

Case No: _____

SUPREME COURT OF THE UNITED STATES

MARK MADISON LOWE - Petitioner,

vs.

HAROLD CLARKE - Director
Dept. of Corrections for
the Commonwealth of Virginia - Respondent

From:

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

In Re: _____

PETITION FOR WRIT OF CERTIORARI

Mark Lowe - 1489162
Deep Meadows Correction
3500 Woods Way
State Farm, VA 23160

QUESTIONS PRESENTED:

1. Whether the imposition of a RACC Stun belt with secret instructions to compel testimony, alter testimony, and remain silent during trial infringed upon and/or violated the Petitioner's rights under the 4th, 5th, 6th, 8th, and 14th

Amendments and is inconsistent with the rudimentary demands of fair procedure.

a. The reviewing court reviews the imposition of stun belts under the abuse of discretion standard, plain error standard, and structural error standard.

There is a presumption of prejudice. U.S. v. Olano, 507 U.S. 725, 731 (1993) and U.S. v. Iglesias, 553 F.3d 150, 159 (3rd Cir. 2008) and U.S. v. Harbin, 250 F.3d 532, 544 (7th Cir. 2001)

2. Whether the trial court violated the petitioner's 6th Amendment rights by unnecessarily forcing him to wear a stun belt during trial; without the establishment on the record (a) the reasons for the severe restraints; (b) facts about the operation and accidental discharge potential of the Stun belt; (c) guidance for the petitioner about the conduct which would precipitate discharge by a sheriff; or the availability of a less severe form of restraints; and the error is not harmless beyond a reasonable doubt.

a. The reviewing court reviews the error under the abuse of discretion standard, plain error, and structural error standard. U.S. v. Olano, 507 U.S. 725, 731 (1993) and U.S. v. Iglesias, 553 F.3d 150, 159 (3rd Cir. 2008) and U.S. v. Harbin, 250 F.3d 532, 544 (7th Cir. 2001)

3. Whether the suppression of impeachment or exculpatory evidence upon request violates due process where the evidence is material either to guilt or punishment, irrespective of good faith or bad faith of the prosecution.

a. The reviewing court reviews the error under the abuse of discretion standard, plain error standard, and structural error standard. U.S. v. Olano, 507 U.S. 725, 731 (1993) and U.S. v. Iglesias, 553 F.3d 150, 159 (3rd Cir. 2008) and U.S. v. Harbin, 250 F.3d 532, 544 (7th Cir. 2001)

4. Whether the Closing statements by the prosecution were improper conduct, a 6th Amendment violation and a reversible error.

a. The reviewing court reviews the error under the abuse of discretion standard, plain error standard, and structural error standard. U.S. v. Olano, 507 U.S. 725, 731 (1993) and U.S. V. Iglesias, 553 F.3d 150, 159 (3rd Cir. 2008) and U.S. V. Harbin, 250 F.3d 532, 544 (7th Cir. 2001)

5. Whether the Commonwealth of Virginia has denied the Petitioner access to the Court and violated the 1st Amendment of the U.S. Constitution.

a. The reviewing court reviews the denial of access to the court under the abuse of discretion standard, plain error standard, and structural error standard. There is a presumption of prejudice. U.S. v. Olano, 507 U.S. 725, 731 (1993) and U.S. v. Iglesias, 553 F.3d 150, 159 (3rd Cir. 2008) and U.S. v. Harbin, 250 F.3d 532, 544 (7th Cir. 2001)

6. Whether the Court denied the right to the assistance of, counsel for the defense during all proceedings and violated the 6th Amendment of the United States Constitution.

a. The reviewing court reviews the error under the abuse of discretion standard, plain error standard, and structural error standard. U.S. v. Olano, 507, U.S. 725, 731 (1993) and U.S. v. Iglesias, 553 F.3d 150, 159 (3rd Cir.2008) and U.S. v. Harbin, 250 F.3d 532, 544(7th Cir. 2001)

LIST OF PARTIES:

MARK MADISON LOWE
STATE 10 - 1489162
Pro Se

Deep Meadows Corrections
3500 Woods Way
State Farm, VA 23160

v.

HAROLD CLARKE - DIRECTOR
Department of Corrections for the Commonwealth of Virginia
Counsel - Craig Stallard Assistant Commonwealth Attorney
202 North 9th St.
Richmond, VA 23219

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LAWS:

28 U.S.C.§ 2254 State custody; remedies in Federal Courts

28 U.S.C.§ 1651 All Writs Act.

5th Amendment of the U.S. Constitution protects a person against being incriminated by his own testimony (1) compelled testimony; (2) being testimony; (3) incriminate the person in criminal proceedings.

6th Amendment of the U.S. Constitution – Due process under the law

8th Amendment of the U.S. Constitution – Cruel and unusual treatment

14th Amendment of the U.S. Constitution- Equal Protection

Virginia Code 2.2-3706

Virginia Supreme Court Rule 5:7 and 5:17

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

Petitioner respectfully prays that a writ of certiorari 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 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 C 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 B 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 B to the petition and is

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

JURISDICTION:

Pursuant to Rule 13 of the United States Supreme Court Rules, this petition is timely. The Appellant received a denial of a Habeas Corpus Appeal from the Fourth Circuit Court of Appeal on the 26th of June 2018. The Appellant seeks a review of the June 26th 2018 final Order. The Supreme Court may entertain a Writ of Habeas Corpus under 28 U.S.C §2254(a).

The Commonwealth of Virginia and the Court have stipulated to a timely petition for Writ of Habeas Corpus. This case originates in the jurisdiction of Chesterfield County Virginia State Circuit Court. The trial took place on August 16-20, 2013. The direct appeal was denied by the highest state court in Virginia on April 18, 2016. The Petitioner filed a timely Habeas Corpus in State and Federal Court. This Court has jurisdiction to decide this case under 28 U.S.C §1651. The All Writs Act imbues this court and prior courts with flexibility.

STATEMENT OF THE CASE:

Prior to the public disclosure of Russian tampering with the Presidential Elections in the United States, the appellant, Mark Lowe, was subjected to an extortion and entrapment attempt by state officers of the court, private individuals, and unknown entities. The group or syndicate required Mark Lowe to exchange sensitive classified information for the life of his child prior to the Presidential Election of 2012.

The Commonwealth Attorney's Office took constructive and material measures to fraudulently conceal the matter before the grand jury, court, and trial jury. The Commonwealth of Virginia used a taser belt in secret against a defendant with a heart weakness and medical condition during trial and testimony. The Commonwealth Attorney withheld Joint Intelligence Bulletins warning law enforcement of the attacks described by the Appellant. The Commonwealth Attorney used fraudulent expert testimony. The Commonwealth of Virginia secreted and/or destroyed evidence searched and seized at the scene of the arrest and incident. The Commonwealth secreted and /or destroyed the Appellant's Pentagon Access Badge prior to trial. The search, seizure, and denial of access to the Appellant's electronics, personal computers, and smart phones, prevented a successful defense.

The decision of the United States District Court conflicts with multiple decisions of this Court and State Court of last resort. The U.S. District Court has departed from the established and accepted course of judicial proceedings.

The District Court has decided an important question which should be settled by this Court. There was no record of the use of restraints or weapons against the petitioner during trial. Neither the Commonwealth of Virginia nor the County of Chesterfield County has a policy or procedure for the deployment and use of taser belts during trial. The use of the devices is arbitrary and imposed without safety precautions. The County Sheriff used a private set of instructions. The instructions were not recorded or included as part of the trial record for review. The Sheriff deleted and destroyed the surveillance video and archive of the surveillance video in the first 30 days.

The petitioner has asserted a subversive set of instructions were used to cause perjury and subvert the very machinery of the judicial process.

The petitioner was a 'model prisoner' as adjudicated by the trial Court (MT/36 June 17, 2014). The petitioner urges the court to identify the use and abuse of a Taser weapon/restraint as imperative to the public under 28 U.S.C §2101. There is no uniformity for the deployment and discretionary use of the weapon under the 6th and 14th Amendment of the United States Constitution. The petitioner has asserted the Taser weapon was used to coerce testimony in violation of the constitution and to fraudulently conceal espionage.

The questions presented to this Court are divisive and touch upon intuitive wrongs; patriotic wrongs; legal wrongs; and fundamental wrongs within our society.

STATEMENT OF FACT:

The law and facts are in dispute. Neither the State Court nor the Federal Court made a determination of facts during the Habeas Corpus or direct appeal.

The petitioner was convicted of five offenses on the 20th of August 2013. Mark Lowe was a party to a custody dispute in the Chesterfield Juvenile and Domestic Relations Court of Virginia. His x-wife was represented by the alleged victim, David DeFazio. (here in identified as DeFazio) On June 21, 2012, Lowe retrieved an Order at the JDR Court which awarded full custody of his daughter to his x-wife. Later, during the day, Lowe went to the office of David DeFazio with a rifle and ammunition. While running behind DeFazio, a shot was discharged from his rifle. The shot from the rifle struck the front of the building and travelled through the office building. [Trial Transcript Volume 1/117-118; 2/82]

Lowe entered the office building and demanded the location of David DeFazio from several workers he encountered (TT2/88-91) DeFazio had already exited the building. (TT1/36). When Lowe concluded that he would not locate DeFazio, he exited the front door and encountered Special Agent Cosby (herein Cosby), a plain closed Officer. (TT2/92) Lowe demanded to be shot by Special Agent Cosby. However, Lowe never pointed his rifle at Officer Cosby. (TT/234-235; 2/92)

After being taken into custody, Lowe did not receive medical care for his injuries to the leg and arm. During the interview, Lowe asserted that DeFazio, his x-wife, and a group of Muslim extremist demanded classified or sensitive information in

exchange for his daughter's life. Lowe's criminal record was spotless prior to the arrest.(TT 2/56)

The Commonwealth Attorney testified in front of the jury and alleged there was 'no threat from Muslims or attacks by the Presidential Election. The Commonwealth Attorney testified and alleged Mark Lowe constructed 'wild theories.' (TT2/188)

In March 2014, ISIL published a kill list for American soldiers or their families. (Exhibit 7) In December of 2014, the Federal Department of Professional Management (herein OPM) disclosed that an unknown entity or group had stolen the names and identities of 21 million Federal Employees. (Exhibit 6) In the time after Mr. Lowe's arrest, there were multiple and separate attacks executed against the Federal Government which collected and/or extracted the information described by Mark Lowe, during the police interview. There was an official policy of denial through the Federal Government.

In 2016, the Russian government interfered with the Presidential Election in the United States. Homeland Security released a joint DHS and FBI bulletin on December 29, 2016 indicating that the Russians have been engaged in espionage of this type for the last 'decade'. (Exhibit 38)

Judge Thomas Warren and Richard Cox, were Special Prosecutors assigned by the Supreme Court of Virginia due to a conflict of interest, hostility to the petitioner, and prejudice. Pursuant to Rule 7A:6 of the Virginia Supreme Court, the trial court is authorized to preserve photographic and electronic records of the trial.

However, the Court allowed the original surveillance recordings and archive recordings to be destroyed within the first thirty days. The Sheriff is required under Virginia law to retain the surveillance records for 5 years.

On March 30, 2017, Clint Watts, former FBI Counter Intelligence Agent, testified in front of the U.S. Senate. The agent asserted that Russian Government and multiple syndicates were 'taking active measures to topple democracies through the pursuit of five complimentary objectives: 1) Undermine; 2) Foment and exacerbate divisive political fractures; 3) erode trust; 4) popularize Russia 5) create general distrust. The technical personnel involved and/or their families have been killed through accident or incident.

Mark Lowe was required to exchange (quid pro quo) a list of military families and children for the life of his child. Mark Lowe was providing Security services to the Department of Defense sub-agency DoDEA prior to his arrests and incarceration.

(Exhibit 11)

PETITION FOR WRIT OF CERTIORARI

Comes Now, Mark Lowe, Pro Se, pursuant to Rule 10(a), (b), and (c) of the Rules of the Supreme Court with a petition for Writ of Certiorari and asserts the following causes of action: The Appellant is unlawfully imprisoned, detained, confined, and restrained from his liberty at Deep Meadows Correction Center 3500 Woods Way State Farm, VA 23160. The petitioner is a citizen of the United States and prior to his detention, he was a resident of Chesterfield County Virginia. The petitioner was employed as a Security Analyst for the Department of Defense. The petitioner worked under a secret clearance in the military, intelligence agencies, Federal Civilian agencies, and commercial locations throughout the United States. The petitioner is now above the age of eighteen and has been actually, unjustly, and unlawfully imprisoned and restrained from his liberty under the color and authority of the State Laws of Virginia. The petitioner was required to exchange sensitive or classified information for the life of his child prior to the 2012 Presidential Election. Court Officer(s) of Virginia engaged in an extortion attempt and took constructive measures to secrete their actions during trial. The earlier "judgment of conviction was flawed in a fundamental respect." U.S. v. Denedo, 129 S. Ct. 2213, 173 L. Ed. 2d 1235(2009)

REASON TO GRANT THE PETITION:

The principal and root error presented in this case is whether the trial court violated the petitioner's 6th amendment rights by unnecessarily forcing him to wear a stun belt during trial without the establishment on the record for the

reason for the severe restraint; facts about the discharge of the device; guidance for the petitioner about the conduct which would precipitate discharge by a sheriff.

PART I

During a post conviction period, Federal Courts may upset a State's post conviction relief procedures only if they are fundamentally inadequate to vindicate the substantive rights provided. Medina v. California, 505 U.S. 437, 446, 448, 112 S. Ct. 2572, 120 L. Ed. 2d 353

The State Court denied the petitioner due process of the law under the 6th amendment. The Commonwealth failed to file a timely response to the petitioner's Habeas Corpus petition in the state Circuit Court of Chesterfield Virginia. The Commonwealth procedurally defaulted.

The petitioner addresses the third threshold question by asserting 4 causes of action and prejudice. (1) The Officer(s) of the Court secretly used force against a petitioner during testimony before a jury. A taser belt was attached to the petitioner's chest as part of a secret tactical plan to coerce testimony. (Exhibit 4)(2) The Commonwealth of Virginia secreted and/or destroyed the appellant's pentagon access badge and relevant identification and/or confirmation of job and professional duties. (3) The Commonwealth withheld 'Brady' material and/or evidence exculpatory and mitigating in nature. (4) The Officers of the Court conducted a secret process in an auxiliary room of the court house. The electronic

recordings of the incidents were destroyed and/or deleted. The archive recording of the incident was destroyed and/or deleted within 30 days. Virginia law requires the Sheriff to maintain a record for 5 years. The trial record available for review is not complete.

The Commonwealth Attorney has asserted that he need not retain or produce 'Brady' material under VA Code 2.2-3706. The State process does not provide for discovery of suppressed information secreted under VA Code 2.2-3706. The state post conviction process is not adequate to vindicate the petitioner.

The Court engaged in a separate pattern of discrimination against the Federal Rights of the petitioner. Brown v. Western R Co. of Ala., 338 U.S. 294, 298-299, 70 S.Ct.105, 94 L. Ed. 100. The purpose of the use of the taser weapon or taser restraint was to evade the constitutional guarantees of rights. Beard. v. Kindler, 130 S. Ct. 612, 358 U.S. 53, 175, L.Ed.2d 417, 78 USLLW 4005

The U.S. District Court failed to come to a published factual conclusion for the errors presented. The petitioner has been prejudicially denied access to the court to enter new evidence, evidentiary hearings, and an opportunity to impeach the testimony and closing argument of the Commonwealth Attorney. Multiple Federal Courts of proper jurisdiction have found that there was a well funded espionage plan to disrupt Presidential Elections for the past decade.

During the year 2012 and 2013, there was an official policy of denial through the Executive Office and Federal Government.

PART II

The Virginia Supreme Court reviewed the question and Federal issue of the unlawful use of a taser belt on April 18, 2016 case No: 15117-1. The petitioner successfully presented the question to the Virginia Supreme Court in the manner required under law. However, the U.S. District Court asserted the petitioner is procedurally barred. The US District Court has sanctioned the petitioner for failing to present the same question multiple times to the highest court in the State. Federal Law does not require this unique deviation from the norm of due process. The Court has required the petitioner to present the same question an indefinite amount of times to the same court. The Petitioner urges this court to reverse the decision. The decision is contrary to law under 28 U.S.C §2254.

The decision of the court conflicts with decision from other jurisdictions and the Fourth Circuit to include:

Jones v. Sussex I State Prison, 591 F.3d 707, 716-17(4th Cir. 2010)
Coleman v. Dretke, 595 F.3d 216, 220(5th Cir. 2004); Amos v. Renico, 683 F.3d 720, 727-28(6th Cir. 2012); McGee v. Bartow, 593 F.3d 556, 567 (7th Cir. 2010);
Rolan v. Coleman, 680 F.3d 311, 318-19(3rd Cir. 2012); James v. Ryan, 679 F.3d 780, 806-07(9th Cir. 2012). The Petitioner has successfully raised the claim in State Court and complied with the requisite procedure for 28 U.S.C §2254.

The US District Court has used a decision from the state habeas corpus process to bar the entire appeal. This Court has held that a "litigant wishing to raise a federal issue can easily indicate the federal law basis for his claim in a state court petition or brief by citing in conjunction with the claim a case deciding such a claim." Baldwin v. Reese, 541 U.S. at 32, 124 S. Ct 1347. The petitioner presented "both the operative facts and controlling legal principles to the state court." Baker v. Corcoran, 220 F.3d 276, 289 (4th Cir. 2000)

The decision of the US District Court and Court of Appeals departs from the normal course of judicial proceedings in such a way to call for an exercise of this Court's supervisory power. The US District Court exercised and abused its discretion in a unique and prejudicial manner. The US District Court has amended the 28 U.S.C §2254 process with a new and unique caveat which is unsupported by law.

The new process used by the US District court has been used as an estoppel and gate keeping mechanism for valid appeals in Virginia. The petitioner has a protected liberty and interest in due process of the law. The procedural safe guards are not adequate to vindicate the petitioner and provide evidentiary hearings.

The Petitioner requests for this court to reverse the decision.

PART III:

The US District Court decision is in conflict with Armstrong v. the Village of Pinehurst , 1191 published (4th Cir. 2015) The 4th Circuit Court of Appeals

decided a taser is "a weapon designed to cause excruciating pain." Cavanaugh v. Woods Cross City, 625 F.3d, 661, 665(10th Cir. 2010) The 4th Circuit Court of Appeals has required that there be an exigent and/or emergency circumstance prior to the deployment and use of a taser weapon.

In this case, the weapon was used as part of tactical plan to alter testimony of the petitioner. The use of the weapon is a plain error, structural error, egregious violation of a right to a fair trial, and subversive. There is a cumulative weight of evidence that a subversive plan existed and ran in parallel to the court proceedings.

The decision of the US District court to deny the Habeas Corpus Petition is in conflict with: Taylor v. Ky., 436 U.S. 478,488 n.15 (1978); Breakiron v. Horn, 642 F.3d 126, 131-32 + n.5(3rd Cir. 2011); U.S. v. Delgado, 631 F.3d 685, 710-11(5th Cir. 2011); U.S. v. Wallace, 848 F.2d 1464,1475(9th Cir. 1998); U.S. v. Dispoz-O Plastics, Inc., 172 F.3d 275, 286(3rd Cir. 1999); U. S. v. Ridlehuber, 11 F.3d 516, 523-24(5th Cir. 1993); U.S. v. Thomas, 321 F.3d 627, 637(7th Cir. 2003); U.S. v. Perlaza, 439 F.3d 1149, 1171 (9th Cir. 2006); Romine v. Head, 253 F.3d 1349, 1369-70(11th Cir. 2001)

The error identified herein is a cognitive error and opens the final verdict to collateral attack. The petitioner request a denovo review of the questions presented to the court and the improper use of a taser weapon.

The improper curative instructions given by the Chesterfield Circuit Court constitute a plain error. During the case and prior to sentencing, the state trial

court gave improper curative instructions after the disclosure of the subversive actions of Officer(s) of the court. There was no emergency or security related incident which required the addition of shackles and a taser belt. The actions of the court were conducted under the color of law.

The Commonwealth of Virginia has the responsibility for "proving beyond a reasonable doubt the restraints did not contribute to the obtained verdict." Deck v. Mo., 544 U.S. 622, 628(2005) The Commonwealth has not proven the facts. The petitioner has been denied an evidentiary hearing in state and federal court.

The Federal Courts are responsible for enforcing the concept of "No state shall deprive any person of life, property, without due process of the law." U.S. Constitution 14§1 The Constitutional clause imposes procedural limitations on the State of Virginia and its power to take away protected liberty and entitlements see e.g. Jones v. Flowers, 547 U.S. 220, 226-239 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006)

The Commonwealth has asserted a shield and buckle of secrecy and security around the subject matter of misconduct and the taser weapon. In the Chesterfield County Court, the Taser weapons or belt is not applied to individuals who have run from the police, attempted suicide, and/or other adverse conditions. The shackles and Taser are applied without the benefit of a hearing, policy, procedure,

or law which governs the use and deployment. The device is applied prejudicially. The petitioner has a fundamental interest in being free of coercive tactics or devices while testifying before a jury. "An interest is fundamental for the purpose of substantive due process analysis if it is objectively deeply rooted in this Nation's history and traditions." Washington v. Gulcksberg, 524 U.S. 702, 720, 117 S.Ct. 2258 138

The Sheriff's Officer(s) applied the taser belt in an auxiliary room in the court house. The Sheriff's Officer(s) also used time in the auxiliary room to break the petitioners arm in two and grind the pieces together. The room and process is used for torture. The petitioner urges the court to recharacterize all taser devices as weapons. Restraints do not kill. The taser belt can be lethal.

PART IV:

The Commonwealth Attorney failed to disclose evidence "favorable to the accused." The evidence suppressed by the Commonwealth Attorney was willfully destroyed, altered, or secreted. Prejudice ensued during the State trial and Federal Habeas corpus.

The decision of the District Court is contrary to: U.S. v. Bagley, 473 U.S. 667, 676 (1985); U.S. v. Aviles-Colon, 536 F.3d 1,20 (1st, Cir. 2008); U.S. v. Triumph Capital Group Inc., 544 F.3d 149, 162 (2nd Cir. 2008); Wilson v. Beard, 589 F.3d 651, 660-62(3rd Cir. 2009); Monroe v. Angelone, 323 F.3d 286, 300 (4th Cir. 2003); Banks v.

Thaler, 583 F.3d 295, 311(5th Cir. 2009); Robinson v. Mills, 592 F.3d 730, 737 (6th Cir. 2010); U.S. v. Bland, 517 F.3d 930,934 (7th Cir.2008); U.S. v. Cazares, 465 F.3d 327, 333-34(8th Cir. 2006) ; Gonzales v. McKune, 247 F.3d 1066, 1077(10th Cir. 2000); U.S. v. Johnson, 592 F.3d 164 172 (D.C. Cir 2010).

The Commonwealth of Virginia withheld the following evidence:

- A) The Commonwealth failed to disclose the search and seizure of the pentagon access badge in Exhibit 31, 32, and 33.
- B) The Commonwealth used a Motorola replica phone during trial. Pursuant to the Chesterfield forensic report the actual phones were Blackberry's.
- C) The Commonwealth withheld the trajectory and forensic report of the bullet.
- D) The Commonwealth withheld 911 reports, records, and calls.

The incident lasted less than 3 minutes. However, witnesses were allowed to testify to a 20-30 minute incident.

- E) The Commonwealth withheld statements made by Celeste Morris to first responders.
- F) The Commonwealth withheld communication to and from the Capital Police Dept. The Commonwealth developed multiple versions of the same incident. The Petitioner was not allowed to impeach

any witnesses in state trial.

G) Lt. Tricia Powers of the Virginia State Police stipulate to withholding evidence retained by the Virginia State Police.

(Exhibit 72)

H) The Commonwealth Attorney withheld Joint Intelligence Bulletins distributed to all law enforcement personnel.(Exhibit 14,16,37, 38).

I) The Henrico Police stipulated to withholding evidence. (Exhibits 28 and 29)

J) The Commonwealth withheld the petitioner's FBI Human Resources Report. The report identifies the petitioner as an expert in computers, accounting, and law. (Exhibit 76)

The Commonwealth of Virginia secreted and/or destroyed all investigative reports of extortion and money laundering. Mark Lowe reported the improper accounting, money laundering, and extortion to the Henrico Police Department, State Police of Virginia, and FBI. Money was returned to the petitioner. However, the opposing parties escalated and made death threats. The petitioner request a denovo review of the plain and structural error. The errors were committed in an effort to subvert the very machinery of the Court. The Commonwealth Attorney compromised the integrity of the §2254 process.

PART V:

Mark Lowe stopped a planned and targeted attack on Federal employees, military families, and/or others as a result of his sacrifice.

The decision of the U.S. District court conflicts with: Keeney v. Tamayo-Reyes, 504 U.S. 1, 11, 12(1992). The sustained conviction would result in a miscarriage of justice. The petitioner requests for this court to reverse the decision. The decision to deny an evidentiary hearing is also in conflict with the following decisions from other jurisdictions: Williams v. Taylor, 529 U.S. 420, 437(2000); Pike v. Guarino, 492 F.3d 61, 69 (1st Cir. 2007); Drake v. Portuondo, 321 F.3d 338, 347(2d Cir. 2003); Han Tak Lee V. Glunt, 667 F.3d 397, 406 (3d Cir. 2012); Winston v. Pearson, 683 F.3d 489(4th Cir. 2012); Hall v. Quartermon, 534 F.3d 365, 367-69(5th Cir. 2008); Robinson v. Howes, 663 F.3d 819, 824-25(6th Cir. 2011); Dalton v. Battaglia, 402 F.3d 729, 736 (7th Cir. 2005); Simpson v. Norris, 409 F.3d 1029, 1035(8th Cir. 2007); James v. Ryan, 679 F.3d 780 (9th Cir. 2012); Barkell v. Crouse, 468 F.3d 684, 694-95 (10th Cir. 2006).

A parallel investigation impeached the testimony of Richard Cox, Commonwealth Attorney and Special Prosecutor. Mark Lowe was forced to act out of character to protect his child. The U.S. District Court has jurisdiction to "decide state prisoner's habeas corpus petition "as law and justice require." Quimette v. Moran, 942 F.2d 1,13 (1st Cir. 1999) The District Court has jurisdiction to allow the unconditional release of the petitioner because of due process violations resulting from prosecutorial "cover-ups" and censorship. see also Willette V. Fischer, 508 F.3d 117, 122-23(2d Cir. 2007) and Henderson v. Frank, 155 F.3d 159, 171-72(3d Cir.

1998). The Department of Corrections censored mail to and from the Court and the Justice Department.

PART VI:

During closing arguments, the Commonwealth prosecutor alleged Mark Lowe developed "wild theories" of extremist groups attempting to acquire the names and address(s) of government employees for targeted attacks. The assertions by the Prosecutor, Richard Cox, went beyond the clerk's record and were false. Boyd v. French, 147 F.3d 319, 328-329 (4th Cir. 1998). The Commonwealth Attorney suppressed Joint Intelligence Bulletins warning of a planned attack and participated in misconduct. The full case could not be developed until a special prosecutor was assigned by Congress and additional information was released to the public. The Court violated the petitioner's due process rights under the 6th Amendment and equal protection under the 14th Amendment of the U.S. Constitution.

The U.S. District Court decision is in conflict and contrary to Kyles v. Whitley, 514 U.S. 419, 453 (1995); Brady v. Maryland, 373 U.S. 83, 87 (1963); Quimette v. Moran, 942 F.2d 1, 9-11(1st Cir. 1991); Simmons v. Beard, 590 F.3d 223, 238 (3d Cir. 2009); Rerce v. Thaler, 604 F.3d 197, 211-12(5th Cir. 2010); Kincade v. Sparkman, 175 F.3d 444, 446 (6th Cir. 1999); Toliver v. McCaughtry, 539 F.3d 582, 589-90(7th Cir. 2008); Weaver v. Bowersox, 438 F.3d 832, 840-41 (8th Cir. 2006)

The Circuit Court judge made a special notation during sentencing and commented that there was no espionage or planned attack. Pursuant to 28 U.S.C §2254(2) the applicant failed to develop the full factual basis of the claim in state court. The Commonwealth fraudulently deceived the state and federal courts.

A parallel investigation developed evidence of extrinsic fraud while this case was being appealed to the Fourth Circuit. The errors in this case, "worked to actual and substantial disadvantage and infected his entire trial with error of constitutional dimensions." McCarver v. Lee, 221 F.3d 583, 389 (4th Cir. 2000)

PART VII:

In 2013, the Commonwealth Attorney created a cover story and alleged Mark Lowe was delusional. A forensic psychologist who worked for the State Police testified falsely. The psychologist concealed the documents and records which warned of a syndicate or joint attack during the Presidential Election. The Department of Correction reviewed Mark Lowe and observed Mark Lowe for over 3 years and found no deviant behavior.

Mark Lowe was forced to release the false psychologist statement in secret by threat of death through electrocution by taser. The taser device was attached to the petitioner's body in an auxiliary location with secret instructions. The instructions were given under threat of death by taser. The decision of the US District Court is in conflict with: U.S. v. Kasenge, 660 F.3d 537, 541-42 (1st

Cir. 2011); U.S. v. Batista, 684 F.3d 333, 342-43(2d Cir. 2012); U.S. V. Lee, 612 F.3d 170, 194-96(3rd Cir. 2010); U.S. v. Powell, 680 F.3d 350, 358 (4th Cir. 2012); and U.S. v. Grant, 683 F.3d 639, 649(5th Cir. 2012)

The Petitioner requests for this court to reverse the decision. The petitioner requests for this court to narrow the time, place, location, and conditions under which the court can impose restraints or use weapons against a person while they testify in front of a jury. All taser weapons are deadly and should be characterized by the courts as a weapon and not a restraint. The weapon in this case, was used to stop contemporaneous objections and stopped communications with the petitioner's attorney. There were no threats to security or cause of action to employ the weapon/restraint.

It is impossible to vindicate myself in the ongoing conspiracy and espionage under the conditions described. The Petitioner has met the established standard to proof of danger during testimony, in the event of failure to comply with the complisary instructions of the Sheriff. Mitchell v. U.S., 526 U.S.314, 326(1999) and Hoffman v. U.S., 341 U.S.479, 486-87(1951).

PART VIII:

The Court denied access to an attorney after the petitioner gave notice of the subversive use of a taser belt weapon/restraint during testimony. The petitioner was forced to file a Motion for Mistrial and a Motion to Set Aside without the assistance of counsel. (Exhibits 1, 2, 3) The denial of access to legal counsel is a due

process violation under the 6th and 14th amendment to the United States Constitution. As an unaided laymen, Mark Lowe had a right to counsel under the 6th Amendment during the sentencing procedure. The Counsel assigned, refused to work or review the case. This court has found a constitutional error when counsel was totally absent or prevented from assisting. McNeil v. Wis., 501 U.S. 171, 175 (1991); Satterwhite. v. Tex., 486 U.S. 249, 256 (1958); see also U.S. v. Cronic, 466 U.S. 648, 659 n.25 (1984)

The petitioner need not show prejudice. There was no waiver of counsel during sentencing. The Dept of Corrections searched and seized all attorney client communications during the transfer from regional jail. The errors in this case are clear and require reversal. The petitioner was forced to move forward without counsel.

The Constitution of the United States was intended to be a granular protection for individuals like myself during crises such as this. The Court has not enforced the protections and entitlements of the Constitution. The Russian/American's have killed direct parties involved or family members involved in espionage at this level.

Prior to the incident of Mark Lowe's arrest, the Commonwealth Attorney assisted in the collection of kickback payments and financial pressure on the petitioner. The Petitioner reported the crimes to the Henrico Police, Chesterfield Police, Virginia State Police, and FBI. The Commonwealth refunded the monies taken unlawfully. However, the parties escalated to death threats. The records were

withheld from the review by the Court or Jury by the Commonwealth Attorney. The current censorship standard at the Dept of Corrections limits the receipt of mail in excess of three pages.

The Commonwealth has denied access to the court. The post conviction process is required to comport with the demands of due process. Evitts v. Lucey, 469 U.S. 387, 393, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985) Under the current censorship program, the Dept of Corrections has denied access to mail to and from the Justice Dept of the United States. The policy is arbitrary.

PART IX:

The Commonwealth Attorney failed to make a timely response to the 'Show Cause Order' during the state habeas corpus process. The Commonwealth procedurally defaulted. In an evasive process, the State Court reversed the procedural default and sanctioned the petitioner for no cause of action (Exhibit 34). The decision is in conflict with Hawk v. Olson, Supra 326 U.S. 271-279(1945) and Morris v. Smith 1461, 120 S.E.2d 465, 202 VA 283. The well pleaded allegation of the Petitioner should have been accepted as true. The law has been well established and settled for more than 70 years. However, the District Court deviated. The Court violated the due process clause 6 of the Amendments to the Constitution.

In 2013 during State trial, the Court, the Jury, and the public had no reason to believe the allegations of conspiracy. In 2018, the facts have eclipsed the

conspiracy and the petitioner is entitled to relief. The failure of the court to protect the petitioner under the 14th Amendment exposed the infrastructure of the U.S. to additional attacks and espionage. The petitioner was one of many layers of redundant security compromised through corruption. The Court violated the petitioner's 5th, 6th, 8th, and 14th Amendment rights during State and Federal process. The Court Officers believed their actions would adversely affect one of the parties in the race for President.

PART X:

The VA Code 8.01-655 does not require the Petitioner to make a statement in compliance with Virginia Supreme Court Rule 5:17. Rule 5:7 of the Virginia Supreme Court Habeas Corpus does not require the petitioner to make a statement in compliance with Rule 5:17. The instructions published for Pro Se prisoners by the Commonwealth Attorney's Office do not require the Petitioner to make a statement in compliance with Rule 5:17. However, the Virginia Supreme Court uses Rule 5:17 as a 'gotcha' clause for Pro Se prisoners. The Habeas Corpus petitions are dismissed without consideration of merit. The Habeas Corpus petition is dismissed for failure to comply with procedure. The Virginia Habeas Corpus process is not and does not provide Pro Se prisoners with an opportunity for vindication. The Court violated the petitioner's due process rights under the 6th Amendment.

During the Federal Habeas Corpus process, the court refused to process the petitioner's §1983 claim. The Court violated the petitioner's due process rights again. There is a pattern and cumulative weight of evidence which indicates deception and denial of constitutional rights. The syndicate took all necessary steps to deflect, deceive, and deny espionage until their success was exposed in 2016.

RELIEF REQUESTED:

A) The petitioner request for this court to reverse the following convictions from the August 13-20, 2013 trial:

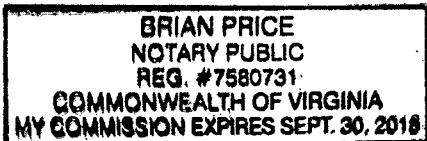
- 1) CRF1300859-01 Attempted Murder**
- 2) CRF1300859-02 Use of Fire Arm in the Commission of a Felony**
- 3) CRF1300859-03 Abduction**
- 4) CRF1300859-04 Use of a Fire Arm in Commission of a Felony**
- 5) CRF1300859-05 Discharge of a Fire Arm into a building**

B) Reverse Case number 3:17cv0292 of the US District Court -Richmond

C) Reverse Appeal No 18-6090

CONCLUSION:

Wherefore, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court directed to the United States District Court for the Eastern Division of Richmond, commanding said court to certify and send up to this court on a day designated a full and complete transcript of the record and of all proceedings in the district court, to the end that this case may be reviewed and determined by this Court; that the Order of the District Court be reversed; that the complaint herein be granted; and that your petitioner be granted such other and further relief as may appear proper.



Brian Price 07-19-2018
Powhatan County, VA.

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July 19, 2018