IN THE
TEXAS COURT OF CRIMINAL APPEALS

JOHN GERARD QUINN,

Petitioner,

vs. No. _____

THE STATE OF TEXAS,

Respondent.

****

PETITION FOR DISCRETIONARY REVIEW

****

Scheef & Stone, LLP

James A. Pikl
SBN 16008850
2601 Network Blvd., Suite 102
Frisco, Texas 75070
214-472-2100
Fax 214-472-2150
jim.pikl@solidcounsel.com

PARTICIPATING ATTORNEYS WITH THE RUTHERFORD INSTITUTE, ATTORNEYS FOR PETITIONER

PETITIONER REQUESTS ORAL ARGUMENT

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

STATEMENT REGARDING ORAL ARGUMENT

Petitioner believes oral argument would be helpful to the Court because the issues raised are issues of first impression and the public policy behind resolution of these issues could be better discussed in the context of oral argument, where the Court can ask questions and consider alternatives that counsel are prepared to discuss.

STATEMENT OF THE CASE

This case concerns a conviction for possession of a controlled substance based on a jury charge that does not conform to Texas law. TRAP 66.3(f). It also concerns the issue of whether a no-knock entry to a residence may be Constitutionally predicated solely on police suspicion that the occupants may be in possession of weapons, and whether evidence seized in an illegal search must be suppressed. TRAP 66.3 (b), (f).

STATEMENT OF PROCEDURAL HISTORY

(1)	Date of opinion from Court of Appeals:	May 17, 2013
(2)	Date of Motion for Rehearing:	None was filed.
(3)	Date Motion for Rehearing Disposed:	N/A

ABBREVIATIONS AND REFERENCES

The required documents and several other key documents from the trial are attached to this Petition in the Appendix. The pages of the Appendix are numbered in the lower, right-hand corner for ease of reference and use by the Court.

The Clerk's Record (CR) is referred to by page number (e.g., CR422).

The Reporter's Record (RR) is referred to by volume number, then page number (e.g. 3 RR 88-90).

GROUNDS FOR REVIEW

1. Suspicion by police that a residence may contain a firearm is Constitutionally-insufficient justification to allow police to conduct a "no-knock" entry when serving a search warrant. Because the only purported justification for the no-knock entry in this case was the suspected presence of firearms in the residence, Petitioner's Constitutional rights were violated by the no-knock entry. Due to that violation, Texas Code of Criminal Procedure art. 38.23 requires that all evidence seized in the search be suppressed. Because the lower courts refused to suppress the evidence, the conviction must be overturned.

2. The jury charge did not contain the requirement of guilt beyond a reasonable doubt on ***both*** elements of the offense of possession of drugs. The jury subsequently asked a question that would have allowed the trial judge to fix the mistake in the original charge so that the jury would have been informed of the correct law. However, the trial court answered the jury's question incorrectly. Those errors undoubtedly lead to the conviction.

3. Insufficient evidence exists to support the finding of the jury – if such a finding even occurred, which is unlikely – that Mr. Quinn knew the substance in his safe was contraband, so the conviction cannot stand.

ARGUMENT

1. The illegal SWAT raid requires suppression of evidence.

A. The law requires a no-knock warrant or exigent circumstances before a no-knock entry of a residence will pass Constitutional muster.

The Supreme Court of the United States (SCOTUS) holds that a search may only be conducted via no-knock entry under two circumstances:

(1) using a no-knock warrant, or

(2) when exigent circumstances lead police to conclude that knocking and announcing risks:

(a) the safety of persons, or

(b) destruction of evidence.

Richards v. Wisconsin, 520 U.S. 385 (1997). Texas follows this rule. *Jeffrey v. State*, 169 S.W.3d 439, 443-44 (Tex.App. – Texarkana 2005, no pet.).

Here, the police based their no-knock entry solely upon their suspicion that the occupants of the residence may have been in possession of a rifle. The Court of Appeals cited two intermediate appellate opinions in which courts have found the suspected existence of firearms justified no-knock entries. However, this Court and SCOTUS have ***never*** held that suspected possession of firearms is sufficient cause, without more, to justify a no-knock entry. This Court should now decide it does not. TRAP 66.3(b)

That the suspected possession of weapons was the only "justification" for use of a no-knock entry in this case is undisputed. See 5 RR 290-92 (Appendix 18-20) and 4 RR 205 (Appendix 17).[1] The issue of whether the mere suspicion of weapons is sufficient to justify no-knock entries is thus squarely presented to the Court in this case.[2]

---

[1] The warrant affidavit, State's Exhibit 255 (Appendix 23-29), states generalized knowledge regarding drug cases, including item (K): "drug traffickers commonly have in their possession, that is[,] on their person, at their residence(s), business(es), and in their vehicles, firearms, including but not limited to handguns, rifles, shotguns, and other weapons." If true, then possession of firearms is a *generalized* circumstance in all drug cases, which in turn means that every drug case is one in which the police would reasonably suspect that weapons are in the residence. Thus, suspicion of weapons at the site of a drug search is nothing more than the blanket exception to the no-knock rules that SCOTUS unanimously struck down in *Richards*.

[2] The Court of Appeals seems to think that an "AK-47" rifle is some sort of "exceptionally" dangerous weapon. Actually, despite the faux mystique surrounding that particular type of rifle fostered by popular media, the AK-47 is not uniquely dangerous. It is the most-used rifle in the world because there are 100 million of them, it is cheap to make and easy to repair, and because it can be chambered for a wide variety of calibers. However, when chambered for .223 caliber (NATO 5.56x45 mm, the most common chambering by far), it is no more dangerous than any other .223 caliber rifle such as the AR-15 – the most widely used hunting rifle in the U.S. today. Dangerous, yes, but not "exceptionally" so. As we pointed out to the Court of Appeals (Reply Brief, p. 9), and as was pointed out by the police in the trial (7 RR 29-30; Assistant Chief Redden testifying), it is the size and type of ***ammunition*** (armor-piercing, etc.) that makes a weapon dangerous, not the style or type of rifle in question.

As a gun collector who prudently kept his legally-owned collection safely secured in gun vaults, it was altogether possible that Mr. Quinn could have had a large number of guns in his home and ***no*** ammunition. The point here is not to argue that "possession" of guns does not roughly or usually equate to possession of "working" guns. The point is: an AK-47 is no more powerful – and is indeed ***less*** powerful – than many common hunting rifles that can be chambered up to .460 Weatherby Magnum – a weapon many times more powerful than a .223 rifle. Even a .357 magnum handgun, one of the most popular calibers, is more powerful than a .223 rifle. The police, being weapons experts, obviously knew this – but testified about the "dangerous" nature of this particular gun because they knew the jury would have heard of it in the media and would know about its mystique as the weapon of choice for terrorists around the world. Clever, but misleading.

B. The presence of lawfully-owned weapons in a residence cannot justify a no-knock entry under the Constitution.

This case involves the confluence of two Constitutional rights: the Constitutional right of persons to keep working firearms in their residences for self-defense (*District of Columbia v. Heller*, 128 S.Ct. 2783 (2008)), and the right to be secure from unreasonable searches and seizures under the Fourth Amendment. SCOTUS has held this second right includes freedom from no-knock entries except in specific circumstances. *Richards v. Wisconsin*, *supra*.

Since under Texas statutory law, if the Fourth Amendment is violated, suppression of any evidence obtained is automatically suppressed, the only question is:

> Did the police in this case violate Mr. Quinn's Constitutional rights by using a no-knock entry based solely on their suspicion that weapons were being kept in the house?

And subsumed within that question is the key question in this issue:

> **Can a no-knock entry be justified solely based on police suspicion that the occupants might have weapons?**

No cases out of SCOTUS or this Court have held that mere possession of firearms in a residence is sufficient justification for a no-knock entry to serve a warrant. But this exact situation has been brewing for a while, and was predicted in a recent law review article by John D. Castiglione: *Another Heller Conundrum: Is it a Fourth Amendment "Exigent Circumstance" to Keep a Legal Firearm in Your*

Home? 59 U.C.L.A. Rev. Discourse 230, 239 (2012)(Appendix 42-55):

> It is only a matter of time before a plaintiff seeking to challenge a forced entry through a civil suit (or in the rare case, a defendant seeking suppression of evidence) will argue that the presence of a lawfully possessed firearm in the home could not permissibly be a factor in overcoming the knock-and-announce requirement. At the time of this writing, there appear to be no reported cases in which this argument has been made. It will happen. At that point, the federal courts (and potentially the Supreme Court) will need to adopt a framework for deciding whether the presence of a suspected firearm can justify a no-knock entry.

Mr. Castiglione's prophesy has come true.[3]

C. Suppression of evidence is required under Texas law.

Under ***federal*** law, suppression of evidence is not always necessary just because police violate the knock-and-announce rules. *Hudson v. Michigan*, 547 U.S. 586 (2006, Kennedy, J., concurring in the judgment).[4] However, there is no "federal exclusionary" statute. Under federal law, the exclusionary rule is exclusively common law and can be changed by the courts. *Weeks v. U.S.*, 232 U.S. 383 (1914). Not so in Texas.

---

[3] See also, Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* (2012 Update)(Appendix 56-64).

[4] The dissent in *Hudson* makes a convincing case that the plurality opinion pretty much guts the only thing keeping no-knock entries from becoming the norm in police work. After all, since it is supposedly "safer" (or maybe, more exciting) for policemen to use this method, why would they not do so in ***every*** case – unless it is legally discouraged? The importance of this issue alone justifies further articulation in full briefing before this Court under Texas law.

In Texas, the exclusionary rule is statutory and requires suppression of evidence where the legal or Constitutional rights of the suspect are violated. CCP art. 38.23 states in relevant part:

> Art. 38.23. EVIDENCE NOT TO BE USED. (a) No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.

The only thing we can take from federal law is one avenue among many for determining whether CCP art. 38.23 is triggered (violation of the U.S. 4th Amendment under *Wilson v. Arkansas*, 514 U.S. 927 (1995)). But the federal common law found in *Hudson* regarding suppression of evidence is without any bearing in our case.[5]

D. The Court of Appeals' ruling that there must be a "causal connection" between the illegal nature of the search and the acquisition of evidence is incorrect and therefore not grounds to ignore the requirements of CCP art. 38.23.

The COA cited two cases in which this Court has required a "causal connection" between the illegality of the search and the discovery of evidence before CCP §38.23 is triggered, *Gonzales v. State*, 67 S.W.3d 910 (Tex.Crim.App. 2002) and *Pham v. State*, 175 S.W.3d 767 (Tex.Crim.App. 2005). However, the analysis in

---

[5] The lone TCCA case post-dating *Hudson* involved only ***federal*** law. *Wright v. State*, 253 S.W.3d 287 (Tex.Crim.App. 2008).

those cases can be readily distinguished from our case.[6]

There are only three types of searches:

1. legal (where evidence is obtained through legal process),

2. ineffective (where no evidence is obtained), and

3. illegal (where evidence is obtained through ***illegal*** process).

There is no need to suppress evidence unless evidence is found, so we can eliminate search type 2 from the analysis. Search type 1 does not result in suppression because everything was done correctly.

The exclusionary rule only applies, if ever, to search type 3. The exclusionary rule is a rule designed to discourage the police from conducting illegal searches by taking away the fruits of illegal searches, the theory being that if police cannot use ill-gotten evidence, they will be discouraged from using illegal means to acquire it, or, said a better way, they will be ***encouraged*** to use only ***legal*** means.

The only time the "legal-illegal" dichotomy is logically applicable to suppression, and where the defense could prove that but-for police illegality no evidence would have been discovered, would be in those situations where ***no search whatsoever*** would have occurred if legal steps were followed. And that would only occur (as in *Gonzales* and *Pham*) when the search is illegal because it was performed

---

[6] Neither *Gonzales* nor *Pham* involved no-knock entries; both involved irregularities in the legal ***basis*** for conducting the search under the Family Code (akin to an invalid warrant), not illegality in the ***method*** of entry.

without a warrant or proper cause.[7] That is, if no search would have happened ***at all*** if the police had followed the law, then the defense could prove this "causal link" between the illegal police procedure and discovery of the evidence.[8]

But to try to prove that evidence would not have been discovered if the police had knocked on the door instead of kicking it in is a fool's errand. The entry is always prior to the search itself, which means entry has always been ***completed*** when the search begins, regardless of the ***manner*** of entry. In addition to the logical impossibility of proving a negative, one cannot "prove" that the police would not have found something once they are in the premises ***because of*** the physical manner in which they entered it. The two things have nothing to do with each other. And, with due respect to the Court of Appeals, that is not the ruling in *Gonzales* or *Pham*. These issues need to be cleared up, and granting this Petition could assist in that goal.

---

[7] See *Weeks v. U.S.*, 232 U.S. 383 (1914) and *New York v. Harris*, 495 U.S. 14 (1990), two federal cases where the lack of a warrant was the "illegality" in question.

[8] Not that we need to go there, but the COA discussion of the relation between the "inevitable discovery" doctrine and the "causal connection" doctrine (see opinion, p. 6 fn 1) is also incorrect.

The "causal connection" doctrine says the defense must prove that, but for the illegal nature of the search, the evidence would not have been discovered. The "inevitable discovery" doctrine says the defense must prove that, but for the illegal nature of the search, the evidence would not have been ***inevitably*** discovered. This is a distinction without a difference. Just because the Houston Court of Appeals got it wrong in *Callaghan* is no reason to continue making the same mistake.

2. The incorrect jury charge resulted in an improper conviction.

A. This Court has determined that the offense of possession is a two-element offense.

In *Blackman v. State*, 350 S.W.3d 588, 594 (Tex.Crim.App. 2008), this Court held that possession consists of two elements (brackets added):

> To prove the unlawful-possession-of-a-controlled-substance element of the charged offense in this case, the State was required to PROVE that: 1) appellant **[1A]** exercised control, management, or care over the three kilograms of **[1B]** cocaine; and **[2]** appellant knew that this was cocaine.

Element **[1A]** comes from Texas Penal Code §6.01, element **[1B]** comes from Texas Health & Safety Code §481.115(a), and element **[2]** (i.e., scienter) comes from Texas Penal Code §6.03(b)("... or that the circumstances exist").

Per *Blackman*, if a person knows he has a bag in his pocket, he cannot be convicted of possession of a controlled substance unless the state proves ***both*** that he knowingly possessed it ***and*** that he knows it is contraband. Possession is not a strict-liability offense. The scienter for the offense does not come merely from "knowing" that he possesses ***something*** in his pocket nor from the fact that the substance happens to be contraband, but from the defendant knowing that what is in his pocket is illegal. This is basic due process. While "ignorance of the law" is not an excuse (e.g., cocaine is illegal whether you know it is illegal or not), ignorance of what one has in his possession ***is*** a defense because unless the state proves he knows it is cocaine, the state does not meet its entire burden of proof per *Blackman.*

B. The jury charge does not contain the second element of the offense.

A jury charge must contain all the elements of the offense charged. *Francis v. Franklin*, 471 U.S. 307, 313 (1987)(proof of ***all*** elements of a crime beyond a reasonable doubt is required by the due process clause of the Constitution); *West v. State*, 572 S.W.2d 712, 713 (Tex.Crim.App. 1978)(leaving an offense element out of a jury charge, such as the culpable mental state, is a "fundamental error" and always results in reversal of a conviction), *Sanchez v. State*, 182 S.W.3d 34 (Tex.App. – San Antonio 2005), *affirmed* 209 S.W.3d 34 (Tex.Crim.App. 2006)(same).[9]

In this case, the jury was not charged correctly because it was only charged with requiring the State to prove elements [1A] and [1B] of the offense. CR 422 contains the relevant portion of the Jury Charge in this case:

> Now, if you find from the evidence beyond a reasonable doubt that on or about the 6th day of August, 2006, in Collin County, Texas, the defendant, JOHN GERARD QUINN, did then and there [1A] intentionally and knowingly possess [1B] a controlled substance, namely: cocaine, in the amount of less than one (1) gram, by aggregate weight, including adulterants and dilutants, then you will find the defendant guilty as charged.

This sentence only requires proof [1A] that Mr. Quinn "intentionally and

---

[9] These errors are sometimes called "egregious errors." Courts assess harm from such errors carefully, and decide whether they: (1) affect the very basis of the case, (2) deprive the defense of a valuable right [such as having the jury charged using correct law?], or (3) vitally affect a defensive theory. *Warner v. State*, 245 S.W.3d 458, 462 (Tex.Crim.App. 2008). See also *Taylor v. State*, 332 S.W.3d 483, 489 (Tex.Crim.App. 2011)(same) and *Almanaz v. State*, 686 S.W.2d 157, 171 (Tex.Crim.App. 1985)(case discussing the process for addressing jury-charge errors). This analysis was not performed by the Court of Appeals below, even though briefed. See Appellant's Brief, pp. 11-14. These errors cannot be waived.

knowingly" ***possess*** the substance and [1B] that it be cocaine. It is an improper strict liability charge; the State does not have to prove [2] scienter: that he ***knew*** the substance was cocaine. Consider the charge under this hypothetical: if the State were to ***stipulate*** that the defendant did ***not*** know what the substance was, but if the State proved it was knowingly in his possession and that it was cocaine, would this charge still require the jury to find the defendant guilty, using ordinary English?[10] Yes, it would, and that proves the deficiency.

This is how the jury charge should have been written:

> Now, if you find from the evidence beyond a reasonable doubt that on or about the 6th day of August, 2006, in Collin County, Texas, the defendant, JOHN GERARD QUINN ***both***:
> (1) did then and there intentionally and knowingly possess a controlled substance, namely: cocaine, in the amount of less than one (1) gram, by aggregate weight, including adulterants and dilutants, ***and***
> (2) knew he was possessing a controlled substance,
> then you will find the defendant guilty as charged.[11]

C. The jury's note allowed the court to correct the charge and foreclose error.

During deliberations, the jury sent a handwritten note out to the court asking if the crime required proof that the defendant knew that the substance was "illegal" (i.e., contraband). Here is the jury's note (all underlining in original; CR

---

[10] "Intentionally" and "knowingly" are adverbs that only modify the verb "possess." There are no words in this charge language that require proof the defendant ***knows*** what it is he has in his possession.

[11] See Appendix 38-39.

426)(Appendix 15):

> In the 8th paragraph of cause 429-81971-09 it states:
>
> A person commits an offense only if he voluntarily engages in conduct, including an act, and omission, or possession. Possession is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control.
>
> The Question: Does the possessor have to know the thing is illegal.

In response to this question, the trial court had the opportunity to fix the charge by answering the question "yes" as the defense urged. 10 RR 236 (Appendix 22). Amazingly, the State asked the court to tell the jury incorrect law by answering the question "no." *Id.* Without consensus from counsel, and perhaps due to its own ignorance of the law, the trial court gave the jury an ***incorrect*** response, telling the jury: "You have all the law and the evidence. Continue to deliberate." This response was incorrect because the jury did ***not*** have all the law; the charge does not require the State to prove element [2] of the offense, only element [1A] and [1B].

Consider this hypothetical: what if the trial court had followed the suggestion of the prosecutor and answered the question "no"? *Blackman* would say this would be misinforming the jury about the law. So, what was the harm in answering the question "yes"? If all that did was restate the correct law, or just clear up a jury-perceived ambiguity in the charge (an important purpose of jury questions), it

would be a good thing to do or, at worst, it would be neutral. Instead, by telling a confused jury that it had "all the law," this was the equivalent of answering the question "no" – exactly as the prosecutor wrongfully urged.

D. The Court of Appeals wrongly speculated as to how the jury supposedly "found" that Mr. Quinn knew what he had in his safe.

The Court of Appeals tries to get the "knowledge of what it is" evidence from the circumstance that Mr. Quinn put the baggie into his safe, and says that the jury could have inferred from that location that Mr. Quinn "possibly knew" he possessed contraband. This analysis is flawed for two reasons.

First, a defendant does not have to overcome the ***possibility*** that the jury may have ruled as it did because of the evidence; that is another fool's errand and contrary to actual law:

> It is also well established that a conviction based on circumstantial evidence cannot be sustained if the circumstances ***do not exclude every other reasonable hypothesis except that of the guilt of the accused***, and proof amounting only to a strong suspicion or mere probability is insufficient.

Waldon v. State, 579 S.W.2d 499, 502 (Tex.Crim.App. 1979)(emphasis added). Here, there is a far more reasonable hypothesis about what happened other than guilt – especially in light of the jury's question – which proves reasonable doubt due to insufficient evidence.

Second, if the jury thought Mr. Quinn knew what the substance was, it would never have asked the jury question. That is, if the jury had already inferred that Mr. Quinn knew the substance was contraband, what difference would it make whether that knowledge was or was not an element of the offense?

The only possible scenario under which the jury would have asked that question was:

> (A) the jury did not believe Mr. Quinn knew he possessed contraband,
>
> (B) they were going to acquit if his knowledge was a required element, and
>
> (C) because the charge did not say that scienter was an element, and the judge, when asked, did not clarify that as being an element, they felt they had to convict even though they did not believe Mr. Quinn knew what the substance was because they were told, in effect, that this knowledge was irrelevant under "the law."

The Court of Appeals appears nonchalant about the logic of its conclusion. Here is what the Court of Appeals must believe happened:

> The jury asked the question about scienter regarding the nature of the substance even though it made no difference to their decision.

That is, since the jury had already inferred that Mr. Quinn knew the substance was contraband, they were merely ***curious*** as to whether that was something the State had to prove. This makes no sense.

Inferring what a jury did must be based on logic, or else we can just accept whatever our imaginations can dream up as a "reason" why they did what they did.

In that world, sufficiency-of-the-evidence review becomes entirely meaningless. Juries have wide latitude, but they are not altogether unrestrained in coming to their decisions.

It defies logic to conclude that the jury did what the Court of Appeals says it might have done. Better is to consider the logic behind the jury's question and infer from that the basis for its question in the first place. When that is done, it is clear that the jury did ***not*** believe Mr. Quinn knew what he possessed and that they thought the law might (or should?) require that knowledge even though the charge did not tell them so, hence their question being "pretty astute" per Judge Oldner (Appendix 22). Then, when the trial judge refused to confirm that scienter was an element of the offense, they convicted on the single element the charge provided: [1A] knowledgeable possession of [1B] contraband.

The charge did not tell the jury they had to find proof of both elements of the offense, and the trial court failed to so inform them in response to the jury question. These are both fundamental, egregious errors that resulted in a conviction for possession against a man whom the jury almost-certainly found had no idea what he had in his possession.

Leaving out required elements from the charge is fundamental error per *Dinkins v. State*, 894 S.W.2d 330, 339 (Tex.Crim.App. 1995), and *Evans v. State*, 606 S.W.2d 880, 883 (Tex.Crim.App. 1980), *overruled o.g., Woods v. State*, 653 S.W.2d

1 (Tex.Crim.App. 1980)("A jury charge which authorizes a conviction without requiring the jury to find all of the elements of the offense charged is fundamentally defective"). See also *Sanchez, supra* (defendant's conviction for sexual assault reversed because the charge did not require the jury to find that the defendant knew his contact with the victim was unwelcome – the second element of ***that*** crime).

The Court is also referred to the Texas Pattern Jury Charge, Intoxication and Controlled Substances (Appendix 30-41). There, the authors show why the ordinary jury charge in possession cases, such as the one given in this case, is legally deficient:

> Current practice, the Committee concluded, too often ignores and even obscures the problem. Jury instructions are drafted in the statutory terminology, which simply passes the uncertainty of present law along to juries. . . . As a result, jury instructions too often do not reflect a clear and complete explanation of what the charged offense requires.

Because the jury charge in this case did not instruct the jury as to the scienter element of the offense charged, it contained fundamental, egregious, un-waive-able, Constitutional error and the conviction cannot stand. When the error came to the trial court's attention in the form of the jury question, the trial court's failure to correct that error was another fundamental/egregious error that caused a wrongful conviction, requiring reversal.

PRAYER FOR RELIEF

This Petition should be granted.

The evidence seized following the illegal no-knock entry should be ordered suppressed. The conviction based on that tainted evidence should be reversed and judgment of acquittal ordered per *Waldon*, 579 S.W.2d at 502.

The error in the jury charge for possession cases should be corrected for all future cases.

Petitioner also requests such other and further relief as is just.

RESPECTFULLY SUBMITTED:

Scheef & Stone, LLP

_____

James A. Pikl
SBN 16008850
2601 Network Blvd., Suite 102
Frisco, Texas 75070
214-472-2100
Fax 214-472-2150
jim.pikl@solidcounsel.com

PARTICIPATING ATTORNEYS WITH THE RUTHERFORD INSTITUTE, ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2013, a copy of the foregoing Petition for Discretionary Review was served on the following by certified mail, return receipt requested:

Greg Willis
Andrea Westerfield
Collin County District Attorney's Office
2100 Bloomdale, Suite 200
McKinney, Texas 75071

_____
James A. Pikl

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition conforms to the requirements of TRAP 9, and consists of 4,485 words per TRAP 9.4(i)(2)(D).

_____
James A. Pikl

IN THE TEXAS
COURT OF CRIMINAL APPEALS

JOHN GERARD QUINN,

Petitioner,

vs. No. _____

THE STATE OF TEXAS,

Respondent.

****

APPENDIX –
PETITION FOR DISCRETIONARY REVIEW

****

Index:

42-55 John D. Castiglione, *Another Heller Conundrum: Is it a Fourth Amendment "Exigent Circumstance" to Keep a Legal Firearm in Your Home?* 59 U.C.L.A. Rev. Discourse 230, 239 (2012)

56-64 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, §4.8(e)(2012 Update)