No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

LESTER THOMAS BUTCHER- PETITIONER

Vs.

STATE OF TEXAS- RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS 12TH CIRCUIT COURT OF APPEALS

LESTER THOMAS BUTCHER. Pro Se

#02223373

ALLRED UNIT

2101 FM 369 N

IOWA PARK, TEXAS 76367

QUESTIONS PRESENTED

Question 1.

WILL THIS SUPREME COURT PERMIT TEXAS PROSECUTORS' CLAIMS OF "MISTAKE AND INADVERTENCE", MADE BY PROSECUTORS BENEFITTING FROM SUCH CLAIMS, IN AN EFFORT TO EXCUSE THE DENIAL OF SUBSTANTIAL CONSTITUTIONAL RIGHTS OF THE ACCUSED AS HARMLESS ERROR.

Question 2

WILL THIS SUPREME COURT PERMIT TEXAS PROSECUTORS TO CLAIM "MISTAKE AND INADVERTENCE" UNDER ANY SET OF CIRCUMSTANCES DESIGNED TO EXCUSE THE WRONGFUL ADMISSION OF INADMISSIBLE AND INHERENTLY PREJUJDICAIL EVIDENCE WHEN THE FAIRNESS OF THE TRIAL AND THE VALIDITY OF THE CONVICTION ARE IMPLICATED.

LIST OF PARTIES

Parties involved are in the style of the case.

RELATED CASES

TABLE OF CONTENTS

INDEX OF APPENDICES

TABLE OF AUTHORITIES CITED

CASE **PAGE NUMBER**

STATUTES AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

1. Petitioner seeks this Court's exercise of its Supervisory Powers to address this Supreme Court's problem, recognized historically, to wit: State prosecutors being permitted to use claims of "mistake and inadvertence" to overcome inherently prejudicial and inadmissible evidence to be admitted, even if the inadmissible evidence is recognized as inherently prejudicial.

2. Petitioner seeks a writ of certiorari to establish a standard by which State prosecutors are precluded from using "mistake and inadvertence" as a justification for excusing prejudicial and inadmissible evidence from being admitted before the jury.

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the petition and is [ ] reported at ; or, [ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.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the petition and is [ ] reported at ; or, [ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.

[x] 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the petition and is [ ] reported at ; or, [ ] has been designated for publication but is not yet reported; or, [x] is unpublished.

The opinion of the court appears at Appendix to the petition and is [ ] reported at ; or, [ ] has been designated for publication but is not yet reported; or, x] is unpublished.

JURISDICTION

For cases from state courts:

The date on which the highest state court decided my case was October 31, 2019. A copy of that decision appears at Appendix A.

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

This Supreme Court has jurisdiction to supervise the criminal justice system throughout, to supervise the treatment of the concept of "fair trial" and constitutional prerequisites of due process be met, in every trial, and not be subjected to being treated by state tribunals as though strict adherence to these concepts is not the hallmark of due process and the foundation upon which American Jurisprudence is founded.

CONSTITITION AND STATUTORY PROVISION INVOVLED

Due process of law is guaranteed by Amend. V. U.S. Const. and is incorporated to the many states via Amend. XIV, U.S. Const.

False statements in the federal system are defined by statute, 18 U.S.C. § 1001, proscribing false statement by concealment, or false documentation in any matter within the jurisdiction of any of the three branches of the federal government. Within the judicial branch it applies as a criminal offense.

18 U.S.C. § 1001(a) ("Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years ...").

The Supreme Court's observation that a statement that is misleading but literally true cannot support a conviction under Section 1621 because it is not false 94 applies with equal force to perjury under Section 1623.95 Similarly, perjury cannot be the product of confusion, mistake, or faulty memory, but must be a statement that the defendant knows is false,96 although this requirement may be satisfied with evidence that the defendant was deliberately ignorant or willfully blind to the fact that the statement was false.97 On the other hand, "[a] question that is truly ambiguous or which affirmatively misleads the testifier can never provide a basis for a finding of perjury, as it could never be said that one intended to answer such a question untruthfully."98 Yet ambiguity will be of no avail if the defendant understands the question and answers falsely... ,99.

14th Amendment | U.S. Constitution . 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 citizens 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.

In this matter the Petitioner was denied due process by the Prosecutor making a false statement, at trial, then again in his brief stating: Petitioner's criminal history was not published to the jury during the trial, but once. This statement is false. The statement misled the 12th Court of Appeals' claim of harmless error that only happened once. In fact, the error was repeated. It is only because the state of the law in Texas has come to this point, permitting prosecutors to claim they "inadvertently" or "mistakenly" violated the Constitution of this country, as well as, the rules of evidence of the State of Texas, it is quite another by-product of this colossal denial of due process, that false statements punishable by prison sentence, are permitted to justify the repetitious denial of constitutional rights.

STATEMENT OF THE CASE

Grand Jury met and the Petitioner was indicted for Murder F1, on the 4th day of June 2017. Grand Jury met again and on the 15th day of December 2017, and the previous case was dismissed and the petitioner was indicted for Capital Murder. The state did not seek the death penalty. Voir Dire took place on the 1st day of October 2018. The trial started on the 2nd day of October 2018 and ended on the 11th day of October 2018. Petitioner was

automatically sentenced to Life Without Parole due to the crime being a non-death capital offense. (R.R. 93:8-94:11). On the 31st day of October 2018, Trial Counsel filed a Motion for a New Trial and also a Motion to Withdraw from Counsel at Petitioner's request. A new attorney was not appointed for the new trial motion. Counsel was appointed to file Notice of Appeal on December 18, 2019. Motion for an Extension to file brief was filed on March 7, 2019. April 10, 2019 the brief was filed and no request for oral argument. The State submitted their brief on June 6, 2019, and oral argument was not requested. The Petitioner's counsel failed to file a response to the state's brief. The 12th Court of Appeals AFFIRMED. Counsel's opportunity to file for Rehearing or Rehearing en banc, waived. Due to petitioner's reading disability it was hard to find someone in prison to assist him with legal work and a Motion for re-hearing was just not filed. Petitioner finally found an inmate to request an extension to file a PDR and the Motion for Extension filed on December 16, 2019 and the extension was granted on January 2, 2020. PDR and the Motion for Extension filed on December 16, 2019 and the extension was granted on January 2, 2020. PDR was filed in a timely manner, but it was refused. A Motion for a Rehearing was sent in a timely manner, but the Court of

Criminal Appeals never received it in the mail. The State Prosecutor received theirs in a timely manner, and it was forwarded to the Court of Criminal Appeals show the post -mark date, but they refused it stating that it was not filed in time.

REASONS FOR GRANTING THE PETITION

1. Texas law, by its operation, permits State prosecutors to intentionally inject inadmissible and inherently prejudicial evidence before the jury, and once the bell has been run and cannot be unheard by the jurors, Texas law permits constitutional error from admitting inadmissible and inherently prejudicial evidence to be admitted at trial on the prosecutor's claim of "inadvertence or mistake". Texas permits constitutional violations to be permitted, if done by the State prosecutors, as long as those prosecutors claim "inadvertence and/or mistake". The presumption is granted in favor of the State prosecutors. Texas needs the direction of this Supreme Court removing "inadvertence and mistake" as justification for constitutional error being suffered inside the trial of a case purporting to be a "fair trial" based on the protections inherent in the system designed to not question the result, the jury verdict.

Factual Basis. The State of Texas will not dispute that the State Prosecutor caused the jury to hear that the Petitioner had served 17.5 years in prison. This was after he had already let the jury hear that Petitioner, in his own words, admitted, when prompted by the police investigator during a custodial interrogation began the interrogation with asking Petitioner if his mother had been upset when he went prison. It should be noted, here, that the question was poignant and relevant to not being "inadvertent", nor as a "mistake". Years before, when Petitioner went to federal prison, the same police agency and prosecuting authority *lost this same Petitioner* to the federal government for prosecution in federal court. These same police and prosecutors mentioned on more than one occasion, to Petitioner and others, that making up for when they lost him before would guarantee their pay back, retribution. *The first words out of the police detective's mouth referred to that 17.5 years in prison Petitioner had served.* The probability, or even the remotest of possibilities, that the State intentionally injected the prejudicial error into that conversation was *never addressed.* Petitioner could not speak to the "mistake" or the "inadvertence" being a manufactured explanation was not addressed. Petitioner was represented by appointed counsel. A motion for new trial was filed, but appointment counsel never filed a brief to go with it, therefore no ruling was every made

on it. All participants simply did not broach the subject. Specifically, the prosecutor making the "inadvertence and mistake" explanation never broached the subject, either.

2. In addition, the State prosecutor lied in his brief on appeal. He claimed the error on his part was "inadvertent and mistake" because it was "only mentioned once." The record reveals otherwise. Lies to courts, by officers of the court, are never presumed, and in this case, never investigated at all. It is axiomatic that a person who lies does so for a reason, and that reason is to suppress guilty intent. No one challenges prosecutors when they speak on subjects relevant to the proceedings. There is a presumption of good faith and fair dealing accorded Texas prosecutors, and in this instance, the prosecutor took full advantage. How comfortable does a person have to be to bold faced lie about a relevant event, knowing it was to be a part of an official document, filed by "his" office? That "comfort zone" is the result of the precedent of the Texas appellate courts, in general. Texas law also presumes if inadmissible evidence slips into a trial, an instruction by the trial court will be made, and that instruction is "presumed" to be followed by the jury. *Gardner v State*, 730 S.W.2d 675, 696 (Tex. Crim. App. 1987); *Coble v State,* 330 S.W.3d 253,

292 (Tex. Crim. App. 2010. Of course, these cases deal with improper questioning, not the defendant speaking in a custodial interrogation controlled by the police investigator. But they relied on *Ovalle v State*, 13 S.W.3d 774, 783 (Tex. Crim. App. 2000) to assure the court they could even get away with this constitutional violation, *even when inherently prejudicial matter, the defendant's criminal record, was involved.* It was the *exception to the rule* that such evidence would cause a mistrial because *only exceptional cases, rare cases, would call for granting a mistrial.* *Ocon v State*, 284 S.W.3d 880, 884 (Tex. Crim. App. 2009); *Hawkins v State*, 135 S.W.3d 72, 77 (Tex. Crim. App. 2004). Texas law, in the ultimate exoneration of State prosecutors successfully placing inadmissible and inherently evidence before the jury, citing to *Ladd v State*, 3 S.W.3d 547, 567 (Tex. Crim. App. 1999) which holds that a mistrial for such error results "... only when the improper question is clearly prejudicial to the defendant..." taking the intentional actions of police investigators out of the calculus of the decision to grant the mistrial, or not. Well, lo and behold, there was no "questioning" by the prosecutor in this case because all he did was turn on a recording device that was not stopped at the proper times.

With all of this protection under Texas law, it is not surprising that Texas police and prosecutors don't worry too terribly much about getting caught doing injustice to the Constitution. That suspicion has been recognized by this Supreme Court. In *United States v Lane*, 474 U.S. 438, 450-51 (1986) Justice Stevens recognized the constitutional error created with allowing "harmless error" to be admitted, as in this very instance. He wrote that in addition to giving inadequate respect to constitutional values, besides reliability, adopting a broad presumption in favor of harmless error, as Texas courts have done, has a corrosive impact on the administration of criminal justice. An automatic application of harmless error review, as Texas court and prosecutor did in this case, in case after case, and for error after error,

can only encourage prosecutors to subordinate the interest in respecting the Constitution, *to the ever present and always powerful interest in obtaining a conviction in a particular case.* You wonder why the exact time in prison spent by Petitioner was inquired as the primary issue: "... *obtaining a conviction in a particular case ...". Id.*

What this Supreme Court has recognized in the past is that we are not discussing unimportant considerations. Substantial errors "call into question the fairness of a trial, as a who, by calling into question the reliability of the verdict." *Connors v United States*, 158 U.S. 408, 411-414 (1895); *Holmgren*

v United States, 217 U.S. 509, 523-524 (1910). That was a long time ago, but the problem persisted in history to thirty-five years ago as well. *Rose v Clark,* 478 U.S. 570 n.5 (1986). And then later that year this Supreme Court asked the central question of an element that is left out of the review for "harmless error": Of the Texas courts' apparent willingness to excuse constitutional error as "harmless error, what about when that error "rebounds to the prosecutor's benefit?" *Smith v Murray*,477 U.S. 577 (1986).

Of course the "error" benefitted the prosecutor. The subject matter was covered in not one, but TWO, motions in limine GRANTED in Petitioner's favor. The problem is that it gives another, inadmissible, means by which a conviction can go in favor of the prosecutor: When prior criminal record is inadmissible, this Supreme Court has stated the problem, to wit: "the effect of the conviction on the trier of fact may lead a juror to believe an erroneous conviction would not be quite as serious as would otherwise be the case..." *Old Chief v United States*, 510 U.S. 172 (1997). The conviction may be based on criminal record, and not the facts presented. *Green v Brock*, 490 U.S. 504 (1989). It is clear that 100 years of this Supreme Court's precedent has not favored what happened in this case.

150 years ago this Supreme Court even spoke on when "inadvertence" can be overlooked. "Inadvertence" can be overlooked *when it can be corrected.* Ex Parte Lang, 85 U.S. 163 (1873). Inadvertence is not sought to be "overlooked" in Texas. Inadvertence is permitted to overlook what could be intentional error by a prosecutor, who for some reason, wants to get away with forgetting constitutional error, because the prosecutor is getting a conviction in a *particular case.* With this Petitioner, he got away from them last time. He went to "Club Fed", not TDCJ-ID. They weren't going to let that happen, again. And the truth? They didn't!

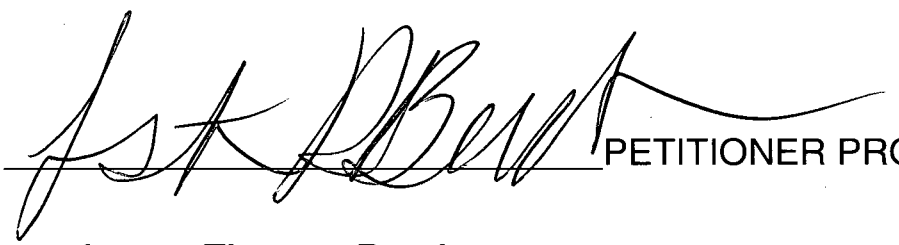
These are the reasons why Petitioner is seeking a writ of certiorari. He is doing it alone with all the non-lawyer help he could muster. Helping him is his now, *wife.* The presumption has been, generally speaking, those women who marry men in prison, they're all nuts! Isn't that what we all say about situations we know nothing about? The comparison to this case is remarkable, and the irony compelling. Petitioner's wife put him in prison. And now, she is fighting to undo what she did on that jury. Is the system more prejudiced by prosecutors, intending to break the rules to such an extent as to lie to that same system to get, and hold onto that almighty "conviction"? Or, is the system prejudiced by a woman, juror, responsible for signing a verdict and never feeling comfortable about that, making arrangements to go

visit this man she had sent to prison for LIFE, same woman realizing she was RIGHT to feel WRONG about her verdict, so much so she is trying to fill in whenever the lawyer cannot, or will not, all the way to the Supreme Court. Does this Supreme Court, with its rich history of protecting the constitutional rights of all citizens, and non-citizens alike, going to err on the side of one of its own, a member of the Bar of this Court, abuser of the constitutional protections in lieu of his faux "inadvertence and mistake"? Or do we err on the side of goodness, commitment and genuineness beyond unique,

because she knows what happened was wrong! Your Honors, Petitioner found a way to get this far. For that, he asks you take it the rest of the way home, and that cannot be done without granting certiorari.

CONCLUSION

WHEREFORE, for the reasons given, Petitioner prays this Supreme Court grants a writ of certiorari, to the end that this Court can decide for the State of Texas the correct side to take when constitutional guarantee of rights is confronted by prosecution tactics calculated to execute a plan to make those rights, and their guarantee, de minimus. Petitioner prays for REVERSAL and REMAND FOR A NEW TRIAL, with a Local Counsel to be appointed from the Rolls of the Membership of this Court.



PETITIONER PRO SE

Lester Thomas Butcher