

22-5868

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

OCT 05 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

CHAD ALAN CASPERLO — PETITIONER
(Your Name)

VS.

STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE
SECOND DISTRICT OF TEXAS
FORT WORTH

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

PETITION FOR WRIT OF CERTIORARI

CHAD CASPERLO # 2262766

(Your Name)

2101 FM 369 NORTH

(Address)

IOWA PARK, TEXAS 76367

(City, State, Zip Code)

NA

(Phone Number)

QUESTION(S) PRESENTED

1. IS THE CLERK OF THE STATE COURT OF APPEALS AT LIBERTY TO REFUSE PETITIONS OR MOTIONS FOR UNTIMELINESS, BY DISREGARDING A TIMELY FILED AFFIDAVIT, BY AN INMATE IN AN INSTITUTION, ACCOMPANIED BY WITH THE PETITIONS OR MOTIONS, ACCORDING TO FED. R. APP. PROC. 25(a)(2)(A)(iii)? IF NO, THEN SHOULD THE STATE COURT OF APPEALS HEAR AND RULE ON THE TIMELY FILED PETITIONS OR MOTIONS AND WITHDRAW DECISIONS MADE BEFORE CONSIDERING THE TIMELY PETITIONS OR MOTIONS?

2. SHOULD THE STATE COURTS BE AT LIBERTY TO IGNORE THE UNITED STATES CONSTITUTION'S CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT, BY NOT ADDRESSING THE KNOWN FACT OF THE WITNESS COMPLAINANT'S BEING DECEASED PRIOR TO A THEFT OF PROPERTY TRIAL? IF NO, THEN HOW SHOULD AN ALLEGED AGGREGATE THEFT OF PROPERTY WITH A CONTRACT PRESENT BE CALCULATED, WHEN ITS DEFERENCE WOULD CONSIDERABLY CHANGE THE RANGE OF PUNISHMENT?

3. ARE STATE COURTS PERMITTED TO CREATE BY PROSECUTION'S TORTUOUS INTERFERENCE AND COMMON LAW A CONVECTION TO EMPEASE THE OBLIGATIONS OF PRIVATE PARTY CONTRACTS, IN VIOLATION OF THE CONTRACT CLAUSE OF THE UNITED STATES CONSTITUTION ART. I, SEC 10? IF NO HOW SHOULD SUCH AN INFRACTION BE REVERSED?

4. SHOULD THE STATE COURTS BE ALLOWED TO DEFINE AWAY OR DISREGARD FACTS NECESSARY TO CONSTITUTE A CRIMINAL OFFENSE FOR AN OTHERWISE CIVIL ISSUE, INCLUDING BUT NOT LIMITED TO USING A GENERAL STATUTE AND ELEMENTS, RATHER THAN THE REQUIRED SPECIFIC STATUTE AND ELEMENTS SUPPORTED BY COMMON LAW OF THE HIGHER COURTS?

5. ARE STATE COURTS PERMITTED TO DISREGARD A PERSISTENT PATTERN OF PROSECUTORIAL MISCONDUCT TO SECURE A CONVECTION AND PENALIZE AN ACCUSED FOR WHAT THE LAW PLAINLY ALLOWS HIM TO DO?

LIST OF PARTIES

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

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

JUDGES:

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FT. WORTH, TEXAS 76196

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APPELLEE COUNSEL:

SHARON WILSON, D.A.
JOSEPH W. SPENCE, ADA
401 W. BELKNAP ST.
FT. WORTH, TEXAS 76196

RELATED CASES

~~CHASLA~~

STATE V. CHAD ALAN CARPUELO - 213TH DIST. COURT TARRANT COUNTY, TEXAS
TR. CT. NO. 1554954 D - JUDGMENT MAY 2019

CHAD ALAN CARPUELO V. STATE OF TEXAS, NO 02-19-00197-CR, COURT OF APPEALS FOR THE SECOND DISTRICT, FORT WORTH, TEXAS - JUDGMENT MAY 5TH, 2022; SUBMITTED FOR REHEARING JUNE 4TH, 2022 - SUMMARILY DENIED JULY 7, 2022; SUBMITTED FOR REHEARING EN BANC WITH EXTENSION AUGUST 7, 2022 - CLERK REFUSED AND ISSUED MANDATE AUGUST 30TH, 2022.

CHAD ALAN CARPUELO V. STATE OF TEXAS, NO. PD-0297-22; FILED ~~APRIL~~ ^{JULY} 6TH, 2022 (CORRECTION BY ATTORNEY); ATTORNEY NOTIFIED APPELLANT JULY 23RD, 2022; APPELLANT FILED PRO SE MOTION FOR STAY AND ABOYANCE, MOTION FOR SUBSEQUENT OR SUPPLEMENT ON ~~APRIL~~ JULY 26TH, 2022 WITHOUT RULING; JULY 27TH 2022 PETITION FOR DISCRETIONARY REVIEW REFUSED WITH NOTICE; NO NOTICE OR RULING GIVEN ON PRO SE MOTIONS, COURT OF CRIMINAL APPEALS TEXAS.

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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 NA to the petition and is

☐ reported at NA; 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 NA to the petition and is

☐ reported at NA; 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 _____ 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 SECOND COURT OF APPEALS, TEXAS 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:** NA

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

☐ 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 July 27, 2022. A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: NA, and a copy of the order denying rehearing appears at Appendix NA.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION ART I § 10:

NO STATE SHALL ENTER ANY TREATY, ALLIANCE, OR CONFEDERATION; GRANT LETTERS OF MARQUE AND REPRISAL; COIN MONEY; EMIT BILLS OF CREDIT; MAKE ANY-THING BUT GOLD AND SILVER COIN A TENDER IN PAYMENT OF DEBTS; PASS ANY BILL OF ATTAINDER, EX POST FACTO LAW, OR "LAW IMPAIRING THE OBLIGATION OF CONTRACTS"
...

UNITED STATES CONSTITUTION AMEND V:

NO PERSONS SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LANDS OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER, NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPULSED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

UNITED STATES CONSTITUTION AMEND VI:

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY A PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; "TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM"; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE,

UNITED STATES CONSTITUTION AMEND XIV:

SECTION 1. ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE ~~IN WHICH~~ WHEREIN THEY RESIDE.

NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

FEDERAL RULE APPELLATE PROCEDURE 25(a)(2)(A)(iii):

RULE 25. FILING AND SERVICE

(a) FILING

(2) FILING: METHOD AND TIMELINESS.

(A) NON ELECTRONIC FILING.

(iii) INMATE FILING. IF AN INSTITUTION HAS A SYSTEM DESIGNED FOR LEGAL MAIL, AN INMATE CONFINED THERE MUST USE THAT SYSTEM TO RECEIVE THE BENEFIT OF THIS RULE 25(a)(2)(A)(iii).

A PAPER NOT FILED ELECTRONICALLY BY AN INMATE IS TIMELY IF IT IS DEPOSITED ~~IN~~ IN THE INSTITUTION'S INTERNAL MAIL SYSTEM ON OR BEFORE THE LAST DAY ~~BE~~ FOR FILING AND:

• IT IS ACCOMPANIED BY: A DECLARATION IN COMPLIANCE WITH 28 U.S.C. § 1746 - OR A NOTORIZED STATEMENT - SETTING OUT THE DATE OF DEPOSIT AND STATING THAT FIRST-CLASS POSTAGE IS BEING PREPAID; . . .

TEXAS PENAL CODE § 31.03 THEFT:

(a) A PERSON COMMITS AN OFFENSE IF HE UNLAWFULLY APPROPRIATES PROPERTY WITH THE INTENT TO DEPRIVE THE OWNER OF PROPERTY

(b) ~~THEFT~~ APPROPRIATION OF PROPERTY IS UNLAWFUL IF:

(1) IT IS WITHOUT THE OWNER'S EFFECTIVE CONSENT

TEXAS CODE OF CRIMINAL PROCEDURE ART. 35.22

WHEN THE JURY HAS BEEN SELECTED THE FOLLOWING OATH SHALL BE ADMINISTERED TO THEM BY THE COURT OR UNDER ITS DIRECTION: "YOU AND EACH OF YOU DO SOLEMNLY SWEAR THAT IN THE CASE OF THE STATE OF TEXAS AGAINST THE DEFENDANT, YOU WILL A TRUE VERDICT RENDER ACCORDING TO THE LAW AND EVIDENCE, SO HELP YOU GOD".

TEXAS RULE OF APPELLATE PROCEDURE RULE 21, 21.6 AND 21.8:

RULE 21. NEW TRIALS IN CRIMINAL CASES

21.6 TIME TO PRESENT

THE DEFENDANT MUST PRESENT THE MOTION FOR A NEW TRIAL TO THE TRIAL COURT WITHIN (10) DAYS OF FILING IT, UNLESS THE TRIAL COURT IN ITS DISCRETION PERMITS IT TO BE PRESENTED AND HEARD WITHIN (75) DAYS FROM THE DATE WHEN THE COURT IMPOSES OR SUSPENDS SENTENCE IN OPEN COURT.

21.8. COURT'S RULING

(a) TIME TO RULE. THE COURT MUST RULE ON A MOTION FOR A NEW TRIAL WITHIN (75) DAYS AFTER IMPOSING OR SUSPENDING SENTENCE IN OPEN COURT.

(b) RULING. IN RULING ON A MOTION FOR A NEW TRIAL, THE COURT MAY TAKE ORAL OR WRITTEN EVIDENCE OF FACT. THE GRANTING OF A MOTION FOR

NEW TRIAL MUST BE ACCOMPLISHED BY WRITTEN ORDER. A DOCKET ENTRY DOES NOT CONSTITUTE A WRITTEN ORDER.

(C) FAILURE TO RULE. A MOTION NOT TIMELY RULED ON BY WRITTEN ORDER WILL BE DEEMED DENIED WHEN THE PERIOD PRESCRIBED IN (A) EXPIRES.

STATEMENT OF THE CASE

PETTSOWER WAS CONSIDERED OF (3) SEPARATE COUNTS IN A DIFFERENTIATED TRIAL AS FOLLOWS:

- COUNT (1) - THEFT OF PROPERTY ELDERLY PERSONS \$30,000 - \$150,000
SCOTT \$17,980, TROTSCH \$6,990, MARTINDALE \$9,000
- COUNT (2) - MISAPPROPRIATION FIDUCIARY FUNDS \$30,000 - \$150,000
- COUNT (3) - THEFT OF PROPERTY \$30,000 - \$150,000

THE SECOND COURT OF APPEALS OF TEXAS AFFIRMED COUNT (1); REVERSED AND RENDERED A JUDGMENT OF ACQUITTAL ON COUNTS (2) AND (3).

THE SECOND COURT OF APPEALS OF TEXAS DID NOT CONSIDER AND IGNORED THE FACT THE SCOTT'S WERE DECEASED AT THE TIME OF TRIAL. BY INCLUDING THE SCOTT'S ALLEGED AMOUNT OF \$17,980, IN THE TOTAL AGGREGATE OF \$33,880, VIOLATED THE UNITED STATES CONSTITUTION'S CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT; AS THEY WERE NOT PRESENT TO BE CROSS EXAMINED AND THEIR TESTIMONY WAS THAT OF THE DISTRICT ATTORNEY'S INVESTIGATOR TAYLOR AND THE DISTRICT ATTORNEY'S FINANCIAL ANALYST HANNA, WHO NEITHER CONSIDERED NOR READ THE CONTRACT IN QUESTION TO DETERMINE EARNED INCOME, OR TERMS OF THE AGREEMENTS. THE SCOTT'S CONTRACT WAS SUBSTANTIALLY COMPLETED. THE DRIVEWAY WAS TORN OUT AND A NEW ONE INSTALLED (RR 3, 71-72, 79-80, 101, 111, 120-722); (DEFENSE EX. 14 - RR 3, 69); (DEFENSE EX. 17 - RR 7, 250); (RR 5, 89); (RR 3, 178-89, 185)

THE CONTRACTUAL AGREEMENTS WERE CLEAR AND AGREED TO BE REDUCED TO WRITING (DEF. EX. 14 (RR 3, 69)); STATE'S EX. 2 (RR 3; 133, 132); STATE'S EX. 7 (RR 4, 13-14). THE SCOTT'S INITIAL INSTALLMENT WAS GARNISH MONEY FOR (50%) OF THE PROJECT ^{TO} INCLUDE THE DRIVEWAY ~~FOR~~ FOR \$12,980. A CHANGE ORDER FOLLOWED, STATING THE DRIVEWAY WAS COMPLETED DEF. EX. 17 (RR 7, 250). DUE TO A DELAY ON THE SCOTT'S BEHALF EXTENSIVE REMODELING, PETTSOWER, WOULD NEED A DRAW OF \$5,000 AND THIS WOULD BE CONSIDERED ~~TO~~ THE "INVEST" FOR THE COMPLETION OF THE DRIVEWAY." BASED ON THE UNAMBIGUOUS LANGUAGE OF THE CONTRACT, THE DRIVEWAY COST WOULD HAVE BEEN A TOTAL OF \$10,000, (\$5,000 DURING 50% AND \$5,000 FOR COMPLETION). IF ONLY ONE OR THE OTHER WERE CONSIDERED THE RANGE OF PUNISHMENT WOULD HAVE BEEN SUBSTANTIALLY REDUCED FROM 5-99 YRS. (47 YRS. ASSESSED), TO A MAXIMUM OF 10 YRS. LOWERING FROM A 1ST DEGREE FELONY TO A STATE JAIL FELONY WITH ELDERLY PUNISHMENT. HAD THE SCOTT'S NOT BEEN DECEASED AT THE TIME OF TRIAL, THESE FACTS WOULD HAVE BEEN PROPERLY PRESENTED TO THE JURY. PETTSOWER PRESENTED THE AFORESAID BY HIS PRO-SO MOTION

FOR A NEW TRIAL, TIMELY FILED, PAGES (5)-(9). THE MOTION FOR A NEW TRIAL WAS PROPERLY PRESENTED, AS IT INCLUDED A REQUEST FOR HEARING WITHIN ITSELF AND WAS ACCOMPANIED BY A SEPARATE MOTION REQUESTING A HEARING WITH HIS PRESENCE, BOTH OF WHICH WERE CONSIDERED FILED 5/28/2019, ACCORDING TO THE PROBATOR'S MANUAL RULE. THE APPELLATE ATTORNEY RAISED THE ISSUE OF "THE EVIDENCE WAS LEGALLY INSUFFICIENT TO SUPPORT A FINDING OF THAT AMOUNT OF \$30,000 OR MORE" APPELLANT BRGF PP(7-10). THE SECOND COURT OF APPEALS THEN PROCEEDED TO EXPLAIN AWAY THE UNAMBIGUOUS LANGUAGE OF THE \$5,000 USE OF FUNDS AND KNOWINGLY IGNORED THE FACT THE SCOT'S WORK DECREASED AT THE TIME OF TRIAL, MEMORANDUM OPENED PP(12-13).

THE PETITIONER FILED A MOTION FOR REMITTANCE TIMELY ON JUNE 4, 2022, REQUESTING THE INSUFFICIENCY OF EVIDENCE TO SUPPORT THE DOWRY AMOUNT AND THE VERDICT PP.(1-9); THE ERROR RELEVANT IN DETERMINING THE AMOUNT ALLOWED PP(9-11); INCOMPLETE STANDARD OF REVIEW TO UPHOLD A THIEF CONVICTION WITH A CONTRACT PERSON PP.(4-14). THE STATE WAS REQUESTED TO ANSWER THE MOTION FOR REMITTANCE BY JULY 1, 2022 THE STATE FAILED TO SEND ITS ANSWER TO THE PETITIONER UNTIL JULY 22, 2022.

THE COURT OF APPEALS AND THE STATE OVERLOOKED THE RECORD OF TESTIMONY AND PETITIONER'S A20 SO MOTIONS, (NOW TRIAL AND REMITTANCE), TO INCLUDE DISTRICT ATTORNEY'S INVESTIGATOR TAYLOR'S TORTUOUS INTERVIEW WITH THE COMPLAINANTS SCOT, TROTSCH AND MARTINDALE, (MOTION FOR REMITTANCE PP.(6-8)), CAUSING COMPLAINANTS TO MATERIALLY BREACH THEIR AGREEMENTS. INVESTIGATOR TAYLOR, IN HIS TESTIMONY, ~~THE~~ SEARCHED EXTREME REMOVEDNESS, (PETITIONER'S), BANK ACCOUNTS AND CONTACTED THE COMPLAINANTS. THEREAFTER, COMPLAINANTS FILED COMPLAINTS WITH THE DISTRICT ATTORNEY'S OFFICE FOR THEFT OF PROPERTY AND REPUDIATED THEIR CONTRACTS. THUS, PERMITTING THE STATE COURT TO PROSECUTE AND CONVICT THE PETITIONER FOR WHAT HE IS LEGALLY ALLOWED TO DO.

THE STATE AND THE STATE COURTS FAILED TO CONSIDER THE USE OF FUNDS ALREADY DISBURSED AND COMPLETED FOR THE WRITTEN AGREEMENTS. SCOT'S, DEF. EX. 14 (RR 3, 69), DEF EX. 17 (RR 7, 250); TROTSCH ST. EX 2 (RR 3, 131-132); AND MARTINDALE, ST. EX 7 (RR 4, 13-15). SCOT'S AS PREVIOUSLY DISCUSSED, TROTSCH AGREEMENT, CONTRARY TO THE COURT OF APPEALS FOR SECOND DISTRICTS OPENING, STATES (10%) TO HOLD PRECE, WHICH WAS DONE, AND 40% ~~REMAINING~~ ~~ONCE~~ ~~DISBURSED~~ COMPLETED, SEE CHANGE ORDER OF CONTRACT (RR 3, 126-134, 161-162), BOTH OF WHICH WERE EARNST MONEY, AS AGREED, MARTINDALE AGREEMENT STATED BOTH PAYMENTS WERE EARNST MONEY ~~TO~~ \$1,500 TO HOLD THE PRECE AND \$7,800 AS REMAINING INITIAL INVESTMENT. THESE FACTS

WERE PRESENTED TO BOTH THE TRIAL COURT (^{PROSS.} MOT. FOR NEW TRIAL Pp 3, 6-4), AND THE COURT OF APPEALS, R (MOTION REMED' Pp 3-9), AND WENT UNADDRESSED. PETITIONER, (EXTENSIVE REMODELING), HAD THE RIGHT TO RETAIN THE FUNDS FOR THE COMPLETED PORTIONS OF THE AGREEMENTS, ~~AND~~, AFTER REPUDIATION AND BREACH BY COMPLAINANTS. PETITIONER, ACCORDING TO WRITTEN AGREEMENTS AND LAW ^{IS} ~~IS~~ RELEASED FROM PERFORMANCE. BY PROSECUTING, ~~AND~~ CONVICTING AND AFFIRMING THE ALLEGED ACCUSATIONS OF THEFT, THE STATE COLLECTIVELY IMPAIRED THE OBLIGATIONS OF PRIVATE PARTY CONTRACTS, IN VIOLATION OF THE CONTRACT CLAUSE OF THE UNITED STATES CONSTITUTION ART. I, SEC 10.

THE STATE COURTS HAVE FAILED TO ADDRESS THE INSUFFICIENCY OF THE EVIDENCE TO SUPPORT THE VERDICT, AS REQUIRED BY STATUTE AND COMMON LAW WHICH ARE PARAMOUNT TO UPHOLD A CONVICTION OF THEFT OF PROPERTY WITH A CONTRACT PRESENT IN TEXAS. THESE ISSUES WERE PRESENTED TO BOTH THE TRIAL COURT AND THE APPELLATE COURT, IN PETITIONER'S MOTION FOR A NEW TRIAL Pp (2,3,5,6) AND MOTION FOR REMOVAL RESPECTIVELY Pp. (4-6).

THE STATE COURT THROUGHOUT THE TRIAL PERMITTED OVER OBTENTION MULTIPLE INSTANCES OF PROSECUTORIAL MISCONDUCT TO SECURE A CONVICTION. THESE INSTANCES WERE COMPAILED OF IN PETITIONER'S (PROS) MOTION FOR A NEW TRIAL (Pp 21-28) TO THE TRIAL COURT. TWO ENORMOUS PROSECUTORIAL ARGUMENTS WERE BROUGHT TO THE ATTENTION OF THE SECOND COURT OF APPEALS ~~THE APPELLATE COURT~~ IN APPELLANT'S BRIEF Pp (14-19), "THE COURT ERRORED IN PERMITTING GROUNDED PROSECUTION ARGUMENT TO CONSIDER AN EXTRANEOUS JURY VERDICT IN A DIFFERENT CASE" (Pp 14-16 APP. BRIEF) AND "ERRORED IN PERMITTING IMPROPER JURY ARGUMENT CONCERNING THE SUBMISSION OF A LOSSER ENCLOSED OFFENSE JURY INSTRUCTION". (RR 6, 77-78 APP. BRIEF). THE COURT OF APPEALS IN ITS OPINION Pp (20-24) EXPLAINED AWAY AND OVERRULED THE ERRORS AS HARMLESS. THIS WAS ADVANCED TO THE COURT OF CRIMINAL APPEALS AND REFUSED. ~~THE~~ ~~STATE~~ THE STATE ENGAGED IN FALSE AND MISLEADING STATEMENTS TO THE JURY AND THE COURT OF APPEALS, BY STATING PETITIONER CONTINUED THESE CONTRACTS AFTER BEING CONVICTED IN ANOTHER COUNTY. THE WRITTEN AGREEMENTS PROVE OTHERWISE. THIS FACT WAS BROUGHT TO THE ATTENTION OF THE COURT OF APPEALS IN PETITIONER'S MOTION FOR REMOVAL Pp (1-3), CONTRARY TO THE COURT'S OPINION Pp (2-3), AS THE STATE USED THIS FALSELY TO PROVE INTENT. ONCE CHALLENGED IN PETITIONER'S MOTION FOR REMOVAL THE ISSUE REMAINED UNADDRESSED BY THE STATE'S ANSWER AND THE COURT OF APPEALS. THE STATE, HOWEVER, FALSELY STATED THAT PETITIONER USED THE ALIAS NAME OF RUSSELL IN HIS DEALINGS WITH THE COMPLAINANTS, ^{FACT} ~~THE~~ IS THE STATE KNOWS THAT RUSSELL IS NOT AN ALIAS BUT THE PETITIONER'S

LEGAL NAME AS IT APPEARS ON HIS BIRTH CERTIFICATE. PETITIONER HAS NOT HAD A LEGAL NAME CHANGE FROM ANY COURT PROCEEDING. THE STATE IN ITS ANSWER TO PETITIONER'S MOTION FOR REHEARING STATED THAT THE PETITIONER'S PRO SE MOTION FOR A NEW TRIAL WAS NOT PROPERLY PRESENTED, WHICH ACCORDING TO STATUTE A COMMON LAW IN TEXAS, IT WAS AND WAS DENIED BY THE TRIAL COURT BY PROCESS ~~OF~~ OF LAW. THE COURT OF APPEALS DECIDED TO ADDRESS THE ISSUE:

PETITIONER, ATTEMPTED TO BRING MANY OF THE ISSUES DISCUSSED TO INCLUDE INSUFFICIENT EVIDENCE TO SUPPORT THE VERDICT, VERDICT WAS CONTRARY TO LAW AND EVIDENCE, VIOLATION OF THE CONFRONTATION CLAUSE, ADDITIONAL PROSECUTORIAL MISCONDUCT, AMONG OTHER MISFEASANCES CLAIMS NOT INCLUDED IN HIS APPELLANT BRIEF BY WAY OF FILING A SUPPLEMENT ON MAY 27, 2020 ALONG WITH A REQUEST FOR A COPY OF THE TRIAL AND RECORD TRANSCRIPTS. THE COURT OF APPEALS SHOWS THE FILING ON JUNE 3, 2020 LESS THAN (60) DAYS FROM ORIGINAL APPEAL BRIEF, AND LESS THAN (30) DAYS OF THE STATE'S BRIEF, AND (7) MONTHS PRIOR TO SUBMISSION FOR REVIEW. BOTH REQUESTS WERE DENIED, AS IT APPEARS BY A CLERK OF THE COURT OF APPEALS, AS NO JUSTICE SIGNATURE APPEARED ON THE DENIAL. THEREFORE, BASED ON THE OPINION OF THE SECOND COURT OF APPEALS, SOME OF THE ISSUES OF ERROR, (NOT ALL), WERE ABLE TO BE PRESENTED BY PETITIONER'S MOTION FOR REHEARING ON JUNE 4, 2022

WHILE PETITIONER'S MOTION FOR REHEARING WAS PENDING IN THE SECOND COURT OF APPEALS, HIS COURT APPOINTED ATTORNEY WENT BEYOND HIS APPOINTMENT, FILED AN INCOMPLETE PETITION FOR DISCRETIONARY REVIEW ~~APPEAL~~ ON JULY 6, 2022, FAILING TO NOTIFY APPELLANT UNTIL JULY 23, 2022. THIS TRIGGERED A PREMATURE SUMMARY DENIAL FROM THE SECOND COURT OF APPEALS ON JULY 7, 2022 REMOVING JURISDICTION FROM THE SECOND COURT OF APPEALS AND VESTING JURISDICTION TO THE COURT OF CRIMINAL APPEALS. AT THE TIME OF NOTICE FROM PETITIONER'S COURT APPOINTED ATTORNEY'S PREMATURE AND IMPROPER FILING, PETITIONER WAS DRAFTING A MOTION FOR RECONSIDERATION ON BANK TO THE SECOND COURT OF APPEALS TO ENCOMPASS THE FOLLOWING POINTS:

- 1) THE PANEL ERRED ~~IN~~ IN ISSUING A SUMMARY DENIAL OF "APPELLANT'S MOTION FOR REHEARING" AFTER STATE'S RESPONSE WITHOUT ADDRESSING THE ISSUES RAISED AND NECESSARY TO FINAL DISPOSITION OF THE APPEAL, REGARDING COUNT(1) THEFT OF PROPERTY WITH A CONTRACT PRESENT; AS DENIAL WOULD BE CONTRARY TO FEDERAL COURT RULES ON THE SAME ISSUES NECESSARY TO SECURE AND MAINTAIN UNIFORMITY OF SUCH RULES

- 2) THE PANEL'S DECISION WAS SO PREMATURE AS TO DENY APPELLANT'S DUE PROCESS TO ADDRESS THE ERRONEOUS, FALSE AND MISLEADING ASSERTIONS OF THE STATE'S RESPONSE TO "APPELLANT'S MOTION FOR REHEARING".

AFTER RECEIVING NOTICE OF THE FILING OF PETITION FOR DISCRETIONARY

REVIEW ON JULY 23, 2022, PETITIONER FILED AN AFFIDAVIT OF FILING, SIGNED AND DATED JULY 26, 2022; A MOTION FOR LEAVE FOR STAY AND ABSTINENCE OF PETITIONER'S PETITION FOR DISCRETIONARY REVIEW, PRO SE; MOTION TO SUPPLEMENT OR SUCCESSIVELY FILE PETITIONER'S PETITION FOR DISCRETIONARY REVIEW, PRO SE AND; A MOTION TO EXTEND TIME TO FILE SUPPLEMENT TO PETITION FOR DISCRETIONARY REVIEW, PRO SE. THE AFFIDAVIT WAS TIMELY FILED ACCORDING TO FED. R. APP. PROC. 25(a)(2)(A)(iii), WITH THE COURT OF CRIMINAL APPEALS OF TEXAS ON JULY 26, 2022.

ON AUGUST 7, 2022 PETITIONER TIMELY FILED AFFIDAVIT OF FILING, SIGNED AND DATED ACCORDINGLY; A MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR RETRAVING AND RECONSIDERATION EN BANC, PRO SE; MOTION FOR RETRAVING AND RECONSIDERATION EN BANC ACCORDING TO FED. R. APP. PROC. 25(a)(2)(A)(iii).

ON AUGUST 10, 2022 PETITIONER RECEIVED NOTICE FROM THE COURT APPOINTED ATTORNEY THAT HIS PETITION FOR DISCRETIONARY REVIEW, WHICH WAS ERRONEOUSLY FILED, HAD BEEN REFUSED ON JULY 27, 2022.

PETITIONER HAD A THIRD PARTY CONTACT THE COURT OF CRIMINAL APPEALS CLERK, ON AUGUST 10, 2022, TO CHECK STATUS OF THE PRO SE MOTIONS AND WAS INFORMED BY THE CLERK THEY HAD NOT ARRIVED. ON AUGUST 11, 2022 PETITIONER VERIFIED WITH HIS LATEST'S LAW LIBRARY THAT IT WAS MAILED. VERIFICATION WAS MAIL ~~RECEIVED~~ DROPPED ~~RECEIVED~~ JULY 26, 2022; INDECENT POSTAGE PAID JULY 28, 2022; MAIL ROOM VERIFIED MAILED JULY 29, 2022. IT WAS NOT UNTIL AUGUST 15, 2022 THE CLERK OF TEXAS COURT CRIMINAL APPEALS SHOWED RECEIVED. THE CLERK SENT NO NOTICE BUT GAVE THE THIRD PARTY THE STATUS. STATUS BEING, CLERK DID NOT CONSIDER THE PRISONER'S MAILBOX RULE OF FILING JULY 26, 2022 AND CLOSED THE CASE JULY 27, 2022 WITHOUT CONSIDERATION OF PRO SE MOTIONS.

FINALLY, DUE TO TEXAS COURT OF CRIMINAL APPEALS CLERK CLOSING THE CASE, THE SECOND COURT OF APPEALS CLERK ERRONEOUSLY STATED "THE TIME FOR FILING HAD EXPIRED", WHEN IT HAD NOT, "AND DUE TO THE REFUSAL OF PETITION FOR DISCRETIONARY REVIEW ON JULY 27, 2022, THE CASE IS CLOSED." THE CLERK ISSUED MANDATE AND RETURNED THE AUGUST 7, 2022 FILINGS BACK TO PETITIONER. ON AUGUST 30, 2022.

THE AFFIDAVIT DENIAL OF FILING BEING RECOGNIZED, AS SET FORTH IN FED. R. APP. PROC. 25(a)(2)(A)(iii) DENIED THE PETITIONER THE RIGHT TO BE HEARD AND ADDRESSED IN REGARD TO HIS MERITORIOUS CLAIMS. THESE DENIALS HAVE VIOLATED PETITIONER'S DUE PROCESS, DUE COURSE OF LAW, AND EQUAL PROTECTION, AS ENTITLED, IN THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

REASONS FOR GRANTING THE PETITION

THE STATE COURTS' DISREGARDING AND DENYING THE PETITIONERS CONSTITUTIONAL RIGHT TO CONFRONT THE WITNESSES AGAINST THEM, IS SO FAR DEPARTED FROM OUR SYSTEM OF JURISPRUDENCE AND SHOULD GIVE RISE TO THE UNITED STATES SUPREME COURT'S EXERCISE OF SUPERVISORY POWER. THIS DENIAL OF RIGHT NOT ONLY ABROGATES OUR CONSTITUTIONAL RIGHT, BUT TO NOT ADDRESS ~~THE~~ THE ISSUE, AS THE STATE COURTS HAVE DONE, IS TO GO AGAINST THIS COURT'S RULINGS IN POWELL V. TEXAS, 380 U.S. 400, 403, 85 S.Ct. 1065, 13 L. Ed 2d 923 (1965). THE ACCUSED IS ENTITLED TO AND HAS THE RIGHT TO CONFRONT HIS ACCUSER, FURTHER THE ACCUSED HAS THE RIGHT TO CROSS EXAMINE HIS ACCUSER IN A PUBLIC TRIAL. DENIAL OF THIS RIGHT VIOLATES THE CONFRONTATION CLAUSE OF THE UNITED STATES CONSTITUTION'S SIXTH AMENDMENT AND DENIES THE ACCUSED HIS RIGHT TO DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW, CONFRONTATION RIGHT CONSISTS OF FOUR ELEMENTS (1) PHYSICAL PRESENCE (2) OATH (3) CROSS EXAMINATION (4) OBSERVATION OF Demeanor BY TRIER OF FACT MARYLAND V. CARLE, 497 U.S. 836, 844 (1990).

TO UPHOLD THE ALLEGED AGGREGATE THIEF DOLLAR AMOUNT, OF \$33,880 IN COUNT (1) OF THIEF \$30,000-\$150,000, WHEN \$17,480 OF THE ALLEGED AMOUNT IS THAT OF A SUBSTANTIALLY COMPLETED CONTRACT WITH A DEFENSE PARTY, COULD CAUSE SERIOUS ISSUES OF GOVERNMENT OVERTREACHING BY STATES COMING FORWARD. IN ALL CIRCUMSTANCES A DEPRIVATION, SUCH AS THIS, COULD CAUSE THIS BASIC RIGHT TO CONFRONT ONE'S ACCUSER TO BE REMOVED FROM NOT ONLY COMMON LAW BUT WOULD BEGIN TO FURTHER DETERIORATE THIS NATION'S SYSTEM OF JURISPRUDENCE ^{AND} THE RIGHTS THIS COUNTRY WAS FOUNDED UPON. THIS WOULD ALLOW STATES TO ENGAGE IN MORE SERIOUS AND PERSISTENT PATTERNS OF NOT ONLY MISCONDUCT, BUT DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW.

THE SCOTTS WERE DECEASED AT THE TIME OF TRIAL. BOTH THE TRIAL COURT AND THE APPELLATE COURT WERE AWARE THIS, YET HAVE DENIED TO PROPERLY ADDRESS THE ISSUE. BEING THE SCOTTS ABSENCE EXISTED AND THE ONLY TESTIMONY TOWARD THE ALLEGED DOLLAR AMOUNT WAS THAT OF THE DISTRICT ATTORNEY'S INVESTIGATORS; THE UNANIMOUS CONCLUSIONS IN AN AGREEMENT BETWEEN THE ACCUSED AND THE SCOTTS IS THE ONLY EVIDENCE TO CONSIDER, RATHER THAN THAT OF THE INVESTIGATORS WHO HAVE NOT READ NOR CONSIDERED THE AGREEMENTS BEFORE TESTIFYING, AS TESTIMONY SHOWS. IN REALITY NONE OF THE DOLLAR AMOUNT OF THE SCOTTS SHOULD BE CONSIDERED, NOR SHOULD THIEF BE CONSIDERED, AS WITHOUT THE TESTIMONY OF THE SCOTTS THERE IS NOTHING THAT CAN SHOW THE REQUIRED ELEMENT IN A THIEF OF PROPERTY WITH A CONTRACT PRESENT, IN TERMS AS REQUIRED IN WIRTH V. STATE, 361 S.W. 3d 694, 697 (TEX. CRIM. APP. 2012) "FALSE ARREST OR FRAUD TO INDUCE PAYMENT." WITHOUT THE ALLEGED DOLLAR AMOUNT OF THE SCOTTS THE

EVIDENCE IS INSUFFICIENT TO SUPPORT THEFT OF PROPERTY \$30,000-\$150,000 AND WOULD LOWER THE OFFENSE TO THAT OF A STATE JAIL FELONY, IF NOT ACQUIT THE PETITIONER. THEREFORE, THE PETITIONER HAS EXPERIENCED NOT ONLY PREJUDICE BUT HARM AS THE DIFFERENCE IN YEARS ASSIGNED OF (47) WOULD LOWER TO A MAXIMUM OF (10) WITH AN ELDERS ENHANCEMENT INCLUDED.

THE STATE COURTS DISREGARDING AND EXTRACTING AWAY ELEMENTS REQUIRED TO UPHOLD A THEFT CONVICTION WITH A CONTRACT PRESENT COUPED WITH THE OMISSION OF CONSPIRACY TO THE OBJECTIVE LANGUAGE IN THE CONTRACTS, SHOULD FURTHER RAISE CONSTITUTIONAL CONCERNS OF THE STATES OVERRIDING TO SECURE A CONVICTION OF AN OTHERWISE CIVIL ISSUE; AS IN THE CASE OF PETITIONER. THIS COURT HAS STATED "CONSTITUTIONAL LIMITS EXIST TO THE STATE'S AUTHORITY TO DEFINE AWAY FACTS NECESSARY TO CONSTITUTE A CRIMINAL OFFENSE" McMILLAN V. PENNSYLVANIA, 477 U.S. 79 AT 85-88. THE COURT OF APPEALS STATING PETITIONER ACCEPTED MONEY FROM THE COMPLAINANTS AFTER CONVICTION IN HOKENS COUNTY IS CONTRARY TO THE WRITTEN AGREEMENTS AND THE CHECKS ISSUED, AS ALL EXCEPT (1) CHECK WAS PRIOR TO ANY CONVICTION. THEREFORE, AS THE COURT ALLEGED "THE STATE RELIED ON THIS FOR INTENT" IS PREPOSTEROUS. EVEN SO, THE STATE RELIES ON THE CONVICTION UNDER THE GENERAL THEFT STATUTE, TX. PEN. CO 31.03 WITHOUT CONSIDERING THE REQUIREMENTS IN TEXAS WHEN A CONTRACT IS PRESENT. INTENT AND APPROPRIATION ARE NOT ENOUGH, TEXAS REQUIRES A FALSE PRETEXT OR FRAUD TO INDUCE PAYMENT AT THE TIME OF THE TRANSACTION. WIRTH V. STATE, 361 S.W. 3d 694, 697 (2012). THE EVIDENCE SHOWED NO DECEPTION TO INDUCE PAYMENT IN ANY INSTANCE, AS IT DID NOT EXIST. THE FUNDS WERE VOLUNTARILY GIVEN; AGREEMENTS AND USE OF FUNDS EARNED AND COMPLETED WERE DOCUMENTED, AS ALL AGREEMENTS WERE REDUCED TO WRITING; ALL AGREEMENTS WERE PROCEEDING AS ORIGINALLY CONTEMPLATED UNTIL PETITIONER'S UNEXPECTED ~~THE~~ CONVICTION AND INCARCERATION; FOLLOWED BY THE STATE'S TORTUROUS INTERFERENCE WITH THE COMPLAINANTS, CAUSING COMPLAINANTS TO REPUDIATE AND MATERIALLY BREACH THEIR CONTRACTS REPEATING PETITIONER FROM PERFORMANCE. THE STATE FURTHER FAILED TO PROVE OWNERSHIP OF THE FUNDS. MANY OF THE PAYMENTS WERE FOR TASKS STARTED AND COMPLETED SUCH AS: (1) TO HOLD PRIZE (MARTINDALE AND TROTSCH); (2) ONCE DESIGN COMPLETE (TROTSCH); (3) INURE FOR THE COMPLETION OF THE DRIVENY (SCOTT'S); ALL PAYMENTS WERE CONSIDERED EARNED MONEY, AND ALL AGREEMENTS WERE REDUCED TO WRITING. THEREFORE, CONTRADICTING INFERENCE TO THE OBJECTIVE ~~OF~~ AGREEMENTS ARE MOOT. AS THIS COURT HAS RULED, "EVIDENCE IS LEGALLY INSUFFICIENT WHEN THE RECORD CONTAINS NO EVIDENCE OF AN ESSENTIAL ELEMENT, MERELY A MODICUM OF AN ESSENTIAL ELEMENT"

OR IF IT CONCLUSIVELY ESTABLISHES REASONABLE DOUBT, ¹¹ JACKSON V. VERGENSEN, 443 US, 307 AT 320. THE TEXAS COURTS HAVE NOT ADDRESSED THIS ISSUE, ONLY BY OMISSION AND SUMMARY DENIAL. THE WRITTEN AGREEMENTS WERE CLEAR, THE OWNERSHIP OF THE FUNDS BELONGED TO THE PETITIONER FOR CONSIDERATION OF THE CONTRACTS, AS EARNEST MONEY AND COMPLETED TASKS AS OUTLINED IN THE AFORESAID.

UNDER TEXAS LAW COURTS MUST ENFORCE UNAMBIGUOUS LANGUAGE IN A CONTRACT AS WRITTEN, AND THE APPLICABLE STANDARD IS THE OBJECTIVE INTENT EVIDENCED BY THE LANGUAGE USED, RATHER THAN THE SUBJECTIVE INTENT OF THE PARTIES PULUCA ASSOC. LTD. V. DOLO PACKAGING CORP., 240 F.3d 499 (5TH CIR. [TEX] 2001). ADDENDUMS AND MODIFICATIONS WERE EVIDENT BY HAND WRITTEN AND AGREED LANGUAGE, PRIMARILY USE OF FUNDS. TEXAS LAW REQUIRES COURT TO READ THE CONTRACT(S) AND ITS SUBSEQUENT MODIFICATIONS AS A WHOLE GIVING EFFECT TO NEW PROVISIONS AND DISCARDING OLD PROVISION WHICH ARE INCONSISTENT WITH NEW TERMS. E.F.D.C. V. R.J. GALLAGHER, 181 F.3d 645 (5TH CIR. [TEX] 1999). THE TEXAS COURTS HAVE FAILED TO ADDRESS THESE ISSUES OF INSUFFICIENT EVIDENCE TO SUPPORT THE VERDICT, HAVE EXPLAINED AWAY THE MEANING OF THE "INVOICE FOR THE COMPLETION OF THE DRAWING", IN THE SCOTT'S TRANSACTION, (\$5,000), AND RELIED ON ~~THE~~ THE DISTRICT ATTORNEY'S FINANCIAL ANALYST, WHO DID NOT READ THE CONTRACTS, PRIOR TO MAKING HER ASSERTIONS FOR THE USE OF FUNDS. ALL OF WHICH WERE IMPROPER. THEORIZING OR GUESSING AS TO THE MEANING OF EVIDENCE IS NEVER ADEQUATE TO UPHOLD A CONVICTION BECAUSE IT IS INSUFFICIENT BASED ON EVIDENCE TO SUPPORT BELIEF BEYOND REASONABLE DOUBT HOOVER V. STATE, 214 S.W. 3d 9, 15-16 (TEX. CRIM. APP. 2007). THE ERRORS IN DETERMINING THE SUFFICIENCY ~~BY~~ BY OMISSION; NOT CONSIDERING THE OBJECTIVE UNAMBIGUOUS LANGUAGE OF TERMS OF THE CONTRACTS, REGARDING DOLLAR AMOUNT, USE OF FUNDS AND OWNERSHIP OF FUNDS; CHARGED AND CONVERTED CONDUCT THAT DID NOT CONSTITUTE A CRIMINAL OFFENSE AND IN EFFECT CAUSED ~~AN~~ AN ILLEGAL INCARCERATION AND SENTENCE. THE CONTRACTS ARE THE PRIMA FACIE EVIDENCE IN DETERMINING THE AFORESAID.

THE FACT FENDOR(S) IS NOT PERMITTED TO CONTRADICT OR ADD TO AN UNAMBIGUOUS DOCUMENT WITH EXTRINSIC EVIDENCE, NEGATING ANY CONFLICTING INFERENCES TO THE AGREEMENTS ^{CONTRADICTION} THAT ARE REDUCED TO WRITING. FOR THE STATE AND STATE COURTS TO ALLOW THIS IS FAR REMOVED FROM OUR CONSTITUTIONAL RIGHTS TO ECONOMIC SUBSTANTIVE DUE PROCESS, SUCH AS "FREEDOM OF CONTRACT," IT VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, PARTICULARLY IN THE WORDS "LIBERTY" AND "PROPERTY".

THE UNITED STATES CONSTITUTION'S "CONTRACT CLAUSE" PROHIBITS STATES FROM IMPAIRING PRIVATE CONTRACTUAL OBLIGATIONS, TO ALLOW THE STATE(S) TO

NOT ONLY IMPAIR THE OBLIGATIONS OF PRIVATE PARTY CONTRACTS BUT ALLOW THE DISTRICT ATTORNEY'S INVESTIGATORS TO TORTUOUSLY INTERFERE WITH THOSE OBLIGATIONS, AS IN PETITIONER'S, SHOULD NOT BE TOLERATED. THE INVESTIGATOR TAYLOR'S INTERFERENCE BY SEARCHING EXTREME REMODELING, LLC'S, (PETITIONER'S), BANK ACCOUNT FOLLOWED BY CONTACTING ALL THE DEPOSITOR'S VIOLATED THE OBLIGATIONS OF THE CONTRACTS WITH SCOTT, TREFSCH AND MARTINDALE. TAYLOR'S TESTIMONY CONFIRMS THE AFORESAID. AFTER BEING CONTACTED BY TAYLOR THE COMPLAINANTS, WHO OTHERWISE HAD NOT COMPLAINED, FILED CRIMINAL CHARGES, REPUDIATED AND BROKE THE ~~THE~~ ARBITRATION AGREEMENT OF THE CONTRACTS. TO ALLOW CRIMINAL CHARGES TO BE FILED, DUE TO THIS INTERFERENCE SHOULD SHOW SERIOUS CONCERNS, IF THE STATE'S PROSECUTORS AND INVESTIGATORS ARE PERMITTED TO CONTINUE TO PENALIZE PERSONS FOR WHAT THE LAW PLAINLY ALLOWS THEM TO DO, THEN WHAT IS THE POINT OF DUE PROCESS OR THE CONTRACT CLAUSE? "See" BORDENKITCHER V. HAYES, 434 U.S. 357, 363 (1978); U.S. CONST. ART I, SEC. 10. TO ALLOW THESE ARBITRARY AND CAPRICIOUS ACTS TO CONTINUE WILL AFFECT ALL CONTRACTS IN ALL SITUATION. WHEREBY, THE STATE WOULD BE ALLOWED TO CAUSE REPUDIATION EFFECTING PERFORMANCE TO CREATE A CRIMINAL OFFENSE TO OTHERWISE CIVIL DISPUTES WITHOUT ANY LAWFUL REASON, NEGATING ENFORCEABILITY AND PARTY LIABILITY, ~~OR~~ ON A NATIONWIDE SCALE.

STATE COURTS ALLOWING MULTIPLE INSTANCES OF CONSTITUTIONAL DEPRIVATION AND PERSISTENT PATTERNS OF PROSECUTORIAL MISCONDUCT TO CONTINUE IN THIS COUNTRY, REMOVES THE BASIC RIGHTS OF EVERY CITIZEN IN THE UNITED STATES. THESE INJUSTICES ALLOW THE STATE(S) TO FOR ANY REASON, BY ANY MEANS NECESSARY TO CONVICT ITS CITIZENS ~~FOR~~ ^{CITIZENS} FOR ANYTHING A PROSECUTOR DECIDES TO CREATE, GIVING PROSECUTOR'S NOT THE ~~STATE'S~~ ^{CITIZENS} ULTIMATE POWER. IN THIS COUNTRY AS A WHOLE WE SEE THIS IN MASS INCARCERATION, TEXAS BEING THE LEADER. THIS IS MOST EVIDENT WITH THE POOR, LESS FORTUNATE, AND THOSE WITH MENTAL INCAPACITIES, WHO COMPOSE MOST OF INSTITUTION'S POPULATION. AS PROSECUTORS CONTINUE TO OVERREACH AND VIOLATE OUR BASIC RIGHT, COURTS SUPPORTING OR IGNORING THOSE ACTIONS WITHOUT REMEDY AND SANCTIONS; HAS AND IS BECOMING A GROWING PROBLEM, BEYOND THAT OF CONSTITUTIONAL MAGNITUDE BUT ALL OF WHAT THIS COUNTRY WAS FOUNDED. TO ALLOW THOSE TYPE ISSUES TO REMAIN UNREGULATED WILL CAUSE HARM IN BIBLICAL PROPORTIONS IN THE UNITED STATES OF AMERICA.

THE STATE IN THE PETITIONER'S CASE ENAGED IN A PERSISTENT PATTERN OF PROSECUTORIAL MISCONDUCT THAT THE COURTS OVERRULED IN TRAIL ~~FOR~~ INCLUSION BUT WAS LIMITED TO THE AFORESAID TORTUOUS INTERFERENCE, CHARGED AND CONVICTED CONDUCT THAT DID NOT CONSTITUTE A CRIMINAL OFFENSE.

ALLOWING THE JURY VOTING TO SET THE INDICTMENT AND ENHANCEMENT ALLEGATIONS IN VOTER DERR'S SOLICITATION; INFERRING GUILT, STATING "HE HASN'T EVEN PROVED GUILTY YET," IN VOTER DERR; GIVING HIS OPINION OF EVIDENCE FALSELY STATING "ZERO REMODELING" WAS DONE; PROSECUTOR ENGAGED IN GIVING WEIGHT TO THE EVIDENCE; PROSECUTOR MADE IMPROPER STATEMENTS TO ENFLAME THE PASSIONS AND PREJUDICES OF THE JURY, "THE DEFENDANT SHOULD WRITE A BOOK ON HOW TO..."; VOUCHING IN REFERENCE TO SCOT'S DROWNING, (WHICH WAS PROBABLY OBSERVED); ENGAGED IN IMPROPER CHARACTER ASSAULTS, REFERRING TO THE DEFENDANT AS A PROCTOR, WOLF IN SHEEP'S CLOTHING, COUPLED WITH A PROSECUTOR PICTURE OR A WOLF IN SHEEP'S CLOTHING (OBSERVED TO PROBABLY); "THIS MAN IS A CRIMINAL"; PROSECUTOR ENGAGED IN IMPROPER STATEMENT OF LAW TO FACTS WITHOUT CONSIDERING USE OF FINES AND CONTRACTUAL TERMS AGREED FALSELY STATING, "CONTRACTORS NOT ENTITLED TO PROFIT UNTIL COMPLETE"; AGAIN PROSECUTOR INFERRING GUILT BY SAYING "NO BRAGGADOCIOUS GUILTY"; PROSECUTOR CONFIRMED TO THE JURY FALSELY STATING THAT ALL ELEMENTS OF CRIME MET; PROSECUTOR MADE AN IMPROPER APPEAL FOR LAW AND ORDER, (CALL FOR LAW ENFORCEMENT), ASKING THE JURY, "TO MAKE A STATEMENT"; FURTHER THE PROSECUTOR URGED THE JURY TO "SEND A MESSAGE IN TARRANT COUNTY..." TO PROTECT THE COMMUNITY, IN SENTENCING AND AGAIN ASKED THE JURY TO SEND A MESSAGE. ALL OF THESE ISSUES WERE BROUGHT IN PETITIONER'S PRO SE MOTION FOR A NEW TRIAL AND HAVE REMAINED UNADDRESSED OR IMPROPERLY DENIED BY REFUSING TO ALLOW THEIR PRESENTMENT TO THE COURT OF APPEALS, IN THE FORM OF A SUPPLEMENT. (MOTION FOR NEW TRIAL, PRO SE PP 21-29).

THE ~~PROSECUTOR~~ PETITIONER'S APPELLATE ATTORNEY URGED (2) OTHER PROSECUTORIAL MISCONDUCT ISSUES TO THE APPEALS COURT AND THE COURT OF CRIMINAL APPEALS IN THE ORIGINAL APPEAL BRIEF (PP 14-19). THESE ISSUES WERE EXAMINED AWAY AS HARMLESS BY THE APPEALS COURT. "THE COURT ERRED IN ~~PERMITTING~~ PERMITTING ERRONEOUS PROSECUTION ARGUMENT TO CONSTITUTE AN EXTRAORDINARY JURY VERDICT IN DIFFERENT CASE, ~~AND~~ (RR 5, 77-78)." "THE IMPROPER JURY ARGUMENT WAS AN INVITATION TO CONSIDER THE JURY VERDICT IN HOPKINS COUNTY AND A PROBATION DECISION IN TEMPLE IN DECIDING THE PROPER VERDICT IN THE INSTANT CASE. THE PROSECUTOR WAS SAYING, IT IS A CRIMINAL CASE WORTHY OF A GUILTY VERDICT BECAUSE THAT HAS ALREADY BEEN DECIDED IN THOSE OTHER CASES... THE TRIAL COURT'S OVERRULING [PETITIONER'S] APOOR OBJECTION INVITED THE STATES FOLLOW-UP IMPROPER ARGUMENT SEEKING TO CAPITALIZE ON THE IDEA THAT THIS JURY SHOULD DEFER TO THE PREVIOUS DECISION OF ANOTHER JURY IN A COMPLETELY DIFFERENT CASE. THE ARGUMENT OF THE PROSECUTOR WAS IMPROPER IT SHOULD NEVER BE PROPER JURY ARGUMENT TO ARGUE THAT A DECISION MADE BY A COMPLETELY DIFFERENT

JURY IN A CASE NOT BEFORE THE INSTANT JURY AS AN INVITATION TO SUBSTITUTE THAT JURY'S DECISION FOR THE SWORN DUTY OF THE INSTANT JURY." (APP. BR. PP 14-16).

THE PANEL IN ITS DECISION ERRED IN DETERMINING THAT THIS JURY ARGUMENT WAS HARMLESS ERROR. WITHOUT REACHING THE CONCLUSION THAT THE ARGUMENT WAS ERROR AND IMPROPER, THE PANEL SAID, "EVEN ASSUMING ~~THE~~ [PETITIONER] IS CORRECT, WE CONCLUDE HE WAS NOT HARMED BY THE ARGUMENT" (PANEL OP P. 21)

PETITIONER ARGUES AN ARGUMENT THAT ASKS A JURY TO FOLLOW THE DECISION OF A COMPLETELY DIFFERENT JURY IN A COMPLETELY DIFFERENT CASE SHOULD NOT ONLY, ALWAYS BE ERROR BUT IS ALSO ALWAYS HARMFUL TO THE DEFENDANT.

THE STATE'S ARGUMENT IN THE INSTANT CASE ASKED THE JURY TO DES- REGARD ITS OATH IT TOOK UNDER TX. CO. CRIM. PROC. ART. 35.22 AND RENDER ITS DECISION IN REFERENCE ON A JURY IN HOPKINS COUNTY. THIS ARGUMENT WAS CONSTITUTIONAL ERROR IN VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS AND DUE COURSE OF LAW UNDER THE 5TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 19 OF THE TEXAS CONSTITUTION. THE IMPROPER JURY ARGUMENT WAS ERROR AND WAS HARMFUL TO PETITIONER. (APP. PET. FOR DISCRETIONARY REV.).

THE STATE HAS FALSELY ACCUSED THE ~~APPEAL~~ PETITIONER BOTH IN ITS REPLY AND BEFORE THE JURY STATING "[PETITIONER] LIES ABOUT HIS IDENTITY," TO SATISFY CONSENT INDUCED BY DECEPTION BUT FAILS TO PRESENT ANY EVIDENCE THAT THE PETITIONER'S USE OF HIS "LEGAL NAME, RUSSELL," IN CONTRACTING WITH COMPLAINANTS CAUSED THEM TO ENTER INTO AGREEMENT OR REFUSE THEIR FUNDS. THE STATE IN FACT HAS MISLED THE JURY AND THE COURT OF APPEALS TO BELIEVE PETITIONER USED AN ALIAS OF RUSSELL, WHEN PETITIONER TRUE AND LEGAL NAME, AS IT APPEARS ON HIS BIRTH CERTIFICATE IS RUSSELL. EVIDENCE SHOWS PETITIONER USING HIS LEGAL NAME OF RUSSELL FOR AT LEAST THE MOST RECENT (4) YEARS PRIOR TO CONTRACTING WITH COMPLAINANTS (I.E. SINGER-2013-TEMPER; DESS-2015-HOPKINS; AND TARRANT CO. COMPLAINANTS-2017), FURTHER ~~APPEAL~~ PETITIONER'S APPEAL BOND HEARING IN HOPKINS CO. ALSO SHOWS AND EXPLAINS THE USE OF PETITIONER'S "LEGAL NAME" "RUSSELL". THE STATE WAS FULLY AWARE OF THESE FACTS BUT ERRONEOUSLY MISLED AND FALSELY CLAIMED RUSSELL TO BE AN ALIAS. ~~(THE STATE'S ARGUMENT IS FALSE)~~.

THOUGH IT IS TRUE PETITIONER HAD USED THE "ALIAS CAPPABELLO" IN THE PAST, THERE WAS AND NEVER HAS BEEN ANY LEGAL PROCEEDING OR OTHERWISE THAT HAS CHANGED PETITIONER'S NAME FROM RUSSELL TO CAPPABELLO, TO CLAIM OTHERWISE IS FALSE, MISLEADING AND INSUFFICIENT TO SUPPORT CONSENT INDUCED BY DECEPTION. THIS IN AND OF ITSELF SHOULD WARRANT ACQUITTAL.

IN THE STATE'S ANSWER TO REMOVRING PAGE 8, THE STATE HAS INCORRECTLY STATED (n.9), "NEITHER MOTION FOR NEW TRIAL WAS PRESENTED TO THE [TRIAL] COURT." THOUGH THE STATE DOES RECOGNIZE PETITIONER DID FILE A PRO-SE MOTION FOR A NEW TRIAL, AFTER HIS ATTORNEY FILED ONE. THE PRO-SE MOTION WAS FILED WITHIN THE PROSCRIBED TIME LIMITS FOR BOTH INITIAL FILING AND SUPPLEMENTAL OR AMENDED FILING DATED MAY 28, 2019. THE PRO SE MOTION WAS THE ONLY ONE PRESENTED PROPERLY TO THE COURT IN COMPLIANCE WITH TEX. R. APP. PROC. ARTS. 21, 21.6, AND 21.8. TO SATISFY PRESENTMENT, PETITIONER FILED A SEPARATE MOTION TO, "REQUEST HEARING AND THE PRESENCE OF DEFENDANT, AT SUCH HEARING FOR A NEW TRIAL," ALONG WITH HIS, "MOTION FOR A NEW TRIAL," WHICH ~~ALSO~~ IN ITSELF REQUESTED A HEARING DATE WITH ORDER FOR SCHEDULING.

THE TRIAL COURT ABUSED ITS DISCRETION BY NOT HAVING THE HEARING. PETITIONER WAS PUT ON A "SPECIAL" CHAIN TO TDCJ AFTER ALL PARTIES WERE NOTIFIED. THIS FACT WAS BROUGHT TO THE ATTENTION OF PETITIONER BY INTAKE OFFICER OF TEXAS DEPT. OF CRIMINAL JUSTICE (TDCJ).

IN MONTALONGO V. STATE, — S.W. 3d — 2021 WL 1936543 (TEX. CRIM. APP. 2021) (NO. PD 0202-19; 5-12-21) THE COURT HOLD "TIMELY FILING AND PRESENTING A MOTION FOR A NEW TRIAL THAT REQUESTS HEARING PRESERVES ... THE ISSUE OF WHETHER THE TRIAL COURT ABUSES ITS DISCRETION IN FAILING TO HOLD SUCH A HEARING."

THE STATE HAS FAILED TO CORRECT KNOWN FALSE AND MISLEADING EVIDENCE, INCLUDING THE AFORESAID MULTIPLE ISSUES OF PROSECUTORIAL MISCONDUCT LEADING UP TO AND AFTER ITS UNLAWFUL CONVICTION OF THE PETITIONER. THE PROSECUTOR HAS THE DUTY EVEN IF HE DOES NOT KNOW THE EVIDENCE IS FALSE AND MISLEADING, AS HE SHOULD HAVE RECOGNIZED THE MISLEADING NATURE OF EVIDENCE WILLIAMS V. STATE, 513 S.W. 2d 54, 56 (TEX. CRIM. APP. 1974). "THE PROSECUTOR IS OBLIGATED TO CORRECT TESTIMONY KNOWN TO BE FALSE AND ITS OBLIGATION IS NOT OBLIVIOUS BY THE FACT THE JURY IS AWARE OF OTHER EVIDENCE LESSENING THE IMPACT. NAPUE V. ILLINOIS, 360 U.S. 264, 269-70, 79 S.Ct. 1173, 3 L.ED 2d 1271 (1959).

THIS COURT HAS NOT FORFEITED THE POSSIBILITY THAT AN UNUSUAL CASE, A DELIBERATE AND USUALLY EGREGIOUS ERROR OF TRIAL TYPE OR ONE THATS COMBINED WITH A PATTERN OF PROSECUTORIAL MISCONDUCT, MIGHT SO INFECT THE INTEGRITY OF THE PROCEEDING AS TO WARRANT RELIEF EVEN IF IT DID NOT SUBSTANTIALLY INFLUENCE THE JURY'S VERDICT. BRECHT V. ABRAHAMSON, 507 U.S. 619, 638 n.9, 113 S.Ct. 1710, 123 L.ED 353.

THE PROSECUTOR ALSO HAS THE DUTY TO AVOID ANY COURSE OF CONDUCT THAT RESULTS IN THE DENIVATION OF A FAIR TRIAL FOR THE ACCUSED. A PROSECUTOR'S PERSISTENCE IN ENGAGING IN SUCH CONDUCT CONSTITUTES A DENIAL OF DUE

Process "sub" SMITH V. PASKOFF, 455 U.S. 209, 219-220 (1982) IMPORTANT FACTOR IS FAIRNESS OF THE TRIAL RATHER THAN CULPABILITY OF PROSECUTOR. THE PROSECUTIONS IMPROPER ARGUMENTS TO THE JURY CONTAINED INSINUATIONS AND ASSERTIONS THAT WERE CALCULATED TO MISLEAD THE JURY AND THE COURT OF APPEALS BERGER V. UNITED STATES, 295 U.S. 78, 85, 55 S.Ct. 629 79 L.Ed 1314. THE COURT REMARKED THAT THE JURY WILL PLACE GREAT CONFIDENCE ON THE FAITHFUL EXECUTION OF THE OBLIGATIONS OF A PROSECUTING ATTORNEY AND THEREFORE IMPROPER INSINUATIONS OR SUGGESTIONS ARE APT TO CARRY MORE WEIGHT AGAINST THE ACCUSED THAN COMPARABLE STATEMENTS BY WITNESSES. BERGER AT 88-89. THE COURT CONCLUDED WHERE THERE WERE SEVERAL IMPROPER EVENTS "PROBABLE CUMULATIVE EFFECT UPON THE JURY... CANNOT BE DISREGARDED", BERGER V. UNITED STATES, 295 U.S. 78 (1955). PERSUASIVE IMPROPER REMARKS BY A PROSECUTOR CAN SO INFECT THE TRIAL WITH UNFAIRNESS AS TO MAKE THE RESULTING CONVICTION A DENIAL OF DUE PROCESS. A PROSECUTOR'S BEHAVIOR VIOLATES THE FEDERAL CONSTITUTION WHEN IT COMPREHENDS A PATTERN OF CONDUCT "SO EGREGIOUS THAT IT INFECTS THE TRIAL WITH SUCH UNFAIRNESS AS TO MAKE THE CONVICTION A DENIAL OF DUE PROCESS" UNITED STATES V. YOUNG, 470 U.S. 1, 16 n.14 (1985).

THE PROSECUTOR, (STATE), ENGAGED PERSISTENTLY IN MULTIPLE INSTANCES OF MISCONDUCT DENYING PETITIONER A FAIR TRIAL, VIOLATING HIS CONSTITUTIONAL RIGHTS OF DUE PROCESS, DUE COURSE OF LAW, AND EQUAL PROTECTION UNDER THE LAW. LEFT UNCURLED WILL EFFECT LEGALITY OF CONTRACTS, PROOF BEYOND REASONABLE DOUBT OF ELEMENTS OF AN OFFENSE REQUIRED, AND MORE EGREGIOUS ACTS OF MISCONDUCT TO EFFECT THE OUTCOME OF TRIALS AND CONSTITUTIONAL PROTECTIONS FOR ALL CITIZENS, THE STATE COURTS HAVE DISREGARDED AND OR EXPUNDED AWAY THOSE PROSECUTORIAL ISSUES OR HAVE REFUSED TO ADDRESS THEM, THUS FAR.

THE COURT CLERK'S DECISIONS, IN BOTH THE COURT OF APPEALS AND COURT OF CRIMINAL APPEALS, TO NOT CONSIDER PRESENTING TIMELY FILED MOTIONS (I.E. COURT OF APPEALS - MOTION TO SUPPLEMENT APPELLANT'S BRIEF, MOTION TO REOPEN COPY OF TRIAL TRANSCRIPT AND RECORD, MOTION FOR REHEARING AND RECONSIDERATION ON BANC; COURT OF CRIMINAL APPEALS - MOTION FOR STAY AND ABSTINENCE OF P.D.R., MOTION TO FILE SUPPLEMENT OR SUCCESSIVE P.D.R., MOTION FOR EXTENSION TO FILE SUPPLEMENT TO P.D.R.), TO A JUSTICE OF THE COURT(S) FOR REVIEW AND RULING, AS PRESENTED IN STATEMENT OF THE CASE IN THIS INSTANT MOTION, WHICH VIOLATED THE PRISONER'S MAILBOX RULE AND FED. R. APP. PROC. 25(a)(2)(A)(iii) ON JULY 26, 2022 (COURT OF CRIMINAL APPEALS) AND MAY 27, 2020, AUGUST 7, 2022 (COURT OF APPEALS), HAVE NOT BUT SHOULD BE DECIDED BY THIS COURT AS SUMMARY DENIALS TO CONSIDER HAVE BEEN DECIDED BY CLERKS OF BOTH COURTS. THESE ERRONEOUS DENIALS AFFECT EVERY PRISONER'S RIGHTS TO BE HEARD, ~~VERIFIED~~

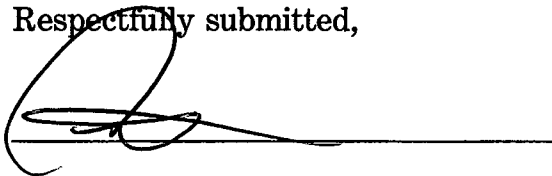
A MEANINGFUL, PRO SE APPEAL WITH THE SAME RESOURCES AS THOSE WHO CAN AFFORD COUNSEL AND RECORD TRANSCRIPTS. TO SUMMARILY DENY SUPPLEMENTS, RECORD TRANSCRIPTS FOR INDIGENT PRISONERS AND ^{NOT} RECOGNIZE THEIR FELLOW RIGHTS AND MAKING DELAYS BEYOND THEIR CONTROL, DENIES ALL ACCUSED OF THE BASIC RIGHTS TO PRO SE LITIGATING. THOSE DENIALS RAISE ISSUES OF DUE PROCESS, DUE COURSE OF LAW, AND EQUAL PROTECTION UNDER THE LAW AS AFFORDED IN THE CONSTITUTION OF THE UNITED STATES OF AMERICA

THE STATE COURTS SHOULD BE REQUIRED TO PROVIDE NECESSARY PORTIONS OF THE RECORD, HAVE THE JUDGE AND OR JUSTICES OF EACH COURT ADDRESS THE MERITS OF THE MOTIONS FILED, RECOGNIZING FELLOW DATES PRIOR TO RULINGS, AND PUT FORTH EVERY EFFORT TO ENSURE THAT NOT ONLY PRO SE LITIGANTS BUT ALL LITIGANTS ARE FAIRLY HEARD AND OPENED AS THEIR MERITORIOUS CLAIMS.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized capital 'R' followed by a horizontal line and a small flourish.

Date: 10/5/2022

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

7/27/2022

CAPPIELLO, CHAD ALAN Tr. Ct. No. 1554954D

COA No. 02-19-00197-CR

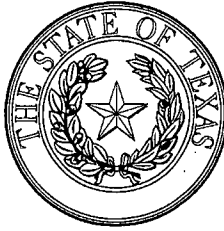
PD-0297-22

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

Deana Williamson, Clerk

WES BALL
4025 WOODLAND PARK BLVD
SUITE 100
ARLINGTON, TX 76013
* DELIVERED VIA E-MAIL *

APPENDIX
C



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-19-00197-CR

CHAD ALAN CAPPIELLO, Appellant

v.

THE STATE OF TEXAS

On Appeal from the 213th District Court
Tarrant County, Texas
Trial Court No. 1554954D

ORDER

We have considered appellant's "Motion for Leave to File A Supplement to Appellant's Brief Pro Se" and "Motion for Leave to Obtain Copy of Trial and Appellate Record."

The motions are **DENIED**.

Appendix D