

21-5338 ~~ORIGINAL~~

No. _____

Supreme Court, U.S.
FILED

AUG 05 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL VINCENT MOORE — PETITIONER
(Your Name)

vs.

DIRECTOR, TDCJ-CID — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

MICHAEL VINCENT MOORE ID #02002686

(Your Name)

CID SMITH UNIT / PRISON
1313 COUNTY ROAD 19

(Address)

LAMESA, TEXAS 79331-1898

(City, State, Zip Code)

(806) 872-6741

(Phone Number)

QUESTION(S) PRESENTED

1. WHY DID THE PROSECUTOR SUBMIT A AFFIDAVIT FOR PROBABLE CAUSE LISTING/CITING A TAN ANIMAL HAIR WAS FOUND INSIDE WICKER TRUNK WITH VICTIM (AFTER VIEWING THE PETITIONER'S INTERNET FACEBOOK PAGE AND SEEING HIS TAN AND WHITE K-9 DOG) WHEN THE PROSECUTOR RECEIVED THE DNA REPORT ON 4/30/2013 (ONE WEEK BEFORE FILING AFFIDAVIT TO THE COURT, MAY 6, 2013) DNA REPORT LISTING "HAIR FROM TRUNK" AS BLACK AND PROFILED AS BEONGING TO THE VICTIM? (APPENDIX 'G' EXHIBIT "B" DNA RPT, PAGE 3 OF 3)
DAVIS V. STATE, 831 S.W.2d 426 (TEX. CRIM. APP. 1989); EX-PARTE BRANDIEY, 781 S.W.2d 886- (TEX. CRIM. APP. 1989); U.S. V. LEON, 468 U.S. 897 (1984); VIOLATION(S) OF U.S. CONSTITUTION AMENDMENT(S) FOURTH, FIFTH, FOURTEENTH; FED. R. APP. P. RULE 56 (G),

2. HOW IS IT LEGAL FOR THE TRIAL COURT TO ALLOW AND IGNORE IRRELEVANT, INADMISSIBLE, MISLEADING CELL PHONE TESTIMONY AND EVIDENCE TO BE ADMITTED WHEN CLEARLY THE MOTION FOR MISTRIAL SHOULD HAVE BEEN GRANTED AT: 17RR, 83-84 (EXHIBIT "L"), THE STATES ACCUSATION/SPECULATION WAS "LACK IN CALL ACTIVITY" FOR THE DAYS IN QUESTION, (EXHIBIT "N" PAGE 13) WHICH IS PROVEN TO BE THE OPPOSITE WITH GRAPH AND PHONE RECORDS AT: EXHIBITS "C" PAGES 111 THRU 115. (APPENDIX "G" EXHIBIT "L" "N" AND "C").
COBIE V. STATE, 330 S.W.3d 253, 292 (TEX. CRIM. APP. 2010),

JACKSON V. VIRGINIA, 443 U.S. 307, 99 S.Ct. 2781-82 (1979) 8, HABEAS CORPUS 45.2 (1).
TEXAS RULES OF EVIDENCE (TRE), RULE 402 (IRRELEVANT EVIDENCE INADMISSIBLE),
" " " " " TRE - RULE 403 (VIOLATIONS U.S. CONST. AMENDS: 5TH, 6TH AND 14TH)

3. IF THE TIME OF DEATH IS/WAS 12 TO 36 HOURS BEFORE THE VICTIM WAS FOUND, HOW COULD PETITIONER COULD HAVE STRANGLED THE VICTIM SHORTLY AFTER SEXUALLY ASSAULTING HER (STATED BY THE STATE AT EXHIBIT "N" PAGE 12), WHEN THE DNA EXPERT AND MEDICAL EXAMINER'S TESTIMONY IS THAT PETITIONER'S SEMEN/SPERM THAT WAS FOUND WAS MEDICALLY/SCIENTIFICALLY PROVEN TO HAVE BEEN DEPOSITED FIVE (5) DAYS OR ONE HUNDRED TWENTY (120) HOURS BEFORE, NOT 12 TO 36 HOURS, DUE TO THE TAILS BEING MISSING WHICH TAKES 120 HOURS OR 5 DAYS AS PER EXHIBITS "L3" PAGE 260-261 AND "M3" PAGES 106-108. (APPENDIX "G" EXHIBITS "N" "L3" "M3"),

4. WHY DID THE PROSECUTOR STATE TO THE COURT THAT HE WAS WAITING THE FBI DNA REPORT OF THE TAN ANIMAL HAIR THAT WAS FOUND INSIDE TRUNK, WHEN HE KNEW A YEAR BEFORE FROM THE DPS DNA LAB REPORT ISSUED 4/30/2013, THE RESULT IDENTITY OF THE HAIR. (STATEMENT MADE BY PROSECUTOR ON MAY 13, 2014) SEE APPENDIX "G" EXHIBIT "J" PAGES 3-4).
DAVIS V. STATE, 831 S.W.2d 426 (TEX. CRIM. APP. 1989); EX-PARTE BRANDIEY, 781 S.W.2d 886 (TEX. CRIM. APP. 1989); U.S. V. LEON, 468 U.S. 897 (1984); VIOLATIONS U.S. CONST. AMEND. 4TH, 5TH, 14TH).

5. HOW CAN THE STATE BE ALLOWED TO VIOLATE THE U.S. CONSTITUTION AMEND. ARTICLE VIII(8) BY POSTING AN "EXCESSIVE BAIL" AMOUNT OF TEN MILLION (\$10,000,000) DOLLARS?

6. WHY WAS THERE VERY LITTLE OR NOTHING WAS DONE ABOUT THE STATE INTERCEPTING "LEGAL SEALED CONFIDENTIAL MAIL" FROM PETITIONER TO HIS TWO (2) ATTORNEYS. SEE APPENDIX "G" (EXHIBIT "G" 3 PAGE DOCUMENT ON 2 PAGES). DREHER V. SIEAFF, 636 F.2d 1141, 1143 (7TH CIR. 1980); BREWER V. WILKINSON, 3 F.3d 816, 820 (5TH CIR. 1993); U.S. V. MASTROIANNI, 749 F.2d 900-908 (1ST CIR. 1984); AITZER V. DEEDS, 171 F.3d 549 N. 14 (4TH CIR. 1999); VIOLATION U.S. CONST. 1ST, 6TH, 14TH AMENDMENTS.
QUESTION(S) PRESENTED CONTINUES ON NEXT PAGE

QUESTION(S) PRESENTED / CONTINUE

7. IS IT AGAINST THE LAW OR ILLEGAL TO DENY/DEPRIVE AN INMATE ACCESS TO LEGAL RESEARCH, LAW LIBRARY, ACCESS TO ATTORNEY AND THE COURTS? AS TO WHAT HAPPENED CONSTANTLY AND CONTINUOUSLY AT 4RR.5-6 (APPENDIX "G" EXHIBIT "I" PAGES 5-6); BOUNDS V. SMITH, 430 U.S. 817, 828 (1977); CONST. AMEND. VIOLATION 5TH, 14TH.

8. WHY DID THE PROSECUTOR FILE THE ELECTION NOT TO SEEK THE DEATH PENALTY AFTER HE REALIZED PETITIONER DID NOT WOULD NOT "FAIL" FOR HIS "RUSE"? (APPENDIX "G" EXHIBIT "D")

9. HOW CAN SIX (6) JURORS WHO HAD AN OPINION AS TO PETITIONER'S GUILT, BE ALLOWED TO SIT ON THE JURY PANEL AFTER ADMITTING DURING VOIR DIRE THAT THEY VIEWED T.V. NEWS REPORTS AND FOLLOWED THE CASE? (APPENDIX "G" EXHIBIT "K" PAGES 43, 44, 45); 1RR. 125 THRU 135 ON MAY 4, 2015 NOT INCLUDED). VIOLATION U.S. CONST. AMEND. SIX (6); DANIELS V. WOODFORD, 428 F.3d 1181, 1211-12 (9TH CIR. 2005); REMMER V. U.S., 347 U.S. 227 (1954); U.S. V. BECKNER, 69 F.3d 1290, 1293 (5TH CIR. 1995).

10. HOW COULD THE DNA EXPERT BE ALLOWED TO CHANGE HER TESTIMONY BY TELLING THE BIAS JURY THAT PETITIONER COULD NOT BE EXCLUDED FROM A DNA SWAB PROFILE FROM THE ANAL AREA AND DAMAGING PETITIONER UNREVERSABLE DAMAGE DONE IN THE MINDS OF THIS BIAS JURY AT: 18RR.107 EXHIBIT "M4" PAGE 107; WHEN THE DNA REPORT ITEM #01-04 ANAL SWAB STATES "NO DNA FOREIGN WAS OBTAINED"; THE EXPERT TESTIMONY CHANGED. AT: 18RR.109-110 (APPENDIX "G" EXHIBIT "M5" PAGE 109-110).

11. WHY WAS "INTERLOCUTORY APPEAL" NOT CONSIDERED, EXAMINED OR RULED ON BY THE FIFTH CIRCUIT COURT ON JUNE 10, 2021 AFTER THE SAME COURT DISMISSED THE INTERLOCUTORY APPEAL FOR "WANT OF JURISDICTION" ON FEBRUARY 12, 2020? (APPENDIX "D").

12. WHY WAS "IN FORMA PAUPERIS" DENIED BY THE FIFTH CIRCUIT ON JUNE 10, 2021 WHEN PETITIONER HAS NEVER HAD OR OBTAINED / POSSESSED MORE THAN TWO HUNDRED (\$200) DOLLARS AT ONE TIME AS SHOWN ON PETITIONER'S INMATE TRUST ACCOUNT STATEMENT? (APPENDIX "A").

13. WHY IS IT THAT PETITIONER HAS BEEN CONSTANTLY, CONTINUOUSLY DENIED THE "MOTION TO BE LOANED/FURNISHED A PARTIAL COPY OF THE RECORD ON APPEAL" AS PER THE RULE FED. R. APP. P. RULE 28 ("BRIEFS"); PETITIONER IS ENTITLED, AND HAS BEEN TRYING FOR TWO (2) YEARS PRIOR TO RECEIVING THE FIFTH CIRCUIT COURTS MANDATE DENYING PETITIONER'S CERTIFICATE OF APPEALABILITY AND PANEL REQUEST FOR REHEARING "EN BANC". ANOTHER MOTION TO RECEIVE THE RECORDS (PROBABLE CAUSE AND FBI DNA REPORT) WAS SUBMITTED WITH "NOTICE OF APPEAL EN BANC FOR REHEARING", DENIED ON JULY 9, 2021. (APPENDIX "A")

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:

1. **Bobby Lumpkin, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE (TDCJ)
CORRECTIONAL INSTITUTE DIVISION (CID)
P.O. BOX 99, HUNTSVILLE, TEXAS 77340 - 0000**
2. **NATHAN TADEMA, ASSISTANT ATTORNEY GENERAL
P.O. BOX 12548, AUSTIN, TEXAS 78711**

RELATED CASES

TRIAL COURT: 244TH JUDICIAL DISTRICT COURT CASE CR13-00337, MAY 8, 2015 CONVICTION DATE.

DIRECT APPEL: 12TH COURT OF APPEALS CASE 12-15-00137-CR, AUGUST 31, 2016 CASE AFFIRMED (MANDATE)

COURT OF CRIMINAL APPEALS OF TEXAS, PDR CASE PD-0552-16, JULY 27, 16 CASE REFUSED.

COURT OF CRIM. APPEALS OF TEXAS, HABEAS CORPUS CASE WR-86-382-01, APRIL 12, 2017 CASE DENIED.

U.S. DISTRICT COURT, HABEAS CORPUS 2254 CASE 6:17-cv-00423, JULY 29, 2020 CASE DENIED.

U.S. COURT OF APPEALS FOR THE 5TH CIRCUIT CASE 19-41005, FEBRUARY 12, 2020 CASE DISMISSED FOR "WANT OF JURISDICTION" (INTERLOCUTORY APPEAL).

U.S. COURT OF APPEALS 5TH CIRCUIT CASE 20-40535, JUNE 10, 2021 CASE DENIED.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A- 1.U.S. COURT OF APPEALS(5TH CIRCUIT) MANDATE DENYING COA APPEAL.
2. NOTICE OF APPEAL FOR REHEARING "EN BANC".

3. LETTER FROM U.S. COURT OF APPEALS(5TH CIRCUIT) DENYING NOTICE TO APPEAL "EN BANC".

APPENDIX B ORDER ADOPTING RECOMMENDATION OF USDC MAGISTRATE JUDGE DENYING AND DISMISSING HABEAS CORPUS AND COA.

2. FINAL JUDGMENT ORDER DENYING AND DISMISSING HABEAS CORPUS AND COA.

APPENDIX C JUDGMENT OF CONVICTION BY TRIAL COURT CASE CR13-00337. 2. MANDATE FROM, 12TH COURT OF APPEAL (AFFIRMED). 3. PDR AND HABEAS 11.07 DENIED BY COURT OF CRIMINAL APPEALS OF TEXAS (2 WHITE CARDS). 4. LETTER FROM ATTORNEY APPOINTED FOR CHAPTER 64 WRIT.

APPENDIX D "INTERLOCUTORY APPEAL" ORDER CLOSING. 2. DOCKET SHEET. 3. MOTIONS FILED: DESIGNATE THE RECORD, STATEMENT OF EVIDENCE, PRODUCTION OF DOCUMENTS,

6. MANDATE, APPEAL DISMISSED "FOR WANT OF JURISDICTION" FROM 5TH CIRCUIT COURT OF APPEALS.

APPENDIX E ORDER FROM USDC TO REOPEN AND RETURN CASE TO ACTIVE DOCKET. 2.- LETTER: REQUEST FOR MANDATE (NEVER RECEIVED).

3. ORDER DENYING REQUEST CASE BE RE FILED FOR INTERLOCUTORY APPEAL.

APPENDIX F NOTICE OF APPEAL TO THE 5TH CIRCUIT COURT "INTERLOCUTORY APPEAL".

2. MOTION TO BE LOANED PART OF THE RECORD ON APPEAL: PROBABLE CAUSE/FBI DNA REPORT.

3. ORDER FROM USDC DENYING MOTION FOR PART OF THE RECORD ON APPEAL.

APPENDIX G: PETITIONER'S EXHIBITS "B" THRU "N" (THIRTY FOUR (34) PAGES).

NOTE: DUE TO TDCJ-CID POLICY/RULES, PETITIONER IS UNABLE TO FURNISH "EXHIBITS" TO ATTORNEY GENERAL PER REGULATIONS. INMATES ARE PROHIBITED FROM GENERATING COPIES. ATTORNEY GENERALS OFFICE CAN RETRIEVE ALL DOCUMENTS FROM THE CLERK'S RECORDS ON FILE. A TABLE OF CONTENTS OF THE EXHIBITS WILL BE INCLUDED / ENCLOSED WITH A CARBON CAREFULLY COPIED IN FORMA PAUPERIS AND THIS PETITION WRIT AS REQUIRED BY SUPREME COURT RULE 29.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
ALTIZER V. DEEDS, 191 F.3d 549 N.14 (4TH CIR. 1999)	— — — — —
BOUNDS V. SMITH, 430 U.S. 817, 828 (1977)	— — — — —
BREWER V. WILKINSON, 3 F.3d 549 N.14 (4TH CIR. 1999)	— — — — —
COBIE V. STATE, 1330 S.W.3d 253, 292 (TEX. CRIM. APP. 2010)	— — — — —
DANIELS V. WOODFORD, 428 F.3d 1181, 1211-12 (9TH CIR. 2005)	— — — — —
DAVIS V. STATE, 831 S.W.2d 426 (TEX. CRIM. APP. 1989)	— — — — —
DREHER V. SIEIAFF, 636 F.2d 1141, 1143 (7TH CIR. 1980)	— — — — —
EX-PARTE BRANDLEY, 781 S.W.2d 886 (TEX. CRIM. APP. 1989)	— — — — —
JACKSON V. VIRGINIA, 443 U.S. 307, 99 S.Ct. 2781-82 (1979)	— — — — —
REMMER V. U.S., 347 U.S. 227 (1954)	— — — — —
U.S. V. BECKNER, 69 F.3d 1290, 1293 (5TH CIR. 1995)	— — — — —
U.S. V. LEON, 468 U.S. 897 (1984)	— — — — —
U.S. V. MASTROIANNI, 749 F.2d 900-908 (1ST CIR. 1984)	— — — — —

STATUTES AND RULES

FEDERAL RULE OF APPELLATE PROCEDURE, RULE 10(c)	— — — — —	6
FED. R. APP. P. RULE 24	— — — — —	6
FED. R. APP. P. RULE 28	— — — — —	—
FED. R. APP. P. RULE 56 (G)	— — — — —	—
(ADDED)		
FED. R. APP. P. RULE 26.1-	— — — — —	V

OTHER

TEXAS RULE OF EVIDENCE, RULE 402	— — — — —	—
TEXAS RULE OF EVIDENCE, RULE 403	— — — — —	—

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is UNKNOWN (SEE BELOW)

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 UNKNOWN (SEE BELOW)

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 UNKNOWN

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

The opinion of the 294TH JUDICIAL DISTRICT court 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.

^{1.}
PETITIONER HAS SUBMITTED FOUR (4) REQUEST TO ACCESS LAW LIBRARY TO RESEARCH THE
PUBLICATION OF CASE(S). LIBRARY STAFF REFUSE TO ANSWER MY REQUEST, DENYING AND
DEPRIVING RIGHT(S) TO ACCESS THE COURT(S). AGAIN (SEE APPENDIX "G" EXHIBIT "I")
BOUNDS V. SMITH, 430 U.S. 817, 828 (1977)

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JUNE 10, 2021.

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: JULY 9, 2021, and a copy of the order denying rehearing appears at Appendix A (LETTER FROM THE COURT).

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 AUGUST 31, 2016. 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTIONAL AMENDMENT / RIGHTS (U.S.C.A)

	PAGE
U.S.C.A. VIOLATION OF THE FIRST (1ST) AMENDMENT	ii
U.S.C.A. VIOLATION OF THE FOURTH (4TH) AMENDMENT	ii
U.S.C.A. VIOLATION OF THE FIFTH (5TH) AMENDMENT	ii, iii
U.S.C.A. VIOLATION OF THE SIXTH (6TH) AMENDMENT	iii, iii, 5
U.S.C.A. VIOLATION OF THE EIGHTH (8TH) AMENDMENT	ii, 5
U.S.C.A. VIOLATION OF THE FOURTEENTH (14) AMENDMENT	ii, iii, 5

STATEMENT OF THE CASE

CASE PRESENTED IN ORDER BY DATE / START (2012) TO FINISH (2021).

2012: 11/1/2012 PETITIONER HAD CONSENSUAL SEX WITH VICTIM, PETITIONER'S NIECE.

11/2/2012 VICTIM DISAPPEARED, LEFT TEXT MESSAGE SHE WAS MEETING A GUY FROM PARIS, TEXAS FOR SEX.

11/6/2012 VICTIM FOUND DECEASED INSIDE A WICKER TRUNK. A RAPE KIT WAS PERFORMED AND DNA OF A MIXTURE OF SPERM MATCHED, PETITIONER AND VICTIM. DUE TO THE MIXTURE, MEDICAL EXAMINER AND DNA TESTIMONY (EXPERT) IS THAT THE INTERCOURSE IS CONSISTENT WITH CONSENSUAL SEX. (APPENDIX "G" 19RR.77-78 ALSO AT APPENDIX "G" PETITIONER'S EXHIBITS "L3" (17RR.260-261), "M3" (18RR.106-108) M.E. AND DNA EXPERT STATES THAT PETITIONER'S SPERM WAS FIVE (5) DAYS OLD, THIS CONFIRMS / CORROBORATES PETITIONER'S STATEMENT OF BEING WITH VICTIM ON 11/1/12).

2013: DPS-DNA LABORATORY REPORT NO. GAR-1211-12325 ISSUED TO THE STATE ON 4/30/2013 ITEM NO. (S) 01-04 AND 01-14 IS UNKNOWN. DNA FOUND ON ANAL AND NIPPLE SWABS. (APPENDIX "G" EXHIBIT "B" IS THE REPORT).

DNA EXPERT TELLS BIAS / PREJUDICE JURY "PETITIONER COULD NOT BE EXCLUDED FROM DNA THAT DUE TO LOW LEVEL OF DATA PRESENT, NO PROFILE COULD BE OBTAINED". (APPENDIX "G" EXHIBIT "M4" 18RR.107).

5/6/2013 AFFIDAVIT FOR "PROBABLE CAUSE" TO SEARCH AND ARREST WARRANT EXECUTED. LISTING FOR CAUSE: DNA MIXTURE, CELLULAR (CELL) PHONE RECORDS CALL ACTIVITY, PETITIONER'S DOG'S HAIR FOUND INSIDE WICKER TRUNK WITH VICTIM (TAN HAIR).

1). HAIR FOUND IN TRUNK WAS BLACK AND BELONG TO VICTIM: ACCORDING TO DNA REPORT ITEM NO. 03-01-AD-01-AB TITLED: "HAIR FROM TRUNK" (APPENDIX "G" EXHIBIT "B")

2). CELL PHONE RECORDS ACCUSATION BY THE STATE AT APPENDIX "G" EXHIBIT "N" PAGE 13 IS THAT "LACK OF CALL ACTIVITY DURING THE DAYS / TIME VICTIM WAS MISSING". APPENDIX "G" EXHIBIT "C" PAGE 111 IS A CELL PHONE GRAPH THAT WAS COPIED FROM THE RECORDS PAGES 112, 113, 114 AND 115, INCLUDED, THAT SHOWS AND PROVES THE EXACT OPPOSITE OF LACK OF CALL ACTIVITY, A LOT MORE CALLS IN THOSE FIVE DAYS THAN WEEKS, MONTHS BEFORE PLEASE SEE AND MATCH GRAPH TO THE RECORDS.

3. DNA EVIDENCE LISTED ABOVE, AT APPENDIX "G" EXHIBIT "N" PAGE 12 IS THE STATEMENT BY THE STATE; "MOORE'S SEMEN INSIDE VICTIM'S VAGINA AND MEDICAL EVIDENCE SHOWS THE VICTIM WAS STRANGLED SHORTLY AFTER BEING SEXUALLY ASSAULTED".

PETITIONER CAN SHOW AND PROVE THE STATE'S STATEMENT IS FALSE (FALSE), UNTRUE: PETITIONER'S SEMEN WAS CONFIRMED TO BE MORE THAN FIVE DAYS OLD DUE TO THE TAILS DISSOLVED FROM THE SPERM CELLS THAT TAKES FIVE DAYS (APPENDIX "G" EXHIBIT "L2" (3) PAGE 260-261, "M3" PAGE 106-108).

TIME OF DEATH: WAS 12 TO 36 HOURS BEFORE SHE WAS FOUND (APPENDIX "G" EXHIBIT "L2" 17RR.258, 259, 266-268, 273).

CONTINUATION / CONCLUSION / CONTINUE ON NEXT ADDITIONAL PAGE

STATEMENT OF THE CASE / CONTINUE

5/6/2013: EXCESSIVE BAIL/FINE/BOND AMOUNT OF TEN MILLION (\$10,000,000) DOLLARS. (APPENDIX "G" EXHIBIT "H") CONSTITUTION AMEND. ARTICLE (VIII).

3/18/2014: PETITIONER DENIED/DEPRIVED ACCESS TO LEGAL LAW LIBRARY BOOKS. PETITIONER WANTED TO RESEARCH "PROBABLE CAUSE". JUDGE STATES: "HE HAS A LAWYER!" (APPENDIX "G" EXHIBIT "I" PAGES 5,6). BOUNDS V. SMITH, 430 U.S. 817, 828 (1977).

5/13/2014: PROSECUTOR CONTINUE TO "LIE TO THE COURT ABOUT HAIR FOUND IN TRUNK" STATING HE'S WAITING FOR FBI DNA REPORT ON TAN ANIMAL HAIR. (APPENDIX "G" EXHIBIT "J" PAGES 3,4). U.S. V. LEON, 468 U.S. 897 (1984) (19 CRIM. LAW 394, 4 (6)).

6/24/2014: "MOTION TO STOP THE STATE FROM INTERCEPTING PETITIONER'S LEGAL CONFIDENTIAL MAIL TO ATTORNEYS." (APPENDIX "G" EXHIBIT "G" PAGES 1,2,3). CONSTITUTION AMENDMENT SIXTH AND FOURTEENTH VIOLATIONS.

8/26/2014: STATE FILES "ELECTION NOT TO SEEK THE DEATH PENALTY". THE STATE TRIED A "PLAY" TO SCARE PETITIONER INTO AGREEING TO A PLEA BARGAIN BY THREATENING DEATH IF DNA TESTING OF TAN HAIR BY FBI RESULTS MATCHED PETITIONERS DOG. PETITIONER HAD NOTHING TO DO WITH THE MURDER AND CONTINUED TO REJECT PLEA. (APPENDIX "G" EXHIBIT "D" ONE PAGE).

5/4/2015: VOIR-DIRE JURY SELECTION (JURY BIAS AND PREJUDICE). JURORS WERE OPINIONATED AS TO PETITIONER'S GUILT BASED ON WHAT THEY VIEWED ON T.V. NEWS. (APPENDIX "G" EXHIBIT "K" PAGES 43,44,45), PAGE 128 THRU 135 NOT INCLUDED (IRR.). NOTE: PETITIONER IS AFRICAN AMERICAN (BLACK). TRIAL BEING HELD IN ALL WHITE TEXAS TRIAL COURT (PARTYS AND JURORS). PETITIONER WAS DOOMED FROM THE START BY THIS SMALL TEXAS TOWN. DANIELS V. WOODFORD, 428 F.3d 1181, 1211-12 (9TH CIR. 2005); REMMER V. U.S., 347 U.S. 227 (1954); U.S. V. BECKNER, 69 F.3d 1290, 1293 (5TH CIR. 1995)

5/7/2015: DNA TESTIMONY BY EXPERT, PUBLIC HAIR FOUND AND ENTERED INTO SWIFTS RAPE KIT DOES NOT APPEAR TO HAVE BEEN TESTED AS IT IS NOT LISTED ON DNA REPORT. (APPENDIX "G" EXHIBIT "M" PAGES 82,83). CHAPTER 64 WRIT FOR DNA TESTING FILED ON MAY 16, 2016. ATTORNEY APPOINTED. SEE APPENDIX "C" LETTER FROM ATTORNEY (CASE PENDING).

7/27/2016: PRO SE PETITION FOR DISCRETIONARY REVIEW WAS REFUSED BY COURT OF CRIMINAL APPEALS OF TEXAS (APPENDIX "C" EXHIBIT "F" ONE PAGE CARD NO.1).

4/12/2017: APPLICATION FOR WRIT OF HABEAS CORPUS (11,07) DENIED WITHOUT WRITTEN ORDER BY COURT OF CRIMINAL APPEALS OF TEXAS (APPENDIX "C" EXHIBIT "F" CARD NO.2).

7/20/2017: WRIT OF HABEAS CORPUS (2254) FILED TO THE U.S. DISTRICT COURT.

7/24/2020: WRIT OF HABEAS CORPUS (2254) DENIED BY U.S. DISTRICT COURT. APPEND

12/4/2019: PETITIONER FILED A "INTERLOCUTORY APPEAL" TO THE U.S. DISTRICT COURT THAT WAS FORWARDED TO THE FIFTH CIRCUIT COURT OF APPEALS (APPENDIX "D").

2/11/2020: FIFTH CIRCUIT COURT DISMISSED THE "INTERLOCUTORY APPEAL" FOR WANT OF JURISDICTION" (APPENDIX "D").

CONTINUATION / CONCLUSION ON NEXT PAGE

STATEMENT OF THE CASE / CONTINUED

APPEAL TO COURT OF APPEAL FOR THE FIFTH CIRCUIT.
8/5/2020: NOTICE OF APPEAL, CERTIFICATE OF APPEALABILITY, MOTION (AND) TO BE,
LOANED / FURNISHED A COPY OF THE RECORD ON APPEAL (FED.R.APP.P. RULE 28 BRIEF),
IN FORMA PAUPERIS WITH DATA SHEET FROM INMATE TRUST FUND AS PER FED.R.APP.P.
RULE 24, "STATEMENT OF EVIDENCE UNDER FED.R.APP.P.RULE 10(C) WHEN A TRAN-
SCRIPT IS UNAVAILABLE". (APPENDIX "D").

6/10/2021: U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT HAS DENIED MOTIONS FOR
IN FORMA PAUPERIS, CERTIFICATE OF APPEALABILITY, MOTION FOR LOAN OF RECORD
ON APPEAL, AFFIDAVIT FOR "PROBABLE CAUSE AND FBI DNA REPORT. ALL DENIED.
(APPENDIX "A").

7/9/2021: APPEAL TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT "EN BANC" COURT FOR
PANEL/PANEL/PANEL REHEARING HAS BEEN REJECTED/DENIED. SEE LETTER FROM
THE COURT AT! (APPENDIX "A").

REASONS FOR GRANTING THE PETITION

SUFFICIENCY OF ALL THE EVIDENCE IS INSUFFICIENT TO CHARGE AND CONVICT PETITIONER WITH CAPITAL MURDER. PETITIONER HAS BEEN OVER CHARGED AND WRONGFULLY CONVICTED.

INTERLOCUTORY APPEAL WAS DISMISSED BY THE COURT OF APPEALS (5TH CIRCUIT) FOR "WANT OF JURISDICTION" BUT ONCE JURISDICTION WAS OBTAIN WITH COA, THE APPEAL WAS NOT REVIEWED, CONSIDERED NOR RULED UPON IN THE MANDATE DENYING COA APPEAL. (SEE APPENDIX "D" AND "A")

CHAPTER 64 WRIT FOR DNA TESTING AND AN APPOINTMENT OF COUNSEL WAS GRANTED ON MAY 16, 2016 (CASE STILL PENDING, SEE LETTER FROM APPOINTED ATTORNEY AT APPENDIX "C") REASON FOR GRANTING WRIT IS THAT A PUBIC HAIR WAS FOUND BUT WAS NOT TESTED AND THE FBI DNA REPORT ON THE TESTING OF A "TAN ANIMAL HAIR" WILL BE REQUESTED FOR TESTING. PETITIONER HAS REASON TO BELIEVE THE TAN HAIR DOES NOT EXIST BUT WAS A PART OF THE PROSECUTOR'S "RUSE" TO SCARE PETITIONER. SEE APPENDIX "G" EXHIBIT "J".

THE EVIDENCE LISTED ON PROBABLE CAUSE TO SEARCH AND ARREST WAS INSUFFICIENT FOR MURDER: 1. DNA / 2. CELL PHONE RECORDS / 3. TAN ANIMAL HAIR.

1. DNA: MIXTURE OF SPERM WAS CONFIRMED BY EXPERT WITNESS TESTIMONY TO HAVE BEEN CONSISTENT WITH CONSENSUAL SEX AND THAT THE SPERM WAS FIVE (5) DAYS OR MORE OLD, CONFIRMING AND CORROBORATING PETITIONER'S CLAIM OF BEING WITH THE VICTIM THE DAY BEFORE SHE DISAPPEARED.

2. CELL PHONE RECORDS: THE CELL PHONE RECORDS SHOWS EXACT OPPOSITE OF THE STATE'S ACCUSATION/SPECULATION OF "LACK OF CALL ACTIVITY". PETITIONER REQUEST THIS COURT TO VIEW THE GRAPH AND COMPARE IT TO THE RECORDS AT APPENDIX "G" EXHIBIT "C". PAGE III IS THE GRAPH, 112 THRU-115 ARE THE RECORDS. START WITH 11/1/2012, THE DAY BEFORE VICTIM DISAPPEARED AND GO BACKWARD FOR WEEKS, MONTHS, WHAT WILL BE FOUND ARE CALLS EXCEPTED AND MADE ARE RARELY OVER 8 CALLS PER DAY.

DURING THE TIME THE VICTIM WAS MISSING THERE WERE 10 TO 18 CALLS PER DAY FOR 6 DAYS. WITH THIS EVIDENCE AND THE MOTION FOR MISTRIAL THAT WAS DENIED, IT IS CLEAR THE PHONE EVIDENCE AND TESTIMONY WAS IRRELEVANT AND INADMISSABLE (ILEGAL). (SEE APPENDIX "G" EXHIBIT "L")

3. TAN ANIMAL HAIR: PROBABLE CAUSE LISTED THIS HAIR AFTER VIEWING PETITIONER'S INTERNET FACEBOOK PAGE TO SEE HIS TAN AND WHITE K-9 DOG, THEN FALSELY, FRAUDULENTLY SUBMITTED AFFIDAVIT TO A JUDGE WITH THIS LIE AFTER PROSECUTOR RECEIVED AND KNEW THE TRUE IDENTITY OF THE HAIR ONE WEEK BEFORE ON APRIL 30, 2013 THEN FILED AFFIDAVIT MAY 6, 2013.

IN CLOSING: PETITIONER WAS CONVICTED FOR HAVING SEX WITH HIS NIECE, NOTHING MORE. VICTIM WAS UNDER AGE FOR WHICH THE CHARGE AND CONVICTION SHOULD HAVE FOR SEXUAL ASSAULT, FOR WHICH THE EVIDENCE PROVES, THERE IS NO EVIDENCE OF MURDER, ONLY ACCUSATION(S) AND SPECULATION(S). NOT ONE (1) ITEM ON SEARCH WARRANT AFFIDAVIT OR ITEMS SEIZED ON PROPERTY LIST (APPENDIX "G" EXHIBIT "E-2") WAS USED AS EVIDENCE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Philip J. Wagner

Date: AUGUST 3, 2021