

19-7866

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
Farid Popal — PETITIONER  
(Your Name)

vs.

State of New York  
\_\_\_\_\_  
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_  
Farid Popal  
(Your Name)

\_\_\_\_\_  
WENDE Correctional Facility

\_\_\_\_\_  
(Address)

3622 Wende Rd., P.O. Box 1187, Alden  
New York 14004-1187

\_\_\_\_\_  
(City, State, Zip Code)

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(716) 937-4000

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(Phone Number)

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## QUESTION(S) PRESENTED

WHETHER THE U.S. CONSTITUTION PROTECTS WITNESSES FROM BEING TAMPERED WITH WHEN DETECTIVE WAS WHISPERING INTO HIS EARS DURING LIVE SKYPE TESTIMONY IN OPEN COURT, AND WHETHER WHISPERING INTO THE EAR OF TESTIFYING WITNESS IN OPEN COURT IS A VIOLATION OF A CRIMINAL DEFENDANT'S DUE PROCESS RIGHTS THAT PREVENTED HIM FROM CROSS EXAMINING WITNESS AND PRESENTING A COMPLETE DEFENSE, AND WHETHER SAID CONDUCT IS SANCTIONED BY THIS COURT'S PRECEDENT LACKAWANNA COUNTY DISTRICT ATTORNEY V. COSS, 532 U.S. 394.

In the case at bar, the U.S. Court of Appeals denied a previous application arguing the same issue on the basis that the U.S. Supreme Court does not provide any mechanism for relief in a post conviction motion and apparently based on that understanding, the same court also denied the instant §1983 civil suit against the detective who was whispering into the ear of the witness. In the previous application having the same issue, the Court cited Coss supra.

WHETHER THE LEAD CASE DETECTIVE'S DOCUMENTED WHISPERING IN THE EAR OF WITNESS IN OPEN COURT TO DEFEAT PETITIONER'S POST CONVICTION MOTION PRESENTS A QUESTION OF LAW FOR THE FEDERAL COURT OF APPEALS TO RESOLVE?

Here, as evidenced by the Federal Court of Appeals order annexed here as Appendix (A). The answer is No.

## LIST OF PARTIES

- [ ] 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:

## RELATED CASES

Lackawanna County District Attorney v. Coss, 532 U.S. 394

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	9
CONCLUSION.....	10

## INDEX TO APPENDICES

APPENDIX A	Denial of the U.S. Court of Appeals
APPENDIX B	Petitioner's application to the Court of Appeals
APPENDIX C	Order and Decision by the U.S. District Court
APPENDIX D	The Relevant pages of Hearing transcripts of an evidentiary hearing held in 2018
APPENDIX E	The U.S. Court of Appeals' denial of rehearing motion
APPENDIX F	

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Lackawanna County District Attorney v. Coss, 532 U.S. 394

### STATUTES AND RULES

Right to Cross Examination;

Right to present a complete defense

Rights to a fair and unbiased judicial intervention

rights under the U.S. Constitution, amendments 5,6,14.

### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

☒ For cases from **federal courts**:

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

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

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

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

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

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 15, 2020.

☐ 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: February 3, 2020, and a copy of the order denying rehearing appears at Appendix E.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied 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. A.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

VIOLATION OF DUE PROCESS RIGHTS, U.S. CONSTITUTIONAL  
AMENDMENTS 5,6,14.

## STATEMENT OF THE CASE

In February of 2019, the petitioner filed a civil action pursuant to 42 U.S.C §1983 against the lead detective in his criminal case now a Sergeant Steven Brown alleging denial of his constitutional rights, among other things, denial of his right to cross examine, present a complete defense, fabrication of information, and intimidation of his witnesses. The district court denied said action on June 11, 2019, See Appendix (C). The petitioner appealed said denial to the Federal Court of Appeals, See Appendix (b). The circuit court also denied and did not permit further appeal. See Appendix (A-E).

For reasons set below and since the issue presented here impacts every criminal defendant in the Country because the law enforcement misused laws and trampled petitioner's constitutional rights, this Court should grant entry and clarify its precedent that is being misapplied by the state and Circuit courts across the country.

### WHETHER THE LEAD CASE DETECTIVE'S LITERAL WHISPERING INTO THE EAR OF THE PROSECUTION WITNESS IN OPEN COURT WHILE TESTIFYING VIA SKYPE VIOLATED DEFENDANT'S DUE PROCESS RIGHTS IN VIOLATION OF THE U.S. CONSTITUTION.

While in Lackawanna Cnty. Dist. Att'y v. Coss, 532 U.S. 394,402, this Court recognized, the Constitution does not compel states to provide post-conviction proceedings for relief. This ruling did not undermine post conviction remedies all together, nor it provided license for police to literally whisper into the ear of a witness in open Court to pressure him provide scripted testimony

to defeat a criminal defendant's meritorious post conviction motion. Here, the New York Courts are relying on Lackawanna supra, to justify or ignore this violation. For this reason, this Court should step in and clarify that ruling and provide constitutional protection for in Court proceedings relating to a post conviction motion, which as evidenced by the denial of this and petitioner's other related appeals grounded on this violation is deemed permissible by the New York Courts.

In the case at bar, STEVEN BROWN, the lead detective in petitioner's criminal case. Took the chief witness who recanted his trial testimony in 2017, to a police station and literally whispered into his ears to provide scripted testimonies while he testified for the prosecution in open court via SKYPE.

Among other misconduct that includes but were not limited to fabricating information, intimidating petitioner's witnesses to keep them from testifying on petitioner's behalf to defeat defendant's CPL 440.10 motion.

The lead case detective Steven Brown took the 70 years old wheel chair bound witness to a police station in Florida while proceedings were being held in New York while he testified via SKYPE. Steven Brown positioned himself at a blind spot of the camera and continuously whispered into the witness ear coaching him to accuse the defendant, his brother and his attorney of bribing him for his original recantation. Albeit, a false accusation there were

proven to be false by documentary proof that further proved it was the lead detective and an associate of his who forged documents to blame the defendant and his associates when Brown himself was involved.

Furthermore, since police's bald allegations accusing the defendant of misconduct fell flat on their face and remained unsubstantiated. The prosecution witness was used to fill the evidentiary gap by means of detective Brown whispering into his ears.

The followings took place in open Court:

Mr. George: Objection, Judge. I'd like to point out the witness keeps turning to someone else in the room. and looking for something and I just would like --

The Court: I know he is not looking for his lawyer because his lawyer is sitting right in front of the both of us.

The Court: do you know who is in the room there?

The prosecutor: Sergeant Brown, from Queens district attorney's office, detective Al Schwartz from dis, Queens district attorney's office, and I think Tommy lockwood, from the Queens district attorney's office.

The Court: Mr. Miata, who's sitting to your left?

Witness: Steve Brown

The Court: Mr. Miata just answer the questions, look at the camera, you don't need help from detectives to answer questions, all right.

(Evidentiary hearing minutes of 2018, pages 170,171<sup>2</sup>)

See Appendix (D )

Certainly, the evidentiary hearing records in this case clearly establishes that the witness who was recanting his recantation and was testifying for the prosecution was taken to a police station to testify via SKYPE as opposed to a U.S. Courthouse. Only so that he can be tampered with and give testimony in favor of the prosecution's allegations.


The honorable justice of said proceeding was no saving grace because despite witnessing and admonishing the witness for getting help from the lead detective to answer questions, he still allowed the proceedings to commence and subsequently relied upon the same scripted testimony he himself witnessed and denied the motion.

The question of law for this Court is this: if in each post conviction evidentiary hearings the detectives are given the right to whisper into the ear of witnesses testifying for the prosecution, how can a defendant win any motion and what would be the use of having a post conviction proceedings in New York State? And, whether the misconduct occurred in this case by the lead detective violated defendant's rights to cross examine, present a complete defense, and right to unbiased judicial intervention?

Wherefore, for the reasons above, this Court should grant certiorari and set precedent to protect the integrity of a post conviction proceedings in New York state and hold the misconduct occurred in this case a violation of a criminal defendant's due

process rights because while police detective was whispering into the ear of the witness, said witness was simply repeating what the detective was whispering to him thereby petitioner's right to cross examine and confront as well as his right to present a complete were all denied, such misconduct should never happen anywhere especially in the open court and for such other and further relief as this court deems just and proper.

cc; Queens District Attorney's office

  
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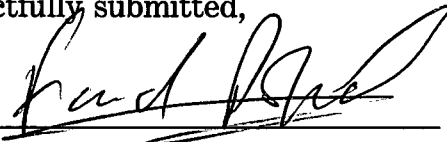
## REASONS FOR GRANTING THE PETITION

While in Lackawanna Cnty. Dist. Att'y v. Coss, 532 U.S. 394,402, this Court recognized, the Constitution does not compel states to provide post-coviction proceedings for relief. This ruling did not undermine post conviction remedies all together, nor it provided license for police to literally whisper into the ear of a witness in open Court to pressure him provide scripted testimony to defeat a criminal defendant's meritorious post conviction motion. Here, the New York Courts are relying on Lackawanna supra, to justify or ignore this violation. For this reason, this Court should step in and clarify that ruling and provide constitutional protection for in Court proceedings relating to a post conviction motion, which as evidenced by the denial of this and petitioner's other related appeals grounded on this violation is deemed permissible by the New York Courts.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_

Date: February 24- 2020