No. 19-1421

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL WILFRED LAFLAMME,
Petitioner,

Vs.

Bobby Lumpkin,
Respondant.

ON PETITION FOR WRIT OF CERTIORARI TO
THE FIFTH CURCUIT COURT OF APPEALS

PETITION FOR REHEARING

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

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PETITION FOR REHEARING AND SUGGESTIONS IN SUPPORT

Now Comes, Michael Wilfred LaFlamme, pro se petitioner, and prays this court grant rehearing pursuant to Rule 44, and thereafter, grant him a writ of certiorari to review the opinion and record of The Fifth Circuit Court Of Appeals Denial Of a COA Cause No.19-40484, entered Feburary 24,2020, the taking of no action on Petition for rehearing en banc, due to being untimely because of COVID-19 pandemic lock down and quarantine entered April 20,2020. Also to review the opinion of the united States District Court, Southern District Of Texas granting of respondants motion for summary judment, Denial of all Petitioner's motion(s) and Dismissing my case with prujudice under cause number 5:18-cv-00134 entered May 10,2019 signed by Obama appointed activist judge Marina Garcia Marmolejo. In support of petition, Mr. LaFlamme offers the following.

STATEMENT OF FACTS

In Ground one of LaFlamme's application for writ of certiorari No. 19-1421 at 8, he clearly demonstrated how the officer entrusted with the responsibility of summoning the venire acted corruptly by seeding an enormous number of law enforcement officials, family and wives of the State witnesses, Mothers Against Drunk Drivers, and others with a pre-disposed view of guilt towards the accused placing him at an extreme disadvantage as the State was allowed to slam their fist down on the scale which did in fact obliterate the impartiality requirement of the jury and fundamental fairness as artculated in the 14th amendment.

Additionally, several prospective jurors withheld crucial information when asked about employment as law enforcement, marriage to law enforcement, and or any relation to law enforcement, which prevented intellegent exercise of peremtory strike allowing law enforcement officials, wives and sisters of law enforcement officials, to infiltrate my jury with inherantly biased jurors.

The trial judge claimed that just because 75% of the venire was law enforcement, and family and wives of law enforcement and even MADD was not a challenge for cause.(2 RR 138 at 2-10) See writ of certiorari at 12, and supplemental application for COA at 3-14 cause number 19-40484. Apparently "[d]erference to the trail court is appropriate because it is in a better position to asses the demenor of the venire, and of the individual who constructed it, a factor of critical importance in assing the qualifications of potential jurors." (Citing **Uttecht** V. Brown, 551 U.S. 1,9 (2007).

Moreover. Because juror #5 Martha Lidia Rodriguez Juror card #147582, (jury Foreman) withheld crucial information concerning her marriage to police officer Michael Johannes, and direct relationship as being the sister of LPD officer Marco A. Rodriguez who conducted the investigation in Mr. LaFlamme's case, when asked during voir dire was "unreasonable" and had this information been disclosed Mr. LaFlamme would have exercised a peremptory strike to remove her from the venire.

Furthermore. Prospective juror #18 Alfredo M. Vidaurri, card #207290 works for The Department Of Homeland Security and he

wihheld this information and was seated as juror #9 on my jury and if Mr. LaFlamme had known he was law enforcement he would have excercised a peremptory strike to remove him from the venire.

The Fifth Circuit Court of appeals should have granted a COA as the above stated facts are in conflict with their ruling in U.S. V. Scott, 854 F.2d 697 (5th Cir. 1998). Where the trial judge asked the venire. " 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 enforcement officials so the trial 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 disclosed, he would have removed Buras for cause. U.S. V. Scott, at 698.

This is exactly what happened in the present case except there were several prospective jurors who withheld crucial information pertaining to employment as law enforcement official then being seated as jurors on a pro se defendants jury. This is not merely unreasonable as is the standard of review in the Scott case but this was a criminal act to wrongfully convict an innocent man of a fabricated offense.

"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 (1984).

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.

Voir Dire is Anglo French meaning "to speak the truth." And when prospective jurors Martha Lidia Rodriguez, Alfredo M. Vidaurri and Irma Laura Davila all withheld crucial information as it relates to their marriage to law enforcement officials, employment as law enforcement officials, and their direct relationship to law enforcement officials involved in my case was deception by omission.

The standard of review for a COA is. Congress mandates a prisoner seeking postconviction relief under 28 U.S.C. § 2254 has no automatic right to appeal a distrct court's denial or dismissal of a petition. Instead, a petitioner must first seek and obtain a COA. Slack V. McDanial, 529 U.S. 473,481 (2000). A prisoner seeking a COA need only demonstrate "a substantial showing of a denial of a constitutional right." 28 U.S.C. § 2254(c)(2) A petitioner satisfies this standard by demonstrating that jurist of reason could disagree with the district court's resolution of his constitutional claim, or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. Slack, Supra at 484.

Because LaFlamme has made an overwhelmingly substantial showing that his 6th amendment right to be tried by an impartial jury and a trial that is fundamentally fair under the due process

clause of the 14th amendment to the United States Constitution were flagrantly violated in the trial court as first the officer entrusted with the responsibility of summoning the venire acted corruptly by seeding an enormous number of law enforcement officials, family and wives of law enforcement, wives of State witnesses and even MADD throughout the venire which prevented intelligent exercise of peremptory challenge, and the trial judge claimed that just because 75% of the venire is law enforcement is not a challenge for cause, then have several prospective jurors remain silent of their employement as law enforcement, relationy of State witnesses and law enforcement which allowed them to infiltrate my jury so they could agressivly coerce other jurors to relinquish guilty verdicts thus the Fifth Circuit Court Of Appeals should have granted a COA so Mr. LaFlamme could proceed further on appellate review.

Doctrin of implied juror bias is that there are certain factual circumstances in which no reasonable person could not be effected in his actions as a juror and in which constitution refuses to accept any assurances to the contrary is "Clearly Established" federal law, and thus may serve as basis for Federal habeas relief under AEDPA. U.S.C.A. Const. Ament. 6 28 U.S.C. § 2254 (d)(1).

I beseech this Honorable Supreme Court of the United States to exercise its supervisory judicial authority and grant writ of certiorari and order a new trial.

PROCEDURAL HISTORY OF GROUND TWO:

United States Supreme Court Mr. LaFlamme submitted his Petiton for writ of certiorary to the clerk of the court Re: Michael Wilfred LaFlamme V. Lorie Davis No.19-1421 filed on April 29,2020 and placed on docket June 25,2020.

October 5,2020 the Clerk Of the Court Scott S. Harris denied my writ of certiorary.

Pursuant to Supreme Court Rule 44 "rehearing." Although Lorie Davis is no longer acting Director of TDCJ so now named her successor one, Bobby Lumpkin, named as respondant.

Ground Two:

Mr. LaFlamme 's U.S.C.A. Const Amend. 6, 14
WERE VIOLATED WHEN A LAREDO POLICE OFFICER
WAS FORCED ONTO HIS JURY OVER CHALLENGES
AND OBJECTIONS

(Cause No.19-1421) (COA Cause NO.19-40484) U.S. Southern 5:18-cv-134)

Mr. LaFlamme was placed at an exrteme disadvantage when the trial court incorrectly seated an officer of the law on his jury when he had utilized a peremptory strike to remove him from the venire.

As addressed in petitioner's writ of certiorari at 15 Mr. LaFlamme was given just 45 minutes to vet 71 venirepersons, where at the concluson of voir dire the trial judge unilaterally devided the venire from 71 prospective jurors to 37. He then allowed 15 minutes for the State and defense to review their notes, allocate their strikes and submit their strike sheets to the clek.(2 RR 138).

As the names of the prospective jurors were being called out Mr. LaFlamme immediately stood up and objected to the seating of the improperly seated police officer, Carlos Adan, insisting he had stricken him from the venire using a peremptory challenge. (2 RR 144 at 11-15). Tex. Code.Crim. P. 35.14 A peremptory challenge is made to a juror without assigning any reason thereof.

The Supreme Court in Swain V. Alabama, 380 U.S. 202, 209 85 S. Ct. 824 Holds: "The right to peremptory challenge is one of the most important rights secured to the accused because it safeguards the accused right to be tried by an impartial jury.

The trial judge in the present case told the pro se defendant, Mr. LaFlamme, that just because 75% of the venire in which the jury was chosen was law enforcemnt officials, Laredo police officers, family of the State witnesses and police officers involved in my case and Mothers Against Drunk Drivers, was not a reason to challenge for cause. (2 RR 138 at 2-10). 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.

As to what extent does the trial judge have the broad discretion and authority to arditrarily decide that a prospective juror's employment as a law enforcement official standing alone is not a challengable objection then what does this precautionary measure even exist for and or do in way of safeguarding the constitutional rights secured by the 6th and 14th amendments that are offered to the accused? There is no inpartiality requirement of the jury and we now have a police State and freedom is lost.

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.

The juror in the present case is a Laredo Police Officer, Mr. Carlos Adan, 24 years and heads the narcotics unit for LPD, Juror Card No.158238 signed 12/9/15 which is just two days prior to voir dire proceedings in Mr. LaFlamme's case. 12/11/15

Doctrine of implied juror bias is that there are certain factual circumstances in which no reasonable person could not be effected in his actions as a juror and in which constitution refuses to accept any assurances to the contrary, is "Clearly Established" federal law, and thus may serve as basis for federal habeas relief under AEDPA. U.S.C.A. Const. Amend. 6, 28 U.S.C. § 2254(d)(1). It is only in extreme sitiations that implied juror bias may be found. Some examples might include a revelation that the juror is an actual employee of the prosecuting agency, that the juror is a close relative of one of the participents in the trial or the criminal transaction, or that the juror was a witness or somehow involved in the trial. Laredo police officer actively working for the Laredo Police Department is an employee of the prosecuting agency as without the testimony of the Laredo police officers the State did not have a case thus making him unfit to be seated as juror.

Therefore. When Mr. LaFlamme objected to his sesating on the jury insisting he had utilized a peremptory challenge to remove him from the venire and the trail court judge admitted his clerk

had failed to remove venire person number 25 as the Court had sua sponte removed her and she was called to be seated as a juror and the court corrected their mistake but refused to remove the improperly seated police officer this violated the impartiality requirement of the jury and fundamental fairness secured by the 14th amendment.

On dirict appeal LaFlamme V. State, cause No.04-15-000806-CR, the fouth Court Of Appeals, Justice Irene Rios entered a finding on June 14,2017 claiming there was no evidence of a mistake in the exercise of LaFlamme's peremptory challenges or in the seating of the jury members. See Appendix "A" at 5 in writ of certiorari No.19-1421. Opinion Of Fourth Court Of Appeals. See - Clerk's Record (2 RR 144 at 1-3) Certiorari at 17.

This is incorrect as the trial judge clearly stated on the record that the clerk inadvertently failed to remove venireperson number 25 and she was called to be seated as juror 12 so the court ordered the mistake be corrected with number 12 but disallowed LaFlamme to correct the mistake with the Laredo Police officer Carlos Adan. (2 RR 144 at 1-3) Writ Certiorari at 17.

Moreover. the Fouth Court Of Appeals refused to even acknowledge the juror in question is a Laredo Police Officer who works for the same police department that investigated my case and personally knows all officers who testified against the accused thus making him unfit to searve as a juror for his implied bias as he would be subconsciously inclined to side with the testimony of his fellow officers than that of the defendant.

The jury being the trier of fact and when police officers are forced onto a defendants jury over his objections, pleadings

and insistence he had stricken him from the venire, the intended purpose of the impartiality requirement of the jury has been compramised placing the accused at an extreme disadvantage which violated his right to a fair trial.

Such a showing of pervasive actual prejudice can hardly be thought to constitute anything other than the prisoner was denied "Fundamental Fairness" at trial since for justice, Stevens, a constitutional claim that implicates fundamental fairness compels review regardless of possible procedural defalt. Citing, Smith V. Philips, 102 S. Ct. 940 (1982). See juror card provided in appendix of Supplemental application for COA No.19-40484 at Exhibit "B." Appendix at B, B.1, B.2

Petitioner LaFlamme requests this Honorable Supreme Court Of the United States exercise its supervisory judicial authority and hereby grant petition for rehearing and order a new trial as it would be readily apparent that the trial court has so far departed from the regular course of judicial proceedings.

Ground Three For review:

FACTUAL INNOCENTS

Mr. LaFlamme's Due Process Rights Were Violated When He Was Wrongfully Convicted Of Intoxicated Assault When Blood Toxicology Proved He Was Infact Not Intoxicated Or Impaired Supported Expert Testimony.

See Fed. Writ No.19-40484 (Dkt. 1 at 7) Memo. (Dkt. No.2 at 26-30)

Mr. LaFlamme insisted on reintroducing his blood toxicology results in the second trial to prove the lead investigator Marco A. Rodriguez falsified probable cause as blood clearly showed that there was nothing intoxicating or even slightly impairing in the results. This fact was confirmed by State witness Eduardo Padilla, who being the forensic scientist for the DPS Crime lab in Austin Texas. See State's Exhibit 25 Tab-F in appendix of 2254 cause No.5:18-cv-00134. (5 RR 153 at 21-25).

During cross examination of LPD officer Marco A. Rodriguez petitioner LaFlamme asked: "Why did it take you so long to write your case supplemental report?" Answer from Marco 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 received that is was going to be presented to the distrct attorney's where it was approved by the DA's office. (4 RR 114 at 14-23).

According to the lead investigator in Mr. LaFlamme's case officer Rodriguez concluded his investigation when the toxicology results returned from the DPS Crime Lab in Austin confirming there was factual evidence of intoxication for the DA's office to charge and arrest petitioner LaFlamme for the criminal offense intoxicated assault penal Code 49.07

Unfortunately the only intoxicant found in Mr. LaFlamme's blood was 0.01 Mg/L of morphine which is less than a mere scintilla thus is equated with "No evidence" and will support nothing more substantial than a surmise or conjecture. see Fort Worth & Denver Ry Co. V. Williams, 375 S.W. 2d 279 R.Evid. 596.

Additionally, Toxicologist have a 0.1 Mg/L cut off for most drugs of interest so this could very well be a false positive and when the State need prove all elements of the indictment beyond a reasonable doubt where intoxication being the single most crucial element of intoxicated assault Penal Code 49.07 the State failed miserably in proving the charged offense. This is exactly why law enforcement officials, Laredo Police Officer, and family and wives of law enforcement and State witnesses were forced onto my jury.

Finally. under cross examination of the forensic scientist Eduardo Padilla, who tested the blood and produced his official report (State's Exhibit 25) he confirmed there was nothing intoxicating or even slightly impairing in the blood evidence: Petitioner LaFlamme asked: "Can you say beyond a reasonable doubt that I was intoxicated at the time of the blood draw based on the results?" (5 RR 152 at 17-25).

Prosecutor Goldsmith frantically objected several times trying to prevent the truth from coming out but his objections were overruled by the court and the toxicologist answered truthfully. and stated: "No. Like I said befor, 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." (5 RR 153 at 1-25).

Intoxication is the single most crucial element of the charged offense (Intoxicated Assault Texas Penal Code 49.07) as without this essential element, there is no crime under 49.07 and th

this was an illegal conviction as the blood evidence proved no intoxication or impairment which is contrary to the cherged 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 bedroch axiomatic and elementary principles who's enforcement lies at the foundation of the administration of criminal justice."

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

Mr. LaFlamme has provided this Honorable Supreme Court with overwhelming and compelling material facts clearly demonstrating how his constitutional rights were egregiously violated in the trial court and he has illegally convicted of a intoxicated assault when he was in fact not intoxicated.

In the intrest of justice, and to maintain public confidence in the lagal system, this conviction must be reversed and Mr. LaFlamme immedately released from custody. Also garnt any other relief this honorable court deems appropriate and which Mr. LaFlamme may be entitled.

Respectfully Submitted

Michael W. LaFlamme

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Petitioner pro se

CERTIFICATE OF SERVICE

I, Michael Wilfred LaFlamme,do hereby certify that a copy of the foregoing was mailed, postage pre paid, this 28 day of October 2020, to: Edward Larry Marshall, Assistant Attorney general, P.O. Box 12548, Austin, Tx 78711.

Michael W. LaFlamme
Petitioner

Persuant to 28 U.S.C. § 1746, undersigned hereby certifies under penalty of perjury that the informetion provided above is true and correct to the best of my knowledge.

Signed this 28th day of October 2020. Michael W. LaFlamme

No. 19-1421

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL WILFRED LAFLAMME,

PETITIONER,

V.

BOBBY LUMPKIN,

RESPONDANT.

CERTIFICATE OF GOOD FAITH

Comes Now, Michael Wilfred LaFlamme, and makes certification that his petition for rehearing is presented to this court in good faith pursuant to Rule 44, Mr. LaFlamme further states the folloing:

1.) This Court entered its judgment denying petitioner a Writ of Certiorari on October 5,2020. petitioner believes that he presented this Court with adequate grounds to justify the granting of rehearing in this case and said petition is brought in good faith and not for delay.

Furthermore, petitioner believes that based upon the law of this court and facts of this case, LaFlamme is entitled to relief which has been unjustly denied to him. He further believes that if the Fifth Circuit Court Of Appeals are continually allowed to incorrectly apply the prejudice standard of Swain V.

Alabama, denial of right to peremptory challenge, denial of the intellegent exercise of peremptory challenge as articualted in U.S. V. Delgado Jr., 350, F.3d 520 (6th Cir. 2003) Also see, Fed. Rule.Cr.Pro. Rule 24 18 U.S.C.A. The implied bias of denying challenge for cause of Laredo Police officer, then forcing said police officer, Carlos Adan, onto pro se defendants jury over his objections, pleadings and challenges which did in fact obliterate the the "Fundamental fairness" requirement on the 14th amendment as ruled on in Smith V. Philips, 102 S. Ct. 940 (1982) and denial of challenge for cause in Ross V. Oklahoma, 487 U.S. 81, 108 S. Ct. 2273, a number of people will be denied their constitutional right to due process.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28 day of October, 2020 Michael W. Lee Flores

Additional material from this filing is available in the Clerk's Office.