

No. _____

IN THE

ORIGINAL

SUPREME COURT OF THE UNITED STATES

CHAYCE AARON ANDERSON PETITIONER
(Your Name)

vs.

PEOPLE OF THE STATE OF COLORADO — RESPONDENT(S)
PHILIP J. WEISER, et al.
ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Chayce A. Anderson ^{DOC # 175290}
(Your Name)
Arkansas Valley Correctional Facility
12750 Hwy. 96, at Lane 13
(Address)

Ordway, CO 81034
(City, State, Zip Code)

None / N.A.
(Phone Number)

1

QUESTION(S) PRESENTED

I. Whether the district court reversibly erred when it improperly limited the scope of cross-examination of the jail house informant, thereby denying Mr. Anderson his constitutional right to confrontation.

II. Whether the district court reversibly erred in admitting highly prejudicial and irrelevant evidence describing uncharged, worse crimes, thereby denying Mr. Anderson his constitutional right to a fair and impartial jury trial.

1. Improper Admission of text messages.

2. Improper Admission of "fictitious" date rape drug statement.

III. Whether the district court reversibly erred when it denied Mr. Anderson's motion for mistrial after allowing inadmissible testimony from a Habitual Felon describing uncharged worse crimes, thereby denying Mr. Anderson his constitutional right to a fair and impartial jury trial.

IV. Whether the Division reversibly erred when it affirmed the district court's decision to not allow sufficient cross-examination of the jail house witness as constitutional harmless error. Whether the trial error impacted the verdict beyond a reasonable doubt.

V. Whether the Division reversibly erred when it failed to address the constitutionality of the "uncharged, worse crimes" argument.

VI. Whether the Division reversibly erred when it stated falsely:

1. "The record overwhelmingly supports the prosecution's case and lacks support for defendant's assertions."

2. "There was no error in the proceedings. Without error, there was no reason to declare a mistrial."

3. "We presume, absent a showing of actual prejudice..."

VII. Whether the Division reversibly erred when it concluded there was no prejudice to allowing a habitual felon to commit

QUESTION(S) PRESENTED

perjury in the form of a fabricated false confession that incorporated a "fictitious" roofie[®] allegation, thereby denying Mr. Anderson his constitutional rights to a fair and impartial jury trial, equal protection of the Law, and Due Process of Law.

VIII. Whether the Division reversibly erred when it validated two essential elements of alleged crime; "Knowledge" and "Physically Helplessness," based upon not-true, "made-up" false confession statements" by a habitual felon, that Mr. Anderson never confessed to. Whether this violates constitutional rights to Counsel, protections against self-incrimination, and due process of Law.

IX. Whether the District Court reversibly erred when it ruled that defense counsel opened the door to the text messages, when he did not open the door. Whether this violates fair and impartial trial rights.

AND FINALLY;

X. Whether a Verdict can constitutionally stand, where a Jury is deprived of critical factual evidence, that Mr. Anderson has never roofied anyone in his life time, leaving the Jury to speculate the possibility of a roofie's role in their Verdict. Whether this is Unconstitutional, and violates Principles of U.S. Constitution, and violates fundamental fairness of Law.

XI. Whether a Partial Acquittal gives the Court authority to utilize false, inadmissible evidence. Whether the Counts are individual and separate; meaning whether a Partial Acquittal on One Count specifically authorizes use of inadmissible, false evidence on a Second Count. Whether the Second Count conviction is therefore constitutionally permissible, or if it violates constitutional right to a fair and impartial jury trial.

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:

THE PEOPLE OF THE STATE OF COLORADO,
(1) PHILIP J. WEISER, Attorney General,
&
(2) JENNIFER L. CARTY, Assistant Attorney General,
Attn. # 48991

RELATED CASES

(1) People v. Anderson, No. 17-~~en~~CA-469, C.O. Court of Appeals. Judgment entered Aug. 15, 2019.

(2) People v. Anderson, No. 19-SC-627, Colorado Supreme Court. Judgment entered Feb. 3, 2020.
"IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.
BY THE COURT, EN BANC, FEBRUARY 3, 2020."

TABLE OF CONTENTS

OPINIONS BELOW	<u>19</u>
JURISDICTION	<u>10</u>
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	<u>11</u>
STATEMENT OF THE CASE	<u>12-24</u>
REASONS FOR GRANTING THE WRIT	<u>25-29</u>
CONCLUSION	<u>30-32</u>

INDEX TO APPENDICES

APPENDIX A: Decision of Colorado State Court of Appeals.

APPENDIX B: Petition for Writ of Certiorari to CO Supreme Court.

APPENDIX C: CO Supreme Court Order & Mandate.

APPENDIX D: Opening Brief in C.O. State of Appeals.

APPENDIX E: Attorney General's/PEOPLE's Answer Brief.

APPENDIX F: Reply Brief in C.O. State of Appeals.

APPENDIX G: Prior in forma pauperis Order, Order Appointing Alternate Defense Counsel (A.D.C.), Mittimus.

* (Please Note: APPENDIX B: Decision of State Trial Court → Mr. Anderson is not allowed transcripts in C.D.O.C., but has requested select portions from Appellate Lawyer, yet to receive them.) *

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Bernal v. People</u> , 44 P.3d 184 (Colo. 2002)	<u>14</u>
<u>Bruton v. United States</u> , 391 U.S. 123 (1968)	<u>19</u>
<u>Chapman v. California</u> , 386 U.S. 18 (1967)	<u>27</u>
<u>Crawford v. Washington</u> , 541 U.S. 36 (2004)	<u>26</u>
<u>Davis v. Alaska</u> , 415 U.S. 308 (1974)	<u>15</u>
<u>Delaware v. Van Arsdall</u> , 475 U.S. 673 (1986)	<u>15</u>
<u>Gilbert</u> , 12 P.3d at 339	<u>22</u>
<u>Hagos v. People</u> , 288 P.3d 116 (Colo. 2012)	<u>16</u>
<u>Hersey v. Tully</u> , <u>supra</u>	<u>19</u>
<u>In re Winship</u>	<u>30</u>
(continued next page)	
STATUTES AND RULES	
C.R.E. 401	<u>16, 24</u>
C.R.E. 402	<u>16</u>
C.R.E. 403	<u>16, 17</u>
CONSTITUTIONAL PROVISIONS	
Colo. Const. Art. II § 16	<u>2, 3, 11-16, 21-22</u>
U.S. Const. Amend <u>VI</u>	<u>25-28, 30-32</u>
U.S. Const. Amend <u>XIV</u>	<u>2, 3, 11-16, 21-22</u>
	<u>25-28, 30-32</u>
	<u>2, 3, 11-16, 21-22</u>
	<u>25-28-30-32</u>
OTHER	
Standards for the Prosecution Function 3-6.6(d)	<u>18</u>

TABLE OF AUTHORITIES CITED

<u>CASES</u>	<u>PAGE NUMBER</u>
<u>Kinney v. People</u> , 187 P.3d 548 (Colo. 2008)	<u>14, 15, 27</u>
<u>Masters v. People</u> , 58 P.3d 979 (Colo. 2002)	<u>18</u>
<u>Merritt v. People</u> , 842 P.2d 162 (Colo. 1992)	<u>14, 22</u>
<u>Morgan v. Illinois</u> , 504 U.S. 719 (U.S. Ill. 1992)	<u>16</u>
<u>Morrison v. People</u> , 19 P.3d 668 (Colo. 2000)	<u>16</u>
<u>People v. Abbott</u> , 690 P.2d 1263 (Colo. 1984)	<u>20</u>
<u>People v. Acosta</u> , 338 P.3d 472 (Colo. App. 2014)	<u>20</u>
<u>People v. Anderson</u> , No. 17-CA-469, C.O. Court of Appeals	<u>4</u>
<u>People v. Anderson</u> , No. 19-SC-627, Colorado Supreme Court	<u>4</u>
<u>People v. Bastardo</u> , 554 P.2d 297 (Colo. 1976)	<u>26</u>
<u>People v. Coney</u> , 98 P.3d 930, 934 (Colo. App. 2004)	<u>17</u>
<u>People v. Cousins</u> , 181 P.3d 365 (Colo. App. 2007)	<u>19</u>
<u>People v. Dement</u> , 661 P.2d 675 (Colo. 1983)	<u>26</u>
<u>People v. District Court of El Paso County</u> , 869 P.2d 1281, 1286 (Colo. 1994)	<u>17</u>
<u>People v. Ellis</u> , 148 P.3d 205 (Colo. App. 2006)	<u>16</u>
<u>People v. Esparza-Trejo</u> , 282 P.3d 471 (Colo. App. 2011)	<u>19</u>
<u>People v. Estep</u> , 583 P.2d 927 (Colo. 1978)	<u>18</u>
<u>People v. Everett</u> , 250 P.3d 649 (Colo. App. 2010)	<u>18, 20</u>
<u>People v. Fortson</u> , 2018 COA 46M	<u>18</u>
<u>People v. Fry</u> , 92 P.3d 970 (Colo. 2004)	<u>26</u>
<u>People v. Goldsberry</u> , 509 P.2d 801 (Colo. 1973)	<u>18, 19</u>
<u>People v. Harlan</u> , 8 P.3d 448 (Colo. 2000)	<u>16, 19</u>
<u>People v. Herdman</u> , 310 P.3d 170 (Colo. App. 2012)	<u>20</u>
<u>People v. Herrera</u> , 2012 COA 13	<u>18</u>
<u>People v. Houser</u> , 2013 COA 11	<u>22, 26, 27</u>
<u>People v. Johnson</u> , 2017 COA 11 (Colo. 2003)	<u>18</u>
<u>People v. Jurado</u> , 30 P.3d 769 (Colo. App. 2001)	<u>27</u>

TABLE OF AUTHORITIES CITED

<u>CASES</u>	<u>PAGE NUMBER</u>
<u>People v. King</u> , 498 P.2d 1142 (Colo. 1972)	<u>14, 15</u>
<u>People v. Lohr</u> , 2013 COA 57 (Colo. 2003)	<u>18</u>
<u>People v. McClelland</u> , 350 P.3d 976 (Colo. App. 2015)	<u>18</u>
<u>People v. Melillo</u> , 25 P.3d 769 (Colo. 2001)	<u>16</u>
<u>People v. Miller</u> , 113 P.3d 743 (Colo. 2005)	<u>16</u>
<u>People v. Montoya</u> , 942 P.2d 1287 (Colo. App. 1996)	<u>15, 22</u>
<u>People v. Orozco</u> , 210 P.3d 472 (Colo. App. 2009)	<u>14</u>
<u>People v. Owens</u> , 183 P.3d 568 (Colo. App. 2007)	<u>27</u>
<u>People v. Pate</u> , 625 P.2d 369 (Colo. 1981)	<u>15</u>
<u>People v. Quintana</u> , 882 P.2d 1366 (Colo. 1994)	<u>14</u>
<u>People v. Saiz</u> , 32 P.3d 441, 446 (Colo. 2001)	<u>17</u>
<u>People v. Santana</u> , 255 P.3d 1126 (Colo. 2011)	<u>20</u>
<u>People v. Sepulveda</u> , 65 P.3d 1002 (Colo. 2003)	<u>16</u>
<u>People v. St. James</u> , 75 P.3d 1122 (Colo. App. 2002)	<u>20</u>
<u>People v. Vigil</u> , 718 P.2d 496 (Colo. 1986)	<u>20, 23</u>
<u>People v. Wilson</u> , 2014 COA 114	<u>27</u>
<u>People v. Young</u> , 70 P.2d 1140, 1143 (Colo. App. 1985)	<u>17</u>
<u>Tevlin v. People</u> , 715 P.2d 338, 341 (Colo. 1986)	<u>17</u>
<u>United States v. Johnson</u> , 447 F.2d 31 (7th Cir)	<u>19</u>
<u>United States v. Lucas</u> , 516 F.3d 316 (5th Cir. 2008)	<u>20</u>
<u>Wend v. People</u> , 235 P.3d 1086 (Colo. 2010)	<u>18</u>

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

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

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the 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 _____ 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 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 _____ 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.

~~1.~~

JURISDICTION

☐ For cases from **federal courts**:

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

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

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

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

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

** See U.S. Court Order # 589
extends deadline to July 2nd, 2020.*

** This Motion is Timely Sought, 90-day
Rule ends May 3rd, 2020.*

☒ For cases from **state courts**:

The date on which the highest state court decided my case was February 3rd, 2020,
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).

*→ An Extension of Time was filed, no response from the Court. Mr. Anderson was prejudiced by COVID-19.
In Good Faith, Writ of Cert. Filed by Hand "Pro Se".*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Confrontation Clauses of the United States and Colorado

Constitutions. U.S. Const. Amends VI, XIV; Colo. Const. art. II, §16.

2. Constitutional Right to a Fair and Impartial Jury Trial.

U.S. Const. Amends VI.

3. Equal Protection of the Law. U.S. Const. Amends XIV; Colo. Const. art. II, §16.

4. Due Process of the Law (U.S. + C.O. Constitutions).

5. Presumption of Innocence Rights (U.S. + C.O. Constitutions).

6. Right to have an Impartial Jury decide case (")

7. Right to have a prosecutor to prove to the jury beyond a reasonable doubt, each and every element of the offense charged.

8. Right to not be prosecuted with worse, uncharged offenses.

LEGAL TERMS USED:

Cross Examination, Confrontation, Fair & Impartial Jury Trial, Mistrial, Actual Prejudice, False Confession, Fabricated Statements, Equal Protection, Due Process, Protections Against Self-Incrimination, Opening the Door, Fundamental Fairness of Law, Partial Acquittal, Inadmissible Evidence, Constitutionally Permissible, Narrowing the Scope, Limited Question, Perjury, Habitual Offender, Undue Prejudice, Abuse of Discretion, Reversible error, ...

9. Right to Counsel.

10. Protections against self-incrimination.

OPENING BRIEF:

STATEMENT OF THE CASE

1. Defense counsel did not open the door. Defense counsel argued that his question was about a single text. He argued that there was extensive cross-examination about texts between Mr. Anderson and S.W., but not between S.W. and K.M. [R.Tr, 11/15/16, pp. 136:5-137:14].

2. DeLano's felony record → [R.Tr, 11/16/16, pp. 105:12-107:11].

DeLano's testimony → [R.Tr, 11/16/16, pp. 108:5-113:20].

→ Court narrowing scope of cross examination [R.Tr, 11/16/16, pp. 114:5-115:18]

→ Court narrowing possible penalty question [R.Tr, 11/16/16, pp. 115:19-116:25]

→ Limited question of DeLano → [R.Tr, 11/16/16, pp. 117:1-118:5].

The jury was not informed during questioning of the length of time DeLano originally faced, or the reduced time he ultimately faced from his plea bargain.

→ Fictitious "roofie" → [R.Tr, 11/16/16, pp. 118:6-120:25].

* → Immediate after DeLano's testimony, Mr. Anderson informed Judge preserved objection of Perjury claim through Counsel, [Citation Unknown]. *

3. The Court did not provide a written instruction to the jury about the limited purpose testimony regarding the text between S.W. and K.M. Nor did counsel's request it do so. [R.Tr, 11/16/16, pp. 211:2-219:9; 11/17/16, p. 3:6-16; R.CF, pp. 17-40].

4. The Court improperly limited cross-examination of prosecution witness DeLano, thereby depriving Mr. Anderson his constitutional right of confrontation.

5. The initial sentencing range included up to 24 years in the Department of Corrections, but after the plea, his maximum exposure was six months in the county jail. (not including x4 Habitual Offender 12 Enhancement).

STATEMENT OF THE CASE

6. The Court also reversibly erred in admitting highly prejudicial and irrelevant evidence in the form of the content of a text message from S.W. to K.M., stating she felt roofied, and testimony of DeLano stating Mr. Anderson told him he gave S.W. date rape drugs.

7. Any injection of potential date rape drugs could only have served to inflame the passions of the jury, evoking horror or retribution impacting and violating Mr. Anderson's constitutional right to a fair and impartial jury trial. The potential use of date rape drugs had no relevance to any fact of consequence, and even if it had some minute probative value, this was substantially outweighed by undue prejudice and the admission of this testimony was an abuse of discretion and reversible error.

8. It would, however, portray Mr. Anderson in the most sinister light possible and undermine the fundamental fairness of the proceedings, calling into question the reliability of the verdict.

→ Therefore, the error was substantial and obvious and reversible plain error.

9. Finally, the court reversibly erred in denying counsel's motion for mistrial for improper admission of the text message that S.W. felt roofied.

The injection of objectionable, inadmissible evidence of a date rape drug subjects Mr. Anderson to the type of harm an instruction could not cure, and the Court's denial of the motion for mistrial violated Mr. Anderson's constitutional right to a fair trial. The court's denial is reversible error.

Therefore, this Court should reverse Mr. Anderson's conviction and remand the matter for a new trial.

10. Here, the court reversibly erred by limiting cross-examination to solely the fact of an original felony charge and

STATEMENT OF THE CASE

a misdemeanor plea. The jury was not informed the actual sentence received, nor the extent of the sentence DeLano originally faced, which was up to 24 years in the Department of Corrections. (not including x4 Habitual Offender Enhancement, actual exposure was 96 years in D.O.C. before D.A. amended Cts.)

ARGUMENT

1. "A trial court has substantial discretion in deciding questions concerning the admissibility of evidence. Therefore, absent an abuse of discretion the evidentiary rulings of a trial court will be affirmed." People v. Quintana, 882 P.2d 1366, 1371 (Colo. 1994). However, this discretion does not permit limitations on cross-examination that unduly restrict a defendant's right to question a witness about bias or motive. Merritt v. People, 842 P.2d 162, 166-67 (Colo. 1992). Review of a discretionary ruling asks if the court's decision was "manifestly arbitrary, unreasonable, or unfair, or based on an erroneous understanding or application of the law." People v. Orozco, 210 P.3d 472, 475 (Colo. App. 2009). In contrast, possible confrontation right violations are reviewed de novo. Bernal v. People, 44 P.3d 184, 198 (Colo. 2002).
2. The right to confront and cross-examine witnesses is guaranteed by the Federal and Colorado Constitutions. Kinney v. People, 187 P.3d 548, 558-59 (Colo. 2008). Thus, while courts have wide latitude to reasonably limit cross-examination, id at 559, they must "allow broad-cross examination of a prosecution witness with respect to the witness's motive for testifying, especially... where her testimony against the defendant might be influenced by a promise of, or hope or expectation of, immunity or leniency." People v. King, 179 Colo. 94, 98 498 P.2d

STATEMENT OF THE CASE

1142, 1144-45 (1972) (emphasis added).

3. A confrontation violation occurs if the defendant "was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness," which leaves the jury with a "significantly different impression of the witness's credibility." Kinney, 187 P.3d at 559 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 680, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)) (internal quotations omitted).

4. As relevant here, when a witness faced criminal charges and entered into a plea agreement, the defendant must be allowed to provide the jury "with adequate facts from which it can appropriately draw inferences relating to bias and motive." People v. Montoya, 742 P.2d 1287, 1293 (Colo. App. 1996).

5. A.J.'s equivocation about whether her plea agreement was conditioned on providing testimony against defendant underscores the need to expose the jury to "facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness." People v. Pate, 625 P.2d 369, 370 (Colo. 1981) (quoting Davis, 415 U.S. at 318, 94 S.Ct. 1105). The wide disparity between the charges, as well as the leniency of deferred adjudication, plausibly suggest that A.J.'s testimony "might have been influenced by a promise of, or hope or expectation of, immunity or leniency." King, 179 Colo. at 98, 498 P.2d at 1144-45.

6. Therefore, by precluding cross-examination on the plea details, the trial court denied defendant his constitutional right to confrontation.

7. As the result of this error, Mr. Anderson's constitutional

STATEMENT OF THE CASE

right to confrontation was violated and the error is reversible.

8. A trial court's evidentiary rulings are reviewed for an abuse of discretion. People v. Melillo, 25 P.3d 769, 773 (Colo. 2001). When a court's ruling is manifestly arbitrary, unreasonable, or unfair the court has abused its discretion. Id. Errors not preserved by objection are reviewed for plain error. Hagos v. People, 288 P.3d 116, 120 (Colo. 2012); citing, People v. Miller, 113 P.3d 743, 748-50 (Colo. 2005). Plain errors are obvious and substantial. Hagos, 288 P.3d at 120; Miller, 113 P.3d at 750. Where the error undermines the fundamental fairness of the trial and casts serious doubt on the reliability of the judgment of conviction, the error is reversible. Hagos, at 120; People v. Sepulveda, 65 P.3d 1002, 1006 (Colo. 2003).

9. The U.S. Constitution provides that every criminal defendant has a fundamental right to a fair trial. U.S. Const., Amend. VI; Colo. Const., art. II, sec. 16; Morrison v. People, 19 P.3d 668 (Colo. 2000). An essential element of a fair trial is a fair and impartial jury. Morgan v. Illinois, 504 U.S. 719, 112 S.Ct. 2222 (U.S. Ill. 1992); People v. Ellis, 148 P.3d 205, 208 (Colo. App. 2006); People v. Harlan, 8 P.3d 448 (Colo. 2000) ("Every individual, whether detested or revered, is entitled to a fair trial.").

STANDARD OF REVIEW FOR ADMISSIBILITY OF THE EVIDENCE:

1. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." C.R.E. 401. "Evidence which is not relevant is not admissible." C.R.E. 402.
2. C.R.E. 403 provides that "although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading

STATEMENT OF THE CASE

the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403 "strongly favors the admission of evidence... and the balance should generally be struck in favor of admission when evidence indicates a close relationship to the event charged." People v. District Court of El Paso County, 869 P.2d 1281, 1286 (Colo. 1994). The term "unfair prejudice" refers to a tendency "to suggest a decision made on an improper basis," and the term "does not mean the damage to a defendant's case that results from legitimate probative force of the evidence." Id.

3. The Colorado Supreme Court has held that "the probative worth of any particular bit of evidence is affected by the scarcity ~~of~~ or abundance of other evidence on the same point, and 'probative value' may be calculated by comparing evidentiary alternatives." People v. Saiz, 32 P.3d 441, 446 (Colo. 2001). "Rule 403's 'probative value' ~~thereby~~ therefore signifies the 'marginal' or 'incremental' probative value of evidence relative to other evidence in the case." Id.

4. A trial court's determination under C.R.E. 403 is reviewed for abuse of discretion. People v. Young, 70 P.2d 1140, 1143 (Colo. App. 1985). To prevail under this standard, "a defendant must show the trial court's decision was manifestly arbitrary, unreasonable, or unfair." People v. Coney, 98 P.3d 930, 934 (Colo. App. 2004). The reviewing court "must give the evidence the maximum probative value attributable by a reasonable fact finder and the minimum unfair prejudice to be reasonably expected." Id.

5. "A trial court's evidentiary ruling will not be reversed where the error is harmless." Tevlin v. People, 715 P.2d 338, 341 (Colo. 1986).

ARGUMENT

1. Evidence is unfairly prejudicial if it has an undue tendency to

STATEMENT OF THE CASE

suggest a decision using an improper basis, commonly but not necessarily an emotional one, such as sympathy, hatred, contempt, retribution, or horror. McClelland, 350 P.3d at 984 (emphasis added); citing, People v. Herrera, 2012 COA 13, 41, 272 P.3d 1158, 1166 (citing, Masters v. People, 58 P.3d 979, 1001 (Colo. 2002)).

2. Eliciting legally objectionable testimony is "manifestly improper." People v. Fortson, 2018 COA 46M, ¶ 31, 421 P.3d 1236, 1242 (Colo. App. 2018); citing, People v. Estep, 196 Colo. 340, 344, 583 P.2d 927, 930 (1978); see also Standards for the Prosecution Function 3-6.6(d) ("The prosecutor should not bring to the attention of the trier of fact matters that the prosecutor knows to be inadmissible... by ... asking legally objectionable questions.")

3. Further, even where defense counsel fails to object to the improper use and admission of objectionable testimony elicited by the prosecutor at trial, ... "above all, it is the appellate court's responsibility to avoid a miscarriage of justice for a defendant even when defense counsel seriously lapses at trial." Fortson, 2018 COA at ¶ 24, 421 P.3d at 1241; quoting, Wend v. People, 255 P.3d, 1086, 1097 (Colo. 2010).

4. Generally, instructing the jurors to disregard erroneously admitted evidence is a sufficient remedy. People v. Johnson, 2017 COA 11, ¶ 42, citing, People v. Lohr, 2013 COA 57, ¶ 25. Yet, no curative instruction will suffice when inadmissible evidence "is so highly prejudicial... it is conceivable that but for its exposure, the jury may not have found the defendant guilty." Johnson, 2017 COA at ¶ 42; citing, People v. Everett, 250 P.3d 649, 663 (Colo. App. 2010) (quoting, People v. Goldsberry, 181 Colo. 406, 410, 509 P.2d 801, 803 (1973)).

5. It is, of course, essential that the court observe caution that evidence is not so selected, nor used in such a manner, that there

STATEMENT OF THE CASE

is a likelihood of it being given undue weight or emphasis by the jury. This would be prejudicial abuse of discretion and constitute grounds for reversal. See, Hershey v. Tully, supra; and United States v. Johnson, 447 F.2d 31 (7th Cir.).

6. See, People v. Harlan, 8 P.3d 448 (Colo. 2000) ("Every individual, whether detested or revered, is entitled to a fair trial.") There are some ~~some~~ contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored. People v. Goldsberry, 181 Colo. 406, 410, 509 P.2d 801, 803 (Colo. 1973); citing, Bruton v. United States, 391 U.S. 123 (1968).

7. The Goldsberry Court went on to state that in its case, the district attorney was fully cognizant the witness would respond as it did and expose the jury to inadmissible and highly prejudicial evidence. The court cannot condone this conduct and has repeatedly held the duty of a prosecutor is to see justice done, by seeking the truth through the presentation of proper evidence and not merely to convict. Goldsberry, at 803. Where the prosecutor clearly lacked adherence to elementary principles of fairness in its zeal to win a case, that can only be condemned. Id.

STANDARD OF REVIEW FOR MISTRIALS

1. We review a court's denial of a motion for a mistrial for an abuse of discretion. People v. Cousins, 181 P.3d 365, 373 (Colo. App. 2007). A court abuses its discretion when its ruling is (1) based on an erroneous understanding or application of the law or (2) manifestly arbitrary, unreasonable, or unfair. People v. Esparza-Treto, 282 P.3d 471, 480 (Colo. App. 2011).

2. Factors relevant in considering whether a mistrial should be

STATEMENT OF THE CASE

declared include the value of a cautionary instruction and the nature of the inadmissible evidence. People v. Vigil, 718 P.2d 496, 505 (Colo. 1986). Notably, "a motion for a mistrial is more likely to be granted where the prosecutor intentionally elicited" the improper evidence. People v. Everett, 250 P.3d 649, 662 (Colo. App. 2010).

3. An error in a trial court's ruling on a motion for mistrial is subject to harmless error review. See, e.g., United States v. Lucas, 516 F.3d 316, 345 (5th Cir. 2008) ("When improper evidence is introduced to a jury but a defendant's subsequent motion for mistrial is denied, we review the denial for abuse of discretion, and if we find error, we apply harmless error review," (footnote omitted)); see also People v. Santana, 240 P.3d 302, 309 (Colo. App. 2009) (court's error in refusing to grant mistrial based on a constitutional violation subjected to constitutional harmless error review), rev'd on other grounds, 255 P.3d 1126 (Colo. 2011) (finding no constitutional violation and, consequently, declining to address whether constitutional harmless error review applies).

4. Under general harmless error review, we will disregard the error as harmless if there is no reasonable probability that it contributed to the defendant's conviction. People v. Acosta, 338 P.3d 472, 486 (Colo. App. 2014); citing, People v. Herdman, 310 P.3d 170, 175 (Colo. App. 2012).

5. While a mistrial is a drastic remedy, it is warranted "where the prejudice to the defendant is too substantial to be remedied by other means." People v. St. James, 75 P.3d 1122, 1125 (Colo. App. 2002). The trial court's refusal to grant the mistrial constituted a gross abuse of discretion and was reversible error. See, People v. Abbott, 690 P.2d 1263, 1269 (Colo. 1984).

OPINION BRIEF STATEMENT OF THE CASE:

4. "Anderson suggested they share a ride because he lived nearby."

→ This is false. The case involves a Taxi Cab that does not exist. Mr. Anderson never suggested this, nor did he live nearby. He convinced a sober Silvermine Driver stopped at a red light to give them a safe ride to the apartment.

"Anderson also exited the car and tried to enter the apartment. K.M. told him he needed to leave. K.M. checked on S.W., who she saw was still asleep in her own bed. K.M. then fell asleep in her own room."

→ This is false. K.M. invited Mr. Anderson into apartment. K.M. never told him to leave. Not even S.W. asked him to leave until after he provoked her with his HIV comment. K.M. was awake entire time. K.M. spoke to S.W. before and after alleged incident.

5. "S.W. woke up to Anderson penetrating her..."

→ This is false. S.W. admitted at trial to being awake when K.M. and Mr. Anderson entered apartment loudly together.

"Anderson yelled at S.W. that he had given her and K.M. HIV and smashed bottles of alcohol in their kitchen."

→ This is false. The comment was directed only to S.W. The Opinion shows the bias of the panel, as the K.M. consensual sexual encounter was mentioned only by defendant in Pre Sentence Investigation Report.

9. "When the prosecutor asked M.D. why he disclosed that Anderson discussed raping S.W...."

→ This is false. Mr. Anderson never "discussed raping S.W." M.D. fabricated statements. Mr. Anderson's story has never changed, he maintains the sex was consensual, he maintains his actual innocence.

16. Colorado cases have found the Confrontation Clause satisfied

STATEMENT OF THE CASE

where "the jury is fully informed as to the original charge brought against a prosecution witness as well as the charge to which the witness later pleaded guilty in exchange for his or her testimony, and the jury also hears about the penalty actually received."

Montoya, 942 P.2d at 1293 (emphasis added).

17. Because similar Colorado cases — with the exception of Gilbert, 12 P.3d at 339, which considered a jury instruction question — hold that the jury must be informed of the original charges, the charges pleaded to, and the penalty imposed, the trial court improperly limited cross-examination. See, e.g.,

Montoya, 942 P.2d at 1293.

18. However, we conclude that this error was harmless beyond a reasonable doubt. See, Houser, ¶ 64.

19. Factors we consider in determining if the defendant was prejudiced include "the importance of the witness' testimony to the prosecution's case, whether the testimony was cumulative, the presence or absence of corroborating or contradictory evidence on the material points of the witness' testimony, the extent of the cross-examination otherwise permitted, and the overall strength of the prosecution's case." Merritt, 842 P.2d at 169.

→ There was significant absence of corroborating evidence.

There was significant contradictory evidence.

→ M.D. claimed the bottles were broken together, yet Mr.

Anderson had no cuts on his hands.

→ Toxicology results prove no "roofie."

→ M.D. created multiple false scenarios of a "roofie," bouncing back and forth between lies.

20. "The record overwhelmingly supports the prosecution's

STATEMENT OF THE CASE

case and lacks support for defendant's assertions."

→ This is false. See REASONS FOR GRANTING PETITION #19.

39. "There was no error in the proceedings. Without error, there was no reason to declare a mistrial."

→ This is false. There were numerous errors.

40. Factors relevant to whether a mistrial is warranted include the nature of the inadmissible evidence, the weight of the admissible evidence of the defendant's guilt, and the value of a cautionary instruction. People v. Vigil, 718 P.2d 496, 505 (Colo. 1986).

→ Mr. Anderson contests that any "roofie" allegation was inadmissible evidence, and that he has never confessed to anyone, especially not to a Habitual Felon.

41. "We conclude ~~that~~ the trial court did not abuse its discretion in denying Anderson's mistrial motion because the testimony was not inadmissible evidence, there was overwhelming evidence of Anderson's guilt, and the court provided a limiting instruction on the purpose for which the jury could consider the testimony. (See, #19)

Further, we presume, absenting a showing of actual prejudice, that the jury followed the court's instruction and considered the statement only as it related to S.W.'s credibility and mental state and not for whether she was actually drugged, or by whom.

Thus, the court did not abuse its discretion in denying Anderson's mistrial motion."

→ The court presumed falsely. There was actual prejudice, and the court clearly abused its discretion.

→ Therefore, the rulings and Opinion are erroneous.

STATEMENT OF THE CASE

46. Thus, evidence relating to (1) Anderson's knowledge and (2) S.W. being physically helpless was relevant. See CRE 401. Anderson's statement to M.D. demonstrates that he knowingly had sex with S.W. while she was physically helpless.

→ Mr. Anderson never made this statement.

→ Mr. Anderson never stated once to anyone that he knowingly had sex with S.W. while she was physically helpless.

→ S.W. was never "physically helpless."

→ S.W. and K.M. propositioned him Sex in exchange for sleeping in S.W.'s bed.

→ Mr. Anderson asked S.W. for consent. She said "Yes."

→ Mr. Anderson asked a second time, specifically if she knew who he was. She stated, "Chance with CSU Confessions."

→ Mr. Anderson asked a third time, if what K.M. said was true. She said "Yes."

→ K.M. had led Mr. Anderson into room by the arm.

→ After the consensual sex, K.M. reentered room and asked if S.W. was mad. She said, "No, I'm not mad." K.M.

asked if S.W. wanted him to stay or leave. S.W. said "He can stay, and sleep in my bed."

→ The domestic argument happened after these facts.

48. The evidence was offered to prove two of the essential elements of sexual assault on a helpless victim - knowledge and physically helplessness - so the evidence bore directly, not merely incidentally, on these elements. The evidence also rebutted Anderson's claim that the sex was consensual. Whether or not Anderson actually drugged S.W. was not the focus of the testimony; the focus was on whether Anderson knew S.W. was physically helpless when he had sex with her...

24

→ This was erroneous.

ARGUMENT

1. The Division reversibly erred when it affirmed the district court's decision not to allow sufficient cross-examination of the jail house witness as constitutional harmless error.
2. This division of the Court of Appeals has decided questions of substance in a way probably not in accord with applicable decisions of this Court, and in conflict with decisions of other divisions of the Court of Appeals and Federal Courts.
3. Court of Appeals erred in determining the error in restricting cross-examination of the jail house witness not to allow questioning of the sentencing risk reduction received as the result of testifying in Mr. Anderson's trial was harmless beyond a reasonable doubt.
4. This Court should provide guidance to the lower courts to provide for uniformity and consistent direction in assessing constitutional harmless error.
5. Additionally, this decision is likely not in accordance with and conflicts with decisions by other divisions of the Court of Appeals, and by this Court and Federal Courts.
6. The jury was not informed during questioning of the length of time DeLano originally faced, or the reduced time he ultimately faced from his plea bargain.
7. The jury was not informed that there was no "roofie," nor informed that DeLano committed perjury by manufacturing false statements, incorporating a false confession. Mr. Anderson did not confess to a habitual felon, and he never made these "roofie" statements. Mr. Anderson's constitutional right to a fair and impartial jury trial was violated, when he was depicted as having confessed to a crime he never confessed to. This violates Equal Protection & Due Process, and Fundamental Fairness of the Law.

REASONS FOR GRANTING THE PETITION

8. Mr. Anderson appealed the judgment of conviction. On March 14, 2019, a division of the Court of Appeals affirmed the denial. The Division found the district court erred in limiting the cross-examination but found the error harmless. Slip Opinion, pp. 8-12. This decision is flawed.

9. An accused's right to confront the witnesses against him is guaranteed by the Confrontation Clauses of the United States and Colorado Constitutions. U.S. Const. Amends. VI, XIV; Colo. Const. art. II, § 16. The purpose behind this right is to, inter alia, "prevent conviction by ex parte affidavits" and to afford an accused an opportunity to cross-examine the witnesses against him. People v. Bastardo, 554 P.2d 217, 300 (Colo. 1976); People v. Dement, 661 P.2d 675, 679 (Colo. 1983); Crawford v. Washington, 541 U.S. 36, 50 (2004). "Accordingly, we must protect the most obvious manifestation of that right - the opportunity for cross-examination. People v. Fry, 92 P.3d 970, 975 (Colo. 2004).

10. And when, as here, questioning designed to show a prototypical form of bias is precluded, and the jury is not provided information about the original charges, the reduced charges, including the actual penalty DeLano is subject to and the sentence he receives, the defendant's Confrontation Rights are violated and the error is reversible. See, People v. Houser, 2013 COA 11, ¶¶ 58-63, reh'g denied (Apr. 18, 2013), cert. denied, 13 SC 350, 2014 WL 4403023 (Colo. Sept. 8, 2014). As in Houser, DeLano received significant leniency in the charges and sentencing range for the offense he ultimately pled guilty to. Defense counsel argued he wanted to ask DeLano about the original range of up to 24 years and the plea of a maximum of six months. DeLano's testimony was objectionable, inadmissible, and unconstitutionally illegal, hence the suppression of appropriate questions.

REASONS FOR GRANTING THE PETITION

11. The error is not harmless. If a reasonable possibility exists that the error contributed to the verdict, then the error is not harmless beyond a reasonable doubt. People v. Owens, 183 P.3d 568, 575 (Colo. App. 2007); citing, Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 828, 17 L. Ed. 2d 705 (1967); People v. Jurado, 30 P.3d 769, 772 (Colo. App. 2001). The prosecution bears the burden of proof in a harmlessness inquiry. Houser, ¶ 65.
12. As the result of this error, Mr. Anderson's constitutional right to confrontation is violated and the error is reversible. The testimony counsel sought to elicit goes to the heart of DeLano's potential bias and motive to testify against Mr. Anderson, based on hope of leniency which he received in the form of a sentencing risk reduction of more than 23 years. This testimony also is of the sort where courts should exercise broad discretion in cross-examination.
13. "The trial court should allow broad cross-examination regarding a witness's motive for testifying when the witness has a pending case and his or her testimony against the defendant might be influenced by a promise of, or hope or expectation of, immunity or leniency with respect to the pending charges against him, as a consideration for testifying against the defendant." People v. Wilson, 2014 COA 114, ¶ 37; quoting, Kinney v. People, 187 P.3d 548, 559 (Colo. 2008) (emphasis in original, internal quotation marks omitted).
14. This Court should grant certiorari, for compelling reasons exist for the exercise of the Court's discretionary jurisdiction. The decisions of the lower Courts were unconstitutional and erroneous, but the national importance far exceeds the individual. The importance of the case exceeds not only Mr. Anderson's

REASON FOR GRANTING THE PETITION

constitutional rights as an "aggrieved U.S. Citizen," but rather applies to all U.S. Citizens, including those similarly situated.

15. In Mr. Anderson's case, all 3; Defense Counsel, District Attorney, & Judge were cognizantly aware that any "roofie" allegation was false evidence. All 3 have sworn oaths that prevent knowingly allowing witnesses to perjure themselves. Their sidebar conversation prior to a habitual felon committing perjury proves knowledge. The Interests of Justice require review, as no U.S. Citizen, can receive a Fair and Impartial Jury Trial, if individuals are able to so blatantly violate U.S. Constitutional Rights of U.S. Citizens.

16. Mr. Anderson was a declared Senior in the Prestigious College of Business at Colorado State University, with an accumulative G.P.A. over 3.200. Since incarcerated, he has earned 4 Pueblo Community College diplomas with 4.00 G.P.A.'s.

17. Mr. Anderson is a U.S. Citizen serving an indeterminate natural life sentence in D.O.C. for inappropriately exercising his Constitutional Right of Freedom of Speech, and committing Petty Offense for Vandalism.

18. Mr. Anderson contests the Sexual Encounters were consensual. Afterwards, he stated an HIV comment. Mr. Anderson does not have HIV. After arguing, he broke empty liquor bottles. In the morning after, the two roommates framed him in a Sexual Assault case. Mr. Anderson claims factual innocence.

19. This Honorable Court should take Judicial Notice of Key Facts excluded from lower court's opinion:

1. Mr. Anderson never denied the Sexual Encounters, nor denied being at the apartment.

2. The Sexual Assault Nurse Evaluation was negative For

REASON FOR GRANTING THE PETITION

forced penetration, reporting "No Injury" in every anatomical category.

3. The forensic DNA expert testified the type of DNA that was present could have only been available in a "sexually intimate encounter."

4. The Key Witness, roommate K.M., never disclosed to Police that she'd also had consensual sex with Mr. Anderson earlier in the night. Later at trial, she changed her story, calling Mr. Anderson "friendly."

5. The Alleged Victim, S.W., created a story of texting K.M. that she'd been assaulted. The actual text read, "Should we call the cops on that guy for breaking bottles."

6. The Alleged Victim, S.W., admitted on the stand that when Mr. Anderson and K.M. arrived, she was already awake. This contradicts the prosecution's case.

7. The Alleged Victim, S.W., deleted large portions of text conversations with Mr. Anderson.

20. Therefore, there was substantial evidence of Mr. Anderson's actual innocence, contrary to the Opinion.

21. Mr. Anderson has never even seen a "roofie," and if he ever saw one, he would have reported people to the Police.

AND FINALLY,

22. The two essential elements of Sexual Assault on a Helpless Victim - knowledge and physically helplessness - were alleged to have been proven by the strength of word of a habitual felon. Mr. Anderson never made these statements. A conviction cannot be validated by fabricated false statements. Mr. Anderson is willing to take a Poly Graph test that he never confessed, and that he never made any "roofie" statements to DeLano. DeLano will not agree to take a Poly Graph. Habitual 29 Felons should not be allowed to manipulate the Judicial System, without consequence.

CONCLUSION

1. A criminal defendant is presumed innocent. Accordingly, the U.S. Supreme Court in In re Winship has held he cannot be convicted "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime." Other cases have held reasonable doubt is a "square and honest doubt," a doubt growing out of the "evidence or lack of evidence," a doubt for which "you can state a reason."

2. "Through the institution of trial by jury that Citizens have an opportunity to exercise 'the ultimate control over the administration of justice' and to 'insure its fairness.'" The Sixth Amendment of the U.S. Constitution guarantees U.S. Citizens a fair and impartial jury trial. The U.S. and C.D. Constitutions guarantees right to have an impartial jury decide case, right to have a prosecutor to prove to the jury beyond a reasonable doubt, each and every element of the offense charged. Both Constitutions protect U.S. Citizens from being prosecuted with Worse, Uncharged crimes. The prosecutor used evidence of a Felony 2 to convict Mr. Anderson of a Felony 3, when he was never even formally indicted on a Felony 2. This is Unconstitutional. Mr. Anderson was never charged with offense, the higher class Felony has the element of using a "roofie." Mr. Anderson was not convicted of a lesser included offense, as the Felony 3 was not a lesser included charge of the Felony 2. The jury therefore convicted Mr. Anderson of a F-3 based on evidence of an uncharged F-2. This cannot stand.

3. Mr. Anderson is a "Red Herring," an innocent person who appears to be the guilty party. Mr. Anderson challenges both the Actus Reus - the act of a crime & Mens Reus - the culpable mental state of a crime. Mr. Anderson did not willingly, knowingly, and feloniously commit an 30 alleged Sexual Assault.

CONCLUSION

4. Knowledge Definition By Law → it says a person acts knowingly with respect to conduct or for the circumstances described by a statute defining a defense when he or she is aware that his or her conduct is of such a nature of such that a circumstance exists. A person acts knowingly with respect to result of his or her conduct when he or she is aware that his or her conduct is practically certain to cause the result.

5. Review in Supreme Court by means of a writ of certiorari is not a matter of right, but of judicial discretion. The primary concern of the Supreme Court is not to correct errors in lower court decisions, but to decide cases presenting issues of importance beyond the particular facts and parties involved.

6. Important considerations for accepting a case for review include the existence of a conflict between the decision of which review is sought and a decision of another appellate court on the same issue. An important function of the Supreme Court is to resolve disagreements among lower courts about specific legal questions. Another consideration is the importance to the public of the issue. All three apply here respectively.

7. Mr. Anderson is factually innocent, serving an indeterminate life sentence in D.O.C. He has been denied Justice, Due Process, & Equal Protection, being a violated and deprived U.S. Citizen. The State of Colorado has AFFIRMED a conviction on erroneous grounds, denied him his constitutional rights and refused to grant discretionary review. Jurisdiction falls appropriately to the U.S. Supreme Court as the last resort Court to review Mr. Anderson's case

8. Mr. Anderson's constitutional rights to confrontation and

CONCLUSION

fair and impartial jury trial have been violated.

9. The District and Divisions' decisions conflict with established precedent, and conflict with other Districts and Divisions.

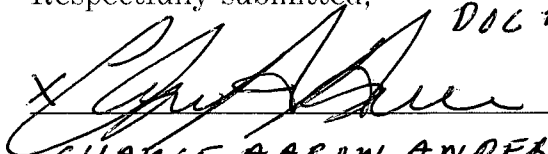
10 The "Interests of Justice" require review. An innocent U.S. Citizen's life hangs on the balance.

11. Mr. Anderson bids Y'all Good Day, wishes Y'all Good Health and Prosperity. Thank Y'all for your valuable time in considering my Claims.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 DOC #175290

CHARLES AARON ANDERSON

Date: Saturday, April 25th, 2020