No. 19-6052 ORIGINAL
18-12985

N/A

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IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON D.C. 20543

FILED
JUL 15 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

RAFIE A. LEE — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

RAFIE A. LEE
(Your Name)

FLORIDA STATE PRISON-P.O.BOX 800
(Address)

RAIFORD, FLORIDA 32083
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

1) Whether Petitioner was denied "Fundamental Fairness" in the State Court Proceedings?

2) Whether State and District Court erred in denying Petitioner an evidentiary hearing?

3) Whether the United States Courts of Appeal erred in denying Petitioner a certificate of Appealability?

LIST OF PARTIES

1) In the United States Court of Appeals for the Eleventh Circuit. Case no.: 18-12985-E

2) In the United States District Court for the Northern District of Florida Pensacola Division. Case no.: 3:16-CV-00097-MCR/CAS

3) In the District Court of Appeal First District, State of Florida. Case no.: 1D12-6062:1D15-2173

4) In the Circuit Court of the First Judicial Circuit in and for Escambia County, Florida. Case no.: 2012-CF-001705-A

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

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[✓] is unpublished.

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

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[✓] is unpublished.

[✓] For cases from **state courts**:

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

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[✓] is unpublished.

The opinion of the CIRCUIT COURT OF THE FIRST JUDICIAL court appears at Appendix D to the petition and is

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

JURISDICTION

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

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

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: APRIL [redacted], 2019, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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 12-3-13. A copy of that decision appears at Appendix C.

[✓] A timely petition for rehearing was thereafter denied on the following date: 9-29-15, 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).

[redacted]

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 6

RIGHTS OF THE ACCUSED.

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; 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 DEFENCE.

AMENDMENT 14

SECTION 1. [CITIZENS OF THE UNITED STATES]

ALL PERSON BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

§26.4. MISCARRIAGE OF JUSTICE (ACTUAL INNOCENCE)

[redacted]

STATEMENT OF THE CASE

On April 7, 2012, at and in Escambia County, Florida, Petitioner Rafie A. Lee was accused and arrested for battery touch and strike, 783.03 on Hope Cattell and Aggravated battery on a pregnant person, 784.45 (1) (b) Brittni Freeman. On December 6, 2012 Petitioner plead not guilty and went to trial and was found guilty. On December 18, 2012 Petitioner was sentenced to time served for battery touch and strike 784.03, and fifteen (15) mandatory years for aggravated battery by battery of a pregnant person 784.45(1)(b).

COURT PROCEEDINGS

1) 2-13-13: Denial of Direct Appeal 1D12-6062

   12-3-13/12-19-13 Per Curiam Affirmed, Mandate

2) 9-2-14: Denial of 3.850 Pro-Se Post Conviction

3) 3-7-16: (entered 3-9-16) file §2254 Writ of Habeas Corpus

   4-21-16: Filed a Motion for Leave to Proceed to Informa Pauperis (entered 4-26- 16) 3:16-CV-00097-NCR/CAS

   5-13-16: (entered 5-19-16) Pro-Se Amended §2254

4) 2-3-17: First District Court Appeal filed an answer to §2254

5) 9-29-17: Magistrate Judge filed a report and recommendation to deny §2254 Writ of Habeas Corpus, Certificate Appealability, and (IFP)

   10-23-17: (Entered: 10-25-17) Petitioner filed an objection to report and

recommendation of denial.

6) 5-25-18: Chief Judge order to deny §2254 Writ of Habeas Corpus

7) 9-6-18: Petitioner filed an application for (C.O.A.) to the Eleventh Circuit Court of Appeal. Case no.:18-12985/2-28-19: 11th Cir Court of Appeal denied (C.O.A.)

8) 4-17-19: 11th Cir Court of Appeal denied Motion to Reconsider.

In Petitioner's Pro-Se amended 3.850 motion. Petitioner raised fifteen (15) Claims of ineffective assistance of counsel, but since on his Federal §2254 Writ of Habeas Corpus has reduced the claims to ten (10). Prosecutorial misconduct, miscarriage of justice. Petitioner comes now asking the Court to review only four (4) of his ineffective assistance of counsel claims, prosecutorial misconduct, (Giglio violation), and miscarriage of justice (actual innocence).

Petitioner asserts his claim relate in one way or the other to counsel's failure to accord Petitioner "effective assistance of counsel." In which the Sixth Amendment, Guarantee, Counsel, deprives Petitioner of that right because Petitioner defense depended on adequate Pre-Trial investigation, adequate discovery and depositions, putting on proper expert witness testimony and evidence, filing Pre and Post trial motions and effective cross examinations. Trial counsel delivered none of the above.

QUESTION(S) PRESENTED

Whether Petitioner was deprived "fundamental fairness" in State-Court proceedings?

ISSUE ONE

COUNSEL RENDERED "INEFFECTIVE ASSISTANCE OF COUNSEL" FOR (1) FAILURE TO MOVE TO STRIKE PROSPECTIVE JUROR FOR BIAS TOWARD LAW ENFORCEMENT. ALLEN V. STATE, 875 SO.2D 734 (2004); STRICKLAND V. WASHINGTON, 466 US 668, 104 S. CT. 2052, 80 L.ED.2D 674 (1984)

Had trial counsel moved to strike juror Donna Connor for cause, there's a reasonable probability the result of the proceeding would have been different, because her participation in the deliberation help to inflame the mind of the rest of the juror, that the police is being truthful in his testimony, because that is how she was raised to believe the testimony of the Law Enforcement. Petitioner should have been afforded an evidentiary hearing to present evidence that would have rebutted the evidence the State presented at trial. The testimony of the Law Enforcement.

Counsel rendered "Ineffective assistance of counsel" for (2) failure to use available evidence to properly cross-examine the alleged victims with their deposition and trial testimony for impeachment purpose. **Smith v. Wainwright,** 779 F.2d 1442 (1986); **Strickland v. Washington,** 466 US 668, 104, S.Ct.2052, 80

L.ED.2d 674 (1984).

Had trial counsel used the allege victims written Statement/ police report it would have pointed out the contradictions and inconsistencies in their deposition and trial testimony. Failure to make the jury aware during trial that the allege victims had given different Statements to the police which was inconsistent with deposition and trial testimony deprived Petitioner of evidence which was critical to determination of Petitioner guilt or innocence. **Smith v. Wainwright,** The newly presented evidence may indeed call into question the credibility of the witness presented at trial. **Jackson v. Virginia,** 443 US 307, 61 L.ED.2d 560 99 S.Ct. 2781 (1979). Had this newly presented evidence been used at trial no juror of reason would have found Petitioner guilty respecting guilt beyond a reasonable doubt? Petitioner was entitled to an evidentiary hearing to develop facts as why trial counsel chose not to present evidence that would have shed doubt on the State's case and demonstrate Petitioner's actual innocence.

Trial counsel fail in his duty to hold the State to its heavy burden of proof beyond a reasonable doubt. **United States v. Cronic,** 466 US 648, 80 L.ED.2d 657, 666, N.19, 104 S.Ct.2039 (1984). The reasonableness of trial counsels failure... Fell outside the wide range of a professional competent attorney. The State-Court fail to meet the standard in **Hoffman v. State,** 571 So.2d 449 (Fla.1990), by not refuting Petitioner's claim with competent, substantial evidence

from the face of the record.

Counsel rendered "Ineffective assistance of counsel" for (3) failure to conduct an adequate pre-trial investigation, by investigating, interviewing, and calling expert witnesses or evidence to support Petitioner's defense. **Holsomback v. White,** 138 F.3d 1382 (C.A.11 (Ala.)). **Strickland v. Washington,** 466 US 668, 104, S.Ct. 2052 L.ED2d 674(1984).

Trial counsel's failure to interview, investigate, and call witnesses, (namely) the pregnant victim Brittni Freeman's doctor, and nurse Susan Duponte was a "constitutional error" of ineffective assistance of counsel, which deprived the jury of critical evidence that would have established Petitioner's actual innocence. Counsel incompetence also deprived Petitioner the right to be confronted with the witness against him; which violates the confrontation clause. Trial counsel failure to call the allege nurse Susan Duponte and the doctor or any expert witnesses prejudice the Petitioner defense. The doctor and nurse or expert witness would have established the fact rather, Petitioner has committed a battery or not. Or rather had any physical assault occurred at all? Petitioner was denied his "constitutional" Guaranteed right to "effective assistance of counsel" for failure to investigate and present evidence to the jury to rebut the State's evidence. No evidence exist in the record that trial counsel conducted any investigation into the merits of the evidence the State presented at trial. Trial counsel did not fulfill his

obligations to conduct a thorough investigation, counsel unprofessional service prejudice the Petitioner within the meaning of **Strickland v. Washington,** 466, Us 668 104 S.Ct.2052 L.ED.2d 674; had trial counsel conducted an adequate investigation and called expert witnesses the judge and jury would have heard credible evidence from expert witnesses that would have supported the Petitioner's defense. That it is physically impossible for the Petitioner to have committed this crime and not leave a shred of proof beyond a reasonable doubt. And the allege victims are Caucasian females. The judge and jury would have learned that Hope Cattell and Brittni Freeman was dishonest and given false testimony. The testimony of the expert witnesses and Susan Duponte would have significance facts relevant to a particular issue and facts. Which discredit a witness by pointing out the witness bias, corruption, or lack of competency. Petitioner argues Hope and Brittni's false testimony about the battery and aggravated battery goes to their credibility and that if the judge and jury knew they were lying. It would have affected the guilty verdict, or a judgment of acquittal would have been granted. The State-Court did not hold an evidentiary hearing to settle the dispute on rather a battery had occurred on either Hope or Brittni. Brittni had mentioned the doctor and allege nurse Susan Duponte in her testimony to the jury that they had assisted her. But the Petitioner should have been afforded the opportunity to confront these witnesses. The newly presented evidence may indeed call into the credibility of

the witness presented at trial. **Jackson v. Virginia,** 443 US 307 61 L.ED.2d 560, 99 S.Ct.2781 (1979). Trial counsel's lack of preparation and failure to provide character witnesses demonstrated no valid tactical reason for his failure to properly investigate evidence and as a result his performance fell below the acceptable standard for competent counsel. Had trial counsel investigated, interviewed, or called these witnesses it would have established reasonable doubt as to whether Petitioner battered Hope and Brittni. Also, it would have give Petitioner a fair chance to be confronted with these witnesses against him. The doctor and Susan Duponte. The State-Court did not attach those specific portion of the record with competent, substantial evidence that directly refuted this claim, as to why counsel chose not to present evidence that will demonstrate Petitioner's actual innocence, or raise sufficient doubt in the States case. Therefore, Petitioner was entitled to an evidentiary hearing. **Hoffman v. State,** 571So.2d 449 (Fla.1990)

Counsel rendered "ineffective assistance of counsel" for (4) failure to move for a judgment of acquittal which deprive Petitioner of his liberty. **Strickland v. Washington,** 466 US 668, 104 S.Ct. 2052, 80 L.Ed 2d 674 (1984)

Had trial counsel moved for judgment of acquittal and explained to the Court the State's evidence is legally insufficient to support a guilty verdict. The State failed to present sufficient evidence as proof beyond a reasonable doubt that Petitioner had committed a battery against, Hope and Brittni. The State-Court

State's "the State put forward direct evidence from the two victims that defendant had committed both battery and aggravated battery." The direct evidence was the testimony of Hope and Brittni, and it is apparent on the face of the record that Hope and Brittni's testimony is not credible. Trial counsel fail to challenge the lack of evidence in the States case. Battery and aggravated battery requires proof beyond a reasonable doubt, which is an essential element of the charges. There was no medical/visual proof that this crime had occurred, in which there should be. If Petitioner had severely battered Hope and Brittni, according to their accusation, both Hope and Brittni are white females. Hope claim that Petitioner threw a glass gin bottle as hard as possible and hit her in the face, choked her, and held her in the house against her will. Brittni claimed Petitioner pushed her on her stomach with great force and she was 34 weeks 6 days pregnant -almost 9 month-. Both allege victims refuse medical treatment. And there is no doctor report or expert witness to collaborate their false accusations.

Judgment of acquittal is proper if the State fail to present evidence from which the jury can exclude every reasonable hypothesis except that of guilt; if there is circumstantial or direct evidence, the State must present sufficient evidence to legally support a jury determination of guilt to defeat such a motion. And the evidence must exclude any reasonable hypothesis of innocence. **Wilson v. State,** 776 So.2d 347 (2001). Trial counsel is aware of the element of the charge and

what the State

must prove beyond a reasonable doubt, and counsel failed in his duty to hold the State to its heavy burden of proof beyond a reasonable doubt. Petitioner contends he was entitled to acquittal on the charge of battery and aggravated battery.

Where the State fails to meet its burden of proving each and every necessary element of the offense charge beyond a reasonable doubt, the case should not be submitted to the jury and a judgment of acquittal should be granted. Lack of evidence supporting the State conviction of criminal offense as a violation of Federal Due Process Sixth and Fourteenth Amendment right.

ISSUE TWO

PETITIONER WAS DENIED HIS "CONSTITUTIONAL" FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

PROSECUTORIAL MISCONDUCT (GIGLIO VIOLATION)

To establish a claim under Giglio, a Defendant must prove (1) the testimony given was false, (2) the prosecutor knew the testimony was false, and (3) the Statement was material. **Suggs v. State,** 923 So.2d 419 2005.

Both allege victims Hope Cattell and Brittni Freeman testimony at deposition and at trial regarding the battery of Hope contradicted and was inconsistent to their Statement to the police, which are contained in the police

report and their written Statement on the night of the allege battery and aggravated battery. At deposition and trial Hope and Brittni testified to a more fabricated different version than what they reported to the police. See written Statement/ police report- Tr. Tr. P.P. 151-181 (App.E). The State theory of the case presented to the jury that Petitioner came over to Hope Cattell apartment, intoxicated and grabbed her around her neck, threw her to the floor while choking her with one hand, and holding the door closed with the other hand to prevent her son-in-law from entering the house to help her. After the allege strangulation and false imprisonment, Hope Cattell testified to being hit in the face by Petitioner with a Glass Seagram Gin bottle thrown as hard as possible. Then Petitioner allegedly walked up on Brittni Freeman and pushed her on her stomach with great force and she was 34 weeks and 6 days pregnant. In Hope and Brittni's report to the police and written Statements there was no mention of Hope being choked, held in the house against her will, and being hit in the face with a bottle? According to the written Statement/police report, Petitioner was Hope Live-in-boyfriend who came home yelling and cussing at her and made threats that he was going to beat her ass, and "said" that he was going to slap her with the bottle in his hand. Then Petitioner walked off and she closed the door. Then Petitioner allegedly approached Brittni and pushed her on her stomach. Both Hope and Brittni refused medical treatment and the both of them are white females so there should have

been visual/medical proof beyond a reasonable doubt, nor was there any expert testimony or doctor report to support their allegations of battery and aggravated battery on a pregnant woman.

(1) The State Prosecutor knew of these false testimony through their written Statement and police report, which contradicts and is inconsistent with their deposition in both contents and details. (2) The State did not correct their false testimony, but instead allowed Hope and Brittni to take the stand and give a fabricated lie, in which the State also contributed to with her opening argument to obtain a conviction. See Tr.Tr. P.P.151-152 And (3) the Statements was of material because it was used to overt or extrinsic acts in furtherance of the overall conspiracy to battery and aggravated battery on a pregnant women. For which the Petitioner was convicted.

There was no credible evidence, other than Hope and Brittni Statements that was used to arrest, charge and convict the Petitioner.

Also, the State Prosecutor opening argument was improper and prejudice because it was inconsistent and contradicts Hope and Brittni's written Statement/police report and the injury diagram. (SEE) App.E.

The perjured testimony and State improper comment contributed to the fundamental miscarriage of justice. The "Constitutional error" has clearly violated Petitioner's Fourteenth Amend. Right: Nor shall any State deprive any person of

life, liberty, or property without due process of law; the "Constitutional violation" has caused the liberty of one who's actually innocent.

ISSUE THREE

TRIAL COUNSEL AND STATE PROSECUTOR "CONSTITUTIONAL ERRORS" RENDER A FUNDAMENTAL MISCARRIAGE OF JUSTICE.

§26.4 MISCARRIAGE OF JUSTICE (ACTUAL INNOCENCE)

Petitioner asserts that trial counsel and State prosecutor knowledge of Hope and Brittni perjured testimony is a "Constitutional violation" that has resulted in the conviction of one's who's actually innocent. Trial counsel and State took depositions from Hope and Brittni pertaining to their accusations of allege battery and aggravated battery on a pregnant person. Petitioner was not present during the depositions. But their depositions is the only evidence the State presented at trial to establish offense charged. Both Hope and Brittni testified at deposition and trial that Petitioner had hope around her neck and choking her, while holding the door closed, and hitting hope in the face with a Seagram gin bottle.

On Hope and Brittni written Statement/ police report they did not mention any of this to the police. In which it would have been natural to mention such details. On Hope's written Statement she Stated Petitioner made threats to beat her ass, and threaten he was going to slap her with a bottle, and she Stated "you are not going to put your hands on me." And "that Petitioner pushed her in the face and

walked off and she closed the door behind him." Both trial counsel and State was fully aware of their false accusations, and yet both counsel failed to correct it. The State used the perjured testimony in her opening argument and trial counsel did not object. Thus, trial counsel and State prosecutor has contributed to the conviction of one who's actually innocent. Clearly a "Constitutional violation" of Petitioner's Sixth Amend. Right to effective assistance of counsel and Fourteenth Amend. Right to due process and equal protection of the law.

QUESTIONS PRESENTED

Whether the State and District Court erred for not granting Petitioner an evidentiary hearing to his claims of (1) Ineffective assistance of counsel, (2) Prosecutorial misconduct (Giglio violation), and (3) Miscarriage of justice (Actual innocence)?

(1) INEFFECTIVE ASSISTANCE OF COUNSEL

(1) Petitioner asserts he was entitled to an evidentiary hearing to settle the factual dispute of his claims. Petitioner's trial counsel had demonstrated deficiency throughout the entire trial proceedings which is apparent on the face of the record, and the State and District Court failed in their duty to hold an evidentiary hearing as to the questions why counsel chose not to participate in Petitioner's trial. Counsel fail to conduct an adequate pre-trial investigation, adequate discovery and depositions, putting on proper expert witnesses and evidence, filing "pre" and

"post" trial motions and effective cross-examination. Such defense would have established Petitioner's "actual innocence" Trial counsel incompetent deprived Petitioner of a fair trial. **Strickland v. Washington,** 466 US 668.

State and District Court was incorrect in their ruling because it was "contrary to" the holding in **Hoffman v. State,** 571 So.2d 449 (Fla 1990).

Petitioner was entitled to an evidentiary hearing if the State did not refute his claim with competent substantial evidence off the face of the record. There is no evidence on record from the counsel stating why he chose not to deliver performance that would establish his client "actual innocence." Therefore, Petitioner claims for ineffective assistance of counsel was to be taken as the truth and relief granted.

The State case was based solely on the credibility of her witness/victims Hope and Brittni, and its apparent on the face of the record that both Hope and Brittni has fabricated and used perjured testimony, and had trial counsel used the afore Stated performance as a competent counsel, and presented available evidence to the jury and to rebut the false testimony used as evidence the State did-offer, it would have placed the State key witnesses creditability at stake and shed doubt on the State case. The State and District Court has "unreasonably" determine the facts because Petitioner has allege deficiency of trial counsel if proven would have granted him relief. **28 USC §2254(d).**

Strickland; Required his attorney to rely on rebuttal witnesses and evidence, because counsel had not consulted or introduced expert evidence the Supreme Court could not reasonably have concluded counsel provided adequate representation. **Harrington v. Richter,** 178 L.ED.2d 624, 562, US 86;

The State and District Court factual determination without conducting an evidentiary hearing "involved" an unreasonable application of.... Clearly established federal law, as determined by the Supreme Court of the United States.

The State and District Court fail to put forward competent substantial evidence from the trial counsel or any reasonable argument from the record that counsel satisfied Strickland's deferential standard.

(2) PROSECUTORIAL MISCONDUCT (GIGLIO VIOLATION)

(2) Petitioner assets that the state prosecutor knowingly used perjured testimony to obtain a conviction violated his Fourteenth Amendment Right to Due Process and equal protection of the law.

The State and District Court erroneously denied Petitioner's claim stating Petitioner failed to raise this claim on direct appeal. The claim that the prosecutor knowingly presented perjured testimony is unexhausted and procedurally defaulted. Petitioner provides no basis to find that the procedural default should be excused.

Attorney error excuses a procedural default... Petitioner contends that trial

counsel "Constitutional Error" was so serious that counsel was not functioning as "counsel" guaranteed the Petitioner by the Sixth Amendment. **Strickland v. Washington,** 466 US 668,687 (1984). Trial counsel rendered numerous errors during trial, in which contributed to the conviction of one who is actually innocent. Trial counsel fail to object to the state prosecutor use of perjured testimony and failure to file and raise a Constitutional claim deprived Petitioner of his Constitutional right to "effective assistance of counsel." **Evitts v. Lucey,** 469 US 387, 83 L.ED 2d 821, 105 S.Ct. 830; failing to raise due process claim violated Petitioner's right to due process law. **Murray v. Carrier,** 477 US 478, 91 L.ED 2d 397, 106 S.Ct. 2639.

The State and District Court states "to demonstrate cause, Petitioner must show that an "external impediment" prevented him from raising the claim."

Carrier explains, "If the procedural default is the result of ineffective assistance of counsel, the Sixth Amendment itself requires that responsibility for the default be imputed to the state. In other words, it is not the gravity of the attorney's error that matters, but that it constitutes a violation to Petitioner's right to counsel, so that the error must be seen as an "External Factor" i.e. Imputed to the state. See **Evitts v. Lucey,** SUPRA, ("The Constitution mandate [guaranteeing "effective assistance" of counsel] is addressed to the action of the state in obtaining a criminal conviction through a procedure that fail to meet the standard of due

process of law.")

§26.4 MISCARRIAGE OF JUSTICE (ACTUAL INNOCENCE)

A Petitioner who has committed a procedural default (1) May be excused from default and obtain federal review of his constitutional claims only by showing "cause" and "prejudice", (2) or by "demonstrating... that failure to consider the claim will result in a fundamental miscarriage of justice. (3) As the court has explained, "the principles of comity and finality that inform the concept of "cause" and "prejudice" must yield to the imperative of correcting a fundamentally unjust incarceration.

The court has made clear that the "miscarriage of justice" extends, at least to cases of "actual innocence," which the court has defined as situations in which: (1) the Constitutional violation "has probably resulted in the conviction of one who is actually innocent [of the offense of which he has been convicted]. In **Schlup v. Delo,** the Supreme Court further defined the "probable innocence" standard originally announced in **Murray v. Carrier.** "Probable innocence" is established in this context if the Petitioner presents "new facts" that raises sufficient doubt in the result of the trial. To establish the requisite probability, the Petitioner must show that it is more likely than not that no reasonable jurist would have convicted him in the light of the new evidence.

The Petitioner presented new evidence to the court that was not used at trial,

and would have supported his defense. (SEE) written statement/ police report/ injury diagram. Had this new evidence been presented at trial it would have established new facts that raises sufficient doubt about the Petitioner's guilt and undermine confidence in the result of the trial...? The state case was based solely on the testimony of Hope and Brittni and their creditability, which was not challenged. Had the new evidence been used to point out the lies and fabrication of their accusation, it would have raised sufficient doubt respecting guilt. And is more likely than not that no reasonable juror would have convicted Petitioner in the light of the new evidence. The new evidence goes to the credibility of Hope and Brittni. **Jackson v. Virginia,** 443 US 307 (1979).

Murray v. Carrier, 477 US 478 (1986), Thus recognized a narrow exception to the cause requirements where a constitutional violation has "probably resulted" in the conviction of one who is actually innocent of the substantive offence; accord **Schlup v. Delo,** 513 US 298, 115 S.Ct. 581, 130 L.ED. 2d 808 (1995)

Standard of review applied to District Court determinations of issue; even if District Courts have discretion. However, they must follow legal standards set forth by the Supreme Court and may be reversed if they deviate from these standards because it is a paradigmatic abuse of discretion for a court to base its judgment on an erroneous view of the law. (Majority opinion) (suggesting that court has held manifest miscarriage doctrine to be mandatory not discretionary: "If

a Petitioner presents [sufficient] evidence of innocence the Petitioner should be allowed to pass through the gateway and argue the merits") today... The court obliquely but unmistakably pronounces that a successive or abusive Petition must be entertained and may not be dismissed so long as the Petitioner makes a sufficiency persuasive showing that a "fundamental miscarriage of justice" has occurred."

Petitioner's Habeas Corpus "Petition supported by a convincing Schlup gateway showing raises sufficient doubt about the Petitioner's guilt to undermine confidence in the result of the trial without the assurance that trial was untainted by a constitutional error." The State and District Court did not attempt to address Petitioner's claim of prosecutorial misconduct, and miscarriage of justice only that it was procedurally defaulted.

(A majority of the court has said that the "miscarriage of justice" exception is limited to situations of "actual innocence.") See **Schlup v. Delo,** 513 US at 321-22 (" to ensure that a fundamental miscarriage of justice exception would remain "rare" and would only be applied in the extraordinary case, while at the same time ensuring that the exception would extend relief to those who were truly deserving, the court explicitly tying the miscarriage of justice exception to innocence. Thus, accommodates both the systemic interest in finality, comity, and conservation of judicial resources, and the overriding individual interest in doing justice in the

"extraordinary case") **United States v. Olano,** 507 US 725, 736-37 (1993) collateral review jurisprudence, the term "miscarriage of justice means that the Defendant is actually innocent," but in other criminal contexts the phrase has wider meaning extending to any error that "seriously effects the fairness, integrity, or public reputation of judicial proceedings... Independently of the Defendants innocence." Quoting **United States v. Young,** 470 US 1, 15 (1985); **McCleskey v. Zant,** 499 US 467, 502 (1991).

Murray v. Carrier, 477 US at 496, accord **Schlup v. Delo,** 513 US at 325, 327-28. (Constitution violation "probably has cause the conviction of one innocent of the crime "or" has resulted in the conviction of one who is actually innocent.")

"Probability of innocence" test for miscarriage of justice (" The prisoner must show a fair probability that, in the light of all the evidence, including that alleged to have been illegal admitted (but with due regard to any reliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial. The trier of fact would have entertained a reasonable doubt of his guilt." (Quoting **Kuhlman v. Wilson,** 477 US 436, 455 n-17 (1986); **McCleskey V. Zant,** 499 US at 494 (default does not bar consideration if constitutional violation "probably has cause the conviction of one who is innocent of the crime.")

Petitioner Lee asserts that the evidence the state presented at trial was false

testimony from Hope Cattell and Brittni Freeman, and Grandfather (Herman Strickland) who testified to what he supposed to had heard over the phone and what was told to him by Brittni. His testimony is inconsistent and contradicts Hope and Brittni's written statement to the police. Herman Strickland testimony to the jury was that he received a phone call from his granddaughter Brittni and she told him that Petitioner had hit her mother -Hope- in the head with a bottle. TR.TR> P.184. There's no evidence of the bottle, no evidence of any bruises, scratches, or blood, no doctor report. In trial Brittni says she did not actually see Petitioner hit her mother with a bottle. Trot 167-168.

Herman Strickland testimony was improper and prejudicial and should have been excluded from trial, instead it was illegally admitted to support the state's, Hope and Brittni theory that Petitioner had hit Hope in the face with a glass gin bottle thrown as hard as possible.

Trial counsel was ineffective for not objecting to this hearsay testimony or use available evidence such as written statement/ police report- to properly impeach his statement. There's a "reasonable probability" the trier of fact would have entertained a reasonable doubt of Petitioner guilt. (Quoting **Kuhlman v. Wilson**, 477 US 436 455, n-17 (1986).

Hope Cattell and Brittni Freeman has testified at deposition and trial that Petitioner grabbed Hope around her neck threw her to the floor while still choking

her with one hand and holding the door closed with the other hand and she was struggling trying to get away, but Petitioner allegedly had her in such a grip with one hand, and not leave no bruises? And at some point Petitioner let her go and walked outside hit her in the face with a glass bottle as hard as possible, and walked up to Brittni who was 34 weeks and 6 days along- almost 9 months- and pushed her on her stomach with great force. Both Hope and Brittni refused medical treatment, and fail to mention in their report about Petitioner choking Hope, holding the door close, and hitting her in the face with a bottle, which would have been natural to mention.

In fact, in Hope's written statement she stated Petitioner "said" he was going to slap her with a bottle and that Petitioner pushed her in the face and walked off and she closed the door.

Both Hope and Brittni had made false accusations of being severely battered by Petitioner but there's not a shred of proof to corroborate their allegations, in which there should be because Hope and Brittni are white females. There is no expert witnesses; no doctor reports no photos of any bruises, scratches, blood, or bottle. To indicate a crime even occurred. Petitioner asserts that it is physically impossible to have committed this crime and not leave a shred of proof.

Further more, Hope, Brittni, Herman Strickland, and even the state argument is remarkably inconsistent and contradicting to Hope and Brittni's written

statement/ police report. Had trial counsel used the wrongly excluded evidence to properly cross-examine for impeachment purpose and subpoena Brittni's doctor or any physician or expert witness to testify what would be the impact of such abuse, and also rebut the state argument? It is more likely than not that no reasonable juror would have convicted Petitioner in the light of the new evidence.

Petitioner asserts that trial counsel has violated his Sixth Amendment Constitutional Right to effective assistance of counsel for failing to object to state use of perjured testimony, and properly cross-examine state witnesses for impeachment. Amongst other violation named in previous motions. **Strickland v. Washington,** 466 US 668, 687 (1984).

Petitioner asserts that state prosecutor has violated his Fourteenth Amendment Constitutional Right due process of law to a fair trial for knowingly using perjured testimony to obtain a conviction. **Giglio v. United States**, 405 US 150, 92 S.Ct. 763, 31 L.ED. 104 (1972).

Both trial counsel and state prosecutor has violated Petitioner Fourteenth Amendment Right to due process and equal protection of the law. Because they were fully aware of allege victims lies, and perjured testimony before taking the stand, due to their written statement/ police report which was remarkably different from their deposition and trial testimony. And trial counsel failure to object to the

state opening argument (APP. E) Tr.Tr. 151-152 Constituting a "fundamental miscarriage of justice" of one who is actually innocent.

The evidence the state presented was constitutionally insufficient to support a guilty verdict. Petitioner did not satisfy an essential element of the crime of battery and aggravated battery on a pregnant person; touch and strike and cause bodily harm beyond a reasonable doubt for which he was convicted. Petitioner would qualify for actual innocence "exception." This seems to be Akins to the standard in **Jackson v. Virginia,** 443 US 307 (1979) under which a person cannot be guilty of a crime if a reasonable jury would entertain a reasonable doubt about any element of the crime.

REASON FOR GRANTING THE PETITION

Petitioner humbly prays this court will serve justice and correct an unjust incarceration of one who is actually innocent.

Petitioner seeks relief in this court because the state and district court failed in their duty to hold an evidentiary hearing to Petitioner's claim for (1) **ineffective assistance of counsel. (2) prosecutorial misconduct (Giglio Violation) and (3) miscarriage of justice (actual innocence).** Without refuting the claim with competent, substantial evidence from the face of the record. **Hoffman v. State,** 571 So.2d (Fla.1990). Also the district court ruling was "Objectively unreasonable" for not granting an evidentiary hearing to settle the factual disputes,

but simply adopting

the state court reasons without applying the rules of law.

Dretke v. Haley, 541 US at 399-400 (Kennedy, J) Dissenting, the law must serve the cause of justice... "In a society devoted to the rule of law, the difference between violating or not violating a criminal statue cannot be shrugged aside as a minor detail." Id. at 396-98 (Stevens, J, Dissenting) ("The unending search for symmetry in the law can cause judges to forget about justice... That the state has decided to oppose the grant of habeas relief in the case, even as it concedes the Defendant has already served more time in prison than the law authorized, might cause some to question whether the state has forgotten it's overriding obligation to serve the cause of justice... But the District court is surely no less at fault. In its attempt to refine the boundaries of the judge-made doctrine of procedural default, the court has lost sight of the basic reason why the Writ of Habeas Corpus indisputably holds an honored position in our jurisprudence." Habeas Corpus is, and has for centuries been "a" bulwark against convictions that violate "fundamental fairness.")

"The Writ of Habeas Corpus is the fundamental instrument for safeguarding individuals freedom against arbitrary and lawless state actions." **Harris v. Nelson,** 394 US 286, 290-291.22 L.ED.2d 281, 89 S.Ct. 1082 (1969). Its well-known history bears repetition. The writ emerged in England several centuries ago, and

was given explicit protection on our Constitution. The first judiciary act provided federal Habeas Corpus for federal prisoners. In 1867 Congress provided the Writ of Habeas Corpus for state prisoners; the act gave federal courts "power to grant Writs of Habeas Corpus in all cases where any person may be restrained of his liberty in violation of the constitution, or any treaty or law of the United States." The current statue confers similar power, **28 USC §2241 (c) (3) [28 USCS §2241 (c) (3)]**, and provides: "the court shall... dispose of the matter as law and justice require." **28 USC §2243 [28 USCS §2243].**

The state and district court states Petitioner provides no basis to find that procedural default should be excused. As Petitioner explained in the statement of the case that due to attorney error was the "external factor" why his due process claim was not raised on direct appeal. Counsel fail to object and raise on appeal the state prosecutor use of perjured testimony. **Murray v. Carrier,** 477 US 478 496 91 L.ED.2d 397, 106 S.Ct. 2639 (1986) (Carrier explains, "If the procedural default is the result of ineffective assistance of counsel, the Sixth Amendment itself requires that responsibility for the default be imputed to the state." In other words, it is not the gravity of the attorney's error that matters, but that it constitutes a violation of Petitioner's right to counsel, so that the error must be seen as an external factor I.e. "Imputed to the state." See **Evitts v. Lucey,** 469 US 387, 396, L.ED.2d 821, 105 S.Ct. 830 (1985) ("The Constitution mandate [guaranteeing

effective assistance of counsel] is addressed to the action of the state in obtaining a criminal conviction through a procedure that fails to meet the standard of due process of law.")

To obtain review of a procedurally defaulted claim without a showing of a cause or prejudice, Petitioner must show a fundamental miscarriage of justice. To do so, He must show that a constitutional violation has occurred that "probably resulted" in a conviction of one who is actually innocent," **Schlup v. Delo,** 513 US at 327.

The Supreme Court held in **Giglio v. United States,** 405 US 150 (1972), that the government's presentation of perjured testimony, or failure to correct false evidence violates due process. Id. at 153-55.

The District Court ruling resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding, Petitioner's argument for prosecutorial misconduct, use of perjured testimony. The District Court states for his reasoning "However, inconsistency of statements is not perjured, and not every inconsistent statement is material." **United States v. Nelson,** 970 F.2d. 439, 442(8th Cir 1992). The District Court has not referred to what inconsistency he is referring to.

The District Court states "The testimony was consistent with much of the police report where Cattell reported that Petitioner pushed her in the face and

Brittni Freeman reported that she saw Petitioner pushing Cattell. Freeman is said to have reported to police that Petitioner pushed her to the ground [sic] with great force where she landed on her stomach as she testified at trial. Any other possible inconsistencies between the police report and trial testimony were not material to the elements of the offenses charged; and Petitioner alleges no facts to show that the prosecutor knowingly presented any false testimony."

On the "contrary" the District Court has "objectively unreasonably" determined the facts. First he states the victims in this case testified at trial that Petitioner touched them without their permission. Which Petitioner asserts is a lie.

Petitioner also asserts that the allege victims allegations was much more than being "touched", they alleged they were severely battered, Hope testified on stand that Petitioner chocked her, locked her inside the house, and hit her in the face with a glass gin bottle thrown as hard as possible. Imagine that. And she refused medical treatment, where's the proof beyond a reasonable doubt? The essential element of the offense charged.

Brittni testified that she saw Petitioner choking her mom Hope, locked her inside the house, and threw a bottle at her mom, and walked up to her and pushed her on her stomach at 34 weeks and 6 days pregnant -almost 9 months- With the father of her child standing right there. The baby father which is a gang member, with his fellow gang members associates standing right there watching. Imagine

that. Brittni refused medical treatment. Where's the proof beyond a reasonable doubt? The essential element of the offense charged.

Secondly, the District Court argues "The testimony was consistent with "much" of the police report where Cattell reported that Petitioner pushed her in her face and Freeman reported she saw Petitioner pushing Cattell. Freeman is said to have reported to police that Petitioner pushed her to the ground where she landed on her stomach, as she testified at trial."

On the "contrary" the District Court has "objectively unreasonably" determined the facts. The only thing that was consistent in the police report and trial testimony was when Hope claimed Petitioner pushed her in the face, and pushed Brittni on her stomach. That's not saying it happened. On Hope and Brittni police report/ written statement, Hope reported her live-in- boyfriend came home cussing and yelling getting in her face, and "said" he was going to slap her with the bottle in his hand and that he "said" he was going to beat her ass. And she stated "you ain't going to put your hands on me." And Petitioner "did" push her in the face and walked off and she closed the door behind me. And I walked up to Brittni and pushed her on her stomach. Hope deposition and trial testimony she testified that her and Petitioner was not in a relationship, that they did not live together, and that when Petitioner came over Petitioner grabbed her around the neck, threw her to the floor choking her with one hand while holding the door

closed with the other, then Petitioner walked outside and threw a glass bottle and "hit" her in the face, thrown as hard as possible. Then Petitioner allegedly walked up to Brittni and pushed her on her stomach. That is most definitely not consistent with "much" of the police report.

In Brittni's written statement/ police report she testified that she saw her mom and mom boyfriend Rafie Lee arguing and he pushed her mom -Hope- in the face and walked up on her and bumped her then pushed her on her stomach. And she's 34 weeks 6days pregnant. At deposition and trial she testified to her and her boyfriend seen Petitioner holding hope on the floor choking her with one hand while holding the door closed with the other to prevent them from getting in to help. Eventually Petitioner let her up went outside thrown a glass bottle at Hope and it shattered on the ground and Petitioner walked up to her and pushed her on her stomach. Neither is Brittni testimony consistent with "much" of the police report. In fact it is remarkably different to a more fabricated version that they reported on their written statements/police report.

Also, Petitioner would have been charged with 3 additional felony charges (1) Aggravated Battery with a weapon, (2) Battery by Strangulation, and (3) False imprisonment. And the reason Petitioner was not charged is because they fail to mention it to the police. When it would be natural to mention such details.

Trial counsel fail to object to this testimony nor did he use their written

statements/ police reports to properly cross-examine them for impeachment purposes. That also gave the state opportunity to argue her version before the jury, that Petitioner was an ex-jealous lover, seen a man run from her house got drunk acted out in violence, choked Hope and hit her with a bottle. (SEE) Tr.Tr. 151-152.

Third, District Court argues any other possible inconsistencies between the police report and trial testimony were not material to the elements of the offenses charged.

On the "Contrary" The District Court has "objectively unreasonably" determined the facts. Because the inconsistencies and contradictions of the uncharged crimes was used before the jury to showcase Petitioner bad character. And to establish the overt and extrinsic act of battery in which he was charged.

Last but not least, the District Court states "Petitioner alleges no facts to show that the prosecutor knowingly presented any false testimony."

On the "contrary" once again the District Court "objectively unreasonably" determined the facts. Petitioner has clearly stated in his arguments and its apparent on the face of the record that the prosecutor knowingly presented perjured testimony, and she argued the same perjured testimony in her opening argument.

Petitioner asserts in order for his arrest the allege victims gave a written statement to the police, the police arrested the Petitioner according to their

statements, the police filed a police report according to their statements and presented it to the state prosecutor. In which the state prosecutor indicted Petitioner according to their written statement and police report. Several months later, the allege victims gave depositions before defense counsel and state prosecutor. Petitioner was not present during the depositions. At deposition Hope and Brittni had given a different version of what they reported to the police. They had fabricated their story adding more lies. Defense counsel and state prosecutor was fully aware of these lies due to what was reported to the police and their written statements that they had before them in their files. For instance, police report and written statement states Petitioner "said" he was go slap her with bottle. Deposition and trial testimony states Petitioner "did" hit her with bottle thrown as hard as possible. This is not a simple contradiction like what color shirt he had on. This is saying Petitioner made threats, to actually doing. Major difference and the state and District Court act as if they don't understand the difference. I don't know how to make it more clearer. Its apparent on the face of the record. Trial counsel fail to object and the state fail to correct the false testimony. In which violates Petitioner Sixth Amendment right to "effective assistance of counsel" and Fourteenth Amendment right to due process and equal protection of the law.

Petitioner asserts that the state and District Court's ruling on the Constitutional claims that was presented in state and federal court was so lacking

in justification that there was an error well understood and comprehended in existing in law beyond any possibility for fair-minded disagreement.

The court uses terms like "highly differential," "presumption of correctness," and "benefit of doubt." Given officers of court high standards; that shall be the cause, but it's hard to hold these officers of the court to such standards when they deliberately strike foul blows to obtain a conviction, fail to use common sense, and fail to correct a "fundamental miscarriage of justice", that's clearly apparent on the face of the record.

"The very nature of the writ demands that it be administered with the initiative and flexibility essential to ensure that miscarriage of justice within its reach are surfaced and corrected" **Harris v. Nelson,** 394 US 286 at 291 [22 L.Ed.2d 281-89 S.Ct. 1082]

The term "cause" and "prejudice" are not rigid concepts; they take their meaning from the principles of comity and finality. In appropriate case those principles must yield to the imperative of correcting a fundamentally unjust incarceration. **Wainwright v. Sykes,** 433 US at 91 [53 L.Ed.2d 594, 97 S.Ct. 2497]

Brown v. Allen, 344 US at 500, 97 L.Ed 469, 73 S.Ct. 397. But it is equally clear that the prisoner must always have some opportunity to reopen his case if he can make sufficient showing that he is the victim of a fundamental miscarriage of

justice. Whether the inquiry is channeled by the use of terms "cause" and "prejudice" or by the statutory duty of "dispose of the matter as law and justice requires." **28 USC §2243 [28 USCS §2243].** It is clear that appellate procedural default should not foreclose Habeas Corpus review of a meritorious "Constitutional" claim that may establish the prisoner's innocence.

The court's suggestion that the absence of "cause" for his procedural default requires Respondent to prove that the "Constitutional violation has probably resulted in the conviction of one who is actually innocent." Ante, at 496. 91 L.Ed. 2d at 413, or relationship of that standard to the principles explicated in **United States v. Bagley**, 473 US 667, 87 L.Ed.2d 481 105 S. Ct. 3375; **Giglio v. United States,** 405 US 150 (1972).

Expansive protection afforded by the Fourteenth Amendment guarantee of "fundamental fairness" in state criminal proceedings. The court today continues its crusade to erect petty procedural barriers in the path of any state prisoner seeking review of his Federal Constitutional claims.

Like the great writ from which it draws its essence, See **Engle v. Issac,** 456 US 107, 126, 71 L.ED 2d 783, 102, S.Ct. 1558 (1982), The root principle underlying **28 USC §2254 [28 USCS §2254]** Is that government in a civilized society must always be accountable for an individual's imprisonment; If the imprisonment does not conform to the fundamental requirements of law, the

individual is entitled to his immediate release. **Moore v. Dempsey,** 261 US 86, 67 L.ED 543, 43 S.Ct. 265 (1923), **Johnson v. Zerbst,** 304 US 458, 82 L.ED 1461, 58 S.Ct.1019 (1938), **Waley v. Johnston,** 316 US 101, 86 L.ED 1302, 62 S.Ct. 964 (1942)

The United States Court of Appeals erred in its ruling because it's in conflict with its ruling held in **Cave v. Singletary,** 971 F.2d 1513,1516 (11th Cir 1992); The court held District Court must hold evidentiary hearing on factual disputed constitutional issues. A Petitioner is entitled to an evidentiary hearing in Federal Court if he alleges facts, which, if proven would entitled him to relief. If the state court has held a hearing on the claims raised by the Habeas Corpus Petition the State Court's factual findings are entitled to presumption of correctness. The determination that a Defendant received adequate assistance of counsel, is a mixed question of law and fact that is not entitled to a presumption of correctness. **28 USCS §2254 (d).** Therefore, the District Court and United State Courts of Appeals ruling was "Contrary to" holding in **Cave v. Singletary,** Supra, The Petitioner was not given a hearing to settle the factual dispute of counsels incompetent for failing to function as the "counsel" guaranteed effective assistance of counsel as defined is **Strickland v. Washington,** 466 US 668; The court fail to put forward competent, substantial evidence from the trial counsel or any reasonable argument from the record that counsel satisfied Strickland's deferential standards.

"THE U.S. SUPREME COURT ESTABLISHED THE NOW FAMILIAR TEST FOR DETERMINING WHETHER A DEFENDANT RECEIVED CONSTITUTIONALLY INEFFECTIVE ASSISTANCE OF COUNSEL. A PETITIONER MUST DEMONSTRATE THAT COUNSEL'S ALLEGED ACTS OR OMISSIONS, UPON CONSIDERATION OF ALL THE CIRCUMSTANCES, FELL OUTSIDE THE WIDE RANGE OF PROFESSIONALLY COMPETENT ASSISTANCE."

THERE WAS NO PROOF THAT PETITIONER HAS COMMITTED THE CRIME OF BATTERY AND AGGRAVATED BATTERY ON A PREGNANT PERSON. THE ONLY EVIDENCE PRESENTED AT TRIAL WAS HEAR-SAY TESTIMONY AND FALSE TESTIMONY USED TO CONVICT PETITIONER. PETITIONER DEFENSE DEPENDED ON ADEQUATE PRE-TRIAL INVESTIGATION AND EFFECTIVE CROSS-EXAMINATION. IN WHICH TRIAL COUNSEL DELIVERED NONE OF THE ABOVE. THE STATE AND FEDERAL COURTS RULING ON CLAIMS THAT PETITIONER PRESENTED IN THE COURTS WAS SO LACKING IN JUSTIFICATION THAT THERE WAS ERRORS WELL UNDERSTOOD AND COMPREHENDED IN EXISTING BEYOND ANY POSSIBILITY FOR FAIR-MINDED DISAGREEMENT.

CONCLUSION

RULE 10 (C) A STATE COURT OR A UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLE BY THIS COURT, OR HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

The petition for a writ of certiorari should be granted. TO CORRECT A MISCARRIAGE OF JUSTICE THAT HAS CAUSED AN UNJUST AND UNLAWFUL INCARCERATION OF AN INOCENT MAN. PETITIONER HUMBLY PRAYS THIS COURT WILL GRANT HIS IMMEDIATE RELEASE, OR THE ALTERNATIVE, AN EVIDENTIARY HEARING.

Respectfully submitted,

Bajie A. Lee

Date: ~~AUGUST 30~~ SEPTEMBER 2019