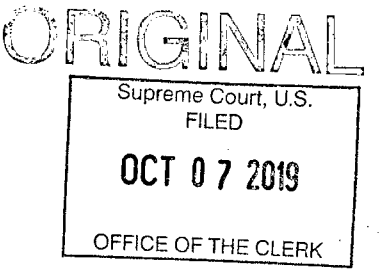
NO. 19-6237

IN THE
SUPREME COURT OF THE UNITED STATES



*

TERRY G. WATSON, ON BEHALF OF
HIMSELF AND ALL OTHERS SIMILARLY SITUATED

PETITIONER;

VS.

MICHAEL BOWERSOX, ET.AL.,

RESPONDENTS;

*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

*

PETITION FOR WRIT OF CERTIORARI

*

ANDREW JACOB CRANE
COUSEL OF RECORD
MISSOURI ATTORNEY GENERAL'S OFFICE
207 W. HIGH ST.
P.O. BOX 899
JEFERSON CITY, MO 65102-0899
PH: 573-751-0264
EMAIL: ANDREW.CRANE@AGO.MO.GOV

TERRY G. WATSON
PRO-SE
13698 AIRPORT ROAD
BOWLING GREEN, MO 63334
PH: 417-932-1208
CELL: 636-633-6869
EMAIL: WATSONT0548@SBCGLOBAL. NET

PETITIONER IS PRO-SE

QUESTIONS PRESENTED

Respondent Daniel Redington, Warden, Northeast Correctional Center through counsel of record have been untruthful in all the courts, denying Petitioner due process of law, as a right to fair and impartial trial before a jury of his piers. Respondents' misrepresentation of the facts in proceedings include violations of United States Constitutional rights, under the Bill of Rights, Amendments 1,4,5,6,8 and 14. The State's prosecutors engaged in subornation of perjury to coverup spoiliation of evidence, used Petitioners' religious conscience against him at trial, suppressed exculpatory evidence, violating Brady, and witnessed to perjured evidence not in the record, shifted the burden of proof to petitioner, and in at least one instance were inebriated during proceedings.

Further, the trial court, is an alcoholic, who has admitted guilt to alcohol related crimes, allowed the Prosecutor Catherine Crowley to conduct proceeding inebriated, while he was inebriated himself. Catherin Crowley was fired by Jefferson County, Missouri for being inebriated during a proceeding.

Petitioner, moved for summary judgment under Rule 56, Fed.R. Civ.P., which was denied by the district court as unavailable to the habeas petitioner. Further, petitioner properly served a Rule 36, Fed.R.Civ.P., upon the parties, who failed to respond properly under the Rule. The district court granted the admissions into evidence, but refused to hold the proper standard of law and apply the admissions as binding upon the State.

Petitioner motioned the district court to accept medical evidence from the Department of Veterans' Affairs archive as evidence

meeting the Actual-innocence standard. The district court accepted the evidence into the record, unapposed by the State, along with an affidavit from the POTUS's agent, Mr.Ivey; that the evidence was witheld from Petitioner in violation of the FOIA, by a VA fault. And thereby unavailable at trial. The district court in denying the petition stated, actual-innocence is an unsettled matter of law by this court.

1. Did the U.S. Court of Appeals for the Eighth Circuit, err in not granting COA to the following claims?:the prosecutor's comments during closing argument improperly shifted the burden of proof to the defense; (2) the trial court abused its discretion in overruling Watson's objection to instruction No. 9(note the judge is an alcoholic, who plead guilty to alcohol related crimes and allowed the lead prosecutor to conduct proceedings in the inebriated state); (3) the trial court erred in allowing testimony from Watson's son regarding Watson's alleged physical abuse;(4) trial counsel was ineffective in failing to introduce medical records to prove Watson suffers from erectile dysfunction;(5) the prosecutor in subornation of perjury event, used Watson's ethnicity and religious conscience by asking the witness why Watson disliked the victim's husband;(6) the prosecution stole valuable property and exculpatory evdience from Watson's home;(7) the State's witnesses committed perjury;(8) the prosecutor relied on facts outside of the evidence during his closing argument;(9) the police should have preve-

nted the victim from deleting her Facebook account and emails;(10) trial counsel was ineffective for failing to call an orthropedic surgeon or pain specialist at trial;(11) trial counsel ineffective for failing to call an expert to tesify about DNA evidence, police procedure, or child pschology;(12) the evidence was insufficient to convict him of statutory rape, statutory sodomy, amd incest;(13) the prosecutor violated attorney-client priviledge by coordinating with Watson's condition of bond counselor, for trial strategy of defense information;(14) members of the jury were biased against him;(15) trial counsel was ineffective for failing to pursue a defense based upon the fact victim did not report the abuse for several years;(16) the prosecutor improperly named Watson's son as "victim" in his opening statement;(17) he was prejudiced when both state's witnesses testified at trial about an instance in which they were highly intoxicated;(18) the trial court erred in asking WAtson to remove military service medals in front of the jury;(19) the prosecution failed to obtain phone and social media records shwoing text messages and contact between the State's witnesses;(20) Watson's son committed perjury, concerning immunity becaus ehis trial testimony is inconsistent with his testimony at a preliminary hearing;(21) the victim's testimony concerning foreighn exchange students was inconsistent; and (22) the prosecutor improperly vouched for the credibility of the State's witnesses during closing argument.

After the State filed its response to the second amen-

ded petition, and Watson filed a traverse and supplemental evidence, the district court dismissied his second amended petition. The district court denied Watson a cerificate of appealability. Watson filed a timely appeal and filed his application for a certificate of appealability.

The Eighth Circuit Court of Appeals, denied the petition for COA, without an opinion. A motion for reconsideration and en banc was filed, which was also denied. This petition for a writ of certiorari follows.

TABLE OF CONTENTS

TABLE OF CONTENTS CONTINUED

TABLE OF CONTENTS CONTINUED

PETITIONER INCORPORATES INTO THIS PETITION ALL DOCUMENTS OF OF THE HABEAS COURT IN WATSON V. BOWERSOX, ET.AL., 4:15-CV-01864-ACL. NOTE: PETITIONER MOTIONED THE HABEAS COURT FOR A COPY OF THE FILES AS FORMA PAUPERIS. THE COURT REFUSED TO RESPOND.

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES CONTINUED

PETITIONER FURTHER INCORPORATES ALL AUHTORITIES CITED IN THE TRAVERSE AND MEMORANDUMS OF LAW IN SUPPORT, IN THE DOCKET OF THE DISTRICT COURT, WATSON V. BOWERSOX, ET.AL., 4:15-CV-01864-ACL

STATUTES:

28 USC §2243,2253,2254,2246,2247,2248

FEDERAL RULES OF CIVIL PROCEDURE:

RULE 36; RULE 56, FED.R.CIV.P.

OTHER:

U.S. CONSTITUTION ARTICLES I, SECTION 9; ARTICLE III; AMENDMENTS 1,4,5,6 AND 14 PASSIM.

PETITION FOR A WRIT OF CERTIORARI

Terry G. Watson, on behalf of himself and all others similarly situated, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in Watson v. Bowersox et.al., No. 19-1698 ( ).

*

OPINIONS BELOW

The memorandum opinion of the court of appeals denying a Certificate of Appealability is not reported(but available at PACER, WATSON V. BOWERSOX, ET.AL., NO. 19-1698). The memeorandum opinion of the court of appeals denying Petitioner's petition for rehearing is not reported.

*

JURISDICTION

The court of appeals denied COA, upholding the district courts denial of issue of the writ and denial of COA on 09/03/19 . (APP. A) The court of appeals denied the petition for rehearing on 10/03/2019 . This Court's jurisdiction is invoked under 28 USC § 1254.

*

STATUTORY PROVISIONS INVOLVED

28 USC § 2243, 2253, 2254,, 2246, 2247,2248

§2243. Issuance of writ;return;hearing;decision

A court, justice or judge entertaining an application for writ of habeas corpus shall forthwith award the writ or issue an order directing respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person wo whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of the court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

(June 25, 1948,c.646,62 Stat. 965.)

§ 2253. Appeal

(a) In a habeas corpus proceeding or a proceeding under Section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United Sattes, or test the validity of such person's detention pending removal proceedings.

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from--

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under Section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2). (June 25, 1948, c. 646, 62 Stat. 967;May 24, 1949 ,c. 139, § 113, 63 Stat. 105; Oct. 31, 1951,c. 655, § 52,65 Stat. 727; Apr. 24, 1996. Pub.L. 104-132, Title I, § 102,110 Stat. 1217.)

§ 2254. State custody;remediesin Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court only on the grounds that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that-

(A) the applicant has exhausted the remedies available in in the courts of the state; or

(B)(1) ~~there is an abscence of~~ available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in State court proceeding.

(e)(1) In a proceeding instituted by an application for a writ habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that--

(A) the claim relies on--

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; and

(ii) a factual predicate that could not have been previously discovered through the excercise of due dilligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for the constitutional error, no reasonable fact-finder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceedings to support the State court's determination of factual issues made therein, the applicant, if able, shall produce that part of the record pertinent to

a determination of the sufficiency of the evidence to support such a determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the state shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the offical records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in Section 408 of the Controlle Substance Act, in all proceedings brought under this section, and any any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority., Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The effectiveness or incompetence of counsel during Federal or State collateral post conviction proceedings shall not be grounds for relief in aproceeding arising under section 2254. (June 25, 1948, c. 646,62 Stat. 967;Nov. 2, 1966,Pub.L. 89-711, § 2, 80 Stat. 1105;Apr. 24, 1996, Pub.L. 104-132,Title I, § 104, 110 Stat. 1218.)

§ 2246. Evidence; depositions;affidavits

On application for a writ of habeas corpus, evidence may be taken orally or by deposition, or, in the discretion of the judge , by affidavit. If affidavits are admitted any party shall have the to propound written interrogatories to the affiant, or to file answering affidavits. (June 25, 1948,c. 646,62 Stat. 966.)

§ 2247. Documentary evidence

On application for a writ of habeas corpus documentary evidence , transcripts of proceedings upon arraignment, plea and sentance and a transcript of the oral testimony introduced on any previous similar application by or in behalf of the same petitioner, shall be admissible in evidence. (June 25,1948,c. 646, 62 Stat. 966.)

§ 2248. Return or answer;conclusiveness

The allegations of a return to the writ of habeas corpus or of an answer to an order to show cause in a habeas corpus proceeding , if not traversed, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true. (June 25, 1948, c. 646, 72 Stat. 966.)

RULES GOVERNING SECTION 2254 CASES IN THE UNITED STTAES DISTRICT COURTS

Rules 5, 6, 7,8 and 12

Rule 5. The answer and reply

(d) Contents: Briefs on Appeal and Opinions. The respondent must also file withthe answer a copy of:

(1) any brief that the petitioner submitted in an appellate court contesting the conviction or sentence, or contesting an adverse judgment or order in a post-conviction proceeding;

(2) any brief that the prosecution submitted in an appellate

court relating to the conviction or sentence; and

(3) the opinions and dispositive orders of the appellate court relating to the conviction or the sentence;

(e) Reply: The petitioner may submit a reply to the repondent's answer or other pleadings within a time fixed by the judge.(as amended Apr. 26, 2004.)

Rule 6. Discovery

(a) Leave of the Court required. A judge may, for good cause , authorize a party to conduct discovery under Federal Rules of Civil Procedure and may limit the extent of discovery. If necessary for effective disacovery, the judge must appoint an attorney for a petitioner who qualifies to have counsel appointed under 18 USC § 3006A.

(b) Requesting Discovery. A party requesting discovery must provide reasons for the request. The request must also include any proposed interrogatories and request for admissions, and must specify any requested documents. (As amended April 26, 2004, effective Dec. 1,2004)[Fed.Rules of Civil Proc. 2011].

Rule 7. Expanding the Record

(a) In General. If the petition is not disamissed, the judge may direct the parties to expand the record by submitting additional materials relating to the petition. the judge may require that these materials be authenticated.

(b) Types of Materials. The materials that may be required include letters predating the filing of the petition, documents, exhibits, and answers under oath to written interrogatories propounded by the judge. Affidavits may also be submitted and considered as part of the record.

(c) Review by the Opposing Party. The judge must give the party against whom the additional materials are offered an opportunity to admit or deny their correctness. (As amended Apr. 26, 2004,eff. DEc. 1, 2004.)

Rule 8 Evidentiary Hearing.

(a) Determining Whether to Hold a Hearing.

If the petition is not dismissed, the judge must review the answer , any transcripts and records of the state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted. [effective Dec. 1, 2009]

Rule 12 Applicability of Federal Rules of Civil Procedure.

The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules. (As amended Apr. 26, 2004, eff. Dec. 1, 2004; Rule 11 redesignated Rule 12 Mar. 26, 2009; eff. Dec. 1, 2009.)

FEDERAL RULES OF CIVIL PROCEDURE

Rule 36 Request for Admissions.

(a) Scope and Procedure.

(1) Scope. A party may serve on any other party a written request to admit, for the purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinion about either; and

(B) the genuiness of any described documents.

(3) Time to respond; Effect of not responding. A matter is admitted unless, within 30 days after being served, the party to

whom the request is directed serves on the requesting party a written answer or objection addressed to the matters and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

(4) Answer. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insuffient to enable it to admit or deny.

(5) Objections. The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(b) Effect of an Admission; Withdrawing or Amedning it.A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

Rule 56. Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought. The court shall grant summary judgemnt if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgemnt as a matter of law. The court should state on the record the reasons for granting or denying the motion.

STATEMENT OF THE CASE

This case seeks relief for thousands of citizens who have been denied due process of law by Defendant/Respondents by use of inquisitional trial processes, instead of the appropriate accusatorial process prescribed by the Bill of Rights. In the time before and leading up to the trial, and at trial, the prosecutors, law enforcement officer, and parties principle to the prosecution acted outside the Rule of Law, to a lawful thing unlawfully, by conspiracy, to deprive Petitioner due process of law, during the trial proceedings.

These acts included ex-parte communications between the State's witnesses, subornation of perjury by prosecution, perjury by all State's witnesses, spoilation of evidence by destruction and withholding, inebriated trial judge and prosecutor during trial and/or other proceedings and trial court acting in league with prosecution to ensure a conviction. App.A, no.2-6

On March 15, 2010, Petitioner argued with adult daughter KW, who informed Petitioner she was ending her at will tenancy from his home at 5825 Schneider Rd. Imperial, Mo 63052. On March 17,2010, KW, Craig Casey & Michael Stempf called deputy Cardona Choney, to meet them at a gas station 1.5 miles from Petitioner's home. They informed the officer, they wanted a police escort to retreive KW's property from Petitioner's home. The officer refused upon the accusation by KW, that Petitioner was "threatening" her boyfriend Craig Casey. Then KW made a second allegation to Deputy Choney stating she had been molested by Petitioner from age 14 to 19.5 years old.

This prompted the Deputy to allow the entourage to enter upon curtilage and interior of Petitioner's home with no property owner present or warrant having been obtained. The entire party entered

into Petitioner's home,burglarizing and doing property damage, removing exculpatory evidence of paper photos, removing computer hardrives containing exculpatory evidence of digital photos, removing cash, coins, bonds, antiques, property titles, and electronics. The estimated value of the damage and property in excess of $7,000.00 to $9,000.00, not including the sentimental value of the photos and antiques. App.A, No.4;B,No.1,2,4;C, No. 1;E,No.1

During the time at the home on March 17,2010, KW wrote a statement sworn under the penalty of perjury, that Petitioner molested her from age 14 to 19.5 years of age. The Deputy testified to this fact during trial. The statement did not include Petitioner's spouse. On this same day, at approximately 5:00 p.m., Petitioner was met at his home by Father Clarence G. Watson, and Brothers David A. Watson and Jarod H. Watson, who witnesses the property damage and burglarly of the home. During the period in which the Deputy was at Petitioner's home, he contacted two Jefferson County supervising detectives to obtain a warrant, which was denied, and still the deputy entered into Petitioner's home without probable cause, warrant or permission from a property owner. App.A,No. 2,4;B,No. 2,4;C,No.1;E,No. 1

Jarod H. Watson, obtained the private cell number of the Deputy from Stephanie Stempf. Petitioner called the Deputy on March 17, 2010 to complain of the burglarly and property damage. The Deputy informed Petitioner that all parties present had been in his home that same day and KW had made allegations against Petitioner as described above. He demanded an interview with Petitioner, and requested Emily Plazier, KW's best friend and Jefferson County Deputy trainee, be present during the interrogation, to which Petitioner denied and informed the Deputy he could speak with Petitioner's attorney.

attorney when he obtained one. Petitioner and Spouse made an attempt to have their property returned by the party principle to the prosecution through and intermediary Gloria A. Gardener, Petitioner's mother-in-law. Circa 03/20/2010, a phonecall was received from Michael and Stephanie Stempf, in which Petitioner and spouse were informed that if Petitioner did not turn himself in, instead of "lawyering up" to the prosecutors office, allegations would be changed from age 14 to age 12 as the beginning of the crime and Petitioner's spouse would be added to the allegations.[1]

On April 18, 2010, KW was sent to the Jefferson County police station to meet with Deputy Choney. Where, the original statement was shredded by the Deputy and a new statement written with the aforementioned changes.

Circa September 2010, a known false probable cause statement was presented to the Jefferson County Court by the prosecutor's Office for the warrant to arrest Petitioner and Spouse. Both were placed on bond with the condition they report to a private probation company once a month. During the Time on bond, agents of the probation company, working at the behest of the prosecutors, questioned Petitioner and spouse concerning trial strategy with the threat if answers weren't provided the bond would be revoked. No attorney was present during the sessions.[2]

At some point, Joseph R. Watson was contacted by Deputy Choney. Deputy Emily Plazier, also friend of Joseph Watson, came to WAtson's Old Tyme Donuts and spoke with Gerry D. Watson[3], Petitioner's mother, to inform her JW had been located and a statement taken from him.

Footnote 2: Tammy Berg Neuman private probation LLC

Footnote 3: This was after the Stemp's and KW had contacted him

Footnote 1: Under Missouri Law, statutory rape age 14 to16 is a class C Felony, where under age 14 is an unclassified carrying upto life.

In Circa 2005, JW was forcibly removed from Petitioner's home by Petitioner when it was discovered that KW and JW had been engaging in sexual intercourse unbeknownst to Petitioner. KW was forbidden to speak or have any further contact with JW while in Petitioner's home. However, during trial it was discovered through cross examination they had been in contact through social media unbeknownst to Petitioner. In addition, Michael and Stephanie Stempf had been in contact with JW since before 03/17/2010 through social media.

Circa 2005, Michael Stempf was removed from Petitioner's home with a stipulation that until he gave up being a white supremacist , he could not return. Michael Stempf, in an argument over Native American Rights called Petitioner a " radical prairy nigger" for his anthropology studies and work on various reservations with Redfeather. Org. The Stempfs remained estranged todate.[4]

The events that set the allegations in motion, began circa 03/15/10, when an argument occured between Craig Casey, KW and Petitioner concerning the comment from Craig Casey, that the African American veterans at the VA hospital where they worked could not speak english. He stated," Those niggers can't speak english." Incensed by the racist remark and other misogynistic views of the then boyfriend now husband, petitioner, informed the youngman he was not welcome in petitioners home or to continue to ride to work with KW and himself.

This set a chain of events in motion that led to Petitioner's incarceration by the White Nationalist Governemnt of Jefferson County, Missouri for Petitioner's political views concerning civil rights. At trial, KW would espouse that Petitioner and her husband argued over religion in the car. Attached in appendix D, No.1, are

Footnote 4: The Stempf's will be hostile witnesses at an evidentiary hearing

the common political positions of Native Americans, as recorded by the Cherokee Band Corporate Avenger. This music along with other Native protest music and Petitioners written papers on the subjects for studies at the University of Missouri St.Louis, were discussed in Petitioner's home. Petitioner's views were in opposition to the white nationalist views of Craig Casey and Michael Stempf.

On 03/17/10, the trio along with their police contacts on the Jefferson County Sheriff's Patrol came to Petitioners home and robbed him of wealth and exculpatory evidence. Then a series of purposeful destruction of exculpatory evidence events was carried out by the vigilante group and Sheriff's Patrol.

The State and Federal courts have supported these events by denying due process, in full support of white nationalism, during the direct appeal and post collateral proceedings. The courts have supported the proven absolute corruption in the Jefferson County government and sanctioned its corruption in absolute support. Barring relief in this Court, Petitioner is going to be forced to return to the State, in a MO.Sup. Ct.Rule 91 writ of habeas corpus on the actual-innocence issue. Plaintiff's spouse is saving the money necessary to hire Attorney Kevin Schriener to conduct the proceedings on Petitioner's behalf. Petitioner will never stop in his course to clear his name and bring the corrupt public officials to justice. He has included emails to the Attorney(App. E,No.1) showing there is a plethora of evidence in the Federal government and with private companies that will prove not only actual innocence, but the nefarious acts of the vigilantes and Missouri public officials, to coverup the truth for political purposes.

Petitioner is a proven political prisoner of the State of Missouri. Yet, no matter the evidence, his pleas fall on deaf ears of the State and Federal Courts. These actions by the courts have made any and all remedies hollow. The writ of habeas corpus has been suspended by the AEDPA, in violation of the U.S. Constitution Article I, Section 9, states, "the priviledge of the writ of habeas corpus shall not be suspended". Yet, AEDPA has made the writ all but unavailable, with a very few exceptions. This is suspension, by any reasonable persons view. It has allowed the State's criminal justice systems to be so corrupt; it is a pipeline to prison without due process of law. Criminal proceedings in the State of Missouri are a mere formality, as well as any direct appeal or post-collateral proceedings. App.A,No. 2,4,5,6,7;B,no. 1,2,3,4,5,6;C,No.1;E,No.1

Petitioner's is exhausting remedies, to support his request with the United Nations for asylum as a political prisoner of the State, under the Universal Declarations for Humans Rights, Article 14. There is no legitimacy to a conviction from the courts of Missouri. All the world is now aware of the state of the criminal justice sysytem in this country. Further, this Court's legacy in its support for white nationalism is well documented. Chief Justice John Marshall in Marbury v. Madison, layed out this court's constitutional duties, in holding the Bill of Rights sacred. Those rights no longer exist in the United States, and this Court's decision since Justice Marshall left the Court are the reason.

Petitioner was willing to place himself in harms way while serving on active duty in the U.S. Army. This resulted in severe disability. The State and Federal judges are such cravens, they refuse to hold the State of Missouri Officials responsible to the Consti-

tution. Petitioner, would like to place them on active duty, in harms way, and see what it means to defend the Constitution against all enemies foreign and domestic, the oath all soldiers swear to before serving. We know what sacrifice is, the cushy little lives of the lawyers guild, does not compare. Yet, they deny us due process of law, abdicating their duties to the people and abandoning the Bill of Rights.

DISABILITIES

Petitioner has been service connected disabled since leaving the U.S. Army in 1993, under Honorable conditions. A fall from a two story urban warfare site in Hohenfel Germany, damaged Petitioner's left leg, lower back, cervical spine, right foot ect. Petitioner has been in proceedings with the Department of Veterans' Affairs since 1994, and only recently did his appeal in the U.S. Court of appeals for Veterans Claims, cause no. 17-4868, Watson v. Wilkie, reverse and remanded the Boards' decision denying earlier effective dates for onset of the disabilities, mandated on 08/27/2019.

The main defense at trial was inability to committ the crime as testified to by the State's witnesses. The evidence from the VA archive was sought under FOIA, in the VA, St. Paul,Minnesota Regional Office, where the files were located. The FOIA request was ignored, and the process of appeal was followed, with no remedie. As a result, the writ of mandamus was filed in the CAVC, where Judge Greenberg order the Secretary to explain himself, resulting the files finally being provided. The process was started in 2013, with the first FOIA request in the regional Office and ended in 2017, when the files were finally provided. The District court in its decision claimed this was not new and material evidence for the actual-

innocence standard, refusing to apply the standard to overcome procedural default, and ruling on the claims presented, on the merits. App.A,No.5;B,No.2,4,5;C,No.1,2

The USCA8, has refused to apply this standard, in the petition for COA, and reverse for an evidentiary hearing. Petitioner has sent to the USCA8, evidence of treatment for BPH by Corizon Correctional Healthcare Inc. since 2012 to present. The district court in its decision chastised petitioner for not providing more recent evidence. The motion in the UCCA8, for rehearing or en banc on the actual-innocence standard, was supplemented by another motion with the Corizon evidence attached requesting the court to consider the evidence, showing the district court improperly denied petitioner counsel and an evidentiary hearing on the claims. App.A,No. 1

A symptom of BPH, is erectile dysfunction, which Petitioner has been treated for since 2006, though there are other issues in the medical record showing ED as onset as early as 1998.

The fact remains, that the testimony given at trial was that an ereet penis, ejaculated in the vagina of the alleged victim always, and that in every single event Petitioner was on top in the missionary position. Petitioner's disabilities preclude him from coitus in the missionary position, this is a strong showing by scientific evidence that the testimony is untruthful, and there are other reasons for the allegations as expressed in the writ and traverse. App.A,No.2,4,5;B,No.2,4,5;C,No.1,2;E,No.1

Further, the fact remains that in circa July 2001, Petitioner suffered from a severe inguenial hernia, with intestinal material in his scrotum. He was in severe pain until after the surgery in fall of 2001, recovering by December of 2001. The testimony at trial

stated the sexual abuse began in August 2001. Further, the invasive surgery created a large scar on petitioner abdomen, in line of sight for someone performing fellation. The scar is 5 to 6 inches long and 1/4 inch wide clearly visible 3.5 inches left of center of the penis. At trial false testimony was given as to the location of this scar and the time frame of the hernia surgery. Petitioner supplied the district court with the evidence showing the timeframe and location of the scar. The court refused to apply the actual-innocence standard and merit review the claims. App.A,No.2,4;B,No.2,4,5;C,No. 1,2;E,No. 1

EVIDENCE OF CORRUPTION BY JEFFERSON COUNTY ,MISSOURI OFFICIALS

Evidence of alcohol abuse by the trial court and lead prosecutor was provided by newspaper articles detailing the abuse. Catherine Crowley, was inebriated during the evidentiary hearing in the State court, she was fired four months after the hearing by the county for her conduct, which is well known by all county officials. The trial judge came back to court during the trial very inebriated after the lunch breaks, he allowed Crowley to conduct proceeding inebriated, as this was his modus operandi, birds of a feather flock together. The district court upheld this corruption and not violating the Bill of Rights. refusing to reach the merits of the claims that the State proceedings were a legal nullity due to the corruption; Instead of providing them full merit.

The file in the district court is well fleshed out with the evidence and motions properly docketed with service. The respondents failed in every instance to respond to the motions. It can't be that new evidence appears during proceedings, is motioned to be accepted by the court, and excepted under the rules and then

to be meritless. The evidence is true material and should have caused the court to decide the case in petitioner's favor. The fact shows that the Section 2254 writ of habeas corpus is a hollow remedy in Missouri Courts, State of Federal, and has been suspended by the Court's themselves in violation of the Constitution Article I Section 9 guarantee. App.A,No. 4,6;B1-6

In fact, it is Petitioner's view its the nature of the case that has caused the Court's to act so badly. It is nearly impossible in the State of Missouri, to have a fair and impartial proceeding when a man is accused of a sex crime. All officials involved will act in vigilantism, or turn a blind eye to acts of others. This Court is a court of last resort, its constitutional duties prescribe protecting the inalienable rights of the citizen no matter the allegations. The lower courts are just wrong in their actions and should have provided remedy against the State.

RULE 36, FEDERAL RULE OF CIVIL PROCEDURE

On 04/05/17, the district court accepted newly discovered evidence from the VA archive from a writ of mandamus in the U.S. CAVC, with an affidavit from the POTUS's agent stating under the penalty for perjury, the evidence was witheld due to VA's fault. As a result, Petitioner served upon the respondent Chantay Godert and her Attorney, with service a Rule 36, Fed. R.Civ.p. More than 30 days later after the time to respond was passed under the rule, Petitioner motioned the district court to accept the facts as binding on the State. [Doc. 86, dist court]. On 10/15/2018, the Court accepted the Rule 36, Fed.R.Civ.p. into evidence unapposed

by the State, along with aletter from the respondent, as admissions, of the corruption spelled out in the petition and subsequent filings, including that the actual- innocence standard had been met. [Doc. 88 Dist court]. The district court and USCA8, failed to recognize the rule as binding upon the State and issue the writ upon the established facts of the case in the Rule 36, Fed.R. Civ.P. In stead, in corruption with the State, the federal courts established their own facts, which were created untruthfully in State court proceedings.

The courts refused to follow this Courts' stare decisis and Congresses' intent in habeas rules. It is Petitioner opinion this due to the political climate or zeitgeist of the women's movement. That you have to believe victims even when you prove they are lying. Petitioner is no misogynist, being raised in Native culture, women are held as equals. In traditional society, men did not own property, only women did. Under the Great Law of Peace of the Iroquois, the origial Constitution of the United States, women were the only voters. Further, the courts have demonstrated their propensity to creat a person that does not exist, to ease their conscience. Petitioner, is a non-violent person, his social life and professional life show this to be a fact. It is the vigilante's in this case, white supremacist/ nationalist that are the violent agressor's. Petitioner did not threaten violence against Craig Casey or KW. JW was never struck or beaten or physically abused. In fact, spanking was not allowed.

In fact, when the allegations were made in 2010, both Craig Casey and KW were Fedral employees. Petitioner was a GS-9, Legal Adminstrative Specialist with the VA. KW filed a complaint against Petitioner with the VA police and Homeland Security. This caused Petitioner to be investigated, resulting in KW and Craig Casey be-

ing dismissed from federal service, where Petitioner was cleared and had to resign his position from prison. The monster the lawyer's guild has created is simply fantasies of the master race. For time immemorial white Americans have created monsters of people of color or persons aligned with them to justify their own heinous acts of inhumanity. There is no difference from Court's creations and the proganda espoused in the papers of the Ku Klux Klan or Neo Nazi's. We have seen this type of propraganda from the court's of the western developed democracies before. One only need look at the era of 1930-1945 in Nazi Germany, or the court decisions in this Country on Native American Affairs or the seperate but equal doctrines of Jim Crow, to see the courts have always been political machines used by the master race to harm people of color, or those different than the main stream, the other, in xenophobic fervor.

This case is no different, there is no justice in the United States, no rule of law, and the Bill of Rights only applies to those with the means to afford it. This is the state of the courts in this country. Petitioner has no expectation of relief, but will speak truth to power.

This case is purely a machination of the master races' war machine through the criminal justice system.

NATIVE HERITAGE

Petitioner is 1/16 Cherokee Tsu-lagi, he has always been aware of his heritage and practiced the culture of his family. The diffrence for people with no Native heritage is that, my family has been on Turtle Island for more than 30,000 years. I hunt and fish, gather herbs and food stuffs in the same forsts and rivers my ancestors have for thousands of years.

There is no monetary or social benefits to claiming my heritage. If fact. quite the opposite, most people are descriminatory to person like my family and I . For instance upon entering MODOC, the officer, was requested to list my ethnicity as Native American. MODOC refused, and the officer stated," why would any one want to be anything other than white."

I have continued the traditions setout by the matriarchs of my family, and worked on reservations to assist those of the people that need my help. I was offered a $10,000.00 a year scholarship by UMSL, by the anthropology chair to obtain my doctorate in the discipline. I declined Dr. Susan Brownell's offer and instead offerd, there were many people on the reservations that could use the help. While at Turtle Mountain reservation in N. Dakota, building an extension to the college, I contacted a coordinator of scholarships , who spread the word, resulting in many Native young people being UMSL students. App.C,No.1;D,No.1;E,no.1

The truth of my life does not reflect, the fantasy's created by the courts.

The state of the criminal justice system, especially concerning sex crimes, was told nationally in the Justice Brett Kavanaugh hearings.Had the justice been a regular Joe, he would now be in prison, forced to plea to the crimes alleged without due process of law, and spend the rest of his life in prison. The standard of law espoused by the women's movement activist's, that if a man is alleged to have "harmed a women" she must be believed at all costs, no matter the lack of evidence.[5] This is inquistion, the process by which Petitioner was tried and convicted.. Petitioner, hopes this Court to begin to reverse these trends.

Footnote 5; The vigilantes, tried to force Petitioner's spouse to side with them, and wrote false police reports in St.louis.

2003-2007 UNIVERSITY STUDIES

Petitioner was enrolled in the VA's vocational rehabilitation program from 2003-2007, earning a B.S. in Logistics and Operations Management, with an emphasis in Lean Production. Before university , Petitioner held a G.E.D. He was forced from highschool in the 1980's due to gang violence. Petitioner upon taking the entrance exam to the university/community college, tested deficient in mathematics and English skill. He had the extra burden of remedial classes to update his skills. This made his B.S. requirement approximately 150 college credt hours. Petitioner completed his studies timely in the four year window. This averages approximately 14 hrs per semester plus summer classes. Additionally, Petitioner worked as a independent contractor in marketing part time. See App. A, No.7.

Petitioner spent a large amount of time at the college or university studying and in the spare time working , this is yet another point of inconsistencies in the State's witnesses testimony. In addition, Petitioner had a home to maintain, and many other social responsibilities in the community with volunteer work. The point, given the states position and testimony at trial, how can a person account for every moment of everyday, in fifteen minute increments for eight years? It leaves the defendant defenseless if he is never specified, as in a Bill of Particulars, the where, the what and the when of the allegation. How can a jury , given the vagaries of Celis-Garcia and jury instruction no.9 determine what evidence supports what element of the charged crime?

NOTE: 23 A- 23D, were added in this manner number system due to the difficulty of creating documents in prison.

CURRENT ZEITGEIST'S IMPACT ON HETEROSEXUAL MEN

Petitioner throughout his personal and professional life has been subject to multiple incidents of unwanted sexual advancement by women, who, when the advancement was denied, acted in revenge and made false allegations against Petitioner.

As a result, in congruence with the latest false accusations, when Petitioner regains his freedom from the women's oppression movement, he will always have a body camera on his person 24 hrs a day, no one under the age of 18 will be allowed in his presence, no female will be allowed in his presence with a very narrow set of exceptions. This is now the reality, men face. This is because there is no due process of law required when a women makes any type of accusations agaisnt a man. It is determined women don't lie or exaggerate, the police and prosecutor's will act in accordance with the mandate to incarcerate all citizens for the slightest report of an infraction of law, the system of pleas and punishment for excercising the Right to a jury trial will determine the outcome as predetermined, guilty. The only means for a man to protect himself from this reality, is by the aforemntioned rules. The instant case is directly on par with the facts, that all due process of law has been removed from judicial proceedings, especially in the State of Missouri. Notably, Petitioner was offered a plea of 5 years probation with a 10 year backup, Petitioner declined and stood his ground on actual-innocence. The Judge at the sentencing hearing, sentenced Petitioner to more time, than the 5 to 15 year range of the unclassified felonies. This was done to punish Petitioner for excercising his right to a jury trial.

Due process of law in the United States does not exist in criminal proceedings.

RESOLUTION OF THE COMPLAINT AGAINST PETITIONER'S SPOUSE AND CO-DEFENDANT

The first handwritten statement of KW, did not include Gina M. Watson as a perpretrator. This is part and parcel of the reason it was destroyed by KW and Deputy Choney. On 03/17/2010, Petitioner called his spouse at work during break at 2:30 p.m. to see what were the plans for dinner. She was upset and informed Petitioner KW had made accusations against him. She asked Petitioner go home, she was going to discuss the issue with her mother Gloria A. Gardner.

This rsulted in her coming home and standing by Petitioner's side. As a result, this infuriated the vigilantes, who is a phone call on or about 03/20/10, threatened to add Petitioner's spouse to the complaint as a perpretrator and change the allegations to place life sentences against Petitioner. This objective was accomplished on 04/18/2010, when the original statement of KW was destroyed. Stephanie Stempf also wrote afabricated police report in St. Louis County,Missouri concerning an alleged affair between JW and Petitioner 's spouse. The State charged Petitioner's spouse with alleged sexual misconduct against KW and JW. She stood on her innocence and went to trial. The resultwas a hung jury, and the State threatened to refile charges until they obtained a conviction. A trial in Missouri costs $50,000.00 plus costs, Petitioner and spouse were out of funds after his conviction at trial. This made or forced Petitioner's spouse into a plea deal. Due process in the United states is predicated upon your economic means not justice.

KW'S ABILITY TO REPORT

According to the allegations KW and JW were in an abusive

household where they were sexually and physically abused regularly. Yet, JW was removed from the home with animosity in circa 2005, but never reported to the police or anyone else this alleged terrible abuse. KW, sucessfully completed ther B.S. in Business Management from UMSL. She began university studies at age 15 in the highschool. She had good paying jobs, her own bank account, automobile, motorcycle, and lived part time with her boyfriend Craig Casey.

She traveled all over the United States, with friends to visit relatives in Florida, and site see in various State's. At the ex-parte hearing against Petitioner, he proved through train ticket stubbs, that her allegation of the last time she was sexaully assaulted was false, as she was on a train to Washington D.C. and then onto Florida. The ex-parte did not permanently issue as the Judge found her incredible.

Before trial, Petitioner was offered a plea deal of 5 years probation with a 10 year back up sentence, to which he declined standing upon his innocence. It was his naivety's that all he had to do was tell the truth at trial. Court is not about truth, but about the best liar and manipulator. Even still, Petitioner would stand on his innocence again, no matter the costs.

The Trial judge, to punish Petitioner further, at sentencing turned the jury's will of a minimum sentence as the trier of fact, into a larger sentence than the legistlature prescribed. The sentence structure is 5 to 15 years and 2 to 7. The Trial judge in bias, ran the sentences consecutively making the sentence 19 years. Petitioner under 559.040 RSMo. must complete MOSOP before being paroled, by admitting guilt in violation of his 5th Amendment rights, or be inprisoned all 19 years.

NOTE: 23A-23D were added in this manner due to the hardships of creating documents in priosn.

REASONS FOR GRANTING THE PETITION

I. THERE ARE CONFLICTS IN THE COURTS OF APPEALS ON THE QUESTIONS PRESENTED

A. THE EIGHTH CIRCUIT COURT OF APPEALS HAS REACHED A DIFFERENT STANDARD OF LAW REGARDING WHETHER COA SHOULD BE GRANTED ON THE CLAIMS PRESENTED.

Petitioner has suffered loss of liberty without due process law. The trial was completely and totally one sided for the State, with the burden of proof to prove innocence shifted to defense. The State was aware of destruction of evidence, and engaged in subornation of perjury to coverup the spoiliation event. The courts below have refused to recognize the RUle 36, Fed.R.Civ.P. admissions in the proceedings and provide relief. Further, they have refused the procedural right to a Rule 56, Fed.R.Civ.p., summary judgment on behalf of Petitioner.

STANDARDS FOR GRANTING A CERTIFICATE OF APPEALABILITY

A habeas corpus petitioner is entitled to a certificate of appealability (COA) if he makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). This means that the issue before the court should be one about which reasonable jurists could disagree:

> In requiring a 'question of some substance', or a 'substantial showing of the denial of [a] federal right', obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are 'adequate to deserve encouragement to proceed further.' [Citations omitted].

Barefoot v. Estelle, 463 U.S. 880, 893 (1983). *See Flieger v. Delo*, 16 F.3d

878, 883 (8th Cir. 1994).

Applying this standard under the AEDPA, the Supreme Court in *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) stated:

> We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.

Therefore, doubts as to whether to issue a certificate of appealability should be resolved in favor of the appellant. *Fuller v. Johnson*, 114 F.3d 491, 495 (5th Cir. 1997); see *Buxton v. Collins*, 925 F.2d 816, 819 (5th Cir. 1991); *Buie v. McAdory*, 322 F.3d 980 (7th Cir. 2003). This is particularly true where the case involves a death sentence. *Morris v. Dretke*, 379 F.3d 199, 204 (5th Cir. 2004).

The Court recently revisited the COA standard in *Buck v. Davis*, 137 S.Ct. 759, 773-774 (2017). There, the court rejected the reasoning of the Fifth Circuit in denying a COA, holding that the court had improperly reviewed the merits of the claim:

> The court below phrased its determination in proper terms—that jurists of reason would not debate that Buck should be denied relief, 623 Fed. Appx., at 674—but it reached that conclusion only after essentially deciding the case on the merits. . . . We reiterate what we have said before: A "court of appeals should limit its examination [at the COA stage] to a threshold inquiry into the underlying merit of [the] claims," and ask "only if the District Court's decision was debatable."

Miller–El, 537 U.S., at 327, 348, 123 S.Ct. 1029.

The process of determining whether a COA is appropriate to review a district court's procedural decision, such as a finding of procedural default or a denial of evidentiary hearing, is governed by *Slack v. McDaniel*, 529 U.S. 473, 483-484 (2000). There, the court held that where a claim was dismissed by the district court on procedural grounds, the petitioner must meet the *Barefoot* standard as to the procedural question, and must show at a minimum, that jurists of reason would find it debatable whether the petition states a valid claim of a constitutional right. Where the merits of the constitutional claims have not been fully developed—for example, because the district court dismissed the petition on procedural grounds—the Court need only take a "quick look" at the constitutional claims. *Mateo v. United States*, 310 F.3d 39, 41 (1st Cir. 2002). App.A,No.2-6;B,no. 1-6;C,no. 1-2;D,No. 1;E,No.1

CONSTITUTIONAL ISSUES WORTHY OF APPELLATE REVIEW

A. Ground 1: Shifting of burden of proof in final argument

In Ground 1, Mr. Watson contended that the prosecutor's comments in closing argument improperly shifted the burden of proof to the defense violating his rights to due process. In addressing Ground 1, the district court found that it could only grant relief if "the prosecutor's closing argument was so inflammatory and so outrageous that any reasonable trial judge would have *sua sponte* declared a

mistrial." Doc. 94 at 8[1], quoting *James v. Bowersox,* 187 F.3d 866, 869 (8th Cir. 1999). The district court further opined quoting *James* that its review of whether the State's closing argument in Mr. Watson's case violated his right to due process was "exceptionally limited." *Id.* The district court further found that the Missouri Court of Appeals's decision was neither contrary to nor an unreasonable application of clearly established Federal law. Finally, the district court found that the prosecutor did not misstate the burden of proof but simply attacked the reasonableness of Mr. Watson's testimony while clarifying on rebuttal that the burden of proof remained with the State. *Id.* Reasonable jurists could disagree with these conclusions, and a COA is required.

The Missouri Court of Appeals did not address Mr. Watson's due process argument but denied this ground for relief based on state law. Although this failure does not preclude federal habeas review, it is arguable that it is an unreasonable and contrary application of Supreme Court precedent. The prosecutor's comments that Mr. Watson needed to prove his innocence "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Donnelly v.*

---

[1]Document citations are from the docket of *Watson v. Godert,* Cause No. 4:15-cv-1864-ACL (E.D. Mo.).

DeChristoforo, 416 U.S. 637, 643, 40 L. Ed. 2d 431, 94 S. Ct. 1868 (1974). Clearly, suggesting that the defendant must prove his innocence rises to extreme prejudice that any reasonable trial judge in similar circumstances would have called a mistrial. The State's evidence was based solely on the testimony of the victim and Watson's son. Watson maintained his innocence and called several witnesses who testified to factual inconsistencies and impossibilities presented by the testimony of the two State's witnesses. (Tr. 435-37, 452-55, 463-70, 486, 507, 514). Also, the jury asked several questions during deliberation and delivered the minimum sentence on several counts, when the evidence presented by the two State's witnesses was that potentially hundreds of repeated instances of sexual abuse had occurred. (LF 38-40; Tr. 241-42, 244-48). Given these facts, it it cannot be said that the State's argument shifting the burden of proof was not outcome determinative and resulted in a manifest injustice. APP. A, no. 4, 5; B, No. 1-6; B, no. 1-6; C, No. 1-2; E, No. 1.

This Court should grant a COA as to Ground 1. Other federal courts have granted certificates of appealability in cases in which the prosecution has shifted the burden of proof in argument. *See e.g. Dixon v. Pennel,* No. 00-CV-75524-DT, 2003 U.S. Dist. LEXIS 848 at *12 (E.D. Mich. 2003); *Basile v. Bowersox*, 125 F. Supp. 2d 930 (E.D. Mo.1999).

B. Ground 2: Submission of Jury Instruction No. 9

In denying Ground 2, the district court, citing *Johnson v. Louisiana*, 406 U.S. 356, 362-63 (1972) and *Apodaca v. Oregon,* 406 U.S. 404, 406 (1972), found that the United States Supreme Court has held that neither the due process clause nor the Sixth Amendment require unanimous verdicts in state criminal cases. Doc. 94 at 11. The district court further opined that for Watson to prevail on his claim of instructional error, he must show that the instructional error so infected the entire trial that it violated due process. *Id.* The district court found that Watson had not made such a showing. *Id.* at 12. Finally, the district court held that even if Watson stated a federal claim due to the alleged violation of *State v. Celis-Garcia,* 344 S.W.3d 150 (Mo. banc 2011), the Missouri Court of Appeals found that Instruction No. 9 was proper under Missouri law. *Id.*

Given that the United States Supreme Court has granted certiorari to the question whether the Fourteenth Amendment fully incorporates the Sixth Amendment's guarantee of a unanimous verdict, *see Ramos v. Louisiana,* No. 18-5924 (set for argument on October 7, 2019, U.S.), the district court's decision that Watson did not state a federal constitutional claim is debatable and requires further review.

Regardless, reasonable jurist would disagree as to whether Watson's right to due process was not violated as the result of Instruction No. 9. It is arguable that the Missouri Court of Appeals's decision was an unreasonable application of *Estelle v. McGuire,* 502 U.S. 62, 67 (1991) and *Waddington v. Sarausad,* 555 U.S. 179, 190-191 (2009) because Instruction No. 9 did in fact relieve the State of its burden of proving every element of the crime beyond a reasonable doubt. Although Instruction No. 9 instructed the jury that the elements of statutory rape must be proved beyond a reasonable doubt and that the jury must "unanimously agree as to which act has been proved," it reduced the burden of proof because the State did not elect a particular criminal act to support each separate charge. Also, the verdict director did not specifically describe the separate criminal acts so that the jury could unanimously agree upon them. Given that the State presented evidence that potentially hundreds of sexual offenses had occurred over an eight-year charging period either in the living room or bedroom of the same home, it is impossible to know if the jury agreed on one act, which act, or whether they agreed on the same or multiple acts for each count.

Moreover, when jury instructions do not require the government to prove each element of an offense beyond a reasonable doubt, structural error occurs, and a

harmless error analysis is not required for a reviewing court to find a constitutional violation. *Sullivan v. Louisiana*, 508 U.S. 275 (1993). Even if harmless error applies to this ground for relief, the trial court's error in giving Instruction No. 9 was not harmless as it "had substantial and injurious effect or influence in determining the jury's verdict." *Brecht v. Abrahamson*, 507 U.S. 619, 637, 123 L. Ed. 2d 353, 113 S. Ct. 1710 (1993). Again, a jury instruction cannot relieve the state of the burden of proving beyond a reasonable doubt a crucial element of the criminal offense. *See e.g. Sandstrom v. Montana*, 442 U.S. 510, 521 (1979). Instruction No. 9 not only did not ensure a unanimous verdict but also suggested to the jury that they could disregard evidence if other jurors did not agree it was true violating the jury's duty to consider all the evidence.

This Court should grant a COA as to Ground 2. Other federal courts have granted certificates of appealabiity in cases in which a state prisoner has claimed that a jury instruction violated his right to due process by lessening the State's burden of proof. *See e.g. Doan v. Carter,* 548 F.3d 449, 453 (6th Cir. 2008).

C. Ground 3: Physical Abuse Testimony

In addressing Ground 3, the district court found that the Missouri Court of Appeals's decision to uphold the admission of Joseph Watson's testimony about

Watson's physical abuse was not contrary to or an unreasonable application of clearly established federal law. Doc. 94, at 15. The district court implicitly held that Watson had not demonstrated that his son's testimony fatally infected the proceedings and rendered his trial fundamentally unfair. The district court further found that the State was entitled to question Watson's son regarding why he thought Watson was strict, but not safe and responsible, because of defense counsel's line of questioning on cross-examination. *Id.* Finally, the district court held that even if his son's testimony was improper evidence of other bad acts, Watson had not established that the verdict would have been different absent his testimony. *Id.*

It is debatable among reasonable jurist whether the Missouri Court of Appeals's decision was contrary to or an unreasonable application of clearly established federal law, *see e.g. Estelle,* 502 U.S. at 67-58. Joseph Watson's testimony was impermissible uncharged bad act and propensity evidence which made Watson's trial fundamentally unfair. It is unfathomable to believe that Joseph's trial testimony that his father kicked him in the head, hit him in the head with a steal pry bar, and grabbed him by the back of the head at work, did not prejudice Watson in the eyes of th jury. Also, Joseph's testimony regarding being forced to work with an injury, working 19-hour days, caring 245 eight-pound bags

of concrete, and being made to only eat what the chickens produced for three days after forgetting to feed them resulted in Watson's trial as being fundamentally unfair. App.A,No.4,6,7;B,No.1-6;C,No.1;E,No.1

Furthermore, the district court put great weight on the victim's testimony finding that because of it, Joseph Watson's testimony did not affect the verdict. Doc. 94, at. 15. Specifically, the district court noted that in addition to the victim testifying that Watson sexually abused her, she testified that he was abusive and threatened to kill her boyfriend by putting a bullet to the back of his head. *Id.* Again, the State's evidence was solely testimonial, there was no DNA or other evidence that was presented to support the State's case. Only the victim and Joseph Watson testified against Watson and their testimony was littered with inconsistencies and factual impossibilities within their version of events, (Tr. 435-37, 452-55, 463-70, 486, 507, 514). Watson strenuously denied the allegations against him testifying that he had never had sex with his children, and did not know why they would have said this.

Joseph's testimony was pure propensity evidence that it did not fall within any of the limited circumstances that would allow its admission - establish motive or intent, identity of the person charged, common scheme or plan, or absence of

mistake or accident. *See e.g. State v. Miller,* 372 S.W.3d 455, 474 (Mo. banc 2012). Accordingly, Watson's right to a fair trial was violated as Joseph's testimony fatally infected the entire proceedings rendering Watson's trial fundamentally unfair.

This Court should grant a COA as to Ground 3. This Court has previously issued a certificate of appealability when a state prisoner has claimed that he was deprived of his right to due process when the prosecution was allowed to comment upon and elicit testimony regarding certain uncharged bad acts. *See Harris v. Bowersox,* 184 F.3d 744 (8th Cir. 1999). This Court should do the same as it is debatable among reasonable jurists whether Joseph Watson's testimony fatally infected the guilt phase of Terry Watson's trial.

PROCEDURAL DEFAULT OF GROUNDS 4 THROUGH 22

Regarding Watson's remaining clams, the district court found that they were procedurally defaulted because they were not raised either on direct appeal or on appeal from the denial of postconviction relief. Doc. 94, at 19. Watson concedes these claims were not raised on either direct or postconviction appeal, however, he does not concede they are procedurally defaulted. Despite the district court's procedural ruling, this Court should grant a COA on these remaining claims as

procedural default issue could be resolved in a different manner. Also, Watson's grounds for relief establish substantial claims of the denial of a constitutional right and deserve further review. App.A,No.4,5,6;B,No.1-6;C,No.1-2;D,No.1; E,no.1

It is arguable among reasonable jurists that Watson's procedural default of these claims can be excused under two circumstances: (1) ineffective assistance of postconviction counsel under *Martinez v. Ryan*, 566 U.S. 1 (2012); and (2) fundamental miscarriage of justice as Watson is actually innocent.

Martinez v. Ryan

The district court dismisses Watson's use of *Martinez* to overcome his procedural default for the reason that it can only be used as cause for ineffective assistance of trial counsel claims and not for ineffective assistance of appellate counsel claims. Doc. 94, at 17. Also, the district court noted that Watson raised his claims in his initial *pro se* postconviction motion but not on the appeal from the denial of the amended motion. Doc. 94, at 17. Although the district court is correct in that *Martinez* does not provide cause for the default of claims alleging ineffective assistance of direct appeal counsel, *see Davila v. Davis,* 137 S. Ct. 2058, 2070 (2017), Watson's defaulted claims mainly involve ineffective assistance of trial counsel and prosecutorial conduct. He has raised no claims in his second amended

petition that direct appeal counsel was ineffective.

Regarding the fact that Watson raised claims in his *pro se* motion that were not raised on appeal from the denial of his amended postconviction motion, *Martinez* does not bar their review because these claims were never actually adjudicated by the state postconviction motion court. A review of the amended motion filed on Watson's behalf by appointed counsel indicates that Watson's *pro se* motion was merely attached to the amended motion. Doc. 41-6, pp. 68-141. At the time of Watson's Rule 29.15 proceedings, Missouri court's allowed counsel to attach the *pro se* motion to the amended motion. *See Reynolds v. State,* 994 S.W2d 944 (Mo. 1999). Since this time, however, the Supreme Court Rules have been amended and no longer allow this practice. In Watson's case, the postconviction motion court did not address his *pro se* claims in its Findings of Fact and Conclusions of Law. Doc. 41-6, pp. 142-149. The postconviction court never indicated that it was specifically denying Watson's *pro se* grounds for relief but only that it had reviewed his claims in the amended motion. Doc. 41-6, p. 144. Also, although the postconviction motion court refers to "Findings Relevant to All Claims," it is unclear what this means and does not specifically reference or address Watson's *pro se* claims. *Id.* Finally, there is no statement by the postconviction

motion court denying all claims in both the *pro se* and amended motions. *Id.* at 149. Thus, the postconviction motion court never adjudicated Watson's *pro se* claims. *See Green v. State,* 494 S.W.3d 525 (Mo. 2016). Because no final judgment exists as to these claims, they could not have been raised on appeal. Postconviction counsel did not file a motion pursuant to Rule 74.01(b) to correct this error making these claims a nullity on appeal. *Green,* 494 S.W.3d at 531. This Court should grant the COA and allow Watson to argue cause under *Martinez* because postconviction counsel was ineffective in failing to ensure they were properly adjudicated in the amended motion.

In order to overcome a procedural default under *Martinez*, petitioner has to show that his postconviction counsel was ineffective in failing to present issues of ineffective assistance of trial counsel in the circuit court post-conviction proceeding, and that the issue that was omitted was "substantial." In determining whether an issue is substantial, the court does not perform a full merits review. Rather, the process is akin to that for determining whether a certificate of appealability (COA) should be issued. *Martinez*, 566 U.S. at 14.

In *Buck v. Davis*, 137 S.Ct. 759 (2017), the Supreme Court held that all a petitioner must show to receive a COA is that "jurists of reason could disagree"

with how the issue should be resolved, or that "the issues presented are adequate to deserve encouragement to proceed further." 137 S.Ct. at 773-74. "[W]hen a reviewing court . . . 'first decid[es] the merits of an appeal, . . . then justif[ies] its denial of a COA based on its adjudication of the actual merits,' it [places] too heavy a burden on the prisoner at the COA stage." *Id.* (emphasis in original).

As set out above, postconviction motion counsel was ineffective in failing to ensure that these claims were brought before the postconviction motion court and properly preserved. As set out *infra,* Watson's Grounds 4 through 22 are substantial and are deserving of further review.

Freestanding Claim of Actual Innocence

In his reply to the State's response Watson argued that he is actually innocent of his convictions. Actual innocence can be a gateway to allow the district court to review otherwise procedurally defaulted claims. *See Schlup v. Delo*, 513 U.S. 298, 315 (1995). The district court did not find this argument persuasive because it contended that Watson had failed to present new evidence that affirmatively demonstrated that he is innocent of the crime for which he was convicted. Doc. 94 at 18.

The only evidence at trial that Watson submitted regarding his physical disabilities and inability to perform sexual intercourse in a missionary position were records from the 1994 regarding surgery of his right knee. Doc. 41-1, at 519-520. Since that time, Watson has obtained additional new evidence that was not presented to trial. Watson submitted this information to the district court during the pendency of his habeas petition. Docs. 34, 48-1, 48-2. Specifically, Watson received a copy of his claims folder from the Department of Affairs in January 2017, after waiting three years and filing a mandamus action to receive it. This new evidence supports Watson's innocence argument in that: (1) the only comfortable position for him to engage in coitus is with a female on top of him; (2) he received hernia surgery in the fall of 2001, resulting in a large scar on his abdomen making his ability to perform coitus improbable due to the intrusive surgery into his genitalia; and (3) he suffered from an enlarged prostrate known as BPH and that he in fact had this condition since 1998 instead of 2006 as he testified at trial. This new evidence calls into question the State's witnesses's testimony regarding Watson's ability to engage in coitus and maintain an erection. Also, this new evidence from the VA demonstrates that his left arm was incapacitated from May 2007, until his surgery in September 2009, further demonstrating that he could

not perform repetitive movement as require for coitus in the missionary position. Given this new evidence, it is debatable among reasonable jurists that Watson cannot establish a "gateway" claim of actual innocence.App.A,no.4,5;B,No.1-6; C, No.1-2;E,no. 1

GROUNDS 4 THROUGH 22

If this Court does not find that Watson has presented an arguable "gateway" claim of actual innocence, it should grant a COA on the basis of *Martinez* for those claims contained in his *pro se* motion because his underlying claims are substantial.

A. Ineffective Assistance of Counsel Claims (Grounds 4, 10, 11, 15)

Watson's Grounds 4, 10, 11, deserve further review. Regarding Ground 4, it is debatable whether trial counsel was ineffective for failing to introduce medical records of erectile dysfunction. The district court chides Watson for not producing new reports of erectile dysfunction, however, the records he has produced demonstrated an inability to perform coitus in a missionary position and engage in sexual activity.

Similarly, it is debatable as to Ground 10 whether trial counsel was not ineffective for failing to call an orthopedic surgeon or pain specialist as to Watson's injuries sustained in the Army. This evidence would have shown that the State witnesses's testimony would not have been possible. As to Ground 11, it is

debatable that this claim should not have been dismissed without an evidentiary hearing. The district court found it to be speculative but no record had ever been developed on it in either state or federal court. Finally, as to Ground 15, the factual basis of it has not been developed and it cannot be said that trial counsel's failure to make such argument was trial strategy. This Court should grant a COA on Grounds 4, 10, 11, 15 as it is debatable that Watson's right to effective assistance of trial counsel under the Sixth Amendment was violated. *See Strickland v. Washington,* 466 U.S. 668, 687 (1984).

B. Prosecutorial Misconduct (Grounds 5, 6, 8, 13, 16, 19, 22)

In deciding Ground 5, the district court found that whenever religion was referenced during trial it was relevant. This finding by the district court is debatable as there was no need for the jury to know that the victim's boyfriend was a Christian and Watson was an atheist or that Watson thought Americans were prudes based on Christian laws. This testimony was irrelevant and prejudiced Watson. Regarding Ground 6, this claim was never developed in either state or federal court and goes to the performance of the investigation into the alleged crimes. Watson should be allowed to develop it further. As to Ground 8, the district court found that the prosecutor's statement was not so inflammatory to

violate Watson's rights to due process. Doc. 94, at 21. The prosecutor, however, without any evidence in the record made such a statement. This statement influenced the jury and violated Watson's rights to due process. Grounds 13 and 16 should be further developed through an evidentiary hearing. App. C, No. 1; D, No. 1; E, no. 1

In denying Ground 19, the district court found that Watson could have obtained Joseph's phone records through the use of a subpoena. Doc. 94, at 26. Whether Watson could have independently obtained these records is not the issue. The government must disclose any evidence both "favorable to the accused" and "material to either guilt or to punishment." *Brady v. Maryland,* 373 U.S. 83, 87 (1963). *Brady* applies to exculpatory impeachment evidence, *United States v. Bagley*, 473 U.S. 667, 676 (1985), whether or not the accused specifically requests the information, *Kyles v. Whitley*, 514 U.S. 419, 433-34 (1995). Watson has stated an arguable *Brady* claim deserving of a COA.

Likewise, Ground 22 should be further developed because it goes to the propriety of the prosecution's tactics and when viewed cumulatively with other alleged acts of prosecutorial misconduct calls into question the fairness of Watson's trial. This Court should grant a COA on Grounds 5, 6, 8, 13, 19, 22 as it is debatable whether the State performed acts of prosecutorial misconduct. App. A, No. 4, 6; B, no. 1-6; C, no. 1; E, no. 1

C. Witness Testimony (Grounds 7, 17, 20, 21)

In denying Grounds 7 and 20, that the State's witnesses gave perjured testimony which went uncorrected, the district court found that Watson had not established that these statements were perjury and that the state knowingly used false testimony. The state's failure, however, to correct false testimony that results in a conviction violates due process. In *Napue v. Illinois*, 360 U.S. 264 (1959), the Court recognized, "a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment .... The same result obtains when the State, although no soliciting false evidence, allows it to go uncorrected when it appears." *See also Giglio v. United States*, 405 U.S. 150, 154 (1972). Given the importance of these grounds for relief, this Court should grant a COA as to them. As for Grounds 17 and 22, dealing with the victim and Joseph's trial testimony, this Court should grant a COA as to them. App.A,No.4,6,7;B,no.1-6:C,No.1;D,No.1;E,No.1

D. Police Misconduct (Ground 9)

The district court in denying this ground for relief found that it lacked merit. Doc. 94, at 21. Specifically, the district court found that the police would have no control over victim's social media or email accounts. Again, the state has the burden to disclose all impeaching or exculpatory evidence as well as preserving it.

Where potentially exculpatory evidence is destroyed in bad faith there is a due process violation. *California v. Trombetta*, 467 U.S. 479, 888 (1984); *Arizona v. Youngblood*, 488 U.S. 51 (1988). This Court should grant a COA as this claim is substantial and deserving of further review. App.A,no.4,6,7;B,no.1-6;C,No.1; E,No.1

E. Actual Innocence/Sufficiency of the Evidence (Ground 12)

Watson acknowledges that he cannot bring a "freestanding" claim of actual innocence and refers this Court to his argument above regarding his "gateway" claim of actual innocence. *Supra,* pp. 18-19. Regarding Watson's sufficiency claim, it should be granted a COA. Because the underlying sufficiency of the evidence claim is, by its nature, fact-intensive, it is deserving of further scrutiny on appeal. See *e.g. Lynch v.Hudson*, 2011 U.S. Dist. LEXIS 110652, 248 (S.D. Ohio Sept. 28, 2011) (granting certificate of appealability on sufficiency of the evidence claim). This issue is debatable among reasonable jurists, could be resolved differently, and deserves further proceedings.

F. Juror Bias (Ground 14)

The district court in denying Watson's claims of juror bias found that they were unsupported by the record. The district court reached this conclusion, however, without this claim being developed in either state or federal court. If this

Court granted a COA on this claim, it would ultimately grant relief and remand this ground to the district court for further proceedings.

G. Medals (Ground 18)

The district court found no support in the record for Watson's claim that the trial court made him remove his military service medals before the jury. Again, given there is no record, this Court should grant a COA. Given that the State presented only testimonial evidence, there is a reasonable probability that this incident could have affected the outcome of the trial. App.A,No.4,6,7;B,No.1-6; C,no.1-2;E,No.1

WHEREFORE, for the foregoing reasons, Watson respectfully requests the Court to grant his petition for certiorari.

Respectfully Submitted,

Terry G. Watson Date: 10/04/19

CERTIFICATE OF SERVICE

I hereby certify that 10/07/19, the orginal was placed in the institutional mail box and first class postage paid to the Supreme Court of the United States, 1 Firts Street, N.E., Washinton, D.C. 20543.

Pursunat to 28 USC § 1746, all statements contained in the foregoing are true and correct under the penalty for perjury.

Signed,

Terry G. Watson Date: