No. 21-5450

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RICHARD K. COOK — PETITIONER
(Your Name)

vs.

TODD WASMER, Warden, et al RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth U.S. Circuit Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Richard K. Cook
(Your Name)

P.O. Box 900
(Address)

Tecumseh, NE 68450
(City, State, Zip Code)

(402)331-3657
(Phone Number)

QUESTION(S) PRESENTED

The Crime Scene Investigator (CSI) in this case eventually went to prison for planting DNA evidence in another murder case, as he's alleged to have planted DNA evidence in Cook's case. Mr. Cook testified that the State's "star witness" (Hornbacher) was the murderer, even though no accomplice jury instruction was given for his defense, creating a structural error(s). After DNA tests came back late with mixed results and couldn't exclude Hornbacher, a request for a continuance to further investigate Hornbacher was denied, one example of abuse of judicial discretion effecting the trial outcome.

A prosecutor's husband, a private attorney, filed a civil lawsuit against Cook, Ford Motor Co., and Bridgestone/Firestone during the trial, which ended in a payout settlement paid by Mr. Cook's family, monetizing the prosecution for the corrupt couple. Cook believes this misconduct led to a number of other instances of prosecutorial misconduct. Mr. Cook illustrates how his lawyers were ineffective throughout the proceedings and/or had major conflicts of interests resulting in the constructive denial of counsel. These varied errors have produced a handful of questions for the Court's consideration.

Question #1: Did the lower courts commit reversible error by refusing to order an evidentiary hearing surround a pattern of misconduct and evidence planting by its' Crime Scene Investigation Supervisor, whom was convicted of planting evidence in another murder case(s), OR IS IT JUST A COVER-UP BY STATE LAW ENFORCEMENT AND/OR PROSECUTORS EMBARRASSED THAT ONE OF THEIR "OWN" HAS BEEN CAUGHT PLANTING EVIDENCE? Is this a denial of due process of law contrary to the 5th and 14th Amendments and/or ineffective assistance of counsel per the 6th Amendment, to not properly investigate or ask for a mistrial, not hire a DNA expert because Cook didn't "have enough money", nor motion the court for funds for a DNA expert and/or not properly assign/argue the prejudicial and illegal conduct on direct or postconviction appeal, nor move for a mistrial?

Question #2: Did the courts below commit reversible error not recognizing it is either ineffective assistance of counsel, a violation of due process, an abuse of judicial discretion, and/or law enforcement/prosecutor misconduct to not allow a continuance of a murder trial when late-requested DNA testing on the State's "star witness" - alleged to be the murderer - comes back with MIXED RESULTS less than a week before trial that CAN NOT EXCLUDE HIM FROM BEING THE CONTRIBUTOR TO THE DNA FOUND UNDER THE VICTIM'S NAIL(s), BUT CAN EXCLUDE THE DEFENDANT; AND DEFENSE ASKS FOR A CONTINUANCE TO COLLECT/test more evidence since law enforcement/prosecutors never sought a search warrant, EVEN IN THE FACE OF OVERWHELMING PROBABLE CAUSE EVIDENCE TO DO SO, undermining Cook's 5th, 6th and 14th Amendment rights?

Question #3: Did the lower courts err in utilizing a procedural bar contrary to Court precedent, to avoid ruling on the merits of multiple conviction reversing claims, considering the State set into play the variable(s) resulting in the erection of the procedural bar, by appointing CONFLICTED postconviction counsel whom they should have known had an existing conflict, whom intentionally or sabotaged the case,contrary to Cook's rights to due process, equal protection, access to the courts, and/or effective counsel, contrary to the 5th, 6th and 14th Amendments of the U.S. Constitution, and further ARBITRARILY REFUSED TO CONSIDER COOK's PRO SE SUPPLEMENTAL POSTCONVICTION APPEAL BRIEFS THAT CURED SAID PROCEDURAL BARS?

QUESTIONS PRESENTED

Question #4: Did the courts below commit reversible error as it was plainly evident that it was prosecutorial or law enforcement misconduct undermining Cook's 5th, 6th and 14th Amendment rights to due process, equal protection and effective counsel when prosecutors commented multiple times about Cook's right to remain silent, consult an attorney at the time of his arrest, aid in the preparation of his defense and testify on his own behalf, and included the husband of a prosecutor, who was a private lawyer, filing a lawsuit against the defendant the night before he testified, in order to monetize the prosecution for the corrupt couple; one of a myriad of examples of prosecutor misconduct?

Question #5: Did the courts below commit reversible error by ignoring Cook's denial of the rights held in the Due Process Clause or was it the constructive denial of counsel or ineffecitveness on all levels per the 5th, 6th and 14th Amendments for a trial court to NOT INSTRUCT or be asked by conflicted defense counsel to give an ACCOMPLICE INSTRUCTION, as this was the ONLY DEFENSE offered by Cook to the murder charge, so therefore, the jury WAS NOT INSTRUCTED ON ANY DEFENSE OFFERED BY COOK?

Question #6: Was it contructive denial of counsel, ineffectiveness, or is it a structural error, plain error,and/or an abuse of judicial discretion for a trial court to have allowed Cook to proceed with an attorney whom had serious conflicts of interest, preventing him from advocating for his client, and cause a series of highly prejudicial and verdict changing decisions in the trial (i.e. showing jury shock restraint system) in violation of Cook's 5th, 6th and 14th Amendment rights?

Question #7: Is it a violation of Cook's right to due process per the 5th and 14th Amendments, and access to the state courts for a federal U.S. District Court judge to deny a pro se pauper litigant's motion for a "stay and abeyance" of his habeas corpus petition per 28 U.S.C. §2254 and §2241(d)(1) once he has shown "good cause" for the "stay and abeyance" AND the question(s) of law being presented need to first be adjudicated and/or exhausted in the state courts, and the legal questions revolve around the State postconviction process, specifically the Nebraska Postconviction Act (Neb. Rev. St. §29-3001 to §29-3004), but also directly impact the exhaustion requirement(s) of the federal courts?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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:

* State of Nebraska
* Scott Frakes, Director - Nebraska Department of Corrections

RELATED CASES

State v. Cook, 266 Neb. 465 (2003)

State v. Cook, 290 Neb. 381 (2015)

Cook v. Hansen, 2020 WL 2523048 (May 18, 2020)

Cook v. Wasmer, 2020 WL 7226072 (Oct. 27, 2020)

There is also an unpublished opinion, listed as Appendix "E", of the Memorandum Opinion and Judgment on Appeal (final postconviction appeal) of the Nebraska Supreme Court, State v. Cook, No. S-17-567 (Jan.17, 2018)

TABLE OF AUTHORITIES

CASES — **PAGE NUMBER**

STATUTES AND RULES

OTHER

TABLE OF CONTENTS

INDEX TO APPENDICES

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 judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A & B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix C & D to the petition and is

[X] reported at Cook v. Wasmer, 2020 WL 7226072 (Oct. 27, 2020) Cook v. Hansen, 2020 WL 2523048; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix E & F to the petition and is

[ ] reported at State v. Cook, No. S-17-567 (Jan. 17, 2018) State v. Cook, 290 Neb. 381 (2015); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Nebraska Supreme Court court appears at Appendix H to the petition and is

[X] reported at State v. Cook, 266 Neb. 465 (2003); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 10/27/20.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 5/21/21, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

I. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourth Amendment of the United States Constitution provides:

"Protections against unreasonable search and seizures, protection against the issuance of warrants without probable cause, supported by an oath or affirmation, particularly describing the place to be searched or the persons or things to be seized.

2. The Fifth Amendment of the United States Constitution provides:

"No person shall be...deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

3. The Sixth Amendment of the United States Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

4. The Fourteenth Amendment of the United States Constitution provides:

"Section 1. All persons born or naturalized in the United States, and subject to the juridiction therof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

5. 28 U.S.C. section 2254

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State Court shall not be granted unless it appears that--

(A) the applicant has exhausted the remedies available in the court of the State; or

(B)(i) there is an absence of available State corrective process; o
(ii) circumstances exist that render such process ineffective to protect the rights of the applciant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjuciation of the claim--

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that--

(A) the claim relies on--

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a detemination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce shuch part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

II. STATEMENT OF THE CASE

A timely direct appeal was filed with the Nebraska Supreme Court from the conviction of Cook for murder and use of a weapon, where he was sentenced to Life plus 49 1/2 to 50 years. The opinion of the Nebraska Supreme Court to affirm the conviction came on 8/1/03, and the mandate issued 9/26/03. A verified motion for state postconviction relief was filed on July 1, 2004, and after an interlocutory appeal, evidentiary hearing on a select few issues, and final appeal, a motion for reconsideration was denied by the Nebraska Supreme Court on April 12, 2018. A timely Petition for Writ of Habeas Corpus was filed pro se in the U.S. District Court, and denied and dismissed with prejudice on May 18, 2020. A Certificate of Appealability was filed with the U.S. Court of Appeals for the Eighth Circuit, and was denied in a revised order issued on May 21, 2021. (See Appendix #1)

Cook was convicted of the murder of Amy Stahlecker, even though the State "star witness" - Mike Hornbacher - testified he was with Cook before and after the murder, but not during the murder. What complicated Hornbacher's story is that late-requested DNA tests on him came back with **mixed results**, showing male DNA under the victim's nails that Hornbacher could **NOT BE EXCLUDED AS BEING THE CONTRIBUTOR OF.** An impossibility if Hornbacher testified truthfully. It was interesting to also note that Cook **could** be excluded as the contributor of the male DNA under the victim's nails (consistent with his testimony), but contrary to the State's theory of the case presented to the jury, and Hornbacher's testimony. Cook did admit to having drunken consensual adult sex with the victim, but also testified that it had been Hornbacher that had shot her in a fit of drunken rage, after she'd rejected Hornbacher's sexual advances.

The presence of Hornbacher's DNA under Stahlecker's nail(s) seemed to prove this, along with the fact Cook's DNA was present where his testimony indicated it should be AND considering other facts making it impossible that Hornbacher had **NOT** been present at the murder scene, as Cook testified to.

The facts supporting Cook's rendition of events included the fact that Cook's and Stahlecker's footprints could be seen leaving the area that the truck had been parked in, but NO FOOTPRINTS WERE FOUND COMING BACK TO THE TRUCK. This meant that there HAD to be someone else in the truck that drove it out and up onto the highway. Also, Hornbacher was found to have lied to his cell-phone company, telling a customer service rep (CSR) that he'd "lost his phone" when the truth unveiled at trial by Cook was that Hornbacher gave him his cell-phone to be discarded. There were other factual problems, not all of Hornbacher's making, such as the fact investigators never searched Hornbacher's person, car,

apartment or workplace, aside from the late-requested DNA sample and early statement(s) (where Hornbacher had to have notes on the 2nd interview to try and remember what he said the first time), EVEN THOUGH THE MURDER WEAPON WAS NEVER FOUND AND COOK TESTIFIED THAT HORNBACHER WAS LAST SEEN WITH IT!

Another key question in this case was how did a bloody footprint of a shoe NOT found in Cook's possession make it into the door of Cooks' truck? Interestingly enough, the tennis shoe's put forward as evidence at trial were purchased by Crime Scene Investigator (CSI) Dave Kofoed, who purchased them at Target. Not only did Cook and CSI Kofoed work out at the same gym for over a decade and were familiar with each other through mutual friends, a fact CSI Kofoed wouldn't admit to, but trial attorney Lefler woudn't call a rebuttal witness.

CSI Kofoed was later found guilty of planting/tampering with DNA evidence in another murder case, and went to prison for it. He (CSI Kofoed) is also known to have planted blood/DNA evidence in multiple other murder cases, but was only prosecuted in one, likely due to the overwhelming evidence of guilt in the other cases, and no other suspects. **However, this is NOT true in Cook's case. Cook's case has another suspect, Mike Hornbacher, whose DNA was found on the victim, and admitted to being with Cook before and after the murder, saying he'd been home when the murder took place, even though he and his girlfriend whom were fighting earlier that night couldn't get their stories straight on what time Hornbacher actually arrived home.** Cook's case also involved a personal connection between the defendant and the now convicted Crime Scene Investigator. Cook was essentially convicted on circumstantial evidence, evidence that was twisted by prosecutors to try and whitewash any involvement of Hornbacher - their "star" witness, whom they put a bubble around from the start of the investigation.

A few examples of this wuld be prosecutors:

1. NOT having Hornbacher strip searched and take pictures of his body for scratches as the did to Cook. **Then tell the jury Hornbacher hadn't had any visible injuries to his body. (You can NOT find what you don't look for, right?!)**

2. Never searched Hornbacher's apartment, car, person, workpalce, etc., even though the murder weapon was NEVER FOUND. Then had the lead detective on the case, who'd been a detective for only 3 months, get on the stand and testify that "there was no probable cause to ask for a search warrant on Hornbacher."!

This testimony wasn't abjected to, and was highly prejudicial to Cook's defense, liely changing the outcome of the trial, and covering for law enforcement's failure in bumbling the investigation.

Cook's trial lawyer, Steve Lefler, who'd lied to Cook AND the sentencing court about withdrawing from Cok's case because he was "retiring from the practice of law." (See: Ex. #) - AND WHO IS STILL PRACTICING LAW IN Omaha, Nebraska **20 years later** AND REPRESENTED CSI KOFOED IN HIS FEDERAL AND STATE CRIMINAL

trials, ignoring Cook's verbal objection to Lefler to NOT do so. Lefler's lie about retiring forced Cook to get different appellate counsel, whom unbeknownst to Cook at the time he was hired, was Lefler's law-school buddy---who then tried to double charge Cook his quoted fee, and purposely avoided assigning obvious, highly prejudicial AND verdict-reversing ineffective assistance of trial counsel claims against his long-time friend, Lefler, in Cook's appeal.

After trial and appeal counsel (Lefler & Mock) fleeced Cook for over $130,000.00, he was forced to turn to appointed counsel on state postconviction. After multiple lawyers had worked on the case, and withdrawn due to various reasons or conflicts of interests, Cook was appointed postconviction counsel Jerry Soucie, whom had worked in the same law firm (Nebraska Commission on Public Advocacy) for over a decade with Cook's former counsel Rob Kortus, who'd withdrawn due to a conflict of interest(s),by order of the Nebraska Supreme Court, Cook was appointed new counsel. This will be further explained as part of Question #3 posed to the but to suffice it to say that Atty Soucie had **actively sought out Cook to represent him while he was a lawyer with the Nebraska (Commission)on Public Advocacy, even though Cook had counsel at the time,** finally getting the appointment to Cook's case once he had been fired from the Commission for malfeasance. The conflict of interest(s) Atty Soucie had with Cook's case caused Soucie to intentionally sabotage Cook's postconviction process, including appeals and/or incompetently represent Cook in his state postconviction process, contrary to not only the Nebraska Postconviction Act (Neb. Rev. St. § §29-3001 to 29-3004), but also contrary to the intent of the legal process whereby a pauper prisoner is appointed post-conviction counsel to assist him/her in the execution of their postconviction claims, not to impede the vetting of claims that infringe upon basic federal constitutional rights, such as due process, equal protection, access to the courts effective counsel, etc.

Cook can demonstrate cause and prejudice for the lifting of the procedural default(s) in state court attributable to his postconviciton counsel and/or state procedures that were applied differently to Cook's case than past cases of defendant's similarly situated, in that the NE Supreme Court refused to consider Cook's pro se supplemental brief(s) on postconviction appeal that would have otherwise cured the procedural defaults erected by ineffective postconviction counsel, caused by a conflict of interest(s) that the State district court knew about when making the appointment, supplyiing the "extraordinary circumstances beyond his control" exception to lift the state procedural bar to his federal petition.

III. REASONS FOR GRANTING THE WRIT

I. The Eighth Circuit's disregard of serious, even felonious law enforcement and prosecutorial misconduct in this case warrants reversal of the decision of the court(s), with serious consideration given to outright dismissal with prejudice of the case, as the lower courts failed to uphold the precedent cases of the U.S. Supreme Court and the 5th, 6th and 14th Amendments of the U.S. Constitution.
(See: Berger v. United States, 295 U.S. 78, 55 S.Ct. 629 (1935); Brady v. Maryland,83 S.Ct. 1194, 373 U.S. 83 (1963))

II. The Court of Appeals erred in upholding the denial of a certificate of appealability or grant of the writ of habeas corpus, by determining that Cook's ineffective assistance of trial counsel claim(s) did not meet the standards set forth by this Court in Strickland, Hill and Fulminate, failing to recognize the equitable exceptions provided for by these precedent cases and the fact this case **distinguishes itself as new question of law**, revolving around the constructive denial of counsel and the subsequent structural error that affected the framework of the trial itself.
(See: Powell v. Alabama, 287 U.S. 45, 69, 53 S.Ct. 55, 64 (1932)

III. The Eighth Circuit's allowance of the misapplication of the prejudice standard of Strickland warrants this courts' attention.

The Eighth Circuit refused to grant a certificate of appealability on the U.S. District Court's error to **NOT** consider all of the evidence in the record Both that which was admitted at trial and that which is developed at the postconviction stage. as are the standards set forth by this COurt in Strickland v. Washington, Rompilla v. Beard, 545 U.S. 374 (2005 and Wiggins v. Smith, 539 U.S. 510 (2003). Under this test, it is inappropriate to consider the evidence in the light most favorable to the verdict. It is clear that the Nebraska Supreme Court's and U.S. District Court's disregard for this principle was in error. Because the Eighth Circuit Court of Appeals has truncated the scope of Strickland v. Washington, prejudice review, this Court must grant certiorari.

IV. The Eighth Circuit erred in not granting re-hearing, and reverse the decision to not grant a certificate of appealability regarding the petition for a writ of habeas corpus to issue on the basis that there was a conflict of interest known to exist by the State, when they appointed Atty Jerry Soucie as Cook's postconviction counsel, whom then sabotaged purposely (having practiced law 35+ years), and creates a new question of law that is cognizable in a habe corpus proceeding, along with the fact that the Nebraska Supreme Court also arbitrarily denied Cook due process of law and equal access to the courts per the 5th, 6th and 14th Amendments of the U.S. Constitution, by not accepting Cook's pro se supplemental brief(s) (See: Ex.#63,65) on interlocutory and final postconviction appeal, where the practice of the court had been to accept pro se supplemental briefs in similar or like jurder cases (See: Ex. #), and Cook's brief(s) would have cured the procedural bars erected by conflicted Postconviction counsel. (5th, 6th and 14th Amendments to the U.S. Constitution. (Also see: Buck v, Davis, Martinez v. Ryan and/or Trevino v. Thaler)

V. The Eighth U.S. Circuit Court disregarded a severe abuse of judicial discretion at the state trial, postconviction and U.S. Distict Court levels, that both prejudiced Cook and altered the outcome of the trial and postconviction/habeas proceedings. This ignored the dictates of Marshall v. Jerrico, Inc., 446 U.S. 238, 100 S.Ct. 1610 (1980) as well as the 5th, 6th and 14th Amendments, undermining The Due Process Clause, which entitles a person to an impartial and disinterested tribunal in both civil and criminal cases, in order to assure neutrality in adjudicating a case, which protects the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. (Also see: Carey v. Piphus, 435 U.S. 247, 98 S.Ct. 1042 (1978) The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted concept of the facts or the law. (See: Mathews v. Eldridge, 424 U.S. 319, 344, 96 S.Ct. 893, 907 (1976)

VI. The Eighth U.S. Circuit Court disregard the bias or prejudice created by trial counsel having Cook stand and tell, as well as show the jury the shock retrainst system around his arm that could pump 50,000 volts of electricity through him, rendering him unconscious, which created a partial, biased jury and prejudiced jury against Cook, which became a structural error in the trial proceedings. This is an error that cannot be harmless, and requires a new trial without a showing of prejudice, even though prejudice is evident. This was combined with forcing Cook to appear in front of the jury in a "Prisoner" orange jumpsuit with shackles at the delivery and reading of the verdict, contrary to U.S. v. Martinez-Salazar, 528 U.S. 305, 120 S.Ct. 774, 782 (2002) Estelle v. Williams, 425 U.S. 501, 96 S.Ct. 1691 (1976); 5th, 6th, 8th and 14th Amendments of the U.S. Constitution were undermined by this action(s) Deck v. Missouri, 544 U.S. 622, 125 S.Ct. 2007 (2005)

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IV. ARGUMENTS AMPLIFYING REASONS FOR WRIT

Question #1: Did the courts commit reversible error and is a murder conviction vailid if State and Federal courts refuse to order an evidentiary hearing surrounding a pattern of intentional misconduct and evidence planting by its' Crime Scene Investigator (CSI) Supervisor Dave Kofoed, whom is eventually convicted of the same crime(s) in another murder case, and known to have planted evidence in multiple other murder cases, which he's never been charged for, OR IS IT JUST A COVER-UP BY STATE LAW ENFORCEMENT AND PROSECUTORS? and/or a denial of due process of law contrary to the 5th & 14th Amendments, and/or an ineffective assistance of counsel per the 6th Amendment, for not properly investigating or asking for a mistrial, not hiring a DNA expert because Cook couldn't afford one, nor asking the trial court for funds to do so, and/or not properly assigning/arguing the prejudicial and illegal conduct on direct or postconviction appeal properly?

FURTHER ARGUMENT: The "Kofoed" claim seemingly dominates the myriad of law enforcement misconduct in Cook's case, mainly because it is a problem in multiple murder cases in Nebraska, which resulted in Crime Scene Investigator David Kofoed (CSI Kofed) going to prison for planting/tampering with DNA evidence in another murder case (State v. Kofoed, 283 Neb. 767, 817 N.W.2d 225 (2012)),and prosecutors and law enforcement **know for certain that CSI Kofoed planted DNA/blood evidence in multiple other murder cases, but have elected to not prosecute him, nor fully even investigate the instant case because they are embarrassed one of their "own".**

did it. Not only did CSI Kofoed plant blood evidence on the outside of Cook's truck door, but there was also earlier cross-contamination during a warrantless entry search into Cook's truck. Nebraska State Patrol (NSP) investigators had failed to secure either arrest or search warrants for Cook in Iowa, and had only secured them in Nebraska at the time NSP Investigator Kracl got Cook's truck keys from him and climbed into the cab of Cook's truck under the auspices of "looking for Cook's wallet", rooting around in the truck's front and back seats (super cab) with no protective gloves or shoe coverings, after being present at the crime scene only a few days prior.

The Kracl warrantless entry was enough to cross-contaminate the interior of Cook's truck, warranting suppression of all evidence realted to the truck per the Fourth Amendment, but was overruled. However, there is NO WAY YOU CAN SIMILARLY DISCOUNT the fact that CSI Kofoed planted blood evidence on the side of the truck. How do you know this to be fact? Because Cook **POWERWASHED** the exterior of his truck after the murder, using a power washing wand to soak, soap, and then power wash the exterior with extremely hot water. THERE IS NO POSSIBLE WAY THAT ANY **DNA/** BLOOD EVIDENCE COULD HAVE SURVIVED THIS.

It is debatable as to whether or not the issue is properly exhausted in the State courts. This is the only question holding up immediate reversal of this case, or at the very least ordering an evidentiary hearing on the matter, which the Nebraska courts have so far refused to do, as this SUBJECT IS EXTREMELY BOTH EMBARRASSING TO NEBRASKA LAW ENFORCEMENT OFFICIALS; BUT HAS BECOME A POINT OF POLITICAL CONTENTION IN THE DEBATE AS TO WHETHER OR NOT TO COMBINE STATE AND COUNTY CSI OFFICES INTO ONE OPERATION.

Interestingly, not only were the type of shoes the bloody shoe print supposedly made by **NEVER FOUND IN COOK's POSSESSION** OR AT HIS APARTMENT OR IN HIS TRUCK, of the dozen or so pairs of tennis shoes investigators examined of Cook's, but CSI Kofoed actually went out and bought a pair of Spaulding Energaire tennis shoes at Target which matched the shoe print(s), **when matching tennis shoe's couldn' t be found in Cook's possession,** then CSI Kofoed kept and wore the tennis shoe himself since he wore the same size shoes as Cook. What Court would allow any of this?

The Court will find interesting a quote from an interview with CSI Kofoed that aired on Nebraska Educational Television (NET) on 11/19/10 where CSI Kofoed adamently refuted any and all allegations of planting DNA evidence in ANY CASE saying, " **I didn't plant evidence, but if I were to plant evidence I would plant it on the shoes.".** CSI Kofoed has also said that he "WOULD RATHER GO TO PRISON THAN ADMIT TO ANY WRONGDOING." publicly.

An evidentiary hearing on the CSI Kofoed/DNA/cross-contamination issues

would show that it is now clear that Cook's request of his trial lawyer to hire a DNA expert was well placed. Cook wanted a defense DNA expert because he knew there were problems with the DNA evidence. His concerns were ignored, and he was told by his trial lawyer that he "didn't have enough money left over for a DNA expert". Atty Lefler NEVER MOTIONED THE TRIAL COURT FOR FUNDS FOR A DEFENSE DNA EXPERT- A CRITICAL MISS IN THIS CASE.

CSI Kofoed used stacks of filter papers to collect DNA samples which have proven to be susceptible to easy cross-contamination, and are no longer used by CSI's, whom instead use individually wrapped filter papers. (See: PTOP 318:3-14)

The testing results from the University of Nebraska Medical Center (UNMC) DNA lab were tainted from cross-contamination from NSP Investigators and CSI Kofoed that used sloppy investigative techniques leading to cross-contaminated evidence being forwarded to the UNMC DNA Lab after after improper collection/storage procedures.

NO DNA LAB CAN GET ACCURATE RESULTS FROM TESTS PERFORMED ON CROSS-CONTAMINATED EVIDENCE

For example, when UNMC Lab Tech Kelly Duffy first amplified the vaginal swab, she came back with 10 different results, and didn't use the first result in the report, so we are left in the dark as to what the first amplification showed. (TBOE: Vol. VII: 1518: 2-8)

Trial Atty Lefler did NOT UNDERSTAND HOW TO EVALUATE DNA EVIDENCE, to wit: Lefler made the following statement during trial: "I will tell you that I'm very nervous trying to cross-examine you on DNA. I become even more nervous trying Cross-examine you on software". (TBOE Vol. I: 129Ñ 12-19)

Sgt Burns of the NE State Patrol (NSP) testified that there was NO chain-of-possession for Cook's truck as it sat in the garage of NSP Troop A headquarters after being towed there illegally from Iowa to Nebraska without a search warrant (TBOE Vol. I: 55: 9-11) It was then towed AGAIN back to Iowa, realizing their error.

Csi Kofoed decided to operate outside of his jurisdiction, and instead of waiting for the proper paperwork and legal proceedings to take place, he went over to Iowa from Nebraska to process the truck at the Iowa State Patrol BEFORE IT WAS AUTHORIZED TO BE SENT TO HIM IN NEBRASKA. (PTOP 159: 2-11)

Examples of additional breaks in the "chain-of-evidence" from Douglas County Sheriff Investigative Supplementary reports allowed into evidence:

a. Douglas County Sheriff "Property Report"
   Problem: Chain-of-possession of evidence incomplete on almost all, completely absent on some reports.
b. Douglas County Sheriff "Property Report" (Ex. #30 at trial)
   Problem: No Propery Officer Signature/Serial Number. One form signe but illegible or crossed out in "Received from Criminalistics"
c. Serolgy Tests Form
   Problem: Incomplete forms due to no Page #'s on multi-page document

d. Evidence and Inventory Submittal Form and Receipt
Problem: Incolmplete for "Location/Date/Lab No., etc."
e. Subpeona for AOL Subscriber information not dated or signed.
f. ~~State of Iowa: Inventory and Receipt for Property Seized~~
Problem: State of Iowa: Inventory and Receipt for Property Seized
No Case number (Trial Ex. #28)
g. No signature of Approving Officer on Investigative Report Supplement
Problem: CSI Kofoed or approving officer should have signed report
h. Nebraska State Patrol Division of Investigative Services "Assistance on Vehicle Search Warrant" re: Trinity Jones
Problem: No investigator signature or date (Ex. #31) - CSI Kofoed should have signed since he's the Supervisor, or another investigator

The above samples of "chain-of-custody" are **mandatory protocol/procedure in any law enforcement agency, even the one CSI Kofoed is running, where he thinks he can get away with anything, because "he's the boss".**

To plant, alter, hide or delay the turning over of critical DNA evidence in a case where DNA evidence is central to the finding of guilt or innocence, in an otherwise circumstantial evidence case, **is incomprehensible**, especially in light of the detailed responsibilities lists for CSI Kofoed and other law enforcement found at Habeas Corpus (HC) Exhibit #24, with how to execute a formal investigation conference put together by no other than CSI Kofoed (content at HC EX.#33), which focused first on Cook's case, presented by CSI Kofoed and Prosecutor Don Kleine, with only 1 defense attorney presenting - former defense counsel for both Cook and CSI Kofoed - Steve Lefler. (See HC Ex.#33)

CSI Kofoed, early in his trial testimony, raised a red flag for Cook, who pointed out to Atty Lefler that CSI Kofoed was lying about not knowing him from Gold's Gym, where the two had worked out for over a decade, and had mutual friends. CSI Kofoed knew one of Cook's workout partners, Boyd "Buth" Hall, whose wife flew to Omaha to testify in Cook's case as a defense witness against Hornbacher's myriad of lies, but was only allowed to testify in-chambers and give an offer-of-proof. Boyd Hall was best friends with Bart Kofoed, a former NBA basketball player and CSI Dave Kofoed's older brother.

The FBI refused to turn over investigative records re: CSI Kofoed or Cook (See HC Ex#50 & 51), contrary to Brady v. Maryland.

Lefler and Cook maintained a close friendship even after Cook's trial, as Lefler told during a postconviction evidentiary hearing, T 34: 4-26), but would not listen to Cook's concerns about his representation of CSI Kofoed, telling Cook "it was no big deal".

The Nebraska Supreme Court affirmed CSI Kofoed's conviction for fabricating and planting evidence in the Stock murder investigation, and **also affirmed the district courts' finding by clear and convincing evidence that CSI Kofoed had fabricated evidence in the Ivan Henk/Brendon Gonzalez case.** State v. Kofoed, id.

On May 15, 2013, NSP Inv. (ret.) Gary Plank was deposed in the Sampson/Livers civil rights case, stating he "had long been suspicious of Kofoed's findings of blood in the Sampson/Livers, Henk/Gonzalez and Edwards/O'Grady investigations. He told his wife about his concerns, but said nothing to others in law enforcement, saying if he had, he would have been **alienated within the law enforcement community.**

During a Douglas County Sheriff (DoCoSo) investigation, CSI Kofoed re-iterated "I mean if I wanted to (plant blood evidence)...I would put it somewhere where it would link him (the accused), lock him down on it...I'm the boss. I don't have to do that stuff. I can assign somebody to do it." Kofoed statement (6/30/08) Ex. 316 at pg. 81 in Edwards (Chris) v. State.

CSI Kofoed never turned over photo's and notes he had in a white notebook that he used at trial and said were "personal" photo's and notes of the shoe print on the outside of Cook's truck, and other physical and blood DNA evidence he collected from the truck. (See HC Ex#14) Kofoed also didn't mention anywhere in his report that NSP Inv. Kracl had **already been inside the cab of Cook's truck**, without any gloves or shoe coverings, thus cross-contaminating the truck.

The above cases/examples show a **"pattern of conduct" CSI Kofoed used in Cook's case,** warranting reversal of the lower courts' decision and a COA.

Question #2: Did the courts commit reversible error denying Cook's §2254 motion without recognizing it is either ineffective assistance of counsel, a violation of Cook's right to due process, an abuse of judicial discretion and/or law enforcement misconduct to not allow a trial continuance in a murder trial when late-requested DNA testing on the State's "star" witness - Mike Hornbacher - alleged to be the murderer by Cook - comes back with mixed results - less than a week before trial - that CAN NOT EXCLUDE Hornbacher from being the male contributor to the DNA found under the victim's nail(s), but can exclude Cook as being the contributor, and the defense asks for a trial continuance in order to do further evidence collection & testing on Hornbacher since law enforcement never sought a search warrant for Hornbacher, even in the face of overwhelming probable cause evidence to do so, INCLUDING THE MISSING MURDER WEAPON AND HIS MIXED DNA RESULTS; contradicting Cook's rights held in the 5th, 6th and 14th Amendments?

FURTHER ARGUMENT: New Lead Investigator O'Callaghan, 3 months removed from traffic duty NOT request a search warrant for State's "star witness" Hornbcher's person, apartment, car, work, etc. even after he admitted to being with Cook before and after the murder, but wouldn't admit to being with Cook at the time the murder occurred, considering the FACT that the murder weapon and other items were missing in the case, more than enough for a probable cause determination to be found in favor of issuing a search warrant for Hornbacher, IF Inv. O'Callaghan or prosecutors had sought one. Inv. O'Callaghan said there was "no probable cause to request a search warrant, even though the murder weapon, Hornbacher's shoes and clothing worn the night of the murder had never been found. Inv. O'Callaghan was not qualified to make an expert determination of "probable cause" the purview

of the issuing judge.

The late-requested DNA testing on the State's "star" witness Hornbacher came back with mixed results just before trial, indicating Hornbacher had been at the crime scene, contrary to his testimony and the State's "theory" of the case. The finding of Hornbacher's DNA on the murder victim was consistent with Cook's testimony. Defense counsel had made an oral continuance motion in order to be able to search Hornbacher's person, apartment, car, work, etc. since law enforcement had MADE NO EFFORT TO DO SO? NOR WERE DIRECTED BY PROSECUTORS TO DO SO?.EVEN THOUGH COUNTY PROSECUTORS HAD DIRECTED THEM TO TAKE COOK'S TRUCK BACK TO IOWA FROM NEBRASKA AFTER ILLEGALLY SEARCHING? SEIZING AND TOWING IT WITHOUT AN IOWA SEARCH WARRANT.

This should have resulted in a dismissal of the case per Arizona v. Young, 488 U.S. 51 (1988) (HC motion pg. ID#29: 1-19)

Further, "When a continuance will **cure the prejudice caused by belated disclosure of evidence, a continuance should be requested by counsel and granted by the trial court.**".

CSI Kofoed and other investigators failed to secure any clothing, shoes or any other physical evidence from Hornbacher, protecting their "star witness", and having blinders on to any other suspects aside from Cook. The only evidence they obtained from Hornbacher were a few statements early on, in which Hornbacher had to use a yellow notepad to reference his prior answers on in the second interview, and the late-requested DNA testing, which came back with mixed results THEN' PROSECUTOR DON KLEINE HAD THE AUDACITY TO TELL THE JURY THAT "There were no injuries on Hornbacher." - EVEN THOUGH LAW ENFORCEMENT NEVER SEARCHED FOR ANY.

To plant, alter, hide or delay the turning over of critical DNA evidence (or other evidence) is contrary to Brady v. Maryland, meeting the cause and prejudice standard to warrant relief in this case.

NSP forensic chemist Michael Auten testified he would analyze fibers for defense purposes if ordered to do so by8 the trial court. (TBOE: 1300: 7-1301: 23) Attny Lefler requested the trial court to order production of Hornbacher's clothing (shoes) from April 28, 2000 for fiber analysis (BOE 1302: 4-11), and asked for a continuance to search for other physical evidence, which was denied

The denial of the continuance was a blatant abuse of judicial discretion on perhaps the most critical question surrounding guilt or innocence of the accused. This was highly prejudicial and verdict changing. Atty Lefler should have filed motions to the trial court re: "probable cause" to search Hornbacher's person, apartment, aar and work, etc., but only at did so orally at the last minute, partly due to the late-requested, later-received DNA report showing mixed results on Hornbacher.. Lefler never asked for a mistrial due to this critical error.

There is obviously no reasonable trial strategy for failing to do so, and the prejudice to Cook is undeniably highly prejudicial and verdict changing, and can't be cured other than the grant of a new trial, or dismissal of all charges against Cook, with prejudice, due to the prosecutorial misconduct (driven by greed as will be addressed in Q#4), abuse of judicial discretion, and/or ineffective assistance of counsel, at the trial, appeal and/or postconviction levels.

Question #3: **Can a postconviction or appellate court at the State or Federal level, utilize a procedural bar contrary to established U.S. Supreme Court precedent to avoid ruling on the merits of multiple claims that would otherwise reverse conviction if the State itself directly or indirectly set into play the primary variable which resulted in the erection of the procedural bar, by appointing CONFLICTED postconviction counsel to a pauper prisoner, whom intentionally or incompetently sabotaged the case, thereby effectively undermining Cook's right's to due process, equal protection, access to the courts, and/or effective counsel contrary to the 5th, 6th and 14th Amendments of the U.S. Constitution, and further REFUSED to consider the pro se petitioner's supplemental postconviction appeal brief(s) that WOULD HAVE CURED SAID PROCEDURAL BARS IF NOT ARBITRARILY OR PURPOSEFULY IGNORED BY STATE APPELLATE COURTS?**

FURTHER ARGUMENT with FACTUAL BACKGROUND RELEVANT TO QUESTION:

In the instant case, the State postconviction court appointed Jerry Soucie a former lawyer for 17 years with the Nebraska Commission on Public Advocacy ("Commission"), whom had been recently fired due to malfeasance. This was problematic because:

1. ANOTHER Commission lawyer (Rob Kortus) had earlier withdrawn from Cook's case, DUE TO A SEPERATE CONFLICT OF INTEREST, and another former friend and fellow Commission lawyer, Jerry Soucie, took the appointment to be Cook's new postconviction counsel;

2. Atty Soucie had, contrary to the rules of professional and ethical conduct dictating attorney behavior, CONTACTED COOK WHILE HE WAS A COMMISSION LAWYER IN ORDER TO GET COOK TO TURN OVER ALL OF THE DNA EVIDENCE IN HIS CASE; TELLING COOK AFTERWARDS HE WAS CERTAIN THAT CSI KOFOED HAD TAMPERED WITH OR PLANTED DNA EVIDENCE IN COOK's CASE; AS HE HAD IN 3 OTHER MURDER CASES; BUT THAT HE COULDN'T WORK ON OR TAKE COOK's CASE AT THE TIME DUE TO COOK HAVING OTHER COUNSEL PRESENTLY. (Douglas County Public Defender)

3. Once Atty Soucie was eventually offered and accepted the appointment from the postconviction court, whom knew Soucie had been a Commission lawyer for many years, AND had handled Commission lawyer Kortus' removal from the case, Soucie said the money the postconviction court had set for his payment on the case was only around $8,000, , complaining to Cook he wouldn't be able to spend much time on the case due to he had paying clients that needed their cases worked on, curtailing work on Cook's case.

4. Atty Soucie refused to send Cook copies of the postconviction briefs he was submitting to the Nebraska Supreme Court before they were submitted only afterwards sending Cook a copy, so Cook coudn't object or try to remedy the fact Soucie wasn't correctly briefing the failure to assign both ineffectiveness of trial and direct appeal counsel, a fundamental requisite for litigants who'd had different appeal and trial counsel.

5. Atty Soucie refused to individually assign and argue 27 out of 28 of Cook's postconviction claims on interlocutory appeal, only assigning and arguing the CSI Kofoed claim (Soucie's pet claim, and the one he had contacted Cook in regards to before he became Cook's lawyer, and while he was still employed by the Commission). This effectively procedurally barred 27 out of 28 claims immediately, a number of which were verdict reversing claims.

6. On Cook's final postconviction appeal, Soucie refused to assign and argue 5 of 7 claims, even though he'd told Cook he planned on arguing them all, AND had briefed all 7 claims in a supporting brief to the district court which had held the evidentiary hearing on all 7 claims

7. Atty Soucie's intentionally sabotaged Cook's postconviction process, as he'd been a defense attorney for over 30 years, and knew that he had to assign and argue BOTH ineffectiveness of trial and appeal counsel since they had been different. (Due to trial Atty Lefler lying to the trial court by saying he was "retiring" from the practice of law". (See HC Ex. #2), forcing Cook to get alternate counsel for appeal AFTER He'D ASKED LEFLER MULTIPLE TIMES TO DO HIS DIRECT APPEAL. This can NOT be dismissed as just a "rookie error" or "oversight".

8. Atty Soucie's sabotage was an extension of the conflict of interest he had with Cook's case. Specifically, because he was friends and former co-worker's with Rob Kortus, who'd been forced to withdraw from the case due to a conflcit of interest he'd reduced to writing to Cook some years earlier, which Cook sent a copy of to James Mowbray, the then Chief Attorney for the Commission, whom forced Kortus to withdraw.

ADDITIONAL ARGUMENT: Pro se petitioner, Rich Cook, a Life-sentenced prisoner, argues that the federal courts have, amongst other errors, erred in its' decision by analyzing and incorrectly applying the precedent cases of Martinez v. Ryan, 132 S. Ct. 1309, 566 U.S. 1 (2012); Trevino v. Thaler, 569 U.S. 413, 133 S.Ct. 1911 (2013); and Buck v. Davis, 137 S.Ct. 759, 197 L.Ed.2d 1 (2017).

Cook argues his case is distinct from these cases due to the fact that the State postconviction court appointed CONFLICTED postconviction counsel, which led to conflcits between counsel at each stage of the proceedings in his case, AND THE STATE APPELLATE COURT REFUSED TO CONSIDER COOK's PRO SE SUPPLEMENTAL BRIEF ON POSTCONVICTION THAT WOULD HAVE CURED ANY PROCEDURAL BARS ERECTED BY APPOINTED COUNSEL; IF CONSIDERED, AS THE PRO SE SUPPLEMENTAL BRIEFS HAVE BEEN CONSIDERED BY THE NEBRASKA SUPREME COURT IN THE PAST; IN SIMILAR OR LIKE CASES; DIVERGING FROM STANDARD PRACTICE AND PROCEDURE (HC Ex's #63 and #65)

Further, Cook argues he meets the cause and prejudice requirement to allow for review of his habeas corpus petition on its' merits, or for an evidentiary hearing to be granted. Maples v. Thomas, 565 U.S. 266, 132 S.Ct. 912 (2012)

Ineffective assistance is recognized at the trial and direct appeal level as infractions of a defendant's Sixth Amendment right to counsel, and when a

defendant is FORCED TO FIND ALTERNATE DIRECT APPEAL COUNSEL BECAUSE HIS TRIAL COUNSEL DECEIVED BOTH HIMSELF AND THE COURT; THUS SUBJECTING HIM TO A HIGHER STANDARD OF PROOF ON DIRECT APPEAL; AND THEN THE COURT APPOINTS CONFLICTED POST CONVICTION COUNSEL WHO INTENTIONALLY SABOTAGES THE CASE, DUE PROCESS, EQUAL PROTECTION, AND ACCESS TO THE COURTS RIGHTS PER THE 5TH, 6TH, AND 14TH AMENDMENT ARE ALL NULLIFIED.

The court argues, however incorrectly, that ineffective assistance of counsel can't be a ground to excuse a procural bar due to the fact counsel is not a right at the postconviction stage. Cook understands this is typically the case, however, Cook's case distinguishes itself from those factually, to the degree that it would be a complete denial not only of due process and equal protection and access to the courts, **but substantial government interference with a pauper, prisoner defendant**, if the lower courts' logic is allowed to stand. Cook is required to demonstrate misconduct on the part of the government by a preponderence of teh evidence, and has done so, and if any further facts need to be put into the record, he has asked for an evidentiary hearing on the matter, but has been denied. Reversal of these decisions is paramount to hold governmental agents in check, even if they are cloaked as an attorney, and/ or former government employee who ran afoul of the ABA's Code of Professional Conduct and victimized a pauper prisoner defendant in the process. This CANNOT BE CONDONED BY THE COURTS.

Cook has illustrated, and the briefs/lower court decisions speak for them in that state court-appointed postconvction counsel, who intentionally worked to create procedural bars to every one of the 35 claims on postconviction that Cook wanted argued and was, of course, seeking a merits analysis on each, which was done on none due to procedural default, by an attorney who has practiced criminal law for over 30 years, and his former and recent co-worker was removed from the case due to a conflict of interest, AND postconviction counsel contacted Cook about DNA in his case BEFORE HE WAS EVER APPOINTED AS COOK's COUNSEL, AND WHEN COOK HAD OTHER COUNSEL, AND P.C. COUNSEL COMPLAINED THAT HE WAS NOT GETTING PAID ENOUGH BY THE COURT ON COOK's CASE (AS HE WAS NOW A PRIVATE ATTORNEY), IT IS UNQUESTIONABLE THAT COOK's FUNDAMENTAL CONSTITUTIONAL RIGHTS ANNOUNCED EARLIER WERE TRAMPLED; CAUSING HIM SEVERE PREJUDICE, AND CHANGING THE OUTCOME OF HIS CASE. **This is impossible for the court to ignore, in the interest of justice.**

Question #4: **Did the courts below commit reversible error when it was plainly evident that it was either Prosecutorial or Law Enforcement misconduct to undermine Cook's 5th and 14th Amendment due process rights and his 6th Amendment right to remain silent, consult an attorney at the time of his arrest, and help in the preparation of his defense and testify on his own behalf. Additional prosecutor misconduct, a prime example being Prosecutor's Leigh Ann Retelsdorf's husband**

Patrick Heng, was found to have received a direct/indirect monetary payment from Cook's family due to a settlement from a lawsuit that her husband's law firm filed on Cook that night before he was to testify, and she didn't reveal this sustained conflict to the court until it was pointed out by defense counsel in chambers during trial, resulting in no hearing, no admonishment, nor removal from the case , in light of the highly prejudicial, unethical, possibly illegal conflict between her public prosecutorial job and her husband's private law practice monetizing one of her prosecutions? Dfoyle v. Ohio, 426 U.S. 610 (1976);Miranda v. Arizona

FURTHER ARGUMENT: Prosecutor Leigh Ann Retelsdorf was caught during trial during an in-chambers discussion trying to hide from the trial judge the FACT that her husband, Patrick Heng, his law firm had filed a civil complaint against Cook AND DONE SO THE NIGHT BEFORE COOK WAS SET TO TESTIFY, apparently in an attempt to both monetize her prosecution of Cook via the intermingling of funds with her husband's private law firm (who eventually received a settlement from Cook's family to settle the lawsuit), and attempting to stop Cook from testifying. This eviscerated the wall between public and private sector attorneys who combined to prosecute lawsuits against Cook simultaneously. (See: Stahlecker v. Ford, Motor Co., 266 Neb. 601, 667 N.W.2d 244 (2003).

This conflict of interests undermined Cook's right to due process and effective assistance of counsel contrary to the 5th, 6th and 14th Amendments. This fact was never appealed to the Nebraska Supreme Court by appeal counsel, even though it would have reversed the verdict, due to the extreme prejudice to Cook by this prosecutorial misconduct.

Retelsdorf should have been removed from the prosecution by either the presiding trial judge, or by Deputy County Attorney Don Kleine, the head of the County Attorney's Office, who had dozens of other lawyers he could put on the case. Patrick Heng, Retelsdorf's husband was an attorney at the time with Raynor, Rensch & Pfeiffer, P.C. (TBOE: Vol. VII: 1732, 1733)

When defense counsel brought the conflict to the court's attention, Retelsdorf reacted as if she'd got caught with her hand in the proverbial cookie jar, arguing adamantly that her husband "only drafted the suit," but someone else signed it.

At the time, Cook HAD NOT BEEN FOUND GUILTY OF ANY CRIME.

Trial counsel also failed to ask for her removal, or a mistrial, constituting ineffectiveness. The Court should reverse the lower courts' decision.

QUESTION #5: Did the courts below commit reversible error by ignoring Cook's denial of the rights held in the Due Process Clause and/or ineffective assistance of counsel on all levels per the 5th, 6th and 14th Amenments or structural error for a trial court to not instruct or be asked by conflicted defense counsel (who offered no instructions) to give an accomplice instruction, as this was the only DEFENSE OFFERED BY COOK TO THE MURDER CHARGE, so the jury was NOT instructed on any, MUCH LESS THE ONLY DEFESE OFFERED BY COOK?

FURTHER ARGUMENT: Both trial and direct appeal counsel were ineffective for not requesting and/ or appealing the failure to properly instruct the jury. The direct appeal focused on trial counsel's failure to propose no jury instructions at all. Appeal counsel argued there should have been a limiting instruction. Postconviction counsel, as discussed prior, made no real attempt to assign or argue this verdict reversing claim, even in light of the fact that Cook's federal due process rights were violated and a structural error may have ensued, nullified the entire trial due to the trial court's failure to give an Accomplice Instruction which was the only defense Cook offered at trial, so in effect, the jury was never instructed on Cook's ONLY DEFENSE!!

The defense theory of the case, as well as Cook's trial testimony, was that Mike Hornbacher committed the murder of Amy Stahlecker when she refused a sexual advance AFTER Cook and Stahlecker had had consensual drunken sex.

This warranted an Accomplice Jury Instruction per Nebraska Jury Instruction (NJI2d 5.6 on accomplice testimony regarding the State's "star witness".

The only reason Hornbacher wasn't charged in the case is because #1, he was willing to testify against Cook, making him the State's "star" witness, and #2, State prosecutors and law enforcement solely focused on Cook as their perpetrator, not even asking the trial court to consider issuing a search warrant on Hornbacher's person, car, apartment, work, etc. aside from a few statements early in the investigation and a late-requested DNA sample of Hornbacher's that came back with mixed results, AFTER COUNTY ATTORNEY DON KLEINE HAD TOLD NEWS MEDIA THAT THE DNA SHOWED IT WAS ESSENTIALLY COOK AND NO ONE ELSE THAT COULD HAVE BEEN THE MURDERER BEFORE ORDERING HORNBACHER'S DNA TO BE TESTED, A STATEMENT HE NEVER RETRACTED.

So, there was evidence in the trial that Hornbacher was not only an accomlice, but actually the sole perpetrator of the murder, to wit:

a. Hornbacher couldn't be excluded as the male contributor to the DNA found under the victim's fingernail(s) - Cook could be excluded.

b. Hornbacher admitted to being with Cook before and after the murder, and evidence indicates he WAS AT THE SCENE OF THE MURDER, contrary to his trial testimony and the State's "theory" of the case;

c. only 2 pair of shoe prints indicate Cook and Stahlecker walking away from the truck. If this is true, then someone else (Hornbacher according to Cook's testimony) HAD TO STILL BE IN THE TRUCK TO DRIVE IT OUT OF THE AREA AND UP ONTO THE HIGHWAY, since no other prints were found going from or to the truck. (See HC Ex's #22 & 23).

d. Cook testified Hornbacher was last seen with the murder weapon.

e. Hornbacher gave inconsistent times as to when he arrived home;

f. Hornbacher lied about getting his cellphone stolen, when he actually gave it to Cook to get rid of. An innocent person has no reason to lie.

g. Hornbacher lied as to his drug use,and dealing of marijuance, GHB;

h. Up to 5 defense witnesses, whom didn't know each other, and some who didn't know Cook, were prepared to testify that Hornbacher was lying on the stand. Some were allowed to give "offers-of-proof" in-chamber's but none were allowed to testify in front of the jury. They would have contradicted Hornbacher's testimony as to his drug usage, womanizing anger problems, and acts and threats of violence, including a death threat made to one, which Cook had witnessed.

It is the judge's responsibility to ensure the jury instructions encompass all of the facts and evidence introduced during trial, along with defense counsel and prosecutors. None of them thought it **WAS IMPORTANT TO GIVE AN ACCOMPLICE INSTRUCTION, EVEN THOUGH THAT WAS COOK'S ONLY DEFENSE!??**

Cook was NOT ALLOWED TO ATTEND THE JURY INSTRUCTION CONFERENCE, SO HAD NO IDEA THAT HIS TRIAL ATTORNEY OFFERED NO INSTRUCTIONS ON THE ACCOMPLICE THEORY OR ANY OTHER INSTRUCTION IN REGARDS TO LIMITING INSTRUCTIONS, possession of a weapon, etc.

County Attorney Kleine, as a representative of the State, inserted himself into a role of telling the jury that it had to decide, versus what it was free to decide on its' own, and limited any jury instructions favorable to the defendant, as described above.

Statements by coconspirator of a party during the course and in furtherance of the conspiracy are admissible even when there is no charge of conspiracy (PTOP 85: 5-9; 86) (See: U.S. v. Cawley, 630 F.2d 1345 (1980)

This precedent case demands reversal of the lower courts' decision.

Question #6: **Was counsel constitutionally ineffective or is it structural error plain error, an abuse of judicial discretion and/or ineffective assistance of counsel for a State trial court to have allowed Cook to proceed to trial that had serious conflicts of interest, preventing him from advocating fully for his client, and caused him to make a series of highly prejudicial and verdict changing decisions or actions such as having Cook show and tell the jury about the 50,000 volt shock restraint strapped to his arm, having no prior reason nor felony record for any such extreme security measure, coupled with uniformed deputies sitting just to the left of the defense table in close proximity to Cook, and Cook being forced by law enforcement to go to his last day of trial where the verdict was read in an orange jail jumpsuit and shackles, as if the verdict was a foregone conclusion. This could also be viewed as a constructive denial of counsel. Fulminante, 499 U.S. at 309, 111 S.Ct. 1265**

FURTHER ARGUMENT: Cook was represented at trial by Steve Lefler, who allowed his young law partner, Jim Mullen, to do some minimal work on the case and be present for trial, since he'd never worked a murder case before. Atty Lefler still practices law to this day, over 20 years later, AFTER TELLING BOTH COOK AND THE COURT THAT HE WAS "RETIRING FROM THE PRACTICE OF THE LAW". This came after Cook paid over $100,000.00 to Lefler to complete the trial and any appeal that might be necessary. So, essentially, Lefler told both his client and the court a lie, which forced Cook to find a new direct appeal lawyer. Lefler initially

tried a dirtball defense attorney move by sending his young law partner to the jail to see Cook and extract another $25,000.00 out of him for Mullen to do the direct appeal, but he'd never appealed a murder case; so Cook balked. Lefler then sent Cook to his former law school buddy, Clarence Mock, who agreed to do the appeal for $15,000.00 plus the cost of the bill of exceptions. At the time he hired Mock, Cook didn't realize the two were law school buddies. Then he heard that Lefler had told Mock that Cook was a "big fish", which came around the same time Atty Mock tried to double bill Cook for over $42,500.00. Attorney Lefler also had additional direct conflicts of interest(s) with Cook's case that revealed themselves in the following ways:

(1) Not known to Cook at the time he hired Lefler, Lefler had previously represented Cook's former girlfriend, Janelle Elster, **against him, threatening Cook with both civil and criminal lawsuits. Janelle Elster showed up on the prosecution's witness list before trial, Lefler still attended the same** church as the Elster's, and Janelle's dad sent a death threat on a postcard to Cook while Cook was in jail, which Lefler had Cook turn over to him. Janelle Elster was also the subject of the prosecution's argument against Cook getting a bond set. Jim Mullen handled the hearing, hadn't been told about the Cook/Elster case and connection. The court refused to set a bond for Cook due to the Elster argument, also a client of Lefler's.(CM/ECF p.25 and p. 66)

(2) failed to investigate the DNA evidence by not hiring a DNA expert, saying Cook "didn't have enough money left to hire a DNA expert", even though Cook had paid him over $100,000.00, but instead of spending the money on Cook's defense, he spent it on 5 trips to Italy in the year leading up to trial. (filing no 1 at CM/ECF pp. 25-27)

(3) failed to file a written motion with the court for a continuance in order to further investigate State's "star witness" Mike Hornbacher (Hornbacher after mixed DNA results were obtained from Hornbacher's late-requested DNA testing, obtained less than a week before trial. (id. at CM/ECF p.25)

(4) failed to object to the "lack of probable cause" testimony from Nebraska State Patrol (NSP) Investigator Charlie O'Callaghan who wasn't qualified to give expert testimony which is the purview of the judge deciding a search warrant request. (id. at CM/ECF pp. 25, 36)

(5) failed to move for a mistrial based on law enforcement's improper seizure and transportation of both Cook and his truck from Iowa to Nebraska at the time of his arrest, done without Iowa search and/or arrest warrants. No waiver of extradition was signed as well. (CM/ECF p. 34)

(6) failed to investigate Hornbacher prior to trial, even though Cook hired a private investigator through Lefler, who was a former Douglas County Sheriff since neither the Douglas County Sheriff's Dept., Nebraska State Patrol, or prosecutor's moved to get a search warrant for Hornbacher's person, apartment, car, work, etc. aside from the late DNA testing that came back with mixed results. (id. at CM/ECF pp. 31, 36-37)

(7) failed to investigate or inform the trial court or prosecution that Douglas County Sheriff Capt. Dan McGovern had discussed evidence from Cook's case in a class he taught at Iowa Western Community College shortly after Cook arrest, and was the subject of a final exam. (id. at CM/ECF p. 38)

(8) Failed to divulge his friendship with CSI Kofoed to either the court or Cook. Lefler also knew Bart Kofoed, CSI Dave Kofoed's older brother.on a personal level. CSI Kofoed collected the lion's share of evidence in Cook's case. Bart Kofoed was best friends with Boyd "Butch" Hall, one of Cook's workout partners, and Boyd's wife Cynthia came to court to testify against Hornbacher's claim he wasn't a drug user, which Hornbacher testified he "hadn't used drugs since high school", while the truth was that Hornbacher was not only an illegal drug user (marijuance, GHB, steroids, etc.), but was also a drug manufacturer and dealer, making GHB (the "date rape" drug in his kitchen and selling it in Aquafina bottles to customers. Cynthia Hall was not allowed to testify in Cook's case.

(9) failed to request a mistrial or removal of Prosecutor Leigh Ann Retelsdorf due to her ongoing conflict of interest since her husband's law firm sued Cook during trial, and her husband is a private attorney, who represented the victim's family. Corrupt couple were trying to monetize the prosecution by suing Cook, Ford Motor Col, and Bridgestone/Firestone, which is illegal. (id. at CM/ECF pp. 41-42)

(10) failed to object and/or move for a mistrial as to the prosecution's use of Cook's invocation of his rights to remain silent and to counsel after his arrest and his subsequent right to testify on his own behalf.(CM/ECF p.43)

(11) failed to move for a mistrial or object as to Retelsdorf's misconduct in misrepresenting the DNA evidence and calling Cook a "rapist" and "manipulator" throughout trial, prejudicing the jury against Cook, and exciting their passions and prejudices versus judging Cook based on the evidnece. (CM/ECF pp. 44, 67)

(12) failed to prepare adequately (or at all) for the Rape Shield Law hearing and suggested it was because he was "out of town". (id. at CM/ECF p.45,68)

(13) failed to object or move for a mistrial as to untried, uncharged "prior bad acts" evidence (that the judge had ruled was inadmissible pre-trial) yet the prosecution repeatedly tried bringing it up and did so during trial. (id. at CM/ECF pp. 47-49); Agard v. Portuondo, 117 F.3d 696 (1997)

(14) failed to effectively utilize investigative tools at his disposal, such a a private investigator, and obtain missing evidence critical to the defense (such as testimony/depositions on Ken Palattao, Mark Imm, etc.)(ECF p.52)

(15) failed to object or move for a mistrial as to the following instances of misconduct by prosecutor Retelsdorf, who vouched for Hornbacher's credibility through a leading question, elicited testimony from Jeanette Cook that was contrary to the evidence, and mis-stated Cook's testimony to the jury, as well as the ballistic evidence, evidnece regarding injuries to Hornbacher who she said had none (but they never searched Hornbacher for injuries), and improperly instructing the jury on the law during closing arguments, AS A REPRESENTATIVE OF THE STATE? GIVING HER AN INDICIA OF RELIABILITY. (id. at CM/ECF pp. 56-7, 74)

(16) Failed to make an offer of proof re: Cook's excluded testimony about conversations he had with Hornbacher before and after the murder that went to Hornbacher intent and frame of mind when Hornbacher committed the murder.(ECF p.60)

(17) told Cook to remove his suit jacket, show the shock belt restraint system around his arm,,explain it to the jury, right as Cook was set to testify in his own behalf, prejudicing the jury against Cook as they thought he was a "dangerous man" due to the security measure. (id. at CM/ECF p. 64)

(18) failed to show the jury an exhibit called "23 Reasons for Reasonable Doubt" that he'd agreed with Cook multiple times to show during closing argument.

(id at CM/ECF p. 66)

(19) failed to call customer service rep from Hornbacher's cell phone company that would have testified that "Hornbacher called in and told me that his phone had been stolen", which goes to Hornbacher's veracity, or lack thereof;

(20) stood silent and failed to object during the death penalty hearing when prosecutors did not stnnd silent as they said they would, according to Lefler. (id. at CM/ECF p. 67)

(21) failed to request proper jury instructions, including an accomplice jury instruction, which was Cook's only and primary defense. (id at CM/ECF pp. 71-74)

"Failure of a retained counsel to provide adequate representation can render a trial so fundamentally unfair as to violate the 14th Amendment and require habeas corpus relief." Cuyler v. Sullivan, 446 U.S. 1, 100 S.Ct. 1708 (1980)

"Unless a defendant charged with a serious offense has counsel able to invoke the procedural and substantive safeguards that distinguish our system of justice, a seious risk of injustice infects the trial itself and when a state obtains a criminal conviction through such atrial, it is the state that unconstitutinally deprives the defendant of his liberty." id.

> "Defense counsel has an ethical obligation to avoid conflicting represention, and to advise the court promptly when a conflict of interest arises during the course of the trial." ABA Code of Prof. Responsibility, EC5-15, DR5-105

Atty Lefler admitted at sentencing to the judge as he was busy lying about "retiring from the practice of law" that he didn't have time todo the "23 Reasons for Reasonable Doubt" visual aide he'd agreed with Cook to show and explain to the jury during closing arguments, because he said "he just ran out of time" (TBOE Vol. VIII: 1956:10-20)(Also See: Ex. #1)

Lefler bragged to Cook about knowing both Bart Kofoed and Boyd Hall. the later through the rugby team called the G.O.A.T.S. and Bart Kofoed, and Bart himself through the fact Lefler said he'd played in some pick-up basketball games and tournaments Bart was in. Bart Kofoed is a former NBA basketball player and Atty Lefler is a self-proclaimed "basketball expert" having played over 10,000 pick-up basketball games (See: Dotzler v. Tuttle, 234 Neb. 176 (1990))

Lefler's divided loyalties throughout his representation of Cook prevented him from effectively representing Cook, as is illustrated above. The prejudice to Cook changed the outcome of the trial itself, runs contrary to the dictates of Strickland v. Washington, and demands reversal of the lower courts.decision

[2] Lefler admitted to his friendship with CSI Kofoed in State v. Edwards, 284 Neb. 382, 821 N.W.2d 680 (2012) (Edwards' BOE 45: 13-24; Ex. 10 at 4:12-6) CSI Kofoed admitted their friendship and said, "Yes." (Edwards BOE: 45:13-24) Atty Lefler was later the only defense attorney to appear at a CSI Kofoed CSI workshop, where Cook's case was the first topic on the agenda, presented by CSI Kofoed and Prosecutor Don Kleine. (See: HC Ex. #33) Lefler can deny his

relationship with CSI Kofoed to the court all he wants, it wouldn't be the first time he's lied to the court, as Cook has illustrated with Lefler's own motion, lying about his "retirement from the practice of law", when he had NO INTENTION OF QUITTING HIS LEGAL PRACTICE AND STILL PRACTICES 20 YEARS LATER.

Atty Lefler's created a structural error in the trial, that can only be cured by vacating the conviction and remanding back for a new trial, or by any relief this Court deems appropriate.

Question #7: Is it a violation of Cook's right to due process per the 5th and 14th Amendments, and access to the state courts for a federal U.S. District Court judge to deny a pro se pauper litigant's motion for a "stay and abeyance" of his habeas corpus petition per 28 U.S.C. §2254 and §2241(d)(1) once he has shown "good cause" for the "stay and abeyance" AND the question(s) of law being presented need to first be adjudicated and/or exhausted in the state courts, and the legal questions revolve around the State postconviction process, specifically the Nebraska Postconviction Act (Neb. Rev. St. §29-3001 to §29-3004), but also directly impact the exhaustion requirement(s) of the federal courts?

FURTHER ARGUMENT: On pgs. 2 - 4 of Petitoner's "Petition for Writ of Habeas Corpus" (Pg ID #18 - 20), Cook tells the U.S. District Court that his is a "mixed petition" of both exhausted (potentially) and unexhausted claims. He then later motions the u.S. District Court for a "Stay and Abeyance" of his pending habeas corpus petition, asking to be allowed to go back to the State courts to exhaust any potentially unexhausted claims, in light of both the dictates of the federal courts and also those of the Nebraska Postconviction Act, referenced above, which is expressed in four state statutes that Cook wanted to ask the Nebraska Courts to make a decision on in relation to the exhaustion/unexhaustion, and competency and/or effectiveness of postconviction counsel whom was appointed by the State to represent Cook, a pauper, prisoner. Cook's request to go back to the state courts to exhaust any potentially unexhausted claims was DENIED, even though Cook showed "good cause" why a stay and abeyance was appropriate in this situation, especially considering the fact he was trying to exhaust state questions of law that directly impacted his ability to effectively present all his habeas claims as fully exhausted at the state level.

The U.S. District Court judge abused his judicial discretion in not allow for the "stay and abeyance" upon the showing of "good cause", especially when he inserted himself into expressing his judicial opinion of what the State courts would rule on a yet to be determined question of state law revolving around the Nebraska Postconviction Act. This calls for a reversal of the lower court's decision. The issues/claims Cook wanted to return to State court on are partially laid out on pages 3-5 of the "Corrected Motion for Rehearing" rejected by the 8th U.S. Circuit Court, and argued as facts in this argment.

Additionally, there was additional "good cause" to sya Cook's habeas petition, as he had been appointed postconvction counsel by the State, whom had a conflict(s) of interest, which caused him to sabotage Cook's postconviction efforts at the State level.

When a state prisoner files a mixed eptition for federal habeas relief, which contains both unexhausted and exhausted claims with respect to state-court remedies, a federal district court may stay the mixed petition for federal limitations purposes, holding it in abeyance to allow the prisoner to return to state court to litigate the unexhausted claims. Stay and abeyance is permissible only if the prisoner had good cause for failing to exhaust his claims first in state court.

Cook had multiple reasons showing good cause for the grant of a stay and abeyance. These reasons necessitated a STATE COURT decision revolving around the STATE postconviction process, AND SHOULD NOT BE DECIDED BY A FEDERAL COURT IN SUCH A DISMISSIVE MANNER. They included, but would not be limited to:

a. Litigating in Nebraska state courts the fact that state court-appointed postconviction counsel, Soucie, was operating under conflicts of interests that being the already stated fact that he had worked alongside Cook's previous postconviction counsel, Robert Kortus, who'd withdrawn from Cook's case due to a conflict of interest Kortus had explained in a letter to Cook; Soucie only assigned and argued 1 out of 28 claims in the interlocutory postconviction appeal. That was the CSI Kofoed claim. He had chased this claim in regards to Cook's case since he worked at the Nebraska Commission on Public Advocacy with Kortus, the taken a court appointment to Cook's case, knowing full well he had a pre-existing conflict with the case;
The procedural bars erected in Cook's case are almost all attributable to State court-appointed postconviction counsel Soucie, who not only complained to Cook that the district court was only paying him around $8,000 for his case, which he didn't feel was enough, but also would file a brief with the court without showing it to Cook first, so Cook couldn't ask him to change any errors in the brief, such as not assigning BOTH ineffectiveness of trial AND appeal counsel, which is fundamental "legal rule" known by any and all criminal defense lawyer as "common knowledge", especially Soucie, who'd been practicing law for over 30 years, so this can NOT be viewed as an "accidental mistake" and clearly changed the outcome of Cook's postconviction efforts, essentially nullifying them.

b. The fact that the State postconviction court had refused to allow new appointed postconviction counsel to either have a hearing on the pro se "Motion to Alter and Amend" before overruling it, even though Cook requested the judge allow new counsel to hear the motion on the same day Judge Derr appointed new counsel.

c. The fact that the State postconviction court did not allow Cook's new counsel to alter and amend Cook's postconviction motion, even though Kelly Steenbock of the Douglas County Public Defender's Office didn't tell Cook that the court had given him another approx. 1 year to submit an amended postconviciton motion.

Steenbock later withdrew due to a conflict of interest, and argued in a hearing to appoint new counsel that Cook should not get new counsel appointed, even though she'd already withdrawn. Steenbock's argument WAS THE SAME AS THE PROSECUTOR's!

d. The fact that the NE Supreme Court refused to accept and consider Cook's multiple pro se briefs during both the interlocutory and final appeal of his postconviction motion. This was both a denial of Cook's federal due process rights under the 5th and 14th Amendments, as well as went against the common practice of the NE Supreme Court, which had accepted MANY supplemental pro se briefs of past prisoner appellant's, whom also had court-appointed counsel and were appealing murder conviction so the court acted contrary to previous practice and precedent in Cook's case.

e. The fact that Cook's pro se briefs PROPERLY ASSIGNED AND ARGUED THE CLAIMS FOR RELIEF ON BOTH INTERLOCUTORY AND FINAL POSTCONVICTION APPEAL; AND WOULD HAVE ENSURED COOK WAS NOT SUBJECTED TO PROCEDURAL BARS AND WULD HAVE HAD A MERITS RULING MADE BY THE NEBRASKA SUPREME COURT

f. The judgment concerning police misconduct from the actions of CSI Kofoed is legally erroneous and fails to consider the entire scope of Kofoed's misconduct and its' subsequent impact on the trial proceedings and consequential prejudice on Cook in his attempt to obtain a fair trial. It also is legal error that Cook WAS NOT successful in exhausting a claim found of state postconviction concerning this error, and his attorney's assignment of this error on postconviction appeal, as well as Cook's own pro se appeal briefs assigning this error were either adequate to exhaust this error, or a "stay and abeyance" was appropriate.

g. The Postconviction evidence, both in terms of the additional exhibits submitted to the State and Federal courts, as well as the abbreviated State evidentiary hearing, to include the **OMITTED TESTIMONY OF COOK THAT HE WAS NOT ALLOWED TO GIVE AT TRIAL** WAS NOT FULLY CONSIDERED, and IF an evidentiary hearing had been held in the U.S. District Court, with Cook being allowed to testify, as well as postconviction counsel Soucie Soucie would testify that when questioned by a NE Supreme Court justice during oral arguments, he was asked by a Justice, "Did Cook wash the exterior of the truck as well as the insdie of the truck?", to which Soucie replied "I don't know." Soucie then told Cook about the question and Cook told Soucie, "Yes, I did wash the exterior of my truck. I had to think about it, because I didn't remember at first, but I remember distinctly due to the fact that my hands were torn up, and I'm usually able to hold the power wash wand with one hand, but instead I had to hold it with primarily the fingers of both hands due to my injuries. I sprayed the truck down, then soaped it, then rinsed it like I normally do.".

This is a critical piece of evidence in the case, due to the fact that the **bloody, shoeprint found on Cook's truck door was obviously planted by Douglas County CSI Kofed, as CSI Kofoed has done in multiple other murder cases.**

The decisions of the lower courts are in conflict with both Williams v. Taylor, 529 U.S. 362 (2000) and Strickland v. Washington, as Williams emphasized that in determining Strickland prejudice, the court must examine both the tria

conduct and postconviction evidence to determine whether Postconviction relief is warranted. The Postconviction evidence was incomplete due to Soucie's failing ~~to follow up and answer the NE Supreme Court on a~~ critical question which changes the outcome of the postconviction appeal, thereby prejudicing Cook, and meeting the cause and prejudice standard. Atty Soucie could have asked the Justice for time to get Cook on the phone for an answer or requested to meet with his client to supply the correct answer. Instead, Atty Soucie asked Cook about the washing of the exterior of his truck, and when Cook gave him a detailed answer, Soucie told Cook, "Well, I don't want to give them that answer now, they'll just think you are lying.". Cook told Soucie he didn't care what they thought he wanted them to hear the truth and let them decide with all of the facts in front of them.

h. The court has not, and can not, accurately weigh the missing trial testimony (given in Cooks' postconviction deposition and made part of the record in the evidentiary hearing) and other exculpatory evidence, that had it been admitted or know at trial, there is a reasonable probability of a different trial verdict.

Strickland requires that the court consider ALL OF THE EVIDENCE admitted at trial, as well as the evidence that could have been admitted had the defendant had effective assistance of counsek, in applying the reasonable probability standard. Strickland, id.; Williams, id.; Romplilla b. Beard, 545 U.S. 374 (2005).

Because of the failure to consider the entire record and body of evidence or in the alternative, allow Cook a chance to have an evidentiary hearing on claims of prosecutorial misconduct, law enforcement misconduct, etc., it is clear tht there is at least a reasonable probability of a different outcome of Mr. Cook's trial or appeals.

A complete review of the evidence omitted at Cook's trial shows that it is a mixture of both physical, testimonial and expert (DNA) evidence, as has been recited throughout the entirety of this petition and habeas corpus motion, certificate of appealability and motion for rehearing.

This, of course, pulls forward additional questions of federalism and a States' right to decide questions of state laws themselves BEFORE they are subjected to either federal scrutiny or interpretation of state stautes. For example, the Nebraska Postconviction Act, discussed above, MAKES IT MANDATORY that once postconviction counsel has been appointed, they MUST BE BOTH COMPETENT AND EFFECTIVE. This clearly did not happen in the instant case.

The alternative for the federal courts would be to exercise their right to now recognize ineffectiveness of postconviction counsel in the limited context of it being mandated by state statute, thus respecting State law in the process. A statutorily created right cannot exist only as a "statutory right" BUT MUST BE CARRIED OVER TO BE AN ACTUAL RIGHT OF THE CITIZENRY; WITH RESPECT GIVEN TO TO ITS' PLAIN AND ORDINARY MEANING; IF IT IS TO CONFORM TO THE PAST PRECEDENT AND OF THIS COURT; AND IT'S INTERPRETATION OF THE U.S. CONSTITUTION'S 5th, 6th and 14th Amendments.

CONCLUSION

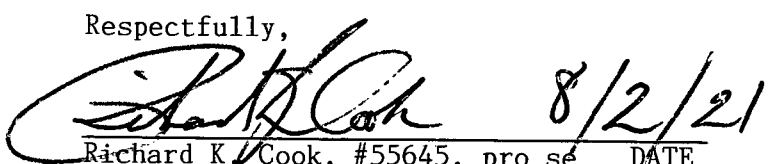
Cause for procedural default of a habeas claim exists, where something external to the petitioner, something that cannot fairly be attributed to him, impeded his efforts to comply with the State's procedural rule. Cook clearly falls into this category of litigants.

As for the prosecutorial and law enforcement misconduct in this case, it is important to remember the clear and unequivocal statement in Olmstead v. U.S., 277 U.S. 438, 485, S.Ct. 564 (1928), "If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of criminal law the end justifies the means - to declare that the government may commit crimes in order to secure the conviction of a private citizen - would bring terrible retribution. Further, "The timing of the government's disclosure of Brady and Giglio evidence and information to the defense is important. In United States v. Pollack, 534 F.2d 964 (D.C. Cir. 1976), this court instructed that "disclosure by the government must be made at such a time as to allow the defense to use the favorable material effectively in the preparation and presentation of its case, even if satisfaction of this criterion requires pre-trial disclosure."

Where the prosecution tardily discloses material pursuant to Brady or Giglio, however, appellants "must establish that had the information or evidence been disclosed earlier, there is a probability sufficient to undermine our confidence in the actual outcome that the jury would ahve acquitted." U.S. v. Tarantino, 846 F.2d 1384 (1988). The petition for a writ of certiorari should be granted.

Cook has met and exceeded these standards for reversal.

Respectfully,



8/2/21

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