19-7289

CASE NO:_____

IN THE

SUPREME COURT OF THE UNITED STATES

Willis Shane Gordon - Petitioner

vs.

Shannon Meyer (Warden) - Respondent

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Willis Shane Gordon #56595
C/O: Lansing Correctional Facility
P.O. Box 2
Lansing, Kansas
66043-0002

ORIGINAL

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RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment V: to the Constitution of the United States:

The Fifth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, provides in relevant part: "No person Shall be... subject for the same offense to be twice put in jeopardy of life or limb"

Amendment VI: to the Constitution of the United States:

The Sixth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, provides in relevant part: "in all criminal prosecutions, the accused shall enjoy the right... to the assistance of counsel for his defense"

Amendment VIII: to the Constitution of the United States:

The Eighth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, provides in relevant part: "The Eighth Amendment to the United States Constitution provides as follows: Excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishments inflicted"

Amendment XIV: to the Constitution of the United States:

The Fourteenth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, provides in relevant part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

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JURISDICTION

The Jurisdiction of this Court is Confered under 28 U.S.C. § 1254 (1)

STATEMENT

Petitioner was charged in Kansas state court of one count each of rape, aggravated kidnapping, attempted robbery, and aggravated battery. The first three counts involved a female victim, while the fourth involved a male victim. The female victim testified at trial that she met up with Petitioner to see an apartment he had told her he would help her to rent, but soon after they entered the apartment, the Female Victim claims Petitioner threatened her with a knife, attempted to take her phone away from her—breaking it in the process— nad forced her to undress, then she claims he escorted her into a bedroom, where she alleged he raped her. She Then Claims she was able to escape from the apartment, she saw the male victim, who had given her a ride to the apartment earlier that evening, Waiting outside, while The male victim testified at trial that he had come back to the apartment to see if anything was wrong because he was concerned that the female victim had not been answering his phone calls and texts. He testified that soon after he got there, he saw the female victim running out of the apartment wearing nothing and screaming that "he" had raped her. Petitioner then followed the female victim out of the apartment and began chasing her, so the male victim tackled Petitioner. After Petitioner cut him in the face with a knife, the male victim yelled at the female victim to get the knife away from Petitioner. She was able to do so, and then she ran and found other help. The police arrived soon thereafter.

It was Established in the Course of Petitioners State habeas that Police reports were withheld From Trial Counsel, then in the Course of the State Habeas Appeal, it was admitted by the Prosecutor that 'he' Did not have Exculpatory Evidence of petitioners own Injuries, and after Seven Years from the Original trial, these Photographs were not contained in the Files of the Police Department.

The State Appeals Court ruled the Brady issue 'should' have been raised in Petitioners Direct State Appeal, and Alleged Petitioenr was subject to State procedural bar on the brady Claim.

The State Further asserted procedural bar on the Additonal issues contained herein, and it is the Position of the Petitioenr that these asserted Procedural bar's are asserted in a manner which is unreasonable to Clearly Established Federal Law as Determined by this Court.

Factual and Procedural Background

Note, the Following is drawn fromt he State Record, Amended to correct facts in the State Record, intended to Mislead.

Petitioner was Charged with one count each of rape, aggravated kidnapping, attempted robbery, and aggravated battery after B.H. claimed that she was the victim of these crimes. At the ensuing jury trial, B.H. testified that she was kidnapped, raped, robbed, and battered by Gordon, but Gordon claimed that B.H. arranged to have consensual sex for money. The jury found Gordon guilty on all counts, and he received a controlling sentence of 460 months' imprisonment. On his direct appeal, Gordon raised three issues: (1) ineffective assistance of counsel; (2) failure of the district court to give a limiting instruction; and (3) violation of his constitutional rights by enhancing his sentence based on a criminal history that had not been proven to a jury beyond a reasonable doubt. Another panel of this court dismissed his ineffective assistance of counsel claim for lack of jurisdiction, rejected his other two claims, and affirmed his convictions. On June 5, 2012, (INCORRECTLY STATES IN STATE RECORD FILED APRIL 5, 2012). Judge attempted to block Filing with demand to Filing Fee in Violation of Smith v. Bennett, 365 U.S. 708

Petitioner filed a timely, and lengthy, pro se K.S.A. 60-1507 motion. His primary pleading was nine pages long and is essentially the habeas pleading form. In that pleading, specifically in paragraphs 10 and 11, he raised a violation under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), contending the prosecution withheld important information about the cell phones (MISLEADING STATEMENT BY STATE COURT) used by the victim and police, and contends that had the jury seen the full text messages between the victim and him the jury may have reached a different verdict. Then in paragraph 20, where the

form requests the movant to list how his counsel had been ineffective, Gordon appended a 35-page attachment discussing in detail his allegations of ineffective assistance of counsel. Gordon also filed contemporaneously a 15-page "Affidavit of Case Law in Support of Habeas Corpus."

After reviewing this extensive pleading, the district court appointed counsel to represent Gordon on July 9, 2012. Interestingly, the court did not appoint someone from the appointment list but instead appointed an attorney specifically requested by Gordon. After a number of continuances granted at Gordon's counsel's request, on January 23, 2013, Gordon's counsel filed a modified K.S.A. 60-1507 motion intended to replace Gordon's original (MISLEADING STATEMENT FROM STATE APPEALS COURT) [An no time did Counsel indicate he was replacing his Clients Filing] 60-1507 motion.

The State Record of the habeas Proceeding in the Trial Court contains Two Pro Se, Discovery Motions, to which the Prosecutor bavid Belling, Asserted in a Filed Responce, "MY OFFICE HAS AN OPEN FILE POLICY", this Assertion was Repeated to each item request in the Discovery.

In the Course of his Habeas Appeal, Petitioner made a direct Challenge that this Same Prosecutor "PROVE WHAT WAS IN HIS FILE", attaching a Police Report where the Officer Clearly Identified Exculpatory Evidence, The Same Prosecutor only then attempted to discharge his Brady (OBLIGATION) - and - (DUTY) under Brady, and admitted to the Court of Appeals, his office 'DID NOT' have this Bady material, Also the Police Department 'DID NOT' have this Brady Material.

Petitioner before trial filed Several Pro Se Motions - where he Clearly Asserted that his Trial Attorney's had not Obtained Exculpatory Evidence, and the Trial Court while presented ample opportunity to actually Inquire, instead rushed into trial, and Conviction. Prior to

Sentencing Petitioner again asserted Missing Brady Evidence, and Again the Trial Court never Inquired, even in habeas Review, the Trial Court never inquired.

At the Habeas Hearing, the Trial Court heard that Police Reports were also withheld, when Trial Counsel was Cross Examined by Habeas Counsel, this Was Established, and not Given Consideration by the Trial Court in the Habeas Ruling.

Petitioner timely Appeals, Proceeding through the State Appeals Court, State Supreme Court denied review, and Petitioner proceeded to the Federal habeas, and Federal habeas Appeal, including En Banc Reconsideration.

The Lower Courts failed give consideration of Pro Se material, and refused to hear the claims, instead depending on the State Appeals Courts incorrect determination, without consideration of the Pro Se Dockuments.

Petitioner presents the Following to this Honorable Court seeking it Grant CERTIORARI.

APPRENDI

This issue is of primary importance as it involves States circumventing this courts rulings in violation of the Constitution, Earlier this Year, in his Dissent, Justice KAVANAUGH cited a list of Cases in - United States v. Davis, 139 S. Ct. 2319 (June 24, 2019), Stating the Following "First, in the prior- conviction cases, the Court emphasized that the categorical approach avoids the difficulties and inequities of relitigating "past convictions in minitrials conducted long after the fact." Moncrieffe v. Holder, 569 U. S. 184, 200-201, 133 S. Ct. 1678, 185 L. Ed. 2d 727 (2013). Without the categorical approach, courts would have to determine the underlying conduct from years-old or even decades-old documents with varying levels of factual detail. See Taylor v. United States, 495 U. S. 575, 601-602, 110 S. Ct. 2143, 109 L. Ed. 2d 607 (1990). The factual statements that are contained in those documents are often "prone to error." Mathis v. United States, 579 U. S. ___, ___, 136 S. Ct. 2243, 195 L. Ed. 2d 604, 615 (2016). The categorical approach avoids the unfairness of allowing inaccuracies to "come back to haunt the defendant many years down the road." Id., at ___, 136 S. Ct. 2243, 195 L. Ed. 2d 604, 615-616). The Court has echoed that reasoning time and again. See, e.g., Sessions v. Dimaya, 584 U. S., at ___, 138 S. Ct. 1204, 200 L. Ed. 2d 549 (plurality opinion), 200 L. Ed. 2d 549 (slip op., at 15); Johnson v. United States,135 S. Ct. 2551, 576 U. S., at ___, , 192 L. Ed. 2d 569 (slip op., at 13); Descamps v. United States, 570 U. S. 254, 270, 133 S. Ct. 2276, 186 L. Ed. 2d 438 (2013); Chambers v. United States, 555 U. S. 122, 125, 129 S. Ct. 687, 172 L. Ed. 2d 484 (2009).

Referenced as these statements describe the problems which plague the State of Kansas, where the (Kansas Sentencing Guidelines Act (KSGA)) are an unreasonable Application of Clearly Established Federal law as Determined by the Supreme Court of the United State. Specificly Apprendi v. New Jersey, 530 U.S. 466 (2000)

Kansas Sentencing Guideliens operate on a Horizantal and Vertical grid, for the arguements herein, Petitioners dispute involves the not the horizontal axis of the KSGA grid but specifically the Mechanics of that Axis.

The Mechanics are divided into two specific parts (PERSON) and (NONPERSON) Felony convictions, Petitioner disputes the (PERSON) mechanics of the Grid, as Unconstitutionally vague and Unconstutional when applying the principles in Apprendi v. New, Jersey, 530 U.S. 466 (2000)

In order to classify prior Crimes as (PERSON) crimes, the Kansas Statute Ann. 21-6811 direct it's judges to violate the Folowing 'For Apprendi purposes, the relevant statutory maximum is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings. When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts which the law makes essential to the punishment, and the judge exceeds his proper authority.' See: Blakely v. Washington, 542 U.S. 296 (2004)

While the Grid boxes (E, F, G, H, and I) are not challenged, as they clearly are simply the State applying the (FACT) of Prior Convictions, what is Disputed are the (A, B, C, and D) boxes, of the Grid, which rely on Finding of Additional Facts, without puting the (ELEMENTS) of the (FACT) involving the prior Conviction's (Seprate Legal Offenses) to a jury in violation of the Sixth Amentment protections applied in Apprendi, Supra.'Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. With that exception, it is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such

facts must be established by proof beyond a reasonable doubt.' - this Court addressed this primary issue of (separate legal offense), stating as follows 'Apprendi concluded that any "facts that increase the prescribed range of penalties to which a criminal defendant is exposed" are elements of the crime. Id., at 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (internal quotation marks omitted); id., at 483, n. 10, 120 S. Ct. 2348, 147 L. Ed. 2d 435 ("[F]acts that expose a defendant to a punishment greater than that otherwise legally prescribed were by definition 'elements' of a separate legal offense"). We held that the Sixth Amendment provides defendants with the right to have a jury find those facts beyond a reasonable doubt. Id., at 484, 120 S. Ct. 2348, 147 L. Ed. 2d 435. While Harris limited Apprendi to facts increasing the statutory maximum, the principle applied in Apprendi applies with equal force to facts increasing the mandatory minimum.' See: Alleyne v. United States, 570 U.S. 99 (2013)

Those facts of those ['elements' of a separate legal offense] are not determined by a jury, instead kansas Statutes direct it's judges to specifically violate Appreni, and are Unconstitutional as Applied.

In Petitioners Specific case, The State used Three misdeamenors - where the Records before the Sentencing Court clearly showed petitioner was actually refused his right to a Jury Trial, as well as Denial of the Right to the Assistance of Counsel. Yet the Records frm the Misdeamenor Court showed specific Motions requesting 'BOTH'.

Yet Petitioner's underlying Sentence was increased - From the [E] box, (Three plus - Nonperson Felonies), to the [D] Box - (One Person and One NonPerson Felony) where the Maximum Possible sentence based only of the Facts of the Underlying Convictions would have been (Between 246, 234, 221 Months), where through the Judicial finding of Additional facts, petitioners sentence was increased to (285, 272, 258 Months) - The Court sentenced Petitioner to the 258 month base.

The (ELEMENTS) of the (FACT) involving the prior Conviction's (Seprate Legal Offenses) were not put to a jury and Proven beyond a reasonable Doubt in violation of the Sixth Amentment protections applied in Apprendi.

This increase of (37 Months), Violates Apprendi, and its progeny include Ring v. Arizona, 536 U.S. 584 (2002) there the Court Stated, 'The right to trial by jury guaranteed by the Sixth Amendment would be senselessly diminished if it encompassed the factfinding necessary to increase a defendant's sentence by two years, but not the factfinding necessary to put him to death. The Sixth Amendment applies to both.', Further the Court Stated 'The dispositive question in determining whether a jury determination is necessary, is one not of form, but of effect. If a state makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact, no matter how the state labels it, must be found by a jury beyond a reasonable doubt. A defendant may not be exposed to a penalty exceeding the maximum he would receive if punished according to the facts reflected in the jury verdict alone.'

These mandates of this Court are meaningless to Kansas, who place the 'FINDING OF ADDITIONAL FACTS' Directly in the Sentencing Judge's Discreationary judgement, and Kansas is plagued with the Very Problems addressed by Justice KAVANAUGH, Outlined Earlier. Including - "the difficulties and inequities of relitigating "past convictions in minitrials conducted long after the fact." - "have to determine the underlying conduct from years-old or even decades-old documents with varying levels of factual detail." - as well as "The factual statements that are contained in those documents are often "prone to error.".

Currently by Population, Kansas has the Highest number of State Level Appeals involving Apprendi v. New Jersey, 530 U.S. 466 (2000) - Currently as of September 19, 2019 - (Kansas Supreme Court 1,015 and Kansas Court of Appeals 1,801), to illistrate the Means

by which the State has used this as a means to Circumvent the Constitutional Protections against Double jeopardy, Petitioenr will address several cases which Illistrate this Abuse.

First - State v. Dwerlkotte, 2018 Kan. App. Unpub. LEXIS 685 (2018) Involving Six Remands on Sentencing.

Second - State v. Murdock, 439 P.3d 307 (2019) - A. State v. Murdock, 299 Kan. 312, (2014), modified by Supreme Court order September 19, 2014.

Further, skilled prosecutors in a means to manipulate sentencing, (Hypothetical) - (John Doe) gets arresed in January for 'Forgery' a (NONPERSON) felony, and then is released on bond, later in May, he Is Arrested for 'Battery' a (PERSON FELONY). the Prosecutor, as a means to impose a Prison Sentence, will manipulate the Pleas, or Trial in Both cases, as a means to gain a Criminal History of (One Person Felony), the Prosecutor will Rush the Battery to Convictions first, then having created a 'Prior' Person Felony, Will try the Second case to gain the increased Sentence, and in some Circumstance's gain a Prison Sentence rather than the Normal Probation for the Forgery.

The Person subject to trying to Appeal, then faces trying to Explain these 'act' that while they are lawful, amount to Prosecutorial Abuse. Look at State v. Murdock, 439 P.3d 307 (2019), where the Abuse was deliberate.

Currently, The State also applies these Guidelines in a manner which violates the Equal Protections Clause of the Fourteenth Amendment, SEE: State v. Wetrich, 307 Kan. 552 (2018) where Currently the Kansas Supreme Court has Stated 'On the other hand, interpreting "comparable offenses" in K.S.A. 2017 Supp. 21-6811(e)(3) to mean that the out-of-state crime cannot have broader elements than the Kansas reference offense—that is, using the identical-or-narrower rule—furthers the KSGA's [*562] goal of an even-handed, predictable, and consistent application of the law across jurisdictional lines. Cf. Johnson, 135 S. Ct. at 2562-

63 (discussing goal of doctrine of stare decisis to effect even-handed, predictable, and consistent application of the law).'

Simply, as in State v. Fetterolf, 2019 Kan. App. Unpub. LEXIS 597 (September 13, 2019) 'the Texas statute is broader because it applies to victims that are not covered by the Kansas statute, namely individuals that are 16 years of age. Compare Tex. Penal Code Ann. § 21.11 with K.S.A. 2016 Supp. 21-5506(a). Therefore, the district court erroneously classified Fetterolf's prior Texas conviction as a person felony.'

Where (IF) Convicted in Kansas, Fetterolf, would have a perons Felony, but because he was Convicted in Texas, the Same Crime is Classified by Kansas as a (NONPERSON FELONY), Entitling Fetterolf to a lessor Sentence for the Same Underlying Conduct.

Criminal defendants in federal court are granted the same rights through an equal protection element of the Fifth Amendment due process clause: "(W)hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is "so unjustifiable as to be violative of due process.' " Schneider v. Rusk, 377 U.S. 163, 84 S. Ct. 1187, 12 L. Ed. 2d 218 (1964). "If a classification is invalid under the Equal Protection Clause of the Fourteenth Amendment, it is also invalid under the Due Process Clause of the Fifth Amendment." United States v. Gordon-Nikkar, 518 F.2d 972 (5th Cir. 1975). Therefore, appellant's Fifth Amendment claim is governed by the principles and law which have developed under the familiar Fourteenth Amendment equal protection cases

This Court has been clear in addressing Prior Convictions cases, Involving the Apprendi line of Cases, "A prior conviction must itself have been established through procedures satisfying the fair notice, reasonable doubt, and jury trial guarantees." Jones v. United States, 526 U.S. 227 (1999), Apprendi cited directly from Jones one year later.

Apprendi has become one of the most distorted cases at both the State as well as Federal level where, the first act of Prosecutors, as well as pro se efforts was agruements on 'Retroactive Application'. Any Arguement of retroactive Application is Incorrect and Misleading - 'As a general rule, new constitutional principles apply to any cases pending on direct appeal when the decision was issued.' [State v. Noah, 284 Kan. 608] - Apprendi, 'DID NOT' anounce a new rule, to the Rule of Retroactivity applies, Apprendi more directly gave 'FORCE OR EFFECT' to Existing law, Applying - In re Winship, 397 U.S. 358, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970), Mullaney v. Wilbur, 421 U.S. 684, 44 L. Ed. 2d 508, 95 S. Ct. 1881 (1975), and Patterson v. New York, 432 U.S. 197, 53 L. Ed. 2d 281, 97 S. Ct. 2319 (1977). All listed in JUSTICE STEVENS, concurring. in Jones v. United States, 526 U.S. 227 (1999)

Kansas continues to twist, turn, manipulate, and distort how it wished to apply Apprendi, which involved seriour questions concerning "The Constitution of the United States, in the Fifth Amendment, declares, "nor shall any person be subject to be twice put in jeopardy of life or limb." The prohibition is not against being twice punished, but against being twice put in jeopardy; and the accused, whether convicted or acquitted, is equally put in jeopardy at the first trial." United States v. Ball, 163 U.S. 662 (1896)

In the Context involved, Persons sentenced in Kansas are punished for 'ELEMENTS' of prior crimes for which they have already been punished, that "twist, turn, manipulate, and distort" by the Kansas Supreme Court was baed on a Kansas Inmate who failed argue the 'Mechanics' of the horizontal Axis - First Argued in Kansas in, State v. Ivory, 273 Kan. 44 (2002), kansas avoided any discussion concerning the 'mechanics'. Ivory argued "Simply put, Ivory argues application of the horizontal axis of the sentencing grid is unconstitutional under Apprendi." State v. Ivory, 273 Kan. 44 at 45.

The Tenth Circuit in when it Denied the certificate of appealability States as Folows "He argues

that the Kansas sentencing scheme goes beyond "the fact of a prior conviction" because it considers whether prior offenses were "person" or "nonperson" offenses and recommends increased sentences for a defendant who has committed "person" offenses. See Kan. Stat. Ann. § 21-6811; see also Kan. Sentencing Guidelines Desk Reference Manual App. D at 2 (2009). However, it is clear from the record that the sentencing court did not look at the underlying facts of Petitioner's past criminal offenses. Certain prior offenses were classified as "person" offenses based on the statutory elements of those offenses, not based on any individualized factfinding about Petitioner's specific conduct in those cases. Petitioner has not shown that this constituted an unreasonable application of federal law;"

Special attention to the Wording, "Classified as "person" offenses based on the statutory elements of those offenses" - where those (ELEMENTS) of those - ("[F]acts that expose a defendant to a punishment greater than that otherwise legally prescribed were by definition 'elements' of a separate legal offense"). We held that the Sixth Amendment provides defendants with the right to have a jury find those facts beyond a reasonable doubt. Id., at 484, 120 S. Ct. 2348, 147 L. Ed. 2d 435.SEE: Alleyne v. United States, 570 U.S. 99 at 111(2013)

Clearly the Determination of the tenth Circuit which denied the certificate of appealability, was clearly an unreasonable Application of Clearly Established federal law as Established in Apprendi, and Alleyne respecively. Those "statutory elements" were not determined by a Jury, and are a 'Finding of Additional facts'

This Court is Clear "For Apprendi purposes, the relevant statutory maximum is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings. When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts which the law makes essential to the punishment, and the judge

exceeds his proper authority." Blakely v. Washington, 542 U.S. 296 (2004)

The kansas Statute directly and unquestionably direct the judges of the State of Kansas to Exceed his proper Authority.

Because the Kansas statutes are divisible and may extend to conduct that does not constitute an aggravated felony (Or Criminal Acts not involving actual violence), The conviction record indicates that petitioner clarly requested the State Court Appoint Counsel, as well as Clear records that petitioner requesteed trial by jury. Both these Constitutional request were denied - yet the Sentencing Court disreguarded these facts is 'FINDINGS OF ADDITIONAL FACTS' - as a means to Justify the Enhanced sentence. These Findings of additional facts are Strictly prohibited "For Apprendi purposes, the relevant statutory maximum is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings. When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts which the law makes essential to the punishment, and the judge exceeds his proper authority.", Blakely v. Washington, 542 U.S. 296

Accordingly the Court should strike down the potrion of the Kansas States which violate the principles established in the (Apprendi / Winship) line of cases, granting the Writ.

DOYLE VIOLATION

With no Foundation in the United States Supreme Court, the State Appeals Court in ruling against Petitioner concerning the States violatio of Clearly Established Federal Law as determined by the Supreme of the United States in Doyle v. Ohio, 426 U.S. 610 (1976), holding that petitioenr Counsel 'Opened the Door'- when Counsel Questioned his Client about his invoking his Miranda Rights, The Prosecutor in facts mislead Jurors concening Protections established in Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Only Nothing in Counsels Questions intended to "to twist his Miranda protection to shield lies or false impressions from government attack.", See: State v. Murray, 285 Kan. 503, 521-28, 174 P.3d 407 (2008), the States reasoning creates an claim of Invited error or Procedural Default where no such claim actually exist. Kansas reasons as Follows:

"In effect, the court held that Doyle could not be used to mislead jurors, so the prosecutor's examination was proper. Looked at that way, there simply was no error. Many other courts have expressly recognized a limited fair-reply exception to Doyle. See Cook v. Schriro, 538 F.3d 1000, 1022 (9th Cir. 2008) ("We have interpreted Doyle to allow prosecutors to comment on post-Miranda silence in response to defense arguments."); United States v. Martinez-Larraga, 517 F.3d 258, 268 (5th Cir. 2008) (noting continued recognition of fair-reply exception); United States v. Matthews, 20 F.3d 538, 552 (2d Cir. 1994) ("[W]hile comment on a defendant's silence is usually improper, such comment may be permissible when the defendant, by the impression he has sought to create, has opened the door."); United States v. Shue, 766 F.2d 1122, 1129 (7th Cir. 1985) (The rule of Doyle may yield because "[a] defendant should not be permitted to twist his Miranda protection to shield lies or false impressions from government attack."). The exception allows a surgical rebuttal confined to

countering a cultivated and deceptive depiction of the evidence rather than a wide open use of the defendant's silence to prove guilt—the vice Doyle intended to eliminate. See Murray, 285 Kan. at 526 (prosecutor engaged in "limited questioning" of the detective about Murray's decision to remain silent and did not mention it in closing argument); State v. Higgins, 243 Kan. 48, 49-52, 755 P.2d 12 (1988) (reversible error for prosecutor to dwell on defendant's exercise of right to remain silent in questioning witnesses and in closing argument even though issue first arose in response to question posed by defense counsel on cross-examination. See: State v. Hargrove, 48 Kan. App. 2d 522

No Question by Petitioner counsel 'Opened the Door' - the Prosecutors direct Questions in fact were an Attack on petitioners Silence to Prove Guilt. In fact discussed below are the Questions asked by petitioners Attorney, kansas canot even follow its own state Decisions, in order to sustain a Conviction which violated Constitutional Rights, the State Simple Ignored

> "(reversible error for prosecutor to dwell on defendant's exercise of right to remain silent in questioning witnesses and in closing argument even though issue first arose in response to question posed by defense counsel on cross-examination." See: State v. Hargrove, 48 Kan. App. 2d 522

This Same inconsistant application of State Court Determination will repeat throughout this Petitioner, as well as the fact the Claim of Procedural bar simply are Misleading and a Misrepresentation of fact to Sustain an Conviction obtained in violation of petitioners Fifth Amendmant rights as secured and protected by the Constitution of the United States. Accordingly this court should reverse the underlying Convicitons and remand accordingly as it Deems Proper.

Potential Doyle error must be said to have "substantially influence[d] the jury's verdict" and therefore no actual harm to petitioner resulted. Brecht, 507 U.S. 619 at 639.Alston v. Garrison, 720 F.2d 812 Thus, pursuant to Doyle, the government generally may not make comment on a Mirandized defendant's silence. "When a Doyle violation occurs, [the Court] review[s] the government's use of the defendant's post-Miranda silence for harmless error." United States v. O'Keefe, 461 F.3d 1338, 1345 (11th Cir. 2006). If such a violation is present, "the conviction can stand only if the court is satisfied beyond a reasonable doubt that the error was harmless." United States v. Tenorio, 69 F.3d 1103, 1106 (11th Cir. 1995). In evaluating whether error is harmless, the Court considers "the facts, the trial context of the error, and the prejudice created thereby as juxtaposed against the strength of the evidence of defendant's guilt." Id. (citation omitted).

This reasoning is undermined based on the Fact police withheld Exculpatory Evidence, therefore Review of 'the strength of the evidence of defendant's guilt.' cannot be reliable, as Police

failed to turn over to the Prosecutor Exculpatory evidence addressed in the brady claims herein.

Pro Se, This petitioner find no case law directly on this Point, where a Doyle Determination with Brady Violations co-exist. Also the State Court never addressed the fact this Petitioner asserted that Trial Counsel's 'FAILURE TO OBJECT' to the underlying Doyle Violation amounted to Ineffective Assistance of Counsel, Alston v. Garrison, 720 F.2d 812, here not only did petitioner actually raise the ineffective assistance claim in his State habeas Appeal Brief filed pro Se, the kansas Appeals Court the Kansas Appeals Court ruling conflicted with its reason for Denial claiming "[s]ignificantly, [petitioner] does not argue his counsel was ineffective for failing to

object [to the Doyle violation]." Gordon, 2016 Kan. App. Unpub. LEXIS 850, 2016 WL 6137901, at *7. (APPENDIX C), Only Gordon v. State, 2016 Kan. App. Unpub. LEXIS 850 at 27 the Court conflicts with it reason for Denial, "In his supplemental brief, Gordon argues that his trial counsel was ineffective for failing to object to the alleged Doyle violation.

However, as discussed above, this error was invited.

The claim the error was invited is in dispute - During Gordon's direct examination at trial, his counsel asked him the following series of questions:

"Q [Gordon's counsel]: Okay. Now when the police arrested you they read you your Miranda warnings?

"A [Gordon]: Yes, sir.

"Q: What was your response to them?

"A: I answered yes, I'll answer anything my attorney tells me to answer.

"Q: And at that point they stopped questioning you?

"A: Yes, sir.

"Q: Did they ever come back to get your side of the story?

"A: No, [*21] they didn't.

"Q: So is today the first time the State's hearing your side of the story?

"A: Yes, sir.

"Q: Today is the first time anybody is hearing your side of the story besides myself?

"A: Yes, sir."

After this exchange, Officer James Slickers testified during the State's rebuttal that he stayed with Gordon for 1 1/2 to 2 hours at the hospital after his arrest. Slickers further testified:

"Q [State]: At any time while you were with [Gordon] that night did he tell you anything about being attacked by Luther or having any money stolen?

"A [Slickers]: No, sir.

"Q: Did he tell any of the other officers to the best of your knowledge?

"A: No, sir.

"Q: No, sir, he didn't tell them or—

"A: To the best of my knowledge he didn't tell them. I'm sure if he did tell them we would have continued that investigation also.

"Q: Did you have some kind of small talk or conversation with him out at the hospital?

"A: Yes, sir.

"Q: Not about the details of why he had been arrested?

"A: No, sir.

"Q: So it wasn't like you were there and he was there and nothing was ever said?

"A: No, we just had friendly banter back and forth. No questions were asked about this particular arrest."

Slickers testified on cross-examination that he did not ask Gordon about the incident because Gordon had been read his Miranda rights.

Gordon's post-Miranda silence was again brought up in Gordon's closing argument. His counsel stated: "When the police showed up he was willing to talk if he had a lawyer. He didn't have a lawyer in the hospital room. He was willing to talk if he had a lawyer. Today is the first time the State, you, or anybody has heard his side of the story so you have to understand the State has based their entire case on [victim's] story."

"It is constitutionally impermissible for the State to elicit evidence at trial of an accused's post-Miranda silence. [Citations omitted.] A Doyle violation occurs when the State attempts to impeach a defendant's credibility at trial by arguing or by introducing evidence that the defendant did not avail himself or herself of the first opportunity to clear his or her name when confronted by police officers but instead invoked his or her constitutional right to remain silent. State v. Edwards, 264 Kan. 177, 195, 955 P.2d 1276 (1998).

Here Counsel ask the Following one Question - Which did not "OPEN THE DOOR" to Impeachment under Doyle

"Q [Gordon's counsel]: Okay. Now when the police arrested you they read you your Miranda warnings?

"A [Gordon]: Yes, sir.

"Q: What was your response to them?

"A: I answered yes, I'll answer anything my attorney tells me to answer.

"Q: And at that point they stopped questioning you?

"A: Yes, sir.

Instead the Entire attack by the Prosecutor misleads the jury into a mistaken here the Prosecutor commited Misconduct, as such "claims of prosecutorial misconduct are reviewed deferentially. Darden v. Wainwright, 477 U.S. 168, 181, 106 S. Ct. 2464, 91 L. Ed. 2d 144 (1986). To be cognizable, the misconduct must have "'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" Id. (citation omitted). Even if the prosecutor's conduct was improper or even "universally condemned," id., we can provide relief only if the statements were so flagrant as to render the entire trial fundamentally unfair. Once we find that a statement is improper, four factors are considered in determining whether the impropriety is flagrant: (1) the likelihood that the remarks would mislead the jury or prejudice the accused, (2) whether the remarks were isolated or extensive, (3) whether the remarks were deliberately or accidentally presented to the jury, and (4) whether other evidence against the defendant was substantial. See Boyle v. Million, 201 F.3d 711, 717 (6th Cir. 2000).

Here the Prosecutor Violated Doyle v. Ohio, Supra, as well as failing to discharge his responsability under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). - Brady responsability by this court use strong language, (BURDEN), and (OBLIGATION) - Only these words were meaningless to the prosecutor in a rush to simply convict, this prosecutor never fulfilled his (BURDEN), and (OBLIGATION), leaving exculpatory evidence clearly withheld and as petitioenr asserted in the Pro Se - Pre-trial Motion (APPENDIX ____) Destroyed.

Law Enforcement distruction of such Evidence can greatly influence the prosecutors determination to actually prosecute, and with Offenders - Like this petitioner who had a history of minor Felony Convictions

BRADY

Mere speculation that some exculpatory material may have been withheld is unlikely to establish good cause for a discovery request on collateral review. Such suspicion does not suffice to impose a duty on counsel to advance a claim for which they have no evidentiary support. Proper respect for state procedures counsels against a requirement that all possible claims be raised in state collateral proceedings, even when no known facts support them. The presumption, well established by tradition and experience, that prosecutors have fully discharged their official duties, is inconsistent with the novel suggestion that conscientious defense counsel have a procedural obligation to assert constitutional error on the basis of mere suspicion that some prosecutorial misstep may have occurred. Strickler v. Greene, 527 U.S. 263, 286 -287

While Petitioner had asserted before trial that Evidence was being Withheld, through-out First State Appeal, and even through-out his State habeas Trial Court hearing, the District Court operated completly contrary to Strickler v. Greene, 527 U.S. 263, at 286

"The presumption, well established by tradition and experience, that prosecutors fully discharged their official duties, is inconsistent with the novel suggestion that conscientious defense counsel have a procedural obligation to assert constitutional error on the basis of mere suspicion that some prosecutorial misstep may have occurred."

Presented pre-trial - with Pro Se Motions (APPENDIX H) - the Trial court never takes opportuniity to inquire, Post trial as well, Pro Se Motions (APPENDIX J) asserted the Same, and again the trial Court never inquires. Proceeding in 2012 with the Habeas, where Two additional Pro Se Motions (LOST TO PETITIONERS) - and again the Trial Court never Inquires, it simply continued to operate on that - Presumption, cautioned against in Strickler.

In fact, the habeas Record will clearly reflect that the Prosecutor 'David Bellings' (Actng as the State Attorney in the Habeas, as well as Original Prosecutor) - filed an Official responce, in which he Used the Exact language of Strickler, [My Office Has An Open File Policy] - asserted repeatedly in the Formal reply to the Pro Se Discovery Motions.

Proceeding in the State Habeas Appeal, the Prosecutor was finally directly Challenged - rather that saying you have an Open file Policy - Prove whats in your File - Only then was it actually Established that His office (DID NOT) actually have the Evidence - and upon actually fulfilling his (OBLIGATION) to actually investigate - only then did he Discover (Law enforcement did not have the Missing Evidence).

Petitioner 'was not' subject to a State 'procedural bar' where that procedural bar was clearly contrary to clearly estabished federal law as Determined by the Supreme Court of the United States, Citing Strickler v. greene. "In the context of a Brady claim, a defendant cannot conduct a reasonable and diligent investigation to preclude a finding of procedural default when the evidence is in the hands of the state." - only in this case - was destroyed by the State. The Brady v. Maryland doctrine is interpreted broadly to encourage prosecutors to carry out their [DUTY] to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. Information possessed by other branches of the federal government, including investigating officers, is typically imputed to the prosecutors of the case. In this case, the Governement was presented Pre Trial, Post Trial, and habeas Evidentary hearing, Opportunity to actually (duty to learn of any favorable evidence), only it proceeded on the The presumption cautioned against in Strickler.

While Pre trial, and post Convictions (APPENDIX H, and J) raised several areas of Brady material, all of which affect the jurys factual determination, and Police truthfulness.

Including:

1. Photos of (ADDITIONAL INJURIES) not addressed in the Tenth Circuit Determination

2. Photos of Taser Probe Deployment, completly never addressed by the Trial Court Where Specif Discovery was Requested. Clearly Impeaching as Desceibed.

3. Petitioner own Hand Injuries (While Discussed By Trial Counsel) the Withholding of this Evidence undermines the Juries ability judge Petitioner's Truthfulness.

4. Additional Text (While the Alleged Female Victim testified these were Recovered by Law Enforcement) these Text were never Turned over after Repeated Request.

and trial Counsel being left unable to 'impeach' - yet Even the Habeas given an Opportunity to inquire or Compel the Prosecutor, again failed. This Core Due Process principle undermines any later Federal Review, as the Reviewing Court looks only at the 'PARTIAL FACT' and this undermines reliable Review.

(The Taser did not - [Electro-Muscular] - as while Police did Discharge a taser - one of the Prongs of the Taser Lodged in the Petitioner's Two layer Leather Belt - preventing [Electro-Muscular Disruption], and first hand Petitioner witnessed Police Photograph this area where one probe lodged in petitioner's left Rib area, the Second lodged in the Belt.)

Allowing Police to give False testimony, and undermining Defense Counsel the ability to impeach the Officers, Even the habeas State Court, Given specif Request to Produce the Belt, where Two Tiny Holes remian.

The Critical effect of ewithholding of Evidence, allowed the [POLICE] to write their own story, and Where this court speaks of the Court operating on 'The presumption, well established by "'tradition and experience,'" that prosecutors have fully "'discharged their official duties,'" United States v. Mezzanatto, 513 U.S. 196, 210, 130 L. Ed. 2d 697, 115 S. Ct. 797 (1995), is inconsistent with the novel suggestion that conscientious defense counsel have a procedural

obligation to assert constitutional error on the basis of mere suspicion that some prosecutorial misstep may have occurred.' Strickler v. Greene, 527 U.S. 263 at 286.

The Harm this Withholding has on the jury cannot be factually measured, and Undermines reliable assessment, not just of the 'taser', but (Petitioners Additional Injuries, Complete Text [Including Deleted], Hand Injuries of Petitioner (MENTIONED - No Photos Disclosed), DNA Testing of the Blood on the Carpet (This is Petitioners Own Blood) - Falsely Claimed that of the Victim.

Petitioner in (APPENDIX I) provided the trial Court a General Claim of Distrcution and Withhold of Exidence, only the trial Court never took any Opportunity to Inquire - Off the Record, the Judge actually vouched for the Prosecutor's (OPEN FILE POLICY), Which the prosecutor asserted repeatedly in his Habeas Responce to the Petitioenr's Discovery Motions.

"suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution". 373 U.S. at 87. But as the Brady rule was developed, its scope was extended to all favorable evidence possessed by the prosecution, even without a request from the defense, United States v. Agurs, 427 U.S. 97, 107, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976), and established a prosecutorial duty "to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police", Kyles v. Whitley, 514 U.S. 419, 437, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995). On the other hand, the prosecution's failure to disclose such evidence constitutes a Brady violation only where the "nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict". Strickler v. Greene, 527 U.S. 263, 281, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999)."

This Supreme Court held in Brady v. Maryland "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment." 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). The state's obligation to disclose favorable evidence under Brady extends to "evidence 'known only to police investigators and not to the prosecutor.'" Strickler v. Greene, 527 U.S. 263, 280-81, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999) (quoting Kyles v. Whitley, 514 U.S. 419, 438, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995)). A true Brady violation has three essential components: "The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." Poventud v. City of N.Y., 750 F.3d 121, 133 (2d Cir. 2014) (en banc) (quoting United States v. Rivas, 377 F.3d 195, 199 (2d Cir. 2004)). Brady violations occur both in circumstances where the defense never received the evidence in question and where belated disclosure to the defense impairs its ability to use the information at trial. See Leka v. Portuondo, 257 F.3d 89, 101 (2d Cir. 2001).

Had the Jury been able to 'SEE' petitioenr's own Injuries - INCLUDING, those supressed in the (PHOTOS OF ADDITIONAL INJURIES NOTICED AND OBSERVED BY EMERGENCY ROOM STAFF) - Noted in the Officers Police Report, their assessment of the truthfulness of the Petitioner might well have been diferent, withholdign of the Police Report prevented Trial Counsel from Impeaching the Claims petitioenr 'Pulled the Knife', as the Trial gives no explination as to 'HOW' in a Physically Violent Altercation, where Police Reports Describe Petitioenr being 'Chocked' - 'HOW' does he go from gripping the Handle [AGRESSOR], to Gripping the [BLADE].

Withholding Evidence allows the State to 'Tell' and Version of Events' and the Defendant is left unable to effectively to martial a Defense where evidence is actually Presented to a jury.

"[T]he adversarial process protected by the Sixth Amendment requires that the accused have 'counsel acting in the role of an advocate.' Anders v. California, 386 U.S. 738, 743, [87 S. Ct. 1396, 18 L. Ed. 2d 493] (1967). The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. When a true adversarial criminal trial has been conducted . . . the kind of testing envisioned by the Sixth Amendment has occurred. But if the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated." United States v. Cronic, 466 U.S. 648, 656-657, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984) (footnotes omitted). SEE: Melendez-Diaz v. Massachusetts, 557 U.S. 305 at 353 (2009)

Such adversarial testing was prevented in this case, and Petitioner has been denied every reasonable Effort to comple the State meet it's [OBLIGATION] and [DUTY] to Produce and test evidence, and now that State incorrectly asserts a State procedural bar, where Correctly Applied, cause for any Procedural Default is properly Attributable to the State.

The Refusal of Reviewing Tribunals to fully Address correctly the Full Context of the Brady Claims, acts to taint later review, where the Reviewing Tribunal acts on the Presumprion of the Correctness of the Lower Court.

For the foregoing reasons, the petition for writ of certiorari should be granted.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Petitioner in the Course of his State habeas was able to establish that trial Counsel 'DID NOT' actually investigate, first trial counsel by his own admission ,

1. never obtained any material concerning his own Clients Injuries,
2. Failed to Obtain Police Reports which he admitted could have been used to impeach the alleged victims claims of Petitioner pulling the Knife,
3. Failed to Obtain Photographs of his Clients own injuries taken at the time of Arrest (NOTE: Counsel shold have been well alerted to these in his Clients pro Se Motions asserting Distruction of such Evidence.)

Looking at the Case from the Jury prespective, they 'hear' claims by the female Alleged Victim of injuries, of which the Prosecutor 'SHOWED' these injuries to the Jury, while Defense Cousnel also makes claims of his Client having injuries, which the jury 'hears' - only through the failing of Defendant's own Attorney, the Jury was left asking 'SHOW US'.

While, had Counsel preformed a factual investigation, he would have read the Police report which the Petitioner presented the State Habeas Appeals Court, confronting the Prosecutor, rather than claim you have an open file "Prove whats in that File" as outlined in the brady Claim.

Petitioner clearly developed through the Course of the State habeas proceeding that his trial Counsel was ineffective as determined by Strickland v. Washington, 466 U.S. 668 (1984), 'right to counsel is the right to the effective assistance of counsel. Government violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense. Counsel, however, can also deprive a defendant of the right to effective assistance, simply by failing to render adequate legal assistance.' Clearly the Withholding of Material Evidence amouted to "interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense."

Petitoner had demonstrater both elements of Strickland - 'A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.'

While confronted with these facts - the State Appeals court never addressed the fact that the failure of Counsel to 'Support' his claims of Self Defense with 'factual Evidence' and failed obtain the Evidence clearly determined 'destroyed' amounted to ineffective assistance. The State court addressed only two areas, avoiding the relationship between the Brady and Doyle Claims. The State Court addressed only -

1. Was Gordon's trial counsel ineffective for failing to argue that his charges for aggravated kidnapping and rape merged or were multiplicitous?

2. Gordon's trial counsel ineffective for failing to present Gordon's desired theory of defense?

The State Appeals Court determination also failed address their on conflictions Statements, in its Opinion the State Appeals Court Stated - "Gordon does not argue his counsel was ineffective for failing to object. Rather, he argues the State violated his due process rights under the Fourteenth Amendment to the United States Constitution." conflicting with the later Statement in the Final paragraph of their Opinion "In his supplemental brief, Gordon argues that his trial counsel was ineffective for failing to object to the alleged Doyle violation."

Gordon "DOES NOT", only later to note "In his supplemental brief, Gordon argues", the State

applied the 'Open Door' principle on a presumption of 'GUILT', undermning the very constitutional Protections Established therein.

Petitioner did argue counsel was ineffective for failing to Object to the Prosecutors violation of Doyle - in assessing these claims, full consideration should not focus only on the failure to object, but the full effect of all errors outlined - Where Doyle violations are reviewed "Hold that a remark about a defendant's post arrest silence automatically constitutes a Doyle violation, they have been undercut by the Supreme Court's opinion in Greer v. Miller, 483 U.S. 756 (1987)" U.S. v. Stubbs, 944 F.2d 828, 834 (11th Cir. 1991); see also U.S. v. Miller, 255 F.3d 1282, 1285-86 (11th Cir. 2001) (even if prosecutor's comment on defendant's post-arrest silence was a Doyle violation, "[a] Doyle violation is harmless if the error had no "substantial and injurious effect or influence in determining the jury's verdict," especially where "the prosecutor makes no further attempt to 'highlight' the defendant's exercise of Miranda rights either in questioning other witnesses or during closing argument.") (internal citations omitted); Reese v. Sec'y, Fla Dep't of Corr., 675 F.3d 1277, 1290 (11th Cir. 2012) (same). Such assessments must be made on a whole, considering the trial as a whole even, and the relationship each claim affects the others.

Counsel failed to timely object, allowing the prosecutor to mislead the jury into false and misleading clams concerning the Very protections of Miranda, as well as Doyle, leading the Jury into a misleading impression that petitioner had some obligation - while receiving 'Medical treatment', to Speak with Police without his Attorney present.

As Asserted throughout the habeas process, Trial Coounsel was clearly ineffective, allowing the Distruction of Exculpatory Evidence, even though clearly Alerted (APPENDIX J).

BLOCKBURGER

When the government wants to impose exceptionally harsh punishment on a criminal defendant, one of the ways it accomplishes this goal is to divide the defendant's single course of conduct into multiple offenses that give rise to multiple punishments. The Supreme Court has rendered the Double Jeopardy Clause, the Cruel and Unusual Punishments Clause, and the rule of lenity incapable of handling this problem by emptying them of substantive content and transforming them into mere instruments for effectuation of legislative will....This notion of rendering crimes ... infinitely divisible, is repugnant to the spirit and policy of the law and ought not to be countenanced. ARTICLE: Dividing Crime, Multiplying Punishments, 48 U.C. Davis L. Rev. 1955 - Author: John F. Stinneford (Copyright © 2015 John F. Stinneford. Associate Professor of Law, University of Florida Levin College of Law, Gainesville, Florida.) Citing: State v. Comm'rs of Fayetteville, 2 N.C. (1 Mur.) 371, 371-72 (1818).

Blockburger v. united States, 284 U.S. 299(1932), has left an unconstitutional broad means by which States may simply Define a single course of conduct into multiple criminal acts, avoiding the "Same Elemennts test" set forth in Blockburger. This ability to circumvent the Double Jeopardy protections of the Fifth Amendment

This has allowed the State to Create multiple crimes out of a single Course of conduct simply by means of "Defining Elements" ,to avoid the limits imposed by Blockburger. Kansas has manipulated the Seprate Crimes of 'Rape' and 'Kidnapping' to create two criminal acts, in where in 1986 and before the Supreme Court of Kansas Stated "A standstill robbery on the street is not a kidnapping; the forced removal of the victim to a dark alley for robbery is. The removal of a rape victim from room to room within a dwelling solely for the convenience and comfort of the rapist is not a kidnapping; the removal from a public place to a place of seclusion is. The forced direction of a store clerk to cross the store to open a cash register is not a kidnapping; locking him in a cooler to facilitate escape is. The list is not meant to be

exhaustive, and may be subject to some qualification when actual cases arise; it nevertheless is illustrative of our holding.- The conviction of aggravated kidnapping is reversed - State v. Ransom, 239 Kan. 594 (1986) (There are Others)

Kansas simply refused follow it's own Prior Decisions, and the case history demonstrated the Issue outlined above - "Gordon argues that, under the facts, when he allegedly ordered the victim to undress in the living room of the apartment and then ordered her to the bedroom of the apartment where there were pillows on the floor to complete the rape, the movement of the victim from one room of the apartment to another was merely for Gordon's convenience and therefore has no legal significance independent of the rape." SEE: Gordon v. State, 2016 Kan. App. Unpub. LEXIS 850 (2016) (Appendix ___)

This issue take on Eight Amendment dementions in that this same ability to circumvent the Double Jeopardy protections of th Fifth Amendment through simple legislative ability to define 'Element' in a manner to get around the failings of Blockburger to set a adequate limit on an issue which is 'HARD TO DEFINE', this problem is a major contributor to one of the biggest problems plagueing this Country, 'Prison Over-Crouding' where prosecutor 'hoping' to coax a plea -charge more than one crime, only the person does not plea, and the court renders sentencing on each count successive.

This ability of the Legislature through simple 'Defining Elements' to create multiple Crimes has plagued the Country with prisons packed with offenders who's 'single' bad act, have been 'defined' to create multiple offenses,where while it is a prosecutoral tool for leverage in the plea process, it is also a tool for 'crusading prosecutors' who feel offenders should remain locked up as 'wrongdoers'.

Kansas simply 'definded their way around Blockburger, because Blockburger failed to fully

see limits, and where the bproblem is not easy to define - it is the primary duty of the Court to Define these limits to punish under the eighth Amendment" - upholding the seperation of powers by confining the legislature to penal decisions whith prospective effect and the judiciary and executive to application of existing law.'

The Simply Crime of 'Fleeing and Eluding' has bben 'Element Defined' to multiple crimes, First - 'Fleeing and Eluding', Secong - 'Interfearance with Official Duties', Three - 'Obstructing legal proceess' - and any other crime the legislature is free to 'element define' these multiple crimes because of the shortfall of blockburger, and the 'misguided crusading impule' of prosecutors to punish with longer and longer sentencing, achieved through the multiple sentence ability of circumventing the protections of Double Jeopardy in 'Elements defination'.

Because the task is not simple, the Court has avoided a cure to this plague, "Familiar to most Americans, the double jeopardy clause (the clause) of the Fifth Amendment to the United States Constitution represents an idea so basic that the average person probably would feel comfortable attempting to explain it. Courts confronted with the task of fixing the meaning of the clause and the scope of its protection, however, have found the task to be far from simple. The United States Supreme Court has been no exception" See: (RECENT DEVELOPMENT: Matching Tests for Double Jeopardy Violations with Constitutional Interests.), 45 Vand. L. Rev. 273, BY: Eli J. Richardson (1992) The Court has not been able to cure this plague, "the Grady majority rightly recognized that, in some situations, strict adherence to the Court's prior double jeopardy jurisprudence, and particularly to the test enunciated in Blockburger v. United States, failed to provide defendants with protection that reflected the values embodied in the clause."

Pro Se, Petitioner seeks the Court has an Eight amendment responsability to guide the States as well as the Federal Courts. Accordingly The Court should Grant the writ.

REASONS FOR GRANTING WRIT

"The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment. The Constitution therefore prohibits any courtroom procedure that undermines the presumption of innocence and the related fairness of the factfinding process. It is well-settled that defendants who are compelled to appear before the jury in handcuffs, shackles or prison attire suffer prejudice which unconstitutionally undermines the presumption of innocence..... Trial courts must avoid the sort of inherently prejudicial practices that undermine the presumption of innocence by giving the jury the impression that the defendant is guilty." United States v. Portillo-Quezada, 469 F.3d 1345 (10th Cir. 2006) - as Demonstrated the resoning for allowing the State to Violate the Constitutional Protections of Doyle v. Ohio, completly undermine the presumption of Innocence.

"The presumption of innocence, although not articulated in the United States Constitution, is a basic component of a fair trial under our system of criminal justice. The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law. To implement the presumption, courts must be alert to factors that may undermine the fairness of the factfinding process. In the administration of criminal justice, courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt." Estelle v. Williams, 425 U.S. 501 (1976)

Petitioner has clearly established that the State Withheld Exculpatory Exidence, and the Records from the State Court support repeated efforts to seek the State Trial Court actualy inquire into the line of Brady material. each of the Attempts has been simply Ignord, although the Fundamental issue involved is Due Process, it was and Remain easier to sustain a convictions obtained in violation of Petitioners Constitutional Rights.

"By the traditional understanding of habeas corpus, a "fundamental miscarriage of justice"

occurs whenever a conviction or sentence is secured in violation of a federal constitutional right. See 28 U. S. C. § 2254(a) (federal courts "shall entertain" habeas petitions from state prisoners who allege that they are "in custody in violation of the Constitution or laws or treaties of the United States"); Smith, 477 U.S. at 543-544 (STEVENS, J., dissenting). Justice Holmes explained that the concern of a federal court in reviewing the validity of a conviction and death sentence on a writ of habeas corpus is "solely the question whether the petitioner's] constitutional rights have been preserved." Moore v. Dempsey, 261 U.S. 86, (1923). SEE: Sawyer v. Whitley, 505 U.S. 333 (1992)

Each of the Factors outlines, in Issues II,III, IV, and V, each allow the prosecuton to 'tip the scale of justice' in favor of obtaining a Conviction. Incorrectly Applying Doyle v. Ohio, the Denial of Due Process in Police Failing to turn over Exculpatory Evidence, Charging Additonal criminal acts (RAPE and AGGRAVATED KIDNAPPING), and Counsel failing to argue for Disclosure of Brady Material even when alerted to the Fact.

Petitioner had reason to distrust The Justice System where the (Misdemeanor Charges) used in this trial to enhance his Criminal History - where based on Convictions on which the Record before the Sentecing Court clearly Supported that Petitioner was 'Refused' both the Right to Counsel as well as the Right to Trial by Jury.

The Choice to Cooperate or 'NOT' is based on Life Experience, and where those Charged with protecting those right - the Judges, either refuse, or simply fail to listen to asserted errors, the System fails.

Petitioner has Presented this Court several areas of Fundamental Constitutional importance, for which petitioner respectfully request this Court grant the Writ.

Filing pro se, Petitioner has presented issue of Constitutional Signifigance of which will affect the Application of Federal Questions involving not only the State of Kansas, but all States. Which this court should take judicial notice and Respectively issue the Writ as requested.

Respectfully submitted this 7th day of October, 2019

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