

18-6959

No. _____

ORIGINAL

FILED

SEP 16 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

In re:

Glenn Kingham — PETITIONER
(Your Name)

Lori Davis director vs.
service to ED Marshall, post-conviction asst.
counsel to Att. Gen Ken Paxton — 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

Glenn Kingham
(Your Name)

Stiles Unit - 3060 FM 3514 - Beaumont, Tx 77705
(Address)

Beaumont, Tx 77705
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. If arbitrary government intrusion violates the fourth amendment by means of unlawful detention without probable cause, can that intrusion be used to further government interests by means of compelled compliance with demands?
2. Can government use evidence obtained and introduced at trial unconstitutionally to charge and convict an accused?
3. Can government use a made up procedure during court proceedings, that is not a statute in criminal or civil procedures, to deny a substantial right?
4. If habeas petitioner suffered "actual prejudice" found in the Brecht standard, and it had "substantial and injurious effect," is it constitutional error to deny relief?
5. Can a state deny assistance of counsel at trial just because an accused offered competency at a sanity hearing during early stages of court process?
6. Is it a violation of Due Process if the United States district court or court of appeals from one of the U.S. circuits closes the door to potential habeas relief when applicant satisfies the criteria established by 28 U.S.C. § 2254(d)(1); § 2254(e)(2) or § 2244(a)(2)(B)(i) and (2)(B)(ii) in a federal habeas?

#2A
(1 page)

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
#1 A Table of Contents.....	2
JURISDICTION.....	3
#2 A Questions Presented (1 page).....	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
#3 A Authorities (1 pgs) #4 pgs 1-4 by authority #5 pgs 1-5.....	6
STATEMENT OF THE CASE.....	6
#5 A memorandum (4 pages) (2 pages).....	6
REASONS FOR GRANTING THE WRIT.....	7
CONCLUSION.....	7
Proof of Service	

INDEX TO APPENDICES

APPENDIX A	Decision of Court of Appeals Fifth Circuit
APPENDIX B	Decision of United States District Court
APPENDIX C	Copy of Order denying rehearing
APPENDIX D	Exhibit 1 A & B attempt to obtain evidence and court's issuance of discovery order
APPENDIX E	Exhibit 2 Probable Cause (base on speeding)
	Exhibit 3 Indictment
APPENDIX F	Exhibit 4 A & B Instructions for playing video in correct GPS L3 program
	Exhibit 6 Police Report

#1 A

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 _____ 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 No. 17-20095 Feb, 05 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 18, 2018, and a copy of the order denying rehearing appears at Appendix A.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including September (date) on 17th, 2018 (date) in Application No. 18A 64.

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

Preamble
Secure the "Blessings of Liberty"

Article VI Paragraph two "Supremacy Clause"

First Amendment right to redress for grievances

Fourth Amendment right to be secure from unreasonable seizures

Fifth Amendment right against self incrimination and fair trial

~~Sixth~~ Sixth Amendment right to be confronted with witnesses and evidence pretrial and right to assistance of counsel.

Seventh Amendment right to be heard according to the common law and right to fair trial.

Fourteenth Amendment right to Due Process, fair trial and equal protection of laws.

Federal Statutes 28 U.S.C. 1254(1); §1652; §2254(d)(1) and §2254(e)(2) and most important §2241

State of Texas Statutes and Constitution:

Texas Constitution Art 1, section 10, "the accused shall have the right to demand nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor" inter alia...

State Statute 28.00 TCCRP min 10 day pretrial prep once discovery is closed

State Statute 38.03 no conviction of crime unless each element shown beyond reasonable doubt was committed by defendant

State Statute 38.23 evidence obtained in violation of law is inadmissible

Texas Penal Code 37.09 (a)(1) & (2) person commits offence in official process if. (1) conceals any record... inter alia or its availability as evidence (2) makes or presents record with knowledge of its falsity and with intent to effect outcome of investigation or official proceeding

Authority as they appear in statement of the case

1. 440 U.S. 648, 653 (1979)

P. 1

2. 392 U.S. 1, 21-22

3. 99 S.Ct. at 1399

4. 124 S.Ct. 2451

5. Terry Supra at 20

6. 131 S.Ct. 2394

7. 519 U.S. 318, 322

8. 130 S.Ct. 1195, 1198

9. 516 U.S. 99

10. 605 S.W.2d 612, 614

11. 121 S.Ct. 1536

12. 514 U.S. 927, 931

12. Atwater at 319

13. 161 U.S. 591, 598, 16 S.Ct. 644

14. ID at 599-600, 16 S.Ct. 644

15. 1 B. & S. 311, 330, 121 Eng. Rep. 730, 738

16. 406 U.S. 441, 445

17. 341 U.S. 479, 486

18. 384 U.S. 436, 467, 86 S.Ct.

19. 487 U.S. 201, 214-215, 108 S.Ct. 2341

20. ID at 211, 108 S.Ct. 2341

21. ID at 213-214, 108 S.Ct. 2341

22. 151 S.W.3d 188, 191

23. 295 W.3d 103, cert denied, 532 U.S. 944, 121 S.Ct. 1407 149 L.Ed2d 349 (2000)

24. 507 U.S. 619, 113 S.Ct. 1710, Brecht, Supra at 631, 113 S.Ct. 1710

25. Kotleakas, Supra at 776, 66 S.Ct. 1239

26. 529 U.S. 362, 120 S.Ct. 1495

27. 127 S.Ct. 649, 650 (2006)

28. 529 U.S. 420, 430-432, 120 S.Ct. 1479

29. 542 U.S. 649, 124 S.Ct. 2736

Texas Statutes
20.01 (1) Penal Code
38.23 TCCrP

#3A (3pgs)

Table of Authorities [as they appear In memorandum]

1. 440 U.S. 648, 653; 85 S.W. 3d 272, 276	(seizures)
2. 392 U.S. 1, 21-22; "	(seizures)
3. 440 U.S. at 654; "	(seizures)
4. 392 U.S. at 20	(seizures)
5. 422 U.S. 873, 878	(seizures)
6. 440 U.S. 648, 663	(seizures)
7. 449 U.S. 411, 417	(seizures)
8. 470 U.S. 675, 682	(seizures)
9. 517 U.S. 806,	(seizures)
10. 124 S.Ct. 2451	(seizures)
11. 379 U.S. 89, 91	(probable cause)
12. 438 U.S. 154, 155-56	(probable cause)
13. 119 S.Ct. 1827	(perjury)
14. 431 U.S. 174, 97 S.Ct. 1823	(perjury)
15. Id at 178, 97 S.Ct. at 1826	(perjury)
16. 384 U.S. 855	(perjury)
17. 507 U.S. 87, 113 S.Ct. 1111	(perjury)
18. 475 U.S. at 346	(Fair trial)
19. 360 U.S. 264, 269	(unconstitutional)
20. 317 U.S. 213, 216	(unconstitutional acts)
21. 294 U.S. 103, 112	(injustices)
22. 373 U.S. at 87	(Brady violation)
23. 540 U.S. 668, 691	(Brady Rule)
24. 513 U.S. 298	(new evidence)
25. 513 at 327	(new evidence)

26. 513 at 324 (evidence not presented at trial)
27. 513 at 329 (evidence that impacts juror)
28. 449 U.S. 467, 494 (manifest injustice)
29. 513 U.S. at 317 (sufficiency of evidence)
30. 414 U.S. 478, (all elements must be proven)
31. 443 U.S. 307, 318-19 (all elements must be proven)
32. 131 S.Ct. 2705 (right to evidence pre-trial)
33. 467 U.S. 479, 485 (access to evidence)
34. Tx Code of Cr Pro. ~~38.03~~ 38.23 "evidence obtained in violation of law is inadmissible"
35. Tx Code of Cr Pro 38.03 Its fundamental rule of criminal law that one cannot be convicted of a crime unless it is shown beyond a reasonable doubt that defendant committed each element of the alleged offence. U.S. Fourteenth Amend
36. 428 U.S. 465 (right to fair litigation of 4th Amend)
37. 477 U.S. 478, 495 (lenity and finality must yield to imperative of correcting unjust incarceration)

Statement of the case

On Dec. 12, 2012 a municipal police officer Tony Pham fabricated a reason to initiate a detention in his zeal for writing a traffic citation.

Once this unreasonable seizure was commenced police officer Pham asked traveler to waive fifth amendment right to remain silent and comply with government demand peacefully or forced compliance will follow.

Traveler did not consent so back up was called to surround traveler and forced entry into this private property was done by breaking a window. In fear for safety traveler fled in car and got away on foot with out positive I.D. being ascertained by police.

Since then Tony Pham presented perjured testimony before a grand jury by using incriminating evidence illegally obtained from fruit of the unlawful stop, to secure a constitutionally infirm indictment against the registered owner of the car. The state court aided Pham by denying Due Process, the confrontation clause, assistance of counsel and fair trial rights.

The only non-testimonial evidence presented to jury was on scene police video, which incorporates GPS that gives patrol cars real time, location and speed of vehicle including when breaks are applied inter alia.

The accused has been denied a copy of this pretrial. The prosecution was allowed to introduce this over three timely objections and district attorney's office conceals its full content from jury and defence, who saw the video one time at trial while GPS system was concealed by playing video in default computer systems flash player rather than GPS system incorporated into video. The video was narrated by Pham who presented perjured testimony a second time, now to state trial court jury. This time it was to back up his false police report (Included as exhibit) that states he noticed south bound vehicle traveling at a high rate of speed.

In transcripts on direct exam Tony Pham states he "paced" car at 80mph for a quarter mile through a speed zone of 65mph as his probable cause to make this intrusion (7R.R. at 25). Once Pham activated lights traveler pulled over right away (7R.R. at 30).

Statement of the case

If reasonable jurists would view Tony Phams video through the correct program (instruction included as exhibits) you will see exculpatory evidence of an unjust incarceration taking place.

Once its proven beyond a reasonable doubt that the stop was not valid at its inception any further view into video there-after or evidence obtained there-after is inadmissible fruit of an illegal stop. (Texas State statute 38.23)

This evidence was developed for the first time in federal habeas. (Federal statute §1652) Defence had motion for discovery file stamped by district clerk Jan. 04, 2013. This was 20 days before the first appearance of Jan. 24, 2013 was required. Defence asserted over and over again in transcripts pre-trial, his need for Due Process and discovery, state statute 28.01 gives minimum 10 days pre-trial preparation once discovery is closed, but state judge ignores substantial right and even states "discovery is not important." See transcripts on March 19, 2013 pg 6 & 7 the accused asserting need for evidentiary ~~hearing~~ hearing - discovery and Due Process. Once state trial court knew defendant was a claimant of his substantial rights, the court attempts to impose incompetent or ineffective ^{counsel} ~~counsel~~ that seemingly was aiding the state to deny due process and the confrontation clause. He certainly was not helping defendant with substantial rights to prove police falsified an affidavit, so the accused did not consent to this and even offered competency at a faretha hearing to speak on the matter. ~~State of Texas~~

State of Texas constitution Art I section 10 states "the accused has a right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witness in his favor"

Under this pretence defendant made it clear at three different faretha hearings that he maintains all his rights. He is not waiving any rights at this time but does desire discovery.

Statement of the case

The state trial court for the next 8 months used this tactic of court imposed attorney I did not consent too to deny substantial rights of Due Process and the confrontation clause as well as refusing me on the record hearings and even had hearings out side of my presence including an issued discovery order July 26, 2013 and compliance date of Oct. ~~21~~ 21, 2013 that was kept from me up to the date of Nov. 04, 2013 when I was told this is how this state court does things, I don't know procedure, discovery is not important and your going to have to represent yourself at trial with the benefit of a fair trial including the confrontation clause being honored pretrial. The court also stated if I bring up substantial rights again I would be defending myself from the county jail. Defence is unable to develop the facts of unlawful detention, perjured testimony inter alia under these conditions, in state trial court (~~§ 32254(e)(2)~~).

Post-conviction habeas petitioner tried for two years to obtain a copy of Tony Phams on scene video from the court appointment lawyer, including asking CAAP's for help. These efforts are included as exhibits.

Federal habeas petitioner asked for help from U.S. district court for help with discovery asserting credible evidence from investigator that the detention was unlawful and applicant has not been given full and fair litigation of a fourth amendment violation.

Its not ~~until~~ Dec. 19, 2016 after Kingham files a title 42 section 1983 complaint against my accusers that their defence team introduced a copy of Phams on scene video.

These facts of exculpatory evidence was brought to U.S. district courts attention in a Rule 60 motion for relief due to newly discovery evidence (see #84 docket entry) before fifth circuit ruled on COA.

Statement of the case

This evidence that federal habeas petitioner has developed was expressed to fifth circuit in Motion to Expedite Appeal, Motion for Reconsideration and 28.U.S.C section 2244 Application for permission to file second or successive habeas, which was denied.

I ask the Supreme Court to use its powers to prevent a miscarriage of ~~jud~~ justice.

I affirm under penalty of perjury 28.U.S.C. §1746 that all asserted here and that which is stated is true and correct so help me God.

Alan Knight

statement of case

STATEMENT OF THE CASE by authority

A municipal police officer, Tony Pham, fabricated a reason to detain an American in his zeal for writing a traffic citation. "Under the 14th amend U.S. ~~detaining~~ stopping an automobile and detaining its occupants constitutes a seizure" Del. v. Prouse, 440 U.S. 648, 653 (1979) "a seizure must be objectively reasonable in light of the circumstances of the case" Terry v. Ohio, 392 U.S. 1, 21-22, 88 S.Ct. 1868; "It is reasonable where the police have probable cause to believe that a traffic violation has occurred" Prouse, supra at 659, 99 S.Ct. at 1399.

In *Hibel v. Sixth Judicial Dist. Court of Nev.* 542 U.S. 151, 124 S.Ct. 2451 (2004) The SCOTUS says a "Terry Stop" must be valid at its inception quoting Terry supra at 20.

After this unreasonable seizure, police demand traveler waive his 5th amend right to remain silent and comply with demands or forced compliance will follow. In *J.D.B. v. North Carolina* 561 U.S. 211, 121 S.Ct. 2394 (2001) Substantial Miranda warnings protect the individual against coercive nature of custodial interrogation, they are required only where there has been such a restriction on a persons freedom as to render them in custody (*Stansbury v. California* 519 U.S. 318, 322, 114 S.Ct. 1526) Warnings are required when normal persons believed he was so restrained in his liberty that he was not free to leave (*Florida v. Powell*, 559 U.S. ___, 130 S.Ct. 1195, 1198 (2010)) the four warnings Miranda require are invariable, but this court has not dictated the words in which the essential information must be conveyed" (*Thomson v. Kechane*, 516 U.S. 99, 112 S.Ct. 457 (1995)) "Once the scene is set and the players lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry of the "Miranda" custody analysis; was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest." State Statute 20.01(i) restraint defined as substantial interference with the victims liberty through the use of deadly force, ~~with~~ intimidation or deception; see (*Sanders v. State*, 605 S.W.2d 612, 614)

statement of the case by authority

"Restraint need not be for a certain time" Cr. App. Tex. 4.

Tony Pham was ~~in~~ ^{assistant} Traveler did not consent to the abuse of authority so back up was called to surround car and forced entry was intruded by breaking a window. In fear for safety traveler fled in car and got away on foot with out positive I.D. obtained by police. In Hiibel the suspect did not identify himself because he felt it was none of their business, but the police were called out by someone that witnessed a fight between Hiibel and his girlfriend. In *Atwater v. City of Lago Vista* 121 S.Ct. 1536 (2001) In reading the 4th amend, the Court is guided by the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing. E.g. *Wilson v. Arkansas*, 514 U.S. 927, 931, 115 S.Ct. 1914. *Atwater* at 319. The police arrest her because the children were unbuckled in the front seat and the officer could plainly see this as she drove through town.

If reasonable jurists of the Supreme Court would view Tony Phams own video through the correct program (instructions included as exhibit) you will see this citys patrol cars are equipped with GPS systems which give latitude/longitude; the time including hour-minute and 1/100th of each second; the patrol cars speed through out the video including when breaks are applied inter alia.

If reasonable jurists of the Supreme Court would view Tony Phams police report included as exhibit you will see this false witness alleges he notices south bound vehicle traveling at a high rate of speed. He alleges speed was confirmed at approx. 80 mph in a 65 mph zone.

At trial on direct exam Tony Pham states he "paces" car at 80 mph for a quarter mile as his probable cause to intrude pgs 25 Line 7 thru pg 32 L2 (7 R.R. at 25). Once Pham activated lights, the traveler pull over right away (7 R.R. at 30).

page 2 (statement)

statement of the case by authority

After traveler fled on foot and got away Tony Pham ran the registration of the taurus. The car is registered the the petitioner, then Tony Pham ran my name and got picture of Drivers Licence photo ~~and~~ according to court transcripts to charge the petitioner with evading arrest with a motor vehicle. The example from Tony Phams own video show doing 81 to 84 mph to catch up to taurus and hes catching up quickly. As taurus is passing under an over pass ~~55~~ ~~55~~ when both vehicles can be seen in video and Pham approach this same over pass he must hit his breaks and slow from 81 to 77, then 74 then 70 (at 1:25:24, gps 29.5383, -95.1399) then 68 to a steady 66 during the alleged 'pace' taurus at 80 mph for a quarter mile. Tony Phams own GPS system shows him slow to 65 before he turns on his emergency lights, which was plainly the speed the taurus was traveling at the whole time.

Texas state Statute 38.23 says evidence obtained in violation of law is ~~and~~ inadmissible. The fifth amend prohibits only compelled testimony that is incriminating. See *Brown v. Walker*, 161 U.S. 591, 598, 16 S.Ct. 644, 40 L.Ed. 819 (1896) "reasonable ground to apprehend danger to the witness from his being compelled to answer... [The danger to be apprehended must be real and appreciable, with reference to ordinary operation of law in the ordinary course of things, -not a danger of imaginary and unsubstantial character, having reference to some extra ordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct". *Id.*, at 599-600 16 S.Ct. 644 (quoting *Queen v. Be Boyes* 1 B. & S. 311, 330, 121 Eng. Rep. 730, 738 (Q.B. 1861) In *Kastiger v. United States*, 406 U.S. 441, 445, 92 S.Ct. 1653, 32 L.Ed. 2d 212 (1972), the fifth Amend privilege against compulsory self-incrimination "protects against any disclosure that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used", or in *Hoffman v. United States*, 341 U.S. 479, 486, 71 S.Ct. 814, 95 L.Ed. 1118 (1951) "would furnish a link

Page 3

Statement of the case by authority

in the chain of evidence needed to prosecute"

"There can be no doubt that the fifth amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves" *Miranda v. Arizona*, 384 U.S. 436, 467, 86 S.Ct.

Whether a communication is testimonial is sometimes a "difficult question"; *Ooe v. United States*, 487 U.S. 201, 214-215, 108 S.Ct. 2341, 101 L.Ed.2d 184 (1988) the SCOTUS has stated generally, that, "it is the extortion of information from the accused, the attempt to force him to disclose the contents of his own mind, that implicates the Self-Incrimination Clause," *Id.*, at 211, 108 S.Ct. 2341 (citations omitted) while "the vast majority of verbal statements thus will be testimonial and, to that extent at least, will fall within the privilege," *Id.*, at 213-214, 108 S.Ct. 2341.

The satellite and towers the GPS systems use are miles above the earth and miles apart so in real time it may take the system a couple seconds or more to calculate the distance traveled by patrol car / divided by the time it took to go that distance to give speed of patrol car from one second to the next but there is clearly reasonable doubt that the lawfulness of the detention was not valid at its inception.

The state of Texas and its highest criminal court deems "proof beyond a reasonable doubt" means proof to a high degree of certainty. See *Lane v. State*, 151 S.W.3d 188, 191 (Tex Crim App 2004) In effect a claim of legal insufficiency is an argument that the case never should have been presented to the jury. *Westbrook v. State*, 29 S.W.3d 103, 111 (Tex Crim App 2000), cert. denied, 532 U.S. 944, 121 S.Ct. 1407, 149 L.Ed.2d 349 (2001)

The SCOTUS holds in § 2254 proceedings a court must assess the prejudicial impact of constitutional error in a state court criminal trial under "substantial and injurious effect" standard set forth in *Brecht*, 507 U.S. 619, 113 S.Ct. 1710, 123 L.Ed.2d 353. *Brecht*, supra at 631, 113 S.Ct. 1710 (quoting *Kotlerkas*, supra at 476, 66 S.Ct. 1239)

State ment of the case by authority

In Williams v. Taylor, 529 U.S. 362, 120 S.Ct. 1445, 146 L.Ed.2d 389 (2000) "Clearly established law" in § 2254 (d)(1) "refers to the holdings, as opposed to the dicta, of this court's decisions as of the time of the relevant state-court decision." Id., at 412, 120 S.Ct. 1445. Therefore, federal habeas relief may be granted here if the Texas state court's decision was contrary to or involved an unreasonable application of this court's applicable holdings, quoting Cargy v. ~~Musat~~ Musladin 127 S.Ct. 649, 650 (2006)

In another Williams v. Taylor, (at a later date), 529 U.S. 420, 430-432, 120 S.Ct. 1479, 146 L.Ed. 2d 435 (2000) Applicant is not at fault for failing to develop factual bases for claim in state court when trial court denies Due Process, the Confrontation clause, right to a fair trial. § 2254(d)(1)

According to Holcomb v. Jackson, 542 U.S. 644, 124 S.Ct. 2736, 159 L.Ed.2d 683 (2004) habeas applicant has satisfied the criteria established by 28 U.S.C § 2254(e)(2)

Memorandum

"Under the 14th Amend U.S. stopping an automobile and detaining its occupants constitutes a seizure." *Del. v. Prouse*, 440 U.S. 648, 653 (1979); *Corbin v State*, 85 S.W.3d 272, 276 (Tx Comm App 2002)

"a seizure must be objectively reasonable in light of the circumstance of the case." *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S.Ct. 1968, 20 L.Ed. 2d 889 (1968) *Corbin*, 85 S.W.3d at 276.

"Assessing the reasonableness of a search or seizure requires a balancing of the public interests and the individuals right to be free from arbitrary interference by law enforcement *Prouse*, 440 U.S. at 654; 99 S.Ct. 1391; *Corbin*, 85 S.W. at 276.

"We adopted a dual inquiry for evaluating the reasonableness of an investigative stop. Under this approach, we examine whether the officers actions were justified at its inception and whether it was reasonably related in scope to the circumstances which justified the interference in the first place *Terry v. Ohio*, 392 U.S. 1, at 20, 88 S.Ct. at 1879. See also *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975); *Delaware v. Prouse*, 440 U.S. 648, 663 (1979); *United States v. Cortez*, 449 U.S. 411, 417 (1981); *United States v. Sharpe*, 470 U.S. 675, 682 (1985); *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769 (1996); *Hill v. Sixth Judicial Dist. Court of Nev.* 124 S.Ct. 2451 (2004)

In *Beck v. Ohio*, the SCOTUS held that probable cause exists when the police have "reasonable trustworthy information [that is] sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offence" based on "the facts and circumstance within [the police's] knowledge" at the moment in question. 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed. 2d 142 (1964)

#5 A (4 pages)

"A Fourth Amendment violation exists if, "with the affidavits remaining content is insufficient to establish probable cause" quoting *Franks v. Delaware*, 438 U.S. 154, 155-56, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978)

"In general, false statements is material if it has natural tendency to influence, or is capable of influencing the decision of decision making body to which it was addressed". *Neder v. United States*, cite 95119 S.Ct. 1827 (1999) Witnesses appearing before a grand jury under oath are likewise required to testify truthfully, on pain of being prosecuted for perjury. *United States v. Wong*, 431 U.S. 174, 97 S.Ct. 1823, 52 L.Ed.2d 231 (1977) The SCOTUS said that "the predicament of being forced to choose between incriminatory truth and falsehood... does not justify perjury". Id at 178, 97 S.Ct., at 1826. Similarly one who files a false affidavit required by statute may be fined and imprisoned". *Dennis v. United States*, 384 U.S. 855, 86 S.Ct. 1840, 16 L.Ed.2d 973 (1966)

Writing for a unanimous Court in *United States v. Dunnigan*, 507 U.S. 87, 113 S.Ct. 1111, 112 L.Ed.2d 445 (1993), Justice Kennedy state that: "In determining what constitutes perjury, we rely upon the definition that has gained general acceptance and common understanding under the federal criminal perjury statute, 18 U.S.C. § 1621." 507 U.S. at 94, 113 S.Ct. 1111. Which is "false testimony concerning a material matter with willful intent to provide false testimony..."

Id..

#5A (4 pages)

"When a police officer creates false information to prosecutors, he violates the accused's constitutional right to a fair trial," *Malley*, 475 U.S. at 346

Prosecutors who knowingly uses false evidence at trial to obtain a conviction acts unconstitutionally. *Rapue v. Illinois*, 360 U.S. 264, 269 (1959); *Pyle v. Kansas*, 317 U.S. 213, 216 (1942); *Mooney v. Holohan*, 294 U.S. 103, 112 ~~113~~ (1935).

Under *Brady* "the suppression by prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87, 83 S.Ct. 1194. To assert a successful *Brady* claim, a habeas petitioner must show that: (1) evidence favorable to petitioner, (2) was suppressed by the government, and (3) the petitioner suffered prejudice. *Banks v. Dretke*, 540 U.S. 668, 691, 124 S.Ct. 1256, 157 L.Ed.2d 1166 (2004).

In *Schlup v. Delo*, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed. 2d 808 (1994).

"In light of new evidence, it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt. *Id.* 513 U.S. at 327

"petitioner has new reliable evidence... not presented at trial" *Id.* at 324 "the habeas court must assess the likely impact of all the evidence on reasonable jurors;

Id. at 329

Schlup explains, "ensures that petitioners case is truly extraordinary while still providing petitioner a meaningful avenue by which to avoid a manifest injustice." *Id.* quoting *McCleskey v. Zant*, 499 U.S. 467, 494, 115 S.Ct. 1454, 113 L.Ed.2d 517 (1991)

5A (4 pages)

Schlup gateway showing "raise(s) sufficient doubt about [the petitioner] guilt to undermine confidence in the result of the trial without the assurance that the trial was untainted by constitutional error;" hence, "a review of the merits of the constitutional claims" is justified. 513 U.S. at 317 "New reliable evidence - whether it be exculpatory, scientific evidence, trustworthy eyewitness accounts, or critical physical evidence - that was not presented at trial." Id. at 324, 115 S.Ct. 851.

The SCOTUS held a conviction based upon a record wholly devoid of any relevant evidence of a crucial element of the offence charged is constitutionally infirm." Vachon v. New Hampshire, 414 U.S. 478, 94 S.Ct. 664 38 L.Ed. 2d 666; ~~Atkins~~ v. Virginia, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 61 L.Ed. 2d 560, 573 (1979)

The "defence has the right to examine witnesses and evidence pre-trial", Bullcoming v. New Mexico 551 S.Ct. 2705 (2011) "We have long interpreted (with respect to the Due Process clause of the Fourteenth Amend U.S.) the standard of fairness to require that criminal defendants to be afforded a meaningful opportunity to ~~present~~ present a complete defence. To safeguard that right, the Court has developed what might loosely be called the area of constitutionally guaranteed access to evidence." California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed. 2d 413 (1984)

Tex Code of Crim Pro 38.23 "evidence obtained in violation of law is inadmissible."

Tex Code of Crim Pro 38.03 "Its fundamental rule of criminal law that one cannot be convicted of a crime unless it is shown beyond a reasonable doubt that defendant committed each element of the alleged offence, U.S. 14th Amend TCRP Art 38.03 (Vernon 2009)

REASONS FOR GRANTING THE PETITION

The Supreme Court has a copy of this video this minute from a habeas filed under §2241 signed July 1, 2018.

Petitioner believes the facts of this case are compelling enough on their own. Municipalities enjoy a lot of latitude enforcing traffic laws.

Sheriffs and constables are elected and have some checks and balances to the people accordingly, but these municipalities that are in less populated areas have a familiarity between the city attorney, police and magistrate.

This city and its police officers attempted to justify what they did, what they are doing to the jury by stating "it's our policy that if you don't sign our traffic ticket, we take you to jail on the spot." This was given to the jury who was under the impression this was a lawful detention.

Texas transportation code 543.002(a)(2) as applied to an alleged offence of speeding gives the accused the right to demand an immediate appearance before a magistrate if the accused refuses to sign citation, but petitioner is unaware of any specifics if it's 1:30 AM or holiday etc. and I believe the city has officers engaging with the public grossly under trained beyond the understanding of write the citation and make them sign it! If they refuse bring them to our jail. Imagine the many dollars this earns cities like this across the country.

Most Americans when their accused of a traffic violation just pay it, regardless of guilt or not because of loss from taking off work out weighs ~~defend~~ defending yourself, and cities count on this. At least part of a work day is lost and that's only if you live close. More times than not there is much more time involved between plea to trial date and it's still your word against local police who are friendly with city attorney and magistrate.

If your accused of speeding because officer says he "paced"

Reason for Granting the Petition

the accused at some said speed and the city attorney, police and magistrate work together to conceal known GPS evidence that violation was fabricated it becomes extortion behind legal means.

This city is getting away with strong arming people out of 2-3 hundred dollars under these circumstances. Worse than that is, their willing to hide evidence of their wrong doing and send a man to prison unjustly.

Reasonable jurists have the evidence within their finger tips. If your willing to spend a few minutes playing video in its correct program, it proves petitioners assertion(s) is fact.

In the interest of judicial economy once you see the truth of this unlawful detention, resources for a federal evidentiary hearing could be saved for another. Reasonable jurists would agree petitioner deserves relief now...

Jackson v. Virginia, 443 U.S. 307, 318-319, 99 S.Ct. 2781, 61 L.Ed.2d 560, 573 (1979) The SCOTUS held, "It must be determined any rational trier of fact could have found the defendant guilty of all the elements of the offence beyond a reasonable doubt." (Tx CrPr. 38.03) Hooper v State, 214 S.W.3d 9, 13 (Tx Cr App 2007); Brooks v State, 323 S.W.3d 893, 895 (Tx Crim App 2010)

Even the indictment ~~into~~ charges the narrower offence of evading detention, that Tony Pham was lawfully detaining.

Sept. 16, 2018

I affirm under penalty of perjury
that assertions are true 2805851746

Blm Kiffin

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sept 16, 2018 Ylu Kufman

Date: Sept 16, 2018

7