

19-5409

IN THE

ORIGINAL

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2019

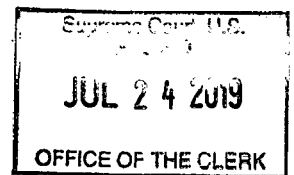
NO. _____

BRADY DANIEL PETITIONER

V.S.

LORIE DAVIS RESPONDENT / DIRECTOR

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
CORRECTIONAL INSTITUTIONS DIVISION



PETITION FOR A WRIT OF CERTIORARI TO THE —
UNITED STATES COURT OF APPEALS FOR THE ,
FIFTH CIRCUIT

BRADY DANIEL
379 FM 2972 W.
RUSK, TEXAS
— 75785 —

QUESTION(S) PRESENTED

- (1) DID THE ACTIONS OF MILLS COUNTY SHERIFFS DEPARTMENT VIOLATE THE CONSTITUTIONAL AND STATUTORY RIGHTS OF PETITIONER BRADY A. DANIEL UNDER THE FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION. ARTICLE 1 SEC. 9 OF THE TEXAS CONSTITUTION, AND UNDER ART. 38.23 & 14.04 OF THE TEXAS CODE OF CRIM. PROCEDURES. "WARRENTLESS ARREST." ?
- (2) WHETHER THE WARRENTLESS ENTRY INTO THE PROPERTY OF PETITIONER VOIDS ARREST AND INDICTMENT ?
- (3) WHETHER THE ADVICE OF TRIAL ATTORNEY HARMED & PREJUDICED PETITIONER TO PLEA GUILTY OF AGG. ASSAULT TO AN OPEN PLEA, WITH NO CAP. 5-99 PLEA UNDER DURESS "COHURST"
- (4) WHETHER COUNSEL'S DEFICIENT PERFORMANCE PREJUDICED PETITIONER WHEN TRIAL COURT REFERENCED THE FACT THAT THE SUPP. MOTION COULD BE URGED BY THE DEFENCE (PREVIOUSLY FILED - MOTION TO SUPPRESS) COUNSEL FAILED TO URGE OR ACT ON.
- (5) WHETHER A BRADY VIOLATION EXISTS WHEN STATE WITHHELD MATERIAL EVIDENCE THAT PETITIONER WAS ARRESTED WITHOUT WARRANT IN VIOLATION OF FOURTEENTH AMENDMENT.
- (6) WHETHER THERE WAS A CONFLICT OF INTEREST OF ATTORNEY / CLIENT
- (7) WHETHER COURT OF CRIMINAL APPEALS DENIAL OF STATE WRIT 11.07 WAS EITHER CONTRARY TO "OR" UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW, AS DECIDED BY THE US SUPREME COURT, OR THAT THE STATE COURTS UNREASONABLY DETERMINED THE FACTS OF THE CASE. SEE 28 USC § 2254 (d) (i)

LIST OF PARTIES

BRADY DANIEL PETITIONER

V.S.

LORIE DAVIS, DIRECTOR

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTION DIVISION.

RESPONDENT

§
§
§
§
§
§
§
§

NO. 6:16-CV-61-C

STATES DIRECT TESTIMONY PARTIES: _____

• ANGELA SKELTON [GIRLFRIEND/VICTIM]

• DEPUTY SHERIFF GREEN

• STATE TROOPER WHEELER

DEFENSE DIRECT TESTIMONY PARTIES: _____

PATTI WEBB - MOTHER

PAT DANIEL - FATHER

GARY DANIEL - SECOND COUSIN

ATTORNEY FOR STATE: SAM C. MOSS _____

ATTORNEY FOR DEFENDANT: PATRICK HOWARD _____

JUDGE: HONORABLE: STEPHEN ELLIS _____

APPELLATE ATTORNEY: EMILY MILLER _____

APPELLATE JUDGE: CHIEF JUSTICE ROSE, JUSTICES PEMBERTON
AND FIELD _____

RE: 03-15-00058-CR; BRADY ALAN DANIEL

V. THE STATE OF TEXAS, THIRD COURT OF APPEALS, AUSTIN, TX

TABLE OF CONTENTS

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

INDEX TO APPENDICES

APPENDIX A	(ORDER) OPINION OF UNITED STATES COURT OF APPEALS. / DATE WHICH UNITED STATES COURT OF APPEALS DECIDED MY CASE. / PETITION FOR REHEARING. DENIED. <u>5-10-19</u>
APPENDIX B	(ORDER) OPINION OF UNITED STATES DISTRICT COURT TO THE PETITION. / OPINION OF THE HIGHEST STATE COURT TO REVIEW THE MERITS TO THE PETITION. <u>5-31-19</u> THE OPINION OF THE COURT OF CRIMINAL APPEALS TO THE PETITION.
APPENDIX C	ON APRIL 22, 2019 PER CURIAM APPEAL DISMISSED FOR WANT OF JURISDICTION OWEN, HO, AND DUNCAN CIRCUIT JUDGES.
APPENDIX D	UNITED STATES DISTRICT COURT. <u>MARCH 22, 2019</u> NORTHERN DIV. MOTION REQUEST ACCEPTANCE OF APPEAL.
APPENDIX E	MARCH 1, 2019 ORDER TOLT HODGE UNIT MAIL ROOM LOGS. A COPY OF MAIL OUT LOG AND ORDER
APPENDIX F	ON FEBRUARY 25, 2019 PETITIONER GRANTED IN FORMA PAUPERIS ON APPEAL. UNITED STATES DIST. COURT FOR THE NORTHERN DIST.
APPENDIX G	IN THE DISTRICT COURT 35 th JUDICIAL DISTRICT MILLS COUNTY, TEXAS EXHIBIT _____ MOTION TO SUPPRESS "FILED BY ATTORNEY"

TABLE OF AUTHORITIES

FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE
UNITED STATES CONSTITUTION, ART. I SEC. 9, 10, 19 OF THE TEXAS
CONSTITUTION, AND UNDER ART. 1.06, 14.04 AND 38.23 OF THE
TEX. CODE CRIM. PROC. _____

CASES INVOLVED

BAGLEY V. UNITED STATES 841 S.W. 473 US 667, 682
BETTS V. STATE 398 SW 3d 198, 203 (TEX. CRIM. APP. 2013)
BLANKENSHIP V. JOHNSON 118 F 3d 312, 318 (5th Cir 1997)
BOSTICK V. PETERS 3 F 3d 1023, 1027-29 (7th Cir 1993)
BRADY V. MD 373 US 83, 87 (1963)
BRICK V. STATE 738 S.W. 2d 676, 681 (TEX. CRIM. APP. 1987)
CITY OF ONTARIO V. QUON 560 US 746, 755-56 (2010)
COLLINS V. VIRGINIA 138 S.Ct 1663 (2018)
HUYNH V. KING 95 F 3d 1052, 1057 (11th Cir 1996)
JOHNSON V. U.S. / JOSHUA V. DEWITT 341 F 3d 430, 449-50

(6th Cir 2003)
KYLES V. WHITLEY 514 US 419, 453 (1995)
LONGHORN V. ALLEN 519 F 3d 1272, 1288 (11th Cir 2008)
RICHTER V. HICKMAN 578 F 3d 944 (CA9 2009)
STEAGALD V. U.S. 451 US 204, 212 (1981)
STRICKLAND V. WASHINGTON 466 US 668, 694, 104 S.Ct. 2052
2068 80 L ED 2ND 674 (1984)
THOMAS V. STATE 841 SW 28 399 404 [TEX. CRIM APP. 1992]
UNITED STATES V. STRUCKMAN

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B 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 OF CRIMINAL APPEALS court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

DECISIONS BELOW

REFERENCE TO THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS IN THE CASE _____

ON 12-10-2015 TEXAS COURT OF APPEALS, THIRD DISTRICT AT
AUSTIN TX NO. 03-15-00058-CR (MEMORANDUM OPION)
AND CONCLUSION. AFFIRMED TRIAL COURTS JUDGMENT
BEFORE CHIEF JUSTICE ROSE, JUSTICES PEMBERTON AND FIELD
NOT PUBLISHED

ON APRIL 15th, 2016, BRADY A. DANIEL FILED PRO SE WITH
WITH THE CLERK FOR A POST-CONVICTION WRIT OF HABEAS CORPUS
THE CLERK FILED AND SUMMITTED THE MATTER TO COURT OF CRIMINAL
APPEALS AS REQUIRED BY LAW. _____

ON JUNE 29th, 2016 THE COURT OF CRIMINAL APPEALS ISSUED ,
AN ORDER IN CASE NO. WR-85,144-02. CONCURRING OPINION
ADHERING TO THE VIEWS EXPRESSED IN MY CONCURRING OPION IN
EX PARTE POINTER SW.3d____, Nos. WR-84,786-01 & WR 84,786-02
(TEX. CRIM. APP. DEL. JUNE 8, 2016), I JOIN IN THE COURTS
DISPOSITION OF THIS CASE. YEARY, J., FILED A CONCURRING
OPINION WHICH KEASLER, AND HERVEY, J.J., JOINED.

ON AUGUST 12, 2016 ORDER / MEMORANDUM TO PATRICK HOWARD
BRADY DANIELS TRIAL ATTORNEY TO FILE HIS AFFIDAVIT.

ON SEPTEMBER 28, 2016 FINDINGS OF FACT AND CONCLUSION OF -
LAW. BY HONORABLE JUDGE STEPHEN ELLIS IN THE DISTRICT
COURT OF MILLS COUNTY, TEXAS 35th JUDICIAL DISTRICT.
RECOMMENDATION THAT THE RELIEF BY PETITIONER BE DENIED.

DECISIONS BELOW CONT

ON NOVEMBER 29, 2016 SAM R. CUMMINGS SENIOR UNITED-STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS (SAN ANGELO DIVISION) ORDER TO SHOW CAUSE, NOTICE, AND INSTRUCTIONS TO PARTIES: RESPONDENTS ANSWER, RECORDS AND PETITIONERS ANSWER / RESPONSE SERVICE OF PETITION AND ORDER A PETITION FOR WRIT OF HABEAS PURSUANT TO 28 U.S.C. § 2254

ON FEBRUARY 1, 2017 IN THE NORTHERN DISTRICT OF TEXAS ORDER THE COURT HAS CONSIDERED PETITIONERS' "LEAVE TO STAY THE JUDGEMENT OF THE COURT PENDING HABEAS CORPUS AND INJUNCTION TO BE RELEASED ON PERSONAL RECOGNIZANCE BOND" FILED ON JANUARY 26, 2017 AND FINDS IT SHOULD BE DENIED. SAM R. CUMMINGS SENIOR
—DISTRICT JUDGE.

ON OCTOBER 17, 2018 MOTION FOR APPOINTMENT OF COUNSEL AND MEMORANDUM OF LAW IN SUPPORT. DENIED ON NOV. 5, 2018
SAM R. CUMMINGS SENIOR DISTRICT JUDGE

ON DECEMBER 27, 2018 RULING ON THE PETITIONER GROUNDS FOR REVIEW IN HIS FEDERAL PETITION. DENIED AND DISMISSED W/ PREJUDICE BY: SAM R. CUMMINGS SENIOR DISTRICT JUDGE

ON JANUARY 14, 2019, PETITIONER FILED AN "OBJECTION TO ORDER" WHICH WAS CONSTRUED AS A MOTION TO RECONSIDER COURTS ORDER ENTERING ON DECEMBER 27, 2018 ORDER THAT IF PETITIONER IS TO PROCEED WITH APPEAL HE SHALL PAY THE \$505.00 FOR FILING FEE OR APPLICATION TO PROCEED IN FORMA PAUPERIS. SAM R. CUMMINGS SENIOR JUDGE "DISTRICT JUDGE"

DECISIONS BELOW CONT.

ON FEBRUARY 26, 2019 APPLICATION TO PROCEED IN FORMA PAUPERIS COURT SO ORDERED THAT PETITIONER BE GRANTED PERMISSION TO PROCEED IN FORMA PAUPERIS ON APPEAL.

ON MARCH 1, 2019 UNITED STATES FOR THE FIFTH CIRCUIT REMANDED CASE NO. U.S. CA 19-10172 / CIVIL ACTION NO. 6:16-CV-00061-C DOWN TO NORTHERN DISTRICT ORDER THE TDCJ HODGE UNIT MAIL ROOM LOGS. TO DETERMINE IF PETITIONER DELIVERED HIS NOTICE TO APPEAL IN A TIMELY MANNER.

ON MARCH 22, 2019 NORTHERN DISTRICT CONSTRUCTIVE MOTION REQUESTING ACCEPTANCE OF APPEAL FOR MOTION FOR EXTENSION OF TIME. DENIED THE CASE IS RETURNED TO FIFTH CIRCUIT FOR FURTHER PROCEEDINGS
SAM R. CUMMINGS Senior United States District Judge

ON MAY 10, 2019 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT NO. 19-10172 APPEAL FROM U.S.D.C. FOR THE NORTHERN DISTRICT BEFORE OWEN, HO, AND DUNCAN, CIRCUIT JUDGES PER CURIAM:

THE PANEL PREVIOUSLY DISMISSED THE APPEAL FOR LACK OF JURISDICTION AND DENIED APPELLANTS MOTION FOR C.O.A. THE PANEL HAS CONSIDERED APPELLANTS MOTION FOR RECONSIDERATION. MOTION DENIED

ON MAY 31, 2019 U.S.D.C. MOTION TO RE-OPEN FOR RECONSIDERATION TIMELY FILED 'NOTICE OF APPEAL TO THE FIFTH CIRCUIT FILED MAY 30 2019 AND FINDS THAT MOTION SHOULD BE DENIED. THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT PREVIOUSLY DISMISSED APPEAL NO 19-10172 FOR WANT OF JURISDICTION ON APRIL 22, 2019 AND DENIED APPELLANTS SUBSEQUENT MOTION FOR RECONSIDERATION ON MAY 10, 2019

SAM R. CUMMINGS Senior U.S.D. JUDGE
(iii)

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 31st, 2019.

☐ 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: May 10, 2019, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (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 March 22, 2019.
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: January 14, 2019, and a copy of the order denying rehearing appears at Appendix B.

☐ 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).

JURISDICTIONAL GROUNDS

THE JUDGEMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT PREVIOUSLY DISMISSED APPEAL NO. 19-10172 FOR WANT OF JURISDICTION, AND DENIED APPELLANTS SUBSEQUENT MOTION FOR RECONSIDERATION ON MAY 10, 2019. "SEE: LOWER COURTS DECISIONS ON PG _____"

A COPY OF THAT ORDER IS ATTACHED AS APPENDIX A & B TO THIS PETITION.

_____ JURISDICTION CONFERRED BY U.S.C 1257(d)
U.S.C 1254

CONSTITUTIONAL PROVISIONS

TEXAS CONSTITUTION ART 1 SEC. 9, 10, 19

TEXAS CODE OF CRIMINAL PROCEDURES ART. 38.23, ART 14.04

AND ART. 1.06. SEARCH AND SEIZURES / ^{NOTE:} 14.04 WARRANTLESS ARREST SEARCH

- AND SEIZURES _____

U.S. CONSTITUTION IV, V, VI AND XIV

STATEMENT OF CASE

PETITIONER "BRADY ALLEN DANIEL" AND ANGELA SKELTON "VICTIM" / GIRLFRIEND. HAD DATED FOR APPROX. FIVE AND ONE HALF YEARS PRIOR TO THE INCIDENT TO HIS ARREST. SKELTON RESIDED WITH DANIEL AND HER THREE CHILDREN FROM A PREVIOUS MARRIAGE IN A MOBILE HOME OWNED BY THE DANIEL FAMILY.

ON FEBRUARY 8, 2014 DANIEL RECEIVED NEWS THAT HIS WORK HOURS ON HIS WORK SCHEDULE HAD BEEN REDUCED. DANIEL, THE PETITIONER HERE IN THIS CASE WAS UPSET AND WENT WITH ANGELA SKELTON TO PURCHASE BEER AFTER DRINKING SEVERAL BEERS DANIEL AND GIRLFRIEND GOT INTO AN ARGUMENT AND DANIEL THE PETITIONER STRUCK ANGELA IN THE FACE WITH HIS FIST. ANGELA "VICTIM" LEFT AND HER AND HER THREE CHILDREN WENT DOWN THE ROAD TO PETITIONER'S COUSIN'S HOUSE. THE COUSIN THEN CALLED THE POLICE. ONCE THE DEPUTY SHERIFF'S DEPARTMENT AND STATE TROOPER ARRIVED AT THE COUSIN'S HOME THEY SPOKE WITH THE COUSIN AND VICTIM ANGELA SKELTON. THEN, DEPUTY SHERIFF GREEN, AND STATE TROOPER WHEELER LEFT. ANGELA AND CHILDREN ALONE WITH COUSIN AND WENT TO DANIEL'S PROPERTY "POSTED NO TRESS PASS ON GATE" AND UNLATCHED THE GATE AND ENTERED ON A "WARRENT LESS ENTRY" AND WENT UP TO TRAILER AND FOUND PETITIONER OUTSIDE ON THE PHONE WITH HIS DAD AND ARRESSTED PETITIONER.

CHARGED WITH AGGRAVATED ASSAULT PENAL CODE 22.02

ON NOVEMBER 18, 2014 PETITIONER WAS FOUND GUILTY AFTER AN OPEN PLEA OF GUILTY TO CHARGE AND SENTENCED TO 35 YEARS IN THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE SYSTEM.

PETITIONER WAS LED TO BELIEVE THAT THE MOTION TO SUPPRESS WOULD SHOW THE COURTS THAT HIS CONSTITUTIONAL RIGHTS WERE VIOLATED THE FOURTH, FIFTH, FOURTEENTH U.S. CONSTITUTION AMENDMENT RIGHT AS A U.S. CITIZEN.

(4)

STATEMENT OF CASE CONT.

PETITIONER BRADY A. DANIEL STATES HIS ATTORNEY MISLED HIM FROM THE TIME OF MOTION FILED ON NOVEMBER 4TH, 2014 TIL NOVEMBER 18TH, 2014. PETITIONER STATES ATTORNEY PATRICK HOWARD PRIOR TO THE MOTION TO SUPPRESS STATED THAT THE LAW ENFORCEMENT OFFICERS HAD A LEGAL VALID WARRANT TO ENTER PETITIONERS PROPERTY HAD THE LEGAL ADVICE OF ATTORNEY PATRICK HOWARD BEEN IN THE BEST INTEREST OF PETITIONER AND JUSTICE HE WOULD OF NOT ADVISED PETITIONER TO OPEN PLEA WITH NO CAP SENTENCE RANGE 5-99. AND PETITIONER STATES BEFORE TRIAL ATTORNEY CAME TO SEE HIM ON OR ABOUT NOVEMBER 4, 2014 WITH MOTION TO SUPPRESS "STATEING WE GOT THEM"

THEY ENTERED THE PROPERTY WITH OUT A WARRANT OR PROBABLE CAUSE. THIS WAS NOT A EXIGENT, CIRCUMSTANCES EMERGENCY. NOR WAS THERE ANYONE THERE EXCEPT FOR, PETITIONER.

THIS WAS AN UNLAWFUL ENTRY AND WARRANT-LESS ARREST.

FURTHERMORE BRADY A. DANIEL PETITIONER IN THIS CASE HIS FOURTH, FIFTH, SIXTH AND FOURTEENTH ADMENDMENT OF THE U.S. CONSTITUTION, ARTICLE I, SEC. 9, 10, AND 19 OF THE CONSTITUTION OF THE STATE OF TEXAS. SPECIFICALLY, THE FOURTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE 1 SEC. 9 OF TEXAS CONSTITUTION PROTECT INDIVIDUALS FROM UNREASONABLE SEARCHES AND SEIZURES.

NOTE: THE VICTIM IN THIS CASE ANGELA SKELTON WAS KNOWN BY LAW - ENFORCEMENT NOT TO BE ON THE PROPERTY AND SAFE IN ANOTHER LOCATION.

LAW ENFORCEMENT OFFICERS DID NOT HAVE AN ARREST OR SEARCH WARRANT TO ENTER PROPERTY AS EXIGENT OR EMERGENCY CIRCUMSTANCES.

(i)

BASIS FOR FEDERAL JURISDICTION

THIS CASE RAISES A QUESTION OF INTERPRETATION OF THE FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. THE DISTRICT COURT HAD JURISDICTION UNDER THE GENERAL FEDERAL QUESTION CONFERRED BY 28 U.S.C 1331(a)

[RULE 14.1 (g) (i) SUPREME COURT RULES]

ARGUMENT

"REASONS FOR GRANTING THE WRIT"

A. CONFLICTS WITH DECISIONS OF OTHER COURTS:

PETITIONER CLAIMS HE WAS DEPRIVED OF DUE PROCESS OF LAW DUE TO UNLAWFUL ARREST "WARRENTLESS SEARCH AND SEIZURE IN VIOLATION OF FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION. FIFTH, SIXTH AND FOURTEENTH U.S. CONSTITUTION ART 1. SEC. 9 OF THE TEXAS CONSTITUTION AND UNDER ART - 38.23, 14.01, 14.04 TEXAS CODE CRIMINAL PROCEDURES PETITIONER CLAIMS SHERIFFS DEPARTMENT JUMP TO CONCLUSION AND ACTED ON IMPULSE VS. PROTOCOL BY NOT OBTAINING A CALL-IN WARRENT OR BY AFFIDAVIT TO COME ON, PRIVET POSTED PROPERTY AND ARREST "BRADY A. DANIEL" - PETITIONER IN THIS CASE. AS IN U.S. vs. STRUCKMAN, POLICE OFFICERS WARRENTLESS SEIZURE OF STRUCKMAN WITHIN HIS BACK YARD, AND THEIR ENTRY INTO THE YARD TO PERFECT HIS ARREST VIOLATED THE FOURTH AMEND. "REVERSED AND VACATED"...

#1

ARGUMENT CONT.

JOHNSON VS UNITED STATES, THE SUPREME COURT STATED:

"THE POINT OF THE FOURTH AMENDMENT . . . IS NOT THAT IT DENIES LAW ENFORCEMENT THE SUPPORT OF THE USUAL INFERENCES WHICH REASONABLE MEN DRAW FROM EVIDENCE. ITS PROTECTION CONSIST IN REQUIRING THAT THOSE INFERENCES BE DRAWN BY A NEUTRAL AND DETACHED MAGISTRATE INSTEAD OF BEING JUDGED BY THE OFFICER ENGAGED IN THE OFTEN COMPETITIVE ENTERPRISE OF FERRETING OUT CRIME. See ALSO STEAGALD VS. U.S., 451 U.S. 204, 212 (1981).

PETITIONER ARGUES PROTOCOL WOULD OF BEEN THE SHERIFFS DEPARTMENT OF MILLS COUNTY TO OBTAIN A SWORN AFFIDAVIT FOR SEARCH WARRANT BEFORE ENTERING PRIVATE PROPERTY THERE WERE NO EXISTENT CIRCUMSTANCES IN THIS CASE TO ALLOW THEM TO MAKE UNLAWFUL WARRANTLESS ENTRY

WITHIN THE CURTILAGE OF PETITIONER RESIDENCE TO INVESTIGATE AND ULTIMATELY ARREST PETITIONER. WITHOUT PROBABLE CAUSE THE EIRIEMUND AND CHILDREN WERE SAFE AT ANOTHER LOCATION SO AN EXISTENT CIRCUMSTANCES DID NOT EXIST.

SEE: BRICK V. STATE 738 SW 2d 676, 681 (TEX CRIM. APP 1987) NO GROUNDS FOR WARRANTLESS ARREST VIOLATION OF ART 14.04

COLLINS V. VIRGINIA 138 S.Ct 1603 (2018) UNDER FOURTH-

AMENDMENT OF THE U.S. CONSTITUTION THE CURTILAGE IS

USU PROTECTED FROM WARRANTLESS SEARCHES. SEE KATZ V.

UNITED STATES, SUPREME COURT STATED WARRANTLESS SEARCHES

ARE PER SE UNREASONABLE UNDER THE FOURTH AMEND.

CONT. (I.I.)

#1

ARGUMENT CONT.

SEE ALSO: CITY OF ONTARIO V. QUON 510 U.S. 746, 755-56 (2001) THE FOURTH AMEN. GUARANTEES THE PRIVACY, DIGNITY AND SECURITY OF PERSONS AGAINST CERTAIN ARBITRARY AND INVASIVE ACTS BY OFFICERS OF THE GOVERNMENT. PETITIONER STATES HE WAS HARMED AND PREJUDICED BY THE INTRUSION AND ARREST BY MILLS COUNTY SHERIFFS DEPARTMENT SPECIFICALLY A VIOLATION OF HIS FOURTH AMENDMENT RIGHT PROTECTED BY U.S. CONSTITUTION AND ART. 1 SEC. 9 OF THE TEXAS CONSTITUTION PROTECTING INDIVIDUALS FROM, UNREASONABLE SEARCH OR SEIZURES BETTS V. STATE, 398 S.W. 3d 198, 203 (TEX CRIM. APP. 2013)

CONT. (iii)

ARGUMENT 2 REASONS FOR GRANTING WRIT
IMPORTANCE OF QUESTION # 2 _____

PETITIONER REQUEST THAT THE UNLAWFUL "WARRENTLESS SEARCH AND SEIZURE / ARREST" "VOIDS THE INDICTMENT." AS TO CALL FOR THE EXERCISE OF THE SUPREME COURTS POWER TO EXHAUST THIS MATTER.

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ARGUMENT: IMPORTANCE OF QUESTION 3 AND 4 AND 6

PETITIONER STATES HE WAS DEPRIVED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL "THAT HIS PLEA WAS INVOLUNTARY DUE TO COERSION AND DURESS. PRIOR TO HIS PLEA ON NOVEMBER 5, 2014 TRIAL COUNSEL PATRICK HOWARD ADVISES PETITIONER THAT THE CASE WAS BEAT "WE GOT THEM" THE MILLS COUNTY SHERIFFS DEPARTMENT MADE A UNLAWFUL ARREST WARRENTLESS SEARCH AND SEIZURE /ARREST. A - VIOLATION OF MY CONSTITUTIONAL RIGHTS. COUNSEL FILED MOTION TO SUPPRESS TO SHOW UNREASONABLE SEARCH AND SEIZURES. THEN ON NOVEMBER 17, 2014 COUNSEL COERSED PETITIONER TO PLEA GUILTY TO THE CHARGES IN CASE NO. 3029 AGG. ASSAULT. IN EXCHANGE FOR THE STATE TO DISMISS ALL THE OTHER PENDING FELONIES. I ASKED COUNSEL WHAT THE MOTION TO SUPPRESS HE NEVER WOULD ANSWER" HE THEN LED ME TO AN OPEN PLEA WITH "NO CAP." BRADY ALLEN. DANIEL WAS SENTENCED TO 35 YEARS , CONFINEMENT IN THE TEXAS DEPARTMENT OF CORRECTIONS ON THE MORNING OF NOVEMBER 17, 2014, THE TRIAL COURT EVEN REFERENCED THE FACT THAT THE SUPPRESSION MOTION COULD BE VIRGED BY THE DEFENSE. COUNSEL TOOK NO ACTION ON BEHALF OF DEFENDANT /PETITIONER. THIS RISES A CONFLICT OF INTEREST, AFFECTED PERFORMANCE. BLANKENSHIP V. JOHNSON 118 F 3d 312, 318 (5th Cir 1997) (i)

ARGUMENT: IMPORTANCE OF QUESTION 3, 4 AND 6 CONT

THIS IS A CASE OF FUNDAMENTAL MISCARriage OF JUSTICE
PETITIONER HAS BEEN PREJUDICED AND HARMED . . .

SEE JOSHUA V. DEWITT, 341 F 3d 430, 449-50
(6th Cir 2003) See: HUYNH V. KING 95 F 3d 1052,

1057 (11th Cir 1996) I.O.C GRANTED WHERE
COUNSEL MADE TACTICAL DECISION TO DELAY
FILING POTENTIALLY MERITORIOUS 14th Amen.

SUPPRESSION MOTION. THE DECISION IN PETITIONERS
CASE RELIED ON COUNSELS BAD ADVISE. SEE BOSTICK

V. PETERS, 3 F 3d 1023 1023, 1027-29 (7th Cir 1993)

"THIS CASE RAISES IMPORTANT QUESTION OF FED. LAW.
THAT HAS NOT BEEN BUT SHOULD BE SETTLED BY
THIS COURT."

THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION GUARAN
TEES THE RIGHT TO EFFECTIVE COUNSEL STRICKLAND V.

WASHINGTON 466 U.S. 668, 694, 104 S.Ct. 2052
2068 80 LEd 2nd 674 (1984)

HEART OF EFFECTIVE ASSISTANCE IS PREPARATION _____

RICHTER V. HICKMAN, 578 F 3d 944 (CA 9, 2009)

REINHARDT, CIRCUIT JUDGE: TO BE NOT PREPARED IS
THE GREATEST OF CRIMES: TO BE PREPARED BEFOREHAND FOR
ANY CONTINGENCY IS THE GREATEST OF VIRTUES.

ARGUMENT. IMPORTANCE OF QUESTIONS [#]3, 4 AND 6 CONT.

____ SUN TZU, THE ART OF WAR 83 _____

SAMUEL B. GRIFFITH TRANS. OXFORD UNIVERSITY PRESS

AT THE HEART OF AN EFFECTIVE DEFENCE IS AN ADEQUATE INVESTIGATION. WITHOUT SUFFICIENT INVESTIGATION, A DEFENCE ATTORNEY, NO MATTER HOW INTELLIGENT OR PERSUASIVE IN COURT RENDERS DEFICIENT PERFORMANCE AND JEOPARDIZES HIS CLIENTS DEFENCE. WITH THIS BEING SAID: PETITIONER DEFENCE COUNSEL HAS BREACHED HIS DUTY TO CLIENT. RENDERING THIS CASE OF INEFFECTIVE ASSISTANCE COUNSEL A MATTER OF FEDERAL QUESTION. NOT ONLY TO ME BUT OTHERS WITH SIMILARY SITUATED. THE WAY I WAS VIOLATED MY CONSTITUTIONAL RIGHTS.

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ARGUMENT: IMPORTANCE OF QUESTION #5

PETITIONER ARGUES HE WAS DEPRIVED OF DUE PROCESS FOURTEENTH AMENDMENT PROTECTION AND RIGHT TO A FAIR TRIAL BECAUSE DISTRICT ATTORNEY FOR STATE WITHHELD FAVORABLE AND MATERIAL EVIDENCE THAT MILLS COUNTY SHERIFFS DEPARTMENT ENTERED HIS PROPERTY AND ARRESTED HIM WITHOUT A VALID WARRANT.

(iii)

ARGUMENT: IMPORTANCE OF QUESTION # 5 cont.

THIS QUESTION OF FEDERAL LAW IS OF THE IMPORTANCE FOR THE SUPREME COURT TO DECIDE. SEE KYLES V. WHITLEY 514 US 419, 453 (1995) DUE PROCESS VIOLATED BECAUSE PROSECUTION SUPPRESSED EXCULPATORY EVIDENCE THAT, IF DISCLOSED, COULD REASONABLY HAVE ALTERED RESULT OF PROCEEDING) SEE ALSO BRADY V. M.D. 373 US 83, 87 (1963) THE FACT THAT DISTRICT ATTORNEY FAILED TO DISCLOSE THIS FAVORABLE AND MATERIAL EVIDENCE UNDERMINE THE CONFIDENCE IN THE OUTCOME OF THE PROCEEDING THOMAS V. STATE 841 S.W. 28 399, 404 [TEX CRIM APP 1992] THE DISTRICT ATTORNEY HAS AN AFFIRMATIVE DUTY TO DISMISS THE INDICTMENT BECAUSE OF THE FOURTH AND FOURTEENTH AMENDMENT. AGAIN THE UNLAWFUL ARREST UNDERMINING THE CONFIDENCE IN THE OUTCOME OF TRIAL PROCEEDING BAGLEY V. UNITED STATES, 841 S.W. 473 US 667, 682. THEREFORE THIS CONSTITUTES A BRADY VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION. "PETITIONER STATES HE IS ENTITLED TO RELIEF"

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ARGUMENT: IMPORTANCE OF QUESTION #7

PETITIONER CONSTITUTIONAL FOURTH AMEND. RIGHT HAS BEEN VIOLATED DUE TO THE UNREASONABLE DETERMINATION OF FACTS OF THE CASE BY THE STATE COURT. SEE: — LAWHORN V. ALLEN 519 F.3d 1272, 1288 (11th Cir 2008) AS IN THE REVIEW OF FOURTH AMEND. CLAIM NOT BARRED WHEN IGNORED BY STATE APPELLATE COURT BECAUSE DID NOT RECEIVE FULL AND FAIR CONSIDERATION.

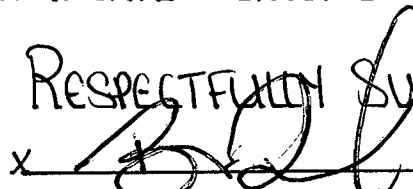
BOSTICK V. PETERS 3 F.3d 1023, 1027-29 (7th Cir 1993) REVIEW OF FOURTH AMEND. CLAIM NOT BARRED BECAUSE PETITIONER HAD NO OPPORTUNITY TO ESTABLISH STANDING FOR ILLEGAL SEARCH AND SEIZURE BECAUSE OF UNFOUNDED PROCEDURAL RULE PREVENTING STATE COURT FROM REACHING MERITS OF CLAIM.

THE DENIAL OF STATE WRIT FROM COURT OF CRIM. APP. WAS UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED LAW. DECIDED BY THE U. S. SUPREME COURT.

THIS IS A COMPLETE MISARRIAGE OF JUSTICE. THE LOWER COURTS HAS TOTALLY IGNORED THE RIGHTS VIOLATED BY PETITIONER. FOURTH, FIFTH, SIXTH AND FOURTEENTH U.S. CONSTITUTION PROTECTED BY FED. LAWS ART. 1 SEC 9, 10, 19 OF THE TEXAS CONSTITUTION. AND UNDER ART 38.23 14.04, 1.06 TEX CODE CRIM. PROC.

CLOSING STATEMENT

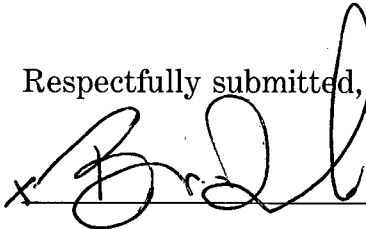
PETITIONER HAS EXHAUSTED AVAILABLE REMEDIES IN THE STATE COURTS. TO NO AVAIL HAS PETITIONER RECEIVED ANY RELIEF FROM LOWER COURTS, NOR THE FIFTH CIRCUIT FOR THAT MATTER. AS PRO SE PETITIONER HAS LIMITED LAW EDUCATION. AND AS A U.S. CITIZEN MY CONCERN IS NOT ONLY FOR MY, CIRCUMSTANCES BUT I KNOW THERE ARE OTHERS OUT THERE FIGHTING FOR THEIR RIGHTS, THAT HAVE BEEN ENGROSSLY VIOLATED BY THE COURT SYSTEM MAY IT BE DISTRICT ATTORNEY OR DEFENCE ATTORNEYS OR APPELLATE COURTS DENYING PETITIONS. THIS PETITION OF WRIT OF CERTIORARI DESERVES A REVIEW OF EXCEPTIONAL CIRCUMSTANCES THAT WARRANT THE EXERCISE OF THE COURTS DISCRETIONARY POWERS AND RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT. I PRAY THAT SUPREME COURT WILL SEE THE IMPERATIVE PUBLIC IMPORTANCE IN MY CASE AND I REQUIRE IMMEDIATE DETERMINATION IN THE U.S. SUPREME COURT. I NOW CALL FOR THE EXERCISE OF THE COURTS SUPERVISORY POWER; REMAND AND VACATE SENTENCE OR AS THIS COURT SEES FIT.

RESPECTFULLY SUBMITTED,
x 
DATE: July 23rd, 2019

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

x  _____

Date: July 23rd, 2019