

No. 26-5024

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
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SUPREME COURT, U.S.

In Re Jesse Randolph Curry Jr. - PETITIONER
(PRO SE)

ON PETITION FOR ORIGINAL HABEAS CORPUS
TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

PETITION FOR ORIGINAL HABEAS CORPUS

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QUESTION(S) PRESENTED

- (A) Has the Fifth Circuit entered a decision in "CONFLICT" with her sister circuits and lower federal courts, on the same important issues, of wheather A.E.D.P.A.'s successive petition rules apply to "BRADY" and "NAPUE" violations that were "NOT RIPE" at the time of the initial petition, based on "NEWLY DISCOVERED" DNA forensic test evidence;
- (B) Has the Fifth Circuit entered a ruling that "CONTRAVENTS" United States Supreme Court "PRECEDENT" set in Panetti V. Quarterman, on wheather A.E.D.P.A.'s successive petition rules apply to violations that were "NOT RIPE" at the time of the initial habeas petition, based on "BRADY" and "NAPUE" violations shown by NEWLY DISCOVERED FORENSIC DNA TEST EVIDENCE;
- (C) Has the Fifth Circuit entered a decision in "CONFLICT" with its sister circuits and lower federal courts, on the same "IMPORTANT ISSUES" of wheather A.E.D.P.A.'s successive petition rules apply to § 60 (b), § 60 (d) (3), "FRAUD UPON THE COURT" violations that demonstrate EGREGIOUS, "intentionally fraudulent conduct directed at state and federal courts;
- (D) Has the Fifth Circuit entered a ruling that "CONTRAVENTS" United States Supreme Court "PRECEDENT" on wheather A.E.D.P.A.'s successive petition rules apply to § 60 (b), § 60 (d) (3), "FRAUD UPON THE COURT" where state officers of the court of Texas, did DILIBERATELY PLAN AND EXCUTE A SCHEME TO DEFRAUD STATE AND FEDERAL COURTS.

LIST OF PARTIES

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

[X] 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:

**PARTIES: UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
No. 25-20177, before SOUTHWICK, DUNCAN, and ENGELHARDT,
Circuit Judges., Per Curiam.**

RELATED CASES

Curry, was charged with aggravated assault in the 337th District court of Harris County Texas, Cause No.838340, the jury found curry guilty and sentenced him to LIFE, June 6th, 2000.

Curry's conviction was affirmed by the First Court of Appeals of Texas October 25th, 2001. Curry v. State, No. 1-00-864-CR. Curry, filed a PDR, Curry V. State, PDR No. 2399-01 (Tex. Crim App. 2002) Refused March 13th, 2002. Curry, filed a Petition for Writ of Certiorari with the United States Supreme Court, **DENIED** on October 7th, 2002. Curry V. Texas, 537 U.S. 862 (2002).

Curry, filed on March 31st, 2003, Application for State Writ of Habeas Corpus, **DENIED** March 18th, 2009, **WITHOUT WRITTEN ORDER**, by Texas Court of Criminal Appeals, Writ No. WR-53, 885-06. Curry, filed his [FIRST] Federal **2254** Habeas Application on July 1st, 2009, Jesse R. Curry V. Nathanied Quarterman, Civil Action No.H-09-2119 in the U.S. District Court for the Southern District of Texas, **Dismissed** 09/03/2010.

Curry, filed his second State Application for 11.07 Writ of Habeas Corpus January 10th, 2025, Texas Court of Criminal Appeals **Dismissed Without Written Order on April 2nd, 2025, WR-53,885-08**. Curry, filed a 28 uscs § 2244 Motion for Leave Order April 30th, 2025, in the United States Court of Appeals Fifth Circuit seeking a second or successive §2254 **Authorization, No.25-20177, DENIED July,29th, 2025**.

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- Appendix B** : Curry's MOTION FOR LEAVE to file second or successive 28 U.S.C. § 2254; with proposed 2254 Brief and its attached (EXHIBITS A-N). No.25-20177.
- Appendix C** : Curry's State MOTION FOR NEW TRIAL.
- Appendix D** : States SUMMARY JUDGMENT submitted by States Assistant Attorney General Jessica Hartsell, in response to Curry's [FIRST] § 2254 application.
- Appendix E** : [FIRST] § 2254, Federal court findings and judgement and Curry's [FIRST] § 2254, Brief in Support.
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SUPREME COURT RULE: 34.6

IN ACCORDANCE WITH RULE 34.6 THE
[VICTIMS NAME] HAS BEEN [REDACTED]
IN ALL OF PETITIONER'S FILINGS.

RULE 20.1
EXTRAORDINARY WRIT

Petitioner Jesse Randolph Curry Jr. (CURRY), files Pro Se, his **MOTION FOR LEAVE TO FILE HIS ORIGINAL HABEAS CORPUS** under **28 USCS § 2241 (a)**, pursuant to the **FIFTH CIRCUITS UNPUBLISHED DENIAL**, in Cause No. 25-20177, pursuant to Curry's **MOTION FOR LEAVE** to file a **SECOND 28 USCS § 2254** Habeas Petition, issued July 29th, 2025.

ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR COURT
Curry asserts, adequate relief cannot be obtained in any other form or court for **28 USCA § 2244 (b)(3)(E)** provides that "the grant or denial of an AUTHORIZATION by a Court of Appeals to file a second or successive application [**FOR HABEAS RELIEF**] shall not be appealable and shall not be subject to a petition for a rehearing or for writ of CERTIORARI."

"EXCEPTIONAL CIRCUMSTANCES" warranting the exercise of The Court's discretionary powers exist. In that the **FIFTH CIRCUIT** has [SET] a PRECEDENT that "CONTRAVENTS" Supreme Court PRECEDENT, that has created a CONFLICT in her SISTER CIRCUITS. concerning if UNRIPE BRADY and NAPUE claims apply to A.E.D.P.A.'S successive petition rules OR its higher standerds and if they apply to a TRUE FRAUD UPON THE COURT 60 (b), 60 (d)(3) violation.

IN AID TO THE COURT, Curry raises questions that require or allow The Honorable Court to "DEFINE WHAT CONSTITUTES A RESTRICTED SECOND OR SUCCESSIVE 2254 HABEAS CORPUS APPLICATION UNDER 28 U.S.C. § 2244, IN THE CONTEXT OF PROSECUTORIAL MISCONDUCT WITHIN BRADY, NAPUE AND TRUE FRAUD UPON THE COURT 60 (b), 60 (d)(3) VIOLATIONS THAT, "UNFAIRLY DEPRIVES INDIVIDUALS OF A OPPORTUNITY TO FAIRLY RAISE SERIOUS CLAIMS:"

The issues presented, are fully ripe for The Honorable Court to [DEFINE] and [CURE] the CONFLICT between the SISTER CIRCUITS and "to rain in [ALL] Federal and State Courts that [CONTRAVEN] UNITED STATES SUPREME COURT [PRECEDENT] set out in Panetti V. Quarterman, 551 U.S. 930 (2007); on wheather A.E.D.P.A.'s successive petition rules APPLY TO VIOLATIONS THAT, WERE NOT RIPE AT THE TIME OF THE INITIAL PETITION.

RULE 20.4: Curry could not bring his application to the district court of the district in which he is held for; Under **28 USCA § 2244 (b)(3)(E)** provides that "the grant or denial of an authorization by a court of appeals to file a second or successive application for (habeas relief) shall not be appealable and shall not be subject to a petition for a rehearing or for writ of CERTIORARY.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR ORIGINAL HABEAS CORPUS

Petitioner respectfully prays that the Honorable Court take up a review of his **PETITION FOR ORIGINAL HABEAS AND THE JUDGMENT BELOW.**

OPINIONS BELOW

[X] For cases from Federal Courts:

The opinion of the United States court of appeals appears at Appendix A to the petition for **leave To file second § 2254** and is

[X] UNPUBLISHED.

[X] For cases from State Courts:

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

[X] UNPUBLISHED.

JURISDICTION

[X] For cases from Federal Courts:

The date on which the United States Court of Appeals decided my case was DENIED, JULY 29th, 2025.

The jurisdiction of this court is invoked under 28 U.S.C. § 2254 and 28 U.S.C. § 2244.

[X] For cases from State Courts:

The date on which the highest state court decided my case was DISMISSED WITHOUT WRITTEN ORDER, APRIL 30th, 2025.

The jurisdiction of this court is invoked under State habeas § 11.07, and § 11.073

A.E.D.P.A. 28 U.S.C. § 2244, does [NOT] deprive the SUPREME COURT of its JURISDICTION TO ENTERTAIN ORIGINAL HABEAS PETITIONS FILED AS ORIGINAL MATTERS PURSUANT TO 28 U.S.C. §§ 2241 and 2254. SEE Felker V. Turpin, 518 U.S. 651 (1996).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. V

U.S. CONST. AMEND. VI

U.S. CONST. AMEND. XIV

28 U.S.C. § 2254

28 U.S.C. § 2244

28 U.S.C. § 2241

Tex. Code. Crim. Proc., Art. 11.07

Tex. Code. Crim. Proc., Art. 11.073

NO. _____

IN THE
SUREME COURT OF THE UNITED STATES

In Re Jesse Randolph Curry Jr. Pro Se Inmate, Petitioner

ON PETITION FOR ORIGINAL HABEAS CORPUS
TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

MOTION FOR LEAVE
TO FILE
ORIGINAL HABEAS CORPUS

Petitioner Jesse Randolph Curry Jr. (CURRY), files Pro Se, his Motion For Leave to file an Original Habeas Corpus under 28 USCS § 2241 (a), pursuant to the FIFTH CIRCUITS UNPUBLISHED DENIAL, in Cause No. 25-20177, pursuant to Curry's Motion For Leave to file a SECOND 28 USCS § 2254 habeas petition, issued July 29th, 2025.

Curry asserts, ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR COURT for 28 USCA § 2244 (b)(3)(E) provides that "the grant or denial of an AUTHORIZATION by a COURT OF APPEALS to file a second or successive application [FOR HABEAS RELIEF] shall not be appealable and shall not be subject to a petition for rehearing or for a writ of CERTIORARI."

Curry asserts "EXCEPTIONAL CIRCUMSTANCES" warranting the exercise of The Court's discretionary powers exist. That the FIFTH CIRCUIT has [SET] a precedent that CONTRAVENTS Supreme Court PRECEDENT, that has created a CONFLICT in SISTER CIRCUITS.

IN AID OF THE COURT'S APPELLANT JURISDICTION

Curry raises questions that, require The Honorable Court to "define what constitutes a restricted second or successive 2254 habeas corpus application under 28 U.S.C. § 2244, in the context of prosecutorial misconduct within Brady, Napue and True Fraud Upon The Court 60 (b), 60 (d)(3) violations that, "unfairly deprives individuals of a opportunity to fairly raise serious claims"

The issues presented, are "fully ripe" for The Honorable Court to [define] and [cure] the conflict between the Sister Circuits and to rain in all federal and state courts that [CONTRAVEN] United States Supreme Court [PRECEDENT] set out in Panetti V. Quarterman, 551 U.S. 930 (2007); on wheather A.E.D.P.A.'S successive petition rules apply to violations that, were not ripe at the time of the initial petition.

BRIEF SUMMARY;

Curry sought leave from The Fifth Circuit, based in part on "NEWLY DISCOVERED"; EXCULPATORY FORENSIC "DNA" EVIDENCE, in which the "factual predicate" for Curry's Brady and Napue claims could [NOT] have been discovered or factually proven, until [CURRY] aquired [RE-TESTING] of the "complainant's (Curry's Wife's) sexual assault kit evidence.

These [NEW] forensic DNA test results from the TWO SPERM FRACTION SAMPLES, [BOTH] "concluded the presence of at least ONE UNKNOWN THIRD PARTY DNA TYPE, that should [NOT HAVE BEEN PRESENT] based on;

- (1) States theory, that complainant was not raped by the third party she had originally accused and neither had she had sex with a third party.
- (2) Prosecutor's opening claiming complainant was not raped by the third party and denying that she had sex with any third party.
- (3) Complainants statements and trial testimony denying the [SAME].
- (4)[State's experts] false testimony, of no third party contamination.

STATEMENT OF THE CASE

I. Procedural History:

Curry was charged with aggravated assault in cause no. 838340. Curry entered a plea of not guilty to a jury and on June 6th, 2000, the jury found Curry guilty of AGGRAVATED ASSAULT on his wife, as alleged in the indictment and sentenced him to **LIFE IMPRISONMENT**.

Curry's conviction was affirmed by the First Court of Appeals of Texas on October 25th, 2001. Curry V. State, No.1-00-864-CR, (Tex. APP.-Houston 1st 2001). Curry filed a Petition for Discretionary Review, **REFUSED** on March 13th, 2002. Curry V. State, PDR No.2399-01 (Tex. Crim. App. 2002). Curry filed A Petition for Writ of Certiorari with the United States Supreme Court and that petition was **DENIED** on October 7th, 2002. Curry V. Texas, 537 U.S. 862 (2002).

On March 31st, 2003, Curry filed an Application for State Writ of Habeas Corpus challenging his State conviction and on March 18th, 2009, the Texas Court of Criminal Appeals **DENIED** relief **WITHOUT WRITTEN ORDER**, writ no. WR-53,885-06.

Curry filed his [FIRST] Federal 2254 Habeas Application on July 1st, 2009, styled Jesse R. Curry V. Nathanied Quarterman, Civil Action No. H-09-2119, in the U.S. District Court for The Southern District of Texas, Houston Division, **DISMISSED** on September 3rd, 2010.

Curry filed his [SECOND] State Application for 11.07 Writ of Habeas Corpus **BASED ON "NEWLY DISCOVERED SCIENTIFIC EVIDENCE" "BRADY AND NAPUE VIOLATIONS" along with "A TRUE FRAUD UPON THE COURT VIOLATION"** on January 10th, 2025, TR.Ct. No. 0838340-B, WR-53,885-08. **DISMISSED WITHOUT WRITTEN ORDER** on April 2nd, 2025.

Curry filed a **28 USCS § 2244 MOTION FOR LEAVE ORDER** on April 30th, 2025, to The United States Court of Appeals for THE FIFTH CIRCUIT, seeking authorization to consider a successive 28 U.S.C § 2254 application NO.25-20177, that was **DENIED** July 29th, 2025.

II. Statement of Facts:

(A). Guilt-Innocence;

Rob Freyer, state prosecutor presented in his opening statement; That Jesse Curry came home drunk and high; and accused [REDACTED] (his wife) of not "behaving like the woman he thinks she should". She [DENIED IT]. That Curry continued to harass and harrangue her. And when she [PERSISTS] in [DENYING] the [ACCUSATIONS] that he's making, he beats her (3 RR 6-7).[1]

[REDACTED], the complainant, testified she and applicant Curry met in a bar where she worked as a dancer; they eventually married (3 RR 11,73,75). They separated but reunited and moved in with a friend "Dale Fowler", in June of 1998 (3 RR 12-15).

Libby Paris, a Lufkin Police Detective testified, that [REDACTED] on June 25th, 1998, had [ORIGINALLY] told her; that on June 24th, 1998, she had been at home--Jesse had gone to work about 6;00AM. that morning--the guy Dale Fowler came home from work--[REDACTED] went to her room--she laid down on the bed--she said that somebody came in and laid down next to her--she thought at first it was Jesse--she found out it was [DALE]--that Dale told her if she would be quiet and not struggle that [THEY] would leave soon--she said she was "RAPED, and SEXUALLY ASSALTED"--she was BEATEN and placed in a bathtub--that Dale put her in a bathtub, calling her a slut, bathed her and continued to call her a slut, told her that if she told that something terrible would happen--"then later, when Jesse came home, he found her in bed. (4 RR 15-17)(4 RR 31-33).

[1].The states theory, not only denied that [REDACTED] had committed the act of [INFIDELITY, but DENIED FOWLER HAD RAPED [REDACTED]].

Libby Paris, testified to what she did to get the ball rolling with regard to criminal charges being filed against Dale Fowler. (I requested that a sexual assault evidence kit be taken- [REDACTED]). Q. And was that done? A. Yes it was. (4 RR 22). That she took about 24 photographs that she had developed at Wal-Mart photo center. And referred the case to Pasadena Police (4 RR 22-29).

Valerie Murphy, the Lufkin registered nurse testified, she had performed a sexual assault kit, a rape kit, on [REDACTED] (4 RR 80). That [REDACTED] had told her, she was RAPED BY SOMEONE THEY LIVED WITH, HAD BEEN LIVING WITH (4 RR 78). The "SEXUAL ASSAULT EXAMINATION FORENSIC REPORT FORM", contain written reports, purporting that [REDACTED] "told them;" (I felt someone get in bed next to me. I thought it was Jesse. Then I turned over and he put his hand over my mouth and told me to be still/quiet and it would be over quickly. He used a some object-- then he hit me with my crutch telling me I better not say anything to anyone--he had been drinking and smelled of liquor-- Dale Fowler, was named as her attacker--Nurses notes also purport, [REDACTED] stated man sexually assaulted her/made her take a bath then beat her with her own crutch) see (States Exhibit 17) ENTERED AT (3 RR 52).

R.J. MCANINCH, Pasadena Police Detective testified, Libby Parish Lufkin Detective had taken the initial report of the offense-- and she, in turn, reported it to our department--and that she later called me back and said that [REDACTED] had arrived in Kansas and at that time had [RECAINED] the story that Dale Fowler was the person who assaulted her and had in fact, said--told the Kansas authorities

that it was her husband, Jesse Curry who had assaulted her (4 RR 86). The next day after I received that information from Miss Parish, I spoke with [REDACTED]. And she infact, told me that--the same information and at that point I did [ELIMINATE] Mr. Fowler as a suspect (4 RR 86).

[REDACTED] testified, that the reason she waited over [TWO] weeks to tell what Jesse had done to her was, (I was scared he would hurt me again or one of the kids)-- I didn't know what to do-- I dont know (3 RR 61-62). [REDACTED] testified, that Jesse before leaving for work was talking about going back to houston to see his parole officer and that he wanted to leave the kids with her family while [REDACTED] went with him. That she became frightnd and thats when she told what realy happened (3 RR 61-62).

[REDACTED], testified, that Jesse came home from work--started asking who had been there and "what I had done"-- he had been drinking--I told him nobody had been there [ALL DAY]-- he seemed to get very angry and didnt like my answeare, and he threw his car keys and hit me in the face.--then he stood up. He was very angry, and he had said that he had been at the bar and that he had been talking to people and that he thought I had done something.-- I tried to explain I hadn't done anything--and he didn't want to hear that-- he just kept telling me I was lying, and then he started hitting me with his fist--and then he picks up my walking crutch and hits me across the arm--the chest area, the arms-- legs (3 RR 17-28). Then he told me to take my cloths off and he put the crutch inside me pulled it out and continued to hit me calling me a slut--that I was

lying and he could stop if I would tell him the truth (3 RR 29).

██████ also testified, Curry had choked and strangled her (3 RR 34).

██████, testified, that on the way to Lufkin Texas in the middle of the night, on HWY 59, Curry at a rest stop told her what [their plan] was going to be when they got to the hospital in Lufkin Texas. Jesse had told her, that she was to say, that Jesse came home from work and found her like that, that [Dale Fowler] had [raped] and [beaten] her and that is what we were to tell the police at the hospital (3 RR 39-40). ██████ also testified, that "she had not told anybody else" that Dale Fowler had raped her (3 RR 79). [2]

R.J. MCANINCH, the first Pasadena Police Detective assigned in the offense testified, that in June of 1998, he was assigned to a sexual assault case to follow up on. When asked what were his first steps in the case, he stated, (well, as a matter of fact, the day I got the offense report, I was contacted by the [suspect] Dale Fowler. He told me that he had learned through a fellow employee that he was a suspect in this offense-- and he wanted to discuss it with me.)

Q. Had any body from Pasadena P.D., to your knowledge, called Dale Fowler [before] he called you-all? A. Not to my knowledge.--I told him that I had not even spoken with the complaining witness in this offense and as soon as I did I would get back in touch with him See (4 RR 84-85).

[2]. The state [knowingly] turned a blind eye to the fact that Fowler had [incriminated] himself. If Fowler was infact not home and it was indeed a contrived sceem made up at a rest stop on a dark HWY between Pasadena and Lufkin, then how could Fowler or anyone know that Curry was going to frame or falsefy sexual assault charges against Fowler when ██████ told nobody else.

R.J. McANINCH, testified, on cross, that at this phone call Mr. Fowler basically told him that (he was not involved in this offense and he only heard about it through an employee, a fellow employee, of his.)(That to his knowledge the police [**had not**] contacted Fowler or [**called**] him to get him to come down to the police station.)(He testified, that is all Fowler told him at this phone interview.)(He further testified, that Pasadena Police [**never investigated**] the [**scene**] of the alleged offense--Fowler's house.)(That Pasadena P.D. [**did not**] collect [**any**] evidence there.)--(Because he had not spoken with the complaining witness as of that time.) Q. Was any other investigation other than statements and telephone recordings made of this incident? (Not to my knowledge, no sir.)(McANINCH referred his information to sergeant Clifton.) See (4 RR 89-93).

Susan Clifton, Pasadena P.D. Sergeant testified, Detective R.J. McANINCH passed the case to her. (That McANINCH actually received a [**phone call**] from Mr. Fowler before McANINCH even contacted him, because Fowler had heard wind of the case, so to speak, and was calling to let him know he [**wasn't home**] and [**knew nothing of it**]. (4 RR 47-48). Clifton testified this case was referred to McANINCH and then to her, that she was the [last employee] to handle the case (4 RR 56). Q. Did you interview Dale Fowler? A. [**NO**]. Q. Did anyone in Pasadena P.D. interview him? A. (I believe that he was interviewed by Detective McANINCH.) Q. And did you testify that he (Fowler) called before Pasadena even had any occasion to call him or contact him? A. I believe he had. Q. --"That he had just called [out of the blue]," denying any involvement? A. I think so, yes. (4 RR 55-57).

Dale Fowler Sr., the [original suspect] testified on direct exam by the [prosecutor]. Q. And at some point, were you [contacted] by the Pasadena Police about being a suspect--A. [YES]. Q.--aggravated sexual assault case? A. [YES].-- [They] contacted me about it and asked me about it.--and I told them where I was and everything. And they said we didn't think you were involved or else we'd have been coming to arrest you for it. Q. And what happened after that? A. (They came by and just showed me some photographs of what happened--and told me about it. And they told me--asked me if I would go to court for it. And I told them I would (testify) (3 RR 86-87).

Dale Fowler Jr., (BUBA) Fowler's son testified, (that they had a phone at their house on June 24th, 1998, but it was [NOT CONNECTED] --it was not working (4 RR 60-61).[3]

 testified, Q. Was Dale there that day? A. [No sir.] Q. When had you last seen Dale? A. That morning "when he--yeah. He told me he was [going to go to work] and, good morning and hi and bye" (3 RR 78).

Dale Fowler Sr., testified he wasn't working at that time. That on June 24th, 1998, the day this happened (he was with a friend), his girl friends, watching some movies.--He went over to her house early that day--because [I wasn't working at that time], [I went over there at probably "2:00" o'clock] maybe. He returned the next day and knew nothing of any beating. (3 RR 84-85)

[3]. The court note; no one from Pasadena Police ever called Fowler or went to Fowler's home. Fowler had [incriminated] himself by calling police before they had reason to call him. The trial prosecutor and Fowler staged the call and visit by police.

Dale Fowler Jr., (Buba) testified, that on June 24th, he took his Dad (Dale Sr., to a friends house and dropped him off and then proceeded to take the van out--that night with friends (4 RR 62).

Detective Libby Parish, testified, [REDACTED] told her that Dale Fowler, came home from work about [8:00 pm] and the assault took place at that time (4 RR 16).[4]

Valeri Murphy, the Lufkin nurse performed the sexual assault kit (4 RR 77). After performing the sexual assault rape kit procedure she gave the kit to Libby Parish who signed for it (4 RR 81). The prosecutor entered the rape kit records and reports as (State's Exhibit No. 17) at (3 RR 32). The court NOTE: That in these rape kit records, that (page STEP 2-A) shows DATE OF ASSAULT 6-24-98 and the TIME OF ASSAULT AT [0900 hours]. And [REDACTED] most recent [COITUS] was dated 6-24-98 AT [0600 hours]. Also NOTE; That the (Physician's Report) states the alleged assault took place at [0700 hours]. See (States Exhibit No. 17).

[4]. The court take judicial NOTICE: That Fowler's on testimony is clear and clarifys that, Dale Sr. was not working at the time (NO JOB) and infact was home all morning long up untill about [2:00 pm] when he supposedly left to a friends house. Which is supported by his son's testimony. The following Rape kit notes and reports clearly show that [REDACTED] had told nurses and the MD that this assault took place between [0600--0700--0900]. NOTE, Fowler had incriminated himself by calling the police to soon when no one at that time could have known about a made up plan to frame him, and he infact said he wasnt home when this case was alleged to have happened. But the Rape kit evidence and fowler's own testimony put him at the house that morning when [REDACTED] had originally told the time of the assault had accured.

[REDACTED] never told Fowler hi and bye as he went to work and she never told Parish that Dale came in from work at [8:00 pm]. This testimony was falsely given to change the time line of the assault to create an aliby time line for Fowler.

Statement of Facts:

(B). Punishment-Sentencing;

 testified, during the assault Curry forced her to give him [oral sex], that prior to that Curry [tried] to have intercourse "from my [behind]" (anal sex), that he turned me over "on my back" and [tried] to [enter me from the--behind] and was "unable to" Q. Now, after he wasn't able to have sex with you, What happened after that? A. He told me I was such a slut that he could not even have sex with me, then he forced me to perform oral sex on him and had [ejaculated] in her mouth (5 RR 41-42).^[5]

Pamela McGINNIS, Pasadena Police Crim Lab Director, testified, she analyzed the Sexual Assault Kit, that the [vaginal smear] she had examind, she had found [spermatozoa] present on the [slide], through microscopic examination (5 RR 6-9).^[6]

[5]. Note: The state has "consistently argued that [identity] is not an issue" Yet they continually fall back and rely on the fact that Curry's DNA was found in the vaginle samples, knowing full well that has [never] accused Curry of vaginal intercours only Fowler. claimed Curry orally assaulted her and that he ejaculated in her mouth. Isn't it strage or just convenient that the state and prosecutor never mention the mouth swab test examination? in her testimony and the sworn out complaint claim Curry had attempted to sexually assault her from behind (anal) but his [penis was not hard], and that she [DENIED] that she had committed [INFIDELITY]. Curry's DNA would be expected to be present in vaginal samples, he's her husband. But the question remains, "if identity was never an issue, then why did knowingly give false testimony, why did Robin Freeman in trial testify in a confusing and atpical way than normal DNA analysts usally testify, why claim the vaginal swab was used up or consumed when it wasn't and was infact reanalyzed showing a third party. It's clear third party DNA makes idenity of the perpetrator an issue and always has.

[6]. Note; the presence of "intact sperm" (spermatozoa) and who the --Major-Minor DNA contributor establishs a time line within a 26 hour window and who the last contributor was.

Robin Freeman, the DNA Supervisor for the Department of Public safety, testified, that the "sperm fraction" test samples had a mixture of DNA, that was [consistent] with Curry's and [redacted] DNA types. Freeman is pressed by defense counsel and she[reluctantly] admits she could not exclude other persons from the mixture, that since she had no one eleses Dna to compare she was not able to say if the mixture contained a third party DNA type. That there could be someone eleses DNA type that would fall [inbetween] the mixture "but the mixture obtained was [consistent] with Curry's and [redacted] DNA types. Nor did she know how long Curry's DNA had been present and that there was way to determine how long it had been there. Freeman also testified that the [vaginal swab had been consumed] during analysis (5 RR 10-26).[7]

[7]. The court note; the [factual predicate] discovering that [redacted] had [knowingly] committed [perjury] as to beeing raped either by Fowler or that she had committed infidelity and that DNA expert Freeman had given false testimony evidence that test results were consistent with Curry and [redacted] and that the vaginal swab was cunsumed during analyzis or that she couldn't tell if there was someone eleses Dna in the mixture without a sample from them to compare, did not exist before or at the time Curry filed his [first 2254 habeas]. It was not until Curry obtained a copy of an unredacted 3rd page of Freeman's lab report that cast suspicion on Freeman's testimony, that Curry filed a complaint with the "Texas Forensic Science Commission" that had eventually resulted in agreement of the retesting of the DNA evidence, which concluded that a third party was found in both vaginal samples and that [redacted] was not found in the swab nor had the swab been destroyed.

Statement of Facts:

(C). Guilt-Innocence;

██████████, testified, that Curry's and her relationship ended in [1992], when (he beat me up and the cops took him away.)-- He went to jail on a prior that he already had--[Not "because of what he did to me"].--That was [in Almeda], in Texas, right here in Houston.--He went away for four years--I seen him a year after he got out of prision--And a few months later we were married. Q. Did you at some point start dating Jesse's brother? A. Yes, Sir.--[it's --Jesse went and got arrested in 1992, and I was presently pregnant with of his children]--one of Jesse's children--And the [beating I sustained "on that night" in "1992" made me lose the baby] See (3 RR 74-77).[8],[9]

[8]. Defense counsel claims he [inadvertently] asked ██████ about her relationship in 1992, to show a period of amiable accord with Curry and ██████--and did not anticipate ██████ response. See (Motion for leave No.25-20177, Brief in support, Exhibit (J), Affidavit of trial counsel.) (Appendix B)

[9]. The Court Note: ██████ testimony of this alleged 1992 assault is factually and knowingly false. The prosecutor knowingly had allowed ██████ to make these claims, knowing full well that the 1992 assault claim had infact been [DISMISSED], that ██████ had falsely charged Curry, that she had swore out in an affidavit at the DA's office and swore to the judge in Curry's hearing.

This 1992 testimony was the beginning of a sceem to deceive the fact finder and trial court. The prosecutor went on in the punishment phase to elicit a horrifying account of this 1992 assault from ██████ that he knew was not true. Taking what was originally classified as a simple assault and turning it into several serious felonies. The prosecutor seals his on fate by alluding to parts of this 1992 testimony in his closing at the punishment phase. See (Appendix B) At (Exhibit L)

The State went on to perpetrate a [TRUE FRAUD UPON THE COURT] in its [FINDINGS OF FACT & CONCLUSIONS OF LAW] "pleadings", to the trial habeas court, which were adopted and then again to the Federal District Court, where at the State submitted these same pleadings and asked the federal judge to except them as true factual pleadings, thus fraud upon the Federal Courts. See (Appendix D) And (Appendix B - Exhibit N)

Statement of Facts:

(D). Punishment-Sentencing;

Victim, testified, Jesse assaulted me back in November of 1992.--He had been drinking segram's seven--We had a trailer in [ALMEDA], and he came, and he was--very angry. I don't really know why. And I was--didn't find out until afterwards, but I was at the time pregnant. And he started hitting me. And we were wrestling on the floor, and he was breaking things and he took my bird out of the cage and tore it apart and splattered the blood on me and he had hit me with a table. He was throwing things, breaking glass. And a neighbor called the cops.--before they had got there, he had --already tore my clothes off, and I was lying on the floor naked when the cops busted in the door. And he took out--the back way. And they immediately picked me up and took me to another house on [the other street] so I would not be in the house. I didn't have no clothes. I was [HEMORRHAGING]. And The [Paramedics] "couldn't come and get me" because they didn't know where he was at.--A few hours passed by, and when the cops would leave where I was at to go look for him, he would show up at the house. And he hit the neighbor's dog, knocked the dog out. And he had to pull a gun on Jesse to make him go away. And when the cops come back--I didn't have no clothes on; and so they were going to take me back to the trailer so I could get clothes for me and the children.-- and when they went up to the door, Jesse was back in the trailer. And he assaulted the officer that came to the door and they wrestled around on the porch until they got him in custody and in the car. Q. And what was the dispute over; A. [I don't Know]. I think [WE] had previously been at a bar, and somebody had made him angry, one of

the waitresses or something. And he wanted me to fight with her. And I refused to do so. Q. Was this November or December? A. This was [TWO DAYS before Thanksgiving] in [1992]. And December 11th I lost my child that I was carrying (5 RR 34-37).

Jesse Curry, testified, he did not assault her back in 1992. That [REDACTED] [got in a fight] in a club for \$200.00, she fought the [BARMAID] there. That the owner of the bar was also the owner of the trailer we were staying in. And thats[WHY] they called the law on us--because she got in a fight in there.--that [REDACTED] had dropped the barmaid and a guy jumped up grabbed [REDACTED] and slammed her to the floor. Then I slammed him to the floor. And then we got out of there and when I took off, a rock spun out from my tire and hit a dude's back window and thats how I picked up the criminal mischief charge. (5 RR 66-67).

Rob Freyer, trial prosecutor, argued in his closing argument, that Curry entertains himself by ripping off the head of parakets (1992). What he does to dogs--he kicks dogs--to animals (1992). (5 RR 73,75). Rob Freyer, also entered a [pen packet Exhibit no.22; a jail card no.20;and 19;18. they are--21, certified copies of judgment and sentences for further violations before the court,the offense of criminal mischief, 18A through 22].(5 RR 4-5);[10] [11]

[10]. The Court Note; that the jail card that the prosecutor did enter as an exhibit, proves in fact that the [1992] case that [REDACTED] testified to is and was a [DISMISSED] case.And that the Criminal Mischief for the spun out rock is as Curry testified to. The prosecutor allowed the court and finder to see them as diffrent cases from [REDACTED] 1992 testimony.

[11]. All of the testimony and evidence to Curry's facts are found in Curry's Motion for leave,brief in support (EXHIBIT A-N)

Statement of Facts:

(E). Findings of Fact-Conclusions of Law

Josh Schaffer, Curry's State Habeas Attorney, filed a supplement application for 11.07 State Habeas, Cause No.838340. Schaffer argued trial counsel was deficient for opening the door to, elicited, and failed to object to inadmissible testimony regarding the extraneous [offenses], that Curry (in 1992) had beat the complainant, causing her to have a **[MISCARRIAGE]** at the Guilt Stage. Schaffer also argued that, at the Punishment Stage trial counsel was deficient in failing to object to testimony regarding extraneous [offenses]-that Curry not only assaulted [REDACTED] in (1992) but that during this offense he had assaulted police officers and assaulted a dog, and that counsel failed to object to evidence that previous charges of assault had been **[DISMISSED]** in **[1992]**.

Jesse Curry, in his original 11.07 State Habeas, before it was supplemented by Schaffer, argued the prosecutor committed misconduct by failing to investigate, discover, and disclose evidence of [REDACTED]'s unreliability. At (ERROR ONE (1)(B).) Curry argued that in **(1992)**, on 11-22-92, [REDACTED] **[falesly]** accused Curry of an alleged assault. That approximately three weeks later on 12-18-92; [REDACTED] had signed papers (affidavit) at the District attorney's office claiming that **["Curry did not commit the alleged act"]**. The prosecutor had entered an exhibit (jail card) showing this 11-22-92 arrest and its 12-18-92 **[DISMISSAL]** corroborating Curry's allegation. That the prosecutor had failed to disclose a copy of the disissal or [REDACTED] signed papers admitting that Curry did not commit the assault. And that counsel failed to object to all the 1992 assault and dramatics.

States Attorney, [FILED], "Proposed Findings of Fact, Conclusions of Law", that WERE [ADOPTED], by the trial habeas court. See (EXHIBIT (N) At Brief in Support for motion for Leave)(EPPENDIX B).

FINDINGS OF FACT

- (51). The Court finds, based on the appellate record the State introduced into evidence a pen packet, [jail card] and judgment which reflected that applicant had been previously convicted of [criminal mischief]; the court further finds that these documents also referenced an [aggravated assault charge and an assault charge that had been dismissed].
- (52). The Court finds that the applicant fails to show [THE STATE "QUESTIONED" "ANY WITNESSES" ABOUT THE "DISMISSED" CHARGES] or [THAT THE STATE "REFERENCED" THE [DISMISSED] CHARGES "DURING CLOSING ARGUMENT"]; the applicant also fails to show that [THE JURY "CONSIDERED" ANY OF THE "DISMISSED CHARGES" IN "ASSESSING" PUNISHMENT].
- (53). The Court finds, based on the Affidavit of Wallace Wilson, that Wilson made the [REASONABLE STRATEGIC DECISION NOT TO OBJECT] to the Pen Packet, [JAIL CARD] and Judgment on the [BASIS THAT THEY CONTAINED REFERENCES TO TWO CHARGES THAT HAD BEEN DISMISSED]
- (56). The Court finds, based on the official trial records, the appellate record, its [PERSONAL RECOLLECTION], the [VERY CREDIBLE TESTIMONY BY THE COMPLAINANT] that the evidence at guilt and punishment stages, was overwhelming that any additnal argument [BY COUNSEL would not have made a diffrence in the Jury's verdict at punishment].

See FOOT NOTE: [12]

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- [12]. The Court Note; this is proof that the prosacutor and State Habeas attorneys committed a fraud upon the Trial court, the Jury, and the Trial Habeas Court on up to the Court of Criminal appeals. The prosacutor sceemed the trial court in putting on and not correcting ~~Curry's~~ false 1992 assault testimony in the guilt and punishment statges. The prosecutor never told the jury or court that all of ~~Curry's~~ 1992 testimony was the one and the same [DISMISSED 1992 CASE] that was in the jail card. The prosecutor and State attorney's all knew that The dismissed 1992 assault case and ~~Curry's~~ 1992 testimony were the same case but never admitted it. ~~Curry~~ had on 12-18-92 the day of Curry's 1992 assault hearing had first stoped at the District Attorneys office and swore out an affidavit that she had lied on Curry, then she told the Court Judge the same thing ,and dismissed all the charges. The Jury did hear about the dismissed case.

CONCLUSIONS OF LAW

- (4). Wilson's decision not to object to testimony about extraneous offenses committed by applicant was reasonable trial strategy had a plausible basis and is therefore not subject to review.
- (6). The applicant fails to show a reasonable probability that, but for counsel's failure to object to testimony about the [various extraneous offenses] committed by applicant, the result of the proceeding would have been different.
- (15). Because the complainant's testimony about extraneous acts committed by the applicant during the course of assaulting her on previous occasions and in connection with the primary case was admissible to show the context in which the criminal acts occurred. Counsel was not deficient for failing to object, **NOR CAN THE APPLICANT SHOW THAT THE TRIAL COURT WOULD HAVE ERRED IN OVERRULING SUCH AN OBJECTION.**
- (16). The applicant fails to show that counsel's strategic decision to not object to the complainant's testimony about extraneous offenses committed by applicant was unreasonable and that there is a reasonable probability that the result of the proceeding would have been different but for counsel's failure to object.
- (17). The applicant fails to show that counsel's strategic decision to not object to the pen packet, [JAIL CARD] and judgment admitted at trial on the basis that they also referenced charges that had been dismissed was unreasonable and that there is a reasonable probability that the result of the proceeding would have been different but for counsel's failure to object.

SEE FOOT NOTE: [13]

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- [13]. The Court Note: that there was nothing reasonable to Curry's trial counsel not objecting to ~~Curry's~~ 1992 testimony and it is not within reasoning to think that a trial judge would allow a witness change her testimony from one trial or a court hearing in which the witness confesses to falsifying charges against someone and has also sworn out an affidavit to falsely accusing someone, then be allowed to scheme the trial court that these 1992 charges I'm talking about, are not the same as the dismissed charges in a jail card. That the applicant did not go to jail for this assault and got away with it. And then allow that witness to take what was a simple assault and turn it into several serious felony accusations.

Note; all trial had to do was object and inform the Trial Court that Curry had been charged for this alleged assault and that there was a hearing and affidavits, were ~~Curry~~ had admitted that she had falsely accused Curry of this very 1992 assault and the Court had dismissed all charges and that the prosecutor and ~~Curry~~ attempting to fraud the court and the fact finder. [AND GOD HELP THEM WHEN THE JUDGE FOUND OUT].

Statement of Facts:

(F). Respondent's Motion For Summary Judgment;

Jesse Curry, Filed his **[first]** Federal Habeas Corpus in, The United States District For The Southern District of Texas Houston Division, seeking relief pursuant to 28 U.S.C. § 2254, Civil Action No. H-09-2119, on July 1st, 2009 and DISMISSED on September 3rd, 2010. Curry in this 2254 had brought these **[SAME]** **[1992]** extraneous offense errors of counsel, alleging counsel failed to present a viable defense by "**not investigating**" the complainant's **[HISTORY]** of falsely accusing people of sexual and physical abuse, eliciting, opening door and failing to object to testimony that Curry had **[previously]** beat ~~Curry~~ causing her to miscarry, object to Curry had assaulted a police officer, assaulted a dog and failing to object to evidence that 1992 previous charges of assault had been DISMISSED.

Jessica Hartsell, Assistant Attorney General, "placed in her Summary Judgment - Statement of Facts" ~~Curry~~ testimony of the 1992 alleged assault on her, that she was hemorrhaging, that the paramedics could not get to her and the child she was carrying was lost, that Curry had assaulted an officer (5 RR 35-37)(Summary Judgment Pg 14).
(Appendix D)

Hartsell, argued " A party moving for Summary Judgment "**[Bears the Burden]** of **[Informing the Court]** of the basis for the motion and **[Identifying Pleadings]**" and other record evidence demonstrating the "absense of any genuine issues of **[material fact]**" Howell Hydrocarbons Inc. V. Adams, 897 F.2d 183, 191 (5th Cir. 1990) (citing Celatex Corp V. Catrett, 477 U.S. 317, 323 (1996). If the moving party makes the required showing, then the burden shifts to the nonmoving party to show summary judgment is not appropriate Fields V. City of South Houston, 922 F2d 1183, 1187 (5th Cir. 1991). **[14]**

[14]. Hartsell's own argument informs the court it is her (the States) that bears the burden of informing the court and identifyin pleadings and other records demonstrating the "absense of any genuine issue of material fact" [Is not Brady and Napue violation a genuine issue of material fact and the states burden]

Hartsell, argues; however, while summary judgment rules apply with equal force in a "federal habeas proceedings" the rule only applies to the "extent that it does not conflict" with rules that govern habeas review. "Therefore § 2254 (e)(1)-which [mandates] that **[FINDINGS OF FACT]** made by a state court are **[presumed to be correct]** overrides the ordinary rule that, in summary judgment proceedings all disputed facts must be construed in the light most favorable to the nonmoving party.- unless... the petitioner can rebut the presumption of correctness by clear and convincing evidence as to the "state court [Findings of Fact], they [must] be accepted as correct. See- (SUMMARY JUDGMENT Pg 17-18). At (Appendix D)

Hartsell, additionally argues, AEDPA provides that the state courts **[Factual Findings]** "shall be presumed to be correct" unless the petitioner carries" the burden of rebutting the presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254(e)(1). "The presumption of correctness not only applies to explicit findings of fact, but it also applies to "those unarticulated findings which are necessary to the state courts **[Conclusions of mixed law and fact]**. (SUMMARY JUDGMENT Pg 21).^[15] See (Appendix D)

Hartsell, argued Curry has failed to provide any of the necessary evidence to rebut the findings that either his trial counsel was not deficient or that Curry has not been prejudiced by trial counsel's performance. Hartsell, even argues the same argument in the findings of fact/conclusions of law; arguing Curry has not demonstrated that "the state ever questioned any witness about the dismissed charges or referenced them in closing and that he similarly fails to show or demonstrate that the jury considered the dismissed charge." ^[16]
^[15]. Hartsell is arguing that the false pleadings of adopted Findings and conclusions should be taken as true, knowing the dismissed 1992 case is the same case ██████ testified to in 1992.
^[16]. Hartsell at this point has surely perpetrated Fraud on the Federal Court when she herself argues Curry hasn't demonstrated his claims, when their own exhibit is the same 1992 case.

REASON FOR GRANTING THE PETITION

GROUND, (A)-(B)

- (A). Has the Fifth Circuit entered a decision in "CONFLICT" with her sister circuits and lower Federal Courts, on the same important issues of wheather A.E.D.P.A.'s SUCCESSIVE PETITION RULES apply to "BRADY" and "NAPUE" violations that were NOT RIPE at the time of the initial petition, based on "NEWLY DISCOVERED" DNA FOREnsic test evidence;
- (B). Has the Fifth Circuit entered a ruling that "CONTRAVENTS" United States Supreme Court "PRECEDENT" set in Panetti V. Quarterman, on wheather A.E.D.P.A.'s SUCCESSIVE PETITION RULES apply to violations that were NOT RIPE at the time of the initial petition based on "BRADY" and "NAPUE" violations shown by "NEWLY DISCOVERED FORENSIC DNA TEST EVIDENCE";

ARGUMENT

Curry's, "First four grounds" in his Motion for Leave with his Proposed 2254/Brief in Support (Fed. No.25-20177), brought forth BRADY and NAPUE violations committed by the Prosecutor, the Complainant and the State's Forensic DNA expert, that were based on "NEWLY DISCOVERED FORENSIC DNA TEST EVIDENCE", Showing that "both sperm fraction test samples [DID] contain a [THIRD PARTY MALE DNA TYPE] that should not have been there based on (1). The Prosecutor's trial theory and line of questioning(2). Complainant's trial testimony, sworn out complaint and her written and recorded statements(3). And state's forensic DNA expert Robin Freeman's trial testimony and lab results.[17] SEE at (APPENDIX B).

[17]. The Court Note: We know the third party DNA type is [MALE], because; the (NON-SPERM) fraction test results were CONSISTENT with a [SINGLE SOURCE] DNA Profile of a [FEMALE INDIVIDUAL], that ~~Curry's~~ could not be excluded as the source. Also Note that if the third party DNA belonged to a female, then she would have showed up in the (NON-Sperm) (Body Cells).

- (1) The Prosecutor's theory and arguments, was that Curry came home drunk accusing [REDACTED] (his wife) of not behaving like a wife should (INFIDELITY), Whitch [REDACTED] [DENIED]. That Curry beat her and after leaving the residence of Dale Fowler where they were temporarily living, Curry at a rest stop in the middle of the night comes up with a plan to [FRAME] Dale Fowler for the rape and assault of his wife. SEE Prosecutor's opening, At (APPENDIX B),(EXHIBIT D).
- (2) [REDACTED] testified to the theory of the prosecutor's, that she [DENIED] committing the [INFIDELITY] claims Curry was making and that Dale Fowler never raped or assaulted her, that Curry had come up with the plan to accuse Fowler at a rest stop and had threatend her to tell this story to police. It was several weeks afterwards that she was able to tell police the truth. [REDACTED] in her charging [COMPLAINT] by police also claimed Curry had accused her of [INFIDELITY] which she [DENIED]. And [REDACTED] also [DENIED] that she Had committed [INFIDELITY] in SEVERAL WRITTEN STATEMENTS and a Recorded Police Statement. SEE DENIAL OF INFIDELITY TESTIMONY AND COMPLAINT WITH STATEMENT AT (APPENDIX B),(EXHIBITS A,C).
- (3) Robin Freeman, the State's DNA expert bolstered both the State's theory and [REDACTED] testimony that, "SHE WAS NOT RAPED BY FOWLER AND THAT SHE HAD NOT HAD SEX WITH ANYONE SLSE, NO INFIDELITY. That the DNA types found were consistent with Curry and [REDACTED] DNA types, that her test results did not discover any other any other type not consistent with the types from Curry and [REDACTED] FREEMAN also testified that the [VAGINAL SWAB] was [CONSUMED] during her testing. FREEMAN also testified that she could not know if the samples contained a [THIRD PARTY]. FREEMAN also testified that there was no way to know how long Curry's DNA had been in his wifes vagina.^[18]SEE FREEMAN'S TESTIMONY AND LAB REPORT AT (APPENDIX B),(EXHIBITS F-G).

[18]. The Court Note; Freeman's Lab Report was never introduced or entered as an exhibit during the guilt or punishment phase.

REASONS FOR GRANTING THE PETITION

The Honorable Court Note: That at "NO TIME" [BEFORE], [DURING] or [AFTER] Curry's trial or throughout Curry's State Appeals, up to Curry's [FIRST] federal § 2254 application "**has there been [ANY] FACTUAL EVIDENCE PROVING THAT [REDACTED], HAD [ANY TYPE] OF SEXUAL [INTERCOURSE] WITH [ANYONE] OTHER THAN HER HUSBAND**" during the time frame window of the alleged sexual assault, that would [FACTUALLY] prove, that [REDACTED] had some type of sexual relations outside of her husband and had committed perjury or that it was [FACTUALLY] and truly possible, that [REDACTED] had [INFACT] BEEN RAPED AND ASSAULTED BY DALE FOWLER SR. on the morning of June 24th, 1998, AS [REDACTED] HAD ORIGINALLY CLAIMED. --- Neither was there [ANY] FACTUAL EVIDENCE PROVING, THAT THE STATE'S DNA EXPERT ROBIN FREEMAN HAD GIVEN FALSE TESTIMONY OR EVIDENCE PROVING THAT HER DNA TEST RESULTS WERE FALSE (NOT CORRECT).

Curry is not trying to argue the merits of the case, but is rather more accurately give the HONORABLE COURT a clear understanding of the facts and show the court that [NO] factual evidence existed that would or could have tested the State's [THEORY] or challenged the State's DNA experts testimony or results, that supported Trudy's denial of rape and infidelity. That without the [NEW DNA EVIDENCE] from the retesting of [REDACTED] sexual assault kit testing done after Curry's first § 2254, that the truth of [REDACTED] [VAGINAL SAMPLES] **containing a third party male DNA profile type would have never came to light.** Surley this Court can imagine the effect on the defenses pre-trial preparation or the effect on the fact finder if it was shown [REDACTED] had lied, that DNA supported her original claim.

The Court take Notice; that Curry up until (2018) had **(DILIGENTLY)** **tried to gain DNA retesting.** Curry's court appointed DNA attorney was replaced at this time with new court appointed attorney SCOTT POPE. Curry at that time for the first time obtained an unredacted copy of the (3rd page) of Freeman's original lab report. Curry discovered that tho Freeman testified about her results, she had "failed to inform the Court, defense and the fact finder that her test results were from **[PARTIAL PROFILES]** in the [DQA1] sperm fraction test from both samples. The VAGINAL SMEAR AND VAGINAL SWAB"

Freeman on her (2nd page) of her lab report informed that Curry's DNA type was not detected in the [D1S80] **test results and that these results would not be used.** Yet Curry now with the unredacted copy of the third page learned that Freeman had failed to explain that not only had the D1S80 test failed to detecte Curry's DNA type, but it had also failed to detect ~~Curry's~~ DNA type in [BOTH] the sperm fraction test samples, So both Curry and ~~Curry~~ were not detected in the sperm test, [Yet] the court take notice, that the [POLYMARKERS] next to each of the sperm fraction test samples are SHOWING in (HBGG and GC) three letters, [ABC]-[ABC]. NOTE: Each person only has TWO LETTERS out of the three letter (ABC) code, not three. It can be any commination of two letters AB,AC,BC etc.. but not three. So the Polymarkers are showing that there is stil a mixture of at least two DNA types showing up yet Curry and ~~Curry~~ are not detected. **NOW THE COURT UNDERSTAND THAT THIS IN NO WAY PROVES THAT A THIRD PARTY TYPE IS PRESENT, BUT THIS DOES GREAT A LOT OF [SUSPICION].** SEE Freeman's Lab Report and her trial testimony AT (APPENDIX B),(EXHIBITS F-G).

**NEWLY DISCOVERED
FORENSIC DNA EVIDENCE**

Curry, in (2018) presented these "suspicious findings" to his new court appointed DNA counsel (Scott Pope) and Pope refused to bring these suspicious findings to the trial courts attention. Curry filed a motion to dismiss Pope bringing these findings to the trial courts attention. The trial court refused to rule on Curry's motion. Curry was stuck between the court and his own counsels non action, basically "TRAPED IN LIMBO" ---Curry with no choice had to work around his own counsel. At this time Curry filed a [COMPLAINT] with the (TFSC), the TEXAS FORENSIC SCIENCE COMMISSION, concerning Freeman's suspicious testimony and lab results. (TFSC) Complaint no.20.67.

It was this complaint that "lead to the RETESTING along with the REVIEW by Bob Wicoff, a public defender whom Curry believes is still with the DNA mixture review team in Harris County. See (TFSC) letter and BOB WICOFF'S TWO letters At (APPENDIX B), (EXHIBIT B).

NEW TEST RESULTS

On July 30th, 2021, the Harris County Institute of Forensic Sciences, disclosed the [NEW] DNA test results from ~~Curry's~~ Sexual Assault Kit, in its "FORENSIC GENETICS REPORT", Laboratory No: CL98-0263DS1. ---Curry request The Honorable Court at this time take [JUDICIAL NOTICE] of this [NEW] laboratory report. The [EVIDENCE] from this report is [NEWLY DISCOVERED], it "DID NOT EXIST PRIOR TO

CURRY'S [FIRST] FEDERAL § 2254 APPLICATION]. Infact it "did not exist untile approximately TEN YEARS after Curry's first § 2254, that was DISMISSED on September 3rd, 2010. SEE NEW 4pg GENECTICS REPORT At (APPENDIX B),(EXHIBIT E).

RESULTS

THESE NEW TEST RESULTS [CONCLUSIVELY] SHOW THAT A [THIRD PARTY] DNA PROFILE TYPE WAS FOUND IN [BOTH] OF ~~██████████~~ VAGINAL [SMEAR AND SWAB] SPERM FRACTION SAMPLES;

Genetics Report: Page 2, Item 6 (VAGINAL SWAB);

Sub-Item 6 sp (sperm fraction): The DNA results are consistent with a MIXTURE of DNA from [TWO INDIVIDUALS].

The DNA MIXTURE is approximately [35 BILLION TIMES] more likely if it ORIGINATED FROM JESSE CURRY and an [UNKNOWN INDIVIDUAL].

Genetics Report: Page 2-3, Item 7 (VAGINAL SMEAR);

Sub-Item 7 sp (sperm fraction): The DNA results are consistent with a MIXTURE of DNA from [THREE INDIVIDUALS].

[ASSUMING] ~~██████████~~ as a donor, the DNA MIXTURE is approximately [45 QUADRILLION TIMES] more likely if it ORIGINATED FROM ~~██████████~~, JESSE CURRY, AND AN [UNKNOWN INDIVIDUAL].

These results prove [IRREFUTABLY] that the [COMPLAINANT] ~~██████████~~ Curry, the State's (KEY WITNESS), [KNOWINGLY] committed [PERJURY] during trial, in her sworn complaint, her statements and her sworn [RECORDED] Pasadena Police statement. It is "not conceivable that ~~██████████~~ did not know she had had sex with someone other than her own

husband. NOTE: ~~██████~~ "ADAMANTLY DENIED INFIDELITY CLAIMS"; the only [MALE] ~~██████~~ ever factually claimed she had had "VAGINAL SEXUAL INTERCOURS WITH, WAS DALE FOWLER; WHEN SHE HAD FIRST ACCUSED FOWLER OF RAPING HER:" ~~██████~~ claimed no one had been there at the house all day, that Fowler had went to work. Yet Fowler [CLEARLY STATED] he was [NOT WORKING AT THE TIME], that he went over to his girl friends around [2:00 that day]. The court not forget it was not the police who contacted Fowler as Fowler claimed, it was Fowler who had jumped the gun and had infact contacted Pasadena Police, claming he had heard that he was an aggravated assault suspect, before the police had even talked to the complaining witness yet. The court has to use some commin sence here. Allegedly the plan to frame Fowler was made up on a dark HWY at a rest stop in the middle of the night after [LEAVING] Fowler's house in Pasadena Texas. Some where between Houston and Lufkin Texas. Well away from Pasadena Texas. And Fowler also claimed he wasn't home and knew nothing about the incident, yet Fowler [OUT OF THE BLUE] calls police claiming he had heard that he was an "AGGRAVATED SEXUAL ASSAULT SUSPECT". If this plan to frame him was made up after leaving the area on a dark HWY, How could any person in Pasadena Texas or Fowler know about it when it was reported to Lufkin Police and Pasadena Police had not even talked to the complaining witness? This Case is so [STUPID]. A competent attorney should have destroyed the State's case. Yet all the Honorable Court needs to do is read the MOTION FOR NEW TRIAL,WHERE TRIAL COUNSEL STATED (I JUST LET THE CHIPS FALL WHERE THEY MAY) SEE MOTION FOR NEW TRIAL At (APPENDIX C), and ABOVE (STATEMENT OF FACTS)

The Court Note; that the prosecutor Rob Freyer, not long before Curry's trial (dropped the sexual assault charge) and Re-Indicted Curry for Aggravated Assault. Curry now beleaves with all the new facts and evidence, that this was done to keep Curry from attacking the DNA evidence in the guilt phase, as the prosecutor did not call FREEMAN as an expert witness untile the punishment phase.

Curry also beleaves, this was done to keep the defense in the dark, just in case counsel was up to muster on DNA testing, "which he clearly was not". It is now clear that **ROBIN FREEMAN** gave [FALSE AND MISLEADING] trial testimony, testifying in a [CONFUSING] and [ATYPICAL] way, than other analysts usually testify.

(1) Freeman, failed to inform the court, defense or fact finder, that her results in the (DQA1) sperm fraction smear and swab samples were infact based on (partials), and that infact her (statistical) rarity calculations of Curry's known DNA profile was [FALSE] and did not provide any useful information. SEE (TFSC) letter, BOB WICOFF LETTERS At (APPENDIX B),(EXHIBIT B).

(2) Freeman testified that the vaginal [SWAB WAS CONSUMED]. This was [PERJURED TESTIMONY], for we now know from the retested samples, that the "VAGINAL SWAB" was retested, and that it showed a third party male DNA type.

(3) Freeman also testified that the results were consistant with ~~Curry's~~ and Curry's DNA type. We now know that the new testing of this supposedly consumed vaginal swab, did not detect ~~Curry's~~ in the sperm fractions test from the swab, so the partial that was half of ~~Curry's~~ DNA type was not ~~Curry's~~ DNA after all in Freeman's original test, and therefore not consistent with ~~Curry's~~ type.

(4) Freeman lead [EVERYONE] to beleave with her testimony, that her test results were consistent with only Curry's and ~~Tracy's~~ DNA types, that her results were not [CONTAMINATED] with any other persons DNA type, or profile. Yet we now know this is [FALSE].

(5) Freeman knowingly purjurs, herself, when she testifies that she was [NOT ABLE] to tell if someone elses DNA profile type was in the sperm fraction mixture, (because she didn't have anyone elses DNA to compare it to). --- The Court Note; Freeman "irrefutably" is **not telling the truth**. Freeman herself had during questioning by the prosecutor, had [JUST TESTIFIED] "we consider contamination a foreign [DNA TYPE] thats [UNACCOUNTABLE]. Freeman clearly knows she does not need a comparison DNA profile to tell if a sample is contaminated with an [UNKNOWN DNA PROFILE TYPE]. SEE Freeman's original lab report and freeman's trial testimony and NEW GENECTICS REPORT At (APPENDIX B) and (EXHIBITS E,F,G).

NOTE: There are thousands upon thousands of cases all over the UNITED STATES, showing that DNA analyst ETC... are able to [ROUTINELY] determine if a DNA mixture or sample contains an UNKNOWN DNA PROFILE TYPE, Freeman herself, in other cases has given testimony that DNA test results [OBTAINED] "from samples was [CONSISTENT] with [UNKNOWN MALE AND FEMALE DNA PROFILES]" SEE Winfrey V. State, 291 S.W. 3d 68, 72 (11th Court of APP.2009); (Freeman said, that a DNA profile obtained from the hair was consistent with an [UNKNOWN FEMALE]. SEE Wallace V. State, 2004 Tex. App. Lexis 3307; [UNIDENTIFIED MALE].

Also see the new Genectics report, were the analyst in the retesting was clearly able to find a UNKNOWN MALE PROFILE and even entered it into the DNA [CODIS] "searching for the profile.

ARGUMENT
FOR
GROUND (A),(B)

Curry sought leave in the Fifth Circuit, requesting Leave to Present "NEWLY DISCOVERED FORENSIC DNA EVIDENCE" in a second §2254 Application. In Curry's first four grounds, Curry sought relief for BRADY and NAPUE violations leading up to a MISCARRIAGE OF JUSTICE. The Fifth Circuit DENIED authorization, determining Curry had not made "a prima facie showing", that Curry's application did not satisfy the requirments of 28 U.S.C. § 2244 (b)(2)(B). SEE The Fith Circuits ORDER At (APPENDIX A).

The Fifth Circuit has ADOPTED a "PRECEDENT" (describing that this court has "DEFINITIVELY"...determined that [BRADY] and GIGLIO/ [NAPUE] claims raised in 'second-in-time habeas petitions' are successive "REGARDLESS" of whether the Petitioner knew about the alleged suppression when he filed his first habeas petition.) Inre Will, 970 F.3d 536, 540 (5th Cir. 2020); Also See Blackman V. Davis, 909 F.3d 772 (5th Cir. 2018).

Curry argues the Fifth Circuit, has made an [ERRONEOUS] and overbroad review, of Curry's BRADY and NAPUE violations, holding Curry to the "HIGHER STANDAREDS" of A.E.D.P.A.'s § 2244 (b)(2)(B) Gate Keeping requirments, that [CONTRAVENTS] the United States Supreme Court's [PRECEDENT] set in Panetti V. Quarterman, 551 U.S. 930 (2007), holding "that a petition bringing a claim that was [NOT RIPE] when the petitioner filed his first-in-time petition is [NOT SECOND] OR [SUCCESSIVE]". PANETTI'S reasoning applies with "FULL FORCE" to BRADY and NAPUE claims. As in PANETTI, applying the BAR on second-or-

successive habeas petitions to BRADY and NAPUE claims "would produce troublesome results, create procedural anomalies, and close courthouse doors to a class of habeas petitioner's seeking review without any clear indication that such was congress' intent" 551 U.S., At 946 (quoting) Castro V. United States, 540 U.S. 375, 380-381 (2003).

Take Curry's case. How exactly was Curry supposed to have raised a BRADY or NAPUE claim more than a "DECADE" ago when he brought his first habeas petition, given that he was UNAWARE of the BRADY and NAPUE evidence and "COULDN'T HAVE BEEN AWARE OF THESE VIOLATIONS BECAUSE THE [FACTUAL PREDICATE] TO THIS EVIDENCE [DID NOT] AND [COULD NOT] HAVE [EXISTED] UNTIL CURRY HAD AGUIRED THE [RE-TESTING] OF THE FORENSIC EVIDENCE FROM THE COMPLAINANTS SEXUAL ASSAULT RAPE KIT A DECADE LATER", IT DID NOT EXIST!

The Court Note; it is not even arguable by the Fifth Circuit that the "Factual Predicate" to Curry's NEW DNA EVIDENCE EXISTED at the time of Curry's first § 2254 filing, for it clearly [DID NOT EXIST]. Yet the Fifth Circuit clearly understanding that Curry "had made the PREDICATE REQUIREMENTS, the Fifth Circuit, went AGAINST THIS COURTS [PRECEDENT] IN [PANETTI]. Holding Curry to the HIGHER STANDARED of § 2244 (b)(2)(B). (That, but for Constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.)

Curry argues, that if the Fifth Circuit's erroneus and illogical ruling is allowed to stand, it would have troubling consequences. **FOR EXAMPLE:** Think of the consequences on all the other inmates from around the United States seeking POST CONVICTION DNA TESTING, because they knew they were innocent and knew there had to have been some

kind of mistake or deliberit false testimony, yet even thou these inmates gain testing or RE-TESTING proving something was not right, and the results were in their faivor, under the Fifth Circuits rule no matter what the evidence proved, if there was any kind of CIRCUMSTANTIAL EVIDENCE of guilt, under the "PRECEDENT" being set by the Fifth Circuit, [NOT ONE] of these inmates could meet the 28 U.S.C. § 2244 (b)(2)(B), higher standard requiring, "the Facts underlying the claim, if proven and viewed inlight of the evidence as a whole, 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"... This standared is far more stringent than the REASONABLE PROBABILITY OF A DIFFRENT RESULT STANDARED THAT TYPICALLY APPLIES TO BRADY CLAIMS. PANETTI'S reasoning applies with full force to BRADY claims as well as NAPUE claims.

Curry should not be required to meet the more stringent standard, and his BRADY AND NAPUE violations "should be held to [FIRST § 2254] application standards" It is unconstititutional to "allow the state or its witness's, encluding law enforcement and other agencys used by the state, to present FALSE TESTIMONY OR EVIDENCE AND GET AWAY WITH IT.... The prosecutor and trial witness's already have some form of immunity at a certin level. It is [ILLOGICAL] to [PUNISH] the inmate further by requiring him to meet an even higher standard once he has exposed [THE STATES FALSE OR PRJURED EVIDENCE]. Yet under the Fifth Circuits "CURRENT PRECEDENT" PROSECUTORS WHO SUCCESSFULLY CONCEAL THESE VIOLATIONS AT THE FIRST APPLICATION, ARE INFAC T [REWARDED].

NEXT: Curry, would argue, "that the Fifth Circuit's [ERRONEOUS] [PRECEDENT] has caused a [CONFLICT] with other Sister Circuit's and lower federal courts". At least three other Courts of Appeals have [ADOPTED] "the same erroneous interpretation as the Fifth Circuit" Inre Wogenstahl, 902 F.3d 621, 626-628 (CA 6 2018) Per Curiam; also Brown V. Muniz, 829 F.3d 661, 668-671 (CA 9 2018); Tompkins V. Secretary, Dept of Corrections, 557 F.3d 1257, 1259-1260 (CA 11 2009).

But See; Scott V. United States, 890 F.3d 1239, 1254-1258 (CA 11 2018) (we respectfully disagree with the TOMPKINS panel's analysis and conclusion, as we read Panetti V. Quarterman, 551 U.S. 930 (2007), the Supreme Court did not limit its analysis to petitions involving FORD claims. And when we apply the Panetti Factors to BRADY claims, as we must, BRADY claims CANNOT BE FACTUALLY DISTINGUISHED from FORD claims for puposes of determining whether they are second or sucessive.)

Yet there are other Sister Circuits who have adopted the Fifth Cicuits erroneous precedent, INRE PICKARD, 681 F.3d 1201, 1204-1205 (10th Cir. 2012); Evans V. Smith, 220 F.3d 306, 322-323 (4th Cir. 2000).

BUT SEE; other Courts that agree with Suprem Court [PRECEDENT] in PANETTI's, generalized logic that second-in-time habeas petitions "ARE NOT SUCCESSIVE UNDER 28 § 2244 gate keeping, that were [NOT RIPE] at the time of the initial petition, See United States V. Obeid, 707 F.3d 898 (7th Cir. 2013). ALSO SEE a number of sister circuits have generalized this logic to "apply to other types of second- time petitions that were not ripe at the time of the initial petition, SEE Johnson V. Wynder, 408 F. APPX 616, 619 (3rd Cir. 2010); Inre Weathersby, 717 F. 3d 1108, 1111 (10th Cir. 2013).

REASON FOR GRANTING THE PETITION

GROUND, (C)-(D)

- (C). Has the Fifth Circuit entered a decision in "CONFLICT" with her sister circuits and lower federal courts, on the same important issues of wheather A.E.D.P.A.'s SUCCESSIVE PETITION RULES apply to § 60 (b), § 60 (d)(3) "FRAUD UPON THE COURT" violations that demonstrate egregious "INTENTIONALLY FRAUDULENT CONDUCT DIRECTED AT STATE AND FEDERAL COURTS"
- (D). Has the Fifth Circuit entered a ruling that "CONTRAVENTS" United States Supreme Court "PRECEDENT" on wheather A.E.D.P.A.'s SUCCESSIVE PETITION RULES APPLY TO § 60 (b), § 60 (d)(3) "FRUAD UPON THE COURT" where state officers of the court of Texas, did DILIBERTLY PLAN and EXCUTE A SCHEME to DEFRAUD state and FEDERAL COURTS.

Curry directs the Honorable Court to his "GROUND FIVE" FRAUD UPON THE COURT argument in his (MOTION FOR LEAVE/2254 BRIEF IN SUPORT AND ITS EXHIBITS K-L-M-N) at (APPENDIX B).

NOTE: Curry [IS NOT] attacking the substance of the Federal District Court's resolution of his claim ON THE MERITS. Rather Curry [IS] attacking a [DEFECT IN THE INTEGRITY] of the [FIRST] federal § 2254 proceedings. Curry is "Actually INNOCENT", and is requesting that the Honorable Court "INTERVENE" to prevent a "GRAVE MISCARRIAGE OF JUSTIC" ...where state officers of the court (attorneys), perpetrated an unconscionable plan to scheme state and [FEDERAL COURT JUDGES] into making ERRONEOUS and IMPROPERLY INFLUENCED DECISIONS that prevented Curry from obtaining the benefit of his defense in his [FIRST] § 2254 FEDERAL COURT JUDGMENT.

Curry seeks relief based on; the Fifth Circuits ERRONEOUS HOLDING and DENIAL in Curry's Motion For Leave/ § 2254 Brief in Support arguments. (HOLDING): (Curry fails to make the required Prima Facie showing). See Fifth Circuit's ORDER at (APPENDIX A).

Thus the Fifth Circuits ruling [IS] "Holding Curry's § 60 (b), § 60 (d)(3), FRAUD UPON THE COURT claim, to the A.E.D.P.A.'s §2244 HIGHER GATE KEEPING REQUIRMENTS that "CONTRAVENTS" United States Supreme Court "PRECEDENT" set in Gonzalez V. Crosby, 545 U.S. 524, 532 (2005); (HOLDING) (A § 60 (b) motion in a § 2254 case that asserts or reasserts [NO CLAIM] but instead attacks "some defect in the INTEGRITY of the Federal Habeas Proceedings" IS NOT BARRED) and as such, "IS NOT SECOND OR SUCCESSIVE". SEE Calderon V. Thompson, 523 U.S. 538 (1998). Also SEE, Hazel-Atlas Glass Co. V. Hartford-Empire Co., 332 U.S. 238 (1944).

The Fifth Circuit's ruling is also, in "CONFLICT" with its sister circuits, on this same "important issue" of wheather A.E.D.P.A.'s successive petition rules apply to § 60 (b), § 60 (d)(3), "FRAUD UPON THE COURT" violations that demonstrate EGREGIOUS INTENTIONALLY FRAUDULENT CONDUCT DIRECTED AT FEDERAL COURTS. SEE Rodriguez V. Mitchell, 252 F.3d 191, 200 (2nd Cir. 2001),"we are aware that the majority of circuit courts that have considered this issue have held that a RULE 60 (b) motion to vacate a judgment denying habeas petition either must or may be treated as a second or successive habeas petition. These Courts, **HOWEVER**, have offered little explanation in support of their reasoning. Their opinions depend largely on concusory statements and citations to one another. "In our view better reasoning support the conclusion that a RULE 60 (b) motion to vacate a judgment denying habeas IS NOT a second petition under § 2244 (b)."

SEE: Workman V. Bell, 227 F.3d 331 (6th Cir. 2000); Cases of Fraud upon the court ARE EXCEPTED FROM THE REQUIREMENTS OF 28 USCS § 2244.

SEE: Johnson V. Prelesnik, 2017 U.S. DIST. Lexis 36791 (MICHIGAN Eastern District Court), the Assistant Attorney General, who represented the state in this matter committed a fraud on the court BY RELYING ON, AND SUBMITTING TO THE COURT FALSE AFFIDAVITS [FROM] THE TRIAL PROSECUTOR AND THE INVESTIGATING OFFICER in petitioner's criminal case. This [IS NOT] a claim under § 2244 because it attacks an alleged defect in the federal habeas proceeding.

SEE: Rice V. United States, 2014 U.S. Dist. Lexis 121061 (Florida Southern District Court), RULE §60 (b) motions that attack "not the substance of the Federal Court's resolution of a claim on the merits, BUT SOME DEFECT IN THE INTEGRITY OF THE FEDERAL HABEAS PROCEEDINGS [ARE NOT] SUCCESSIVE and A DISTRICT COURT [CAN] RULE UPON THEM WITHOUT PRECERTIFICATION. Sighting; Gonzalez V. Crosby, 545 U.S. 524, 532-33 (2005).

In Munoz V. United States, 331 F.3d 151, 52-53 (1st Cir 2003); the first circuit adopted an "INTERMEDIATE" focus on whether a § 60 (b) motion is successive. Holding that a motion under rule 60 (b), should be treated as a second or successive habeas petition if-and only if-the factual predicate set forth in support of the motion constitutes A direct challenge to the constitutionality of the underlying conviction. "If however the factual predicate set forth in support of the motion attacks [ONLY] the manner in which the earlier habeas judgment has been procured. The motion may be adjudicated under the jurisprudence of RULE 60 (b)."

Curry sought leave based on a True FRAUD UPON THE COURT and laid out from start to finish on how this fraud began with [REDACTED] and the prosecutor conspired and orchestrated an elaborate [SCHEME], Devising a horrifying plot, accusing Curry of a vicious [1992] assault upon [REDACTED], Police and animals [THAT NEVER took place].

The prosecutor and [REDACTED] intentionally suppressed exculpatory evidence [PROVING] that Curry was charged with a simple assault in 1992, that he was arrested and went to jail for. Yet the suppressed POLICE REPORT [BELIES] [REDACTED]'s trial testimony and accounts that led to several serious felonies. [REDACTED] and the Prosecutor suppressed that [REDACTED] had given a sworn affidavit at the DA's office stating; that she had falsely accused Curry of this 1992 simple assault, that she was drunk and upset with him and was just trying to get him into trouble etc..., [REDACTED] and the prosecutor also suppressed that [REDACTED] had that same day explained to the judge in Curry's 1992 hearing the exact story she had explained in her affidavit hours before. Upon the judge hearing [REDACTED]'s recantation the judge dismissed all the charges. Curry has supplied in his exhibits in his brief in support the judges dismissal order based on [REDACTED]'s affidavit. So Curry's jurist or the trial court never knew that [REDACTED] and the prosecutor were deceiving them.

The State officers further perpetrated this FRAUD by submitting proposed findings of fact/ conclusions of law that were "INTENTIONALLY CORRELATED" to cover up this fraud, and "infact these pleadings are the true fraud upon the courts. As explained in Curry's MOTION for leave with brief in support, the prosecutor entered a jail card that showed a dismissed [1992] simple assault. This is the same 1992 case that [REDACTED] testified to. Yet when Curry argued grounds about all

these 1992 extraneous offenses that victim had testified to and the jail card the prosecutor had entered as an exhibit, the State set the "TRUE FRAUD UPON THE COURT ON PAPPER IN THE PLEADINGS"; when Jessica Hartsell, the Texas Assistant Attorney General, in Curry's [FIRST] § 2254 [PRESENTED] these FRAUDULENT FINDINGS/ CONCLUSIONS to THE FEDERAL DISTRICT COURT, arguing in her [SUMMARY JUDGMENT] that [THESE PLEADINGS] should be [EXCEPTED AS TRUE]. Inturn The Federal U.S. District Court For The Southern District of Texas "Trusted and Relied [EXPONENTIALY] On These False Pleadings. SEE [FIRST] 2254 and Federal Courts Opinion At (EPPENDIX E).

THEREFORE THESE FRAUDULENT ADOPTED STATE PLEADINGS ARE IMPUTED TO THE FEDERAL DISTRICT COURT, EVEN MORE SO AS JESSICA HARTSELL, ARGUED THESE FALSE FACTS AND PLEADINGS IN HER FEDERAL SUMMARY JUDGMENT. SEE Jessica Hartsell's summary judgment filings at Curry's (APPENDIX D) and his GROUND FIVE AT (APPENDIX B).

The Honorable Court look at Curry's (EXHIBIT N) in his brief in support, STATES ADOPTED PROPOSED FINDINGS/CONCLUSIONS AT (APPENDIX B). The Court look at (PAGES 15-16, of EXHIBIT N). SEE Proposed #51, #52 and #53. The Court NOTE: #52; the court finds the applicant fails to show that the State [OUESTIONED] any [WITNESSES] [ABOUT] the [DISMISSED CHARGES] or that the [State refrenced the dismissed charges during closing argument]; the applicant also fails to sho that [the Jury considered any of the dismissed charges in assesin punishment]. There are many places threwout these proposed adopted State pleadings concerning the 1992 cases. SEE (PAGES 23-24)(#15-#17, and it should be abundently clear, the State officers of the Court [KNEW] the [1992 testimony and the 1992 dismised jail card case were infact the same cases]. Yet hiding it from [EVERYONE].

CONCLUSION

Curry asserts "EXCEPTIONAL" circumstances warranting the exercise of THE HONORABLE SUPREME COURT'S discretionary poweres exist and that adequate relief can not be obtained in any other form or any other court. The FIFTH CIRCUIT HAS SET A PRECEDENT THAT IN ALL RESPECTS IS UNCONSTITUTIONAL AND "CONTRAVENTS" SUPREME COURT PRECEDENT, CREATING A "CONFLICT" THAT IS AN EMBARRASSMENT TO THE PUBLIC "TRUST".

IN STOREY V. LUMPKIN, 142 S.Ct 2576, 2577-78 (2022), Statement of JUSTICE SOTOMAYOR; (The facts of this case offer a cautionary tale for those courts of appeals that have yet to define what constitutes a restricted "secound or successive habeas corpus application," 28 U.S.C. §2244(b).(2), in the context of prosecutorial misconduct. I WRITE TO UNDERSCORE HOW ERRONEOUS THE FIFTH CIRCUIT'S DEFINITION IS AND HOW IT UNFAIRLY DEPRIVES INDIVIDUALS OF AN OPPORTUNITY TO RAISE SERIOUS CLAIMS OF PROSECUTORIAL MALFEASANCE IN FEDERAL HABEAS PROCEEDINGS.

Curry argues it is "IRREFUTABLE" that the factual predicate was not previously available through the exercise of reasonable diligence. Curry truly believes that the court of criminal appeals of Texas and the fifth circuit both intentionally pulled a rug over Curry's claims to avoid another DNA scandal in Texas. Note: Curry's DNA analyst was Robin Freeman, The region TWO CRIME LAB SUPPERVISER when she gave her FALSE DNA RESULTS Etc... Think of the magnitude of the thousands of possiable cases she overseen having to be looked at.

Curry prays that the HONORABLE COURT [GRANT] his petition for his ORIGINAL HABEAS CORPUS IN ALL MATTERS THE COURT DEEMS SHOULD TAKE PLACE.

RESPECTFULLY SUBMITTED,

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