

No. _____

19-7925

IN THE
SUPREME COURT OF THE UNITED STATES

Ronald O'Rourke Pro SE #11-18779 PETITIONER
(Your Name)

VS.

STATE of Illinois ET. AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES Court of Appeals (for 7th Circuit) (Case # 19-1364)

APPELLATE Court of Second District # 16-0289 ELLI. Illinois

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

PETITION FOR WRIT OF CERTIORARI

Ronald O'Rourke Pro SE #11-18779
(Your Name)

P.O. Box 1000 / MSU
(Address)

Menard, Illinois 62259
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

FILED

FEB 04 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION - AND AUTHORITY, IN NOT HOLDING A HEARING ON THE - ADMISSABILITY OF EVIDENCE CONTAINED IN ^{the} 6 hours - OF RECORDING REMOVED FROM PETITIONER'S VIDEO - TAPED INTERVIEW, OBSTRUCTING HIS ACCESS TO HIS TRIAL, AT COURT, U.S.C.A. CONST. AMEND. 5 RIGHTS.

2. WHETHER PETITIONER'S TRIAL COUNSEL WAS INEFFECTIVE - OF ASSISTANCE OF COUNSEL, FOR FAILING TO ADVERSELY DEFEND PETITIONER'S MIRANDA RIGHTS, WHERE - CONTAINED IN THAT [6] HOURS OF SUPPRESSED - EVIDENCE THAT PETITIONER ATTEMPTED TO OBTAIN COUNSEL, U.S.C.A. CONST. AMEND. (6) AND U.S.C.A. CONST. AMEND. (5) RIGHTS ON BOTH.

3. WHETHER THE TRIAL COURT ABUSED ITS - DISCRETION, IN FAILING TO HOLD A HEARING ON WHAT CONSTITUTES REASONABLE CONDUCT - AND WHY IT'S THE PROPER STANDARD FOR ATTORNEY AND PERFORMANCE IN THE INSTANT CASE TO ALLOW THE [6] HOURS OF SUPPRESSED - VIDEO-TAPED EVIDENCE TO GO UNINVESTIGATED, OR AT LEAST CHALLENGED, UNDER ILLINOIS RULES OF EVIDENCE 106 OR FEDERAL RULES OF EVIDENCE 106 WHICH PARROTS ITS U.S.C.A. CONST. AMEND. [6]. -

QUESTIONS PRESENTED

IV. WHETHER, IT VIOLATED PETITIONERS RIGHTS TO BE INTERROGATED WITHOUT A VALED WAIVER OF HIS RIGHTS TO OBTAIN COUNSEL, U.S.C.A CONST. AMEND 5.

V. WHETHER, THOSE CONSTITUTIONAL RIGHTS WERE VIOLATED, AND DENYING THE PETITIONER HIS RIGHTS TO DUE PROCESS, U.S.C.A CONST AMEND 14.

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:

TABLE OF AUTHORITIES CITED

CASES		PAGE NUMBER	PASSEM
MURRAY V- CARRIER	477 U.S. 478		
UNITED STATES V- WHITE	222 F. 3d 363 (2000)		8, 11
People of ILLINOIS V- VEATCH	2016 IL APP 4TH 130888 (2016)		
People of ILLINOIS V- HOBBS	897 N.E. 2d 421 (2008)		10
BRADY V- MARYLAND	373 U.S. 83 (1963)		9, 10
Mosley V- CITY OF CHICAGO	614 F. 3d 391, 396-97 (2010)		PASSEM
Young Blood V- WEST VIRGINIA	547 U.S. 867, 869 (2006)		PASSEM
People of ILLINOIS V- SAVAGE	838 N.E. 2d 247 (2005)		PASSEM
UNITED STATES V- STANWORTH	656 F. 3d 721, 731 (2011)		12
People of CALIFORNIA V- TROMBETTA	467 U.S. 479 (1984)		12
Streckler V- GREENE	527 U.S. 263, 281 (1999)		10
People of ILLINOIS V- KOUTSAKIS	627 N.E. 2d 388 (1993)		10
MOONEY V- HOLLOMAN	294 U.S. 1003 (1935)		13
People of ILLINOIS V- BIER	661 N.E. 2d 511 (1996)		12
People of ILLINOIS V- WILSON	632 N.E. 2d 114 (1994)		PASSEM
STATUTES AND RULES			
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ILLINOIS COMPILED STATUTES	720 ILCS 109.1		PASSEM
ILLINOIS COMPILED STATUTES	720 ILCS 114.10		PASSEM
ILLINOIS COMPILED STATUTES	720 ILCS 114.11		PASSEM
ILLINOIS COMPILED STATUTES	720 ILCS 5/31-4 (9)		PASSEM
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ILLINOIS SUPREME COURT RULE	IL.SCF R 608		PASSEM
ILLINOIS SUPREME COURT RULES OF PROFESSIONAL CONDUCT	IL.SCF R 3.4 RPC(4)(1)		PASSEM
ILLINOIS SUPREME COURT RULES OF PROFESSIONAL CONDUCT	IL.SCF R 3.3 RPC(13)		PASSEM
ILLINOIS SUPREME COURT RULES OF PROFESSIONAL CONDUCT	IL.SCF R. 1.2 RPC(9)		PASSEM
ILLINOIS SUPREME COURT RULE	IL.SCF R. 415(E).		

OTHER

CONSTITUTION OF THE STATE OF ILLINOIS	ARTICLE I, SECTION 2, 3 SEPT 1970.	PASSEM
CONSTITUTION OF THE STATE OF ILLINOIS	ARTICLE F, SECTION 6, 3 SEPT 1970.	PASSEM
CONSTITUTION OF THE STATE OF ILLINOIS	ARTICLE I, SECTION 8, 3 SEPT 1970.	PASSEM
ILLINOIS RULES OF EVIDENCE 106	ILLINOIS CODE CIVIL PROCEDURE	11
FEDERAL RULES OF EVIDENCE 106	FEDERAL CODE OF CIVIL PROCEDURE	11
ILLINOIS RULES OF EVIDENCE 103	ILLINOIS CODE CIVIL PROCEDURE	11
FEDERAL RULES OF EVIDENCE 103	FEDERAL CODE OF CIVIL PROCEDURE.	11

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APPENDIX C ILLINOIS SUPREME COURT

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APPENDIX E UNITED STATES COURT OF APPEALS 7TH CIRCUIT

APPENDIX F ~~N/A~~ EXAMPLE (A) Notice of Rehearing Petition,

LAST
Review
was
Denied

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

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

OPINIONS BELOW

☒ For cases from federal courts:

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☒ For cases from state courts:

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Second District Appellate court appears at Appendix D to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 10 September 2019.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 20 November 2019, 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 30 MAY 2018.
A copy of that decision appears at Appendix C.

☐ 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

- "THE Fourth Amendment": Search and Seizure ^{Ratified 12/15/1791}. -
The Right of the People to be secure in their Persons, houses, Papers, and effects, against UNReasonable Searches and Seizures, Shall not be Violated, and no Warrants Shall -
Issue, but upon Probable Cause, Supported by Oath or Affirmation, and Particularly describing the Place to be Searched, and the Persons or things to be Seized.
- The Fifth Amendment: Trial and Punishment, Compensation for Takings. Ratified 12/15/1791... No Person shall be held to answer for a Capital, or otherwise infamous Crime, unless on a Presentment or indictment of a Grand Jury, except in Cases arising in the land or Naval Forces, or in the Militia, when in actual Service in time of War or Public Danger, nor shall any Person be subject for the same -
offense to be twice put in Jeopardy of life, or limb, nor shall be Compelled in any Criminal Case to be a Witness -
Against himself, nor be deprived of life, or liberty, or Property, without due Process of law, nor shall Private Property be taken for Public use, without Just Compensation.
- Sixth Amendment: Right to Speedy Trial, Confrontation of Witness. Ratified 12/15/1791... In all Criminal Prosecutions, the accused shall enjoy the Right to a Speedy and Public trial, by an -
Impartial Jury of the State and district wherein the Crime shall have been Committed, which district shall have been -
Previously ascertained by law, and to be informed of the Nature and Cause of the accusation, to be Confronted with the Witnesses -
Against him; to have Compulsory Process for obtaining witnesses in his -

FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE...

-FOURTEENTH AMENDMENT: CITIZENSHIP RIGHTS. RATIFIED - 7/9/1868....

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

2. REPRESENTATIVES SHALL BE APPORTIONED AMONG THE SEVERAL STATES ACCORDING TO THEIR RESPECTIVE NUMBERS, COUNTING THE WHOLE NUMBER OF PERSONS IN EACH STATE, EXCLUDING INDIANS NOT TAXED. BUT WHEN THE RIGHT TO VOTE AT ANY ELECTION FOR THE CHOICE OF ELECTORS FOR PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES, REPRESENTATIVES IN CONGRESS, THE EXECUTIVE AND JUDICIAL OFFICERS OF A STATE, OR THE MEMBERS OF THE LEGISLATURE THEREOF, IS DENIED TO ANY OF THE MALE INHABITANTS OF SUCH STATE, BEING TWENTY-ONE YEARS OF AGE, AND CITIZENS OF THE UNITED STATES, OR IN ANY WAY ABRIDGED, EXCEPT FOR PARTICIPATION IN REBELLION, OR OTHER CRIME, THE BASIS OF REPRESENTATION THEREIN SHALL BE REDUCED IN THE PROPORTION WHICH THE NUMBER OF SUCH MALE CITIZENS SHALL BESE TO THE WHOLE NUMBER OF MALE CITIZENS TWENTY-ONE YEARS OF AGE IN SUCH STATE.

STATEMENT OF THE CASE

In 2010, a Jury in the Circuit Court of DuPage County, Illinois, found Petitioner, Ronald O'Rourke, guilty of First-degree Murder, home invasion, and Residential burglary in connection with the stabbing death of his ex-girlfriend Pamela Howat. The trial judge sentenced O'Rourke to 135 years of imprisonment, and the State Appellate Court affirmed his sentence with certain modifications not relevant here. Following two unsuccessful attempts to secure Post-Conviction Relief in State Court, O'Rourke filed this Pro Se. Petitioner was sentenced to 100 years of imprisonment for first-degree murder, 20 years for home invasion, and 15 years for Residential burglary. The home invasion, and burglary charges were to be served concurrently to each other but consecutively to the first-degree murder charge. The appellate Court vacated a separate Court for first-degree felony murder under the "one-act, one-crime" doctrine, see *People v. Nunez*, 925 N.E.2d 1083, 1086 (Ill. 2010), and vacated and modified some fees the trial Court imposed, Petition for a writ of habeas corpus under 28 U.S.C. § 2254. It was deny by Judge Elaine E. Bucklo, United States District Judge. For the following reasons. O'Rourke advances two categories of claims in his habeas Petition. First, he argues that the trial Court violated his Right to due Process guaranteed under the Fourteenth Amendment by allowing the Prosecution -

to impeach him with two prior felony convictions.

Second, O'Rourke contends that his trial counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments by failing to object to the prosecution's use of O'Rourke's past convictions for impeachment, by failing to move to suppress O'Rourke's recorded interrogation interview at police station where he by not objecting to the admission of an abridged version of the recorded interrogation interview under the completeness doctrine.

O'Rourke's due process claim fails because it is procedurally defaulted, by direct appeal attorney not putting O'Rourke's 13 issues in the direct appeal attorneys fault. See *Coleman v. Thompson*, 501 U.S. 722, 729-31 (1991). In *Illinois*, a criminal defendant's failure to raise on direct appeal is direct appeal attorney's fault. That made me procedurally default - which results in a bar to consideration of the claim's merits in a post-conviction proceeding *People v. Erickson*, 641 N.E.2d 455, 458 (Ill. 1994). O'Rourke did not raise his due-process claim in his direct appeal, and the appellate attorney was the same ineffective attorney I had on direct appeal that failed to bring up my issue in the direct appeal brief. That made me in procedurally default in my habeas corpus petition. Trial counsel failed to object to the prosecution's impeachment of evidence of suppression of video-taped interrogation recorded at police station.

Next Page

O'Rourke, Petitioner: is blaming his appellate Counsel for the forfeiture but he does not assert an ineffective-assistance claim against her in Petition, But He does appear to argue ineffective assistance of Appellate Counsel in his Reply brief but this claim came too late. O'Rourke's other ineffective claims, which concern the recording presented to the jury of his interrogation with Police, are similarly without merit. O'Rourke contends, as he did in his State Post-conviction Proceedings, that his Counsel should have objected to the introduction of an abridged version of the recording at trial. To prevail on these ineffective assistance claims, O'Rourke now asserts that the complete interrogation recordings would have revealed that he had requested a lawyer 4 or 5 times point in the interrogation. Because I do not have the recordings (6 hours) before me, I cannot test the veracity of this claim. Judge Elaine E. Buck's (nor does that recorded interrogation have been found, to be viewed). Trial Counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687, (1984) would have reasonably predicted a different result in his/my case the other (6 hours) of evidence submitted at trial. There was no admitting of killing Pamela Howat. Just not true.

REASONS FOR GRANTING THE PETITION

A COMBINATION OF FACTORS HAS THE UNITED STATES COURT OF APPEALS RUBBER STAMPING THE FEDERAL DISTRICT COURT AND STATE COURTS DECISIONS IN CONFLICT WITH THEIR OWN DECISIONS AND THOSE OF OTHER APPEALS COURTS OF THE UNITED STATES. FURTHER, THEY HAVE DRIFTED OFF COURSE AND SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND DECISIONS, THEY THEMSELVES ARE BELIEVED TO BE IN VIOLATION OF THE UNITED STATES CONSTITUTION. THIS CALLS FOR AN EXERCISE OF THESE COURTS SUPREMACY POWERS TO CORRECT;

I. WHETHER, THE TRIAL COURT ABUSED ITS DISCRETION AND AUTHORITY IN NOT HOLDING A HEARING ON THE ADMISSIBILITY OF EVIDENCE CONTAINED IN THE SIX HOURS OF RECORDING REMOVED FROM PETITIONERS VIDEO TAPED INTERVIEW, OBSTRUCTING HER ACCESS TO HER TRIAL AT COURT. U.S.C. A 5.

THIS WAS THE EXTENT OF THE QUESTION POSED TO THIS HONORABLE COURT. IT WAS ALSO POSED TO THE LOWER COURTS. IT HAS BEEN ASKED AND ANSWERED MANY TIMES AND ALMOST ALWAYS STATES A CLAIM TO A CONSTITUTIONAL VIOLATION, EXCEPT IN THIS INSTANCE. AN INSTANCE WHERE THE FEDERAL DISTRICT COURT AND THE APPELLATE COURT OF THE SEVENTH CIRCUIT IN AFFIRMANCE MERELY MADE A FORMULATED AND CONCLUSORY DECISION ON EVIDENCE THEY WERE NOT IN POSSESSION OF AND MR. OROURKE COULD NOT OBTAIN DUE TO HIS INCARCERATION. WHERE THE FEDERAL DISTRICT COURT STATED;

"BECAUSE I DO NOT HAVE THE RECORDING BEFORE ME, I CANNOT TEST THE VERACITY OF THIS CLAIM."

THE GOVERNMENT HAS A SPECIAL RESPONSIBILITY TO ENSURE THE INTEGRITY OF THE CRIMINAL JUDICIAL PROCESS BY LIVING UP TO THE CODE OF PROFESSIONAL ETHICS AND FAIR PLAY AT ALL TIMES.

U.S. - V- WHITE 222 F.3d 363 (7th CIR 2000).

UNDER THE COMPLETENESS DOCTRINE OF FEDERAL RULES OF EVIDENCE 106 WHICH ARE FOR ALL PURPOSES THE SAME.

"THE DOCTRINE OF COMPLETENESS DOES NOT GIVE ANY PARTY AN AUTOMATIC RIGHT TO INTRODUCE MATERIAL WHICH IS OTHERWISE INADMISSIBLE" OR ADMISSIBLE FOR GOOD REASON. ITS OBVIOUS THIS EVIDENCE HAD "SOME CONCEIVABLE EFFECT ON THE OUTCOME" IN THE PRESENT CASE THE COURTS OF APPEALS, DISTRICT AND OTHERS HAVE SAID THAT NOTHING IN THE SUPPRESSED EVIDENTIARY CONFESSION/STATEMENT COULD HAVE REDUCED PETITIONER O'ROURKE'S OFFENSE BELOW FIRST DEGREE MURDER. THAT STATEMENT BY THE FEDERAL COURT APPEARS TO BE THE SAME AS ALL THE OTHER COURTS, A RULING ON THE ADMISSIBILITY OF THE EVIDENTIARY CONFESSION/STATEMENTS SUPPRESSED EVIDENCE ON THE ISSUE OF O'ROURKE'S INNOCENCE OR GUILT. A SPORTING THEORY OF JUSTICE MIGHT ASSUME THAT THE COURTS MAY WANT TO ACTUALLY SEE THE EVIDENCE BEFORE FORMING AN OPINION. FURTHER, "IN THE MATTER OF CONFESSIONS A HYBRID SITUATION EXISTS. IT IS THE DUTY OF THE COURT TO DETERMINE FROM PROOF, USUALLY TAKEN OUT OF THE PRESENCE OF THE JURY, IF THEY WERE FREELY AND VOLUNTARILY MADE, ETC AND ADMISSIBLE." FOOTNOTE 5 BRADY-V. MARYLAND 373 U.S. 83 (1963).

II. WHETHER, PETITIONERS TRIAL COUNSEL WAS INEFFECTIVE ASSISTANCE OF COUNSEL, FOR FAILING TO ADVERSELY DEFEND PETITIONERS MIRANDA RIGHTS, WHERE CONTAINED IN THE SIX HOURS OF SUPPRESSED EVIDENCE THAT PETITIONER ATTEMPTED TO OBTAIN COUNSEL, U.S.C.A. 6, U.S.C.A. 5.

IN RELATION TO SIXTH AMENDMENT CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL, PREJUDICE IS PRESUMED IF DEFENDANT DEMONSTRATES THAT COUNSEL ACTIVELY REPRESENTED CONFLICTING INTERESTS AND THAT AN ACTUAL CONFLICT OF INTEREST ADVERSELY AFFECTED HIS LAWYERS PERFORMANCE. U.S.C.A. 6.

HERE COUNSEL'S FAILURE, TO ALLOW THE PREJUDICIAL EVIDENCE INTO THE TRIAL AND AS WELL COUNSEL'S FAILURE TO INQUIRE INTO THE SOME OF THE MISSING TAPES MATERIAL

OUTLAWING Prof. name of HERS MIRANDA Rights missing, SHOWS A FAILURE to INVESTIGATE. AS well SUPPRESSION BY PROSECUTION OF EVIDENCE FAVORABLE to AN ACCUSED upon Request VIOLATES DUE PROCESS where evidence IS MATERIAL either to GUILT or to PUNISHMENT, IRRESPECTIVE of GOOD FAITH or BAD FAITH of PROSECUTION. U.S. CA AMEND 14. BRADY-V- MARYLAND 373 U.S. 83 (1963) NONDISCLOSURE BY A PROSECUTOR VIOLATES DUE PROCESS. MOONEY-V- HOLLOMAN 294 U.S. 103 (1935), SIGNIFICANTLY, THE PROSECUTIONS DUTY to Present ALL MATERIAL EVIDENCE to the JURY was not FULFILLED and constitutes A VIOLATION of DUE PROCESS REQUIRING A NEW TRIAL. U.S. CA. Fourteen 14. FURTHER, "Counsel Allowed withholding of EVIDENCE Exculpatory" to O'ROURKE'S CASE STRECKLER-V- GREENE 527 U.S. 263, 281 (1999) AND IT IS APPARENT Counsel withheld it FROM HIS CLIENT People V- HOBSON 847 N.E. 2d 421 (2005) LEAVING O'ROURKE WITH A HOBSON'S CHOICE BETWEEN Counsel AND THE EVIDENCE needed to Prove INNOCENCE. WHERE THE COURT NOTED BUT FAILED to RESOLVE, CONFLICTING Appellate Authority CONCERNING whether A DEFENSE ATTORNEY HAS AN UNQUALIFIED DUTY to comply with HIS CLIENTS Request to SEE DISCOVERY materials. THE FAILURE to PROVIDE DISCOVERY materials to the client could constitute Ineffectiveness ASSISTANCE of counsel, Had THE outcome of TRIAL BEEN DIFFERENT Had He BEEN ABLE to USE IT. People-V- HOBSON at 426, WITHHOLDING of DISCOVERY information IS A DUE PROCESS VIOLATION, U.S. CA. 14 AMEND.

III. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION, IN FAILING to HOLD A HEARING on what constitutes REASONABLE CONDUCT AND why it IS the PROPER STANDARD FOR ATTORNEY AND PREFORMANCE IN THE INSTANT CASE to ALLOW SIX HOURS of SUPPRESSED - VIDEO TAPED EVIDENCE to go UNINVESTIGATED, OR at least CHALLENGED, UNDER ILINNOIS AND FEDERAL RULES of EVIDENCE 106 WHICH PARAGRAPHS ITS U.S. CA CONST. AMEND 6, AND FEDERAL RULES of EVIDENCE 103.

IN THE FEDERAL HABEAS of O'ROURKE THE JUDGE STATES that O'ROURKE FAILED to ADDRESS O'ROURKE'S REAL ISSUES of CONSTITUTIONAL INEFFECTIVE COUNSEL AS PLAIN ERROR FOR VIOLATION of HIS CONSTITUTIONAL RIGHTS of MIRANDA NOT BEING IDENTIFIED IN THE VIDEO, THE COURT

Instead Redirects: Attention to O'Rourke's 'earring' and HIS
LIMINE to BAR HIS PRIOR CONVICTIONS. THIS HAS ABSOLUTELY
NOTHING TO DO WITH THE ISSUES AT BAR, OR THE CASE O'Rourke
IS making THAT EVIDENCE IS BEING OBSTRUCTED, CONCEALED AND SUPPRESSED
A CRIME OF OBSTRUCTION TO JUSTICE (COMPILED STATUTE 720 5/31-4(a) OR
FEDERALLY INVOLVING HIS MIRANDA RIGHTS, AND THAT HIS COUNSEL MADE NO
ATTEMPT TO INSPECT THE VIDEO ACCORDING TO ILLINOIS COMPILED STATUTES 720 ILCS
5/114-13. COUNSEL WAS IN FACT INEFFECTIVE AND VIOLATED O'Rourke's
CONSTITUTIONAL RIGHTS, THE DISTRICT COURT STATED O'Rourke VIOLATED
PROCEDURAL DEFAULT Pq 2 of ITS HABEAS ORDER, CONTRADICTS OTHER
APPELLATE COURTS AND THIS DISTRICT COURT WHERE AT MURPHY V. GARRNER
IT STATES 477 U.S. 478 AT 488 THE COURT HELD EFFECTIVE ASSISTANCE
OF COUNSEL THAT VIOLATES THE SIXTH AMENDMENT IS CAUSE FOR TOWERING
A procedural default. (7TH CIRCUIT CASES) STATE APPELLATE COUNSEL
CANNOT STRIP THE CLIENT OF HIS ONLY VIABLE ARGUMENTS BEFORE LEAVING
THE SCENE, JUDGE WOOD SAID AT BEST WHEN HE WROTE THE SPECTRUM
OF COUNSEL'S LEGITIMATE TACTICAL CHOICES DOES NOT INCLUDE ABANDONING
A CLIENT'S ONLY DEFENSE. (7TH CIRCUIT), WHILE RECORDED ON APPEAL CONTAINED
NO INDICATION AS TO WHY COUNSEL AGREED TO ADMISSION OF RECORDINGS
AND DID NOT INVESTIGATE, AND TO RESOLVE CLAIM ON DIRECT APPEAL, APPELLATE
COURT WOULD HAVE TO SPECULATE AS TO COUNSEL'S MOTIVATION. U.S.C.A.
6TH AMEND.

FEDERAL AND ILLINOIS RULES OF EVIDENCE 106 STATE "IF A PARTY
INTRODUCES ALL OR PART OF A WRITING OR RECORDED STATEMENT, AN ADVERSE
PARTY MAY REQUEST AT THAT TIME, OF ANY OTHER PART." COUNSEL FAILED TO ASSIST
MR. O'Rourke IN DOING THAT. FURTHER, FEDERAL AND ILLINOIS RULES OF EVIDENCE 103 (a)(1)
STATES "A PARTY MAY CLAIM ERROR IN A RULING TO ADMIT OR EXCLUDE EVIDENCE
ONLY IF THE ERROR AFFECTS A SUBSTANTIAL RIGHT OF THE PARTY (MIRANDA) AND;
(2) TAKING NOTICE OF PRAISE ERROR, A COURT MAY TAKE NOTICE OF PRAISE ERROR
AFFECTING A SUBSTANTIAL RIGHT, EVEN IF THE CLAIM OF ERROR WAS NOT
PROPERLY PRESERVED.

BECAUSE OF THE ISSUES IN THE PREVIOUS PARAGRAPHS
THIS HONORABLE COURT MUST REVERSE AND REMAND AT THE VERY
LEAST FOR A NEW TRIAL. AS ALL COURTS HAVE VIOLATED O'Rourke's
CONSTITUTIONAL RIGHTS OF THE U.S.C.A 6TH AND 14TH AMENDS.

IV. WHETHER, & VIOLATED PETITIONER'S RIGHTS TO BE INTERROGATED WITHOUT A VALID WAIVER OF HIS RIGHTS TO OBTAIN COUNSEL, U.S. CA. CONST. AMEND(5).

IF THE HONORABLE COURT HAS CONTEMPLATED THE CASE AT BAR, THEN IT FOUND O'ROURKE'S CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED IN REFERENCE TO THE PRECEDING PARAGRAPHS. PETITIONER INCORPORATES THOSE PARAGRAPHS HERE. THIS QUESTION OF COURSE HANGES ON THOSE OTHER QUESTIONS FOR BECAUSE OF THOSE OTHER CIRCUMSTANCES THIS QUESTION CANNOT BE ADDRESSED. THIS IS SIMPLY BECAUSE IT CANNOT BE DECIDED WITHOUT THE REMAINING VIDEO TAPE IF MR O'ROURKE'S CONSTITUTIONAL RIGHTS IN REFERENCE TO MIRANDA V. ARIZONA CAN BE SUBSTANTIATED. THIS SUBSTANTIAL VIOLATION IF EXISTING WOULD CONSTITUTE PLAIN ERROR IF INDEED IT EXISTS, HOWEVER, THAT CAN NOT BE KNOWN IF THE EVIDENCE WAS NOT BROUGHT FORWARD BY COUNSEL. MR O'ROURKE STATES WHAT HAPPENED IN THE MISSING FOOTAGE. THE COURT STATES THAT THE CONSTITUTION REQUESTS THE GOVERNMENT TO PRESERVE EVIDENCE THAT MIGHT BE EXPECTED TO PLAY A SIGNIFICANT ROLE IN A DEFENSE. CALIFORNIA V. TROMBETTA 467 U.S. 479 (1984) FEDERAL DISTRICT COURT OF MR O'ROURKE'S HABEAS PETITION JUST TOOK THE STATES WORD WITHOUT EVER SEEING THE VIDEO BECAUSE MR O'ROURKE COULD NOT PROVIDE IT FROM PRISON. IT FORMULATED ITS RESPONSE WITHOUT EVER SEEING THE COMPLETE VIDEO. O'ROURKE HAD A "RIGHT TO USE THIS EVIDENCE TO ADVISE THE EXTENT OF EVIDENCE FACING A DEFENDANT." PEOPLE V. BIER 661 N.E. 2D 511 (1996) U.S. CA. 5TH CIRCUIT. MATERIALS SHOW THE VIDEO TAPED EVIDENCE EXISTS, HOWEVER, THE VIDEO FOOTAGE IN SPECIFIC PORTIONS HAD DISAPPEARED. PEOPLE V. KOUTSKIS 627 N.E. 2D 388 (1993). THE PROBLEM AT BAR IS A VALID WAIVER CANNOT BE SUBSTANTIATED, SO THE COURT CANNOT DETERMINE PLAIN ERROR.

II. WHETHER THESE CONSTITUTIONAL RIGHTS WERE VIOLATED
AND DENYING THE PETITIONER HIS RIGHTS TO DUE PROCESS —
OF U.S.C.A. CONST. AMEND. 14.

THE OBLIGATION TO GUARD AND ENFORCE EVERY RIGHT
SECURED BY FEDERAL CONSTITUTION RESTS ON STATE COURTS
EQUALLY WITH FEDERAL COURTS. PETITIONER O'ROURKE WAS DENIED
HIS CONSTITUTIONAL RIGHTS UNDER THE LAW. THE COURTS HAVE
RULED CONTRARY TO THE COURTS RULINGS AND THE CONSTITUTION OF THE
UNITED STATES. O'ROURKE NOW LOOKS FOR THE SUPERVISORY AUTHORITY
OF THE UNITED STATES SUPREME COURT TO REVERSE THE RUBBER
STAMP AFFIXED TO MR O'ROURKE'S HABEAS PETITION AS ITS
CONTRARY TO THE RULINGS OF MANY APPELLATE COURTS AND THE HONORABLE
COURT. THE POWER TO ISSUE THIS HISTORIC REMEDIAL PROCESS WHEN
IT APPEARS THAT ONE IS DEPRIVED OF HIS LIBERTY WITHOUT DUE
PROCESS OF LAW, UPON THE COURTS RESTS THE OBLIGATION TO GUARD
AND ENFORCE EVERY RIGHT SECURED BY THE CONSTITUTION. IN VIEW
OF THE DOMINANT REQUIREMENT OF THE FOURTEENTH AMENDMENT,
WE ARE NOT AT LIBERTY TO ASSUME THAT THE STATE HAS DENIED
TO ITS COURT JURISDICTION TO REDRESS THE PROHIBITED WRONG UPON
A PROPER SITING AND IN AN APPROPRIATE PROCEEDING FOR THAT
PURPOSE. *Mooney v. Holohan* 294 U.S. 103 (1935). MR. O'ROURKE
WAS DENIED HIS PROPER SITING AT THE APPROPRIATE
PROCEEDINGS DENYING HIM REDRESS. SIGNIFICANTLY, THIS AND
ALL THE PREVIOUS PAGES AND PARAGRAPHS VIOLATED MR. O'ROURKE'S
FOURTEENTH AMENDMENT RIGHTS, AND ALL THE OTHER RIGHTS
OF THE UNITED STATES CONSTITUTION HE HAS BEEN EXCLUDED
FROM.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

15 Ronald O'Rourke #118779

Date: 28 JAN 2020