19-7290

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

Tamarkqua Garland - Petitioner

vs.

Bronx District Attorney – Respondent(s)

COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

TAMARKQUA GARLAND
Name

135 STATE ST – POB 618
Address

AUBURN, N.Y. 13024 – 9000
Auburn, N.Y. 13024

(315)-253-8401
Phone Number

ORIGINAL

QUESTION(S) PRESENTED

1. Defendant challenge and "impugned the integrity," of the denial of his CPL § 30.30 speedy trial consitutional rights, which includes 409 days in excess including illusory time.

2. Bias trial prejudice to defendant – which exceeded over 3 and ½ years. Involuntary/coerced confession used at trial as ADA Schordine front line of defense against defendant.

3. Defendant speedy trial and Fourteen Amendment rights to due process violated and denied.

4. Defendant Fifth and Sixth Amendment to th U.S. Constitution rights violated and denied.

5. Defendant United States Constitutional law Rights. The Constitution of the State of New York law case, and Statutory law rights violated and denied.

6. Force confession under means of torture and duress extracted from defendant through enhanced interrogation technique by means of withholding exigent emergency care, threats speaking with attorney or family denied, water denied until involuntary/corce confession written. **NYC–EMS** 11th October 2010 at 3:35 p.m.

7. The prosecution failed to prove his case beyond a reasonable doubt. According to the victim sole eyewitness Lloyd Bethea written statement there were twenty-five plus perpetrator(s) rioting in the intersection, interfering with on-coming traffic. The People failed to meet their burden of proof under the U.S. Constitution in case 3886/10 against defendant.

8. The People framed defendant to cover up gross negligence, the 49th precinct allowed twenty-five plus perpetrator(s) fighting with all forms of weapons in the intersection to escape, because of a two hour delay in *not responding* to approximately fifteen to twenty 911 calls from civilians.

9. **ARRAIGNMENTS** October 12, 2010 defendant plead not guilty. February 15, 2011 case detail appearrance - under Judge W. Mcguire, defendant plead not guilty. Under Judge Patricia Domingo jurisdiction defendant plead not guilty. March 30, 2015 prior to sentencing defendant plead not guilty.

10. Prosecutorial Vindictivevess – Unconstututional procedure enhance punishment for another offense, prejudicial. Prosecutorial Misconduct –Jury tampering which cuts into the heart of the Sixth Amendment's promise of a fair trial. Two hour surveilance tape tampered with.

11. Ineffective counsel of assistance – Counsel failure to object to prosecutorial misconduct against defendant. Counsel failure to object or protect defendant from the diabolic villanious barrage of on slaught and relentless ambush at trial and sentencing targeting defendant as a"sacrificial lamb". Prosecution's disparagement "exceeded fair limits of advocacy and [was] prejudicial to defendant as a matter of law.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page

[ ] All parties do not appear in the caption of the case on the cover page. A list of All parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. **SUPREME COURT OF THE UNITED STATES**
   CLERK'S OFFICE
   1 First St NE,
   Washington, D.C. 20543

2. **Hon. Darcel D. Clark, District Attorney**
   Bronx County – (Att: James Wen)
   198 East 161 Street
   Bronx, N.Y. 10451

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

1. **United States v. Marion,** 404 U.S. 307.
2. **People v. Singe,** 44 N.Y. 2d 241 (1978).
3. **People v. Stanley,** 41 N.Y. 2d 789 791.
4. **People v. Anderson,** 66 NY2d 529, 535 [(1985)].
5. **Barker v. Wingo,** 407 U.S. 514, 530.
6. **Miranda v. Arizona,** 384, U.S. 436 (1966).
7. **People v. Catu,** 4 NY 3d 242 (2005)

STATUTES AND RULES

Speedy Trial Statutes – In addition to the Constitution guarantees, various State and Federal statutes confer a more specific right to a speedy trial in New York, the prosecution must be "ready for trial" within six months in all felonies except murder.

The Speedy Trial Clause of the Six Amendment Constitution provides that "[i]n all criminal prosecution, the accused shall enjoy the right to a speedy trial. The clause protect the defendant from delay between the presentation of the indictment or similar charging instrument and the beginning of trial.

A delay of at least one year in bringing a defendant to trial following arrest will trigger a presumption that the Sixth Amendment has been violated (**United States v. Gutierrez,** 891 f. Supp. 97 [E.D. N.Y. 1957]).

Barker v. Wingo – The Supreme Court articulated a balance test to determine whether a defendant's right to a speedy trial had been violated and held that any delay of longer than a year would be "presumptively" but not absolutely prejudicial.

Strickland v. Washington – A decision by the Supreme Court of the United States established the standard for determing when a criminal defendant Sixth Amendment right to counsel is violated by the Inadequacy of counsel performance.

Challenging the "2010" predicate violation. To obtain conviction in violation of defendants' constitutional rights to be used either to support or enhance punishment for another offense would erode principal of that case and allow an unconstitutional procedure to injure a defendant twice.

The admission into evidence of a constitutionally invalid prior conviction is inherently prejudicial. **People v. Catu,** 4 NY 3d 242 (2005).

Prosecutorial Vindictiveness - ADA Schordine abused his power and authority opened the flood gate by introducing a "2002" seal case file as his front lines of defense to punish defendant twice for not acceding to his demands in the the "2010" case, foul play. The content of the information summarized 2nd April 2019 in the *DECISION AND ORDER FROM THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT*, mind blowing betrayal were confidentially and illegally disclosed and released to jurors' at trial to contaminate, taint, and influence a corrupt fraudulent and unfair **[prejudice]** and bias advantage result against defendant.

> Proceedings *page 7, line 21 ADA Schordine malicious and fraudulently falsified charges against defendant to exact diabolical and intentionally revenge against defendant for not acceding to his sweetheart deal. Proceedings page 9 line 25 and proceedings page 10 lines 1-19. Undercover of justice the only words to describe ADA Schordine twisted and intentional diabolic malice at trial and sentencing prejudice and revenge at its' worst form. Psychologically encoding and brainwashing the Court and defense counsel to conspire with his unethical illegal doctrine.*
>
> *Courtroom procedure must be followed and strictly adhered to, when procedure is intentionally skirted in such a manner as to influence or attempt to influence a juror for a corrupt or fraudulent and unfair advantage results.* ***Arizona v. Fulminante,*** *499 U.S. 279, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991) United* ***States v. Dutkel,*** *192 F. 3d 893 (9ath Cir 1999); gives rise to a conclusive presumption of prejudice.*
>
> The U.S. Supreme Court has held that the constitutional guarantee to due process protects a defendant against prosecutorial vindictiveness. In "2002" defendant defense counsel did not make defendant aware of (PRS). ADA Schordine totally clueless in his infinite wisdom as to what took place October 9, 2010 regarding the RIOT seized this as his opportune moment to receive devious unmerited ***promotion and recognition*** by taking fraudulent and unfair advantage of violating defendants' CPL 30.30 speedy trial constitutional rights, so that he may receive a promotion. **North Carolina v. Pearce,** 395 U.S. 711; **United States v Goodwin** : 457 U.S. 368 (1982...Justia Law ; **Blackledge v. Perry,** 417 U.S. 21 94 S. Ct. 2098 (1974); **Bordenkircher v. Hayes,** 434 U.S, 357. Pp. 457 U.S. 372-380.

The Sixth Amendment to the U.S. Constitution affords criminal defendant, several discrete personal liberties; 1. the right to a speedy trial, denied. 2. The right to confront and cross examine adverse witness, denied. 3. The right to compel favorable witnesses to testify at trial through the subponea power of the judiciary power, denied. U.S. CPL § 30.30 Constitutional Rights, denied. The Due process and Equal Protection Clause of the Fourteenth Amendment Rights, denied there are certain liberties enumerated in the Bill of Rights, ***all constitutional rights werel denied to defendant***. The motives and illogical reasoning the Court denied defendant his CPL § 30.30 speedy trial constitutional rights to afford ADA Schordine a promotion and recognition.

OTHER

Strickland v. Washington, 693 f.2d 1243, 1258 (5th Cir 1982).
Brady v. Marland, 373 U.S. 83 (1963).
Frank v. Delaware, 98 S.C. T 2674.
Bumper v. North Carolina, 391 U.S. 543 (1968).

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

[ ] The opinion of the United States court of appeals appears at Appendix_____ to The petitin and is
[ ] reported at _____;or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix_____to the petition and is

[ ] reported at _____;or,
[ ] is unpublished.

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

The opinion of the highest state court to review the merits appears at Appendix___A_____to the petition and is
[ ] reported at www.nycourts .gov/ctapps___;or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Court of Appeals _____court
Appears at Appendix___A____to the petitiom and is
[ ] reported at _____www.nycourts.gov/ctapps _____ or,,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case

was _____

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

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on_____(date) in Application No. _____

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

[X] For cases from state courts:

The date on which the highest state court decided my case was April 2, 2019 A copy of that decision appears at Appendix___A_____. Case # 147-SSM-24 www.nycourts.gov/ctapps.

[X] A timely petition for rehearing was thereafter denied on the following date: April 2, 2019 ,and a copy of the order denying rehearing appears at Appendix_____

[ ] An extention of time to file the petition or a writ of certiorari was granted to the including _____(date) on _____(date) in Application No. ____A_____.

The jurisdiction of the Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment requires investigation and preparation, not only to exonerate, but also to secure and protect the rights of the accused, such constitutional rights are granted to the innocent and guilty alike, and failure to investigate and file appropriate motion is ineffectiveness. ***Kimmelman v. Morrision***, 477 U.S. 365, 91 Led. 2d 305, 106 S. Ct. 2574 (1986).

Constitutional speedy trial violation CPL § 30.20, CPL 30:30 statue equal protection and due process of law violation, NYS Const. Art U.S. Constitution, 14th, 6th Amendment. New York policy every; accused including defendant is entitled to a speedy trial is embodied in N.Y. criminal procedure law § 30.20 (1) and in the time periods prescribed by N.Y. Criminal procedure law §30.30. The people violated their obligation to the CPL 30:20, 30.30 statute regarding defendant Tamarkqua Garland indictment # 3886-2010 statutory and constitutional rights to a speedy trial, prior to case given to jurors for deliberation or taken to trial.

The defendant's arrest was illegal and in violation of the 4th Amendment based on a false ID conjecture/guesswork and statement of an unavailable and uncorroborated testimony of the State's sole eye witness. Defendant challenge the veracity ruse and denial of his CPL§30.30 speedy trial constitutional rights.

Honorable Judge John W. Carter violated **"public office law 30 (1)"** by filing a late oath of office when his term began 1 January 2013 filed 4 months and 28 days late that created a vacancy in office. In that period of vacancy Honorable Judge Carter violated defendants' equal protection and due process of law NY Art. 11 section 1.

Honorable Judge Carter did not have legal authority to decide over defendants' case which is a jurisdiction defeat that prejudice defendants' case by allowing ADA Schordine prosecutorial misconduct in bringing defendant to trial.

"Mckinney's Election law 5, 6 -122" as used by the election law, the term residence complies with the residency requirement is synonymous with domicile that when he filed his oath of office as any Albany resident with proof of a Saratoga County Jurat of Constitutional and Statutory residency requirement.

"Counsel has a constitutional duty to make reasonable investigations or to make reasonable decisions to that which makes particular investigation unnecessary. **Strickland v. Washington,** 466 U.S. 688, 691, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984).

Bronx ADA Michael J. Schordine a one man launching system enacted his power and position to establish his illegal moral and unethical master-plan relentlessly requested that the Court and defense counsel ruin defendant's life to exact his vindictiveness, and revenge, maliciously prejudicing the judge mind in the exact order as did he the jurors. See Sentencing report filed March 30 2016, Proceedings, page 19 lines 1-20. It must be reiterated Sentencing report Proceedings, page 7 lines 21-22 this information is fraudulent and falsified. The People also hoodwink prejudiced and tainted the minds of the jurors', with this illegal fraudulent strategy.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The speedy trial clause of the Sixth Amendment to the United States Constitution provide that "[i]n all criminal prosecution, the accused shall enjoy the right to a speedy trial. The clause protects the **defendant from, *delay* between the presentation of the indictment or similar charging instrument.**

The due process clause "has a limited role to play in protecting against oppressive delay." ***United States v. Lavasco*** (1977) 431 U.S. 783, 789). At the threshold, the defendant must show actual prejudice. ***(United States v. Marion*** (1971) 404 U.S. 307, 324-325.) A delay of one year can create a presumption of prejudice. (Id. At pp. 655, 656: ***People v. Williams*** (2013) 58 Cal 4th 197, 234-235.

"Exculpatory Evidence Withheld" *favorably to defendant an expired, involuntary/coerced confession withheld from jury causing wrongful conviction, jury tampering cuts into the heart of the Sixth Amendment's promise of a fair trial. It shocked the moral and conscious mind when (1). Judge Peter J. Benitez issued a "gag order" and forbid anyone from informing the Jurors' that defendant's* involuntary confession were tampered with and coerced. (2.) It must be reiterated the riot not brawl lasted for 2 hours, and the 2 hours *surveillance tape tampered with, which constitutes a* ***Brady v. Maryland,*** *373 U.S. 83 (1963) violation.*

Under the Fifth Amendment, suspect cannot be forced to incriminate themselves. And the Fourteenth Amendment prohibits coercive questioning by police office. Confession to crimes that are coerced, or If a police officer questions a suspect who is in custody without giving the suspect the Miranda warnings nothing the suspect says can be used against the suspect at trial.

The purpose of this "exclusionary rule" is to deter the police from violating the Miranda rule, which is required by the constitution (**Dickerson' v. U.S., U.S. Sup. Ct** 2000). Det. O'Connell read Mr. Garland's Miranda Rights after the coerced and involuntary confession secured.

(1). "Evidence withheld from Jurors", Under NY State and the United States Constitution the defendant has the right to confront his accuser or eyewitnesses as afforded as under the 6th Amendment of the United States Constitution. The Sixth Amendment more so protects the defendant from being guilty of a crime. There were no accuser or eyewitnesses that I.D. defendant.

It must be reiterated – The People intentionally and maliciously violated defendants', constitutional rights. To obtain conviction in violation of defendants' constitutional rights to be used either to support or enhance punishment for another offense would erode principal of that case and allow an unconstitutional procedure to injure a defendant twice. The admission into evidence of a constitutionally invalid prior conviction is inherently prejudicial. **People v. Catu,** 4 NY 3d 242 (2005).

VIOLATION OF DEFENDANTS' UNITED STATES CONSTITUTIONAL LAW RIGHTS. THE CONSTITUTION OF THE STATE OF NEW YORK LAW RIGHTS, CASE AND STATUTORY LAW RIGHTS.

STATEMENT OF THE CASE

The Fourteenth Amendment prohibits coercive questioning by police officers. So, confession to crimes that are coerced, or involuntary are not admissible against defendants in criminal cases, even though they may be true, defendants is not the perpetrator. Summation – People page 462, line 16 and 17, regarding the key element, the gun. No gun was ever recovered. Summation – Defense page 464, line 4 again, no gun was ever recovered.

> ***"The wall of silence", October 9, 2010, BRONX DEFENDERS investigator Jeff Cavallaro received eight written pages signed by Lloyd Bethea (victim) comprehensibly and undeniably explaining without a shadow of doubt that there were twenty-five individual(s) plus with all forms' of weapons fighting and rapidly moving into the intersection placing oncoming motorist at imminent risk and danger. The riot was a "force not to be reckoned with" Bronx Defender (victim) statement, page 4, line 6. Twenty five individuals' fighting with all forms of weapons constitutes a (RIOT).***

New York State Unified Court System (Web Crims) Judge Mcquire page 7 of 8 defendant plead not guilty February 15, 2011. Also, Bronx arraignment October 12, 2010 defendant plead not guilty. ADA Schordine web of lies and sinister innuendo against defendant derived from the plagiarism and written statement of the victim Lloyd Bethea (perpetrators' fighting in the intersection) ADA Schordine treacherous statement were made to unhinged the emotions of a lynch mob opportunist against defendant.

Lloyd Bethea, victim the State only eyewitness to whom testified, and according to his written statement communicated in precise detail to Det. Sean O'Connell, testified at grand jury also at trial with clarification and beyond all reasonable doubt that there were individuals fighting with all forms of weapons, moving into the intersection. Approximate fifteen spectators called 911 for two infinite and extensive hours to no avail, civilian(s) calls were stonewalled and fell onto deaf ears. Defendant is framed as a cover up to protect the 49th precinct from negligence.

The People are given ***60 to 120*** days according to the Constitution not four years to bring a case to trial. 18 U.S. Code § 3161 time limits and exclusion. *Four year prior to trial Bronx ADAs' reign an avalanche of ultimate terror in defendant Garland life,* because they could not locate their star eye-witness for approximately four years, also ineffective counsel of assistance played its role in expired coerced and involuntary confession going to trial. *In fear of the unstoppable unconstitutional corruption and ongoing defamatory Prosecutorial Misconduct defendant fell prey and plead "guilty" to* 976/13 case to avoid trial and subjected to additional and ongoing psychological ruthlessness, inhuman vindictiveness persecution avoiding a bias and prejudice outcome.

Career breaker, cops have a personal interest in the outcome of a case **People v. Dickerson** (1969) Cal. App 2d 645, 650. In the broad context of what is now known however, one might reasonably conclude that every minute of interrogation should be videotaped. This simple procedural reform will deter police coercion, alter frivolous defense claims of coercion, and enable trial judges and juries to assess the veracity of taped confession.

Defendant also prejudiced by ***HEARSAY TESTIMONY- (Det. Sean O'Connell – shield 07506)*** While hearsay evidence is admissible to establish why an officer made an arrest, prosecutors may not rely on testimony from an arresting officer merely that he received information about the defendant and acted pursuant to it in making the arrest.

(Det. O'Connell – People – Cross) page 178, line 9) it just indicates here there was two separate groups of girls and a couple of guys fighting. Det. O'Connell – People – Cross page 178, line 13) But again you indicated a few moments ago that you didn't record all the information he gave you on that day. Trial date 14th August 2014 the lack of integrity inconsistencies and constant contradictions of Det. Sean O'Connell statements and answers were so alarming Judge Benitez called recess to protect Det. O'Connell from perjury also requesting that ADA Schordine nor defense counsel argue in front of jurors'.

It is not enough to prove that the information received was credible and acted on. In order to sustain the police conduct, it must be demonstrated the sender possessed the requisite knowledge, or that the arresting officer made his own observations sufficient to provide probable cause. Det. Sean O'Connell did not make his own observations.

11th October 2010 a seasoned veteran detective Sean O'Connell to whom mentally and psychologically paralyzed preyed on and tortured appellant with fear while in an altered state of mind, appellant drink was tainted. A seasoned veteran detective who intentionally denied appellant water, and exigent emergency medical care for six hours, until false and involuntary confession were written under duress, appellant was also denied speaking with an attorney or his family after several request. See, Prisoner movement slip stamped by **NYC-EMS** 11th October 2010 at 3:35 p.m.

A seasoned detective to whom ambushed and preyed upon Mr. Garland exigent emergency medical needs and vulnerability incapacitated defendant's free will, dictated as to what he wanted written to unhinge the minds and emotions of others. Defendant was paralyzed and in fear of his life and safety while undergoing exigent emergency medical health crisis, during a torturous and excruciating interrogation.

Defendant arrested on a warrantless warrant at 6 a.m. Miranda Rights read at 12 noon defendant wrote false confession under duress in fear of his life and against his free will. The warrant squad informed Debbie Toney that they had a warrant for her husbands' arrest for child support. The police did not have a warrant signed by a judge for Mrs. Toney's husband nor defendant Garland.

Defendant Garland regurgitated for hours prior to and while at the precinct, defendant also regurgitated on the confession, his body sprawled over the table from weakness dehydration, confusion and disorientation, lack of physical coordination, an inability to walk. Det. O'Connell felt this cruel inhumaneness and callous treatment towards defendant was normal behavior. Prisoner movement slip stamped by ***NYC-EMS*** 11th October 2010 at 3:35 p.m.

The false coerced confession written precipitated by threat, fear and torture. A seasoned veteran detective to whom kept his hands on his gun, while dictating as to what he wanted written, an involuntary confession. Defendant surrendered to his tormentor, threats included if he refused to write what he was told to write, the foundation of defendant's life would be uprooted and overturned.

It is not sufficient, for a police officer to testify that he received a description of the defendant without also providing details of the description. Hours of torture and sheer exhaustion defendant surrendered to his tormentor. Defendant also challenged the sufficiency of the warrant, and asserted that the search and seizure had been tainted because of a warrantless entry by other officers on the day prior to the execution of the warrant. ***People v. Castillo*** N.Y. 2d 270 (1979).

The Jurors were not aware that probable cause was based on hearsay an involuntary/coerced confession and sheer speculation testimony of "unavailable State sole eye witness" and uncorroborated non- sworn testimony. People - Cross lines 25, 1-7, the State used sole eye witness identification through other people second hand versions, from Det. Sean O'Connell and ADA Michael J. Schordine.

Exculpatory Evidence Withheld – Police reports are not admissible in criminal cases. Hearsay is generally inadmissible as evidence in a court of law because it is based on the report of others rather than on the personal knowledge of a witness. Det. O'Connell interviewed approximately fifteen eye-witnesses' including the victim Lloyd Bethea to whom did not I.D. defendant as the perpetrator.

Hearsay evidence is normally excluded from trial because it is deemed untrustworthy. The police report is hearsay and generally not admissible as evident in court. The reason hearsay is inadmissible is because the person cannot be questioned. The People were unable to locate their eye-witness give or take four years prior to trial, therefore so decided to frame and vehemently criminally prosecute defendant. ADA Schordine submitted a "2002" seal case, an expired CPL § 30.30 coerced/involuntary confession as his front line of defense.

Prosecutorial Misconduct – Unfair bias and prejudicial trial based on racial prejudice Bronx ADA Michael J. Schordine in his infinite wisdom weaved an outlandish and preposterous sinister tale and exclusive front line of defense submitted an unconstitutional expired involuntary and coerced confession 3886/10 to the jurors' for deliberation, betrayal of trust. "Jaw dropping moment" during trial one male juror requested that the People presented proof of allegations against defendant. To obtain conviction in violation of defendants' constitutional rights to be used either to support or enhance punishment for another offense would erode principal of that case and allow an unconstitutional procedure to injure a defendant twice. The admission into evidence of a constitutionally invalid prior conviction is inherently prejudicial. **People v. Catu,** 4 NY 3d 242 (2005). The People's behind the scene unethical immoral legal strategy to have defendant convicted.

"Degree of actual prejudice to defendant:" was caused by ADA Schordine tidal wave of onslaught and corroborated line of deception in bringing defendant Garland to trial knowing that none of the people evidence presented except a coerced/forced confession elicited from Det. O'Connell had pointed to defendant no more than it could have pointed to any other person in that court room or jury stand, knowing that the peoples eye witness if there really were really ever one never went to the grand Jury hearing nor trial.

STATEMENT OF CASE

- *Video tape was tampered with and vouchered on February 15, 2011 four months and five days after the **RIOT not brawl date of occurrence** October 9, 2010. None arguably and must be repeated without a reasonable doubt - **Not one person in or out of law enforcement ever found or discovered a weapon on defendant person nor his residence October 9, 10, or 11th 2010. The two hours surveillance tape were tampered with to frame defendant.***

*It must be reiterated - **NYC-EMS pre-arrangement prisoner movement slip, stamped by NYC-EMS October 11, 2010 at 3:35 p.m.*** Defendant Garland was not allowed exigent emergency care until, a false involuntary coerced confession was written. (Det. Brown-People-Cross page 9, lines 6 - 8) And from 6 a.m. until approximately sometime after eight, you had no conversation with Mr. Garland, answer that correct.

Defendant arrested at 6 a.m. Miranda warning read at 12:00 and 1:00 p.m. Det. O'Connell signature pre-assigned and affixed. Det. O'Connell – People – Cross page 59, line 16 and 17. At 12:00 noon you went in there and filled out a Miranda sheet with him correct, Det. O'Connell answered correct.

The Jurors were not made aware Mr. Garland's request for an attorney several times were denied, emergency exigent care denied, food, water and also speaking with his family all denied by Det. O'Connell a veteran and seasoned detective who needed a clue card to read the Miranda rights to defendant.

Under the Fifth Amendment, suspect cannot be forced to incriminate themselves. And the Fourteenth Amendment prohibits coercive questioning by police office. Confession to crimes that are coerced, or If a police officer questions a suspect who is in custody without giving the suspect the Miranda warnings nothing the suspect says can be used against the suspect at trial.

The purpose of this "exclusionary rule" is to deter the police from violating the Miranda rule, which is required by the constitution (**Dickerson' v. U.S.**, U.S. Sup. Ct 2000). Det. O'Connell read Mr. Garland's Miranda Rights after the coerced and involuntary confession were secured and guaranteed.

M*IRANDA V. ARIZONA*

Miranda v. Arizona, 384, U.S. 436 (1966) was a landmark decision of the United States Supreme Court, this decision prohibited the use at trial of inculpatory and exculpatory statements made by an individual in police custody in the absence of demonstration that police follow procedural safeguards. The decision further indicated that the administration of warning regarding the rights of the individual in custody were not merely procedural rules, but derived from constitutional rights. In **Harris v. New York, 401 U.S. 222 (1971)**. ADA Michael J. Schordine unconstitutionally released a "2002" seal case file, an expired CPL § 30.30 accompany by a coerced/involuntary confession to hoodwink jurors' date of trial, August 14, 2014.

REASONS FOR GRANTING THE PETITION

The undercover of justice – perjudice is the egregious motives the People unconstitutionally denied defendant his CPL § 30.30 speedy trial constitutional rights to afford ADA Michael J. Schordine a promotion and recognition.

1st July 2013 prior to trial (14th August 2014) Jamal Johnson, Esq. provided **affirmation in support of defendant's CPL § 30.30 speedy trial motion.** Jamal Johnson, Esq. discussed his notes with Walter Fields, Esq. Paul S. London, Esq. and the District Attorney's Office.

2nd July 2013 Paul London filed a **NOTICE OF MOTION PURSUANT TO C.P.L. SECTION 210.20, 30.30 AND 30.20** with the District Attorney's Office and Supreme Court Clerk's Office, Bronx County.

29th June 2013 Paul S. London, Esq. filed **AFFIRMATION IN SUPPORT OF MOTION TO DISMISS INFORMATION FOR DENIAL OF RIGHT TO SPEEDY TRIAL** with HON. ROBERT JOHNSON, District Attorney, Bronx County and the SUPREME COURT, CLERK OF THE COURT, Criminal Division – Part D 85.

9th April 2015 prior to sentencing Davic C. Farman, Esq. filed a **MOTION TO SET ASIDE VERDICT AND DISMISS** to HON. Robert T. JOHNSON, DISTRICT ATTORNEY and the BRONX COUNTY CLERK SUPREME COURT.

28th April 2015, prior to sentencing David C. Farman, Esq filed **REPLY AFFIRMATION IN SUPPORT OF MOTION TO SET ASIDE VERDICT AND DISMISS INDICTMENT** with Bronx District Attorney Office and BRONX SUPREME COURT CLERK'S OFFICE.

The right to the effective assistance of counsel is guaranteed by the state and federal Constitutions. See U.S. Const. amends. VI, XIV; N.Y. Const, I, §; **Strickland v. Washington**, 466 U.S.668 (1984); **People v. Baldi**, 54 N.Y. 2d 137, 147 (1981). Counsel's failure to object to prosecutorial misconduct in summation my be constitutional error. See **People v. Wright**, 25 N.Y.3d 769,780-81 (2015); **People v. Fisher**, 18 N.Y. 3d 964, 966-67 (2012. Also, the prosecutor's disparagement "exceeded fair limits of advocacy and [was] prejudicial to defendant as a matter of law," **People v. Lombardi**, 20 N.Y.2d 266,272-73 (196).

Counsel's failure to file a motion to suppress evidence can provide the basis of a claim of ineffectiveness, and that there is a reasonable probability that the successful motion would have affected the outcome ***an Iran v. Lindsey,*** 212 F 3d 1143, 1145 (9th Cir 2000).

Defense failure to pursue identifiable defense strategy – ***People v. Norfleet,*** 267 AD 2d 991, 882 (3d Dept. 1999) IV. Den 95 NY2d 801 (2000) defense counsel should have pursue tainted intoxication defense).

Defense failure to advise client that prosecutor did not intend to enforce promise nor reduce sentence – U.S. ex rel, ***Wissenfield v. Wilkins*** 283 F2d 707, 712 (2d Cir. (1960).

REASON FOR GRANTING THE PETITION

Defense failure to subject the prosecution's case to meaningful adversarial testing, "ineffectiveness will be presumed under United ***States v. Cronic***, 466 U.S. 648, 80 Led. 2d. 657, 140 S. Ct. 2039 (1984).

Statement was involuntary and written under uncorroborated duress. The Warrant Squad team never recovered a weapon at defendants' residence nor on his person. Former counsel was terminated December 2015 for "ineffective assistance of counsel".

> *Courtroom procedure must be followed and strictly adhered to, when procedure is intentionally skirted in such a manner as to influence or attempt to influence a juror for a corrupt or fraudulent and unfair advantage results.* ***Arizona v. Fulminante,*** *499 U.S. 279, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991) United* ***States v. Dutkel,*** *192 F. 3d 893 (9ath Cir 1999); gives rise to a conclusive presumption of prejudice.*

Prejudice to defendant – Defendant challenge and claiming a speedy trial violation under the Constitution delay has impaired the ability to defend against the charges because, for instance, witness unavailable, evidence tampered with, memory of potential witness faded. (***People v. Lowe*** 2007 40 Cal. 4th 937, 946. Fading memory and lost witnesses can be actual prejudice. **People v. Morris** (1988) 46 Cal 3d 1, 37; **People v. Hill** (1984) 37 Cal. 3d 491, 498). Prejudice also exist based on unfair trial (See ***People v. Johnson*** (1980)26 Cal. 3d 557, 574).

Miranda v. Arizona, 384, U.S. 436 (1966) was a landmark decision of the United States Supreme Court, this decision prohibited the use at trial of inculpatory and exculpatory statements made by an individual in police custody in the absence of demonstration that police follow procedural safeguards. The decision further indicated that the administration of warning regarding the rights of the individual in custody were not merely procedural rules, but derived from constitutional rights. In **Harris v. New York,** 401 U.S. 222 (1971). ADA Michael J. Schordine unconstitutionally released a "coerced" statement to the jurors' for deliberation.

When delay in prosecuting is long enough, the charges must be dismissed whether or not defendant's ability to present a defense has been shown to have been hampered, and even shorter delays may result in a deprivation of constitutional rights, especially if it is shown that defendant has been prejudiced by delay. (***People v. Staley*** (1997 N.Y. 2d 789, 396 N.Y. S. 2d 339, 364 N.E. 2d 111); **Barker v Wingo**, 407 U.S. 514 (1972).

Prejudice in pro se motions is not strictly construed. In cases which "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, "ineffectiveness will be presumed under United ***States v. Cronic***, 466 U.S. 648, 80 Led. 2d. 657, 140 S. Ct. 2039 (1984).

PLEASE TAKE NOTICE – ADA Schordine reign power and control over judges and defense counsel alike demanding loyalty to unconstitutionally exacting revenge against defendant by punishing him twice for past deeds paid for. Please see Sentencing report Proceedings pages 1-19. Sentencing report Proceeding page 7 line 21-22 allegations are fraudulent against defendant. Fraudulent allegation were released to jurors to unconstitutionally convict defendant.

Prejudice also exist under disruption in one's life draining of resources, curtailment in association, public scorn, anxiety for the defendant and family and friends can be prejudice in the final analysis. **(United States v. Marion** (1971) 404 U.S. 307; ***United States v. Ewell*** (1966) 383 U.S. 116, 120; ***Klopfer v. North Carolina*** (1967) 386 U.S. 213 "Time is an irretrievable commodity," **(Barker, supra,** 407 U.S. at p. 533).

Witnesses disappeared causing delay and prejudice to defendant. There were also prejudice for Prosecutor witnesses' (Det. Sean O' Connell – shield # 7506l) were unable to recall accurately events of the distant past. ***Barker v supra***, 407 U.S. at p. 5 32; accord Doggett, supra, 505 U.S. at p. 655.) Certain information could have been introduced had there been no delay (***People v. Conrad*** (2006 145 CA; App ***4th*** 1175, 1184.

Incriminating information extracted from accused on cross by prosecution – ***People v. Sanin,*** 84 AD 2d 681, 682-83 (4th Dept. 1981).

*Without reservation, Mr. Garland and his family heartfelt and authenticated condolence goes to the victim and his family for being injured during a two hour 'force not to be reckoned with" **riot** not brawl. The stratagem in using the victims' age as a front line of defense is a mere ruse (trick of ADA legal strategy) and means to gain an indirect favorable end result. It must be reiterated the defendant is wrongfully convicted. **"The perpetrator is right handed, defendant is left handed".***

(1). "Evidence withheld from Jurors", Under NY State and the United States Constitution the defendant has the right to confront his accuser or eyewitnesses as afforded as under the 6th Amendment of the United States Constitution. The Sixth Amendment more so protects the defendant from being guilty of a crime.

(2).The warrant Squad did not have a warrant for either party. The warrant Squad falsely announced they had a warrant for Ricky which is the head of household husband, they were not invited in. **Brown v. Williams** *is in support of the nonexistent warrant that is unlawful. The United States Supreme Court ruled that consent based upon a false assertion that the officers have a warrant cannot be voluntary and is thus invalid.* ***Bumper v North Carolina*** *391 U.S. 543 (1968).*

The jurors were not informed that the prosecutor had provided the answers to the Det. O'Connell, the testimony was prepared beforehand by the State. The Jurors therefore did not have before it the untainted testimony of the State sole eye witnesses.

Exculpatory Evidence Withheld the Jurors there were no crime scene set-up. It is normal protocol to set a crime scene when a crime is under investigation. The crime scene was contaminated and tampered with (for example people walked through the crime scene and cars riding through the crime scene).

The DD5 paper work from arresting officers withheld from jurors. The complaint from arresting officer's signature and case ready checklist arresting officer signature does not match and were withheld from jurors.

PLEASE TAKE NOTICE – Malfeasance, based on constitutional challenged to vacate conviction ADA, Schordine "betrayed the public trust," by "withholding exculpatory evidence" from jurors' intentionally and maliciously releasing an **"expired and seal case"** file for jury deliberation (trial date- 14 August 2014) to defraud jurors with 180 day in excess excluding illusory time which total approximately 405 days with the express consent to unconstitutionally rendering defendant an unfair and bias trial. Defense counsel nor the court informed defendant of PRS prior to sentencing conviction, PRS (2002) obtained in violation of predicate violation of the constitutional of America. **People v. Catu,** 4 NY 3d 242 (2005).

> Challenging the "2010" predicate violation ***Gideon v. Wainwright***, 372 U.S. 335. To obtain conviction in violation of Gideon or Mr. Garland to be used either to support or enhance punishment for another offense would erode principal of that case and allow an unconstitutional procedure to injure a defendant twice. The admission into evidence of a constitutionally invalid prior conviction is inherently prejudicial. ***Chapman v. California,*** 386 U.S. 18 (1967); also see **Spencer v. Texas,** 385 U.S. 554 (1967).

Constitutional CPL § 30.20, CPL 30:30 statue equal protection and due process of law violation, NYS Const. Art U.S. Constitution, 14th, 6th Amendment. New York policy every; accused is entitled to a speedy trial is embodied in N.Y. criminal procedure law § 30.20 (1) and in the time periods prescribed by N.Y. Criminal procedure law §30.30 the people violated their obligation to the CPL 30:20, 30.30 statute and defendant Tamarkqua Garland indictment # 3386-2010 statutory and constitutional rights to a speedy trial, prior to case given to jurors for deliberation or taken to trial.

NYS, U.S. equal protection and due process of law there are four factors of primary importance in determining whether defendant has been denied due process as a result of pre-indictment delay (1) **length of delay** from 11th October 2010 to 14th August 2014. (2) Reason for delay: People not being able to find their eyewitness, for four years nor did the People disclosure/express this fact to the courts or defense counsel, where the people failed to show cause for the unduly delay.

PLEASE TAKE NOTICE – Sentencing report filed 30th March 2015 with the SUPREME COURT BRONX COUNTY, Proceedings page 17 lines 7 and 8 defendant asserted that he was forced to write a false confession. Also, please take notice observing defendants' photos taken prior to and during interrogation.

PLEASE TAKE NOTICE – Sentencing report filed 30th March 2015 with SUPREME COURT BRONX COUNTY Proceedings page 14, line 20 defendant Garland inquired as to why the Courts intentionally turned a deaf ear and a blind eye to the violation of his CPL§ 30.30 speedy trial constitutional rights.

PLEASE TAKE NOTICE – Sentencing report filed 30th March 2015 with SUPREME COURT BRONX COUNTY Proceedings page 23 lines 20 and 21 defendant affirmed that he was not the perpetrator and that he was being framed. Bronx arraignment 12 October 2010. Sentencing date 8th May 2015.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Name: T. [illegible]

Date: 6-5-19