

24-6929

ORIGINAL

No. _____

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL JAMES CARSON - PETITIONER

VS.

BOBBY LUMPKIN - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS - FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Michale James Carson

3872 FM 350 South

Livingston, Texas, 77351

QUESTION(S) PRESENTED

- 1.) Did the lower courts erroneously failed to acknowledge and apply the correct laws and facts surrounding Petitioners circumstances during his custodial interrogation pursuant to Thompson v Keohane of this courts ruling ?
- 2.) Did the police violate Petitioners Fourth and Fourteenth Amend. right of illegal search and seizure by illegally detaining Petitioner for interrogation without probable cause under Dunaway v New York ?
- 3.) Did Petitioners Fourth and Fourteenth Amend. right of illegal seizure intrude and contribute to Petitioners Fifth and Fourteenth Amend. right to self incrimination and his illegal arrest pursuant to Dunaway v New York of this courts ruling ?
- 4.) Was Petitioners Fourteenth Amend. right to Due Process violated when the trial court erroneously failed to comply with Tex.Code.Crim.Proc.Art.38.22 § 6 and make its independent findings whether the statement on page 149, lines 5-12 were made under voluntary conditions with the law and facts stating its conclusions pursuant to Morales v Lumpkin and Miller v State?

LIST OF PARTIES

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

RELATED CASES

Arizona v Gant, No.07-542, Supreme Court of the U.S., Judgment entered April 21, 2009.

Berkemer v McCarty, No.83-710, Supreme Court of the U.S., Judgment entered July 2, 1984.

Dunaway v New York, No.78-5066, Supreme Court of the U.S., Judgment entered June 5, 1979.

Miller v State, No.05-82-00944-CR, Court of Appeals of Texas, Fifth District Dallas, Judgment entered January 18, 1984.

Miranda v Arizona, No.759, Supreme Court of the U.S., Judgment entered June 13, 1966.

Morales v Lumpkin, No.7:21-cv-0020, U.S. District Court for the Southern District of Texas, McAllen Division, Judgment entered August 2, 2021.

Pogue v Director, TDCJ-CID, No.3:20-cv-00175-L(BT), U.S. District Court for the Northern District of Texas, Dallas Division, Judgment entered June 15, 2022.

State v Ortiz, No.07-11-00001-CR, Court of Appeals of Texas, Seventh District, Amarillo, Judgment entered July 13, 2011.

State v Pena, No.03-18-00765-CR, Court of Appeals of Texas, Third District, Austin, Judgment entered August 13, 2019.

Thompson v Keohane, No.94-6615, Supreme Court of the U.S., Judgment entered November 29, 1995.

U.S. v Abusnena, No.5:20-cr-00301-M-1, U.S. District Court for the Eastern District of North Carolina, Western Division, Judgment entered March 18, 2021.

U.S. v Garcia, No.78-1671, U.S. Court of Appeals for the Seventh Circuit, Judgment entered August 31, 1979.

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

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

OPINIONS BELOW

For cases from **federal courts**:

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

reported at 2025 U.S. App. LEXIS 223; 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 B to the petition and is

reported at 2024 U.S. Dist. LEXIS 147412; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

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

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 06, 2025.

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: February 19, 2025, and a copy of the order denying rehearing appears at Appendix C.

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 _____. A copy of that decision appears at Appendix _____.

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_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Bill Of Rights - The United States Bill of Rights provides some of a criminal defendants protections against the federal government in a federal criminal case. Protections consist of two types: (1) rights that a defendant can exercise, and (2) prohibitions and requirements of the government towards the defendant. The Due Process clause of the Fourteenth Amendment of the Constitution applies these protections to criminal defendants in cases brought by states.

U.S. Const.Amend.IV - Unreasonable searches and seizures, The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the person or thing to be seized.

U.S. Const.Amend.V - No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

U.S. Const.Amend.XIV - Section 1 - 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 laws.

Texas Code Of Criminal Procedure Article 38.22 § 3 - No oral or sign language statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceedings.

Texas Code Of Criminal Procedure Article 38.22 § 7 - When the issue is raised by the evidence, the trial judge shall appropriately instruct the jury, generally, on the law pertaining to such statement.

Texas Code Of Criminal Procedure Article 38.23 § (a) - No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the state of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accuse on the trial of any criminal case.

Texas Code Of Criminal Procedure Article 38.22 § 6 - See Appendix D due to being lengthy.

Texas Code Of Criminal Procedure Article 38.22 § 2 [¶] See Appendix E due to being lengthy.

STATEMENT OF THE CASE

Petitioner and two other passengers were subject to a lawful traffic stop. After the initial stop, officer Brown did a warrant check and verified the existence of a (non-drug) related warrant "Parole Violation" for the arrest of the backseat passenger Mr. Ingram. Officer Brown lawfully arrested Mr. Ingram for the outstanding warrant, alleging a (non-drug) related offense and conducted a lawful pat down search incident to that arrest of the arrestee's person in which officer Brown discovered a hypodermic syringe found in the arrestee's pant's pocket that he speculated was some type of residue around the cap where it covers the needle that he recognized to be consistent with methamphetamine residue yet the arrestee was never charged with the possession of drug paraphenlia, nor possession with methamphetamine. Furthermore, officer Brown testified that do to the discovery of the syringe, he believed he had probable cause to search the entire vehicle in this case, without reciting any Miranda admonitions or receiving waivers thereto, to Petitioner that is relevant to officer Browns search do to the speculations of the syringe being consistent with illicit drug use. Officer Brown testified that he searched the interior of the vehicle and compartments, containers therein and found nothing as well as in the area within the arrestee's immediate control. Petitioner avers that the lower courts failed to examine and acknowledge the law and facts surrounding these circumstances pursuant to the search incident to arrest doctrine, in its conclusions and in its addendum to its order found in relevant decisions on the same important matter in other appellate courts. Petitioner asserts that after officer Brown had lawfully arrested Mr. Ingram for a (non-drug) related offense "Parole Violation", lawfully searched the arrestee's person, handcuffed and locked in the back of a patrol car, and lawfully seized and searched Petitioner and searched the area within the arrestee's immediate control which would have been the interior of the vehicle and any compartment, containers therein, Petitioner asserts he should have been free to leave at that point in time of the traffic stop because the records show that Petitioner did not articulate any criminal activity on his behalf to justify any seizure beyond that point.

And Moreover, officer Brown testified that after he searched the interior of the vehicle and found nothing, he began searching the trunk, and when he started searching the trunk he had individuals identify which bags belonged to them

and Petitioner identified a backpack as belonging to him again without reciting any Miranda admonitions or any waivers thereto, to Petitioner that is relevant to the search before searching the trunk and all his individualized personal effects, all due to an arrest of a passenger for a (non-drug) related warrant. Petitioner avers that officer Brown exceeded his authority and went beyond the scope permitted of his search and seizure by unconstitutionally searching the trunk without having probable cause and seizing Petitioner longer than necessary pursuant to the search incident to arrest doctrine in which the lower courts erroneously failed to examine and apply the correct law and historical facts surrounding these circumstances which is in conflict of relevant decisions found in other appellate courts as well as in this court on the same important matter. Petitioner asserts that the search must be conducted substantially contemporaneous with the arrest, and be spatially limited to the person of the arrestee, the possessions immediately associated with the arrestee's immediate control. Petitioner asserts that the existence of the syringe on the arrestee did not constitute probable cause to believe additional evidence of the offense of arrest (Parole Violation) would be found in the trunk. Accordingly, there was not probable cause to believe the trunk contained evidence relevant to the offense of arrest. Petitioner asserts that the search of the trunk pursuant to the search incident to arrest doctrine was not objectively and legally authorized by the dictates found in other relevant decisions found in this court and other appellate courts on the same matter. Petitioner avers that if the lower courts would have examined and acknowledged the law and facts surrounding these circumstances, the courts would have revealed that the seizure of Petitioner for custodial interrogation intruded on the interest protected by Petitioner's Fourth and Fourteenth Amend. right of the U.S. Constitution and that officer Brown violated Petitioner's constitutional rights when without probable cause, officer Brown seized Petitioner for the search of the trunk and Petitioner's individualized personal effects found in the trunk in which contributed to the questioning, and interrogating of Petitioner in which officer Brown testified that Petitioner was being questioned and interrogated restricting his freedom of movement to the degree associated with this formal arrest, he was not free to go pursuant to his own testimony in which all these surrounding circumstances intruded and contributed to the tainted exploitation of Petitioner's confession in which violated his Forth, Fifth, and Fourteenth Amend. right of an illegal seizure and self incrimination.

Petitioner asserts that he was admittedly seized without probable cause in the hope that something might turn up during officer Browns fishing expedition all due to the syringe. After the illegal seizure of Petitioner, Officer Brown illegally searched the trunk in which Petitioner confessed that the coke bottle found in the backpack contained G.H.B. and that the backpack belonged to him. after the intervening circumstances of the unconstitutional flagrancy misconduct of officer Browns search and seizure of Petitioner and his personal effects. Petitioner avers that the confession was obtained through exploitation of an illegal search and seizure in which contributed to Petitioners self incriminating statements and his illegal arrest and Petitioner asserts that the lower courts are erroneously failing to examine and acknowledge all these surrounding circumstance concerning Petitioners incriminating statements.

Furthermore, Petitioner asserts that the lower courts erroneously failed to examine and acknowledge the surrounding circumstances of Petitioners claim during his trial concerning the trial courts Miranda rights ruling on two sets of Petitioners protected incriminating statements when the trial court abused its discretion by only addressing one set of those protected and not the other violating Petitioners Due Process rights. Petitioners counsel took officer Brown on a voir dire examination after the second set of incriminating statements was exposed to the jury. Officer Brown testified that Petitioner was being questioned, being interrogated and was not free to go. Counsel then asked the court thathyany statements between Petitioner to the arresting officer be precluded under Miranda. The trial court excused the jury and had an off-the-record discussion concerning this Miranda violation ruling but the trial court abused its discretion by not adequately resolving all related issue related to the Miranda violation ruling on Petitioners incriminating statements when after the Miranda ruling the trial court only ordered the prosecutor to withdraw one set of Petitioners protected statements and not the other. Petitioner asserts that pursuant to the statutory requirements found in Tex.Code.Crim.Proc.Art.38.22 § 6 after an objection where a question is raised as to the voluntariness of a statement of an accused, the court must make an independent finding in the absence of the jury as to whether the statement was made under voluntary conditions and enter an order stating its conclusions with the specific findings of facts upon which the conclusions was based. Petitioner asserts that the records are void of such independent findings of whether Petitioners incriminating statements were made under voluntary conditions violating his Due Process rights. Petitioner asserts

that after the Miranda ruling there involved a mixed question of law and facts concerning Petitioners protected statements due to the fact that the trial court judge sustained one objection to statements protected under Miranda then there right after overruled an objection of the same occurrence of protected statements in front of the jury. Petitioner asserts that this neglect of art. 38.22 § 6 was in fact an issue due to the fact there was no entered order stating its conclusions of the Miranda ruling to help resolve such dispute in front of the jury which prejudice Petitioner of a fully fair trial. The voluntariness of the confession was sufficiently raised by Petitioners objection to require a hearing outside the presence of the jury in compliance with art.38. 22 § 6 but the objection was overruled by the trial court and then allowed the officer to testify that Petitioner advised him that the backpack belonged to him in the trunk. Petitioner asserts that the trial courts failure to comply with the requirements of article 38.22 and enter an order stating its conclusions of what statements were made under voluntarily conditions and what were not made under voluntarily conditions violated Petitioners Due Process rights under the Fourteenth Amend. of the U.S. Constitution in which this neglect prejudice Petitioner of a fair trial by neglecting Petitioner the entitlement to present any evidence on the issue of the voluntariness of the statement prior to the courts final ruling and an order stating its findings. The statutory provisions at issue prescribed a written order after the trial judge has already determined that a statement was made voluntarily and is admissible. Petitioner asserts that the lower courts erroneously failed to acknowledge these surrounding circumstances of Petitioners trial concerning the trial courts Miranda ruling on the two sets of Petitioners protected statements when the trial court abused its discretion by only addressing one set of Petitioners protected statements and not the other in which was in conflict with other decisions on the same important matter of other appellate courts.

REASON FOR GRANTING THE PETITION

Petitioner challenges the U.S. Court Of Appeals, Fifth Circuit's opinion and denial on the 6th day of January, 2025 of Petitioners motion seeking a certificate of appealability, No. 24-10854 due to the final judgment from the U.S. Dist. Court, Northern Dist. of Texas, Fort Worth Division on the 19th day of August, 2024, No. 4:24-cv-186-0 for his possession conviction on the grounds that the presumption of correctness, 28 USCS § 2254 (d) precluded federal review of his Miranda claim where the state court had determined he was not in custody for the sake of Miranda at the time of his confession and respectfully ask this court to review the lower courts judgment concerning Petitioners constitutional rights under his Fifth and Fourteenth Amend. of the Constitution. Petitioner asserts that the U.S. Court Of Appeals, Fifth Circuit as well as the U.S. Dist. Court has entered a decision that is contrary and in conflict with the decisions of another U.S. Court Of Appeals and U.S. Dist. Court on the same important matter, and has decided an important federal question in a way that conflicts with relevant decisions of this court. Petitioner has shown a substantial showing of the denial of his constitutional rights under 28 USCS § 2253 (c)(2), § 2254 (d)(1) and (e)(1) but the lower courts are erroneously neglecting to resolve this mixed question of law and facts that surrounds Petitioners custodial interrogation and are only adopting the States notion. Petitioner will demonstrate and show the following conflict of his constitutional rights.

Petitioner asserts that the lower courts erroneously decided issues related to Miranda in which requires certain warnings to be given to safeguard the uncounseled individuals privilege against self incrimination under the federal constitutions Fifth and Fourteenth Amend. Miranda v Arizona, 384 U.S. 436 (Supreme Court, No.759, 1966) which are appropriately considered on Federal Corpus review. Thompson v Keohane, 516 U.S. 99 (Supreme Court, No.94-6615, 1995) On Certi-

orari, the Supreme Court reversed, ruling that the presumption of correctness did not apply to a custody determination because that issue was not a question of fact, but was a mixed question of law and facts requiring an independent review by the Federal Court. Although the historical fact determination were factual and entitled to the § 2254 (d) presumption, the ultimate objective inquiry of whether there was a formal arrest or restrain of movement similar to arrest was a legal matter for independent Federal determination. Petitioner asserts that the lower courts erroneously failed to acknowledge and apply the correct rules, laws, statutes, and case logs to Petitioners surrounding circumstances of his custodial interrogation determination by neglecting to acknowledge this mixed question of law and facts surrounding the interrogation, questions included extending beyond the determination of what actually really happened. Basic, Primary and Historical facts are the factual issues to which the statutory presumption of correctness dominately relates to, in which it's the national importance of having the Supreme Court decide the question involved. Petitioner avers that there was a formal arrest, which in fact this formal arrest curtailed a restraint of movement to the degree associated with this formal arrest in which this restraint of movement tainted Petitioners confession in which had been obtained by exploitation of an illegal seizure in which contributed to Petitioners incriminating statements and his illegal arrest, violating Petitioners Bill of Rights under the Fourteenth Amend. of Due Process pursuant to Texas Code of Criminal Procedures Article 38.22 § 2, § 3(a), and Article 38.23. Petitioner has argued this in his post conviction remedies but all the lower courts are erroneously neglecting to examine these surrounding facts and law of this formal arrest and the importance of this federal review is not only for Petitioner but to others similarly situated. These are the following circumstances that surrounded Petitioners custodial interrogation.

Petitioner and two other passengers were subject to a lawful traffic stop violation on the 16th day of January, 2017. Officer Brown (arresting officer) testified that the backseat passenger (Mr. Ingram) advised him that he had a parole violation warrant, see (Transcripts V 2, Pg.144, lines 16-17) After the initial stop, officer Brown did a warrant check and verified the existence of a (non-drug) related warrant "parole violation" for the arrest of Mr. Ingram. Officer Brown lawfully arrested Mr. Ingram for the outstanding warrant, alleging a (non-drug) related offense and conducted a lawful pat down search incident to the arrest of the arrestee's person. in which officer Brown discovered a hypodermic syringe found in the arrestee's pants pocket that he speculated was some type of residue around the cap where it covers the needle that he recognized to be consistent with methamphetamine residue. see (Transcripts V 2, Pg.147, lines 1-25) Officer Brown testified that after the verified parole warrant, after the search incident to that arrest, the arrestee was handcuffed and taken into custody. see (Transcripts V 2, Pg.145, lines 8-12) Officer Brown lawfully seized the syringe that he speculated is associated with illicit drug use from the arrestee's pocket, yet the arrestee was never charged with the possession of drug paraphenalia, nor possession with methamphetamine. see (Transcripts V 2, Pg.204, lines 18-25 and Pg.205, lines 1-17) Furthermore, officer Brown testified that do to the discovery of the syringe, he believed that he had probable cause to search the entire vehicle in this case, see (Transcript V 2, Pg.148, lines 7-10) without reciting any Miranda admonitions or receiving waivers thereto, to Petitioner or any other passengers that are relevant to officer Browns search do to the syringe being consistent with methamphetamine drug use in violation of Petitioners Due Process rights under the Fifth and Fourteenth Amend. pursuant to Petitioners Fifth Amend. right and the statutory warnings set out in article 38.22 of the Tex.Code.Crim.Proc. to the safeguard of self incrimination. Miran-

da v Arizona, 384 US 436, see also State v Pena, 581 S.W.3d at 472-76 (3rd. Dist.Court.App.,No.03-18-00765-CR, 2019) " Statements suppressed do to questioning without the safeguard to self incrimination after officer found a glass pipe in defendants pocket." Furthermore, officer Brown testified that in preparation for the search of the vehicle, he asked all passengers what in the vehicle belong to who before he started searching it, see (Transcripts V 2,Pg.148, lines 12-23) again without any Miranda admonitions or waivers thereto. Officer Brown testified that he searched the interior of the vehicle and found nothing. see (Transcripts V 2,Pg.149, lines 1-2) Petitioner avers that if the lower courts would have examined the facts and law surrounding these circumstances, the courts would have revealed that pursuant to the "search-incident-to-arrest" doctrine, in its conclusions and in its addendum to its order under U.S. v Abusnena, 2021 US Dist. Lexis 51605 at 20 (U.S.,Dist.Court.,Eastern Dist.,No.5:20-cr-00301-M-1, 2021) " stating that a search of a cars "trunk" incident to arrest is [barred] by Arizona v Gant., evidence suppressed in trunk." the courts would have realized that after officer Brown had lawfully arrested Mr.Ingram for a (non-drug) related offense "parole violation", lawfully searched the arrestee's person, handcuffed and locked in the back of a patrolecar, and lawfully seized Petitioner and searched the area within the arrestee's immediate control, " which would have been the interior of the vehicle and any compartments, containers therein.", as well as Petitioners persons, Petitioner should have been free to leave at this point in time of the traffic stop because the records show that Petitioner did not articulate any criminal activity on his behalf to justify any seizure beyond that point. The lower courts would have revealed that Petitioner was legally in custody, deprived of his freedom of movement to the degree associated with a formal arrest at this point in time, which is in conflict with the decision in U.S v Abusnena, 2021 US Dist. Lexis 51605 at 20. The Supreme

Court has long ago held that persons temporarily detained pursuant to ordinary traffic stops are not in custody for Miranda purposes, Berkemer v McCarty, 468 US 420, (Supreme Court, No.83-710, 1984) but at the same time, the court made clear that a [motorist] who has been detained pursuant to a traffic stop, but whose freedom of action there after is curtailed to the degree associated with a formal arrest is entitled to the protections prescribed by Miranda. see Ortiz v State, 346 S.W.3d at 132, (7th.Dist.Court.App., No.07-11-00001-CR, 2011) Petitioner avers that officer Brown should have advised Petitioner of his Miranda safeguard to self incrimination under the Fifth and Fourteenth Amend. before the seizure of Petitioner went beyond that scope of going into a locked compartment "trunk" without consent in which officer Brown testified that Petitioner was being questioned, being interrogated, and was not free to go. see (Transcripts V 2,Pg.151, lines 3-12)

And Moreover, officer Brown testified that after he searched the interior of the vehicle and found nothing, he began searching the trunk, and when he started searching the trunk he had individuals identify which bags belonged to them and Petitioner identified a bag as belonging to him, see (Transcripts V 2,Pg.149, lines 5-12) again without reciting any Miranda admonitions or any waivers from any passengers that are relevant to the search before searchin the trunk and all individualized personal effects, all due to an arrest of a passenger for a (non-drug) related warrant. Petitioner avers that at this point in time when officer Brown opens the trunk and startsssearching individualized effects, questioning, and interrogating Petitioner which in fact was in violation of Petitioners Fourth Fifth, and Fourteenth Amend. right of the U.S. Constitution without having probable cause or consent to do such, Petitioner asserts that there are multiple issues at this point in time where the lower courts erroneously failed to ackn^W owledge the law and facts surrounding these circumstances of officer Brown ill-

egally going into a locked compartment "trunk" without having probable cause, a warrant, or consent which is in conflict and contrary to U.S. v. Abusnena, quoting Arizona v. Gant, 556 US 332 (Supreme Court, No.07-542,2009)

First, Petitioner avers that officer Brown exceeded his authority and went beyond the scope permitted of his search and seizure by unlawfully and unconstitutionally searching the trunk without having probable cause and seizing Petitioner longer than necessary pursuant to the search-incident-to-arrest doctrine in which the lower courts erroneously failed to examine and apply the law and historical facts surrounding these circumstances which is in conflict of its decision decided with relevant decisions of this court pursuant to Arizona v. Gant, (No.07-542) Petitioner asserts that the search must be conducted substantially contemporaneous with the arrest, and be spatially limited to the person of the arrestee, the possessions immediately associated with the arrestee's immediate control. see U.S. v. Garcia, 605 F.2d at 353 (7th.Cir., No.78-1671,1979) Petitioner asserts that the existence of the syringe on the arrestee did not constitute probable cause to believe additional evidence of the offense of arrest (parole violation) would be found in the trunk. see State v. Pena, 581 S.W. 3d at 473. Accordingly, there was not probable cause to believe the trunk contained evidence, if at all, relevant to the offense other than the offense of arrest, and a broader scope of a warrantless search, search of the trunk pursuant to the search-incident-to-arrest doctrine was also not objectively and legally authorized by the dictates found in U.S. v. Abusnena as cited in Arizona v. Gant. Petitioner avers that if the lower courts would have examined the law and facts surrounding these circumstances, the courts would have revealed that the seizure of Petitioner for custodial interrogation intruded on the interest protected by Petitioner's Fourth and Fourteenth Amend. right of the U.S. Constitution and that officer Brown violated Petitioner's constitutional rights when with

out probable cause, officer Brown seized Petitioner for the search of the trunk and Petitioners individualized personal effects found in the trunk in which contributed to the questioning and interrogating of Petitioner in which officer Brown did in fact testify that Petitioner was being questioned and interrogated restricting his freedom of movement to the degree associated with this formal arrest, he was not free to go pursuant to his testimony on pg.151, lines 3-12 of trial transcripts in which all these surrounding circumstances contributed to the tainted confession of Petitioners Fifth Amend. right which is contrary and in conflict with relevant decisions found in this court pursuant to Dunaway v New York, 442 US 200 (Supreme Court, No.78-5066, 1979) " stating that the court reversed the lower courts judgment that convicted defendant of murder because the police violated the Fourth and Fourteenth Amend. by illegally detaining petitioner for interrogation without probable cause." Whenever a police officer accosts on individuals and restrains his freedom to walk away, he has seized that person. Furthermore, during this unlawfull and unconstitutional seizure of Petitioner while officer Brown illegally searched the trunk, officer Brown was questioning and interrogating Petitioner as to what bags belonged to him, upon searching the bag he found a coke bottle that contained a liquid and questioned Petitioner as to what was in the bottle. see (Transcripts V 2, Pg.149, lines 5-12 and Pg.150, lines 18-21) Petitioner asserts that both of these conversations (incriminating statements) are from the same conversation after he opened the trunk, they are not divided from, differential, nor compartmentalized but in relation to the same during Petitioners illegal search and seizure. Petitioner avers that regardless of these incriminating statements, whether they were voluntarily or involuntarily made, they were the casual connection between the illegal search and seizure and the confession, and the confession was obtained by exploitation of an illegal search and seizure in which contributed to the

exploitation of an illegal arrest. Factors to be considered in determining whether the confession was obtained by exploitation of an illegal search and seizure, is the temporal proximity of the search and seizure and the confession, the presence of intervening circumstances, and particularly, the purpose and flagrancy of the officers misconduct. see Dunaway v New York, 442 US at 218. Petitioner asserts that he was admittedly seized without probable cause in the hope that something might turn up during officer Browns fishing expedition all due to the syringe. After the illegal seizure of Petitioner, officer Brown illegally searched the trunk in which Petitioner confessed that the coke bottle contained G.H.B. and that the backpack belonged to him after the intervening circumstances of the unlawfull and unconstitutional flagrancy misconduct of officer Browns search and seizure of Petitioners and his personal effects, violating Petitioners expectation to privacy in the space invaded. Petitioner avers that the confession has been obtained through exploitation of an illegal search and seizure in which contributed to Petitioners illegal arrest. Petitioner avers that not only was his confession in violation of his Fifth Amend. right of the U.S. Constitution, the evidence found in the trunk should also be suppressed as the fruit of an illegal search in violation of the statutory requirements found in Tex.Code.Crim.Proc.Art.38.23(a). If officer Brown would not have violated Petitioners Fourth and Fourteenth Amend. right of the U.S. Constitution, Petitioner avers that his Fifth and Fourteenth Amend. right of the U.S. Constitution would not have occurred nor violated. Petitioner asserts that to admit Petitioners confession and to admit the evidence found in the trunk in such case would allow law enforcement officers to violate the Fourth Amend. of the Constitution with impunity, safe in the knowledge that they could wash their hands in the "Procedural Safeguard" of the Fifth Amend. right to self incrimination in which would be in conflict and contrary to the decision found in this court and to

others in similarly situated pursuant to Dunaway v New York, 442 US at 219. Petitioner avers that the lower courts erroneously failed to examine and acknowledge the records, the statutes, the laws, and the historical facts that surrounded Petitioner's circumstances due to Petitioner's Miranda rights ruling which clearly and concisely was obviously contributed and intruded on Petitioner's Fourth Amend. and the "in custody" determination which in fact was in conflict with other courts in their decisions on the same important matter namely State v Pena U.S v Abusnena, Ortiz v State, U.S. v Garcia, as well as in conflict with related decisions in this court on the same important matter namely, Miranda v Arizona, Thompson v Keohane, Berkemer v McCarty, Arizona v Gant and Dunaway v New York. The lower courts erroneously failed to apply the adequate law and facts to Petitioner's surrounding circumstances as explained herein.

Second, Petitioner asserts that the lower courts erroneously failed to acknowledge the surrounding circumstances of Petitioner's claim during his trial concerning the trial courts adjudicated Miranda ruling on [two] sets of protected incriminating statements when the trial court abused its discretion by only addressing one set of the protected statements and not the other, violating Petitioner's Due Process rights under the Fourteenth Amend. of the U.S. Constitution Petitioner's Bill Of Rights supporting the Fourteenth Amend. of defendants in cases brought by States and the statutory requirements supported and found in the Texas Code Of Criminal Procedures Article 38.22 § 6, and § 7 and in Article 38.23(a). Petitioner will show the following circumstances surrounding his Miranda violation ruling and his two sets of protected incriminating statements that are in conflict with the decisions of another U.S. Court Of Appeals on the same important matter and has decided an important federal question in a way that conflicts with relevant decisions of this court and has so far departed from the accepted and usual course of judicial proceedings.

Petitioner ask this court to examine and realize that there are [two] sets of incriminating statements exposed to the jury during officer Brows testimony. see (Transcripts V 2,Pg.149, lines 5-12, and Pg.150, lines 18-21) After the second set of Petitioners incriminating statements on pg.150, lines 18-21, counsel made an objection to the trial courts and asked the court to take officer Brown on a voir dire. During this voir dire examination of officer Brown, he testified that he was questioning, interrogating, and that Petitioner was not free to go. Counsel then asked the trial court that [any] statements made by the defendant to the officer be precluded under Miranda. see (Transcripts V 2, Pg.151, lines 3-12) There was an off-the-record discussion concerning the Miranda ruling (which is [not] part of the records) which was in violation of Petitioners Due Process rights because Petitioners protected statements were not adequately resolved nor addressed outside the presence of the jury to the court on whether or not the first set of Petitioners incriminating statements were under voluntarily conditions on pg.149, lines 5-12 with the courts order stating its conclusions as to whether or not the statement was voluntarily made, along with the specific findings of facts upon which the conclusions was based, which order shall be filed among the papers of the cause. as well as the second set of Petitioners incriminating statements found on pg.150, lines 18-21 with the courts order stating its conclusions as to whether or not the statement was voluntarily made, along with the specific findings of facts upon which the conclusions was based pursuant to Tex.Code.Crim.Proc.Art. 38.22 § 6 and § 7 and art. 38.23(a) in which is in conflict with Morales v Lumpkin, 2021 U.S.Dist.Lexis 255774 at 37-39 (U.S.Dist.Court for the Southern Dist. of Tex, McAllen Division No.7:21-cv-0020, 2021) on the same important matter. Petitioner avers that the conversation between Petitioner to officer Brown on pg.149, lines 5-12 and on pg.150, lines 18-21 are from the same conversation after officer Brown opened

the trunk. They are not divided from, differential, nor compartmentalized but in relation to the same. The trial court abused its discretion, violating Petitioners Due Process rights by erroneously neglecting to resolve related issues to the Miranda ruling when it only addressed the second set of Petitioners protected incriminating statements on pg.150, lines 18-21 and not the first set of protected statements on pg.149, lines 5-12. see (Transcripts V 2, Pg.151, lines 20-22 and Pg.152, lines 2-5) The lower courts are only adopting the States notion instead of resolving the art.38.22 § 6 and art.38.23(a) that Petitioner has repeatedly addressed in all his post conviction remedies and with the lower courts erroneously neglecting to properly address all related issues to the Miranda ruling calls for this courts supervisory power due to that the lower courts has so far departed from the accepted and usual course of judicial proceedings and has decided an issue in conflict with another decision in Morales v Lumpkin.

And Moreover, Petitioner asserts that the trial courts failure to not address the first set of Petitioners protected statements on pg.149, lines 5-12 pursuant to art.38.22 § 6 and art.38.23(a) allowed the prosecutor to mislead and confuse the Miranda ruling to the courts and jury in which prejudice Petitioner of a fully fair trial. If this first set of Petitioners protected statements on pg.149, lines 5-12 were adequately addressed and resolved, there would have been no confusion concerning Petitioners protected statements in front of the jury, see (Transcripts V 2, Pg.153, lines 18-25 and Pg.154, lines 1-11) in which Petitioner will show the following confusion of such neglect pursuant to art. 38.22 § 6 and art.38.23(a).

After the Miranda ruling there involved a mixed question of law and facts due to the Miranda ruling because if this court would examine and realize that in one issue during trial, counsel objected to a question asked by the prosecution concerning a protected statement ruling under the previous ruling of the

Miranda violation in which the question should not be allowed to be asked. see (Transcripts V 2,Pg.153, lines 18-22) Petitioner also ask this court to realize the comment made by the prosecutor on pg.153, lines 23-25 concerning the off-the-record discussion on the Miranda rulihg on what was under voluntarily cond-itions. Petitioner asserts that this neglect of art.38.22 § 6 and § 7 as well as art.38.23(a) was in fact an issue due to the fact there was no entered order stating its conclusions of the Miranda ruling to help resolve such dispute in front of the jury which prejudice Petitioner. Furthermore, the trial court [su-stained] this objection and again the prosecutor asked the same question on the same occurrence of Miranda protected statements and again counsel objected due to protected statements under previous ruling can not be asked and the trial court [overruled] this objection, contradicting his own Miranda ruling in which confusing the jury in the process because the jury has no clue nor idea of such Fifth Amend. violation performed by officer Brown which also prejudice Petition-er. see (Transcripts V 2,Pg.153, lines 18-25 and Pg.154, lines 1-18) Again Pe-titioner asserts that this neglect of art.38.22 § 6 and § 7 as well as art.38. 23(a) was in fact another issue clear and concisely in front of the jury due to the fact there was no entered order stating its conclusions of the Miranda rul-ing to help resolve such dispute in front of the jury or have such dispute sub-mitted to the jury in which shall be instructed that unless the jury believes beyond a reasonable doubt that the statement was voluntarily made, the jury sha-ll not consider such statement for any purpose nor any evidence obtained as a result thereof.pursuant to art.38.22 § 6 and § 7 in which when the issue is ra-ised by the evidence, the trial judge shall appropriately instruct the jury on the law pertaining to such statement. Petitioner avers that the records show that there was no jury instruct on such dispute, nor was there any opportunity for the jury to decide if such statement was made voluntarily beyond a reasona-

Morales v Lumpkin, 2021 US Dist. Lexis 255774 at 38. Petitioner asserts that he shall have the opportunity of rebutting the presumption of correctness by clear and convincing evidence pursuant to § 2254 (e)(1),(2)(B) as well as having the opportunity to object and question the trial courts ruling on such statement on pg.149, lines 5-12 as outlined and argued in this claim due to the Fourth Amend. violation that intruded and contributed to Petitioners Fifth Amend. violation.

In Texas Law, there are three types of jury instructions that relate to the taking of confessions: (1) a "general" article 38.22 § 6 voluntariness instruction; (2) a "general" article 38.22 § 7 warning instruction (involving warning given under § 2 and § 3; and (3) a "specific" article 38.23(a) exclusionary rule instruction. Tex.Code.Crim.Proc.Art.38.23(a) a trial court has a duty to give an article 38.23 voluntariness instructions when three requirements are met; (1) evidence heard by the jury raises an issue of facts; (2) the evidence on that fact is affirmatively contested, and (3) the contested factual issue is material to the lawfulness of the challenged conduct in obtaining the statement claimed to be involuntary. see Pogue v Dir., Tex. Dep't. of Crim. Just.-Corr. Insts. Div, 2022 US Dist. Lexis 251659 (U.S. Dist. Court for the Northern Dist. of Texas, Dallas Division, No.3:20-cv-00175-L(BT), 2022)

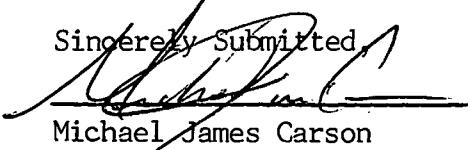
Petitioner asserts that the lower courts erroneously failed to acknowledge these surrounding circumstances of Petitioners trial concerning the trial court Miranda ruling on the two sets of Petitioners protected statements when the trial court abused its discretion by only addressing one set of Petitioners protected statements and not the other in which was in conflict with other decisions on the same important matter pursuant to Morales v Lumpkin, Miller v State, Miranda v Arizona as well as Tex.Code.Crim.Proc.Art.38.22 § 2, §3, § 6, § 7 and art.38.23(a). Petitioner also asserts that pursuant to his issue raised herein on the conflict of the decisions on the same matter found in U.S. v Abusnena

and in State v Pena, Petitioner asserts that these two case logs had already proved beyond a reasonable doubt that Petitioners incriminating statements were protected under his Fourth, Fifth, and Fourteenth Amend. right of the U.S. Constitution and ask this court to consider such violations in determining Petitioners claim on Article 38.22. Respectfully

PRAYER

Petitioner prays that this court considers Petitioners Writ Of Certiorari and correct the lower courts judgment of the denial of his Certificate of Appealability and correct the U.S. District Courts judgment due to the fact that Petitioners has shown a substantial showing of his constitutional rights violation and has shown a substantial showing of the conflict of the lower courts decision in other appellate courts as well as in this court on the same important matters herein. Petitioner ask this court to consider his Fourth Amend. violation claim that intruded and contributed to Petitioners Fifth Amend. violation to self incrimination which lead to his illegal arrest. Petitioner ask this court to abate the appeal and order the trial court to make the findings of facts as required by art.38.22 § 6 of Petitioners statements and allow Petitioner his due process rights to rebutt the presumption of correctness by presenting evidence on the issue of any voluntariness of any statements prior to the courts final ruling and order. Respectfully

Sincerely Submitted


Michael James Carson

TDCJ # 02250040

Polunsky Unit

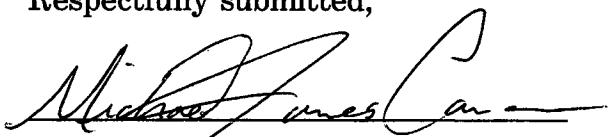
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Livingston, Tx 77351

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

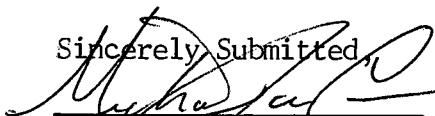
A handwritten signature in black ink, appearing to read "Michael J. Jones, Esq." The signature is fluid and cursive, with "Michael J. Jones" on the top line and "Esq." on the bottom line.

Date: March 26, 2025

UNSWORN DECLARATION

I Michael James Carson, Petitioner in this Petition For Writ Of Certiorari states the following under penalty of perjury: I am prisoner No. 02250040 and I am currently incarcerated at the Polunsky Unit, in Livingston, Tx. I am duly qualified and authorized in all respect to make this declaration. I have prepared and read the contents in the Writ Of Certiorari and declare that have personal knowledge of the facts contained therein, and said are true and correct pursuant to 28 U.S.C. § 1746.

Executed on the 26th day of March, 2025


Sincerely Submitted,

Michael James Carson
TDCJ # 02250040
Polunsky Unit
3872 FM 350 South
Livingston, Tx 77351