No: 23A1096

In The
Supreme Court of the United States

In re ERIC DRAKE,

On Application for Emergency Stay of the Proceedings In the 282nd District Criminal Court in Dallas Texas

APPLICATION FOR EMERGENCY STAY OF THE PROCEEDINGS IN 282ND DISTRICT CRIMINAL COURT IN DALLAS PENDING THE FILING OF A PETITION FOR WRIT OF MANDAMUS

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June 4, 2024

HONORABLE JUSTICES OF THE US SUPREME COURT:

Comes now, Petitioner, ERIC DRAKE, prays that an Order be entered temporarily staying proceeding pursuant to 23.3 in the 282nd District State Court, which is a underlying criminal trial court in Dallas County, Texas and in support of his application respectfully states as follows:

1. Petitioner filed the instant action on June 4, 2024, requesting that this Court grant review of the order of the Fifth Court of Appeals (Case No. 05-24-00342-CV) denying the Petitioner's Mandamus and emergency relief. *See* **Exhibit A**. Petitioner provided a 1025-page Appendix. The Fifth Court of Appeals Texas shall be referred to herein as (FCA). The FCA denial was based on the fact that the 282nd had just received the criminal file because of a transfer. *See* **Exhibit B** (denial of Mandamus by the FCA).

2. Petitioner is also filing this instant action requesting that this Court grant review of the order of the Court of Criminal Appeals (Case No. WR-95,163-02) denying the Petitioner's emergency relief and leave to file Mandamus *without* an order. *See* **Exhibit C**. The Court of Criminal Appeals Texas shall be referred to herein as (CCA). The CCA did not provide any reasons for its denials. *See* **Exhibit D**.

3. Petitioner was arrested on August 23, 2022 for allegedly stalking April Corrales, a neighbor, bearing the criminal cause number: F2276307. The Affidavit of Arrest is completely false and is the product of

conspiracy and fraud by local law enforcement, Dallas Police Department (DPD), and private citizens (including alleged victim) and the Dallas District Attorneys office in Dallas County, Texas. Petitioner can prove beyond a reasonable doubt with exculpatory evidence that the Affidavit of Arrest is false and that assistant District Attorney have likewise conspired with private citizens (alleged victim and her family) and with other State Actors (DPD) to convict the Petitioner of the felony crime of stalking.

The Speedy Trial Act and Argument

4. As a matter of fact the indictment was obtained by reading the fraudulent Affidavit of Arrest to the grand jury. The prosecutors for the State of Texas failed to comply with the speedy trial act. Petitioner was indicted on February 14, 2023. A year after the indictment, prosecutors were not ready to try Petitioner nor had any prosecutors announced ready. Petitioner filed a motion to dismiss pursuant to speedy trial act on March 24, 2023 and has been since pending, which triggers *Barfield* and *Barker*. Pursuant to the speedy trial act, time began to start on the date of the arrest August 23, 2022.

[1]The failure of the state to show compliance with the Speedy Trial Act, Tex. Code Crim. Proc. Ann. art. 32A.02, results in a dismissal of the indictment, and a discharge of the accused from criminal liability thereunder, in essence an acquittal without a trial.

5. Factually, a prosecutor for the State commented on record that the previous prosecutor had not prepared the Petitioner's case for trial, which weighs heavily against State regarding the speedy trial act. According to *State v Cooley*, 12-months was sufficient to trigger a speedy trial analysis.

6. One of the main issues in the Petitioner's Mandamus was the fact that the previous judge failed to allow arguments for Petitioner's motion to dismiss pursuant to the speedy trial act. The FCA and the CCA failed to conduct a *speedy trial analysis* because to do so would reveal that the indictment should be dismissed. Point to be made is that the FCA and CCA is protecting the District Attorney's Office (DA's) in Dallas County by not requesting a response to the Petitioner's Mandamus because to do so would result in a dismissal.

7. The FCA legal opinion that the trial court only had the criminal file for a month is not relevant to the argument that the prosecutors failed to comply with the speedy trial act. The Speedy Trial Act is directed at *prosecutorial delay only*. This is an important point because the FCA and the CCA protected the DA's office to cover the DA's office failures to comply with the Sixth Amendment. Delays due to the state of the court's docket are not attributable to the State and will not justify dismissal. *Barfield*, supra.

Four Hundred days after the Petitioner's arrest prosecutors were not ready to try him. Evidence of this fact was obtained by a transferring prosecutor who said on the record that the prior prosecutor had not prepared the case for trial. See transcript **Exhibit E** (page 5 lines 23 — 25, on November 30 2023 State no ready). The FCA had the transcripts from the lower trial courts and the Mandamus was well pled. However, in an effort to try and protect the DA's office, the FCA cited a most recent transfer, as the reason for denial of Petitioner's Mandamus and emergency relief, which was not proper. FCA refused to conduct a speedy trial analysis because it would trigger *Barker.*

8. The falsified indictment filed against Petitioner's should be dismissed with prejudice. Hence, a stay of the underlying criminal case is necessary until the CCA, FCA, and the trial court could conduct a speedy trial analysis. There would be no prejudice to the State of Texas because the DA's office has already violated the speedy trial act pursuant to the Sixth Amendment. And an order from this Court directing the DA's office, even though they where the Real Party in Interest for an explanation of its delays would shed light on this important factor to the speedy trial act.

7. According to *Ordunez v. Bean*, supra, the announcement of ready was not contemporaneously challenged by appellant so in that case,

the trial court was not called on to determine whether in fact the State was ready to go to trial. However, in the case before the Court, a prosecutor has already admitted that the State was not ready to try the Petitioner over a year after his arrest. As such, 508-days after the Petitioner's arrest the State has admitted it was not ready to try him. Furthermore, since the indictment against the Petitioner should be dismissed at this point, because the prosecutors violation of the Sixth Amendment and its provable the indictment was obtained by reading the fraudulent Affidavit of Arrest to grand jury thus an order Staying underlying criminal trial proceedings is necessary.

8. It would obviously inflict irreparable harm on the Petitioner to continue in a case where the indictment was fraudulently issued by the prosecutors reading a conspired Affidavit of Arrest to the grand jury that does not support probable cause.

9. The prejudice that the Petitioner has faced during this fraudulent case is overwhelming. The stress of the entire ordeal has caused Petitioner began to experience *intrinsic blindness* since March of 2023. Doctors believe that this is a result of the ongoing stress that is daily compounded and compressed on the Petitioner.

10. The *Barker-Wingo* factor is the prejudice to a *defendan*t result ing from the delay. *Barker*, 407 U.S. at 532. In assessing this factor, the

Court must take into consideration the interests that the right to a speedy trial is intended to protect: "1) to prevent oppressive pre-trial incarceration; 2) to minimize the accused's anxiety and concern; and 3) to limit the possibility that the accused's defense will be impaired." ***Id.***

11. The most serious factor is the harm to the accused's defense. ***Id.*** "[T]he inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. The FCA and the CCA failed to order the trial court to conduct a hearing on Petitioner's motion to dismiss.

12. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past." ***Id.*** "Once an accused makes a *prima facie* showing of some prejudice, the State must carry the obligation of proving that the accused suffered no serious prejudice beyond that which ensues from the ordinary and inevitable delay of being charged with a criminal case." *Ex parte McKenzie*, 491 S.W.2d 122, 123 (Tex.Crim.App. 1973) (emphasis added). In this case, Petitioner has suffered substantial injury by the harm this case has caused his name and by the way of probable lost evidence and witness memories, because the prosecutors evidently miscalculated that this case would be pled out.

13. Petitioner has experienced emotional strain and stress, which has affected his health as stated herein because of the ordeal of this criminal case. In sum, the Petitioner prays that he has made the requisite showing for this Honorable Court to intervene and Stay the underlying criminal case pending in the 282nd JDC Dallas, Texas. CCA failed to instruct the FCA to order the trial court to rule on Petitioner's motion to dismiss or to set a hearing without delay. The FCA failed to order the trial court to do anything, including ordering the trial court to rule on Petitioner's motion to dismiss or to set a hearing on the motion without delay. The CCA and the FCA failed to make a *speedy trial analysis* or instruct the trial court to conduct a speedy trial analysis. Further, the CCA and the FCA failed to instruct the trial court to obtain an explanation of the reasons behind the prosecutor's delays.

14. A trial court is authorized to dismiss an indictment with prejudice under only a few circumstances. In this case, the Petitioner argue that the indictment should be dismissed because Petitioner has been denied his constitutional right to a speedy trial . . . *State v. Johnson*, 821 S.W.2d 609, 616 n.2 (Tex.Crim.App. 1991); *Gaitan*, 905 S.W.2d at 706 n.4. However, Petitioner never obtained an adverse ruling on his motion to dismiss because the trial courts refused to rule on the motions and refused to

conduct hearings on Petitioner's motion to dismiss and *Franks* motion. This action is a violation of Petitioner's due process and equal protection rights. Without an adverse ruling the Petitioner cannot preserve his complaint for appellate review. Petitioner cannot make a judge rule on his motions. However, the Petitioner indeed many requests for a ruling on his motions and hearing, but all of those requests were denied. In the Petitioner's Mandamus, he complains about the judge's refusal to rule on his motion to dismiss indictment, and the FCA and CCA failed to Order the trial court to rule on the motion to dismiss, and conduct a speedy hearing on the Petitioner's Motion to Dismiss Indictment. A trial court has a ministerial duty to timely rule on a motion requesting relief. *In re Salazar,* 134 S.W.3d 357, 358 (Tex. App.--Waco 2003, orig. proceeding); *In re Taylor,* 39 S.W.3d 406, 414 (Tex. App.--Waco 2001, orig. proceeding); *In re Taylor*, 28 S.W.3d 240, 248 (Tex. App.--Waco 2000, orig. proceeding) (disapproved on other grounds, *In re Z.L.T.*, 124 S.W.3d 163, 166 (Tex. 2003)).

JUDGE AMBER GIVENS REFUSAL TO RECUSE HERSELF

15. On April 3, 2024, the Petitioner filed several motions, which included a Motion to Recuse Judge Amber Givens of the 282nd District Criminal Court in Dallas County, Texas. Petitioner forwarded the Motion to

Recuse by U.S. Mail. The mail arrived at the clerk's office on April 4, 2024. But the Petitioner had to request the district clerk to get involved to have Judge Givens clerk to even file the document into the record. Once filed, the clerk filed the Petitioner's motion on the 15th of April instead of April 4, 2024 when she actually received it. The clerk also sealed the motion. The clerk appeared to try and conceal the Motion to Recuse Judge Givens.

16. On May 31, 2024, the Petitioner advised Judge Amber Givens in open court that she has been recused from his criminal case and requested her to recuse and refer the matter for another assignment of a judge. Judge Givens refused to recuse herself. When a trial judge is presented with a motion to recuse, she must either recuse herself or refer the motion to the regional presiding judge. *Brousseau v. Ranzau*, 911 S.W.2d 890, 892 (Tex. App.—Beaumont 1995, no writ). When a motion is filed, the clerk of the court has a duty to deliver a copy to the respondent judge and to the regional administrative presiding judge. Tex. R. Civ. P. 18a(e). If Judge Givens is allowed to continue in the Petitioner's criminal case, and orders that she signs would be considered void and null, without legal affect.[2]

17. Regardless of whether the motion complies with Rule 18a, the

respondent judge, must either recuse or refer the motion to the regional presiding judge. Tex. R. Civ. P. 18a(f)(1). Judge Givens failed to act on the Petitioner's Motion to Recuse and the CCA and FCA also failed to even comment on this ministerial duty that Givens has failed to comply with.

18. Recusal is appropriate if the facts are such that a reasonable person would harbor doubts as to the trial judge's impartiality. *Kemp v. State*, 846 S.W.2d 289, 305 (Tex. Crim. App. 1992).

19. Petitioner has no remedy by appeal of a judge who has refused to recuse herself under State law that mandates for the judge to recuse or refer. However, since Judge Amber Givens has waited more time than Rule 18a allows, and unlike federal judges, Givens under Texas State law is automatically recused.

20. Rule 18a of the Texas Rules of Civil Procedure does not allow any Texas State judge to luxury of not following its strict rules. A trial judge faced with a motion to recuse has two options: recuse himself or refer the case to the administrative judge to assign another judge to hear the motion. *McLeod v. Harris*, 582 S.W.2d 772, 773 (Tex. 1979). Once a motion to recuse has been filed, the trial judge "shall make no further orders and shall take no further action in the case except for good cause stated in the order in

which such action is taken." TEX. R. CIV. P. 18a(c) (emphasis added); see also *Carson v. Gomez*, 841 S.W.2d 491, 493 (Tex. App.--Houston [1st Dist.] 1992, no writ) (stating once recusal motion filed trial court shall not take any further action).

21. The CCA and the FCA is not enforcing Rule 18a simply because the Petitioner is not an attorney. "Where a trial court judge denied a motion to recuse him and then ruled on a pending motion to recuse another judge, both orders were void; under Tex. R. Civ. P. 18a, a judge who was the subject of a motion to recuse could not deny the motion but had a mandatory duty either to grant the motion or to refer the motion to the presiding judge." "Because the judge signed the Temporary Restraining Order (TRO) after the handwritten motion to recuse was filed without complying with Tex. R. Civ. P. 18a(f)(1), the TRO was void. A TRO that was void was subject to remedy by mandamus."

22. The Petitioner will file his Mandamus with the Supreme Court within 5-days of the Court receiving this Emergency Motion to Stay.

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[2]The acts of a disqualified judge are void. *Templeton v. Giddings*, 12 S.W. 851 (Tex.Sup., 1889); Fry v. Tucker, 146 Tex. 18, 202 S.W.2d 218, 221 (1947). A proliferation of the authorities upon the point is deemed unnecessary.

The Honorable Amber Givens has been recused but have refused to recuse in compliance with Rule 18a, as such all order signed after a judge have been recused are void. The Constitution is not authorized only for practicing attorneys; otherwise basic civil rights, due process and equal protection rights are without meaning. Even if the Constitution has taken a holiday regarding *pro se* litigant's rights, it cannot become a sabbatical.

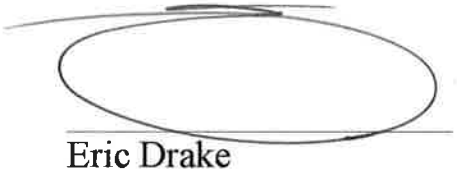
CONCLUSION

This Court should stay the 282nd Criminal District Court proceedings pending resolution of Petitioner's Mandamus in this Court. As additional relief, Petitioner requests that this Court stay all proceedings pending the resolution of a petition for Mandamus in the 282nd court, before the filing of his petition for Mandamus in this Court.

Pursuant to the Sixth Amendment of the U.S. Constitution (*speedy trial act*), the Petitioner's criminal case should be dismissed with prejudice for the reasons cited herein. Under Texas laws, recusal is mandatory if the judge fails to comply with their ministerial duty of refer or recuse, which is strictly governed under Rule 18a of Texas Rules of Civil Procedure.

June 4, 2024.

Respectfully submitted,



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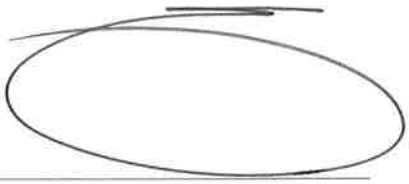
CERTIFICATE OF SERVICE

I, Eric Drake, *pro se* Applicant certify that on June 4th 2024, I served a copy of the Emergency Motion to Stay on all parties by U.S. Mail or by hand and that all persons required to be served have been served.



Eric Drake

Exhibit A

No: _____

In the Fifth Court of Appeals
Dallas, Texas

IN RE ERIC DRAKE

Relator

Original Proceeding Arising from the District Criminal Court Number 7, Dallas County, Dallas, Texas

Trial Court Number F2276307
Honorable Chika Ada Anyiam

RELATOR'S PETITION FOR WRIT OF MANDAMUS

Respectfully submitted by,

Eric Drake
Pro-Se
Relator
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912-281-7100

ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Relator:	**Eric Drake** ***Defendant* in the underlying suit**
Movant is *pro-se*:	**Eric Drake** **Pro-Se** **10455 N. Central Expressway** **Suite 109** **Dallas, Texas 75231** **(214) 477-9288**
Respondent:	**The Honorable Chika Anyiam** **Criminal Court Number 7** **133 N Riverfront Blvd.** **7th Floor** **Dallas, Texas 75207**
Real Party in Interest:	**April Corrales**
Assistant District Attorney:	**Robin Ogbonna** **Frank Crowley Courts Bldg.** **133 N. Riverfront Blvd.** **LB 19** **7th Floor** **Dallas, Texas 75207**

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Tab 51: **Copy of Sara Sheerin's False Affidavit of Arrest.**

Tab 52: ***Pitchford v. Borough of Munhall*, 631 F. Supp. 2d 636 (W. D. Pa. 2007) (excerpt from page 11) probable cause for an arrest.**

Tab 53: ***Hobley v. Burge*, Case No. 03 C 3678, June 2004.**

Tab 54: **U.S. Justice Dept. Translation of Texas Senate Bill 1043.**

Tab 55: **Sworn Declaration Emergency Room Doctor for Relator to Isolate Covid.**

Tab 56: **Police Report of Jesus Corrales Threatening Relator with a weapon, and referring to Drake with racial hateful words.**

Tab 57: **Respondent entry in old docket sheet.**

Tab 58: **Estimate of Damages to Relator's vehicle after Jesus Corrales Used a knife to cause significant damages to 2020 Outback.**

Appendix B:

RR1: **Transcript of October 20, 2022 hearing April Corrales protective order court.**

RR2: **Transcript of June 21, 2023 hearing before Judge Justin Koch (setting pre-trial and trial date of October 23, 2023).**

RR3: **Transcript of August 10, 2023 hearing before Judge Tina Clinton.**

RR4: **Transcript of Oct. 11, 2023 pre-trial hearing before Respondent Judge Chika Alma Anyiam.**

RR5: **Transcript of November 30, 2023 hearing before Respondent Judge Chika Alma Anyiam.**

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ABBREVIATIONS AND RECORD REFERENCES

Abbreviations:

1. Relator, Eric Drake will be referred to as either Relator or Drake.

2. The Honorable Chika Ada Anyiam is referred to as Respondent.

3. Real Party in Interest, April Corrales, will be referred to as Real Party in Interest or April or April Corrales.

4. State's attorney, Robin Obgonna, assistant district attorney shall be referred to as Robin Obgonna, or Robin.

5. State's attorney, Shawnkeedra ShaNeese Houston-Martin, assistant district attorney shall be referred to as Shawnkeedra ShaNeese Houston-Martin, or Houston-Martin, and or Martin.

Record References:

1. Documents attached to Relator's Petition, which includes the reporter's records, shall be referred to as **App.____,** with the appropriate alpha/numerical references. **App.A (__)App.B:RR:____.**

STATEMENT OF THE CASE

A. Nature of the Underlying Proceeding.

Underlying suit involves a criminal case where the District Attorney Office in Dallas County falsely charged Relator with "Stalking" April Corrales.

B. Respondent.

Respondent is the Honorable Chika Ada Anyiam presiding at the Criminal District Court Number 7, Dallas County, Texas.

C. Documents Filed Into the Trial Court's Record By Relator.

The Relator has filed the following documents into the trial courts record.

- **March 24, 2023**, Relator filed his Motion to Quash, Dismiss, and or Set Aside the Indictment. Relator requested the trial court dismissal of the Indictment pursuant to Speedy Trial Act. Relator's request for dismissal was made 6-month ago, which case law stipulates is too long for the trial court not to have ruled or acted on the motion.
- **June 2, 2023**, Relator Motion for Grand Jury Testimony. As set forth herein, unquestionably the district attorneys office in Dallas County indeed provided false, misleading, and fabricated evidence, and testimony, if any to the Grand Jury to indict Relator. This request is at the 3-month period of being too long for the trial court not to have acted on the motion.
- **June 2, 2023**, Relator requested Neuropsychological testing for the

reason that several key people in this legal matter behavior has been unstable, such as, Detective Sara Sheerin statement that Relator was going to hold her hostage by the taking her deposition. This request is at the 3-month period of being too long for the trial court not to have acted on the motion.

- **June 8, 2023**, Relator announced to the trial court that he was representing himself and not any other attorney.
- **June 13, 2023**, Relator filed a letter complaining that his pleadings were not getting filed into the trial courts record.
- **June 16, 2023**, Relator's Application to take Depositions was filed to try and obtain critical information proving that the Corrales conspired with Dallas Police to have him wrongfully arrested. Corrales knowing that the entire criminal complaint is false would be a risk of flight to Mexico. This request is at the 3-month period of being too long for the trial court not to have acted on the application.
- **June 16, 2023**, Relator had to file a motion to Compel the Grand Jury testimony being that he had requested the Grand Jury testimony. This request is at the 3-month period of being too long for the trial court not to have acted on the motion.
- **June 16, 2023**, Relator filed a Motion to Compel the Identity of Police Officers, not just those who arrested him, but other key Dallas

Police officers who Drake spoke with in complaining about the Corrales behavior towards him. This request is at the 3-month period of being too long for the trial court not to have acted on the motion.

- **June 16, 2023**, Relator Motion to Disqualify and Recuse Justin Koch. Judge Koch did many things that were improper in Drake's case, such as refusing to give him copies of documents that Koch's instructed Relator sign, threatening to jail Relator for his explaining to Koch that if a judge rule on a matter in open court a party may ask for a signed order and that is a ministerial duty of a judge. (quoting *In re Pete*).
- **July 5, 2023**, Relator filed a Supplemental to his Motion to Recuse Judge Jay Koch.
- **June 16, 2023**, Relator Motion for Franks hearing has not been ruled on nor has the trial court set this motion for a hearing in nearly 3-months.
- **July 5, 2023**, Relator filed a Supplemental to his Motion to Recuse Judge Justin Jay Koch.
- **July 5, 2023**, Relator Motion for Franks hearing has not been ruled on nor has the trial court set this motion for a hearing in nearly 3-months.
- **July 6, 2023**, Relator Motion to Appoint Investigator has not been ruled on nor has the trial court set this motion for a hearing in nearly 3-mothns. This is a very important motion to begin collecting

evidence for the trial, serving subpoenas, and other major needs.

- **July 10, 2023,** Relator filed a Motion to Clarification to have a better understanding of the courts position on his pending pre-trial motions being heard.
- **July 18, 2023**, Relator filed into the trial court's record a proposed order because Drake was fully aware that Judge Koch would deny any relief he would requests.
- **July 19, 2023**, Judge Justin Koch recused himself.
- **July 21, 2023**, Relator filed a Motion to Strike Judge Justin Koch's order being that it was defective in Relator's opinion and was not accurate. Judge Koch did not voluntary reucse himself.
- **August 14, 2023**, Relator filed a Motion for Discovery. Judge Justin Koch would not allow any of Drake's pre-trial motions to be heard until a week before the actual trial. However, Judge Tina Clinton ordered that the Relator, not being an attorney could only be shown the discovery but not provided a copy of the State's discovery or photograph the discovery. It is the Relator's legal opinion that both trial court judges violated his due process rights as argued herein.
- **August 14, 2023**, Relator filed a motion for the trial court to rule on his pre-trial motions, since many of these motions had been pending 3 to 6-months in the clerk's record without the trial court acting on the motions or setting a hearing date.

- **August 16, 2023**, Relator filed a letter into the clerk's record requesting the trial court, (Judge Tina Clinton) to act on his pre-trial motions. Relator was attempting to bring to the trial court's attention his pending pre-trial motions.
- **August 21, 2023**, Relator filed an amended letter into the clerk's record requesting the trial court to rule on his pre-trial motions.
- **August 21, 2023**, Relator further brings the trial court attention to his pre-trial motions by filing a pleading entitled, "Defendant bringing court Attention to Rule on his Pre-Trial Motions."
- **August 28, 2023**, Relator filed opposition to trial court's appointment of legal counsel.
- **August 29, 2023,** Relator filed a motion to recuse Judge Tina Clinton.
- **August 29, 2023**, Relator filed opposition to method of the trial court ordered the State discovery to provide evidence to him.
- **August 29, 2023**, Relator filed opposition to Court Appointed Attorney.
- **August 30, 2023,** Relator filed supplement to opposition of trial court's appointment of what it referred to as "Shadow" which is "Standby" legal counsel.
- **August 30, 2023,** Relator Opposition to Court, (Recusal of Tina Clinton) and the Courts Method of releasing Discovery to Relator, Due Process Violations, and Request Hearing.

- **August 30, 2023**, Order of Transfer from Criminal District Court 1 to Criminal Court No. 7 after the Recusal of Tina Clinton.
- **September 6, 2023,** Relator Motion for Evidentiary Hearing on Motion to Dismiss Indictment and Motion to Vacate Protective Order
- **September 13, 2023**, Relator letter Requesting Respondent Chika Anyiam to rule on his Pre-Trial motions.
- **October 2, 2023,** Relator's Filed an Opposition to the Court's Pre-Trial and Trial Dates that the Court Adopted.
- **October 5, 2023,** Relator's Supplemental Opposition to Court's Pre-Trial and Trial Dates and Defendant for Discovery.
- **October 5, 2023,** Relator's Objection and Demand for Discovery.
- **November 2, 2023**, Relator's Motion to Dismiss is based on several facts: a) State was not ready on October 23, 2023 to try Relator; b) State's Motion to Continue filed on October 26, 2023 is deficient, untimely, failed to meet Texas laws standards for a continuance; c) It is supportive evidence of the State not being ready to try the Relator previous to the filing; d) The State's Motion to Continue also reinforces Relator's argument that it violated the Speedy Trial Act.
- **November 7, 2023**, Relator's Amended Motion to Dismiss is based on additional factors for dismissal of the Indictment, including but not limited to the deficient Motion to Continue filed by the State. Furthermore, the State's Motion to Continue did not state proper grounds for a continuance. Relator in his further objections, objects to

the Respondent and lay grounds for her recusal and disqualification in the underlying criminal case. Respondent failed to respond to Relator Motion to Recuse and Disqualify.

- **December 5, 2023**, Relator filed a Notification of Supplemental Objection and Motion for Disqualification. However, even after the Relator filed his plainly read Motion for Disqualification and recusal, Respondent never recused or referred pursuant to the mandatory requirements pursuant to Rule 18a of the Texas Rules of Civil Procedure. As such, the Respondent has been recused from the underlying criminal case.
- **February 2, 2024**, Relator filed an Amended Motion for *Franks* evidentiary hearing. Additionally, Relator filed a letter into the courts record requesting a hearing on Relator's *Franks* Motion as soon as practical—by the appointed judge who will replace Respondent.

- **The State of Texas** has filed only one document into the trial court's record since it filed a copy of the indictment, which was a deficient motion to continue. Given an opportunity to prove it, the Relator will prove beyond a reasonable doubt that the State obtained its indictment against him by fraud. The State admitted that it was not ready to try Relator on October 26, 2024 when it filed its deficient motion to continue. And the state is still not ready to try this case as of the filing of this Mandamus.

D. Creditability Issues with District Attorney's Criminal Complaint.

On February 14, 2023, the Dallas District Attorneys office obtained an indictment against Relator for alleged stalking April Corrales. However, there are serious creditability issues with the State's case as shown below:

a) Would a jury believe that the Relator in fact stalked April Corrales when he gave her gifts while her parents were present? This legal argument is contradictory to common sense.

b) The Affidavit of Arrest authored by Dallas Police detective Sara Sheerin is a conspired false document. The District Attorneys office in Dallas County is very aware that Detective Sheerin's affidavit is a sham. Thus, there is no desire for Detective Sheerin to testify, expect in Grand Jury proceedings, were *relator's* are normally unable to obtain the testimony. However Relator has requested the Grand Jury testimony because of the obvious need to prove the indictment was obtained fraudulently. Respondent has refused to timely rule on the request for Grand Jury testimony.

c) Factually, the Dallas District Attorneys office cannot put April Corrales, the alleged victim on the stand to testify, because she has already falsified her testimony to obtain a protective order. Relator can prove April Corrales previous testimony was false.

d) The Dallas District Attorneys office knows that the evidence against Relator has been fabricated, and testimonies has been per-

jured, and misleading information was provided to the Grand Jury to obtain the indictment against Relator.

e) Sara Sheerin's Affidavit of Arrest lacks probable cause.

f) When the main witnesses have creditability issues, the results can be seen in the trial courts docket, which is:

1. No response by the Dallas District Attorneys office to any of the Relator's pleadings, which includes even his Motion to Dismiss and Quash Indictment, and,
2. The Dallas District Attorneys office has filed only one deficient motion into the trial court's records for over 11-months, or since the filing of a copy of its indictment against Relator on February 14, 2023 into the court's record.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this matter pursuant to section 22.221 of the Texas Government Code. TEX. GOV'T CODE ANN. § 22.221 (Vernon 2004).

ISSUES PRESENTED FOR REVIEW

- Whether Relator, Eric Drake is entitled to Mandamus relief because Respondent abused her discretion when she denied Relator the relief that he sought in timely ruling on his pre-trial motions, thus implicitly denying his Motion to Dismiss Indictment pursuant to the *Speedy Trial Act.*

- Whether the Prosecutor's for the State violated the Speedy Trial Act.
- Whether the State's Delay's Violated Relator's Rights to a Speedy Trial.
- Whether the Relator's requests for Grand Jury Transcripts and Evidence is necessary in a criminal case of fraud and conspiracy committed by the Complaining Witness, the Dallas Police and the District Attorneys Office.
- Whether Respondent violated her ministerial duties in regards to the Tex. R. Civ. P., Rule 81a pursuant to Relator's Motion to recuse and disqualify.
- Whether the Appointment of Heath Harris violated the Petitioner's Sixth Amendment, Due Process Rights, and the U.S. Constitution and the Texas Constitution.
- Whether Heath Harris was appointed to interfere with Relator's self-representation and whether he was appointed as a spy for the state.
- Whether Harris was appointment was as an act of racism.
- Whether Respondent is partial to prosecutors on account of their race.
- Whether Relator has a right to chose his own investigator when requesting funding for an investigator.

- Whether Relator has a right to select his own standby counsel that he desires to work with—since the trial court insist on Relator to have standby counsel.

- Whether Respondent should be recused because she appears to be covering up police felony crimes as well as the district attorneys felony crimes of fraud, conspiracy, fabricating evidence and perjured testimonies.

- Whether Respondent should have ordered an investigation into Relator's case when Relator advised the Respondent on November 30, 2023 that, Detective Sara Sheerin's Affidavit is false and the fact that he has evidence beyond a reasonable doubt to prove this point, and that her Affidavit lacks probable cause for arrest.

- Whether Respondent violated her ministerial duties in regards to the Relator's request for an immediate hearing on his *Franks* Motion.

PETITION FOR WRIT OF MANDAMUS

Eric Drake ("Drake"), Relator in this original petition, file this Petition for Writ of Mandamus and, as grounds therefore, would show as follows:

I.
STATEMENT OF FACTS

THESE ARE THE FACTS ARGUED BEFORE THIS HONORABLE COURT:

1. The Relator was wrongfully arrested on August 23, 2022.
2. Relator has represented himself *pro-se* since his arrest.
3. Relator requested a speedy trial on March 24, 2023, less than 41 days after the State's indictment against him. **App.10**
4. State hasn't announced ready in underlying case since Drake's arrest.
5. Respondent refused to hear Relator's Franks Motion and Dismissal.
6. Affidavit of Arrest is false and it lacks probable cause for arrest.
7. Respondent have refused to allow the Relator to actually possess the State's discovery—to be examined by Relator and his experts.
8. The State failed to comply with the *Speedy Trial Act.*
9. Relator was not given the opportunity to submit his packet to the Grand Jury for its consideration.
10. The Grand Jury was most likely provided false, misleading evidence, information, and presented with perjured/misleading testimonies.
11. The State has only filed one motion in the trial courts record since it filed a copy of its indictment against Relator on February 14, 2023.

II.
SUMMARY OF THE ARGUMENT

The State failure to comply with Chapter 32 of the Texas Code of Criminal Procedure demands dismissal of Indictment with prejudice.

Previous **Judges Justin Koch, Tina Clinton as well as the Respondent Implicitly Denied Relator's Motion to Dismiss the State's Indictment**

Judges Justin Koch and Tina Clinton, and the Respondent abused their discretion by implicitly denying Relator's Motion to Dismiss the Indictment against him. The Relator recused previous Judges Koch and Clinton. *See* **App.24**, **App.34**. Respondent has followed the same pattern of abusing her ministerial duties by refusing to act on Relator's pre-trial motions. Also, Respondent has also failed to recuse herself and file a referral to the RALJ.

Relator summarize his argument regarding the dismissal of the State's indictment in the following manner: a) The State was not ready to try the Relator case within the prescribed 120-day deadline of his felony arrest under Article 32A.02, § 1(1); and b) The State has failed to make announcements of "ready" each time thereafter, as the *Speedy Trial Act* requires. The State was not ready to try the Relator's case within 260 days of its indictment against Drake. It has been well over 420 days since the Relator was arrested, and the State is still not ready to try him for the alleged offense of stalking. Relator has a right to a *Speedy Trial* under the Sixth Amendment of the United States. The State has continued to delay and conspire against him.

The Relator recused Judges Justin Koch, Tina Clinton, and Respondent for violating his Constitutional and due process rights. Under the given situation, Relator believes he should be granted Mandamus relief, because he is indisputably entitled to the requested relief as a matter of fact and law.

Further, prosecutors for the State have conspired with private citizens to suggest additional alleged crimes against Relator. The State's delays violated Relator's right to a speedy trial, and the proof that the State was not ready to try Drake within the prescribed time set forth by the Speedy Trial Act is its deficient motion to continue filed on October 26, 2023. In addition, Prosecutors stated on November 30, 2023 that the State read the fraudulent Affidavit of Arrest to the grand jury to indict Drake. The State knows that the Affidavit is a product of fraud, perjury, and fabricated evidence—and the Affidavit of Sheerin's lacks probable cause.

STATEMENT OF THE CASE

The case before this Honorable Court is very similar to the case of *Rosa Parks* in 1955. Ms. Parks refused to give up her seat on public transportation to a white man, which resulted in her being arrested. In this case, a Hispanic family by the name of "Corrales," that resides in the same neighborhood the Relator reside referred to Relator with harsh racial epithets

using the "n" word, (nigger) repeatedly towards Drake. Audiotapes verify the racial slurs used by the Corrales towards the Relator. Video of the Corrales confirm them saying to Drake, "We don't want you in our part of the neighborhood, go back to where you belong."

Because Relator would not allow the Corrales or the Dallas Police to violate his Constitutional rights of freedom, Detective Sara Sheerin, a Hispanic employed with the Dallas Police Department, filed a false Affidavit of Arrest to silence the Relator's voice, which was retaliation under the First Amendment. Sheerin falsely arrested and falsely imprisoned the Relator.

Relator has been an ordained minister for over 4-decades. Prior to accepting the call to the ministry, the Relator was employed as a professional artist; his artwork has been shown in museums. He graduated from one of the toughest University's in the nation Magna Cum Laude. However, God convinced the Relator that He was calling him into His ministry by allowing Drake to experience Stigmata.[1] This is a extremely rare occurrence that very few ministers—or even the Pope has experience in his lifetime.

Relator was arrested at gunpoint on August 23, 2022, by 5-Dallas Police officers as if he was the Mexican drug lord Joaquín 'El Chapo' Guz-

[1]Stigmata is a mystical phenomenon where holy men or women (mainly women, including Catherine of Siena) receive some or all of the bodily wounds of Christ's crucifixion. The Catholic Church has carefully studied this rare spiritual marvel, and is a sign of closeness with the Almighty through sharing in Christ's suffering.

mán. Relator also used to work with a specialist group that was advisors to law enforcement nationwide. Thus, he understands proper protocol when engaging suspects. The Dallas police officers who arrested Relator violated many standard practices, such as having their fingers on the trigger of their guns, which is a receipt for killing the suspect before his or her arraignment.

Bail for the Relator was set at $30,000.00, (**App.2**) (**App. 4**) which was excessive and a violation of the 8th Amendment. The scheme was to try and keep the Relator incarcerated. Even the handcuffs used to arrest Relator

were the type used for violent criminals. The magistrate who set Relator's bail is employed only part-time in Dallas County. She is a criminal lawyer, who just happened to be on the bench when Drake was arrested. She told Relator that she spoke to the victim and her sister. She is also Hispanic. At the time of Relator's arrest, he had no contact with April Corrales, the alleged victim or her sister, Athena Corrales for over 3-years. This is why this case is so preposterous, but also conspired and fraudulent.

The prosecutor is not ready to try this case presently. The Dallas District Attorneys office obtained an indictment against Relator on February 14, 2023. **App. 9**. Without examining what information, witnesses, or evidence they provided the Grand Jury, Relator is certain that he is able to prove it was fraudulent. And most likely any evidence provided to the Grand Jury was fabricated, misleading or misinformation. Hence, the indictment

should be dismissed with prejudice. (**App.16**) Relator made a request for the grand jury testimony and transcripts from the trial court, (**App.11**) but the prosecutors have refused to release any information to Relator, which would end the district attorneys criminal complaint against him. Moreover, the Respondent has refused to order the State to release its full and complete discovery to him. As one of Dallas County's most prominent and respected past Chief Prosecutor, Patrick Jordan, said after reviewing the Relator's case, "I would not have even filed this case let alone prosecute it."

HOW THE DALLAS POLICE AND CORRALES CONSPIRED TO FABRICATE A STALKING CHARGE AGAINST RELATOR

The Relator gave the Corrales youngest daughter a cake for her birth-day from the age of 12-years old, until her 16th birthday. The Corrales were struggling partly because Mr. Corrales would not work. Relator commonly gives gifts to children, especially when the parents are struggling. However, each time Relator gave April Corrales any gifts, at least one of her parents were always present. After a period of time, Relator noticed abusive behavior by April's parents: physical and possibly sexual in nature. Relator filed a CPS inquiry and the Corrales discovered it was in fact the Relator who filed the inquiry. Since that time, the mother of the alleged victim, Kimberly Caves has attempted to retaliate by making false claims against the

Relator, but none of those frivolous complaints were successful in having Drake falsely arrested. In 2019, Kimberly Corrales filed a false compliant against Relator allegedly he inappropriately touched her daughter, April Corrales. But at that time Kimberly did not have a detective that was willing to conspire with her like DPD Detective Sara Sheerin. The detective who was working the fraudulent inappropriate touching claim by Kimberly Corrales dropped the falsified allegations. Case law stipulates that if a *defendant* is able to prove that the grand jury was provided perjured testimony and fabricated evidence, which resulted in an indictment against defendant, *dismissal with prejudice* would be the proper legal remedy.

The parents, Jesus and Kimberly Corrales (aka Cave) of April have so much control over their daughters that, April and Athena Corrales would testify to whatever their parents told them to say. Furthermore, the gifts that were mainly given to April Corrales were given prior to the filing of the CPS inquiry. But suddenly those same gifts have been used to form the frivolous allegation of stalking April Corrales. Each person who has played a major part in this conspiracy against the Relator is Hispanic. This is why the Dallas District Attorneys office does not want to try the Relator's case. Further, Relator has exculpatory evidence—evidence beyond a reasonable doubt that proves the entire case against him is completely fraudulent.

ARGUMENT

A. Availability of Mandamus Relief.

Although a speedy-trial claim is not typically a matter for pretrial appellate-court review, the CCA has suggested that Mandamus relief may be appropriate if a "trial court rules against a *defendant* [on a motion to dismiss for failure to provide a speedy trial] and the *defendant's* entitlement to relief is indisputable, as a matter of fact and law." This Court has Mandamus jurisdiction over criminal law matters. But in this case, the Relator urge this Court to take this matter up because of: a) prosecutor's delays; b) the fact that he is entitled to the relief sought, and c) the continual damage to Relator's name, his defending this case and health creates hardship.

Article 32A.02, § 1(1), supra, requires the State to be ready for trial within 120 days after commencement of a felony criminal action or risk dismissal of the indictment with prejudice. *Barfield v. State*, 586 S.W.2d 538 (Tex.Cr.App. 1979); Art. 28.061, supra. A felony criminal action commences when an indictment against a *defendant* for a felony offense is filed in court or when the *defendant* is arrested for the same offense, whichever occurs first. Art. 32A.02, § 2(a), supra; *Euziere v. State*, 648 S.W.2d 700, 704-705 (Tex.Cr.App. 1983). Defendant made a claim under the *Speedy Trial Act* on March 24, 2023. *See* **App.10**.

The State could not announce ready 120 days after Relator's arrest, because the State had not obtained an indictment against the Relator until 164 days after his arrest. Therefore, as a matter of *fact and law*, the Relator should be granted Mandamus by the Honorable Court in this *rare* case. As such, the pending criminal case against Relator should be dismissed with prejudice. *Chapman v. Evans,* 744 S.W.2d 133, 135 (Tex. Crim. App. 1988). *Doster*, 303 S.W. 3d 501, 509-10 (Tex.App.–Fort Worth 2011, no pet).

Moreover, judges Koch, Clinton, and the Respondent abused their discretion by refusing to timely rule on Relator's motion to dismiss pursuant to the *Speedy Trial Act. In re Amir-Sharif*, 357 S.W.3d 180 (Tex. App. 2012). Relator has made several requests for a ruling on his pre-trial motion to dismiss the indictment by three different judges, but each judge has refused to act. Relator's motion to dismiss the State's indictment has been pending for over 10-months. According to case law, even 3-months have been considered by several appellate courts as a threshold of a trial court need to act. Respondent's refusal to rule on Relator's motion to dismiss the Indictment has resulted in refusal to undertake a ministerial duty and by doing implicitly denied relief sought by Relator. She also refused to hear Relator's *Franks* motion until the scheduled pre-trial motions in April.

B. Applicable Texas Criminal Statutes.

1. Speed Trial Statute

Article 32A.02, Sec. 2, V.A.C.C.P., provides in pertinent part:

"(a) . . . a criminal action commences for purposes of this article when an indictment, information, or complaint against the defendant is filed in court, unless prior to the filing the defendant is either detained in custody or released on bail or personal bond to answer for the same offense or any other offense arising out of the same transaction, in which event the criminal action commences when he is arrested." Relator has moved three district trial courts for a discharge of indictment under the provisions of Article 32A.02 prior to trial.

2. Senate Bill 1043

Felony crimes in Texas must be brought to trial within 120-days of the commencement of the criminal action.

3. Rules about ruling on pleadings, ministerial duty to rule.

The trial court has a ministerial duty to rule on a motion that is presented for a ruling. To be entitled to mandamus relief compelling a trial court to rule on a properly filed motion, relator must establish that the trial court (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) failed or refused to rule on the motion within a reasonable time. *In re Layton*, 257 S.W.3d 794, 795 (Tex. App.—Amarillo 2008, orig. proceeding); *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 2003, orig. proceeding).

C. **Issue One:**

Respondent abused her discretion in several ways. She implicitly denied Relator the relief he sought of conducting a hearing on his dismissal of the Indictment pursuant to the *Speedy Trial Act.*

The Respondent and two other trial courts implicitly denied Relator an opportunity to hear his *speedy trial* motion under U.S. 2 CONST. Amend VI; TEX. CONST. art. I, § 10. *2. The *Speedy Trial Act* dictates that when a *defendant* is accused of a felony, the court shall set aside the indictment if the State is not ready for trial within 120 days of commencement of a criminal action. Tex. Code Crim. Proc. Ann. Art. 32A.02, § 1 (Vernon Supp. 1986). *See* also SENATE BILL 1043. Relator argues he has been deprived of his Texas and U.S. Constitutional rights guaranteeing right of a speedy trial.[2]

Relator have requested for the Court to dismiss the indictment with prejudice in response to his motion to dismiss under the Speedy Trial Act. Tex Code Crim.Pro.Ann. art. 32A.02, § 1(1) (Vernon Supp. 1982). The Speedy Trial Act requires a court to grant a motion to set aside a felony in-

[2]Article 32A.02, § 1(1), supra, requires the State to be ready for trial within 120 days after commencement of a felony criminal action or risk dismissal of the indictment with prejudice. Barfield v. State, 586 S.W.2d 538 (Tex.Cr.App. 1979); Art. 28.061, supra. A felony criminal action commences when an indictment against a defendant for a felony offense is filed in court or when the defendant is arrested for the same offense, whichever occurs first. Art. 32A.02, § 2(a), supra; Euziere v. State, 648 S.W.2d 700, 704- 705 (Tex.Cr.App. 1983).

dictment if the State is not ready for trial within 120 days of the commencement of a criminal action. A felony criminal action commences when an accused is arrested for the offense.[3] Tex Code Crim.Pro.Ann. art. 32A.02, § 2(a) (Vernon Supp. 1982). The Dallas Police arrested Relator for the offense of alleged Stalking on August 23, 2023. (**App. 1**) See *Hull v. State*, 699 S.W.2d 220, 221 (Tex.Crim.App. 1985). *See* also App. **2**, **3**, **4**, and **5**. Since the State has not formally announce ready for trial as of the date of filing this amended Mandamus, it has failed to comply with the *Speedy Trial Act*. The State cannot claim that it was ready for trial from the date of Drake's arrest until 120 days later, which was December 23, 2022 when the Relator had not been indicted. *Ex parte Castellano*, 321 S.W.3d 760, 763.

Readiness for trial, within the meaning of the *Speedy Trial Act*, encompasses several core elements: 1) the State must have filed a formal charging instrument such as an indictment or information; *Buford v. State*, 657 S.W.2d 107, 108 (Tex.Crim.App. 1983). Yet, the State did not obtain its indictment until February 14, 2023. The State also failed to announce its readiness for trial within 120 days after it obtained its indictment against Relator. The State isn't ready to try Relator's case over 260-days after the indictment was returned against him, which is greater than the period prescribed by Article 32A.02 § 2(a) of the Tex Code Crim.Proc.Ann. (Vernon

Supp. 1982-83). Factually, Relator filed his Motion to Quash, and Dismiss, Indictment on March 24, 2023. (**App. 10**) As off filing date of this action the State has failed to announce its readiness to try the above cause of action.

Secondly, State must be ready to proceed with its evidence. *Wright v. State*, 719 S.W.2d 188 (Tex.Crim.App., 1985). The best evidence that the State was not ready within the prescribed periods is the fact that the State had not secured an indictment against Relator within the 120-day period. "Without an indictment, the State cannot be ready for trial under Article 17.151." *Ex parte Lanclos*, 624 S.W.3d 923, 927 (Tex. Crim. App. 2021).

It is the Relator that has aggressively defended the State's frivolous case against him. (**App. 10-47**). The State has consistently failed to make its announcement of ready. State filed a Motion to Continue the **October 23, 2023** trial date, but since its motion was deficient, the State failed to secure its continuance. If an accused *speedy trial right* is violated, the proper remedy is to dismiss the prosecution with prejudice. See *Shaw v. State*, 117 S.W.3d 883, 888 (Tex. Crim. App. 2003); *Strunk v. United States*, 412 U.S. 434, 440, 93 S.Ct. 2260, 37 L.Ed.2d 56 (1973). This Court and the CCA has supported the fact that the State must be ready for trial within 120 days after commencement of a felony criminal action." *Meshell*, supra, slip op. at 2. Thus, the trial court is required to dismiss the indictment, thus barring the State from further prosecution of the offense. Art. 28.061, V.A.C.C.P.

The leading case on the Speedy Trial Act is *Barfield v. State*, 586 S.W.2d 538 (Tex.Cr.App. 1979), where the Court of Criminal Appeals [CCA] set out a two-fold requirement that the State must meet in order to establish a *prima facie* case of readiness within the meaning of the Act by stating: "Once the defendant files his motion to dismiss for failure to adhere to the provisions of the Act, the State must declare its readiness for trial, then and at the times required by the Act." However, the State failed to announce its readiness at the time Relator filed his Motion to Dismiss on March 24, 2023. State on October 26, 2023 filed a continuance. Indeed, State failed to meet the first and third elements of readiness to try Relator's case for alleged stalking. The State's failed to provide any reasons for its delay, because no valid reason existed. *Turner*, 545 S.W.2d at 137, 138.

The right to a speedy trial is guaranteed by both the United States Constitution and the Texas Constitution. See U.S. CONST. Amend. VI; TEX. CONST. art. 1, § 10. In *Barker v. Wingo,* the United States Supreme Court established a framework for analyzing speedy trial claims. 407 U.S. 514, 530-31 (1972). The *Barker* framework requires consideration of: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion of the right; and (4) the prejudice to the defendant. ***Id***. Claims of a denial of the

speedy-trial right are analyzed under the same four *Barker* factors. *Cantu v. State*, 253 S.W.3d 273, 280 (Tex. Crim. App. 2008). No single factor is necessarily sufficient to establish a violation of the right to a speedy trial. *Barker*, 407 U.S. at 530, 533. Instead, appellate courts weigh the strength of each of the *Barker* factors and then engage in a balancing test in light of "the conduct of both the prosecution and the *defendant.*" *Cantu*, 253 S.W.3d at 281; *Barker*, 407 U.S. at 533.[3]

After finding that an accused right to a speedy trial was violated, the charging instrument must be dismissed with prejudice. See *Barker*, 407 U.S. at 533. By the State not only using but also fabricating false evidence and inciting witnesses who *has* and *is* willing to commit perjury is "a deliberate intent to harm the Relator and his defense." The State's actions in this case are purposely driven to harm Relator's name and to cause him financial woes. State knows it cannot win, so it has resulted to committing fraud.

Article 32A.02, Sec. 2, V.A.C.C.P., provides in pertinent part:

> "(a) . . . a criminal action commences for purposes of this article when an indictment, information, or complaint against the defendant is filed in court, unless prior to the filing the defendant is either detained in custody or released on bail or personal bond to answer for the same offense or any other offense arising out of the same transaction, in which event the criminal action commences when he is arrested."

It is well settled that an indictment or information must be filed in a felony case within 120 days of arrest, unless the State establishes one of the exemptions to the *Speedy Trial Act*. In this case before the Honorable Court, the State failed to indict the Relator within the prescribed time of 120-days and the State also failed to establish any exemptions to the *Speedy Trial Act*. The State failed to announce it was ready to try the Relator's case within 120-days of his arrest. Thus, the indictment against Relator should be dismissed under the *Speedy Trial Act* and no exception to the Speedy Trial Act has been provided by the State. *Ward v. State*, 659 S.W.2d 643 (Tex.Cr.App. 1983). State's motion to continue proves there're "not ready status" of over 240-days after indictment against Relator and over 500-days after his arrest.

1. STATE'S MOTION TO CONTINUE

The Relator has argued that the State was not ready to try his case pursuant to the Speedy Trial Act. On October 11, 2023, the prosecutors for the State requested a continuance from the trial court. *See* Relator's Appendix, **App. 41**, **RR4**, P. 11, Lines 17—22. There are legal deficiencies with the State's Motion to Continue that, in Relator's opinion renders it non-effect and by the State requesting a continuance, it only reinforces Relator's

[3]The "criminal action" for the purposes of the Speedy Trial Act. Section 2 of Article 32A.02 directs that, when arrest precedes indictment, the criminal action commences when the defendant is arrested to answer for the same offense or any other offense arising out of the same transaction.

legal argument that the State has never been ready to try the Relator for the alleged crime of stalking since his arrest that is approaching two years.

On October 17, 2023, Relator requested a copy of the prosecutor's Motion to Continue. ADA Robin Ogbonna said that he had not gotten to drafting the motion. Relator followed up with Mr. Ogbonna on October 19, 2023, and he still did not have a written copy of his Motion to Continue to provide to the Relator. Being that the prosecutor did not present to the trial court a written Motion to Continue that is sworn to, verified, and supported by affidavit before the October 23, 2023 trial date, the State [d]efaulted and failed to prosecutor Drake for the alleged offense. Pursuant to *Barfield*, "delay caused because "the state (was) not ready for trial" under the terms of the Speedy Trial Act, the case should have been dismissed." *Rodriguez v. State*, 656 S.W.2d 121 (Tex. App. 1983). But Relator presented himself to the trial court at: 8:00 a.m. on October 23, 2023 and announced ready to try his case. Judge Koch's set Drake's case for an October 23, 2023 trial date. *See* **RR2**, P. 9, Lines 20—24. Respondent adopted Koch's pre-trial and trial settings. Also *see* Appendix, **App. 40**, **41**, and **RR4**, [certified copies of the clerk's docket sheets showing no motions for continuances had been filed by the State up to October 23, 2023]. *See* **App. 1A**. Respondent made an entry in the clerk's old system docket sheet, see **App. 57**, but a docket sheet entry is insufficient without a written motion, which came after the order to meet

the standards as set forth under the law regarding a motion to continue and is therefore inadequate. The Court of Criminal Appeals has consistently held that a notation on the court's docket is not sufficient. *Williams v. State*, Tex. Cr. App., 272 S.W.2d 115. "We hold that an instrument merely filed with the clerk is insufficient." *See* Appendix, **App. 57**, which does not satisfy the legal standards necessary to obtain a motion to continue a trial. Without a properly filed and written Motion to Continue, it is Relator's legal opinion that the trial in the underlying case was actually set for the October 23, 2023 trial date. To reiterate, the Relator appeared and announced ready on October 23, 2023 at 8:00 a.m. sharp, but only the trial courts bailiff was present. He said that he would verify that the Relator was present and announced ready. Relator then spoke with the chief prosecutor Houston–Martin and asked if she was ready to try the case. She said no, the case wasn't set for trial. However, Relator disagrees with Ms. Martin, because the prosecutor's failed to secure its continuance properly and timely—the trial was indeed set and the State again failed to prosecute Relator. The indictment against Relator should be dismissed with prejudice.

However, on October 26, 2023, a Motion to Continue and an order suddenly appeared in the trial court's record, but it came too late. *See* **App. 40, 41**. In examining the State's motion, it is **not sworn to** nor is the motion

verified. Further, the State motion under number "I" is asking the trial court for a continuance "**so that the State can adequately prepare for trial**." This is ***proof*** by the prosecutor's on hands that the State had not been ready to try Relator previously and thus a clear violation of the *Speedy Trial Act*. Respondent erred in granting a continuance based on a deficient oral and written motion by the State. *See* **App. 41**. The lack of the State securing its own Motion to Continue is supportive of the State's deficient manner of its not readiness to try Relator pursuant to the *Speedy Trial Act*. On the docket sheet it shows the State's motion to continue was filed on October 24, 2023, which is not true and it's a sly way of backdating to make a pleading appear to be filed at a date that it wasn't, because according to **App. 40**, and **41** the documents are filed stamped on October 26, 2023 at 3:34 p.m. However, since the State's motion to continue[4] was filed after the October 23, 2023 trial date, it was filed too late and dismissal with prejudice should follow.

Article 29.08 of the Texas Code of Criminal Procedure provides that "[a]ll motions for continuance must be sworn to[4] by a person having personal knowledge of the facts relied on for the continuance." TEX. CODE CRIM. PROC. ANN. art. 29.08 (West 2006). In this case, the prosecutors

[4]A motion for continuance must be in writing. TEX. CODE CRIM. PROC. ANN. art. 29.03 (West 2006).

failed to file a timely written Motion to Continue. Relator sought a copy of the Motion on several occasions but, Mr. Ogbonna replied, "I have not gotten to writing it." And he failed to file a proper motion to continue right up to and after the trial date of October 23, 2023.

In Articles 29.03 and 29.08 of the Texas Code of Criminal Procedure, the Legislature has set out the requirements for a motion for continuance. *Anderson v. State*, 301 S.W.3d 276, 278-79 (Tex. Crim. App. 2009). Article 29.03 provides that "[a] criminal action may be continued on the written motion of the State or of the *defendant*, upon sufficient cause shown; which cause shall be fully set forth in the motion." TEX. CODE CRIM. PROC. ANN. art. 29.03 (Vernon 2006). Article 29.08 provides that "[a]ll motions for continuance must be sworn to by a person having personal knowledge of the facts relied on for the continuance." TEX. CODE CRIM. PROC. ANN. art. 29.08 (Vernon 2006). An oral motion for continuance presents nothing for review. *Dewberry*, 4 S.W.3d at 756; *Matamoros v. State*, 901 S.W.2d 470, 478 (Tex. Crim. App. 1995). Also, Article 29.06 requires that a motion for continuance must state "the diligence which has been used to procure [a witness'] attendance" when it is based on the absence of a witness. This provision has been interpreted to require diligence not only in procuring the presence of the witness, but also diligence as reflected in the timeliness with

which the motion for continuance was presented. The State's motion as seen in **App. 41** does not demonstrate diligence. *Dewberry*, 4 S.W.3d at 756. A sworn, written motion for continuance explaining the diligence utilized in filing such a motion or otherwise in showing good cause for granting the motion was not filed by the State. Pursuant to, **RR4**, P. 6, L. 15–25. The prosecutor acknowledged that Relator's case was transferred to the Respondents court towards the end of August, but somehow the case was assigned to him a week ago, which would have been October 2nd or 3rd. Common sense would interpret that statement as being untruthful.

If the State were ready to try the case, since it has been nearly two years after Relator's arrest, why would the prosecutors need a continuance? This action facially demonstrates that the State was not ready to try Relator's case at no previous time. In speaking with prosecutor Ogbonna on October 11, 2023, he wanted to try the case May of 2024. But the Relator objected to that date and was silent to determine if prosecutors would file a written motion to continue that conforms to the law. Even at that point, the Relator understood that if the State had not filed a written motion to continue, verified, and sworn to by the trial date, Relator's would appear and announce his readiness to try the case on October 23, 2023 and to proceed, be-

cause without a written motion to continue, and adequate reasons for the continuance, the Respondent should not had granted the continuance. The case should be dismissed with prejudice because the State has continually failed to comply with the Speedy Trial Act. And not being prepared to try the case on October 23, 2023 as a result of the State deficiencies and failures to comply with procedures, and Texas laws. Although, Mr. Ogbonna motion to continue under "certificate" stated that he forwarded a copy to the Relator, factually, Drake has not received a copy of the motion to this very day.

2. STATE FAILED TO PROVIDE THE TRIAL COURT WITH SUFFICIENT GROUNDS FOR A CONTINUANCE

Prosecutor Ogbonna advised the trial court the reasons why he was asking for a continuance was to have more time to prepare for trial, which is not sufficient ground for a continuance—but it also shows the State wasn't ready to try the case, which supports dismissal pursuant to speedy trial act.

On page 6 of Appendix, **RR4**, L. 15–20, the prosecutor made his case before the trial court that he was recently appointed to handle the case, about a week ago. Since Mr. Ogbonna has been untruthful to Relator by stating that the State did not have to announce its readiness until after the hearing on Relator's motion to dismiss, Ogbonna's story lacked creditability. On October 17, 2023, Ogbonna claimed that he would get fired if he provid-

ed Relator with the State's discovery. The Michael Morton Act does not indicate in the slightest manner that a prosecutor would be terminated for releasing State's discovery to pro se defendant. Relator also expressed to Ogbonna that the previous prosecutor failed to announce ready, and he stated, "The announcement of ready does not trigger until after the hearing on the speedy trial," which is untrue. Relator advised Ogbonna that discovery is a moot issue if this Court dismisses the indictment because of the State's failure to comply with the *Speedy Trial Act*. The State could not have been prejudiced by a denial of its motion to continue if the State indeed was ready to try Relator. A possible reason why some prosecutors have been reserved in providing the State's discovery to *pro se defendants* is because of personal information contained in some of the discovery. Relator has personal information in regards to all parties involved in this criminal matter for proper service of process by U.S. Marshals in anticipation of filing a federal civil rights lawsuit.

3. RESPONDENT DID NOT HAVE JUSTIFICATION, AUTHORITY OR REASONABLE CAUSE TO GRANT THE STATE'S CONTINUANCE

The State filed an oral motion to continue on October 11, 2023. The trial court was obviously unaware who was requesting the continuance. *See* Appendix **RR4**, P. 11, L. 17–18. The Motion that the prosecutor filed was signed allegedly on October 20, 2023. Relator checked with the clerk of

Criminal Court Number 7 almost every other day after the October 11, 2023 hearing, seeking a copy of the motion that Mr. Ogbonna had allegedly filed. And out of the blue, Ogbonna's motion and an order appeared in the trial court's record on October 26, 2023. Yet, in order to make the filing appear more like it was filed sooner, the clerk's record shows Respondent's order and Ogbonna's motion to continue filed on October 24, 2023, which isn't true (*See* **App. 40**), but more importantly, prosecutor's motion wasn't properly or timely filed before the actual trial date of October 23, 2023.

The Respondent filed an order into the trial court's record on October 26, 2023 that was supposedly signed on October 24, 2023. Again, this order was too late to interrupt the trial date of October 23, 2023. Although the Ogbonna failed to file a verified and sworn motion to continue in writing, and the motion failed to comply with Article 29.08, the Respondent granted the motion even when the prosecutor for the State did not provide justification for the continuance. Furthermore, Respondent did not have the legal authority to grant the State's continuance because she was already recused by the November 30, 2023 hearing. Nor did the Respondent have a valid motion to rule on, as such, State's motion to continue should be set aside and the case dismissed with prejudice for violations of speedy trial act,

and its default of not being ready to try Relator on October 23, 2023. Thus, the court's order as seen in Appendix **App. 40** is without legal effect. If the order is without legal effect, the criminal case should be dismissed. When a judge actions lacks authority to issue an order, the order is void. See *State ex rel. Holmes v. Salinas*, 784 S.W.2d 421, 425 (Tex. Crim. App. 1990) (orig. proceeding) (en banc). *State Bar v. Heard*, 603 S.W.2d 829, 833 (Tex. 1980) (substance of pleading, not just title given to it, determines pleading's nature). *Huynh.* A finding that presentment of the indictment was made because of "false information" or "mistake" requires proof. In this case, the grand jury could only have been provided with misinformation, perjured testimony and fabricated documents and testimony to find probable cause to indict Relator.

Ogbonna admitted during the October 11, 2023 hearing that he had not filed a motion to continue. *See* **RR4**, P. 8, L. 1–11. Prosecutor's violation of the Speedy Trial Act is no less confirmed by case law.

D. Issue Two:

The Prosecutor's For The State Violated the *Speedy Trial Act.*

Relator has suffered severe harm to his defense and suffered through bond conditions more excessive while awaiting trial; the two greatest harms the Right to a Speedy Trial exist to protect. Relator has been diligent in his efforts to have his motion to dismiss heard by several trial courts to no avail.

FIRST FACTOR – LENGTH OF DELAY– SPEEDY TRIAL

The first factor to be considered in determining whether the Relator's right to a speedy trial has been violated is the length of the delay. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). The length of delay for purposes of speedy trial analysis is measured in felony cases from the time a *defendant* is arrested or formally charged. *United States v. Marion*, 404 U.S. 307, 313, (1971); *Harris v. State*, 827 S.W.2d 949, 956 (Tex.Crim.App.1992). Both the United States Supreme Court and the Texas Court of Criminal Appeals have held that a delay approaching one year is sufficient to trigger a speedy trial inquiry. *Doggett v. United States*, 505 U.S. 647 (1992); *Shaw v. State*, 117 S.W.3d 883 (Tex.Crim.App.2003); *Harris*, 827 S.W.2d 949 (Tex. Crim. App. 1992) (finding that an eight-month delay is presumptively prejudicial). "Because [in this case] the length of the delay stretched well beyond the bare

minimum needed to trigger judicial examination of the [speedy trial] claim, this factor—in and of itself—weighs heavily against the State."). *Zamorano v. State*, 84 S.W.3d 643, 649 (Tex.Crim.App.2002).

These extensive delays weigh heavily in favor of Relator. The Relator did not even have his first setting in the case until March 8, 2023, which is the presumptive eight-month delay established in *Harris*. *See* **App. 10**. Relator's first trial setting wasn't until a year and 2-months after his arrest. *See* **App. 1A,** and **RR2**, P. 9, L 20–21. Presently, the trial is set for June 2024. Once the Relator has shown a delay, which reaches the point of being presumptively prejudicial, the Court must consider the other three factors.

SECOND FACTOR - REASONS GIVEN FOR DELAY– SPEEDY TRIAL

The second *Barker-Wingo* factor is the reasons offered for the delay. "The State bears the burden of justifying the delay." *Guerrero v. State*, 110 S.W.3d 155 (Tex.App.—San Antonio, 2003, reh'g overruled). The burden of excusing the delay rests with the State. *Turner v. State*, 545 S.W.2d 133, 137-38 (Tex. Crim. App. 1976). "A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the *defendant*." *Barker*, 407

U.S. at 531 (emphasis added).

Fundamental Civil Rights Are Not Suspended Because Relator is Pro Se.

While this case requires a *Barker* balancing test, the crux of this matter is whether the prosecutors lack of getting the case against Relator ready for trial, and the fact that Relator is representing himself suddenly suspends the fundamental civil right of a *speedy trial* and absolves the State of its burden to bring a *defendant* to trial. *Duncan v. Louisiana*, 391 U.S. 145 (1968) (establishing the right to a speedy trial as a fundamental right).

No other amount of leeway or deference can overcome such a long delay. Simply put, the only way the prosecutor's lack in trying the Relator can be justified is to hold that the Relator is representing himself somehow suspended the right to a speedy trial. Relator faced a delay in over a year to obtain his first trial setting, and suffered significant harm to his ability to present a defense. *See* **RR2**, P. 9, L 20–21. To the extent delays were caused by the prosecutors inability to try the Relator, does not shift the burden of the State and Court to bring Relator to trial. The Constitution does not authorize endless pretrial oppression and suspension of basic civil rights due to the State's disinterest in trying a *defendant*. "Even if the Constitution has taken a holiday for *pro se* litigants rights, it cannot become a sabbatical."

In fact, the delay due to the prosecutor's lack of desire to try the Relator is only at issue due to the excessive time the State took to file this case. Had the State promptly filed the case, Relator would have in all likelihood had a trial set sooner, but the State understood that this case represents fraud. Prosecutors have conspired with Dallas Police and private citizens have caused oppressive delays. *Krizan–Wilson*, 354 S.W.3d at 814.

The State is burdened with bringing an accused to trial. "Between diligent prosecution and bad-faith delay, official negligence in bringing an accused to trial occupies the middle ground. While not compelling relief in every case where bad-faith delay would make relief virtually automatic, neither is negligence automatically tolerable simply because the accused cannot demonstrate exactly how it has prejudiced him." *Doggett*, 505 U.S at 656–657. The presumption that pretrial delay has prejudiced the accused intensifies over time." ***Id.*** at 652. "[U]nreasonable delay in run-of-the-mill criminal cases cannot be justified by simply asserting that the public resources provided by the State's criminal-justice system are limited and that each case must await its turn." *Barker*, 407 U.S. at 538. At its core, the State simply did not put any effort in affording the Relator a speedy trial.

There were no delays in other cases being tried in Dallas County, and several criminal attorneys who were past assistant district attorneys made the

comment that usually cases of stalking are aggressively prosecuted. But in the Relator's case, the State knows that the case is comprised of fraud.

While the delays in this case are certainly an act of malice, and an intentional act to prejudice Relator, dismissal for violation of speedy trial rights does not require malice. *Barker*, 407 U.S. at 531. The State's failure to try Relator or comply with the Act does not shift the burden of bringing the Relator to trial. At worst, Relator did not in any way contribute to or cause the delays, nor did he waive his right but has asserted those rights. Quite simply, Relator had at all times a right to a speedy trial, and it was violated.

The State's simply failed to bring the Relator to trial. The underlying jurisprudence and harms creating the basis for the right to a speedy trial was certainly not suspended by the lack of the State bringing the Relator to trial or even appearing to try the Relator on October 23, 2023.

The stress and anxiety of a case looming over Relator has become an every day reality in this present nightmare. Restrictive and expensive bond conditions persist. Incarcerated individuals are still just as incarcerated. Memories of witnesses still erode equally as fast and Relator's ability to present his case is equally as harmed. Defendants on bond still have their liberties restrained, in this case by having to live with the severe harm to a

ministers name for two years is damaging. Notably, Relator effectively presently live under typical probation conditions, refraining from even protecting himself by the restriction of firearms, having to check in with his bail bondsman over a case that the State knows very well is laced with fraud.

THIRD FACTOR - ASSERTION OF THE RIGHT– SPEEDY TRIAL

The third *Barker-Wingo* factor is a defendant's assertion of his right to a speedy trial. "The defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." The *defendant's* assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. *Barker*, 407 U.S. at 531-32.

Relator promptly sought dismissal for his charges after the long delay in filing the charge. *See* **App. 10**. Relator has yet to have a hearing on his motion to dismiss because the courts have refused to allow a hearing and has ignored Relator and his rights under the speedy trial act. The trial courts has carried out this conduct going on two years with no sign it would actually grant even a hearing on the Relator's motion to dismiss, thus, this Court must act. *See* **App. 10**, and **36**. Relator continued to seek a trial through the pendency of this case, even though the case should be dismissed.

FOURTH FACTOR— PREJUDICE TO DEFENDANT– SPEEDY TRIAL

The final *Barker-Wingo* factor is the prejudice to the Relator resulting from the delay. A fourth factor is prejudice to the *defendant*. *Barker*, 407 U.S. at 532. In assessing this factor, the Court must take into consideration the interests that the right to a speedy trial is intended to protect: "1) to prevent oppressive pre-trial incarceration; 2) to minimize the accused's anxiety and concern; and 3) to limit the possibility that the accused's defense will be impaired." ***Id***.

The most serious factor is the harm to the accused's defense. ***Id***. "[T]he inability of a *defendant* adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past." ***Id***. "Once an accused makes a prima facie showing of some prejudice, the State must carry the obligation of proving that the accused suffered no serious prejudice beyond that which ensues from the ordinary and inevitable delay of being charged with a criminal case." *Ex parte McKenzie*, 491 S.W.2d 122, 123 (Tex.Crim.App. 1973) (emphasis added).

In this case, Relator has suffered substantial injury by the harm this

case has caused his name and by the way of probable lost evidence and witness memories because the prosecutors obviously miscalculated that this case would be pled out. Relator has experienced emotional strain and stress, which has affected his health because of the ordeal of this criminal case. Relator's ability to defend his case has been prejudiced as memories of witnesses, including his own, have naturally faded with time. This harm is clear. Moreover, the longer the State waits, the more its prime witnesses can hide behind statements such as, "I can't recall that, " or "I'm not sure that happened a long time ago," as well as other ways to avoid telling the truth.

BALANCE OF FACTORS AND CONCLUSIONS

In balance, these four Barker factors strongly weigh in favor of the Relator. He is plainly seeking a trial as this criminal case is parked on the Court's trial docket approaching two years. Relator has been unable to get his motion to dismiss heard. And even when the case was set for trial on October 23, 2023, the State failed to appear. *See* **App. 27**, **28**, **29**, **30**, **36**, **37**. His ability to present a defense and call witnesses is severely impeded, leaving him virtually no ability to go forward with a fair trial. His trial rights were effectively eliminated just because he is representing himself and because of his race, an African American in Dallas County, Texas.

Having established every factor, the only question remaining is whether representing oneself as an African American man in Dallas County, Texas suspended Americans' fundamental rights. Plainly, if it did not suspend the right, Relator has suffered and will continue to suffer the exact harms, in spades, that the right exists to protect, and virtually no part of the delays can be attributed to Relator.

Relator is simply unaware of any law, statute or code supporting the Dallas County's District Attorneys Office ability to suspend fundamental civil rights going on for two years. Prosecutors cannot override Constitutional provisions. It is important to note that cases where appellate courts found no violation of a *defendant's* speedy trial rights are generally where either harm was not found and/or where the *defendant* was not found to be seeking a speedy trial. Neither is present in this case.

Although the Relator believes that the State's case should be dismissed with prejudice, he is nevertheless seeking a speedy trial and has suffered presumptively prejudicial harm based on the delay alone in addition to financial harm, harm of being under oppressive bond conditions as well as harm to the presentation of his case and his name as an ordained minister. Relator has been, indisputably, seeking a speedy trial but the prosecutors have been uninterested in perusing his criminal case to trial.

Logic, as well as every factor of the *Barker* tests, weighs heavily in favor of Relator. The Relator suffered personal harm as well as harm to his name, his health, and case due to the prosecutor's delay. Bringing a *defendant* to trial is a burden of the State. It is only logical that not only the party bearing the responsibility of effectuating a trial bears the consequences of being unable to bring a *defendant* to trial.

Meanwhile, the State is not affirmatively harmed in dismissing the case while the Relator has been harmed. The very purpose, bedrock and framework of our criminal justice system, embodies infamous *Blackstone's Ratio*; ". . . the law holds that it is better that 10 guilty persons escape, than that 1 innocent suffer." Commentaries on the laws of England. J.B. Lippincott Co., Philadelphia, 1893. But Ogbonna actually conspired with the alleged victims family to harm Drake. **RR5**, P. 12, L 18–24. Relator has effectively served a greater punish-ment through awaiting for trial, approaching two years of which are under bond conditions that directly mirror probation conditions.

A *defendant's* punishments on bond in a case that is comprised of fraud are not only unjust, but also the precise danger the Right to a Speedy Trial exists to protect against. It defies the purpose of the Right, logic and justice to simply assert that a citizen is subject to this tyranny as a result of a condition, which is completely out of his own control.

In fact, it was the State itself that made, and in the future makes, the decision to limit the sacred right to a jury trial. Without regard to the merits of the limitations imposed on of jury trials, it was undoubtedly the State who unilaterally made the decision to not try the Relator, but still have him in limbo is of the greater evil. The Right to a Speedy trial serves to protect citizens from excessive delays, personal harm and unfair trials through delays. At this juncture, the State has made only one reason for its delays; prosecutor ***Ogbonna said on 10/26/23 that Relator's case wasn't properly ready to try***. The entire purpose of a right to a speedy trial is so that the State cannot suspend and delay jury trials and punish presumptively innocent citizens. Neither Constitution nor logic can sustain a conviction in this case.

TEXAS SPEEDY TRIAL ACT

The Texas Speedy Trial Act addresses itself to prosecutorial delay rather than the judicial process as a whole. *Phillips v. State*, 659 S.W.2d 415, 419 (Tex.Crim.App. 1983); See *Barfield v. State*, 586 S.W.2d 538, 541 (Tex.Crim.App. 1979). The State must be ready for trial within **120-days** of the "commencement of a **felony action**," which is defined as the date of the return of an indictment or complaint, or the date of the defendant's arrest, *whichever occurs first*. Tex. Code Crim. P. Ann. art. 32A.02, sec. 1(1). As

set forth herein, the State cannot substantiate that it was ready to try the above cause within all subsequent times required by the Act.

The Relator was arrested on August 23, 2022. The Court docket does not show any evidence that the State was ready to try the above cause in 120-days of his arrest. In fact, the State did not present the Relator's case to the Grand Jury until February 14, 2023. Being that the Relator was arrested on August 23, 2022, and that by December 23, 2022, 120-days later, the State had not announced that it was ready for trial; Relator respectfully moves this Court to dismiss Indictment in the above cause with prejudice for the State's failure to comply with Chapter 32 pursuant to the Texas Code of Criminal Procedure Evidence, which demonstrates that the State was not ready for trial during the Act's 120-day limits. *Barfield*, 586 S.W.2d at 542.

The clerk's record demonstrates that the Relator filed a Motion to quash, dismiss, and or set aside indictment on March 24, 2023. (**App. 10**) On page 2 of Drake's motion to quash, dismiss, and set aside indictment he argued in his motion the following:

> "(2) the trial court dismisses an indictment when a *defendant* has been denied the constitutional right to a speedy trial. Relator requested the trial court dismiss the Indictment . . . with prejudice of it's refiling."

On pages 14 through 17 of the Relator's Motion to Quash Indictment and Dismissal, Drake argued further his demand for a speedy trial. See **App. 10**.

Factually, the prosecutor could not try its case against Relator until after February of 2023 because it did not have the discovery. Hence, common legal sense would sustain that the State was not ready to try the case. And proof of not ready to try Relator is contained in **Tab 41**. Furthermore, since the Relator filed his Motion to Quash and Dismiss, the State has made no effort to respond to the dismissal motion in writing or orally in court. State has yet to announce, "Ready to try the Relator's case." State failed to declare its readiness for trial regarding all previous time within the 120-day period as required by the Act. Hence, dismissal is warranted the above cause with prejudice. *Pate v. State*, 592 S.W.2d 620.

The Sixth Amendment to the United States Constitution guarantees the accused in a criminal prosecution the right to a speedy trial. *Hopper v. State*, 520 S.W.3d 915, 923 (Tex. Crim. App. 2017) (citing U.S. CONST. amend. 6; *Vermont v. Brillon*, 556 U.S. 81, 89, 129 S.Ct. 1283, 173 L.Ed.2d 231 (2009)). The Texas Constitution provides the same guarantee to a speedy trial. TEX. CONST. art. 1, § 10.

The State is fully aware that the Relator's case is based on fraudulent

evidence (Affidavit of Arrest) **App. 51**, perjured testimony (April Corrales testimony in the protective order court) **RR1**, P. 7–21, and conspiracy by assistant district attorneys that have conspired with April Corrales to perjure herself. It would seem that there is no real desire to take Drake's case to a jury for fear that the jury would discover through the Relator's evidence that the district attorneys office and the DPD (Dallas Police Department) have in fact committed felony crimes in this case to cause the wrongful arrest of the Relator and to have him wrongfully prosecuted.

A *defendant's* "assertion of his speedy trial right is entitled to strong evidentiary weight in determining whether the defendant is being deprived of that right." *Zamorano*, 84 S.W.3d at 651. The State's delays has created extreme prejudice and anxiety in Relator's everyday life to the point that a dismissal is justified because the State's case against him is frivolous, even if the State might be belatedly announce ready—the damage caused to Relator has been ongoing and incalculable. *Phillips*, 650 S.W.2d at 401.

The State's delay is a "triggering mechanism" in this case for analysis of the other *Barker* factors. Moreover, the Relator alleges, "the interval between accusation and some future trial has purposely been crossed in the Relator's case to punish him to a speculative prejudicial delay." There has

been a deliberate delay in this case to hamper Relator's defense weighs heavily against the State. *Hopper*, 520 S.W.3d at 924. It has been over 410 days since Relator's arrest, and State has only filed a copy of the indictment and a motion to continue into the clerk's record. State's prosecutors provided the best evidence that it was not ready to try the Relator previously, by admitting on October 26, 2023 that the case was not ready to be tried.

E. Issue Three:

The State Delay's Violated Relator's Rights to a Speedy Trial.

Texas Code Criminal Procedure Ann. Art. 32A.02, § 2(a) (Supp. 1987) provides that a criminal act commences when the complaint and information are filed with the court, *unless first* the defendant is detained or released on bail "to answer for the same offense or any other offense arising out of the same transaction in which case the action commences at the time of arrest." (emphasis added). The Relator was arrested on August 23, 2023. He was held in the Dallas County Jail for 18-hours, were he was infected with Covid. Relator was released on bond from jail on August 24, 2022 with an excessive bail of $30,000.00. Apparently, there was a contrived effort to keep the Relator incarcerated by violating his Constitutional rights to a reasonable bail by making it excessive in violation of the Eight Amendment.

Article 32.01 compels dismissal of the prosecution without regard to whether the *defendant* has been prejudiced by the delay or has even made a request for a speedy trial. Article 32.01 is almost indistinguishable from Article 32A.02. Since 120-days passed without an indictment[7] against Relator, it is not enough for the State to appeal in open court after the running of the applicable period by declaring itself at that time ready for trial. *Jones*, 803 S.W.2d at 717. The filing of an indictment is essential to vest the trial court with jurisdiction over a felony offense." *Cook v. State*, 902 S.W.2d 471, 474 (Tex. Crim. App. 1995) (en banc).

A trial court has the power to dismiss a case without the State's consent in certain circumstances, such as when a *defendant* has been denied a speedy trial, as in the case before the Court.[5] The power to dismiss under these circumstances is authorized by common law or statute and does not give rise to a general right to dismiss. Appellate courts have surmised, "delay approaching one year is unreasonable enough to trigger the *Barker* enquiry. *Dragoo*, 96 S.W. 3d at 314. It is quickly approaching two years since the Relator's arrest, and the State has persistently failed to announce ready during the prescribed times of the speedy trial act and thereafter.

[5] *Smith v. State, supra; Scott v. State,* 634 S.W.2d 853 (Tex.Cr.App. 1982).

McClellan v. State, 701 S.W.2D 671 (Tex. App. 1986).

A trial court can dismiss an indictment without the State's consent for constitutional violations where dismissal with prejudice is necessary to protect the *defendant's* constitutional rights—as in the case before the Court. Additionally, Relator respectfully asks the Court to dismiss the Indictment pursuant to Tex. Code Crim. Proc. Art. 28.061. The right to a speedy trial attached when the Relator was arrested. *State v. Horner*, 936 S.W.2d 668, 671 (Tex.App.-Dallas 1996, no pet.); *Stewart v. State*, 767 S.W.2d 455, 457 (Tex.App.-Dallas 1988, pet. ref'd).

A delay of one year is generally presumptively prejudicial for purposes of the length-of-delay factor. See *Cantu*, 253 S.W.3d at 281; *Shaw*, 117 S.W.3d at 889. When balancing the Relator's conduct of filing motion after motion into the trial court's record, against the State's conduct of not responding to any of the Relator's motions. The State have filed only one document into the trial courts for nearly a year—which was a deficient motion to continue, which this is relevant to the four *Barker* factors. The State is unable to contribute any delay was due to the Relator's conduct.

Under *Barker*, the State knew where the Relator was at all times after it acquired an indictment against Relator by fraud. The record shows abso-

lutely no efforts made on the part of the State of Texas to bring Relator to trial from the time of his arrest to the prosecutors filing of its deficient motion to continue. Moreover, any reason advanced by the State at this point in time would be nothing but conjecture and purely hypothetical.

The Relator asserted his right to a speedy trial in a lengthy Motion to Dismiss in about 45-days after the State filed its indictment into the trial courts record. *Barker*, 407 U.S. at 530. *See* **App. 10**, **36**, and **43**.

However, the State cannot respond by alleging Relator's motion to dismiss failed to ask to be brought promptly to trial. Referring to Relator's Motion to Dismiss, which also demanded a speedy trail, on page 16 of the Relator's motion, he demands a *speedy trial* because of the affects of the allegations made against him are continually damaging. Relator pled:

> "It has not been Defendant's lack of diligence in seeking a speedy trial. Everyday that the fraudulent claims in the above cause are pending against an ordained minister, the Defendant Eric Drake, it creates heavy burden upon the Defendant and his name, as well as embarrassment and mental anguish. Defendant's demand for a speedy-trial demand is unambiguous. *Henson*, 407 S.W.3d at 769. Defendant asserts his demand for a speedy trial within about 45-days after being improperly indicted." *See* **Tab 10**.

On page 16 paragraph 33, Relator pled: "Defendant would not plea guilty to even a Class C misdemeanor in exchange for the frivolous accusations made in the indictment to be dropped, but Defendant demands a speedy trial."

Fourth, the prejudice to Relator resulting from the delay has been a nightmare for an ordained minister being charged with a crime, arrested, and put on display in a sexual related crime. However, as stated herein, the State has serious creditability issues with its primary witnesses that have falsified sworn documents and committed perjury. Relator demanded a speedy trial but efforts by the State has been to delay. Further, the Relator has been diligent in attempting to have his motion for speedy-trial and dismissal heard by the trial court without success by two previous judges, Koch and Clinton, and now the Respondent. The Relator has also asserted herein improprieties in the grand jury process. Tex. Code Crim. Proc. arts. 27.03; 28.061. The State was ready for trial within the time prescribed by art. 32A.02 sec. 1(2). The State's not ready status was confirmed when the prosecutor's filed its late but also deficient motion to continue on October 26, 2023.

F. Issue Four:

The Necessity For Grand Jury Transcripts and Evidence.

Relator requested the trial court to release the Grand Jury transcripts

and evidence. *See* **App. 11**. Case law stipulates that even though the grand jury transcripts are viewed as being secret, the transcripts are accessible if the *defendant* can demonstrate a need. In the case, the *need* is associated with the fact that the State (prosecutors) used perjured testimony and fraudulent evidence in order to achieve their misguided goals of an indictment against Relator for alleged stalking. Ogbonna and Martin have prevented Relator access to grand jury evidence. *See* **RR5**, P. 20, and 21, L 1–14.

It's settled law that a prosecutor *need not* have actual knowledge of perjured testimony in order for there to be a due process violation. *Giglio*, 405 U.S. at 154, 92 S.Ct. at 766; *Adams*, 768 S.W.2d at 291; and *Duggan*, 778 S.W.2d at 468. Yet, Ogbonna and Martin conspired with private citizens (Corrales) to use false testimony. **App. 2B**, **RR5**, P. 12, 13, and 14, L. 1–2.[6] It is axiomatic that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction. This rule does not cease to apply merely because the false testimony goes only to the credibility of the witness. *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959). As recognized in *Napue*, the jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence

[6]Respondent should have admonished Ogbonna for making such inflammatory statement against Relator with no witnesses, and no affidavits in hand, which the statement was an outright lie conspired by the prosecutor. The DOJ is investigating this case. The FBI can trace telephone numbers from what Ogbonna referred to as burner telephones. An example of the DA's office and Respondents corruption.

And such deprivation amounts to a denial of due process.

In *Thomas v. State*, the appellate court surmised that proving the indictment against *Thomas* lacked probable cause was crucial to his innocence, by showing that his daughter made false accusations against him. And assuming in the *Thomas* case that he could prove the indictment was presented due to false information, the dismissal must ultimately stem from the false information. Obviously, the prosecution could not find an outcry witness to a crime that did not exist—as in this case before the Honorable Court. This Court ruled in *Thomas v. Stevenson*, 561 S.W.2d 845 (1978), that it had the power to issue Mandamus relief.

The Supreme Court in *Alcorta v. Texas*, expanded the prosecutorial duty to correct perjured testimony to include perjured testimony which related to the witness' credibility and not just the facts of the case. *Napue.* In *Napue*, the court held a prosecutor's knowing failure to correct perjured testimony, which related to the witness' credibility violated the defendant's right to due process. *Napue*, 360 U.S. at 269, 79 S.Ct. at 1177; *Alcorta v. Texas*, 355 U.S. 28, 78 S.Ct. 103, 2 L.Ed.2d 9 (1957).

In *Brady v. Maryland*, the Supreme Court recognized the underlying principle of *Mooney* was: "the avoidance of an unfair trial to the accused . . . and when criminal trials are unfair; our system of the administration of justice suffers when any accused is treated unfairly." *Brady v Maryland*, 373

U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

The State is not allowed to use perjured testimony to obtain a conviction. *Losada v. State*, 721 S.W.2d 305, 311 (Tex.Crim.App. 1986). If the prosecution presents false testimony, which relates to an essential element of the offense, and fails to correct its own testimony, then reversal will naturally follow. See ***Id***. Moreover, the prosecutor's knowingly use of perjured testimony violates the due process clause of the Fourteenth Amendment to the United States Constitution.[7]

Reversal must also follow if the prosecutor presents a false picture of the facts[8] by failing to correct its own testimony when it becomes apparent that it was false. *Giles v. State of Maryland,* 386 U.S. 66, 87 S.Ct. 793, 17 L.Ed.2d 737; *Miller v. Pate*, 386 U.S. 1, 87 S.Ct. 785, 17 L.Ed.2d 690; *Pyle v. State of Kansas*, 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214; *Mooney v. Holohan*, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791.

Through this original petition, the Relator has made his case for the following facts: **a**) The State's case against the Relator is fraudulent, which includes witnesses and its evidence; **b**) Prosecutors have willingly caused

[7]Due process prohibits prosecutors from presenting testimony that any member of the prosecution team, including both investigative and prosecutorial personnel, knows to be false, and prosecutors have a duty to reveal the perjured testimony of members of the prosecution team, whether or not the prosecutor has knowledge of such perjury. Because Godfrey was a member of the prosecution team, and the State did not disclose his perjury prior to the conclusion of the trial, the State suppressed such evidence.

and controlled the naive alleged victim, April Corrales, to perjure herself in court; **c**) Prosecutors admitted on November 30, 2023 that they used the fraudulent sworn Affidavit of Arrest to obtain an indictment against Drake; **d**) And in all probability prosecutors used the void and perjured protective order, dated October 20, 2022 from the protective order court to obtain an indictment against Relator. Taking all illegal, unethical, violations of Texas and U.S. Constitutional laws into consideration, as well as due process violations, it is Relator's legal opinion that he has made, more than a good faith showing of the *need* to obtain the grand jury transcripts, and evidence shown to the grand jury that, was used to obtain an indict against him. Prosecutors seemed to not know how the State indicted Relator, which is a lie.

Calculating the cumulative period of time that Relator's Motion to Dismiss has been pending in the trial court, with the understanding that there were two prior judges assigned to the case, appellate courts has opinioned that 5-months is the beginning of an "excessive" period of time for a motion to be pending before a trial court. *In re Ramos*, 598 S.W.3d 472, 474 (Tex. App.-Houston [14th Dist.] 2020, orig. proceeding). Relator's Motion to Dismiss has been pending in the trial court for over 10 months.

The Relator hereby certifies that he has reviewed the petition and concludes that every factual statement in the petition is supported by competent evidence in the appendix or record.

On October 18, 2023, Robin Ogbonna, prosecutor for the State acknowledged that he would indeed release the grand jury transcripts to the Relator. However, on October 25, 2023, Mr. Ogbonna said that he would release the transcripts only to Heath Harris, an attorney that the court had appointed as standby counsel. In the October 11, 2023 hearing, Heath Harris acknowledged to the trial court that Relator does not desire his assistance. **App. B, RR4**, P. 5, Lines 16—18.

G. Issue Five:

The State Failed to Comply with the Speedy Trial Act and Was Not Ready At Anytime After Relator's Arrest To Try Him.

The State failed to announce ready for trial within the statutory period. Relator announced "ready" when the case was set for trial on October 23, 2023 at 8:00 a.m. Prosecutor's motion to continue is deficient.[8]

The State is only required to declare its readiness for trial after the defendant files his motion to dismiss. *Barfield v. State*, supra, 586 S.W.2d at 542. Relator filed his Motion to Dismiss in March of 2023. **App. Tab 10**. Since the Relator has been representing himself in the trial court since his arrest, the prosecutor has not announced ready at any time during the criminal case—even, obviously on October 11, 2023, when the prosecutor requested a continuance, which was deficient. On 10/11/2023 Ogbonna requested a continuance and was not ready to try Relator. **RR4**, P. 11, L 17-21.

The court of criminal appeals has reiterated that "presumptive prejudice" simply marks the point at which courts deem the delay unreasonable enough to trigger further inquiry. *State v. Munoz*, 991 S.W.2d 818, 821-22 (Tex. Crim. App. 1999) (quoting *Doggett*, 505 U.S. at 652 n.1). There is no set or defined period of time that has been held to be a *per se* violation of a defendant's right to a speedy trial under the Sixth Amendment. *Barker*, 407 U.S. at 530; Cantu, 253 S.W.3d at 281. Rather, alleged violations are considered on a case-by-case basis, and each case is considered on its own merits. *Barker*, 407 U.S. at 529-30; *Knox v. State*, 934 S.W.2d 678, 681 (Tex. Crim. App. 1996). The length of delay that will necessitate further inquiry is dependent upon the peculiar circumstances of the case. *Barker*, 407 U.S at 530-31; *Zamorano v. State*, 84 S.W.3d 643, 649 (Tex. Crim. App. 2002).

Courts have found delays approaching one year to be unreasonable enough to trigger the *Barker* inquiry. See *Balderas*, 517 S.W.3d at 768; see also *State v. Page*, No. 05-18-01391-CR, 2020 WL 1899453, at *4 (Tex.

[8]In Teamer v. State, 685 S.W.2d 315 (Tex.Crim.App. 1984) (en banc), the Court of Criminal Appeals cast doubt on whether an agreed resetting is sufficient to toll the running of the speedy trial period if the reset form is signed only by the prosecutor, the appellant's attorney, and a court coordinator.

App.-Dallas Apr. 17, 2020, no pet.) (mem. op., not designated for publication) (citing *Balderas*, 517 S.W.3d at 768; *Shaw v. State*, 117 S.W.3d 883, 889 (Tex. Crim. App. 2003); *State v. Thomas*, 453 S.W.3d 1, 4 (Tex. App.-Dallas 2014, no pet)).

It is undisputed that the delay between Relator's arrest, August 23, 2022 and the fact that although Relator has made request of (three) 3-judges to have a hearing on his speedy trial motion is approaching two years.[8] And the delay between when was indicted and the time of filing this amended mandamus has been over 11-months. Relator concludes that these delays were more than adequate to find presumptive prejudice and trigger a full *Barker* analysis. See *Balderas*, 517 S.W.3d at 768 (noting that, in general, courts deem delay approaching one year to be unreasonable enough to trigger *Barker* inquiry). Personal matters, other cases, and insufficient time to prepare are not necessarily sufficient cause for granting a continuance. See *Blake v. Lewis*, 886 S.W.2d 404, 409 (Tex. App.—Houston [1st Dist.] 1994, no writ). The Court of Criminal Appeals opinioned that in certain limited circumstances a trial court has the power to dismiss without the State's consent, such as this case when the Relator has been denied a speedy trial. *Johnson*, 821 S.W.2d at 612. *See* **App. 10**, **36**, and **43**.

The State *cannot* prove every element of the alleged offense beyond a reasonable doubt, which cannot support a conviction.

H. Issue Six:

The Appointment of Heath Harris As Standby Counsel.

On August 12, 2023, Judge Tina Clinton appointed Heath Harris to the Relator's criminal case as standby counsel. Being that the State had not filed but one deficient motion into the trial court after the indictment for over 11 months, the Relator's opposed Harris appointment and it was absurd that Clinton would appoint any attorney to the Relator's case. **App. 31**.

Relator criminal case was not set for trial when Tina Clinton appointed Heath Harris to his case, *while Clinton was out of town*. This was Judge Clinton's way of slowing Relator demands for his Motion to Dismiss and *Franks* Motion to be heard. Relator has been delayed substantially waiting on Harris to appear in court for the Relator's hearings—or even to set a hearing. Respondent Judge Chika Anyiam has refused to remove Harris from the Relator's criminal case. Although, Relator has made it clear that he will not speak, conference, or have anything to do with Heath Harris, Respondent commented, "its not about what you want."[9] **RR4**, L 4–7.

[9]The Supreme Court noted that it had previously held that "a defendant who does not require appointed counsel [has the right] to choose who will represent him." Id. (citing Gonzalez-Lopez, 548 U.S. at 144, 126 S. Ct. at 2561) (emphasis added)). It then reversed the conviction because it decided that the trial court violated the appellant's right to counsel of his choice, which it held was a structural error that required no showing of harm. Id. (citing Gonzalez-Lopez, 548 U.S. at 144-52, 126 S. Ct. at 2561-66).

Case law stipulates that if Relator agreed to allow Harris to participate in a substantial part in the case it could be viewed as *Hybrid* representation. Harris would at that time become Relator's counsel. Clinton would not even hear Drake's request for a needed investigator or his *Franks* motion. She said the motions were not ready. Drake respectfully disagrees.

> "The *McKaskle* court held that "once a *pro se* defendant invites or agrees to ***any*** substantial participation by counsel, subsequent appearances by counsel must be presumed to be with the defendant's acquiescence, at least until the defendant expressly and unambiguously renews his request that standby counsel be silenced." ***Id***. at 183, 104 S.Ct. at 953.

October 11th transcript clearly illustrates Relator's objection to Harris and that objection has been maintained even after Relator's criminal case was transferred to Respondent, at Dist. Crim. Ct., No. 7. *See* **RR3**, P. L. 2–4. The Respondent, Judge Clinton, and Heath Harris has violated the Relator's Sixth Amendment right by interfering Drake self representation.[10]

Heath Harris advised Judge Chika Ada Anyiam that he was in the process of reviewing the discovery and getting Relator's case ready for trial. But the discovery, which Relator has not reviewed, most likely, is fabricated

[10]A defendant who exercises his Sixth Amendment right to represent himself does not have a right to standby counsel. But Harris is ineffective standby counsel. See Simpson v. Battaglia, 458 F.3d 585, 597 (7th Cir. 2006).

and manufactured evidence against Relator, just as the Affidavit of Arrest that Detective Sara Sheerin authored. It would be impossible for Harris to get a case ready for trial that is composed of fraud, perjured testimony and fabricated evidence and he has no idea where the fraudulent testimony or evidence is located—and the Relator will not share that fact with him, or the evidence that Relator have that would impeach the State's evidence and witness testimonies. Hence, Relator will also file a complaint against Heath Harris with the Office of Disciplinary Counsel for the reason that he could not properly prepare the Relator's case for a jury trial when he is unaware of what evidence is fraudulent in the case. Harris has committed an ethics violation. Relator will also file a complaint with the Bar against ADA Robin Ogbonna, because he tendered to Heath Harris evidence that is fraudulent, which he intend to be used against Relator to obtain a wrongful conviction. Ogbonna has manufactured and used manufactured evidence and testimonies; he has lied to the Respondent, and suppressed the truth.

Pursuant to Relator's Appendix, **RR3**, P. 11, L. 9—16, the Respondent said, "Harris will not interfere," however, the Relator is not allowed to even set a hearing unless Harris schedule allows the hearing to take place. Of course, this is no more than what the prosecutor's desires to delay the entire proceedings. Also *see* **App. 31**, and **32**.

Standby counsel must not infringe on a *defendant's* right to represent himself, and an improper denial of the right cannot be harmless. *McKaskle v. Wiggins,* 465 U.S. 168, 177 & n.8 (1984). Moreover, participation by standby counsel without the defendant's consent should not be allowed to destroy the jury's perception that the defendant is representing himself. The *defendant's* appearance in the status of one conducting his own defense is important in a criminal trial, since the right to appear *pro se* exists to affirm the accused individual dignity and autonomy.

A violation of a *defendant's* Sixth Amendment right to self-representation [10] is structural error. See *Wiggins*, 465 U.S. at 177–79 & n.8, 104 S.Ct. 944 ; Rice , 776 F.3d at 1025 ("The Supreme Court has found denial of the right of self-representation to be structural error because it deprives a defendant a fair chance to present his case in his own way."

Relator has a constitutional and a statutory right to self-representation. The former is expressly recognized in *Faretta v. California* , 422 U.S. 806, 834-36 (1975). "Its denial is not amenable to `harmless error' analysis. The right is either respected or denied; its deprivation cannot be harmless." ***Id.***; accord *United States v. Baker*, 84 F.3d 1263, 1264 (10th Cir. 1996). Relator invoked the right to represent himself from the day he was indicted. Long before Heath Harris appointment as standby counsel. The Relator "clearly

and unequivocally" asserted his intention to represent himself. *United States v. Floyd,* 81 F.3d 1517, 1527 (10th Cir. 1996). Secondly, Relator made this assertion in a timely fashion. *United States v. McKinley*, 58 F.3d 1475, 1480 (10th Cir. 1995). *See* **App. 13**. Third, Relator "knowingly and intelligently" relinquished the benefits of representation by counsel. *Boigegrain*, 155 F.3d at 1179. *See* **RR3**, L 8–13. Furthermore, the trial judges (Tina Clinton and Justin Koch) conducted a thorough and comprehensive formal inquiry of Relator on the record to demonstrate that he is aware of the nature of the charges, the range of allowable punishments and possible defenses, and is fully informed of the risks of proceeding *pro se*. *United States v. Willie*, 941 F.2d 1384, 1388 (10th Cir. 1991).

Where the *defendant* met the waiver of his Sixth Amendment right to counsel, a court must permit Relator to proceed *pro se*. *Hernandez*, 203 F.3d at 620-21. *See* **App. 50**. However restricting the State's discovery and forcing the Relator to meet the schedule of Heath Harris—standby counsel, is interfering which is a violation of the Relator's Sixth Amendment rights and due process rights. Unless this Court acts immediately, Relator has no other legal remedy to prevent the continual abuse by Respondent, the prosecutors: Ogbonna and Houston–Martin, and Mr. Heath Harris.

Texas Constitution[11] "is more explicit than Sixth Amendment" prov-

iding that "the accused shall 'have the right of being heard by himself or counsel, or both.' " *Kombudo v. State*, 148 S.W.3d 547, 553 (Tex.App.-Houston [14th Dist.] 2004) (quoting Tex. Const. art. I, § 10), vacated, 171 S.W.3d 888 (Tex.Crim.App.2005), appeal perm. abated,No. 14–03–00738–CR, 2006 WL 54413 (Tex.App.-Houston [14th Dist.] Jan. 12, 2006, no pet.)

It is the Relator, not his lawyer or the State, who will bear the personal consequences of a conviction. Therefore, Relator must be free personally to decide whether in his particular case, counsel is to his disadvantage or to his advantage. *Faretta*, 422 U.S. at 833.

While *Faretta* does not mandate an inquiry concerning appellant's age, or education where an accused expresses a desire to represent himself, the Relator's legal background with the knowledge that the underlying criminal case is laced with fraud, conspiracy, fabricated evidence, altered evidence by the Dallas Police, the Corrales, and the Dallas district attorneys office gives him a clear advantage over an attorney just reviewing the case.

[11]The Sixth and Fourteenth Amendments to the United States Constitution protect a defendant's right to self-representation in a criminal proceeding. Moore v. State, 999 S.W.2d 385, 396 (Tex. Crim. App. 1999) (citing Faretta v. California, 422 U.S. 806, 818-20, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975)). "[A]n accused's right to proceed pro se does not attach until he clearly and unequivocally asserts it." Hathorn v. State, 848 S.W.2d 101, 123 (Tex. Crim. App. 1992).

In *Weninger*, supra, Supreme Court noted that *Faretta* had held that a *defendant* had the constitutional right under the Sixth Amendment to defend against a criminal charge *pro se* but the assertion of the right is conditioned on a knowing and intelligent waiver of counsel and that to ascertain whether a defendant has knowingly and intelligently waived his right to counsel a court must consider "the total circumstances of the individual case including background, experience and conduct or accused person."

A *defendant* need not have the skill and experience of a lawyer "to competently and intelligently choose self representation," *Faretta*, 422 U.S. at 835, 95 S.Ct. [at 2541]. The focus is on whether the *defendant* is competent to choose to proceed *pro se*, not whether he is equipped to represent himself at trial. *Godinez v. Moran,* 509 U.S. 389, 400-01, 113 S.Ct. 2680, [2687-88] (1993). Heath Harris is not the kind of lawyer that the Relator would hire, however, because he has been appointed, even over the Drake's objection—some lawyers will not speak with the Relator about his case. As such, Harris is interfering with the Relator's ability to represent himself, and thus is a Sixth Amendment violation.

Respondent said that Heath Harris role is to prepare the Relator's case—just in case? Since the Relator has refused to communicate with Harris, he is of no value to the Relator, but he is a huge problem in even

simply getting settings for a hearing. Relator asserted his right to self-representation timely and early on in the criminal case—since his illegal arrest on August 23, 2022. *See* **App. 13**.

Once a *defendant* in a criminal proceeding elects to represent himself, he is supposedly held to the same standards as an attorney. *Johnson v. State*, 760 S.W.2d 277, 279 (Tex. Crim. App. 1988); *Borne v. State,* 593 S.W.3d 404, 414 (Tex. App.- Beaumont 2020, no pet.); *McCray v. State*, 861 S.W.2d 405, 408-09 (Tex. App.- Dallas 1993, no pet.). But *pro se* criminal defendants are not treated like an attorney in Dallas County. Factually, Relator is treated like he has already been convicted of the crime he alleged to have committed. Attorneys do not have broken-down untrustworthy black—whipping boy—lawyers like Harris appointed to their cases to impede their ability to defend their client's cases and to spy on them.

Relator referred to the Respondent: *Collins v. State* on November 30, 2023, which is a 2022 case. *See* **App. 50**. Respondent did not note any mental illness characteristics in regards to Relator. Moreover, a criminal *defendant* that is capable of filing this Mandamus has no need for standby counsel.

It was also noted in *Collins* that the record did not indicate he suffered from any severe mental illness, which is the "threshold requirement for mandating that a *defendant* accept the representation of counsel." *Fletcher*,

474 S.W.3d at 401.

Subsequently, Relator has made it very clear since the appointment of Heath Harris that he has rejected him, and it is of a matter of record that Harris has caused delays in the Relator representing himself. Hence, Heath Harris should be removed from the Relator's criminal case without **delay**.[13] If not, Relator will file a civil rights action naming Harris as a defendant in federal court.

1. THE UNDERLYING CASE IS FRAUDULENT

The underlying case is comprised of Dallas Police officers who have conspired with private citizens and the District Attorneys Office through its counsel to suborn perjury, manufacture or orchestrate the manufacturing of evidence. Relator can prove that Sara Sheerin Affidavit of Arrest is false. David Woodruff should *not* have signed the warrant for Relator's arrest, because a first year law student could easily denote it lacks probable cause. Evidently, Woodruff also conspired to violate Relator's constitutional rights.

Having Harris as standby counsel,[12] which he claims he is preparing the case for trial when the case is comprised of fraud, perjury, and other crimes is an ethics violation. Harris cannot competently get a case ready for trial if he does not know the facts. Relator will not speak with, or confer-ence with, or discuss his criminal case with Heath Harris. However, because

the Relator can prove that the DA's case against him is fraudulent, Relator needs to possess the State's discovery and the grand jury testimony and evidence. Yet, prosecutors Ogbonna and Houston-Martin claimed that there weren't any grand jury transcripts. Ogbonna and Houston–Martin advised Respondent on November 30, 2023, that in the Relator's case, the grand jury was read the Affidavit of Arrest. If so, Relator can prove the arrest affidavit is a product of fraud and conspiracy—this Court should dismiss indictment. Relator filed several motions in an effort to obtain the State's discovery. *See* **App. 11**, **15**, **16**, **17**, **26**, **35**, **36**, **38**, **39**. Ogbonna in the November 30, 2023 hearing stated that he refused to provide State's discovery to Relator. **RR5**, P. 22, L. 9 –13. Ogbonna said, "I am not willing to do," provide discovery.

Special exceptions can be made in the production of the State's discovery and the releasing of the Grand Jury testimonies, evidence, as well as how the State obtained an indictment against Relator. And in this case, Relator is asking the Court to order the trial court to release directly to him the State's discovery and the grand jury transcripts and or testimonies or by whatever means the State obtained an indictment against Relator.

The Grand Jury did not have probable cause to indict Drake because the grand jury relied upon false, misleading evidence, misinformation, perjured testimony, fabricated and manufactured evidence.

The state conspired by and through the DA's office, police department

and private citizens to initiate a false criminal proceeding against Relator. Prosecutors, law enforcement, and private citizens acted maliciously to make Relator suffer deprivation of his liberty consistent with the concept of seizure as a consequence of a legal proceeding: false Affidavit of Arrest without probable cause. *Johnson v. Knorr*, 477 F.3d 75, 82 (3d Cir. 2007). There wasn't probable cause to arrest Relator. In the case before the Court, dismissal would be appropriate when "necessary to neutralize the taint of the unconstitutional action." ***Id***. at 817. See *Mungia*, 119 S.W.3d at 816–17.

I. Issue Seven:

Prosecutor's Refusal to Provide Discovery Directly to Relator.

Assistant district attorney Robin Ogbonna said in a November 30, 2023, hearing that he "chose" not to allow the Relator to have possession of the State's discovery. **RR5**, P. 22, L. 9 –13. This was a voluntary act to apparently to try and hide from Relator's experts the fabricated evidence that

[12]A trial court is permitted to insist upon counsel for a defendant who is competent to stand trial, but who nonetheless suffers from severe mental illness. Indiana v. Edwards, 554 U.S. 164, 174 (2008). "[O]nce a defendant is deemed competent to stand trial, the relevant inquiry in determining whether a court may insist on counsel is whether the defendant can 'carry out the basic tasks needed to present his own defense without the help of counsel.'" Fletcher, 474 S.W.3d at 389 (quoting Edwards, 554 U.S. at 175- 76). The court is authorized to take a realistic account of the defendant's mental capacities in determining whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. Edwards, 554 U.S. at 177-78.

Ogbonna knows is manufactured by the Dallas Police, the DA's office, and private citizens, Kimberly Cave, April, Athena, and Jesus Corrales.

Pursuant to the Michael Morton Act, the Relator has every right to possess the State's discovery. Moreover, because the underlying criminal case is comprised of fraud, fabricated evidence and witnesses, the Relator needs to have possession of the discovery so that he can confer with his expert witnesses to actually show the jury how the evidence is fabricated.

There is plenty of case law that states, *pro se* defendants are granted no "special consideration" and must satisfy rules of evidence and procedure just as licensed attorneys. *Johnson v. State*, 760 S.W.2d 277, 279 (Tex. Crim. App. 1988). *Pro se* defendants might not be granted any special considerations but they are not granted the same consideration, as in this case in obtaining the State's discovery as an attorney–and this must change!

The Michael Morton Act requires that the State, as soon as practicable after receiving a timely request from the *defendant*, to produce and permit the inspection and the electronic duplication, copying, and photographing, **by** or on behalf of the defendant, of any offense reports, any designated documents, papers, written or recorded statements of the defendant or a

witness, including witness statements of law enforcement officers but not including the work product of counsel for the state in the case and their investigators and their notes or report, or any designated books, accounts, letters, photographs, or objects or other tangible things not otherwise privileged that constitute or contain evidence material to any matter involved in the action and that are in the possession, custody, or control of the state or any person under contract with the state. Authorizes the state to provide to the defendant electronic duplicates of any documents or other information described by this article.

Sub-section (d) requires the state, in the case of a *pro se defendant*, if the court orders the state to produce and permit the inspection of a document, item, or information under this subsection, to permit the *pro se defendant* to inspect and review the document, item, or information but provides that the state is not required to allow electronic duplication of the document. But the state is required to allow duplication of the items which the state in this case has refused, hence, have has violated the Relator's due process, and equal protection rights under the Fourteenth Amendment.

Case law suggests that the state's discovery should not be provided to a *defendant* when he or she is represented by counsel. In the underlying case

assistant district attorney Robin Ogbonna released the state's discovery to Heath Harris. *See* **RR4**, P. 5, L 23–25. Harris has no idea what evidence is fraudulent, yet he is working the case up for a jury trial. *See* **RR4** P. 6, L 8–10. But Harris does not represent the Relator, nor will Drake communicate with Harris for any reasons—as such, the Relator should have access to the state discovery—especially in a case when its provable the Affidavit of Arrest is falsified, and warrant for arrest lack probable cause.

J. Issue Eight:

Respondent's Failure to Comply with Ministerial Duties.

Respondent, Judge Chika Ada Anyiam, have a ministerial duty to comply with Texas laws and statutes. On November 30, 2023, the Relator brought to the attention of the Respondent three motions: **a**) Relator's motion to dismiss, objection, disqualify motion filed on November 7, 2023, **b**) motion for investigator filed July 6, 2023, and **c**) Relator's *Franks* Motion filed July 5, 2023. Additionally, Relator requested: 1) Heath Harris removal from his criminal case, and 2) for the prosecutors to explained how or in what manner did the State obtain an indictment against Relator.

Respondent's reply to all of Drake's motions, except for his request for an investigator was to wait until date of pre-trial motions. State has already violated the Speedy Trial Act and now Respondent is assisting in the

delay of a hearing regarding Relator's Motion to Dismiss the Indictment and his *Franks* Motion. Further, Respondent ignored Relator's Motion to Recuse and Disqualification filed on November 7, 2023, and notification filed on December 5, 2023. Once a ruling has been requested on a motion pending before the trial court, the trial court is required to consider and rule on a motion within a reasonable period of time. *In re Greenwell*, 160 S.W.3d 286, 288 (Tex. App.—Texarkana 2005, orig. proceeding). Relator has been waiting nearly a year to have his motion to dismiss indictment heard.

Whether a reasonable period of time has lapsed is dependent on the circumstances of each case. *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding). It is evident from Respondents behavior that she is assisting the prosecutors to delay providing Relator the legal aid he requested. Her impartiality is very questionable.

1. RESPONDENT ABUSED HER DISCRETION WHEN SHE IMPLICITLY DENIED RELATOR THE RELIEF THAT HE SOUGHT OF CONDUCTING A HEARING ON HIS FRANKS MOTION.

In regards to the Relator's *Franks* Motion, the Respondent indicated that she would hear this motion during the pre-trial hearings only. She said, "these motions would be better heard during the A pre-trial hearing. Relator

disagrees. A *Franks* motion must be heard at the earliest practicable time. Respondent acknowledge Franks hearing. **RR5** P. 28, L 18.

> "In *Franks*, the United States Supreme Court held that where the defendant makes a substantial preliminary showing that the affiant intentionally, knowingly, or with reckless disregard for the truth included a false statement in the search warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. *Franks*, 438 U.S. 154, 171-72, 98 S.Ct. 2674, 2684-85, 57 L.Ed.2d 667 (1978).

During hearings in the trial court, the Relator has stated more than twice before the Respondent that he can prove beyond a reasonable doubt that every part of the Affidavit of Arrest authored by Detective Sara Sheerin of the Dallas Police Department is false, except the fact that Relator did have two short conversations with Detective Sheerin—but Sheerin lied about what the Relator said during that conversation. Relator tape-recorded the entire conversation with Sara Sheerin. *See* **RR5**, P. 10, L 6 –7.

Relator has indicated in his sworn declaration, statements made by Sara Sheerin's in her August 2, 2022 Affidavit of Arrest that are false, nor does it demonstrate probable cause. *See* declaration, **App. 2B**, P 16–19.

Relator advised Respondent that he has proof beyond a reasonable doubt to support the fact that Detective Sheerin's Affidavit is false, which is comprised of video and audio evidence that the State could not possibly defend against. When the Relator stated in open court that he could prove beyond a reasonable doubt that the Affidavit of Arrest was false, Respondent just looked at the prosecutors but made no attempt to discover the truth, which demonstrates partiality towards the assistant district attorneys who are also from the same racial background as Respondent, African.

One could possibly argue that Magistrate David Woodruff was misled by information in Sara Sheerin Affidavit of Arrest when she knew the Affidavit was false. However, not to protect Magistrate David Woodruff, he should have been able to easily recognize, just by reading Sheerin's Affidavit of Arrest that her Affidavit lacked probable cause.

Respondent's position was to wait for over five months to hear Relator's *Franks* motion, which is a showing of an abuse of discretion and it is Relator's opinion that she in fact, has conspired to delay the defense of Relator to assist the prosecutors. It is not the fact that the Respondent wasn't aware of Relator's *Franks* motion because he served a copy of the motion on the Respondent on November 30, 2023.

A *Franks* "motion must be heard at the earliest practicable time." To be granted a *Franks* hearing, a defendant must:

(1) Allege deliberate falsehood or reckless disregard for the truth by the affiant, specifically pointing out the portion of the affidavit claimed to be false;

(2) Accompany these allegations with an offer of proof stating the supporting reasons; and,

(3) Show that when the portion of the affidavit alleged to be false is excised from the affidavit, the remaining content is insufficient to support issuance of the warrant.

The Relator has unquestionably cited detail falsehood or a reckless disregard for the truth in regards to Detective Sheerin's Affidavit of Arrest in his Franks motion. **App. 20**, P. 3, 1st ¶, 2nd ¶, P 4, 5. Amended Franks Motion, see **App. 46**, P. 3, 4, 5, 6, 7. Relator has specifically pointed out the portions of Sara Sheerin's Affidavit that he can prove that are false by exculpatory evidence. Relator can prove that these specified statements are false, and evidence has been conspired and fabricated, to be used against Relator by the DPD, DA's office, and the Corrales family. Specifically, Kimberly Cave, and April, Athena, and Jesus Corrales conspired with Sheerin and the DPD to produce the false Affidavit. **App. 51**. Removed the false statements from the Affidavit; it is insufficient to support issuance of an arrest warrant. The Affidavit also lacks probable cause to arrest Relator.

In *Franks*, the United States Supreme Court held that when "the *defendant* makes a substantial preliminary showing that a false statement

knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request." "An affidavit supporting a search warrant begins with a presumption of validity; thus, the defendant has the burden of making a preliminary showing of deliberate falsehoods in that affidavit before he is entitled to a *Franks* hearing." *Franks*, 438 U.S. at 171, 98 S. Ct. at 2684; *Harris v. State*, 227 S.W.3d 83, 85 (Tex. Crim. App. 2007).

Cates v. State, 120 S.W.3d 352, 356 (Tex.Cr.App. 2003).

Relator is not saying that Detective Sara Sheerin was merely negligence or she made an innocent mistake, but that Sheerin with malicious intent did in fact, conspire with Kimberly Cave, April Corrales, Athena Corrales, and Jesus Corrales—private citizens to fabricate and manufacture a false Affidavit of Arrest and evidence to harm the Relator's name, create financial hardship, cause harm to his physical body, and to wrongfully take his liberty. Sara Sheerin and the Corrales violated 42 USC §1983, and 42 USC §1985(3) of the federal statutes. Sara Sheerin will be sued in federal court for false arrest and imprisonment under §1983 and 4th Amendment.

Respondent has ignored case law, and ignored her ministerial duties. Relator filed a motion pursuant to Rule 18a to recuse her, and she ignored the motion—even though the Relator brought the motion to her attention on November 30, 2023. *See* **RR5**, P. 28, L 11–-14. When the Relator requested an investigator, Respondent said she would select the investigator. Yet, an order appeared to be signed but under seal. On December 18, 2023, Drake requested a copy of the order from Respondent's clerk. The clerk said that she could speak to the Respondent about the order, because the order was sealed. On January 17, 2023, the Relator returned and asked for a copy of the order, but now the same clerk advised Relator to talk to the Respondent. There is a pattern of behavior to delay the Relator's defense by the Respondent and her staff. A civil rights claim under §1983 is the proper remedy.

Criminal activity by the police and possibly the district attorney's office in a case brought to the attention of the judge and subsequently ignored is sufficient to support a finding that the judge is "interested" in the case, because a failure to investigate and remediate evidence of criminal activity affecting the proceedings brings upon the judge criminal liability in and of itself. Texas Penal Code § 7.02(a).

As such, the Respondent, Judge Chika Anyiam, has incurred criminal liability for failing to investigate the Dallas Police and the district attorneys office criminal conduct. Hence, Respondent's recusal was properly sought.

Respondent, Judge Chika Ada Anyiam, failed to respond to the Relator's motion to recuse timely, she has been recused from Relator's criminal pending case in the district court number 7 in Dallas County, Texas. See recent court docket **App. 1A**, in support of Chika's recusal. Respondents' behavior is one that supports the assistant district attorneys desires, their ethics violations, and she is obviously partial to the prosecutors who are of the same race as she is: Africans. Respondent removed herself from a high-profile case involving a suspect in jail accused of murder, which was shooting a child in the head and firing an AR-15 at Dallas police officers. Respondent, Chika Ada Anyiam lowered the bonds for Julio Guerrero because she received more than $5,000.00 in campaign contributions suspects' attorney. There is a pattern of abuse and partiality.

In a further observation of Respondent's partiality, she is very protective of Robin Ogbonna, prosecutor. During the October 11, 2023 hearing Respondent asked if Ogbonna had filed a motion to continue, and he answered affirmatively, yes your honor. **RR5**, P. 11, L 17–20. Yet, when the Relator requested a copy of the alleged motion, Ogbonna had not drafted the motion on October 11, 2023. In fact, Ogbonna did not filed the motion to continue into the trial courts record until October 26, but it was nevertheless

filed as if it was filed on October 24, 2023. During the October 11,2023, hearing before the Respondent, she asked Heath Harris, "And, Mr. Harris, you — have you reviewed the State's motion? **RR5**, P 7, L 23—25. Harris responded and acknowledged, "I have Judge." However, Ogbonna did not have his motion to continue ready to file into the trial courts record on October 11, 2023.

Ogbonna had not even drafted his motion to continue on October 11, 2023, the date of the hearing, so how could Harris review a motion that was not in existence on October 11, 2023? Thereafter the Respondent inquired, "You have?" **RR5**, P. 7, L 24. And Harris said, "The previously filed." **RR5**, P 7, 25. The State had not filed any motions into the courts record in regards to a continuance prior to October 11, 2023. Factually, the State had not filed any motions into the trial court. Respondent did not obtain the truth from Harris. On page 8 of **RR5**, Ogbonna now acknowledges that he had not filed any motion to continue. It is improper for Respondent to rule on a verbal motion to continue. However, the Respondent's behavior illustrates heavy partiality towards Ogbonna. **RR5**, P. 1—11.

Afterwards Respondent improperly granted the mystery prosecutor's motion to continue. Meanwhile, Harris said that, "he is looking at all the discovery, preparing for trial on the case." **RR4**, P. 13, L 21—23. But how

could Harris competently prepare a case for trial that is laced with fraud, conspiracy, fabricated evidence, when he is not aware of where the fraud is located or what evidence is fabricated, unless Harris likewise is part of the conspiracy. Further, Respondent said that she is allowing Harris to continue in Relator's case over the Relator's objection, "Should the need arise . . ." and for him to intervene.'" **RR4**, P 11, 6—9.

In regards to the grand jury transcripts, Ogbonna said that he would turn the transcripts over to Heath Harris, standby counsel, and not the Relator. **RR5**, P 19, 4–9. Of course, Ogbonna knows that the Relator will not speak to Harris in regards to the underlying criminal case and the Respondent allowed this to occur.

CONCLUSION

Relator understands that Mandamus is an extraordinary remedy. However, substantial rights of Relator have been violated in this case: **a**) He was falsely arrested because a Dallas detective purposely authored an Affidavit of Arrest that she knew was false through her conspiracy; **b**) The grand jury transcripts or whatever manner that the prosecutor's obtained an indictment against Relator would provide proof that witnesses committed false swear-

ing, and that evidence was most likely fabricated or altered to obtain an indictment against Relator that, was provided to the grand jury and this would be caused to dismiss the indictment against Relator because the grand jury would not have probable cause to indict him if they were not provided with tainted and false information, evidence and testimony; **c**) Judges in the trial court ignored their ministerial duties, which created delays, continual financial and mental harm to Relator; **d**) The prosecutor failed to comply with 32A.02. And at no time after the Relator's arrest on August 23, 2023 has the State announced its readiness to try Relator. The State violated the speedy trial act knowingly and purposely; **e**) Without the fraudulent testimony by witnesses who possibly appeared before the grand jury and or the misinformation the State provided the grand jury, the State would be unable to show the grand jury there is *probable cause* to indict the Relator for the alleged crime of stalking; **f**) In support of the fact that the State was never ready to try the Relator's case within the limits of the speedy trial act is **App. 41**, which is the State's deficient motion to continue.

Relator realizes that the granting of Mandamus relief by the Court is *rare* pursuant to the speedy trial act, yet CCA has opinioned there are exceptions. (**App. 49**) *Ex parte Ortiz*. Likewise, it is extremely rare in a

criminal case for a *defendant* to have exculpatory evidence in his possession that proves the police involved committed felony crimes, the alleged victim have committed felony crimes, and the district attorneys in Dallas County has and is continuing to assist the police and the alleged victim's family in their conspiracy and fraud. It is equally rare when the Relator has over 40 videotapes and over 90 audiotapes to impeach witnesses. The Relator either tape-recorded or videoed, each and every visit he made in the presence of the Corrales, because he never trusted the family. Relator also recorded all telephone calls when speaking to Kimberly Corrales, Jesus Corrales, Sara Sheerin, chief of police assistant and any DPD officers that he spoke to about any matter. Tape recordings and videos do no lie.

In *Meshell*, the statute required dismissal of the case with prejudice if the State was not ready for trial within 120 days of the commencement of a criminal action.

Even when the Relator took the alleged victim, April Corrales to North Park Mall to the Apple Store to have her select a computer for her school needs—with her father, Jesus Corrales, who was present in the car with April Corrales at that time, the Relator nevertheless tape recorded and videoed the entire time the Corrales was with him. On the video and audiotape, Jesus Corrales asks Relator for a ten thousand dollar loan.

In past civil litigations, the Relator has been successful because he has always supported his claims with detail audio and video recordings of the transaction or the matter in dispute to support his claims. The Relator grew up poor and understands that children are unable to help themselves. Unfortunately, Mr. Corrales would not work most of the time, and its probably one of the reasons why Kimberly Cave, his x-wife finally divorced him. Yes, Relator gave April gifts as he does many children.

Relator petitioned the Respondent, Judge Chika Anyiam to schedule his Motion to Dismiss for a hearing, but she was dismissive to the Relator and wanted to wait for another 5 months. Relator is filing his petition for Writ of Mandamus, and is respectfully requesting the Honorable Court to dismiss the underlying indictment with prejudice pursuant due to the State failure to comply with the *Speedy Trial Act*, TEX. CODE CRIM. PROC. ANN. Art. 32A.02.

The blatantly obvious violations of Relator's constitutional rights[13] and the failure of the State to comply with 32A.02, and the State's lethargic approach to outright failure in litigating its case against the Relator denotes that it has abandoned its case, which the delays by the State, violations of Relator's rights as set forth along with the State's failure to prosecutor the case, and its failure to comply with the speedy trial act, and failure to an-

nounce its readiness entitles Relator to the relief he is requesting of the Honorable Court: dismissal with prejudice as a matter of *fact and law*.

Our entire judicial system is bridged upon an accused having an impartial judge to hear his or her case. The actions of the Respondent is not impartial, but biased and prejudice towards Relator. Respondent's past has proved that she can be **bought** if the *price is right*. Respondent's ignoring felony crimes committed by the police and assistant district attorneys is deplorable, dangerous, but in a legal sense: she is paid partiality to the DA's office. This CCA has said that Mandamus is proper if the *relator* had a legal right. Moreover, one of the most compelling reasons for this Court to hear this Mandamus is because the petition conforms to the rare exception of the CCA has opinioned. The State has failed on many different levels to bring Relator to trial for an alleged crime in a timely and professional manner. Hence, Relator has no other remedy by law but for this Court to review and rule on his original petition—Mandamus.

[13]The Sixth Amendment right to a speedy trial is thus not primarily intended to prevent prejudice to the defense caused by passage of time; that interest is protected primarily by the Due Process Clause and by statutes of limitations. The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges.

With Emphasis, the State was not ready to try Relator's case on October 11, 2023 when Ogbonna made his verbal motion for a continuance to the trial court. Prosecutors could not make a declaration under oath that they were ready to proceed with a trial against Relator at any time after his initial arrest, and especially not as of October 11, 2023. The Relator has not seen the State's discovery, but he can try the State's case against him without review of the discovery because of the reasons below:

a) State discovery is predominantly fraudulent and its witnesses have already perjured themselves and or made false sworn statements, including the police and assistant district attorneys;

b) Taking into consideration the evidence that Relator possess, he will be able to indeed demonstrate to a jury that witnesses have perjured themselves, and that the States evidence is fabricated. Further, the Relator will be able to prove that witnesses, including law enforcement and assistant district attorneys have already conspired with private citizens to maliciously prosecute the Relator. It's difficult to overcome audio and video evidence.

All motions for continuance must be sworn to by a person having personal knowledge of the facts relied on for the continuance. *See* TEX.CODE CRIM.PROC.ANN. art. 29.08 (Vernon 1989). Ogbonna's oral motion for continuance was not in compliance with Article 29.03, because it must be in writing, and his written motion also failed for noncompliance.

> "A criminal action may be continued on the written motion of the State or of the defendant, upon sufficient cause shown; which cause shall be fully set forth in the motion. A continuance may be only for as long as is necessary."

Art. 29.08. MOTION SWORN TO. All motions for continuance must be sworn to by a person having personal knowledge of the facts relied on for the continuance. Ogbonna's oral motion was not in writing and even his written motion was deficient, and the motion was not sworn to. These are supportive facts to conclude that the State was not ready to try the Relator from his February 14th indictment to at least October 24, 2023. Hence, this Court should grant a dismissal of the indictment for the following reasons:

a) State cannot claim it was ready previous to October 24, 2023, which is 8 months and over 200-days after the State obtained a fraudulent indictment against the Relator;

b) State's motion to continue was deficient and the trial court's granting of such a motion demonstrates partiality towards prosecutors. And that partiality in Relator's opinion is on account of the prosecutor's race;

c) The pillars of the criminal compliant against the Relator is established on an Affidavit of Arrest, which is fraudulent and conspired;

d) The Affidavit of Arrest does not demonstrate probable cause;

e) State obtained an indictment against Relator by reading or showing grand juries information that was and still is fraudulent, perjured, and fabricated by Dallas Police and knowingly used by the DA's office.

A motion for continuance in a criminal case is regulated by statute. *Wright*, 28 S.W.3d at 532. "A criminal action may be continued on the writ-

ten motion of the State or of the defendant, upon sufficient cause shown; which cause shall be fully set forth in the motion." Tex. Code Crim. Proc. Ann. art. 29.03 (Vernon 1989), Article 29.08, supra; *Rosales v. State*, 473 S.W.2d 474 (Tex.Cr.App. 1971). In addition, the written motion must allege facts sufficient to constitute surprise and diligence. Article 29.13, supra. Further, "[a]ll motions for continuance ***must*** be sworn to by a person having personal knowledge of the facts relied on for the continuance." Tex.Crim. Proc. Code Ann. art. 29.08 (Vernon 1989). Ogbonna motion to continue that the Respondent granted was not in writing, nor was it sworn to. Ogbonna's motion to continue was defective and insufficient—yet, Respondent granted the oral motion, which she did not file into the trial courts record until October 26, 2023.

A criminal defendant who waives his right to counsel and chooses to proceed *pro se* is supposed to be held to the same standards as any attorney who would represent them. *Johnson v. State*, 760 S.W.2d at 279; McCray v. State, 861 S.W.2d 405, 408-09 (Tex. App.-Dallas 1993, no pet.). Courts do not make allowances merely because a defendant waives his right to counsel and chooses to represent himself. *McCray*, 861 S.W.2d at 408. And neither should the Respondent grant a continuance and make allowances merely because the person asking was a prosecutor and of the same racial back-ground as the Respondent, an African.

The entire case against Relator is fraudulent. This case begun with Jesus damage to Relator's vehicle, which the DPD refused to investigate properly. Relator had to reconstruct the case and locate cameras that would support Jesus conviction. As such, Relator had to be in the area were the Corrales resides more often. DPD officers would not even report the facts that Relator reported to them about Jesus on account of Relator's race, black.

The above screen shot is from a video in the possession of Relator speaking to a DPD Sergeant about a Report he filed against Jesus Corrales that omitted the fact that Jesus threatened Relator with a gun. Relator also has the original video when he reported the incident to DPD (Dallas Police Department) were he clearly indicted that Jesus had a gun. DPD omitted information that the Relator described to the DPD officer about the incident. Relator has video of the incident when Jesus called him a pussy and a nigger, and when he used threatening and vulgar language towards Relator.

There is also an audiotape were Jesus Corrales said to the Relator these words, "You are Dead."

RECUSAL OF JUDGES INCLUDING THE RESPONDENT

Unfortunately, the Relator has had to recuse three judges in a case that the State cannot prove beyond a reasonable doubt.

Justin J. Koch

The Relator's criminal case was first assigned to the Honorable Nancy Kennedy. However, Judge Kennedy campaigned for a position with the Fifth Court of Appeals successfully. The Governor appointed Justin Koch to her court as an intern judge. Relator began to experience intrinsic blindness in March of 2023. Doctors were baffled as to why this was occurring, and they still do not understand this medical mystery. Doctors suggested the hospitalization for observation, but being *pro se* in a pending criminal case, Relator asked the prosecutor if she would agree to allow an extended time to report to the court for one month—she agreed, but Judge Koch ruled was opposed to the agreement. Relator showed his doctor's original declaration to Koch, and he kept the document, and smiled about it. Koch would not give the original document back to Relator, though the document was not submitted into evidence, which is a violation of the 4th Amendment of an illegal seizure. Koch would not provide copies of documents the Relator signed, such as when he admonished him. *See* **App. 13**. When Relator requested Koch to sign a written order of a oral decision in open court, his

responses was to threaten Relator with contempt of court. **RR2**, P. 12, L 2—12. Koch would not hear any of the Relator's motions, even motions that were *not* pretrial motions until the date of the pre-trial hearing. This would include Relator's motions for: a) an investigator; b) Relator's *Franks* Motion; c) Relator's Motion to Compel Grand Jury Transcripts; d) Relator's Motion for Neuropsychological testing; and e) Relator's Motion Compel Identity of Police Officers. The Relator recused Judge Justin Koch. *See* **App. 24**. Judge Koch violated Relator's Texas and U.S. Constitutional rights.

Tina Clinton

After Koch's recusal, Relator's criminal case was assigned to the Judge Tina Clinton. Judge Clinton ordered the prosecutor to show Relator the State's discovery in open court. However, there are no laws that would prevent the Relator from receiving the State's discovery personally. *Pro se* litigants are warned that they must cut the mustard like licensed attorneys, but they are abused by the judicial system. While Clinton was out of town she decided to appoint a has-been-whipping-boy attorney to the Relator's case that the Relator does not trust, and refuse to discuss even the weather with: Heath Harris. This was an intentional act by Clinton to disrupt the Relator's defense, and to possibly stop the Relator from filing motions with

her trial court, and for Harris to spy on the Relator: to relate what type of evidence he has to defend against the State's case. Additionally, Clinton, like Koch would not hear any of the Relator's motions, that are *not* pretrial motions until the date of the pre-trial hearing, including Relator's motions for: a) an investigator; b) Relator's *Franks* Motion; c) Motion to Compel Grand Jury Transcripts; d) Motion for Neuropsychological testing; e) Motion Compel Identity of Police Officers. On August 14, 2023, Relator filed his Motion for Discovery under the Michael Morton's Act. *See* **App. 26**. Relator also filed in Clinton's court the following: 1) Motion to Rule on Pre-Trial Motions, see **App. 27**; 2) Relator's Opposition to Court Appointed Attorney, *see* **App. 31** and **32**. Clinton advised Relator that those motion were not ripe, which is a lie. Relator recused Judge Clinton. *See* **App, 33**. Judge Clinton also violated Relator's Texas and U.S. Constitutional rights.

Chika Ada Anyiam

After Clinton's recusal, Relator's criminal case was assigned to an equally inferior trial court: Chika Ada Anyiam. Relator wasted no time in filing more petitions with the trial court of Anyiam. On September 9, 2023, Relator filed a Supplement Motion for Discovery, *see* **App. 35**; on the same day, September 9th, the Relator filed a Motion for Evidentiary Hearing on his Motion to Dismiss Indictment and Motion to Vacate Protective Order. *See* **App. 36**. Relator filed a letter into the trial courts record asking Respond

ent to rule on his pre-trial motions on September 13, 2023. *See* **App. 37**. On October 5, 2023, Relator filed an Objection and Demand for Discovery. *See* **App. 38**. On October 26, 2023, the State filed its only motion into the courts record since Relator's arrest, which as pled, the motion is deficient. *See* **App. 41**. On November 1, 2023, the Relator filed a Motion to Dismiss Indictment again. *See* **App. 42**. On November 7, 2023, Relator filed an Amended Motion of Dismissal, which was also a recusal of Chika Anyiam. *See* **App. 43**. Relator followed up with a notification of Respondent's recusal and disqualification, but Respondent, failed to follow TRCP Rule 18a. *See* **App. 45**. Relator filed an amended *Franks* Motion on February 2, 2024, and a letter that is address to a court (since Respondent is recused she has no authority to act in the underlying case) requesting an immediate hearing on Relator's *Franks* motion for the next judge. *See* **App. 46**, and **47**. Respondent also failed to hear all non-pre-trial motions, except Relator's Motion for Investigator and even then, she kept the investigator from Drake.

During the November 30, 2023, hearing, Relator expressed significant issues with Respondent's staff, such as making Relator wait over an hour to schedule a hearing. Respondent made excuses and ignored Relator's complaint. The Honorable Nancy Kennedy was the only judge to treat Relator with respect as if he was an attorney. If were possible to have her try the Relator's case and hear his motions, the State would file a dismissal quickly.

PRAYER

WHEREFORE, PREMISES CONSIDERED, for the reasons briefed and set forth herein, and in the interest of justice and fairness, the Relator, Eric Drake, prays that this Court grant his Petition for Writ of Mandamus and issue an Order Dismissing the Indictment against the Relator with prejudice, **OR** as an alternate, Relator respectfully requests the Court to:

1) Order the trial court to try the Relator's underlying criminal case before a jury as soon as practical; **2**) Order the release of the *grand jury transcripts* and or if there are no transcripts, reveal the manner which the District Attorneys Office secured an indictment against the Relator to be submitted to Relator without **delay**.[13] **3**) Order the release of the *names* of all *witnesses* who *testified* before the grand jury to Relator without delay. **4**) Release copies of any *evidence* provided to grand jury to the Relator without delay; **5**) Order the State to *answer* all of the Relator's *discovery without objection* and without delay; **6**) Order the State to surrender to Relator all of its *discovery evidence* to him personally, which is ordered be formatted in the following manner: all audio and video discovery will be place on a flip drive were Relator may use "Quick Time" to open the audio and video files. Printable discovery will be copied and submitted with the State's audio and video

evidence to Relator by hand without delay.[14] The prosecutor will provide a sworn declaration to Relator of the number of discovery document pages he or she submitted to him; **7**) Order the *depositions* of the following: *April Corrales, Athena Corrales, D. V. Cunningham, Jesus Corrales, Kimberly Corrales, Sharon H. Archie, Sara Sheerin, Cara McNeese, Henry Sheerin, Glenn Eric Larsen, David Woodruff, and Suzy Vanegas* to be conducted in open court without delay; **8**) Order the release of the *transcripts* of the Relator's *arraignment* that was conducted on August 24, 2022 without delay; **9**) Order the trial court to conduct an *evidentiary hearing* on Relator's Motion to Dismiss Indictment were he can subpoena witnesses to be cross-examined; **10**) Order the trial court to conduct an *evidentiary hearing* on Relator's *Franks* Motion were he can subpoena witnesses to be cross-examined; **11**) Order the trial court to conduct an *evidentiary hearing* on Relator's Motion to Vacate and or Set Aside the protective order obtained by the alleged victim, April Corrales, on or about October 20, 2022, because the order is void and a product of fraud. Also, the aforesaid evidentiary hearings on Relator's Motion to Dismiss and Vacate/Set Aside is ordered to be conducted by the trial court, but ***only*** after sub-sections: 2 through 8 in this paragraph are complied with, by the State and trial court; (**12**) Order that

Heath Harris (standby counsel) is discharged from the Relator's case immediately; (**13**) Order an investigator for Relator of his choice with a budget of $20,000.00 because the investigator will also investigate DPD police officers who conspired with private citizens and who fabricated evidence against Relator, as well as the assistant district attorneys conspiracy and their conspiracy with private citizens in this case. There are several key State Actors and private citizens that should be investigated. (**14**) Order the indictment filed against Relator dismissed with prejudice because the State violated Relator's Constitutional rights as set forth herein.

Thus, Relator, Eric Drake respectfully request the Court to grant his Petition for Writ of Mandamus and issue an Order Dismissing the Indictment against him with prejudice because the State failed to comply with the Speedy Trial Act or as an alterative as pled, issue an order as the Relator has respectfully requested in his prayer.

Respectfully submitted,

Eric Drake
10455 N. Central Expy
Suite 109
Dallas, Texas 75231
912-281-7100
directdrakeemail@gmail.com

CERTIFICATION

I certify that I have reviewed the petition for writ of mandamus and concluded that every factual statement is supported by competent evidence included in the appendix attached hereto.

Eric Drake

CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4, this certifies that this document complies with the type-volume limitations because it is computer-generated. Using the word-count feature of Microsoft Word, the entire document except in the following sections: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix. This document also complies with the typeface requirements because it has been prepared in a proportionally- spaced typeface using Microsoft Word in 14-point Times New Roman.

Eric Drake

[14]Without delay is interpreted as a demand for the requested discovery or discovery items to be released to Relator within a 10-business-day period of time.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of Relator Eric Drake's Petition for Writ of Mandamus has been delivered as follows:

Robin Ogbonna
Frank Crowley Courts Bldg.
133 N. Riverfront Blvd.
LB 19
7th Floor
Dallas, Texas 75207

The Honorable Chika Anyiam
Criminal Court Number 7
133 N Riverfront Blvd.
7th Floor
Dallas, Texas 75207

Delivered by Hand

Signed the _____ day of February, 2023.

_____
Eric Drake

Exhibit B

DENIED and Opinion Filed May 16, 2024

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00342-CV

IN RE ERIC DRAKE, Relator

Original Proceeding from the 282nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-2276307

MEMORANDUM OPINION

Before Justices Partida-Kipness, Nowell, and Miskel
Opinion by Justice Miskel

In his April 10, 2024 amended petition for writ of mandamus, relator contends that the trial court has violated his right to a speedy trial and that the trial court has failed to rule on several of his pre-trial motions.

Entitlement to mandamus relief requires a relator to show that the trial court clearly abused its discretion and that the relator lacks an adequate appellate remedy. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding).

After reviewing relator's amended petition and the record before us, we conclude that relator has failed to demonstrate entitlement to mandamus relief. *See*

Ex parte Sheffield, 685 S.W.3d 86, 96–98 (Tex. Crim. App. 2023) (explaining the existence of adequate remedies to vindicate the speedy trial right, including a "motion to dismiss and appeal in the normal course and mandamus when trial is indefinitely postponed"); *In re Torres*, No. 05-22-00715-CV, 2022 WL 17485033, at *3 (Tex. App.—Dallas Dec. 7, 2022, orig. proceeding) (mem. op.) (explaining that whether a reasonable period of time for a judge to rule on a pending motion has elapsed is heavily circumstantial). We note that the record shows that respondent only recently received the underlying case after it was transferred to her on March 22, 2024, due to the previous judge's recusal.

Accordingly, we deny the amended petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a). In conjunction with his amended petition, relator also filed an amended emergency motion for temporary relief to stay all trial court proceedings. We deny the amended emergency motion as moot.

/Emily Miskel/
EMILY MISKEL
JUSTICE

240342F.P05

Exhibit C

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

5/29/2024
DRAKE, ERIC **Tr. Ct. No. F2276307** **WR-95,163-02**

This is to advise that the Court has denied without written order motion for leave to file the original application for writ of mandamus.

Deana Williamson, Clerk

ERIC DRAKE
10455 NORTH CENTRAL EXPY SUITE 109
DALLAS, TX 75229
* DELIVERED VIA E-MAIL & POSTAL *

Exhibit D

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

FILE COPY

5/9/2024

DRAKE, ERIC **Tr. Ct. No. F2276307** **WR-95,163-02**

On this day, this Court has denied applicant's "RELATOR'S EMERGENCY MOTION FOR TEMPORARY STAY".

Deana Williamson, Clerk

ERIC DRAKE
10455 NORTH CENTRAL EXPY SUITE 109
DALLAS, TX 75229
* DELIVERED VIA E-MAIL & POSTAL *

Exhibit E

P R O C E E D I N G S

(Thursday, November 30, 2023, at 10:14 A.M. The defendant appearing in person.)

THE COURT: This is Cause Number F22-76307, styled the State of Texas versus Eric Drake.

Is that your name, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right.

THE DEFENDANT: I am the defendant in this case.

THE COURT: All right. Thank you.

Will the attorneys announce their presence for the record.

MR. OGBONNA: Robin Ogbonna for the State of Texas.

MS. HOUSTON-MARTIN: Shawnkeedra Houston-Martin for the State of Texas.

THE COURT: All right.

And...

MR. HARRIS: I'm Heath Harris. Just sitting for Mr. Drake.

THE COURT: Okay. Thank you.

All right. This case is set on the Court's trial docket; is that right?

MR. OGBONNA: Not yet. Not exactly, Your Honor. We were set for trial October 23rd. We had to do a reset being that I had just received the case. Court asked that the State