No. 19-1421

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Michael Wilfred LaFlamme -PETITIONER

Vs.

Lorie Davis -RESPONDANT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

The United States Court of Appeals for the Fifth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Michael Wilfred LaFlamme
(Your Name)

1200 F.M. 655
(Address)

Rosharon, Tx 77583
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

1.) Was Petitioner Prejudiced When Several Prospective Jurors Withheld Crucial Information Pertaining To Employment As Law Enforcement When Asked During Vior Dire, Resulting In Biased Partial Jury Seated And Empaneled. Violation U.S.C.A. Const. 6

2.) Abuse Of Discretion By Seating Improperly Impanelled Police Officer On Jury Over Petitioner's Objections Insisting He Had Stricken Said Juror. Violation U.S.C.A. Const. Amend. 6

3.) Was Petitioner Wrongfully Convicted Of Intoxicated Assault Penal Code 49.07 When Toxicology Blood Results Prove He Was In Fact Not Intoxicated Or Impared. Supported By Expert Testimony.

4.) Abuse Of Discretion For Twice permitting The Amending Of Grand Jury Indictment Over Written Objections By petitioner.

5.) Abuse Of Discretion By Trial Judge For Twice permitting all Police Officers Who Testified To Not Produce Video Evidence Requested VIA Defense Subpoena, In Both Trials Under same Cause.

6.) Trial Judge Abused His Discretion By Admitting Falsified Prejudicial Video Into Trial Over Petitioner's Objection(s) and Pleading(S).

The questions before this Honorable court are: Is a criminal defendant prejudiced when several prospective jurors withhold information of employment as law enforcement then being seated as juror(s), and trial judge refuses to excuse improperly impanelled police officer from jury over objection(s), and trying defendant for intoxicated assault when toxicology evidence prove no intoxication, then admitting falsified video into trial. Mr. LaFlamme humbly request this Honorable court exercise its supervisory judicial authority as the trial court has so far departed from accepted and usual couses of judicial proceedings.

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

STATE CASES PAGE NUMBER

FEDERAL CASES

STATUTES AND RULES

LIST OF PARTIES

Petitioner:

Michael Wilfred LaFlamme
TDCJ No.02045009

Represented By: Michael W. LaFlamme
TDCJ No.02045009
A.M. Stringfellow Unit
1200 F.M. 655
Rosharon, Tx 77583

Respondant

Lorie Davis
Director TDCJ-ID

Represented By: Edward Lary Marshall
Office Attny General
P.O. Box 12548
Austin, Tx 78711
(512)936-0638

Sarah Miranda Harp
Office Attny General
P.O. Box 12548
Austin, Tx 78711
(512)936-0638

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES DISTRICT COURT

Petitioner, Michael Wilfred LaFlamme, respectfully prays that a Writ Of Certiorari be issued to review the order and record of The United States District Court, Soutther District Of Texas, Laredo Division, denial of my 28 U.S.C. §2254 cause No. 5:18-cv-00134 entered on May 10, 2019, and the Fifth Circuit Court Of Appeals denial of my application for COA and Supplemental application for COA in cause number 19-40484 entered February 24,2020 then denying my motion for extension of time to file a petition for rehearing en banc then denying my petition for being untimely.entered April 20,2020. (App'x E_F).

OPINION BELOW

The United States District Court, Southern District, Laredo Division, cause No.5:18-cv-00134 denied my 28 U.S.C. § 2254 on May 10,2019. the opinion is unpublished. However, copy of order is reprinted in the Appendix of this petition at E. The order of the 5th Circuit Court Of Appeals is unpublished pursuant to 5th cir. R. 47.5 but a copy is reprinted and provided in Appendix at F adated February 24,2020. Petition for rehearing en banc was said to be untimely thus was not entertained Date April 20, 2020.also provided in Appendix at F.

JURISDICTION

The original application and supplemental application requesting COA were denied on February 24,2020. Filed motion extension for time to file petition for rehearing en banc was denied, and petition for rehearing en banc was dismissed on April 20,2020.

The jurisdiction of this court is envoked under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. 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 previously been ascertained by law, and to be informed of the nature of the cause of the accusation; to be confronted with the winesses against him; to have compulsory process to obtain witnesses in his favor, and to have the assistance of counsel.

U.S. Const. Amend 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, libertly, or property, without due process of law; nor deny to any person the equal protection of the law.

28 U.S.C. § 2254

(a) The Supreme Court, a justice thereof, a circuit judge, or a district court shall entertain an application for writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the United States Constitution or laws or treaties of the United States.

(b)(1) An application for writ of heabeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless that;

(A) Tha applicant has exhausted the remidies available in court's of the State; or

(B)(i) There is an absence of available State corrective process; or

(ii) Circumstances exist that rendure such process ineffective to protect the rights of the applicant.

(2) An application for Writ Of habeas Corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remidies available in the court's of the State.

(3) A State shall not be demmed to have waived the exhaustion requirements or be estopped from reliance upon the requirement unless the State, through counsel expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remidies available in the courts of the State within the meaning of this section, if he has the right under the law of the State to raise by any available procedure, the question presented.

(d) An application for Writ of habeas Corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim---

(1) Resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law,

as determined by the Supreme Court of The United States; or

(2) Resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding..

(e)(1) In a proceeding instituted by an application for writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a state court shall be presumed to be correct. The applicant shall have the burden or rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develope the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that--

(i) A new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) A factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) The facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for the constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of the factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a

determination of the sufficiency of the evidence to support such determination. If the applicant, because of indegency or other reason is unable to produce such part of the record, then the state shall shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall deteermine the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official record of the State court, duly certified by the clerk of such court to be true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h). Except as provided in section 408 of the Controlled Sub. Act, in all proseedings brought under this section, and any subsequent proceeding on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by rule promulgated by the Supreme Court pursuant to statutory authority; Appointment of counsel shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetentce of counsel during federal or State collateral post-conviction proceedings shall not be ground for relief if a proceeding arising under section 2254.

STATEMENT OF THE CASE

Mr. LaFlamme's first trial for Intoxicated Assault was from September 14-17,2015 in the 406th Judicial District Court, Webb County, Laredo Texas, cause number 2013-CRW-000160-D4, with the Honorable Dick Alcala Presiding. Towards the latter of this first trial, Mr. LaFlamme had to interject, firing his two court appointed attorney's, and proceeded pro se and merely spoke a few words of common sense to the jury causing the jurors to question the veracity of LPD officer Marco A. Rodriguez's, who served as the lead investigator, testimony. During deliberation all questions from the jurors to the court were as follows: "Since there's a reasonable dispute as to testimony of M.A. Rodriguez, may we have the reporter's notes as to why an arrest was not made, signed by presiding juror." See reporter's record first trial[2] (4 RR 91 at 12-18). Reporter looked up the question: "So even though you had probable cause to arrest, why didn't you arrest on that day?"

Answer from LPD officer M.A. Rodriguez: "We were still gathering evidence to conclude our investigation." (4 RR 92 at 11-15).

Presiding judge declared a mis-trial based on the juries inability to reach a unanimous verdict.[2](4 RR 100 at 14-16) Date 09/17/2015.

[2]Clerk's record will be cited as CR, preceded by volume number and followed by page number. The reporter's record will be cited as RR, preceded by volume then followed by page then line.

In the second trial Mr. LaFlamme proceeded pro se and was convicted by jury of the offense Intoxicated Assault Texas Penal Code 49.07 , on December 16,2015 in cause number 2013-CRW-000160-D4, jury assesed punishment at 16 years TDCJ-ID. [2](6 RR 213-15)

During second trial Mr. LaFlamme reintroduced his blood and using expert State witness proved no intoxication or imparemnt. beyond a reasonable doubt. This being an established principle based on scientific law. (5 RR 153 at 21-25).

Direct appeal to the Fouth Court Of Appeals filed 08/23/16 appellate cause number 04-15-00806-CR, which was affirmed Juna 14, 2017. Opinion by. Irene Rios.(App'x A).

Petition For Discretionary Review was submitted to Texas Court Of Criminal appeals, on 12/18/2018,then was denied on, 2/07/2018. (App'x C)

Writ Of habeas Corpus pursuant to C.C.P Art. 11.07 was filed with the clerk of trial court then forwarded to Texas Court Of Criminal Appeals on 6/4/2018, then was denied without written order on 6/13/18 in cause number WR-88,540-01. Motion for rehearing and reconsideration dismissed on 7/9/2018. (App'x D).

Mr. LaFlamme then filed a petition for Writ Of Habeas Corpus 28 U.S.C. § 2254 No.5:18-cv-00134 (Dkt 1-2) on September 11,2018 Styled Michael LaFlamme V. Lorie Davis addressing (8) grounds for relief. Denied on May 10,2019. See Order attached hereto (App'x E)

Mr. LaFlamme then filed an application for COA on July 1,2019, supplemental application COA , cause number 19-40484 with Fifth Circuit Court Of Appeals which was denied on February 24,2020. (App'x F)..Petition For Rehearing En Banc No action by court 4/20/220. COVID-19 Untimely

GROUND(S) FOR REVIEW:

1. Petitioner's U.S.C.A. Const. Amend. 6 Were Violated When Prospective Jurors Withheld Information Of Employment As Law Enforcement Officials And Family Of State Witness When Questioned During Voir Dire Then Being Seated As Jurors
(Dkt. 1 at 6 and Dkt.2 at13-20 Juror Cards Tab-B)
28 U.S.C.A § 2254 Civil Action No.,5:18-00134

On December 11,2015 in the 406th Judicial District Court, Webb County Cause No.2013-CRW-000160-D4. Presecutor J. Rodriguez conducted voir dire for the State Of Texas and posed the question: "Just a couple of housekeeping matters. We already talked to you. Your father is a witness in this case. Do any of you know the prosecutors in this case? That's me, Mr. Joaquin Rodriguez, Ms. Christina Alva, or Mr. Claude Goldsmith II. Keep them up and I'm going to call on you. Juror 10, how do you know the prosecutors?"

Prospective juror, Laredo police officer, 10 Carlos Adan, juror card #158238 stated: "I know you guys because I work with the City Of Laredo police Department." I secure search warrants with you guys and I also present cases before judge Oscar Hale." [2](2 RR 43 at 19-25) [2](2 RR 44 at 1-7). Officer Adan then suggested he could be a fair and impartial juror. [2](2 RR 45 at 10-13).

Another potential juror stated: "I work with you (Mr. Rdz.) for a long time, I worked with the DA's office up intil July." Another stated: "I know Christina. I used to date her brother." Yet another stated: "I work with Christinas husband." [2](2 RR 44 at 10-23).

Then Venireperson (13) Andrea Flores juror card #126839,

admitted to knowing all police officers who are testifying since since she is a communications supervisor for LPD and she also claimed that she could be fair and impartial. ²(2 RR 45 at 13-22). Prosecutor Rodriguez then asked: "Now, how about officer Marco Rodriguez? You know him? Number 13 and Number 10, same question. Number 10, could you be fair?" LPD officer Adan stated, yes. Could you number 13? Answer. Yeah. ²(2 RR 47 at 9-25)

Prosecutor Rodriguez then asked: "How do you know LPD officer Alberto San Miguel?" "I've known him since high school." "Now, Number 24?" Potential juror answered: "I'm a police officer." ²(2 RR 48 at 2-12). Again all these prospective jurors claimed they could be fair impartial jurors despite all being police officers.

Now, how about a Jose Luis Manrique? He's a licensed vocational nurse. What is your number? Potential juror: "20." And how do you know Mr. Manrique? "He's my husband." Okay. Now, with that relationship that you have with your husband, could you still be a fair and impartial juror in this case? Maria Luz Manrique juror card #211003 stated:"yes." ²(2 RR 49 at 17-25)²(2 RR 50 at 1-4). Another prospective juror #22, Edna G. Garcia card #221641 who is a victims advocate for MADD stood up to assist prosecutor Rodriguez with his housekeeping matters and stated: "I want to go back to your housekeeping because we did not go through the last two, which I was very ready to pick up my card to answer. (Who do you know that was intoxicated?)" Mr. Rodriguez: "Okay. Okay." Edna stated: "The last two points in your housekepping." Prosecutor Rodriguez: "All right. Let me ask that question now. Thank you very much for reminding me,

Number 22, and I'm sorry. I don't mean to---there's a lot of people. I'm not going to call you by name." What. Call her by name? Potential juror: "That's okay" ²(2 RR 52 at 21-25) ²(2 RR 53 at 1-8). Edna also claimed that she could be fair. Prosecutor Rodriguez then asked: "How many of you who raised your card to this queation cannot withhold your judgment until after the presentation of evidence, because you feel so strongly about your experience with either a drunk driver or someone you know who was operating a motor vehicle while intoxicated? I'm going to name them out, so keep them up til I call you. 1, 2, 6, 25, 27, 42, 45. Did I call 6?" ²(2 RR 54 at 7-17).

By the time Mr. LaFlamme stepped up to the podium he was very aware the venire had been constructed with ill intent by seeding an enormous amount of law enforcement officials, family and wives of the State witnesses and others with a predisposed view of guilt towards the accused so after questioning them he asked: "Just to wrap this up real quick, by a show of hands, who works in law enforcement, is married to someone in law enforcement, or has kids, so forth, any aspect that would be a biased individual in this case. Could you please raise your hand at this time?" ²(2 RR 130 at 7-11•.

The following venireperson raised their cards: 43, 33, 45, Number 1, Number 7. Any one else? 33, I already have you. 54?

Potential juror asked: "Because they work in law enforcement?" The trial judge asked: "Because they work in law enforcement, that's your question?"

Mr. LaFlamme: "Yes. You as well, number 17? Any body else? Number 60. ²(2 RR 130 at 12-25).

Because venireperson #9 Martha Lidia Rodriguez, juror card #147582, seated as juror 5 (jury foremen) delibertly withheld crucial information concerning her marriage to police officer Michael Johannes, and her direct relationship to LPD officer Marco A. Rodriguez, who served as the lead investigator in the present case, and testified in the first trial and subsequently testified in this second trial was "unreasonable" and had this information been disclosed Mr. LaFlamme would have either struck her from the venire, or attempted to challenge her for cause.

See guilty verdict signed by Martha Lidia Rodriguez provided in Appendix at B and juror card provided in Supplemetal Application for COA labeled Tab-B.1 cause number 19-40484 filed in the Fifth Circuit.

Additionally, prospective juror #18 Alfredo M. Vidaurri, card #207290 works for The Department Of Homeland Security and withheld this information and was seated as juror #9 on my jury. Also, Irma Laura Davila card #169228, is married to retired LPD officer Jose Davila Jr. and withheld this information and Irma was seated as juror number 11.

Moreover, Maria Luz Manrique, who is married to State witness Jose Luis Manrique, The States (DRE) who is not a drug recognition expert, he is an LVN at a local methadone clinic and dispences nacotics to drug addicts, was seated on my jury as #10.

In U.S. V. Scott, 854 F.2d 697 (5th Cir. 1998). The trial Court Judge asked: "Are any of you now serving as law enforcement officials, or are any close relatives? By that I mean a spouse, child, anyone dependant on you, a close relative? David Buras was

present when two prospective jurors volunteered that their spouses were law enforcemnt officials so the trila judge sua sponte removed them from the venire.

The trial judge found that in light of the other jurors response and subsequent discharge, Buras's failure to say that his brother was deputy sheriff in office that did some of the investigative work in Scott's case was "unreasonable." The trial judge further found that had the information been diclosed, he would have removed Buras for cause. U.S. V. Scott, at 698.

In the Scott case the court merely used the "unreasonable" standard which warranted a new trial when Buras withheld crucial information about his brother. Furthermore, the trial judge after asking who is a law enforcemnt official or married to a law enforcement official immediately removed two prospective juror for being married to law enforcement officials.

In the present, Mr. LaFlamme, a pro se defenadnt, had to address the court saying: "I have them all written down on my tablet. I mean, I would say a good 75%, just to be fair of these people, either work or are involved in law enforcemnt in some way, or even MADD."

The trial judge stated: "That alone is not a challenge for cause."

Mr. LaFlamme: "But what are the odds of that happening by chance?" [2](2 RR 138 at 2-10).

"The Supreme Court has held that whether an individual juror is is disqualified on account of bias is a question of fact." Caldwell V. Thaler, 770 F. Supp. 2d 849, 870 (S.D. Tex. 2011) Citing Patton V. Yount, 467 U.S. 1025, 1036 (1984).

The United States District Court, Southern District Of Texas Cited: Uttecht V. Brown, 551 U.S. 1,9 (2007), Claiming; "[d]eference to the trial court is appropriate because it is in a better positionto asses the demenor of the venire, and of the individuals who construct it, a factor of critical imporatnce in assessing the qualifications of potential jurors." (quoting Uttecht V. Brown, 551 U.S. 1,9 (2007).

In the present the trial judge claimed that just because 75% of the venire was law enforcement, family of State witnesses, or MADD was not a challenge for cause. [2](2 RR 138 at 2-10).

In the present, Martha Lidia Rodriguez, was seated in the venire as #9, LPD officer Carlos Adan was #10, LPD Communication Supervisor Anrdea Flores was #13, Guadalupe Julian Pena III (the son of accidendt reconstructionist G.J. Pena Jr.) was #7 and all of them #10, #13, #7, had extensive questioning during voir dire admitting to being police,oLPD employee, son of police officer involved in my case, so clearly Martha delibertly withheld crucial information of her marriage to law enforcemnt official, and being the sister of LPD officer M.A. Rodriguez, when asked because she was surrounded by law enforcemnt and had ample opportunity to reveal this information but chose to remain silent. This can only be viewed as "unreasonable." #10 LPD officer Carlos Adan was seatd as juror #6 Martha seated as #5. Clear error, Structural error. Fundamental Fairness?

If Martha had provided this crucial information LaFlamme would have utilized a peremptory strike to remove her from the venire.

The trial judge in under an obligation to protect every constitutional right offered to the accused and he should have immediately excused all police officers, law enforcement officials family of State witnesses and MADD seeding the venire objected to.

Not only did the officer entrusted with the responsibility of summon the venire act corruptly by selecting police officers, family of police and State witnesses, but he strategically situated them directly in front of Mr. LaFlamme as he vetted the venire. This can only be construed as structural error.

In accodance with 28 U.S.C. § 2254(e)(2)(B). A petitioner will only be granted relief if: "The facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for the constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense."

As addressed in ground (3) Mr. LaFlamme used expert State witness Eduardo Padilla and proved no intoxicsation or impairement beyond a reasonable doubt yet he was convicetd of Intoxicated assault. This is shocking and must be corrected.

Mr. LaFlamme requests that this Honorable Supreme Court Of the United States exercise its supervisory judicial authority and grant Writ Of Certiorari as it would be realidy apparent that the trial court has so far departed from accepted and usual courses of judicial proceedings which has trampled on Mr. LaFlamme's civil liberties and constitutional right to be tried by an impartial jury under the sixth amendment.

2.) VIOLATION OF U.S.C.A. Const. Amend. 6 BY DISALLOWING THE REMOVAL OF IMPROPERLY IMPANELED POLICE OFFICER ON JURY OVER OBJECTIONS AND PLEADINGS

Mr. LaFlamme was given 45 minutes to vet 71 venirepersons, where at the conculsion of voir dire the trial judge unilaterally devided the venire from 71 prospective jurors to 37. Then he allowed 15 minutes for Mr. LaFlamme to review his notes, allocate his strikes and submit his sheet to the clerk. [2](2 RR 138 at 21-24) [2](2 RR 139 at 13-25).

The court then gave Mr. LaFlamme confusing instructions concerning the allocation of peremptory challenges: "The 10. And again, 1 through 37, you get 10." Mr. LaFlamme: "Okay. So I 86 10 of them?" The Court: "You have up to 10. You don't have to use all 10. If you need to use all 10, you have up to 10 to use." [2](2 RR 140 at 16-22). Tex.Code.Crim.P. 35.14 A peremptory challenge is made to a juror without assigning any reason thereof.

As the names of prospective jurors were being called out Mr. LaFlamme immediately stood up and objected to the seating of a improperly seated police officer, Carols adan, insisting he had stricken him from the venire. [2](2 RR 144 at 11-15)

The trial court claimed Mr. LaFlamme had only used 7 of the 10 peremptory challenges allotted by statute. [2](2 RR 144 at 25) [2](2 RR 145 at 1).

Mr. LaFlamme reviewed his list of strikes and called LPD officer Carlos Adan, by name, requesting he approach the bench so he could be challenged for cause. [2](2 RR 145 at 3-4).

Tex.Code.Crim.P. 35.16(a). A challenge for cause is an objection made to a particular juror alleging some fact which rendures the juror incapable or unfit to serve on the jury.

The trial judge questioned LPD officer Adan concerning his employment, and if that would make him biased or prejudiced in this

case what was your response to that?" Officer Adan: "No. I feel that each one on their own could be exonerated." The Court: "All right. You may take a seat." [2](2 RR 145 at 9-20).

The simple fact that officer Adan wanted to be seated as a juror by suggesting he could be a fair impartial juror with no bias towards the accused is absurd. When in fact, LPD officer Adan juror card #158238, seated as juror #6 on Mr. LaFlamme's jury was a hyper biased juror who used his size, training in law enforcement, and authoritative demeanor to coerce, bully and persuade the other jurors, not named in ground one, to surrender guilty verdicts against petitioner. Jurors addressed in ground one were complicitly involved. See the following:

> Mr. LaFlamme: "Well if we are going to go into the current state of the law there are two people rolling their eyes and shaking their heads while pointing fingers at the police officer that's in the jury box with them and their making signs."
>
> The Court: "Who are you referring to sir?"
>
> Mr. LaFlamme: "The large gentleman that has got his hand to his beard. He's the one that persuaded them that's tanted the jury."
>
> The Court: "Who's rolling their eyes towards who, you said?"
>
> Mr. LaFlamme: "One of the people on the jury. One of the jurors is rolling their eyes and making it very clear."
>
> The Court: "Towards who?"
>
> Mr. LaFlamme: "Somebody on the jury, your Honor."
>
> The Court: "I understand, but you're saying he's rolling his eyes towards someone?"
>
> Mr. LaFlamme: "Uh-huh."
>
> The Court: "Towards who?"
>
> Mr. LaFlamme: "The large man sitting there, the police officer particularly."
>
> The Court: Who is he rolling his eyes towards?"
>
> Mr. LaFlamme: "He's looking at me."
>
> The Court: "But you're looking my way."
>
> [2](6 RR 90 at 18-25) [2](6 RR 91 at 1-23).

Mr. LaFlamme brought to the attention of the trial court that the police officer was improperly impaneled and that he had stricken him from the venire. This was known prior to the jury being sworn in and impaneled thus giving sufficient time to cure the courts mistake.

The court admitted the clerk had inadvertently, failed to strike prospective juror #25 Maria Del Rosario Casarez, due to the Court sua sponte removing her from the venire and she made it onto the jury and the court allowed their mistake to be corrected but refused to remove the improperly seated police officer over petitioner's objections.[2](2 RR 144 at 8-10).

Petitioner LaFlamme pleaded with the court: "I ask you to please consider striking him on the list, based on I feel that he would be biased in making a decision." [2](2 RR 146 at 1-3.)

Of course prosecutor Rodriguez claimed that he and his fellow comrades believe that officer Adan could be a fair and impartial juror. [2](2 RR 146 at 10-11).

The court told Mr. LaFlamme that based on Mr. Adan's response I don't know that I have any alternative but to allow him to continue serving. LaFlamme pleaded: "He's a domanant person. He's in law enforcement. I thing he could persuade the jury with his background in law enforcemnt, and I don't think he would be a good juror. I intended to strike him but like I said my notes were really primitive. [2](2 RR 146 at 21-25).

The United States District Court copletely misstated the fact that are supported by the record.by claiming: "The trial court did not err by permitting Mr. Adan to remain on the

panel, particularly given that no party moved to strike him for cause.." See Order provided in Appendix (E) at 10.

It is clear from the record that Mr. LaFlamme objected to the seating of the police officer on the jury. It is clear that Mr. LaFlamme insisted he had stricken him from the venire and brought the clerks mistake to the attention of court immediately as the names of the prospective jurors were being called out.

It is also clear from the record that Mr. LaFlamme called officer Adan by name so he could approach the bench so he could be challenged for cause. The record also relect that the clerk inadvertently failed to remove 25 and the court allowed their misstake to be corrected but disallowed petitioner to excuse the police officer from the jury.

The United States District Court erroneously denied relief when dismissing petitioner's 2254 as there is no way a judge should be allowed to force a LPD officer who works for the same police department as all officers who testified and personally knows all the prosecutors and trial judge and is clothed in the color of State law and part of the prosecution. This is a huge violation of Mr. LaFlamme's U.S.C.A. Const. Amend. 6 right to be tried by an impartial jury.

In Murry V. Carriur, 106 S. Ct. 2648. The habeas petitioner must show not merely that the error at trial created a possibility of prejudice but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.

The error(s) addressed above are subject to muliple error analysis, all of which are of constitutional dimensions, as the

the Fifth Circuit has held: That the denial or impairment to peremptory challenge is reversable error without a showing of prejudice. Citing U.S. V. Brousard, 987 F.2d 215, 221 (5th Cir. 1994).

In Ross V. Oaklahoma, 487 U.S. 81, 108 S.Ct. 2273, the defendant used a peremptory challenge to remove a prospective juror who should have been removed for cause claiming that juror was impartial had to focus on the juror who ultimately sat and not the juror who should have been removed for cause.

In the present, Mr. LaFlamme objected to the venire stating: "I have them all written down on my tablet. I mean, I would say a good 75%, just to be fair of these people, either work or are involved in law enforcement, or even MADD.

The trial Court: "That alone is not a challenge for cause." [2] (2 RR 138 at 2-10).

The trial judge abused his discretion by not allowing Mr. LaFlamme to correct the court's mistake in peremptory challenge, even though the clerk made a mistake with 25, then refused to remove the police officer when Mr. LaFlamme objected to his seating and challenged him for cause, then played dizzying word games of samantics when LaFlamme brought to the attention of the trial court that juror #6 LPD officer Carlos Adan was bullying the other jurors.

"The Supreme Court has held that whether an individual juror is disqualified on account of bias is a question of fact." See Caldwell V. Thaler, 770 F. Supp. 2d 849, 870 (S.D. Tex. 2011). Citing, Patton V. Yount, 467 U.S. 1025, 1036 (1994).

As stated in the Ross court the error for not removing a juror for cause claiming the juror was impartial so the defendant useed a peremptory strike had to focuse on the juror who ultimately sat and not the juror who should have been struck. Citing Ross V. Oaklahoma, 487 U.S. 81, 108 S. Ct. 2273.

Corruption runs deep in Laredo. See Laredo Morning Times/ post Sunday, October 19,2014. Headline, "A thirst for power and money and greed led to one of the most corrupted years Webb County has seen in its more than 160--year history." Petitioner LaFlamme was being tried at a time when Lared was embroiled in corruption so he had every constitutional right to be highly suspicious of a Laredo Police officer being on his jury. Especially in light of the injured woman in my case is Edna Rios Gonzalez, and her close relative is Deputy Sheriff Jesse Gonzalez and he was just elected County Commissioner Pct.1 running under the same ticket as Isidro "Chilo" Alaniz who is the District Attorney in Webb County. Also, Edna's son is Laredo police officer Jesus Robert Gonzalez who was allegedly at the scene of the accident that occured on 11/3/2011 in which this auto-ped accident Intoxication Assault criminal prosecution resulted.

It would appear that the court's in Laredo have been over-come and hijacked by corruption.

Petitioner LaFlamme humbly requests that this court exercise its supervisory judicial authority and herby grant writ of certiorari, and put a stop to these egregious violations of constitutional rights that have taken place in the trial court.

3.) VIOLATION Of U.S.C.A. Const. Amend. 5, 14

Convicted Of Intoxicated Assault

And Blood Proved No Intoxication
28 U.S.C. § 2254 No.5:18-00134
(Dkt. No.1 at 7)(Dkt. No.2 at 26-30)

The United States District Court Denied relief on Mr. LaFlamme's ground of Blood Toxicology Evidence proved no [illegible] impairment beyond a reasonable doubt supported by expert State witness testimony. [2](2 RR 153 at 1-25).claiming the ground is unexhasted. See order Appendix E at 10.

However, the exhaustion doctrin requires that State courts be given the initial opportunity to address and if necessary to correct, alleged depravations of Federal Constitutional Rights. Castillo V. Peoples, 489 U.S. 346,349 (1989): Anderson V. Harless, 459 U.S. 4, 6 (1982). In order to satisfy the exhaustion requirement, a claim must be presented to the highest court in the State for review. Richardson,V Procuner, 672 F.2d 429, 431 (5th Cir. 1985): Carter V. Estelle, 677 F.2d 427, 443 (5th Cir. 1982). For purpose of exhaustion the Court Of Criminal Appeals, is the highest court in the State of Texas. Richardson, 672 F.2d at 431. To proceed before that court a petitioner must either file a petition for discretionary review Tex.R.App.P. 68. 1, or an application for post conviction writ of habeas corpus Vernnon's Ann art. 11.07. See ground (3) of writ of habeas corpus 11.07 Cause No.WR-88,540-01, and memorandum in support at 16-19 addressing "No Intoxication In Blood."

An applicant may have a meritorious claim, if he can show that there was no evidence of a crucial element of the offense with which they were convicted. Ex Parte Barfield, 697 S.W. 2d

420 (Tex.Crim.App. 1985):CEx Parte Perales, 215 S.W. 3d 418 (Tex. Crim.App. 2007).

This ground was fairly presented in a procedurally correct manner to the highest court in the State of Texas, thus exhaustion requirements have been met.

Additionally, the Court Of Criminal Appeals received my 11.07 on 6/4/2018, then denied it without written order on 6/13/2018. My application supported with memorandum addressed (8) grounds for relief referencing the reporter's record, then supported with exhibit's/documents. Thus, it would be objectively unreasonable to for the Distrct court to suggest that the Court Of Criminal Appeals even reviewed my writ before denying it without written order.

No Intoxication Beyond Reasonable Doubt

Mr. LaFlamme insisted on reintroducing his blood toxicology results, requesting to show chain of custody, proper packaging as blood was drawn on 11/3/20 and placed in a seald container in front of the phlebotomist. [2](4 RR 127 at 8-11). But arrived by Fed Ex on 1/5/2012 in a white paper bag with gray top blood tubes (2). See State's Exhibit 25 Tab F in appendix 2254 5;18-cv-00134.

During cross examination of LPD officer Marco A. Rodriguez petitioner asked: "Why did it take you so long for you to write your sase supplemental report?" Answer M.A. Rodriguez: "The case supplemental report goes with the arrest. We need to gather as much evidence as we could, which we were waiting on the blood results to arrive. Then once we recieve that it was going to be presented to the district attorney's where it was approved by the DA's office [2](4 RR 114 at 14-23).

So, LPD officer M.A. Rodriguez was waiting on toxicology blood results to arrive to confirm there was probable cause to arrest petitioner LaFlamme and charge him with the criminal offense, Intoxicated Assault Penal Code 49.07.

However, under cross examination of forensic Scientist, Eduardo Padilla, who being the State expert witness from the DPS Crime laboratory in Austin Texas confirmed there was nothing intoxicating or impairing in blood results.

Mr. LaFlamme asked: "Can you say beyond a reasonable doubt that I was intoxicated at the time of the blood draw based on the results?" [2](5 RR 152 at 17-20).

Toxicologist Eduardo Padilla Unequivocally stated: "No. Like I said before, I'm here to testify on my report and the possible effects that these drugs may have on a person, But I can't say that somebody was impaired beyond a reasonable doubt, not on my report alone. No. I can't say that." [2](5 RR 153 at 21-25)

Intoxication is the single most crucial element of the offense (Intoxicated Assault Texas Penal Code 49.07) as without the essential element, there is no crime under 49.07 thus on the face of the record the State failed to prove the charged offense.

In Re Winship, 397 U.S. 358, 90 S. Ct. 1068 (1970). The Supreme Court expressly [held] that the reasonable doubt standard "is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides substance for the presumption of innocence that bedrock axiomatic and elementray principles who's enforcemnt lies at the foundation of the administration of criminal justice."

The 5th Circut Court Of Appeals has steadfastly stated that,

"we review the district court's conclusion of law de novo and will uphold its findings of fact unless they are clearly erroneous. Thompson V. Cain, 161 F.3d 802 (5th Cir. 1998): Gochicoa V. Johnson, 118 F.3d 440 (5th Cir. 1997). The same no holds true in habeas corpus cases proceedings. Donahue, Supra at 1003 28 U.S.C. § 2254(d)(2).

It would be highly inappropriate for the trial court to be allowed to stratigically infiltrate a jury with police officers, and family and wives of State witnesses and law enforcemnt officials, and have officer Rodriguez, officer J.R. Gonzalez, Sgt. Anothony Gomez, and officer Charles A. Rosales plagiarize eachothers case supplemenatal reports two years after the fact (inappropriate sharing of information) which spoke a criminal offense into existance, and testify from said reports to wrongfully convict a pro se defendant of a fabricated offense. See Case Supplemenatl reports provide in appendix of memorandum (Dkt. No.2) TAB-C Tab C.1, Tab C.2, Tab C.3, Tab C.4, Tab C.5.

In accordance with 28 U.S.C. § 2254 (d)(2) An application for writ of habeas corpus will be entertained if: Resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings. 2254(d)(2).

Under 28 U.S.C. § 2254(e)(2) (B). The facts underlying the claim would be sufficient to establish by clear and convincing evidence that but not for the contitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense. 2254(e)(2) (B).

Mr. LaFlamme has provided this court with compelling facts that warrant the granting of certiorari as he has proven by a preponderance of evidence supported by expert testimony, juror card, and the reporter's record that he was wrongfully convicted and maliciously prosecuted forintoxicated assault when he was in fact not intoxicated.

GROUND(S) 4-6 FOR REVIEW:

Ground 4:Abuse Of Discretion For Twice permitting The Amending Of Grand Jury Indictment Over Written Objections.

Ground 5:Twice Permitteng All Police Who testified In Both Trials To Not Produce Video Evidence Requested VIA Defense Subpoena.

Ground 6:Trial judge Abused His Discretion By Admitting Falsified Video Into Trial Over petioner's Objections and Pleading(s).

Mr. LaFlamme is not waiving the opportunity to proceed with these grounds for review. At present our Prison Unit is on lock-down and we are being quarantined due to COVID-19 pandemic and I do not have access to law library material necessary to properly research applicable law in order to effectively present them to this court. Also, I do not have sufficient typewriter ribbon, corrective ribbon, typing paper, needed to draft additional grounds.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted

By. Michael LaFlamme

Michael Wilfred LaFlamme
TDCJ No.02045009
A.M. Stringfellow Unit
1200 F.M. 655
Rosharon, Tx 77583
Pro se

Date 5/18/2020