19-7442

No. 14-16-00458-CR

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

ANDREW LEE WILLIAMS - Petitioner,

v.

GREGG ABBOT - Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE TEXAS COURT OF CRIMINAL APPEALS

Pro Se Petitioner:
Andrew L. Williams
TDCJ-CID # 02068698
McConnell Unit
3001. S. Emily Dr.
Beeville, Texas 78102

QUESTIONS PRESENTED

1. Whether the Texas Court of Criminal Appeals' recent holdings in ANDREW LEE WILLIAMS v. STATE, No. PD-1199-17 (Tx.Crim.App.-October 9, 2019), regarding the construction and application of Texas Code of Criminal Procedure Article 38.41, renders the notice-and-demand procedure of the statute Constitutionally Vague and Indefinite, Intollerable, and, thus, Violative of a Defendant's right to: (1) a Fair Trial and Confrontation under the SIXTH AMENDMENT of the UNITED STATES CONSTITUTION; and (2) Due Process of Law under the FOURTEENTH AMENDMENT of the UNITED-STATES CONSTITUTION?

IDENTIFICATION OF THE PARTIES

Petitioner gives notice, pursuant to United States Supreme Court Rules, Rule 14(b), that the following are interested parties in the present petition:

Petitioner, Pro Se:

Andrew Lee. Williams, #02068698, 3001 S. Emily Dr., Beeville, Texas 78102

For Respondent Gregg Abbott:

Texas Attorney General Ken Paxton, P.O.Box 12548, Austin, Texas 78711-2548

TABLE OF CONTENTS

INDEX OF AUTHORITIES

STATUTES, RULES, AND OTHER AUTHORITIES

PRIOR OPINIONS AND ORDERS

May 9, 2016 Conviction, Manslaughter and Accident Involving Injury Brazoria, County; Cause No. 75253;

October 3, 2017 Direct Appeal, affirmed; (Published) WILLIAMS v. STATE, 531 S.W.3d 902 (Tx.App.-Houston[14th Dist.] 2017);

October 9, 2019 Discretionary Review, affirmed; (Published) WILLIAMS v. STATE, No. PD-1199-17 (Tx.Crim.App.October 9, 2019).

BASIS OF JURISDICTION

Seeking United States Supreme Court review of State Court decisions that are contrary to, and unreasonable applications of clearly established federal law; were based on unreasonable determinations of fact; and, which are offensive to the Sixth and Fourteenth Amendments of the United States Constitution.

The Texas Court of Criminal Appeals GRANTED discretionary review, and later affirmed Williams' conviction on October 9, 2019 which renders the conviction final.

Jurisdiction is conferred on This Court by the United States Supreme Court Rules, Rule 10 (b) and (c); and , Rule 13 (1). The state court decision was a final adjudication per Texas Rules of Appellate Procedure, Rules 68; 78.1 (a); and 79, and the decision conflicts with the Sixth and Fourteenth Amendments to the United States Constitution; as well as the relevant holdings of the Supreme Court of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES

United States Constituition, Amendment VI and XIV;

Texas Code of Criminal Procedure, Article 3.01; 26.13; 38.41 (see Appendix 6);

Texas Government Code, Section 311.011; 311.021; 311.023 (see Appendix 7);

Texas Rules of Appellate Procedure, Rule 33.1

STATEMENT OF THE CASE

During the guilt/innocense phase of Petitioner Andre Lee Williams' (hereinafter Williams) jury trial, in criminal cause number 75253, trial counsel objected to the State's admittance and use of a Certificate of Analysis that FAILED TO COMPORT (substantially comply) with the notice-and-demand statute of **Texas Code of Criminal Procedure**, Article 38.41. Trial Court Reprter's Record, Volume 5 at 55-58 (hereinafter Appendix 2 [Appx.2]).

Trial counsel argued that the Certificate of Analysis did not comport with the statute, and further pointed to the fact that the AFFIANT was not "the analyst" who performed the test procedures that are sworn to in the Certificate of Analysis Affidavit. Id. The State's counter argument was that the Defense had failed to comply with Section 4 of Tex.C.Crim.P. Art. 38.41, and raise the complaint at least 10 days prior to the trial proceeding.Id. The trial court, relying on This Court's precedent, **Melendez-Diaz v. Massachusetts**, 557 U.S. 305, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009), overruled Williams' objection and allowed the Certificate of Analysis into evidence.

On direct appeal Williams raised the issue of: (1) the denial of his United States Constitutional Sixth Amenendment right to confrontation; and (2) the trial court's Abuse of Discretion in allowing the State to admit and use a statutory non-compliant Certificate of Analysis. See Appellant's Brief in cuase No. 14-16-00458-CR (hereinafter Dir.App.Brf. of App). The 14th District Court of Appeals of Texas disagreed with Williams, and affirmed the decision of the trial court. See Memorandum Opinion in cause No. 14-16-00458-CR (hereinafter Appendix 3 [Appx.3]).

The Texas Court of Criminal Appeals granted Williams discretionary review to address the issue of whether "the court of appeals [had] erred in affirming the

trial court's allowing evidence of a drug test without testimony of the chemist who performed the testing." The Texas Court of Criminal Appeals, in a published memorandum opinion (see Appendix 4 [Appx.4]), denied Williams relief and affirmed the decisions of the trial and appellate court. Appx.4. Justice Walker filed a DISSENTING Opinion, in which Justice Keel concurred. See Appendix 5.

The instant Petition For Writ Of Certiorari now follows.

ARGUMENT

1. Whether the Texas Court of Criminal Appeals' recent holdings in ANDREW LEE WILLIAMS v. STATE, No. PD-1199-17 (Tx.Crim.App.- October 9, 2019), regarding the construction and application of Tx.Code of Criminal Procedure Art.38.41, renders the notice-and-demand procedure of the statute Constitutionally Vague and Indefinite, Intollerable, and, thus, Violative of a defendant's right to: (1) a Fair Trial and Confrontation under the Sixth Amendment of the UNITED STATES CONSTITUTION, and (2) Due Process of Law under the Fourteenth Amendment of the UNITED STATES CONSTITUTION?

The Texas Court of Criminal Appeals has handed down a decision, regarding the notice-and-demand procedure of Texas Code of Criminal Procedure Article 38.41 (hereinafter Art.38.41), that now: (1) allows ANY analyst – other than "the analyst" who actually performed the test procedure(s) – to certify, under oath, as to the test procedures actually used and the reliability of such procedures; (2) allows a statutory non-compliant and, thus, inadmissible Certificate of Analysis to trigger the statute's timer and require, or subtly FORCE, the defendant to exercise-or-forfeit his Constitutional Right BEFORE TRIAL; and (3) holds a party accountable to a statutory non-compliant Certificate of Analysis Affidavit, submitted by the opposing party, so long as the invalid affidavit is submitted within the statutory time frame. See Texas Court of Criminal Appeals Memoramdum Opinion (hereinafter Appendix 4 [Appx.4]); see also Texas Court of Criminal Appeals Dissenting Opinion (hereinafter Appendix 5 [Appx.5]).

Art.38.41 renders admissible, ONLY, a COMPLIANT Certificate of Analysis that timely filed with the clerk of the trial court, and absent any timely objections from the opposing party. Art.38.41 §§ 1 and 4. Nowhere does the statute require the opposing party to object, PRIOR TO TRIAL, to the use or admissibility of a Certificate of Analysis that does not comply – substantially or otherwise – with the statute.

Williams' objection during trial was that theState's Certificate of Analysis did not "comport" (Substantially Comply) with Art.38.41. See Trial Court Reporter's Record, Volume 5 at 55-58 (hereinafter Appendix 2 [Appx.2]). Williams' argument, to the trial court, in support of his objection, was: (1)"the affiant in the Certificate of Analysis is not the person who actually conducted any of those test." Id. at 57; (2) "the witness should not be allowed to rely on [the] information [contained within the Certificate of Analysis] and put it in front of the jury as a statement of this is what is fact." Id. at 58; and (3) "there is a Confrontation problem there." Ibid. The State's counter-argument was that Williams had failed to comply with Art.38.41's statutory time frame for objecting to the Certificate of Analysis. Appx.2 at 59-62. Contrary to the Texas Court of Criminal Appeals' unreasonable determination of the record facts (Appx.4 at 17), Williams did not offer any counter-argument to the State's argument regarding Williams failure to timely comply with the statute; and, instead, offered an addition argument to the commentaries within the Certificate of Analysis - if the trial court were to find the Certificate admissible. Appx.2 at 62.

The trial court, after reviewing this Court's holding in MELENDEZ-DIAS v. MASSACHUSETTS, 577 U.S. 305, 129 S.Ct. 2527, 174 L.Ed 2d 314 (2009), and without stating its reasons, agreed with the State and overruled Williams' objection to the admittance of the non-compliant Certificate of Analysis. Id. at 69-70. The trial court's denial of William's request to exclude the non-compliant Certificate was based on Williams' objection under Texas Rule of Evidence Rule 403 and 404 (See Appx.8); therefore, the question of statutory compliance was not addressed or ruled on by the trial court. Appx.2 at 69-70.

On direct appeal, in Ground Four, Williams raised the issue of the trial court's error in admitting the statutorily non-compliant Certificate of Ananlysis Affidavit. See **Brief of Appellant, at 54.** In overruling Williams' ground Four complaint, the 14th District Court of Appeals of Texas opined that: (1) "[a]bsent a more specific requirement in the statute that the affiant be the certifying analyst, the Certificate of Analysis substantially complies with the requirements of article 38.41." See **Memorandum Opinion of the 14th District Court of Appeals of Texas, at 21** (hereinafter Appendix 3 [Appx.3]) (citing Lopez v. State, No. 08-10-00285-CR, 2012 WL 165-8679, at *4 (Tx.App.-El Paso May 9, 2012, no pet.); Johnson v. State, No. 07-07-0327-CR, 2009 WL 102930, at *6 (Tx.App.-Amarillo Jan. 15, 2009, no pet.); and (2) because the Certificate of Analysis substantially complied with the statute, [Williams] was required to filed a written objection at least ten days before the begining of trial. **Appx.3 at *22.**

Williams petitioned the Texas Court of Criminal Appeals, for discretionary review, to answer the question of whether the 14th District Court of Appeals of Texas erred in affirming the trial court's allowing evidence of a drug test without the testimony of the chemist who performed the tests. See **P.D.R. and Brief on P.D.R.** in cause No. **PD-1199-17.** The Texas Court of Criminal Appeals granted Williams review of the question. In a published memorandum opinion **(Appendix 4)**, the Texas Court of Criminal Appeals found that: (1) although the Certificate of Analysis Affidavit failed to substantially comply with all seven enumerated, mandatory provisions of Art. 38.41 § 3, the Certificate of Analysis Affidavit did substantially comply with the statute "in the narrow regards Williams

complained about on appeal" (Appx.4 at *10); and, therefore, it would "leave for another day an examination of the procedural-default consequences of a defendant's failure to timely object to a certificate of analysis that does not substantially comply with Article 38.41. Appx.4 at *10; (2) there is no express requirement that any of the information, mandated by Art.38.41, come from the analyst herself. Id. at *13; (3) Art. 38.41 § 3 does require the information to be certified under oath, but does not require that the oath be given by any particular person. Id. at *14; (4) there is no requirement in the statute, express or otherwise, that the affiant be the analyst who tested the physical evidence. That is essentially a matter of form, discretionary with the offering party, not a matter of substance. Id. at *15; (5) when Sec. 3 of Art. 38.41 says **the analyst**, it means "**the analyst**" – who conducted the analysis. Id. at *15-16; and (6) the State's certificate is missing information the Sec. 3 of Art. 38.41 plainly requires; and, had Williams complained of the missing information that Sec. 3 says a certificate must contain, he might well have succeeded in his argument that this certificate does not substantially comply with Art. 38.41. Id. at *16.

Based on its analysis and interpretation of Art. 38.41, and its findings resulting from its analysis and interpretataion of the statute, the Texas Court of Criminal Appeals held that: (a) it does not matter "if the affiant is someone who could not, over a Sixth Amendment confrontation objection, serve as a sponsoring witness for the laboratory results at trial." Id. at *14; (b) "The only way a certificate of analysis will fail to substantially comply with Article 38.41 is if it omits information that Section 3 says a

certificate 'must contain'." Id. at *15; and (c) "for Section 5, substantial-compliance purposes, the affiant need not be the same personperson as the analyst. It is still the case that, whoever the affiant is, she must provide information that is responsive to Section 3 — including information pertinent to 'The analyst'." Id. at *16. The Texas Court of Criminal Appeals' analysis of Art. 38.41 was inadequate, incomplete, and has resulted in an unreasonable interpretation and application of Art. 38.41 which offends the Sixth and Fourteenth Amendments of the United States Constitution.

Williams will now show this Honorable Court the following:

I. NOT AN ADEQUATE AND INDEPENDENT STATE LAW GROUND

Article 38.41 of the Texas Code of Criminal Procedure is a notice-and-demand statute that requires a defendant, in a State Court proceeding, to execise-or-forfeit his United States Constitutional Sixth Amendment right to Confrontation; and, therefore, is not an adequate and independent State law ground. See COLEMAN v. THOMPSON, 501 U.S. 722,735, 111 S.Ct. 2546, 115 L.Ed 2d 640 (1991).

When properly applied by parties in a Texas State Court proceeding, Article 38.41 is sufficient to foreclose review by federal courts of the question of a violation of a State court defendant's U.S. Constitutional Sixth Amendment right to Confrontation. However, it "is itself a federal question" as to the adequacy of a State Statute that forcloses federal review. DOUGLAS v. ALABAMA, 380 U.S. 415,422, 85 S.Ct. 1074, 13 L.Ed 2d 934 (1965).

Being that the decision of the Texas Court of Criminal Appeals "fairly appears...to be interwoven with the federal law, and...the adequacy and independance of [the] State law ground is not clear from the face of the opinion," this Court should presume that there

is no adequate and independent State law ground supporting the decision and judgement of the Texas Court of Criminal Appeals. COLEMAN v. THOMPSON, supra, at 501 U.S. 735.

II. FAILURE TO PROPERLY APPLY THE APPLICABLE LAWS

The Code Construction Act, Codified under Texas Government Code Chapter 311, applies to Articles 38.41 and 3.01 of the Tx.C.Crim.P.; hence, Tx.Govt.Code Article 311.011 (a), and Tx.C.Crim.P. Art. 3.01 imposes a duty on those charged with enforcing said statutes to interpret the words and phrases in Article 38.41 according to the Rules of Grammar and Common Usage. See Appx.6 and 7; see also KIRSCH v. STATE, 357 S.W.3d 645 (Tx.Crim.App.2012); RIPKOWSKI v. STATE, 61 S.W.3d 378 (Tx.Crim.App.2001)(holding that words in a statute must be read in context and construed according to the rules of grammar and common usage).

In reviewing Williams' claims, and interpreting the enactment of Article 38.41 by the Texas Legislature, the Texas Court of Criminal Appeals was obligated to "seek to effectuate the collective intent or purpose of the Legilature who enacted the legilation." BOYKIN v. STATE, 818 S.W.2d 782,785 (Tx.Crim.App.1991)(citations omitted). The Texas Court of Criminal Appeals was to focuss its analysis on the literal text of the statute and "attempt to discern the fair, objective meaning of that text at the time of its enactment." Id. When the language used in the statute is clear and unambiguous, Texas courts are to give effect to the statute's plain meaning, unless that meaning would lead to absurd consequences that the Legilature could not have intended." Id.

Although the Texas Court of Criminal Appeals applied Tx.Govt. Code 311.011 to the word "otherwise" as that word is used in

Tx.C.Crim.P. Art. 38.41 § 5 —, it failed to apply Tx.Govt.Code 311.-011 to the entire statute of Tx.C.Crim.P. Art. 38.41.

III. RELEVANT STATUTORY WORDS, PHRASES, AND COMMON GRAMMATICAL DEFINITIONS

Williams' challenges – during trial (Appx.2), on direct appeal (see Appellant's Brief in State Appellate cause No. 14-16-00458-CR, groung 4 at *56), and on Petition for Discretionary Review (see PDR in State Cause No. PD-1199-17, at *11) – to the Certificate of Analysis Affidavit's failure to substantially comply with Art. 38.41 required the Texas courts to determine what the Texas Legilature would have intended by its use of the words and phrases: "the analyst", "substantially complies", and "this article." See BOYKIN, supra, at *785. Where there is no statutory definition for words in a statute, the reviewing court may look to dictionary definitions to determine the statutes plain meaning. LANE v. STATE, 933 S.W.2d 504,515 n.12 (Tx.Crim.App.1996). The words analyst, article, comply/complies, substantial(ly), the, and this are not defined by the Texas Code of Criminal Procedure; therefore, the Texas courts were to interpret those words – as they are used within the context of the statute – in accordance with their ordinary meaning. See WATSON v. State, 369 S.W.3d 865,870 (Tx.Crim.App.2012)("Terms not defined in a statute are to be given their plain and ordinary meaning, and words defined in dictionaries and with meaning so well known as to be understood by a person of ordinary intelligence are not to be considered vague and indefinite.").

The word "ANALYST" means: a person who analyzes or who is skilled in analysis. Merriam Webster's Collegiate Dictionary 11th Edition (2003), at *44.

The word "ARTICLE", in relevant part, means: a distinct often numbered section of a writing; and, any of a small set of words or affixes (as a, an, and the) used with nouns to limit or give definiteness to the application. Id. at *70.

The word "COMPLY(IES)", in relevant part, means: to conform, submit, or adapt. as required or requested. Id. at *255.

The word "SUBSTANTIAL(LY)", in relevant part, means: consisting of or relating to substance; not imaginary or illusory; being largely but not wholly that which is specified; See also "SUBSTANCE": essential nature; fundamental or dharacteristic part or quality. Id. at *1245.

The word "THE", in relevant part, means: used as a function word to indicate that a following noun or noun equivolent is definite or has been previously specified by context or by circumstance; used as a function word to indicate that a following noun or noun equivolent is a unique or a particular member of its class. Id. at *1294.

The word "THIS", in relevant part, means: the person, thing, or idea that is present or near in place, time, or thought or that has just been mentioned; the one nearer or more immediately under observation or discussion; the one more recently reffered to. Id. at *1300.

A. STATUTORY ANALYSIS AND APPLICATION

Having shown the meanings of the above-defined words to be plain, and reading them in the context in which they are written, Williams avers that the Texas Legislature would have understood the words as follows:

1. "THE ANALYST", as that term first appears in Tx.C.Crim.P. Art. 38.41 § 1, and as read in context of the statute, can ONLY be in reference to that which was previously specified by context; thus, "the analyst" mentioned in Sec. 1 of Art. 38.41 MUST necessarily be "THE ANALYST" who, by or for a law enforcement agency, conducted the laboratory analysis of physical evidence;
2. "THE ANALYST", as that term is used in Tx.C.Crim.P. Art. 38.41 § 3 (1)-(6), can ONLY be in reference to that which has been previously specified by the context of Art. 38.41 § 1; thus, as argued by Williams during trial (Appx.2), on appeal, on Petition for Discretionary Review, and conceded by the Texas Court of Criminal Appeals in its memorandum opinion (Appx.4 at *15-16), "the analyst" mentioned in Art. 38.41 § 3 is "THE ANALYST" who conducted the analysis of the physical evidence;
3. "THIS ARTICLE", as that term first appears in Sec. 1 of Art. 38.41, can ONLY be in rference to the Article's heading immediately proceeding Sec. 1; thus, "this article" applies to the entire statute and is not to be applied in part or isolation;
4. "SBSTANTIALLY COMPLIES", as that term is used in Art. 38.41 § 5, explains and requires that a Certificate of Analysis that does not follow the exact form provided by Sec.5 MUST still include the substantive requirements of Art. 38.41 ("this article"); thus, being that the statutory approved form, provided in Art. 38.41 § 5, is a part of the statute as a whole, and the Texas Legislature included the substantive grammatical phrases: " I received the physical evidence..." and " I conducted the following test or procedures," within the statutory approved for, the Texas Legislature meant for "THE ANALYST" authoring the Certificate of Analysis to be "THE ANALYSIS" who recveived and conducted the analysis on the physical evidence.

It is to be presumed that the words and phrases used within a statute are to be consistent in meaning throughout the entire statute.

IV. MISCONSTRUCTION OF TX.C.CRIM.P. ARTICLE 38.41

The Texas Court of Criminal Appeals, relying primarily on its own case law (CAIN v.STAE, 947 S.W.2d 262 (Tx.Crim.App. 1997); MORALES v. STATE, 872 S.W.2d 753 (Tx.Crim.App.1994)) derived from Tx.C.Crim.P. Art. 26.13, has interpreted Art. 38.41's use of the phrase substantially complies as being applicable to Art. 38 41 § 3 ONLY. The Texas Court of Criminal Appeals overlooked the fact

that the phrase "substantially complies" appears in Art. 38.41 § 5 in reference to the entire statute.

The Texas Court of Criminal Appeals was to "presume that" when the Texas Legislature enacted Art. 38.41, "compliance with the constitution[] of...the United States [wa]s intended..." Tx.Govt.Code § 311.021 (1). In construing Art. 38.41, and "whether or not the statute is considered ambiguous on its face," the Texas Court of Criminal Appeals "may" have "consider[ed] among other things," the Seven – conjunctively – enumerated provisions of Tx.Govt.Code § 311.023.

The Texas Court of Criminal Appeals is bound by law to "presume that every word in a statute has been used for a purpose and that each word, phrase, clause, and sentence should be given effect if reasonablly possible," HARRIS v. STATE, 359 S.W.3d 625,629 (Tx.Crim.App.2011)(quotations omitted); and "cannot interpret a phrase within a statute in isolation," NGUYEN v. STATE, 1 S.W. 3d 694,696 (Tx.Crim.App.1999); but must "always strive to give words and phrases meaning within the context of the larger provisions." THOMAS v. STATE, 919 S.W.2d 427, 430 (Tx.Crim.App.1996). The Texas Court of Criminal Appeals' analysis and review in Williams' case was incomplete and, therefore, inadequate to foreclose on the question of Williams' United States Constitutional Sixth Amendment right to Confrontation.

Based on the Texas Court of Criminal Appeals' interpretataion of Art. 38.41, the court concluded that although the Texas Legislature's use of the specific term "the analyst" in Art. 38.41 (Appx.4 at *15-16), and of the "first person" narrative in the statutory provided form of Art. 38.41 § 5 (Appx.4 at *08), there is no express or [implicit] requirement that the analyst authoring the Certificate of Analysis be "the analyst" who received or conducted the analysis on the physical evidence. (Appx.4 at *15).

The Statutory language of Art. 38.41, however, construed in context according to the rules of grammar and common usage, Tx.Govt.Code § 311.011, and as understood by people of ordinary intelligence, KIRSCH, supra; RIPKOWSKI, supra,

ONLY renders admissible, and therefore allows to be used to establish the results of a laboratory analysis...without the necessity of "the analyst" personally appearing in court, a Certificate of Analysis that "complies" substantially with the entire statute of Art. 38.41. Tx.C.Crim.P. Art. 38.41 § 1.

Sections 1 and 3 of Art. 38.41, construed in context according to the rules of grammar and common usage, and as understood by people of ordinary intelligence, plainly requires that the author of the Certificate of Analysis be "the analyst" who conducted the analysis; being that "the analyst" who actually performed the test or procedure is the only person who could CERTIFY UNDER OATH as to the actual test or procedures conducted by her, and "that the test procedures used were reliable," as required by Art. 38.41 § 3 (5) and (6).

The only logical exception would be that of an Affiant with PERSONAL KNOWLEDGE – under Tex.Rules of Evidence Rules 602 and 701 – as to the test or procedures actually used by "the analyst", and the reliability of any such KNOWN test or procedures. Personal Knowledge, however, in this case, required the State to show that the author of the Certificate of Analysis Affidavit, who swore under oath as to the actual test or procedures performed and the reliability thereof, actually "observed or experienced the underlying facts." See e.g. TURRO v. STATE, 950 S.W.2d 390,403 (Tx.App.FortWorth 1997, pet. ref'd). It would be totally absurd to think, suggest, opine, or hold that the Texas Legislature enacted a statute that would allow a person without actual knowledge of a fact of consequence to sware under oath to that very fact. See BOYKIN, supra.

A. Texas Legislature's Implicit Requirement

The Texas Court of Criminal Appeals, in its memorandum opinion, opined that "[t]here is no requirement in [Art. 38.41], express or otherwise, that the affiant be the analyst who tested the physical evidence." Appx.4 at *15. However, the Texas Court of Criminal Appeals, in failing to properly construe the entire statute in context, appears to have overlooked the fact that the Texas Legisla-

ture included in Art. 38.41 § 5 a form with the exact same caption as the statute itself. This statutorily approved, and exemplary form — obviously included by the Texas Legislature to provide guidance as to what a substantially compliant Certificate of Analysis entails — includes substantive language that tracks each MANDATORY, provisional requirement of Art. 38.41 § 3. The substantive portions of Art. 38.41 § 5's form Certificat of Analysis, and its relations to the substantive requirements of Art. 38.41 § 3 are as follows:

(a) "My name is," in Sec.5's form, meets the substantive requirements of Sec. 3 (1);

(b) "I am employeed by," in Sec.5's form, meets the substantive requirements of Sec.3 (1);

(c) "Part of my duties for this laboratory involved," in Sec.5's form, meets the substantive requirements of Sec.3 (4);

(d) "The laboratory is accredited by," in Sec.5's form, meets the substantive requirements of Sec.3 (2);

(e) "My educational background is as follows," in Sec.5's form, meets the substantive requirements of Sec.3 (3);

(f) "My training and experience...are as follows," in Sec.5's form, meets the substantive requirements of Sec.3 (3);

(g) "I conducted the following test or procedures on the physical evidence," in Sec.5's form, meets the substantive requirements of Sec.3 (5);

(h) "The test procedures used were reliable and approved by the laboratory," in Sec.5's form, meets the substantive requirements of Sec.3 (6);

(i) "The results are as indicated on the lab reports," in Sec.5's form, meets the substantive requirements of Sec.3 (7);

Reading Art. 38.41 in context, and giving ordinary meaning and effect to the ALL PROVISIONS of the article, as people of ordinary intelligance, it stands to reason that the Texas Legislature's inclusion of the substantially compliant, statutorily approved and exemplary form Certificate of Analysis was to demonstrate exactly what substantive elements are to be included in a Certificate of Analysis; therefore, IMPLICITLY REQUIRING that the affiant be "the analyst" who conducted the analysis, or at the very least be a person with personal knowledge who observed or experienced the

underlying facts that are sworn to in the Certificate of Analysis.

V. UNREASONABLE DETERMINATIONS OF FACTS AND CONFLICTING ASSERTIONS OF FACT & LAW

The Texas Court of Criminal Appeals, in its memorandum opinion, concluded thatthe Certificate of Analysis "substantially complied" (at least in the narrow regard that Williams complains about) with Art. 38.41. Appx.4 at *10. In reaching such a conclusion, the Texas Court of Criminal Appeals seems to have overlooked the fact that Williams made a timely, specific objection to the State's Certificate of Analysis failing to "SUBSTANTIALLY COMPLY" with the notice-and-demand statute, Tx.C.Crim.P. Art. 38.41.

Under Texas Rules of Appellate Procedure, Rule 33.1 (a)(1)(A), Williams' objection to the State's Certificate of Analysis' failure to substantially comply with Art. 38.41 was "sufficient[ly] specific[] to make the trial court aware of [his] complaint." Id. Given the specificity and apparent nature of Williams' substantial compliance objection, Williams needed not go any further or be required to "read some special script to make [his] wishes known." Lankston v. State, 827 S.W.2d 907,909 (Tx.Crim.App.1992). The trial court, appellate court, and Court of Criminal Appeals, in reviewing Williams' substantial compliance objection, were to look to Art. 38.41 as a whole and determine if the Certificate of Analysis did in fact substantially comply with the entire statute. The trial court never gave a direct ruling or reason denying the objection. The 14th Court of Appeals and the Texas Court of Criminal Appeals both parsed the issue by analyzing the objection in part, and impermissibly reviewing and interpreting the statutory requirements in isolation. See NGUYEN, supra.

In CAIN, supra, the Texas Court of Criminal Appeals, relying on MORALES, supra, "rejected the...approach of finding substantial compliance when there was in fact no compliance with a particular" enumerated, mandatory provision within the statute. See CAIN, supra at *263 (citing MORALES, supra, at *754-755). In the instant case, the Texas Court of Criminal Appeals found that although the state's Certificate of Analysis FAILED to substantially comply with all seven of the seperately enumerated, mandatory provisions of Art. 38.41 § 3, the Certificate of Analysis did substantially comply with the statute "in the narrow regard Williams complained about." Appx.4 at *10. This finding is in direct conflict with the Texas Court of Criminal Appeals' own prior holdings in CAIN, supra, and MORALES, supra.

The Texas Court of Criminal Appeals has contravened this Court's holdings in BULLCMINGS v. NEW MEXICO, 564 U.S. 647, 131 S.Ct. 2705, 180 L.Ed.2d 610 (2011); and MELENDEZ-DIAZ v. MASSACHUSETTS, 557 U.S. 305, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009), by holding that:

(a) "it does not matter if the affiant is someone who could not, over a Sixth Amendment Confrontation objection, serve as a sponsering witness for the lab results at trial." Appx.4 at *14;

(b) "there is no requirement in the statute (Art. 38.41)... that the affiant be the analyst who tested the physical evidence." Id. at *15;

(c) Art. 38.41 "Sec. 3 says that the information must be certified under oath, but it does not require that oath to be given by any particular individual..." Id. at *14.

Allowing the Texas Court of Criminal Appeals' decisions in the instant case to stand would render the notice-and-demand statute of Tx.C.Crim.P. Art. 38.41 Unconstitutionally Vague and Indefinite; and, thus, violative of a Defendant's choice to exercise of forfeit his right to Confrontation.

CONCLUSION

For the foregoing reasons, Williams avers that he has shown this Honorable Court just reason as to why the holdings of the Texas Court of Criminal Appeals requires this Court to exercise its supervisory powers, and give CLEAR meaning to the NOTICE-AND-DEMAND statutes of Texas — or any other state —, regarding the statute's clear meaning and absolute requirements.

PRAYER FOR RELIEF

WHEREFORE NOW above premisses considered, Petitioner, Andrew Lee Williams, prays that this Honorable Court finds validity in the issue raised here, and **GRANTS** certiorari, and/or any other equitable relief that this Court deems sufficient.

Executed this 25th day of December, 2019.

Respectfully submitted,

Andrew Williams

Andrew Lee Williams, Petitioner
TDCJ-CID #02068698
McConnell Unit
3001. S. Emily Dr.
Beeville, Tx 78102