

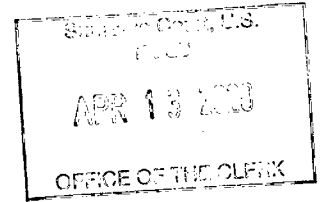
19-8360

ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES



Juan Parra-Interian — PETITIONER
(Your Name)

vs.

James Key, Supt. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth circuit

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

PETITION FOR WRIT OF CERTIORARI

Juan Parra-Interian

(Your Name) Airway Heights Correctional Ctr

PO Box 2049

(Address)

Airway Heights, Washington 99001

(City, State, Zip Code)

(Phone Number)

Case No. _____

CONSTITUTIONAL QUESTIONS

Constitutional question: 1.

Is it lawful to have a witness testify in a case where they have NO Direct knowledge of the facts?

Constitutional question: 2.

Can a State Court use Joinder of Dissimilar charges, where Acts alleged are significantly different from the original set of facts?

Constitutional question: 3.

A Court abuses its discretion when its ruling is based on an erroneous view of the law, or on a clearly erroneous assessment of the evidence.

therefore, Can a Court allow witness, or victims to testify to different facts in separate cases, where witness was NOT "witness thereto" ?

Constitutional Question: 4.

It is considered "Harmless Error" to convict a person while failing to consider Exculpatory evidence that can exonerate him?

Constitutional question: 5.

Was it Constitutional Error to Deny admission of Defendants witness's Affidavit & Declaration, which could exonerate Defendant ?

Constitutional Question: 6.

Was it Harmless Error to omit Defendant's witnesses Affidavit from Jury consideration ?

Case No _____

CONSTITUTIONAL QUESTIONS

Constitutional question: 7.

Under State Law, can a witness be both, "Awake and half asleep" for the purpose of finding of guilt, or probable cause ?

Constitutional Question: 8.

Was joinder of the dissimilar offenses proper ?

Constitutional Question: 9.

Was there insufficient evidence to convict the Defendant as pertains to the Solicitation & Conspiracy charges ?

Constitutional question: 10.

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:

Mr. Juan Parra-Interian

Airway Heights correctional Center

PO Box 2049

Airway Heights, Washington 99001

State of Washington; Supt. James Key (Respondent)

Airway Heights correctional Center

PO Box 2049

airway Heights, Washington 99001

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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 No. 19-35497; 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 No. 3:17-cv-05481-RBL. West.; 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 E to the petition and is

☒ reported at 432169 43366-6; 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 Dec. 19, 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: Feb 28, 2020, and a copy of the order denying rehearing appears at Appendix A.

☐ 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).

STATEMENT OF THE CASE

Petitioner States;

There are Two main issues at appeal in this case, (1) Where the Court abused its discretion and allowed a "Witness/Victim" to testify at a second set of criminal charges, to which they were NOT a Direct Witness to. And;

(2) Misjoinder of criminal charges in the case, where the first set of charges were derived from Alleged Criminal Acts, and the second were derived from a criminal investigation where "Confidential informant wore a Wire, recording some Evidence of conspiracy & Solicitation to commit murder.

Petitioner argues;

(1) Witness was not competent to testify in trial where they had NO direct knowledge thereof; (2) Were incompetent to testify in the first trial due to State Law provision under statute.

Petitioner argues;

Misjoinder of the Criminal Charges was improper under Joinder, where sets of charges were dissimilar in context, scope and allegation. and therefore should have consisted of Separate trials.

Petitioner states;

Ineffective assistance of counsel, where Defendants counsel failed to object to admission of evidence and improper witness testimony.

Petitioner States;

Due Process and fair trial doctrine was violated by the Court's abuse of discretion. And in allowing the jury to hear testimony of incompetent witness.

Moreover, numerous errors compounded to create serious Constitutional violation and this case should be reversed for retrial to correct such errors.

Case No. _____

STATEMENT OF THE CASE

Petitioner was charged in cowlitz County, Washington with Burglary and Indecent Liberties. See RCW 9A.52.030;.020 and RCW 9A.44.100.

Petitioner was charged with being in the home of the victim without permission and AFTER a Party, was present until the Victim called police. The witness/victim stated that, Defendant had no right ot be present in the home, and had sexually abused her.

Petitioner was adamant about being invited into the home some time earlier for a party, and that the party did die down, but remained going until the arrival of the police.

Police subsequently arrested petitioner and he remained in county jail, until the time of as second set of charges was filed by the county prosecutor alleging that petitioner (Defendant) had committed other crimes while incarcerated at the jail.

Petitioner was then arraigned on the charges of Solicitation of murder, RCW 9A.28.030, and conspiracy to commit murder, RCW 9A.28.040. The State utilized a known Felon to "wear a wire" to entrap the Defendant into the Conspiracy and Solicitation charges. The Petitioner's cellmate wore a wire for the express opportunity to receive a favorable sentence in exchange for his testimony and wearing the wire recording device to trap petitioner into serious charges.

The third cellmate of petitioner's wrote an Affidavit and Declaration. under the penalty of perjury that the Informant, Mr. White, was trying to "Set Up" the Petitioner and trap him so he could gain an edge in his case.

As trial progressed, the Misconduct of State and the Ineffectiveness of Trial Counsel was apparent. Defense counsel failed to object to numerous issues and to Motion the court to dismiss evidence that was erroneous such as the false information by the state's informant, versus the Exculpatory witnesses statements.

Mr. Parra-Interian was subsequently convicted. And appealed from the first to the State courts and State Court of Appeals. Each appeal has been denied. Mr. Parra-Interian then appealed to the United States district court and the United States Court of appeals in the Ninth Circuit, at San Francisco. He was denied a review of the case.

STATEMENT OF THE CASE

The petitioner States that he is entitled to relief and Review of his case by the courts to effect his right to access the courts under the Constitutional Guarantee.

The Decision to convict petitioner was not reasonable under the circumstances and was an abuse of discretion; led to prosecutorial misconduct and the Ineffective assistance of counsel during trial.

Petitioner remains with an Liberty Interest that has been violated by the unlawful conviction and extreme sentence he is now forced to serve. Moreover, the Belief and inference that the Court and Jury convicted him under the sheer power of public fear of persons being sex offenders, creates inference of unlawful prejudice and discrimination.

Petitioner continues to aver his innocence, and pleads with the court for justice.

Petitioner states that while he was present in the home, he never sexually assaulted or abused anyone, and that he was invited to the party. This allows his presence in the home, and that the Residents never once told him to leave.

Moreover, the States abuse of power to restrain him is an unreasonable enforcement of its power, to control crime, it is expected. however, to restrain an individual so that he cannot care for himself, provide for his defense, and at the same time fail to do so, exceeds the substantive limits set on state action and the Due Process clause.

Petitioner's due Process rights suffered as a matter of right denied to a person whom is expected to retain such rights. And afforded a trial by his peers with Due Process protections.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Constitutional Provisions;

Fourteenth amendment and Due Process was violated by the Abuse of discretion of the Court and in allowance of testimony of unqualified witness.

When jury deliberated they heard evidence and testimony which unfairly prejudiced the Jury.

Federal Statutes;

Lower Court's failure to afford constitutional protections, under the sixth and fifth Amendments to the United States Constitution.

18 U.S.C. § 557, Harmless Error.

Where Harmless Error standards does NOT apply to persons convicted unlawfully.

State statutes;

Statelaw, Regulated code of Washington [RCW, here on out] 5.60.020, Witness Competency.

RCW 9A.28.040, conspiracy to commit homicide.

RCW 9A.28.030, solicitation of Murder.

RCW 9A.44.100, Indecent Liberties

RCW 9A.52.030, Burglary (2nd Degree); .020 Burglary (1st Degree).

REASONS FOR GRANTING THE PETITION

Petitioner argues;

The Court's abuse of discretion by the improper use of allowing a "witness/Victim" to testify in a second set of separate facts that had NO bearing on the first case, Was unlawful violation of due Process. Because it lead to conviction via improper influence, and therefore was prejudicial.

Petitioner argues;

The Court's abuse of discretion in Filing a second set of facts, Factually and significantly different from the first set, was abuse of discretion and had an prejudicial effect on the Trial outcome.

Petitioner argues;

The court abused its descretion when it allowed a "Witness/Victim" to testify at trial when the State Law RCW 5.60.020, Witness competency was clearly established and "witness"did NOT meet the criteria of Competency.

Because A violation of the United States Constitution is NEVER Harmless error, this case should be reversed and remanded.

State never produced evidence beyond a reasonable doubt to convict. The legislative intent in RCW 5.60.020 is presumed Constitutional, the State never proved that beyond a reasonable doubt the witness was competent to testify. This violates the Due Process clause. The State denied Petitioner, Equal Protection of the Laws. State acted outside the scope of authority, and therefore violated the constitution and laws of the State in so doing. The petitioner has a liberty interest in fair trial and potential for reversal.

Due Process requires at a minimum that, absent countervailing state interests of overriding significance, persons forced to settle thier claim of right through judicial process MUST be given a meaningful opportunity to be heard.

"The touchstone of due process is protection of the individual against arbitrary government action.."

The U.S. Court of appeals held erroneous holding in conflict with another decision of this court, in Jackson V. Virginia, and in Brecht V. Abrahamson, inter alia; in direct conflict with these decisions, the court denied to hear this appeal and Petition.

In The Supreme Court
of the
UNITED STATES

State of Washington
Respondent

V.

Juan Parra-Interian
Petitioner.

Case No. _____

PLAINTIFF'S BRIEF & MEMORANDUM OF LAW
TO PETITION OF WRIT OF CERTIORARI

BRIEF AND MEMORANDUM OF LAW

INTRODUCTION

In Brecht V. Abrahamson, 507 U.S. 619, 123 L.Ed.2d 353, 113 S.Ct 1710 (1993). The Court held, " Error had a prejudicial effect and influence on the Jury's decision to convict." Further, in such circumstances, a legal Rule requiring the issuance of the Writ [of Habeas Corpus] at least often, to avoid a grievous wrong holding a person in custody in violation of the Constitution...of the United States."

In 28 U.S.C. § 2241(c)(3), §2254(a), such a rule thereby protects individuals from unconstitutional convictions and helps guarantee the integrity of the criminal process by assuring that trials are fundamentally fair.

Denying the Writ in cases of grave uncertainty, would actually guarantee that many, in fact, will be held in unlawful custody contrary to the Writ's most basic traditions and purposes. And it would tell judges who believe individuals are quite possibly being held in custody in violation of the U.S. Constitution that, they CANNOT grant relief.

Claims consist of improperly stated rule of Well Established Law, and Misjoinder of criminal charges stemming from two separate incidents.

INTRODUCTION

The State has the responsibility for the error that infected the Trial initially. And, if one assumes that; (1) in cases of grave doubt, the error is at least likely to have been harmful in fact, and; (2) that retrial will often (or even sometimes) lead to reconviction (even if on a lesser degree) then State interest is further deminished by a factual circumstance.

The number of acquittals wrongly caused by the grant of writ (of habeas corpus) and delayed retrial, (The most serious harm affecting the State's legitimate interest) will be small when compared with the number of persons whom would otherwise be wrongfully imprisoned.

If a "Violation of constitution" is harmless, then there is NO causal connection between the violation and custody, and the prisoner is NOT in custody in violation of the U.S. Constitution.

However, "When an Errors' natural effect is to prejudice substantial rights and the Court is in grave doubt about the "Harmlessness" of that error, the error MUST be treated as if it had a "Substantial and Injurious Effect" on the verdict." Kotteakos, 328 U.S. at 764, 765, 776, 90 L.Ed 1557, 66 S.Ct 1239 (1946).

The harmful error of conviction in violation of an individual's right to Due Process and fair Trial guarantee is established when; (1) Misjoinder of the charges was permitted by the Court, and; (2) The Court permitted the victim in the first case (or set of criminal charges) to testify in the second trial in which the Witness had no direct knowledge of the charges or the case incidents, of the second case matter.

Moreover, the "Prejudice" is palpable and presumed to have created Jury bias. Harmless error "MUST" be construed and applied so as to bring the charges into substantial harmony, NOT into square conflict. [18 USC § 557, which reflects Rules 8 and 14] see Federal rule 5 of criminal procedure: documentary History, 2nd preliminary draft Feb. 1944, note to rule 8, pp 35-36, "Since the Counts of two or more indictments consolidated for trial, [under [18 USC § 557] are put..., in the SAME category as if they were separate counts in one indictment." McElroy V. U.S., 164 U.S. 76, 77, 41 L.Ed 355, 17 S.Ct 31 (1896), "This type of joinder is more

INTRODUCTION

Widely practiced than is generally realized."

Before a Federal Constitutional error can be held harmless, the Court MUST be able to declare a belief that it was harmless "Beyond a reasonable Doubt".

Chapman, 386 U.S. at 24; 17 L.Ed.2d 705, 87 S.Ct 824. The error of joinder & witness testimony had a substantial influence on the Jury's verdict. Kotteakos, 328 U.S. at 765; 90 L.Ed 1557, 66 S.Ct 1239.

HISTORY

Mr. Juan Parra-Interian was convicted in the Superior Court of King County Washington on two separate set of charges. first was the initial charges of Burglary and Sexual assault (indecent liberties); and the Second set of charges stem from a "Jail house informant" entrapping accused by wearing a wire recording of an alleged "Conspiracy and Solicitation of murder" of the Victim/Witness in the first trial.

The Court's Decision to Allow JOINDER of the Two distinct sets of criminal charges was an Abuse of discretion, where Each set of infractions consisted of Separate and distinct issues as different from each other as chinese is to english. Moreover, the "Witness/Victim" had NO special knowledge of the second set of charges that arose and Testimony wouldn't be Accurate or otherwise reliable. Therefore; Joinder was improper and abuse of discretion.

The Trial court should have held separate trials on the matters where Each was as distinct from the other and there was no cause for the "Witness/Victim" from the first case [Without special knowledge of the second set of facts] to testify.

Judgment & Sentence, Cause No. for Burglary & Rape, Cowlitz county 10-1-00557-6; and Cause No. for Solicitation & Conspiracy, Cowlitz county 11-1-01263-5, are in direct Appeal and dispute by the Defendant.

Moreover, the court Denied to hear Exculpatory evidence of Defendant's Witness testimony refuting State Informants testimony.

II ARGUMENT

Mr. Juan Parra-Interian argues;

The charges against him were improperly joined and the Court's conclusion that he was NOT Prejudiced by such misjoinder was in error and should be rejected.

The Magistrate judge [The "Court" here on out] concluded that, the Defenses of two separate sets of charges (1) Burglary and Rape, and; (2) Solicitation & Conspiracy to commit murder were proper.

The Court reasoned as, rejecting defendants argument of disparity between the charges, and in allowing the "Victim/Witness to testify on the second trial matters, did NOT establish jury bias and discrimination resulting in Conviction.

Moreover, the strength of the evidence between the burglary and rape case was substantially different than that of the Solocitation and conspiracy case, and a "Risk of confusion" to Jury over them would bias such jury panel due to the perception in each case .

Where Evidence in the conspiarcy & solicitation case varies widely from that of the burglary & Rape case; and inference that the "Victim/Witness" would be allowed to testify in the second case was also improper and abuse of Discretion. And therefore was NOT harmless error. In United States V. Lane, 474 U.S. 438; also 18 U.S.C. s 557., Harmless error.

Witness/victim was NOT Party to or a direct witness to the Solicitation & Conspiracy case and therefore the allowance by the Court of Testimony was, improper and should be reversed. Therefore, it did NOT Consist of harmless error where the defendant was convicted on said testimony.

II ARGUMENT

Where the Court concluded that there was NO possibility of confusion between defendant being charged with burglary & Rape in the original case, and being charged with Solicitation of Murder and Conspiracy, created a reasonable doubt as to the jury's ability to Defer any prejudice derived therefrom.

Moreover, The court's assertion that; "these charges Did NOT prejudice jury" Dkt 44 at 13. Is in error. and Defendant argues that joinder was improper, in fact, because the evidence was disproportionate supporting each case.

The fact that evidence to convict defendant on burglary & Rape was highly speculative, and required the jury to infer a great deal from the circumstances and to make factually impossible findings to convict.

Moreover, In the Burglary & Rape case, the Court allowed the Victim/Witness to testify contrary to State Law, RCW 5.60.020 witness Competency; Where, (1) Witness ADMITS and state concedes that alleged Victim "Was NOT Fully Awake" during said sexual assault.

The criteria under RCW 5.60.020 is for a witness to be competent to testify, they MUST be reasonably AWARE.

Where victim/Witness Admits and state concedes, "Victim was NOT fully Awake"... creates an inference of witness INCOMPETENCY.

Moreover, the failure of defense counsel to object to such allowance, deprived the defendant of the effective assistance of Counsel and 6th amendment guarantee to Counsel, and Fair trial doctrine, under the 5th amendment.

III ARGUMENT

Clearly, defendant was prejudiced by the Jury's hearing testimony of the conspiracy and solicitation charges, where Witness was allowed to testify. Which caused an accumulative effect on the Jury's Decision to convict.

REASONABLE JURY

Where the Court's abuse of discretion provided unreliable results...
"If a reasonable jury would doubt whether the evidence proves an essential element of the crime, the U.S. Court of appeals MUST Reverse the Conviction." Sultan V. U.S., 115 F.3d 321 (5th Cir 1997).

It is reasonable to infer a Jury would NOT have convicted defendant in making the determination they did without the abuse of discretion in allowing circumstantial evidence, Improper witness testimony and Joinder.

Moreover, "the government's proof may lay entirely on circumstantial evidence, the Court of appeals is Loathe to stack inference upon inference in order to uphold a jury verdict." United States V. Ruiz, 105 f.3d 1492 (1st Cir 1997).

Defendant argues that; "A Court of appeals is Obligated to correct plain error when the error seriously affects the Fairness; integrity, or public reputation of judicial proceedings." In United States V. Miner, 108 F.3d 967 (8th cir 1997).

The fundamental fairness of Allowing a "witness to testify without direct knowledge of the case and The plain error of joinder combined to create conviction based on the passions of jury rather than actual evidence, was affected by Court's decision to allow such to occur. and affected the fundamental fairness of the Trial process. The Evidence was NOT Material to the case where Witness was allowed to testify to acts she had no direct knowledge of.

However, the Material facts concern the "Testimony" of a witness. The evidence is NOT material to the Solicitation and Conspiracy case.
"An issue of material fact is genuine IF the evidence is sufficient to a reasonable jury to return a verdict." Anderson liberty lobby inc., 477 U.S. 242, 248, 106 S.Ct 2505, 91 L.ed.2d 202 (1986).

Defendant argues that; A reasonable Jury Could NOT find a genuine issue of "Reasonable Doubt" to convict based on such error. Joinder of charges; Trial witness testimony was improper.

III ARGUMENT

REASONABLE JURY

To determine the effects of the Trial error, [the court should] consider "both the impact of the impropriety of improperly admitted evidence, and the overall weight of the evidence presented at trial, consider; (1) the importance of witness testimony; (2) whether testimony was accumulative; (3) the Presence of corroborating/contradicting testimony of witness(es) on material points; (4) the extent of cross examination permitted; (5) the overall strength of prosecution's case." Deleware V. Van Arsdall, 475 U.s.673; 684, 106 S.ct 1431, 89 L.ed.2d 674 (1986).

JOINDER OF CHARGES

Joinder of Offenses; is defined as, charging a defendant with 2 or more crimes in a single indictment.

The Harmless error Rule.1; doctrine an unimportant mistake by trial judge at trial will NOT result in reversal on appeal.

Defendant argues;

Joinder of the two sets of charges/offenses is improper, since they arose from two distinct and seperate actions or incidents and that they are totally distinct in nature and cause, criminal act, context and scope.

- 1, Conspiracy to comit homicide RCW 9A.28.040 and;
- 2, Solicitation of murder RCW 9A.28.030, as contrasted by;
- 3, Indecent liberties RCw 9A.44.100 and;
- 4, Burglary RCW 9A.52.030 (2nd Deg), .020 (1st Deg)

A reasonable jurist could not derive a conviction from two seperate sets of facts in the instance of Defendant Parra-Interian's case. Because, A reasonable person wouldn't be able to discern the difference from two totally seperate facts and sets of charges stemming from two different alleged crimes. The inference gives rise to "reasonable Doubt" as to whether or not there was sufficent facts to arrive at a guilty finding in either case.

III ARGUMENT

Conspiracy & Solicitation, as charged; the Court concluded that, a sexual Assault Victim/Witness could testify in Solicitation & conspiracy trial. Despite that Victim/Witness had NO special knowledge of the case. Except that the Solicitation & conspiracy case had to do with the Witness/Victim in the first case of Burglary & Rape as subject thereof.

The state argued that; "Evidence regarding one set of charges is readily apparent to the other", and the Court concluded that; "The nature of the Rape case would be introduced into the Solicitation case." Dkt 44 at 13-14

Defendant argues; The very nature of the two cases are distinct, and the decision to allow joinder and witness testimony was abuse of discretion. Where Witness/Victim "Was NOT Fully Awake", victim/witness does NOT meet the definition of a "Competent witness," Moreover, Witness had NO direct knowledge of the case.

Constitutional question:

Is it Constitutional to afford a "Not fully awake"[at time of incident] person to testify, when they Do Not meet the criteria of competency, in proceedings where she has NO Direct knowledge or information?

Defendant thinks NOT.
and, the very justification to allow such a person to testify under such circumstances is Constitutional ERROR which deprived the Defendant of a fair trial and of Due Process. (

The Decision by the Court to allow such testimony, was contrary to applicable law, Clearly established by legislative and Federal Acts. see RCW 5.60.020, witness competency; and 28 U.S.C. § 2254(d)(1)(2), et seq.

IV REASONABLE DOUBT DOCTRINE

Reasonable Doubt Doctrine as to whether Sexual assault victim was "AWARE" or NOT "Fully awake" goes to the merits of defendant's argument under RCW 5.60.020, witness competency.

If witness/Victim was NOT "fully AWAKE" as stated, they do NOT Meet the definition of a "Competent witness". moreover, the conviction without this Competency is questionably unlawful, and reversal should be ordered.

Blacks Law dictionary defines "Reasonable Doubt" as;
Reasonable doubt is one for which a sensible person/reason can be supplied.

In deciding whether guilt or innocence has been proved, the jury MUST begin with the presumption defendant is innocent.

"Because every thing relating to human affairs, and depending on moral evidence is open to some possible or imaginary doubt." see Commonwealth V. Webster, 59 Mass. (5 Cush) 295, 320 (1850).

Defendant argues that the jury had not applied Reasonable Doubt doctrine during deliberations.

Constitutional question:

Did the Trial Court use reasonable Doubt in the determination when it granted the witness in the first case to testify, when they had NO Direct knowledge or facts in which to derive a testimony from?

Defendant argues Not. such abuse of discretion is NOT Harmless Error. Where defendant is incarcerated for acts otherwise a reasonable jury would not have found him guilty of without such abuses of discretion and improper joinder.

V. HARMLESS ERROR

Harmless Error exists where the Court failed to consider the signed declaration and Affidavit of Mr. William Womack, a Cellmate of the Defendants and of the States informant, Mr. Ronald White.

The Affidavit sworn to under penalty of perjury that the facts were true, was made voluntarily by Witness to the Informant's statements "to Set Up" the Defendant, Mr. Parra-Interian. [See Appendix D.]

Harmless error does NOT result in reversal. Therefore, based on the Court's consideration merely of the states Evidence and witnesses, and failed to allow the Defendant to admit and consider Exculpatory evidence of Defendant; Establishes Constitutional Violation of Due Process.

CONSTITUTIONAL Law § 840.2-due process

In a Federal Habeas Corpus proceeding, in which an accused's who has been convicted in a state Court of; Conspiracy to commit Murder & Solicitation to commit Murder, alleges that;

(1) the issue at trial was whether the accused was afforded a fair trial by hearing of the evidence. (2) Extinguishing circumstances indicate whether the U.S. supreme court will grant writ of certiorari, reverse judgment of the sentencing court, and remand the case for further proceedings, because, (3) the Evidence is material to the Defendant's case, (4) it is reasonably likely that Disclosure of it would have changed the outcome of the proceedings at trial, and (5) a reasonable Jurist would find otherwise.

The outcome of the State trial proceedings was NOT harmless Error.

INEFFECTIVE ASSISTANCE OF COUNSEL

CLAIM I

The Ineffectiveness of Defense counsel's failure to "Investigate the possibilities of distinguishing exemplar of the Defendant's voice from a Taped recording where taped recording was the only evidence against Defendant in Conspiracy & Solicitation allegations." See U.S. V. Baynes, 687 F.2d 659 (3rd Cir 1982).

Defendant argues that Defense Counsel never argued the "Taped recordings" where Confidential informant was sole provider of information used to indict and convict the Defendant, and where it could've been used to impeach the testimony of said informant.

Was Improper and Grounds for Ineffective Assistance claim.

"Trial Counsel's failure to object to the admission of the Taped recording made by the informant for police, [where informant had issue and wanted less jail time for exchange of acting as informant], and the inflammatory reference to the Defendant, constitutes Ineffective assistance of Counsel." see Sager V. Maas, 907 F.supp. 1412 (D. Ore.1995).

Constitutional Law § 836, 840-due process-evidence.

"Just as a conviction upon a charge not made, would be sheer denial of due process, So is it a violation of due process to convict and punish a Man without evidence of his guilt."

INSUFFICIENT EVIDENCE

CLAIM 2

"A Conviction based upon a record wholly devoid of any relevant evidence of the element charged offense is unconstitutional." Thompson V. Louisville, 362 U.S. 199, 4 L.ed.2d 654, 80 S.Ct 624.

Prosecution held "evidence" of wire tap and taped for the jury's consideration, was sufficient to convict Defendant of Solicitation and Conspiracy to commit murder. The admission of which a "Witness"

INSUFFICIENT EVIDENCE

CLAIM 2

Cont;

Who was NOT a Competent witness under state Law, RCW 5.60.020, witness competency; to testify, and who had NO direct or special knowledge of the facts arising from the Solicitation & Conspiracy charges. Therefore Ineffective Assistance of Counsel for failure to object to such testimony and Insufficient evidence, was prejudicial to plaintiff resulting in improper conviction.

In Plaskowski V. Casperson, 125 F. Supp. 1149 (E.D. Wis. 2001) the Court held, "There was insufficient evidence to support Defendant's conviction and the Court's decision holding to the contrary was an unreasonable application of the Constitutional standard set forth by the United States Supreme Court in, Jackson V. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), "Federal Habeas Corpus Court MUST look at State Law for the substantive elements of the criminal offense, but the minimum amount of evidence required by due process to prove the offense is a matter of Federal Law."

Where state Court did not weigh evidence to Habeas standards and the Federal court of appeals Denied review, the Court failed to "Review the evidence for sufficiency" such that due process was violated.

"The Trial Court's failure to object to the testimony concerning incriminating statements, presumably to have been made by defendant in a taped conversation with a government informant, required an evidentiary hearing to resolve the claims of ineffective assistance of counsel." Government of Virgin Islands V. Nichols, 759 F.2d 1073 (3rd Cir 1985); also see, Whelchel V. Wood, 996 F.supp. 1019 (E.D. Wash. 1997).

"The ineffective assistance of Trial Counsel's failure to investigate, to present mitigating evidence, and prepare Experts of voice exemplars of defendant's voice (with respect to taped recording), for their testimony to be presented at trial and penalty phase of trial, constitutes ineffective assistance of counsel." see Bean V. Calderon, 163 F.3d 1073 (9th Cir 1998).

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INSUFFICIENT EVIDENCE

CLAIM 2

Evidence is material if it has ANY Tendency no matter how slight, to advance the parties' position at trial, it is probative and relevant.

Evidence need NOT, establish the proponent's case or theory in and of itself.

Evidence is material if offered to prove or disprove an element of a legally cognizable claim, offense or defense.

Evidence may consist of Witness testimony. Defendant cedes this point. However, the decision to admit "evidence of witness Testimony", when said witness had NO Direct Facts to testify to, constitutes very serious Departure from Judicial norm; Evidentiary testimony and Judicial jurisprudence.

Constitutional Question:

Does the Admission of Testimony, where witness has NO Facts, constitute Abuse of Judicial discretion?

Defendant thinks so.

The admission of testimony as evidence was prejudicial and caused Error in the Jury's deliberations resulting in Conviction.

This is NOT Harmless Error, where Defendant shall spend numerous years in prison, for crimes otherwise would NOT be convicted of.

The Court's failure to consider and admit for Juror consideration, an Affidavit and Declaration of a Material Witness which was exculpatory to Defendant, was NOT Harmless Error and resulted in prejudice to Defendant at Trial, and jury deliberations.

MISJOINDER

CLAIM 3

The Court improperly allowed joinder of two very distinct and separate sets of criminal charges. [for joinder, see Pg _____.]

The Court abused its discretion in allowing joinder and caused the Defendant to be prejudiced.

The court held in the U.S. district Court that, Joinder was proper because the defendant could not demonstrate that separation was proper. The facts show that two separate and distinct sets of criminal charges, which were alleged to have occurred on SEPERATE occasions, being joined IS in fact, improper. And that Defendant was prejudiced by the Jury's deliberations on the two separate sets of facts.

Syllogism lies, where a Lay person, (Jurist) who is NOT educated in the legal nuances of the law, and where ambiguity lay as to the facts in separate sets of crimes, it would be confusing to some of the most well practiced professionals to keep separate the facts, each of its own merits and make a finding.

Constitutional Question:

Can a lay person such as a jurist, determine the differences between separate sets of facts, of such serious magnitude, remain unbiased and make a finding from the facts alone, without judicial or prosecutorial intervention?

The Defendants thinks NOT. Syllogism lies where the Lay person has NO real experience in such determinations, it will lie on passion rather than facts of the case.

Here, the jury is to consider the merits of a Rape & Burglary case. Then is asked to derive the merits of "the victim being Murdered" via, the facts from a Solicitation & Conspiracy to commit murder case. And to derive a finding of fact that the Defendant, committed such acts "BEYOND A REASONABLE DOUBT".

Logic creates the inference that, "A reasonable jurist would be prejudiced by the facts that a person charged with Rape & Burglary, has now attempted to murder the same victim."

USE OF GOVERNMENT INFORMANT

CLAIM 4

"Defense Counsel's failure to seek discovery regarding the Government informant, where two police agencies considered informant unreliable, and his family considered him a pathological liar, amounts to Ineffective Assistance of counsel, where evidence could've been used to impeach informant's testimony."

Based on information and belief obtained after trial, Informant was considered unreliable by both the Local police and County sheriff. Moreover, The State's reliance on the informant, was improper and abuse of power, and amounts to Prosecutorial misconduct, resulting in a Due Process violation. See Thomas V. Calderon, 120 F.3d 1045 (9th Cir 1997).

The use of Government informant where informant made a deal for less jail time if he talked to Defendant and effectively, coerced a statement to the charges of Conspiracy & Solicitation of Murder. Which caused Defendant great prejudice.

Trial counsel's failure to object to admission of taped conversation and move to delete inflammatory reference to defendant, constituted Ineffective Assistance of Counsel. See Sager V. Maas, 907 F.supp. 1412 (D. Ore. 1995).

The inference of insufficient evidence is strong and should have been counted in and at trial. The Magistrate's conclusion that Prosecution did not engage in misconduct "simply because Defendant Parra's claims were little more than speculation was in error.

PROSECUTORIAL MISCONDUCT

CLAIM 5

Prosecution had introduced a witness's testimony to Solicitation & Conspiracy of Murder, when said Witness had NO Relevant evidence of knowledge of the facts.

Defendant Parra-Interian's Fifth amendment right to Due Process was violated when Prosecutor introduced testimony of "witness" from a separate trial, where the facts were totally different from the facts in the first trial, and the distinction between Rape & Burglarly, are as different from Solicitation & Conspiracy to commit murder. See Cause No. 10-1-00557-6 (Dkt.9, Ex.1), Sentence for burglary & Rape, from King County Washington; and Cause No. 11-1-01263-5 (Dkt. 9, Ex.2).

PROSECUTORIAL MISCONDUCT

CLAIM 5

Cont; Mr. Parra-Interian's Sentence, Cowlitz county Washington.

The testimony of a witness who had NO Direct knowledge of the facts in the solicitation & Conspiracy case was allowed to testify, by the Court as the Prosecution advised, " because the jury will hear the testimony of the Rape & Burglary case."

The Court allowed such testimony, which prejudiced Mr. Parra-Interian and resulted in an improper conviction.

The Prosecution's Assertion that, " a person who could solicit the murder of a mother and authorize the murder of her child if necessary could be guilty of anything."

The joinder of the charges, the Prosecution argued, did not rise to the level of prejudice so great that it violates the U.S. Constitution. Moreover, that, even if misjoinder can rise to level of unconstitutional violation, it does NOT do so here because joinder was not fundamentally unfair and defendant cannot show actual prejudice.

To the contrary, Supreme court precedent clearly dictates that, in certain egregious circumstances, misjoinder can trigger a constitutional violation and, furthermore, given the serious impact that consideration of one set of charges had on the mentality of the jury considering the remaining charges, this is precisely the type of case contemplated by the supreme court. See Lane, 474 U.S. at 466 n.8.

The Prosecution knew what it was asking when it advised the Court of Joinder. The State prosecution knew that it would prejudice the Jury to the first set of charges and result in conviction. Moreover, that the second set of charges would result in Conviction on the second set of charges, solicitation & Conspiracy.

The U.S. Supreme Court's Decision was NOT of what the law "MIGHT" be, as the State suggests. (Dkt 18 at 8.) Rather, the Supreme Court clearly stated that Misjoinder WOULD rise to the level of a constitutional violation ONLY if it results in prejudice so great as to deny a defendant his fifth amendment right to fair trial.

The supreme Court's precedent is unambiguous that, if the misjoinder is as sufficient to constitute a fifth amendment violation,

Case No. _____

PROSECUTORIAL MISCONDUCT

CLAIM 5

The supreme Court's precedent is unambiguous in that, if the misjoinder is as sufficient to constitute a fifth amendment violation. Accordingly, if a state was faced with misjoinder that prejudiced the defendant enough to deny him a fair trial and ruled against the defendant, then, the decision of the court would be an unreasonable application of clearly established Federal law and warrant habeas relief.

State misrepresented the facts as to joinder and created a fifth amendment violation in the defendant's trial which resulted in conviction. Prosecutorial Misconduct is Palpable, in that the State's job is NOT to win at all costs, but to seek Justice.

Justice on fair terms for criminal defendants, that doesnot create a threat to the public reputation, and discredit the judicial process.

ABUSE OF DISCRETION

CLAIM 6

The Magistrate's conclusion that, the Prosecutor did NOT engage in misconduct when Defendant claims that Prejudice shall result from joinder of charges, and that Defendant failed to show prejudice was in error.

Prejudice is shown by the fact that "defendant is convicted of crimes that if tried separately would have derived separate results. and prejudice is presumed where a jury hears the "Evidence" from the Witness /Victim from the first trial (without having personal knowledge of the facts in the second trial charges) creates an inference of prejudice. And Establishes the presence of REASONABLE DOUBT.

The Judge abused his discretion when he allowed the Charges to be joined that were so dissimilar in fact and in essence, that the creation of the presumption of guilt when heard by the jury, is blatantly obvious.

Moreover, the first set of charges, Burglary & Rape would have taken a great deal of inference from the jury to convict defendant. The defendant was initially invited to the house for a party, where afterwards, he was accused of Rape and burglary. One cannot be invited into a house then charged with Burglary, unless he was directed to leave and refused to do so. Additionally, the "Witness/victim" ADMITS to thinking the sexual liberties was her Boyfriend/fiance and that she WAS NOT fully awake at time of the incident.

Reasonable Doubt exists as to whether or not she was; (1) A Competent witness, and (2) whether she was experiencing a sexual assault, when she stated, "she thought it was her fiance who was touching her."

Therefore, the inference that Joinder was proper is in error, and should be reversed.

Constitutional Question:

Did trial court err when it ordered Joinder of the charges?

And, as a result of joinder, Did it unfairly prejudice the Defendant?

INDECENT LIBERTIES

CLAIM 7

Indecent Liberties under State Law, RCW 9A.44.100, consists of a defendant taking advantage of a person whom is "helpless".

The state argued, that a trier of fact "could" have found defendant guilty beyond a reasonable doubt. And that under 28 U.S.C. § 2254(d), it was not unreasonable application of clearly established federal law for the State Court of Appeals to conclude a trier of fact could have done so.

Defendant argues that it was impermissible for the State's argument to lead witness into statement that, once she was digitally penetrated, she began to awaken, and therefore, the provisions of RCW 9A.44.100 apply.

In Jackson V. Virginia, 443 U.S. 307; 321, 99 S.Ct 2781, 61 L.Ed.2d 560 (1979) the supreme Court held, A State prisoner who alleges evidence in support of his state conviction, is insufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt, states a Constitutional claim.

Defendant argues;

(1) the Evidence of "Rape" was insufficient to cause a finding of guilt. Because there was lack of DNA evidence of said "rape" by indecent liberties. And (2) Because the Prosecution coached witness in Court hearings.

Moreover, the Witness/victim was NOT awake, but as the state cedes, "NOT fully awake", she thought it was her fiance who was "touching her".

Clearly, the evidence is insufficient and probable cause for sufficiency should be held on the merits of this case where substantial error has occurred and caused significant harm to plaintiff in the form of liberty interests, and false conviction.

In Coleman V. Johnson, 556 U.S. 650, 655, 132 S.Ct 2060, 182 L.Ed.2d 978 (2012) The Court held that, A Habeas Court must presume trier of fact resolved any conflict of evidence in favor of the prosecution.

However, (1) the elements of the criminal offense defined by state law; (2) SUFFICIENT evidence existed for rational fact finder to conclude beyond a reasonable doubt that defendant possessed the INTENT to commit the crime; MUST be Established.

Defendant argues; (a) the evidence was contradicted and exculpatory evidence was NOT considered; (b) Exculpatory evidence points to conspiracy by cellmate,

INDECENT LIBERTIES

CLAIM 7

Cont;

Defendant argues; (c) the exculpatory evidence was clear and convincing.. where Third cellmate wrote a statement/affidavit concerning the exculpatory evidence of a second cellmate who was "out to get defendant" and earn time off his jail sentence.

In State V. Bucknell, 144 Wash. App. 524, 526, 529-30 (2008) the court held, a victim who could not move was physically helpless.; In State V. Puapuaga, 54 Wash. App. 857, 861 (1989) The Court held, unconsciousness as a situation in which a victim was physically incapable of resisting, but aware of what was transpiring and was Capable of responding.

Argument; As defined in RCW 9A.44.100 a victim must be helpless, and incapable of responding. However the victim in this case was capable of responding and was "half awake" at time.

So either the Helplessness was apparent or the consciousness was apparent. The State seems to want BOTH aspects of the terms defined in thier favor.

If a victim is Physically helpless as the State asserts, then the Conviction for indecent liberties would lie; However. IF the Victim was "half awake" as the State cedes, "Not fully awake", then she had the capacity to resist because she was aware of the situation and therefore the physically helplessness claim does not meet the criteria.

Again, Defendants Assert the Evidence was INSUFFICIENT TO CONVICT. And reversal should be ordered by the Court, even if for evidentiary hearings to remedy the matter of Sentence.

The State's assertion that the victim was helpless was in error and an abuse of discretion by the court in determination of victim's claims of being, "Not fully awake"; goes to the merits of the claims that the state cannot have it both ways. either the victim was, "Helpless; or she was cognizant" and therefore capable of saying NO to sexual action. See RCW 9A.44.050 and RCW 9A.60.020, witness competency (Pg 7).

GOVERNMENT INFORMANT

CLAIM 8

The state argued the Jury was informed as to the issues regarding Mr. White, the Government informant used to convict Defendant. The Defense argued that the informant was out to set up the Defendant. And produced a written affidavit by the third cellmate of the trio stating that the informant intended to "set up" the Defendant.[See Pl Appendix D.]

The Exculpatory evidence by written testimony of William Womack was not regarded during the Court's proceedings as substantial. And the result was prejudice to the Defendants Defense that he was NOT culpable, either factually or circumstantially for the State's charges, solicitation & Conspiracy to commit murder.

The Prosecutor's actions "infected the trial with unfairness as to make the resulting conviction a denial of due process." See Darden V. Wainwright, 477 U.S. 168, 179 (1986). Because the State unfairly asserted the Evidence by Mr. White (Government informant) was substantial to its case, and outweighed Defendant's own testimony of Affidavit of Mr. Womack., created an inference of unfairness that need be resolved at evidentiary hearing.

Moreover, Defendant shows that the State's Informant, Mr. White made a false statement knowingly and intelligently, and with a reckless disregard for the truth. This requires a hearing to establish probable cause under the fourth amendment. See Franks V. Delaware, 438 U.S. 154, 155-56 (1978). "Where a defendant makes a substantial preliminary showing that a false statement knowingly and intelligently or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and allegedly false statement was necessary to find probable cause, the Fourth Amendment requires a hearing be held at the defendants request..."

Such hearing was never conducted nor was it inferred by the Court of appeals when it denied Defendants petition of Habeas Corpus. Either by the State Courts or Federal Courts.

The State Court of Appeals oversimplified the allegation that, Informant was offered a plea deal as result of information pertaining to Mr. Parra-Interian's conviction. And framed the argument only as Misconduct. (Dkt. 9, EX.24 at 3).

CERTIFICATE OF APPEALABILITY

Defendant is Entitled to "Certificate of Appealability", because "In order to show cause and receive a certificate of appealability, a Petitioner MUST show ONLY that his claims are "Debatable Amongst Jurors of Reason." Miller-El V. Cockrell, 537 U.S. 322, 336 (2003).

The Washington Court of Appeals denied review of Defendant's claims without an evidentiary hearing, through which Defendant can expand the record, by hearing the Informant's and Exculpatory witnesses, Affidavits, and develop those facts. See Schiro V. Landrigan, 550 U.S. 465, 473-75 (2007).

The Defendant exercised due diligence and appropriate diligence in attempting to develop the facts. See Williams V. Taylor, 529 U.S. 420, 437 (2000). Defendant found the Exculpatory witness, Mr. Williams, was able to give his version of the events and for submission to the Court. Because what Mr. White (Government Informant) stated was untrue.

WITH REGARD TO PREJUDICE

With regard to prejudice, this Court should reverse Defendant's conviction and remand for Hearing to the appropriate Court. Because, the collection of errors each individually are sufficient to show a reasonable probability that the Trial outcome would have been different, when considered in concert, their prejudicial effect is clear. see Turner V. Duncan, 158 F.3d 449, 457 (9th Cir 1998).

Defendant was denied a fair trial under the Constitution and Laws of the United States. as a result, Defendant, Mr. Parra-Interian, is Entitled to Reversal.

Case No. _____

INEFFECTIVE ASSISTANCE OF COUNSEL

Ineffective assistance of counsel occurs when the Trial attorney fails to move to suppress evidence on "wireTap" or recording of conversation and testimony when there are two separate Statements averring "facts" which one avers guilt, and another avers the intentional "set up" of the Defendant.

Decisions that "could" be the result of trial strategy are ordinarily afforded deference and cannot be touched by a reviewing court. see Strickland V. Washington, 466 U.s. 668, 686,(1984). However, "A petitioner may establish constitutionally inadequate performance if he shows that counsel omitted significant & obvious issues that were clearly and significantly weaker." See Mayo V. Henderson, 13 F.3d 528, 533 (2nd Cir 1994) also See Fagan V. Washington, 942 F.2d 1155, 1157 (7th Cir 1991).

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CONCLUSION

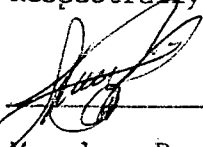
Wherefore, for the reasons set forth in this petition, Defendant respectfully requests the Honorable Supreme Court to;

1. Make an Order remanding the Trial Court [or other Court of Competent Jurisdiction] rehear the Defendants Case based on the issues presented herein.
2. Order a Writ of Mandamus, or Habeas Corpus and Remand for resentencing indicative of the case and its merits.
3. Any other relief deemed Just and Proper, by the Court.

I, Petitioner, aver under penalty of perjury that, the foregoing is true & Correct to the best of my knowledge and belief, this 13 Day of APRIL 2020.

I Swear a True Copy of this Petition has been mailed, postage prepaid to Each party concerned with this action, as Dated above and signed hereto.

Respectfully submitted,




Mr. Juan Parra-Interian #365878
Airway Heights Corr. Center
PO Box 2049
Airway Heights, Washington 99001

Pro Se

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: April 13, 2020

Mr. Juan Parra-Interian

PO Box 2049

Airway Heights, Washington 99001

Airway Heights correctional Center