No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BRIAN DALE NIXON,
PETITIONER,

v.

STATE OF TEXAS,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF CRIMINAL APPEALS OF TEXAS

PETITION FOR WRIT OF CERTIORARI

Michael C. Gross,
Counsel of Record
1524 North Alamo Street
San Antonio, Texas 78215
lawofcmg@gmail.com
(210) 354-1919
(210) 354-1920 Fax

QUESTION PRESENTED

The Petitioner's capital murder trial was held in this facility:

The Supreme Courts of Oregon and Washington held this is inherently prejudicial and erodes the presumption of innocence. *Oregon v. Cavan*, 337 Ore. 433, 98 P.3d 381 (Or. 2004); *Washington v. Jaime*, 168 Wn2d 857, 233 P.3d 554 (Wash. 2010). The Texas Court of Criminal Appeals, with one judge dissenting, disagreed and reversed the unanimous lower court of appeals.

Was the Petitioner's right to the presumption of innocence and to due process violated when the Petitioner's capital murder trial was conducted in this jail facility?

LIST OF PARTIES

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

RELATED CASES

Nixon v. Texas, 674 S.W.3d 384 (Tex. App. - San Antonio 2023, pet. granted), reversed by, remanded by *Nixon v. Texas*, No. PD-0556-23, 2024 Tex. Crim. App. LEXIS 949 (Tex. Crim. App., Nov. 20, 2024).

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES PAGE

STATUTES AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Brian Dale Nixon, respectfully prays that a writ of certiorari issue to review the judgment below of the Court of Criminal Appeals of Texas.

OPINIONS BELOW

The opinion of the highest state court to review the merits, the Court of Criminal Appeals of Texas, appears at Appendix A to the petition and has been designated for publication but is not yet reported. The opinion of the Fourth Court of Appeals, San Antonio, Texas, appears at Appendix B to the petition and is reported at *Nixon v. State*, 674 S.W.3d 384 (Tex. App. - San Antonio 2023, pet. granted).

JURISDICTION

The date on which the highest state court, the Court of Criminal Appeals of Texas, decided this case was November 20, 2024. A copy of that decision appears at Appendix A. There was no motion for rehearing filed. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the Constitution of the United States: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or

indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment to the Constitution of the United States: In all criminal 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 of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Fourteenth Amendment to the Constitution of the United States, 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 person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Petitioner was indicted for Capital Murder. (T- 45-46).[1] The Petitioner pleaded not guilty, was found guilty as charged, and the judge sentenced the Petitioner to life imprisonment without the possibility of parole. (T - 2081; R - v.27 - 1,5; R - v.32 - 1, 71; R - v.32 - 1, 71-72). A motion for new trial was timely filed and denied by operation of law. (Tsupp - 10). Notice of appeal was timely filed. (T - 2109). An appeal was filed alleging, in part, that the Petitioner's right to the presumption of innocence and to due process was violated when the Petitioner's capital murder trial was conducted in the jail facility. The Fourth Court of Appeals of San Antonio, Texas unanimously held the trial in the jail facility did violate these rights. *Nixon v. State*, 674 S.W.3d 384 (Tex. App. - San Antonio 2023, pet. granted). The Court of Criminal Appeals reversed in a published opinion, with one judge dissenting, and remanded the case back to the court of appeals. *Nixon v. Texas*, No. PD-0556-23, 2024 Tex. Crim. App. LEXIS 949 (Tex. Crim. App., Nov. 20, 2024).

[1]The clerk's record will be referred to as "T and page number" and the supplemental clerk's record as "Tsupp and page number." The court reporter's record will be referred to as "R and volume and page number."

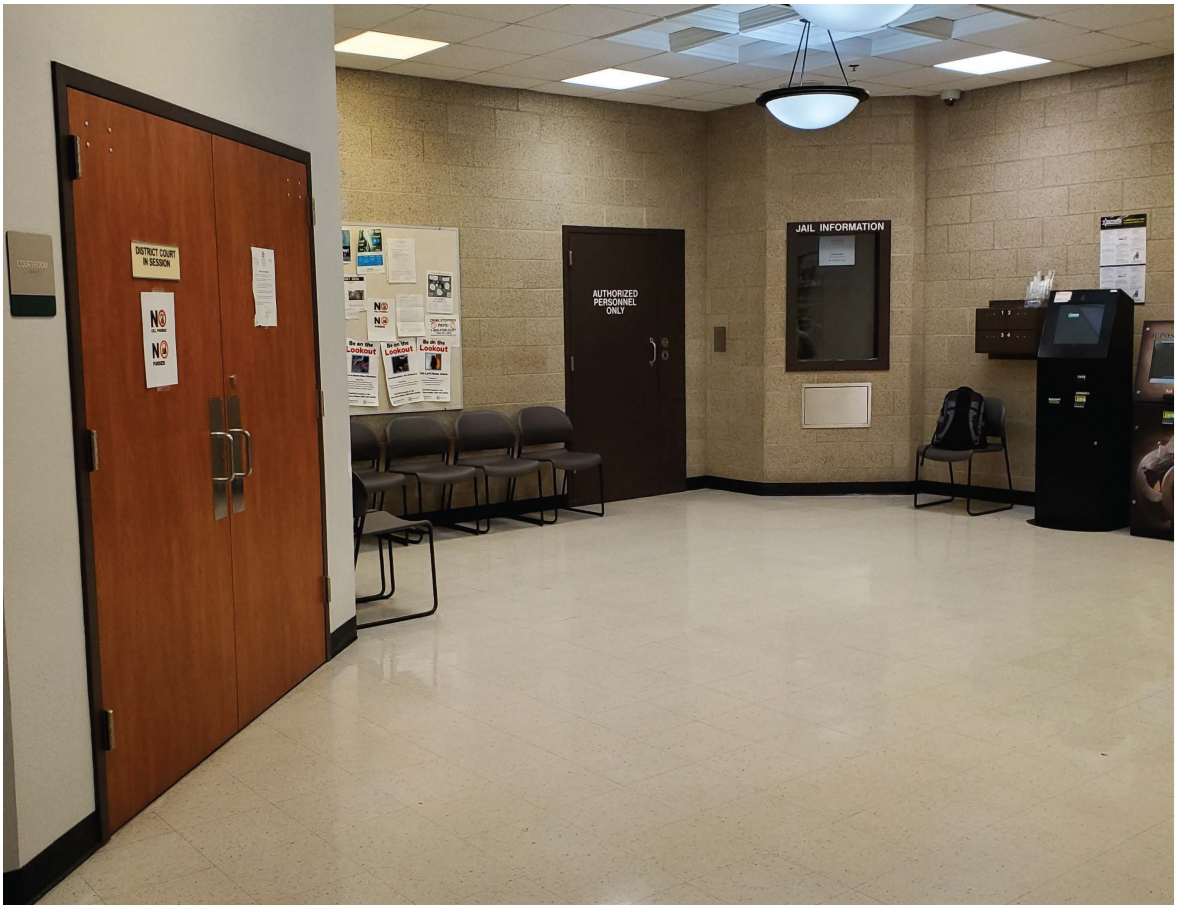
The Petitioner's capital murder trial was held in this facility:

(R - v.20 - Defense Exhibit 1).

Immediately inside the front door to the jail facility were the areas for inmate visitation cells and secured inmate confinement area:

(R - v.20 - Defense Exhibit 3).

By the entrances to the inmate visitation cells area and secured inmate confinement area was the jail courtroom entrance where the Petitioner's capital murder trial was held:



(R - v.20 - Defense Exhibit 6).

The jail entrance (Defense Exhibit 1), immediately inside the front door to the jail (Defense Exhibit 2), and the jail courtroom entrance (Defense Exhibit 3) were "public areas," but when the Petitioner's investigator attempted to take these photos, the investigator was confronted by jail personnel and deputy sheriffs. (R - v.19 - 16).

Medina County, Texas has since built a courthouse annex in the downtown area and no longer holds trials in the jail facility.

The Petitioner filed a motion to hold the Petitioner's trial in a non-jail facility and not in the Medina County Jail. (T - 1211-1218). In this motion, the Petitioner

argued that holding the Petitioner's trial in the Medina County Jail would: (1) present a fundamental challenge to the fairness of jury selection and trial proceedings by undermining the presumption of innocence and substantive and procedural due process rights as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and *Estelle v. Williams*, 425 U.S. 501 (1976), *Holbrook v. Flynn*, 475 U.S. 560 (1986), *Deck v. Missouri*, 544 U.S. 622 (2005), *Moore v. State*, 535 S.W.2d 357 (Tex. Crim. App. 1976), and *Randle v. State*, 826 S.W.2d 943 (Tex. Crim. App. 1992); (2) violate the right to an impartial jury as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution; (3) violate the presumption of innocence by trying a defendant in a jail courtroom, *Oregon v. Cavan*, 98 P.3d 381 (Ore. 2004), *Ohio v. Lane*, 397 N.E.2d 1338 (Ohio 1979), *Vescuso v. Virginia*, 360 N.E.2d 547 (Va. Ct. App. 1987), *Washington v. Jaime*, 233 P.3d 554 (Wa. 2010) *citing Estelle, Holbrook*, both *supra*, and *Shaver v. State*, 280 S.W.2d 740 (Tex. Crim. App. 1955) (Even if only one juror is influenced by proceedings conducted in jail courtroom, such a bias compromises the jury as a whole and deprives a defendant of a fair trial). *Id.*

A pretrial hearing was held on this motion. (R - v.19 - 1). Testimony at the hearing was that the entrance to the jail said "Medina County Jail" with warnings at the entrance unlike the courthouse. *Id.* at 10-13. The courtroom in which the trial was

proposed to be held was inside the Medina County Jail. *Id.* at 10. The jail was located on the outskirts of Hondo, Texas and not near downtown. *Id.* The courthouse, however, was located downtown amid businesses and in an attractive area. *Id.* at 12. The defense investigator took photos of the jail area where the jail courtroom was located and was informed by jail personnel that photographs were forbidden in the jail. *Id.* at 16. The entrance to the jail courtroom was in the same public area as the attorney visitation booths and jail security. *Id.* at 17. Jail personnel testified that the Medina County Jail is a correctional facility. *Id.* at 42-43. The photos of these areas were admitted into evidence. (R - v.20 - Defense Exhibit Nos. 1-19).

The Petitioner argued that Texas Government Code Section 24.012(e) prohibited a jury trial in a correctional facility which includes, by definition, a county jail such as the Medina County Jail. (R - v.19 - 43-44). Given that the Medina County Jail is a correctional facility, the Petitioner argued that 24.012(e) prohibited a jury trial in the Medina County Jail. *Id.* at 44. The Petitioner referred to *Jaime* and the following case law as cited in his motion and argued that jurors in this case, if held in the jail courtroom, would have a difficult time presuming the Petitioner innocent and would believe the Petitioner was dangerous. *Id.* at 45. The trial judge denied the motion. *Id.* at 48. Error was preserved.

REASON FOR GRANTING THE PETITION

The state court of last resort, the Court of Criminal Appeals of Texas, has decided an important question of federal law in a way that conflicts with the decisions of other state courts of last resort. The following establishes that the Court of Criminal Appeals (hereinafter CCA), refused to follow the contrary state supreme court decisions in *Jaime* and *Cavan*. The CCA discussed the conclusion of the lower court of appeals as follows:

> Before analyzing the first question – whether the practice complained of was inherently prejudicial to the defendant's presumption of innocence – the court of appeals examined three cases from other jurisdictions which, it said, had concluded that holding a trial in a "Jailhouse Courtroom" is inherently prejudicial. *See id.* at 391-93 (examining *Jaime*, 168 Wash.2d at 864, 233 P.3d at 557; *State v. Cavan*, 337 Or. 433, 449, 98 P.3d 381, 389 (2004) ("[C]onducting defendant's criminal jury trial in [the Snake River Correctional Institution] violated defendant's . . . guarantee to an impartial jury."); and *State v. Lane*, 60 Ohio St.2d 112, 115, 397 N.E.2d 1338, 1340 (1979) ("By holding a trial within a prison for an offense committed within that same institution, the constitutional right to a fair trial is abridged in three ways: (1) The presumption of innocence which must attach to the criminal defendant is eroded; (2) there is a major interference with the jury's ability to remain impartial; and (3) the right of the defendant to obtain witnesses is chilled.")). It then examined four cases from other jurisdictions which, it said, had concluded that holding a trial in a "Jailhouse Courtroom" was not inherently prejudicial. *See id.* at

> 393-95 (examining *Harper v. State*, 887 So.2d 817, 826-27 (Miss. Ct. App. 2004) ("[T]he trial judge did not abuse his discretion in ordering that the trials of these defendants be moved from the courthouse to the Administrative Building at Parchman."); *State v. Daniels*, 2002 UT 2, 40 P.3d 611, 620 (Utah 2002) ("[W]e conclude that the practice challenged in this case was not inherently prejudicial[.]"); *California v. England*, 83 Cal.App.4th 772, 781, 100 Cal.Rptr.2d 63, 69 (2000) ("There simply is no comparison to be made between shackling a defendant and holding trial on prison grounds in accordance with established standards."); and *Howard v. Virginia*, 6 Va. App. 132, 140, 367 S.E.2d 527, 532, 4 Va. Law Rep. 2273 (1988) ("[W]e conclude that the location of Howard's trial did not impermissibly suggest that he was guilty of the offense for which he was being tried or otherwise operate to inherently prejudice him.")). After examining the arguments made in these cases from other jurisdictions – some approving of, and some disapproving of – trials in what the court of appeals in this case called a "Jailhouse Courtroom[,]" the court of appeals concluded that holding Appellant's trial in the courtroom at issue here was inherently prejudicial to his presumption of innocence. But we do not agree.

Nixon v. Texas, No. PD-0556-23, 2024 Tex. Crim. App. LEXIS 949 (Tex. Crim. App., Nov. 20, 2024).

The CCA, in stretching common sense to a breaking point, concluded that when this trial was held in the Medina County Jail, a juror would not have necessarily concluded that the Petitioner must be guilty or dangerous because this was merely a government building that housed more than one government facility – a jail, a Sheriff's Department, and an auxiliary courtroom. *Id.* The CCA concluded that such

a juror would have merely "been aware of the proximity of the jail and the sheriff's office to the courtroom." *Id.* The CCA stated that it was only "*possible* that a juror might have thought that the proximity of the auxiliary courtroom to the jail could suggest that Appellant was either culpable or dangerous." *Id.* (emphasis in original). The CCA stated it declined to follow *Jaime* and instead held that "holding Appellant's trial in the auxiliary courtroom located in the same building as the Medina County Jail and Sheriff's Department was not inherently prejudicial to Appellant's presumption of his innocence." *Id.*

In his dissent, Judge Walker stated, "This is the Medina County Jail. It boldly declares to all the world – in big letters on the front of the building right above the door – that it is a 'JAIL.'" *Id.*, Walker, J., dissenting. Judge Walker further described the common sense implications on a juror experiencing a trial inside the Medina County Jail as follows:

> It is not a courthouse that happens to have jail facilities inside of it. Nor is it a structure in which a courtroom shares "the same building where the jail and the sheriff's department were located," such that they are all separate facilities. The building does not call itself the "Medina County Government Center," or the "Medina County Criminal Justice Center." It is a jail.
>
> * * *
>
> In contrast, jurors walking into a building called "JAIL" are well aware that they are walking into a jail, a place where trials do not normally take place. They are immediately put

> on notice that something is different because they are not at the usual place – the courthouse.
>
> * * *
>
> In this case, the trial court did not explain to the jury why the trial was being held at the jail, and the trial court gave no instructions to the jury to refrain from drawing the wrong inferences from it. Without any guidance to the jury explaining why the move from the courthouse was warranted, they were placed in an unusual, uncommon experience. It should go without saying that they would have noticed the difference, and they reasonably would have entertained several inferences about why things were different.
>
> * * *
>
> In my view, holding Appellant's trial in the Medina County Jail carried an unacceptable risk to Appellant's presumption of innocence. It was obvious to the jurors that Appellant was being held and not transported to the regular courthouse. The court of appeals was right to conclude that "the various markings reminding the jury that the building at issue here has a primary purpose as a jail created an unacceptable risk that the jury would conclude, before hearing any evidence, that Nixon is too dangerous to transport and must be isolated from society."

Id.

Judge Walker took the majority to task for refusing to follow the *Jaime* and *Cavan* Supreme Courts:

> Unsurprisingly, from their recognition of the effect holding a trial in a jailhouse or prison would have on a juror, both

> Oregon and Washington held that such a practice is inherently prejudicial and erodes a defendant's presumption of innocence. *Cavan*, 98 P.3d at 389; *Jaime*, 233 P.3d at 559; *see also State v. Lane*, 60 Ohio St. 2d 112, 397 N.E.2d 1338, 1340-41 (Ohio 1979) ("The prison environment which is laden with a sense of punishment of the guilty within transmits too great an impression of guilt[.]").
>
> * * *
>
> I believe our peers in Oregon and in Washington got it right, and the court of appeals was right to follow their lead. The majority, however, declines to follow at least *Jaime*, because in the Court's view the Washington Supreme Court had misapplied *Holbrook v. Flynn*, 475 U.S. 560, 106 S. Ct. 1340, 89 L. Ed. 2d 525 (1986). But as the majority explains, when *Flynn* upheld the posting of additional uniformed state troopers in the courtroom, the Supreme Court considered "reason, principle, and common human experience," and believed that a case-by-case approach was appropriate to determine whether *Flynn's* presumption of innocence was undermined. Id. at 569.
>
> * * *
>
> Consequently, the fact that the Washington Supreme Court in *Jaime* found an unacceptable risk of an improper inference does not mean that court misapplied *Flynn*. To the contrary, that court followed the script laid out by *Flynn* in considering a starkly different situation: holding a trial in a jail, rather than the posting of additional law enforcement in Flynn's specific courtroom.

Id.

"The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice." *Estelle v.*

Williams, 425 U.S. 501, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976). "The courtroom in Anglo-American jurisprudence is more than a location with seats for a judge, jury, witnesses, defendant, prosecutor, defense counsel and public observers; the setting that the courtroom provides is itself an important element in the constitutional conception of trial, contributing a dignity essential to 'the integrity of the trial' process." *Estes v. Texas*, 381 U.S. 532, 561, 85 S.Ct. 1628, 14 L.Ed.2d 543 (1965) (Warren, C.J., concurring) (quoting *Craig v. Harney*, 331 U.S. 367, 377, 67 S. Ct. 1249, 91 L. Ed. 1546 (1947)).

"Because the courtroom setting itself is essential to a trial's integrity, we should be wary of a setting that impermissibly influences a jury's decision-making process and jeopardizes the presumption of innocence." *Washington v. Jaime*, 233 P.3d 554 (Wa. 2010). "When a courtroom arrangement is challenged as inherently prejudicial, the question to be answered is whether an unacceptable risk is presented of impermissible factors coming into play." *Id.* citing *Holbrook v. Flynn*, 475 U.S. 560, 570, 106 S.Ct. 1340, 89 L.Ed.2d 525 (1986)). "A courtroom practice might present an unacceptable risk of impermissible factors coming into play because of 'the wider range of inferences that a juror might reasonably draw' from the practice." *Holbrook*, 475 U.S. at 569.

"Holding defendant's murder trial in a jailhouse courtroom violated his right to due process by eroding the presumption of innocence." *Washington v. Jaime,*

supra. Regarding this erosion of the presumption of innocence in jail trials, the *Jaime* court stated:

> "The presumption of innocence, although not articulated in the Constitution, 'is a basic component of a fair trial under our system of criminal justice.'" *State v. Finch*, 137 Wn.2d 792, 844, 975 P.2d 967 (1999) (quoting *Estelle v. Williams*, 425 U.S. 501, 503, 96 S. Ct. 1691, 48 L.Ed.2d 126 (1976)). In order to preserve a defendant's presumption of innocence before a jury, the defendant is "entitled to the physical indicia of innocence which includes the right of the defendant to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man." *Id.* "Measures which single out a defendant as a particularly dangerous or guilty person threaten his or her constitutional right to a fair trial." *Id.* at 845. Such measures threaten a defendant's right to a fair trial because they erode his presumption of innocence; these types of courtroom practices are inherently prejudicial. *See*, e.g., *id*. at 844-45.
>
> ¶5 Thus, the first question we must answer is whether a jailhouse setting is inherently prejudicial and thereby offends due process. We begin with the recognition that "the courtroom in Anglo-American jurisprudence is more than a location with seats for a judge, jury, witnesses, defendant, prosecutor, defense counsel and public observers; the setting that the courtroom provides is itself an important element in the constitutional conception of trial, contributing a dignity essential to 'the integrity of the trial' process." *Estes v. Texas*, 381 U.S. 532, 561, 85 S. Ct. 1628, 14 L. Ed. 2d 543 (1965) (Warren, C.J., concurring) (quoting *Craig v. Harney*, 331 U.S. 367, 377, 67 S. Ct. 1249, 91 L.Ed. 1546 (1947)). Because the courtroom setting itself is essential to a trial's integrity, we should be wary of a setting that impermissibly influences a jury's decision-making process and jeopardizes the presumption of innocence.

> ¶6 "When a courtroom arrangement is challenged as inherently prejudicial, the question to be answered is whether an unacceptable risk is presented of impermissible factors coming into play." *In re Pers. Restraint of Woods*, 154 Wn.2d 400, 417, 114 P.3d 607 (2005) (citing *Holbrook v. Flynn*, 475 U.S. 560, 570, 106 S. Ct. 1340, 89 L.Ed.2d 525 (1986)). A courtroom practice might present an unacceptable risk of impermissible factors coming into play because of "the wider range of inferences that a juror might reasonably draw" from the practice. *Holbrook*, 475 U.S. at 569.

Id.

"'[R]eason, principle, and common human experience' tell us that the average juror does not take for granted a visit to a jail." *Washington v. Jaime, supra*, (quoting *Estelle*, 425 U.S. at 504). "The average juror does not frequent the jailhouse for the very reason that a jailhouse is not meant to be a public space." *Jaime, supra*. "Unlike a courthouse, in which the public is welcome to – and in some instances required to – conduct all manner of business, a jail serves a specific purpose not generally applicable to the public at large." *Id.* "Courthouses are often monuments of public life, adorned with architectural flourishes and historical exhibits that make them inviting to members of the public." *Id.*

"A jail, on the other hand, is singularly utilitarian. Its purpose is to isolate from the public a segment of the population whose actions have been judged grievous

enough to warrant confinement. Jail buildings are typically austere in character, and entrance is subject to heightened security." *Id.* With respect to jails:

> Given the character of a jail, a juror would not take a visit to a jailhouse for granted, nor would he or she be inured to the experience. *See Holbrook*, 475 U.S. at 569. A juror's experience with jail is very likely limited to what our societal discourse tells us of jails: they are high-security places that house individuals who need to be in custody. That the average juror would draw a corresponding inference from that experience is reasonable to surmise.
>
> ¶11 Of course, some jurors' experience with a jail may be more personal but no less negative. What if, for example, one of Jaime's jurors was the victim of domestic violence whose abuser was housed in the jail? Her visit to the jail would not strike her as unremarkable or routine. It takes no great logical leap to conclude that such a juror's heightened awareness of her surroundings could contribute negatively to her view of the defendant.
>
> ¶12 In short, under the analysis of *Holbrook*, holding a trial in a jailhouse courtroom is inherently prejudicial for two reasons. First, the setting is not in a courthouse, a public building whose purpose is to provide a neutral place to conduct the business of the law. Second, the setting that replaces the courthouse has a purpose and function that is decidedly not neutral, routine, or commonplace. Holding a criminal trial in a jailhouse building involves such a probability of prejudice that we must conclude it is "'inherently lacking in due process.'" *Holbrook*, 475 U.S. at 570 (quoting *Estes*, 381 U.S. 542-43).

Id.

In reversing the case for holding the trial in the county jail, the *Jaime* court held:

> We erect courthouses for a reason. They are a stage for public discourse, a neutral forum for the resolution of civil and criminal matters. The unique setting that the courtroom provides "is itself an important element in the constitutional conception of trial, contributing a dignity essential to 'the integrity of the trial' process." *Estes*, 381 U.S. at 561 (Warren, C.J., concurring) (quoting *Craig*, 331 U.S. at 377). The use of a space other than a courthouse for a criminal trial, particularly when that space is a jailhouse, takes a step away from those dignities. We hold that the setting of Jaime's trial infringed upon his right to a fair and impartial trial, and we remand for proceedings consistent with this opinion.

Id., *see also Oregon v. Cavan*, 98 P.3d 381 (Ore. 2004) (holding trial in prison confines infers that defendant was so dangerous that he could not stand trial in the public courthouse which created a trial environment that was incompatible with sustaining impartiality); *Ohio v. Lane*, 397 N.E.2d 1338 (Ohio 1979) (trial court's efforts to encourage the atmosphere of a public trial at the penitentiary were ineffective to overcome the constitutional deficiencies for holding trial at a prison for an offense committed within that same institution).

In the case at bar, the prosecution inquired of the trial judge as to whether jury selection would take place in the Medina County courthouse. (R - v.23 - 4-5). Clearly, the prosecution was unopposed to holding at least part of the Petitioner's trial in the courthouse rather than the Medina County Jail. *Id.* Clearly, the photos demonstrate that the Medina County Jail was an imposing and austere facility unlike the Medina

County courthouse. The average juror in the case at bar would not take for granted a visit to the Medina County Jail for a capital murder trial. These average juror would not frequent the Medina County Jail for the very reason that the jail with its many warnings is not meant to be a public space. Unlike the Medina County courthouse, in which the public was welcome and sometimes required to conduct all manner of business, the Medina County Jail serves a specific purpose not generally applicable to the public at large. In fact, the Petitioner's investigator was confronted by jail personnel when attempting to take photos for this hearing. The Medina County Jail is singularly utilitarian given the photos introduced into evidence. Its purpose is to isolate from the public a segment of the population whose actions have been judged grievous enough to warrant confinement. Based upon the photos, the Medina County Jail is austere in character, and its entrance is subject to heightened security.

Holding the Petitioner's trial in the Medina County Jail courtroom violated the Petitioner's right to the presumption of innocence and certainly resulted in the eroding of the presumption of innocence. Holding the trial in the jail resulted in the Petitioner not having the physical indicia of innocence because the jail trial did not provide the Petitioner with the appearance, dignity, and self-respect of a free and innocent man. The jail trial was inherently prejudicial because it singled out the Petitioner as a particularly dangerous or guilty person and therefore eroded his

presumption of innocence. The jail courtroom setting may have presented an unacceptable risk of impermissible factors coming into play because of the wider range of inferences that a juror might reasonably draw about the Petitioner being tried in the jail courtroom. The setting of the courtroom in the jail failed to contribute a dignity essential to the integrity of the trial process. This court should be wary of the jail setting because such a jail setting impermissibly influenced the jury's decision-making process and jeopardized the Petitioner's presumption of innocence. Because the jail courtroom arrangement was challenged as inherently prejudicial, it is clear that an unacceptable risk was presented of impermissible factors coming into play in the Petitioner's trial. The jail trial violated the Petitioner's right to the presumption of innocence.

The Fourteenth Amendment to the United States Constitution provides, in part, that no State may "deprive any person of life, liberty, or property, without due process of law . . ." The Supreme Court of the United States has made it clear that "the due process requirements in both the Fifth and Fourteenth Amendments and the provisions of the Sixth Amendment require a procedure that will assure a fair trial." *Estes v. Texas*, 381 U.S. 532 (1965). The Court in *Estes* further explained due process by quoting *In re Murchison*, 349 U.S. 133 (1955) and *Tumey v. Ohio*, 273 U.S. 510 (1927) as follows:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the *probability* of unfairness. . . . To perform its high function in the best way 'justice must satisfy the appearance of justice.' *Offutt v. United States*, 348 U.S. 11, 14." At 136. (Emphasis supplied.)
>
> And, as Chief Justice Taft said in *Tumey v. Ohio*, 273 U.S. 510, almost 30 years before:
>
> "the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it on without danger of injustice. Every procedure which would offer a possible temptation to the average man . . . to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." At 532.

Id.

When confronted with the analogous situation of a defendant being forced to wear jail clothes during trial, the Court in *Holbrook v.Flynn, supra*, voiced the following due process concerns:

> To guarantee a defendant's due process rights under ordinary circumstances, our legal system has instead placed primary reliance on the adversary system and the presumption of innocence. When defense counsel vigorously represents his client's interests and the trial judge assiduously works to impress jurors with the need to presume the defendant's innocence, we have trusted that a fair result can be obtained.

> Our faith in the adversary system and in jurors' capacity to adhere to the trial judge's instructions has never been absolute, however. We have recognized that certain practices pose such a threat to the "fairness of the factfinding process" that they must be subjected to "close judicial scrutiny." *Estelle v. Williams*, 425 U.S. 501, 503-504 (1976). Thus, in *Estelle v. Williams*, we noted that where a defendant is forced to wear prison clothes when appearing before the jury, "the constant reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment." *Id.*, at 504-505. Since no "essential state policy" is served by compelling a defendant to dress in this manner, *id*., at 505, this Court went no further and concluded that the practice is unconstitutional.

Id.

The *Holbrook* Court continued its due process analysis by discussing whether or not jurors' claims of how they were or were not affected in such cases should be considered:

> If "a procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process," *Estes v. Texas*, 381 U.S. 532, 542-543 (1965), little stock need be placed in jurors' claims to the contrary. *See Sheppard v. Maxwell*, 384 U.S. 333, 351-352 (1966); *Irvin v. Dowd*, 366 U.S. 717, 728 (1961). Even though a practice may be inherently prejudicial, jurors will not necessarily be fully conscious of the effect it will have on their attitude toward the accused. This will be especially true when jurors are questioned at the very beginning of proceedings; at that point, they can only speculate on how they will feel after being exposed to a practice daily over the course of a long trial. Whenever a

> courtroom arrangement is challenged as inherently prejudicial, therefore, the question must be not whether jurors actually articulated a consciousness of some prejudicial effect, but rather whether "an unacceptable risk is presented of impermissible factors coming into play," *Williams*, 425 U.S., at 505.

Id.

In the case at bar, conducting the Petitioner's trial in the Medina County Jail did not afford the Petitioner a fair trial or a fair jury which violated the Petitioner's right to due process as guaranteed by the Fourteenth Amendment and was inherently prejudicial. First, the setting was not in the Medina County courthouse, a public building whose purpose is to provide a neutral place to conduct the business of the law. Second, the Medina County Jail has a purpose and function that is decidedly not neutral, routine, or commonplace. The holding of the Petitioner's criminal trial in the Medina County Jail involved such a probability of prejudice that this Court should conclude it was inherently lacking in due process. The use of the Medina County Jail courtroom in the jailhouse rather than the Medina County courthouse for the Petitioner's criminal trial, infringed upon the Petitioner's right to a fair and impartial trial.

The Petitioner's trial in the jail was unfair because such a venue results in bias in the trial. Such a due process violation is even more evident in that a trial in the jail

resulted in the *probability* of unfairness which also violates due process. Justice did not satisfy the appearance of justice in the Petitioner's trial under these circumstances. Holding the trial in the jail resulted in a possible temptation to the average juror to forget the burden of proof required to convict the Petitioner, to probably not hold the balance clear and true between the State and the accused, and therefore denied the Petitioner due process of law. The conducting of the trial in jail posed a threat to the fairness of the factfinding process and is subject to close judicial scrutiny because trial in a jail may affect a juror's judgment. Since no essential state policy was served by compelling the Petitioner to be tried in the jail, the practice was unconstitutional and a violation of due process. This Court should resolve the clear dispute on this issue between the CCA and the supreme courts of Washington and Oregon in *Jaime* and *Cavan*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
/s/ Michael C. Gross

Michael C. Gross
Counsel of Record
1524 North Alamo Street
San Antonio, Texas 78215
lawofcmg@gmail.com
(210) 354-1919
(210) 354-1920 Fax

Date: January 17, 2025