

21-5225 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JUL 13 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Raymond Lumsden - PETITIONER
(Your Name)

vs.

State of Texas - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Raymond Lumsden
(Your Name)

Rt 2 Box 4400

(Address)

Gatesville, TX 76591
(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Did the trial court deny Petitioner a fair trial by refusing indigent funds for a DNA expert to assist the defense and testify at trial under Ake v. Oklahoma (1985)?
2. Was appointed trial counsel ineffective for failing to file proper motions for expert witness fees as even the Court of Appeals cited in their decision of this case?
3. Did the State's use of false expert testimony related to "touch DNA" evidence, violate Petitioner's right to a fair trial?
4. Did the State's continued bolstering of its witnesses credibility deny Petitioner of a fair trial?
5. Did appointed trial counsel's numerous failures and acts of ineffectiveness deny Petitioner a fair trial under the Sixth Amendment, as even the Court of Appeals pointed out in their decision?

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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

1. Raymond Lumsden v. State of Texas, No. 02-16-00366-CR, Second Court of Appeals - Fort Worth, Texas. Judgment entered on November 8, 2018.
2. Ex Parte Raymond Edward Lumsden, No. F15-1103-211 WHC 1, WR- 89,651-02, Court of Criminal Appeals of Texas. Denied on June 2, 2021.

IN THE
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PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from **federal courts**:

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

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 is unpublished.

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

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 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C 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 State Court of Appeals court appears at Appendix A to the petition and is
 reported at Lumsden, 564 S.W.3d 858; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from federal courts:

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

No petition for rehearing was timely filed in my case.

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

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

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

For cases from state courts:

The date on which the highest state court decided my case was 6/2/2021. A copy of that decision appears at Appendix C.

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).

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
<u>Ake v. Oklahoma</u> , 470 U.S. 68 (1985)	3, 6
<u>Strickland v. Washington</u> , 466 U.S. 668 (1984)	3, 6
<u>Brady v. Maryland</u> , 373 U.S. 83, 87 (1963)	3, 6

STATUTES AND RULES

Sixth Amendment	Passim
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OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The right to an indigent defendant to have expert witnesses assist with his defense and testify at his trial under Ake v. Oklahoma, 470 U.S. 68 (1985).
2. The right to the effective assistance of trial counsel under Strickland v. Washington, 466 U.S. 668 (1984).
3. The defendant's right to a fair trial under the Sixth Amendment and Brady v. Maryland, 373 U.S. 83, 87 (1963), where the State allows its witnesses to provide material false testimony and fails to correct it.
4. The defendants right to a fair trial under the Sixth Amendment forbidding the State from bolstering the credibility of its witnesses, especially in a case where credibility is the "crux" of the case, as in the present case.

STATEMENT OF THE CASE

Raymond Lumsden, Petitioner, was accused of sexual assault after a heated domestic argument where he ended the relationship and told the mother of the complainant to "move out of his home." Without ever being questioned by law enforcement, Lumsden was indicted by a Denton County, Texas grand jury on June 5, 2015.

Being indigent, Lumsden was appointed trial counsel, Robert "John" Holland to represent him. Lumsden wrote numerous letters to the trial court complaining of Holland's refusal to file motions, meet with him, and complaining of a severe conflict, which the trial court ignored in totality. Even during the trial itself, Lumsden sent a letter to the trial court complaining of his counsel's refusal to impeach the lying witnesses with evidence in his possession, etc. Again, the trial court ignored the letter, and the trial continued.

Prior to trial, Lumsden's counsel filed a request for indigent funds necessary to hire a DNA expert, which the trial court granted. The defense hired Forensic Expert Suzanna Ryan, who effectively destroyed the prosecutions alleged DNA evidence, known as "touch DNA." But, she would never be heard at trial, nor the evidence introduced because trial counsel "failed to file a proper request for additional funds for the expert to testify at trial," as the trial court and Court of Appeals opined in denying Lumsden relief. At a hearing prior to trial, counsel had only made a verbal request for the additional funds needed for the DNA expert to travel and testify, which the trial court denied.

At trial, the complainant took the stand, and twice when asked, told the court that Lumsden....was NOT her alleged abuser. Just as Lumsden had maintained all along, and still maintains to this very day. In fact, the complainant denied most of the original allegation and the events associated with it, as had been described to authorities by her mother, the woman/girlfriend that Lumsden had broken up with and told to leave his home prior to the allegation being reported.

The entire, was an act of character assassination on Lumsden during the trial, where the prosecution introduced evidence and testimony that was obviously and known to be false and perjured. For instance, two probation officer's testified that Lumsden was a "poor probationer and unbelievable or honest." To the contrary, Lumsden had been granted an early release by the probation department for GOOD BEHAVIOR!!!!

More powerful however, was the testimony of the state's DNA expert, Christina Capt. She told the jury that the "touch DNA" found on the complainant, was only Lumsden's, couldn't have transferred because "touch DNA" only transfers through biological fluids, and that it proved sexual assault had occurred, etc. Every word, false and flat-out perjured as the defense DNA expert could/would have exposed had she been allowed to testify at Lumsden's trial.

In closing, over and over, the state told the jury how credible

and believable their witnesses were, to include the law enforcement who had conducted "the best investigation I've ever seen. They knocked it out of the park on this one." Bolstering their witnesses to the fullest extent, without any objection from the defense counsel who fell in-and-out of sleep during trial, and was highly inattentive.

Lumsden's defense counsel provided ineffective assistance in many instances, as even the Court of Appeals found in their decision to deny Lumsden any relief, and a new trial. They determined, however, that Lumsden had not been prejudiced by those failures, which included counsel's failure to properly request the funds he needed in order to assure Lumsden's DNA expert, Suzanna Ryan, was at trial to advance his defense, etc.

The jury found Lumsden guilty, and handed down three (3) stacked LIFE sentences. Lumsden filed his direct appeal, which was denied, and then his state writ of habeas corpus, which was also denied.

Lumsden has also filed numerous motions requesting an evidentiary hearing in the trial court, and additional DNA testing to prove his innocence in this case, all denied by the trial court without hearing. In addition, Lumsden has introduced into the trial court cia motions, evidence that the state provided false testimony and evidence, and that his trial counsel failed to introduce exculpatory and mitigating evidence at trial, all of which went ignored by the trial court, and the Texas Appellate Courts.

This Petition, is Lumsden's last and only remaining hope at truth, justice, and his innocence.

REASONS FOR GRANTING THE PETITION

1. Texas continuously violates this Court's decision in Ake, and denies defendant's who are indigent, defense experts to assist with their defense, and to testify at trial, etc. As they did in this case. Then, the appellate Court's also fail to uphold the Ake decision. This has NATIONAL significance.

2. Lumsden's court appointed trial counsel knew that DNA evidence would be critical at trial in requesting the initial funds to hire a defense DNA expert to give adversarial challenge to the "touch DNA" evidence of the State. His failure to properly file a motion requesting additional funds for the defense expert to testify at trial, was ineffective assistance of counsel and denied Lumsden a fair trial, where the complainant testified that Lumsden was NOT her alleged abuser. The DNA expert, was critical and would have changed the outcome of the case.

3. This Court has continually held that prosecutor's cannot bolster the credibility of their witnesses at trial, and when they do, it violates the constitution and the defendant's right to a fair trial. Yet it happens with regularity, unchecked, in Texas, as it did in this case, numerous times. This has National significance.

4. This Court decided in Strickland, the responsibility of counsel in representing a defendant at trial. In this case, counsel violated them all, and performed miserably, denying Lumsden of a fair trial and violating his Sixth Amendment right to a fair trial. This has NATIONAL significance.

5. The trial court in denying the request for additional funds for the defense DNA expert to travel and testify at trial, where it had previously granted funds for her review and findings, was an abuse of discretion and violated Lumsden's right to a fair trial. This abuse, has NATIONAL significance and happens on daily basis in courtrooms across the country.

6. Because if the Petition is not granted, Lumsden will die in prison for a crime he did not commit, as even the complainant herself told the trial court when she testified that Lumsden was NOT her alleged abuser. Innocence, has a NATIONAL impact and significance on every citizen.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Raymond E. Lummis

Date: 7/3/2021