

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT GENE GEOTCHA, JR.

V.

THE STATE OF TEXAS

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-15-00327-CR
COURT OF CRIMINAL APPEAL PDR

ROBERT G. GEOTCHA, JR.
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QUESTION PRESENTED

- 1) Was the Court of Appeals Second District of Texas, Fort Worth: contrary to the holding of the Supreme Court in Crawford v. Washington, 124 S. Ct. 1354 and Davis v. Washington, 126 S. Ct. 2266, 165 L. Ed. 2d (2006) as well as the United States Constitution Amendment 6, the Confrontation Clause.

No. 02-15-00326-CR

LIST OF PARTIES

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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 be issued to review the judgement below.

[X] The opinion of the Court of Appeals Second District Fort Worth appears at Appendix A to the Petitioner is

[X] Unpublished

[X] Texas Court of Criminal Appeals PDR Unpublished *of Appendix b*

STATEMENT OF JURISDICTION

The Court of Appeals and the State's highest court in a denial of Petitioner's direct appeal has denied Petitioner relief. In Hob v. United States, 524 U.S. 236 (1998) this court held that pursuant to 28 U.S.C. §1254(1) the United States Supreme Court has jurisdiction on certiorari to review denial of relief by courts of appeal or states highest court under Rule 10.

STATUTORY PROVISION INVOLVED

The right of a state prisoner to seek federal habeas is guaranteed in 28 U.S.C. §2254. The standard of relief under the AEDPA is set forth in U.S.C. §2254(d)(1).

STANDARD OF REVIEW

Denial of Certificate of Appealability. In Miller v. Cockrell, 537 U.S. 322, 123 S. Ct. 1029 (2003) this court clarified the standard for issuance of a Certificate of Appealability (hereafter COA). A prisoner seeking a COA need only to demonstrate a substantial showing that a constitutional right. A prisoner satisfies this standard by showing that a jurist of reason could disagree with the district court's resolution of his constitutional claim or that a jurist could conclude the issues presented are adequate to deserve encouragement to proceed further....We do require Petitioner to prove, before the issue of a COA that some jurists would grant the parties for habeas corpus. Indeed a claim can be debatable even though every jurist of reason might agree, COA has been granted and the case has received full consideration that Petitioner will not prevail. Id. 123 S. Ct. at 1034, citing Slack v. McDaniel, 529 U.S. 473, 484 (2000).

STATEMENT OF CASE

Through separate indictment, a grand jury indicted Appellant

on two charges of Aggravated Assault with a Deadly Weapon. The indictment alleged that in March of 2014, he had used a knife-a deadly weapon by its use or intended use-to cut and injure Alquisha Knox and Wanda Jackson. Appellant received appointed counsel and the parties filed various pretrial documents in both cases. Appellant chose trial court to assess his punishment in the event of conviction. Petitioner was found guilty and received two 65 years sentences to run concurrent.

REASON FOR THE PETITION FOR WRIT OF CERTIORARI
SUPREME COURT RULE 10

- (B) A state court of last resort has decided a important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.
- (C) A state court or a United States Court of Appeals 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.

QUESTION NUMBER ONE

- (1) Was the Court of Appeals Second District of Texas Fort Worth and the Texas Court of Criminal Appeals adoption of the finding contrary to the holding of Supreme Court in Crawford v. Washington, 124 S. Ct. 1354 and Davis v. Washington, 126 S. Ct. 2266, 165 L. Ed. 2d (2006) as well as the United States Constitution Amendment 6, the confrontation clause.

The appeal court in their reasoning on whether this was a testimonial statement used the following reasoning. Whether a statement is testimonial under the confrontation clause is a question of law that we review denovo. DeLapaz v. State, 184 S. W. 3d 671, 680 (Tex. Crim. App. 2008); Wall v. State, 184 S.W. 3d 730, 742 (Tex. Crim. App. 2006). When an out of court statement is made by the declarant to a medical professional of diagnosis and treatment rather than to develop facts for later litigation, it is not testimonial.

When a forensic or investigatory motive predominates, the resulting statements are testimonial, when therapeutic motives or healing motives predominates, statements are not testimonial. The record indicates that Knox's statements to the paramedic were made for the purpose of medical diagnosis and treatment, not in anticipation of furthering a future criminal prosecution rendering them non-testimonial and not within the scope of the confrontation clause.

The following exchange occurred during the paramedics testimony:

[State]: [w]hen you're treating patients, do you ask them questions related to what happened to them?

[witness]: yes, I do.

[State]: Why do you do that?

[witness]: To get a better understanding of what kind of injury that they got. How it was delivered, and how....severe the injury would be.

[State]: Do you use that information to treat or...to diagnose any kind of medical issues that they may have?

[witness]: yes, I do.

Because Knox's statement to the paramedics were made by a patient to an attending medical professional for the purposes of medical diagnosis and treatment and because the record does not indicate that the statements were made under circumstances where Knox or the paramedic contemplated that they would be used at a later trial, we conclude that they were not testimonial for the purpose of invoking the requirements of the confrontational clause. See Crawford, 541 U.S. at 50, 124 S. Ct. at 1369.

Therefore we conclude that the trial court did not err by admitting statements. We overrule the remainder of Appellant's first point.

In the interest of brevity, Petitioner would ask this court to review the concurring and dissenting opinion Justice Lee Ann Dauphinot in which Petitioner summarizes here. Clearly the evidence that Knox told the paramedic that Appellant had caused her injuries affected both the conviction and punishment. Because Appellant was denied his essential right to confront his accuser and to cross examine her, and because he properly preserved this issue for review, I would reverse the trial court's judgement and remand Appellant Cause No. 02-16-00326-Cr to the trial court because the majority does not I must respectfully dissent.

The Petitioner would respectfully disagree with the majority opinion and agree with the dissenting judge. This court in Davis v. Washington, 126 S. Ct. 2266, 165 L. Ed 2d 224 (2006). (1) for purposes of the Sixth Amendments confrontation clause without attempting produce on exhaustion classification. Statements are (a) not testimonial when made in the course of police interrogation circumstances indicating the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency and (b) testimonial when the circumstances objectively indicate that (1) there is no such ongoing emergency and (2) the primary purpose of the interrogation is to establish or prove past events potentially

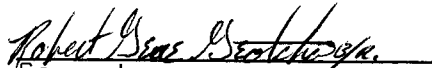
relevant to criminal prosecution. This is exactly the case in this Petitioner's case. Even though statements were taken for medical diagnosis, they were later used for criminal prosecution in violation of the confrontational clause. This is clearly a central question of law that this court should clarify. This court held (1) the confrontational clause bars admission of testimonial statements of a witness who does not appear at trial unless he was unavailable to testify and the Defendant had a prior opportunity for cross examination. Crawford v. Washington, 541 U.S. 36, 53-54 124 S. Ct. In Petitioner's case the State stated that Alquisha Knox would testify and was available to testify but was never called. This violation could not be clearer.

For this Court to allow this ruling to stand, it would serve to vitiate a fundamental right bequeathed to this generation as well as future generations to confront one's accuser. U.S. Amendment 6, also it thwarts the original intent of the founders.

CONCLUSION

Based on the foregoing, Petitioner prays that this Court grants the Petition for Writ of Certiorari and order full briefing after which will overturn Petitioner's conviction.

Executed on this the 1st day of June, 2017.


Signature

Respectfully Submitted
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