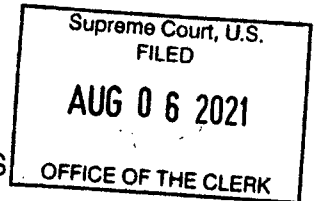


21-5349 ORIGINAL
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



me Chris Miller et al, — PETITIONER
(Your Name)

vs.
State of South Dakota
ms Sherri Sundem Wald et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

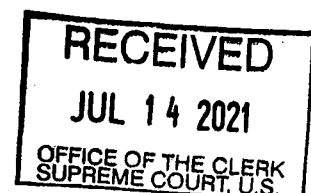
PETITION FOR WRIT OF CERTIORARI

MR. Chris Allen Miller # 17869
(Your Name)

South Dak Depart of Corrs'
(Address) 1600 North Drive, P.O. Box 5911

Souix Falls, SD 57112-0911
(City, State, Zip Code)

171
(Phone Number)



QUESTION(S) PRESENTED

Whether denial of challenge for cause impaired Miller's use of peremptory challenge provided by FR Crim P 24(b), whether its mistaken denial requires automatic reversal is a question of law?

Whether Miller showed sufficient cause to overcome his procedural default? and whether State defendant(s) made prosecutorial misconduct by intentional deprivation to the jury as factfinder to the 911 tape (call)?

Whether the petitioner [Miller] has shown cause and prejudice to excuse procedural default by the Federal law clearly established under Strickland v Washington or the SD constitution ART VI secs 2 and 7 by States presumed prejudice? By the Fourteenth Amendment.

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:

added list of plaintiffs

Attorney for Appellant Jan 22, 2018 Jason Ravensborg
721 Douglas, Suite 101, Yankton SD 57078
wherein raises ineffective assistance (Strickland test is met).

added defendants,

Kelly Marnette Asst. Attorney General
1302 East Hwy #4, Suite 1
Pierre, SD 57501

and Lisa Rothschild

Bon Homme State's attorney
P.O. Box 476, 1719 main Street
Tyndall, SD 57066

and Craig M. Eichstadt
Asst Attorney General's Office
1302 E. Highway 14, Suite 1
Pierre SD 57501-8501

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	April 13, 2021 Judgement NO: 20-3538
APPENDIX B	petition for rehearing NO: 20-3538 Dec, 7, 2020
APPENDIX C	District Court/Agency case "order" May 20, 2021 denied petition for rehearing NO: 3538
APPENDIX D	3/11/21 request for Certificate of Appealability NO: 20-3538
APPENDIX E	order of Service by Judge Veronica Duffy Oct 31 st 2018 in case 4:18-cv-04137-KES
APPENDIX F	Sept 12, 2019 order NO: 19-2976

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
Jackson v Smith, 2018 US Dist Lexis 14742	p 1, 4
Martinez v Ryan, 566 US 1, —, —, 132 S.Ct. 1309 (2012)	1-6
Gonzalez v Crosby 545 US 524	1-6
Strickland v Washington 466 US 668, 104 S.Ct. 2052	()
Washington v Recuenco 548 US 212, 218-19	p 2, 5
Rivera v Illinois, 556 US 148	pl p 2, 5
Brecht v Abrahamson 507 US 619, 637-38	
Hunt v Houston, 2008 US Dist Lexis 24110 at [82].	
Heck v Humphrey	

STATUTES AND RULES

FR Crim P 24(b);

60(b)(6)

28 USC 2254 (c)(1);

28 USC 2247

FR Civ P 12(b)(6)

FR Civ P 8(c)

42 USC 1983, Olson v Amato 799 Fed Appx 433 8th Cir 2020 id 437

OTHER AEDPA, Pub. L. 104-132, 110 Stat 1214 (1996), codified in relevant part in 28 USC 2254(c)(2), (see Fed Habeas Practice 19.1).

STATEMENT OF THE CASE

In the case of 20-3538 Judgment was issued April 13, 2021
Miller v Young, 2019 US Dist Lexis 149934. A magistrate report and recommendation
was made by Judge Veronica Duffy Oct 16, 2014 order dismissing petition.
timely objected by Miller.

In which Judge Karen Schreier done a procedural history,
Glimpe, when a Ct used a mandatory strike down jury selection process
that allowed each party two more peremptory challenges then were permitted
by SDCC 23A-20-20, Miller v Young, 2018 SD 33, 911 NW2d 684, 687 (SD 2018).

A Ct err resulted in additional jurors being seated and then passed for
cause id 646 B-cuz of the err the Ct gave the government an extra
peremptory challenge.

Also during deliberations, the jury did ask to listen to the 911 TAPE.
That had been admitted into evidence (BE advised), and was denied.
with simple saying its testimonial.

(note that each instance they all raise the 911 tape call, but no one questions
its context or appeals it, if the jury would of heard testimony with that tape
being played, deliberations would be showing jurors would of had reasonable doubt
respecting guilt.

Like *Clemons v Armontrout* 477 F3d 962 (8th Cir 2007). "causal relationship",
Justice wrote mistake assumption had by both parties is admission by justices
seen in written neither the parties nor the State were aware of the mistake
when it happened. Is inexcusable justices do not get to argue for the parties
As did not cure the err showing Fed Law clearly established
when denied of full and fair hearing, both Judge Duffy and Judge Schreier
decisions in even mentioning of 911 tape case 14-73

So the justices in *State v Miller* 2014 SD 49 is Justice's mention
the 911 tape at [4], you will note no specifics are written.
Cited, *Hunt v Houston*, 2008 US Dist Lexis 24110 at [82],

to assess the prejudicial impact of trial type Federal Const; error in State
Criminal trial, federal courts determine whether the trial error, had substantial and
injurious effect or influence in determining jurors verdict, "Brecht v Abrahamson,
507 US 619, 638, Fry v Piller, 551 US 112, —, 127 S.Ct. 2321, —, —,
168 L.Ed 2d 16 (2007).

Whether denial of challenge for cause impaired Miller's use of peremptory challenge provided by FR Crim P 24(b), whether its mistaken denial requires automatic reversal is a question of law? as here is no mistake its deliberate indifference prosecutorial misconduct, fraudulent concealment.

As jurors asked to hear the 911 call, (contrary to US Supreme Court Federal Court can overturn when as here could be no reasonable dispute that they were wrong. whether petition shows to record entirety not just portions its examine to fit their need states purpose.

Cause and prejudice to excuse procedural default, Miller v Young 2019 US Dist Lexis 14734 [19], case at bar, showing the reason the records enclosed show not the ones state would have justice believe. Prove the call was ignored is during exculpatory evidence that exonerates Miller. shows as all undermining public confidence in that actual innocence. As fair trial denied, by fourth amendment violation due process, equal protection

Standard of Review / Burden of proof

Legal analysis Jackson v Smith, 2018 US Dist Lexis 14742 [12], [21] 28 USC 2254(b)(1)(A). fair presented violation of federal rights.

exhaustion is burden of proof. cited Miller v Young, 2018 SD 33, 911 NW2d 793, 812 shows the principal reason for peremptories is to help secure the Const, guarantee of the trial by an impartial jury.

Technical departures from the jury selection statutes and violations which do not threaten the goals of random selection and objective disqualification do not constitute a substantial failure to comply. The justices also raise Rivera v Illinois 556 US 148

where having claimed the 911 call with no explanation, prosecutorial misconduct is shown dishonest act and attempt to persuade jurors to use deception as reprehensible methods. when Mr Miller told the attorney Podhradsky of the 911 call. Attorney knew there'd been a tape. It is further written when excluding the tape 911 call. Exhibit Trial Ct said;

"The reason is that it enhances that evidence over other testimony because it given is testimonial in nature and so the Ct's position is not to allow the playing of that."

No standing objection made nor by State, Kearney v Tamayo-Reyes 504 US 1, 12 etc. Stockley v Joyce, 963 F3d 809 (8th Cir 2020). see also, Scheeder v City of St Cloud, 402 F3d 826. see Abdur Rahman v Bell 226 F3d 696, 699-706 seen in Markham v Janssen, 2020 US Dist Lexis 250266 [27] 911 call. quoting Miller v Young, 2019 US Dist Lexis 142938 [47]-[57]. showing the prosecutor recommended the Ct instruct the jury that they would not be allowed to listen to the evidence again.

Reference evidence recorded. p25 NOV 29 2018 NO's 49-50 CASE 18-4137
It's the ct that brought the extra alternate juror to attention of the parties
ct notes recognized state used its 1st peremptory strike on a juror (#117),
who should have been on the list due to should be fifty nine.

ct found it states 1st per strike to be "invalid" - EX 222, JT 425
It's the ct that says recognizes that state would have stricken juror #108 had the state
known that juror was still on the list.

NO: 51 defense miller objected.

NO: 52 State says case proceeded to trial (the attorneys
whom done selection jury issue pretrial (NOTE: not saying miller

when its attorney Vol 3, Feb 26, 2016 p 909 done direct appeal Podhrasky fails to object.

State saying because it believed had not prejudiced miller.

Theres no case law to constitution supporting in that respondent answer.

* Intentionally and purposefully ignored evidence, state don't question 911 call.

Jan 22, 2018, attorney Ravensburg State Craig M. Eichstadt refers Jan 22, 2018.
(Bon Hammock County CIV # 18-73 Therein Ravensburg provides p10 very detailed
describing structural error. Reviewable to reverse its conclusion and miller expects this
cts review will find. "contrary too" US Supreme Court.
Miller v Young 2019 US Dist Lexis 141934 [8]-[10],

Record shows Vol 3 Feb 26, 2016 Both Ravensburg and Judge agree p 569

Enclosed

Burden of proof Rivera v Illinois, 556 US 148, 161-163, Fed Law
renders state ct judgement void, whenever there is a state law defect in the tribunals
composition (showing miller v Young, 2019 US Dist Lexis 142938 [8]-[10].

Only in event, absent a federal constitutional violation states retain the prerogative
to decide whether such errors deprive a tribunal of its lawful authority and thus require
automatic reversal.

B-cuz the trial ct mistaken denial of a peremptory challenge as seen here is
per reversible per-se. (when fundamental unfairness structural error resists harmless error
review because it taints the entire trial proceedings).

We typically designate an error as "structural" therefore requiring automatic
reversal, only when the error necessarily renders a criminal trial fundamentally unfair
or undiable vehicle for determining guilt or innocence. Revenco 548 US at 218-19.
(quoting Neder v US 527 US. The 911 tape does determine innocence

Moran v Clarke, 443 F3d 646, 660-661 (8th 2006); erroneously denied
peremptory challenge, cited, US v Carter, 629 F Supp 2d 934, 940 (Case 2:03-cr-00002-
necessary to resuscitate a procedurally defaulted claim include ineffective assistance
of counsel Brecht v US, 403 F3d 541, 546 (8th 2005); cert denied, 546 US 1177

Whether Miller showed sufficient cause to overcome his procedural default? And whether State defendant(s) made prosecutorial misconduct by intentional deprivation to the jury as factfinder to the 911 tape call?

Rose v Lee 252 F 3d 676, 685 (4th Cir 2001). As whether the facts were unavailable to Miller during and for State Habeas 2254(c)(2). is here. Cause (counsel's failure to consider the argument to tape in its full context. When State admits its accidental death of Person. State as judge knew, Murray v Carrier, 477 US 478, 488 holding by Justice that cause must turn on whether (Miller) can show some objective factor external, (us v Rivera 802 F2d 593, 598-99, (2nd Cir 1986). to the defense impeded counsel's efforts to comply with States procedural rule. There is no order claiming by respondent Miller g's or issues are frivolous. No appeal is warranted when a plain procedural bar is present and the dist. it is correct to invoke it to dispose of a claim. Slack 529 US at 484. No order barring Miller is shown.

Thus, The State clearly establishing Fed law as determined by Supreme Court of U.S. goes to the holdings. when the facts are unavailable at time Miller filed his State Habeas. when as the record shows Ravensberg did make ineffective assistance the claim previous pages show 14-73, when as here denial of full and fair hearing on the Fourth Amendment Liberty interest, conflict free representation.

Order Miller v State, 2018 SD 33. S. Ct. agreed with State Habeas Ct that Trial Court erred in granting both sides two extra peremptory challenges without a motion or good cause. Intentional provocation

The State merely stating Miller procedural defaulted does not excuse State as excessively force malicious pros. used to incarcerate Miller. by falsifying info, State was permitted to deny use of 911 tape in truth finding deliberations. Making sure to win at all costs ignores rules of professionalism. Jackson v Smith Supra id 2018 US Dist Lexis 14742 at [22].

But the error resulted in fundamental unfair trial. Sweatt v Delo, 125 F3d 1144, 1150-51 (8th 1997) id 1152. when State Ct decides issue on merits despite possible procedural default no independent and adequate state qd. bar consideration of that claim in habeas Ct. id [21]. where here actual innocence is properly pleaded see Schlup v Delo, 513 US 298 at 316. States showing by records conceding meritorious Const. violation when clear and convincing evidence that but for Const. error no reasonable juror would have found Miller guilty

Whether the petitioner [Miller] has shown cause and prejudice to excuse procedural default by the Fed Law clearly established under *Strickland v Washington*, or the second AFR 11 sec 2 and 7, by states presumed prejudice?

By the Fourth Amendment case and controversy AFR 11 showing recklessness that shocks the conscience credibility can be measured by asking other things how reasonable or how probable the states explanations are. *Wilson v Lawrence* 260 F 3d 946 8th 2001

Standard of Review / burden of proof / legal analysis

cited, *Ward v Smith*, 2016 US Dist Lexis 20001 [19], could have been raised direct appeal is in erroneously decided by district ct and 8th circuit to the case at bar. *Murphy v King* 452 F 3d 845 (8th 2011). The doctrine procedural default fed ct will not review the merits of claims including Const claims that a state ct declined to hear b-cuz petitioner failed to abide by a state procedural Rule. *Martinez v Ryan* 132 S. Ct 1309 1316. citing *Coleman v Thompson* 501 US 722, 747-48 (see *Cohns v Kelly* 2019 US Dist Lexis 224825 [8]). The ct said it might be easier and more efficient to reach the merits. citing *Sacramento v Lewis* 523 US 833, 846

Thus the USS Ct held that unless narrow exception *Martinez* holding

(see also *McKinnon v Lockhart* 921 F 2d 830, 832-33 (8th 1996)). Miller raises (Federal Habeas review by this Ct is barred unless as has been shown (petitioner) can show cause and prej. for the default and actual prejudice (see *Ward* at [24]). *Coleman* at 750, accord *Trevino* 133 S. Ct at 1917, *Martinez* 132 S. Ct at 1316. cited, *Thomas v Payne*, 960 F 3d 465, 472-74 (8th 2020). *Schriro v Landrigan*, 550 US 465, 473 28 use 2254 (EX 2).

In order to satisfy the cause requirement Miller had to have shown external impediment prevented him from presenting his claims in state ct in timely and procedurally proper manner. id 470 *Coleman* 501 US at 753-54. responsibility lies with state. *Hunt v Houston* 563 F 3d 645, 703 (8th 2009), id 704-05, accord *Hunt v Houston* 2008 US Dist Lexis 24110 at [22].

FRCiv P 12(b)(6). FRCiv P 8(a). id 705, *Easton v Endell* 137 F 3d 1343, 1347 (8th 1994), *Washington v Renceno*, 548 US 212, 218-19, *Rivera v Illinois* 556 US 148, claimed *Brenda v Young*, 2016 US Dist Lexis 183366 [8].

In July 2020 the 31st State does not raise in its response to motion for relief from

Judgment by Sherrie Wald to millers 60(b) filed Dec. 18, Aug 21, 2019, State failed to address *Martinez v Ryan* application see March 21, 2021 Affidavit by Miller.

Legal analysis, A careful review of and to Justices in *Miller v Young* 2018 80 33.

see reference *State v Arquello* 2015 SD 103 ¶ 11, 873 NW 2d 490, 495, Although the jurors were not present they liken that to *Batson* issues and other matters that can arise during the exercise of peremptory challenges by the parties that the ct should be present to observe. Yet admitted Miller trial judge was not present and upon written the ct mistakenly drew the line after the 60th qualified name on the list instead of one 54th name. Neither the parties nor the circuit ct were aware of the mistake when it happened. * Miller contends your either aware or not can't be both.

P8 in Miller ct further held in recognizing that circuit unilaterally decided to give each side 22 rather than 20 peremptory challenges, without a motion by either side as required by SDCR 23A-20-23 violate the statute and letter of law.

B-az Two Habeas Court further noted that the circuit et use of Hybrid-juror-selection process resulted in more jurors than necessary being passed for cause on Jan 18. The Habeas Ct held that the circuit et decision to remove another [juror] [i.e. juror #108]. That was selected by the State after all other peremptory challenges had been used by both parties, violated SDCL 23A-20-25. (if Ct does find presumed prej Strickland is moot. As no standing order for failure to state a claim period. record evidence).

* Ineffective assistance of post-conviction counsel
Cited, Blannett v Roper, 904 F3d 623, 631 (8th 2018). reasonable probability that but for counsel's unprofessional error, result is different, id 630 n 2
Martinez v Ryan id 632 n 5-633, Ward v Morris, 577 F3d 925, 933 (8th 2009), (quoting Gonzalez 545 US at 532 n 4). Nooner v Hobbs, 689 F3d 921, 923-24 (8th 2012).
Showing its post conviction counsel Ravensberg talks about ineffective assistance and distrust of factual findings for clear error and legal question whether those findings amount to ineffective assistance is reversible de-novo. id 631

As here id 630 its Coleman that exception treats ineffective assistance treats may not be used as cause to excuse procedural default, recognizing narrow exception to the gen rule in Coleman.

Thus that exception treats ineffective assistance by Miller's post-conviction-State counsel cause to overcome the default of the single claim ineffective assistance of trial counsel as cause in single context where as is shown presently State effectively requires (Miller) to bring that claim in state post-conviction proceedings. See pg 3 herein these papers enclosed to wit show even the State Habeas Judge raise its ineffectiveness is substantial one.

A State Ct in inquiry grants permission, but as design denied meaningful oppart, to do so is a distinction without a difference. See SO v Craig 850 NW2d 628, 639 (SD 2014).
When as here Johnson v Vaughn 2013 US Dist Lexis 165171, cited, Box v Petsock, 2014 US Dist Lexis 115363 [22]-[23]. Here State does not even address Martinez v Ryan in its response July 31st 2020. cite, Camacho v Kelley, 888 F3d 389 (8th 2018) id 382 n 2, Martinez id 17.

A procedural default does not bar a Ct from hearing a substantial claim of ineffective assistance of trial counsel, and Cox v Horn, 757 F3d 113, 119 (3rd 2014). Review is abuse of discretion when clearly erroneous conclusion of law by decision based on clearly erroneous findings of fact.
cited, US v Lee 811 F3d 272, 2015 US App Lexis 21616.

See 274-75 Some defect in the Fed Habeas proceedings Gonzalez stated only that a rule (ed) movant's Habeas counsel's omissions... ordinarily do not go to the integrity of the proceedings Gonzalez 545 US at 532 n 5.
it did not hold that they can never do so cite, McGurk v Stenberg 163 F3d 470

8th 1998 id 473-74. The principle is not responsible for the agent.
Coleman v Thompson

Reasons for Granting The Petition

Miller showing and continues to apply due diligence shown ~~CAUSE~~
and projected by ~~prosecution~~ misconduct intended non-disclosure of The 911 tape
to jury factfinder. Shows State injected such unfairness knowingly no one questioned
The 911 tape call. to specifics. Stacy confessing its an accidental death.

The raising of procedural default see *Graham v. Weber*, 2014 US Dist Lexis 27836 [6]-[7].
cited, *Berry v. Fluitt*, 2020 US Dist Lexis 205628 [14] n.5. wherein The 50 Supreme of
on particular application of SDCL 21-27-18.1, not to be firmly established and regularly
followed procedural rule. *Berry* at [15]-[16], *Miller v. Young* 2016 US Dist Lexis 141934

held Habeas counsels failure to pursue a Certificate of probable cause cannot excuse
procedural default.

Cause and prejudice is here to excuse.

Jan 20 2016, Vol 1 day 1 Feb 25, 2016 Vol 2 State Habeas

Jan 20 2016 pgs 105-106 Ravensborg is questioning Miller question is on selection
of jury. p203 redirect MR Ravensborg is now raising peremptory challenge

p203-221 recess.

Recess is p213 by ms Marnette now by p221 Ravensborg does not do
follow up questions of Chris Miller. Ravensborg should have moved for credibility
of narrators seen pages 108-111 The attorneys are interposing on what to do
on a motion to strike jurors interpreting a plea bargain suggested by MR Miller

(This is a question by defendant Miller on jury selection MR Ravensborg in a
State Habeas Vol. 1 day 1 pgs 1-256.

The consequences of Jurors bias (is not discussed), p106 Ravensborg
asks about jury selection (notable is line of questioning of Chris Miller by Ravensborg
Then asked if attorney asked for mistrial.

So the pt is its on jury selection and no witnesses (attorneys) are questioned to those
allegations. Thus ineffective assistance claims require credibility of narrators
specific to jury selection. (again is only necessary if Ct. does not find presumed prejudice).

Thus allowed Judge to just say, neither the parties nor the Circuit Ct were aware
of the mistake when it happened. credulous or incredulous is narrators to 911 call (impd).

Disregards the purpose behind the statute SDCL 23A-20-25

The record shows State government positioned its self with help of justice
ignorance to 911 call by applying selection of jurors is how used it

The record enclosed show the decisions from beginning appointed attorneys facts how unavailable to Miller when, why by who as Fourth Amendment unlawful arrest. Thus, inclusive to information during State habeas, as records as a whole.

That context in the tape was the truth and the truth is what sets Freedom and Liberty constitutionally and civil protection. Only when equal protected.

When the objective factor external to Miller is show and respondents fail to rule on the merits of (60th) to Martin v Ryan.

This Justice must reverse and remand (by all means prosecutorial misconduct).

Upon review of the tape and its complete context both the record and all parties to the case

unreasonable applied determination of facts in light of the evidence presented in State Court proceedings. And State Ct arrived at conclusion opposite to Supreme Court on question of law. COA is imperative district Ct know, as 8th circuit. **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Chris A Miller

Date: 7-7-21