NO. 20-7636

ORIGINAL

In The
Supreme Court of The
United States

Marcus Anthony Barnes Pro Se Petitioner
V.S.
United States of America Respondent

On petition For Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

Petition for Writ Of Certiorari

Marcus Anthony Barnes #66185-019
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Atlanta GA. 30315

QUESTIONS PRESENTED

Mr. Barnes case raises a pressing issue of national importance: Whether and to what extent the criminal justice system tolerates false testimony on the part of government agents and false information relied upon that is not in the trial record on part of the United States Court of Appeals for the Eleventh Circuit and has so far departed from the accepted and usual course of Judicial Proceedings.

Specifically, did the United States Court of Appeals for the Eleventh Circuit Court impose an improper and unduly burdensome (C.O.A.) standard that contravenes this Court's precedent? By denying Mr. Barnes a (C.O.A.) on his 2255 Motion to Vacate, that his appellate counsel was constitutionally ineffective for:

1. Not raising the denial of Motion for Judgement of Acquittal at the end of all the evidence.
2. Not raising the denial of Motion to Suppress Evidence, and
3. Whether petitioner overcame the procedurally barred rule for not raising the insufficiency of evidence on direct appeal in light of (Jackson v. Virginia n.d.) by demonstration of cause and prejudice or factual innocence.

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:

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IN THE SUPREME COURT
OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of Certiorari issue to review the judgement below.

Opinions Below

The opinion of the United States Court of Appeals appears at Appendix A. reported at 2020 U.S. App lexis 29342.

The opinion of the United States District Court appears at Appendix C reported at 2020 U.S. Dist. lexis 75882.

The opinion of the United States Magistrate Court appears at Appendix C reported at 2020 U.S. Dist. lexis 77106.

The opinion of the United States Court of Appeals Motion for Reconsideration appears at Appendix D reported at 2020 U.S. App lexis 34455.

Jurisdiction

The date on which the United States Court of Appeals decided my case was September 15, 2020.

The date on which the United States Court of Appeals denied my motion for reconsideration was on October 29, 2020.

The jurisdiction of this Court is under 28 U.S. C 1254aj.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves a Federal defendant's constitutional rights under the Sixth, Fourteenth and Fourth Amendment.

> The Sixth Amendment provides in relevant part: In all criminal prosecution the accused shall enjoy the right to have the assistance of counsel for his defense.
>
> The Fourteenth Amendment provides in relevant part: That no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof beyond a reasonable doubt of existence of every element of the offence, an essential of due process guaranteed.
>
> The Fourth Amendment provides in relevant part: That individuals are protected from unreasonable search and seizures.

The case also involves the application of 28 U.S. C 2253 (C) which states:

(1) Unless a circuit justice or judge issues a Certificate of Appealability, an appeal may not be taken to the Court of Appeals from (B) the final order in a proceeding under section 2255.

(2) A Certificate of Appealability may issue under paragraph (1) only if applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

A. Introduction

By any measure, Mr. Barnes is legally and factually innocent. In addition to his Fourteenth Amendment, his Fourth and Six Amendments being violated, his attorney raised a non-meritorious issue of counsel of choice on direct appeal. This was contrary to prevailing professional norms and not sound strategy. Reason being is that prior to his decision on June 26, 2018, Mr. Barnes and appellate counsel Adam Marshall Hames had discussions over email on June 20, 2018 between 2:15pm and 6:05pm in regard to notifying the courts about our communication issues and what to raise on direct appeal.[1] In that email Adam Marshall Hames stated that the council of choice is an issue that Mr. Barnes created, and it will not likely be considered by the courts because it reads like Mr. Barnes is trying to delay the trial. The next day Mr. Barnes emails back that counsel should challenge the sufficiency of the evidence, and motion to suppress along with other issues that are not relevant. Also, Mr. Barnes stated to his attorney that if they cannot agree on what issues to raise then please do not abuse your power and allow Mr. Barnes to state his claim to the judge and proceed Pro Se if that is what it takes (email dated June 21, 2018 at 6:22pm). He also asked the attorney to ask for a continuance because the attorney waited until the week before the appellate brief was due (which was the 25th of June 2020) to start working on Mr. Barnes case. In addition, because Mr. Barnes sent a letter to the courts about his attorney communicating better which was docketed, out of spite Mr. Hames did not tell Mr. Barnes what issue he raised until after the appellate brief was due, which was the counsel of choice claim.[2] This was more a decision based on "payback" and convenience rather than strategic. The appeal was denied for the exact same reasons that we both agreed would happen. See United States v. Barnes 740 Fed.*Appx* 980 Case# 18-10702 filed on October 30, 2018.

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[1] TRULINKS is a Federal Prison email service.

[2] App. E contains emails between appellate counsel and petitioner.

What makes counsel performance unreasonable is that without the effects of hindsight he already knew the counsel of choice was the weakest issue and it would not be considered. Evidence of petitioner's statements and acts is highly relevant to ineffective assistance claims. Strickland 104 S. Ct. at 2066. An inquiry into counsel's conversations with petitioner may be critical to a proper assessment of counsel's investigation decisions. Just as it may be critical to a proper assessment of counsel's other litigation decisions 24 Id.

The attorney's view that the law does not weigh direct evidence greater than circumstantial evidence when dealing with sufficiency of evidence is incorrect. The Appellate Court for the Eleventh Circuit has held that if after the evidence is viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged, then a reasonable jury must necessarily entertain a reasonable doubt. United States v. Louis 861 F. 3d 1330 (11th Cir. 2017) citing Cosby v. Jones 682 F. 2d 1373 (11th Cir. 1982). Which appellate attorney failed to investigate along with other relevant laws that proves Mr. Barnes is legally and factually innocent. He also failed to investigate this court's opinion in Anderson v. City of Bessemer, North Carolina 470 U.S. at 575 that appellate courts can find clear error even in a finding purportedly based on credibility determinations when evidence contradicts a witness's story or if the story itself is internally inconsistent. Along with failing to investigate the Rodriquez claim 135 S. Ct. 1609 (2015) that was raised in Mr. Barnes' Motion to Suppress. Counsel for a criminal defendant has a duty to make reasonable investigations or to make reasonable decisions that makes a particular investigation unnecessary. Kimmelman v. Morison 477 U.S, at 348 citing Strickland 466 U.S. at 685. A reasonable attorney should look into governing laws because without the laws the facts mean nothing. A reasonable attorney will also inform his client if his client has an interest about what issues to raise well before the brief is due. This is in case there is a disagreement, there is time to resolve it. See rule 1.5 diligence and rule 14 communication ABA and Georgia Bar rules of professional conduct. As explained in Strickland 466 U.S.

at 685 access to counsel's skill and knowledge is necessary to accord defendants the ample opportunity to meet the case of the prosecution to which they are entitled. In making the competency determination the Court should keep in mind that counsel's functions, as elaborated in professional norms is to make the adversarial testing process work in the case.

Yet presented with these facts, laws and abundance of more to demonstrate prejudice. The Eleventh Circuit denied relief and improperly side stepped the COA process by denying relief on its view of the merits that was based in part on false information that is not supported or in the trial record. They also failed to apply applicable appellate procedural law,

B. Trial Proceedings

On July 16, 2014 Mr. Barnes was indicted for 21 U.S.C. 841 (a) (1) (b) (i), 18 U.S.C. 924 (c) (1), 18 U.S.C. 922 (g) (1), and 26 U.S.C. 5861 (d) (Doc# 1 Case# 1:14-cr-268) in the Northern District of Georgia for the Eleventh Circuit. After four continuances, two for Motion to Suppress Evidentiary Hearings and two for trial dates (Doc# 37, 42, 103, 145). Mr. Barnes trial started on March 1, 2016 and lasted for five days not including the weekends (Doc# 160 – 168).

Late Summer of 2013, Mr. Barnes allegedly came to authority's attention when Dekalb HIDTA agents followed a red Cadillac from 2459 Wagon Trace in Lawrenceville GA, Gwinnett County to 5706 Mountain Crescent, Stone Mountain GA, Dekalb County. Prior to following Mr. Barnes, there was video surveillance of the red Cadillac pulling out of the garage after a female and male hugged each other before the female got into the car that the male showed up in and drives off. The video does not show the same car circling the neighborhood as stated by Detective Robinson (Doc# 205 vol. 2 Trans. p. 229-231) and (Doc# 206 vol. 3 p. 443 and 452). Detective Robinson testified that just because you see a gathering of males does not mean that they are involved in the illegal drug trade. The only available parking space was in the garage (Doc# 206 vol. 3 Trans. p. 454-455). After Mr. Barnes leaves in the red Cadillac the video shows a Hispanic male holding a black bag. Detective Robinson made false representation of the contents in the black bag by saying that it was a package, meaning narcotics and then admits that he does not know what is in the black bag (Doc# 206 vol.3 p.456-457). Overall, there is no video of any evasive driving maneuvers or heat checks. Detective George testified to this type of driving but was impeached about the same incident (Doc# 205 vol. 2 p. 231-233 and p. 292-302).[3] Defense exhibits 4, 5 are the only

[3] **Portions of the transcript are attached to App. F. The entire transcript is on pacer.gov found in Case# 1:14-cr-268 Doc# 204-208 vol. 1-5**

photos that they have of the defendant out of the entire investigation (Doc# 205 vol.2 p.290). There is no testimony of heat checks on the day of the arrest.

On March 26, 2014 there was a second video with three minutes of footage showing a woman parked in the driveway at a different location from the Wagon Trace location.[4] Detective Robinson also testified that he did not know if the vehicle was there for a long time, if it had gotten there three minutes prior, if the driver had gone inside already, or if the driver was still inside of the car. This is because he had just arrived at the location when Mr. Barnes pulled out of the garage. Mr. Barnes was driving a white Impala instead of the red Cadillac (Doc# 206 vol. 3 p.451). After Mr. Barnes left the location, he was pulled over for an alleged traffic violation (Doc#205 vol. 2 p. 169-171).[5] The officer had the K-9 dog circle the white Impala and allowed him inside of the car where it alerted by the air bag. Then Officer Viar pried open the airbag and found a hidden compartment with a kilo of cocaine and a firearm inside (Doc# 205 vol. 2 p. 173-176). He also testified that the tampered airbag was not visible to the human eye. He affirmed that this is how it looked prior to him forcefully prying it open (Doc#205 vol. 2 p. 204-205). After the traffic stop Detective George applied for a search warrant. During the search of the house there were firearms found in the master bedroom, kitchen, and attic where large amounts of cash were found in a safe with silencers (Doc# 205 vol. 2 p. 193-198 and p. 242-246). (Defense exhibits 9-10) are photos of the cabinets located in the kitchen which had to be opened to see what was inside. There were vacuum sealers, sealing bags, rubber bands, baking soda, and a pot also known as (Government exhibits 75, 62, 04, 95, 96). Detective George testified that none of these items were in plain view, or visible to somebody just walking by (Doc# 205 vol. 2 p. 320 – 324). The same thing for Govt. exhibit 66 which was a closed case with firearms inside, as well as (Govt. exhibits 44, 46, 48) that were found in a closed cabinet.

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[4] Det. George testified that they received a tip that narcotics were being sold at 2459 Wagon Trace, but it was never confirmed that it was a drug location or that drugs were being sold, or why Mr. Barnes was at that location.

[5] It was never established why Mr. Barnes was at the second location, nor was it established that it was a drug location. There were no informants or undercover buys.

(Government exhibit 50) was a bag of bullets that prior to the officer putting them in a bag was found inside of the guns clips out of sight and not in plain view (Doc# 205 vol. 2 p.329-331). (Government exhibit 57) is a picture of the master bedroom in the same condition as it shows in the picture before Detective George and officers searched it. (Government exhibits 43, 43, 44, 58, 60, 59) are firearms and a scale that were found hidden in the room, not in plain view or visible and had to be moved around to take photos (Doc# 205 vol. 2 p. 324-325). (Government exhibits 62, 63) are the same as (Govt. exhibits 89 ,90, 91, 92) showing trash clumped together and depicted as kilo wrappers that were never tested for cocaine (Doc# 205 vol.2 p. 326-327). Officer Viar testified that he found guns, silencers, a safe and a large amount of cash in the attic, but nothing was in plain view. The only way to find them was to pull back the insulation (Doc#205 vol. 2 p. 189-199 and p. 215 – 216) (Govt. exhibits 31-40 and 49 and 11-23).[6] He also testified that he did not have any idea who put the items in the attic (Doc# 205 vol. 2 p. 215-216). Detective George testified that he never saw Mr. Barnes doing any drug transaction or any drugs being given to him (Doc# 205 vol. 2 p. 332).

Ms. Nikeia Waters testified that she lived at 5706 Mountain Crescent and that Mr. Barnes did not live there but he stayed there three to four nights a week and would sleep in the master bedroom (Doc#206 vol.3 p. 467-469). She also testified that Mr. Barnes did not have a key to her house during the time of the arrest and she did not remember the exact date that he lost the key. She believes it was back in 2010 or 2011 (Doc# 206 vol. 3 p.470). Sometimes she would let Mr. Barnes drive her Impala, but if they argued she would deny him permission to use her car and would not allow him to come over to the house. This was during the rocky portion of their relationship (Doc# 206 vol.3 p. 479-481 p. 499 and 507). She testified that she drove the Impala the most during the month of March.[7] The majority of the time Mr. Barnes drove the Cadillac and sometimes her brother drove the Impala (Doc#208 vol. 3p. 500-501).

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[6] The guns and silencers were also inside of trash bags under the insulation (Doc# 205 vol. 2 p.199).

[7] The tag and title for the Impala is in Nikeia Waters name.

Detective George testified that he put a GPS tracker on the Cadillac and not the Impala (Doc# 205 vol. 2 p. 306-310).[8]

Government Witness

Ms. Nikeia Waters testified that she never saw Mr. Barnes put any guns, silencers or large amounts of cash or safes in her house, nor had she seen him with these items (Doc# 206 vol. 3 p. 489-491. She also testified that Mr. Barnes is the only man that came to her house, but the physical evidence contradicts her statement. Kevin Erler a convicted felon reported a firearm stolen that was registered in his name on May 9, 2014 almost two months after Mr. Barnes was arrested. The firearm was already in possession of law enforcement, which makes it impossible to have been stolen May 9, 2014 (Doc# 206 vol. 3 p. 489-490) and (Doc# 206 vol. 3 p. 527 -543). Defense exhibits 17, 18 are documents listing a Rock Island firearm, model 2011 .45 caliber, serial number RIA1471895 is also listed as (Govt. exhibit 45). Ms. Nikeia Waters admitted to using Mr. Barnes debit/credit card on multiple occasions both before and after March 26, 2014 (Doc# 206 vol. 3 p.505). Although she denied buying a safe, the physical evidence contradicts her testimony. Shia Chason, the owner of BuyaSafe.com testified that he sold and shipped a safe to Ms. Nikeia Waters at 5706 Mountain Crescent, Stone Mountain GA 30087 (Doc# 205 vol.3 p. 346-360).[9] (Govt. exhibit 102) is a two-page document including a sales receipt with Ms. Nikeia Waters listed as the purchaser and the recipient. Timothy Spencer-Banks testified that he got his cocaine from a guy whose nickname is Skip (Doc# 206 vol.3 p. 589). Ms. Nikeia Waters testified that she had the name Skip tattooed on her leg, then stated "what is the importance of that tattoo," when asked about using Mr. Barnes' debit/credit card (Doc#206 vol.3 p.504).

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[8] Det. George testified that he only witnessed Mr. Barnes driving three to four times and each time Mr. Barnes was driving the red Cadillac which was explained to the Jury.

[9] It was established that Mr. Barnes known address is 2609 Eastwood Drive, Decatur GA (Doc# 205 vol.2 p. 315 and p. 338 – 339). Ms. Waters also testified that the Internet bill was in Mr. Barnes name, but it was really hers to help the kids (Doc# 206 p. 502).

During the deliberations, the Jurors indicated that they wanted to look at the cocaine and weapons. The District Court judge allowed this to go on. Afterwards the Jurors again retired for deliberations. The Jurors had two questions, the first was related to asking for prosecution's questioning related to the Skip tattoo. The second question was wanting to know if the defense attorney was a paid attorney or a court appointed attorney. To the question regarding the Skip tattoo and wanting to know if the prosecution tried to ask about it before any objections. The District Court Judge stated that he cannot answer that question, nor could he give them a transcript. He answered the same for the question about whether the defense attorney was a paid attorney or not. Neither party objected. The Jury retired and came back with another question, asking if they could read the testimony of Nikeia Waters. The District Judge stated that the law did not allow him to do that, and they must use their 12 collective minds to remember what the testimony was or was not (Doc#208 vol.5 p. 765-770). This indicating an irrational decision. The Jury returned a verdict of guilty on all four counts.

Trial Testimony Regarding March 12, 2014

Detective George testified that on March 12, 2014, he observed Mr. Timothy Spencer-Banks go inside 8312 Pleasant Hill Rd., Lithonia GA. When asked what he observed next, he stated that he observed a black male come out of the location, and that he did not see anything in Mr. Timothy Spencer-Banks hands, no bag or anything of that nature. He also stated that detectives conducted mobile surveillance and Detective Huckabee conducted a traffic stop on Mr. Timothy Spencer-Banks. Defense attorney objected for personal knowledge. He also stated that he observed the traffic stop but nothing after the traffic stop. Then stated he arrived later after the traffic stop (Doc# 205 vol. 2 p.235 – 238). Detective George was asked what was recovered during the traffic stop, and defense attorney Mr. Hall objected for lack of personal knowledge and hearsay. The prosecution again asked if he was there, and Detective George stated yes. The court asked if he was there the whole time and he stated yes, then the court stated it was

not hearsay. Detective George then stated that 181 grams of cocaine and a handgun were recovered, and he was present when Mr. Timothy Spencer-Banks was found in possession of these items. Then on cross examination detective George confirmed that Mr. Timothy Spencer-Banks left the location of 8312 Pleasant Hill Rd. with nothing in his hands. When asked about being present at the time the drugs were found in Mr. Spencer-Bank's car, Detective George stated that he was not present at the time (Doc# 205 vol. 2 p,237-239). Defense attorney moved to strike the prior testimony because he stated he was present and saw the drugs. The court called for an at the bench hearing and Mr. Hall explained about his objection earlier to lack of personal knowledge, hearsay and why. Then he renewed his objection and asked some follow up questions.

He asked Detective George if any contraband was already found before he got there. Detective George answered yes sir. Then he turned around and said he cannot recall if he was there to see the contraband but believes it was in a black bag on the passenger side of the vehicle. This supports the fact that Mr. Spencer-Banks did not get any cocaine from 8312 Pleasant Hill Rd (Doc# 205 vol. 2 p. 318-320).

Officer Viar's Testimony About the Cadillac

Officer Viar did not take any photos of the Cadillac; his reasoning was because it was during the search of the residence and the vehicle was there at the residence. He admitted that the back of the front seats were natural voids and that he did not find any guns, cocaine, or anything drug related. He also admitted that he removed the back of the front seats and that he never generated any kind of report with respect to the Cadillac (Doc# 205, vol. 2 p. 214). He testified that he took pictures of the hidden trap in the Impala that he found (Doc# 205 vol. 2 p. 213). He also took pictures of the hinges on the trap in the Impala (Doc# 205 vol. 2 p. 217).

Officer Viar admitted again that he popped off and removed the back of the front seats and it was a natural void and that he believes there were latching devices holding them, but he is not a Cadillac expert. When shown (defense exhibits 1 and 2), photos of the back of the front seats of the same type of car and

asked whether the photos were consistent with the interior of the Cadillac CTS as he observed on March 26, 2014. He testified that he could not remember what the seats looked like and he did not have any photos to refer to (Doc# 205 vol.2 p. 218) and (Doc. #205 vol. 2 p. 224-225). This shows that his testimony was impeached and not credible regarding the Cadillac having latching devices. Additional facts are incorporated in the petition.

C. 2255 and COA Proceedings as to whether appellate counsel was ineffective assistance for not raising the denial of Motion for Judgement for acquittal.

On October 3, 2019 petitioner's 2255 Motion to Vacate was filed (Doc# 253). On April 30, 2020, the District Court adopted the Magistrates R and R) and denied the petition on its view of the merits that petitioner failed to demonstrate prejudice. Mr. Barnes was also denied a COA. [10] Although the Magistrate Court applied an appellate standard of review, neither court applied applicable appellate procedural law in making its determination of the merits (see Id.) They also failed to acknowledge that the Jury was forced to make a decision on faulty memory when they were denied access to read the testimony of the governments witness Nikeia Waters, the owner of the car and house in which the illicit items were found. This incited an irrational decision that is forbidden. Jackson v. Virginia 443 U.S. at 320. Likely making its decision based on reviewing the illicit items charged before asking about the transcript rather than making its decision on if Mr. Barnes knowingly possessed the items charged or not (Doc# 208 vol. 5 p. 765-770).

The Magistrate Court omitted the fact that the kilo of cocaine and firearm with ammunition was hidden inside a secret compartment that took the place of the airbag (Doc# 205 vol.2 p. 209-210).[11] This is totally different than cocaine and a firearm with ammo being hidden under the front or passenger seats. The appellate procedural law in cases dealing with hidden compartments in the Eleventh Circuit holds that there must be more than control over the vehicle and that there must be circumstances evidencing a consciousness of guilt on the part of the defendant. U.S. v. Almanza 634 F.3d 1214 (11th Cir. 2011). Officer Viar who made the stop testified that the compartments were not visible to the human eye (Doc# 205 vol. 2 p. 171). He also testified that Mr. Barnes nervousness was consistent with a lay person because

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[10] **See App. B**
[11] **See App. C**

of fear of getting a citation (Doc# 205 vol.2 p. 171). Reasonable Jurist could debate whether the Eleventh Circuit erred in not applying this appellate procedural rule, and if applied would Mr. Barnes prevail or not.

The Magistrate Court also omitted the fact that the items found in the attic were not in plain view and neither were the other illicit items that were found in the house (Doc# 205 vol.2 p. 189-199, p. 215-216, p. 320-331). Mr. Barnes did not have a key to the house, he was not present when the search took place, and he did not have unrestricted access to the house (Doc# 206 vol.3 p. 465-470, p. 479-481, p. 433, 499, 507). The Eleventh Circuit failed to apply the procedural law that holds that it is not enough to show that a defendant simply visited or made temporary use of the premises. Some nexus must exist between the accused and the contraband as a defendant's mere presence where there is contraband, or awareness of its location is not sufficient to establish constructive possession. Most notably a defendant must know of the illegal item's existence. Holmes v. Kucy NDA 321 F.3d 1069 (11th Cir. 2003). To assess the degree of control or domain necessary to establish constructive possession when in somebody else's house the Eleventh Circuit used United States v. Rackley 742 F.2d at 1272 (11th Cir. 1984) where a key to the house; a frequent overnight guest and power to exclude others from the house was deemed not enough to have constructive possession. 321 F.3d at 1080. The Eleventh Circuit also pointed to this court noting in Minnesota v. Olson 495 U.S. 91, 110 S. Ct. 1684, 109 L. Ed. 2d 85 (1990) that while an overnight guest has a measure of control over the premises the host has ultimate control. Ms. Nikeia Waters testified that she would deny Mr. Barnes permission to come over during the rocky portion of their relationship and that Mr. Barnes would let her know when he was coming over. He would have to knock on the door when he did not have a key and that Mr. Barnes lived at 2609 Eastwood Drive, Decatur GA (Doc# 206 vol.3 p. 506-507). A Jurist of reason could debate whether Mr. Barnes would prevail under the Eleventh Circuit Procedural rule of law of constructive possession, and whether the Eleventh Circuit erred in not applying the Appellate procedural law. Especially when Ms. Waters testified that she never saw Mr.

Barnes with these illicit items and that she always knew ahead of times when he was coming over to her house (Doc# 206 vol.3 p. 489-491 and 506). Most notably the Magistrate Court presented false information that is not supported in the trial record such as Mr. Barnes drove the Impala regularly[12]. Ms. Waters testified that she drove the Impala most of the time, but sometimes Mr. Barnes would drive it as well as her brother. She also testified that Mr. Barnes did not have a key to her car and that if they argued he was denied permission to use it, and that Mr. Barnes drove the Cadillac most of the time. In addition, the tag and title are in her name (Doc# 206 vol.3 p479-482 and p. 500).[13]

Regarding Mr. Barnes driving in and out of garages, these were only two incidents on two separate days nine months apart. The first was late summer of 2013 and the second was the day of the arrest, March 26, 2014. Mr. Barnes never testified, so it was unknown why Mr. Barnes was at those residences and there is zero evidence that something illegal was going on. This is not a case where there were informants and undercover buys. Mr. Barnes does not dispute that the material found in the residence is consistent with the material used for the cocaine found in the Impala. Mr. Barnes dispute is that he had no knowledge of the illicit items found in the car and house. The mens rea requirement was reaffirmed in this court in Rehaif v. U.S. 139 S. Ct. 2191 (2019) and in McFadden 576 U.S. 135 S. Ct. 2298 (2015).

The Magistrate Court omitted the fact that the testimony about avoiding surveillance was one of two incidents that were claimed to have happened nine months before the arrest and the officer who testified to it was impeached in his testimony Doc# 205 vol.2 p.292-302). This calls into question if the second incident even occurred, where it was alleged that Mr. Barnes pulled into a plaza and just sat there looking around (Doc# 205 vol.2 p. 237). Both times it was alleged that he was in the Cadillac but there is no evidence that a drug deal took place before or after this alleged incident on March 12, 2014.

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[12] **See App. C**
[13] **See App. F1**

The Magistrate Court again provides false information not supported by the trial record. It stated that Mr. Barnes purchased a safe that was found in the attic with sealed currency with his debit/credit card.[14] Government witness Shia Chason the owner of BuyaSafe.com testified that he sold and shipped a safe to Ms. Nikeia Waters at her address (Doc# 205 vol.2 p. 346-347).[15] Ms. Nikeia Waters testified that she used Mr. Barnes debit/credit card before and after March 26, 2014 (Doc# 206 vol.3 p. 505). Government exhibit 102 is a sales receipt with Nikeia listed as the purchaser and recipient. This is direct physical evidence that Mr. Barnes did not purchase the safe. The Eleventh Circuit did not even acknowledge the direct physical rebuttal evidence that Kevin Erler a convicted felon reported a firearm stolen which was already in law enforcement possession, almost two months after Mr. Barnes was arrested (Doc# 206 vol.3 p. 527 – 542). By Mr. Erler attempting to disconnect his possessory interest and connection to 5706 Mountain Crescent which is the smoking gun that he and Ms. Nikeia Waters had some type of relationship. Mr. Erler's firearm which is government exhibit 45 was found in the kitchen among other firearms in a closed case tucked away in a cabinet (Doc# 205 vol.2 p. 244, p. 269 and p. 329-330). The worst-case scenario, the Eleventh Circuit failed to provide its equipoise rule which Mr. Barnes argued in his 2255 Motion to Vacate (Doc# 253 p. 13 of 33) that after the evidence is viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged, then a reasonable jury must necessarily entertain a reasonable doubt. United States v. Terry Pierre Louis 861 F.3d 1330 (11th Cir. 2017). Jurist of reason could debate whether the Eleventh Circuit erred in not applying appellate procedural rules of law in testing whether petitioner demonstrated prejudice. When dealing with sufficiency of the evidence under appellate review procedural rules of law are necessary to test how rational the Jury was when making its decision. Ms. Nikeia Waters testimony was essential, especially when the jury was forced to decide guilty or innocent

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[14] **See App. C**
[15] **See App. F2 and F3**

with a faulty memory. The rest of the government's witnesses testified that they never saw or heard of Mr. Barnes dealing in drugs and guns or that they were in a position from an evidentiary standpoint to say who possessed the illegal items due to not being part of the initial investigation (Doc# 205 vol.2 p. 212, p. 234, p.372-373, p. 406-407 and p. 418) and (Doc# 206 p. 451 and p. 523). The government presented a mere modicum of evidence that is relevant and evidence which tends to make the existence of an element of a crime slightly more probable than it would be without the evidence cannot by itself rationally support a conviction of a crime beyond a reasonable doubt, as required by due process. Jackson v. Virginia 443 U.S. 320 99 S. Ct. 2781 (1989). There is no basic fact in which to draw a reasonable inference that Mr. Barnes knew of the illicit items that were found in a hidden compartment of Ms. Nikeia Waters car or the illicit items found hidden out of sight in her home. Mr. Barnes demonstration of prejudice is clear under the Eleventh Circuit Procedural Rules of law when dealing with sufficiency of the evidence. In addition to the lower courts, the Court of Appeal denied petitioner's COA application on its view of the merits which relied on false information that the car where the illicit items were found belonged to Mr. Barnes.[16] Mr. Barnes also addressed these issues in a Motion for Reconsideration, and it was also denied.[17]

[16] **See App. A p.2, and App. F1 p.479, p. 500.**
[17] **See App. D**

D. Motion to Suppress Evidence and Evidentiary Hearing Proceedings

On September 4, 2014 petitioner through counsel filed his Motion to Suppress evidence from the traffic stop, and the search of the house (Doc # 24 and 25). On September 8, 2014, Magistrate Judge Russel G. Vineyard granted an evidentiary hearing for November 13, 2014 (Doc# 28). After two continuances the Evidentiary Hearing took place on January 20, 2015 and lasted for two days (Doc# 60 and 62). Afterwards briefs were submitted by both parties (Doc# 73, 75, 81, 82, 85 and 86). On August 18, 2015, the Magistrate Judge recommended that the Motion to Suppress Evidence be denied (Doc#86). The defendant filed an objection to the R and R on September 1, 2015 (Doc# 93). The District Court adopted the Magistrate's R and R and denied the defendants Motion to Suppress (Doc# 93). The defendant through counsel filed a Motion for Reconsideration on October 27, 2015 (Doc# 105). On February 5, 2016, the District Court denied the defendants Motion for Reconsideration (Doc# 122).

Doc# 90 and 91 Evidentiary Transcript for Motion to Suppress[18]
Statement of Facts
The Traffic Stop

Dekalb County Police Officer Viar alleged that he stopped Mr. Barnes on March 26, 2014 because Mr. Barnes was speeding, traveling between 50 – 52 mph in a 40-mph zone. Officer Viar did not use a laser or radar to determine Mr. Barnes speed. He testified that he paced Mr. Barnes (Doc# 90 p.39-41 of 277). Officer Viar testified that to pace a vehicle you must keep the same distance between the first vehicle and your vehicle, and if you keep the same distance between vehicles for two tenths or a quarter of a mile you can determine what their speed is. This occurred on Old Stone Mountain Rd (Doc# 90 p.39-40 of 277). Officer Viar testified on direct that there was no traffic, just Mr. Barnes and himself (Doc# 90 p.39-40 of 277). He then testified that the reason why he asked Mr. Barnes to step out of the vehicle was because they were on a heavily travelled road, but traffic was light that day (Doc# 90 p.45

[18] **The entire transcript can be found on pacer.gov and can be found in the transcript of Case# 1:14-cr-268.**

of 277). Officer Viar was impeached on cross-examination with (Government Exhibit 20) the police report dated March 26, 2014, when he wrote that the traffic was heavy (Doc# 90 p.58 of 277). Mr. Barnes testified that he was not speeding due to heavy traffic and that he could only go as fast as the cars in from of him which was under 40 mph (Doc# 91 p.67 of 109). He knew this because he glanced at the speedometer a few times to make sure he was not speeding because he knew the police was behind him but could not spend too much time glancing at the speedometer because he had cars in front of him (Doc# 91 p.94-95 of 109).

Expert witness, Dwayne Canupp a retired Cobb County Police Officer, was an instructor for accident reconstruction which deals with speed analysis. He also taught pacing of vehicles as part of the courses he instructed that were approved by Georgia Peace Officers Standard and Training (POST) (Doc# 90 p.215-216 and 238 of 277). He testified that to pace a vehicle properly one must maintain the same distance behind the vehicle in front of him and the same speed must apply over a quarter to a half mile (Doc# 90 p.246 of 277). He testified that a person should use pacing to detect speed only in a proper setting. The optimal surface for pacing is primarily a flat straight away or a long sweeping curve, but never in a hilly area and never in a curvy area where you cannot maintain a proper distance between the vehicle in front of you (Doc# 90 p.218-219 of 277). Mr. Canupp also testified that he drove Old Stone Mountain Rd and could not maintain the speed limit because there is no flat area anywhere on that road. He kept having to take his foot off and on the brake. He also videotaped the road so the court could see the topographical features and not simply rely on a witness say-so (Defense Exhibit 14). The video shows a single lane road that's always up and down and curving. The expert concluded that Old Stone Mountain Rd. was not a proper road to conduct pacing on (Doc# 90 p.241 of 277) (Doc# 90 p.224 of 277) (p.247 of 277). This contradicts Officer Viar's testimony that it does not matter what grade of road

you use when pacing a vehicle (Doc# 90 p.92-93 of 277). Mr. Canupp the expert witness also testified that the volume of traffic affects the ability to conduct pacing properly (Doc# 90 p.254 of 277).

Prior to the traffic stop Dekalb County Police Sargent J.C. Pitts instructed his officers that Mr. Barnes was going to the side of the road regardless and that Mr. Barnes is a definite 1048 as soon as he crosses the county line (Doc# 90 p.263-264of 277). A 1048 is police radio talk for a traffic stop (Doc# 90 p.68 of 277).

After the Traffic Stop
On Direct

Officer Viar testified that after he activated his blue lights, Mr. Barnes pulled over to the shoulder of the road (Doc# 90 p.43 of 277). He also testified that Sergeant Cusumano was with him but did not approach the car with Officer Viar. Officer Viar asked Mr. Barnes to step out of the car. Once out of the car Officer Viar asked for Mr. Barnes driver's license. Mr. Barnes asked if he could smoke before he provided his license and asked why he was stopped. Officer Viar testified that he told Mr. Barnes that he stopped him for speeding, doing 50 in a 40-mph zone (Doc# 90 p.44-45 of 277). Before he checked Mr. Barnes' license, he allowed Mr. Barnes to stand with Sergeant Cusumano by the police car. When Officer Viar checked Mr. Barnes' license he found out that Mr. Barnes was on probation, asked him what for, and that Mr. Barnes response was that he used to have a drug problem. Officer Viar asked Mr. Barnes if he could search the car and Mr. Barnes responded yes to that question. He then deployed Basa the Police dog. He also testified that Mr. Barnes told him no, there were not any drugs in the car before he deployed the police dog (Doc# 90 p.46-47 of 277). Officer Viar also testified that from the time he blue lighted Mr. Barnes to the arrest, only lasted a little more than 20 minutes. On cross-examination Officer Viar testified that Mr. Barnes' license showed that there were not any warrants and that Mr. Barnes was lawfully able to operate a vehicle in Georgia. He testified that he never wrote a citation or warning for the speeding violation and stopped pursuing the speeding violation to ask about

probation. After that he testified that all his energy and efforts were related to searching the vehicle and whether Mr. Barnes was on probation or not had nothing to do with the speeding violation (Doc# 90 p.87-89 of 277). Officer Viar testified that he wanted to know why Mr. Barnes was on probation for his safety, but stated that when he approached Mr. Barnes, he was respectful and did nothing to suggest that he was a danger to Officer Viar, only that he was nervous while lighting a cigarette. However, it is not uncommon for people who are pulled over by the police to exhibit some nervousness (Doc# 90 p.90-91 of 277). Mr. Barnes testified that he never consented to the search of the vehicle because Officer Viar never asked permission to search the car (Doc# 91 p.70 of 109).

Officer Viar admitted at the hearing that he had been sanctioned for violating the Fourth Amendment. The sanctions were for illegal searches and that the discipline he had received was a written reprimand (Doc# 90 p.106-108 of 277). He also demonstrated a racial bias against African Americans by using the term "Nigger" when arresting Mr. Timothy Spencer-Banks (Doc#91 p.19 of 109). Whose arrest was used in the Search Warrant Affidavit (see Exhibit A, Motion to Suppress Doc# 25). Mr. Spencer-Banks wrote and signed a declaration regarding Officer Viar's racial slurs and shooting of gun by Mr. Spencer-Banks head (Defense Exhibit 17).

Mr. Spencer-Banks testified consistently about Mr. Barnes non-involvement in his March 12, 2014, arrest, which Detective George failed to tell the State Magistrate Court. Which he testified that he never purchased or received any cocaine or any other kind of illegal drugs from anyone at 8312 Pleasant Hill Rd., specifically Marcus Barnes (Doc#9 p.11-12 of 109). Detective George testified and agreed that Mr. Spencer-Banks never received any cocaine from Mr. Barnes on March 12, 2014. Detective George also testified that Mr. Spencer-Banks told him Mr. Barnes was a middleman in a drug transaction at 8312 Pleasant Hill Rd. When asked the same question again, he stated, "yes" that Mr. Spencer-Banks told him that he never purchased or received drugs from Mr. Barnes on March 12, 2014. Then he stated that

he could not remember his exact conversation regarding whether Mr. Timothy Spencer-Banks purchased or received any illegal drugs from 8312 Pleasant Hill Rd. on March 12, 2014 (Doc# 90 p.204-206 of 277).

E. 2255 and COA Proceedings as to whether appellate counsel was Ineffective assistance for not raising the denial of the Motion to Suppress Evidence.

In determining whether Mr. Barnes demonstrated prejudice or not, the Eleventh Circuit never applied the appellate standard of review or applicable appellate procedural law. If appellate counsel would have raised this argument on direct appeal the facts of this case would have been reviewed de novo under a clearly erroneous standard. United States v. Sims 385 F.3d 1347 (11th Cir. 2004). The Eleventh Circuit also ignored this courts finding in Anderson v. City of Bessemer North Carolina 470 U.S. at 575 that Appellate Courts may find a judge's credibility determinations clearly erroneous when there are documents, objective evidence, and extrinsic evidence that contradicts the testimony of witnesses, or when witnesses are internally inconsistent. [19] Officer Viar who made the traffic stop was impeached by his own police report that said that "traffic was heavy" (Doc# 90 p.45 and p. 58 of 277). Defense expert witness Dwayne Canupp testified that the volume of traffic affects the ability to conduct pacing properly (Doc# 90 p. 254 of 277). Mr. Canupp also stated that Old Stone Mountain Rd. is not appropriate to conduct pacing (Doc# 90 p. 247 of 277. Along with expert testimony to contradict the officer's version of facts, the head of the surveillance team Sergeant J.C. Pitts gave a recorded statement over the radio to pull Mr. Barnes over to the side of the road regardless. He internally impeached himself when he testified that if no probable cause existed the stop would not have occurred (defense exhibit 4) (Doc#90 p. 263-264 of 277). With these combined facts, Jurist of reason can disagree with the District Courts ruling that there was probable cause.

On March 4, 2020, petitioner filed a Motion to Amend errors in the brief in support of the 2255 Motion (Doc# 268). It was granted on March 11, 2020 (Doc# 269). In petitioner's original brief in support of the 2255 Motion, he took out the sentence that said, "He gave Mr. Barnes back his license",

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[19] **See App. A p.2**

and replaced it with, "Instead of writing a citation or warning for the speeding violation, he walked back with his license" (Doc# 253 pg. 23-24 of 33). [20] Petitioner also changed the third sentence and took out "as soon as he gave Mr. Barnes back his license," and replaced it with, "The record is clear, Officer Viar prolonged the mission of the traffic stop as soon as he asked about probation" (Doc# 253 p. 24 of 33). This was all done in support of petitioner's claim that officer Viar's conduct violated this courts ruling in United States v. Rodriguez 135 S. Ct 1609, where the petitioner also argued that the alleged consent did not cure the taint of the Rodriguez violation, as the government contended, and the District Court rubber stamped (Doc#266 p.10 of 17). There were no intervening circumstances in such a short period of time, and the temporal proximity of the illegal conduct and consent was a matter of seconds. U.S. v. Chanthasoox 342 F.3d at 1250-1281 (11th Cir. 2003). All of which the Eleventh Circuit failed to apply, and appellate counsel failed to investigate. In light of the error corrections in the transcript, petitioner made new arguments that are consistent with this Court's ruling which the Eleventh Circuit calls the Mendenhall Test 446 U.S. 544 that Fourth Amendment safeguards come into play where there is a show of official authority, that a reasonable person would have believed he was not free to leave. United States v Thompson 712 F.2d at 1360 (11th Cir. 1983). Also, quoting Royer 460 U.S. at 501. Officer Viar still had Mr. Barnes license and admitted that he never wrote a warning or citation for the traffic violation (Doc# 90 p.87-89)). This is a prime example where a reasonable person would not believe that the officer would permit him to leave. Prior to this Courts holding in Rodriguez 135 S. Ct 1609, the Eleventh Circuit held that detentions that extended beyond the time necessary to process the traffic violation, violated the Fourth Amendment. United States v. Boyce 351 F.3d 1102 (11th Cir. 2003). Which the appellate counsel failed to investigate, and the Eleventh Circuit failed to address. Under these procedural laws and standard of review petitioner established that the outcome of his appeal would

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[20] **There is no where in the evidentiary transcript that says Officer Viar gave Mr. Barnes his license back.**

have been different. At the very least Jurist of reason can debate whether petitioner demonstrated prejudice.

Regarding the search warrant the Eleventh Circuit concluded it was valid but provided no factual or legal argument in support of its conclusion.[21] On the other hand, the petitioner provided and demonstrated that the warrant contains false and misleading information that should be removed from the warrant. See "demonstration of prejudice" in the brief in support of the 2255 (Doc# 253 p. 25-31 of 33). Also see Motion for COA Case# 20-1 11839-J filed on _____ p. 23 – 24 of 27. Example: The Search Warrant Affidavit contains a passage that begins with "during the week of March 12, 2014 your affiant and Dekalb HIDTA task force conducted a surveillance operation at 8312 Pleasant Hill Rd. in Lithonia," and ends with "approximately two hours after the stop, Barnes left the Pleasant Hill location and returned to the listed location later that evening." This entire passage from beginning to end and the text in-between should have been removed (Doc# 25 Exhibit A, Motion to Suppress).

Mr. Spencer-Banks testified that he never purchased or received any cocaine from anyone at the 8312 Pleasant Hill location and that he told Detective George the same thing (Doc#90 p. 288-301). Detective George's testimony became internally inconsistent when asked whether Mr. Timothy Spencer-Banks told him that he got cocaine from Mr. Barnes. First, Detective George testified that Mr. Timothy Spencer-Banks told him "no", that he never received any cocaine from Mr. Barnes. Then Detective George stated that Mr. Spencer-Banks said Mr. Barnes was a middleman in a drug deal with Jonathan McNeil. When asked again by defense attorney whether Mr. Timothy Spencer-Banks told him that he got drugs from the 8312 Pleasant Hill Rd. location, Detective George stated that he could not remember his exact conversation. Then he admitted that Mr. Spencer-Banks told him that Mr. Barnes did not sell

[21] **See App. A, B and C.**

drugs. Therefore, Mr. Spencer-Banks was not able to help him purchase drugs from Mr. Barnes (Doc# 90 p. 204-206).

The passage about the confidential source should be stricken from the warrant. There are three different stories regarding how information was obtained (Doc# 90 p. 161-163 of 277) and Defense Exhibit A (Doc# 25 at Barnes 00058 and p. 185-187 and p. 192 of 277). The warrant never demonstrated the informant's veracity and basis of knowledge. Martin 297 F.3d at 1314 (11th Cir. 2002). Detective George testified that he never spoke to the confidential source and that he received the information from another officer. The Eleventh Circuit holds that the affiant must make it clear to the Magistrate Judge when he is relying on other officers. U.S. v. Kirk 781 F.2d 1498 (11th Cir. 1986). The warrant fails to demonstrate. The Eleventh Circuit also held that a police officer violates the constitution if to obtain a warrant he or she perjures themselves or testifies in reckless disregard of the truth. Kelly v. Curtis 21 F.3d at 1554 (11th Cir. 1994). Under this applicable procedural law, Jurist of reason could debate whether the search warrant is invalid or not.

F1. Reason for Granting the Petition

The Eleventh Circuit's decision contravened this court's precedent. It also has so far departed from the accepted and usual course of judicial proceedings by not applying Appellate procedural laws that would be applied on direct appeal. In addition to that, the Eleventh Circuit based its denial of COA on false information that is not supported in the trial record. As well as the credited testimony of police officers who were impeached and internally inconsistent. This is an issue of national importance because when courts turn a blind eye to police misconduct it injects arrogance into the minds of officers that they can do whatever they want and get away with it, disrupting the balance of the justice system. This is the mindset that caused the unnecessary death of Brianna Taylor and George Floyd as well as many other victims of police brutality. By the Eleventh Circuit using false information not supported by the trial record[22] (Doc# 206 p.479-482 and p.500-501[23] and p.346-347[24]). It poisons the publics confidence in the evenhanded administration of justice. Even this Court doubts the Eleventh Circuit practices (see the footnote in United States v. Hubert 207 LED 2d. 180). The Eleventh Circuit is starting to follow the Fifth Circuits troubling pattern of failing to follow this Courts COA precedent. Jordan 135 S. Ct at 2652 (Sotomayor J. joined by Ginsburg and Kagan J.J. dissenting from denial of certiorari). This case presents the court an ideal opportunity to correct the Eleventh Circuit before it gets out of control. For all the reasons and those discussed more fully herein certiorari should be granted.

F2. Certiorari should be granted because reasonable Jurist could unquestionably debate the Eleventh Circuit procedural approach and rulings.

This court's precedent is clear: A COA involves only a threshold analysis and

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[22] **See App. A p.2 of 2 and App. C p.6-7 of 12**
[23] **Compare to portions of the Trial Transcript See App. F1**
[24] **See App. F2**

preserved full appellate review of potentially meritorious claims. Thus, a prisoner seeking a COA need only demonstrate a "substantial showing" that the district court erred in denying relief. Miller-EL 537 U.S. at 327 (quoting Slack v. McDaniel 529 U.S. at 484 (2002). This "threshold inquiry" is satisfied so long as reasonable Jurist could either disagree with the District Court's decision or "conclude the issue presented is adequate to deserve encouragement to proceed further," Id at 327 336. A. COA is not contingent upon proof "that some Jurist would grant the petition for habeas corpus or in Mr. Barnes case the 2255 Motion to Vacate. Indeed, a claim can be debatable even though every Jurist of reason might agree, after the COA has been granted and the case has received full consideration that the petitioner will not prevail." Id at 338.

In sum, the touchstone is "debatability of the underlying constitutional claim [or procedural. issue], not the resolution of that debate Id. At 342, also see Id at 348 (Scalia J. concurring) (Recognizing that a COA is required when the District Court's denial of relief is not "undebatable"). Applying this standard in Miller -EL, this court reversed the Fifth Circuit's denial of a COA in a Jury discrimination case and explained, "that a COA can be supported by any evidence demonstrating that despite the neutral explanation of the prosecution, the peremptory strikes in the final analysis were race based." Id. At 340 (emphasis added).

Petitioner presented numerous appellate cases that fall right in line with the facts of petitioner's demonstration of prejudice for both ineffective assistance of appellate counsel claims. The Eleventh Circuit Court of Appeals did not even address or provide any procedural case law that proves that Mr. Barnes claims are non-meritorious from an appellate stand view. Then made false representation of the facts "stating that the evidence from Mr. Barnes Car".[25] Which Ms. Nikeia Waters testified that the car

[25] **See App. A p.2 of 2**

where the drugs were found belonged to her (Doc# 206 p.479-482).[26] Instead of assessing the debatability of the District Court's opinion, the court improperly rejected Mr. Barnes Ineffective of Assistance claim on its false views of the merits.

F3. The Eleventh Circuit sidestepped the COA process by denying relief on its view of the merits.

The Eleventh Circuit held Mr. Barnes to a far more onerous standard. Specifically, the Eleventh Circuit "sidestepped [the threshold COA] process" by first deciding the merits of Mr. Barnes appeal, and then justifying its denial of a COA based on its adjudication of the actual meris, thereby "in essence deciding an appeal without jurisdiction." Miller-EL 537 U.S. at 336 337.

As this court stressed in Miller-EL, the threshold nature of a COA inquiry would mean little if appellate review were denied because the prisoner did not convince the judge that he or she would prevail. The Eleventh Circuit's failure to apply the proper COA standard in this case is not an isolated error. Tharpe v. Sellers 583 U.S. _____ 138 S. Ct. _____ 199 LED 2d 424.

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[26] **See App. F1**

CONCLUSION

For all the foregoing reasons, Mr. Barnes case at a minimum is debatable amongst Jurists of reason, which means a COA must be issued. This Court's review is warranted not only to keep the Eleventh Circuit from departing from the accepted and usual course of judicial proceedings, but to maintain public confidence that courts will not rely on false information not supported in the trial record to keep a prisoner incarcerated.

Respectfully Submitted,

Marcus A. Barnes
Dated: