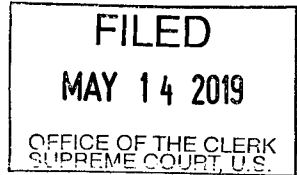


ORIGINAL

No. 18-9400



IN THE

SUPREME COURT OF THE UNITED STATES

Charlie Russell Martin — PETITIONER
(Your Name)

vs.

State of Arizona — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Arizona Court of Appeals Supreme Court of Arizona
~~Supreme Court of Arizona~~
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Charlie Russell Martin #120503
(Your Name)

P.O. Box 5000 Florence/East
(Address)

Florence, AZ 85132
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did the knowing use of false testimony at defendant's second trial raise to a denial of due process that likely affected the jury's judgment?
2. Did the false, predetermined, non-random lot drawing of alternate jurors at defendant's second trial violate fundamental fairness under the due process clause?
3. Was the use of defendant's involuntary, coerced pretrial statements without the benefit of *Miranda* warnings a violation of defendant's Fifth Amendment rights?
4. Was counsel's failure on appeal to present nonfrivolous issues a denial of defendant's Fifth Amendment rights?

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:

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

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

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☐ is unpublished.

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

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☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C 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☒ is unpublished.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 Arizona Court of Appeals court 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. (Top of Cover page Appendix A)

JURISDICTION

☐ For cases from **federal courts**:

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

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

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 9-25-2018.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 11-6-2018, and a copy of the order denying rehearing appears at Appendix B.

* Review Denied 4-30-2019, 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in pertinent part as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.
...by an impartial jury of the State

U.S. Const. Am. VI.

The Fifth Amendment to the United States Constitution provides in pertinent part as follows:

...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law.

U.S. Const. Am. V.

The Fourteenth Amendment to the United States Constitution provides in pertinent part as follows:

...nor shall any State deprive any person of life, liberty or property, without due process of law.

U.S. Const. Am. XIV.

TABLE OF CONTENTS

OPINIONS BELOW	1.
JURISDICTION.....	2.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3.
STATEMENT OF THE CASE	6.
REASONS FOR GRANTING THE WRIT	13.
CONCLUSION.....	14.

INDEX TO APPENDICES

APPENDIX A

Arizona Court of Appeals (Memorandum Decision)

APPENDIX B

Arizona Court of Appeals (Denying Motion ☐ for Reconsideration)

APPENDIX C

Arizona Supreme Court (Petition for Review = Denied)

APPENDIX D

Exhibit Tracking Log

APPENDIX E

Court Report's Transcript (of false lot drawing)

APPENDIX F

Map (page 8 of 10 of petitioner's Supplemental Brief)

*

Ariz. R. Crim. P. 31.20.(f) Motions Not Permitted.

No party may file a motion for ^{reconsideration of} an order denying a petition for review by the Supreme Court.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Arizona v. Fulminante, 499 U.S. 279, 309-10 (1991)	17
Chavez v. Martinez, 538 U.S. 760, 770 (2003)	17
Dickerson v. U.S., 530 U.S. 428, 431, 444 (2000)	16
Haines v. Kerner, 404 U.S. 519, 520 (1972)	7
Hoffman v. U.S. 341 U.S. 479, 486 (1951)	18
J.D.B. v. NC, 564 U.S. 261, 269 (2011)	16
Malloy v. Hogan, 378 U.S. 1, 8 (1964)	16
Md. v. Shatzer, 559 U.S. 98, 103 (2010)	16
Miranda v. Arizona, 384 U.S. 436 (1966)	12, 16 and 17
Mooney v. Holohan, 294 U.S. 103, 112 (1935)	14
Napue v. Illinois, 360 U.S. 264 (1958)	14
Northern Mariana Island v. Bowie, 243 F.3d at 1117 (9 th Cir. 2001)	15
U.S. v. Agurs, 427 U.S. 103, 96 S.Ct. 2392	15
U.S. v. Giddens, 858 F.3d 870, 887 (4 th Cir. 2017)	18
U.S. v. Gonzalez, 110 F.3d 936, 946 (2d Cir. 1997)	16
U.S. v. Lochmondy, 890 F.2d 817, 822 (6 th Cir. 1989)	14
U.S. v. Skurdal, 341 F.3d 921, 927-28 (9 th Cir. 2003)	18

RULES AND STATUTES

Ariz. R. Crim. P. 18.5(h)(2)	15
Fed. R. Crim. P. 24(c)(2)	15
J.S.S.A. of 1968 § 1863(b)(2)	15
Ariz. R. Crim. P. 31.20.(F)	4

STATEMENT OF THE CASE

Petitioner Charlie R. Martin's first trial resulted in a hung jury.

At second trial petitioner was convicted upon the jury's finding of guilt of two counts of aggravated DUI. Petitioner was sentenced to 11 years in prison, Petitioner admitted that he was on felony probation for misconduct involving a weapon (prohibited possessor) at the time of the offense, then the Court imposed a 2.5 year prison term to be served consecutive, for a total of 13.5 years.

Petitioner was sentenced by the circuit Court of Maricopa County, Arizona on February 24, 2017

On 12/5/15 petitioner was a passenger of a car that was involved in a non-injury fender-bender type collision. Petitioner was mis-identified by two witnesses. At first ^{trial} one of the witnesses testified that "it maybe possible that someone else exited the Mustang before Martin did," and the other witness (the one that was rear-ended) testified that it was 5 minutes before she exited her van. At second trial these two witnesses completely changed their testimony on a few issues in order to find petitioner guilty.

At petitioner's second trial, States prosecutor introduced false testimony of their witnesses that infected the trial with unfairness as to make the resulting conviction a denial of due process.

At petitioner's second trial, there was a unlawful, predetermined lot drawing of alternate jurors that is on the record.

At petitioner's second trial, there was police body-cam video introduced revealing arresting officer arriving on-scene using coercible tactics of investigation on petitioner, there was also testimony introduced of investigative questions by arresting officer without petitioner reciving the benefit of Miranda warnings.

Pertinent to Question Number One

At A. of Appendix A, the Court held: No Evidence Supports Martin's Claim of Perjury.

Petitioner's Claims that are on record

First, Petitioner would like to remind this Court of protections he enjoys due to the fact that petitioner is uncounseled and pro-se. see Haines v. Kerner, 404, U.S. 519, 520 (1972) (per curiam) (pro se complaint held to less stringent standards than formal papers drafted by lawyers)

Witness Christian Sevilla's Perjured testimony

1. 1st trial he doesn't remember the time of the accident, (Court Reporter's transcripts of trial, Hereafter will look as follows through out this petition) R.T., 12/6/16, p. 40: 6-8, 2nd trial he knows the time, R.T., 1/10/17, p. 14: 1-2
2. 1st trial he hears the accident, R.T., 12/6/16, p. 50: 16-20, 2nd trial he saw the accident, R.T., 1/10/17, p. 30: 4-8
3. 1st trial he identified the driver of the van as a female, R.T., 12/6/16, p. 56: 5-14, 2nd trial he was not paying attention to who got out of the van, R.T., 1/10/17, p. 29: 3-22
4. 1st trial he testified he wasn't looking at the Mustang continuously, R.T., 12/6/16, p. 52: 2-20 and it's possible that someone else exited the Mustang before Martin did R.T., 12/6/16, p. 52-53: 21-25 1-7, 2nd trial he testified that his concentration was only on the Mustang R.T., 1/10/17, p. 35-36: 20-25 1-6
5. (The Mustang involved was a black vehicle) 2nd trial he testified that the Mustang that he fully remembers, R.T., 1/10/17, p. 38: 20-22 is red in color, R.T., 1/10/17, p. 37: 16-20

Petitioner's contention here is that witness Christian Sevilla at petitioner's first trial did not know what time the accident happened, he heard the accident, and that he was not fully aware of the happenings during and after the accident. At petitioner's second trial something happened to turn this witness from not so good, to a star witness that knows the time of the accident, saw the accident take place, and wasn't paying attention to who got out of the van, because he's concentration was

only on the Mustang. The only mistake this witness made at the second trial was he testified that the Mustang was red.

Witness Brittney Austin's Perjured testimony,

1. She testified she remembers 100% vividly the day this accident happened, R.T., 1/10/17, p. 76: 7-9. 1st trial she testified that Martin runs away, R.T., 12/6/16, p. 7: 5, R.T., 12/6/16, p. 11: 11-13 and R.T., 12/6/16 p. 37: 14-15, 2nd trial she testified that Martin walks away, R.T. 1/10/17, p. 71-72: 22-25 1-11, and R.T., 1/10/17 p. 73: 6-7
2. at R.T., 1/10/17 p. 71: 1-15, is a conflict in testimony, as to the time that passes when she actually saw Martin after the accident, she testified that she had previously stated that it was 5 minutes, and she is now testifying that it was closer to 2 minutes
3. At 1st trial she identified Martin as being the other driver. R.T., 12/6/16 p. 31: 9-11

Petitioner's contention here is that Brittney was confident at first trial that Martin took off running, then at second trial she testified that Martin is walking. It can only be inferred that she was told that this was a conflictive statement of the first trial between her and Christian Sevilla. As for the conflict in time, even if it was 2 minutes, that was more than enough time for the actual driver to exit the vehicle and go the opposite direction.

In petitioner's Supplemental brief to the Arizona Court of Appeals, Petitioner provides a map of the conflictive/perjured testimony of the witnesses, as to the direction Martin went after the accident. CD/Videotape of proceedings (which petitioner has asked the Arizona Court of Appeals and the Arizona Supreme to view) when these two witnesses are asked to approach the projection screen, will prove that this map (see Appendix F) is accurate and that these two witnesses change their conflictive testimony of the first trial to be exactly the

same at the second trial.

The witnesses and police officers at petitioner's second trial all testify "that it is not as dark out as video shows." R.T. 1/10/17, p. 43:13-17, R.T. 1/10/17, p. 73-74:16-25, 1-12, R.T. 1/10/17, p. 91:15-20, R.T. 1/10/17, p. 69:1-25, R.T. 1/10/17, p. 32:13-16, R.T. 1/11/17, p. 121:2-5 and R.T. 1/11/17, p. 123:22-25

At R.T. 1/10/17, p. 112:3-6, Officer Robinson testified that the body-cam video was at approximately 6:00 pm. A simple inter-net search will show that the time of sun-set in Gilbert, Arizona on 12/5/2015 was at 5:18 pm, Approximately 42 minutes before this body-cam is recorded and the fact that the street lights were on in this video, proves that this was ^{known} perjured testimony used against the petitioner. This perjured testimony is not even addressed by the Arizona Court of Appeals.

In exhibit #1 (police report), Officer Robinson writes that petitioner is given Miranda warnings at 1752. Petitioner challenged the Arizona Court of Appeals to view exhibit #10 (arresting officer's body-cam video) which reveals this officer arrive on-scene and not read petitioner his Miranda warnings. The Court agreed at ¶15 of Appendix A, that Martin was not provided Miranda warnings. The Court never addressed this as a perjury claim.

At ¶10 of Appendix A, The Court held: Martin first contends that two witnesses committed perjury.

Petitioner asserts that he clearly contended that witnesses were coached and that witnesses and police testified to perjured testimony at petitioner's second trial. The Arizona Court of Appeals brushed aside petitioner's claims of perjury, by isolating his claim to the two witnesses. At ¶11 of Appendix A,

The Court held: "But mere inconsistency in testimony does not establish perjury." Petitioner has shown that there was lots of changed/perjured testimony introduced at his second trial, that without any doubt had influence on the jury, and it has to be inferred that this known perjured ^{testimony} was coached or rehearsed before petitioner's second trial, after the first one ended as a hung jury.

Pertinent to Question Number Two

At ¶ 25 of Appendix A, Martin contends that the court demonstrated bias and coerced the jury by selecting as an alternate juror "the only [one] taking notes through the whole trial."

This statement is absolutely true, but Martin also contended that this false lot drawing changed the dynamic of this alternate jury selection procedure. This part of the raised issue is not addressed.

The court simply held at ¶ 26 of Appendix A, The record reveals that the clerk randomly selected the alternate jurors by lot in accordance with the Rules of the Court and that the record contains no suggestion of impropriety in the selection process.

Petitioner would like to present to this Court the transcripts of the conversation between the States prosecutor and Judge held at the bench, see Appendix E. Petitioner accerts that this lot drawing was not random, therefore not in accordance and that the record clearly contains suggestions of impropriety in the selection process.

Pertinent to Question Number Three

At B. of Appendix A, The Court held: the admission of Martin's statements given in the absence of Miranda warnings constituted Harmless error.

At 9114 of Appendix A, The Court held that Martin's statements were Voluntary. This finding is false., All statements of Martin (of the investigation, and of exhibit #10) were coerced by Officer Robinson. The Court also held: A constitutional error is harmless if "the appellate court can say beyond a reasonable doubt that the jury would have found the defendant guilty without the evidence." Petitioner accerts this illegal evidence was not introduced at he's first trial and half of the jury found him not guilty. The Arizona Court of Appeals is in error due to the fact that it cannot be known what injurious affect the statements and video had on the juries verdict and by definition this is structural error.

At 9115 of Appendix A, The Court held: Martin was in custody, Martin was interrogated, and Martin should have been given Miranda warning. But because he denied involvement it constituted Harmless error.

Martin did deny involvement, as he was not the driver. But what needs to be taken into context is the way Officer Robinson approached Martin accusing him of something he did not do., and the fact that the State used illegal pretrial statements against him.

In the trials transcript's before and after exhibit #10 is played, there is no mention of why this video is being introduced. Petitioner accerts that the purpose of this video was to use pretrial statements, and to reveal Martin's intoxicated state to use against him, which by definition is self-incrimination.

The prejudice of this video (exhibit #10) was that it did subvert the proceedings in that the purpose of the trial was to decide the Petitioner's creditability verse the witness creditability and NOT that of Officer Robinson's verses Petitioner's creditability. The officer that was repeatedly accusing Martin, as held by the Court at ¶ 15 of Appendix A

Quoting Mr. Chief Justice Warren,

The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime. More specifically, we deal with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation and the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself. Miranda v. Arizona, 384 U.S. 436, 440

REASONS FOR GRANTING THE PETITION

Petitioner Martin was denied Due Process of Law by States prosecutor knowing presenting false testimony, by jury coercion, by Miranda violations, and by an improper Anders brief.

Petitioner asserts that his first trial resulted in a hung because of inconsistent testimony of key witnesses on material fact.

In petitioner's Supplemental brief to the Arizona Court of Appeals on page 3 of 10 petitioner argues that the witnesses were coached to give similar testimony at petitioner's second trial. The Court did not give a discussion or decide on this presented issue.

A. The erroneous error here is that petitioner is making a claim of prosecutorial misconduct that this Court chose to put aside and not rule on.

It can only be inferred that coercion of these witnesses took place, something made these two witnesses change their inconsistent testimony of the first trial to be exactly the same at the second trial. In petitioner's Motion For Reconsideration at page 2 and 3 of 10 petitioner referred the Court to view CD/Videotape of proceedings and compare the witnesses testimony of the first trial to that of the second trial when witnesses approach the projection screen. At first trial witnesses give conflictive testimony, at second trial witnesses testify to the exact something at the projection screen. Petitioner also raised this same issue in his Petition For Review at page 3 of 10.

A1. Petitioner has a United States Constitutional protected right of Due Process As of right guaranteed by the 14th Amendment to have a fair trial, absent known false testimony, not corrected by States prosecutor.

The knowing use of perjured testimony raises to a denial of Due Process if a reasonable likelihood exists that the false testimony could have affected the jury's judgment. see United States v. Lochmondy, 890 F.2d 817, 822 (6th Cir. 1989) (The defendant must show that (1.) the statement was actually false, (2.) the statement was material, and (3.) the prosecutor was aware of the statement's falsity.) Petitioner has satisfied these 3 prongs. (1.) Petitioner has proffered evidence that is in the record of false statements and the CD/Videotape of proceedings show that witnesses go from conflictive testimony at first trial to self-serving testimony at second trial to give the jury the illusion of consistency. (2.) CD/Videotape also reveals that the changed self-serving testimony was material used at second trial in order to find petitioner guilty, and (3.) One of the witnesses testified at second trial that he would not be surprised if trial lawyer produced something ^{different} that the witness had stated earlier (which meant the first trial but you can't say that) about the direction petitioner went. This proves that the prosecutor was aware of the false statements.

A prosecutor may not knowingly present false testimony and has a duty to correct testimony that he knows to be false. see Napue v. Illinois, 360 U.S. 264 (1958) (In Napue, the Supreme Court held that the 14th Amendment due process clause bars prosecutors from knowingly presenting false testimony and obligates them to correct such testimony.) also see Napue v. Illinois, 360 U.S. at 270, 79 S.Ct. 1173 (In Napue, the Court elaborated on the prosecutor's role, noting that "the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth." see Mooney v. Holohan, 294 U.S. 103, 112 (1935) (per curiam) (the use of perjured testimony by the prosecutor as the basis of a conviction is as improper as obtaining a conviction by intimidation.) In Mooney at 294 U.S. 112, 55 S.Ct. 340 the Supreme Court held that a conviction obtained through "deliberate deception of court and jury... is... inconsistent with the rudimentary demands of justice."

see Agurs, 427 U.S. at 103, 96 S.Ct. 2392 the Court has emphasized that the presentation of false evidence involves "a corruption of the truth-seeking function of the trial process." This truth-seeking function cannot be fulfilled when the state, knowing that a witness may have perjured themselves, proceeds without conducting an investigation to ensure that a new trial is not warranted. The duty to investigate flows from the "constitutional obligation of the State and its representatives to collect potentially exculpatory evidence, to prevent fraud upon the court, and elicit the truth." Bowie, 243 F.3d at 1117

B. The erroneous false lot drawing of alternate jurors was a violation of petitioner's United States Constitutional protected right of Due Process As of right guaranteed by the 6th and 14th Amendments

Petitioner argued in his Supplemental brief to the Arizona Court of Appeals of his 6th and 14th Amendment violation of due process. At petitioner's second trial there was a false, predetermined, non-random lot drawing of alternate jurors that was not in accordance with Ariz. R. Crim. P. 18.5(n)(2), Fed. R. Crim. P. 24(e)(2), or The Jury Selection and Service Act of 1968 § 1863(b)(2).

Petitioner has failed to find any case's or decisions where a Commissioner and her Clerk devised a plan to go against the Rules of the Court by conducting a false lot drawing. (Petitioner has no access to a law library, Petitioner pretty much has a Georgetown Law Journal that he is using to fight his case with.) The day before the false lot drawing took place petitioner's lawyer and State's prosecutor agreed that the sleeping juror should be struck for cause then Commissioner Van Wie states: "Then we will be down to one alternate." This sleeping juror was never struck for cause but instead the Commissioner and her Clerk elected deception of the court and jury which is inconsistent with the rudimentary demands of justice. This plan was talked about in court

and is on the record. The Arizona Court of Appeals, falsely held that the Clerk randomly selected the alternate jurors by lot. see 9526 of Appendix A Reporters transcript's reveal conversation between Commissioner and prosecutor of this false lot drawing. see Appendix E

C. Petitioner has a United States Constitutional protected right of Due Process As of right guaranteed by the 5th and 14th Amendment. Petitioner should have received Miranda warnings upon arrest, absent these warnings pretrial statements and Body-Cam video should not have been introduced at trial.

Malloy v. Hogan, 378 U.S. 1, 8 (1964); Md. v. Shatzer, 559 U.S. 98, 103 (2010) ("[5th] Amendment...applies to the States by virtue of the [14th] Amendment.")

Miranda v. Arizona, 384 U.S. at 444; see also J.D.B. v. N.C., 564 U.S. 261, 269 (2011) (substance of Miranda warnings must be given prior to questioning).

Miranda v. Arizona, 384 U.S. at 492; see also Dickerson v. U.S., 530 U.S. 428, 431, 444 (2000) (holding that Miranda warnings are constitutionally required).

At B. of Memorandum Decision, The Arizona Court of Appeals held that the admission of petitioner's statements given in the absence of Miranda warnings constituted harmless error. see Appendix A

see U.S. v. Gonzalez, 110 F.3d 936, 946 (2d Cir. 1997) If the error involved is constitutional, the court will determine whether the error was a "structural" or "trial" error, looking "not only at the right violated, but also at the particular nature, context, and significance of the violation."

Structural error-defects that fundamentally undermine the reliability and fairness of the trial-are not subject to harmless error review and automatically require reversal. see Arizona v. Fulminante, 499 U.S. 279, 309-10(1991)(structural errors, as opposed to trial errors, involve defects in fundamental framework by which criminal trials assess guilt.)

At ¶ 14 of Memorandum Decision, The Arizona Court of Appeals held that petitioner's statements were Voluntary. see Appendix A This finding is erroneous and cannot be subject to harmless error. Exhibit #10, Body-Cam video played at petitioner's second trial clearly reveal arresting officer arrive on-scene and start accusing petitioner and interrogating him without receiving Miranda warnings. Nothing in this video was offered voluntarily by petitioner, all statements made by petitioner were coerced by a overbearing officer and was played illegally for this jury.

see Chavez v. Martinez, 538 U.S. 760, 770(2003)(use of involuntary statements at defendant's trial barred by 5th Amendment)

In Miranda v. Arizona, 384 U.S. at 478-79 The Supreme Court held that custodial interrogations have the potential to undermine the Fifth Amendment privilege against self-incrimination by possibly exposing a suspect to physical or psychological coercion. To guard against such coercion, the Court established a prophylactic procedural mechanism that requires a suspect to receive a warning before custodial interrogation begins. Unless suspects are warned of their Fifth Amendment rights, any pretrial statements elicited from them are inadmissible at trial.

At the end of Exhibit #10 Body-Cam video, petitioner is viewed by jury saying "I hope your happy, it looks like you got your man." This video was edited and pieced together in a way to make this look like a confession. Petitioner was being sarcastic to a overbearing officer that was accusing petitioner of a crime he did not commit. Petitioner believes that the jury did misconstrue this last statement as an admission of guilt based upon the jury going from 21 questions to less than

ten minutes of deliberations. see U.S. v. Giddens, 858 F.3d 870, 887 (4th Cir. 2017) (admission of confession not harmless error because statements were "essential links in the chain" of evidence presented to the jury which led to conviction.) In Hoffman v. U.S., 341 U.S. 479, 486 (1951) The Supreme Court held that compelled testimony is self-incriminating if reasonable cause exists to believe that the testimony would either support a conviction or provide a link in the chain of evidence leading to a conviction.

Petitioner would like to present to this Court one more thing about Exhibit #10 Body-Cam video that was illegally played, to show this Court some of the tomfoolery that took place at petitioner's second trial. According to Arizona Rules, Petitioner cannot argue ineffective assistance of counsel on his direct appeal, so he did not. This is just about the introduction of this video and not an ineffective assistance of counsel argument. Just before lunch break on 1/11/17 petitioner's lawyer tells him that the prosecutor has this video that shows how drunk petitioner was and if petitioner takes the stand she was going to play it. Petitioner asks him "is it that bad?" he's answer was "I don't know, I haven't seen it." Petitioner and lawyer decide that petitioner has to take the stand as he has no witnesses to present to the jury what really happened that night. This video was edited and pieced together during the lunch break. After lunch just before petitioner takes the stand exhibit #10 appears on the exhibit tracking log. see Appendix D. This video was never disclosed.

The Anders brief was not proper in this case as Petitioner has Constitutional issues that are arguable non-frivolous questions of law. see U.S. v. Skurdal, 341 F.3d 921, 927-29 (9th Cir. 2003) (counsel's failure on appeal to present nonfrivolous issues "supported by citations to the record and applicable legal authority" was ineffective assistance because defendant was denied 5th Amendment right to effective counsel on appeal)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Charles R. Martin

Date: 05/14/2019