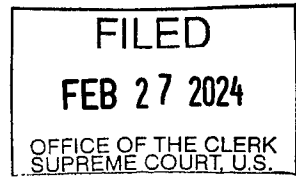


24-5169



No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Clerk of the Supreme Court

ORIGINAL

Jeremy David Spielbauer — PETITIONER
(Your Name)

vs.

Bobby Lumpkin Director TDCJ-CID — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

5th Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jeremy David Spielbauer
(Your Name)

2101 FM 365 North
(Address)

Iowa Park, Texas, 76367
(City, State, Zip Code)

940-855-7477
(Phone Number)

QUESTION(S) PRESENTED

(1) The trial court abused its discretion in denying challenges for cause to venire members Terry Freethy and Joseph Havlik; and the 7th Court of Appeals in Lubbock, Texas overturned his conviction. If the 7th court overturned his conviction and the 5th Circuit Court held up his conviction then who is right? If Mr. Spielbauer's legal council had to use 2 strikes for the 2 jurors Freethy and Havlik, that should have been stricken for cause based on the answers to the questionairs they submitted. Instead, the judge denied the request of extra strikes and made Jeremys council use the only strikes he had. With the media coverage on the case and the location of the incident Mr. Spielbauer was already found guilty in the publics eyes. They automatically had formed opinions about the case. So who is right the 7th court or 5th circuit?

(2) Spielbauer was denied the effective assistance of trial counsel when, during the course of the investigation, they allowed him to submit to interviews with the investigators under the auspices of a "Use Immunity Agreement" without any understanding of the evidence possessed by the investigators. Also not giving him the correct advise on how a use immunity works and that according to the courts does not go into effect until the petitioner has been indicted. His council did not make the petitioner aware of that. Why does a use immunity have to be able to be used only AFTER an indictment? And why wasnt Jeremy made aware of this by his attorneys?

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

Wainwright v. Witt, 469 U.S. 412 (1985)

Witherspoon v. Illinois, 391 U. S. 510

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- Exhibit 6- 7th Court of Appeals Overturned Conviction
- Exhibit 7- 5th Circuit Court of Appeals Opinion
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- Exhibit 9- Original Application of Writ
- Exhibit 10- Rules of Voir Dire

TABLE OF AUTHORITIES CITED

CASES

Wainwright v. Witt, 469 U.S. 412 (1985)

Witherspoon v. Illinois, 391 U.S. 510

Moore v. Estelle, 670 F.2d 56, 58

STATUTES AND RULES

Code of Criminal Procedure article 35.16(a)(10). Id. That statute provides:

(a) A challenge for cause is an objection made to a particular juror, alleging some fact which renders the juror incapable or unfit to serve on the jury. A challenge for cause may be made by either the state or the defense for any one of the following reasons:

10. That from hearsay, or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence the juror in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in the juror's opinion, the conclusion so established will influence the juror's verdict. If the juror answers in the affirmative, the juror shall be discharged without further interrogation by either party or the court. . . .

Tex. Code Crim. Proc. Ann. art. 35.16(a)(1). Spielbauer maintained that, given Freethy's and Havlik's questionnaire responses, article 35.16(a)(10) precluded any further questioning. ECF No. 13-2, pages 27–33, App't Rev. Amd Br. at 27–33. After the CCA granted the State's PDR, Spielbauer did not argue that the subsequent questioning failed to establish that Freethy and Havlik were not disqualified to serve, only that under article 35.16(a)(10), the questioning should not have taken place. ECF No. 9-22, pages 9, 15–25, Appellant's Br.

(CCA) at 9, 15–25. And while he argued that the article 35.16(a)(10) inquiry

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth 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.

Fifth Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The basic purposes that lie behind the privilege against self-incrimination do not relate to protecting the innocent from conviction, but rather to preserving the integrity of a judicial system in which even the guilty are not to be convicted unless the prosecution shoulder[s] the entire load. . . The basic purpose of a trial is the determination of truth, and it is self-evident that to deny a lawyer's help through the technical intricacies of a criminal trial or to deny a full opportunity to appeal a conviction because the accused is poor is to impede that purpose and to infect a criminal proceeding with the clear danger of convicting the innocent. . . By contrast, the Fifth Amendment's privilege against self-incrimination is not an adjunct to the ascertainment of truth. That privilege, like the guarantees of the Fourth Amendment, stands as a protection of quite different constitutional values—values reflecting the concern of our society for the right of each individual to be let alone.

A witness has traditionally been able to claim the privilege in any proceeding whatsoever in which testimony is legally required when his answer might be used against him in that proceeding or in a future criminal proceeding or when it might be exploited to uncover other evidence against him. Incrimination is not complete once guilt has been adjudicated, and hence the privilege may be asserted during the sentencing phase of trial. Conversely, there is no valid claim on the ground that the information sought can be used in proceedings which are not criminal in nature, and there can be no valid claim if there is no criminal prosecution. The Court in recent years has also applied the privilege to situations, such as police interrogation of suspects, in which there is no legal compulsion to speak.

[https://constitution.congress.gov/browse/essay/amdt5-4-3/A1_DF_00000865/\['Use',%20'immunity'\]](https://constitution.congress.gov/browse/essay/amdt5-4-3/A1_DF_00000865/['Use',%20'immunity'])

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 7 to the petition and is

☒ reported at 5th Circuit Court of Appeals; 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 4 to the petition and is

☒ reported at Northern District Court; 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 5 to the petition and is

☒ reported at 7th Court of Appeals; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the 151st court appears at Appendix 3 to the petition and is

☒ reported at 151st Court; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

[X] For cases from federal courts

The date on which the United States Court of Appeals decided my case was 08-23-2022.

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 01-19-2023, and a copy of the order denying rehearing appears at Appendix 9.

[] 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).

[X] For cases from state courts :

The date on which the highest state court decided my case was 10-10-2023.
A copy of that decision appears at Exhibit 4.

[X] A timely petition for rehearing was thereafter denied on the following date: 11-30-2023, and a copy of the order denying rehearing appears at Exhibit 6.

[] 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).

STATEMENT OF THE CASE

Jeremy David Spielbauer was convicted of murder. After his ex wife had been jailed for 469 days for the murder. She was released and Jeremy was indicted. During interrogation Jeremy was offered a Use Immunity agreement. At that time he was coached by his 2 attorneys on how to respond to the interrogation. A short time later he was indicated on murder charges. The video of his interrogation was also played for the judge and juror's to see. These videos were incriminating. Prior to formal jury selection, the court submitted written Jury

Questionnaires to the venire panel. R.R. 11: 17 (D Voir Dire X 1 & 2). Among other questions, the survey asked: "If you have heard about this case, based upon what you have heard, have you formed an opinion as to the guilt or innocence of Jeremy Spielbauer as would influence your verdict?" Before bringing the jury panel into the courtroom on January 16, 2018, trial counsel challenged for cause a number of jurors for their affirmative answers to that question. Counsel advised the court that "it is very clear that if a person answers that question in the affirmative, no further questioning is to be had and they are to be discharged. It is not a subjective question." R.R. 3: 6. Over counsel's objection, the trial court brought the six objectionable jurors into the courtroom individually to allow the parties to ask additional questions. R.R. 3: 9-23. One of the jurors was thereafter dismissed pursuant to an agreed challenge for cause—the others when the prosecutor lodged no objection to trial counsel's challenges for cause. R.R. 3: 11, 19, 21, & 22.

With respect to Prospective Jurors Freethy and Havlik, however, the court overruled trial counsel's challenges. R.R. 3: 18. While article 35.16 provides a rather exhaustive list of the reasons upon

which parties may base their challenges for cause, (a)(10) is the only section that provides a mechanism for absolute disqualification of a juror. And, that provision provides quite a bit of detail about how that procedure should work. First, it must be established that from hearsay or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence the juror in finding a verdict. Tex. Code Crim. Proc. art. 35.16(a)(10).

In determining whether that a valid challenge for cause exists, the juror shall be asked whether, in the juror's opinion, her conclusion will influence her verdict. Id. If the juror answers in the affirmative, the juror shall be discharged without further

interrogation by either party or the court. We feel the judge allowing the jurors to be reconditioned violated the right to a fair trial when the jurors had stated they had already formed an opinion.

They should have been dismissed instead of the defense having to use 2 strikes. Also the judge did not grant the defense any extra strikes. Voir Dire should start when the court asks the first question whether it be written or spoken. The 7th court of appeals sided with the defense and reversed the conviction. At that time the state appealed their decision and I was presented to the higher courts. They went against the 7th Court of Appeals decision to reverse the decision and upheld the original decision.

REASONS FOR GRANTING THE PETITION

We ask the court to please grant this petition. The 7th court of appeals already made a decision to reverse the conviction due to the jury selection process. We ask you please agree with the decision and allow a retrial so that Jeremy Spielbauer may have a fair trial. We are not asking you to determine his guilt or innocence we are simply asking you to grant a new trial so that he may be able to present his case to a fair and impartial jury. Thus allowing his 6th ammendment to not be violated. We also ask you grant this petition so that the courts can appoint him a new attorney with better knowledge of procedure so that in a situation such as this he will know what to challenge.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X

Date: 5-14-24