

24-5350
No. 1

ORIGINAL

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

JAY SANDON COOPER — PETITIONER

vs.

STATE OF TEXAS — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI

TO

THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

Jay Sandon Cooper
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PETITIONER

QUESTION(S) PRESENTED

Whether the judicial duty to identify and protect constitutional rights described in Obergefell v. Hodges (a civil case) applies to State criminal cases? See Obergefell v. Hodges, 576 U.S. 644, 663, 135 S. Ct. 2584, 2597–98, 192 L. Ed. 2D 609 (2015). Whether the State court of appeals 2) had a duty to identify and protect defendant's fundamental rights (enumerated in the Bill of Rights), whether objected to at trial or not, that the record showed were violated in the trial court; and 3) whether defendant's conviction for a crime should stand when the State has failed to accord federal constitutionally guaranteed rights to defendant and the State court of appeals did not find that the deprivation of those rights were harmless beyond-a-reasonable doubt?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

None.

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 state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is
[X] reported at *Cooper v. State*, No. 05-21-01002-CR, 2023 WL 6475647 (Tex. App.—Dallas Oct. 5, 2023, pet. ref'd) (mem. op., not designated for publication).
or, [] has been designated for publication but is not yet reported; or, [] is unpublished.

JURISDICTION

[] For cases from state courts:

The date on which the highest state court decided my case was October 5, 2023. A copy of that decision appears at Appendix A.

The Trial Court's Judgment is at Appendix B.

[X] A timely petition for rehearing was thereafter denied on the following date: November 1, 2023, and a copy of the order denying rehearing appears at Appendix C.

Thereafter, the Texas Court of Criminal Appeals denied Petition for Discretionary Review on February 21, 2024 (Appendix D) and denied rehearing on April 17, 2024 (Appendix E).

[X] An extension of time to file the petition for a writ of certiorari was granted to and including August 15, 2024 in Application No.

24A16..

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

Court Rule 10(c): “[A] state court... has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.”

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

amend. VI

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.

U.S. Const. amend. VI

amend. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or

emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

U.S. Const. amend. XIV

§ 38.15. Interference with Public Duties

(a) A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with:

- (1) a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law;
- (2) a person who is employed to provide emergency medical services including the transportation of ill or injured persons while the person is performing that duty;
- (3) a fire fighter, while the fire fighter is fighting a fire or investigating the cause of a fire;
- (4) an animal under the supervision of a peace officer, corrections officer, or jailer, if the person knows the animal is being used for law enforcement, corrections, prison or jail security, or investigative purposes;

(5) the transmission of a communication over a citizen's band radio channel, the purpose of which communication is to inform or inquire about an emergency;

(6) an officer with responsibility for animal control in a county or municipality, while the officer is performing a duty or exercising authority imposed or granted under Chapter 821 or 822, Health and Safety Code; or

(7) a person who:

(A) has responsibility for assessing, enacting, or enforcing public health, environmental, radiation, or safety measures for the state or a county or municipality;

(B) is investigating a particular site as part of the person's responsibilities under Paragraph (A);

(C) is acting in accordance with policies and procedures related to the safety and security of the site described by Paragraph (B); and

(D) is performing a duty or exercising authority imposed or granted under the Agriculture Code, Health and Safety Code, Occupations Code, or Water Code.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under Subsection (a)(1) that the conduct engaged in by the defendant was intended to warn a person operating a motor vehicle of the presence of a peace officer who was enforcing Subtitle C, Title 7, Transportation Code.¹

(d) It is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only.

(d-1) Except as provided by Subsection (d-2), in a prosecution for an offense under Subsection (a)(1), there is a rebuttable presumption that the actor interferes with a peace officer if it is shown on the trial of the offense that the actor intentionally

disseminated the home address, home telephone number, emergency contact information, or social security number of the officer or a family member of the officer or any other information that is specifically described by Section 552.117(a), Government Code.

(d-2) The presumption in Subsection (d-1) does not apply to information disseminated by:

- (1) a radio or television station that holds a license issued by the Federal Communications Commission; or
- (2) a newspaper that is:
 - (A) a free newspaper of general circulation or qualified to publish legal notices;
 - (B) published at least once a week; and
 - (C) available and of interest to the general public.

(e) In this section, "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury or in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of damage or destruction.

Tex. Pen. Code Ann. § 38.15.

§ 38.16. Preventing Execution of Civil Process

- (a) A person commits an offense if he intentionally or knowingly by words or physical action prevents the execution of any process in a civil cause.
- (b) It is an exception to the application of this section that the actor evaded service of process by avoiding detection.
- (c) An offense under this section is a Class C misdemeanor.

Tex. Pen. Code Ann. § 38.16.

STATEMENT OF THE CASE

On October 19, 2018, Judge Jay Bender, county court at law signed a judgment for possession of [Defendant's] property. State's Ex. 1 (11RR at 369-70). Writ of Possession issued May 30, 2019, and expired by operation of law (Tex. R. Civ. P. 510.8(d)(2)) 90 days after issuance. State's Ex. 2 (11RR at 372). Although the Writ was expired, constables executed same by surrounding and demanding to enter defendant's residence on June 3, 2019. ICR (11/30/21) at 18 (Information). State alleged that its actions were lawful and that defendant interfered with the execution of the (expired) Writ by "refusing to come outside or allow the Constable to enter the residence." Id. Judge Jay Bender signed the probable cause affidavit (ICR (11/30/21) at 738-39) and issued the warrant to arrest defendant. (ICR (11/30/21) at 746).

Essentially, without authority, constables raided defendant's residence, intruded on his seclusion, and criminally charged defendant for his absolute right to say no when entry was demanded.

The Information did not specifically charge a Penal statute. ICR (11/30/21) at 18. But after a finding of guilt, punishment was assessed at a Class B misdemeanor level. ICR (11-30-21) at 1146.

The Trial Court Ordered the Clerk not to issue subpoenas (compulsory process) requested by defendant for his defense. ICR (11-30-21) at 114. None issued, although requested.

At trial, constables wore face masks throughout their testimony. See 8RR 127. The Court stated that the masks "impeded" the constables' testimony. See 8RR at 177. The Trial Court explained that Defendant's constitutional rights were defeated by COVID Rules. 8RR at 179-180.

REASONS FOR GRANTING THE PETITION

The State of Texas reviewed this case under its State version of "fundamental error" that is described in Jimenez v. State, 32 S.W.3d 233, 237–38 (Tex. Crim. App. 2000). In that case, Texas decided that not all federal constitutional protections guaranteed to a defendant are subject to identification and protection, unless specifically invoked. *Id.* at 237-38. But this Supreme Court has stated differently in Obergefell v. Hodges (a civil case):

Under the Due Process Clause of the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law." The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. [...]

The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution.

Obergefell v. Hodges, 576 U.S. 644, 663, 135 S. Ct. 2584, 2597-98, 192 L. Ed. 2D 609.

Instead, the majority elides any difference between civil and criminal immunity, granting Trump the same immunity from criminal prosecution that Nixon enjoyed from an unlawful termination suit.

Trump v. United States, 144 S. Ct. 2312, 2362 (2024)(Sotomayor, J; joined by kagan and Jackson, JJ, dissenting). So, this Supreme Court has recently found parody in the application of the constitution to both civil and criminal cases. Petitioner (defendant, below), urges parody in application of the duty in Obergefell v. Hodges. This court previously touched on this, before announcing its rule regarding harmless error. "Whether a conviction for crime should stand when a State has failed to accord

federal constitutionally guaranteed rights"? *Quoting Chapman v. California*, 386 U.S. 18, 21, 87 S. Ct. 824, 826, 17 L. Ed. 2d 705 (1967).

Defendant's Sixth Amendment right to an impartial judge was violated. The violation of the right to an impartial judge is a structural error for which there is no harm analysis. *Arizona v. Fulminante*, 499 U.S. 279, 309, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991); *Chapman v. California*, 386 U.S. 18, 23 & n. 8, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927).

The Information violated defendant's Sixth Amendment right to be informed of the nature and cause of the accusation. The information did not charge Tex. P.C. Sec. 38.16, a Class C Misdemeanor over which the trial court had no subject matter jurisdiction. The elements necessary to be proven included execution of a civil writ for which the Legislature made the penalty grade a Class C Misdemeanor. The trial court violated the separation of powers doctrine to punish defendant at the grade of Class B misdemeanor (Tex. P.C. Sec. 38.15).¹ "The legislature is vested with the lawmaking power of the people in that it alone "may define crimes and prescribe penalties."² *Matchett v. State*, 941 S.W.2d 922, 932 (Tex. Crim. App. 1996). The jury was charged (ICR (11-30-21) at 1149) and verdict (ICR (11-30-21) at 1153) was rendered. After the jury convicted Defendant of that which was described - but not identified as either 38.15 or 38.16 (an offense) - in the Information, the Trial Court unconstitutionally introduced Class B misdemeanor range of punishment. *See* ICR (11-30-21) at 1146. The trial court had no subject matter jurisdiction in a Class C

misdemeanor.

Fundamentally, Defendant was deprived of the constitutional right to compulsory attendance of witnesses. The Trial Court entered an Order to the Clerk to not issue subpoenas requested by Defendant, then and in the future. *See ICR (11-30-21) at 114.*

Further, *Washington v. Texas*, 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967), held that the right of an accused to have compulsory process for obtaining witnesses is his behalf as guaranteed by the Sixth Amendment is so fundamental and essential to a fair trial that it is incorporated in the due process clause of the Fourteenth Amendment applicable to state trials. *See Brito v. State*, 459 S.W.2d 834, 837-838 (Tex.Cr.App.1970).

Ross v. State, 504 S.W.2d 862, 864-65 (Tex. Crim. App. 1974).

Defendant was deprived of the right to confront the witness constables who wore face masks throughout their testimony. *See 8RR 127.* The trial Court stated that the masks "impeded" the constables' testimony. *See 8RR at 177.* The Trial Court explained that Defendant's constitutional rights were defeated by COVID Rules. 8RR at 179-180. The Confrontation Clause of the Sixth Amendment guarantees an accused the right to confront the witnesses against him. Defendant was deprived of that right by face masked constables. The Sixth Amendment applies to the states by virtue of the Fourteenth Amendment. *See Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 795, 9 L.Ed.2d 799 (1963).

The trial was structurally unfair.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Doe". It is a cursive style with a large, stylized 'J' on the left and a 'D' on the right.

Date: August 15, 2024