

IN THE SUPREME COURT OF THE UNITED STATES

IN Re: William David Cannon,
Petitioner,

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SUPREME COURT, U.S.

vs.

Commonwealth of Virginia,
Respondent.

Petition For a Writ of Certiorari
pursuant to Rule 20(2); (4)(a)

William David Cannon #1457842
Sussex II State Prison
24427 Musselwhite Drive
Waverly, Virginia 23891

Questions Presented

#1. When a reviewing court on collateral appeal dismisses as "non-cognizable under law" a Cumulative Effect / Aggregate Prejudice claim, asserting multiple grounds under an ineffective assistance of counsel Sixth Amendment violation, are the Defendants constitutional rights under the Due Process Clause of the Fifth and Fourteenth Amendments violated? Is the summary dismissal contrary to Strickland v. Washington, 466 US 668 (1984) and its progeny?

#2. Is the Courts Holding in In re Winship, 397 US 358, 364 (1970) of "... proof beyond a reasonable doubt of every fact necessary..." disregarded and invalidated when a State uses multiple jury instructions to supplant the proof needed of the elements of the charges? Specifically > When the State uses two (or more) jury instructions that infer the necessary proof of the elements of the charges, are the Defendants Sixth and Fourteenth Amendments violated?

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1. Final ORDER of the Circuit Court of the City of Virginia Beach. CL 16-4979 § 8.01-654 Virginia Petition for Writ of Habeas Corpus; Evidenciary Hearing Denied, Petition Denied with Prejudice April 17, 2017.

A

2. Petition For Appeal § 8.01-654 to Virginia Supreme Court: "the Court refuses the petition for appeal ... no reversible error in the judgment complained of." March 5, 2018

B

3. Petition For Rehearing (en banc) Denied May 10, 2018

B

4. Virginia Court of Appeals opinion; Record no. 1898-14-1 - "denied", Virginia Supreme Court, Record no. 151941 on Petition For Appeal with Assignment of Errors; "Refused"

D

5. Jury Instructions; Tr. 4/9/2014 pp. 273-287; Instruction 8, 9, and 10 on pages 275-276.

F

6. Constitutional provisions, statutes, etc.

H

7. Cumulative Effect IAC collected cases

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Motion Denied; Abuse of Discretion by court - erroneous findings of fact (p. 260)

IN THE SUPREME COURT OF THE UNITED STATES

In re William David Cannon,
Petitioner,

v.

Commonwealth of Virginia, Director Dept. of Corrections,
Respondent.

Petition For a Writ of Certiorari
to the Circuit Court of the City of Virginia Beach

The Final ORDER of the Circuit Court of the City of Virginia Beach, Virginia, Case no. CL16-4979, is dated April 17, 2017. The opinion of the court appears at Appendix A.

The Petition For Rehearing en banc was denied May 10, 2018. The opinion of the Virginia Supreme Court appears at Appendix B.

Statutory provisions of Jurisdiction

The Court has jurisdiction to review on a writ of certiorari the judgment and ORDER in question pursuant to: 28 USC § 1651(a), § 1257(a); 28 USC § 2254(b), § 2254(a).

Statement pursuant to Rule 20(4)(a)

The reasons for not making application to the district court of the district in which the applicant is held are as follows:

1. The courts of the Commonwealth of Virginia, including the Federal District courts, do not recognize Cumulative Review of Sixth amendment ineffective assistance of counsel claims. IN

fact, the court stated: "The Court finds that Virginia law does not recognize such a claim." [p.19, Final ORDER]

2. The United States Court of Appeals for the Fourth Circuit has ruled the idea of Cumulative Review/Aggregate Prejudice of ineffective assistance of counsel claims "...odd, to say the least..." Fisher v. Angelone, 163 F. 3d 835, 852 (4th Cir. 1998)

3. The state court dismissed Plaintiff/Petitioners claim of Cumulative Review as follows: "because claim III(f) does not set forth a cognizable basis for habeas corpus relief, it is Dismissed." [p.20, Final ORDER]

4. The U.S. Court of Appeals has further stated: applying Fisher and concluding that the "cumulative effect" argument was "squarely foreclosed" by that decision. see Mueller v. Angelone, 181 F. 3d. 557, 586 n.22 (4th Cir. 1999)

5. Additionally, see: Lenz v. Warden of the Sussex I State Prison, 267 Va. 318, 340; 593 SE 2d 292, 305 (2004) "Having rejected each of petitioners individual claims, there is no support for the proposition that such actions when considered collectively have deprived petitioner of his constitutional right to effective assistance of counsel."

Wherefore, Cannon's Cumulative Effect claim, asserting his Sixth Amendment guarantee of the effective assistance of counsel and a fair trial was violated, has been ruled non-cognizable in the federal 4th Circuit.

6. IN direct contrast, per the Courts Rule 10(a) and (b),

The 1st, 2nd, 3rd, 5th, 6th, 7th, 9th, 10th, and D.C. Circuit U.S. Court of Appeals have taken the view that cumulative effect ineffective assistance of counsel claims ARE Cognizable on collateral review, and in-fact promulgated by Strickland v Washington, 466 US 668 (1984). [Appendix C]

7. These Courts, as well as their respective lower state courts, have for over THREE Decades now, proceeded to determine whether individually non-prejudicial errors, when combined cumulatively, prejudiced the defense, operated to deny the defendant a fair trial, or otherwise accumulate to establish prejudice under Strickland, supra. [See Appendix C; collected cumulative effect cases]

IN regard to Question no. 2:

8. The Virginia Supreme Court has previously examined the jury instruction Petitioner asserts violated his due process rights, and found that it "did not establish an improper presumption but merely stated a permissive inference."

Schmitt v Commonwealth, 262 Va. 127, 145; 547 SE 2d 186, 198-99, (2001) [Final ORDER p. 25] {Concert of action instruction}

9. In Addition to the Concert of Action instruction, though, under Virginia law > "it is well settled in Virginia that each co-actor is responsible... and may not interpose his personal lack of intent as a defense." Carter v. Commonwealth, 348 S.E 2d 265, 267-68 (1986). [Final ORDER, p. 25]

10. An additional jury charge instructed the jury... "you

may infer a person intends the natural probable consequences of his actions."

11. Wherefore, under Virginia Supreme Court jurisprudence and imagineably sanctioned by the 4th Circuit US Court of Appeals, Cannon was indicted and charged as a principle in the second degree; thereafter, the Commonwealth used Two jury instructions to relieve itself of its burden of production AND persuasion of material elements of the charges. > In violation of Sandstrom v. Montana, 442 US 510, 513 (1983) and Francis v. Franklin, 471 US 307, 316 (1985), AND IN re Winship, 397 US 358 (1970)

12. The state court of last resort was presented with the unconstitutionality of the jury instructions, yet ~~denied~~^{refused} the Petition For Appeal finding "no reversible error". [Supreme Court of Virginia, March 5, 2018; Record No. 170821, Circuit Ct. No. CL16-4979]

13. Therefore, pursuant to the Courts rule 10(c), the Petitioner is unable to find relief upon his claim and prays the Court use its supervisory power.

Constitutional provisions, statutes, etc...

§ 2254(d): (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.

- > 28 USCA Constitutional Amendment 6
- > 28 USCA Constitutional Amendment 14
- > 28 USCA Constitutional Amendment 5
- > 28 USCA §1257(a)
- > 28 USCA §1651(a)
- > Va Code Ann. §18.2-22 Concert of Action
- > Va. Code Ann. §18.2-89 Statutory Burglary
- > Va. Code Ann. §18.1-86; §18.1-215 Intent
- > Va. Code Ann. §18.2-18 Principle in the 2nd Degree

Statement of the Case, Facts Material

William David Cannon (hereinafter "Cannon") was charged with: conspiracy to commit burglary, armed statutory burglary, abduction, robbery, rape, object sexual penetration, and 5-counts of use of a firearm in the commission of a felony > All as a principle in the 2nd degree.*¹ Rolando Goodman, the perpetrator, plead Guilty on a plea-bargain (it is believed he received 40 years).

Cannon plead NOT guilty to all counts and a trial by jury (at the Commonwealths request) was held April 8 and 9, 2014, in the Circuit Court of the City of Virginia Beach, Virginia. Cannon was represented by a state-appointed attorney for both trial and direct appeal. Cannon was

*1 Va. Code Ann. §18.2-18

found NOT Guilty of: Conspiracy to commit burglary, object sexual penetration, and 1 count of use of a firearm in the commission of a felony.

Cannon was found Guilty as a principle in the second degree of: Robbery, Rape, Armed Statutory Burglary, Abduction, 4 counts use of a firearm in the commission of a felony. The jury recommended the statutory Minimums on each count, which was an aggregate of 58 years. This was Cannons First arrest at the age of 24. Nonetheless, on September 23, 2014 - just short of 3 years after his arrest, the judge imposed the full 58 year sentence.

* Germane to petitioners following argument is that the Commonwealth originally, as in when Cannon was arrested, only charged Cannon with Robbery and the accompanying count of use of a firearm. Cannon hired a "paid" attorney and a plea deal was negotiated. However, before that plea deal could be signed, Cannon was not able to finish paying the attorney, and so ~~he~~ ^{the attorney} petitioned the court and had himself removed. - Cannon believing the plea deal was in place anyhow - . Approximately 14-18 months AFTER his arrest, now indigent with a court appointed attorney, the Commonwealth charged him with the rest of the counts, the original plea deal no where to be found. *

In pertinent part to the proceeding Arguments, the Trial Transcripts and evidence offer the following:

On the night of September 25, 2011, Cannon and

Goodman traveled to the Mansards apartment complex, in the Virginia Beach area, specifically to "loot/rob/take any merchandise from any open cars they could find." [this "plan" was identified by Cannon to Detective Policella during an in custody interview on 10/01/11, which transpired upon Cannon turning himself in. This CD was played for the jury.]

The two men were at the Mansards apartments, in the parking lots, for approximately thirty minutes when Ms. Carter (the victim) pulled into her parking space that was, in happenstance, mere feet from where Goodman and Cannon were ~~standing~~ ^{walking}. Goodman followed Carter down the outside hallway to her apartment door, put a gun to her head, and forced her to enter her apartment. Goodman forced Ms. Carter down her interior hallway to her living room. It is at that point Cannon entered the apartment but stayed at the door.

Goodman then forces, still at gunpoint, Ms. Carter to get on all fours and drags her by her ponytail into a back bedroom. Goodman attempted to tie Carter up with a cable cord; Cannon entered the bedroom and asked ~~Carter~~ ^{Goodman} where her cash was. Carter replied she didn't have any; Cannon left the bedroom and proceeded checking the rest of the apartment for things to take, checking rooms and closets.

Goodman, meanwhile, has tied up Ms. Carter with electrical tape, closed the bedroom door, and is raping Ms. Carter.

Approximately 10 minutes transpire before Cannon

reentered the back bedroom to come upon the scene that Goodman had sexually assaulted Ms. Carter. Cannon told Goodman to "Hurry Up" and left the apartment. [Tr. 4/8/14 p. 131 at 24. thru p. 132 at 3] This induced Goodman to "get up off of her" and leave several minutes later. [id. p. 153]

There are two substantial material factual issues that were not, and have not, been resolved.

(A) The Commonwealth stated, and ~~inferred~~ ^{inferred}, at trial (and in all of its briefs thus far) that the Rape was still "actively" occurring when Cannon reentered the bedroom, and that Cannon stating "Hurry Up" was "an act in furtherance" of the Rape. However, based on Ms. Carter's own testimony [Tr. 4/8/14, pp. 131-132; 153] Goodman had "just finished" when Cannon reentered the room; Goodman "like just stopped" when Cannon stated "Hurry Up". Thus, the Commonwealth's inference is unequivocally contradictory to evidence.

(B) There are numerous testimonial statements and evidence as to where the "tape" that bound Ms. Carter's hands came from; and the issue itself is exculpatory as mitigating evidence toward the abduction and rape. Yet defense counsel let the Commonwealth "establish" that the tape came from Cannon because the victim, who testified her tank top was covering her eyes, said she saw Cannon hand Goodman the tape. Previous statements establish Goodman already had a roll of electrical tape in HIS pocket; Cannon's fingerprints were NOT on the tape. Thus, the historical

facts and Commonwealths inferences are belied by the contradictory and cumulative evidence Goodman already had the tape. [Tr. 4/9/2014, p. 297-298] > see Appendix E.

Cannon's defense counsel made a timely Motion To Strike at the conclusion of the Commonwealths case in chief. * [Tr. 4/9/14, pp. 249-261; Appendix B of Habeas Petition]. Under Virginia law "presence and consent alone are not sufficient to make a person a principal in the second degree." "the rape that occurred ... not [a] natural and probable consequence" of the original plan to rob from cars. ... "that's not sufficient for him to be aiding and abetting in the actual entry of the apartment." The Prosecution citing to McMorris v Commonwealth as controlling; combining Principal in 2nd degree with Concert of Action.

* * The Point being that the factual materiality of Question no. 2 hereof was presented to the Trial Court. * *

Jury Instructions 8, 9, and 10 were objected to by counsel "for the reasons previously stated"; no due-process argument was offered, only that the evidence did not support those instructions being tendered to the jury. [Tr. 4/9/14, pp. 271-72; 307; 296-300] [Exhibits 8 and 10 of Cannons §8.01-654 State habeas] {these are the subject of Question no. 2} *

The verdict was read on April 10, 2014.

The Court of Appeals of Virginia was presented with defendants Petition For Appeal, in which counsel argued in Claims I, II, and III the "evidence is insufficient to support

* Appendix F.

* Appendix G

his convictions..." *2 [Record No. 1898-14-1; Circuit Court Nos. CR12-189, CR12-1640, CR14-83] The Petition was Denied May 4, 2015. [Appendix D hereof] The Supreme Court of Virginia Refused the Petition For Appeal August 3, 2016. [Appendix D hereof][Record No. 151941]

Cannon's Petition For Appeal, in brevity, argued that in accordance with Virginia's own case law, the evidenciary facts of the case did not support the principal in the 2nd degree charges nor the use of the concert of action jury instruction. Counsel, however, did NOT argue that the "inferences" the prosecution were asking for did NOT flow from a "proven fact", and thus were arbitrary.

The Court of Appeals, in its three page decision, and using the Prosecution's inferences verbatim (page 3 of the opinion) cited to:

"A principal in the second degree, or an aider or abettor as he is sometimes termed, is one who is present, actually or constructively, assisting the perpetrator in the commission of the crime. In order to make a person a principal in the second degree, actual participation in the commission of the crime is not necessary. The test is whether or not he was encouraging, inciting, or in some manner offering aid in the commission of the crime. If he was present lending countenance, or otherwise aiding while another

*2 Cannon did not challenge on Direct Appeal nor on Collateral Appeal his conviction for Robbery and accompanying firearm charge.

did the act, he is an aider and abettor or principal in the second degree."

Thomas v. Commonwealth, 688 SE 2d 220, 234 (2010), quoting *Muhammad v. Commonwealth*, 619 SE 2d 16, 33 (2005).

We have previously held that:

"proof that a person is present at the commission of a crime without disapproving or opposing it, is evidence from which, in connection with other circumstances, it is competent for the jury to infer that he assented thereto, lent to it his countenance and approval, and was thereby aiding and abetting the same."

Pugliese v. Commonwealth, 428 SE 2d 16, 25 (1993) quoting *Foster v. Commonwealth*, 18 SE 2d 314, 316 (1942).

Cannon timely filed his Virginia Petition For a Writ of Habeas Corpus October 28, 2016, §8.01-654, of which the Questions Presented hereto are based. Cannons' Claim III(6) [proffered on pages 50-56] - which is referred to as Claim III(f) in the courts Final ORDER - presents his Cumulative Effect ineffective assistance of counsel claim; Cumulative Review/Aggregate Prejudice. Cannons Claim IV(4) [presented on pages 63-68] - which is referred to as Claim IV(d) in the courts Final ORDER - proffers the argument, inter alia, that the concert of action jury instruction violated petitioners 5th, 6th, and 14th Amendments to the United States Constitution. [III(f) = III(6) ; ~~III(d) = III~~ IV(d) = IV(4)]

{For ease of reference, only III(6) or IV(4) will be noted}

In regard to Question no. 1, "the Cumulative Effect of counsels deficiencies and the Aggregate Prejudice caused by the errors and omissions" [p. 47 of habeas petition] was Dismissed by the Virginia Courts as "non cognizable under Virginia law" as confirmed by the 4th Circuits US Court of Appeals. > See Fisher v. Angelone, 163 F. 3d 835, 852 (4th Cir. 1998) (citation on page 2 herein), and Mueller v. Angelone, 181 F. 3d 557, 586 n. 22 (4th Cir. 1999) (citation on page 2 herein) Thus, the Ten (10) grounds that Cannon proffers for Claim III (6) as evidence his Sixth Amendment guarantee of a fair trial has been violated, and his sixth and fourteenth amendment guarantees of the effective assistance of counsel have been violated, will NOT be Adjudicated as a Claim on Cannons § 2254 petition; the District will refuse and dismiss without hearing the Claim. [see Final ORDER, p. 19-20]

In Cannon's § 8.01-654 Petition For Appeal to the Virginia Supreme Court [Record No. 170821, Denied March 5, 2018], Cannons proffers on his Assignments of Error, p. 2, "The circuit court erred in denying petitioners Habeas Claim III^{error}" and thereafter specifically argues [on pages 33-35] that the "Cumulative Effect of counsels deficiencies, and the Aggregate Prejudice caused by the errors and omissions, resulted in a Fundamentally unfair trial not worthy of Public Confidence, and a violation of Cannons 6th and 14th US Constitutional Amendment Guarantees."

Cannon's § 8.01-654 Petition For Rehearing en banc was timely filed on 3/17/18 (per the prison mailbox rule) and restated, inter alia, Claim III (b) on pages 5-7. Petitioner also stated, AGAIN, that Virginia's "finding and conclusion of law is contrary to US Supreme Court law, and AT-ODDS with EVERY other US Court of Appeals in the United States." The Petition was Denied on the 10th day of May, 2018.

IN regard to Question no. 2, Cannon proffers in Claim IV(4) "The concert of action jury instruction contributed 100% to Cannon being found guilty. Without the instruction, which will be shown to be unconstitutional in this trial, Cannon would have been acquitted - more likely than not." [state habeas petition, p. 63 (claim is argued on pages 63-68)]

The Facts and Circumstances of the instant case:

A. Cannon was charged as a principal in the 2nd-degree. (under Virginia law, "he must be guilty of some overt act, or he must share the criminal intent of the principal..." Triplett v. Comm. 141 Va. 577, 586 (1925), Jones v. Commonwealth, 157 SE 2d 907 (1967))

B. To find a defendant Guilty as a principal in the 2nd degree, the Commonwealth must prove that the defendant "shared in the criminal intent of the principal..." McMorris v. Comm., 666 SE 2d 348 (2008)

C. Jones v. Common., 208 Va. 370, 373 (1967) (... if he is guilty of some overt act done KNOWINGLY in furtherance of the

that when Cannon said "Hurry-Up", Goodman immediately got up off of her. [Tr. 4/8/14, p. 153; habeas petition Exhibit 2]

G. The Commonwealth is allowed the Concert of Action jury instruction derivative of the false statements as of facts it made, through-out the trial, without objection by Defense counsel. [but see Tr. 4/9/14, pp 296-301; Exhibit 10 of habeas Petition] [Appendix F, hereof; Jury Instructions]

H. There are Nineteen misrepresentations of evidence and facts proffered to the jury during trial, and written by the Commonwealth in its "Brief in Opposition to the Defendants Motion To Set Aside the Verdict". [See Appendix F, Habeas Petition; Included hereof] [included hereof AS Appendix E]

I. "The court instructs the jury 'You may infer that every person intends the natural and probable consequences of their acts.'" [Tr. 4/9/2014, p. 275, 17-19]

J. Jury Instruction no. 10 > "If there is concert of action with the resulting crime one of its incidental probable consequences... all who participate in any way to bring it about are equally answerable and bound by the acts of every other person connected with the consummation of ~~some~~ ^{such} resulting crime." [Tr. 4/9/14, p. 276, 15-22]

Ergo, when considering H, I, and J above collectively, as the jury did, the prosecution was relieved of its burden of proving intent; the misrepresentations of evidence, the false inferences, the unconstitutional burden-shifting instructions (I and J) and Cannon never stood

a chance of a fair trial.

The lower court, in Dismissing Claim IV(4), stated:
"... the jury instruction was supported by precedent and the evidence at trial. Additionally, the court finds that the Virginia Supreme Court has previously examined this instruction* and found that it "did not establish an improper presumption but merely stated a permissive inference." Thomas, 279 Va. at 166, 688 SE 2d at 239, quoting Schmitt v. Commonwealth, 547 S.E. 2d 186, 198-99 (2001). [Final ORDER p. 25]

The claim was again submitted and argued in Cannon's Petition For Appeal § 8.01-654 within Claim III; [pages 24 through 34, and page 35] The Virginia Supreme Court found "No Reversible Error" and refused the petition on March 5, 2018 [Appendix B] The Commonwealth did not submit any additional argument.

A Petition for Rehearing en banc was denied on the 10th day of May, 2018.

Wherefore, as the Virginia Commonwealth courts rely on the precedent of the Virginia Supreme Court and find No Reversible Error in the Constitutionality of the two jury instructions stated herein, Cannon can NOT get relief in the District Court. Whereby the subject matter and proceedings thus far fall squarely within the parameters of the Courts Rule 10(c). Cannon prays the Court to adjudicate the merits of his claim and the Constitutionality of Question no. 2.

* It is actually a statute; VA Code Ann. 18.2-22

commission of the crime... or shared "in the criminal intent of the principal..." cf. Augustine v. Comm. 226 Va 120, 124 (1983).

D. Cannon's Confession - undisturbed, its important to note, by Goodman's arrest and interrogation - is that THE ONLY plan he and Goodman had was to "Rob From Cars." Cannon and Goodman were going to pull on door handles; Cannon would be "the lookout", Goodman would "do the taking."

E. The victims testimony is crystal clear Goodman - and only Goodman - put the gun to her head, forced her into her apartment, forced her down her interior hallway to her living room. Cannon was no-where in sight.

Ergo, as a matter of law, there is NO Intent or culpability of Cannon for the armed statutory burglary nor the abduction. Furthermore: burglary, abduction, and the subsequent rape are NOT "probable consequences" of the initial criminal scheme. Additionally, there is abundant conflicting evidence that the "tape" was Goodman's - he had it before entering the apartment. Thus, NO Direct Evidence holding Cannon culpable of anything other than robbery.

F. The Commonwealth, with statements it makes during trial to the jury wholly misrepresenting evidence; Infers that "Cannon was there to 'Rob People'"; Cannon "handed the tape to Goodman"; Cannon telling Goodman to "Hurry Up" was an act overt in the ~~act of the rape~~ furtherance of the rape (even though the victim testified

Argument amplifying reasons
in re Question no. 1

Petitioners US Constitutional rights were violated, under the due process clauses of the Fifth and Fourteenth Amendments, whereby the Virginia courts (and the federal 4th Circuit US Court of Appeals) summarily refuse to adjudicate his claim of Cumulative Effect / Aggregate Prejudice of the ineffective assistance of counsel per the Sixth Amendment. The Virginia Courts, pursuant to precedent of the 4th. Cir. US Ct. of Appeals, dismissed as "non-cognizable under law" petitioners Cumulative Effect claim asserting multiple grounds within an ineffective assistance of counsel Sixth amendment claim. The courts dismissal is contrary to Strickland v. Washington, 466 US 668 (1984) and its progeny, AND the Sixth Amendment's guarantee of a fair trial.

Cannon proffers three standards of Law:

1. The Courts Holdings in Strickland, supra, and its diction in the Opinion asserts that a Cumulative Review of individual grounds for aggregate prejudice is Expressed.
2. Alternatively, the Opinion issuing the standards of Strickland are implicitly of review for cumulative effect and aggregate prejudice. Additionally, Strickland's progeny do proffer an Expressed holding of Cumulative Review and thus can not be ignored when reviewing a Sixth amendment claim.
3. For AS long as the past three-decades, every

federal US Court of Appeals in the United States, and their respective state courts of review, have conducted Cumulative Review of ineffective assistance of counsel claims; sans the 4th Circuit.

First: Throughout Strickland v. Washington, the Court opines on the plurality of the proceedings, not on the singular. While the Court does note that a singular error may have had "a pervasive effect on the inferences to be drawn..." 466 US at 695-96, mostly the diction is unambiguous as weighing the entirety of the proceedings, and "Expresses" a cumulative review. To wit:

> "The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome." 466 US at 694. This statement in and of itself announces that "even if" prong 1 and 2 of the Strickland standard finds no violation of each individual ground, the entirety of the proceeding - with ALL of its circumstances - must be reviewed to see if cumulatively the errors and omissions alleged resulted in a sixth amendment violation.

> "The defendant must show... the result of the proceeding..." 466 US at 694. Again, the Court states "errors", plural, that would have cumulatively violated the Sixth amendment's fair trial guarantee; the

Court expresses the need to look at the entirety of the affect of All-of the errors.

> "The benchmark for judging any claim of ineffectiveness must be whether counsels conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." 466 US at 686

This statement is obviously a dictate for a reviewing court to conduct a cumulative review for aggregate prejudice.

"... in light of all the circumstances, the identified acts or omissions ... counsels function ... is to make the adversarial testing process work in the particular case." 466 US at 690

If Strickland was not Expressly cumulative, the Court would not have opined on the particular importance of the "adversarial testing process" (plurality) and "of all the circumstances," in reviewing a claim of a Sixth amendment violation.

> "The defendant must show that there is a reasonable probability that, but for counsels unprofessional errors, [the cumulative "errors" - it does NOT state each individual 'error'] the result of the proceeding would have been different." 466 US at 694 Expressly cumulative.

And lastly;

> "... the question is whether there is a reasonable probability that, absent the errors, the factfinder would have a reasonable doubt respecting guilt." 466 US at 695

> "... and taking due account of the effect of the errors on the remaining findings ... the prejudice inquiry ... would reasonably likely have been different absent the errors."

466 US at 696 Whereby 466 US at 695-96 is Expressly dictating an Aggregate Prejudice analysis of the cumulative effect of the acts or omissions, or errors, as specified in the claim.

Second: The Holdings of Strickland v. Washington, supra, and the diction in the Courts Opinion, are implicitly "cumulative" and "aggregate" in making determinations and adjudicating ineffective assistance of counsel claims. To wit:

> "... the purpose of the effective assistance guarantee of the Sixth Amendment is not ... The purpose is simply to ensure that criminal defendants receive a fair trial." 466 US at 689. Implying that in order to analyze a "fair trial", all of the errors must be weighed against the entirety of the resultant prejudice; as in cumulative review and aggregate prejudice.

> "Counsel also has a duty ... as will render the trial a reliable adversarial testing process. See Powell v. Alabama, 287 US 45, 68-69 (1932)" 466 US at 688 this statement, this opinion, implicitly connotes adjudication based on a cumulative review of all errors, and the aggregate prejudice and effect on the entirety of the trial. Nothing singular.

Highly probative, and perhaps most relevant, is this:
> "Accordingly, the appropriate test for prejudice finds its roots in the test for materiality ... United States v. Agurs, 427 US 97, 104, 112-113 (1976), and in ... United States v. Valenzuela-Bernal, 458 US 858, 872-874 (1982) ... The defendant must show ... reasonable probability ... the result of the proceeding would have been different." 466 US at 694. Thus, the "roots" of the test for prejudice come from "materiality in terms of cumulative effect"; ergo it is implicit that Strickland's test for prejudice be of the cumulative effect. "of sufficient significance to result in the denial of the defendant's right to a fair trial." 427 US at 108. See Kyles v. Whitley, 514 US 419, 433, 437 (1995).

> "... the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." 466 US at 696 implying an "overall" review of the "entire" proceeding; a "result" is indicative of the culmination of events. Thus, proper adjudication under Strickland requires a cumulative review of All errors, and the judgment of the aggregate resultant prejudice. > See Lockhart v. Fretwell, 506 US 364, 369 (1993)

Third: The 1st, 2nd, 3rd, 5th, 6th, 7th, 9th, 10th and D.C. Circuit U.S. Court of Appeals have taken the view that cumulative effect ineffective assistance of counsel claims are cognizable and have proceeded to determine whether

individually non-prejudicial errors, when combined cumulatively, prejudiced the defense, operated to deny the defendant a fair trial, or otherwise accumulate to establish prejudice under Strickland v. Washington, 466 U.S. 668 (1984).

To wit: Rodriguez v. Hoke, 928 F.2d. 534, 538 (2nd Cir. 1991) ("a claim of ineffective assistance of counsel can turn on the cumulative effect of all counsel's actions"); Henry v. Scully, 78 F.3d. 51, 53 (2nd Cir. 1996) ("We express no view regarding whether one or two of these errors would have constituted ineffective assistance, for the aggregate effect of these three instances of inaction by defense counsel convinces us that [the defendant] received ineffective assistance of counsel"). IN Contrast to:

Fisher v. Angelone, 163 F.3d 835, 852 (4th Cir. 1998) ("Having just determined that none of counsel's actions could be considered constitutional error... it would be odd, to say the least, to conclude that those same actions, when considered collectively, deprived Fisher of a fair trial."); Mueller v. Angelone, 181 F.3d. 557, 586 n. 22 (4th Cir. 1999) (applying Fisher and concluding that the "cumulative effect" argument was "squarely foreclosed" by that decision.)

> Compare: Conklin v. Schofield, 366 F.3d. 1191 (11th Cir. 2004) (engaging in consideration of "cumulative effect" of errors, but finding no cumulative prejudice) vs. Lenz v. Warden of Sussex I State Prison, 593 SE 2d 292, 305 (2004) "Having rejected each of petitioners individual claims, there is no

support for the proposition that such actions when considered collectively have deprived petitioner of his constitutional right to effective assistance of counsel."

> See Appendix C ; 16 collected cases of Cumulative Review for Aggregate Prejudice from varied US Ct. of Appeals.

> Lindstadt v. Keane, 239 F.3d 191 (2nd Cir NY, 2001) (6th Amendment cumulative effect ineffective assistance of counsel) ; Pavel v. Hollins, 261 F.3d 210 (2nd Cir NY, 2001)

(cumulative effect, aggregate errors resulting in denial of a fair trial ; ineffective assistance of counsel under Strickland)

> United States v. Tucker, 716 F.2d 576 (9th Cir 1983) (cumulative errors in not preparing for trial ; ineffective assistance).

> Cone v. Bell, 556 US 449 (2009) (materiality and cumulative analysis of suppressed evidence) ; Wellons v. Hall, 130 S.Ct. 727 (2010) > citing to , inter alia , Cone

and cf. Williams v. Taylor, 529 US 420, 442 (2000) (holding that several "omissions as a whole disclose the need...")

* All of which enunciating and reconfirming that due process, to be constitutionally valid, encapsulates the cumulative effect/cumulative review/ aggregate prejudice analysis of any given defendants case and circumstances relevant to a meritorious claim : "... where it appears that such redetermination may determine the ultimate outcome of the litigation." Lawrence v. Chater, 516 US 163, 167 (1996) ; 558 US 220, 227, 130 S.Ct. 732 *

> Cumulative Review of Ineffective Assistance of Counsel

Claims : Snow v. Pfister, 240 F. Supp. 3d 854 (N.D. Ill. 2016);
Dickey v. Davis, 231 F. Supp. 3d 634 (E.D. Cal. 2017);
Harrison v. Tegels, 216 F. Supp. 3d 956 (W.D. Wis. 2016);
Miller v. Beard, 214 F. Supp. 3d 304 (E.D. Pa. 2016);
Esparaza v. Sheldon, 765 F.3d 615 (6th Cir. 2014) (Federal District Ct. granted Habeas Petition on 4 of 56 claims, one of them being "Cumulative Error" ineffective assistance of counsel.)

> of note is the fact that there are Hundreds of cases of Cumulative Effect/Aggregate Prejudice review ineffective assistance of counsel claims in the courts of the United States over the past 20+ years. All of them adjudicated pursuant to Stricklands expressed and/or implied standard of cumulative review to ensure a Fair Trial, pursuant to the Sixth Amendment, was had. Except for Virginia and the 4th Circuit who take the view such review is non-cognizable.

The Court stated an expressed dictate to conduct the necessary cumulative review in > Lockhart v. Fretwell, 506 US 364, 369 (1993) "An analysis focusing solely on mere outcome determination, without attention to whether the result of the proceeding was fundamentally unfair or unreliable, is defective."

Finally; in ^{consideration of} ~~considering~~ petitioners assertions of one, two, and three hereinabove: the Court stated:

"The pivotal question in reviewing an ineffective

assistance of counsel claim under AEDPA is whether the state courts application of the Strickland standard was unreasonable...."

28 USCA § 2254(d)(1) ; Harrington v. Richter, 562 US 86 (2011)

"There need not be a narrow Supreme Court holding precisely on point, however - a state court can render a decision that is 'contrary to' or an 'unreasonable application' of Supreme Court Law by "ignoring the fundamental principles established by [that Courts] most relevant precedents."

Abdul-Babir v. Quarterman, 550 US 233 (2007) quoted in Moore v. Czerniak, 534 F.3d 1128 (9th Cir. 2008).

Wherefore, Petitioner asserts and contends that the Virginia courts application of Strickland to his Claim of Ineffective Assistance of Counsel was unreasonable in that ^{the} Court took each individual Ground and analyzed it against the entirety of the Commonwealths case, but refused to then analyze all of the grounds aggregately against the entirety of the Commonwealths case. The Virginia courts application of Strickland was contrary to US Supreme Court precedent because its adjudication of petitioners Cumulative Effect ineffective assistance of counsel Claim did not include an analysis to see if the aggregate prejudice violated Cannons Sixth Amendment guarantee of a fair and adversarily tested trial. It was in-fact

"passed upon" as "non cognizable under Virginia law", which is contrary to Strickland v. Washington, supra.
§ 2254(d)(1) > See 28 USC § 1257(a)

Additionally, the 4th Circuits jurisprudence concerning Cumulative Effect Ineffective Assistance of Counsel claims, Sixth Amendment Fair Trial violation claims, contradicts the jurisprudence of every other US Court of Appeals in the United States; the Virginia courts jurisprudence contradicts the vast majority of sister courts through out the nation.

Cannon prays the Court to GRANT certiorari under Rule 10 (a) or (b) (or as otherwise applicable) and settle Question no. 1 as presented herein; and thereafter remand petitioners habeas for proper adjudication.

IN regard to Question no. 2:

The premise of this Argument is this: The Commonwealth charged Cannon as a principle in the 2nd-degree for crimes it had no direct evidence he participated in (the charges by direct-indictment Twelve plus months after his arrest). The Commonwealth, at trial, misrepresented the true nature of some of the evidence and asked the jury to infer multiple "ultimate facts". The prosecution then used a concert-of-action jury instruction to

relieve itself of the Burden of Persuasion of the element of INTENT. The prosecution also included the jury instruction "you may infer that every person intends the natural and probable consequences of their acts." which again relieves the prosecution of its burden of persuasion, AND its burden of production, of Intent and culpability. The Prosecutions use of the two instructions jointly created an impermissible burden-shift onto the Defendant to disprove the necessary elements of the charges. Whereby the circumstances of Cannons convictions and the jury instructions violate his sixth, fifth, and fourteenth U.S. Constitutional guarantees, AND are contrary to a plethora of U.S Supreme Court jurisprudence. Petitioner proffers:

① In Virginia, Concert of Action has been defined as: "action that has been planned, arranged, adjusted, agreed on and settled between the parties acting together pursuant to some design or scheme. All participants in such planned enterprises may be held accountable for incidental crimes committed by another participant during the enterprise even though not originally or specifically designed." Tweed v. Commonwealth 550 SE 2d 345 (2001) quoting Beckley v. Commonwealth, 19 Va App. 279, 283 (1994). > Va Code Ann. 18.2-22 **

Additionally: "... the defendant must also share in the principals criminal intent. The overt act must be 'knowingly in furtherance'... Therefore, lack of intent is usually a defense to a conviction as a principal in the second

degree." > McMorris v. Commonwealth, 276 Va. 500, 506, 666 SE 2d 348 (2008) quoting Jones v. Commonwealth, 208 Va. 370, 373-74 (1967). "The one exception exists when there was concert of action and the resulting crime is a natural and probable consequence of the intended wrongful act." 276 Va. at 506, quoting Spadlin v. Commonwealth, 195 Va. 523, 528 () but see > Kemp v. Comm. 80 Va. 443, 450-51 (1885) accord Brown v. Comm. 130 Va. 733, 737-38 (1921). (consent of felonious purpose)

In the instant case, and YEARS before trial, evidence from an interrogation proffers the ORIGINAL plan was to "rob from cars" and "take what we could get". Thus, a "natural and probable consequence of the intended wrongful act" is NOT burglary, abduction, and rape. So the prosecution, with nary an objection from defense counsel, propagates: A) Cannon was "there to rob people"; B) Cannon was "standing at the door because he was the lookout", C) Cannon saying "Hurry-Up" "allowed Goodman to finish the rape" {even though staunch evidence contradicts this inference}, D) Cannon was the "get away driver" {simply because Cannon drove}.

* A review of the record will show that A thru D are in-deed inferences made by - "asked for" - the prosecution, and infact the efficacy of those statements during closing arguments induced the guilty verdicts because of the jury instructions. *

IN summary thus far we have: principle in the 2nd degree, combined with Concert of Action, with the misrepresentation of the true nature of the evidence so as to infer elements of the charges. No Direct Evidence, plus some evidence actually contrary to the prosecutions statements.

The U.S Supreme Court has Held: in Clark v. Arizona, 548 US 735 (2006) "As applied to mens rea (and every other element) the force of the presumption of innocence ... which is proof beyond a reasonable doubt that a defendants STATE OF MIND was in fact what the charge states." > In re Winship, 397 US 358, 361-363 (1970) [Due Process Clause of the 5th Amendment]

In Jackson v. Virginia, 443 US 307 (1979) "The question whether a defendant has been convicted upon inadequate evidence is central to the basic question ... The constitutional necessity of proof beyond a reasonable doubt ... " at 323.

Pursuant to Jackson, and Virginia's own case law, the inferences drawn from the testimonial evidence are arbitrary and unreasonable. "all necessary circumstances proved must be consistent with guilt and inconsistent with innocence and exclude every reasonable hypothesis of innocence." Moran v. Commonwealth, 4 Va App 310, 314; 357 SE 2d 551, 553 (1987) Thus, the very testimony the inferences are taken from are untainted, reasonable hypothesis of non-culpable conduct from Cannon.

IN order for a jury prosecutions inferences to be

~~to be~~ permissable, they must "flow from facts and circumstances proven in the record..." Johnson v. Mechling, 446 Fed. Appx. 531, 539 (3rd Cir. 2011), quoting Commonwealth v. Bostick, 958 A.2d 543, 560 (2008) from Coleman v. Johnson, 132 S. Ct. 2060 (2012). "a reasonable inference is one where the fact inferred is more likely than not to flow from the proved fact on which it is made to depend." *ibid.* also see McDaniel v. Brown, 558 US 120 (2010)

Ergo, at least three (3) of the jury instructions were erroneously given as there was NO evidenciary foundation to sustain them. To wit: Concert of action; principle in the 2nd degree; "a person intends the natural and probable..."

② In regard to the jury instructions used against Cannon: Under the Due Process Clause of the Fifth Amendment, the prosecutor is required to prove beyond a reasonable doubt every element of the crime. > In re Winship, 397 US 358, 364 (1970); Clark v. Arizona, 548 US 735, 766 (2006) restating presumption "defendant is innocent unless and until the government proves beyond a reasonable doubt each element of the offense."

"A defendant's state of mind or intent is an element of a criminal offense and cannot be taken from the trier of fact through a reliance on a legal presumption of wrongful intent from proof of an effect..." United States v. United States Gypsum Co., 438 US 422, 435 (1978); cf Morissette

v. United States, 342 US 246 (1952) quoted in Sandstrom,
v. Montana, 442 US 510, 523 (1979)

Particularly apropos of the instant case is this >

"Conclusive presumptions conflict with the
overriding presumption of innocence with which
the law endows the accused... they invade the
fact-finding function which in a criminal case the
law assigns to the jury." Morissette, 342 US at
275; United States Gypsum Co., 438 US at 446

"It follows that the trial court may not withdraw
or prejudice the issue by instruction that the law
raises a presumption of intent from an act. A
presumption which would permit the jury to make
an assumption which all the evidence considered
together does not logically establish would give to
a proven fact an artificial and fictional effect."

Morissette, 342 US at 274-275;

In violation of Sandstrom, Morissette, US Gypsum, the
prosecutor didn't "produce nor persuade" on the elements
of the crimes charged.

> The Commonwealth charged Petitioner as a "principal in
the 2nd degree". Thus, by law and statute, its burden of
production and burden of persuasion, inter alia, was intent.

> The Commonwealth added "Concert of Action", a statute
under Va. Code 18.2-22, so that the prosecutor must then
only prove an "overt or covert act in furtherance" of

the criminal scheme; however, the crime must be a "natural and probable consequence" of the initial mutual planned felonious act. However;

> In Cannons case, burglary-abduction-rape are unequivocally NOT incidental of robbing from cars.

> In Cannons case, testimony from THE VICTIM herself, is that Cannon had no part in the armed burglary and abduction. Cannon was found NOT Guilty of conspiracy to commit burglary. * Which means the jury found he had NO Plan (no shared plan) and no intent to commit the burglary.

> In Cannons case, further testimony reveals the armed abduction was done by Goodman. The victim didn't try to break-free/run/get away because Goodman threatened to kill her. [Exhibit 4 of Habeas Petition; Tr. 4/8/14, p. 131]

> In Cannons case, even if the jury concludes through the conflicting evidence Cannon DID hand Goodman the tape, the victim had all of her clothes on and nothing sexual was transpiring.

> In Cannons case, testimony proves Goodman was done raping Carter when Cannon stated "Hurry Up" [Tr. 4/8/2014, p. 152-153]; thus actually ^{the} victim testimony belies the Commonwealths misrepresentations.

Whereupon, the prosecution knowingly misrepresented evidence to infer "acts in furtherance" of Goodman's crime spree; malicious inferences so as to persuade

that the acts were "knowingly in furtherance".

The court then charged the jury: "you may infer that every person intends the natural and probable consequences of their acts." Which is to state: you may presume; you may assume; you may conclude; you may speculate; you may insinuate; you may imply; etc.

[Merriam-Webster's Dictionary and Thesaurus, copyright 2006; p. 555] Which is absolutely contradictory to

"all necessary circumstances proved must be consistent with guilt and inconsistent with innocence..." Moran, supra 4 Va App at 314

and In re Winship, 397 US at 361-363, AND completely contrary to "... may not withdraw or prejudge the issue by instruction that the law raises a presumption of intent from an act." 438 US at 446, United States Gypsum Co.

Wherefore, what is unconstitutional in Cannon's case is that there is a conclusive presumption {Concert of Action} enjoined with a rebuttable permissive presumption {you may infer}. The two instructions together, in the context of Cannon's case, are as "pernicious in this context as conclusive presumptions because they shifted the burden of proof" onto the defendant to disprove he knowingly acted in furtherance. > see Yates v. Evatt, 500 US 391, 400 (1991). Although the presumptions were rebuttable in some ways, the mandate to apply them remained. Subsequently, they effectuated the shift of

the burden of proof from the prosecution to Cannon. Each instruction violated - that is to say each presumption violated - the Holdings of Sandstrom v. Montana, *supra*, and Francis v. Franklin, 471 US 307, 316 (1985), and in turn vitiate the verdicts pursuant to In re Winship, *supra*.

③ From Yates v. Evatt, 500 US 391 (1991): "This Court held in Sandstrom v. Montana, 442 US, at 513, that a jury instruction stating 'the law presumes that a person intends the ordinary consequences of his voluntary acts' violated the requirement of the Due Process Clause ... We applied this principle in Francis v. Franklin, 471 US 307 (1985) to instructions that the 'acts of a person of sound mind and discretion are presumed to be' ... and that a person 'is presumed to intend the natural and probable consequences of his acts.' *Id.* at 316." 500 US 391, 400

In contrast to the Courts holdings, in defining concert of action, the Virginia Supreme Court has stated:

"All those who assemble themselves together with an intent to commit a wrongful act, the execution whereof makes probable, in the nature of things, a crime not specifically designed, but incidental to that which was the object of the confederacy, are responsible for such incidental crime ... Hence, it is not necessary that the crime should be part of the original design; it is enough if it be one of the incidental probable consequences

of the execution of that design, and should appear at the moment to one of the participants to be expedient for the common purpose." (quoting Brown v. Commonwealth, 130 Va 733, 738; 107 SE 809, 811 (1921))

Furthermore, the Virginia Supreme Court has noted that "it is well settled in Virginia that each co-actor is responsible for the acts of the others, and may not interpose his personal lack of intent as a defense."

** "Additionally, the Court finds that the Virginia Supreme Court has previously examined this instruction and found that it "did not establish an improper presumption but merely stated a permissive inference." (quoting Schmitt v. Commonwealth, 547 SE 2d 186, 198-99 (2001)) [from Cannon §8.01-654 Final ORDER, pp 24-25 concerning his Claim IV(4)] **

The problem, petitioner asserts, is that the Concert of Action is a Statute, derivative of ~~co~~-conspiracy, and as a jury charge is everything BUT a "permissive inference". It IS, however, the epitome of a conclusive presumption in that it mandates a defendant's personal lack of intent not be considered in his guilt or innocence. Whereby Virginia's concert of action statute, and the instruction as argued hereof, is a violation of IN re Winship, supra and is Constitutionally impermissible, inter alia, in that it is a burden shifting instruction onto the defendant to prove himself innocent.

Lastly, in Estelle v. McGuire, 502 U.S. 62, 72 (1991), "The instruction 'must be considered in the context of the instructions as a whole and the trial record,' and the pertinent question is whether the 'instruction by itself so infected the entire trial that the resulting conviction violates due process.'" quoted in Waddington v. Sacausad, 129 S. Ct. 823, 831-32 (2009)

IN the instant case, it is crystal clear that the two instructions complained of - concert of action; you may infer... - considered in the context of the instructions as a whole - principle in the 2nd degree charges - operated to infect the entire trial by relieving the prosecution of its burden of production of intent, AND shifting the burden onto Cannon to prove he had no culpability. > 2-step standard of Yates, supra.

The charges were of Cannon being criminally culpable as a person/principle in the 2nd degree. The concert of action charge relieved the prosecutor of its burden of production and its burden of persuasion on the element of Intent. The instruction contains an evidentiary presumption that relieved the state of its burden to prove an essential element; a mandatory presumption. See: Brecht v. Abrahamson, 507 U.S. 619, 637 (1993) ("substantial and injurious effect on the verdict") And there is the enjoining of the second evidenciary presumption, also probably

seen by the jury as mandatory given the entirety of the trial, evidence, and other instructions. > "you may presume { "you may infer" } that every person intends the natural and probable consequences of their acts." Thus, the jury was instructed that it could determine the Defendants state of mind and/or intent through a legal presumption of wrongful intent from proof of an effect. Which is wholly contrary to the Courts holdings in U.S. v. United States Gypsum Co., 438 US 422, 435 (1978); Hickory v. United States, 160 US 408 (1896); Sandstrom, 442 US at 512. *3

Under the Due Process Clause of the Fifth Amendment, the prosecutor is required to prove beyond a reasonable doubt every element of the crime charged > Clark v. Arizona, 548 US 735, 766 (2006). The party bearing the Burden of Production must produce enough evidence to allow a factfinder to determine that the fact in question occurred. The party bearing the burden of persuasion must convince the factfinder that a fact in issue should be decided a certain way. > 39 Geo. L.J. Ann. Rev. Crim. Proc. p. 684 ~~WILLIAM~~ - 686 (2010)

Wherefore, as Cannon was charged as a principle in the 2nd degree, and the prosecutor used TWO jury instructions to shift the burden of production and burden of persuasion onto the Defendant to prove himself innocent; AND because the TWO instructions joint

and several did operate to relieve the prosecution of its burden of production on the element of Intent, and its burden of persuasion on the element of Intent, said jury instructions as argued herein are UNConstitutional. Whereby the verdicts are violations of Cannons 5th, 6th, and 14th Amendments.

Thus, Petitioner prays the Court, in accord with Estelle v. McGuire, 502 US 62 (1991) and/or Yates v. Evatt, 500 US 391 (1991) and In re Winship, 397 US 358 (1970) to find the instructions unconstitutional, and thereby the verdicts unconstitutional, and vacate Cannons convictions as presented herein.

Alternatively: The trial courts authority to try Cannon arose solely upon the Concert of Action statute. Whereby, if the Statute is unconstitutional and void, the trial court acquired no jurisdiction of the case: an unconstitutional law is void and is as no law. Cannon should be exonerated. > see Ex parte Siebold, 100 US 371 (1879) *4 28 USCA § 1257.

*3 "In determining Intent, the factfinder may infer that a person intends the immediate, direct, and necessary consequences of his voluntary acts." Moody v. Commonwealth, 508 SE 2d 354 (1998) citing Sandstrom v. Montana, 442 US 510, 522-23 (1979). It therefore follows that if a person had the ability and opportunity to commit burglary, abduction, rape, but did not do so that they did not intend to do so. § 2254(d)(2), § 2254(e)(1)

*4 Ashcraft et.al. v. Tennessee, 64 S.Ct. 921 (1944)

I ASK FOR THIS.

Respectfully Submitted,

> William Cannon

William David Cannon prose

Certificates pursuant to Rule 29

The undersigned attests, under penalty of perjury, that the foregoing Petition For a Writ of Certiorari was deposited in the institutions internal mail system on the 22 day of MAY, 2018, with first-class postage prepaid, certified mail, return receipt; Addressed to: Clerk of the Court, Supreme Court of the United States, 1 First Street, N.E., Washington, D.C. 20543

He further Attests that a true copy of the Petition For a Writ of Certiorari was deposited in the institutions internal mail system on the 22 day of May, 2018 with First-Class postage prepaid, and addressed to: J. Christian Obenshain, Office of the Attorney General, 202 North Ninth St., Richmond, VA 23219

> William Cannon

Declaration pursuant to 28 USC §1746

The undersigned swears under penalty of perjury that all of the information in the foregoing Petition For a Writ of Certiorari is true and accurate to the best of his knowledge and beliefs.

> William Cannon