

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

John Richard Tarquard — PETITIONER
(Your Name)

vs.

State of Arizona — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ARIZONA STATE SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOHN RICHARD TACQUARD
(Your Name) ADC# 071238
ASP - DOUGLAS/GIDA UNIT
P.O. DRAWER 3867
(Address)

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(City, State, Zip Code)

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QUESTION(S) PRESENTED

1. Did Arizona State Trial Court, Maricopa County Superior Court Commissioner Richard L. Nothwehr, commit intentional judicial errors historically at trial and in Evidentiary Post-Conviction Proceedings citing "Trial was fair and complete," when in fact was NOT, supported by the record established in presence of trial court - physical evidence and material facts of actual innocence was suppressed from trial as substantial prejudice violating Due Process requirements to unacceptable Federal Constitutional Standard?
2. Did Arizona State Reviewing Courts refuse to determine...: trial court's intentional Plain Error abuses of discretion to the perjurious ruling proven by the court record establishing trial was Not fair Nor complete where State trial prosecutor admitted to trial court suppressing physical VIN plate evidence in states custody and Detective Winston Brown's independent collection and investigation into the VIN plate linked to a legal title; PREVENTING appropriate Court action required by Due Process, Confrontation and Compulsory Process, and Equal Protection of the Law Clauses in the United States Constitution and citations of U.S. Supreme Court precedent?
3. Does the factual circumstances of this cause presented and supported by the exhibited records provide the United States Supreme Court jurisprudence to enforce corrective legal precedent that will hold State Courts accountable, or be sanctioned accordingly, as a result of improprieties alerted to and Court inaction of clear substantial fundamental concern violative of United States Supreme Court Precedent and United States Constitution provisions?

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:

Maricopa County Superior Court;
Hon. Richard L. Nothwehr,
Commissioner of the Superior Court
For the State of Arizona in and
for the County of Maricopa;
Maricopa County Attorney's Office;
DCA. Jeffrey R. Duvendack,
Arizona State Court of Appeals;
Arizona State Supreme Court;
Respondents;

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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 _____ 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 _____ 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 A to the petition and is

- ☒ reported at No CR-18-0049 PR; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Arizona Appellate court appears at Appendix A-1 to the petition and is

- ☒ reported at No 1-CA-CR-16-0393; 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 _____.

☐ 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: _____, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 06/12/2018.
A copy of that decision appears at Appendix A.

☒ 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 PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

FIFTH AMENDMENT

No person... shall be deprived of life, liberty or property without due process of Law.

SIXTH AMENDMENT

In all criminal prosecutions the accused shall enjoy the right... to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the (effective) Assistance of Counsel for his defense.

FOURTEENTH AMENDMENT

Section 1. 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.

ARTICLE III

Section 1. The judicial power of the United States shall be vested in One Supreme Court.

Section 2 ¶ 1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution and the laws of the United States... which shall be made under their authority; to all cases... and controversies... between a State, or the citizens thereof.

ARTICLE VI

[2] This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

FEDERAL RULES OF EVIDENCE

103 (c) Taking Notice of Plain Error. A court may take notice of Plain Error affecting a substantial Right, even if the claim of error was not properly preserved.

201 Judicial Notice of Adjudicative Facts:

(c) Taking Notice. The Court:

(2) must take judicial Notice if a party requests it and the Court is supplied with the necessary information

USC. 18 § 242 Deprivation of Rights Under Color of Law.

USCA. 28 § 1257 State Courts; Certiorari

STATEMENT OF THE CASE

Arizona State, Maricopa County Superior Court No. CR2012-133963-001 is One Count Theft of Means of Transportation Class 3 Felony taken to trial 09/03/2013 through 09/05/2013, guilty verdict rendered by a jury, 11.25 years prison term imposed.

Petitioner had borrowed a jeep grand Cherokee from David Elmore, friend of 15 yrs at that time, whom informed the Petitioner that he had purchased the vehicle from some girl and was awaiting a title - title was in process to remove lien hold as the vehicle was collateral on another parties bond - Elmore had a bill of sale stored in the glove box of the jeep, Petitioner borrowed the vehicle.

Petitioner was pulled over by Phoenix Police in the parking lot of Petitioner's hotel.

Petitioner was informed by police that the vehicle was stolen, Petitioner was not so forthcoming when asked where he got the vehicle from - "friend of a friend."

Petitioner's moralistic operandi, as stated at trial, He can't just give up his friend until a face to face agreement for him to come forward - of his own choice - and explain the situation.

Mr. Elmore did come forward prior to trial in a telephonic conference with trial prosecutor DCA Darendark that was recorded and notes were taken (RT 09/04/2013 pg 20 lines 16-25; see EXHIBIT C-2) that was confirmed destroyed (Pre EH State's response to compel Elmore recorded interview 12/08/2015 "this interview was unable to be located" see EXHIBIT D-3) and DCA Darendark admits to no recollection of interviewing Elmore (E.H. 03/25/2016 pg 114 @ 23-25; pg 115 @ 1-19 - EXHIBIT C-1)

Elmore did not testify at trial as a result of Limone State favored Court decision revisited 09/04/2013 @ pg 10, 16 - Court deems Elmore irrelevant pg 23 @ 19-20 (EXHIBIT C-2)

Petitioner was asked by officer Lence at the PPD substation after receiving a phone call from an scene officer and asked

What was used to start the vehicle?

Pettanor's response was "a piece of a broken key should be on the floor board somewhere."

Officer Lence falsely claims Pettanor said a "screwdriver" or "screwdriver type tool".

No screwdriver(s), tools nor piece of a broken key were collected, therefore not preserved - no physical evidence in support.

The next day 06/27/2013 officer Winston Brown found a VIN plate mounted on the dashboard of the jeep grand cherokee was linked to a legal title for a jeep grand cherokee registered to a Chanele Pauley - title in process no prior plates.

The VIN plate was removed by officer Brown and impounded as evidence - see Brown #4833 report attached to trial court post conviction (Rule 32 ARCP) pro-Rex Petan (EXHIBIT B-7) & Winston Brown #4833 and physical VIN-plate evidence was suppressed from Pettanor's trial and state limine proceedings on the bill of sale preclusion of testimony from defense, where VIN-plate supports existence of bill of sale and legitimate alternate ownership. (see DCA Duvendack testimony at E.H. 03/25/2016 pgs 103; 104; 105; 106; 109-112 - EXHIBIT C-1)

Q...this is the first time you've actually seen one (VIN plate) taken off and brought into court? (id 109@24-25)

Duvendack: "Yes, unless a case agent brought one into court that I didn't use as an exhibit, but I don't remember ever using one as a State's exhibit at trial." (id pg 110@1-3)

Duvendack admits to handling "many--hundreds of auto theft cases (id pg 109@12-13)

Also should be emphasized DCA Duvendack did recall a bill of sale or title bill of sale that was found in the vehicle (id E.H. pg 116@16-25; pg 117@1-18 / EXHIBIT C-1)

The Evidentiary Hearing was conducted by trial court Commissioner Richard L. Mathewehr and heard all testimony from DCA Jeffrey Duvendack.

05/23/2016 Commissioner Mathewehr's UNDER ADVISMENT

RULING (EXHIBIT C) Precluded DCA Duwendack testimonial facts; cited pg 2 ¶. 5 "The screwdrivers were impounded"

¶ 7 "Investigating officers did not impound a specific screwdriver or other item which allegedly was used to start the vehicle"; pg. 4 (2nd unnumbered paragraph) cited "As noted above, the trial was fair and complete." "two screwdrivers appear to have been kept in evidence by the prosecution."

INTENTIONAL JUDICIAL ERROR COMMITTED

Petitioner filed pre-evidentiary hearing motions to compel Elmore recorded interview and production of state's vin plate evidence with sanctions upon state's failures that remain outstanding with NO court ruling from Superior Court - resubmitted to the Arizona Supreme Court - as per ARS Const. Art. 6 § 21 provides the speedy disposition - Motions not ruled on by Arizona Courts to date. (EXHIBIT D-1 through D-7)

Should emphasize 'Advisory Counsel' McEachern (PCR) alerted Commissioner Nothwehr at Status Hearing (01/19/2016) that proper motions filed are to stand - Nothwehr nodded in agreement yet said NOT ONE WORD ON THE RECORD IN HIS COURT. (proceeding video will confirm - Petitioner not provided with that particular record)

Petitioner made request for production of Evidentiary Hearing transcripts 05/25/2016 1st request unanswered by trial Court - Nothwehr - and 2nd and 3rd request denied; Four more requests to Superior Court judges Danielle Viola denied; Eighth request to Arizona Court of Appeals provided to 'Advisory Counsel' McEachern, then mailed to Petitioner 1 year from 1st requests (EXHIBIT E)

Advisory Counsel McEachern intervened and filed an incomplete Petition for Review (Rule 32.9(c)) in Arizona Court of Appeals No. 1 CA CR 16-0393 PCR, where Petitioner, as established pro per litigant in PCR proceedings, attempted to

assert the proven claims by submitting:

- (B-4) MOTION TO PRESERVE ISSUES - Az. Ct. App. DENIED
- (B-5) SUPPLEMENTAL PETITION FOR REVIEW - Az. Ct. App. STRICKEN
- (B-6) Interlocutory Writ - Az. Ct. App. DENIED
- (B-7) Re-raised in MOTION FOR RECONSIDERATION - Az. Ct. App. DENIED
- (EXHIBIT - B contains All State Court Petitions)
- (EXHIBIT - A contains All State Court Decisions)

Petitioner filed Special Action Petitions in Superior Court Maricopa County No CR2012-133963-001 DT; Arizona Court of Appeals No. 1CA-SA 17-0166; Arizona Supreme Court No. M-16-0051 (EXHIBIT-B 8); DENIED or Dismissed by the Arizona Courts (EXHIBIT A 5)

Petitioner filed a state Habeas Corpus in Arizona Supreme Court No. HC 17-0016 (EXHIBIT B 2); Dismissed due to Rule 32.9(g) Petition for Review availability (EXHIBIT A-2)

PRIOR TO POST-CONVICTION PROCEEDINGS

Arizona Court of Appeals No. 1CA-CR 13-0916 (EXHIBIT A 6)
Presiding Judge John C. Gemmill dissents against majority recognizing trial court error - Direct Appeal (pgs 8-9)

- Judge Gemmill was not on second round panel -
- Kenton D. Jones sat in on both Direct Appeal and PCR review -

Arizona Supreme Court No. CR-15-0349 PR (EXHIBIT A 7)
Vice Chief Justice John C. Pelander voted to grant review
- Justice Pelander also excluded from PCR consideration -

FINALITY OF ARIZONA SUPREME COURT

Petitioner alerted State Supreme Court to Judicial and Prosecutorial improprieties in prose Petition for Review No. CR 18-0049-PR (EXHIBIT B)

Arizona Supreme Court DENIED June 12, 2018 (EXHIBIT A)
Petitioner timely files for Certiorari in United States Supreme Court exhibiting unreasonable state court decisions in a manner unacceptable to Supreme Authority standard.

REASONS FOR GRANTING THE PETITION

THE UNITED STATES CONSTITUTION

Article III

Section 1. The Judicial Power of the United States shall be vested in One Supreme Court.

Section 2. The Judicial Power shall extend to all Cases, in law and equity, arising under this Constitution and the Laws of the United States... which shall be made under their Authority; to all Cases... and Controversies... between a State, or the Citizens thereof.

Article VI [2] This Constitution, and the Laws of the United States which shall be made in pursuance thereof and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Provides the jurisdictional structure for the Supreme Court to enforce the law and strike Arizona State Courts unconstitutional decisions and treatment in this cause.

FIFTH AMENDMENT

No person... shall be deprived of life, liberty or property without due process of law.

SIXTH AMENDMENT

In all criminal prosecutions the accused shall enjoy the right... to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the (effective) Assistance of Counsel for his defense.

FOURTEENTH AMENDMENT

Section 1. 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.

EXCEPTIONAL CIRCUMSTANCES EXIST THAT WARRANT EXERCISE OF SUPREME COURT DISCRETIONARY AUTHORITY TO CORRECT STATE COURTS DERIVATION OF RIGHTS THAT DENIED EQUAL PROTECTION OF THE LAW GUARANTEES AND DUE PROCESS OF LAW VIOLATIONS.

FEDERAL RULES OF EVIDENCE

Rule 103(e) Taking Notice of Plain Error. A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.

The wording of the plain error principle is from Rule 52(b) of the Federal Rules of Criminal Procedure. While judicial unwillingness to be constructed by mechanical breakdown of the adversary system has been more pronounced in criminal cases, there is no scarcity of decisions to the same effect in civil cases. In general see Campbell, *Extent to which Courts of Review will Consider Questions Not Properly Raised and Preserved*, Wis. L. Rev. 652 (1951).

RULE 201 Judicial Notice of Adjudicative Facts.

(C) Taking Notice. The Court:

(2) must take judicial notice if a party requests it and the Court is supplied with the necessary information.

(d) Timing. The Court may take judicial notice at any stage of the proceeding.

Note: The taking of judicial notice is mandatory under subdivision (d), only when a party requests it and the necessary information is supplied.

Compare Uniform Rule 9 making judicial notice of facts universally known mandatory without request, and making judicial notice of facts generally known in the jurisdiction or capable of determination by resort to accurate sources discretionary in the absence of request but mandatory if request is made and information furnished.

PETITIONER HEREIN ASSERTS REQUEST TO JUDICIAL NOTICE OF ADJUDICATIVE FACTS PRESENTED HERewith TO BE DETERMINED BY THE UNITED STATES SUPREME COURT.

(e) Opportunity to Be Heard. On timely request a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the Court takes judicial notice before notifying a party, the party on request, is still entitled to be heard.

Supreme Court Rule 28 Oral Argument

Where Appointment of qualified Counsel will be required and telephonic appearance from institution of confinement ordered, Ample protection and flexibility are afforded by the broad provision for opportunity to be heard on request set forth in subdivision (e).

Unless this Court takes notice of the plain errors to the adjudicative facts, where all necessary information submitted in exhibits for a fair determination, oral argument may be required to answer any questions this judiciary deems necessary for clarification, with allotted time to prepare

counsel to the circumstances of this cause.

This is a prima facie evidence where Arizona State Courts and prosecution have run a muck to the apparent disregard for Constitutional and Supreme Authority legal precedent of the United States.

In considering the question it is the United States Constitution we are expounding as the document that encompasses the guidelines of this nation and the judicial system mandating specific Rules of Law to fundamental safeguards that are not to be denied nor disparaged.

The principle of Supreme Court judicial review is to invalidate the unconstitutional decisions by state courts that violate the rights of the Petitioner, and assert corrective measures accordingly to law preventing further occurrences in other cases as well as the continuation in this cause to essential fundamental rights being violated.

No judiciary can violate the Constitution, Nor excuse improprieties committed with impunity under the color of law this case displays by Arizona State Courts.

U.S.C 18 § 242 Deprivation of Rights Under Color of Law.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State... to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States... shall be fined under this title or imprisoned not more than one year or both.

The precedent of this case requires checks and balances pursuant to U.S. Constitution Article VI § 2 Supremacy Clause that establishes the power of this Court to overrule State Court decisions in order to maintain a consistent system of laws.

Authority of the United States, shall be the Supreme Law of the Land; and the judges in every State shall be bound thereby. The Constitution is in fact, and must be,

regarded by state judges as fundamental law.

The Supreme Court may strike down any determination it concludes as unconstitutional, and impose sanctions and Rules for state courts to abide by, including but not limited to, disqualification or impeachment proceedings as a result from the intentional and continuation of deprivation of essential Constitutional Rights by State Courts acts and omissions bringing the judiciary into disrepute upon state courts refusal to rule appropriately.

U.S. Supreme Court platform is set to enforce Precedent.

The Petitioner has persistently alerted Arizona State Courts, Trial and Reviewing, to the unconstitutional State's suppression of evidence aimed at preventing acquittal and supports the Petitioner's actual innocence; remains outstanding to date.

There has been judicial recognition of trial court error on direct appeal where Judge John C. Gemmill dissents in Arizona Court of Appeals No. 1 CA-CR13-0916 (EXHIBIT A-6) on pages 8-9 quoting "that the trial court erred in sustaining the state's objection when Tacquard attempted to testify that D.E. had told him the jeep was legitimate and there was a bill of sale in the glove box. This evidence was not hearsay because it was offered as evidence of Tacquard's state of mind. Because Tacquard's defense was that he neither knew nor had reason to know that the jeep was stolen, the evidence was crucial. The majority errs, I respectfully submit, by deciding the erroneous exclusion of this evidence was harmless beyond a reasonable doubt."

"This wrongly excluded evidence went to the heart of Tacquard's defense: that he did not knowingly control another person's means of transportation." end quote.

Gemmill quoted *Bollenbach v. United States*, 326 U.S. 607, 615 (1946) (From presuming too often all errors to be "prejudicial," the judicial pendulum need not swing to presuming all errors to

11.

be "harmless" if only the appellate court is left without doubt that one who claims its corrective process is, after all, guilty. In view of the place of importance that trial by jury has in our Bill of Rights, it is not to be supposed that Congress intended to substitute the belief of appellate judges in the guilt of an accused, however [] justifiably engendered by the dead record, for ascertainment of guilt by a jury under appropriate judicial guidance, however cumbersome that process may be.)

Arizona Supreme Court vice chief justice John Pelander voted to grant review in No. CR-15-0349 (EXHIBIT A-7)

The rational review of two reviewing court judges, Gemmill and Pelander, were not included in further review in Post-Conviction (Rule 32 ARCP) decisions where the Petitioner establishes further prejudicial acts and omissions of trial prosecutor and trial judge ON THE RECORD, is unfair to appropriate judicial advocacy where the nay saying judges did participate precluding any positive influential decisions by rational judges is depriving in and of itself to fairness of appropriate review.

This promotes a full negative assestion from the state courts, in concert with perjerous Trial Court determinations, allowing unfavorable and unconstitutional decisions to proceed on a negative note to federal review further sought, provides weight in state courts sustaining a corrupted conviction upon judicial and prosecutorial misconduct.

Should also be noted (EXHIBIT A-6) Arizona Appellate judge Kenton D. Jones - delivered decision - 1/17/13-0916 stated Pg 2 ¶12 "the radio and speakers and two interior door panels removed."

The stereo was in the dash of the vehicle being installed. (see RT 09/03/2013 pg 53) Troy Beach: "There was a cheaper stereo that was kind of sitting inside the dash just laying there."

Not installed, just sitting inside the dash." (attached beneath Exhibit A-6 decision) Proves Appellate Court Judge Jones using misinformation to affirming conviction with further errors being committed by reviewing court majority.

A basic procedural principle should be formatted and implemented or enforced as a reliable Court Rule from this Court where favorable and/or rational judges' decisions should be given weight in all future proceedings, be it Direct Appeal or Post-Conviction, or to have those favorable judges to sit in on the second round of review to advocate the recognized errors under rational basis review that were acknowledged.

STATES' PROVEN SUPPRESSION OF PHYSICAL MATERIAL EVIDENCE

Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)

The Supreme Court has held that "when a State suppresses evidence favorable to an accused that is material to guilt or punishment, the State violates the defendant's right to due process, irrespective of good faith or bad faith of the prosecution." *Cone v. Bell*, 556 U.S. 449, 129 S.Ct. 1769, 1782, 173 L.Ed.2d 701, 50 ALR 4d 2597 (2009). Therefore, the prosecution is obligated to produce certain evidence actually or constructively in its possession or accessible to it."

BRADY provides No good faith or inadvertence as a defense for the state.

In this instant cause DCA Duwendack admits in his testimony at the Evidentiary Hearing 03/25/2016 (Exhibit C-1) pg 104 line 23 "No. I, over the course of four years probably handled-- well, I handled multiple cases involving auto thefts and never introduced a vin plate into evidence."

Duwendack admits to handling hundreds of auto theft cases (id. pg 109) citing "I never did see one." (vin plate)

Duwendack admits first time seeing one brought into court "Yes. unless a case agent brought one to court that I didn't use as an exhibit, but I don't remember ever using one as a state's exhibit at trial." (id. P110 @ lines 1-3)

Q. Was there any bill of sale that you know of found in the car or any other documentation found in the car
Duwendack "I seem to recall there was in this case."

Duwendack "I don't know if it was impounded or not, I don't recall it being introduced into evidence."

"And I can't recall if it was a title or a bill of sale or title/bill of sale both." (id pg 116)

EXHIBIT C-2 (Transcripts 09/04/2013 pg 22) lines 7-10)

Duwendack: "but for anyone else to talk about their knowledge of transaction concerning the car, Bill of sale that don't exist or they don't have, the State would submit A, is irrelevant. They go to that witness' mindset and their knowledge; and B would be largely precluded if not outright hearsay."

Duwendack was aware of a bill of sale that was recovered from the vehicle that he was not sure if it was impounded or not, and commits perjury upon inconsistent testimony under oath.

During Trial in oral limine submission on the eve of trial, Duwendack cites "Bill of Sale that don't exist or they don't have," is further misconduct proven where the VIN plate and officer Winston Brown's independent investigation and collection of the physical material evidence being suppressed by Duwendack supports the existence of the 'Bill of Sale' he was actually aware of, yet states to the court defense "can't produce the document."

JCA Duwendack admits to "never introducing a VIN plate in any trial" he has conducted - unless a state agent brought one into court, yet "never did see one" - didn't choose to look at the evidence, in a potential multitude (hundreds) of auto-theft cases is deplorable and unacceptable prosecutorial misconduct satisfying and proving Brady claims; that commands court action Trial Court and Arizona Reviewing Courts deliberately refuse. (See EXHIBIT B for all historic petitions.)

Also (C-2) Trial Transcripts 09/04/2013 pg 10 lines 16-23 (limine)

Duwendack: "Well, the Court had referred to an opinion that it said it actually found, but I didn't catch the citation."

The Court: "It didn't have a citation, but it's Investment Retrievers versus Marshall, from August 6th of 2009."

Certainly not something I was supposed to cite..."

INTENTIONAL TRIAL COURT ERROR ADMITTEDLY COMMITTED.

id pg 16 lines 7-11 (EXHIBIT C-2)

Trial Counsel Buesing "Additionally, I too found that case the Court was noting, the unpublished case Investment Retrievers versus Marshall.

The Court: "Which none of us -- should be citing, but all three of us have cited"

Arizona Supreme Court Rule 111(c) (effective Jan. 1 2015)

Dispositions as Precedent, Memorandum decisions shall not be regarded as precedent nor cited in any court except for (1) the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case or (2) in forming the appellate Court to other memorandum decisions so that the Court can decide whether to issue a published opinion, grant a motion for reconsideration, or grant a petition for review. Any party citing a memorandum decision pursuant to this rule must attach a copy of it to the motion or petition in which the decision is cited.

The Trial Court sought out the unpublished memorandum decision - Investment Retrievers v. Marshall - that a party, not a judge, must attach to a pleading for persuasion purposes - but in no event shall it be used as precedent nor cited in any court. (Language in effect for 2013 at the time of Commissioner Nathwehr's erroneous use as precedent to prevent bill of sale testimony in State favored Elmore decision).

This omission of evidence in conjunction with State's suppression of in plate evidence permitted incomplete and unfair trial under Commissioner Nathwehr's discretion.

Commissioner Nathwehr regarding bill of sale testimony

"I won't let them testify unless and until we have something that shows that it's relevant." (id pg 23 lines 10-11) (EXHIBIT C-2)

"It can be admitted if there is some nexus to show the relevancy. Right now you are not telling me that Elmore's testimony is going to be relevant independent of the Defendant saying "I got my information from Elmore." (id pg 23 lines 19-22)

State objected even prior to my testimony being said and Trial Court sustained - preventing information from being aired before the jury.

Trial Court UNDER ADVISEMENT RULING ON PETITION FOR POST CONVICTION RELIEF Dated 05/23/2016 (Exhibit C)
(Commissioner Nathuehr Presiding)

Several errors were intentionally committed by Commissioner Nathuehr, in light of testimony and evidence presented that established prosecutorial misconduct in suppressing critical VIN plate physical evidence. Detective Winston Brown's independent investigation of legal VIN plate mounted on the dashboard linked to a legal title in process to remove the lien holder - vehicle was collaterally on another parties bond, officer Brown impounded VIN plate ONLY.

Trial Court precluded DCA Duwendacks admissions to suppressing physical/material VIN plate from this trial and all auto theft cases "never listing one as a state's exhibit at trial" Duwendack was prosecuting.

pg 2 ¶15 Investigating officers observed numerous items within the victim's vehicle including hand tools such as screwdrivers. The screwdrivers were impounded.

pg 2 ¶17 Investigating officers did not impound a specific screwdriver or other item which allegedly was used to start the vehicle.

INCONSISTANT - NO PRODUCTION BY STATE TO DATE

pg 3 ¶16 Mr. Elmore was not credible and appeared willing to try to exculpate Petitioner by any statement.

THIS DONE IN ATTEMPT TO JUSTIFY COURT DEEMING ELMORE IRRELEVANT AND NOT PRESENTED TO JURY TRIAL.

pg 4; No mention of Duwendack's testimony

- 2nd unmarked paragraph -

"Petitioner claims that his trial counsel was deficient and this Court disagrees. As noted above, 'the trial was fair and complete'. Petitioner's counsel's trial decisions were appropriate. Counsel did not highlight or emphasize the screwdriver evidence, even when ~~two~~ screwdrivers appear to have been kept in evidence by the prosecutor."

IDENTIFIERS OF INCOMPLETE TRIAL

1. No Bill of Sale testimony upon trial court limine error;
2. No Screenshot in evidence - no production to date (destroyed);
3. No Vin Plate Physical evidence linked to legal title;
4. No Winston Brown #4833 testimony to independent vin plate invest;
5. No Defense Witness Elmore presented to jury result J.C. ruling;
6. No Willits Instruction to lost/destroyed/suppressed evidence;
7. Chanele Pauley plead 5th Amend. outside jury presence;

UNCONSTITUTIONAL ERRORS COMMITTED UPON TRIAL COURT PERJURIOUS DETERMINATION "TRIAL WAS FAIR AND COMPLETE," ALERTED ALL ARIZONA STATE REVIEWING COURTS OF TRIAL COURT AND STATE PROSECUTOR MISCONDUCT TO NO AVAIL.

Any State Court determination to the contrary permitting such conduct to continue without appropriate sanctions nor proceedings, is inconsistent with their Constitutional obligations that displays prejudice as a result, unacceptable in any context.

UNDER PLAIN ERROR STANDARD OF REVIEW

Providing United States Supreme Court discretion to correct the substantial fundamental egregious errors affecting fairness, integrity, and public reputation of judicial proceedings.

U.S. v. Cotton, 535 U.S. 625, 631, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002) (Citations and alterations omitted); see also U.S. v. Juarez, 626 F.3d 246, 254 (5th Cir. 2010) ("We find plain error when (1) there was an error or defect; (2) the legal error was clear or obvious rather than subject to reasonable dispute; and (3) the error affected the defendant's substantial rights." Once those three elements have been satisfied, we may exercise our discretion to correct the error. Regarding the second element, 'plain error is considered plain, or obvious, only if the error is clear under existing law.'") (quoting U.S. v. Salinas, 480 F.3d 750, 756 (5th Cir. 2007)) U.S. v. Sanchez-Berrios, 424 F.3d 65, 73, 68 Fed. R. Evid. Serv. 320 (1st Cir. 2005); see also U.S. v. Boyd, 640 F.3d 657, 669, 85 Fed. R. Evid. Serv. 74 (6th Cir. 2011) ("We should reverse a conviction under plain error review only in exceptional circumstances [where] the error is so plain that the trial judge and prosecutor were derelict in countenancing it.") (internal quotation

marks omitted); *U.S. v. Taylor*, 54 F.3d 967, 972 (1st Cir. 1995) (explaining that "[t]he plain error doctrine concentrates on black-busters." (internal quotation marks omitted)).

EXHIBIT D

Pre-Evidentiary Hearing Motions Not Ruled on to date by trial Court Nor Arizona Supreme Court, still remain outstanding.

Arizona State Constitution Art. 6 § 21

Superior Court Speedy Decisions

Every matter submitted to a judge of the Superior Court for his decision shall be decided WITHIN SIXTY DAYS from the date of submission thereof.

-The Supreme Court shall by rule provide for the speedy disposition of all matters not decided within such period.

On 11/20/2015 Petitioner being pro-per in PCR proceedings filed a motion to compel state disclosure of David Elmore recorded interview conducted by DCA Duwendack, admitted to 09/04/2013 PG 20 lines 16-25 (EXHIBIT C-2)

The Court: Mr. Duwendack, have you interviewed Mr. Elmore?

Duwendack: Yes.

Duwendack took notes and stated it was recorded.

On 12/08/2015 States response to request for Elmore interview the state was unable to locate said interview (no notes produced)

On 12/14/2015 Petitioner moved for sanctions against state (EXHIBIT D-4)

On 12/15/2015 Petitioner moved to compel disclosure of Vin Plate (EXHIBIT D-5)

On 01/07/2016 Petitioner filed/moved for sanctions against the state for failing to disclose the vin plate in timely manner and historically throughout this case, 3 yrs 9 months no disclosure

No ruling from trial Court to date on these motions

On 01/19/2016 Advisory Counsel McEachern cited to trial Court "The Defendant filed proper motions and those are to stand;" trial Court Nothwehr nodded in agreement and did not say one word on the record concerning Petitioner's motions.

(see proceeding video 01/19/2016 if available)

These motions were submitted in State Habeas Corpus Petition and PCR 32.9(g) Petition for Review to Arizona Supreme Court and has no ruling on motions to date.

First request for Evidentiary Transcripts from 03/25/2016 was filed 05/25/2016 to Superior Court Commissioner Nothwehr is and was unanswered, two more requests later denied. (EXHIBIT E)

Upon review of the Evidentiary transcripts received a year later through 8th request made to Arizona Court of Appeals EH. 03/25/2016 pg 114 @ 23-25 and 115 @ 1-19 (EXHIBIT C-1)

Q: Were you present for the interview with David Elmore?

Duvendack: If an interview was done I have no recollection of it. id pg 115 @ 17-19

Q: Do you remember ever telling -- telling this Court that you had recorded the interview?

Duvendack: I don't recall.

DCA Jeffrey Duvendack not only suppressed the in plate evidence and Detective Winston Brown from Limine and trial proceedings, but he has destroyed state's recorded interview with Elmore, then lied about it, as all was reminded in the search to acquire with Duvendack specifically in state's response where the recording was unable to be located - thereby destroyed.

For the trial Court to deem the trial was fair and complete is completely inconsistent with the facts presented to the Court at several critical stages that has sustained a corrupted conviction, perjurous determinations made to cover for DCA Duvendack's admitted misconduct aimed at preventing acquittal, is an obstruction to appropriate administration of justice, where this case should have been dismissed upon Petitioner's actual innocence with supporting facts prevented from the jury deliberately and intentionally by the trial prosecutor and trial judge working in concert.

The possible exception for the "unusual case in which" a deliberate and especially egregious error of the trial type, or one that is combined with a pattern of prosecutorial misconduct... infects the integrity of the proceeding." Brecht v. Abrahamson, 507 U.S.
14.

619, 638 n.9, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993).

Judicial Code of Conduct

Canon 2A

"[A] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

[A]n appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament or fitness to serve as a judge is impaired. *In re Charges of Judicial Misconduct*, 404 F.3d 688, 698 (2d Cir. Jud. Council 2005)

Improper partiality to certain degrees is judicial misconduct from wrongful or inappropriate bias, prejudicial to the administration of justice, whether evidence adduced at trial or from some extraneous source. "A favorable or unfavorable predisposition can... deserve to be characterized as 'bias' or 'prejudice' because even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment. The judge's actions must reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Liteky v. U.S.*, 510 U.S. 540, 551, 555, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994)

DISPARATE TREATMENT

The Equal Protection Clause of the Fourteenth Amendment requires that "all persons similarly situated should be treated alike. To secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of statute or by its improper execution through duly constituted agents."

RATIONAL BASIS REVIEW

"[T]he government violates Equal Protection Clause when it treats someone differently than another who is similarly situated without a rational basis for the disparate treatment."

The Supreme Court has suggested, in rare circumstances, a determination of state law can be "so arbitrary or capricious as to constitute an independent due process violation."

This instant cause Petitioner establishes compelling factual basis for granting this Petition for Certiorari to implement the imperative checks and balances for the State Courts to abide by under United States Supreme Court jurisprudence.

Petitioner presents a clear showing of unfair and unreasonable Arizona State reviewing Courts decisions concerning the serious, and proven, Judicial improprieties and prosecutorial misconduct aimed at depriving fairness at trial to prevent an acquittal is manifest injustice violating Due Process.

EXHIBIT F

Providing proof that Arizona Court of Appeals has, in multiple cases of various issues, utilizes a 'cookie cutter' stylistic judicial memoranda, that is apparently enacted to clear their docket, without addressing the issues of different character and significance.

Even where Arizona Court of Appeals denied Motion for Reconsideration in No. 1 CA CR 16-0393 (EXHIBIT A-D) with request for oral argument, alerting the reviewing judiciary to the plain errors committed by trial prosecutor and trial judge, refused their judicial obligation to take notice of fundamental errors intentionally committed. (Judge John C. Gemmell was precluded from PCR review)

EXHIBIT A and B

The Arizona Supreme Court precluded Vice Chief Justice Pelander from Rule 32.9(g) PCR second round of review that allowed a totality of negative review to the issues of serious concern, where more proof of Judicial misconduct is indeed present and displayed historically throughout this case, where not merely disqualification of a judge is required, but impeachment should be enacted upon for the improprieties of perjury committed by Commissioner Northwehr.

Petitioner establishes blockbusting clear showing of significantly egregious plain errors intentionally committed by Arizona State Trial Court that was permitted by all state reviewing courts refusing to act, after being alerted to at several stages of review, to the judicial improprieties and proven prosecutorial misconduct aimed at preventing acquittal violating substantial fundamental fairness and depriving both state and Federal Constitutional safeguards guaranteed by Supreme Authority Precedent, that allowed a corrupted conviction upon suppression of actual innocence facts from the jury, is a manifest injustice as a result, violating Due Process.

The United States Supreme Court should grant certiorari review, establish precedent and corrective law and procedures for State Courts to abide by or suffer consequences for allowing the continuation of unconstitutional acts and omissions to occur from officers of the courts.

CONCLUSION

Wherefore, Petitioner prays the United States Supreme Court to exercise supervisory discretion, GRPER Relief vacating conviction and sentence; impose appropriate sanctions and disciplinary action against Respondents to prevent further unreasonable and unconstitutional acts and omissions from occurring. The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: July 23, 2018