IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

18-8405

MOHAMMED S. ROBLE

-Petitioner-

Vs.

UNITED STATES OF AMERICA

-Respondent-

CASE No.

MARCH 10, 2019

ORIGINAL

FILED
MAR 08 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR A WRIT OF CERTIORARI TO THE
DISTRICT OF COLUMBIA (STATE) COURT OF APPEALS

REQUEST OF PETITIONER ROBLE.

Respectfully Submitted By:

Mohammed Roble
#80570-083
RIVERS CORRECTIONAL INSTITUTION
P.O BOX 630
WINTON, NC 27986

QUESTION(S) PRESENTED

1. DOES STRICKLAND v. WASHINGTON, 466 US 668, 80 L Ed 2d 674, 104 S Ct 2052 REQUIRE THE GOVERNMENT'S EVIDENCE TO BE WEAK TO FIND A CRIMINAL DEFENSE ATTORNEY INEFFECTIVE UNDER THE SIXTH AMENDMENT ?

2. DOES REASONABLENESS OF A COUNSEL'S CONDUCT ALSO APPLY TO THE COUNSEL'S CONDUCT DURING PRE-TRIAL PROCEEDINGS UNDER STRICKLAND v. WASHINGTON, 466 US 668, 80 L Ed 2d 674, 104 S Ct 2052 ?

3. DOES A CRIMINAL DEFENSE ATTORNEY VIOLATE CONSTITUTIONAL RIGHTS OF THE ACCUSED UNDER THE DUE PROCESS AND CONFRONTATIONAL CLAUSES, WHEN THE ATTORNEY SUPPRESSES AND EXCLUDES READILY AVAILABLE FAVORABLE EXCULPATORY EVIDENCE FOR ONLY THE GOVERNMENT TO GAIN ADVANTAGE IN THE PROCEEDINGS ?

4. DOES ABSENCE OF THE ACCUSED'S DNA ON THE SEXUAL ASSAULT KIT, AND NEWLY DISCOVERED EVIDENCE OF OTHER FORENSIC EVIDENCE SHOWS IT WAS FLAWED, PRESENTS AN ACTUAL INNOCENCE UNDER THE HOLDING OF HOUSE v. BELL, 547 US 518, 126 S Ct 2064, 165 L Ed 2d 1, 2006 US LEXIS 4675 ?

LIST OF PARTIES

THE CAPTION CONTAINS THE NAMES OF THE PARTIES, i.e., MOHAMMED ROBLE AS PETITIONER AND UNITED STATES OF AMERICA AS RESPONDENT.

TABLE OF CONTENTS PAGE(S)

JURISDICTION

Jurisdiction is based upon the District of Columbia Court of Appeals judgment affirming conviction of Mr. Roble (Exhibit B), entered on 21 day of August 2018, denial for rehearing en banc (Exhibit C) entered December 10, 2018, and Title 28 U.S.C.§1257(a) creates jurisdiction for this Court to hear this petition for a writ of certiorari.

TABLE OF AUTHORITIES PAGE(S)

STATUTES AND CONSTITUTIONAL PROVISIONS

U.S. Sixth Amendment to the Constitution:

(Rights of the Accused):

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

STATEMENT OF THE CASE

I. At trial, the prosecution star witness Gebremedhin Tiblets (here after G.T.) who was the only witness relied upon to develop "elements of all charges" against Mr. Roble, told for the Sixth time a different new version of events regarding how she was assaulted, how it happened, and as well, a different version to other happenings that morning the alleged incident occurred. This new version of events as told at the trial was inconsistent to G.T.'s other previous multiple different versions including but not limited to her inconsistent declaration[s] in her perjury testimony to the Grand Jury, inconsistent statements to the Police Officers, Detectives, and the SANE nurse who did examination on her, in all possible aspects it could be unthinkable or imagined. Specifically, G.T.'s testimony at trial included but not limited to some of the following statements:

> Approximately around 3:00am in the morning of April 13, 2013, G.T. left a bar on 9th Street and was looking for â taxi cab to go home. She met two Ethiopian men, one of them was Samuel Tekle, an active marine personnel.
>
> G.T. started talking to the two men and they went to get something to drink from another bar located next to the Climax night club. see Trial Transcripts (**EXHIBIT 1**) at 4/1/2014, pages 16-17 ("They wanted me to go with them to have something to drink and I said no------they wanted to go to another place. So I decided that because they wouldn't let me go that I would walk them to that place and leave"). G.T. stated the place was closed so they proceeded to a gas station where they got a cab. They entered the cab and G.T. directed the cab driver to take them to an After hours bar located on Georgia Avenue. Once the cab arrived at the After hours bar, G.T. together with her Ethiopian friends got out of the cab, walked on the side walk, and then into the alleyway to the back entrance of the After hours bar. G.T. stated that Mr. Roble and the cab driver stayed back in the cab but later she saw them coming from behind approaching her while she was with her two Ethiopian male friends at the back door entrance. see **EXHIBIT 1** (4/1/2014, pages 35-36).
> G.T. called the After hours bar and she was told there

was an open door on the right, so she told the four men to go in. see id. at 35 ("So I called after hours again and I asked, I don't see any open door. And they said, on the right there's an open door. And I said to the marine, go to the right")("The two Somalians and the two Ethiopians were going in"). id. at 37.
G.T. stated that she started walking back towards Georgia Avenue and she heard sounds coming from behind her and when she turned around, she saw Mr. Roble. see id. at 38. G.T. stated that she started shouting and Mr. Roble pulled her into the alley and placed her face on his stomach to muffle her screams. see id. at 40 ("When he saw that I was shouting, he pulled my face toward his belly, his stomach....."). She stated that Mr. Roble pulled her further into the alley and tried to penetrate her vagina with his penis, but he was unable to do so because he could not get erection. G.T. stated that she knew it was Mr. Roble's penis because she could feel it was very soft and he was pushing. id. at 56. She also stated that Mr. Roble inserted his two fingers into her vagina, took them out, spit on them, and put them back. G.T. stated that Mr. Roble was sitting on her right side next to her thigh when he penetrated her with his fingers and on the right side when he attempted to penetrate her with his penis. see id. at 57-58. G.T. also stated that she was in her second day of her menstruation period at the time of the alleged assault, and that she apologized to the Grand Jury in her second testimony taken on "May 15, 2013" (EXHIBIT 3) for lying to them in her first testimony taken on "April 17, 2013" (EXHIBIT 2). see EXHIBIT 1, pages 66 ("I told them the truth and I apologized for not having said it before and I repeat my apologies today for not having been truthful the first time").

In her presentation of the defense case, the trial counsel, Anne K. Walton[1], presented a fabrication theory in the opening and closing statements, and requested Jury Instructions that requires the Jury to discredit G.T's trial testimony and credibility if G.T.'s statements to the Grand Jury in her perjury declarations were actually inconsistent to her declaration at trial. see EXHIBI 4: OPENNING STATEMENT at 3/31/2014, page 14:-

"[G.T.] lied to the Police, she lied to the SANE nurse who did examination on her, she lied to the Grand Jury, and make no mistake ladies and gentlemen, she will lie to you, too".

CLOSING ARGUMENT at 4/3/2014, page 44:-

> "[G.T.] lied to the Police, she lied to the nurse and all of this that she said to the Grand Jury on April 17th, 2013, throw it out".

JURY INSTRUCTIONS at 4/3/2014, page 19:-

> "You've heard testimony that one or more witnesses made statements under Oath, subject to the penalty of perjury at the Grand Jury and that statements may be inconsistent with their testimony at trial. If you find the earlier statement is inconsistent with the testimony in Court, you may consider this testimony inconsistency in judging the credibility of the witness".

However, during her cross-examination of G.T., Ms. Walton suppressed and excluded in it's entirety all prior inconsistent statements told by G.T. eventhough the evidence was readily available to the counsel and she presented a defense theory indicating there is such evidence. see Cross-Examination of G.T. (EXHIBIT 5). In fact, the counsel excluded the most striking exculpatory evidence which could have shown bias on part of G.T. and severely undermine and damage her credibility. In fact, Ms. Walton's actions actually mislead the Jury in "areas of intergrity and honest" to fairly judge credibility of G.T. because the Jury believed G.T.'s [un]impeached version of events regarding the assault, how it happened, and all other happenings that morning as G.T. had stated them at trial, was consistent with her previous versions of events she told to the Grand Jury and the Police, but only G.T. did not mention the after hours bar to which she falsely alleged

---

[1] Anne Keith Walton is a former clerk for the Superior Court of the District of Columbia and had no prior experience with Felony 1 nor sexual assault cases prior to her appointment to this case. She was appointed by the trial judge who was her mentor.

that she had apologized to the second Grand Jury for being [un]truthful the first time.

Indeed, there is no doubt, "there is at least a reasonable probability that any competent defense attorney would have recognized the attractiveness of using powerful and striking prior inconsistent statements of G.T. especially statements regarding the assault itself, how it happened, and as well, other happenings that morning as told in the perjury testimony to the Grand Jury to cast doubt on the key witness for the prosecution. These included but not limited to the following examples:-

1. In her Grand Jury testimony, G.T. stated the the suspect was in in front of her when she was asked whether the suspect was "on top of her", "to the side of her", or "some place else" when the suspect placed his fingers inside her vagina. see G.T. Grand Jury (Exhibit 2) at 4/17/2013, pages 34-35.

   While at trial, G.T. told the Jury that the defendant was "sitting on her right side". see Exhibit 5 (4/1/2014, pages 57-58).

   NOTE: Contrary to both statements of G.T. made at trial and to the Grand Jury, G.T. initially told a different version to the Detectives at the scene in her audio interview on April 13, 2013 that the suspect did not penetrate her at all.

2. In the Grand Jury when asked whether the suspect was on top of her, to the side of her or some other place when the suspect attempted to push his penis inside her, G.T. told the Grand Jury that the suspect was on top of her. see G.T. Grand Jury (Exhibit 2) at 4/17/2013, page 34.

   While at trial, G.T. stated that the defendant was sitting on her right hand side next to her thigh. see Exhibit 5 (4/1/2014, pages, 55, 57-58).

3. G.T. told the Grand Jury that she did not know where the men she had been with were heading and that she didn't know where they had gone. see G.T. Grand Jury (Exhibit 2) at 4/17/2013, pages 39-40 (".....I do not know where they were heading")("they must have gone somewhere, but I can not know"); id. at 41-42 (".....the cab driver, the other Somalian and the two Ethiopians appears to be friends and they all walked away")(".....[everybody got out of the cab],....they got out and walked away").

While at trial, G.T. stated that she took the men she was with to a back entrance door of the after hours club and that she told them that's the door and she saw them going in. see Exhibit 5 (4/1/2014, pages 32-35); also see id. at 37 (".....the two Somalians and the two Ethiopians were going in").

4. In the Grand Jury, G.T. stated that the suspect came back calling her name. see G.T. Grand Jury (Exhibit 2) at 4/17/2013, page 23 (".....he was in the alley with them and he came back out calling my name").

   While at trial, G.T. told the Jury that she could not hear any names or words when the defendant called her out. see Exhibit 5 (4/1/2014, page 38)(".....I could not distinguish any words or ...names...I could only hear sounds coming from behind me").

   NOTE: Contrary to both of G.T.'s statements at trial and to the Grand Jury, G.T. initially told the Police at the scene that while she was waiting for the cab driver to come back, she was standing in the mouth of alley with the suspect when he asked her to come to him and that's when he grabbed her hands.

5. G.T. told the Grand Jury that when she screamed, the suspect covered her mouth with his hands to stop her from screaming. see G.T. Grand Jury (Exhibit 2) at 4/17/2013, pages 24-25.

   While at trial, G.T. stated that when she screamed, the defendant pulled her face to his stomach so that sounds from the screams could be muffled. see Exhibit 5 (4/1/2014, page 40).

6. G.T. told the Grand Jury that the suspect grabbed her phone and threw it away when she was about to make a phone call. see G.T. Grand Jury (Exhibit 2) at 4/17/2013, pages 25-26 (".....I saw that I could reach for my phone and call, and I had the phone in my hand. As I was about to call.....he grabbed it and threw it away").

   While at trial, G.T. stated that her phone dropped to the ground because of the manner and way the defendant picked her up. see Exhibit 5 (4/1/2014, page 42)(".....so I wanted to call, but.... as he.....pulled me up by my elbows,.....the phone slipped out of my hands").

7. G.T. told the Grand Jury that the suspect grabbed her the second time when she reached out to get her shoe. see G.T. Grand Jury (Exhibit 2) at 4/17/2013, page 29 ("It was when I reached out to get my shoe that's when he grabbed me again").

   While at trial, G.T. stated that, ".....it was when she reached out to get her phone that's when the defendant grabbed her for the second time. see Exhibit 5 (4/1/2014, page 47).

NOTE:

In addition to her two versions above as told to the Grand Jury and at trial, G.T. initially told a different version to the Detectives in her audio interview at the scene on April 13, 2013 that, "it was when she was walking out of the alley that the suspect pulled her for the second time because he seemed to have lost something he was looking for.

8. G.T. told the Grand Jury that she could feel nothing when the suspect attempted to penetrate her with his penis and that the reason she knew it was his penis is because he had his pants down. see G.T. Grand Jury (Exhibit 2) at 4/17/2013, page 33.

   While at trial, G.T. stated that she could feel defendant's penis was very soft, and that she knew it was his penis because he was pushing. see Exhibit 5 (4/1/2014, page 56)

9. G.T. told the Grand Jury that she was off the ground halfway when the suspect placed his fingers in her vagina. see G.T. Grand Jury (Exhibit 2) at 4/17/2013, pages 34-35 (" and as I was...getting up ....half way and about to leave, he grabbed me again and put his hands inside my vagina")("...I was on the ground halfway....").

   While at trial, G.T. stated that she was on the ground and the defendant couldn't let her get up. see Exhibit 5 (4/1/2014, pages 57-58)("before I got up, he still had his hand [on my chest] and I barely got up....").

10. G.T. told the Grand Jury that she spoke "Amharic, Tigrinya (both Ethiopian languages), Italian, Spanish, and English. see G.T. Grand Jury (Exhibit 3)

    While at trial, G.T. stated that she spoke Germany (Armenia), Portugese (Potrena), Italian, Spanish, and English. see Exhibit 5 (4/1/2014, page 5.

    NOTE:

    G.T. testified in Ethiopian language Amharic in her testimony to the Grand Jury, while at trial, she testified in Italian language and stated that she was Italian national and she didn't speak Ethiopian language nor understand the the two Ethiopian men's language.

11. G.T. told the Grand Jury that,"the driver's friend who was standing there, I asked him, are you Somalian? and he said yeah, I'm Somalian and he greeted me". Exhibit 2, page 15.

    While at trial, G.T. stated that, "I asked the defendant if he was Somalian, and he didn't say anything,...". see Exhibit 1, page 27.

12. In the Grand Jury, G.T. stated that she had never seen nor knew the suspect or the cab driver before that night of the alleged incident. see Exhibit 2, pages 25-26.

While at trial, G.T. told the Jury that she knew both the defendant and the cab driver before that night the incident happened from the Sunshine restaurant. Exhibit 1, pages 26,93.

13. G.T. told the Grand Jury that she told the cab driver to take home and she didn't give him the exact address, and that she got out of the cab when the driver took a different direction from her home. see Exhibit 2, page 19 (" I had not yet told him my exact address, I told him I was heading towards Georgia, and they said, we too heading to Georgia. He picked up New Hampshire and then he picked a side street, a small street and then we got on Georgia and they say 2600 and I told them the numbers go down this way and when we got there, he started slowing down and I got out of the taxi").

While at trial, G.T. stated that she told the cab driver not to go to the left of Georgia Avenue and go to the right because they were going to the 2600 block at the After hours club and told them to stop when they got there. see Exhibit 1, pages 29-30.

14. G.T. told the Grand Jury that, "when the male Officer showed up, she asked him for help and then she saw a female Officer and walked towards the female Officer. Exhibit 2, page 36.

While at trial, G.T. stated that when the Police showed up, "the Police-woman came and help me get up and assist me". see Exhibit 1, page 60.

15. At trial, G.T. falsely told the Jury that she had apologized for lying in her first testimony to the second Grand Jury. see Exhibit 1, page 66 ("I told told them the truth and apologized for not having said it before and I repeat my apologies today for not having been truthful the first time"). There is no such admission and apology could be found in G.T.'s Grand Jury testimony. see Exhibits 2 & 3.

The counsel also excluded other prior inconsistent statements of G.T. including but not limited statements told to the following:

(a) <u>First Responding Officer Dora Pacheco</u>

According to Officer Pacheco as attested to in the Affidavit in support of arrest warrant, G.T. reported that while standing at 9th and U streets N.W., she was approached by an unidentified male who stated he had met her three years earlier. During the conversation,

a male driving a taxi cab pulled up, exited the vehicle and approached them. The cab driver asked where they were going and he was told the 2600 block of Georgia Avenue N.W. The driver told G.T. and the male to get into the cab that he would take them there.
When entering the taxi cab there was a male in the front passenger seat later identified as the defendant. The cab driver dropped G.T., an unidentified male and the defendant in front of 2608 Georgia Avenue and left the scene. Then G.T. said good-bye to the uninvolved male and was waiting for the cab driver to come back to the scene so she could go home. G.T. and the defendant were standing in the mouth of the alley when the defendant asked her to come to him. G.T. went to him and asked what do you want?, the defendant told her he wanted to talk with her. G.T. told him she needed to go home. A few seconds later, with one hand the defendant grabbed G.T.'s hand and placed the other hand over her mouth and pulled her in the middle of the alley. G.T. was able to release part of the defendant's hand from her mouth and scream. The dendant pushed G.T. to the ground. He told her not to cry and let go of her. G.T. was walking away and the defendant grabbed her for the second time. G.T. stated she did not know the defendant and she had never met him before this night.

(b) <u>G.T.'s Audio Interview at the Scene</u>

G.T. was asked when did she see the defendant and she stated that," he wasn't there, he was inside the taxi cab". He is a friend of the taxi cab driver. He was in the taxi. Then G.T. stated that the suspect wanted to talk to her and she asked him why? He said let me talk to you and after few minutes he started holding my hand. I started shouting and he close my mouth. When he held my hand, I was talking to him in the corner. I was not in the street, I was in the corner. He took me

over to the corner. When I started to walk out of the alley he pulled me again," he changed his mind again because he looked like he lost something". He tried to pull my pants down but he couldn't because I opened my legs wide. I didn't see the suspect's penis. He tried to put his hand inside. "He did not penetrate".

(c) Special Assault Nurse Examiner (SANE) Interview

According to the SANE nurse who did examination on G.T., G.T. stated that she was riding in a cab with three other males, one of whom she knew, heading home. G.T. stated that she realized the cab she was in was going in a direction away from her home. She stated that the cab stopped. She saw another cab across the street and hailed that cab. She went over to the cab she hailed. She noticed one of the males in her previous cab approach her. This male grabbed her and begun to pull her into the alleyway. I tried to talk to him and he said no, I am leaving. He grabbed left wrist. She begun to scream, he closed my mouth. This individual is a stranger. She states that she tried to bend down to become small to stop the male individual from dragging her into the alleyway.[2]

[2] The SANE nurse also did a Sexual Assault Kit examination on G.T. and collected multiple several biological evidences from G.T. including but not limited to (1) Known DNA sample of G.T.,(2) vagina/cervical swabs,(3) external genitalia swabs,(4) thighs swabs,(5) buttocks swabs, (6) lips area swabs, (7) neck swabs, (8) mouth & chin swabs,(9) finger swabs etc.

(d) G.T.'s Grand Jury (second) Testimony

In her second testimony to the Grand Jury taken on May 15, 2013, G.T. changed her version of events and mentioned the After hours for the first time. Specifically, G.T. stated that, "the thing is.....the After hours place I don't want them to get in trouble because the After hours I know is not legal. After hours isn't legal. That's why I don't want to get them in trouble. I was protecting them". "[I] felt responsible if the Police or prosecutors went to the After hours party and knocked on their door and started asking them questions". It's not legal. I know that. I know all the After hours they do hiding. You have to call. They have to know you, and the people even who do the After hours can be illegal, and I was worried to make in trouble alot of people, because myself I'm illegal in this country. I know what that means to be illegal. You don't want to have "attach" with the Police or the....., you know. And I know what's means to struggle. You don't have papers you don't want to be in trouble with the Police. That's.....I was thinking more.[3]

G.T. also told the Grand Jury that it was only the two Ethiopians who were headed towards the After hours and not the two Somalian men, and that she didn't know what happened to the cab she told to wait for her. see Exhibit 3.

---

[3] The Grand Jury found G.T. inconsistent and did not issue the indictment however, according to the prosecution, the indictment was issued by a different new (second) Grand Jury consisting of new Grand Jurors and did not do investigations nor hear any live testimony but only heard hearsay statements told by the prosecution representative to issue the alleged indictment. Mr. Roble was denied any information or discovery pertaining to this second (new) Grand Jury process, and the (state) courts affirmed the prosecution's position.

Indeed, the trial counsel, Ms.Walton's decision to suppress and exclude exculpatory evidence indicative of G.T.'s bias from which the Jury could have reasonably drawn adverse inferences of reliability was clearly not a "Strategic" nor "Tactical" decision, but an omission and error of Constitutional dimension. see for example, Bullock, 297 F.3d at 1050 ("clearly negligent treatment of a crucial deficiency in the prosecution's case or an obvious strength of the defense will render an attorney's overall performance deficient"). Mr. Roble sought to impeach G.T. on two grounds of bias. One type arose from the fact G.T. was an illegal Ethiopian alien involved in illegal activities at an illegal After hours club, and the second, was to show that G.T. is not trustworthy witness like any regular citizen by presenting evidence of G.T.'s own "Corruption Behavior" to willingly be "[U]ntruthful Under Oath" and 'upon the stand. This cross-examination of G.T. was probative. It would have permitted the Jury to infer not only that G.T. was an illegal alien involved in illegal activities at the After hours club was motivated to carry favor with the prosecution because of her fear for prosecution and possibly deported, but also that G.T. was "not a truthful and trustworthy" witness.

There be no doubt, prior inconsistent statements made by G.T. especially statements in her perjury testimony to the Grand Jury, would have been subjected to "serious" impeachment had the counsel introduced them to the full scope of cross-examination and presentation of bias evidence to which Mr.Roble is entitled to under the Sixth Amendment Confrontation Clause. This Court had held that the right to meaningful Confrontation "means more than being allowed to confront the witness physically". see Davis v. Alaska, 415 US 308, 315, 94

S Ct 1105, 39 L Ed.2d 347 (1974). The Court simply said:-

> [A] criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the Jury the fact from which Jurors.. ...could appropriately draw inferences relating to the reliability of the witness. Delaware v. Van Arsdall, 475 US 673, 680, 106 S Ct 1431, 89 L Ed.2d 674 (1986)(quoting Davis, 415 US at 318). "Bias refers both to a witness's personal bias for or against a party and to his or her motive to lie.

It's not enough that the possibility of bias be mentioned, counsel must present "the nature and extent of the bias". see Davis, 415 US at 318 (holding cross-examination on bias inadequate where counsel was permitted to ask a witness whether he was biased but was unable to make a record from which to argue why the witness might have been biased).

In this case here, a further review of the record will demonstrate the counsel actively enhanced the prosecution's case by asking G.T.'s immigration status and her omission about the After hours club, and excluding critical exculpatory evidence which could have shown bias on part of G.T., and then requesting the Jury to find her inconsitent if actually there is such evidence. G.T.'s immigration status and her omission about the After hours club, was of little relevancy to Mr. Roble's case and had no direct impact or bearing on the more critical prior inconsistent statements of evnts regarding the assault itself, how it happened and all other happenings as told by G.T. to the Grand Jury, the Police and Detectives other than a motive to support G.T.'s impeachment for corruption behavior of willingly be untruthful witness under Oath and upon the stand.

No doubt, the trial counsel abrogated the fact-finding function of the Jury to determine credibility and thereby committed per se reversible error. Davis, 415 at 318.

Moreover, the manner in which testimony of G.T. was presented that she had apologized to the second Grand Jury for being untruthful thefirst time and told them the truth about the After hours, was likely to have a potent impact on the Jury unless G.T.'s reliability was crdibly undermined because the Jury believed G.T.'s [U]nimpeached version of events at trial, but she only did not mention the After hours to the first Grand Jury or anyone else for which she apologized. In otherwords, there is no evidence in the existing record that G.T. lied and committed perjury to the Grand Jury, she lied to the Police & SANE nurse, and she was lying to the Jury as well by telling them a new version of what happened regarding the assault, how it happened and other happenings. see EXHIBIT 5.

In sum, the case against Mr. Roble turned on G.T.'s credibility. She proved to be an impressive witness and emerged from her cross-examination with her credibility intact.....the trial counsel failed to impeach, contradict, or otherwise undermine her testimony with readily available critical exculpatory impeaching evidence. What Mr. Roble lost and was denied in this case, was not merely the opportunity to impeach G.T. with her Grand Jury testimony and other prior inconsistent statements, but also.....and perhaps even more critically, the opportunity to confront G.T. herself on cross-examination with contradictions between her own words regarding how she was assaulted and how it happened.

Hearing on the New Trial Motion

In her testimony at the D.C.Code §23-110 Motion (analogo to §2255) motion for new trial, trial counsel provided no strategic or tactical reason for her decision to exclude striking exculpatory evidence indicative of G.T.'s bias from which the Jury could have reasonably drawn

drawn adverse inferences of reliability. The counsel simply stated that she could not remeber if she used G.T.'s prior inconsistent statements to the Grand Jury against G.T. during her cross-examination. see 10/29/2015 (EXHIBIT 6). Though the counsel acknowledged and admitted that it would have been important to use actual statements where G.T. actually lied to the Grand Jury. see Exhibit 6, page 106. However, the counsel stated that G.T.'s testimony was not important evidence against Mr. Roble. see id. at 113.

Superior (Trial) Court Ruling/Opinion

In it's opinion, the trial Court overlooked and misapprehended the facts and law. The Court falsely accused Mr. Roble that he was second guessing the manner in which trial counsel impeached G.T. Notably, the Court stated that, the post-conviction process of sifting through a witnes's testimony in order to identify inconsistencies or discrepancies and then determine which, if any, details should be emphasized is markedly different when one is in trial and listerning to the testimony first-hand versus reviewing a transcript of it after the fact. However, contrary to the Court's view is the fact the Court itself received a letter dated April 8, 2014 from Mr.Roble. see EXHIBIT 7. This letter contained complains regarding exclusion of exculpatory evidence during cross-examination of G.T. and other witnesses. The Court received this letter four days after the Jury returned guilty verdict on April 4, 2014. see EXHIBIT A, page 3. The trial Court concluded that because the counsel had impeached G.T. with other inconsistences between her and other witnesses at trial, such as;(1) G.T. was employed at the Mercato restaurant with the contrary testimony of the restaurant owner,(20 G.T. went along with Tekle and others to the After hours location

because Mr. Tekle was sad and insisted he needed to talk to someone, a fact he denied,(3) Mr.Tekle had signaled her multiple times in the cab not to return home with the same cab driver with Mr.Tekle's testimony to the contrary etc., that the counsel was effective even-though she did not use prior inconsistent statements of G.T. against her, because the evidence of guilty was overwhelming. see Superior (Trial) Court Opinion (Exhibit A) at 4/11/2016, pages 31-32.

District of Columbia (State) Court of Appeals Opinion

In it's opinion, the District of Columbia Court of Appeals affirmed the Superior Court judgment, and stated that, "given the overwhelming evidence against Mr.Roble, we see no reasonable probability that additional questioning on the topics raised by Mr. Roble would have changed the outcome of the trial". see D.C.Court of Appeals Opinion (EXHIBIT B) at 8/21/2018, pages 10-11. The Court also acknoledged the exculpatory evidence was provided to the counsel prior to trial and was readily available for use at trial. see id. at 6...Exhibit B.

Constitution/Controlling Authority

This Court ("Strickland") says, a Court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The Court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide rage of professionally competent assistance. In making that determination, the Court should keep in mind that counsel's

function, as elaborated in prevailing professional norms, "is to make the adversarial testing process work in the particular case". see Strickland, 466 US at 690.

In this case here, the trial counsel's conduct not only deprived Mr.Roble of a fundamental right to Sixth Amendment, but the counsel also, "mislead the Jury in areas of integrity and honest to fairly judge G.T.'s credibility". Applying the standard for Due Process claims, this Court held that, "the failure to disclose evidence affecting the overall credibility of witnesses "Corrupts" the process to some degree in all instances". see Giglio v. United States, 405 US 150, 31 L Ed.2d 104, 92 S Ct 763 (1972) ;Napue v. Illinois, 360 US 264, 3 L Ed.2d 1217, 79 S Ct 1173 (1959) ;United States v. Agurs, 427 US 97, 121, 49 L Ed.2d 342, 96 S Ct 3292 (1976), but "when the reliability of a given witness may well be determinative of guilty or innocence", Giglio, supra, at 154, 31 L Ed.2d 104, 92 S Ct 763 (quoting Napue, supra, at 269, 3 L Ed.2d 1217, 79 S Ct 1173), and when "the government's case depends almost entirely on the testimony of a certain witness", 405 US at 154, 31 L Ed.2d 104, 92 S Ct 763, "evidence of that witness's possible bias simply may not be said to be irrelevant, or it's omission".

This Court had held that a strigent standard for demonstrating ineffective assistance of counsel makes an effective Brady right even more crucial. Without a real guarantee of effective counsel, the relative abilities of the State and the defendant become even more skewed, and the need for a minimal guarantee of access to potentially favorable information becomes significantly greater. see Strickland v. Washington, 466 US 668, 82 L Ed.2d 864, 104 S Ct 3562 (1984) ;id. at 712-715, 82 L Ed.2d 864, 104 S Ct 3562 (Marshall, J., dissenting) ;Babcock, at 1163-1174, 79 L Ed.2d 689, 104 S Ct

1287 (discussing the interplay between the right to Brady material and the right to effective assistance of counsel).

The prosecution in this case here, relied upon G.T.'s testimony to develop and prove elements of all charges against Mr. Roble. In otherwords, the prosecution's evidence consisted mainly of the testimony of G.T. regarding the alleged sexual assault. Daniel Diaz (911 caller)'s testimony, added nothing to G.T.'s testimony and instead acknowledged that strange noises from sexual activities was a frequent occurrence from the alley and the After hours location. In fact, Mr.Diaz told the Jury that he didn't know nor see Mr. Roble, and that the suspect he observed left the scene after the Police arrived. Without true corroboration by the Police Officers on the scene, because of their luck of an opportunity to observe Mr. Roble's actions, the lack of the undated physical injuries observed and the lack of Mr. Roble's DNA on sexual assault kit of G.T., evidence which could have undermined and severely damage credibility of the government's star witness "G.T." cannot be merely ignored.

In a recent case, this Court held that evidence pertaining to the credibility of the government star witness cannot merely be ignored especially if that witness may well be determinative of guilty or innocence. see Weary v. Cain, 2016 BL 67934, US, No.14-10008, 3/7/16. In that case, this Court voted 6-2 and entered summary disposition that wasn't fully briefed or argued. The Court reversed Weary's conviction on grounds that, "evidence which could have undermined the credibility of the government's star was suppressed" ,and that "the witness changed his account of the crime over the course of four later statements, each of which differed from others in material ways".

Other critical exculpatory evidence excluded and/or the counsel failed to introduce of which the Court of Appeals overlooked include but not limited to the following:

IDENTIFICATION OF THE SUSPECT

In his identification of the suspect, Mr. Diaz told the Grand Jury that based upon the suspect and G.T.'s appearance and the language they were speaking, they were of Ethiopian race. He explained that they were speaking Ethiopian language and that he knew they are Ethiopians. He said they even tried to get into his car and they were very drunk. Further at trial, Mr.Diaz stated that he did not see Mr.Roble nor knew him, and that Mr.Roble was not one of the individuals he saw trying to enter his car. see 3/31/2014, pages 123, 134.

THE POLICE DID NOT ACTUALLY OBSERVE ROBLE WITH G.T. ALONG A PARKED SUV

The counsel also excluded critical exculpatory evidence which could have shown the first responding Police Officers did not actually observe Mr. Roble on top of G.T. and between her legs besides the parked SUV, as the Officers stated at trial.

In her testimony to the Grand Jury, the first responding Officer Dora Pacheco, who was the first Officer to make contact with G.T. and question her about what had happened, told the Grand Jury that, "when she arrived at the scene and saw G.T., she questioned G.T. and asked her what happened and where it did happen at". Officer Pacheco told the Grand Jury that, "G.T. did not show her the SUV area nor describe to her anything about what had happened there nor G.T. did not tell her that the suspect actually had sex with

her or he was in the position to have sex". see EXHIBIT 8, pages 5-8 ("she just said that a guy had pulled her into the alley to the first crime scene,.....he just pulled her and ...she didn't know what exactly he was going to do to her at that moment")("she didn't say in particular what exactly happened to her [at the second scene]")("I asked her would you please show me where exactly it did take place.....where the parked SUV was")("she actually took me to another location which was the first crime scene")("she didn't tell me he actually had sex with her or he was in the position to have sex").

This evidence was probative and could have undermined and severely damage the Police Officers' entire testimony had the counsel introduced and used this evidence against Officer Pacheco's during her cross-examination. For example, the Officers stated at trial that they observed Mr. Roble on top of G.T. and between her legs, a position for having sex or to have sex, while Officer Pacheco told the Grand Jury that Mr. Roble was not in a position to have sex and G.T. had not told her the suspect had sex with her.

Also this evidence, could have refuted G.T.'s false and self serving claims that she told Officer Pacheco the suspect was raping her and about to kill her. see Exhibit 1, page 64. In fact, a further review of the discovery in this case, will actually demonstrate statements of Officer Pacheco to the Grand Jury, are actually consistent with the 911 Event Chronology Report. see Ex.8.

II. On April 13, 2013, the day Mr. Roble was arrested, he was wearing the following clothes:(1) a black t-shirt under, (2) a long sleeve white & black Coogi shirt, (3) a white & black vest on top of the Coogi shirt, (4) a red Tommy underwear (boxers) underneath, (5)

black shorts and a (6) black Cargo pants, (7) Timberland boots, (8) white & Grey hat, (9) white socks and (10) a brown belt. After his arrest, Detective Alexander Macbean (lead Detective in the case), directed Mr. Roble to take off his clothes, a piece at time as he told Mr. Roble. Detective Macbean documented each piece of cloth Mr. Roble took off and then gave it to forensic Officer James Savage who took pictures of that particular piece of cloth handed to him by Detective Macbean.

Detective Macbean documented all clothes Mr. Roble was wearing as mentioned above 1 through 10, and Officer Savage took pictures of all these items. see **EXHIBIT 9.**

Because of his intoxication, Mr. Roble fell down and injured his hand (tumb & palm). This injury caused a open wound on Mr.Roble's tumb and he spread blood on his Coogi shirt from this wound of which Detective Macbean documented as well together with physical condition of Mr. Roble and of his clothes. see Exhibit 9. Six months later, on October 7, 2013, Detective Macbean testified at the preliminary hearing and stated that during taking of Mr. Roble's clothes and belongings, he did not see any stain or blood anywhere on Mr.Roble's clothes other than a stain on a long sleeve white & black Coogi shirt. During the hearing, the counsel and the Detective exchanged the following but not limited questions and answers regarding the Detective seeing blood on Mr.Roble's person or clothes:(see 10/7/2013, pages 47-48...Exhibit 9).

COUNSEL.....[Roble] literally in the video he just put his fingers up to his nose ?

MACBEAN.....Correct

COUNSEL.....Okay, Did you observe any blood on his fingers ?
MACBEAN.....No

COUNSEL.....and do you know if there was any blood on him at all, on Mr.Roble ?

MACBEAN.....Well, there appeared to be blood on his shirt, but, you know, that requires further testing.

COUNSEL.....Oh, you don't know if it's blood or not ?

MACBEAN.....No

COUNSEL.....Did you see the shirt ?

MACBEAN.....Yes

COUNSEL.....What kind of shirt was it ?

MACBEAN.....Oh, it was like a long-sleeve t-shirt, something like. I don't remeber if it was button-down or just like a rugby or whatever.

COUNSEL.....Didn't he have a vest over his shirt too ?

MACBEAN.....He may have

COUNSEL.....Do you remember exactly where on the shirt that potential blood stain was ?

MACBEAN.....My memory was down in this area. I'm pointing to my sort of abdomen area.

COUNSEL.....Was there any blood anywhere else on Mr.Roble's clothes?

MACBEAN.....Not that I know of

COUNSEL.....Or anything that appeared to be blood?

MACBEAN.....Not that I remember seeing.[4]

---

[4] Detective Macbean's testimony at the preliminary hearing did not mention "a white tank top t-shirt" nor "seeing blood stain on the tank top t-shirt". Also the Detective did not document a white tank top t-shirt nor seeing blood stain on the t-shirt in his handwritten notes of Mr. Roble's belongings/clothes. see Exhibit 9.

Thereafter, on February 3, 2014, Mr.Roble was provided with a DNA report discovery dated "January 28, 2014". see EXHIBIT 10. This report contained test results of; (1) Sexual Assault Kit of G.T., (2) a white tank top t-shirt, (3) Mr.Roble's underwear/Red Tommy boxers. The test results on these items showed that Mr.Roble's DNA could not be found on Sexual Assault Kit of G.T. and on a white tank top t-shirt. The test also showed that G.T.'s DNA could not be found on Mr. Roble's Tommy underwear, and was found on a white tank top t-shirt. see Exhibit 10.

On February 27, 2014, the Superior (Trial) Court held Innocence Protection Act (hereafter IPA) hearing. The prosecution presented that G.T.'s DNA was found on the white tank top t-shirt, and that the t-shirt belonged to Mr.Roble. The counsel refused to challenge the inaccurate presentation that the t-shirt belonged to Mr.Roble, and therefore, on his own, Mr.Roble told the trial judge in open Court that the white tank top t-shirt is not his and he was not wearing a tank top t-shirt the day he was arrested, however, the Court ignored Mr.Roble's pleading and did not address the issue.

Thereafter, Mr.Roble orally and in writting requested his counsel to file a motion to exclude the white tank top t-shirt from the evidence on grounds of chain of custody and/or tampering including in his letter dated "March 3, 2014". see EXHIBIT11. In her response in her letter dated "March 14, 2014", the counsel refused to file a motion to exclude the white tank top t-shirt and simply stated that it was not a good idea to file such a motion and that the t-shirt was a trial issue and that Mr. Roble had already stated in open Court that the tank top was not his against her advice.

In her letter, the counsel also acknowledged and presented that the

white tank top t-shirt could have been fabricated and tampered with, and that she may file a motion to exclude the t-shirt from the ... evidence. see **EXHIBIT 12** (".....I will file a motion to exclude the tank top---from evidence, as there is no documentation of it in Officers' notes, Police reports, photographs, etc., and as your DNA could not be located by the government on it, though I do not advise that such motion be filed. You already stated in open Court aginst my advice that the tank top was not yours. I believe that this is an issue for trial,.....").[5]

Although Mr. Roble had agreed to the counsel's advice not to do independent DNA testing on biological items recovered at the scene, because he saw a Ethiopian man with G.T. before his arrest, Mr.Roble requested independent testing on the condom rapper recovered at the scene which he anticipated it could reveal the actual perpetrator and exonerate him. With help of the counsel, the Superior (Trial) Court entered order authorizing independent testing of the condom rapper on March 4, 2014. see **EXHIBIT 13**. However, the next day on "March 5, 2014", with no advance knowledge nor for unknown reasons to Mr.Roble, in a special private car, Mr.Roble was taken away from D.C.jail and transported across State lines to Virginia and placed in a solitary confinement lockdown with no communication with anyone at the Alexandria Detention Center. There was no case pending against him in Virginia nor a writ for his transfer there.

---

[5] In his testimony at trial, Officer James Rimensynder, who actually arrested, handcuffed, and transported Mr. Roble to the Station stated that, "he never saw Mr. Roble wearing a white tank top t-shirt. see Trial Transcripts at 4/2/2014, page 11.

During the time Mr. Roble was in a solitary confinement in another State illegally, through deceitful manner and collusion, the trial counsel on her own and without Mr. Roble's consent nor knowledge, did the same presumptive testing on the white tank top t-shirt instead of the condom rapper the Court authorized. The counsel did the IPA testing on the t-shirt weeks after refusing to file a motion to exclude the tank top t-shirt from the evidence. The counsel alleges that Mr.Roble requested her to do the testing on the t-shirt of which makes no sense at all because Mr. Roble had already denied the t-shirt was not his and the government testing confirmed his position and no evidence in the existing record or written documentation Mr.Roble requesting for the testing of the white tank top t-shirt other than the counsel's word of mouth. On the other hand, the record shows Mr.Roble denied the t-shirt in open Court and requested for it's suppression in writing. Furthermore, although the counsel refused to file a motion to exclude the t-shirt and stated it was a trial issue, the counsel failed to challenge or present evidence of tampering of the t-shirt and asked "NO" any questions at all of Detective Macbean at trial or present at least some circumstances surrounding the t-shirt for the Jury to make their own determination. see EXHIBIT 9 (4/2/2014, page 115)("No Questions"). And instead the counsel enhanced the prosecution's theory by asking whether Officer Savage had seen the white tank top t-shirt on Mr.Roble, without having previously spoken to Officer Savage and knowing that the Officer would testify he had seen the t-shirt without photographing it. In fact, the counsel presented leading questions to Officer Savage. see EXHIBIT 14 4/2/2014, pages 37-39. The counsel also mislead the Jury on other

other evidences during cross-examination of Officer Savage including on Mr.Roble's phone which was recovered at the scene as G.T.'s phone while G.T. actually had her phone on her at all the times.

HEARING ON THE NEW TRIAL MOTION

In her testimony at the D.C.Code §23-110 motion for new trial, the counsel stated that, "she found no legal basis to file a motion to exclude the white tank top t-shirt. see Exhibit 6, 10/29/2015, pages 99-104. In addition, the counsel falsely alleged that she challenged the white tank top t-shirt on grounds of tampering during cross-examination of witnesses at trial, and that she could not recall whether she cross-examined Detective Macbean at trial. see id. at 104.

Superior (Trial) Court Ruling/Opinion

In it's opinion, the Superior Court stated that Mr.Roble's claim of ineffective assistance of counsel for failure to file a motion to exclude the white tank top t-shirt from the evidence, was legally unsupported and warrants no relief because Ms.Walton found no basis in which to file such a motion given that the independent DNA test conducted by the defense's own DNA expert refuted Mr.Roble's claim although Ms.Walton was aware of a possible theory of tampering, with evidence in support thereof, and could have cross-examined on the issue. see Trial Court Opinion (Exhibit A), 4/11/2016, pages 29.

District of Columbia Court of Appeals Ruling/Opinion

In it's opinion, the Court of Appeals simply stated that since Officer Savage testified at trial that he collected the white tank top t-shirt from Mr.Roble, the concerns Mr.Roble raises did not

provide a plausible basis upon which to exclude the t-shirt from evidence. see Exhibit B, 8/21/2018, page 10. The Court did not reach the issue of ineffective assistance of counsel's actual conduct prior to trial at the time Mr.Roble requested the counsel to file the motion to exclude the t-shirt.

Constitution/Controlling Authority

This Court has held that, "whether a defendant has received his Sixth Amendment guarantee to counsel is measured against an objective standard, but it is tested in the context of his case and warrants judicial review based upon 'the reasonableness of counsel's challenged conduct on the facts of the particular case', viewed as of the time of counsel's conduct". Strickland, 466 US at 690.

III. To begin with, in this case here, there is a direct contradiction of DNA evidence, i.e.,(1) the DNA testing of Sexual Assault Kit of G.T. established there was no physical or sexual contact between Mr.Roble and G.T. as Mr.Roble's DNA could not be found on the kit (Exhibit 10) and (2) on the other hand, the prosecution contended that G.T.'s DNA was found on biological evidence collected by the Police from Mr.Roble's finger, hand and penis.[6]

---

[6] While a Sexual Assault kit of G.T. including her known DNA sample had been already collected by an independent professional Special Assault Nurse Examiner at Washington Hospital and submitted for analysis two weeks later, "for unknown reasons", the Police personnel also collected another.....duplicate known DNA sample of G.T. and as well, finger, hand and penal swabs from Mr.Roble. These biological evidences collected by the Police personnel were kept and held together in the Police custody for over six months before submitting them for analysis. And they were submitted for analysis 'only' after the test results on sexual assault kit of G.T. had established there was no any physical or sexual contact between Mr.Roble and G.T.

At trial, the prosecution introduced expert testimony through the Department of Forensic Services (hereafter 'DFS') analyst Emily Head, suggesting presence of semen on G.T.'s external genitalia, and G.T.'s blood on a white tank top t-shirt that the prosecution contends that Mr.Roble was wearing, thus confirming the prosecution theory of a sexual assault. However, prior to Mr. Roble's trial, defense counsel, Ms.Walton, retained Dr. Maher Noureddine to investigate and challenge this very scientific evidence of the prosecution.[7] Dr. Noureddine found flaws in the prosecution expert (and analyst) Emily Head's conclusions that undercut the results of the prosecution's testing. Specifically, Dr. Noureddine found flaws in the prosecution's scientific evidence as follows:

(i) Semen on the External Genitalia

Dr.Noureddine stated that the P30 test done on the external genitalia swab was merely another presumptive test and thus it was inappropriate for the prosecution expert to make conclusions based upon that test, because P30 test detects a protein found in seminal fluid and as well in other biological samples, such as vaginal secretions and urine. He stated that P30 is produced by women from their periutethral gland in smaller quantities than in men. see 10/26/2015, pages 17-18 (EXHIBIT 16).

Dr.Noureddine quoted a study establishing that 11% of women have

---

[7] Dr.Maher Noureddine is the president and founder of ForensicGen, a company that specializes in the evaluation of DNA serology evidence. There was no objection to Dr.Noureddine providing expert testimony, as he was a board certified in the field of forensic molecular biology.

a detectable amount of P30 in their urine. id. at 18 (Exhibit 16). Dr.Noureddine stated that the P30 testing utilized by the prosecution analyst Emily Head, would detect down to one nanogram per microliter of the P30 protein, which is a level that can be produced by a woman. id. at 18. Because of these facts, Dr.Noureddine stated and opined that P30 test should be considered a presumptive test. see id. at 19. Dr.Noureddine stated that the conclusive test for semen is the RSID semen test, which detects a protein found only in semen. id. at 19. The prosecution expert's conclusion that there was seminal fluid on G.T.'s external genitalia was flawed because: (1) the expert relied on the P30 test, which can produce a false positive, (2) the expert's own results were inconclusive after the AP test, suggesting the lack of semen, (3) the expert's own negative results for the presence of spermatozoa, and (4) the lack of male DNA on the external genitalia swabs. see Exhibit 16, 10/26/2015, page 21 ;also see Affidavit of Dr.Noureddine.

(ii) Blood on the White Tank Top T-shirt

Evidence of blood stain on a white tank top t-shirt that the prosecution alleged that Mr.Roble was wearing was critical to his conviction. The prosecution argued in the closing that G.T.'s blood was present on the t-shirt because Mr.Roble wiped his fingers on the t-shirt after he digitally penetrated a menstruation vagina of G.T.[8]

[8] In a post-trial New Evidence Discovery, a panel of independent experts assembled by the federal prosecutors at the United States Attorney's Office in District of Columbia, reported that the conclusions that Mr.Roble and G.T. could not be excluded on a mixture on finger and hand swabs, was "flawed and inaccurate". see EXHIBIT 17 (hereafter FINAL REPORT). Furthermore, in addition to this new evidence,

In concluding that a reddish-brown stain on the t-shirt was blood, the prosecution expert stated that she first looked at the color, then performed a kastle-meyer test, which she admitted was merely presumptive. But because the stain also contained DNA, the prosecution expert concluded that the stain was blood. Dr.Noureddine faulted the prosecution expert conclusion that there was blood on the t-shirt, opining that a presumptive kastle-meyer test is merely presumptive for the presence of blood as it can give a false positive for a wide range of enzymes, such as found in certain cleansers and various metals. see 10/26/2015 (Exhibit 16), pages 23-25. Recognizing this fact, the prosecution expert used the concurrent finding of DNA to conclude that the stain on the t-shirt was blood. Yet, Dr.Noureddine stated that DNA is not specific.... ...a finding of DNA gives no clue whether it came from blood or another source, such as saliva. see 10/26/2015 (Exhibit 16), page 24. Dr.Noureddine stated that only serological testing could establish the source of a particular biological fluid. see id. at 24. No serological testing was performed by the prosecution expert. see id. at 26. Dr.Noureddine concluded that the prosecution expert erred in her conclusion that blood was present based upon the presence of DNA coupled with a kastle-meyer test. id. at 25. The testing did not necessarily lead to that conclusion and thus, Dr. Noureddine stated that the prosecution expert "oversold" the findings to the Jury. see id. at 26. In short, Dr.Noureddine stated that

---

The SANE nurse who did examination on G.T. documented in her report that during her examination inside, around, and outside G.T.'s vagina, she saw no any blood, injury, pain, or bleeding on the vagina. The counsel failed to question the nurse whether she had seen menstruation blood on G.T.'s vagina during the cross-examination of the nurse at trial, and the counsel stated that questioning the nurse about the menstruation blood was not important. see 10/29/2015 (Exhibit 6), pages 111-112.

the prosecution expert's conclusion that there was blood on the t-shirt was misleading and not valid given the testing performed. see Exhibit 16.

(iii) New Independent Evidence

At trial, the prosecution argued and presented that G.T.'s DNA was finger and hand swabs of Mr.Roble, and a white tank top t-shirt t that because Mr.Roble had inserted his fingers in G.T.'s vagina and then wiped them on the t-shirt. To be sure, this presentation indicates that,"Mr.Roble's finger(s) was perhaps the 'carrier' of G.T.'s DNA from her vagina to his person and the alleged t-shirt". this evidence was critical to the prosecution case and corroborated what G.T. told the Jury. However, few weeks after Mr. Roble's trial, an audit conducted by a National Accreditation Board (hereafter ANAB) and a panel of independent experts assembled by the federal prosecutors, found that the District of Columbia government crime laboratory,. DFS's DNA testing procedures were not in compliance with the FBI standards. The analysis in Mr.Roble's case (this case) was one that the ANAB used as an example in reaching it's conclusion. see Exhibit 17 (FINAL REPORT), pages 2-3,9, 21 & Appendix A attached. The United States Attorney's Office directed the panel of independent experts to do an on-site visit to the crime lab., inspect and i investigate DFS documents, and interview members of the DNA section and laboratory management. Among other problems, the panel found analysts at DFS crime lab. rendered inappropriate practices in determining statistics probabilities and interpretations on DNA evidences which lacked general scientific acceptance. The panel also found all DNA anaysts and their technical leader "incompetent" and required additional training on DNA mixture interpretation prior

to performing additional casework involving DNA evidence. see Ex.17
As to this case of Mr.Roble, the problems identified by the panel included the inappropriate use of statistics in mixtures by inclusion of loci where allele drop-out was highly probable and not using established stochastic thresholds to assess potential allele drop-out. Specifically, the panel found that the DFS did not take into account allelic drop-out that had to have occurred in at least one finger and hand swab and possibly others, if the sample was truely taken from Mr.Roble. see Exhibit 17 ("quote, For reasons unclear to the panel, the DFS appears to have made separate CPI.. "a Combination Probability Inclusion" calculations for this exemplar (one calculation using allele calls at locus D16 and one NOT using allele calls from this locus D16). This is not an agreeable practice for calculations involving forensic DNA mixtures. Furthermore, Roble's "9" allele is not indicated in the mixture (the allele calls are "10,11", which is Tiblets's genotype at this locus), so if Roble is indeed included then "allele drop-out" must have occurred in this sample at that locus (and others?), adding an additional complication")("As hands are in frequent contact with all manner of objects, it is understandable that some laboratories might NOT wish to consider swabs from a hand or fingers to represent an "intimate" sample"). see Exhibit 17---FINAL REPORT.
The DFS crime laboratory was also found to have rendered inappropriate portion of the population that could contribute to the mixture, and misapplied the concept of a CPI by calculating two CPI's on the same sample. see Exhibit 17.
Dr.Noureddine reviewed the FINAL REPORT (Exhibit 17) and agreed with the determinations cited therein. Specifically, with regard to

finger and hand swab, Dr.noureddine noted that the prosecution expert, calculated two different mixture statistics on the same sample. see 10/26/2015 (Exhibit 16), page 27 ("[W]hen you have a mixture DNA where you cannot discern a major contributor, you have to treat that mixture in it's entirety. You can't pick and choose which portions.....mixtures you can use for statistics for one person versus another"). Dr.Noureddine testified consistent with the findings in the FINAL REPORT (Exhibit 17), and stated that he himself had identified these problems previously before Mr.Roble's trial and that, "he had told the trial counsel what his testimony would be if he is called to testify at trial. see 10/26/2015 (Ex.16) pages 36-37 (".....I made it clear to Ms.Walton what I would agree or disagree with in terms of what the lab has done"). Furthermore, further review in Mr.Roble's letter (Exhibit 11) to Ms.Walton dated "March 3, 2014, approximately a month prior to his trial, in the letter, Mr.Roble also identified the problems in the FINAL REPORT and requested his counsel to file a motion to exclude finger, hand and penal swabs and match statistics from the evidence pursuant "Frye v. United States, 293 F.1013 (D.C.cir.1923) prior to his trial. The counsel refused to file the motion to exclude these evidences nor do any investigations into the evidences themselves. The counsel simply stated that,Frye v. United States, 293 F.1013 (D.C. Cir.1923) does not support such motion and there was no legal basis to do so. see Exhibit 12.

Because Mr.Roble had requested IPA testing, the trial counsel abandoned preparation of his case including investigating and/or challenging the government's scientific evidence in it's totality, and used Dr.Noureddine to conduct IPA testing on the white tank top

t-shirt instead of using a different expert to do the IPA testing and preserve DR.Noureddine's favorable testimony for trial. In fact, the counsel herself admitted that prior to the IPA testing, she and Dr.Noureddine agreed that it was a bad idea for him to perform the IPA testing because they realized that if his testing confirmed the government's conclusion regarding the tank top t-shirt, the prosecution would attempt to use that fact against him. see 10/29/2015 (Exhibit 6), pages 19-20. Furthermore, Dr.Noureddine himself warned the counsel prior to testing, specifically, he stated:

> "I believe I indicated to Ms.Walton that if the DNA comes back confirming the findings of the lab, then I have to testify to that. And therefore I made it clear to Ms. Walton what I would agree or disagree with in terms of what the lab has done". see 10/29/2015, pages 36-37.

At trial, the counsel refused to call Dr.Noureddine as medical expert for the defense and/or challenge the government's scientific evidence at all in any meaningful way. The counsel simply stated that she had made a 'tactical' decision not to call Dr.Noureddine as medical expert, however, she admitted and acknowledged that she was acutely aware that the prosecution expert's conclusions were major issues in a sexual assault case and problems for the defense theory. see 10/29/2015 (Exhibit 6), pages 93-94. In fact, the counsel did not contest or challenge at all the DNA results of G.T. on the alleged white tank top t-shirt in her cross-examination of the prosecution expert but only that G.T.'s DNA could have been transferred to Mr.Roble's clothing through other means. see 10/29/2015 (Exhibit 6), page 115 ;also see Trial Transcripts at 4/2/2014, pages 164-165. Therefore, Dr.Noureddine's testimony, even if it had included consistent results of G.T.'s DNA on the t-shirt, would have added nothing to the prosecution's case because G.T.'s DNA

on the t-shirt could have come from non-sexual innocent contact , tampering or since they were both together from another location and in the same car, they might have as well had contact at some point, a fact well supported by the absence of Mr.Roble's DNA on G.T.'s sexual assault kit. On the other hand, Dr.Noureddine's testimony could have severely undermined the determination regarding semen, blood, and the alleged mixture on the finger and hand swab, much more critical evidence to the prosecution's theory of a sexual assault. To be sure, in this case here, expert testimony regarding semen, blood on the tank top t-shirt, and a mixture on finger & hand swabs went directly to the central issue in Mr.Roble's trial, i.e., the reliability of G.T.'s story and allegations. Thus, there be no doubt "there is at least a reasonable probability that any competent defense criminal attorney would have recognized the attractiveness of using the medical expert testimony to cast doubt on the veracity of the key witness for the prosecution". In a case like this------it's almost assumed that a competent attorney would investigate the relationship between the complainant and the forensic evidence, it's just basic,...it is just implict in this type of case that competent lawyers are going to do that.

Hearing on the New Trial Motion

In her testimony for the new trial motion, Ms.Walton stated that she didn't use Dr.Noureddine because the government would have asked him about his independent testing of the tank top t-shirt and he would have to explain what the results were. see 10/29/2015, page 23. This reason is not compelling because the counsel apparently realized the shortcoming the IPA testing could create and advised

against the testing, the counsel actually permitted the shortcoming to be created by not employing a different expert to do the IPA testing, and preserve Dr.Noureddine to testify at trial. Accordingly, D.C.Court of Appeals Rule 16(b)(1)(B) states as follows:

> "The defendant, on request of the government, shall permit the government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant,.....which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness's testimony".

Id. "had a different expert perfomed the IPA testing, this rule would not have been triggered". While it is true Mr.Roble had exercised his right under the Innocence Protection Act, it was not for Mr.Roble to appreciate the effect that would have on Dr.Noureddine's value as a medical expert witness at his trial or to devise a way to avoid any negative effect of Dr.Noureddine's value. His attorney, Ms.Walton who did appreciate that IPA testing could destroy Dr. Noureddine's value, did nothing to avoid that result. In fact, the counsel didn't give any strategic or tactical reason for her decision not to use a different expert for IPA testing.

Superior (Trial) Court Ruling/Opinion

In it's opinion, the Superior Court stated that while Dr.Noureddine's testimony at the post-conviction hearing may have theoretically undermined some of the government expert's preliminary opinions, this testimony would not be able to undermine the primary DNA results presented at trial because Dr.Noureddine's independent testing essentially confirmed the government's results. Therefore, the trial counsel's decision as to whether to present the testimony of Dr.Noureddine was a classic tactical decision, which was reasonable under the circumstances and one which the

Court is not in a position to second guess. see Exhibit A (4/11/2016,pages 24-25). The Court also held that, while in an academic sense the weaknesses cited in the FINAL REPORT (Exhibit 17) issued after trial, and Dr.Noureddine's opinions may have been something for counsel to consider, after Dr.Noureddine completed his independent testing and confirmed the government's results, counsel would have been left with the same, difficult, tactical decision, and there is no evidence that the decision would have been...different. see id. at 25.

* **District of Columbia Court of Appeals Ruling/Opinion**

In it's opinion, the Court of Appeals agreed with the trial Court that the counsel made a reasonable tactical decision not to call Dr.Noureddine, and that it was skeptical that trial counsel's performance was deficient, at least in the absence of evidence that trial counsel had reason to believe that no other expert could replace Dr.Noureddine to conduct IPA testing and preserve Dr. Noureddine's favorable testimony. The Court held that in any event given the overwhelming evidence against Mr.Roble, the Court saw no reasonable probability that Dr.Noureddine's anticipated testimony would have changed the outcome of the trial. see 8/21/2018 (Exhibit B) page 11. The Court did not reach nor comment on the new DNA Discovery evidence cited in the FINAL REPORT (Exhibit 17) indicating the government's scientific evidence used against Mr.Roble was flawed and misleading.

C **Constitution/Controlling Authrity**

This Court has recognized that the Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial. The Constitution guarantees a fair trial through

(Strickland, 466 US 685) the Due Process Clauses,but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the counsel clause. Thus, a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding. The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to "Counsel's Skill and Knowledge is Necessary" to accord defendants the ample opportunity to meet the case of the prosecution to which they are entitled. The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. see Strickland, 466 US at 693.

Strickland also says, where a "defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt". Strickland, 466 US at 695.

A reasonable probability is a probability sufficient to undermine confidence in the outcome. id. at 694. Under this standard, "a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case...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". id. at 693-94 ;also see United States v. Dominguez Benitez, 542 US 74, 83, 124 S Ct 2333, 159 L Ed.2d 157 (2004)("The reasonable..... probability standard is not the same as, and should not be confused with, a requirement that a defendant prove by a preponderance of the evidence that but for error things would have been different").

REASONS FOR GRANTING THE PETITION

Certiorari should be granted because, in affirming Mr.Roble's conviction, the District of Columbia Court of Appeals "decided an important Consitution and Federal question in a way that conflicts with relevant decisions of this Court" ,namely Strickland v. Washington, 466 US 668, 80 L Ed.2d 674, 104 S Ct 2054 (1984). Alternatively, if the Court thinks that this case would broaden the holding of "Strickland standard" ,then it represents an important question of the Constitution and Federal law that has not been, but should be settled by this Court. S.Ct.Rule 10. Likewise, if the Court also thinks that this case would broaden the holdings of "House v. Bell, 547 US 518, 126 S Ct 2064, 165 L Ed.2d 1, 2006 US LEXIS 4675" ,in regards to actual Innocence based upon lack of the accused's DNA on the sexual assault kit, then it further represents "an important question of the Constitution and Federal law that has not been, but should be, settled by this Court".

In his posttrial proceedings, Mr.Roble had put forward substantial evidence including but not limited: (1) that there was no semen on the external genitalia swab, (2) that there was no blood on the white tank top t-shirt and evidences of tampering of the t-shirt, (3) that conclusion that G.T. and Mr.Roble could not be excluded on the mixture on finger and hand swab was flawed & inaccurate, and (4) that the counsel actually suppressed actual prior inconsistent statements of G.T. regarding how she was assaulted, how it happened and all other happenings as G.T. told the Grand Jury and the Police e.t.c. Accordingly, had the Jury heard all the above conflicting testimony, it is more likely than not that no reasonable Juror viewing the record as a whole would lack reasonable doubt.

Without being realistic with regards to the counsel's actual conduct and be mindful of the relationship between the evidence the counsel failed to introduce and that of central issues in this case, the Court of Appeals simply held that because the government's evidence was overwhelming, the counsel's conduct was reasonable. The counsel in this case, never presented defense at all and/or challenge the government's evidence, and instead, excluded readily available striking exculpatory evidence which could have severely damage the entire government's case.

Indeed, the Court of Appeals holding and interpretation of the Sixth Amendment right to effective assistance of counsel is inconsistent with the holdings in the Strickland standard. Strickland says in adjudicating a claim of actual ineffectiveness of criminal defense counsel, the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged and on whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results. Strickland, 466 US at 680. The Sixth Amendment right to counsel is the right to the effective assistance of counsel, and the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. Mr.Roble has presented overwhelming evidence exhibiting counsel's errors were so srious as to deprive him of a fair trial, a trial whose result is reliable. Strickland, 466 US at 687. Mr.Roble "need not show that counsel's deficient conduct more likely than not altered the outcome of the case". id. at 693, rather Mr. Roble need show only that there is a reasonable probability that,

but for counsel's unprofessional errors the result of the proceeding would have been different. Id. at 694.

In reality, Sixth Amendment right to effective assistance of counsel protects the accused's rights to Due Process and Confrontation Clauses rather than assistance of counsel in any manner.

Indeed, this petition presents a type of Sixth Amendment claim of ineffective assistance of counsel involving violations of fundamental rights under Due Process and Confrontation Clauses committed by the counsel that this Court has not previously considered in generality. The Supreme Court has never directly and fully addressed a claim of this kind, and therefore, this Court should revisit the holding of "Strickland standard" to avoid Constitution breakdown, and afford criminal defendants Constitutional right to Due Process protection for the defense criminal attorneys not to suppress exculpatory evidence from the Jury because of the counsel's hidden agenda or other motives.

CONCLUSION

Because the State Courts of the District of Columbia interpretation of the Sixth Amendment right to effective assistance of counsel contradicts established Supreme Court precedents ("Strickland standard"), and criminal defendants in the State Courts, are deprived of their fundamental rights under color of defense counsel, and this could open a nation-wide avenue for the government to suppress exculpatory favorable evidences from the Jury through defense attorneys, this Court should accept this request for a Writ of Certiorari to resolve this important Constitution and Federal question.

Respectfully Submitted

Mohammed Roble