

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KENNIE HINES — PETITIONER
(Your Name)

vs.

LORIE DAVIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KENNIE HINES
(Your Name)

12120 SAVAGE DR. MIDWAY TX, 75852
(Address)

MIDWAY TEXAS, 75852
(City, State, Zip Code)

(936) 348-3751
(Phone Number)

QUESTION(S) PRESENTED
CAPITAL CASE

WHEATHER. A CAPITAL MURDER CONVICTION WITHOUT A THIRD OPTION, COMBINE WITH JURY INSTRUCTION PERMITTED TO CONVICT ON LESS THEN INTENT TO CAUSE DEATH, A FACTUAL BASIS THAT EFFECTIVELY MODIFIES AN ESSENTIAL ELEMENT OF OFFENSE CHARGED, ALLOWS FOR A DISPROPORTIONATE PUNISHMENT WITHOUT PROOF OF AN INTENTIONAL KILLING IS UNCONSTITUTIONAL/ UNDER BECK V. ALABAMA?

DID THE COURT OF APPEALS ERROR WHEN THEY CONCLUDED THAT PETITIONER SIXTH AMENDMENT RIGHT TO COUNSEL UNDER CRONIC AT 659.600 AND STRICKLAND V. WASHINGTON 466 U.S 668(1984) WAS NOT VIOLATED BECAUSE COUNSEL DISCUSSED EVIDENCE WITH PETITIONER ONLY AND ADVISED HIM NOT TO TESTIFY : WHEN THE PROPER STANDARD UNDER SUPREME COURT PRECEDENT IS WHEATHER PETITIONER WAS DENIED COUNSEL AT A CRITICAL STAGE?

DID THE INADMISSABLE EVIDENCE OF PETITIONER PRIOR CONVICTION DIVERT THE ATTENTION OF THE JURY FROM THE CENTRAL DISPUTED ISSUE OF PETITIONER INTENT OF OFFENSE CHARGED, TO IMPROPER ISSUE OF HIS BAD CHARACTER. IN CONJUNCTION WITH THE PREJUDICIAL DETAILS OF THOSE CONVICTION WITH NO INSTRUCTION TO JURY, SO INFUSED THE TRIAL WITH UNFAIRNESS AS TO DENY DUE PROCESS OF LAW, A PREJUDICIAL VIOLATION WITH AFFECTED PETITIONER SUBSTANTIAL RIGHT?

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:

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OTHER

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 D 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☐ is unpublished.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 A to the petition and is

☒ reported at CIVIL ACTION H-15-1977(16-20828); 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 _____; 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 January 8 2018.

[] 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: January 8 2018, 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. § 1254(1).

[] For cases from **state courts**:

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

[] A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION.
SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION.
EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION.
FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

ARTICLE I SS, 10,13,15 AND 19 OF THE TEXAS CONSTITUTION

STATEMENT OF THE CASE

THE DIRECTOR HAS UNLAWFUL CUSTODY OF KENNIE HINES (HEREAFTER HINES) PURSUANT TO JUDGEMENT AND SENTENCE OF THE 176th DISTRICT COURT OF HARRIS COUNTY, TEXAS. HINES WAS CHARGED BY INDICTMENT WITH THE OFFENSE OF CAPITAL MURDER, APP.C. ON AUGUST 10, 2011. HE PLED NOT GUILTY BEFORE A JURY TRIAL. ON AUGUST 17, 2011, HE WAS FOUND GUILTY AND SENTENCED BY THE LEGISLATURE AUTOMATIC LIFE WITHOUT THE POSSIBILITY OF PAROLE.

HINES APPEALED HIS CONVICTION, BUT THE CONVICTION WAS AFFIRMED IN NOVEMBER 8 2012, HINES V. STATE NO.01-11-00725-CR, 2012 WL 5458424 (TEX APP-HOU 1st DIS) HINES FILED A PETITION FOR DISCRETIONARY REVIEW, BUT IT WAS REFUSED. HINES V. STATE, PDR NO.1684-12 TEX.CRIM. APP 2013] HINES CONCLUDED HIS DIRECT REVIEW BY FILING FOR A WRIT OF CERTIORARI, WHICH WAS DENIED. HINES V. TEXAS 134 S.CT 645 (2013)

HINES THEN FILED A STATE APPLICATION FOR HABEAS CORPUS RELIEF, BUT HIS APPLICATION WAS DENIED WITHOUT WRITTEN ORDER. HINES THEN FILED A FEDERAL APPLICATION FOR HABEAS CORPUS RELIEF PURSUANT TO 28 U.S.C 2254 ON JULY 1, 2015 IN THE UNITED STATE DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. THE CASE WAS REFERRED TO MAGISTRATE JUDGE STEPHEN WM SMITH FOR REPORT AND RECOMMENDATION ON AUGUST 16, 2016. THE REPORT AND RECOMENDATION UNITED STATE DISTRICT JUDGE LYNN N. HUGHES WHO ADOPTION, FINAL JUDGEMENT WAS ENTERED, APP.A.. HINES FILED APPEAL ON SEPTEMBER 14, 2016 DUE TO MIS-DIRECTED FILING A ORDER ON TIMELESSNESS WAS ENTERED APRIL 2 2017. APP.A. ON JANUARY 8, 2018 UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DENIED HINES SC.O.A. NOW HINES FILE THE INSTANT PETITION.

REASONS FOR GRANTING THE PETITION

MR. HINES WAS INDICTED SOLELY ON THE OFFENSE OF CAPITOL MURDER BY WAY OF AGGRAVATED ROBBERY THAT HE INTENTIONALLY CAUSE THE DEATH OF AMTHORY MAXWELL. APP.C 19.03 TEXAS PENAL CODE.

~~WITH THE ISSUE OF WHETHER OR NOT MR. HINES HAD THE INTENT TO KILL BEING~~ THE PARAMOUNT CONTESTED ISSUE, TRIAL COUNSEL REQUEST FOR A THIRD OPTION OF FELONY MURDER, 37.09, THE TRIAL COURT DENIED MR. HINES THIRD OPTION REQUEST, BUT PERMITTED THE JURY TO CONVICT HIM OF CAPITOL MURDER, BASED ON ALTERNATIVE ALLEGATION OF RESPONSIBILITY FOR THE ACTIONS OF OTHERS WITH THE LAW OF PARTIES, 7.02 APP.C THE LAW OF PARTIES CHARGE UNDER 7.02 IS AUTHORIZED UNDER TEXAS LAW IS UNCONSTITUTIONAL AS APPLIED IN THIS CASE, IT ALLOWS A CONVICTION ON LESS THEN INTENT TO CAUSE DEATH THAT THE STATUTE REQUIRES, AND VIOLATES THE DUE PROCESS AND DUE CAUSE OF LAW CLAUSES OF THE 5th AMENDMENT AND TEXAS CONSTITUTIONAL, AND VIOLATES THE 8th AMENDMENT BECAUSE IT ALLOWS FOR A DISPROPORTIONATE PUNISHMENT AND ALLOWS THE LIFE WITHOUT PAROLE IN A CAPITOL CASE, FINDING OF GUILTY IN A CAPITOL CASE WITHOUT PROOF OF INTENTIONALLY KILLING BASICALLY EQUATING PROOF OF A FELONY MURDER AND ALLOWING A CONVICTION THAT RESULTS IN LIFE WITHOUT PAROLE. THE INDICTMENT ALLEDGED MR. HINES WAS THE PRINCIPAL, WHITCH MEANS THAT THE PROSECUTION MUST PROVE BEYOND A REASONABLE DOUBT THAT HE IS GUILTY OF EVERY ELEMENT OF THE CHARGE OFFENSE. WINSHIP, 397 U.S 358, PETERSON V NEW YORK, 432 U.S 197. MOORE V UNITED STATES 429 U.S 20 MONTANA 442 COLE V ARKANSAS 333 U.S 201 U.S 510, THE LAW OF PARTIES IS UNCONSTITUTIONAL AND THE REFUSAL TO GRANT THE THIRD OPTION ENHANCE THE RISK OF AN UNWARRANTED CONVICTION THAT HAD A SUBSTANTIAL INFLUENCE ON THE OUTCOME OF THE CASE, BECK V ALABAMA 447 U.S 625, HOPPER V EVANS 456 U.S 605, KEEBLE V UNITED STATES, SCHMUC V UNITED STATES 489 U.S 705, SPANZIANO V FLORIDA 468 U.S 447, SANDSTROM, MONTANA 442 U.S 510, EVITT V LUCEY 469 U.S 387.

MR. HINES GAVE AN ORAL STATEMENT TO DETECTIVES WHILE IN THE HOSPITAL UNDER INFLUENCE OF MORPHINE PAIN MEDICATION, MR. HINES WAS NEVER ALLOWED TO REVIEW OR LISTEN TO DISCOVERY EVIDENCE, EVEN AS HE EXPRESS A DESIRE TO TESTIFY NUMEROUS TIMES BEFORE TRIAL TO COUNSEL, THE INSPECTION WAS NECESSARY TO REFRESH HIS RECOLLECTION OF STATEMENTS BECAUSE HE WAS NOT FULLY AWARE OF ALL INCONSISTENCIES THAT WOULD OF HELPED HIM DECIDE IF HE WANTED TO TESTIFY, GO TO TRIAL OR NOT. DURING CROSS EXAMINATION THE TRIAL COURT HAD TO STOP HINES TESTIMONY AND EXCUSE THE JURY FOR THE REST OF THE DAY TO ALLOW HIM TO LISTEN TO THOSE STATEMENTS ONCE THE COURT FOUND OUT HE WAS NEVER ALLOWED TO REVIEW HIS OWN STATEMENTS APP.E, SUCH DENIAL OF COUNSEL DURING THE PRESENTATION OF THE CASE TO THE JURY IS A STRUCTURAL ERROR, BRECHT V ABRAHAMSON 507 U.S 619, ARIZONA V FULMINUTE 499 U.S 279 A TOTAL DEPRIVATION OF COUNSEL WHEN EVIDENCE IS IN THE HANDS OF THE DEFENSE COUNSEL BUT NOT FULLY DISCLOSED TH MR. HINES, THE RESULT MAY WELL BE THAT HE WAS DEPRIVED OF A FAIR CHANCE BEFORE THE TRIER OF FACTS, AND THE TRIER OF FACTS WAS DEPRIVED OF THE INGREDIENTS NECESSARY TO FAIR DECISION MAKING, THIS FAILURE TO PREPARE HINES IS MORE THEN SUFFICIENT TO ESTABLISH A VIOLATION OF THE SIXTH AMENDMENT RIGHT TO COUNSEL, CONFRONTATION, AND COMPULSORY PROCESS IN SO FAR AS THEY DEPRIVED HINES OF MATERIALS USEFUL IN DECISION MAKING TO TEST AND TO WITHSTANS CROSS-EXAMINATION AT A CRITICAL STAGE CRONIC 659.600, STRICKLAND 466 U.S 668, ARIZONA V FULMINUTE 499 U.S 279, HOLLAND SUPRA 493 U.S AT 451, GEORGIA SUPRA 505 U.S AT 57.

NEXT THE COURT OF APPEALS ADMITS, THAT HINES DID NOT LEAVE A FALSE IMPRESSION TO THE JURY, TO BE IMPEACH, BUT FOUND THE ADMISSION OF HIS PRIOR CONVICTIONS HARMLESS, BECAUSE HINES TESTIFIED, HE CARRIED FOR DISPLAY ONLY OPEN THE DOOR, TO INTRODUCTION OF HIS AGGRAVATED BATTERY CONVICTION, WHICH IS A UNREASONABLE DETERMINATION OF THE FACTS, HINES WAS IMPEACH WITH BOTH CONVICTIONS AND DETAILS BEFORE HE EVEN MADE THE STATEMENT APP.F PAGE 35,36 FOR DISPLAY ONLY APP.F PAGE 37.

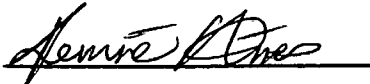
THE PROSECUTOR MAY REBUT ONLY EVIDENCE OFFERED BY THE ACCUSED RULE 403-404(a)(1)-404(b), PROSECUTOR MAY NOT GET INTO THE USE OF EXTRANEOUS OFFENSE EVIDENCE ON CROSS EXAMINATION BY PROMPTING AND MANEUVERING TO ELICIT TESTIMONY FOR REBUTTING PURPOSES, THE EVIDENCE MUST BE ELICITED ON DIRECT BY THE DEFENSE SHIPMAN V STATE 604 S.W 2D 182, 185 (TEX CRIM APP 1980) EVEN IF THE PRIOR CONVICTION IS ADMISSABLE TO IMPEACH A WITNESS, DETAILS OF THE CONVICTION ARE INADMISSABLE MAYS 726 S.W 2D AT 953. THESE TWO EXTRANEOUS ACTS WERE NEITHER RELEVANT FACTS SURROUNDING THE KILLING AND THE PREVIOUS RELATIONSHIP EXISTING BETWEEN THE ACCUSED AND THE DECEASED, NOR HIS STATE OF MIND AT THE TIME OF THE OFFENSE. THE STATE WAS ALLOWED TO DISCREDIT HINES AND PAINT HIM AS A GUN TOTING AGGRESSOR BY ELICITING NOT ONLY A MISDEMEANOR UNLAWFUL CARRYING OF A WEAPON THAT WAS NOT A CRIME OF MORAL TURPITUDE RULE 609(a) BUT BY GOING FURTHER AND ELICITING DETAILS OF A PRIOR FELONY FOR AGGRAVATED BATTERY DURING WHICH AN INDIVIDUAL WAS SHOT, HINES UNLAWFULLY CARRYING OF A WEAPON SHOWED THE JURY THAT THE SAME MODEL GLOCK 22 IN THAT OFFENSE WAS USED IN THE CRIME HE IS BEING TRIED FOR. OVER A RUNNING OBJECTION APP.F. P.37 THE JURY WAS NOT INSTRUCTED TO LIMIT EVIDENCE AND WAS PROSECUTED FOR SOME COLLATERAL CRIMES OF EXTRANEOUS OFFENSES SIMILAR TO THE CRIME CHARGED. REVIEW IS NECESSARY BECAUSE THE SUBSTANTIAL AND INJURIOUS EFFORT IT HAD ON THE JURY DETERMINING THE VERDICT BRECHT V ARANSON 507 U.S 619, CHAPMAN V CALIFORNIA 386 U.S 18.

CONCLUSION

WHEREFORE PREMISES CONSIDERED, MR. HINES PRAYS THIS COURT GRANT CERT WITH ORAL ARGUMENT TO FULLY DEVELOPE AND RESOLVE THESE CONTROVERTED ISSUES AND THAT UPON REVIEW, RELIEF BE GRANTED, HINES IN THE FORM OF ACQUITAL OR REVERSE AND REMAND FOR NEW TRIAL.

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED,



DATE: April 2 2018