

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN H. ROSKY — PETITIONER
(Your Name)

vs.

THE STATE OF NEVADA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF NEVADA (No. 75209)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOHN H. ROSKY # 77188
(Your Name)

LOVELOCK CORR. CENTER, 1200 PRISON ROAD
(Address)

LOVELOCK, NEVADA 89419
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER THE GUARANTEED, PROTECTED LIBERTY INTERESTS OF THE 5th AMENDMENT DOUBLE JEOPARDY CLAUSE BAR RETRIAL WHEN, UPON DIRECT APPEAL, THE CONCLUSION OF THE APPELLATE COURT IS: "OVERWHELMING EVIDENCE DOES NOT SUPPORT CONVICTION" AND THUS AN IMPLIED ACQUITTAL,

LIST OF PARTIES

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

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

ATTORNEY GENERAL FOR THE STATE OF NEVADA
ADAM LAXALT
100 N. CARSON STREET
CARSON CITY, NEVADA 89101-4117

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts:**

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

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☐ is unpublished.

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

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☐ is unpublished.

☒ For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix "A" to the petition and is (SUPREME COURT OF THE STATE OF NV)

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. TO BEST OF KNOWLEDGE

The opinion of the COURT OF APPEALS OF THE STATE OF NEVADA court appears at Appendix "B" to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. TO BEST OF KNOWLEDGE

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____

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

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

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

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

☒ For cases from state courts:

The date on which the highest state court decided my case was September 21, 2018
A copy of that decision appears at Appendix "A".

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- U.S. CONSTITUTIONAL AMENDMENT 5: DOUBLE JEOPARDY CLAUSE, GUARANTEE AGAINST TRIAL, PROTECTED LIBERTY INTERESTS, AND DUE PROCESS OF LAW.
" . . . NO PERSON SHALL BE SUBJECT FOR THE SAME OFFENSE (AFTER ACQUITTAL) TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB. . . . NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW."
- U.S. CONSTITUTIONAL AMENDMENT 14: MAKING THE 5TH AMENDMENT (U.S.C.A.S.) ENFORCEABLE UPON THE STATES. BEADY V. MARYLAND, 313 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963)
- NEVADA CONSTITUTION ARTICLE 1 § 8: DOUBLE JEOPARDY PROTECTIONS (1 § 8.1), DUE PROCESS OF LAW (1 § 8.5) (BOTH MIRROR U.S.C.A.S.)
- NEVADA CONSTITUTION ARTICLE 1 § 2: PARAMOUNT ALLEGIANCE TO THE FEDERAL GOVERNMENT AND BOUND BY U.S. SUPREME COURT DECISIONS. BARGAS V. WARDEN, MSP, 87 NEV. 30, 482 P.2d 317 (1971).
- NEVADA CONSTITUTION ARTICLE 15 § 2: OATH OF OFFICE TO SUPPORT PROTECT AND DEFEND THE CONSTITUTION OF THE UNITED STATES.
- NEVADA STATUTE: N.R.S. 34.360: NEVADA'S GREAT WRIT OF HABEAS "ILLEGAL RESTRAINT OF GUARANTEED, PROTECTED, PERSONAL LIBERTY INTERESTS."
- NEVADA STATUTE: NRS 174.085 (3): "ACQUITTAL IS A BAR TO ANOTHER INDICTMENT, INFORMATION, OR COMPLAINT FOR OFFENSE CHARGED IN THE FORMER."
- NEVADA STATUTE: N.R.S. 178.391: "NO PERSON SHALL BE SUBJECT TO SECOND PROSECUTION FOR A PUBLIC OFFENSE FOR WHICH HE HAS ONCE BEEN PROSECUTED AND DULY . . . ACQUITTED."
- NEVADA STATUTE: N.R.S. 175.381 (2): COURT MAY . . . SET ASIDE THE VERDICT AND ENTER JUDGMENT OF ACQUITTAL IF EVIDENCE IS UNSUFFICIENT TO SUSTAIN A CONVICTION.

STATEMENT OF THE CASE

ON APRIL 14, 2003, PETITIONER WAS FIRST TRIED AND CONVICTED OF ONE COUNT EACH, N.E.S. 200.366 (SEXUAL ASSAULT), AND H.R.S. 201.220 (INDECENT EXPOSURE). PETITIONERS "FIRST TRIAL" DIRECT APPEAL TO THE SUPREME COURT OF THE STATE OF NEVADA (SCH) RESULTED, ON 5/25/2005, IN REVERSAL OF THE JUDGMENT OF CONVICTION OF THE ASSAULT CONVICTION WITH THE COURT (SCH) CONCLUDING: "HOWEVER, OVERWEIGHING EVIDENCE DOES NOT SUPPORT BUSTY'S CONVICTION FOR SEXUAL ASSAULT" (SEE APPENDIX "D" AND "E").

THE SCH CONCLUSION, SO ORDERED, ADJUDGED AND DECREED, WAS MADE AS A MATTER OF LAW, LAW AND DOCTRINE OF THE CASE, AND TERMINATED DEBARRED OR PETITIONERS ASSAULT CONVICTION.

UNDER THIS COURTS HOLDINGS AND DECISIONS AND 5TH AMENDMENT DOUBLE DEBARRED LAW, THE SCH'S CONCLUSION ON PETITIONERS DIRECT APPEAL FROM FIRST TRIAL IS IN FACT AN APPELLATE REVERSAL FOR INSUFFICIENCY OF EVIDENCE, THE FUNDAMENTAL OFFENSIVE EQUIVALENT OF AN ACCIDENTAL AND BARRED SUBSEQUENT DETAIL ON THE ASSAULT CHANGE.

THE STATE TRIAL COURT, AT THIS POINT, IN LIGHT OF SUBJECT MATTER JURISDICTION TO RETRY PETITIONER ON THE ASSAULT CHANGE AND LOST- EXCEEDED JURISDICTION WHEN, ON 3/27/06, IT RETERED PETITIONER ON THE ASSAULT CHANGE THUS VIOLATING THE CONSTITUTIONAL LIMITATIONS IMPOSED UPON THE TRIAL COURT BY THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION AND THIS COURTS "BINDING" DECISIONS AND HOLDINGS. PETITIONERS RESULTING CONVICTION OBTAINED THROUGH THE UNCONSTITUTIONAL DETAIL IS VOID.

ON FEBRUARY 28, 2014, PETITIONER FILED HIS "ORIGINAL WRIT OF HABEAS" UNDER H.R.S. 34.360/34.500 WITH THE SCH ON THE BASIS THAT PETITIONER IS BEING ILLEGALLY RESTRAINED OF HIS PROTECTED PERSONAL LIBERTY INTERESTS GUARANTEED BY THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION BY A COURT OF THE STATE OF NEVADA WHICH ACTED IN EXCESS/LOSS OF SUBJECT MATTER JURISDICTION.

WITHIN THIS PETITION, PETITIONER PRESENTED LEGAL ARGUMENT ON:
① PROVISIONS OF THE FIFTH AMENDMENT DOUBLE JEOPARDY CLAUSE;
(a) WHAT TERMINATES JEOPARDY, (b) WHAT QUALIFIES AS AN ACQUITTAL
AND BAR TO RETRIAL, (c) DOUBLE JEOPARDY AMBIGUITIES,
② 5th/14th AMENDMENT CONSTITUTIONAL GUARANTEES AGAINST RETRIAL;
③ LAW OF THE CASE DOCTRINE / MATTER OF LAW; ④ 14th AMENDMENT
DUE PROCESS PROTECTIONS / RIGHTS; ⑤ NATURE OF PETITIONERS DOUBLE
JEOPARDY CLAIM, AND ⑥ JURISDICTION, EXCEEDING / LOSING SUBJECT
MATTER. ALL SUPPORTED BY 5th/14th AMENDMENT LAW AND
BINDING (UPON NEVADA COURTS) DECISIONS / HOLDINGS OF THIS,
THE U.S. SUPREME COURT.

THE 'SCM', UNDER SUPREME COURT RULE N.R.A.P. 17(b), TRANSFERRED
THE PETITION TO THE COURT OF APPEALS OF THE STATE OF NEVADA,
ON MAY 22, 2018, THE COURT OF APPEALS SUA SPONTE ISSUED ITS ORDER
DENYING THE PETITION. (SEE APPENDIX "B"), THE BASIS FOR THE COURT
OF APPEALS WAS THAT; "(PETITIONERS) REVERSAL (ON DIRECT APPEAL FROM FIRST
TRIAL, SEE APPENDIX "D") WAS NOT AN ACQUITTAL BECAUSE THE NEVADA
SUPREME COURT DID NOT BASE THE REVERSAL ON A RESOLUTION OF ANY OF
THE FACTUAL ELEMENTS OF THE OFFENSE OF SEXUAL ASSAULT." "SEE
U.S. V. MARTIN LUTHER SUPPLY CO., 430 U.S. 564, 571 (1977)." (SEE APPX "B").

THIS FINDING BY THE COURT OF APPEALS (NV) SEVERELY CONFLICTS
WITH AUTHORITIES OF THIS COURT AND SO ARGUED IN THE PETITION
AND PETITION FOR REHEARING, SPECIFICALLY, THIS COURTS DECISION(S)
IN; BURKS V. U.S., 437 U.S. 1, 57 L.Ed. 2d 1 (1978); BLUEFORD V.
ARKANSAS, 566 U.S. —, — 132 S.Ct 2044 (2012); EVANS V. MICHIGAN,
568 U.S. 313, 185 L.Ed. 2d 124, ET. AL. (2013)

PETITIONER TIMELY PETITIONED THE COURT OF APPEALS (NV) FOR
REHEARING UNDER N.R.A.P. 40 BASED UPON (a) MISSAPPLICATION AND FAILURE
TO CONSIDER U.S.S.C / NEV. BINDING AND CONTROLLING AUTHORITIES, AND
(b) MISAPPREHENSION OF MATERIAL FACTS, ON JULY 27, 2018, THE COURT
OF APPEALS DENIED REHEARING WITHOUT COMMENT. (SEE APPENDIX "C"),

PETITIONER TIMELY SUBMITTED A PETITION FOR REVIEW TO THE STATES HIGHEST COURT, THE SUPREME COURT OF THE STATE OF NEVADA (SCH) PURSUANT TO N.R.A.P. 40B. ISSUE(S) PRESENTED: (1) MATTER OF FIRST IMPRESSION, SCH CONCLUSION BARRED RETRIAL AND THAT RETRIAL WAS WITHOUT JURISDICTION, VIOLATED DUE PROCESS, VIOLATED U.S.C.A. 5 AND 14 DOUBLE JEOPARDY RIGHTS, PROTECTIONS AND LIMITATIONS RESULTING IN LOSS OF JURISDICTION, VIOLATION OF PROTECTED LIBERTY INTERESTS, MANIFESTING A FUNDAMENTAL MISCARRIAGE OF JUSTICE A VOID JUDGMENT. (a) WHY? PETITIONER IS ONLY PUBLISHED OPINION COUNTRYWIDE (IN LEXIS) WITH A CONCLUSION THAT "OVERWHELMING" EVIDENCE DOES NOT SUPPORT CONVICTION WHO DID NOT OBTAIN RELIEF OR ALLOWED TO ENJOY HIS RULING, MADE IN HIS FAVOR, (APPENDIX "F") AND (b) MATTER OF STATEWIDE SIGNIFICANCE, COURTS JURISDICTION, NV. COURTS FAILING TO GIVE EFFECT OF LAW, PROTECTED LIBERTY INTERESTS (U.S.C.A. 5/14). (2) DECISION OF COURT OF APPEALS (NV) CONFLICTS WITH PRIOR SCH DECISION AND U.S. SUPREME COURT DECISIONS/LAW. (3) PETITION INVOLVES ISSUES OF STATEWIDE IMPORTANCE

ON SEPTEMBER 21, 2018, THE SUPREME COURT OF THE STATE OF NEVADA ISSUED "ORDER DENYING PETITION FOR REVIEW"

NOW, BEING AN ISSUE OF IMPORTANCE, PROTECTED LIBERTY INTERESTS, FUNDAMENTAL MISCARRIAGE OF JUSTICE, U.S.C.A. 5 DOUBLE JEOPARDY VIOLATION, ONE ACQUITTED/INNOCENT RETRIED ILLEGALLY, DENIAL OF DUE PROCESS, PETITIONER PETITIONS THIS HONORABLE COURT FOR CERTIORARI.

JURISDICTION INVOKED PURSUANT TO 28 U.S.C. § 1257(a),

FN1: ON OCTOBER 25, 2018 THE SUPREME COURT OF NEVADA GRANTED "STAY OF ISSUANCE OF THE NOTICE IN LIEU OF BAIL" PENDING RESOLUTION OF THIS PETITION FOR WRIT OF CERTIORARI.

REASONS FOR GRANTING THE PETITION

THE FOLLOWING ARGUMENT AMPLIFIES THE REASONS FOR ALLOWANCE OF THE WRIT AS A RESULT OF THE STATE OF NEVADA'S HIGHEST COURT HAVING DECIDED AN IMPORTANT FEDERAL QUESTION REGARDING PROTECTED LIBERTY INTERESTS IN A WAY THAT SEVERELY CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT, (RULE 10 c).

WHEREAS, THE SUPREME COURT OF THE STATE OF NEVADA (SCN) HAS, DECIDED THAT THE TRIAL COURT RETAINED JURISDICTION TO RETRY PETITIONER ON SAME CHARGE AFTER REVERSAL BY THE 'SCN' ON DIRECT APPEAL FROM FIRST TRIAL WHICH CONCLUDED: "HOWEVER, OVERWHELMING EVIDENCE DOES NOT SUPPORT ROSKY'S CONVICTION FOR SEXUAL ASSAULT", REVERSING JUDGMENT OF CONVICTION ON SAME. (SEE APPENDIX "D" AND "E"). A REVERSAL WHICH, WHEN APPLYING BASIC 5TH AMENDMENT DOUBLE JEOPARDY JURISPRUDENCE / LAW, AND THIS COURT'S PLETHORA OF DECISIONS WHICH DELINEATE PETITIONERS REVERSAL AS "AN APPELLATE REVERSAL FOR INSUFFICIENCY OF EVIDENCE", TERMINATING JEOPARDY AND THE FUNDAMENTAL OPERATIVE OF AN ACQUITTAL, ACTIVATING THE PROTECTED LIBERTY INTERESTS, PROTECTIONS AND GUARANTEES OF THE 5TH AMENDMENT DOUBLE JEOPARDY CLAUSE APPLICABLE UPON THE STATES THROUGH THE 14TH AMENDMENT.

ON APRIL 14, 2003, PETITIONERS FIRST TRIAL RESULTED IN CONVICTION OF ONE COUNT N.R.S. 201.366 (SEXUAL ASSAULT) AND ONE COUNT N.R.S. 201.220 (INDECENT EXPOSURE). ON FIRST TRIAL DIRECT APPEAL, THE 'SCN', ON MAY 25, 2005, CONCLUDED: "HOWEVER, OVERWHELMING EVIDENCE DOES NOT SUPPORT ROSKY'S CONVICTION FOR SEXUAL ASSAULT", REVERSING 'JOC' ON SAME AND

REMANDING FOR PROCEEDINGS CONSISTENT WITH ITS OPINION, (SEE APPX. "D" AND "E"). ON MARCH 27, 2006 PETITIONER SUFFERED UNCONSTITUTIONAL RETRIAL AND WAS AGAIN CONVICTED ON THE ASSAULT CHARGE.

ON FEBRUARY 28, 2018, PETITIONER FILED HIS "ORIGINAL" WRIT OF HABEAS UNDER NEVADA REVISED STATUTE (N.R.S.) 34.360 AND 34.500 DIRECTLY WITH THE 'SCM' CLAIMING THAT THE TRIAL COURT LACKED JURISDICTION TO RETRY PETITIONER, VIOLATED DUE PROCESS OF LAW, U.S.C.A. 5 AND 14 CONSTITUTIONAL LIMITATIONS, VIOLATING THE 'SCM'S' DECREE AND JUDGMENT, EXCEEDING AND LOSING SUBJECT MATTER JURISDICTION THROUGH RETRIAL ON SAME OFFENSE AFTER 'SCM' REVERSAL CONCLUDING "EVIDENCE DOES NOT SUPPORT CONVICTION" CREATING A PROTECTED LIBERTY INTEREST MANIFESTING INTO A FUNDAMENTAL MISCARriage OF JUSTICE.

ON SEPTEMBER 21, 2018, THE 'SCM' AFFIRMED THE COURT OF APPEALS DENIAL OF ORIGINAL PETITION THROUGH DENIAL OF PETITION FOR REVIEW. (SEE APPX. "A" AND "B"), THE DENIAL OF THE PETITION WAS BASED UPON; "THE REVERSAL (FIRST TRIAL) WAS NOT AN ACQUITTAL BECAUSE THE NEVADA SUPREME COURT (SCM) DID NOT BASE THE REVERSAL ON A RESOLUTION OF ANY OF THE FACTUAL ELEMENTS OF THE CHARGE OF SEXUAL ASSAULT", CITING TO: U.S. V. MARTIN LINEN SUPPLY CO., 430 U.S. 564, 571 (1977), "THEREFORE THE STATE WAS NOT PRECLUDED BY THE DOUBLE JEOPARDY CLAUSE FROM RETRYING ROSKY", (SEE APPX. "B"),

THE STATES RELIANCE ON WHAT CONSTITUTES AN ACQUITTAL AND BAR TO RETRIAL THROUGH ITS INTERPRETATION OF MARTIN LINEN SEVERLY CONFLICTS WITH ALL RELEVANT DECISIONS

OF THIS COURT, U.S.C.A. 5 AND 14, AND ALL U.S.S.C. LAW / AUTHORITIES / DECISIONS ARGUED FOR THE ORIGINAL PETITION AND PETITION FOR REVIEW.

WHAT THIS COURT HAS STATED - DECIDED REGARDING "MARTIN LIKEN" ["]THUS MAKING THE SCN'S INTERPRETATION IN CONFLICT:

THIS COURT IN EVANS V. MICHIGAN, 568 U.S. 313, 185 L.Ed. 2d 124, AT 136 (2013) HELD: " (RESPONDENT) READS MARTIN LIKEN TOO NARROWLY, AND IT IS INCONSISTENT WITH OUR DECISIONS SINCE THEN. THE DISTRICT COURT IN THAT CASE HAD "EVALUATED THE GOVERNMENT'S EVIDENCE AND DETERMINED THAT IT WAS LEGALLY INSUFFICIENT TO SUSTAIN A CONVICTION," 430 U.S. AT 572. ["] " THAT DETERMINATION OF NON-CULPABILITY WAS ENOUGH TO MAKE THE ACQUITTAL Akin TO A JURY VERDICT, OUR HOLDING DID NOT DEPEND UPON DEFINING THE "ELEMENTS" OF THE OFFENSE," ["] EVANS AT 136.

CONSEQUENTLY THE SCN'S DENIAL UPON ORIGINAL PETITION RELYING ON MARTIN LIKEN IS IN CONFLICT WITH THIS COURT'S HOLDINGS / DECISIONS IN MARTIN LIKEN AND EVANS.

ADDITIONALLY, WE KNOW THE "SCN" IN PETITIONERS REVERSAL EVALUATED THE EVIDENCE AND FOUND IT INSUFFICIENT; "HOWEVER [YET-STILL] OVERWHELMING [EXTREME-GREAT] EVIDENCE DOES NOT SUPPORT ROSKY'S CONVICTION FOR SEXUAL ASSAULT."

IF THE EVIDENCE DOES NOT SUPPORT A CONVICTION - IT IS INSUFFICIENT, AND "PROSECUTION'S RELATIVELY WEAK CASE" IN SUPPORT OF THE S.A. CHARGES AT ISSUE, ROSKY V. STATE, 121 NEV. 184 AT 197, 111 P.3d 690 AT 698 (2005),

AND FOUR ITEMS DISCUSSED, WITH THE 'SCH' FIRST DETERMINING THAT THE EVIDENCE DOES NOT SUPPORT CONVICTION. ROSKY AT 679.

PETITIONER MADE NO CLAIM OF EVIDENCE SUFFICIENCY ON DIRECT APPEAL, THE 'SCH' COULD HAVE REMAINED SILENT.

EVEN THOUGH THE 'SCH' FOUND REVERSABLE TRIAL ERROR, IT ALSO FOUND EVIDENCE INSUFFICIENT, AS THIS COURT HELD IN EVANS V. MICHIGAN, 568 U.S. 313, 185 L.Ed.2d 124, 136 (2013), "WE REJECT THE NOTION THAT A DEFENDANT'S CONSTITUTIONAL RIGHTS WOULD TURN ON THE HAPPENSTANCE OF HOW AN APPELLATE COURT CHOOSES TO DESCRIBE A TRIAL COURT'S ERROR."

WHAT THIS COURT'S DECISIONS DEFINE AS AN ACQUITTAL, TERMINATING JEOPARDY, ACTIVATING U.S.C.A. 5 DOUBLE JEOPARDY PROTECTIONS, CAUSING THE 'SCH'S' DECISION TO BE IN CONFLICT:

THE FOLLOWING WAS ALSO PRESENTED IN PETITIONER'S ORIGINAL PETITION AND PETITION FOR REVIEW.

"JEOPARDY TERMINATES UPON A DETERMINATION, HOWEVER CHARACTERIZED, THAT THE EVIDENCE IS INSUFFICIENT TO PROVE A DEFENDANT'S GUILT", SMALLS V. PENNSYLVANIA, 476 U.S. 140, 144 90 L.Ed.2d 116 (1986). "THUS WE HAVE TREATED AS ACQUITTALS

(2) AN APPELLATE REVERSAL OF CONVICTION FOR INSUFFICIENCY OF EVIDENCE", BURKS V. U.S., 437 U.S. 1, 10 57 L.Ed.2d 1 (1978), QUOTING: BLUEFORD V. ARKANSAS, 566 U.S. —, —, 132 S.Ct. 2044, 2054 (2012),

"IN ASCERTAINING WHETHER AN ACQUITTAL HAS OCCURRED, FORM IS NOT TO BE EXALTED OVER SUBSTANCE", SANABRIA V. U.S., 437 U.S. 54, 66 57 L.Ed.2d 43 (1978). "RATHER WE ASK

WHETHER THE FACTFINDER HAS MADE A SUBSTANTIVE DETERMINATION
THAT THE PROSECUTION HAS FAILED TO CARRY ITS BURDEN."

QUOTING: BLUEFORD V. ARKANSAS, 566 U.S. — 132 S. CT. 2044

(2012)

THIS COURTS DECISION IN EVANS V. MICHAEL, 568 U.S. 313,
185 L. ED. 2D 124 (2013); "OUR CASES HAVE DEFINED AN ACQUITTAL

TO EXCEED ANY BULGE THAT THE PROSECUTION'S PROOF IS
INSUFFICIENT TO ESTABLISH CRIMINAL LIABILITY FOR AN OFFENSE"

SEE IBID., AND HILL, BUREK V. U.S., 437 U.S. 110 (1978), U.S. V.

MARTIN LUTHER SUPPLY CO, 430 U.S. 564, 571 (1977), "THUS AN

ACQUITTAL INCLUDES "A RULING BY THE COURT THAT THE EVIDENCE

IS INSUFFICIENT TO CONVICT, A "FACTUAL FINDING THAT

NECESSARILY ESTABLISHES DEFENDANT'S LACK OF CULPABILITY,"

AND "ANY OTHER RULING WHICH RELATES TO THE ULTIMATE

QUESTION OF GUILT OR INNOCENCE," EVANS AT 133

PETITIONER RECEIVED HIS REVERSAL - APPELLATE REVERSAL

THAT EVIDENCE IS INSUFFICIENT, DOES NOT SUPPORT, CONVICTION

FOR SEXUAL ASSAULT, JUDGMENT OF CONVICTION REVERSED

DEFENDANT TERMINATED AND AS THE LAW OF THIS COURTS

DECISIONS MANDATES, AN ACQUITTAL, THUS, THE 'SCA'S' (APP. 'B')

DECISION AND BASIS THEREOF SEVERELY CONFLICTS WITH THIS

COURTS DECISIONS, PETITIONERS PROTECTED LIBERTY INTERESTS

MUST BE EFFECTED AND FULL EFFECT OF LAW PROVIDED,

FOR ANY U.S. CITIZEN TO LOSE THE PROTECTIONS OF THE

5TH AMENDMENT DOUBLE DEFENDANT CLAUSE SHOULD CAUSE CONCERNS

TO CHANGE, THESE PROTECTIONS ARE OF NATIONAL CONCERN IF

TO BE SO FREELY ERRORED.

WHAT THIS COURTS DECISIONS AND FIFTH AMENDMENT DOUBLE JEOPARDY LAW SAY REGARDING 'ACQUITTALS' AND BAR TO RETRIAL, PLACING THE 'SCN'S' DECISION IN CONFLICT:

THE FOLLOWING WAS ALSO PRESENTED IN PETITIONERS ORIGINAL PETITION AND PETITION FOR REVIEW.

"THE DOUBLE JEOPARDY CLAUSE PROTECTS AGAINST RELITIGATION OF AN ISSUE NECESSARILY DETERMINED IN DEFENDANTS FAVOR BY A VALID AND FINAL JUDGMENT," U.S. V. CONSOLE, 13 F3d 641, 664 (3rd CIR, 1993).

"ONCE A DEFENDANT OBTAINED AN UNREVERSED APPELLATE RULING THAT THE GOVERNMENT FAILED TO INTRODUCE SUFFICIENT EVIDENCE TO CONVICT AT TRIAL, A SECOND TRIAL IS BARRED," BURKS V. U.S., 437 U.S. 1, 18 98 S.Ct. At 2150 (1978)

"THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION DOES INCLUDE AN EXPRESS GUARANTEE AGAINST TRIAL MIDLAND ASPHALT, 489 U.S. 794, 801 (1989); U.S. V. ABNEY 431 U.S. 651, 661-662 (1997)

CONSEQUENTLY, AND SO PROVEN, "WHERE A STATE IS PRECLUDED BY THE FIFTH AMENDMENT DOUBLE JEOPARDY CLAUSE FROM HAILING A DEFENDANT INTO COURT ON A CHARGE, FEDERAL LAW REQUIRES THAT A CONVICTION ON THAT CHARGE BE SET ASIDE," MEHRA V. NEW YORK, 423 U.S. 61, 62, 46 L.Ed.2d 195 96 S.Ct. 241 (1975).

THE FACT THAT THE 'SCN'S' DENIAL OF ORIGINAL PETITION BASED UPON MARTIN LINEH SEVERLY CONFLICTS WITH THIS COURTS RELEVANT DECISIONS ALSO MAKES

THE 'SCH'S' DECISION THAT THE STATE WAS NOT PRECLUDED FROM RETRYING PETITIONER IN CONFLICT WITH THIS COURTS RELEVANT DECISIONS SO NOTED ABOVE, BARRING RETRIAL.

AS A FINAL NOTE, "ANY PERCEIVED AMBIGUITY IN PETITIONERS 'SCH' REVERSAL ON DIRECT APPEAL MUST BE RESOLVED IN FAVOR OF PETITIONER AS THE DOUBLE JEOPARDY CLAUSE DEMANDS", BLUEFORD V. ARKANSAS, 566 U.S. ___, ___, 132 S.Ct. 2044 182 L.Ed.2d 937 AT 950 (2012); DOWHUM V. U.S., 372 U.S. 734, 738 83 S.Ct. 1033, 10 L.Ed.2d 100 (1963); U.S. V. WATSON (DC NY) 3 BEM 1, FCAS NO. 16651 (DC SD NY 1868),

AMAZINGLY, ALL CASES/OPINIONS FOUND IN THE 'LEXIS' LEGAL DATABASE THAT CONTAIN: "[OVERWHELMING] EVIDENCE DOES NOT SUPPORT" OF WHICH PETITIONERS 'SCH' REVERSAL IS ONE, PETITIONER IS ONLY CASE WHERE HE IS NOT ENJOYING A RULING IN HIS FAVOR / FULL EFFECT OF LAW.
(SEE APPENDIX "F"),

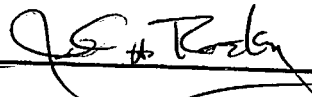
IN A HUTSHELL, THE 'SCH'S' DENIAL OF PETITION BASED ON U.S. V. MARTIN LUTHER, 430 U.S. 564 (1977) SEVERLY CONFLICTS WITH THIS COURTS RELEVANT DECISIONS ON THE ISSUES AND BRING ABOUT A LOSS OF INTEGRITY AND LOSS OF CONFIDENCE IN THE JUDICIAL SYSTEM, A JUDICIAL SYSTEM THAT CAN SO BLATANTLY DEPRIVE ONE OF HIS PROTECTED LIBERTY INTERESTS AND EFFECT OF LAW,

PROTECTED LIBERTY INTERESTS ARE OF EXTREME - NATIONAL CONCERN OF EVERY CITIZEN OF THE UNITED STATES.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 JOHN H. ROSKY

Date: NOVEMBER 4 2018