

20-6107 ORIGINAL  
No. \_\_\_\_\_

FILED  
JUL 04 2020

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Larry M. Maples Pro se — PETITIONER  
(Your Name)

vs.

Lorie Davis TDCJ Director — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Fifth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Larry M. Maples  
(Your Name)

3060 FM 3514

(Address)

Beaumont, Texas 77705  
(City, State, Zip Code)

(409) 722-5255  
(Phone Number)

### **QUESTION(S) PRESENTED**

Whether an accused's Due Process Rights are violated when all lower courts deny an Evidentiary Hearing on controversial evidence and picture of a pillow, when States own evidence proves petitioner did not use the pillow?

Whether an accused's Due Process Rights are violated when State and Federal District Courts deny writ of Habeas Corpus without "Findings of Facts" and "Conclusions of Law" for petitioner to Argue Facts of Law to have a Full and Fair Fundamental Trial.

Whether an accused's Constitutional Right to have "Effective Assistance of Counsel" is violated when, Counsel fails to make an investigation into the case, and makes strategic decisions to not hire "Experts" to make Ballistics and Medical findings, when Counsel was made aware of perjury of States only witness before Trial and when Counsel is not versed in the "Technical Subject Matter", instead relies upon States witness and investigation?

## 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:

## RELATED CASES

Maples v State Tr.Ct.No.CR 13-0033A WR-87, 178-01 Denial of Habeas Corpus, without written orders, Court of Criminal Appeals of Texas. Entered August 16, 2017 Unpublished

Maples v Davis Director TDCJ 6:17-cv-00560 Memorandum Opinion denying Federal Habeas Corpus and Evidentiary Hearing and C.O.A. with Prejudice. United States District Court Eastern Division of Texas, Entered February 22, 2019. Unpublished

Maples v Davis Director TDCJ 19-40225 Memorandum and Opinion on denial of Request for C.O.A. and Affirming District Courts decision to deny Evidentiary Hearing. United States Court of Appeals for the Fifth Circuit, Entered May 21, 2020 Unpublished

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## INDEX TO EXHIBITS

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EXHIBIT 2 Letter from 2nd Chair Trial Attorney/Appellant Attorney James Huggler to Petitioner confirming the 2 conflicting testimonies of Texas Ranger Brent Davis.

EXHIBIT 3 Affidavit Search Warrant from Van Zandt County where Deputy Prock said "There was a pillow partially over her face".

EXHIBIT 4 Document ffrom the Texas State Law Library confirming that there was no "Findings of Facts" or "Conclusions of Law" issued on Article 11.07.

EXHIBIT 5 Cost of the transcripts from 294th Judicial Court Reporter Estella Grisham \$1400.00

EXHIBIT 6 Letter from petitioner to his parents to purchase the Facts and Findings and Conclusion of Law from the Trial Court and to purchase just the pre-trial evidentiary hearing on the lost custodial recording.

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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**

**[X] For cases from federal courts:**

The opinion of the United States court of appeals 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 United States 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.

**[X] For cases from state courts:**

The opinion of the highest state court to review the merits appears at Appendix E 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 12th Court of Appeals court appears at Appendix F to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

**[X] For cases from federal courts:**

The date on which the United States Court of Appeals decided my case was May 21, 2020.

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 \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied 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. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### U.S. CONSTITUTION 5th AMENDMENT

No person shall be held to answer for a capital, or infamous crime....without due process of law

### U.S. CONSTITUTION 6th AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

### U.S. CONSTITUTION 14th AMENDMENT

No State shall deprive any person of life, liberty, or property, without due process of law.

28 U.S.C. § 1254(1) Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following method:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

Effective date of act June 27, 1988.

## PETITION FOR WRIT OF CERTIORARI

Petitioner Larry Maples, Respectfully petitions this Honorable Court for Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit and lower Courts decision, which denied an "Evidentiary Hearing", that thru Facts of Law submitted, could have changed the outcome and opinion of reasonable jurist.

### PETITIONERS OPENING PRAYER TO THE COURT

Petitioner Prays this Honorable Court to Review this Petition for Writ of Certiorari, under the more liberal standard established by this Honorable United States Supreme Court in: Haines v Kerner; 404 U.S. 519 (1972) and Hulsey v Owens; 63 F.3d 354 (5th Cir 1995).

..."Pro se pleadings are to be construed liberally and held to less stringent standards than formal pleadings drafted by lawyers, if the Court can reasonably read claims to state a valid cause of action upon which litigants could prevail, it should do so despite litigants failure to cite Proper Authority, Confusion of Legal Theories, Poor Grammer and Sentence Construction of a litigants unfamiliarity with PLEADING REQUIREMENTS"...

Haines; 404 U.S. 519 (1972)

## STATEMENT OF THE CASE

On Nov. 6, 2014, Petitioner Larry Maples(hereinafter petitioner)was found guilty of Capital Murder, Texas Penal Code 19.03(a)(2) and was sentenced to life no parole in TDCJ. James Huggler, second chair trial Attorney and Appellant Counsel timely filed Direct Appeal on Grounds of Insufficient Evidence for Capital Murder, Motion for Directed Verdict and a Denial of a Jury Instruction regarding perjury of states witness Moises Clemente(hereinafter Clemente). Which was affirmed June 24, 2016(Appendix F). Huggler wasn't wrong when he filed for Insufficient Evidence for Capital Murder and perjury of States only witness. Clemente perjured hisself five(5) times under oath about him having sex with petitioners wife. State had already told Clemente months before trial that his semen was found in petitioners wife vaginally and anally. Twelfth Court of Appeals confirmed that Clemente had perjured himself under oath. Even before trial the Sheriff of Van Zandt County had told Foxnews.com that Clemente's stories had changed several times during interviews. Not only did Clemente perjure himself about these things, petitioner argues he perjured more of his testimony which this Honorable Court will read in "Reasons for Granting Petition".

Appellant Counsel Huggler filed a PDR on the perjury ground, which was refused by Texas Court of Criminal Appeals on Aug. 25, 2016. Petitioner timely filed Article 11.07 on Jun. 14, 2017 on grounds of Ineffective Assistance of Counsel for failure to hire Ballistics/Reconstruction Experts as well as a Medical Expert to challenge states theories. Counsel advising petitioner not to testify and pressuring petitioner and family to pressure petitioner to plea guilty, which was denied without written orders on Aug. 16, 2017(Appendix E). Petitioner argued that Trial Counsel should have hired Ballistics/Reconstruction Experts to dispute theories of State and the already known lying of Clemente that Counsel knew was going to be presented in Court at Trial. Trial Counsel could have shown the Jury and Public how the States theories and perjured events from Clemente, even before and during Trial were wrong based on facts presented by the Experts. The Ballistics Expert coupled with the Medical Expert would have shown thru the examination of the pillow that petitioner did not use the pillow as a buffer, nor did the petitioner shoot thru the pillow as the State and Clemente reported. Petitioner also submitted a Motion for Evidentiary Hearing on the pillow which was denied.

Petitioner timely filed § 2254 Pro se on Sept. 29, 2017 on grounds of Ineffective Assistance of Counsel for not hiring Ballistics/Reconstruction and Medical Experts, Counsel Advising petitioner not to testify and Counsel not building a Defense around Sudden Passion. Petitioner again argues that Trial Counsel was Ineffective because he didn't hire Ballistics/Reconstruction Experts to prove that Clemente was lying about events that took place at his residence that mourning. Especially when Counsel was aware of Clemente's lying to State even before Trial. Trial Counsel failed to hire a Medical Expert to challenge the Autopsy Report even after Counsel was made aware months before trial that petitioner didn't use the pillow as a buffer or shoot thru it. Petitioner also argues Trial Counsel should have built a defense around Sudden Passion due in part to the perjury of Clemente and the situation that petitioner encountered after seeing his wife in a state of undress with Clemente

Respondent filed answer on Jan. 22, 2018. Petitioner timely filed Traverse on Feb. 2, 2018. Magistrate Judge John D. Love filed his Report and Recommendations on Jun. 8, 2018(Appendix D). Petitioner timely filed Objections to Report and Recommendations on Jun. 18, 2018. Petitioner filed a Motion to Expand the Record for District Court to review the Autopsy report in support of the Evidentiary Hearing of the pillow on Oct. 3, 2018(Appendix C). Final Judgment on § 2254 was entered on Feb. 22, 2019(Appendix B), dismissing with prejudice and denying C.O.A. and Motion for Evidentiary Hearing on the pillow.

Petitioner timely filed Notice of Appeal with District Court on Mar. 6, 2019. Petitioner timely files "Request for C.O.A." from the United States Court of Appeals for the Fifth Circuit on Jul. 14, 2019 on grounds of State and Federal Courts not conducting "Facts and Findings" and "Conclusions of Law", Ineffective Assistance of Counsel on failure to investigate, failure to testify, failure to build a defense around Sudden Passion and included a Motion for Evidentiary Hearing on the pillow. Final Judgment was entered May 21, 2020 (Appendix A) denying C.O.A. and Affirming District Courts denial of an Evidentiary Hearing.

## REASONS FOR GRANTING THE PETITION

United States Fifth Circuit, U.S. District Court Eastern Division of Texas, Texas High Court and Trial Court have all ignored Pro se plea for an "Evidentiary Hearing" on a pillow that was supposedly placed over petitioners wife's face/head by petitioner, using it as a "buffer", shooting thru the pillow killing his wife. The State used a picture to convince the Jury and Public into believing that petitioner had "intent to kill". There are disputed issues between State and District Courts where State implies petitioner "placed pillow over her face, put his firearm to her chin, pulling the trigger". District Court, Judge Love implies petitioner "fatal blow being shot thru the pillow while it was covering her face". Jurist of reason could debate that neither Court was correct in their findings granting relieve to petitioner. All Courts have denied petitioner his Constitutionally Guaranteed Right to "Due Process" to conviction under the United States Constitution Amendments 5 and 14. The evidentiary hearing is crucial to reducing the Capital sentence. Under these same Amendments, petitioner has not been guaranteed a "Full and Fair Hearing" by State and Federal Courts when neither Court performed a "Finding of Fact or Conclusion of Law", which did not give petitioner a chance to rebut with Laws and Facts to support his claims on the merits during Appeals, guaranteeing petitioner with no chance of relief, even reducing the Capital Sentence. Under the Sixth Amendment of the U.S. Constitution, petitioner has a right to "Effective Assistant of Counsel". Counsel was deficient and ineffective when he didn't hire "Experts" to challenge States theories. Even so more, after being told that the States only witness had lied about him having sex with petitioners wife, Counsel should have hired "Experts" to show facts regarding the events that took place in the residense of Clemente, that would have debunked States theories of "Burglary and Intent" dismantling State's case for Capital Murder.

## REVERSABLE CONSTITUTIONAL ERROR

This petition is by no means a successive petition and is not some piece of relitigation, it is a concise showing of why and how all the Appeals Courts were unreasonable in it's denial of writs and motions. Petitioner from the outset has asked for an "Evidentiary Hearing" on the pillow that the State showed a picture of(state exhibit 49)to the panel of Jurist. The State did not bring the actual pillow to Trial nor did State or Defense perform any forensics on the pillow. The State mislead the panel of Jurist into believing that petition-

er had "intent" to murder his wife by placing it over her face, using it as a "BUFFER" and shooting thru it. Petitioner submitted exhibits in all Appeals to prove he never placed the pillow over his wife's face shooting thru it. Texas Ranger Brent Davis testified on November 4, 2014, that "the Van Zandt County Sheriff's Dept. TAMPERED with the evidence before he had his search warrant." In the 17 volumes of transcripts, the word TAMPERED is no where to be found by Ranger Davis. Petitioner assures this Honorable Court that Ranger Davis used the word TAMPERED. The following day, November 5, 2014, the State had Melonie Smith of the Van Zandt County Sheriff's Dept. testify about the tampering issue(RR 15 6:10-13:14). However, Ranger Davis' testimony with the word TAMPERED has been rewritten in the transcripts. If Melonie Smith was there to clean up the tampering issue, then why remove parts of the testimony of Ranger Davis saying they TAMPERED with the evidence. Petitioner does not have proof of this testimony, but petitioner does have proof that there was some kind of prosecutorial misconduct by removing another statement made by Ranger Davis. During an "Evidentiary Hearing" on a custodial recording that was supposedly lost of petitioner saying he was invited to the house where his wife was at to talk to her and Mioses Clemente, Ranger Davis testified (RR 11 12:4-6)"so I don't know if the recorder never took from either the batteries failing or the recorder not recording at the time of the interview." This hearing was held on October 22, 2014, before trial without a jury present. During the Trial on November 5, 2014 with the Jury present, Ranger Davis testified "when I hooked the recorder to my laptop, I turned on the laptop and the laptop had a malfunction causing it to erase the digital recorder." This testimony of Ranger Davis has been removed and replaced with(RR 15 88:5-10)in the written transcripts. Petitioner has Exhibits 1 and 2 to show this Honorable Court that 2nd Chair Trial Attorney/Appellant Attorney James Huggler was aware of the two conflicting testimonies by Ranger Davis, but yet, one of them is not in the written transcripts because it would give reasonable Jurist and Appeals Courts a debatable issue into the truth about whether are not the State was hiding "Exculpatory Evidence from the Jury and the Public." To further show that the State knew there was a recording, D.A. Chris Martin for the State tried to side step bringing up the issue of the missing recorded statement by saying "we won't bring it up and that solves the problem"(RR 10 13:5-13). Before Trial Counsel argued that the State was saying that the Rangers lost the recording and the Rangers were saying the State lost the record-

ing. (RR 10 16:16-17:15) and (RR 10 18:4-6). In the Affidavit for Search Warrant from Van Zandt County, Peace Officer Ronnie Breathwitt confirms that there was a recording made, see Exhibit 3, second page hi-lighted portion. This is also supported by Counsel talking about the Miranda being recorded, (RR 10 20:20-25). Petitioner does not know if there is a live recording made of the Trial Proceedings. Petitioner asked Appellant Attorney James Huggler in 2015 for a copy of the transcripts but Huggler said he had already turned the Disc back in to the County. Petitioner asked his parents to see how much the transcripts would cost from the Court, \$1400.00 from the Court Reporter, see Exhibit 5, which were too much for my parents to afford. If there is a live hearing or recording of the Trial Proceedings, it could shed light to reasonable Jurist of the truth about the prosecutorial misconduct to mislead them from debating on issues presented. This prosecutorial misconduct is a direct violation of petitioners right to "Due Process" and "Fair and Fundamental Trial" under the U.S. CONSTITUTION AMENDMENTS 5 and 14. Petitioner has shown 4 times in SHC, 4 times in FHC, 6 times in Traverse, 2 times in Objections and 5 times in Brief to the Fifth Circuit Court of Appeals why petitioner should be granted an "Evidentiary Hearing" on the pillow. This Honorable Court in Townsend v Sain; held, where a petitioner shows the existence of a genuine dispute of material fact, which if resolved in his favor would grant him relief, and, he has been denied a full and fair hearing in the State Proceedings a Federal Evidentiary Hearing is mandatory. 372 U.S. 312-313 83 S.Ct. 757. Petitioner had meet the standards for being granted an evidentiary hearing in all writs of the lower courts. By refusing to grant the motion and allow petitioner to discover evidence to support his claims, the Court has denied the Fact Finding process and it's own Fact Finding is deficient in a very material way, quoting Hibbler v Berridetti; 693 F.3d 1140(2012). Petitioner had Exhibits on why the motion for evidentiary hearing should have been granted in all Appeals Courts. An Affidavit Search Warrant from the Van Zandt County Sheriff's Dept. of Peace Officer Ronnie Breathwitt where Deputy Prock who was the first officer to enter the room said in the Affidavit, "there was a pillow partially over her face" he did not say over her face, see Exhibit 3 first page hi-lighted section. The other exhibit submitted was the autopsy report to the District Court as a motion to expand the record which was dismissed after the ruling on the § 2254 writ. The autopsy

report does not report any pillow material of any kind in any of the entry or exit wounds. Magistrate Judge John D. Love in his Report and Recommendations(Doc. 22-1 pg. 12)8th line says,"with the fatal blow being as Maples shot her through a pillow placed over her head". Where did Judge Love get this statement from, was he just inserting what he thought might have happened or did he read it in the transcripts(or possibly on a Disc as Appellant Attorney mentioned). Petitioner received transcripts from the District Court where Judge Love presides(Ibid at 10)which does not have petitioner placing the pillow over her face shooting through it. Why is all this important? Richard Schmidt, Attorney for the State said "I don't know why he used the pillow, maybe as a buffer, maybe he didn't want to get blood on him". In opening State said " he puts a pillow over her head, puts his firearm to her chin and pulls the trigger"(RR 14 16:2-4). Ranger Davis testified, when asked by Defense if there was a hole in the pillow he said yes(RR 14 165:5-7) which would indicate that there was an issue previously mentioned before he testified that petitioner placed the pillow over her face shooting through it. The reason petitioner brings up these issues is because more prosecutorial misconduct has occurred. The word "BUFFER" has been removed and the statement "he shot through it, killing his wife" has also been removed while the statement "he puts the firearm to her chin pulling the trigger" has been added. Petitioner is not seeking an error on prosecutorial misconduct in this Honorable Court because petitioner didn't find out about the misconduct until June of 2019, when petitioner received the transcripts from his parents who purchased them from the District Court, not having the State exhaust the issue before this Court. Petitioner did not seek prosecutorial misconduct in any of the Appeals Courts as previously stated. Petitioner is establishing to this Honorable Court that, if there were not any misconduct(removing testimonies and replacing testimonies in the transcripts)or(rewording testimony in the transcripts), Jurist of reason may have debated the facts and issues in a different manner and possibly granted relief. The pillow issue was never challenged at trial by Defense. Petitioner had met the "Substantial Showing" standard for Granting an Evidentiary Hearing in SHC and FHC, further demonstrating, petitioners "Due Process" rights were violated being that, a "full and fair hearing" is an element of Due Process. Furthermore, "Reasonable Jurist" could also debate whether petition should have been resolved in a

different manner, or that issues presented by petitioner, were adequate to deserve encouragement to proceed further, quoting Scheanette v Quarterman; 482 F.3d 815,818(5th Cir 2007),Miller-El v Cockrell;537 U.S. 322 123 S.Ct. 1029(2003). Jurist of reason could debate whether the petitioner used the pillow and also whether he had "intent". The 5th Circuit Court of Appeals Affirmed the District Court's decision to deny the evidentiary hearing even when disputed material facts were unresolved. Under Article 1 § 10,13, and 19 of the Texas Constitution and Amendments 5 and 14 of the United States Constitution, petitioner has a "Due Process" right to be heard. A common-sense reading of 28 § 2254 (d) tells us a review of the facts presented in trial along with the facts and evidence presented at post conviction, which includes the 11.07, 2254, and any rebuttal declarations, must be done before (e)(1) can be considered. Without fact finding per (d)(2), (e)(1) makes no sense. Without a review of the record as a whole, all the evidence presented at trial and post conviction and the merits of the claims, (e)(1) can not operate as congress intended. The State Court has never shown that it has complied to T.R.A.P: 73.3. The Respondent has not made any showing of such compliance either. Petitioner has never been sent 1 document on State Findings because they didn't do any(see Exhibit 4). When the State referred the District Court to conduct Findings and Facts and Conclusions of Law, District Court didn't conduct any either(see Doc.22 at 1, Report and Recommendations). Petitioner had no chance to argue the facts and findings to dispute the findings on the merits. Petitioner asked his parents to find out how much the transcript for the "Evidentiary Hearing" on the missing costodial recording would cost and to also purchase the "Facts and Findings/Conclusion of Law" from the County.(see Exhibit 6). This is when petitioner found out that there were no Facts and Findings or Conclusion of Law performed by the Trial Court(see Exhibits 4 and 6). Petitioner found out from another inmate that the full transcripts could be purchased for half the cost the County wanted, from one of the Appeals Courts, Ibid at 10. Petitioner recieived the written transcripts from his parents on or about June 20, 2019. Once petitioner received the complete 17 volumes of the transcripts, petitioner realizing that after arguing statements and testimonies in his 11.07 and 2254, that were supposed to have been in the transcripts, had been removed, replaced or reworded. Petitioner did not receive the 2 letters(Exhibits 1 and 2) until May 2020 from

his parents. Petitioner was arguing facts that were not in the transcripts due to them being removed or replaced by State. Petitioner had no chance of being granted relief due to the misconduct. It is unjust, unlawfull and unreasonable for State Attorney's to say contradictory statements, use untruthful theories, unlawful tactic's to persuade jurist to achieve getting the Highest possible conviction they can get, even when the facts do not support the conviction. Then, after Trial, remove or change the very statements and contradictory testimonies of witnesses, allow witnesses to lie, to keep the convicted from ever having a chance at being granted relief.

Petitioner also showed in Brief for "Request for C.O.A.", 2254 and 11.07 that Trial Counsel was deficient and ineffective for not hiring Ballistics/ Reconstruction and Medical Experts to show the Jury and Public where and how the theories of the State and the perjury of clemente didn't match the findings and portrayal of the events of the scene at the resident of clemente. This case is analogous to Soffar v Dretke, that the Fifth Circuit Court of Appeals heard, granting relief to Soffar, for Trial Counsel's failure to "Conduct an adequate pretrial investigation." 368 F.3d 441, 479(5th Cir 2004). It was Unconstitutional for Counsel to not hire Experts when Counsel was already aware that clemente had lied about having sex with petitioners wife and that Prosecutorial Misconduct had occurred before Trial with the costodial recording. Counsel blindly accepted the States theories and untruthful accusations of known perjurer clemente. There were unresolved issues at Trial that Experts could have resolved and showed the Jury and Public the Facts of the truth instead of theories portrayed by the State. Without the Experts the Jury and Public had no choice but to believe what the State and clemente were persuading them to believe. The Experts would shown that clemente wasn't lying in bed when he was shot, and that petitioner and his wife were in a struggle when she was shot. Experts would have also shown that petitioner didn't use the pillow. Petitioner knows that these statements would be just speculation on his part, but had Counsel hired the Experts as he should have, these statements would have became facts to support the claims on the merits that petitioner did not commit Capital Murder. Soffar's case results in determining that Defense Counsel failed in identifying and investigating "the extent to which statements were not corroborated by the evidence pertaining to the offense", and the "inability to utilize those statements clearly supports ineffective assistance of counsel."

Fifth Circuit, District, and State Courts decision to deny relief, is an unreasonable application of clearly established federal law, contrary to Strickland v Washington; "If there is only one plausible line of defense, the Court concluded, counsel must conduct a "reasonable investigation" into that line of defense, since there can be no strategic choices that render such an investigation unnecessary" 466 U.S. at 681 104 S.Ct. 2052(1984). Counsel failing to hire Experts led to the Capital Murder sentence of petitioner. The 6th Amendment of the United States Constitution allows the petitioner a right to have "Effective Assistance of Counsel." Counsel was deficient and ineffective for not challenging the States and Clemente's theories and lies. Even more, after being told by the State that Clemente had lied about the semen found in petitioners wife, this was more a reason to hire the "Experts" to show facts regarding the events that took place in the residence of Mr. Clemente that would have debunked States theory of "Burglery and Intent", dismantling State's Case for a Capital Murder sentence. Petitioner prays this Honorable Court Grant in all things considered his writ of certiorari and remand this case back to Van Zandt County for a new trial, where petitioner will testify to the truth and facts of events.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Harry Mopler

Date: July 4, 2020

Resubmitted,

Sept. 10, 2020  
Date: Harry Mopler