No. 17-8407

Appellate commissioner File order

No Longer A capital case

IN THE

SUPREME COURT OF THE UNITED STATES

Petition For The Rehearing

Bryan Joseph Mincey Pro, se PETITIONER
(Your Name)

vs.

Ron Davis warden San. Quentin et-al — RESPONDENT(S)

Petition For The Rehearing

United States court of Appeals For The Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

In-Pro-se Bryan Joseph Mincey
(Your Name)

P.O. Box D-09104, San Quentin State prison
(Address)

San Quentin CA 94974
(City, State, Zip Code)

None
(Phone Number)

QUESTION PRESENT

NO LONGER CAPTIAL CASE PRE-AEDPA

(1) "DISTRICT ATTORNEY WAITED 14 YEARS TO ARRAIGNED, MINCEY VIOLATION OF SPEEDY TRIAL RIGHTS. FILE ORDER APPELLANT COMMISSIONER NO LONGER CAPTIAL CASE. MOTION FOR CLARICATION, PANEL REJECT CLARICATION APPANDEX D. SEE REHEARING PETITION I.D 1

(2) "TRIAL COURT IMPROPER RULE EVIDENCE WAS CUMUALTIVE. WHEATHER, A CRIMINAL DEFENDANT'S FEDERAL CONSTITUTION RIGHTS ARE VIOLATED BY AN EVIDENCE RULE UNDER WHICH THE DEFENDANT MAY NOT INTRODUCE HABIT EVIDENCE AS PROOF OF THIRD-PARTY GUILT. FED-RULE 406. REHEARING PETITION I.D 2.1 I.D 2.23

(3) "DEATH by AMPHETAMINE FATAL CARDIAC ARRHYTHMIA WHEATH "FALSE CAUSE OF DEATH ISSUES" VIOLATED A CRIMINAL DEFENDANT FEDERAL CONSTITUTION RIGHT'S ARE VIOLATED BY DECEIVING THE JURY THAT SCIENTIFIC TESTING WAS DONE TO DETERMINE METABOLIC ACIDOSES. AND DECIVE THE JURY "THAT ALL BODY FLIUD'S WAS SCIENTIFIC TESTED SEE PETITIONER PETITION FOR REHEARING I.D 10 THUR 12. SEE REASON FOR GRANTING THE PETITION

(4) WHEATHER SPENDING RETAINER FEE ON COCAINE INSTEAD ON CLIENT DEFENSE. VIOLATED A CRIMINAL DEFENDANT'S FEDERAL CONSTITUTION RIGHTS. TRIAL ATTORNEY ABANDON HIS OBLIGATION TO HIS CLIENT. PETITION I.D 12-16

QUESTION PRESENT CONTINUE

(5) WHEATHER A TRIAL ATTORNEY ASSISTANT THE PROSECUTOR VIOLATED A DEFENDANT RIGHTS TO A FAIR TRIAL BY CALLING ON DIRECT PROSECUTOR PSYCHOLOGICAL. PETITION I.D 14.24. INCLUDING ALLOW THE JURY TO HEAR FALSE EVIDENSE PETITION REHEARING I.D 14.1

(6) WHEATHER FEDERAL LAW IS UNCONSTITUTION TO EXCEED THAT "IT IS IRRELEVANT WHEATHER LAWYER'S USE NARCOTIC DURING TRIAL. PETITION I.D 15.4 SEE MOTION 59 WHICH PANEL REFUSE TO REPLY SEE PETITION REHEARING 12.28

(7) WHEATHER A CRIMINAL DEFENDANT'S FEDERAL CONSTITUTION RIGHTS ARE VIOLATED BY TRIAL COURT REFUSE THE INSTRUCTION NECESSARY FOR THE JURY TO APPLY THE DEFENSE EVIDENCE PETITION I.D 15.7

(8) ALTERNATIVE THEORIS. THE UNCONSTITUTION OF ANY THEORIS REQUIRES THAT THE CONVICTION BE SET ASIDE PETITION I.D 15.12

(9) PETITIONER CLEARLY CONFUSE. THE SIXTH AMENDMENTS GUARATEE'S A DEFENDANT THE RIGHT TO PUT ON A DEFENSE CONSTITUTION ARTICLE VI. AS THIS COURT HAS POINTED OUT, " WHY IS MINOR SIXTH AMENDMENT AND DUE PROCESS RIGHTS IS BEING DENY? SEE PETITION REHEARING I.D. 2.23 AND I.D 3-16.

(10) WHEATHER 9th CIR VIOLATED DEFENDANT RIGHT TO A MEANINGFUL APPELLANT REVIEW BY REFUSING TO REPLY TO CLAIMS IN FED. A.O.B

LIST OF PARTIES

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

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Meredith S. White Deputy Attorney General
2. 600 W Broadway Suite 1800 San Diego CA 92101
3.
4.
5.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

Table of Authorites continue

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR ~~WRIT OF CERTIORARI~~ ReHearing

Petitioner respectfully prays that ~~a writ of certiorari~~ ReHearIM issue to review the judgment below.

OPINIONS BELOW

[✓] For cases from **federal courts**:

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[ ] For cases from **state courts**:

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[✓] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was Oct 26 2017.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Dec 7 2017, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

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

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLED

IN chambers V Mississippi 410 U.S 284 (1973) The UNITED STATE SUPREME COURT CLEARLY ESTABLISHED THAT THE EXCLUSION OF TRUSTWORTHY AND NECESSARY EXCULPATORY TESTIMONY AT TRIAL VIOLATES A DEFENDANT DUE PROCESS RIGHTS TO PRESENT A DEFENSE, SIXTH AND FOUNTEENTH AMENDMENT CONSTITUTION "GUARANTEE'S A COMPLETE DEFENSE." THIS CLEARLY ESTABLISHED FEDERAL LAW. SEE PETITION REHEARING I, D 2

THE AMENDMENT REQUIRES THAT EXPERT TESTIMONY BE BASE ON SUFFICIENT FACTS OR DATA. PETITION I.D. 10, 9 "IN (2014) LEGISLATIVE AMEND SECTION 1473. TO STATE THAT "FALSE EVIDENCE" SHALL INCLUDE OPINON OF EXPERTS THAT HAVE BEEN REPUDIATE BY THE EXPERT. PETITION ID 11, 18.

TRIAL COUNSEL ABANDON HIS OBLIGATION TO HIS CLIENT A B A Model RULE OF PROFESSIONAL CONDUCT 3.3 Maple V THOMAS 132 S,Ct 912, 927. STRICKLAND V WASHINGTON 466, U.S 668 104 (1984). PETITION I.D 12.16

FEDERAL LAW IS UNCONSTITUTION. BONIE V CALDERON 59 F.3d 815, 838 9th CIR (1995). PETITION I. D 15.4

IT HAS LONG BEEN SETTLE THAT WHEN A CASE IS SUBMITTED TO THE JURY ON ALTERNATIVE THEORIES THE UNCONSTITUTION OF ANY THEORIES REQUIRES THA THE CONVICTION BE SET ASIDE. SANDSTOM V MONTANA 442 U.S 510 529 99 (1979). CITING LEARY V UNITED STATES 395 U.S 31-32. PETITION I.D 15-8

STATEMENT OF The CASE

THIS CASE CENTERS ON THE THRESHOLD REQUIREMENTS FOR THE ADMISSIBILITY OF THIRD-PARTY CULPABILITY EVIDENCE. "THE TRIAL COURT IMPROPERLY PREVENTED EXCLUDING EVIDENCE IMPLICATING CO-DEFENDANT AS THE PRIMARY PERPETRATOR." "PROFFER EXCLUDING EVIDENCE WAS NOT CUMULATIVE." SEE REHEARING PETITION I.D 2, 23. THE TRIAL COUNT NOTED THAT'S THE PROSECUTOR ENTIRE THRUST OF HIS CASE IS CULPABILITY OF SANDRA BROWN AND MR. MINCEY Rt 4165. The TRIAL COURT GRANTED The PROSECUTION MOTION IN LIMINE. REFERRED TO ITS OBLIGATION TO THE STRUCTURE, The FABRIC OF The LAW Rt 4169. ALSO EXCLUDED ON THE BASIC OF CALIF EVID Code 352 The TRIAL COURT ABUSED ITS DISCRETION BY NOT APPLYING The BALANCING TEST TO WEIGH The PROBATIVE VALUE, ITS IMPOSSIBLE TO WEIGH PROFFER THIRD-PARTY CUPABILITY EVIDENCE WITHOUT KNOWING WHAT The WITNESS WOULD HAVE ACTUALLY TESTIFY TO, SEE Rt 4165-68 The ISSUE WAS RAISED BY PETITIONER IN HIS DIRECT APPEAL TO The CALIF SUPREME COURT THAT COURT AFFIRMED The COURT RULING CITE CALIF EVIDENCE CODE 1101 AND 352, PEOPLE V MINCEY SUPRA 2 CAL 4th AT P 439. STATE COURT ALSO ADDRESS The CONSTITUTION ISSUE. APPLICATION OF The ORDINARY RULES OF EVIDENCE AS The TRIAL COURT DID HERE DOES NOT IMPERMISSIBLY INFRINGE ON A DEFENDANT'S RIGHT TO PRESENT A DEFENSE. "DEFENDANT'S TRIAL WAS "NOT" CONDUCTED IN ACCORD WITH PRINCIPLES OF

STATEMENT OF THE CASE CONTINUE

DUE PROCESS UNDER THE FOURTEENTH AMENDMENT I.D 285 ARE UNDER SIXTH AMENDMENT RIGHT TO PRESENT A DEFENSE PANEL COURT ABUSE IT DISCREPTION BY ADOPTING THE REASONING OF THE TRIAL COURT. "The EXCLUDING PROFFER EVIDENCE IS UNDOUBTEDLY RELEVANT AND IS THEREFORE PROBATIVE, SEE PETITION REHEARING I.D 9.23 9.3 WHICH THE PANEL COURT OVERLOOK I.D 3.16, 4.7 "SEE THE PROSECUTIONS "FALSE CAUSE OF DEATH" PETITION REHEARING I.D 10. The LOWER COURT'S "IGNORE" THE CORNER DECLARATION COPY ENCLOSE, ALSO SEE DR- STEWART DECLARATION COPY ENCLOSE "DEATH FATAL CARDIAC ARRhythmia". REHEARING PETITION I.D 12.1 PANEL COURT WILLING TO OVERLOOK TRIAL COUNSEL DECLARATION EX 50 DESCRIPTION The EFFECT COCAINE HAD ON HIS PERFORMANCE PETITION I.D 13.5. INCLUDING SPENDING CLIENT RETAINER FEE ON COKE INSTEAD ON MINCEY DEFENSE PRE-AEDPA LAW APPLY TO THIS CASE 28 U.S.C 2254 WAS TIMELY FILE BEFORE THE AEDPA OF (1996)

The JURISDICTION OF THIS COURT 28, U.S.C 2254 (1)

MARTINEZ V RYAN CITE AS (2012) PRISONER UNLEARN IN LAW ARE GENERALLY ILL EQUIPPED TO REPRESENT THEMSELVES.

"NO WITNESS WAS ALLOW TO TESTIFY ON DEFENDANT'S BEHALF RT 4231, 4241 4250 SIXTH AMENDMENT VIOLATION DUE PROCESS UNDER FOURTEENTH AMENDMENT

REASON FOR GRANTING THE PETITION

IN THE INTEREST OF JUSTICE EXTRAORDINARY CIRUMSTANCE SHOULD NOT BE OVERLOOK. "AMPHETAMINE" DEATH FATAL CARDIAC ARRhythmia" High Levels OF POTASSIUM 7.7 MEQ/L. I.D. 7.21. IN Addition PARLYTIC iLEUS Supports DEATH RESULTed FROM AMPHETAMINE I.D. 8.22 DR. PABLO STEWART ALSO HAVE CONSIDERABLE EXPERTENCE IN EVALUATING POST MORTEM ANALYSIS AND CONCLUSIONS REARDING CAUSE OF DEATH. SEE DR. STEWART DECLARATION ~~copy Enclose~~. HAD TO TAKE COPY OUT. it APPEAR IT WAS BEING COUNTED A PAGE LIMIT. THE CORONER it is POSSIBLE THAT THERE COULD HAVE BEEN "AMPHETAMINE" IN THE CHILD SYSTEM. I.D 3.6. HAVE WE BEEN IMFORMED THAT There WAS A POSSIBILITY OF FINDING AMPHETAMINE IN THE BOY SYSTEM WE COULD HAVE TESTED THE GASTRIC CONTENTS I.D 4.7. SEE DECLARATION ENCLOSE HAD TO TAKE COPY OF DECLARATION OUT PAGE LIMIT. TRIAL ATTORNEY SHOULD HAVE HIRE A FORENSIC expert WITH THE RETAINER FEE FIFty Thousand. TO DEFEND MINCEY. "NOT" BUY COCAINE. SEE PETITION I.D 12.16. THAT FACT SHOULD WEIGH ON THIS COURT DECISION.

THE THREE JUDGE PANEL DOES NOT FOCUS ON THE PROBATIVE VALUE OR THE POTENTIAL ADVERSE EFFECTS OF ADMITTING THE DEFENSE EVIDENCE OF THIRD-PARTY GUILT. PROFFER HABIT EVIDENCE LINKS

REASON FOR GRANTING THE PETITION CONTINUE

THE CO-DEFENDANT TO THE MURDER WEAPON, WAS OVERLOOK IN THEIR DECISION, EXCLUSION PROBATIVE ADMISSIBLE EVIDENCE THAT ANOTHER PERSON COMMITTED THE CRIME, "CHAMBERS" CONTROL'S, THEIR WAS NO CUMULATIVE EVIDENCE. SEE REHEARING PETITION I.D. 2,23 IN UNITED STATE V ARMSTRONG 621 F.2d 951 9th CIR (1980) ARMSTRONG LAID OUT THE PROPER STANDARD FOR THE ADMISSIBILITY OF THIND-PARTY CULPABILITY EVIDENCE UNDER FEDERAL RULE OF EVIDENCE FUNDAMENTAL STANDARDS OF RELEVANCY I.D 1451, 9th CIR CONSISTENTLY APPLIED THIS STANDARD IN A STRING OF CASE FOLLOWING ARMSTRONG SEE, EG UNITED STATES V WELLS NO-14-30146 (2018) WL. 377837 AT 28 9th CIR JAN 11 (2018) AMENDING 877 F.3d 1099, 1136 9th CIR (2017), UNITED STATES V STOVER F.3d 747, 756 9th CIR (2010), UNITED STATES V VALLEJO 237 F.3d 1008, 1023 9th CIR (2001) UNITED STATES V CROSBY 75. F.3d 1343, 1347 9th CIR (1996) "THE PANEL IN THIS CASE COMPLETELY IGNORE'S ITS OWN CIRCUIT LAW, INCLUDING ITS OWN BLANCING TEST IN MILLER V STAGNER 757, F.2d 988, 994 9th CIR (1985). 28 U.S.C 2254 (d)(1). THREE JUDGE PANEL EVEN WILLING TO OVERLOOK THIS COURT LAW. THE DUE PROCESS CLAUSE OF THE FOURTEETH AND SIXTH AMENDMENT CONSTITUTION GUARANTEES CRIMINAL DEFENDANT'S A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE.

THE JURY IN THIS CASE WAS FLATY LIE

TO SEE REHEARING PETITION I.D 9.3

TIMELY BARRED STATUE LIMITATIONS EXPIRE

APPELLATE COMMISSIONER FILE ORDER NO LONGER A CAPITAL CASE. "It APPEAR THIS COURT DENIED THE PETITION WRIT OF CERTIORARI, MAY HAVE BEEN BASE ON RULE 14.1 (A). IF PETITIONER IS UNDER DEATH SENTENE THAT MAYBE AFFECTED by THE DISPOSITION OF THE PETITION. MAYBE WHY RESPONDANT HAVE NO INTEREST RULE 12.6. NO OPPOSE BRIEF FILED, OR SERVED R.29 ON MARCH 14 (2001) THE DISTRICT COURT GRANTED SUMMARY JUDGMENT ON CLAIM XLV. RELIEF FROM HIS DEATH SENTENCE, MINCY V WOODFORD CV-93-2254 M.R.P STATE COURT ↓ CHIEF JUSTICE GEORGE AFFIRM ORDER (2006) BOTH ORDER WAS NOT APPEAL OR WAS STAY I.E TO STOP THE CLOCK. THE DISTRICT ATTORNEY ATTEMPT IS TO RETRY A 14 YEAR OLD COURT ORDER. CLEAR VIOLATION OF MINCY SPEEDY TRIAL RIGHTS; D.A HAS SLEPT ON HIS RIGHTS.. AMERICAN PIPE AND CONSTR CO. V UTAH 414 U.S 538, 554, P.16-19. D.A OR ATTORNEY GENERAL COULD HAVE PROTECTED THEIR RIGHTS TO HOLD IT IN ABEYANCE. WHILE THE DISTRICT COURT PROCEEDING WAS PENDING ON THE GUILT PHASE CLAIM MINCEY WAS ARRIGNED IN (2015) SUPERIOR COURT. THE STATUTE LIMITATIONS EXPIRE. IF THEY HAD ANY DOUBT AS TO THE MEANING OF THE COURT ORDER. THEY COULD HAVE SOUGHT CLARIFICATION FROM THE COURT. OR TO AVOID ANY POTENTIAL PROBLEMS BY FILING A STAY OR ARRAIGNED MINCEY AFTER (2001) COURT ORDER. ACCORDING TO ASSEM BILL 2254 AMENDING SECTION 859 b 1382 1370 PENAL CODE. MUST BE ARRAIGNED WITHOUT UNNESSARY DELY 60 ~~90~~ DAYS NOT 14 YEARS

Third-Party Habit Evidence

THE TRIAL COURT improperly PREVENT PETITIONER FROM PRESENTING His DEFENSE. by EXCLUDING PROFFERED Habit Evidence. which support THAT CO-DEFENDANT BROWN Habitual USE OF BOARD'S Including THE Night in QUESTION. "It MATERIAL" excluded UNDER CALIFORNIA RULES OF EVIDENCE IF THE PROBATIVE VALUE is outweigh. "THE TRIAL COURT improperly Rule Evidence WAS CUMULATIVE The Record Simply DOSE NOT support such Findings.

HOLMES V SOUTH CARLINA 547 U.S (2006) This LATITUDE, However HAS Limits whether Rooted DIRECTLY in THE DUE PROCESS CLAUSE OF THE FOURTHTEENTH AMENDMENT, AND SIXTH AMENDMENT CONSTITUTION GUARANTEES CRIMINAL DEFENDANTS A MEANINGFUL OPPORTUNITY TO PRESENT A complete DEFENSE. CRANE V KENTUCKY 476, U.S 683, 690 (1986) QUOTING CALIFORNIA V TROMBETTA 467, U.S ~~683~~ 479, 485. (1984) THAT CONSTITUTION Right is VIOLATED by THE EXCLUSION PROBATIVE And missible EVIDENCE THAT ANOTHER PERSON committed THE CRIME. CHAMBERS V MISSISSIPPI 410 U.S 284, 302, 03 (1972) THE TRIAL COURT IMPROPER RULE EVIDENCE WAS CUMULATIVE. "There WAS NO REPETITIVE EVIDENCE" "NO" WITNESS TESTIFY AT THE GUILT PHASE. THAT They SAW BROWN USE A BOARD ARE ANYBODY. THE DEFENSE SOUGHT TO INTRODUCE TESTIMONY OF WITNESS who observed BROWN USING A BOARD

ON HER CHILDREN ON VARIETY OF other OCCASIONS
Rt 4164. THE RECORD simply DOES NOT SUPPORT
SUCH FINDING's. THEREFORE THE EXCLUDE PROFFER
EVIDENCE WAS NOT CUMULATIVE EVIDENCE.
THE PROSECUTOR MISLEAD THE COURT TO CONFUSION
OF THE ISSUE OR POTENTIAL TO MISLEAD THE JURY
CRANE, SUPRA AT 689-690 QUOTING DELAWARE V VAN
ARSDALL 475. U.S 673, 679 (1986) THEREFORE THE
TRIAL JUDGE EASE THE PROSECTOR BURDEN by
IMPROPERLY PREVENTED MINCEY FROM PRESENTING
HIS DEFENSE by EXCLUDING EVIDENCE IMPLICATING
BROWN AS THE PRIMARY PERPETRATOR. CHAMBERS
V MISSISSIPPI 410 U.S 284 (1973). THE COURT NOTED
FEW RIGHTS ARE MORE FUNDAMENTAL THAN THAT OF
AN ACCUSED TO PRESENT WITNESS IN HIS OWN
DEFENSE. "MINCEY" SHOULD NOT BE DEPRIVE OF
HIS CONSTITUTION RIGHT'S TO OBTAIN WITNESS IN
HIS FAVOR. TO REBUT OR CASE DOUBT. UNDER THE
CONSTITUTION "ALL CITIZENS OF THE UNITED STATES
SHOULD NOT be DEPRIVED OF LIFE WITHOUT DUE
PROCESS OF LAW AND TO COMPULSORY PROCESS FOR
OBTAINING WITNESS IN HIS FAVOR ARTICLE V I.
THIS COURT HAS CONSISTENTLY APPLY THAT STANDARD,
DAVID V ALASKA SUPRA 415 U.S 308 Id AT P. 317
CRANE V KENTUCKY, WASHINGTON V TEXAS. SMITH V ILLINOIS
WEB V TEXAS, CHAMBERS, HOMES V SOUTH CAROLINA
MCCOY V LOUISIANA CITE AS (2018) DJDAR 4443.
EACH OF THESE RIGHTS WAS VIOLATED. THE EXCLUSION

OF This Evidence was error, IF The Trial court Ruling could be sustain under The California Evidence code This Application of The code would violate Mincey Sixth and Fourteeth Amendment Right To Present A Defense, "Crane" Due Process Clause OF The Fourth Amendment

The Three Judge Panel Refuse To go by The Record Mincey specifically Disput. Panel court Description OF what The Evidence show. Panel court quoting The Trial court. Know The Record Does Not support such Evidence. The Trial court Noted that For every witness Mincey Present To Demonstrate Brown Habits, The Prosecutor could Present An Equal Number OF witness Attesting To Mincey Bad acts, Hitting The children Therefore it is Nessary To show what The Record Actually show.

Mincey Told Dr. Rath That Sandra Brown made James And Wendy "Sit Indiana Style" And would Smack Them if They Moved State Appellate opening Brief Page 40, 41 And Brown would walk Behind James And Wendy For several Hours Hitting Them RT 4304, Brown Move The children Near The Heater And would occastonally Hit Them on Their Backs. Brown grab James Head slammed it To The Floor - Repeatedly Hitting James Between His legs. Emphasis Added. Dr. Rath Left Part of My Statement out of His Testimony

STATE Appellate Opening Brief Page 40, 41

"The Prosecution corroborated these facts with His own expert. Dr. Root Testify at the Pre-Lim page 48. I was given History from the Sheriff Reports. That this child had urinate in His Pants either on Dec 21 or 22. That James was force to sit in urine soak clothing for several Hours and with continuous Beating on top of that striking Blows, the skin would peel away causing this Abrasion." Its misguided attempt Discipline"

Wendy Told the Police officer that Mommy Blindfold Her Because Her Mother Had her sitting with her "leg crossed" and Her Hands on top of Her Head. State Appellant opening Brief. Page 23. "See Rt 3751, 3762-63 Wendy statement support Sandra Brown Testimony what Brown was doing while Mincy was sent To the store by Brown. Rt 3799." Emphasis Added" Brown Blindfold Wendy and sent Mincy To the store "To eliminate Eye Witness From seeing Her use a Board on James See Brown Tape statement Page 7 2ine 3 in This Petition and Brown confession Rt 5146, 5122, 5211 5143-44 Brown only served Two years SCT 116, 118

Dr. Root Testimony at Trial Bruising of The Buttocks which was Black and Blue and Raw Rt 3648. Dr Root described The Rawness

Similar To A Rash where The SKIN HAS WORN
AWAY AFTER SOME PERIOD OF CLOSENESS TO URINE
WET CLOTHING. DR ROOT FURTHED TESTIFIED. THAT
ALL OF THE OBJECTS HE HAD BEEN SHOWN THE ONLY
ONE THAT COULD HAVE CAUSE THE SHEARING OF THE
BUTTOCKS WAS THE BOARD Rt 3675
SANDRA BROWN WAS Highly MOTIVATED TO BLAME
MINCEY FOR HER OWN PHYSICAL USE OF The BOARD
TO EARN HERSELF A MANSLAUGHTER. Fed, RULE 801 (D)
(1) (A) INFLUENCE TURNCOAT WITNESS. BROWN WAS
CHARGED BASE ON HER TESTIMONY FOR The PROSECUTOR
Rt 5192, 3727-28. BROWN WAS PECULIRLY EQUIP BY
REASON OF HER INSIDE KNOWLEDGE OF The CRIME TO
CONVINCE. The UNWARY THAT her LIES ARE The TRUTH
CAL. JIC 318 (1979) REVISION.
The DISTRICT COURT POINTS OUT BROWN PENALTY PHASE
TESTIMONY EVER TIME JAMES MOVE, MINCEY WOULD Hit
JAMES WITH A BOARD.
The DISTRICT COURT FAILED TO POINT OUT THAT BROWN
CONFESS TO FORCING JAMES TO SIT IN A "LOTUS POSITION" 91
EVER TIME JAMES MOVE BROWN WOULD Hit JAMES FOR
MOVING FOR SEVERAL HOURS. Rt 5143, 44, 5226, 5263
STATE A.C.B. P. 63
DISTRICT COURT ALSO POINTS OUT BROWN TESTIMONY
AT The PENALTY PHASE MINCEY Hit JAMES KNEES WITH
BOARD. "AGAIN The DISTRICT COURT FAIL TO POINT
OUT THAT BROWN CONFESS. THAT She WOULD SMACK
THEIR "KNEES" OR SOMETHING. "EMPHASIS ADDED"

SOMETHING MEANING OTHER PARTS OF THE BODY
INCLUDING JAME TESTICLE. STATE A.O.B. P. 61
SANDRA BROWN OWN POLICE-REPORT-TAPE STATEMENT
CONTRADICTS HER OWN TESTIMONY WHERE BROWN
ADMITTED THAT she "DID NOT" SEE MINCEY USE A
BOARD ON JAMES STATE HABEAS P. 61 INDICATE
HERSELF. People V Leach (1975) 15 CAL 3d 419, 441
People V DURATE (2000) 24 CAL 4th 603, 612
DECLARANT INCULPATE HERSELF BUT SHIFTS MORE
BLAME TO THE DEFENDANT, AND AWAY FROM HERSELF
SELF-SERVING. HAMMON V INDIANA U.S (2006)
HAMMON COURT CONSIDERED STATEMENT GIVEN TO LAW
ENFORCEMENT OFFICER AND DAVIS V WASHINGTON THE
SAME TO PROVE PAST EVENTS.
People V GRIMS (2016) 1 CAL 5th 698, 713
GRIMS COURT QUOTING WITH APPROVAL THE APPLICATION
OF THE WILLIAMSON IN U.S V PAQUIA 9th CIR (1997)
114 F.3d 928. "The STATEMENT SOUGHT COMMON
SENSE THE PORTION AT ISSUE WOULD NOT HAVE BEEN
MADE by A REASONABLE PERSON UNLESS HE OR SHE
believed IT TO BE TRUE. BROWN WAS BEING ALLOWED
ESSENTIALLY TO CREATE THE EVIDENCE FOR HER OWN
CASE. SERVE 2 YEARS.
ARIZONA V FULMINATE 499 U.S 279, 296 (1991)
A CONFESSION IS LIKE NO OTHER EVIDENCE. INDEED THE
CO-DEFENDANT OWN CONFESSION IS PROBABLY THE MOST
AND DAMAGING EVIDENCE THAT CAN BE ADMITTED AGAINST
HER BROWN CONFESS ON NUMEROUS OCCASIONS WAIVE HER

RIGHTS WILLINGLY. THE LOWER COURT DELIBERATELY OVERLOOK THE FACT THAT BROWN CONFESS TO THE PROSECUTION VERSION OF EVENTS. PETITION I.D 5.2 WHICH IS CORROBORATED BY ALL WITNESS ROUTINE HABITS OF BROWN. UNDER THE CIRCUMSTANCE THE JURY SHOULD HAVE BEEN ALLOW TO HEAR PROFFER MIKE AND CARLA BROWN TESTIMONY IT WAS HIGHLY MATERIAL MARBURY V MADISON 5. U.S 137, 177 (1803) IT IS EMPHATICALLY THE PROVINCE AND DUTY "OF THE JURY" TO DETERMINE THE WEIGHT AND CREDIBILITY OF THE TESTIMONY OF THE WITNESS SATTERWHITE V TEXAS (1988) U.S Led 2d 284 S.CT 1792 AT PAGE 258-259. WE CANNOT SIMPLY EXCISE SOME ITEM'S OF EVIDENCE IN ORDER TO MAKE AN ITELLIGENT JUDGMENT I.D 258 "THE PROSECUTOR CALL BROWN. MOTHER MARY SMITH AT THE PRE-LIM P. 142 (1984) MARY SMITH TESTIFIED "UNDER OATH" NEVER SAW MINCEY STRIKE EITHER CHILD INCLUDING JUNE (1981) AND PRIOR TO CHRISTMAS OF LAST YEAR. BUT SMITH SAID SHE SEEN HER DAUGHTER STRIKE JAMES AND WENDY ON THOSE DATES. THE DEFENSE WAS BARRED FROM CALLING SMITH WHICH APPEAR TO BE A EYE WITNESS TO THE NIGHT IN QUESTION. ANOTHER WITNESS BARRED. BROWN CELLMATE INTERVIEWED BY SHERIFF ON JAN 5th (1984) BROWN TOLD MARTINEZ IT WAS WENDY WHO BROWN WAS REALLY WORRIED ABOUT ANYBODY QUESTIONING HER. SO BROWN ARRANGED WITH THE PROSECTOR

CONTACTS BETWEEN WENDY AND HER FAMILY, SEE BROWN DECLARATION ex 11 STATE HABEAS p 104 - MEMORNUM p. 15 ANOTHER WITNESS BARRED. "THE JURY WAS FLATLY Lie TO." THE PROSECUTOR TOLD THE JURY THAT WOULD BE THEIR JOB you Decide CULPABILITY TO EVALUATE THE EVIDENCE AGAINST TWO PARTY RT 5021 THE TRIAL COURT NOTED THAT BEEN THE ENTIRE THRUST OF THE PROSECUTOR CASE. "RELATIVE CULPABILITY OF BROWN AND MINCEY RT 4165. The TRIAL COURT REFUSED TO PERMIT THE DEFENSE TO INTRODUCE "RELATIVE" EVIDENCE OF BROWN HISTORY OF HABITS OF BEATING The CHILDREN WITH BOARDS, BELTS, STICKS RT 4165-66-68 The TRIAL Judge HAD AN OBLIGATION TO HEAR The PROFFER TESTIMONY OUTSIDE The PRESENT OF The JURY TO Weigh The PROBATIVE VALUE. "NOT TO SPECULATE" MILLER V STAGNER 757 F.2d 988, 994 9th CIR. (1985) DESCIBING THIS TEST AS Weighing OF The PROBATIVE VALUE, 28 U.S.C 2254 (d) (1). TRIAL COURT WOULD HAVE LEARN The REAL REASON D.A WANTED PROFFERED TESTIMONY KEEP AWAY FROM The JURY AND WOULD NOT HAVE RULE UNRELATED ACTS by BROWN ON The BODIES OF The CHILDREN AND OBSERVATIONS OF INJURY RT 4168 69. The REJECTED TESTIMONY WAS CRITICAL TO MINCEY DEFENSE DIRECT EVIDENCE LINKING BROWN TO A HABIT OF PICKING UP BOARDS OUT OF The YARD TO HIT THE KIDS. AND HAD it MINCEY IN The PAST WITH A BACK RT 5122. DO TO PAGE LIMIT got OTHER ISSUE SEE WRIT OF CERTIORARI Third-PARTY

THE PROSECUTION FALSE CAUSE OF DEATH TESTIMONY, AND INADEQUATE TOXICOLOGICAL REPORT

THE CRITICAL POINT IS, THE JURY WAS DELIBERATING ON THE METABOLIC ACIDOSIS THEORY. THE JURY WAS BETRAY THAT METABOLIC ACIDOSIS WAS RELATED TO THE CAUSE OF DEATH "OR" WAS "A" CAUSE OF DEATH TO DECEIVE THE JURY FLAGRANTLY VIOLATED BASIC DUE PROCESS PRINCIPLES 91 L Ed 10 405. U.S. SUCH DECEPTION VIOLATES A LONG LIST OF CASE BRADY, BAGLEY, NAPUE, AGURE, SIXTH AND FOURTEENTH AMENDMENT. "THE MINORITY OF EXPERTS WOULD QUICKLY RECOGNIZED. DR. ROOT FAILED TO RUN BASIS TEST BY NOT TESTING THE P.H LEVEL OF THE BLOOD TO DETERMINE WHEATHER IT WAS EVEN ACIDIC TO SUPPORT HIS CONCLUSION. SEE DR. STEWART DECLARATION ~~Copy Enclose~~. "DEATH FATAL CARDIAC ARRhyTHMIA." "THE PROSECUTOR USED DR. ROOT INADEQUATE TOXICOLOGICAL REPORT TO FURTHER MISLEAD THE JURY BY FALSELY HAVING DR. ROOT TESTIFY THAT HE TESTED THE BOY BODY "FLUIDS" FOR AMPHETAMINE. THE JURY WAS INTENTIONALLY DECEIVE THAT "ALL BODY "FLUIDS" WAS SCIENTIFIC TESTED RT 3683. IN FACT THE CORONER ADMITTED THAT HIS TOXICOLOGY REPORT WAS IN ERROR HIS TESTING METHODS WAS INADEQUATE HIS REPORT SHOULD HAVE SHOWED A "NO" RESULT UNDER AMPHETAMINE RATHER THEN NEGATIVE. DR. ROOT AFTERWARD "RECANTED" HIS TESTIMONY AND REPORT STATING IN HIS DECLARATION. THAT THE URINE TEST WAS INCONCLUSIVE AND THAT HE HAD "NO WAY" OF

DETECTING SUCH SUBSTANCE IN THE BLOOD AND TISSUES IN DEC (1983) NO SWAB TEST OF SALIVA WAS DONE AT ALL. DR. ROOT EXPLAINED THAT FIVE C/C OF URINE WAS EXTRACED FROM THE BLADDER. FIVE C/C IS THE VERY MINIMAL AMOUNT TO PERFORM A URINE T.L.C SCREEN. FIRST TEST REQUIRED JUST DROPS OF URINE. THE SECOND TEST A FEW DROPS. THIRD TEST APPOXIMATELY 1/2 C/C OF URINE. FOURTH TEST 1/2 C/C OF URINE. THEREFORE THE AMPHETAMINE TEST WAS CLEARLY ALOT LESS THE 4 C/C OF URINE. THE QUESTION IS HOW MANY DROPS OF URINE DOES IT TAKE TO MAKE ONE C/C OF URINE. ONLY A EXPERT CAN ACTUALLY ANSWERS THAT QUESTION. OBVIOUSLY THE T.L.C SCREEN TEST WAS ALOT LESS THAN 20% LESS EFFECTIVE ACCORDING TO AMERICAN BOARD OF PATHELOGY DR. ROOT LABORATARY WAS POORLY EQUIP. SEE STANDARD 6-26 27, 27 (1) 28. DR ROOT DID NOT HAVE PROPER EQUIPMENT TO RUN BASIC TESTING. DR. ROOT EXPLAIN IT IS POSSIBLE THAT THERE COULD HAVE BEEN AMPHETAMIN IN THE CHILD SYSTEM. IN (2014) LEGISLATIVE AMEND SECTION 1473 TO STATE THAT FALSE EVIDENCE SHALL INCLUDE OPINION OF EXPERTS THAT HAVE BEEN REPUDIATE BY THE EXPERT. 1473 SUB E (1) AS ADD BY STATS 2014 CH 623 (E) (1) JAN 1ST (2017) SIGNED INTO CAL STATE LAW. DR. ROOT HAD WE BEEN INFORMED POSSIBILITY OF FINDING AMPHETAMINE. WE COULD HAVE TESTED GASTRIC CONTENTS

I.D.4

CARDIAC ARRhyTmia

DR. PABLO STEWART DECLARATION DEATH RESULTED FROM A FATAL CARDIAC ARRhyTmia BROUGHT ABOUT THE INVOLUNTARY INGESTION OF AMPHETAMINE ADMINISTERED BY THE DECEDENT MOTHER. DR. ROOT FINDING THAT THE CHILD SUFFERED FROM HyPERKALEMIA (High POTASSIUM IMBALANCE) DUE TO TISSUE BREAKDOWN FURTHER SUPPORT A DIAGNOSIS OF CARDIAC ARRhyTmia DECEDENT BLOOD SHOW EXTREMELY HIGH LEVELS OF POTASSIUM 7.7 MEQ/L WHICH WOULD HAVE INCREASED THE RISK OF CARDIC ARRhyTmia PARTICULARY A NATIVE CHILD I.D.7 IN ADDITION PARALYTIC ILEUS SUPPORTS THE CONCLUSION THAT DEATH RESULTED FROM AMPHETAMINE INGESTION I.D 8. EXCULPATED MINUS FROM FIRST DEGREE MURDER.

MAPLES V THOMAS 132 S.CT 912, 927 (2012) TRIAL ATTORNEY DAVID WHITNEY ABANDON HIS OBLIGATION TO HIS CLIENT. WHITNEY AGREE TO HIRE A FORENSIC EXPERT. BEFORE ACCEPTING THE RETAINER FEE IN ADVANCE OF FIFTY THOUSAND IN CASH, "AS HE REQUEST" WHITNEY DECIDED TO RE-VISIT HIS COCAINE HABIT WITH CASH IN HAND AT HIS CLIENT EXPENSE. IF COUNSEL HAD RETAINED A FORENSIC EXPERT WOULD HAVE DISCOVERED JAMES MOTHER HAD FOOLISHLY ADMINISTERED AMPHETAMINE TO THE CHILD THUS CAUSING DEATH by CARDIAC ARRhythmia. RETAINER FEE SHOULD NOT BEEN USE TO BUY COCAINE. C/O COUNSEL ALAN SPEARS SIGN DECLARATION STATING HE

WAS PRESENSE DURING LUNCH HOUR WHEN WHITNEY PURCHASE A LARGE AMOUNT OF COCAINE. SPEARS WITNESS COUNSEL SNORTING A BIG CHUNK OF COCAINE WAS USING ALL THUR MINELY TRIAL. SEE WHITNEY DECLARATION ex 50 DESCRIPTION The eFFect coke HAD ON HIS PERFORMANCE. Admitted HIS FORGETFULNESS AND MISTAKES FAILED TO REQUEST ACCOMPLICE INSTRUCTION. FAILED TO OBJECT, I JUST MISS IT I DID NOT SEE IT. Admitted HIS ARGUMENTS WAS POORLY CHOSEN. PEOPLE WILL SAY THATS NO WAY TO PICK A JURY RT 4765. SEE MOTION 59 Which DISTRICT COURT AND PANEL COURT REFUSE TO Reply WIGGINS V SMITH 539 U.S 510, 522-23 (2003) WILLIAMS V TAYLOR U.S 362, 373 (2000) EVEN IF COUNSEL NEGLET WAS PART OF A TACTICAL DECISION TACTICS AS A MATTER OF REASONABLE PERFORMANCE COULD NOT JUSTIFY The OMISSIONS. STRICKLAND V WASHINGTON 466 U.S 668, 104 S.Ct 2052 (1984) FAIL TO MAKE REASONABLE INVESTIGATION TO CORROBORATION MINELY STATEMENT TO The POLICE RT 4110. ALSO DISCREDIT The CORONER (1) EFFECTIVELY CROSS-EXAMINE AND REBUT DR. ROOT. (2) DETERMINE BEFORE TRIAL WHAT EVIDENCE He should OFFER (3) PREPARE IN ADVANCE HOW TO COUNTER DAMAGING EXPERT TESTIMONY THAT MIGHT BE INTRODCEED. There WAS NO STRATEGIC REASON FOR COUNSEL FAILURES DO TO TRIAL ATTORNEY UNPROFESSIONAL ERRORS. The RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT

THERE WAS NO SOUND TRIAL STRATEGY TO PLAYING UNREDACTED TAPE TO THE JURY.

IT WAS ABANDONMENT OF HIS CLIENT COUNSEL WAS SHOWING HIS LOYALLY TO THE D.A. OFFICE ANNOUNCED HE WILL BE JOINING THE D.A. AFTER MINCEY CASE THE JURY WAS PERMITTED TO DELIBERATION ON FALSE EVIDENCE. THE OFFICER FALSELY STATED THEY FOUND A BOARD WITH JAMES BLOOD AND HAIR AND MINCEY FINGERPRINTS ON ST. RT 3804-05, 3822, 3940-41 FALSELY TELLING PETITIONER THAT WENDY STATED SHE HEARD MINCEY TELL JAMES HE WAS GOING TO GET A BOARD AND HEARD JAMES SCREAMING AND THE SOUND OF A BOARD SLAPPING AGAINST A BODY RT 4037, 4090-91 JURY WAS BEING ALLOW TO SPECULATE DURING DELIBERATION WHICH PERMITTED THE JURY TO BELIEVE THAT MINCEY USE A BOARD. WHICH FURTHER SUPPORT PROFFER HABIT EVIDENCE OF BROWN HISTORY OF BEATING THE CHILDREN WITH A BOARD RT 4164. SHOULD NOT HAVE BEEN WITHELD FROM THE JURY. FURTHER-MORE BROWN TOLD THE SAME DEPUTIES MINCEY DID NOT USE A BOARD. STATE HABEAS P. 61 JURY WAS PERMITTED TO BELIEVE CLAIMS OF SEXUAL MISCONDUCT INVOLING THE CHILD VICTIMS RT 3809-10 CT 1414, AND RT 3820 CT 1420 JURY WAS ALLOW TO DELIBERATION ON FALSE EVIDENCE NO CAUTIONARY INSTRUCT CAN CURED PREJUDICAL IMPACK. "PROSECUTOR PSYCHOLOGICAL DR. OLIVER. NO TACTICAL REASON FOR COUNSEL TO CALL DR. OLIVER SPECIALTY WHEN HIS CLIENT INFORM COUNSEL MINCEY REFUSE THE INTERVIEW WITH DR. OLIVER. WITNESS BY OFFICER POWELL THATS WHY NO TESTING WAS DONE AT ALL. COUNSEL

BELIEVES HIS MOST INEXCUSABLE ERROR WAS EXAMINING THE D.A PSYCHOLOGICAL EXPERT ON DIRECT. DECLARATION EX 50. ITS IRRELEVANT WHEATHER LAWYERS USE NARCOTIC DURING TRIAL. SEE BONIN V CALDERON 59 F.3d 815, 839, 9th cir (1995). THE COURT HELD IN BONIN PERFORMANCE DID NOT FALL BELOW. STRICKLAND TEST. "QUOTING WEBSTER DICTIONARY "NARCOTIC DULLS THE SENSE, UNAWARENESS, IGNORANT, "DRUG STUPEFY" THE TRIAL COURT, IMPROPERLY REFUSED THE INSTRUCTIONS NECESSARY FOR THE JURY TO FOLLOW THE APPLICABLE LEGAL PRINCIPLE. THAT CHILD BEATING WHICH ARE MISGUIDED ATTEMPT AT DISCIPLINE MAY NOT BE WILLFUL DELIBERATE OR PREMEDITATED MURDER. PEOPLE V STEGAR 16 CAL 3d 589 596 (1976). THE REFUSED INSTRUCTION CORRECTLY STATE THE LAW. ALTERNATIVE THEORIES. IT HAS LONG BEEN SETTLED THAT WHEN A CASE IS SUBMITTED TO THE JURY ON ALTERNATIVE THEORIES THE UNCONSTITUTION OF ANY THEORIES REQUIRES THAT THE CONVICTION BE SET ASIDE. SEE MINCEY V WOODFORD CV-93-2254. M.R.P. TAINTED JURY INSTRUCTION EFFECT THE JURY VERDICT ON THE GUILT. THE TRIAL COURT INSTRUCTED THE JURY TO FIND MINCEY GUILTY OF FIRST DEGREE MURDER BASE ON CHILD ABUSE RT 5025 JURY WAS DEEPLY CONFUSE STATE HABEAS EX 21-7-10 CT 1666 1701 RT 4936. 9th CIR FAIL A MEANINGFUL APPELLANT REVIEW TO REPLY TO CLAIMS IN THE FEDERAL A.O.B. MOTION 59 REFUSE TO REPLY. "CONCLUSION". FOR ALL THE ABOVE REASON WHEN VIEWED CUMULATIVELY WHICH DEMONSTRATE AN OVERALL VIOLATION OF DUE PROCESS, ENCLUDING SIXTH AMENDMENT RIGHT TO PUT ON A DEFENSE MINCEY RESPECTFULLY REQUEST A FAIR NEW TRIAL.

THE PETITION FOR REHEARING SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED

Bryan J Mincey DATE 6/5 (2018)

RECENT JULY 22 (2018)

Additional material from this filing is available in the Clerk's Office.