No. 25-5384

IN THE

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER KINES, PRO SE,
TDCJ No. 2270633,
Petitioner,

v.

ERIC GUERRERO, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

CHRISTOPHER KINES
TDCJ# 02270633
TERRELL UNIT
1300 FM 655
ROSHARON,TX 77583

QUESTIONS PRESENTED

1. Is it the common practise of the Fifth Circuit to disregard facts in the record and ignore evidence the court itself agreed to consider?

2. Did the Fifth Circuit Court of Appeals err in refusing to issue a certificate of appealabilty regarding Mr. Kines' claims of Sixth and Fourteenth Amendment Constitutional violations?

LIST OF PARTIES

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

RELATED CASES

State of Texas v. Kines, 81st/218th Judicial Court
Case No. 16-07-153-CRW

Kines v. State, 2020 Tex. App. LEXIS 3119, 2020 WL 1866274
(Direct Appeal No. 04-19-00244-CR)

KInes v. State No. WR-93, 154-01
(habeas corpus petition)

Kines v. State WR-93, 154-02
(Subsequent habeas corpus petition)

In Re Kines, 2020 Tex. Crim. App. LEXIS 928 (Tex. Crim. App. Nov, 11,2020)
(Petition for Discretionary Review No. PD-0535-20)

Kines v. Lumpkin Civil No. SA-22-CA-01089-JKP
(§2254 Petition)

Kines v Guerror No. 24-50857
(Certificate of Appealability)

TABLE OF CONTENTS

INDEX TO APPENDICES

Record to be cited as follows: Court's Record [CR];Reporter's Record [Volume# RR]; Motion for New Trial [RRMNT];Kines' Reply [KR]; Certificate of Appealability [COA]

TABLE OF AUTHORITIES CITED

CASES

STATUTES AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Christopher Kines respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

The opinion of the Texas Fourth Court of Appeals appears at Appendix D to the petition and is unpublished

JURISDICTION

The date on which the United States Court of Appeals decided Mr. Kines' case was February 21, 2025.

A timely petition for rehearing was denied by the United States Court of Appeals on April 17, 2025, and a copy of the order denying rehearing appears at Appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. 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 defense.

U.S. CONST., AMEND. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens

of the United States; nor shall any State deprive any 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.

28 U.S.C. §2254

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

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

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

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

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

(2) An application for a writ of habeas corpus may be denied on the merits. notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as

determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumtion of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that--

(A) the claim relies on--

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

Federal Rule of Appellate Procedure 24(c) provides, in relevant part:

A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

Federal Rule of Civil procedure 10(c) provides, in revelant part:

> A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion.

Supreme Court Rule 12.7 provides, in revelant part:

> In any document filed with this Court, a party may cite or quote from the record, even if it has not been transmitted to this Court.

STATEMENT OF THE CASE

In 2019, Petitioner Christopher Kines was convicted by a Texas jury of the murder of Jessica Eden and tampering with evidence. The Wilson COunty district attorney's office filed a three-count indictment against KInes, alleging he committed the offense of murder, engaging in organized crime, and tampering with evidence. CR at 5-6. Kines pleaded "not guilty", and he exercised his right to trial by jury. RR at 28. The court appointed counsel, Edward Adams to represent Kines in connection with his case on September 17, 2017.

The jury found Kines guilty of both murder and tampering with evidence. CR at 35-40. The court assessed Kines' punishment at 50-years imprisonment for murder and 20-years imprisonment for tampering with evidence, sentences to run concurrently.

Law enforcement officers found Eden's abandoned car in a vacant lot and Eden's charred remains in a grassy field. 3RR at 162,170. The officers found Alejandro Marroquin's wallet near the location where they discovered Eden's body. Officers relied upon the contents of Marroquin's wallet to

expand their investigation, 3RR at 165-69, and eventually connected several other individuals to Eden's death: Christopher Kines; Ronald Jacobs; Stuart Fraser; and Emilee Casias. 3RR at 165-70.

Marroquin, Jacobs, Fraser, and Kines each stood accused of participating in Eden's murder. Law enforcement officers believed Eden died inside of Kines' home after a night of drug use at the hands of Kines and Fraser. 3RR at 32-34. Kines and Fraser are alleged to have struck Eden in the head with objects and strangled her until she died. 3RR at 32-39. Kines and Fraser then purpotedly ordered Casias, Jacobs, and Marroquin to clean up their mess and dispose of Eden's vehicle and body.

Kines' trial began on February 11, 2019 and lasted more than a week, during which time the prosecution presented the testimony of multiple law enforcement witnesses, miscellaneous videotape evidence, and testimony from three of the key actors in Eden's murder - Jacobs, Marroquin, and Casias.

Dr. William McClain, a medical examiner, testified Eden's body was wrapped in a comforter and tarp. 4RR at 77-78. He observed trauma to Eden's head and strangulation marks around her neck that appeared consistent with a cloth, fitted bed linen. 4RR at 86-93. McClain concluded strangulation and head trauma in concert are the cause of Eden's death.

Texas Ranger Terry Snyder testified Kines' name came up in the investigation and officers secured a search warrant for his residence. Snyder stated the investigation pointed to Eden's murder occuring inside of Kines' home. 3RR at 184-75.

Snyder stated the search of the residence revealed tile flooring missing from one location in the house, but confirmed they had no idea when the tiles had been removed. 3RR at 184-85. Officers found tiles in a trashcan outside the home, but after testing could not conclusively confirm whether

the tiles had any type of blood on them 3RR at 187-90.

Kines testified in his own defence, and his trial counsel presented no other witnesses to support his client. The jury was not sympathetic and found Kines guilty of both murder and tampering with evidence. CR at 35-40.

Kines subsequently filed a Pro Se motion for new trial, alleging he received ineffective assistance of counsel in connection with his case. CR at 106-36. He also filed a timely Pro Se notice of appeal. CR at 44.

At Kines' motion for new trial hearing the court considered documentary evidence, as well live testimony from Kines, a private investigator, and Kines' trial attorney. MNT at 3. After considering the evidence presented, the trial court denied Kines' request for new trial. CR at 143. The Fourth Court of Appeals of Texas affirmed Kines' convictions April 15, 2020. Kines then filed a petition for discretionary review which was refused by the Texas Court of Criminal Appeals on November 11, 2020. Kines then filed a Pro Se motion for re-hearing, which the TCCA dissmissed as untimely.

Kines filed his first Pro Se state habeas application on August 23, 2021. The TCCA denied Kines' petition without written order or holding an evidentiary hearing December 8, 2021. Kines filed a second Pro Se state habeas application and the TCCA dismissed the second application without written order as a subsequent application on September 7, 2022. Kines filed a Pro Se federal habeas §2254 petition on September 23, 2022. The Director filed his answer January 5, 2023. Kines then filed along with his Reply a motion for leave to consider evidence which was granted, and he submitted twenty-four pieces of documentary evidence consisting of affidavits, copies of documents in the record, out-of-court witness statements, unsworn signed and dated hand written statements from witnesses, and law

enforcement reports on Janurary 21, 2023.

On September 5, 2024 the district court entered a final judgment denying Kines' §2254 petition without holding an evidentiary hearing and declined to issue a COA. Kines then filed a Pro Se notice of appeal and Pro Se motion for a certificate of appealability that was dismissed as moot on October 23, 2024. Subsequently, Kines' in forma pauperis application was granted October 23, 2024. The U.S. Clerk was directed by the the district court to accept Kines' notice of appeal without the prepayment of thw required filing fee on October 23, 2024. Kines filed his Pro Se motion for COA in the United States Court of Appeals for the Fith Circuit which was denied February 21, 2025. Kines then filed a Pro Se motion for rehearing which was denied April 17, 2025,

REASON FOR GRANTING THE WRIT

1. THE FITH CIRCUIT COURT OF APPEALS HAS SANCTIONED THE DISTRICT COURT'S DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY REFUSING TO ACKNOWLEDGE OR CONSIDER MATERIAL FACTS AND EVIDENCE WEIGHING IN MR. KINES' FAVOR AND HOLDING HIM TO A HIGHER STANDARD/ BURDEN.

In this case Mr. Kines filed numerous claims in the Federal habeas proceeding involving Sixth and Fourteenth Amendment Constitutional violations, the majority of which required evidentiary development. Although pertinent facts in the record and evidence was presented and argued several times in support of Kines' petitions, the district and appeals courts completely overlooked facts and not once did the courts acknowledge the evidence.

In its February 21, 2025 opinion, the Fifth Circuit court of appeals held that Kines failed to reach the requisite standard, Appx. A at 2. The district court held that Kines failed ultimately, to demonstrate that the State court's decision was objectively unreasonable or that he was entitled to relief on his claims. Appx. B at 28.

As a preliminary issue, due to the vauge and conclusory manner in which the COA was denied in this cause, it must be presumed that the circuit court determined that no valid claims of the denial of a constitutional right had been presented. see Appx. A at 2. Although a timely motion for rehearing was filed which brought to the court's attention facts and arguments that were overlooked, the panel on rehearing made no corrections to the vauge holding. see Appx. C.

The district court also ignored facts in the record and refused to acknowledge the evidence it agreed to consider in Kines' motion for leave to consider evidence. see Appx. D. In the district court's opinion it deferred to Texas Fourth Court of Appeals' decision in Kines' direct appeal. Appx. B at 15.

In its opinion the Fourth Court of Appeals distorted facts in the record and held Kines to a higher standard. The Fourth Court ignored the majority of Kines' arguments and did not ackowledge them in its opinion. Without investigation, the Fourth Court of Appeals adopted the State's false claim in its brief that Priscilla Fonseca and Jennifer Debner would have testified that Kines tried to force his way into their home looking for Casias after Eden's murder. Appx. E at 8-10. This claim was based on prosecutor Marc Ledet's and Kines' trial counsel's false testimony at Kines' motion for new trial hearing rendering that hearing unfair. RRMNT at 71,88,119. As Kines argued in his Pro Se PDR, these statements are entirely baseless

and untrue. The prosecution tied two witnesses together that did not know eachother to make a factless assertion. The prosecution made it seem as though Jennifer Debner and Priscilla Fonseca lived together in the same home, which was not true. Fonseca lived with her mother Carmen Garcia. In fact, the record confirms Carmen Garcia gave live testimony at Kines' trial 5RR at 117-27. The record confirms that the only two people living with Garcia during that time were her two daughters Priscilla and Amber Fonseca. 5RR at 118-23. During Garcia's entire testimony Mrs. Garcia never mentions Jennifer Debner's name nor states that she knew her. Garcia did in fact testify that Kines visited her home three times, 5RR at 119-22, but never gave any indication that Kines ever tried to "push" or "force" his way into her home as the Fourth Court of Appeals suggests. On the contrary, Mrs. Garcia testified that Kines "was a nice person." 5RR at 122. The prosecution made false and misleading statements at Kines' new trial hearing and prompted Kines' trial counsel to agree. RRMNT at 88. Both trial counsel and prosecutor Marc Ledet committed perjury at Kines' new trial hearing.

Kines also argued in his PDR the fact that at the new trial hearing, trial counsel said he viewed and transcribed dvd's containing the witnesses' interviews, RRMNT at 49-50, proves trial counsel knew that neither Debner nor Fonseca made any such accusations in their interviews.In Kines' Reply, he argued what Debner and Fonseca would have testified to. With his Reply, Kines submitted as evidence the transcripts trial counsel made of Debner and Fonseca's interviews that he gave to Kines to go over right before KInes' trial started. KR Ex. 3; Ex. 4. The record confirms that trial counsel gave Kines the prosecution's file just days before his trial started and instructed Kines to conduct his own investigation and report

back to trial counsel, basically, do trial counsel's job for him. The district and appeals courts made no mention of the transcripts Kies submitted as evidence.

As Kines Argued in both his Reply and COA, Jennier Debner woul have testified about Casias' bad character. This would have been useful to destroy Casias' credibility. Priscilla Fonseca would have testified about KInes' good raport and testified about the last time she saw Eden alive which in contrast to Casias' testimony.

The Fourth Court of Appeals made erroneous claims about John Waclawczyk and what he would have testified to. In the Fourth Court's opinion, it claims that Kines' trial counsel testified that Waclawczyk's testimony would have benifited Stuart Fraser, not Kines. see Appx. E at 8. This simply is not true. A review of the record confirms that Kines' trial counsel only testified that Terrence Mason's statement would have exonerated Fraser. RRMNT at 87. As Kines argued in Ground Three of his Pro Se PDR, trial counsel played ignorant of John Waclawczyk and what testimony he had to offer, RRMNT at 84-85, although trial counsel was put on notice by Kines of Waclawczyk's potential testimony and mentioned Waclawczyk by name in at least two letters Kines wrote to trial counsel. CR at 119,121. In Kines' Reply and COA, he argued what Waclawczyk would have tesified to. Kines also submitted with his Reply, Waclawczyk's signed and dated hand written statement. see KR Ex. 13. The district and appeals court chose not to mention this evidence in its opinions. Waclawczyk's statement confirms Kines' argument in his Reply and COA that Alejandro Marroquin confessed to Waclawczyk that Kines was not actually involved in the murder. Waclawczyk

stated he was willing to help in Kines' defense. see KR Ex. 13.

The Fourth Court of appeals relied on another false statement made by trial counsel at Kines' new trial hearing. The Fourth Court cites trial counsel's testimony that when he interviewed Genevieve Ramos after Kines' trial started, her testimony would not benefit Kines. Appx. E at 9. At Kines' new trial hearing, trial counsel testified falsely about what all Ramos would have testified to at Kines' trial rendering Kines' new trial hearing unfair. RRMNT at 72-73. In Kines' Reply and COA, he argued what all Ramos would have testified and Kines also submitted as evidence with his Reply, Ramos' signed and dated hand written statement. see KR Ex. 12. The district and appeals court chose not to mention anything about Ramos' hand written statement in their opinions. Ramos' statement confirms what Kines argued on his Reply that Ramos was willing to testify that Marroquin confessed to her that the real killer was Stuart Fraser.

Kines' trial counsel also testified falsely at the new trial hearing that Kines gave trial counsel no witnesses to interview before trial. RRMNT at 54,70,83-84. The record confirms this testimony was false based on the motion for continuance filed by trial counsel. CR at 14. Kines has demonstrated how the state court ruling was unreasonable determination of the facts based on the evidence in the record. The proven false testimony by Kines' trial counsel at Kines' new trial hearing renders the hearing unfair and the Fourth Court's opinion inadequate.

The district court held that there was "overwhelming evidence" establishing Kines' guilt. Appx. B at 15. Kines objected to the district court's opinion and demonstrated that the strength of the evidence against Kines was far from overwhelming. As argued in Kines' Reply and COA, the admissible evidence connecting Kines to the murder was hardly overwhelming. The prosecution used false evidence in the form of floor tiles found out-

side Kines' home which were inconclusive as to having blood on it. 3RR at 187-90. As for "overwhelming evidence", trial court's observation was, "I will tell you that there was a giant gaping hole in the state's evidence..." RRMNT at 127. Giant gaping hole seems far from "overwhelming". In his Reply and COA, Kines also argued the fact that Texas Ranger Snyder testified falsely in regards to the floor tile. Snyder testified that based on "eyewitnesses' interviews he believed tiles were on the floor" when it was alleged the murder took place in Kines' room. 3RR at 191. However, the evidence Kines submitted with his Reply proves Snyder's testimony to be a total fabrication. Kines submitted copies of the Texas Ranger Supplemental Report, investigation number #2016I-TRF-50003863 containing the interviews of the state's key witnesses. All three witnesses, Jacobs, Marroquin, and Casias stated there was no tile on the florr only, cement. see KR Ex. 1 at 20:10; Ex. 2 at 00:31. The district court ignored the evidence it agreed to consider when it granted Kines' motion to consider evidence and made no mention of it in the court's opinion.

When we look at Arson Investigator Jaun Martinez's prejudicial hearsay testimony stating that he "was told blood was found in Kines' home", 4RR at 24,50, it was not only hearsay but blatantly false as well. The record confirms that there was no actual blood found in Kines' home and no blood evidence entered in at Kines' trial.

Kines pointed to evidence submitted at his trial in the form of a letter from Jacobs to Marroquin discussing a plan to corroborate their stories because they did not match 6RR at 295-96. Kines also submitted with his Reply copies of the defense exhibit. see KR Ex. 11. Before Jacobs testified, trial court's observation was that if Jacobs admitted to writing the letter, it would be "deadly and damaging." 6RR at 124-25. The record confirms that Jacobs admitted to writing the letter. The district and

appeals courts chose not to mention this in their opinions.

The district and Fifth Circuit appeals court chose not to mention other investigation issues Kines argued in his Reply and COA.

Kines' trial counsel was appointed to represent Kines in September 2017, aquired an investigator November 2, 2017, waited until February 6, 2019 which was only five days before Kines' trial started on February 11, 2019, to contact the investigator to utilize him in Kines' case. RRMNT at 10-11. As Kines argued in his Reply and COA, investigator Joe Gonzales testified that Kines gave him useful information and believed Kines' story was credible, but didn't have enough time to investigate because the investigative period just covered the weekend before Kines' trial. Gonzales felt that if trial counsel had reached out to him sooner, "he would have found additional evidence to help" Kines' defense. RRMNT at 13-18,32-34. The district and appeals courts made no mention of this in their opinions.

KInes argued in his Reply and COA that after the second meeting with trial counsel ,counsel filed a motion for continuance on April 23, 2018 stating he had, "recently obtained information regarding testimony from individuals that may be exculpatory. More time is needed to locate the individuals", CR at 14, but admitted that he nor investigator Gonzales interviewed no one before trial, RRMNT at 40, and without talking to any witnesses, conceded that he simply did not know what they could have offered for purposes of Kines' defense. RRMNT at 86. The district and appeals courts made no mention of this in their opinions. Trial counsel's failure to independently investigate any potential witnesses concerning Kines' case is hard to excuse given the facts prsented. In his Reply and COA, Kines argued that defense counsel has a duty to independently investigate the charges against his client. Bower v. Quarterman, 497 F.3d 459, 467 (5th Cir 2007). Kines also cited Sears v. Upton, 561 U.S. 945,130

S.Ct. 3259,3264,177, L.Ed.2d 1025 (2010)(defense counsel was ineffective when hi investigation was limited to one day or less of interviewing witnesses). KInes' trial counsel admitted to interviewing no one eventhough he knew about potential witnesses back in April 2018. Again, the district and appeals court chose not to address this in their opinions.

In his Reply and COA, KInes also demonstrated that the record confirms that trial counsel's alleged investigation consisted of solely reviewing the prosecution's file. RRMNT at 48-52. In his Reply and COA, KInes cited Anderson v. Johnson, 338 F.3d 382,392-93 (5th Cir. 2003)(concluding under Strickland that counsel's admitted failure to investigate rose to the level of a constitutionally deficient perfomance where counsel relied exclusively on the investigative work of that state and based his own pretrial investigation on assumptions divined from a review of the state's files; noting the gravity of the charges, and the fact that there were only two adult witnesses to the crime, it is evident that "a reasonable lawyer would had made some effort to investigate the eyewitnesses' testimony.") Kines' trial counsel's reliance upon the prosecutions files for all of his information is no substitute for an inv estigation of the facts. The district and appeals courts made no mention of this in their opinions.

KInes also argued in his Reply and COA that he advised trial counsel that he had proof in the form of a Facebook video post on Kines' Facebook account that shows the room and floor where it is alleged the murder took place. The video shows and proves the floor was cement and not tile, thus proving Texas Ranger Terry Snyder's testimony to be false. The video was made and dated on Facebook nearly a month prior to the murder taking place.

Eventhough trial counsel was told about the evidence, he made no attempt to investigate and recover the evidence. Kines argued that if his trial

sional responsibility and can have prejudicial impacts on the client such of the loo of the right to be heard by the court). DEspite Kines' extensive argument on his trial counsel's lack of communication, district and appeals courts chose n ot to address thissue in its opinions.

KInes' case was not a situation where counsel made a strategic choice after investigation, which would have justified any deference under Strickland. "Counsel simply failed to make the effort to investigate. Counsel, therefore did not choose, strategically or otherwise, to pursue one line of defense over another. Instead, he simply abdicated his responsibility to advocate his client's cause." Nealy v. Cabana, 764 F.2d at 1177, 1178.

The reality is that KInes' trial counsel appeared to have abandoned the case early on. At trial, counsel presented a lackluster and to some extent incoherent theory of defense which as the record confirms he had not adequately investigated. He failed to meaningfully consult with Kines and called him to testify without any preparation. This effectively gave the case away to the prosecution.

In KInes Reply and COA, he argued that his trial counsel provided ineffective assistance when he failed to impeach the state's witnesses based on inconsistencies and false testimony. KR at31.

As discussed supra in the instant writ, Texas Ranger Terry Snyder testified falsely at Kines' trial concerning floor tiles. Snyder testified that Jacobs, Marroquin, and Casias stated in interviews that tiles were on the floor in Kines' room when it was alleged the murder took place. As Kines demonstrated, that testimony was false. Snyder interviewed the witnesses and prepared the report himself. He knew that all three witnesses stated the floor had no tile only cement. KInes submitted with his Reply, copies of Snyder's reports. KR Ex. 1; Ex. 2. KInes trial counsel failed to dis-

cover the report and use it to impeach Snyder's testimony. The district and appeals courts did not mention this fact in their opinions.

Kines also argued that during his trial, Emilee casis gave false testimony. Casias was asked about a black eye she had around the time of the murder. Casias first testified that she had the black eye before she met Kines. 7RR at66. On cross-examination, she recanted her story and admitted to having received the black eye from the victim[Eden] in a physical fight with her the same night she alleges Kines murdered Edn. 7RR at 151-52. She also calimed not to remember what the fight was over. Trial counsel failed to impeach Casias with her prior inconsistent statement.

Kines has demonstrated that the district and Fifth Circuit appeals courts simply overlooked and ignored facts and evidence that was in Kines' favor and chose not to even ackowledge them in their opinions. The question presented here therefore warrants this Court's review.

2. THE DECISION OF THE FIFTH CIRCUIT COURT OF APPEALS IS IN CONFLICT WITH THE DECISIONS WITHIN ITS OWN CIRCUIT.

The Fifth Circuit's test for COA exceeds the limited scope of the COA analysis. A petitioner is entitled to a COA if he demonstrates "a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253 (c)(2). This Court held in Barefoot v. Estelle, 463 U.S. 880,893 (1983), that this means that the appellant need not show that he would prevail on the merits, but must "demonstrate the the issues are debatable among jurists of reason; that a court could resolve the issues in a different manner; or that the questions are adequate to deserve encouragement to proceed further.[citations omitted]." see also Slack v. McDaniel, 529 U.S

473,484,146 L.Ed.2d 542 (222).

It is unecessary for a "petitioner to prove, before the issuance of a COA, that some jurists would have granted the petition for habeas corpus." Miller-El v. Cockrell, 537 U.S. 322, 336, 154 L.Ed.2d 931 (2003). Indeed, "a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that the petitioner will not prevail." Miller-El, 537 U.S. at 338.

If a ground was dismissed by the district court on procedural grounds, a certificate of appealability must be issued if the petitioner meets the Barefoot v. Estelle, 463 U.S. 880,893 (1983), standard as to the procedural question, and shows, at least, that jurists of reason would find it debatable whether the ground of the petition at issue states a valid claim of a constitutional right. Slack v. McDaniel, 529 U.S. 473,483-484 (2000). Therefore, doubts whether to issue a COA should be resolved in the favor of the petitioner. Fuller v. Johnson, 114 F.3d 491495 (5th Cir. 1997); and Buxton v. Collins, 925 F.2d 816,819 (5th Cir. 1991).

In Mr. Kines' case, the Fifth Circuit court of appeals phrased its determination in proper terms, but its conclusion was reached in error after faulting KInes for failing to make a substantial showing of the denial of a constitutional right. Appx. A at 2. A COA simply asks whether the issue could be debated. Kines demonstrated through out his enitre COA that the issues clearly are debatable aomg jurists of reason and could be resolved in a different manner.

In issue six of KInes' Coa, he asserted that his trial counsel failed to investigate his case, interview, and call witnesses. COA at 17. There, he argued that there are several cases where COA's were granted on issues: failure to investigate, interview witnesses, and call witnesse. In Darby v. Johnson, 1999 U.S. App. LEXIS 41092 (5th Cir. Tex. March 9, 1999) a

COA was granted where facts were less favorable than Kines. There, Darby contended that his trial counsel was ineffective for failing to investigate the case and failing to interview an eyewitness. Darby claimed an eyewitnes was not interviewed by his trial counsel. The eyewitness could have testified "he never touched the complainent" and that she heard the complainent's mother state she was going to "get even" with Darby. Although Darby's trial counsel did not personally interview the witness, the investigator for the defense did. Further, trial counsel called the witness to testify during trial. In Kines' case as discussed supra, Kines' trial counsel admitted he nor his investigator interviewed any witnesses before Kines' trial.

In Skinner v. Quarterman, 528 F.3d 336, 2008 U.S. App. LEXIS 10444 (5th Cir. Tex. May 14, 2008) a COA was granted on the issue of whether counsel failed to discover and present a witnesses' testimony. Skinner contended that an uncalled witness offered strong circumstantial evidence that someone else was the killer. Skinner's claim was that Donnell was the real killer. Ellis was Donnell's neighbor.At a federal hearing, Ellis testified that a couple of days after the murders, she saw Donnell clean the carpets and inside of his truck and paint the outside of the truck. She stated she had never seen him clean the truck before. The Fifth Circuit Court of Appeals held that jurists of reason could debate whether the failure to present Ellis's testimony caused prejudice and whether trial counsel was deficient in failing to seek out Ellis and present her testimony. Kines' case relates to this in the fact that John Waclawczyk and Genevieve Ramos both stated Alejandro Marroquin tol them that Kines was not involved in the murder and that Stuart Fraser was the real killer. As discussed above, Waclawczyk and Ramos both wrote hand written signed and dated statements which Kines submitted as evidence with his Reply. see KR Ex. 12; Ex. 13.

In Hinkle v. Dretke, 86 Fed. Appx. 687, 2004 U.S. LEXIS 895 (5th Cir. Tex. January 22, 2004) a COA was granted on the issue of whether counsel provided ineffective assistance when he told Hinkle's witnesses that their testimony was not needed. In Kines' case, as argued in his Reply and COA, trial counsel bench warrented Genevieve Ramos during Kines' trial to interview her then failed to call her as a witness.

In Busby ~~v. Davis~~, 677 F. Appx. 884,886,893 (5th Cir. 2017) a COA was granted. The court held that reasonable jurists could debate whether habeas petitioner had presented a viable IAC claim where counsel "waited approximately nineteen months to assemble a mitigation investigation team, hired a mitigation specialist days before voir dire." This case mirros KInes' with the exception that Kines' trial counsel totally failed to launch any investigation and waited days before Kines' trial started to contact an investigator, all argued in KInes' Reply and COA.

Kines demonstrated jurists of reason could find it debatable on the issues whether his trial counsel failed to investigate, interview witnesses, and call witnesses. Kines made a substantial showing of a denial of his right to effective assistance of counsel and due process right, or was adequate to deserve encouragement to proceed further.

In issue seven of Kines' COA, he argued that his trial counsel provided ineffective assistance when he failed to impeach the state's witnesses based on inconsistencies and false testimony. COA at 24.

Kines demonstrated a COA had been granted in cases similar to Kines'. In Tutt v. Cockrell, 2001 U.S. App. LEXIS 31430 (5th Cir. Tex. September 17, 2001) a COA was granted on the issue whether trial counsel was constitutionally ineffective for failing to use an audiocassette recording to impeach the trial testimony of Tutt's arresting officers. At Tutt's parole revocation hearing, officer Hooper testified that he gave Tutt a field so-

briety test, but at trial, officer Hooper and officer Teer testified that it was Teer who gave the test.Eventhough the trial court ruled the tape was admissible for impeaching Teer's testimony, trial counsel failed to do so.

This case is similar to Kines' except that Kines' trail counsel failed to discover Snyder's report because he did not investigate.

In Reed v. Vannoy, 703 Fed. Appx. 264, 2017 U.S. App. LEXIS 13706 (5th Cir. La. July 28, 2017) a COA was granted on the issue whether trial counsel was ineffective for failing to impeach the victim's testimony with prior inconsistent statements.

There a victim#1 testified at trial she never witnessed the petitioner engage in sex with victim#2, but during her pre-trial interview she said she did. Also at trial victim#1 testified that her friend interrupted petitioner's sexual assault on a specific occasion, however, in her pre-trial interview victim#1 stated nothing had actually happened that day.

In Kines' case and in Reed there is a situation where a testifying witness has made conflicting inconsistent statements. Kines has demonstrated jurists of reason could find it debatable on the issue whether Kines' trial counsel was ineffective for failing to impeach Terry Snyder and Emilee Casias. Kines made a substantial showing of a denial of his right to effective assistance of counsel and due process rights, and is adequate to deserve encouragement to proceed further.

In issue four of Kines' COA, he demonstrated jurists of reason could find it debatable whether the prosecution presented false testimony.

Kines argued in his Reply and COA that Texas Ranger Terry Snyder gave false testimony when he testified that the interviews of Jacobs, Marroquin, and Casias led him to believe tiles were on the floor in the room where it was alleged the murder took place 3RR at 191. However, the prosecution knew from Snyder's report, investigation #2016I-TRF-50003863, all three

witnesses stated there were no tiles in the room only cement. Kines submitted with his Reply copies of the actual report Snyder prepared. see KR Ex. 1 at 20:10; Ex. 2 at 00:31.

Snyder's testimony was material because "there is a reasonable likelihood that the false testimony could have affected the judgment of the jury." Barrientes v. Johnson, 221 F.3d 741,756 (5th Cir. 2000), cert. denied, 531 U.S. 1134,121 S.Ct. 902,148 L.Ed.2d 948 (2001). As Kines demonstrated in his COA, hearing from a Texas Ranger that the state witnesses said tiles were on the floor, when in fact, they did not, and the insinuation that Kines tried to hide evidence in his trashcan weighed heavy in the jury's minds and had a substantial and injurious effect and influence in determining the jury's verdict.

A COA was granted on the issue of false testimony in a case that had less favorable facts than Kines'. In Fuller v. Johnson, 114 F.3d 491,1997 U.S. App. LEXIS 12652 (5th Cir. Tex. May 30, 1997) a COA was issued on whether Dr. Erdman gave false testimony about the autopsy of a murder victim. Fuller used the testimony and affidavit of Dr. Veasy to demonstrate Dr. Erdman's testimony was false. The Fifth Circuit Court of Appeals found this was enogh to make a substantial showing of the denial of a constitutional right. KInes' case is different because he not only demonstrated by arguing, but he also submitted clear and convincing evidence proving Texas Ranger Terry Snyder gave false testimony concerning the floor tiles.

In issue five of KInes' COA, he raised the claim of the prosecution giving improper arguments during the closing argument. se COA at 15-17. Kines argued that the prosecution vouched for the credibility of the state witnesses, conveyed personal opinion of state witnesses' testimonies, and expressed own opinion of Kines' guilt. In highlighting just a couple of the inproper arguments, Kines argued that in its closing argument the pro-

secution stated, "...and what they told you was the truth as to what happened during those two days." 8RR at 32. Also, "...one of the things I can always tell when somebody's telling the truth to me is when they're not the hero of the story...that, to me, always could be a sign somebdy is being forthright with you." 8RR at 60-61. As kines argued in his Reply and COA, the Fifth Circuit has repeatedly admonished that a prosecutor "may not state,'the prosecution's witnesses are telling the truth' or 'I believe that the prosecution's witnesses are telling the truth.'" United States v. Morris, 568 F.2d 396,402 (5th Cir. 1978)(citations omitted). The record confirms that this is exactly what happened during the closing arguments in KInes' trial.

In a case that had similar issues of improper closing argument, a COA was granted. In Burkett v. Thaler, 379 Fed. Appx. 351,2010 U.S. App. LEXIS 10366 (5th Cir. Tex. May 20, 2010), during the closing argument, the prosecutor stated "what [A.P.] told in addition to [her staement to police] was the truth is what I submit to y'all"; "[A.P.] told the truth." Burkett at 356. The prosecutor's remarks in Burkett and Kines' case are virtually identical. Kines demonstrated jurists of reason could find it debatable whether his claim of improper closing argument is entitled to a COA and made a substantial showing of a denial of his right to due process.

Several of Kines' claims were dismissed by the district court as being unexhausted and procedurally barred by Texas Code of Criminal Procedure 11.07 §4. As argued in issue 1 of Kines' COA, in Kines' §2254 pettion, he raised several ineffective assistance of counsel issues from his subsequent Pro Se state habeas petition that were not specifically mentioned in his first Pro Se state habeas petition. However, all of those issues supported the same constitutional claim urged to the state court in Kines'

initial state habeas petition, were discernible from the review of the entire record in which that state court was obligated tocarry out. several Fifth Circuit cases mirros Kines'. see Vela v. Estelle, 708 F.2d 954 (5th Cir. 1983), cert. denied, 464 U.S. 1053,104 S.Ct. 736,79 L.Ed.2d 195 (1984); Furgeson v. Cain, 1995 U.S. App. LEXIS 42066 (5th Cir. La. Nov. 30, 1995); Richardson v. Scott, 1995 U.S. App. LEXIS 43865 (5th Cir. Tex. January 10, 1995).

In Vela, Furgeson, and Richardson, the petitioners raised in both state and federal petitions claims of ineffective assistance of counsel[IAC], but in the federal courts they supplemented their arguments with additional allegations of error. In all three cases, the Fifth Circuit Court of Appeals held that they had exhausted their state remedies. In Richardson, the petitioner waited until his appeal to supplement his argument with references to facts that he did not allege in either that state or federal court. However, the Court of Appeals held that petitioner's allegations were not "new," but were included in the record that was before state and federal courts. The Court of Appeals further held that because Richardson did not raise new legal claims or factual allegations that were not before the state habeas court, he had exhausted his state remedies. In Vela, the court concluded virtually the same thing. Vela, 708 F.2d at 957-58. The Fifth Circuit Court of Appeals held that a general claim of IAC in the state petition was sufficient to invoke a full study of individual factual claims found in the available state court records. see Id. at 960.

Furthermore, as Kines argued in his COA, Kines' Pro Se status in his first motion for post-conviction relief established cause to excuse his procedural default, and the claims were substantial. see Martinez v. Ryan, 566 U.S. 1, 132 S.Ct. 1309,1318,182 L.Ed.2d 272 (2012); see also Trevino v. Thaler, 133 S.Ct. 1911,185 L.Ed.2d 10044 (2013).

The Supreme Court crated in Martinez a "narrow exception" that allows a state prisoner to obtain federal review of unexhausted claims of IATC in a petition for a writ of habeas corpus. Martinez, 132 S.Ct. at 1315. The prisoner must prove that cause exists to excuse the failure to exhaust and that his "underlying ineffective-assistance-of-trial counsel claim is a substantial one, which is to say that...the claim has some merit." Id. at 1318. Cause exists when state law requires the prisoner to raise a claim of IATC in his first collateral proceeding and when either the prisoner proceeded pro se or his appointed post-conviction counsel was ineffective. Id. Proof of "cause and prejudice does not entitle the prisoner to habeas relief"; instead, "it merely allows a federal court to consider the merits of a claim that otherwise would have been procedurally defaulted." Id. at 1320.

Cause exists to excuse Kines' failure to exhaust his claims in the state courts. Kines litigated his post-conviction motion Pro Se. Kines' Pro Se status establishes cause to excuse his procedural default. see Martinez, 132 S.Ct. at 1318.

Also, the district nor the Fifth Circuit court of appeals made no mention of the procedural bar claim addressed in Kines' Reply and COA. There, Kines argued Vela and also gave further cause for default in the misleading advice given to him by his appellate attorney. KR at 3. Kines also submitted as evidence a letter from his appellate attorney containing the advice. see KR Ex. 26

Kines also showed that the barred claims stated valid claims of denials of constitutional rights.

In issue 1.B.1., Kines argued his trial counsel failed to move to strike for cause prospective juror #13. As Kines demonstrated in his Reply and

COA, prospective juror #13 admitted she could not be impartial. KR at11; COA at 6. Trial counsel asked her "if there was a 'yes' or 'no'" as to whether she could be impartial, she answered "no" and confirmed the "no" immediately after. 2RR at 101.

In Virgil v. Dretke, 446 F.3d 598,609 (5th Cir. 2006), a COA was granted where the petitioner complained of IAC when his attorney failed to challenge for cause five jurors. The Fifth Circuit held that the failure to challenge two of the jurors, either for cause or through peremtory strikes, was ineffective assistance requiring reversal because these jurors specifically testified they could not be fair or impartial.

In both Kines' case and in Virgil, the venireman in question revealed having family in law enforcement. In Kines' case venireman #13 revealed she tended to believe law enforcement were more truthful than non-law enforcement, 2RR at 101, and enequivically answered "no" when asked if she could be impartial. Venireman #16 in Virgil mirrors Kines' case. Prejudice resulted in the fact that prospective juror #13 ended up on the jury in KInes' trial deciding his fate.

as Kines demonstrated in his COA, COA's also have also been granted where facts were less favorable than Kines'. In Seigried v. Greer, 372 Fed. Appx. 536,2010 U.S. App. LEXIS 7202 (5th Cir. Miss. April 7, 2010) juror #2 stated her "strong values might effect how she would come to a conclusion." When asked if she would "have a hard time weighing facts in a case like this...," juror #2 answered "I'm not sure,...I really don't know."

Although the statements made by juror #2 hinted at possible bias, juror #2 never explicitly stated she could not be an impartial juror. This is in contrast to Kines' case where prospective juror #13 unequivically answered "no". These cases are clearly sufficient to show that reasonable

jurists could differ on the prejudice issue in Kines' case.

In issue 1.B.2. of Kines' COA, he argued that his trial counsel failed to effectively cross-examine state witnesses. Kines argued that his trial counsel should have used Snyder's reports that Snyder prepared himself to cross-examine Snyder. see KR at 28; COA at 7.

During trial Texas Ranger Terry Snyder stated, "based on eyewitnesses' interviews, he believed tiles were on the floor" when they allege the murder took place in Kines' room. 3RR at 187-90. As stated in Kines' Reply and COA, during trial Snyder testified that the blue star presumtive blood test results on the tile found in a trashcan outside Kines' house were inconclusive. 3RR at 189-90. Furthermore as Kines argued, Snyder prepared the Texas Ranger Supplemental Report himself. Investigation number #2016I-TRF-50003863 contained the interviews of Ronald Jacobs, Alejandro Marroquin, and Emilee Casias. In all three interviews, all three witnesses stated the floor in the room where the murder allegedly took place had no tiles, only cement. Kines submitted as evidence with his Reply copies of the report Snyder prepared. see KR Ex. 1 at 20:10; Ex. 2 at 00:31.

Kines' trial counsel could have used the report to cross-examine Snyder and impeach his testimony. Kines' claim mirrors those in Hunter v. Cain, 2002 U.S. App. LEXIS 28940 (5th Cir. La. January 14, 2002). There, a COA was granted on the issue of whether trial counsel rendered ineffective assistance by not adequately cross-examining Causey and not introducing evidence necessary to impeach Causey. Hunter alleged his trial counsel failed to use portions of a police report to impeach Causey. The difference in Kines' case is that he actually names the report and submitted copies of the actual report.

The fact that the witnesses stated there were no tile but only cement on the floor, supported Kines' argument in his Reply that the testimony

Snyder gave concerning the tiles was false and that Kines was denied the right of effective counsel as Kines summerised in his Reply from Davis v. Alaska, 415 U.S. 308 (1974).

In issue 1.B.3. of Kines' COA, he argued that his trial counsel failed to object to hearsay testimony at his trial when arso investigator was by the prosecution if he knew blood was found at Kines' home, and Martinez answered "yes" 4RR at 24. On cross-examination Martinez testified that he was told blood was found in Kines' room that was being investigated. 4RR at 50. Martinez never named the person who told him this.

KInes' case is similar to Atkins v. Hooper, 969 F.3d 200,2020 U.S. App. LEXIS 25002 WL 4557116 (5th Cir. La. August 7, 2020). There a COA was granted on petitioner's claim of confrontation clause violation. In that case, a detective gave testimony that a non-testifying witness implicated the petitioner. The Fifth Circuit Court of Appeals reversed the district court's judgment and remanded the case.

As Kines argued in his Reply and COA, police officers cannot, through their trial testimony, refer to the subtance of statements given to them by non-testifying witnesses in the course of their investigation, when those statements inculpate the defendant. The Fifth Circuit has applied this analysis in several cases. Taylor v. Cain, 545 F.3d 327,2008 U.S. App. LEXIS 21408 (5th Cir. October 13, 2008); United States v. Kizzie, 877 F.3d 650, 2017 U.S. App. LEXIS 25394, 2017 WL 6398243 (5th Cir. Tex. December 15, 2017).

In Kines' Reply, he cited similar cases that examined the issue of the Six Amendment right to confrontation: U.S. v. Harper, 527 F.3d 396,403 (5th Cir. 2008), cert. denied, 555 U.S. 891,129 S.Ct. 212,172 L.Ed.2d 157 (U.S. 2008); Gary v. Maryland, 523 U.S. 185,192,196-97,118 S.Ct. 1151,140 L.Ed. 2d 294 (1985).

As Kines demonstrated in his Reply and COA, trial counsel failed to ask:

Who told him blood was found in Kines' home? What was it found on? Why wasn't it tested? Why wasn't it entered as evidence? These questions were essential to Kines' defense because the record confirms there wasn't any actual blood or DNA evidence submitted as evidence at Kines' trial. Kines' trial counsel's failure in objecting to the hearsay allowed Martinez's statement to ingrain itself as truth in the jury's minds.

In issue 1.B.4. of Kines' COA he raised the issue that his trial counsel failed to object to the misrepresentation of evidence. As discussed supra in the instant writ the prosecution used false evidence in the form of floor tiles taken out of a trashcan outside of Kines' home to convict Kines at his trialKines argued in his Reply and COA that the tiles were false and misleading because the prosecution knew from Snyder's Texas Ranger Supplemental Report that all three of the prosecution's witnesses stated there were no tile on the floor only cement. KR at 30.; COA at 9.

Kines' case is factually similar to Miller v. Pate, 386 U.S. 1,6,87 S.Ct. 785,788,17 L.Ed.2d 690 (1967). There, the Supreme Court held that a state prisoner was entitled to federal habeas relief upon showing that a pair of stained undershorts, allegedly belonging to the prisoner and repeatedly described by the state during trial as stained with blood, was in fact stained with paint.

Similar to Miller, the prosecution knew from Snyder's report there were no tiles on the floor in Kines' room, but they pushed it on the jury anyway. The prosecution then presented the results of the analysis that were of course inconclusive because according to Snyder's report,there was only cement on the floor in Kines' room during the time it waa alleged the murder took place.

Kines' claim also shared strong factual similaraties with Castellano v. Fragozo, 352 F.3d 939,2003 U.S. App. LEXIS 24625 (5th Cir. Tex. Decem-

ber 5, 2003). There the Fifth Circuit Court of Appeals reversed and remanded for new trial on the issue of frabricated evidence of a police officer. In Kines' Reply and COA, he cited Donnelly v. DeChristoforo, 416 U.S. 637, 646,94 S.Ct. 1868,40 L.Ed.2d 431 (1974); Berger v. United States, 295 U.S. 78,88,79 L.Ed. 1314,55 S.Ct. 629 (1935).

As Kines argued in his COA, his trial attorney failed in his duty to investigate. Had he done so, he would have read Snyder's report and would have ceased the opportunity to object when the prosecution presented the false evidence. KInes was prejudiced by counsel's failure because without the objection, the factfinders were left with the incorrect idea that Kines tried to hide evidence. "Manufacturing of evidence and knowing use of that evidence along with perjured testimony to obtain a wrongful conviction deprives a defendant of his long recognized right to a fair trial secured by the due process clause." Catellano, 352 F.3d at 942.

Considering that the tiles were the main peice of physical evidence used by the state to link Kines to the murder, Kines' trial counsel's failure to investigate and challenge such evidence, rose to the level of ineffective assistance and deprived Kines of a fair trial and right to due process.

Here, Kines showed that jurists of reason could debate whether his trial counsel provided ineffective assistance and made a substantial showing of a denial of his right to effective assistance of counsel and due process rights.

In issue 1.B.5. of Kines' COA, he argued that it was debatable as to whether his trial counsel provided ineffective assistance when he failed to object to prosecutorial misconduct. COA at 10. KInes argued that the record showed that the prosecution: vouched for witnesses,8RR at 32,60,61; made comments conveying personal opinion, 8RR at 27,29,52; and expressed own opinion of guilt, 8RR at 69.

Kines argued that these improper comments induced the factfinders to trust the government's judgment rather than their view of the evidence.

In United States v. Phillips, 2000 U.S. App. LEXIS 40084 (5th Cir. La. Junes 23, 2000) a COA was granted where facts were less favorable than Kines'. There, the petitioner did not raise the IAC claim of failing to object to the prosecution's closing argument in the district court, yet he was still granted a COA on that claim. The Fifth Circuit Court of Appeals held that "although Phillips did not specifically refer to counsel's failure to object to the prosecutor's alleged improper closing argument in his motion or in his supporting memorandum, we nonetheless liberally construe his pro se pleadings to include this issue. We therefore reach the merits of his IAC claim." United States v. Phillips, 2000 U.S. App. at 4-5. The Fifth Circuit Court of Appeals then referred to Fuller v. Johnson, 114 F.3d 491,496 (5th Cir. 1997)(all doubts about whether to grant a COA are to be resolved in favor of the habeas petitioner).

Phillips alleges that during the closing argument, the prosecutor improperly made a "guilt by association"comment by referring to convictions of coconspiritors who did not testify at trial. Phillips asserts, similar to Kines, that counsel's failure to object to improper argument amounted to IAC. In Kines' case, the prosecution's comments amounted to persistent and pronounced misconduct affected Kines' trial, cast serious doubt on the correctness of the jury's verdict, deprived Kines of a fair trial, and violated his rights to due process.

In issue 1.B.6. of KInes' COA, he raised the issue that jurists of reason could fing it debatable whether his trial counsel's performance constituted a constructive denial of counsel. COA at 11. Kines argued that the many errors listed in his §2254 petition, pre-trial and durinng combined, established that Kines' trial counsel failed entirely to oppose the

prosecution throughout the proceedings as a whole, rather than atspecific points.

In Gomez v. Thaler, 2011 U.S. App. LEXIS 26570 (5th Cir. Tex. November 8, 2011) the Fifth Circuit Court of Appeals granted a COA where facts were less favorable than the claims laid out in Kines" Reply. There, GOmez argues that he was denied counsel during merely the hearing on his motion to supress. In contrast, Kines demonstrated in his Reply that he was denied counsel during multiple critical stages throughout his entire proceedings. KR at 37. As Kines argued in his Reply and COA, "although counsel is present, the performance of counsel may be so inadequate that, in effect, no assistance of counsel is provided." Cronic, 466 U.S. at 654 n.11,104 S.Ct. at 2044 n.11.

The prosecution recieved no meaningful resistance to the charges from Kines' trial counsel. If the facts of Kines' case and his trial counsel's level of representation do not support a finding of IAC as invisioned by Cronic and Strickland, it is hard to imagine what facts would.

This Court is urged to issue a writ of certiorari because the failure to do so would allow the Fifth Circuit to continue to apply the wrong standard in deciding COA's, and deny justice to those it is entitled to. There is an ethical duty by the United States Constitution to establish the Law of the land and to assure the citizens of the United States of America that the lower courts apply that Law. When they do not, it is this Court's obligation to hold that court accountable for failing to properly apply the Law of this Court and relief where relief is due.

CONCLUSION

For these reasons, Writ of Certiorari should issue to review the judgment and opinion of the Fifth Circuit Court of Appeals.

Respectfully sumitted,

Date JULY 9, 2025

CHRISTOPHER KINES
Petitioner, Pro Se
TDCJ# 02270633
Terrell Unit
1300 FM 655
Rosharon, Texas 77583