XI. APPENDICES

Appendix-A. Refusal Notices - Texas CCA

FILE COPY

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

12/9/2020 **COA No. 04-19-00483-CR**
PD-0864-20

YADAV, VINAY PRAKASH **Tr. Ct. No. 601415**

On this day, the Appellant's Pro Se petition for discretionary review has been refused.

Deana Williamson, Clerk

4TH COURT OF APPEALS CLERK
MICHAEL A. CRUZ
300 DOLOROSA, THIRD FLOOR
SAN ANTONIO, TX 78205-3037
* DELIVERED VIA E-MAIL *

FILE COPY

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

12/9/2020 **COA No. 04-19-00486-CR**
PD-0865-20

YADAV, VINAY PRAKASH **Tr. Ct. No. 601414**

On this day, the Appellant's Pro Se petition for discretionary review has been refused.

Deana Williamson, Clerk

4TH COURT OF APPEALS CLERK
MICHAEL A. CRUZ
300 DOLOROSA, THIRD FLOOR
SAN ANTONIO, TX 78205-3037
* DELIVERED VIA E-MAIL *

Appendix-B. Opinion of Texas Appeal Court

Fourth Court of Appeals

San Antonio, Texas

MEMORANDUM OPINION

Nos. 04-19-00483-CR & 04-19-00486-CR

Vinay **YADAV**,

Appellant

v.

The **STATE** of Texas,

Appellee

From County Court at Law No. 15, Bexar County, Texas
Trial Court Nos. 601415 & 601414
Honorable Melissa Vara, Judge Presiding

Opinion by: Beth Watkins, Justice
Sitting: Rebeca C. Martinez, Justice
Irene Rios, Justice
Beth Watkins, Justice
Delivered and Filed: August 12, 2020

AFFIRMED

A jury found appellant Vinay Yadav guilty of criminal trespass and resisting arrest, search, or transportation. Yadav challenges his conviction in sixteen issues. We affirm the trial court's judgment.

BACKGROUND

On November 19, 2018, Bexar County Sheriff's Office Lieutenant Raymond Ortega arrested Yadav in the parking garage of Yadav's then-employer, One Frost. On November 29, 2018, Yadav was charged with the misdemeanor offenses of criminal trespass and resisting arrest, search, and transportation. At trial, the jury heard testimony that One Frost's assistant vice president of enterprise physical security, Dwight Obey, initially gave Yadav the choice to either report to human resources for a meeting or leave the premises for the day. Multiple witnesses testified that Yadav refused to report to human resources and became disruptive. Those witnesses also testified that Obey then ordered Yadav to leave several times, but Yadav refused even after he was warned he would be arrested if he stayed. The jury also heard testimony that after Ortega told Yadav he was under arrest, Yadav "[threw] his head back," "arch[ed] his back," and "flail[ed]" and "flopp[ed]" his body while Ortega was trying to handcuff him and transport him to a police car.

A Bexar County jury found Yadav guilty of both charges, and the trial court sentenced him to: 180 days in the Bexar County Jail, probated for eighteen months; sixty hours of community service; and anger management classes. The trial court also ordered Yadav to have no contact with the One Frost campus. Yadav filed two motions for new trial, but he did not set those motions for hearing and they were overruled by operation of law. This appeal followed.

ANALYSIS

Yadav raises sixteen issues challenging his conviction. We will consider related issues together.

Sufficiency of the Evidence

In his eleventh issue, Yadav contends the trial court erred by denying his motion for directed verdict on the resisting arrest charge because there is no evidence he prevented or obstructed Ortega from conducting a search, or used force against Ortega. He also contends there is no evidence to support his conviction for criminal trespass because he had One Frost's permission to be on the premises.

Because this issue would, if meritorious, potentially require us to render a judgment of acquittal on one or both charges, we will consider it first. *See Benavidez v. State*, 323 S.W.3d 179, 181 (Tex. Crim. App. 2010).

Standard of Review

A motion for directed verdict attacks the sufficiency of the evidence to sustain a conviction. *McDuff v. State*, 939 S.W.2d 607, 613 (Tex. Crim. App. 1997). As a result, we construe Yadav's complaint about the trial court's ruling on his motion for directed verdict as a legal sufficiency challenge. *See id.* In reviewing a complaint that the evidence presented at trial is legally insufficient to support a jury's guilty verdict, we must determine whether any rational trier of fact could have found the essential elements of the charged offense beyond a reasonable doubt. *Adames v. State*, 353 S.W.3d 854, 860 (Tex. Crim. App. 2011) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *Caballero v. State*, 292 S.W.3d 152, 154 (Tex. App.—San Antonio 2009, pet. ref'd). We view the evidence in the light most favorable to the jury's guilty verdict and resolve all reasonable inferences from the evidence in its favor. *Tate v. State*, 500 S.W.3d 410, 417 (Tex. Crim. App. 2016). "Because the jury is the sole judge of witness credibility and determines the weight to be given to testimony," we must defer to its determinations. *Hines v. State*, 383 S.W.3d 615, 623 (Tex. App.—San Antonio 2012, pet. ref'd). "If any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, we must affirm the trial court's judgment." *Hernandez v. State*, 198 S.W.3d 257, 260 (Tex. App.—San Antonio 2006, pet. ref'd).

Applicable Law

Under section 38.03 of the Texas Penal Code, a person commits the offense of resisting arrest, search, or transportation "if he intentionally prevents or obstructs a person he knows is a peace officer . . . from effecting an arrest, search, *or* transportation of the actor or another by using force against the peace officer or another." TEX. PENAL CODE ANN. § 38.03(a). For the purposes of section 38.03,

"using force against" a peace officer means "'violence or physical aggression, or an immediate threat thereof, in the direction of and/or into contact with, or in opposition or hostility to, a peace officer.'" *Finley v. State*, 484 S.W.3d 926, 928 (Tex. Crim. App. 2016) (quoting *Dobbs v. State*, 434 S.W.3d 166, 171 (Tex. Crim. App. 2014)). Evidence showing an individual "used force against the officers by pulling against the officers' force" will support a conviction under section 38.03. *Id.*

A person commits the offense of criminal trespass if he, inter alia, "remains on or in property of another . . . without effective consent and the person . . . received notice to depart but failed to do so." TEX. PENAL CODE ANN. § 30.05(a)(2). "'Notice' means: (A) oral or written communication by the owner or someone with apparent authority to act for the owner." *Id.* § 30.05(b)(2)(A).

It is well-established that where a charging instrument alleges different methods of committing an offense in the conjunctive, "it is proper for the jury to be charged in the disjunctive . . . if the evidence is sufficient to support a finding under any of the theories submitted." *Kitchens v. State*, 823 S.W.2d 256, 258 (Tex. Crim. App. 1991); *see also Pizzo v. State*, 235 S.W.3d 711, 714–15 (Tex. Crim. App. 2007). When a jury returns a general verdict, "the State need only have sufficiently proven one of the paragraph allegations to support the verdict of guilt." *Fuller v. State*, 827 S.W.2d 919, 931 (Tex. Crim. App. 1992); *see also Pizzo*, 235 S.W.3d at 714 ("Jury unanimity is required on the essential elements of the offense but is generally not required on the alternate modes or means of commission.") (internal quotation marks omitted).

Application

1. Resisting arrest, search, or transportation

Yadav notes the information alleged he obstructed his own arrest, search, *and* transportation, while the court's charge allowed the jury to find him guilty based on a conclusion that he obstructed his own arrest, search, *or* transportation. Because there is no evidence Yadav

obstructed a search, he argues this discrepancy entitles him to acquittal on the resisting charge.

The Texas Court of Criminal Appeals has held that where the focus of a statutory offense is the result of the defendant's conduct, rather than the specifically alleged conduct itself, then allegations of different types of conduct do not amount to separate offenses that the State must independently prove. *Huffman v. State*, 267 S.W.3d 902, 907 (Tex. Crim. App. 2008). This court and several sister courts have held that section 38.03 "defines a single offense that a person may commit by obstructing or preventing a peace officer from performing his duty, whether that duty involves the arrest, search, or transportation of the actor." *McIntosh v. State*, 307 S.W.3d 360, 366 (Tex. App.—San Antonio 2009, pet. ref'd); *see also Clement v. State*, 248 S.W.3d 791, 802 (Tex. App.—Fort Worth 2008, no pet.); *Hartis v. State*, 183 S.W.3d 793, 799 (Tex. App.—Houston [14th Dist.] 2005, no pet.); *Finster v. State*, 152 S.W.3d 215, 219 (Tex. App.—Dallas 2004, no pet.). Under this analysis, the "focus" of section 38.03 is the result of the defendant's conduct— the obstruction of a peace officer's duties—not the conduct itself. *See, e.g., McIntosh*, 307 S.W.3d at 366. As a result, the State can satisfy its burden of proof under that statute by presenting legally sufficient evidence of only one theory of conduct, even if the court's charge asks the jury to consider multiple theories in the disjunctive.[11] *See id.*; *see also Huffman*, 267 S.W.3d at 907; *Finster*, 152 S.W.3d at 218–19.

Here, multiple witnesses testified that while Ortega was trying to handcuff Yadav, Yadav "arch[ed] his back back [*sic*] and tr[ied] to wiggle away from [Ortega]"; "was throwing his leg back"; and "started to flail like a fish, flopping, kicking

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[11] Yadav cites *Agnew v. State*, 635 S.W.2d 167 (Tex. App.—El Paso 1982, no writ) to support his contention that because the information alleged he obstructed his own arrest, search, *and* transportation, the State was required to prove all three theories. However, in *Agnew*—unlike in this case—the court's charge asked the jury to consider whether the defendant obstructed both an arrest and a search. *Agnew*, 635 S.W.2d at 168.

his head back, twirling." Obey testified that "it was hard for Officer Ortega to restrain [Yadav]" in light of the "continual resistance of Mr. Yadav actually wiggling, flopping backwards, trying to get his arms and so forth out of [his] jacket." Ortega himself testified that when he tried to handcuff Yadav, "he was resisting, squirming his body, you know, squirming away...[H]e was actively resisting, obstructing me and not letting me just willingly handcuff him." He also testified that after Yadav was handcuffed and Ortega was trying to transport him to a police car, "I was trying to isolate him, get control of him. He was flailing his body and then he would fall like he was trying to, you know—causing his entire body to fall to the ground." Based on this testimony that Yadav fought Ortega's attempts to both handcuff Yadav and move him to a police vehicle, a rational factfinder could conclude that Yadav's conduct obstructed Ortega from performing his duties related to Yadav's arrest and transport. *See* TEX. PENAL CODE § 38.03(a); *McIntosh*, 307 S.W.3d at 366.

Under the plain language of section 38.03, the State was required to show not only that Yadav obstructed Ortega's exercise of his duties, but also that he did so by exerting force against Ortega. TEX. PENAL CODE § 38.03(a); *Finley*, 484 S.W.3d at 928. The court's charge instructed the jury to determine whether Yadav used force against Ortega by pushing Ortega with his hand *or* flinging his body toward Ortega. *See Pizzo*, 235 S.W.3d at 715 (noting "means of commission or nonessential" offense elements "are generally set out in 'adverbial phrases' that describe how the offense was committed"). Yadav contends there is no evidence to support the jury's affirmative finding because "Ortega stated in his testimony that neither of those two things occurred" and because there is no evidence Ortega was endangered by Yadav's actions.

While it is true Ortega testified Yadav did not push Ortega with his hand, the jury heard testimony—including from Ortega—that Yadav repeatedly tried "to wiggle away from" Ortega and that he moved his back, head, and leg in

Ortega's direction while doing so. This evidence would allow a rational factfinder to conclude Yadav used force against Ortega, both as that term is used in section 38.03 and as specified in the court's charge. *See* TEX. PENAL CODE § 38.03(a); *Finley*, 484 S.W.3d at 927, 929 (evidence suspect refused to put his arms behind his back to be handcuffed and "pulled his arms away from the arresting officers" was sufficient to support conviction under 38.03). The State was not required to show Yadav posed a specific danger to Ortega to prove he violated section 38.03. *See* TEX. PENAL CODE § 38.03(a); *Clement*, 248 S.W.3d at 797 ("[W]hen a defendant thrashes his arms and legs and is combative towards an officer, he forcefully resists arrest.").

Based on this evidence, a rational trier of fact could have found all of the essential elements of section 38.03 beyond a reasonable doubt. *See Adames*, 353 S.W.3d at 860. As a result, the evidence is legally sufficient to support the jury's finding of guilt under section 38.03. *See* TEX. PENAL CODE § 38.03(a); *Finley*, 484 S.W.3d at 929; *see also Hernandez*, 198 S.W.3d at 260.

2. Criminal trespass

Yadav contends the trial court should have granted his motion for directed verdict on the criminal trespass charge because he had One Frost's permission to be on the premises. He asserts he tried to leave but was kept on the premises against his will by One Frost employees who wanted to retrieve company property from him. While Obey acknowledged that some of One Frost's employees tried to retrieve company property from Yadav, he testified he "overruled" those attempts and instructed Yadav to leave. *See* TEX. PENAL CODE § 30.05(b)(2)(A) (notice to depart can come from "someone with apparent authority to act for the owner"). Obey also testified that he had authority to order a One Frost employee to leave. *See id.* Another One Frost employee who witnessed the incident, Robert Torres, testified that Yadav "was asked several times" to leave and was told he would be trespassing if he did not. Additionally, Ortega testified that Obey told Yadav to leave "several

times" and Yadav refused. Finally, Obey and two other One Frost employees who witnessed the incident, Virginia Gonzales and Michael Landin, all testified that Yadav tried to go back in the building after he had been directed to leave. Based on this evidence, a rational factfinder could conclude Yadav was given notice to depart but failed to do so. *See id.* As a result, the evidence is legally sufficient to support Yadav's criminal trespass conviction. *See Hernandez*, 198 S.W.3d at 260. Because the evidence is legally sufficient to support Yadav's conviction on both charges, we overrule his eleventh issue.

3. Factual sufficiency

In his sixth issue, Yadav primarily argues the evidence is factually insufficient to support his conviction because the State presented incomplete and/or altered surveillance footage of the incidents leading up to his arrest. Texas appellate courts do not review criminal convictions for factual sufficiency. *See Brooks v. State*, 323 S.W.3d 893, 894–95 (Tex. Crim. App. 2010). Because we have already held the evidence is legally sufficient to support Yadav's conviction on both charges, we overrule Yadav's factual sufficiency claim. *See Hernandez*, 198 S.W.3d at 260.

Yadav also contends in his sixth issue that the trial court refused to allow him to present evidence that One Frost tampered with and/or destroyed video surveillance footage of the events that led to his arrest. However, the record citations upon which he relies for this assertion do not support it, and Yadav's expert witness testified that the videos he reviewed did not show any signs of tampering. We may not consider assertions in a brief that are not supported by the record. *See Salazar v. State*, 5 S.W.3d 814, 816 (Tex. App.—San Antonio 1999, no pet.). Additionally, while Yadav's brief appears to complain of Fourth Amendment violations—specifically, that several items were improperly seized from him during his arrest—Yadav did not assert any Fourth Amendment claims in the trial court. Moreover, nothing in the record supports his contention that the items he identifies in his brief were seized from him during his

arrest. *See* TEX. R. APP. P. 33.1; *see also Salazar*, 5 S.W.3d at 816. We overrule Yadav's sixth issue.

Wording of the Court's Charge

In his thirteenth issue, Yadav complains the court's charge on resisting arrest, search, or transportation was improperly worded because it did not conform to the charging instrument. He also argues he was prejudiced by the inclusion of the phrase "criminal episode" in the charge.

As noted above, the information charging Yadav with resisting arrest alleged he used force against Ortega by pushing Ortega with his hand *and* flinging his body toward Ortega, but the court's charge allowed the jury to find him guilty if it concluded he used force by pushing Ortega with his hand *or* flinging his body toward Ortega. Yadav did not complain about this discrepancy during the charge conference. To the contrary, the proposed charge Yadav's attorneys read into the trial court record contained the same "or" construction he complains about on appeal. Because Yadav did not raise this argument in the trial court, he must show the error "was so egregious and created such harm that [he] was denied a fair trial." *Warner v. State*, 245 S.W.3d 458, 461–62 (Tex. Crim. App. 2008).

We hold he has not made that showing. We have already held the evidence is legally sufficient to support a finding that Yadav flung his body toward Ortega while Ortega was trying to arrest and transport him. Because the evidence is legally sufficient to support conviction under at least one of the submitted theories, Yadav has not shown that the discrepancy he identifies between the information and the court's charge affected the very basis of the case, deprived him of a valuable right, or vitally affected a defensive theory. *See id.*; *see also Pizzo*, 235 S.W.3d at 714–15.

Yadav also complains the trial court abused its discretion by overruling his objection to the phrase "criminal episode" in the charge. Yadav has not presented any authority showing the inclusion of that phrase in the court's charge was error under these circumstances. *See* TEX. R. APP. P.

38.1; *McDuff*, 939 S.W.2d at 613. We overrule Yadav's thirteenth issue.

Defensive Instruction

In his first issue, Yadav argues the trial court improperly refused to submit a statutory defensive instruction to the jury. The State responds that Yadav was not entitled to assert that defense under the statute's plain language.

Standard of Review and Applicable Law

We review a trial court's decision to deny a defensive instruction for abuse of discretion. *McCallum v. State*, 311 S.W.3d 9, 13 (Tex. App.—San Antonio 2010, no pet.). "A trial court abuses its discretion when its ruling is outside the zone of reasonable disagreement." *Id.* A criminal defendant is not entitled to the submission of a defensive instruction "unless evidence is admitted supporting the defense." TEX. PENAL CODE ANN. § 2.03(c); *Shaw v. State*, 243 S.W.3d 647, 657 (Tex. Crim. App. 2007). A defense is "supported" if the defendant presents the "minimum quantum of evidence necessary to support a rational inference" that the defense is true. *Shaw*, 243 S.W.3d at 657.

Application

It is a defense to a charge of criminal trespass "that the actor at the time of the offense was . . . a person who was: (A) employed by or acting as agent for an entity that had, or that the person reasonably believed had, effective consent or authorization provided by law to enter the property; and (B) performing a duty within the scope of that employment or agency." TEX. PENAL CODE § 30.05(e)(3). Yadav contends the trial court abused its discretion by denying his request to instruct the jury on this defense because he was still a One Frost employee when he was arrested. The State responds that section 30.05(e)(3) does not apply to employees of the property owner. It also argues Yadav was no longer a One Frost employee when he was arrested and that he did not show "he was performing a duty within the scope of his employment or agency" when he was arrested.

We need not resolve the question of statutory construction the State has presented, because we agree that

Yadav did not present any evidence that he was performing duties within the scope of his employment at the relevant time. *See id.* The evidence shows Yadav was in the parking garage when Obey ordered him to leave for the final time and when Ortega arrested him for refusing to do so. The evidence also shows Yadav was in the parking garage specifically because he had refused his employer's instructions to report to human resources for a meeting. Yadav, who was employed by One Frost as a software developer, did not present any evidence that his job duties included any tasks performed in the parking garage. Because Yadav did not show he was "performing a duty within the scope of [his] employment or agency" when he was ordered to depart the premises or when he was arrested for refusing to do so, the trial court did not abuse its discretion by refusing to instruct the jury on section 30.05(e)(3)'s "employee" defense. *See id.*; *McCallum*, 311 S.W.3d at 13. We overrule Yadav's first issue.

Evidentiary Rulings

Standard of Review and Applicable Law

In his second and fifteenth issues, Yadav challenges the trial court's evidentiary rulings. "Trial court decisions to admit or exclude evidence will not be reversed absent an abuse of discretion." *Beham v. State*, 559 S.W.3d 474, 478 (Tex. Crim. App. 2018). To show an abuse of discretion, the appellant must show the trial court's decision was outside the zone of reasonable disagreement. *Id.*

Application

1. Exclusion of Yadav's bloody jacket

In his second issue, Yadav contends the trial court abused its discretion by refusing to admit the bloody jacket he was wearing at the time of his arrest into evidence. Yadav argues the jacket was relevant evidence because it shows Ortega "battered" Yadav during the arrest and "sent him to jail after injuring him in bleeding conditions." The State responds Yadav was not harmed by the jacket's exclusion because the trial court admitted photographs of it.

We agree with the State. As Yadav himself notes, multiple witnesses testified that he was injured during his

arrest and that his clothes were bloodied as a result. Moreover, the trial court admitted multiple photographs of Yadav wearing the bloody jacket. Because the jury heard testimony that Yadav was injured during his arrest and saw photographs of the bloody jacket, we cannot say the trial court's decision to exclude the jacket itself was outside the zone of reasonable disagreement. *See id.* We overrule Yadav's second issue.

2. Admission of irrelevant hearsay evidence

In his fifteenth issue, Yadav argues the trial court abused its discretion by admitting irrelevant, prejudicial hearsay statements about his character that were contained in his employee file. As the State notes, however, the record shows the trial court consistently sustained Yadav's objections to hearsay "about [his] character as an employee or as a coworker." Although the trial court allowed the State's witnesses to testify that Yadav had received verbal and written warnings from his employer, it limited that testimony to the witnesses' own personal knowledge of performance-related issues that led to those warnings, and it repeatedly refused to allow the State's witnesses to testify about others' perceptions of whether Yadav was a "team player" or "his general demeanor toward other employees." It also did not admit the written warnings into evidence or allow the State's witnesses to read portions of those documents into the record. We conclude Yadav has not identified any hearsay that was erroneously admitted into evidence.

Additionally, even assuming the challenged evidence was irrelevant or unfairly prejudicial, "[t]he erroneous admission of evidence is non-constitutional error. Non-constitutional errors are harmful, and thus require reversal, only if they affect Appellant's substantial rights." *Gonzalez v. State*, 544 S.W.3d 363, 373 (Tex. Crim. App. 2018). Here, the record shows the jury heard ample evidence to support its finding of guilt on both charges. We therefore conclude, based on our review of the record as a whole, that any error in admitting the evidence Yadav challenges in his fifteenth issue either

"did not influence the jury, or had but a slight effect." *Id.* As a result, we overrule Yadav's fifteenth issue. *See id.*; *see also* TEX. R. APP. P. 44.2.

Motion to Reopen

In his third issue, Yadav contends the trial court abused its discretion by refusing to allow him to present testimony from witnesses who had been subpoenaed but did not appear at trial. In his fourth issue, he argues the trial court erred by refusing to allow him to call previous witnesses back to the stand for additional re-cross examination. In his fifth issue, he argues the trial court erred by denying his motion to reopen the evidence for the presentation of the testimony he addresses in his third and fourth issues.

Standard of Review and Applicable Law

The Texas Code of Criminal Procedure provides that a trial court "shall allow testimony to be introduced at any time before the argument of a cause is concluded, if it appears that it is necessary to a due administration of justice." TEX. CODE CRIM. PROC. ANN. art. 36.02. The Texas Court of Criminal Appeals has held that "due administration of justice" means the trial court must reopen the evidence "if the evidence would materially change the case in the proponent's favor." *Peek v. State*, 106 S.W.3d 72, 79 (Tex. Crim. App. 2003). "That the proffered evidence is relevant is not enough; it 'must actually make a difference in the case' and not be cumulative of evidence previously presented.'" *Birkholz v. State*, 278 S.W.3d 463, 464 (Tex. App.—San Antonio 2009, no pet.) (quoting *Peek*, 106 S.W.3d at 79). We review a trial court's decision on whether to reopen the evidence for abuse of discretion. *Id.*

Application

In his third issue, Yadav argues the trial court abused its discretion by refusing to allow him to present the testimony of several One Frost employees he had subpoenaed. However, Yadav did not attempt to call those witnesses until he moved to reopen the evidence—i.e., after he had already rested his case. As a result, he was required to show that their testimony "would materially change the case" in his

favor. *See Peek*, 106 S.W.3d at 79. In the trial court, Yadav identified the subpoenaed witnesses as coworkers "in [his] work area," but he did not explain what their testimony would have been or how their testimony would have helped his case. And other than a statement that the subpoenaed individuals were coworkers who "were sitting around his work-desk" on the day of the incident, his brief is also silent on this issue. Because Yadav has not shown that the subpoenaed witnesses' testimony would "actually make a difference in the case," we overrule his third issue. *Birkholz*, 278 S.W.3d at 464.

In his fourth issue, Yadav argues the trial court erred by refusing to allow him to recall Landin, Gonzales, Obey, Ortega, and Torres to the stand for additional cross examination. He claims those examinations were "of utmost importance to [his] case" because those witnesses "committed multiple perjuries" during their earlier testimony. He also argues he was denied his right to confront them. As was the case with his third issue, however, Yadav did not ask to conduct these re-cross examinations until he moved to reopen the evidence. Additionally, the record shows Yadav cross-examined all of these witnesses at some length before the parties rested. During cross-examination, his attorneys repeatedly questioned the witnesses' recollection of the relevant facts and emphasized alleged discrepancies between the witnesses' statements and the available video evidence. Because the record shows Yadav had an opportunity to impeach those witnesses' credibility in front of the jury, the trial court did not abuse its discretion by concluding that re-cross examination on their purported perjuries would have been "cumulative of evidence previously presented.'" *See id.* We overrule Yadav's fourth issue.

In his fifth issue, Yadav contends the trial court abused its discretion by refusing to reopen the evidence after the parties rested. Yadav's motion to reopen was based on the evidence addressed by his third and fourth issues on appeal. Because Yadav has not shown that the additional evidence

he wished to present would have "materially changed this case in [his] favor," we cannot say the trial court abused its discretion by denying the motion to reopen. *See Peek*, 106 S.W.3d at 79. We overrule Yadav's fifth issue.

Jury Deliberation Question

In his seventh issue, Yadav argues the trial court erred by refusing to give a substantive answer to the following question asked by the jury:

> We would like to get clarification on the transportation aspect of the resisting arrest charge. We want to ensure that this includes the act of the defendant walking under his own power to the police vehicle.

In response, the trial court told the jury:

> Members of the jury, in response to your inquiry, you have heard all the evidence in this case, and you have all the exhibits that were admitted during trial as well as the Charge of the Court. You are instructed to please continue your deliberations.

Although Yadav objected to that answer at trial, his only objection was that "the jury has not heard all the evidence." On appeal, however, he now contends this question shows the jury was "perplexed" and required additional instruction on "the actual law" of the resisting charge. Because the issue presented on appeal does not correspond with the objection Yadav made at trial, he has not preserved it for this court's consideration. *See Lemon v. State*, 298 S.W.3d 705, 708 (Tex. App.—San Antonio 2009, pet. ref'd). We overrule Yadav's seventh issue.

Right to Self-Representation

In his eighth issue, Yadav contends the trial court erred by refusing to allow him to present closing argument. In his ninth issue, he argues the trial court erred by denying his request to represent himself. We construe both of these issues as complaints that the trial court's rulings violated Yadav's right to self-representation. In response to both

issues, the State contends Yadav did not timely assert his right to self-representation.

A criminal defendant has a constitutional right to represent himself if he knowingly, intelligently, and voluntarily waives the right to counsel. *See Faretta v. California*, 422 U.S. 806, 807 (1975); *Hatten v. State*, 71 S.W.3d 332, 333 (Tex. Crim. App. 2002). However, "[a]n accused's right to self-representation must be asserted in a timely manner, namely, before the jury is impaneled." *McDuff*, 939 S.W.2d at 619; *see also Ex parte Winton*, 837 S.W.2d 134, 135 (Tex. Crim. App. 1992). We review the denial of a defendant's request to represent himself for abuse of discretion, viewing the evidence in the light most favorable to the trial court's ruling. *Lathem v. State*, 514 S.W.3d 796, 802 (Tex. App.—Fort Worth 2017, no pet.).

Here, Yadav first invoked his right of self-representation after both sides had rested, long after the jury was impaneled. As a result, his request to represent himself was untimely. *See McDuff*, 939 S.W.2d at 619; *Ex parte Winton*, 837 S.W.2d at 135. We therefore cannot say the trial court abused its discretion by denying that request. *See Latham*, 514 S.W.3d at 803; *see also Calderon v. State*, No. 10-17-00265-CR, 2019 WL 962310, at *3 (Tex. App.—Waco Feb. 27, 2019, pet. ref'd) (mem. op., not designated for publication) (rejecting a challenge to timeliness requirement).

Although Yadav's brief implies the trial court did not permit any summation to be offered on his behalf, the record shows his attorneys presented closing argument to the jury. To the extent Yadav argues he should have been allowed to present his own closing in addition to that offered by his attorneys, we overrule that argument. "There is no constitutional right in Texas to hybrid representation partially pro se and partially by counsel." *Landers v. State*, 550 S.W.2d 272, 280 (Tex. Crim. App. 1977); *see also Webb v. State*, 533 S.W.2d 780, 784 (Tex. Crim. App. 1976) (noting Texas courts have "held that an accused does not have the right to be both represented by counsel and also propound his own questions to witnesses and make jury argument in

his own behalf"). The Texas Court of Criminal Appeals recently reiterated that hybrid representation "is disallowed in Texas." *See Tracy v. State*, 597 S.W.3d 502, 509 (Tex. Crim. App. 2020). We therefore overrule Yadav's eighth and ninth issues.

Right to Testify

In his tenth issue, Yadav contends he was denied the right to testify on his own behalf. A criminal defendant has a constitutional right to testify in his own defense. *See Rock v. Arkansas*, 483 U.S. 44, 51–52 (1987); *Nelson v. State*, 765 S.W.2d 401, 404 (Tex. Crim. App. 1989). However, "[e]ven constitutional errors may be waived by failure to timely complain in the trial court." *Pabst v. State*, 466 S.W.3d 902, 907 (Tex. App.—Houston [14th Dist.] 2015, no pet.). "Although there are no technical considerations or forms of words required to preserve an error for appeal, a party must be specific enough so as to 'let the trial judge know what he wants, why he thinks himself entitled to it, and do so clearly enough for the judge to understand him at a time when the trial court is in a proper position to do something about it.'" *Resendez v. State*, 306 S.W.3d 308, 312–13 (Tex. Crim. App. 2009) (quoting *Lankston v. State*, 827 S.W.2d 907, 909 (Tex. Crim. App. 1992)).

Here, nothing in the record shows Yadav ever clearly invoked his right to testify, either through his attorneys or during his own discussions with the trial court. In his reply brief, Yadav contends that his statement, "All the evidence that we haven't presented to the jury or to this Court, so I would like to present all those cases—all those evidence myself," was sufficient to put the trial court on notice that he wanted to testify in his own defense. However, Yadav made that statement in response to the question, "Can you let me know why you'd like to represent yourself?" Under these circumstances, we conclude that this statement, without more, did not clearly and specifically invoke Yadav's right to testify. *See id.* Moreover, while Yadav states in his brief that he objected to jury instructions indicating he had chosen not to testify, the record does not support this assertion. As a

result, the record does not allow us to conclude that the trial court was aware Yadav wanted to testify at a time when it was "in a proper position to do something about it" but nevertheless denied him that right. *Id.*

It is true, as Yadav notes, that the trial court "asked the court reporter to go off-the-record for 35 minutes" shortly before he indicated he wanted to dismiss his attorneys and represent himself. Yadav appears to contend that he expressed his wish to testify during those 35 minutes. However, nothing in the record indicates Yadav objected to going off the record or specifically asked for a record to be made during that time. As a result, he waived any complaint he may have had about the trial court's decision to go off the record. *See Valle v. State*, 109 S.W.3d 500, 508– 09 (Tex. Crim. App. 2003). Additionally, we cannot consider any factual assertions about what purportedly happened off the record. *Hiatt v. State*, 319 S.W.3d 115, 123 (Tex. App.—San Antonio 2010, pet. ref'd). Because nothing in the record shows Yadav expressed a desire to testify but was denied the right to do so, we conclude he has not preserved this issue for our review. TEX. R. APP. P. 33.1; *see Pabst*, 466 S.W.3d at 907. We overrule Yadav's tenth issue.

Yadav's Twelfth Issue

In his twelfth issue, Yadav appears to argue the State colluded with One Frost and its employees to offer damaging testimony against him. He also appears to contend that the State and/or One Frost improperly refused to disclose evidence to him, such as "all agreements between State and [One Frost]" that he believes would show "collusion" between the State and witnesses employed by One Frost. Finally, he contends that a number of the State's witnesses offered untruthful testimony about the events leading up to his arrest, implies the State had a duty "to correct the fallacious testimonies of" its witnesses, and argues the trial court erred by not charging the State's witnesses with perjury.

Because Yadav's twelfth issue "is based on more than one legal theory and raises more than one specific complaint," it is multifarious. *Prihoda v. State*, 352 S.W.3d 796, 801 (Tex.

App.—San Antonio 2011, pet. ref'd). "As an appellate court, we may refuse to review a multifarious issue or we may elect to consider the issue if we are able to determine, with reasonable certainty, the alleged error about which the complaint is made." *Id.* The basis for each complaint appears to be that the State's witnesses gave untruthful testimony. "In the interest of justice, we elect to consider this contention." *Id.*

Yadav points to nothing in the record that conclusively supports his assertions that the State's witnesses lied. Although Yadav disputes the witnesses' recitation of events, as an appellate court, we have no authority to re-weigh the evidence or substitute our own judgment for that of the jury. *See Febus v. State*, 542 S.W.3d 568, 572 (Tex. Crim. App. 2018). While Yadav contends the video evidence offered at trial disproves the testimony of the State's witnesses, the jury viewed those videos and could therefore draw its own conclusions about their impact on the witnesses' credibility. *Cf. Zill v. State*, 355 S.W.3d 778, 788 (Tex. App.—Houston [1st Dist.] 2011, no pet.); *see also Gonzales v. State*, No. 01-15-00914-CR, 2016 WL 5920778, at *4 (Tex. App.—Houston [1st Dist.] Oct. 11, 2016, no pet.) (mem. op., not designated for publication). Moreover, as noted above, Yadav's attorneys repeatedly pointed to perceived discrepancies between the video evidence and the State's witnesses' testimony during cross-examination. *See Trippell v. State*, 535 S.W.2d 178, 181 (Tex. Crim. App. 1976) ("Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested.") (internal quotation marks omitted). Because we must defer to the jury's determinations on the credibility of the witnesses and the weight to be given to their testimony, we overrule Yadav's twelfth issue. *See Hines*, 383 S.W.3d at 623.

Motion for New Trial

In his fourteenth issue, Yadav argues the trial court erred by not holding a hearing on his motions for new trial and denying those motions by operation of law. The State

responds that Yadav was not entitled to a hearing because he did not timely present his motions to the trial court.

"The right to a hearing on a motion for new trial is not absolute." *Aguilar v. State*, 547 S.W.3d 254, 264 (Tex. App.—San Antonio 2017, no pet.). A criminal defendant who seeks a new trial must present his motion to the judge who tried the case within ten days of its filing. TEX. R. APP. P. 21.6; *Aguilar*, 547 S.W.3d at 264. To satisfy this requirement, the record must contain "some documentary evidence or notation that the trial judge personally received a copy of the motion and could therefore decide whether to set a hearing or otherwise rule upon it." *Gardner v. State*, 306 S.W.3d 274, 305 (Tex. Crim. App. 2009). "Without any documentary proof that the trial judge personally saw the motion for new trial, the judge cannot be faulted for failing to hold a hearing on the motion." *Aguilar*, 547 S.W.3d at 265.

Here, Yadav told the trial court at the end of his July 8, 2019 sentencing hearing that he "would like to file" a motion for new trial. The trial court responded that he needed "to do that all through the proper channels . . . . That's not today and that's not done orally." Yadav then filed two written motions for new trial on August 7, 2019. However, he did not file a separate motion requesting a hearing, the motions do not contain any notation indicating the judge saw them, and there is no entry on the docket sheet showing the motions were presented to the judge. *See id.* Because the record does not contain any documentary proof that the trial court judge personally saw either of Yadav's motions within ten days of their filing, we conclude Yadav failed to timely present his motions for new trial. *See id.* at 265–66. As a result, the trial court did not abuse its discretion by allowing the motions to be overruled by operation of law without a hearing. *See id.* We overrule Yadav's fourteenth issue.

Yadav's Expert Witness

In his sixteenth issue, Yadav argues the trial court erred by "ignoring" the testimony of his expert witness, Russell McWhorter, who testified that Ortega violated certain policies and procedures of the Bexar County Sheriff's Office

during Yadav's arrest. However, the jury was the sole judge of both McWhorter's credibility and the weight to give to his testimony. *Williams v. State*, 432 S.W.3d 450, 453 (Tex. App.—San Antonio 2014, pet. ref'd). We "may not sit as a thirteenth juror and substitute our judgment for that of the fact-finder." *Id.* We therefore overrule Yadav's sixteenth issue.

CONCLUSION

We affirm the trial court's judgment.

Beth Watkins, Justice

Do Not Publish

Appendix-C. Verbatim Citation

i. THE U.S. CONSTITUTION

> 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.

FOURTH AMENDMENT TO THE U.S. CONSTITUTION

> 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.

FIFTH AMENDMENT TO THE U.S. CONSTITUTION

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for

> obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

SIXTH AMENDMENT TO THE U.S. CONSTITUTION

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

NINTH AMENDMENT TO THE U.S. CONSTITUTION

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

THIRTEENTH AMENDMENT TO THE U.S. CONSTITUTION, § 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 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.

FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION, § 1

ii. TEXAS BILL OF RIGHTS

> Sec. 9. SEARCHES AND SEIZURES. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

TEXAS CONSTITUTION - BILL OF RIGHTS ARTICLE I, § 9

RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

TEXAS CONSTITUTION - BILL OF RIGHTS ARTICLE I, § 10

EXCESSIVE BAIL OR FINES; CRUEL OR UNUSUAL PUNISHMENT; OPEN COURTS; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

TEXAS CONSTITUTION - BILL OF RIGHTS ARTICLE I, § 13

DEPRIVATION OF LIFE, LIBERTY, PROPERTY, ETC. BY DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

TEXAS CONSTITUTION - BILL OF RIGHTS ARTICLE I, § 19

iii. TEXAS EMPLOYEE DEFENSE STATUTE

It is a defense to prosecution under this section that the actor at the time of the offense was: . . . (3) a person who was: (A) employed by or acting as agent for an entity that had, or that the person reasonably believed had, effective consent or authorization provided by law to enter the property; and (B) performing a duty within the scope of that employment or agency.

Texas Penal Code § 30.05(e)(3).

iv. RIGHTS OF ACCUSED

In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself, or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor.

TEX.C.CR.PROC.art-1.05

v. RIGHT TO HAVE DEFENSE WITNESSES

The right of an accused to have compulsory process for obtaining witnesses in his favor stands on no lesser footing than the other Sixth

> Amendment rights that we have previously held applicable to the States.

Washington v. Texas, 388 U.S. 14, 19 (1967)

> The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

Washington v. Texas, 388 U.S. 14, 19 (1967)

vi. RIGHT TO CROSS-EXAMINE

> The right granted to an accused by the Sixth Amendment to confront the witnesses against him, which includes the right of cross-examination, is a fundamental right essential to a fair trial and is made obligatory on the States by the Fourteenth Amendment.

Pointer v. Texas, 380 U.S. 400 (1965)

> A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense — a right to his day in court — are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony...

In re Oliver, 333 U.S. 257, 273 (1948)

CONFRONTED BY WITNESSES. The defendant, upon a trial, shall be confronted with the witnesses

TEX.C.CR.PROC.art-1.25

vii. RIGHT TO RESPOND TO JURY'S LAW QUESTIONS IN-DELIBERATION

"In a trial by jury in a federal court, the judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law." *Quercia v. United States*, 289 U.S. 466, 469. "The influence of the trial judge on the jury is necessarily and properly of great weight," *Starr v. United States*, 153 U.S. 614, 626, and jurors are ever watchful of the words that fall from him. Particularly in a criminal trial, the judge's last word is apt to be the decisive word. If it is a specific ruling on a vital issue and misleading, the error is not cured by a prior unexceptionable and unilluminating abstract charge.

Bollenbach v. United States, 326 U.S. 607, 612 (1946)

Under Texas law, the judge must provide the jury with "a written charge distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the jury.

Walters v. State, 247 S.W.3d 204, 208 (Tex.Cr.App.2008)

"If jurors differ as to the instructions they should come into court and have them repeated, or if they wish more information as to the law they should request it of the court, and it has been held that it is not only the right but the

> duty of the court to reinstruct on any question of law arising from the facts on which the jury say they are in doubt, and on which they ask further instructions. Where the jury make their difficulties explicit, the judge should clear them away with concrete accuracy; and where the question asked is not clear, it is the duty of the court to seek clarification."

People v. Harmon, 104 Ill. App. 2d 294, 301 (Ill. App. Ct. 1968)

> We consider that the court's response to the jurors' question was no less than a refusal to reinstruct them as to an applicable proposition of law, a refusal to clarify their doubts. Their question, while not framed in language of the utmost possible clarity, was intelligible and, even if it were not, it was the court's duty to ask the questioners to make their inquiry clearer. That there was a binding duty to answer the question cannot be doubted.

People v. Gonzalez, 293 N.Y. 259, 261 (N.Y. 1944)

> [T]he trial court committed reversible error when it refused to respond to an inquiry from the jury which indicated its question

People v. Shannon, 206 Ill. App. 3d 310, 312, 564 N.E.2d 198, 202-03 (Ill. App. Ct. 1990)

> Where a jury has raised an explicit question on a point of law arising from the facts over which there is doubt or confusion, the court should attempt to clarify the question in the minds of the jury members.

People v. Kucala, 7 Ill. App. 3d 1029, 1035, 288 N.E.2d 622, 626-27 (Ill. App. Ct. 1972); *People v. Morris*, 81 Ill. App. 3d 288, 290, 401 N.E.2d 284, 286 (Ill. App. Ct. 1980)

viii. RIGHT OF OWN SUMMATION

> It can hardly be questioned that closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions. And for the defense, closing argument is the last clear chance to persuade the trier of fact that there may be reasonable doubt of the defendant's guilt. See In re Winship, 397 U.S. 358.

Herring v. New York, 422 U.S. 853, 862 (1975)

> This is a substantial legal right, of which the defendants could not be deprived by an exercise of judicial discretion. The defendant in an action, civil or criminal, who introduces no evidence after the plaintiff, or the State, as the case may be, has rested, is entitled as a matter of right to reply to the argument of counsel for the plaintiff or of the solicitor for the State, and to that end to conclude the argument to the jury.

State v. Raper, 166 S.E. 314, 203 N.C. 489, 492 (N.C. 1932)

> The right to closing argument is a substantial legal right of which a defendant may not be deprived by the exercise of a judge's discretion.

State v. Eury, 317 N.C. 511, 517 (N.C. 1986)

ix. RIGHT AGAINST MALICIOUS PROSECUTION

> DUTIES OF DISTRICT ATTORNEYS. ... It shall be the primary duty of all prosecuting

> attorneys, including any special prosecutors, not to convict, but to see that justice is done. They shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused.

TEX.C.CR.PROC.art-2.01.

> [P]rosecutor's closing argument was so grossly improper that the trial court erred in failing to intervene ex mero motu to correct the error, as we cannot say that there is not a reasonable possibility that had the argument not been made, a different result would have been reached at trial.

State v. Williams, 317 N.C. 474, 483 (1986)

> When, as in this case, the trial court persists in making discourteous and disparaging remarks to a defendant's counsel and witnesses and utters frequent comment from which the jury may plainly perceive that the testimony of the witnesses is not believed by the judge, and in other ways discredits the cause of the defense, it has transcended so far beyond the pale of judicial fairness as to render a new trial necessary. Neither can a plea for the application of the section of the constitution save this situation. The fact that a record shows a defendant to be guilty of a crime does not necessarily determine that there has been no miscarriage of justice. In this case the defendant did not have the fair trial guaranteed to him by law and the constitution.

People v. Mahoney, 201 Cal. 618, 627 (Cal. 1927); *People v. Dickman*, 143 Cal.App.2d Supp. 833, 836 (Cal. Super. 1956)

x. INDIVIDUAL RIGHT TO SELF-REPRESENT

The Sixth Amendment as made applicable to the States by the Fourteenth guarantees that

> a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily and intelligently elects to do so; and in this case the state courts erred in forcing petitioner against his will to accept a state-appointed public defender and in denying his request to conduct his own defense.

Faretta v. California, 422 U.S. 806 (1975)

> The choice is not all or nothing: To gain assistance, a defendant need not surrender control entirely to counsel. For the Sixth Amendment, in "grant[ing] to the accused personally the right to make his defense," "speaks of the 'assistance' of counsel, and an assistant, however expert, is still an assistant." *Faretta*,422 U.S., at 819–820, 95 S.Ct. 2525; see *Gannett Co. v. DePasquale*,443 U.S. 368, 382, n. 10, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979) (the Sixth Amendment "contemplat[es] a norm in which the accused, and not a lawyer, is master of his own defense").

McCoy v. Louisiana, 138 S.Ct. 1500, 1508 (2018)

xi. RIGHT TO TESTIFY

> In trial of all persons charged with the commission of offenses against the United States and in all proceedings in courts martial and courts of inquiry in any State, District, Possession or Territory, the person charged shall, at his own request, be a competent witness. His failure to make such request shall not create any presumption against him.

18 U.S.C. § 3481

> [D]efendants have a right to testify in their own behalf under the Due Process Clause of the

> Fourteenth Amendment, the Compulsory Process Clause of the Sixth Amendment, and the Fifth Amendment's privilege against self-incrimination.

Rock v. Arkansas, 483 U.S. 44 (1987)

> [T]he right to testify on one's own behalf in defense to a criminal charge is a fundamental constitutional right.

Id. at 53 n.10 (1987) (emphasis added).

xii. RIGHT TO CONFRONT AGAINST PERJURIES

> Subornation of perjury: Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. §§ 1621, 1622, 1623

> Whoever, being an officer, director, agent or employee of any Federal Reserve bank, member bank, depository institution holding company, national bank, insured bank, branch or agency of a foreign bank, . . . makes any false entry in any book, report, or statement of such bank, company, branch, agency, or organization with intent to injure or defraud such bank, company, branch, agency, or organization, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank, company, branch, agency, or organization, or the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or any agent or examiner appointed to examine the affairs of such bank, company, branch, agency, or organization, or the Board of Governors of the Federal Reserve System; or Whoever with intent to defraud the

> United States or any agency thereof, or any financial institution referred to in this section, participates or shares in or receives (directly or indirectly) any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such financial institution—Shall be fined.

18 U.S.C. § 1005 - Bank Fraud & False Statements

> AGGRAVATED PERJURY. (a) A person commits an offense if he commits perjury as defined in Section 37.02, and the false statement: (1) is made during or in connection with an official proceeding; and (2) is material. (b) An offense under this section is a felony of the third degree. ...Sec. 37.04. MATERIALITY. (a) A statement is material, regardless of the admissibility of the statement under the rules of evidence, if it could have affected the course or outcome of the official proceeding. (b) It is no defense to prosecution under Section 37.03 (Aggravated Perjury) that the declarant mistakenly believed the statement to be immaterial. (c) Whether a statement is material in a given factual situation is a question of law.

Texas Penal Code §§ 37.02, 37.03, 37.04

> The failure of the prosecutor to correct the testimony of the witness which he knew to be false denied petitioner due process of law in violation of the Fourteenth Amendment.

Napue v. Illinois, 360 U.S. 264 (1959)

> [T]he prosecution's duty to present all material evidence to the jury was not fulfilled and constitutes a violation of due process

Giglio v. United States, 405 U.S. 150 (1972)

xiii. RIGHT OF SPECIFIC CHARGE

> [a] written charge distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the jury. Before said charge is read to the jury, the defendant or his counsel shall have a reasonable time to examine the same and he shall present his objections thereto in writing, distinctly specifying each ground of objection. Said objections may embody errors claimed to have been committed in the charge, as well as errors claimed to have been committed by omissions therefrom or in failing to charge upon issues arising from the facts, and in no event shall it be necessary for the defendant or his counsel to present special requested charges to preserve or maintain any error assigned to the charge, as herein provided.

TEX.C.CR.PROC.art-36.14

> [I]t must show that the accused has committed an offense against the law of this state, or state that the affiant has good reason to believe and does believe that the accused has committed an offense against the law of this state

TEX.C.CR.PROC.art-45.019(a)(4)

> No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights...

Cole v. Arkansas, 333 U.S. 196, 201 (1948)

> It is the opinion of this court that the indictment in this case is fatally defective, and that the form of indictment for theft prescribed in the act of the Legislature hereinbefore quoted is repugnant to the Constitution, and that a defendant who has been tried upon such an indictment has not been tried "by due course of the law of the land." (Bill of Rights § 19). The judgment, therefore, is reversed and the prosecution dismissed.

Williams v. State, 12 Tex.App. 395, 401 (1882)

xiv. RIGHT OF DIRECTED VERDICT

> DIRECTED VERDICT. If, upon the trial of a case in a justice or municipal court, the state fails to prove a prima facie case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of "not guilty."

Tex.C.Cr.Proc.art-45.032

> [I]t is not sufficient to establish an obstruction of a search. The police officer testified that no effort was made to search the Appellant at the time of the arrest...

Agnew v. State, 635 S.W.2d 167, 168 (Tex.App.1982)

> Appellant's action in twice pulling his arm away did not constitute force against the peace officer. There being no other evidence upon which the jury could base its verdict, the conviction must be reversed and a judgment of not guilty rendered.

Raymond v. State, 640 S.W.2d 678, 679 (Tex.App. 1982)

> The State failed, however, to adduce sufficient evidence that appellant used force directed against Officer Landrum after the initial shoving. Accordingly, we sustain

appellant's sole point of error. We reverse the conviction and render a judgment of not guilty.

Leos v. State, 880 S.W.2d 180, 184 (Tex.App. 1994)

xv. RIGHT TO REOPEN

TESTIMONY AT ANY TIME. The court shall allow testimony to be introduced at any time before the argument of a cause is concluded, if it appears that it is necessary to a due administration of justice.

TEX.C.CR.PROC.art-36.02

The trial judge fell into error in refusing to allow appellant's counsel to adduce testimony from the two witnesses who were available to testify on Wednesday, November 4, 1964. Although the testimony of these two witnesses is brought forward by bill of exception and the state takes issue with the testimony and says that it is either cumulative or of no probative value, we feel that appellant had the right to adduce it and allow the jury to weigh its credibility and probative value. It was an abuse of discretion not to allow its submission to the jury. Art. 643, Vernon's Ann.C.C.P., provides for the allowance of testimony to be introduced at any time before the argument of a cause is concluded

Kepley v. State, 391 S.W.2d 423, 425 (Tex.Cr.App.1965)

This case presents no extreme circumstances that could justify exclusion of this exculpatory testimony. The trial court abused its discretion by denying the motion to reopen the proofs to permit the witness to testify. Accordingly, the convictions must be reversed."

People v. Goff, 299 Ill.App.3d 944, 949, 234 Ill.Dec. 133, 702 N.E.2d 299 (1998)

xvi. UNLAWFUL & EXCESSIVE USE OF FORCE

> BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT AND INVIOLATE. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

TEXAS CONSTITUTION - BILL OF RIGHTS ARTICLE I, § 29

> When does police officer's use of force during arrest become so excessive as to constitute violation of constitutional rights, imposing liability under Federal Civil Rights Act of 1871 (42 U.S.C. § 1983)

60 A.L.R. Fed. 204 (1982)

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

Federal Civil Rights Act of 1871 (42 U.S.C. § 1983)

> 9.01 POLICY. It is the policy of the Bexar County Sheriff's Office that deputies use only the force that reasonably appears necessary to effectively bring an incident under control, while protecting the lives of the officer and others the use of force must be objectively reasonable. The deputy must only use that

> force which a reasonably prudent officer would use under the same or similar circumstances.

Bexar-County-Policy/Procedures § 9.01 (CHAPTER 9 — Use of Force REV. APR 15, 2014)

xvii. EVIDENCE DESTRUCTION, TAMPERING & SPOLIATION

> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States . . ., or in relation to or contemplation of any such matter or case, shall be [in violation of this statute]. 18 U.S.C. § 1519(emphasis added).

United States v. Hunt, 526 F.3d 739, 743 (11th Cir. 2008)

> TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE. (a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he: (1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

TEX.PENAL § 37.09 : Spoliation | Tampering With or Fabricating Physical Evidence

xviii. UNREASONABLE SEIZURES

> SEARCHES AND SEIZURES. The people shall be secure in their persons, houses, papers

and possessions from all unreasonable seizures or searches. No warrant to search any place or to seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation.

TEX.C.CR.PROC.art-1.06

xix. CONSPIRACY AGAINST CIVIL RIGHTS

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same;. . . They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated . . , they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S.C. § 241

xx. CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. § 371

CRIMINAL ATTEMPT. (a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended. (b) If a person attempts an offense that may be aggravated, his conduct constitutes an attempt to commit the aggravated offense if an element that aggravates the offense accompanies the attempt.

TEX.PENAL § 15.01

CRIMINAL CONSPIRACY. (a) A person commits criminal conspiracy if, with intent that a felony be committed: (1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and (2) he or one or more of them performs an overt act in pursuance of the agreement. (b) An agreement constituting a conspiracy may be inferred from acts of the parties.

TEX.PENAL § 15.02

A. (1) "Association" and "corporation" have the meanings assigned by Section 1.07, Penal Code. (2) "High managerial agent" has the meaning assigned by Section 7.21, Penal Code. B. If conduct constituting an offense under Section 29 of this Act is performed by an agent acting in behalf of a corporation or association and within the scope of the person's office or employment, the corporation or association is criminally responsible for the offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by: (1) a majority of the governing board acting in behalf of the corporation or association; or (2) a high managerial agent acting in behalf of the

> corporation or association and within the scope of the high managerial agent's office or employment.

Tex. Vernon's Statutes Art. 581-29-3. Criminal Responsibility of Corporation

> "Restrain" means to restrict a person's movements without consent, so as to interfere substantially with the person's liberty, by moving the person from one place to another or by confining the person. Restraint is "without consent" if it is accomplished by: (A) force, intimidation, or deception;...
>
> UNLAWFUL RESTRAINT. (a) A person commits an offense if he intentionally or knowingly restrains another person.

TEX.PENAL §§ 20.01, 20.02

> Under concert of action, those who are in pursuit of a common plan or design to commit a tortious act and actively participate in it or lend aid, cooperation, or encouragement to the wrongdoer are equally liable.

Prosser and Keeton on the Law of Torts § 46 (W. Keeton 5th ed. 1984). (This theory of concert of action is also embodied in the Restatement of the Law of Torts, § 876.)

xxi. RULES OF EVIDENCE

> General Admissibility of Relevant Evidence: Relevant evidence is admissible. Irrelevant evidence is not admissible.

TEX-/FED-R-EVID-Rule-402

> Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons: The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the

jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

FED·R·EVID·Rule-403

(a) CHARACTER EVIDENCE.

(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(b) CRIMES, WRONGS, OR OTHER ACTS.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

FED·R·EVID·Rule-404

Authenticating or Identifying Evidence

(b). (1) Testimony of a Witness with Knowledge. Testimony that an item is what it is claimed to be. . . .(4) Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

TEX·/FED·R·EVID·Rule-901(b)(1),(4)

Appendix-D. Record References

CROSS REFERENCES OF REPORTER RECORD

CROSS REFERENCES OF CLERK RECORD

i. FROSTBANK INDISPENSABLE PARTIES IN THE RECORD

Alonzo	Annette Alonzo, Group Executive Vice President
Green	Phil Green, C.E.O. Chairman
Gonzales	Virginia Gonzales, Sr. Vice President
Landin	Michael Landin, Sr. Vice President
Obey	Dwight Obey, Vice President
Ortega	Raymond Ortega, Off-duty Employee
Romero	Stephen J. Romero, Attorney, FrostBank
Russell	Mike Russell, Group Executive Vice President
Shetgeri	Uday Shetgeri, Executive Vice President
Stead	Jimmy Stead, Group Executive Vice President,
Torres	Robert Torres, Contractor, FrostBank

ii. TITLES FROM RECORD

Petitioner	Appellant/Defendant
State	State of Texas, Respondent-Appellee
Frost / FrostBank	FrostBank, One Frost, 3838 Rogers Road, San Antonio TX 78251
Expert-witness	Russell McWhorter, Ex Supervisor Police Officer, Forensic, Electronic Crimes & Use of Police Force Expert

Trialcourt Trialjudge	Judge Hon. Melissa Vara, Bexar County Court #15
Jury	Six Jurors: Keima Ohi, Jo Lynn Lopez, Antonio Gallegos Amesquita, Edward Jakob Zertuche, Caroline Claudia Converse, Katherine Brooke Shell (Jury Foreman, Product Manager USAA)

iii. REPORTER RECORDS [12]

STATE'S EXHIBITS (RR_{10})

Ex-1	EVIDENCE-VIDEOS Petitioner walking to his car	RR_{10} 3; RR_4 34-36
Ex-3	FrostBank's E-mail Meeting Invite sent to Petitioner at 11:04 am	RR_{10} 5; RR_5 14

DEFENDANT'S EXHIBITS (RR_{10})

Ex-1	Petitioner's Broken Car-door Photo	RR_{10} 7; RR_5 47-48
Ex-2	Petitioner's Broken Car-door Photo	RR_{10} 9; RR_5 47-48
Ex-3	Petitioner's Broken Car-door Photo	RR_{10} 11; RR_5 47-48
Ex-4	Expert-witness Résumé	RR_{10} 13-14; RR_5 57
Ex-5	Expert-witness CV	RR_{10} 16; RR_5 57
Ex-6	Obey & Ortega forcibly dragging Petitioner as a slave towards meeting	RR_{10} 18; RR_6 76

[12] * RR Volumes of 601414 & 601415 with same last digit are identical.

RR_1	RR-Vol001	RR_6	RR-Vol006
RR_2	RR-Vol002	RR_7	RR-Vol007
RR_3	RR-Vol003	RR_8	RR-Vol008
RR_4	RR-Vol004	RR_9	RR-Vol009
RR_5	RR-Vol005	RR_{10}	RR-Vol010

Ex-8	Blazer – Petitioner's coat in blood	RR5 105; RR6 29, 97
Ex-12	Forcefully enslaving Petitioner to go to HR meeting Photo	RR10 20; RR6 124
Ex-13	Forcefully enslaving Petitioner to go to HR meeting Photo	RR10 22; RR6 124
Ex-14	Forcefully enslaving Petitioner to go to HR meeting Photo	RR10 24; RR6 124
Ex-15	Forcefully stopping in parking to go to HR Photo	RR10 26; RR6 84
Ex-17	Petitioner's Broken Exterior Car-door handle Photo	RR10 28; RR6 124
Ex-18	Petitioner's Broken Car-door Photo	RR10 30; RR6 124
Ex-19	Petitioner's Broken Car-door Photo	RR10 32; RR6 124
Ex-20	Petitioner's Injuries, Blood on Coat Photo	RR10 34; RR6 30
Ex-21	Petitioner's Face Injuries, Blood Photo	RR10 36; RR6 31
Ex-22	Petitioner's Face Injuries, Blood, Broken dental crown	RR10 38; RR6 31

TIMESTAMPS & SEQUENCE OF SURVEILLANCE VIDEOS RR10 STATE-EX-1

Video (mp4)	**Time-stamp**	**Video Sequence**
RR10 Frost_5-Chan020	11:10:30	Entering into Elevator on Petitioner Work-floor immediately after very first contact at his desk
RR10 Frost_9-Chan047	11:10:48	Inside Elevator on Petitioner Work-floor
RR10 Frost_4-Chan010	11:11:11	Exiting Elevator at First-floor -Petitioner Being enslaved to go to Landin Meeting

RR_{10} Frost_4-Chan013	11:11:14	First-floor Main-street Lobby -Fishbowl Camera by TV
RR_{10} Frost_4-Chan012	11:12:31	First-floor Main-street Lobby -Forged/paused videos
RR_{10} Frost_4-Chan027	11:17:35	Exiting Guard/Badge/Metal-detector Security-exit
RR_{10} Frost_4-Chan008	11:17:48	Exiting From Security-exit lobby towards parking-stairs
RR_{10} Frost_5-Chan047	11:17:56	Exiting From Security-exit in front of parking-stairs
RR_{10} Frost_5-Chan053	11:18:02	Exiting Main-exit into parking
RR_{10} Frost_5-Chan055	11:18:19	Start walking from Main-exit into parking towards Petitioner's car (rear-view)
RR_{10} Frost_5-Chan050	11:18:19	Start walking from Main-exit into parking towards Petitioner's car (front-view)
RR_{10} Frost_5-Chan048	11:19:45	Making left-turn in parking just before entering into Petitioner's car
RR_{10} Frost_5-Chan049	11:19:49	After getting into Petitioner's car - Parking Far camera

iv. CLERK RECORDS [13]

CLERK RECORDS CR_1 & CR_2	CR_1 Page#	CR_2 Page
Deceitful "COMPLAINTS" Resist & Trespass	10	12

[13] CR_1 Clerk Record of Case# 601414; CR_2 Clerk Record of Case# 601415

Motions to Reveal Agreements between State & FrostBank	35-38	35-38
Motions in Limine	44-46	44-46
Orders Granting Motions for Inspection of FrostBank Premises	63	67
Orders to allow Petitioner to View the Scene at FrostBank	67	71
FrostBank's Motion to Quash Orders to allow Petitioner to View the Scene	68-71	-
Memorandum - Statements & Exhibits	75-78	89-92
Petitioner's Witnesses list & Evidence Exhibits Summary	79-82 234-237	93-96
Petitioner's Character Certificates & Educational Summary	83-98	97- 111
Destruction of Evidence by FrostBank-Letter dated 03042019 (highlighted)	99-101 208-211	115- 117
FrostBank's Anniversary Invite to Petitioner on 11152018	102,202, 238	-
FrostBank Employee photo ID Badge of Petitioner issued on 10162017	103-104 205-206	118- 119
Frost[ONE]: False Police Report "Escorting to HR" & "Holding his Car-Door" 11192018	105-118 214-227	130- 143
FrostBank Response on HR Meeting 02122019 –(highlighted)	119	-
FrostBank Voting Letter to Petitioner on 04232019	120,201, 203	-
FrostBank Employment Letter to Petitioner on 09112017	121-123 213	126- 128
Birthday cake & pizzas Receipts from HEB & Domino 11192018	124,233	-
Texas Penal Code Title 7 Sec 30.05(e)(3)	125,195	-
Medical Clinic Report & Dentist Receipts to replace broken crown	126-130 228-232	-
Letter to FrostBank for Preservation of all Electronic Surveillance on 12052018	131-132	-
Invite Note from FrostBank's Shetgeri to Petitioner on 11142018	133	129

Whistleblowing Email thread from Petitioner to FrostBank on 11142018	134-147	144-157
Letter to Shetgeri at FrostBank for Preservation of all Electronic Record & Surveillance	148,200	114
Letter to Mike Russell at FrostBank for Preservation of all Electronic Record & Surveillance	149,199	113
Witness Letter -Picking up Petitioner's broken Car from Impound 01052019	150-151	-
EMS City of San Antonio Letter to Petitioner on 12142018	152-153	-
Petitioner's Car Impound by FrostBank on 11192018	154-155	-
FrostBank seized Petitioner's Wallet, IDs, Credit Cards, Passport, Cellphone, Personal pen-drive, shoes-clothes	156-162	-
Trialcourt Judgements & Conditions on 07082019	163-166	175-176 182-183
Petitioner's Motions for New Trial on 08072019	178-188	195-205
Subpoenas to FrostBank for surveillance videos on 02222019	189-190	122-123
Subpoenas to Alonzo/FrostBank for surveillance videos on 01292019	191-192	120-121
Subpoenas to FrostBank for surveillance videos 01232019	193-194 196-197	124-125
FrostBank Acknowledgement Evidence Preservation on 12192018	198	-
FrostBank Final Pay slip to Petitioner on 11302018	204	112
FrostBank Joining Email to Petitioner sent on 10052017	207	-
Destruction of Evidence by FrostBank – Photo	210-211	117

FrostBank Employment Offer Email to Petitioner on 09112017	212	-
Order to Consolidate Cause# 601414 and Cause# 601415	-	77
Juror's Question signed by Jury Foreman 07012019	-	79
Judge's Nonresponse to Perplexed-Jury in deliberation 07012019	-	80
CHARGE OF COURT/Jury Instructions/Jury Charge 07012019	-	81-87
Petitioner's Educational Credentials Summary	-	162-169

v. BRIEF SUMMARY OF SURVEILLANCE VIDEOS (RR_{10} STATE-EX-1)

Following is a small subset of facts from surveillance video against numerous perjuries perpetrated by all state-actors so-called witnesses:

1. EVIDENCE-VIDEO $(RR_{10})^{Frost\_5\_Ch020}$ timestamps reflect Obey, Ortega & Torres began walking towards Petitioner's desk from elevator at 11:08:50am and returned along with Petitioner to elevator at 11:10:32am. Total time spent on Petitioner's desk, less than one-and-half-minutes, includes walk-time both-ways from elevator to his desk and back-to-elevator.
2. EVIDENCE-VIDEO $(RR_{10})^{Frost\_9\_Ch047}$ timestamp reflects total time 35 seconds spent inside the elevator standing quietly without saying a word.
3. Petitioner walked with state-actors instantaneously without any disturbance after asking, "Could he grab his personal-belongings from his desk-drawer?" They disallowed. Petitioner immediately walked along within 5 seconds. Both Gonzales & Landin admittedly testified that 'Petitioner was leaving voluntarily' to the birthday-party.

4. RR_{10}[Frost_4_Ch008,Ch027;Frost_5_Ch047,Ch048,Ch050,Ch053,Ch055]
   EVIDENCE-VIDEOS show Petitioner leaving by himself calmly, neither yelling nor screaming nor aggressive, while state-actors continued to encircle/stop him. Videos show all bystander-employees normally walking around without hearing a word. State-actors themselves conflicted that they did not hear anything (RR_4 50;RR_5 33,53). Petitioner's desk was surrounded by more than dozen of his coworkers, who sat around his desk, could have testified not hearing a word from Petitioner.
5. EVIDENCE-VIDEOS (RR_{10})[Frost_9_Ch047 & (RR_{10})[Frost_4_Ch010 inside/outside of elevator show Obey & Ortega forcing Petitioner physically for more than 30 seconds with their both hands. Furthermore, Ortega made him hostage by turning Petitioner's body to left forcibly to go to HR meeting. Petitioner turned right towards exit-pathway to parking to leave. Obey & Ortega blocked his exist pathway again in front of elevator asking him to go attend HR meeting. Petitioner continued walking towards exit to leave. Videos show Ortega waiving his hands furiously. Total time spent out of downstairs elevator was 42 seconds. Videos show state-actors stopping Petitioner physically from "leaving" on three different spots i.e., in-front-of-elevator, main-street and inside-car.
6. Petitioner took less than eight minutes to walk from his desk to car parked over thousand-feet since they arrived at his desk (RR_6 10).
7. Petitioner entered inside his car ready to drive away at about 11:19am. Ortega abetted FrostBank to hold Petitioner there. Ortega broke Petitioner's car-door. Ortega never asked Petitioner for any identification in whole sequence (RR_6 24,33;RR_7 48). Both Gonzales/Landin testified that they were near driver-side. They testified along with all others, that Petitioner's car-door broke in front of them while Ortega was holding his car-door very hard.

8. In whole sequence, Petitioner was never asked to leave. Neither Petitioner resigned nor FrostBank terminated employment. Ortega/Obey neither asked Petitioner to leave nor mentioned the word "trespassing" in parking or anywhere else that day, not even once.
9. Ortega rebuts Gonzales/Landin's perjuries up to a great extent by stating that Petitioner stood up driver-side of his car (RR7 65,73).
10. Ortega & Torres both testified that there was a lot of Petitioner's blood on the parking-floor (RR6 67;RR7 32).
11. Ortega himself admittedly testified that Petitioner never resisted, touched or pushed Ortega at all (RR7 36,68,79) Landin testified that Petitioner was in full control.
12. Lindsey signed under penalty & perjury stating himself as custodian of FrostBank Records but testified not a custodian. Videos are incomplete and highly edited/customized favorable angles. Crucial locations' surveillance-videos have been destroyed.
13. Whole hearsay document presented to Trialcourt is fraudulently orchestrated.

vi. PETITIONER'S PERSONAL HISTORY & CHARACTER

Petitioner, 51 years old from well-educated family, values education, academia and professional success. Against this background of high education, he worked to educate himself. Through persistence and hard work, he graduated with multiple Masters Degrees. He continued his family tradition of high education and success in workplace. After graduation, he continued to be highly motivated and began to achieve professional success. Nearly three decades, he worked fulltime different positions for well-respected corporations and left a good impression with his past well-known employers.

His family background, education history, work history and zero criminal record suggest a highly stable

individual who respects the laws of the communities where he resides. He is honest, hardworking, good character ethical person with high moral. 51 years Petitioner has neither any criminal history nor even any single civil-complaint against him throughout his life.

vii. SUMMARY OF REPORTER RECORD

1. Petitioner was fulltime actively employed as Senior Software Engineer for more than one year at FrostBank, 3838 Rogers Road, San Antonio Texas as of 19 Nov 2018 with an active photo-ID employee-badge/car-token authorizing him office/employee-parking.
2. On Nov 19, 2018, Petitioner was working diligently and quietly on his desk at FrostBank since morning until about 11:10 a.m. He had definite plan on leaving from his work during his lunchbreak starting at 11:15 a.m. to fulfill his personal obligations to purchase pizzas & cake for his kid's birthday-party starting that noon.
3. On this day at 11:04 a.m., Petitioner received an Outlook email meeting invite to attend a meeting at 11 a.m. from FrostBank 'Michael Landin' ("**Landin**"). Landin sent this offhand email meeting invite on that day at "*11:04 a.m.*" for a meeting that would have started in the past i.e. four minutes earlier at "11 a.m.". Landin's offhand-meeting-invite had no mention of any supervisors or any reasons of the meeting or any previous discussions or scheduling any advance notice of the meeting on Nov 19 2018, and did not indicate that it was a mandatory meeting. Petitioner never spoke Landin to request any offhand-meeting that day or beforehand.
4. Due to Petitioner's appointment for his kid's birthday-party at lunchtime with school kids and because Landin sent a delayed calendar appointment for an offhand-meeting that would started in past, he proposed a new time at 1 p.m. same day immediately after his lunchbreak to Landin thru FrostBank Outlook email system in response to the meeting invite. Petitioner declined unscheduled-meeting at 11:04

a.m. by proposing it right after lunchbreak at 1 p.m. same day because of his prior appointment to fulfill his personal obligations at 11:15 a.m. during his lunchbreak. FrostBank exhibit deliberately blurred the 11:04 a.m. timestamp, the actual meeting invite ***sent-time***[14], dated Nov 19, 2018.

5. Upon receiving Petitioner's prompt-response of 1 p.m. after-lunch meeting-proposal, Landin immediately sent a FrostBank ununiformed armed actor large-guard 'Dwight Obey' ("**Obey**") along with FrostBank actor[15] armed-guard 'Raymond Ortega' ("**Ortega**"), and a FrostBank actor[16] armed-guard 'Robert Torres' ("**Torres**") to his desk to forcibly bring him for Landin's offhand-meeting.

6. FrostBank: Obey, Ortega & Torres arrived and encircled Petitioner's desk at about 11:10 a.m. Obey bullied him to shutdown his computer, instantaneously intimidatingly snatched his keyboard & mouse from him at the same time at about 11:10 a.m. while Petitioner was performing his duties at his desk within the scope of his employment at FrostBank.

7. Obey & Ortega surrounded Petitioner, bullied him not to touch his personal belongings from his desk or drawer, or his coat hanging on the back of his chair, and bullied him away from his desk without his personal belongings from his desk. Torres grabbed and carried his coat from his chair.

8. Surveillance timestamps show that Petitioner complied immediately attempted to pack up his desk to vacate the premises and followed them into an elevator. On Petitioner's work-floor, the whole group waited for elevator to come up to that floor; Petitioner suggested taking quick stairs to exit; Obey dictated to wait for the elevator;

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[14] RR16-State-Ex-3

[15] Ortega is FrostBank paid armed employee who directly reported to FrostBank: Obey & Landin.

[16] Torres is FrostBank allied employee like Ortega who directly reported to FrostBank: Obey & Landin.

Petitioner promptly followed Obey, Ortega & Torres into the elevator.[17]

9. Upon exiting elevator on the ground floor at about 11:12 a.m., FrostBank: Obey & Ortega then capriciously forcibly redirected Petitioner with their ***Simple Assault*** at 11:12 a.m. by physically grabbing him and by tormenting him with one and only one option that he then had to go attend Landin's offhand-meeting at once.[18] EVIDENCE-VIDEOS show that at about 11:12 a.m., FrostBank: Obey, Ortega & Torres with their simple-assault made Petitioner hostage, harassed and pushed him towards FrostBank meeting-room that he had to go Landin's offhand-meeting.

10. Due to FrostBank Obey & Ortega bullying & physical-force, Petitioner had already experienced at his desk, he elected to go to his car and leave.

11. Petitioner hurried to leave for his prescheduled appointment, continued to exit calmly towards his car parked over thousand-feet away, and exited into parking at 11:18 a.m. despite FrostBank gang's obstructions like shark-circles thrice to stop him from leaving.

12. FrostBank's Obey, Ortega & Torres accompanied by two Sr. Regional Vice Presidents Virginia Gonzales ("**Gonzales**"), Michael Landin & a Group Executive Vice President Annette Alonzo ("**Alonzo**") followed right behind Petitioner to his vehicle.

13. EVIDENCE-VIDEOS show Petitioner calmly walking to his car thousand-feet away from his desk in less than eight minutes since Obey, Ortega & Torres arrived at his desk despite FrostBank Obey & Ortega obstructing him from leaving for his prior appointment.

14. FrostBank: Alonzo, Gonzales, Landin, Obey, Ortega & Torres ("*gang*") surrounded his car as soon as Petitioner opened his driver-door and entered into his vehicle to leave

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[17] RR10-State-Ex 1

[18] RR10-Defense-Ex 6, 12-13 Simple Assault Photograph

at about 11:19 a.m. After Petitioner entered into his car, this gang forcibly barricaded him from leaving the premises.[19]

15. FrostBank gang testimonies prove that all six positioned themselves around Petitioner's car parked in a very tight parking-spot where other cars were parked both sides such that Petitioner could not leave or drive away without letting them giving his car space. Obey & Torres stood right behind Petitioner's car blocking from backing it up. Ortega held and broke Petitioner's driver-door. Gonzales & Landin blocked driver side while Alonzo on passenger-side and parking-concrete-wall blocking front of Petitioner's car.

16. FrostBank: Alonzo, Gonzales & Landin instructed fully armed Obey & direct-subordinate Ortega to break Petitioner's car-door to remove him from his car. While Petitioner was attempting to leave the premises, Obey & Ortega, having now received additional instruction from their superiors Alonzo, Gonzales, Landin to pull Petitioner out from his car because FrostBank: Alonzo, Gonzales, Landin needed him for Landin's meeting.

17. At about 11:22 a.m. when Fifty-years old 5'4" weighing approximately 130 lbs. safe & delicate Petitioner, surrounded by gang, was out of office-building inside his car on his driver seat whole time ready to leave for his kid's birthday-party, then FrostBank: armed-actors Obey & Ortega following the orders of FrostBank. Alonzo, Gonzales & Landin forcibly broke his car-door[20], violently yanked him from his car threw him to the parking floor.

18. FrostBank Alonzo, Gonzales & Landin further instructed Obey & Ortega to unlawfully false-imprison Petitioner. FrostBank's Ortega at about 11:22 a.m. unlawfully handcuffed him, had his personal belongings confiscated, his car impounded subsequently without consent, and unlawfully false-imprisoned him without any

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[19] FrostBank: Alonzo, Gonzales & Landin surrounded his car in the parking, when Ortega & Obey yanked him, then assaulted him, together with Landin.

[20] RR10-Defense-Ex 1-3, 17-19

cause. Then, FrostBank gang's shenanigan: Alonzo & Gonzales perpetrated assault recklessly by instructing Landin, Obey & Ortega to batter Petitioner.

19. Then, three of FrostBank gang's fully-armed Landin, Obey & Ortega aggravatingly assaulted and caused bodily injuries to Petitioner by battering him to the ground with their continuous assault right behind his own car at the direction of Alonzo, Gonzales & Landin. At about 11:23 a.m., Alonzo together with Gonzales & Torres confined him while Landin, Obey & Ortega physically battered him brutally; injured him, kicked him, broke his dental crown and made him bleed until all of his formal clothes soaked in his own blood on the parking floor right behind Petitioner's car.

20. While Petitioner handcuffed-facedown, Ortega pressed Ortega's knees on his neck and, Obey squashed his back with Obey's foot/shoes and Landin kicked Petitioner. While Ortega's knee on Petitioner's neck, Ortega brutally lifted Petitioner's face up, and then repeatedly hit his chin & face to the parking floor, at the same time over 300 lbs. weighing Obey like a huge guerilla continued to sit on Petitioner's back, and Landin & Obey both continued to shove and kick Petitioner's back with their shoes. Petitioner cried for help due to torturous pain on his neck, shoulders, back, legs, wrists, face & chin due to brutal injuries and broken teeth. There was Petitioner's blood all over in parking, and his formal coat/clothes soaked in his own blood.

21. Immediately after Petitioner's injuries, a large pool of his blood formed on the parking floor right behind his car. When Petitioner asked Gonzales & Landin to take pictures of his injuries and blood to document, "***both of them refused and looked away***". Landin & other gang members cross-examined that when "***Petitioner was crying for help***"; and "***begging to take pictures***", then ***"Landin looked away".***

22. There is a full box of evidence - Petitioner's clothes, coat, inner, shirt, trousers all deeply soaked in his blood revealing full brutality of FrostBank. Ruthless gang barbarically injured Petitioner within under ten-minutes since this gang had arrived at his desk when he had

promptly left his desk to depart and had entered into his car parked over thousand feet away.

23. FrostBank unlawfully false-imprisoned Petitioner and later falsely accused him of a fake-trespass even though he was fulltime-employee there inside his car in the parking over thousands-feet-away far from his desk, out of building's highly guarded security-exits[21] thru metal-detectors, physical-guards and electronic-badge, which FrostBank instantaneously could remote-disable to prevent any entry.

24. After aggravating-assault & false-imprisonment without cause, FrostBank: Alonzo, Gonzales & Landin maliciously complotted a fake-trespass/resist COMPLAINT so-called "Frost-One" Report ("Frost[ONE]")[22] and deceitfully filed it to Bexar-county thru its own actors Obey & Ortega. Phony Frost[ONE] is one of perjurious-pretext-docs FrostBank created to conspire against Petitioner's Rights to accuse him falsely for a fake-trespass. Clear evidence and gang's testimonies show that Petitioner was still active-employee when FrostBank unlawfully false-imprisoned him thru its fake-trespass conspiracy. On June 28, 2019, FrostBank paid rubberstamp-actor Ortega testified that Ortega was working as FrostBank employee while off-duty and cross-examined to rebut under-oath that Frost[ONE] is "***FALSE***", phony and malign. Obey cross-examined that Obey was Ortega's direct supervisor and Obey ordered Ortega to restrain Petitioner.

25. Contrary to phony Frost[ONE], Petitioner was in his car when Obey & Ortega yanked him. First, he was still employee as testified by FrostBank: Gonzales, Landin, Obey, Ortega & Torres. Second, Obey & Torres testified that he was standing next to his car-door, not going anywhere, after they broke his car-door and yanked him out.

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[21] In a military style, Over hundreds of FrostBank-guards watch employees entering or exiting thru metal-detectors using their electronic badges, which FrostBank instantaneously disables remotely to prevent any entry. In order to reenter the building an employee has to go through badge, guards & metal detectors.

[22] FrostBank's fabricated Police-Report a.k.a. Frost[ONE] "Incident-Report"

26. Further, to cover up the FrostBank assault on Petitioner, FrostBank tampered and destroyed the crucial surveillance-videos evidence from the cameras where its gang surrounded his car, yanked him and battered. FrostBank gang not only destroyed parking-cameras-videos above-car but also destroyed videos from several cameras around & above Petitioner's desk to deprive him of the true evidence against FrostBank perjurers.

27. Petitioner sent emails and letters to FrostBank: CEO Phil Green, Chief Banking Officer Jimmy Stead ("**Stead**"), Chief Operating Officer (COO) Mike Russell ("**Russell**"), and issued subpoenas to Alonzo & Russell, to preserve and release all surveillance-videos immediately after tragic battering and false-imprisonment of Petitioner by FrostBank. FrostBank neither released the crucial and complete surveillance-videos from above Petitioner's desk, despite the existence of several cameras right above around his desk, nor released the crucial-videos from employee-parking where Petitioner's car was parked and towed from despite the existence of several cameras right on the top of & around his car, and to exit from which FrostBank impounded his car.

28. Despite several preservation-requests thru emails & letters to FrostBank Phil Green, Stead & Russell, and subpoenas to Alonzo & Russell immediately after gang's assault, FrostBank destroyed crucial surveillance-videos related to violence against Petitioner from cameras right above Petitioner's desk and from employee-parking camera right above his car.

29. Per FrostBank attorney Romero's letter Mar 4, 2019, FrostBank has destroyed the crucial evidence of aggravating-assault/injuries by FrostBank pursuant to FrostBank policy. Despite the fact that Petitioner thereupon requested FrostBank for preserving evidence thru emails & letters to Phil Green, Stead & Russell and thru subpoenas to Alonzo & Russell. FrostBank in contempt of multiple subpoenas failed to release true & complete surveillance evidence, and additionally in contempt of court-orders

prohibited Petitioner from taking photos of surveillance-cameras above his desk & above his car in parking.

30. To cover up spoliation, on June 10, 2019 against a court order for discovery on FrostBank fake-trespass/fraudulent-allegations, FrostBank perpetrated additional written perjuries with its malicious ex-parte motion that falsely states, "*allowing a bank robber back into the bank he just robbed*"; maliciously to harm and wrongful-convict Petitioner part of its fake-trespass conspiracy.

31. Few weeks later in December 2018, Petitioner received a "***backdated***" letter from Landin indicating his "*employment with FrostBank ended*". FrostBank letter fails to make any mention of 'any actions' or the 'aforementioned circumstances' or 'termination'. Moreover, FrostBank had not notified of any formal termination, other than a COBRA benefits letter, instead FrostBank later opened a 401(K) account with Fidelity in Petitioner's name in May 2019 and sent a check for $19.38 on 30 May 2019.

32. As of April 2021, FrostBank has neither returned Petitioner's personal belongings from his desk back to him nor paid his accrued paid-time-off(PTO) & -sick-leave even when FrostBank seriously injured him which took several months to recover him from the physical injuries caused by FrostBank: Landin, Obey & Ortega's aggravating-assault.

33. FrostBank actions were entirely predicated on Petitioner's attempts at alerting FrostBank of issues with the work he was instructed to perform. Specifically Petitioner had made numerous representations, presentations, comments, and remarks to FrostBank management regarding the systems architecture, programming, database, web & mobile applications protocol, security and compliance, and IT work which he was required to perform, and the potential illegalities related thereto.

34. Petitioner attempted on more than one occasion to alert his superiors that as a banking institution, any IT work, applications, websites, systems, auditing, etc. must follow CONSUMER PRIVACY, Gramm-Leach-Bliley Act("GLBA"), Payment Card Industry Security Data Standards ("PCI DSS")

per 12 U.S.C. §§ 5531(a), 5536(a)(1) Bank-Fraud, Accounting-Fraud and relevant regulations. However, FrostBank was not acting in furtherance of conformity or compliance with these Federal laws. Petitioner frequently and continuously raised concerns, verbally and in-writings, regarding FrostBank illegalities & violations of Federal laws.

35. Petitioner's whistleblowing were neglected wholly. Rather, FrostBank cooked malicious deceitful documents ("pretext-docs"). On one such FrostBank fabricated pretext-docs on Aug 6, 2018, Petitioner had penned that Landin/Gonzales's perjury-documents were "***completely false***" in his handwriting.

36. Petitioner had refused to sign the pretext-docs and did not acknowledge the truth of such findings. Petitioner wholly denies pretext-docs contain any element of truth. Specifically, upon the execution of the pretext-docs, Petitioner noted, "***most of the findings are completely false.***" FrostBank was working to punish him for attempting to bring to light the company's failure to comply with federal regulations. Ultimately, such retaliation extended to the immoral events of FrostBank.

37. Petitioner was given continuously more difficult work, causing him to stay late to complete the work, all the while being in a work environment that never formally tracked tasks with anything other than Post-it Notes. Petitioner designed and delivered alone two very complex systems – Bank's Payments Systems and a Visa Cards Fraud Alert Systems in 2018. Petitioner's performance was superb as he delivered more work than he was required to do.

viii. FROSTBANK FRAUDS

FROSTBANK VIOLATIONS

38. Since January 2018, Petitioner consistently had warned his superiors of the Bank-Fraud, the illegal nature of FrostBank work of IT, applications, websites, systems, auditing as a banking institution failing to comply with federal regulations CONSUMER PRIVACY, GLBA, PCI DSS Bank Regulations under 12 U.S.C. §§ 5531(a), 5536(a)(1).

FROSTBANK : BANK ACCOUNTING FRAUD

39. On or about Nov 14-21, 2018, Petitioner had called FBI to report his whistleblowing of FrostBank Bank-Accounting Frauds under 18 U.S.C. §§ 1005, 1344, 1348. Due to his reports to FBI, FrostBank further retaliated on Nov 19, 2018 thru its conspiracy to later wrongful-convict Petitioner on July 8, 2019.

ix. FROSTBANK ASSAULT & BATTERY

40. FrostBank gang intentionally, knowingly & recklessly followed Petitioner, surrounded his car, blocked his car from leaving from parking, broke his car-door, violently yanked him from his car, threw him to the parking floor, confined him, made him hostage, handcuffed him, unlawfully false-imprisoned and then battered him on the parking floor.

41. FrostBank armed-actors: Landin, Obey & Ortega brutally kicked and physically hurt him on Nov 19 2018 between around 11:19 a.m. and 11:22 a.m., perpetrated aggravating-assault, battery & tragic bodily injuries to Petitioner while Alonzo, Gonzales & armed Torres assisted in their hurtful Assault & Battery. Landin, Obey & Ortega assaulted by throwing him to parking floor, hitting his face to ground, kicking him all over and severely injuring him while Alonzo, Gonzales & Torres confined him. Phony Frost[ONE] itself reveals that Obey & Ortega first violently yanked Petitioner from his car, unlawfully false-imprisoned and then Landin, Obey & Ortega brutally battered him.

42. FrostBank active participant assailants: Senior-Vice-Presidents Landin, Obey & Ortega altogether directly kicked, injured, and perpetrated an aggravating-assault on Petitioner solely with FrostBank indulgence. Ortega cross-examination revealed that Ortega was working off-duty for its employer FrostBank whole time and simply participating with FrostBank gang to batter/injure Petitioner. FrostBank continues to pay its fulltime assailants actors Alonzo, Gonzales, Landin, Obey indulged in criminal-acts.

43. Aggravating-assault caused severe bodily injuries to Petitioner: broken dental-crown fillings, cuts on wrists,

internal bleedings due to kicks on his head, chest and back, loss of significant amount of blood, and many other bodily injuries. Petitioner physically suffered due to brutal assault.

44. The surveillance-evidence timestamps prove that FrostBank gang assaulted Petitioner in less than ten minutes since the whole gang made "very first contact" at 11:10 a.m. at his work-desk thousand-feet away from his car to which he entered at about 11:19 a.m.

45. Petitioner was inside his car ready to drive away to his home on his own when FrostBank gang blocked his car, broke the car-door, yanked him, and assaulted him instantaneously within 30 seconds at about 11:19 a.m. The biggest evidence is the total time-spent with FrostBank actors from their very first contact at his desk to his car until they finally assaulted in his car, less than ten minutes while he was still fulltime-employee leaving the parking himself.

46. FrostBank: Phil Green thru Alonzo with FrostBank gang organized its well-planned aggravating-assault to cover-up FrostBank white-collar crimes. Landin, Obey & Ortega paid by FrostBank perpetrated FrostBank's criminal actions of well-planned cold-blooded violent conspiracy to aggravatingly assault and severe injure Petitioner with their full physical engagement & reckless conduct per TEX.PENAL §§ 22.01, 22.02.

BODILY INJURIES & DISFIGUREMENT

47. Landin, Obey & Ortega at Alonzo, Gonzales & Landin's direction directly caused Bodily Injuries by their physical attack from their shoes, by breaking his dental crown and by making him bleed on the parking floor right behind Petitioner's car, and caused him bleed a significant amount of his blood all over in the parking, and on his formal coat, clothes and shoes.

48. FrostBank impaired Petitioner's teeth, inhibited, imperfect & deformed his face chin and caused him embarrassment.

PHYSICAL & MENTAL ATTACK

49. The physical attack caused Petitioner physical & emotional impairment. Physical injuries substantially disrupted Petitioner's daily routine and caused mental pain, lost wages, mental anguish, decreased earning capacity and loss of consortium.

50. While severely injured and bleeding, Petitioner reported his injuries to FrostBank: Gonzales & Landin, they both looked away and refused to record his injuries at FrostBank-property caused by their direct actions.

PERSONAL PROPERTY DESTRUCTION

51. FrostBank gang maliciously destroyed Petitioner's car and then unlawfully impounded it without Petitioner consent on Nov 19, 2018. Car retrieved from Impound has been preserved as evidence as is.

52. FrostBank has NOT returned Petitioner's personal properties that FrostBank seized from his desk, drawer and refrigerator due to its malicious and gross negligence act.

53. FrostBank maliciously destroyed all of Petitioner's formal clothes, coat, shoes he wore on Nov 19, 2018. Petitioner's formal clothes, coat, and shoes in Petitioner's blood have been preserved as evidence

x. FROSTBANK VIOLENT CRIMES

FALSE-IMPRISONMENT & UNLAWFUL DETENTION

54. FrostBank gang made Petitioner hostage and initiated False-Imprisonment of an actively-employed hardworking honest employee.

55. When Obey & Ortega physically grabbed Petitioner and made him hostage first time to go to HR meeting at 11:11 a.m. in front of elevator, Petitioner asked their names & titles, they *both refused to give their names/titles*. Torres cross-examined that *Petitioner was asking their names and titles and they refused;* Obey & Torres had their badges flipped inside out hiding their names/titles.

56. FrostBank gang willfully detained Petitioner to violently assault, batter and injure him, broke his car-door

to pull him out, injured him, destroyed-car and soaked his clothes in his blood.

57. FrostBank Landin, Obey & Ortega's misconduct, aided & abetted by Phil Green, Alonzo, Gonzales and Torres, for which each of them is malefactor, caused violence of assault & injuries & unlawful restrain on Petitioner against TEX.PENAL §§ 20.01, 20.02.

UNLAWFUL SEIZURE & CONSPIRACY TO VIOLATE CIVIL RIGHTS

58. On 19 Nov 18, FrostBank unlawfully seized all of Petitioner's personal property – e.g. his wallet, US passport, personal cellphone, credit cards, pen-drive and his car at his own employment without any cause, reasons or warrant.

59. FrostBank has continued to seize unlawfully Petitioner's personal property and books from his desk, work-drawer and work-refrigerator since November 2018 without returning to him as of April 2021.

60. After unlawfully seizing all of his personal property, FrostBank damaged and unlawfully seized his car, fraudulently complotted a phony Frost[ONE] for a fake-trespass.

61. FrostBank perpetrators: Phil Green, Alonzo, Gonzales, Landin, Obey & Ortega, who conspired against Petitioner, had "mutual agreement"/"meeting of minds" on the object and course of action to conspire, and to cover up FrostBank malfeasance by false-imprisoning, perpetrating perjuries and spoliation to wrongful-convict Petitioner to ruin Petitioner's good name such that FrostBank continues to perpetrate its white-collar crimes.

62. FrostBank perpetrated more than one unlawful overt acts: Assault, phony Frost[ONE], False-Imprisonment, Perjuries, Spoliation to wrongful-convict, & Frauds against Petitioner to severe damage his Reputation, Life and Career.

63. FrostBank violated Texas-laws on conspiracy.

FROSTBANK EVIDENCE DESTRUCTION & SPOLIATION

64. FrostBank knowingly altered, destroyed, concealed, covered up, falsified, and made a false entry in the records, documents, or tangible object with the intent to impede,

obstruct, or influence the investigation or in relation to or contemplation of Petitioner's case in violation of 18 U.S.C. § 1519.

65. FrostBank Phil Green & Officers actively perpetrated record-spoliation, evidence-destruction & tampering/concealing surveillance-videos (i.e. spoliation of FrostBank parking videos, spoliation of Petitioner's desk surveillance-videos and other electronic-records, emails from Petitioner).

FROSTBANK PERJURIES

66. FrostBank not only aggravatingly assaulted Petitioner but also violated State and Federal laws 18 U.S.C. §§ 1005,1621, 1622, 1623 ("§§ 1622, 1623"); TEX.PENAL §§ 37.02, 37.03, 37.04 by perpetrating perjuries and subornation of perjuries to severely intentionally damage Petitioner.

67. FrostBank simultaneously conspired and presented two backdated fabricated pretext-docs to Petitioner to obtain his signatures on same day. Contrary to FrostBank perjuries, Petitioner penned "***completely false***" in his hand-written remarks and dated each on *Aug 6, 2018* when FrostBank was harassing Petitioner. Both of FrostBank fraudulent pretext-docs consist of full of hearsays within hearsays and malicious words such as "insolent" - written perjuries perpetrated by FrostBank. FrostBank dates & pretext-docs itself are completely fraudulent. Before the meeting on Aug 6, 2018, Shetgeri told that FrostBank always creates fraudulent & false documents against every employees including Shetgeri himself.

68. FrostBank conspiringly presented set of backdated false pretext-docs with full of hearsays to Bexar-county in June-July 2019 to influence Jury to wrongful-convict Petitioner, in order to cover up its corporate malfeasance & white-collar-crimes under §§ 1622, 1623. Over the course of his employment, Petitioner reported his concerns regarding Bank- & Accounting-Frauds to FrostBank supervisors/management. Upon Petitioner's discovery and

reporting, FrostBank secretly started plotting a conspiracy against Petitioner.

69. FrostBank derogatory falsified to conspire its phony Frost[ONE] consists of FrostBank perjuries perpetrated by Gonzales, Landin, Obey & Ortega with the collusion and obstructions of FrostBank Romero to defraud to wrongful-convict Petitioner.

70. FrostBank perpetrated perjuries with its malicious deceitful backdated fabricated pretext-docs to the county.

71. False and fraudulent publication of written perjuries, oral testimonies by FrostBank are serious crimes in violations of §§ 1622, 1623 and TEX.PENAL §§ 37.02, 37.03, 37.04, which do not permit FrostBank to abscond after it has perpetrated numerous absolute-perjuries.

FROSTBANK FALSE-STATEMENTS & OUTRAGEOUS CONDUCT

72. FrostBank conduct is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. FrostBank conduct is not merely insensitive, rude, or mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities it is beyond outrageous and extreme dangerous to a civilized society and to any future generations to come.

73. FrostBank gang engaged in an extreme outrageous conduct for which Landin, Obey & their direct-subordinate rubberstamp Ortega together intentionally complotted a phony Frost[ONE]. Petitioner suffered emotional injuries of shame, embarrassment, fright, horror, grief, and humiliation due to FrostBank extreme outrageous conduct and due to the fact that FrostBank unlawfully made him spend two days and nights in prison.

74. Evidence & contradictory-testimonies reveal that FrostBank outrageously perpetrated perjuries, destroyed/tampered evidence and accused of fake-trespass to cover up its malfeasance. Phony Frost[ONE], perjuries under oath, evidence-destruction, record-spoliation, and conspiracy with false & malicious communications to county, pretext-

perjuries were the primary reasons that misled perplexed-Jury resulting in wrongful-convictions.

FALSE CRIMINAL ACCUSATIONS

75. FrostBank intentionally, outrageously, and falsely accused Petitioner for groundless fake-trespass & false-resist judicially. FrostBank cover-up crimes: perjuries, false-declarations, and obstruction of justice & fraud are punishable under False Claims. (*C.f. United States v. Gilliland*, 312 US 86, 93 (1941)).

76. CEO Phil Green and all the high-ranking Vice Presidents Alonzo, Gonzales, Landin, who aided & abetted the "Conspiracy, Fraud, Spoliation, Physical-Assault, and False-Imprisonment with cabal of phony Frost[ONE]" ("*Offences*"), are FrostBank and vice-versa (*C.f. Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998)). .

77. Alonzo the ringleader, who takes orders from Phil Green, confined Petitioner and led FrostBank: Gonzales, Landin, Obey, Ortega & Torres to perpetrate *Offences*. Alonzo, Gonzales, Landin & Torres followed and surrounded Petitioner's car to aid & abet Obey & Ortega to break his car-door.

78. Phony Frost[ONE] is craftiness of Alonzo, Gonzales & Landin, who directed Obey & direct-subordinate Ortega to pull Petitioner out and then batter him.

79. Phil Green, Alonzo & Gonzales indulged in the assault and the false-imprisonment. Petitioner did not commit any crimes at any time for which FrostBank fraudulently false-imprisoned him; this fact has been repeatedly recorded thru Landin's & Gonzales's cross-examinations proving that Frost[ONE] is a malicious, false, document.

80. FrostBank viciously publicized fraudulent, false and malicious Frost[ONE] to harass and defame Petitioner.

FROSTBANK FRAUDULENT TRESPASS CONSPIRACY

81. Upon Petitioner's whistleblowing to Phil Green, Stead & Russell in October/November 2018, FrostBank Sr. Executive Vice President Shetgeri was threatening with his

at-will status, and Bernal was harassing Petitioner and asking him to resign. Alonzo, Gonzales & Landin conspired against him.

82. FrostBank uses preliterate tribes to execute its corporate malfeasance with its fraudulent activities.

83. FrostBank Checklist verifies that, Petitioner had no company property such as laptop or phone at the time when he was in his car on Nov 19. FrostBank perpetrated numerous perjuries under oath in June/July 2019 when FrostBank: Gonzales, Landin & Obey perjuriously testified that they were surrounding him in his car to collect a company's laptop & a company's phone. FrostBank issued-property laptop/phone was a phony-story told by perjurers. Petitioner was not carrying any FrostBank laptop or phone when he walked to his car and entered into his car to leave. Petitioner left his work laptop & phone thousand-feet-away at his desk from where he departed with FrostBank actors who criminally perpetrated numerous perjuries.

84. FrostBank gang complotted its hearsay, false, phony Frost[ONE]. FrostBank: Gonzales & Landin created several perjurious-pretext-docs, which contradict their own cross-examinations under oaths, reveal that both of them have perpetrated numerous perjuries.

85. Facts, evidence and self-contradictory-testimonies of Gonzales, Landin, Torres and others prove that FrostBank has first brutally assaulted and injured Petitioner and then filed a false and phony Frost[ONE] of fake-trespass conspired by FrostBank thru its own actors Obey & Ortega to county. FrostBank: Gonzales & Landin both have testified under oath in their cross-examinations that Petitioner was NOT terminated that day and Petitioner did not do anything illegal before or after, when they unlawfully fraudulently false-imprisoned him thru their fake-trespass conspiracy. Petitioner was NOT terminated on Nov 19, 2018, until even after that day when Phil Green, Alonzo, Landin, and Gonzales fraudulently complotted their phony Frost[ONE] thru actors Obey & Ortega. FrostBank engaged in a criminal-

conduct that is wholly inappropriate to a civil society and is criminal conspiracy under 18 U.S.C. § 241.

FROSTBANK FRAUDS & CONSPIRACY

86. Petitioner was engaged in reporting of FrostBank misconduct that he reasonably believed violates laws pertaining to Bank-, Accounting-Fraud.

FrostBank covered up its criminal activities and its subsequent retaliatory conspiracy. Due to FrostBank Assault with Bodily Injuries and fraudulent false-imprisonment of Nov 19, 2018, Petitioner, incognizant of unforeseen retaliatory conspiracy of FrostBank, attempted to investigate on Jan 24, 2019 against FrostBank malicious acts. FrostBank vigorously further retaliated with its subsequent perjurious-testimonies and fraudulent-pretext-docs under oath to wrongful-convict Petitioner in June/July 2019.FrostBank conspired to defraud in violation of 18 U.S.C. § 371 and Tex. Vernon's Statutes Art. 581-29-3. Criminal Responsibility of Corporation.

87. In June/July 2019, FrostBank vigorously colluded with Bexar-county for its fake-trespass conspiracy to retaliate against Petitioner, while Petitioner was still employee working at that location. FrostBank fooled Jury by perpetrating numerous perjuries and by spoliation of evidence & records. FrostBank retaliated thru its fake-trespass conspiracy.

88. FrostBank retaliatory-conspiracy in violation of §§ 241, 371 and Bank-Fraud Regulations are criminal acts.[23]

FROSTBANK CRIMINAL CONSPIRACY

89. Phil Green, Alonzo, Gonzales, Landin, Obey, Ortega & Torres are malefactors for criminal conspiracy against Petitioner, punishable under TEX.PENAL §§ 7.02(b), 15.01, 15.02.

90. FrostBank Officers & actors engaged in violation of the laws of Texas and the United States, violently false-

[23] On July 8, 2019, FrostBank wrongfully convicted thru its fake-trespass conspiracy at his own employment.

imprisoned Petitioner, fraudulently cooked phony Frost[ONE], perpetrated spoliation perjuries & spoliation, destroyed evidence to cover up FrostBank-malfeasance after brutal assault resulting in serious bodily injury upon Petitioner.

91. Phil Green & Alonzo had direct connection and Obey, Ortega & Torres were fully armed when FrostBank: Landin, Obey & Ortega perpetrated violent crimes against Petitioner in violation of 18 U.S.C. §§ 1959, 1962.

92. Alonzo & Gonzales thru Landin, Obey & Ortega on behalf of Phil Green as one racket executed a full physical violence of FrostBank on Petitioner. FrostBank Phil Green thru Alonzo retaliated against Petitioner for his findings and reporting of FrostBank illegalities & malfeasance.

93. FrostBank: Phil Green, Alonzo, Gonzales, Landin, Obey & Ortega fabricated its phony Frost[ONE] after engaging in violence against Petitioner. Alonzo, Gonzales, Landin & Torres confined him to execute their ringleader Alonzo's order directed by Phil Green.

94. FrostBank colluded with Bexar-county to conspire, abet its fake-trespass fraudulent-allegation vigorously against Petitioner despite the fact that he was working there as an active-employee of FrostBank. FrostBank: Gonzales, Landin & Obey perpetrated numerous perjuries to wrongful-convict Petitioner. Wrongful-convictions are due to shenanigan of FrostBank perjuries & conspiracy against Petitioner.

95. FrostBank extreme outrageous & gruesome act was not mere knowingly providing misinformation so that innocent Petitioner is prosecuted for fake-trespass, instead it was FrostBank ordering its paid-gang to perform the gruesome act together and later writing up its phony Frost[ONE] themselves using a rubberstamp. EVIDENCE-VIDEOS & photos show FrostBank cruelty on how gang threw Petition down and injured after yanking him from his car. Phony Frost[ONE] written up by FrostBank used exact same language, tone and style that Gonzales & Landin had used

in their malicious deceitful pretext-docs perpetrating their perjuries.

96. Since January 2018 immediately after Petitioner reported FrostBank-illegalities, FrostBank was conspiring and threatening to bring false criminal-allegations against Petitioner, even before FrostBank first cooked its perjurious malicious deceitful pretext-docs. FrostBank unlawfully false-imprisoned Petitioner thru FrostBank plotted fake-trespass.

97. FrostBank gang unlawfully plotted fake-trespass conspiracy by bringing fictitious criminal-accusations against Petitioner thru its fraudulent pretext-docs to Bexar-county to wrongful-convict him later in June 2019. FrostBank vigorously colluded with Bexar-county against Petitioner's private rights. County wrongfully used FrostBank-conspired fraudulent pretext-docs. Filing perjurious-documents to State and Federal agencies were subject to Conspiracy and Perjury-charges against FrostBank.

FROSTBANK CRIMINAL RESPONSIBILITY

98. Under TEX.PENAL §§ 7.21 (2)(B) & (C) &7.22 (b)(2), commission was authorized, commanded, performed, and recklessly tolerated by a high managerial agents, Phil Green & Alonzo acting in behalf of FrostBank, and within the scope of the agent's office and employment.

99. Phil Green, Alonzo, Gonzales & Landin as individuals are malefactors for misconduct that the individuals performs in the name of and in behalf of FrostBank to the same extent as if the conduct were performed in the individual's own name or behalf, under TEX.PENAL § 7.23 (a).

100. Phil Green & Alonzo as FrostBank agents having primary responsibility for the discharge of a duty to act imposed by law on a corporation are malefactors for omission to discharge the duty to the same extent as if the duty were imposed by law directly on the agents, under TEX.PENAL § 7.23 (b).

FROSTBANK QUO WARRANTO

101. FrostBank as a corporation exercised its criminal-power, against Petitioner, not granted by law in the name of State of Texas in violation of Tex. § 66.001(5).

FROSTBANK HISTORY OF TORTIOUS ACTS

102. FrostBank intentionally retains outsourced-agents who have history of violence against individuals. Several Texas-courts have found the *tortious acts of its attorneys.* FrostBank Romero sat in Trialcourt public-gallery interrupted, prepared and shared FrostBank: Gonzales, Landin, Obey, Ortega & Torres to be consistent on their phony stories and perjuries despite Trialjudge admonishment to Romero several times for interrupting the court from public-gallery when he was not even attorney in that case. Gonzales, Landin, Obey, Ortega & Torres lied in the court and told conflicting stories.

SMEAR CAMPAIGN THRU SPOLIATION, DESTRUCTION OF EVIDENCE, STALKING & CIVIL RIGHTS VIOLATIONS

103. Despite, Petitioner's court-order to inspect the premises to take pictures of FrostBank scene -- where Petitioner's desk was and where the aggravating-assault & false-imprisonment took place -- where all the cameras were above his desk and above his car, FrostBank in contempt of the court-order denied Petitioner to inspect the scene.

104. FrostBank filed a malicious motion-to-quash, smearing Petitioner with profane word *Robber*, to suppress the whole evidence and whole truth. Beside FrostBank causing many damages to Petitioner's reputation since November 2018, FrostBank Romero prepared, published, filed and launched FrostBank Smear Campaign suggesting "Robber" thru its Motion-to-Quash in June 2019.

105. FrostBank publically smeared Petitioner reputation by making companywide announcements and by asking all of Petitioner's coworkers not to contact Petitioner and, by threatening to prosecute them criminally if anyone contacted Petitioner or testified against FrostBank.

106. FrostBank maliciously complotted a phony Frost[ONE] using Obey & direct-subordinate rubberstamp-actor Ortega, destroyed the crucial surveillance evidence from several cameras above Petitioner's desk and above his car, later influenced Jury with its false deceptive hearsays, malicious deceitful pretext-docs with forged dates, and perpetrated numerous perjuries.