

20-5944  
No. \_\_\_\_\_

IN THE

ORIGINAL

SUPREME COURT OF THE UNITED STATES

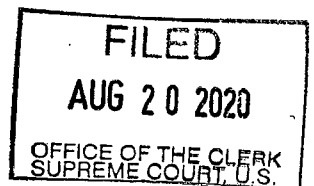
In Re

Germán Calmesa — PETITIONER  
(Your Name)

vs.

David Shinn et al — RESPONDENT(S)

Application for writ Habeas Corpus 28 U.S.C. 2842



United States District Court / District of Arizona  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

Germán Calmesa  
(Your Name)

P.O. Box 24401  
(Address)

Tucson, Arizona 85734  
(City, State, Zip Code)

000-000-0000  
(Phone Number)

### QUESTION(S) PRESENTED

- 1). Was the Evidence Presented Establish The Required Element of "Another Person" in which the Plaintiff was convicted of Taking their Identity?
- 2). Did the Court before which the Plaintiff Tried have Jurisdiction over the offenses Charged?
- 3). Did the County Prosecutor Fail to Provide the Plaintiff with Relevant material?
- 4). Was the Plaintiff Denied Effective Counsel by the 6th Amendment Guarantees?
- 5). Was there Issues upon the Court, And what the County Attorney, The Judge, And Counsel of Record Participated in a Voir Dire?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

MARICOPA COUNTY SUPERIOR COURT # CR2010-008086-001

ARIZONA COURT OF APPEALS Div 1 No. 1 CA-CR 12-0328

U.S. DISTRICT COURT. District of Arizona;

CALMERE V. RYAN et al 2:18 cv-00515-DGC

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2. The court before which the plaintiff was tried lacked jurisdiction over the offenses charged. There for the judgement and sentence of the court is void.

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3. The county prosecutor failed to provide the plaintiff with Brady material.

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4. The plaintiff was denied the 6<sup>th</sup> Amendment guarantee to effective counsel.

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5. The Petitioner contends that there is fraud upon the Court. And that the county Attorney, the judge and his attorney of record participated in the fraud of a voir dire.

11.

6. The evidence presented failed to establish a finding of guilty on the allegation of taking the identity of another, beyond a reasonable doubt, And no Reasonable fact finder would've found the petitioner guilty of the crime of taking the identity of another.

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## Constitutional And Statutory Provisions Involved

### Constitutional

U.S. Constitution, Article 3: violation of the Treaty of the United States, as made applicable to the Territory or State of Arizona.

U.S. Constitution, Sixth Amendment: Right to Effective Counsel,  
The right of a Defendant to know the nature and cause of the  
Accusations against him.

U.S. Constitution, Thirteenth Amendment - When one is subjected to  
Involuntary servitude and/or slavery as punishment for a Crime.

U.S. Constitution, Fourteenth Amendment; Due Process and Equal  
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Article II, Art 3, Ariz. Const.

Arizona Constitution, Article 22, Section 10 - Where the Seal of  
the State shall be ascribed to all Documented orders of the  
Superior Court.

Arizona Constitution, Article 22, Section 5 #9 - Duties of the State  
of Arizona as a Territory or a State.



## Statutory

28 U.S.C. § 2242 - Statement for not presenting issues to lower Court, Extraordinary Circumstances

28 U.S.C. § 2243 - A Hearing as set forth in the Complaint

28 U.S.C. § 2254 - Petitioner Congressional legislated Right to encompass a Writ of Habeas Corpus under Common Law, The grounds of Petitioner Rights, Governed do not prescribe to what it was created.

### STATEMENT OF THE CASE

In December 2010, The State of Arizona indicted Calmese with one Count of Fraudulent Schemes and Artifices, A Class 2 Felony (Count 1); Six Counts of Theft of a Credit Card or obtaining a Credit Card by Fraudulent means, Class 5 Felonies (Count 2, 3, 4, 6, 7 and 8); one Count of Aggravated Talking Identity of Another, A Class 3 Felony (Count 5).

The Jury found Calmese Guilty on all Counts with the exception of Count 2, on which they were unable to reach a verdict. The Superior Court declared a mistrial as to Count 2 only. At Sentencing, The Superior Court found that Calmese has five prior Felony convictions and sentenced Calmese to the following term: 20 Years on Count 1; 6 Years on Count 3, 4, 6, 7, and 8; 15 Years on Count 5. The Court ordered Count 1 and 5 to be served concurrently with all other Counts and Counts 3, 4, 6, 7, and 8 to be served consecutive to one another.

Calmese filed a timely Notice of Direct Appeal. On April 23, 2013, The Arizona Court of Appeals issued a memorandum decision rejecting Calmese's insufficient-evidence claim.

Calumase Files a Timely PCR Notice on October 23, 2013. Calumase Files a Pro Per PCR Petition on June 12, 2015. On May 16, 2016, The Superior Court Dismisses Calumase's Petition in minute entry. The Superior Court Finds That All Calumase's Claims, except for ineffective Assistance of Counsel ("IAC") Claims, were Precluded Under Ariz R. Crim. Proc.

Calumase Files a Timely Petition For Review in The Arizona Court of Appeals. On October 5, 2017. The Arizona Court of Appeals Grants Review. And Denies Relief.

Calumase's Files a Federal Habeas. Petition on Feb 5, 2018. On June 1, 2020, Petition For habeas was Denied on The merits and Granted by Senior Judge David G. Campbell.

(A)

## Statement in Support of This Court's Venue

Pursuant to 28 U.S.C. § 2242 and Rule 17 of The Rules of The Supreme Court of The United States. A statement is required stating the reason for not presenting the application to the district court or the district in which the applicant is held." The following grounds are points of authority in support of such action. And stand as the statement of such facts.

The plaintiff Gerald M. Calmese, who is the real party of interest, is currently being held in the Arizona Department of Corrections, A.S. P.C. Tucson; Winchester Unit. That is alleged to be located @ 10002 S. Wilmet Rd. Tucson Arizona, 85734. It is here alleged that his detention is unlawful. And fails to meet the minimum standards of the duly convicted mandate of the 13<sup>th</sup> Amendment. When one is to be subjected to involuntary servitude and/or slavery as punishment for crime.

We assert that the detention of the plaintiff is in violation of The Treaty of The United States, as made applicable to The Territory or State of Arizona through The United State's Constitution. Because Federal laws are deficient to create a remedy for relief. And state laws are inconsistent to provide that justice will be administered without unnecessary delay. It must be held that the plaintiff is entitled to a speedy means of relief.

And where the District Court in The District of Arizona is bound by Federal law. And has been known to mis construe pleadings against what one declares in

his bill to be. Relief in that forum falls short of the Fundamental Fairness Clause of the 14<sup>th</sup> Amendment. And the scope of remedy will seldomly be drawn from True Precedence of this Court's Decisions.

Not to mention the fact that Congress has legislated laws and created Federal Statutes that stand totally in opposition to this Court's Judicially legislated laws. In doing so Congress has narrowed the Scope of Habeas Corpus. And has converted the Federal Statutes of 28 U.S.C. 2254 & 2255 into something that is far from what it was created for when introduced to this Court and The Judicial Committee in 1948. Here Congress enacted into legislation 2255 to minimize the difficulties encountered in habeas corpus hearings by affording the "same rights" in another and more convenient forum."

And those rights go beyond that of the two grounds found in 2254(d)(1) & (2). Only this Court has permitted a plaintiff the right to seek Habeas Corpus Relief.

- 1) for a sentence imposed in violation of the Constitution or laws of The United States;
- 2) for a court that imposed a sentence without jurisdiction to do so;
- 3) Where a sentence was in excess of the maximum authorized by law;
- 4) That the sentence is otherwise subject to collateral attack."

- 5) "When an opportunity to be heard is denied altogether, the ensuing mandate of the court is void, and the prisoner confined thereunder may have recourse to habeas corpus, to put an end to his restraint." *Sunal v. Large*, 322 U.S. 174 (1947).
- 6) In removal cases, habeas corpus has been available not to weigh the evidence to support the accusation but to determine whether there is an entire lack of evidence to support it. *Hyde v. Shine*, 199 U.S. 62, 199 U.S. 84.
- 7) Whether the court before which it is proposed to take and try the accused had jurisdiction over the offense, or the individual. *Selinger v. Loisel*, 265 U.S. 224.
- 8) On questions of jurisdiction, where it involves consideration of many facts and seriously controverted questions of law. *Kadman v. Pothier*, 264 U.S. 399; *Nenky v. Nenkel*, 235 U.S. 219.

There are just a few rights that the Congressionally legislated §2254 have taken from the scope in which Habeas Corpus encompassed under its common law process. And because the District Court cannot proceed beyond the two grounds of 28 U.S.C. §2254. This court is the only court available to effectuate its rulings and mandates.

The plaintiff attempted to proceed in The District Court of Arizona with a petition for Writ of Habeas Corpus. And in answering the defendant's claims all of its decisions were based on

(D)

9th Circuit precedence. However, Arizona is not bound by 9th Circuit's interpretation of the Federal Constitution. See *State ex rel. Montgomery v. Padilla*, 237 Ariz. 263, 349 P.3d 1100 (2015 Ariz. App. Lwis64). So if Arizona is not bound by 9th Circuit decisions or interpretations. How is the District Court Shielding the State of Arizona by USE of 9th Circuit dictum? This shows the biasness of the District Court of Arizona. And it's blatant upon the face of the court, it's preferential decisions in maintaining the State's conviction.

In The District's review of the plaintiff's personally drafted Habeas Corpus Petition. The Court's review, fell short of the broad and liberal scope of review required by This Court. An example of this was the district court's decision on the plaintiff's 1st ground for relief. Which was

- 1) The trial court erred by denying Petitioner's motion for acquittal based on insufficient evidence.

The District Court, in The District of Arizona gave the ruling that his claims for that was procedurally defaulted. This ruling stands repugnant to the 13th Amendment's prohibition against the use of slavery or involuntary servitude except as punishment where one has been duly convicted.

A duly conviction is a conviction based in the methodology of The Constitution. We often refer to that methodology as "the truth seeking process." Which is protected by the "duly convicted" mandate of

"  
 the 13<sup>th</sup> Amendment, This duly convicted mandate  
 and the "Truth Seeking process" both carry an  
 enumerated power delegated to all judicial officers, in  
 the Constitution.

The implied powers of a state's public Acts,  
 records and judicial procedures are a matter of faith  
 and trust. And in no way, shape or form can those  
 implied powers supersede the enumerated powers of  
 the Constitution. Especially when the state has created  
 a proposition that says that it will block federal law  
 or Actions, in which it feels are unconstitutional.  
 This would include with holding its judicial officers / personnel  
 from acting to purposes consistent with the United States  
 Constitution. See Ariz. Proposition 132 [Senate Current Resolution  
 1016], which Amended Article II sect. 3 of Ariz. Const.

This alone is enough to have cause for a thorough review  
 of the judicial process, the plaintiff alleges to be partial or  
 unconscionable. Not to mention the fact that nothing behind the  
 prosecution here the sovereignty of "The State." According to  
 the Ariz. Const. Article 22 sect. 10, (b) have the seal of  
 The State shall be ascribed to all documented orders of

the Superior Court. Or because of Ariz. Const. Art. 22 sect.  
 5 & 9 which holds that: until full exchange from a Territory  
 form of government to a State form of government, causes  
 papers, records, and proceedings of the court shall pass  
 into the jurisdiction of the Supreme Court of the State, and  
 until so superseded, the Supreme Court of the Territory



(F)

and the judge thereof shall continue, with like powers and jurisdiction as if this Constitution had not been adopted, or the State admitted into The Union.

By these grounds alone. Full Faith cannot be given to This States public Acts, records and judicial proceedings. And This Court is the only court with inherent powers, both express and implied, to create a remedy to relieve the plaintiff of his Unlawful Restraint.

Respectfully Submitted  
Ed Moore T Garry

①

1) The evidence presented failed to establish the required element of "another person," in which the plaintiff was convicted of taking their identity.

A) The plaintiff was unlawfully charged, indicted and convicted of a Class 3 felony "Aggravated taking the Identity of another person" in The Maricopa County Court of Daniel G. Martin. Who was acting under the guise of The Superior Court of Arizona.

On December 14, 2010 it is alleged that the 518 Grand Jury Number 182 was convened. And that M. Lisa Edgar R.P.R., C.P. was the certified Court reporter. In the transcripts, which she provided, it's alleged that the grand jury delivered a True Bill, indicting the plaintiff on an 8 count indictment.

In regards to Court #5 the "Aggravated taking the identity of another person." The state legislated law holds that "one violates this Statute when A) A person taking the identity of another person or entity if the person knowingly takes, purchases, manufactures, records, possesses or uses any personal identifying information or entity identifying information of either:

1) Three or more other persons or entities, including real or fictitious persons or entities, without the consent of the other person or entities, with the intent to obtain or use the other persons' or entities' identities for any unlawful purpose or to cause loss to the persons or entities whether or not the persons or entities suffer any economical loss.

In the grand hearing, the allegation was set forth to Count #5, where the Grand Juror requested: "Who the allegations of another referred to." (See Transcripts Dec. 10, 2010 @ pg 4: 15-18. Exhibit # 1) The county attorney's response was "Taking the identity of another may involve a variety of victims. It's not actually listed in the indictment, those actual victims are, because it can be numerous."

The county deputy attorney continues to explain the provisions of the statute. "It can also be -- under the statute it can be real people or fraudulent people, counterfeit people (Trans. Dec. 10, 2010 pg 4: 24-25 Exhibit #1)"

This may be true under the Arizona Statute. But what the county attorney failed to establish, was the lack of consent. The most vital element of the statute. Even if it were Constitutional for the legislative branch of Arizona to create such a statute that criminalizes the use of a name that is fictitious. The element of lack of consent must be presented in the grand jury hearing to find that there is probable cause that a crime has been committed.

B) Due process requirement of the 14<sup>th</sup> Amendment holds that an indictment shall be a plain concise statement of the facts sufficiently definite to inform the defendant of the offense charged. In the current case the name of use in which was "of another" is an element of the offense. Which must be named to shield the plaintiff from double jeopardy. And to actually give the

accused enough information to make a proper pleading. Failure to set out such information, and require that such information be presented before the grand jury, relieves the prosecution from establishing 2 critical elements of the crime. First, the element that there is in fact another entity and/or person. And Secondly, the accused was doing so without consent of that person and/or entities.

"Elements" are the "constituent parts" of a crime's legal definition - the things the prosecution must prove to sustain a conviction."

Black's Law Dictionary 634 (10<sup>th</sup> Ed, 2014). At trial, they are what the jury must find beyond a reasonable Doubt, to convict the defendant, see *Richardson v. United States*, 526 U.S. 813, 817, 119 S.Ct. 1707, 143 L.Ed.2d 985 (1999); and at plea hearing, they are what the defendant necessarily admits when he pleads guilty, see *McCarthy v. United States*, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969).

Because the legal requirement of the statute requires proof that the accused was acting without the consent of the other person or entities. And because the element to the crime requires the taking of real property interest. There must be a Real owner of that property. So fictitious or imaginary victims stand repugnant to the Due Process requirements of the 14<sup>th</sup> Amendment.

Thus creating an adjudication of the claim which resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state courts proceeding.

Claim #2 The court before which the plaintiff was tried lacked jurisdiction over the offenses charged. Therefore the judgement and sentence of the court is void.

The mechanics behind the business of the Superior Court operates according to The Arizona Constitution. Accordingly, Ariz Const. Article II section 30 holds as law "No person shall be prosecuted criminally in any court of record for felony or misdemeanor, other wise than by information or indictment. However, prior to the indictment, the Superior Court of Arizona doesn't acquire jurisdiction of any controversies setting forth felony accusations, until a complaint is filed before the Superior Court Clerk. Who then summons the accused for finger prints, and empanels the Grand Jury in accordance to Ariz. Const. Article 6 section 17 and A.R.S. 21-402(a) and (b).":

A look at the case history, we only have a record that shows this cause originated on 12/14/2010 at the Grand Jury hearing (see pg. 6 of 6 of Exhibit #2). And because we have no evidence of such proceeding to acquire jurisdiction. We can't assume such proceeding has taken place. Even in the transcripts of the Grand Jury procedures no mention is made to the impanelment or summoning of this particular grand jury. Or the conveyance of these allegations from them being complaints to being deemed felonies. As only a state agency can deem them.

without such record, it can only be found that the Municipal officer Daniel G Martin, Maricopa County Judge Lacked Jurisdiction over the offenses set forth in the unlawfully procured indictment, which failed to obtain State power. Which lead to a prosecution that was contrary to, or involved an unreasonable application of clearly established Federal Law, as determined by the Supreme Court of the United States. And which created a void judgment and void sentence. From lack of Jurisdiction and lack of power.

### Claim # 3

The County prosecutor failed to provide the plaintiff with Brady Material.

After arrest, for crimes alleged in indictment CR2010-008080-001, the plaintiff was appointed counsel by the courts. Counsel upon making the initial appearance for the plaintiff filed a request to withdraw as counsel. Another counsel was appointed on 1/25/2010. Which counsel filed his notice of appearance, in compliance with A.R.C. Rules of Crim. Proc. 6.3 and 41, Form 8. The next day there was an order by the court regarding counsel. However on 1/27/2010, Counsel filed a motion to withdraw as counsel for the plaintiff.

On 2/16/2011, a motion was filed on behalf of the defendant, giving Notice of Disclosure and Requesting

disclosure from the prosecuting agency, in accordance to Ariz. Rules of Crim. Proc. 15.1(e)

It is alleged that on 2/16/2011 a hearing was held. And acting counsel for the plaintiff requests, and obtains the files and transcripts from the court the following week on 2/22/2011. on 03/02/2011 the acting counsel for the plaintiff returned the court files, after reviewing their contents for 7 days. The same counsel removed the files again on 3/21/2011 returning them after viewing them for 6 days on 3/28/2011. Giving a 13 day total review of the case. ~~After~~ receiving disclosure from the county attorney. This counsel filed to withdraw from the plaintiff's case. And was withdrawn on 7/11/2011.

On 7/14/2011 new counsel filed a notice of appearance. And on 10/7/2011 counsel <sup>was</sup> provided with a supplemental Notice of Disclosure. Not upon request. But the prosecuting agency was adding disclosure to disclosure that it never delivered. It later filed another Notice of Supplemental Disclosure on 10/24/2011. And still no Disclosure was filed pursuant to 15.1(a). Which by Arizona's Rules of Criminal Procedure was required to be made available to the defendant by arraignment. And all Supplemental Disclosure was required to be filed and disclosed in the Superior Court, no later than 30 days after arraignment.

Because of these actions, the plaintiff was prejudiced by lack of Brady Material. Full Faith and Credit shall be given in each State to the public acts, records and judicial proceedings of every other State. United States Constitution

Article 4. However, that faith and credit can't be given to the acts, records keeping and judicial proceedings that fall outside of what the state has deemed as conscionable in its Rules of Records keeping and judicial proceedings.

Because the Disposition pursuant to 16A A.R.S. Rules of Crim. Proc. 15.1 wasn't made according to the time in which the rule requires. And the Supplemental Disclosure was not made notice to the plaintiff's agent until 10/24/2011. Over 9 months beyond the permissible time deemed conscionable by Rule 15.1(c)(1). The counsel for the plaintiff was without the required disclosure to put forth a notice of Defences as required by Ariz. Rules of Crim. Proc. 15.2(B).

With such actions being so damaging. It is clear that both the judgment of the Court and Sentence of the Court stand repugnant to the 13<sup>th</sup> Amendment's duly conviction requirement to order involuntary servitude or slavery as punishment, And also violates both the fundamental Fairness clause and Due process clause of the 14<sup>th</sup> Amendment. And the failure to provide disclosure to the plaintiff violated the Due Process Clause, Creating a criminal prosecution that was fundamentally unfair. Requiring a vacating of the plaintiff's sentence and the conviction.



Claim #4

The plaintiff was denied the 6<sup>th</sup> Amendment's guarantee to effective counsel.

The criminal prosecution of the petitioner/plaintiff's began on 12/14/2010, with a grand jury hearing producing a True Bill on 8 felony allegations. On 10/28/2011 the request for Jury instructions were presented by motion before the court. And on 1/18/2012 the petitioner began the beginning of trial before the Court of The Honorable Daniel G Miller.

From the date of the petitioner being indicted, to the date of the voir dire. The petitioner had been represented by 4 different attorneys. The last of which, took the petitioner to trial capriciously. Without complete disclosure from the prosecuting agency.

The last counsel began his position as agent for the defendant when he filed his notice of appearance pursuant to Ariz. Rules of Crim. Proc., 6.3. In doing so, counsel becomes agent of the accused. And by court rule, receives the entire file of preceding counsel. This would include all notes, witness lists and developments pertaining to the case. This was done by Mr. Stephen Mercer on 07/14/2011.

However, prior to Mr. Stephen Mercer becoming the successor counsel. An unknown counsel assumed position as agent for the petitioner on 2/3/2011.

This was done without this counsel filing a Notice

of Appearance (see Exhibit 2 pg 5 of 6). And because Counsel failed to file a Notice of Appearance. There was no lawful means for him to receive any part of the petitioner's file. So when Counselor Stephen Mercer assumed position as acting agent. He was without a file from <sup>his</sup> unnamed predecessor counsel. And could not have been aware to the joint stipulation made on either 4/27/2011, 5/17/2011 or 6/6/2011, by the unnamed Counselor.

And because counsel was without complete discovery, The scope of the petitioner's defense was exstreamly narrowed. And Counsel failed to meet the minimum standard, required by The Constitution's 14<sup>th</sup> Amendment fundamental fairness Clause; the 13<sup>th</sup> Amendment's duly conviction requirement; and the 6<sup>th</sup> Amendment's right to effective Counsel.

(B) When a convicted defendant claims ineffectiveness of counsel, in a Habeas Proceeding. First the litigant is required to show that counsel made errors so serious that counsel's functions were not those as would any normal counsel would do. His action or omissions were outside the parameters of what is expected from counsel.

Secondly, the petitioner must show that the deficient performance prejudiced the defendant's defense. Which has created an untrustworthy verdict of guilt. This requires a showing that Counsel's errors were so serious as to deprive the petitioner of a fair trial, one that it's results are reliable. And satisfies the truth seeking process

Our 14<sup>th</sup> Amendment guarantees, and the 13<sup>th</sup> Amendment mandates.

However, there is another nexus, seldomly addressed, between a showing of counsel's ineffectiveness. And its prejudicial effects on the truth seeking process of our Judiciary. As well as the 6<sup>th</sup> Amendment's requirement on all attorneys who act as an agent for the accused in any criminal prosecution.

The Sixth Amendment places a minimum standard requirement on all counsel representing one in a criminal prosecution. In the pre trial stages, the 6<sup>th</sup> Amendment imposes on counsel, the duty to investigate all possible defenses. Because reasonably effective assistance of counsel, must be based on professional decisions. And informed legal choices, that can only be formed after investigating options for defenses have been made. Quoting *Strickland v. Washington*.

The investigation need not be exhaustive. But in this case, were there are witnesses to be called. Counsel has the obligation to question those witnesses, in reference to whatever information their questioning may hold. Because there could be material evidence of exculpatory value within their testimony. Therefor making an interview of the witness a Brady requirement.

In this case there was no investigation. Because there was no investigation. And if there was no investigation and no defense, then there is no way counsel can be deemed to have been effective. Arizona's Rules of Criminal

Procedure 15.2 (b) requires that, the defendant must provide written notice to the State specifying all offenses the defendant intends to assert at trial. A look at the history of this case reveals that no such notice of defense was ever filed by any of the attorneys acting as agent for the petitioner. Thus, without such a showing, full faith and credit cannot be given to this criminal judicial proceeding. Nor is there proof that counsel for the petitioner had performed any investigation as to prepare for trial. 1.7c

It is already known that no witnesses were interviewed.

And a failure to file a notice of defense only shows that no defense was declared, and so counsel has failed to provide the effective assistance of counsel. Required by both State and Federal Standard. But most importantly, stands in clear violation of well established Federal law as defined by the Supreme Court of the United States.

Claim #5

The petitioner contends that there is fraud upon the court. And that the County Attorney, the judge and his attorney of record participated in the fraud of staying a voir dire.

On 09/14/2018, the Deputy Attorney General for the State of Arizona, submitted before the United States District Court in the District of Arizona Document 13-2 in case 2:18-cv-00515-DGC-B5B. This document was the Voir Dire and jury selection in the Maricopa County Superior

Court of Daniel G. Martin.

In examination of the voir dire proceedings, taken place on January 18, 2012 @ 1:35 pm. There were several issues that became clearly alarming upon reading the certified transcripts of that hearing. To be more specific, the record reflects that the voir dire was a staged event. And that active jurors were placed in the jury panel, as agents of The State.

In order to secure a verdict of guilty, in the trial of the petitioner.

On page 72 of the certified transcripts Document 13-2, of case 2:18 cv-00515 DGC-BSB page 11.5 of 215 of The State's disclosure filed 09/14/18. The Court begins to instruct the prospective jurors of the following:

- 72:24) All right. Next, ladies and gentlemen, I would
- 72:25) like each of you to look at the back of your number card.
- 73:1) On back of that card you'll see a series of questions,
- 73:2) and I'm going to ask each of you to stand in turn and
- 73:3) answer those questions for us.

The Court goes through prospective jurors 1, 3, 5, 7, 8, 9, 10, 11, 13, 14 & 15. Allegedly, having them answer the questions on the back of the card. However when the Court has the prospective juror to answer the questions from the card. The prospective juror informs the Court of what the card actually says. The exchange goes as follows:

- 18) PROSPECTIVE JUROR: 16. It says lands
- 19) broker associate, inside land investment. Been there a

- 20) week. Syndicate and sell raw land to bulldozers and
- 21) developers. I'm married. Three children, one deceased.
- 22) Occupation of spouse, she was a teacher. I have sat on a
- 23) jury before. It was<sup>a</sup> criminal trial for v.
- 24) it was plead out.

This transaction from prospective juror, is the juror telling us what the card read. Those cards should not be made in a way as to inform the juror of what he is to say. With this sort of misconduct involving the judicial officer as well as the attorney for the defendant. Faith and Credit can not be given to the jury selection process.

The Court goes further, in it's attempt to cover up what the 16<sup>th</sup> prospective juror has exposed in his dialogue with the Court. By it's exchange in the following lines.

- 79:25) THE COURT: It was
- 80:0) PROSPECTIVE JUROR: Yeah
- 80:2) THE COURT: O.K.
- 80:3) The raw land syndicate, is that all Arizona or
- 80:4) outside?
- 80:5) PROSPECTIVE JUROR: YES
- 80:6) THE COURT: Okay. All right.

Here the Court asks the juror a question, that requires an answer of one of two choices. The question being "Is The raw land Syndicate all of Arizona or outside," And instead of answering the court by informing the court of one or the other in the choices of All of Arizona or Outside,

The prospective juror answers "Yeah". And the court goes further in it's attempt to talk pass the anomaly by responding "Okay. All Right."

B) At pg. 157 of the certified transcripts, The Court advises counsel that they are nearing the 26 juror minimum, And may talk about proposed strikes far cause up and through the 26 juror line. In doing so, the attorney for the state suggests to the Court that he would not object to allowing her to leave. Not in the since as of leaving for the day. But having the Court strike her for cause, so that the State would not have to use one of it's peremptory Challenges to strike that juror.

In doing so, the State continues to encourage the Court to strike the juror for cause @ pg 157:24. The exchange goes as follows:

pg 157: 24) Mr. Marguait: Judge, I would not object to

25) Allowing her to leave, but I know she's going to have

pg. 158 1) difficulty with some technical terms we're going to be

2) using. It sounds like the child-care issue would be

3) something more a distraction to her, so I wouldn't object

4) to letting her go if the Court were so inclined.

The Court later responds @ pg 158: 10-13

10) The Court: I'm actually going to strike No.

11) 8 for Hardship at this time. So we have --- well,

12) actually, let me do this. Mr. Mercer, you had indicated

13) that the defense had an additional purpose ---

This exchange shows how the court and the attorneys were in cahoots to save the peremptory strikes of both the state and the defense. In order to get the jury selected that fit the court and the state. A jury with the mind set to find the defendant guilty. And one pre-selected by the court, the court attorney, the defendant's attorney.

If you go to page 167, the court questions if the panel was passed for cause. There are several exchanges between the court and the two attorneys. However a jury was never selected. And the court ends the page by giving instructions on the use of peremptory strikes. The very next page recess is over. And the clerk has a list of the selected jurors. Without them ever being selected, on the record.

It is obvious that this list was pre-made. And the venire dire was merely for show, which fall through. Fairly cannot be given to. There is fraud upon the court. And the error is fundamental. The State may wish to call for the court to preclude this claim. But the claim falls within the this Court's "Novelty" doctrine of *Reed v Ross*, 468 U.S. 1, 104 S.Ct. 2901, 82 L.Ed.2d 1 (1984). In *Reed*, this court held that there are excusable omissions for failure of a defendant to raise a constitutional claim in his state court appeal. This Court stated:

We hold that were a constitutional claim is so novel that it's legal basis is not reasonably available to counsel, a defendant has



cause for his failure to raise the claim in accordance with applicable state procedures, 486 U.S. at 16, 104 S. Ct. at 2910, 82 L.Ed.2d at 15.

### Claim #6

The evidence presented, failed to establish a finding of guilt on the allegation of taking the identity of another, beyond a reasonable doubt. And no reasonable fact finder would've found the petitioner guilty of the crime of taking the identity of another.

According to the evidence presented at trial and at the grand jury hearing. The petitioner was charged with taking the identity of another for giving the alleged victims a ~~fake~~ name. None of the names, in which the petitioner is accused of taking, were ever presented to the grand jury or even on the indictment. To substantiate that the identity of another had in fact been taken by the petitioner.

Arizona Law A.R.S. § 13-2009, requires that one violates this statute when one "knowingly takes, ~~seizes~~, purchases, manufactures, records, possesses or uses any personal identifying information or entity, with identifying information of either:

- 1) Three or more persons or entities, including real or fictitious persons or entities, without the consent of the persons or entities, with the intent to obtain or use the other persons' or entities' identities for any unlawful purposes or to cause loss to the persons or entities whether or not the persons or entities actually suffer any economic loss.

Arizona has been creating statutes that violate the United States' Constitution for as long as it has been apart of The Union. And has played a cruel and unusual form of Government on Native Americans, Blacks, and Hispanics for just as long as well.

A look at the statute shows that the legislature created a statute that allows for variance of the material facts, in order to relieve the prosecutor of having to prove an element of the crime. With the intent of aggravating the identity of another person. Arizona has attempted to relieve the prosecutor of having to prove that the identity belongs to another person. By perverting the prosecuting to prosecute under this statute, even if the identity is that of a fictitious person or entity. The Arizona Constitution and Federal Constitution states

defendants with a right to know "the nature and cause of the accusations" against them. U.S. Const. Amnt. VI; Ariz. Const. art. II, § 24. Another key Actus Reus of the crime of Aggravated taking the identity of another person is that the perpetrator has took something from someone with exclusive exclusive rights to the property of which has been took. And the act was committed without consent. Two things which can't be done to a fictitious person or entity.

The English language is somewhat complex to those who are not of Anglo-American heritage. And comprehension of the use of the English words and terms. Requires the proper schooling and mental nurturing that can only be obtained in our top rated High Schools and Colleges that this state lacks in providing its

citizens. So in prosecuting the aggravated taking the identity of another. The prosecution could only be addressing the petitioner's use of the fictitious names the alleged victims claimed that the petitioner gave them as his personal name.

This element <sup>was</sup> never proven beyond a reasonable doubt. In fact, the materiality of this element was gleaned over by the county attorney in the grand jury hearing. See Exhibit pg 4:19-22. The exchange goes as follows

pg 4:19) Mr. Wendell: Taking the identity of another may  
 20) involve a variety of victims. It's not actually listed in the  
 21) indictment, these actual victims are, because it can be  
 22) numerous.

This alone shows the wide range in which the charging document and the legislated statute permits the prosecution to vary. And because this element was not presented to the grand jury. It cannot be proven at trial, which would be a denial of due process. Due process requires that an accused be on notice of the offense charged. *State v. Sims*, 114 Ariz. 292, 295, 560 P.2d 810, 813 (1977). This includes notice both the nature of the offense and cause. Causality in the current case was never presented to the grand jury. The prosecuting agency never even knew what or who the cause was based on. And a conviction upon a charge not made is a sheer denial of Due Process. *State v. Rivera*, 207 Ariz. 69 ¶ 8, 83 P.3d 69, 72 (App. 2004).

## Conclusion

The petitioner requests for relief in this matter are as follows:

- 1) That a hearing be set on the allegations set forth in this complaint pursuant to 28 U.S.C. § 2243.
- 2) That the respondents be required to show cause and legality of the petitioner's incarceration.
- 3) A declaratory injunction on all State proceedings, for cause of effectuating this court's definition of The Constitution.
- 4) That the writ be issued in accordance of law. And that the writ require immediate release of the petitioner upon a full reversal of all charges.
- 5) That the writ be accompanied by writ of prohibition on any and all conduct associated with any allegations set forth in any of the documents of these Courts presented. Or that have not been presented,

Respectfully Submitted  
 D. Gray  
 The Ministerial Servant of Jehovah

Exhibits

1 MR. WENDELL: This is 518 Grand Jury Number 182.  
2 This is the investigation of Gerald, G-e-r-a-l-d, Melvin  
3 Calmese, C-a-l-m-e-s-e, also known as Jerry, J-e-r-r-y, Isaha,  
4 I-s-a-h-a, Calmese, C-a-l-m-e-s-e, for the alleged offenses of  
5 fraudulent schemes and artifices' --

6 GRAND JUROR FRITSCH: Say again.

7 ~~MR.~~ MR. WENDELL: -- fraudulent schemes and artifices  
8 is alleged to have occurred on or between February 1st and  
9 September 27th -- I'm sorry -- on or between February 1st, 2009  
10 and September 27th of the year 2010, involving alleged victim  
11 Victor -- see, this one would even blow you away I'm sure --  
12 R-z-e-p-h-e-c-k-i -- Rzephecki -- Rzephecki -- yeah, whatever.  
13 That's not a good German name; is it?

14 All right. Also theft of credit card alleged to  
15 have occurred on or between February 1st of 2009 and April 29th  
16 of 2010, the alleged victim being Lynn, L-y-n-n, R. Destefino,  
17 D-e-s-t-e-f-i-n-o, and theft of credit card, alleged to have  
18 occurred on or between August 6th of -- 26th rather, August  
19 26th of 2009 and 27th of 2009, alleged victim being Joe  
20 Corodova, C-o-r-o-d-o-v-a, and theft of credit card, alleged to  
21 have occurred on or about September 6th of the year 2009, the  
22 alleged victim being Monica, M-o-n-i-c-a, Striplin,  
23 S-t-r-i-p-l-i-n, aggravated taking an identity of another  
24 alleged to have occurred on or between August 17th and  
25 September 27th of the year 2010, theft of a credit card alleged

1 to have occurred on or between August 17th and August 22nd of  
2 the year 2010, again involving alleged victim, Victor  
3 Rzephecki.

4 I don't have to spell it again, do I?

5 THE COURT REPORTER: No.

6 MR. WENDELL: Okay. Theft of a credit card  
7 alleged to have occurred on or about August 20th of the year  
8 2010 involving alleged victim, Britt, B-r-i-t-t, Mortensen,  
9 M-o-r-t-e-n-s-e-n, and theft of credit card alleged to have  
10 occurred on or about November 16th of the year 2010 involving  
11 alleged victim Robin Fletcher, F-l-e-t-e-c-h-e-r.

12 Do any of the Grand Jurors need me to go over the  
13 allegations again since they are fairly lengthy?

14 THE GRAND JURY: (No oral response.)

15 GRAND JUROR ARNDT: You said theft of a credit  
16 card, Monica Striplin, something like that, and then after that  
17 you said identity of another.

18 Who does that refer to.

19 MR. WENDELL: Taking the identity of another may  
20 involve a variety of victims. ~~It's not actually listed in the~~  
21 ~~Indictment~~, those actual victims are, because it can be  
22 numerous.

23 GRAND JUROR ARNDT: Oh.

24 MR. WENDELL: It also can be -- under the statute  
25 it can be real people or fraudulent people, counterfeit people.

1 GRAND JUROR ARNDT: Okay.

2 MR. WENDELL: So we -- so we tend not to list --

3 GRAND JUROR ARNDT: Okay. Not one person?

4 MR. WENDELL: Right.

5 GRAND JUROR ARNDT: Okay.

6 MR. WENDELL: Additional questions regarding the  
7 allegations?

8 THE GRAND JURY: (No oral response.)

9 MR. WENDELL: Okay. Let the record reflect that  
10 all of the Grand Jurors are present with the exception of Grand  
11 Jurors Sayers, Robles, Daniels, Manradge and Gresham.

12 To assist you in determining whether or not  
13 probable cause -- probable cause exists in this matter, it may  
14 benefit you to take a look at A.R.S. Sections 13-105, 13-2310  
15 covers fraudulent schemes and artifices, 13-2101, 2102, 1801,  
16 1802 and 1804 cover theft of credit card, and the other  
17 statutes would be 13-2001 and 2009 reference aggravated taking  
18 the identity of another.

19 Now, all of these were previously read to the  
20 Grand Jury with all Grand Jurors present on October 22nd of the  
21 year 2010, and copies of these statutes are available for the  
22 Grand Jury to use in their deliberations.

23 Are there any Grand Jurors who would like to have  
24 any of these statutes re-read or clarified at this time?

25 THE GRAND JURY: (No oral response.)



1 MR. WENDELL: I take it by your silence that is  
2 not the case.

3 We have already discussed the alleged victims.  
4 Your witness today will be Detective Miaso of the Phoenix  
5 Police Department.

6 Those admonitions read to you earlier regarding  
7 persons disqualified from serving as Grand Jurors are  
8 applicable.

9 Are there any Grand Jurors to whom those  
10 admonitions apply?

11 THE GRAND JURY: (No oral response.)

12 MR. WENDELL: I take it by silence that is not the  
13 case.

14 GRAND JURY FOREPERSON LANDA: We are about to  
15 consider the matter of 518 Grand Jury Case 182 and the  
16 investigation involving the individual named.

17 The usual admonition applies.

18 MR. WENDELL: Come, young lady; come. It is time.

19 (CARRIE MIASO entered the proceedings.)

20 DETECTIVE MIASO: I just saw you guys; didn't I?  
21 I will stop here this time.

22 (CARRIE MIASO was duly sworn by the Grand Jury  
23 Foreperson.)

24  
25 CARRIE MIASO,

1 called as a witness herein, having been first duly sworn, was  
2 examined and testified as follows:  
3

4 EXAMINATION

5 BY MR. WENDELL:

6 Q. Would you state your name for the record, please?

7 A. My name is Carrie Miaso, last name is M-i-a-s-o, serial  
8 number 7169.

9 Q. And with regard to your duties, were you involved in  
10 the investigation of -- I guess for lack of a better term --  
11 the activities of an individual by the name of Gerald Melvin  
12 Calmese dating back into 2009?

13 A. Yes. Yes, I was.

14 Q. Now, through your investigation did you find evidence  
15 to indicate that Mr. Calmese has been known by other names?

16 A. Many other names, yes.

17 Q. Is one of those Jerry Isaha Calmese?

18 A. Yes.

19 Q. And is another Quinton, Q-u-i-n-t-o-n, Lewis,  
20 L-e-w-i-s?

21 A. Yes.

22 Q. Through this investigation did you in fact speak with  
23 an individual by the name of the Rhonda Destefino?

24 A. I -- I personally did not speak to -- to Rhonda.

25 Q. Did members of your department do so?

1 A. Yes, Rhonda was spoken -- spoken to.

2 Q. And did she advise that she knows an individual by the  
3 name of Quinton Lewis?

4 A. Yes.

5 Q. How is it that she became aware of or met Quinton  
6 Lewis?

7 A. I'm not sure how she actually met him. She said she  
8 met him early in the year of 2009, like February of 2009.

9 Q. Okay. At some point in time in the spring of 2009, in  
10 particular I guess calling your attention go to April of 2009,  
11 did Ms. Destefino believe that Mr. Lewis was involved in the  
12 use of her credit card without her permission?

13 A. Yes.

14 Q. And why is it that she believed that?

15 A. She had some fraudulent charges on her credit card.  
16 The credit card company associated Quinton, in this case  
17 Gerald, with those charges by a phone number and by his own  
18 admissions to the credit card company and also to Rhonda.

19 X He admitted that he had used the -- the credit  
20 card.

21 Q. And aside from -- aside from the admissions that he  
22 made to Ms. Destefino, did investigators -- and I'm assuming  
23 it's investigators from the bank; is that correct?

24 A. I think -- I think that's the fraud investigators from  
25 the bank, yes.

1 Q. Okay. Did they also speak with him on the phone?

2 A. Yes, they spoke with him on the -- or somebody claiming  
3 to be him was on the phone saying, yes, he made those charges  
4 and actually wanted to pay the balance on them. X

5 Q. Okay. Now, with regard to that situation did they do  
6 an investigation?

7 Did that investigator actually do an investigation  
8 with regard to the telephone number of the person that they  
9 were speaking with?

10 A. They -- they had the photo -- the phone number that was  
11 captured on their caller I.D. and that was Quinton's or  
12 Gerald's phone number.

13 Q. Did it actually come back to Quinton Lewis or did it  
14 come back to Gerald Calmese?

15 [A.] I would not be able to offer testimony on that part.

16 Q. Okay. And did Ms. Destefino eventually identify Gerald  
17 Calmese as being the individual that she knows as Quinton Lewis  
18 out of a photographic lineup?

19 A. Yes, she did.

20 Q. And I'm assuming that the photographic lineup, the  
21 known photograph was that of Gerald Calmese, Gerald Melvin  
22 Calmese?

23 A. Yes.

24 Q. Additionally, does -- or did your department receive  
25 information from an individual by the name of Joe Corodova?

1 A. Yes.

2 Q. With regards to Joe Corodova, does -- she or he?

3 A. Joe is a -- a male.

4 Q. Okay.

5 A. Yeah.

6 Q. Did he meet with an individual later identified as  
7 Gerald Melvin Calmese some time in, I guess, August or so of  
8 2009?

9 A. I believe it was his sister that met Mr. Calmese --

10 Q. Okay.

11 A. -- and that is where the connection is with Joe  
12 Corodova.

13 Q. Did Joe's sister actually date Mr. Calmese for a period  
14 of time?

15 A. She did, yes.

16 Q. And did she -- I'm sorry. Did she know him as Gerald  
17 Calmese or by some other name?

18 A. I honestly won't be able to tell you at this point.

19 Q. Okay. On August 26th or I guess the break between  
20 August 26th and the start of August 27th, the late hours, did  
21 Joe Corodova report that his credit card was being used?

22 A. Yes.

23 Q. And how is it -- well, was it the credit card itself or  
24 was it the credit card number?

25 A. Again, I -- I do not know. I won't be able to offer

1 testimony on that.

2 Q. Okay. But either the credit card or credit card number  
3 was being used?

4 A. Correct. Yes.

5 Q. And had Joe, during this interview, reported that he  
6 was aware of Mr. Calmese, that he had ever met Mr. Calmese?

7 A. I -- I honestly don't know. I won't be able to offer  
8 testimony on that.

9 I do -- I do know that his card was used, I  
10 believe, at the C.V.S. Pharmacy. While it was being used at  
11 the C.V.S. Pharmacy the pharmacy -- the employee at the  
12 pharmacy grew suspicious of the transaction and was actually  
13 holding the card so that would tell me that the card was in his  
14 possession, in Gerald's possession.

15 Q. Okay.

16 A. Um --

17 Q. Did that staff member of C.V.S. -- were they shown a  
18 photographic lineup including a photograph of Mr. Calmese?

19 A. Yes, they were.

20 Q. Did they identify Mr. Calmese as the individual who was  
21 involved in this particular transaction --

22 A. Yes.

23 Q. -- on the 26th?

24 A. Yes, they did.

25 Q. Now, in your investigation of Mr. Corodova's credit

1 card or credit card number, did you also determine that there  
2 was either an attempt or a completed use of that particular  
3 credit card at a Safeway on the 27th?

4 A. Yes, there was.

5 Q. Okay. And with regard to that though there was no --  
6 at this point in time there has been no identification of the  
7 individual who actually used it other than Mr. Corodova  
8 indicating that that person did not have permission?

9 A. That's correct, yes.

10 Q. Through your investigation did you determine that an  
11 individual by the name of Monica Striplin knows Gerald Melvin  
12 Calmese?

13 A. I believe so, yes.

14 Q. And with regard to that situation, how are you aware of  
15 how Ms. Striplin met Mr. Calmese?

16 A. I would have to refresh my memory on that --

17 Q. That's okay.

18 A. -- on how they met.

19 Q. Did she indicate at some point in time that they dated  
20 off an on?

21 A. Yes.

22 Q. And did she report to your department that on September  
23 6th of 2009 her credit card was used without her consent?

24 A. Yes.

25 Q. Did she also report that -- well, strike that. I

1 apologize.

2 was video of that particular transaction obtained  
3 I guess from both Circle K and also Albertson's?

4 A. Yes.

5 Q. And in looking at that video -- have -- have you  
6 reviewed that video?

7 A. I have not reviewed it personally, no.

8 Q. Do you know if Ms. Striplin has had a chance to review  
9 that video?

10 A. I do not know that.

11 Q. Did someone who is aware of Mr. Calmese and his  
12 features review that video?

13 A. Yes, I believe so.

14 Q. And did they identify Mr. Calmese as the individual in  
15 the videos using the card at both Circle K and Albertson's?

16 A. Yes.

17 Q. Now, has Ms. Striplin ever been shown a photographic  
18 lineup for identifying -- identification purposes in this  
19 particular case?

20 A. ~~I~~ -- I -- I really honestly don't remember --

21 Q. Okay.

22 A. -- if she had or not.

23 Q. Okay. with regard to -- I -- I guess I'm skipping  
24 ahead slightly to, I guess -- well, strike that.

25 On September 27th of the year 2010 did officers of



1 your department serve a search warrant at the home of Gerald  
2 Melvin Calmese?

3 A. Yes. I was involved in that investigation. Yes.

4 Q. And was he -- was he home at the time?

5 A. Yes, he was.

6 Q. During a search of that location, did officers recover  
7 a number of items on which identifying information such as  
8 credit card numbers, maybe even -- I'm not sure, but I guess it  
9 was -- I guess it was all credit card numbers; is that correct?

10 A. Well, we found a sheet of paper that had a handwritten  
11 credit card number on it with the expiration and the secret  
12 code, the little security code on the back.

13 We found a credit card -- actually two credit  
14 cards actually belonging to the same individual by the name of  
15 Peggy Smith in there as well.

16 Q. Okay. Now, the information that was written on the  
17 paper; through a investigation was it determined that that  
18 information belonged to Jennifer Allen?

19 A. Yes.

20 Q. Was Ms. Allen interviewed?

21 A. I spoke to her on the phone, yes.

22 Q. Okay. And did she confirm that she knows an individual  
23 by the name of -- or does she know Gerald Melvin Calmese?

24 A. Yes, she was dating him or had been dating him for  
25 about three months.

1 Q. Okay. And did she know him by the name of Gerald  
2 Calmese or --

3 A. I think she knew him as Gerald, yes.

4 Q. Okay. Did she -- was she confronted with the fact that  
5 he had this information regarding her credit card?

6 A. Yes, I --

7 Q. And what did she advise with regard to his permission  
8 or her permission actually for his having it?

9 A. He had no permission to have her credit card number  
10 whatsoever.

11 Q. Now, you indicated also that you obtained actual credit  
12 cards during the search warrant belonging to a Peggy Smith; is  
13 that correct?

14 A. Yes, that is correct.

15 Q. And with regard Ms. Smith, I'm assuming that she was  
16 also contacted?

17 A. Yes, I -- I actually spoke to her in person.

18 Q. Did she also -- was she aware that Mr. Calmese had  
19 these credit cards?

20 A. She was not aware that he had the credit cards and she  
21 ~~does not know who he is nor did she~~ give him permission to have  
22 them.

23 Q. Does she know how the credit cards came up missing?

24 A. She does not.

25  Additionally, was there identifying information found

1 regarding an individual by the name of Victor Rzephecki?

2 A. Rzephecki.

3 Q. Rzephecki?

4 A. Rzephecki. Yes.

5 Q. Okay.

6 A. If I remember the name.

7 Q. And with regard to Mr. Rzephecki, what exactly was  
8 found with respect to his identifying information?

9 A. Mr. Rzephecki is how I got involved in this  
10 investigation. He filed a police record. His credit card  
11 number was used at Jiffy Lube and at a Lens Crafters here in  
12 Phoenix and in Maricopa County. He did not know Mr. Calmese,  
13 did not give him permission to use his credit card number.

14 I went to Jiffy Lube and I went to Lens Crafters  
15 where I was able to have Gerald positively identified by  
16 employees in a photo lineup at both locations as the one who  
17 used the credit card.

18 → Q. With regard to that situation, with regard to Mr.  
19 Rzephecki or his credit card number, did he report that those  
20 transactions at Lens Crafters and Jiffy Lube took place August  
21 17th and 20th?

22 A. Yes.

23 Q. I'm sorry; 22nd?

24 A. Yes. Yes.

25 Q. Now, you indicated that a photographic lineup was shown

1 to the staff. I apologize; did you indicate Jiffy Lube or Lens  
2 Crafters?

3 A. Yeah. I showed it to an employee at Jiffy Lube that  
4 dealt with Mr. Calmese and I showed it to two different  
5 employees at Lens Crafters, one who was able to positively  
6 identify Mr. Calmese as being the one involved in the  
7 transaction.

8 Q. Okay. Now, I apologize; did anyone -- you indicated  
9 that one person at Lens -- at Lens Crafters was able to  
10 identify him and one was not?

11 A. That's correct. Yes.

12 Q. Was it shown to more than one person at Jiffy Lube?

13 A. No, just the one.

14 Q. And they did identify him?

15 A. Yes.

16 Q. Did they have any information or through the  
17 transactions that were done with regard to Mr. Rzephecki's  
18 credit card or credit card number, was the name Gerald Calmese  
19 used during those transactions?

20 A. Those transactions at the Jiffy Lube, was Quinton Weeks  
21 was the name --

22 Q. I'm sorry --

23 A. -- at the Jiffy Lub.

24 Q. Weeks?

25 A. Weeks.

1 Q. W-e-e-k-s?

2 A. That's correct.

3 Q. Okay.

4 A. The name at Lens Crafters was Quinton Calmese.

5 Q. Okay. Through your investigation -- I'm sorry.

6 And I'm assuming that Mr. Rzephecki was also  
7 contacted?

8 A. Yes, I spoke to him.

9 Q. And is he aware of or does he know Gerald Calmese?

10 A. Doesn't know who he is or how he got his credit card  
11 number.

12 Q. Was he aware -- and it was just a credit card number  
13 itself; is that correct?

14 A. Yes, that's correct.

15 Q. Additionally, did you have contact with a Britt  
16 Mortenson?

17 A. I did not have contact with Britt.

18 Q. Okay. Did other officers either of your department or  
19 another local department contact her?

20 A. Yes.

21 Q. And during that contact did she in fact indicate that  
22 she met Mr. Calmese at a local club and actually went out with  
23 him four or five times?

24 A. Yes.

25 Q. With regard to that situation, did she know him as

1 Gerald Calmese?

2 A. (I don't know.)

3 Q. Okay. And on or about August 20th of the year 2010 did  
4 she report to a local police agency that her credit card was  
5 used at a Circle K, Albertson's, Fry's and QT without her  
6 permission?

7 A. Yes.

8 Q. Was video surveillance obtained with regard to all four  
9 of those transactions?

10 A. Yeah, I believe so.

11 Q. Okay. And did someone who was aware of Mr. Calmese's  
12 stature or physical description have a chance to review those  
13 videos?

14 A. Yes.

15 Q. And did they in fact identify Mr. Calmese as the  
16 individual involved in those particular transactions?

17 A. Yes.

18 Q. With regard to an individual by the name of Robin  
19 Fletcher, did you have contact with Robin Fletcher?

20 A. I did, yes.

21 Q. And did she report that she knows Gerald Melvin  
22 Calmese?

23 A. Yes, she did?

24 Q. Does she know him by the name Gerald Melvin Calmese?

25 A. I don't recall. Actually I'm kind of confused.

1 Q. Do you recall how it was that they met?

2 A. Yeah. She met -- she met Gerald while they were  
3 driving down the road on Union Hills and they pulled over and  
4 into the QT and started talking. That's how she met him.

5 Q. Okay. And did she indicate she dated him for a period  
6 of time?

7 A. Yes.

8 Q. Did she also report her credit card number apparently  
9 was used on or about November 16th of 2010 at Fry's and also at  
10 Albertson's?

11 A. It was actually used. It was her actual credit card.  
12 It was used at Fry's and Albertson's at the Red Box video  
13 rental inside the Albertson's.

14 Q. Okay. Now, did she also during the interview indicate  
15 that prior to that actual incident in November that she had  
16 caught Mr. Calmese in a compromising situation with regard to  
17 her purse?

18 A. The -- the day the card was used she saw him going  
19 through -- it wasn't her purse. It was her school bag, her  
20 school bag.

21 Q. Oh. Okay.

22 A. So --

23 Q. And were videos obtained from both Fry's and  
24 Albertson's?

25 X A. Yes.

1 Q. And does the individual involved in these two  
2 transactions appear to be Mr. Calmese?

3 A. Yes.

4 Q. Additionally, did Ms. Robinson -- I'm sorry -- did Ms.  
5 Fletcher identify Mr. Calmese as the individual that we're  
6 talking about as the individual she met and dated, et cetera,  
7 from a photographic line-up including a known photograph of Mr.  
8 Calmese?

9 A. Yes, she did.

10 Q. During interview with Mr. Calmese, did he admit to  
11 using Mr. Rzephecki's card, credit card, at a Jiffy Lube?

12 A. He did admit it.

13 Q. Did he also indicate, quote, that he always, quote,  
14 wants to take the easy way out, unquote?

15 A. Yes. I'm sorry. Yes, he did.

16 MR. WENDELL: Are there any additional factual  
17 questions for the detective?

18 THE GRAND JURY: (No oral response.)

19 MR. WENDELL: I take it by your silence there are  
20 none.

21 Detective, if you'll step out, I admonish you that  
22 Arizona law prohibits you from discussing your testimony with  
23 anyone other than prosecution.

24 THE WITNESS: Thank you.

25 MR. WENDELL: See you.



1 (CARRIE MIASO left the proceedings.)

2 MR. WENDELL: Are there any legal questions?

3 THE GRAND JURY: (No oral response.)

4 MR. WENDELL: I take it by your silence there are  
5 none.

6 With such, we will step outside and allow you to  
7 deliberate with regard to your options.

8 (Whereupon, the Deputy County Attorney and the  
9 court reporter were excused from the Grand Jury room, were  
10 subsequently recalled into the Grand Jury Room, and the  
11 following proceedings were had:)

12 GRAND JURY FOREPERSON LANDA: The Grand Jury would  
13 like a Draft Indictment, please.

14 MR. WENDELL: The County Attorney's Office has  
15 presented a Draft Indictment for your consideration.

16 I'll remind you that the admonitions read to you  
17 earlier regarding Draft Indictment are applicable.

18 (Whereupon, the Deputy County Attorney and the  
19 court reporter were excused from the Grand Jury room, were  
20 subsequently recalled into the Grand Jury Room, and the  
21 following proceedings were had:)

22 GRAND JURY FOREPERSON LANDA: The Clerk will read  
23 the findings of the Grand Jury.

24 GRAND JURY CLERK TOLEU: The Grand Jury with 11  
25 members present and only members of the Grand Jury present

1 deliberated upon evidence, and with 11 jurors voting, by a vote  
2 of 11 to zero returned a true bill.

3 (A recess was taken. The following Grand Jurors  
4 are present for returns: GRAND JURY FOREPERSON MARY LANDA,  
5 GRAND JURY CLERK RICHARD TOLEU, GRAND JURY ALTERNATE FOREPERSON  
6 RAYLENE JOHNSTON, GRAND JUROR ELLEN CHARNEY, GRAND JUROR  
7 ROSEMARIE ARNDT, GRAND JUROR WILLIAM JEN, GRAND JUROR KATRINA  
8 ROSS, GRAND JUROR KAREN ROCHA, and GRAND JUROR STEPHEN LOCKLIN.

9 Whereupon, Commissioner Pamela Svoboda, Deputy  
10 County Attorney Jon Wendell and the Grand Jury Clerk entered  
11 the Grand Jury room and the following proceedings took place:)

12  
13 R E T U R N O F I N D I C T M E N T

14  
15 GRAND JURY FOREPERSON LANDA: Your Honor, Case 518  
16 GJ 182; a true bill.

17 My signature appears on the Indictment endorsing  
18 it a true bill.

19 MR. WENDELL: Your Honor, this is a warrant  
20 request. The State is asking the subject be held non-bondable  
21 in that he committed numerous of these offenses in this  
22 particular Indictment at the time that he was on release in a  
23 separate offense or separate cases, that being also his current  
24 whereabouts presently are unknown, but in  
25 CR 2010-106358-001 DT the subject is charged with theft of