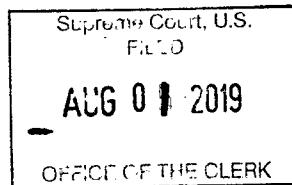


19-5588 ORIGINAL

CASE NO. _____



IN THE
SUPREME COURT OF THE UNITED STATES

LUIS ORDONEZ-VEGA,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

DEFENDANT,

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

LUIS ORDONEZ-VEGA
REG. NO. 30103-058
P.O. BOX 1034

COLEMAN, FLORIDA
33521-1034

USP COLEMAN TWO HIGH

QUESTION(S) PRESENTED

DID CONFLICT OF INTEREST ARISE WHEN APPELLATE
COUNSEL'S FAILED TO RAISE NON-FRIVOLOUS MERIT(S)
"INEFFECTIVE ASSISTANCE OF COUNSEL" ON DEFENDANT'S
FIRST APPEAL "WAIVE" HIS ABILITY TO LATER RAISE
CERTAIN ISSUE(S) IN A SECT. 2255 MOTION CONSTITUTED
INADEQUATE REPRESENTATION OF COUNSEL

LIST OF PARTIES

All paties 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:

1. Appellate counsel's-W.H. PARAMORE, III, P.C., see Appendixes A-3, A-4, A-5;
2. Defense counsel's H.A. (ALEC) CARPENTER IV, see Appendix A-6;
3. Defense counsel's JEREMY SMITH, see Appendix A-6;
4. United States Attorneys Office for the District of North Carolina with-holding exculpatory evidence;
5. United States Attorney General;

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL & STATUTORY PROVISIONS	3
STATEMENT OF THE CASE	4
REASONS GRANTING THE PETITION	8
CONCLUSION	22
PROOF OF SERVICE	24

INDEX TO APPENDICES

APPENDIX A:

Judgment (Mandate) 4th Cir. Appeals No. 16-4857.

APPENDIX A2:

Published opinion in 4th Cir. Appeals No. 16-4857.

APPENDIX A3:

Letter from appellate counsel's stating dft's
filing a writ of certiorari would be frivolous.

APPENDIX A4:

Motion to withdraw as appellate counsel stating
filing a writ of certiorari would be frivolous.

APPENDIX A5:

Letter from appellate counsel's stating he cannot
raise ineffective assistance of counsel (IAC) on
appellant's opening brief.

APPENDIX A5:

Letter from appellate counsel's stating there is
no basis for attack your sentence.

APPENDIX A6:

Letter from trial defense counsel's stating (you
stated both of us were ineffective at trial), and
motion to withdraw as appellate counsel's, Jeremy
Smith and H.A. Carpenter IV..

APPENDIX A7:

Letter addressed to defense/appellate counsel's
requesting to obtain exculpatory evidence.

APPENDIX B:

Judgment in the United States District Court for
the Western District of North Carolina, Criminal
Case No. 3:15-CR-121-22.

APPENDIX C:

Declaration of affidavit by dft. Luis Ordonez-Vega,
a/k/a Mr. Ordonez.

APPENDIX D:

Pro se Motion(s) filed to the United States
District Court by the Defendant/Appellate requesting
Discovery Brady Material(s) and Misclaneous motion(s)
defense/appellate counsel(s) failed to obtain filing
an adequate appellate opening brief to the 4th Cir.

TABLE OF AUTHORITIES

Anders v. California (1967) 386 US 738.....	5,10,11,12
Brady v. Maryland (1963) 373 US 83.....	14-23
Bruton v. United States (1968) 391 US 123.....	20,21
Christerson v. Roper (2015) 574____, 135 S. Ct____, 190 L Ed 2d 763.....	12,13
Gloucester Cty. School Bd. v. G.G., Deirdre Grim (4 th Cir. 2016, No. 15-2056).....	5,7,8
Jared Smith v. United States, 322 Fed. App'x 229 (4 th Cir. 11/19/2018, No. 07-6358).....	7,8,9,11
United States v. Troy Anthony Coleman, U.S.D.C. N.D. Fla. 5:12-CR-5, (4 th Cir. 4/18/2019, No. 18-12946)	18

STATUTES AND RULES

Stat. 19-Conflict of interest (defense/appellate) counsel(s).....	12,14,15,16,18,19,20,22,23
Stat. 46.5-Appeal from Conviction, Id. at 386 US 738.....	5,10,11,12
Stat. 50-Guaranty of confrontation, right to severance of trial from co-defendant(s) when being charged for murder, Id. at 1 L Ed 2d 178.....	20,21

Bruton Rule.....	20,21
Rule 5(d)(1)(D) Fed.R.Crim.P., Preliminary	
Hearing.....	15,22
Rule 5.1 Fed.R.Crim.P., Preliminary Hearing-	
Cross-Examine Adverse witnesses	15,22
Rule 10 of the Rules governing the Supreme Court for consideration of judicial discretion.....	3,12

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, LUIS ORDONEZ-VEGA, Mr. Ordóñez (hereinafter referred to as Mr. Ordóñez, (dft)) respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit (Direct Appeal) appears at Appendix A1. and A2. to the petition and is reported at No. 16-4857.

The opinion of the United States Court of Appeals for the Fourth Circuit (Recall Mandate) appears at Appendix A. to the petition and is reported at no. 16-4857.

The opinion of the United States District Court for the Western District of North Carolina (Charlotte Division) appears at Appendix A2. and B. to the petition and is reported at 3:15-cr-00121-RJC-DSC-22.

JURISDICTION

The date on which the United States Court of Appeals decided my first (Direct Appeal) was November 14, 2018.

No petition for a rehearing was timely filed.

A motion (Recall Mandate) was filed in the United States Court of Appeals on July 12, 2019.

The date on which the United States Court of Appeals decided my case was July 15, 2019.

The jurisdiction of this Court is invoked under Title 28 USC, Sect. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Rule 10 of the rules governing the Supreme Court of the United States, more specifically, considerations governing on a writ states in relevant part:

"Review on a writ is not a matter of right, but a judicial discretion. A writ will be granted for compelling reasons, the following, although... neither controlling, nor fully meaning the Court's discretion indicates the character of the reasons the Court considers".

The United States Court of Appeals for the Fourth Circuit has entered a decision in conflict with the Supreme Court of the United States.

Departing from a well established supreme Court precedent(s). The petitioner, i.e dft. Mr. Ordóñez contends that as a result of the Circuit Court's departure from the Supreme Court's precedent. A writ of certiorari should issue with respect hereto all parties involved.

STATEMENT OF THE CASE

On November 14, 2018, the United States Court of Appeals for the Fourth Circuit issued a mandate as to criminal appeal number 16-4857, DE NO. 113-1, pgs 1-3, see Appendix A1 to this petition.

On 11/14/2018, 4th Cir. Court of Appeals denied appeal no. 16-4857, DE NO. 112, pgs 1-24, in remit of DE NO. 56, filed 8/14/2018, pgs 1-130, see Appendix A2 to the petition. Due to co-defendant(s), appellant has provided excerpts as to DE NO. 56 that pertains in re: Mr. Ordonez¹ with respect hereto all parties involved.

On January 10, 2019, appellant's defense counsel's filed a letter addressing Mr. Ordonez's filing a writ of certiorari, and stated that his certiorari would be frivolous, and that he does not have any merits in his case. (Appellate counsel's W.H. PARAMORE, III, P.C.). See Appendix A3, pages 1-3 to the petition.

On January 11, 2019, appellate counsel's (Paramore). filed a letter addressing Mr. Ordonez (motion withdrawing as appellate counsel), see Appendix A4, pgs 1-4², specifically page 2 of 4, paragraph 2. states: (cannot identify

¹ Mr. Ordonez, a/k/a (LOV) Luis Ordonez-Vega, a/k/a dft., appellant.

² pgs., a/k/a pages, page(s).

a non-frivolous issue(s) to serve a platform for a petition for certiorari to the United States Supreme Court ~~–~~, therefore, counsel believes a certiorari would be frivolous. See also page 2 of 3, DE NO. 124, Appendix A4.³

June 29, 2017, appellate counsel's (Paramore) filed a letter addressed to Mr. Ordonez, in re: Mr. Ordonez's conversation prior to filing open brief in remit of his first appeal, stating in a conversation, that there is no basis for attack of your sentence, see Appendix A5, paragraph 4, page 1 of 2, and including page 2 of 2, paragraph 2. stating:(The Fourth Circuit has written a number of decisions that say (what you do not want to hear) that a defendant/appellant is prohibited from raising issues of "ineffective assistance of counsel" under the Sixth Amendment to the United States Constitution)).⁴

On February 23, 2017, defense counsel's (H.A. (ALEC) CARPENTER), and defense counsel's (JEREMY SMITH), co-counsel filed a letter addressing Mr. Ordonez stated: (I know you believe that Jeremy and I were both ineffective at trial). Jeremy Smith and I prepared your case together. Because you stated that both of us were ineffective at trial)). See

³ Anders v. California (1967) 386 US 738 states: Appellate counsel's must refer to anything that reflect in the record that might arguably support the dft's first appeal.

⁴ Gloucester Cty School Bd. v. G.G., Deirdre Grim (4th Cir. 2016, No. 15-2056), Recall and stay mandate.

Appendix A6, pages 1-4, including 1 cover page.

In this letter, defense counsel's stated that Mr. Ordonez was very angry, i.e. upset because defense counsel's were inadequate for failing to raise non-frivolous issues... during pretrial and trial proceedings. *NOTE, issues will follow in this brief.

On 6/21/2017, Mr. Ordonez filed a letter addressing the clerk of the Court in forma pauperis, to provide, transcripts, Brady/Exculpatory material, criminal indictment, judgment in criminal conviction. See Appendix A7 to the petition, pgs 1 of 1, certified mail no. 7015-3010-0000-7687-1459.

Motion granted by Smith v. United States (321 Fed. Appx. 229; 2008 U.S. App. LEXIS 25048, No. 07-6358, November 19, 2008. Warrant treatment of ~~28~~ USC, Sect. 2255 motion as motion to recall mandate, which was granted. OUTCOME: The Court stated that an order would be entered recalling its mandate and vacating and reentering judgment, and that counsel would be appointed to assist dft. (in accordance with this court's CJA Plan) with respect to the matter of a petition for certiorari to the U.S. Supreme Court. Because the court treated his Sect. 2255 motion as a motion to recall the mandate, it vacated the district court's order dismissing the Sect. 2255 motion.

Recalling its mandate in an action that an appellate court takes only in extraordinary circumstances.

3. EXTRAORDINARY CIRCUMSTANCES:

- a. Appendix A1, 4th Cir. issued a mandate 16-4857 in appellant's first direct appeal, DE NO. 113-1, denying appellant's first appeal in Appendix A2 to the petition.
- b. Appendix A3, appellate counsel's (Paramore) filed a (letter addressed to Mr. Ordonez (appellant) stating that his filing certiorari would be frivolous on January 10, 2019).
- c. Appendix A4, appellate counsel's filed a letter

REASONS GRANTING THE PETITION

- A. RECALL AND STAY MANDATE -

1. On 11/14/2018 the United States Court of Appeals for the Fourth Circuit, in remit Appeal No. 16-4857, with respect hereto, issued a mandate in dismissal of the appellant's first direct appeal, DE NO. 113-1. 4th Cir. issued an opinion in re: Gloucester County School Board v. G.G., by his next friend and mother, Deirdre Grimm, Supreme Court of the United States 136 S. Ct. 2442; 195 L. Ed 2d 888; 2016 U.S. LEXIS 4361; 85 U.S.L.W. 3055, Appeal No. 16A52, August 3, 2016, decided. (ON APPLICATION TO RECALL AND STAY G.G. v. Gloucester Cnty. Sch. Bd., 2016 U.S. Dist. LEXIS 93164 (E.D. Va., June 23, 2016) (4th Cir. Va., Apr. 19, 2016)), states in relevant part:

(195 L. Ed. 2d 888) (136 S. Ct. 2442) The application to recall and stay the mandate of the United States Court of Appeals for the Fourth Circuit in case no. 15-2056.

2. And again in opinion in remit United States v. Robert Jared Smith (4th Cir. November 19, 2008, No. 07-6358), Smith v. United States, 129 S. Ct. 2763, 174 L. Ed. 2d 268, 2009 U.S. LEXIS 4172 (U.S., 2009), vacated by, remanded by,

addressed to the appellant Mr. Ordonez on January 11, 2019 stating that Mr. Parramore (appellate counsel) filed a ~~Motion~~ to withdraw, and that issues ~~in~~ his appeal would be frivolous, see page 1 of 2, attached motion to withdraw, DE NO. 124, filed 1/11/2019, pages 1-3, indicating that appellate counsel's cannot identify any non-frivolous issue(s) in Mr. Ordonez's first direct appeal, and therefore believes a writ of certiorari being filed in remit of Mr. Ordonez's post mandate would be frivolous , see page 2 of 3 paragraph 2. continuation from page 1 of 3.

d. Appendix A5, a letter filed by appellate counsel's (Paramore) June 29, 2017 prior to filing appellant's first openning appeal brief in Appendix A1 and A2, discloses a conversation between Mr. Ordonez and Appellate Counsel's Paramore states: Paragraph 2., page 1 of 2, (As I told every appellate client that I have assisted in the past, appellate counsel's, i.e. (lawyers) do not review discovery). (We review the transcripts, the motions, the orders of the court). In this statement, with respect hereto appellate counsel' failed to read transcripts, because the transcripts indicate Mr. Ordonez stated in open trial that both defense counsel's Jermey Smith and Mr. Carpenter were ineffective, see Appendix A6 to the petition. And Appellate counsel's

stated in Appendix A5, page 2 of 2, paragraph 2, (that what you do not want to hear) a defendant/appellant is prohibited from raising issue(s) of "ineffective... assistance of counsel" under the Sixth Amendment to the United States Constitution. *Anders v. California* (1967) 386 US 738; Held, that appellate counsel's must refere to anything in the record that might arguably support the dft's first appeal. Here, Mr. Ordonez presents Appendix A6, where defense counsel's admitted that dft/appellant Mr. Ordonez stated (because you stated that both of us were ineffective at trial, I do not see how I can proceed as your appellate counsel under these cricumstances).

A6⁵ is a statement from defense counsel's in the record as held in U.S. Supreme Court's decision in *Anders*, Id. at 386 US 738. Wherefore, Appellate counsels must raise "ineffective assistance of counsel" because it is in the record, with respect hereto all parties involved. Here Rule 10 of the rules governing the Supreme Court of the United States is relevant to file a writ of certiorari.

Wherefore, Mr. Ordonez's motion to recall mandate is extraordinary, and presents a prima facie showing in support thereof to recall mandate and issue an abeyance to stay the mandate. 195 L. Ed. 2d 888. (4th Cir. 2016), and

⁵ A6, a/k/a, Appendix A6, 5 pages to the petition.

Smith, Id. at 129 S. Ct. 2763; (4th Cir. 2008).

e. Appendix A6, 1 cover page, and pages 1-4 to follow filed February, 23, 2017 in remit defense counsel(s), Jeremy Smith and H.A. Carpenter that represented Mr. Ordonez during pretrial and trial proceedings stating in relevant part:

Cover Page, Paragraph 2.: I know you believe that Jeremy and I were both ineffective at trial. Jeremy Smith and I prepared your case together. Because you stated... that both of us were ineffective at trial, I do not see how I can further proceed as your appellate counsel under these circumstances.

Cover Page, Paragraph 3.: So that you can get new counsel with whom you can fully discuss and develop ineffectiveness of trial counsel, I have filed a motion to withdraw from your case to the Fourth Circuit Court of Appeals.

Here, Mr. Ordonez makes a claim of ineffective assistance of counsel, i.e. (IAC) during pretrial and trial proceedings that is in the record. See Anders, Id. at 386 US 738, appellate counsel's must refer to anything in the record that might arguably support the dft's first appeal.

Appendix A3, A4, and A5 states in relevant part that appellate counsel's state, specifically Appendix A3, page

2 of 2, paragraph 2, filing a writ is frivolous to raise claims of (IAC). And Appendix A5, paragraph 1.: defendant/appellant is prohibited from raising ineffective assistance of counsel under the Sixth Amendment.

Mr. Ordonez raises ineffective assistance of appellate counsel in re: W.H. Paramore for filing a frivolous opening appellate brief without raising (IAC) claims violated U.S. Supreme Court's convening rule of law (Anders v. California, Id. at 386 US 738) and (Christerson v. Roper (2015) 574 US____,; Held, Statute, i.e. Stat. 19-Conflict of interest arises when counsel's failed to raise his client's strongest argument in fear of damage to his own reputation is at odds, had abandoned his client).

4. INEEFFECTIVE ASSISTANCE OF APEPLATE COUNSEL:

a. Rule 10 of the rules governing the Supreme Court of the United States states that an appeal is not of a right, but of compelling reasons of judiciary review in the interest of justice. Here, Mr. Ordonez makes a prima facie showing, Appendix A5, page 1., states, there are no basis for attack of your sentence. Appendix A5, page 2., Mr. Ordonez is prohibited from raising (IAC) claims, in re: appellate counsel's (Paramore) is inadequate. Appellate counsel's failed to read transcripts as he indicated that

he did, see Appendix A5, page 1 of 2, paragraph 3. to the petition, he failed to raise Mr. Ordonez's (IAC) claims. Here, Appendix A6, states that Mr. Ordonez stated in the record at trial defense counsel's were (IAC), which is indicated in the record.⁶

b. Mr. Ordonez newly asserts a claim of ineffective assistance of appellate counsel's provided ineffective assistance for failing to raise non-frivolous merits on his first appeal (direct appeal)⁷ causing him to "waive" his ability to later raise certain issues in a Sect. 2255 motion, causing a future Sect. 2255 motion "inadequate or ineffective" waiving appellant's opportunity to obtain earlier judicial correction of fundamental defect in his conviction or sentence.

⁶ Christerson v. Roper (2015) 574 US____, 135 S Ct____, 190 L Ed 2d 763; Held, a significant conflict of interest arises when an attorney's interest in avoiding damage... to his own reputation is at odds with his client's strongest argument, i.e., that his attorneys had abandoned him.

⁷ Appellate counsel's stated that he cannot raise (IAC) claims on the appellant's first appeal, see Appendix A5, Page 2 of 2, paragraph 1., (appellant is prohibited from raising ineffective assistance of counsel claims is moot, here, the record indicates defense counsel's were ineffective, see Appendix A6, Page 1 of the cover page)).

c. Appellate counsel's failed to object (IAC) claims defense counsel's representing Mr. Ordonez did not raise merits on his post-conviction that the government withheld exculpatory/Brady Material from a federal grand jury and jury by trial unlawfully convicting the defendant Mr. Ordonez as to murder, rico, vicar.

I.

Appellate counsel's failed to object (IAC)⁸ claims defense counsel's Jeremy Smith provided full disclosure of the shooting (video) incident while Mr. Ordonez was in state custody pending state charges of murder to be reviewed by a grand jury to consider self-defense under North Carolina Law (self-preservation), Mr. Ordonez was in the custody Mecklenburg P.D. prior to being transferred to the custody of the federal government (picking up charge(s)).

During grand jury and trial by jury, defense counsel's did not object the government only displayed cropped parts of the shooting video. Defense counsel's failed to raise stand your ground law for self defense in the state of North Carolina.

II.

Appellate counsel's failed to object (IAC) claims defense counsel's failed to file a motion Bill of

⁸ Ineffective assistance of counsel, i.e. (IAC).

particulars under Rule 6 and 7 of the Fed.R.Crim.P. attacking the indictment as to Mr. Ordonez on the grounds government with-held ~~exculpatory~~/Brady Material in remit murder, rico, vicar, including Rule 5(d)(1(D), 5.1(c) of the Fed.R.Crim.P. preliminary hearing to cross-examine the adverse witnesses, test the prosecutions evidence, produce evidence.

III.

Appellate counsel's failed to object (IAC) claims on Mr. Ordoneze's openning brief that the government provided cropped parts of the shooting video affected appellant's substantial rights (due process), appellate counsel's plainly erred, a plain error is met if:

(1) An eror, (2) that is plain, (3) that affects substantial rights, if all three conditions are met, the Court of Appeals may correct the error only if it seriously affects the fairness, integrity, or public reputation.

Here, full disclosure of the shooting video makes a prima facie showing Mr. Ordonez is actually innocent of murder. See USA v. Coleman (11th Cir. No.18-12946, Apr 8, 2019).

IV.

Appellate counsel's failed to object (IAC) claims defense counsel's failed to object during trial proceedings

Mr. Ordonez moved from New York to North Carolina due to economic reasons and lower taxes. Defense counsel's failed to provide Ordonez's work history through the unemployment agency's recording his post work record(s).

Unemployment records indicates that Mr. Ordonez paid into unemployment taxes, fica, state and federal taxes. The government painted Mr. Ordonez's past is still current is moot and malfeasant with respect hereto all parties involved. Work history indicates that Mr. Ordonez 's work history consist of excessive overtime payment(s).

Every citizen, working class has a right to overcome their past criminal history, or known bad juvenile history, and make a better future for themselves. For the government to withhold exculpatory evidence unlawfully charging and convicting Mr. Ordonez is obstruction of justice, i.e. prosecutorial misconduct. See Senator Ted Steppehens v. United States, held 4 United States Assistance Attorney(s) were sanction obstruction of justice/prosecutorial misconduct, for unlawfully charging and convicting Senator Stephens, his case was over-turned.

v.

Appellate counsel's failed to object (IAC) claims defense counsel's failed to aquire a private investigator to assigned to Mr. Ordonez's criminal case to assist in

his defence. Mr. Ordonez's defense counsel's failed to file (CJA) for funds to aquire private investigator in his criminal case to interview witnesses (Pena), and (Christian Bergamasco). Defense counsel's failed to subpoena (Christian Bergamasco) phone records that indicates a phone call between Mr. Pena (governments witness) and Mr. Bergamasco after Mr. Ordonez's incident of the shooting as to the deceased, stated: Mr. Ordonez acted in self defense, Pena stated to Bergamasco in an phone conversation.

In a previous state case in the state of North Carolina, in re: State of North Carolina v. David Mark Tillery, Mr. Tillery was charged with first degree murder, the state of North Carolina provided (CJA) funding to hire Mr. Tillery a private investigator. Upon determination and investigation, the private investigator provided substantial evidence that witness (Stephanie Berry) had lied on the stand during state trial proceedings. Ms. Berry lived next door to the deceased victim. Ms. Berry was shown a photo lineup with Mr. Tillery and could not identify Mr. Tillery. Mr. Tillery's photo was placed in a news paper several days later. Ms. Berry then contacted state officials and stated she wanted to see the line up again, and picked out Mr. Tillery.

During an investigation by the investigator (private

investigator), he determined that Ms. Berry had lied to Fayetteville Sheriffs Dpt. that she did not recognize Mr. Tillery until she seen his picture in the paper, although, she was still shown his picture at lineup. Mr. Tillery was adjudicated (not guilty). The Circuit Judge ordered...to expunge from the (FBI), State Highway Dpt., NCIC data base, et, al..

Mr. Ordonez argues that appellate counsel's provided (IAC) to raise in the appellant's opening brief. Private investigator would have substantiate Mr. Ordonez's actual innocence. Also see David Mark Tillery v. J.T. Shartle U.S.D.C. Tucson Az. CV-16-204, December, 2016.

VI.

Appellate counsel's failed to object (IAC) claims defense counsel's failed to investigate, hire private investigator to investigate the New York Police testimony for perjury. June 25, 2019, the State of New York suspended 71 police officer(s) in re: of racist remarks as to african americans, and latinos that was posted on Face Book. Mr. Ordonez newly asserts police provided perjured testimony 10 years prior to this case. Mr. Ordonez was an juvenile, and juvenile records are sealed. Police provided protected information without prior approval, and failed to provide exculpatory/Brady Material in remit of New York Police Testimony.

Mr. Ordonez's post contact with New York Police in inquiring as to his tatoos are moot and malfeaseant.

VII.

Appellate counsel's failed to object (IAC) claims defense counsel's failed to obtain exculpatory/Brady Material in remit Mecklenburg P.D. interrogation videos of alleged co-defendant(s), police interviews, police reports, federal 302 R's (reports) by federal officers during state and federal custody. Governments witness Mr. Pena changed his testimony from: (1) Mr. Ordonez acted in self defense, to (2) Mr. Ordonez murdered deceased... victim prior to entering grand jury and jury trial proceedings. Mr. Pena (government's witness) provided perjured testimony, and failed to state under oath, that he (Mr. Pena) and (Christian Bergamasco) had a telephone conversation after the shooting incident, which he stated, Mr. Ordonez acted in self defense. Prosecution coerced Mr. Pena to lie to unlawfully convict Mr. Ordonez. Defense counsel's failed to obtain telephone records.

VIII.

Appellate counsel's failed to object (IAC) claims defense counsel's failed to obtain exculpatory/Brady Material actual phone records, telephone conversations with co-defendant(s) and (Mr. Pena), (Mr. Bergamasco), et, al..

in remit Mr. Ordonez (appellant) acted in self defense.

IX.

Appellate counsel's failed to object (IAC) claims defense counsel's failed to raise, object, and file an interlocutory appeal that the district court denied his motion for severance. See Bruton Rule, Bruton v. United States (1968) 391 US 123, 20 L Ed 2d 476, 88 S Ct 1620 (No. 705); Held, certain co-defendant(s) did not testify at joint trial, introduction of the police reports... exculpatory, Brady Material, prior statements could not be cross-examined when co-defendant(s) occupy joint trial proceedings, added substantial weight to the government's case in form not subject to cross-examination, thereby violating Mr. Ordonez's Sixth Amendment right to cross-examine co-defendant(s) in a joint trial proceedings and that the incroachment on Mr. Ordonez's constitutional right could not be avoided by a jury instruction to disregard co-defendants jointly tried, and separate of Mr. Pena's trial (governments witness).

Admissibility as against conspirator of extrajudicial declarations of co-conspirator, 1 L Ed 2d 1780. Criminal Law Stat. 50-a major reason underlying constitutional confrontation rule is to give a dft. charged with a crime an

opportunity to cross-examine the witnesses, i.e. co-defendant(s) jointly tried.

- An accused's right to cross-examination secured by the **confrontation clause** of the Sixth Amendment is violated at his joint trial with co-defendants who does not testify.

Appellate counsel's failed to object in appellant's opening brief Mr. Ordonez's defense counsel's did not object or failed to file an interlocutory appeal that Mr. Ordonez should had been provided separate trial when being charged for murder. Appellate counsel's failed to object Mr. Ordonez was entitled to a separate trial when being charged, indicted for murder, has a due process for severance, i.e. (Bruton Rule).

IV. PRAYER FOR RELIEF

For the above and foregoing reasons, Mr. Ordonez (appellant) respectfully moves this Court to order a recall mandate Appeal No. 16-4857, and issue an order appoint... (CJA) appellate counsel's to raise Mr. Ordonez's non-frivolous issue(s), i.e. merits for review by this Honorable Court. Or in the alternative, remand for new trial in the interest of justice, appoint (CJA) counsel's.

Upon determination and review of this Court to remand to the United States District Court and determination new trial proceedings, Mr. Ordonez respectfully moves this Court enter an order (CJA) counsel's move for a preliminary hearing pursuant to Rule 5(d)(1)(D) and 5.1(c)(e)(h) of the Fed.R.Crim.P. to cross-examine adverse witnesses, test the prosecutions evidence, review phone records, videos, police reports, 302r reports, police interviews, interrogation video's, etc. with respect hereto all parties involved.

Mr. Ordonez respectfully moves this Court to recall mandate in the interest of justice on the grounds he is innocent beyond a reasonable doubt. The government withheld exculpatory/Brady Material in violation of Mr. Ordonez's due process to a fair trial.

Upon review and determination of this Court, Mr. Ordonez respectfully moves this Court enter an order gran

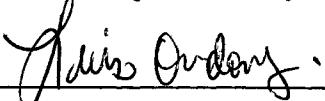
-tinting appointment (private investigator) to assist in his post criminal conviction as to murder.

Upon review and determination of this Court, Mr. Ordonez moves this Court to issue an order that the government provide full exculpatory material and Brady material as to the phone records between Mr. Pena (government's witness and Mr. Bergamasco) indicating Mr. Ordonez incident involving the shooting incident Mr. Ordonez acted in self defense, and provide full disclosure of the shooting incident, on the grounds that the government withheld the complete video from the grand jury and the jury by trial.

Mr. Ordonez moves this Court issue an order to provide all police report(s), 302R's, interrogation video(s) and recordings. Mr. Ordonez petitions this Court that he is actually innocent, and that the above and foregoing reasons and in the interest of justice.

Mr. Ordonez timely directed appellate counsel's file an appeal, i.e. writ of certiorari to the Supreme Court of the United States from his criminal conviction. Appellate counsel's failed to file an timely appeal.

Respectfully Submitted

X 

LUIS ORDONEZ-VEGA