

NO. 19-5650

ORIGINAL

In The
Supreme Court Of The United States

Supreme Court, U.S.
FILED

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James Michael Williams, Petitioner,

Vs.

Daniel Paramo, Warden; Kamala D. Harris,
Attorney General Of California,

Respondents.

On Petition For A Writ Of Certiorari To
United States Court Of Appeals
For The Ninth Circuit

Petition For Writ Of Certiorari

James Michael Williams, AN9579

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- 1.) Whether the Ninth Circuit U.S. Court Of Appeals erred in denying Certificate Of Appealability to Petitioner, on the Ground Of Error concerning the Prosecution's failure to establish the burden of proof denying the Petitioner rights afforded by the Due Process Clause of the United States Constitution's Fourteenth Amendment.
- 2.) Whether the Ninth Circuit U.S. Court Of Appeals erred in denying Certificate Of Appealability to Petitioner , on the Ground Of Error regarding ' Multiple Brady violations where the Prosecution withheld critical items of evidence having exculpatory and impeachment value to the defense.
- 3.) Whether the Ninth Circuit U.S. Court Of Appeals erred in denying Certificate Of Appealability to Petitioner, on the Ground Of Error regarding ineffective assistance of trial Counsel in the second jury trial, and prior to the Preliminary Hearing initially.

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Constitutional Amendment Sixth of the United States.

Due Process Clause of The Fourteenth Amendment of
The United States Constitution.

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In The
Supreme Court Of The United States

James Michael Williams, Petitioner,

Vs.

Daniel Paramo, Warden, et. al.,
Respondents.

On Petition For A Writ Of Certiorari To
United States Court Of Appeals
For The Ninth Circuit

Before The Honorable Justices Of The U. S. Supreme Court.

Petitioner, James Michael Williams, respectfully petitions each Honorable Justice of the Court for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Ninth Circuit, denying Petitioner's application for Certificate Of Appealability. All Parties Appear Above.

The following Opinions and Orders below are pertinent in this matter, all of which are Unpublished.

Beginning with " Appendix - (A):" The most recent to the previous .

The March 15, 2019, Order of the Ninth Circuit denying Reconsideration and/or Rehearing en banc, on the denial of the Certificate of Appealability, entered by a Panel on December 3, 2018. Order of January 10, 2019, granting an extension of time.

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Appendix - (B): United States District Court For The Southern District Of California. Report and Recommendation by Magistrate Judge Gallo, and Order by the District Court Judge Battaglia, adopting the Report and Recommendation denying habeas corpus relief and evidentiary hearing.

Appendix - (C): California State Supreme Court Denial of " Petition For Review " of the Direct Appeal, affirming the convictions ; and the State Supreme Court's denial of " Petition for a Writ of Habeas Corpus, and the requested Evidentiary Hearing, dated March 9, 2016.

Appendix - (D): California State Appeals Court Opinion on Direct Appeal, affirming convictions, (two-Orders) first and second following resentencing.

Appendix - (E): Exhibits - (A) through (G).

Appendix - (F): Petitioner's Declaration Of Facts .

Appendix - (G): Attachments, To Declaration Of Facts .

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Statement Of Jurisdiction

The District Court and the Ninth Circuit Court of Appeals denied Petitioner's request for Certificate Of Appealability hereinafter (COA). Petitioner invokes this Court's authority pursuant to Title 28 U.S.C. Section 1254 (1), and under this Court's holding in, Hohn V. United States, 524 U.S. 236 (1998), where this Court held pursuant to 28 U.S.C. Section 2254 (1), that the United States Supreme Court has jurisdiction, on certiorari, to review the denial of a request for certificate of appealability by a Circuit Judge, or Panel of a Federal Court of Appeals.

Statutory Provisions Involved

The right of this Petitioner to seek federal habeas corpus relief is guaranteed in 28 U.S.C. Section 2254. The standard for relief under the (A E D P A) is set forth in 28 U.S.C. Section 2254 (d) (1).

Standard Of Review

Denial Of Certificate Of Appealability

In, Miller-El V. Cockrell, 537 U.S. 322, 123 S.Ct. 1029 (2003), this Honorable Court clarified the standard required for issuance of Certificate of Appealability. That a petitioner seeking a (COA) need 'only demonstrate a substantial showing of the denial of a Constitutional right. That a petitioner satisfies this standard by demonstrating that Jurists of 'reason could disagree with the District Court's resolution of the Constitutional claims, or that Jurists of reason could conclude the issues presented are adequate enough to deserve encouragement to proceed further...' We do not require a petitioner to prove -

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before issuance of a (COA), 'that some Jurists would grant the petition for habeas corpus. Indeed, a Claim can be debatable even though every Jurists of reason might agree, after the (COA) has been granted and the case has received full consideration, that the petitioner will not prevail. *Id.*, 123 S.Ct. at 1034 , Citing, Slack V. Mc Daniel, 529 U.S. 473 , at 484 (2000).

Statement Of Case

Petitioner herein, was convicted by a California Jury in the second jury trial, of rape in Count- 1, Penal Code Section 261, subd. (a)(2), and forcible oral copulation in Counts- 2 and 3, Penal Code Section 288 a, subd (c)(2)(A). In a bifurcated proceeding, the trial court found true petitioner suffered a prior serious felony, and served a prison term and been convicted of two " strike " priors. Penal Code Section 667.71, subd. (a); 667.5 subd. (a), 668 ; 667 subd. (a) (1), 1192.7 subd. (c); 667 subds. (b)-(i), and 1170.12.)

For each of the three counts of conviction, the court imposed a 25-year to Life term under the habitual sex offender statute, triple to 75-years to Life under the Three Strikes Statute.

Additionally, the Court imposed a five year term for the serious felony prior conviction and a one-year term for the prior prison-term on each count. Petitioner's total sentence was a determinate term of 18 years, plus an indeterminate term of 225 years to Life.

On Direct Appeal, the Appeals Court reversed a true finding for one of the 'strike priors, but otherwise affirmed the-

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Following remand for resentencing, the trial court imposed a 25 - year to life term, doubled it to 50 - years to life under the Three Strikes Statute, on each Count. Totalling 150 - years to life, plus the 18 - year determinate sentence.

Statement Of Facts

The Prosecution in this case involves its key witness Laurel B., who had been drinking with this Petitioner in his Motorhome, on Mardi Gra's Night March 8, 2011 in Ocean Beach California. Laurel, had robbed this Petitioner of \$ 2,430.00 cash after Petitioner passed out from drinking. Only \$ 1,699.00 of this money was recovered from a Drawer in Laurel's bedroom, (one and a-half hours after) she give a false complaint to the Police of being assaulted.

The allegations made by Laurel as to an offer of \$10.000 dollars ; the assumed continued threats of harm ; or the assumed offer of drugs, or to have her Identification copied, are not only her imaginary threats provided, but completely fabricated false claims. Raw unsupported claims, with no form of corroboration whatsoever.

The false allegations given by Laurel, were in an attempt to try 'Masking the fact she had committed a robbery a few hours earlier.

The erroneous statement of facts provided to the State Appeals Court, by Counsel, who did not bother to correct his narrative, by close review of the existing record. Despite Petitioner's repeated request he do so. The Appeal Court has relied upon an inaccurate submission of assumed facts.

This entire case reflects 'assumptions made from 'Raw uncorroborated allegations. That as a matter of law is not evidence. Being a Direct Evidence case, meaning that a Jury has to believe what Laurel alleges, or otherwise they cannot convict. The prosecution's evidence in chief, depends solely upon what Laurel alleges.

Petitioner testified in the first trial, and never has denied Laurel , orally copulating him, or the kissing that occurred more than a brief-moment, as Laurel, attempted to avoid the truth in her testimony at the second trial.

Her attempt to demonstrate that she was an unwilling party, is completely contrary to fact, and erroneous.

The nondisclosed material DNA-Evidence to the Defense was by specific design. Despite claims that numerous items of evidence that were " collected for testing " were not tested due to budget-problems within their department, and that they work closely with the Detective Pasha, to determine what items of evidence would be most probative to the case.

Is wholly unacceptable, and such nondisclosure constitutes a violation of existing law and the Constitution.

The nondisclosure of material DNA Evidence, relevant to multiple Counts charged, is a nondisclosure of material evidence favorable to the Defense. The nondisclosure, equals a suppression of material evidence, when the items of evidence were available for testing, having exculpatory and impeachment importance to the defense.

An example of reaching a perspective based on an assumption is evidenced by the District Judge's reiteration of the Report and Recommendation analysis of assumed facts.

At Page - 2, lines 21 and 22, of the District Judge's Order, he states , " he punched her again and threatened to drug her ". The drugs was falsely stated, and out of context.

Laurel, was never punched once, despite her claim of being punched. She alleged that I hit her twice with a closed-fist to the left-side of her face. One punch, with two hits. ' Not two separate punches.

It becomes easy for assumed-facts to be stated out of proper context, when all the facts are not known, or as in this case based on pure assumption.

Assumed facts viewed completely out of context, which underly her false claims, the manipulation of evidence, and exploitation of the situation Laurel, had created.

The " Raw " uncorroborated allegations are 'not as a matter of law evidence. Assumptions are not evidence, however, in this case it appears the opposite.

The prosecution's case in chief, depends solely upon what Laurel , said happened.

Petitioner testified in the first trial, and never denied Laurel, orally copulating him, or the kissing that occurred alot. Contrary to Laurel's false testimony in an attempt to mislead the Court and Jury into believing she was not a willing party ' avoiding the truth.

Laurel's testimony that she briefly kissed me, and gently ended the kiss, was completely falsely stated.

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Reasons For Granting The Writ

- 1.) The first and foremost reason is that this Petitioner is innocent and did-not commit the offenses charged. Laurel B., was never assaulted as alleged and assumed. Petitioner's convictions are unlawful and he is held unlawfully in his liberty. Petitioner's Habeas Corpus Petition request that his liberty be restored, or at the very-least provided an Evidentiary Hearing with competent Counsel to assist in the presentation of the facts, the truth, and the law applicable to this case.
- 2.) The Prosecutor failed to comply with the mandate of the Due Process Clause of the Fourteenth Amendment of the United States Constitution, in his failure to prove the essential elements of the offenses charged, not meeting his burden of proof that Petitioner used a deadly weapon, a knife, in the commission of the offenses.
- 3.) The Police and Prosecutor violated the Constitution's Due Process Clause, in their failure to disclose Multiple items of evidence favorable to the Defense and material to Petitioner's guilt, and impeachment purposes. Multiple items of material DNA evidence that was collected for testing, having exculpatory and impeachment importance to the defense.
- 4.) Defense Counsel in the second Jury Trial, provided deficient and prejudicial performance in his representation , despite his efforts and/or his appearance, violating Petitioner's Sixth Amendment rights under the Constitution.

These three errors are the principle errors in the initial habeas corpus application. Likewise, the initial errors -

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submitted to the Ninth Circuit on Application for (COA).

The Court Granting leave to Amend additional error for (COA). Petitioner preparing the Reconsideration Motion, was not able to timely complete the Amended Motion. However, a second Motion was filed for extension of time to complete the amendment, which has not been ruled on to date.

With regard to Ground of Error Three, that regards the Prosecutor's failure to prove the essential elements of the offenses charged. Establishing his burden of proof beyond a reasonable doubt, as required by the Due Process Clause, and various precedent holding from this Court.

The District Judge erred in adopting the Report and Recommendation's conclusions. The Magistrate, reaching his conclusions underlying (assumed factual allegations) that are in essence (raw) unsupported claims with no-form of corroboration.

At Pages 41 through 44, of the (Report and Recommendation) the Magistrate Judge dismisses the " fact " the Jury found the force-elements not true, (ignoring the fact that the command of Due Process was 'not met by the Prosecutor.

The Prosecutor's burden, is to (prove all the essential elements of the offenses charged).

The Jury finding the use of a knife, and threats of harm with the knife, " not true ". The Prosecutor failed to meet his burden of proof, to sustain a finding of guilt.

At Page - 43, lines 14 and 15, the Magistrate states Petitioner 'ignores the evidence of his ongoing threats and atmosphere of fear Laurel testified they created."

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The Prosecutor failed to meet his burden of proof, in his failure to prove beyond a reasonable doubt ' all the key-essential elements of the offenses charged, as required by the command of the Due Process Clause of the Constitution, and by this Court's specific command in, In re Winship, 397 U.S. 358 (1970), and numerous other holdings by this Court reinforcing the rule of law announced in, Winship, supra.

Contray to the Magistrate Judge's conclusions, the " assumed " ongoing threats are just that, " assumed ".

They are alleged by Laurel, with no-form of support or corroboration.

These raw claims made by Laurel, were given in an attempt to 'mask' the fact she had committed a robbery, and raise a degree of (imaginable-circumstances) that she gather from my personal history through conversations we had while drinking that night.

As the record clearly reflects, that Laurel's alleged reasons for her (assumed submission to engage in oral copulation, or any other assumed act), is based on Laurel's claim that she complied to the assumed-demands made, because of a knife being pulled on her and held-to her throat, with threats on how Petitioner could harm her with the knife, unless she complied . See: Attachment (23), Page - 561, lines - 1 through 5 , and Attachment (22), Page - 33, lines - 9 through - 17 .

Laurel, testified that " I think it was a knife, which is completely the opposite of what she initially stated to the Police, the Nurse, and the Detective . That Petitioner had pulled a knife on her, holding it towards her, and threatening her with harm with the knife.

She alleged to Officer Gustafson, that he pulled the knife, threatened harm, but did-not touch me with it. Again being, contrary to her testimony.

The knife use and threats of harm with it, were the reasons underlying the offenses charged, and Petitioner's arrest.

That a knife was used with threats of harm with it against Laurel.

As even the lower Courts have recognized that in order for a conviction to be Constitutionally sound, " every element of the crime must be proved beyond a reasonable doubt ".

In , Cox V. Jenkins, U.S. Dist. Lexis 136189, Oct. 6, 2015, Quoting , In re Winship, supra. In , Copeland V. Brewer, 99 F. Supp. 3d 754 (April 15, 2015), the Court reiterating that it is beyond question that Due Process requires (every element responsible for the offense charged , 'must be proved beyond a reasonable doubt ".

This Honorable Court made it clear in , Sullivan V. Louisiana, 508 U. S. 275, that the Prosecutor bears the burden of proving " all elements of the offense charged ".

It is well known that the Government 'must prove beyond a reasonable doubt every element of the offense charged.

Victor V. Nebraska, 511 U. S. 1, at 3 (1994).

The Court finds plain error in, United States V. Spinner,

152 F. 3d 950, at 956 (D.C. Cir. 1998), because the Prosecutor failed to present 'any evidence on the essential element of the crime.

In , United States V. O'Brien , 560 U.S. 218 (2010), this Court announced that the touchstone for determining whether a fact must be found by a Jury beyond a reasonable doubt , " is whether the fact constitutes an element 'or an ingredient of the charged offense ".

The alleged use of a knife in the commission of the offense, with threats of harm with the knife, are definitely essential-principle elements responsible for the charges filed against Petitioner in this case.

Following the Jury's verdict, defense Counsel, refused to revisit his previous Motion to the Court for an acquittal on the knife use allegation, and threats of harm with the knife against Laurel.

No explanation provided by Counsel, other than he's not going there again.

The trial judge should have entered a verdict of acquittal upon the Jury's return of not-guilty to the weapons use, and threats of harm with that weapon, However, he did not. He did however, promptly dismissed the two-Hung-Counts Four and Five.

Count-five, being responsible for the assumed punch to the left-side of Laurel's face twice-with a closed-fist. Allegedly, occurring at the same-time, not separate times being punched.

In , Apprendi V. New Jersey , this Court clearly defines that it is the facts that distinguish an offense, not assumptions , that are essential. That States are prohibited from using evidentiary 'presumptions that have the effect of relieving the State of its burden of persuasion beyond a reasonable doubt, of every essential element of the crime.

Unlike a situation where the Jury received erroneous instructions. Petitioner's Jury was properly instructed on the Prosecutor's burden of proof, on the specific use of a knife and threats of harm with that knife in the commission of the offenses charged.

Therefore, the Prosecution failed to meet its burden of proof beyond a reasonable doubt as required by the command of the Due Process Clause, and this Court's numerous holdings.

Under the circumstances of this case, and this claim in particular. The State Supreme Court's denial of the habeas corpus petition with the (Silent) Post-Card- Denial, should 'not be entitled to 'any deference under the (AEDPA), as a matter of law.

When 28 U.S.C. Section 2254 (d), is satisfied, a Federal Court should resolve a claim without deference.

Frantz V. Hazey , 533 F.3d 724, 737 (9th. Cir, 2008).

When Appellate Counsel did not present this error, and others to the State Appeal Court. Petitioner filed a " Petition For Rehearing " with a request to Augment the Appellate Record. The Court rejected Petitioner's Petition and Counsel of record did nothing.

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See: Exhibit - (C).

This being the principle reason Petitioner filed his habeas corpus Petition 'directly to the State Supreme Court, requesting on the face of the petition an Evidentiary Hearing.

To date, Petitioner has not been provided the opportunity to be heard on the merits of the factual dispute, clearly present where Petitioner's convictions and custody are in violation of the law and the Constitution.

Petitioner has presented the Federal District Court with a clear *prima-facie* case for habeas relief. The silent denial by the state supreme court, is not only unreasonable, but contrary to law.

In , Clark V. Arizona, 548 U. S. 735, at 766 (2006), the Court restating the presumption that a " defendant is innocent 'unless and until the Government proves beyond a reasonable doubt each element of the offense ".

The Court in , United States V. Rocha, 598 F.3d 1144 (2009), finds as a general matter, whether an object constitutes a dangerous weapon in a particular case, is a question of fact for the jury, because it is an element of the offense and 'must be proved beyond a reasonable doubt. We also reverse his conviction under 18 U.S.C. Section (a) (3), because there was insufficient evidence as a 'matter of law that Rocha used a dangerous weapon.

Petitioner respectfully alleges to the Court that the Federal District Court erred in denying habeas corpus relief, and that the Ninth Circuit erred in not Granting the (COA) to consider the substance and merits of the claim, and -

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whether it is appropriate for the Federal District Court to conduct a 'full evidentiary hearing, with competent Counsel to assist Petitioner in the proper presentation of the material facts relevant to innocence.

The Petitioner is innocent, despite whatever 'assumed flaws he may have. The bottom line is that once Petitioner had passed-out, Laurel, seen her opportunity to take the money and leave. The basis of Laurel's 'raw uncorroborated claims underlies the information/history she received while in conversation with Petitioner. Specific information regarding personal life experiences, and his business, and business plans. See: Exhibit - (D), in relevant part Counsel's closing argument, Volume - (6), Pages - 941 and 942. Also See: Exhibit - (E), Volume - (4), in relevant part, Laurel's testimony at, Pages - 283, 284, and 285, in conjunction with Exhibit - (D)'s content.

Regarding," Ground Of Error Two " concerning multiple Brady violations. The nondisclosure to the defense were multiple items of evidence (collected for testing), having exculpatory and impeachment value to the defense.

Of interest the Magistrate Judge reiterates in part the Criminalist testimony on Page (40) of the (R. & R.), at line - (3) in relevant part, " and the other evidence was not as probative ".

The other evidence consisting of multiple items of evidence directly linked to multiple Counts charged.

The Criminalist testified that the fingernail swabs and hair samples from Petitioner were less probative than the penile and vaginal swabs , at lines (8) and (9) , page - 40, of the (R. & R.).

How can they be less probative, when the fingernail swabs were relevant to Count- Four digital penetration, and also to prove Laurel, absolutely lied about being punched to the left-side of her face. Despite the fact there was no physical evidence of a punch to the left-side of Laurel's face, and the assumed punch was relevant to Count-Five the False Imprisonment charge that was Hung, and promptly dismissed.

The significance and probative value to the defense, was to impeach Laurel, sustaining a fact to the Jurors , and that Laurel, not only lied about the punch, but give false testimony to a false complaint.

The same is true with Count-Four the digital penetration, where the fingernail and hands swabs were relevant in proving Laurel, lied there was never any digital penetration. The absence of this test analysis, left the Jury in a position to be Hung. The true significance of that test analysis was hidden from the Jury and the defense. To impeach Laurel's false allegations and testimony. Again the pubic-hair samples that were collected from Laurel and the Petitioner, would have revealed no-contact detected.

The next significant item of evidence 'not-tested, after the Criminalist found (no) DNA evidence inside of Laurel's vagina.

Were the swabs collected from Laurel's external vaginal area.

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Laurel's allegation was that I had orally copulated her, Count-Three, as originally charged. In the second jury trial, because Laurel, alleged that she copulated me twice, the Prosecutor suggest to the Jurors that it-might-be easier for them to find that Laurel, copulated me twice.

When in truth, Laurel, copulated me only once while I was sitting on the Couch, for a brief time a minute possibly less, when I had asked her to stop.

The Prosecutor's move to the Jurors, was a manipulation of the facts, and a manipulation of the evidence, knowing the absence of the test-analysis from the swabs collected from Laurel's external vaginal area.

Had the test analysis been disclosed to the defense, the results would have revealed that Laurel, lied again as to another allegation and charge.

The items that the Criminalist failed to test, working closely with Detective Pasha, on items that will be tested, or not tested. Are items just as probative, as those items which were tested. Items of evidence relevant to specific Counts charged. The probative value of the items not-tested would have revealed the truth, and put an end to the Prosecutor's case.

The probative value of the items tested was favorable to the Prosecutor's case, because the testing of the other items would have provided the truth, where he could not even use the test-analysis he manipulated, through the non-testing of other evidence material to the defense. See : Exhibit (F)

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Volume - (6), Pages - 943 through 946.

With regard to the Magistrate's speculation on Page - 40, of the (E. & R.), at lines 19, 20, and 21, did -not regard a read-back of the Criminalist testimony.

It regarded the Jury questioning the absence of particular test-analysis, reflecting at one point the Jury had requested testing of certain items of evidence.

See: Attachment - (16), in response to the trial court, expressing the concern.

The prosecution would argue that there is no suppression of evidence, destruction, or failure to preserve evidence, all of which are/was available to the defense for testing.

However, it is not the Defense's duty and obligation under the law to test the DNA evidence that is material to the defense. Especially so, in light of the fact a timely Motion for Discovery was filed with the District Attorney's Office. Specifically requesting 'all material evidence to be disclosed, to the defense, including 'all DNA evidence , laboratory reports on the physical evidence, that included any exculpatory evidence in the possession of any Police Dept., the District Attorney, or any other person or agency and available to the prosecution. See: Attachment - (15), the Discovery Motion.

The Duty and obligation of disclosure to the Defense, rest on the Prosecutor and the Police, especially Detective Pasha, who worked closely with the Criminalist in the testing of the evidence, and who admitted he assembled the case evidence for the Prosecutor in this case.

On Page - 40, of the (R. & R.), the Magistrate Judge , Citing , Villafuerte v. Stewart, 111 F. 3d 616, 625-626 (9th Cir. 1997), finding no due process violation from failure to test a semen sample, 'absent a showing of bad faith.

The circumstances in Villafuerte , supra, unlike Petitioner's circumstances are not applicable to the facts in the case now before this Court. Where Petitioner's circumstances are that " multiple items of evidence were collected for testing, and not-tested. Evidence having exculpatory and impeachment value to the defense.

Moreover, these items of evidence not-tested, reflected multiple-Counts-Charged to Petitioner. The absence of the test-analysis-report 'deprived the Jury from learning the truth from Defense Counsel, through an explanation of the relevance of the 'reports analysis that (none) of Laurel's DNA was found on Petitioner's fingers, hands, or the large gold-ring on Petitioner's right hand. That Laurel's allegation of digital penetration was false.

The test analysis of the swabs taken from Laurel's external vaginal area, would have revealed (none) of Petitioner's DNA found. That Laurel's allegation that Petitioner orally copulated her was likewise false.

The testing of the pubic-hair samples collected from Laurel and the Petitioner, would have revealed no findings of contact.

Especially, in light of the fact that there were no-findings inside of Laurel's vagina. No DNA or physical findings. The Pubic-Hair samples were critical to proving no-contact to Count - One. The absence of test analysis deprived the Jury of the truth.

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The Magistrate Judge's analysis of the facts presented and the circumstances, is contrary to law which governs this type of error, where it involves the cumulative effect of multiple items of material evidence being withheld from the defense and the Jury, affecting the outcome of the trial where the verdict would have been different.

The Prosecutor and the Police in this case, including Detective Jamal Pasha, violated the very spirit of Brady V. Maryland , 373 U. S. 83 (1963).

The Magistrate comments on the fact that Counsel argued to the Jury in closing that the Prosecution's failure to test the Petitioner's fingernail swab when it could have corroborated Laurel's story constituted a lack of proof.

That does not excuse the absence of material evidence. Although, defense could make that statement to the Jury, the Jury was not able to grasp the significance, in the absence of defense having in-hand the analysis report to explain the relevance of the findings that Laurel lied, giving false allegations, and false testimony.

The Prosecutor and Detective Pasha, understood what the significance of these test analysis reports would mean to their case in chief. However, their failure to disclose this material evidence, multiple items of evidence, does not excuse their duty and obligation under the law.

They have violated every principle ruled upon by this Court in numerous Holdings, beginning with Brady V. Maryland, supra, United States V. Bagley, 473 U.S. 667, 678 (1985) ;

Kyles V. Whitley, 514 U. S. 419, 433, this Court clearly found that a defendant's failure to request favorable evidence did not leave the Government free of all obligation, referencing several of this Court's holdings.

The first being, where previous undisclosed evidence revealed that the Prosecution introduced trial testimony that it knew, or should have known was perjured, citing, United States V. Agurs, 427 U. S. at 103 - 104, and where the Government failed to accede to a defense request for the disclosure of some specific kind of exculpatory evidence, *Id.* at 104 - 107; and a third factor where the Government failed to volunteer exculpatory evidence never requested.

Where in this case, it was requested early by specific Motion, well before (both jury trials) commenced.

This Court finding the Duty on the Government, even in this last situation, when that evidence withheld was of sufficient significance to result in the denial of a defendant's right to a fair trial.

As this Court clearly held in, United States V. Bagley, 473 U. S. 667, at 682, that regardless of request, favorable evidence is material, and Constitutional error results from its suppression by the Government. Withholding, multiple items of evidence as in Petitioner's case, suffices as a suppression.

There is a strong reasonable probability that had these multiple items of evidence been disclosed to the Defense, the result of the proceeding/trial would have been different.

Kyles V. Whitley, *supra*, at 433.

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Detective Pasha, being the chief investigator throughout the entire case. Directly assisting the Prosecutor in the assembly of his case evidence, and likewise, working closely with the Police Crime-Lab Criminalist in the test development of the evidence. Has a Duty and obligation under the law, existing law, as the Prosecutor also has.

The Police and Prosecutor Under Brady V. Maryland, supra., have a Duty and obligation to disclose 'Brady evidence which is exculpatory in nature and 'material to the defense.

Reinforcing this rule of law with regard to the Police , is the case of, Carrillo V. County Of Los Angeles, 798 F. 3d 1210 (9th Cir. 2015), where the Court held that Police under existing law have the same-duty and obligation as the Prosecutor on the disclosure of exculpatory material evidence to the defense under Brady , supra.

There exist more than a reasonable showing of bad-faith in this case before the Court. Where there exist 'multiple items of exculpatory evidence withheld from the defense. The non - disclosure of one item, of evidence is enough to draw into question the validity of excuses given, however, where there exist multiple items of evidence not-tested, that are directly related to multiple-Counts-charged. Results in one obvious conclusion, that the nondisclosure is in direct violation of Brady, supra, in violation of Petitioner's rights.

As the Court in , United States V. Bagley, 473 U.S. 667 makes reference to in the Summary, regarding, the Ninth Circuit reversed, holding that the prosecution's failure to disclose -

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requested information which the defense could have used to conduct an effective cross-examination, impaired defendant's right to confront adverse witnesses, and therefore, required automatic reversal of his convictions.

The same is true here, where Counsel did not have in hand the test analysis report, in his cross examination of Laurel. The significance of the multiple analysis reports, would have permitted the defense to ask Laurel, (why) her DNA-was not discovered on Petitioner's fingers or hands, or for that matter, (why) Petitioner's DNA was not found on Laurel's external vaginal area, or (why) there was no affirmative finding on the pubic-hair samples collected from Laurel and Petitioner. The cumulative effect of this nondisclosure of multiple items of material evidence has prejudiced Petitioner's defense and deprived him of a fair trial. Brady, supra, at 678 , and Kyles V. Whitley, supra., at 434.

Regarding more recent enforcement of this Court's precedent is the case of , Wearry V. Cain, 136 S. Ct. 1002, (2016), where a cumulative evaluation of the materiality of wrongfully withheld evidence is required. Where the prosecution failed to disclose material evidence supporting Wearry's innocence , concluding the prosecution's failure to disclose violated Wearry's due process rights. The Court reiterating the Brady V. Maryland, supra., at 87, rule of law that the suppression by the Prosecution of evidence favorable to an accused upon request, violates due process where the evidence is material either to guilt or punishment, " irrespective of Good Faith or Bad Faith of the Prosecution.

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This Court in, Mathews V. Eldridge, 424 U. S. 319 (1976), speaks right to the heart of the matter, where the Court states, " that the right to access exculpatory biological evidence, when denied , is a 'violation of the balancing-test which weighs the 'risk of convicting an innocent person ", against the Government's interest in avoiding disclosure ".

Had disclosure been provided to the Defense, the outcome of the Jury's verdict and the trial would have been very different. Counsel, would have been able to effectively cross examine Laurel B., revealing the false allegations she give to the Police, and her false testimony to a crime that never occurred.

Petitioner was denied a fair trial and justice, while the Jury was deprived of learning the truth. In direct violation of Petitioner's rights to due Process under the Constitution of the United States.

Petitioner would 'respectfully allege to the Court, that the District Court and the Ninth Circuit Court of Appeals, have erred in denying (COA) to Petitioner. Further, that the District Court erred in denying the requested evidentiary hearing of the very substance of the claim presented, and supported by the record. A (COA) should issue to allow review on the merits of this claim, based on findings of fact developed at an evidentiary hearing with competent Counsel assisting Petitioner in proper presentation of the material facts.

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For these reasons, Petitioner states to this Court that he 'has met the requirements set-forth by the Court in Miller-El v. Cockrell, 537 U.S. 322, 123 S. Ct. 1029 (2003) to receive Certificate of Appealability.

In light of the facts presented to this Honorable Court, and the 'existing record of fact. Petitioner would request this Court to ' Grant Writ Of Certiorari, 'reversing the Ninth Circuit Court of Appeals (Order) denying (COA), with instructions to either consider the totality of the merits presented to the substance of the claims, or in the alternative mandate the case back to the District Court to conduct an indepth evidentiary hearing, with Counsel to assist the Petitioner in presenting the merits leading to an adequate factual resolution in accordance to existing law and the Constitution's clear mandate, in the interest of justice, Petitioner therefore, yields to the Court.

(I A C- Claim)

Ground - Four

Despite Petitioner's extremely strained communication with Mr. Tandon, the appointed-reassigned Public Defender for the second trial. Mr. Tandon, was intentionally removed from my case, when retaining private Counsel following the preliminary hearing. See: Declaration Of Facts, (Appendix-E). Despite Mr. Tandon's general appearance in his -

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cross examinations, opening summation to the Jury, and his closing argument.

With communication strained at nearly every level. We had many heated conversations in and out of the Courtroom.

I had to urge him to object numerous times, and then , some objections he plainly refused. Informing me, that if I did not like what he was doing to file ineffective assistance claims on him.

Some objections he could not properly argue, not being familiar with topic-matter. Admission of erroneous prior convictions where the argument was not fully on point , or being consistent with precedent.

When Mr. Tandon, was originally assigned prior to the preliminary hearing. He repeatedly refused to conduct an initial investigation, " to secure the Video Footage from the Local Arco Gas Station/ Store combination. To secure the Arco employee witness, who would have corroborated the Video Footage, and personally corroborate the time I had left the Arco. This witness and the Video, would have impeached Laurel B's account of leaving the Arco when it was beginning to be Day-Light-Hours. The significance of this, is that we left the Arco, when it was completely dark outside, arriving back in the Parking Lot, before 4:00 A.M.

Why ... it is significant to prove this point, is because Laurel, alleged that she left the Motorhome during daylight hours around 7:00 A.M.

Laurel, had intentionally pushed the time-frames forward, to justify or support the time the call was placed to the -

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Police at 7:36 A.M.

Laurel's " claim " of leaving the Arco, when it was beginning to be Daylight-Hours, (and) leaving the Motorhome at 7:00 A.M., was an intentional lie to justify/support (why) the call to the Police was at (7:36 A.M.).

When Laurel and I, left the Arco it was completely dark outside. We arrived back at the Parking-Lot, at approximately 3:45 to 3:50 A.M.

Somewhere between 4:30 and 5:00 A.M., Petitioner passed out from drinking. Thereafter, Laurel, left the Motorhome with Petitioner's money.

At Stacy's residence some four-blocks in distance, Laurel, and Stacy, discussed what they would do.

The significance of the Arco witness and the video-footage was to impeach Laurel's lie.

Mr. Tandon, refused to conduct any initial investigation with regard to the Arco Station , or to try interviewing potential witnesses at businesses adjoining the Parking Lot area.

Mr. Tandon, refused numerous request to secure my telephone records. One phone was manually deleted, and the second phone was missing the memory-chip.

The significance of the phone-records, were to refute the Prosecutor's theory. suggestion to the Jurors that Petitioner had noway to locate Laurel, and therefore, Laurel, had no motive to call the police.

Petitioner 's phone records would have demonstrated that he had the ability to find Laurel, or to report her to the Police for robbery.

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Mr. Tandon, refused several of Petitioner's request to call three (3) Women character witnesses. Who knew Petitioner's character well. Women, whom Petitioner never had an affair with, being only good friends.

Defense Counsel, refusing to call them, and willing to call only women Petitioner had an affair with. Which made contact impossible, because Counsel refused to secure Petitioner's phone records, and the only way to reach the two-women was by phone. Counsel, was aware of these facts, yet still refused to secure the phone records.

Contrary to the Magistrate Judge's reasoning on Page-46 of the E, & E. that the Arco Video and eye-witess from the Arco , has not demonstrated how it would have impeached Laurel. It was explained as clear the the Magistrate, as it is herein.(That laurel, intentionally lied about the time we left there, to intentionally push the time-frames forward, to justify her claim of leaving at 7:00 A.M. and call to police at 7:36 A.M.

To verify the time we did leave when it was still very dark, would have impeached Laurel. Petitioner, has not engaged in any speculation , and the Magistrate's announcement of Speculative and conclusory allegations are insufficient to prove Counsel provided ineffective assistance. Is misplaced and an inappropriate response, based on the factual record before him, that exist within the actual Court record.

The Magistrate's assumption on Page- 47, line 17 and 18 , is outright offensive to Petitioner.

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There was NO-ruse as the Magistrate would state, to get Laurel's phone number, or to get her to come to the Motorhome.

Laurel, chose to place her number into my phone, when I give her my number at the Club. She speed-dailed her phone to verify she correctly entered my number. Thus, her number was on my Caller I.D.

She was suppose to call me within two-weeks, to discuss her possibility of modeling at the photo-shoot, that was five-weeks out from that point in time. Where one male and female would be modeling Leather Apparel.

Laurel, chose to speed-dail her phone. Just as she chose to come to the Motorhome, to continue drinking.

See: Attachment - (1), Page - 79, lines 12 to 25.

There never was any (ruse) to secure Laurel's number or to get her to come to the Motorhome. (Laurel) wanted to come of her own accord.

There are so many assumed-facts in this case (misconstrued) it is beyond reasonable comprehension. For instance, a raw allegation with no-form of corroboration, is construed as being a fact ?

The fact is that the cumulative effect in Counsel's refusals and failure's have caused deficient and prejudice performance to Petitioner's defense.

Mr. Tandon, not only violated the very requirements of representation defined by the Court in, Strickland V. Washington, 466 U. S. 668, at 694 (1984), where his failures outlined here to the Court, were deficient to the point that -

his representation ' fell below an 'objective standard of reasonableness , and further, that had these errors by Mr. Tandon, not occur, there existed more than a reasonable probability the result of the trial would have been more favorable to Petitioner.

Especially so, in a direct evidence circumstantial case where Laurel, is the sole key witness, where everything depends on what Laurel, says.

The absence of total evidence in this case, including the DNA evidence, Petitioner has met his burden of proving by a preponderance of the evidence , under Strickland, supra, that Counsel's was deficient and prejudiced his defense.

Again, Mr. Tandon, not only ignored the initial pretrial investigation, but violated the principles set forth by this Court in , Wiggins V Smith, 539 U. S. 510 (2003), where the Court applied the basic-principles in determining whether a Lawyer's pretrial investigation was constitutionally deficient.

That Counsel " must make a rational and informed decision on strategy and tactics ", which are founded upon an adequate investigation and preparation. However, no rational and informed decision can possible be made, when no pretrial investigation occurred. Counsel's actions described cannot be presumed reasonable assistance.

Petitioner would state to this Court, that Mr. Tandon's refusals to secure material evidence in this case, and to conduct a pretrial investigation, to prepare evidence to refute very serious allegations against Petitioner in a -

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circumstantial case, violates this Petitioner's rights afforded by the Sixth Amendment of the United States Constitution.

The need for disclosure in this case is particularly acute where the Prosecutor has presented a witness, 'who has not only committed a robbery of Petitioner's money, ' but condoned the robbery.

Laurel, has committed a second felony , the giving of a false complaint of a felony crime, is a felony crime.

Leaving to one's imagination whether this event is comparable to rewarding a criminal for their testimony ' on the promise (not to prosecute) for their testimony, and the unsuspecting defendant becomes a victim of a perfidious bargain.

As the Court recognized in, Amado V. Gonzalez, 758 F. 3d 1119 (9th Cir, 2014).

Mr. Tandon, was not prepared to properly argue against the admission of the 1984 Oklahoma prior conviction. He would enter objections when urged to do so, however, as to posting argument he was deficient for reasons he never had the interest to investigate the matter.

The Prosecutor exploited fully the prior conviction, and relied upon false documents in the process. Under extreme duress by a corrupt Sheriff, James Ray Mc Clain, I had plead guilty to Kidnap for Extortion, no other Count, especially a rape Count. The small town prosecutor, altered the plea Form (post-plea) after I was no-longer in the Courtroom, or likely, at a later date when I was no-longer in the Courtroom.

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The Prosecutor and the trial Judge were totally aware of my testimony given in the first trial, regarding the Oklahoma conviction in 1984, for only one-Count, Kidnap for Extortion.

On the day of trial, the Prosecutor receives a one-page faxed document Judgment and Sentence alleging one-Count only Kidnap for Extortion.

In the second trial he has a completely different document, alleging I plead guilty to two Counts. When that never did occur. The document had a rubber Clerk's Stamp on it, which is accessible to many people in this small town at the Court House. It was not a Certified Document by the Court with a Genuine Seal Of The Court, as other documents bear.

Cheryl Bunya, did appear here and testify, that she did witness me plea guilty to the rape Count. That was a lie, even in her own testimony here.

That she was sitting out in the Hallway, and called into the Judges Chambers and told that I had plead guilty.

I had plead guilty under duress to the Kidnap Count, but not to any rape count.

If Cheryl, was sitting out in the Hallway as she testified to, she cannot witness the actual plea being made. Not being in the Courtroom to witness it first hand.

Mr. Tandon, in this second trial was not prepared for the cross examination of Cheryl Bunya, and therefore, only asked her whether the alleged incident in Oklahoma involve her taking any money, something to that effect.

The Prosecutor and the Judge, had been on notice of the -

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in that small Oklahoma town, and refused to acknowledge it, even when Mr. Tandon, finally offered some proof of the situation there. The trial Court declined to entertain any evidence regarding Oklahoma and what actually occurred to my situation there.

If Counsel would have investigated the matter sooner, there existed a possibility the the Judge would have viewed what he learned, however, that investigation never took place.

Even if it had, the Prosecutor was not willing to look at the real facts that did traspire.

For this Court convenience, when reading reiterations that regard the Oklahoma incident, which are taken by those reiterating, out of context to the actual events that occurred.

See : Exhibit - (G): Volume - 8, January 16, 2013, in relevant part, Page - 1027, lines 23 through 28 , and on Page - 1028, lines 1 through 5. Also See: Exhibit - (H), various New's Articles regarding the arrest and Conviction of Sheriff James Ray Mc Clain, and the overall degree of the corruption that transpired there in that small Oklahoma town. These are just a fraction of the coverage, and of the facts to all the corruption there at that time.

Wherefore, for all of the foregoing reasons presented to this Honorable Court, the Petitioner Prays the Court Grant Petition for Writ of Certiorari, reversing the Ninth Circuit Court of Appeals Order Denying (COA), and that the Court either consider the merits of each claim as to the substance, or to remand to the District Court for a evidentiary hearing with Counsel to assist in the presentation to the Court. Should -

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this Honorable Court require any further documentation, Court
Records/Transcripts, please advise.

Respectfully, Petitioner Yields to the Court,

Date: August 7, 2019

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