

NOV 08 2021

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No. _____

21-6340

IN THE

SUPREME COURT OF THE UNITED STATES

TROY WAYNE HARMON - PRO SE — PETITIONER
(Your Name)

vs.

STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS 9TH DISTRICT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TROY WAYNE HARMON #2307134
(Your Name)

BETO 1 UNIT, 1391 F.M. 3328
(Address)

TENNESSEE COLONY, TX. 75880
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. The trial court refused to allow Petitioner to call a material witness that could significantly aid in his defense and complied with the Rules Of Evidences. Did the Court of Appeals err by not finding that Petitioner's Sixth Amendment and Fourteenth Amendment Constitutional Rights were violated?
2. Whether the Court of Appeals failed to acknowledge that Petitioner made the required plausible showing that the informant's testimony may be important under Tex. R. Evid. 508(c)(2)?
3. Whether the Court of Appeals Memorandum Opinion was inconsistent and/or contrary to the facts of the record?

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [X] 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:

Philip S. Harris, Assistant District Attorney
Montgomery County, Texas
207 W. Phillips, Second Floor
Conroe, Texas 77301

RELATED CASES

The State of Texas v. Troy Wayne Harmon, No. 19-12-16953,
No. 19-12-16954, In the 221st District Court of Montgomery
County, Texas, Judgement entered February 6th, 2020

Troy Wayne Harmon v. The State of Texas, No. 09-20-00061-CR,
No. 09-20-00062-CR, In the 9th District Court of Appeals at
Beaumont, Judgement entered April 14th, 2021

Troy Wayne Harmon v. The State of Texas, PD-0422-21, PD-0423-21,
In the Texas Court of Criminal Appeals, Judgment entered
August 25th, 2021

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	27

INDEX TO APPENDICES

APPENDIX A	9th District Court of Appeals Memorandum Opinion
APPENDIX B	221st District State Trial Court Judgement of Conviction
APPENDIX C	-Texas Court of Criminal Appeals, P.D.R. Refused
APPENDIX D	No Motion for Rehearing Filed
APPENDIX E	Appellant's Original Brief
APPENDIX F	Petition for Discretionary Review, Questions for Review
APPENDIX G	Constitutional and Statutory Provisions, Pertinent Text

TABLE OF AUTHORITIES CITED

CASES:

<u>Bodin v. State</u> , 807 S.W. 2d 313 (Tex. Crim. App. 1991)...	12,13,16,19
<u>Buchanan v. State</u> , 207 S.W. 3d 772 (Tex. Crim. App. 2006).....	25
<u>Cain v. State</u> , 947 S.W. 2d 262 (Tex. Crim. App. 1997).....	14
<u>Cates v. State</u> , 120 S.W. 3d 352 (Tex. Crim. App. 2003).....	10
<u>Coleman v. State</u> , 577 S.W. 3d 623 (Tex. App. -Fort Worth 2019 , , no pet.).....	10,11,12
<u>Collins v. State</u> , 138 S. Ct. 1663, 201 L. Ed. 2d 9, 2018 US Lexis 3210.....	22
<u>Craney v. Kentucky</u> , 476 U.S. 683, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986).....	8,9
<u>Heard v. State</u> , 995 S.W. 2d 317 (1999[Corpus Christi] pet. ref'd).....	8,12,13,14,19,26
<u>Katz v. United States</u> , 389 U.S. 347, 19 L. Ed 2d 576, 88 S. Ct. 507(1967).....	24
<u>Matthews v. State</u> , 431 S.W. 3d 596 (Tex. Crim. App./2014).....	24,25
<u>Olivarez v. State</u> , 171 S.W. 3d 283 (Tex. App. -Houston[14th Dist] 2005 no pet.).....	9
<u>Potier v. State</u> , 68 S.W. 3d 657 (Tex. Crim. App. 2002).....	9
<u>Roviaro v. United States</u> , 353 U.S. 53, 77 S. Ct. 623, 1 L. Ed 2d 639 (1957).....	11,19
<u>Shedden v. State</u> , 268 S.W. 3d 717 (Tex. App. -Corpus Christi 2008, pet ref'd).....	12
<u>Southwell v. State</u> , 80 S.W. 3d 647 (Tex. App. -Houston[1st Dist.] 2002, no pet.).....	8
<u>State v. Gaino</u> , 149 P. 3d 1229 (Or. App. 2006).....	7
<u>Thompson v. State</u> , 408 S.W. 3d 614 (Tex. App. -Austin 2013,no pet)	20
<u>Tillman v. State</u> , 376 S.W. 3d 188 (Tex. App. -Houston[14th Dist.] 2012, no pet.).....	9
<u>U.S. v. Bohn</u> , 890 F. 2d 1079 (CA 1989).....	7

STATUTES AND RULES

Sixth Amendment of the U.S. Constitution.....	7,22,25
Fourteenth Amendment of the U.S. Constitution.....	7,22,26
Tex. Code Crim. Proc. Art. 28.01.....	5,6
Tex. Code Crim. Proc. Art. 28.08 § 1.(6).....	10
Tex. Health and Safety Code, Sex. 481.112(d).....	6
Tex. R. App. Proc. 44.2(b).....	9,14
Tex. R. Evid. 508(a).....	7
Tex. R. Evid. 508(c)(2).....	6,7,11,12,13,14,16,18,19,22,24
Tex. R. Evid. 508(c)(3)(a)(i).....	24

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 _____ 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 A to the petition and is

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

The opinion of the _____ 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.

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 August 25, 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment of the U.S. Constitution.....	APPENDIX G
Fourteenth Amendment of the U.S. Constitution.....	APPENDIX G
Tex. Code Crim. Proc. Art. 28.01.....	APPENDIX G
Tex. Code Crim. Proc. Art. 28.08 § 1.(6).....	APPENDIX G
Tex. Health and Safety Code, Sec. 481.112(d).....	APPENDIX G
Tex. R. App. Proc. 44.2(b).....	APPENDIX G
Tex. R. Evid. 508(a).....	APPENDIX G
Tex. R. Evid. 508(c)(2).....	APPENDIX G
Tex. R. Evid. 508(c)(3)(a)(i).....	APPENDIX G

STATEMENT OF THE CASE

On July 30, 2019, Special Agent Craig Ward with Texas D.P.S. received information from a non-credible informant that Petitioner (Mr. Harmon); 1. "was an ounce level methamphetamine and heroin trafficker" and "more specific information." (R.R., Vol. 4, pg. 181, L. 14); 2. placed the drugs "in a black tube sock." (R.R., Vol. 4, pg. 186, L. 8); 3. was "located at 27041 Medina Circle in Magnolia" - Mr. Harmon's girlfriend's residence. (R.R., Vol. 3, pg. 17, L. 20), (R.R., Vol. 3, pg. 94, L. 12) Agent Ward then directed Trooper Brit Lopez to "go by and do a 'spot check' to see if he sees Mr. Harmon there." (R.R., Vol. 4, pg. 183, L. 15) Agent Ward stated that he "had no knowledge" of Mr. Harmon's unrelated Failure to Appear warrant at that time. (R.R., Vol. 4, pg. 201, L. 18)

Based on the informant's information, Lopez "went to try to look for Mr. Harmon." (R.R., Vol. 3, pg. 66, L. 4-7) Upon turning on Medina Circle at "9:17" PM, Lopez drove past Mr. Harmon's residence unannounced and allegedly, observed Mr. Harmon, "for a split second", standing by his car. (R.R., Vol. 2, pg. 134, L. 20) Lopez stated he did not "see the Defendant" after that point, and he "never saw anybody leave" or flee. (R.R., Vol. 3, pg. 73, L. 11) Lopez "continues driving down the street", around a corner and "turned on Langtry Dr." at which point he called another agency with a K-9 dog unit for backup. (R.R., Vol. 3, pg. 72, L. 20-25) Lopez stated he learned of Mr. Harmon's unrelated Failure to Appear warrant from "another agency in his area." (R.R., Vol. 3, pg. 64, L. 9)

Approximately "five minutes" after Lopez called for backup, while "waiting around the corner", K-9 handler Sgt. Marshall Williams and Sgt. Christopher arrived at the residence. (R.R., Vol. 3, pg. 73,

L. 22) Upon making a warrantless entry on the curtilage of the Posted Private Property, Jason Tahtinen - a residence visitor, was the only person present and standing next to the drugs that were later found. (R.R., Vol. 4, pg. 215, L. 15) Mr. Harmon's car was parked unattended, "35 yards" from the road, and "within the enclosure of a fence line" around the curtilage of the home. (R.R., Vol. 5, pg. 179, L. 1,24) See also Defense exhibit 1. Lopez testified that when he looked into Mr. Harmon's car with flashlights he did not see any weapons, drugs, or contraband. (R.R., Vol. 4, pg. 66, L. 13)

The police did not have a search warrant (R.R., Vol. 4, pg. 33, L. 22) or consent to search Mr. Harmon's car (R.R., Vol. 4, pg. 39, L. 3), nor was there probable cause or the presence of exigent circumstances. (R.R., Vol. 2, pg. 151, L. 20)...Based WHOLLY on the informant's information, the police conducted an illegal search and seizure on Mr. Harmon's car while repeatedly stating aloud, "We're looking for a black sock" and "Look for a black sock." See video defense exhibit 1 and 2. The illegally obtained evidence from Mr. Harmon's car was used to enhance the drugs found "on the ground" from a 2nd degree possession to a 1st degree "intent to deliver" charge. (R.R., Vol. 5, pg. 54, L. 19)

On January 28, 2020, at "Docket Call", Mr. Harmon submitted a Motion Disclose Informant's Identity to the trial court. Based on the merits of the Motion, and in agreement with all parties, the trial court ordered a 508 Informant Hearing to be held pursuant to Tex. C. Crim. Proc. Art. 28.01 on February 3, 2020 during trial. (R.R. Jan. 28, 2020)

On February 3, 2020 an improper 508 informant hearing was conducted where the trial court refused to allow Mr. Harmon to call

Agent Ward and ask preliminary questions about the informant. The trial court further denied Mr. Harmon's Motion without holding the required "in-camera" hearing as directed by Tex. R. Evid. 508(c)(2) (R.R., Vol. 2, pg. 110, L. 9) Thereafter, Mr. Harmon was found guilty of Possession w/ Intent to Man/Del methamphetamine (Cause #19-12-16954) and heroin (Cause #19-12-169534), both a violation of the Texas Health and Safety Code, Sec. 481.112(d), and sentenced to sixty years confinement. Both judgements, running concurrently, were entered on February 6, 2020.

Mr. Harmon appealed to the Ninth Dist. Court of Appeals in Beaumont, Tx. on July 30, 2020. In his Ground Of Error, Mr. Harmon asserts that "the trial court erred by failing to allow him to call a witness whom he believes would prove that an informant may be able to give testimony to aid in his defense as required under Texas Law" (Appendix E, A.O.B. pg. 10), thus violating his Const. Right to a fair trial. (Appendix E, A.O.B. pg. 16) The Court of Appeals delivered an erroneous Opinion contrary to the facts of the Record and Affirmed the trial court's Judgement on April 14, 2021 (Appendix A, Memorandum Opinion pg. 17)

Mr. Harmon then submitted a Petition for Discretionary Review to the Texas Court of Criminal Appeals on July 29, 2021. In his P.D.R., Mr. Harmon argues that "the Court of Appeals erred in failing to find that the trial court's abuse of discretion arbitrarily violated his Sixth Amendment Right to a fair trial and Fourteenth Amendment Right to procedural Due Process." (Appendix F, P.D.R. "Questions Presented") Mr. Harmon's P.D.R. was refused on August 25, 2021. No Motion to Rehear was filed.

REASONS FOR GRANTING THE PETITION

Pursuant to Rules of the Supreme Court of the United States, Rule 10(b), Mr. Harmon shows the Honorable Supreme Court the following:

QUESTION ONE

The trial court refused to allow Petitioner to call a material witness that could significantly aid in his defense and complied with the Rules of Evidence. Did the Court of Appeals err by not finding that Petitioner's Sixth Amendment and Fourteenth Amendment Constitutional Rights were violated?

Introduction:

Procedural Due Process is thought of in terms of "notice" and the opportunity for a "full and fair hearing". Procedural Due Process also means the opportunity to be heard by an unbiased judicial platform. In the area of criminal law, when the government seeks to deprive the person of his liberty, the greatest procedural safeguards to ensure a fair trial are afforded to defendants.

Any pre-trial adversarial contact of the State and a defendant, at which the State's case may be enhanced, or the defense impaired, may be considered a "critical stage" of the trial. See State v. Gaino, 149 P. 3d 1229 (Or. App. 2006) The Ninth Circuit further holds that an "in-camera" proceeding is a "critical stage of the prosecution". See U.S. v. Bohn 890 F. 2d 1079 (CA 9 1989)

It is long held law that the State has a privilege not to disclose an informant's identity. Tex. R. Evid. 508(a) However, Tex. R. Evid. 508(c)(2) provides in mandatory terms: "If it appears from the evidence in the case, or from some other showing by a party, that an informant may be able to give testimony

necessary to a fair determination of a material issue on guilt or innocence, and the State invokes the privilege, the judge must give the State an opportunity to show in-camera facts revelant to determine whether the informant can in fact supply testimony". The court in Southwell v. State, 80 S.W. 3d 647 (Tex. App. - Houston [1st Dist.] 2002, no pet.) further holds:

"A defendant has the threshold burden of demonstrating that identity must be disclosed. However, because the defendant may not actually know the nature of the informant's testimony, he or she is only required to make a plausible showing of how the informer's information may be important. Once a plausible showing is made, the court should conduct an in-camera hearing to determine whether there is a reasonable probability the informant could give testimony necessary to a fair determination of guilt or innocence." id at 649-50

A. Mr. Harmon's fundamental due process right to 'present a defense' was violated by excluding 'critical exculpatory' testimony and evidence...

The Court of Appeals errs by not finding that the trial court's error of law in it's ruling further denied Mr. Harmon of his Right to a fair trial. Agent Ward testifying at the improper 508 informant hearing was crucial to show that the State may have relied on the informant's information to establish guilt. See Heard v. State, 995 S.W. 2d 317, 320 (1999 [Corpus Christi] pet. ref'd) By not being allowed to ask Agent Ward preliminary questions about the informant, Mr. Harmon was denied a "meaningful opportunity to present a complete defense" See Crane v. Kentucky, 476 U.S. 683, 690, 106 S. Ct. 2142, 90L. Ed. 2d 636 (1986)

The Court of Appeals further errs holding: "We cannot say... that the trial court abused it's discrection by concluding that the defense did not meet the threshold test for disclosure of the CI's identity." (Appendix A, M.O. pg. 16) However, on the contrary, the

trial court's abuse of discretion entirely prevented Mr. Harmon from EVEN ATTEMPTING to "meet his threshold burden" to show that the informant's disclosure was required from the outset. (R.R., Vol. 2 pgs. 110-115) In other words, Mr. Harmon was not allowed to ask the lead narcotics agent - whom received the "intel" about narcotics - preliminary questions about the informant - whom provided the "intel" about narcotics - , at the 508 informant hearing after the required "plausible showing" was made pursuant to Tex. R. Evid. 508(c)(2). The court in Olivarez v. State, 171 S.W. 3d 283 (Tex. App. -Houston[14th Dist.] 2005 no pet.) holds: "Allowing defense counsel to ask preliminary questions concerning a confidential informant may often be necessary to help a defendant meet his threshold burden of demonstrating that an in-camera review is warranted." id at 294

It's long held in this Honorable Court's Case Law that "the Constitution guaranties criminal defendant's a meaningful opportunity to present a complete defense, which includes the right to 'present testimony of witnesses that is material' and favorable to their defense and complies with the rules of evidence." Crane, 476 U.S. at 690

The court in Tillman v. State, 376 S.W. 3d 188, 198 (Tex. App. -Houston[14th Dist.] 2012, no pet.) further holds:

"The erroneous exclusion of evidence offered under the T.R.E.'s generally constitutes non constitutional error and is reviewed under T.R.A.P. 44.2(b). However, in Texas, the improper exclusion of evidence may raise a constitutional violation in two circumstances: (1) when an evidentiary rule categorically and arbitrarily prohibits the defendant from offering relevant evidence that is vital to his defense; or (2) when a trial court erroneously excludes evidence that is vital to the case, and the exclusion precludes the defendant from 'presenting a defense'." See also Potier v. State, 68 S.W. 3d 657, 665 (Tex. Crim. App. 2002)(exclusion of vital evidence); Wilson v.

State, 451 S.W. 3d 880,886 (Tex. App. -Houston[1st Dist.] 2014, pet ref'd)(exclusion precluded defendant from presenting defense)

Furthermore, "a person who has made a substantial preliminary showing" of his specific allegations "is entitled to an evidentiary hearing. That phrase, 'evidentiary hearing', normally means a live hearing in court with witnesses on the witness stand"... Accordingly, by denying Mr. Harmon the opportunity to present testimony or any other evidence to prove his specific allegations, the trial court denied Mr. Harmon his right to a full 508 hearing. See Cates v. State, 120 S.W. 3d 352, 359 (Tex. Crim. App. 2003)

Therefore, the Court of Appeals errs by not finding that the trial court did not allow Mr. Harmon the opportunity to offer evidence to prove his 508 claim in any of the ways set out in Tex. C. Crim. Proc. Art. 28.01,§1.(6). The Court of Appeals further fails to acknowledge that the trial court cause egregious harm to Mr. Harmon by violating his Due Process Right to present a complete defense, and its Opinion is contrary to well established federal law.

B. The Court of Appeals Opinion was contrary to other court of appeals and Court of Crim. App. Opinions on similar matters.

In its Memorandum Opinion, the Court of Appeals erroneously invokes and applies Coleman v. State, 577 S.W. 3d 623, 636 (Tex. App. -Forth Worth 2019 no pet.) holding: "If the information from the informant was only used to establish probable cause for a search warrant or ... led police to investigate a potential offense" and was not "present when the search warrant was executed... then the informant's identity need not be disclosed" because the informant's testimony is not essential to establish guilt. (Appendix A M.O. pg 16)

However, in Coleman the informant's "tip" merely provided probable cause for a search warrant, he was approached in a public area and the drugs were found "in his pocket". id at 636. The court there simply concluded that the informant's testimony was not necessary to determine guilt. at 628. i.e. Coleman possessed the drugs.

In the instant case, it is undisputed that the police did not have a search warrant (R.R., Vol. 4, pg. 205, L. 21), nor did Mr. Harmon possess the drugs (R.R., Vol. 2, pg. 143, L. 18), nor was Mr. Harmon in exclusive possession where the drugs were found (R.R., Vol. 4, pg. 71, L. 3), nor was Mr. Harmon even present at the scene (R.R., Vol. 2, pg. 136, L. 20) It is therefore abundantly clear in the Record that reasonable probability exists that the State may have relied on the informant's information to establish Mr. Harmon's guilt. (R.R., Vol. 2, pgs. 5-10) The case at bar wholly distinguishes Coleman.

Furthermore, the Court of Appeals erroneously relies on a standard that was before the enactment of Tex. R. Evid. 508 holding, "the informant was not present at the scene" (Appendix A, M.O. pg. 3, 14, 16) ...

Under Texas Law, before enactment of Rule 508, the courts followed this Court's ruling in Roviaro v. United States, 353 U.S. 53, 77 S.Ct. 623, 1 L. Ed 2d 639 (1957). In Roviaro, this Court required an informant's identification disclosure (1) "if the informer participated in the offense", or (2) "was present at the time of the offense or arrest", or (3) "was otherwise shown to be a material witness...". Under current law, however, Rule 508(c)(2) requires only that the testimony be "necessary to a fair determination

of the issues of guilt or innocence". Thus, the new rule requires disclosure in a broader range of circumstances than the three categories of the former rule. See Bodin v. State, 807 S.W. 2d 313, 318 (Tex. Crim. App. 1991)

The court in Heard v. State, 995 S.W. 2d 317 (1999)[Corpus Christi] pet. ref'd) further holds:

"While disclosure is indeed required when a confidential informer is 'present at the scene' or 'a material witness to the transaction itself', there may be many circumstances other than those two where the informer can give testimony necessary to a fair determination of guilt or innocence." id at 321

In example, Mr. Harmon notes that the State used the "very specific", personal and first hand knowledge from the informant to "inflame the minds of the jury" throughout the duration of the trial. (R.R., Vol. 3, pg. 65, L. 23)

Nevertheless, in Coleman, Supra, based on the informant's information, a search warrant was obtained, drugs were found in Coleman's possession, and the informant was not "present at the scene". at 636-37. However, upon Coleman's Motion, a proper Disclosure hearing was held as directed by Tex. R. Evid. 508(c)(2). "After conducting a hearing regarding Coleman's disclosure motion, the trial court held an in-camera hearing with the arresting officer to determine whether the State should be required to disclose the informant's identity." id at 628

In Shedden v. State, 268 S.W. 3d 717 (Tex. App. -Corpus Christi 2008, pet ref'd), the informant's tip was used to procure a search warrant, drugs were found in Defendant's possession, and the informant was not present at the scene." id at 720. However, upon a Disclosure Motion, a proper 508 hearing was held and the defendant

there was allowed to ask the investigating officer questions about the informant. id at 722.

Likewise, in Bodin,²Supra, the court there states: "After receiving information from a confidential informant"...a search warrant was procured and..."Officer's found methamphetamine" in Bodin's possession. at 315. The trial court held a proper disclosure hearing upon Bodin's Motion and allowed "Officer Virgil Price "to testify about the informant's involvement. id

Mr. Harmon invokes Heard, 995 S.W. 2d 317 in his "Appellant's Original Brief". In Heard the defendant there sought disclosure of a confidential informant under Tex. R. Evid. 508(c)(2) who allegedly told police where to find a murder weapon. id at 320 The Trial Judge held a hearing in open court and erroneously limited trial counsel's questions to whether the informant was "present at the scene" or a "material witness". Counsel was prevented from asking crucial questions to determine whether the informer could provide "testimony necessary to a fair determination of guilt or innocence". id

The Heard court held: "The trial court applied the wrong legal standard in limiting the scope of the hearing". at 321 And further stated: "The procedure employed by the trial court precluded any meaningful verification of the investigator's testimony...However, there was something that could have been done that morning - an "in-camera" hearing. We hold that the trial court erred in overruling appellant's motion without conducting a proper inquiry as directed by Rule 508." id at 319

In the case at bar, the Court of Appeals errs by not finding that the trial court's decision to move forward without allowing

Agent Ward to testify, caused Mr. Harmon egregious harm. As in Heard, the procedure employed by the trial court precluded any meaningful verification of Agent Ward's testimony to show that the informer's information may have been relied on to establish guilt or innocence. The Court of Appeals further errs by not finding that the trial court applied the wrong legal standard in limiting the scope of the hearing. (R.R., Vol. 2, pg. 114, L. 18). There may be many circumstances other than being "present at the scene" where the "informer can give testimony necessary to a fair determination of guilt or innocence". See Heard at 321. The Record shows that the instant case is one of those "many other circumstances".

Furthermore, the Court of Appeals errs by not finding that the trial court should have held an in-camera hearing, as required by Tex. R. Evid. 508(c)(2), before ruling on Mr. Harmon's Motion. See Heard, at 320. And, that Mr. Harmon was harmed by the trial court's error of law in its ruling. See id.; Tex. R. App. P. 44.2(b) Mr. Harmon asserts that an integral part of the in-camera process is the preservation of the evidence reviewed by the trial court for review on appeal. See id. The Heard court further states:

"In this case, the very nature of the error prevents us from assessing its harm. Because the trial Court denied Heard's Motion without conducting a proper 508 inquiry, the record does not contain adequate materials to permit us to say, with fair assurances, whether the error has a substantial and injurious effect of influence in determining the jury's verdict. Id. To make such a determination we would need the benefit of the materials that the State should have been permitted to provide under seal regarding the nature of the informers' testimony. While the Court of Criminal Appeals has required that court's of appeals apply reversible error analysis to all errors other than "structural" constitutional errors, it has acknowledged that the harm caused by some errors defies analysis, and that, in those situations, the judgement of the trial court must be reversed. See Cain v. State, 947 S.W. 2d 262 at 264 (Tex. Crim. App. 1997). This is one of those situations." Heard at 322.

Mr. Harmon asserts that he was denied the right to ask Agent Ward the following questions at the improper 508 hearing.

1. Was the informant and Mr. Harmon roommates at the Medina Circle residence?
2. Was the informant's girlfriend and Mr. Harmon intimately involved?
3. Did the informant's girlfriend and Mr. Harmon conceive a child?
4. Did the informant have ill feelings for Mr. Harmon?
5. Was the informant aware of the details of Mr. Harmon's prior arrests?
6. Did the informant place the black sock by Mr. Harmon's car?
7. Does the informant's criminal record consist of multiple strangulation charges against women?
8. Was the informant given a fee or were his charges dropped, to provide information to Agent Ward?
9. Has the informant ever provided truthful or reliable information in the past?
10. Was the informant present at the scene?
11. The police reports and body-cam video show that Mr. Harmon was not present at the scene when the police arrived, nor do they show that Mr. Harmon evaded arrest. In your opinion, did the informant's information provide probable cause to search Mr. Harmon's car that was parked unattended within the curtilage of posted private property without a search warrant or the presence of exigent circumstances?

Mr. Harmon contends that these questions, if asked of Agent Ward, could significantly aid in his defense because it is undisputed that no officer testified that they observed Mr. Harmon in possession of the drugs. (R.R., Vol. 2, pg. 143, L. 6), (R.R., Vol. 4, pg. 71, L. 3)

The Court of Appeals therefore errs by not finding that the trial court abused its discretion and its ruling was "outside the zone of reasonable disagreement". The Court's Memorandum Opinion is further conflicting with other court of appeals and Court of Criminal Appeals Opinions on similar important federal questions.

QUESTION TWO

Whether the Court of Appeals failed to acknowledge that Petitioner made the required plausible showing that the informant's testimony may be important under Tex. R. Evid. 508(c)(2)?

Mr. Harmon notes that a remarkable aspect of this case hinges on the fact that a "plausible showing" was properly demonstrated before the trial court's erroneous ruling was made. In the Memorandum Opinion, the Court of Appeals holds: "In this case, the Appellant was required to make a threshold "plausible showing" of how the CI's information may be important in his defense." (Appendix A, M.O. pg. 15) However, thereafter, the Court of Appeals fails to show that a "plausible showing" was NOT made, more so, it fails to acknowledge that indeed a textbook "plausible showing" was made under Rule 508(c)(2). The T.C.C.A. holds in Bodin, Supra:

"The defendant has the threshold burden of demonstrating that identity must be disclosed. (Cite Omitted) Since the defendant may not actually know the nature of the informer's testimony, however, he or she should only be required to make a plausible showing of how the informer's information may be important." Bodin at 318...

On January 28, 2020, Mr. Harmon submitted a Motion to Disclose Identity of Informant to the trial court. Based on the merits of the Motion and in agreement with all parties, the court ordered a 508 hearing to be held on February 3, 2020 pursuant to Tex. Code Crim. Proc. Art. 28.01.

On February 3, 2020, prior to the improper 508 hearing, the following discussion was had, in revelant part:

Court: "What are you wanting to put before the jury?"

State: "No. 1, that DPS Agent Craig Ward had some information

that Mr. Harmon had drugs in a black tube sock and so that's the reason they were trying to look for him." (R.R., Vol. 2, pg. 5, L. 18,23)

Counsel: "Well, Defense definitely does not want any mention of of sock or drugs or anything like that." - informant's info. (R.R., Vol. 2, pg. 6 L. 5)
"I think if we just say he is wanted for Failure to Appear, that would-" (R.R., Vol. 2, pg. 6 L. 9)

Court: "But if they have information that a sock on the ground may somehow pertain to a crime, then I think they have to elicit that information." (R.R., Vol. 2, pg. 7, L. 8)

State: "One, it provides context as to why...Special Agent Ward and Trooper Lopez and the other officers are looking for Mr. Harmon..." (R.R., Vol. 2, pg. 7, L. 14)
"It is simply for the effect on the listener (Jury) of why they are out there searching for specifically a black tube sock. (R.R., Vol. 2, pg. 8 L. 1)

Court: "I am probably going to let you elicit information of what they are looking for"
"And the reason why they stayed there looking in that area is because they had information about a black sock and that's what they were looking for" (R.R., Vol. 2, pg. 8 L. 6,16)

Counsel: "This goes right to the core of our request for disclosure of the informant because the informant has information that hinges on the guilt or innocence of my client." (R.R., Vol. 2, pg. 9 L. 7)
"...deals in ounces of drugs... uses a tube sock... drives a certain car...be at a location...These are all relevant facts only which the informant has." (R.R., Vol. 2, pg. 9 L. 7)
"and that information is critical to the determination of guilt or innocence." (R.R., Vol. 2, pg. 10 L. 15)
"...all this information led them to be there, which led to an illegal search of the car, which led to the ultimate finding of the drug." (R.R., Vol. 2, pg. 14 L.15)

Court: "I think they have a right to say what they were looking for. Whether it is true or not, they didn't know, but here is the information they had, here is what they were looking for, and that's that..." (R.R., Vol. 2, pg. 19, L.9)
"I think they are allowed to say...they had a confidential informant that have them a tip saying that he would be at this location at this time and that they are looking for a black sock." (R.R., Vol. 2, pg. 19 L. 24)...9:15AM

Three hours later, at the improper 508 informant hearing, the following conversation was had in relevant part: (R.R., Vol. 2, pg. 140)

The improper 508 Informant Disclosure hearing, February 3, 2020, 12:13PM; (R.R. Vol. 2, pg. 110 L. 9):

Court: "...Mr. Cheadle, do you have any witnesses you want to call for the purposes of the 508 hearing?"

Counsel: "...I would like to call Officer Ward." (R.R., Vol. 2, pg. 110 L. 22)

Court: "Who is Officer Ward?" ??

State: "Your Honor, Officer Ward is a special agent with DPS, the one that received the intel from the informant." (R.R., Vol. 2, pg. 110 L. 25)

The State then proceeds to make an outstanding assertion that is contrary to their position and even further upholds Mr. Harmon's very argument...

State: "We are not relying on the informant to establish guilt or innocence. That is going to be established by our officers on the scene, (i.e. the informant's "intel") doing the search, (i.e. the informant's "intel") the sock on the scene, (i.e. the informant's "intel") Mr. Harmon being on the scene." (i.e. the informant's "intel")

"The informant, as we stated before, was an initial threshold matter as to why we were out there, why we were looking for what we were looking for." (R.R., Vol. 2, pg. 112 L. 3)

Mr. Harmon then proceeds to make an elegant "black letter law" plausible showing that the informant's testimony may be important, invoking Tex. R. Evid. 508(c)(2) and triggering a mandatory in-camera hearing...

Counsel: "He (informant) told an officer (Ward) about him (Harmon) being there that day and what he drives...and that supposedly he carries stuff in a black sock and supposedly he delt in ounce size quantities...therefore that's what they (police) were looking for when they illegally searched the car...So they were specifically looking for this stuff and they (police) wouldn't have known that but for the informant... It is imperative that we know that the informant either had firsthand knowledge or... basis for this, and was he credible." (R.R., Vol. 2, pg. 113 L. 1)

Three minutes after the State proffered that the informant was the reason they were "out there" and looking for drugs, the Court states the following:

Court: "...your request is denied...just filing a motion does not mean that the Defendant gets a hearing..." ???

"...there is nothing to suggest to me that the confidential informant was present or had anything to do with the search there at the scene." ??? (R.R., Vol. 2, pg. 114 L. 8)

Counsel: "May I respond?"

Court: "No,...I think you preserved your error...I am denying your motion" (R.R., Vol. 2, pg. 115 L. 5)

Mr. Harmon asserts, had the Court of Appeals applied proper harm analysis, the trial court's erroneous reliance on a standard that was before the enactment of Rule 508 would have been revealed. See Heard, 995 S.W. 2d at 321. See also Bodin, 807 S.W. 2d 313 holding: "the Court of Appeals erred by restricting application of the exception to the three categories [of Roviato, Supra] that was relevant before Rule 508 was adopted." at 318. i.e. The informant's "presence" is not required under the 508(c)(2) exception. (Appendix A, M.O. pg. 3) Nonetheless, Mr. Harmon was denied the right to "test" the State's assertion or even ask about the C.I.'s presence when the "intel" suggests that the C.I. could have been "present at the scene".

The Court of Appeals also errs in its adoption of the trial court's erroneous ruling that "there is nothing to suggest that the C.I. had anything to do with the search." (Appendix A, M.O. pg.3)

On the contrary, the "pre-hearing" discussion and the evidence presented at the improper 508 hearing - from all parties -

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"suggests" that the C.I. was the sole and only reason "for the search there at the scene.":

State: "The informant, as we stated before, was an initial threshold matter as to why we were out there, why we were looking for what we were looking for." (R.R., Vol. 2, pg. 112 L.8)

Counsel: "So they were specifically looking for the stuff. And they wouldn't have know that but for the informant. (R.R., Vol. 2, pg. 113 L. 24)

Furthermore, the State, trial court, nor the Court of Appeals presents no evidence, testimony or findings of facts at the improper 508 hearing that "affirmatively links" Mr. Harmon to the drugs, but the informant. Ironically, almost the entire Court of Appeals Memorandum Opinion erroneously cites irrelevant testimony, misapplied authority, and the State's "bare bone assertions" that were adduced 1. later at trial. Even there, no evidence of any kind demonstrates an "affirmative link" to the drugs, but the informant's "intel". (Appendix A, M.O. pgs. 3,8,9,9, 15)

The record is clear that Mr. Harmon was not at the scene and that Jason Tahtinen was the only person present standing next to the drugs with a "scared look on his face" when the police arrived. (R.R., Vol. 4, pg. 215 L. 16) See also Defense Exhibit 2 video. Those facts coupled together moves the State into a position of reliance on the C.I.'s "intel" to establish guilt.

1. Thompson v. State, 408 S.W. 3d 614 (Tex. App., -Austin 2013, no pet.) holds: "We generally consider only evidence adduced at the [pretrial] hearing because the ruling was based on that evidence rather than evidence introduced later at trial." id at 622. In the instant case, the issues Mr. Harmon presented at the improper 508 hearing were not re-opened or "re-litigated by the parties" later at trial, other than Trial Counsel objecting to the State putting the informant's information "before the jury". (R.R., Vol. 3, pg 64 L. 24)

A reasonable probability that the State relies on the informant's information is clear in the record. After Mr. Harmon was denied his Due Process Right to a "full and fair" informant hearing, the trial court allowed the State to continuously "inflame the minds of the jury" with the C.I.'s "intel" to establish guilt. In the Opening Statement alone, the State asserts:

1. "DPS Agent Craig Ward...had some information pertaining to the Defendant. The information was that he was dealing drugs and that he kept his drugs in a black sock." (R.R., Vol. 3, pg. 5 L. 7)
2. "He has information that there may be drugs. (R.R., Vol. 3, pg. 7 L. 11)
3. "...they still have the information that he may have narcotics." (R.R., Vol. 3, pg. 8 L. 14)
4. "And again they are looking for a black tube sock. That's the intel that they have." (R.R., Vol. 3, pg. 10 L. 24)
5. "Inside that black tube sock there is 25 grams of meth and 12 grams of heroin, just like the intel said would be there." (R.R., Vol. 3, pg. 11 L. 4)

** // Mr. Harmon believes that first impressions of a case are hard to overcome. The picture that the State was allowed to create in the minds of the jury here, while the defense was denied the right to even question it, made it impossible to overcome. Indeed, research reveals that approximately 85% of jurors make up their minds in the case by the end of the opening statement. The record is abundantly clear that the preponderance of the evidence that the State "puts before the jury" in their Opening Statement to establish Mr. Harmon's guilt is wholly based on the informant's information. And, that the Court of Appeals errs by not finding the trial court cause irreparable harm to Mr. Harmon by not allowing him to "test" the State's evidence against him. The Court of Appeals should have acknowledged this clear and blatant violation

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of Mr. Harmon's Sixth Amendment Right to a fair trial.

Nevertheless, thereafter the Opening Statement, the State proceeds to "inflame the minds of the jury" with the C.I.'s information throughout the duration of the trial to further establish Mr. Harmon's guilt. See Trooper Brit Lopez and Agent Craig Ward's Direct Examination. (R.R., Vol. 3, pg. 60 - Lopez), (R.R., Vol. 4, pg. 171 -Ward)

The trial court abused its discretion and its erroneous ruling denied Mr. Harmon a fair trial and his Fourteenth Amendment Right to Due Process of law. Mr Harmon further asserts that the Court of Appeals errs by not finding that the "required plausible showing" was properly demonstrated, invoking Tex. R. Evid. 508(c)(2) and a mandatory in-camera review. Mr. Harmon was egregiously harmed and prejudiced by these errors.

QUESTION THREE

Whether the Court of Appeals Memorandum Opinion was inconsistent and/or contrary to the facts of the Record?

The Court of Appeals states in the Memorandum Opinion Analysis: "Testimony at trial establishes that law enforcement knew there was an open warrant for Harmon, they approached Harmon in an open area, and they did not search Harmon on the night the black sock was found." (Appendix A, M.O. pgs.22,15)...

However, a "Failure To Appear" warrant does not establish an "affirmative link" to the drugs, nor does it establish probable cause to enter the curtilage of Mr. Harmon's residence, where he lived with his girlfriend, to search his car without a warrant or the presence of exigent circumstances. See Collins v. Virginia,

138 S. Ct. 1663, 201 L. Ed. 2d 9, 2018 US Lexis 3210, holding:

"Just as an officer must have a lawful right of access to any contraband he discovers in plain view in order to seize it without a warrant, and just as an officer must have a lawful right of access in order to arrest a person in his home, so too, an officer must have a lawful right of access to a vehicle in order to search it pursuant to the automobile exception."
138 S. Ct. at 1672

This Court further holds in Collins:

"Nothing in our case law, however, suggests that the automobile exception gives an officer the right to enter a home or its curtilage to access a vehicle without a warrant."
id at 1671

The Court of Appeals further asserts, "They approached Harmon in an open area, and they did not search Harmon." (Appendix A, M.O. pgs. 2, 15)

Here again, the Court of Appeals "opens the door" to rebut and argue the illegal entry and search of Mr. Harmon's private property. These adoptions are most inconsistent with the fact of the Record. It is undisputed that Mr. Harmon was not present and that 2^d Jason Tahtinen was "approached" within the Constitutionally protected curtilage of the posted private residence. (R.R., Vol. 4, pg. 71 L. 3) Furthermore, the record is clear that Mr. Harmon's private property WAS searched "on the night the black sock was found" while the officers stated repeatedly, "We're looking for a black sock". See video defense exhibit 1 and 2

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2. Sgt. Christopher testified that he "ran" a background check on Jason Tahtinen. (R.R., Vol. 4, pg. 75 L. 22) The Tex. Law Enforcement Communication System (T.L.E.C.S.) is a very detailed criminal record data base that's used by all Texas authorities. A "background" check on Mr. Tahtinen would reveal THREE Meth. possession arrest and State convictions among other felonies. This knowledge to the police on the scene would, all the more, emphasized the State's reliance on the informant's information to "link" Mr. Harmon to the drugs.

The Court of Appeals further errs holding:

"No evidence or testimony at trial suggest that information from the C.I. was relied on to establish the legality of the means by which evidence was obtained. See Tex. R. Evid. 508(c)(3)(a)(i)." (Appendix A, M.O. pg. 16)

However, Tex. R. Evid. 508(c)(3) was never invoked, claimed, or mentioned in "Appellant's Original Brief". It is already established that the evidence was "illegally obtained". Mr. Harmon rather invokes and argues Tex. R. Evid. 508(c)(2) on appeal, holding: A reasonable probability exists "that an informant may be able to give testimony necessary to a fair determination of a material issue on guilt or innocence." In other words, the only possible means by which the police illegally search Mr. Harmon's private property "looking for drugs" was solely based on the informant's information.

The Court of Appeals cites irrelevant case law that does not apply to the case at bar, holding in Matthews v. State, 431 S.W. 3d 596, 603-04 (Tex. Crim. App. 2014): "if the dog alerts, the presence of drugs is confirmed, and police may make a warrantless search of the vehicle." (Appendix A, M.O. pg. 16)

Again, the Court of Appeals here misapplies Authority and refuses to acknowledge that Mr. Harmon's car was parked unattended, in the curtilage of his girlfriend's private residence within the enclosure of a fence line, (R.R. Vol. 5, pg. 79 L. 1,24) and that Mr. Harmon has "a reasonable expectation of privacy" in his private property. See Katz v. United States, 389 US 347, 361, 19 L. Ed 2d 576, 88 S. Ct. 507 (1967). It is obvious that the police attempts to divert the informant's information, as being their motive, with

a "red herring" by illegally deploying a K-9 without probable cause.

The Court of Appeals also fails to acknowledge the undisputable LACK of probable cause to call and deploy a K-9 dog on a private residence without a search warrant to begin with. See Buchanan v. State, 207 S.W. 3d 772, 778 (Tex. Crim. App. 2006) holding, the police must have a warrant-to enter private property to make an arrest, or a warrant-authorizing entry to "conduct any kind of search or seizure". In the instant case, the record is clear that there were no exigent circumstances present. (R.R.; Vol. 2, pg. 151, L. 20)

In Matthews, Supra, the defendant there was selling drugs and parked in a public place at a "food store", sitting in the "driver's seat" of a "borrowed van". at 600. The court there concluded that Matthews did not have standing or a "reasonable expectation of privacy" in a "borrowed van" in a public place. at 602...The case at bar is wholly unlike and distinguishes Matthews.

Furthermore, the Court of Appeals erroneously suggests, to some extent, that Mr. Harmon argues ineffective assistance of counsel on appeal. (Appendix A, M.O. pg. 15, footnote) The Court of Appeals is well aware that an I.A.C. "argument" on direct appeal is not likely a cognizable claim in Texas. However, Mr. Harmon contends that the trial court denied his Sixth Amendment Right to a fair trial by not allowing defense counsel to call an obvious material and relevant witness. The error of law in the trial court's ruling rendered trial counsel unable to fairly and effectively represent him. (Appendix E, A.O.B. pg. 16) Mr. Harmon has not yet

raised his I.A.C. claim.

Mr. Harmon has shown above that the trial court abused its discretion by not allowing him to ask preliminary questions about the informant, at an informant hearing, and further by denying his Motion before holding a required in-camera hearing. "In this case, the very nature of the error prevents assessing its harm" and "defies analysis", therefore, "the judgement of the trial court must be reversed." Heard, Supra at 322. Mr Harmon also demonstrates that the trial court violated his Fourteenth Amendment Right to due process by denying him a "full and fair" 508 hearing.

The Court of Appeals therefore errs by not finding that the trial court abused its discretion and that its ruling was "outside the zone of reasonable disagreement", and furthermore, the Perkins Memorandum Opinion is contrary to other Court of Appeals Opinions on similar matters and well established Federal Law.

Mr. Harmon believes that the Court of Appeals Opinion allows and encourages prosecutors to secure unjust convictions in total disregard to a defendants Constitutional Rights without jeopardizing them. Its Opinion further sets an erroneous standard suggesting and even persuading trial courts to arbitrarily deny defendant's Due Process Right to a "full and fair hearing". The Honorable Supreme Court is presented with an opportunity to preserve justice and save untold amounts of money in unnecessary post-conviction litigation on similar matters by reversing Mr. Harmon's conviction. Finally, by allowing the trial court to "silence" Mr. Harmon at the improper 508 informant hearing, the Court of Appeals has removed the blind-fold from the eyes of Lady Justice and placed it upon her mouth! This Court must intervene.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Troy Wayne Harmon

Date: October 31, 2021

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

8/25/2021

COA No. 09-20-00061-CR

HARMON, TROY WAYNE Tr. Ct. No. 19-12-16953-CR

PD-0422-21

On this day, the Appellant's Pro Se petition for discretionary review has been refused.

Deana Williamson, Clerk

TROY WAYNE HARMON
BETO 1 UNIT - TDC # 2307134
1391 FM 3328
TENNESSEE COLONY, TX 75880

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Date Filed:

02/25/2020

Case Type:

Poss With Intent to Deliver a Controlled Substance

Style:

Troy Wayne Harmon

v.:

The State of Texas

Orig.Proc:

No

Transfer From:

Transfer In:

Transfer Case:

Transfer To:

Transfer Out:

Pub Service:

APPELLATE BRIEFS

Date	Event Type	Description	Document
11/17/2020	Brief filed - oral argument not requested State		[PDF/226 KB] Brief [PDF/123 KB] Notice
07/28/2020	Brief filed - oral argument not requested Appellant		[PDF/8.13 MB] Brief [PDF/125 KB] Notice

CASE EVENTS

Date	Event Type	Disposition	Document
09/22/2021	Case returned from higher court		
09/09/2021	Letter received		[PDF/1.01 MB] Pro Se LTR Recvd
08/25/2021	Petition for discretionary review disposed by Court of Criminal Appeals	Refused	
07/29/2021	Motion disposed	Motion or Writ Granted	
07/29/2021	Petition for discretionary review filed		
07/15/2021	Motion disposed	Motion or Writ Granted	
07/08/2021	Letter received		[PDF/1.02 MB] Pro Se LTR Recd
06/23/2021	Record Sent		
06/11/2021	Letter received		

Date	Event Type	Disposition	Document
06/11/2021	Motion for extension of time to file petition for discretionary review disposed by Court of Criminal Appeals	Motion or Writ Granted	
06/08/2021	Case stored		
06/08/2021	Mandate issued		[PDF/94 KB] [PDF/123 KB]
05/07/2021	Response received		Mandate Notice
04/14/2021	Judgment Issued		[PDF/11 KB] Judgment
04/14/2021	Memorandum opinion issued	Affirmed	[PDF/61 KB] [PDF/123 KB]
04/12/2021	Letter received		Memorandum Opinion Notice
03/04/2021	Submitted		
02/11/2021	Set for submission on briefs		[PDF/127 KB] Notice
11/17/2020	Case ready to be set		
11/17/2020	Brief filed - oral argument not requested		[PDF/226 KB] [PDF/123 KB]
10/27/2020	Motion for extension of time to file brief disposed	Motion or Writ Granted	Brief Notice
10/27/2020	Motion for extension of time to file brief filed		[PDF/146 KB] Notice
09/28/2020	Motion for extension of time to file brief disposed	Motion or Writ Granted	[PDF/411 KB] Motion
09/28/2020	Motion for extension of time to file brief filed		[PDF/126 KB] Notice
09/28/2020	Motion for extension of time to file brief filed		[PDF/409 KB] Motion
08/31/2020	Motion for extension of time to file brief disposed	Motion or Writ Granted	[PDF/126 KB] Notice
08/31/2020	Motion for extension of time to file brief filed		[PDF/407 KB] Motion
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07/06/2020	Motion for extension of time to file brief disposed	Motion or Writ Granted	Brief Notice
07/06/2020	Motion for extension of time to file brief filed		[PDF/127 KB] Notice
06/17/2020	Exhibits filed		[PDF/452 KB] Motion
05/04/2020	Motion for extension of time to file brief disposed	Motion or Writ Granted	[PDF/88 KB] [PDF/21 KB]
05/04/2020	Motion for extension of time to file brief filed		COA Email RPT Ltr
04/20/2020	Electronic Supplemental Clerks Record Filed		[PDF/126 KB] Notice
04/02/2020	Electronic Clerks Record Filed		[PDF/451 KB] Motion
03/25/2020	Exhibits filed		[PDF/125 KB] Notice
03/25/2020	Electronic Reporter/Recorders Record Filed		[PDF/128 KB] Notice
02/25/2020	Trial court certification filed		
02/25/2020	Notice of appeal w/form from trial clerk		[PDF/125 KB] Notice

CALENDARS

Set Date	Calendar Type	Reason Set
09/23/2021	Case Stored	Case stored

PARTIES

Party	PartyType	Representative
Harmon, Troy Wayne	Criminal - Appellant	Troy Wayne Harmon Willis Everett Smith
The State of Texas	Criminal - State of Texas	William J. DeImore III Philip S. Harris

TRIAL COURT INFORMATION

Court

221st District Court

County

Montgomery

Court Judge

Honorable Lisa Bengé Michalk

Court Case

19-12-16953-CR

Reporter

Cathy Busa

Punishment

60 yrs TDCJ

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The State of Texas	Criminal - State of Texas	William J. Delmore III Philip S. Harris

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County

Montgomery

Court Judge

Honorable Lisa Bengé Michalk

Court Case

19-12-18954-CR

Reporter

Cathy Busa

Punishment

60 yrs TDCJ