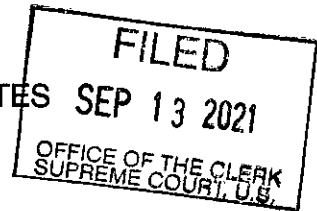


No. 21-5830

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



BRAD JOHNSON — PETITIONER
(Your Name)

STU SHERMAN vs. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For The Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRAD JOHNSON
(Your Name) CDC#AS-3996

P.O. Box 500
(Address)

CHINO, CA 91708
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether the 9th Circuit
erred when it denied my
Certificate of Appealability.

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:

RELATED CASES

JOHNSON V. SHERMAN No. 5:17-01860-ODW-ADS
U.S. DISTRICT OF CALIFORNIA FOR THE CENTRAL DISTRICT JUDGEMENT ENTERED
AUGUST 21, 2020

JOHNSON V. SHERMAN No. 20-55931, U.S. COURT OF APPEALS FOR THE NINTH
CIRCUIT. JUDGEMENT ENTERED APRIL 20, 2021

PEOPLE V. JOHNSON No. E060351 COURT OF APPEAL FOURTH DISTRICT, DIVISION TWO
FOR THE STATE OF CALIFORNIA. JUDGEMENT ENTERED NOVEMBER 20, 2015

PEOPLE V. JOHNSON PETITION FOR REVIEW. CALIFORNIA SUPREME COURT No. S231464
JUDGEMENT ENTERED FEBRUARY 24, 2016

PEOPLE V. JOHNSON STATE PETITION FOR WRIT OF HABEAS CORPUS SUPERIOR COURT STATE OF
CALIFORNIA, COUNTY OF SAN BERNARDINO JUDGEMENT ENTERED JULY 05, 2016 No.
No. WHCJS1600065

PEOPLE V. JOHNSON No. E066694 STATE WRIT OF HABEAS CORPUS COURT OF APPEAL FOURTH
DISTRICT DIVISION TWO JUDGEMENT ENTERED SEPTEMBER 02, 2016

PEOPLE V. JOHNSON No. S234562 STATE WRIT CALIFORNIA SUPREME COURT JUDGEMENT ENTERED
AUGUST 24, 2016

PEOPLE V. JOHNSON No. S240057 (SECOND) STATE WRIT TO CALIFORNIA SUPREME COURT
JUDGEMENT ENTERED FEBRUARY 15, 2017

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"OPINION"

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 _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ 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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 20, 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: _____, 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. § 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

Fifth Amendment

No person shall be held to answer for a Capital, or otherwise infamous Crime, unless on a presentment or indictment of a Grand Jury, except in Cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in Jeopardy of life or limb; nor shall be Compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without Just Compensation

Sixth Amendment

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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.

Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the Jurisdiction thereof, 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.

STATEMENT OF THE CASE

Petitioner was Convicted of assault likely to Cause great bodily injury (Count one) (Pen Code 245 subdivision (a) (4) and false Imprisonment (Count two) (Pen. Code 236).

And the Jury found true the great bodily injury offense enhancement (Pen. Code 12022.7 Subd. (a) attached to Count one.

The Jury found true that Petitioner had been Convicted in 2005 of a prior serious felony Pen. Code 422 (verbal threat)

On December 27, 2013 Petitioner was sentenced to the Maximum prison term of 17 years and four months as follows:

STATEMENT OF THE CASE

On Count one, the Court imposed the upper term of four years, doubled to eight years because of the prior strike enhancement, plus a Consecutive three years for the great bodily injury offense enhancement.

Then the Court imposed a Consecutive five year enhancement for a prior conviction of a serious felony.

On Count two, the Court imposed a Consecutive one year and four months, the middle term doubled.

Petitioner was sentenced to the maximum prison term of 17 years and four months. The Court gave no reasons for his sentencing decisions.

REASONS FOR GRANTING THE PETITION

The reason why I'm petitioning of Certiorari is to have this Court to order the Ninth Circuit to issue (a) Certificates of Appealability.

The reasons for granting the Petition are explained in detail on pages 8 through 44.

"Issue On Which COA Is Being Sought"

The trial Court's admission of the 911 Call violated the Confrontation Clause. (DOCUMENT 53 PAGE ID# 3139 line 6)

The 911 Caller's statement is "testimonial" and was played to the jury without Petitioner having any opportunity to Cross-examine (the 911 caller) the witness against him.

During the 911 Call Ms. Reyes (The Caller's) first words stated are: "My Grandson beat up this girl and were at my house." (see actual 911 call transcript at Document 37-2 PAGE ID# 2954 line 7)

The 911 Caller's statement is "Testimonial" because there was no-ongoing emergency and the primary purpose of the

Statement was to provide a narrative report of a crime absent any imminent danger.

The District Court Judge was factually incorrect. The District Judges "Background" information at R&R Page 45 line 18 incorrectly states:

"Petitioner's grandmother told the dispatcher that Doe needed the Paramedics."

(R&R p. 45 line 18)

Ms. Reyes (The 911 Caller) never said victim needed the paramedics.

The (911 Caller) immediately began describing past events rather than speaking about events as they were actually happening making the Statement "testimonial".

Ms. Reyes (the 911 Caller's) first words to the 911 dispatcher are "My grandson beat up this girl and were at my house." (See actual 911 transcript filed at Document 37-2 Page ID # 2954 line 7)

The Petitioner has cited portions of the record (see above and below) to show that the record does not support the District Court Judges "Analysis" at R&R page 47 line 2-3

Only three days after the incident during Detective Antillon's video recorded interview with victim (Marla). The Victim told Detective Antillon that Ms. Reyes (911 caller) called 911, 20 minutes after Petitioner left the house. (see actual transcript of DVD filed at Document 37-2 Page ID # 2923 line 14)

Marla (victim) testified that when she pretended to act unconscious, "then I'm laying on the ground." (Document 68 Page ID # 3563 line 24)

"I lifted my finger and went like this so his grandmother could see me and I said help me help me." So then she just came over Marla, Marla are you okay?" See reporter's Transcript at Document 68 Page ID # 3563 line 25)

The Petitioner has cited portions of the record (see above and below) to show the record does not support the District Court Judge's incorrect "Analysis" at R&R page

The victim (Marla) testified: "I responded by doing waving my hand". "When I saw she had no intentions of helping me, then, you know, "I just pretended to be knocked out again". (see actual Reporter's Transcript filed at Document 68 Page ID # 3564 line 21)

The Victim (Marla) was responsive during and after the entire incident. Marla didn't need medical attention. Nor did the 911 caller ever say she did. There was no emergency in progress.

The District Court Judge's "Analysis" at R&R page 47 line 15 and lines 21-22 is not supported by the record. And the District Judge's findings are factually incorrect.

The District Judge's "Analysis" wrongly states: "Finally even if the State Court erred, ^(cc) Petitioner cannot demonstrate prejudice". (R&R at p.47 line 15)

And "Petitioner was not prejudiced by admission of the 911 Call." (R&R p.47 line 21)

This Confrontation Clause error could not be deemed harmless. The Prosecutor explicitly argued to Jury in her closing argument that the 911 tape corroborated victim's testimony. (see actual reporter's transcript filed at Document 37-1 Page ID# 2879 line 6-28, Page ID# 2877 line 3 and Page ID# 2878 line 21).

The District Court Judge's assessment is based on information not supported by the record, and is factually incorrect.

So reasonable Judges would find the District Court's assessment debatable and wrong.

The Petitioner asks the Court to order the Ninth Circuit to issue a Certificate of Appealability.

Issue on Which COA Is Being Sought
The Trial Court Judge Committed
Reversible Error In Granting
Prosecutor's Batson/Wheeler Motion,
Resulting in Petitioner being denied his
Federal Constitutional Right To A Fair And
Impartial Jury (DOCUMENT 37-2 PAGE ID# 2915 line 16 - #2919)

The District Court and the State Court
of Appeal have failed to asses whe-
ther the Prosecutor met her burden
to make out a prima facie Case,
during the first step of Batson's three-
step test.

And whether the trial Court Judge
failed to properly hold the Prosecutor to
her initial burden of demonstrating
a prima facie Case.

In fact, the District Court Judge, like the State Court of Appeal have completely failed to note and acknowledge the Prosecutor's statement when she attempted to make a prima facie case. (see Reporter's Transcript filed at Document 37-2 Page ID# 2916 line 5)

No where in neither the State Court's opinion nor the District Court Judge's report and recommendation, does any Court acknowledge or note the following statement made by the Prosecutor.

"I will note that three of them do appear to be appropriate, but there doesn't appear to be any other reason that the other three females were kicked." (DOCUMENT 37-2 PAGE ID# 2916 line 5-7)

This statement made by the Prosecutor is a significant part of the record,

because the Prosecutor's statement is made during the first step of Batson's three step test. Which is when the Prosecutor (the Opponent of the strike) must make out a prima facie Case. By showing that the relevant facts give rise to an inference of discriminatory purpose.

There is no possible way that the District Court and the State Court reasonably applied Batson v. Kentucky without assessing and noting the Prosecutor, said:

"Three of the six peremptory Challenges were justified. (see Reporter's Transcript filed at 37-2 Page ID# 2916 line 5-6)

Judge Powell, responded: Only two of the six were justified. (DOCUMENT 37-2 ID# 2916 line 22)

The District Court Judge and State Court of Appeal have refused to acknowledge the difference between the Prosecutor's Statement (when she attempted to make out a prima facie case) and the trial Court Judge's different (prima facie case) statement he created to help the Prosecutor meet her burden to make out a prima facie case.

Obviously the trial Court Judge did not hold the Prosecutor to her initial burden of demonstrating a prima facie case.

Instead, obviously the trial Court Judge believed the Prosecutor's explanation failed to make out a prima facie case.

So that's why Judge Powell created his own different ("prima facie case") explanation to justify granting the Prosecutor's Batson motion.
(see reporter's transcript filed at DOCUMENT 37-2 ID# 2916 line 22)

The trial Court Judge (Powell) created his own explanation to meet the Prosecutor's burden of making out a prima facie by showing that the totality of the relevant facts give rise to an inference of discriminatory purpose.

The Prosecutor failed to make a showing of discrimination. (see Reporter's Transcript at DOCUMENT 37-2 ID# 2916 line 5-6)
And that is the reason why the District Court Judge's R&R and the State's Opinion neglected to note and assess the Prosecutor's "statement" anywhere in their

in their reports.

The District Court Judge has failed to acknowledge and note the Prosecutor said:

"I will note that three of them do appear to be appropriate, but there doesn't appear to be any other reason that the other three females were Kicked." (Doc. 37-2 ID# 2916)

The District Court Judge Can not possibly determine whether the trial Court Judge failed to hold the prosecutor to her initial burden of demonstrating a Prima facie Case, without assessing the Prosecutor's Statement (noted above).

Especially when the explanation the trial Court Judge used for granting the Prosecutors "Batson Motion" is not the same explanation Prosecutor used in her attempted to make out a prima facie case.

Therefore reasonable Judges would find the District Court's assessment wrong or debatable.

The Petitioner asks the Court to order the Ninth Circuit to issue a Certificate of Appealability.

Issue On Which COA Is Being Sought
Prosecutorial and Judicial failure to make exculpatory evidence available to defense at trial.

The Prosecutor and the trial Judge Collaborated by using misconduct, to prevent the Petitioner from showing the Jury the Video recorded interview (DVD) taken of the Victim, Only three days after the incident.

The Video recorded interview (DVD) of Victim, Conducted by Detective Antillon only three days after the incident is exclusively about victim's injuries.

The Video (DVD) shows Victim saying her doctors told her she had "NO" Concussion.

(see DVD transcript filed at Document 37-2 ID #2922 line 12-16)

The Video (DVD) evidence proves that the Offense enhancement P.C. 12022.7(a) is false. The Prosecutor knew there were no significant and no substantial injuries in this case. That is the reason why the Prosecutor and Judge failed to make the DVD (transcript) available to Petitioner at trial.

The District Court Judge's "Analysis" at R&R page 41 line 12-19 is factually incorrect and not supported by the record.

R&R at page 41 line 12-19 reads, "The record indicates Antillon attempted to correct the transcript but was unable to do so before he was excused due to Petitioner's misconduct, not Prosecutorial misconduct. (R&R at p. 41 line 12)

Actually, Even the Prosecutor's statement proves that the District Court Judge's findings is factually incorrect at R&R page 41 line 12-19.

(See Reporter's Transcript filed at 37-1 page ID# 2808 line 28 - Page ID# 2809 line 1-9)

The record shows the Prosecutor said, "I believe the Court came out at one point and he was on page 5 and was still making corrections to the transcript and it was not finished." And at that point I think we had been in break for over 20 minutes and the corrections were not done being made."

"That transcript was turned back into the Court because it is marked as an exhibit."

"People are not allowed to take that nor should I be the person who has to make corrections to the transcript that the defendant intends to use." (Doc. 37-1 Page

So Contrary to the District Court Judges findings at R&R page 41 line 12-19.

The record shows Detective Antillon was unable to finish Correcting the transcript due to Judicial misconduct and Prosecutorial misconduct. (see Document 37-1 ID# 2808 line 28 - ID# 2809)

The District Court Judges "Analysis" at R&R page 42 line 7-8 is also factually incorrect, it reads

"Petitioner has not demonstrated he was prejudiced because the jury didn't see the DVD."
(R&R at page 42 line 7)

The Petitioner has shown prejudice in "the Petition" at Document 1 page ID# 31 line 11, and then Petitioner showed prejudice again in "the Points and Authorities in support of Reply" at Document 37 page ID# 2631 line 18 - Page ID# 2632

The District Court Judge ignores Petitioner's claims that he was prejudiced by the jury not seeing DVD, because the DVD shows victim denying having any Concussion. (see word-for-word transcript of DVD filed at Document 37-2 Page ID# 2922 line 12-14)

The District Court Judge's finding was factual incorrect.

There is a reasonable probability that had not the Prosecutor and Judge failed to make "material" evidence available to the defense at trial.

The Jury's finding for the great bodily injury enhancement would have been different.

The victim's testimony that her doctor told her she had a "mild Concussion", is the strongest evidence in support of the G.B.I. allegation (P.C. 12022.7(a) attached to count one)

The DVD is Petitioner's strongest evidence in defense of the G.B.I. enhancement.

The DVD shows the victim denying that her doctors told her she had any Concussion (see word-for-word transcript of DVD filed at Document 37-2 Page ID # 2922 line 12-14)

The District Court Judge's assessment is based on factually incorrect findings (as noted above).

Therefore reasonable Judges would find the Judge's findings wrong and debatable.

The Petitioner ask the Court to Order the Ninth Circuit to issue a Certificate of Appealability

Issue On Which COA IS Being Sought
The Prosecutor used illegal influence to Cause the Case to be reassigned to the Judge of her choice. A bias Judge.

The record supports a finding that the Prosecutor's Comments and Actions did Cause Petitioner's Case to be transferred to Judge Powell a bias Judge. Whom the Prosecutor specifically requested to try Petitioner's Case. Which doing so denied Petitioner due process. The record shows that the Prosecutor's Comments infected and influenced Judge Stull to transfer the Case to Judge Powell a bias Judge. It is wrong for a Prosecutor to ask the Presiding Judge to transfer the

Case to another: specific Judge.

Especially when (Judge Stull) the Presiding Judge gave no (prior) indication he was unavailable to try Petitioners Case.

« The Prosecutor's Comments :

I was just in Judge Powell's Courtroom. « I believe that he is available ». (see actual Reporter's Transcript filed at DOCUMENT 53 PAGE ID# 3100 line 19)

And the following Prosecutor's Comment :

« I'm not available this afternoon. »

The Prosecutor's (DOCUMENT 53 ID# 3100 line 19) Comments noted above, were devastating to the Petitioner because the Prosecutor's request to transfer Case Caused Petitioner to be tried in front of a bias Judge.

The District Court Judge's "Background" information in R&R at page 38 lines 9-19 is factually incorrect. And is based on false information, not supported by the record.

The R&R at page 38 line 9-10 incorrectly states: "When the Parties indicated they were ready for trial, the assigned trial Judge Judge Stull, said he was" starting trial in about ten minutes in another matter". (R&R page 38 line 9-10)

Actually the record shows the following: Before the Prosecutor announced she was "ready" for trial, Judge Stull, said "Okay."
"Well at the earliest opportunity Obviously, I'll go through these

“ [MENTAL HEALTH RECORDS] Just as
soon as I can. “ I’m starting
trial in about ten minutes on
another matter. “ I assume
you’re still not ready for trial.”
(See Reporter’s transcript filed at R DOCUMENT 53 PAGE
ID# 3099 line 6-10)

Before the Prosecutor announced
“ready”, Judge Stull assumed the
Prosecutor was still not ready for
trial, Judge Stull, said “ I’m starting
trial in about ten minutes on
another matter. “ I assume you’re
still not ready for trial.”
(See actual Reporter’s Transcript filed at Document 53 PAGE
ID# 3099 line 6-10)

The District Court Judge's "Background" information in R&R at page 38 line 11-13 is factually incorrect. And is based on false information not supported by the record

The R&R at page 38 line 11-13 incorrectly states: "The trial Judge had assumed that Petitioner was not ready, and after Petitioner said he was the trial Judge briefly discussed a motion Petitioner brought regarding the victim's mental health records." (R&R at p. 38 line 11-13)

Actually the record shows the trial Judge assumed that Prosecutor was not ready for trial. And after Prosecutor said she was, the trial Judge briefly discussed a motion Prosecutor brought

(See actual Reporter's Transcript filed at DOCUMENT 53 PAGE ID# 3099 - ID# 3100)
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regarding the victim's mental health records. (see actual Reporter's Transcript Document 53 Page ID# 3100)

Judge Stull assumed the Prosecutor wasn't "ready" for trial because when the Petitioner announced "ready" for trial at the very beginning of the hearing. (See Reporter's Transcript filed at 53 PAGE ID# 3093 line 15)

The Prosecutor did not announce ready. And instead the Prosecutor brought her "motion to prevent the use of victim's mental health records." (See the actual copy of Prosecutor's motion at DOCUMENT 68 ID# 3553)

In fact during the two prior trial readiness hearings on November 08, 2013 and November 13, 2013, the Prosecutor asked for a Continuance to delay the trial. (See minute Orders at DOCUMENT 68 Page ID# 3555 and ID# 3557)

The District Judge's findings was factually incorrect at R&R page 38 line 15-18. And is based on false information, not supported by the record.

The R&R at page 38 line 15-18 incorrectly states: "At one point, the Prosecutor said: "Your Honor, I was just in Judge Powell's Courtroom." "I believe that he is available." "Judge Stull again commented, "I just have another trial that I'm supposed to be starting, and I don't know which one of these I'm going to start." (R&R at p. 38 line 15-18)

Actually the record shows Judge Stull said: "The question is whether or not we can get a jury panel today". (see Reporter's Transcript filed at Document 53 PAGE ID #3100)
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It's important to note the exact point the Prosecutor requested Judge Powell to be her trial Judge. Which the District Judge failed to note.

Suddenly, because the Prosecutor disliked Judge Stull's ruling regarding the Prosecutor's motion

The Prosecutor, said: "Your Honor I was just in Judge Powell's Courtroom." "I believe that he is available."

Judge Stull responds: "The question is whether or not we can get a Jury panel" "We may not be able to today."

Immediately the Prosecutor, said: "I'm not available this afternoon."

As explained in detail above,
The District Court Judge
attributed to me things
that should be attributed to
the Prosecutor. Based on
the factual incorrectness which
the District Court Judge accepted.
The District Judge's ruling should
be in my favor. And a
Certificate of Appealability should
be granted.

The Petitioner ask the Court
to order the Ninth Circuit to
grant a Certificate of Appealability.

Issue On Which COA Is Being Sought
Evidence insufficient to support
the great bodily injury offense
enhancement P.C. 12022.7(a) attached
to Count one

The District Court Judge's
"Analysis" at R&R page 44 line 3
is factually incorrect, and
not supported by the record.

R&R at page 44 line 3 incorrectly
says: "The treating physician
told Doe that she had a
mild Concussion" (R&R at p.44 line 3)

There was no physician who
testified. And no medical records
to prove any injuries. In fact
the Prosecutor suppressed the victim's

medical record from the day of the incident. (see Reporter's transcript filed at Document 37-1 ID# 2757) (Then see minute order at Document 68 PAGE ID# 3565)

Only three days after the incident, during the video recorded interview exclusively about the victim's injuries. The victim said: "NO" her doctors didn't say she had any Concussion. (see word-for-word transcript of DVD at DOCUMENT 37-1 PAGE ID# 2922 line 14)

Victim testified she received "NO" follow-up medical care. (See R.T. filed at (DOCUMENT 37-1 PAGE ID# 2782 line 14))

The Prosecutor knew the evidence was insufficient to prove G.B.I. so that's the reason why the Prosecutor failed to make transcript

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Of the video recorded interview (DVD) available to defense during trial, Suppressed victim's medical record taken from day of incident, and the Prosecutor knowingly used prejured testimony from the victim to obtain the conviction for the G.B.I offense enhancement P.C. 12022.7(a) attached to Count one.

The District Court Judge's "Analysis" at R&R page 44 line 9-11 is not supported by the record. R&R page 44 line 9-11 says:

"Sergeant Gonzales was the first to respond to Petitioner's Grandmother 911 Call." When he walked up to Doe, "She was unresponsive and very pale." (R&R p.44 line 9-11)

The victim testified she was
"never unconscious". (See R.T. at
DOCUMENT 68 PAGE ID# 3564 line 6-25)

In fact, the victim testified:
"the paramedics arrived first,
then the police". (DOCUMENT 68 PAGE
ID# 3565 line 9-10 and lines 17-19)

During the video recorded inter-
view taken only three days after
the incident. The victim said:

"As soon as the police came I
told him get her away from
me. "I was never knocked out."
(See word-for-word transcript of DVD filed at Document 37-2
PAGE ID# 2923 line 21)

It's important to note, that
Sergeant Gonzalez testified that he
didn't write a police report. (DOCUMENT
37-1 Page ID# 2846 line 7-9)

Sergeant Gonzalez testified that he spoke to the victim and Petitioner's Grandmother at the scene of incident, but wrote no police report. (DOCUMENT 37-1 Page ID# 2846 line 7-9)

The R&R at page 44 line 9-11 is not supported by the record R&R at page 44 line 9-10 says: "When Sergeant Gonzalez walked up to Doe, "She was laying face down with a large pool of blood around her."

There is no pictures of this alleged pool of blood. (DOCUMENT 37-1 PAGE ID# 2954)
It should be noted the 911 call was made on August 25, 2013 at 10:22 p.m. (DOCUMENT 37-2 ID# 2954)

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The victim was released from the hospital at about 12:00 A.M.
(See word-for-word transcript of DVD filed at Doc. 37-2 PAGE ID# 2954)

The victim spent no longer than one-hour and thirty-minutes at the hospital. There were no significant or substantial injuries.

For the reasons noted above reasonable judges would find the District Judges assessment of Petitioner's Constitutional claims debatable or wrong.

Therefore Petitioner ask the Court to grant a Certificate of Appealability, or Order the Ninth Circuit to issue a COA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brad Johnson

Date: September 13, 2021