

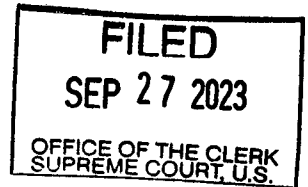
23-5754

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



TONY TERREL CHASE — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

TONY TERREL CHASE
(Your Name)

Mark W. Stiles Unit, 3060 FM 3514
(Address)

Beaumont, Texas 77705
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Was Petitioner denied substantive due Process ?
2. Was Petitioner harmed by the state's denial of Petitioner's request for a instruction on Necessity ?

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

- Jordan V. Stephens, 2014 U.S. Dist. LEXIS 122665 at 11*, 12*
- Finely V. Johnson, 243 F.3d 215 (5th Cir. 2001).
- Quarez V. State, 300 S.W. 3d 390 (Tex. Crim. App. 2010).
- Hubbard V. State, 133 S.W. 3d 797, 801-02 (Tex. App. Texarkana 2013, no pet.)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5, 6
CONCLUSION.....	6

INDEX TO APPENDICES

- APPENDIX A THE COURT OF CRIMINAL APPEAL'S "REFUSED".
- APPENDIX B THE TWELFTH COURT OF APPEALS - "AFFIRMED".
- APPENDIX C PETITIONER'S AFFIDAVIT TO PROCEED IN FORMA PAUPERIS.
- APPENDIX D PETITIONER'S DECLARATION UNDER 28 U.S.C. § 1746.
- APPENDIX E
- APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

- Daniels v. Williams, 474 U.S. 332, 106 S.Ct. 662 (1986), _____ 5.
- Tuarez v. State, 208 S.W. 3d 398 (Tex. Crim. App. 2010) _____ 5.
- Jordan v. Stephens, 2014 U.S. Dist. LEXIS 122665 at 11-12 _____ 5.
- Finely v. Johnson, 243 F.3d 215 (5th Cir. 2001), _____ 5.
- Sandstrom v. Montana, 442 U.S. 510, 520-521, 61 Ed. 2d 39, 99 S.Ct. 2450 (1979) _____ 5.
- Estelle v. McGuire, 502 U.S. 62, 72, 116 L. Ed. 2d 385, 112 S.Ct. 475 (1991) _____ 5.
- Cupp v. Naughton, 414 U.S. 141, 147, 38 L. Ed. 2d 368, 94 S.Ct. 396 (1973) _____ 6.
- Boyd v. California, 494 U.S. 370, 378, 108 L. Ed. 2d 316, 110 S.Ct. 1190 (1990) _____ 6.
- Middleton v. McNeil, 541 U.S. 437, 124 S.Ct. 1830, 158 L. Ed. 2d 701 (2004) _____ 6.

STATUTES AND RULES

- TEXAS PENAL CODE § 9.22 (NECESSITY) _____ 5, 6

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 _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the TWELFTH COURT OF APPEALS court appears at Appendix B 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 8-23-2023.
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 1.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- TEXAS PENAL CODE § 9.22 (NECESSITY).
- FOURTEENTH AMENDMENT UNITED STATES CONSTITUTION.
(DUE PROCESS).

STATEMENT OF THE CASE

Petitioner was charged with the offense of murder Art. 19.02(c) alleged to have occurred on January 7, 2019. Petitioner Pleaded "not Guilty", and a Jury trial was held (RR 10, 26). The Jury found Petitioner "Guilty" of murder and assessed his Punishment at life in Prison. See (RR 11, 119); (RR 13, 50).

Petitioner Appealed to the Twelfth Court of Appeals (Texas) contending, Petitioner was harmed by the trial court's denial of Petitioner's request for an instruction on necessity. the Twelfth court of Appeals Affirmed Petitioner's sole claim, Petitioner proceeded PRO SE and filed his Petition for Discretionary Review with the court of Criminal Appeals (Texas) in which was refused.

Petitioner Now files this his Petition contending the same, Petitioner was harmed denied due Process by denying Petitioner's request for an instruction on necessity.

REASONS FOR GRANTING THE PETITION

Petitioner hereby contends he is reasonably entitled to relief, do to the Twelfth court of Appeals (Texas) adjudication of Petitioner's sole claim of the trial court denial of Petitioner's request for an instruction on necessity was an unreasonable determination of the facts in light of the evidence presented in the court of Appeals and court of criminal Appeals proceeding. The court of criminal Appeals Refusal was an unreasonable application of state law and denial of Petitioner's right to substantive due Process as guaranteed by the 14th amendment of the U.S. Constitution. The Guarantee to substantive due Process was meant to secure the individual from arbitrary exercise of Power's of Government. Daniels v. Williams, 474 U.S. 332, 106 S.Ct. 662 (1986). Petitioner was harmed by the trial courts denial of his request for an instruction on necessity. The defense presented two theories: that Petitioner acted in self-defense and out of necessity when he shot Edward Blaylock, the record shows Petitioner called the Police stating he was "scared for my life" and admitted to the shooting and that he acted in self-defense. (See) (RR 10, 38); (RR 10, 41), see Also state Exhibit 1).

In applying the doctrine of confession and avoidance to the defense of necessity the court made it clear that in order to invoke necessity as a defense the defendant must admit both to the commission of the charged act and to a requisite mental state. JUAREZ V. STATE, 308 S.W.3d 398 (2010) (citing --- JORDAN V. STEPHENS, 2014 U.S. dist LEXIS 122665 at 11-12).

Pursuant to the Texas Penal code § 9.22 (NECESSITY), conduct is justified if (1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm; (2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct; and (3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear. --- Quoting: FINLEY V. JOHNSON, 243 F.3d 215 (5th Cir. 2001). Petitioner presented evidence for each element but was denied he's due Process right to instruction on the necessity defense, Petitioner was harmed by the charges omission of the defense of necessity, leaving the Jury no choice but to convict Petitioner if it did not find that Petitioner acted in self-defense even though another valid defense existed to justify Petitioner's conduct. In a criminal trial, the state must prove every element of the offense, and a Jury instruction violates due Process if it fails to give effect to that requirement. See: SANDSTORM V. MONTANA, 442 U.S. 510, 520-521, 61 Ed 2d 39, 99 S.Ct. 2450 (1979). Nonetheless, not every ambiguity, inconsistency, or deficiency in a Jury instruction rises to the level of a due Process violation. The question is "whether the giving instruction --- so infected the entire trial that the resulting conviction violates due Process". Estelle v. McGuire, 502 U.S. 62, 72, 116 L.Ed 2d 385, 112 S.Ct. 475 (1991);

Quoting: Cupp v. Murchison, 414 U.S. 141, 147, 38 L.Ed. 2d 368, 94 S.Ct. (1973) "[A] single instruction to a jury may not be judged in artificial isolation, but must viewed in the context of the overall charge". Boyd v. California, 414 U.S. 370, 378, 108 L.Ed. 2d 316, 110 S.Ct. 1190 (1990) (Quoting: Cupp, supra, at 146, 147, 38 L.Ed. 2d 368, 94 S.Ct. 396). If the charge as a whole is ambiguous, the question is whether there is a "reasonable likelihood that the jury has applied the challenged instruction in a way that violates the constitution," Estelle, supra, at 72, 116 L.Ed. 2d 385, 112 S.Ct. 475 (Quoting: Boyd supra, at 380, 108 L.Ed. 2d 316, 110 S.Ct. 1190). Middleton v. McNeil, 541 U.S. 437, 124 S.Ct. 1830, 158 L.Ed. 2d 701 (2004).

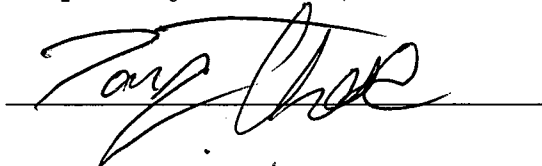
In this case Petitioner was denied an necessity jury instruction of imminent peril in terms of an unreasonable belief or instead describes imperfect self-defense as allowing an unreasonable belief in imminent peril, the import of the instruction is the same in the state court denial Petitioner necessity jury instruction violated Petitioner's due process right of the 14th amend. U.S.C. The states arbitrary and erroneous jury instruction had violated due process under the Federal constitution.

CONCLUSION

Petitioner, in conclusion has shown a constitutional violation by the state's denial of Petitioner's proper request for instruction on necessity, and that denial violated Petitioner's guarantee to substantive due process.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: September 18, 2023