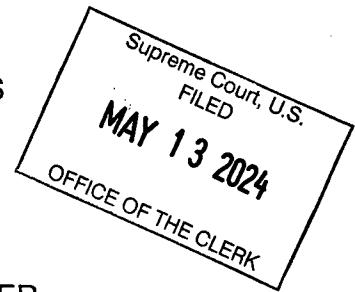


23-7715

No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Noel Termaine Bender — PETITIONER
(Your Name)

Iowa Dept. of Corrections vs.
and (Warden) Chris Tripp et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Noel Termaine Bender
(Your Name)

Iowa State Penitentiary
(Address)

Ft. Madison, IA 52627
(City, State, Zip Code)

(319) 372-5432
(Phone Number)

QUESTION(S) PRESENTED

Whether Substantial Evidence Supports the District Court's finding beyond a reasonable doubt that Noel Bender and Gayle Banks were "Cohabiting" at the time Bender assaulted the victim under Iowa Code Section 708.2A(4) and 902.8 Such that he ~~and this is~~ is a ~~cohabitation and~~ "Household Member" and the assault is a Domestic Abuse Assault, When the Defendant is ~~merely~~ Merely staying with the victim after he has absconded from a residential treatment facility.

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:

Noel J. Bender

Iowa Department of Corrections

Chris Tripp (warden)

Benjamin Milton Parrott

Aaron Rogers

Catie Johnson

Elizabeth Dickey

Kristie Finek

RELATED CASES

- 3:19-CV-03001-CJW-KEM
- State of Iowa v. Noel Bender, No. SRCR016095 District Court for Plymouth County Judgment entered 4-18-2017
- State of Iowa v. Noel Bender, No. 17-0646 Court of Appeals of Iowa Judgment entered 4-4-18
- State of Iowa v. Noel Bender, No. 17-0646 Court of Appeals Supreme Court of Iowa Judgment entered 7-12-18
- Noel Bender v. Iowa Dept of Corrections and Chris Tripp, et al United States District Court for the Northern District of Iowa Western Division No. 5:20-CV-04045-LRR-KEM Judgment Entered 7-6-23
- Noel Bender v. Iowa Dept of Corrections and Chris Tripp, et al No. 23-2833 U.S. Court of Appeals Eighth Circuit Judgment entered 1-17-24 and 2-20-24

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APPENDIX E In the Court of Appeals of Iowa # 17-0646

APPENDIX F In the Iowa District Court for Plymouth County
SPCR 016095

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
• <i>In re Marriage of Gibson</i> , 320 N.W.2d 872 (Iowa 1982)	
• <i>State v. Bender</i> , No. 15-1595, 2016 Iowa App. Lexis 1108 (Iowa Ct. App. Oct. 26, 2016)	
• <i>State v. Benesh</i> , No. 09-0951 2010 Iowa App Lexis 140 (Iowa Ct. App. March 10, 2010)	
• <i>State v. Kellogg</i> , 542 N.W.2d 514, 516 (Iowa 1996)	
• <i>State v. Virgil</i> , 895 N.W.2d 873 (Iowa 2017)	
• <i>Jackson v. Virginia</i> , 443 U.S. 307 (1979)	

STATUTES AND RULES

Iowa Code Section 236.2

Iowa Code Section 708.2A(4)

Iowa Code Section 902.8

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 Noel Bender v. Iowa Dept of Corrections et al; 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 Bender v. Iowa, State of et al 5:20-cv-04045-LRR-KEM; 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 State v. Noel Jermaine Bender NO. 17-0646; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Iowa District Court for Plymouth County court appears at Appendix _____ to the petition and is
 reported at State v. Noel Jermaine Bender NO. SPCR 016095; 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 1-17-24.

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: 2-20-24, 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 7-12-18. 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

5th Amendment of the U.S. Constitution

8th Amendment of the U.S. Constitution

14th Amendment of the U.S. Constitution

Article #1, Section #9 of the Iowa Constitution

Article #1, Section #17 of the Iowa Constitution

Article #1, Section #19 of the Iowa Constitution

Article #1, Section #23 of the Iowa Constitution

STATEMENT OF THE CASE

The decision of the Iowa District Court for Plymouth County expands the definition of "Household Member", for purpose of Iowa's statute defining when an assault is a domestic abuse assault, far beyond what is proper under Iowa law.

I admittedly assaulted the victim. But the evidence at trial cannot, as a matter of law, support a finding that myself and the victim were cohabiting, as is necessary for the assault to have been domestic. This is so because the evidence revealed that myself merely lived with the victim as a guest-visitor for a few non-consecutive weeks, while I was on the run from law enforcement after absconding from a residential treatment facility, and during which time I contributed effectively nothing towards household expenses, lived out of my duffel bag with a few belongings, and maintained a room at my father's house. The decision by "All" the courtrooms leading up to my Writ of Certiorari by holding that these circumstances constitute cohabiting, expands the scope of what constitutes "cohabiting" to a degree wholly divorced from Iowa Law. This Court should vacate the judgment of conviction because there is not enough evidence in the record to prove the appellant guilty beyond a reasonable doubt.

REASONS FOR GRANTING THE PETITION

Because the State Courts along with the U.S. District Court and U.S. Court of Appeals has decided an important question of Federal law in a way that conflicts with relevant decisions of the U.S. Supreme Court. That decision being the U.S. Supreme Court's precedent of *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) and *Thompson v. Louisville*, 362 U.S. 199, 4 L. Ed. 2d 654 80 S.Ct 624.

Under Iowa law "Cohabiting" is a necessary element of Domestic Abuse Assault under 708.2A(4) with the burden of proof being on the prosecution to prove such element. A Conviction based upon a (Record) wholly devoid of any relevant [Evidence] of an element of the offense charged is unconstitutional.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Neil Bell

Date:
June 03, 2024