No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

Washington D.C

Allan Story — PETITIONER
(Your Name)

vs.

Lorie Davis — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals - fifth Circuit -
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Allan Story
(Your Name)

1391 FM 3328
(Address)

Tennessee Colony, Tx, 75880
(City, State, Zip Code)

N/A
(Phone Number)

I.

Questions Presented For Review

1. Whether the state violated Story's forth, and fourteenth, Amendment Constitutional rights. When the Waco Police lied on a Affidavit for Arrest Warrant. According to Franks v. Delaware 98 S.Ct 2674

2. Whether the state violated Story's fifth, and Sixth Amendment, Constitutional rights. When the State obtain Story's Conviction through false, and fabricated evidence, through the state's Primary, Witness testimony. According to Napue v. Illinois 79 S.Ct 1173

3. Whether the state violated story's, Sixth Amendment right to Effective Assistance of Counsel. When Counsel failed to Consult with Medical expert. According to Harrington v. Richter 131 S.Ct 770

4. Whether the State Violated Story's fifth, and Sixth Amendment Constitutional rights. When the State Suppress Favorable Evidence. According to Giglio v. United States 92 S.Ct 763

5. Whether the State Violated Story's, fifth, Sixth, and fourteenth Constitutional rights. When the Court Denied Story A meaningful OPPortunity to Present A Complete defense. According to California v. Trombetta 104 S.Ct 2528

6. Whether the State violated Story's, Sixth, and fourteenth Constitutional right. When the Court Denied A Motion for Speedy Trial. According to Barker v. Wingo 92 S.Ct 2182

Parties to Proceeding

Lorie Davis, TDCJ - Director
Edward Marshall - Counsel
Susan Miquel - Counsel
Allan Story - Petitioner

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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 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[✓] is unpublished.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 United States district court appears at Appendix B 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 _____; 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 April 5 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: April 27 2018, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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.

The Constitution of the United States of America.

We the People of the United States, in Order to form a More Perfect Union, establish Justice, insure domestic Tranquility "Provide for the Common defence", Promote the general Welfare, and secure the Blessings of Liberty, to ourselves, and our Posterity, do ordain, and establish this Constitution for the United States of America.

Amendment IV.

The right of the people to be secure in their Persons houses Papers and effects Against unreasonable searches and seizures shall not be violated and no Warrants shall issue but upon Probable Cause supported by Oath or Affirmation and Particularly describing the place to be searched and the persons or things to be seized.

Amendment V.

No Person shall be held to answer for a Capital or otherwise infamous Crime unless on a Presentment or indictment of a Grand Jury except in Cases Arising in the Land or Naval forces or in the Militia when in Actual service in time of War or Public danger Nor shall any Person be Subject for the same offense to be twice put in Jeopardy of life or Limb Nor shall be compelled in any Criminal Case to be a Witness Against himself Nor be deprived of life liberty or Property without Due Process of Law Nor shall Private Property be taken for Public use without Just Compensation.

Amendment VI.

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 defence.

Amendment XIV.

Section 1.

All Persons born or Naturalized in the United States and Subject to the Jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any Law which shall abridge the Privileges or immunities of Citizens of the United States Nor shall any State deprive Any Person of life Liberty or Property without "Due Process of Law" Nor deny to any Person within its Jurisdiction the equal Protection of the Laws.

Statement of the Case

On the Night of September 22, 2011. Story and his girlfriend Renee Davis, had a heated arguement, about Story being Promiscuous, which turned Physical, when Zachary Davis, for no Apparent reason, Struck Story, from behind, as Story, was Laying on the ground, defenseless, Renee Davis, Join in the fight, with her brother, beating Story, with weapons, while he was on the ground. Story, grabs his Knife, and Started swinging it back, and fourth, to get them up off of him, the fight stop, and Renee, and her brother, went one way, and Story, went the other way, till everybody calms down. While Story, was over this friends house, the Waco Police, came, and said that Story, was being Arrested for Murder. Story, was then taken to the Waco Police Department Headquarters, Where he had done an interogration, with detective Steve January. were Story cooperated with the Police, and told them what happen. January asks Story, where was Joyce, and Story told him there was'nt any witnesses outside, and Joyce was Nextdoor (see interrogation video at W.P.D) Then Story, was transported to the McLennan County Jail, where he sat over fifthteen months, before stepping foot in a Courtroom. In January of 2013, Story, had filed a motion for Speedy Trial, and the Judge, denied it. Story. then went to the 10th Court of Appeals, and they [redacted] Also denied it. After being incarcerated for two years, the State Comes up, with a false Witness, Joyce Akers, who was'nt at the Scene, when the incident Occurred. I told my Attorney Sam Martinez, this, and it fell on deaf ears. I Also told the Attorney while I was in the County Jail, that the Auto-Psy report will Prove my innocence, the Only that he did was mention it, at trial. Stating: One of the Stab wounds

Is to the thigh of Zachary Davis, (R.R Vol 3 page 13 Line 19) (Also see Reply to State's Responce with Supporting Memorandum and Brief) In Trial, I read A in Open Court Objecting to proceeding with Trial, because of Misconduct, in the Court with evidence, being Alterd, Doctored, tamper- with, and Secreted (R.R. VOL 2 page 5-7 Lines 23-8) At Trial, Story tried to introduce the Interrogation tape into evidence, on his behalf, and the Judge denied it, and Story requested A Self-defense Instruction, and the Judge denied it, Making Story's, trial fundamentally unfair, because it was one sided.

Story was found guilty of Murder on 12-12-2013.
The 13th Court of Appeals date Affirmed on 11-19-2015.
P.D.R. Date Refused on 2-24-2016.
11.07. Denied without written Order on 9-21-2016.
2254 Denied and Dismiss on 7-12-2017.
C.O.A. Denied on 4-5-2018.
Petition for Panel Rehearing denied 4-27-2018.

Arguement

1. Whether the state violated Story's, forth, and fourteenth Amendment Constitutional rights, When the Waco Police lied on A Affidavit for Arrest Warrant.

In Story's, habeas Petition, he Allege's that he did not go before A Magistrate Judge for A Probable Cause determination hearing, Preliminary hearing, or A Examination trial. that's required by Texas Code of Criminal Procedure. Art 14.06. Must take offender before Magistrate within 48 hours, and Art. 15.17 Duties of Arresting officer, and Magistrate. These state laws Derive from federal Law. Federal Rules of Criminal Procedure

Rule 5.1. Preliminary hearing: (A) In General
If a defendant is charged with an Offense other than a Petty Offense, A Magistrate Judge "must" Conduct a Preliminary hearing. If the state is skipping over this Process, Their not only violating State Law, their [redacted] Violating federal Law, as well, Which is a Violation of Criminal defendants Constitutional rights of "Due Process." The record is silent on this Process, and there is NO-Waiver forms. When Story, brought up that the Waco Police lied in an Affidavit to secure a Probable cause Affidavit, The State's Attorney Stated Story's, fourth Amendment Claim, is not Cognizable [redacted] on federal Habeas Corpus Review, citing Stone, Where the State has Provided an Opportunity for full and fair litigation of a fourth Amendment Claim, a State Prisoner may not be granted federal habeas corpus relief, on the ground that the evidence obtained Pursuant to an unconstitutional Arrest, search or seizure was introduced at Trial. Stone v. Powell 428 U.S 465 96 S.Ct. 3037 (1976) (see respondent Davis Answer with brief in Support page 12) But Franks v. Delaware says different Stating: This case Presents an important and longstanding issue of fourth Amendment Law. Does a defendant in a Criminal Proceeding ever have the right under the fourth, and fourteenth Amendments, subsequent to the ex parte, issuance of a Search Warrant, to challenge the truthfulness of factual Statements made in an Affidavit Supporting the Warrant, P2681 In decidina today that in Certain Circumstances, a challenge to a Warrants Veracity "must be Permitted" we derive our ground from language of the Warrant Clause, itself, but upon Probable cause, Supported by Oath, or Affirmation ... Franks v. Delaware 438 U.S. 154 98 S.Ct 2674 (1978)
So pursuant to franks the Court erred when it said that a fourth Amendment Claim cannot be challenge.

The Court also cites SwiceGood v. Alabama: Where the State has Provided an opportunity for full, and fair litigation of a U.S. Const. Amend. IV Claim the Constitution does not require that a state Prisoner be granted federal habeas corpus relief on the ground that evidence, obtained in an unconstitutional search, or Seizure, was introduced at his trial. The initial inquiry is Whether the state Provided an Opportunity for a full, and fair hearing on the U.S. Const. Amend IV issue If it did Appellate review is Precluded. SwiceGood v. Alabama 577 F.2d 1322 (5th Cir)

But in O'Berry v. Wainwright states: State Procedures, statory Provisions, waiver, deliberate bypass, or mere oversight, by Petitioners, Court-Appointed, State trial Counsel. Petitioners fourth Amendment claims were never raised during trial, So he did not have a full, and fair hearing. O'Berry v. Wainwright 546 F.2d 1204

This is exactly what happen in my case, I neverd received a copy of the "Affidavit for Arrest Warrant", the state Skiped over All State Procedures, and the Attorney's Never Address this issue, and I was deprive of this valuable Constitutional right, by the state actions, were as I could have challenge this deliberate falsehood, and would'nt be sitting here today, and the record will Confirm this.

Supreme Court Rule 10 (c) Considerations Governing review on Certiorari.

(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.

Between Stone v. Powell and Franks v. Delaware

2. Whether the state violated Story's fifth, and Sixth Amendment Constitutional rights, When the state obtain Story's Conviction through false, and fabricated evidence through the state's Primary Witness testimony. According to Napue v. Illinois 79 S.Ct 1173

This ground of error tie's into The federal Investigation of District Attorney ABle Reyna for Cronyism, Corruption, and Case fixing. Where as my case, Also was tainted by Corruption of Case fixing. The state fixed my case, by Creating a false Witness, two years, after I was incarcerated, in the Mclennan County Jail. Then Coerce this witness to testify at trial and give false, and Perjured testimony, even though, that she was Not Present at the Scene, when the incident happen. Detective Steve January, ask story, where was Joyce, Story, Stated there was No-witnesses outside, and Joyce, was "Next door" (see video DVD of Interrogation at Waco Police department Headquarters between Det. January and Story) At trial the State, during Renee Davis testimony, Ask Renee, Where was Joyce? She stated "I know she had Already left my house" (see R.R. VOL IV page 65 Line 15) So this is two people Saying that Joyce Akers, the state's primary Witness, was'nt a Eyewitness at All. Attorney Thomas West, establish early in his Investigation, that it was three People, Present, when the incident Occurred, Allan Story, Renee Davis, and Zachary Davis, Attorney West, can Confirm this. The state Allowed Joyce, Perjured testimony to go uncorrected, that Mr. Story had Assualted Renee (see R.R VOL III page 36 Line 21) and (R.R. VOL III page 57 Lines 16-25) Renee Davis, testified that Story never Assualted her or even touch her at All. (see R.R VOL IV page 32 Lines 24-25 page 33 Lines 1-16) Also there were Notes of investigator Edward McElyea, of a Phone Conversation from the Mclennan County Jail, between Story, and Ms. Davis, that says (Story) I did'nt touch you (Ms. Davis) I know you didnt (see Appendix "D" of the Memorandum of Law in Support of Petition for a Writ of habens Corpus

So this document supports Ms. Davis testimony that Mr. Story did not Assualt her. and the State knew that Joyce Akers, testimony was a Lie given the fact that this document was Dated 10-29-2011 wayed before the indictment, where as Joyce Akers, never testified before the Grand-Jury either, Nor did she talk to the police after the incident.

CaseLaw:

One of the bedrock Principles of our democracy implicit in Any Concept of Ordered liberty is that the state may Not use false evidence to obtain a Criminal Conviction Napue v. Illinois 360 U.S. 264 269 79 S.Ct 1173. Deliberate deception of a Judge and Jury is inconsistent with the rudimentary demands of Justice. Mooney v. Holohan 294 U.S 103 172 55 S.Ct 340 Thus a Conviction obtained through use of false evidence known to be such by representative of the State must fall under the fourteenth Amendment Napue 360 U.S. at 269 79 S.Ct 1173 A Conviction on testimony known to Prosecution to be Perjured as denial of "Due Process" Giglio v. United States 405 U.S 150 92 S.Ct 763 The State violates a Criminal defendant's right to "Due Process" of Law when Although Not soliciting false evidence it Allows false evidence to go uncorrected when it Appears Alcorta v. Texas 355 U.S. 28 78 S.Ct 103 Pyle v. Kansas 317 U.S 213 63 S.Ct 177

Supreme Court Rule 10 (a)

Has so far departed from the Accepted and Usual course of Judicial Proceedings or sanctioned such a departure by a Lower Court as to call for an exercise of this Court's Supervisory Power.

There is a enough factual evidence in the record to prove Mr. Story's Allegations as true that he was deprive of a Constitutional right.

3. Whether the state violated Story's, Sixth Amendment right to Effective Assistance of Counsel when Counsel fail to Consult with Medical expert.

In this Ground of error, Story, was charge with Murder, where as he plead self-defense, where it was very essential to have a Medical expert, because of the seriousness of the Charge. I brought this ground up in my 11.07 (see Reply to states Response with Supporting Memorandum and Brief), 2254, C.O.A. Application, I filed a Motion for evidentiary hearing, Motion, Motion for fact finder hearing, Motion for Adjudication hearing, (see docket sheet) Because the states primary Witness testimony was in Conflict with the Forensic evidence, and No-one Address this issue through out my whole Appeal Process. When I was in the County, I wrote to Attorney Martinez, telling him about the Autopsy report, that it will Prove my innocence, the only thing that he did was Mention it, in trial. (R.R. VOL 3 page 13 Line 19: ONE of the stab wounds is to the thigh of Zachary Davis) (see Reply to State's Response with Supporting Memorandum and Brief page 11) Right here, he was of the Opinion, that the incident did'nt happen the way that the state Portrayed it, But this does Not excuse the fact that Counsel was deficient in Failing to Consult, or hire, a Pathologist evidence expert, in Planning A trial Strategy, and in Preparing to rebut expert evidence, the Prosecution might, and later did offer. Criminal cases will arise where the only reasonable, and Available defense Strategy, requires Consultation, with experts, or introduction, of expert evidence, whether Pretrial, At trial, or both. The importance of Corroborating the Accused's testimony with Physical evidence is Paramount. In the Present case, Joyce Akers (states witness) testified that Story was on top of Mr. Davis, while he was laying on his back, when Story, Stabbed him (R.R VOL 3 page 39 Lines 1-2)

But the Autopsy report states that all three wounds were in a upward Motion (see Autopsy report) This means that Story was under Mr. Davis, when he got Stabbed, Collaborating Ms. Davis testimony, and Story's, Statement. So it was very Necessary for Story's, defense, Counsel to Consult with Medical experts, in Preparing Story's defense, A Pathologist expert could have testified, that the Stabbing happen in a different way thus Suggesting that Story's, version of the Stabbing, was Correct, and Joyce Akers, a fabrication. Because Counsel did'nt Consult with Medical experts, deprive Story, of a fair trial, And there is a reasonable Probability, that but for Counsels UnProfessional errors, the results of the Proceedings woulh have been different. The record is Clear that Counsel did not consult, or hire, a Medical expert, and this Plain Error is easily seen.

CaseLaw:

The Court held Richter's trial Counsel was deficient for failing to Consult experts on blood evidence in determining and Pursuing a trial Strategy and in Preparing to rebut expert evidence the Prosecution might and later did offer. Harrington v. Richter 562 U.S. 86 102 105 131 S.Ct 770 (2011)

Separate Opinion

Justice Ginsburg Concurring in the Judgement

In failing even to Consult Blood-experts in preparation for the Murder trial Richter's Counsel, I agree with the Court of Appeals " was not functioning As the Counsel guaranteed the defendant by the Sixth Amendment. Strickland v. Washington 466 U.S 668 687 104 S.Ct 2052 80 L.Ed. 2d 674 (1984)

While in some instances "Even an isolated error" can support An Ineffective-Assistance claim, if it is, "Sufficiently egregious and Prejudicial." Murray v. Carrier 477 U.S 478 496 106 S.Ct 2639 91 L.Ed. 2d 397 (1986)

Attorney's failure to present qualified medical testimony in support of defendant's only "viable defense" when combined with other trial errors undermines confidence in outcome of trial and amounts to Ineffective Assistance. Rylander v. State 75 S.W.3d 119 (Tex. App - San Antonio 2002 Pet Granted)

4. Whether the State Violated Story's, fifth, and Sixth Amendments Constitutional rights. When the State Suppress favorable evidence. According to Giglio v. United States.

As in all Criminal cases, Story's Attorney filed several motions One of them was motion for discovery requesting documents such as Affidavit for Arrest Warrant, Grand-Jury Transcripts, Scientific reports, data Compilation, and All, and any documents Pertaining to any states witnesses. After not being provided with any of these items, Story, read a letter in open Court stating that he object to proceeding with Trial, Because of Misconduct in the Court, with evidence being Altered, Doctored, tamper-with, and Secreted. (see R.R. VOL 2 Page 5-7 Lines 23-8) By with-holding this evidence, made story's, trial unfair, and Violated his Constitutional rights, which Ultimately led to story's, conviction, because he could not refute any of the states witnesses, or challenge their Credibility, which if had been provided, would have Created a Probability Sufficient, to undermine the Confidence in the Outcome of the Proceeding.

Case Law:

The Suppression by the Prosecution of evidence, favorable to and Requested by an Accused Violates "Due Process" where the evidence is Material either to guilt or to Punishment irr-espective of the good faith, or bad faith, of the Prosecution. Giglio v. United States 405 U.S. 150 92 S.Ct 763 31 L.Ed 2d 104

According to The Court of Appeals failure to disclose impeachment evidence is "Even more Egregious" than failure to disclose exculpatory evidence, because it threatens the defendants right to Confront Adverse Witnesses Credibility. Giglio v. United States 405 U.S. 150 92 S.Ct 763 31 L.Ed 2d 104

The Court established the rule that the knowing use by A State Prosecutor of Perjured testimony to obtain A Conviction And the "Deliberate suppression of evidence" that would have impeached And Refuted the testimony Constitutes A denial of "Due Process" Mooney v. Holohan 294 U.S. 103 55 S.Ct 340 79 L.Ed 791

Story was deprived of "Due Process" on this ground of error Supreme Court Rule 10(A)

5. Whether the state Violated Story's fifth, Sixth, And fourteenth, Constitutional rights. When the Court Denied Story A Meaningful Opportunity to Present A Complete defense. According to California v. Trombetta 104 S.Ct 2528

Story tried to introduce his interrogation video with detective Steve January, But the Court denied it, saying it was hearsay. The video was viable to story's "Defense" because Story was telling the detective exactly what happen that Night, immediately following his Arrest, that he was defending himself from the Attack of Renee, and Zachary Davis. The reason that the State did Not want the tape Admitted into evidence, Is because the Jury would have learned that the state's primary witness, Joyce Akers, was not Present, when the incident Occurred, Also Story was deprived of A valuable Constitutional right, that of presenting A

Defense, When the Trial Court, denied Story's, request for a Jury instruction, on self-defense. Because the issue was raised by the evidence. Initially the trial Court said that he would give a Self-defense instruction. (see R.R. IV at [redacted] 107) After a lunch recess, however the trial Court again brought up the self-defense instruction, and eventually refused to give it. (R.R. IV 108 123) The "Uncontroverted evidence" at trial, showed that Story, was on the ground being Assaulted by two Adults, one of whom was hitting him with a stick, that was 2-3 feet long and as thick As a female's wrist, immediately, before he stabbed Zachary Davis, even the trial Judge Conceded that deadly force was being used against Story (see R.R. IV at 109).

There was an extended informal charge conference regarding whether a self-defense instruction should be Place in the Charge of the Court regarding guilt-innocence. (see R.R. IV at 107-123) During this informal charge Conference, even the State's Attorney's were Suggesting language for the self-defense instruction, that would satisfy the trial Judge's Concerns, which indicates they thought, that the self-defense instruction was Warranted. (R.R. IV at 119-120)

The trial Court erred in refusing the request for a self-defense instruction, because the issue was raised by the evidence. Specifically there was evidence of the two statutorily-required matters: That deadly force was used against Story, and that he reasonably believed that his own use of deadly force was immediately Necessary to Protect himself against the deadly force being Asserted against him. Tex. Pen. Code § 9.32 (A)

The State Never Consider that they were violating Story's Constitutional rights to "Due Process" with the trial Court's decision to exclude evidence, and a Jury instruction on self-defense, which made the trial fundamentally, one sided, and unfair, or the Contention that these rulings deprived him of his right to "Due Process", that's guaranteed by the Constitution, that a defendant has a right to a fair trial. The trial Court's refusal to give the self-defense instruction, in the charge, eviscerated Story's defense. The Jury could not even Consider whether Story, acted in Self-defense. So it is Clear that Story, suffered some harm, and the harm Could hardly be more obvious. The harm Story, suffered was egregious by refusing to allow the Jury to even Consider, whether story acted in self-defense, the trial court's ruling affected the very basis of the case, by "eliminating any defense. Further the trial court's ruling "deprived" Story of a valuable right, "that of presenting a defense", and the trial Judge's ruling vitally affected a defensive theory, by entirely eliminating Story Sole defense, i.e. self-defense.

First we look at the evidence, When Renee Davis, testified that they attack Story, first, and had him on the ground beating him with weapons, was enough to Create a reasonable doubt of guilt in the mind of a reasonable Juror. Mathews v. United States 485 U.S 58 63 108 S.Ct 883 886 99 L.Ed 2.d 54

A defendant is entitled to a self-defense Jury instructions on the theory of self-defense, Provided that there is any foundation in the evidence, even though the evidence may be weak, insufficient, inconsistent, or of doubtful Credibility. U.S. V. Sanchez Lima 161 F. 3d 545 (C A 9 1998) Generally a defendant is entitled to an instruction as to any recognized defense for which there exists evidence Sufficient for a reasonable Jury to find in his favor. Mathews v. United States 485 U.S 58 63 108 S.Ct 883 886 99 L.Ed 2.d 54

CASELAW:

The Constitution guarantees Criminal defendants A meaningful OPPortunity to Present A Complete defense. Crane v. Kentucky 476 U.S 683 690 106 S.Ct 2142 2146 90 L.Ed 2.d 636 (1986) (quoting California v. Trombetta 467 U.S. 479 485 104 S.Ct 2528 2532 81 L.Ed.2d 413 (1984)

Under the Due Process Clause of the fourteenth Amendment Criminal Prosecutions must comport with Prevailing Notions of fundamental fairness. We have long interpreted this st- Andard of fairness to require that Criminal defendants be Afforded A meaningful opportunity to Present A complete defense. California v. Trombetta 467 U.S. 479 485 104 S.Ct 2528 2532 81 L.Ed.2d 413 (1984)

CASELAW: Taylor v. Withrow 288 F.3d 846

We hold that the right of A defendant in A Criminal trial to Assert self-defense is one of those fundamental rights and that failure to instruct A Jury on self-defense, when the in- struction has been requested and there is Sufficient evidence to Support such A charge violates A Criminal defendant's right's under the "Due Process" Clause." It is indisputably federal Law" "As Announced by the Supreme Court" that A defendant in A Criminal trial has the right to A meaningful Opportunity to present A Complete defense. California v. Trom- betta 467 U.S 479 485 104 S.Ct 2528 81 L.Ed.2d 413 (1984) see Also Chambers v. Mississippi 410 U.S. 284 294 93 S.Ct 1038 35 L.Ed. 2d 297 (1973)

Though there is no Supreme Court decision unmistakably setting down the Precise rule that a defendant is entitled to an instruction on self-defense, when there exists evidence to Support it, that rule follows inescapably not only from our legal Heritage, but also from the Supreme Court's holding in "Trombetta", that a defendant has the right to Present a meaningful defense, and thus a state Court decision Contrary to that rule, would warrant grant of habeas Corpus U.S.C.A Const. Amend. 14. 28 U.S.C.A § 2254 (d) (1) Taylor v. Withrow 288 F.3d 846

Supreme Court Rule 10 (C)

(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.

6. Whether the State violated Story's, Sixth, and fourteenth Constitutional rights, When the Court Denied a Motion for Speedy Trial. According to Barker v. Wingo 92 S.Ct 2182

Story was Arrested September 23, 2011. then he was indicted December 9, 2011. Story filed a Motion for Speedy Trial, Asserting his Sixth Amendment Constitutional right, and the Trial Court, denied his Motion with no explanation at all. Then Story went to the Tenth Court of Appeals (No. 10-13-00251-CR) and they Also denied his Motion. Story's Attorney's did Not Address this issue at Trial, Nor did his Appeal

Attorney bring it up in his direct Appeal, by Story being a layman, he did not know, that he could Continual to challenge this ground of error, by bringing it up, in a 11.07 Petition, where he did not. When Story learned that he Could, he was Already on his 2254 Petition, so he filed a Motion to Stay and Abate, so he could go back, and exhaust his State remedies, and the Western District Judge Robert Pittman, denied his motion, Story then filed a Motion to Amend his 2254 Petition, to add the Speedy Trial Claim, and the Judge granted his Motion to Amend, Then the Judge Address the Speedy Trial Claim, saying it was Procedurally Barred. A Constitutional violation did Occur, when Story was denied his Sixth Amendment right, but should Story be Penalize for Something that his Attorney's fail to do, or because he lack Knowledge, of the Law, What about the "Plain Error" that Occurred that Story was deprive of a guaranteed right. Texas Speedy Trial Act, was found unconstitutional, and because of that, there seems to be no Principal guidelines for Texas to go by, when dealing with Speedy Trial, thereby violating a defendants right without repercussion. In Story's case he was Already incarcerated over fifthteen month's, before he filed a Motion for Speedy Trial, and was denied, and the reviewing Court did not Address it, by the Barker v. Wingo Standard - That Courts balance four factors to Assess whether a defendant's right to a Speedy trial, has been violated or that from ignorance, or inadvertence from the Attorney can be Just Cause to over come Procedural default. Murray v. Carrier 477 U.S. 478 106 S.Ct 2639 It seems like I'm not getting a fair review on Constitutional Violations that's Clearly Obvious.

The Constitution of the United States of America

Amendment VI.

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 defence.

CASE LAW:

The Sixth Amendment's guaranty to an Accused of the right to a Speedy trial is fundamental and is imposed by the "Due Process Clause" of the fourteenth Amendment on the States Barker v. Wingo 407 U.S. 514 92 S.Ct 2182

Federal Criminal Code and Rules

[redacted] 3173 Sixth Amendment rights.

No Provision of this chapter shall be interpreted as a Bar to any Claim of Denial of Speedy Trial as required by Amendment VI, of the Constitution.

Supreme Court Rule 10 (a)

So Pursuant to The federal Criminal Code and Rules Rule 3173 Sixth Amendment rights The District Court erred when it said that it was Procedurally Barred.

Reasons For Granting the Petition

The reason for granting the Petition is because of The Constitution of the United States of America, which states: We the People of the United States, in Order to form a more Perfect Union, establish Justice, insure domestic Tranquility, "Provide for the Common defence" promote the general Welfare, and secure the Blessings of Liberty, to ourselves, and our Posterity, do ordain, and establish this Constitution for the United States of America. Done in Convention by the Unanimous Consent of the States Present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth.

Majority of my claims are "Due Process" violations due to reviewing Courts not adequately addressing the issue's, and that is not uniform, Practice of Laws, established by the Constitution, Where as the violation is Clearly seen. If a Person Requested a Specific right, and was denied, that means he was deprived of that right, Which is a violation of Protected rights. question one, is a Conflict between two case Laws Stone v. Powell and Franks v. Delaware one say I can, one say I can't, Questions 2,3,4, are were the Court's are Simply to Lax, and not being reasonable in their Judgement, of those issue's, Question Six, is A Legal Significance of Constitutional Magnitude, where the Supreme Court have deemed fundamental. The denial of the right to a Speedy Trial is unlike the Denial of some of the other guarantee's of the Sixth Amendment. Strunk v. United States 412 U.S. 434 93 S.Ct 2260

But question five, is extraordinary because it deals with the right to present a defense, and the Court's are not recognizing this right, because there is not a "Clearly Established Precedent" for them to go by, that logically follow from a Supreme Court decision on what the Supreme Court has not held. Caselaw supports this...

Without unambiguously identifying a Constitutional source the U.S. Supreme Court has repeatedly recoginized that the Constitution guarantee's Criminal defendant's a meaningful opportunity to present a Complete defense under the Sixth Amendment is an essential Attribute of the Adversary System. Violations of a right to Present a Complete defense are reviewed for harmless error. United States of America v. Daniel James Stanford 823 F.3d 814 (5th Cir 2016) There is no Supreme Court decision unmistakably setting down this Precise rule though the holding in Mathews has been taken by some Courts as Setting out a right to a Jury instruction on self-defense. (See e.g Taylor 154 F. Supp 2.d at 1043) (citing Mathews 485 U.S. at 63 108 S.Ct 883 for the Proposition that a defendant is entitled to an instruction on self-defense when there exists evidence to support it. This is an example of a [rara avis] A fundamental Constitutional rule dictated by Precedent, but "So UNexceptional that it has never been drawn into question in a reported case," at least a Supreme Court case." Tyson v. Trigg 50 F.3d 436 440 (7th Cir 1995)

Now in Story's case, the Judge knew that Story was Asserting his right to self-defense, when he stated: The record, the Court's own recollection, and Counsel's Affidavit, reflect that the defense strategy was self-defense. (see Findings of fact and Conclusions of Law page 5 Line 14)

Also there was Sufficient evidence that entitled Story a Jury instruction on self-defense. : We were able to locate Renee Davis. Renee Davis was a good witness for us, and she was called by the Defense. We established through her, that she, and her brother, were the Aggressors towards Applicant. (see Affidavit of Samuel Martinez page 2 second paragraph)
So my case is a "Prime Candidate" for granting the Petition, As Noted above, this issue has never came before The Supreme Court, and is desperately needed to established, a clear Precedent, for the right to Present a defense, would be meaningless were a trial Court Completely free to ignore, that defense, when giving instructions. Which happen in Story's case, that he was denied his right to a fair trial, when the trial Judge, refused to instruct the Jury on self-defense. Without this up-most important decision, Certain Courts will Continue to Abused their discretion, Were Order is needed, for not some, but All Court's, will be on one Accord, Like the Constitution intended it to be. This Issue is of great importance to the public as well, because it will [redacted] Affect thousands of People, whom been in my situtation, defending their life, which is in our'll legal heritage, to Protect ones self, and to be safeguarded by this Law, So that no-one will be Victimize by a bias Judge, for whatever reason he dislikes, or feels isn't enough evidence. This "Clearly established Precedent" Will make Judge's focus on federal Law, which is a Persons right, instead of state Law, and quit sending innocent People to Prison.
So it is of Judicial discretion, and the Primary Concern of the Supreme Court to grant and hear Arguments, presenting issues of importance, beyond the Particular facts, and Parties involved in this case, and the interest of Justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mr. Allen Storey

Date: July 10, 2018