ORIG

18-9751

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

In Re., THOMAS E. NESBITT — PETITIONER
(Your Name)

vs.

SCOTT FRAKES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The EIGHTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

THOMAS EDWARD NESBITT
(Your Name)
Petitioner-Appellant, pro se
OMAHA CORRECTION CENTER
(Address)

P.O. Box 11099, OMAHA, NE 68111
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QUESTION(S) PRESENTED

- (Preface) -

The untrained pro se Appellant respectfully attempts to succinctly present from the trial record, compelling justificable Constitutional reasons of error for the Writ to issue in this exceptional NO-CRIME case of ACTUAL INNOCENCE involving an Accidental Self-Induced Drug Overdose Death, as Law and Justice would require. (28 USC § 2243).

The 1-28-19 wholly obsecure one-line Court of Appeals ignored denials, thoroughly departed from any accepted course of Jurisprudence norms, in direct Conflict with this Court's controlling precedents, emphatically calling for the attended exercise of Certiorari authority to resolve these Conflicting Judicial abuses. (see Appx: A & B)

I

I-A-1) First Question: Does the Appellate Court's obsecure Panel Denials, violate the 1996 A.E.D.P.A. Constitutional Due Prosess Question in Conflict with the Certiorari Decisions of this Court in (1), CASTRO v. U.S., 540 US 375 (2002), and (2), in PANETTI v. QUARTERMAN, 551 US 930 (2007), NON-SUCCESSIVENESS precedents, where upon §2253 C.O.A.'s issued, prohibited § 2254 District and Appellate Courts from wrongly creating "...Troublesome Results...", "...Procedural Anamolities...", "... Closing Courtroom Doors...", contrary to Congress intent? (pp. 8-10)

I-A-2): Did the Court of Appeals Panel further deny §2253 C.O.A. in Conflict of this Court's controlling "...ACTUAL INNOCENCE..." A.E.D.P.A. Habeas "... Gateway Exception..." substantive Mandate of McQUIGGIN v. PERKINS, 569 US 383 (2013), overruling Troublesome Results and Procedural Anamolities, wrongly Closing Courtroom Doors denying Habeas relief? (pp. 10-11)

I-B) Second Question: Did the Appellate Panel's obsecure Denials, violate the Constitutional JEOPARDY Question of "DIRECT ESTOPPEL ISSUE PRECLUSION Law, concerning Nebraska's uncontroverted, NO-PROBATIVE-EVIDENCE Directed Verdicts of the alternative Felony Murder charge and all its underlying "ATTEMPTED" foreclosed Acquitted Motive offenses, in Conflict with this Court's and its own Circuit Court's Stare Decisis Directed Verdict Acquittal precedents? (pp. 11-12)

I-C) Third Question: Does Appellate Panel's obsecure Denials, violate compelling Constitutional Questions of Law in Conflict with BRADY v MARYLAND, 373 US 83 (1963), substantial Trial safeguards upon State suppressed material and exculpatory vital evidence, diligently uncovered, that should have resulted in a very different outcome upon a confident verdict by an untainted Jury? (pp. 12-19)

I-D) Fourth Question: Does Appellate Panel's obsecure Denials, violate compelling Constitutional Questions of Law, separate and apart from the forestated Trial errors, of INEFFECTIVENESS of Trial and Appellate Counsel's deficient prejudicial performances denying a fair trial, in utter conflict with this Court's and its own Circuit Court's controlling Ineffectiveness precedents, upon: (?)
(i)- Rights to Remain Silent without Guilty Infringements;
(ii) & (iv)- Structural Prosecutorial Misconduct violations;
(iii)- Structural requested Jury Instruction violations;
(v)- First Amendment Rights to Free Association violations;
(vi)- Multiple Due Process Admonishment violations;
(vii)- Sufficiency Of Evidence violations. (pp. 19-21)

II

Fifth Question: Did the Appellate Panel violate the compelling

Constitutional substantive Due Process Law vital to all Appellant's forestated prejudicial infringements to a fair trial, when rendering Conflicting Denials to this Court's and other Appellate Courts' controlling precedents, to accord and conduct EVIDENTIARY HEARINGS whenever Burden of Proof is on Movant as in this case at Bar? (pp. 21-22)

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:

Upon Certiorari being granted, Respondent's Representative is:

NEBRASKA's ATTORNEY GENERAL

Douglas Peterson

2115 State Capitol Building

Lincoln, NE 68509

(402) 471-2682

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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

[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 Court of Appeal's Doc. 18-3015 (1-28-19); 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 N/A to the petition and is

[ ] reported at District Court Doc. 4:18CV-3057 (5-30-18); or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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

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

The date on which the United States Court of Appeals decided my case was Jan. 28, 2019.

[ ] 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: Mar. 27, 2019, and a copy of the order denying rehearing appears at Appendix B.

[ ] 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

UNITED STATES CONSTITUTIONAL GUARANTEES INVOLVED:

		Page
FIRST AMENDMENT-	Congress shall make no Law respecting ... the right of the People to Peacably Assemble	20-21
FIFTH AMENDMENT-	No Person shall ... be subject for the same offense to be twice put in Jeopardy of life or limb; ... nor be deprived of ... liberty ... without due process of law... .	15,21
SIXTH AMENDMENT-	In all Criminal prosecutions, the accused shall enjoy the right ... to be Confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.	15
FOURTEENTH-AMENDMENT	No State shall make or enforce any Law which shall abridge the Privileges or Immunities of the Citizens of the United States; nor shall any State deprive any person of ... Liberty ... without Due Process of Law, nor deprive any person within its jurisdiction Equal Protection of the Laws.	15,21
ARTICLE 1,-SECTION 9, CLAUSE 1	The Privilege of the Writ of Habeas Corpus shall not be suspended	

UNITED STATES and NEBRASKA STATUTORY PROVISIONS INVOLVED:

28 USC § 2241 (c-3)- Habeas Corpus relief for wrongful custody in violation of Constitution and Laws of the United States at Bar;

28 USC § 2243- Relief as Law and Justice requires;

28 USC § 2244- (AEDPA 1996)- Habeas Corpus Procedural Filing Exceptions, and § 2244- (b-3-E)- Certiorari Limitation Exception;

28 USC § 2253- (c1 & 3)(1996)-Appealability Procedures (C.O.A.);

28 USC F.R.E. §501- (N.R.S. § 27-513(3)- Admonishing Jury Instructions;

Neb.Rev.Stat. § 28-401(1975)- First Degree Murder Statutory Elements;

Neb.Rev.Stat. §§ 29-2101-2103 (LB 245- 2015)- New Trial Procedural Amendments.

STATEMENT OF THE CASE

-(Verified upon Oath)-

A '9' year Law Enforcement misdirected Investigation into the tragic death of, Ms Mary Harmer, came to unjustly fixate upon the Innocent Appellant in this No-Crime exceptional case.

The actual probative testimonial evidence from the 1986 trial record, outside of the trial Judge's multiple non-probative findings of suspicious speculative assumptions, established, Ms. Harmer died from a Self-Induced Accidental Drug Overdose at a party, alone in the bathroom of Appellant's domicile, Uncontroverted by Anyone! (Emphasis Added).

Through-out this period, Appellant constantly exercised his Constitutional MIRANDA v. ARIZONA and DOYLE v OHIO substantive Rights to remain Silent, not to be used as any inference of gulit at trial. But instead, said Guarantees were repeatedly violated by the State through-out Appellant's trial, as matters of Ineffectiveness.

As a Miscarriage of False Imprisonment, Appellant was arrested and charged by the State for First Degree Intentional Murder, (N.R.S. §28-401 (1975)), and upon the CATCH-ALL underlying MOTIVE charges of the alternative Felony Murder "ATTEMPTED" Offenses. (N.R.S.§28-401(1975)).

Upon State resting, the Trial Judge, under Nebraska's NO-PROBATIVE-EVIDENCE Directed Verdict Standard, ACQUITTED Appellant of the CATCH-All Felony Murder and all its underlying "ATTEMPTED" Sexual Assault MOTIVE Offenses, to wit:

> NO PROBATIVE EVIDENCE EXISTS APPELLANT ENGAGED IN ANY INTENTIONAL ACTS OR CONDUCT OF FORCE, COERCION, OR DECEPTION, EITHER EXPRESSED OR IMPLIED THROUGH WORDS OR BODILY MOVEMENTS, WHERE THE ATTENDED CIRCUMSTNACES SUCH AS APPELLANT BELIEVED THEM TO BE WOULD HAVE CONSTITUTED A COURSE OF CONDUCT INTENDED TO CULMINATE IN THE COMMISSION OF SEXUAL PENETRATION, OR WHERE SUCH A COURSE OF CONDUCT OR ACTS WOULD HAVE BEEN KNOWN TO CAUSE SUCH A RESULT, OR THAT APPELLANT KNEW OR SHOULD HAVE KNOWN THAT, MARY HARMER, WAS

MENTALLY OR PHYSICALLY INCAPABLE OF RESISTING OR APPRASING THE NATURE OF SUCH ACTS OR CONDUCT! (Emphasis Added).

All these Factual Issues are foreclosed from any probative evidentiary value, resolved favorably to Appellant, Uncontroverted.

In conjunction, also as matters of exceptional importance to the trial Judge'above foreclosed "NO-PROBATIVE-EVIDENCE" Directed Motive Verdicts of Acquittals, is State's Expert Witnesses trial testimonies, to wit:

(a)- NO VIOLENCE exists- testified to by State's Law Enforcement;

(b)- NO FOUL PLAY exists- Nor any CRIMINAL CORPUS DELICTI DETERMINATION OF DEATH exists- testified to by State's Forensic Experts, thereby,

(c)- Forcing State Prosecutor to twice on record, state to the Jury, in Opening and Closing, that it could not prove a Murder occurred, Nor the Defendant committed a Murder! (Appx: C pp. 4-6)

All forestated Clear and Convincing uncontroverted evidentiary Facts of Trial Record, again resolved favorably to Appellant, warranting a §2253 C.O.A. be issued by lower Courts. (Emphasis Added).

But the trial Judge, however, for unknown reasons, wrongly refused defendant's justified request to also Acquit on the alternative Intentional Murder charge, or, at least, to properly admonish the now wholly confused and mislead Jury, that these acquitted non-probative Felony Murder CATCH-ALL foreclosed MOTIVE offenses were no-longer any part of this case.

Court Exhaustion Remedies: Thereafter, Appellant constantly pursued his violated Constitutional Trial rights with manifest Due Diligence under exceptional prejudicial circumstances, unjustly hindering his guaranteed Constitutional relief upon the Clear and Convincing requested Appellate Records filed. (See: Appellant's 7-23-18 F.R.A.P., R.10(a)(1) request filed in the District Court for VERIFIED supporting Records on appeal, Filings, #1 thru #17)(Appx:F) (See also: Appellant's §1746(2) VERIFICATION at pg. 23 herein; upon this 28 USC §2241(c-3) Habeas at Bar.).

State collateral litigation began on 12-7-87, after the State Direct Appeal terminated on 10-13-87. State collateral litigation, unabated, terminated on 5-5-10, with only 55 non-tolled days having expired out of the new A.E.D.P.A. §2244(d) 365 day limitation period. State v Nesbitt, 409 NW2d 312 (Neb 1987)(Dir. App.).

A.E.D.P.A.: The 1991 pre-A.E.D.P.A. (4:91-CV-3644) habeas, necessarily filed under the YOUNGER v HARRIS, 410 US 37,46 (1971), and ABNEY v U.S., 431 US 651, 662-63 (1977), Exception to the Abstention Doctrine for Colorful DIRECT ESTOPPEL ISSUE PRECLUSION Jeopardy protections, CREATED NO SUCCESSIVENESS, not even under pre-AEDPA Rule 9. (Appx's: C at pp. 6-7 and D at pp. 1-6).

The First 5-25-10 post-AEDPA (4:10-CV-3099) habeas filed after Exhaustion of State remedies, was wrongly ignored and denied, "WITHOUT PREJUDICE" by the District Court, in CONFLICT with the controlling precedents of this Court, and the Court of Appeals of LINDH v MURPHY, 521 US 320, 322, 326, 336 (1997), and BARRETT v ACEVEDO, 169 F3d 1155, 1161 (8th Cir 1999), for pre-1996 NON-SUCCESSIVENESS mandates, clearly requiring §2253 C.O.A. be issued.

Consistent with BANKS v DRETKE, 540 US 668, 690-91 (2004), and MAYFIELD v FORD, 664 FS 1285, 1287-88 (D.NEB 1987), precedents, Exhaustion of available State and Federal remedies concerning the herein GROUNDS I and II violated Questions of Law, all occurred prior to the 5-25-10 (4:10CV-3099) habeas filing, as well as, before the 2013 (8:13CV-75) post-AEDPA filing.

Both habeas actions were wrongly ignored and denied "...WITHOUT PREJUDICE ...", in CONFLICT with this Court's, LINDH v MURPHY and BARRETT v ACEVEDO, controlling precedents, supra..

Plus, both habeas cases were also ignored and denied in direct CONFLICT with this Court's Certiorari cases, CASTRO v U.S., 540 US 375, 380(2002), and PANETTI v QUARTERMAN, 551 US 930, 936(2007), prohibition mandates against AEDPA

Successiveness, almost identical in Factual and Legal substance to Appellant's case at Bar.

NOTE: 28USC §2253 (a & c) C.O.A.'s were issued in CASTRO (290F3d at 1272), and PANETTI (448F3d816), plus in McQUIGGINS (569at392), cases, all contrary to Appellant's wrongful denials at Bar. (Appx.-D, pp.1-7, C.O.A. Renewal).

In addition, this Diligent Exhaustion, likewise encompasses the I-C BRADY v MARYLAND, 373 US 83(1963) multiple Constitutional violated substantial Questions of Law, presented under the AEDPA §2244(b)(2)(B) provision, after the State's Amended NEW TRIAL 2015 Law (LB-245) litigation. These Laws now allow for State and Federal, Exhaustion, at any time upon Non-Ineffectiveness BRADY Trial Errors. (See: N.R.S. §§ 29-2101 to 29-2103 (2015).

Supporting Material and Exculpatory Documentation of Record, Diligently Uncovered, secreted in an updated 1992 Presentence Investigation Report (PSI) upon a 2000-2001 posttrial investigation of this case, first became fully available for Federal litigation in this 2018 4:18CV-3057 habeas case, and this (18-3015) Appeal therefrom at Bar.

These multiple Constitutional violated BRADY Questions of Law, exhausted under BANKES v DRETHE, supra, precedent, also issued a §2253(a & c) C.O.A., contrary to Appellant's ignored C.O.A. denials.

The Circuit Panel on 4-3-19, even ignored in this No-Crime case of Actual Innocence, Appellant's requested F.R.A.P., R. 41(d1&2) Stay of Mandate, pending this Justiciable Meritorious Certiorari filing for long overdue warranted Justice. (Appx.-C, pp.1-10, Appellant's Court of Appeal's ReHearing Petition.).

REASONS FOR GRANTING THE PETITION

- (Factual Issues also Verified upon Oath) -

I-A-1

First Important Constitutional A.E.D.P.A. (1996) violated Substantial Due Process Question of Law, concerns the Court of Appeals obsecure 1-28-19 AEDPA Denials in Conflict with this Court's AEDPA Mandates:

The lower Federal Courts' total disregard Denials for this Court's controlling A.E.D.P.A. mandates of Non-Successiveness, were not only in direct Conflict with this Court in LINDH v MURPHY, 521 US 320, 322, 326, & 336 (1997), but also as adopted fully by the Circuit Court in BARRETT v ACEVEDO, 169 F3d 1155, 1161 (8th cir 1999).

Both LINDH and BARRETT Courts hold NO-SUCCESSIVENESS is created by any §2254 Habeas case filed before the 1996 AEDPA, Chapter 153 Changes by Congress, warranting a §2253 C.O.A. issued.

The Appellate Panel not only egregiously violated its own BARRETT Circuit mandate of the NON-SUCCESSIVENESS prior Panel precedent, as well as LINDH's precedent. See: MADER v U.S., 654 F3d 794, 810 (8th Cir 2011), and NEIDENBACH v AMICA MUTUAL INNSURANCE COMPANY, 842 F3d 560, 566 (8th Cir 2016), to wit: "It is a Cardinal Rule in our Circuit that one Panel is bound by the decision of a prior Panel." Id.

Appellant's 1991 (4:91CV-3644) Pre- AEDPA Habeas was necessarily filed under this Court's Exception to the Abstention Doctrine of YOUNGER and ABNEY colorful JEOPARDY prohibitions, ante, continuously flaunted and violated wrongly by the State Courts at Trial and on Appellate review, in violation of Constitutional DIRECT ESTOPPEL JEOPARDY prohibitions of ISSUE PRECLUSION under manifest erroneous Sufficiency of Evidence evaluations. (See, SECOND I-B Constitutional Question of Error presented, infra.).

The Federal District and Court of Appeals were both prohibited from

utilizing the 4:91CV-3364 Habeas case from creating any Successiveness to anything, even under prior AEDPA, Rule '9' procedures.

Included in this FIRST Constitutional violated AEDPA Due Process Question, concerns this Court's further controlling AEDPA exceptions to the §2244(b-3-E) review provision for Successiveness, found not to be Self-Defining. PANETTI, infra, 551 US at 943-44. A subsequent §2254 Habeas filing may be allowed, even after a first post-AEDPA Habeas filing was actually adjudicated on the merits, not involved here. See, PANETTI v QUARTERMAN, 551 US at 944, also adopted by the Eighth Circuit in NOONER v NORRIS, 499 F3d 832, 834 (8th Cir 2007).

Also in Conflict to this Court's controlling AEDPA precedent, includes CASTRO v U.S., 540 US 375, 380-81(2002), holding on Certiorari, that irregardless of §2244 (b-3-E) AEDPA provision to the contrary, the CASTRO Court found the actual issues presented on Appeal, were not the Court of Appeals §2244 (b-3 E) Decision. Thus this Court's Certiorari review is therefor not prohibited. (540 US at380-81). Instead, the CASTRO Court, very similar to Appellant's case at Bar, found the District Court had wrongly changed a Fed.R. Crim.P., R.33, Motion for New Trial, into a wrongful 28USC§2255 Habeas case, and thereafter erroneously claiming Successiveness, where none existed! (540 US at 378-79 & 384).

In Appellant's case at Bar, the District Court had also changed Appellant's 1991 42 USC §1983 Civil Case, into a §2254 Habeas, also wrongly claiming Successiveness where none never existed! (See: both 4:10CV-3099, and 8:13CV-75, wrongly adjudicated habeas cases as somehow successive.)

Further in Conflict with the Panel's wrongful Denials, is this Court's precedent of PANETTI v QUARTERMAN, 551 US 390(2007, controlling AEDPA Certiorari review, similar in substance and Law to Appellant's case at Bar. PANETTI Court found the FORD claim, like Appellant's herein Ground I-D INEFFECTIVENESS Claims

of exhausted errors, infra, were neither ripe nor available for Habeas adjudication, prior to Appellant's 5-25-10 habeas filing for relief. (551 US at 943-46). (See, STATE v NESBITT, 650 NW2d 766 (2002).).

Thus, in direct Conflict with CASTRO and PANETTI, the District Court and the Court of Appeals, both created: "...Troublesome Results...", "...Procedural Anamolities...", "...Closing Courtroom Doors...", all prohibited in Conflict under CASTRO, 540 US at 380-81, and PANETTI, 551 US at 946, mandates! §2253 (a & c) C.O.A.'s were issued in both CASTRO (290F3d at 1272), and PANETTI (448 F3d at 816), cases.

I-A-2

Second A.E.D.P.A. important "ACTUAL INNOCENCE"Due Process GATEWAY EXCEPTION' violated Question of Law by Court of Appeals Panel, concerns its additional CONFLICT with this Court's controlling precedent of "ACTUAL INNOCENCE" of McQUIGGINS v PERKINS, 569 US 383 (2013) mandate.

McQUIGGINS, earlier, had remanded to the lower Court's for plenary review by way of holding an EVIDENTIARY HEARING. Id at US 396. Unlike Appellant's case at Bar, a §2253(a & c) C.O.A., was also granted in this controlling McQUIGGINS case. (569 US at 392).

McQUIGGINS GATEWAY EXCEPTION INNOCENT mandate, (569 US at 383, 386, & 392-93), to any AEDPA limitation, was denied in direct CONFLICT by the Lower Court's in Appellant's ongoing exceptional case, further resulting in an egregious Miscarriage of Justice upon Appellant's Actual Innocence.

The Clear and Convincing Factual substance establishing Appellant's Innocence, set forth in part in the I-B important DIRECT ESTOPPEL ISSUE PRECLUSION substantial JEOPARDY Question, post, and in part through-out Appellant's requested Trial Records, together, should warrant vacating with a remand to the lower Courts, as Law and Justice would require (§2243) in this exceptional No-

Crime case. A §2253(a&c) C.O.A. was also issued in the McQUIGGINS case, (569 US at 392), contrary to Appellant's ignored and denied Constitutional Claims and requested C.O.A., plus an Evidentiary Hearing.

I-B

Second important fundamental Constitutional violated Question, concerns ISSUE PRECLUSION DIRECT ESTOPPEL Jeopardy Prohibition Law in utter CONFLICT with the Panel Denial Decision and this Court's prior Precedents.

The Court of Appeal's Panel and lower District Courts, mandated by this Court's controlling precedent, MIGRA v WARREN, 465 US 75, 77(Fn#1), 81 (1984), were required to use the Trial Judge's same Nebraska controlling "NO PROBATIVE-EVIDENCE" Directed Verdict of Acquittal Standard. (See, State v Johnson, 602 NW2d 253, 258 (1999) and precedents.). Appellant stands favorably ACQUITTED upon a "No-Probative-Evidence" Judgment of the alternative FELONY Murder charge (N.R.S. 28-401(1975)), and ALL its Underlying "ATTEMPTED" Sexual Assault Acquitted "MOTIVE" offenses. (See, Directed Verdicts of Acquittals in Statement of Case section, at pp. 4-5; and all State's Factual Elementary Essential Elements and Issues resolved favorably to Appellant by State's Witnesses at pp. 5 ,ante.). As this Court further holds in U.S. v AGURS, 427 US 97, 113 (1976): "If the verdict is already of questionable valitity, [as in this case], additional evidence of minor importance, [like a lack of Motive], might be sufficient to create reasonable Doubt." US at 113. See, BROWN v BORG, 951 F2d 1011, 1015 (9th Cir 1991).

No probative evidence exists in this no-crime case of actual innocence beyond any doubt, (let alone by a preponderence or clear & convincing evidence), to establish the remaining Intentional Murder (§28-401(1975) alternative offense essential Elements, to wit:

i.e., Corpus Delicti- Defendant physically Kills Another, Purposely, Deliberately, and Premeditatedly, with Malice, in Nebraska.

The Court of Appeals Panel ignored this rudimentary Structural criminal mandate of Issue Preclusion Direct Estoppel Jeopardy Law, in direct Conflict with this Court's and Court of Appeals following Direct Estoppel Issue Preclusion Acquittal precedents in the same trial context, to wit:

(i) BOBBY v BIES, 556 US 825, 829(fn.#1), 835 (2009)(Reiterating Issue Preclusion Estoppel prohibition, adopted from- Charles A. Wright, 18 Fed. Prac.Proc. §4418 (3rd Ed.) - Issue Preclusion (Direct Estoppel) within a Single Trial Claim.);

(ii) U.S.v McBRIDE, 862 F2d 1316, 1319 (8th Cir 1988)(Applying corresponding Direct Estoppel Issue Preclusionn priniciples upon favorable Directed Verdict Acquittal Judgments within a Single Trial.);

(iii) PERU (BIRD) v U.S., 4 f2d 881, 884 (CA8 1925)(Also applying corresponding Direct Estoppel Issue Preclusion priniciples upon favorable Directed Verdict Acquittal Judgments within a Single Trial.); and,

(iv) not last nor least, See the Directed Verdict Issue Preclusion Direct Estoppel Judgment resolutions of SMALIS v PENNSYLVANIA, 476 US 140, 145-46(1986)(holding: "...LYDON teaches that Acquittals, unlike convictions, terminate the initial Jeopardy, ... not only when it might result into a second trial,...but also if it would translate into further proceedings of some sort, devoted to the resolution of the factual issues going to the elements of the offense charged.";

This includes, "... from being relitigated even in an Appellate Court." KEPNER v U.S., 195 US 100, 103(1904).

Direct Estoppel Issue Preclusion prohibitions were repeatedly violated through-out this exception case and Appellate processes, in direct violation of both Constitutional Jeopardy Safeguards, warranting this Court to grant the Writ in this no-crime case as Law and Justice would require. (§2243).

I-C

THIRD important Constitutional violated Questions of Law, concerns this Court's BRADY v MARYLAND, 373 US 83 (1963) controlling precedents, wrongly denied in Conflict with this Court's and the Panel's own prior BRADY precedents.
(See, BRADY precedental cases set forth alphabitically in the Table of Authorities, and through-out these following Constitutional I-C substantial BRADY violations.)

These below A.E.D.P.A. §2244(b)(2)(B) pertinent and succinctly condensed

BRADY v MARYLAND, 373 US 83 (1963), Constitutional violated Claims were presented for exhaustion purposes, under Nebraska's 2015 New Trial (N.R.S. §§29-2101 to 29-2103, LB245), procedural Amendments. Whereby, diligently discovered State suppressed material and exculpatory substantial Trial evidence, (Non-Ineffectiveness), may now be properly brought on Habeas under the §2244 (d)(1)(D) AEDPA equitable tolling provision.

These Constitutional meritorious BRADY Claims, in and of themself, readily would establish, Appellant's trial would have resulted in a substantially different confident verdict by an untainted Jury.

This supporting Court's precedent in STRICKER v GREENE, 527 US 263, 280-81 (1999) holds under its controlling BRADY precedents:

> "... that the suppression by the prosecutor of evidence favorable to an accused upon request violates Due Process where the evidence is material to guilt or punishment, irrespective of the good faith or bad faith of the prosecutor. 373 US at 87. We have since held that the duty to disclose such evidence is applicable even though there has been no request by the accused, U.S. v AGURS, 427 US 97, 107 (1976), and that the duty encompasses impeachment evidence as well as exculpatory evidence, U.S. v BAGLEY, 473 US 667, 676 (1985). Such evidence is material if there is a reasonable proability that had the evidence been disclosed to the defense, the result of the proceeding would have been different. Id. US at 282; see also, KYLES v WHITELY, 514 US 419, 433-34 (1995). Moreover, the rule encompasses evidence known only to police investigatore and not to the prosecution. Id. at 438. In order to comply with BRADY, therefore, the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police. KYLES, 514 US at 437." Id. 527 US at 280-81.
> See: WHITE v HELLINGS, 184 F3d 937, 943-946 (8th Cir 1999) (citing to STRICKLER v GREENE).

This diligently discovered material-exculpatory BRADY evidence, still requiring an Evidentiary Hearing review, (see, HEFFERMAN v LOCKHART, 834 F2d 1431, 1436(8th Cir 1987), includes amoung other State deliberately suppressed exculpatory documentation, to wit:

1). the 9-13-16 District Court Clerk's letter from its Bill of Exceptions file

Department's Check-out Log;

2). Witness Ray's Sworn 7-16-77 Statements to OPD Miller in RB505K case;

3). The 7-19-77 OPD Miller,s perjured Affidavit to 7-19-77 Search Warrant under RB505K case;

4).Witness Ray's 4-20-84 (pp. 1 & 28 of 29) Sworn Statements to OPD Miller under RB505K case;

5). Witness W. Bieber's 4-25-84 (p. 1 of 32) Intimidated Immunity promise and Statements under RB505K case;

6). OPD Gorgen's 4-8-78 Voice Stress Test results of Ray under RB505K case;

7). OPD Salerno's 5-28-78 Poloygraph Test of Ray under RB505K case;

8). OPD Miller's 7-7-84 Doc. F84-4883 Perjured Affidavit;

9). 11-29-84 Miller's Perjured Affidavit to Governor's Warrant;

10). Other now Known interrelated Perjured case Documentation; and,

(11). The 2-11-92 "Updated" suppressed PSI Report of case Doc. 117,page 261 (CR 9010892).

These forestated newly discovered material and favorable exculpatory evidence Documents, could not have been presented at the 1986 Trial, upon Appellant's 1985 discovery requests of same, due to State's deliberate suppresion of it.

The State Courts' summarily ignored this presented vital BRADY v MARYLAND, newly discovered substantial exculpatory evidence at Trial and Appeal, (Doc. S-16-711 (3-13-17 Sum. Judg., and (4-10-17) R. Hrg. of same, both unpublished.).

Therein, State prosecutor and his OPD Law Enforcement Cohorts, Conspired together, (as documented), to INTIMIDATE, COERCERE , and SUBORN PERJURED Testimonies of its (3) three Immunitized Main Principle Witnesse, Kathy Ray, Wayne Bieber, and third party, Michele McKeever.

This following unlawful suppression of this material and favorable exculp-

atory evidence, prejudicially denied Appellant his substantial DUE PROCESS and COMPULSORY rights, and his other associated SIXTH and FOURTEENTH Amendment Guaranteed Safeguards to CONFRONTATION and EFFECTIVE ASSISTANCE OF COUNSEL, to prepare and present a vital and effective Trial Defense to an untainted Jury. (See: CHAMBERS v MISSISSIPPI,410 US 284, 294-95, 302 (1973)(Compulsory Rights), and POINTER v TEXAS, 380 US 400, 403-05 (1965)(Confrontation Rights).).

Asserted in Appellant's State and Federal Court Filings of Record, none of these State's main principle witnesses (Ray- Bieber- McKeever), ever claimed they could testify to what occurred at the 1975 party.

However, Ray and Bieber through their respective nine-year old "...Hazy... ", "...Foggy...", and "...Lack of Memories...", upon this forced fed subornation of perjured fabricated evidence of the prosecutor and Law Enforcement ORCHESTRATED MEMORY REFRESHERS, thereby falsely testified only about Appellant's so-called alleged later-on conduct, after the early morning of the 11-30-75 party. (State v Nesbitt, 409 NW2d 312, 315-16(Neb 1987).).

The actual case Trial Record of evidence, as stated by the Trial Judge himself, was not only wholly Circumstantial, but amounted to no more than weak Suspicious Speculative Conjective value. The mislead and confused jury, after the multiple Acquittals, necessarily by Law, had only to rely solely on the State's Suborn Perjured testimonies of Ray and W.Bieber, plus the non-probative Third party McKeever's Leniency fabrications, in order to wrongly convict Appellant.

The following uncovered suppressed and Redacted (by white-out) Police Reports and further Falsified Judicial documents used by State as fabricated Memory Refreshers of Record, were confirmed as relied upon by Ray's Attorney's testimony at Trial.

This physicial and mental outright Coercion and Intimidation of these

main principle State witnesses, remains extremely unfair and prejudicial, again denying Appellant a Fair Trial contemplated and guaranteed by both the State and Federal Constitutions' Safeguards.

(State's vital Principle Witness- W.Bieber)

The State and its Law Enforcement Cohort's Criminal Intimidation of W.Bieber to testify falsely, stems directly from this most extraordinary Discovery of State's physical Criminal Kidnapping, Torture and Rape of Bieber's wife, Bridgettte, for several days. These egregiously uncovered Law Enforcement unlawful Cohorts, posing as Mobsters, also burned-up W.Bieber's domicile as further criminal Intimidation of State's witnesses to testify falsely.

(See, U.S.v SMITH, 478 F2d 976, 979(D.C. Cir 1973)("A prosecutor may impeach a witness in Court, but he may not intimidate him or her in or out of Court." Id.).

The State prosecutor had promised Bieber suppressed immunity protection for his perjured testimony, but became highly unsatisfied when W.Bieber Recanted all of it on Redirect. (See, SANDERS v SULLIVAN, 863 F2d 218, 222-25(2nd Cir 1988)(Reversed upon false inculpatory testimony, UnCorrected, after Recantation). Thereafter, the prosecutor, nevertheless, went further in Closing Rebuttal to the still confused Jury, and falsely twisted Bieber's uncorrected perjury. The prosecutor, then falsely exclaimed to the Jury, that Bieber's perjury had eminated from Appellant as extreme unfair prejudice, attempting to establish the prosecutor's failed essential Structural PREMEDITATED element of the remaining Offense charged through Appellant.

See: NAPUE v ILLINOIS, 360 US 264, 270(1979)(Subornation of Perjury prohibited); and WEARY v CAIN, 136 S.Ct. 1002, 1006(2016)(Prohibition against suppression of perjured evidence by way of immunity cover-ups); plus, BURGER v U.S., 295 US 78, 84-88(1935), and U.S.v BECKMAN, 222 F3d 512, 526-27 (8th Cir 2000)(Prohibiting prosecutors falsefying evidence to Jury.).

(State's Third-Party McKEEVER Witness)

The suppressed LENIENCY COERCION of State's witness, Michele McKeever, wholly concocked a fabricated third-party story and testified falsely thereof, (an alleged prior kidnapping and sexual assault- out of whole cloth), contrary to the Documented Law Enforcement Statements. This was uncovered stemming from McKeever's HIDDEN MOTIVE of personal BIAS and GAIN of LENIENCY to have her prior charged and confessed to, repeated, CRIMEN FALSI STATE AND FEDERAL CRIMINAL BANK FRAUD charges, dismissed by these same involved known Law Enforcement Cohorts, which occurred!

In this Court's recent per curiam case, WEARY v CAIN, 136 S.Ct.1002 (2016), holds today in Conflict with the Appellate Court's Panel's Denials, that: "[A] witness's attempt to obtain a deal before testifying, is material because the jury might well have concluded that this witness had fabricated testimony to curry prosecutor favor. NAPUE v ILLINOIS, 360 US 270." Id.S.Ct. at 1006.

See also, STATE v JOHNSON, 587 NW2d 546, 552 (Neb 1988) (Crimne Falsi evidence admissible as material-exculpatory evidence to show fabricated falsified BRADY evidence for guilt or innocence.).

After the prosecutor first granted Ray and W.Bieber suppressed immunity promises, their respective "Hazy", "Foggy" and "Lack of Memories" , were further subtley suborn by inducing Ray and W.Bieber to rely solely on these uncovered falsified and perjured 1977-1978 and 1984 Police Reports and Judicial Documents to refresh their respective momories for testifying falsely at Trial.

This Court in GIGILO v U.S., 405 US 150 (1972) continues to hold and remand today upon non-disclosure violations of false evidence, to wit:

"As long ago a MOONEY v HOLOHAN, 294 US 193 (1935), it made clear the deliberate deception of a court and jurors by the presentation of known false evidence, is incompatible with rudimentary demands of justice. PYLE v KANSAS, 317 US 213 (1942). In NAPUE v ILLINOIS, 360 US 264 (1959), we said the same results obtain when the State, although not soliciting fake evidence, allows it to go uncorrected

when it appears. Id.at 269. Thereafter, BRADY v MARYLAND, 373 US 87, held, that suppression of material evidence justifies a New Trial irrespective of good faith or bad faith of the prosecutor. ... When the reliability of a given witness may well be determinative of guilt or innocence, non-disclosure of evidence is required under BRADY, supra. ... A New Trial is required if the false testimony could ... in any reasonable likelihood have affected the judgment of the Jury. ... NAPUE, supra, at 271. " Id. 405 US 153-54.

See also: PYLE v KANSAS, 317 US 213, 214-16 (1942), along with, DAVIS v ALASKA, 415 US 308, 316-18 (1974)(Prohibiting suppression of perjured or falsified evidence upon immunity protections.).

(State's Vital Principle Witness Ray)

Amoung the uncovered prejudicial perjury injected and suborn by the prosecutor and its Law Enforcement cohorts, prior Sworn upon Oath, "...DIRT ..." Statements, now becomes perjured "...Blood..." testimony that Ray falsely claims she cleaned-up, where none existed as Sworn to Under Oath by Ray in 1977 through 1984. Also, sexual inferences were created out of wholecloth in 1977, and again in 1984, by the OPD Miller and his perjured Affidavits, where no sexual inferences ever existed by anyone, period! See this Court's controlling case, MILLER v PAGE, 386 US 1 (1972), prohibiting falsified 'Blood' testimony, where: "More that 30 years ago this Court held that the Fourteenth Amendment cannot tolerate a State conviction obtained by the knowing use of false evidence, MOONEY v HOLOHAN, 249 US 103. There has been no deviation from this established principle. NAPUE v ILLINOIS, 360 US 264, and PYLE v KANSAS, 317 US 213. ... There can be no retreat from this principle here." Id. US at 7.

See also, CURREN v DELAWARE, 259 F2d 707, 712-13(2nd Cir 1958)(Where the Court consistently holds: "... the knowingly false testimony [of a vital witness] was sufficient to cause the Defendant's trial to pass the line of tolerable imperfection and fall into the field of fundamental unfairness. " Id. at 713.

At Trial, Ray and her then Attorney of Record, as stated earlier herein, both testified under oath, that they relied solely on this induced injection of the then unknown, 1977 and 1984 falsified Police Reports and Judicial Documents used to refresh Ray's "...Foggy..." and "...Hazy..." memory, to wit: ("... as the NOTES read it must have been ..."). See, SMITH v CAIN, 565

US 73, 75-76 (2012)(Where this Court also prohibiting perjured testimony upon unlawfully suppressed evidence, Contrary to Appellate Court's Panel Denials.).

These perjured testimonies of Ray and W.Bieber, along with the fabricated perjured character assault of Apppellant by the third party, Mckeever, under promise of Leinency, became, and remains crucial to the State's imaginary and its sole but foreclosed Issue Preclusion Theory of a "non-probative MOTIVE" Acquittals, all resolved favorably to Appellant upon the Felony Murder Directed Verdicts. (See, I-B Question Claim, ante.).

These forestated substantial Constitutional BRADY Trial violations of Appellant's guaranteed Safeguards, would also warrant the grant of Certiorari to vacate and remand this extraordinary No-crime case of Actual Innocence for an EVIDENTIARY HEARING to the Lower Courts', as Law and Justice would require. (§2243). See: FUNTES v SHEVIN, 407 US 68, 80 (1977), and HEFFERMAN v LOCKHART, 834 F2d 1431, 1436 (8th Cir 1987), infra, at Question Claim II-EVIDENTIARY HEARING Due Process Controlling Requirement Precedents.

I-D

Fourth Constitutional violated Question of Law, separate from the forestated Claims of Trial Errors, concerns INEFFECTIVENESS of Trial and Appellate Counsel of Right deficient prejudicial performances in utter Conflict with this Court's and the Panel's own Circuit Court's prior controlling Ineffectiveness precedents.

The Panel's 1-28-19 wrongful Denials are in direct Conflict with the below Court of Appeals, and this Court's controlling INEFFECTIVENESS precedents, all properly exhausted through-out this exceptional case. (See, Table of Authorities, Alphabetically, and through-out these following I-D Constitutional INEFFECTIVENESS Factual Predicate violated Claims.

These substantial STRICKLAND v WASHINGTON, 466US 668(1984) Ineffective Assistance Claims of the same Trial and Direct Appeal P.D. Counsel, are brought under this Court's WILLIAMS v TAYLOR, 529 US 362(2000) Ineffectiveness precedent

on the following concisely summarized underlying Constitutional Ineffective predicate violations, denying a Fair Trial. These prejudicial Ineffectiveness Claims below, are necessarily brought under §2244(d)(2) AEDPA Equitable Tolling Jurisdiction, as Law and Justice would require. (§2243).

Said Claims were all raised, exhausted, and properly re-raised in this exceptional case, in the 2010 (4:10-CV-3099), the 2013 (8:13CV-75), and current 2018 (4:18CV- 3057) Habeas actions. These Habeas actions were all DISMISSED WITHOUT PREJUDICE, wrongly, as "Legal Nullities", with No Adjudication on the Merits. (Appx.-D pp. 3-4). See, SLACK v DANIELS, 529 US 473, 489-90(2000), and CROUCH v NORRIS, 251 F3d 720, 723-24(8th Cir 2001)(AEDPA Dismissed Without Prejudice as Legal Nullities controlling precedent.).

The INEFFECTIVENESS Claims succinctly constitute, to wit:

(i)- Post MIRANDA v ARIZONA 384 US 436(1966), and DOYLE v OHIO, 426 US 610(1976), multiple unfair prejudicial guilty incrimination inffringements by prosecutorial misconduct upon Appellant's repeated exercise rights to remain silent, to an attorney, and not to be used at trial against Appellant's Constitutional guaranteed Due Process Safeguards. FREEMAN v GLASS, 95 F3d 639, 644 (8th Cir 1996);

(ii)- Prosecutorial unfair prejudicial Closing Rebuttal misconduct infringements misstating Lack of Evidence to establish essential PREMEDITATION element, misleading the already confused Jury in Appellant's long '5' week trial, in Conflict with this Court in BERGER v U.S., 295 US 78, 84-88 (1935), plus, U.S. v BECKMAN, 222 F3d 522, 526-27(8th Cir 2000);

(iii)- Trial Court's 14th Amendment Due Process infringement Denial to requested CORPUS DELICTI 'Structural' essential element (ie. defendant physically KILLS ANOTHER) Jury Instruction; in Conflict with REGAN v NORRIS, 365 F3d 616, 621-22(8th Cir 2004); plus, TREPPISH v STATE, 252 NW 388 (Neb 1934), and STATE v DOYLE, 287 NW2d 59, 61-64(Neb 1980)- (Overturned Lack of Corpus Delicti cases);

(iv)- Prosecutorial unfair prejudicial Closing Argument misconduct infringement, of excluding Corpus Delicti 'Structural' essential element from province of the confused mislead Jury, again violating BERGER v U.S., supra, precedent;

(v)- Repeated unfair prosecutorial prejudicial misconduct infringements of Substantial FREEDOM of ASSOCIATION First Amendment prohibited Safeguards,

U.S.v ROACK, 924 F2d 1426, 1434 (8th Cir 1991) - Exactly on Point;

(vi)-Trial Court's and Counsel's 14th Amendment Due Process repeated Denials to several requested by law, necessary NO-INFERENCE ADMONISHMENT Jury INSTRUCTION Infringements to the confused and mislead Jury- (ie., DOYLE v OHIO, ISSUE PRECLUSION, and FREEDOM of ASSOCIATION, 28USC§ F.R.E., Rule 501- (N.R.S. §27-513(3), Constitutional Safeguards; and,

(vii)- JACKSON v VIRIGINA, 443 US 307(1979), plus U.S. v BECK,659 F2d 875, 876-77(8th Cir 1981), 14th Amendment Due Process INSUFFICIENT PROBATIVE EVIDENCE violations upon each and every Essential 'Structural' element of the remaining accusation charged of Intentional 1st Degree Murder (N.R.S.§28-401(1975))-(ie., KILLS ANOTHER by Physical Act of defendant, PURPOSELY, DELIBERATELY, PREMEDITATEDLY, with MALICE, in Nebraska.

These forestated substantial and Structural Constitutional INEFFECTIVENESS Infringememts of P.D. appointed Counsel at Trial and on Direct Appeal, Prejudicially Denied Appellant to a Fair Trial as guaranteed by both Constitutions, that should readily warrant this Court to grant Certiorari, vacate and remand to the Lower Courts this exceptional No-Crime case of Actual Innocence for further necessary Exploration of these Constitutional violations of Law upon EVIDENTIARY HEARINGS as Law and Justice requires. (§2243). (See, Appx.-C, pp. 8-10).

II

FIFTH important Constitutional violated Question of Substantive DUE PROCESS Law vital to all Appellant's prejudiced Infringements Denying a Fair Trial, concerns in Direct CONFLICT with this Court's controlling precedents to accord Full Throated EVIDENTIARY HEARINGS.

The Burden of Proofs through-out this Habeas litigation were placed on Appellant to establish his Justiciable Meritorious Constitutional Errors in this No-crime exceptional case of Innocence, all Denied in violation of, to wit:

ARMSTRONG v MANZO, 380U.S.545, 552 (1965)(holding, "For more than a Century the meaning of procedural Due Process has been clear. Parties whose rights are to be affected are entitled to be heard, BALDWIN v HALE, 1 Wall 223, 233.");

FUENTES v SHEWIN, 407 US 68, 80 (1977)(Declaring, whenever Burden of Proof is placed on the movant, Due Process accords an EVIDENTIARY Hearing be conducted);

WILLIAMS v TAYLOR, 529 US 420, 437 (2000)(Declaring EVIDENTIARY HEARING Standard to be accorded Habeas Corpus cases; Adopted in WRIGHT v BOWERSOX, 720 F3d 979, 987 (8th Cir 2013);

McQUIGGINS v PERKINS, 569 US 383, 396 (2013), and GRIFFIN v DELO, 33 F3d 895, 906-08 (8th Cir 1994)(Declaring EVIDENTIARY HEARINGS required on Claims of Actual Innocence);

HEFFERMAN v LOCKHART, 834 F2d 1431, 1436 (8th Cir 1987), and CRAWFORD v MINNESOTA, 698 F3d 1086, 1087-88 (8th Cir 2012) (Declaring EVIDENTIARY HEARING required upon diligent BRADY violations); and,

FREEMAN v GLASS, 95 F3d 639, 644 (8th Cir 1996)(EVIDENTIARY HEARINGS accorded on MIRANDA and DOYLE, supra, prejudicial violations of Prosecutorial misconduct upon Exercise Rights to remain Silent Infringements.). (See Appx.- C, p.3).

Plus Compare: the 1-28-19 Panel Judge, Colloton in NELSON v U.S., 909 F3d 964, at 981 (8th Cir 2018)- where judge Colloton, as Justice required, granted Rehearing, an EVIDENTIARY HEARING, and further modification of a C.O.A., on INEFFECTIVENESS Claims, as opposed to ignoring and Denying the same relief of Justice warranted in Appellant's case at Bar! (Emphasis Added)

Denials to Justiciable Due Process EVIDENTIARY HEARINGS for establishing Appellant's herein Constitutional violated meritorious Questions of Law in this exceptional No-Crime case of Actual Innocence, should clearly warrant this Court to grant Certiorari relief, and to vacate and remand this extraordinary case to the Lower Courts to explore upon EVIDENTARY HEARINGS, all Appellant's herein Constitutional substantial prejudicial violations of Law denying a Fair Trial, as Law and Justice would require. (§ 2243).

(See also; Appx.-E, Request for Appointment of Counsel at the District Court and Court of Appeals in this case, also Denied!).

CONCLUSION

The petition for a writ of certiorari should be granted, as Law and Justice requires. (§2243).

Respectfully submitted,

THOMAS E. NESBITT, Appellant Pro se
P.O. Box 11099, Omaha, NE 68111

Date: June 13, 2019

VERIFIED DECLARATION

I, THOMAS NESBITT, the pro se layperson Appellant, hereby declare under penalty of perjury, that all forestated Factual and Legal Statements herein, are both true and correct per 28USC§1746(2). Executed this 13th of June, 2019.

Thomas Nesbitt

Fn*: ROBERTSON v HAYIT POLICE DEPT., 241 F3d 992, 994-95 (8th Cir 2001)(Holding, "... A Plaintiff's VERIFIED ... [Pleading] ... is the equivlent of an AFFIDAVIT for the purpose of Summary Judgment. A ... [Pleading] ... Signed and Dated as true under penalty of perjury, satisfies the requirement of a VERIFIED [Pleading] ... . 28USC §1746(2)."

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

In Re., THOMAS E. NESBITT - Petitioner

vs.

SCOTT FRAKES - Respondent

On Petition for Writ of Certiorari to

The EIGHTH CIRCUIT COURT OF APPEALS

APPENDICES
FOR WRIT OF CERTIORARI

THOMAS EDWARD NESBITT

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