21-7618

ORIGINAL

IN THE
UNITED STATES SUPREME COURT

TONY GENE WILLIAMS, Sr., §
(Petitioner)

vs. § Cause No. _____

BOBBY LUMPKIN,
Director Of TDCJ-ID,
(Respondent) §

PETITION FOR

WRIT OF CERTIORARI

Challenge To The State Court Ruling
On Petition For Discretionary Review
Cause No. **PD-0013-21**

Trial Court No. CR-18-130

Respectfully submitted,
Tony Gene Williams, Sr.

TONY GENE WILLIAMS, Sr.,
Petitioner Pro Se
TDCJ #2300397
Memorial Unit
59 Darrington Rd.
Rosharon, Tx. 77583

QUESTION OF THE ISSUES PRESENTED

1. WHETHER OR NOT **JUDGE McCLURE**, OF THE TEXAS COURT OF CRIMINAL APPEALS, AFTER EXAMINING PETITIONER'S APPEAL, ERRED WHEN HE DETERMINED HE WOULD **GRANT** P.D.R.;

2. WHETHER OR NOT THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT WAS BREACHED WHEN THERE PATENTLY EXIST "INSUFFICIENT EVIDENCE" TO ESTABLISH EVERY ELEMENT OF THE OFFENSE CHARGED;

3. WHETHER OR NOT THE 6th COURT OF APPEALS DEPRIVED PETITIONER OF DUE PROCESS PROTECTION AND ABUSED ITS DISCRETION WHEN IT FAILED TO "ABATE" APPEAL, AFTER BOTH STATE AND DEFENSE FILED A "JOINT MOTION TO ABATE APPEAL", AFTER DISCOVERY OF "NEWLY AVAILABLE EVIDENCE" OF EXCULPATORY DNA RESULTS, LINKING SOMEONE ELSE TO THE OFFENSE;

4. WHETHER OR NOT PETITIONER WAS DEPRIVED OF THE DUE PROCESS GUARANTEE WHEN TRIAL COURT PERMITTED INTO EVIDENCE THE TESTIMONY OF **NON-CORROBORATED** TESTIMONY OF A JAILHOUSE SNITCH;

5. WHETHER OR NOT THE LOWER COURT ERRED AND ABUSED ITS DISCRETION IN NOT DETERMINING THE TRIAL COURT VIOLATED THE **"CONFRONTATION CLAUSE"** BY PERMITTING "HEARSAY" TESTIMONY.

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LIST OF ALL PARTIES

1. MORRIS, C.J., BURGESS and STEVENS, JJ
   (6th Court Of Appeal Justices)
   Texarkana, Texas

2. MICHAEL JIMERSON,
   (State Attorney)
   Appellate Division
   Rusk County, Courthouse

3. JOE SHUMATE
   (Defense Attorney)
   Kilgore, Texas

4. LEW DUNN,
   (Appellate Attorney)
   Kilgore, Tx.

5. TONY GENE WILLIAMS, Sr.,
   TDCJ #2300997
   (Appellate)
   Rosharon, Tx.

6. Hon. J. CLAY GOSSETT, Judge
   (4th District Court)
   Rusk County, Tx.

REQUEST FOR ORAL ARGUMENT

That your Appellant asserts Oral Argument should occur only upon the request of this Court for more clarity on the issues presented; However, your Appellant asserts this case can be resolved on the merits, and Arguments advanced in his Writ Of Certiorari.

IN THE
UNITED STATES SUPREME COURT

TONY GENE WILLIAMS, (Petitioner)	§	
vs.	§	Cause No. _____
BOBBY LUMPKIN, Director Of TDCJ-ID, (Respondent)	§	

PETITION FOR
WRIT OF CERTIORARI

Challenge To The State Court Ruling
On Petition For Discretionary Review
Cause No. **PD-0013-21**

TO THE HONORABLE JUDGES OF SAID COURT:

PLEASE TAKE NOTICE that COMES NOW, TONY GENE WILLIAMS, Petitioner, Pro Se, in the above styled and numbered cause, files this his 'Petition For Writ Of Certiorari', in good faith, contending due process and the interest of justice would be best served by this Court GRANTING the same, and in support thereof, your Petitioner would present unto this Honorable Court the following grounds and reason:

I.

PLEA FOR LIBERAL SCRUTINY

That your Petitioner respectfully request for this Court to accord him the 'protection' of pro se litigation, and construe said 'Certiorari' liberally, as required in Erickson v. Pardus, 127 S.Ct. 2197 (2007); Haines v. Kerner, 92 S.Ct. 594, (1972): Bourne v. Gunnells, 921 F.3d 484, (C.A. 5 - 2019). Your Petitioner is a layman at law, unskilled and inexperienced in the formal drafting of 'Writs of Certiorari', and is therefore entitled to less stringent standards that formal pleadings drafted by Attorneys.

II.

JURISDICTION

That this Honorable Court has Jurisdiction to entertain said 'Writ', pursuant to RULE 10, 13, RULES OF THE SUPREME COURT; U.S.C.A., Amend. 5; 14. Petitioner asserts the State Court has decided an important Federal Question in a way that conflicts with relevant decisions of this Court, and another State Court, warranting consideration by this Court.

III.

PROCEDURAL HISTORY OF CASE

That your Petitioner was charged with committing the offense of Aggravated Robbery, alleged to have occurred against the Complainant, DONALD LEE CLARK, on or about January 11, 2014, Cause No. CR-18-130. Petitioner pleaded

Not Guilty. Trial commenced November 18, 2019, in the 4th Judicial District of Rusk County, Texas. On November 21, 2019, the Jury found your Petitioner guilty, and the Trial Court, after a Pre-Sentence Investigation, assessed punishment at Life Imprisonment on December 10, 2019. Petitioner Appealed! The Appeal was advanced to the 6th District Court Of Appeals, located in Texarkana, Texas, Cause No. 06-20-00024-CR. The due date for advancing the Appellate Brief was June 5, 2020. However, in the interval, the Appeal Counsel was apprised of potential exculpatory DNA Evidence linking someone other than Petitioner to the crime scene. Appeal Counsel received 'notice' from the State that evidence obtained 1/13/2014, consisting of 'bloody paper towels' were found near the victim's wallet, that yielded DNA results exculpatory to Petitioner. On 4/23/20, the D.P.S., as part of an ongoing investigation into the 'Murder' of the victim, issued a report that a person of interest, FRANCISCO MORALES, was the Profile Contributor of the DNA obtained from the 'Bloody Towels'. This now 'Newly Available Evidence', not available at the time of Petitioner's trial, prompted State Counsel, as well as Defense Counsel, to file a "JOINT" 'Motion To ABATE The Appeal' to the State Appeal Court, on May 20, 2020, to accord Petitioner the chance to investigate and factor in the 'Newly Discovered Evidence' into the case, by going back to the Trial Court for resolution of new claim. On June 9, 2020, the State 6th Court of Appeals DENIED the 'Joint

Motion To Abate The Appeal', erroneously concluding, "The 'Joint Motion' failed to explain how the 6th Court of Appeals has the AUTHORITY to reinvest the Trial Court with Jurisdiction and does not indicate or explain how either party would be PREJUDICED by its DENIAL." The Court is mistaken! See argument advanced, infra. Said 6th Circuit Court of Appeals subsequently AFFIRMED Petitioner's case on 11/25/20. Your Petitioner advanced a Petition For Discretionary Review, Cause No. PD-0013-21. Said PDR was Denied 10/21/21; However, **JUDGE McCLURE WOULD GRANT**. Thereafter, your Petitioner filed a 'timely' "MOTION FOR REHEARING", seeking to get the Court to reconsider in light of fact one of their fellow Justice would GRANT. Said 'Motion For Rehearing' was denied 11/12/21. Hence, pursuant to Rule 13.3 of the RULES OF THE SUPREME COURT, your Petitioner seeks to advanced his 'Petition For Writ of Certiorari' in a timely manner, bringing the due date until on or about February 11, 2022.

IV.

STATEMENT OF THE FACTS OF CASE

That Petitioner's case is a Circumstantial Evidence case. Petitioner was charged and indicted in Cause No. CR-18-130, for the offense of Aggravated Robbery, alleged to have occurred against the Complainant, DONALD LEE CLARK, on or about January 11, 2014, in Kilgore 'Rusk County' Texas. (Tr. -); (R. III - 8). Petitioner pleaded Not Guilty.

(R. III - 9). The Complainant was apparently robbed and murdered inside of his own Trailer Home, located at 2012 Farm to Market Road, Kilgore, Texas. (R. III - 44)(State's Exhibit #10).

On 1/11/14, between the hours of 8am and 9am, State witness and nephew of the victim, SCOTT ALAN CLARK, along with his Brother-In-Law, ANDY HEARN, arrived at the Complainant's Trailer Home to conduct home repair. Upon opening the front door, SCOTT found his uncle lying on the ground, deceased. The Complainant suffered a single gunshot wound to his left eye, shot with his glasses on. (R. III - 45, 46). SCOTT also noted the Trailer Home was in disarray, and blood spatter were on the walls, floor and carpet. SCOTT called 911. (R. III - 46). The victim's wallet was not on his person. (R. III - 69). The sole evidence the State relied upon to establish the offense of 'Robbery' was the victim's wallet. (R. III - 15)(R. IV - 77, 89, 90, 98).

There were **NO EVIDENCE** linking your Petitioner to the victim's wallet, which was subsuquently found down the road from the victim's Trailer Home, with all of its contents emptied on the road. (R. III - 15; 47). The wallet was forensically tested. (R. IV - 40).

The DNA profile from the obtained from the victim's wallet was interpreted as a mixture of three (3) individuals, the victim and two (2) unknown individuals. Your Petitioner was **Excluded** from being the profile contributor of the forensic evidence found on the wallet.

(R. III - 53,54). In light of the weakness of the State's case, and the five (5) years it took before the State made up its mind to prosecute the case, the State conceded there was **NO EVIDENCE** to prove Murder. (R. IV - 111):

> Realize that when you get past some of this other stuff, when you get past that **We Really Can't Prove The Murder**. Frankly, admittedly, **concedely**, but when you get past that, you realize we have abundantly proved a robbery.

The State could not prove Murder or Robbery, as argued, infra. The State wholly failed to meet its burden of establishing every element of the offense charged, as required, and based its entire case against Petitioner upon an interview with the Kilgore Police Department, Detective BEN REYNOLDS, conducted 3/14/14, wherein Petitioner, out of fear of being wrongly accused, denied knowing the victim or even being at the Complainant's home. (R. III - 9, 10). Your Petitioner was denouncing he had nothing to do with the Murder or the charged offense, and sought to completely distance himself from the entire offense. The State used the fact Petitioner misspoke against him, and highlighted Petitoiner's misrepresentation during the opening and closing comments to the Jury. (R. III - 26; 70; 79; 80; 97; 104; 111)(State's Exhibit No. 13 - C.D. of the 3/11/14 interview). Hence, the State may have established your Petitioner misspoke with he stated did did not know the victim and was never present at the victim's home, but wholly failed to prove every essential element of the offense charged.

While processing the crime scene, Investigator REYNOLDS found two (2) cigarette butts near the crime scene, nearly 25 yards away from the victm's home, on the front yard. One of the cigarette butts were subsequently forensically tested, and the DNA results established Petitioner, and CHARLENE JACKSON tested positive for being the profile contributor of the DNA obtained from the cigarette butt. (R. IV - 52). Earlier on the day of the offense, your Petitioner and CHARLENE JACKSON, (a known prostitute), visited the Complainant's home. Petitioner wanted to purchase a truck the Complainant had for sale, and sought to use JACKSON to 'trick' with the Complainant in exchange for the truck. (R. III - 107-109). Neither the Complainant, nor Ms. JACKSON wanted to engage in 'tricking' to obtain the truck. Afterwards, the State witness, Ms. JACKSON asked the Complainant for a cigarette. The Complainant gave her a cigarette, plus $15.00 to purchase a whole pack for herself. (R. III - 110). It was the cigarette butt, found on the victim's yard, that was eventually obtained by Detective REYNOLDS. The two, your Petitioner and JACKSON, subsequently left the Complainant's home, with him being live and well, and went to town and purchased some dope, Crack Cocaine. (R. III - 113). Petitioner eventually dropped JACKSON off, and the two sent their separate ways. Moreover, while the two were driving after purchasing the Cocaine, the witness testified Petitioner allegedly made a statement about if she had a 'toy gun' and 'face mask.'

(R. III - 114, 122). The witness was dropped off and does not know what Petitioner meant by 'toy gun', and never mentioned about robbing the victim. (R. III - 119, 122).

The State also tried to rely upon the testimony of a jailhouse informant, SABRIAN ALEXANDER. Said witness testified that Petitioner admitted to him that he took items from the victim's home, namely, guns, jewelry, a generator and a nailgun. (R. III - 141). However, the facts establishes the items did not come from the victim's home, and hence, never **Stolen** from the victim. Said witness erroneously believed Petitioner sold him a Generator that allegedly came from the Robbery of the victim's home, which indirectly links him, SABRIAN ALEXANDER, to the Robbery and Murder of victim. The witness pawned the merchandise he believed came from the Robbery of the Complainant, i.e., the Generator he purchased from Petitioner. This claim was thoroughly investigated by Detectives and it was clear the Generator the witness allegedly purchased from Petitioner did not come from the victim's home at all. (R. III - 143). The jailhouse informant's testimony was not Corroborated, for its use at trial. Consequently, your Petitioner asserts the State's case is wholly lacking in evidentiary support to constitute the offense charged, warranting REVERSAL.

V.

GROUNDS FOR REVIEW

I. Petitioner's conviction was obtained in breach of the Constitution, as well as Federal Law, as determined by the United States Supreme Court, in that, the State Court erred in not determining the evidence was wholly insufficient to establish 'every element' necessary to constitute the offense charged;

II. The Lower Court erred and abused its discretion in not finding the jailhouse snitch testimony was not sufficiently corroborated for its use at trial, in conflict with other State Court Rulings;

III. The Lower Court erred and abused its discretion in not determining the Trial Court REVERSIBLY ERRED in permitting the admission of an **AUDIO RECORDING** between Officer HELTON and an anonymous caller, AUTHUR WATERS, in breach of the Confrontation Clause of the 6th Amendment and Federal Law as determined by the United States Supreme Court;

IV. The State Court erred and abused its discretion in not determining the Trial Court REVERSIBLY ERRED for allowing evidence of the vehicle report that was presented as hearsay;

V. The Lower Court erred and abused its discretion, in breach of the due process clause, for not GRANTING the "Joint Motion To Abate The Appeal", in light of Newly Available Evidence of DNA Match of Blood Evidence at Crime Scene to another known suspect, not Petitioner.

VI.

POINT OF ERROR NUMBER ONE (RESTATED)

THE LOWER COURT ERRED AND ABUSED ITS DISCRETION, IN NOT HOLDING THE EVIDENCE ADDUCED AT TRIAL WAS WHOLLY INSUFFICIENT TO CONSTITUTE THE OFFENSE CHARGED

ARGUMENTS, AUTHORITIES and DISCUSSIONS

That your Petitioner asserts his conviction was

obtained in breach of the United States Constitution, Slack v. McDaniels, 120 S.Ct. 1595, (2000). Moreover, your Petitioner asserts his conviction was obtained in breach of Federal Law, as determined by the United States Supreme Court. Williams v. Taylor, 120 S.Ct. 1495, (2000).

Petitioner asserts, as guidance to this Court, and helpful in its analysis of Petitioner's claim is the case of Jackson v. Virginia, 99 S.Ct. 2781, (1979), and its progeny. It has been long recognized the due process clause of the 14th Amendment establishes no person should be made to suffer the onus of a criminal conviction except upon proof, [Defined] as evidence necessary to convince a trier of fact beyond a reasonable doubt of 'Every Element' of the offense charged. Jackson, 99 S.Ct at 2787, adopted by State Courts in Brooks v. State, 323 S.W. 3d 893, (Tex. Cr. App. 2010); U.S.C.A., Amend. 5; 14.

Your Petitioner was charged with the offense of Aggravated Robbery, proscribed by the provisions of Article 29.03, V.T.C.A. On the simplest level, the elements of the offense consist of the following:

1. A person;
2. While in the course of committing theft, as defined in Chapter 31;
3. And with intent to obtain or maintain control of the property;
4. (a) Causes bodily injury to another;
   (b) uses or exhibits a deadly weapon; or
   (c) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is:

1. 65 years of age or older; or
2. a disabled person

Your Petitioner asserts the evidence is wholly insufficient to establish the offense charged. On the outset, the State "admittedly, concededly, could not prove the Murder." (R. IV - 111). The State sought to establish the Aggravated Robbery, put produced **INSUFFICIENT EVIDENCE** to establish [your] Petitioner engaged in 'theft or property' or 'caused or threatened to cause serious bodily injury' to the Complainant, two essential elements of the offense. The two items the State sought to rely upon to prove 'theft of property' is the victim's wallet, and a Generator - introduced into evidence by a jailhouse snitch. The Wallet, (State's Exhibit #6), was taken during the course of the robbery. (R. IV - 98). Said wallet's contents were emptied out and found down the road near the Complainant's trailer home. Said wallet was forensically tested. The State sought to infer that your Petitioner Murdered the victim while robbing him of his wallet, and emptied the contents of the wallet on the road, near the Complainant's Trailer Home; however, DNA was retrieved from the victim's wallet, and the profile contributors of the DNA was a 'mixture' consisting of the victim and two (2) unknown individuals, **Excluding** Petitioner: (R. IV - 53):

16 Tell them what your result revealed on the wallet.
17 A. The DNA Profile from the swabbing on the wallet was
18 interpreted as a mixture of three individuals. obtaining the
19 Mixture Profile was 80.6 Quadrillion times more likely if
20 the DNA came from DONALD CLARK and two unknown individuals,

> than if the DNA came from three unrelated, unknown individuals. So, based on the likelihood ratio, DONALD CLARK could not be excluded. CHARLENE JACKSON and TONY WILLIAMS, Sr., are both **EXCLUDED** as profile contributors.

In addition, the jailhouse snitch sought to establish that Petitioner sold him a Generator that was allegedly taken from the victim's home by Petitioner, and sold to him. However, it was established, after thorough investigation into the matter, the Generator did not come from the victim at all. (R. III - 143). There was no corroboration in support of the jailhouse snitch assertion that Petitioner informed him that he stole a Generator from the victim and sold said Generator to him.

Consequently, the evidence adduced at trial establishes the evidence was wholly insufficient to prove the key element of 'theft of property', as alleged in the indictment, affirming Petitioner's conviction was obtain in breach of Federal Law, as determined by the United States Supreme Court. Slack v. McDaniel, supra. Petitioner additionally asserts his conviction was obtained in breach of the due process guarantee of Jackson v. Virginia, supra. See Williams v. Taylor, supra; U.S.C.A., Amend. 5; 14.

The State want this Court to conclude guilt, solely upon your Petitioner and CHARLENE JACKSON's visit of the Complainant at his home, far prior to the offense. Petitioner asserts he did, in fact, visited the Complainant, in hope of purchasing a truck that was for sale, but left the victim live and well, at approximately 5:00 pm. The

nephew discovered the victim's body at 8:00 am the next morning. Petitioner asserts there is No Evidence to establish that he committed the offense. The alleged link to the cigarette butt only establishes your Petitioner visited the Complainant, but there is no evidence to establish the cigarette butt's DNA linking both him and JACKSON, to the scene of the crime at the 'time' of the crime. It took the State five (5) whole years to prosecute the case against Petitioner. There were no significant evidence that surfaced during that five (5) year span. The State conceded to not having evidence to prove Murder. Since Aggravated Robbery requires the State to prove [Petitioner] caused "serious bodily injury" to the Complainant, while in the course of 'theft of his property', this Court should infer the State's inability to prove, from its own admission, the Murder, also means it cannot prove 'serious bodily injury' was caused by Petitioner. From the time your Petitioner was present at the victim's home, and the time the victim's nephew observed Petitioner's car driving up in the driveway, until the time the victim's body was discovered by his nephew was a full fifteen (15) hours. At best, the State can only establish 'mere suspicion'. However, "A Jury can rely on wholly circumstantial evidence to find provoking acts or words, but the evidence must create more than mere suspicion, because a Jury is not permitted to reach speculative conclusions. Engel v. State, 2020 Tex. App. LEXIS 7388. Moreover, "both direct evidence

and circumstantial evidence may be used to establish a material fact. However, evidence that does no more than create a mere suspicion is **INSUFFICIENT**." Qui Phloc Hov v. Mac Arthur Ranch LLC, 395 S.W. 3d 325, (Tex. App. Dallas 2013); Jackson v. Virginia, supra. This Court must determine the State wholly failed to meet its burden, and REVERSAL is warranted. Simms v. State, 2019 Tex. App. LEXIS 4946. The Jackson mandate was not met, establishing said conviction was obtained in breach of Federal Law, as determined by Supreme Court Precedent, and United States Constitution. Slack v. McDaniel, supra; Williams v. Taylor, supra.

WHEREFORE, PREMISES, ARGUMENTS and AUTHORITIES CONSIDERED, your Petitioner prays this Court would find said conviction was obtained in breach of Federal Law, as determined by the United States Supreme Court, as argued, supra, and REVERSE said conviction, in light of INSUFFICIENT EVIDENCE to establish every element of offense charged.

VII.
POINT OF ERROR NUMBER TWO (RESTATED)

THE LOWER COURT ERRED AND ABUSED ITS DISCRETION IN NOT DETERMINING THE 6th COURT OF APPEALS REVERSIBLY ERRED IN NOT GRANTING THE "JOINT" MOTION TO ABATE APPEAL, IN LIGHT OF NEWLY DISCOVERED DNA EVIDENCE

ARGUMENTS, AUTHORITIES and DISCUSSIONS

That it has been long recognized by this Court that DNA evidence reigns supreme, and when the same are favorable, it could lead to Reversal and Exoneration. Maryland v. King, 133 S.Ct. 1958, 1964, (2013); Larue v. State, 518 S.W. 3d 439, 449, (Tex. Cr. App. 2017). Moreover, DNA evidence reigns supreme over all other forensics, including 'fingerprint evidence'. (id); (See also the National Academy of Science Report: a Path Forward, 2009)(two year study on forensics and concluding only DNA would be given 100% credence of successfully linking a suspect to a source, all other forensic evidence is fallible).

In the case at bar, Forensic Expert, MELISSA HAAS, of Garland, Texas, conducted DNA Testing on several items connected to the offense, seeking a profile match, as well as inclusion or exclusion to a source. On 1/27/14, Lt. BEN REYNOLDS of KPD, forwarded DNA Items to Ms. HAAS for testing, and results were yielded 5/13/14. (R. IV - 38-39). Specifically, Lt. REYNOLDS office forwarded the following items for testing, to wit:

(1) Cigarette Butts;

(2) Fingernail Clippings, (since there was evidence of a struggle between victim and assailant;

(3) A couple of **Paper Towels** from crime scene that tested Positive for blood;

(4) A Money Band;

(5) Beer Cans;

(6) Petitioner's shoes, due to bloody crime scene.

(R. III - 39-41, 45). Trial commenced on said offense 11/19/19. Petitioner was found guilty on 11/21/19. DNA Expert, MELISSA HAAS, successfully identified an individual to the items tested, [Except] the 'Blood Evidence' retrieved from the two (2) **Paper Towels** connected to the crime scene. (R. IV - 41):

> Blood was also Positive. The wallet, we did not see any staining on that. That was just swabbed for potential DNA analysis, as well as a trace collection was made. **Paper Towels Number One**, which was 03-06, was presumptive positive for blood, as well as trace evidence collected. 03-07 was **Paper Towel Number Two**, and that was also positive for Presumptive blood.

The Fingernail Clippings profile were developed and found to belong to victim. (R. IV - 42); Beer Cans contained DNA that were testing and found to principally belong to victim. (id) however, regarding the **Paper Towels**, said items belonged to an "UNKNOWN MALE INDIVIDUAL". (R. IV - 43):

> Q. And like, for example, the stain from Paper Towel number one, which you've got here marked 3-06-AB, you've got -- you've actually got the victim was excluded, correct?
> A. Yes. That was, that profile was consistent with an unknown male.
> Q. And so in addition to that, Charlene Jackson was checked and Tony Williams. Were they **Excluded** likewise.

A. Yes, sir.
Q. And the stain from **Paper Towel Number two**, how about that one? Same result?
A. Yes, sir. That was also consistent with the same unknown male individual.

The "unknown male profile" was uploaded into the DNA database, called CODIS. (R. IV - 60, 61). After trial, but prior to the submission of 'Appellate Briefs' from both the Appellant and the State, Appeal Counsel, LEW DUNN was apprised of information from the Department of Public Safety, in a letter dated 4/23/20, that a 'positive match' from DNA testing were made on the items styled as 03-06 and 03-07, i.e., two (2) blood stained paper towels that were found near the victim's wallet at crime scene. Previously, the DNA Expert, Ms. HAAS, determined the above items were from an 'unknown male individual'. With this new evidence, both the State and Defense moved the 6th Court of Appeals to 'ABATE' the Appeal, as it was determined the DNA from the two (2) blood paper towels matched an FRANSCISCO MORALES. Said 'Motion' was filed 5/21/20, to accord Counsel(s) time to investigate this 'newly discovered evidence' and determined MORALES possible role in the death of the Complainant. On June 9, 2020, the 6th Court of Appeals denied the 'Joint' Motion for leave to "ABATE" the Appeal, contending, "the Motion fails to explain how this Court has the Authority to reinvest the Trial Court with Jurisdiction and does not indicate or explain how either party would be Prejudiced by its denial." The Court is mistaken! Appeal Counsel, LEW DUNN, introduced the Court to the case of

Harris v. State, 818 S.W. 2d 231, (Tex. App. - San Antonio 1991), as precedence for the 'Abatement'. In light of the exonerating nature of such evidence, your Petitioner asserts the 6th Court of Appeals erred, abused its discretion, and deprived your Petitioner of Due Process protection by not according him a meaningful opportunity to return to the Trial Court for resolution of a potentially exonerating claim. Moreover, Petitioner asserts the Court's ruling was clearly 'prejudicial' to his Petitioner's rights to due process and fundamental fairness. At the very least, the Court should have stayed the proceeding or held the Appellate proceedings in abeyance to accord your Petitioner the fair and just chance to return back to the Trial Court for resolution. See the rationale of Rhines v. Weber, 125 S.Ct. 1528, (2005)(The Supreme Court, Justice O'Connor Held that the District Court had discretion to stay a mixed habeas petition to allow the Petitioner to present his unexhausted claims to the state court in the first instance, and then to return to federal court for review of his perfected petition).

Your Petitioner was deprived of a meaningful opportunity to advance an exonerating claim to the trial court for resolution, that may have resulted into the dismissal of his case, in breach of due process of law and the case of Herrera v. Collins, 113 S.Ct. 853, (1993). Consequently, the State Court committed a fundamental miscarriage of justice in denying Petitioner the fair and

just chance to return to the State Court for resolution of his potentially exonerating claim. See Smith v. Murray, 106 S.Ct. 2661, (1986); Murray v. Carrier, 106 S.Ct. 2639, (1986), and their progeny. In addition, the Court deprived your Petitioner of his right to a 'meaningful appeal', as articulated in Evitts v. Lucey, 106 S.Ct. 830, (1985).

WHEREFORE, PREMISES, ARGUMENTS and AUTHORITIES CONSIDERED, your Petitioner prays and respectfully urge of this Court to find the lower court deprived him of his due process rights in denying the 'joint' "MOTION TO ABATE APPEAL", in light of exculpatory DNA Test Results. Petitioner prays this Court would REVERSE said case in light of the due process breach, or alternatively, your Petitioner prays for whatever other, further or different relief this Court deem your Petitioner is justly entitled, in the interest of justice. It is so prayed for.

VIII.

POINT OF ERROR NUMBER THREE (RESTATED)

THE LOWER COURT ERRED AND ABUSED ITS DISCRETION IN NOT DETERMINING REVERSAL WAS WARRANTED, IN LIGHT OF THE ABSENCE OF THE NON-CORROBORATED TESTIMONY OF A JAILHOUSE SNITCH

ARGUMENTS, AUTHORITIES and DISCUSSIONS

Your Petitioner asserts State Witness, SABRIAN ALEXANDER, a jailhouse snitch, testimony should have been excluded from trial, pursuant to the provisions of Art. 38.075, C.C.P., and the due process clause of the 14th Amendment. The State wholly failed to meet its burden of 'corroborating' the jailhouse snitch testimony to permit its admission at trial. It has been long recognized the testimony of a jailhouse snitch "is inherently unreliable due to the inmates incentive to better his circumstances." See Phillips v. State, 463 S.W. 3d 59, 66, (Tex. Cr. App. 2015).

In the case at bar, ALEXANDER did not come forth with alleged admissions from Petitioner while in custody, until after he got indicted for charges. (R. III - 136). Said witness to a full three (3) months before coming forth to inform on Petitioner. Said witness stated, during trial, and over objection, that Petitioner allegedly admitted to him that he stole items from the victim's home, while in the course of robbing him, namely, (1) some guns; (2) some jewelry; (3) a Generator; and (4) a nail gun. (R. III - 139). Pursuant to the Law, and in light of requirement that inmate's testimony must be corroborated with independent facts, Art. 38.075, C.C.P., the State wholly failed to provide any measure of corroboration to warrant its admission before trial. The record evidence establishes that the Generator, allegedly stolen from from the victim's

home, and obtained and pawned in a local Pawn Shop by ALEXANDER, was proffered by the State into evidence as proof of an alleged Robbery and in its effort to establish the charge against Petitioner. However, after thorough investigation, it was proven that at no time did the Generator come from the victim's home, or ever belonged to the victim, establishing non-corroboration: (R. III - 143):

> Q. So you think you could get in trouble for some of the things that you've done or heard?
> A. No, I think I can get in trouble for me taking a Generator that came from that house and taking it to the Pawnshop and selling it.
> Q. Are you aware that that was investigated, and that Generator Did Not come from that house?
> A. Well, it came from 2012.
> Q. You went to the Pawnshop and pawned a Generator that you thought came from Mr. Clark's house?
> A. Yes, sir.
> Q. But it didn't, did it?

Hence, the jailhouse snitch testimony was insufficiently corroborated for its admission before the Jury, pursuant to the requirements of Art. 38.075, supra. See Schmidt v. State, 357 S.W. 3d 845, (Tex. App. Eastland 2012); Simms v. State, 2019 Tex. App. LEXIS 4764; Ruiz v. State, 358 S.W. 3d 676, 680, (Tex. App. Corpus Christi 2011).

The lower court erred and disregarded the standards of corroboration required in jailhouse snitch testimony, as articulated in Art. 38.075, supra. Critical to the insufficiency of the State's entire case is the complete omission of the 'time' in which the offense occurred. Your Petitioner asserts he and witness JACKSON left the victim's home earlier in the evening and that he was alive and well.

There is a 15-hour opportunity for the offense to have been committed. There is **NO Evidence** tending to establish that your Petitioner committed the Aggravated Robbery, as alleged in the indictment. The jailhouse snitch testimony insufficiently 'corroborates' the State's version of the events and the charged offense. Hence, in light of the complete lack of corroboration, as required, the lower court erred and abused its discretion its admission of jailhouse snitch testimony, without sufficient corroboration, as required by Art. 38.075, supra, and the due process clause of the 14th Amendment. Said conviction was obtained in breach of the United States Constitution. See Slack v. McDaniel, supra.

WHEREFORE, PREMISES, ARGUMENTS and AUTHORITIES CONSIDERED, your Petitioner prays and respectfully urge for this Honorable Court to determine Petitioner's conviction was obtained in breach of due process, as argued, supra. Petitioner prays this Court would Grant REVERSAL in light of the Constitutional breach. Alternatively, your Petitioner prays for whatever other, further or different relief this Court deem Petitioner is justly entitled, in the interest of justice. It is so prayed for.

IX.

POINT OF ERROR NUMBER FOUR (RESTATED)

THE LOWER COURT ERRED AND ABUSED ITS DISCRETION IN NOT DETERMINING REVERSAL WAS WARRANTED, IN LIGHT OF THE TRIAL COURT's ADMISSION OF HEARSAY TESTIMONY OF STATE WITNESS, IN BREACH OF THE 6th AMEND. CONFRONTATION CLAUSE

ARGUMENTS, AUTHORITIES and DISCUSSIONS

That it has been long recognized the United States Supreme Court and the 6th Amendment guarantee, condemns the use of 'testimonial' statements made out of court, without according cross examination. Crawford v. Washington, 124 S.Ct. 1354, (2005); Walker v. State, 180 S.W. 3d 829, (Tex. App. 14th Dist. - 2005); U.S.C.A., Amend. 6; 14.

In the case at bar, during recess with the Jury out, the State witness, CHARLES HELTON, testified about a telephone call from an AUTHUR WATERS, offering information about a conversation he, WATERS, had with alleged accomplice witness, CHARLENE JACKSON, (R. III - 56,57), that implicated Petitioner in the offense. (R. III - 57-59).

The State sought the admission of a portion of the Audio Recording, to be played before the Jury, that captures the conversation between Officer HELTON and WATERS, styled as Exhibit #12. (R. III - 57). Trial Counsel objected as impermissible hearsay, (R. III - 16):

...And then there's a phone call.
Its from a man who identifies himself as Authur Waters, and he calls the Sheriff's office.
Mr. SHUMATE: I need to object in discussing a phone call from somebody who is not going to be here and not going to be subject to Cross Examination. There's been no offer at this moment, so we object to even discussing it.

During trial, the State sought to admit into evidence the Audio Recording of WATERS and HELTON. (R. III - 57). Trial Counsel objected to the offering and the acceptance of the playing of this, for the reasons stated in the objection earlier. (R. III - 58). The Court overruled the objection and permitted the playing of the audio tape before the Jury, (State's Exhibit #12). Counsel then moved the Court for a 'running objection' on the recording. (R. III - 58).

The State argued said claim was 'waived', and the lower court of appeals determined, "Williams raises a confrontation clause issue, which was overruled because the record shows that it was not preserved." Your Petitioner asserts the Court's determination is in conflict with the case of Langham v. State, 305 S.W. 3d 568, (Tex. Cr. App. 2010)(informant's "background" testimony can cross the line so Jury consider evidence "for that improper truth-of-the-matter-asserted purpose." See also Morin v. State, 960 S.W. 2d 132, 138, (Tex. App. Corpus Christi 1997)(Evidence improper showing accused involved in the offense). The lower court failed to demonstrate how the hearsay about WATERS conversation with JACKSON evades the pitfalls pointed out in Langham and Morin, supra. In addition, the 'confrontation' issue was raised at trial. (R. III - 50). Trial Counsel objected to 'hearsay nature' of testimony and that the State could have mentioned 'tip' through witness, without breaching 'hearsay' or Confrontation Clause.

Counsel further asserted its prejudicial effect outweighed its probative value. (R. III - 49-51). Petitioner contends, "this sort of hearsay implicates the 6th Amendment Confrontation Clause because the person whose words are being offered is not in Court for cross-examination. Said use of 'hearsay' testimony violated Crawford; Langham; Morin and Walker, along with U.S.C.A. Amend. 6. Petitioner asserts his conviction was obtained in breach of the United States Constitution, along with Federal Laws, as determined by the United States Supreme Court, warranting REVERSAL.

WHEREFORE, PREMISES, ARGUMENTS and AUTHORITIES CONSIDERED, your Petitioner prays and respectfully urge for this Court to determine a breach of the Confrontation Clause, as argued, supra. Petitioner prays for REVERSAL herein, or any other, further or different relief this Court deem is just and proper, in the interest of justice. It is so prayed for.

X.

POINT OF ERROR NUMBER FIVE (RESTATED)

THE LOWER COURT ERRED AND ABUSED ITS DISCRETION IN NOT DETERMINING THE TRIAL COURT's ADMISSION OF THE "HEARSAY TESTIMONY" OF THE VEHICLE REPORT BY ALAN SCOTT WAS REVERSIBLE ERROR

ARGUMENTS, AUTHORITIES and DISCUSSIONS

In the case at bar, Officer BEN REYNOLDS, (Crime Scene Investigator), testified that witness ALAN CLARK, (victim's nephew), told him that he saw a 'late' model, sky blue Sedan exiting the property of the deceased late in the afternoon, between 4:30-5:00 pm, with one headlight working. (R. III - 80-81). Counsel objected, in light of fact said witness had already testified and was excused, and thus, could not be subjected to cross examination. (R. III - 79,80).

Petitioner asserts the State violated his substantial rights and breached the Confrontation Clause. Holmes v. State, 323 S.W. 3d 163, 174, (Tex. Cr. App. 2010); U.S.C.A., Amend. 5; 6; 14. The identity of the car was crucial to the State's case, and was used in the State's final summation. (R. IV - 102). Said error conflicts with Crawford, supra, warranting REVERSAL.

WHEREFORE, PREMISES, ARGUMENTS and AUTHORITIES CONSIDERED, your Petitioner prays this Court would grant him REVERSAL, and determine a breach of the Confrontation Clause, as argued, supra. Alternatively, your Petitioner prays for whatever other, further or different relief this Court deem is just and proper, in the interest of justice. It is so prayed for.

CONCLUSION AND PRAYER

That your Petitioner prays and respectfully urge for this Honorable Court to determine Petitioner's conviction waspatently obtained in breach of the United States Constitution, as well as Federal Law, as determined by the United States Supreme Court, as argued, supra. Petitioner prays this Court would Rule on the merits, and GRANT Petitioner the relief sought, which is REVERSAL AND ACQUITTAL. Petitioner prays this Court would remand the case back to the State Court for further resolution of the claims, or alternatively, your Petitioner prays for whatever other, further or different relief this Court deem is just and proper, to alter a fundamental miscarriage of justice from continuously prevailing against him. It is so prayed.

Respectfully submitted,

Tony Gene Williams, Sr.

TONY GENE WILLIAMS, SR.
Petitioner Pro Se
TDCJ #2300397
Memorial Unit
59 Darrington Rd.
Rosharon, Tx. 77583

AFFIDAVIT

PURSUANT TO TITLE 6, CHAPTER 132, V.T.C.A., CIVIL PRACTICE AND REMEDIES CODE; and 28 U.S.C. § 1746:

I, TONY GENE WILLIAMS, Sr., Petitioner, Pro Se, in above cause, being currently confined in TDCJ -ID, at the MEMORIAL UNIT, located here in Brazoria County, Tx., have read the foregoing "WRIT OF CERTIORARI", filed in good faith,and in the interest of justice, hereby DEPOSE and DECLARE under the pain and penalties of PERJURY, the foregoing "PETITION" is true and correct to the best of Petitioner's belief and knowledge.

Executed on this the 10TH day of FEB., 2022.

Tony Gene Williams, Sr.
TONY GENE WILLIAMS, #2300997
Petitioner, Pro Se

CERTIFICATE OF SERVICE

I, TONY GENE WILLIAMS, Sr., Petitioner, Pro Se, files this 'PETITION', in good faith and in interest of justice, hereby CERTIFY a true and correct legible copy of the foregoing "WPETITION FOR WRIT OF CERTIORARI", was served upon this Court, United States Supreme Court, on this the the 10TH day of FEB., 2022.

Tony Gene Williams, Sr.
TONY GENE WILLIAMS #2300997
Petitioner, Pro Se