATE: TIME:

C. Shae 206

SIGNATURE OF OFFICER

Incident Report #1 Continued

Clarksville Police Department	Incident Classification Assault Non Agg	attempted <input type="checkbox"/>	Case No. 20170625
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Dispatch advised me that the on-duty deputy was in Avery, TX on an unrelated call. I advised Dispatch that I would be en route to the pallet factory.

Upon arrival, I made contact with factory manager Cedric Nickerson who advised that the assault victim was in the back seat of an SUV parked in front of the main office.

I made contact with victim Michelle Harris who advised that she had been staying with her boyfriend Argustus Choyce in his apartment at 1108 W. Main St. Apt. #4 in Clarksville and that this morning (06/10/2017) at approx. 07:00-07:30, Choyce began beating her repeatedly and choked her. I observed bruising and redness on Harris' face and neck. Photographs of Harris' injuries were taken as evidence and will be included with this file. I advised Harris that I would need her statement regarding the assault, and she advised she would write a statement. The following statement was written by Michelle Harris on 10/06/2017 : ["I have been assaulted by Arguste Choyce he started to beat me repeatedly around 7:00 to 7:30AM I ran out and left everything my purse with \$420.00"]

Harris advised that she had cash in her purse from her paycheck of approx. \$420.00 in her purse, and Choyce took that money from her purse. The driver of the vehicle that Harris was sitting in, Gary Reed, advised that he lives in the same apartment building, in Apt. #2. Reed advised that he was trying to help Harris this morning when he observed Choyce take the money. I asked Reed if he was willing to give a statement about what he witnessed, and he advised yes. The following statement was written by Gary Reed on 06/10/2017 : ["I Gary was trying to help Michelle get her belongings back from Argustus Choice and he had her purse and I seen him take her money out of her purse at least \$400 asked him to give it too me and he said no this is my bail money. So I left when he was putting money in pocket."]

While on scene, Choyce was arrested for Disorderly Conduct and Public Intoxication. See report # 20170624 for details. No further information at this time. EOR.

 Officer conflicting statements

Attachment
#3

CHOYCE V. LUNSPKIN
43AP5 21-40450

CAUSE NO.: CRO 2606



THE STATE OF TEXAS

VS.

ARGUSTUS CHARLES CHOYCE

CHARGE

ASSAULT FAMILY VIOLENCE BODILY INJURY IMPEDING BREATH

TEXAS 22.01

3RD DEGREE FELONY

ENHANCED 25-99

A TRUE BILL

CYNTHIA RAMIREZ
FOREMAN OF THE GRAND JURY

RETURNED INTO OPEN COURT BY A QUORUM OF

THE GRAND JURY, THIS 20TH DAY OF

JULY, A.D. 2017 AND

FILED THE SAME DAY.

JANICE K. GENTRY, CLERK OF THE DISTRICT COURT OF

RED RIVER COUNTY, TEXAS

BY Janice Gentry DEPUTY

NAMES OF WITNESSES:

CALEB SLEEPER

← The charge, degree, enhancement
charge all was change in amended
indictment by prosecutor no by
grand jury.

INDICTMENT

DATE: JULY 20, 2017

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

The Grand Jury of Red River County, State of Texas, duly impaneled, sworn, charged, and organized at the JANUARY Term of Court, 2017 A.D. of the 6TH District Court of said county, in said court, at said term, upon their oaths do present that Argustus Charles Choyce, on or about the 10th day of June, 2017, did commit the offense of ASSAULT CAUSES BODILY INJURY IMPEDING BREATH by then and there intentionally, knowingly, and recklessly cause bodily injury to Michelle Harris, hereafter styled the complainant, a person with whom the defendant had or had had a dating relationship, as described by Section 71.0021(b) of the Texas Family Code, by intentionally, knowingly, and recklessly impeding the normal breathing or circulation of the blood of the complainant by applying pressure to the throat or neck of the complainant, and before the commission of the offense, the defendant had previously been convicted of an offense under Chapter 22 of the Texas Penal Code, against a person with whom the defendant had or had had a dating relationship, as described by Section 71.0021(b) of the Texas Family Code, to-wit: on the 10th day of January, 2012, in the 204th Judicial District Court of Dallas County, Texas, in cause number F-1475608-Q.

And it is further presented that, prior to the commission of the charged offense (hereafter styled the primary offense), on the 10th day of March, 1995, in cause number F-9364282 in the 283rd Judicial District Court of Dallas County, Texas, the defendant was finally convicted of the felony offense of Possession of a Controlled Substance.

And it is further presented that, prior to the commission of the primary offense, and after the conviction in cause number F-9364282 was final, the defendant committed the felony offense of Unlawful Possession of a Firearm by Felon and was finally convicted on the 4th day of August, 2000, in cause number F-9949606 in the 291st Judicial District Court of Dallas County, Texas.

The primary offense occurred in Red River County, and is therefore within the jurisdiction of the court in which it is presented.

AGAINST THE PEACE AND DIGNITY OF THE STATE

THE grand jury indictment
ENHANCEMENT charge

Cynthia Ramirez
CYNTHIA RAMIREZ
FOREMAN OF THE GRAND JURY

Attachment
#4

Choyce v. Lumpkin
USAP 5 21-40450

NO. CR02606

STATE OF TEXAS

vs.

ARGUSTUS CHARLES CHOYCE

§ IN THE DISTRICT COURT
§
§ 6TH JUDICIAL DISTRICT
§
§ RED RIVER COUNTY, TEXAS

MOTION FOR LEAVE TO AMEND INDICTMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW The State Of Texas and files its Motion for Leave to Amend Indictment and would show the Court as follows: Argustus Charles Choyce is charged with the offense of ASSAULT CAUSES BODILY INJURY IMPEDING BREATH which is a 2nd Degree Felony allegedly committed on the 10th day of June, 2017, that is enhanced to a 1st Degree Felony carrying a range of punishment of 25 years to Life.

1. Trial is set to commence on FEBRUARY 13, 2018.
2. Amended indictment charges neither a different nor an additional offense.
3. It needs to be amended as set forth in the attached Amended Indictment.
5. Pursuant to Articles 28.10 and 28.11 of the Texas Code of Criminal Procedure, the State asks the Court for leave to amend the indictment which was originally issued on JULY 20, 2017.

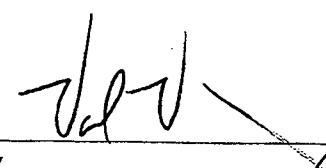
WHEREFORE, PREMISES CONSIDERED, Movant asks that the Court grant the relief requested.

Respectfully submitted,

RED RIVER COUNTY DISTRICT ATTORNEY
Red River County Court House
400 N. Walnut St
Clarksville, TX 754263041
(903) 427-2009
(903) 427-5316

By:

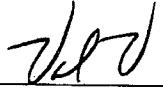
Val J. Varley
Red River County and District Attorney
Red River County, Texas
State Bar No. 20496580
valvarley@valornet.com



CHOYCE V. LUMPKIN
43AP5 21-40460

CERTIFICATE OF SERVICE

This is to certify that on January 9, 2018, a true and correct copy of the above and foregoing document was served on Defendant's Attorney, DAN MEEHAN, by hand delivery.


Val J. Varley

Attachment
#15

Choyce v. Lumpkin
4SAPS 21-40450

AMENDED INDICTMENT

DATE: JULY 20, 2017

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

The Grand Jury of Red River County, State of Texas, duly impaneled, sworn, charged, and organized at the JULY Term of Court, 2017 A.D. of the 6TH District Court of said county, in said court, at said term, upon their oaths do present that Argustus Charles Choyce, on or about the 10th day of June, 2017, did commit the offense of ASSAULT CAUSES BODILY INJURY IMPEDING BREATH by then and there intentionally, knowingly, and recklessly cause bodily injury to Michelle Harris, hereafter styled the complainant, a person with whom the defendant had or had had a dating relationship, as described by Section 71.0021(b) of the Texas Family Code, by intentionally, knowingly, and recklessly impeding the normal breathing or circulation of the blood of the complainant by applying pressure to the throat or neck of the complainant, and before the commission of the offense, the defendant had previously been convicted of an offense under Chapter 22 of the Texas Penal Code, against a person with whom the defendant had or had had a dating relationship, as described by Section 71.0021(b) of the Texas Family Code, to-wit: on the 10th day of January, 2012, in the 204th Judicial District Court of Dallas County, Texas, in cause number F-1058808-Q.

And it is further presented that, prior to the commission of the charged offense (hereafter styled the primary offense), on the 10th day of March, 1995, in cause number F-9364282-NT in the 283rd Judicial District Court of Dallas County, Texas, the defendant was finally convicted of the felony offense of Possession of a Controlled Substance.

And it is further presented that, prior to the commission of the primary offense, and after the conviction in cause number F-9364282-NT was final, the defendant committed the felony offense of Unlawful Possession of a Firearm by Felon and was finally convicted on the 4th day of August, 2000, in cause number F-9949606-WU in the 291st Judicial District Court of Dallas County, Texas.

The primary offense occurred in Red River County, and is therefore within the jurisdiction of the court in which it is presented.

AGAINST THE PEACE AND DIGNITY OF THE STATE

THE grand jury indictment
Enhancement charge changed
by prosecutor

CYNTHIA RAMIREZ
FOREMAN OF THE GRAND JURY