No. 21-6604 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Andre Bowers Pro-se — PETITIONER
(Your Name)

vs.

Superintendent-Josep Noeth — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Andre Bowers-11-A-1993
(Your Name)

Green-Haven Corr. Fac. 594 Route 216
(Address)

Stormville, New York 12582
(City, State, Zip Code)

N/A J-Pay tablet-program-E-mail
(Phone Number) J.Pay.com

QUESTION(S) PRESENTED

1. There is a proven systematic pattern of wrongful conviction around the Nation based on prosecutorial/police misconduct, and ineffective assistance of counsel, faulty investigative practices; Therefore, Q, whether or not it's in the public interest, to implements new procedures, to break this patter, to reduce the harm caused in the Black community around the nation?

2. Mr. Bowers, called 911 reporting a crime in progress, a timely and specific request was made for the recorded statement, people failed to preserve, the recording the ADA and police had direct knowledge of, at trial a request for a sanction base on Brady was denied, the appellant court base their decision on due diligence.

   Therefore, Question: whether the 911 call was protected conduct under the first, fourteenth amendment, and whether the court decision to apply due diligence to counsel request, fundamentally questions state statues, Brady and it progeny?

3. Will the dignity of U.S. Government permit the convictions of any person, where the prosecutor fails to correct misleading and false testimony or impression under **Napue** and progeny?

4. Whether the probable impact of wrongful mischaracterized evidence seized at the crime scene, affected manifest prejudice of guilt and deprive the accused a fair trial?

5. Whether or not a person can be held liable of a crime on a transferred intent?

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] 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,
[✓] is unpublished.

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

[ ] reported at 2020 WL 6746829, NOV. 17, 2020; 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 F to the petition and is

[ ] reported at 23 N.Y.3d 1128, JUNE 23, 2016; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the State trial, 2D, and Court of Appeals (440) court appears at Appendix E, D to the petition and is

[ ] reported at 35 N.Y.3d 940, MAR. 04, 2020 (Error-Coram Nobis); 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 4, 28, 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: July 6, 2021, 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).
28 U.S.C. § 2241; 28 U.S.C. § 2254 (A) (b) (1) (A) (B) (i) (ii) (D) (1) (2) AND under this court Rule 10 (A)-(B) (C)

[ ] 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 PROVISION INVOLVED

The First Amend – Freedom of speech – right to Petition the Government for redress of grievances: The Fourth Amend – Right to be secure in their person: The Fifth Amend – Right not to be deprived of Life, Liberty, or Property, without procedural due process of law; The Eight Amend- The Right to be free from cruel and unusual punishment: The Fourteenth Amend – 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 Law.

Federal Rules of Criminal Procedure. Rule 16 (A) (B) (i) (ii) upon a defendant's request, the Government must disclose to the defendant... (i) any relevant written or recorded statement by the defendant if: the stamen is within the Government's possession, custody, or control, and the Attorney for the Government knows.

New York State Criminal Procedure (CPL §240.20 (1) (A) (H), upon a demand to produce by a defendant... The prosecutor shall disclose to the defendant... any written, recorded or oral statement of the defendant... anything required to be disclosed, prior to trial, to the defendant by the prosecutor, pursuant to the constitutional of this state or of the United States.

(2) The Prosecutor shall make a diligent, good faith effort to ascertain the existence of demand properly...

New York State Criminal Procedure (C.P.L. 245.20 (1) (A) (G) (K) (U) (i) (ii) (2) (Automatic discovery)

Statement of the case

1. This case which has, as many other like it, been included in the nationwide ongoing systematic pattern of wrongful convictions over the past five decades and longer based on prosecutorial police misconduct, which involves faulty investigate practices, being the driving force to arrest, and wrongly convict innocent Black Americans, lately even amongst other ethnic group: Asians, Jewish, and poor Caucasians Americans. However, the differential treatment of Innocence Black men and the impact on its community throughout the nation has raised tremendous attention, where now, the public is questioning the integrity of the criminal justice system.

2. There are systematic factors shown in study's, news articles, and recent Exoneration and/or reversed wrongful conviction cases throughout the years from 1985-2021 for Examples: DNA testing first initiated in 1989 which established the innocence of 349 persons around the country. See Chief Judge State of New York report I App [G-1]; which in the third paragraph, The New York State Justice task force have admitted that there is "Systemic Factors" that lead to wrongful convictions. In the report one of the categories is that 46% involved "misapplication of Forensic Science", and or material evidence which is one of petitioners issues.

3. In Jurisprudence, prosecutorial misconduct is a procedural defense, such defense's has been successful roughly 1 out of 6 times it has been used from 1978 to 2003, during that period, Judges have cited misconduct by prosecutors as a reason to dismiss charges, reversed convictions, or reducé sentences in 2,012 cases according to a study by the "Center for Public Integrity" released in 2003. The researchers looked at 11,452 cases in which misconduct was alleged. See the Justice Report in App. [G-2]/

4. The New York Queen County DA's office have been leading the country in wrongful conviction, and reversed case's based on prosecutorial, and ineffective assistance of

counsel from 1985-2021 out of thousands of cases. See about 100 cases in App [G-3].

5. While prosecutor's is the leading cause, Judge's have a Major part in their action and conduct in How they failed to apply the governing factors to the standards that governs the case's, and the evidence being allowed, one judge actually admits that she allowed false testimony or evidence to be submitted to the jury. See Report in App [G-4].

6. A Police Officer whistle blower, have secretly recorded phone calls of other officers saying innocent people were frame. See Report in App [G-5].

7. While there are thousands of news articles around the nation of wrongful convictions, the 50 plus. Here mostly came out of Queens County and other Borough's in New York See App [G-6]. Also See A New York Times Report; A false conviction is overturned, but the system that allow it remains see App [G-7].

8. Another systemic factor in wrongful convictions is that 18-B lawyers. There is a conflict of Interest, when its Judges who maintain an assigned counsel plan formulated by an Advisory Committee, which consists of an Administrative Judge of the criminal court and the presiding Justice of the Second Department, and First Department, who is responsible for establishing not only the basic operating plan, But also the procedure for evaluating training and disciplining attorneys as well as the procedures for appointing and reappointing the attorney's. Please see **People v. Cortes** 80 N.Y.2d at 208-09)10/20/1992).

9. At the time **Gideon v. Washington**, 372 U.S. 335 (1993) requirement that states appoint and compensate defense counsel for indigent defendants approximately forty-three percent of felony defendants were indigent, that percentage has doubled, in 2010 it was eighty – two percent, and currently over ninety – five percent are indigent, and because *Gideon* "offered no guidance on how states were to pay those lawyers, as a result the funding mechanism vary widely from state to state, in New York

State Jurisdiction it's Judges who decide who is appointed, an practitioners rely on those court appointments for their Livelihood, under these circumstance, counsel has a personal interest the viability of his practice – in assuring that the Judge, rather than the client, is pleased with the representation. This fact that counsel is being paid by the state, creates an inherent potential for conflict. Indeed, the ethical rules on their face recognize the potential, the rules target a risk that the person (or entity) providing the compensation and that feeling of obligation will affect the lawyer's professional judgment.

This risk can clearly be seen in the many of thousands of wrongful conviction case's here in New York and around the country. This system, the judiciary must remain neutral, however, it's the judges who is actually over citizens defense.

The drafters of the Sixth Amendment clearly rejected the idea that judges could adequately "Represent" defendants in criminal cases, instead granting defendants the right to Assistance of Counsel for his defense, not the very same Judges to have power over the defense. See William E. Nelson, Emerging notion of modern criminal law in the **Revolutionary Era**, 42 N.Y.U.L. Rev. 450, 476 (1967) ("the increase power of the courts to affect the outcome of those cases created a danger that courts might abandon their role as arbiter between Government and subject, and become an oppressor of the latter")

10. The great work that newly elected District Attorneys around the nation, who created new integrity units, where they have successfully reinvestigated and exonerated people even after 32 years of incarceration. See Carlton Roman-Daily News-Articles in App [G-6]

11. The question is why it was not revealed 32 years earlier in 1989 when there should have been two investigations? one from defense counsel and one from the prosecution. The evidence of innocence would have been a thousand times stronger in 1989.

12. Is the faulty investigative practices' by ADA's and 18-B Defense design to incarcerate innocent Black people? The same faulty practice's and unethical tactic was use to convict and uphold petitioners conviction because the prosecutor/courts willingly choose to ignore the State and Federal constitutions, Established laws of the land, State statues, and Penal laws, which are the standard factors that was required to be applied, and allowed speculation, assumption, and faulty inference on inferences to govern the case which denies the accused due process, violates pro-se defendants right to a fair and just review which are fundamental guarantees of the bill of rights, that are made enforceable in the states, due process and equal protection clause, require that states provide fair and just legal proceedings before any person may be deprived of life of liberty.

13. The system failed all of the exonerated people, as well as petitioner who is not exonerated, however, the same system who ignored our issues still exist, by where there are no remedies for the tactics the ADA in petitioner's case used. It seems to be normal practice that should be condemned.

14. Petitioner will demonstrate the tactic's use by prosecutors to obtain convictions, and how courts fail in their duty to apply the factors to the standards that Govern a case which is a common practice in New York, just to deny relief in a wholly circumstantial evidence case under a acting and concert theory.

Petitioner will refer to the Appendix to explain the arguments here.

15. Petitioner request his pleading to be reviewed under the standard held under **Hines v. Kernier**, 404 U.S. 519 (1972) and **Estelle v. Gamble**, 429 U.S. at 106, 97 S.ct 285 (1976). All lower courts failed to apply less stringent standard to petitioner's claims and their deliberate indifference was apparent violations of 14 Amendments.

16. Petitioner case involves an violations of pre-trial-discovery requirements of disclosure of potential exculpatory evidence by prosecution to defenses specific request that was an constitutionally protected privilege to

request, where there was no exemption provided by statue, case law, or court rule to exclude during pre-trial discovery where the recording was available, it was relevant and material to the subject matter of the actions and conduct of petitioner defense of innocence, that harm the people's theory of the case.

17. Petitioner had a Legal and Procedural right to the 911 recording that the police and people had constructive knowledge of under their control from the time of the incident to five days later when petitioner testified under oath in the Grand Jury (see App (H)) that his full name is on the recording reporting an robbery in progress that triggered the people's constitutional duty to preserve. See COA –En Banc Application in App – [A-1] (P.3 – L-6-P-4)

18. The prosecutions promise to order the recordings, after defense counsel specific request, we relayed on the prosecutor to uphold its duty, but failed to do, and allowed the recording to be destroyed shows bad faith, his actions and conduct violated the due process requirement of disclosure, and violated due process; the fundamental right to the presumption of innocence, and his First Amend right to file a complaint under duress of Grievance.

19. The prosecution duty is well established around the nation in Federal Law, State's statue, and different circuits, and is one of the main systemic factors in wrongful convictions cases. See Queens County reversed, exonerated case App [G-3]; is:

20. The prosecution failure to adhere to its ethical and constitutional duty to disclose favorable defense information under Brady and its progeny, have been ignored by the courts for decades.

The United States Supreme Court

21. See **Jencks v. U.S.**, 353 U.S. at 666-669 (1957); **Killan V. United States**, 368 U.S. 231 (1961); **Brady v. Maryland**, 373 U.S. at 86-88 (1963); **U.S. v. Agurs**, 427 U.S. at 106-107 (1976); **California v. Trombetta**, 467 U.S. at 485-486 (1984); **Arizona v. Youngblood,** 488 U.S. at 58 (1988)(A defendant to show bad faith on the

part of the Police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that "class of cases where the interest of Justice most clearly require it, ie. Those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendants"). **Kyles v. Whitley**, 514 U.S. at 432-438 (1995); and **YoungBlood v. West Virginia,** 547 U.S. at 869-870 (2006).

Circuit Courts

22. **US v. Bryant**, 439 F.2d at 647 – 650 (DC. Circuit 1971) (Access by defense counsel to certain evidence gathered by Government is protected by both constitutional and statutory safeguards in Federal Criminal Process. Fed. Rules Crim.Proc. Rule 16, 18 USCA; 18 USCA § 3500); **U.S. V. Camargo-Vergara**, 57 F.3d at 998-999)11th Cir. 1995) (Governments discovery violation, failing to disclose defendants post-arrest statement that Kilo of cocaine were strange, substantially prejudiced defendant and, this, constituted reversible error.) Compare, **Armstrong v. Daily**, 786 F.3d at 545[3] -554 (7th Cir. 2015).

District Court

23. **U.S. V. Urena**, 98 F.Supp 2d at 258-261 (U.S.D.C. S.D.N.Y. (2013).

State Court's

People v. Vilardi, 76 N.Y.2d 67, at 73-78 (NY 1990) (State's failure to disclose exculpatory material in response to specific discovery request is seldom, if ever, excusable and entitles defendant to new trial if there is reasonable possibility that it contributed to defendant's conviction); **People v. Garrett**, 23 N.Y.3d 878, 886-889 (Brady Violation did not bar the Court of Appeals from deciding the materiality of that information) (N.Y. 2014); **People v. Handy**, 20 N.Y.3d 663-670 (N.Y. 2013); (Adverse Inference - Charge-State's Destruction of Evidence Reasonably likely to be material); **People v. Huynh**, 232 A.D.2d 655-656 (2nd Dept. 1996) (where the 911 tape was destroyed and was thus no longer available for Judicial inspection, it cannot be deemed the "duplicative equivalent" of the so-called "Sprint-Report"

which was disclosed to the defendant): **People v. Melendez**, 296 A.D.2d 424-426 (2nd Dept. 2002) (held that tape recording of defendant's telephone call to emergency services was required to be admitted as either excited utterance or present sense impression and was potential exculpatory evidence), and also **People v. Hunter**, 126 Misc. 2d 13-17 (Supreme Court, NY County 1984) (defendant seeks dismissal of this indictment for the failure of the District Attorney to present the Exculpatory testimony of ... to the Grand Jury...)

Federal and State Statue's

24. Federal Rules of Criminal Procedure, Rule 16 (Discovery and Inspection); New York State Criminal Procedure Law: **C.P.L.§** 245.20 (1) (A) (G) (K) (U) (i) (ii) (2) (Automatic discovery) **C.P.L. §** 240.20 (1) (A) –(H) (2) (Discovery upon demand of defendant) (2), The Prosecutor shall make a diligent, Good faith effort to ascertain the existence of demanded property-etc).

25. The following demonstration, will show that petitioner counsel did move for a demand in his omnibus-motion for petitioner's exculpatory statement: that the police and prosecutor had constructive knowledge of and how all lower courts completely ignored this material fact, and applied due diligence to counsel omnibus motion, that's contrary to every law around the nation. See Motion-Demand in App (H-5).

The Prosecutor/Police Knowledge

26. Petitioner call was on December 6, 2008, form a cell phone: The ADA's report-his statement that defendant Bowers tries to pose as a victim is (knowledge.) See "Queen County District Attorney in take Bureau Crime Report" dated December 6, 2008, in Appendix (H-1) (there was no base's for his assumption); on the night of incident.

    Almost two years later, Officer Ferrizz testified that when Mr. Bowers-petitioner came out the room he had a cell phone in his hand see (H-165 – L – 16-25) Date January 22, 2010 – in App. (H-2);

On February 23, 2010 – Sgt. Shapiro testified that Mr. Bowers told him that "He was a victim who called 911 (H-378 – L – 21 – 25 – 379 – L – 1 -7) (App H-2). Both officers was present in petitioner arrestee, and their *knowledge alone is constitutional.* The testifying to events on the night of the incident.

27. On December 11, 2008 – five days after the incident petitioner testified in the Grand Jury, that his "Full Name" is on the recording see Grand Jury minutes in App. (H-3).

28. The ADA was given direct knowledge of the recording, and the procedure for 911-recording, is held 180 days from the time the call is made, so the destruction would not occur until June of 2009. See The Police policy in App (H-4)

29. On March 2, 2009, counsel demand see App (H-5);

30. The ADA sworn – Bill of Particulars, fail to equally turn over petitioner statement, but turn over the statement of the other defendant because it help his case – Date March 23, 2009 (See bill in App (H-6) and promised counsel that he would order recording. This is apparent of the Government knowledge and the sprint report clearly reflex the call see App (H-7).

Trial

31. When the ADA failed to turn it over, at trial, counsel ask for a sanction in the form of an adverse inference charge base on the people failure to preserve, when he requested it in his omnibus motion, and its absents effect his client right to testified. See (T.T. 1130 – 1144) and court denial in App (F-1).

32. Counsel made a *Brady* argument, which the trial court failed to examine the specific constitutional claim associated with the suppression of favorable evidence, and based his denial on, we are dealing with "speculation", this was irrational of a Federal question that was never answered.

Direct Appeal

33. Appellate counsel, argued what trial counsel preserved, and she explained to the court that the Police and ADA had constructive knowledge of the statement and recording. See her Brief Dated November, 2013 – P – (55-64) in App – (F-3).

34. The Second Department abuse their discretion, when they denied counsel arguments and applied due diligence which was contrary to trial counsel constitutional demand. See Decision in App (F-2), and established precedent.

35. Appellate counsels argue to the Court of Appeals, that trial counsel did use due diligence in his timely, and specific demand. Also with the Police and ADA constructive knowledge, and how the Appellate Division's decision does not. Explain why making a request for a recorded statement of defendant in the defense Omnibus motion, pursuant to **C.P.L. §** 240.20 (1) (A) the mechanism created by the Legislature for doing so, does not constitute reasonable due diligence. See Applications in App (F-4).

Federal Eastern District

The Federal Court opinion was objectively unreasonable - 2254, because he stated that the adverse inference charge was a State trial court jury instruction. State law is not cognizable on Habeas Review, and because petitioner waited until trial to request the recording, and petitioner knew and was aware, and petitioner could have taken steps to get it on his own, and the prosecution good faith. See Court Decision in App (c). Which amounts to plain error, or an unreasonable application of establish law, because, the adverse inference request was not a state-law independent of the Federal question, the record demonstrate that counsel did take steps in his Omnibus motion demand, petitioner had a right to rely on the prosecution to uphold his duty to produce, the recording that he told counsel he would order, 2 year later the second prosecutor cannot satisfy good faith, due diligence, where the first prosecutor failed to satisfy. These tactic's

was (Smoking Mirrors) to deny petitioner relief he was entitle to because – The trial Court.

36. The trial court arbitrary decision, was irrational not based in law, however, the Appellate court's decision was most troubling it draws into question Brady and its progeny. Other circuits Decisions, and the validity of New York status **CPL** §§ 240.20. 245.20. The New York legislators intent, which make clear that reasonable due diligence, and good faith only apply to prosecutor's under 245.20 (2). And the District Court decision that petitioner knew of the Evidence, and could have obtain it himself, was contrary to the same statue under (ii) and established law in short, the phone petitioner was in possession of required the people to obtain any information from it because it's under the people control, so they was required to preserve the recording. See also 245.20 (G) (A), by applying due diligence, to counsel pre-trial discovery demand was manifest, and clearly unconstitutional under long standing Supreme Court precedent, because the record demonstrates that counsel did make a specific request that all courts willingly choose to ignore, which is contrary to **Brady v. Maryland**; (**United States v. Agurs**, Supra 106, 96 S.ct. at 2399) and (**People v. Vilardi** Supra, 76 N.Y.2d 67, at 73-74),. its been held that ends of criminal Justice would be defeated to ensure that Justice is done. It is imperative to the function of the courts that pre-trial discovery process be available for the production of evidence needed by the defense. It's the People who failed exercise due diligence pursuant to **CPL** 240.70 (1) and require a sanction from the trial court under ***Brady***, ***Agurs*** Supra. The people/courts violated basic concepts of fair play, the courts deliberate indifference to petitioner's pro-se claims, which constitute reversible error.

37. The petitioner contends that his actions of reporting a crime, was protected conduct in the Freedom of Speech to petition the State Government for redress of grievances and the Government adverse action was directly related to his protect conduct and deliberate indifference because they knew of the recording, and the routine destruction of 911 – recordings being 6 months, and stalled counsel until it was no longer available amounting to violations plainly

unlawful under ***Trombettal,*** 467 U.S. at 488-89, even if the recording was potentially exculpatory the Government, Lack of action, and knowledge permit a reasonable inference of bad faith under ***Youngblood*** 488 U.S. at 58.

38. ***Killian*** addressed law enforcement's duty to preserve potentially exculpatory evidence. See **Armstrong v. Daily** at 548. Under ***Killian*** and ***Brady***, prosecutors had a clearly established legal duty not to act in bad faith to destroy evidence, which if suppressed or destroyed "create a reasonable doubt that did not otherwise exist" See ***Agurs,*** 427 U.S. 97, 112-13 (1976) (defining material evidence that must be disclosed under ***Brady,*** petitioner had a bedrock right to the exculpatory statement-recording under the Government control, even without a request. And the Grand Jury was entitled to hear the recording under the ABA standard 3-3.6 (b); no prosecutor should knowingly fail to disclose to the Grand Jury evidence which tends to negate guilt or mitigate the offense.

The Unreasonable Application of Napue and Giglio

39. Petitioner was required to show that the false testimony concealed facts that would have undermined the credibility of the Government's key witness. See ***Giglio*** supra at 405 U.S. at 151, 154-155 and that the testimony could in any reasonable likelihood have affected the judgment of the jury. See ***Napue,*** Supra at 264, 269-71.

40. Petitioner contends, that the People's chief witness officer Ferrizz is the only testimony that satisfied the elements of the crime under their Acting in Concert theory, that petitioner was in possession of a big blue laundry bag with alleged stolen property in it. See Argument in the lower courts' 1.) CPL 440 – page (79-88) in App (E2); 2.)Habeas – Petition in App (C-2); 3.) Amended petition in App (C-11); 4.) COA-Application Page (9-15) in App (B-1); 5.) En-Banc application page (6-13) in App (A-1).

41. What petitioner arguments demonstrate is that there are two Police Officer reading the same invoice and placing evidence in two different locations for two different

defendants, that was material, which bind on petitioner conviction, for example:

42. The Evidence Collection Unit (ECU), which is the Forensic officers, who took DNA, Finger prints, and documented evidence that was found and took pictures of what they found. See Trial Testimony that's part of the record. (T.T. 590-604) trial date March 28-30, 2011. Officer Nutter did not testify to finding any property in a boiler room or took any pictures of a blue laundry bag. However, they did make invoices for the other defendants who are in different location in a public bar. This was the law of the case. However, the prosecutors choose to change these material facts. On May 28, 2009 in hearing where petitioner and his counsel was not present because Mr. Bowers had no hearings. Thereafter, Sgt Barkman, after objection was allowed to read the actual invoice in evidence to make the record clear to what defendants was found with property. He read defendant "J. Quinn" voucher # P477023, a purple cloth clothes, hats, glove, that one of the robbers allegedly wore that was found in the bathroom bar "not boiler room" See (H:53-62) in App (H-4), and he read all that was found with different defendants (but not petitioner) when he read what the ECU documented.

43. The invoice (ECU) filled out for five defendants in different location and statements on the bottom of the vouchers can be found in App (H-9). What's relevant is the first three 1).Petitioner have one invoice # P477046 for cell phone. 2). Is co-defendant J. Quinn have two invoice's first # P477021 is a blue laundry bag, statement on bottom state's "The above property was... and used by the defendant to collect stolen property" and 3). Invoice # P477023 J. Quinn – 11 item clothes purple cloth, ext on the bottom state's item 1 – 6 were recovered in the bar bathroom, 7 – 9 were recovered from the basement bathroom, Items 10-11 were recovered from the upstairs kitchen. Anybody reading this paper work should not refer any evidence from a boiler room, the paper work does not state that it was in a boiler room with petitioner.

44. When the second prosecutor took over the case the (above) material facts changed. He had a officer Ferrizz falsely

testified while he was reading the very same invoice (above) at trial dated March 2, 2011, he refresh his recollection reading invoice #P477021 – and place the blue laundry bag in the boiler room with petitioner's see (T.T. 244 – 45, 270 – 273) in App (H-10). He also placed all the clothes, and purple cloth with petition and (T.T.250): tried to say it was a mask.

The court rule he can't call it a mask, **no one saw it being use, as one and admitted that it was not him who found the property it was P.O. Nutter from the (ECU) who found the property and it's her hand writing that on the invoice.** See (T.T. 306 – 311) in App (h-10).

45. The argument above was material to petitioner's conviction. Petitioner also argued in his Error Coram Nobis that because the officer was reading the invoice on the stand without submitting them into evidence, where the jury would have seen the documentation and questioned why his testimony don't reflex what on the documentation, when he refreshed his recollection and, that the people failed prove that 'the inventory was conducted pursuant to "An established procedure, and failed to fill out an meaningful inventory list for this petitioner under well establish law. See **Illinois v. Lafayette**, 462 U.S. 640 (1983) compare **People v. Johnson**, 1 N.Y.3d 252 at 255 – 257 (2003) (The policy or practice governing inventory searches should be designed to produce an inventory; ***Wells*** U.S. at 4, See also ***Galak,*** 80 N.Y.2d at 270 [inventory search must "create a usable inventory"]; also compare **People v. Rodriguez**, 16 Misc.3d 982-987 (2007) (The police had a clear obligation to secure, examine, voucher and inventory the safe and its contents which constituted stolen property, physical evidence, and the proceeds of a heinous crime, proceeds which had recently been abandoned by armed Robbers) (**Illinois v. Lafayette**, 462 U.S. 640, 644 [1983]). Following the discovery of apparently stolen property abandoned by arm Robbers while fleeing the scene of the crime. Petitioner Error Coram Nobis was preserve, for the district court who allowed petitioner to exhaust his remedies but fail to review amounting to plain error. See App (D-4).

46. The prosecution failed in their burden to satisfy that the constitutional "inventory standard was in complain... with Federal and State Law, and failed to designate his intent on the statutory presumption of possession. The court failed to apply the mandatory actual possession charge to the jury, and it was error to apply joint possession to defendants that are in different location of a public bar. See Court of Appeals application Date September 27, 2020, Error Coram Nobis in App (D-11); Also see **Lynch v. Dolce** 789 F.3d 303 (2nd Cir. 2015).

Ineffective Assistance of Trial, Appellate Counsel

47. Both counsel's failed to investigate and to present substantial exculpatory mitigating evidence to the jury, and direct appeal, was either contrary to, or involved an unreasonable application of, "that established law, see in accord **Williams v. Taylor**, 529 U.S. 362 (2000); **Wiggins v. Smith**, 466 U.S. 668 (1984); Also **Gersten v. Senkowki**, 426 F.3d at 610 – 611 (2nd Cir. 2005).

48. Trial counsel never objected to the exculpatory invoice's or put up a defense or cross examined the officer on this point. His argument conceded petitioner's guilt over petitioner's objection of evidence claim to be found where petitioner was at, petitioner has maintained his complete innocence, by placing contradicted that argument was prejudicial, and equivalent to a guilty plea, had he objected to the prosecution false testimony and showed the jury that the evidence was attributed to someone else's, this not only would have created a reasonable doubt, but even an acquittal because there was no other evidence. There is a custom of trial counselors not letting defendants. See the discovery material, petitioner raise two objections, which the record don't reflect, by not logging petitioner objections, it denies him his right to argue on direct appeal the false testimony. In counsel motion to dismiss, he argued, that the laundry bag did not have any stolen property in it, that came from the complaints. See argument below.

49. There is a custom of trial counselors not letting defendants see the discovery material, petitioner raise

tow objections; it denies him his right to argue on direct appeal the false testimony.

50. Appellate counsel after three years having possession of the discovery material, she admitted that she never read it, and gave it to petitioner, petitioner seen the invoice for the first time and move for an reconsideration in the court of appeals. There was no strategic reason not to challenge this false evidence. See counsel failures and omission page 25 amended petitions in App C (11).

The Respondents Arguments

51. The respondent argues three positions to uphold petitioner conviction which are not supported by the record. Mr. Bowers have refuted all by using the trial record. See Amended Petition (C-11) Page (4-7). In her opposition to petitioners Habeas Corpus Dated August 11, 2017, @ page 37 she argued that "information to which the defense has better access than the people cannot be said to be Brady material. In her opposition supplemental to petitioner's amended petition dated October 9th, 2020, pages (4-par 7 – P-6). She conceded that petitioner was charged with Acting in Concert, therefore, "Even if the items had been recovered only from where co-defendant had been hiding, rather than just vouchered under co-defendants name, the location of the item were recorded only from where co-defendant hid and the officers established that they were not – the evidence would still have been admissible, counsel, therefore, could not be deemed ineffective for failing to make an objection with regard to the vouchering of evidence that had little or no chance for success.

52. Petitioner moving papers demonstrated to the lower courts that his *Brady* claim was in accord with *Brady*, that involved a co-defendant exculpatory statement request by counsel, in petitioner case it was an exculpatory statement, that the 911 recording would have corroborated, that counsel request, and on its face was material. Petitioner also demonstrated that the false testimony was also material, and both issue's created a reasonable doubt.

53. The lower courts was one sided and relied on the respondent's arguments that was misleading and not supported by the record, amounted to speculations and inference on inference's. The courts failed to determine the materiality of petitioners claims or how the defense could have used the exculpatory information, and whether it would have change the course of trial or created a reasonable doubt, or whether or not it was harmless error, failed to apply State law to see if the factors to the standards was satisfied in a wholly circumstantial evidence case under the standard of acting in concert. And whether the state's court's decision, was an unreasonable application of Federal law, or made an unreasonable determination of the facts, **U.S.C.A** 2254, it's been consistently held under New York, and Federal Law, that the following must be satisfied in order for a conviction to stand in the circumstances of a case like this one:

A. Possession by dominion or control, or constructive possession requires a "show[ing] that the petitioner exercised dominion or control over the property by a sufficient level of control over the area in which the contraband found or over the person from whom the contraband is seized; This is well established See **Chamel v. California**, 395 U.S. 752, 759 – 760 (U.S. 1969) (The court held that the search in its entirety fell within the principle giving law enforcement authorities (t)he right to search the palce where the arrest is made in order to find and seize the things connected with the crime at 759, that a warrantless search incident to a lawful arrest may generally extend to the area that is considered to be in the possession or control of the person arrested at 760); **United States v. Facen**, 812 F.3d 280, 287 (2nd Cir. 2016) (A defendant's "mere presence" in a location containing contraband is insufficient to establish constructive possession). See **Thomas v. City of New York**, 2018 WL4328825 (E.D.N.Y. 2018); at * 8 (1.) constructive possession **People v. Manini**, 79 N.Y.2d 561, 572-74 (N.Y. 1992); **People v. Joyner**, 126 A.D.3d 1002, 1006-07(2nd Dept. 2015).

Petitioner presented invoice's that show someone else had Dominion & Control over the evidence, that was exculpatory to petitioner. Therefore, under State Law there is an exemption from accomplice liability. See ***Manini*** Supra at (569); Penal Law §20.10.

54. The people's theory was to link petitioner to independent corroboration evidence. See **People v. Ohlstien**, 54 A.D.2d 109, 112 (1st Dept. 1979) (Accomplice testimony is insufficient by itself to sustain a criminal conviction, it must be corroborated by evidence tending to connect defendant with the commission of such offense); (**C.P.L.** §60.22).

Here the people main witness an accomplice who, planed, committed the Robbery indentified the two people he planed it with, and testify he don't know petitioner he never seen him before in his life. See Id at 112 (Testimony of each of several accomplices is not corroborative of the other)

55. The respondents, and people's acting in concert theory was insufficient to convict, uphold petitioner conviction. This standard is well established around the nation. See **U.S. v. Medina,** 32 F.3d 40, 45 (2nd Cir. 1994**); Brown v. Palmer**, 441 F.3d 347 – 353 (6th 2006); **U.S. v. Thomas**, 987 F.2d 697, 701-701 (11th Cir. 1993). Here, the Second Circuit partially disagreed with **U.S. v. Thomas**. However, in ***Medina***, held that in a prosecution for Aiding and Abetting Armed Bank Robbery, "the Government must establish not only that the defendant knew that a bank was to be robbed and became associated and participated in that crime, but also that the defendant "knew that [the principal] was armed and intended to use the weapon, and intended to aid him in that respect id at 47.

Petitioner contend that the Respondent argument are wrong and is about the transference of knowledge from one defendant to petitioner. As a matter of law, its petitioner's knowledge that is required to prove Aiding and Abetting directly showing a gun would be used, and

petitioner had control over proceeds, nor could a Robber charge be proven through "Guilt by Association", the jury did not receive any evidence of petitioner knowledge, Intent, (nothing) the record is void of this requirement. See **People v. LaBelle**, 18 N.Y.2d 405, 412 (N.Y. 1996); ***Manini*** Supra (at 569); **People v. McLean**, 107 A.D.2d 167, 169 (1st Dept. 1985) (the evidence "must establish adequate proof of such a design by each person charged and must be shown to exclude other fair inference") See **Penal Law** § 20.00, 20,10; **People v. Chessman,** 75 AD2d 187 (2nd Dept 1980); **Penal Law** §§§ 15.10, 15.15, 160.00.

56. The Respondent concedes that petitioner's conviction is based entirely upon circumstantial evidence of guild, and this standard is well establish around the country, and is held to be prejudicial error, or a court to fail to give jury instruction on circumstantial evidence. See **William v. State**, 239 GA 12 (S.ct. GA 1977); Standard of Proof in circumstantial evidence cases is that facts from which inference of guilt is drawn must be inconsistent with innocence and must exclude to moral certainty every other hypotheses. See **People v. Guiliano**, 65 N.Y.2d 766 (N.Y. 1985); **People v. Way**, 59 N.Y.2d 361, 365 (N.Y. 1983); **People v. Sibbles**, 63 A.D. 2d 934, 935 (1st Dept. 1978); **People v. Burdick**, 66 A.D. 2d 459 (4th Dept. 1979); because of the closeness of this case we conclude that the failure to charge the circumstantial evidence rule was prejudicial error requiring reversal and a new trial, in the interest of justice, despite the absence of an exception to the charge. See **People v. Vasquez**, 47A.D.2d934(2ndDept.1975)

57. When a prosecutor's tactic cause substantial prejudice to the defendant and thereby serve to deprive him of his right to a fair trial, reversal is mandated. See **U.S. v. Valintine** 820 F.2d 565, 570 (2 Cir. 1987)) ("For our purpose it suffices that the prosecutor's presentation gave the trial jury an unfair and inaccurate impression that documentary evidence and oral testimony uniformly substantiated the gov loan theory of culpability. Id at * 571.

58. Petitioner raised in lower courts issues of material fact and law, as to manipulation of crime scene evidence, showing a consistence in documentation where guilt is pointing to one defendants and now ask the United States Supreme Court to condemn the following tactic by prosecutor's, to prevent them from being an architect of the proceeding as they did here and also to hold prosecutor's to the theory in their Bill of Particulars. See **People v. Colon**, 139 Misc.2d 1053, 1061 (1988-Federal Law). **Berger v. US,** 295 US 78, 82 (U.S. 1935) (held, The General Rule that allegation and proof must correspond is base upon the obvious requirement (1) that the accuse shall be definitely inform as to charge against him.

Petitioner contends, the investigation at a time where memory are fresh, and all evidence is documented should correspond to hearing and trial testimony. In this case it does not, and is not logical to assume that professionals would miss the most important evidence to the crime. Simply put the evidence collection unit investigating only documented petitioner – cell phone. See App H-9 (Properly clerk invoices). When they took pictures of the boiler room where petitioner was at (There is no Big Blue Laundry Bag). Next the arresting officer and the ADA investigation, both do not have petitioner with a bag. See App H-1 (Felony Complaint) – (District Attorney Crime Report), there is just nothing, however, the Grand Jury was presented with these allegation that do not correspond to the investigations. This documentation above was consistent with one defendant having a Gun and Bag in one room, is what the ADA theory is in is Bill of Particulars See App (H-6) (Bill – P-2).

During the hearings, it was ruled that his case has no in court or out of court ID, and all complaints laid face down on the floor and all could not see where the two robberies ran, all evidence and sprint report have only two perpetrators in the bar. But three people were arrested. The first prosecutor was removed from the case one year

and half earlier later. When the new prosecutor took over, he changes the theory of defendant being found in one room, to, two rooms. He then had the arresting officers and the other officer take pictures of the property in the other defendant's invoices where it was not at the crime scene. The picture was inadmissible to submit into evidence for a few reasons. First, "the invoices was not placed into evidence where the jury could see them and the photo's was based on the invoice's not taken at crime scene and, the invoice states where the cloths was found being in a bathroom, and the statement in the invoices with the Blue Laundry Bag state that defendant Quinn use it to collect stolen property, so the respondent argument that the invoice was admissible was wrong, not for petitioner, they was not relevant to petitioner's state of mind, and substantially prejudice petitioner because it was the only evidence against petitioner, so the inference the jury received was manifest, because petitioner stand on a wrongful conviction where all the standards that was required, all parties ignored. Leaving the conviction legally insufficient under ***Winship***, 397 U.S. 358 (U.S. 1970); **Jackson v. Virginia**, 442 U.S. 307 (U.S. 1970).

Therefore, the Respondent and court decision was a fundamental miscarriage of justice. To hold petitioner responsible for evidence that was not taken by force that's in a different location that relate to identification, and mental state, violates every law in the land, and the fundamental fairness doctrine, because all standard above clearly dictate that the conviction by fact and law is legally insufficient.

Had the courts applied any of these standards properly they would have found that the evidence was legally sufficient.

Reasons for granting the Petition

59. Because New York State Criminal Justice System has abandoned the Due Process protection against all forms of false impressions, misleading, and false testimony that goes uncorrected by prosecutor's who suppress favorable information. See **Alcorta v. Texas**, 355 U.S. 28-31 (1957); **Mooney v. Holohan**, 294 U.S. 103 (1935); **Pyle v. Kansas,** 317 U.S. 216 (1942); Brady Supra; *Giglio* Supra, ***Kyles*** Supra, ***Agurs*** Supra, ***Napue*** Supra, and Bagley.

60. The public interest lies in permitting an De Novo review on the record to determine whether prosecutors unethical practices, and faulty investigation procedure's warrants reexamination, to prevent the harm caused by the pattern of wrongful convictions around the nation.

61. It is absolutely vital for there to be a full accounting of the New York court's failure to apply the mandatory, necessary standards, developed in the long line of precedents in the case's above, that govern prosecutor's duty's, and how court's should review such claims, and should not require a high level of proof from defendant's when the actual record is apparently clear.

62. The amount of work and diligence in pursuing these claims is not the work of a guilty man. Petitioner has over a 30 year criminal history for low level non-violent crimes. Robbery is inconsistent with petitioner history, and could have taken eight years offered; he would have been home in 6 years. However, this case actually gave me a purpose in life, and for that he is grateful. The creator of the Bill of Rights was design to govern a nation. However, this petition is about Human Rights, not petitioner. The Criminal Justice System can work, but the bad actors are no better than a common criminal. There are at least three Justice's in this court, two, petitioner witness the allegations and the attacks you had to go through, while many assumed that they was true, petitioner saw that they did not have any truth to them and said "that's what people in the criminal justice system go though for decades and is what happen in his trial. This court can't allow the state's prosecutors and courts to alter

established and settle law, when they don't follow the standard of acting in concert, then they are allowed to transfer mental culpability to whoever they choose. A conviction should not be based in pure speculation, and possession, will also be used in any way the prosecutors choose, the standard and rules are design to bring about either a just conviction or innocence.

The right to the presumption of innocence, petitioner was denied this right from the time of his arrest.

63. Petitioner ask this court please do not ignore the obvious fact that if it deny this petition, the practical effect would be to allow prosecutors judges to continue to breach their constitutional duty, their statutory obligations. Enforcement of clear, non-discretionary, and easily definable laws of the land, statutes, and rules, given the obvious reality that the protections of indigent defendants in the criminal justice system who are wrongly being convicted is a central concern of our society, and given this pattern in view of the truth of a systemic problems in deficiencies is 18-B Counsel system, prosecutors unethical tactics. Both faulty investigative procedure's, improper reviews by courts, resulting in widespread violations of defendants rights to the six, fourteen amendment for decade's is sufficient basic to conclude that petitioner- Mr. Bowers claim and petition has an substantial relationship to an ongoing pattern, and future African American defendants would likely be adversely affected in the absence of litigation.

Petitioner ask the court to consider the standard in **Illinois v. Lafaytte** 462 U.S. 640 (U.S. 1983), to affirm and require under Federal law, that police officers are required to document all crime scene evidence, and when there are multiple suspect, to log location, place, time, and who have dominion & control. This will prevent confusion, and would be reasonable to know for shore without speculation, who had what, and require

prosecutors around the nation committing misconduct, the driving factor is that there is no penalty for them.

This court should remove the immunity in order to stop wrongful convictions. The amount of money that these actions has caused the state and Federal Government to payout is a burden on the tax payer, and prosecutor's are public citizen, and under the equal protection clause, due process, if a citizen break the law, than a prosecutor should equally be punish if it violates the constitutional to treat one group of people different from another group of people, this truly should be change.

64. If by some miracle this court grants this petition, petitioner will ask this court, to hold the respondent to the arguments she made in state and federal courts. Let her show this court where in the record do she rely on. (She will not be able too).

May all be bless, and thank you for your time, and patience, bless.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Date: December 2, 2021

Sworn to before me this
2nd day of December, 2021

NOTARY PUBLIC

ELIZABETH PEREZ-COLON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01PE6406912
Qualified in Dutchess County
My Commission Expires 04-20-2024