No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

PETER R. RUBENS --- PETITIONER

VS.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES FIFTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF MY CASE)

PETITION FOR WRIT OF CERTIORARI

PETER R. RUBENS #557614

LOUISIANA STATE PENITENTIARY

GENERAL DELIVERY

ANGOLA, LA 70712

QUESTIONS PRESENTED

1. Does Webb v. Texas apply when it is the Orleans Parish District Attorney's Office who systematically threatens, coerces, intimidates, and actually offers to pay a key defense witness to prevent her from testifying at trial?

2. Is it "structural error" when the trial court judge refuses to bring this key defense witness "in-chambers" to put these threats, coercion, intimidation, and offers of payment into the trial court record for appellate review?

3. Is it an abuse of discretion for the trial court judge to state into the record, "this had nothing to do with the trial," despite repeated requests by defense counsel?

4. Is it a violation of Due Process of Law when the Orleans Parish District Attorney's Office illegally use "fake subpeonas" to threaten, coerce, and intimidate key defense witnesses?

5. Is it permitted for a defendant to supplement the record with prosecutorial files that clearly prove a claim pursued with diligence through all state and federal courts?

6. Is it thwarting a valid claim when the prosecution conceals facts that prove a defendant's claim?

7. Is "Brady" evidence turned over "in-chambers" by the Orleans Parish District Attorney's Office during trial still "Brady" and subject to Brady's requirements?

8. Is it a violation of defendant's Sixth Amendment right to cross-examination when the trial judge "in-chambers" stops trial counsel from asking state witnesses about this impeaching evidence?

LIST OF PARTIES

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

[X] 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 a follows:

Peter R. Rubens #557614
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Jeff Landry
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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

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

The opinion of the United States Fifth Circuit Court of Appeals appears at Appendix - A to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

The opinion of the United States District Court for the Eastern District of Louisiana appears at Appendix - B to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

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

The opinion of the Louisiana Supreme Court to review the merits appears at Appendix - ___ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the Louisiana _____ Circuit Court of Appeal appears at Appendix - ___ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was February 27, 2018.

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

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 17, 2018, and a copy of the order denying rehearing appears at Appendix - D.

[ ] 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 Louisiana Supreme Court decided my case was _____.

A copy of that decision appears at Appendix _____.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides that:

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

The Fourteenth Amendment to the United States Constitution provides that:

> 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.

28 U.S.C. § 2254 provides that:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

The United States Magistrate Judge summarized the procedural history of the case in the following manner:

> The petitioner, Peter Rubens, is incarcerated in Angola, Louisiana. On October 9, 2008, Rubens was indicted in Orleans Parish for second degree murder. Rubens was tried before a jury on August 18-21 and August 24, 2009, and was found guilty as charged. At a hearing held on August 31, 2009, the state trial court denied Rubens' motion for a new trial and sentenced him to life imprisonment without the possibility of parole.
>
> On direct appeal, Rubens' appointed counsel, John Harvey Craft, raised six issues before the Louisiana Fourth Circuit: (1) sufficiency of the evidence; (2) erroneous denial of Rubens' motion for new trial without conduction an evidentiary hearing; (3) witness intimidation; (4) erroneous admission of other bad acts; (5) improperly forcing Rubens to attend all bench conferences, despite his request to the contrary; and (6) unconstitutionality of the non-unanimous jury instruction.
>
> On November 16, 2010, Rubens filed a supplemental brief with the Louisiana Fourth Circuit in which he raised fifteen claims: (1) sufficiency of the evidence; (2) prosecutorial misconduct; (3) denial of the right to present a defense; (4) failure by the State to turn over exculpatory evidence; (5) denial of compulsory process to "evidence of overt acts;" (6) denial of the right to cross-examination; (7) deliberate failure by the judge to correct perjured testimony; (8) erroneous admission of hearsay; (9) erroneous admission of other bad acts; (10) failure by the trial court to rule on a motion for return of property; (11) failure by the trial court to sequester witnesses; (12) failure to transcribe bench conferences; (13) prosecutorial and judicial misconduct resulting in an unfair trial; (14) assessment of fines and fees in violation of due process of law; and (15) failure by the trial court to admit character evidence of the decedent. On November 30, 2011, the Louisiana Fourth Circuit affirmed Rubens' conviction in a split decision.
>
> Rubens filed two writ applications to the Louisiana Supreme Court. On February 13, 2012, Rubens' appointed counsel, Christopher Aberle, filed a writ application raising two issues: (1) the trial court abused its discretion by refusing defense counsel the opportunity to proffer evidence that the prosecution intimidated a defense witness; and (2) the Louisiana Fourth Circuit erred by ruling on the merits of an ineffective assistance of counsel claim because Rubens never raised ineffective assistance of counsel. The Louisiana Supreme Court denied the writ without explanation of May 25, 2012.
>
> Subsequent to Mr. Aberle's writ, Rubens filed a pro se writ to the Louisiana Supreme Court on February 16, 2012. In his pro se writ, Rubens raised seven claims: (1) sufficiency of the evidence; (2) denial of the right to present a defense through government intimidation of defense witnesses; (3) deliberate failure by the State and trial court to correct false testimony; (4) prosecutorial misconduct during

> opening and closing statements; (5) denial of compulsory process to subpoena phone records; (6) denial of the right to cross-examination; (7) repeated misconduct by the State and trial court resulting in an unfair trial; (8) failure by the State to turn over exculpatory evidence; (9) prosecutorial misconduct through vouching for witness' credibility; and (10) unconstitutionality of the Louisiana aggressor doctrine. On October 12, 2012, the Louisiana Supreme Court denied Rubens' pro se writ application without explanation.
>
> On March 18, 2013, the United States Supreme Court denied Rubens" writ of certiorari and his conviction became final that same day.[1]

On April 4, 2014, the clerk of court filed Rubens' petition for federal habeas corpus relief. On August 6, 2014, the clerk of court filed the State's response to Rubens' petition for habeas corpus. On March 9, 2016, the Magistrate Judge issued a report and recommendation (R&R) that Rubens' petition be dismissed without prejudice for failure to exhaust state court remedies. See Appendix-C. On March 28, 2016, Rubens filed an objection to the court's (R&R). The District Court denied Rubens' petition for habeas corpus relief. See Appendix-B.

Rubens filed for a certificate of appealability with the United States Fifth Circuit Court of Appeal, which was denied on February 27, 2018. See Appendix-A. Rubens' motion for reconsideration and rehearing en banc was denied on April 17, 2018. See Appendix-D.

1 See Appendix-C (Report and Recommendation, Pgs. 1-4); Case citations omitted.

STATEMENT OF THE FACTS

Peter Richard Rubens was a longtime resident of New Orleans who had worked as a artist/sculptor for many years, as well as conservation and church restoration projects. After Hurricane Katrina and the collapse of the art market in New Orleans, Rubens went full time into the construction business, repairing both churches and residences. One of these residences under repair was owned by Ray Manning and Rubens had worked out an arrangement wherein both Rubens and his fiance, Diana Hoover, had care, custody and control of the Manning residence while the renovations were under way. Manning was not there. Rubens' own residence was a ten (10) acre farm located right outside of Independence, Louisiana and it was nearly a two hour drive one way to get to New Orleans. Testimony at the trial by Ray Manning revealed that Manning had given Rubens and Hoover a number of bad checks that totaled thousands of dollars even though Manning testified that he had allegedly settled at debts on a weekly basis with Rubens up until these checks bounced, with all employee hours and materials strictly accounted. Manning further testified that he gave Rubens $12,000.00 dollars after these bad checks occurred, in cash, but without a receipt of any kind. Mannings' testimony did state that the business relationship had soured somewhat and that Rubens had obtained an opportunity to do more disaster relief work due to flooding in Iowa, and had received an extremely lucrative contract there. Rubens and a large group of workers had planned to leave for Iowa on June 29, 2008, with another group of Rubens' workers staying behind to complete the New Orleans projects under construction. The alleged victim, Robert Irwin, had worked for Rubens in various construction capacities including a laborer, carpenter and finally a foreman.

Trial testimony clearly revealed that Rubens had fired Irwin for abusing narcotics on

these construction projects, and, pursuant to federal and state law, had legally notified any owners of properties under construction that Irwin was abusing illegal narcotics on these projects. State witnesses , Metts, Salts, and Shelton, at trial testified in front of the jury that Irwin did not abuse illegal narcotics, and they knew nothing about Irwin abusing illegal narcotics. Yet, in chambers, away from the jury, the State put right on the record that not only did these testifying State witnesses know Irwin abused illegal narcotics, one of them was actually the illegal narcotics dealer who was supplying Irwin with illegal narcotics. The State's three (3) primary witnesses against Petitioner were Lynette Metts, Jesse Salts, and Emily Shelton, with Metts being the State-admitted illegal narcotics dealer, and Salts as well as Shelton being involved in this illegal narcotics dealing as well, to the decedent and Ms. Hoover.

At trial, Metts, Salts, and Shelton testified under oath that Irwin had spent several days with them at, continuously, at St. Rose, Louisiana, that Irwin had not abused ANY illegal narcotics those three days, which was Friday, Saturday, and Sunday, June 28th, the day of the shooting. These state witnesses testified that Saturday evening, Salts and Shelton drove Irwin from St. Rose back into New Orleans, stopping by Petitioner's house on their way to the French Quarter. This was on direct examination by the State, yet on cross-examination by Trial Counsel, this same line of questioning was objected to by the State repeatedly and finally led to several "in-chambers" conferences where the State put on the trial record the real reason for Irwin, Salts, and Shelton coming to New Orleans. This was so Irwin could deliver illegal narcotics to Dianna Hoover, petitioner's fiance, while petitioner was not at home. The illegal narcotics were supplied by Metts.

Metts, Salts, and Shelton also testified extensively about the petitioner allegedly owing

money to the decedent and even to Ms. Hoover. These amounts varied widely, from a few hundred to a few thousand dollars.

Ms. Hoover would have contradicted this completely as she handled payrolls, materials, and all banking business. She knew that Irwin, the decedent was not owed one thin dime by the petitioner. Trial testimony clearly revealed that the property owners paid the workers every Friday without fail except state's witness, Ray Manning. Ms. Hoover computed the hours. Ms. Hoover would also have testified that the decedent had wrecked a work truck while pulling a trailer full of construction equipment that belonged to the petitioner and Ms. Hoover. After wrecking this truck, the decedent left the scene of the accident because he had NO drivers' licence, having lost it for D.W.I.'s. The other vehicle owner tracked the truck down and came to see Ms. Hoover and the petitioner, demanding her damages be paid. Petitioner had this women get damage estimates and paid $1,850.00 to this women, Ms. Hoover had the receipts and gave them to trial counsel for use at trial.

After investigation, petitioner and Ms. Hoover found out it was the decedent who wrecked this work truck. And when the decedent came to petitioner's office, he not only confessed to having no driver's license because of multiple D.W.I.'s, the decedent was so intoxicated on illegal opioid narcotics that he could not even sit up in the chair. Petitioner fired decedent on the spot, in front of Ms. Hoover, and decedent stormed out making physical threats against petitioner.

Ms. Hoover was also going to testify that she <u>was</u> <u>not</u> having a romantic affair with the decedent in any way, shape, or form. She was doing to testify that she got illegal opioid narcotics from the decedent, who got these narcotics from state's witness Lynette Metts. Also

that because of this illegal opioid narcotics dealing, the decedent became obsessed with her. And the petitioner did not know anything about any of this whatsoever.

The cellphone records, the wrecked vehicle receipts, and other evidence through Ms. Hoover does not come out at trial without Ms. Hoover's testimony for the defense. The prosecutor knew this and they threatened, coerced, intimidated, and finally offered to pay Ms. Hoover to prevent her from testifying. No Hoover, no defense.

On Sunday, June 29, 2008, Salts and Shelton drove Irwin from St. Rose back to New Orleans, allegedly to confront petitioner for telling home owner that Irwin was abusing illegal narcotics on their construction projects. Also, allegedly for monies owed to Irwin by petitioner, as well as, allegedly, monies owed by petitioner to his fiance, Dianna Hoover. And finally, to allegedly safeguard Irwin's so-called tools which were stored in a van parked on the street. These three (3) witnesses, Metts, Salts, and Shelton, all testified that Irwin had said; "I got a feeling that somebody will probably die tonight," and "if he (petitioner) pulls a gun on me, I will shove it up his ass." Despite these comments, Salts and Shelton both testified that Irwin's demeanor was calm and relaxed when they reached petitioner's location.

Salts and Shelton testified that, allegedly, the door to petitioner's house was open and that there were Mexican men on the porch and around the home. When Irwin exited Salts' vehicle, Salts testified this happened so fast that Irwin left his bags as well as his dog in Salts' vehicle and walked straight into the house. Salts testified that he then followed Irwin up to the residence and yelled for Irwin to come back out. Irwin came from inside the house and gave his keys to Salts, allegedly so he could put Irwin's bags and dog in Irwin's motor home parked down and across the street. As Irwin went back into the house, he was joking with the Mexican men and Salts went

across the street to put Irwin's bags and dog inside the RV. Salts testified he only opened the RV's door to place Irwin's belongings right inside. Salts also went into great detail about what was going outside the house until Salts heard the shots and allegedly, a "painful scream." Emily Shelton's testimony contradicted Salts' testimony as she testified Salts was actually "inside" of the RV this entire time and even after the shots were fired, Salts did not come out of the RV right away, thereby clearly contradicted Salts' testimony.

Salts testified that he went to the front porch without his shirt on and Shelton testified that Salts also ran to the front porch without his shirt on and she heard no "scream." When salts reached the front steps of the house, he saw petitioner, who allegedly, said to Salts, "You got a problem? I'll put you down like I put "B" down." Salts did not see a gun and testified further that he saw the alleged victim's arm hanging out the front door, so Salts ran to the alleged victim. This was also untrue testimony since the alleged crime scene photos clearly show that Irwin had collapsed at the bottom of the interior stairwell, inside of the hose, fully 12-15 feet to the right of the front door.

Salts further testified that he ran outside to call 911 when Ray Manning walked up, so Salts gave the cellphone to Manning, who gave the address to the 911 operator. New Orleans Police Department Homicide Detective Robert Long arrived on the scene approximately one and one-half hours after the shooting. The primary scene was in the second floor office used by petitioner and four (4) .380 caliber spent shell casings and a spent bullet were all recovered behind the desk where petitioner was at. Also found were several blood stains, one on the filing cabinet and one on the carpet, but both blood stains were less then two (2) feet from petitioner's office chair on petitioner's side of the desk. The secondary scene was where the alleged victim

was found, on the first level of the residence, at the base of the staircase. There was a blood trail where the alleged victim had touched the wall and handrail of the stairwell as he went back down the stairs. Petitioner was developed as a suspect, and an arrest warrant was issued for his arrest, charging him with second degree murder.

Detective Long searched for Petitioner unsuccessfully. Later, he and Detective Weyshan returned to the Manning residence around 1:00 a.m. Detective Weyshan noticed that the front porch light that he had left on when they previously left the crime scene was off, and that a light was on in the second floor bedroom which had been turned off when they had left the residence previously. A police tactical unit was called in to search the residence, and, allegedly, apprehended petitioner inside the attic area located on the second floor of the residence. Detective Long further testified that he was actually not there at the residence and trial counsel stated into the trial record that, in fact, there were several N.O.P.D. Reports turned over under discovery and one said that petitioner had been arrested at the residence without incident outside the second floor bathroom, wet. Another report contained the police tactical unit story, and, the night before petitioner's trial, Assistant DA Mathew Borque faxed trial counsel Eric Hessler an alleged use of force form allegedly created by the N.O.P.D. Swat Team. Trial counsel argued briefly against the admission of this alleged use of force form and the State argued it would have these SWAT officers testify, however, not one of them did. Only Detective Long testified that he had advised petitioner of his right at the scene of arrest, yet petitioner's Miranda Form was not signed until nearly two and a half (2 1/2) hours later at the N.O.P.D. Homicide Office. Detective Long testified petitioner had immediately begun stating that he, petitioner, had to kill the alleged victim because the alleged victim was after him with a pencil. Detective Long asked petitioner

where the gun was and petitioner allegedly said he had dropped it by the body.

Detective Long further testified that petitioner allegedly said if he still had the gun, he would have killed himself. Detective Long testified that even though petitioner was in the N.O.P.D. Homicide Office equipped with audio and video capabilities, detective Long admitted never turning this equipment on during the two and a half (2 1/2) hours petitioner was there. Detective Long also testified at trial that he had allegedly contacted Detective Garcia and allegedly asked her to conduct another canvas of the office at the scene to see if she could locate a pencil out of place. Allegedly, no pencil was out of place, even though Detective Long did admit at trial that he did not document this alleged search or even mention Detective Garcia in any of his N.O.P.D. police reports. Detective Long also testified that petitioner's forehead had a lump on it with a scab forming that petitioner said came from the decedent hitting him prior to being shot, but Detective Long never put this in his reports either!

Dianna Hoover, petitioner's fiance, was under defense subpoena to testify at the trial that petitioner called her from the house and told her that he had shot the decedent in self-defense. Ms. Hoover said she would call the NOPD, which she did and this is in the NOPD supplemental report.

REASONS FOR GRANTING THE PETITION

This Honorable Court should grant certiorari because the lower appellate courts have misapplied Webb v. Texas, 409 U.S. 95, 98, 93 S.Ct. 353, 34 L.Ed.2d 330 (1972) in the petitioner's case. The Orleans District Attorney's Office did unethically conduct a pattern of prosecutorial misconduct wholly executed to insure petitioner's conviction. This began with key defense witness intimidation.

In all of his filings to all courts, state and federal, petitioner has always contended that the prosecutorial misconduct in his case started with Assistant District Attorney (ADA), Mary Glass. That months before trial, ADA Glass called petitioner's key defense witness, Diana Hoover, to threaten, coerce, and intimidate Ms. Hoover to prevent her from testifying for petitioner at trial. Diana Hoover's mother, Mrs. Emma Hoover actually also heard these threats while listening on the telephone extension. ADA Glass also sent Diana Hoover (2) two separate District Attorney "fake subpeonas", telling Ms. Hoover she had to testify exactly how ADA Glass wanted at trial.

Trial counsel filed a formal complaint against ADA Glass at Ms. Hoover's request as well as the petitioner and Glass was removed from petitioner's case. Trial counsel also actually subpeonaed ADA Glass and Mrs. Emma Hoover for trial to testify about these threats after Diana Hoover had testified. This is in the trial court record and copies of these subpeonas were submitted to all federal and state courts.

During petitioner's trial, which lasted over (1) one full week, ADA Matthew Bourque, ADA Cuccio, and the District Attorney himself, Leon Cannizzarro, took turns threatening, coercing, intimidating, and finally actually offering to pay Diana Hoover to prevent her from testifying. This is a matter of trial court record and is undisputable as it was discussed numerous

times "in-chambers) away from the jury.

The State, in their response to both state and federal courts, flatly deny any unethical misconduct, that they did not threaten, coerce, intimidate, or actually offer to pay Ms. Hoover to prevent her from testifying for the defense at trial.

The Louisiana Fourth Circuit Court of Appeals affirmed the petitioner's conviction in a "split-decision," which is of great importance as the federal district court's opinion by the magistrate apparently adopted as a basis for denying petitioner's habeas. In this 'split-decision," Judge Bonin of the Fourth Circuit filed a dissenting opinion, holding, "Few rights are more fundamental than that of an accused to present witnesses in his own defense." Chambers v. Mississippi, 410 U.S. 284, 302 (1973)." The Sixth Amendment preserves the right of the defendant "to have compulsory process for obtaining witnesses in his favor." Washington v. Texas, supra. "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." Id. "This right is a fundamental element of due process of law." See also Webb v. Texas, supra. Judge Bonin also stated, "It is clear that despite multiple requests by defense counsel to the trial judge, she refused to conduct an evidentiary hearing so that the defense could substantiate its allegations."

The trial judge was asked at one point no less than (6) six times to bring Ms. Hoover "in-chambers" so Ms. Hoover could testify under oath what these prosecutors had been subjecting her to in the courthouse hallway for over a week while the trial was going on. In an abuse of discretion, the trial judge stated right into the record, this has nothing to do with the trial.

The District Court Magistrate R&R stated that Webb does not apply to petitioner, "The facts here are quite different. The admonitions that were proffered on the record – which the Fourth Circuit apparently adopted as factually true – were not made in "unnecessarily strong terms" nor were they lengthy and intimidating." Webb, 409 U.S. at 97-8, 93 S.Ct. 351. Unlike Webb, the proffered comments were "brief, factual, and explanatory; they were mildly worded; they were designed to allow [Ms. Hoover] an opportunity to make her own decision ... rather than to impose a decision on her; and they conveyed neither an assumption that perjury would occur nor a threat of prosecution for perjury." Trial counsel moved for a mistrial about this very issue, the unethical conduct of the Orleans Parish District Attorney's Office stopping counsel from putting on a defense.

The District Court Magistrate's R&R is clearly erroneous because like the Fourth Circuit, all they had was the Orleans prosecutors word that there was no threats, coercion, intimidation, or offers of payment. The District Court should have held an evidentiary hearing and put Ms. Hoover under oath to ask her for her version of what occurred.

The R&R also omits (2) two other facts; (1) Judge Bonin's dissenting opinion cited herein; and (2) the fact that these threats, coercion, and intimidation actually started months before trial when ADA Glass called Ms. Hoover several times to do just this, and also sent the "fake subpeonas." This is an erroneous application of the law and the facts and here is exactly why Webb does apply.

In Webb, supra, the judge said it was the court's duty to admonish the witness. In petitioner's case, it was the prosecutor who said into the record that it was their duty to admonish the only key defense witness. In Webb, supra, the judge said, "If you take the witness stand and

lie under oath, the court will personally see that your case goes to the grand jury and you will be indicted for perjury." In petitioner's case, the prosecutor said right in the record, "All I told her was that if she took the stand and lied in this case --- that is perjury."

In Webb supra, the judge said, "If you got on that witness stand and lie, it is probably going to mean several years and at least more time that you are going to have to serve." In petitioner's case, the prosecutor said, "I asked her is anyone had explained to her the consequences for perjury, lying in a murder case and that I didn't --- I was just made aware this week that the penalties are enhanced, depending on the type of case that you perjure yourself in. In a murder case, it's 5 to 40 years, and I asked her if she was aware of that."

In Webb, supra, the judge said, "You don't owe anybody anything to testify and it must be done freely and voluntarily and with a thorough understanding that you know the hazard that your taking." In petitioner's case, the prosecutor said, "I don't want to see you get wrapped up in this. I don't want you to have to lie, if that's what your intent is, I don't want you to do that."

Petitioner could go on and on but when the side by side comparison is made, there is not an iota of legal difference between petitioner's case and Webb, supra.

This Honorable Court must see the great importance of petitioner's case and to other criminal defendants similarly situated in Orleans Parish, Louisiana. The same Orleans Parish District Attorney's Office is being sued right now in Orleans Civil Court for threatening, coercing, intimidating, and offering to pay defense witnesses to prevent their testimony at trial by the MacArthur Justice Center, the ACLU, and other agencies. Also for issuing "fake subpeonas" to the defense witnesses, to stop them from testifying. It is in the Advocate newspaper and all over the web.

Further, in the District Court's R&R, Pg. 14, line 7, the prosecutor at trial quite plainly refers to Ms. Hoover's prior testimony at a Prieur hearing. This prosecutor watched Ms. Hoover's testimony completely destroy this alleged Prieur evidence since it had never happened whatsoever. This same prosecutor vigorously cross-examined Ms. Hoover at this Prieur only to watch it fail. Ms. Hoover's testimony was truthful, strong, concise, and absolutely unshaken by this prosecutor. The trial court had no choice but to dismissed this so-called Prieur evidence. The prosecutor became so angry that he tool a writ to the Fourth Circuit Court of Appeals trying to get this ruling over turned and this totally false Prieur evidence admitted. The 4th Circuit denied the writ.

In United States v. Morrison, 535 F2d 223 (CA 3 1976), a case very similar in facts to the petitioner', the court there held that the district court's conclusion that the prosecutor's actions were done in good faith, did not cause any substantial prejudice, and did not deprive the defendant there of any right to which he was entittled was wrong. The court there held that Webb, supra stood directly in the way of the district court's conclusion and must control that case. Three other federal circuits have also held that the intimidation of defense witnesses requires reversal without a showing of prejudice. United States v. Hammond, 598 F.2d at 1013; United States v. Thomas, 488 F.2d at 336 Brya v. Peyton, 429 F.2d 500, 501. Obviously the district court's erroneous decision on petitioner's habeas is in conflict with these cases. In conclusion petitioner submitted Ms. Hoover's regular cell phone records to the district court, with Mr. Hoovers' own hand writing on them, exactly as they had been given to trial counsel, as an exhibit. These cellphone records clearly show Ms. Hoover had talked to the alleged victim (6) six times the day of the shooting, the last time less than (30) thirty minutes before the shooting.

Ms. Hoover knew the alleged victim was "out of his mind" on illegal narcotics supplied by states witness Lynette Metts and was coming to kill he petitioner. Ms. Hoover's cell phone records plainly show she had also talked to Metts and Metts told her the alleged victim was on the way to kill petitioner.

The Orleans Parish District Attonrey's Office did not want the jury to hear any of this, it would have destroyed their case of 2nd degree murder instead of self-defense.

" [a defendant's] rights are not trenched upon by mere information or advise about the possibility of a perjury prosecution but b y deliberate and badgering threats designed to quash significant testimony" United States v. Blackwell, 694 F.2d 1325, 1334 (D. C. Cir. 1982). Finally, Ms. Hoovers' cellphone records alsoprove that she spent the night after the shooting with State witnesses Lynette Metts, Jesse Salts, and Emily Shelton at Mett's house, using illegal narcotics supplied by Metts. These state witnesses told Ms. Hoover that they were waiting outside the petitioner's house to be "get away" drivers after the alleged victim had attacked and killed petitioner. Petitioner has claimed this in all his pleadings to all state and federal courts.

Denial of Cross-Examination/Perjured Testimony

Petitioner contends that the prosecution put forth (3) three primary witnesses; Lynette Metts, Jesse Salts, and Emily Shelton.

In Emily Shelton's initial NOPD interview taken within hours of the shooting, Shelton stated that the alleged victim "apparently he was not in his right mind because he had taken some Xanex and Lortabs from Lynette." Emily Shelton and Jesse Salts had driven the alleged victim from Lynette Mett's home in St. Rose to New Orleans so the alleged victim could attack the petitioner.

Yet, at trial, Emily Shelton testified on direct by the state that the alleged victim "was in his right mind", and that the alleged victim did not use illegal narcotics and she did not know if he did that. On cross-examination trial counsel tried to ask Emily Shelton about her initial NOPD statement, the state objected, and the proceedings went "in-chambers the state said trial counsel could not ask any questions about illegal narcotics because it would incriminate Lynette Metts and the trial court judge actually agreed, stating counsel could not ask Shelton any questions about this NOPD statement.

This Honorable Court knows that this is not the law of the land, that it is a basic right to ask a witness about their previous statements to the police.

State's witness Lynette Metts also testified that the alleged victim did not use illegal narcotics, that she did not know if he did that, and that he was in his right mind when he left her home with Shelton and Salts to go attack petitioner.

On cross-examination trial counsel tried to ask Metts if she had a prescription for Lortabs and Xanex since these were (2) two of the illegal narcotics found in the alleged victim's toxicology report. The prosecutor objected and the proceedings went "in-chambers." The prosecutor argued that trial counsel could not ask Metts any questions about illegal narcotics because it would incriminate Metts. Trial counsel argued that this was a legal line of questioning because Metts had testified falsely already. But the trial judge sustained the state's objection and told counsel he could not ask Mett any questions about illegal narcotics. Cross-examination continues and trial counsel asked Metts why the alleged victim, along with Shelton and Salts, had gone to New Orleans the night before the shooting. The prosecutor again objects, the proceedings again go back "in-chambers," and the prosecutor actually puts right into the record

that Metts is an illegal narcotics dealer who was supplying illegal narcotics to the alleged victim and to Ms. Hoover behind the petitioner's back. Trial counsel immediately moved for a mistrial for Brady violation, and after much discussion the trial judge denied counsel's oral Brady mistrial motion and sustained the states objection. Counsel p♦ut right in the record that Metts was testifying falsely and counsel had a constitutional right to ask Metts about this issue because it affected her credibility as a witness. The prosecutor, at this same 'in-chamber" meeting said "Ms. Hoover is going to know all about this and she's a cooperating defense witness."

Yet at the same time, ADA Cuccio is threatening, coercing, and intimidating Ms. Hoover out in the hallway to prevent her from testifying at trial.

The district court's R&R stated: "Likewise, Rubens has failed to prove that the government directed or procured Lynette Metts, Emily Shelton's, or Jesse Salts alleged perjured testimony. Indeed, contrary to trying to create the false image that Irwin was a non-drug user, the government disclosed to defense counsel that Lynette Metts may have been giving prescription narcotics to Robert Erwin to deliver to Diana Hoover before Jesse Salts or Emily Shelton even testified."

This is patently incredible, and clearly erroneous. all (3) three of these state's witnesses committed perjury when they testified that the alleged victim "was in his right mind," and he had not abused any illegal narcotics around them.

The district courts' R&R is clearly wrong because it was for the jury, at petitioner's trial, to decide where the truth was and if these witnesses were believable. 1. How can Metts, Salts, and Shelton all testify in front of the jury that the alleged victim did not use illegal narcotics yet, "in-chambers," the state p♦uts in the record that all (3) three were involved in illegal opioid

narcotics dealing with the alleged victim, and 2. The prosecution knew the testimony in front of the jury was false, it objected constantly and then fought "in-chambers" to keep trial counsel form exposing this false testimony during cross-examination; and, 3. The statements, and trial testimony, are certainly material. They go to the state of mind of the alleged victim at the time he was shot.

Under the documented court record, the jury could not have remotely began to establish a "credibility question" of these state witnesses. The district court R&R erroneously also held: "A trial judge has wide latitude to exclude evidence which is repetitive....only marginally relevant or poses an undue risk of harassment, prejudice, [or] confusion of the issues."

Petitioner counters that United States Supreme Court precedents would not characterize asking a state disclosed illegal opioid narcotics dealer if she had supplied these illegal narcotics to the decedent prior to him attacking the petitioner as "harassment" or "prejudice" when everyone but the jury knew she had. It was for the jury, as trier of fact, to determine if it was "confusing to the issue of whether petition was justified in shooting the decedent in self-defense after the decedent attacked him on the second floor of his home while creased on illegal opioid narcotics and marijuana.

According to Metts, Salts, and Shelton's trial testimony, the decedent, Salts, and Shelton had gone by the petitioner's house the night before the shooting (Saturday night) while petitioner was gone. It had already been disclosed in-chambers during Mett's state testimony that the real purpose lof this trip was for the decedent Salts, and Shelton to deliver illegal opioid narcotics to Ms. Hoover, illegal narcotics supplied by Metts. As the prosecutor said in the record at the same in chambers meeting, Ms. Hoovers gonna know all about this and she is a cooperating defense

witness.

Yet, after the prosecutor stopped the cross-examination of Metts, Salts, and Shelton, all (3)(three of these witnesses said the purpose for this trip, in exactly the same four words, was for the decedent to pick up his dog. The trial judge in an abuse of descretion stopped the confrontation process, the severely limited to scope of effective cross-examination and them permitted the prosecutor to elicit false testimony knowing such testimony was fabricated by the prosecutor to mislead the jury.

The district courts R&R sated, "Thus, regardless of whether Rubens was allowed cross-examination of Lyrette Metts about whether she gave Robert Erwin Xanex and Lortabs the jury could have easily rejected Ruben's self-defense claim and returned a guilty verdict. Accordingly, the state court decision denying relief on this issue was neither contrary to nor an unreasonable application of federal law. Rubens is not entitled to relief on this claim."

The District Court is plainly erroneous as it takes the legal position that Metts is the only witness that trial counsel could have challenged their credibility, biases, and motivations with the withheld impeaching disclosure by the prosecutor in-chambers. Trial counsel would have ripped not only Metts but also Salts and Shelton's credibility to shreds. Petitioner's verdict was 10-2, so, obviously, 2 jurors did not think the petitioner was guilty. If this same jury had herd that Metts was an illegal opioid narcotics dealer supplying the decedent and Ms. Hoover with these illegal drugs, the jury would have viewed Metts differently. Then, compound this with the fact that Mett's own son, Jesse Salts and his girlfriend, Emily Shelton were involved in at least the deliver of these illegal opioid narcotics. The jury, as trier of fact, should have had all the facts put before them. Petitioner cited Davis v. Alaska, 415 U. S. 308, 316, 94 S. Ct. 1105, 39 L.Ed.2d 347

(1974), "although the scope of cross-examination is within the discretion of the trial judge and as such it may impose reasonable limits on defense counsel's inquiry, "that discretionary authority comes about only after sufficient cross-examination has been granted to satisfy the Sixth Amendment."

It is axiomatic that defense counsel should be permitted to expose to the jury facts relative to witness possible motivation to testify favorably for the prosecution or his potential bias for or against any part to a criminal proceeding. Delaware v. Van Arsdall, 475 U. S. 673, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1981); Davis, supra. Such information is always relevant as discrediting the witness and affecting the weight of his testimony. Petitioner contends, further, the imperative of protecting a defendant's right to effective cross-examination is even more where, as in his case, the witnesses are critical to the prosecution's case ... in fact, the witnesses ARE the State's case. "A more particular attack on the witness's credibility is affected by means of cross-examination directed towards revealing possible bias, prejudices, or ulterior motives of the witnesses as they may relate directly to issues or personalities in the case at hand." Davis, supra, 415 U.S. at 316.

Indeed, Metts, Salts, and Shelton had considerable incentive ... "to slant, unconsciously or otherwise their testimony in favor of or against a party." United States v. Abel, 469 U.S. 45, 52, 105 S.Ct. 465, 83 L.Ed.2d 450 (1981). Exposing the motivation of a witness "in testifying is a proper and important function of the constitutionally protected right of cross-examination." Davis, Id. at 316.

The District Court was erroneous to not see the numerous constitutional violations committed by the Orleans Parish District Attorney's Office. Especially when this same office

threatens, coerces, intimidates, and offers to pay a key defense witness to stop them from testifying. At the same time putting (3) three state witnesses on who testify exactly as the state wants them to at trial, the record clearly demonstrates this.

Brady Violations

This Honorable Court has held, "[T]he truth-seeking process is corrupted by the withholding of evidence favorable to the defense, regardless of whether the evidence is directly contradictory to evidence offered by the prosecution." U.S. v. Agurs, 427 U.S. 97, 121, 96 S.Ct. 2392, 2406, 49 L.Ed.2d 342 (1976).

Since the prosecutor obviously knew this impeaching evidence during Metts, Salts, and Shelton's testimony is plainly evident by his own words during the very contentious "in-chambers" conference during Metts' testimony. Trial counsel moved for a mistrial under Brady violation and that this Honorable Court needs to hear this case on the Brady issue if nothing else. Is impeaching information turned over by the State "in-chambers" still Brady as Brady was written??

After all, when the government fails to disclose impeaching information on key witnesses, the truth-finding process of trial is necessarily thrown askew. The failure to disclose evidence affecting the overall credibility of witnesses corrupts the process to some degree in all instances. Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972); Napue, supra; Agurs, supra; but when "the reliability of a given witness may well be determinative of guilt or innocence;" Giglio, supra, 405 U.S. at 154, 92 S.Ct., quoting Napue, "and when the government's case depend[s] almost entirely on "the testimony of witness, evidence of that witness possible bias simply may not be said to be irrelevant or its omission harmless." "A

Brady violation occurs when the government fails to disclose evidence materially favorable to the accused." This Honorable Court has held that the Brady duty extends to impeaching evidence as well as exculpatory evidence.

What really stands out with this Brady violation is the prosecutor actually putting it into the record "in-chambers" and saying "Ms. Hoovers gonna know all about this," while other prosecutors are threatening, coercing, intimidating, and offering to pay Ms. Hoover to prevent her from testifying. The significance of this cannot be lost upon this Honorable Court.

To prevail on a Brady claim, petitioner must show that the State withheld evidence. The State certainly put on the record that Metts was on illegal opioid narcotics dealer right into the record, and the State was sure enough that it would result in Metts "incriminating" herself if cross-examination on this impeaching evidence continued. The trial judge violated Brady as well because once the prosecutor put this into the record, the only Brady violation cure would cure would been to allow counsel to continue to cross-examine Metts on this issue. Especially since the prosecutor stated, "Ms. Hoover's gonna know all about this and she's a cooperating defense witness." Any seasoned trial lawyer would not have to debate this Brady violation, it is obvious.

Of course, it was "material" because Metts, Salts, and Shelton would not have been able to testify falsely that the decedent had not used any illegal opioid narcotics around them; that they did not know if he did that; that he was "in his right mind"; and that it was slanderous lies when petitioner fired the decedent for abusing illegal opioid narcotics on heavy construction sites and notified the property owners of this.

The District Court, like the Louisiana Fourth Circuit Court of Appeals are erroneous on

this issue. As stated, once the prosecutor put in the record that Metts was an illegal narcotics dealer and Salts was Shelton drove the decedent to deliver these illegal narcotics, the Brady requirement ensues. Common legal knowledge clearly shows that the withheld Brady material had to come from one of the State's witnesses, and as it is multiple felonies under Louisiana state law to sell and distribute illegal opioid narcotics, Metts herself is the likely source of this. And for this prosecutor to jump up and object at the time trial counsel asked his questions, and the subsequent "in-chambers" Brady disclosures, the prosecutor knew if was Brady under the law.

In Smith v. Cain, 132 S.Ct. 625 (2012) this Honorable Court required that Brady violation required that conviction be reversed. There, as here, the State does not dispute that this Brady evidence was favorable to the petitioner, nor do they dispute that the Brady evidence was not disclosed to trial counsel. Under Brady, evidence is material if there is a "reasonable probability that, had the evidence been disclosed, the results of the proceedings would have been different." Cone v. Bell, 556 U.S. 49, 129 S.Ct. 1769, 173 L.Ed.2d 701. "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to the guilt or punishment, irrespective of the good or bad faith of the prosecution." Weary v. Cain, ____ S.Ct. ____, 2016, No: 14-10008.

1. Is impeaching Brady material turned over by the state "in-chambers" at trial Brady material as determined by this Honorable Court; and,

2. Does a trial judge abuse his discretion when he deny the admissibility of this "in-chambers" Brady material.?

Under the pro se standards of Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), petitioner prays he has satisfied this Honorable Court's "Reasons for

Granting the Petition."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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