

No.

24-6864

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

MAR 03 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

DARREN LATODD HOUSTON

— PETITIONER

(Your Name)

VS.

MATTHEW OTTOWAY

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF CRIMINAL APPEALS

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

PETITION FOR WRIT OF CERTIORARI

DARREN LATODD HOUSTON

(Your Name)

2641 FM 2054

(Address)

Tennessee Colony Tx 75884

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(1) Did the Third Court District Austin, Error by Affirming the Conviction of Petitioner on Direct Appeal. Stating a Variance in the counts and this variance was created by the court when misinterpreting the indictment and omitting the "Family Violence" in Count One creating the variance. Affirming Appellants conviction in violation of the Fifth Amendment double Jeopardy Clause when Appellant was charged by indictment with and Acquitted of Count One. "AGGRAVATED ASSAULT FAMILY VIOLENCE DEADLY WEAPON" PC. 22.20 (B)(1) (with habitual enhancements) And then Convicted of Count Two "ASSAULT FAMILY VIOLENCE" (enhanced) PC. 22.01 (B)(2)(A) (with habitual enhancements) of the indictment Appendix (E) INDICTMENT CLEAR RECORD PAGE 139-140 The indictment is Multiplicity and the Charges are Carbon Copies of one another for Purpose of Blockburger

(2) DID THE DISTRICT COURT Error when The State Elicited and used Perjured / false Testimony in order to obtain a conviction in violation of The Constitution Fourteenth Amendment Due Process when The State failed to correct the testimony when knowing it to be false.

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

155th Judicial District Court of Fayette County

State of Texas V. Darren Latodd Houston 2020R-154

Third Court of Appeals:

Darren Latodd Houston Appellant Vs. The State of Texas Appellee
Appeal No. 03-23-00082-CR.

In The Court of Criminal Appeals of Texas

Darren Latodd Houston Appellant v. THE STATE OF TEXAS. Appellee
Petition For Discretionary Review
PDR Number. PD-0765-24.

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Court of Appeals Number 03-23-00082-CR

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FAYETTE County Date imposed 02-09-23 Judgment of Conviction BY Jury.
CERTIFIED COPY 3 pages

APPENDIX C Court of Criminal Appeals
Petition For Discretionary Review filed 9/4/24 and denied on Refused 10/23/24
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APPENDIX D Court of Criminal Appeals PD-0765-24
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APPENDIX E ⁽²¹⁾
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Petition Writ Certiorari

Petitioner was charged with an amended indictment with Aggravated Assault Family Violence with a deadly weapon P.C. 22.20(1)(B) (with habitual enhancements) count One:

hereinafter styled Defendant on or about the 15th day of September 2020 and before the presentment of this indictment, in the County and State aforesaid did then and there intentionally knowingly and recklessly cause bodily injury to Sandra Bahner a member of the defendant's family and a member of the defendant's household and a person with whom the Defendant has or has had a dating relationship as described by Section 11.003 and Section 11.005 and Section 11.0021(b) of the Texas family code by Striking SANDRA JO BAHNER with defendant's hand and by Kicking Sandra Bahner with defendant's foot and leg.

And the Defendant used or exhibited a deadly weapon namely Defendant's hand and foot during the Commission of the Assault which in the manner of its use was capable of causing death or serious bodily injury.

Count Two: Assault Family Violence (Enhanced) P.C. 22.01(b)(2)(A) (with habitual enhancements)

hereinafter styled Defendant on or about the 15th day of September 2020 and before the presentment of this indictment in the County and state aforesaid did then and there intentionally knowing and recklessly cause bodily injury to Sandra Bahner a member of the defendant's family and a member of the defendant's household and a person with whom the defendant has or has had a dating relationship as described by Section 11.003 and 11.005 and 11.0021(b) of the Texas Family Code by striking Sandra Bahner with Defendant hand and by kicking Sandra Bahner with Defendant's foot and leg.

And before the Commission of the charged offense the Defendant had previously been convicted of an offense under Chapter 22 of the Texas Penal Code against a member of the defendant's family and a member of the Defendant's household and a person with whom the defendant has or has had a dating relationship as described by Section 11.003 and 11.005 and Section 11.0021(b) of the Texas Family Code namely on the 17 day of May 2017 in the 155th Judicial District Court of Fayette County Texas in Cause number 2016P-2490

This is Double Jeopardy under Blockburger Standard as outlined by the Supreme Court. This is in violation of the Ervin 991 SW 2d

The Non-exclusive Ervin factors this Court's need to engage in the Ervin Analysis. There is no way the State can rebut the presumption of double Jeopardy here.

Concluding that Section 22.01 as Plead in Count one and Count 2 as stated in the Charge to the Court. Are indictal and if he committed any offense was a single offense for Double Jeopardy Purposes.

All 8 of the Ervin factors are resolved in Petitioner favor.

(1) are the offenses in the same statutory section? (Yes) (2) Are the offenses Phrased in the alternative? (Yes) (3) Are they named Similar? (Yes) (4) Do they have Common Punishment Range? The Punishment Ranges are not only identical they are described in the exact subsection and described together the only exception is the

Plea as to an enhancement Paragraph of the use or exhibit of a deadly weapon negative findings of that as was the case here the Punishment are the same. (5) do they have Common Focus? Yes both are result oriented based on the Gravamen of the offense Williams v. State 235 SW 3d 742 750

(Tex. Crim App 2006) Villanueva 227 SW 3d at 748 which is important is the Gravamen of both Counts are identical (6) Does the Common focus tend

to indicate a single instance of Conduct? if you are to believe the State and their Pleadings then absolutely. There is only one instance of Conduct Alleged Combined in both Count and there is no injuries alleged. (7) Can the differing elements between the two offenses be Considered the same under imputed theory of liability that would result in offenses being the same under

Blockburger v. U.S. 284 U.S. 299? The differing element if it can be called or Plead as an element are based only on the Pleadings of an enhancement Paragraph (8) whether there is legislative history Containing an articulation of an intent to treat the offense as the same or different for double Jeopardy Purposes? No but the Court of Criminal Appeals did as unit of

Prosecution "the allowable unit of Prosecution for an assaultive offense in Texas is each victim and injuries sustained. Shelby v. State 448 SW 3d 431 439 (Tex crim App. 2014) also Phillips v. State 787 SW 2d 391 395 (Tex crim App 1990) Thus in an assaultive Crime each victim Constitutes a separate offense or distinct injuries to be Prosecuted and Convicted for separate crime here it's only one victim and bodily injury in both counts. Saying the same Conduct

Price v. State a ~~book~~ 457 SW 3d 437 "a third degree felony family Violence Can not be ~~not~~ committed with out bodily injury" Count one Contained family Violence and Petitioner was Acquitted of that Count. And the Convicted of the exact Conduct. Childress v. State 285 SW 3d 544, footnote(1) family and dating violence Can only be Predicated on bodily injury Tex Pen Code 22.01(B) So Here Petitioner Clearly was found not guilty of this Penal Code in Count one

He was Acquitted of Count two because family Violence is predicated on bodily injury therefore it's clear he was found not guilty of family Violence and bodily injury when the State choose to Create this ~~fatal~~ Fatal Variance. There is nothing in the record to show that he was ever charged with Assault family Violence see Reporter Record's Vol one - 26. This fatal Material Variance and ask this Court to review De Novo. Accused is Prejudice by a Variance if it (one) Put them at Risk of another Prosecution for the Same offense Conduct. Clearly by the State alleging the Same Conduct Petitioner was basically Acquitted of nothing. due to Count one should have alleged Serious bodily injury and only named bodily injury (two) misleads them such that they were inadequately able to prepare for trial. the Case here very misleading defendant was led to believe that he would be charged with Count one if ~~at~~ acquitted he would be Acquitted of Count 2 due to it being the exact Conduct and not a different or distinct injury Alleged to make them Separate charges (3) denies them the Ability to defend against the Charge as the Case. Placing them in Jeopardy. which was exactly the case, here.

It choose not to allege another method and means Martinez V. Illinois 572 US. 833 Led HN 8 Here it state what Constitutes an Acquittal is not to be controlled by the form of Judges Action's it turns on whether the ruling of the Judge actually represents a resolution... of some or all the factual elements of one and two. Yeager V. United States 557 HN 4 Collateral Estoppel the double Clause embodies Two vitally important interest the first is the deeply ingrained Principle that the State with all its resources and Power should not be allowed to make repeated attempts to Convict an individual for alleged offense thereby Subjecting him to embarrassment, expense and ordeal and Compelling him to live in Continuing fear State of anxiety and insecurity as well as enhancing the Possibility that even though innocent he may be found guilty the Second interest is the preservation of finality of Judgment the Case here Petitioner was never indicted on the Charge it was brought through on an Amended indictment with out a leave of Court or the Court Granting it. Violating Rule 28.10 and 28.11 Tex Code Crim Proc. over the defendant objection with out a hearing.

Petitioner was charged by the Same Conduct after a Judgment.

This Court has noted that double Jeopardy do not bar Acquittal of one Count if the State alleged two distinct theories or alternative theories However there is only one Conduct and one injury alleged different act as can be said that it was not final due to the one Single Act Alleged. And that was based off one Cause number 2020-154 And he Petitioner was Acquitted in that Cause number. And that was based off an indictment with a ~~fatal~~ Fatal Variance

For Bar From Perjured testimony Eliscited from the state known to be false A Clear Error from which this Court can look at ~~De~~ De Novo. From the Reporter Record.

Reporter Record 2020-154 Vol 14 10 Jan 2023 Guilt/Innocence

PG 34 Line 12-13 ~~from~~ Opening statement by the State.

"The Bruising was so severe they thought she might have nerve damage. The State knew this was false." The medical that they had debunked this ~~she~~ misleading statement.

Reporter Record Vol 14 2020-154 Bahner Testimony (direct) Page 227 Line 5-6.

Q. Did you follow up with your physician on the injuries you had with the injuries. You had. Line 7 A. I did. Line 8 and do you recall how many times that was?

Line 9. A. I had come to Texas a couple of times Line 10 OKAY and how did they treat you. Line 12-15 A mostly with Anti-inflammatory trims to get the swelling and all that to go down. They gave me pain medication and said that you know that I'd probably have problems down the road. as well. (False Perjured)

Line 16-17 Q How long did it take for that swelling went down? A To be honest 8 months it still is not down. (this testimony was 2 years and 4 months later)

I still have knots in my hips Line 21 I can't lay on either side I have "Nerve Damage"

Line 23-24 Q when you say "nerve damage" have you gone to the doctor about that. Line 25 I have

Page 228 Vol 14 Line 1 I know you said you did follow up Line 2 Year

The State knowing intentionally Eliscited this Perjured /False testimony the knew this is and was totally false. The State was in possession of her medical records the charging Part. To come up with the charge of Aggravated Assault Family Violence deadly weapon was off clearly false testimony. the State cannot obtain a conviction off false testimony and has a duty to correct it. United States V. Boyd 55 F3d 239 243 (4th Cir 1995) United States V. Aguero 427 US 97 103 96 Sct 2392 L. Ed 2d 342 (1976) Ex Parte GHAUREmani

Vol 16 Reporter Record 2020-154 Motion Directed Verdict. Page 14 Line 23-24 States that leaves long term injuries nerve damage and tissue damage Page 15. Line 16-22 Baker (DeLenge) secondly nerve damage and tissue damage has absolutely been proven not to be true that was "Perjured Testimony"... the medical records are in the record from Texas regarding testing and for specifically neurological damage and all the test were negative They were negative at the hospital and they are proven negative since then that testimony is simply not true. This is Clear Prosecutorial misconduct knowing eliscited false testimony/perjured testimony and giving the jury a false impression Alcorn V. Texas 355 US 28 31 78 S.Ct 103 (1957) false impression Vol 16 2020 154 State Rebutting Closing Argument PG 19. "This is about one event in September" Line 14. was Sandra Bahner injured? Yes. This is false. Clearly she was. (debunked by medical records) continues to rely on false testimony to obtain this conviction. In 14-15 we not only have her testimony. which is false. This Court has the right to look at a clear error supported by the Record Petitioner Pleads you will.

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 A 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 Court of Appeals Third District of Texas Austin court appears at Appendix A 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 10/23/24.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: 12/11/24, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

U.S. Constitution Fifth Amendment Double Jeopardy

U.S. Constitution Fourteenth Amendment Due Process Clause.

STATEMENT OF THE CASE

Petitioner was indicted for the first time Nov 6 2020 see clerk Record Page 8.

for "Aggravated Deadly weapon family violence" Felony one. Motion to Quash the indictment was filed on March 17 2021 (Nover Ruled on) Clerk Record Page 27-29

On June 17 2021 the State amended the indictment 35 Page Clerk Record with out a leave of Court on Order Granting motion to Amend the indictment Still not citing a Penal statute.

The State Amended the indictment on Apr 22 2022 Clerk Record Page 8081

To Add the Charge of Continuous Violence Against the Family Count 2 P.C. 25.11. While Maintaining Count One Aggravated Assault Family Violence with deadly weapon P.C. 22.20(b)(1)

Appellant was Arraigned on this indictment on May 24 2022 Reporter Record Vol 9 Line 10-16 Page 4.

It is unclear if the Defendant was Reindicted or the indictment was Amended. it is clear that the state Read the Penal Statute into the Record on May 27 2022 Reporter Record Vol 9.

Then on Sept 22 2022 the State Amended the indictment Clerk Record Page 139, 140

To include the Charges in Question however there is no motion in the record for a leave motion as outlined by Tex Code Crim Proc Art 28.10 or an order granting the state the right to Amend the indictment. or was a hearing on a motion to Amend

Docket Sheet Clerk Record Page Reported Record Vol 10 Sept 27 2022 Page 16

Line 21-22 Court: I understand that the indictment has been Amended is that Accurate? Line 23-24 State: Yes Your honor the indictment has been Amended LN-25 Court: I have not see that but Page 17 Reporter Record 10 Vol Line 1-7 Bethany is going to Send it to me so I'll take a look at it as quickly as I get it.

Here the Court never Said that it granted the state the right to Amend the indictment. to include the lesser Charge and new Charge.

Now the Amended Sept 22 2022 (indictment) Clerk Record Page 139-140

Count One: Aggravated Assault Family Violence Deadly Weapon P.C. 22.20(b)(1) (with habitual enhancement)
(Note) This is not the Proper Statute. (ACQuitted)

Count 2. Assault Family Violence (Enhanced) P.C. 22.01(b)(2)(A) (with habitual enhancements)
(Guilty)

Count 3. Continuous Violence Against the Family P.C. 25.11 (with habitual Enhancements)
(ABANDONED)

Each Count is a Carbon Copy of the First Count Not one word is different it's

STATEMENT OF ^{OR} ~~CASE~~ THE CASE

All three of the Charges state the Same Conduct For Sameness they are Multiplicity.

Petitioner Raised this violation of this violation of his Fifth Amendment double Jeopardy, On direct Appeal Error 3 Appendix A To the third Court of Appeals District Austin Memorandum Page 26-29 Rendered July 3 2024

In the memorandum opinion Justice Thiede misstated the Record by stating that appellant was charged by indictment with "Aggravated Assault deadly weapon" Page 5 of opinion

Petitioner did file Feb 5 2025 A motion for the Court to take Judicial notice of ~~adjudicated~~ adjudicated fact

Due to Petitioner being charged with "Aggravated Assault family violence with deadly weapon" P.C. 22.02(b)(1) (with habitual enhancements)

The Court misstated the indictment creating a Variance and Affirming his Conviction in violation of his fifth Amendment double Jeopardy.

By omitting the family violence. ~~violates~~ In Count one due to Petitioner being acquitted of Count one and family violence. and the Assault Causing bodily injury.

And then being convicted of Count 2 Assault family violence (Enhanced) with the Count's being Carbon Copies. Petitioner Direct Appeal was filed Court of Appeals. Petitioner filed this Constitutional violation double Jeopardy violation

Point of Error 3 and it was denied July 3rd 2024 03-23-00082-CR-Appeal No Petitioner then filed a Petition for Discretionary Review on

9-04-24 and was denied 10/23/24 PD-0765-24 ~~Petitioner filed a timely~~ in the Court of Criminal Appeals

Petitioner filed a timely motion for Re hearing ON 11/15/24 and was denied 12/11/24 Raising Claim. Giving this Court Jurisdiction matter of this violation of Petitioner Fifth Amendment double Jeopardy

REASONS FOR GRANTING THE PETITION

The fundamental RIGHT TO A TRIAL BY JURY. And once that Jury makes a FINAL decision as to his innocence it is not for the defendant to continue to have to face the same fact and fear of being found GUILTY Even After HE WAS ACQUITTED of the Greatest Charge as the Case here.

with the exact Act, Charge or Complaint leveled against him that he just faced in the same trial. This is a clear and unprecedented.

Case as Petitioner has researched and there is "NO" case in Texas or the United States exactly like what has happened here.

And for the Greater Good of this Country to Rule On the matter, The Acquittal is binding by this ~~least~~ legal system. And still sent To Prison for life (60) years. Even though He was Acquitted first of the exact crime. Once he face trial in this Country he will not be forced due to Poverty. To Continue to endure the fear of This Act. By Allowing the State to Continue to Repeat the same Conduct and claim a different Count's with out any check or input from this Court will start to have grave Consequences To all Americans.

The Repeatedly at the same defendant is in no way not the most Glaring account of the violation of Double Jeopardy and a Clear Violation of Blockburger And this Court is the hope for ANY Person in this Situation.

I state Yeager V. US. That once an ultimate fact has been determined it can not be litigated.

And in the Cause number 2020R-154 It Has.

(1) There is no different method are means of Committing this alleged assault

(2.) Knowing intentionally Recklessly causing bodily injury. P.C. 22.01

The Gravier of Ant Assault Acquitted Count 1

Count 2. Knowing intentionally Recklessly causing bodily injury 22.01 (PC)

Convicted

(3) Family Violence Texas Family Code 11.003, 11.005 11.0021(b) Acquitted Count 1

Family violence Tex family Code 11.003 11.005 11.0021(b) Convicted Count 2

4. On or about Sept 15 2020 Count 1 Acquitted

On or about Sept 15 2020 Count 2 convicted.

Clear Violation of double Jeopardy, which is not a matter of state law but federal law.

Review is important because THE court of Appeals has rendered a decision which is in conflict with the decisions of this court.

CONCLUSION

That this Court Reverse and Remand this case back to the Appellant Court and order and enter a Judgment of Acquittal or May this court After Review Enter a Judgment of acquittal in the Cause of 03-23-00082-CR from Trial Court ~~2020-154~~^{03-23-00082-CR} 2020R-154.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Don Hauer

Date: 02/27/25