No. 20-6815

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT MUNOZ, Pro Se — PETITIONER
(Your Name)

vs.

BOBBY LUMPKIN, et.,al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Criminal Appeals-Austin, TX.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)
(5th Circuit Denied/Dismissed C.O.A.)

PETITION FOR WRIT OF CERTIORARI

ROBERT MUNOZ
(Your Name)

(SB) No. 01859917-1525 FM 766
(Address)

Cuero, Texas 77954
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

1. IS IT WRITTEN IN THE U.S. CONSTITUTION THAT A PERSON MAY BE INDICTED, REINDICTED 3-TIMES WITH SAME CAUSE NUMBER: BROADEN, ABANDON, AND BRING ABANDONED CHARGES BACK?
   * U.S. v. Palomba, 31 F. 3d 1456 (9th Cir. 1994)
   * Arizona v. Fulminante, 111 S. Ct. 124 (1991)

2. DOES AN INDICTMENT TOLL THE STATUTE OF LIMITATIONS ON A REINDICTMENT THE STATE KNOWINGLY FABRICATED THE CHARGES ON SAID REINDICTMENT?
   * Donnelly v. DeChristoforo, 416 U.S. 637 (1973)
   * Nudd v. Burrows, 91 U.S. 426

3. DID THE COURT ERR BY PERMITTING THE STATE TO MENTION IN OPEN COURT, A RECORDED JAIL PHONE CALL NOT INTRODUCED INTO EVIDENCE THE STATE MISREPRESENTED THE RECORDINGS CONTENTS?
   * Mooney v. Holohan, 55 S. Ct. 340
   * Berger v. U.S., 55 S. Ct. 629 (1935)
   * U.S. v. Agurs, 427 U.S. 97 (1976)

4. DID THE COURT ERR WHEN IT PERMITTED THE STATE AND DEFENSE WITNESS TO PRIVATELY LISTEN TO A RECORDED JAIL PHONE CALL WHITLE NOT ALLOWING THE JURY THE OPPORTUNITY TO LISTEN TO SAID RECORDING?
   * Bruton v. U.S., 88 S. Ct. 1620, 1624 (1968)

5. DID THE COURT ERR BY DENYING AN EYE-WITNESS TO TESTIFY ABOUT WHAT SHE PERSONALLY EYE-WITNESSED; CRAWFORD?
   * Davis v. Alaska, 94 S. Ct. 1105
   * Crawford v. Washington, 124 S. Ct. 1354 (2004)

6. IS IT A VIOLATION OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION FOR THE STATE TO OBTAIN A CONVICTION ON THE USE OF KNOWN FALSE / PERJURED TRIAL TESTIMONY?
   * Napue v. Illinois, 79 S. Ct. 1173 (1959)
   * Giglio, 405 U.S. 150

7. DID THE COURT ERR WHEN IT FAILED TO ALLOW DEFENSE COUNSEL TO IMPEACH COMPLAINANT ON KNOWN TRIAL TESTIMONY-PERJURED?
   * U.S. v. Bagley, 105 S. Ct. 3375 (1985)
   * U.S. v. Keller, 58 F. 3d 884, 889 (2nd Cir. 1995)

8. DID THE COURT ERR IN ALLOWING THE STATE TO FILE A MOTION TO CUMULATE SENTENCE AFTER GUILT / INNOCENCE JUST BEFORE SENTENCING NOT KNOWN BY THE JURY (TRIER OF FACT)?

9. DID THE APPELLATE COURT'S ADOPTING TIME BARRED COUNTS NOT ALLOWING PETITIONER HIS GUARANTEED RIGHTS OF MEANINGFUL APPEAL ON CLAIMS OF VOID JUDGMENT AND ACTUAL INNOCENCE?
   * Williamson v. Berry, 49 U.S. 495, 551 (1850)
   * Main v. Thiboutot, 100 S. Ct. 2502 (1980)

LIST OF PARTIES

PETITIONER:	Robert Munoz / Pro-Se (SB) No. 01859917 1525 FM 766 Cuero, TX 77954
RESPONDENT:	Bobby Lumpkin, et., al. PO Box 99 Huntsville, TX 77342 Ken Paxton / Attorney General PO Box 12548 Austin, TX 78711-2548
DEFENSE COUNSEL:	Wayne Frost-Trial 203 W. Wall St. Ste. 205 Midland, TX 79701 Woody Leverett, Jr.- Appellate PO Box 10506 Midland, TX 79702
LEAD PROSECUTOR:	Laura Nodolf 500 No. Loraine St., Ste 200 Midland, TX 79701
STATE HABEAS PROSECUTOR:	W. Ralph Petty 500 No. Loraine St., Ste 200 Midland, TX 79701

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STATEMENT OF THE CASE

Petitioner [Munoz] was tried in the 441st Judicial District Court on the State's 3rd untimely indictment. Munoz was found guilty and sentenced to (2) 10-year consecutive sentences in CR38496 on the State's 3rd reindictment with the same cause number as the original indictment and the 1st and 2nd reindictment in Midland, Texas, Midland, County.

Munoz' appellate counsel filed his direct appeal in Cause NO. 11-13-00139-CR of which the 11th Court of Appeals (COA) in Eastland Texas affirmed said conviction.

Munoz filed his Petitionerfor Discretionary Review (PDR) (pro-se) in Cause No. PD-0958 which was 'refused' by the Court of Criminal Appeals in Austin, Texas.

Munoz then filed (pro-se) his § 11.07 in Cause No. WR85,776-01 which was denied without written order by the Court of Criminal Appeals in Austin, Texas without any judges facts of findings nor conclusion of law.

Munoz filed his § 2254 (pro-se) in the U.S. District court-Western District in Cause Number MO:18-CV-00191-DC which was 'DENIED' and 'DISMISSED' as 'TIME-BARRED' on June 7, 2019 by Judge D. Counts.

Munoz then filed (pro-se) his Certificate of Appealability with Brief in Support with the 5th Circuit Court of Appeals in Cause No. 19-50641 which was denied by the U.S. Circuit Judge James E. Graves Jr. on July 24, 2020.

This Honorable U.S. Supreme Court has jurisdiction as Munoz' Writ of Certiorari is timely filed before December 21, 2020 per this Honorable Court's letter dated October 21, 2020.

REASONS FOR GRANTING THE WRIT

Petitioner [Munoz] on or abbut the 21st day of October, 2020 received a letter from Midland County District Attorney, Honorable Laura A. Nodolf stating that the State Habeas Prosecutor, Mr. Ralph Petty..."While he worked on your writ for this office, HE WAS ALSO PAID BY THE DISTRICT JUDGES OF MIDLAND COUNTY TO WORK ON YOUR WRIT. []. This is a potential violation of the RULES OF ETHICS for attorneys." Thus, this clearly supports Munoz' Exhibit "E" in his § 11.07 claiming 'fraud on the court' via misrepresentation by Mr. Petty that has 'NEVER' been addressed by any appellate court.

Furthermore, Munoz was originally indicted in CR38496 on April 20, 2011 in one Count of 'Sexual Assault' by digital penetration. (Emphasis Mine). He was arrested on May 6, 2011. In the SAME CR38496 cause number, he was reindicted on April 11, 2012 after thennext term of the Court; now alleging 2counts...'Sexual Assault of a Child' alleging both counts as sexual organ to sexual organ penetration with absolutely no allegation ever being made by Complainant of such (Vol 13 at 62) and no tolling paragraph on any reindictment. Munoz was reindicted for the 2nd time again as CR38496 on May 9, 2012, and reindicted for the 3rd time again as cause number CR38496 on June 6, 2012. All reindictments had charges broadened, abandoned, and or brought back. Thus supporting QUESTION PRESENTED No. 1 at 2-3 of Argument.

The record contains Munoz' Grievance No. 201704943 where the State Bar of Texas and the Board of Disciplinary Appeals (BODA) No. 59576 both agree that the Prosecutor's conduct to Munoz' claim of Prosecutorial Misconduct--fabricating evidence and misrepresenting

trial evidence '**occured**' four years prior to Munoz' filing. Thus, the Prosecutor was not able to be disciplined. See Senate Bill 825--Prosecutor Accountability Act, June 2013 that the State side-stepped and see FN 14.

Furthermore, the record contains several notorized Affidavits NEVER addressed by any appellate court. Thus, since Munoz' § 11.07 was denied without written order, his § 2254 dismissed as 'time-barred' and his Certificate of Appealability 'denied' and 'dismissed' by the 5th Circuit Court of Appeals. Munoz, humbly, as a non-attorney, as best he can, points to the trial record to support his claims and points to Exhibits in the record along with trial transcripts, Affidavits received and filed after trial and the like. A copy of a list of Munoz' Exhibits filed in his § 11.07 (WR85,776-01) are enclosed in Appendix along with copies of the District Attorney's belated letter (notice-not dated) that was mailed to Munoz on or about October 9, 2020 informing Munoz of Ralph Petty's rules of ethics violation over a year after the State's knowledge of said ethics violation.

This writ should be granted as justice demands.

A P P E N D I X

* Exhibits "A" thru "D";
  * *Indictments and Reindictments with same cause number and no tolling paragraphs.
* Exhibit "E":
  *Misrepresentation by State of alleged June 6, 2011 reindictment supporting 'fraud on the court';
* BODA Letter No. 59576: Denial of Grievance No. 201704943(...conduct complained of 'APPEARS' to have 'OCCURED' over four years ago...cannot discipline Prosecutor on 'MIS'-conduct. (Emphasis mine).
* Trial Transcripts cited in 'ARGUMENT'.
* Legend For--Typed Transcripts (TR-1 thru TR-48)
* Typed Transcripts--Pages "A" thru "M" in the event Munoz' record (transcripts) not legible.
* Copy of List of Exhibits in Munoz' § 11.07 (WR85,776-01) (Midland County, Texas (denied without written order by CCA).
* Mandate--5th Circuit Court of Appeals--Louisiana dated July 24, 2020.
* 6-Pictures...possible Federal Mail Fraud by State.
* Copy of undated letter-notice from District Attorney/Midland County supporting Ralph Petty's violation of rules of ethics.
* Copy of envelope--containing U.S.P.S. stamp marked of 10/9/2020 date from D.A.'s letter to Munoz.
* Copy of Midland Reporter Telegram (Newspaper) Story of Ralph Petty's violation of rules of ethics.

ARGUMENT

QUESTIONS PRESENTED

1. IS IT WRITTEN IN THE U.S. CONSTITUTION THAT A PERSON MAY BE INDICTED, REINDICTED 3-TIMES WITH SAME CAUSE NUMBER; BROADEN, ABANDON, AND BRING ABANDONED CHARGES BACK?

Petitioner Munoz, hereafter Munoz, respectfully informs this Honorable Supreme Court; he is an honorably discharged U.S. Marine-war veteran only seeking to be heard, is not an attroney, files pro-se, and humbly invokes: **Haines v. Kerner**, 404 U.S. 97 (1972):

> "Allegations such as those asserted by petitioner, however inartfully pleaded are sufficient"..."which we hold to less stringent standards than formal pleadings drafted by lawyers."

SUPREME COURT OPINION

Pursuant to this Honorable Supreme Court in **Berger v. U.S.**, 55 S. Ct. 629 (1935):

> "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as it's obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with eagerness, and vigor, indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike FOUL ONES. It is as much his duty to refrain from improper methods calculated to produce a wronful conviction, as it is to use every legitimate means to bring about a just one."[1]

INDICTMENT AND 3-REINDICTMENTS WITH SAME CAUSE NUMBER

(A) Munoz was orginally indicted in CR38496 on April 20, 2011. He was arrested May 6, 2011. Said indictment enclosed as Exhibit "A" reads:

* Cause Number CR38496;
* 1-Count; 'Sexual Assault';
* Alleging penetration of Complainant's sexual organ digitally.

(B) Munoz was reindicted on **April 11, 2012** almost 1-year later after Court's next term. Said reindictment enclosed as Exhibit "B" reads:

* Cause Number CR38496[2] (No tolling paragraph);
* Now 2-Counts as 'Sexual Assault of Child);
* Both Counts alleging penetration of Complainant's sexual organ by Munoz' sexual organ;
* Count I date is now January 3, 2008;
* Count II date is now January 15, 2008;
* No tolling paragraph;
* No allegation of these Counts ever made by Complainant. (Vol 13 at 62).

Munoz believes this Honorable Supreme Court deserves to see this conversation immediately; (lines 9-18 of Vol 13 at 62):

09. Frost: Do you know a Christina Reyes?[3]
10. A: Yes, I do.
11. Frost: Did you ever tell her that he put his penis in
12. you?
13. A: NEVER.
14. Frost: So you don't--you don't deny it ever at all
15. to anybody?
16. A: No.
17. Frost: Is that your testimony?
18. A: Yes.

Due to the above reindictment, Munoz filed a Motion To Quash Indictment that was denied by the Court. Since defense counsel would not file said motion, Munoz filed one before trial the best he could which was deemed '**moot**' by the Court. Yet the Court did rule on said motion via hybrid representation. See (Vol 13 at 11-12).

Munoz believes that the Prosecuter's misconduct on reindicting him when the record is 'SILENT' of any allegation vitiates the Court of any further jurisdiction. See **Nudd v. Burrows,** 91 U.S. 426 ("Fraud vitiates everything"); and **Bryce v. Grundy,** 3 Pet. 210 ("Fraud vitiates the most solemn contracts, documents and even judgments").

(C) Munoz was again reindicted on **May 9, 2012.** Said reindictment enclosed as Exhibit "C" reads:

* Cause Number CR38496 (No tolling paragraph);
* Count I alleging: 'penetration of Complainant's sexual organ digitally on or about Januray 3, 2008;[5]
* Count II alleges: Complainant's sexual organ allegedly penetrated by Munoz' sexual organ on January 15, 2008.[6]

(D) Munoz was again reindicted on **June 6, 2012.** Said reindictment enclosed as Exhibit "D" reads:

* Cause Number CR38496 (No tolling paragraph);
* 2-Counts...both now alleging Complainant's sexual organ penetrated via digitally;
* Count I alleged to have happened January 3, 2008 (abandoned by State in April 11, 2012 reindictment, then brought back here);
* Count II alleged to have happened January 15, 2008 (also abandoned by State and brought back here).[7]

Munoz believes that his Fourteenth Amendment to the U.S. Constitution were violated due to the above as stated in **Essery v. State,** 72 Tex. Crim. 414, 163 S.W. 17 (1914); Tex. Const. art. 1, § 15:

"No one, under any circumstances, should be deprived of any right given him by the laws of this State, and, if any provision of our [CCP] has been overlooked, or disregarded, if, in the remotest degree, it could have been hurtful or harmful to the person on trial, the verdict should be set-aside. He has a right to be tried in accordance with the rules and form of law, and if this sort of a trial is not accorded him he has a right to complain, and to this complaint we will always give an attentive ear." See also **Chapman v. California,** 87 S. Ct. 824 (1967)(Some constitutional rights are so basic to a 'fair trial' that their infraction can never be treated as harmless error); **Wynn v. Underwoodd,** 1 Tex. 48, 49 (1846)("Consent...cannot give jurisdiction").

The State Prosecutor not only obtained indictments with no complaint nor allegation being made as stated and supported by the record above. The State abandoned counts, brought back counts, changed dates, broadened charges...all contrary to law. See **U.S. v. Palomba,** 31 F. 3d 1456 (9th Cir. 1994) supporting this conviction void.

Palomba, Id., at 1463: Palomba's third and only meritorious contention of error is that defense counsel rendered deficient performance in failing to move to dismiss the two mail fraud counts INDTRODUCED in the complaint, OMITTED from the original indictment, and then charged approximately three months leter in the superseding indictment. Palomba contends that because counts 1-2, the mail fraud counts, were filed more than thirty days after his arrest on the complaint in violation of 18 U.S.C. § 3162(b) defense counsel should have moved for their dismissal under Section 3162(a)(1) of the STA.

WE AGREE.

Palomba at 1463: []. The Government's first counter argument is problomatic because the mail fraud counts untimely raised in the superseding indictment 'repeated charges' (i.e., counts alleging violation of a particular statute) stated in the complaint over thirty days before, despite being based perhaps on wholly or partially discrete offenses (i.e., acts in violation of the same or different criminal statutes or laws) within the same criminal scheme. In this event, the STA plainly requires that "such charge shall be dismissed or otherwise dropped." 18 U.S.C. § 3162(a)(1) (emphasis added).

Palomba at 1464: In short, the superseding indictment charged Palomba in an untimely manner with an offense which was contained in the complaint but which was not preserved against Section 3162(a)(1) dismissal either by such facial factual differences or by inclusion in the timely original indictment. Accordingly, defense counsel erred in failing to move for dismissal of the mail fraud charges untimely raised in the superseding indictment under Section 3161(c) of the STA.

Palomba at 1465: In addition, under a carelessly drafted or Draconian recidivist statute, the mail fraud convictions might have Palomba with no remaining 'strikes' against him and result in a disproportionate sentence for even a minor future conviction in state court. Other possible sources of prejudice include the additional stigma of the improper conviction and its use to impeach the defendant's credibility in future proceedings. See **OClaire v. U.S.,** 470 F. 2d 1199, 1203 (1st Cir. 1972), cert. denied, 412 U.S. 921, 93 S. Ct. 2741, 37 L.Ed. 2d 148 (1973)(noting that "[t]he collateral

effects of a conviction, independent of the sentence, are many and varied")(citations omitted). Accordingly, we find that PALOMBA satisfied the unfair prejudice prong under **Strickland** and **Fretwell's** test for ineffective assistance of counsel.

Palomba at 1466: With regard to **Strickland's** deficient performance prong, no apparent or plausible tactical decision could explain counsel's failure to move for dismissal, potentially with prejudice, on an UNTIMELY charge under Section 3162(a)(1). Given the apparent absence from the record of indicia of tactical reflection by counsel on this issue, this failure would appear to fall outside the presumption that counsel's decisions might be considered 'SOUND TRIAL STRATEGY' under **Strickland,** 466 U.S. at 689, 104 S. Ct. at 2065, quoting **Michel v. Louisiana,** 350 U.S. 91, 101, 76 S. Ct. 158, 164, 100 L.Ed. 83 (1955). []. Because counsel's failure to move for a dismissal was prejudicial within her wide discretion under **Strickland's** first prong, Palomba's third contention of error raises a colloráble claim of ineffective assistance.

In the case before you today. Munoz respectfully states that the State's violation was more and included moral turptitude, fraud on the court, obstruction of justice by miraculously tendering a true bill of indictment in the April 11, 2012 reindictment by fraud and no complaint nor accusation. Thus solidifying that this conviction is void from its inception. See **Arizona v. Fulminante,** 111 S. Ct. 124 (1991)(Stating that a structural error is a 'defect affecting the framework within which the trial proceeds rather than simply an error in the trial process itself"). See also **U.S. v. Hansel,** 70 F. 3d 6 (CA 2 1995)(Hansel's counsel's failure to object

to the 'time-barred' counts is unaccountable in the circumstances, and cannot 'be considered sound trial strategy."

Tolling Mandatory In Texas Reindictments:

Pursuant to **Tita v. State,** 267 S.W. 3d at 38 (2008):

> The State failed to plead that tolling facts in the indictment itself. Under those circumstances, the trial court erred in denying appellant's motion to dismiss and the court of appeals erred in holding otherwise. See also G. Dix & R. Dawson, Texas Practice: Criminal Practice and Procedures § 20.349 at 740 (2nd ed. 2001).

In TITA, TITA was indicted, reindicted a couple more times and all reindictments were provided different cause numbers. Thus, Munoz' reindictments with the same cause number of the original indictment did not vest the court as a court of competent jurisdiction. See **State v. Hall,** 829 S.W. 2d at 188 (Tex. Cr. App. 1992):

> There is nothing in the Legislative history of Article V, § 12(b), suggesting that it was believed that that article automatically vest subject-matter jurisdiction in any court in which an indictment was presented, thereby effectively abrogating Ch. 4 of the Texas Code of Criminal Procedure. As a matter of this Court recently observed,--a literal reading of Article V., § 12(b) could lead to absurd results. If the mere presentment of an indictment could vest jurisdiction in 'any' court, then...a capital murder case could be properly tried in a county court. I cannot believe that such a result was the legislature's or the voters intent. See **DeDonato v. State,** 819 S.W. 2d 164, 168 (Tex. Cr. App. 1991) (Maloney, J. concurring). See also **State v. Collier,** 285 S.W. 3d at 135; 2009 Tex. App. LEXIS 1928 (The State included a tolling allegation in the reindictment.)

Thus, by the State reindicting Munoz on the 2-Count reindictment of April 11, 2012 with no complaint; no allegation being made; after his arrest / after the next term of the Court; with no tolling paragraph on indictment(s); and as Complainant-herself admitted that she never made such an allegation (Vol 13 at 62). The 441st Judicial District Court was not a Court of competent jurisdiction to prosecute Munoz on the 3rd reindictment since the original indictment and all 3-reindictments possess the same cause number-CR38496. All 3-reindictments were issued after the next term of the Court after Munoz' arrest.

For the record and this Honorable Supreme Court's knowledge. Munoz has enclosed as Exhibit "E" that he first filed with his § 11.07 number WR85,776-01 with the convicting Court. Said Exhibit "E" clearly and without any doubt supports the States continued misrepresentation and actions to 'CAMOFLAUGE' the lack of jurisdiction by the convicting Court.

The State claimed in its 'Reply' to Munoz direct appeal that Munoz was indicted on **April 20, 2011**...and reindicted on **JUNE 6, 2011**. However, the turth and fact is that Munoz was indicted **April 20, 2011**...then reindicted **April 11, 2012, May 9, 2012**...and again reindicted on **JUNE 6, 2012**.

The entire record is 'SILENT' of any appellate Court ever addressing this claim on Exhibit "E" from Munoz.

DID THE COURT ERR BY DENYING MUNOZ' MOTION TO QUASH INDICTMENTS WHILE DEFENSE COUNSEL FAILED TO OBJECT TO A TRIAL THE COURT HAD NO JURISDICTION NOR AUTHORITY?

2. DOES AN INDICTMENT TOLL THE STATUTE OF LIMITATIONS ON A REINDICTMENT THE STATE KNOWINGLY FABRICATED THE CHARGES ON SAID REINDICTMENT?

"It is the duty of all officials whether legislative, judicial, executive, administrative, or ministrial to so perform every official act as not to violate constitutional provisions." **ACLU Foundation v. Barr,** 952 F. 2d 457 (CA DC 1991).

Also...Prosecutorial misconduct reasonably reaches only that which is qualitatively more serious than simple error and cannotes an intentional flouting of known rules or laws. See e.g., **Donnelly v. DeChristoforo,** 416 U.S. 637 (1973)(noting the distinction between "ordinary trial error of a prosecutor" and "egregious misconduct"); JOH JAY DOUGLASS, Ethical Issues in Prosecution 341 (1988)("[a] violation of the rule of evidence is not 'ipse dixit' umprofessional conduct unless it was a deliberate attempt to avoid the rule. Motive and intent play a role in determining whether the action of the prosecution is unprofessional"); BRUCE A. GREEN, The Ethical Prosecutor And The Adversary System. 24 Crim. L. BULL. 126, 138 (1988)("[t]he term 'misconduct' as pejorative overtones--it suggests that the prosecutor has acted erroneously with intent if not with malice"; suggesting that "the term" "misconduct" should be reserved for behaviour that intentionally deviates from reasonably attainable standards of propriety"). See also QUESTION PRESENTED #3 BELOW.

To support his claim in presenting this QUESTION to this Honorable Supreme Court. Munoz points to the trial record since all his appeals were either 'denied without written order', or 'dismissed'

as 'time-barred'.

Munoz will address the record in (Vol 13 at 62). During the cross-examination of Complainant, defense counsel Mr. Wayne Frost, hereinafter Mr. Frost, asked Complainant the following with response:

09. Frost: Do you know a Christina Reyes?[8]
10. A: Yes, I do.
11. Frost: Did you tell her that he put his penis in
12. you?
13. A: Never.
14. Frost: So you don't--you don't deny it at all
15. to anybody?
16. A: No.
17. Frost: Is that your testimony?
18. A: Yes.

In **Hullin**, 171 Tex. Crim. 425, 351 S.W. 2d 248, 255, this Court [CCA] stated:

> "A Court of competent jurisdiction means a Court that has jurisdiction of the offense."...[]....it was further stated that jurisdiction "includes the three essentials necessary to the jurisdiction of a Court; the Court must have authority over the person and the subject-matter, and it must have power to enter the particular judgment rendered", see 16 Tex. Jur. 2d Criminal Law, Sec. 200...In Tex. Jur. 2d, Courts, Sec. 45, it is written: "Jurisdiction is the power to hear and determine issues of law and fact involved in a case, and to render a judgment thereon, after deciding the existence or non-existence of material facts and applying the law to the findings."
>
> Also, "A defendant is 'denied due process of law and due coarse of the law when the district court" acts without jurisidiction. See **Ex parte Birdwell,** 7 S.W. 3d 160, 162 (Tex. Crim. App. 1999); see also U.S. Const. Amend. XIV, § 1; and **Frank Mangum,** 237 U.S. 309 (1915)(due process requires that a criminal prosecution be "before a court of

competent jurisdiction"); BUT...for this commencement of criminal proceedings by a court without jurisdiction by the acts of the prosecutor...the trial court, as factfinder, could not have found applicant guilty. See **Ex parte Chaney,** 563 S.W. 3d 239 (2018).[9]

The Supreme Court has mandated that certain federal constitutional errors labeled as "structural" are not subject to a harmless error analysis. See **Arizona v. Fulminante,** 499 U.S. 279, 309, 310, 111 S.Ct. 1246, 113 L.Ed. 2d 302 (1991); T.R.A.P. Rule 44.

Furthermore, Munoz filed a Grievance with the State Bar of Texas and Board of Disciplinary Appeals (BODA) due to the Prosecutor's misconduct. However, the State Bar and BODA claimed that "Because the Prosecutor's conduct '**OCCURED**' 4-years before Munoz filed his Grievance, the Prosecutor could not be disciplined" (Emphasis mine). See Grievance No. 201704943 and BODA No. 59576 in the hands of the State of Texas. Munoz does not have access to a copier and the Law library has not direct access since March 2020 due to COVID-19. This claim has never been addressed by any appellate court in Texas nor the 5th Circuit Court in Lousiana in Munoz' § 11.07 or § 2254 nor Munoz' Certificate of Appealability with Brief in Support to the 5th Circuit.

Thus, due to the above, the April 11, 2012 reindictment is without any legal authority nor any reindictment thereof. The Court did not possess competent jurisdiction on the State's fraudulent indictment, fraud on the court, deceit, moral turptitude violation, etc...

"Jurisdiction can be challenged at anytime", and "jurisdiction, once challenged, cannot be assumed and must be decided." See **Nudd v. Burrows,** 91 U.S. 426 ("Fraud vitiates everything"); and see also

Hafer v. Melo, 502 U.S. 21 (...officials and judges are deemed to know the law and sworn to uphold the law; officials and judges cannot claim to act in good faith in willful deprivation of the law, they certainly cannot plead ignorance of the law, even the Citizen cannot plead ingnorance of the law, the courts have ruled there is no such thing as ignorance of the law, it is ludicrous for learned officials and judges to plead ignorance of the law []; see also **Maine v. Thiboutot,** 100 S. Ct. 2502.

DID THE COURT HAVE COMPETENT JURISDICTION TO RENDER THE JUDGMENT OR ANY JUDGMENT IN CR38496 MIDLAND COUNTY?

3. DID THE COURT ERR BY PERMITTING THE STATE TO MENTION IN OPEN COURT, A RECORDED JAIL PHONE CALL NOT INTRODUCED INTO EVIDENCE OF WHICH THE STATE MISREPRESENTED THE RECORDINGS CONTENTS?

Prosecutor Misrepresentation

More than 30-years ago, this Court held that the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence. **Mooney v. Holohan,** 294 U.S. 103, 55 S. Ct. 340, 79 L.Ed. 791; [omitted]. There can be no retreat from that principle here Munoz also states! See **Miller v. Pate,** 386 U.S. 2, 17 L.Ed. 690, 87 S. Ct. 785 (1967); see also **Wade v. Hunter,** 69 S. Ct. 834 (1949).

For similar reasons, asserting facts, that were <u>NEVER</u> admitted into evidence may mislead a jury in a prejudicial way; see **Berger v. U.S.,** 55 S. Ct. 629 (1935). This is especially true when a prosecutor 'MISREPRESENTS' evidence because a jury generally has confidence

that a prosecuting attorney is faithfully observing his obligation as a representative of a soverignty. See **Washington v. Hofbauer,** 228 F. 3d at 700 (CA 6 2000).

During the guilt / innocence in CR38496 trial. On the State's examination of Complainant's mother, Mrs. Elizabeth Kuzmich was asked if Munoz had instructed her to record Complainant to **"RECANT"**. See (Vol 13 at 130):

13. Q: And in fact, didn't the Defendant instruct you
14. to go to Lubbock to try and record your daughter to get
15. her--to try and get her to **RECANT** on a recording?
16. A: What's that?

As the record indisputably supports...Elizabeth Kuzmich did not even know what the word recant meant. The reason being is because Munoz never wanted Elizabeth to record Complainant to recant...Munoz only wanted Complainant to re-admit that Munoz never touched her as Complainant had admitted many times before trial as shown below.

Also, during the examination of defense witness, Mr. Albert Palmer, the State claimed the same thing as with Elizabeth Kuzmich in a tricky way. (Vol 14 at 100).[10]

To manifest its intentions, the State conveniently told the Court that Mr. Palmer did not have to listen to said recording in 'front of the Court'. (Vol 14 at 100)-(Vol 14 at 101). The Court allowed the State and defense witness Mr. Palmer to privately listen to said recording of which the State 'MISREPRESENTED' the recordins contents.

Defense counsel did attempt to request, at the bench, that he would like the jury to listen to said recording that the State had 'opened the door' to of coarse. (Vol 14 at 102). But, the Court

simply followed the State's lead and called said recording 'hearsay' even though the recording was never introduced into evidence. See (Vol 14 at 102)-(Vol 14 at 103).

Upon continuing examination of defense witness, Mr. Palmer, Mr. Palmer **'verfied'** that what Munoz had asked him to do was not improper. (Vol 14 at 103). So, no jury has listened to said recording and no appellate court has ever addressed said recording either. Furthermore, direct appeal attorney failed to raise said issue after Munoz' repeated instructions to invoke whatever way legally possible.

Fraud in its elementary common sense of deceit...includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public...and if he 'DELIBERATELY' conceals material information from them, he is guilt of FRAUD. "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." See also **McNally v. U.S.,** 483 U.S. 350, 371-372 (quoting **U.S. v. Holtzer,** 816 F. 2d 304, 307); see also **Donnelly v. DeChristoforo,** 416 U.S. 637 (1974); and see **U.S. v. Young,** 105 S. Ct. 1038 (1985)(...jury trust Government rather than its own view of evidence)(Emphasis mine).

Hence, pursuant to **Brady v. Maryland,** 83 S. Ct. 1194 (1963), and its progeny, the suppression of evidence, favorable to an accused's guilt or punishment. It is <u>irrelevant</u> whether the evidence was suppressed inadvertently or in bad faith, and the defense need not request disclosure because the State's duty to disclose is an affirmative one. See **U.S. v. Agurs,** 427 U.S. 97 (1976); and see also

Kyles v. Whtley, 115 S. Ct. 1555 (1995).

Thus, by the Prosecutor's knowing and willing deception and fraud on the Court of the recordings true contents, Munoz adopts the following as the Fifth Circuit Court was adamant of in its holding in **Woods v. Wright,** 334 F. 2d 369 (5th Cir. 1964):

> "When there is a deprivation of a constitutional guaranteed right, the duty to exercise the power to inferfere with the conduct of tated officers cannot be avoided." See also **Berger v. U.S.,** 295 U.S. 78 (1935)(...while he [prosecutor] may strike hard blows, he is not at liberty to strike **foul ones**). (Emphasis Mine).

Munoz state that he was violated of his guaranteed right to a fair trial under the law. Not to fail to mention that said trial should have never commenced since the 441st Judicial District Court of Midland County, Texas was not a Court of competent jurisdiction. See Munoz' QUESTIONS presented above thus far.

DID THE COURT COMMIT PLAIN ERROR OR FUNDAMENTAL ERROR IN IN ALL OF THE ABOVE SUPPORTED BY THE RECORD?

4. DID THE COURT ERR WHEN IT PERMITTED THE STATE AND DEFENSE WITNESS TO PRIVATELY LISTEN TO A RECORDED JAIL PHONE CALL WHILE NOT ALLOWING THE JURY THE OPPORTUNITY TO LISTEN TO SAID RECORDING?

> "I am aware the Supreme Court has held that the presumption of innocence 'disappears' after an applicant 'has been afforded a fair trial and convicted of the offense for which he was charged." **Herrera v. Collins,** 113 S. Ct. 853 (1993). HOWEVER, that rule of law seems to beg the question when we are dealing with an actual innocence claim based on 'FALSE-EVIDENCE'. If the State's evidence presented against a defendant was 'FAULTY' in 'ANY WAY', whether because it was 'UNTRUE', or secured improperly, or 'MISLEADING' because exculpatory evidence

was withheld, then how can we say the defendant was afforded a fair trial"? **Ex parte Chaney,** 563 S.W. 3d 239 (2018)(Honorable Judge Newell). And, "IF RIGHT DOESN'T MATTER, IT DOESN'T MATTER HOW GOOD THE CONSTITUTION IS." --Rep. Adam Schiff; January 24, 2020; House Case Manager.

Munoz claims that the convicting Court abused its discretion and committed fundamental trial error / plain error when the Court permitted the State to take defense witness to privately listen to a recored jail phone call outside the presence of the jury, outside the presence of the defense, and not even with defense counsel. See (Vol 14 at 101); (Vol 14 at 102); (Vol 14 at 103).

Even though defense counsel requested that the Court allow the jury to listen to said recording, the Court denied said request from the defense and just called said recording 'hearsay'. (Vol 14 at 102); (Vol 14 at 103).

But, defense witness Mr. Alber Palmer did verify that the State was incorrect by alleging that Munoz had requested Mr. Palmer to have Mrs. Elizabeth Kuzmich to record Complainant to 'recant'. See (Vol 14 at 103). Said action by the Court is contrary to Munoz' guaranteed rights to a fair trial, due coarse of law, the 5th, 6th, and 14th Amendments to the U.S. Constitution. Furthermore, by the Court not permitting said recording to be heard by the jury since the State did 'OPEN THE DOOR' to said recording...violated Munoz' rights and is contrary to Fed. R. Evid. in the face of the record.

"It is better to follow the rules than to try to undo what has been done. Otherwise stated, one cannot 'unring a bell'; 'after the thrust of the saber it is difficult to say forget the wound'; and finally, 'if you throuw a skunk into the jury box, you can't instruct the jury NOT TO SMELL IT." See **Abbot v. State,** 196 S.W. 3d 334 (Tex. App.- Waco

2006); **Walker v. State,** 610 S.W. 2d 481, 486 n. 6 (Tex. Crim. App. [Panel Op] 1980)(quoting **Dunn v. U.S.,** 307 F. 2d 883, 886 (5th Cir. 19620); See also **Bruton v. U.S.,** 391 U.S. 123, 129, 88 S. Ct. 1620, 1624, 20 L.Ed. 2d 476 (1968)("The naive assumption that prejudicial effects can be overcome by instructions to the jury...all practicing lawyers '**KNOW**' to be unmitigated fiction")(citing **Krulewitch v. U.S.** 336 U.S. 440, 453, 69 S. Ct. 716, 723, 93 L.Ed. 790 (1949) (Jackson, J., concurring)). See also **Cone v. Bell, 556** U.S. at 470 (2009).

DID THE COURT SHOW BIAS IF FAVOR OF THE STATE TO NOT ALLOW MUNOZ A FAIR TRIAL WHEN THE STATE OPENED THE DOOR TO SAID RECORDING NOT INTRODUCED IN EVIDENCE?

5. **DID THE COURT ERR BY DENYUING AN EYE-WITNESS TO TESTIFY ABOUT WHAT SHE PERSONALLY EYE-WITNESSED?..CRAWFORD?**

Pursuant to **Redmond v. Kingston,** 240 F. 3d 590 (CA 7 2001):

"[I]n this case the doctrin (trial court reasoning) that unreasonably limit[ed] the cross-examination of a prosecution witness infringes the constitutional right of confrontation, e.g. **Delaware v. Van Arsdall,** 475 U.S. 673, 679-80, 106 S. Ct. 1431, 89 L.Ed. 2d 674 (1986); **Davis v. Alaska,** 415 U.S. 308, 94 S. Ct. 1105, 39 L.Ed. 2d 347 (1974). []. The statute protects complaining witness in rape case (including statuatory-rape cases) from being questioned about their sexual conduct. []. See F.R.E. 403; see also **Olden v. Kentucky,** 488 U.S. 227, 232, 109 S. Ct. 480, 102 L.Ed. 2d 513 (1988)...HOWEVER, a false charge of rape is not sexual conduct!

Munoz humbly states that his rights to cross-examination pursuant to **Crawford v. Washington,** 514 U.S. 36, 158 L.Ed. 2d 177, 124 S. Ct. 1354 (2004) was violated, especially on false-allegations of sexual assault of a child as Munoz is adamant of his innocence.

During the examination of Complainant by defense counsel. Com-

plainant was in the process of being questioned of the time Munoz was cleaning tile in one of the bathrooms. While Munoz was on his hands and knees, Complainant, on her own volition, 'poked' Munoz in his anas (butt) with her foot. Elizabeth Kuzmich, Complainant's mother, actually eye-witnessed this episode. See Exhibit "T" and also Exhibit's "2a" and "2b" in Munoz' § 11.07 number WR85,776-01 of which no appellate court has ever addressed supporting the above claims by Munoz. See (Vol 13 at 81-84).

Furthermore, the Court-itself said that Complainant's mother, Elizabeth Kuzmich was limited to what she could and couldn't say. See (Vol. 13 at 109-110).

The Court, possibly knowing that Elizabeth Kuzmich knew of 'Exonerating Evidence' of Munoz in this case...had the following conversation while telling Mr. Frost to approach the Bench. (Vol 13 at 142).

Munoz humbly reminds this Honorable Supreme Court that 'A FALSE CHARGE OF RAPE (or the like) IS NOT SEXUAL CONDUCT', as he was wrongfully and maliciously charged. See **Redmond v. Kingston,** 240 F. 3d 590 (CA 7 2001). And, Munoz, as a non-attorney, was under the impression that the Court should be nutural...not BIASED. Especially when the Court would not allow the trier of fact to know that Complaiant...'poked' Munoz in his anus either playfully or sexually. Elizabeth Kuzmich did eye-witness the poking unknown to Munoz at the time of it happening.

[]. A criminal defendant can prove a violation of his 6th Amendment rights by 'showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a

prototypical form of bias on the part of the witness, and thereby "to expose to the jury the facts from which jurors...could appropriately draw infrences related to the reliability of the witness." **Delaware v. Van Arsdall**, 475 U.S. 673, 680, 106 S. Ct. 1432, 89 L.Ed. 2d 674 (1986)[:][...].

Munoz is an honorably discharged U.S. Marine-war veteran that was wrong of his marital vows. Yet, is adamant as the entire record supports, another innocent man is in a Texas prison. See **Murray v. Carrier,** 477 U.S. 478 [omitted](1986), thus recognized a narrow exception to the cause requirement where a constitutional violation has 'probably resulted' in the conviction of one who is 'actually innocent' of the substantive offense. Id at 496.

DID THE COURT VIOLATE MUNOZ' CONFRONTATION CLAUSE RIGHTS?

6. **IS IT A VIOLATION OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION FOR THE STATE TO OBTAIN A CONVICTION ON THE USE OF KNOWN FALSE / PERJURED TRIAL TESTIMONY?**

Due Process, Misconduct, Knowing Use Of False Testimony:

Back in 1959, this Honorable Supreme Court state in **Napue v. People v. Illinois,** 360 U.S. 264, 3 L.Ed. 2d 1217, 79 S. Ct. 1173 (1959):

> At 1177: [I]t is well established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the 14th Amendment, **Mooney v. Holohan,** 294 U.S. 103, 55 S. Ct. 340 [omitted]. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.

See also **Ex parte Chaney,** 563 S.W. 3d 239 (2018) at FN 2.

Munoz believes that the convicting Court should have never proceeded to trial for the lack of jurisdiction. See QUESTIONS PRESENTED, 1st and 2nd above. However, Munoz will show this Honorable Supreme Court the manifest injustice the Prosecutor went through to get a win at all cost. A complete miscarriage and travesty of justice all supported by the record herewith and appeals before.

Even though the Prosecutor knew of **Several** times that known perjured testimony occured during trial, the Prosecutor never corrected any favorable perjured testimony of its witnesses.

To divest the convicting Court of its conviction, Munoz begins with divesting Count II or allegation II then will show the proof that Count I is also false.

Complainant, in her statement to Office Steif (police report)[11] claimed that on or about the 15th day of January, 2008, that Munoz entered her room and since she 'knew' what was occuring, Complainant 'moved' as if she was waking up...and that Munoz 'ran out of the room before making penetration'. (Emphasis mine) See Police report as Exhibit "F" in Munoz' § 11.07; WR85,776-01 in the hands of the State.

Now, compared to Complainant's trial testimony, she stated that Munoz' finger went inside her body. See (Vol 13 at 37-38). The Prosecutor knew of such fatal variance and failed to correct to inflame the minds of the jury so the jury would convict.

On Complainant's alleged first incident of January 3, 2008. Complainant stated in a police report that the alleged first incident lasted '10' minutes. See Exhibit "F" again. With great respects

to this Honorable Supreme Court...even though Complainant was age 21 during guilt / innocence, was engaged to her black boyfriend and living with him for several months. Complainant stated that Munoz allegedly penetrated her 'NO-NO SPOT' because she was embarrased to say it. (Vol 13 at30):

> At 21-A: I felt--I felt the fingers penetrate me. 22-Q: And when you say that you felt the fingers...23: penetrate you, was this a skin-to-skin contact? 24:A-Yes...25-Q: Where on your body were the fingers? (Vol 13 at 31) At 1-A: **How do you say that?** I don't know. I don't..2- know how to say that. I feel awkward...3: Q: And I know you feel awkward. Do you have a...4: name for that part of your body?...5-A: My **no-no spot.**

Munoz states that in **Ventura v. Attorney General, FLA.,** 419 F. 3d 1269 (CA 11 1995)...it states at 1276:

> **Giglio** error is a species of **Brady** error that occurs when "the undisclosed evidence domonstrates that the prosecutor's case included perjured testimony [Ventura, 419 F. 3d at 1277] and the prosecution knew, or should have known, of the perjury", **U.S. v. Agurs,** 427 U.S. 97 []. "If false testimony surfaces during a trial and the government has knowledge of it...the government has a duty to step forward adn disclose". **Brown v. Wainwright,** 785 F. 2d 1457, 1464 (11th Cir. 1986).

During defesne counsel's examination of Complainant. Defense questioned Complainant if she ever told anyone that the alleged first incident lasted "10" minuts...of which Complainant answered--NEVER! See (Vol 13 at 90) and (Vol 14 at 79). The record clearly supports perjured testimony...but jurors are not lawyers!

OTHER KNOWN PERJURED TRIAL TESTIMONY KNOWN BY THE STATE

Defense counsel questioned Complainant whether she knew Munoz had been arrested. She denied knowing of his arrest and perjured herself in (Vol 13 at 102)...which also contains that Complainant posted "Big Bad Marine, looking for someone to bond him out", and "I won...I don't know for how long, but I won." In the record cited, Complainant-herself verified that she did give false testimony.

Complainant further perjured herself about two trips to Cancun. The first trip was June 2010, and the second trip was June 2011 after Munoz was out on bond due to Complainant's allegations. Complainant, Elizabeth Kuzmich, and Wilson Kuzmich went on said trips to Cancun with Munoz. (Vol 13 at 75). Complainant said that the trips were in 2009 and 2010.

To support the second trip of 2011 to Cancun. Munoz points to the record after Munoz was out on bond and that the State knew all along that Complainant was perjuring-herself. The State's own witness verified said second trip to Cancun and also committed perjury-herself. Tio's Bail Bond Representative-Chris Barrientes verified that Munoz did in fact go on a trip to Cancun in June 2011 after his arrest on this case. (Vol 14 at 147, 149, 152-154). Said trips were claimed by Munoz in his § 11.07 that the Court and CCA denied without written order when Munoz' Exhibit "J" in WR85,776-01 confirms flight and hotel receipts of Munoz and the Kuzmich' above mentioned's trip to Cancun together. No corrections of any known perjured trial testimony or false evidence was ever corrected by the State.

The only correction the State made was when Defense Counsel mistakenly said Officer Steif worked for the sheriff's office when

Officer Steif actually worked for the Midland Police Department. See (Vol 13 at 91).

To verify and solidify that Complainant did in fact state that the alleged first incident lasted "10" minutes of which she denied saying. Defense counsel, while setting the proper predicate to impeach, verified by Officer Steif that his police reports were in fact accurate and that Complainant did clearly state to the officer that the alleged first incident lasted "10" minutes. See (Vol 13 at 218-219). All found solid in the record.

In **Ventura v. Attroney General, FLA,** 419 F. 3d at 1277 says:

> The origins of the **Giglio** doctrine lie in the Supreme Court's decision in **Napue v. Illinois,** 360 U.S. 264 [...][The Court in **Napue**] explained that "it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the 14th Amend. Id. at 269, 79 S.Ct. 1173 (citing **Mooney v. Holohan,** 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 2d 791 (1935). "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." Id [...]
>
> Subsequently, in **Giglio** at 150...the Supreme Court held that the government's failure to correct false testimony that its **key** witness () had received no promise of non prosecution in exchange for his testimony, as well as the prosecutor's false statement, to this effect in closing argument, required that the defendant be granted a new trial. The Court explained that "DELIBERATE DECEPTION OF A COURT AND JURORS BY THE PRESENTATION OF KNOWN FALSE EVIDENCE IS INCOMPATIBLE WITH RUDIMENTARY DEMANDS OF JUSTICE." Id at 153, 92 S. Ct. 763 []. See QUESTION PRESENTED on State's fraud on recorded jail phone call above.

Furthermore, "Few rules are more central to an accurate determination of innocence or guilt than the requirement...that one

be convicted on false testimony". **Sanders v. Sullivan,** 900 F. 2d 601, 607 (2nd Cir. 1990).

7. DID THE COURT ERR WHEN IT FAILED TO ALLOW DEFENSE COUNSEL TO IMPEACH COMPLAINANT ON KNOWN TRIAL TESTIMONY PERJURED?

Deceit, Fraud On The Court, Use Of More Known Perjury

Pursuant to **U.S. v. Keller,** 58 F. 3d 884, 889 (2nd Cir. 1995) ("[p]lain error exists where an error or defense affects a defendant's substantial rights and results in a manifest injustice"); **U.S. v. Puig-Infante,** 19 F. 3d 929, 941 (5th Cir.)(emphasis added) (pre-**Calverley,** post **Olano**; defines plain error as "error so obvious and substantial that failure to notice it would affect the fairness, integrity, or public reputation of the judicial proceeding and would result in manifest injustice) [13]

Defense counsel did verify that Complainant had in fact perjured herself during trial testimony about not knowing Munoz' arrest, her posting and messages in Facebook, etc...as stated in QUESTION PRESENTED above this QUESTION. See (Vol 13 at 102-104).

Also, defense counsel questioned Officer Steif about Complainant stating that the alleged first incident lasted "10" minutes to set the PROPER PREDICATE TO IMPEACH. (Vol 13 at 213-214). However, the State claimed that Officer Steif 'wrote it down wrong' and asked the Court to NOT permit Officer Steif's testimony using said police report to her advantage. (Vol 13 at 215)...of which...surprisingly, the Court stated that defense counsel did not set the proper predicate to impeach Complainant...which defense counsel did set the proper predicate. (Vol 13 at 215-218). The above shows bias by Court.

Defense counsel verified through Officer Steif's trial testimony that what he roperted in his police report was accurate as to what Complainant-herself stated. (Vol 13 at 218-219) and also see (Vol 14 at 85-87). The Court denied defense counsel the legal right to impeach Complainant using a credible Police Officer's correct police report. (Vol 13 at 216).

"Favorable evidence include exculpatory evidence and impeachment evidence". See **U.S. v. Bagley,** 105 S. Ct. 3375 (1985). "Exculpatory evidence justifies, excuses, disputes, disparges, denies, or contradicts other evidence." See **U.S. v. Broadnax,** 601 F. 3d 336 (5th Cir. 2010).

Munoz simply reminds this Honorable Supreme Court that...[]..., "But a false charge of rape is NOT sexual conduct." **Redmond v. Kingston,** 240 F. 3d 590 (CA 7 2001). In the case at bar, a false allegation(s) of sexual assault or sexual assault of a child is also NOT sexual conduct. See all 4-indictments enclosed as Exhibits "A thru D", and Munoz' claim as supported by Exhibits, Affidavits, and the record that has either been 'denied without written order', 'time-barred', or no 'certificate of appealability' granted.

DID THE TRIAL COURT ERR WHEN IT FAILED TO ALLOW DEFENSE COUNSEL TO IMPEACH COMPLAINANT ON KNOWN TRIAL TESTIMONY-PERJURED?

8. DID THE COURT ERR IN ALLOWING THE STATE TO FILE A MOTION TO CUMULATE SENTENCE AFTER GUILT / INNOCENCE JUST BEFORE SENTENCING NOT KNOWN BY THE JURY (TRIER OF FACT)?

As the United State Supreme Court; Honorable Justice Jackson famously stated:

> "[W]e are not final because we are infalliable, but we are infalliable only because we are final." No matter how 'wrong' or 'arbritrary' State judges may personally believe the Supreme Court to be on a particular issue, they, like the rest of the nations Citizens, should generally follow Supreme Court pronouncement on constitutional issues unless their State constitutional provisions have an independent historical basis or their own Citizens, through legislation or the constitutional amendment process, evince a different balance of competing rights and interests. (Empahsis added).

The continual piercing of Munoz' constitutional rights as an innocent man just so an'rich young lady' could have her way to seperate Munoz from her mother was further demonstrated by the State's 'UNTIMELY' filing of a motion to cumulate sentences and without defense counsel's objection...were permitted and rendered by the Court. Sentences stacked!

Munoz simply asks this Court to simply see (Vol 15 at 77) and (Vol 15 at 111). The Court...did not even provide Munoz any opportunity for 'ALLOCUTION'...the Court simply sentenced Munoz. Yet, Munoz, in respect to the Court simply said: 'Thank you, sir'. Court was adjourned!

Munoz is adamant of his innocence and his wrongful incaceraiton. Munoz feels this Honorable Supreme Court will not hold it against him if he cites:

"had the jury HEARD ALL THE CONFLICTING TESTIMONY"...AND..."Ha[ve] probably resulted in the conviction of one who is actually innocent", sooh that a federal court's refusal to hear the defendant's claims would be a "miscarriage of justice." **Schlup v. Delo,** 513 U.S. 298, 326, 115 S. Ct. 851 (1995).

Munoz states that this is exactly what happened to him when the U.S. District Court in Midland County, Texas simply stated that Munoz' § 2254 was 'time-barred' without given him the proper rights as an American-U.S. born Citizen / U.S. War-Veteran whom is risking everything to demonstrate his innocence. Even up to the current death of his wife of 32-years of marriage in August, 2020. Munoz deeply request this Court to carefully read the following:

"THE DECLARATION OF INDEPENDENCE"

Fifty-six men signed the Declaration of Independene. Thier conviction for freedom resulted in untold sufferings for themselves and their families. Of the 56-men, 5-were captured by the British and tortured before they died. Twelve (12) had their homes ransaked and burned. Two (2) lost their sons in the Revolutionary Army. Another had two sons captured. Nine (9) of the fifty-six (56) fought and died from wounds or hardships of the war. **FREEDOM IS NOT EASILY WON!**

Munoz simly seeks justice as his 5th, 6th, and 14th Amendments have been violated and anihalated. With the loss of his wife, many family members (father-in-law). Munoz has suffered irrepariable harm on the known use of false / fabricated evidence by the State in complete oppoosition to the law and The Supreme Court. For this reason, Munoz has 'denied' parole for four-years in a row! He is innocent!

9. DID THE APPELLATE COURT'S ERR IN ADOPTING TIME BARRED COUNTS NOT ALLOWING PETITIONER HIS GUARANTEED RIGHTS OF MEANINGFUL APPEAL ON CLAIMS OF VOID JUDGMENT AND ACTUAL INNOCENCE?

Williamson v. Berry, 49 U.S. 495, 551 (1850) states:

"A Court's judgment until reveresed is ragarded as binding in every other Court. BUT, if it acts without authority, its judgments and orders are nullities, they are not voidable, but simply VOID. They constitute no justification and all parties concerned in executing and all parties concerned in executing them are considered in law as tresspassers."

"Jurisdiction can be challenged at anytime, and jurisdiction once challenged, cannot be assumed and must be decided." **Main v. Thiboutot,** 100 S. Ct. 2502 (1980); see also Corpus Juris Secundum § 754.

Munoz believes it is noteworthy for this Honorable Supreme Court to be informed of the State's other 'unauthorized' actions. Even though Munoz is adamant that his conviction has been 'void' since its inception, Munoz shows the following that is firmly grounded in the record.

(1) When Munoz filed his direct appeal as Cause Number: 11-13-00139-CR in Eastland, Texas (11th COA). The State filed it's 'RESONSE' (or reply) and 'CONVENIENTLY' misrepresented that Munoz was indicted on **April 20, 2011...**and reindicted on **June 6, 2011.**

However, the above is fraud on the court by the State along with deceit, malicious, and a clear moral turptitude violation because Munoz was 'NOT' reindicted on **June 6, 2011.** Munoz was indicted **April 20, 2011...** reindicted on April 11, 2012, May 9, 2012, and then reindicted on **June 6, 2012!** See Exhibit "E" enclosed that was

'SIDE-STEPPED' by the habeas court and has never been addressed by any federal court. Munoz' § 11.07 (WR85,776-01) has Exhibit "E".[14]

(2) During closing arguments by the State, Assistant District Attorney, Ms. Patterson stated that 'REASONABLE DOUBT' means 'WHAT YOU WANT IT TO MEAN TO EACH OF YOU, IT'S AN INDIVIDUAL DEFINITION'. See (Vol 14 at 164).

(3) The Prosecutor, knowing of every recorded jail phone call between Munoz and Elizabeth Kuzmich (Complainant's mother). Nicely '**Swayed**' the Court into not allowing defense counsel the time to go retrieve recordings from his office that clearly possess recordings that "Laura (Nodolf) hates Robert (Munoz)". Said evidence also contains information that Nodolf mentioned other alleged evidence of other allegations of Munoz to Tyler Kuzmich (State's witness and Complainant's brother) and also non-testifying witness; Christina Reyes. Mrs. Reyes is Tyler Kuzmich's ex-girlfriend.

The Court did not provide any opportunity for defense counsel to retrieve said recordings that the Court said it would. See (Vol 15 at 6-7). Said recordings are still in the hands of defense counsel whom has denied Munoz'repeated attempts to retrieve.

Furthermore, defense counsel was provided with said recordings above with a 5-page hand-written letter by Complainants mother on the Monday of trial. However, defense cousnel did take the 5-page hand-written letter to trial of which the Court permitted the State to copy, even though defense counsel claimed he 'did not know' who wrote it. See (Vol 13 at 161-166). Failure to investigate?

Said hand written letter contains several times Elizabeth Kuzmich remembered the times Munoz was alone with Complainant of which

Complainant denied ever being alone with Munoz. Under **Strickland** supra...this supports 'no sound trial strategy' by defense counsel.

In **Johnson v. zerbst,** 304 U.S. 458, 467 (1938), the Supreme Court makes clear that:

> "[S]ince the 6th Amendment constitutionally entitles one charged with a crime to the assistance of counsel, compliance with this constitutional mandate is an essential **jurisdictional** prerequisite to a Court's authority to deprive an accused of his life or liberty."

(4) The Prosecutor dwelled on Munoz' character with Elizabeth Kuzmich of their 'arguing and fighting'. This is supported in the trial court record with absolutely no objection by defense counsel. See (Vol 13 at 7-8; 33; 45; 72; 127; 134; 184; 185; 186; and 199).

Munoz points to **Washington v. Hofbauer,** 228 F. 3d at 699 (CA 6 2000):

> [...] When a prosecutor dwells on a defendant's bad character in this prohibited manner, we may find prosecutorial misconduct. See e.g. **Cook v. Brodenkircher,** 602 F. 2d 117, 120 (6th Cir. 1979)(noting that the "prosecutor's misconduct in this case is severe" due to his "persistence Ad hominem attack on petitioner's character".)

(5) Furthermore, the State is believed to have committed a federal U.S. Postal infraction. See all pictures enclosed in support. Munoz has informed the Court, the U.S. Postal Services in Cuero; Corpus Christi; Midland, Texas, and Washington, D.C. with no response.

Munoz has reason to believe and does believe that the State, 'BY FRAUD' had Munoz' trial transcripts intercepted and re-routed to the Texas Department of Public Safety (DPS) office before being delivered to Elizabeth Kuzmich.

Munoz pre-paid via Certified Mail No. 7015 0640 0001 5782 4996 his trial transcripts to: Elizabeth Kuzmich; PO Box 4693; Midland,

Texas, 79703.

Munoz believes that some of the transcripts were exchanged, especially when defense counsel instructed the Court that Munoz did in fact want to testify in front of the jury. Munoz clearly and indisputably recalls the judge stating something like: "Okay...you can **testify** tomorrow." This is missing from the transcripts and Munoz was in jail clothes in the witness stand with no jury the next day...it was for sentencing! Other portions appear changed, yet Munoz believes this Honorable Supreme Court would agree that Munoz' 5th, 6th, and 14th Amendments to the U.S. Constitution were violated in all the above and the entire record since trial. Copies of 6-pictures in support to the above stated along with verification of certified mail from Munoz to Elizabeth Kuzmich from Stevenson Unit, Cuero, Texas to Midland, Texas are enclosed in Appendix.

CONCLUSION

Petitioner Munoz objections contend that he is actually innocent, and that the untimeliness of his § 2254 petition should be excused under **McQiggin v. Perkins,** 569 U.S. 383, 386-91, 133 S. Ct. 1924 (2013). In **McQujggin,** the Supreme Court held that even where a habeas petitioner [2016 U.S. Dist. LEXIS 5] has failed to demonstrate the due diligence required to equitably toll the statute of limitations, a plea of actual innocence can overcome the AEDPA statute of limitations under the "miscarriage of justice" exception to a procedural bar. A tenable actual innocence claim must persuade a district court that, in light of the new evidence, it is more likely than not that no rational fact-finder would have found the petitioner guilty beyond

a reasonable doubt in light of the new evidence. Id., at 386, 399. The untimeliness of plea of actual innocence does bear on the credibility of the evidence offered. Id., at 399-400. "A credible claim [of actual innocence to excuse the untimeliness of a habeas petition] must be supported by new reliable evidence--whether it be exculpatory scientific, trustworthy eye-witness accounts, or official physical evidence-that was not presented at trial." **Vloyd v. Vannoy,** 887 F. 3d 214, 2018 WL 1663749 at *6-7 (5th Cir. 2018). Also see the above in **Berger v. Davis,** 2018 U.S. Dist. LEXIS 213634.

Munoz humbly points to all the 'Exonerating' evidence that no trier of fact has knowledge of nor addressed by any appellate court, all in the record in WR85,776-01(Munoz' § 11.07); § 2254 No. 7:18-CV-191 (Munoz' § 2254); No. 19-50641 (Munoz' Certificate of Appealability with Brief in Support) form the 5th Circuit Court of Appeals in Louisiana; plus Grievance No. 201704943 and BODA No. 59576 (Munoz v. Laura Nodolf) as found in WR85,776-02.

PRAYER

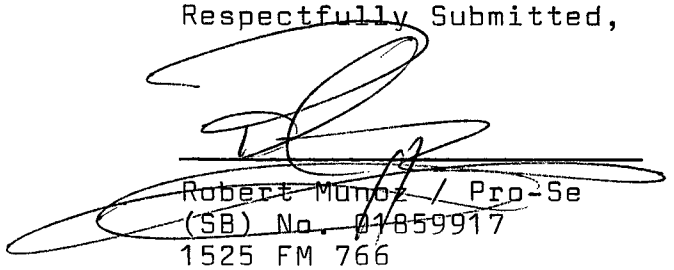
WHEREFORE, PREMISES CONSIDERED, Petitioner Munoz prays that this Honorable Supreme Court declare 'VOID' the judgment of the Criminal District Court:(441st) in Midland, Texas in State Criminal Cause Number CR38496, wherein all subsequently issued instruments of law which base their authority upon each 'BRUTUM FULMEN' are declared to be 'NULL AND VOID'.

Munoz further prays that this Honorable Supreme Court order the 'Dismissal' with prejudice of any further prosecution in Cause

Number CR38496 as the State is barred from reprosecution pursuant to the Double Jeapordy Clause of Article 1, § 14 of the Texas Constitution, and the 5th, 6th, and 14th Amendments to the United State Constitution...'Vindictive Prosecution'.

Munoz humbly further request habeas counsel and if this Honorable Supreme Court deem a live hearing for the order of Munoz' immediate release from the Texas Department of Criminal Justice Division along with any other dues him by law with all good speed. He somprays!

Respectfully Submitted,



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