20-6371

No._____

_____

IN THE

**Supreme Court of the United States**

Antoine Moseley

*Petitioner*

v.

The People of the State of Illinois

*Respondent(s)*

On Petition for Writ of Certiorari
To the United States Court of Appeals for the 7th Circuit

PETITION FOR WRIT OF CERTIORARI

Antoine Moseley
#MO5986/Prose
Taylorville C.C.
1144 IL. Rt 29
Taylorville, IL. 62568

## Questions Presented

1. Double Jeopardy: Pages 6-13

Whether there were post-acquittal fact-finding proceedings going to guilt or innocence of count 3 and count 4 that shared identical statutory elements. Exposing the petitioner to a second jeopardy which violates the first protection of the double jeopardy clause. In violation of petitioner's right to due process, as guaranteed by the United States Constitution, 5th and 14th Amendments.

2. Prosecutorial Misconduct: Pages 14-27

Whether the prosecutor failed to disclose two oral statements from two of its chief witnesses (the medical expert and the alleged victim) not allowing the petitioner to make an informed decision before waiving his constitutional rights to a jury trial, and selecting to take a bench trial as a result of the state withholding those two undisclosed oral statements. In violation of the petitioner's right to due process, as guaranteed by the U.S. Constitution, 5th and 14th Amendments.

3. Insufficient evidence: Pages 28-31

Whether the evidence at trial was insufficient. When the trial court created its own theory of why the petitioner allegedly assaulted Doe. Due to which the state nor the defense ever argued this erroneous theory at trial. This is despite the trial court previously ruling during cross-examination of the alleged victim, that the alleged

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victim's testimony will stand, which reflected the court's theory never existed. In violation of the petitioners right to due process, as guaranteed by the U.S. Constitution, 5th and 14th Amendments.

List of parties

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## ISSUE #2

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**[ISSUE #3]**



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The United States District Court opinion appears at Appendix B.
The highest State Court opinion appears at Appendix C.
The second highest State Court opinion appears at Appendix D.
The lowest State Court opinion appears at Appendix E.

## Jurisdiction

The Seventh Circuit panel entered judgment the same day it issued it's opinion on June 5, 2020. [See Appendix A] No petition for rehearing was filed. The highest State Court decided the case on September 30, 2015. [See Appendix C] This Court has Jurisdiction under 28 U.S.C Section 1254(1), §1257(a).

## Constitutional And Statutory Provisions Involved

Constitutional Provisions: In violation of right to due process, as guaranteed by the U.S Constitution; and 5th and 14th Amendments.

Statutory Provisions: In violation of Chapter 720 Act 5, Section 12-14(a)(2) of the Illinois Compiled Statutes 1992 as amended.

## Statement of Case

The following facts are pertinent to the issues presented in petitioner's Writ of Certiorari brief. The facts are supported by documents included with the petitioner's application for Certificate of Appealability that was filed in the U.S. circuit Court of Appeals, or by documents contained in the Appendix included with the brief.

### Background

The following facts are undisputed: The petitioner met the alleged victim on May 18, 2005 at a traffic light in Evanston, Illinois and pulled over his vehicle. They exchanged phone numbers, and later that night the petitioner, the alleged victim, and his cousin all went out to a bar in Chicago. They all drank liquor, and the petitioner dropped off his cousin, Mr. Azuka Oji, at his condo. The petitioner testified that he and the alleged victim agreed to park his car on Ravenswood Avenue in Chicago, where they consensually kissed and fondled for almost two hours in his parked car. He testified that once he learned she urinated in his car they had words that lead to a fight. He admitted that he slapped her around, and pushed her out of his parked car half naked. The alleged victim testified that after they dropped off the petitioner's cousin, the petitioner refused to take her home. Allegedly the petitioner drove to Ravenswood Avenue on his own. Then he beat and raped her for her 30 minutes after she told her friend, Marcuss, she was trying to get home. She testified that her call with Marcuss allegedly caused the petitioner to snap. She also testified that she urinated in his car, but stated that occurred out of fear of the petitioner. She testified that after the alleged rape, he pushed her out of his parked car and drove away. [See App. to Ground #3 pages E4, E26-E29]. The petitioner's complaint states that he was arrested the next day, on May 19, 2005, and taken to Cook County jail in Chicago, Illinois. He bonded out after seven days, and went to court. Below are the events that followed.

**Trial Court Proceedings**

1. After testifying at trial for multiple counts of aggravated criminal sexual assualt, attempted murder, unlawful restraint, and aggravated battery on 3/26/2009, the petitioner was convicted of one count of aggravated criminal sexual assualt and aggravated battery, and was sentenced to fourteen years for the sexual assualtand four years for the aggravated battery, and a merged count of aggravated criminal sexual assualt during the commission of aggravated battery for total of 18 years.
2. The location of the court that entered judgement of conviction that the petitioner is challenging is Circuit Court of Cook County, Illinois 2600 S. California, in a bench trial before Honorable Judge Angela Petrone under criminal docket and/or case number **05-CR-13245.**
3. Sentence and timely notice of appeal date: **5/20/2005**

**Direct Appeal Proceedings**

4. Under case **#109-1452** in the Illinois Appellate Court 1st District affirmed convictions: **6/28/2011**
5. A petition for leave to appeal to the Illinois Supreme Court was denied: **9/28/2011**

**Post-Conviction Proceedings**

1. Trial Judge Angela Petrone denied post-conviction relief under case **#05-CR-13245 PC.** The petitioner raised the issues he is raising in questions Presented for Review, among other issues.
2. On **4/14/15**, after responding to Appellate Counsel's motion to withdraw as counsel that was filed on **3/30/15**, under case **#1-13-3393**, the Illinois Appellate Court 1st District denied the petitioner's appeal of his post-conviction petition: **6/16/15.** The petitioner raised issues he is raising in Questions Presented for Review, among other issues.
3. Under case **#119505** the Illinois Supreme Court denied the petition for leave to appeal post-conviction

relief: 9/30/15. The petitioner raised issues he is raising in Questions Presented for Review, among other issues.

**Federal District Court**

1. The location of court the petition for Federal Habeas Corpus was filed in the United States District Court, Northern Illinois 219 S. Dearborn, Chicago, Illinois 60602, before Honorable Judge Robert Gettleman, Docket **#16-CV-0211.** The petitioner raised issues he is raising in Questions Presented for Review, among other issues.
2. The District Court ruled the petitioner did not make a substantial showing that his constitutional rights were violated. The court also denied on the same day to issue a Certificate of Appealability: **8/19/2019.**

**Federal Circuit Court of Appeals Proceedings**

1. The location of the court the application for Certificate of Appealability was the United States Court of Appeals, Northern Illinois, 219 S. Dearborn, Chicago, Illinois, before Honorable Judges Michael S. Kanne, and David f. Hamilton, Docket **#19-2778**. The petitioner raised issues he is raising in Questions Presented for Review, among other issues.
2. The Circuit Court ruled the petitioner did not make a substantial showing of the denial of a constitutional right: **6/5/2020.**

- The Petitioner is presently incarcerated at Taylorville C.C, Reg. No. M05986

## Reasons For Granting the Writ

I. The reasons relied on for the allowance of the writ. Rule 10 and 14.1(h).

There is conflict among the federal and states courts with the holdings of the courts mentioned below.

The questions presented are of great public importance because it affects defendants on a nationwide scale ability to receive fair decisions in judicial proceedings. Similarly situated as the petitioner is presenting to this court. The issue's importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted all the cases mentioned in all three questions and/or issues raised.

**First:** The results were a trial where the petitioner was exposed to a second Jeopardy, where post-acquittal fact finding proceedings took place. When the trial court acquitted the petitioner, but also convicted the petitioner of two counts even though they shared identical statutory elements.

**Second:** The next result was a trial where the petitioner was not able to make an informed decision when he waived his constitutional rights to a jury trial and he took a bench trial based on the evidence his trial counsel told him would be presented.

**Third:** The trial court created its own theory of why the petitioner allegedly assaulted the alleged victim despite both the petitioner and the alleged victim testifying the Judges theory never occurred. due to which the State nor the defense ever argued or presented as facts in this case.

A remand for a hearing in this case on these issues would promote such courtroom-wide vigilance, not to mention the insistence of fairness. At such a hearing, the government should have the burden. Burdens should not shift to the defendants in this country. Moseley contends that despite all three issues presented in his reasons for granting the petition. Both the Illinois and the federal courts have denied his due process rights. There is clear conflict among the federal circuits and the state of Illinois courts. Compelling reasons exist for the exercise of this

court's discretionary jurisdiction. Not only was the lower court's decision erroneous but there is a national importance for this honorable court to decide the questions involved within this petition. In this case Antoine Moseley petitions this court for a writ of certiorari.

## Issue #1
## ARGUMENTS

**A. Double Jeopardy post-acquittal fact finding proceedings error: [SeeIssue #1** OF Fed. Habeas and ISSUE #1 OF C.O.A **]** The petitioner contends the state put him twice in jeopardy. When the trial court erred by exposing him to double jeopardy. When it continued to deliberate whether the State met its burden **during post-acquittal fact finding proceedings going to guild or innocence of count #3 and 4 that share identical statutory elements.** This was equivalent to a retrial for double jeopardy purposes. Which violates the first protection of the double jeopardy clause.

It protects against a second prosecution for the same offense after acquittal even in a single proceeding. For Judge Gettleman to allow this ruling to stand when he ruled his Habeas Corpus petition ground #1 Double Jeopardy was erroneous and it amounts to plain error. **1.1(A)** Judge Gettleman acknowledges the two counts only differed in the types of bodily harm.

**[Judge Gettleman]**: "The counts differed in the bodily harm alleged: count 3 alleged "a broken nose and facial contusions". Count 4, "rectal tearing". The trial judge acquitted on count 3 and convicted on count 4". **[See Judge Gettleman ruling page 7 line 18-20]**

Judge Gettleman acknowledges that the two counts only differed in the immaterial types of bodily harm. But he fails to acknowledge the pattern of activity in the material elements are identical.

*"U.S. v. Dixon 113 S.ct. 2849 (1993) Thus if the pattern of activity is the same, even if there are some*

*differences in detail. This points to a finding of the same offense."*

Her injuries were all the different types of bodily harm, and only one needed to be proven to sustain a conviction in counts #3 or 4.

**1.1(B)** Even if the petitioner would have been found guilty of both counts #3 and 4, the Judge could not give him 14 years for each count and run it consecutively without violating the 3rd protection of the double jeopardy clause. Because it protects against multiple punishments for the same offense.

**1.1(C)** Because the Illinois Appellate Court rule the rectal tearing was an immaterial allegation that did not need to be proven to substantiate a conviction. Just as long as bodily harm of any sort was proven: **[See appendix to** ISSUE #1 **[redacted] pages (D1-D3)]**

The Illinois appellate court's judgement on count #4 is what allowed me to realize that both count #3 and 4 were identical as far as the material elements that needed to be proven. Illinois Appellate Court ruling that the type for bodily harm to wit: broken nose/facial contusions and rectal tearing. Were both **immaterial allegations** that did not need to be proven to sustain either conviction in counts #3 and 4.

**1.1(D) [Judge Gettleman's erroneous relitigation ruling]**

**[Judge Gettleman]**: "What the double jeopardy clause barred was "**relitigation** between the same parties of issues actually determined at a **previous** trial...Ashe v. Swanson --- "**There was no relitigation**". **[See Judge Gettleman ruling page 8, lines 13-15]**

The petitioner contends there may not have been relitigation between the same parties of issues actually determined in a previous trial. But there was clearly relitigation between the same parties of issues actually determined **during post acquittal fact finding proceedings.**

The petitioner contends when the trial court convicted him of count #4: "Insertion of his penis into her anus by force or threat of force and cause bodily harm", after it had just acquitted him of the same identical statutory element offense in count #3: "Insertion of his penis into her anus by force of threat of force and caused bodily harm". **[Apdx #1, pages C1 – C3 ]**

He was subjected to post-acquittal fact finding proceedings going to guilt or innocence which violates the Double Jeopardy clause. At that pint he was exposed to a second jeopardy. **Smith v. Massachusetts 125 S.CT 1129 (2005).**

*"Double Jeopardy Clause prohibition against re-examination of court – decreed acquittal applies regardless of whether judge's ruling of acquittal comes in bench trial or trial by jury."– "How Massachusetts characterizes the ruling is not binding on this court."– "What matters is that, as the Massachusetts rules authorize, the judge evaluated the Commonwealth's evidence determined that it was legally insufficient to sustain a conviction."--- "Subjecting defendant to post acquittal fact finding proceedings going to guilt or innocence violates the Double Jeopardy Clause."--- Quote the dissent goes to great lengths to establish that there was no prejudice here, since the acquittal was legally wrong and the defendant was deprived had no available defense.* ***But the Double Jeopardy Clause has never required prejudice beyond the very exposure to a second jeopardy.*** *To put it differently, requiring someone to defend against the charge of which he has already been acquitted is prejudice per se for purposes of the Double Jeopardy Clause – even when the acquittal was erroneous because the evidence was sufficient."*

***Smalis v, Pennsylvania 106 S.ct 1745 (1986)***

**1.1(E)** in the petitioner's case if he were initially **only** indicted for "insertion of his penis into her anus by force or threat of force and caused bodily harm", he was acquitted. He may not later be indicted for "insertion of his penis into

her anus by force or threat of force and caused bodily harm." Not if it's for the same victim, for the same day, and same moment the incident took place was acquitted earlier for.

Because the pleas mentioned below bar repeated prosecution for the same identical act and crime. In the petitioner's case there could be no second trial because both counts #3 and #4 of his indictment show there is clearly an identity of the statutory elements between both counts.

**Currier v. Virginia 138 S.ct. 2144 (2018),"** *To prevent the second trial, defendant must show an identity statutory elements between the two charges against him."*

In proving double jeopardy, petitioner will show an identity of the statutory elements between the two charges against him by showing where the form of the charges are identical. Section 111-3, form of charges provides, a charge will be in writing and alleged the commission of an offense by:

1. Stating the name of the offense:
    a. In **Count #3**, the name of the offense is aggravated criminal sexual assault
    b. In **Count #4**, the name of the offense is aggravated criminal sexual assault
2. Citing the statutory provisions alleged to have been violated;
    a. **Count #3**, in violation of chapter 720,Act 5, section 12 – 14 (A) (2) of the Illinois compiled statutes 1992 as amended
    b. **Count #4**, in violation of chapter 720,Act 5, section 12 – 14 (A) (2) of the Illinois compiled statutes 1992 as amended
3. Setting forth the nature elements of the offense charged;
    a. **Count #3**, charge that he committed an act of sexual penetration: upon Rita Pira , in that Antoine Moseley inserted his penis into Rita Pira's anus by the use of force or

threat of force and Antoine Moseley caused bodily harm to Rita Pira.

**b.** **Count #4**, charge that he, committed act of sexual penetration upon Rita Pira, in that Antoine Moseley inserted his penis into Rita Pira's anus by the use of force or threat of force and Antoine Moseley caused bodily harm to Rita Pira. **[Apdx #1, pages C1-C3 [redacted]]**

**According to Block Burger:** *"same elements test, inquires whether each offense contains an element not contained in the other; if not, they are quote same offense was quote. And double jeopardy bars additional punishment and successive of prosecution.*

**Block Burger v. United States 284. 299, 304,S2 S.ct. 180.**

The two crimes in the petitioner's indictment of the same offense under the Block Burger check.

The petitioner is contending the trial court continued to deliberate whether the state prove the statutory elements of count #4 when the court just acquitted him of count #3 was equivalent for double jeopardy purposes of the state later indicting him of: "insertion of his penis into her anus by force or threat of force and caused bodily harm". When he was just acquitted of: "insertion of his penis into her anus by force or threat of force and caused bodily harm", in an earlier indictment.

**1.1(F) [Judge Gettleman's erroneous single trial ruling]**

[Judge Gettleman]: "The state presented two theories in a single trial. That single trial did not put petitioner twice in jeopardy is quote. **[See Judge Gettleman ruling page 8, lines 15 – 16]**

**1.1(G)** the petitioner contends the District Court is mistaken that there has to be more than one trial for the petitioner to have been exposed to double jeopardy.

The fact that the state did not gain a new trial of second chance to persuade the second trier of fact following a not guilty finding of count #3 does not mean he was not subjected to double jeopardy once found guilty of the identical count #4. Where the trial court in the same bench trial made further post – acquittal fact finding proceedings of the material elements of count #3 in an identical count #4. **[See appendix to Issue #1, pages C1 – C3)**
**1.1(H)** it does not have to always be a second trial for double jeopardy to kick in. It also protects from the exposure to a second jeopardy.

***"Smith v. Massachusetts 125 S.ct. 1129 (2005)*** *But the Double Jeopardy Clause has never required prejudice beyond the very exposure to a second jeopardy.*
**1.1(I)** The petitioner contends that the subsequent finding of guilty of count #4 when he was previously in the same proceeding found not guilty on count #3 (an identical count with the identical material elements per the Illinois Appellate Court) was equivalent to a "retrial" for Double Jeopardy purposes that protect against post-acquittal fact finding proceedings. The trial court's ruling on count #3 determined he had already been put in jeopardy of "insertion of his penis into her anus by force or threat of force and caused bodily harm."

So his jeopardy of the material elements of that count or any identical count was terminated no matter how erroneous the court's ruling may have been.
***[Justice Butler in dissent]: "Speiller . United States, 31 f.2d 682*** *the verdict of guilty on the first count is not based on the other evidence than that on which the jury found the defendant not guilty on the second count, the jury said, in substance, that these alleged facts are not true, they have no legal existence. Where this is an acquittal on one count of an indictment and a conviction on another count charging the same crime, the verdict of conviction will not be allowed to stand unless supported by evidence other than that on which the acquittal was based."*

*"Strengthened and ruled to be controlled by* ***Evans v. Michigan is People v. Cervantes 2012, ILL App. 92d) 110, 191, 2013 991, N.E. 2d 521, 372 IL. Dec. 214. For double jeopardy purpose.*** *"The States one trial one-Jeopardy theory finds no support in the law, generally, jeopardy terminates in a bench trial when a judge enters a final judgement of acquittal – "Stout, Brown, Smith demonstrate that the state in our case is mistaken in its theory that only a second trier of fact constitutes Double Jeopardy".*

Although rising out of dissimilar context People v. Cervantes had issues presented that were related; if not identical to the petitioners case.

***"Stow v. Mura Shige, 389 f3d 880 (9th Cir. 2004)***

**1.1(J)** The petitioner contends that Justice Scalia said it best. It can be determined before a second trial if a defendant has been exposed to a Second Jeopardy. ***[Justice Scalia]*** *"In U.S. v. Dixon, "As he recently wrote, "Since the double Jeopardy clause protects the defendant from being twice put in Jeopardy" i.e. made to stand trial...For the same offense "It pre supposes that sameness can be determined before a second trial.*

**1.1(K)** The petitioner would like to bring the courts attention to **Martinez v. Illinois 134 S.ct. 2010 (2014).** Where the Supreme Court ruled the trial judge's characterization of his own action cannot control the classification of the action. The petitioner contends that he was not charged with broken nose/facial contusion which was the immaterial allegation of count #3. So the trial court finding him not guilty of count #3 based on the fact the state had not proven Pira had a broken nose beyond a reasonable doubt does not mean the petitioner was not acquitted of the statutory offense and elements he was indicted for in Count #3 **[Apdx #1, pages C1-C3]**

**Martinez v. Illinois:** "We have previously noted that the trial judge's characterization of his own action cannot control the classification of the action. "We have emphasized that what constitutes an acquittal is not to be

controlled by the form of the Judge's actions". It turns on whether the ruling of the Judge whatever its label actually represents a resolution correct or not of some or all of the factual elements of the offense charge. **Martin Linen 97 S.ct. 1349**.

The petitioner contends that just because the trial court said it acquitted the petitioner of the charged offense based on immaterial facts it was not required to prove to sustain a conviction does not mean he was not acquitted of the charged offense.

Clearly, post acquittal fact finding proceedings were violated. The petitioner contends that every argument, example, and case law he's presented all support that he was exposed to a second jeopardy. The trial court erred when it violated the first protection of the Double Jeopardy Clause. Then Judge Getttleman committed plain error in allowing the trial court judgement to stand.

[ISSUE 2]

**B. 5.1(A) Prosecutorial misconduct: Dr. Maloney undisclosed oral statement [see [redacted] ground #3 OF Fed. Habeas and #5 of C.O.A.**

The petitioner contends that Judge Gettleman's judgement is erroneous that the petitioner's strategy would not have changed had he learned earlier that Dr. Maloney planned to testify an undisclosed oral statement about his medical reports he made to the prosecutor earlier that morning the day of trial. That the prosecutor never disclosed to the defense. The trial court allowing this to stand was erroneous and violated the Brady Rule.

It injured the petitioner in ways that created a reasonable probability that, had Dr. Maloney's oral statement been disclosed, there is a reasonable probability the result of the proceedings would have been different. **Namely**; the petitioner would have never waived his constitutional right to a jury trial, and taken a bench trial had he been told by his lawyer, that Dr. Maloney planned to testify to this new oral statement. The injury suffered was a conviction where the defendant was not afforded the protection against the prejudice of surprise, unfairness, and inadequate preparation. Which is what the discovery rule is for.

For Judge Gettleman to allow this judgement to stand when he ruled on his Habeas Corpus is erroneous and it amounts to plain error.

**5.1(B) [Judge Gettleman]** "Dr. Maloney's oral statement that his physician's notes were incorrect. Petitioner first claims that the state failed to disclose a statement made by Dr. Maloney. After examining Doe, Dr. Maloney completed two sets of physician's notes. One set had preprinted patient complaints that he could mark positive or negative. The doctor testified that he erroneously did not check the laceration one and mark it positive." He documented Doe's abrasion in the other set of notes. On re-cross-examination,

Dr. Maloney testified that he and the prosecutor had discussed the discrepancy.

**[Defense Counsel]:** Q: "Did you tell the assistant state's attorney in this case, Mr. Welkie, that in fact you had come upon this epiphany, that you had made a mistake with respect to the reports generated on May 19, 05, that they were incorrect?"

**[Dr. Maloney]:** A: "We discussed it, and I told her I thought it was incorrect."

After the doctor finished testifying, petitioner's lawyer objected to what he believed was "a clear discovery violation," stating that he never received...anything memorializing or codifying the fact that a state's witness had been interviewed with respect to the preparation of his notes...the prosecutor responded that there were no such notes because her conversation with Dr. Maloney happened that morning. The trial judge declined to find the discovery violation.

She reasoned that the conversation's timing was irrelevant: petitioner's lawyer had received the notes years before and "had ample time to try to clear that up with him (**Dr. Maloney**) before today. **[See Judge Gettleman's ruling page 9, lines 9-24 and page 10 lines 1 – 3 also see appendix to Issue #2, 5.1 pages G7 – G14, G18 – G19].**

**5.1(C)** The petitioner contends the trial judge in allowing the state to introduce and use evidence concerning key medical reports not disclosed to the defense violates Illinois S.ct rule 415 (D), Brady/Giglio rules, and rules of disclosure. In the state failed to disclose this very vital oral statement before Dr. Maloney testified.

***United States v. Agurs, 427 U.S. 97, 49. L.ED 2d 342, 96 S.ct. 2392 (1976) People v. Diaz 297 ILL. APP. 3d 362, 370, 231 IL. Dec 523, 696 N.E. 2d 819 (1998)*** *In cases subsequent to Brady the Supreme Court delineated the standard for determining whether undisclosed evidence is material. Under Brady and its progenies favorable evidence is material, and constitutional error results from its*

*suppression by the government, if there is reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different."*

***U.S. v. Gil, 297 F.3d 93; Brady material must be disclosed in time for its effective use at trial (2nd Cir 2002) Crivens v. Roth 172 F.3d (1999) and Bagley, 473 U.S. 9T 678, 1055, CT 3375.***

**5.1(D)** The petitioner contends that Judge Gettleman's judgment is erroneous that his defense strategy would not have changed had he learned earlier that the doctor considered the first set of notes "incorrect". The petitioner can't speak to what his defense counsel would have modified or changed had he taken advantage of the ample time he had to learn which port the doctor would say was correct. **[See Judge Gettleman's ruling page 11 lines 1-6].**

But the petitioner is saying today just like he swore in his affidavit, that he would have taken a jury trial and not waived his constitutional rights to a bench trial. **[See appendix to Issue #2, 5.1 pages D6-D7].**

A jury with 12 of his peers weighing the facts as opposed to one judge, significantly creates a reasonable probability of a different outcome of the proceedings. The only facts the petitioner knew about prior to waiving his right to a jury trial, was what his defense counsel told him, and what counsel showed him over the years on bond in his trial file. That was the fact Dr. Maloney's medical reports were equivocal and inconsistent. **[See appendix to** ISSUE#2/5.2 **, pages G6, G9-G14, G18-G19 ].**

The point that petitioner decided to waive his constitutional rights was one of the most criminal points of the proceedings. Without full disclosure, the petitioner was left at a disadvantage and not able to make informed decisions, on whether to waive his constitutional rights, which may have affected the outcome of the trial.

**5.1(E) [Judge Gettleman]: Undisclosed** "He made effective use of the doctor statement and did not need earlier disclosure to do this." **[See Judge Gettleman's ruling page 11, lines 12-13].**

Again, Judge Gettleman is completely disregarding how the petitioner was unable to effectively use the doctor's statements. And his disregarding if the petitioner needs earlier disclosure to make effective decisions at his trial where it was his life and limb on the chopping block.

**5.2 (A) Prosecutorial misconduct: Doe's undisclosed oral statement [See ground #4 of habeas corpus petition and see issue #5 of C.O.A.]**

The petitioner contends that Judge Gettleman's judgment is erroneous that the petitioner's defense strategy would not have changed had he learned earlier that Doe planned to testify and undisclosed oral statement she made to the prosecutor early in the morning the same day she testified. This was 4 years later about being certain she was penetrated in both her anus and vagina as opposed to attempted penetration into both her anus and vagina. She also told the prosecutor she was now certain the petitioner used his penis as opposed to being unsure if it was a penis or finger.

The prosecutor never disclosed this oral statement to the defense. The trial court allowing this to stand was erroneous as it violated the Brady Rule. It injured the petitioner in ways that created a reasonable probability that, had Doe's oral statement been disclosed there's a reasonable probability the result of the proceedings would have been different.

**Namely**: The petitioner never would have waived his constitutional right to a jury trial and taken a bench trial. Had he been told by his lawyer Doe planned to testify to this new oral statement. The injury suffered was a conviction where the defendant was not afforded the protection against the prejudice of surprise, unfairness, and inadequate preparation Which is what the discovery rule is for. For Judge Gettleman to allow this ruling to stand when

he ruled on his habeas corpus is erroneous and it amounts to plain error.

**5.2(B) [Judge Gettleman]:** "Doe's oral statement that she was certain she was penetrated. Petitioners other **Brady** claim is that the state failed to disclose an oral statement made by Doe. Doe testified on direct examination that she "heard a condom wrapper tear open", and then "felt his penis to my anus". When the prosecutor ask if petitioners penis contacted any other part of her, she said, "yes, my vagina." Right after the anus. **Doe admitted on cross-examination that she had told others that:** **(1)** She was unsure if petitioner used his penis or his fingers, and **(2)** she was unsure if petitioner penetrated her vagina or her anus. She nevertheless testified that she was certain "that petitioner penetrated her both vaginally with his penis." When petitioner's lawyer asked if she had ever told anyone about her certainty, the following exchange took place:

**[Defense Counsel]:** "Who did you tell in connection with this investigation that you were certain he penetrated you both vaginally and anally with his penis?"

**[Doe]:** "Well when I was finally able to come to; you know, the whole situation myself I was able to admit to my state's attorney."

**[Defense Counsel]:** "When you say state's attorney, you mean Ms. Welkie?"

**[Doe]** "Yes."

**[Defense Counsel]:** "And when did you tell Ms. Welkie the fact that you were certain that he had penetrated you with his penis in your vagina and anus, when did that take place?"

**[Doe]:** "Today."

**[Defense Counsel]:** "The first time any individual ever learned of the fact that you were certain that he had penetrated you anally and vaginally with his penis was to the assistant state's attorney today?"

**[Doe]:** "She's one, yes."

Petitioner claims that the state violated his right to due process by failing to disclose Doe's oral statement to the prosecutor. **[See Judge Gettleman's ruling page 11, lines 14-23; page 12, lines 1-11 and page 15, lines 7-19. Also see app TO ISSUE #2/5.2 pages H23-H24, E1-E2, H4-H6, H10-H12, H14-H18 [redacted]].**

***5.2(C) "U.S. v, Garner, 507 F. 3d 399; Crivens v. Roth,*** *in determining whether a reasonable probability exists, courts must focus on whether the lack of evidence impaired the defendant's ability to receive a fair trial or cast doubt upon the verdict. A reasonable probability of a different result is accordingly shown when the government's evidentiary suppression undermines confidence in the outcome of the trial."*

***"U.S. v. Gil, 297 F.3d 93.*** *Brady material must be disclosed in time for its effective use at trial." (2nd Cir. 2002)*

*"The prosecutors failed to turn over key statements and reports that touched the subject matter violating, the Jencks rule in* ***Jenk v. U.S. 353 U.S. 657 IL. Ed. 2d 1103, 77 S.ct. 1007 (1957) "Bagley 473 U.S. at 678, 105 S.ct 3375*** *Childs' testimony forms the heart of the state's case against Crivens. The state trial court based its findings of guilt upon the testimony of Childs – Thus, the credibility of these two witnesses, while within the sound discretion of the trial court played a pivotal role in the court's ultimate decision.*

From the moment Doe accused him of this crime she had stated that he attempted to sexually assault her, and that she was unsure as to whether or not he used his penis or a finger in that attempted sexual assault. **[See App. TO ISSUE #2/5.2 [redacted], pages E1-E2 [redacted]].**

The petitioner prepared his entire defense based on evidence his defense lawyer was tendered by the state's attorney in relation to all Doe's statements leading up to trial. He prepared for trial that Doe would testify that he **"tried"** to rape her. And that she was unsure whether or

not a finger or penis was used to make contact in this alleged attempt to rape her. **[See appendix to [redacted], pages H4-H6, H11-H12, H14-H18 [redacted] petition].** ISSUE #2/5.2

However, on the day of the trial she changed her story as far as what she would testify to.

**5.2(E) [Judge Gettleman]: Favorable** "Doe's statement was potentially favorable to the defense. Taken in isolation, it incriminates, taken with Doe's earlier statements, it may exculpate." **[See Judge Gettleman's ruling page 13, lines 1-2].**

The petitioner contends that everything that Doe said prior to trial and during trial, should have been ruled on in its totality and if it had been by any reviewing court the petitioner may have been exculpated, like Judge Gettleman said. Why would Doe's oral statement not be taken with all her earlier statements? Why were they all taken in isolation?

The petitioner contends that Judge Gettleman continues with all the reasons Doe's undisclosed oral statement was favorable to the petitioner.

**[Judge Gettleman]** "Her statements to the prosecutor that she was "certain" conflicted with those earlier statements and could have been used to impeach her. **[See Judge Gettleman's ruling page 13, lines 4-5].**

The petitioner contends that Judge Gettleman is acknowledging Doe's conflicting statements that could have been used to impeach her.

**–Confliction–**

**[Defense Counsel]:** "The first time any individual ever learned of the fact that you were certain that he had penetrated you **anally and vaginally** with his penis was to the assistant state's attorney today, correct?"

**[Doe]:** "She's one, yes." **[See Judge Gettleman's ruling page 15, lines 13-14].**

**[Judge Gettleman]:** "Doe's statement – unlike Dr. Maloney's – did not help explain an existing inconsistency. It created one. And that inconsistency might have been

favorable to the defense." **[See Judge Gettleman's ruling page 13, lines 6-7].**

**5.2(F) [Judge Gettleman]: Material** "Doe's statement was nonetheless immaterial." **[See Judge Gettleman's ruling page 13, line 10].**

The petitioner contends that, how is it possible that he can say her undisclosed oral statement was immaterial, when it went to the heart of every material element of the charge he was convicted of. Without that undisclosed oral statement there would be no conviction:

**[Material elements of convicted offense]**

"Antoine Moseley committed the offense of aggravated criminal sexual assault in that he: committed an act of sexual penetration upon Rita Pira. To wit: An intrusion in that Antoine Moseley inserted his penis into Rita Pira's anus by the use of force of threat of force and Antoine Moseley caused bodily harm to Rita Pira. In violation of Chapter 720 Act 5 section 12-14(A)(2) **[See appendix to** ISSUE #1 **[redacted] pages C1-C3 [redacted].**

**5.2)G) [Judge Gettleman]:** "These questions impugned Doe's credibility. They led the trial Judge to acquit petitioner of the counts alleging vaginal penetration—the counts alleging anal penetration are a different story. **[See Judge Gettleman's ruling page 14, lines 13-14 and 20].**

The petitioner contends that Judge Gettleman's judgement as if he does not see that Pira made the exact same allegations prior to trial and at trial about both her vagina and her anus. But yet he rules as if Pira's accusations to her vagina were less powerful, than her accusations to her anus. He had the power to correct the trial court error by saying, "Hey hold on for one second, You acquitted him for the vaginal counts because Doe testified she only became sure her vagina had been penetrated with his penis the same day of trial. But yet you convicted him on the anal counts when Doe also testified she only became sure her anus had been penetrated by his penis the same day of trial as well as her vagina."

**–Confliction–**

**[Defense Counsel]:** "The first time any individual ever learned of the fact that you were certain that he had penetrated you **anally and vaginally** with his penis was to the assistant state's attorney today, correct?"
**[Doe]:** "She's one, yes." **[See Judge Gettleman's ruling page 15, lines 13-14].**
**[Trial Court's ruling when it acquitted him on vaginal counts]**
[Trial Court]: "I understand her feelings, but the fact that she only disclosed this on the day of trial leaves me reasonable doubt that this count has been proven guilty. So for that reason count #1 is not guilty" --- "I did find the defendant not guilty on all counts involving contact between penis and vagina. And that is because Miss Pira had testified that the first time she really realized that that had happened was shortly before she testified. Where there was the inconsistency which she explained about the vaginal contact, I did acquit the defendant of all those counts." [See appendix to ISSUE #2 page H29-A, H30;H31 [redacted]. [Judge Gettleman)
[j]: "The judge was left with reasonable doubt on those counts because: (1) Doe "did not tell Dr. Maloney...about this type of contact. [See Judge Gettleman's ruling page 14, line 1-3 also see appendix to ISSUE #2 page H3-H6, H12-H13 [redacted].
***The petitioner will now prove that every statement Doe made to the doctor about her vagina was nothing different than se made about her anus:***

**–Confliction–**

- **Anus**

**Defense:** "You told Dr. Maloney that you were unsure as to whether or not he had penetrated you anally with his penis. Correct?
**[The Court]:** "Answer the question, ma'am, is that true, you said you were unsure about that?
**[Doe]:** "I did say that, yeah."

**–Confliction–**

- **Vagina**

**[Defense]:** "And would you also agree that you told Dr. Maloney also that you were unsure as to whether or not he had penetrated you with is fingers vaginally, you told Dr. Maloney those statements too, correct?"
**[Doe]:** "Yes, I'm sure I said that." **[See appendix to** ISSUE#2/5.2 **[redacted], page H13 line 4-17 [redacted].**

**–Confliction–**

- **Anus and vagina**

**[Defense]:** "Okay. You told Dr. Maloney that you weren't sure whether or not it was a finger or his penis, correct?"
**[Doe]:** "Right."

**–Confliction–**

**[Defense]:** "Okay you told Dr. Maloney that he had attempted to penetrate your vagina and rectum but that he had not done that. Is that correct?
**[Doe]:** "I am not sure if I said that he had not done it but I'm sure I said I wasn't sure." **[See appendix to** [redacted] ISSUE#2/5.2 **pages H4, lines 1-18, page H5, lines 6-12, H21, lines 11-16 [redacted].**

Dr. Maloney's medical reports mirrored his and Doe's testimony of what she told him at the hospital. Because he checked every box as unsure in regards to both anal and vaginal, and penis or finger. **[See appendix to** [redacted] ISSUE#2/5.2 **pages E1-E2 [redacted].**

The petitioner contends that Judge Gettleman can clearly see that Doe told Dr. Maloney the exact same things about her vagina and anus. So why would he not rule the same? The court should have been left with the same reasonable doubt for the vaginal and anal counts when it came to what she told Dr. Maloney.
**5.2(H)** Next, **[Judge Gettleman]:** "(4) Doe testified...that she was sure her vagina was penetrated by the defendant's penis, but she only became sure of this on the day she testified. **[See Judge Gettleman's ruling page 14, lines 18-19].**
**[Judge Gettleman]:** "The questions impugned Doe's credibility, they led the trial judge to acquit petitioner of the counts alleging vaginal penetration."

The judge was left with reasonable doubt on those counts because: (4) Doe testified, that she was sure her vagina was penetrated by the defendant's penis, but she only became sure of this the day she testified". **[See** App. TO ISSUE #2/5.2 **[redacted], pages H29A, H30-H31 as opposed to H4-H6, H10-H12, H14-H18, E1-E2 [redacted].**

**5.2(I)** ***Proof that Judge Gettleman knew exactly what Doe testified about becoming certain about. But yet he failed to correct the trial court's error of not realizing Doe became certain the day of trial about both the anal and vaginal counts.***

**[Defense Counsel]:** Q. "And when did you tell Ms Welkie the fact that you were certain that he had penetrated you with his penis in your **vagina and anus**, when did that take place?"

**[Doe]:** A – "Today." **[See Judge Gettleman's ruling page 12, lines 7-9].**

- **[Defense Counsel]:** "As you testified today you are certain that he penetrated you with his penis in your vagina, correct?"
- And you testified you are certain that he penetrated you anally with his penis, correct? **[See Judge Gettleman's ruling page 13, lines 14-17].**
- "You were sure that he had penetrated you both vaginally and anally with his penis, you just testified to that? **[See Judge Gettleman's ruling page 14, lines 1-2].**
- "The first time that you ever stated to any individual that you are certain that my client penetrated you both **anally and vaginally** with his penis is today?...The first time any individual ever learned of the fact that you were certain that he had penetrated you **anally and vaginally** with his penis was to the assistant state's attorney today, correct? **[See Judge Gettleman's ruling page 14, lines 8-12 and see** App. TO ISSUE #2/5.2 **[redacted] pages H4-H6, H10-H12,**

**H14-H18, H23-H24, E1-E2 [redacted]].**

The petitioner contends that Judge Gettleman can clearly see that Doe told the prosecutor, she became certain about the exact same things concerning both her anus, and her vagina on the same day of trial. So why would he not rule the trial court should have been left with the same reasonable doubt for both counts? Why would he not correct such a huge error on behalf of the trial court. But instead he supports the trial court's error by making the same error as if he also does not know what the actual record reflects.
**5.2(J)** Doe's oral statement was so material to the defense that the trial court did the right thing when it acquitted the petitioner on al counts of vaginal assault. **So for Judge Gettleman to rule the reasons why the trial court acquitted the petitioner were immaterial**, when he's in a position to correct this erroneous conviction of the anal counts based on the exact same reasons that exist to acquit the vaginal counts.

***Judge Gettleman erroneously ruled that Doe's undisclosed oral statement was immaterial. When it's the same undisclosed oral statement that cause the trial court to acquit all vaginal counts.***

**[Judge Gettleman]: Material** "Doe's statement was nonetheless immaterial." [See Judge Gettleman's ruling page 13, line 10].

**5.2(K)** ***Judge Gettleman's ruling on why Doe's new oral statement would not have changed any decisions the defense could possibly make had it been disclosed prior to her testifying:***

**[Judge Gettleman]: undisclosed** "Nor was Doe's statement disclosed too late for petitioner's lawyer to make use of it. The revelation that she had talked to the prosecutor that day was not a Perry Mason moment that forced petitioner's lawyer to revamp the defense strategy. **[See Judge Gettleman's ruling page 15, lines 1-3].**
**[Judge Gettleman]:** "Knowing about Doe's newfound certainty in advance would not have empowered

petitioner's lawyer to do much more damage to her credibility. Petitioner's lawyer did not need earlier disclosure to make effective use of Doe's change of heart." **[See Judge Gettleman's ruling page 15, lines 20-22].**

**Doe's earlier statement that the defense and petitioner thought Doe would testify:**

**[Judge Gettleman]:** "Doe was not so certain that petitioner used his penis or that he actually penetrated her anus or vagina when she talked to Dr. Maloney and several police officers." **[See Judge Gettleman's ruling page 13, lines 2-4].**

The petitioner contends that Judge Gettleman ruled that:

(1) This undisclosed statement was not disclosed too late for trial counsel.

(2) That it was not a Perry Mason moment for trial counsel.

(3) It would not have empowered trial counsel to know in advance.

(4) Trial counsel did not need earlier disclosure to be effective.

The petitioner contends if it's not too late to learn on the same day of trial, that an alleged rape victim has given the state an undisclosed oral statement regarding the material elements of the charged offense, and that her story has gone from being unsure to absolutely sure, then when is it too late for Judge Gettleman to declare the undisclosed oral statement was given too late? Because he has to have a certain point that he'd rule it's too late.

Judge Gettleman also disregards that the petitioner was the one on trial and who waived his constitutional right to a jury trial, and if someone was going to prison or losing his life and limb it was him. So why does he not consider if the statement was disclosed too late for the defendant to make use of it and say he wanted a jury trial if Doe's going to be certain instead of being unsure?

Why does he not consider her revelation, that she talked to the prosecution that day was in fact, a Perry Mason moment for the defendant? And if he was informed

before trial, it would have forced him to revamp his entire defense strategy an say he wants a jury trial if she is going to be certain instead of unsure?

The least he could have been afforded was to know what his accuser was going to say before she said it. That way he would not just throw away his constitutional rights the way he did. When damning testimony by Doe was discussed previously between Doe and the prosecutor.

## ISSUE #3

**C. Insufficient evidence:** The trial court erred when it created its own theory of the case to which neither the state or the defense argued at trial. Despite the court previously ruling this theory never existed when it ruled the alleged victim's testimony will stand. **[See ground #5 of habeas corpus petition and see ISSUE #4 of C.O.A.]**

**4.4(A)** The petitioner contends the trial court created its own theory of why the alleged crimes occurred. The petitioner will now show how the trial court was influenced by improper factors and created its own theory of the case:

**[Trial Court]:** "The evidence to me shows the defendant felt like he was entitled to oral sex. He took Rita Pira around. He spent money on her. He tried to ply her with alcohol. They are kissing. Now he wants to go to the next level and she does not want to and this is what made him angry." **[Apdx #3, page E31 of habeas corpus petition.]**

This was an erroneous theory the trial court created based on unfounded allegations and inaccurate information. In fact, during cross examination of the alleged victim, the trial court ruled that her answer will stand that the petitioner never asked her for oral sex. Yet, as the petitioner mentioned above during the trial court's ruling it created the theory that by Doe saying no to oral sex the petitioner beat and raped her.

**4.4(B) Cross examination of alleged victim proving she said oral sex was not an issue or the theory of why the petitioner allegedly snapped (as she put it):**

**[Defense Counsel]:** "Don't you remember that he said to you I can't get an erection would you please, I don't know if he said please, but would you perform oral fellatio on him?"
**[The State]:** "Objection."
**[The Court]:** "She can answer if that occurred. Ma'am, did that happen that the defendant said that to you?"

**[Doe]:** "Absolutely not. There was no question of, there is absolutely no oral anything."
**[Defense Counsel]:** "I didn't say..."
**[The Court]:** "All right, she answered your question the answer will stand."
**[Defense Counsel]:** "I didn't say there was an oral of anything."
[Doe]: "There was no question, he never asked me anything like that. There was never even this situation that you speak of." **[See appendix to ISSUE #3 pages E19-E20 of the petition.]**

The petitioner contends what's so powerful in the above exchange is that Doe testified twice the petitioner asking her for oral sex was never the issue in this case. She actually testified twice he never asked her for oral sex. What's also powerful is the court ruled that Doe's answer will stand that he never asked her for oral sex.
So, if Doe's answer stood, then how can the evidence be that he beat and raped Doe because she refused oral sex, and he felt entitled to it?
**4.4(C)** The petitioner contends the prosecution's case was never that he asked for oral sex, never that he felt entitled to oral sex, or that he felt like Doe owed him because he drove doe around and spent money on her. The prosecutor's case was that he snapped because Doe was on the phone trying to get home with her friend Marcus.
**[Trial Court]:** "Rita Pira said the defendant snapped when her phone rang and she told the defendant...she told her friend Marcus in front of the defendant that she was trying to get home. She said then the defendant began beating her, tried to kill her, and raped her." **[See apdx to ground ISSUE #3 #5, page E29, lines 10-16 of the petition.]**

The court used this erroneous theory of being denied oral sex when the petitioner felt entitled to it. So he allegedly became so enraged that he attacked Doe. In doing so, the court made an erroneous but critical decision about why this entire alleged crime happened after a perfect night of hanging out on the town between two adults. The

court made this theory despite neither the defense nor the state ever presenting this to the court. It was at this point the petitioner was deprived of his due process rights. The trial judge committed plain error when she based parts of her ruling on mere speculation. Because it led to the petitioner being convicted of rape.

It is improper for the trial court to point to and use points of evidence to find the petitioner guilty, where that evidence was never introduced and never argued by either party in this case. Especially when the alleged victim testified it never happened, and the court ruled the alleged victim's answer will stand, that it never happened. This theory had absolutely no bearing on the facts, testimonies, or accusations of either party at any time. This clearly affected the outcome of the case.

Surely, if a judge is not allowed to sentence a defendant on misinformation, then a judge cannot be allowed to convict based on misinformation. Based on these facts, it is not improbable to conclude the trial judge created an unfounded theory of the case.

**4.4(D)** ***U.S. v. Bradley 628 F.3d 394 (7th Cir. 2010):*** *"But the evaluation of those factors was flawed from the inception because the court's assessment of the very first factor—the nature and circumstances of the offense and Bradley's history and characteristics—rest on speculation rather than evidence bearing 'sufficient in dica of reliability'."* ***Pulley*** *601 F.3d at 665 and this skewed view of the first factor necessarily colored the court's view of the remaining factors." See U.S. v. Durham 645, F.3d(7th Cir. 2011) and U.S. v. England 555 F.3d 616 (7th Cir. 2009 and U.S. v. Halliday 672 F.3d 462 (7th Cir 2012).*

**4.4(E)** Finally, the petitioner contends he never had the chance to confront or cross examine the court's theory that he felt entitled to oral sex, so he beat and raped Doe because he spent money and drove her around.

He never had the chance to challenge any of those errors, or unfounded theories. Because he never heard about any of them until the trial court judgement and the

trial was over. So he never confronted any state witnesses about any of those erroneous findings.
In the petitioner's Federal Habeas Corpus proceedings. The District Court granted the petitioner's motion to supplement pending petition for Federal Habeas Corpus based on his trial Judge, which had an occasion where she missed applied the law in another case even though both the defense lawyer and prosecutors office agreed the defendant in that case was convicted on the basis of evidence which experts now know is unscientific and unreliable. Judge Petrone was overruled by the Illinois Appellate Court and the defendant Mr. Gray in that case was set free after twenty-four years.
The District Court granted his motion to Supplement. **[see Judge Gettleman granting motion to supplement pending Federal Habeas Corpus petition.]**
The District Court later denied his Habeas Corpus petition despite granting his motion to supplement. Which argued many identical points against his trial Judge as he argued in his Habeas Corpus Petition.
The issues the petitioner argued within his petition for writ of certiorari were all argued in his motion to supplement. The District Court granted the motion to supplement essentially agreeing with the petitioner that the trial court did apply the law unconstitutionally. Now the petitioner asks this very Honorable U.S. Supreme Court to grant his petition for writ of certiorari.

## Conclusion

Mosley petitions this very honorable United States Supreme court for a writ of certiorari in order to review and resolve conflicts that exist among the State of Illinois and its rule of law and the Federal Courts and its rule of law where conflicts of the courts and their rules create national concern.

Wherefore this petitioner asks that his conviction for aggravated criminal sexual assault be vacated and his

petition for writ of certiorari should be granted pursuant to 28 U.S.C. Section 1254.

**Respectfully submitted**

**Antoine Moseley**
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**Date:** 10/27/2020
**By:** [signature]