

24-6758
No. _____

RECEIVED
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IN THE SUPREME COURT
OF THE UNITED STATES

Matias P.Briones-- PETITIONER

v.

State of Texas-- RESPONDENTS

et al. BOBBY LUMPKIN, TDCJ Director

Supreme Court, U.S.
FILED

JAN 20 2025

OFFICE OF THE CLERK

ON PETITION FOR WRIT OF CERTIORARI TO
COURT OF CRIMINAL APPEALS, AUSTIN, TEXAS

PETITION FOR WRIT OF CERTIORARI

Matias P.Briones, #2445715

PRO SE PETITIONER

Memorial Unit, 59 Darrington Road

Rosharon, Texas --77583

QUESTIONS PRESENTED FOR REVIEW

QUESTION #1: Is Texas Penal Code 21.02 repugnant to the 5th, 6th, and 14th amendment of the U.S. Constitution where Texas held error of non-unanimous jury instruction is not unconstitutional (a) as applied to finding of guilt, and; (b) as to non-unanimous finding of two or more predicate acts which compose element of the offense?

QUESTION #2: Was Briones tried under an Unconstitutional Statute and convicted by a non-unanimous jury?

QUESTION #3: Are jurors required, by Ramos v. Louisiana, to be unanimous as to which predicate acts support finding defendant is guilty of continuous sexual assault where: (1) unanimity as to two or more predicate acts was not answered in Ramos; (2) in Richardson, SCOTUS said multiple violations of penal law unanimously found; (3) analysis of Texas Penal Code 21.02 supports conclusion opposed to SCOTUS precedent?

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PARTIES TO THE PROCEEDINGS
AND RELATED CASES

| | | |
|--|---|--------------------------------|
| Matias P.Briones, #2445715 PETITIONER | § | STATE OF TEXAS, RESPONDENTS |
| | § | ET AL. Ken Paxton |
| | § | ATTORNEY GENERAL OF TEXAS |
| | § | PO Box 12546 |
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RELATED CASES

Briones v.State, 2024 Tex.App. LEXIS 5607(Aug.07, 2024) [Direct Appeal]

In re Briones, 2024 Tex.Crim.App. LEXIS 967(Nov.20, 2024) -- | Post

In re Briones, 2024 Tex.Crim.App. LEXIS 977(Nov.20, 2024) -- Discretionary

in re Briones, 2024 Tex.Crim.App. LEXIS 959(Nov.20, 2024) | Review

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APPENDIX A: Court of Criminal Appeals' denial of Post Discretionary review>>

Judgment entered Nov.20, 2024>> See related cases for citations.

APPENDIX B: Constitutional and Statutory Provisions involved in case, verbatim.

TABLE OF AUTHORITIES

CONSTITUTIONAL LAW

USCS Const. Amend. 5:pp.

USCS Const. Amend. 6: pp.

USCS Const. Amend. 14: pp.

STATUTORY PROVISIONS

28 USC §1257:

Supreme Court, Rule 10(a):

Texas Penal Code 3.01(2)

Texas Penal Code 21.02:

CASELAW CITATIONS

Baker v. State, 107 S.W.3d.671 [6]:

Capitol Traction Co. v. Hof., 174 U.S.1:

Coronado v. Davis, 2017 U.S.Dist.LEXIS 215591:

Erlinger v. United States, 602 U.S.821, 854:

Hernandez v. Dir. TDCJ, 2022 U.S.Dist. LEXIS 203331:

In re Hall, 979 F.3d.339[8]:

LaPorte v. State, 840 S.W.2d. at 414:

Music v. State, 2005 Tex.App.LEXIS 7789

Patton v. United States, 281 U.S.276, 288:

Ramos v. Louisiana, 590 U.S.83 [2]:

Richardson v. United States, 526 U.S.813, 816-819:

State v. Tran, 154 Haw.211, 220 [11]:

Sioux Remedy Co. v. Cope, 235 U.S.197:

Weston v. Charleston, 27 U.S.449

STATEMENT OF THE CASE

Three charges were tried in a consolidated jury trial, which according to Tex. Pen. Code 3.01-3.04, entitled Briones to receive benefits (as defined by contractual law) of concurrent sentences, in event of conviction. Trial Court erred in accepting prosecution's cumulative order after negotiating defendant Briones into consolidating actions into single trial. Nonperformance by prosecution amounts to prosecutorial misconduct, and malicious prosecution.

Case #1: 04-23-00515-CR/ 19-CRD-25S1/ PD-0723-24

Count I: CONTINUOUS SEXUAL ABUSE OF A CHILD:
Tex. Pen. Code§21.02

Count II: PROHIBITED SEXUAL CONDUCT;
Tex. Pen. Code§25.02(c)

Case#2: 04-23-00516-CR/ 19-CRD-26S1/ PD-0724-24

Count I: AGGRAVATED SEXUAL ASSAULT OF A CHILD
Tex. Pen. Code§22.011

Count II &III: INDECENCY WITH A CHILD BY CONTACT
Tex. Pen. Code§21.11(d)

Case #3: 04-23-00517-CR/ 19-CRD-27S1/ PD-0725-24

Count I & II: SEXUAL ASSAULT OF A CHILD
Tex. Pen. Code§22.011

Count III: PROHIBITED SEXUAL CONDUCT;
Tex. Pen. §25.02(c)

VERDICTS

Case #1:

Jury acquitted Briones of count #1, continuous sexual abuse, but found lesser included offense of aggravated sexual assault. Jury, in violation of double jeopardy clause, found Briones guilty of count #2, since the same set of facts and the victim are the same as in count #1.

More importantly, Court, on direct review, found erroneous jury instructions where it was advised by trial judge, according to Penal code 21.02, that jury need not be unanimous on continuous sexual abuse charge. The problem is that the judge did not advise the jury that it must be unanimous for the aggravated sexual assault finding.

Non-unanimous jury instruction allowed jury to return guilty verdict that violates Briones 6th amendment right, as it was vindicated in Ramos v.Louisiana.

Punishment assessed at 50 years for count 1, and 20 years for count 2, conc..

But for violations of the 5th, 6th, and 14th amendment, the Jury would have acquitted Briones of Aggravated sexual assault, as in the other two cases.

CASE#2: Jury found Briones not guilty of aggravated sexual assault but found Briones guilty of Indecency with a child. Briones should have been acquitted of count one because indecency with a child is not a lesser included offense of aggravated sexual assault.

Jury found Briones guilty of count two and three in violation of jeopardy clause since all counts rely on same set of facts, and victim, to prove. Punishment assessed at 20 years for each count, to run concurrent to each other, and consecutive to Case #1. The cumulative stacking order should not have been granted since state entered negotiations with Briones for the benefit of concurrent sentencing.

CASE#3: On Count 1 & 2, the jury found Briones not guilty of aggravated sexual assault, but guilty of lesser included offense of indecency with a child. by contact; and guilty of count #3. Punishment assessed at 20 years for each count running consecutive to Case#2. Cumulative order violates contractual law.

MATTERS BEFORE SCOTUS

This petition challenges the constitutionality of a state Statute [Tex.Pen.Code. 21.02] that violate two prongs of the 6th amendment right to a trial by jury as enunciated in SCOTUS' recent decision Ramos v.Louisiana, (2020), wherein the Court held a jury must be unanimous in all felony cases.

Tex.Pen.Code.21.02, when compared to other state statutes for continuous sexual assault, supports not only a non-unanimous jury finding of guilt, but it allows non-unanimous findings for each composite act that violates the law. one circuit clarifies the issue perfectly: SCOTUS' decision in Ramos v.Louisiana, did not clarify whether unanimity requirement of the law extends to each element of the offense, when one of the elements is composed of a "series" of acts.

However, SCOTUS said in Richardson v.United States that a "series" element does require unanimity if the series list is composed of individually punishable violations of law; whereas a series list is a single element if the list is merely listing manners and means .

The Hawaii Circuit "hangs ten" by saying that Ramos v. Louisiana needs to extend the unanimity holding before the circuits can adopt that procedure to the context of "series elements".

Under the circumstances of the case, SCOTUS should grant certiorari on this issue while Ramos v. Louisiana is still in its infancy-- 5 years to date, happy birthday. What better gift may be bestowed on society than extension of the unanimity clause of the 6th amendment, to help society stay abreast of a wave of statutory cases that are, constitutionally, rogue mavericks.

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the decisions of the highest State courts pursuant to 28 USC §1257, which governs certiorari review to State Courts on constitutional challenges to State Statutes. It is alleged that Tex. Penal Code 21.02 does not comport to the unanimity requirement of the United States' 6th amendment.

ARGUMENTS

QUESTION #1: Is Texas Penal Code 21.02 repugnant to the 5th, 6th, and 14th Amendment of the U.S. Constitution where Texas held error of non-unanimous jury instruction is not unconstitutional (a) as applied to finding of guilt, and; (b) as to non-unanimous finding of two or more predicate acts which compose element of the offense?

STANDARDS OF REVIEW: Ramos v. Louisiana, 590 U.S.83[2]; Richardson v. United States, 526 U.S.813-819; Tex. Penal Code 21.02

ARGUMENT: SCOTUS has jurisdiction to review the "Final decree or judgment of highest State Court, which involves constitutionality of any Statute" with the authority to "reverse or affirm" the State's judgment. Weston v. Charleston, 27 U.S.449.

When reviewing a challenged State Statute SCOTUS may "accept[ed] latest construction adopted by [the] State Court." Sioux Remedy Co. v. Cope, 235 U.S.197.

"The 6th Amendment affords a right to trial by jury as understood and applied at common law, including all the essential elements as they were recognised in this country and England when the Constitution was adopted." Ramos v. Louisiana, 590 U.S.83[2], citing Patton v. United States, 281 U.S.276,288

The Court in Patton said there are three elements that together comprises our right to a trial by jury [Patton,281 U.S.at 288].

Two of these three "essential elements" were violated in this case. See Capitol Traction Co. v. Hof., 174 U.S.1 to view three facets of right to jury trial.

Specifically, we have a right to unanimity findings by jury, as unanimity has recently been defined in Ramos v. Louisiana, 590 U.S.83. Secondly, we have the right to have a Judge that will properly instruct the jurors on the applicable law of the case. Patton, at 288.

Texas Penal Code 21.02 is being challenged as unconstitutional because SCOTUS' recent decision in Ramos clarified that a jury must be unanimous for a guilty verdict to be considered inoffensive to the defendant's constitutional right of the 6th amendment. Also, it was the Judge's reading of the Statute that caused the judge to err in its' instructions to the jury. The State admits erroneousness

of jury instructions(See Briones v.State, 2024 Tex.App. LEXIS 5607 at *11.

Before we look at Richardson v.United States 526 U.S.813,at 816 which held unanimity "in respect to each individual violation is necessary" [Id.at 816], let us examine the challenged Statute while keeping Richardson in mind:

Texas Penal Code 21.02;

"(b) a person commits an offense if:

"(1) during a period that is thirty or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims."

The Statute then defines "Acts of sexual abuse" as "any act that is a violation of one or more of the following penal laws"[See Penal Code 21.02(c)(1)-(8)].

The significance of the word act is that it is synonymous with a violation of a list of Penal laws. This is significant when reading Richardson, because SCOTUS said in Richardson, at 816, that when one interprets a Statute to determine if a series element lists separate violations of law, or whether the Statute lists different manner and means of committing the crime. SCOTUS held that jury unanimity is required if the Statute lists separate violations of a set of Penal laws.

Clearly the Statute lists separate violations of penal law. For example 21.02(c)(1)-(8) lists violations that range from kidnapping, threats of violence, threats to third persons, and murder and rape. Each listed factor has its own individual Statute.

Texas Construction of this Statute is found in cases like Hernandez v.Dir. TDCJ, 2022 U.S.Dist.LEXIS 203331; and Coronado v.Davis, 2017 U.S.Dist.LEXIS 215591, and SCOTUS said they will accept the latest construction of the Statute when reviewing its constitutionality(Sioux Remedy Co., 235 U.S.197).

The crux of the matter is this:

The State claims a jury need not be unanimous as to which two acts support the jury's finding of guilt under the Statute. Texas claims their holding is supported under Richardson v.United States, at 816 because, they claim,

the statute merely lists alternate manner and means of committing continuous sexual assault, and the jury must simply agree that the defendant committed two of the enumerated acts. This rationale is flawed on two points:

- (1) If a juror finds that a defendant burglarised a home and subsequently kidnaps a victim, then the jury can convict the defendant of continuous sexual assault without any act of sexual violence, and attempted rape doesn't exist in Texas' penal code.;
- (2) Tex. Penal code 21.02(c) is clearly a list of severable, individually punishable acts, and SCOTUS said in Richardson "that unanimity in respect to each individual violation is necessary." Id. at 816

Let's contrast Tex. Penal code 21.02(c) with Hawaii's statute for the same offense. State v. Tran, 154 Haw. 211, 220[11], lays bare the whole crux of my argument, perfectly citing each circuit's holding on this issue-- contrasting different statutes of continuous sexual assault, and analysing the language, albeit sticking to the respective constructions adopted by the States. The court for State v. Tran said SCOTUS did not clarify, when It established Ramos' unanimity precedent, whether the unanimity requirements of the law applied equally to the context of a list of a series of acts that compose an element of the underlying offense.

I believe the court in State v. Tran is most unbiasedly like Richardson v. United States, which held analysis of the challenged statute requires two prongs: either the Statute lists alternate manner and means or it lists alternate violations of law. If the former is found then a jury need not be unanimous; if the latter, then a jury must return a unanimous finding for each punishable violation of law.

Taking this guiding principle to task; and comparing Tex. Penal code 21.02(c) to Hawaii's Statute for the same offense reveals this distinction:

- (1) Hawaii's statute does not list alternate, separate violation of their penal code-- their statute lists alternate manner and means; premeditation, etc.;
- (2) penal code 21.02(c) clearly lists individual violations of law that have their own chapters in Texas penal code--agg, kidnaping; burglary, terroristic threats, extortion, etc. Most telling of all is the fact that Texas legislators so drafted sex case Statutes with an eye towards subsuming the offenses of the preceding

penal code. For instance, the offenses comprising indecency with a child are subsumed facets of the assumed offense of sexual assault, and the subsumed acts that comprise sexual assault are assumed as the factors of aggravated sexual assault. Thus, when the jury returns a finding for sexual assault, all the elements of indecency with a child are subsumed in that offense. This is not true for Hawaii's statute of the same offense.

Hawaii clearly listed alternate manner and means of committing continuous sexual assault, not several, independently punishable violations of penal law.

CONCLUSION:

Texas Penal Code.21.02 is not constitutional where it allows jurors to return findings of guilt based on a verdict that is not unanimous. SCOTUS said in Ramos v. Louisiana, 590 U.S.83, that the 6th amendment right to a trial by jury means the right to a unanimous verdict of guilt, and that this right extends to all felony convictions.

SCOTUS also held in Richardson v. United States, that a series element of a statute must be unanimous if the series lists individually punishable violations of a penal code; and non-unanimous if the statute merely lists alternate manner and means of committing the offense.

The Statute does not safeguard a person's 6th amendment right to jury trials, and needs amendment to remove the non-unanimous language. Briones was convicted by a non-unanimous jury and the Highest Court in Texas affirmed the 4th circuit of Texas' ruling that such error was harmless.

It is not harmless to violate our right to, not only a non-unanimous finding of guilt, but our right to have a judge that will tell the jury the correct, law of the case-- which is the other facet of our right to a jury trial, says SCOTUS in Patton.

The proper remedy is to amend the statute and demand that Texas hold a new trial for Briones under a statute that is not constitutionally infirm.

QUESTION #2: Was Briones tried under an Unconstitutional Statute and convicted by a non-unanimous jury?

STANDARD OF REVIEW: Ramos v.Louisiana, 590 U.S.83[2]; Richardson v.United States, 526 U.S.813-819; Texas Penal Code §21.02

ARGUMENT:

For the reasons set forth in Ground one of this petition, SCOTUS should hold that Texas Penal Code §21.02 is unconstitutional, namely because:

- (1) Ramos v.Louisiana, held that all felony convictions must be had by a jury that is unanimous;
- (2) Richardson v.United States held that a series element of an offense must be unanimous if the series element lists individual violation of a penal statute, which this statute does;
- (3) Texas legislators geared their statutes with an eye toward subsuming the degree of sexual conduct, and they framed the statute this way by making each degree severally punishable as a statute.
- (4) a Hawaii court said that SCOTUS needs to clarify whether the non-unanimous finding must extend to a series element of an offense. Hawaii's court identified exactly where SCOTUS needs to rule before the States can implement the new rule of law.

In each case at hand (Case#1-3), the jury acquitted Briones of the greater offense, and entered a guilty verdict for the lesser included offenses. This fact indicates to the certiorari factfinder the notion that if the jury would have received a proper jury instruction the jury would have voted to acquit Briones of aggravated sexual assault (Case #1). In all cases there is a double jeopardy violation.

A retrial should be had under a statute that comports its' language to the unanimity requirements of the law as announced in Ramos v.Louisiana(2020).

Texas legislation appears stale, in light of recent developments in the U.S.Supreme Court.

CONCLUSIONS:

SCOTUS should require Texas to conditional release of Briones if Texas fails to retry Briones:

- (1) within 90 days, and;
- (2) under a statute that safeguards our constitutional rights.

QUESTION #3: Are jurors required, by Ramos v. Louisiana, to be unanimous as to which predicate acts support finding defendant is guilty of continuous sexual assault where: (1) unanimity as to two or more predicate acts was not answered in Ramos; (2) in Richardson, SCOTUS said multiple violations of penal law must be unanimously found; (3) analysis of Texas penal code 21.02 supports conclusion opposed to SCOTUS precedent?

STANDARDS OF REVIEW: Ramos v. Louisiana, 590 U.S.83; Richardson v. United States, 526 U.S.813-819; Texas Penal Code, 21.02

ARGUMENT:

State v. Tran, 154 Haw.211,220, HN[11] perfectly lays bare the question posed to the Supreme Court here, giving case citations for States like Arizona, California, and Texas on this issue-- whether the unanimity requirements of the law, as enunciated in Ramos v. Louisiana, apply with equal force to each element of an offense. The offense under consideration here is continuous sexual assault of a child.

That statute in Texas is Penal code 21.02, which has been challenged in ground one and two of this petition. This statute has been shown to allow non-unanimous jury instructions. Moving foward to the arguments for this ground, the consideration now turns upon whether the unanimity requirement of the 6th amendment would require jury unanimity for each punishable offense.

SCOTUS said in Richardson v. United States that each individual violation of the law does require jury unanimity. This question is being presented to SCOTUS to draw Your attention to the discrepancies between Texas Construction of the Statute and its contradictory conclusions to cases that challenge this statute.

Basically, Texas is of the position that, when applying Richardson's standard

of review to statutory challenges of Tex. Pen. Code 21.02, the Legislators did not list individual violations of law--which would require unanimity--. Instead, Tex. Pen. Code 21.02 merely lists alternate methods of committing continuous sexual abuse--which, according to Richardson, says Texas, does not require jury unanimity to safeguard a defendants 6th amendment right.

But the opposing view can be proven to be true by this vital distinction: Look at State v. Tran, 154 Haw.211, at 220. Hawaii's statute for this same offense does not list several violations of a penal code. Texas' Statute does list severable violations of law. And, according to Richardson, severable acts that violate a penal law are, for unanimity purposes, elements to the offense-- plural, and requires a jury return a unanimous finding of guilt for each alleged act. This did not happen in this case.

Here now I respectfully present Texas' contradiction of law. There is a body of law floating around concerning a defendant's right to be free from double jeopardy. This body of law is parallel to unanimity, and although the court's analyses of Penal code 21.02 concern only whether a statute violates the jeopardy clause, it also concerns legislative intent of 21.02.

The legislators clearly intented for continuous sexual assault to be punishable as severable acts that are subsumed by degrees of conduct. A pyramid of sorts wherein no double jeopardy violation can be claimed because the acts are subsumed. The acts are subsumed in Penal Code 21.02 by listing subsets of violations.

Each subset [See PenalCode 21.02(c)(1)-(8)] is punishable by law. Thus, if the prosecution cannot find two acts that violate 21.02 the prosecutable acts turn upon what is subsumed in the next penal code.

The fact that Texas claims in one instance that the convictions are subsumed for jeopardy purposes, and in another instance claims the penal code does not list severable acts is a clear contradiction of law. These constructions only serve state interests in finality at the expense of the 6th amendment.

CONCLUSIONS:

SCOTUS made clear in Richardson that individual violations of law, although forming a series element of an offense, must still be unanimous as to each act that the jury finds. Comparison with other State statutes for ~~continuous~~ sexual assault distinguish Texas' Statute from Hawaii's. The distinction matters to the analysis provided in Richardson v. United States. Richardson made clear unanimity is required when a statute lists severable, punishable, violations of a penal code.

The statutory challenge to Texas Penal Code 21.02 must stand as valid in light of the unanimity requirements of the law as enunciated in Ramos v. Louisiana.

The Statute must be amended to undo the non-unanimous language because such a statute cannot be said to safeguard our 6th amendment rights.

Briones' conviction cannot stand upon an invalid State statute, invalid to the extent it does not safeguard Briones, or anyone's 6th amendment right.

SCOTUS should grant the unconditional release of Briones unless Texas amends its statute and retries Briones within 90 days of SCOTUS' grant of this petition.

REASON FOR GRANTING PETITION

Texas Penal Code §21.02 specifically says a jury need not be unanimous when finding that a defendant committed two or more acts, which in this case, enumerates a list of punishable violations of law (Penal Code §21.02(c)(1)-(8)). The list of acts are independant violations of law, which require unanimity, said SCOTUS in Richardson v. United States.

A Hawaiian Court said the Court needs to expand on their decision in Ramos v. Louisiana before the States may amend their respective Statutes for continuous sexual assault. Also, a distinction can be drawn to distinguish this case from the Hawaiian's Court: Texas' Statute lists several violations of law; whereas the Statute in Hawaii merely lists alternate methods of committing continuous sexual abuse.

Briones was acquitted in all three cases, which signifies to the Factfinder that the jury did not believe, in each case, that Briones was as guilty as the prosecution made appear to be. In fact, Briones is innocent as charged. A Habeas Court can consider admissible and inadmissible evidence to weigh whether Briones would have been found not guilty but for the constitutional violations.

Consider now the fact that Briones wishes to testify on his behalf in a new trial; that Briones did not previously testify because he did not want to demean or belittle his ex wife, who Briones claims masterminded this conspiracy to destroy Briones' new marriage. Consider that we only have a witness's testimony. Consider that Briones has never been in trouble.

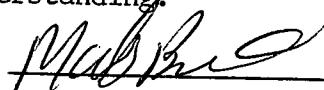
In all other circumstances when trial counsel objects to the jury instructions the remedy is a new trial. Briones is being penalised because his counsel was ineffective. So not only was he deprived counsel during a critical stage of trial, but was denied a unanimous verdict, and a judge who would properly instruct-- both prongs are violations of the 6th amendment. We have three clear violations of substantive rights here. We ask This Court to hold Texas statute unconstitutional.

in light of Ramos v. Louisiana, and Richardson v. United States.

Briones requests This Court grant his conditional release within 90 days unless Texas retries him under a statute-- and with a jury instruction-- that respects his 5th, 6th, and 14th amendment rights, as announced in the United States Constitution.

PRISONER'S DECLARATION

I, Matias P. Briones, swear under penalty of perjury, that everything in this petition for Certiorari, is true and correct, as to Facts, and Law, to the best of my abilities and understanding.



Matias P. Briones, #2445715
Pro Se Petitioner
Memorial Unit, 59 Darrington Road
Rossharon, TX-77583

CERTIFICATE OF SERVICE

I Matias P. Briones, swear under penalty of perjury, that I have served a true and correct copy of this PETITION FOR CERTIORARI upon:

Ken Paxton
Attorney General Of Texas
PO Box 12546
Austin, TX-78711

by placing this petition in the prison mailbox, first class postage, prepaid, on this 20th day of January, 2025. And it is deemed filed of this date.



Matias P. Briones, #2445715
PRO SE PETITIONER
Memorial Unit, 59 Darrington Road
Rossharon, TX-77583