EXHIBIT #1

M E M O R A N D U M

COUNTY COURT, SUFFOLK COUNTY	**TRIAL TERM PART**
THE PEOPLE OF THE STATE OF NEW YORK,	**BY: BRASLOW, J. C. C.**
vs	**DATED: August 22, 2019**
EZRA LESLIE,	**COURT CASE NUMBER: 2111-01**
Defendant.	

EMILY CONSTANT, ESQ.
ACTING SUFFOLK COUNTY DISTRICT ATTORNEY
ATTN: TIMOTHY P. FINNERTY, ESQ.
CRIMINAL COURT BUILDING
CENTER DRIVE SOUTH
RIVERHEAD, NY 11901

EZRA LESLIE, DIN #03-A-3404
c/o CLINTON CORRECTIONAL FACILITY
PO BOX 2001
DANNEMORA, NY 12929-2001

The defendant was convicted in 2003 after a jury trial of committing the crime of murder in the second degree and was sentenced by this Court to an indeterminate term of imprisonment of twenty-five years to life plus a fine of $5,000. The defendant appealed his conviction which appeal affirmed the defendant's conviction (see People v. Leslie, 41 A.D.3d 510). That Court found that the defendant's statements to the police were properly admitted into evidence as a confession and an admission, and that this Court properly declined to charge the jury with respect to the affirmative defense of extreme emotional distress. That Court also found that the defendant's contentions raised in his supplemental pro se brief concerning the admission into evidence of his statements to police, the racial composition of the jury, ineffective assistance of counsel, the charge to the jury, and prosecutorial misconduct were without merit. Defendant's motion for leave to appeal to the Court of Appeals was denied (see People v. Leslie, 9 N.Y.3d 923) as was his motion for reconsideration (see People v. Leslie, 9 N.Y.3d 1007).

The defendant also filed a petition for federal habeas corpus relief which was denied. (Leslie v LaValley, 2014 US Dist LEXIS 94689 [EDNY July 11, 2014, No. 10-CV-2391(JS)]) That Court found that Petitioner's claims that he was denied his Sixth Amendment right to effective assistance of trial counsel, that he was denied his Sixth Amendment right to effective assistance of appellate counsel; and that he was denied his due process and fair trial rights when this Court denied Petitioner's motion to vacate judgment despite Petitioner's showing of newly discovered evidence were without merit.

The defendant also filed a series of motions pursuant to CPL 440.10 all of which were denied by this Court.

The defendant has now filed another motion pursuant to CPL 440.10 seeking an order vacating his conviction. The motion is rooted in McCoy v Louisiana, ___US___, 138 S Ct 1500 [2018]) in which the Court held that the Sixth Amendment rights of defendant in that case, who was charged with three murders, were violated because even though he vociferously insisted that he did not engage in the charged acts and objected to any admission of guilt, the state

trial court permitted counsel at the guilt and sentencing phases of the capital trial to tell the jury that defendant was guilty of committing the charged murders; that Counsel could not admit his client's guilt of a charged crime over the client's intransigent objection to that admission, and violation of a defendant's Sixth Amendment secured autonomy constituted structural error, warranting a new trial, because the admission blocked the defendant's right to make fundamental choices about his own defense.

The defendant is characterizing his argument as new evidence, which it is not, but is based on the recent holding enunciated by the U.S. Supreme Court.

The defendant argues that notwithstanding his objections to his attorney, his attorney admitted to the Court and jury that the defendant did shoot and kill the victim of this crime.

The colloquy the defendant points to is where the defense counsel tells the Court and the prosecutor that he never said that the defense was that the defendant did not do it. That statement was at sidebar and in response to the prosecutor's statement in which she assumed that defense counsel's trial strategy was that the defendant did not do it. Defense counsel was simply denying that he ever admitted to anyone what his trial strategy was, whether it was that the defendant did not do it or anything else.

As held in (People v Murphy, 168 AD3d 632 [1st Dept 2019])and (People v Strong, 165 AD3d 1589 [4th Dept 2018]) defendant's reliance on McCoy v Louisiana (584 US, 138 S Ct 1500, 200 L Ed 2d 821 [2018]) is misplaced because counsel did not concede his client's guilt.

Moreover, any suggestion by defense counsel that defendant did shoot the victim was in the context of explaining that even if the People proved that the defendant shot the victim they still would have to prove mens rea as an element of the charged crime. This does not rise to a violation of the holding in *McCoy*.

The defendants secondary arguments regarding purported prosecutorial misconduct are record based and were either reviewed on appeal or should have been raised on appeal. (CPL § 440.10(2). (People v Stewart, 16 NY3d 839 [2011]); (People v Tyrell, 22 NY3d 359 [2013]).

The Court has reviewed and considered defendant's remaining arguments and finds them to be without merit.

Accordingly, the defendant's motion is denied in its entirety.

ENTER,

STEPHEN L. BRASLOW - J.C.C.

EXHIBIT #2

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

----------X

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff-Respondent,

- against -

EZRA LESLIE,

Defendant-Appellant.

----------X

NOTICE OF ENTRY

App. Div. Case No.
2019-11831

Suffolk Co. Indictment No.
2111-01

S I R :

PLEASE TAKE NOTICE that the enclosed Order was duly entered and filed in the Office of the Clerk of the Appellate Division, Second Department, on or about December 24, 2019.

DATED: January 6, 2020
Riverhead, New York

Yours, etc.,

TIMOTHY D. SINI
District Attorney of Suffolk County
Criminal Courts Building
200 Center Drive
Riverhead, New York 11901
(631) 852-2500

To: Ezra Leslie: DIN #03A3404
Defendant-Appellant *pro se*
Clinton Correctional Facility
P.O. Box 2001
Dannemora, New York 12929

TF

Supreme Court of the State of New York
Appellate Division : Second Judicial Department

M268454
SL/

FRANCESCA E. CONNOLLY, J.

2019-11831

DECISION & ORDER ON APPLICATION

The People, etc., plaintiff,
v Ezra Leslie, defendant.

(Ind. No. 2111/01)

Application by the defendant pursuant to CPL 450.15 and 460.15 for a certificate granting leave to appeal to this Court from an order of the County Court, Suffolk County, dated August 22, 2019, which has been referred to me for determination.

Upon the papers filed in support of the application and the papers filed in opposition thereto, it is

ORDERED that the application is denied.

Francesca E. Connolly

FRANCESCA E. CONNOLLY
Associate Justice

December 24, 2019

PEOPLE v LESLIE, EZRA

EXHIBIT #3

sound so unbelievable. Why would we even be here? Why would Ezra Leslie be here saying that he is not guilty of murder, that he is not guilty of intentionally murdering her?

Well, until you hear everything and until you know everything, you can't say that. That is exactly why we are here, ladies and gentlemen.

So I am going to urge you one more time, keep your oath, keep an open mind, wait until all the evidence is in, until you have heard everything in this case before reaching your determinations. Because if you do that, if you keep to your oath, you will see that Ezra Leslie is not guilty of intentionally murdering Gwen Brodie.

Thank you.

THE COURT: Thank you, Mr. Obedin.

Miss Merrifield, you want to call your first witness.

MS. MERRIFIELD: Yes, Your Honor.

The People call as their first witness, Police Officer Steven Bardak.

THE COURT: Thank you.

EXHIBIT #4

Proceedings

Any other requests to charge, Miss Merrifield?

MS. MERRIFIELD: No, Your Honor.

THE COURT: Mr. Obedin, any requests to charge?

MR. OBEDIN: Yes, Your Honor.

THE COURT: Go forward.

MR. OBEDIN: I am requesting that the Court charge with regard to the affirmative defense of extreme emotional disturbance.

I have handed up case law to the Court. Whether or not the charge of extreme emotional disturbance should be given to the jury is based on what the Court of Appeals has referred to as a two-prong test.

First of all, backing up, the defendant does not have to put forward any evidence or witnesses with regard to extreme emotional disturbance. It can be determined from the totality of the evidence that was adduced at the trial, whether it be People's witnesses or defense witnesses.

The two prong test is that an event had occurred at or near the time of the incident

EXHIBIT #5

THE COURT: All right, sir, go forward.

MR. OBEDIN: Your Honor, I have discussed this matter with my client, Mr. Leslie, he is aware of the fact that I was going to be making this record at this time.

Your Honor, I have represented Mr. Leslie for eighteen months, more at this point, nineteen months. And Mr. Leslie and I have a very serious conflict with regard to the proper theory of defense for this case.

We are now engaged in the trial, we have been on trial for over a week. And my defense and my defense strategy with regard to the way I opened, the way I voir dired and the way that I questioned witnesses, cross-examined witnesses who were on the stand, has all been based on Mr. Leslie's position with regard to what the defense of this case should be.

And I think it is important that I make a record of the fact, that that position has changed from what Mr. Leslie's theory was, to during the trial my theory of defense, and then has shifted back now to Mr. Leslie's theory of defense.

We oppose any application for mistrial. The defendant has chose his strategies. We feel this is another attempt, on strategies, part of the defendant, not Mr. Obedin's part, to attempt to change the outcome of this case.

THE COURT: Mr. Obedin, can I inquire of your client?

MR. OBEDIN: Certainly.

THE COURT: Any objection?

MR. OBEDIN: No.

THE COURT: All right.

Mr. Leslie, you are aware of what Mr. Obedin has just put on the record, correct?

THE DEFENDANT: Correct.

THE COURT: All right. And you know you have had approximately eighteen to nineteen months to prepare for this trial. And at that point I am just advising you that you need to cooperate with your attorney, that he is best able to advise you as to the strategy that you should pursue during your case. And that it is in your best interests to allow Mr. Obedin to represent you in the best way he knows how.

He is a most preeminent and learned

Exhibit 1

EXHIBIT #6

And it is because of that shift back that I feel that I need to make this record. Because obviously, the way that witnesses were cross-examined and the way I opened and the way I voir dired was all based upon which particular theory of defense we were going forward with.

I have attempted to explain to Mr. Leslie over these many months, what my position was with regard to theory of defense, based upon my experience, based upon the many trials I have had, based upon my knowledge of the law, based upon everything that I have as an attorney, which is the reason that he has me to give him that advice and to give him those opinions.

Mr. Leslie is now back to his theory of defense and he is adamant that I proceed on his theory of defense. And I feel, that based upon what has occurred, and most specifically what has occurred during the trial vis-a-vis how I have handled the trial, based on the different theories, that Mr. Leslie's defense has been compromised at this point. Not his theory, specifically, but his defense in general.

We have a significant rift,

EXHIBIT #7

obviously, between us, in terms of theories. And I think that in fairness to him and his ability to have a full and fair trial, which is of the utmost importance here, this is a very significant charge, obviously, that I think it is only appropriate at this time, that Your Honor relieve me as counsel and grant a mistrial and allow Mr. Leslie to have a full and complete defense, based upon his theory, from the outset of the trial.

I think that, unfortunately, that is the only remedy appropriate at this point, to ensure a full and fair trial for Mr. Leslie.

THE COURT: Miss Merrifield, do you want to be heard on this issue?

MS. MERRIFIELD: Your Honor, the People oppose the application for mistrial. This assistant has actually tried other homicide cases with Mr. Obedin and knows he is a very good defense attorney. And in fact, feel that the defense is attempting to, at this time to create another strategy in trying to ask for a mistrial and ask for a new attorney, in attempt to avoid the inevitable, his guilt, overwhelming guilt in this case.

EXHIBIT #8

counsel. And he has tried numerous cases in this court and other courtrooms in this building, as well as in federal and state courts all through the state. And he is extremely experienced and knows how to go forward in these matters.

So I am just advising you, Mr. Leslie, that again, you have had nineteen months to figure out what your strategies should be on this case. And at this late date to be having so called or appearance problems with your attorney, should not be happening.

I am going to deny your application, Mr. Obedin, to be relieved. I am going to deny your application for a mistrial. Again, I have to go along with Miss Merrifield, I believe that Mr. Leslie might be using the change in theories in order to precipitate this court to declare a mistrial and to have you relieved, just to delay this case.

I am not going to entertain that at this time, and you need to go forward with your representation of the defendant.

Any other further applications?

MS. MERRIFIELD: Just one, Your

EXHIBIT #9

anything else.

And I submit to you, ladies and gentlemen, to judge James's credibility, think about the total recall that that man had. Testified on Friday and came back Tuesday. Nothing changed. Not an iota of his testimony.

I submit to you, that man will never forget what happened that day, that place, like a bad video in his mind.

Every question defense counsel asked him, he corrected the defense on certain things he left out in the question. He will never forget that, what happened to Gwen in front of him and in front of Olivia.

Now the defense wants to stand here and say to basically feel sorry for this man. Feel sorry for a man that is a police officer. That has training and experience in how to handle himself. Feel sorry for a man who took his police issued weapon and used it to murder his neighbor. His neighbor. Feel sorry for a man that killed this woman in front of her nine year old little daughter in her own home. You are supposed to think he is a family man, so

EXHIBIT #10

doorway, stepped out the bedroom door into the hallway, the first sound I heard was a swoosh and -- I put a front door in and it scrapes the bottom on the seal a little bit, either opening or closing it. Then I heard a pop, then I heard a pop again and Gwen was down.

Q. So where were you when you heard these noises and saw Gwen go down?

A. Directly behind her.

Q. So you started to come out of the door?

A. Right, I was coming out the door the same time she was but she stepped into the hallway first because she was in front of me.

Q. And you heard two pops?

A. I heard two pops.

Q. And saw her fall down?

A. And I saw her fall down. The first pop, I looked down the haul and I seen Ezra standing there pointing the gun, rushing towards us down the hallway. He shot another time as he was coming down the hallway and then, while she was laying down there on the floor, he reached into the room that she fell in and fired three more shots at her. I tried to stop him by grabbing his wrist and hitting it up against the door frame of the door, hopefully he would drop the gun or the bullets would miss her.

Q. Was he saying anything when you saw him come down the hall?

A. He said nothing.

Q. After the first pop, you looked up and could see him with the gun?

A. Yes, I could see him with the gun aiming down the hallway.

Q. Was this a handgun?

A. Yes, it was.

Q. It appeared to be his 9mm?

A. His 9mm he always carried.

Q. This is the gun he would carry with work?

A. With work, at home. When I say always, he always had it.

Q. You saw him actually point the gun as he was coming down the hall?

A. Yes, I seen him pointing the gun, down at me and Gwen's direction and, you know, I didn't know what was going to happen. All I know is I seen my woman fall and I went to her aid.

Q. So you went to reach for Gwen then you noticed he was almost on top of you?

A. He was right on top of her. He came down -- the hallway i not that long. It's not a big, old long hallway. It's a few good strides and you are at where we are at. By the time I was on the way down, you know, to see about her, I looked out the corner of my eye and I seen this happening and I grabbed his wrist.

Q. When you say this happening, you could see him pointing t

Exhibit 34

EXHIBIT #11

A Yes.
Q Then there was another shot?
A Yes.
Q Both of those shots she was standing for?
A Yes.
Q And then she fell in the room?
A Then she fell in the room.
Q What was -- when you saw the person standing in the hallway, could you tell us, did you observe a weapon in their hand?
A To be honest, I didn't see the weapon until it came into the door.
Q Meaning what door?
A The doorway where she fell. This doorway here, when he reached in and started firing.
Q That is the first time you saw the gun?
A That is the first time I seen the gun.
Q And when he was in the hallway, the person was in the hallway when Gwen was in the hallway and you were in the hallway, just outside your bedroom door, did you notice what the person was doing down the hall?
A No it was just like I said, when we walked out of the bedroom, it was a pop, it was a pop, and a figure coming down the hallway.

EXHIBIT #12

bed. When she stepped into the hallway, I was -- stepped in right behind her. I heard a pop. I looked down the hallway, I seen a figure standing there. Then I heard another pop, and she fell to the ground. As I was going to reach for her, to see what was going on, what happened, I see this gun, I see this body coming out of my corner of my eye. I see a gun come in past my head into the doorway.

Q Where was Gwen then?

A Gwen is laying on the floor.

Q Where?

A In the office. Well, computer room. It was where we had the computer. She fell. When she got shot, she fell into the next doorway, which is right next to the master bedroom.

Q At this point in time did you see who had shot her?

A Yes.

Q Who shot her?

A Ezra Leslie.

Q After she fell on the ground, you said you were down on the floor by her or what, if anything, occurred next?

A I was reaching down to assist her and I seen the gun coming through past the corner of my eye.

EXHIBIT #13

didn't shoot her in the toe. There were no shots anywhere else in this house fired other than into Gwendolyn Brodie's body. There is no struggle over this weapon. There is no loss of control. I am out of my mind. This is center mass right at this woman.

You have the Medical Examiner's diagram just so you can see exactly where all these bullets landed. Center-mass.

And this one, and I submit to you, ladies and gentlemen, an if you look at People's exhibit -- by the way, you can take all of these photographs back, you can take all of this evidence back with you. You just have to ask the Court for it when you deliberate.

I want to show you People's exhibit 7 in evidence. This is the hallway. This is Gwen's hallway at 1072.

You recall Dr. Wilson's testimony, when she is standing in that hallway, that she received gunshot wound A. When she was in an upright position. He can tell because of the tangential entry, the way it stayed straight across, she is upright. And that it went from

EXHIBIT #14

GUNSHOT RESIDUES

Lab File 01-5129

Case File 01-525873

Specimen: 1.02.1

Marked: 1.02.1

Location of other marks, initials: ADJACENT TO HOLES / TAGGED

Description: Blue Jeans

MICROSCOPIC EXAMINATION

Specimen/hole no.: D-2-HOLES ON ZIPPER D1, D2
C-1-HOLE BELOW LEFT POCKET

Smoke: NO

Bullet wipe: NO

Ripping/tearing: ALL (3) – CONSIST. W/ PASSING OF BULLET

Singeing/burning: NO

Gunpowder/type: UNK

Sample: —

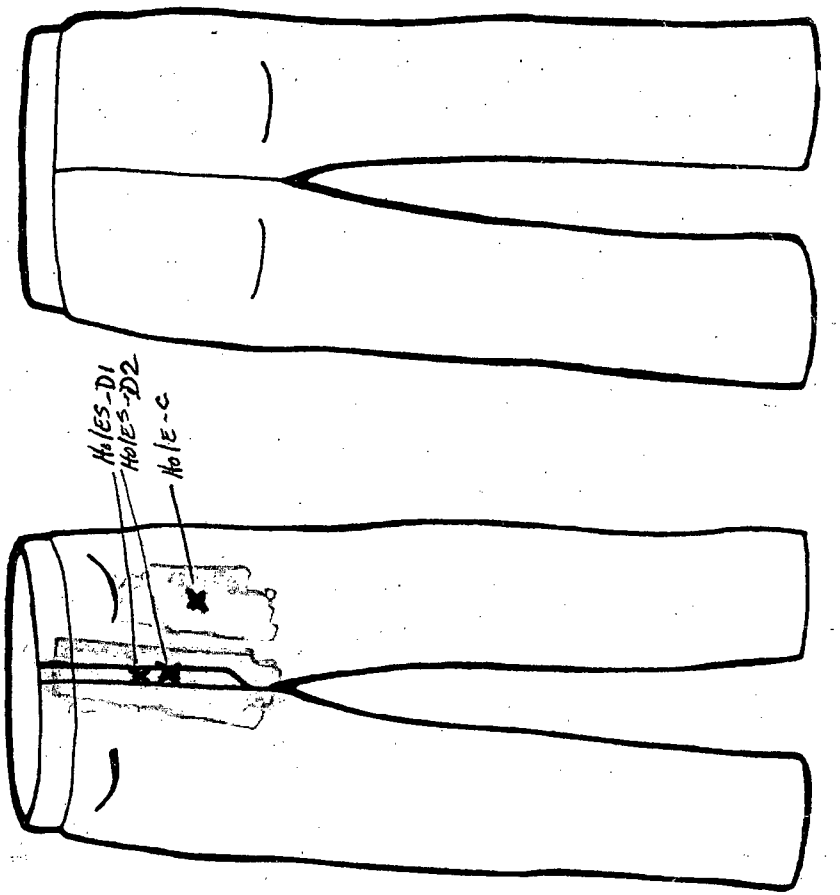
Distance from hole: UNK

CHEMICAL EXAMINATION

Specimen/hole no.: D + C

Griess test: NEG.

Sodium Rhodizonate: NEG.



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

----------X

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

-against-

Indictment: # 2111-01

EZRA LESLIE,

Defendant.

----------X

AFFIRMATION & MEMORANDUM OF LAW
IN SUPPORT OF A MOTION TO VACATE
JUDGMENT PURSUANT TO
CRIMINAL PROCEDURE LAW § 440.10 (1) (C) (G) (H)

Suffolk County Court Indictment: 2111-01
Judge S. Braslow

Respectfully submitted,

Ezra Leslie, Din# 03-A-3404
Defendant, "*Pro-Se*"
Clinton Correctional Facility Main
P.O. Box 2001
Dannemora, New York, 12929

Submitted On: May 23rd, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES

QUESTIONS PRESENTED

WAS DEFENDANT DENIED HIS DUE PROCESS RIGHTS TO A FAIR TRIAL AS ENUMERATED UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1 § 6 OF THE NEW YORK STATE CONSTITUTION., WHERE NEWLY DISCOVERED EVIDENCE SHOWS THAT THE DEFENDANT'S CONVICTION SHOULD BE REVERSED BECAUSE OF "STRUCTURAL ERROR", NOT SUBJECT TO HARMLESS ERROR REVIEW.

This question should be answered yes!

WAS DEFENDANT DENIED HIS DUE PROCESS RIGHTS TO A FAIR TRIAL AS ENUMERATED UNDER THE 6th & 14th AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE 1 § 6 OF THE NEW YORK STATE CONSTITUTION.,WHERE "PERVASIVE PROSECUTORIAL MISCONDUCT" REQUIRED REVERSAL OF DEFENDANT'S CONVICTION AND RETRIAL.

This question should be answered yes!

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

----------X

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

EZRA LESLIE, Indictment #:2111-01

Defendant.

----------X

I. PRELIMINARY STATEMENT

I, **Ezra Leslie**, former N.Y.P.D. Narcotics/Vice Undercover Detective, with no prior arrest record (hereinafter the Defendant) respectfully submits this Motion to Vacate the Judgment of Conviction Pursuant to Criminal Procedure Law § 440.10 (1)(C) (G) (H). Defendant respectfully request for this Honorable Court to vacate the judgment of conviction entered against the defendant on June 12, 2003. Defendant was unjustly convicted of murdering N.Y.P.D., Sergeant Gwen Brodie, (hereinafter the victim) despite Forensic Science, D.N.A. & Biological Trace Evidence ordered by the *"People"* on defendant and his clothes clearly establishing defendant did not fire his weapon, *Inter alia.*

On September 20, 2001, in the early evening hours defendant, former N.Y.P.D. Narcotics/Vice Undercover Detective Ezra Leslie, *{the defendant}* and the *{victim,}* N.Y.P.D. Sergeant Gwen Brodie, had an argument about the status of defendant's sexual relationship with the victim's 29 year old sister Tanya Brodie. This argument was in front of the victims jealous abusive drug using live in boyfriend James Jones, *{the true murderer}*. Defendant had told the victim that Tanya and defendant were just friends and the sexual relationship with the victim's sister Tanya, had been over approximately two months ago in mid July 2001, two months before James Jones murdered the victim and tried to murder defendant on September 20th 2001". The victim and defendant argued because the victim did not believe the sexual relationship was over despite the victim's sister, herself Tanya Brodie, telling the victim on her phone that we were just friends and our

sexual relationship was over since the middle of July 2001. please see *{Grand Jury page 23, lines 8 to 11, Testimony Tanya Brodie}* telling the victim she was not having sex with the defendant as the victim kept calling her sister Tanya a liar angering Tanya to the point that Tanya hung up on the victim.

Defendant "did not murder" the victim, after standing there listening to the victim and defendant arguing James Jones *{the true murderer}*, figured out for himself that the victim and defendant were "much more than just friends" and planned to murder the victim and defendant. After the victim and defendant stopped arguing on our own accord defendant tried to go to his house next door to make some phone calls since the victim's home phone was restricted and could only dial out to 911 due to James Jones, *{the true murderer}* not paying the victim's phone bill as he said he would do. Jones asked defendant to please stay so the victim, James Jones, and the defendant could talk about the relationship between the victim and the defendant, but defendant told Jones he had to go to his house to make some phone calls. James Jones then pleaded with defendant to come right back to the victims house after making his phone calls under the guise the three of us would talk about the relationship between the victim and defendant and what Jones heard us saying during the argument. James said to just come in because he was going to leave the door open as he and Gwen done for me in the past. A little bit past dusk upon returning to the victim's house, the front door was unlocked just as James said it would be. Defendant entered the house, the house was dark, I called the victim, then walked to the start of the hallway. The victim came out of her bedroom into the hallway, then we both started walking towards each other in the direction of the light switch in her hallway to turn on the light.

Before the victim and defendant made it to the light switch James Jones quickly snuck up behind defendant from the dinning room area to the left just behind me and struck defendant over the back of my head with something hard knocking me to my knees. The force from the initial blow forced defendant's 9 mm Glock pistol, to fall out of the waist band of my sweat pants on the floor just behind me. James quickly picked up my weapon and shot the victim from down the hallway, then ran just past me and fired more shots

at the victim from the hallway as the victim was laying on the floor with her upper torso in the doorway of her computer room and her legs were in the hallway. Dazed, hurting and shaking in a attempt to stop Jones from firing the weapon I lunged at James as he was shooting the victim, Jones then tried to turn the weapon on me. I grabbed the barrel of the gun and twisted it out of James hand and the gun fell on the floor, I then retrieved my weapon. James immediately positioned his upper body over me fighting to regain possession of the weapon as I now had the weapon in my hand while James and I fought down the length of the hallway as James was forcefully trying to get the weapon back. Still dazed, shaking and feeling like I was going to lose consciousness I positioned myself and held James at bay with my weapon and told him to call **911 "right now".** Still shaking and fearing I was going to pass out and give James the opportunity to finish what he started, to kill the victim, and me, I left the victim's house. As I walked to my house I told one of my daughters to call **"911"** as I gave my weapon to my brother, now retired Suffolk County Detective Patrick Leslie who broke the weapon down into a few parts and placed the weapon on the front steps of my house so the arriving uniformed officers would not have any reasons to shoot anyone upon their arrival in a few minutes. I then tried to regain my faculties by leaning on the banister of my front steps. James Jones, had one true agenda, to ambush defendant in the victim's dark house and murder us both after finding out the victim and defendant always had a serious ongoing sexual relationship with each other since 1991.

Defendant further submitted his August 18th 2017, Free Standing Claim Actual Innocence 440 Motion in support of his appeal from an order of Suffolk County Court (Hon. Stephen Braslow, J.) dated January 23, 2009, unjustly denying defendant's October 2008 Motion without holding an Evidentiary Hearing *{despite Sworn Affidavits}* that were confirmed true by Police Departmental Documents supporting defendant's allegations, pursuant to Section 440.10, of the Criminal Procedure Law.

Forensic Scientific Evidence, D.N.A. Evidence, and Trace Evidence, categorically examined by the *{People's, Suffolk County Crime Laboratory}* established with "Scientific Certainty" there was "No Evidence at all to validate that the defendant fired his weapon," making defendant "Actually Innocence" and

unjustly convicted of Murder in the Second Degree. Suffolk County Police Officers *{Bardak & his partner Walsh}* arrived at the crime scene about four minutes after the victim was shot and were quick to judgment when they saw blood on defendant's **"bright white"** sports shirt and assumed defendant was the murderer despite defendant telling the arresting officer *"Bardak"* that James Jones shot the victim with my weapon. Scientific and Forensic testing by the *{People's, Suffolk County Crime Laboratory}* later established with **"Scientific Certainty"** that the blood on defendant's clothes was the **"defendant's very own blood"** with **"No Blood"** of the victim being on the defendant, please see *{The November 9th 2001 Suffolk County Forensic Crime Laboratory scientific testing results from defendant's shirt showing "D 2.22" blood stains of defendant's blood}*. Please see *{The November 26th , 2001 and February 7th 2002, Serology Reports, confirming defendant's blood stains on his shirt}*.

Defendant's August 2017, "Freestanding Claim of Actual Innocent" Motion Pursuant to Criminal Procedure Law § 440.10 (1) (H) (G-1) had established by clear and convincing evidence that defendant is "Actually Innocent", and that no trier of fact would have convicted the defendant of murder under a reasonable doubt standard, in the light of all available evidence in defendant's actual Innocence 440 motion which was deliberately withheld from defendant's trial by the prosecutor and defendant's Court appointed attorney, this Court should properly dismiss the accusatory instrument against defendant.

Defendant will establish by clear and convincing evidence that the victim's Eight year old daughter Olivia, did not see what truly transpired in the hallway on that tragic night, but instead was allowed to sit next to James Jones, *{the true murderer}* and listen to him lie to a officer about his untrue version of what transpired. James Jones, the victim's jealous abusive live in boyfriend was the one who murdered the victim and tried to murder defendant. Had the Suffolk County Police Department properly tested James Jones and his clothes as they tested defendant and his clothes, all would have known back in 2001 that James Jones was the true murderer.

Defendant will establish that had court appointed 18-B trial counsel *{Glenn Obedin}* who trial Judge

Braslow, **"would not allow"** defendant to **"replace"** utilized the exculpatory evidence he and prosecution always possessed, but deliberated failed to use, defendant would have been "easily exonerated at trial".

Had African American defendant been Constitutionally allowed to replace his ineffective trial attorney, defendant would not have been **"Unjustly Convicted by an All Caucasian Jury"** and All Caucasian alternate jurors whom Judge Braslow, allowed the prosecutor and defendant's Court appointed lawyer to chose against defendant's will. Defendant's Right to have "Conflict Free Representation" was severely violated as trial Judge Braslow allowed the prosecution and defense chose an all Caucasian Jury and all Caucasian alternative Jurors for an African American defendant.

Defendant's August 2017, Actual Innocence 440 Motion clearly established defendant's Due Process Rights to have a "Fair Trial" as Enumerated under the 14th Amendment to the U. S. Const. and Art. 1 § 6 of the N. Y. S. Const. was violated where the Trial Court, and the prosecutor **"Violated Requirements of the Brady Rule"** by deliberately failing to disclose results of Polygraph Test *{Lie Detector Test}* given by State to two of the three prosecutions star witnesses who failed their Lie Detector Test *Inter alia.*

Defendant's August 2017, Actual Innocence 440 certainly established by clear and convincing evidence that the District Attorney's Office and the prosecutor intentionally failed to inform the Court and Jury that two of prosecutions three star witnesses had **"Been Arrested with Criminal Records"** before they were allowed to testify, and the third witness, an eight year old child's testimony was **"bombarded with serious inconsistencies"** and untruths undeniably proving she did not see what truly transpired. The prosecution and defense **"made absolutely no effort"** to correct false and misleading testimony and factual inconsistencies they had proof was false, misleading and inconsistent.

After reading this May 23rd, 2019, 440 Motion, any Court will certainly see defendant was in fact unjustly convicted of murder **by way of defendant's Sixth Amendment and Due Process Right to have a fair trial being violated by defense counsel and trial court not allowing defendant to chose his own defense as trialcounsel told the Court and jury defendant was guilty without defendant's permission**

and by prosecution committing "Pervasive Prosecutorial Misconduct" during trial and the summations by deliberately misrepresenting evidence *inter alia* **as trial counsel was factually ineffective for allowing the misconduct and the violations of defendant's rights to go unchallenged.** The *{Peoples very own Suffolk County Crime Laboratory}* established with "Scientific Certainty" there was "No evidence on defendant or his clothes to prove defendant ever fired his weapon", making defendant a actually innocence person.

Wherefore, this Court should issue an order granting defendant's May 23rd, 2019, 440 motion in its entirety and vacate defendant's conviction or, in the alternative, grant defendant an Evidentiary Hearing, to resolve the factual Sixth Amendment Violations levied against defendant preventing defendant from having his right to chose his own defense at trial, and to resolve complicated factual allegations relevant to defendant's actual innocence documents proving he didn't fire his weapon, to resolve the complicated factual allegations against the **"Pervasive Prosecutorial Misconduct",** and resolve the factual ineffectiveness of defendant's trial counsels performance. Defendant's May 23rd, 2019, C.P.L. §440.10 (1) (C) (G) (H), motion will certainly demonstrate a **"Prima Facie Showing"** of defendant's Sixth Amendment Rights being violated, warranting a retrial, and lastly, will demonstrate how **"Pervasive Prosecutorial Misconduct"** certainly warranted defendant a retrial.

STATEMENT OF FACTS

1. Defendant was originally charged with one count of Intentional Murder and one count of Depraved Indifferent Murder in the Second Degree.

2. Defendant was arraigned on September 21, 2001. At the arraignment defendant entered a plea of "not guilty" and was denied bail.

3. On December 11, 2002, at defendant's Huntley Hearing Proceeding, the defendant's Court Appointed Attorney and the prosecutor "knowingly exacerbated false testimony" from Suffolk County Police Officer Bardak about alleged Police Misconduct at the Crime scene by the defendant and his brother Suffolk County Det. Patrick Leslie, that {I.A.B.} fully exonerated Det. Patrick Leslie from doing "anything wrong" approximately one year after defendant's trial. Both should be cleared, untruths were about us both.

4. In late April 2003Voir Dire began, an on May 1st, 2003, defendant's trial began.

5. On May 15th, 2003, the defendant, an African American former N.Y.P.D. Narcotic's/Vice Undercover Detective with no prior criminal record was "Unjustly Convicted" of murder in the second degree in a little over 30 minutes by the all Caucasian Jury selected by the defendant's Court appointed Lawyer and the Prosecutor against the defendant's will and without his permission.

6. On June 12th, 2003, the defendant was sentenced to 25 years to life in prison (Judge Braslow).

7. On June 16th, 2003, the Suffolk County District Attorney's Office and the County Clerk's Office were both served with Notices of the defendant's intent to appeal his conviction.

8. On January 9th, 2004, the defendant requested permission from the Appellate Division - Second Department to appeal as a poor person.

9. On February 24th, 2004, defendant was informed by the Appellate Division - Second Department that his application for poor person's relief was granted.

10. On June 5th, 2007, the Appellate Division - Second Department affirmed the defendant's conviction, *People v. Ezra Leslie*, 41 A.D. 3d 510, 837 N.Y.S.2d 304 (2nd Dept. 2007) Howard J. Miller,

J.P.,DAVID S. RITTER, FRED T. SANTUCCI, and ANITA R. FLORIO, J.J. present.

11. On June 12th, 2007, defendant's Court appointed Appellate Counsel filed an Application Seeking Leave to Appeal to the New York State Court of Appeals.

12. On June 28th, 2007, defendant filed an Application for Reconsideration/Re-Argument of the Appellate Division - Second Department's June 5th, 2007, decision.

13. On September 14th, 2007, defendant's Reconsideration/Re-Argument Application to the Appellate Division - Second Department was denied.

14. On September 20th, 2007, defendant's Application Seeking Leave to Appeal to the New York State Court of Appeals was denied by the Hon. Carmen Beauchamp Ciparick, Associate Judge of the Court of Appeals, *People v. Ezra Leslie*, 844 N.Y.S.2d 178 (2007).

15. On October 18th, 2007, defendant filed an Application for Reconsideration/Re-Argument of the previous Application to the New York State Court of Appeals.

16. On December 20th, 2007, the New York State Court of Appeals denied defendant's October 18th, 2007, Reconsideration/Re-Argument motion from their September 20th, 2007, decision, Hon. Carmen Beauchamp Ciparick, Associate Judge of the New York state Court of Appeals, *People v. Ezra Leslie*, 850 N.Y.S.2d 395.

17. In October 2008, defendant respectfully submitted a Criminal Procedure Law § 440.10 (1) (G) (H) motion consisting of a "55 page" Memorandum of Law with a separate "60 Exhibit" Appendix of Exhibits Supporting Proof that defendant's allegations are true to the Supreme Court of the State of New York, Suffolk County.

18. On January 7th, 2009, defendant received a four page [15 Part] Affirmation In Opposition from the Suffolk County District Attorney's Office against defendant's October, 2008 C.P.L.§440.10 (1) (g-h) motion to vacate his conviction.

19. On January 29th, 2009, defendant mailed off his Affidavit In Reply with four Intra Exhibits to

the Peoples January 7th, 2009, four page [15 Part] Affirmation In Opposition against defendant's October, 2008 C.P.L.§ 440.10 (1) (g-h) motion to vacate his judgement of conviction.

20. In the P.M. mail on January 29th, 2009, defendant received a two page Memorandum dated January 23rd, 2009, from Suffolk County {Judge Braslow}, (defendant's trial Judge) denying defendant's C.P.L.§ 440.10 (1) (g-h) motion to vacate his judgement of conviction in it's entirety. Defendant's C.P.L. § 440.10 (1) (G-H) was denied without an Evidentiary Hearing despite several included Sworn Affidavit's and Police Departmental Documents contradicting the sworn testimony from police officers and other prosecution witnesses. Defendant's C.P.L. § 440.10 (1) (G-H) was still denied despite A.D.A. Bannan's deliberate lie in his January 7, 2009 Opposition Motion in {part, 13} where A.D.A. Bannan "Blatantly" lied to the Lower Court by falsely stating the defendant's C.P.L. § 440.10 (1) (G-H) motion did not contain any sworn allegations to support his allegations "knowing defendant's C.P.L. § 440.10 (1) (G-H) motion contained several sworn affidavits that were supported with Police Departmental Documentation proving the sworn affidavit's were factually true warranting the defendant a new and fair trial.

21. On February 20th, 2009, defendant respectfully submitted an Application requesting permission to Appeal pursuant to Section 460.15 of the Criminal Procedure Law, and all attached paperwork to the Appellate Division 2nd Dept. seeking permission to Appeal the Lower Court's January 23rd, 2009, decision which denied defendant's October, 2008 C.P.L.§ 440.10 (1) (g-h) motion to vacate his judgement of conviction.

22.On July 23rd, 2009, the Appellate Division Second Department denied defendant's February 20th, 2009, Application requesting permission to Appeal the denial of defendant's October, 2008 C.P.L.§ 440.10 (1) (g-h) motion to vacate his judgement of conviction pursuant to Section 460.15 of the Criminal Procedure Law.

23. On July 29th, 2009, defendant respectfully submitted a Petition for a Writ of Error Coram Nobis consisting of a "61 page" Memorandum of Law including defendant's "Actual Innocence" claim with

evidence proving with Scientific Certainty the petitioner "was not" the shooter. The Actual Innocence claim and more was supported with a "58, Exhibit" Appendix of Exhibits to the Appellate Division Second Department for their review.

24. On August 7th, 2009, defendant respectfully submitted a Notice of Motion for Re-Argument of defendant's {February 20th, 2009, Motion Pursuant to C.P.L. 460.15} that was denied on July 23rd, 2009, to the Appellate Division Second Department for their review.

25. On January 5th, 2010, the Appellate Division 2nd Dept. Denied defendant's August 7th, 2009 Re-argument Motion of the Appellate Division's July 23rd, 2009, denial of petitioner's Motion pursuant to C.P.L.460.15.

26. On "January 25, 2010" petitioner received the "January 5th 2010 denial" of defendant's 61 page, July 29, 2009 Writ of Error Coram Nobis which included 58 exhibits irrefutably proving the defendant was telling the truth about his allegations.

27. On January 29th, 2010, defendant submitted an application to the N.Y.S. Court of Appeals seeking leave to appeal the Appellate Division 2nd Dept. 01/05/10 denial of petitioner's Writ of Error Coram Nobis.

28. On March 18th, 2010, the New York State Court of Appeals denied defendant's January 29th, 2010, application seeking leave to appeal the Appellate Division Second Department's denial of defendant's July 29th, 2009 Writ of Error Coram Nobis.

29. On May 4th 2010, defendant submitted a C.P.L. § 440.10 (1) (G) arguing Newly Discovered Evidence to the Supreme Court, Suffolk County. Defendant's May 4th 2010, C.P.L.§ 440.10 (1) (g) contained "Transcribed Transcripts" from the April 2008, Internal Affairs Bureau telephone interview between the {I.A.B.} Sergeant Detwiler and the defendant with {I.A.B.} Sergeant Detwiler clearly telling the defendant that his office had investigated the defendant's brother, {Det. Patrick Leslie} about misconduct allegations at the scene, and their investigation did not find Det. Patrick Leslie guilty of committing any police

misconduct and ruled all accusations against Det. Patrick Leslie was "Unfounded".

30. On May 11, 2010, defendant submitted a 76 page 10 Exhibit Habeas Corpus to the Eastern District of New York. On September 14th, 2010, defendant submitted a 32 page 5 Exhibit Traverse to the Eastern District of New York.

31. On July 14th, 2010, Judge S. Braslow denied defendant's second C.P.L. §440.10 (1) (g) motion and this time stated: *The defendant did not raise any new evidence which if presented at the defendant's trial would have been more favorable to the defendant. Specifically, the issues proffered by the defendant as new evidence relate to credibility of trial witnesses. However, the witness credibility was the subject of significant scrutiny during trial and this Court is not convinced that the purported new evidence would have had any impact in favor of the defendant with respect to the jury's verdict.*

32) On June 28, 2011, defendant submitted three copies of a June 24, 2011, - C.P.L. § 440.10 (1) (C)(G)(H) Motion arguing Newly Discovered Evidence with definitive proof defendant's brother was investigated and cleared by the S.C.P.D. {I.A.B.} to the Suffolk County's Clerk & sent one copy to the District Attorney's Office. This June C.P.L. § 440.10 (1) (C) (G) (H) Motion by the defendant has "definitive proof" from the Suffolk County Police Department Internal Affairs Bureau that the defendant's brother, Suffolk County Detective Patrick Leslie "was in fact Criminally Investigated by the Internal Affairs Bureau for alleged Police Misconduct" at the scene of the murder, and cleared from doing anything wrong, about alleged police misconduct alone, and together with the defendant, *Inter alia.* The Internal Affairs Bureau "Exonerated Det. Patrick Leslie" from doing the false accusations of police misconduct by himself and together with the defendant. The Internal Affairs Bureau's decision to exonerate Det. Patrick Leslie is proof all the accusations against Det. Patrick Leslie in regards to police misconduct was unfounded "{Did Not Happen}". Had Det. Patrick Leslie did what officer's Bardak & his partner Walsh falsely testified about, Det. Patrick Leslie would have been prosecuted instead of exonerated. Det. Patrick Leslie could not have been cleared without clearing the defendant because the false testimony accused the "Defendant, former

N.Y.P.D. Narcotics/Vive Undercover Det. Ezra Leslie and his brother, Suffolk County Det. Patrick Leslie" of doing the very same thing together. Had the Court and Jury seen the final {I.A.B.} deposition stating Det. Patrick Leslie was innocent of "any wrong doing" on September 20, 2001, the Court and Jury would have knew the sworn testimony by officer's Bardak & his partner Walsh, accusing the defendant's brother, Det. Patrick Leslie, of being involved in Police Misconduct at the crime scene, with the defendant, was Felony Perjury.

33) On October 4th 2011, Judge Braslow unjustly denied defendant's June 24, 2011, C.P.L. §440.10 (1) (C)(G)(H) Motion arguing Newly Discovered Evidence.

34) On November 9th, 2011, defendant mailed the Appellate Division 2nd Dept. Two copies of my Motion Pursuant to C.P.L. 460.15. arguing the October 4th, 2011, denial of my June 24, 2011, 440 motion on Newly Discovered Evidence.

35) On July 25, 2012, defendant received a letter dated July 20, 2012, from the Appellate Division Second Department denying my motion with-out giving any reason.

36) In July 2014, the Eastern District of New York unjustly denied my May 11, 2010 Habeas Corpus.

37) In August of 2014, I submitted my Appeal to the Second Circuit Court of Appeals arguing the denial of my Federal Habeas Corpus.

38) On December 1, 2014 the Second Circuit Court of Appeals denied defendant's appeal of the denial of defendant's May 2010, Federal Habeas Corpus.

38) On December 27, 2014, defendant submitted an Untimely Re-hearing Petition arguing the denial of my Habeas Corpus. Defendant's Re-Hearing Petition was untimely because it was 13 days late of the 14 day allowance time to submit a Re-hearing Petition.

39) On March 17th 2015, the Second Circuit Court of Appeals denied my "Appropriately Entertained" Untimely Re-hearing petition now giving 90 days from March 17th 2015 to file petitioner's

Petition for a Writ of Certiorari, pursuant to the Rule 13 of the Supreme Court of the United States which states : *if the lower Court Appropriately Entertains an untimely petition for Re-hearing the time to file the Petition for a Writ of Certiorari for all parties "runs from the date of the denial of the re-hearing";*

40) On April 9th 2015, defendant submitted his Writ of Certiorari *{less than 30 days after the March 17, 2015, denial of defendant's Appropriately Entertained Re-hearing Petition}*, to the Supreme Court of the United States and a copy to the Suffolk County District Attorney's Office. Defendant never heard any thing from the Supreme Court, in November of 2016 defendant's daughter called the Supreme Court of the United States inquiring about the status of defendant's April 2015, Writ of Certiorari. The Supreme Court told defendant's daughter that they mailed out a letter dated April of 2015, denying the Writ due to it being untimely. Defendant's Writ was not untimely as defendant sent proof to the Supreme Court proving he never received their April 28, 2015 letter and a copy of their own Rule 13 stating : *if the lower Court Appropriately Entertains an untimely petition for Re-hearing the time to file the Petition for a Writ of Certiorari for all parties "runs from the date of the denial of the re-hearing";*. In short, defendant's Writ of Certiorari was not late pursuant to Rule 13 of the Supreme Court's very own rule. At the date of this motion, defendant's Writ of Certiorari was never reviewed by the Supreme Court of the United States because of their failure to comply to Rule 13 of their very own Supreme Court Law.

41) On August 18th, 2017, defendant submitted a 95 page Actual Innocence 440 Motion which consisted of "Five Points" of arguments. Three of the points were argued for the first time, but that didn't stop trial Court from deliberately misstating that defendant had argued everything before. Defendant's Actual Innocence 440 motion also included 56 exhibits to support the truth of defendant's arguments, only for the lower trial court to ignore scientific facts proving defendant's innocence *inter alia.*

ARGUMENT I.

POINT ONE: DEFENDANT WAS DENIED HIS DUE PROCESS RIGHTS TO A FAIR TRIAL AS ENUMERATED UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1 § 6 OF THE NEW YORK STATE CONSTITUTION., WHERE NEWLY DISCOVERED EVIDENCE SHOWS THAT THE DEFENDANT'S CONVICTION SHOULD BE REVERSED BECAUSE OF "STRUCTURAL ERROR", NOT SUBJECT TO HARMLESS ERROR REVIEW.

A. General Application.

Defendant argues this motion under the authority of Criminal Procedure Law § 440.10 (1)(C) (G)(H) to vacate the judgement of conviction entered against him on June 12th 2003. Newly discovered evidence has been ascertained since the entry of a judgment based upon a verdict of guilty after trial, which could not have been produced by the defendant at the trial even with due diligence on his part.

§2931, Due diligence requirement as to newly discovered evidence Jurisprudence 2d. 34A. N.Y. held: *where newly discovered evidence was not available to defendant prior to trial, it supports setting aside the verdict with respects to the defendant's convictions.*

§3477. Jurisprudence 2d. 34B. N.Y. Newly Discovered Evidence requirement held: *new evidence upon which a motion to vacate a judgment is based must have been discovered since entry of a judgment based upon a verdict of guilty after trial and could not have been produced by defendant at trial even with due diligence on his or her part.*

The Sixth Amendment of the Constitution guarantees to each criminal defendant the **"assistance of counsel for his defense"**.

In the case at bar, *this 440 motion will properly demonstrate how defendant's Sixth Amendment of the United States Constitution and defendant's Due Process Right to have a fair trial "was certainly violated" as trial judge Braslow, and trial court appointed counsel Obedin made certain defendant* **"was definitely deprived of his right to have counsel for "defendant's defense strategy" who would try to prove defendant's innocence with the overwhelming evidence counsel and prosecution both possessed**

which proved defendant did not fire his weapon".

The Supreme Court of the United States, in *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018), petitioner *Robert Leroy McCoy,* represented by new counsel, moved for a new trial, arguing that trial counsel violated his Constitutional Rights by allowing prior counsel to concede that petitioner committed three murders over his objection during guilt phase of Capital trial. The 26th Judicial District Court, Parish of Bossier, denied motion and sentenced petitioner to death. Petitioner appealed. The Louisiana Supreme Court, Hughes, J., 218 So. 3d 535 affirmed. Certiorari was Granted. In a "Landmark Decision" by the Supreme Court of the United States went as followed:

@ *McCoy v. Louisiana*, **Holdings:** [1] United States Supreme Court Justice Ginsburg, held that: *defendant had the right under the Sixth Amendment to insist that his prior counsel refrain from admitting that petitioner committed three murder's during guilt phase of capital trial, even though counsel reasonably believed that admitting guilt afforded petitioner the best chance to avoid death sentence.*

@ *McCoy v. Louisiana*, 1505 Supreme Court justice Ginsburg, held that: *Yet the trial Court permitted counsel, at the guilt phase of a capital trial, to tell the jury the defendant "committed three murders....[H]e's guilty". We hold that defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experienced-based view is that confession guilt offers the defendant the best chance to avoid the death penalty.*

"Guaranteeing a defendant the right to have the Assistance of counsel for his defense the Sixth Amendment so demands". With individual liberty–and, in capital cases, life–at stake, "it is the defendant's prerogative, not counsel's to decide on the objective of his defense": to admit guilt in hope of gaining mercy at the sentencing stage, **"or to maintain his innocence",** *leaving it to the State to prove his guilt beyond a reasonable doubt.*

@ *McCoy v. Louisiana*, 1507 Supreme Court justice Ginsburg, held that: *Counsel's admission of client's involvement in murder when client adamantly maintained his innocence contravened Sixth*

Amendment right to counsel and due process right to a fair trial. The Sixth Amendment guarantees to each criminal defendant the assistance of counsel for his defense.

In the case at bar, defendant repeatedly informed his Court appointed Counsel *Glenn Obedin*, that defendant **"did not murder the victim"** and defendant continuously instructed trial counsel *Glenn Obedin* that defendant **"only wanted to fight for an acquittal at trial"** and nothing else. Defendant's trial counsel was well aware that defendant had pled **"Not Guilty"**from the start, nothing ever changed, defendant had **"always maintained his innocence".** Defendant's trial counsel *Glenn Obedin*, violated defendant's Sixth Amendment of the Constitution and Due Process Right to have a fair trial by failing to refrain from telling the Court and Jury the defendant committed the murder.

The prosecutor always knew the defendant maintained his innocence. The prosecutor, *A.D.A. Merrifield* clearly stated on the record, {*His defense through his attorney thus far, has been that he did not do this crime, please see Trial Transcript page 788}.* A.D.A. Merrifield further stated:{*I would ask they go in subject to connection and subject to the testimony of further witnesses in this case, because we believe that is where the defense all along is, "he didn't do it", please see trial transcript page 789*}. Then defendant's trial counsel, *Glenn Obedin,* vociferously violated defendant's Sixth Amendment of the Constitution and Due Process Right to have a fair trial by vociferously telling the Court & prosecution **on the record,** *{"I strenuously object to {the prosecutor} Miss Merrifield's, assertion that the defense thus far has been that he didn't do it. I challenge her to go anywhere on the record where I said he didn't do it. I never said that, never. And I am appalled at that, at that thought,* please see *trial transcript pages 789 to 790}. A.D.A. Merrifield further stated on the record, to defendant's counsel:{ Mr. Obedin, we have had numerous conferences about this case, that your client is not admitting he committed this crime, please see trial Transcript page 790}.* That was the **"first time"** defendant heard about his counsel having numerous conferences with the prosecutor. Defendant's trial Counsel **"never told defendant he had numerous conferences with the prosecutor"** and he was ineffective for keeping defendant in the dark about his

conferences with the prosecutor making plans to put defendant away some place where I could never be heard from again.

At this point trial Judge Braslow was well aware that defendant's trial counsel was **"giving everyone the impression defendant did murder the victim versus defendant maintaining his innocence".** Defendant's ineffectual trial counsel also deliberately lied to defendant by saying he did not have discovery to give me to make sure I couldn't speak up to expose his plot to make sure the truth never came out. If defendant had his discovery I could have spoken for myself and that is why my court appointed counsel did not give me my discovery, so he could use the defense he wanted to use despite me specifically telling trial counsel *Glenn Obedin,* that James Jones murdered the victim and tried to murder defendant.

In the case at bar, even though trial counsel believed that telling the Court and jury defendant did not intentionally murder the victim would afford defendant a better chance to avoid 25 to life and get the lesser Extreme Emotional Disturbed defense, it was still **"without defendant's permission"** and not the defense strategy defendant repeatedly told his lawyer what he wanted to use. Defendant's court appointed counsel was quick to go against "defendant's defense strategy that defendant did not commit the murder, that trial counsel deliberately failed to alert the court and jury about the scientific, D.N.A., biological trace, and forensic evidence **"possessed by prosecution and defense"** proving defendant did not fire his weapon".

Defense counsel then violated defendant's Sixth Amendment of the Constitution and Due Process Right to have a fair trial by knowingly falsely telling the court and jury *{defendant is not guilty of intentionally murdering Gwen Brodie, Opening Statements, please see Trial Transcript page 629, Obedin}.* Judge Braslow allowed defendant's trial counsel to violate defendant's Due Process Right to have a fair trial when Judge Braslow allowed defendant's trial counsel to falsely state : defendant did not intentionally murder the victim **"knowing prosecution, the Court, and defense Counsel all possessed copies of the Scientific Evidence, D.N.A. Evidence and Biological Trace evidence from their Suffolk County Crime Laboratory clearly establishing with "Scientific Certainty" that defendant did not fire his weapon**

and definitely was not the shooter.

@ 1511, McCoy , The U.S. Supreme Court Justice Ginsburg *held* **"Structural Error"** *affects the framework within which the trial proceeds, as distinguished from a lapse or flaw that is "simply an error in the trial process itself". An error may be ranked* **"Structural",** *we have explained, "if the right at issue not designed to protect the defendant from erroneous conviction but instead protects some other interest," such as "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty". Under at least the first two rationales, counsel's admission of a client's guilt over the client's express objection is error* **"Structural"** *in kind. The effects of the admission would be immeasurable, because a jury would almost certainly be swayed by a lawyers concession.*

@ McCoy v. Louisiana, **Holdings:** [3] United States Supreme Court Justice Ginsburg, held that: *Trial court's error, in allowing prior counsel's admission of defendant's guilt despite defendant's insistent objections to such admissions, was* **"structural"**, *and thus, defendant would be accorded a new trial without any need to show prejudice.*

@ McCoy v. Louisiana, 1510 The Supreme Court of the United States Justice Ginsburg held: *For McCoy, that objective was to maintain "I did not kill the members of my family". In this stark scenario, we agree with the majority of the State Courts of last resort that counsel may not admit her client's guilt of a charged crime over the client's intransigent objection to that admission.*

In the case at bar, It was trial judge Bralsow's error by allowing trial counsel *Obedin,* to falsely tell the jury at opening statements that :*{defendant is not guilty of intentionally murdering Gwen Brodie, please see Opening Statements, Trial Transcript page 629, Obedin}.* When trial judge Braslow, the prosecutor *Merrifield,* & trial counsel *Obedin* all knew and possessed Scientific documents *Inter alia* from their very own Crime Laboratory that proved with absolute certainty defendant did not fire his weapon, they knew defendant was definitely going to fight at trial for an acquittal. Trial Judge Braslow allowed a serious error by allowing defendant's trial counsel *Glenn Obedin* to yell defendant is guilty by saying : *{"I strenuously*

object to {the prosecutor} Miss Merrifield's assertion that the defense thus far has been that he didn't do it. I challenge her to go anywhere on the record where I said he didn't do it. I never said that, never, And I am appalled at that, at that thought, trial transcript pages 789 to 790}. That deliberate error from trial counsel *Obedin* is **"Structural in kind"** and can only be corrected with a new trial, as stated by the Honorable Supreme Court Justice Ginsburg, in Supreme Court of the United States, in McCoy v. Louisiana, 138 S. Ct. 1500 (2018), @ 1512 & **Holdings [3].**

@ 1515, Even in the dissenting opinion from the Supreme Court of the United States, in McCoy v. Louisiana, 138 S. Ct. 1500 (2018), United States Supreme Court Justice's Alito, Thomas, and Gorsuch, held: *if counsel is appointed, and unreasonably insist on admitting guilt over the defendant's objection,* **"a capable trial judge"** *will almost certainly grant a timely request to appoint substitute counsel. And if such a request is denied, the ruling may be vulnerable on appeal.*

In the case at bar, defendant's lawyer was also appointed, and trial judge Braslow knew trial counsel *Obedin,* unreasonably insisted on admitting non-intentional guilt without defendant's permission, trial judge Braslow also unjustly refused to grant defendant a substitute counsel even after counsel asked to be relieved from defendant's case so defendant could have a fair trial from the start using defendant's defense strategy, please see trial transcript pages 788 to 790, 629, & 1008.

After many argument's with defense counsel, trial counsel told judge Braslow **"on the record" :***Mr. Leslie's defense has been compromised at this point, but his defense in general, please see trial transcript page 1007.*

One the record, defendant's trial counsel told judge Braslow,: *We have a significant rift, obviously, between us, in terms of theories. And I think that in fairness to him and his ability to have a full and fair trial, which is of the utmost importance here, this is a very significant charge, obviously, that I think it is only appropriate at this time, "***that your Honor relieve me as counsel and grant a mistrial and allow Mr. Leslie to have a full and complete defense, based upon his theory, from the outset of the trial".**

I think that, unfortunately, that is the only remedy appropriate at this point, to ensure a full and fair trial for Mr. Leslie., please see trial transcript pages 1007 to 1008.

In the case at bar, going by the standards in the Supreme Court of the United States where dissenting Justice's Alito, Thomas, and Gorsuch, held: *if counsel is appointed, and unreasonably insist on admitting guilt over the defendant's objection,* **"a capable trial judge"** *will almost certainly grant a timely request to appoint substitute counsel.* It is painfully obvious trial judge must not be a capable trial judge because he did not care about defendant's Sixth Amendment's and his Due Process Rights to have a fair trial being violated because judge Braslow unjustly refused to give defendant a substitute attorney that would fight for an acquittal to prove defendant's innocence, *and judge Braslow had the audacity to tell defendant to cooperate with defendant's attorney {trial transcript page 1009}, and ignore "the facts" that defendant's attorney has told the court and jury defendant is guilty {trial transcript pages 788 to 790, & 629} and would not fight to prove defendant's innocence. How can judge Braslow tell defendant he needs to cooperate with an attorney that falsely told the court and jury the defendant murdered the victim without defendant's permission.* United States Supreme Court Justice Ginsburg, clearly held that: *defendant had the right under the Sixth Amendment to insist that his prior counsel refrain from admitting that petitioner committed three murder's during guilt phase of capital trial, even though counsel reasonably believed that admitting guilt afforded petitioner the best chance to avoid death sentence.*

In the case at bar, *Judge Braslow unjustly failed to do what "3" United States Supreme Court Justices said a capable trial judge would do, and that would be to certainly grant a timely request to appoint substitute counsel if counsel is appointed, and unreasonably insist on admitting guilt over the defendant's objection. Judge Braslow knew defendant had always maintained his innocence and wanted nothing but a trial to fight for his acquittal, and judge Braslow certainly knew trial counsel Obedin kept stating defendant did murder the victim against defendant wishes, a clear cut violation of defendant's Sixth Amendment Rights and his Due Process Right to have a fair trial and choose the defense defendant wants to use. Supreme*

Court Justice Ginsburg has ruled in McCoy v. Louisiana, 138 S. Ct. 1500 (2018), @ *McCoy v. Louisiana,* **Holding [3]** *such admissions, was* **"structural"**, *and thus, defendant would be accorded a new trial without any need to show prejudice.*

@ *McCoy v. Louisiana, 1507-1509* The Supreme Court of the United States justice Ginsburg held: *when a client makes it plain that the objective of "his defense" is to maintain innocence of the charged criminal acts and pursue an acquittal, his lawyer must abide by that objective and may not override it by conceding guilt.*

In the case at bar, defendant's trial counsel *Obedin,* repeatedly ignored that defendant told him defendant did not murder the victim and he wanted to fight for an acquittal at trial and nothing else.

@ *McCoy, 1509* The Supreme Court of the U. S. Justice Ginsburg held: *When a client expressly asserts that the objective of "his defense" is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt. U.S. Const. Amdt. 6 (emphasis added).* See Model Rule of Professional Conduct 1.2(a) (2016) (*a "lawyer shall abide by a client's decisions concerning the objectives of the representation"). Presented with express statements of clients will to maintain innocence, however, counsel may not steer the ship the other way.* @ *McCoy v. Louisiana, 1508,* The Supreme Court of the United States Justice Ginsburg held: *The choice is not all or nothing: To gain assistance, a defendant need not surrender control entirely to counsel. For the Sixth Amendment, in "Granting to the accused personally the right to make his defense" speak's of the assistance of counsel, and an assistant, however expert, is still an assistant. The Sixth Amendment "contemplates a norm in which the accused, and not the lawyer,* **"is master of his own defense". In the case at bar,** *you have judge Braslow unjustly telling defendant he needs cooperate with court appointed attorney Obedin, who will not allow defendant to use the defense of his choice and fight for an acquittal by it self violated defendant's Sixth Amendment to the Constitution and his Due Precess right to have a fair trial by denying defendant his right to fight for an acquittal using the defense strategy* defendant chose.

In *People v. Sides,* 75 N.Y. 2d 822 (1990), the Court of Appeals held: *defendant who requested substitution of appointment of counsel was deprived of his right to counsel where court failed to make even minimal inquiry as to nature of disagreement with present counsel or its potential for resolution prior to denying motion.* For that error *Sides* was granted a new trial because trial judge failed conduct any inquiry whatsoever.

In *People v. Daviel McCummings,* 124 A.D. 3d 502 (2015) the Appellate Division First Department held: *New trial was warranted due to trial court's improper denial of defendant's request for substitution of counsel without conducting any inquiry whatsoever}.*

In the case at bar, the record clearly demonstrated how trial counsel Obedin asked Judge Braslow if he could be relieved as counsel of defendant *{Trial Transcript pages 1007-1008}* for a mistrial and give defendant a substitute counsel and a chance to have a fair trial using defendant's defense. The record clearly demonstrated how judge Braslow unjustly denied the application for a mistrial to receive substitute counsel *"without conducting any inquiry whatsoever" without giving defendant a chance to explain the nature of disagreement with present counsel or its potential for resolution prior to denying motion.* That act of misjudgement and abuse of discretion by Judge Braslow certainly warranted defendant a new and fair trial alone based on case law from the Court of Appeals in *People v. Sides,* 75 N.Y. 2d 822 (1990), & from the Appellate Division First Department in *People v. Daviel McCummings,* 124 A.D. 3d 502 (2015).Judge Braslow and trial counsel Obedin stomped on defendant's Sixth Amendment of the Constitution and Due Process Rights to have a fair trial like judge Braslow is exempt from following the law. For the above mentioned reasons defendant should by all rights be warranted a new and fair trial immediately.

@ McCoy v. Louisiana, page 1508 Supreme Court justice Ginsburg, held: Some decisions are reserved for the client, rather than for the lawyer, notably, **"whether to plead guilty"**, waive a right to a jury trial, testify in one's own behalf, and forgo an appeal. *U.S.C.A. Constitution Amendment Sixth.*

In the case at bar, trial counsel *Glenn Obedin*, and trial judge *Braslow* certainly violated

defendant's Sixth Amendment of the Constitution and his Due Process Right to have a fair trial by taking away defendant's right to fight for a acquittal at trial by trial judge Braslow allowing court appointed counsel Glenn Obedin to tell the Court & jury that defendant did murder the victim, which **"deliberately stripped defendant of his Constitutional Rights to choose the defense of his choice".** @ *McCoy v. Louisiana*, **Holding [3]** Supreme Court Justice Ginsburg stated errors like these are **"Structural"**, *and thus, defendant would be accorded a new trial without any need to show prejudice.*

@ *McCoy v. Louisiana*, 1511, The Supreme Court of the United States Justice Ginsburg held: *But here, the violation of McCoy's protected autonomy right was complete when the court allowed counsel to usurp control of an issue within McCoy's sole prerogative. Violation of a defendant's Sixth Amendment-secured autonomy ranks as error of the kind our decisions have called "structural" ; when present, such an error is not subject to harmless-error review.*

@ *McCoy v. Louisiana, 1512, The United States Supreme Court* Justice Ginsburg *held : Attorney Larry English was placed in a difficult position; he had an unruly client and faced a strong government case. He reasonably thought the objective of his representation should be avoidance of the death penalty. But McCoy insistently maintained "I did not murder my family". Once he communicated that to court and counsel, a concession of guilt should have been off the table. The trial Court's allowance of English's admission of McCoy's guilt despite McCoy's insistent objections was incompatible with the Sixth Amendment. Because the error was* **"structural"**, *a new trial is the required corrective. For the above stated reasons McCoy's Judgment was reversed and McCoy was accorded a new trial.*

In the case at bar, defendant's trial counsel Obedin reasonably thought the objective of his representation should be to avoid a 25 to life sentence by telling the Court and jury defendant did not intentionally murder the victim and should receive a lesser sentence under the Extreme Emotional Disturbance defense. But defendant Ezra Leslie vehemently maintained **"he did not murder the victim and requested to fight at trial for an acquittal".** The prosecution, *A.D.A. Merrifield,* the Court, *judge Braslow,*

and defense counsel, *Glenn Obedin,* all knew defendant stated he did not commit the crime *{Trial Transcript pages 788 to 790}.* Defendant made it clear to the court and defense that he did not murder the victim and wanted to fight for an acquittal, after that *a concession of guilt should have been off the table. The trial Court's allowance of Glenn Obedin's admission of defendant Ezra Leslie's guilt despite defendant repeatedly telling trial counsel that he did not murder the victim was incompatible with the Sixth Amendment because the error was* **"structural"**, *as United States Supreme Court Justice Ginsburg stated* **@ 1512, "a new trial is the required corrective"**. *For these above stated reasons defendant Ezra Leslie's Judgment of conviction should properly be reversed and defendant accorded a new trial just as United States Supreme Court Justice Ginsburg ruled in* McCoy v. Louisiana, 138 S. Ct. 1500 (2018) because the **"Error was Structural In Kind"** denying defendant his right to chose the defense of his choice while trial counsel told the Court and jury defendant committed the crime without defendant's permission, *inter alia.*

Had this Newly Discovered Evidence, from the **"Landmark Decision"** in McCoy v. Louisiana, 138 S. Ct. 1500 (2018), by the Supreme Court of the United States been available in "2003", defendant would have been granted a new and fair trial on the law based on trial Judge Bralow's unjust allowance of court appointed counsel's unreasonably insist on admitting guilt over the defendant maintaining his innocence and request to fight at trial for an acquittal. Trial Judge Braslow allowing trial counsel Obedin to ignore defendant's request to maintain his innocence and fight for an acquittal absolutely violated defendant's Sixth Amendment of the United States Constitution and Due Process Right to have a fair trial, this error was **"Structural in Kind"** and could only be corrected with a new trial, *"Guaranteeing a defendant the right to have the Assistance of counsel for his defense the Sixth Amendment so demands". {The Honorable Supreme Court of the U.S. Justice Ginsburg,} in* McCoy v. Louisiana, 138 S. Ct. 1500 (2018). Trial court judge Braslow, & trial counsel Obedin failed to protect defendant's Sixth Amendment Right of the United States Constitution and Due Process Right to have a fair trial, by unjustly denying defendant his constitutional right to have the assistance of counsel for his defense, and his request for substitution of counsel, for these types

of errors alone, United States Supreme Court Justice {Ginsburg} in a **"Landmark Decision"** clearly stated *in* *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) **"a new trial is the required corrective".**

Based on the **"Landmark Decision"** in *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) where United States Supreme Court Justice {Ginsburg} held: **"a new trial is the required corrective"** when court appointed counsel's unreasonably insist on admitting guilt over the defendant maintaining his innocence and request to fight at trial for an acquittal. The prosecutor, judge Braslow, and defendant's court appointed counsel all knew defendant maintained his innocence and wanted to fight for an acquittal, and judge Braslow still allowed defendant's counsel to go against defendant and falsely admit his guilt. For this **"Structural Error"** alone defendant Ezra Leslie should be granted a new and fair trial immediately.

ARGUMENT II.

POINT TWO: DEFENDANT WAS DENIED HIS DUE PROCESS RIGHTS TO A FAIR TRIAL AS ENUMERATED UNDER THE 6th & 14th AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE 1 § 6 OF THE NEW YORK STATE CONSTITUTION.,WHERE "PERVASIVE PROSECUTORIAL MISCONDUCT" REQUIRED REVERSAL OF DEFENDANT'S CONVICTION AND RETRIAL.

B. General Application

Defendant argues this motion under the authority of Criminal Procedure Law § 440.10 (1)(C) (G)(H) to vacate the judgement of conviction entered against him on June 12th 2003. Defendant was denied his Due Process Rights to have a fair trial as enumerated under the 6th & 14th Amendment to the United States Constitution and Article 1§ 6 of the New York State Constitution, **"Where Pervasive Prosecutorial Misconduct required reversal of defendant's conviction and retrial".**

Under § 18:241, New York Secondary Sources held: *Only with Pervasive misconduct will an un-preserved issue result in reversal.*

In *People v. Redd*, 141 A.D. 3d 546 (2016), Appellate Division Second Department, defendant was convicted in the Supreme Court, Queens County, Lewis, J. of Second degree murder, second degree abortion, and fourth degree criminal possession of a weapon, and he appealed.

The Supreme Court Appellate Division Second Department held: that **"pervasive prosecutorial misconduct required reversal"** of defendant's convictions and retrial.

@ People v. Redd, *page 548*: The Appellate Division, Second Department stated; However, the judgment of conviction must be reversed and a new trial ordered as a result of "pervasive prosecutorial misconduct". *During opening statements as well on summation, the prosecutor repeatedly engaged in improper conduct, including misstating the evidence, vouching for the credibility of witnesses with regard to significant aspects of the People's case calling for speculation by the jury, seeking to inflame the jury and arouse it's sympathy, and improperly denigrating the defense.*

@ People v. Redd, *page 549*: The Appellate Division Second Department stated; During the summation, the prosecutor flatly misstated the medical examiner's testimony regarding the estimated time of death, quoting her as saying "I found nothing in my autopsy that would be inconsistent with the time of death of six A.M" and asking, rhetorically, "Can we get more clear than this ladies and gentlemen?" In fact, the medical examiner's testimony was, "I found nothing in my autopsy that would be consistent with the time of death of six a.m. the previous day." While defense counsel objected to the prosecutor's misstatement, the trial court's only response was to say "[t]hat is the jury's determination."

Echoing the earlier remark from his opening statement, the prosecutor again sought to explain, on summation, the small cuts on the defendant's hands by saying that "during this repeated stabbing, you may get yourself a little cut there a little cut there and a little cut there," particularly "[i]f the blade stabs something hard, like a baby." Not only was the remark needlessly inflammatory, it also improperly cast the prosecutor as an unsworn expert witness in his own case. Defense counsel objected, and the trial court asked the prosecutor not to testify.

Also during summation, the prosecutor improperly vouched for prosecutions witness Gerves's credibility, describing her as a "sharp-eared woman," and speculating that her sense of hearing was particularly well developed from "listening to her [asthmatic] son breath[e] from a distance since four

months old." Defense counsel objected, but the trial court did not rule on the objection.

@ *People v. Redd, page* 550, The Second Department further stated: The Prosecutor was also allowed, during summation, to read stricken hearsay testimony from Gerve about a conversation she reportedly had with a friend about calling Crime Stoppers. Defense counsel, who did not have a transcript of Gerve's testimony during the prosecutor's summation, brought the matter to the trial court's attention at the earliest opportunity the following day, while the jury was still deliberating.

The Appellate Division, Second Department held: *Although objections to some of the remarks below were sustained, we nevertheless include them in order to provide a more complete picture of the pervasiveness of the misconduct at issue on this appeal.*

As stated in *People v. Redd,* @ 548, the judgment of conviction must be reversed and a new trial ordered as a result of "pervasive prosecutorial misconduct" because during opening statements as well on summation, the prosecutor repeatedly engaged in improper conduct, including **"misstating the evidence", "vouching for the credibility of witnesses".**

In *People v.Jones,* 134 A.D. 3d 1588, 22 N.Y. 3d 755(Dec., 31st ,2015), defendant was convicted after jury trial in the Supreme Court, Monroe County, Robert B. Wiggins, A. J., of attempted rape in the first degree, attempted criminal sexual act in the first degree, and assault in the second degree, and he appealed. The Appellate Division held: that reversal is required based on **"Pervasive Prosecutorial Misconduct, on summation".**

@ *People v.Jones,* page 1588, the Appellate Division stated, *On summation, the prosecutor repeatedly invoked a "Safe Streets" argument even after the Supreme Court sustained defense counsel's objection to the prosecutor's use of that argument, denigrated the defense by calling defense counsel's arguments "garbage", "smoke and mirrors", and "nonsense" intended to distract the juror's focus from the "atrocious acts" that defendant committed against the victim.*

@ *People v.Jones, page 1589, the Appellate Division also stated Perhaps most egregiously, given*

that "the potential danger posed to defendant when DNA evidence is presented as dispositive of guilt is by now obvious ," the prosecutor engaged in misconduct when she mis-characterized and overstated the probative value of the DNA evidence in this case.

@ *People v.Jones, pages 1588 to 1589,* the Appellate Division stated although defendant failed to preserve his contention for our review with respect to all but one alleged instance of Pervasive Prosecutorial Misconduct we exercise our power to review defendant's contention with respect to the remaining instances as a matter of discretion in the interest of justice., (see CPL 470.05[2]).

@ *People v.Jones,* 1588, Defendant contends that reversal is required based on pervasive prosecutorial misconduct, the Appellate Division stated, We agree.

For the above mentioned pervasive prosecutorial misconduct the Appellate Division Fourth Department ordered that the judgment so appealed from is unanimously reversed on the law and as a matter of discretion in the interest of justice and a new trial is granted.

In the case at bar, the prosecutor, *{A.D.A. Merrifield}* was so petrified she would lose that she deliberately made misleading and false statements to the jury and in summations, including vouching for a star witnesses credibility which is outside her duties as a assistant district attorney, for instance please see:

The definition of "Center of mass is located on a persons upper torso in the chest area" no lower than the stomach where *{A.D.A. Merrifield}* was trying to make the connection that only Police officers are taught to fire their weapon at center mass, as *{A.D.A. Merrifield}* acted as an **"unsworn witness". The case at bar** had several discovery diagrams showing where the victim was shot and **"none of them displayed all {5} of the bullets hitting the victim center mass".**

In the case at bar, the prosecutions pervasive prosecutorial misconduct attempt to hide the truth that this shooting **"was personal"** by the live-in boyfriend **"James Jones"** who just found out during the argument between the victim and defendant, that the victim had a ongoing sexual relationship with the defendant for over 10 years. *{A.D.A. Merrifield}* blatantly lied to the court and jury about where the victim

was actually shot, by falsely stating during summations all the shots were center mass knowing three of the five shots were intended for the victims vagina. Discovering the victim and defendant had always been sexually involved prompted James Jones *{the true murderer}* to shoot the victim five times, and try and shoot the defendant. Three of the shots were near the victims vagina because it was **"Very Personal"** and prosecution *{A.D.A. Merrifield}* knew this, but the prosecutor **"deliberately lied in her closing summation"** about the victim being shot center mass with all the bullet's please see {Exhibit No.13, Trial Transcript page Closing Summation 1308, lines 6 to 10} to deceive the jury to believe a police officer {the defendant} shot the victim since police officers are taught to fire their weapons at center mass.

In the case at bar, during **"closing summations"** the prosecutor *{A.D.A. Merrifield}* deliberately committed **"pervasive prosecutorial misconduct"** by engaging in improper conduct, including misstating the evidence, by falsely stating to the Court and Jury: " **This is center mass right at this women. You have the Medical Examiner's diagram just so you can see exactly where all these bullets landed, Center mass".** please see {Exhibit No. 13, Trial Transcript Closing Summation page 1308, lines 6 to 10}.

In the case at bar, the evidence clearly shows how "James Jones, the true murderer", tried to **"shoot the victim in her "vagina" not center mass"** as the prosecutor lied in her closing summations, {Exhibit No.13,Trial Transcript Closing Summation page 1308, lines 6 to 10}. The true diagram *{A.D.A. Merrifield}* possessed clearly displayed that the victim's vagina was the intended target, please see *{Exhibit No.1, the diagram of the victims pants showing how 3 of the five shots were intended for the vagina with two bullet holes in the zipper, and one bullet hole in the left leg under the pocket.}*.Also see *{ Exhibit No. 2, where the* **"Peoples"** *forensic crime laboratory clearly determined and stated (2) holes on the front zipper area, and (1) hole on the left leg below the pocket}.*

In the case at bar, the proof is inarguable that prosecutor *{A.D.A. Merrifield }* committed **"pervasive prosecutorial misconduct"** by brazenly lying to the court and jury by telling them **"all the bullets hit the victim center of mass"** to deceive them to believe the defendant was the shooter since police

officer's are taught to shoot center mass. This pervasive prosecutorial misconduct issue alone by *{A.D.A. Merrifield }* **"warrant's a reversal of defendant's conviction and retrial".**

In the case at bar, *{A.D.A. Merrifield}* deliberately failed to inform the court and jury that prosecution's star witness, *{the true murderer}* James Jones, falsely testified at the Grand jury about **"two different positions"** defendant allegedly shot the victim from when each position James Jones testified the defendant shot the victim from was scientifically impossible based on the testimony by the Peoples distance expert's Mr. Hopkins testimony.

James Jones first testimony about where the weapon was positioned for the shooting stated: defendant was *"Right on Top of the victim for the final three shots" please see {Exhibit No. 10, Grand Jury page 38, line 19 }.* Now, please see *{ Exhibit 3, the* **"People's** *" crime laboratory's test results of the sweat pants, socks and sneakers defendant was wearing} displaying no evidence of blood splatter on defendant's sweat pants legs, socks and sneakers* **"undeniably proving"** *James Jones lied about the defendant being right on top of the victim for the final three shots. Had the shooter been standing right on top of the victim for the final three shots* **"there would have certainly been blood spatter on defendant's sweat pants legs, socks and sneakers" and there was none.** That was the reason why the Suffolk County Police had defendant's clothes tested, to confirm if James Jones story about defendant being right on top of the victim for the final three shots was true, which the forensic testing turned out proving James Jones lied again. Also if the victim was shot by the defendant standing right on top of her there would have certainly been **"Gun Powder Residue"** on the bullet entry holes being that the weapon would be closer than the four feet required distance to create gun powder residue on the bullet entry holes. The distance to create gun powder residue was determined to scientific certainty by the **"Peoples Distance Expert", { Exhibit No. 14, Mr. Hopkins, trial transcript pages 933 to 934, Jones}.**

Prosecutor *{A.D.A. Merrifield}* asked distance expert *{Mr. Hopkins,}* "Do you have an opinion, sir, as to a **"scientific certainty"**, as to the distance at which these particular articles of clothing *{clothes victim*

was wearing} were fired on? Distance expert {Mr. Hopkins} testified to a "**scientific certainty**": this is about four feet right here, so the gun was no closer than this, in my opinion, when it was fired into the clothing". please see {Exhibit No. 14, Trial Transcript pages 933 to 934}, the distance expert {Mr. Hopkins} testified to scientific certainty that the victim was shot from no closer than four feet. Any shot from four feet and more would not create gun powder residue on the bullet hole entries. The distant expert *{ Mr. Hopkins}* testified there was no gun powder residue on the bullet holes because the "gun was not closer than four feet when the victim was shot". If defendant done what Jones said, there would have been gun powder residue.

In the case at bar, this Court, *{Judge Braslow}*, prosecution, *{A.D.A. Merrifield}*, and defendant's deliberately ineffective defense counsel *{Glenn Obedin},* has seen testimony from the true murderer *{James Jones}*, brazenly lying that defendant was right on top of the victim for the final three shots {Exhibit No. 10, Grand Jury page 38}, and we all know **"from distant expert Mr. Hopkins, testimony"** if defendant stood right on top of the victim the distance would have certainly been less than the required four feet to produce gun powder residue and there "**would have definitely been gun powder residue on the bullet holes where the victim was shot",** but there was no gun powder residue on the bullet hole entries proving the shooter was not standing right on top of the victim, but at least four feet or more.

James Jones second testimony about where the weapon was positioned for the shooting stated: Jones testified at defendant's Grand Jury by falsely stating: *Ezra {the defendant} was rushing towards us down the hallway, he shot another shot as he was coming down the hallway and then while she was laying on the floor,* **"he reached into the room that she fell and fired three more,** s*ee { Exhibit No. 9, Grand Jury page 37, lines 16 to 21, Jones}.* The first and second story James Jones testified about how the weapon was positioned when the victim was shot does not corroborate to the testimony from {Distance Expert} Mr. Hopkins testimony that the weapon was **"No Closer than Four feet"** when the victim was shot. Both stories by James Jones, (1) **standing right on top of her, and** (2) **leaned into the room that she fell into and fired three shots, all "placed the weapon closer than the required four feet"** to create gun powder residue on

the entry to the bullet holes. The victim's body was positioned with her upper body from the neck down to her waist **"directly in the doorway"** with her legs in the hallway. True murderer James Jones testimony even confirmed the victim's body was positioned directly in the doorway of the computer room with her legs in the hallway, please see {Trial Transcript page 1049, lines 12 to 16, Jones Cross}. If the shooter reached into the doorway to shoot the victim, again that would place the weapon closer than the four feet required to create gun powder residue on the entry of the bullet holes because the victims upper body was **"positioned directly"** in the doorway of the computer room with her legs in the hallway. **The scientific test results prove "with scientific certainty" the weapon was no closer than four feet from the victim's body when it was fired.** Testimony from James Jones "two versions" of how the victim was shot definitely had the weapon closer than four feet and there should have been gun powder residue on the bullet hole entries if James Jones told the truth, but there was no gun powder residue on the victims clothes because James Jones lied about how the victim was shot for the sole purpose to place the blame on the defendant.

James Jones also falsely testified *{the defendant} after firing once from down the hallway, defendant then rushed towards us down the hallway, he fired another shot as he was coming down the hallway, see {Exhibit No.9, Grand Jury page 37, Jones}.*

Pursuant to Scientific Evidence 5th Edition: § 14.13, Gunshot Residue test held: When a firearm is discharged, a **"back blast of gases"** escapes and gunshot residue will be deposited on the hand of the person firing the weapon or any other person or surface in the vicinity. Also propellent (smokeless powder) and **"primer residues are discharged"**. A number of techniques are designed to detect gunshot residues.

In *People v. Rozier,* 143 A.D. 3d 1258, 2016), the Supreme Court Appellate Division Fourth Department held: *Prosecutor's flagrant distortion of DNA evidence on summation violated defendant's due process rights.* **@ 1260,** *We nonetheless agree with defendant's contention that he was denied a fair trial owing to prosecutorial misconduct. Although defendant failed to preserve that contention for our review, we exercise our power to review it as a matter of discretion in the interest of justice(see CPL 470.15[6][a]).*

At trial, the People presented testimony of a forensic expert to discuss DNA evidence collected from the gun, but the testimony was not conclusive. The expert testified that she analyzed the DNA mixture and determined that the defendant was among 1 in 15 Americans who could not be excluded as a contributor. Nevertheless, on summation, the prosecutor grossly exaggerated the DNA evidence as "overwhelming" proof establishing defendant's "guilt beyond all doubt" and posited; "if the defendant had not possessed the gun, wouldn't science have excluded him?" In our view, the prosecutor's flagrant distortion of the DNA evidence caused defendant such substantial prejudice that he was denied due process of law, as Prosecutor's statement, on summation in prosecution for criminal possession of a weapon, **Reversed.**

In the case at bar, the Suffolk County Police Department Division of Medical Legal Investigations & Forensic Sciences Crime Laboratory did in fact test defendant and his clothes for Biological Trace and Forensic Science Evidence especially after James Jones falsely stated defendant fired a shot as he was running down the hallway. Had defendant "**walked or ran while firing his weapon he would have definitely walked directly into "Trace Particles, Primer Residues" that were definitely ejected from his weapon and those trace particles, primer particles, forensic particles and backblast of gases would have certainly been detected on defendant and his clothes".** The forensic & biological trace test results from the Suffolk County Crime Laboratory **"did not detect any trace evidence or any other evidence to prove defendant fired his weapon, because defendant did not fire his weapon".** The Suffolk County Forensic Science Crime Laboratory's extensive testing of defendant and his clothes clearly found no evidence of defendant firing his weapon. After defendant told trial judge Braslow at his sentencing that he allowed the prosecutor to suborn perjury to convict me, **trial judge Braslow deliberately misstated the evidence by "falsely" telling defendant:** *for you to stand here in this courtroom, to protest your innocence when all of the forensic and scientific evidence in this case pointed to your participation and your guilt in this crime is outrageous,* see {Exhibit #7, Sentencing page 13, Braslow, being untruthful}. **All the Scientific, D.N.A. and forensic evidence in this case performed by the Peoples Crime Laboratory clearly**

established with "scientific certainty" that there was no evidence detected on defendant or his clothes to prove defendant fired his weapon, Judge Braslow's statement was "Very prejudice and untrue". In Judge Braslow's unjust denial of defendant August 2017, Actual Innocence 440 Motion, Braslow again deliberately falsely stated: *After hearing all the evidence in this case the Court was left no doubt that the defendant was indeed guilty of the brutal murder of a fellow officer:* **Judge Braslow, prosecution, {A.D.A. Merrifield}, and intentionally ineffective defense Counsel {Obedin}, "all deliberately failed" to "Show all the scientific evidence" they possessed to the jury. The record will certainly confirm how the prosecution and defense intentionally failed to mention the scientific evidence from their Crime Laboratory that proved defendant did not fire his weapon. Had they shown all of the scientific evidence they possessed, every one would have known from the "Peoples Crime Laboratory that defendant was not the shooter". The People's Crime Laboratory clearly established with absolute certainty that there was no evidence to prove defendant fired his weapon. Had the Suffolk County Police followed proper police protocol and tested James Jones, {the true murderer} for evidence of him firing the weapon as they tested defendant, they would have had their true murderer, "James Jones in 2001". The scientific tests ran on defendant and his clothes determined that defendant did not fire his weapon warranting defendant a new trial, based on "Pervasive Prosecutorial Misconduct".**

In the case at bar, during **"the Direct Examination of star Witness Tanya Brodie"** the prosecutor *{A.D.A. Merrifield}* deliberately committed **"pervasive prosecutorial misconduct"** by covering-up a serious inconsistencies in the trial testimony from Tanya's Grand Jury testimony. Tanya Brodie, is the victim's sister and the ex- girlfriend of defendant. **At Defendant's 2001 Grand Jury:** The prosecutor asked Tanya after she found out what happened, did she talk to defendant (Ezra} on the phone. **Prosecutor :** *Okay. You talked to Ezra again on the phone?* **Tanya Brodie:** Yes. *I called his cell phone* **"and he picked up the cell phone"** *and I said, what have you done? What did you do? And, um,* **he said I can't talk right now, and he hung up",** see {Exhibit No. 15, Grand Jury page 25, lines 18 to 24, Tanya Brodie}.

At 2003 Trial, A.D.A. Merrifield: *After that, did you attempt to speak to the defendant?* **Tanya Brodie:** *I called his cell phone to ask what happened and–* **A.D.A. Merrifield:** *Did somebody pick up?* **Tanya Brodie:** *Some body picked up and said I can't talk right now and hung up.* **A.D.A. Merrifield:** *As you sit hear right now, do you know who you spoke to?* **Tanya Brodie: "No",** Please see {Exhibit No. 17, Trial Transcript page 1109, Tanya Brodie}.

A.D.A. Merrifield knew when Tanya Brodie was asked if she spoke with defendant after the murder at defendant's 2001 Grand Jury Tanya Brodie testified : Yes. *I called his cell phone* **"and he picked up the cell phone"** *and I said, what have you done? What did you do? And, um,* **he said I can't talk right now, and he hung up",** please see {Exhibit No. 15, Grand Jury page 25, lines 18 to 24, Tanya Brodie}.

A.D.A. Merrifield also knew at defendant's 2003 trial, A.D.A. Merrifield, asked Tanya Brodie the same question, did she speak with the defendant after the murder? Tanya Brodie, then answered: *After that, did you attempt to speak to the defendant?* **Tanya Brodie:** *I called his cell phone to ask what happened and–* **A.D.A. Merrifield:** *Did somebody pick up?* **Tanya Brodie:** *Some body picked up and said I can't talk right now and hung up.* **A.D.A. Merrifield:** *As you sit hear right now, do you know who you spoke to?* **Tanya Brodie: "No",** Please see {Exhibit No. 17, Trial Transcript page 1109, Tanya Brodie}.

In a brazen act of "**Pervasive Prosecutorial Misconduct**" A.D.A. Merrifield deliberately failed to inform the Court and Jury Tanya Brodie gave inconsistent testimony to that question at defendant's 2001, grand jury. **At defendant's Grand Jury Tanya allegedly knew who she spoke with, at trial Tanya didn't know who she spoke with".** A.D.A. Merrifield failed to ask Tanya Brodie why did she testify in 2001 at the grand jury that **"She spoke directly to defendant after the murder" and he hung up on her", versus her 2003 trial testimony stating she did not know who she spoke to.** A.D.A. Merrifield failed to tell Tanya Brodie that prosecution and defense have copies of Tanya Brodie's telephone records that clearly prove Tanya's home phone, **212-368-8698, {Exhibit No. 16, 2 pages}** called defendant's cell phone,@ **516-721-0143, four (4) times from "9:51 P.M. to 10:07 P.M." undeniably proving Tanya Brodie did not speak**

to defendant after the victim was shot because defendant was in police custody since "7:34 P.M." with no contact with his phone or any phone.

Despite knowing this A.D.A. Merrifield in a brazen act of "**Pervasive Prosecutorial Misconduct**" still tried to get Tanya Brodie to lie again about speaking with the defendant after the murder to make defendant appear more guilty, **"knowing Tanya did not speak with defendant after the murder".** Defendant's trial counsel , {Obedin} who Judge Braslow would not allow defendant to replace knew phone records had proven Tanya Brodie, lied about speaking with the defendant after the murder and his intentional ineffective representation of defendant did absolutely "nothing".Defendant's counsel did not try to show the jury the phone records.

In another brazen act of "**Pervasive Prosecutorial Misconduct**" during **"Closing Summations"**, A.D.A. Merrifield **"knowingly lied to the jury that the first two officers on the scene had to face defendant and his brother {now retired Det. Patrick Leslie} with no cover by falsely stating:** *Imagine how that officer felt responding to a call of an officer down, shot by another police officer. He has to stand there with no cover and try to stop these two individuals that he ultimately sees possessing a gun, fumbling with the gun and had the audacity* **to say "ultimately police officer Bardak convinces them to drop the gun",** Please see {Exhibit No. 19, Trial transcript page 1327, Closing Summation,}.

A.D.A. Merrifield told that bold untruth about the defendant and his brother fleeing with the gun having discovery in her possession indisputably proving her Closing statement is untrue. A.D.A. Merrifield had a copy of the Homicide, Det. Stephan's #675, 11/21/01 Continuation Report that clearly stated : *Leslie went back to his front yard and gave it to his brother, Det. Patrick Leslie,#1170. Shortly there after, the police arrived,* **Stephan's continuation report clearly proved defendant and his brother Patrick were in front of defendant's house before officer Bardak and his partner Walsh arrived, the weapon was on the steps before they arrived, and they saw "Nobody" fleeing anywhere, nor did they see anyone handling the weapon. Homicide Det. Stephan received this information from Officer Bardak before**

Bardak decided to change his story, and prosecution knew this and did nothing but use Bardak's lie.

A.D.A. Merrifield had more discovery proving defendant and his brother were not fleeing nor seen handing the weapon, she also had a :**Suffolk County Police Dept. Communications Section Form , that had "Recorded 911 Tapes" from the victims and defendant houses again proving defendant and his brother were not fleeing or were seen holding the weapon.**

A.D.A. Merrifield had more discovery proving defendant and his brother were not fleeing nor seen handling the weapon, she also had a: **"Cad Completed Call Form",** a computer print out of the precise time patrol cars arrived and instructions from the 911 dispatcher to patrol car, this form also clearly stated the 911 dispatcher told all at **"7:27 p.m."** defendant was in front of his house, and the dispatcher told all officer's Bardak and his partner Walsh, **arrived in car# 306 at "7:31p.m." 4 minutes after everyone knew defendant was in front of his house.**

A.D.A. Merrifield had more discovery proving defendant and his brother were not fleeing nor seen handling the weapon, A.D.A. Merrifield, had knew that the allegations from officer Bardak & his partner Walsh about defendant and his brother doing police misconduct by fleeing from them refusing to drop a weapon *Inter alia,* was not true, because : **The Suffolk County Police Dept. Internal Affairs Bureau had completed an extensive investigation into all those allegations and I.A.B. determined "all the police misconduct allegations was "unfounded", there was no proof the lies from Bardak & Walsh ever occurred, see {Exhibit No. 18, a copy of the I.A.B. complaint, determining accusations of misconduct were Unfounded }. A.D.A. Merrifield, judge Braslow, and defendant's counsel Obedin who Braslow would not allow defendant to replace all knew this and much more, and they did nothing but believe lying officers who slandered defendant and his brother because we were African American Detectives.** Judge Braslow stated on the record that officers Bardak and his partners saw my brother and I fleeing, and despite **"911 tapes, the homicide detective's report, and more proving Bardak and Walsh lied"** about the actions and location of defendant and his brother upon their arrival at the scene, Judge Braslow still

believed them. This is how Assistant District Attorney's really operate under the watchful eyes of former indicted for Corruption Suffolk County District Attorney Thomas Spota to wrongfully convict defendant as Judge Braslow and Merrifield joined in, the sad truth, there is still corrupt assistant district attorney's who worked with Corrupt Thomas Spota doing the same thing now with the new Suffolk County District Attorney with nothing being done.

Based on prosecutions flagrant distortion of DNA evidence and deliberate blind eye to evidence irrefutably proving Suffolk Police Officers {Bardak & Walsh} were untruthful defendant should by all rights be granted a new and fair trial on the above evidence by it's self.

In the case at bar, the proof is inarguable that prosecutor *{A.D.A. Merrifield}* committed **"pervasive prosecutorial misconduct"** by brazenly covering up the fact's that child witness Olivia did not see what truly transpired. Prosecutor, *{A.D.A. Merrifield}* knew eight year old Olivia Brodie's testimony was compromised when the Suffolk County Police violated proper police protocol by not separating witnesses James Jones & Olivia Brodie, and allowed James Jones *{the true murderer}* to tell his version of what allegedly transpired with the victim's then eight year old daughter Olivia sitting right next to him on the front steps to the victims house. Proof James Jones told his untrue version with Olivia next to him was on the record when James Jones testified at defendant's trial. At trial the prosecutor asked James Jones did he tell a officer at the scene what happen,: **PROSECUTOR**: *Now I want to ask you next, when you were in the house, now did there come a time that you spoke with police officer's and told them what had happened?* JAMES JONES: *Yes.* PROSECUTOR: *When did you first tell them what happened?* JAMES JONES: *After they took Gwen out, I went out. I went outside when the police was assisting Gwen. I came back into the house. The police officers wouldn't let me go back down the hallway,* **"So I grabbed Olivia and we sat on the front stoop". And that was the first time that I talked to the cops about what happened.**

PROSECUTOR: Now have you ever told Olivia what had happened? JAMES JONES: No. please see {Exhibit 4, trial transcript pages 997, lines 8 - 25, to 998 line 1, Jones}. Prosecutor *{A.D.A.*

Merrifield} committed **"pervasive prosecutorial misconduct" when she asked James Jones, have you ever told Olivia what happened when the prosecutor "knew James Jones just told prosecution he had Olivia sitting right next to him on the front steps of the victims house when he told the police officer his version of what happened while Olivia was sitting right next to Jones, Olivia, "certainly heard James Jones, she was sitting right next to him" {see Exhibit 4, Trial transcript page 997 to 998, Jones}.**

While prosecution was questioning Olivia, A.D.A. Merrifield asked Olivia, what happened just before her mother was shot, and Olivia, testified, "I saw Ezra coming down the hallway. PROSECUTION: Where were you when you saw him? OLIVIA: In the um– front door of my room. PROSECUTION: And what did you do when you saw him there? Olivia: "I went behind my dresser because I didn't really know who it was. Then trial Judge Braslow allowed prosecution to deliberately steer witness Olivia by telling the jury and Olivia when she first saw him she didn't know him. Then again, PROSECUTION: When you saw the man in the hallway, where did you go to? OLIVIA: Again Olivia, testified behind my dresser, next to my closet. PROSECUTION: Why you do that? OLIVIA" Again, Olivia testified because I was scared and I didn't know who it was. Please see {Exhibits 5 & 6, trial transcript pages 1138-1139, O. Brodie}. The truth and fact's are, Olivia never knew who was in the hallway because she stayed hidden in her room and heard James Jones false story of what transpired when Olivia was sitting next to Jones on the front steps to the victim's house, see {Exhibit 4, trial transcript page 997 to 998, Jones}. Then prosecution was allowed to ask leading questions as the prosecutor steered Olivia to say yes to prosecution saying at first you didn't know who it was. {A.D.A. Merrifield} knew Suffolk County Police officer's took notes of what Olivia allegedly saw that night, and the notes clearly stated that Olivia had told the investigating officer's she saw the defendant from down the hallway and knew it was the defendant versus her "inconsistent trial testimony" stating she hid behind her dresser because she did not know who was in the hallway. "It certainly can't be both versions".

During Cross examination defendant's counsel asked Olivia: DEFENSE COUNSEL, OBEDIN:

Now after this happened that night, you said that James, your step dad, talked to the police at the house? OLIVIA: Yes. DEFENSE COUNSEL OBEDIN: And he told them what happened? OLIVIA: Yes. DEFENSE COUNSEL OBEDIN: And you heard him telling them what happened? OLIVIA: Yes. DEFENSE COUNSEL OBEDIN: And you talked to the police some time after that, right? OLIVIA: Yes. , please {Trial Transcript page 1153, O. Brodie}.

Prosecutor *{A.D.A. Merrifield}* committed **"pervasive prosecutorial misconduct"** when she then Redirected and ask ed Olivia: PROSECUTION: Olivia, did James ever tell you what to say to police? OLIVIA: No. PROSECUTION: Did you ever talk to James about what happened that night? OLIVIA: No. PROSECUTION: Has he ever talked to you about what happened? OLIVIA: No.

Prosecution, defense and the Court, all knew "by Suffolk County police officer's failing to separate witnesses Olivia and James, and allowing Olivia to sit right next to James Jones while he told his side of the story "everyone knows Olivia did in fact hear all of James Jones lie's by just sitting next to Jones while he told his story to the police officer, and the prosecution is trying to hide the fact that Olivia, heard James Jones false story about what transpired and all the inconsistencies in Olivia's testimony from the notes officers took from Olivia on the night of the shooting is obvious proof Olivia did not see what truly transpired. The notes taken from Olivia, at the scene in 2001, was inconsistent to her testimony at trial and nothing was done about it but prosecution trying to hide the truth.

Based on all the above documented **"pervasive prosecutorial misconduct"** where defendant's due process rights to have a fair trial were violated by {A.D.A. Merrifield}, defendant by all rights should be granted a new and fair trial.

In *People v. Powell,* 165 A.D. 3d 842, 84 N.Y.S. 3d 563, Appellate Div. 2nd. Dept. October 10th, 2018, defendant was convicted in the Supreme Court, Kings County, Neil Jon Firetog, J. of murder in the second degree and criminal possession of a weapon in the second degree. Defendant appealed.

The Supreme Court Appellate Division Second Department held: *prosecutor's statement's made*

during summation that misrepresented scientific import of DNA evidence constituted prosecutorial misconduct, which deprived defendant of his right to a fair trial. @ **565,** *However, reversal of the judgment is required due to prosecutorial misconduct on summation: we reach them as a matter of discretion in the interest of justice (see CPL 470.15[6][a]). Moreover, reversal is required because the defendant was deprived of the effective assistance of counsel. We further find that the defendant was deprived of the ineffective assistance of counsel, inter alia, due to defense counsel's failure to object to the prosecutor's improper comments in summation.* **Reversed and remitted.**

In *People v. Rozier,* 143 A.D. 3d 1258, 39 N.Y.S. 3d 340, October 7th, 2016, Appellate Division Fourth Department defendant was convicted in the County Court , Erie County, Kenneth F. Case, J., of criminal possession of a weapon in the second degree. Defendant appealed.

In *People v. Jones,* 134 A.D. 3d 1588, 22 N.Y.S. 3d 755 12-31-15, defendant was convicted after jury trial in the Supreme Court, Monroe County, Robert B. Wiggins, A. J., of attempted rape in the first degree, attempted criminal sexual act in the first degree, and assault in the second degree, and he appealed. **Holding:** The Supreme Court, Appellate Division, held that reversal was required based on pervasive prosecutorial misconduct on summation.

@ *page* 1589, the Appellate Division Fourth Department held: *most egregiously, given that "the potential danger posed to defendant when DNA evidence is presented as dispositive of guilt is by now obvious," the prosecutor engaged in misconduct when she mis-characterized* and overstated the probative value of the DNA evidence in this case. In view of the substantial prejudice caused by the prosecutor's misconduct in this case, including the fact that the evidence of guilt is less that overwhelming.

In the case at bar, *{A.D.A. Merrifield}* failed to mention how she brazenly misstated to the Court and Jury during **"Closing Summations"** by falsely stating: *You can't give points to the defense because the prosecution's case is so* **"overwhelming".** *You can't plug in things for them just because you think maybe, maybe there is something to this we are missing,* Please see {Trial Transcript Closing Summation pages 1304

to 1305}.

In the case at bar, *{A.D.A. Merrifield}*, committed **"pervasive prosecutorial misconduct"** when she deliberately failed to inform the jury or show the jury that *{A.D.A. Merrifield}* and defense counsel possessed Scientific Forensic Evidence from the People's Suffolk County Crime Laboratory clearly establishing that their test results from defendant and the clothes he was wearing**"did not detect a morsel of evidence to support defendant firing his weapon"**. The true facts are the test results from the "*Peoples*" Suffolk County Crime Laboratory is **"overwhelming scientific proof defendant did not fire his weapon". {A.D.A. Merrifield}** definitely misstated the probative value of the evidence when she falsely told the Court and Jury "*the prosecution's case is so* **"overwhelming".** The prosecutions case is not overwhelming, when the jury is not allowed to see the scientific evidence prosecution truly possessed showing there was no evidence on the defendant and the clothes he was wearing to support that he fired a weapon, **had the jury seen that evidence** they would have clearly seen defendant did not fire his weapon.

Time after time the prosecution was allowed to intentionally misstate the probative value of certain issues to hide the truth that clearly proved defendant did not murder the victim. For failing to alert the Court and jury to the facts that scientific testing from the prosecutions Crime Laboratory clearly establishing there was no evidence detected on the defendant or the clothes he was wearing proving he was not the shooter, & the prosecutor {Merrifield} engaged in misconduct when she mis-characterized and overstated the probative value of the DNA evidence in this case defendant should be awarded a new and fair trial , **"so this time a jury of defendant's peer's can see all the evidence", something Judge Braslow did not allow the All Caucasian Jury he helped to pick for defendant's trial.**

As previously stated In *People v. Redd,* 141 A.D. 3d 546 (2016), Appellate Division Second Department, defendant was convicted in the Supreme Court, Queens County, Lewis, J. of Second degree murder, second degree abortion, and fourth degree criminal possession of a weapon, and he appealed.

The Supreme Court Appellate Division Second Department held: that **"pervasive prosecutorial**

misconduct required reversal" of defendant's convictions and retrial because of vouching for the credibility of a witness during Closing summation, including "misstating the evidence", *inter alia.*

In the case at bar, evidence clearly established **"prosecution & defense"** allowed witnesses to **"Falsely testify defendant was drinking alcohol and was drunk**"with out correcting them with documented proof prosecution and defense possessed from the **"N.Y.C. Police Dept." stating defendant was found to be fit for duty, and testimony from two Suffolk County Police Officers {Bardak & Walsh} stating they did not smell alcohol on defendant.** People v.Jones, 134 A.D. 3d 1588, 22 N.Y. 3d 755(12-31-15), held : It is nevertheless mandated when the conduct of a prosecutor "has caused such substantial prejudice to the defendant that he [or she] has been denied due process of law" a new trial is needed. **In the case at bar,** during **"closing summations"** the prosecutor *{A.D.A. Merrifield}* deliberately committed **"pervasive prosecutorial misconduct"** by engaging in improper conduct, by **"vouching for the credibility of her star witness"James Jones,** *{the true murderer}* during her closing summations. Not only did *{A.D.A. Merrifield}* violate defendant's due process right to a fair trial, *{A.D.A. Merrifield}* blatantly lied during Closing Summations about her witness James Jones never changing his testimony when *{A.D.A. Merrifield}* knew and had testimony from James Jones prior Grand Jury that was inconsistent from his trial testimony about what transpired in the hallway before the victim was shot to prove James Jones gave two completely different accounts about what transpired in the hallway when the victim was shot. During the closing summations *{A.D.A. Merrifield}* committed **"pervasive prosecutorial misconduct"** by clearly stating on the record: *And I submit to you, ladies and gentlemen, to judge James credibility, think about the total recall that man had. Testified on Friday and came back Tuesday. Noting changed. Not an iota of his testimony. I submit to you, that man will never forget what happened that day, that place, like a bad video in his mind,* please see {Exhibit No. 8, trial transcript summation page 1341, lines 2 to 10}. As stated in People v. Redd, 141 A.D. 3d 546 (2016), Appellate Division Second Department, Just vouching for prosecutions witnesses credibility requires a reversal, but here, **in the case at bar,** *{A.D.A. Merrifield}* knowingly misstated that the testimony of James Jones *{the true murderer}* never changed when *{A.D.A. Merrifield}* knew and had documented proof James Jones gave two different accounts about what

transpired in the hallway when the victim was shot.

{2001 Grand Jury, James Jones first version of what occurred in the hallway}. *{Prosecution}* knew at **"defendant's Grand Jury"** after being asked what happened in the hallway, **James Jones testified:** *And I saw her fall down. I looked down the hall and I seen "Ezra" {defendant} standing there pointing the gun, rushing towards us down the hallway. He shot another time as he was coming down the hallway and then while she was laying on the floor, he reached into the room that she fell in and fired three more shots at her,* Please see {Exhibit No. 9, Grand Jury page 37, lines 16 to 21, Jones}. **Prosecutor:** After the first pop, you looked up and could see him with the gun? **James Jones:** *Yes, I could see him with the gun aiming down the hallway,* Please see {Exhibit No.10, Grand Jury page 38, line to 4, Jones}.

{2003, Trial, James Jones 2nd version of what occurred in the hallway}, At defendant's trial when James Jones was asked what happened in the hallway: **James Jones:** *When she stepped into the hallway, I was- - stepped right behind her. I heard a pop, I looked down the hallway, I seen a figure standing there,* Please see { Exhibit No. 11, Trial Transcript page 983 lines 1 to 3, Jones}. **Prosecutor:** And then she fell in the room. **James Jones:** *Then she fell in the room.* **Prosecutor:** What was - - when you saw the person standing in the hallway, could you tell us, did you observe a weapon in their hand? **James Jones:** *To be honest, I didn't see the weapon until it came in the door.* **Prosecutor:** Meaning what door? **James Jones:** *The doorway where she fell. This doorway here, when he reached in and started firing.* **Prosecutor:** That is the first time you saw the gun? **James Jones:** *That is the first time I seen the gun.* **Prosecutor:** And when he was in the hallway, the person was in the hallway when Gwen was in the hallway and you were in the hallway, just outside your bedroom, did you notice what the person was doing down the hall? **James Jones:** *No it was just like I said, when we walked out of the bedroom, it was a pop, it was a pop, and a figure coming down the hallway.* Please see {Exhibit No. 12, Trial Transcript page 993, lines 6 to 25, Jones}.

In the case at bar, at defendant's trial *{A.D.A. Merrifield}* obviously knew James Jones had just gave prosecution at defendant's trial **"an inconsistent story"** from defendant's Grand Jury about what

transpired in the hallway where the victim was shot. *{A.D.A. Merrifield}* deliberately failed to correct James Jones inconsistencies, *Merrifield* even failed to ask James Jones why did he give a different testimony about what transpired in the hallway during the grand jury versus what he just testified happened at defendant's trial. At defendant's 2001, Grand Jury, James Jones testified he saw **{Ezra}**, *{the defendant}* from down the hallway and saw the weapon in his hand, please see {Exhibit No. 9, Grand Jury page 37, lines 16 to 17, Jones}. At trial James Jones testified he saw an **"unidentifiable figure"** down the hallway and **"did not see a weapon in the hand",** please see {Exhibit No. 11, trial transcript page 983, line 3, Jones}& {Exhibit No. 12, Trial transcript page 993line 11 to 12, Jones}.

"Two testimonies do not get any more different than those two", and you have {A.D.A. Merrifield} committing **"pervasive prosecutorial misconduct"** by blatantly Misstating to the jury during closing summation that **"Not an Iota of James Jones testimony changed".** First of all, the prosecutor is not allowed to vouch for the credibility of prosecutions witnesses, and {A.D.A. Merrifield} not only vouched for Jones credibility, A.D.A. Merrifield knowingly lied about Jones never changing his story by lying to the jury that **"Not an iota of his testimony changed",** please see {Exhibit No. 8 Trial Transcript page 1341, Closing Merrifield}. The deliberate Pervasive Prosecutorial Misconduct by {A.D.A. Merrifield} "has caused such substantial prejudice to the defendant that defendant has been denied due process of law", a new trial is needed, please see *People v.Jones,* 134 A.D. 3d 1588, 22 N.Y. 3d 755(12-31-15). **A.D.A. Merrifield's Conduct was in fact Pervasive Prosecutorial Misconduct that warrant's a retrial".** Defendant's trial counsel {Obedin} who judge Braslow would not allow defendant to replace was also guilty of ineffective assistance of counsel for his failure not to object or do anything about {A.D.A. Merrifield's} intentional pervasive prosecutorial misconduct throughout defendant's trial and especially during Closing Summation. It is nevertheless mandated when the conduct of a prosecutor "has caused such substantial prejudice to the defendant **"as did in this case at bar"** that he [or she] has been denied due process of law".

For the above mentioned deliberate acts of pervasive prosecutorial misconduct defendant confirmed

to this court to be true with documented records and more, defendant {Ezra Leslie} should be granted a new and fair trial immediately. Prosecution certainly violated defendant's Due Process rights to have a fair trial by way of **"Pervasive Prosecutorial Misconduct".**

Dated May 23, 2019
Dannemora, N.Y. 12929

Respectfully Submitted,

Ezra Leslie

Ezra Leslie, Din#03-A-3404
Defendant, "Pro-Se"
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P.O. Box 2001
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Sworn to Before me on this
23rd day of May, 2019

Larry J. Christon
Notary Public

LARRY J CHRISTON
NOTARY PUBLIC, STATE OF NEW YORK
NO: 01CH6287138
QUALIFIED IN CLINTON COUNTY
COMMISSION EXPIRES 08/05/21

cc: State of N.Y. Attorney Generals
Conviction Review Bureau

Suffolk County District Attorney's Office
S.C.D.A.{Timothy D. Sini}
&
N.A.A.C.P.
&
A.C.L.U.
&
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