No. 18-8942

ORIGINAL

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

Jeffrey E. Akard
(Your Name) — PETITIONER

vs.

United States of America
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jeffrey E. Akard
(Your Name)

709 Olive St
(Address)

Peru, IN 46979
(City, State, Zip Code)

n/a
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Was Petitioner's 94 year sentence for rape related charges, based only on accuser's testimony, in violation of Fifth Amendment Due Process rights warrant habeas relief when the state violated trial court's Order on Discovery and withheld Brady materials to: exculpatory expert medical evidence, impeaching evidence in the accuser's past rape allegations not disclosed the blocked by 412 Rape Shield law conflict, no pre-trial disclosure of 403/404(b) evidence or of state held rebuttle evidence?

Was trial counsel constitutionally ineffective under this Court's standards in Strickland by failing to investigate and present to the jury exculpatory expert medical evidence; use impeaching, rebuttle and mitigating evidence because he believed the case was over at nolle prosequi order and never investigated or gained rebuttle evidence against 403/404(b) exhibit; and did appellate counsel fail to raise these significant claims on appeal, which establishes excuses for procedural default?

Did the lower courts commit reversible err denying Petitioner § 2254 and state Post-conviction motions without conducting an evidentiary hearing to resolve the factual disputes, conflicts with issues of law, sentencing errors and denial of every discovery request as "moot" because the courts held no hearings?

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INDEX TO APPENDICES

Appendix

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

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

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

CASES PAGE NUMBER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[x] For cases from **federal courts**:

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

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

[x] reported at 2:17-cv-00123-RL-JEM; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

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

[x] reported at 79A05-1411-PC-553; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Superior Court 2 Tippecanoe County court appears at Appendix D to the petition and is

[x] reported at 79D02-1101-PC-00001; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Nov. 15, 2018.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Jan. 18, 2019, and a copy of the order denying rehearing appears at Appendix A.

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

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

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution, "No person shall be... subject for the same offense to be twice put in jeopardy of lif or limb;,,, nor be deprived of life, liberty or property, without due process of law."

2, The Sixth Amendment to the United States Constitution, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial; by an impartial jury... and to be informed of the nature and cause of accusations;... to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

3. The Eighth Amendment to the United States Constitution, "... nor cruel and unusual punishment inflicted."

4. The Fourteenth Amendment to the United States Const., Section 1 and Section 5, for state cases.

5. The statute under which Petitioner sought habeas corpus relief was 28 USC § 2254, state court adjudication was contrary to or unreasonably applied federal law detrermined by this Court and decision was unreasonable based on facts presented.

6. Federal Rules of Criminal Procedure, Rule 16. Disc./Insp 16(G) Expert Wit.,Rule 35 or Rule 52.

7. Federal Rules of Criminal Procedure, Rule 5. Serving and Notice, Rule 16. Pretrial Conf., Rule 26. Duty to Disclose and Rule 37. Failure To Make Disclosures or to Cooperate in Disc/Sanc

8. Federal Rules of evidence, Rule 404(b) & 404(b)(2)(A), Rule 403 and 412 needs this Court's attention.

STATEMENT OF THE CASE

1. On Sept. 10, 2006, Petitioner was arrested by accusations that he drugged, held overnight and raped a homeless prostitute for 17 hours and that he had a dead child's picture on laptop.

On Sept. 14, 2006, in cause number 79D02-06090FA-16, Petitioner was charged with 3 counts of rape, 3 counts of deviate conduct, 2 counts of criminal confinement (double jeopardy to rape) and 2 counts of battery (without factual seperation of charges). No 'liquid cocaine', silenced shotgun, M16, body bag, image of a 2 to 4 year-old dead child or any images of Akard having sex with minors was ever found, offered or charged as accuser's police statement urged them to arrest him on.

Trial set for Nov. 03, 2007, with 'hold until proceedings are concluded' Order, wasn't followed as Akard was in Federal custody and accuser was in jail on prostitution charges for that date. The trial court would not grant the state their 4th continuence, therfore state filed a nolle prosequi in FA-16 on Nov. 01, 2007, in order to receive an 'unfair advantage' in waiting out federal proceedings. Note: On Nov 03 trial date, the state would not have been allowed to question Akard about pending federal child pornography charges or been able to gain state's Exhibit #40 image of child porn to show the jury.

On Oct. 02, 2008, after the state found out the Petitioner plead guilty to receiving images of cp over the internet, the state refiled charges in 79D02-0810-FA-36. The Petitioner was

produced from federal custody by Writ of Habeas Corpus, where all of Akard's legal notes and paper work from this case was taken from him and held by R&D staff at FCI Terre Haute.

On Jan. 13 - 15, 2009, an unfair unconstitutional trial was conducted where the following Fifth Amendment Due Process rights and Sixth Amend. Effective Counsel rights were violated pre-trial, trial and at the Feb. 15, 2009, sentencing hearing.

2. On Oct. 14, 2009, appointed counsel Tim Broden, filed an Appellant's Brief on direct appeal and failed to site violations on the record to: trial court's Order on Discovery; trial and evidence rules; case law and sentencing errors in a 'sure fail' brief, as shown by this petitioner's claims.

3. On Jan. 26, 2011, Petitioner filed pro-se Petition for P.C R and 2 Affidavits in Support of Pet on Nov. 13, 2013 and Oct 23 2014. On Oct. 29, 2014, the court's Finding of fact and Conclusions of Law was the exact same document the state filed on Aug. 29, 2014, that contained eggregious errors. No independant P-C R court judge review was done, just a signature of what the state prepared. No P-C R hearing held and discovery request to support claims were denied as "moot" because no hearing. But still needed for appeals.

On dec. 11, 2014, a Notice of Appeal to Ind Ct. of Appeals with May 28, 2015, pro-se Appellant's Brief was met with Oct. 22, 2015, Memorandum Decision with misconstrued appellant claims.

4. On Mar. 15, 2017, a pro-se 28 USC § 2254 Petiton with Brief denied on Feb. 22, 2018. Mar. 02, 2018, a NOA filed and denied on Nov. 07, 2018 with Rehearing denied on Jan. 18, 2019.

REASONS FOR GRANTING THE PETITION

Petitioner has sited Fifth Amendment - Unfair Due Process pages 1-7, Sixth Amendment - Ineffective Assistance of Counsel(s) pages 8-11, and New Evidence pages 12-15 in the Jan. 26, 2011, Petition for Post-Conviction Relief (P.-C. R.) 79D02-1101-PC-0001, as well as claims for: Brady v Maryland p. 1-5, Rule 404(b) p. 4, Double Jeopardy p. 5, Rule 412 conflict p. 6, with additional supporting case law, constitutional claims and rules of the court in this Affidavit In Support of Petition.

The cover of Petitioner's 28 USC § 2254 sites Fifth, Sixth, Eighth and Fourteenth Amendments violations to the United States Constitution, as well as in his Reply Brief, Motion For Rehearing and COA.

No citizen of the United States of America should be subject to such prosecutorial misconduct with procedural due process violations shown by this miscarriage of justice. This Courts review is needed because however 'inartfully' or 'incoherently' a pro-se petitioner's arguments may be, an unconstitutional trial leading to 94 years sentence deserves serious consideration and evaluation once the petitioner has shown, the record, has the following errors in light of overwhelming actual innocence.

The state court's Findings Of Fact are erroneous and unreasonably applied to the Amendments listed, Brady and Strickland when compared to the facts of the petitioner's case as shown:

I. The Court of Appeals Erred In Affirming The State Convictions Without Ruling On The Merits[1] Of Petitioner's Fifth Amendment Due Process Rights Being Violated By State Dr Prosecutor's Brady Like Violations to: Exculpatory Expert Medical Evidence Hidden In 11th Hour Disclosure, Impeaching Evidence Of Accuser's Past Rape Allegations Not Disclosed Then Blocked By 412 Rape Shield Law Conflict, No Pre-Trial Disclosure Of 403/404(b) Exhibit Or State Held Rebuttle Evidence, All Of Which Violates Trial Court's Order On Discovery And U.S. Supreme Court's Standards in Brady v Maryland.

Habeas Corpus relief should have been granted and an evidentiary hearing was needed by the following:

1. The Court of Appeals erred in affirming the the Court of Appeals of Indiana stated,

> "Akard has failed to point to anything in the record suggesting that the state violated the (A) trial court's discovery order or (B) Brady by keeping any evidence from the defense." () added. see Oct. 22, 2015, Memorandum Decision p. 26 of 40 Appendix C.

A. Order On Initial Hearing, Discovery, Pre-Trial Hearings and Trial Dates (see Appellant's §2254 Reply Brief Exh. 11) - FA-16 ordered Sept. 18, 2006, to be disclosed by Oct. 18, 2006, FA-36 ordered Nov. 07, 2008, to be disclosed by Dec. 08, 2008, for a trial of Jan. 13-15, 2009.

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1. State court need not address claim. Dye v Hofbauer, 546 U.S. 1(2005) ("Failure of a state appellate court to mention a federal claim does not mean the claim was not presented to it"): Smith v Digmon, 434 U.S. 332 (1985) (claim was presented in briefs, although not addressed in decision of state court.

The court's Order On Discovery states in part,

> "4. Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons."[2]

Prejudice - The 11th Hour Disclosure on Jan. 06, 2009, in state's supp. discovery disclosure listed State lab tech, Tobey, SANE nurse, Smith, EMT(s) and Dr. Schwartz, M.D. only days before the start of the Jan. 13, 2009, trial date and weeks after the due date of Discovery Order #4. Det. Huff's only reason to testify was as an expert witness on child porn laptop evidence and was never disclosed as such or as to general nature of his proposed testimony. Accuser, A.A., revealed she was police escorted to a hospital for mental health hold in 2007 but info. not disclosed by state.

Therefore, violations to Order #4 deprived defense opportunity to prepare meaningfully for trial or design an intellegent trail strategy with pre-trial preperation, shown infra in Brady argument.

> "5. Any books, papers, documents, photographs or tangible objects which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused."[3]

Prejudice - State offered Exhibit #40, a 10 to 12 year-old elaborately tied to a chair, eyes wide open alive and was never one time disclosed prior to trial offer. This photo was not what accuser claimed in intial police statement, deposition or trial.

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2. This Order reflects Indiana Rules that aligns to Federal Rules of Civil/ Criminal Procedure Rule 16, 26 - Time to Disclose Expert testimony, Evid. R. 702, 703, 705 on Experts and Rule 404 - Reasonable Notice.

3. This Order aligns to Rule 16 - pre-trial conf. and Discovery and Inspection Rule 5 - notice if not for public access.

The state held laptop was never diclosed to be in state's possesion from the Feds, had impeaching photo and video evidence and far less prejudicial Adult porn evidence. Trial records prove that state didn't review adult porn(tr. 331), defense never had opportunity to access any documents or photos belonging to the accused (Tr. 176-78) which lead to a trial-by-ambush unfair surprise that affected pre-trail stategy, voir dire jury selection, plea negotiastions, defense own evidence gathering to combat the offer of state's exh. 40.

> "6. Any record of prior criminal convictions which may be used for impeachment of the persons whom the state intends to call as witnesses at the hearing or trial."[4]

Prejudice - The state failed to provide impeaching evidence of rape kit results, SANE nurse report or M.D.'s report for the prior rape allegation A.A. made against 17 year-old illegal alien, Vega-Tellez, (also viol. Order 4): A.A.'s deposition found she had fraud conviction, South Bend Ind case with Scotty Adams, lieing to police charges and false address/name/work but the state said, nothing really important showed up in her background check that the defense needed to see. Well, 3 other prior rape allegations were withheld too, defense decieds what's improtant or not. This left the jury only hearing one side of the story when the state withholds impeaching evidence against accuser's accusations.

> "7. Any evidence which tends to negate to guilt of the accussed as to the offense charged or would tend to mitigate his punishment."[5]

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4. The Vega-Tellez case did not result in A.A. being charged with solicitation of a minor for sex, however the info was withheld.

5. Order 7 encompases the entire Due Process right viol. claim, prosecutorial misconduct and effective assistance claims with rule 37.

Prejudice - Listed infra under Brady shows:

(a) Dr. Natalie Schwartz, M.D., EMTs Bushman and Gilbert;

(b) accuser's past rape allegation of Vega-Tellez case evidence;

(c) computer files on accused's laptop computer; and

(d) impeaching/mitigating wound photos of accuser are state held.

This is the best exculpatory evidence the defense needed to win.

The state shows bad faith and prosecutorial misconduct thoughout the case from Sept 2006 arrest to Jan 2009 trial and sentencing hearing, all because a plea agreement wasn't signed and Akard was a high TV profiled case.

The Court of Appeals erred in not finding trial court's Order On Discovery had constitutional violations by state that did prjudice the defendant.

The post-conviction court's Findings of fact were further clearly erroneous by:

B. Brady v Maryland, 373 U.S. 83 (1963).

A Brady violation occurs when!

(1) prosecution suppressed evidence;

(2) that the evidence was favorable[6] to the defense; and

(3) that evidence was material to an issue at trial.

"Material is reasonable probability that , had the evidence been disclosed to the defense, the results of the proceedins would have been different.ID "Reasonable probablity" is a probability sufficient to undermine the confidence in the coutcome.Id.

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6. This Court summarized that a "true Brady Violation" has three aspects: (1) "the evidence must be favorable to accussed, either because its exculpatory or because it is impeaching; (2)evidence must have been suppressed by the state, (3) prejudice occurreed, Strickler v green, 527 U.S. 263(1999).

The petitioner has established cause and prejudice for the state's Due Process violations[7] to:

(i) exculpatory expert medical evidence;

(ii) impeaching evidence of accuser's past rape allegations;

(iii) no pre-trial disclosure to 403/404(b) exhibit evid,;

(iv) exculpatory/mitigating wound photo evidence of accuser.

However, the lower courts failed to consider these violations and only ruled on ineffective assit. of counsel claims nested in the same argument. Supreme Court review is needed:

(i) Exculpatory Expert Medical Evidence Hidden in 11th Hour Discovery Violation

Under the standards set forth in Brady:

(1) The state suppressed evidence listed in state's suppl. discovery disclosure of Jan. 06, 2009, for: Rebecca Tobey, Ind. State lab tech, Phil Bushman & Cole Gilbert (EMTs), Kathleen Smith R.N. SANE, and Dr. Natalie Schwartz, M.D., St. Elizabeth hospital. These names, reports and results should have been disclosed by FA-16 Oct. 18, 2006 or FA-36 Dec. 08, 2008.

Prejudice - the 11th hour disclosure, just days before the start of the trial, deprived the defense opportunity to prepare meaningfully for trial or design an intellegent trial strategy.[8]

> The district court's Opinion & Order stated, "The medical reports were admitted into evidence...and were given to the jury during deliberations." p. 16 of 29 Appendix B.

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7. The Constitutional right to due process guarantees a criminal defendant "a meaningful opportunity to prent a Complete defense." California v Trombetta, 467 U.S. 479 (1984).

8. Prosecutors have obligation to provide defense with exculpatory evidence. United States v Agurs, 427 U.S. 97 (1967).

However, the only witnesses called were - state leb tech, [illegible] Tobey, to discuss DNA and drug tests results; and SANE nurse, [illegible] Smith, to discuss a body diagram and Sexual Assault Examination Record page 4 of 4(§2254 Exh 3) that ONLY has "Description of Medical Forensic Findings" for the Labia Majora, Labia Minora, Posterior Fourchette, Urethra (all showing no bruising, no abrasion, no tearing or any redness) along with normal - Hymen, Vagina, [illegible] Cervix and ()ineum. Therefore, the SANE nurse's report and testimony favored the defendant with reasonable doubt to forceable rape to vagia or anus but the defendant had 7 other charges that needed testimony from EMTs 1st responders, and from Dr. Schwartz.

The same suppression is found in 412 evidence argument infra.

(2) Favorable exculpatory and impeaching evidence of EMTs report and Dr. Schwartz, M.D.'s report both needed testimony that would have revealed the lab tech and nurse could not have testified to EMTs or Doctors reports, could not have given their opinion on a M.D.'s findings as they related to deviate conduct, confinement or to battery counts.

Prejudice - the EMTs were first on the scene to evaluate the accuser and eyewitnesses to accusations. She told EMTs raped in butt real bad 4 to 5 times, yet, no tearing, no abrasion, no redness or any activity was visible so no photographs were taken. EMTs testimony was crucial about her stun gun marks. EMTs have seen police use of stun guns and could testify as qualified experts as to the extent of the wounds. Most importantly, were they 17 hours old as accuser said "immediately tazed and raped at 3 am" or were they fresh with red haloes at 5 pm for defense's property defense.

Additionally, the EMTs said her arm, wrist and elbows were fully mobile towards the confinement charges. Without EMTs testimony, the jury only had the state's version of events and deprived the defense of impeaching/exculpatory evidence.

Dr. Schwartz, M.D.'s report and name had been held from the defense since she had electronically sign and sent her report ../ 09/22/2006. Where the Order On Discovery said to dosclose it by Oct. 18, 2006 or Dec. 08,2008. State provides NO excuse for withholding. This is the same tactic by the state to withhold expert medical information as seen in the in-camera inspection hearing for Vega-Tellez's rape allegation by same accuser as Akard's case. Prosecutor Zeman is Tippecanoe Co. sex crimes guru and knew better than to hold Brady materials, thus showing prosecutorial misconduct to win-at-all-costs.

The Court of Appeals erredin agreeing with the district court's O & O that additional medical testimony was cumulative page 9 of 29 and testimony didn't have any additional exculpatory value, page 20 of 29 Appendix B. That Akard failed to show.

However, Doc.# 158045 page 2 of 3 to Dr. Schwartz report says,

"HEENT: Normocephalic - Puples are equal, round and react to light... no trauma.
Neck: Non tender in midline. she has no creptis or tenderness over her hyriod. she has no bruising, ligature marks or petechiae around her neck.
Chest: nontender. Heart: Regular Abdomen: Soft. Nontender
Extremities: Superficial abrasions, good perfusion no swelling.
Back: small lesion. (§ 2254 Exhibit 2).

Prejudice - According to the lower courts, the average juror was supposed to at deliberations, find this medical exculpatory evidence on there own that's hidden in 100's of pages of paperwork

(that was never discussed by any witness at trial or shown to the jury its existance), the average juror was to medically know what all of that report means about A.A.'s limited injuries and to give rise to reasonable doubt to charges, to the elements of multiplictious counts and mitigate the enhancements of 'serious bodily injury' - all without this expert medical doctor's testimony. Therefore, the EMTs & Dr. Schwartz was needed.

(3) Finally under Brady, this evidence was 'material' to issues at trial and would have different results.

Prejudice - In addition to 3 counts of rape, Akard was charged with 3 counts of Criminal Deviate Conduct. Court's Inst. No. 14.57, "deviate sexual conduct" means "a sex organ of one person and the mouth or anus of another person or the penetrating of the sex organ or anus of another person by an object." (Count VI of Criminal Deviate Conduct was enhanced to 40 years) by state's use of: Court's Inst. No. 14.185, "serious bodily injury" (sbi) meaning "Sunstaintial risk of death or that causes serious or permanent disfigurement, unconsciousness, etreme pain, or permanent or protracted loss or impairment of the fuction of a bodily member or organ."

The witnesses called of Tobey and Smith did not examine A.A.'s mouth or throat. Only Dr. Schwartz exculpatory[9] could have confronted[10] the accuser's statement that her mouth and throat had forceable oral sex, but the doctor found no trauma, as weell as no activities to the anus. The state offered A.A.'s sexual

9. The right to confront and cross-examine witnesses and to call witnesses on ones own behalf has long been recognized as essential to due process. Chambers v Mississippi, 410 U.S. 284 (1973).

10. Whether rooted in Due Process Clause of 14th Amend for Compulsory Process or Confrontation Clause in 6th Amend. the const. gurantees criminal defendent a meaninhful opp. to present complete defense. Holmes v S. Carolina, 547us (2006)

predisposition that she's a straight-up sex kinda girl no kinky stuff (tr. 14, 333). However, the defendantwas unable to compulsory cross-examine and impeach the accusser's accusations. Without the jury hearing this medical testimony[11] the results of 40 year enhanced sentence by serious bodily injury to deviate conduct Count VI cannot leave this Court with confidence in the verdict or sentence.[12]

Also material, to the 2 counts of criminal confinement, was M.D.'s testimony to the extent of her wrist and ankle marks. Not cumulative to a SANE nurse or lab tech, would be Doctor's opinion adding reasonable doubt to 17 hours of being tied up verses the wounds look more like wrist watch marks more consistant with bondage sex acts and would have affected the witnesses credibility.

To the 2 counts of battery - the use of a stun gun to remove a crack cocaine addict from apartment, get back wallet and check, while protecting his property at 5pm next day verse accuser saying tazed and raped at 3am or 17 hours different verses doctor saying it was more like 2 hours; would be exculpatory, rebuttle, impeaching and mitigating. But defense was deprived of crucial testimony.

Therefore, a Brady violation has been established against the lower court's Findings of Fact and that an evidentiary hr. is needed.

(ii) Impeaching Evidence in Accuser's Past Rape Allegation Not Disclosed Then Blocked By 412 Rape Shield Law Conflict

11. The erroneous exclusion of expert testimony was not harmless because issues "lay at the heart" of the charges against the defendant and defendants efforts to establish an affirmative defense. Howard v Walker, 406 F.3d 114 (2005).

12. "Favorable evidence is subject to constitutionally mandated disclosure when it 'could reasonably be taken to put the whole case in such different light as to undermine confidence in the verdict'". Cone v Bell, 556 U.S. 449 (1995)(quoting Kyles v Whitley, 514 U.S. 419 (1995)).

Under the standards set forth in Brady:

(1) The state suppressed medical evidence needed for the case #2006-16514, in-camera inspection hearing's Judge to make an informed decision about accuser's 11/15/2006 rape allegation against V. Vega-Tellez. Trail court's Order On Discovery #7 was to be disclosed by Oct. 18, 2006. The in-camera inspection hearing was held on Oct. 19, 2006.

Therefore, when the state only provided the defense with 'police reports' and failed to provide exculpatory & impeaching evidence of accuser's: SANE nurse report, rape kit results, drug screens and medical doctor's hospital evaluations - the state violated Brady and trial court's Order. Then blocked all defendant's effets to gain this evidence or use reports by 412 rape shield conflict.[13]

Prejudice - this suppressed evidence is the exact evidence needed to determine that a prior rape allegation was demonstrably false or not. The prosecutor, Zeman, knew very well this was Brady material obligated to disclose to the defense same as hidden evid in Akard's case. When the SANE rport, rape kit results and doctor's finding all show no forceable oral turned to anal rape (same story told in Akard's case), then finding a false rape alleagation would allow all of Vega-Tellez case's evidence into Akard's trial. The confrontation clause permits a prior statement to be used to impeach a witness during cross-examination. California v Green, 399 us 149 (1970).

(2) Favorable exculpatory and impeaching evidence is found in the police reports and mendical reports would be compaired to allegations made against Akard's medical reports to show in both cases, no forceable oral and no rape occurred.

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13. Evidence Rule 412(b)(1)(C)- Evidence whose exclusion would violate the defendant's constitutional right- has never been meritouslyruled on.

Prejudice - In both cases the accuser said: she did a fake wash to preserve evidence, had a hidden agenda or cross with premeditated attempt to accuse men of rape from a siutation that could have only occurred from or resulted from sexual activities, whether consentual or not. Akard's case, she was protecting all the little girls from Akard and hoped he was arrested. In Vega-tellez, she was protecting all of "her girls" of homeless prostitutes she was the 'ring leader' of, and hoped Vega-Tellez went to prison., because he cheated her girls out of money.

Akard trial would impeach A.A.'s testimony with Vega-Tellez case info on her cocaine usage where she brags about smoking '8 balls" of crack but said Akard put "liquid cocaine" in her drink; oral sex price were $150 for Akard going rate verses 20 bucks, her homeless shelter status and curfue is midnight verses she saying she was held against her will but at 3 am and 911 call shows she had no place to stay when she went with Akard. Witnesses in Vega-Tella case would impeach A.A.'s testimony and give reasonable doubt to credibility, accusations and the whole trial.[14]

The Court of Appeals erred in agreeing with State of Indiana's Memorandum Decision that stated,

> "...evidence offered to prove that a victim or witness engaged in other sexual behavior or to prove a victim's or witnesses sexual predisposition was barred under Indiana Rule of Evidence 412...[15] and such an argument would not have been allowed at trial." p.12 Appendix C.

Supreme Court Rule 10 applies. Need for uniform interpretation of Federal law is needed. Cuylers v Adams, 449 U.S. 433 (1981).

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14. The United States Supreme Court said, "We find it intolerable that on constitutional right should be surrendered in order to assert another." Simmons v United States, 390 U.S. 377 (1968).

15. The state cannot, through a rape shield law or anything else, deprive a criminal defendat of his rightt to confront wit. Davis v Alaska, 415us 308 (1974)

However, the prosecutor opened-the-door to A.A. being a prositute and her sexual behaviors and predisposition as a straight-up sex kinda girl no weird stuff (tr. 14, 333). Therefore, the defense should been able to cross with the fact she solicited a minor for sex, then the small 17 year-old illegal alien forced oral sex and anal rape onto her with no marks?

States may not rely on rape shield law to exclude evidence that is'indispensible' to defendant's exercise of their Sixth Amendment right to present a defense. Trial judges exclusion of the evidence violated clear U.S Supreme Court precedent. Gagne v Booker, 680 F.3d 493 (6th Cir. 2012)(noting that "a rape shield statute cannot be constitutionaly be employed to deny a defendantan opportunity to intriduce vital evidence.") Sandoval v Acevedo, 510, U.S. 916 (1993).

(3) The Vega-Tellez case's evidence was material to issues raised at Akard's trial and would have lead to different results to rape, deviate conduct, confinement and impeached accuser's testimony and statements, allowed the in-camera judge to affect a ruling with all of the info needed and allowed the defense an opportunity to tell their side of the story.

Prejudice - Suppressed expert medical evidence would have greatly affected the counts against Akard for rape and deviate conduct when the two case were compared to each other. (80 years of the sentence). Evidence of case manager, Dia Brown's, case statement about A.A.'s curfue, drug habbits and criminal activities along with shelter cordinator, Tanika Phillips', same comments on record in Vega-Tellez case would affect confinement charges. (12 years)

Showing A.A.'s propensity for false rape allegations (at least 2 others known of but never disclosed), fraud conviction, false informing, admitted perjury to police statement in deposition about drug usage all shows - An exclusion of evidence will almost invariably be declared unconstitutional when it "significantlly undermines fundamental elements of defendant's defense." United States v Scheffer, 523 U.S. 303 (1998).

Juror questions were blocked by 412 rape shield law conflict. the jurors asked to know, "the legal results of previous rape exam? When date wise was this related to this event?" (Trial p. 201), because the state had their witness, SANE nurse, say A.A. told her she had a rape examination done before, (Tr. p. 194), before Akard's 09/10/2006 case. The state opened the door to prior rape allegations, blocked juror questions and denied Akard use of that case's evidence.

Exclusion of this evidence was vital to the central issue in the case, A.A.'s credibility, the defendant's constitutional right of confrontation has been infringed. Olden v Kentucky, 488 U.S. 227 (1988)(writ granted). U.S. Supreme Court Rule 10 needed.

Note: The state and appellate judges repeatably use "petite akin toichild-like and most voulnerable in our society, a homeless mother of two" to describe A.A. However, Amber Archer's Indiana drivers license (P-C R Exh 150) shows 5 foot 4 inches 110 lbs, she is c-cup breasted curvy features and more like 130 at trial. Not 5 foot 90 lbs akin to child. A.A. is an admitted crack cocaine prostitute that would rather smoke '8 balls' then pay rent of feed and cloth her children; that's why CPS took them away long ago.

Therefore, the lower courts errored by never finding any Due Process right violations to (A) & (B), habeas and discovery was needed.

(iii) No Pre-Trial Disclosure Of 403/404(b) Exhibit or Rebuttle Evidence Was Given

Under the standards set forth in Brady:

(1) The state suppressed photgraphic evidence that rebuttled State's Exhibit #40's, image of child pornography, contained on Akard's laptop from his prior bad act federal conviction. The States discovery Disclosure for Nov. 03, 2006; Jan. 22, 2007; and Jan. 06, 2009, do NOT list Exh 40 description.

The trial court's Order on Discovery #5 - any documents or photographs belonging to accused - was to be disclosed by FA-16 Oct. 2006 and FA-36 Dec 2008, but the state failed to. Rule 16 pre-trial conferences of 12/19/2008 and 01/13/2009 never disclosed #40. Rule 5 - not for public access, Notice, or Rule 404(b)(2)(A) - reasonable notice, Fifth Amend due process and Sixth Amend - to be informed of the nature and cause of accusations have all been violated by the state.

Prejudice - Akard's laptop had rebuttle and impeaching evid they never gained because of unfair surprise trial offer. Akard couldn't win the objection without the supressed evidence.

(2) Favorable exculpatoy and impeaching evidence of a "sleeping child" not a dead two to four year-old as accussed would be shown to the judge as the only described photo A.A. said to police and deposition and trial statements.

Prejudice - to win the objection and impeach state's star witness, this photo evidence or compairable adult porn that was far less prejudicial, would not have enflamed the jury to convict for prior bad act and not for evidence against the actual charges.

(3) This evidence was material to issue at trial for deviate conduct and confinement charges the state alleged because of plan, motive, intent, preperation exception evidence that greatly infuenced the jury.

Prejudice - Adult porn showing acts of bondaged with adult female with shaved vaginas would allow the state to present the accusations without the 403 unfair prejudice of confusing the issues, misleading the jury and needless presenting cumulative evidence of #154. Material to the defense to show the judge he should overrule state's offer of #40 prejudicial evidence.

Without child pornography from prior bad act federal conviction, the jury would have; adult bondage photos, expert medical witnesses showing no rape or deviate conduct, 2 eyewitnesses that night saying she was not held against her will, beaten drugged or raped and reasonable doubt to all charges and accusations by A.A.

No discovery has been allowed to gain this evidence.

(iv) Exculpatory and Mitigating Wound Photographic Evidence of Accuser

Under the standards set forth in Brady:

(1) The state suppressed evidence of wound photographs taken of the accuser at St. Elizabeth Hospital that are on the lafayett Police Depot server. The state presented to the jury only ones the prosecutor viewed, selected and printed for the trial.[16]

16. Failure to turn over these exculpatory information violated due process because the battery counts, confinement elements and enhancements to sbi could have different results. see United States v Bagely, 473 U.S. 667 (1985)

Prejudice - the defense was not allowed an opportunity to view, select favorable photos and present to the jury counter exculpatory or mitigating wound photos that showed just how minor the wounds were compared to allegations. This suppression violated court Order on Discovery #4 of scientific comparisons evidence and #7 evidence which tends to negate guilt of mitigate punishment. In context of a Brady claim, if the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt. Id.

(2) This evidence was favorable where the accuser said he tazed me in the heart 4 times trying to kill me, and suppressed photos shows no stun gun marks to chest. Aug, 25, 2013 newspaper article has A.A. saying, he stuck it in my mouth and activated it (stun gun), "he was trying to fry my brain", and again no mouth trauma, no wrist or ankle 'serious bodily injuries' photos given.

Prejudice - is only the state told their side with photos.

(3) Material to all charges, elements and enhancments would be no heart, mouth, ankle or wrist injuries to the extent the state alleged. A meaningfull opp to present a COMPLETE defense denied.

Prejudice - This is the same prosecutorial misconduct of playing hide-the-ball, suppressed evidence, non-disclosure or 11 hour viol, to prevent defense investigations was also shown by state keeping the inside view of bathroom window while offering state's #4, diagram of apartment that left it off too so the jury thought A.A. was confined, while alone and dresses in bathroom with Upshaw there.

The Fourteenth Amendment cannot tolerate a state crimainl conviction by the knowing use of false evidence. Miller v Pate, 386,U.S. 1 (1967).

II. The Court of Appeals Erred In Affirming The Introduction Of State's Exhibit # 40 Was "Properly Admitted", Was Admissable Under Evidence Rule 403 or 404(b), and That Counsel(s) Were Not Objectively unreasonable Under Strickland In Their Objections and Appeal Arguments.

The state violated petitioner's due process rights by never once disclosing state's exhibit #40, or an expert witness Dt. Huff purposed testimony, or the 21 more enflamitory photos in #154. The state violated Due Process Clause of the Fifth Amendment and Fourteenth Amend., as well as the Cause & Prejudice requirements set forth by this Court in Strickland and Sixth Amend. Habeas Corpus relief should have been Granted and an evidentiary hearing was needed by the following:

1. The Court of Appeals erred when stating,

"Because trial counsel objected to the child pornography evidence and because the state found the evidence admissable, Akard's claim that trial counsel failed to object to cp evidence is not a basis for habeas relief."[17] p.27 of 29 Appendix B.

The Indiana Court of Appeals erred when stating that Akard only argued that his counsel was ineffective for failing to suppress certain evidence due to Rule 404(b), p. 10-11 and

"Failure to supress evidence absent a constitutional issue is not an indicator of ineffectiveness." p.22 App. C.

The lower court's misconstrued or misunderstood the petitioner

17. If "evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process clause of the Fourteenth Amendment provides a mechanism for relief." Payne v Tennessee, 501 US 808(1991).

raised Fifth Amendment Due Process violations by the state to "improperly admitted" state's exh. 40, but did not rule on the merits of this Constitutional claim. The courts failed to acknowledge all other court rules violations, by the state, to Rule 5, 16, 26, 403, 404(b) or 37 -that defense attorney failed to raise at trial or appeals which gives rise to the Sixth Amend Effective Counsel rights violations.

Post-Conviction court's Finding of facts were clearly erroneous.

A. State's Exhibit #40 was NOT "Properly Admitted" and Thus Inadmissable By Procedural Due Process Violations.

The petitioner establishes cause and prejudice for the State's Due process violation which support III. IAC.

(i) Trial court's Order On Discovery,

(ii) State's 3 Discovery Disclosures,

(iii) Rule 16 -Pre-Trial Conf, Disc & Inspec, Rule 26 Experts,

(iv) Evidence Rule 403,

(V) Evidence Rule 404(b) Opening Door and Reasonable Notice.

In addtion to the previously stated Brady violation against state's 40 rebuttle state-held evidence,

(i) The state failed to follow trial court's Order On Discovery #4 for Det. Huff as expert and Order #5 for state Exh 40. Without a pre-trial "notice" of such enflamitory exhibit and without knowing the nature and cause of the accusation and general nature of testimony by Det. Huff (being he did not testify to any charges Akard stood trial for, he only was called for child porn laptop evidence from Akard's prior bad act federal conviction),

the state prejudiced the defendant into an unfair trial by "unfair surprise"[18] and "trial-by-ambush".
see FRCP 26(e)(1)(A) - this rule ensures that parties do not play hide-the-ball with relevant facts and is designed to give parties a degree of certainty and prodictabitity, thereby eliminating "trial by ambush.

Disclosure Order for FA-16 was to be by Oct. 18, 2006, and FA-36 by Dec. 08, 2008, this gave the state ample time to disclose Exh 40 that was planned to be offered out of 154 numbered exhibits.

On Nov. 04, 2007, attorney Trueblodd notified by letter, that the state filed Nolle Prosequi on Nov. 01 because state's star witness was in jail on prostitution charges anddidn't make depo, so the judge would not grant the state a 4th cont... and,

> "the state could attempt to refile. Abut, they would have great difficulty in going forward because of the length of time that has elapsed and the fact they would receive an unfair advantage." (§ 2254 Exh. 5.

On July 28, 2008, during Akard's federal sentencing hearing, page 31, attorney Thiros stated that Tippecanoe Co. prosecutor,

> "they are waiting to see what happens here before they make a decision as to what they are going to do with that case down there."

Thus, showing the state used Nolle Prosiqui to an unfair advantage to wait out federal sentence in order to obtain the prior bad act child porn to enflame the jury. Akard wanted his trial on Nov. 01, 2007, and the state couldn't obtain #40 then.

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18. "The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice." Michelson v. United States, 355 U.S. 469 (1948).

(ii) The state gave 3 Discovery Disclosures of Nov. 03, 2006, state's supplemental of Jan. 22, 2007 and Jan. 06,2009, for a trail date of Jan. 13, 2009. No court can deny that there is any mention of this evidence (state's 40) in any 3 diclosures.[19] The prosecution shows further misconduct by telling the judge at renewed onjections Tr. p. 176, "we did disclose, it was child porn, but it was reaved to---in discovery." Defense attorney Trueblood said defense was never told it, "was going to an exhibit to be used in the course of the trial." (Tr. p. 176).

A prosecutor should "prosecute with earnestness and vigor" but is not to use "improper methods calculated to produce a wrongful conviction." see Berger v US, 295 U.S. 78 (1935).

(iii) The state violated Indiana trial Rule/FRCP Rule 5 - "Service. Every paper related to discovery to be served upon a party. If "not publsihed" then a notice of discovery items meant for trial but "not published" should be sent to attorney of record." Just like state's 40, but no notice given. Nor was it tendered on light green coversheet marked "NOT FOR PUBIC ACCESS" pursuant to Admin R. 9(G)(1). Noticeable at trial by effective counsel.

Fed. R. Civ. P. 16 - pre-trial conferences - violated when court records show a 12/19/2008 and 01/13/2009 confer. gave state twice to furnish opposing counsel with notice or exhibits.

Fed. R. Crim. P. 16 -16(a)(1)(E) - Document and Objects : (i) the item is material to preparing the defense; (ii) the [state] intends to use the item in its case-in-chief at trial; or

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19. "Absent the discovery violation, [defense counsel] would have likely crafted a different trial strategy that might have proven more effective... but 'plowing through' was not enough to cure the damage caused by the [state's] nondisclosure" United States v Mackin , 793 F.3d 703 (7th Cir Ct App 2015).

(iii) the item was obtained or belongs to the defendant.

To avoid the prejudicial results which emenate from surprise evidence, courts should aim to prevent surprise evidence by enforcing the discovery rules and ensuring that prosecutors comply with the requirement of diclosing documents and other materials which are material to the preparation to the defense.

(iv) No court has ruled on the merits of Evidence Rule 403 claim. Focus stayed on trial counsel and direct appeal's use of 404(b). Rule 403 states the court may exclude relevant evidence if its probative value is substaintialy outweighed by a danger of ONE or more of the following; (1) unfair prejudice; (2) confusing the issues; (3) misleading the jury ; (4) undue dely; (5) waistin time; or (6) needlessly presenting cumulative evidence.

(1) No comparable, less prejudicial, less enflamitory photos of Adult porn was reviewed, selected or offered to the jury as Det. Huff testified to (tr. p. 331).

(2) The trial was for Adult rape, deviate conduct, confinement and battery. It was NOT for possession of child porn or forcing someone to view it, both of which are chargable exteranous offenses inferred to the jury. Rule 403 was intended to apply to prejudice from deep tendency of human nature to punish, not cause defendant is guilty this time, but because he is a bad man and may as well be condemned now that he is caught. United States v Robinson, 544 F.2d 611 (2nd Cir Ct App 1976).

The prosecutor told the jury to convict Akard because of cp that was toddlers and preschoolers(tr. 521-24), said, "he has a reason and excuse of everything, because he's innocent(?), he gets off these charges. He gets to go do this again."(Tr. 520).

(3) State mislead the jury[20] in opening statement, 22 images, crossed 5 witnesses, 1 expert and mention child porn 8 times in closing (tr. 517-540). This evid.was - to weigh too much with jury to so overpursuade them as to prejudice on bad (character) general record and deny him a fair opp to defend against particular charg. Old Chief v US, 519 US 172(1997). A drop of ink in a glass of milk cannot be removed.

(v) State violated Rule 404(b) notice requirements and appellate counsel failed to raise this Fifth Amend Due Process claim. Note on Advisory Comm 1991 Amendment states, amendment to 404(b) notice requirement intended to reduce surprise and in line with other rules of evid, and courts have discretion to make evidence not disclosed inadmissible precedent to admissibility.

No attorney for defendant raised the above or Rule 37. Lafayette v State, 849 N.E. 2d. 736 (Ind Ct App 2009) was not fully developed as argument and Rule 10 S. Ct. is needed.

Rule 404 - opening the door violation because Akard never made any statemnts to anyone when the state was first in opening statement to say Akard's federal convict and child porn inamges. State abuses its discretion in admitting details of the prior convictioin and records show no comparable Adult porn was provided. Petitioner has shown no notice was given, no excuse for non-discl constitutes reversible error that did deprive a fair trial by: prejudices placed on the defendant with the following:

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20. A prosecutor may not make comment calculated to arise the passions or prejudice of the jury. Vierech v United States, 318 U.S. 236 (1943).

Prejudice

Prejudice- Without state pre-trial notice for state's exh 40 the defendfant was deprived of:

(a) pre-trial strategy, evid gathering and investigations;
(b) seek a prejudicial evid hearing before the trial;
(c) critical stage of Plea Agreement process;
(d) critical stage of Jury Selection and Voir Dire; and
(e) proceduraly blocked to argue issue in P-C R & 2254.

This prejudice supports BOTH Fifth Amend Due Process and Sixth Amend Effective counsel violations. Habeas relief was only denied on IAC, therefore this Court should consider both prejudices.

(a) The defense was deprived of a meaninfull pre-trial strategy without knowing the extent of accusation/evidence he would face at trial by non-diclosure of Stat'e 40 and suppression of adult porn.

The defense could not gather and investigate to counter the offer, rebuttle against accusations of dead child and was suprised.

(b) Defense was unable to seek an effective motion, objection or request to have a pre-trial hearing against this evidence and outside of a seated jury. Respectfully to this Court, st. Ehb. 40 bears no relevance to alleged sexual abuse of an adult woman. It was not even close to what A.A. described 4 times. trial judge admitted it did look like a deaad child (tr. 178) and it substantially outweighed the danger it placed on the jury when viewed with overwhelming evidece of factual acutual innocence.

(c) The critical stage of plea agreement process prejudiced the defendant in a manner the defendant couldn't recover from.

"had I known the evidence, I may not be here today because I would have plead guilty." Mackin at 703. The state's failure to relaease discovery material -"prevented [defense[from assisting the accused during a critiacl stage of the proceeding." see United States v Cronic, 466 U.S. 659 (1984).

Plea agreement offer (§2254 Exh 7) on 04-13-2007 tendered by the state offered to drop all 8 sex crimes but plead guilty to counts 9 & 10 for battery, a class C felony with advis. of 4 years. Akard was already serving a 14 year federal sentence making a 4 to 8 max state sentence concurrent to the Feds reasonable to any juror Akard would have taken because he'd face no addition jail time.

Akard told attorney the jury would hang him for child porn alone if it got into his trial. "It would be hard to make an argument with any degree of plausibility that the use of this [evidence] without prior production did not seriously prejudice the defendants in exercising their option to plean [not] guilty." see Lafler v Cooper 132 S.Ct. 1376, 398 (2012).

(d) Defense was unable to affect the critical stage of Jury selection process and voir dire when he didn't know what evidence the jury would have put in front on them.

Denial of a fair and impartial trial as gauranteed by the Sixth Amend is also a denial of due process demanded by Fifth and fourteenth Amned and renders the trial and conviction for the crimianl offense illegal and void and redress therefore is within ambit of habeas corpus. Baker v Hudspeth, 129 F.2d 779 (10 Cir Ct App. 1942).

Voir dire enables the court to elimenate extremes of partiality on both sides to assure parties that jurors before whom they try

a case will decied the case on the basis of the evidence placed before them and not otherwise. Swain v Alabama, 308 U.S. 2002 (1965). No voir dire against evid like State's 40 was done. When Passion Are Most Enflamed, Then Fairness Is Most In Jeopardy.

(e) Trial counsel failed to inform the trial judge of these due process violations, therefore, the Fifth Amend rights violations gave rise to defense counsel's Sixth Amend Effective Counsel rights violations. Likewise, direct appeal counsel was suppossed to site the 'record', that show's state's 40 was improperly admitted. Even a casual reading of the case, should have had due process 'leaped' from the pages to show the record on direct appeal. Akard should not be procedurally blocked from meritfull claims.

III. The Court of Appeals Erred By determining That The Petitioner's Ineffective Assistance of Counsel (trial & appellate) Sixth Amend Claims Did Not Meet The Standards Set Forth By This Court In Strickland and That The Petitioner'Failed To Prove Procedural Default Excuses On Claims.

The Petitioner has shown numerous Fifth Amend Due Process violations made by the state, but the petitoner has also shown Sixth Amend Effective Counsel violations for (cause) not acting against these state misconducts and rules viol, and the (prejudice) because counsel's deficient performance affected the entire case's history from 2006 till 2009, without counsel's error a different outcome beyond reasonable probability is shown.

To prevail on an ineffective assistance of counsel claim in the state courts, a petitioner must show that counsel's performance

was deficient and that the deficient performance prejudiced him. Strickland v Washington, 466 U.S. 668 at 674 (1984).

A. Trial Counsel's Deficient Performance

If not for counsel's unprofessional errors, the results of the state proceedings would have been different for:

(i) Trial Court's Order On Discovery

As shown in I. 1. A. (supra p. 8)- Petitioner has shown had counsel brought these to court's attention Orders were not followed, defense would have sustained a ruling on state's violations.

(ii) State's 3 Discovery Disclosured

Had counsel simply shown the trial judge these disclosures at the side bar for State's Exh 40 objection, the defense would have won the argunemt when state said, "we did disclose it in discovery." Which was false because it doen't appear in any 3.

Counsel failed to raise 11th hour disclosure to expert medical evidence in violation of court orders, and rules of court. see supra page 26 and prejudice is same at 29.

To establish a 6th Amend. viol., a defendant must demonstrate that he was deprived of the opp to present a witness who would have provided testiomony "both material and favorable to his defense." United States v Valenzuela-Bernal, 458 U.S. 858 (1982). see p 11-15.

(iii) No Pre_trial Investigation

Counsel's letter Nov 04, 2007, said the case was over and when refiled he only went to see Akard 1 time on Jan. 09, 2009. (1) Exculpatory expert medical witness and testimony shown to be material in Brady argument supra p. 11, no evidence the defense counsel contacted any medical witness or any relevant research

and failure to request testimony from Dr. Schwartz or EMTs contributed significantly to his ineffectiveness.

"Counsel's unprofessional errors so upset the balance between the defense and prosecution that the trial was rendered unfair and the verdict suspect. Lockhart vFretwell, 506 U.S. 364 (1993) see Rompilla v Beard, 545 U.S. 374 (2005) failure to investigat wit.

(2) Counsel said he heard it for the first time like you did, in court, when talking about the 911 recording, thus admitting he never pre-trial reviewed such critical evidence.

"As a general rule an attorney must investigat a case in order to provide minimally compenent representation" and cannot be allowed to "defend his omission simply by raising the shield of trial strategy and tactics." Crisp v Duckworth, 743 f.2d 580, 583-84 (7th cir. 1984).

(3) Counsel failed to view the state's entire folder of evidence in any pre-trial conference to find out about state's Exhibit 40. see Brady p. 20, 403 argumnet p.27 and prejudice that this palced on the defendant's entire stages of the case, p. 29-31. supra

(4) Counsel never gained favorable photos of accuser's limited wounds. Counsel had "obligation to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to fact relevant to the merits of the case. Bobby v Van Hook, 558 U.S. 4 (2009). Wound photos were material see p.21-22. supra

(5) Counsel failed to go 1 mile from courthouse to gain adult stockings, the same that the state told the jury was childrens. Counsel failed to gain 2 miles from courthouse FOR bathroom inside view of the window to 'show' jury she had egress to the outside. Counsel failed to provide "beyond A reasonable Doubt" jury instr.

(iv) Sentencing Hearing Errors

Counsel failed to act on client's favor during the sentencing hearing as the judge even said Akard was in shock, from the way the trial was conducted, 20 over-rulings, surprise evidence and counsel willfill neglect towards the case. Issue follow in IV.

B. Appellate Counsel's Deficient Performance

The Due process clause of the 14th Amend guarantees the right to effective assistance of counsel on a first appeal as of right in a state court. Evitts v Lucey, 469 U.S. 387 (1985).

Petitioner alleged Ineffective Assis. of Appellate counsel in his briefs stating Broden (1) failed to present issue well, (2) waiver of isuues and Nelson (3) denial of access to appeal. Representation was mechanical, prefunctory and ineffective. The defiecient peformance on appeal prejudiced this petitoner by procedurally blocking State's 40 issue, sentencing issues and effected how the effective trial counsel's merit were ruled.

C. Procedurally Blocked From IAC

The Supreme Court "announced a narrow exception to Coleman's general rule." see Davila v Davis, 137 S. Ct. 2058 (1991). This exception treats IAC of state P-C counsel as cause to overcome procedural default of ineff assist of trial counsel claims only "where the state effectively requires a defendant to bring that claim in state post-conviction proceedings rather than on direct appeal. idat 2062-63. (Indiana doesn't allow IAC on direct appeal). Therefore, this Court's review is need on significant claims that were raised as IAC on trial and direct appeal counsel.

Direct Appeal counsel raise three (3) issues not presented well. (1) Whether the Trial Court Erred in Admitting Pornographic Materials. Counsel only used 404(b) extrensic acts inadmissible in sex crime cases on consent. Prejudice is shown by counsel not attacking the improper admittance on State's Ehx 40 by Fifth Amend due process violations shown supra p. 23. If objection to #40 is won, then there is no State's Exh #154 or expert or enflamed jury.

(2) Whether Trial Counsel's Performance Consituted Fundamental Error. Prejudice is shown by saying Trueblood opened-the-door to child porn evidence, but is was the state at Tr. p. 14 opening before Trueblood addressed the jury or before any statement of Akard.

(3) Whether the Sentence Imposed By The Trial Court is Inappropriate. Counsel only said "inlight of nature of offenses, character of the offender only having 2 misdemeanor traffic viol priors and not aggravated or consecutive sentence was appropriate. Prejudice is shown in the following sentencing arguments, IV.

The state's failure to disclose information constitutes cause to excuse Akard's procedural default because State's concealment is an "objective factor external to the defense" that prejudiced Akard's trial. see Bagley, 473 at 682.

Akard has climed actual innocence throughout arrest till today. The suppressed medical evidence proves "'actual innocence' means factual innicence, not mere legal insufficiency." Bousley v United States, 523 U.S. 614 (1998). Claimed for preced. def. excuse.

Prosecutorial misconduct of due process violations and deficient performance by defense counsel is a misscarriage of justice and excuses "cause" for procedural default. Murry v carrier, 477 U.S. 478 (1985).

IV. The Court of Appeals Erred By Not Considering The Petitioner's Sentencing Claims of Double Jeopardy, Not Having a Jury's Instruction on 'Beyond A Reasonable Doubt', Multiplicious Counts Without Factual Seperation Of Charges, and Unconstitutional or Unlawful Enhancements.

Petitioner was deprived of his Sixth Amend right to counsel when Trueblood remained silent for sentencing aruments, and Eighth Amend rights violated when the Judge felt contrained to accept all state's sentencing recomendantions without acknowledging the defense had given him a sentence recomendation and double jeopardy claim.

Appellate counsel's faifure to raise straightforward and obvious sentencing claims constitutes ineffective performance. see e.g., Murray v Carrier at 488.

The state used compound offese when criminal confement counts are part of rape counts, and elements in rape of "threat" means to confine by court's inst. no. 14.203 and was enhanced to 40 years. Therfore, rape is divisible offense of confinement counts for another 12 years for 52 years. When factual allegations are each elements of the same offense, the defendant should be charged with only one count of that offense. This hinders abitity to plead double-jeop or prevent the jury from seperately deciding guilt or innocence with respect to each particular offense.

When conviction of a greater crime cannot be had without conviction of the lesser crime, the Double-Jeopardy clause bars prosecution for the lesser crime. Harris v Oklahoma, 433 U.S. 682 (1977). Trial court err when Trueblood did argue double-jeopardy for counts VII & VIII (Tr. 554-556, 569). However, the judge felt "constrained" to give the state everything they asked for(Tr. 570).

Prosecutorial misconduct is again shown when state leaves out the 'Beyond A Reasonable Doubt' final jury instruction. Defense counsel was ineffective for not having his own prepared, as admitted on record (Tr.410, 512). Jury shows doubt by accepting lesser-included charges, when/where offered. State prisoner's claim - raised again before Supreme Court on Certiorari to review state court's denial of post-Conviction relief - that trial court's [lack of] instruction to jury defining "reasonable doubt" violated requirements of due process clause of Fourteenth Amend., is properly presented for review by Supreme Court. Victor v Nebraska,551 US 1(1994).

Charging a single offense in different counts are multiplicity counts. Blockburger v United States, 284 U.S. 299 (1932). Counsel failed to move for severence of charges or factual seperation cause facts in counts were Not based on different time periods, locations or some other differentiating factor.

The state lured the trial court into placing enhancement onto counts that the jury did not specifically enhance. Counts for Battery 9 & 10 were selected up from lesser-included misdemeanors to C felonies, however, the state placed "serious bodily injury" onto count VI for 40 years enhancement. Provided to this Court, accusser did not have sbi for deviate conduct shown supra p. 11-15 with evidence presented at trial and exculpatory medical evidence hidden in 11th hour disclosure that the jury did Not see. Count I-III enhanced even though jury found no deadly weapon. to count I, the state used "Threat" use of deadly weapon for 40 years in order to gain higher sentence than the Battery counts would have. This Courts review is needed to protect all citizen's rights.

V. The court of Appeals Erred in Affirming The Denial Of Petitioner's § 2254 Motion Where the District Court and State Courts All Failed to Conduct An evidetiary Hearing To Resolve The Factual Disputes, Conflicts With Issues of Law and Denial Of All Discovery Requests That's Needed To Support The Petitioner's Claims.

Petitioner has received NO hearings, let alone a full and fair evidentiary hearing in the state or federal courts were facts are in dispute. see Wood v Milyard, 566 U.S. 463 (2012). Trial counsel failed to develope the court rules, Order on Discovery and effective objects' facts needed against state's Exh 40, sentencing errors or gain expert medical evidence. Appellate counsel failed to develope the trial court record's facts needed for effective appeal claims. see Banks v Dretke, 540 U.S. 668 (2004).

The evidence presented at trial with evidence suppressed by the state, shown here, is insufficient to sustain a conviction, rather, it proves medical factual actual innocence.

Petitioner's trial was plauged by fatal flaws. His representation did not rise to level of minimal standars required of counsel by U.S. Constitution and Indiana courts. The fundamental deprivation of petitioner's const. rights to effective counsel and due process rights renders the conviction and sentence viodable. The Petitioner has always claimed he did not do these crimes and continues to search for that which he has sought for more than (10) ten years; a chance for a fair trial where a jury will be informed of all evidence relevant to a determination of criminal culpabitity, a jury not enflamed by extrensic evidence and one that's given an

instruction on 'Beyond A Reasonable Doubt' where defendant has presumption of innocence and burden of proof is not shifted onto him or each 'element' of charges and enhancements.

Post-Conviction court denied Petitioner's Discovery Requests as "MOOT". Maybe for the P-C R judge it seemed moot, but petitioner still had Ind cout of Appeal and §2254 briefs that needed the discovery to support due process and effective counsel violations. Discovery is still needed.

Pro-se Petitioner has proven he was deprived of a meaningful opportunity to present a Complete defense. Substantive and Procedural requirements of Supreme Court Rule 10 are met. Conflict with Post-Conviction court, state court of appeals and federal courts decisions needs this Court's supervisory review for a uniform interpretation of federal law and ensure no other citizen is prejudiced by accuser's false accusations, prosecutor's misconduct and ineffective counsel.

The Question before this Court; did lower courts err by not finding Fifth Amendment Due Process right violations, by the state, that gave rise to Sixth Amendment Effective Counsel rights violations by trial and appellate counsel, lead to an unfair trial needing a remand, reversial, acquittal and a new trial?

CONCLUSION

Petitioner, Jeffrey E. Akard, has been deprived of basic fundamental rights guaranteed by the Fifth, Sixth , Eighth and Fourteenth Amendments to the United States Constitution and seeks relief in this Court to restore those rights and Grant Writ.
Respectfully submitted on this 08 day of April, 2019

Pro-se