

NO 20-6673

In The
Supreme Court OF The United States

David A. Diehl - Petitioner

VS.

United States - Respondents

On Petition For A writ of certiorari TO

Fifth Circuit Court of Appeals

Petition For Rehearing

David A. Diehl, 532 14 018

Federal Correctional Complex

USPBColeman II

P.O. Box 1034

Coleman, FL 33521

Certificate

This Petition is restricted to interfering circumstances of a substantial or controlling effect, or to other substantial grounds not previously presented. The Petition is in good faith and not for delay.

David A. Diehl

David A. Diehl

PIO SE

2-18-2021

i

J List of Parties

[X] All parties appear in the caption

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1. The Law of Conservation of Mass

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Law of Conservation of Mass
The total mass of a system remains constant
during a chemical reaction.
Mass is neither created nor destroyed.
The mass of the reactants is equal to the mass of the products.

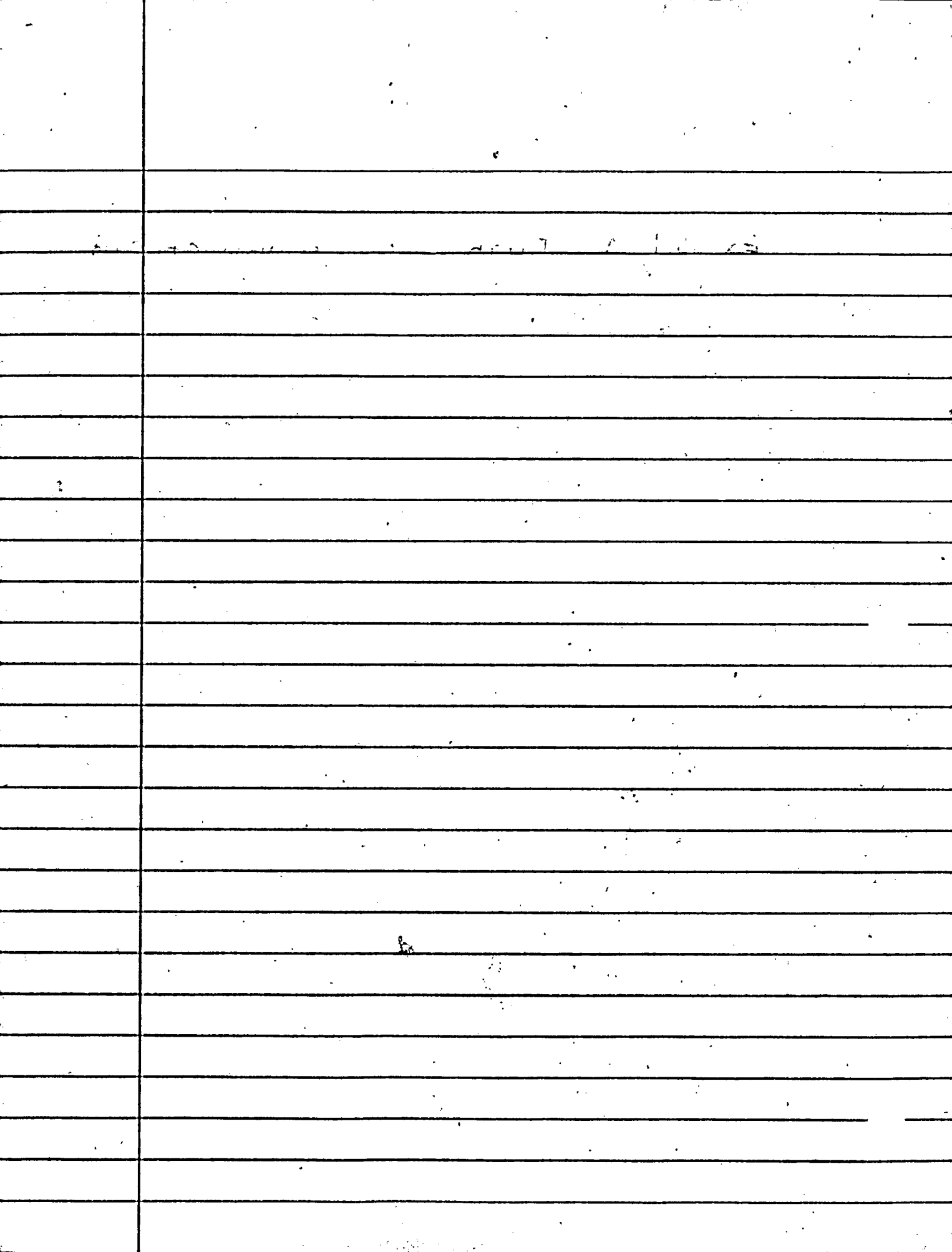
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Example: $2H_2 + O_2 \rightarrow 2H_2O$
In a closed system, the mass of the reactants ($2H_2 + O_2$) is equal to the mass of the products ($2H_2O$).
This demonstrates the Law of Conservation of Mass.

H1

Conclusion: The Law of Conservation of Mass is a fundamental principle of chemistry. It states that the total mass of a system remains constant during a chemical reaction. This law is essential for understanding the behavior of matter in chemical reactions.

Exhibit A - Fifth Circuit denial of COA



IV

Table of Authorities

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1. —

In The Supreme Court of U.S.A.
Petition For writ of Certiorari Rehearing

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

Opinion Below

[X] For cases from federal courts:

The opinion of the United States Court
of appeals at Appendix A to the
petition and is

[X] Reported at 19-50165

2.

Jurisdiction

[X] For cases from Federal Court

[X] The date on which the United States Court of Appeals decided my case was 5-6-2020 - COA denial.

[X] A timely petition for rehearing was denied by the United States Court of appeals on the following date 9-11-2020.

3.

Case statement

On January 25, 2021 this Court denied Certiorari on a petition for a Certificate of appealability.

Per Rule 44 of the Supreme Court Rules petitioner herein submits his petition for a rehearing. The enclosed petition presents other substantial grounds not previously presented.

Compliance

Per Rule 33 Petitioner pro se attests this document has less than 3000 words. Per subsection (XV) of Supreme Court Rules and is limited to 15 pages.

Grounds For Rehearing Facts

I.

Here inlc petitioner shows grounds for a rehearing per Supreme Court Rule 44. Per Rule 44 a petitioner must show that there are intervening circumstances of a substantial or controlling effect, or to other substantial grounds not previously presented.

Rejected Second Certiorari Petition

II.

on December 21, 2020 this Court rejected an independant petition for certiorari¹ where petitioner challenged a series of delayed motions, which concerned interference into petitioner's constitutionally protected client-attorney privileges. In the den certiorari petitioner explained that well prior to his §2255 he sought to obtain discovery in the possession of his attorney Gerald morriss. The government responded by obtaining an injunction, and an order for mr morriss to destroy the discovery

¹ originally originating from an interlocutory appeal.

information. See DKt 291, 292. Petitioner appealed on 2-27-19, and on 4-16-2019 the Fifth Circuit refused to hear the appeal. This eventually led to the afore mentioned Petition for Cert. The Report and Recommendation treated the interference as a pre-mature attempt to circumvent justification for an evidence hearing, saying Petitioner's legal theories were baseless, and "petitioner's attorney [had] passed the files," and so petitioner had no cause to examine them. The Report accused petitioner of trying to "reopen and retry the case." see Report and Recommendation ("Report") Doc 270 P. 7-8. The complete denial of the Second Cert is a substantial ground not previously presented.

Defect In The Integrity of The Habeas Corpus Proceedings

III

Petitioner argues that the government's interference into petitioner's client-attorney relationship, was nothing more than a purposeful attempt to prevent the petitioner from exposing outrageous misconduct that involved the manufacture of federal

jurisdiction in petitioner's case.

Purpose Of Government Interference

IV.

The purpose of the government's interference was two-fold. First, the government sought to prevent petitioner from discovering exculpatory evidence concerning jail house witness Ken Courtney. Second, the government sought to withhold evidence concerning the Fourth Amendment violation, caused by the illegal seizure of petitioner's computer equipment. The evidence concerned the affidavits.

The government at trial had alleged that based on Ken Courtney's testimony, the computer equipment contained charged counts, and travelled in interstate commerce. The discovery, in the possession of attorney Morris, along with new evidence, proves this false.

In fact new evidence shows that the computer hard drives were decrypted¹ and prior to the 2255, the government withheld this information. Other evidence concerning Ken Courtney reveals that federal agencies

failed to turn over a deposition conducted by agent Al Danna. Petitioner's 2255 Count 10 (D) also sought this evidence as exculpatory, and the Report didn't address it. Petitioner argued a United States v. Brady error occurred. See Report p. 36-37. See also, "First Petition For Particular FBI Report" (DKt #267). See Report page 8.

With regard to the Fourth Amendment violations, which Counsel was ineffective for not raising, Petitioner raised 2255 Count 13. However the Report also fails to address this. See petitioner's 2255 p. 46-49.² See Report Page 20. Petitioner's objections to the Report on this and all other matters was not addressed in the "De Novo" Review. See Petitioner's objections, Doc. 274 p. 13-14. See promises by the United States that the hard drive contains changed Counts at trial transcript 171:6. These promises were also not addressed.

¹ The Report only address how Ken Courtney was found, not the illegal search and seizure including the associated procedural errors.

8.

The Promises were used verbatim by the Fifth Circuit to uphold the conviction on appeal. Note that the Report finds Counsel was not ineffective concerning failing to inspect the hard drives on the basis the trial Court did not rely on them. See Report p. 41. Petitioner's objections on the matter were not addressed. The Report also argues the hard drives were not dispositive, and if for that reason a hearing on these issues was denied.

Fraud On The Court

Because, the government finding a charged scene in another state, was most likely not sufficient evidence to prove transport under the pre-2008 version of 18 USC § 2251(a), the FBI went on a mission to prove petitioner's computers had the charged counts, and travelled in interstate commerce.²

At pre-trial petitioner challenged the illegal seizure of his computer. The judge however for unknown reasons did not decide the issue. This gave the government

² Never has this alone been shown to be sufficient

time to try and associate the crime to the computers. The United States accomplished this by using witness Ken Courtney, who they gave five years off his sentence to say he saw a charged count on the illegally seized computers. There is strong evidence that the FBI coerced his changing his testimony, and also evidence cheating. The computers were also illegally seized so any evidence would have been suppressed. The trial and the jury.

Changing The Trial Courts Finding

V.

Unfortunately for the government, the trial court refused to rely on witness Courtney, or the hard drives. This fact is made crystal clear by the record.²

1. First, the court says the fact scenes were found outside of Texas is enough "and it doesn't take any more" TT. Day 2 p. 7:10.

Second, following a Rule 27, after additional evidence, the court announced, "we're now at a reasonable doubt stage" TT. 186:4.

Third, Courtney would have established mens rea.

To circumvent the trial court's finding, the United States misrepresented the legal and factual findings to the Fifth Circuit, and the Fifth Circuit used the hard efforts and Courtney in a sufficiency finding to establish the nexus, on a constitutional issue!

VI

On 2255, the magistrate as shown failed to consider 2255 count 13 (Search and Seizure), and disallowed an evidence hearing where petitioner hoped to develop his Blady and Napue claims regarding Courtney and the computer. See 2255 p. 36-38 showing the evolving testimony of Courtney.

The facts surrounding the illegal seizure are outrageous, and new evidence continues to surface. For instance, the warrant had already been denied, and the government seized it any way without a warrant.¹ All procedures were ignored throughout the entire proceeding. For example, the government avoided the Grand Jury because they could not prove a nexus. NO Fed. R. Cr.P. 32.2 (b)(5)(A) procedures were followed. They used

¹ Affidavit is still being withheld with active litigation.

Petitioner's ex-wife as an agent to circumvent the warrant denial, and to argue Petitioner gave up possessory interests. They said at pre-trial they weren't going to use the equipment in their case in chief, to prevent the defense from proving it had nothing illegal on it. They demanded a password as a condition of inspection,¹ and much more. Again it appears they lied about what they seized, and withheld the fact they decrypted the hard drive, and knew it was void of charges! They withheld other transport evidence including: that the FBI transported the scenes from Texas!

VII. Prejudice

The Report concludes that Petitioner can't show prejudice, because the Fifth Circuit heard Petitioner's correct nexus argument on appeal, and found that scenes, found outside of Texas (where they were videoed), was enough to establish the interstate nexus. The magistrate further maintains the constructive amendment to Petitioner's indictment was also resolved on appeal.

¹ 18 USC § 3509 (m) doesn't require passwords

The magistrate completely ignores that this was a structural error, and to complex to measure. See Weaver v. Massachusetts, 137 S.Ct. 1899 (2017). Further more, it was also separately an ex-post facto application of §2251 (Post 2008). Petitioner's 2255 count 4 was ignored entirely. Also, the Fifth Circuit really guessed that the trial court considered the "correct burden." See Report p. 14 referencing the Fifth Circuit's footnote analysis.

The Report also found the Fifth Circuit considered the correct legal argument, which petitioner raised on appeal as ineffective counsel, and requested a new trial. This is entirely false. The correct argument, which was a pure legal argument, and could have, and should have been resolved at pre-trial, was never heard. The argument was simply that §2251(a), prior to 2008, did not apply to electronically transmitted data.¹ If the Fifth Circuit would have considered that argument, they would not have relied on cases that have nothing to do with IT.

1. This was an amendment, not a clarification, and the structural error is a structural error.

In fact there is only one case, in one Circuit, where the argument has been evaluated, and that's United States v. Nichols, 371 Fed. Appx. 546 (5th Cir. 2010). Nichols however is provably wrong, and is not precedent. see Fifth Circuit R. 47.5-4.

The stipulation was signed based on this and only this argument.² The argument was intentionally pocketed by petitioner's trial counsel, who was working against his client's interests from the start. Substantial evidence exists, what counsel did at trial was to raise a constitutional challenge, which had been soundly defeated at pre-trial, effectively causing a mistrial, which Judge Yeaker then attempted to cover up by saying "...there's always a different slant to it after I have had an opportunity to hear all of the evidence other than what was presented for the purpose of a preliminary motion." TT 186:1-3. 130t, whether or not 2251(a)(3) 3rd Nexus Exchange Requires mens rea is a pure legal issue, and had been resolved at pre-trial. The trial was an unfair, unbalanced, and biased trial, and the result is a mistrial. 2. This is made obvious by the Bill of Particular motion.

Intervening Circumstance Of A Substantial Effect

On January 14, 2021 the government was ordered to respond to Petitioner's substantial allegations of fraud on the Court. See Case No. 3:10-mj-1105-JRK Middle District of Florida, Jacksonville Division. It was this judge, and this Court that originally denied the search warrant, which the government egregiously ignored. The Petitioner has still not received the search warrant affidavit as of the date this rehearing is being composed. The judge governing the above case has requested that the government "substantively respond in opposition to movant's motion for copy of search warrant Denial Order and FBI Warrant Affidavit." Petitioner alleges government fraud from start to finish of this case.

Statute of Limitations

VIII

It's also likely that the United States was looking for charges that were not time expired. Petitioner has requested an evidence hearing on his 2255 Count

1 issue. Petitioner showed grounds in his 50 page Rule 6 memorandum (Doc 240 p. 4-21), and his objections to the Report were entirely ignored. Doc 274 page 1, 3-8, 15. There is no evidence whatsoever of a de novo review. See Gomez v. United States, 490 U.S. 858, 864 N.9. (De novo review as a right applies to all factual and legal matters.) The warrant denial may be based on the Court finding (the limitation expired.) Evidence ties 18 USC §3283 directly to the 1986 Sexual Abuse Act and Rape Reform Act. See the original statute of limitation proposal in 1990, "Any sex offense regardless if it involves force or serious physical injury." S. 1965, NOV 21, 1989, H.R. 1303 1989, Dewine. See Sexual Abuse Act 1986 Report 99-594 to accompany H.R. 4745, "a single common law definition of rape is hard to define" p. 7. And common law rape required proof of force. All of 3283's components are explained by the 1986 act. §3283's offenses are Chapter 109A. The government is knowingly misapplying §3283. A COA should issue to develop the facts. See Petitioner's Rule 6 memorandum, Doc 240 p. 1-21. See Shular v. United States, 140 S. Ct. 779 (2021) (Common Law).

1 issue. The Florida magistrate may well have denied the search warrant because he felt the limitation period on the decade old charges was expired.

There is compelling evidence indicating 18 USC § 3283 applies only to "Sexual or Physical abuse" as explicitly defined by Chapter 109A of Title 18. Chapter 109A was the result of Congress's attempt to codify common law rape for the special maritime and territorial jurisdiction of the United States (18 USC § 7); including special aircraft jurisdiction, federal prisons (some not on federal land), and Indian reservations. The first § 3509(k) statute of limitation proposals show the direct link. They explain why § 3283 supercedes other limitations and why the initial language of the limitation said, "Any sex offense regardless if it involves force or serious physical injury." See "Sexual Abuse Act of 1986" to accompany H.R. 4745, Report 99-594, Poll abandoning the common law doctrine of resistance. The government's only hope would be if, "offense involving" in § 3283 were based on a conduct test, but rape is a common law offense. See Shuler v. United States, 140 S.Ct. 779 (2021). A CoA is appropriate to develop facts,

In The
Supreme Court Of The United States

David A. Diehl - Petitioner

VS

United States - Respondant

- Proof of Service -

I David A. Diehl do swear or declare that
on this date, 2-19 ~~2021~~ 2021 as required by
Supreme Court Rule 29 I have served the
Petition For Rehearing on each party to
the above proceeding by depositing an envelope
containing the above documents in the
United States mail properly addressed to
each of them and with first-class postage
pre-paid.

Name and Address:

Solicitor General

Room 5616

DOJ 950 Pennsylvania Ave N.W

Washington D.C. 20530-0001

I declare under penalty of perjury that the
foregoing is correct and true.

David A. Diehl
David A. Diehl

Declaration

Per Federal Supreme Court Rule 29 and 28 U.S.C. §1746 I David A. Diehl in Coleman Florida declare under the penalty of Perjury, that on Friday February 19th 2021 I handed the CO. in Unit H-2, USP Coleman II whos name is CO. Argo the petition For Rehearing contained in a First Class postage pre-paid envelope addressed to the Supreme Court. Per the mail box rule it was submitted on time because the CO's handle all mail during court-11.

Executed On April 7th 2021.

David A. Diehl

David A. Diehl

4-7-2021