9/22/18

No. 18-753

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT STEPHEN COUTURIER, PETITIONER

v.

THE HONORABLE PRESIDING JUDGE OF LOS ANGELES SUPERIOR COURT AND THE CHIEF PROBATION OFFICERS OF LOS ANGELES COUNTY,

RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO

U. S. NINTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1) Did the 9th Circuit Court of Appeals error when it denied The Petitioner a Certificate of Appealability?

2) Is a Defendant denied the right to a fair trial and impartial jury under Federal Law and The United States Constitution and Amendments, when his or her bench trial is conducted before and she or he is convicted by the very same judge that signed the Arrest Warrant that involves the matter at hand?

3) Is it reasonable to logically deduce that reasonable people or fair minded jury people that know all of the facts would believe that a judge would follow legal procedure and would read a police report that supports the probable cause necessary to issue an arrest warrant?

4) Is a defendant denied his Fourteenth Amendment Right to a fair trial when the judge tells the defendant during a pre-trial hearing that she does not know the facts of the current case and it turns out that this same

judge signed the defendant's arrest warrant?

5) Are a defendant's United States Constitution and Amendments rights to effective assistance of counsel violated if counsel does an inadequate pretrial investigation, does not visit the alleged crime scene to attempt to reconstruct what allegedly happened, does not bring or attempt to bring the police to court to impeach sole government witness multiple times, does not attempt to get a continuance, does not attempt to bring an expert witness and allows a bench trial to be conducted before the very judge that signed the defendants arrest warrant?

6) Did the District Court err, when it denied an evidence hearing to review some or all of the issues discussed below in the writ

7) Did the District Court error when it denied the Petitioner's Certificate Of Appealability?

LIST OF PARTIES

All Parties Appear on the Caption of the Case on the Cover.

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IN THE SUPREME COURT OF THE UNITED STATES

A PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

.1) The Denial of a Certificate of Appealability by the 9th Circuit Court of Appeals App. Pg.1 Case # 17-56376

.2) The Denial of the Petition for Motion to Reconsider by the 9th Circuit App. Pg. 2 Case # 17-56376

.3) The Opinion of the United States District Court is at App. Pgs. 3-4, & Petitioner believes it is unpublished. Case # CV-16-8278-BRO (E)

.4) The Report and Recommendation of the U.S. Magistrate Judge is at Appendix Pgs. 5 thru 44.

.5) District Court denial of ("COA") is at App. Pgs. 48-49.

.6) The last opinion of the C.A. Supreme Court is at App.

Pg. 47; Case # S238512. Petitioner believes it is unpublished

.7) The first opinion of the C.A. Supreme Court to review some of the merits of the case appears at Appendix Pg. 48 ; Case # S 234025. Petitioner believes that both cases are unpublished.

JURISDICTION STATEMENT

The Ninth Circuit denied the "Petitioners", ("Pet")'s petition for a request of a "Certificate of Appealability", ("COA"), on May 7, 2018. (Pet. App:1). The Ninth Circuit denied the ("Pet")'s petition for a Motion to Reconsider on June 25, 2018. (Pet. App:2) The District Court of Central California denied the ("Pet")'s Writ of Habeas Corpus on August 16, 2017. (Pet. App:3-4). This court has jurisdiction under 28 U.S.C. § 1254(1) or (6).

CONSTITUTION & STATUTORY PROVISIONS

Sixth Amendment of the U. S. Constitution: Right to a

Fair Trial: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, ... and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense".

Fourteenth Amendment of the U.S. Constitution: Civil Rights: July 9, 1868, Sec 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or im-

munities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE III, SECTION 2 of the U.S. Constitution provides in relevant part: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States,"and to certain "controversies."(3)"the trial of all crimes...shall be by jury".

ARTICLE V, of U. S. Constitution; In relevant part, ... whenever two-thirds of both houses shall propose amendments to this Constitution. (World Book © 2018).

28 U.S.C. § 455(a): Any justice, judge or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. § 455 (b) He shall also disqualify himself in the following circumstances: **(1)** Where he has a personal bias

judgment, order, or proceeding; **(3)** set aside a judgment for fraud on a court.

STATEMENT OF THE CASE

On Sun. July 20, 2014 at 8:00 pm two Sheriff Deputies pounded on the petitioner's door. They advised him that he was accused of removing a license plate from a car. A witness told them he watched suspect remove the license plate and carry it into his house. They asked some questions and left. In Oct. 2014 petitioner received an arrest warrant for $10,000 in bail in the mail. The alleged victim & witness park cars in front of the petitioner's house and he parks down the street. Petitioner was accused of taking a License Plate off a 1994 Honda Civic that belonged to a Ms. (Richards) or (Bayze) on 7/14/14 at 10 pm. He was allegedly seen crouching down and popping up and scurrying onto his property. He allegedly returns later and goes between the two vehicles. The witness was unable to see the petitioner while he was between the two vehicles. Witness says nothing about reemerging from this area.

or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding; **(3)** Where he has served in government employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding **or** expressed an opinion concerning the merits of the particular case in controversy; **(d)** For the Purpose of this section the following words or phrases shall have the meaning indicated: (1) proceeding includes pretrial, trial, appellate review or other stages of litigation.

28 U.S.C. § 1254(1)&(6) Supreme Court Jurisdiction ....

28 U.S.C. § 1291 provides in relevant part: "The court of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States"

Fed. R. Civ. P. Title VII. Judgement; RULE 60: Relief from a Judgment or Order: **(d)** Other Powers to Grant Relief; This rule does not limit a courts power to: **(1)** entertain an independent action to relieve a party from a

Witness says he sees the petitioner walk onto his property and thru his property with a plate (License Plate) in his hand, a few weeks before ("Pet") tags expire. Witness told the court his white van was parked in front of suspect's house all day. He was driving his orange car. The victim said she parked in front of an orange car. In trial pictures a plug is in one license plate bolt hole. Victim told the court that she screwed the screw right thru the plug or cap. Counsel noted there was no residual hole in the cap. She said she parked the car and looked to verify her license plate was attached. Witness says he could see the whole side and front end of the Honda car. He was unable to see suspect. Witness hid in the bushes between his parent's and the petitioner's house. He goes inside to sort out in his mind what he saw and comes out later to look around. He tells the victim, later. The victim said witness called her at work. He told the police he knocked on her door and no one answered. There was no descript-

tion (size, shape, color or state) of this object. Witness was asked about discrepancies in the police report and his testimony and he alleges the police were mistaken. The prosecutor does not object about putting police report in record. It is the Judge that says police report can't go into trial record. Judge advises defense counsel to bring in the police to verify report is accurate. Counsel did not take her advice. He did not subpoena the police. He does not seek a continuance. There are no witnesses brought in for the defense. Counsel wanted a bench trial and had advised on a credibility of the witness defense. The Judge that conducts bench trial is same judge that signed the defendant's arrest warrant. Judge advises ("Pet") that she does not know facts or charges of the case. ("Pet was convicted of Petty Theft & pays ($31) restitution for plate & about $400-$500 in fees and fines and did (21) days or (100) hours community service. This is first conviction & he is now on Medicare. ("Pet") asks counsel in the corridor

after trial, why didn't he bring in the police. Counsel stares at him blankly and did not respond. ("Pet") sends Email to counsel when question is raised by county appeals court. He responds "the judge believed the witness". ("Pet") pays new counsel ($1500) to appear in court in March 2015 on a witness complaint. Witness did not appear. The judge directs DA to refer any further issues to civil court. The petitioner appealed the conviction, and then learned from a DA brief that an ("IAC") claim is best pursued thru a Habeas Corpus proceeding. He worked thru C.A. Courts to exhaust and then filed a Writ in Federal District Court where his petition &("Certificate of Appealability"), ("COA") was denied. The 9th Circuit denied a ("COA") & a Petition for Motion to Reconsider. We are now at Writ of Certiorari Stage.

A) REASONS FOR GRANTING THE PETITION (1)

The petitioner, ("Pet") contends that the judge should have recused herself and, also, that his counsel should have motioned for her recusal, since, she signed the

("arrest warrant") or ("AW") and then became familiar with the facts of this case. Note, Judge Salkin specifically told the defendant "I don't know anything about the charge in this case", & "Keep in mind I don't know the facts of the case, ("Pet")'s (Appendix Pg.8), hereafter, (App;Pg:8). The ("Pet") believed her. ("Pet") contends this was prejudicial & the perception of this event to the public and fair minded citizens is significant. ("Pet") contends there is a violation of Federal Law 28 § U.S.C. 455(a) & 455(b) (1) or (3) based on the fact that the judge rendered an opinion on the facts of this case when she signed the arrest warrant (and was a government employee that gained knowledge of the case outside the trial or pretrial proceedings (App;Pg:7). Counsel did not investigate to be sure that this judge was not previously involved with the case. ("Pet") argues these events violate the 6th & 14th Amendments of the U.S. Constitution. A judge signs an ("AW"), conducts a bench trial involveing that ("AW") and denies in court record and to the defendant any knowledge regarding the facts of the case. The

District Court decision besides being contrary to the U. S. Constitution & Federal Law is in conflict with decisions of other Circuit Courts of Appeal.

A-A) Analysis. Rule 28 § U.S.C. 455(a) was violated, since, (a) the judge did not recuse, (b) she signed the ("AW") and reasonable people would believe that this judge followed proper procedure and thus, would have read the police report to determine probable cause, (c) the police report had very damaging statements (1) The Police wrote: "We formed the opinion S/Couturier stole V/Bayze license plate. (2) Witness: "Positive ... was person seen removing the victim's license plate. (App;Pgs:51&54). (d) The judge told the defendant twice during the pretrial that she did not know the facts or charges of the case. (e) reasonable people could question the partiality of this judge, knowing all the facts surrounding the case. ("Pet") also alleges that 28 U.S.C. 455(b) (1) & (3) were violated. Judge Salkin, a government employee rendered an opinion on the facts of

this case by signing an arrest warrant. The judge has now gained (personal) knowledge of the case outside the trial proceeding. This law was created by the U.S. Legislature in 1974 under powers of the U.S. Constitution. It does not matter what they were thinking. What matters is how they wrote the law in the English language. They even clarified the meaning of some words. It is not unconstitutional. On the contrary, it is very fair & constitutional. It protects against abuse, which is the primary purpose of the constitution and our system of checks and balances. Congress has not changed the law in (44) years. Neither did Liteky v. United States, 510 U.S. 540 (1994). This case helped fine tune the law. In Liteky v. United States at 550 Justice Scalia, specifically, points out that it is not always an ("Extra Judicial Source") or ("EJS"). It is one application. At 551, he explains that knowledge acquired in the course of a proceeding, even sometimes in a bench trial is acceptable and off limits to bias & (impartiality) contentions.

Note that he clarifies by using the word sometimes. Even, the 9th circuit pointed out in a fairly recent decision, (United States v. Johnson 610 F.3d 1138, 1147 (9th Cir. 2010), that "Exceptionally Inflammatory Information" provides the grounds necessary for a bias or prejudicial recusal. (Citations omitted). ("Pet") contends that (1) "I watched the suspect remove the victim's license plate" and (2) "we formed the opinion that suspect stole the victim's license plate" are highly inflammatory and prejudicial statements, when, compared in context with the trial's circumstantial evidence. ('Pet") argues that reasonable people knowing all the facts that are involved would agree that there is or could be an appearance of partiality or unfairness. ("EJS") can't always be the source of impartiality according to the law and Justice Scalia wrote it clearly. The ("AW") process is not part of a trial. It is not part of a prior proceeding and it did not involve a remanded case. The event is still under investigation until the ("AW") is signed. At this point the judge renders an opinion on the facts of

the issue at hand and it becomes a court case. ("Pet") claims that under U. S. Law this same judge should not be conducting a bench trial on these same issues. The perception to the public violates 28 § U.S.C. 455(a) & (b) and breaches the system of checks and balances. It is an issue of national importance. ("Pet") contends that if the ("AW") process is compared to a grand jury that it would be unconstitutional for that grand jury to either conduct a bench trial or have members sit on a jury at trial of the same matter. ("Pet") believes that Rule 60(d)(1) or (3) gives federal courts broad authority to grant relief from a final judgment and provides the legal authority to vacate this judgment. Please, see Liljeberg v. Health Services Acq. Corp. 486 U.S. 847 (1988), where the court decided, a reasonable person, knowing the relevant facts, would expect that the judge knew of circumstances or facts that created an appearance of partiality. It was not necessary for the judge to be actually conscious of the facts. There was ample basis in the record to conclude that an 'objective observer' would have questioned the

judge's impartiality & it involved a judicial memory lapse. (Citations Omitted). In ("Pet")'s case the judge appears to have two memory lapses & both are clearly in the record. (App:Pg:8) That court reversed the judgment. Please, see In re Murchinson, 349 U.S. 133 (1954) for a precedent that has been around for seven decades. It involves a "single judge grand jury". The court reversed the judgment. ("Pet") listed this case in his ("FAP") petition on the list of relevant cases. In Rice v. McKenzie 581 F.2d 1114 (4th Cir. 1978), (CA4) ruled that the objective standard of 28 § U.S.C. 455(a) required the judges recusal. The judge had participated in rejecting Rice's claim, previously. The denial of Habeas Corpus by the district court was vacated. The perception to the public played a role in the courts decision. In another case, a bench trial, the 9th circuit affirmed the conviction. However, there was substantial physical evidence to support the conviction. See United States v. Van Griffen 874 F.2d 634 (9th Cir. 1989). The judge stated that he had not read about the case. The (CA9) stated in their

opinion that they believed the judge. Citation Omitted. In ("Pet")'s case the evidence is circumstantial & the judge also stated that she did not know the facts of the case. Yet, reasonable people would believe that Judge Salkin would have followed proper procedures and read the police report to determine probable cause and therefore, at that point would have become familiar with the facts of ("Pet")'s case & must have had a memory lapse. ("Pet") contends that the perception to the public shows a 28 § U.S.C.455(a) violation & the facts of the case illustrate a 28 § U.S.C.455(b)(3) violation. When, the judge signed an ("AW"), she became involved with the facts of the case. The judge rendered an opinion on the facts of the case. The judge now has personal knowledge of disputed evidentiary facts. It is the nature of the human brain to have an interest in the case and these facts. The judge has worked in government employment, acquired the knowledge in government employment and has expressed an opinion concerning the merits of the

particular case. The District Court used Harris v. Rivera 454 U.S. (1981) to support part of its habeas writ denial. In that bench trial, evidence is excluded. When, evidence is excluded at trial there is generally sparing between attorneys. When, the judge decides to exclude evidence, the judge hears arguments from both sides. The judge hears conflict for and against the evidence. The judge hears the opposing forces & this info & trial event is lodged into the judge's brain. Then, the judge renders an opinion on if the evidence can be included in the trial. The judge does not render an opinion on whether this particular evidence is sufficient to determine if a crime may have occurred. The government has not provided any precedents to support a prior case where a judge signed an arrest warrant and then conducted a bench trial and then convicted someone, or after assuring a defendant that the judge knows nothing about the facts of the case. Doesn't this mean that the standard of this case is the 1974 Law, 28 § U.S.C. 455(a) & 455(b) (1-5) added with guidance from some of these other

cases? In ("Pet")'s case the judge is the first person in the courtroom to move to exclude the police report from the trial record. Even before, the prosecutor is able to utter a word or utter an objection, the judge excludes the police report, however, this judge has knowledge of the info, damaging & inflammatory, in the police report and this judge is the one person jury. ("Pet") asserts that he would not have allowed his case to be held in front of a bench trial judge that had signed his ("AW") if he had been properly advised by the court. ("Pet") contends that with effective assistance of counsel and with adequate investigating, a competent attorney would not let this happen. ("Pet") contends that this issue is of importance to every citizen and anyone in the USA and protected by our laws. He also thinks he has provided this court conflict between circuit courts of appeal on the issue. ("Pet) alleges that the District Court made an error when they did not grant his Writ of Habeas Corpus and that the 9th Circuit was incorrect to

deny a COA and was also in conflict with their very own decision in United States v. Johnson 610 F.3d 1138, 1147 (9th Cir. 2010). **A-B SUMMARY**

For all of the above reasons, ("Pet") prays that the Writ of Certiorari will be issued.

B) REASONS FOR GRANTING THE WRIT

The Petitioner contends his U.S. Sixth & 14th Amendment Right to effective counsel & fair trial were violated. ("Pet") asserts that the District Court was in error, when it denied his writ for an ("Ineffective Assistance of Counsel"), ("IAC") claim, since, it was in direct conflict with established federal law, the U.S. Constitution, U. S. Supreme Court precedents and various Circuit Court precedents. He claims the District Court & the 9th Circuit were in error to deny the ("Certificate of Appealability"), ("COA"). These decisions were in conflict with other circuit courts of appeals.

1) Counsel did not fully or adequately investigate and did not visit the alleged crime scene and try to reconstruct what allegedly happened. The location was approx.

four miles from courthouse I-5 freeway off ramp. He could have accomplished all of this in 30-40 minutes. The first court appearance lasted about 30 minutes. The record shows it was short. He had an appearance in Santa Monica at 8:30am. I appeared at 8:30 am and told the court that counsel was on his way. ("Pet") paid his firm $6000.00 in fees for a trial. We had had a 45 minute initial meeting where I discussed the plug in the bolt hole, gave him the discovery and a three page list of issues that previously involved the witness from 2012 thru 2014 copies of which were mailed with no mail receipt to my state and federal congress reps. Counsel did not attempt to interview the alleged victim or the alleged witness. He did not discuss the plug or rubber or cap that was located in the car's front license plate bolt hole with the police. (3) Counsel did not subpoena the police to be avail-able at trial. If he had visited the alleged scene, he would have realized that alleged witness could not have seen the suspect crouching. The witness van blocked the view from the driveway to the

Honda car. He would have realized that the witness could not see anyone take a license plate into my house. There are trees, brush and a garage blocking any view. He solidifies this point at trial, but does not realize it, since, he never visited the area. (4) Counsel did not attempt to seek a continuance (5) He did not investigate or pursue the significance of the plug or cap in the front end bolt hole with an auto body shop or a Honda parts person or a mechanic. He should have had one available to testify so he could provide the court some substance. Counsel's opinions on the subject were basic speculation in the court room. It led to a speculative discussion during the trial record. It achieved nothing to challenge the two alleged crime elements. An effective counsel would be aware of the advantage to provide substance to the court and jury by providing an expert to counter the speculation of the prosecution. Petitioner emphasized numerous times to counsel the week before the trial that he did not want a plea bargain. He sent a handful of e mails and signed a few

notes for counsel that he did not want a plea bargain. Counsel and his firm were advised that they were hired for a trial when the retainer was paid. counsel discussed a street light with the ("Pet").(6) Counsel allowed the ("Pet")'s bench trial to be conducted by the same judge that signed his arrest warrant.

B-A) Analysis

The basic standard on ("IAC") complaints appears to be Strickland v. Washington 466 U.S. 668 (1984). This case makes it clear, that counsel has a basic duty to investigate. It is not hindsight to investigate. It is not hindsight to bring in an expert to provide substance to the court. This is experience. It is not hindsight to bring in the police or seek a continuance. It should be Basic Trial Law 202. Counsel is advised by the court, that it is necessary to bring in the police, if he wants the authored statements in the police report to be part of the trial record. The ("Pet") contends that he was prejudiced, when counsel neglected to bring the police to court to provide some substance to this

police report evidence. Counsel neglected his basic duty to his client and he neglected to provide the court with some defense evidence. The Superior Court questioned the prejudice. The District Court questioned the prejudice. ("Pet") has continued to develop and show how he was prejudiced. First, the accumulation of all these errors was prejudicial. ("P") asserts the District Court overlooked the cumulative effect of the errors. See, Goodman v. Bertrand 467 F.3d 1022, 1030 (7th Cir. 2006) for a case that uses the cumulative effect of trial counsel errors to determine Strickland prejudice, where counsel did not subpoena and he made other mistakes. The cumulative effect of prejudice is discussed, further, at the end of this section. ("Pet") argues his trial outcome would have been different because a fair minded jury would not convict a person assumed to be innocent until proven guilty under the following scenario. First, (Impeachment # 1), the witness would not be able to see the suspect crouching in front of the Honda from his driveway as he told Detective Harold. The van was blocking

any view from the Vang (witness parent's house) driveway to the front end of the Honda car. This would eliminate the crouching in police report that was used for the ("AW") and possibly an element of the alleged crime. It would impeach the crouching version the witness gave in court testimony. Witness verified in court that the white van was parked in front of the Honda. Witness advised Det. H. that the van was in front of the Honda during the phone interview. (App. Pg:52). (Impeachment # 2) Witness would not be able to see anyone go into ("Pet")'s house carrying a license plate as authored in police reports. (App:Pg:50) providing a second instance of impeachment of the sole prosecution witness. There are bushes, thick trees and a garage obstructing any sight or view. Counsel was unaware, since, he did not visit alleged crime area. Some of the court photos should show this. Also see (App: Photos) (Impeachment # 3) Witness did not see ("Pet") remove a Honda license plate, as is authored in police report. (App:Pg:54) Counsel established this at trial. Witness testified "I saw the plate in his hand

after" (App:Pg:63) Counsel did not impeach this event. He did not bring the police to court. Please see Caraway v. Beto 421 F.2d 636 (5th Cir. 1970), where (CA5) issued the writ for ("IAC"). There was insufficient investigating, lack of subpoenaing and issues of counsel not objecting. ("Pet") counsel never objected once. Some prosecutor statements were inaccurate. Please see (MacKenna v. Ellis, 280 F.2d 592, 599 (5th Cir. 1960)) & (Rummel v. Estelle 590 F.2d 103, 104 (5th Cir. 1979), discussing the duty to investigate. (Citations omitted). The writ was also granted. In United States v. Grey, 878 F.2d 702, 711 (3rd Cir. 1989) the (CA3) says it is objectively unreasonable if counsel fails to conduct any pretrial investigation. See United States v. Kauffman, 109 F.3d 186, 190 (3rd Cir. 1997), where counsel did not visit alleged crime scene & conducted a poor pretrial investigation. The court could not give his trial strategy the same deference, since it was not informed. (Citations omitted). ("Pet") contends his defense fell below the standard of reasonableness. Counsel was not informed.

Please see Roland v. Vaughn 445 F.3d 671, 681-683 (3rd Cir. 2006) discussing failure to conduct a pretrial investigation objectively unreasonable. In, United States v. Hammonds 425 F.2d 597 (D.C. Cir. 1970), no pretrial motions, inadequate preparation & failure to make an opening statement. Case was reversed and remanded. ("Pet") counsel made no opening statement. See Kimmelman v. Morrison 477 U.S. 365 (1985) at 385, "duty to make reasonable investigation". (Citations Omitted). There was a lot of prejudice and harm done to the defendant. It created a huge & substantial disadvantage to ("Pet"). It is more than just a showing. It is a long list of concrete & substantial errors and omissions that led to a fundamentally unfair trial. It is fundamentally unfair to not conduct a pretrial investigation, visit the alleged scene and attempt to reconstruct what allegedly happened, not subpoena the police & verify their report & impeach the sole government witness multiple times. Counsel did not cast reasonable doubt on the crouching that the judge could not get her

head around, no matter how short a timeframe the crouching existed. By utilizing the impeachment process and by providing verification of police's written report, counsel should have shown the court and jury, a jury that does not have any knowledge of the facts of the case, that a photo clearly shows the van blocking any sight of the front end of the Honda to anyone exiting a car on the Vang driveway. As, witness had moved closer to the bushes where he was hiding, stealthily, he still could not see what was going on behind the van as verified by the witness in the trial record. Counsel needed to bring in a Honda parts or auto body expert so he could correctly guide the courtroom discussion regarding the vehicle and its paint and the plug in the bolt hole, rather than the speculation that ensued during trial. Then, counsel could have provided some substance to the court and jury about these issues from a professional that is familiar or works in this area of expertise.

B-B) Accumulated Prejudice

They must consider the cumulative effect of counsel's errors in light of the totality of the circumstances. See Strickland at 104 and United States v. Merritt, 528 F.2d 650 651 (7th Cir. 1976) (per curiam), where the court says cumulative effect may be substantial enough. (Citations omitted). ("Pet") contends that impeaching the removal and carrying inside of license plate as authored in police report & impeaching the crouching observed from the driveway with the van blocking any sight provides sufficient reasonable doubt for reasonable people and reasonable jury people & enough reasonable doubt to show that the proceeding may have been different. Coupled with the victim parking in front of an orange car and the significance that there is no residual hole in the cap or plug ("Pet") contends that the U.S. Supreme Court will agree that reasonable minded jury people would have great difficulty to convict a person presumed innocent until proven guilty with any remaining circumstantial evidence that was provided by a sole

ticketed on (7/15/14) for no license plate. All else she provided was hearsay. (2) The witness watched the suspect remove the license plate. (3) The police report says the witness watched the suspect carry the license plate into his house. (4) Det. H. telephone interview nine days after alleged incident. Witness exits vehicle after parking in driveway and sees suspect crouched at front of victim's vehicle. Witnesses' 2nd vehicle (van) was parked in front of the victim's vehicle. (5) He watches from less than 50 feet. He sees suspect walk back to area and crouch down. He sees suspect stand up and walk away from the vehicles carrying a license plate in hand then enter front door of home. He goes over and sees plate missing on victim's car.

B) Police Report Evidence Fact Analysis.

1) The victim, in a court statement, parked in front of an orange car, with her plate attached. In court it was established that a white van had been parked all day and

government witness that has been impeached on multiple occasions. Add in the statement that it is pretty bright and then later it's oh so dark and too dark for a camera. It should appear to the court and jury that this sole witness has a remarkable problem with telling a consistent story. Even on the same day. The ("Pet") asserts this sole government witness definitely has credibility, integrity and honesty issues.

B-C) FINAL ANALYSIS

The ("Pet") asserts that reasonable people and a group of reasonable minded jury people or a reasonable minded bench trial judge would find it difficult to convict a person that is innocent until proven guilty under the following circumstances and under the condition that counsel subpoenaed the police & verified what they wrote in their police reports. The info used to arrest the ("Pet").

The reports had (5) primary bits of factual evidence.

(1) The victim parked her car on (7/14/14) and was

night & located in front of the location that the alleged victim parked her Honda car. (2) Witness implied in court he did not see license plate removal. (3) The witness, in his trial statement saw ("Pet") walk on his property and thru his property with a plate in his hand. The prosecutor discusses this differently with no objection from counsel. Also, (a) counsel should have impeached the witness statement to the police. (b) If counsel had visited the alleged crime area he would already know that this witness could not see the alleged suspect's door from his locations. If counsel had done a better pretrial investigation, he would have known this impeach option before trial. (4) Counsel should have impeached witness first by questioning his statement to the police about watching the suspect carry this alleged plate into his house. Then, thru the use of photos he should have provide substance to the court or jury showing that alleged witness would be unable to see the ("Pet")'s front door. There is a thick tree and shrubs

and a garage that is blocking any view from where he was hiding in the dark based on established trial testimony. (5) Lastly, the witness can't see in between cars, as detective H. wrote in his police report. Witness established in

trial he could not see what alleged suspect was doing between the vehicles & he is (70) feet. So, he would not be able to see alleged suspect crouching. This is another simple and significant impeachment. There is also no emerging from these vehicles. ("Pet") states there is no sound strategic trial strategy for counsel to not again reinforce these impeachments during his closing arguments. It was not done since counsel was not completely informed, since he did not conduct an adequate pretrial investigation & did not subpoena the police or seek a continuance so that he could. This is not hindsight and it prejudiced the ("Pet") with a conviction. Please see, United States v. E. Tucker 716 F.2d 576 (9th Cir. 1982), where the court found that an adequate investigation would have led to evidence and wit-

nesses helpful to the defense. The unfairness was not restricted to defense counsel's failure to impeach testimony. (Citation Omitted). Case was reversed and remanded. Please see, U.S. v. Grey 878 F.2d (3rd Cir. 1989). Grey got two weeks continuance. Counsel did not go to the scene. It discusses the advantage of using a witness to attack the prosecution witness. Case was reversed and remanded.

C) REASONS TO ISSUE "COA"

("Pet") asserts that the above reasons to issue the writ should provide enough substance to meet the standard needed to issue a ("COA"). See Miller v. Cockrell 537 US 322, 327, 338, 341 (2003). Reversed and Remanded. Slack v. McDaniel 529 US 473 (2000), Reversed and Remanded.

2-D) FINAL SUMMARY:

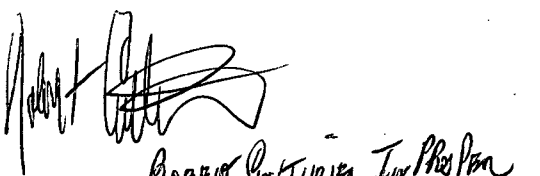
Thus, there is a reasonable probability ("Pet")'s trial outcome would have been different if the errors are considered cumulatively & if counsel had been effective. By removing

these errors & putting the trial in front of an objectively reasonable and fair minded jury, with no awareness of the facts surrounding this case & under the premise that a defendant is 'innocent until proven guilty beyond reasonable doubt', ("Pet") asserts the results would have been different. ("Pet") contends that for all or some of these reasons the writ should issue. He prays that the writ issue.

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,



Date Sept. 20, 2018