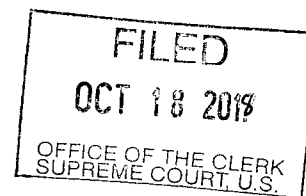


No. **18-6700**

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



Michael DePietro (Pro Se) -PETITIONER  
(Your Name)

vs.

John C. Prindiville (Attorney) -RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO  
New Jersey Superior Court  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

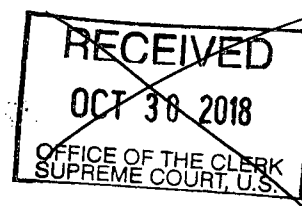
PETITION FOR WRIT OF CERTIORARI

Michael DePietro  
(Your Name)

363 Jackson Mills Road  
(Address)

Freehold, NJ 07728  
(City, State, Zip Code)

732-462-1455  
(Phone Number)



## **QUESTION(S) PRESENTED**

Judge Jose Fuentes his opinions of my case are all denials. The first one on October 26, 2015 he denied me case law. Then on October 20, 2017 he denied me case law once again. On November 27, 2017 he denied me reconsideration. On October 26, 2015 he denied me the motion to overturn Judge O'Brien's decision. Everything I put in front of him, his opinions and denials are to no avail. His opinions about the denial, which Prindiville and my attorney prejudices against me, and he denied my motion to have a new trial.

Why is Judge Fuentes denying everything I brought in front of him, including case law?

He granted a motion to have a new trial to the defense attorney, when I asked for the same reason that I wanted to have a new trial on mischaracter of prejudice. Why is Judge Fuentes denying all of my requests? Yet, he granted the defense council. I feel that this is a political case because it has lasted this long. This shouldn't happen in the United States of America. The system should be fair and I didn't get a fair trial. The case should be granted by the justice of Supreme Court.

### **LIST OF PARTIES**

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

Parties:

John C. Prindiville, ESQ (Attorney At Law of New Jersey)

Aviva Werther (Woman in the accident)

All-State Insurance Company

☐ 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 judgement is the subject of this petition as follows:

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## TABLE OF AUTHORITIES CITED

### CASES

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Transcripts of the **First Case** do show that Judge O'Brien instructed the jury on how to follow the rules of the court. Judge O'Brien overturned their ruling. After he instructed them to do what he overturned on 1/4/2014 and 1/5/2014.

21, 23, 25,  
27, 31, 35

Transcripts of the **Second Case** of Judge Kapalko shows the disagreement with the defendant John Prindiville.

76, 98, 141, 177

Civil Case of Permanent Injuries:  
It occurred on July 13, 2009

### CASE LAW:

Krug V. Warner

STATUTES AND RULES that are written in the oral arguments.

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below:

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☒ reported at The Supreme Court of the United States; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but it not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☒ reported at \_\_\_\_\_ or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including Oct. 18, 2018 (date) on August 22, 2018 (date) in Application No. 18 A 193.

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case May 15 2014  
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**



## STATEMENT OF THE CASE

This case was on July 13, 2009. I was driving on Route 9 North in Lakewood, NJ on County Line Road coming from the Veterans Clinic. The light was green and I had made my left hand and waited to go on County Line Road when the traffic was coming southbound. This is when Ms. Werther hit my right side of the car and spun me around. This accident caused me to have permanent injuries.

Judge O'Brien had told the jury "All I do is make sure that it is a level playing field". Judge O'Brien said "I am not the one who makes the decision, the jury is".

The defendant said that I made a left hand turn in front of her. It was proven in the first case by the jury that this is not true because Ms. Werther had 75% negligence and I had 25% negligence. That means I won. Before I won, the judge said "it is in the jury's hands".

Judge O'Brien had said "the jury has the power to base their evidence on the facts of the case". They made the decision that I won.

I had the judgement against the defendant and Judge O'Brien had told me to try and settle the case. Allstate had not replied to my demands and within one weeks they overturned the jury's verdict for a new trial saying that I used the word "insurance company" which I had used it in context of where the car was that the insurance company came to look at it at my home. The judge had said that I mentioned the words community and congregation. I felt like this was not intended to prejudice the jury because I had to explain where the accident was. When the jury

was deciding to make their decision, I have impaired hearing and I didn't hear what the jury's verdict was. I had told the court if I would be able to leave and the judge said no you won. Then we went to the Appellate Court and the judge ordered a new trial because of what I had said. The judge said the jury made a mistake by granting me the judgement. The opinion of the appellate court had said he granted the defendants motion for a new trial finding the evidence did not support the jury's liability of assessment. There is no purpose of having a jury to favor one thing and the appellate court can change it around for their convenience. I think this is wrong and unconstitutional for what they had done to me. I have been in this case for nine long years, for nothing but heartaches.

I hired an attorney and paid him over \$10,000 to go to the Appellate Court. When we went to the court, the Judge had told my lawyer when he got up in front of him that he said two words and told him to sit down. The appellate court granted the defendant a new trial. When we went for the new trial with the lawyer on January 4, 2016.

On August 4, 2014 on the transcripts on page 6, it indicates that I was told not to say "insurance company". I mentioned insurance company in the context of my vehicle damages, not to just say the words insurance company. On August 4, 2014 on page 27 it shows that Judge O'Brien had told me that I am doing fine with the case. On August 5, 2014 on the transcripts on page 21, it indicates "as the jury in this case, you are the judges of the facts. You will be the only judges of the facts, and it's up to you to decide what really happened here". I cannot see how they overturned the first trial because the jury had made their decision on the facts and evidence. The jury were the ones to decide the negligence on this case and they did. There was no need to have

a new trial because the jury had proven the other side was negligent. They didn't do anything wrong by deciding the case. It was not mentioned throughout the case for any purpose to say that the jury didn't do their job right. On pages 23, 25, 27 and 32 that it shows the evidence that belongs to the case. Judge O'Brien instructed the jury on the case on how to proceed for the verdicts. The jury followed his instructions. Judge O'Brien overturned the verdict after he instructed the jury.

I did not argue with the police officer. I cross examined him. I wanted to be at the hearing for Judge O'Brien deciding for a new trial. I put in for all oral arguments. Judge Fuentes said I wrote it on a piece of paper. The court filed the document on August 27, 2014 that indicated oral arguments. This is with the first trial that I was pro se. In the second trial I hired an attorney, which apparently he didn't do the proper job. I told my attorney that he did not object to one thing and that he didn't protect my interests in this case. Then we continued on with the case and Judge Kapalko tried to settle the case between the two parties. My attorney never said a word about settling the case. It seemed like he was on the side of the defense attorney and the jury observed that. If I was on the jury, I would give the same verdict because all the comments that was said about me made me look like I am a villain and that I do this for a living, that I sue people for a living and that's not true. It's not my fault that within the two years that I had two accidents and I did say throughout the trial if they feel that I had said something wrong, that they should prosecute me. These actions were not caused because of my age. This was brought upon me by two individual people that I brought to court. When Judge Kapalko addressed my attorney and the defense attorney and asked them if they want to settle the case before the jury comes out with their verdict. They said no and Judge Kapalko, with all his medical problems that he had, I

thought he had done a wonderful job with the circumstances that occurred in the court procedure for the three days. When the jury came out and found me negligent, even though one juror had said it was too lengthy and too long for what they are questioning. Then I had told my lawyer to put in a motion for a new trial. When my lawyer put in a motion for a new trial with Judge Kapalko, Judge Kapalko said if you find any case law or any statute in regards to this case that I would consider a mistrial. My lawyer did not show any documents or statutes to bring to Judge Kapalko's attention of a statute regarding his decision. Judge Kapalko denied the motion. I did get rid of the lawyer and I had done it on my own to appeal the second case. Judge Jose Fuentes heard it again in the appellate court. I brought it to the attention to the appellate court the case law that Judge Kapalko wanted to see. Once again, Judge Fuentes denied it. With the case law stating a new trial in the case of Krug v. Wanner it pertains my case. As clearly as it reads on the statute and that is why I am bringing this petition to the attention of the Supreme Court of the United States.

For the second trial, it was in front of the Honorable Paul A. Kapalko. He instructed the jury just like the way Judge O'Brien did, by saying if any of the jurors have a problem with a slip and fall accident or a vehicle accident. If they did have a problem, six of the jurors came up to the judges bench and Judge Kapalko told them if they had a problem with the slip and fall or car accident, if they did he excused them because he didn't want to prejudice the jury. Then I was cross examined by the defense attorney for a period of time and he couldn't find anything wrong with my responses. Then he brought up that he had a document that was from the VA stating that I had cataracts and an operation. That is not true, I never had cataracts and I never had the operation. Judge Kapalko had told him that he shouldn't bring the document from the VA because there is no witness. At the same time, the defense council told the court that he got the documents yesterday from his attorney in the judge's chambers. Judge Kapalko said "what's that?". He told the jury to disregard what the defense attorney says as evidence. This surely prejudices the jury against me by saying I couldn't see, which would cause the accident by me not being able to see. This is not true. The second thing while he was cross examining me, the defense attorney went ahead that I had a lawsuit against Horizon telephone company. He questioned me on my slip and fall, which I had the accident. At first, when he told asked me if I fell, I thought he was asking if I just fell down. I said no and when he mentioned on the telephone wires, I said wait a minute you know not to say that. My lawyer did not object to anything that he questioned me on. I gave him all of the responses and he continued on asking me about the lawsuit and my injuries. This was the time when I told Judge Kapalko that I wanted a mistrial. He was prejudicing the jury. Again Judge Kapalko told the jury to disregard what Mr. Prindiville had said. This is the second time he had deliberately brought it to the attention of the jury. I had a lawyer to represent me and when I objected to the questionings. One case had

nothing to do with the other injuries that I sustained. Judge Kapalko had told me that I could not object because I had a lawyer in front of me. I had told him that I did not want my lawyer to represent me any longer. The judge said we were in the middle of a trial and it would be difficult for another lawyer to come into the trial at this point. Judge Kapalko tried very hard to settle this case. Judge Kapalko was very ill and I felt really bad that he had a terminal illness, of which he passed away. My case was one of the last cases that he was a judge for.

## PETITION FOR WRIT OF CERTIORARI

### Notice of Appeal in Appendix

This appeal was in front of the Superior Court once before and the court granted the defense a new trial due to prejudice that I had mentioned "insurance company", "put yourself in my place", "community" (which is all over television), and "congregation" (my granddaughter is a full Catholic that goes to Georgian Court University in Lakewood). So I do not know where the prejudice came from. I did not mention any racial, religious, or nationality remarks so I do not know where the prejudice came from but the court granted them a new trial.

On January 4, 2016 we went for a trial and Judge Kapalko had questioned the juror on if they were ever involved in an auto accident and slip and fall accident and if they knew anyone that was involved in one. If they said yes, he brought them up to the bench with both attorneys and was asking them if they felt any prejudice towards anyone that had these issues. He excused about a half a dozen of them and told them that they could leave. Apparently they thought it was an issue, so he did not want to prejudice the jury and thinking any mistrial would occur. He was emphasizing on my hearing loss and if I hear well. That would not be an issue to have a mistrial. Now that he picked the jury, he went for recess and we went home on January 4. We went back

on January 5, he had called another juror up and he asked the same question like he asked the other half of dozen of the jurors. This particular juror he made come back to the jury and then it started the case.

The defense attorney cross examined me for quite some time and everything he had said, I made it clear to him that it was clearly what happened. He pointed out that he has a medical report from the veterans which I never gave him permission to get my medical records. He told me that the VA said that I have cataracts so I said so what, I can see. He made the jury think that I could not see because of the cataracts. I do not even have cataracts and I can see. Now, he went to say to the jury and made a statement in regards to if I ever fell on my own property. At first, I said no because I did not know what he had meant until he mentioned a telephone wire. I told him that has nothing to do with this case and he in turn said that I filed a lawsuit in Mercer County. In return, I told him that is why you gave my medical records to Horizon telephone company without my authorization. That is against a federal law HIPAA to give anyone's personal medical records without their consent. I did in no way give him my consent to release my medical records to Horizon's attorney. The jury heard all this and Judge Kapalko in return told me that I should not say anything because I had a lawyer in front of me. So I told him that I do not need this



lawyer because he is not saying a word. I had told Judge Kapalko that I want a mistrial and he told me that it is in the middle of the trial, it would be too expensive, and too complicated to have a mistrial. I asked for a mistrial before they even brought in the verdict.

The defense attorney deliberately brought it up to the jury so that they could come up with the verdict of negligence on my part. They really did not hear anything about the liability of the case. My attorney did not bring anything up in regard to the liability issue. He brought the attention more towards the damages. I feel that I did not have a fair trial. That is a mischaracter of justice because the defense attorney deliberately put it in the minds of the jury to come up with their findings. When they were deliberating in the jury room, they came out and wanted a document read to them about a left hand turn in an intersection and who has the right away. Hon. Judge Kapalko read it to them that the one who has the right away is the person making the left hand turn in an intersection. They heard that very clearly because Hon. Judge Kapalko had specifically read it to them. They came back and came with the verdict in regards to my negligence. I do not want to sway anyone to be on my side, but I have been driving for 67 years and made numerous left hand turns. I have also driven every kind of vehicle besides tractor trailer trucks and the defense

the jury come to their conclusion by telling them that I had a lawsuit after to this one. Judge Kapalko specifically called the half of dozen of jurors, my lawyer, and the defense lawyer and they heard everything what the judge wanted the jurors not to be prejudice towards the case. By saying that I had a lawsuit brought upon the parties that called me to trip over wires. He should know better of what he said because he was up in front of the judge with my attorney and the half of dozen of jurors that Judge Kapalko explained to the jury about if they knew anyone in regards to an accident or slip and fall. Judge Kapalko said this to the jury because he didn't want another mistrial and he made it clear to the jury for them to understand if they had any prejudice towards slip and fall, which I had. Apparently the jury heard what Prindiville had said about my lawsuit and they found me negligence towards the case. I could not say anything because I had an attorney. Now I do not have an attorney anymore and I am going Pro Se like I did in from the start in the first case.

**BRIEF**

**LEGAL ARGUMENT**

On January 5, 2016 during defense counsel's cross examination of the plaintiff, defense counsel revealed to the jury that the plaintiff had filed a subsequent lawsuit against Verizon in Mercer County. As a result, the plaintiff was required to discuss the details of said suit.

The Trial Court properly sustained plaintiff's counsel's objection to the objectionable question and attempted to instruct the jury to disregard the implication of the question.

Plaintiff's counsel moved for a mistrial because of the plaintiff's opinion that, in the circumstances of this matter, a curative instruction could not "un-ring the bell" caused by the implication of defense counsel's question. The question of liability was a close call for the jury. The jury was called upon to determine who was telling the truth, the plaintiff or the defendant, each of whom testified to conflicting versions of the incident.

The fact that defense counsel alerted the jury to the fact that plaintiff had on another occasion sustained an injury for which he blamed others is completely improper. Defense counsel is well aware that he could have simply questioned the plaintiff about the subsequent injury and its possible effects on the

plaintiff's damages without revealing to the jury that a lawsuit had been filed. The intention of defense counsel was to leave the jury with the impression that the plaintiff had a pattern of blaming others for his injuries.

Plaintiff has no quarrel with the law cited by the Court in making its ruling. It is respectfully submitted, however, that the Court erred in finding, without any factual basis, that the objectionable implication of defense counsel's question was "inadvertent". Defendant's counsel is an experienced trial attorney who has practiced trial law for over 25 years. Counsel knows the rules of the Court. Defendants counsel is fully aware that he should not mention that the plaintiff had filed a lawsuit in which he blamed Verizon for his injuries. His question was not "inadvertent". It is respectfully submitted that defendant's counsel deliberately asked the question and deliberately brought to the attention of the jury that plaintiff had filed a lawsuit blaming others for his injuries.

As a result of the improper question posed by defense counsel and the context in which it was asked (a lawsuit filed against Verizon), the plaintiff was required to explain the injuries sustained in the subsequent incident, not in the context of how the injuries allegedly affected plaintiff's life, but in the context of a subsequent lawsuit.

Further evidence of the deliberate nature of the question and its implication is that, even after the Court had ruled that the question was improper, defendant's counsel continued to argue that the question was, in fact, proper and stated that he had asked similar questions in the past. It is clear that asking the question by counsel was not "inadvertent", but deliberate.

The Court instructed the jury to disregard the statement and the implication of the question. Said statement was already in the minds of the jury, something that can't be erased. This caused substantial prejudice against the plaintiff.

The Court should not have found that the objectionable question was inadvertent. Clearly the objectionable question was a deliberate attempt to unfairly sway the jury to disbelieve the testimony of the plaintiff. It is respectfully submitted that such attempt was successful and resulted in the jury returning a verdict in favor of the defendant.

For the foregoing reasons it is respectfully submitted that a new trial should be ordered.

# AFFIDAVIT

## BRIEF

On January 5, 2016 during defense counsel's cross examination of the plaintiff, defense counsel revealed to the jury that the plaintiff had filed a subsequent lawsuit against Verizon in Mercer County. As a result, the plaintiff was required to discuss the details of said suit.

The Trial Court properly sustained plaintiff's counsel's objection to the objectionable question and attempted to instruct the jury to disregard the implication of the question.

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The Court should not have found that the objectionable question was inadvertent. Clearly the objectionable question was a deliberate attempt to unfairly sway the jury to disbelieve the testimony of the plaintiff. It is respectfully submitted that such attempt was successful and resulted in the jury returning a verdict in favor of the defendant.

For the foregoing reasons it is respectfully submitted that a new trial should be ordered.



### **Conclusion**

The petition for a writ of certiorari should be granted. For the forgoing reasons and the reasons previously argued, it is respectfully submitted that the Supreme Court of the United States should grant the petition for writ of certiorari reverse the order granting a new trial. Prindiville prejudiced the jury by mentioning a lawsuit. He also mentioned that I had cataracts, that I couldn't see, and that I had an operation on the cataracts, which is false. My lawyer provided documents in the chambers of the court. Prindiville was told about the documents in the deposition that we had three months prior to the trial date. Prindiville went ahead and mentioned the lawsuit to prejudice me by saying that I had a lawsuit against another accident and that I couldn't see due to the cataracts, of which I do not have. Judge Kapalko disagreed with the statement that Prindiville made in reference to my eyes and the lawsuit. Judge Kapalko stated that if they had any case law or any statutes, that they should present it to him. My lawyer did not do so. I had to research Krug v. Wanner 28 N.J. 174 (1958) 145 A.2d 612. Judge Kapalko had told the two attorneys if they find anything in regards to case law that maintains to this case, to bring it forth and he would consider a mistrial. I brought it up to the appellate court and they denied me a statute of Krug V. Wanner. Your honorable Judge Kapalko wanted to see a statute of this case, which he wasn't able to see it due to his passing. I feel very bad over the situation. Now, I have the statue of which Judge Kapalko was looking for. The appellate court denied me to bring the statute in, even though Judge Kapalko requested the lawyer to bring it in. I found the statue and that is why it should be granted. I cannot understand why this case took so long. I only hope the justice will follow the law and give me a new trial.

Respectfully submitted,  
Michael DePietro

Date: 10/26/18