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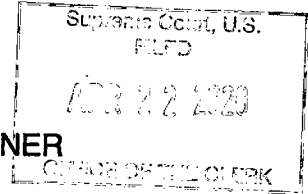
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IN THE

SUPREME COURT OF THE UNITED STATES

Dexter C. Newson
(Your Name)

— PETITIONER



vs.

MARK INCH, Secretary Dept. of Corr — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

11th Circuit of the U.S. Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Dexter C. Newson Dct# U31782
(Your Name)

P.O. Box 800, Florida State Prison - West Unit
(Address)

Raiford, FL, 32083
(City, State, Zip Code)

904-532-1011 "My Family"
(Phone Number)

QUESTION(S) PRESENTED

- 1). Did the 11th Circuit U.S. Court of Appeals Error by denying Petitioner's appeal without granting him an evidentiary hearing on issues 1 & 2 of his COA and Appeal? to determine why his Trial Counsel denied him Compulsory Process to call a witness in his favor as guaranteed in the 6th Amendment of the Constitution and to determine why Trial Counsel failed to investigate, subpoena and obtain Nelson's text message records to use as exculpatory evidence and rebut the State's theory?
- 2). Was Trial Counsel ineffective for violating Petitioner Nelson's 6th Amendment Constitutional Right by denying him Compulsory Process to call witness Angel Nelson in his favor? Trial Counsel failed to call a ~~putative~~ witness as requested by Petitioner to support his testimony.
- 3). Was Trial Counsel ineffective for violating Petitioner Nelson's 6th & 14th Amendment Constitutional Rights of due process and a functioning Counsel by failing to investigate, subpoena and obtain Nelson's text message records to use as exculpatory and rebuttal evidence?
- 4). Is Petitioner Nelson's Issues 1 & 2 of ineffective assistance of Counsel failing to call witness and failing to obtain text message records substantial to excuse its procedural default under Martinez v. Ryan Standards?
- 5). Does a person's actions of fleeing the scene in a panic (and not using good judgment after a confrontation) prohibit them from claiming self-defense where as the State failed to prove a Prima Facie Case of Second degree Murder?

Questions Presented

- 6). Does Trial Counsel violate's Petitioners 5th, 6th & 14th Amendment Constitutional Rights of a Functioning Counsel by Requesting the inapplicable Stand Your Ground Jury instructions due to Lack of Understanding of the Law? Does this deem trial Counsel ineffective?
- 7). WAS TRIAL Counsel ineffective For Failing to raise a defense With Jury instructions on Heat of Passion Which Was applicable to the Facts and Circumstances of Petitioners Case? Does this Constitute Violation of Petitioner Newson's 5th, 6th, AND 14th Amendment Rights of due process And a Functioning Counsel?

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:

- 1). Circuit Court of Marion County Florida
- 2). Fifth District Court of Appeals of Florida
- 3). U.S. Middle District of Florida
- 4). 11th Circuit of the U.S. Court of Appeals.

RELATED CASES

- 1). Newson v. State 94.SD.3d 608, 1 (Fla. 5th Dist. App 2012)
Judgement entered July-31-2012
- 2). Newson v. State, SD14-3048 (Fla. 5th Dist. Court App 2015)
Judgement entered Feb-23-2015, Rehearing denied April-1-2015
- 3). Newson v. State NO. SD15-1468 (Fla. 5th Dist Ct App 2015).
Judgement Entered June-26-2015. Rehearing denied July-16-2015.
- 4). Newson v. Julie Jones, No: 5:15-CV-310-QC-10PRL, U.S. District Court For the Middle District of Florida.
Judgement entered Sept-27-2018, Rehearing denied Dec-6-2018.
- 5). Newson v. Mark Inch Sec, Dept of Corr No: 18-14532, U.S. Court of Appeals For the ELEVENTH Circuit.
Judgement entered Dec-20-2019. Rehearing denied Jan-22-2020

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28 U.S.C [2255(b) Evidentiary Hearing Standards

28. U.S.C [2254(d)

U.S.C.S
6th AND 14th Constitutional Amendments "Right to Compulsory Process
to obtain witnesses / In their Favor, right to Functioning Counsel and
due process.

SUPREME COURT RULE; 10

SUPREME COURT Rule; 34.1; IN Forma Pauperis Proceedings

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- APPENDIX B Order of 11th Circuit U.S. Court of Appeals Order denying Newson's 2255 Petition
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- APPENDIX D Order of the 11th Circuit U.S. Court of Appeals ruling No Action on Newson's Rehearings
- APPENDIX E 11th Circuit of the U.S. Court of Appeals Order granting Petitioner's COA & granting his ~~leave~~ to proceed Informa Pauperis "IFP"
- APPENDIX F SWORN AFFIDAVIT OF Angel Newson

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 B to the petition and is

☐ reported at Newson v. Mark Inc., NO-18-14532 US 11th Circuit; 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 A to the petition and is

☐ reported at Newson v. Jones, NO 5:15-CV-310-OC-10 PRL; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

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

☒ reported at Newson v. State 94-50-3d 608, 1 Fla. 5th DCA 2012; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Newson v. State NO 5:15-CV-310-OC-10 PRL (Fla. 5th District Appeal) court appears at Appendix _____ to the petition and is

☒ reported at Newson v. State SD14-3048 (Fla. 5th DCA 2015); 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 December-20-2019.

☐ 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: ~~December-20-2019~~ / 1-22-2020, and a copy of the order denying rehearing appears at Appendix B.

☐ 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 Sept-27-2018. A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: December-6-2018, and a copy of the order denying rehearing appears at Appendix _____.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE 6th Amendment of U.S. Constitution "A Person
Shall be given Compulsory process to Obtain
Witnesses in their Favor." And "A Functioning Counsel."

THE 14th Amendment of the U.S. Constitution
"Due Process"

Statute 776.013 And 776.012

28 U.S.C [2255(b) Evidentiary Hearing Standard

28 U.S.C [2254(d)

28 U.S.C § 2403(a)

STATEMENT OF THE CASE

1. DEXTER C. NEWSON Was Charged in the Fifth Judicial Circuit in and For MARION County Florida With 2nd degree Murder w/a Firearm. Doc-8. On January-4-2010
2. an Immunity hearing Was held where in Petitioner and Mindy Goble Was the only witnesses to testify. Both testimony's of events Were Consistent all the way up until the gun Went off. Mindy Goble testified She didn't see if Gaskin tried to hit or pull Newson out of the Car because She Wasn't Looking in that direction at the time. Newson testified Gaskin reached into the Car after stating to him "You are doing the right thing staying in the Car pussy Motherfucker." Gaskin Flicked his nose with his finger and attempted to open the Car door at which point Newson panicked and shot once hitting Gaskin and killing him. The Circuit Court denied Newson Immunity of Stand Your Ground hearing.
3. On Sept-2-2010 Newson Was Found guilty of Second degree Murder by Jury.
4. On Sept-24-2010 Newson Was Sentenced to a term of Life Imprisonment.
5. Direct Appeal Was taken to the 5th District Court of Appeals - Newson's Conviction and Sentence Were Affirmed on July-31-2012.
6. Newson Filed a 3.800 (C) illegal Sentence Mitigating Circumstances Which Was denied Sept-5-2012.
7. Newson then Filed a 3.850 Post Conviction Motion. After Conducting an evidentiary hearing Which he Was Forced to represent himself after several request for assistance of Counsel his 3.850 Motion Was denied Feb-24-2014 and Per Curiam Affirmed on appeal by the Fifth DCA.

8. Petitioner Nelson then Timely Filed a State Habeas Corpus Which Was denied Feb-23-2015. Rehearing denied April-1-2015
9. He then Filed a Manifest Injustice to the ^{5th} DCA Which Was denied June-26-2015. Rehearing and request For Written Opinion Was denied July-16-2015.
10. On June-19-2015 Petitioner Nelson timely Filed a 2254 Federal Habeas Corpus petition Which Was denied 3 years Later on September-27-2018. He then Filed a rehearing Which Was denied Dec-6-2018. His Motion For COA he Filed Into the U.S. Middle District of Florida Was also denied Dec-6-2018.
11. Nelson then Filed an COA Into the U.S. 11th District Court of Appeals Which Was Granted on issues 1&2 about trial Counsel being Ineffective For Failing to Call Angel Nelson as a putative Witness and about trial Counsel Failing to Subpoena and Obtain his text Message records to use as exculpatory and rebuttal evidence.
12. Nelson Filed a Second or Successive 3.850 Seeking retro-active benefit of Stand Your Ground Law 776.032(4) Fla. Stat. 2017, this Motion Was denied March-14-2019.
13. On June-4-2019 Nelson Filed his Appellants brief For the Order granting his COA Into the 11th Circuit US Court of Appeals Which Was denied December-20-2019. He then timely Filed a Motion For Rehearing Which Was denied January 22-2020.
14. Petitioner Dexter C. Nelson now Seeks to appeal For relief in this Honorable US Supreme Court.

On January-7-2009 Petitioner Dexter C. Nelson Was a passenger

in Mindy Gables Vehicle Which had Just Stopped at a Stop Sign Infront of Dorian Gaskins Mother house. At trial Mindy Gable and Dexter Nelson both testified that When Gable got ready to drive away from the Stop Sign, that Gaskin ran infront of the Car and began beating on the hood of the Car While yelling at Gable about her driving too Fast With Kids near the Street. Mindy Gable apologized and Stated that She had Stopped. App 5 of Doc 8- pg 340-343, RR pg 340-343.

Gaskin Came over to Gables Side of the Car and told her again that She needed to Slow down. Once again Gable apologized and Stated that She didnt know how to drive the Car that good Which Was Manual Shift. She Was Just learning. She Again tried to leave due to Nelson telling her to just go but Gaskin ran back infront of the Car blocking ~~her~~ path again.

Gaskin Stood infront of the Car and then returned back to Mindy Gables Window and Continued yelling about her driving too Fast With Kids in the neighborhood. Mindy Gable testified She became nervous and rolled her Window till it was Cracked because She Was nervous at how angry Gaskin Was. She testified She didnt think Gaskin Was going to hurt her She Was Just nervous at how mad he Was and She Just Wanted to leave. App 5 of Doc-8 pg 344-345. RR pg 344-345. Gaskin Would not let her leave.

Petitioner Nelson became involved When he Stated to Gaskin through the Cracked Window that Mindy Gable had Slowed down, She had apologized he then asked Gaskin to Move so they Could leave. Gaskin then told Nelson to

at which point Gaskin moved to Nelson's side of the car where an argument ensued about Gables driving. Gable testified during the argument Nelson just kept telling Gaskin to let her leave but Gaskin wouldn't let them go. App 5 of Doc 8 pg 350 RA pg 350. She testified that Nelson told her 3 or 4 times to go but Gaskin repeatedly blocked her path by getting in front of the car. App 5 of Doc pg 401-402. She testified she didn't see if Gaskin tried to hit or pull Nelson out of the car because she wasn't looking in that direction she was looking straight. She testified that Gaskin didn't make any threats and that she thought they were going to fight. She also testified that she witnessed Gaskin reach into the car and point his finger in Nelson's face while telling Nelson "You're doing the right thing staying in the car pussy motherfucker."

Shortly after she heard the gun go off but didn't see it. App 5 of Doc 8 pg 352-380. RA pg 352-380.

Mindy Gable testified that Nelson tried to avoid confrontation. ~~She~~ also testified that Nelson told her he didn't mean to do it, App 5 of Doc 8 pg 401-402 and 406, and that after hearing the shot she sped off in shock. App 5 of Doc 8 pg 352-380.

Petitioner Nelson's recollection of the incident was consistent with Mindy Gables. Their stories only differed when the gun went off. Mindy Gable testified she didn't see Gaskin try to pull Nelson out of the car because she wasn't looking in that direction she was looking straight.

Newson testified that Gaskin stated to him "You're doing the right thing staying in the car pussy MotherFucker," and then for a second time reached his hand back into the car window, this time he flicked Newson on the nose while grabbing for the door at which point Newson panicked and shot without looking. App-5 of Doc-8 pg 618-620, RR pg 618-620.

Gaskin's 10 year old son testified that Gaskin did not stand in front of the car, he did not touch the car nor did he argue or use profanity and that only Newson used profanity. App 5 of Doc-8 pg 431-437.

Gun ballistics expert testified the gun muzzle was from 6 inches to 24 inches from Gaskin. App 5 of Doc 8 pg 220-249. Gun power residue was found on the top of the passenger door. Gaskin was shot at close range.

During Jury Conference the trial Judge ruled that the State couldn't argue that there was evidence contradicting Newson telling Gaskin 3 or 4 times to let them go because D.G. wasn't privy to what was said in the car so he couldn't say that Newson never said hey lets get out of here to avoid the conflict. App 5 of Doc-8 pg 514-515.

The State used everything Newson did after the altercation to argue their case, text messages, Newson fleeing the scene and denying his involvement before turning himself in days later and later on admitting the truth with his lawyer at an immunity hearing.

REASONS FOR GRANTING PETITION

- 1). Did THE 11th Circuit Court of Appeals Error by denying Petitioner Newson's appeal without granting him an evidentiary hearing on issues 1 & 2 OF his COA and Appeal? to determine Why his trial Counsel denied him Compulsory process to call a witness in his favor as guaranteed in the 6th Amendment of the Constitution and to determine Why trial Counsel Failed to investigate Subpoena and Obtain his text Message records to use as exculpatory evidence and rebut the States theory?

On April-26-2014 U.S Circuit Judge of the 11th Circuit U.S Court of appeals granted Petitioners Motion For Certificate of Appealability "COA" on issues 1 & 2 ruling that Newson has shown that reasonable jurist could debate whether his "Claims 1 & 2" regarding a text message that he either Composed himself, or Received and Forwarded to another witness in the moments Following the Shooting present Substantial Ineffective Assistance of trial Counsel Claims that establish Cause to excuse procedural default under Martinez v. Ryan, 566 U.S. 1, 14 (2012). Newson stated that he repeatedly asked Counsel to call his niece who sent the text message to him.

In its order Granting Newson's COA and Granting his Motion For IFP "IN FORMA PAUPERIS", he ordered that

a CoA will issue on the following question only: Whether Nelson can show cause and that he has a substantial claim under Martinez v. Ryan, 566 US 1 (2012) such that a Federal habeas corpus court should hear his claim that trial counsel was ineffective in failing to investigate phone records or call a witness Angel Nelson to testify about the origins of the text message."

On Dec-20-2014 three circuit judges of the US Court of Appeals 11th Circuit denied Petitioner Nelson's petition ruling his issues 1 & 2 of Counsel being ineffective for failing to call Angel Nelson as a witness to testify about the origins of the text message and that Counsel being ineffective for failing to subpoena and obtain Nelson's text message records to use as exculpatory evidence to rebut the State's theory were not substantial and could not excuse procedural default under Martinez v. Ryan, 566 US 1 (2012).

However Nelson asserts that the 11th Circuit erred by not granting him an evidentiary hearing to determine why trial counsel failed to give him compulsory process to call a witness in his favor and failed to subpoena and obtain phone records of text messages that would have refuted the State's theory beyond a reasonable doubt being that the State's whole case theory was built around text messages Mindy Goble received from Nelson after the shooting. See Serano v. United States, 135 S.Ct 1444, 141 L.Ed 2d 402 (2015) holding Evidentiary Hearing Standard: A district court shall hold an evidentiary hearing on habeas corpus petition

Unless the Motion and the Files and records of the case conclusively show that the prisoner is entitled to no relief, 28 U.S.C. § 2255(b) "If the Prisoner alleges facts that, if true would entitle him to relief then the district court should order an evidentiary hearing and rule on the merits of his claim. However a district court is not required to hold an evidentiary hearing if the Petitioner's allegations are frivolous and contradicted by the record."

In the present case Nelson asserts that his claims of ineffective assistance of trial counsel is not frivolous nor contradicted by the record. Nelson also attached an sworn affidavit to his 2254 petition and 2255 petition in which the 11th Circuit and district court ^{ruled} as being belated and ruled it didn't support Nelson's claims. However this ruling by the 11th Circuit and the district court was also erroneous and unsupported by the record as well as the law. See United States v. Ashimi, 932 F.2d 643, 650 (7th Cir. 1991) holding that evidence about testimony of a putative witness must generally be presented in the form of actual testimony by the witness or an affidavit." Nelson asserts he met this requirement by attachment of sworn affidavit by Angel Nelson which corroborated his testimony at trial which was that he didn't brag about killing Gaskin thru that text, that he didn't create the text, he received it from he believed his niece Angel.

See also Sarano v. United States, 135 S.Ct. 1449, 191 L.Ed. 2d 402 (2015) holding that because the court cannot resolve a factual dispute solely upon an affidavit an evidentiary hearing is warranted in order to determine why counsel failed

to act effectively.

Newson asserts that being that the district Court and the 11th Circuit failed to refute his claims conclusively from the record, that he is in fact entitled to an evidentiary hearing on issues 1&2 of his COA and 2255 appeal. See Kahler V. Cain 214 F.3d 1350, 2000 U.S. App. Lexis 11538 (5th Cir. La 2000).

Newson asserts the U.S. Middle District of Florida and the 11th Circuit U.S. Court of Appeals has so far departed from the accepted and usual course of proceedings of judicial proceedings that Petitioner prays in good faith this Honorable U.S. Supreme Court of Appeals will exercise its supervisory power.

- 2). Was trial Counsel ineffective for violating Petitioner Newson's 6th Amendment Constitutional right by denying him compulsory process to call witness Angel Newson to testify in his favor? "Trial Counsel failed to call a putative witness as requested by Petitioner to support his testimony."

During trial and closing arguments the States whole case ~~rested~~ upon a text message stating "Just Reported: MS Queen son just passed away Jan-7-2009. Will be care in these streets. I'm the shit."

The States theory was that Newson created this text to brag about killing Gaskin. This text message is also

What the State used to argue the elements of Second degree Murder to get the Judge to deny Petitioner Newson's Motion For JOA "Judgment of Acquittal." Doc 8- App-5 pg 449-450. This was the only piece of evidence the State argued demonstrated hatred Spite, evil Intent.

Petitioner testified that his niece Angel sent it to him and he Forwarded it to Mindy Goble. Doc-8, App-5 pg 619. The State called Newson's Credibility into question. When they pointed out to the Jury that Newson Couldn't have Forwarded the text Message because there was no FWD in this text like other Forwarded Messages he sent Mindy. This made Newson appear as a liar to the Jury. [Note: Review of the Text Message records of Mindy Goble's shows that when she Forwarded this same exact text to someone, still there was also NO FWD in it as the State argued would be].

In its denial the 11 Circuit and the District Court argued that Angel's testimony would have undermined Newson's testimony but the record refutes this ruling because just as Newson testified his niece sent him the Message, in her Sworn Affidavits Angel stated she sent Newson the text Message that the State argued he created to bribe. The 11th Circuit and the District Court also ruled that trial Counsel wasn't ineffective because he gave an explanation that Newson Couldn't have known Gaskin was dead 20 minutes after the shooting unless someone had told him.

Newson asserts this explanation by Counsel cannot be deemed as a reasonable effective defense because it didn't

rebut the States theory nor did it Corroborate Nelson's testimony, the Jury could have easily concluded that since Nelson shot Gaslin, he drafted the text after automatically assuming Gaslin^{died} since he in ~~fact~~ shot him just as the State's theory alleged. Trial Counsel Failing to use Angel Nelson as a witness to testify to Creating and Sending Nelson this text Message Can't be seen as a trial Stragedy when the dispute was about whether Nelson Created the text to brag or whether he recieved it from someone else.

See Alexander V. McCotter 775, F.2d 545th Cir. 1985 holding that it is well established that in order for an Appellant to demonstrate the requisite prejudice, the Appellant must show not only that this witness testimony would have been favorable at trial but also that the witness would have testified at trial.

Being that the States whole theory to prove the elements of Second degree Murder was based on this text Message arguing Nelson Created this text to brag about killing Gaslin, Trial Counsel should have adequately called Angel Nelson as a Putative / Material witness. Had Jack Mara called Angel Nelson as Petitioner requested him to do so she could testify her testimony would have been favorable to Nelson because (1), it would have rebutted the States theory beyond a reasonable doubt and proved to the jury that Petitioner Nelson in fact did not draft the text, therefore he did not brag about killing Gaslin and most importantly her testimony would have proved beyond a reasonable doubt that Nelson's telling the truth about receiving the text from his niece and in fact

did not commit the act out of hatred, spite, nor ill will, nor did he possess a depraved mind at the time of the shooting nor afterwards. He did not possess the elements of Second degree Murder. (2) Angel Nelson would have testified at trial, She was present during trial all 3 days of trial as well as willing to testify, and trial counsel failed to use her after being requested numerous times to use her as a witness to truthfully testify and rebut the State's theory while simultaneously corroborating Nelson's testimony.

3), Her testimony would have changed the outcome of trial had the judge and the jury been able to hear Angel Nelson testify that she drafted the text message and sent it to Nelson and that IM the shit was her text message signature the jury and the trial judge would have reduced Nelson's Second degree Murder Charge to Manslaughter based on the elements of Second degree Murder not being met. Through this text and only through this text was the State able to argue the elements of Second degree Murder. Doc-8, App 5 pg 444-450 and pg 750.

Without Angel Nelson's testimony to refute the State's theory that Nelson created the text to brag about killing Goslin, the jury was left to only believe the State's theory because trial counsel omitted significant and obvious issues by failing to interview and utilize a valuable witness whom would have rebutted the State's theory beyond a reasonable doubt and corroborated Nelson's testimony and defense. See McGill v. Ryan 2014 U.S. Lexis 4800.

Trial Counsel was not only ineffective, he also deprived Nelson of a Fair trial and Violated Petitioner Nelson's 6th Amendment Constitutional Right to be given Compulsory Process to Obtain Witness in his Favor as guaranteed by the 6th Amendment of the U.S. Constitution.

See Kohler v. Cain 214 F.3d 1350, 2000 U.S. App Lexis 11538

(5th Cir. 2000) holding that Trial Counsel denied Kohler Compulsory process when Counsel Failed to Call Richard as a Witness and that by doing so Counsel Failed to Call a Witness that would directly Contradict the Sole evidence Linking Kohler to the Crime."

Nelson asserts the same error of Ineffective Assistance is true for his case, Angel Nelson's testimony would directly Contradict the Sole evidence the State Used to build their theory to prove the elements of Second degree Murder and Trial Counsel Failed to Use her as a Witness.

See also United States v. Ashimi, 932 F.2d 643, 650 (7th Cir. 1991) holding that evidence about testimony of a putative Witness Must generally be presented in the Form of actual testimony by the Witness or an Affidavit."

Nelson asserts he also Met this requirement by Attachment of Sworn Affidavit by Angel Nelson attached to his 2254 and 2255 Petitions Corroborating his trial testimony.

Finally Nelson asserts Trial Counsel was Ineffective under Strickland v. Washington prong for Failing to Call Angel Nelson as a Witness which Violated his 6th Amendment Constitutional Rights. The U.S Middle District of Florida and the 11th Circuit of U.S Court of appeals has so far departed From the accepted

and usual course of judicial proceedings that Petitioner Nelson prays in Good this Honorable U.S. Supreme Court will exercise its supervisory power.

- 3). Was Trial Counsel ineffective for violating Petitioner Nelson's 6th and 14th Amendment Constitutional Rights of due process and a functioning Counsel by failing to investigate, subpoena and obtain Nelson's cell phone text message records and use as exculpatory and rebuttal evidence?

During the course of trial the State relied on Mindy Gobles text message records arguing a message Nelson sent to Mindy Goble that read: "Just reported MS. Queen son just passed away on Jan-7-2009. R.I.P. Y'all be Care In these Streets. I'm the Shit." demonstrates the elements of Second degree Murder which are hatred, spite, evil intent, & a depraved mind. Doc-8, App-5 pg 449-450 and 750. The States case theory was that Nelson created this text to brag.

Nelson testified he didn't create this text nor brag about killing Gaskin. He stated that his niece sent him the text and he simply forwarded it to Mindy Goble. The State made Nelson appear as a liar when they questioned his credibility and pointed out to the jury that there was no FWD at the beginning of this text message like others he sent. Doc 8, App-5 pg 627-628. [Note: Mindy Goble text records when she forwarded this same exact message to someone, there still was no FWD in it like the State argued would be.]

Newton asserts that when trial Counsel first questioned him about this text message months prior to trial he provided Counsel with all the information he needed to obtain his text message records and use for exculpatory and rebuttal evidence as he was requested to do.

In its denial the 11th Circuit ruled trial Counsel's explanation was trial strategy good enough to not have investigated, subpoenaed and obtained Newton's text message records.

Newton asserts this ruling is not supported by the evidence and the record when trial Counsel failed to obtain and use the only evidence that would directly contradict the State's theory beyond a reasonable doubt.

Couch v. Booker, 632 F.3d 241, 246 (6th Cir. 2011) holding that competent Counsel can be expected to undertake a thorough investigation of law and facts relevant to plausible options for the defense. And while this does not require Counsel to investigate every conceivable defense, any limitations on Counsel's investigation must be supported by a reasonable professional judgment... to make a reasonable professional judgment about whether evidence is worth presenting one must know what it says."

See also Keim v. ADF Mid Atlantic, LLC 2018 U.S. Lexis 204548 (11th Cir. 2018) holding carriers especially major carriers typically retain subscriber identification records for many years after a subscriber is no longer a customer for business purposes, that carrier subpoenas would be an effective way to obtain subscriber data.

and that experienced Law Firms and Class administrators are adept at securing and processing this data in Class action."

In the present Case It is Clear that trial Counsel performed no investigation Much less a ~~thorough~~ one and his decision is not a decision that can be supported by reasonable professional judgement, by trial Counsel failing to subpoena and obtain Newson's phone records to rebut the States theory and Corroborate Petitioner's testimony, trial Counsel allowed the State to unlawfully Shift the burden of proof on Newson when they asked him why FWD didn't appear on ~~any~~^{this} Forwarded text. This was a question that only a cell phone expert and phone records could explain.

"See Holsomback V. White, 133 F.3d 1382 (11th Cir. 1998) holding in order for the Jury to make a fair judgement, the Jury has to weigh the totality of the evidence, not just a piece but the whole of what they heard and saw." Because of trial Counsel's ineffectiveness, the Jury was left to believe the only text message evidence they saw and that was the text message used against Newson. The text message that could have and should have been rebutted beyond a reasonable doubt.

The only way trial Counsel could have represented Newson as a reasonable professional Counsel as is guaranteed by the 6th Amendment Constitution would have been for him to do the only thing that could have rebutted the States theory of Newson

Creating the text message to brag about the killing which would have been for trial counsel to subpoena and obtain Newson's text message records to show the jury visually just as the state did with Mindy Gobles text records.

1) the jury would have been able to see for themselves that the text message was sent to Newson's phone
2) the jury would have been able to see the number it was sent from, what time it was sent along with the testimony of the witness who drafted and sent it to Newson and (3) the jury would have known without a doubt without a doubt that Dexter C. Newson in fact did not brag about the shooting just as he testified he didn't and therefore he did not commit the act of hatred, spite nor evil intent just as he also testified to but unfortunately his trial counsel failed to establish a solid defense with rebuttal evidence to support his testimony, this rebuttal evidence would have rebutted and contradicted the state's theory beyond a reasonable doubt.

Just as in Holsomback v. White, 133 F.3d 1388 (11th Cir. 1998) Holsomback trial attorney was found to be ineffective for failing to perform any investigation into defense relevant records and for failing to obtain medical records." Newson asserts the same ineffectiveness is true for trial counsel in Newson's case who failed to perform investigation and obtain Newson's text records to use as rebuttal evidence as Newson requested him to do so. Instead he left Newson defenseless to

to the States theory.

Finally Nelson asserts that trial Counsel ineffective under Strickland v. Washington Standards by Failing to investigate, Subpoena and Obtain his text Message records to use as exculpatory and rebuttal evidence, by trial Counsel Failing to do so he Violated Petitioner Nelson's 6th and 14th Amendment Constitutional Rights of due process and a Functioning trial Counsel.

The U.S. Middle District of Florida and the 11th Circuit U.S. Court of Appeals has so far departed from the accepted and usual course of Judicial proceedings that Petitioner Nelson prays in Good Faith this Honorable U.S. Supreme Court will exercise its Supervisory power.

- 4). Is Petitioner Nelson Issues 1 & 2
Ineffective assistance of trial Counsel
For Failing to investigate and Call Angel
Nelson as a putative witness and For
Failing to Investigate Subpoena and Obtain
his text Message records Substantial to
excuse its procedural default Under
Martinez v. Ryan Standards.

In Martinez v. Ryan, 566 U.S. 1 (2012) this Honorable U.S. Supreme Court held that defendants pursuing First tier

review are generally ill equipped to represent themselves because they do not have a brief from Counsel or an opinion of the Court addressing their claim". This US Supreme Court held that "When a State requires a prisoner to raise an ineffective assistance of trial Counsel claim in a collateral proceeding, a prisoner may establish cause for a default of an ineffective assistance claim in two circumstances: (1) is where the State court did not appoint Counsel in collateral proceedings for a claim of ineffective assistance at trial. (2) is where appointed Counsel in the initial review collateral proceeding where the claim should have been raised was ineffective under the Strickland Standards.

1. Petitioner Newson asserts he has met the first requirement to establish cause for a procedural default under the Martinez v. Ryan Standards for ineffective assistance claims due to the State Court not appointing him Counsel in his collateral post conviction proceedings. Newson has proceeded pro se throughout all post-conviction proceedings as a layman in law without any legal training whom is ill equipped to represent himself. See Doc-8, App-19 pg 3-45 of Petitioner's post-conviction evidentiary hearing where in Newson requested the assistance of Counsel throughout the whole proceeding due to him not being fit to argue law nor locate doctors to testify about his mental health to support his claim. The State Court had to correct Petitioner Newson on his misapprehension of the law and post conviction rules and procedure.

Newson requested assistance of Counsel at least 4 or 5 times throughout the whole evidentiary hearing due to not being trained in law, however the State Court denied each of his ~~request~~ and made him represent himself during the 3.850 Post-Conviction evidentiary hearing.

It is clear that Newson was in no way fit to represent himself, as held in *Martinez v. Ryan* to present a claim of ineffective assistance at trial in accordance with the State's procedures then a prisoner likely needs an effective attorney. The prisoner unlearned in law may not comply with the State procedural rules or misapprehend the substantive details of Federal Constitutional Law." This is so with Petitioner Newson's Collateral proceedings.

See also *Trevino v. Thaler*, 569 U.S. 133 S.Ct. 1911, 1918-21-185 L Ed. 2d 1044 (2013) holding that where a state procedure framework by reason of its design and operation makes it highly unlikely in a typical case that a defendant will have a meaningful opportunity to raise a claim of ineffective assistance of trial Counsel on direct appeal the ruling applies."

Newson asserts the same is true for Newson's case where as in, "the State of Florida diminishes prisoner's ability to file claims of ineffective assistance of trial Counsel on direct appeal where Counsel is Constitutionally guaranteed, Florida precludes prisoners from filing such claims on direct appeal."

Furthermore in accordance with the second requirement "To overcome default, a defendant must demonstrate that the ineffective assistance of trial Counsel claim is a substantial one which has merit."

11. Newson asserts that his claims are substantial and have merit as was ruled in ~~the~~ Order granting his COA that "Newson has shown that a reasonable jurist could debate whether Claims 1 & 2 regarding a text message that he either composed himself, or received and forwarded to another witness in the moments following the shooting presents substantial ineffective assistance of Counsel claims that establish cause to excuse procedural default under Martinez v. Ryan." Newson stated he repeatedly asked Counsel to call his niece who sent him the text so she could testify to doing so.

Newson asserts that being that the State in the trial court whole case theory was built around this text message, the State in the trial court opened the door to this substantial evidence with this text message and phone records when they gave the judge and the jury the impression of this substantial evidence by using these text messages to argue the elements of the charge, therefore issues 1 & 2 are very much substantial and by trial counsel failing to call Angel Newson as a witness and failing to investigate subpoena and obtain Newson's text message records, he violated Newson's 6th Amendment Constitutional right by denying him compulsory process to call witnesses in his favor. He also violated his 14th Amendment Constitutional right of due process and

a Functioning Counselor. Trial Counsel was ineffective in accordance with Strickland v. Washington Standards.

Newson asserts he has met both requirements to excuse his procedural default under Martinez v. Ryan and Prays in Good Faith this Honorable U.S. Supreme Court will grant his Petition.

5). Does a Persons actions of Fleeing the scene in a panick and not using good Judgement after a Confrontation prohibit them from Claiming Self-defense where as the State Failed to prove a Prima Facie Case of Second degree Murder?

During the Course of trial, Trial Counsel put in two motions For Judgement of acquittal proclaiming that the State Failed to present a prima facie Case of establishing the elements of Second degree Murder beyond a reasonable doubt. The State argued that a text Newson sent to Mindy 20 minutes after the shooting occurred along with Newson's actions of Fleeing the scene and denying any involvement shows guilt. Doc-8 App 5 pg 449-450 and pgs 750.

During Newson's testimony he testified that he Fled because he was scared, he panicked and didn't tell the truth because he didn't think he would be believed. He was only 18 at the time. State Witness Mindy Whom was never Charged testified she lied to the police at first because she too was scared.

See Fowler v. State 921 So.2d 708 Feb-10-2006 in which the 2nd District Court of Appeal held that "While Flight can evidence Consciousness of guilt, it is not inconsistent with Fowler's hypothesis that he Fled because he was panicked, scared and not using good judgement." The same is true for Newson's Case and actions after the incident.

Newson asserts that just as the 2DCA held in Fowler v. State that "although his actions after the shooting of Fleeing the scene and hiding the gun could show guilt, his actions are also consistent with someone who exercised poor judgement and panicked in fear, impaired thinking and based on his background a sinking feeling that the police would not believe him."

As the 3rd District Court of Appeals declared in Mobley v. State 132 So.3d 1160 Jan-2-2019 "The Conduct of a person acting in Self-defense is measured by an objective standard, but

the Standard Must be applied to the Facts and Circumstances as they appeared at the time of the altercation to the one acting in Self-defense.

When Looking at the Facts and Circumstances as they appeared at the time of the altercation to the one "Newson" acting in Self-defense in Newson's Case the evidence and testimony by Newson and State Witness Mindy Goble Clearly Supports beyond a reasonable doubt that the deceased Dorian Gaslin was the provoker and the aggressor of the whole confrontation. Whom wouldn't allow Newson and Mindy to leave by repeatedly getting in front of their ^{car} and beating on the hood of the car no matter how many times the Petitioner Newson pleaded with Gaslin to move so they could go. Doc-8 App-5 pg 402. In her testimony Mindy testified that Newson told her he didn't mean to do it Doc-8, App-5 pg 381. She stated Newson was angry but not as angry as Gaslin that Newson just kept telling Gaslin to let them leave Doc-8, App-5 pg 350. She also testified that Newson ^{told} her 3 or 4 times to go, as well as told Gaslin 3 or 4 times to let them leave, each time Gaslin blocked their path. Doc-8, App-5 pg 401-402.

This means throughout the whole ordeal from start to finish Newson was telling her to leave and telling Gaslin to let them leave. Newson was trying to avoid this whole incident. Mindy Goble's testimony confirms this when she testified yes the Petitioner Newson tried to avoid this confrontation with Dorian Gaslin. Doc-8, App-5 pg 406 and 613. Even the trial judge ruled that the State couldn't argue that there was evidence contradicting Newson telling Gaslin 3 or 4 times to let them go because Dorian Jr. wasn't

privity to what was said in the car so he couldn't say that Nelson didn't try to retreat and avoid the conflict. Doc-8, App-5 pg 514-515.

Nelson Contest that the evidence and testimony support his charged being reduced to Manslaughter. The State has failed to prove a prima facie case of Second degree Murder beyond a reasonable doubt. Just as in Mobley v. State 132 So.3d 1160, Nelson tried to avoid and de-escalate the conflict with Gaskin by telling him "Mindy said sorry, move so we can go." then Nelson repeatedly pleaded with Gaskin to move so they could leave. Doc-8, App 610-620

Mobley's incident last 12 seconds, Nelson's incident lasted 3 minutes with Gaskin refusing to let them leave holding them against their will. This was determined by a video footage of the car heading in the direction the incident took place and the time the 9-11 call was placed reporting Gaskin as being shot.

See also Jenkins v. State 942 So.2d 910, Oct-11-2006 "Jenkins also tried to avoid the confrontation with the victim. He also fled the scene and turned himself in days later once a outstanding warrant was out for his arrest but although each witness gave a different account of what took place it was undisputed that the victim was the initiator and the aggressor." His case was reversed and remand for discharge.

The same is so for Nelson's case. Especially being with Nelson's and Mindy Gables testimonies being consistent. The only difference was when the gun went off. Mindy testified she saw Gaskin reach into the car and point his finger in Nelson's

- NOTE: EVEN THE STATE ~~acknowledges~~ they hadn't proven a case of second degree beyond reasonable doubt by stating "This is a classical heat of passion case." By common law heat of passion is reduced to Manslaughter. Doc-8, App-5, pg 444-450.

Face while telling Newton "You're doing the right thing staying in the car pussy MotherFucker." Shortly after she heard the gun go off. She testified she didn't see if Gasikin tried to hit or pull Newton from the car because she wasn't looking in that direction she was looking straight. Doc-8, App-5, pg 352. She also testified she didn't see the gun at the time of the shooting she only saw it afterwards. Doc-8, App-5, pg 380.

Newton testified that Gasikin pointed his finger in his face and stated "You're doing the right thing ~~staying~~ in the car pussy MotherFucker," then put his hand back in the window for a second time this time flicking his nose while grabbing for the car door at which point Petitioner Newton panicked and shot without looking. Doc-8, App-5 pg 618-620.

As the 3rd District Court of Appeal ruled in Poole v. State 897, 30 So.2d that being that the victim was unarmed the jury would properly have found that Newton had used excessive force in an overreaction to ward off an oncoming attack. However the State failed to prove that Newton acted out of hatred, ill will or spite showing a depraved mind the elements of Second degree Murder.

Just as in Poole v. State, in the current case the victim Dorian Gasikin was 258 pounds, much larger than the Petitioner Newton whom was 142 pounds at the time of the incident. Dorian Gasikin was 38 years old, 20 years older than Newton who was 18 years old at the time. Dorian Gasikin was larger and stronger than the Petitioner and Gasikin was also known

For his violent behavior. Doc 8, App 5, pg 534-546 and pg 577.

Newson asserts that though his actions after the shooting were made out of not using good judgement, they also were consistent with panicking, fear and impaired thinking which ~~doesn't~~ negate him from claiming self-defense nor does it establish the elements of second degree murder because as other District Courts held "The conduct of a person acting in self-defense is measured by an objective standard, but the standard must be applied to the facts and circumstances as they appeared at the time of the confrontation/altercation to the one acting in self-defense."

And looking at the facts and circumstances as they appeared at the time of the altercation in the present case it is undisputed that Newson was a reluctant participant who tried to avoid confrontation with Gaskin whom was the initiator and the aggressor of the whole ordeal. Furthermore throughout trial the State erroneously continuously misadvised the jury that Newson couldn't claim self-defense nor could they find him ~~not~~ guilty of second degree murder because of his actions after the shooting being questionable or suspicious. It has been recognized that "Mere suspicion is not enough when the State presents circumstantial evidence of a particular fact which is arguably consistent with the defendant's story of panicking in fear and not using good judgement, then the fact is simply not probative of the defendant's guilt. Fowler v. State 981 So.2d 708.

Finally Newson asserts that by the trial court, and the appellate courts

Failing to grant his Motion's For JOA due to the State not proving a prima Facie Case Of Second degree Murder beyond a reasonable doubt, these Courts Violated his 6th and 14th Amendment Constitution rights of due process and also denied him the equal protection of Law's Within it's Jurisdiction Which deprived him of a Fair trial because the Facts, Evidence and testimony of Petitioners Case Support and demonstrate an Over reaction to an oncoming attack or Injury Which is Manslaughter not 2nd degree Murder. Mobley V. State 132 So.3d 1160, Jan-2-2018, Poole V. State 897 So.3d, March-26-2010 Fowler V. State 921 So.2d 908 Feb-10-2006 and Jenkins V. State 942. So.2d 910 Oct-11-2006, Pierce V. State So.2d 419, Oct-23-1979.

Trial Court of Marion County Florida, the 5th District Court of Appeals in Florida and the U.S. Middle District of Florida has so far departed From the accepted and Usual Course of Judicial Proceedings that Petitioners Newsum prays in Good Faith this U.S. Supreme Court will exercise it's Supervisory Power.

6. Does trial Counsel Violate's Petitioners 5th, 6th & 14th Amendment Constitutional Rights of a Functioning Counsel by Requesting the inapplicable Stand Your Ground Jury Instructions due to lack of Understanding of the Law? Does this deem trial Counsel Ineffective?

During trial Counsel argued for the jury to be instructed on Stand Your Ground Immunity and Presumption of Fear Stat. 776.013. Which as a Stipulation Clearly States "If a person is engaged in Unlawful activity they Can't Seek Immunity under Stat. 776.013.

Trial Counsel Failed to Correctly Interpret the Language of the Law by arguing that Petitioner's Nelson's Unlawful possession of a Firearm Wasn't Unlawful Activity. See Little v. State 11. SO.3d 214, 233 (Fla. 2nd DCA 2013)

"holding that Unlawful possession of a Firearm by a Convicted Felon is Unlawful activity so though a convicted Felon Couldn't Seek Immunity under Stat. 776.013, they could however Seek Immunity under Stat. 776.012 Which didn't have an Unlawful activity Stipulation."

See also Marty v. State, 2016, WL 4944100 (Fla. 4th DCA): Where in the error was that of defense Counsel Who Specifically requested this Inapplicable instruction even after the trial Court repeatedly expressed the opinion that the instruction didn't apply."

The Face of the Record Confirms that Nelson's trial Counsel Committed this same exact error.

During the course of Jury Instruction Conference, trial Counsel Jack R. Maro Stated to the trial Court before proposing Jury Instructions:

"Judge I know you are going to refuse it but for the record because I think this is interesting, I would like to propose my Immunity Instruction." Doc-8, App 5 pg 270."

By trial Counsel Making this Statement Clearly proves he knew he was requesting Inapplicable Jury Instructions that would not be approved. This was confirmed by the trial Judge denying the proposed instructions due to Petitioner being a Convicted Felon in possession of a Firearm as prohibited

In Statute 776.013 of Immunity: "No Duty to retreat applies Only Where a person is not engaged in unlawful activity."

The trial Judge then ruled the issue of immunity was an legal issue for resolution by the Court and not an issue of resolution for the jury. Where as trial Counsel ineffectively argued it was an issue ~~for~~ resolution for the jury." Doc-8, App-5 pg 272.

After ruling that Newson was not entitled to immunity presumption of Fear instruction by being engaged in unlawful activity as a convicted felon possessing a firearm the trial Judge stated to trial Counsel's assistant Mr. Murty: "Mr. Murty you said that's not a jury issue, you said it's an legal issue for resolution by the Court which is contrary to what Mr. Maro was just inferring." Doc-8, App-5 pg 502.

Mr. Murty conceded with the trial Judge by stating "I did but apparently me and Mr. Maro disagree."

Mr. Murty then gave an adequate analysis of why the presumption of Fear instruction didn't apply to Petitioner. Doc-8, App-5, pg 503.

However trial Counsel disregarded Mr. Murty's assistance and continued to argue with the Court about a jury instruction that was inapplicable to Petitioner's case.

Next Petitioner Newson would like to point this Honorable Supreme Court of the US attention to Doc-8, App-5 pg 513 where the trial Judge read the paragraph on presumption of Fear and asked trial Counsel: "Now that's the presumption

"You are talking about?"

Trial Counsel replied: "That's the Self-defense instruction that's not the presumption."

He then had to be corrected by his assistant Co-Counsel and the State attorney whom both had to enlighten him that the Judge had in fact read the presumption of fear instruction that he was so adamant about.

This proves on the face of the record beyond a reasonable doubt that trial Counsel was ineffective, he did not understand the language nor the applicability of the statute he was wrongfully requesting nor was he functioning as a professional who understood the law as guaranteed by the Constitution. By Counsel's performance being incompetent and him being unprepared to defend the Petitioner as a **professional** attorney would and should, Nelson asserts trial Counsel was not only ineffective but also violated his 5th, 6th and 14th Amendment Constitutional rights of due process and a functioning Counsel.

See Marty v. State 2016 WL 4944100 (Fla. 4th DCA 2016): Holding that trial Counsel was ineffective on the face of the record for neglecting to request a Self-Defense instruction that was applicable to the facts and circumstances of the case.)

Nelson asserts the same ineffectiveness is true for his trial Counsel. See also Dorsey v. State 2011 WL 4949803 (Fla. App 4th DCA 2011), and Miles v. State 162 So.3d 171-72 (Fla. 5th DCA 2015).

After Further discussion on the Jury Instruction Matter the trial Judge determined he would not give Newson no portion of the Stand Your Ground Instruction whether 776.013 or 776.012 he ruled he would give the Standard Self-defense instruction only. Doc-8 App-5 pg 494 and 501.

Trial Court of Marion County FL, the 5th District Court of Appeals, the U.S Middle District of Florida and the 11th Circuit of U.S. Court of appeals has so far departed from the accepted and usual course of judicial proceedings that the Petitioner Newson prays in Good Faith this U.S. Supreme Court will exercise its supervisory power.

- 7). WAS TRIAL COUNSEL ineffective for failing to raise a defense with Jury Instructions on Heat of Passion which was applicable to the Facts and Circumstances of Petitioners Case? Does this constitute Violation of Petitioners 5th, 6th AND 14th Amendment Rights of due process and a Functioning Counsel?

Through out the course of trial, Counsel repeatedly requested the inapplicable Jury Instructions of Immunity Presumption of Fear Stat. 776.013 which was denied due to Petitioner being engaged in unlawful activity as a convicted felon in unlawful possession of a firearm which is prohibited in Statute 776.013 Presumption of Fear. This means trials Counsels whole defense being based around Presumption of Fear was inapplicable to Newson's case.

Newton asserts that the applicable defense for his case would have been Heat of Passion. Even the State prosecutor advised the judge during Counsel's Motion for JOA that "this was a Classical Case of Heat of Passion." Doc-8, App-5 pg 449-450.

Trial Counsel incompetently concluded heat of Passion and Second degree Murder as being the same not realizing the State had just given him the adequate defense to get Newton's Charge reduced to Manslaughter.

By Common Law Heat of Passion serves as a Mitigating Factor which reduces a Murder Charge to Voluntary Manslaughter which is an Unlawful Killing without Malice upon Sudden quarrel or provocation caused by the deceased in the heat of Passion.

In Petitioner's Newton's Case it was undisputed that the deceased Dorian Gaskin was the initiator and the aggressor of the whole altercation and Newton was the reluctant participant who tried to avoid the conflict but was prevented from doing so by Gaskin. Doc-8, App-5 pg 350-402 and pg 613-620.

See Lee v. Clarke 781 F.3d 1141 2015 U.S. App Lexis 4573 "Holding that Heat of Passion must be determined from the circumstances as they appeared to the defendant but those circumstances must be such as would have aroused heat of Passion in a reasonable person."

By the Statley stating to the trial judge "Your honor

this is a Classical Case of Heat of Passion", Shows even with the evidence being viewed in light most favorable to the State that the State were in fact in favor of heat of Passion being used as a defense to negate the element of depravity ~~in~~ Second degree Murder and reduce Petitioner's Charge to Manslaughter based on heat of Passion but unfortunately trial Counsel was ineffective and incompetent when it came to a defense applicable to his Client's Case.

See Dunn v. State 864 So.2d 1235 Jan-29-2004 holding that trial Counsel's Failure to preserve and argue that the Defendant committed the killing in the heat of Passion was ineffective and had trial Counsel preserved and argued that he committed the homicide in the heat of Passion it may have resulted in Appellant's Conviction of the lesser offense of Manslaughter).

Petitioner asserts the same is true for his case and his trial Counsel ineffectiveness, had trial Counsel argued he committed the killing in the heat of Passion, by common law his charge would have been reduced to Manslaughter by the courts as the State said "This is a Classical Case of Heat of Passion" or the jury would have found him guilty of Manslaughter by Heat of Passion based on the facts and circumstances of this case.

Trial Counsel was not only ineffective, he also violated Petitioner's, 5th, 6th, and 14th amendment constitutional rights to a functioning Counsel and due process.

~~The~~ County Of Marion County Fl and the 11th Circuit Of U.S
Court of appeals and the U.S Middle district of Florida
has so far departed From the accepted and usual Course
Of Judicial proceedings that the Petitioner Newson Prays
In Good Faith this U.S. Supreme Court will exercise its
Supervisory power.

CONCLUSION

WHEREFORE NEWSON Declares His Constitutional Amendment Rights has been Violated and that the 11th Circuit U.S. Court of Appeals and the Middle District of Florida has entered a decision in Conflict With the decision of another United States Court of Appeals on the Same Important Matter;

Also that their decision has so far departed From the Accepted and Usual Course of Judicial proceedings or Sanctioned Such a departure by a Lower Court as to Call For an exercise of this Honorable Supreme Courts Supervisory powers.

Petitioner Dexter C. Newson prays in Good Faith this Honorable Court will GRANT him relief.

Respectfully Submitted
/s/ Dexter C. Newson
Dexter C. Newson

OATH

I HEREBY DECLARE that ALL FACTS in Writ of CERTIORARI are True.

/s/ Dexter C. Newson
Dexter C. Newson, pro'se
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