

No. 11-777

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IN THE  
**Supreme Court of the United States**

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NEIL HAMPTON ROBBINS,

*Petitioner,*

v.

THE STATE OF TEXAS,

*Respondent.*

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**On Petition For Writ Of Certiorari  
To The Texas Court Of Criminal Appeals**

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**SUPPLEMENTAL BRIEF FOR PETITIONER**

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FEBRUARY 3, 2012

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## PETITIONER'S SUPPLEMENTAL BRIEF

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Pursuant to this Court's Rule 15.8, petitioner submits this supplemental brief to call the Court's attention to the decision in *Han Tak Lee v. Glunt*, No. 10-4133, 2012 WL 247993 (3d Cir. Jan. 27, 2012), an authority that was not available at the time of petitioner's last filing on December 21, 2011.

The present case involves the question whether federal due process requires that a criminal defendant be afforded a new trial upon the revelation that scientific evidence essential to a conviction was or has become false as a matter of law or scientific fact. Mr. Robbins argues in his petition that a complicated and deepening split has developed among and between the federal courts of appeals and state courts of last resort. The Second and Seventh Circuits as well as state courts in Wisconsin, New Jersey, West Virginia, Arizona, and Minnesota, hold that due process is violated when crucial evidence necessary to a jury verdict is seriously called into question by subsequent developments. However, the Fifth, Sixth and Ninth Circuits, the Supreme Court of Missouri and the Texas Court of Criminal Appeals afford relief only where a criminal defendant can show that an expert's testimony—however misleading—was completely and demonstrably false beyond a reasonable doubt.

In *Glunt*, the Third Circuit joined the Second and Seventh Circuits in holding that a due process right attaches where, as in Mr. Robbins's case, subsequent

scientific developments discredit scientific evidence that was essential to the original conviction. The petitioner in *Glunt*, Han Tak Lee, was convicted of first degree murder and arson after his twenty-year-old mentally ill daughter died in a cabin fire. *Id.* at \*1. Mr. Lee sought federal habeas relief claiming that advances in the field of arson science demonstrated that the testimony used at his original trial was fundamentally unreliable. *Id.* at \*3. The district court denied Mr. Lee’s petition after concluding that “claims of actual innocence based on newly discovered evidence are never grounds for federal habeas relief absent an independent constitutional violation.” *Id.*

On appeal, the Third Circuit reversed. The court held that Mr. Lee was entitled to discovery and an opportunity to present his newfound evidence at an evidentiary hearing. The court explained that the evidentiary hearing was critical to ascertaining whether Mr. Lee’s original trial—like Mr. Robbins’s trial here—was rendered fundamentally unfair by the use of unreliable expert testimony. *Id.* at \*7. After so holding, the Third Circuit concluded:

If Lee’s expert’s independent analysis of the fire scene evidence—applying principles from new developments in fire science—shows that the fire expert testimony at Lee’s trial was fundamentally unreliable, then Lee will be entitled to federal habeas relief on his due process claim.

*Id.* Particularly significant is that the *Glunt* court reached these conclusions under the more-

constraining standards of review imposed by the Anti-Terrorism and Effective Death Penalty Act—a statute not applicable to Mr. Robbins’s state habeas appeal from the Texas Court of Criminal Appeals.

The *Glunt* decision provides yet another example of the deepening split among the various courts to have addressed the question presented in this case. Further, the striking similarity between *Glunt* and the instant case underscores that the question presented by Mr. Robbins’s petition is both important and recurring. Simply put, Mr. Robbins would be entitled to relief under the Due Process Clause based on the reasoning of the *Glunt* court, whereas he was denied relief by the Texas Court of Criminal Appeals. This type of inter-jurisdiction inconsistency necessitates resolution by this Court.

Respectfully submitted,

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