No. 21-5552

IN THE

SUPREME COURT OF THE UNITED STATES

BRIAN GREEN — PETITIONER
(Your Name)

vs.

Clinton Perry — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

BRIAN GREEN GDC. 466505
(Your Name)

P.O. Box 426
(Address)

Oglethorpe, GA 31068
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

1. Whether the eleventh circuit erred in holding that no constitutional violations in Green's trial ,When the police officer who investigated Greens case was allowed to participate in the jury selection process and testify in the case.When this ruling is in conflict with other circuits ,who state it is a Sixth amendment and Fourteenth amendment violation and inherent prejudice exists ?

2. Green alleged ineffective trial counsel for not challenging the states case to proper adversarial testing by not filing a Motion to suppress on the Warrantless seizure. The state habeas court replied to the error in its final report and recommendation .Did the Eleventh circuit err in determining this error was not exhausted ?

3. Mr. Green alleged Appellate counsel ineffective for his failure to investigate the Warrantless search and seizure and to enumerate as error on direct appeal that green was denied a full and fair hearing on the fourth amendment violation. The state Habeas court replied

to the error in its final report and recommendations.Did the Eleventh circuit err in determining this error was unexhausted ?

4. Did the Eleventh circuit err in not addressing Greens Fourth amendment violation, Where evidence was used to convict derived from the Warrantless seizure and a full and fair hearing was not provided ? Does a states procedural default hinder Greens opportunity to address a Fourth amendment violation in a federal habeas 28 U.S.C.2254 Where a full and fair hearing was not provided ?

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: Corporate Disclosure Statement

BROWN, Hon. Michael L. United States District Judge

Carlise, Melissa

Creekmore, Ben

Dooley, James - State Prosecutor

Emerson, Hon. David - State trial Judge

Graham, Hon Kristina - State Habeas Corpus Judge

Hill, Meghan H. counsel for Respondent

Salina, Hon. Catherine - United states Magistrate Judge

Steel, Brian - State Appellate Counsel

Williams, Rodney - State trial Counsel

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Note: Nothing was Published

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U.S. v. Satterfield,743 f.2d 827 11thCir (1984) P. 18

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STATUTES AND RULES

28 U.S.C 2254(d)

O.C.G.A. 17-5-30 procedure to file a motion to suppress in Georgia

OTHERS : Material the petitioner believes essential to understand the petition. All exhibits were also entered in the record state habeas hearing and Eleventh circuit court of appeals. petitioner listed exhibits as the events transpired in the case.

EXHIBIT A- first time officers ran the license plate number outside Greens residents 12/15/05.while vehicle parked under Carport.

EXHIBIT D-the arrest warrant officers applied for the next day after running license plate number. (12-16-05)

EXHIBIT B- impoundment sheet ,officers towed Greens vehicle from the residential carport for investigation ,Green was not home or arrested.No exigent circumstances or consent. No search warrant at this time.No photographic line up at this time.(12/17/2005)

EXHIBIT D petitioner now has a codefendant after the illegal seizure ,codefendant I.d. in the vehicle .Still no photographic line up created at this time.(12/21/2005)

EXHIBIT S - officers applied for a search warrant ELEVEN DAYS AFTER THE VEHICLE SEIZED FROM GREENS RESIDENTS. (12/26/2005/

EXHIBIT C- property sheet after the supposed search of the vehicle .Photograph seized out of the vehicle, NOW THE OFFICERS CREATE A PHOTO LINE UP AND SHOW VICTIMS .(12/26/2005).

EXHIBIT F - now the officers start showing a line up (12/28/2005)

EXHIBIT G-petitioners trial attorney files for motion to suppress evidence all evidence derivative of the seizure .

EXHIBIT H-trial attorney filed this because the only picture in

discovery for three years was photograph with petitioner with jewelry on.(05-15-2007)

EXHIBIT 3 - petitioners partial hearing on the motion to suppress ,petitioners attorney filed initially. Note: petitioner only sent cover page couldn't get more copies through the facility. Petitioner sent the record to the eleventh circuit they have copies of the partial motion to suppress hearing.Judge told attorney we would get our hearing and the judge did not honor any of trail attorney's motions so Green could recieve a hearing on the warrantless seizure .(.Motion to suppress transcript p.45-47.)

EXHIBIT I -1 , day of hearing on (04/03/08) state was ready search warrant ,photo line ups that was in the discovery. At the hearing the detective came with a new photo line up that was not in discovery and district attorney never had in his possession.

EXHIBIT I-2 attorney 's motion to reopen the suppression hearing that the state judge said we would get.

EXHIBIT I -3 second motion lawyer filed for a suppression

hearing.

EXHIBIT I-4 trial lawyer was trying to create a defense with the photo line up ,since judge was ignoring trial attorney's motion to suppress evidence ,motions.

EXHIBIT M- instead of giving petitioner a full and fair hearing, the court gave petitioner's Codefendant a plea to go home that day if he testifies in Douglas county against petitioner.(04/03/08).This is the same day after petitioner was deprived of a full and fair hearing ,to prove Codefendants information came out of the illegally seized vehicle.

EXHIBIT J -Had the same trial lawyer for both counties ,FIVE YEARS AFTER PETITIONER WAS CONVICTED, trial attorney decides to investigate the warrantless search and files another motion to suppress in Cobb county .(06/19/2014).After conviction Cobb county put their case on dead dockect.Reason this all relevant because the same line up was given to Douglas county officers to investigate the petitioner .petitioner was deprived by state to put up a defense before trial and trial attorney was incompetent in handling the fourth amendment violation.

EXHIBIT 22 -Petitioner also sent two pages of trial transcript so the court can see the record police officer selecting jurors on a case he investigated.TT p.335-336

Exhibit W - ORIGINAL description given of suspect

Note: Other witness never gave description of suspect.

SHT = State habeas TRANSCRIPTS

TT = TRIAL TRANSCRIPTS

L = Line

Petition for Writ of Certiorari To the Supreme Court of the United States

The Petitioner, BRIAN GREEN, Respectfully PRAYS that A Writ of CERTIORARI ISSUE to REVIEW the JUDGEMENT AND OPINION of the ELEVENTH CIRCUIT COURT of APPEALS RENDERED ON MARCH 17, 2021.

Opinion Below

The Eleventh Circuit Court of APPEALS Affirmed Petitioners CONVICTION IN CASE # 20-13335-J. The OPINION is UNPUBLISHED AND listed AS APPX #1 The ORDER of the ELEVENTH CIRCUIT COURT of APPEALS denying REHEARING listed AS APPX # 6 APRIL 27, 2021.

Jurisdiction

The OPINION of the ELEVENTH CIRCUIT COURT of APPEALS WAS ENTERED MARCH 17, 2021. A timely MOTION to that COURT FOR RECONSIDERATION WAS DENIED APRIL 27, 2021.

The JURISDICTION of this COURT is INVOKED UNDER 28 U.S.C. 1254.

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

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

The opinion of the United States court of appeals appears at Appendix 1 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 2 AND 3 to the petition and is

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

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

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is NO COPY CERTIFICATE PROBABLE CAUSE
[ ] reported at DENIED APRIL 1, 2019; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the CHATTOOGA SUPERIOR COURT STATE HAB court appears at Appendix 5 to the petition and is

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

A.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was MARch 17, 2021.

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

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 27, 2021, and a copy of the order denying rehearing appears at Appendix 6.

[ ] 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend IV Prohibiting Unreasonable Searches and Seizures and The Issuance of Warrants Without Probable cause.

U.S. Const. Amend VI In All criminal Prosecutions, the Accused shall enjoy the Right to an impartial Jury; and the Right to have Assistance of Counsel for his Defense.

U.S Const Amend XIV section 1 Any state shall Not Deprive any Person of life, liberty, without Due Process of the law; nor Deny to any Person within its Jurisdiction the equal protection of the laws.

28 U.S.C 2254 is available for Fourth Amendment violations When a full and fair hearing was not Provided.

28 U.S.C. 2254 is Available for errors concerning Ineffective Counsel on handling of a fourth Amendment Violation Provided same error was exhausted in State Court.

28 U.S.C 2254(d)

28 USC 2254(e)

O.C.G.A 17-5-30

STATEMENT OF THE CASE

Mr.Green was convicted of armed robbery and received a life without PAROLE sentence. His conviction was affirmed on direct appeal. Green filed a Habeas Corpus petition in the superior court of Chattooga county in 2012 and raised several constitutional violations dealing with the Fourth amendment and Sixth amendment and Fourteen amendments.Greens state habeas Corpus petition was denied June 2017,appx #5. The supreme court of Georgia denied Greens application for a certificate of probable cause in April 2019. Mr.Green ,then filed a habeas corpus action under 28 u.s.c.2254. Relief was denied appx #1 .The District court adopted the Magistrates decision and denied COA.appx#2. The eleventh circuit denied relief without addressing the constitutional issues appx # 6 .Green was convicted by illegally obtained evidence and a full and fair hearing was not provided.

A partial license plate number was given to the Cobb county officers, this car was thought to be seen by a witness who worked next to the establishment that got robbed. Through this partial plate number the Cobb county officers obtained Greens address. The officers drove by Greens residence and saw a vehicle parked under the carport that matched the description of the vehicle thought to have been seen by the witness. This vehicle was registered to Green. Exhibit A. Once the officers saw the vehicle, the officers drove back to their county and applied for a ARREST WARRANT ONLY ! Exhibit D. Green was not home when the arrest warrant was served. The Cobb county police officers seized the vehicle parked under the residential carport without a warrant to search or seize.Cobb county applied for a search warrant 11Days After the Seizure of the vehicle from the residence. At this time a photograph of petitioner was seized out of the vehicle and used in the creation of the photo line up. Exhibit B and C. The officers never created a photo line up before the arrest warrant to show to witnesses of the crime.

The photo line up was only created and shown to witnesses after the photographs was illegally removed from the vehicle. Exhibit C and Exhibit #3

p.23 L4. After the illegal search and seizure Cobb county officer called a detective in Douglas county and said you should look into this guy and gave that county the same photo line up, which they used to show witnesses of an armed robbery and petitioner subsequently was picked out of the photographic line up in Douglas county. An arrest warrant was obtained for a Douglas county armed robbery. Petitioner was proceeding to go to trial in Cobb county, petitioner had the same trial attorney for both counties. Petitioners attorney filed several motions to suppress in Cobb county on the warrantless seizure. NOTE : Exhibit # 3 ,is the Motion to suppress hearing where Green only received a partial hearing. These transcripts was submitted with the application for the 28usc 2254 . Once the clerk sends for the record it should be included.

During the proceedings with this hearing in Cobb county there was issues with the photographic line up Exhibit #3 p.39 to p.47 . Once it became time to proceed with the hearing about the photograph being removed from the vehicle the hearing was stopped and Green only received a partial hearing. Exhibit #3p.47 . Exhibits G,I-1,I-2,I-3,I-4 and j. Cobb county left their case open to make it seem as we was going to receive a hearing, But they sent petitioner to Douglas county to go to trial there ,using the illegally seized photograph that was used in the creation of the photo line up. Greens attorney did not file the same motion to suppress the evidence out of the vehicle in Douglas county as he did Cobb county with the attorney knowing petitioner did not get a full and fair hearing. Exhibit G and (#3. Exhibit) Green filed in state habeas corpus about the fourth amendment violation and how petitioner was denied a hearing. State habeas transcript p.16,17.petitioner also filed ineffective on trial counsel for his failure in not challenging state's case to proper adversarial testing by failing to file a motion to suppress on the warrantless seizure. Green submitted a brief at the hearing SHT p.11, Greens brief submitted ,Ground 8 p.29-39 ,the state answered but did not address the error as petitioner presented it.

State habeas ~~co~~ final order p.13 appx #5, Even though the state answered error 8 that was submitted by petitioner for trial counsels failure to challenge the warrantless seizure.The Magistrate claims this error was unexhausted appx#4

p.8 error 3(A). States attorney just did not elaborate on the substance of the error that petitioner presented. SHT p.16,17

Green ,also submitted error in state habeas on appellate counsel being ineffective for not investigating the warrantless seizure and not raising ineffective on trial counsel for not filing a motion to suppress on the seizure before trial which deprived petitioner an opportunity to have a hearing and to put up a defense on the warrantless seizure of evidence that was put before the jurors. State habeas final order p.16,17 appx #5 error 10. This error was submitted in the same brief (state habeas brief) p.48 error 10 .The states attorney once again did not go into details about the error petitioner presented.

This error ground 10 once again the federal court said it is unexhausted ,Magistrates final order appx #4 p.4 and p.8 4(a),4(d). So,the question is if the states attorney answered 2 errors on APPEAL COUNSEL DEALING WITH THE FOURTH AMENDMENT VIOLATION APPX #5 P.13 error 9 and P.16-17 error 10. Now see appx #4 P.9,federal court addressed one error on appeal counsel dealing with the Fourth amendment violation ,which was 4(b)and claimed 4(a),4(d) is not exhausted.

During Greens jury selection process ,the lead detective in officers uniform sat with the prosecutor and every answer the prospective juror gave during voir dire the officer wrote it down in front of them. The detective told the new ADA of that county who to select for the officers case .The prosecutor never asked the court for permission to allow a witness or why he would need a witness to help strike the jury. The court never inquired if any of the prospective jurors are related or acquainted with the officer. This happened before the rule of sequestration was invoked.The state habeas court did not address the constitutional issues Green presented. The state habeas denied this error based OFF the rule of sequestration the rule was invoked the day after jurors was selected. This rule was formulated for the orderly presentation of evidence O.C.G.A.24-6-615 ,not for a police officer who investigated the case to select jurors he wants and testifies in the case also. Appx #5 p.9 see TT p335-336 . Exhibit 22

FOR ERROR #1, These circumstances are unique and it is a conflict among circuits regarding, A police officer who investigates a case be allowING to be involved in the jury selection process and testify.The supreme court can distinguish the difference between the officers presence for orderly presentation of evidence and being involved with the jury selection process.

Before the beginning of Greens jury trial, During the jury selection process the police officer who was the lead investigator of the case wore his officers uniform and sat with the district attorney and told him who to select for his case and he also testified. Exhibit 22-(transcript from jury trial p.335-336).

Green raised this error in state court and federal court and raised violations of the sixth amendment to a impartial jury and a fair trial, as well as the fourteenth amendment to due process of the law and equal protection of law.

The state habeas final order p.9 and 10 did not address any of the constitutional violations petitioner put forth appx#5 .The federal court did not address any of the federal violations Green put forth appx#4 p.12and13. Petitioner also raised in state habeas hearing ,trial counsels ineffectiveness for not objecting to the Jury selection process.

Also,appellate counsel for not raising error on trial counsel during direct appeal. State habeas final order appx#5 p.9-11.Before jury selection began the district attorney did not ask the trial judge for permission, nor did he explain why the POLICE OFFICER would be needed to select jurors for the case he investigated and will testify in.

Before jury selection, the prospective jurors was never questioned if anyone is a blood relative of Captain Davidson (police officer) or if anyone was even acquainted with him.TT p.36. During the voir dire personal questions was being asked TTp.38. The police officer was writing all the answers prospective jurors responded to down on a pad in front of them.TT p.335 L23-25. Exhibit 22

The officer was not the officer who applied for the arrest warrant TT p.330L10 he was only listed as a witness on the indictment. THIS OFFICER WAS NOT AN OFFICER OF THE COURT. The jury was selected before the rule of sequestration was invoked.TTp.52-53.now see TT p.76. In Greens presentation of this error he never addressed or argued any matter of the rule of sequestration. State habeas trans p.13-15.

Green cited cases such as PILCHAK V. CAMPER,741 F.SUPP 782,8thCir. This case states: The sixth amendment to the constitution of the united states Mandates a fair and impartial jury.Accordingly,the participation of an interested official in the jury selection process is fundamentally unfair and thus a violation of due process. This case does not differentiate between by-standing jurors or prospective jurors.

In case MARTINEZ V.STATE,0808019298WCC,DELAWARE SUPREME COURT(4-29-2010) States in error 10,"THE SUPREME COURT HAS NOTED THAT A VIOLATION OF ACTUAL OR INHERENT PREJUDICE IS FOUND ONLY WHEN POLICE ARE PERMITTED TO ASSIST IN THE JURY SELECTION PROCESS". The difference between this case and Green's is Green has evidence in the record TT P.335-336. In case HENSON V.WYRICK,634 F.2d 1080 8th Cir states "WHEN THE OFFICER SELECTS A JURY BASED ON SUBJECTIVE RATHER THAN AN OBJECTIVE CRITERIA THE POTENTIAL FOR PREJUDICE IS GREAT.TT P.336 L8-16. Exhibit 22

In case COURY V.LIVESAY,868 F.2d 852 6thCir,in this case it does not differentiate between by -standing jurors or prospective jurors. This case was not reversed because the officer involved in selection of the jurors was not involved in the investigation. Petitioners case is opposite TTp.336L14-25. Exhibit 22

The police officer who assisted in selection of the jury gave prejudicial testimony at trial,he vouched for the prosecutions method of preparing witnesses before trial.He gave expert testimony on M.O. and explained why petitioner is a suspect TTp.309-335 . The trial judge prevented trial counsel from asking prospective jurors would they be more prone to believe testimony of a officer over the ordinary witnesses TTp.42. The federal court did not

review petitioners error on trial courts limitation of voir dire appx #5 p.11. The state did not give any jury instructions for guidance for credibility of an officers testimony. See case UNITED STATES V. ANAGNOS 853 F.2d 1 (1st Cir)1988. Green cited to the states habeas court case IRVIN V. DOWD 366 U.S.717,6L.ed2d751. States" A problem may be compounded when a possibility of bias arises,parties which could possibly influence a juror .It is important for the court to retain the doctrine of implied bias to preserve sixth amendment rights. The right to a trial by an impartial jury lies at the very heart of due process. There was no way to determine if any juror was influenced or intimidated by the officer selecting them for his case. There is a reasonable possibility prospective jurors were likely to draw adverse inference from Captain Davidson in uniform selecting jurors inference quilt of petitioner in their mind central to right to a fair trial guaranteed by the sixth amendment and fourteenth amendment is the principal that one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of evidence introduced at trial,certain practices pose a threat to the fact finding process.ESTELLE V. WILLIAMS, 425 U.S. 501,48L.ed2d126(1976).

The system should guarantee" not only freedom from any bias against the accused, but also from any prejudice against his prosecution. Between him and the state the scales of justice are to be evenly held.HAYES V. MISSOURI, 120 U.S.68,30 L.ED758. The state courts habeas final order appx #5p.9 States"PETITIONER CITED NO RULE OF LAW"this is a good reason why this court should grant certiorari. Petitioner cited cases from other appeal courts.
The States Attorney Also, cited NO CASE.
A writ of certiorari should be granted to give courts guidance on whether or not a police officer can be involved in selecting a jury and testifying in a case he investigated.

2. RESTRICTION ON HABEAS CORPUS REVIEW OF FOURTH AMENDMENT CLAIMS HELD NOT APPLICABLE TO SIXTH AMENDMENT CLAIM THAT ASSISTANCE OF COUNSEL WAS INEFFECTIVE BECAUSE OF INCOMPETENT REPRESENTATION ON FOURTH AMENDMENT ISSUES KIMMELMAN V.MORRISON 477 U.S.365,91Led2d305.

Green raised in brief submitted at state habeas hearing to support his application, with exhibits of trial attorney's Motion to suppress evidence from the warrantless search and seizure and evidence of the Partial hearing .SHT P.11-12,P.16L 16-25,P.17-19 ERROR #8 PETITIONERS STATE HABEAS BRIEF P.29-39. STATES FINAL ORDER APPX #5 P.13 ERROR #8.

According to Supreme court case BALDWIN V.REESE,541 U.S.27,29(2004) STATES"to determine whether a petitioner fairly presented a claim before the state courts 1)relied on relevant federal cases applying constitutional analysis; 2)relied on state cases applying federal constitutional analysis to a similar factual situation; 3) asserted the claim in terms so particular as to call to mind specific constitutional right 4)alleged a pattern of facts that is well within the mainstream of federal constitutional litigation. Green submitted error #8 in his state brief ,which states petitioners sixth amendment right to effective assistance of counsel was violated, through pre-trial procedures and criminal trial. The facts and argument Green presented in this error was how trial attorney was incompetent in representation on fourth amendment issues.Case KIMMEL V.MORRISON, 477 U.S. 365(1986) is based on ,which Green cited in his argument in his state habeas brief p.35 error #8.Petitioner cited STRICKLAND V.WASHINGTON, 466 U.S.668(1984) on ineffectiveness (brief submitted at state habeas p.30 error #8) on counsels ineffectiveness. UNITED STATES V.LAMAS ,930F.2d1099 5thCir(1991) Greens brief p.32 error #8 based on the exclusionary rule.Green cited WONG SUN V.UNITED STATES,371 U.S.471,83S.CT407(1963) p.34 in brief submitted to address fruit of the poisonous tree. Green cited HUYNH V. KING,95 F3d 105,11thCir .(1996) p.36 error 8 which is similar facts to petitioners. Green cited also, in error #8 p.37 WARDEN V.HAYDEN 387 U.S.294,87S.ct1642 and MAPP V. OHIO, 367U.S.643,6L.ed2d 1081 p.39 Error #8.

The states attorney answered ground #8 in states final order p.13.The states attorney did not go into what ground 8 was based on ,which is trial counsels failure to file a motion to suppress on the warrantless search and seizure. Green filed a federal habeas 2254 stating how trial counsel was ineffective for his failure to file a motion to suppress on the warrantless seizure .

The Magistrate claims this error is unexhausted .Magistrates final order p.4 error 3(a), p.8 the magistrate claims 3(a) was not presented in state habeas hearing appx#4. But,yet the state habeas court answered ground 8 p.13 appx #5.The district court adopted the magistrates findings which is in-correct. A state prisoner is required to present the state courts with the same claim he urges upon the federal courts PICARED V. CONNOR,404U.S.AT 276,92S.ct at 512.petitioner presented same facts and substance of the claim. In case NEELLEY V. NAGLE,138F.3d917 11thCir(1998). States: When a claim was adjudicated on the merits in state court proceedings the claim must be evaluated under 2254(d) Ground 8 was submitted at state habeas hearing SHT p.11-12.

Green had the same trial attorney for both Cobb and Douglas county where trial took place. Trial lawyer filed a motion to suppress evidence from the warrantless seizure in Cobb county where the officers seized Greens vehicle from his residence when Green was not home.EXHIBITS G AND H. At this particular hearing there was a undissolved dispute on the evidence Exhibit #3 p.39-43,p.45-47. Even though the states attorney was ready for the suppression hearing Exhibit G and i-1(the search warrant applied for 11 days after the seizure). The state court decided not to give petitioner a hearing on evidence seized out of petitioners vehicle. Exhibit #3 p.47 L 20-22. The court in turn decided to give Codefendant a plea TO testify IN Douglas against petitioner. Exhibit M. Before trial in Douglas county trial lawyer filed several motions in Cobb for the suppression hearing where the dispute was never resolved. Exhibit #3 p.45, Exhibits i2,I 3. Greens was hindered from putting on a defense from the warrantless search and seizure.

Cobb county officers seized Greens vehicle from his residence without a

warrant.The officers only had a arrest warrant .The officers saw the vehicle parked at the residence before applying for arrest warrant.The officers never created a photo line up to show witnesses until they seized Greens vehicle removed photographs then created the line up. Exhibits B,S,C,F. Then the officer called an officer in Douglas county and said you should investigate Green and received the photo line up with the illegally seized photograph and Green got I'ded in Douglas county. Trial attorney did not file same motion in Douglass county like he did in Cobb.Exhibit G on the warrantless seizure. All evidence used was the fruit of the poisonous tree ,came after illegal seizure.

Greens trial attorney only investigated the illegal seizure and laws pertaining to the seizure after Green was convicted EXHIBIT J ,GREENS TRIAL ATTORNEY FILED ANOTHER MOTION TO SUPPRESS FIVE YEARS AFTER GREEN WAS CONVICTED WITH THE EVIDENCE.

Prejudice: State court would have granted Greens motion to suppress based on supreme court case COLLINS V VIRGINIA, 138S.ct 1663,201 l.ed2d 920(2018) curtilage is considered part of the home. Officers had no lawful access to the vehicle. Green was not home ,no exigent circumstances or consent.No probable cause evidence was in the vehicle the crime was supposed to happen a week prior .Exhibit D. No photo line up was developed before arrest warrant or illegal seizure. The photo line up had a reasonable probability to be excluded and testimony regarding out of court identification according to case U.S V.CARTER, 2009U.S.DIST LEXIS9607 ,and MAPP V. OHIO, 367 U.S.643, illegally seized evidence not to be used in any trial. Greens fourteenth amendment to due process was violated on a right to be heard on a motion to suppress evidence and an opportunity to challenge the states case to proper adversarial testing.

There is a reasonable probability that the verdict would have been different there was ample evidence the prosecutor went over witness testimony several times before trail. TT p. 197-198,268-269 , There was NO FINGER PRINT EVIDENCE TTp.316-318. Th descriptions was inconsistent TTp.201,TTp.272-274. Green was not arrested in Douglas count until three years this crime supposed

to taken place. Being trial attorney did not have an opportunity to know where the photo came from and which was the original line up and did not file a motion to suppress evidence on the warrantless seizure before trial ,he was incompetent and unreasonable prevailing professional norms. TTp.72, TTp.516-527. There would be nothing strategic about investigating the illegal search after your client has been convicted. EXHIBIT J .Green was entitled to be assisted by an attorney to insure the trial is fair. STRICKLAND V. WASHINGTON, 466U.S.668,80 L.ed2d 674. When the state fails to give at least colorable application of the correct Fourth amendment constitutional standard there has been NO OPPORTUNITY FOR A FULL AND FAIR CONSIDERATION. GAMBLE V. OKLAHOMA,583 f.2d1161 Exhibit #3 p.45-47

There was an unconscionable breakdown in the procedures provided, the state unconstitutionally deprives the petitioner of his liberty.

The district judge in his final order dated October 27,2020 p.4 where he states "just one example, where it says petitioner asserts trial counsel " Ground # 8 in brief submitted at state habeas hearing states trial counsel p.29 to39. The argument in ground 8 is based off trial counsel.The states attorney in his final order acknowledges the error is based off of trial counsel .Appx #5 p.13 ground 8 it clearly states trial counsel.THE DISTRICT COURT ERRED IN NOT EVALUATING ERROR ON TRIAL COUNSEL AND CLAIMING IT IS NOT EXHAUSTED.

ERROR 3. Green raised in ground 10 in his brief submitted at the state habeas hearing SHT p.11,12. Petitioner was denied effective assistance of Appellate counsel in violation of the sixth amendment and denied the right to due process under the fourteenth amendment.

Appellate counsel was constitutionally ineffective by his failure to investigate trial counsels pre-trial errors and for not raising the fact that petitioner never received his constitutional right to have a full and fair hearing. Green testified as evidence at the state habeas hearing the substance of this error to fairly give the state courts an opportunity to address this error. SHT p.25 L21-25, p.26-28.

In the states habeas final order p.16 (at the bottom of the page) and p.17 the states attorney answered ground 10,meaning he replied to the error. Appx # 5.

Green submitted in ground 10 all the facts based on constitutional errors in accordance to the ineffective assistance claim. Green cited STRICKLAND V. WASHINGTON, 466 U.S.668, KIMMELMAN V. MORRISON, 477U.S.365,106S.ct 2574(1986) . Green cited HOUSE V. BALKCOM,725 F.2d 608,11thCir based on inadequate investigation.

The Magistrate judge of the federal court claims this error is not exhausted appx #4,p.4 and on p.8 the magistrate claims 4(a),4(d) is not exhausted and failed to review. The district judge adopted the magistrates findings along with the 11thCircuit. YET ,the state habeas final order addressed error 10 just not in federal constitutional terms as petitioner presented it. See ground 10 brief submitted SHTp.11,12 in brief p.48-58 Ground 10 submitted at the state habeas hearing.

In case OGLE V.JOHNSON, 488f.3d 1364(2007) states: Where the petitioner calls the state courts attention to ineffective assistance problems and the court examines the crucial aspect of counsel's representation, the petitioner may relitigate the constitutional claim in federal court. STATES HABEAS FINAL ORDER P.16-17 GROUND 10 Appx #5.

PICARD V.CONNER,404 U.S.270,277-78,30l.ed2d 438(1971) States: To satisfy the

exhaustion requirement, the petitioner must have fairly presented the substance of his federal claim. A claim is fairly presented if the petitioner has described the operative facts and legal theory upon which the claim is based.In state habeas and federal court petitioner raised and presented evidence of how appellate counsel was ineffective for not investigating petitioners trial counsels pre-trial errors for not filing a motion to suppress on the warrantless seizure from petitioners home before trial in Douglas county and for not presenting evidence Green was denied a full and fair hearing violation of the fourteenth amendment and a right to a fundamentally fair trial to be able to put up a defense on the warrantless search and seizure.

Green informed appellate counsel about the warrantless search from Greens residence. Green informed the counsel that all the evidence used in trial was obtained after the illegal seizure.Petitioner informed appellate counsel that the Cobb county officer called Douglas county after the illegal seizure and gave them the photo line up to use to investigate robberies in that county.

Green was not home during this warrantless seizure, no exigent circumstances or consent. The states attorney acknowledged that Green was not home (states final order p.8 Appx #5) . To show how appellate counsel did not investigate, States habeas final order appx #5 p.15 appeal counsel states : petitioner was there ,appellate counsel thought taking of the vehicle was incident to arrest and it was not Green was not home.SHT p.22 L21-25, p.25 L21-25 ,p.26-28, p.35

Appellate counsel was under the impression trial counsel never filed a motion to suppress the evidence from the warrantless search and seizure .SHT p.37 L1-15 .Appellate counsel was wrong trial counsel filed Exhibit G,i-2, i-3. If the appellate counsel would have investigated he would have found Green was not home during the illegal seizure and that trial attorney did file a motion to suppress and the state declined to hear or rule on the motion denying petitioner an opportunity to put up a defense on the warrantless seizure.

In case HORTON V.CALIFORNIA, 496 U.S. 128,136-137 States: an officer must have a lawful right of access to any contraband he discovers in Plainview in

order to seize it with out a warrant.

GREENS case is similar to UNITED STATES V. CARTER,2009 U.S.DIST LEXIS 9607(2009). It was the creation of the photo line up through the exploitation of that illegality. If appellate counsel would have raised ineffective on trial counsel during Direct appeal for his failure for not filing a motion to suppress on the warrantless seizure, the court would have found the suppression motion had merit.Why would the trial lawyer file a motion to suppress in Cobb county and not Douglas county based on same evidence ? Exhibit G, i-2,i-3 and J.

Prejudice: Once a lawyer files a motion to suppress the burden is on the state to prove the evidence is legal. Exhibit G. If appellate counsel would have investigated he would have realized trial attorney did file a motion to suppress the evidence from the warrantless seizure and the state interference by officials denied trial attorney an opportunity to put up a defence. Exhibit i-2, i-3, i-4 and exhibit #3,TT p.525-526. The only evidence put before the jury was the photo line up, which was created only after the photograph was seized out of the vehicle.

The direct appeal court would have found trial counsel ineffective, he was so unreasonable after trial he renewed his request for a suppression motion after he investigated ,petitioner was convicted already .Exhibit J

Appellate counsel says he didn't raise this error because witnesses iDe'd petitioner on the stand which is unreasonable if the court would have given a hearing the photo line up would have been suppressed and testimony concerning . The witnesses ID's was not competent each witness gave a different description of the perpetrator TT p.201-203. TT p.272-275. The district attorney went over testimony several times before trial on identification TT p.267-269 ,TT p.197-198.

Appellate counsel explained in states habeas hearing he didn't raise the fourth amendment violation based on inevitable discovery which is unreasonable under STRICKLAND.SHT P.39 L24-25 P.40 L1-5

Inevitable discovery would not stand in petitioners circumstances.

U.S.V SATTERFIELD,743 F.2d 827 11thCir(1984) The police officers at the time of the seizure did not possess legal means of discovering the evidence ,a warrant,nor were they actively pursuing such means they had not initiated the warrant process .If appeal lawyer would have investigated he would have learned the officers applied for a search warrant eleven days after the illegal seizure Exhibits B and S.

Independent source would not stand ,because the officers at no point relinquished control of the vehicle and its contents there was no interruption of the illegal seizure. MCGARRY INC V.ROSE,344 F.2d 416 1stCir(1965).

In case NIX V. WILLIAMS, 467 U.S.431,81Led2d 377(1984) The court announced the inevitable discovery and the independent source is not to be speculated on.Its up to the prosecution to prove .If the district court would have realized petitioner did exhaust error 4(a)4(d) appx #4 magistrates findings .There is a reasonable possibility the District court would have granted the writ.states final order appx #5 p.16-17 error 10 .

UNITED STATES V.CRONIC,466U.S.648 . Greens trial was fundamentally unfair ,when unable to put up a defense on the warrantless seizure appeal counsel was unreasonable for not enumerating as error trial lawyers incompetence and the states interference with petitioner receiving a full and fair hearing on the fourth amendment claim.

4. REASONS FOR GRANTING THE PETITION FOR GROUND FOUR INVOLVES UNUSUAL CIRCUMSTANCES WITH THE FOURTH AMENDMENT AND WHEN A FULL AND FAIR HEARING IS NOT PROVIDED BY THE STATE.

Is the federal habeas 28 U.S.C. 2254 a legal avenue for a state prisoner to use when there is a fourth amendment violation and the state deprived the prisoner a full and fair hearing ?

In petitioners case the state used inevitable discovery ,independent source and the attenuation doctrine being the case they admitted to a fourth amendment violation. The petitioner has been claiming in state court and federal court that he was deprived a full and fair hearing on the warrantless seizure of evidence from petitioners home.

The state court or federal court never addressed if petitioner was deprived of a hearing on the warrantless search and seizure of evidence.

Most importantly ,the usual defense used in a case where a state prisoner claims a fourth amendment violation is the courts determine if the prisoner was granted a hearing on the violation and determine if the supreme court precedent applies which is STONE V. POWELL, 428 U.S. 465 as a defense. Which neither state or federal court applied in Greens case. Should Greens case be relevant in determining when a federal court should inquire if the state court deprived a petitioner his fourteenth amendment on a right to be heard ?

Does a states procedural default hinder a state prisoner from his case being evaluated under 28 U.S.C. 2254 ,when the petitioner makes a claim that illegally seized evidence was used for a conviction and a full and fair hearing was not provided on the fourth amendment violation ?

28 U.S.C.S. 2254 ,provides that a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgement of a state court only on the ground that he is in custody in violation of the constitution or laws of the united states. The substance of a federal corpus claim must first be presented to the state courts to satisfy the

exhaustion of remedies requirements of 28 U.S.C.S.2254(b).

Petitioner exhausted state remedies to the Supreme court of Georgia by enumerating as error that petitioner was convicted by illegally seized evidence and a full and fair hearing was not provided. The fundamental premise remains that" it is the substance of the claim that the courts looks in to when analyzing whether a federal claim has been voiced. Petitioner presented the state court with "an opportunity to apply controlling legal principles to the facts bearing on his claim. In case SNOWDEN V. SINGLETARY,135 F.3d 732,735 11thCir(1998) it states " to exhaust state remedies fully the petitioner must make the state aware that the claims asserted present federal constitutional issues".

Petitioner cited facts and federal cases for his fourth amendment violation such cases as STONE V.POWELL,428 U.S.465 and TOWNSEND V. SAIN,372 U.S.293 and COLLINS V. VIRGINIA, 138 S.ct 1663(2018). Petitioner alleged to the state and federal court the facts of how petitioners opportunity for a full and fair litigation of his fourth amendment claim was impaired by the state ,which in turn created the procedural default that should be imputed to the state.

The courts erred by not addressing petitioners opportunity to be heard on his fourth amendment violation before trial, Which made petitioners trial fundamentally unfair by hindering his opportunity to put up a defense on the illegally seized evidence " fruit of the poisonous tree" Usually, a federal habeas corpus 28 U .S.C.S.2254 is the avenue provided for a person convicted of illegally obtained evidence where no opportunity was available for a full and fair litigation of a fourth amendment claim in state court. SHT p.15-19, p.21-28.

An armed robbery took place in Cobb county ,a witness who was next door to the establishment that got robbed gave the investigator a partial plate number of the supposed get away vehicle. A week later through this partial license plate number, the Cobb county police officers obtained Greens home address. The Cobb county officers drove by Greens residence a week after the alleged crime supposedly took place and saw a vehicle thought to match the vehicle thought leaving the scene of the crime parked under the carport of the

residence it serves. The Cobb county officers drove to Cobb county and applied for an ARREST WARRANT ONLY! this was the day after seeing the vehicle at the residence. When serving the Arrest Warrant Green was not home, the officers decided to seize the vehicle that was registered to Green and parked under the Carport. Exhibit b there was no consent or exigent circumstances.

After breaking into the vehicle to seize it from petitioners home the officers decided after eleven days of the seizure to apply for a search warrant.Exhibit S

Once the officers so called search the vehicle they removed photographs and used them to create a photo line up. Exhibit C . The officers never created a photo line up to show witnesses of the crime before applying for the arrest warrant or the seizure of the vehicle. After the officers created the photo line up with the illegally seized photographs then they showed the line up to witnesses of a crime.Petitioner now received a codefendant because his identification was in the vehicle.

The Cobb county police officer after he did the illegal search and seizure called a detective in Douglas county and explained they should investigate petitioner and gave them the same photo line up created after the illegal search. Green was Id'ed in Douglas county after officers canvassed unsolved robberies. Petitioner went to trial in Douglas county after petitioner was denied a full and fair hearing on the fourth amendment violation in Cobb county on the illegally seized photograph,the only physical evidence presented at trial and used to convict petitioner in Douglas county.

Cobb county officers claim they seized the vehicle because of plainview,which would be inapplicable to the warrantless seizure in Greens case. Petitioner cited in his brief to the state and federal courts supreme court case COLLINS V. VIRGINIA, 138 S.CT 1663 (2018) it states "When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the fourth amendment has occurred. Such conduct thus is presumptively unreasonable absent a warrant. The officers never had lawful right of access to seize the vehicle, parked within a home or its curtilage because it does not justify an intrusion on a person's seperate and substantial

Fourth amendment interest in his home and curtilage . Green had an expectation of privacy and possessory interest in the curtilage of his home and contents of the vehicle. There was no exigent circumstances or consent given for the warrantless seizure.

STONE V.POWELL,428 U.S.465 (1976) Requires that a state court take cognizance of the constitutional claim and render a decision in light of. Exhibit G and exhibit #3. The motion set forth demonstrated Green had standing to challenge the search. An "unanticipated and unforeseeable" Procedural rule deprived Green of a fair opportunity to present his claim to the appellate court. Green was precluded from using the corrective mechanism provided by the state for a person aggrieved of an illegal search and seizure, Which is a violation of due process.THERE WAS A SHAM PROCEEDINGS EXHIBIT # 3 P.45-47.

The original jurisdiction Cobb county who did the illegal search and passed the same evidence to Douglas county, told Greens trial attorney he would get a hearing and be able to present facts Exhibit #3 p.40-47 the judge p.40 L14-16,p.43 L20-22,p.45 L13-25 ,p.46 L20-25(p.47 L20-22 ,for exhibit G).

trial attorney filed motion exhibit h ,at the hearing the detective now has a photo line up that was never in discovery and the D.A. never had by this time petitioners attorney had discovery for three years .No evidence of a parole picture was ever in discovery. The state court would not allow Green an opportunity to prove the photo came from the vehicle. Fruit of the poisonous tree. That same day Green was denied a hearing on the warrantless seizure, the judge offered codefendant a plea to go home that day if he testifies in Douglas county. Exhibit M. Codefendants information came out of the vehicle after the illegal search .exhibit E and C fruit of the poisonous tree .The next day after Green was deprived of a hearing he was sent to Douglas county.

Green had the same trial attorney for both counties ,Trial lawyer didn't file same motions in Douglas county like he did in Cobb county exhibit G .this is when trial lawyer was incompetent when the lawyer knew the court refused to hear the case Exhibits ,G ,i-2 ,i-3 , i-4. At the particular hearing before trial in

Douglas county on the line up being suggestive ,the trial attorney nor the Douglas county D.A. subpoena the detective who did the illegal search and took the photograph out of the vehicle, so it could be determined where the photo came from. TTp.61 L-15 the only testimony from the Douglas county officers was we got the line up from Cobb county.

During the course of trial the attorney went through issues again with the line up TT p.516-528 and by precluding petitioner from a full and fair hearing it hindered his opportunity to put up a defense TTp.526-528 Cobb county left their case open as petitioner was still going to get a hearing .exhibit G and h. Both prosecutors knew there was an issue with the line up ,with the picture used out of the vehicle .TT p.134-137.before trial trial lawyer brought to courts attention TTp.1 L10-13 he is speaking on Cobb counties motions exhibit G photographs seized out of the vehicle. Even the judge was aware there was a problem with the line up TT p.75 L18-22.

Petitioner was deprived of the Sixth amendment fundamental right to a fair trial and fourteenth amendment to due process on a right to be heard and a full opportunity to put up a defense on the illegally seized photograph. TT p.526 L2-16. The lawyer was deprived from addressing the issues because motions was still pending in Cobb county and the district attorneys have been working together in order to obtain a conviction TTp.134-137 Exhibit # i-4.

Petitioner was also deprived of an interlocutory appeal if the court ruled the photograph used in the line up was admissible .Green received a Sham hearing and trial attorney was ineffective for not raising a motion on the warrantless seizure. Even after thorough investigation Greens trial attorney filed another motion to suppress FIVE YEARS AFTER GREEN GOT CONVICTED WITH THE ILLEGALLY SEIZED EVIDENCE. EXHIBIT J .APPELLATE COUNSEL WAS INEFFECTIVE FOR NOT RAISING INEFFECTIVE ON TRIAL ATTORNEY DEALING WITH THE FOURTH AMENDMENT VIOLATION ON DIRECT APPEAL.

In case CRANE V. KENTUCKY, 476 U.S.683, states "Due process clause of the fourteenth amendment of the U.S. constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. An essential

component of procedural fairness is an opportunity to be heard ,with out the opportunity it deprives a defendant of the basic right to have the prosecutors case encounter and survive the crucible of meaningful adversarial testing.

The state courts and the federal court never addressed Greens opportunity for a full and fair hearing. SHT p.16-19. The federal court erred by addressing procedural default on Greens fourth amendment claim and not evaluating Greens being denied a hearing and addressing the Unconscionable breakdown in the system. Green requested for an evidentiary hearing under 28 U.S.C. 2254(E) and showed he was qualified and requested an attorney under U.S.C.3006A.

Green showed cause for procedural default and showed how external impediment blocked Green from asserting his federal claim on direct appeal.

MURRAY V. CARRIER, 477 U.S.478(1986) ,SEE ALSO EDWARDS V. CARPENTER, 529 U.S.446(2000). EXHIBITS G , #3 , i-2, i-3,, i-4 and exhibit j .

Prejudice: petitioner was convicted without able to put up a proper defense .These errors worked to Greens actual and substantial disadvantage infecting the entire trial with error of constitutional dimensions. U.S.V.FRADY,456 U.S.152.

28 U.S.C.2254(d)(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. In the states final order the states attorney unreasonably applied the Supreme court case UTAH V.STRIEFF,136 S.CT 2056,2061(2016) to the facts of Greens fourth amendment violation .States habeas final order appx #5 p.16 .There was no attenuation ,the officers illegally seized the vehicle and its contents used information and photograph to create the photo line up. After the illegal search the Cobb county officers called Douglas county officer and told them to investigate petitioner.The Cobb county officers gave them the photo line up they created with the illegal seized photo. The Douglas county officers started canvassing armed robberies until petitioner was id'ed.

Green was not under investigation in Douglas county until after the illegal

seizure " fruit of the poisonous tree" Greens fourth ,sixth and fourteenth amendment was violated in order to obtain a conviction. Douglas county was aware of the illegal seizure.TT p.504-508, TT p.330 L-7 ,TT p.350 L-3 ,TT p.358 L10-14 ,TT p.133. In case UTAH V. STRIEFF,136 S.CT 2056,2061(2016) "The probable cause flows directly from the unlawful seizure and does not break the causal connection between the Fourth amendment violation and the search ,it is not therefore an intervening circumstance.

Next factor under UTAH V. STRIEFF ,weighs in suppression of the photo line up and testimony concerning the line up and codefendants testimony is the purposeful and flagrant misconduct. The officer knew that there was no consent ,no exigent circumstances and Green was not home ,there was no probable cause that evidence of a crime was in the vehicle, the crime happened a week prior supposedly. They never showed a photo line up before applying for an arrest warrant to determine if petitioner was the culprit. The officers still engaged in the seizure knowing it was unconstitutional. This misconduct was investigatory in design and purpose and executed in the hope that something might turn up .Exhibit B .

In states final order appx #5 p.16 the state attorney explains how petitioner case fits the attenuation doctrine ,he never cites anything from the record its all speculation. How can the District court without a hearing to determine the historical facts to determine if UTAH V. STRIEFF,136S.CT 2056(2016) applies to Greens fourth amendment violation.

Accordingly,under 28 U. S.C. 2254(d)(1) petitioner has proved the state use of a decision that was contrary to,and involved an unreasonable application of, clearly established federal law as determined by the Supreme of the united states . THE DECISION WAS BASED ON UNREASONABLE DETERMINATION OF THE FACTS. Due process under the Fourteenth amendment states procedural due process, based on principles of "fundamental fairness" addresses which legal procedures are required to be followed in state proceedings, relevant issues, include notice, opportunity for a hearing , confrontation and cross examination, basis for a decision and availability of counsel. Green was

arrested in Douglas county in 2008 this crime supposedly happened in 2005 if the state had to use an in court identification only,, after three years there is a reasonable possibility the outcome would have been different. .exhibit W .state was aware of all the facts exhausted state remedies SHT P.16-27.

Petitioner should have been entitled to a federal hearing under 28 U.S.C.2254(e) Greens case fits the criteria under TOWNSEND V. SAIN 372 U.S.293 AND STONE V.POWELL ,428 U.S.465. THERE IS A DIFFERENCE BETWEEN THE SUPPRESS MOTION ON THE WARRANTLESS SEIZURE BEING REJECTED, WHICH WOULD HAVE GIVEN THE PETITIONER AN OPPORTUNITY TO GO TO THE APPEAL COURT. BUT,WHEN PETITIONERS MOTIONS WAS NOT HEARD AT ALL THIS OPENS THE DOOR FOR A FEDERAL REVIEW OF THE CLAIM THROUGH A FEDERAL HABEAS PETITION UNDER STONE V. POWELL.

The procedural default should have been imputed to the state.

CONCLUSION

For these reasons,a Writ of Certiorari should issue to review the judgement and opinion of the EleventhCircut Court of appeals.

The circuits are in conflict over the question Whether it would be allowable For a police officer who investigated the case be allowed to participate in the jury selection process and testify in the case ,

Would the Eleventh circuit have departed from the accepted and usual course of judicial proceedings when the court fails to address a petitioners assertion that he was denied a full and fair hearing on the fourth amendment claim .When the state does admit there was a fourth amendment violation and does not use the federal precedent Stone v. Powell as a defense to bar review of the claim? Does a procedural default, bar a state prisoner from the federal court evaluation of the fourth amendment claim when a petitioner makes a claim and shows proof he was denied a full and fair hearing ?

This court hopefully will give guidance to circuit courts to determine exhaustion requirements. The Eleventh circuit have departed from the usual course of proceedings when the court determined Green did not exhaust his ineffective assistance claim on trial counsels failure to file a motion to suppress on warrantless seizure .The state court answered the error how did the federal court determine how ground 8 was not exhausted?

The usual course for a federal habeas would be ,if a state prisoner presented error of ineffective assistance of counsel claim and the state court responded to the claim Green can place same error to federal court ,Greens error 8 and 10 to give example,state habeas final appx #5 ground 9 and 10 was appellate counsel errors dealing with the fourth amendment p.13 at the bottom and p.16 at bottom and p.17 states attorney says it mainly discuses fourth amendment violation. Did the Eleventh circuit err in only evaluation of one appeal counsel error on the fourth amendment when Green submitted two ? Appx # 4 p.9 judge evaluation of 1 appeal counsel error on fourth amendment and one error

on jury selection . The court failed to evaluate ineffective counsel claims .

GREENS CASE is similar to case Jefferson V. Upton, 560 U.S. 284 - The state court Habeas Judge merely signed the final order Drafted By the states Attorney. without Revision of a single word.

The state habeas corpus failed to explain the basis for its credibility findings

Appx #5 P. 8 where state uses case Teal V. state. This evidence of facts the Attorney Presented was never in the Record.

P.16 These facts was Also Never presented in the Record. The states Habeas Attorney only asserted his opionion AND speculations. There was no hearing To Apply the Attenuation doctrine to know what the officer Did or Didnt Do. In Case Utah V. Strieff 136 S.Ct 2056 This court gave a motion to suppress hearing. States order Appx 5 P. 15

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SUBmitted July 15, 2021

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