

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SHONDOLYN ROCHELLE BLEVINS-PETITIONER

vs.

ALLISON DUNCAN BUSHNELL et al, -RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SHONDOLYN ROCHELLE BLEVINS #15329-035
SECURE FEMALE FACILITY -HAZELTON
POST OFFICE BOX 3000
BRUCETON MILLS, WV 26525

QUESTIONS PRESENTED

- 1.) Did the District Court Abuse its discretion when it DENIED the PETITIONER'S 28 U.S.C. 2255 Motion without an EVIDENTIARY hearing? WAS the DENIAL of a COA ALSO ERRONEOUS?
- 2.) WAS the PETITIONER DEPRIVED of EFFECTIVE ASSISTANCE of COUNSEL ON DIRECT APPEAL AND during the 2nd Motion to Suppress?
- 3.) Did the District Court Jury Charge, Jury Instructions AND Indictment MISSTATE the LAW? If so did this MISSTATEMENT OF LAW deprive the PETITIONER of a fair trial, A UNANIMOUS jury verdict AND CAUSE the PETITIONER to be UNDER JUDGEMENT OF CONVICTION for a NON-EXISTENT OFFENSE?

LIST OF PARTIES

- 1.) ALLISON DUNCAN BUSHNELL
Assistant United States Attorney
Western District Of Louisiana
300 Fannin Streest, Suite 3201
Shreveport, Louisiana 71101

- 2.) Carol Mignonne Griffing
Assistant United States Attorney
Western District Of Louisiana
300 Fannin Street, Suite 3201
Shreveport, Louisiana 71101

- 3.) Solicitor General Of The United States
Room 5614, Department Of Justice
950 Pennsylvania Avenue, N.W.
Wasgington, D.C. 20530-0001

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-32
REASONS FOR GRANTING THE WRIT	33
CONCLUSION	34

INDEX TO APPENDICES

APPENDIX A	DENIAL OF CERTIFICATE OF APPEALABILITY	3-5
APPENDIX B	DISTRICT COURT DENIAL OF 2255 MOTION	6-7
APPENDIX C	MAGRISTRATE JUDGE'S R & R	8-25
APPENDIX D	PETITION FOR PANEL REHEARING	26-27
APPENDIX E	MOTION FOR RECONSIDERATION	28-29
APPENDIX F	ARREST WARRANT	30-31
APPENDIX G	WRIT OF MANDAMUS	32-33
APPENDIX H	INDICTMENT	34-35
APPENDIX I	DISTRICT COURT JURY INSTRUCTIONS	36-37
APPENDIX J	DISTRICT COURT JURY CHARGE	38-39
APPENDIX K	JUDGEMENT OF CONVICTION	40-41
APPENDIX L	MINUTE ENTRY (11-cr-0012)	42-44
APPENDIX M	CONSTITUTIONAL AND STATUTORY PROVISIONS	45-47

TABLE OF AUTHORITIES CITED

<u>CASES</u>	<u>PAGE No.</u>
APODACA V. OREGON - 406 U.S. 404, 92 S.Ct. 1628, 32 L.Ed. 2d 184 (1972)	21
BUCK V. DAVIS - 580 U.S. ___, 137 S.Ct. ___, 197 L.Ed. 2d 1 (2017)	17
CHAPMAN V. CALIFORNIA - 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed. 2d 705 (1967)	31
FRANKS V. DELAWARE - 438 U.S. 154, 57 L.Ed. 2d 667, 8 S.Ct. 2674 (1978)	14, 15
HARRINGTON V. RICHTER - 562 U.S. 86, 111-112, 131 S.Ct. 770, 178 L.Ed. 2d 624 (2011)	18
HERRING V. UNITED STATES - 555 U.S. 135, 129 S.Ct. 65, 172 L.Ed. 2d 46 (2009)	11, 20
HUGHES V. BOOKER 203 F.3d 894 , 895 (5th Cir. 2000)	23
MERIDITH V. GOUGH - 168 F.2d 193 , cert. denied 335 U.S. 873, 3 L.Ed. 2d 417 (1948)	32
MILLER - EL V. COCKRELL - 537 U.S. 322, 123 S.Ct. 102 9 , 154 L.Ed. 2d 931 (2003)	20
MIMS V. UNITED STATES - 375 F.2d 135, 147 (1967)	29
MURPHY V. HOLLAND 776 F.2d 470, 476 (4th Cir. 1985)	22
PAYTON V. NEW YORK - 455 U.S. 573, 63 L.Ed. 2d 63 9 , 100 S.Ct. 1371 (1980)	15
STRICKLAND V. WASHINGTON - 466 U.S. 668, 80 L.Ed. 2d 674, 104 S.Ct. 2052 (1984)	10, 11, 16
UNITED STATES V. BARTHOLOMEW - 974 F.2d 3 (5th Cir. 1992)	7
UNITED STATES V. BLAKEY 607 F.2d 779 , 787 (7th Cir. 1979)	20
UNITED STATES V. BLEVINS - 755 F.3d 312 (5th Cir 2014)	4.5
UNITED STATES V. EVANS - U.S. APP LEXIS 30315 (5th Cir 2001)	29
UNITED STATES V. LEON - 468 U.S. 897 , 82 L.Ed. 2d 667, 104 S.Ct. 3405 (1984)	19
UNITED STATES V. MARCUS - 560 U.S. 258, 130 S.Ct. 215 9 , 176 L.Ed. 2d 1012 (2010)	30
UNITED STATES V. MCGILBERRY - 480 F.3d 326, 328-2 9 , (5th Cir. 2007)	23
UNITED STATES V. MONTES - 602 F.3d 381, 386-87 (5th Cir. 2010)	21
UNITED STATES V. OLANO - 507 U.S. 725, 113 S.Ct. 1770, 123 L.Ed. 2d 508 (1993)	28
UNITED STATES V. PHILLIPS - 210 F.3d 345, 350 (5th Cir. 2000)	25
UNITED STATES V. TUCKER - 345 F.3d 320, 336 (2003)	31
UNITED STATES V. WILLIAMSON - 183 F.3d at 463 (5th Cir 1999)	9, 18
WIGGINS V. SMITH - 53 9 U.S. 510, 156 L.Ed. 2d 471, 123 S.Ct. 2527 (2003)	33

CASESPAGE No.

Winthrop v United States 767 F.3d 1210 6
1215 (11th Cir. 2014)

CHANDLER v McDonough 471 F.3d 1360 8
(11th Cir. 2003)

KIMMEL v MORRISON 477 U.S. 365, 9. L. Ed 23
2d 305. 106 S. Ct. 2574 (1986)

United States v REINHART 357 F.3d 521 27
530 (5th Cir 2004)

STATUTES AND RULES

Fed. R. Crim. P 31(a)

Fed. R. Crim. P 52(b)

18 U.S.C.S. 924 (c) (1) (A)

28 U.S.C.S. 2253 (c) (2)

28 U.S.C.S. 2255 (b)

OTHER

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 judgement below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at 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 reported at United States v. Blevins 2016 U.S. Dist. Lexis 79498 (W.D. La. June 17,2016.)

The Magistrate Judge's Report and Recommendation appears at Appendix C to the petition and is published at United States v. Blevins 2016 U.S. Dist. Lexis 79501 (W.D. La. May 5,2016).

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

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

JURISDICTION

The date on which the United States Court Of Appeals denied my application for a certificate of appealability was July 20, 2017.

A timely petition for rehearing was denied by the United States Court Of Appeals on the following date: September 28, 2017, and a copy of the order denying rehearing appears at Appendix D .

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

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fed. R. Crim. P. 31(a) - Return. The jury must return it's verdict to a judge in open court. The verdict must be unanimous.

Fed. R. Crim. P. 52(b) - Plain error. A plain error that effects substantial rights may be considered even though it was not brought to the court's attention.

18 U.S.C.S. 924(c) (1) (A) - Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime ..

(i) be sentenced to a term of imprisonment of not less than 5 years;

28 U.S.C.S. 2253 (c) (2) - A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C.S. 2255 (b) - INDEX OF APPENDICES Page No 45-4

UNITED STATES CONSTITUTIONAL AMENDMENT 4 - INDEX OF APENDICES Page No. 45-4 **b**

UNITED STAES CONSTITUTIONAL AMENDMENT 5 - INDEX OF APPENDICES Page No. 45-4 **b**

UNITED STATES CONSTITUTIONAL AMENDMENT 6 - INDEX OF APPENDICES Page No. 45-4 **7**

STATEMENT OF THE CASE

ON October 12, 2010 SEVEN(7) OFFICERS from the LOUISIANA STATE POLICE ARRIVED AT the PETITIONER'S HOME to EXECUTE AN ARREST WARRANT (APPX F)

The WARRANT which WAS later DETERMINED to BE INVALID, UNITED STATES V BLEVINS 755 F.3d 312 (5th Cir. LA 2014), FORMS the BASIS of the PETITIONER'S FEDERAL INDICTMENT, TRIAL AND 28 U.S.C 2255 MOTION to VACATE. SET ASIDE OR CORRECT SENTENCE.

The PETITIONER CONTENDS that the CLAIMS PRESENTED FOR REVIEW IN this PETITION

FOR WRIT OF CERTIORARI ARE SUBSTANTIVELY
DIFFERENT FROM THE CLAIMS PREVIOUSLY
RESOLVED BY THE COURT IN UNITED
STATES V BLEVINS 755 F.3d 312 (5th Cir
LA 2014) BECAUSE THE ENCLOSED CLAIMS
ARE ASSERTIONS OF:

- A.) DENIAL OF EVIDENTIARY HEARING
- B.) DENIAL OF CERTIFICATE OF APPEALABILITY
- C.) DENIAL OF UNANIMOUS JURY VERDICT
- D.) INEFFECTIVE ASSISTANCE OF COUNSEL ON
DIRECT APPEAL
- E.) INEFFECTIVE ASSISTANCE OF COUNSEL DURING
SECOND MOTION TO SUPPRESS AND THE PROFFER
OF FALSE AND MISLEADING TESTIMONY AND
EVIDENCE AT PRE TRIAL EVIDENTIARY HEARINGS
THROUGH WHICH THE GOVERNMENT WAS ABLE

to prevent the EVIDENCE upon which their PROSECUTION WAS BASED FROM BEING SUPPRESSED.

A. DENIAL OF EVIDENTIARY HEARING

PETITIONER SHONDOLYN ROCHELLE BLEVINS CONTENTS THAT THE DISTRICT COURT ABUSED IT'S DISCRETION WHEN IT ERRONEOUSLY DENIED HER 28 U.S.C.S. 2255 MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE (APPX B) WITHOUT AN EVIDENTIARY HEARING.

A DISTRICT COURT ABUSES IT'S DISCRETION IF IT APPLIES AN INCORRECT LEGAL STANDARD, APPLIES THE LAW IN AN UNREASONABLE OR CORRECT MANNER, FOLLOWS IMPROPER PROCEDURE IN MAKING A DETERMINATION, OR MAKES FINDINGS OF FACT THAT ARE CLEARLY ERRONEOUS

Winthrop v United States 767 F.3d 1210, 1215
(11th Cir 2014).

A CRIMINAL DEFENDANT WHO FILES A MOTION IS ENTITLED TO AN EVIDENTIARY HEARING IN THE DISTRICT COURT UNLESS THE MOTION AND THE FILES AND THE RECORDS OF THE CASE CONCLUSIVELY SHOW THAT THE PRISONER IS ENTITLED TO NO RELIEF
28 U.S.C. § 2255 (b).

IF THE PRISONER "ALLEGES FACTS, THAT IF TRUE, WOULD ENTITLE HIM TO RELIEF, HE MUST RECEIVE AN EVIDENTIARY HEARING SO THE DISTRICT COURT CAN RULE ON THE MERITS OF HIS CLAIM UNITED STATES V BARTHOLOMEW 974 F.2d 39 (5th Cir 1992).

A PRISONER NEED NOT PROVE HIS ALLEGATIONS UNTIL AN EVIDENTIARY HEARING IS HELD WINTHROP V UNITED STATES 767 F.3d AT 1216 (11th Cir 2014).

AN EVIDENTIARY HEARING IS ALSO NOT REQUIRED WHERE THE PETITIONER'S ALLEGATIONS ARE "AFFIRMATIVELY CONTRADICTED BY THE RECORD.

BASED ON this STANDARD BLEVINS ARGUES THAT THE DISTRICT COURT FAILED TO DETERMINE WHETHER BLEVINS SET FORTH SUFFICIENT FACTS IN HER 2255 MOTION THAT, IF TAKEN AS TRUE WOULD ENTITLE HER TO RELIEF

Whether the ALLEGATIONS TAKEN IN THE LIGHT MOST FAVORABLE TO BLEVINS, SUPPORT HER 2255 MOTION. MORE OVER, A PETITIONER SEEKING AN EVIDENTIARY HEARING MUST MAKE A PROFFER TO THE DISTRICT COURT OF ANY EVIDENCE THAT HE WOULD SEEK TO INTRODUCE AT A HEARING CHANDLER V McDONOUGH 471 F. 3d 1360 (11th Cir. 2003).

BLEVINS CONTENDS THAT SHE STATED SUFFICIENT FACTS WHICH, IF TRUE, WARRANT AN EVIDENTIARY HEARING. FACTS SUCH AS BUT NOT LIMITED TO:

- A) HER PERSONAL KNOWLEDGE SUPPORTED BY AFFIDAVIT

describing specific scenes in the alleged surveillance evidence which proves tapes were fabricated.

(B.) her proffer that she still possessed her copy of the surveillance tapes and prove her assertions.

Blevins contends that the government knew of and held back the information regarding the fabrication. This assertion is supported by page 15 of the Magistrate Judge's Report and Recommendation (APPX pg 23).

If true, the fabricated surveillance tapes tainted the judicial process and rendered them fundamentally unfair and unreliable as to undermine confidence in the outcome. United States v Williamson 183 F.3d at 463 (5th Cir. 1999).

B.) Ineffective Assistance Of Counsel

The PETITIONER NEXT ARGUES that SHE WAS DENIED the EFFECTIVE ASSISTANCE OF COUNSEL guaranteed by the SIXTH AMENDMENT of the UNITED STATES CONSTITUTION during the 2ND MOTION to SUPPRESS held NOVEMBER 1, 2011.

The SIXTH AMENDMENT guarantees the CONSTITUTIONAL right to EFFECTIVE ASSISTANCE OF COUNSEL Strickland v Washington 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. At 2052 (1984)

The SIXTH AMENDMENT right to COUNSEL "is the right to the EFFECTIVE ASSISTANCE OF COUNSEL" Strickland 466 U.S. At 686 104 S. Ct. 2052. 80 L. Ed. 2d 674 (quoting Mc Mann v Richardson 397 U.S. 759. 771

N 14. 90 S.Ct. 1441. 25 L.Ed 2d 763 (1970)

Blevins contends that her Counsel's performance fell below an objective standard of reasonableness and this deficiency prejudiced her Strickland 466 U.S. at 687
104 S.Ct. at 2064

BECAUSE the viability of her 4th AMENDMENT claim is inextricably intertwined with her claim of ineffective assistance of counsel the Petitioner further argues that she was convicted through the use of evidence unconstitutionally obtained. Evidence obtained in violation of a defendant's 4th Amendment rights may not be used to prove his guilt at trial Herring v United States
555 U.S. 135 129 S.Ct. 695, 172 L.Ed 2d
496 (2009).

whether before, during or after trial when the Sixth Amendment applies the formulation of the standard is the same "reasonable competence" in representing the accused" Strickland at 688, 104 S.Ct. 2052, 80 L. Ed. 2d 674 (1980).

Under the standard articulated in Strickland v Washington 466 U.S. 668. 687-688. 104 S.Ct 2052 80 L. Ed. 2d 674 (1980) to establish that Counsel Noel rendered ineffective assistance of Counsel Blevins must show that (1) Noel's performance fell below an objective standard of reasonableness and (2) Blevins suffered prejudice as a result.

Petitioner Blevins list four (4) reasons why she contends her Counsel's performance was deficient:

- (1) COUNSEL NOEL FAILED TO ADEQUATELY PREPARE AND INVESTIGATE FOR THE MOTION TO SUPPRESS HEARING
- (2) COUNSEL NOEL FAILED TO AUTHENTICATE THE ALLEGED SURVEILLANCE EVIDENCE.
- (3) DURING THE MOTION TO SUPPRESS HELD NOVEMBER 1, 2011 COUNSEL NOEL SUBMITTED INTO EVIDENCE (USCA 5 PGS 441 LINES 23, 24 AND 25) FIVE (5) FRAUDULENT AND FABRICATED SURVEILLANCE TAPES. THE ALLEGED SURVEILLANCE TAPES CONTAINED FILM RECORDED NEARLY A YEAR AFTER THE PETITIONER'S ARREST.
- (4) COUNSEL NOEL FAILED TO AUTHENTICATE THE DISCS PROVIDED TO THE COURT BY THE GOVERNMENT (MINUTE ENTRY-(APPX L))

Blevins contends that the controlled buys alleged in the body of the arrest warrant never occurred. She argues that Officer Hollingsworth never possessed the evidence he alleged. That when investigative attempts proved fallacious Louisiana State Policeman Christopher Hollingsworth manufactured probable to obtain an arrest warrant (appx F) with a reckless disregard for the truth. FRANKS v DELAWARE 438 U.S. 154, 98 S.Ct. 2674. 57 L. Ed. 2d 667 (1978)

Blevins argues that he accused her of crimes that he knew she had not committed and he did not have the alleged surveillance video evidence to

Support his false Allegations. Blevins further contends that Officer Hollingsworth acted with specific intent to circumvent the 4th Amendment search warrant requirement. PAYTON v. NEW YORK 445 U.S. 573, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980)

But when a Louisiana Appeals Court writ of Mandamus (Appx G) forced Prosecutors to recognize the Petitioner's unobjectable right to challenge the allegations of the Affiant FRANKS v DELAWARE 438 U.S. 154 98 S.Ct. 2674, 57 L. Ed. 2d 667 (1978)

Federal Prosecutors conspiring with the Louisiana State Police fabricated the surveillance evidence alleged in the body of the warrant (Appx F) by recording

SOME FILM NEARLY A YEAR AFTER THE PETITIONER'S ARREST. ALL FIVE (5) TAPES CONTAIN FILM RECORDED WHILE THE PETITIONER SAT IN JAIL AWAITING TRIAL.

DEFICIENT PERFORMANCE

BLEVINS ARGUES THAT COUNSEL NOEL FAILED TO ADEQUATELY INVESTIGATE AND PREPARE FOR THE MOTION TO SUPPRESS HEARING. COUNSEL HAS A DUTY TO MAKE REASONABLE INVESTIGATIONS STRICKLAND V WASHINGTON 466 U.S. 668, 689, 104 S. CT. 2052, 2057, 80 L. ED 2D 674 (1984).

BECAUSE OF HIS FAILURE TO INVESTIGATE AND AUTHENTICATE THE ORIGINALITY OF THE ALLEGED SURVEILLANCE EVIDENCE IN ACCORDANCE WITH FEDERAL RULES OF EVIDENCE 901(A) DURING THE MOTION TO SUPPRESS HEARING COUNSEL NOEL SUBMITTED INTO EVIDENCE FRAUDULENT FABRICATED

Surveillance tapes which did not work. Petitioner Blevins argues that this assertion is supported by docket entry #67 (Appx K) of Blevins I 3:11-CR-0012.

Had Counsel Noel properly investigated and authenticated the alleged surveillance tapes he would have discovered that tapes number 2 and 3 did not work and this would have alerted him to the need to investigate further. Strickland v Washington 466 U.S. at 691. 104 S.Ct. at 2066 (1984)

In Buck v Davis 580 U.S. 137 S.Ct. 197 L.Ed. 2d 1 (2017) the United States Supreme Court held: when a defendant's own lawyer puts in the offending evidence it is an admission against interest. More likely to be taken at face value 197 L.Ed. 2d at 19-20.

PREJUDICE - To satisfy Strickland a litigant must also demonstrate prejudice - A reasonable probability that for Counsel's unprofessional errors the result of the proceeding would have been different 466 U.S. At 694, 104 S.Ct. 2052, 80 L.Ed. 2d 674

PREJUDICE EXIST ONLY WHEN CORRECTING THE ALLEGED ERROR WOULD HAVE PRODUCED A "SUBSTANTIAL LIKELIHOOD" OF A DIFFERENT RESULT HARRINGTON V RICHTER 562 U.S. 86 111-112, 131 S.Ct. 770, 178 L.Ed. 2d 624 (2011).

BLEVINS ARGUES THAT THE FABRICATED/MANUFACTURED SURVEILLANCE TAPES WHICH WERE REPEATEDLY REFERRED TO THROUGHOUT THE PRE-TRIAL PROCEEDINGS, TAINTED THE JUDICIAL PROCESS AND RENDERED THEM FUNDAMENTALLY UNFAIR AND UNRELIABLE AS TO UNDERMINE CONFIDENCE IN THE OUTCOME UNITED STATES V WILLIAMSON 183 F.3d AT 463 (5th CIR 1999).

with the fabrication contradicted on the record Blevins argues that the fabricated

manufactured surveillance tapes were material to the initial warrant application rendering the District Court "Good Faith" application was objectively unreasonable United States v Leon 468 U.S. 897 82 L. Ed. 2d 667

104 S.Ct. 3405 (1984)

The District Court based on statements and evidence which was fabricated, false and misleading denied the defendants motion to suppress and the Appellate Court affirmed United States v Blevins 755 F.3d 312 (2014)

thus prejudicing the Petitioner depriving her of a clearly meritorious suppression issue. What competent Attorney would submit surveillance tapes into evidence that he had not authenticated

IN ACCORDANCE WITH FED. R. EV. 901(A) AND FED R. EV. 901(b)(5) WHICH DID NOT WORK? IT IS A WELL-SETTLED PRINCIPLE OF LAW THAT A PARTY ATTEMPTING TO ADMIT A TAPE RECORDING MUST PROVE, BY CLEAR AND CONVINCING EVIDENCE, THAT THE TAPE IS A TRUE, ACCURATE AND AUTHENTIC RECORDING OF THE CONVERSATION AT A GIVEN TIME BETWEEN THE PARTIES INVOLVED UNITED STATES V BLAKEY 607 F.2d 779, 787 (7th Cir 1979).

EXCLUDE THE FIVE (5) FRAUDULENT FABRICATED SURVEILLANCE TAPES AND JURIST OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HER CONSTITUTIONAL CLAIM MILLER-EL V CORKRELL 537 US 322, 123 S.Ct 1029, 154 L.Ed. 2d 931 (2003) BECAUSE HERE THE DISTRICT COURT'S "GOOD FAITH" RULING HINGED ON THE OFFICER'S CREDIBILITY.

AN ASSESSMENT OF THE FLANGRANCY OF THE POLICE MISCONDUCT CONSTITUTES AN IMPORTANT STEP IN THE CALCULUS OF APPLYING THE EXCLUSIONARY RULE HERRING V UNITED STATES 555 U.S. 135, 129 S.Ct. 695, 172 L.Ed. 2d 496 (2009)

C. DENIAL OF UNANIMOUS JURY VERDICT

And lastly the PETITIONER CONTENDS that SHE WAS DENIED A UNANIMOUS JURY VERDICT AS GUARANTEED BY FED. R. Cr. P. 31(A) AND THE 6th AMENDMENT OF THE UNITED STATES CONSTITUTION APODACA v OREGON 406 U.S. 404, 92 S.Ct. 1628, 32 L. Ed 2d 184 (1972)

BLEVINS ARGUES THAT THE INDICTMENT (APPX H) THE DISTRICT COURT'S JURY INSTRUCTIONS (APPX I) AND JURY CHARGE (APPX J) ALL MISSTATE THE LAW AND PRESCRIBE AN INCORRECT LEGAL STANDARD.

BLEVINS FURTHER ARGUES THAT THE DISTRICT COURT'S JURY INSTRUCTIONS AND JURY CHARGE ARE "CONVOLUTED AND EXTREMELY HARD TO UNDERSTAND" UNITED STATES v MONTES 602 F.3d 381, 386-87 (5th Cir. 2010).

That the ERRONEOUS inclusion of the paragraph
" DURING AND IN RELATION TO Drug Trafficking
CRIMES For Which SHE MAY BE PROSECUTED
IN A COURT OF THE UNITED STATES "

IMPEDED the Jury's Application of the " IN
FURTHERANCE " prong of 18 U.S.C.S. 924 (C) AND
UNDERMINED AND DESTROYED their COMMON SENSE
APPRECIATION OF THE TERMS MEANING Murphy v
Holland 776 F.2d 470. 476 (4th Cir 1985).

Blevins Argues that this MISSTATEMENT OF LAW
MISLEAD the Jury to believe that " POSSESSION
OF A FIREARM DURING AND IN RELATION TO
Drug Trafficking CRIMES " WAS A FEDERAL OFFENSE.

POSSESSION OF A FIREARM DURING AND IN RELATION
TO A drug trafficking CRIME IS NOT A FEDERAL
OFFENSE UNDER statute United States v EVANS
U.S. App. LEXIS 30315 (5th Cir 2001).

This assertion has further support in Fifth Circuit case law see United States v. McGilberry 480 F.3d 326 328-29 (5th Cir 2007).

Blevins argues that although she failed to object during the trial the failure of her Appeal Counsel to research and litigate the issue on direct appeal deprived her of a plain error review in accordance with Fed. R. Crim. P. 52(b). A criminal defendant has a constitutional right to effective assistance of counsel on direct appeal Hughes v Rooker 203 F.3d 894 895 (5th Cir 2000).

In Kimmelman v Morrison 477 U.S. 365, 91 L. Ed. 2d 305, 106 S.Ct. 2574 (1986) the Supreme Court restated the rule that the right to effective assistance of counsel

IS NOT CONTAINED TO TRIAL BUT EXTENDS TO THE FIRST APPEAL AS OF RIGHT.

BLEVINS ARGUES THAT HER APPEAL COUNSEL'S PERFORMANCE WAS DEFICIENT AND FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND THIS DEFICIENCY PREJUDICED HER, ROE V FLORES - ORTEGA 528 U.S. 470. 120 S.Ct. 1029, 1034, 145 L. Ed. 2d 985 — (2000) (CITING STRICKLAND V. WASHINGTON 466 U.S. 668, 104 S.Ct. 2052 80 L. Ed. 2d 674 — 1984).

UNDER THE STANDARD ARTICULATED IN STRICKLAND V. WASHINGTON 466 U.S. 668. 687-88, 104 S.Ct. 2052 80 L. Ed. 2d 674 (1984). TO ESTABLISH THAT COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BLEVINS MUST SHOW THAT (1) APPEAL COUNSEL'S PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND (2) BLEVINS SUFFERED PREJUDICE AS A RESULT.

This REASONABLENESS STANDARD REQUIRES COUNSEL TO RESEARCH RELEVANT FACTS AND LAW, OR MAKE AN INFORMED DECISION THAT CERTAIN AVENUES WILL NOT PROVE FRUITFUL. SOLID MERITORIOUS ARGUMENTS BASED ON DIRECTLY CONTROLLING PRECEDENT SHOULD BE DISCOVERED AND BROUGHT TO THE COURT'S ATTENTION UNITED STATES V PHILLIPS 210 F.3d 345, 350 (5th Cir 2000).

COUNSEL HAS A DUTY TO MAKE REASONABLE INVESTIGATIONS ~~ON UNNECESSARY~~ ~~MAKE~~ REASONABLE DECISIONS THAT MAKE PARTICULAR INVESTIGATIONS UNNECESSARY STRICKLAND V WASHINGTON 466 U.S. 668 Id at 691, 104 S.Ct. at 2066, 80 L. Ed 2d 674 (1984).

Blevins list SEVERAL REASONS why she CLAIMS her COUNSEL'S PERFORMANCE WAS DEFICIENT:

- (1) APPEAL COUNSEL FAILED TO ADEQUATELY REVIEW the PETITIONER'S trial transcript AND bring to the APPEAL COURT'S ATTENTION the facts that
 - (A) the indictment, the district court's jury charge AND jury instructions MISSTATE the LAW AND UNDERMINED the PETITIONER'S DEFENSE
 - (B) According to the JUDGEMENT of CONVICTION the PETITIONER WAS found guilty of A CRIME which she WAS NOT ON TRIAL for AND is NOT A FEDERAL OFFENSE UNDER statute.
- (2) APPEAL COUNSEL FAILED to MAKE REASONABLE INVESTIGATIONS AND put forth a clearly MERITORIOUS PLAIN ERROR REVIEW UNDER Fed. R. Cr. P. 52(b) ARGUMENT

PREJUDICE To satisfy Strickland a litigant must demonstrate prejudice. When a claim of ineffective assistance of counsel is premised on counsel's failure to raise an issue on appeal, the prejudice prong first requires a showing that the Fifth Circuit court would have afforded relief on appeal United States v Reinhart 357 F.3d 521, 530 (5th Cir 2004) (citing United States v Phillips 210 F.3d 345, 350 (5th Cir 2000)).

Petitioner had a meritorious appeal issue and counsel was deficient for failing to do so. Defendant was prejudiced because due to counsel's error, the defendant received a sentence that was at least 60 months longer than appropriate United States v. Phillips 210 F.3d 345, 350 (5th Cir 2000)

Blevins contends that the failure of her Appeal Counsel to challenge the district Court's jury charge (appx 1) and jury instructions (appx 1) under Fed. R. Crim. P. 52(b) Plain Error deprived her of a clearly meritorious argument.

Under Fed. R. Crim. P. 52(b) Plain Error, a plain error that affects substantial rights may be considered even though it was not brought to Court's attention.

Blevins contends that she meets the standard for plain error review set forth by the Supreme Court in United States v. Olano 507 U.S. 725 113 S.Ct. 1770, 123 L.Ed. 2d 508 (1993).

To prevail under plain error standard Blevins must show that (1) there was error (2) the error was plain (3) the error affected her substantial rights (4) it seriously affected the fairness, integrity or public reputation of judicial proceedings.

PLAIN ERROR RULE IS INVOKED ONLY WHERE ERROR COMPLAINED OF AFFECTS SUBSTANTIAL RIGHTS AND APPELLATE COURT IS REQUIRED TO REMEDY CLEAR MISCARriage OF JUSTICE MIMS V UNITED STATES 375 F.2d 135, 147 (5th Cir 1967).

BLEVINS CONTENTS:

(1) THERE WAS ERROR - the district court's jury charge (APPX J), jury instructions (APPX I) AND INDICTMENT (APPX H) MISSTATED THE LAW.

(2) THE ERROR WAS PLAIN - At the time of her 2014 Appellate consideration controlling Fifth Circuit PRECEDENT ESTABLISHES THAT "POSSESSION OF A FIREARM DURING AND IN RELATION TO A drug trafficking CRIME IS NOT A FEDERAL OFFENSE UNDER STATUTE UNITED STATES V EVANS U.S. APP. LEXIS 30315 (5th Cir 2001).

(3) IT AFFECTED HER SUBSTANTIAL RIGHTS - IN THE ORDINARY CASE, TO MEET THIS STANDARD AN ERROR MUST BE PREJUDICIAL,

Which MEANS there must be a reasonable probability that the error affected the outcome of the trial United States v Marcus 560 U.S. 258, 130 S.Ct. 2159, 176 L. Ed. 2d 1012 (2010).

Blevins argues that under the district court's jury charge (Appx J) and jury instruction (Appx I) the jury was permitted to convict her even though there may have been confusion and disagreement as to just what Blevins did.

She argues that due to the court's use of a general verdict form it is impossible to determine whether all of the jurors agreed that Blevins "during and ~~an~~ relation to drug trafficking crimes for which she may be prosecuted in a court of the United States or and ~~an~~ furtherance of said drug trafficking crimes did possess a firearm."

It is impossible to determine that the district court's jury instructions (Appx I) and jury charge (Appx J) were harmless beyond a reasonable doubt CHAPMAN v CALIFORNIA (1967) - 386 U.S. 18, 87 S.Ct. 824, 17 L. Ed 2d 705.

(4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings - the error affected the jury's verdict.

Blevins argues that the judgement of conviction (Appx K) is sufficient to corroborate her claim that there was confusion in reaching a unanimous verdict UNITED STATES v TUCKER 345 F.3d 320, 336 (5th Cir. 2003).

That the judgement of conviction list count two (2) AS POSSESSION OF A FIREARM during a drug trafficking crime. A crime that she was

NOT ON TRIAL FOR AND IS NOT A FEDERAL OFFENSE
UNDER STATUTE UNITED STATES v EVANS U.S. APP.
LEXIS 30315 (5th Cir. 2001)

LASTLY BLEVINS ARGUES THAT JURIST OF REASON
COULD DISAGREE WITH THE COURT OF APPEALS
RESOLUTION OF HER CONSTITUTIONAL CLAIM OR
THAT JURIST COULD CONCLUDE THE ISSUES PRESENTED
ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO
PROCEED FURTHER MILLER-EL v COCKVELL

537 U.S. 322, 327, 123 S.Ct. 1029, 154 L.
Ed. 2d 931 (2003) BECAUSE CLERK'S MINUTES
SIGNED BY JUDGE IS UNIMPEACHABLE RECORD
OF SENTENCE WHICH APPELLATE COURT MUST
REGARD AS TRUE MERIDITH v GOUGH (1948
COURT OF APPEAL GA) 168 F.2d 193 CERT
DENIED (1948) 335 U.S. 873, 93 L.Ed. 2d
417, 69 S.Ct. 161.

REASONS For GRANTING The Petition

Under predecessor to Rule 10 the following
Although neither controlling nor fully measuring
the Court's discretion indicate the character of
the reasons the Court considers:

(A) Petitioner Blevins contends that the Federal Court
of Appeals has erred in upholding the District
Court's rejection of the accused claim of
ineffective assistance of counsel during the
2nd Motion to suppress held November 1, 2011
and has erred in upholding the District
Court's rejection of the accused claim of
ineffective assistance of counsel on direct
appeal as the Fifth Circuit Court of Appeals
has unreasonably applied the clearly established
federal law created by the Supreme Court's
holding in Strickland v Washington (1984) 466
U.S. 668, 80 L. Ed 2d 674, 104 S.Ct. 2052

concerning ineffective assistance because
counsel failed to conduct constitutionally
adequate investigations Wiggins v Smith 539 U.S.
510, 123 S.Ct 2527, 156 L. Ed 2d 471

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI
SHOULD BE GRANTED.

Respectfully Submitted
Shondolyn Rochelle Burns

DATE: 5-28-2018