

No. 25-7074

ORIGINAL

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Ethan Jenkins — PETITIONER
(Your Name)

vs.
State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Criminal Appeals of Texas
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ethan Jenkins
(Your Name)

899 FM 632 Kenedy, Tx, 78119
(Address)

Kenedy, Texas, 78119
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

I. Did the Texas Court of Criminal Appeals err in holding that the trial court properly overruled Petitioner objection to the statement made by the State regarding reasonable doubt?

II. Did the Texas Court of Criminal Appeals err in finding that the trial court properly read the indictment and allowed the state to use portions of it Also allowing the state to interject a variance?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

Petitioner:
Ethan Jenkins
TDCJ #2471588
Connally Unit
899 FM 632
Kenedy Tx, 78119

Prosecutor:
Napoleon Stewart
Jacob Salinas
Jessica Caird
Harris County, TX
1201 Franklin St
6th Floor, 77002
Houston Texas

Trial Counsel:
Mary Conn
1111 North Loop
West Suite 1180
Houston TX, []
77008
Allen Isbell
2016 Main St
Houston TX 77002

Appeal Counsel
Jani Wood
Harris County
Texas 1310
Prairie St
Houston TX
77002

Judge: Beverly Armstrong
208 District Court
Houston, TX 77002

RELATED CASES

- Jenkins v. State, 2025 Tex. App. lexis 3322
May 15, 2025, Opinion Filed, NO. 14-23-00740-CR
- In re Jenkins, 2025 Tex. Crim. App. lexis 677
September 17, 2025, Decided, PD-0339-25,
NO. 14-23-00740-CR
- In re Jenkins, 2025 Tex. Crim. App. lexis
871 November 20, 2025, Decided, PD-0339-25,
NO. 14-23-00740-CR

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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 NA to the petition and is

- reported at NA; 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 is unpublished.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 NA to the petition and is

- reported at NA; 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 Fourteenth court of Appeals court appears at Appendix A to the petition and is

- reported at Appendix A; 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 NA.

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: NA, and a copy of the order denying rehearing appears at Appendix NA.

An extension of time to file the petition for a writ of certiorari was granted to and including NA (date) on NA (date) in Application No. NA NA.

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 9/17/2025.
A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied on the following date: 11/20/2025, 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 NA (date) on NA (date) in Application No. NA NA.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment U.S. Constitution
Fourteenth Amendment U.S. Constitution
Sixth Amendment U.S. Constitution
F.R. Crim. P. 52(a)
Tex. Code. Crim. Pro. Ann. Art. 38.04
Tex. Penal code Ann. 19.02.(b).(3)
Tex. Penal code Ann. 19.03

I. Factual Summary

STATEMENT OF THE CASE

The night of March 25th 2019 Jon Whitfield was murdered he had been shot to death and robbed. The Houston police Department Detective Lovelace arrived on the scene to investigate. During the investigation Detective Lovelace was able to interview a Christian Bell who pointed Appellant out in an interview. [3RR154]. During the investigation Detective Lovelace concluded that there was no D.N.A evidence nor fingerprint evidence connecting Petitioner to the scene of the crime. [4RR178]. In October of 2023 Appellant proceeded to trial where the States case was base chiefly on testimony. While in trial the state made the following comment in discussing reasonable doubt: "So we know what it's not. It's not beyond all doubt. It's not beyond a shadow of a doubt. It's not a hundred percent certainty. And it's - conflict in testimony doesn't equate to as a - beyond a reasonable doubt." [2RR96].

The defense objected, but the trial court overruled the objection. [2RR96].

During jury selection the trial court read the indictment to the jury. [2RR19]. The state referred to specifics from the indictment in their voir dire. [2RR86-87]. The state also interjected a variance into the indictment which charged petitioner with different offense than in the indictment. [2RR91].

II. Procedural History

Petitioner's trial, Appeal, P.D.R. and Rehearing

In 2023, Petitioner was tried and convicted by a jury of capital murder and sentenced to life without parole.

Because there was no finger print or D.N.A. evidence or any forensic evidence implicating a suspect prosecutors relied heavily on witness testimony. [4RR178]. The state's case in chief was devoted to presenting testimony of witnesses rather than crime scene witnesses or expert witnesses. Prosecutors told the jury that conflict in testimony are not reasonable doubt. [2RR96]. The trial court read the indictment to the jury. [2RR19] The state referred to portions of the indictment while also interjecting other crime within the indictment namely felony murder to which was not an lesser included offense to the jury. [2RR91]

On May 15, 2025 Petitioner got Affirmed
On Appeal from the Court of Appeals of Texas,
Fourteenth District, Houston.

Petitioner Proceeded Pro. Se on his Petition
for Discretionary Review (P.D.R.). Presiding Judge
Shenck voted would Grant, ultimately being
refused on September 17, 2025.

Petitioner filed a Pro. Se rehearing and was
denied on Nov, 20, 2025.

This Petition follows.

REASONS FOR GRANTING THE PETITION

Reversal is Warranted because the CCA's decision is patently wrong.

I. What the reviewing court should consider is not what effect the constitutional error might generally be expected to have upon a reasonable jury, but rather what effect it had upon the guilty verdict in the case at hand. Harmless-error review looks to the basis on which the jury actually rested its verdict. The inquiry, in other words, is not whether in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether ~~in this trial~~ the guilty verdict actually rendered in ~~this trial~~ was surely unattributable to the error. That must be so, because to hypothesize a guilty verdict that was never in fact rendered, no matter how inescapable the finding to support that verdict might be, would violate the jury trial guarantee, see... Sullivan v. Louisiana, 508 U.S. 275 (Reversing state court finding on reasonable doubt instructions).

The due Process Clause of the Fourteenth Amendment protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. This constitutional principle prohibits the state from using evidentiary presumptions in a jury charge that have the effect of relieving the state of its burden of persuasion beyond a reasonable doubt of every essential element of a crime. See... *Francis v. Franklin*, 471 U.S. 307.

The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury." In *Duncan v. Louisiana*, 391 U.S. 145, 149, 20 L. Ed. 2d 491, 88 S. Ct. 1444 (1968), we found this right to trial by jury in serious criminal cases to be "fundamental to the American scheme of justice" and therefore applicable in state proceedings. The right includes, of course, as its most important element, the right to have a jury, rather than the judge, reach requisite finding of "guilty." During petitioner trial the prosecutors made the following statement in discussing reasonable doubt: "So we know what it's not. It's not beyond all doubt. It's not beyond a shadow of a doubt. It's not a hundred percent certainty. And it's - conflict in testimony doesn't equate to as a - beyond a reasonable doubt." [2RR96].

9.

The defense objected, but the trial court overruled the objection. [2 RR96]. The trial court erred by overruling the defense objection thereby adopting the State erroneous statement. This statement could have been interpreted to easily mean that a conflict in testimony could not establish a reasonable doubt even when the State's case in chief is based on testimony which is erroneous. In *Carella v. California*, 491 U.S. 263 The court found that jury instructions removed the jury's task of deciding guilt beyond a reasonable doubt. The court reasoned that the jury instruction were phrased as commands and were not explained elsewhere in the jury charge to be merely permissive. The court found that the jury instructions were mandatory directions that directly foreclosed jury's independent consideration of whether the fact proved establish certain elements of the offense with which the defendant was charged. It is the function of the jury, not an appellate court to resolve conflict in testimony or judge the credibility of witnesses. Amendment 6 Rights of the accused State, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

"The Jury, in all cases, is the exclusive Judge of the facts proved..." Tex. Code Crim. Pro. Art. 38.04.

The state's assertion that conflict in testimony are not reasonable doubt misstates the law and invades the province of the Jury to determine whether one witness is more credible than another, and or that all witnesses are credible without any doubt. Since *Cage v. Louisiana*, 498 U.S. 39, the Supreme Court has held that "trial Courts must avoid defining reasonable doubt so as to lead the Jury to conflict on a lesser showing than due process requires." Specifically, the Court held "a Jury instruction equating 'reasonable doubt' with a 'substantial doubt' and 'grave uncertainty' violated due process. *Id.* at 40, 111 S.Ct. 328. While this was not the instruction from the trial court it was telling the Jury what reasonable doubt was not - it was not a conflict in testimony. When in fact this could have been any juror's definition of reasonable doubt for the simple fact that the state's case was based chiefly on testimony. The state's definition of what reasonable doubt was not - along with the trial court and the Court of Criminal Appeals accepting that definition - harmed petitioner's right to a fair trial.

II. During Jury selection the trial court read the indictment to the Jury. The state referred to specific's from the indictment in their voir dire. The state also interjected a variance into the indictment which charged petitioner with different offense than in the indictment. [2RR91].

The Fifth Amendment's grand jury requirement establishes the substantial right to be tried only on charges presented in an indictment returned by a grand jury. A constructive amendment occurs when the charging term of the indictment are altered, either literally or in effect, by the prosecutor or a court after the grand jury has last passed upon them.

There are two types of constructive amendment. First, where there is a complex of facts presented at trial distinctly different from those set forth in the charging instrument, and, second where the crime charge in the indictment was substantially altered at trial, so that it was impossible to know whether the grand jury would have indicted for the crime actually proved. See... *United States v. Davis*, 854 F.3d 601.

During voir dire prosecutors stated, "Okay, All right so basically what that's saying is somebody came to rob you, you try to defend yourself, they kill you. They say 'oh I had to do it. He was going to kill me' Well, who started the whole thing? The guy committing the robbery right? Is everybody good on that and understand that concept? Prospective Juror's stated yes and the state continue as follows. "All right so these are our elements. This is what the state has to prove, okay? And Judge -- this is what's in the indictment, okay? [2BB91]. By interjecting this variance inside the indictment the state gave clear elements of felony murder

A person commits felony murder if he commits or attempts to commit a felony (other than manslaughter), and in the course of and in furtherance of the felony commits or attempts to commit an act clearly dangerous to human life that cause the death of an individual. Tex. Penal Code Ann. 19.02(b)(3). Under the statute, a culpable mental state is required for the underlying felony, but there is no culpable mental state for the murder itself.

In *Saenz v. State*, 451 S.W.3d 338 it states "The gravamen of capital murder is intentionally or knowingly causing a death, plus any one of various different types of aggravating elements. This applies equally to all alternate theories of capital murder contained within Tex. Penal Code Ann. 19.03.

In prosecutors statement regarding what was inside the indictment absent from the interjection [BR 91] was elements of intentionally and knowingly, which are essential ingredients to capital murder, the prosecutor leaving out these elements was erroneous because it made it more likely for the jury to convict without finding that the murder was committed intentionally or knowingly. *Kotteakos v. United States*, 328 U.S. 750 states, "The materiality of a variance of proof does not depend upon the degree of its logical perversity, but upon how far it throws confusion into a trial and makes it likely to miscarry."

Kotteakos v. United States, 328 U.S. 750 States,
"The true inquiry is not whether there has been a
variance in proof, but whether there has been such
a variance as to affect the substantial rights of an
accused.

In Carella v. California, 491 U.S. 263 it states "An
erroneous presumption on a disputed element of a crime
render irrelevant the evidence on the issue because the
jury may have relied upon the presumption rather than upon
that evidence. If the jury may have failed to consider
of intent, a reviewing court cannot hold that the
error did not contribute to the verdict. The fact
that the reviewing court may view the evidence of
intent as overwhelming is then simply irrelevant. To
allow a reviewing court to perform the jury's function
of evaluating the evidence of intent, when the jury
never may have performed that function, would give too much
weight to society's interest in punishing the guilty and
too little weight to the method by which decisions of
guilt are to be made. United States v. Cardenas, 408
Fed. Appx. 106 states "When the jury is presented
with a legally inadequate theory, the conviction
must be vacated and the case retried as to
that charge. Prosecutor placement of a variance
inside the indictment harmed petitioner right to
an fair trial. Petitioner did not have to object to this
error because it was a F.R.Crim.P. 52(a) plain
error.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ethan Jenkins

Date: 2/8/26