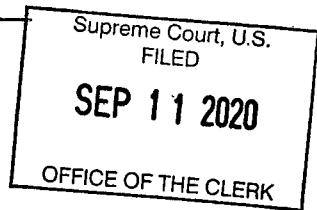


No 20-5761 **ORIGINAL**

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE ANTONIO M. BOGAN



PETITION FOR WRIT OF HABEAS CORPUS

Antonio M. Bogan  
ID No. R29595  
10930 Lawrence Road  
Sumner, IL 62466  
PRD SE

## QUESTION PRESENTED

After more than 14 months of the United States District Court for the Northern District of Illinois delaying ruling on Mr. Bogan's original petition for writ of habeas corpus - and Mr. Bogan petitioning the United States Court of Appeals for the Seventh Circuit for a writ of mandamus to compel a prompt, just decision - the district court denied the petition and a certificate of appealability (COA) without fair consideration and plenary processing of the Jackson v. Virginia, 443 U.S. 307 (1979) claim.

Subsequently, Mr. Bogan's request for a COA was denied by the Seventh Circuit Court of Appeals, not through a threshold inquiry, but by using a false procedural ground to disregard the issues in the COA request. The question presented is :

- I. Whether habeas corpus relief is being denied where (a) the State of Illinois failed to prove the substantive elements of constructive possession - Mr. Bogan's (1) immediate and exclusive control of a car containing a defaced handgun and (2) knowledge of the weapon being therein; (b) the district court, as retaliation, deprived Mr. Bogan of a full and fair hearing; and (c) the court of appeals, in collusion with the district court to deny a full and fair hearing, deprived Mr. Bogan of a full and fair COA hearing.

;

## REASONS FOR NOT MAKING APPLICATION TO DISTRICT COURT OF DISTRICT OF CONFINEMENT

Pursuant to 28 U.S.C. § 2242, the reasons Mr. Bogan decided to make application in the United States Supreme Court rather than the United States District Court for the Southern District of Illinois is because application to the district court would have been futile, as a previous petition and COA had been denied and the court retains no authority to overrule a sister district court or a court of appeals. Moreover, the way Mr. Bogan's previous petition was treated by the district court and the court of appeals leads him to believe he will not receive a full and fair hearing in any court other than the Supreme Court of the United States.

## LIST OF PARTIES

Antonio M. Bogan, Petitioner

Deanna M. Brookhart, Warden, Respondent  
Lawrence Correctional Center

## RELATED CASES

- People v. Bogan, No. 3-15-0156, Third District Appellate Court of Illinois. Judgment entered April 3, 2017.
- People v. Bogan, No. 122365, Supreme Court of Illinois. Judgment entered September 27, 2017.
- Bogan v. Lashbrook, No. 17-cv-7294, U.S. District Court for the Northern District of Illinois. Judgment entered January 14, 2019.
- In re Antonio M. Bogan, No. 18-3680, U.S. Court of Appeals for the Seventh Circuit. Judgment entered January 23, 2019.
- In re Antonio M. Bogan, No. 19-1566, U.S. Court of Appeals for the Seventh Circuit. Judgment entered April 16, 2019.
- Bogan v. Brookhart, No. 19-1690, U.S. Court of Appeals for the Seventh Circuit. Judgment entered December 26, 2019.
- Bogan v. Brookhart, No. 19-8109, Supreme Court of the United States. Judgment entered April 27, 2020.
- In re Antonio M. Bogan, No. 20-2631, U.S. Court of Appeals for the Seventh Circuit. Judgment entered September 8, 2020.

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## EXHAUSTION OF REMEDIES

Mr. Bogan challenged the sufficiency of the evidence on direct appeal before the Illinois Third District Appellate Court. A true and accurate copy of the Court's opinion appears at Appendix C to the petition.

After his convictions were affirmed on direct appeal, Mr. Bogan timely petitioned the Illinois Supreme Court for leave to appeal. A true and accurate copy of the Court's decision appears at Appendix D to the petition.

After being denied leave to appeal by the Illinois Supreme Court, Mr. Bogan timely petitioned the U.S. District Court for the Northern District of Illinois for a writ of habeas corpus. A true and accurate copy of the Court's opinion appears at Appendix E to the petition.

After the district court denied his timely motion to alter or amend judgment, Mr. Bogan timely requested a COA from the U.S. Court of Appeals for the Seventh Circuit. A true and accurate copy of the Court's order appears at Appendix N to the petition.

After the Court of Appeals denied his timely motion to reconsider, Mr. Bogan timely petitioned the U.S. Supreme for a writ of certiorari. A true and accurate copy of the Court's decision appears at Appendix P to the petition.

## JURISDICTION

Pursuant to 28 U.S.C. § 2254(a), the Court has jurisdiction to entertain Mr. Bogan's application for writ of habeas corpus because he contends that he is in custody of the State of Illinois in violation of the Constitution of the United States.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### Article I, Section 9, Clause 2, United States Constitution

The Privilege of the Writ of Habeas Corpus shall not be Suspended, unless in cases of Rebellion or Invasion the public Safety may require it.

### Amendment V, United States 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 offense 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 life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### Amendment XIV, United States Constitution

All persons born or naturalized in the United States, and Subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall

make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of life, liberty, or property, without due process of law ; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 2253

- (a) In a habeas corpus proceeding or a proceeding under Section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
- (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.
- (c)(i) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from —
  - (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court ; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2254(a)

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. § 2254(d)(1)

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim —

resulted in a decision that was contrary to, or invol-

ved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

720 ILCS 5/24-1.7(a)(1)

A person commits the offense of being an armed habitual criminal if he receives, sells, possesses, or transfer any firearm after having been convicted a total of two or more times of a forcible felony.

720 ILCS 5/24-5 (b)

A person commits defacing identification marks of a firearm if he possesses any firearm upon which any importer's or manufacturer's serial numbers have been changed, altered, removed, or obliterated.

## STATEMENT OF THE CASE

### State Trial Court Proceedings

On October 7, 2014, Mr. Bogan began a bench trial for the charges of armed habitual criminal (720 ILCS 5/24-1.7 (a)(1) (West 2012)) and defacing identification marks of a firearm (720 ILCS 5/24-5(b) (West 2012)) based on a defaced Hi-Point .40 caliber handgun being found in a car registered in his name. Appx. A at pg. 144-45.

During trial, Officer John Byrne testified that on July 27, 2013, he received information to be on the lookout for Mr. Bogan, possibly driving a white Impala. *Id.* at 150. Upon observing a white Impala enter the parking lot of an apartment complex, Ofc. Byrne performed a traffic stop of the car. *Id.* The Impala was occupied by three individuals absent Mr. Bogan. *Id.* at 151, 153. As Ofc. Byrne was pulling into the parking lot behind the Impala, he observed Mr. Bogan sitting on a patio of one of the apartment buildings. *Id.* at 151. Ofc. Byrne observed Mr. Bogan enter the building for a moment before returning outside. *Id.* at 152. In the parking lot was an Oldsmobile Cutlass Supreme registered to Mr. Bogan at that address, which Ofc. Byrne kept watch over until a search warrant was acquired. *Id.*

Sergeant Larry Collins testified that he was part of an assignment looking for Mr. Bogan. *Id.* at 156. Upon being made aware of Mr. Bogan being located at the 1900 block of Moore, Sgt. Collin headed to the location. *Id.* When Sgt. Collins arrived, he observed Mr. Bogan exiting an apartment building. *Id.* at 157. Sgt. Collins and two other officers immediately took Mr. Bogan into custody. *Id.* at 158

Detective Jeffrey German testified that upon being notified that Mr. Bogan had been located at the 1900 block of Moore, he went to the location and observed Mr. Bogan in the back of a police car. *Id.* at 196. Mr. Bogan had his iPhone in his possession, which Det. German confiscated. *Id.* at 197-98. Det. German received written consent from Mr. Bogan to search an apartment believed to be his. *Id.* at 198. Later, Det. German obtained a search warrant for the Cutlass. *Id.* at 202. To commence the search of the car, Det. German used a slim jim to forcibly enter it due to not finding its key in Mr. Bogan's possession or in the apartment believed to be his. *Id.* at 227-28. During the search, Det. German discovered on the backseat of the car a garment bag concealing an AR-15 (.223 caliber) style rifle. *Id.* at 204-06. The car also had items piled up on the rear driver's side floorboard: on top was a red plastic bag containing an expired health insurance card with Mr. Bogan's name on it, amongst

other miscellaneous items (Id. at 206-09); beneath the plastic bag were two handguns (a Ruger .22 caliber and a Hi-Point .40 caliber) wrapped in a black sweatshirt (Id. at 210-12); and underneath the sweatshirt and handguns was a black canvas bag containing five empty rifle magazines and two boxes of ammunition (.32 caliber and .223 caliber). Id. at 215-17. On the front passenger seat were two receipts bearing Mr. Bogan's name, dated more than four months prior to the car's search. Id. at 217-21.

Evidence Technician Chris Delaney testified to being present to photograph the evidence as Det. German searched the car. Id. at 170-72. After the search, Mr. Delaney took the evidence back to the police station. Id. at 173. At the police station, Mr. Delaney dusted the two boxes of ammunition for fingerprints. Id. at 182-84. Two fingerprints were lifted off the box of .223 rifle ammunition. Id. at 186-87.

Fingerprint Expert Michael Murphy testified that Mr. Bogan's fingerprint matched one of the prints lifted from the box of .223 rifle ammunition. Id. at 252-63. Mr. Murphy could not determine when the print was put on the box or how long it had been there. Id. at 266.

Officer Christopher Botzum testified that he recovered two

photos of what appeared to be a rifle from Mr. Bogan's iPhone. *Id.* at 299-301. Dfc. Botzum did not know who took the photos or if the dates associated with the photos were correct. *Id.* at 302-04.

At the close of the State's evidence, Mr. Bogan and the State stipulated to (1) the Hi-Point handgun being fingerprinted and no prints being found on it; (2) the weapon being defaced; and (3) Mr. Bogan having two prior convictions for armed robbery (forcible felonies). *Id.* at 309-13.

Mr. Bogan testified that the Cutlass was registered in his name as a favor for his god-brother, Anton Spencer, and Spencer girl-friend, Micah Smith.<sup>1</sup> *Id.* at 350-53, 359, 369. The car Mr. Bogan owned was the white Impala, although it wasn't registered in his name. *Id.* at 363, 380-81. On the day of Mr. Bogan's arrest, the Cutlass was not in the apartment complex's parking lot until Spencer's arrival. *Id.* at 381-82. Spencer left the Cutlass in the parking lot as he rode to Auto Zone in Mr. Bogan's Impala with two friends of Mr. Bogan. *Id.* at 364-56. The last time Mr. Bogan had been in the Cutlass was March, 2013, when he helped Spencer retrieve it from an impoundment lot and when Spencer drove him to Walmart to money-gram a friend.

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1. The court reporter misconstrued Micah's last name as "Schmidt," but Mr. Bogan notified the court that he was saying "Smith". *Id.* at 369-70.

\$50. *Id.* at 356, 379-80, 385-86. Mr. Bogan surmised that the expired health insurance card ended up in the car as a result of Spencer having unrestricted access to his apartment. *Id.* at 357. In regard to his fingerprint being found on the box of .223 rifle ammunition, Mr. Bogan admitted to touching the box when Spencer showed him the ammo and rifle after Spencer purchased them. *Id.* As to the photos of the rifle on his iPhone, Mr. Bogan testified that they were texted to him by Spencer. *Id.* Mr. Bogan denied putting any weapons in the Cutlass. *Id.* at 358.

Based on his legal ownership of the Cutlass and other indicators of ownership, the Court adjudged Mr. Bogan guilty of both charges. *Id.* at 433-35. The Court subsequently sentenced Mr. Bogan to 30 years (at 85%) for the armed habitual criminal count and 5 years (at 50%) for the defacing identification marks of a firearm count, to be served concurrently.

Appx. B.

### State Appellate Court Proceedings

On direct appeal, Mr. Bogan argued before the Illinois Third District Appellate Court that the evidence was insufficient to prove him guilty beyond a reasonable doubt. Appx. C at para. 1, 22. Specifically, Mr. Bogan argued that the State failed to prove he possessed the defaced handgun. *Id.*

The court stated that since Mr. Bogan was not found in actual possession of the weapon, the State was required to prove he constructively possessed it - his (1) knowledge of the presence of the weapon and (2) immediate and exclusive control over the area where the weapon was found. *Id.* at 27-28.

In analyzing the immediate and exclusive control element for establishing constructive possession, the court stated that owners, at times, give up complete control of their vehicle, thus making control of a vehicle, rather than legal ownership, the pertinent element to prove under Illinois law. *Id.* at 31-32. Nonetheless, the court concluded that Mr. Bogan's immediate and exclusive control of the Cutlass was established by his legal ownership of the car and the evidence tying him to it. *Id.* at 33-42.

As to the knowledge element for establishing constructive possession, the court concluded that Mr. Bogan's "regular, ongoing control" (derived from his legal ownership) of the Cutlass creates a reasonable inference that he knew the defaced handgun was in the car. *Id.* at 44-48.

The court affirmed Mr. Bogan's convictions. *Id.* at 50-51. Thereafter, Mr. Bogan timely petitioned the Illinois Supreme Court for leave to appeal, which was denied. Appx. D.

## Federal District Court Proceedings

On October 10, 2017, Mr. Bogan filed his 28 U.S.C. § 2254(d)(1) petition for writ of habeas corpus, contending that the State failed to prove the substantive elements of constructive possession – specifically, his “actual possession” of the car containing the defaced handgun – as defined by Illinois law. Appx. E.

In answering Mr. Bogan’s petition, the Respondent (Warden Jacqueline Lashbrook of Menard Correctional Center) acquiesced to Mr. Bogan exhausting his State remedies before timely petitioning for habeas relief. Appx. F at para. 1-6. Mr. Bogan’s contention of the State being required to prove his “actual possession” of the Cutlass to establish his constructive possession of the defaced handgun found within, however, was not addressed by the Respondent. *Id.* at pg. 3-5.

Mr. Bogan replied to the Respondents’ answer by demonstrating that the State courts unreasonably applied the Jackson v. Virginia, 443 U.S. 307 (1979) standard. Appx. G. First, complying with *Jackson*, Mr. Bogan referenced Illinois law defining the constructive possession element of “immediate and exclusive control” as

"actual possession" of the area containing contraband. *Id.* at pg. 8-9. Next, Mr. Bogan argued that the State failed to prove his actual possession - and intent and capability to exercise actual possession - of the cutlass on the day the defaced handgun was found. *Id.* at 9-19. Lastly, Mr. Bogan argued that the State failed to prove his knowledge of the weapon being in the car. *Id.* at 19-24.

For more than 14 months, the court delayed ruling up-on Mr. Bogan's habeas claim, thus prompting Mr. Bogan to petition the court of appeals for a writ of mandamus to compel a prompt, just decision on his habeas petition. See In re Antonio M. Bogan, 18-3680. Less than a month later (before the court of appeals ruled on the mandamus petition), the court denied Mr. Bogan's habeas petition and declined to issue a COA. Appx. H at pg. 1. In so doing, the court falsely claimed that Mr. Bogan argued "actual possession of the subject handgun." (*Id.* at 7 n.3), when he truly argued actual possession of the car con-taining the subject handgun (Appx. G at pg. 9-15). More-over, the court did not reference, nor address Mr. Bogan's citation of, Illinois authorities explicitly defining the Sub-stantive elements of constructive possession.

Mr. Bogan timely moved the court to alter or amend its judgment, which was denied. Appx. I. Eight days later, Mr. Bogan filed his notice of appeal. Appx. J.

### Federal Court of Appeals Proceedings

Eleven days after his appeal was docketed in the Court of Appeals, Mr. Bogan formally moved the Court for a COA, arguing that the State failed to prove the substantive elements of constructive possession and the district court failed to provide a full and fair Jackson review. Appx. K. Approximately, four months later, Mr. Bogan supplemented his arguments. Appx. L.

In denying Mr. Bogan's request for a COA, the Court concluded that there was no substantial showing of the denial of right in Mr. Bogan's habeas petition being dismissed as untimely. Appx. N. Although Mr. Bogan's timely petition for rehearing argued that the Court overlooked or misapprehended (1) his petition was not dismissed as untimely but denied on the (alleged) merits, (2) his notice of appeal was timely, and (3) his COA requests presented issues reasonable jurist could debate over or disagree with how his petition was resolved, the Court denied reconsideration. Appx. O. The Supreme Court subsequently denied certiorari review of the COA denial. Appx. P. Shortly thereafter, the court of appeals denied mandamus relief. See In re Antonio M. Bogan, No. 20-2631 (7<sup>th</sup> Cir.)

## REASONS FOR GRANTING THE WRIT

Given explicit recognition in our Federal Constitution is the citizen's right to the Writ of Habeas Corpus. U.S. Constitution, Art. I, § 9, Cl. 2. It is axiomatic that the Writ's historic office is Vindication of due process - to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Fay v. Noia, 372 U.S. 391, 401-02 (1963).

Pursuant to 28 U.S.C. § 2254(a), the Court has authority to entertain a petition for writ of habeas corpus in behalf of a person in custody as a result of a State judgment if custody in violation of the U.S. Constitution is contended. In such situations, § 2254(d)(1) authorizes the Court to grant relief if the State court decision on the merits "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States."

The "unreasonable application of" clause of § 2254(d)(1) requires the State court to have correctly identified the governing Supreme Court precedent but unreasonably applied it to the unique facts of the prisoner's case. Williams v. Taylor, 529 U.S. 362, 405 (2000). The State court decision is reviewed under an objective standard. *Id.* at 410-11. In other words, the Court must ask whether the State court decision "was

so lacking in justification that there was error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." Harrington v. Richter, 562 U.S. 86, 103 (2011). Accordingly, habeas relief should be granted unless the record, under any reasonable interpretation of the Supreme Court's controlling legal standard, supports the convictions. Panetti v. Quarterman, 551 U.S. 930, 953 (2007).

In this petition, Mr. Bogan contends (1) the State appellate court identified the correct standard of review for his challenge to the sufficiency of the evidence but unreasonably applied it to the unique facts of his case and (2) the lower Federal Courts refused to accord his habeas claim the full and fair hearing it is entitled to. Therefore, Mr. Bogan seeks the Court's discretionary intervention lest he's forced to remain unlawfully imprisoned for the next 19 years.

### Standard of Review

When the sufficiency of the evidence is challenged, courts must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Appx. C at para. 25; Jackson, 443 U.S. at 319.

A. The Essential Elements For Proving Constructive Possession Under Illinois Law.

It is unequivocal that possession of a firearm is an essential element for establishing armed habitual criminal (720 ILCS 5/24-1.7(a)(1) (West 2012)) and defacing identification marks of a firearm (720 ILCS 5/24-5(b) (West 2012)). When actual possession of a firearm is not at issue, constructive possession becomes the State's burden to prove. Appx. C at para. 27. The essential elements of constructive possession is (1) knowledge of the presence of the weapon and (2) immediate and exclusive control of the area where the weapon was found. People v. Hunter, 2013 IL 114100 at 19.

In regard to the "immediate and exclusive control" element for establishing constructive possession of a firearm found in a vehicle, the State is literally obligated with proving "actual possession" of the vehicle wherein the weapon is found. People v. Schmalz, 194 Ill. 2d 75, 79 (2000) (defining "immediate and exclusive control" interchangably as "actual possession"); People v. White, 33 Ill. App. 3d 523, 531 n.3 (1975) (constructive possession requires actual possession of the locus in or on which the pistol is found); People v. Billings, 52 Ill. App. 3d 414, 421 (1977) (same); and People v. Elders, 63 Ill. App. 3d 554, 559 (1978) (same).

Mr. Bogan contends that the State utterly failed to prove his immediate and exclusive control (actual possession) of the Cutlass wherein the defaced Hi-Point .40 caliber handgun was found, and his knowledge of the weapon being therein.

I. The State Failed To Prove Mr. Bogan's Immediate And Exclusive Control (Actual Possession) Of The Car Containing The Defaced Handgun.

Had the State appellate court "provided fair process and engaged in reasoned, good-faith decision-making when applying Jackson's 'no rational trier of fact' test" (Gomez v. Acevedo, 106 F.3d 192, 199 (7<sup>th</sup> Cir. 1997)), it is plausible Mr. Bogan's convictions would have been reversed. This is because there was absolutely no evidence of Mr. Bogan's immediate and exclusive control (actual possession) of the car containing the defaced handgun.

The undisputed facts establishes that neither the State's witnesses nor its evidence placed Mr. Bogan in actual possession of the Cutlass on the day the weapon was found; he was not observed entering, exiting, an occupant of or in close proximity to the car. Appx. C at para. 4-13. In fact, the officer (Sgt. Collins) who actually arrested Mr. Bogan testified that he did so immediately upon Mr. Bogan exiting an apartment building (Appx. A at pg. 157-58), a pertinent fact omitted by

the State appellate court, Mr. Bogan didn't even have the key to the car, resulting in a slim jim being used to forcibly enter it in order to perform the search. *Id.* at 227-28; Appx. C at para. 10.

To support his contention of his convictions being objectively unreasonable, Mr. Bogan cites three Illinois authority and one federal authority - People v. Zentz, 26 Ill. App. 3d 265 (1975) (Defendant's firearm conviction reversed where the State presented no evidence of him having actual possession of or the key to a parked, locked car officers had to forcibly enter to find a shotgun); People v. Elders, 63 Ill. App. 3d 554 (1978) (There was no evidence of constructive possession of a pistol found in a parked car the defendant did not have actual possession of or the key to); People v. Scott, 367 Ill. App. 3d 283 (2000) (Without the key to the mailbox, the defendant could not control what he could not access, thus requiring one of his drug convictions to be reversed); United States v. Medrano, 5 F.3d 1214 (9<sup>th</sup> Cir. 1993) (One drug conviction based on constructive possession reversed where officers put drugs in the defendant's car and failed to return the vehicle's key to him).

Insofar as *Zentz* and *Elders* presented facts analogous to Mr. Bogan's case, noted in both cases are the courts' observation of the State's failure to adduce evi-

dence of the defendants' respective ownership of the vehicles containing weapons, something that the State accomplished in Mr. Bogan's case (Appx. C at para. 6, 31). Ownership of a vehicle in constructive possession case, however, is not a substantive element to prove. Under Illinois law, it is immediate and exclusive control (actual possession) of the vehicle, rather than ownership, which is pertinent to proving constructive possession of contraband found therein. People v. McNeely, 99 Ill. App. 3d 1021, 1025 (1981); People v. Whelan, 145 Ill. App. 3d 125, 130-31 (1986); People v. Sesmas, 227 Ill. App. 3d 1040, 1049 (1992); and People v. Chavez, 327 Ill. App. 3d 18, 26 (2001). The State appellate court even acquiesced to this well-established holding. Appx. C at para. 31-32

Although the requisite element of Mr. Bogan's immediate and exclusive control of the car containing the defaced handgun was "well understood and comprehended in existing law beyond any possibility for fairminded disagreement" (Richter, 562 U.S. at 103), the State appellate court nullified it. In so doing, the court egregiously concluded that Mr. Bogan's legal ownership of the car, fingerprint being found on a box of ammunition he was not charged with and unrelated to the defaced .40 caliber, expired health insurance card and four-month old receipts constitutes his immediate and exclusive control of the car. Appx. C at para. 33-34, 36. This is objectively unreasonable

in light of (1) it is unsupported by authorities and (2) it opposes authorities defining the "immediate and exclusive control" element of constructive possession as "actual possession" of the area wherein contraband is found. *Supra* at pg. 18. The fact of the matter is logic and everyday circumstances dictates that if a person is a "legal owner" of a vehicle, their fingerprints and item bearing their name can reasonably be expected to be found in the vehicle, even when it is parked after being in possession of someone other than the owner.

Likewise egregious is the State appellate court's inference of Mr. Bogan being a "regular driver" of the Cutlass, thus establishing his immediate and exclusive control of the car. Appx. C at para. 36. The court's determination is objectively unreasonable for four reasons: (1) it is unsupported by authority; (2) the State presented no evidence of Mr. Bogan ever driving the car; (3) the substantive element of constructive possession is immediate and exclusive control (actual possession) of the car, not being a regular driver; and (4) if owners are known to sometimes give up complete control of their vehicle (*Id.* at 32), making their actual possession of the vehicle periodically temporal and fleeting, it is plausible the same holds true for regular drivers.

As there was no evidence of Mr. Bogan having the substantive element of immediate and exclusive control (actual

possession) of the car containing the defaced handgun, as required by Illinois law, no rational trier of fact could have found him guilty of constructively possessing the weapon beyond a reasonable doubt. Consequently, the State Courts' decision to the contrary "was so lacking in justification that there was error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." Richter, 562 U.S. at 103.

In sum, the State Courts unreasonably applied Jackson's "no rational trier of fact" test in Mr. Bogan's case, thus the Court should grant habeas relief pursuant to § 2254(d)(1).

## 2. The State Failed To Prove Mr. Bogan's Knowledge Of The Defaced Handgun Being In The Car.

Under Illinois law, "the mere presence of a weapon is insufficient to prove [the defendant] had knowledge of the weapon." People v. Wright, 2013 IL APP (1<sup>st</sup>) 111803 at 26. For the inference of Mr. Bogan's knowledge to arise, the defaced handgun had to be found in an area under his immediate and exclusive control. People v. Smith, 191 Ill. 2d 408, 413 (2000).

Having already demonstrated that the evidence adduced at Mr. Bogan's trial failed to establish the constructive possession element of "immediate and exclusive control" of the car wherein the defaced handgun was found (supra at 19-23), it natural-

ly follows that the "knowledge" element was not established either. Nonetheless, relying on Mr. Bogan's legal ownership of and evidence tying him to the car, the State appellate court concluded differently. Appx. C at para. 46-47.

Once again, the State appellate court's decision "was so lacking in justification that there was error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. at 103. This is because none of the evidence the State courts relied on proved Mr. Bogan had been inside the Cutlass on the day the defaced handgun was found. Absent such evidence, it is arbitrary, egregious and objectively unreasonable for any rational trier of fact to conclude beyond a reasonable doubt Mr. Bogan knew the weapon was in the car. In fact, there was absolutely no evidence of Mr. Bogan even knowing the gun existed - after all, it was fingerprinted and his prints were not found on it. Appx. A at pg. 309-10.

In an attempt to support its conclusion, the State appellate court cited People v. Hampton, 358 Ill. App. 3d 1029, 1032 (2000), where it was stated :

"[I]n order for the inference to arise of defendant's knowledge of the handgun within the vehicle's glove compartment, the State had to demonstrate that defendant had regular, ongoing control over the vehicle he was driving,

similar to the regular and ongoing control that one has over his own living quarters. Regular and ongoing control over a vehicle might be established through proof that the defendant owns or regularly drives the vehicle.”

Appx. C at para. 45-46.

The Court’s reliance of this statement to support its determination is a vast misapplication of *Hampton’s* rationale — that knowledge of contraband may be inferred from evidence that the defendant is not only driving (or actually possessing) the vehicle containing it but also owns or regularly drives it. To hold otherwise is to abrogate the “immediate and exclusive control” element for establishing constructive possession and creates culpability based solely on an inference of knowledge derived from legal ownership. This creates a dangerous precedent where owners, although not in possession of their vehicle but allowing someone else to possess it, being responsible for contraband found therein.

On a different note, Mr. Bogan’s knowledge of the weapon is negated by the key to the Cutlass not being found in his possession or the apartment believed to be his. Appx. A at pg. 227-28. By the key being in possession of someone other than Mr. Bogan, it is entirely possible for the weapon to have been placed in the car without Mr. Bogan’s awareness. Insofar as the weapon being wrapped in a sweatshirt in between the bag with

Mr. Bogan's expired health insurance card and the bag containing the ammunition box with his fingerprint on it (Appx. C at para. 8, 47), there was no evidence of who placed the weapon in the car and when it occurred. See United States v. Salas, 56 F. Supp. 3d 902, 907 (N. D. Ill. 2014) (Defendant's knowledge of the firearms could not be inferred in light of the weapons not being in plain view and the lack of evidence indicating who placed them in the bedroom and when that occurred).

The fact of the matter is Mr. Bogan testified to his god-brother, Anton Spencer, having been in possession of the Cutlass on the day the defaced handgun was found. Appx. A at pg. 354-56, 381-82. As there was no evidence to refute Mr. Bogan's testimony,<sup>2</sup> the likelihood of the weapon being placed in the car unbeknownst to Mr. Bogan is bolstered. The State appellate court, in concluding otherwise (Appx. C at para. 40 n. 5), resorted to speculation - a prohibited act. People v. Ehler, 211 Ill. 2d 192, 210 (2004) (A reviewing court should not speculate in favor of the prosecution). By the car's key not being in Mr. Bogan's possession and no evidence of him entering the car on the day the weapon was found, who knows, maybe

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2. Ofc. Byrne testified to detaining Spencer after stopping Mr. Bogan's Impala; however, there was no testimony of him searching Spencer and not finding the key to the Cutlass on him. Appx. A at pg. 148-55.

Spencer (or whoever he may have given the key to) placed the weapon in the Cutlass and notified the police to get Mr. Bogan charged with it. Reasonable doubt of Mr. Bogan's knowledge is embedded in such a scenario.

As there was no evidence of Mr. Bogan having the substantive element of knowledge of the defaced handgun being in the car, as required by Illinois law, no rational trier of fact could have found him guilty of constructively possessing the weapon beyond a reasonable doubt. Consequently, the State Courts' decision to the contrary "was so lacking in justification that there was error well understood and comprehended in existing law beyond any possibility for fairminded disagreement. *Pichter*, 562 U.S. at 103.

In sum, the State courts unreasonably applied Jackson's "no rational trier of fact" test in Mr. Bogan's case, thus the Court should grant habeas relief pursuant to § 2254(d)(1).

#### B. The District Court, As Retaliation, Deprived Mr. Bogan Of A Full And Fair Habeas Hearing.

It is axiomatic that the office of the writ of habeas corpus is intended to afford a prompt, efficacious remedy in all cases of illegal restraint and confinement. *Fay*, 372 U.S. at 401-02. In other words, its essential function is to give

a prisoner a reasonable opportunity to obtain a reliable judicial determination of the fundamental legality of his convictions and sentence. Carafas v. LaValle, 391 U.S. 234, 238 (1968). Accordingly, the Court and Congress has emphasized that petitioners in habeas corpus proceedings are entitled to careful consideration and plenary processing of their claims so as to safeguard against arbitrary detention. Harris v. Nelson, 394 U.S. 286, 298 (1969).

In Mr. Bogan's case, the district court deprived him of every essential provision embedded in the right of habeas corpus, thus continuing his unlawful imprisonment in violation of his Fifth and Fourteenth Amendment rights to due process and equal protection of the laws. A vivid picture of this is painted by the following events:

When Mr. Bogan filed his petition for writ of habeas corpus and response in further support of it (Appx. E, G), he desired only what the office of the writ intended - a swift, just decision. Nevertheless, the district court delayed adjudication for more than 14 months, which led Mr. Bogan to petition the Seventh Circuit Court of Appeals for a writ of mandamus to compel the district court to forthwith and justly decide his habeas petition. See In re Antonio M. Bogan, 18-3680. However, before the Court of appeals ruled

on the mandamus petition, the district court denied the habeas claim and declined to issue a COA. Appx. I at pg. 1. In so doing, the court did not accord Mr. Bogan a full and fair hearing.

As an initial matter, the court stated that Mr. Bogan argued that the State failed to establish his "actual possession of the subject handgun." Appx. I at pg. 7 n.3. The court's assertion, however, is untrue - Mr. Bogan argued that the State failed to prove his actual possession (immediate and exclusive control) of the car wherein the defaced handgun was found. Appx. E at pg. 8, 11 ; Appx. G at pg. 8-15.

But Mr. Bogan's main contention of the court depriving him of a full and fair hearing is premised on the standard of review governing his challenge to the sufficiency of the evidence - *Jackson v. Virginia*. There, the Court mandated that the "standard must be applied with explicit references to the substantive elements of the criminal offense as defined by state law." *Jackson*, 443 U.S. at 324 n.16.

In deciding Mr. Bogan's claim, the court did not comply with *Jackson*; its opinion (Appx. I) is completely devoid of Illinois authorities explicitly defining the substantive

elements of constructive possession (the base element to Mr. Bogan's convictions). Without such references, it is impossible to ascertain whether the Court independently knew and assessed the elements needed to prove Mr. Bogan's guilt and, more importantly, whether it reasonably determined that Mr. Bogan's convictions are not unreasonable applications of *Jackson*. The Court's independent assessment of Mr. Bogan's claim is further questioned by its neglect (or refusal) to address - to distinguish or otherwise give reasoning not to follow - the authorities Mr. Bogan cited in his response (Appx. G).

Attempting to acquire a full and fair *Jackson* review, Mr. Bogan moved the Court for relief of judgment; however, the Court refused to correct its legal errors.

First, the court stated, "it is not required to cite Illinois cases when applying that law." Appx. M at pg. 2. This can't be right when *Jackson* (443 U.S. at 324-25) and numerous courts within the Seventh Circuit (Gomez, 106 F.3d at 200; Ford v. Ahitow, 104 F.3d 926, 939 (1997); United States ex rel. Leyva v. Walls, 230 F.Supp. 2d 847, 852 (2002); United States ex rel. Conde v. Scott, 224 F.Supp. 2d 1203, 1206-07 (2002); and Curtis v. Montgomery, 552 F.3d 578, 581-83 (2009)) citing State law when they analyzed the claims before them. Besides, how could it be known what law was

applied if citation to the laws are not provided?

Second, the Court insinuated that it could look to Federal Caselaw for the substantive elements of an offense under Illinois law. Appx. M at pg. 2. Such a notion opposes Coleman v. Johnson, 132 S. Ct. 2060, 2064 (2012), where the Court expressly held that “[u]nder Jackson, federal courts must look to State law for the substantive elements of the criminal offense.” Besides, not one of the federal cases cited by the Court explicitly defines the substantive elements of constructive possession under Illinois law.

Third, the Court stated that it did cite Illinois law when considering Mr. Bogan’s habeas petition. Appx. M at pg. 2. True, the Court cited the Illinois Statutes for armed habitual criminal and identification marks of a firearm, which both requires possession of a firearm (Appx. I at pg. 7); however, it did not cite Illinois authorities defining the substantive elements of possession – constructive to be precise.

The fact of the matter is, although the Antiterrorism and Effective Death Penalty Act (AEDPA) requires Federal Courts to accord deference to State courts’ decisions, the district Court improperly gave absolute deference and refused to perform an independent review of Mr. Bogan’s claim. See Miller-El v. Cockrell, 123 S. Ct. 1029, 1041 (2003) (“Even in

the context of federal habeas, deference does not imply abandonment or abdication of judicial review").

Given the court's decision on Mr. Bogan's habeas petition coming only after he filed the mandamus petition, it is clear that the Court's failure - and subsequent refusal - to adjudicate the claim in full compliance with Jackson was retaliatory. Such an action summarily deprives Mr. Bogan of his Fifth and Fourteenth Amendment rights to due process and equal protection of the laws unless the Court intervenes on his behalf to remedy these constitutional violations.

In sum, Mr. Bogan has no other avenue (see *infra* at 32-35) to acquire the relief he seeks - the reversal of his convictions as a result of a full and fair Jackson review. Wherefore, Mr. Bogan asks the Court to grant his petition for writ of habeas corpus.

C. The Court of Appeals, In Collusion With The District Court To Deny A Full And Fair Habeas Hearing, Denied Mr. Bogan A Full And Fair COA Hearing.

It is well-established that a State prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of the petition. *Miller-El*, 123 S. Ct. at 1039. Before an appeal may be entertained, a prisoner

must first seek a COA from a circuit justice or judge, and a COA may issue only if the prisoner makes a Substantial Showing of the denial of a constitutional right. *Id.* A "Substantial Showing" is where "reasonable jurist could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issue presented were adequate to deserve encourage to proceed further." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

In *Miller-El*, the Court expressly held that a COA determination under 28 U.S.C. § 2253 requires a threshold inquiry — an overview of the claims in the habeas petition and a general assessment of the merits to question whether the district court's resolution of the constitutional claim are debatable or disagreeable amongst jurists of reason. *Miller-El*, 123 S. Ct. at 1039. The statute itself makes it clear that this procedure is indispensable in determining whether a petitioner has made a substantial showing of the denial of a constitutional right for the issuance of a COA. § 2253 (2).

It is unequivocal that Mr. Bogan's requests for a COA contended that his convictions are contrary to Illinois law defining the substantive elements of constructive possession, thus making them unreasonable applications of *Jackson*, and that the district court deprived him of a full and fair

*Jackson* review. Appx. K, L. As the contentions in his COA requests being essentially the same as those made in this petition (Supra. at 18-32), it is clear that Mr. Bogan met his burden of making a substantial showing of the denial of constitutional rights (Fifth and Fourteenth Amendment rights to due process and equal protection of the laws). Nevertheless, the Court of Appeals completely ignored these issues as it continued the violations of Mr. Bogan's rights.

Evident by its order, the Court did not perform a threshold inquiry - an overview and general assessment - of Mr. Bogan's *Jackson* claim and contention of the district court failing to give him a full and fair hearing ; it instead found no substantial showing of the denial of a constitutional right in Mr. Bogan's attempt to appeal the dismissal of his habeas petition as untimely. Appx. N. The problem with this is that the Court's conclusion in reference to the petition's disposition is clearly incorrect - the petition was timely filed (Appx. F at para. C) and the district court's adjudication was not a dismissal as untimely, but denial on the (alleged) merits. Appx. I. Although the court was made aware of these facts and asked to reconsider Mr. Bogan's requests for a COA, it denied reconsideration. Appx. O.

If Mr. Bogan's contentions in his COA requests were truly meritless, the court should not have had a problem

with performing a threshold inquiry and articulating why it finds no substantial showing of the denial of a constitutional right, as opposed to using a knowingly false procedural ground to deny Mr. Bogan a full and fair COA hearing. Thus, it is only reasonable to conclude that the Court's decision was in collusion with the district court to deprive Mr. Bogan of the careful consideration and plenary processing his habeas claim is entitled to (Harris, 394 U.S. at 298). Such an action deprives Mr. Bogan of his Fifth and Fourteenth rights to due process and equal protections of the laws unless the Court intervenes on his behalf to remedy these constitutional violations.

In sum, Mr. Bogan has no other avenue<sup>3</sup> to acquire the relief he seeks - the reversal of his convictions as a result of a full and fair Jackson review. Wherefore, Mr. Bogan asks the Court to grant his petition for writ of habeas corpus.

## CONCLUSION

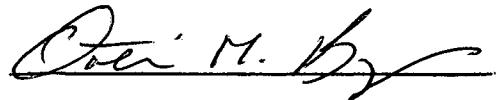
Mr. Bogan respectfully requests the Court to grant his petition for writ of habeas corpus, and in so doing, to direct the Twelfth Judicial Circuit Court of Illinois to issue a Certificate of Innocence / Judgment of Acquittal, and for any other relief the Court deems proper and just.

3. The Court denied certiorari on the court of appeals' denial of a COA. Appx. P. Moreover, the court of appeals denied mandamus relief to compel a full and fair hearing. In re Antonio M. Bogan, No. 20-2631.

## VERIFICATION

The undersigned declares under penalty of perjury pursuant to 28 U.S.C. § 1746 that the information contained in this Petition for Writ of Habeas Corpus is true and correct to the best of his knowledge, information and belief.

Date : September 10, 2020



Antonio M. Bogan

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