

No _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

RICKY BARNETT-PETITIONER

VS.

THE STATE OF TEXAS-RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

**UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

MR. RICKY BARNETT

01541732-BETO

1391 fm 3328

TENNESSEE COLONY, TEXAS, 75880.

PHONE NUMBER: _____

QUESTION(S) PRESENTED

Q. WHETHER A FEDERAL EVIDENTIARY HEARING IS REQUIRED ON CLAIM OF ACTUAL INNOCENCE UNDER THE FACTS ALLEGED ?

Q. WHETHER PETITIONER'S CLAIM OF ACTUAL INNOCENCE IS BARRED FROM FEDERAL HABEAS CORPUS REVIEW WITHOUT AN EVIDENTIARY HEARING ?

Q. WHETHER THE STATE COURT APPLIED THE CORRECT STANDARD OF REVIEW UNDER CLEARLY ESTABLISHED SUPREME COURT DECISIONS SUPPORTING CLAIMS OF ACTUAL INNOCENCE ON FALSE, COERCED, INVOLUNTARY CONFESSIONS TO SECURE A STATE COURT CONVICTION AND WRONGFUL IMPRISONMENT ?

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT.....	5,6
CONCLUSION.....	7

INDEX TO APPENDICES

- APPENDIX A** Barnett V. Lorie Davis, TDCJ-Director, No. 16-41193 Oct. 10,2017,
- APPENDIX B** Barnett V. Director-TDCJ-CID, No. 4:12-cv-167 (E.D. Sherman Divi.)
- APPENDIX C** Barnett V. State of Texas, No. 06-09-00089-CR (Court of Appeals, Sixth Appellate District of Texas at Texarkana [On appeal from the 8th judicial District Court Delta County, Texas Trial Court No. 6884]

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
-------	-------------

ARIZONA V. FULMINANTE, 499 U.S. 279, 111 S. Ct. 1246 (March 26, 1991).....	6
ATWATER V. CITY OF LAGO VISTA, 121 S. Ct. 1536 (April 24, 2001).....	6
COUNTY OF RIVERSIDE V. MCLAUGHLIN, 111 S. Ct. 1661 (May 13, 1991).....	6
MACHIBRODA V. U.S., 368 U. S. 487, 82 S. Ct. 510 (February 19, 1962).....	6
MCQUIGGIN V. PERKINS, 133 S. Ct. 1924, 185 L.Ed. 2d. 1019 (May 28, 2013).....	6
POWELL V. NEVADA, 511 U. S. 79, 114 S. Ct. 1280 (March 30, 1994).....	6
SCHLUP V. DELO, 115 S. Ct. 851 (January 23, 1995).....	6
STANSBURY V. CALIFORNIA, 114 S. Ct. 1526 (April 26, 1994).....	6
WEAVER V. MASSACHUETTS, 137 S. Ct. 1899 (June 22, 2017).....	6

STATUTE AND RULES

28 U.S.C.A. 1254.....	3
28 U.S.C.A. 2102.....	3
28 U.S.C.A. 2106.....	3
28 U.S.C.A. 1746.....	3
18 U.S.C.A. 1621.....	6

OTHERS

U.S.C.A. CONST. AMEND. IV.....	3
U.S.C.A. CONST. AMEND. VI.....	3
U.S.C.A. CONST. AMEND. XIV.....	3

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 _____; 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 _____; 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 OCTOBER 10, 2017.

☒ 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 MAY 19, 2010.
A copy of that decision appears at Appendix C .

☐ 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 AUTHORITY

28 U.S.C.A. 1254. Courts of appeals; certiorari; certified questions:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;...

28 U.S.C.A. 2102. Priority of criminal case on appeal from State Court:

Criminal cases on review from State Courts shall have priority, on the docket of the Supreme Court, over all cases except cases which the United States is a party and such other cases as the Court may decide to be of Public importance.

28 U.S.C.A. 2106. Determination:

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review; and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

U.S.C.A. CONST. AMEND XIV: SECTION I. 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.

U.S.C.A. CONST. AMEND. VI. 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.

U.S.C.A. CONST. AMEND. IV. The right of the people to be secured in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On June 24th, 2007, Donna Ray was working as the 9-1-1- operator for the Delta County Sheriff's Office. At 5:00 a.m., Donna Ray received a 9-1-1- call from Mrs. Cynthia Barnett located at 510 East San Antonio Street, Cooper, Delta County, Texas. (Exhibit 1, a DVD was published to the Jury). Cynthia Barnett did not see the intruder and was in pain and stated that she may have been shot. (SOF Volume 3, Page 31, Lines 16-22). Deputy Ricky Ash was the first officer to arrive at the crime scene. Deputy Ash saw Cynthia Barnett laying on the floor bleeding and notified the 9-1-1-dispatcher that Cynthia Barnett had suffered a gunshot wound. (SOF Volume 3, Page 40, Lines 15-16). When Deputy Ask asked what happened to Cynthia Barnett she responded"... didn't know what happened or anything like that, do something; it hurts, pain, it hurts." (SOF Volume 3, Page 40, Lines 15-18).

The next person to arrive at the home was Cynthia Barnett's mother, Vivian Brewer. Mrs. Brewer immediately started asking questions of her daughter. Deputy Ricky Ash left the room and went to stand on the front porch with the three children waiting for the paramedics to arrive. (SOF Volume 3, Page 43, Lines 4-5).

After Deputy Jason George and the EMS arrived, Deputies Ash and George conducted a cursory going-through (SOF Volume 3, Page 45, Line 1) of the house to make sure that the house was cleared of any suspects. Deputy Ash stated that upon his arrival all lights in the home were on, the children were out on the front porch (SOF Volume 3, Page 46, Lines 12-13). The front door (SOF Volume 3, page 46, Line 3) and the back door were open (SOF Volume 3, Page 47, Lines 10-11). Deputy Ash and George did nothing to preserve the integrity of the crime scene (SOF Volume 3, Page 53, Lines 9-13).

Deputy Ash then left the house searching for any suspicious persons driving around Town (SOF Volume 3, Page 44, Lines 18-210, not looking for any particular vehicle type description (SOF Volume 3, Page 55, Lines 12-14), then returned to the Delta County Sheriff's Office and wrote a Police Report (SOF Volume 3, Page 53, Lines 21-23). The Police Report prepared as written by Deputy Ash stated that the suspect is "Ricky Barnett", however, Deputy Ash testified (SOF Volume 3, Page 60, Lines 18-25), that he did not write that part into the narrative of the Police Report and did not know how that name "Ricky Barnett" was added to the Police Report.

EMS transported Cynthia Barnett to the Paris Regional ER in Lamar County, Texas. Mrs. Cynthia Barnett died shortly after her arrival at Paris Regional ER in Lamar County, Texas, due to the severity of her Injuries.

REASONS FOR GRANTING THE PETITION

Petitioner Ricky Barnett was located at his home in Wolf City, Hunt County, State of Texas by Hunt County Sheriff's Officers around 5:00 a.m. in the morning hours (SOF Volume 4, Page 4, Lines 20-25). Hunt County Officers had their weapons drawn (SOF Volume 4, page 60, Lines 16-20) at the time during the arrest. Petitioner Ricky Barnett was handcuffed and transported to the Delta County Line by Hunt County Sheriff's Deputies (SOF Volume 4, Page 60, Lines 23-25). At the Delta County Line, petitioner Ricky Barnett was in custody and turned over to Delta County Sheriff's Deputies (SOF Volume 4, Page 61, Lines 16-20) and transported to Delta County Sheriff's Office (SOF Volume 4, Page 61, Lines 10-12). Petitioner Ricky Barnett was still secured under restraint with handcuffs while in transit detention to the Delta County Sheriff's Office (SOF Volume 4, Page 61, Lines 13-15). When petitioner Ricky Barnett arrived at the Delta County Sheriff's Office, petitioner was requested to change into County Jail Uniform and petitioner's clothes were confiscated as possible evidence and secured (SOF Volume 4, Page 62, Lines 5-150 and placed inside a holding cell separated from the regular Jail housing offenders (SOF Volume 4, Page 6, Lines 17-18).

Petitioner Ricky Barnett was told by Deputy Short that "Everyone we're going to question has to be dressed in Jail Clothes." (SOF Volume 4, Page 62, Lines 20-24). Further, at approximately 9:00 a.m. (SOF Volume 4, Page 63, Lines 7-9), petitioner Ricky Barnett was told everyone the Deputies talked to had to be Mirandized first (SOF Volume 4, Page 63, Lines 3-6). Petitioner Ricky Barnett told deputy Short "I want to help you find my Wife's killer." (SOF Volume 4, Page 66, Lines 23-25).

The "First" Interview/Interrogation with Ricky Barnett was lengthy (SOF Volume 4, Page 21, Line 12). The equipment used at that time by the Delta County Sheriff's Deputies to record the "First" Interview/Interrogation was a VHS tape system (SOF Volume 4, Page 21, Lines 17-20). The Video Tape used during the "First" Interview/Interrogation ran out of tape prior to the end of the Interview/Interrogation (SOF Volume 4, page 21, Lines 10 0.2-15). It is estimated that the "First" Interview/Interrogation continued for thirty-minutes after the tape stopped recording (SOF Volume 4, Page 22, Lines 16-18).

During the interview/interrogation, petitioner Ricky Barnett was told that it was a capital offense and that the District Attorney was going to make a decision as to whether or not to inject him (SOF Volume 4, Page 63, Lines 11-12). The officers told petitioner Barnett that "You've got to tell the story." (SOF Volume 4, page 65, Lines 11-13) or "We're going to get the gurney ready, and then they are going to stick it in your arm." (SOF Volume 4, Page 65, Lines 5-13). The Delta County Deputies also told petitioner Barnett that the District Attorney was going to seek the death penalty, and the petitioner Barnett was going to get it with this type of information (SOF Volume 4, Page 65, Lines 14-21). Petitioner request the Supreme Court review the DVD where petitioner asked Texas Ranger Lough "If he wa

still facing the death penalty?”and later petitioner Barnett pleaded with deputy Short “Please don’t let them kill me.” Petitioner Barnett was emotionally distraught over the Interview/Interrogation (SOF Volume 4, page 27, Lines 11-12). The above statements were made to the petitioner Barnett prior to his “First” of “Four” different confessions made. Little, if anything. Petitioner Barnett confessed to after the above statements could be verified by Law Enforcement.

Petitioner Barnett was still upset while being interviewed/interrogated by a Texas Ranger Lough first (SOF Volume 4, Page 71, Lines 14-15). Delta County Sheriff’s Deputy Short prepared a complaint and went to Delta County Judge Ted Carrington, to obtain an Arrest Warrant for Capitol Murder and Arrest of Petitioner Ricky Barnett (See States Exhibit 47 Warrant).

(SOF Volume 5, Page 8, Line 17 & Volume 5, page 14, Line 13) the State of Texas through the District Attorney presented evidence of Cell Phones taken from the Victim Cynthia Barnett and petitioner Ricky Barnett. McQuiggin V. Perkins, 133 S. Ct. 1924, 185 L.Ed.2d 1019 (Decided May 28, 2013); Schlup V. Delo, 115 S. Ct. 851 (Decided Jan. 23, 1995); Murray V. Carrier, 106 S. Ct 2639 (Decided June 26, 1986).

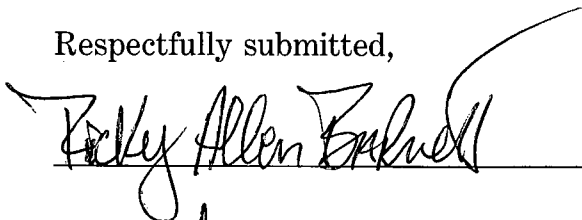
Petitioner Barnett had a complete Alibi Defense if the above necessary steps had been taken by the Officers and district attorneys investigating the case. The prosecution relied upon false, involuntary and coerced confessions to secure a wrongful conviction of an innocent man. If these confessions were lawfully and successfully Suppressed by Motion there would be no valid State Court conviction because the State of Texas relied solely on these false, involuntary and coerced confessions to secure a conviction. Petitioner Barnett’s will was overborne by the coercive atmosphere of the interrogation by police. This structural error affected the entire framework in which the Trial proceeded in securing a wrongful conviction of an innocent man and his imprisonment by the State of Texas. Weaver V. Massachusetts, 137 S. Ct 1899, Syllabus [2-6] (Decided June 22, 2017); Stansbury V. California, 511 U.S. 318, 128 L.Ed.2d 293, 114 S. Ct. 1526 (Decided April 26, 1994); Arizona V. Fulminante, 499 U.S. 279, 111 S. Ct. 1246, 1252-1253, Syllabus [3,4] (Decided March 26, 1991), Rehearing Denied May 20, 1991. See 500 U.S. 938, 111 S. Ct. 2067.

Petitioner Barnett was not given a 48-hour probable cause hearing and all fruits should have been suppressed as violation of his 4th, 5th, 6th and 14th Amendment rights under the United States Constitution. County of Riverside V. McLaughlin, 500 U.S. 44, 111 S. Ct. 1661, 114 L.Ed.2d 49 (Decided May 13, 1991); Powell V. Nevada, 511 U.S. 79, 114 S. Ct. 1280, 128 L.Ed.2d 1 (Decided March 30, 1994); Atwater V. City of Lago Vista, 121 S. Ct. 1536, 149 L.Ed.2d 549, 532 U.S. 318, Syllabus [4] (Decided April 24, 2001); Machibroda V. U.S., 368 U.S. 487, 7 L.Ed.2d 473, 82 S. Ct. 510, Syllabus [2] (Decided February 19, 1962). See 18 USCA 1621(2), 28 USCA 1746(2), I, Ricky Barnett, verify under penalty of perjury that the foregoing is true and correct. Petitioner is actually innocent and entitle to hearing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: January 05, 2018

RICKY ALLEN BARNETT 01541732