No. 19-8886

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JON EDWARD ERICKSON — PETITIONER
(Your Name)

vs.

MARK BRNOVICH, ATTY. GEN-AZ. ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

JON EDWARD ERICKSON
(Your Name) A.S.P.C. TUCSON/WINCHESTER
10002 S. WILMOT RD.
P.O. BOX 24401
(Address)

TUCSON, ARIZONA, 85734
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Question One

Did the trial court error in violating the Petitioner's 5th and 14th Amendment rights to appeal the Petitioner's first conviction, by failing to provide/produce the records and transcripts of the first trial, which were needed for a direct appeal?

Question Two

Did the Appellate Court violate the 5th and 14th Amendments in denying the 'Motion to Dismiss' (the indictment) and the 'Motion For a New Trial' and the 'Petition For Order to Show Cause', on July 31st, 2003?

Question Three

Did the trial court in the second trial violate the Petitioner's 5th, 8th and 14th amendment rights under the U.S. constitution trying the Petitioner twice on the same indictment putting the Petitioner 'twice in jeopardy' (double jeopardy) on the same charge?

Question Four

Did the trial court error in failing to suppress, due to the Cochise County Sheriff's detectives violating the Petitioner's 5th amendment rights (U.S. Constitution), by not properly reading the Petitioner's Miranda (Miranda Warning) interogation rights, both at the hospital and at the county jail?

QUESTION FIVE

DID THE COCHISE COUNTY SHERIFF'S DEPARTMENT VIOLATE THE PETITIONER'S 4TH AMENDMENT (U.S. CONSTITUTION) RIGHTS, WITH THE "FORCED ENTRY" OF THE PETITIONER'S RESIDENCE? WAS THE "SCENE OF THE CRIME" CONTAMINATED WHEN THE BODY WAS MOVED AROUND BEFORE THE PROPER INVESTIGATORY AUTHORITIES ARIVED. DID THE TRIAL COURT ERROR WHEN IT DENIED THE PETITIONER'S "MOTION TO SUPRESS FOR ILLEGAL ENTRY"?

QUESTION SIX

DID THE TRIAL COURT VIOLATE THE PETITIONER'S 5TH AND 14TH AMENDMENT (U.S. CONSTITUTION) RIGHTS WHEN IT DENIED THE PETITIONER'S "MOTION TO DISMISS THE INDICTMENT" OR THE MOTION TO " IN ALTERNATIVE REMAND BACK FOR RE-DETERMINATION OF PROBABLE CAUSE"?

QUESTION SEVEN

WAS THE PETITIONER'S 5TH AMENDMENT (U.S. CONSTITUTION) RIGHT, THE RIGHT TO A COMPLETE DEFENSE, VIOLATED WHEN THE STATE OF ARIZONA ALLOWED/ORDERED THAT THE BODY BE CREMATED BEFORE THE DEFENSE HAD AN OPPORTUNITY TO HAVE IT'S EXPERTS EXAMINE THE BODY (EVIDENCE) AND INVESTIGATE THE STATE OF ARIZONA'S POSITION?

QUESTION EIGHT

DID THE JURY INSTRUCTIONS PROVIDED BY THE STATE AND DEFINING "PRE-MEDITATION" AS THE PROSICUTION DESIRED, IN ORDER TO JUSTIFY IT'S DEFINITION OF "FIRST DEGREE MURDER", IMPROPERLY PROVIDE A LESSENING OF THE BURDEN OF PROOF CONSERNING THE STATE'S ASSERTATION OF "PRE-MEDITATION"?

THE PREDJUDICE HAS BEEN SHOWN AS THE EVIDENCE DID NOT SUPPORT A FIRST-DEGREE MURDER CHARGE ONLY. AND BY NOT INSTRUCTING THE JURY TO THE LESSER INVOLVED CHARGES, THE STATE WAS DENYING THE PETITIONER THE RIGHT TO HAVE A PROPERLY INSTRUCTED JURY, VIOLATIONS OF THE 5TH, 6TH AND 14TH AMENDMENTS TO THE UNITED STATE'S CONSTITUTION.

QUESTION NINE

DID THE TRIAL COURT IN THE SECOND TRIAL VIOLATE THE PETITIONER'S 8TH AND 14TH AMENDMENT (U.S. CONSTITUTION) RIGHTS, BY NOT HAVING A JURY SENTENCE THE PETITIONER? DID JUDGE HOGGATT ABUSE HIS DISCRETION BY SENTENCING THE PETITIONER, KNOWING HE HAD RULED IN THE PREVIOUS CASE/TRIAL THAT WAS OVERTURNED? DID JUDGE HOGGATT ERROR BY NOT RECUSING HIMSELF FROM THE SECOND TRIAL?

QUESTION TEN

DID THE TRIAL COURT ERROR IN THE DECISION AND ORDER DATED DEC. 20TH, 2018, THE TRIAL COURT STATED IN PERTINENT PART: IN HIS RESPONSE TO THE PETITIONER'S "PETITION FOR POST CONVICTION RELIEF", THE DEFENDANT (PETITIONER) RAISES ANOTHER ISSUE: DOES THE 2002 TESTIMONY OF DR. TREPETA QUALIFY AS "NEWLY DISCOVERED EVIDENCE", WHICH RELATES TO ALL FUNDAMENTAL, STRUCTUAL AND PLAIN ERRORS AS WELL AS VIOLATIONS OF THE 4TH, 5TH, 6TH, 8TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION AND STATE OF ARIZONA CONSTITUTION, ARTICLES 2 AND 4, WHICH RESULTS IN A BRADY VIOLATION?

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:

(1ST TRIAL): STATE OF ARIZONA V. JON EDWARD ERICKSON, NO. CR 2001 00103, SUPERIOR COURT OF ARIZONA IN AND FOR THE COUNTY OF COCHISE. JUDGEMENT ENTERED FEB. 11TH, 2002.

RALPH MALANGA	TRIAL ATTORNEY ALSO DIRECT APPEAL ATTORNEY
JOEL A. LARSON	TRIAL ATTORNEY ALSO DIRECT APPEAL ATTORNEY
HARRIETTE P. LEVITT	DIRECT APPEAL ATTORNEY
JERRY TILL	TRIAL ATTORNEY FOR STATE
THOMAS E. COLLINS	TRIAL JUDGE

RELATED CASES

(2ND TRIAL): STATE OF ARIZONA V. JON EDWARD ERICKSON, NO. CR 200100103, SUPERIOR COURT OF ARIZONA IN AND FOR THE COUNTY OF COCHISE. JUDGEMENT ENTERED OCTOBER 9TH, 2009.

DAVID THORN	TRIAL ATTORNEY
GILDA TERRAZAS	TRIAL ATTORNEY
GREGORY JOHNSON	ATTORNEY FOR STATE
WALLACE R. HOGGATT	TRIAL JUDGE
HARRIETTE P. LEVITT	2ND. DIRECT APPEALS ATTORNEY

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts:**

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

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).

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was APRIL 9TH, 2020. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I WAS DENIED MY CONSTITUTIONAL RIGHTS UNDER THE 4TH, 5TH, 6TH, 8TH AND 14TH AMENDMENTS, THE RIGHT TO A DIRECT APPEAL, AFTER BEING FOUND GUILTY BY A JURY ON FEB. 11TH, 2002

SEVEN AND ONEHALF YEARS LATER ARIZONA UNCONSTITUTIONALLY PUT ME INTO DOUBLE JEOPARDY BY TRYING ME TWICE ON THE SAME INDICTMENT, DENYING ME MY CONSTITUTIONAL RIGHT TO A DIRECT APPEAL FROM/ON/TO THE 1ST TRIAL.

4TH AMENDMENT OF THE UNITED STATES CONSTITUTION
5TH AMENDMENT OF THE UNITED STATES CONSTITUTION
6TH AMENDMENT OF THE UNITED STATES CONSTITUTION
8TH AMENDMENT OF THE UNITED STATES CONSTITUTION
14TH AMENDMENT OF THE UNITED STATES CONSTITUTION

FUNDAMENTAL ERROR

HENDERSON 210 ARIZ. AT 567
STATE V. HUNTER 142 ARIZ. 88, 90 (
FULMINATE 499 U.S. AT 310 : STRUCTURAL ERROR
PESS V. U.S. 284 F3d 677, 681-82 (11TH CIR. 2002)
U.S. V. WOLFE 245 F3d 257, 261 (3RD CIR. 2009) : PLAIN ERROR

STATEMENT OF THE CASE

THE FACTS IN QUETION ONE AND TWO INTERLOCK WITH EACH OTHER SHOWING THE MISCARRAGE OF JUSTICE AND COMPLETE VIOLATION OF THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION, BY THE STATE OF ARIZONA KNOWINGLY DENYING THE PETITIONER THE RIGHT TO FILE A DIRECT APPEAL AND THE COURT OF APPEALS ORDERING A SECOND TRIAL WITHOUT JURISDICTION TO DO SO.

THE PETITIONER WAS CONVICTED OF FIRST-DEGREE MURDER AND SENTENCED TO NATURAL LIFE. MR. ERICKSON (THE PETITIONER) FILED A TIMELY "NOTICE OF APPEAL" AND A "MOTION FOR A NEW TRIAL".

THE RECORDS/TRIAL TRANSCRIPTS WERE WITHELD BY THE STATE, WHICH IN TURN, DENIED THE PETITIONER THE RIGHT TO FILE A DIRECT APPEAL ON HIS CONVICTION IN 2002 (TRIAL OF 2002).

THE ARIZONA COURT OF APPEALS, DIVISION TWO, IN TUCSON ARIZONA MADE SEVERAL ATTEMPTS TO GET THESE RECORDS AND TRANSCRIPTS, BUT THE STATE OF ARIZONA NEVER PROVIDED THEM.

ON JULY 31ST, 2003 THE COURT OF APPEALS, DIVISION TWO, GAVE AN ORDER STATING: "PURSUANT TO 'NOTICE OF NON-RECIEPT' OF THE TRANSCRIPTS; "MOTION FOR PROCEEDURAL ORDERS; MOTION TO DISMISS INDICTMENT; MOTION FOR NEW TRIAL AND A PETITION TO SHOW CAUSE", AND IT APPEARING THAT THE COURT REPORTER-REBECCA HUME HAS FAILED TO FILE ALL OF THE TRANSCRIPTS FOR THIS APPEAL AND THE TRANSCRIPTS THAT HAVE BEEN FILED CONTAINING INACCURACIES AND/OR EMISSIONS, THEREFORE, IT IS ORDERED: "MOTION FOR PROCEEDURAL ORDERS; MOTION TO DISMISS INDICTMENT; MOTION FOR NEW TRIAL" ARE DENIED. FURTHER ORDERED: THE CLERK OF THE COCHISE COUNTY SUPERIOR COURT SHALL SERVE FURTHWITH NOTICE OF THE UNAVAILABILITY OF THESE TRANSCRIPTS UPON THE PARTIES. FURTHER ORDERED: COUNSEL SHALL THEN PROCEED TO FORMULATE A STATEMENT OF THE EVIDENCE FOR THE PROCEEDINGS IN QUESTION, IN ACCORDANCE WITH 31.8, ARIZONA RULES OF CRIMINAL PROCEEDURE, 17 ARS. FURTHER ORDERED: THE STATEMENT AS APPROVED BY THE TRIAL COURT, SHALL BE FORWARDED TO THIS COURT WITHIN 45 DAYS OF THE DATE OF THIS ORDER AND UPON IT'S RECIEPT BY THIS COURT, THE RECORD WILL BE DEEMED COMPLETE AND AN ORDER WILL BE ISSUED SETTING THE TIME FOR FILING APPELLANT'S OPENING BRIEF".

THIS ORDER WAS NEVER COMPLIED WITH AND NONE OF THE ABOVE WAS DONE. BUT MORE IMPORTANTLY, THE COURT OF APPEALS WAS PUT ON NOTICE THAT THE RECORD IN THIS CASE WAS UNAVAILABLE FOR THE PETITIONER TO FILE A DIRECT APPEAL, AS THE PETITIONER WOULD BE UNABLE TO MOUNT AN EFFICACIOUS DEFENCE AND RETORT OF THE STATE'S INACCURATE "TESTIMONY" PRODUCED AT TRIAL. MOREOVER, THE COURT WAS FULLY AWARE THAT IT'S JULY 31ST, 2003 ORDER WAS NEVER COMPLIED WITH! (APPENDIX E)

STATEMENT OF THE CASE

IT SHOULD BE NOTED THAT TO "FORMULTE A STATEMENT OF EVIDENCE..." AND TO USE THAT AS THE "... RECORD WILL BE DEEMED COMPLETE ..." WOULD BE A DENIAL OF THE PETITIONER'S UNALIENABLE RIGHT TO DUE PROCESS AND A/AN DIRECT APPEAL.

DUE TO THE TWO FACTORS AFOREMENTIONED, THE COURT OF APPEALS SHOULD HAVE REVISITED IT'S JULY 31ST, 2003 "ORDER" AND GRANTED THE 'MOTION TO DISMISS' THE INDICTMENT WITH PREJUDICE.

EVEN THOUGH THE COURT OF APPEALS KNEW IT COULD NOT OR WOULD NOT PRODUCE/RELINQUISH THE TRIAL TRANSCRIPTS, BY/IN THE STATES OWN 'WORDS', IT TOOK IT UPON ITSELF FOR SEVEN (7) YEARS TO REPEATEDLY FILE MOTIONS FOR EXTENSION OF TIME TO PRODUCE THESE RECORDS FOR APPEAL... RECORDS OF WHICH HAD BEEN SO MISHANDLE BY THE STATE, THAT IT KNEW COULD BE PRODUCED!

THE ARIZONA COURT OF APPEALS, DIVISION TWO, THEN IN JANUARY ON THE 23RD, 2009 (SEVEN (7) YEARS LATER!) WITHOUT JURISDICTION ORDERED THE PETITIONER'S DIRECT APPEAL BE DISMISSED, THEN ON FEB. 13TH OF 2009 IT HAD A STATUS CONFERENCE ORDERING AND SETTING A NEW TRIAL (SEVEN (7) YEARS WITH NO DIRECT APPEAL OF THE FIRST TRIAL, AND ON THE SAME INDICTMENT... DOUBLE JEOPARDY.

THIS WAS BASED ON THE "FACT" THAT THE STATE COULD NOT PRODUCE THE TRANSCRIPTS OF THE FIRST TRIAL. YET THE STATE'S STATEMENT THAT THERE WERE NO TRANSCRIPTS OF THE FIRST TRIAL WAS A FALSE STATEMENT, PROVEN BY THE FACT THAT APPROX. 14 YEARS AFTER THE FIRST TRIAL, WHILE THE PETITIONER WAS IN FEDERAL COURT, THE STATE MIRACULOUSLY PRODUCED THE PREVIOUSLY NON-EXISTANT TRIAL TRANSCRIPTS OF DR. TREPATA'S 'TESTIMONY (AS ENUMERATED IN EXHIBIT/APPENDIX C). IT SHOULD BE NOTED THAT AT THIS 2ND TRIAL, DR. TREPETA DID NOT TESTIFY. BY THIS GIVEN, IT IS PROOF THAT ALL THE TRIAL TRANSCRIPTS DO EXIST (DR. TREPETA'S 1ST TRIAL TESTIMONY, APPENDIX D)

THE STATE HAD PREVIOUSLY REFUSED TO PRODUCE THESE TRANSCRIPTS AS THE DOCUMENTS WOULD HAVE ALLOWED THE PETITIONER TO ILLUMINATE/PRESENT ALL OF THE CONSTITUTIONAL VIOLATIONS, PROSICUTORIAL MISCONDUCT, FALSE JURY INSTRUCTION AND INEFFECTIVE ASSISTANCE OF COUNSEL.

STATEMENT OF THE CASE

LEGAL ARGUMENT: UNDER THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION THE PETITIONER HAS AN UNALIENABLE RIGHT TO A JURY TRIAL AND A PROTECTED RIGHT TO FILE A DIRECT APPEAL.

IN THE STATE OF ARIZONA, TO FILE A DIRECT APPEAL, THE RULES GOVERNING A DIRECT APPEAL HAVE TO BE COMPLIED WITH.

PURSUANT TO THE ARIZONA RULES OF CRIMINAL PROCEDURES, RULE 31.8(a)(B) IT STATES IN PERTINENT PARTS:

"31.8 THE RECORD OF APPEAL (a) COMPESITION OF THE RECORD OF APPEAL (1) GENERALLY, ALL DOCUMENTS INCLUDING MINUTE ENTRIES, EXHIBIT LIST, TRANSCRIPTS AND OTHER ITEMS FILED IN THE SUPERIOR COURT ON OR BEFORE THE EFFECTIVE DATE OF FILING, OF A NOTICE OF APPEAL, CERTIFIED TRANSCRIPTS OF TRIAL PROCEEDINGS. (B) CERTIFIED TRANSCRIPTS (1) GENERALY THE RECORD ON APPEAL INVOLVES/INCLUDES CERTIFIED TRANSCRIPTS AS FOLLOWS: (b) IN ALL OTHER CASES THE RECORD ON APPEALS MUST INCLUDE A CERTIFIED TRANSCRIPT(S) OF THE FOLLOWING PROCEEDINGS: i ANY VOLUNTARINESS HEARINGS OR HEARINGS TO SUPPRESS EVIDENCE, ii ALL TRIAL PROCEEDINGS, iii ANY AGGRAVATION OR MITIGATION HEARINGS, AND, iv PROCEEDINGS FOR JUDGEMENT.

AS THE HONORABLE COURT HAS ALREADY BEEN MADE AWARE OF, NONE OF THESE RECORDS/TRANSCRIPTS WERE MADE AVAILABLE, AS REQUIRED BY THE RULES OF CRIMINAL PROCEEDURES, TO THE PETITIONER SO THE PETITIONER COULD PROPERLY FILE A DIRECT APPEAL.

HOW CAN THE MALFUNCTIONING COURT PRODUCE A JUDICIAL PROCESS CONSISTING OF A SEVEN (7) DAY TRIAL, WITH A COURT REPORTER/STENOGRAPHER PRESENT ALL SEVEN (7) DAYS, AND BY THE STATE'S CLAIM, HAVE NO RECORD OF THE TRIAL PROCEEDINGS?! YET, 14 YEARS LATER THE STATE PRODUCES AND PROVIDES TO THE PETITIONER THE TRANSCRIPTS OF DR. TREPETA'S TESTIMONY THAT THE STATE HAD PREVIOUSLY CLAIMED DID NOT EXIST! (APPENDIX C AND D)

BY THE COURT REPORTER'S, THE STATE OF ARIZONA'S AND THE COURT ITSELF'S FAILURE TO PROVIDE/PRODUCE THE TRIAL TRANSCRIPTS TO THE PETITIONER, IT WAS FUNDAMENTALLY UNFAIR AND PREJUDICIAL TO THE PETITIONER'S ABILITY TO HAVE A FAIR AND PROPER DIRECT APPEAL AND THIS FUNDAMENTAL ERROR WAS NOT HARMLESS. THIS WAS CLEARLY A CONSTITUTIONAL VIOLATION OF THE PETITIONER'S 5TH AND 14TH AMENDMENT RIGHTS. AND DUE TO THE FACT THAT THE STATE OF ARIZONA PRODUCED THE "NONEXISTANT" TRIAL TRANSCRIPTS OF DR. TREPETA'S TESTIMONY 14 YEARS LATER, IT WAS CLEARLY AND INTENTIONALLY PREJUDICIAL.

THE COURT HELD IN GINGRICH V. OBERHOUSER 305 F SUPP 738, 741 (C.D. CAL. 1969); U.S. V. GILLIS 773 F2d 549, 554 (4TH CIR. 1985); U.S. V. HUGGINS 191 F3d 532, 537 (4TH CIR. 1999)

"THE DEFENDANT MUST SHOW THAT THE TRANSCRIPTS OR TRANSCRIPT ERRORS SPECIFICALLY PREJUDICED HIS ABILITY TO PERFECT AN APPEAL. THE COURT HELD IN U.S. V. BRAND 80 F3d 560, 563 (1ST CIR. 1996); U.S. V. GALLO 763 F2d 1504, 1530 (6TH CIR. 1985) "SPECIFIC SHOWING OF PREJUDICE REQUIRED". IN SHELDON V. SHARRIRO 28 U.S.C.A. SEC 753(B), 12 A.L.R. FED. 584: "PREJUDICIAL EFFORT OF FEDERAL DISTRICT COURT REPORTER'S OMMISSIONS IN RECORDING JUDICIAL PROCEEDINGS WHERE SUCH OMMISSIONS CONSTITUTE FAILURE TO COMPLY WITH COURT REPORTER ACT 28 U.S.C.A. SEC. 753(B), 12 A.L.R. FED 584.

HERE, THE COURT REPORTER, THE STATE OF ARIZONA AND THE COURT ITSELF COULD NOT PRESERVE AND THEN PRODUCE THE TRANSCRIPTS OF THE FIRST TRIAL, IN TURN, DENYING THE PETITIONER THE CONSTITUTIONALLY AND UNALIENABLE RIGHT TO A DIRECT APPEAL. THIS IS A SPECIFIC SHOWING OF PREJUDICE, AN UNCONCIONABLE ACT WHICH PREJUDICED THE PETITIONER'S ABILITY TO PRESENT AN APPEAL.

FURTHER THIS ALSO SHOWS STUCTURAL ERROR, AS DEFECTS THAT FUNDAMENTALLY UNDERMINE THE RELIABILITY AND FAIRNESS OF THAT TRIAL [NOTE: DIRECT APPEAL IS PART OF THE/THAT TRIAL] CAN NEVER BE FOUND TO BE HARMLESS. SEE FULMINATE 499 U.S. 310 (STRUCTURAL ERRORS AS OPPOSED TO TRIAL ERRORS INCLUDED FUNDAMENTAL FRAMEWORK ALLOWING CRIMINAL TRIALS TO FAIRLY ASSESS GUILT. ROSS V. U.S. 284 F3d 677, 681-82 (11TH CIR. 2002), WHICH STATES: "STRUCTURAL ORDER AS DEPRIVATION OF CONTITUTIONAL RIGHTS.

HOW MUCH MORE GREATER EXAMPLE OF SUCH MANIFEST INJUSTICE CAN THERE BE, WHEN THE PETITIONER WAS DENIED A CONSTITUTIONALLY PROTECTED RIGHT TO A DIRECT APPEAL?

U.S. V. BANKS 464 F3d 184, 189 (2ND CIR. 2006): "THE GOVERNMENT BEARS THE BURDEN OF PERSUASION REGARDING PREJUDICE WHEN THE SOURCE OF ERROR IS A SUPERVENING JUDICIAL DECISION THAT ALTERS SETTLED LAW.

THE ARIZONA COURT OF APPEALS DID NOT HAVE THE AUTHORITY OR JURISDICTION TO ORDER A "NEW TRIAL", I.E. SECOND TRIAL, WHEN THE ERROR ITSELF WAS WITHIN THE JUDICIAL FOUNDATION, WHEN THE TRIAL COURT ITSELF WITH HELD THE TRIAL TRANSCRIPTS.

BY DOING SO, ORDERING A SECOND TRIAL, THE PETITIONER WAS PLACED TWICE IN JEOPARDY ON THE SAME CHARGE, I.E. DOUBLE JEOPARDY.

QUESTION THREE - AS THE COURTS HOLD IN U.S. V. RENDO-DUARTE 499 F3d 1142, 1146 (9TH CIR. 2007) "...APPELLANT COURT MY EXERCISE DISCRETION TO CORRECT ERROR SERIOUSLY AFFECTING FAIRNESS, INTEGRITY OR PUBLIC REPORTATION OF JUDICIAL PROCEEDINGS. AND A COURT'S DEVIATION FROM A LEGAL RULE CONSTITUTES 'AN ORDER'. THE COURTS FURTHER STATED IN U.S. V. WOLF 245 F3d 257, 261 (3RD CIR. 2001)"...IT IS PLAIN ERROR IF THE COURT APPLIED THE LAW CLEARLY CONTRARY TO THE LAW AT THE TIME OF APPEAL. IN U.S. V. HENDERSON 409 F3d 1293, 1301 (11TH CIR. 2005)"... PLAIN ERROR MUST BE CLEAR AND OBVIOUS AT THE TIME OF APPELATE REVIEW". U.S. V. BANKS 514 F3d 459, 474 (9TH CIR. 2006).

THE ACTIONS OF THE ARIZONA COURT OF APPEALS, DIVISION TWO, WERE CLEARLY CONTRARY TO THE LAW AT THE TIME OF THE DIRECT APPEAL IN THIS CASE. THE PREJUDICE HAS BEEN SHOWN BY NOT ALLOWING PETITIONER A DIRECT APPEAL, AND BY ARBITRARILY AND INTENTIONALY POSTPONING AND CREATING A SEVEN (7) YEAR DELAY, VIOLATING THE PETITIONER'S CONSTITUTIONAL RIGHT TO DIRECT APPEAL.

FACTS: THE PETITIONER WAS ARRESTED IN 2001 IN A HOMICIDE CASE. PETITIONER WENT TO TRIAL, AS SOON AS THE JURY WAS IMPANELED AND SWORN IN (2ND TRIAL ON SAME INDICTMENT) DOUBLE JEOPARDY WAS INVOKED. AFTER THE FIRST TRIAL THE PETITIONER FILED FOR A DIRECT APPEAL. THE STATE OF ARIZONA COULD/WOULD NOT PRODUCE THE TRIAL TRANSCRIPTS OF THE FIRST TRIAL

STATEMENT OF THE CASE

... AFTER SEVEN (7) YEARS OF DELAYS DURING VARIOUS COURT PROCEEDINGS, THE ARIZONA COURT OF APPEAL DISMISSED THE DIRECT APPEAL AND ORDERED A NEW TRIAL (ON THE SAME INDICTMENT, THE AFOREMENTION 'DOUBLE JEOPARDY' ERROR.)

FIRST, THE ARIZONA COURT OF APPEALS DID NOT HAVE THE JURISDICTION TO DISMISS THE PETITIONER'S DIRECT APPEAL. SECOND, THE STATE OF ARIZONA DOES NOT GET A "SECOND BITE OF THE APPLE" IN REWARD FOR THEIR PRIOR FAILURES. THIRD, AFTER ALMOST 14 YEARS OF MAINTAING THE FICTION THAT THE 1ST TRIAL TRANSCRIPTS DID NOT EXIST, THE STATE PRODUCED THE MISSING TRANSCRIPTS DURING FEDERAL PROCEEDINGS I.E. THE TRIAL TRANSCRIPTS OF DR. TREPETA'S TESTIMONY, TESTIMONY THAT IS CONTRARY TO THE STATE'S POSITION AND CASE, TESTIMONY FROM THE FIRST TRIAL, RECORDS THAT THE STATE AVOWED FOR ALMOST 14 YEARS DID NOT EXIST WHICH IS CLEARLY A BRADY VIOLATION AS THE NATURE OF THE TESTIMONY OF DR. TREPETA IS EXCULPATORY

THE LEGAL ARGUMENT: THE DOUBLE JEOPARDY CLAUSE OF THE 5TH AMEND. STATES "NO PERSON SHALL BE SUBJECT, FOR THE SAME OFFENSE, TO BE PUT TWICE IN JEOPARDY OF LIFE OR LIMB". PROTECTIONS: 1) PROTECTION AGAINST SECOND PROSICUTION FOR THE SAME OFFENSE AFTER AN AQUITAL; 2) PROTECTION AGAINST SECOND CONVICTION FOR THE SAME OFFENSE AFTER A CONVICTION, AND; 3) PROTECTION AGAINST MULTIPLE PUNISHMENTS FOR THE SAME OFFENSE.

THE 14TH AMENDMENT'S DUE PROCESS CLAUSE EXTENDS THE DOUBLE JEOPARDY CLAUSE PROTECTION TO STATE PROSICUTIONS. BENTON V. Md 395 U.S. 784, 794 (1969): "THE GUARANTEES DEEMED INTEGRAL TO DOUBLE JEOPARDY ALSO TO THE STATES", CRIST V. BRETZ 437 U.S. 28, 37-38 (1978): "JEOPARDY ATTACHED WHEN JURY IMPANELLED AND SWORN", U.S. V. ELLIOT 463 F3d 858, 864 (9TH CIR. 2006); U.S. V. ISOM 88 F3d 920, 923-24 (11TH CIR. 1996); ARS 13-111: "FORMAL JEOPARDY OR AQUITAL AS BAR TO SAME OR LESSER OFFENSES.

DOUBLE JEOPARDY WAS INVOKED WHEN PETITIONER WENT TO TRIAL. THE DENIAL OF DIRECT APPEAL REST SOLELY ON THE ACTIONS / IN-ACTIONS OF THE COURT REPORTER AND THE STATE AND TRIAL COURTS THEMSELVES.

A HIGHER COURT CAN CORRECT A LOWER COURT'S PLAIN ERROR THAT AFFECTS SUBSTANTIAL RIGHTS, HOW MUCH MORE "SUBSTANTIAL" CAN THE SITUATION BE WHEN THE PETITIONER'S UN-ALIENABLE, PROTECTED RIGHT TO A DIRECT APPEAL IS DENIED AND THE COURT ORDERS A SECOND TRIAL ON THE SAME INDICTMENT AND SUBSEQUINT CONVICTION?

DOUBLE JEOPARDY IS SHOWN, THE ARIZONA COURT OF APPEALS DID NOT HAVE THE AUTHORITY TO VACATE THE DIRECT APPEAL AND ORDER A NEW TRIAL

QUESTION 4: AFTER THE POLICE ARRIVED AT THE SITE OF THE INCIDENT, THE PETITIONER WAS TAKEN TO THE HOSPITAL DUE TO THE PETITIONER'S STATE (TRAUMATIC SHOCK) OF MIND.

AFTER DETECTIVE WHEELER ARRIVED AT THE HOSPITAL THE DET. INFORMED THE PETITIONER THAT HE WAS NOT ALLOWED TO LEAVE AFTER THEY/HE WAS DONE AT THE HOSPITAL, IN OTHER WORDS AT THAT POINT PETITIONER WAS <u>UNDER ARREST</u>, NOT JUST "DETAINED". DETECTIVE WHEELER THEN BEGAN QUESTIONING THE PETITIONER WITH OUT READING HIM HIS MIRANDA RIGHTS. DURING THIS QUESTIONING PETITIONER WAS ARRESTED ON A TRAFFIC WARRANT, ONCE AGAIN, NOT APPRISED OF HIS MIRANDA RIGHTS.

ONCE THE PETITIONER WAS CLEARED BY MEDICAL STAFF, ED RADMORE OF THE BEHAVORAL HEALTH INFORMED THE DETECTIVE THAT THE PETITIONER WAS IN NO CONDITION TO BE QUESTIONED OR ANSWER ANY QUESTIONS. ON FEB. 3RD, 2001 DET. WHEELER AND DET. ZICKFOOSE INTERVIEWED THE PETITIONER AT THE BISBEE JAIL, WITHOUT CONTACTING BEHAVORAL HEALTH TO SEE IF HE WAS IN ANY CONDITION TO BE SO. AT NO POINT PRIOR OR DURING THE INTERVIEW WAS THE PETITIONER APPRISED OF HIS MIRANDA RIGHTS, WHICH IS CONFIRMED BY THE RECORDING OF THE INTERVIEW. AFTER THE INTERVIEW, DETECTIVES PRODUCED A NOTIFICATION OF RIGHT CARD TO SIGN, ON THE "DO YOU UNDERSTAND YOUR RIGHTS?" AND THE "WILL YOU VOLUNTARILY ANSWER MY QUESTIONS?" PROMPTS, THE CARD IS NOT SIGNED, AS IS REQUIRED. AT NO TIME THROUGH ANY OF THIS WAS THE PETITIONER READ OR APPRISED OF HIS MIRANDA RIGHTS.

THE LEGAL ARGUMENT: IN ARIZONA, CONFESSIONS ARE *PRIMA FACIA* INVOLUNTARY AND THE STATE MUST SHOW BY A PERPONDERANCE OF THE EVIDENCE THAT THEY WERE FREELY GIVEN AND VOLUNTARILY MADE: (ASIN) <u>STATE V. ARNETT</u>, 119 ARIZ 38, 42, 579, P2d 542, 546 (1978).

...THE FAILURE BY THE POLICE TO READ OR INFORM THE PETITIONER (WHO WAS SUFFERING FROM A TRAUMATIC MENTAL SHOCK AT THE TIME) OF HIS RIGHTS PROTECTED UNDER MIRANDA, VIOLATED THE PETITIONER'S RIGHTS UNDER THE 5TH, 6TH AND 14TH AMENDMENTS. THIS POSITION IS SUPPORTED BY MIRANDA V. ARIZONA (CITE OMITTED), AS THE COURT STATED IN STANSBURY V. CAL., 511 U.S. 318, 322 (1994): "THE ULTIMATE INQUIRY IS WHETHER THERE WAS A FORMAL ARREST OR A RESTRAINING OF MOVEMENT TO A DEGREE ASSOCIATED WITH A FORMAL ARREST", AND U.S. V. GRIFFIN, F3d 1512 1579 (10TH CIR. 1993)

AS IN THIS CASE, PETITIONER WAS TRANSPORTED TO THE HOSPITAL, AND WAS UNDER THE SUPERVISION AND CONTROL OF/BY THE POLICE AND COULD NOT LEAVE.

A MOTION TO SUPRESS WAS FILED IN THE SUPERIOR COURT DUE TO THESE VIOLATIONS, AND THE SUPERIOR COURT VIOLATED THE PETITIONER'S CONSTITUTIONALLY PROTECTED RIGHTS AND ABUSED IT'S DISCRETION, BY FAILING TO SUPRESS THESE STATEMENTS.

PREDJUDICE HAS BEEN SHOWN/MEET BY THE TRIAL COURT ABUSING IT'S DISRETION BY NOT SUPRESSING THE INTERVIEW THAT THE DETECTIVES HELD WITH THE PETITIONER.

QUETION FIVE

FACTS: OFFICERS QUINOLA AND PERRISH WERE AT THE RESIDENCE OF THE PETITIONER'S NEIGHBORS (THE HALLS) AT WHICH TIME MR. HALL MENTIONED WHAT THE PETITIONER HAD SAID ABOUT HIS (THE PETITIONER'S) FATHER, NEEDING HELP. BOTH OFFICERS PROCEEDED TO THE FATHERS RESIDENCE TO CONDUCT A WELLFARE CHECK AT THIS TIME THE OFFICERS HAD NO IDEA THAT ANY ALLEDGED "CRIME" HAD TAKEN PLACE AT THE PETITIONER'S RESIDENCE. THE OFFICERS APPROACHED THE FATHER'S HOUSE, KNOCKED ON THE DOOR. WHILE WAITING FOR A RESPONSE, THEY NOTICED THE PETITIONER'S HOUSE ABOUT 100 YARDS FURTHER BACK. THE OFFICERS DECIDED TO PROCEED TO THIS HOUSE, WHICH WAS THE PETITIONERS.

THERE IS NO INDICATIONS IN THE OFFICER'S REPORTS OF SEEING OR HEARING ANYTHING THAT WOULD HAVE DRAWN THEM TO THIS HOUSE, THEY JUST PROCEEDED TO THE FRONT OF THE HOUSE WITH GUNS OUT AND THEN ENTERED WITHOUT ANNOUNCING THEMSELVES; UNINVITED; WITHOUT PERMISSION; WITHOUT A WARRANT AND WITHOUT ANY 'CAUSE'... A VIOLATION OF PETITIONER'S RIGHTS PROTECTED BY THE 4TH AND 14TH AMENDMENTS.

FURTHER MORE, THE OFFICERS FAILED TO PRESERVE AND CONTAMINATED THE ALLEDGED "CRIME SCENE" BY DISTURBING IT PRIOR TO THE CRIME SCENE DETECTIVES ARRIVING.

Statement of the Case

After entering the house, officers approached the body and ascertained the body was deceased. Confirming that the body was deceased is of course completely legitamate, but after that the officers should have just secured the scene until the crime scene detectives arrived. But officer Quinola decided to move the body to "get a better look".

After the EMTs arrived the body was repeatedly moved around, contaminated and eventually rolled over, all of these actions altered the scene from it's natural state, destroying evidence and in the fact that the body was flipped over, fabricating evidence.

By contaminating the "crime" scene, it (the State, police, et al) destroyed evidence as to how the alledged "crime" happened, and any conclusions of how the crime happened.

When the State presented this case to the grand jury, it did so without any clear factual evidence due to the sloppy investigation work and due to the crime scene being contaminated prior to an investigation being done

A Motion to Suppress for Illegal Entry was filed and heard, the trial court then erroneously denied this motion.

Legal argument: As the courts have held in Michigan V. Tucker, 917 U.S. at 447, 94 Sct at 2365 "... The defendant's purpose of the conclusionary rule necessarily assumes that the police have engaged in willfull or at least negligent conduct which has deprived the defendant of some right".

As the facts show, police and EMTs destroyed/contaminated evidence at the scene (including evidence that was exculpatory) and in doing so, denied the Petitioner's right to a defense and/or to properly prepare one, as the Petitioner could not prepare a defense with with evidence that has been destroyed and altered by the inept actions of the police and EMTs, in turn violating the Petitioner's rights protected by the 4th and 14th amendments of the U.S. constitution. And the trial court abused it's descretion in not granting the 'Motion to Suppress for Illegal Entry'.

STATEMENT OF THE CASE

QUESTION SIX:

DURING THE GRAND JURY PROCEEDING, DEPUTY COUNTY ATTORNEY; CANDICE PARDEE, PRESENTED TO THE GRAND JURY "EVIDENCE" THAT WAS NEVER INVOLVED IN THE CASE TO SUPPORT THE STATE'S ERRONEOUS "THEORY" FOR FOR PREMEDITATION, WHICH IS A REQUIREMENT FOR FIRST DEGREE MURDER.

THE COUNTY ATTORNEY ERRONEOUSLY MISINFORMED THE GRAND JURY,: "THAT THE DEFENDANT (PETITIONER) PULLED A KNIFE OUT OF HIS POCKET THEN STARTED STABBING THE VICTIM (IN ACTUALITY, THE AGGRESSOR.). THERE WAS NEVER ANY PROOF OF THIS PROOF OF THIS PRESENTED BY THE STATE BUT IT WAS THE ONLY FABRICATED "EVIDENCE" THAT THE STATE COULD "PRODUCE(D)" FOR IT'S FICTICIOUS PREMEDITATION FACTOR, IN ORDER TO CLAIM FIRST DEGREE MURDER.

LEGAL ARGUMENT: THE PRESENTATION OF THIS FALSE "EVIDENCE" AND THE APPLICABLE LAW(S) GOVERNING THE STATE WAS NOT FAIR AND IMPARTIAL, IN TURN, VIOLATING THE PETITIONER'S RIGHT PROTECTED UNDER THE 5TH AND 14TH AMENDMENTS AND ARTICLES 2 AND 4 OF THE ARIZONA STATE CONSTITUTION.

THIS MISCONDUCT LEAD TO VINDICTIVENESS AND MALICIOUS PROSSECUTION AND A FUNDAMENTALY UN FAIR MISCARRAGE OF JUSTICE (MANIFEST INJUSTICE).

DENIALS OF THESE ARE REVIEWED FOR ABUSE OF DISCRETION OF CLEAR ERROR, BUT REVIEW IS *DE NOVO* IF THE DENIAL IS BASED ON A MATTER OF LAW; SEE U.S. V. WOOLFOLK 399 F3d 590, 594 (4TH CIR. 2005)

THE COURT HELD IN U.S. V. HOGAN 712 F2d 757 (2ND CIR. 1983): "...THE LAW OF THIS CIRCUIT IS THAT DISMISSAL OF AN INDICTMENT IS JUSTIFIED TO ACHIEVE EITHER OF THE TWO OBJECTIVES: TO ELIMINATE PREJUDICE TO THE DEFENDANT; OR PURSUANT TO OUR SUPERVISORY POWERS TO PREVENT PROSECUTOR IMPAIRMENT." IN THIS CASE, THE FACT STILL REMAINS THAT THE PETITIONER WAS PREJUDICED BY THIS MISSTATEMENT OF IMPORTANT FACTS AND THE GRAND JURY'S RESPONDANT ROLE WAS IMPAIRED. IN THIS CASE, THERE WERE MULTIPLE INSIDENCES OF FALSE EVIDENCE BEING SUBMITTED TO THE GRAND JURY (SEE' MOTION TO DIMISS THAT WAS FILED MARCH 26, 2001.). THE COURT HELD IN OLIVER V. U.S., 401 F. SUPP 1262 (W.D. MICH. 1995): "TO PREVAIL UNDER 2255 PETITIONER MUST SHOW A FUNDAMENTAL DEFECT WHICH INHERENTLY PRESENT IN A MISSCARAGE OF JUSTICE OR IS SO EGREGIOUS THAT IT AMOUNTS TO A VIOLATION OF DUE PROCESS. THIS POSITION IS FURTHER SUPPORTED (IN REGARDS TO GRAND JURIES) IN MORRISEY V. BREWER, 408 U.S. 471, 481 (1972) "AN APPELLANT WHO RAISES AN ISSUE FOR THE FIRST TIME ON APPEAL HAS THE BURDEN TO SHOW THAT THERE IS ACTUALLY AN ERROR, THAT IS PLAIN, AND THAT IT AFFECTS SUBSTANTIAL RIGHTS."

Statement of the Case

THE FACTS SHOW THAT THE STATE PRESENTED FALSE EVIDENCE TO THE GRAND JURY IN ORDER TO OBTAIN AN INDICTMENT FOR PRE-MEDITATED MURDER; TRIAL COURT FAILED TO GRANT THE MOTION TO DISMISS THE INDICTMENT; THE TRIAL COURT ABUSED IT'S DISCRETION; CAUSE HAS BEEN SHOWN BY THE STATE USING FALSE EVIDENCE TO OBTAIN AN INDICTMENT (FOR PRE MEDITATION); THE TRIAL COURT WAS MADE FULLY AWARE OF THIS. ALL OF THIS VIOLATED THE PETITIONER'S RIGHT TO A FULL AND FAIR HEARING, PROTECTED BY THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION.

PREJUDICE HAS BEEN SHOWN BY THE TRIAL COURTS FAILURE TO NIETHER DISMISS THE INDICTMENT OR IN AN ALTERNATIVE, A REDETERMINATION OF PROBABLE CAUSE ... AN ABUSE OF THE COURTS DISCRETION.

QUESTION SEVEN: ON FEB. 5TH, 2001 DR. GILBERY FLORES, THE CHIEF MEDICAL EXAMINER FOR COCHISE COUNTY PERFORMED AN AUTOPSY (NECROPSY) OF THE DECEASED (THE ACTUAL AGGRESSOR IN THIS CASE) FOR THE PURPOSE OF IDENTIFICATION AND THE EXTERNAL/INTERNAL STUDY FOR THE CAUSE OF DEATH. THIS WAS DONE TO DESCRIBE THE INJURIES AND EXAMINE THE BODY IN ORDER TO COME UP WITH A REPORT FOR THE COCHISE COUNTY ATTORNEY'S OFFICE. PRESENT AT THE AUTOPSY WERE MARK DENNY AND ANGEL GONZALES OF THE COCHISE COUNTY SHERIFF'S OFFICE, TO OBSERVE AND TAKE PHOTOS FOR EVIDENCE PURPOSES.

IT WAS DETERMINED THAT THERE WERE SEVERAL SUPERFICIAL WOUNDS AND TWO DEADLY WOUNDS. IN THE REPORT DR. FLORES LEFT OUT THE FACT THAT LOSS OF BLOOD WAS NOT THE CAUSE OF DEATH, DR. FLORES ALSO LEFT OUT THE SIGNIFIGANCE OF THE LIVER MORTIS OR POST MURTEM LIVIDITY, WHICH PHOTOS SHOW CLEARLY ON THE BACK OF THE DECEASED, NOT THE FRONT. (APPENDIX 3 ILLUSTRATES THIS)

BEFORE THE PETITIONER'S DEFFENSE TEAM HAD AN OPPORTUNITY TO OBTAIN AN EXPERT WITNESS (MEDICAL EXAMINER) TO EXAMINE THE BODY AND MAKE THEIR OWN ASSESSMENT OF THE PHYSICAL EVIDENCE. BUT BEFORE THE DEFENSE GOT IT'S CHANCE TO EXAMINE THE BODY (AND THEREFORE REFUTE THE STATE'S POSITION), THE STATE ALLOWED THE BODY TO BE CREMATED IN DIRECT VIOLATION OF THE ARIZONA RULES OF CRIMINAL PROCEDURE, RULE 13-4221!

THE DEFENSE OBTAINED AN EXPERT WITNESS, DR. RICHARD WAYNE TREPETA, WHO'S OBSERVATIONS AND CONCUSIONS HAD TO BE MADE BY THE REPORTS AND PHOTOS MADE BY DR. FLORES (SEE EXHIBIT/APPENDIX #3).

Statement of the Case

The police and EMTs did not preserve the alledged "crime scene". Police and EMTs moved the body around as they saw fit, destroying evidence (that would have been exculpatory) and contaminating the scene. The police and the EMTs falsely testified that the body was face down, after they contaminated and altered the alledged crime scene. Liver mortis (post mortem lividity) completely and unassailably contradicts their testimonies.

The state used a fabricated theory based on contaminated and falsefied evidence. The state's attorneys used this false narrative to forward the State's case.

The testimony of Dr. Trepeta (Feburary of 2001) stated that post mortem lividity "... was in the back and back of the head...", meaning the body was face up, not face down as maintain by the state.

Dr. Trepeta's testimony showed that "... the blood from the deslead randown onto the defendant (the petitioner)", proving that the deseased was the aggressor, was on top of the defendant (the petitioner) through out the struggle.

Due to post mortem lividity, the body had to be on it's back when police entered and EMTs subsequintly arrived, Dr. Triepeta's testimony (see Apprendix 3) shows this conclusively. In turn this officers and EMTs tampered with the body, contaminated/destroyed evidence and also perjuried thigmselves on the stand when stating that the body was face down, when in fact that was a physical impossibility due to post mortem lividity.

The Legal Argument: In Brady v. Maryland, 373 U.S. 83, 87 (1963); the Supreme Court held that due process requires the prosicution to disclose evidence favorable to an accused upon request when such evidence is material to guilt or punishment. United States v. Bagley, 473 U.S. 667, 682 (1985) states "That the government's duty under *Brady* arises regardless of whether the defendant specifically requested the materials favorable evidence. Under *Brady*, the prosicution's intent behind the suppression of evidence does not determine whether evidence is material or whether the proceeding's outcome would be changed. Kyles v. Whitley, 514 U.S. 419, 434-35 states: The question is not whether the defendant would more likely than not have recieved a different verdict with the [undisclosed] evidence, but whether in it's absence, *he recieved a fair trial*.

LEGAL ARGUMENT, CONT.: STRICKLER V. GREENE, 527 U.S. 263, 281-82 (1989) HELD THAT; THAT A BRADY VIOLATION OCCURS WHEN (1) EVIDENCE FAVORABLE TO THE ACCUSED IS WITHELD BECAUSE IT IS EXCULPATORY OR IMPEACHING. (2) EVIDENCE WAS SUPPRESSED BY THE STATE, EITHER WILLFULLY OR INADVERTEDLY, AND PREDJUDICE ENSUED.

1) THE DEFENDANT (PETITIONER) CLAIMED SELF DEFENSE, THE STATE SAID IT WAS PRE-MEDITATED MURDER AND THE POSITION OF THE BODY WAS THE REASON THAT THE STATE CLAIMED THAT IT WAS "PRE-MEDITATED MURDER".

2) WHETHER THE STATE DID IT INTENTIONALLY OR INADVERTEDLY, THE STATE ALLOWED THE BODY TO BE CREMATED BEFORE THE DEFENSE HAD A CHANCE TO PERFORM IT'S OWN SCIENTIFIC TESTING DONE. (DESTRUCTION OF EVIDENCE.) ALL OF THIS CULMINATES IN A DENIAL (S) OF DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW.

CAUSE HAS BEEN SHOWN: BY DENYING THE PETITION ACCESS TO EXCULPATORY EVIDENCE, BY CREMATING, (DESTRUCTION OF EVIDENCE) THE BODY THEREFORE DENYING THE DEFENSES EXPERTS ACCESS TO THE BODY.

THE PREDJUDICE HAS BEEN SHOWN: AS DENYING THE DEFENDANT (PETITIONER) THE RIGHT TO EXAMINE THE BODY IN TURN DENIED THE DEFENDANT (PETITIONER) THE ABILITY TO PREPARE A DEFENSE

ALL OF THE AFOREMENTION PRESENTS A MANIFEST INJUSTICE AND OBSTRUCTION OF JUSTICE.

QUESTION EIGHT: THE STATE BROUGHT THE DEFENDANT (PETITIONER) TO A SECOND TRIAL IN OCTOBER OF 2009, ONCE AGAIN, ON THE SAME CHARGE OF 1ST DEGREE MURDER, BASE ON "EVIDENCE" FROM A CONTAMINATED CRIME SCENE RIFE WITH FABRICATION AND TAMPERING. AND DUE TO ALL OF THIS TAMPERING, INVESTIGATERS AND THE STATE, DIDN'T EVEN KNOW THE POSITION OF THE BODY AT THE TIME OF DEATH.

YET, WITH ALL OF THIS KNOWLEDGE OF TAMPERING AND CONTAMINATION, THE STATE STILL VINDICTIVELY AND MALICIOUSLY PRESENTED IT'S CASE WITHOUT ANY SOLID EVIDENCE AND IGNORING EXCULPATORY EVIDENCE.

THE STATE MISLED THE GRAND JURY BY NOT OFFERING ALL OF THE LESSER INCLUDES. THE STATE DID NOT EVEN GIVE THE CORRECT DEFINITION OF SECOND DEGREE, MUCH LESS ANYTHING ON MANSLAUGHTER, OR EVEN NEGLIGENT HOMOCIDE. A MALICIOUS PROSECUTION, THAT THE SUBSTANTIAL RIGHT OF THE PETITIONER TO BE TREATED FAIRLY, VIOLATED.

LEGAL ARGUMENT: THE PETITIONER STATES THAT THIS PROSICUTORIAL MISCONDUCT DEPRIVED HIM OF HIS DUE PROCESS RIGHTS, AS THE ARIZONA RULES OF CRIMINAL PROCEEDURE, RULE 13-2809 STATES (1): TAMPERING WITH PHYSICAL EVIDENCE - DESTROYS, MUTILATES, ALTERS, CONCEALS OR REMOVES PHYSICAL WITH THE INTENT TO IMPAIR IT'S VERILITY OR AVAILABILITY.

(2): OR - KNOWINGLY MAKES, PRODUCES OR OFFERS ANY FALSE EVIDENCE.

PROSICUTIONAL MISCONDUCT DOES NOT REQUIRE REVERSAL, UNLESS THE DEFENDANT HAS BEEN DENIED A FAIR TRIAL AS A RESULT OF THE ACTIONS OF THE PROSICUTOR: STATE V. DUMAINE, 162 ARIZ. 392, 400 (1989). CITING: STATE V. HALLMAN, 137 ARIZ. 31, 37, 668 P2d 874, 880 (1983); ALSO SEE DURDEN V. WAINWRIGHT, 447 U.S. 168, 181, 106 Sct 2464, 2471 (1986) WHICH STATES - ["THE PROSICUTOR] IS THE REPRESENTITIVE NOT OF AN ORDINARY PARTY TO A CONTRAVERSY, BUT OF A SOVEREIGNTY WHOSE OBLIGATION TO GOVERN IMPARTIALLY IS AS COMPELLING AS IT'S OBLIGATION TO GOVERN AT ALL"; AND WHERE INTEREST THEREFORE IN A CRIMINAL PROSICUTION IS NOT THAT IT SHALL WIN A CASE, BUT, THAT JUSTICE SHALL BE DONE. WHILE HE MAY STRIKE HARD BLOWS, HE IS NOT AT LIBERTY TO STRIKE FOUL ONES. IT IS AS MUCH DUTY TO REFRAIN FROM IMPROPER METHOD CALCULATED TO PRODUCE A WRONGFUL CONVICTION AS IT IS TO USE EVERY LEGITIMATE MEANS TO BRING ABOUT A FAIR ONE.

ARIZONA RULES OF CRIMINAL PROCEEDURE, RULE 1101 STATES: PREMEDITATION MEANS THAT THE DEFENDANT ACTS WITH EITHER THE INTENTION OR THE KNOWLEDGED THAT HE WILL KILL ANOTHER HUMAN BEING, WHEN SUCH INTENTION OR KNOWLEDGE PRECEEDS THE KILLING BY ANY LENGTH OF TIME TO PERMIT REFLECTION. PROOF OF ACTUAL REFLECTION IS NOT REQUIRED, BUT, AN ACT IS NOT DONE WITH PREMEDITATION IF IT IS THE INSTANT EFFECT OF A *SUDDEN CHORRAL OR HEAT OF PASSION*. (EMPHASIS MINE) IN THE FACE OF THIS NEW STATUTE, THE PETITIONER ARGUES THAT THE ADDITIONAL PHRASE OR PHRASES ABOLISHES ANY DISCERNABLE DISTINCTION BETWEEN FIRST AND SECOND DEGREE MURDER, THUS RENDERING THE STATUTE UN-CONSTITUTIONAL.

STATE V. THOMPSON, (CITE OMITTED): THE QUESTION BEFORE US IS WHETHER THIS DEFINITION OF PREMEDITATION ABOLISHES THE REQUIREMENTS FOR ACTUAL REFLECTION ALTOGETHER, WHETHER IT ELIMINATES THE REQUIRMENT OF DIRECT PROOF OF ACTUAL REFLECTION. THE MERE PASSAGE OF ENOUGH TIME TO PERMIT REFLECTION". THE STATE ASSERTS THE THIRD INTERPRETATION, THAT THE LEGISLATURE INTENDED TO RELIEVE THE STATE OF THE BURDEN OF PROVING A DEFENDANT'S HIDDEN THOUGHT PROCESS AND THAT THIS DEFINITION OF PREMEDITATION, ESTABLISED THAT THE PASSAGE OF TIME MAY SERVE AS A PROXY FOR REFLECTION.

LEGAL ARGUEMENT, CONT.: JURY INSTRUCTIONS SHOULD ALSO CONTAIN BALANCING COMMENT TO REFLECT THAT AN ACT CANNOT BE BOTH IMPULSIVE AND PREMEDITATED. ANY COURT COMMENT ON TIME FACTORS SHOULD BE SHOWN ONLY THROUGH ACTUAL EVIDENCE, NOT ASSUMPTIONS; STATE V. FISHER (CITE OMMITED) THE "GRAVITY THEORY" - DATING 2015.

ARGUEING PREMEDITATION IS A CASE OF MISCARRAGE OF JUSTICE DUE TO THE USE OF FALSE/FABRICATED "EVIDENCE", VIOLATING THE 5TH AND 14TH AMEND. U.S. CONSTITUTION.

CAUSE HAS BEEN SHOWN BECAUSE: THE JURY WAS NOT INSTRUCTED PROPERLY (NOT INFORMED ABOUT "LESSER INVOLVED" OPTIONS).

PREJUDICE HAS BEEN SHOWN AS: AS THE EVIDENCE DID NOT SUPPORT A FIRST-DEGREE MURDE CHARGE ONLY; THE JURY WAS NOT INSTUCTED/INFORMED ABOUT/TO THE LESSER INVOLVED CHARGES WHICH DENIED THE PETITIONER THE RIGHT TO HAVE A PROPERLY INSTRUCTED JURY.

QUESTION NINE: PRIOR TO AND DURING TRIAL, AND EVEN AFTER THE FINDING OF GUILT BY A JURY, THE COURT NEVER INFORMED THE DEFENDANT (PETITIONER) OF HIS RIGHT TO BE SENTENCED BY A JURY. THE TRIAL JUDGE SENTENCED THE DEFENDANT (PETITIONER), BUT THE CASE SHOULD HAVE GONE BEFORE A JURY TO DECIDE THE AGGRAVATING FACTORS.

LEGAL ARGUEMENT: THE DEFENDANT (PETITIONER) HAS A CONSTITUTIONALLY PROTECTED RIGHT TO BE SENTENCED BY A JURY - SIMMONS V. SOUTH CAROLINA, 512 U.S. 154 (1994); LYNCH V. ARIZONA, (CITE OMMITED)

THE U.S. SUPREME COURT HELD THAT CRIMINAL DEFENDANTS HAVE A RIGHT TO A JURY TRIAL, NOT ONLY TO QUESTION THE GUILT, BUT ALSO TO FIND THE MITIGATING AND AGGRAVATING CIRCUMSTANCES APPRENDI V. N.J. 530 U.S. 466, 120 S Ct 2348 (2000) AND BLAKELY V. WASHINGTON, 542 U.S. 29, 124 S Ct 25, 31 (2004).

CAUSE: HAS BEEN SHOWN BY THE COURTS FAILURE TO ALLOW THE JURY TO VIEW THE MITIGATING AND AGGRAVATING FACTORS OR GIVING THE OPTION OF THE JURY SENTENCING THE DEFENDANT (PETITIONER).

PREJUDICE: HAS BEEN SHOWN AS THE TRIAL COURT DID NOT FOLLOW THE RULINGS IN APPRENDI: (SUPRA) AND BLAKELY (SUPRA) BY SENTENCING THE DEFENDANT TO NATURAL LIFE, WHEN DEPENDING ON MITIGATING AND AGGRAVATING FACTORS, THE JURY COULD HAVE SENTENCED THE DEFENDANT TO 25 YEARS TO LIFE INSTEAD OF THE SENTENCE OF NATURAL LIFE.

QUESTION TEN (FACTS): DR. TREPETA TESTIFIED AT THE DEFENDANT'S (PETITIONER'S) FIRST TRIAL; AFTER FINDING OF GUILT AND SUBSEQUENT SENTENCING, THE PETITIONER FILED A DIRECT APPEAL; THE COURT REPORTER, STATE AND TRIAL COUNSEL COULD NOT PRODUCE TO/FOR THE DEFENDANT THE TRIAL TRANSCRIPTS OF THE FIRST TRIAL, IN PARTICULAR THE TESTIMONY OF DR. TREPETA.

APPROXIMATLEY SEVEN (7) YEARS LATER THE COURT OF APPEALS DISMISSED THE PETITIONER'S DIRECT APPEAL AND ORDERED A NEW TRIAL, ON THE SAME INDICTMENT AS THE FIRST TRIAL.

ALL THE WHILE THE STATE MAINTAINS THE FICTION THAT THE TRANSCRIPTS FROM THE FIRST TRIAL DID NOT/OR NO LONGER EXIST.

HOWEVER DURING THE FEDERAL PROCEEDINGS ON JANURARY 30TH, 2014 PRODUCED TO THE DEFENDANT THE PREVIOUSLY "NON EXISTANT" TRIAL TRANSCRIPTS OF DR. TREPETA'S TESTIMONY! (APPENDIX 3) PURJURY BY THE STATE, THE STATE HAS NO QUALMS ABOUT LYING TO THE DEFENDANT (PETITIONER), BUT THE STATE DARE NOT LIE TO THE FEDERAL GOVERNMENT.

DR. TREPETA'S TESTIMONY WAS CRUCIAL FOR THE DEFENSE IN THE SECOND TRIAL. TRIAL COUNSEL DID NOT CALL DR. TREPETA, DID NOT EVEN MAKE AN ATTEMPT TO LOCATE DR. TREPETA OR CONTACT HIM WHICH IS INEFFECTIVE ASSISTANCE OF COUNSEL.

EVEN THOUGH THE TRANSCRIPTS OF DR. TREPETA'S TESTIMONY DID EXIST PRIOR TO THE PETITIONER'S FILING OF POST CONVICTION RELIEF, ACCORDING TO THE STATE THE TRANSCRIPTS "DID NOT EXIST" UNTIL THE STATE HAD TO DEAL WITH A FEDERAL PROCEEDURE ON JANURARY 30TH, 2014. THESE TRIAL TRANSCRIPTS WOULD BE CLASSIFIED AS "NEWLY DISCOVERED EVIDENCE", DUE TO THE CIRCUMSTANCES OF THE/ THIS CASE.

THIS ISSUE INVOLVED (INCONGRUITIES) IN THIS CASE WAS/IS BETWEEN FIRST-DEGREE MURDER AND SELF DEFENSE/STAND YOUR GROUND. THE POSITION OF THE BODY (IN SITU) DICTATES ONE OR THE OTHER. THE STATE'S WITNESSES PLACE THE BODY IN ONE POSITION AFTER THE BODY (AS THE RECORD AND POST MORTEM LIVIDITY SHOWS.) WAS PLACED IN ANOTHER POSITION OR MOVED BY THE SAME WITNESSES. DR. TREPETA'S TESTIMONY, DUE TO THE LIVER MORTIS (POST MORTEM LIVIDITY) CONFIRMS THE DEFENDANT'S TESTIMONY (SELF DEFENSE) AT TRIAL, NOT THE STATE'S ERRONEOUS POSITION.

STATEMENT OF THE CASE

CREDIBILITY OF ANY WITNESS TESTIMONY IS SOLELY FOR THE JURY TO DETERMINE, AND DR. TREPETA'S TESTIMONY WOULD HAVE RAISED REASONABLE DOUBT AGAINST THE STATE'S WITNESSES. "ISSUES RAISED FOR THE FIRST TIME IN A REPLY TO A RESPONSE TO A PETITION NEED NOT BE CONSIDERED BY THE TRIAL COURT.", STATE V. LOPEZ, 223 ARIZ. 239, 240, ¶¶ 6-7, 221 P3d 1052, 1054 (APP 2009). THE COURT WILL NONE THE LESS ANALYZE ISSUE 9 BELOW... UNDER RULE 32.2 (b) PRECLUSSION DOES NOT APPLY TO RULE 32.1(e) CLAIMS OF NEWLY DISCOVERED EVIDENCE... SUCCESIVE IAC CLAIMS DO NOT HAVE OR INVOLVE SUFFICIENT CONSTITUTIONAL MAGNITUDE AND THUS ARE WAIVED (AND PRECLUDED) IF NOT RAISED DURING A PRIOR OPPORTUNITY TO WAIVE THEM... IN OTHER SITUATIONS THE COURT MUST DETERMINE THE PARTICULAR RIGHT INVOLVED BY LOOKING AT THE FACTS OF THE CLAIMS, NOT TO DECIDE IT'S MERITS BUT TO DECIDE WHETHER AT IT'S CORE, THE CLAIM IMPLICATES A SIGNIFICANT RIGHT THAT REQUIRES A KNOWINGLY, VOLUNTARY AND INTELLIGENT WAIVER FOR PRECLUSION TO APPLY UNDER RULE 32.2 (A)(3) D

DISCUSSION OF ISSUE 9, ASSUMING THAT ISSUE 9 IS NOW BEFORE THE COURT, IS PRESENTED NOT ONLY BECAUSE IT NOT ONLY COULD HAVE BEEN RAISED PREVIOUSLY, BUT IN SUBSTANCE ACTUALLY WAS RAISED. THE DEFENDANT'S (THE PETITIONER'S) ISSUE 9 IS NOW PRESENTED AS NEWLY DISCOVERED EVIDENCE. RULE 32.1(e) RECOGNIZES NEWLY DISCOVERED EVIDENCE AS A BASIS FOR POST CONVICTION RELIEF. IN THE FOLLOWING CIRCUMSTANCES(e): NEWLY DISCOVERED MATERIAL FACTS PROBABLY EXIST AND SUCH FACTS PROBABLY WOULD HAVE CHANGED THE VERDICT OR SENTENCE. NEWLY DISCOVERED MATERIAL FACTS EXIST IF: (1) THE NEWLY DISCOVERED MATERIAL FACTS WERE DISCOVERED AFTER THE TRIAL, (2) THE DEFENSE EXERCISED DUE DILIGENCE IN SECURING THE NEWLY DISCOVERED MATERIAL FACTS. (3) THE NEWLY DISCOVERED MATERIAL FACTS ARE NOT MERELY CUMULATIVE OR USED SOLELY FOR IMPEACHMENT... WHICH COMES OF CRITICAL SIGNIFICANCE AT TRIAL, SUCH THAT THE EVIDENCE PROBABLY WOULD HAVE CHANGED THE VERDICT OR SENTENCE.

LEGAL ARGUEMENT: THE FIVE REQUIREMENTS FOR PRESENTING A COLORABLE CLAIM OF NEWLY DISCOVERED EVIDENCE UNDER STATE V. BILKE, 162 ARIZ. [51] at 52, 281 P2d [28] at 29 ARE MET BY THE ABOVE FACTS. DUE TO THE FACT THAT THE PETITIONER HAS MET ALL THE REQUIRMENTS, THESE ISSUES CANNOT BE PRECLUDED.

IN JOHNSON V. CHAMPION, 288 F3d 1215, 1228 (10TH CIR. 2002) THE COURT HELD "... STATE'S CLERK'S FAILURE TO CERTIFY COPY OF ORDER AND TO TIMELY TRANSMIT RECORDS, CONSTITUTES CAUSE TO EXCUSE PROCEEDURAL DEFAULT".

LEGAL ARGUEMENT, CONT.: ..AND IN DORMAN V. WAINWRIGHT, 798 F2d 1358, 1370 (11TH CIR. 1986) THE COURT HELD "STATE'S FAILURE TO PROVIDE PETITIONER WITH THE TRIAL TRANSCRIPTS WITHIN A REASONABLE TIME CONSTITUTES EXTERNAL FACTOR BEYOND PETITIONER'S CONTROL AND WAS SUFFICIENT CAUSE TO EXCUSE THE DEFENDANT'S (PETITIONER'S) APPEAL.

THE COURT'S REASONING ABOVE I.E. "TIMELY TRANSMITTED RECORD" AND "STATE'S FAILURE TO PRODUCE TO THE PETITIONER WITH TRIAL TRANSCRIPTS WITHIN A REASONABLE TIME", THAT WAS SUFFICIENT CAUSE TO EXCUSE DEFENDANT OF APPEAL.

THE DEFENDANT'S REASONS GO UP AND BEYOND THAT. THE STATE COULD NOT PRODUCE ANY OF THE RECORDS/ TRANSCRIPTS OF THE DEFENDANT'S (PETITIONER'S) FIRST TRIAL, SO THE PETITIONER HAS SHOWN CAUSE TO EXCUSE PROCEDURAL DEFAULT.

THE PETITIONER'S RIGHTS TO A CONSTITUTIONALLY PROTECTED APPEAL WAS DENIED BY THE STATE, AS THE STATE COULD NOT AND WOULD NOT AND DID NOT PRODUCE THE FIRST TRIAL TRANSCRIPTS, WHICH TURNS THIS INTO A QUESTION OF LAW.

IN LEVASSEUR V. PEPE, 70 F3d 187, 191 (1ST CIR. 1995): PRESUMPTION OF CORRECTNESS NOT ACCORDED TO STATE COURT'S CONSIDERATION OF CERTAIN CLAIMS OF PETITIONER AND WAIVER OF PROCEEDURAL DEFAULT BECAUSE OF LEGAL QUESTIONS; ABELE V. MARTIN, 380 F3d 915, 922 (6TH CIR. 2004): PRESUMPTION OF CORRECTNESS NOT ACCORDED TO WHETHER PETITIONER'S FEDERAL CLAIM BARRED DUE TO PROCEEDURAL DEFAULT ON CLAIM THAT STATE COURT, BECAME QUESTION OF LAW SUBJECT TO DE NOVO REVIEW.

FURTHER, THE COURT OF APPEALS IS BOUND BY SUPREME COURT DECISIONS AND HAS NO AUTHORITY TO OVER RULE OR DISREGARD THEM.

FUNDAMENTAL ERROR REVIEW APPLIES WHEN A DEFENDANT DOES NOT OBJECT TO ERROR IN THE TRIAL COURT. IT IS LIMITED TO THESE RARE CASES THAT INVOLVE ERROR GOING TO THE FOUNDATION OF THE CASE, ERROR THAT RAISES FROM THE DEFENDANT, A RIGHT ESSENTIAL TO HIS DEFENSE AND ERROR OF SUCH MAGNITUDES THAT A DEFENDANT COULD NOT POSSIBLY HAVE RECIEVED A FAIR TRIAL. HENDERSON 210 ARIZ. at 567 (QUOTING STATE V. HUNTER, 142 ARIZ. 28, 90 (1984).

STATEMENT OF THE CASE

IT WAS AN ABUSE OF POWER (DISCRETION) ON A ERROR IN LAW IN RAISING A DISCRETIONARY CONCLUSION, FAILS TO CONSIDER THE EVIDENCE [IN THIS CASE, DENYING THE PETITIONER THE RIGHT TO FILE A DIRECT APPEAL, BY NOT HAVING / PROVIDING THE TRIAL TRANSCRIPTS TO THE PETITIONER SO HE COULD PROPERLY FILE A DIRECT APPEAL] OR WHEN THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE STATE'S POSITION / CONCLUSION. GRANT V. ARIZ. PUBLIC SERV. CO., 133 ARIZ. 439, 456, 652 P2d 507, 529 (1982); WILLIAMS V. WILLIAMS, 166 ARIZ. 260, 865, 801 P2d 495, 500 (APP 1990); KINNERY V. DENNIS, 97 CIR 206, 207, 223 P 383, 384 (1924); STATE V. GOMEZ, 211 ARIZ. 111, 114 ¶12, 118 P3d 626, 629 (APP 2005).

PREDJUDICE: WAS SHOWN BY THE STATE AND THE TRIAL COURT ERRONEOUSLY TAKING THE POSITION AND STATING THAT THE FIRST TRIAL (DR. TREPETA'S TESTIMONY) TRANSCRIPTS DID NOT EXIST, PERJURING ITSELF; DENYING THE PETITION EXCULPATORY EVIDENCE.

FEDERAL RULES OF CRIMINAL PROCEEDURES pg. 16 IS QUITE CLEAR: THE PROSICUTION HAS A DUTY TO DISCLOSE EXCULPATORY EVIDENCE IN IT'S POSSESION OR CONTROL WHEN THE EVIDENCE MAYBE MATERIAL TO THE OUTCOME OF THE CASE

THE CONVICTION SHOULD OVERTURN AND DISMISSED BY THIS HONORABLE COURT WITH DUE HASTE, AND WITH PREDJUDICE.

REASONS FOR GRANTING THE PETITION

THIS WRIT OF CERTIORARI SHOULD GRANT THAT THIS/MY CASE BE DISMISSED WITH PREDJUDICE DUE TO THE CONSTITUTIONAL VIOLATIONS HELD IN QUESTIONS FOUR (4) TO TEN (10).

THE CONSTITUTIONAL VIOLATIONS HELD IN QUESTIONS ONE (1) TO THREE (3) SHOW THE STATE OF ARIZONA CANNOT CORRECT THE MANIFEST INJUSTICE THAT HAS BEEN DONE.

THE CONSTITUTIONAL VIOLATIONS ARE QUITE CLEAR, AFTER THE PETITIONER'S JURY TRIAL THE PETITIONER HAD A CONSTITUTIONALLY PROTECTED RIGHT TO A/AN DIRECT APPEAL, WHICH THE STATE OF ARIZONA DENIED, AT NO FAULT OF THE PETITIONER. THE PETITIONER PERFORMED ALL PROCEEDURES INVOLVED TO ENGAGE THIS RIGHT.

THE PETITIONER'S CONSTITUTIONALLY PROTECTED RIGHT(S) WAS DENIED BY THE STATE OF ARIZONA, COCHISE COUNTY (AZ.), THE COUNTY ATTORNEY AND THE COURT REPORTER, AS THEY WOULD NOT PRODUCE THE TRIAL TRANSCRIPTS OF THE INITIAL SEVEN (7) DAY JURY TRIAL.

THE ARIZONA COURT OF APPEALS DID NOT HAVE THE JURISDICTION TO DISMISS THE PETITIONER'S 'DIRECT APPEAL AND ORDER TO VACATE' THE SENTENCE AND CONVICTION AND REMANDING THE PETITIONER BACK FOR A NEW TRIAL 7½ YEARS LATER, VIOLATING THE PETITIONER'S RIGHT TO A DIRECT APPEAL OF THE FIRST TRIAL.

THIS PUT THE PETITIONER INTO DOUBLE JEOPARDY BY TRYING THE PETITIONER TWICE ON THE SAME INDICTMENT AFTER A CONVICTION, AND HAVING NO DIRECT APPEAL TO CHALLENGE THE CONVICTION OF THE FIRST TRIAL.

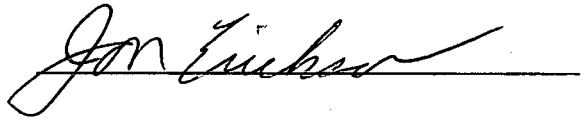
THE PETITIONER IS REQUESTING THAT THE U.S. SUPREME COURT VACATE THE FINDING OF GUILT IN THE SECOND TRIAL DUE TO THE DOUBLE JEOPARDY AND BRADY VIOLATIONS THAT ARE ATTACHED, AS WELL AS UNCONSTITUTIONALLY HELD.

ADDITIONALLY, ORDER THE COCHISE COUNTY SUPERIOR COURT TO DISMISS THE INDICTMENT/CASE WITH PREDJUDICE, DUE TO THE FACT THAT THE PETITIONER'S RIGHT TO A DIRECT APPEAL WAS INTENTIONALLY SABOTAGED BY THE AFORE-MENTIONED PARTIES, PRESENTING ONE OF THOSE "RARE OCCASIONS", DISMISSAL WITH PREDJUDICE IS THE ONLY REMEDY TO CORRECT THE CONSTITUTIONAL VIOLATIONS (4TH, 5TH, 6TH, 8TH AND 14TH AMENDMENTS), STRUCTUAL FUNDEMENTAL AND CLEAR ERROR, DOUBLE JEOPARDY, BRADY VIOLATIONS, DUE PROCESS VIOLATIONS AND A COMPLETE MANIFESTATION OF INJUSTICE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: June 19, 2020