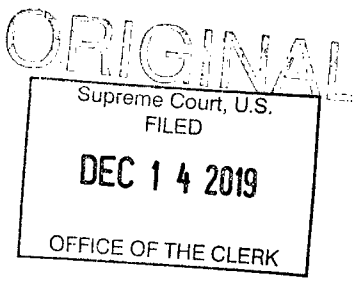
No. 19-7196



IN THE

SUPREME COURT OF THE UNITED STATES

MARK D. ZIMMERMAN — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of TEXAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MARK D. ZIMMERMAN
(Your Name)

TDCJ ID# 02136697, 12120 Savage Drive
(Address)

Midway, Texas 75852
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

#1. Petitioner humbly requests this honorable court for an exercise of it's Supervisory Power over the lower State Court's sanctioning of a departure from the accepted and usual course of judicial proceedings in regards to the decision governing Grayson County Jail's denial of access to a law library while Petitioner was proceeding pro se.

#2. Petitioner now asks that this honorable court exercise it's Supervisory power over the lower State court's sanctioning of Petitioner's personal bank account at Chase Bank being frozen or put on hold without a warrant, subpeona or court order being issued as part of a Civil Asset Forfeiture Proceeding and also without the Bank Account in question ever being listed on any document to be seized or frozen.

#3. Petitioner moves that this honorable court exercise it's Supervisory power over the lower State Court's sanctioning of it's denial of Petitioner's Multiple Pro Se Motions for discovery while simultaneously being denied access to a law library while he was proceeding Pro Se.

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:

- Five Hundred Twenty Two Dollars in United States Currency; One Firearm; Scope; Two Cell Phones; AND Silver Mercedes ML320 VIN# 4JGAB54E77A260775, Appellant (Property in Question)

RELATED CASES

- Five Hundred Twenty Two Dollars in United States Currency et. all v. State, Trial Court Cause No. CV-16-1161, in the 397th Judicial District Court of Grayson County, Texas. Judgement entered on Oct. 17th, 2017.
- Five Hundred Twenty Two Dollars in United States Currency et. all v. State, Trial Court Appeal No. 05-17-01250-CV, in the Court of Appeals Fifth District of Texas at Dallas. Judgement affirmed on January 22nd, 2019.
- Five Hundred Twenty Two Dollars in United States Currency et. all v. State, Case Number 19-0189, in the Supreme Court of Texas. Judgement entered on July 19th, 2019.
- Zimmerman v. Texas, Cause Number 067724, In the 397th Judicial District of Grayson County, Texas. Judgement entered on May 2nd, 2017.
- Zimmerman v. Texas, Case Number 05-17-00492-CR, in the Court of Appeals Fifth District of Texas at Dallas. Judgement affirmed on August 20th, 2018.
- Zimmerman v. Texas, POR Number PD-1226-18, in the Criminal Court of Appeals in the State of Texas. Pro Se Petition for Discretionary Review Granted on June 26th, 2019.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

- TEXAS COURT CASES- CONTINUED

- SUPREME COURT RULES-

- FEDERAL RULES-

- Texas State Rules-

- TEXAS STATE CODES-

- CONSTITUTIONAL PROVISIONS -

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

See Attached Pages iv-v

STATUTES AND RULES

OTHER

See Attached Pages iv-v

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

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

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

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

[✓] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ 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 Appeals Fifth District of Texas at Dallas court appears at Appendix A1-A11 to the petition and is

[ ] reported at _____; or,
[✓] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts:**

The date on which the highest state court decided my case was 1-22-2019. 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 12-16-2019 (date) on 9-17-2019 (date) in Application No. 19 A 310.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Constitutional and Statutory Provisions Involved

- U.S.C.A. Amendment 14, 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 the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Articles Cited and or referenced:

- U.S.C.A. Amendment 4: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
- U.S.C.A. Amendment 5: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
- U.S.C.A. Amendment 8: Excessive bail shall not be required, nor excessive fines, imposed, nor cruel and unusual punishments inflicted.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

See Attached Page 3

STATEMENT OF THE CASE

- This Petition for a Writ of Certiorari is for a decision rendered by The Supreme Court of Texas in a Civil Asset Forfeiture Case from July 19, 2019 denying the Petition For Review in Case Number 19-0189.
- The issues of a U.S.C.A. Constitutional Amendment 14 Procedural Due Process and Right of Access to courts violations were first raised on Appeal in Cause Number 05-17-01250-CV out of the Court of Appeals Fifth District of Texas at Dallas. The 5th District passed on these issues in a memorandum opinion published on 1-22-2019.
- The method the right of access to Courts U.S.C.A. Const. Amend. 14 issue was asserted was first raised in a Civil trial, No. CV-16-1161, in the 397th Judicial District Court of Grayson County, Texas on 10-17-2017, when Petitioner stated he could not obtain a motion due to denial of access to courts, or a law library while proceeding Pro Se. Petitioner then raised the Denial of Access issue on a Pro Se Direct Appeal, citing a Bounds v. Smith violation. The 5th District passed on this issue by stating the trial court did not err and that Petitioner did not raise the issue that his civil rights were violated in a memorandum opinion published on 1-22-2019 in Cause Number 05-17-01250-CV out of the Court of Appeals Fifth District of Texas at Dallas.
- The method the denial of procedural due process violation was first raised, a U.S.C.A. Const. Amend 14 violation, was during trial when Petitioner Sought to unfreeze his frozen Chase Bank account, in Cause No. CV-16-1161, in the 397th Judicial District Court of Grayson County Texas on 10-17-2017. The Judge believed the D.A.'s assertion that a subpeona was lawfully executed and that the account was already unfrozen. Petitioner then

raised the Procedural Due Process issue on a Pro Se direct appeal, showing the account was still frozen and that the subpeona did not exist. The 5th District passed on this issue by stating that the trial court did not act beyond it's jurisdiction to order the account to be frozen and that because the State never sought forfeiture of the account, the account did not fall within the trial court's control and thus, there was no violation to review in the Memorandum opinion published on 1-22-2019 in Cause Number 05-17-01250-CV in the Court of Appeals Fifth District of Texas at Dallas.

- The method the Procedural Due Process U.S.C.A. Const. Amend. 14 violation for denial of discovery was first raised was during the Civil trial, No. CV-16-1161, in the 397th Judicial District Court of Grayson County, Texas on 10-17-2017, when Petitioner re-filed a Motion for Discovery and stated he had filed another one before trial as well. The Judge denied the motion and stated that since the State said they never received the pre-trial motion for discovery, the pre-trial motion did not [redacted] exist. Petitioner then raised the Due Process denial on direct appeal, restating that he filed a pre-trial motion that was not honored and that the Court had no basis to deny the motion he filed in court. The 5th District passed on this issue, stating Petitioner failed to obtain a ruling on the motion and also did not believe he filed the motion, concluding that petitioner did not preserve his complaint for appellate review, in a Memorandum Opinion published on 1-22-2019 in Cause Number 05-17-01250-CV in the Court of Appeals Fifth District of Texas at Dallas
- All the portions of the record cited here appear in Appendix B1-B3 and the Memorandum opinion included in Appendix A1-A4.

REASONS FOR GRANTING THE WRIT

#1 Petitioner humbly requests this honorable court for an exercise of it's supervisory power over the lower State Court's sanctioning of a departure from the accepted and usual course of judicial proceedings in regards to the decision governing Grayson County Jail's denial of access to a law library while petitioner was proceeding pro se.

Petitioner submits that the lower State Court of Appeals erred and violated Rule 10(A) of The Rules of The Supreme Court of The United States when they overruled Petitioner's issue of Grayson County Jail's denial of access to a law library while Petitioner was proceeding Pro Se in this matter.

The evidence included in Appendix F5-F10, as well as in previous briefs in the lower State Court's records, show that Petitioner repeatedly tried to assert his right of access to a law library while he was proceeding Pro Se. By overruling Petitioner's issue, the lower courts deviated from previous precedents that have coddified a Pro Se litigants right of access to legal materials, case law and a law library while incarcerated.

Rule 10(A) of The Rules of The Supreme Court of The United States, states that when a violation has occured," A United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important manner; has decided an important federal question in a way that conflicts with a decision by a State Court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this

Court's supervisory power." Petitioner submits that this honorable court must rectify this violation immediately, lest it become standard practice for an incarcerated individual to be denied access to a law library whilst proceeding pro se.

Procunier v. Martinez, 416 U.S. 396, 419; 94 S.Ct. 1800, 1814; 40 L.Ed. 2d 224 (1974) held, "The constitutional guarantee of due process of law has as a corollary the requirement that prisoners be afforded access to the courts in order to challenge unlawful convictions and to seek redress for violations of their constitutional rights... Regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid." This Supreme Court precedent shows how the lower State Court's denial of Petitioner's issue of denial of access to a law library to a Pro Se incarcerated litigant is both lawful and invalid.

Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977) held, "Our decisions have consistently required States to shoulder affirmative obligations to assure all prisoners meaningful access to courts." This Supreme Court holding exposes how the lower State Courts failed to assure meaningful access to the courts and a law library during the course of these proceedings.

Mann v. Smith, 796 F.2d 79, 83 (5th Cir. 1986) stated, "Under Bounds, the government is obligated to provide prisoners with adequate legal libraries or adequate assistance from persons trained in the law." This precedent shows how the lower State Courts failed to provide access to an adequate legal library to petitioner during the course of these proceedings.

Straub v. Monge, 815 F.2d 1467 (11th Cir. 1987) held, "Right to meaningful access to courts was applicable to civil forfeiture action against prison inmate. U.S.C.A. Const. Amend. 14" This precedent establishes both how the State was obligated to provide meaningful access to courts to petitioner during

these proceedings and also establishes an avenue for redress, injunctive relief, return of property and damages for the violation of Petitioner's civil rights.

Straub held, "Even if State Prison inmate was not indigent and had adequate financial resources with which to employ counsel of his own choice, State was under constitutional obligation to assist inmate in preparation and filing of meaningful legal papers by providing adequate libraries or adequate assistance from persons trained in law. U.S.C.A. Const. Amend. 14" Straub at 1469 also states, "The State cannot force a person with financial means, who would otherwise not hire a lawyer, to hire a lawyer because of incarceration, any more than the State can deny access to an indigent. We hasten to add that we are not holding that an inmate with the financial means to hire a lawyer must be furnished a lawyer at state expense. We do not now speak of representation, but access. The State may not bar access to the courts no matter what form it utilizes." These holdings in Straub show how the lower State Courts were completely in violation by sanctioning Denial of Access to courts to Petitioner in earlier proceedings.

Ryland v. Shapiro, 708 F.2d 967, 972 (5th Cir. 1983) quoting McCray v. Maryland, 456 F.2d 1, 6 (4th Cir. 1972) posed the question, "Of what avail is it to the individual to arm him with a panoply of constitutional rights if, when he seeks to vindicate them, the courtroom can be hermetically sealed against him by a functionary who, by refusal or neglect impedes the filing of his papers?" Very clearly, the multitude of denied law library requests included within this Appendix at F5-F10, demonstrates this exact type of violation of denial of access mentioned above.

Harris v. Pate, 440 F.2d 315, 317 (7th Cir. 1971) held, "Prison Authorities prohibited from interfering with right of access to courts." Once again, the many denied law library requests included here in Appendix F5-F10,

Showcases the perfect example of denial of access to courts to a Pro Se litigant.

Boddie v. State of Connecticut, 401 U.S. 371, 380; 91 S.Ct. 780, 787; 28 L.Ed.2d 113 (1971) stated, "The State owes to each individual that process which, in light of the values of a free society, can be characterized as due." That precedent out of this very court outlines the minimum standard required by the various courts to meet or match when it comes to uniform processes and guidelines thereof which were not met in prior proceedings in this cause.

The Court may now ask the question, "Had this Pro Se litigant been granted access to the Court and a viable law library, would anything have possibly been different?" Aside from the cognizable injunctive relief, return of property and possible damages awarded as part of a 42 U.S.C.A. § 1983 civil rights claim under the standard of Straub v. Monge, that could be generated under this blatant denial of access to courts, there are certain Texas Cases that apply to the case at hand that would have been invoked had Petitioner been granted the access that he was denied.

For example, Petitioner could have invoked a, "Double Jeopardy defense, as the property to be forfeited was seized after a criminal arrest and subsequent trial where the Petitioner was sentenced to time in the Texas Department of Criminal Justice, effectively seizing the property as well as sending petitioner to prison. By performing both of these actions, the State of Texas and/or the Agents acting in her power punished petitioner twice for the same offense.

Nguyen v. State, 925 S.W.2d 297 (App. 1 Dist. Tex. 1996) held, "When contraband is used in exact offense subject to criminal prosecution, seizure and forfeiture of contraband arises from, "Same Offense," for double jeopardy purposes." This case shows how Petitioner could have immediately demonstrated

a Double Jeopardy violation explicitly prohibited by the Fifth Amendment and applicable to the States through the Fourteenth Amendment of the United States Constitution, had he not been denied access to a law library while proceeding Pro Se.

Ex Parte Ariza, 913 S.W.2d 215; 934 S.W.2d 393 (App. 3 Dist. Tx. 1995) States, "Forfeiture of lawfully owned property under Texas Forfeiture statute constitutes, "Punishment," for purposes of double jeopardy clause." Once again, another case that Petitioner would have used had he been granted Access to the Courts while proceeding Pro Se.

Had Petitioner been given the Access to the Courts he sought while proceeding Pro Se, he could have invoked a Legal Sufficiency of Evidence challenge to the Forfeiture proceedings, as the State explicitly stated that, "... we're not going to put on any evidence that the Mercedes was purchased with illegal proceeds." (R.R. 7-23) This statement shows that not only did the State not have any intention of producing evidence of a nexus or substantial connection between the property in question and illegal activity, but also shows how the State had no evidence whatsoever of a nexus of the property being purchased with illegal proceeds.

$7,058.84 in U.S. Currency v. State of Texas, 30 S.W.3d 580 (App. 6 Dist. Tx. 2000) held, "Evidence was legally insufficient that money discovered in vehicle claimant was driving was used or intended to be used in commission of drug related felony or that it was the proceeds from such a felony, and thus, the money was not subject to forfeiture; There was no direct evidence connecting money to sale or possession of narcotics, and fact that money was found near a controlled substance did not establish, by itself, nexus between drug money and drug deal, nor positive alert by drug detection dog, standing alone, constitute evidence that money was used in conection with a drug deal."

This holding would have been insurmountable and vital to Petitioner's defense and would have been invoked had the State not denied him access to a law library.

$7,058.84 in U.S. Currency v. State of Texas, 30 S.W.3d 580 (App. 6 Dist. Tx. 2000) also held, "Even if trial court disbelieved claimants explanation of source of money found in vehicle he was driving, the State failed to provide a nexus between the money and a drug related felony; therefore, the trial court could not infer that even if claimant was lying, the money had to be intended for use in a drug felony or was proceeds derived from such a felony, and thus, money was not subject to forfeiture." Once more, this holding that could have been used by Petitioner, had he had access to a law library, would have been an avenue to dispute the State's entire case.

$4,182 v. State of Texas, 944 S.W.2d 24 (App. 6 Dist. Tx. 1997) held, "State must prove, in forfeiture proceeding, that probable cause exists for seizing property, and that there is a substantial connection or nexus between property and illegal activity." Spurs v. State of Texas, 850 S.W.2d 611 (App. 12 Dist. Tx. 1993) states, "In contested forfeiture proceeding, State must establish link or nexus between property to be forfeited and statutorily defined criminal activity." Money of U.S. in Amount of $8,500 v. State of Texas, 774 S.W.2d 788 (App. 14 Dist. Tx. 1989) stated, "In order for cash to be forfeited, State must establish link or nexus between cash and criminal activity." These 3 holdings show the framework for a possible viable defense that was denied to Petitioner because of the Denial of Access to a law library.

In conclusion, Petitioner humbly requests that this honorable court grant his petition for Certiorari for the compelling reason that another United States Court of Appeals has decided an important federal question that is in conflict with other Applicable decisions out of this very court for Denial of Access to a Pro Se litigant.

#2. Petitioner now asks that this honorable court exercise it's supervisory power over the lower State Court's sanctioning of Petitioner's personal bank account at Chase Bank being frozen or put on hold without a warrant, subpeona or court order as part of a Civil Asset forfeiture proceeding and also without the Bank Account in Question ever being listed on any document to be seized or frozen.

Petitioner submits that the lower State Court of Appeals erred and violated Rule 10(A) of The Rules of The Supreme Court of The United States, when they overruled Petitioner's issue of a Civil Rights and Due Process violation, when the State of Texas froze petitioner's personal bank account at Chase Bank without the Account ever being listed on any document to be seized or frozen, never obtained a subpeona to freeze the account and lied on the record about executing a non-existent subpeona.

Nowhere on the record is there any mention of Petitioner's bank account being frozen, seized or segregated. However, the head District Attorney of Grayson County, Joseph O. Brown, was well aware of the hold on Petitioner's bank account. At R.R. 9-24, Mr. Brown states, "We executed a subpeona for his Bank Account records back when it happened (Referring to the arrest), and did not move forward with filing a seizure on his bank account." At R.R. 10-25, Mr. Brown also said, "As far as I'm aware, the officer said it was released fairly quickly thereafter," Once again referring to the account. The Court's interpretation of testimony about the account was summarized at R.R. 11-22 where Judge Brian Gary said, "They are saying it's not frozen. I don't know. They are not trying to seize your bank account." Ultimately, all of these statements are now known to be false.

The document from the Grayson County District Clerk's office,

contained here at Appendix F1, shows that their office does not even have a search warrant or court order to freeze the personal bank account at Chase Bank.

The letters sent to Petitioner by Chase Bank, contained herein at Appendix F2, F3, shows that Chase Bank themselves do not have and have never had a subpeona or court order to freeze, seize or segregate assets at their financial institution.

The printoff from Petitioner's online account activity at Chase Bank, enclosed here at Appendix F4 shows that the account was still frozen well after D.A. Brown stated it had been unfrozen. The letters from Chase Bank at Appendix F2, F3, Also confirm that Petitioner's bank account was still frozen, despite D.A. Brown's statement that it was unfrozen and Judge Brian Gary's order on 10-17-2017 to unfreeze the account.

The State of Texas utilized Article 59 of The Texas Code of Criminal Procedure to proceed with the Asset Forfeiture hearings. Article 59.12(c) of The Texas Criminal Code of Procedure speaks as to the necessary steps and actions to freeze, seize or segregate assets in a financial institution after obtaining a seizure warrant issued under Chapter 18 of The Texas Code of Criminal Procedure: "Immediately on service of the seizure warrant, the regulated financial institution shall take action as necessary to segregate the account or assets and shall provide evidence, certified by an officer of the institution, of the terms and amount of the account or a detailed inventory of the assets to the peace officer serving the warrant. Except as otherwise provided by this Article, a transaction involving an account or assets, other than the deposit or reinvestment of interest, dividends, or other normally recurring payments on the account

or assets that do not involve distribution of proceeds to the owner, is not authorized unless approved by the court that issued the seizure warrant or, if a forfeiture action has been instituted, the court in which that action is pending." This shows how a seizure warrant was necessary to freeze or hold the account or even inspect the inventory of the account. As all search warrants are public information in Texas and must be made available to the public for inspection through the issuing Magistrate Clerk's office, the State's inability to produce the order or subpeona examplifies a typical 14th Amendment Procedural Due Process violation as well as a 42 U.S.C.A. § 1983 violation as well.

Furthermore, the lower State Court's opinion, written by Justice Erin Nowell on January 22nd, 2019 and published in the Court of Appeals Fifth District of Texas at Dallas, had a glaring error contrary to it's own rules. Article 59.12(c) of The Texas Codes of Criminal Procedure explicitly states that once a forfeiture action has been instituted, the court in which the action is pending has to approve any actions on the account in question. Thus, while the excuse that the Court did not seek forfeiture of the account may in some eyes exonerate the actions undertaken to freeze the account, ultimately O.A. Brown's admission that he or his office executed the non-existant warrant means that the current ruling court technically has jurisdiction over the frozen account at Chase Bank.

Justice Nowell's opinion that there was no evidence the trial court acted beyond it's jurisdiction to order the account frozen was also contrary to clearly established practices and rulings. As there is no warrant on file either at the District Clerk's office in Grayson County nor at Chase Bank Headquarters, it's evident that the State did act beyond their jurisdiction to freeze Petitioner's bank account. In fact, this situation would be the

exact definition of acting beyond their jurisdiction and begs the question of how the account was frozen in the first place without the warrant.

Echtenkamp v. Loudan, 263 F.Supp.2d 1043 (2003) held, "In order to state a §1983 claim for deprivation of property without due process, Plaintiff must show (i) That they have a constitutionally protected property interest and (ii) That they have been denied or deprived of that interest by State action. See, Board of Regents v. Roth, 92 S.Ct. 2701 (1972) and Stone v. Univ, 855 F.2d 167 (1988)." The interest of petitioner in the account, is that it is his named account and misuse by a 3rd party is liable under Criminal action. The deprivation by State Action was defined by O.A. Brown's admission that his office executed the freeze or hold by a non-existent Subpeona.

As the lower courts have continuosly passed the buck or sanctioned these actions by the State, Petitioner is now calling for this honorable court to intercede and clear up the errors and departures from justice that have existed for too long. The illegally frozen bank account and the perjury committed by O.A. Brown on the record create a unique scenario, particularly when combined with the fact that the bank account is still frozen to this day.

Petitioner's lack of access to his own bank account, despite the account not being listed for seizure, impeded not only his defense to this Civil Asset Forfeiture proceeding, but also his defense to his Criminal Case. Access to the account would have helped with his bond, his attorney, legal materials, commissary money in jail and telephone minutes. This lack of access also severely increased Petitioner's pain and suffering in jail and also jeopardized his legal defense.

Petitioner asks this honorable Court to find that the lower court erred when they overruled this issue and asks the Court to now sustain this issue and certify that the State violated Petitioner's civil rights when they froze his bank account without a warrant, lied on the record about the warrant and failed to unfreeze the account when directed to by the judge.

#3. Petitioner moves that this honorable court exercise it's Supervisory power over the lower State Court's sanctioning of the denial of Petitioner's multiple Pro Se motions for Discovery while simultaneously being denied access to a law library while he was proceeding Pro Se

Petitioner submits that the lower State Court of Appeals erred and violated Rule 10(A) of The Rules of The Supreme Court of The United States when they overruled Petitioner's multiple Pro Se motions for discovery, while simultaneously being denied access to a law library while he was proceeding Pro Se.

Despite being denied access to a law library, Petitioner asserts he still managed to file a motion for discovery. It is the lower court's opinion that Petitioner never filed any motions for discovery, because no motion appears on the record and that since Petitioner never obtained a ruling on the motion, Petitioner failed to preserve his complaint for appellate review. This is an instance of, "He said, she said," where credibility and evidence must be weighed and judged by this honorable court.

Petitioner points now to Appendix F1, where the record shows that the District Clerk's office in Grayson County does not have the subpeona that O.A. Brown asserts his office obtained and executed, see R.R. 9-24. Petitioner points to the letter from Chase Bank that proves no subpeona exists in their files at Appendix F2, F3, once again disproving O.A. Brown's assertion of obtaining a subpeona. The letter from Chase Bank at Appendix F2, F3 also proves O.A. Brown's assertion at R.R. 9-15 that the hold was released already is false, as the letter states that the account was still frozen or on hold on the Date of the letter, 1-19-2019 and 2-27-2019. These points and the evidence prove that the Prosecution had no qualms or hesitation about lying on the record in regard to a material matter.

Petitioner will now show the records in all the Cause Numbers tied to this Civil Matter where he has proceeded Pro Se and filed multiple succesful motions and entire briefs; Cause Number 05-17-01250-CV in the Court of Appeals Fifth District of Texas at Dallas, Cause Number 19-0189 in the Supreme Court of Texas. Petitioner will also show he filed his own Petition For Discretionary Review and was successfully granted it for the criminal case tied to this matter at PDR Number PD-1226-18, in the Criminal Court of Appeals in the State of Texas. These records show that not only does Petitioner grasp how to file a brief, but also how to successfully file motions and the operation of law.

The documents at Appendix F5 through Appendix F10 show that Petitioner was denied access to a law library while proceeding Pro Se in this matter, a blatant Bounds v. Smith violation. Thus, Petitioner performed all of his legal research on these aforementioned causes outside his time spent in county jail.

Therefore, due to the lies on the record perpetrated by the State and all the evidence contained within this Appendix and the records in the aforementioned related cause numbers, this Court cannot trust the State's assertions that Petitioner never filed a motion for discovery. Very clearly, Petitioner grasps the rudimentary foundation and operations of law and is well versed in how to file, even as an untrained Pro Se layman in the law. This court must weigh the credibility of the opposing parties in regard to their dispute on whether or not a discovery motion was filed before trial began.

There was no reason given by Judge Brian Gary as to why he denied discovery. The prosecution did not oppose discovery. The prosecution merely had to hand over the files on their desk and allow Petitioner to review the arrest DVD for a scant few hours. Petitioner sought to see if the State actually had a nexus or proof of a substantial connection between the property to be forfeited and illegal activity. D.A. Brown stated at R.R. 7-23 that, "... We're not going to put on any evidence that the Mercedes was purchased with illegal proceeds. The case will proceed on the facts that it was used in the course of the felony drug transaction." Ultimately, the State had no evidence of a nexus of criminal activity and the property to be forfeited, nor did the State display any evidence of a felony drug transaction or delivery to a 3rd party. Discovery or no discovery, the State could not have met a legal or factual sufficiency of evidence standard without proof of a nexus of criminal activity and the property to be forfeited or evidence of a felony drug transaction and delivery to a 3rd party.

Transamerican Natural Gas Corp. v. Powell, 811 S.W.2d 913 (Tex.1991) held, "We review a trial court's actions denying discovery for an abuse of discretion." Joe v. Two Thirty Nine Joint Venture, 145 S.W.3d 150 (Tex.2004) held, "A trial court abuses it's discretion when it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law." In the

case at hand, the trial court abused it's discretion by not only denying discovery arbitrarily but also by ordering the property to be forfeited without proof of a nexus of criminal activity and the property or evidence of a felony drug transaction and delivery to a 3rd Party. See, $4,182 v. State of Texas, 944 S.W.2d 24 (App. 6 Dist. Tex. 1997) "State must prove, in forfeiture proceeding, that probable cause exists for seizing property, and that there is a substantial connection or nexus between property and illegal activity;" and $8,500 v. State of Texas, 774 S.W.2d 788 (App. 14 Dist. Tex. 1989), "In order for cash to be forfeited, State must establish link or nexus between cash and criminal activity."

Ford Motor Company v. Castillo, 279 S.W.3d 656 (Texas-2009) stated, "A party is not required to demonstrate the viability of defenses before it is entitled to conduct discovery. Rather, a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending actions. Tex. Rules. Civil Procedure 192.3. The phrase, "Relevant to the subject matter," is to be liberally construed to allow the litigants to obtain the fullest knowledge of the facts and issues prior to trial." This holding demonstrates how the trial court could neither ignore Petitioner's pre-trial motion for discovery nor deny him discovery in court.

Under the United States Federal Rules of Criminal Procedure Rule 16, Petitioner was fully entitled to discovery. While the lower Courts chose to believe the State's contention that Petitioner never filed a motion for discovery before trial, the State never actually opposed the Discovery Motion while in trial. The denial of Discovery rests solely upon the trial court's shoulders and should be reviewed for an abuse of discretion.

Parker v. State, 745 S.W.2d 394 (Tex. App. Houston [1 Dist.] 1988) stated, "No one, under any circumstances, should be deprived of any right given him by the laws of this state, and, if any provision of our [CCP] has been overlooked

or disregarded, if, in the remotest degree, it could have been hurtful or harmful to the person on trial, the verdict should be set aside. He has a right to be tried in accordance with rules and forms of law and if this sort of trial is not accorded him he has a right to complain and to this complaint we will always give an attentive ear." This holding applies to the case at hand, as all of Petitioner's attempts at pre-trial motions were either ignored or glossed over by the State's assertion that Petitioner failed to file, yet somehow has filed every other motion on time and in compliance with rule of law.

The trial court's abject denial of Petitioner's motion for discovery without rhyme or reason on the record and finding that the State was granted the assets in question without any nexus between the property and illegal activity, fits the exact definition of an abuse of discretion and Petitioner requests that this honorable Court sustain this issue and reverse the incorrect decision of the lower court.