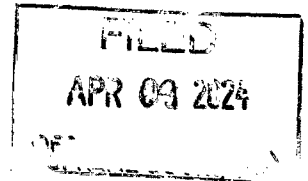


ORIGINAL

No. 18-133



IN THE

SUPREME COURT OF THE UNITED STATES

Christopher Johnson — PETITIONER
(Your Name)

vs.

State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Washington State Supreme Court / 100-1000000
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

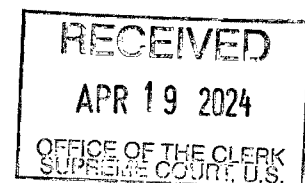
PETITION FOR WRIT OF CERTIORARI

Christopher Johnson, 9000 1st St
(Your Name)

Unit 3 Apt 60-10 / 1000 1st St, Seattle, WA 98101
(Address)

Seattle, WA / 98101
(City, State, Zip Code)

206
(Phone Number)



Question Presented

Does Arbogast apply to Mr. Johnson's case as
collateral review?

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:

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Constitutional and Statutory Provisions Involved

U.S. Constitution

- 6TH Amendment : "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Washington Laws, Rules, or Statutes

- RAP 12.4 (a) : "A party may not file a motion for reconsideration of an order refusing to modify a ruling by the commissioner or clerk, nor may a party file a motion for reconsideration of a Supreme Court order denying a petition for review."

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 B 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 _____.

☐ 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 3/6/2024.
A copy of that decision appears at Appendix A.

☐ 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).

* Rehearings are not allowed in the Washington State Supreme Court per RAP 12.4

Statement of the Case

The trial court denied a jury instruction on entrapment because it did not believe "sufficient evidence" supported it. On appeal, Mr. Johnson argued only "some evidence" was required to support an instruction, but the Washington Court of Appeals held "substantial evidence" was required. The State Supreme Court subsequently reaffirmed that the burden of production is merely "some evidence," and it characterized the appellate decision in Mr. Johnson's case as imposing an improper heightened burden.

State v. Arbogast, 199 Wn. 2d 356, 373 n.5, 506 P. 3d 1239 (2022) (citing State v. Johnson, 12 Wn. App. 2d 201, 208, 460 P. 3d 1091 (2020)).

Mr. Johnson appealed and argued he was entitled to a new trial because the trial court wrongly refused to instruct the jury on the defense of entrapment.

1 In his direct appeal, Mr. Johnson filed a petition for review,
2
3 arguing that the State Supreme Court should correct the broad
4
5 misapprehension regarding the burden of production. That Court
6
7 denied review of that issue, but later addressed it in State v.
8
9 Arbogast, 199 Wn. 2d 356, 506 P.3d 1238 (2022). That Court
10
11 reaffirmed that a defendant is entitled to an instruction if
12
13 "some evidence" supports it, and disavowed opinions stating
14
15 "substantial evidence" is required.

16
17 In the Arbogast opinion, Mr. Johnson's case was mentioned, in
18
19 where the State Supreme Court described the COA's opinion in
20
21 Mr. Johnson's case as wrong (see: Appendix D).

22
23 However, that same State Supreme Court has denied review of
24
25 Mr. Johnson's case (see: Appendix A).

Reasons for Granting the Petition

Does Arbogast apply to Mr. Johnson's case on collateral review?

Yes it does. Even the State agrees that Arbogast does not announce a new rule and instead reaffirms an old rule.

It is without question that, "an old rule applies both on direct and collateral review" (Whorton v. Bockting, 549 U.S. 406, 127 S. Ct. 1173, 167 L. Ed. 2d 1 (2007)).

Therefore, Arbogast applies to Mr. Johnson's case.

Especially when the Washington Supreme Court relied on State v. Johnson, in part (Appendix C - footnote 5), to rule in Arbogast's favor.

This Court should grant Certiorari, because the "same evidence" standard is the correct standard. The courts of Washington State

agree that "same evidence" is the correct standard, yet they deny

Mr. Johnson the ability to apply it to his own case. Where is the

logic or justice in that?

1 The "same evidence" standard is the correct standard. And the courts
2
3 of Washington wrongly rejected Mr. Johnson's argument regarding
4
5 this correct or proper standard.
6

7 This issue is not minor. The improper denial of an entrapment
8
9 instruction violates the Constitutional rights to present a defense
10
11 and to a jury trial (Arbogast, 199 Wn. 2d at 380; 6th Amendment
12
13 to the U.S. Constitution).
14

15 Therefore, the ends of justice require that this Court grant
16
17 Certiorari of the issue. Because Arbogast did not announce a
18

19 new rule, and therefore it applies to Mr. Johnson's case on
20
21 collateral review. Under Teague v. Lane, 489 U.S. 288, 315, 109 S. Ct.
22
23 1060, 103 L. Ed. 2d 334 (1989), an old rule applies both on direct
24
25 and collateral review.
26

27 Mr. Johnson's case is not an exception to this rule.
28

1 The ends of justice would be served by reexamining Mr. Johnson's

2
3 case in light of Arbogast.

4
5 In Arbogast, the Washington Supreme Court clarified that the

6
7 "heightened evidentiary burden" the lower courts imposed on

8
9 Mr. Johnson was wrong (199 Wn.2d at 373, n.5).

10
11 Yet, when Mr. Johnson presented his case to the exact same court,

12
13 in light of Arbogast, they denied him.

14
15
16
17
18
19 Christopher Johnson, DOC # 406520

20 Unit G, Cell GB-18

21 Coyote Ridge Corrections Center

22 P.O. Box 769

23 Connell, WA 99326

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 02 APRIL 2024

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