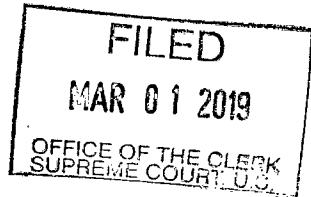


19-5271 ORIGINAL  
No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES



Demarko Cooper — PETITIONER  
(Your Name)

vs.

Lorie Davis — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S.D.C., Northern District of Texas, Dallas Division  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Demarko Cooper # 1789486  
(Your Name)

Coffield unit, 2661 Fm 2054  
(Address)

Tennessee Colony, Tx 75884  
(City, State, Zip Code)

(903) 928-2211  
(Phone Number)

QUESTION(S) PRESENTED

Was the lower court's decision to deny habeas corpus relief to the Petitioner in this cause contrary to, and an unreasonable application of, clearly established federal law with respect to the violations of Demarko's constitutional rights, as demonstrated within this petition?

## 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:

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## OTHER

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**

**[X] For cases from **federal courts**:**

The opinion of the United States court of appeals appears at Appendix B to the petition and is

reported at unknown to Petitioner; 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[ ] is unpublished.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 A to the petition and is

reported at unknown to Petitioner; 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[ ] is unpublished.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[ ] is unpublished.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 December 12, 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: \_\_\_\_\_, 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 \_\_\_\_\_. 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

1. Due Process - Fourteenth Amendment, U.S. const.
2. Effective Assistance of Counsel - Sixth Amendment, U.S. const.
3. 28 U.S.C. § 2254

## STATEMENT OF THE CASE

### I. Procedural History

Cooper challenges the Director's custody of him pursuant to a judgment and sentence of the 1st Criminal District Court of Dallas County, Texas, in cause number F-1127720-H, styled *The State of Texas v. Demarko Deon Cooper*. SHCR at 73–74.<sup>1</sup> Cooper was charged by indictment with aggravated robbery with a deadly weapon with an enhancement paragraph alleging a prior conviction for delivery of a controlled substance. *Id.* at 53. The State also filed a notice to enhance punishment alleging a prior conviction for robbery. CR at 13. A jury found Cooper guilty as alleged in the indictment, found the enhancement paragraphs to be true, and on May 3, 2012, sentenced him to fifty years' imprisonment. *Id.* at 73; 4 RR 68; *Cooper v. State*, No. 05–12–00671–CR, 2013 WL 4568311, \*2 (Tex. App.–Dallas 2013) (modifying the judgment to reflect that Cooper entered a plea of not true to each of the enhancement paragraphs).

On August 26, 2013, the Fifth Court of Appeals of Texas modified the judgment to reflect that Cooper entered a plea of not true to the enhancement paragraphs, but affirmed the judgment of the trial court in all other aspects in an unpublished opinion. *Cooper v. State*, 2013 WL 4568311, \*2. Cooper did not file a petition for discretionary review (“PDR”).

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<sup>1</sup> “SHCR” refers to the written pleadings contained within *Ex parte Cooper*, No. 82,517–01 (Tex. Crim. App. 2015); “Supp.” refers to the supplemental written pleadings contained in Cooper's SHCR; “CR” refers to the Clerk's Record of pleadings and documents filed with the trial court; “RR” refers to the Reporter's Record in Cooper's state trial court proceeding in cause no. F-1127720-H, proceeded by the volume number and followed by the page number.

Cooper filed an application for state writ of habeas corpus challenging his confinement as unlawful on February 13, 2014. SHCR at 18. The Texas Court of Criminal Appeals ("TCCA") denied the application without written order on October 7, 2015.

Cooper filed a petition for writ of habeas corpus in the United States District Court, For the Northern District of Texas, Dallas Division on May 5, 2016.

## II. Statement of Facts

The State summarized the facts presented at trial in its brief to the Fifth Court of Appeals of Texas as follows :

Saleem Lakhani ("Saleem") testified that he and his father Hakim Ali ("Hakim"), owned a convenience store called "Dash-In Grocery" in Garland, Texas. (Id. at 14-15). Saleem testified that he and his father arrived at the store on Saturday November 12, 2011 shortly after 7:00 am. (Id. at 19; 79-80).

Just before 8:00am, a man walked into the store and began talking to Hakim. (Id. at 20). The man was a black male, approximately five feet five inches tall,

and weighed between 150 and 170 pounds. (*Id.* at 24–25.) He was wearing a red baseball cap and red t-shirt. (*Id.* at 25.) Saleem noticed that Hakim, who often had difficulty communicating with customers in English, appeared to be having trouble communicating with the man. (*Id.* at 20.) Saleem decided to go assist his father. (*Id.*)

As Saleem approached his father and the man, the man pulled out a gun and fired a shot. (*Id.*) The man told Saleem to open the cash drawer, but the man would not stop shooting. (*Id.* at 22.) Saleem believed the man fired four or five shots. (*Id.* at 23.) The man pointed the gun at both Saleem and Hakim. (*Id.*) Saleem tried to reach the button to activate the silent alarm, but he could not reach it. (*Id.* at 24.) Saleem testified that as the man was getting cash from the register, Hakim began to come around the counter. (*Id.* at 25, 33.) The man dropped the cash and ran from the store. (*Id.*) The red cap the robber was wearing was found by the police on the ground outside of the store. (*Id.* at 47, 59.)

On November 17, 2011, Saleem observed a photo lineup. (*Id.* at 50.) Saleem identified one of the men from the lineup as the robber; however, the man he picked was not Petitioner. (*Id.* at 52.) On December 19, 2011, Saleem observed a second photo lineup in which he identified a man as the robber. (*Id.* at 53.) The man Saleem identified was Petitioner. (*Id.* at 107.)

Officer James Rogers (“Officer Rogers”), a senior forensic investigator with the Garland Police Department, testified that he was called to process the scene at the Dash-In Grocery on November 12, 2011. (*Id.* at 56–58.) The items that Officer Rogers collected from the crime scene included: a cap that was on the pavement behind the building, a bullet jacket from inside the building, a DNA swab of the counter, currency that was handled by the robber, and a

cardboard display that was stepped on by the robber. (*Id.* at 59.) Officer Rogers collected the hat because he was informed that it fell from the robber's head when he ran away. (*Id.* at 60.) Officer Rogers was unable to lift any fingerprints from the cash register or a cardboard display. (*Id.* at 59.)

Detective I.C. Hale ("Detective Hale") of the Garland Police Department testified that he was assigned to investigate the robbery of the Dash-In Grocery. (*Id.* at 67-68, 70.) At the start of his investigation, Detective Hale spoke with Saleem and reviewed the surveillance tape from the store. (*Id.* at 71-72.) Detective Hale was informed that the robber dropped a cap when he was running from the store. (*Id.* at 72.) Detective Hale was able to observe this on the surveillance video. (*Id.* at 72.) Witnesses informed the detective that the suspect got into a gold Ford Explorer. (*Id.*) They were able to provide Detective Hale with the license plate number for the vehicle. (*Id.*) This was Detective Hale's first lead as to the identity of the robber. (*Id.* at 75.)

Detective Hale determined that the Ford Explorer belonged to a woman named Shawnda Williams ("Ms. Williams"). (*Id.* at 76.) The address listed on the vehicle registration, however, was not Ms. Williams' current address; therefore, Detective Hale asked the Richardson Police Department for assistance in locating the vehicle. (*Id.* at 78.) Detective Yoshida, with the Richardson Police Department, was able to provide Detective Hale with the address where the vehicle was seen on November 4, 2011. (*Id.*) Detective Hale located the vehicle and had the vehicle seized and impounded on November 16, 2011. (*Id.* at 79.) No fingerprints were found in the vehicle. (*Id.* at 81.)

The day after Ms. Williams' vehicle was impounded, she contacted Detective Hale and agreed to come to the police department to speak with the detective. (*Id.* at 78-79.) Ms.

Williams informed Detective Hale that the vehicle belonged to her, but she had loaned it to a man that she knew as Robert James. (*Id.* at 81.) Ms. Williams knew which apartment Robert James stayed in, but she did not know anything else about him. (*Id.*) Ms. Williams told Detective Hale that Robert James borrowed the vehicle on the Thursday before the robbery and returned it the Tuesday after the robbery. (*Id.*) The day after Detective Hale met with Ms. Williams, she called him to let him know that the man she knew as Robert James had called her and told her to say she did not know anything about where her car had been. (*Id.* at 82.)

Detective Yoshida was able to provide Detective Hale with the name Robert Leon Simpson (“Mr. Simpson”) for the man that Ms. Williams knew as Robert James. (*Id.*) Detective Yoshida also informed Detective Hale that Mr. Simpson had reported a robbery a week or two before the robbery of the Dash-In Grocery, and the suspect in that case was named Daniel Norris (“Mr. Norris”). (*Id.*) Detective Yoshida suggested that Mr. Norris might be a person of interest in the Dash-In Grocery robbery. (*Id.*)

Detective Hale testified that at that point in the investigation, both Mr. Simpson and Mr. Norris were persons of interest in the Dash-In Grocery robbery. (*Id.* at 83.) Detective Hale obtained a photo of Mr. Norris and had Saleem look at a photo lineup containing the photo. (*Id.*) Saleem picked another person’s photo. (*Id.*) Hakim also looked at the photo lineup, and he picked Mr. Norris’s photo. (*Id.*) Detective Hale testified that Mr. Norris fit the general description of the robber. (*Id.* at 84.) An arrest warrant was issued for Mr. Norris and Mr. Simpson. (*Id.* at 86, 89.)

When Mr. Norris was arrested, he spoke with Detective Hale. (*Id.* at 86.) Detective Hale showed Mr. Norris the surveillance video from the Dash-In Grocery. (*Id.*) Mr. Norris informed

Detective Hale that the man in the video looked like him, but was not him. (*Id.*) A buccal swab was collected from Mr. Norris. (*Id.* at 87.) Detective Hale testified that the investigation continued because Detective Hale was skeptical about whether he had the right man. (*Id.* at 88.)

As for Mr. Simpson, Detective Hale stated that he was in his sixties, did not fit the description of the shooter, and did not look like the man in the surveillance video. (*Id.* at 90.) However, Detective Hale believed that Mr. Simpson was involved in the robbery because Ms. Williams had loaned him her vehicle. (*Id.* at 91.) Detective Hale believed that Mr. Simpson may have been the driver or a passenger at the time of the robbery. (*Id.*)

Mr. Simpson came to speak with Detective Hale at the police department and provided a voluntary statement. (*Id.*) Mr. Simpson informed Detective Hale that he had borrowed Ms. Williams' vehicle, and that two men, named "Marco" and "Black," were in the vehicle with him during the robbery. (*Id.*)

The man Mr. Simpson referred to as "Black" was identified as James Wafer ("Mr. Wafer"). (*Id.*) Mr. Wafer, who was approximately forty-nine or fifty years old and weighed between 240 and 250 pounds, did not fit the description of the gunman. (*Id.* at 93.) Mr. Simpson also told Detective Hale that the hat that was worn by the shooter belonged to Mr. Wafer. (*Id.* at 94). Mr. Simpson identified "Marco" as the shooter and Mr. Wafer as the driver. (*Id.* at 95).

Mr. Williams initially identified a photograph of a man named DeMarco Crist as the shooter "Marco." (*Id.* at 99.) He later told Detective Hale that Crist was not the shooter. (*Id.* at 99, 134.) Mr. Simpson also gave Detective Hale two potential addresses where the shooter could be found. (*Id.* at 96.)

Detective Hale went to 11601 Audelia, an address provided by Mr. Simpson, and knocked on the door of apartment 174. (*Id.* at 103.) The woman who answered the door informed Detective Hale that she believed the man he was looking for stayed at apartment 276. (*Id.* at 104). The apartment manager also said that it was possible the man Detective Hale was looking for stayed at apartment 276. (*Id.*)

Detective Hale contacted Dallas Police Officer Colunga, who was familiar with the apartments located at 11601 Audelia and a man named "Marco." (*Id.* at 105.) Officer Colunga put the location under surveillance. (*Id.*) Through the surveillance, they obtained the name of Petitioner, Demarko Cooper. (*Id.*) Officer Colunga arrested Petitioner. (*Id.* at 106.)

Detective Hale obtained a buccal swab from Petitioner. (*Id.* at 109.) Detective Hale had Saleem come back to the police department and look at a photo lineup that included Petitioner. (*Id.* at 107.) Saleem identified Petitioner as the shooter. (*Id.*)

Rachel Burch ("Ms. Burch"), a forensic DNA analyst at the University of North Texas Center for Human Identification, performed forensic testing on the red baseball cap that was collected from the crime scene. (*Id.* at 59, 154.) Ms. Burch testified that she was able to get DNA results off the cap. (*Id.* at 158.) Ms. Burch testified there was DNA from more than one person on the cap. (*Id.* at 161.) Ms. Burch explained that there was a major contributor and a minor contributor; meaning that one person contributed more DNA than the other. (*Id.*) Mr. Norris was excluded as a contributor. (*Id.* at 163.) Petitioner "matched the major contributor at all 15 locations, therefore, he could not be excluded as the major contributor" of the DNA on the cap. (*Id.* at 164.) The DNA profile of the major contributor would appear in one out of 466

quintillion individuals. (*Id.* at 165.) Ms. Burch explained that statistic by stating that if there were 71 billion planet Earths, one person on each planet would have that profile. (*Id.* at 166.)

On May 3, 2012, the jury convicted Petitioner of aggravated robbery with a deadly weapon.

### **III. Discussion**

#### **1. Standard of Review**

The pertinent terms of the Antiterrorism and Effective Death Penalty Act of 1996 (the AEDPA), 28 U.S.C. § 2254 provide:

- (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 a State court proceeding.

See 28 U.S.C. § 2254(d). Under the “contrary to” clause, a federal habeas court may grant the writ of habeas corpus if the state court arrives at a conclusion opposite to that reached by the United States Supreme Court on a question of law or if the state court decides a case differently from the United States Supreme Court on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 380-84 (2000). Under the “unreasonable application” clause, a federal court may grant a writ of habeas corpus if the state court identifies the correct governing legal principle from the United States Supreme Court’s decisions, but unreasonably applies that principle to the facts of the prisoner’s case. *Id.*

## REASONS FOR GRANTING THE PETITION

### I.

In The Instant Case Petition was Implicated In a Crime By A Party/ Parties Suspected, Identified, And Verified Present And Said Parties (Caught Red Handed) Then Shot Blame To Petition Who was not Present, NOR Had Knowledge of The Implication Crime and State Officials in Their Haste. Then Relied On Said Party's Blame Etc. In Doing So Initiated Adverse Proceeding Against Petition (Please see RR:81-82). The only Actual Link To Petitioner was a Red Cap. Which May Have Been Lost, Stolen, or Left Behind in The Truck of A Neighborhood Harlot. Truck Belong to A Woman who claimed She Loned Her Truck To Mr. Robert James (RR 3:81) A man She Did Not Know Yet Allow To Keep Her Truck (b) Six Day? (RR 3:81-82) And Never Mentions Petitioner Name or Present Inside or Involved At All. Yet All Alone Come to Find Out The Man She Loned Her Truck To was (Mr. Robert Simpson) That Instructed Her To Lie police To Back Up His Alibi. The Detective Believed their Story and Locks up Daniel Norris. Then Simpson Turns Back around tell the Same Detective He Lied It Was NOT Daniel Norris. It was Some one name Marco And Led them to Believe It was Petitioner. Petitioner Right To Attorney "Since Adversarial Process" Was Attached, There was NO Actual Probable Cause, Because There was Nothing to Link Petitioner to that Crime (There was NO DNA of The Cap Yet) And The Victim: MR Hakim Ali, Himself, Pointed Out Identified The Man that Robbed Him ETC. "Face to Face" As Daniel Norris (A Party Proved to be Inside The Truck) Possible Wearee, Theft Finder of the Red Cap, How Ever, Was Denied The Opportunity of a Fair Trial To Have A DNA Expert To Cross-Examine The State Expert. To Prove That He wasn't The Higher DNA

7, 7  
OR Maybe Not Even In The Cap. In Petition

Want to Point out How IF He Was Giving a Fair Trial, It Be Different  
Respond Back of Denied (5<sup>th</sup> Cir.) The Case the State  
Used States In (Boss Vs Estelle 694 F.2d 1008-1013) We Do  
Not mean to Suggest that a Trial Court is Free to Disregard the Clear  
Command of the Sixth Amendment Regarding Compulsory process.  
A Criminal Defendant, Especially, IF He IS Indigent, Must Be Given  
An Opportunity to put on a Competent and Vigorous Defense  
When He IS on trial for his Life OR Liberty. We hold Only that A  
Defendant IS NOT Entitled to An Unlimited Number of Witnesses  
To Testify In His Behalf, Lest our Criminal Justice System Grind  
To A Complete Halt. He is Entitled To Have Compulsory process Served  
Only ~~as~~ On As Many Witnesses As well Assist Him In Receiving  
A Fair Trial Under The Circumstances of His Case And He Must Demon-  
~~strate~~ Strate to The Court that There IS "Some Colorable Need For  
The Witnesses To Be Summoned." (Hoskins 440 F.2d at 71.) The Need For  
This Simple and Common Sense Requirement Should Be Obvious To  
All. Where it Otherwise Frivolous and annoying Request would make  
The Trial Endless And unduly ~~Burdensome~~ on the Court and all  
Officers Thereof. Now, By Them not Allowing Petitioner A DNA  
Expert Denied Him of Chance of Fair Trial. Especially, When One  
and the only Victim Was used Doing Trial (Saleem) Identified  
A Black Man Doing Trial In The Jury with a Black Polo Shirt as  
The Man That Robbed Him. Also Another View. In Chess They  
Call It the Game of The world. Why? Because It's Concept  
you are Allowed To Have the Same amount of Piece your  
Opponent Have to Have a Fair Game. If You have One pieces  
Missing From What Your Opponent, Then It's a Handicap Match  
Same Concept In Trial. Petitioner was Suppos to Be Not Denied  
Same (All See Buck v. Davis 137 S. Ct 764 Another case State  
used) The Prosecution Questioned Dr. Quijano about his  
Conclusions on Race and Violence During Cross-Examination  
And It Relied On his testimony in Summation. During Deliberations

The Jury Requested and Received the expert Reports Admitted Into Evidence, Including Dr. Quijano's. And Order for to Have a proper Cross-Examination In Petitioner Case. Was To Give Him the Request He Asked for to Prove His Innocents Since The Identification was So tainted. There was 3 Photo Line up Identification Before the (4 Photo Line up) Where Petitioner was Add. But In All 3 Photo Line up there was Misidentification Where The Victims Picked Some Differently each Time. Which Petitioner Appeal Attorney felt to Mension In his Direct Appeal Because of the Misidentification Error on Out-of-Court Identity The Trial Attorney Should Have put up a More Better Defense when The Victim (Saleem) Pointed At Another Man Who was not the Petitioner. He Could have Objected or Filed Motion for Dismissal But Instead It allowed the Prosecutor to Use A Photo Line up to Point out Identity Because the Tainted (See Plaintiff-Appellee V. German F. Cueto 611 F.2d 1056) Identification. In This case is Very Weak, Especially with Regard to the Level of Certainty Demonstrated by the Witness Kosiba. Kosiba Never Made an In-Court Identification by the Witnesses as an Important Factor to Show the Reliability of Suggestive Photographic Displays. In those cases the Witnesses Were exposed to a Suggestive Display only before the trial as a Means of Preparing for a later In-Court Identification. In this case the Improper photographic Display Constituted the Witness only Identification of the Defendant at the Trial Itself. Even Though the Trial Judge Expressly Encouraged the Government to Use In-Court Identification of Cueto that the Government Elected Not to Have Him Attempt An In-Court Identification of the Defendant Kosiba's Uncertainty is Also Revealed By The Testimony of Agent Williamson, Who Showed Him The Photographs. The Petition Argument Basic on Same. The Incorrectly Identity In-Court ~~Identifications~~ Misidentification ~~lead~~ lead to the Photo Line up Identity. Which Trial Attorney Did not put up A Defense Or Objection to Stop. They Had Witnesses Against Petitioner That He Could Not called on Stand to

Cross-Examination. Even (Robert Simpson) could and should have been called to stand since he was the one who put petition at the ~~the~~ crime to be cross-examine. But instead only other witness they use was Detective Hale with a bunch of Hearsay. He said this, she said that, without these people presents being shown for cross-examination (See Also Criminal Law Key) [REDACTED] 1168(2) Bruton Error Arising from admission of non-testifying co-defendant's confession maybe considered harmless when disregarding confession, there is otherwise ample evidence against a defendant. Also Criminal Law Key 1139, 1158(4) Whether identification evidence is admissible at trial is a mixed question of law and fact subject to de novo review. But the district court's underlying factual findings are review for [REDACTED] clear error. (See United States v. Fletcher 121 F. 3d 187, 194)

## II

### Standard of Review

A Criminal Defendant is entitled to effective representation at trial. U.S. Const. amends VI, XIV, TEX. CONST. Art. 1 § 10. To establish an ineffective assistance of counsel claim a defendant must show that: (1) his counsel's representation fell below an objective standard of reasonableness; (2) there is a reasonable probability that, but for his counsel's unprofessional errors, the result of the proceeding would have been different. (Strickland v. Washington, 466 U.S. 668, 689) The right to counsel does not guarantee errorless counsel whose competence is judged by hindsight; rather, it affords a defendant an attorney reasonable likely to render reasonable effective assistance. (See Thompson v. State, 9 S.W.3d 808, 814 Tex. Crim. App. 1999.) Counsel's competence is presumed, and a defendant must rebut this presumption by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy.

(Kimmelman v. Morrison 477 U.S. 365, 384 (1986); Thompson, 9 S.W.3d at 814.) Under The First Part of The Strickland test, Deficient Performance is Established By Showing That Counsel Made Errors So Serious that Counsel was Not Functioning as the "Counsel Guaranteed" the Defendant by The Sixth Amendment. (Strickland, 466 U.S. at 687.) Under the Second Part of The Strickland test, Prejudice is Established by Showing that Counsel's Errors were So Serious as to Deprive the Defendant of a Fair trial; i.e., that there is a Reasonable Probability that, but for Counsel's unprofessional errors, the Result of the Proceeding Would have been Different. (Id. at 694, 687.)

Petitioner Claims add up to the Poor Performance His Trial Counsel Did At Trial Caused to be Ineffective Assistance Of Counsel Under The First and Second Part of the Strickland Test.

### III

#### Application of The Law to The Facts

(Hearsay is "a Statement, Other than one made By The Declarant While Testifying at The Trial or Hearing, Offered in Evidence To Prove The Truth of the Matter Asserted." (TEX. R. EVID. 801(e).) Detective Hale Testified to the Statements Made to Him By AS Many As Five Different People During The Course of His Investigation. These Statements were Offered for The Truth of The Matter Asserted and Did Not Fall Under Any exceptions to the Hearsay Rule in the (Texas Rules of Evidence Tex. R. Evid. 803.)

The Statements Detective Hale Testified to are as Follow:

- Detective Hale testified to a Conversation with an Officer from Richardson who "Had an imaging System to where Officers Drive Around taking Photographs of license plates at Random." (R.R.3:78) The Officer told Detective Hale that Richardson Police Saw the Suspect's Vehicle Eight Weeks Before the Robbery at an Apartment Complex in Richardson (R.R.3:78) This Officer's Name was unknown And He Did not Testify at Trial
- Detective Hale testified to his Conversation with Shawnda Williams the Owner of the Vehicle. (R.R.3:8) Shawnda also informed him

That Robert Had Called Her A Second Time And Asked Her to Lie About Who She Gave the Vehicle to (RR3:82). Shawnda Did not Testify at Trial. (Hearsay)

- Detective Hale Testified to a Conversation with Robert Simpson, Also Known as Robert James Wherein Robert told Hale following That Robert borrow the ~~the~~ Ford Explorer from Shawnda Williams (RR3:91) Robert Picked Marco up outside 11601 Audelia, Apartment 174 (RR3:95). Robert then Rode in the Vehicle with Black and Marco to the Dash in Grocery (RR3:91). Robert Did Not Testify At Trial (Hearsay) ~~Detention~~
- Detective Hale Testified to a Conversation with the Occupants of 11601 Audelia Apartment 174. ~~He~~ Hale Testified that they told him they thought the Suspect He was looking for lived at 11601 Audelia Apartment 276. These Individuals were not named, nor Did They Testify at Trial. (HearSay)
- Detective Hale Testified to a couple of Conversations with Officer Colunga who told Detective Hale He would keep Surveillance on Apartment 276, Hale testified that Colunga Later Called Back ~~Marco~~ To Give him Marco's Full Name which was Demarko Cooper. Officer Colunga Did Not Testify at Trial (HearSay)

There was No Question these Statements were Hearsay. And the Petitioner Trial Attorney Had the Opportunity To Cross-Examination all these People Detective Hale ~~Marco~~ Offered Statements To Prove If Any truth of the Matter ASSerted, that being Petitioner's Connection to the Robbery. None of the Above individuals testified at Trial. Instead, Detective Hale testified to a String of Hearsay ~~Marco~~ Statements Without any Objection by Petitioner Counsel. This Hearsay Testimony Was the only Evidence linking Petitioner to the Robbery. Indeed, the Main Issue at Trial was the Identity of the Gunman. Therefore, It would Only make Sense for Petitioner's Trial Counsel to Attempt to Keep this Testimony out. No trial Strategy existed for Failing to Object to this Evidence. There is a High Probability that The Result of Petitioner's Trial Would Have Been Different Had Trial Counsel Objected to this testimony. The Trial Court Would most Certainly have Subsainted the Objections Since No

Exceptions To The Hearsay Rule Applied. Consequently, the Only Evidence Left for the Jury to Consider would have Been Saleem's Testimony that He Was Robbed, The General Description of the Robber, the Pictures and Video of the Robbery, The Photo Lineups. And the DNA Evidence. Petitioner Anticipates the State will Argue The DNA Analysis of the Baseball cap Left ~~at~~ the Scene Connected Petitioner to the Crime; However, taken out of Context, that Evidence was of little Value. That's why It only Have Been Right To Allowed the Petitioner the Right to Have A DNA Expert for His Defense to Cross-Examination the State DNA Expert to See Do the DNA in Cap to Be true. ~~But~~ (the Opponent IS also Allow to Have the Same Pieces to Allow It to Be a Even Game of Chess to Fight for His Life or Freedom.) That way the Jury who watching Could get to See Both Sides ~~to~~ True or NOT True will Be Able to Determine. Because without the Hearsay testimony, and with The DNA Expert to Cross-Examined the State Expert would have prove that the Petition Worn the Cap at Some point, But Not the Strongest or Highest and that the ~~other~~ State DNA Expert was not true and It would have been No explanation of Petition's Connection to the Crime Since (Saleem) couldn't not Identify Petitioner in the In-Court, The Video couldn't not Identify Petitioner, No Fingerprints, \* The Hearsay Testimony was Vital to the State's Case. Without it there would have been No Evidence linking Petition to the Crime; thus, Creating a Reasonable Doubt in the Jury mind of his Guilt. Consequently, the Result of the trial would, in all probability, have been Different. Therefore, Trial Counsel Should have Objected to the multiple Hearsay Statements on Which the State Relied. Failure to Do So Resulted Ineffective Assistance of Counsel.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X Denardo D. Cooper

Date: March 1, 2019