

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN BOYKINS — PETITIONER
(Your Name)

vs.

ROBERT NAPEL, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS - 6TH CIR.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRIAN BOYKINS #187252
(Your Name)

9625 PIERCE RD
(Address)

FREELAND, MI. 48623
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. WHERE A FEDERAL COURT MUST GRANT AN EVIDENTIARY HEARING AND DENIES, IS THAT IN OPPOSITE OF TOWNSEND V. SAIN, 372 U.S. 293 (1963)?
2. IN A SITOW CAUSE HEARING, TRIAL COURT DEEMED IT NECESSARY FOR PETITIONER TO HAVE INVESTIGATOR IN ORDER TO SAFELY PROCEED TO TRIAL, WAS TRIAL COUNSEL INEFFECTIVE FOR FAILURE TO INVESTIGATE?
3. PETITIONER OFFERS CLEAR AND CONVINCING PROOF TO REBUT DEGENSE COUNSEL REPRESENTATION TO THE COURT, DOES THAT CONSTITUTE FRAUD UPON THE COURT?
4. UNDER 28 U.S.C § 2254 (e) (1), PETITIONER OFFERS CLEAR AND CONVINCING PROOF TO REBUTE CORRECTNESS OF TRIAL COURT RECORD, IF FEDERAL COURT ADOPTS STATE ARGUMENT WITH NO OTHER OF PROOF, WAS THAT CLEAR ERROR?

LIST OF PARTIES

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

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 10, 2018.

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

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: SEPT. 20, 2018, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

PETITIONER RELIES UPON U.S. CONSTITUTIONAL AMENDMENT VI (EFFECTIVE ASSISTANCE OF COUNSEL) AND XIV (EQUAL PROTECTIONS OF THE LAW) THEREFORE ATTACHING THE RIGHT TO DUE PROCESS.

28 U.S.C. 2254 (d) (1) WHERE FEDERAL COURT APPLIED UNREASONABLE APPLICATIONS OF CLEARLY ESTABLISHED FEDERAL LAW AS DETERMINE BY SUPREME COURT.

28 U.S.C. (e) (1) WHERE PETITIONER HAS REBUTTED THE TRIAL COURT CORRECTNESS OF THE RECORD EVIDENCE ADDUCED AT TRIAL. THE ESTABLISH RECORD IS INSUFFICIENT TO SUPPORT SUCH DETERMINATION.

STATEMENT OF THE CASE

PETITIONER WAS APPOINTED ATTORNEY JAMES PARKER, 10-30-07, DAY OF PRELIMINARY EXAMINATION HEARING WHERE PETITIONER ADVISED COUNSEL OF HIS ACTUAL INNOCENCE.

PETITIONER ADVISED COUNSEL AFTER BEING BOUND OVER FOR TRIAL THE NEEDS OF AN "COURT APPOINTED INVESTIGATOR". DURING "SHOW CAUSE" HEARING ON 11-26-07, TRIAL JUDGE DIANNE M. HATHAWAY DETERMINED PETITIONER COULD NOT SAFELY PROCEED TO TRIAL WITHOUT AN INVESTIGATOR AND IVERSON AGENCY WAS APPOINTED. APPROVED FOR ENTRY AND SIGNED BY DEFENSE (ATTY. JAMES PARKER) AND ASST. PROSECUTOR (ATTY. KENYETTA STANFORD).

[SEE APPENDIX **I**, 11-26-07 ORDER APPOINTING INVESTIGATOR-IVERSON AGENCY.]

PRETRIAL CONFERENCE, 12-07-07

PETITIONER PETITIONED TRIAL COURT FOR SUBSTITUTION OF COUNSEL, ATTORNEY PARKER REPRESENTED BEFORE THE COURT:

"YOUR HONOR, I OBTAINED SIGNED ORDER FROM THIS COURT FOR INVESTIGATOR, I RECEIVED LETTER FROM BOYKINS AS TO WHAT NEEDS INVESTIGATED AND FAXED INFORMATION TO DETECTIVE DE IVERSON, HE IS INVESTIGATING CASE."

ATTORNEY PARKER WITHDRAWN FROM CASE ON
12-07-07. THE COURT RECORD IS CLEAR WITH
BOYKINS INFORMING COURT:

- 1.) HAVE NOT MET ANY INVESTIGATOR.
- 2.) DO I KEEP SAME INVESTIGATOR?
- 3.) THERE'S THINGS NEEDED SUBPOENA
AND INVESTIGATED.
- 4.) I REQUESTED POLY-GRAPH TEST.

[SEE APPENDIX # K, RULE 5 MATERIAL #3, 12-07-07]
[PRETRIAL TRANSCRIPT, P. 5 AND 6]

12-10-07 APPOINTMENT, ATTY. CRAIG FREEMAN

ATTORNEY FREEMAN WAS NEW TRIAL ATTORNEY
WHO INFORMED ME ABOUT 2 WEEKS BEFORE TRIAL,
"WE'LL HAVE EVERYTHING FOR TRIAL AND THE
PROSECUTION WILL NOT ALLOW POLY-GRAPH TEST."

TRIAL 02-14-08

PETITIONER HAD ALREADY GIVEN ATTORNEY
PARKER (FIRST ATTORNEY), INFORMATION LAYING THE
FOUNDATION FOR THE QUESTION(S) DURING CROSS
EXAMINATION DURING 10-30-07 PRELIMINARY EXAM,
FOR TRIAL PREPARATION AND SUCCESSFUL INNOCENCE
DEFENSE.

ATTORNEY CRAIG FREEMAN, (SECOND ATTORNEY).
WHO WAS ACTUAL TRIAL ATTORNEY, ABANDON
PETITIONER'S ONLY VIABLE DEFENSE OF "ACTUAL

INNOCENCE" WITHOUT PETITIONERS KNOWLEDGE OR
CONSENT WITHOUT EVEN FOLLOWING UP WITH COURT
APPOINTED INVESTIGATOR, "IVERSON AGENCY". THIS WAS
DONE KNOWING PETITIONER HAD ALREADY ALERTED
(BY LETTER) THE PROSECUTOR, JUDGE AND ATTORNEY(S),
THAT NO ROBBERY/KIDNAPPING EVER HAPPENED AND
REQUESTING POLY-GRAPH TEST.

[SEE APPENDIX # L, 01-18-07 (ACTUALLY WAS 1-18-08)
AND LETTER 11-30-07, TO JUDGE DIANIE HATHAWAY (PRIOR
TO 02-14-08 TRIAL), BOTH CONTAINED WITHIN TRIAL COURT
FILE]

[SEE APPENDIX # K PRETRIAL TRANSCRIPT P. 4.]

POST CONVICTION INVESTIGATION

APPEAL COUNSEL WOULD NOT INVESTIGATE OR
RAISE ISSUE OF "FAILURE TO INVESTIGATE" BECAUSE THE
ORDER OF APPOINTMENT FOR INVESTIGATOR BELIES THE
PETITIONER'S CLAIM - NO INVESTIGATION ACTUALLY WAS DONE.

BY WAY OF FREEDOM OF INFORMATION REQUEST
BY PETITIONER'S SISTER, LATRESE LINDSEY, RECEIVED
RESPONSE FROM DETECTIVE J. GOODRUM, DATED 03-15-13
INDICATING: "PER YOUR F.O.I.A REQUEST FOR DOCUMENTS
RELATED TO THE MATTER OF PEOPLE VS.
BRIAN BOYKINS, OUR OFFICE CANNOT
LOCATE A FILE".

[SEE APPENDIX # M F.O.I.A RESPONSE, 03-15-13]
[FROM DET. J. GOODRUM - IVERSON AGENCY.]

PETITIONER'S SISTER THEN RECEIVED "CASE TRANSACTION SUMMARY" FROM WAYNE COUNTY THIRD CIRCUIT COURT. FINANCIAL CHARGES ASSOCIATED WITH CASE NO. 07-021072-01.

[SEE APPENDIX # IV CASE TRANSACTION SUMMARY]

PETITIONER CONTACTED TRIAL COURT DEPUTY COURT ADMINISTRATOR, RECEIVED RESPONSE FROM, ALISA M. SHANNON DATED, 04-24-15 INDICATING:

"UPON CAREFUL REVIEW OF YOUR FILE
I FIND NO SUCH VOUCHER OR BILL"

[SEE APPENDIX # 0 THIRD CIRCUIT DEPUTY COURT
ADMINISTRATOR, ALISA M. SHANNON, 04-24-15]

THESE DOCUMENTS REFUTES ATTORNEY PARKER'S OWN ADMISSION OF 12-07-07 (PRETRIAL CONFERENCE) CONCERNING MAKING CONTACT WITH INVESTIGATOR AND INVESTIGATION BEING DONE, WITHOUT FILING "PAYMENT VOUCHER" WITH COURT, IVERSON AGENCY WOULD NOT HAVE RECEIVED PAYMENT. ISSUE CONCERNING FUNDS APPROVED AND PAID BY WAYNE COUNTY REMAINS SUSPECT BECAUSE: a.) TRIAL COURT REGISTER OF ACTION DO NOT LIST "ENTRY" FOR MOTION SUBMITTED, b.) DO NOT SHOW ENTRY REGARDING MOTION APPROVED, c.) THERE'S NO ENTRY SHOWING AN 11-26-07 "SHOW CAUSE" HEARING REGARDING APPROVAL OF FUNDS.

[SEE APPENDIX # J ORDER OF APPOINTMENT]

[SEE ALSO APPENDIX # P WAYNE COUNTY REGISTER
OF ACTIONS]

MCR 6500/SUCCESSIVE 6500

FIRST 6500 MOTION, TRIAL COURT RULED
THAT EVIDENCE PETITIONER COMPLAINS OF (HE
COULD HAVE HAD IF INVESTIGATION WAS DONE) WOULD
NOT HAVE PROVIDED ANY EXCULPATORY INSIGHT.

[SEE APPENDIX # G RULE 5 MATERIAL #8, 11-10-11 OPINION]

TRIAL COURT RELIES UPON AN "AFFIDAVIT" THAT
THE PETITIONER HAD PROVIDED AS EVIDENCE TO MAKE
AN CONCLUSION, THAT TRIAL COUNSEL DID IN FACT IN-
VESTIGATE AND VERY WELL THOUGHT EVIDENCE WAS
IRRELEVANT. (WHILE TRIAL JUDGE DEEMED PETITIONER
WAS UNABLE TO HAVE FAIR TRIAL WITHOUT THE AIDE
OF INVESTIGATOR TO CONDUCT PRETRIAL INVESTIGATION)

[SEE APPENDIX # Q AFFIDAVIT LATRESE LINDSEY.]

SECOND (SUCCESSIVE) MOTION, JUDGE WAS
PRESENTED EVIDENCE INCLUDING CASE TRANSACTION
SUMMARY AND LETTER FROM DETECTIVE J. GOODRUM-
INERSON AGENCY IN SUPPORT OF FAILURE TO INVESTIGATE.
ALSO PRESENTED WAS A DETROIT POLICE INCIDENT REPORT
IN-SUPPORT OF BRADY VIOLATION. TRIAL COURT ONLY RULED
UPON DETROIT POLICE INCIDENT REPORT THAT INDICATED:

"CRIME REPORTED 9-14-07 AT 12:00 PM"

"CRIME OCCURRED 9-14-07 AT 3:30 PM"

[SEE APPENDIX # E 05-20-15 OPINION AND ORDER]

AND TRIAL COURT PASSED UPON ISSUE AT BAR. FAILURE
TO USE "INERSON AGENCY" TO CONDUCT INVESTIGATION.

FEDERAL HABEAS FILING(S)

FEDERAL COURTS ALSO PASSED UPON THE ISSUE AT BAR, "FAILURE TO INVESTIGATE" BY RULING INCONCLUSIVE (WHETHER OR NOT TRIAL COUNSEL FAILED TO USE COURT APPOINTED INVESTIGATOR - IVERSON AGENCY) THAT VIOLATES PETITIONER'S DUE PROCESS (RIGHT TO A FAIR TRIAL). THE FAILURE TO INVESTIGATE WAS SUPPORTED BY EVIDENCE, SUCH AS:

a.) LETTER FROM DETECTIVE J. CUDDRUM, 03-15-13, TO LATRESE LINDSEY. [SEE APPENDIX # M]

b.) THIRD CIRCUIT DEPUTY COURT ADMINISTRATOR, LETTER DATED, 04-24-15. [SEE APPENDIX # D]

BOTH EXHIBITS INDICATES THAT, IVERSON AGENCY HAS NO RECORDS SUPPORTING AN "ACTUAL INVESTIGATION" WAS DONE OR THAT ANY PAYMENT HAVE BEEN ISSUED BY WAYNE COUNTY.

FEDERAL COURT OF APPEALS AND DISTRICT COURT OPINIONS ARE FOCUSED UPON REASONS WHY ATTORNEY DID NOT RENDER DEICIENT PERFORMANCE, SUCH AS REASON(S) WHY SOUGHT AFTER EVIDENCE AND WITNESSES WOULD HAVE NOT MADE ANY DIFFERENCE AT TRIAL. IF WITNESSES OR EVIDENCE ACTUALLY EXISTED. BUT NOT WHETHER OR NOT COURT APPOINTED INVESTIGATOR ACTUALLY CARRIED OUT THE TRIAL COURT ORDER.

REASONS FOR GRANTING THE PETITION

IN PETITIONER BOYKINS CASE, THE TRIAL COURT ABSOLUTELY AGREED THAT PETITIONER COULD NOT PROCEED SAFELY TO TRIAL WITHOUT AN INVESTIGATOR FOR DEFENSE. TRIAL COURT SIGNED AN ORDER APPOINTING "IVERSON AGENCY" ON 11-26-07 [SEE ORDER OF APPOINTMENT, APPENDIX #J]

PETITIONER'S FIRST APPOINTED ATTORNEY, JAMES PARKER, APPOINTED 10-30-07, AFTER THE PRELIMINARY EXAM WAS GIVEN FACTS OF THE CASE BY PETITIONER AS TO TRUTH BEHIND THE MEETING OF HIM AND A MAN KNOWN AS "ROB" (WHO LATER FOUND OUT REAL NAME WAS "NATHAN BROWN".)

THAT SAME INFORMATION GIVEN TO DEFENSE COUNSEL BY PETITIONER, WAS THE SAME INFORMATION DISCLOSED TO THE COURTS IN ORDER TO OBTAIN THE ORDER OF APPOINTMENT, 11-26-07, DURING "SHOW CAUSE" HEARING.

DURING 12-07-07 PRETRIAL CONFERENCE, THE COURT HEARD PETITIONER'S "PRO SE" MOTION FOR SUBSTITUTION OF COUNSEL, WITHIN ATTY. PARKER GAVE IN-COURT REPRESENTATION AS HIS DEFENSE REGARDING HIS EFFORTS THUS FAR IN THE CASE (10-30-07 TO 12-07-07).

ATTY PARKER STATES: "HE OBTAINED AN SIGNED ORDER FROM THE COURT FOR PRIVATE INVESTIGATOR. HE GOT HANDWRITTEN LETTER FROM BOYKINS AS TO WHAT NEEDS INVESTIGATED AND FAXED

INFORMATION TO DETECTIVE JOE IVERSON,
HE IS INVESTIGATING CASE".

[SEE APPENDIX #K 12-07-07 PRETRIAL P.5, L.22-25, P.6 LI-11]

ATTY. PARKER RESIGNED AT CONCLUSION OF HEARING.
~~NEW~~ COUNSEL WAS APPOINTED ON 12-10-07.

[SEE APPENDIX #P TRIAL COURT REGISTER OF ACTION]
ENTRIES 12-07-07 AND 12-10-07]

THE FEDERAL COURT RELIES UPON THE TRIAL COURT
RECORD, RULE 5 MATERIAL #3 AS APPENDIX #K IN SUPPORT
OF DENIAL [SEE APPENDIX #A, 07-10-18 U.S. COURT OF APPEALS
OPINION P.6], THE IN COURT REPRESENTATION BY ATTY.
PARKER REMAINS "SUSPECT" BECAUSE OF THE FOLLOWING
REASON(S).

THE TRIAL COURT REGISTER OF ACTION DO NOT
LIST AN ENTRY FOR MOTION SUBMITTED FOR INVESTIGATOR,
ENTRY FOR MOTION APPROVED OR ENTRY FOR "SHOW CAUSE"
HEARING 11-26-07 WHEN ORDER WAS SIGNED.

THE INVESTIGATOR WOULD HAVE BEEN REQUIRED
TO SUBMIT "PAYMENT VOUCHER" BEFORE THE COURT WOULD
BE ALLOWED TO ISSUE PAYMENT.

PETITIONER HAS SUBMITTED PROOF THAT
BELIEVES ATTY. PARKER'S IN-COURT REPRESENTATION,
SUCH AS: a) LETTER FROM DETECTIVE J. GOODRUM -
IVERSON AGENCY, STATING: "NO FILE
CAN BE LOCATED IN PEOPLE V. BRIAN
BOYKINS.

[SEE APPENDIX #M LETTER TO LATRESE LINDSEY]
FROM DET. J. GOODRUM]

b.) LETTER FROM TRIAL COURT DEPUTY COURT ADMINISTRATOR DATED, 04-24-15, STATING: "UPON CAREFUL REVIEW OF YOUR FILE, I FIND NO SUCH VOUCHER OR BILL".

[SEE APPENDIX #D DEPUTY COURT ADMINISTRATOR]

c.) CASE TRANSACTION SUMMARY, A LIST OF ALL FINANCIAL COST ASSOCIATED WITH TRIAL COURT CASE #07-021072-01 (NOTHING SHOWING COST FOR INVESTIGATOR).

IF THE IN-COURT REPRESENTATION BY ATTY. PARKER WAS NOT TRUTHFUL AND CORRECT (SEE APPENDIX #K) AND HIS ACTIONS MIS-LEAD THE TRIBUNAL, DO THAT AMOUNT TO FRAUD UPON THE COURT?

THE TRIAL COURT HAS ONLY ISSUED WRITTEN DETAILED OPINION ON THE MERITS REGARDING FAILURE TO INVESTIGATE, WAS PETITIONER'S FIRST 6500 MOTION. [SEE APPENDIX #G, 11-0-11 OPINION AND ORDER] TRIAL COURT OPINION'S REGARDING FAILURE TO USE "IVERSON AGENCY" TO CONDUCT PRETRIAL INVESTIGATION WAS INCONCLUSIVE. INSTEAD TRIAL COURT'S OPINION; "GIVEN THE OFFER OF PROOF CONTAINED HEREIN, THE COURT FINDS IT WOULD NOT HAVE PROVIDED ANY EXCULPATORY INSIGHT AND IS A COLLATERAL MATTER AT BEST, OF WHICH THE ALLEGED FAILURE OF THE DEFENSE ATTORNEY TO ADDRESS, SIMPLY DOES NOT AMOUNT TO INEFFECTIVE ASSISTANCE OF COUNSEL (APPENDIX #G AT P.6).

PETITIONER'S SECOND SUCCESSIVE "6500" MOTION, PRESENTED TWO ISSUES. FAILURE TO INVESTIGATE

BY USING COURT APPOINTED INVESTIGATOR (IVERSON AGENCY - APPOINTED 11-26-07) AND WITH HOLDING EXCULPATORY EVIDENCE (DETROIT POLICE INCIDENT REPORT).

PETITIONER PRESENTED LETTER FROM IVERSON AGENCY, DATED 3-15-13 INDICATING: "PER YOUR FOIA REQUEST FOR DOCUMENTS RELATED TO THE MATTER OF PEOPLE V. BRIAN BOYKINS, OUR OFFICE CANNOT LOCATE A FILE", PETITIONER ALSO ENCLOSED, "CASE TRANSACTION SUMMARY".

THESE TWO DOCUMENTS PROVE THAT IVERSON AGENCY COULD NOT HAVE INVESTIGATED, AFTER TRIAL COURT'S "GOOD MOTION" WAS SUBMITTED, PETITIONER THEN RECEIVED LETTER FROM DEPUTY COURT ADMINISTRATOR. THE TRIAL COURT PASSED UPON ISSUE AND ONLY ISSUED WRITTEN OPINION ON WITHHOLDING EVIDENCE.
[SEE APPENDIX E 05-20-15 OPINION AND ORDER]

THE FEDERAL COURTS OPINIONS RESULTED IN DECISION(S) THAT WAS CONTRARY TO OR INVOLVE AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW. 28 U.S.C. 2254(d)(1), CITING WILSON V. SELLERS, 138 S.Ct. 1185, 1192 (2018) HELD: "WHEN THE LAST STATE COURT TO DECIDE A PRISONER'S FEDERAL CLAIM, DOES NOT EXPLAIN ITS DECISION ON THE MERITS IN A REASONED OPINION, THE HABEAS COURT SHOULD LOOK THROUGH THE UNEXPLAINED DECISION TO THE LAST RELATED STATE COURT DECISION THAT DOES PROVIDE A RELEVANT RATIONALE AND SHOULD PRESUME THAT THE UNEXPLAINED DECISION ADOPTED THE SAME REASON."

THIS MAKES THE STATE COURT DECISION, RATHER THAN THE PETITIONER'S INDEPENDENT COMPLAINT, A PRIMARY FOCUS OF FEDERAL COURT REVIEW.

U.S. SUPREME COURT PRECEDENT IS WELL SETTLED, IN BROWN V. ALLEN, 344 U.S. 443 (1953), HELD ONLY THAT A FEDERAL HABEAS COURT MUST DETERMINE WHETHER RELEVANT STATE-COURT ADJUDICATION RESULTED IN A "SATISFACTORY CONCLUSION (IF EVERYONE AGENCY CONDUCTED AN INVESTIGATION, PAYMENT VOUCHER WOULD HAVE BEEN SUBMITTED AND PAYMENT ISSUED)".

WILLIAMS V. TAYLOR, 529 U.S. 369 (2000), CITES STRICKLAND, 466 U.S. 668 (1984), "COUNSEL WERE NOT EFFECTIVE BECAUSE THEY FAILED BOTH TO INVESTIGATE AND TO PRESENT SUBSTANTIAL MITIGATING EVIDENCE."

THE DISTRICT AND U.S. COURT OF APPEALS ERRED BY EXCUSING COUNSEL'S FAILURE TO INVESTIGATE ON THE GROUNDS OF "TRIAL STRATEGY", WHEN STRATEGIC DECISIONS⁸ MUST BE BASED ON FULL INFORMATION, STRICKLAND.

[SEE APPENDIX "B" U.S. DISTRICT OPINION, DOC #30, P. 10-12]
[SEE APPENDIX "A" U.S. COURT OF APPEALS, P. 5-6]

WIGGINS V. SMITH, 539 U.S. 570, CITING STRICKLAND, "STRATEGIC CHOICES MADE AFTER LESS THAN COMPLETE INVESTIGATION ARE REASONABLE ONLY TO THE EXTENT THAT 'REASONABLE PROFESSIONAL JUDGMENTS SUPPORT THE LIMITATIONS ON INVESTIGATION.'" Id., AT 690-691.

A DECISION NOT TO INVESTIGATE THUS MUST BE DIRECTLY ASSESSED FOR REASONABLENESS IN ALL THE CIRCUMSTANCES. Id at 691

SO WHEN AN DEFENDANT'S FIRST ATTORNEY, WAS SUCCESSFUL IN "SHOW CAUSE" HEARING IN ORDER TO SECURE FUNDS FOR INVESTIGATOR AND, THE TRIAL COURT AGREED THAT DEFENDANT CANNOT SAFELY PROCEED TO TRIAL WITHOUT AN INVESTIGATOR BY, RELYING UPON THE SAME INFORMATION "BOYKINS" GAVE TO HIS ATTORNEY. IT WAS MANDATORY THAT HIS SECOND ATTORNEY, CONDUCT PRETRIAL INVESTIGATION BY "EVERSON AGENCY" (UNDER THE DUE PROCESS AND RIGHT TO A FAIR TRIAL GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENT.)

ATTORNEY CRAIG FREEMAN WAS NOT OPERATING UNDER THE SIXTH AMENDMENT. ATTY. FREEMAN WAS WELL AWARE THAT HIS CLIENT HAS MAINTAINED HIS INNOCENCE, ALERTED THE PROSECUTION, ATTORNEY(S) PAROLE AGENT AND THE COURT THE REAL FACTS ABOUT HOW HE CAME TO MEET HIS MAN (KNOWN AS "ROB") WHO LATER TURNED OUT IN FACT, TO BE NATHAN BROWN. PETITIONER ASK ON RECORD DURING 12-07-07, PRETRIAL CONFERENCE, ASK THE COURT: "WHAT ABOUT HIS INVESTIGATOR, "HE NEEDS THINGS SUBPOENA" AND "HE ASK ABOUT POLY-GRAPH TEST". [SEE APPENDIX #2 P. 6] TRIAL COUNSEL HAD AN "CONSTITUTIONAL DUTY" TO INVESTIGATE, SPECIALLY AFTER TRIAL COURT HAD ALREADY APPOINTED "EVERSON AGENCY".

NO COMPETENT ATTORNEY WOULD ABANDON CLIENT'S INNOCENCE (WITHOUT FIRST USING THE INVESTIGATOR

THAT HIS CLIENT PROVIDED THE INFORMATION IN ORDER FOR FUNDS TO BE GRANTED) WITHOUT FINDING WHAT THE INVESTIGATION PRODUCED FOR EXCHANGE OF AN MISIDENTIFICATION THEORY (WHEN HIS CLIENT HAS MAINTAINED NO ROBBERY / KIDNAPPING EVER HAPPEN),

COURTS CANNOT LABEL DEFICIENT PERFORMANCE AS TRIAL STRATEGY. US COURT OF APPEALS ACKNOWLEDGE THAT TRIAL COURT APPROVED FUNDS FOR INVESTIGATOR [SEE APPENDIX "A" P. 6]. BY COURT ORDER, PETITIONER HAD AN RIGHT (UNDER SIXTH AND FOURTEENTH AMENDMENT) TO THE RESULTS OF THIS INVESTIGATION IN ORDER TO PRESENT THE ONLY VIABLE DEFENSE FOR PETITIONER. OUTSIDE THE IN-COURT REPRESENTATION OF 12-07-07, THE RECORD REMAINS SILENT ABOUT INVESTIGATION.

THE ALLEGED CRIME WAS SUPPOSE TO HAVE HAPPEN 9-14-07. VICTIM DID NOT GIVE POLICE ANY LICENSE PLATE NUMBER. ALL HE KNEW WAS AN OLDER MODEL, IN ITS 90'S, WHITE 4-DOOR. (AN 2006 YEAR WOULD BE AN BRAND NEW VEHICLE BUT THE POLICE OFFICER SAYS IT MATCHED SAME DESCRIPTION. RAN PLATE THROUGH LEIN, IT CAME BACK AS AN 2006 WITH A PONTIAC, IT WAS REGISTERED TO SOMEONE OTHER THAN PETITIONER.

[THIS OWNER TESTIMONY WAS MANIPULATORY FOR DEFENSE]

THE FEDERAL COURTS REFERENCE THAT PETITIONER FAILED TO OFFER ANY PROOF (THAT SOUGHT AFTER) EVIDENCE ACTUALLY EXISTED.

SUCH AS, PAROLE OFFICE VIDEO OF 10-3-07. BUT PETITIONER HAS PROVIDED LETTER FROM ATTY. C.R. GREEN DATED 01-04-08 [SEE APPENDIX #R, C.R. GREEN LAW FIRM], WHILE WRITING TRIAL, PETITIONER BOYKINS CONTACTED ATTY. GREEN (WHO REPRESENTED BOYKINS DURING PAROLE VIOLATION HEARING) REGARDING HOW TO OBTAIN VIDEO FOR 10-3-07. ATTY. GREEN HAS ADVISED PETITIONER THAT IT CAN BE OBTAINED BY SUBPOENA BY ATTY. FREEMAN.

IN TOWNSEND V. SAUL, 372 U.S. 293 (1963), THIS COURT HELD, "FEDERAL COURT ~~MUST~~ GRANT AN EVIDENTIARY HEARING TO A HABEAS APPLICANT IF FOR ANY REASON IT APPEARS THAT THE STATE TRIER OF FACT DID NOT AFFORD THE HABEAS APPLICANT A FULL AND FAIR HEARING."

THE ERROR IS CLEAR WHEN VIEWED CONSIDERING, FUNDS FOR INVESTIGATOR WAS APPROVED ON 11-26-07 (ACCORDING TO APPENDIX #K) AND ATTY. JAMES PARKER WITHDRAWN ON 12-07-07. ATTY. CRAIG FREEMAN WAS APPOINTED ON 12-10-07 AND WAS RESPONSIBLE FOR FOLLOW-UP WITH INVESTIGATOR - IVERSON AGENCY.

TRIAL WAS FROM 02-14-08 AND CONCLUDED ON 02-19-08 AND ATTY. FREEMAN MADE STRATEGY DECISION WITHOUT ANY BENEFIT OF THE PRETRIAL INVESTIGATION THAT PETITIONER BOYKINS HAS AN MANDATORY RIGHT IN ORDER TO PRESENT HIS VIABLE INNOCENCE DEFENSE. BY THE SIGNED COURT ORDER, TRIAL COUNSEL HAS AN CONSTITUTIONAL DUTY TO USE IVERSON AGENCY TO CONDUCT PRETRIAL INVESTIGATION.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brian Baykins

Date: MARCH 4, 2019