No. _____

_____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

JAMES T. BAGBY-PETITIONER

SUPERINTENDENT/ STATE OF INDIANA -RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Seventh Circuit
Indiana District Court Northern District

PETITION FOR WRIT OF CERTIORARI

James T. Bagby
Petitioner/Defendant, *pro se*
D.O.C. # 913111
New Castle Correctional Facility
1000 Van Nuys Rd.
New Castle, IN 47362-1041

QUESTION(S) PRESENTED

1. Did the United States 7th Circuit Court of Appeals err in denying a certificate of appealability without specifically addressing any of Bagbys' claims by stating that there was "no substantial showing of the denial of a constitutional right and did the United States 7th Circuit Court of Appeals err in not equitably tolling time for Petitioners Habeas Corpus?
2. Did the District Court fail to properly look into all the Post Conviction Relief Courts' misinterpreting of law, Violation of Constitutional rights and violating Bagbys' due process rights?
3. Did The Northern District Court err in not holding the Attorney General in contempt for disobeying order to only show cause why the Habeas Corpus should be dismissed due to timeliness?
4. Did the Indiana Court of Appeals err by denying P.C.R. By not recognizing cumulative errors made by the prosecutor and Judge of the P.C.R. Court?
5. Why is all the Courts scared to give Petitioner relief for the Constitutional violations that have been done to him?

LIST OF PARTIES

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

- Supreme Court of the United States
- United States District Court, Northern District of Indiana
- United States Court Of Appeals

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTRIORARI

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

OPINIONS BELOW

[X] For cases from Federal Courts:

The opinion of the United States Courts of Appeals appears in Appendix A to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is unpublished.

[X] For cases from state courts:

The opinion of the Indiana Court of Appeals to review the merits appears at Appendix C to the petition and is unpublished.

JURISDICTION

[X] For cases from **Federal courts :**

The date on which the United States Seventh Circuit Court of Appeals decided my case was on January 8, 2018. See Appendix A

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

[X] For cases from the **State courts :**

The date on which the highest state court decided my P.C.R. case was on November 12th, 2014. See Appendix C.

[X] For cases from the **Lower State courts** :

The date on which the lower state court decided my P.C.R. case was on May 7th, 2013.

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

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI, Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Respondent 's statement of the facts fails to sufficiently or correctly map the background of James Bagby's case (hereinafter Bagby or Petitioner). There were also relevant, truthful events and facts conveniently left out of the Respondents Statement of Facts. Bagby apologizes in advance if statements are repeated. Bagby isn't an attorney and greatly respects all the hard work they do to prepare Motions and Petitions. Petitioner has done his best with the knowledge he has to apply the facts and to obey all the rules he is aware of. Therefore to bring clarity to the issues, Bagby presents the following:

1. On January 3rd, 2009, the Kokomo Police department kicked in the back door of James Bagby and Kimberly Bagby's residence claiming that Mr. Bagby was confining Ms. Bagby. They were both asleep at the time because it was around 1:00 A.M. To 3:00 A.M. Bagby was arrested for criminal confinement as a class D-felony. On 1/13/2009 Bagby filed with the Court a Motion For Fast and Speedy Trial. On 1/14/2009 the State filed count I and II as class B sexual misconduct with a minor against, Amanda Roe, (hereinafter A.R.). On 1/23, 2009 the State filed count IV as a class D sexual battery, against Katelyn Vanmeter (hereinafter K.V.).

2. Petitioner was appointed a public defender, Mark Dabrowski, (hereinafter Dabrowski). From the time of his appearance to the jury trial Dabrowski only came and seen Bagby one (1) time on April 19th, 2009. Which Bagby entered into evidence the visit records from the jail in his original Post Conviction Relief, (hereinafter P.C.R.), and his Amended P.C.R. 's. See Exhibit 4, 4(a), 4(b) as the jail log records from the Howard County Sheriffs Department and Bagbys' personal calender records. On September 22nd and 23rd, 2009 the jury trial was held. Where Dabrowski failed to represent Bagby which is a violation of his IV and XIV Amendment. He advised Bagby not to testify which Bagby thought was not the best strategy, because Bagby assumed that the jury would want to here his side of the case.

3. At no the time during the trial in this matter did trial counsel, Dabrowski, have the full Indiana State Police DNA laboratory report with which to cross examine the DNA analyst, review the case for cross contamination of samples, or to otherwise analyze the DNA evidence in this matter. See Exhibit 5, Pg. 167 to 172, as part of the Post Conviction Relief Hearing, (hereinafter PCRH). The DNA evidence relied upon at the underlying trial regarding the potential mixture of A.R.'s DNA in the Petitioner's sperm sample on the bed sheet in A.R.'s room, 2A8 was based upon only three (3) of the (16) sixteen loci normally used to determine a

(hereinafter PCRH). The DNA evidence relied upon at the underlying trial regarding the potential mixture of A.R.'s DNA in the Petitioner's sperm sample on the bed sheet in A.R.'s room, 2A8 was based upon only three (3) of the (16) sixteen loci normally used to determine a DNA profile, pursuant to testimony presented at the hearing by Indiana State DNA examiner Miranda Michael (hereinafter Michael), see ex. 5, Pg. 30-48. In the sample there were eight (8) additional alleles. Michael only used three (3) Why ?, because there were only two individuals not fully represented at all locations for the statistic, and for this statistic to work you need to have everyone represented. Bagby and A.R.s' DNA profile was not at both locations. The statistics in that are one in ten that it was the DNA mixture of Bagbys' sperm and that of A.R.'s DNA was in the mixture, see ex. 5, Pg. 46, Ln. 10-12. One In Ten, the Petitioner was guilty!!!

The jury never got to hear any of this. Testimony at the trial from Virginia Maletic (hereinafter Maletic), another State forensic examiner, revealed that a person's DNA could be found on a bed , various furniture and other items in that person's home due to DNA transfer in everyday living, Further , DNA transfer is possible through sweat, hair and dried bodily fluids. The forensic expert also testified that DNA could still be present after washing. Bagby called Dabrowski's office earlier in his representation and fired him due to his continuing the case and other misrepresentations and Bagby was told he could not fire Dabrowski. Bagby will state the numerous failures of Dabrowski in ground one (1) later in the Traverse. On 12/16/2009, Bagby was convicted of two counts of sexual misconduct with a minor, as a class B felony, under cause number 34A02-1001-CR-158, for which he was sentenced to 15 years on each count, to run consecutively. The criminal confinement was dismissed by the state during trial and the jury acquitted Bagby on the sexual battery. After the verdict was read Bagby turned to look at Dabrowski and he had cut out/left. Said convictions were obtained regarding misconduct with a female with the initials A.R.,date of birth. March 7, 1993. The alleged misconduct was said to have occurred on or around November and December 2008. Bagby appealed his conviction and sentence on 1/15/2010, in this case number 34A02-1010-Cr-158. Bagby's appointed appellate counsel, Mark Ryan, was later disbarred due to his miss treating of his clients and Bagby was appointed Derrick Steele. Mr. Steele had to file a belated appeal However, the jury's verdict was affirmed on February 18th,2011.

4. At the time of Petitioner's trial, DNA evidence was presented revealing there were areas wherein both Petitioner's and A.R.'s DNA were present in two mixtures; one area in which

relationships. There was also testimony at the Post -Conviction Hearing that was not presented at trial due to the fact that the full DNA file was not given to defense counsel. Also Bagby and his wife Kimberly Bagby had had sex in A.R.'s bed due to the fact that there was college kids that lived next door and their living room door was within just a few feet from the Bagby's bedroom window. The college kids would have loud parties at times and when A.R. was gone, staying all night with her grandmother, Mr. and Ms. Bagby would sleep in A.R.'s room. Kimberly Bagby produced affidavits which were entered into evidence as previously stated, affirm that her and Mr. Bagby had had sex on A.R.'s bed. Kimberly Bagby. via affidavit (entered into evidence as Petitioner's 1a, 1b and 1c), swore that she told the prosecutor, Jim Fleming, (hereinafter Fleming), prior to the underlying trial, that she and Petitioner had sex in the bed upon which the DNA samples were found containing Bagby's semen, and that she heard A.R. state that Justin Richard was her "one and only" sex partner. She also affirmed that Fleming told her not to talk to Dabrowski about it. Although Ms. Bagby said she had washed the sheets, she never had. She just said that because it made her sound like a bad mother not to wash the sheets. A.R took care of her own laundry due to the fact she didn't like any one else to mess around with her clothes. And Mr. Bagby doesn't recall A.R. ever washing the bed sheets. When Bagby ever witnessed A.R. doing her laundry she would put too many clothes in the washer together, which would not have cleaned them very well.

5. Bagby filed a P.C.R. May 20th, 2011, alleging the presence of new evidence and ineffective assistance of counsel. The P.C.R included the affidavits from Ms. Bagby. Petitioner filed an amended P.C.R. On February 27th, 2012. On February 23rd, 2012 Bagby's mother hired Noel Law office to represent him on his case. Katherine Noel, (hereinafter Noel) advised Bagby that she wasn't very familiar with P.C.R.'s and that she had an attorney, she just recently hired who knew a lot more about the P.C.R.'s. So Megan Schueler, (hereinafter Schueler), became my attorney. Schueler filed an amended P.C.R. on February15th, 2013. On February 20th, 2013 we had an evidentiary hearing with special Judge Brant Parry, (hereinafter Parry). Mark McCain represented the state.

6. Taylor Yard (hereinafter Yard) testified he was having sex with A.R. during the time around which she made allegations against Bagby. In Fact, Yard had sex with A.R. on his birthday, December 23, 2008 prior to A.R.'s SAFE exam, which Dr. Haendiges testified at the underlying trial, see ex. 5, Pg. 60, Ln. 12-24. Haendiges testified A.R. had hymeneal tearing,

which could be consistent with sexual intercourse, a bicycle accident, or she was born with. See ex. 5, pgs.59-60 and 70-71 as Taylor Yard's testimony.

7. A.R. testified inconsistently regarding Yard at the P.C.R. Hearing. She initially testified she met Yard during the 2008-2009 school year and that Yard lived with her family shortly after Petitioner was jailed for the instant offenses, which was prior to her turning 17 years old. She later testified she met and had sex with Yard when she was 17 years old.

8. A.R. testified at some point after the underlying trial , she recalled several non-consensual sexual encounters with her biological father; her cousin Derek Hanley; a man in a wheel chair , who lived on Main St; and a guy named Tommy, when she lived on Korby street, prior to those she said occurred between herself and the petitioner. However, she denied vaginal penetration by any of these persons at the P.C. R. hearing. Incidentally, in Sept 2010, A.R. reported to Melisa Marner (hereinafter Marner), of the DCS, that there was , in fact, vaginal penetration by Derek Hanley and Tommy. According to Marner, who testified at the P.C.R. Hearing, A.R. disclosed Derek Hanley and Tommy, forced her to have sex with them, which consisted of among other things, vaginal penetration, see ex. 5, Pgs. 206-209. Marner further stated that said contact occurred prior to 2008. Marner also testified that nothing was done regarding A.R.'s disclosures in Sept 2010, as A.R. had prior opportunities to disclose and did not. A.R.'s testimony at the P.C.R. hearing both revealed inconsistencies in her pre-trial disclosures to DCS and police, as well as cast doubt upon her credibility in general. Ex. 5, pgs. 90-107.Also see DCS report as exhibit 9.

9. Dabrowski, Bagby's trial counsel , testified he spoke with no witnesses provided by Bagby, including Sabrina Pollard, Trisha Ferguson, Tyler Sims, Justin Richard, and Laura Groover (hereinafter Groover), because he determined , without speaking to the witnesses, they would all lead to inadmissible or harmful evidence, or later testimony. Further, he testified he believed each witness solely had information regarding prior sexual partners of A.R. Thus, he believed any information the witness had to provide was not relevant to the case and was inadmissible due to the Rape Shield statue, IC § 35-37-4-4. However , when asked about each witness, he was unable to testify for what purpose each witness was actually provided or what they could possibly have testified to. Dabrowski failed to prepare for the evidentiary hearing. He didn't bring any of his files and at one time the Court had his office send his files so he could view them to try to get him to remember the case. He commented at the P.C.R. Hearing that at

his age he couldn't remember what he had for lunch, see ex. 5, pg. 146, Ln. 6. When questioned specifically about Groover, Dabrowski admitted he had no recollection about her being mentioned in A.R.'s videotaped statement or the discovery. Pursuant to A.R.'s statement, with in the interview video, which was exhibit 14, entered at the P.C.R. hearing and also entered at trial, clearly stated that she provided letters, allegedly about abuse conducted by Bagby, to Groover. Petitioner was unable to get the exhibit 14 that was entered into evidence at the original trial. Schueler tried desperately to locate Groover, to the extent that she found out she had gotten divorced and her last name was now Beane. Schueler had investigated and found her last place of employment, but couldn't get any information where Ms. Groover/Beane may be. Schueler had also found Ms. Groover/Beane's daughter working at a Goodwill in Kokomo, In. and she would not disclose where her mother was. Dabrowski blew the chance for Bagby to have these witnesses testify on his behalf and now there unattainable. Upon appearing at the P.C.R. Hearing Dabrowski had no notes. No recollection, and about many material facts. He testified he made no effort to find Groover and he made no effort to impeach A.R. at the trial. He failed to investigate at all. Bagby had told Dabrowski that Groover was a very important factor for his trial.

10. Dabrowski Believed he had all of the discovery in this matter, as it was his normal course of conduct to obtain all discovery, and he believed he had all information regarding the DNA evidence. Dabrowski did not have the entire discovery in this matter prior to trial. He did not obtain the 2006 case file from Attorney Katherine Noel (hereinafter Noel), wherein A.R. made statements to the officers. Said charges were dropped. The State had this evidence, and it was readily available to Dabrowski. Dabrowski admittedly took no depositions in this matter and did not obtain all portions of discovery matter, despite it being his normal practice. Dabrowski never obtained videotaped interviews of Brad Vanmeter or Ashley Hanley, both persons interviewed regarding alleged instances of abuse of A.R. and another child, see ex. 5, pgs. 157-159. Dabrowski never obtained the full State Laboratory DNA file, Exhibit 11 from the P.C.R hearing, only having,(Exhibit 10, partial DNA evidence) from the P.C.R hearing, consisting of the summary reports, see ex.5, Pg. 172, Ln. 4-7. In fact , he admitted to having no knowledge that the information in exhibit 11 existed. He further admitted, when shown case law, specifically, Steward v. State, 636 N.E.2d 143, 149 (Ind. App. 1994), and Tague v. Richards, 3F. 3d 1133 (U.S. App. 1993), argued infra, he did not believe he was aware of said research

specifically regarding the exception the Rape Shield law specifically outlined in IC §35-37-4-4(b)2, and Evidence Rule 412(2), ex. 5, Pgs. 132-133. Petitioner diligently tried to obtain exhibit 11, which was entered into evidence at the P.C.R.H. Noel Law Office said that they had lost it. The P.C.R. Court said they sent it it to the Indiana Court of Appeals. Which the Indiana court of Appeals ordered the Attorney General to release it to me, but they claim it went to the Northern District Court. They say they don't have it. Just the evasiveness alone tells us that everyone is trying to hide exhibit 11 the full DNA evidence.

11. On 11/21/2014. Petitioner's mother, Mary Turnpaugh hired Noel Law Office to do a Habeas Corpus Relief for Petitioner, see ex. 3 (a) and 3 (b). On 02/07/2016 Noel Law Office wrote Bagby and informed him they **were not** going to do the Habeas any longer and that they would come ans see him wit-in the next 30 days, Noels' Law Office never showed up, see ex. 2(a) thru (j). From the way Bagby was lead to believe because of the previous correspondence, he thought the Habeas clock didn't start until the Petition To Transfer to the Supreme Court was done. That is the end of his State remedies, which as stated he believed the toll clock started. See ex. 13, CCS of Petition To Transfer and 2(a) thru 2(j) as the letters to and from Noel Law office.

12. These proceedings are governed by the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA") and 28 U.S.C. § 2254. "As amended by AEDPA, 2254(d) ... preserves authority to issue the writ in cases where there is no possibility fair-minded jurists could disagree that the state court's decision conflicts with this Court's precedents." Harrington v. Richter, 562 U.S. ---, 131 S. Ct. 770, 786-87; 178 L. Ed. 2d 624 (2011) (citations omitted). When a State court adjudicates a claim on the merits, habeas corpus relief may not be granted "unless the state court's decision was contrary to or an unreasonable application of clearly established federal law." Johnson v. Hulett, 574 F.3d 428, 433 (7th Cir. 2009). "A state court unreasonably applies Supreme Court precedent if the state court identifies the correct legal rule but applies it in a way that is objectively unreasonable." Bynum v. Lemmon, 560 F.3d 678, 683 (7th Cir. 2009) (internal citations omitted). "[A]n unreasonable state court decision is one lying well outside the boundaries of permissible differences of opinion or one that is at such tension with governing U.S. Supreme Court precedents, or so inadequately supported by the record, or so arbitrary as to be unreasonable." Badelle v. Correll, 452 F.3d 648, 655 (7th Cir. 2006) (internal quotations and citations omitted). Additional standards provided as necessary.

EQUITABLE TOLLING:

As all previously stated Bagby had hired an attorney or his mother did, to complete a Habeas Corpus. He did not believe he had the knowledge to do one himself. He put his trust in Noel Law Office to due the Habeas and was mislead into believing the Habeas was being done. Due to no fault of his own Bagbys' time had run out. Bagby diligently wrote Noel Law Office to confirm that they were doing the Habeas and Noel said they were working on it. See Ex. 2(a) thru 2(j). Then at the last moment, from his calculations they sent a letter saying they were not going to do it. It would be a grave miscarriage of justice not to allow Bagby to complete his Habeas Corpus. The timeliness provision in the federal habeas corpus statute is subject to equitable tolling. Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C.S. 2244(d). (Breyer, J., joined by Roberts, Ch. J., and Stevens, Kennedy, Ginsburg, and Sotomayor, JJ.). A petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing. (Breyer, J., joined by Roberts, Ch. J., and Stevens, Kennedy, Ginsburg, and Sotomayor, JJ.) See also Holland v. Florida, 560 U.S. 631, 648 (2010).

Additional tolling of the AEDPA limitations period, beyond the provisions set forth by 2244(d)(2), may be available as a matter of equity where the Habeas petitioner "has been pursuing his rights diligently," but has been prevented from timely filing his federal petition by "some extraordinary circumstance [that] stood in his way." Holland v. Florida, 560 U.S. 631, 130 S. Ct. 2549, 2562, 177 L. Ed. 2d 130 (2010). The Supreme Court has cautioned, however, that a "garden variety claim of excusable neglect" by counsel that leads to noncompliance with the limitations period will not constitute "extraordinary circumstances" to warrant equitable tolling. Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96, 111 S. Ct. 453, 112 L. Ed. 2d 435 (1990). In order to obtain relief, a petitioner must show "a causal connection, or nexus, between the extraordinary circumstances he faced and [his] failure to file a timely federal petition." Ross v. Varano, 712 F.3d 784, 803 (3d Cir. 2013); see also Jones v. Morton, 195 F.3d 153, 160 (3d Cir. 1999) (finding that a "misunderstanding of the exhaustion requirement is insufficient to excuse [petitioner's] failure to comply with the statute of limitations").

The Supreme Court of the United States has held that the federal Habeas statute of limitations is subject to equitable tolling. Holland v. Florida, 560 U.S. 631, 648-49, 130 S. Ct.

2549, 177 L. Ed. 2d 130 (2010). Equitable tolling is allowed only if petitioner shows: "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." Id. at 649 (quoting Pace v. DiGuglielmo, 544 U.S. 408, 418, 125 S. Ct. 1807, 161 L. Ed. 2d 669(2005)). "The diligence required for equitable tolling purposes is 'reasonable diligence[,]" but "the circumstances of a case must be 'extraordinary' before equitable tolling can be applied." Id. at 652, 653. There are "no bright lines in determining whether equitable tolling is warranted in a given case." Pabon v. Mahanoy, 654 F.3d 385, 399 (3d Cir. 2011). Rather, equitable tolling is appropriate when "principles of equity would make the rigid application of a limitation period unfair." Miller v. N.J. State Dep't of Corr., 145 F.3d 616, 618 (3d Cir. 1998) (alterations omitted); Munchinski v. Wilson, 694 F.3d 308, 329 (3d Cir. 2012).

REASONS FOR GRANTING THE PETITION

It was at no fault what so ever form the Petitioner that the attorney that his mother had hired Noel Law Office to represent him on his Habeas Corpus Relief and they failed to honor their contract. Petitioner was denied a fair trail as guaranteed in the United States Constitution. Petitioner was denied relief How can all these Courts' deny Petitioner the relief sought? The Prosecution for the State withheld evidence. That evidence would have exonerated Mr. Bagby. The evidence was DNA evidence and two witness DVD"S. Prosecution's obligation to disclose Brady material is contingent upon a showing that the prosecution suppressed or withheld evidence that was exculpatory and material. Moore v. Illinois, 408 U.S. 786, 92 S. Ct. 2562, 33 L. Ed. 2d 706 (1972) and U.S. v. Bagley, 473 U.S. 667, 105 S. Ct. 3375, 87 L. Ed.2d 481 (1985) (regardless of nature of request by defendant, favorable evidence is material, and constitutional error results from suppression by government "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different"). Brady violation is not subject to harmless error analysis. Prosecution properly bears burden of determining whether evidence, including that in possession of police, is material and must be disclosed to defense. Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995) (four aspects of materiality under Bagley: First, reasonable probability of different outcome does not require showing that, more likely than not, defendant would have received different result had evidence been disclosed, but rather that, governmental suppression undermines confidence in the outcome. Second, defendant need not show that, discounting exculpatory evidence in light of suppressed evidence, evidence would not have been sufficient to convict. Third, Brady -Bagley error is not subject to harmless error analysis. Fourth, and finally, effect of suppressed evidence must be considered collectively, not item-by-item).

Evidence that may "undermine" a conviction depends upon the facts of any particular case, and nature of the request for information. The key is whether "the prosecutor's response to [defendant's] discovery motion misleadingly induced defense counsel to believe...the evidence did not exist, possibly causing counsel to abandon independent investigation, defenses, or trial strategies..." Bagley, 473 U.S. at 683. Specific discovery requests would probably meet this standard best. See Pennsylvania v. Ritchie, 480 U.S. 39, 58 n.15 (1987). If Dabrowski would have seen the full DNA file then he would have discovered that; 1) DNA evidence was mis-treated or contaminated and because of the

contamination there was not enough DNA left to re-test. 3) He could have properly questioned the States DNA annalist and discovered that the DNA evidence in question were Bagby's DNA and the Alleged victim was a mixture of one to ten, which meant that it was a one in ten chance it was our DNA mixed together.

Agurs Tests

Prosecutor's failure to disclose "material" evidence may result in reversal of conviction in three different situations. United States v. Agurs (1976), 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342. Specific Defense Request -Might Have Affected Outcome if the defense makes specific request for material that is later shown to be exculpatory (called Brady material), reversal is required if exculpatory evidence "might have affected the outcome of the trial." Brady v. Maryland, 373 U.S. 83, 83, S.Ct. 1194, 10 L.Ed.2d 215 (1963); United States v. Agurs, 427 U.S. 97, at 104, 96, S.Ct. 2392, 49 L.Ed.2d 342 (1976). See also Richard v. State, 269 Ind. 607, 382 N.E.2d 899 (1978); Carey v. State, 275 Ind. 321, 416 N.E.2d 1252 (1981); Talley v. State, 442 N.E.2d 721 (1982). Where defendant's request is phrased in general terms, or where there is no request, prosecutor's duty to disclose is determined by whether the evidence in his possession is so obviously exculpatory that the failure to provide the evidence to defendant denies defendant a fair trial. Hunt v. State, 455 N.E.2d 307 (Ind. 1983). General Request or No Request, "Creates Reasonable Doubt" That Did Not Otherwise Exist. The omitted evidence, as evaluated in the context of the entire record, must create a reasonable doubt that did not otherwise exist. United States v. Agurs, supra, 96 S.Ct. at 2401. Also due to fact that the evidence is missing (believed to be missing) and **THAT THE STATE TRIED TO KEEP BAGBY FROM OBTAINING IT. SHOWS THAT THE EVIDENCE WAS OBVIOUSLY EXCULPATORY.**

Indiana Law (1) Use of Federal Tests to Determine "Materiality" Indiana has applied both Bagley and Agurs on basis of federal constitution. Evidence is material only if there is a reasonable probability that in the event of disclosure the result of the proceeding would have been different. Bellmore v. State, 602 N.E.2d 111, 128 n.6 (Ind. 1992).

The Northern District Court ordered the Petitioner and the Indiana Attorney General to only show cause why the Habeas Corpus Relief should not be dismissed due to timeliness. Petitioner obey that order the District court did not. See Exhibit 15 as that order.

The P.C.R.H. Court and Prosecutor for the State of Indiana hurried Petitioner's counsel which caused her to make errors. See exhibit 5, pgs. 201-203, 207. The rushing caused

Petitioner's counsel to not call witness, Kimberly Bagby, who was at the P.C.R.H. to testify to the truthfulness of two affidavits that were submitted into evidence. The affidavits were part of the evidence that the state later got thrown out dur to the witness not testifying. The hurrying also caused counsel not to properly litigate the Brady violation form the prosecutor at trial. There is very important DNA evidence that was not given to trial counsel.

CONCLUSION

The petition for writ of certiorari should be granted. Due to the miscarriage of justice allowed by the Howard County Prosecutor and the Howard County Superior II court, and Northern District Court, United States 7th Circuit Court of Appeals. Petitioner is innocent of these allogations and humbly request for the SUPREME COURT OF THE UNITED STATES to pleas ego over this matterial. Petitioner is sure he missed a lot, but did the best he could.

Respectfully Submitted,

James T. Bagby

James T. Bagby
Petitioner, *pro se*

Date: APRIL 5th ,2018