

No. _____

18-9153

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Albert Randolph
(Your Name)

PETITIONER

FILED

APR 24 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

The State of Texas

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Texas Court of Criminal Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Albert Randolph
(Your Name)

Rt. 2 Box 4406
(Address)

Gatesville, Texas 76597
(City, State, Zip Code)

N/A
(Phone Number)

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:

QUESTION(S) PRESENTED

The Court of Criminal Appeals erred, denying Petitioner a new trial?

District Attorney (prosecution) violated the Due Process Clause, Fourteenth Amendment of the United States Constitution?

Table of Authorities Cited

Case	Pages
Ex parte Mitchell, 853 S.W. 2d 7, (Tex. Crim. App. 1993)	9
Ex parte Richardson, 70 S.W. 3d 865, (Tex. Crim. App. 2002)	9
Thomas v. State, 841 S.W. 2d 399, (Tex. Crim. App. 1992)	9
Little v. State, 971 S.W. 2d 729 (Tex. App. 1998)	9
Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963)	6, 8
United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed. 2d 342 (1976)	9
United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed. 2d 481 (1985)	9
Kyler v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed. 2d 490 (1995)	9

Statutes And Rules

Section 22.011(a)(2), Tex. Penal Code (Vernon's 2007)	3, 6
Article 38.35(b)(2), Tex. Code Crim. Proc. Ann. (Vernon's 2007).	3, 6

Article 38.43 (b) (1), (2), Tex. Code Crim. Proce 4, 6
Ann. (Vernon's 2007).

Article 39.14 (a), Tex. Code Crim. Proc. Ann. 4, 6
(Vernon's 2007)

Article 11.07, Section 4 (a) (2), Tex. Code Crim. 3, 7
Proc. Ann. (Vernon's 2019)

Article 64.01 (a) (a-1), Tex. Code Crim. Proc. 4, 6, 7
Ann. (Vernon's 2014).

Other

U.S. Constitution, 14th Amend. 5, 8, 9.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3, 4
STATEMENT OF THE CASE	5, 6
REASONS FOR GRANTING THE WRIT	7, 8
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A *Decision of Texas Court of Criminal Appeals*

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

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 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 _____ 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 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: _____, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was April 3, 2019.
A copy of that decision appears at Appendix A.

☐ 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

Texas Penal Code, Section 22.011: (a) a person commits an offense if the person: (2) intentionally or knowingly: (A) cause the penetration of the sexual organ of a child by any means.

Texas Code of Criminal Procedure, Article 11.07, Section 4: (a) If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that: (2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.

Texas Code of Criminal Procedure, Article 38.35, Section (b) A law enforcement agency may request a forensic analysis by a crime laboratory of physical evidence if the evidence was obtained in connection with the requesting entity's investigation or disposition of a criminal action and the requesting entity: (2) submits the evidence to the laboratory.

Texas Code of Criminal Procedure, Article 38.43 provides:

(b) This article applies to evidence that: (1) was in the possession of the state during the prosecution of the case; and (2) at the time of conviction was known to contain biological material that if subjected to scientific testing would more likely than not: (A) establish the identity of the person committing the offense; or (B) exclude a person from the group of persons who could have committed the offense.

Texas Code of Criminal Procedure, Article 39.14 provides:

(a) Upon motion of the defendant showing good cause thereof and upon notice to the other parties, the court in which an action is pending shall order the State before trial of a criminal action thereon pending to produce and permit the inspection and copying on behalf of the defendant of any designated documents, which contain evidence material to any matter involved in the action and which are in the possession, custody or control of the State or any of its agencies.

Texas Code of Criminal Procedure, Article 64.01 provides:

(a) In this section, "biological material": (2) contents of a sexual assault evidence collection kit;

(a-1) A convicted person may submit to the convicting court a motion for forensic DNA testing of

evidence that has a reasonable likelihood of containing biological material. The motion must be accompanied by an affidavit, sworn to by the convicted person, containing statements of fact in support of the motion.

Fourteenth Amendment of the United States Constitution provides:

All persons born 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

September 20, 2007 Stanesha N. Ross reported to the Tyler Police Department, Petitioner sexually assaulted her. September 21, 2007 Petitioner was arrested for the alleged offense. Law enforcement collected a sexual assault evidence collection kit, a pair of panties, boxer shorts, petitioner saliva swabs, and submitted the items to the Texas Department of Public Safety, Garland, Texas for DNA testing. Tex. Code Crim. Proc. Ann. art. 38.35(b)(2) (Vernon's 2007), to establish was the petitioner the person who assaulted Stanesha N. Ross. Tex. Code Crim. Proc. Ann. art. 38.43(b)(1), (2)(A)(B) (Vernon's 2007).

October 25, 2007 Petitioner was indicted for Sexual Assault of a Child, Tex. Pen. Code § 22.01(2)(A) (Vernon's 2007). December 18, 2007 Counsel requested for disclosure of all scientific testing results, Tex. Code Crim. Proc. Ann. art. 39.14(a) (Vernon's 2007); Brady v. Maryland, 373 U.S. 83 (1963). Prior to trial, February 4, 2008 prosecution disclosed to the defense a supplemental DNA report, exculpatory evidence, dated January 29, 2008 by forensic scientist Trisha Kacer, Texas Department of Public Safety, relating to the boxer shorts.

January, 2014 Petitioner requested for DNA testing to be performed on the sexual assault evidence collection kit, because the defense did not receive any DNA

testing results relating to the sexual assault evidence collection kit - Tex. Code Crim. Proc. Ann. art. 64.01 (a)(2), (a-1) (Vernon's 2014). Request was granted and counsel was appointed. Counsel discovered a written DNA report, dated December 18, 2007, exculpatory evidence, by forensic scientist Kimberlee N. Mack, Texas Department of Public Safety, and forwarded a copy to the petitioner.

Petitioner filed a subsequent state writ of habeas corpus with the Texas Court of Criminal Appeals - Tex. Code Crim. Proc. Ann. art. 11.0754 (a)(2) (Vernon's 2019). Petitioner claim the prosecution suppressed the written DNA report, dated December 18, 2007 from the Texas Department of Public Safety.

Texas Court of Criminal Appeals dismissed the petitioner's application for abuse of writ.

Reason For Granting The Petition

Petitioner was denied his right to a fair trial, guaranteed by the Fourteenth Amendment of the United States Constitution, by the State's suppression of the written DNA report, dated December 18, 2007 by forensic scientist Kimberlee N. Mack, Texas Department of Public Safety, Garland, Texas excluding the petitioner as the person who was accused of sexually assaulting Stanesha N. Ross. The contents of the sexual assault evidence collection kit detected no spermatozoa, semen specific constituents on the vaginal, anal, or oral smear slides; presumptive test for the presence of semen was negative on the vaginal, anal, and oral swabs; the panties and boxer shorts also tested negative for the presence of semen.

The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution. U.S. Const. Amend. 14; *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963).

The District Attorney's office and its agencies has an affirmative duty under the Due Process Clause of

the Fourteenth Amendment to turn over to the accused all exculpatory evidence, which is favorable to the defendant and is material to guilt or punishment, irrespective of good or bad faith of the prosecution. U.S. Const. Amend. 14; *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995); *Ex parte Richardson*, 70 S.W.3d 865 (Tex. Crim. App. 2002); *Ex parte Mitchell*, 853 S.W.2d 7 (Tex. Crim. App. 1993), clearly supportive of a claim of innocence that it gives the prosecution notice of a duty to produce. *United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976), with or without a request from the defense in time to put it in effective use at trial. *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985); *Thomas v. State*, 841 S.W.2d 399, 407 (Tex. Crim. App. 1992); *Little v. State*, 971 S.W.2d 729, 730 (Tex. Crim. App. 1998).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Albert Randolph

Date: April 15, 2019