

24-6785

No. _____

ORIGINAL

Supreme Court of the State of Texas

FILED

DEC - 2 2024

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

BRIAN SCOTT SHARP

— PETITIONER

(Your Name)

VS.

THE STATE OF TEXAS

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF APPEALS, THIRD DISTRICT AT AUSTIN

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

PETITION FOR WRIT OF CERTIORARI

BRIAN SCOTT SHARP (02411939)

(Your Name)

COFFIELD UNIT, 2661 FM 2054

(Address)

TENNESSE COLONY, TX 75884

(City, State, Zip Code)

NA

(Phone Number)

QUESTION(S) PRESENTED

Given that direct testimony evidence met and satisfied each element for the defense of Self-defense (T.P.C. ann. § 9.31, 9.32) and the defense of Necessity (T.P.C. ann § 9.22) and the denial for jury charges on these defenses was properly objected to, and the objection was preserved;

Did the trial court and appeals courts err by denying a jury instruction on Self-defense and Necessity?

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

- Sharp v. State, NO. CR2019-037; 433 RD DISTRICT COURT, COMAL COUNTY, TEXAS, NO JUDGMENT, LAST HEARING 5 NOVEMBER 2019.
- Sharp v. State, NO. CR2020-730; 207TH DISTRICT COURT COMAL COUNTY, TEXAS. JUDGMENT ENTERED 15 SEPTEMBER 2022.
- Sharp v. State, NO. 03-22-00539-CR; TEXAS COURT OF APPEALS, THIRD DISTRICT AT AUSTIN. JUDGMENT ENTERED 11 APRIL 2024.
- Sharp v. State, NO. PD-0616-24; COURT OF CRIMINAL APPEALS, OF TEXAS. JUDGMENT ENTERED 10 OCTOBER 2024.

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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☐ is unpublished.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☐ is unpublished.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 _____ to the petition and is

- ☒ reported at Sharp v. State, 2024 Tex. App., LEXIS 2512; 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 4 SEPTEMBER 2024.
A copy of that decision appears at Appendix n/a.

☒ A timely petition for rehearing was thereafter denied on the following date: 10 OCTOBER 2024, 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

- Fourth Amendment to the Constitution of the United States Appendix E
- Texas Penal Code Ann § 9.22 Necessity Appendix F
- Texas Penal Code Ann § 9.31 Self-defense Appendix G
- Texas Penal Code Ann § 9.32 Deadly Force Appendix H
- Texas Penal Code Ann. § 9.01(3) Deadly Force is Force that is intended or known by the actor, or in a manner of its use or intended use is capable of causing death or serious bodily injury - under that definition, brandishing a weapon and pointing it at a person constitutes deadly Force.

STATEMENT OF THE CASE

For the Statement of The Case see
Following pages 5 through 16

STATEMENT OF THE CASE

On or about 24 August 2018, Sharp, Appellant, was pulled over by a Bulverde, Texas, Police officer for an expired tags violation. The officer arrested Sharp for evading arrest, despite Sharp waving out of his truck window for the officer to follow to a safe stopping area and slowing down. The officer felt Sharp traveled too far.

Sharp was charged with Evading Arrest and Detention with a Motor Vehicle and attended several hearings on the matter (CR2019-037) (433rd Dist. Ct. Comal County Tex)

On 5 November 2019 a Capias was issued for the arrest of Sharp for allegedly missing a court date.

On 20 August 2020, deputies from the Comal County Sheriff's Office came to Sharp's home at 1400 Springwood Drive, Spring Branch, Texas to serve the issued capias. From their initial entry to the property, deputies had their pistols drawn in a ready-to-fire position, aiming in front of them as they entered.

The deputies had no probable cause to believe Sharp was home at the time.

Despite their training on what constitutes a valid warrant and the fact that they say they "checked it out" to be sure it was good, deputies relied upon the capias that was so facially defective that no officer would believe it to be valid.

The Capias is not signed by a magistrate or judge.

The Capias does not state probable cause for its issue on its face.

The Capias does not list Sharp's address, but lists another nearly nine miles away and officers could not have ascertained Sharp's address from the description listed on the Capias.

The officers had no search warrant.

Deputies had to climb over a barbwire topped wall, around a chain-locked gate, past three "NOT TRESPASSING" signs and down 150 feet of driveway to reach Sharp's home, which cannot be seen from the road.

Deputy Eddy Luna, before announcing his purpose or authority, immediately upon reaching Sharp's home, aimed his pistol directly at Sharp through the window to his home, then banged the barrel of his pistol onto the window. It was at this time ^{he was} able to see Eddy Luna's name tag, and Sharp wrote the name he saw on the tag, "E. LUNA" in his notebook, and began an audio recording on his laptop computer.

Sharp, being frightened by the display of deadly force by officer Eddy Luna, remained quiet and out of sight inside his home.

The display of deadly force, a force greater than necessary, was made before any so called "resistance" to arrest. It was because of the display of deadly force that Sharp remained quiet inside his home, a place he has the right to be in and there be safe from unreasonable government intrusion.

Over the next hour, officers Eddy Luna, Nick Nolte and Rene Luna banged their pistols into the windows, aiming inside, kicked the doors, banged on the walls and roof and provoked Sharp with verbal threats of violence.

Officers broke an entry into the unoccupied back half of Sharp's home and performed an illegal search, even though they admitted to having no search warrant to do so.

Officers moved ladders and climbed onto the roof of Sharp's home, banged on the roof in an attempt to keep the pressure up, and aimed pistols up into the windows of the home's loft.

Officers moved a ladder, climbed up and attempted to enter Sharp's home through the external screen door to the loft and aimed a pistol into the loft through the screen door. The pistol's flash light shined in through the screen door into the loft further increasing the pressure of the situation.

Officers illegally searched two outbuildings and two vehicles, all within the curtilage of Sharp's home.

In an attempt to calm the situation and discuss the matter at hand, Sharp began to communicate through the door to his home with the officers.

Deputies claim to have attempted to show a copy of the Capias, viewed on a smart phone, through a window, but Sharp was too afraid to put his face to the window and look for fear of being shot in the face.

After a few minutes of discussion through the door, an officer procured Sharp's sledge hammer from a nearby tool shed out building, and set out striking the door impacting the door's exterior latch and dead bolt causing a loud crack sound. From inside these new sounds, as opposed to the sounds of the frequent kicking on the door, sounded like gunfire. Sharp's initial reaction was to call out "stop doing that."

Sharp then realized in his mind that they were shooting the door. In that moment Sharp grabbed his shotgun, which he keeps by the door, the door crashed open and there stood a man aiming his pistol directly at Sharp, not six feet away.

Sharp met eyes with the man, and could see the barrel of the man's pistol aiming directly at his face and chest area. Sharp could see the man tighten his hand on the pistol attempting to pull the trigger.

All in an instant of time, a split-second, without a running dialogue in his head, with no intent to cause harm or to kill, acting to avoid imminent and immediate harm of being shot in his own home, Sharp fired one shot at the man's pistol, striking him in the right arm just above the wrist and traveling up his arm through the bicep, and finally striking an oak tree four feet behind the man, officer Eddy Luna. The officer dropped his pistol and

stepped back and away to Sharp's right. Ricochet from the tree sprayed officer Nolte across the back of his vest as he retreated, doing no harm.

In just a few seconds later, Sharp put down his shotgun and surrendered to the officers.

Sharp was charged and convicted of one count of attempted Capital Murder of a peace officer, Eddy Luna, and one count of Aggravated Assault against a public servant, Nicholas Nolte (NO. CR2020-730) and sentenced to 55 years and 25 years respectively.

Sharp Filed a notice of appeal in the Texas Court of Appeals, third District at Austin, NO. 03-22-00539. Judgment, Modified, and as modified, Affirmed on 20 December 2023

Sharp Filed For a rehearing and on 11 April 2024, Judgment Modified and as modified, Affirmed on motion For rehearing.

Sharp Filed For further rehearing, which was denied 10 June 2024. A motion For rehearing en banc was denied on 10 July 2024. On 11 August 2024, a petition For discretionary review was Filed, and was refused 4 September 2024. A motion For extension to file For a rehearing was granted. The motion For rehearing was rejected 10 October 2024. Sharp now files this Petition For writ on Certiorary on 8 January 2025, 90 days after the PDR rejection by the court of criminal appeals of Texas - PD-0616-24

The courts, trial court, 207th Dist. Ct. Comal County Texas; Court of Appeals, Third Dist. at Austin; Court of Criminal Appeals of Texas denied Self-defense and Necessity jury instructions. All contradicted Tex. Penal Code ann. 9.31(b)(2), (c) wherein it states: (See Appendix G)

(C) The use of Force to resist arrest or search is justified,

(1) If, before the actor offers any resistance, the peace officer uses or attempts to use greater Force than necessary to make the arrest or search.

The courts claim Sharp resisted arrest before any peace officer used or attempted to use greater Force than necessary to make the arrest or search.

However, testimonial evidence given by Sharp at the hearing on the State's motion of limine to deny Self-defense and Necessity jury instructions, makes clear that a Force greater than necessary (excessive Force) was made before any resisting, at the point of initial contact between the officer and Sharp, before the officer announced his purpose or authority, by the officer aiming his pistol directly at Sharp through his window and banging the barrel of the pistol onto the window. (see Appendix I)

P. 33. Line 13-17. A. Sharp: They threatened me with the barrel of their pistols banging on my windows from the very first moment that I saw them. And I wouldn't call that a negotiation, I would-- I would call that a threat of deadly force.

(STMT G) 10

Further supporting this direct evidence that the officers used a greater force than necessary (excessive force) before any resistance by Sharp, Sharp gave the following testimony at trial: ~~(see Appendix I)~~

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A. When I first looked out the window I saw armed men and-- and the barrel of a ~~first~~ gun pointing in the window, just boom, boom, boom, boom, Sheriff's office, boom, boom, boom, boom, just like that going to each window in the front.

Q. And going to different windows and banging on them?

A. Yes

Q. How did you feel when that happened?

A. That scared me to death. I don't know if you've ever fired a handgun. They're extremely powerful. I mean, you would never want to point it at somebody or get shot by it. It's horrible. Yeah, it scared me to death.

It is well established in Texas that an accused has the right to an instruction on any ~~defense~~ defensive issue raised by the evidence, whether that evidence is weak or strong, unimpeached or contradicted, and regardless of what the trial court may or may not think about the credibility of the defense.

Hamel v. State, 916 S.W. 2d. 491, 493 (Tex. Crim. App. 1996)

In this testimony Sharp gives evidence of a greater Force than necessary (excessive Force) by the officers, before any resistance was given.

"The right of the people to be secure in their... houses ... shall not be violated," That language unequivocally establishes the proposition that the very core [of the Fourth Amendment] stands the right of a man to retreat into his home and there be free from unreasonable governmental intrusion."

Silverman v. U.S. 365 U.S., 505, 511. (See Appendix E)

Under Tex. Penal Code Ann. § 9.01(3) - "Deadly Force is Force that is intended or known by the actor, or in a manner of its use or intended use is capable of causing death or serious bodily injury - Under that definition, brandishing a weapon and pointing it at a person constitutes deadly Force." (See page 3)

In this case Sharp was being sought for a non-violent "Crime", he had no criminal history, there was no threat to the officers or others, there were no exigent circumstances and he was not resisting or attempting to flee. All the requirements for self-defense and Necessity jury charge are met.

The courts contradicted Texas Penal Code Ann. § 9.22 Necessity by denying Sharp's right to an appropriate jury charge on that issue.

Texas Penal Code Ann. § 9.22 Necessity states: (See Appendix F)

Conduct is justified if:

- 1) The actor reasonably believes the conduct is immediately necessary to avoid imminent harm;
- 2) The desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought ~~to~~ to be prevented by the law proscribing the conduct; and
- 3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.

In addition to testimony already presented, other testimony in support of the jury charges on self-defense and necessity given by Sharp in the 15 July 2022 hearing on the state's motion on limine, Sharp states the following: (see Appendix I)

P34. Line 24, 25. A. Sharp: when I heard those shots fired -- I keep my shotgun by the door. When I heard those shots fired -- what I thought were shots fired, I grabbed my shotgun.

P35. Line 4. A. Sharp: Because I know they were going to kill me.

P.35 Line 6,7. A. Sharp: They made that quite clear when they said they were going to take me out.

P.35. Line 8,9. Q. Floyd: Okay. And it's your testimony that Eddy Luna was standing there ready to gun you down; is that right?

P.35. Line 10. A. Sharp: Absolutely.

P.42. Line 25. Q. Floyd: And so your testimony earlier

P.43. Line 1,2. Q. Floyd: was that his [Eddy Luna's] pistol was pointed right at you. You could see down the barrel of the pistol?

P.43. Line 3. A. Sharp: Absolutely.

P.24. Line 8-16. A. Sharp: And during that moment, I could see an officer with his pistol aimed right at the door. And the door opened and stayed open and he was aiming his pistol right at me.

I looked in his eyes. I looked in his hand and he had -- I could see him squeezing his hand. He was -- it was right then and now. I mean, I had no choice. I was going to be shot. There was no doubt in my mind.

P.25. Line 4,5. Q. Rosen: And you believed you were going to be shot imminently and immediately?

P.25 Line 6,7,8. A. Sharp: Absolutely. Right then it was -- it was live or die right at that moment. There's no -- it was just like -- just instant.

Under Texas Penal Code Ann. § 9.22's plain language, the defense of Necessity may apply to any offense unless the legislature has specifically excluded the defense. The legislature has not excluded the defense of Necessity with respect to assault or aggravated assault. (See Appendix F)

Navarro v. State, 649 S.W.3d 603, 2002 (Tex App LEXIS 2002 ~~2088~~) First Court of Appeals.
evidence

The ^{evidence} is clear. The conditions for evidence were met for both self-defense and Necessity jury charges.

The Fourth Amendment prohibits law enforcement officers from using excessive or unreasonable force in the course of making an arrest or otherwise seizing a person. *Graham v. Connor*, 490 U.S. 386, S. Ct. 1989.

The evidence is clear in this case, these officers used excessive and unreasonable force.

A claim that law enforcement officers used excessive force in the course of effecting an arrest is analyzed under the "objective reasonableness" standard.

Jones v. Buchanan, 325 F.3d 520, 527 (4th Cir 2007)

The courts in this case against Sharp ignore the evidence given, the Fourth Amendment, the "objective reasonableness" standard, by pass the jury and deny self-defense and Necessity jury charges. All contrary to the evidence given, and the precedent established

in the courts; thus in error.

this error caused sharp great harm in that the jury may have reached the decision to acquit. Now acquittal is necessary in the name of justice, or at the least, a new trial.

REASONS FOR GRANTING THE PETITION

Apparently excessive force by law enforcement officers and the right to resist excessive force is a foggy issue in the minds of what normally would be honorable police officers, in the minds of our courts and the citizens of our great nation.

In this time in our country, where police violence is at the forefront in the news, a clear statement on the issues of excessive force, self-defense and necessity needs to be made, and who better than the United States Supreme Court and when better than now?

On a more personal level, I believe I should have been acquitted of the charges against me. I was, am shaken by the events, my heart goes out to the officer, Eddy Luna, and I was unprepared for the trial that followed. The prosecutor prosecuted for a conviction rather than bringing the truth to light and my court appointed attorneys failed to put in the requisite time to put forth all the evidence. Additionally, it caused me great harm to have self-defense and necessity jury instructions denied. Acquittal or a new trial is what is needed to serve justice, otherwise I am likely to die in prison.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

by: Brian Sharp
BRIAN SCOTT SHARP

Date: 8 January 2025