

No. 20-5124

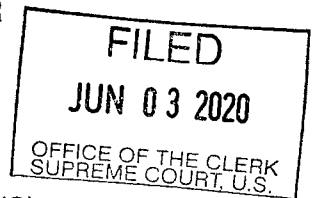
ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Allen "F" Calton — PETITIONER
(Your Name)

vs.

The State of Texas — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

Texas Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Allen "F" Calton #1123880
(Your Name)

Connally Unit
899 Fm 632
(Address)

Kenedy, Texas 78119
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- (1) Whether the Texas Court of Criminal Appeals as the ultimate factfinder in Texas habeas corpus proceedings abused its discretion and erred when it denied Petitioner's State Application For writ of Habeas Corpus on the merits, without the appellate court first remanding the cause to the trial court the original factfinder in Texas habeas Corpus proceedings. To afford the Trial Judge to make written findings of fact and conclusions of law. So the appellate court would have a factual basis to base its determination on. In violation of the U.S. 14th Amendment.
- (2) Whether the Texas Court of Criminal Appeals abused its discretion when it failed to afford Petitioner a hearing as promulgated by this court in *Townsend v Sain* 372 U.S. 298 (1963). When it was undisputed that petitioner had alleged facts, if true, would entitle him to relief. Before denying Petitioner's State Application For writ of Habeas Corpus on the merits. In violation of the U.S. 14th Amendment.
- (3) Whether the Texas Court of Criminal Appeals decision denying Petitioner's Brady claim was objectively unreasonable in light of the materiality of the 'Butcher Knife' which was the instrumentality of Petitioner's self-defense theory. Pursuant to *Brady v Maryland* 373 U.S. 83 (1963); *Kyles v Whitley* 115 S.Ct 1555 (1995)

Petition For writ of Certiorari page 1

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Trial Judge

Judge Robert Gill
213th Judicial Court
401 W. Belknap St.
Fortworth, Tx. 76196

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Pro se Defendant

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TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	20
CONCLUSION.....	40

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

Petition for writ of Certiorari page iii

Table of Authorities Cited

Cases	page number
Acosta v state 179 S.W. 870 (Tex 1915)	p. 26
U.S. v Agurs 427 U.S. 97 (1976)	p. 30
U.S. v Antone 603 F.2d 566 (5th Cir 1979)	p. 22
Arizona v Fulminante 499 U.S. 279 (1991)	p. 27
U.S. v Bagley 473 U.S. 667 (1985)	p. 23, 23, 24, 30
Banks v Dretke 540 U.S. 668 (2004)	p. 21
U.S. v Barham 595 F.2d 231 (5th Cir 1979)	p. 34
Brady v Maryland 373 U.S. 83 (1963)	p. 20, 25, 31
Ex parte Bush 313 S.W.2d 287 (Tex crim App. 1958)	p. 20, 21
Castaneda v state 23 S.W.3d 216 (Tex App. El Paso 2000)	p. 36
Chapman v California 386 U.S. 18 (1967)	p. 34
Cone v Bell 129 S.Ct 1769	p. 23
Crane v state 786 S.W.2d 338 (Tex crim App. 1990)	p. 35
Cruz v state 576 S.W.2d 841 (Tex crim App. 1978)	p. 26
Dominque v state 598 S.W.2d 285 (Tex crim App 1980)	p. 27
Ex Parte Dora 548 S.W.2d 392 (Tex crim App 1977)	p. 37, 38, 39

Table Of Authorities Cited

cases	page number
Earp v Oronski 431 F3d 1158 (9th Cir 2005)	p. 38
Fairman v Anderson 188 F3d 635 (5th Cir 1998)	p. 28
Flemming v state 949 sw2d 876 (Tex App Houston [14th Dist] 1997). p. 34	
Foster v Chatman 136 S. Ct 1733 (2016)	p. 20
Graham v Board of Pardons and Paroles 913 sw2d 745 (Tex. App. Austin, 1996, writ dismissed) . . .	p. 39, 40
Greer v Beto 384 U.S. 269 (1966)	p. 21
Halbert v state 881 sw2d 121 (Tex App. Houston [1st Dist] 1994 pet ref'd). p. 29	
Harris v Reed 858 F2d 16 (1st Cir 1988)	p. 27
Harris v state 728 sw2d 804 (Tex. crim App. 1987)	p. 26
Hicks v state 837 sw2d 686 (Tex. App. Houston [1st Dist] 1992). p. 25, 37	
Hinojosa v state 744 sw2d 319 (Tex App Corpus Christi, pet ref'd) p. 29	
U.S. v Jackson 780 F2d 1305 (7th Cir 1986)	p. 24
Jackson v Johnson 150 F3d 520 (5th Cir 1998)	p. 39
Johnson v state 917 sw2d 135 (Tex. App. Fort Worth 1996) . p. 22, 23	
U.S. v Jordan 49 F3d 152 (5th Cir 1995)	p. 34
Kyles v Whitley 115 S. Ct 1555 (1995)	p. 5, 22, 24, 25, 31, 32
Ex Parte Mitchell 853 sw2d 1 (Tex. crim App. 1993), p. 23, 24, 30	
Miller v Pate 386 U.S. 1 (1967)	p. 34, 35
Montgomery v Peterson 846 F2d 407 (7th Cir 1988) . . .	p. 29

Table of Authorities Cited

Cases	page number
Morgan v U.S. 298 U.S. 468 (1936)	p.40
Penzovechia v Wainwright 658 F2d 337 (5th Cir 1980)	p.27
Porter v McCollan 558 U.S. 30 (2009)	p.20
Price v Johnston 334 U.S. 266 (1948)	p.40
U.S. v Raddatz 100 S.Ct 2406 (1980)	p.40
Ransome v Johnson 126 F3d 716 (5th Cir 1997)	p.26
Robertson v State 163 SW3d 730 (Tex. Crim. App. 2005)	p.25, 37
Sears v Upton 561 U.S. 945 (2010)	p.20
Smith v Cain 132 S.Ct 627 (2012)	p.23, 31
Stewart v Wolfenberger 468 F3d 338 (6th Cir 2006)	p.28
Strickland v Washington 466 U.S. 668 (1984)	p.24
Thomas v State 841 SW2d 399 (Tex. Crim App. 1992)	p.22, 23
Tisdale v State 686 SW2d 110 (Tex Crim App 1985)	p.26, 27
Townsend v Sah 372 U.S. 293 (1963)	p.5, 21
Ex Parte Torres 943 SW2d 469 (Tex crim App 1996)	p.39
Tukmele v Romera 620 F2d 784 (1980)	p.24
Van Brackle v State 179 SW3d 708 (Tex. App. 4th 2005)	p.36

Table Of Authorities Cited

cases	page number
Vasquez v State 2 SW3d 355 (Tex. App. San Antonio 1999) .	p. 28
Weary v Cain 136 S.Ct 1002 (2016) . . .	p. 29, 23, 30, 31
Ex Parte Young 418 SW2d 824 (Tex crim App. 1967) .	p. 21

United States Constitution Amendments, Code, Rules and Statutes

U.S. Constitution XIV Amendment	p. 7
---	------

Texas Constitution Amendments, Codes, Rules and Statutes

Texas Code of Criminal Procedure Article 11.07 . . .	p. 7
Texas Code of Criminal Procedure Article 24.12 . . .	p. 34
Texas Code of Criminal Procedure Article 39.14 . . .	p. 9
Texas Penal Code Section 1.07 (a)(46) . . .	p. 25
Texas Penal Code Section 9.01(3) . . .	p. 26
Texas Penal Code Section 9.31 . . .	p. 29
Texas Penal Code Section 9.32 . . .	p. 22, 29, 31
Texas Rules Of Evidence Rule 615 . . .	p. 9

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

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

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

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

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

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

The opinion of the 213th Judicial District court appears at Appendix B to the petition and is

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

1.

Petition For Writ of Certiorari page 1 of 40

JURISDICTION

☐ For cases from **federal courts**:

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

☐ No petition for rehearing was timely filed in my case.

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

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

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 7-12-17.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 3-12-20, and a copy of the order denying rehearing appears at Appendix C.

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

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

Petition for writ of Certiorari page 2 of 40

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution which provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and 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.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The XIV Amendment is enforced by Title 28, section 1257(a) United States Code which provides:

Final judgments or decrees rendered by the highest court of a state in which a decision can be had, may be reviewed by the Supreme Court by writ of Certiorari where the validity of a treaty or statute of the United States is drawn into question or where the validity of a statute of any state is drawn into question on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or statutes of or any commission held or authority exercised under, the United States

The XIV Amendment is also enforced herein by Title 28, section 1651(a) United States Code which provides:

Petition for Writ of Certiorari page 3 of 40

Constitutional and statutory provisions Involved

The Supreme Court and all courts established by act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Texas Code Of Criminal Procedure Article 11.07

See Appendix "D"

STATEMENT OF THE CASE

Allen "F" Carlton, the petitioner, [Hereafter referred to as Carlton] convicted by a jury of attempted murder, and after being found to be a habitual offender, was sentenced by the jury to life confinement. See petitioner's Affidavit Index of Appendix In Support of His Petition on file herein [Hereafter referred to as "app"] at Appendix "E" pp. p. 8-9. The Court of Appeals For the Second District of Texas Overruled the petitioner's three points of error and affirmed his conviction. See Carlton v State, 2005 WL 3082202 CTex. App. - Fort Worth November 17, 2005, pet. withdrawn (not designated for publication). Carlton has filed seventeen prior state Applications For writ of Habeas Corpus under Texas Code of Criminal Procedure Article 11.07 [Hereafter referred to as T.C.C.P. Art. 11.07] See Ex Parte Carlton No. C-213-007618-0843168-A, C-213-008058-0843168-B, C-213-008124-0843168-C, C-213-008158-D, C-213-008358-0843168-E, C-213-008382-0843168-F, C-213-008423-0843168-G, C-213-009679-0843168-H, C-213-009849-0843168-I, C-213-010015-0843168-J, C-213-010079-0843168-K, C-213-010797-0843168-L, C-213-011065-0843168-M, C-213-011363-0843168-N, C-213-011465-0843168-O, C-213-011505-0843168-P and C-213-011619-0843168-Q. The Texas Court of Criminal Appeals [Hereafter T.C.C.A.] denied Carlton's initial writ Application on its merits. See Ex Parte Carlton, No. WR-65,590-02. The T.C.C.A. dismissed Carlton's next five writ applications because Carlton did not meet the subsequent writ requirements. See Ex Parte Carlton No. WR-65,590-08, WR-65,590-09, WR-65,590, WR-65,590-11 and WR-65,590-12. In resolution of Carlton's seventh writ Application, the T.C.C.A. found that Carlton had abused the writ of Habeas Corpus Process. See Ex Parte Carlton, No. WR-65,590-13, 2008 WL 2223894, at *1 (Tex. Crim. App. May 28, 2008) (Orig proceeding) (per curiam order) (not designated

for publication). Also see Appendix "F" app. p. 10-11 for a copy of the abuse of writ order entered by the T.C.C.A. on 5-28-08. Thus in 2008, Calton was barred from filing applications for the writ of habeas corpus with the Texas Court of Criminal Appeals unless he could show that he was presenting claims that had not been previously raised and could not have been previously raised. See Calton, 2008 WL 2223894, at *1. The T.C.C.A. declined to take any action on eight of Calton's last ten TCCP Art. 11.07 writ applications based on its previously entered abuse of writ order. See Ex Parte Calton, Nos. WR-65,590-14, WR-65,590-15, WR-65,590-16, WR-65,590-17, WR-65,590-21, WR-65,590-23, WR-65,590-25 and WR-65,590-26. The T.C.C.A. also dismissed one of Calton's most recent writ applications for noncompliance because it contained a memorandum exceeding 50 pages in length. See Ex Parte Calton No. WR-65,590-24. The T.C.C.A. also denied one of Calton's more recent writ applications. In particular the underlying post-abuse T.C.C.P. Art. 11.07 application without written order, written findings of fact and conclusions of law submitted by the trial court, or an evidentiary hearing. See Ex Parte Calton WR-65,590-22. Also see Appendix "A" app. p. 1. The T.C.C.A. also dismissed an original Jurisdiction Constitutional Petition for writ of Habeas Corpus filed directly with the T.C.C.A. See Appendix "G" app. p. 12. For order pertaining to Ex Parte Calton WR-65,590-27. Finally The T.C.C.A. denied Calton leave to file an original Jurisdiction Constitutional Petition For Writ of Habeas Corpus filed directly with the T.C.C.A. See Appendix "H" app. p. 13. These original jurisdiction petitions were resolved by the TCCA on 1-29-20 and 4-29-20 respectively. Calton filed his initial Federal Habeas Corpus petition on or about 8-8-02 that was adversely resolved on 12-1-08. See Calton v Quarterman, Civil Action No. 4:07-cv-471-Y, 2008 WL 5083022

(N.D. Tex. Dec. 1, 2008). Finally before seeking relief from this Court Catton sought leave from the Fifth Circuit U.S. Court of Appeals to file a second or successive Petition For writ of Habeas Corpus in the U.S. District Court in Fortworth, Texas. Leave was denied by the Fifth Circuit on 11-26-19. See *In re Catton* U.S.C.A. No. 19-11206. Also see Appendix "I" app. p. 14-15.

Federal Questions were Raised In The State Court of Last Resort

The Federal Questions Sought to be reviewed herein were raised in the trial court namely the 213th Judicial District Trial Court in Fortworth, Tarrant County, Texas, by filing a Post-Abuse Application For writ of Habeas Corpus under T.C.C.P. Art. 11.07 on 5-26-17. By raising the underlying claim in question under *Kyles v Whitley* 115 S.Ct 1555 (1995) and the U.S. Constitution 14th amendment. See Appendix "J" app. p. 16-37. In particular see app. p. 21-22. Catton also sought an evidentiary hearing on his claims pursuant to *Townsend v Sain* 372 U.S. 293 (1963) in the trial court on 5-26-17. See Appendix "K" app. p. 38-42. However the trial was foreclosed from passing judgment on said application and Catton's motion for An Evidentiary Hearing. Due to the abuse of writ order that had been previously entered against Catton by the T.C.C.A. on 5-28-08. see Appendix "F" app. p. 10-11. Due to the fact that Catton had been previously cited for abuse of the writ limited the trial court's duty to entering a finding establishing the same and ordering the district clerk to forward the writ transcript to the T.C.C.A. The trial court entered such findings and order on 6-13-17. See Appendix "B" app. p. 2. After receiving the writ transcript the T.C.C.A. determined that Catton had raised cognizable claims due to the same alleged U.S. Constitutional 14th Amendment Due Process violation claims. In addition the T.C.C.A. determined Catton not only showed

'good cause' for allowing a refiling of his post-abuse T.C.C.P. Art. 11.07 application. But that Calton also stated facts that if were true would entitle him to relief. The T.C.C.A. by affording Calton a merits review on his subsequent application also made clear that Calton's allegations established but for a U.S. Constitutional violation no reasonable factfinder would have found him guilty. When the T.C.C.A. denied relief on 7-12-17. See Appendix "A" app. p. 1. The Federal questions were reurged by Calton by "motion For Reconsideration" filed on 2-7-20 moving the T.C.C.A. to reconsider own its own initiative its improper ruling on 7-12-17. See Appendix "L" app. p. 43-64. However relief was denied by the T.C.C.A. on 3-12-20. See Appendix app. p. 3

Statement Of Pertinent Facts

(A) The Facts On Habeas Corpus Presented To The State Courts That Establishes Petitioner Was Entitled To An Evidentiary Hearing And Establishing A State Agent Suppressed material Evidence

- (1) On 4-24-02 officer Raley of The City of Garland Police Department [Hereafter Garland P.D.] seized a 'Butcher Knife' found in the vehicle Calton was arrested in after the offense was committed. See Appendix "M" app. p. 65.
- (2) The 'Butcher Knife' seized by police belonged to the victim Everett Charles Angle [Hereafter Angle] that Angle was brandishing in a threatening manner while leaning and reaching inside the driver's side window of Calton's parked vehicle while Calton sat in the driver's side seat. See Appendix "N" app. p. 66-67; Appendix "O" Calton's affidavit app. p. 69-70 Ln. 5-7; Appendix "P" TSF V8 p. 163-164 app. p. 74
- (3) The 'Butcher Knife' was the instrumentality of Calton's 'No mental State Defense' and "self Defense" defensive theories the jury was charged on. See Appendix "O" app. p. 69-70; Appendix "Q" TSF V8 p. 223-224 app. p. 78.

- (4) Due to Angle while appearing to be arguing over money. Was brandishing a sharp object toward Calton in a threatening manner. while reaching through the driver's side front window of Calton's parked vehicle while Calton sat in the drivers side front seat. See Appendix "N" app. p. 67; Appendix "O" app. p. 69-70 Ln. 5-7; Appendix "P" TSF V8 p. 163-164 app. p. 74
- (5) In response to this apparent attack Calton grabbed the blade of the 'Butcher Knife' and was cut by Angle. See Appendix "N" app. p. 67; Appendix "O" app. p. 69-70 Ln. 5-7.
- (6) In response to being cut by Angle with the 'Butcher Knife' Calton shot Angle one time in self-defense. See Appendix "O" app. p. 69-70 Ln. 5-7; Appendix "R" TSF V8 p. 181-182 app. p. 80; Appendix "S" TSF V6 p. 72 app. p. 81
- (7) Concealed from Calton by police was that the 'Butcher Knife' had been in the possession of the Garland Police Department up until 2-17-05 which was at least (9) nine months after Calton's 5-10-04 trial date. See Appendix "T" app. p. 82-102; Appendix "O" app. p. 71 Ln. 9; Appendix "O" app. p. 71 Ln. 10; Appendix "O" app. p. 72 Ln. 16
- (8) Calton upon receipt of the States Response to his Tex. Code Crim. Proc. Article 64.01 motion on 3-29-17 became aware that police possessed the 'Butcher Knife' before, during and for at least (9) nine months after Calton's May 10, 2004 trial. See Appendix "O" app. p. 73 Ln. 18; Appendix "T" app. p. 82-102. In particular see Shelli Pryors affidavit establishing the same. Id app. p. 86-87.
- (9) Although Ms. Pryor's Affidavit indicates all property seized by Garland P.O. related to Calton's arrest on 4-23-02. Was released to Lt. Van Cleave on 2-17-05 for Civil Court. See Appendix "T" app. p. 87. The only evidence seized by Garland P.O. in reference to that agency's arrest of Calton
- petition For writ Of Certiorari page 90 of 100

On 4-23-02 was a 'Butcher Knife'. See Appendix "M" app. p. 4.

(10) Calton used Tex. Code Crim Proc. Article 64.01 as a fishing expedition to circumvent Tex. Govit Code Section 552. 028 in search of the truth about the 'Butcher Knife'. See Appendix "O" app. p. 73 Ln. 18

(11) Calton made several open records requests post-trial beginning in the fall of 2004 to no avail to discover the 'Butcher Knife'. See Appendix "O" app. p. 69 Ln. 4; Appendix "U" - "X" app. p. 103-106

(12) The Garland P.D. or the City of Garland has never responded to any of Calton's open records request. See Appendix "O" app. p. 69 Ln. 4

(13) This is in all probability due to the Section 1983 Federal Civil Rights lawsuit Calton filed against Garland P.D., the City of Garland and several individual police officers. See Appendix "Y" TSFV4 p. 62-63 app. p. 108

(14) Alternatively Garland P.D. and the City of Garland non-response to Calton's open records requests could have been due to a governmental body in Texas is not required to comply with a request for information from an inmate or their agent, other than the inmates attorney. See Appendix "Z" app. p. 109. Although this alternative is highly unlikely so in light of Calton's Section 1983 lawsuit against the City of Garland Texas and Police officers and jailers thereof. See Appendix "Y" TSFV4 p. 62-63 app. p. 108.

(15) Calton filed two different Brady motions in an attempt to discover favorable evidence in the possession of the state or an agent of the state that was unknown to the defense that both were granted by the trial court on 7-2-03 and 1-8-04 respectively. See Appendix "AA" and "BB" app. p. 110-115.

(16) Calton tried to have a subpoena issued pretrial compelling the arrest records of Calton in the possession of the Garland P.D. to be turned directly to the defense. That

contained "The Police Report" that memorialized police had seized a 'Butcher Knife'. However the trial court denied Calton's Subpoena request. See Appendix "CC" PSF 1-8-04 p. 12 app p. 116

(17) Calton tried to obtain "The Police Report" under the authority of Tex. Code Crim. Proc. Article 39.14 that memorialized police had seized a 'Butcher Knife'. However Calton's discovery request was only granted by the Trial Court pursuant to Tex. Rules of Evidence Rule 615. See Appendix "DD" PSF 1-16-04 V.1of1 p. 23 app. p. 119

(18) Calton tried the open records provision prior to trial through his court appointed investigators to no avail to obtain "The Police Report" from the Garland P.D. that memorialized police had seized a 'Butcher Knife'. See Appendix "DD" PSF 1-16-04 V.1of1 p. 21-22 app. p. 117-118.

(19) On 4-26-04 the trial relented its subpoena request denial to the extent that the court would issue the subpoena for records from the Garland P.D. pertaining to Calton's arrest. That contained "The Police Report" that memorialized police had a 'Butcher Knife'. For the records to be turned over directly to the trial court for the trial court's in camera review. For the trial court to determine if anything contained in said records was relevant to Calton's defense. See Appendix "EE" PSF 4-26-04 V.1of1 p. 7 app. p. 121

(20) Also on 4-26-04 which was two week before Calton's 5-10-04 trial date Calton informed the trial court and state's attorney that: "Although Calton had yet to find out he needed to know for trial preparation if there is or is not a knife in the Garland P.D. evidence room. See Appendix "O" app. p. 69-70 Ln. 5-7; Appendix "EE" PSF V.1of1 4-26-04 p. 6-7 app. p. 120-121.

(21) After putting the trial court and state's attorney on direct
Petition For writ of Certiorari page 11 of 40

notice of Catton's unawareness of the 'Butcher Knife' in the possession of the Garland P.D. on 4-26-04. There was an off the record colloquy at the trial court's insistence between the state and defense. See Appendix "EE" TSF 4-26-04 Vol 1 p. 7 app. p. 121

(22) The colloquy consisted of the trial court ordering the prosecutor to produce the 'Butcher Knife' to the defense and the prosecutor's response: "Judge our investigation indications there is no 'Knife' in possession of police related to the offense" See Appendix "O" app. p. 72 Ln. 14-15.

(23) The 'Butcher Knife' seized by police would have corroborated Catton's statement to police. Where Catton stated: "Angle was reaching inside of Catton's vehicle with a sharp object that Catton grabbed and was cut with. See Appendix "N" app. p. 67

(24) The 'Butcher Knife' seized by police would have corroborated Catton's trial testimony. Where Catton testified: "The victim Everett Angle was trying to cut me with a knife that I grabbed out of his hand that ended up in my car that was recovered by police officers. See Appendix "R" TSF V8 p. 181-182 app. p. 80

(25) The jury was charged on self-defense but the defense wasn't fully advanced or viable sans the 'Butcher Knife' See Appendix "Q" TSF V8 p. 223-224 app. p. 78

(26) Especially in light of the State's cross-examination of Catton and its closing argument both referencing the matter that implied if a 'Butcher Knife' existed and played a role in the offense. Catton would have issued a subpoena for the 'Butcher Knife' and presented it at trial. See Appendix "Q" TSF V8 215-216 app. p. 76; Appendix "FF" TSF V9 p. 9-10 app. p. 123

(27) On 5-13-04 in the middle of trial Catton received "The Police Report" that memorialized that a 'Butcher Knife' had
petition for writ of Certiorari page 12 of 40

been seized by the Garland Police Department. See Appendix "GG" TSF VS p.37-38 app. p.126

(28) That same day on 5-13-04 Carlton had a subpoena issued to Garland P.D. evidence custodian to produce the 'Butcher Knife' in court instanter. For the same to be utilized at trial as the instrumentality of Carlton's self-defense theory. See ex "O" app. p. 69-70 Ln. 5-7; Appendix "HH" app. p. 127-129

(29) The Garland P.D. evidence custodian at the time in question namely Police officer Michael G. Clark #2769 shows up at trial says the 'Butcher Knife' on 5-17-04 and states: "Although a 'Butcher Knife' was recovered there were no records that indicates it was logged into the evidence room. Due to the 'Butcher Knife' was not used during the commission of the existing arrest offense Garland P.D. arrested Carlton for. See Appendix "O" app. 73 Ln. 17

(30) This was a blatant lie told by officer Clark #2769 and the intentional suppression of the 'Butcher Knife' in question by police. As established by Garland P.D. evidence custodian in 2017 Shelli Pryor's affidavit makes clear dated 3-20-17. See Appendix "T" app. p. 86-87. Also see "The Police Report" at Appendix "M" app. p. 65

(31) In fact not only was the 'Butcher Knife' in the police's possession at the time of Carlton's May 10, 2004 trial. Garland P.D. evidence custodian Shelli Pryor prepared a "Chain of Custody Sheet" from the Garland P.D. pertaining to the 'Butcher Knife' in question. That establishes officer Clark #2769 took possession of the 'Butcher Knife' on 5-17-04. Alleging to evidence room personnel that he was doing so for Carlton's trial. See Appendix "XXX" app. p. 225

(32) However officer Clark #2769 did not produce the 'Butcher Knife' at trial. Instead officer Clark #2769 after taking care, custody and control of the 'Butcher Knife' situated the 'Butcher Knife' in some secret remote place. Officer Clark #2769

did so as a ruse to make it appear to Garland P.D. evidence room personnel. That the 'Butcher Knife' had been utilized in a Court proceeding for the over (5) months period it was allegedly removed from the evidence for court purposes. As officer Clark alleged on 5-17-04 when he checked the 'Butcher Knife' out for court on 5-17-04 and back in from court on 10-26-04. See Appendix "XXX" app. p. 225

(33) Garland P.D. officer Shupe corroborated the blatant lie told by officer Clark #2769 when officer Shupe testified: "There was no indication the 'Knife' was logged into the property room. See Appendix "II" TSF V4 p. 49 app. p. 130

(34) officer Shupe of the Garland P.D. also corroborated the Garland P.D.'s evidence custodian officer Clark's #2769 statement by testifying: "Since the 'Butcher Knife' was not used during the commission of the evading arrest offense. It would not be logged into the Garland P.D. property room. See Appendix "Y" TSF V4 p. 59-60 app. p. 107.

(35) The intentional suppression of the 'Butcher Knife' by police precluded the jury from reasonably finding Carlton acted in self-defense by shooting the victim one time. See Appendix "O" app. p. 69-70 Ln. 5-7; Appendix "S" TSF V6 p. 72 app. p. 81

(36) Had the 'Butcher Knife' been admitted into evidence the only rational verdict would have been not guilty. Thus the guilty verdict is invalid and should be invalidated. Due to the error contributed to Carlton's conviction and prevented Carlton from establishing his actual innocence by self-defense. Due to Carlton's use of deadly force when he shot the victim one time was in direct response to the victim's use and attempted use of deadly force the victim used on Carlton with the 'Butcher Knife' prior to Carlton shooting the victim one time in self-defense. See "O" app. p. 69-70 Ln. 5-7; Appendix "S" TSF V6 p. 72 app. p. 81

Petition For writ of Certiorari page 14 of 40

(B) Summary of Additional Relevant Facts and Facts Established At Trial

The statement of facts regarding the trial will necessarily be referenced as follows as referenced above in the "State Habeas Facts" above in subsection (A). Referred to as "TSF" followed by the volume and page number. Since the factual overview will also involve facts developed at the 5-1-02 motion TO Deny Bail Hearing and the four separate Pretrial hearings. They will be referenced to as "BSF" and "PSF" respectively followed by the date, volume and page number. On 4-8-02 Calton after accidentally drinking an unknown substance went to the hospital for treatment. See Appendix "JJ" app p.131-140. This accidental ingestion of an unknown substance affected Calton's blood sugar level. In turn affecting him mentally and physically. Although Calton has never been diagnosed with diabetes he was rushed by ambulance to two different hospital on two different occasions due to a severely abnormal low blood sugar level i.e. Hypoglycemia. See Appendix "KK" app. p.141-146; Appendix "CC" TSF V4 p.99 app. p.147. The First hospital visit on 4-24-02 was about twelve hours after the offense occurred. At which time Calton's blood sugar level had dropped so low that he went into convulsions. See Appendix "MM" TSF V4 p.41-44 app. p.148. On 4-23-02 at about 9 P.M Calton drove to the victim Angle's residence. Due to mental and physical infirmities caused by Hypoglycemia at that time. Calton also thought someone else was in his vehicle that night. However there was not. See Appendix "N" app. p.67. Angle testified that he was cooking when Calton arrived. See Appendix "NN" TSF V3 p.20-22 app. p.149-150. The 'Butcher Knife' seized out of Calton's vehicle by police belonged to Angle he utilized to cook his dinner at the time Calton arrived to Angle's residence. Angle testified he engaged in conversation with Calton. see Appendix "NN" TSF V3 p.23-24 app. p.151. State's witness Craig Tate testified Angle was leaning inside of Calton's vehicle while this con-

versation took place. See Appendix "P" TSF V8 p.163-164 app. p.174. Angle testified he had a cocaine problem. See Appendix "VV" TSF V3 p.30 app. p.152. Angle testified he had a drug problem at the time of the offense. See Appendix "OO" TSF V3 p.48 app. p.153. An excerpt from Angle's medical records for treatment he received for his gunshot wound that night on 4-23-02 proves he had cocaine in his system at the time of the offense. See Appendix "PP" app. p.154-155. Due to the victim Angle's Aggressive and fearless behavior fueled by his cocaine use and abuse led Catton to reasonably believe despite his mental and physical infirmities caused by Hypoglycemia that Angle was attempting to use and used deadly force against Catton while leaning inside Catton's parked vehicle brandishing a 'Butcher Knife' in a threatening and subsequently cutting Catton. Due to the victim's influence under cocaine at that time. Which resulted in Catton to grab the blade of the 'Butcher Knife' in an attempt to ward off the apparent attack. Upon grabbing the blade Angle cut Catton. See Appendix "D" app.67; Appendix "R" TSF V8 p.181-182 app. p.80. In this sequence of events Catton grabbed the victim Angle's gun he always possessed in a gun holster. See Appendix "QQ" TSF V4 p.140 app. p.156. And shot Angle one time with Angle's own gun after being cut by Angle with the 'Butcher Knife' in question. See Appendix "Q" TSF V8 p.209 app. p.75; Appendix "R" TSF V8 p.181-182 app. p.80; Appendix "S" TSF V6 p.72 app. p.81. Marcus Heard testified that while selling crack cocaine out of his house Angle would wear a firearm in a gunholster. See Appendix "QQ" TSF V4 p.140 app. p.156. Mr. Heard purchased crack cocaine from Angle for years and smoked the purchased crack cocaine at Angle's residence and would observe Angle in possession of a firearm at all times. Id at p.139-140 app. p.156. Angle was a habitual crack cocaine dealer in addition to his crack cocaine use and abuse. Angle had no less than five search warrants executed at his residence on 4-21-99, 11-6-00, 3-6-01, 4-11-02, and 2-23-03. Where police were seeking for and found crack cocaine and even seized a firearm in a gunholster. See Search Warrant Returns Appendix "RR" thru "VV" app. p.157-162.

The police seizing a pistol and a gunholster corroborates Mr. Heard's testimony that the victim Angle kept a pistol at all times on his side. See Appendix "QQ" TSF V4 p.139-140 app. p.156; Appendix "SS" app. p.158. Mr. Heard was such a frequent visitor at Angle's residence as Mr. Heard's testimony above established. That Mr. Heard was present during an actual search warrant execution at Angle's residence on 4-21-99 and Mr. Heard was arrested along with Angle that day. See Appendix "RR" app. p.157. Fifty miles away from the crime scene Calton was observed by Police Officer James Puckett driving in an erratic and unsafe manner. See Appendix "WW" TSF VS p.74-75 app. p.163. Officer Puckett's observation of Calton's driving led him to initiate a police stop that led to Calton's arrest two hours after the offense. Id at p.78 app. p.164. Calton was driving erratic because he thought someone else was in the vehicle with him trying to kill him. Due to the same Calton made a 911 phone call in Garland, TX prior to Officer Puckett initiating the traffic stop and Calton stated to the call taker: "Someone is trying to kill me". See Appendix "XX" app. p.165-167. Officer Puckett testified that Calton's driving during the police chase was unlike someone who was trying to get away from police. Because Calton was merely going back and forth, going here and there and to Officer Puckett it seemed as though Calton was confused. See Appendix "YY" TSF VS p.96-97 app. p.168-169. Police observations describing Calton's behavior at the arrest scene two hours after the offense noted: bizarre behavior, confusion, appeared distracted, passiveness and uncooperative. As well as Calton was experiencing head pain and dizziness. See Appendix "ZZ" TSF V4 p.19-20 app. p.177; Appendix "AAA" app. p.178-182. Although Calton appeared intoxicated at the time he did not smell of alcohol. See Appendix "BBB" TSF VS p.87 app. p.183. Nor was Calton charged with DWI or DUI. See Appendix "CCC" TSF V4 p.72 app. p.184. Defense Expert Dr. Roy Cavaino testified that appearing intoxicated is a sign of Hypoglycemia. As well as confusion, abnormal behavior and dizziness. See Appendix "DDD"

TSF VS p.117 and p.123 app. p.185-186. Dr. Cawano testified that after reviewing the police observation screening form that memorialized Catton's behavior according to police personal observations about two hour after the offense suggested Hypoglycemia. See Appendix "DDD" TSF VS p.124 app. p.186. State's expert Joe Snow testified that the screening suggested Hypoglycemia. See Appendix "EEE" TSF V6 p.61-62 app. p.187. Paramedic Frank Simon testified that if the blood sugar level falls low enough it can lead to an epileptic seizure. See Appendix "FFF" TSF V7 p.27 app. p.189. Paramedics William Johnson testified the epileptic seizure Catton sustained mere hours after the offense was caused by an extremely low blood sugar level that was below 25. See Appendix "MM" TSF V7 p.43-44 app. p.148. Expert testimony at trial established a normal blood sugar level is between 80-120. See Appendix "YY" TSF VS p.105 app. p.171. Catton testified that about a week before the offense he began experiencing dizziness, headaches and felt abnormal. See Appendix "GGG" TSF V8 p.196 app. p.190. Catton testified that his recollection about a week before the offense up until about three weeks after is vague and filled with events that are not true and consists of events that Catton considered were psychotic episodes. See Appendix "R" TSF V8 p.180-182 app. p.79-80; Appendix "HHH" TSF p.168-170 app. p.191. Although Catton described his experiences at the time as psychotic episodes it was undoubtedly Hypoglycemic states causing confusion that Catton was experiencing at the time. As a direct result of Catton's accidental ingestion of an unknown substance on 4-8-02 that burned Catton's throat going down, which was about two weeks before the 4-23-02 offense date. See Appendix "JJ" app. p.131-140. The accidental ingestion of an unknown substance disrupted the proper regulation of Catton's blood sugar level between 4-16-02 and 5-14-02. As established by Catton's hospitalization for Hypoglycemia hours after the offense on 4-24-02 and again on 5-14-02. Dates that bookend the 4-23-02 offense date. See Appendix "KK" app. p.141-146; Appendix "LL" TSF V4 p.99 app. p.147.

Petition For writ of Certiorari page 18 of 40

Due to the disruption of Carlton's blood sugar level and the proper regulation of the same at the time doctors requested his blood sugar level be monitored twice daily. See Appendix "YY" TSF VS p.101-109 app. p.169-192. Kewanda Lawson testified that on 4-16-02 Carlton was not acting himself and seemed to be experiencing confusion. See Appendix "III" TSF V4 p.83 app. p.192. Ms. Lawson testified that Carlton's condition deteriorated after 4-16-02 up until the offense date of 4-23-02 and that it appeared to her that Carlton was in a state of confusion. Id at p.85 app. p.193. Ernest Knox testified that on 4-16-02 he noticed Carlton's confused state and that Carlton at times did not appear to know what was going on. See Appendix "JJJ" TSF V7 p.3-4 app. p.194. Mr. Knox testified that Carlton's condition deteriorated from 4-16-02 up until the offense date of 4-23-02 that Mr. Knox described as a confused state. Id at p.5 app. p.145. Defense expert Dr. Cavalho testified that a person can be capable of actions and not be consciously aware of what he is doing and may not have knowledge of events that occurred while in a Hypoglycemic state. See Appendix "DDD" TSF VS p.119-120 app. p.185. The victim Angle testified that at the time of the offense that Carlton had all of his mental faculties. See Appendix "NN" TSF V3 p.24 app. p.150. State's expert Dr. Jack Price a forensic psychologist with a doctorate degree was hired by the State to evaluate Carlton's mental processes at the time of the offense. Prior to personally evaluating Carlton Dr. Price reviewed certain documents to permit him to form his expert opinion. See Appendix "KKK" TSF V8 p.17-20 app. p.196. Dr. Price testified despite Carlton's mental and physical infirmities caused by hypoglycemia he was not suffering from some type of psychotic episode or psychotic state at the time of the offense. Id at p.29-30 app. p.199. Dr. Price's testimony made clear that Carlton did not reveal any significant symptoms of mental illness at the time of the offense. Id. at p.29-30 app. p.199. Dr. Price's testimony also made clear despite Carlton mental and physical infirmities caused by hypoglycemia resulting in Carlton to experience confusion, bizarre be-

havior and hallucinations. Did not preclude Calton from having the sufficient mental capacity to reasonably believe that the crack cocaine fueled victim with the 'Butcher Knife' in his hands was attempting to use and used deadly force against Calton. In turn justifying Calton's use of deadly force to meet deadly force. Driving home the point that indeed the evidence at trial reasonable raised all elements of a deadly force/self-defense theory including a "Reasonable Belief" is substantiated by the trial court's charge to the jury on self-defense. See Appendix "Q" TSFV 8 p. 224 app. p. 78. The Trial court's certainty that the evidence raised the justification defense withstood prosecutor's David Hagerman vehement objection that the evidence did not raise self-defense/deadly force defensive theory. For which said objection lodged by the prosecutor the trial court judge rightfully overruled. Id at p. 221 app. p. 78.

Reasons For Granting The Writ

This Court has evidenced a predilection for granting review of state court denying post-conviction relief. See *Foster v Chatman* 136 S.Ct 1733 (2016) (Citing *Weary v Cain* 136 S.Ct 1002 (2016)). Due to the extensive record accompanying the petition in support thereof. That establishes the T.C.C.A. has egregiously misapplied well settled federal law. The summarily deciding the case by this court should be exercised. And when the circumstances so warrant summarily deciding a case is hardly unprecedented by this court. See *Sears v Upton* 561 U.S. 945, 951-52 (2010) ("Vacating a state post conviction court's denial of relief on a penalty phase ineffective assistance of counsel claim"); *Porter v McCollum* 558 U.S. 30, 38-40 (2009) ("Attorney provided ineffective assistance of counsel by conducting a constitutionally inadequate investigation into mitigation evidence"). Since the T.C.C.A. failed to issue the writ or afford an evidentiary hearing warrants relief here affording a new trial or ordering an evidentiary hearing be held as promulgated by this court in *Townsend v Cain* supra. see *Ex Parte Bush* 313 S.W2d 287, 288 (Tex. Crim. App. 1958) ("where after conviction

regular on its face and on the record it is made to appear that the defendant was denied due process of law at trial, and the T.C.C.A. refuses to issue the writ of Habeas Corpus applied for. U.S. Supreme Court will reverse and remand the cause to the T.C.C.A. for further proceedings not inconsistent with the opinion of the Supreme Court"). And when one has established his right to an evidentiary hearing as promulgated by this court in *Townsend v Sain* 372 U.S. 293 (1963) and is denied such right in the state court certiorari will lie. See *Ex Parte Young* 418 S.W.2d 824, 826 (Tex. Crim App. 1967) ("Certiorari will be granted by the Supreme Court and the denial of a petition for writ of habeas corpus presented originally to the T.C.C.A. alleging facts, which, if proved, would render the applicant's confinement under a felony conviction illegal and entitle him to relief without a hearing such as dictated in *Townsend v Sain* will be vacated with costs and the case remanded to this court for further proceeding not inconsistent with the Supreme Court's opinion") (Citing *Green v Beto* 384 U.S. 268 (1966))

Clearly Established Federal Law Requires State To Disclose Favorable Evidence

Few constitutional principles are more firmly established by Supreme Court precedent than the rule that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or to punishment, irrespective of the good or bad faith of the prosecution. See *Brady v Maryland* 393 U.S. 83, 87 (1963). "Brady", applies even when there has been no request by the accused. See *Banks v Dretke* 540 U.S. 668, 690 (2004). Under clearly established Supreme Court precedent, there are three elements to a Brady claim: (1) the evidence must be favorable to the accused, either because it is exculpatory or because it is impeaching; (2) the evidence must have been suppressed by the state, either willfully or inadvertently; and (3) the evidence must be "material", i.e. prejudice must have ensued from its non-disclosure. Id. at 341. What could be more prejudicial to one's defense than to have the instrumentality of

said defense intentionally suppressed by police; that rendered the defense inviable as a matter of law? The duty imposed by "Brady" is not merely a negative prohibition against the prosecutor's active concealment of exculpatory evidence; it imposes an affirmative duty on the prosecution to disclose to the defense all such evidence in the possession of "those acting on the government's behalf" See *Kyles v Whitley* 115 S.Ct 1555, 1557 (1995). The first part of the test has been met. Due to the fact that officer Clark checked the 'Butcher Knife' out of the police evidence room on 5-17-01 for Carlton's trial. See Appendix "XXX" app. p. 225. In response to a subpoena compelling the 'Butcher Knife' to be produced at trial. See Appendix "H H" app. p. 127-129. However, Police shows up in court without it and lies to defense by stating: "There was not a 'Butcher Knife' in the Police's possession at the time of trial". See Appendix "O" app. p. 13 Ln. 19. It is no answer that the prosecutor did not participate in the police's intentional suppression of evidence. See *Kyles* 115 S.Ct at 1567-68; *U.S. v Antone* 603 F.2d 566, 569 (5th Cir 1979) ("Imputing knowledge of state's investigators to federal prosecutors in determining there was a Brady violation"); *Johnson v State* 917 Sw2d 135, 138 (Tex App. Fortworth 1996) ("Information possessed by an agent of the state is attributed to the prosecutor"). Favorable evidence is any evidence that if disclosed and used effectively, it may make the difference between conviction and acquittal. See *Thomas v State* 841 Sw2d 399, 405 (Tex. Crim App. 1992) ("Exculpatory evidence is evidence that tends to justify, excuse or clear the defendant from alleged fault or guilt") (Citing *U.S. v Bagley* 473 U.S. 667, 676 (1985)). The 'Butcher Knife' as the instrumentality of Carlton's self-defense theory was not merely favorable evidence. It was an indispensable part of a viable deadly force defensive theory under Texas Penal Code § 9.32. Without the 'Butcher Knife' in the victim's hands and establishing the same was capable of causing death and/or serious bodily injury to Carlton in its use or manner of use by the victim. Made Carlton's force disproportionate as a matter of law when Carlton used deadly force by shooting the victim one time. Thus the second part of the test has

been met. Finally a determination must be made on whether if the 'Butcher Knife' had it been available at trial would it have created a probability sufficient to undermine the confidence in the outcome of the proceeding. In other words was the 'Butcher Knife' as the instrumentality of Carlton's defensive theory material. See Thomas 841 sw2d at 404. To make this determination this Court decides if the 'Butcher Knife' had been disclosed and used effectively would it have made the difference between conviction and acquittal. Id at 403-05. In 'Bagley' the court explained that evidence "is material within the meaning of 'Brady' when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. See Bagley 473 U.S. at 682. In other words altering at least one jurors assessment regarding Carlton's self-defense defensive theory. See Cone v Bell 129 S.Ct 1769, 1773 (2009). Put differently, the question is not whether Carlton would more likely than not have received a different verdict with the 'Butcher Knife', but whether in its absence received a fair trial, understood as a trial resulting in a verdict worthy of confidence. See Kyles 115 S.Ct. at 1566 ("we need to be convinced only that the governments evidentiary suppression undermines confidence in the outcome of trial"); Weary v Cain 136 S.Ct 1002, 1006 (2016) ("To prevail on his Brady claim, Weary need not show that he "more likely than not would have been acquitted had the new evidence been admitted" (Citing Smith v Cain 132 U.S 627, 630 (2012)). In a materiality determination courts also consider the probability adverse affect the intentional suppression of the 'Butcher Knife' had on Carlton's preparation and presentation of his case. See Ex Parte Mitchell 853 sw2d 1, 5 (Tex Crim App 1993) ("In determining materiality we also consider the potentially adverse affect that non-disclosure of East and Stroud's evidence had on the defense counsel's presentation of applicant's case"); Bagley 473 U.S. at 682 ("Recognizing a prosecutor's incomplete response to a request for Brady material could cause defense counsel to abandon lines of independent investigation, defenses or trial strategies that it otherwise would have pursued"); Mitchell 853 sw2d at 5 ("Suppression of favorable evidence hampered defense counsel's ability to prepare defense

that would have created reasonable doubt"). Catton all but abandoned his self-defense theory due to the non-disclosure of the 'Butcher Knife' and primarily focused instead on an 'Automation Defense'. As established by his opening statement to the jury, see Appendix "22" TSFV4 p.5-7 app.p. 174. A defense that was inviable as established by the jury verdict explicitly rejecting it by their finding of guilt. The intentional suppression of the 'Butcher Knife' is a 'smoking gun' of its materiality, see *U.S. v Jackson* 780 F2d 1305, 1311 n.4 (7th Cir 1986) ("we are doubtful that any prosecutor would in bad faith act to suppress evidence unless he or she believes it could affect the outcome of trial"); *Tulamente v Romero* 620 F2d 784, 788 (1980) ("Good or bad faith of prosecutor may play role in materiality determination for Brady purposes"). A showing of materiality does not require demonstration by preponderance that disclosure of the 'Butcher Knife' would have resulted ultimately in Catton's acquittal [whether based on the presence of reasonable doubt or acceptance of an explanation of the crime that does not inculcate him] see *Kyles* 113 S.Ct 1565-66 ("The reversal of conviction is required upon a showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict") (Citing *Bagley* at 682) ("adopting formulation announced in *Strickland v Washington* 466 U.S. 668 (1984)). *Bagley's* touchstone of materiality is a 'reasonable probability' of a different result, and the adjective is important. *Id* at 1566. The question is not whether Catton would more likely than not have received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression undermines confidence in the outcome of the trial. *Id* at 1566. The second aspect of *Bagley* materiality bearing emphasis here is that it is not a sufficiency of evidence test, which requires no demonstration that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict. *Id* at 1566. The third as-

pect is once a reviewing court applying 'Bagley' has found a constitutional error there is no need for further harmless error review. *Id.* at 1566. The final aspect of 'Bagley' materiality concerns the prosecution which alone can know what is undisclosed, must be assigned the consequent responsibility to gauge the likely net effect of all such evidence and disclosure when the point of 'reasonable probability' is reached. *Id.* This means the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. *Id.* at 1566. But whether the prosecutor succeeds or fails to disclose in good or bad faith. *Id.* (citing *Brady* at 87). The prosecution's responsibility for failing to disclose known, favorable evidence rising to material level of importance is inescapable. *Id.* at 1567-68. The 'Butcher Knife' was material due to it was an indispensable component of a viable self defense/deadly force defensive theory and had it been available for trial would have allowed Catton to establish that the 'Butcher Knife' wielding victim in a crack cocaine fueled state was capable of causing serious bodily injury or death. 'Serious Bodily Injury' is an injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ, see Tex. Penal Code Section 1.07(a)(4b). Thus the 'Butcher Knife' an instrument surely capable of causing death or serious bodily injury in the victim's hands while he was under the influence of crack cocaine. See *Hicks v State* 837 S.W.2d 686, 690 (Tex. App. Houston [1st Dist.] 1992) ("Sgt. Crenshaw testified that the knife admitted into evidence could easily injure or kill someone") Cf *Robertson v State* 163 S.W.3d 730, 731, 734 (Tex. Crim. App. 2005) ("Testimony describing the switchblade knife not necessary to support deadly weapon finding because it was admitted into evidence and factfinder had the opportunity to examine the weapon and ascertain for itself whether the weapon had physical characteristics that revealed its deadly nature"). Also see Appendix "PP" app. p. 154-155; Appendix "RR" thru "VV" app. p. 156-162. Would bolster Catton's contention that he was justified in using dead-

ly force to meet the victim's use or attempted use of deadly force the victim used on Calton with the 'Butcher Knife' when he tried to stab and subsequently cut Calton prior to Calton shooting him one time in response. See Tex. Pen. Code 9.01(3). ("Defining 'deadly force' as force intended or known by the actor to cause or in the manner of its use or intended use or capable of causing death or serious bodily injury"). It is undisputed that the 'Butcher Knife' was capable of causing the impairment of a bodily member. As established by the fact that Calton's cuts to his right hand sustained when he grabbed the 'Butcher Knife' warding off the apparent attack, were substantial enough that the injury prevented Calton from writing his statement to police three days after the offense and therefore Detective Hardy wrote the statement due to Calton's injury. See Appendix "W" app. p. 66-67. Also see *Ransome v Johnson* 126 F3d 716, 724 (5th Cir 1997) ("Recognizing the wounds to Pequero's left hand were consistent with defensive wounds as Pequero attempted to ward off the attack") see also *Acosta v State* 179 SW 870 (Tex 1915) ("we are inclined to believe that all mankind know that death can be inflicted by a razor in the hands of a grown man"); *Cruz v State* 576 SW2d 841, 842 (Tex. Crim. App. 1979) ("The knife was capable of inflicting serious bodily injury or death especially when she sustained cuts in the neck and chest"); *Hayes v State* 728 SW2d 804, 804 (Tex. Crim. App. 1987) ("Holding a coke bottle can be a deadly weapon, if used as a club"). At trial Calton testified: "The victim tried to stab him and cut him with a knife. That he grabbed out of the victim's hand warding off the attack that ended up in Calton's car. where the shooting took place that was recovered by police officers" See Appendix "R" TSFV 8 p. 181-182 app. p. 80. This testimony in Texas establishes an implied threat perceived by Calton and shows Calton was justified in using deadly force and if the 'Butcher Knife' had been presented at trial. Any reasonable factfinder would have found likewise. Cf *Tisdale v State* 686 SW2d 110, 115 (Tex. Crim. App. 1985) ("The evidence presented shows that appellant's use of the knife was by showing it to his victim. This is established by direct evidence. Appellant's actions were perceived

by pressly as an implied threat, and the finder of fact could properly find likewise"). In Texas the manner of use is the most important criterion. See *Dominique v State* 598 SW2d 285, 286 (Tex. Crim. App. 1980) ("Scissors in the manner of its intended use was deadly weapon"). This Texas authority when read together establishes as a matter of law the victim not only had the capability to use deadly force but used deadly force with an instrument in Texas that readily classifies as a deadly weapon. In turn makes clear the 'Butcher Knife' was material to Calton's defense. This Texas law is to be deferred to in resolution of Calton's claim. See *Perzovechia v Wainwright* 658 F2d 337, 340 (5th Cir 1981) ("Federal Courts are generally compelled to defer to state courts interpretation of its own criminal laws, rules of evidence and rules of criminal procedure"). Sans the 'Butcher Knife' Calton had nothing to corroborate his self serving testimony: "That he was cut by the victim with a knife police had recovered". See Appendix "R" TSF V8 p181 app. p. 80. There were no photos of Calton's injuries. Nor did Calton have medical records documenting his injuries. Due to Calton's combative behavior hospital officials could not treat him and had him removed from the hospital before treatment could be rendered to his hand. See Appendix "ZZ" TSF V4 p. 23 app. p. 178. And of course due to the police intentionally suppressed the 'Butcher Knife' Calton could not present it at trial either as the best evidence in support of his defense. See *Arizona v Fulminante* 499 U.S. 279, 298 (1991) ("Evidence not merely cumulative if it corroborates other evidence that is unbelievable on its own"). Calton's testimony that police had recovered a 'Knife' and then his failure to produce it at trial, was the 'functional equivalent' to a 'speaking Silence' that is prejudicial as a matter of law. Cf *Harris v Reed* 858 F2d 116, 19 (1st Cir 1988) ("Failure to produce expert witness in support of defense theory introduced in opening statement is a 'speaking silence' that is prejudicial as a matter of law"). Especially when the prosecutor brought the matter to the jury's attention as a direct attack on Calton's failure to produce the 'Butcher Knife': When the prosecutor's closing argument implied: "That if a 'Knife' had been seized by police and played a role in the offense

Calton would have subpoenaed it and produced it at trial. See Appendix "FF" TSF V9 p. 9-10 app. p. 123. In light of Calton's testimony referring to a 'knife' that he alleged he was cut with that was seized by police. And his failure to produce it at trial and the state's summation bringing the same to the jury's attention. Left the jury reasonably questioning, where is the 'knife'? Thus the jury had good reason to find Calton's self-defense theory dubious at best. Since Calton failed to produce the knife he said he was cut with and said was seized by police. Thus there was a negative inference against Calton based upon his failure to produce the 'Butcher Knife' at trial. Cf. *Stewart v Wolfenberger* 468 F3d 338, 358 (6th Cir 2006) ("The jury anticipated more than one alibi witness considering the substance of the alibi. Plus the jury surely wondered where the witnesses were, especially Mrs. Richardson who had been named on petitioner's notice of alibi and who Mr. Engle specifically mentioned at least at voir dire. There was a negative inference against petitioner based on their absence. Given the absence of these witnesses, the jury had good reason to find petitioner's alibi dubious"). Also cf. *Id* at 359 ("The prosecutor emphasized the lack of the alibi witnesses during the cross-examination of a witness"). Due to the deliberate suppression of the 'Butcher Knife'. Calton could not convince the jury of the reasonableness of his actions in shooting the victim one time, when Calton lacked the victim's deadly weapon to do so. Which is why the jury reasonably rejected Calton's self-defense theory as established by their verdict of guilt. *Fairman v Anderson* 188 F3d 635, 648 (5th Cir 1998) (Jones, J. dissenting) ("Questioning the reasonableness of the case in part because the victim's weapon a long 'Butcher Knife' was never found"); *Vasquez v State* 2 SW3d 355, 358-59 CTex App. San Antonio 1999 ("Concluding the jury could find force used by defendant not necessary to protect against use of force when victim suffered multiple stab wounds and weapon allegedly used by victim was never found"). In the absence of the

'Butcher Knife' to establish the victim's use or attempted use of deadly force in turn made Calton's use of deadly force disproportionate as a matter of law. Section 9.32 provides the use of deadly force is justified in self-defense only when three conditions are present: (1) The defendant would have been justified in using force under Section 9.31; (2) a reasonable person in the defendant's position would not have retreated and (3) the use of deadly force was reasonably believed to be immediately necessary to protect the defendant against another's use or attempted use of unlawful force. See Tex. Penal Code §§ 9.31 and 9.32. The trial evidence established the victim was brandishing a 'Butcher Knife' in a threatening manner, while leaning inside the driver's side window of Calton's parked vehicle, while Calton sat in the driver's side seat. See Appendix "N" app. p. 66-67; Appendix "P" TSFV8 p. 163-164 app. p. 74; Appendix "R" TSFV8 p. 181-182 app. p. 80. This is some evidence that Calton could not have retreated. See *Halbert v State* 881 SW2d 121, 125 (Tex. App. Houston [1st Dist.] 1994 pet. ref'd) ("some evidence of inability to retreat is all that is necessary"); *Hinojosa v State* 744 SW2d 319, 322 (Tex. App. Corpus Christi 1988, pet. ref'd) ("Jury could have concluded that defendant did not have clear avenue of escape where evidence showed the defendant was in open lot facing an armed aggressor"). The 'Butcher Knife' an instrument capable of causing death or serious bodily injury was the necessary component to establish the victim's use and attempted use of deadly force he used against Calton. Establishing its materiality to the defense beyond a reasonable doubt. The materiality of the 'Butcher Knife' is undisputedly established due to had it been available for trial would bolster a defense that would not merely raise doubt about Calton's guilt. If believed by jury a §9.32 defense in Texas directly exonerates an accused. Cf. *Montgomery v Peterson* 846 F.2d 407, 415 (7th Cir. 1988) ("Recognizing the clerk's testimony provided petitioner with an untainted alibi defense. As such, it did not merely raise doubt about petitioner's guilt, if believed by the jury would have directly exonerated him of the crime"). Although the 'Butcher Knife' tends to exonerate Calton. It is not necessary to establish a Brady violation that

the exculpatory evidence be certain to exonerate, only that it may do so if used effectively. See Bagley 473 U.S. at 676; Thomas 841 S.W.2d at 405 n.8 ("To require that favorable evidence conclusively exonerate a defendant would be inconsistent with Brady because it would establish such a high standard of materiality as to foreclose all but the egregious case of withheld evidence"). It is fundamental to the discovery rule of Brady, *supra*, that the materiality of a failure to disclose favorable evidence must be evaluated in the context of the entire record. See Bagley 473 U.S. at 683 and there must be an examination of the error in the context of the overall strength of the State's case. *Id.* This court should take judicial notice of the complete statement of facts on file herein to permit the entire record review. It is Calton's burden to show in light of all the evidence, including the state's evidence in particular the false '3shot Theory' and 'made up motive'. As well as the evidence untainted by the Brady violation, it is reasonably probable that a jury would have entertained a reasonable doubt regarding guilt. *Id.* at 682. In light of the state's fabricated '3shot Theory' and 'made up motive'. The state's trial evidence resembles a house of cards built on the jury crediting the state's sponsored false '3shot Theory' and 'made up motive'. Rather than Calton's self-defense theory that would have buttressed to viability had the 'Butcher Knife' been available for trial. Cf. Weary 136 S.Ct. at 1006 ("Beyond doubt, the newly revealed evidence suffices to undermine confidence in Weary's conviction. The state's trial evidence resembles a house of cards built on the jury crediting Scott's account rather than Weary's alibi") (citing *U.S. v. Agurs* 427 U.S. 97, 113 (1976) ("If the verdict is already of questionable validity, additional evidence of relative minor importance might be sufficient to create reasonable doubt")). Also see Mitchell 853 S.W.2d at 5 ("If a verdict is weakly supported by the record it is more likely to be affected by the non-disclosure of favorable evidence, such as that of shroud, than if it was strongly supported"). Even if the jury armed with knowledge of the 'Butcher Knife' the instrumenta-

lity of Calton's self-defense at trial as new evidence could have voted to convict Calton, this court or any other reasonable jurist, would have no confidence that it would have done so in light of the fabricated '3 Shot Theory' and 'made up motive', cf. *Weary* 136 S.Ct at 1007 ("Even if the jury - armed with all of this new evidence - could have voted to convict *Weary*, we have no confidence that it would have done so") (Citing *Smith v Cain* 132 S.Ct 627, 635 (2012)). Because the verdict was weakly supported by fabricated facts knowingly proffered by the state and the 'Butcher Knife' was the linchpin of a viable Tex. Pen. Code § 9.32 defense, establishes Calton has carried his burden to establish the weakness of the state's case below. Petition *infra* at pages 31-36. In turn will allow this court to reasonably conclude failure to disclose the 'Butcher Knife' created a probability sufficient to undermine confidence in the outcome of Calton's trial. See *Kyles* 115 S.Ct at 1569 ("In this case disclosure of the suppressed evidence to competent counsel would have made a different result reasonably probable"). The genius of *Brady* and perhaps the reason it has lent its name to a whole category of constitutional claims lies in its recognition that certain material conduct [such as the intentional suppression of the 'Butcher Knife' here by Police] renders the trial 'ipso facto' substantively unfair. See *Brady* 373 U.S. at 87-88. Where the misconduct is present post-conviction relief is mandatory. *Id.* An individual may not be imprisoned where the fairness of his trial is in question, *Id.* at 86-87.

The Probable Impact Of The 'Butcher Knife' With The Exposure Of The False '3 Shot Theory' and Sans the 'made up motive' Upon The Persuasiveness Of The State's Case As A Whole Now In That Light

The state's case was based on a 'made up motive' and a false '3 shot Theory' the state knew was false that was hinged on the victim's misleading testimony. The victim testified: "Calton opened his car door, stepped out in front of the victim, put the gun over the victim's eye and fired the first shot. The victim then testified that he went down on one knee. And

While on one knee Calton placed the gun up to the back of his head and fired a second shot. Then while he was on his back, then while he was on his back the victim testified that Calton walked up, stood over him and stuck the gun up to his head and fired a third shot. See Appendix "NN" TSF V3 p. 26-27 app. p. 151. When asked how many times he was shot the victim lied when he stated: "Three times". Id at p. 27 app. p. 151. The emergency room doctor's testimony establishes the victim was treated for one gunshot wound. See Appendix "S" TSF V6 p. 72 app. p. 81. As an impermissible plea for sympathy the victim also lied and testified that he lost consciousness. See Appendix "OO" TSF V3 p. 47 app. p. 151. Ten minutes after the offense in response to paramedic Joe Snow's questions, the victim denied a loss of consciousness. And when the paramedic asked how many times he was shot? The victim answered: "I think I heard one shot" See Appendix "LL" TSF V6 p. 53 app. p. 200. The victim's excited utterance and/or dying declaration is the most reliable evidence concerning the amount of shots fired and exactly how many times the victim was shot. And the same corroborates the doctor's testimony that the victim was treated for one gunshot wound. See Appendix "S" TSF V6 p. 72 app. p. 81. In turn also exposes the state's fraudulent '3shot Theory'. How can a denial of "loss of consciousness" and "thinking that you heard one shot" morph into the victim's trial testimony paraphrased above? One thing for certain the gunshot wound did not affect the victim's ability to recall the offense. Due to after the victim made the statements "denying a loss of consciousness" and "thinking he heard one shot". The paramedic determined the victim was alert, lucid and oriented at the time. See Appendix "LL" TSF V6 p. 53 app. p. 200. Establishing the victim's gunshot wound did not affect his ability to recall the offense and making clear the victim's testimony was the willful intent to mislead. Kyles 115 S.Ct at 1571 ("Evolution overtime of a given witness's description can be fatal to its reliability"). The state in an attempt to preserve its false '3shot Theory' put on the record the following morning after

the victim testified by stating: "Everette Angle was sick yesterday after he testified. He has now been admitted to the hospital to have an emergency surgery" See Appendix "ZZ" TSF V4 p. 4 app. p. 173. This lie by the state was exposed to the truth by state's attorney Charles Brandenburg statement during summations stating: "Chuck Angle who is sitting back here". See Appendix "FF" TSF V9 p. 8 app. p. 122. Thus after both sides had rested and closed. With the defense having no chance to correct the fabricated '3shot Theory' hinged on the victim's false testimony. The victim recovers from his alleged sudden sickness and hospitalization. Additionally to float its false '3shot Theory' the state tactically subpoenaed an irrelevant set of medstar Ambulance service medical records for treatment rendered to the victim on 2-16-02. See Appendix "MMM" app. p. 201-203. In addition to the relevant 4-23-02 offense date medical records. See Appendix "NNN" app. p. 204-208. The state's diabolical plan was to provide the irrelevant 2-16-02 records to Calton. which is how Calton came about the victim's medical records for treatment rendered to the victim over two months before the offense. which begs the question if the state was not intending to conceal the relevant 4-23-02 medical records. Then why did the state provide Calton the victim's medical records dated 2-16-02 concerning irrelevant health issues the victim had on 2-16-02 and not concerning his gunshot wound treatment rendered on 4-23-02. The reason the state suppressed the relevant 4-23-02 medical records was due to said medical records memorialized the victim's statement to the paramedic: "I think I heard one shot". See Appendix "NNN" app. p. 204. Had the defense been timely provided the relevant 4-23-02 medical records prior to the victim's testimony and alleged hospitalization, would have allowed Calton to impeach and correct the victim's false testimony. The state's possession of the victim's medical records and providing Calton a copy of the same for treatment rendered to the victim on 2-16-02, which was over two months before the offense date of 4-23-02 is a smoking gun establishing prosecutorial misconduct. But there's additional proof the state sponsored the false '3shot Theory'. The failure to call paramedic Joe Snow as a state's witness drives this point home. Mr. Snow was the author of the relevant

4-23-02 medical records that refutes the states fabricated false '3shot Theory' which was the reason the state did not call Mr. Snow as a witness. The state closed on 5-11-04 before calling Mr. Snow and stated: "Mr. Snow is supposed to be here. He's the paramedic that attended the scene." See Appendix "000" TSE v3 p.162 app. p.209. The state did not intend to call Mr. Snow and that's why the state did not exercise due diligence to compel Mr. Snow's attendance by e.g. 'writ of Attachment' to compel Mr. Snow's attendance pursuant Tex. Code Crim. Pro. Art. 24.12. Knowing the state had something to hide is why Cotton subpoenaed Mr. Snow as a defense witness. See Appendix "PPP" TSE v6 p.31-32 app. p.210. Also see U.S. v Jordan 49 F3d 152, 158 (5th Cir. 1995) ("recognizing both parties implied that failing to call witness indicates that the witness would hurt the others case respectively"). It wasn't until Mr. Snow testified late in trial that Cotton finally received the relevant 4-23-02 medical records. As established by Cotton's statement upon belated receipt of the same at trial: "Your honor, I was supposed to get this I never received it" See Appendix "PPP" TSE v6 p.36 app. p.211. However Cotton was unable to effectively utilize the medical records due to the victims alleged hospitalization. The state not only suppressed records that would have exposed the falsity of its case. The state compounded the error by arguing the false '3shot Theory' during summations stating: "Defendant comes around shouts him once in the face. Stands over him, shoots him two more times" See Appendix "QQQ" TSE v9 p.36 app. p.212. Thus rather than a mere omission, there was an additional error of commission. The states argument during summations referring to false testimony reinforced the deception. See U.S. v Barham 595 F2d 231, 243 n.12 (5th Cir. 1979). The states argument makes clear it hinged its case on the false '3shot Theory'. See Fleming v State 949 SW2d 876, 881 (Tex App. Houston [14th Dist.] 1997) ("Recognizing closing argument is area where trial strategy is most evident"). Referring to fabricated facts to the jury in summations is a violation of due process within itself. See Chapman v California 386 U.S. 18 (1967). The force of a prosecutor's argument can enhance immeasurably the impact of false or misleading evidence. See Miller v State 386 U.S. 116 (1967) ("deceiving pro-

secutors consistent and repeated misrepresentation that paint stains were actually blood"). In addition to the false '3shot Theory' the state also fabricated a 'made up motive' it knew was false. By eliciting false testimony alleging the reason Calton committed the offense was due to word had got back to Calton that the victim had allegedly confirmed to a detective of Calton's possible involvement in a murder. However the victim's testimony at Calton's "Hearing To Deny Bail" establishes that Calton's name never came up during the victim's and detective's conversation. The victim was cross-examined: Q. "Did detective Boetcher or detective Myers ever mention anything to you about Calton?" A. "No"; Q. "Never mentioned his name?" A. "No"; Q. "You ever mention Allen's name to them?" A. "No". See Appendix "RRR" BSF 5-1-02 V.1 of 1 p 80 app. p. 213. Prosecutor David Waterman represented the state at Calton's "Bail Hearing" and again at Calton's trial and knew or should have known the victim's testimony establishing motive was false. Id. at p. 81-82 app. p. 214-215. Additional proof the motive was false is the fact Kevin Black morefee who allegedly confirmed to Calton the victim had spoken to police about Calton possible involvement in a murder lived with the victim at the time and received mail at the victim's residence as established by F.W.P.D. search warrant return # 8960. See Appendix "TT" app. p. 160. The victim testified that Mr. morefee was like a roommate and was at the victim's residence most of the time. See Appendix "SSS" TSF V3 p. 56 app. p. 216. Assuming arguendo Calton's name did in fact come up in the conversation between the victim and the detective and Mr. morefee found out about the victim's mentioning of Calton's possible involvement in a murder to the detective. Would Mr. morefee who lived with the victim at the time of the offense go to Calton and tell him about the matter? In light of Mr. morefee's living arrangements. Highly unlikely. The 'made up motive' was also detrimental to Calton's defense on par with the '3shot Theory'. With both being predicated on fake facts. A motive when presented to a jury tends to raise an inference that the accused had a motive to commit the crime alleged. See *Crane v State* 786 SW2d 338, 349-50 (Tex Crim App 1990). A motive is also a circumstance indicating guilt. See *Harris v State* 727 SW2d 537, 542 (Tex Crim App 1987). At trial the victim also lied about

his inclination to possess a firearm. Calton asked the victim: Q "In the five years that you lived at 1744 Wiseman Ave has there ever been a firearm at the residence?" A. "No." See Appendix "TTT" TSF v3 p.62 app.p. 217. Calton knew this was a lie and tried to refresh the victim's memory with this question: Q. "During the search warrant executed at the residence no gun was ever found?" State's Attorney Hagerman objected Id at p.62 app.p. 217. Mr. Hagerman also knew the victim had lied, hence the objection. Due to Mr. Hagerman provided the defense the search warrant returns establishing the victim was a gun toting prolific crack cocaine dealer who was shot one time with his own gun. See Appendix "Q" TSF v8 p.209 app.p. 75; Appendix "RR" thru "VV" app.p. 157-162; Appendix "UUU" PSF 1-16-04 v.10f1 p.8-9 app.p.218-219. Also see *Cesar v State* 939 sw2d 778, 781 (Tex.App. Houston [14th Dist] 1997) ("Appellant engaged in a fight with victim, appellant lost his own gun in the struggle. However appellant was able to obtain the victim's gun in the struggle and shot the victim with victim's own gun"); *Van Brackle v State* 179 sw3d 708, 711-12 (Tex.App. Austin 2005) ("Appellant wrestled with victim for victim's gun, got control of victim's gun and shot victim with victim's own gun"). Finally the only eye witness to the offense Craig Tate and the victim are both prolific crack cocaine dealers, users and abusers. Mr. Tate was caught by police discarding a used syringe noted as Exhibit #1 in a police report. When Mr. Tate was designated as arrested person #3 in the same police report. Memorializing a search warrant execution at the victim's residence on 4-11-02 days within the 4-23-02 offense date. See Appendix "VVV" app.p. 220-223. The victim's medical records for his gunshot wound treatment on 4-23-02. Proves cocaine was in the victim's system the night of the offense. See Appendix "PP" app.p. 154-155. Cf *Casterada v State* 23 sw3d 216, 219 (Tex App. El Paso 2000) ("Prosecutor conceding that admitted cocaine use on the night in question effects credibility"). With the state's false '3shot theory' and 'made up motive' now exposed to the truth. With this Court evaluating the same in light of the probable impact of the 'Butcher Knife' at trial upon the persuasiveness of the state's case that's now been exposed for what it was i.e. a fraud upon the

Court. The 'Butcher Knife' at trial and admitted into evidence would have allowed the jury to examine it and determine for themselves its deadly nature. In turn affording the jury to reasonably find Calton was justified in using deadly, which establishes the 'Butcher Knife's critical and material nature to the defense, which substantiates his Brady violation contention above. See Hicks 837 SW2d at 690 ("Sgt. Creshaw testified that the knife admitted into evidence could easily injure or kill someone") Cf Robertson 163 SW3d at 731, 734 ("Testimony describing the switchblade knife not necessary to support deadly weapon finding because it was admitted into evidence and fact-finder had the opportunity to examine the weapon and ascertain for itself whether the weapon had physical characteristics that revealed its deadly nature")

The State Court Of Last Resort Abused Its Discretion when It Failed To Afford Calton The Evidentiary Hearing He Was Entitled To Under The Law

It is undisputed that Calton had been previously cited by the T.C.C.A. for abusing the writ process in Texas. See Appendix "F" app.p. 8-9. Thus in light of the same there were a fixed set of procedural rules in place to be utilized as a guide by the Texas Courts for the resolution of a prisoner such as Calton who files a post-abuse Tex. Code of Crim. Proc. Art. 11.07 application for writ of Habeas Corpus when an applicant in Texas has been previously cited for abuse of the writ process. The trial court has a limited responsibility:

- (1) First the trial court should not consider the merits of any application for writ of Habeas Corpus filed by that applicant.
- (2) Second the trial court should review the application and make findings that this applicant has abused the writ of Habeas Corpus in the past.
- (3) Finally the trial court should direct the district clerk to forward the writ transcript to the T.C.C.A. so that Court can conduct its automatic review.

See Ex Parte Oora 548 SW2d 392, 394 (Tex. Crim. App. 1977). When a previously cited for abuse of the T.C.C.P. Art. 11.07 writ process

Applicant files a second or subsequent application. Determination of whether an applicant has established 'good cause' for filing a post-abuse writ application is a matter for the T.C.C.A. See *Dora* 548 sw2d at 394. In cases where it has previously been determined that an applicant has abused the writ process, the T.C.C.A. has the following responsibility:

- (1) First upon receiving the writ transcript from the trial court, the T.C.C.A. reviews the applicant's allegations of 'good cause' for allowing a refiling of the application, and if applicant has "stated facts, which, if true, would entitle him to relief"; then order the application be filed and considered on its merits.
- (2) Second if the T.C.C.A. determines that applicant has established 'good cause' for allowing a refiling, the T.C.C.A. will remand the petition to the trial court for fact-finding since the T.C.C.A. is not a fact-finding agency.
- (3) Finally if the T.C.C.A. determines that the applicant has not established 'good cause' for allowing a refiling, or if his factual allegations concerning 'good cause' are clearly without merit upon their face, then the application is not filed or otherwise considered.

See *Dora* 548 sw2d at 394. Since there was no doubt Catton had been previously cited for abusing the T.C.C.P. Art. 11.02 writ process. The trial court could only enter such findings and order to establish the same. For which the trial did on 6-13-17 - See Appendix "B" app. p. 2. Said order also directed the district clerk to forward the writ transcript to the T.C.C.A. for the T.C.C.A.'s automatic review of the post abuse application. For the ascertainment of whether 'good cause' was shown. See *Id.* *Dora*, *supra* makes clear that Catton had shown 'good cause' and alleged a colorable claim. In stating a colorable claim, a petitioner is merely required to allege facts which, if true, would entitle him to relief. See e.g. *Earp v Oronski* 431 F3d 1158, 1167 (9th Cir 2005) Had Catton not established 'good cause' and alleged a colorable claim. The T.C.C.A. would not

have considered the underlying post-abuse application. See *Dora* 548 SW2d at 394 ("If the Court determines that the applicant has not established 'good cause' for allowing a refiling or his factual allegations, concerning 'good cause' are clearly without merit upon their face, then the application is not filed or otherwise considered"). In fact when post abuse applications do not meet the requirements set out in the abuse of writ order previously entered. The T.C.C.A. by order will make it clear that the application is deficient in that regard and the T.C.C.A. will also make it clear the Court will take no action on the application. See e.g. Appendix "222" app.p.226. Unlike the order entered by the TCCA on 10-3-18 in reference to a different post abuse application the T.C.C.A. took no action on. *Id.* The post-abuse application in question was considered on the merits by the T.C.C.A. on 7-12-17. See Appendix "A" app.p.1. This is so because in Texas when the T.C.C.A. denies a claim without written order it is a merits review. See *Jackson v Johnson* 150 F3d 520, 524 (5th Cir 1998) ("Noting the denial of relief by the Texas Court of Criminal Appeals serves, under Texas law to dispose of the merits of a particular claim") (citing *Ex Parte Torres* 943 SW2d 469, 472 (Tex. crim. App. 1996)) ("In our writ jurisprudence a 'denial' signifies that we addressed and rejected the merits of a particular claim"). In light of the T.C.C.A.'s denial of Carlton's claims on 7-12-17 without first having remanded the cause to the trial court. After the TCCA determined Carlton was in entitled to a merits review. Was in direct contravention of *Dora*, *supra* and in violation of due process. See *Dora* 548 SW2d at 394. ("If the T.C.C.A. determines that applicant has established 'good cause' for allowing a refiling of the application and if applicant has stated facts, which, if true, would entitle him to relief, The T.C.C.A. will order the application be filed, considered on the merits and the T.C.C.A. will remand the petition to the trial court for fact finding. Since the T.C.C.A. is not a fact-finding agency"); *Graham v Board of Pardons and Paroles* 913 SW2d 745, 751 (Tex. App. Austin, 1996, writ dismissed) ("An evidentiary hearing affords essential requisites of due process. A hearing before a district judge, the right to counsel, time to pre-

pare for the hearing, transcription of the hearing and written findings of fact and conclusion of law by the trial court. We hold Texas Const. guarantees Graham the right to a hearing on his Actual Innocence claim". The T.C.C.A.'s violation of Calton's Due Process rights is established by its failure to afford a hearing promulgated by this Court in Townsend v. Jani, Supra. The guarantees of Due process call for a hearing appropriate to nature of the case. Cf. U.S. v. Raddatz 100 S.Ct. 2406, 2413 (1980). How could the T.C.C.A. decide when the court had not heard? See Morgan v. U.S. 298 U.S. 468, 481 (1936) ("The one who decides must hear"); Price v. Johnston 334 U.S. 266, 291 (1948) ("Appellate Courts cannot make factual determinations which may be decisive of vital rights, where the crucial facts have not been developed"). The T.C.C.A.'s 7-12-17 order denying relief without hearing is invalid. See Morgan 298 U.S. at 473 ("Appellants rightly assert that the granting of that hearing is a prerequisite to the making of a valid order.") **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Allen "F" Calton

Date: July 13, 2020