22-7429

ORIGINAL

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IN THE

SUPREME COURT OF THE UNITED STATES

****

MELECIO SANTANA DELACRUZ
Petitioner,

v.

STATE OF TEXAS
Respondent.

****

ON WRIT OF CERTIORARI TO
THE COURT OF CRIMINAL APPEALS OF TEXAS

****

BRIEF OF PETITIONER

****

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QUESTIONS PRESENTED

Understanding that the Texas Court of Criminal Appeals is the ultimate fact finder in Texas habeas corpus cases, and the weight placed upon Trial Court credibility determinations by the Texas Court of Criminal Appeals in a scenario where they themselves requested an affidavit from the contested attorney pursuant to a remand on an ineffective assistance of counsel Sixth Amendment violation, does a credibility determination with no-or even contrary-record evidence trump a clearly record supported claim that proves the attorney has presented perjurious statements based on the record in his affidavit that are provably so by the record and evidence?

QUESTION TWO: Does an attorney's false affidavit on habeas cure his ineffectiveness at trial for failing to call a key witness in a case where her habeas affidavit tracks the attorney's own sworn motion, filed after his investigator had interviewed her, concerning the materiality of her testimony in a case where she has specific and audio recorded evidence the entire case was fabricated and especially so when the then only defense at trial was "you can't believe the child complainant?"

QUESTION THREE: Given the inceasingly spanish speaking population-especially in Texas-can an attorney ever be found effective for his failure to have the Complainant's video,that was completely in spanish,when he utilized it at trial,translated?after he told everyone in the courtroom that it was "critical" to have a translator when he started to go through the video?but then failed to have one and then hung his complete defense on the unbelievability of the statements in the same video that the jury requested to see with an interpreter by Jury note and was then told-without objection-that they must

"ignore the spanish portions of the video and only consider the english portions because of the law" by the Trial Court Judge?

LIST OF INTERESTED PARTIES

All parties are listed on the caption of the cover page.

RELATED CASES

(A).....MELECION SANTANA DELACRUZ VS. THE STATE OF TEXAS NO.05-14-01013-CR Fifth court of Appeals, Dallas, Texas WL 1733461 April 28, 2016.

(B).....EXPARTE MELECIO SANTANA DELACRUZ WR-92,795-01 in the Court of Criminal Appeals of Texas DENIED NOVEMBER 11, 2022-APPENDIX-D. After ORDER APPENDIX-C REHEARING was DENIED onFEBRUARY 9, 2023 APPENDIX-C.

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OPINIONS BELOW

This is a direct collateral review writ of certiorari from the Texas Court of Criminal Appeal on an Texas Code of Criminal Procedure Article 11.07 habeas corpus. Therefore, this case has never, and cannot reasonably be presented due to AEDPA time bar restraints, to the federal court system and no AEDPA deference is required.

FROM STATE COURT:

The Opinion from the Texas Court of Criminal Appeals denying the State habeas corpus is Appendix-D a whitecard denial in Ex Parte Melecio Santana Delacruz WR-92, 795-01. November 11, 2022

A timely Motion for Rehearing was then filed and denied after further Court of Criminal Appeals Orders on February 9, 2023. Appendix-E.

JURISDICTIONAL STATEMENT

The date on which the highest state court decided my case was November 11, 2022. A copy of that whitecard denial appears at Appendix-D

Atimely petitioner for rehearing was thereafter denied on the following date February 9, 2023. A copy of the order denying rehearing/reconsideration appears at Appendix-E.

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

CONSTITUTIONAL AND STATUATORY PROVISIONS INVLOVED

SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION:

In all prosecutions, the accused shall enjoy the right to a speedy and 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 against him; to be confronted with the witnesses against him, to have complusory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

28 U.S.C. § 1257(a).

TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 11.07 et al.

STATEMENT OF THE CASE

Almost seven years after Petitioner's conviction, he filed in the trial court his original writ for habeas corpus relief under Texas Code of Criminal Procedure Article 11.07.(Hereafter TCCA). Therefore, he was barred from filing in the federal court a habeas petition because of the AEDPA one year statute of limitations. The State in their Original Response to the application, gave a standard general denial. Although the State made a general denial, they also requested-due to time restraints-further investigation and then also requested the trial Court order designated issue to be resolved, as is customary, to gather additional evidence-by way of an affidavit from contested counsel. All four of Petitioner's claims are Sixth Amendment United States Constitutional violation of ineffective assistance of trial counsel claims that the state did not misconstruct at the time. The familiar Strickland v Washington 466 US 668 standard of review was utilized by Petitioner and understood by reference in the State's Response. The result was a general denial by the Trial Court and forwarding to the TCCA without providing anything to Petitioner according to the rules-which Petitioner staunchly objected to. The result of those objections filed and the TCCA's review of the writ from the Trial Court's denial was a Remand Order from the TCCA on July 28, 2021 ordering the Trial Court to obtain an affidavit from the contested attorney and a notation that the Trial Court had neglected to make findings of fact and conclusions of law that they then ordered (Appendix-A). Then finally, along after the ninety days to do so had expired, and several update requests from petitioner that were not answered, Petitioer received notice from the TCCA that they had received the "Supplemental record from

the trial court in response to the order issued by this Court..." 10/25/2022. After lengthy delay in actually receiving the white card notice, Petitioner wrote a November 14 & 15, 2022 letter notifying the TCCA and dallas County District Clerk that nothing had been provided to him according to the rules in order to allow his response and objections. The TCCA, however, denied the application on November 16, 2022. Petitioner instantly filed for Rehearing and Reconsideration on December 20, 2022 not knowing that-after the TCCA receivd the November 14 & 15 2022 certified letters complaing of lack of service, they had issued an ORDER on November 28, 2022 ordering the Dallas County District Clerk to provide the supplemental record sent to them including the trial court's FFC to Petitioner in the space of 14 days. It is very important to notice the fact that the TCCA made this order after their white card denial and before the motion for reconsideration was filed. This effectively re-opened this case post denial. After the Dallas County District Court finally provided the withheld FFC and affidavit, Petitioner prepared-with the reconsideration pending-his objections and response to both and filed by certified mail on December 30, 2023. On February 9, 2023 Petitioner received a whitecard notice that his motion for rehearing/reconsideration had been denied by the TCCA. See Appendicies A,C,D,E.

THE CASE HERE

The case here, simply stated, is that the Trial Court Judge, who was not the Judge at trial, deferred completely to the contested trial attorney's version of his affidavit and found it to be credible when in fact-it was intentionally false on key points. Furthermore, the new Judge makes one statement in her FFC that is completely false in and of itself. The reason for jumping right to this single false and inaccurate material

inacurate and very material FFC #32 of Appendix-B p.10 is to set the case up for the Court as one of intentional abuse of the habeas corpus framework by a judge who has obviously and wholly failed to read the record and evidence in the case. That is a bold statement, but if true,brings such a judge's integrity into view and her knowing of an inmate's chances of challenging a virtually unchallengable credibility finding-as the landscape of the Texas habeas corpus has erroded into a gulf of indifferent deference-that she no longer believes she will ever be challenged as a confident cover for such conduct. With that being said, the Judge's#32 FFC p.10 is false and provably so by the claim presented. No where in Petitioner's filing can it be said that he"condeeds that the interview was translated in open court." That consession would and did according to the Judge, completely negate and defeat his claims in Ground 3 and Ground 4 of his State habeas. In fact it was the attorney's complete failure to have an interpreter during the interview in question that negated the jury's ability to have one-as they specifically requested by jury note CR-88-after the attorney urged them to view it in deliberations as the crux of his single defense theory that the child could not be believed. The attorney on the record stated that having an interpreter was "critical" (RR V6 p.19)but waived the interpreter by omission(RR V6 p.33 34). That fact is recorded on the record. There was no translator and the trial court judge pointed that out when the jury requested an interpreter while viewing the second interview. The record and the now habeas judge's finding cannot be reconciled in any reasonable manner unless any and all fairness of the proceeding is completely removed from the habeas process. The complete interview was in spanish (RR V 6 p.67) and the Judge states on the record there was no inter-

preter when the video was heard at trial as his basis for denying and interpreter when the jury wanted to hear it in deliberations. (RR V 9 p.5). The new habeas judge's false finding that Petitioner concedes that there was an interpreter should effectively impeach any further credibility she attributs to the contested attorney if petitioner can show by the record that the Judge's findings are so off base that they cannot fairly be considered as rendering a just result. The record must trump any finding in order to do so and it does.

Working backwards after pointing out that specific and legally false FFC to impeach the Judge's fairness or at least bring into question the accuracy of her credibility findings of the attorney, Petitioner will now return to the top of his complaint and address the credibility deference the Texas habeas corpus litigation erosion to the degree it has and the need for this Court's pleanary review thereof.

To be clear, this complaint does not present a close call. The difference between the Trial Attorney's false and perjurious statements in his affidavit and the truth are as far as the East is from the West. To attribute credibility to them, that will be specifically below named herein, is to completely remove any fair opportunity to raise a constitutional violation claim against an attorney from the Texas habeas corpus review. Credibility must be supported by the record. If the record itself, not some conclusory statement, defeats an attorney's self serving affidavit and goes as far to reveal knowing and perjurious statements, then fundamental fairness demands plenary review from a higher Court.

Volume 2 of the Reporter's record is a hearing on a Motion for Continuance. The Motion itself is contained in (STHC AP AX-1) and in

the Official Clerk's Record at(CR-62-66). The purpose of the motion was to procure the attendance of Yesica Perez-not Jessica Perez-two completely different people. That confusion is evident in Trial Court FFC #2 (D)! As well as the completely false date that Attorney Pappas claims his investigator interviewed "Jesica Perez" as June 23, 2014. June 23, 2014 would be 6 weeks after the trial and an irrelevant date. Yesica Perez, the person who gave her sworn affidavit in (ST HC AP-AX-1) never testified at all in this trial, as evident in the claim itself, and therefore there is no record support for what the Judge finds she told the investigator in Appendix-B FFC #2 at(D). Yesica had no knowledge of Bad stuff or any such texts. Jessica Perez did and the confusion is used by the attorney to dupe the Judge and ultimately the TCCA when in fact it is false and provable so by the record. Attorney Tom Pappas's sworn motion for continuance was based strictly on what his investigator had found out when he did interview Yessica Perez. Namely witnesse tampering as he spelled out in his motion. (CR62-64). And more importantly as he told Judge Stephens at the hearing on the motion when Judge Stephens expressed his concern and confusion and wanted it cleared up(RR V 2 p.22 p.48-58). It is clear on the record that Pappas understood the materiality of Yesica's testimony and it was to show witness tampering leading to why the chilren would lie. It is also clear the judge understood it and only denied the motion because Applicant's wife testified she could get Yesica there and therefore the motion would not need be granted. What proves Pappas's new affidavit falsity is the fact he now claims he never intended to call Yesica Perez and that Petitioner agreed not to call her. This is also in the FFC of Law Appendix-B at p.3#2 (F) he also claims the focus of trial was not about Irma FFF #2(G).

In order to afford credibility to this affidavityit must now and then be presumed that attorney Pappas was lying when he swore out his CR-62 Motion to the Court at which time he would have had full knowledge of what his investigatoe had found out when he actually did interview Yesica Perez pre-trial, not some 6 weeks after trial and his affidavit states which should also bring instantly into question his credibility at all in and of itself. He suddenly claims that his investigator found out, never mind the completely false date mentioned earlier, ..."Her account was very different than what she put in her affidavit." Yesica's account to his investigator, Fred Daugherty, verified the complainant's account of what shedid after Applicant molested her. Yesica also could testify about all of the complainant's text messages about the '"bad stuff''Applicant had done to her." This is incredible given what the Motion CR-62 and RR V2 Reporter's Record on the Motion holds. Pappas urged and reurged his motion to procure the attendance of Yesica Perez prior to trial and deep into the trial as late as (RR V 6 p.20-21) and had obtained a running objection to the Court's continued denial of it. A simple comparison of the Motion CR-62-64, Reporter's Record Volume 2, the affidavit of Yesica Perez entered in the State habeas proceedings at(STHC AP-**AX-1**)and FFC #9 that came directly to the habeas judge from the mouth of attorney Pappas proves unquestionably both versions cannot by any stretch of the imagination be true. Yesica Perez's ST HC AP **AX**-1 affidavit mirrors the record and sworn motion by Pappas as he was claiming the materiality of her testimony being important to proving why the child complainant's could not be believed. The Judge who heard what he did in RR V2 in no way indicated he would not allow Pappas to call Yesica to establish witness tampering as the reason for the false claims of the complainant.

as the habeas Judge finds and accords credibility to Pappas's affiodavit thereby at FFC # 10. The Court found it would be inadmissable. Contrary to this finding, the Trial Judge only denied the motion because Petitionjer's wife testified she could and would be able to get Yesica to the trial negating the necessity of continuance.(RR V 2 p.44). The evidence from Yesica Perez could only bolster the only defense Pappas presented and that is simply you can't believe the complainant. Proving solicitation of false outcrys, as Yesica's affidavit and Pappas's own motion swears out, are supported by the record. The false affidavit entered by Pappas and accorded credibility is not and the veil of credibility should not be allowed for such a departure from the truth and so sanctioned by a Judge who did not sit in this trial and made the adoptive findings with out using the evidentiary hearing process. Blind adoption of a false affidavit is or should be a crime in America and if left to stand further errodes the faith a citizen has in the criminal justice system in America.

IGNORE THE SPANISH

The issue is very short because there is only one interpretation and that is bias and complete disregard for due process.

This portion of the case presented is two fold. Both Ground 3 & Ground 4 of the state habeas are closely related to the point that presenting them together will show the completely erroneous findings of the Habeas court and in doing so will establish the constitutional violation of the Sixth Amendment concerning the ineffective assistane of counsel cumulatively.

It is uncontested that the trial attorney's trial strategy was to attack the credibility of the complainant and that that strategy was squarely on the Second CADC Video (Def.EX-6 at trial). A video he

stated on the record was "critical" to have an interpreter on when he went through it on cross-examination.(RR V6 p.19). Pappas never had an interpreter when he cross examined the complainant on this video that was completely in Spanish (RR V 6 p.67) after claiming himself that it was critical to do so because it was the statements, not actions or body language,that he claimed were non-sense and unbelievable as he implored the jury to view **the second video.** The materiality of the videois that the complete defense hung on it and the jury took Pappas up on his urging them to view it for the nonsense and unbelievable answers the complainat made therein. The problem, he failed to have the critically important interpreter translate the video when he used it at trial. His language in the direct appeal brief he filed was clearly the only evidence in the case is what Brianna "told you." Page 14 of the Appellant Brief. His strategy linking her statements to the video (RR V8 p.93-94)including the critical wording for the need for an interpreter to translate. The second interview is specifically pointed out to the jury at (RR V 8 p.98-99)as the evidence of non-sensé answers. The Jury by jury note(CR 88)specifically requested the second video **with and interpreter.** The request was denied because Papas failed to have an interpreter when he went through the video with the complainant. The Judge at trial, not the habeas judge, at(RR V 9 p.5) denied the jury's request to have an interpreter while viewing the Second video(DEF.-EX6). In FFC #29 the habeas Judge finds Applicant,(Petitioner),"argues that the video was critical evidence..." It is not Petitioner who said that the second video was critical, or for that matter, that it was critical to have an interpreter translate the video as it was being used by counsel in front of the jury, **It was the attorney who**

made those statements ON THE RECORD not Petitioner.(RR V 6 p.19). The jury heard him say it was critical to have and interpreter and when they asked to view the video they asked for one and were denied because of the deficient performance of the attorney only. This claim is spelled out clearly at p. 14-15 of Petitioner' State Habeas Corpus Memoramndum of Law in Support of his TCCP Art.11.07(Emphasis added). The result, in part, they were forced to see a video they could not understand while knowing it was critical to have a translator to understand the unbelievable and non-sensical words of the complainat. Ultimately they were told to ignore the spanish portions.

Transitioning to Ground Four, for clarity particularly, is important here to point out. But to close out the above claim, because of the cumulative nature of the claim, it is imperative to link in here how blind credibility determinations go hand in hand with pure on the record instances of ineffective assistance of counsel claims in the Texas habeas corpus landscape that must ,in the interest of justice, be at some point addressed. The key here is record support in the face of bold faced lies when the credibility is the issue. The habeas Judge's FFC#30 accords credibility to a statement by the attorney that the second interview was played and translated in open Court and each juror had a copy of the translation.. Then FFC #32 follows with a false statement made by the habeas Judge herself. This cannot be over looked in the interest of justice. WHY? Because the record itself refutes the truthfulness of the findings. Perponderance of evidence is out the door of reasonableness when the record can be consulted for the truth of the matter. The Trial Judge at (RR V 9 p.5-9) denied the jury's request to have a translator while viewing (Def.EX-6 Second interview)because Pappas failed to use a trans-

later when he entered and used the video at trial pursuant to their jury note(CR-88) despite him saying a translator was critical before going into the video. (RR V6 p.19). The record at(RR V 6 p.32-34) proves there was no translator or interpreter utilized.

After the brief re-hashing of the issue here, the question presented here concerning Ground four becomes one of national importance. Not only did the jury have to view the completely spanish speaking video(RR V6 p.67) without an translator because of the attorney's deficient performance in remembering it was critical to have one translate the video(RR V 6 p.19), but the Judge ordered them to ignore the parts in spanish and gave them a completely and objectionable instruction. At (RR V 9 p.9) the trial Court Judge told the jury..."Our law says we are to base our decisions on the evidence that's admitted before the jury for their review in ENGLISH." "So if there is any portion of that that is in SPANISH, you guys will just have to ignore it." The deficient performance here, a complete failure to object to this obvious misstatement of the law that any first year lawyer would instantly know was erroneous and any overruled objection would result in reversal on direct appeal. Proving the attorney knew he had messed up by not having an interpreter translate the video when he used it at trial and then hung his defense on it(RR V 6 p.98-101), he during the conference on the lack of translator(RR V 9 p.5-9) moved to just give them a translater like they asked or have the audio turned off. This alone defeats the habeas Judge's finings above and proves there was neither a translator or interpreter concerning the second video(DEF.EX-6 at trial).

An evidentiary hearing, requested at every juncture by this layman pro se defendant, would have allowed crucial cross-examination of this attorney as to why he would ever let a Judge so erroneously instruct a jury as he did here. Recall, not necessary if one can believe he suddenly can't as the habeas judge affords credibility and then provides a complete off the path discussion that really only supports the faulty nature of her review. Ironically, Judge Mays side steps the real question in only addressing the portion of the Judge's instruction concerning to listen to the questions and answers in english Appendix-B FFC #37 not being a violation of Petitioner's rights, which is a true and correct finding. What is not addressed and a demonstration of judicial bias on a completely unexplainable question of law as raised in the habeas proceedings and remains unanswered other than a blanket credibility finding, is the portion of the federal question concerning a Judge telling the jury to ignore any portion of the all spanish video(RR V6 p.67).Totally in spanish! Ironically the video Pappas hung his whole closing argument on after he failed to have it translated when he used it at trial. Even the case cited by Judge Mays in her attempt to cover for the attorney, diespite the fact she fails to give a complete cite in FFC#38, specifically points out Texas courts recommend a limiting instruction that includes..."[Y]ou will have an official translation." Id 606. There is no official translation in this case and it attorney Pappas's fault yet he reamins silent other than to ask the jury be given the requested translator or simply turn the audio off. It is not the actions or what the complainant was doing on the video he relied upon in urging and re-urging the jury to hear the second interview, it was the spanish spoken statements that he asked the jury to hear.(RR V6 p.101).

The elephant in the bathtub here is that the attorney by those concessions on the record in the face of the trial Judge's refusal to grant the jury's request for a translator-purely and only because one was not used at the time in trial when the video was utilized-is recorded(RR V 9 p5-9)evidence that proves his affidavit is false and the non-sitting habeas Judge blindly accords credibility to him. Any evidence admitted at trial from the witness stand is evidence that a jury is legally required to consider in its deliberations ENGLISH SPANISH OR OTHERWISE. The very fact it is admitted as(Def.EX-6) without an interpreter and then completely negated as the defense's most important exhibit demonstrating the non-sensical and unbelievable nature of the complainant's version of the crime(RR V 8 p.98-101) where "the real telling point" was the second video(emphasis added), means the case rested on a video they were untimatley instructed they could not consider because it was in spanish. The right to effective assistance of counsel is the right to a fair trial.

A real telling point here pointing to complete disregard of due process and the breakdown of the Texas habeas minefield that must be addressed at some point, is the very fact that attorney Tom Pappas, who seems to remember so clearly many details-even false details he made up to defeat Petitioner's claims on remand from the TCCA-is that he cannot recall the Judge telling the Jury they could not consider the Spanish portions of the video and only the english portions. Appendix-B FFC#36. The instruction to ignore spanish and only consider english is recorded on the record. (RR V 9 p.9). The only logical reason the attorney ironically cannot remember the instruction is because there is no possible legaly explanation for failure to object to an intruction from a Judge to a jury that is legally wrong.

Whether he remembers it or not, it was his failure and the trial court's erroneous and legally flawed instruction that cause the jury to sit in the courtroom and view a video that they-if they followed the court's instruction-could not consider and for sure could not understand.

ARGUMENT

REASONS FOR GRANTING THE WRIT RULE 10

Petitioner fully understands, after studying his Rules of the Supreme Court Rule 10, that this Court rarely grants review when the error asserted is based upon or consists of erroneous factual findings. However, eventhough the factual findings are connected to all three errors of ineffective assistance of counsel claims at issue here, it is the blind focus credibility determinations-in direct opposition to the record- that Petitioner implores the Court to invoke its "supervisory powers" to correct. Incorrect factual findings that accord credibility to false and perjurous statements from the defending attorney,and in one specific instance a completely false finding from the non-sitting habeas Judge,where the habeas Judge finds Petitioner conceded the very specific point that the ground rests upon,has effectively illegally suspended the great writ. Making a unagreed finding and sanctioning perjury in the state habeas procedure are completely different. Unfortunately, that is what has happened in this present case and has become an understood norm in Texas habeas proceedings. It is time the higher court's take a close look at the "virtually unattackable" credibility deference that insures attorney's they can go as far as outright lies to cover for their trial performance, even when it is on the record opposing the lie, without consequence.

In Texas, it is a crime to commit aggravated perjury in an affidavit presented to a tribunal. The District Court of conviction and the TCCA are tribunals.

The standard of review concerning ineffective assistance of counsel is well known to this Court. It is the injustice of an unfair trial that has brought about the effective assistance of counsel standard in America. Strickland v Washington 466 U.S. 668,684-87 4 years later following of Cuyler v Sullivan's 446 U.S. 335, 343 standard where this Court fully explains the concerns of a fair trial and constitutional duty of an attorney to invoke procedural and substantive safegards to avoid injustice in serious cases. That invocation includes no matter how heavy the evidence of guilt may appear at first blush/ This complete argument is presented at Page 17-23 utilizing the standards this court is well aware of. That argument resulted in a remand from the TCCA. (STHC Memo.of Law p.17-23)(Appendix-A).

The issue here is that the habeas Judge-who did not sit in the case- accorded credibility to false statements from the attorney on remand that are proveably false by the record either at the time the attorney swore out his self-serving affidavit, or at the time he swore out his Motion for Continuance (CR-62-66). He swore to exactly what his investigator had found out from Yessica Perez. She swore out the same in the affidavit that is also in the Memorandum of Law at AX-1 side by side with the CR 62-Motion. The sworn statements in Pappas's Motion,as to the materiality of Yessica Perez's testimony,show that she had told Pappas that Irma Medrano, the family member who in (RR v. 2) stated under oath she wanted Petitioner in jail and her sister living under a bridge, had solicited her to make false sexual assualt charges against Petitioner. That is what Pappas's investigator had learned

learned from Yessica Perez prior to trial. The record is developed on that fact in Volume 2 of this case. The attorney, after being challenged on habeas then claims Irma Medrano, whose name appears no less than 172 times in the trial record, was not part of the unbelievable story telling account of the victims of the case which is what the trial strategy became at trial. ie.you simply cannot believe the complainant. That was his cover for failing to call Yessica Perez at trial knowing she was there to testify to exactly what he swore to in his own CR-62-66 Motion that he obtained a hearing on. On habeas, knowing he cannot reasonably explain not calling Yessica Perez, he instead chose to tell a lie. This must be a lie either at the time he swore his motion out,after his investigator had talked to Yessica Perez pre-trial, or in his affidavit now on habeas where he falsely tells the habeas court and TCCA thereby, that what Yessica told the investigator is different than what she now puts in her affidavit. He goes on further to state Irma Medrano was not what this trial was about and the Judge wouldn't have allowed it. He swore in his motion what he expected Yessica to produce at trial. He urged and reurged his motion and had a running objection to it at trial late into the trial knowing Yessica Perez was in the hall waiting to testify as the record excerpts show in AX-1 of the SHC Memorandum of Law. This alone shows the attorney is a liar and should have effectively shown he is unworthy of belief, not to mention the two diametrically different stories he told about what his investigator had gleaned from Yessica Perez, Instead the Habeas Judge accorded credibility to the false affidavit. This is a travesty of justice and worse, a violation of State law concerning known perjury to a tribunal in one instance or the other. At trial or on habeas.

If there was a sworn pre-trial motion and record development as is the case of CR 62-66 and RR Volume 2, and then the affidavit entered to cover for deficient performance entered by Petitioner or any-other person in America for a jury to consider in a aggravated perjury case-there would surely follw a conviction for aggravated perjury based on the record and evidence. There should be no difference to any other citizen who lies to cover for their actions and an attorney who lies to a court about it. Sure prosecution should and would normally follow-but for it taking place in the Texas habeas proceedings where it has gotten way out of control in order to uphold a conviction. This is at best unconstitutional. At worst a travesty of justice the the entire country should know about and see corrected. At least this Court can and should remand this case back to the trial Court for an evidentiary hearing to determine the truthfulness of the attorney's two completely different stories concerning this uncalled, and according to him, material witness, as his sworn motion states.

A strong message to potentially perjurous attorneys would be sent that committing perjury to help a state maintain a conviction when an attorney has obviously done so, will not be tolerated and possibly convicted for the crime.

The argument and national importance of the second issue is very brief and urgent. When an attorney deficiently forgets or overlooks the critical need for an interpreter and the jury follows his lead to review the video he sends them to in closing of his only defense, the non-sensical and unbelievable statements on said recording, and requests that very video with an interpreter, it can never be considered effective assistance when the jury is refused a translator and instructed by the Judge to ignore the Spanish portions of the com-

pletely Spanish video and consider only the English portion **without objection,** only because the attorney completely failed to have an interpreter when he used the video at trial after calling one "**critical.**"

Can a Judge in this ever increasing spanish speaking land ever legally tell a jury they can only, **as a matter of law in our country,** consider english portions of a video that is completely spanish of which they are instructed to ignore? That question is amplified when it is considered the attorney who failed in both aspects, first to use an interpreter then in failing to object to a well known and understood maxim of law that all evidence from the stand must be considered in a court of law, claims he cannot remember or give a reason for his failure to object because he can't recal such an instruction from the Judge. This is especially egregious when it is a matter of record that the erroneous instruction was given and stands as such for any future reader to review. (RR V 9 p.5-9).

This lay man at law challenges any educated man in the law to find where such an instruction does not demand objection. No judge can order a jury to ignore any evidence from the stand that has been legally admitted by either opposing parties in America. This is so especially in this case where the entire defense was hung on the video that the attorney wholly failed to utilize and interpreter. (CR-88). Self preserving selective memory loss matters not in the face of a cold hard record and neither does a non-sitting habeas Judge who steps in and offers no reasonable adjudication of the error and then goes to the extreme to falsely state Petitioner concedes the the interview was translated in open court Appendix-B #32 adopting the false claim of the attorney in Appendix-B #30 that the second

interview was played and translated in open court and each juror had a copy of the translation. If those findings of fact are true-then why would the trial Court judge refuse to give the jury the translator when they by jury note (CR-88) requested to see the video with a translator? The answer to the question presented is simply that the record-not some conclusory statement from an inmate-proves that there was no translator when the attorney failed to use one at trial. The record proves the Judge's statements. And the record proves the error and effect of the lies from a attorney and Judge who in order to be credible in both instances is basically calling the trial Court Judge a liar. It was the trial Judge who refused an interpreter to the jury solely because Pappas failed to have one when he cross-examined the complaiant. The Habeas Judge's following rendition of un-cited law and her twisting of the issue after the false findings she made indicate this was a purposful and intentional disregard for the truth and due process.

This conduct should not be tolerated for any reason in America. Calling a district habeas Judge an intentional liar should offend any member of the bar unless its the truth. If it is the truth, and the best witness Petitioner can present to show that Judge Mays is intentionally lying in her findings, is Honorable Judge Gary Stephens, then strict judicial scrutnity and simple record review would then demand sanctioning of Judge Mays and criminal charges against attorney Tom Pappas who both know what transpired at trial and then lied to defeat this writ. This behavior has sadly become commonplace in the Texas Habeas Corpus proceedings. Left unchecked here, amounts to the suspension of the great writ by perjury.

CONCLUSION

For the reasons herein stated and in the interest of justice this writ of certiorari should be granted.