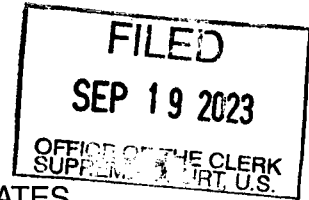


23-6257  
No. \_\_\_\_\_

ORIGINAL



\_\_\_\_\_  
IN THE

SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

RANDALL SCOTT JORDAN

— PETITIONER

(Your Name)

vs.

BOBBY LUMPKIN

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF CRIMINAL APPEALS

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

PETITION FOR WRIT OF CERTIORARI

RANDALL SCOTT JORDAN

(Your Name)

59 Darrington road

(Address)

ROSHARON, TEXAS 77583

(City, State, Zip Code)

n/a

(Phone Number)

## QUESTION(S) PRESENTED

No.1

Randall Scott Jordan, petitioner, contends that external impediments, (State's witness, (Galvan) extensive violent criminal history and gang affiliation), hindered trial counsel from being properly prepared to impeach state's witness' credibility resulting in ineffective assistance of counsel, thereby denying petitioner a complete defense guaranteed by the 6th and 14th Amendment to the United States Constitution.

Evidence of state's witness Galvan's extensive violent criminal record would have revealed to the jurors the following:

1. Confirmation of state witness' criminal history, information that was favorable to defense for impeachment purposes to credibility. see; exhibits attached.
2. Further, denied information would have supported petitioner's defensive theory, or mental culpability, (mens rea), (motive) to state's alleged offense against accused.

The State created external impediments to discovery evidence, impeded counsel's defense to present objective factors to petitioner's defense, failure to review and consider claims of violation to accused 6th and 14th Amendment rights, would result in a fundamental miscarriage of justice.

Did the prosecution's suppression or withholding of state's key witness' prior violent criminal history that was favorable to accused for impeachment purposes, violate defendant's due process to the 14th Amendment under Brady??...

Withheld evidence of state's witness' criminal history, for impeachment purposes was favorable to defense because it could have been used to impeach witness to jurors and proven the facts of witness' gang affiliation, and prior offenses of moral turpitude.

No.2

Petitioner contends that trial court erred by relying on an incomplete evidentiary record, at pre-trial hearing to reflect defendant's claim that State's failure to disclose and preserve cell phone recordings from his cell records and complainant's cell records which were confiscated by police. This constituted a denial of due process because the evidentiary record was too meager to render a proper ruling on due process.

XXX Further, the trial court erred in freely admitting evidence alleged by the State prosecution concerning witness testimony to the charges against accused, because the Court's ruling rested on unsubstantiated premises, and the Court's error was not harmless.

There is a significant likelihood that the jury was inflamed to convict defendant upon only the state's version of the case, therefore denying defendant his right to present his defense in the case before the jury.

Did the trial court err, when it relied solely on the prosecution's word to evidence that was recorded on defendant's cell phone and complainant's cell phone, without actual investigation to the exact contents of information actually recorded, which petitioner identifies as exculpatory and material to his defense.

Prosecution only claims that content of recordings are merely sexual related conversation between accused and complainant, and stated to court that she did not want to listen. prosecution avoided telling the court of many other conversations within cell records with various witnesses including accused alibi witness which if revealed to jurors, subjects state's case to vulnerability and jeopardizes conviction.

see; ground two, attached

Questions presented continued...

No. 3

o. 3

Petitioner contends that his trial counsel's prior representation of this case's state's key witness against accused, violates his 6th Amendment right to effective assistance of counsel and shows a fundamental unfairness, when counsel refused to impeach state's witness (Galvan) on the stand for his extensive violent criminal history to the jury, also to his affiliation to (T.S.), "prison gang". Counsel failed to notify his client to the prior representation until defendant requested the criminal background investigation of state's witness prior to trial for impeachment purposes.

Petitioner knew (Galvan) as a member of a violent gang called Texas Syndicate , founded within Texas prison system in the 1970's but now on the outside, the gang called Austin, Texas their home base city.

Trial counsel for petitioner failed to reveal his prior representation to his client, (defendant) until he asked for his criminal history and counsel refused to investigate and reveal all of the prior arrest and convictions within Galvan's history. see; attached Galvan's criminal arrest sheet.

Counsel later told client that even though state's witness had some assaults, they were older than "Ten years", and indicated that he wasn't going to jeopardize he and Galvan's relationship by impeaching him on the stand for me on such an old record... Petitioner shows within attached criminal history that was withheld from him at the pre-trial, that a few of the arrest were less than 5 years old, at the time of request during 2008-09 pre-trial. see; arrest sheet attached

Did the State prosecution withhold Brady material favorable to defense, to key witness violent criminal history for impeachment purposes???

Did trial counsel violate his client's 6th Amendment right to effective assistance of counsel when counsel refused to investigate state's witness criminal history for impeachment purposes to the jury???

Did trial counsel create a conflict of interest that denied his client right to counsel and a fair trial??? see; groundsthree , Certiorari also see; UNITED STATES V. McKEON 738 F.2d 26,34-35(indicating that such circumstances constitute a disqualifying conflict under Disciplinary Rule 5-102A.) prejudice presumed when counsel is burdened by an actual conflict of interest, breaches the duty of loyalty, most basic of counsel's duties. see; FED.RULE.CRIM.PROC.44(C). see; PARILLO v. JOHNSON, 205 F.3d 775 (5th cir.2000)(reversed and remanded, actual conflict which adversely affected his performance throughout trial).

Questions presented continued...

No.4

Petitioner contends that his 6th Amendment right to an impartial jury was violated, when trial court abused it's discretion and denied defendant his objection and his motion for mistrial to select a new voir dire.

It was during voir dire that a member of the select stood up and yelled during voir dire proceedings that he knew the defendant and the alleged victim and that his opinion of defendant was that he is guilty of charged indictment and should go to prison for life...

Trial court moved for recess of proceedings and during the recess for discussion of the outburst, one of the potential jurors requested to approach the bench and speak with judge.

During the bench conversation with said juror, she stated that the same man was out in the hallway yelling out to all jurors that he is aware of the evidence within the case, and defendant is guilty, that all of the jurors must convict and sentence him to no less than life in prison.

After the judge heard of this woman's request, court convened to a hearing and judge interviewed all the "exposed" jurors to this outburst, and ask them if they could be effected by this outburst about the guilt of defendant and if they could give their honest decision and verdict as a result.

Defendant objected and requested trial court for motion for mistrial because jurors were now tainted and there was no way that a reasonable and reliable verdict could be decided after this outrageous outburst and disruption of voir dire.

Trial court denied the defendant's motion for mistrial and only dismissed the actual voir dire member that made the disrupted outburst, and re-convened the original members back to voir dire proceedings where many of the same members were then impaneled to the defendant's jury for trial.

see; UNITED STATES <sup>11</sup>v. MARTINEZ\_SALAZAR, 528 U.S. 304(2000),(reversed),also see; 146 F.3d 653.

Petitioner claims that although trial court interviewed the "exposed" jurors and obtained a statement from each that they could be impartial as to a verdict, p.. Petitioner asserts that his 5th Amendment right to due process was violated when defendant was forced to use his allotted peremptory challenges for cause in addition to trial courts refusing to dismiss entire voir dire for new selection of voir dire proceedings.

Supreme Court held that a denial or impairment of the right to exercise peremptory challenges,"is reversible error without showing prejudice"see; SWAIN V. ALABAMA,380 U.S. 202.

Questions presented continued...

Did trial court deny defendant's right to an impartial jury when court denied his objection and motion for mistrial after voir dire was exposed to statements by prospective juror that he knew the defendant and alleged victim and his opinion of defendant was he is guilty and deserves a life sentence???

Further, Did trial court violate defendant's 5th Amendment right to due process, when counsel was forced to use additional peremptory strikes during voir dire to exclude prospective jurors that were present during outburst of disqualified voir dire member in which trial court only dismissed ~~two~~<sup>one</sup> of the voir dire panel, and defendant is concerned that entire panel was tainted by the disturbing outburst from dismissed juror.

Is it unfortunate that the end results of the trial verdict in this case was a verdict of life... Or, was it due to voir dire members that experienced the loud outburst from dismissed juror, and possibly remembered his opinion that defendant deserved a life sentence??? see; Fundamental miscarriage of Justice.

#### Question No.5

Petitioner contends that state prosecution threatened his alibi witness through trial counsel for defense, therefore intimidated petitioner's alibi key witness and drove witness away from testifying on the stand. see; WEBB V. TEXAS, 409 U.S. 95 (1972), also see; UNITED STATES V. HAMMOND, 598 F.2d 1008 (1979), also, UNITED STATES, v. CHUKWUMA, 2010 U.S. Dist. LEXIS 18025 (2010) (Petitioner's alibi witness that was present at the scene on the night in question, Ms. Daniel, who is formally alleged victim's step-mother for over ten years during childhood, who knew every circumstance of the case against petitioner, (her son) and lived across the street from alleged victim in which they talked everyday, was at that time planning to testify for petitioner on the stand and is still willing to testify, in behalf, petitioner on appeal. see; witness sworn/notarized affidavit attached hereto.

Alibi witness was threatened by state prosecution through trial counsel on phone and during trial, that she would suffer retaliation from prosecution if she took the stand for defendant as to her knowledge of alleged victim's perjured testimony against accused to charges within indictment of both sexual assault and kidnapping. Alibi witness testimony goes to the heart of case against defendant, and without credibility of state's witness alleged victim, and without credible testimony of state's key witness Galvan, the state's case is jeopardized and would be subjected to serious adverse testing, and it could undermine the reliable outcome to the jury's guilty verdict. % see; Hasting, 461 U.S. at 510-11.

Questions presented continued...

DID the threats by state's prosecution through defenses trial counsel, to defendant's alibi witness, of retaliation violate defendant's right to a fair trial, and his right to present a defense, and his right to compel his alibi witness to testify in his behalf on the stand?? See; alibi witness, affidavit sworn and notarized, attached from 2023

Question No.6

Petitioner contends that his trial counsel failed to investigate his alibi witnesses during pre-trial and defendant raised this issue with trial counsel repeatedly, the fact that he refused to impeach the state's key witness Galvan, (see; question presented No.3), it became obvious to defendant that trial counsel was ineffective and ultimately defense counsel filed motion to withdraw from case when counsel was confronted by defendant about his loyalties. see; motion to withdraw as trial counsel for defense. see; LAWRENCE V. ARMONTROUT, 900 F.2d 127

Petitioner contends that he retained counsel and spent his entire accumulation of funds from his savings accounts to the sum of 25K retainer, after a hearing in pre-trial and withdraw from defendant's counsel, petitioner threatened former counsel to refund at least a partial amount of the retainer fee because of the blatant misrepresentation so far as trial counsel. see; HILL V. LOCKHART 474 U.S. 52 When trial counsel refused petitioner was at a loss and was ignorant to the civil laws protecting him from attorney misconduct which he may file suit and regain at least part of his savings money that his trial counsel stole from him. see; Texas State Bar official complaint against attorney Stephen M. Orr, rec;

Did trial counsel violate his client's right to counsel under 6th Amendment and his due process under 14th Amendment to the U.S. Constitution??

Petitioner asserts the question a reviewing court must ask is this; absent the prosecutor's allusion to the failure of the defense to proffer evidence to rebut the testimony of the victim, is it clear beyond a reasonable doubt that the jury would have returned a verdict of guilty?? HARRINGTON, supra at 254.

Further, did trial counsel violate his client's right to counsel and right to present a defense concerning his alibi witnesses in which there were two(2)

1. Ms. Daniel, former step-mother of alleged victim, and neighbor presently who speaks with alleged victim on a daily basis.
2. Mr. Stuchly, alleged victim's own father, and former employer of accused prior to this case and indictment, in which was present with Ms. Daniel at the motel, on the night in question in Austin, Texas.

Questions presented continued...

Petitioner contends that he repeatedly told his trial counsel to investigate his alibi witness' both Daniel and Stuchly who were present at alleged scene of offense. Both witnesses were together at motel that night when Mr. Stuchly drove Ms. Daniel to retrieve accused car from accross town and deliver to defendant at motel where accused traded his car for Ms. Daniel's car which he'd borrowed temporarily.

Petitioner asserts that a lawyer who fails adequately to investigate, and to introduce into evidence, [information] that [demonstrates] his client's factual innocence, or that raise[s] sufficient doubt as to that question to undermine confidence in the verdict, renders deficient performance." HART V. GOMEZ, 174 F.3d 1067, 1070, (Here defense counsel failed to investigate the alibi witnesses). [Reversed.] Is petitioner entitled to Certiorari review, and relief because his trial counsel failed to investigate his client's alibi witnesses?? and failed to introduce evidence central to his defense???

Alibi witness Ms. Daniel told attorney that she had extensive proof that alleged victim and state's key witness Galvan, had lied about facts of the case and could show the jury facts within the case that could have undermined the prosecution case and reveal to the jury that state has relied on perjured testimony. see; "Reasonable probability", STRICKLAND, at 694.

Question No.7

Petitioner contends that the state's untimely disclosure of exculpatory and impeaching evidence relating to the statements of alleged victim to emergency personnel, at receiving hospital in San Antonio, (bexar County), and within hospital records, ("Route Sheet").

This favorable evidence withheld by prosecution, and was not made a part of state's discovery file to defense, and evidence of statements to emergency personnel by alleged victim, stating that she "was not sexually assaulted by accused", was different from her statements during trial to jury concerning sexual assault, and kidnapping by the accused defendant. (before coercion by prosecutor "CPS", threats) This exculpatory and impeaching evidence was critical to defense and prejudice defendant denying him a fair trial to present his case to jury, and impeaching evidence such as this statement from the actual victim, goes to the heart of the defenses case and could undermine the reliability of the jury's verdict if accused were revealed this evidence within state's discovery file during pre-trial. see; KYLES V. WHITLEY, 115 S.Ct. 1555, (1995); Brady, 373 U.S. at 87, Bagley, 473, U.S. 682.

Did state prosecution violate defendant's due process under Brady, when state failed to disclose impeaching evidence favorable to defense within discovery file??

6-questions presented

## 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:

## RELATED CASES

COURT OF APPEALS, THIRD DISTRICT, AUSTIN, TEXAS

July 11, 2012, filed

No. 03-10-00776, No. 03-10-00777-CR, No. 03-10-00779-CR

In re Jordan, 2013 Tex. Crim. App. Lexis 111 (Tex. Crim. App., Jan. 16, 2013)

Jordan v. Stephens, 2015 U.S. District Lexis 147865 (W.D. Tex., Oct. 30, 2015)



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## OTHER

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

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

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

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

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

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

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

- ☒ reported at WR-81,362-10,1/26/2023; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the TEXAS COURT OF CRIMINAL APPEALS court appears at Appendix D to the petition and is

- ☒ reported at WR-81,362-10 1/26/2023; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

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

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 1/26/23.  
A copy of that decision appears at Appendix D.

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

☒ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_ (pending, as of Sept. 19, 2023).

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

U.S. CONST., AMEND. (VI):

In all criminal prosecutions, the accused shall enjoy the right to a speedy 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 defense.

U.S. CONST. 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 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 persons of life, liberty, or property, without due process of law; nor deny any persons within its jurisdiction the equal protections of the laws.

28 U.S.C. §2254

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that...

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

## STATEMENT OF THE CASE

Petitioner has provided the reviewing court in this application for Writ of Certiorari, evidence that shows the case is of such imperative public importance as to justify deviation from normal appellate practice, therefore requiring immediate determination in this court, see; 28 USC §2101(e).

A Jury found petitioner guilty of two counts of aggravated sex assault and one count of aggravated assault with deadly weapon (hands) and aggravated kidnapping. The Jury also found petitioner to be a habitual offender based on previous convictions, Petitioner was sentenced to Life on each count.

When petitioner was released from jail on a technical violation of parole, he called (Brown), Felty his fiance and they drove separately to a hotel to discuss their relations and to be alone because her children were at her apartment. The events that occurred after they met at hotel room are disputed.

Alfredo Galvan was a friend of (Browns) during the months petitioner was in jail, for violation of his parole for drinking alcohol. (Brown) had sexual relations with Galvan, and had become jealous at the thought of petitioner returning from his stay in county jail, to re-claim his fiance (Brown) and resume their plans to be married that coming August, 8,2008. in which they had both designed wedding rings of the #8 as a sign for infinity.

Galvan refused to accept losing (Brown), and took the necessary steps to prevent petitioner from disrupting his own plans with (Brown).

Galvan was initial complaintant who called police and told 911 operator that petitioner had kidnapped (Brown) against her will, when in fact she had arranged the meeting weeks before release of petitioner which the two talked on phone daily for the duration of petitioners jail incarceration, which includes visits at the jail, see; Vol.28(73RO), jail/records, denied discovery

Galvan and petitioner had many conversations on each others personal cell phones, It was Galvan who initiated the violent threats to petitioner on those calls and stated within conversations that he was affiliated and that he would have petitioner killed for coming between him and (Brown). Petitioner did not take the threats lightly, and felt the threats were sincere. Petitioner had known about (Brown) and her dependence on "Meth" and "Cocaine", Galvan was a major dealer for a known gang in Texas,(T.S.). Petitioner challenges the evidence of cell phone calls that the trial court denied him from presenting this at trial including Galvan's criminal record for impeachment purposes to the jury..see also;Vol.28(73RO).

Petitioner contends that this case involves the requirements of analysis set by Trial Court in its case law, and the Court of Appeals' compliance with those requirements, which require, at the very least, a full discussion of all facts and factors including, in the case of excluded evidence that is relevant and material to petitioner's conviction and judgment.

The Court of Appeals determination of harmlessness was reached by ignoring that evidence and its connection with facts of the case.

Petitioner asserts that his trial counsel was ineffective for not completely reviewing states discovery file to withheld cell phone records and failing to subject the prosecution's case to meaningful adversarial testing. see; ground one(1). within petitioner's Certiorari brief, if the reviewing court grants issue to Certiorari.

Petitioner asserts that this case is a complex one, there are many violations of petitioner's rights that are guaranteed under the United States Constitution, these guarantees are supported through the Sixth Amendment which state right to effective trial and appellate counsel, and right to present a defense.

Guarantees also supported by Fourteenth Amendment which applies through the states, to Due Process and a fair trial, to which are fundamentally protected from miscarriages of Justice. Carrier, 477 U.S. 478, 106 S.Ct. 2639.

Petitioner will outline and show the court, if it may Grant petitioner his Certiorari for review, various rights that were violated during pre-trial and trial in this case, all of which deserve at the very least a full discussion and review to all the facts that were denied by the state and withheld from defense.

Petitioner contends that evidence suppressed and withheld from defendant consist, of state's key witness against accused, prior violent criminal history for impeachment purposes under Brady, Bagley, and Kyles which including various assaults causing bodily injury, family violence, and violations of protective orders, which supports defenses theory and culpability to this case, and is a vital portion to the defenses case, that without presentation to the jury, would result in a fundamental miscarriage of justice and the conviction of one who is actually innocent.

Petitioner will also show the reviewing Court upon Granting issue to Certiorari the following violations to defendant's rights guaranteed to him through the U.S. Constitution, 6th and 14th Amendments:

- (1) External impediment, that hinder trial counsel from an effective defense when state prosecutor suppressed and withheld exculpatory evidence that was material to defendant, witness prior violent criminal history, for impeachment

1

purposes, that would allow defendant to show the jury the mentality of Galvan and prove his affiliated status and ability to carry out the threats made against defendant within the cell phone recordings withheld by state.

- (2) External impediment, that hinder defendant a fair trial when trial counsel represented state key witness Galvan throughout previous years of 1990's and 2000's, last representation was 2005, five years prior to defendant's retainer for this case.

Counsel created a conflict of interest when his divided loyalties prevented counsel from a complete and effective assistance to petitioner's case. prior criminal history of Galvan attached, trial counsel filed motion to withdraw for ethical reasons.

- (3) State prosecutor threatened defendant's key alibi witness Ms. Daniel, through trial counsel during interview with defendant and cell phone conversations with witness. see; alibi witness affidavit attached, and statement stating she is readily available to testify during new trial, absent any threats of retaliations as in previous trial. Alibi witness will testify to threats and impeach both states key witness and alleged victim in the case, see; affidavit of truth notarized.

- (4) Trial counsel failed to investigate alibi witnesses, despite his client's repeated request. further, counsel failed to raise issue to trial court about threats conveyed through him to both his client and alibi witness by the state prosecutor to retaliate against alibi witness (Daniel) if she went forward to testify on stand for defense. see; alibi affidavit attached. Further, counsel failed to investigate 2nd alibi witness Mr. Stuchly, who was present with Daniel at the scene of alleged offense. see reasons for Granting petition.

- (5) Trial Court erred when it denied defense access to cell phone recordings within defendant's and alleged victims cell phone confiscated by police.

Cell recording were material to defense and would show various conversations recorded between state witness Galvan, to threatening defendant and his family, which would show the jury defendant's culpability when he absconded from half-way house in Houston to avenge his family from harm. see; affidavit of alibi witness Daniel to one of Galvan's affiliated members pushing on her apartment door trying to harm her on Galvan's behalf and threat to defendant.

Trial court relied on insufficient record to determine evidence within cell recordings, when state prosecution (on record) during evidentiary hearing at pre-trial, told trial judge that she had not listened to entire recordings, but that she concludes only content was merely sexual between defendant and alleged victim.

Trial court took prosecution's word for it, and denied defense access to cell recordings and relied on incomplete record and insufficient evidence to recordings.



## REASONS FOR GRANTING THE PETITION

Petitioner presents his Reasons for the reviewing Supreme Court to Grant the issuance of Certiorari in which he will show that his trial was infected with many constitutional violations that denied petitioner his guaranteed right to effective counsel, Sixth Amendment and his due process to the Fourteenth Amendment to the United States Constitution which applies to the states.

Petitioner's trial amounted to a miscarriage of Justice under MURRAY V. CARRIER, to one who is actually innocent. Trial counsel was ineffective due to external impediments preventing counsel from access to victim's statements to both emergency assistance personnel of EMS, and hospital emergency personnel recorded within hospital's "Route Sheet" upon arrival at emergency room.

Trial Counsel made request through objections and motions for access to discovery file from state prosecutor, that was suppressed, and ultimately denied within evidentiary hearing during pre-trial for defendant's access to all favorable evidence including the above statements of victim to EMS hospital personnel and all cell phone recordings contained within recordings of both defendant's cell phone and alleged victim's cell phone. see; grounds ~~same~~ within petitioner's Certiorari application for reasons for Granting petition., supporting brief/ granted Certiorari. Petitioner contends that trial court's decision to deny defendant access to exculpatory evidence upon request, denies defendant his right to present a defense, because the denied evidence above is a vital portion of the defenses case and goes to the heart of the defense, in which denial of his right to present this evidence to the jury, would result in a fundamental miscarriage of Justice, and is in conflict with decisions of another appellate court; the importance of this case not only to petitioner but to similarly situated:...

Petitioner urges the reviewing court to allow a thorough review of the facts presented, and Grant issue of Certiorari to ultimately remand to the trial court for new trial. Petitioner was denied effective assistance at trial and at the direct appeal level. Issues presented at direct appeal are: ineffective assistance to appellate counsel because counsel failed to review the appeal issues with defendant before filing, PDR, in which defendant objected to counsel filing PDR without investigating all the evidence, to recordings of cell phone conversations with alibi witnesses and evidence denied for victim statements to EMS personnel... evidence that was a vital portion of the defendants defense, and without access to evidence, violated his 6th and 14th Amendments to a fair trial.

Petitioner contends that, Writ of Habeas Corpus plays a vital role in protecting Constitutional rights. In setting forth the preconditions for issuance of COA, or in this case remand for trial court review to constitutional violations by Texas Court of Criminal Appeals, (the highest state court of appeals in Texas). Congress expressed no intention to allow trial court procedural error to bar vindication of substantial constitutional rights on appeal.

In BAREFOOT, 463 U.S. at 893 and n. 4 ("summing up" the "substantial showing" standard). Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy is straightforward; The petitioner must demonstrate that reasonable jurist would find the district court's assessment of the constitutional claims debatable or wrong. The issue becomes somewhat complicated where, as here, the district court, or Court of Appeals, dismisses petition based on procedural issues. see; "White Card" denial without written order, attached hereto.

In WILLIAMS V. TAYLOR, 529 U.S. -(2000) the Court held; "When district court denies habeas corpus petition on procedural grounds without reaching the the underlying constitutional claims, a COA should issue when the petitioner shows, as here" at least that jurist of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurist of reason would find it debatable whether district court was correct in its procedural ruling. This construction gives meaning to congress requirement that a prisoner demonstrate substantial underlying constitutional claims and is in conformity with the meaning of the "substantial showing" standard provided in BAREFOOT, 463 U.S. at 893 and n. 4, and adopted by congress in AEDPA.

FUNDAMENTAL MISCARRIAGE OF JUSTICE: Actual Innocence;

McGOWEN V. THALER, 717 F.supp 2d, 626,

Mc Gowen strongly argues... he can show a Fundamental Miscarriage of Justice based on SCHLUP V. DELO, 513 U.S. 298, 115 S.Ct. 851 (1995), "The Fundamental Miscarriage", of Justice exception to the Rule that State procedural default bars Federal Habeas review is limited to cases where the petitioner can make a persuasive showing that he is actually innocent of the charges against him. FINLEY V. JOHNSON, 243 F.3d 592, 605 (5th Cir. 2003).

SUCCESSIVE WRIT: FUNDAMENTAL ERROR DEFEATS PROCEDURAL DEFAULT:

Habeas Corpus 896;

"Manifest Miscarriage of Justice", exception to abuse of writ doctrine is not independent avenue to relief, if established, it functions as a "gateway", permitting habeas petitioner to have considered on the merits claims of constitutional error;

Petitioner contends that under Brady rule, which requires the prosecution to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant a fair trial. UNITED STATES, V. BAGLEY, 473 U.S. 667(1985).

Under BRADY, suppression of favorable evidence that is material to either guilt or punishment violate the defendant's due process rights, regardless of "the good faith or bad faith of the prosecution". BRADY.

The BRADY Court noted that courts utilize a three part test in analyzing whether the prosecution violated its Brady disclosure obligations; "[1] [t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; [2] that evidence must have been suppressed by the state, either willfully or inadvertently; and [3] prejudice must have ensued." STRICKLER V. GREEN, 527 U.S. 263(1999). The Court explained that the prejudice requirement entails materiality in that "evidence is material only if there is a reasonable probability that, had the evidence (cell phone records), been disclosed to defense and therefore the jury during trial, the result of that proceeding would have been different". BRADY. The Court further explained that the "reasonable probability" standard is not demanding because the prosecution's burden at trial is so demanding. see; UNITED STATES V. AGURS, 427 U.S. 97 (1976), holding modified by Bagley.

Petitioner asserts that the information within the suppressed and denied impeaching and exculpatory evidence of cell phone records confiscated by police, (both defendants and complaintants that were in car upon arrest), was material to defendants ability to present his defense to the jury. The prejudice to the defendant here occurs not from actual knowledge of the information that was recorded; upon cell phone records, but from the ability to provide the more convincing source corroborating the information contained therein. see; In re Sealed Case No. 99-3096 (Brady Obligations), 185 F.3d 887(D.C.Cir. 1999). (impeachment).

Petitioner contends that appropriate remedy for a Brady violation is a remand for new trial. see KYLES V. WHITLEY, 514 U.S. 419(1995)(upon finding of Brady violation a new trial follows as the prescribed remedy, not as a matter of discretion).

that would otherwise be procedurally barred., CARRIGER<sup>11</sup> v. STEWART, 132 F.3d 463, Habeas Corpus 896, To prevail on procedurally barred claims under "Miscarriage of Justice standard established in SCHLUP, Petitioner need not prove that he is actually innocent, rather petitioner is required to present "evidence of innocence to such that Court cannot have confidence in outcome of the trial., 106 F.3d 1415, 1416.

Petitioner contends in this case and reasons for Granting his issuance to Certiorari, he will show the reviewing court and meet the miscarriage of justice standard, which required that he show it was more likely than not that no reasonable juror hearing all the available evidence would vote to convict beyond a reasonable doubt.

Further, petitioner will demonstrate to the reviewing Court within his Certiorari brief if so granted to present, that the issues are debatable among jurist of reason, that a Court could resolve the issues in a different manner, or that the questions are debatable to deserve encouragement to proceed further. JAMES v. CAIN, 50 F.3d 1357, 1330 (5th Cir. 1995)), Petitioner contends and will show, the dismissal of his petition within the Texas Court of Criminal Appeals, JORDAN V. TEXAS, TXCoCA No. WR-81,362-11, on the grounds of procedural default, could result in a fundamental miscarriage of justice, if the reviewing Court, does not Grant issuance of Certiorari.

Petitioner points to evidence which is both undisputed and highly probative of his affirmative defense of necessity. If the jury had knowledge to the denied cell phone conversations with state's key witness, and defendant's alibi witness, and with actual alleged victim, it would have significantly bolstered Jordan's necessity defense and would have undermined the prosecutor's ability to argue that defendant kidnapped alleged victim, (Brown).

The same evidence points to additional charges of sex assault with alleged victim, which is both undisputed and highly probative of his affirmative defense of necessity. If the jurors had knowledge to the statements within the denied cell conversations of the above witnesses it would have significantly bolstered petitioner's necessity defense and could have undermined the prosecutor's ability to argue the actual guilt of sexual assault, in which if accepted by one juror, would result in defendant's acquittal. (reasonable probability).

Petitioner points to additional denied evidence that was both suppressed by prosecutor in part and further information was withheld by prosecutor concerning statements that support defenses theroy to consent and perjured statements by alleged victim, and state's key witness Galvan (boyfriend of (Brown) and initial complaintant to 911 emergency call to police alleging possible kidnapping), Petitioner's

alibi witness (Daniel) was threatened through trial counsel for retaliation if she testified to jury on defendant's behalf, after petitioner spoke with counsel about this threat to alibi witness, and requested to raise issue with trial court, counsel refused and although alibi witness also repeatedly requested counsel to raise the threat issue with trial judge, because information she had to show was significant and would have definitely undermined the prosecutor's case against accused. see; affidavit sworn and notarized by alibi witness attached hereto, alibi witness (Daniel) is willing and available absent any threat from state prosecutor to appear and testify on the stand to many perjured statements by alleged victim in which she was former step-mother to alleged victim (Brown) being married to Brown's father Mr. Don Stuchly, who was also present at the scene of alleged offense and also was denied access from petitioner's investigation and subpoena to testify through prosecutor's suppression, and was told to leave court room by prosecutor, after accused requested a conversation with his former step-father and employer.

Petitioner points to evidence of ineffective assistance during trial, when his retained trial counsel failed to investigate his alibi witnesses above. If it wasn't enough that accused was denied his right to counsel for refusing to raise the issues to trial court about prosecution threatening alibi witness, Then he refused to investigate the alibi witnesses that were both present at the alleged scene of the offense... when both delivered defendant's car to the hotel room where the defendant and alleged victim were staying. Petitioner met with them in parking lot to trade the cars keys in which Jordan had his mother's car initially while she retrieved his car from across town with the help of Mr. Stuchly. see; alibi witness affidavit attached hereto.

Petitioner now points to evidence of retained trial counsel Conflict of Interest created when counsel refused to investigate state witness (Galvan) prior extensive violent criminal record and confirmed affiliation to criminal organization. Petitioner was notified by his counsel before trial hearing that he would not impeach state's witness Galvan on the stand to issues of prior criminal record nor to his affiliation with criminal organization, Texas Syndicate, which calls their home base Austin, Texas and where defendant resides formerly before being incarcerated, and employed by (Stuchly) living on property renting house.

Trial counsel's reasoning for this refusal was that (Galvan) was a client, and had been one for many years with a good and faithful retainer. Counsel refused to jeopardize that business relationship on accused behalf, and only agreed to a limited cross examination on the stand, avoiding any

confrontation or revealing any relationship with Galvan prior to trial.see; UNITED STATES V. IORIZZO,786 F.2d,52(1986),reversed,dismissed conviction.

Petitioner contends that this information was unknown to him prior to this critical moment at trial... when accused depended on counsel to impeach the states key witness and initial 911 call complaintant, to both his prior criminal record, and his confirmed affiliation with violent criminal organization (T.S.) in which accused would present to the jurors the capabilities of Galvan's violence, and give the jury an understanding to why accused would revert to absconding from Houston half-way house to Austin after being threatened by Galvan and after threats to accused family on behalf of his disagreements with Galvan. see; alibi witness affidavit concerning Galvan's affiliated "friends" pushing on Daniel's apartment door and attempt to harm her. (Defendant's motive)

Petitioner contends that this conversation is on cell phone records arguing and threats with Galvan, that were suppressed and denied discovery by trial court during evidentiary hearing,seevol.28,73(RO)

During an evidentiary hearing to defendant's objection to prosecutor's suppressed exculpatory evidence of cell phone recordings of both his and alleged victims phone, that were confiscated by police during arrest, trial court erred and abused it's discretion when it denied these cell phone recordings.

Petitioner contends that trial court relied on an incomplete and insufficient record when accepted only the state prosecutor's "word" that the recording merely contained sexual content between defendant and alleged victim, and nothing else. Prosecutor admitted to court on record that she did not listen to all recorded conversations within cell phone records,(which there were weeks of recordings., all leading up to the day of the alleged offense.

Although defendant told the court that there were other people on those records many conversations with state's witness, and alibi witnesses and other content other than sexual between him and alleged victim, including statements from her that would impeach her testimony during trial to perjury.

Trial court denied defendant's plea to allow discovery evidence that is a vital portion of his defense, and without it, he was denied due process..(error)al

Petitioner contends that additional conversations with alibi witness "Kelly", Ms. D. Tosh,who called defendant on the cell on the night of offense,xxx after Galvan 's call to 911 emergency, was also denied with recordings, and would show the court within conversation that alleged kidnapped victim Brown, had planned this entire visit with defendant, and is a friend of Galvan to which "Kelly" wanted to "save" (Brown) from any unnecessary police involvement by calling her and telling

or "warning" Brown about the 911 call from Galvan and that she should "abort" their plans, and leave hotel before police were involved.

The call from "Kelly" to Browns cell, was answered by defendant, when Brown told defendant to answer all calls because she was "done" with the drama!!

Call from Kelly ask to speak with Brown, and tell her that she was in a wreck and needed her to come to her house...(code for ,excuse to leave hotel),

Later in room with defendant, Brown argued with him and confessed to their plans and "Kelly's" call. (abuse of discretion,denying due process).

Petitioner tried to present this evidence to jury, and requested discovery to cell phone records to no avail through both his trial counsel who refused to investigate alibi witnesses, and cell phone recordings, nor impeach Galvan, nor alleged victim on the stand to this evidence, also failed to investigate "Kelly" and subpoena Tosh and her husband David Schumer. (ineffective assistance). The Court of Criminal Appeals adopted the STRICKLAND standard in HERNANDEZ V. STATE, 726 SW. 2d 53(Tex.Crim.App.1986),Strickland,466 U.S. at 687.

"Counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. This deficient performance prejudiced defendant, counsel's errors to not investigate the above stated evidence, after repeatedly requested by defendant, seriously deprived defendant of a fair trial, a trial, result to be unreliable.466 US.687. Failure to review this evidence, evidence that has never been heard or presented to a court on defendant's behalf, during trial because of trial counsel's failure to investigate alibi witnesses and failure to subpoena these witnesses after defendant's request in which he made available the names and phone numbers for contacting to conduct interview. (ineffective assistance)see; BRYANT, 48 F.3d,1411 The issues were discussed with appellate counsel assigned to case for direct appeal and P.D.R., all to no avail. and defendant suffered ineffective assistance to appellate counsel when appellate counsel refused to further investigate issues that in his words..."are not part of the record". see; THOMPSON V. U.S., 504 F.3d 1203, (reasonable probability if appellate counsel would have raised Constitutional issues within trial and completed a thorough investigation to trial counsel's performance , including adequate consultation with defendant before filing the appeal).

Petitioner contends that appellate counsel failed to raise issues concerning the trial counsel's "conflict of interest", for representing the state's key witness, Further, appellate counsel was aware of the issues that amounted to a 6th and 14th Amendment violation at trial and if not reviewed by appellate court, could result in conviction of one who is actually innocent, resulting in a fundamental miscarriage of Justice, see MURRAY V. CARRIER,477,488,106 S.Ct. (1986).

### CONCLUSION

A Claim that trial counsel is ineffective due to counsel creating conflict of interest, petitioner need not establish prejudice, rather, prejudice is presumed when counsel is:

burdened by actual conflict of interest in those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interest and the ability of trial courts to make early inquiry in certain situations likely to give rise to conflicts, see; e.g., FED. RULE CRIM. PROC. 44(C), it is reasonable for the criminal justice system to maintain a fairly rigid rule of presumed prejudice for conflicts of interest. Even so, the rule is not quite the per se rule of prejudice that exist for the Sixth Amendment claims as above mentioned. CUYLER V. SULLIVAN, 466 U.S. at 350.

Petitioner asserts that during his trial, there were many issues that alone could possibly mount only to cumulative error, errors that may not alone have merit to pass the standard of error set in AGURS.

However, the Supreme Court construed the amended statute so as to give independent meaning to "contrary" and "unreasonable".

Under contrary to clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by this court on a question of law or if the state court decides a case differently than this court has on a set of materially indistinguishable facts. WILLIAMS V. TAYLOR, 529 U.S. 362, 120 S.Ct. 1495 (2000).

Petitioner ask the question, is the Texas Court of Criminal Appeals decision not to review the presented issues by the petitioner, and deny without a written order, despite his presentation of significant constitutional violations?

Was the decision objectively unreasonable in light of Supreme Court precedent that the opportunity to present a defense is one of the constitutional requirements of a fair trial. see; CRANE KENTUCKY, 476 U.S. 683, 690.

Petitioner contends that during the voir dire proceedings, one members of the jurors to voir dire, stood up and yelled during proceedings interrupting... saying, that he knew the defendant and the victim in the case personally (not true), and in his opinion, the defendant was guilty and should be in prison for the rest of his life... Trial court stopped the proceedings and recessed for discussion



about the voir dire member that was ultimately dismissed after a hearing without jury present. (challenge for cause, Vol. 26) and Defendantt moved for a mistrial after the hearing on voir dire member interruption, including a motion to quash panel, (vol.26 pg.249) Trial Court denied defendant's motion and seated the jurors that were tainted by the outburst in the court room during voir dire proceedings and out in the hallway where same angry juror continued to relay all of his opinions about the defendant and the case that defendant was guilty and needed to get life in prison...(vol.26,pg. 252)

The Constitutional standard of fairness set forth in the Fourteenth Amendment's Due Process Clause requires that a defendant be tried by a panel of impartial, "indifferent" jurors, although the trial court conducted a hearing with a few voir dire members that were tainted by the angry juror outburst... defendant was prejudiced and denied his fair trial when he was denied the motion to quash panel before the proceedings moved to a jury selection.

The Fundamental purpose of voir dire is to ferret out prejudices in the venire and remove partial jurors. Part of the defendant's right to an impartial jury is an adequate voir dire to identify unqualified jurors. Voir dire plays a critical function in assuring the criminal defendant his rights.

The Sixth Amendment guarantees that in all criminal prosecutions, the accused shall enjoy the right to a fair trial, by an impartial jury. The right, held applicable to the states through the Fourteenth Amendment's Due Process Clause, requires that a defendant be provided a fair trial by a panel of impartial, "indifferent", jurors whose verdict is based on the evidence developed at trial.

Petitioner has presented issues of merit and shows violations to his United States Constitutional rights to Sixth and Fourteenth Amendments under the Due Process Clause.

For these reasons, a Writ of Certiorari should issue to review the judgment and the sentence from trial court and the denial on procedural standards of the Texas Court of Criminal Appeals, the highest State Court of Appeals.

Petitioner respectfully prays that this reviewing Court Grants relief to the application to Certiorai and allow petitioner to present his brief in support to Certiorari in the Supreme Court.

Respectfully submitted,



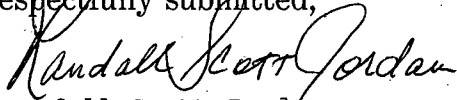
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### CONCLUSION

For reasons outlined by petitioner within this application that show, violations to his 6th and 14th Amendments to U.S. Constitution...

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Randall Scott Jordan, pro se petitioner

Date: November 4, 2023