

NO: 21-7423

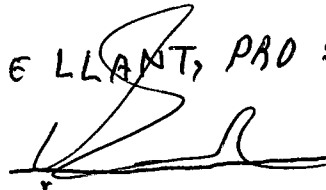
IN THE
SUPREME COURT OF THE UNITED STATES

DELBERT KEYES, #48813, - PETITIONER,
VERSUS

SUPT. BLAND HUFFMAN, ET'AL., - RESPONDENTS.

ON PETITION FOR REHEARING OF
PETITION FOR WRIT OF CERTIORARI

PETITIONER-APPELLANT, PRO SE;

DELBERT KEYES; , #48813,

SMCI, AREA-2, UNIT D-2

P.O. BOX 1419

LEAKESVILLE, MS 39451

THIS THE 12 DAY OF MAY, 2022

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QUESTION(S) PRESENTED

ONE: WHETHER THE COURT SHOULD GRANT
RELIEF IN THIS CAUSE NUMBER.

PETITIONER-APPELLANT, ANSWERS "YES."

LIST OF PARTIES

All parties appear in the caption of this
case on the cover-page.

OPINIONS BELOW

Petitioner filed his Petition for Writ of Certiorari, in this instant Court on/on about the 14th day of April, 2022.

This Court denied said Petition on/on about the 18th day of April, 2022... See Appendix-E, attached hereto.

JURISDICTION

The date on which this Court denied Petition for Writ of Certiorari was April 18, 2022--- This instant Motion for Rehearing, is filed within Twenty-five (25) days of said date. The

The jurisdiction of this Court is invoked under Rule 44 of, of The Rules of The Supreme Court of The United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution states in pertinent part as follows:

"... No person shall be deprived of life, liberty, or property without due process of law."
U.S. CONST. AM. V

The Sixth Amendment to the United States Constitution states in pertinent part as follows:

"That the accused shall have the right to the effective assistance of counsel in all criminal prosecutions, for his defense."
U.S. CONST. AM. VI

The Fourteenth Amendment to the United States Constitution states in pertinent part as follows:

"(Applicable to states via 5th Amendment)... No person shall be deprived of life, liberty, or, property without due process of law."
U.S. CONST. AM. XIV

STATEMENT OF THE CASE

Keyes was convicted in the Circuit Court of Harrison County Mississippi for the offenses of, robbery; kidnapping; and forcible sexual intercourse. Subsequently thereafter, Keyes was sentenced to life on each count (3) respectively, to be served consecutive, in the custody of the Mississippi Department of Corrections.

Following said conviction and sentence in the lower (trial) court, Keyes perfected a timely appeal to the Supreme Court-Court of Appeals of the State of Mississippi. The Appellate Court affirmed conviction and sentence, and mandate was issued on/or about May 19, 2019 (Keyes vs. State, ___ So.3d ___; 2018 WL 6323115-- Miss. Ct. App. 2018-- Certiorari denied/dismitted on/or about the ___ day of ___, 2019, 276 So3d 660--Miss. 2019).

That on/or about March 30, 2022, (received shortly thereafter by Keyes), Keyes received notice that his supplemental Brief was dismissed by the court; Court order NO. 2019-M-01898 (said motion filed by Keyes on/or about 11/25/19) (and said brief was amended by Keyes on/or about 01/13/20) (said motion being denied on/or about

04/07/20).

Subsequently, Keyes caused to be filed his Motion To Supplement Pending Filings... in which the Court denied on/or about 11/09/21. In the interval (04/07/20 and 01/10/22), the Court also denied Keyes' Motion for Rehearing.

Keyes then sought Writ of Certiorari in this instant Court (Case No. 21-7423) -- the same being denied by the Court on/or about March 30, 2022.

The statements set forth in this subtitle -- Statement of Case -- are more supportive by the information supplied in Appendix-A thro Appendix-E, attached hereto and made a part of hereof by reference,

REASONS FOR GRANTING THE PETITION

Should the justice(s) of this Court grant relief requested... The record of any evidentiary hearing that may be held by the Court, will show that Keyes has been denied his Constitutional rights to the effective assistance of Trial Counsel and the right to due process of the law -- under the protective provisions of the Fifth and Fourteenth Amendments, to due process

of law and/or the protective provisions of the Sixth Amendment right to effective assistance of trial counsel. Relief for violations of federal law, (U.S. Const.), by the state should be granted -- whereas herein -- the violations rises to the level of a fundamental defect, which inherently resulted in a complete miscarriage of justice and/or, is inconsistent with the rudimentary demands of fair procedure... See, Reed v. Farley, 512 U.S. 339, 348 (1994) (quoting Hill v. U.S., 368 U.S. 424, 428 (1962); U.S. v. Hopper, 543 U.S. 1136 (2004); Virgil v. Dretke, 446 F.3d 598, 613-14 (5th Cir. 2006); and, U.S. v. Watkins, 552 U.S. 1091 (2008).

Any and all direct evidence presented against petitioner, was inconclusive at best. There is no physical or otherwise evidence to connect the petitioner to the crimes charged. In this regard, the state's so-called credible evidence of guilt was circumstantial and failed to prove petitioner's guilt beyond a reasonable doubt... See, In re Winship, 397 U.S. 358, 364 (1970); Patterson v. NY, 432 U.S. 197, 210 (1977); Cage v. LA, 498 U.S. 39, 41 (1990); Sullivan v. LA, 508 U.S. 275, 278 (1993); Tyler v. Cain, 533 U.S. 656, 664-69 (2001); and, Clark v. Ariz., 548 U.S. 735, 766 (2006).

The trial court erred in denying peti-

tioner's motion for a directed verdict. The evidence presented in said motion represented facts warranting a reversal, reversal and remand, or, at the very least an evidentiary hearing...see, U.S. V. ATKINSON, 297 U.S. 157, 160 (1936); U.S. V. Olano, 507 U.S. 725, 731 (1993); Johnson V. U.S., 520 U.S. 461, 465 (1997); U.S. V. AVANTS, 278 F.2d 510, 520 (5th Cir. 2002); and, U.S. V. Gonzalez-Terrazas, 529 F.3d 293, 296 (5th Cir. 2008).

During the course of trial, the prosecutor introduced improper evidence -- evidence of prior bad acts not charged in the indictment. The trial court allowed this improper evidence to stand before the jury -- no curative instructions. Allowing the jury to consider this unclarified improper evidence, deprived petitioner of a fair trial by an impartial jury...see, U.S. V. Frady, 456 U.S. 152, 163 n.14 (1982); U.S. V. Young, 470 U.S. 1, 15 (1985); U.S. V. Vonn, 535 U.S. 55, 59 (2002); and, U.S. V. Inman, 411 F.3d 591, 595 (5th Cir. 2005). See also, U.S. V. Jones, 527 U.S. 373, 394-94 (1999).

It was discovered during the course of trial that, the prosecutor withheld exculpatory evidence from the defense. The withholding of this evidence was prejudicial to the

Petitioner. The Prosecutor's duty in a criminal prosecution is to seek justice. Therefore, the Prosecutor should prosecute with earnestness and vigor, but may not use improper methods calculated to produce a wrongful conviction. The DNA allegedly found in a jacket, should have been excluded from evidence admitted at Trial... see, Berger v. U.S., 295 U.S. 78, 88 (1935); Massiah v. U.S., 377 U.S. 201, 204 (1964); Donnelly v. DeChristoforo, 416 U.S. 637, 643 (1974); and, Darden v. Wainwright, 477 U.S. 168, 181 (1986).

The Prosecutor (Court) erred in withholding exculpatory evidence. The jury was entitled to receive this evidence for whatever value to lead to the determination of a just verdict after Trial. The Fifth and Fourteenth Amendments requires the government to disclose specific types of evidence to defendants. In some cases, the government's duty under 'Brady' arises regardless of whether the defendant specifically requests material or favorable evidence... see, Brady v. Maryland, 373 U.S. 83, 87 (1963); Wardius v. OR, 412 U.S. 470, 474 (1973); U.S. v. Bagley, 473 U.S. 667, 682 (1985); Weatherford v. Bursey, 429 U.S. 545, 559 (1977); Strickler v. Greene, 527 U.S. 263, 281-82 (1999); and, Cone v. Bell, 129 S.Ct. 1769, 1782 (2009).

During the jury instructions stage of the Trial, the Trial Court provided faulty jury instructions. Defense Counsel stood fast, and did not raising any objections to same. Because the jury was improperly informed; (faulty instructions), there cannot be said that, the resulting verdict rest upon a fair determination of the credible evidence... see, Duncan v. LA, 391 U.S. 145, 153 (1968); Frank v. U.S., 395 U.S. 147, 148 (1969); Baldwin v. NY, 399 U.S. 66, 69 (1970); Mullaney v. Wilbur, 421 U.S. 684, 702 n.31 (1975); U.S. v. Buford, 889 F.2d 1406, 1408-09 (5th Cir. 1989); Blanton v. N. Las Vegas, 489 U.S. 538, 542 (1989); and, Lewis v. U.S., 518 U.S. 322, 325-26 (1996).

In the case sub judice, Trial Counsel committed multiple acts or omissions, which served to deprive petitioner of his right to the effective assistance of Trial Counsel. The record is void to the extent and prejudicial effects of Counsel's deficient representation. To expand the record as to Counsel's ineffective assistance during Trial, an evidentiary hearing is warrant at the least... see, McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970); Cuyler v. Sullivan, 446 U.S. 335, 344-45 (1980); Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Bell v. Cone, 535 U.S. 685, 702 (2002); and, Yarborough v. Gentry, 540 U.S. 1, 5 (2003).

During The course of The Trial, Defense counsel demonstrated deficient performance, by specific acts or omissions... To many for me to identify by memory--as my memory is somewhat distorted by the passage of Time. To factually appreciate counsel's deficiency throughout these proceedings-- the record would need expanding and would be should the court decide to order an evidentiary hearing. Trial Counsel's deficient performance was prejudicial to Petitioner... See, Williams v. Taylor, 529 U.S. 362, 396-99 (2000); Glover v. U.S.,¹ Mickens v. Taylor, 535 U.S. 162, 166 (2002); Ward v. DreTke, 420 F.3d 479, 491 (5th Cir. 2005); Schriro v. Landrigan, 550 U.S. 465, 475-80 (2007).

Petitioner had readily available exculpatory evidence as a defense against the charge(s)-- only, not followed up on and presented in court, due to lack of counsel's assistance. However, even as such, the scant (mostly presumptions) evidence put on by the state-- was not proof of any crime committed by Petitioner. In this regard; "The resulting verdict (guilty) was against the overwhelming evidence, or rather weight of the evidence..." see, Herrera v. Collins, 506 U.S. 390, 409-11 (1993); U.S. v. Sanchez-Sotelo, 8 F.3d

¹ 531 U.S. 198, 201, 204 (2001)

202, 212-13 (5th Cir. 1993); U.S. v. Hopper, 543 U.S. 1136 (2005); Eberhart v. U.S., 546 U.S. 12, 19 (2005); and, U.S. v. Steverns, 559 F.3d 274, 278 (5th Cir. 2009).

Defense Counsel was further ineffective in failing to register timely objections throughout the course of the Trial. Specifically, in regards to prejudicial comments on Detective Christopher Werner and prejudicial comments on State's failure of burden of proof. As aforementioned, I am asserting from memory with a distorted mind from the passage of time. In failing to timely object--or object at all--Counsel's failure did not reserve the subject matter(s) for appellate review... failure to register timely objections amounts to ineffective assistance of Counsel... See, Lockhart v. Fretwell, 506 U.S. 364, 367-68 (1993); Gray v. Lynn, 6 F.3d 265, 269-70 (1993); Wiggins v. Smith, 539 U.S. 510, 534-38 (2003); Rompilla v. Beard, 545 U.S. 374, 390-93 (2005); and, Knowles v. Mirzayance, 129 S.Ct. 1411, 1422 (2009).

Jury selection procedures implicate due process, the Sixth Amendment, and equal protection principles. First, in limited situations, a defendant may challenge the jury selection process, on the ground that it violates fundamental fairness under the Due Process Clause. Second, the Sixth Amendment forbids racial discrimination in the selec-

tion of jurors and requires that the jury venire from which the petit jury is selected represents a fair cross-section of the community. In the instant case, the selection of the jury process amounted to a 'Batson' violation... See, Batson v. KY, 476 U.S. 79, 96-98 (1986). See also, Taylor v. LA, 419 U.S. 522, 531 (1975); Duren v. MO, 439 U.S. 357, 364-65 (1979); Coleman v. Calderon, 525 U.S. 141 (1998); (quoting Batson) McGinnis v. Johnson, 181 F.3d 686, 689 (5th Cir. 1999); and, Garner v. U.S., 543 U.S. 1100 (2005).

At the precise stage of the trial proceeding, the court allowed the prosecutor to amend the indictment. Said Amendment being in violation of petitioner's Fifth Constitutional right... Said Amendment resulting in prejudice to petitioner. Because the Fifth Amendment guarantees a defendant the right to be tried for only those offenses presented in an indictment returned by a grand jury--indictments may not be substantively amended without reconvening the grand jury... See, Stirone v. U.S., 361 U.S. 212, 217-19 (1960); U.S. v. Cotton, 535 U.S. 625, 629 (2002); and, U.S. v. Hoover, 469 F.3d 496, 502 (5th Cir. 2006).

Defense counsel failed to object to improper testimonial evidence from the state's expert witness. Defense counsel failed to petition the court for funds to employ an expert witness for the defense.

Per prior discussions, Defense Counsel knew that to rebut expert testimony-- required your own expert witness. Knowing the State was putting on an expert witness-- Defense Counsel did nothing in an attempt to secure an expert witness for the defense. In the end, this omission by Counsel proved to be prejudicial to Petitioner... See, Kotteakos v. U.S., 328 U.S. 750, 756 (1946); Peyton v. Rowe, 391 U.S. 54, 67 (1968); Pulley v. Harris, 465 U.S. 37, 44 (1984); Brecht v. Abrahamson, 507 U.S. 619, 623, 629-30 (1993); and, Cockerham v. Cain, 283 F.3d 657, 663 (5th Cir. 2002).

The Trial Court erred by allowing-- and, the Prosecutor displayed misconduct in presenting perjury testimonial evidence-- while defense Counsel did nothing in the way of objections... See, Trial Record page 130, lines 15-29-- and page 131, lines 6-26. See also, Holland v. U.S., 348 U.S. 121, 140 (1954); Estelle v. McGuire, 502 U.S. 62, 72 (1991); Victor v. NEB., 511 U.S. 1, 5 (1994); U.S. v. Gaudin, 515 U.S. 506, 522-23 (1995); and Apprendi v. NJ, 530 U.S. 466, 488-92 (2000).

Notwithstanding the fact that the Trial Court may exclude for cause any prospective juror, who is not statutorily qualified or who otherwise will be unable to render an impartial verdict-- may not excuse a prospective juror for cause for improper reasons. In the instant cause, the Trial

Court erred in excusing prospective juror for improper cause... See, Irvin v. Dowd, 366 U.S. 717, 722-23 (1961); Patton v. Yount, 467 U.S. 1025, 1027 n.12 (1984); McDonough v. Greenwood, 464 U.S. 548, 555-56 (1984); Moawad v. Anderson, 143 F.3d 942, 948 (5th Cir. 1998); and, Pyles v. Johnson, 136 F.3d 986, 995 (5th Cir. 1998).

In regards to the conviction on the rape count-- plainly and clearly circumstantial evidence. The credible evidence put on by the state -- receiving all inferences -- was insufficient to support the verdict... See, PA v. Ritchie, 480 U.S. 39, 56 (1987); Boyd v. CA, 494 U.S. 370, 380 (1990); Morris v. Cain, 186 F.3d 581, 586-88 (5th Cir. 1999); Harris v. U.S., 536 U.S. 549-50 (2002); and, Robertson v. Cain, 324 F.3d 297-309-10 (5th Cir. 2003).

Furthermore, the conviction for rape would be made null and void up-under the provisions of the "Rape shield Law." The offense of rape is a serious criminal (non-criminal) matter and -- as should be mandated to require proof other than just mere word of mouth. To allow the conviction of rape to stand herein amounts to a miscarriage of justice... See, U.S. v. Webster, 162 F.3d 308, 351 (5th Cir. 1998); U.S. v. Arnold, 416 F.3d 349, 355 (5th Cir. 2005); and, U.S. v. Trefl, 447 F.3d 421, 424 (5th Cir. 2006).

In some cases a single error standing

alone, may not be enough to require a reversal and remand for a new trial. However, in other cases, multiple errors, cited of constitutional violations combined in a single criminal prosecution, would and should require a reversal and remand. As so with the multiple constitutional errors set forth herein... See, U.S. v. Rodriguez-Moreno, 526 U.S. 275 (1999); U.S. v. Hammoud, 381 F.3d 316, 328-29 (543 U.S. 1097 - 2005); U.S. v. Acosta, 475 F.3d 677, 681 (5th Cir. 2007); and, U.S. v. Burns, 526 F.3d 852, 858 (5th Cir. 2008).

Although the line between proper and improper advocacy is not always clear -- courts have consistently found certain types of prosecutorial conduct improper. So should be found herein in the Prosecutor closing argument -- as to Petitioner's Testimony. Reversal error standing alone... see, U.S. v. Young, 470 U.S. 1, 11-12 (1985); U.S. v. Williams, 343 F.3d 423, 437 (5th Cir. 2003); U.S. v. Ollivierre, 378 F.3d 412, 417, 421 (543 U.S. 1112 - 2005); and, U.S. v. Elashyi, 554 F.3d 480, 506 (5th Cir. 2008).

CONCLUSION

As to the contents herein, Petitioner respectfully prays that the justices of this court, will

Seriously reconsider his petition for a writ of certiorari -- grant same -- reverse conviction and sentence and remand accordingly.

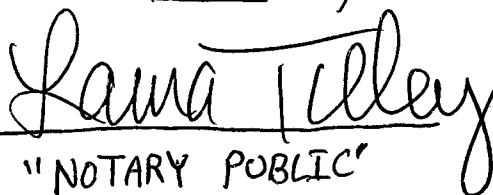
The petition for a writ of certiorari should be granted.

Respectfully Submitted,



DELBERT KEYES

SWORN TO AND SUBSCRIBED BEFORE ME,
this the 12 day of May, 2022.


"NOTARY PUBLIC"



MY COMMISSION EXPIRES; _____

CERTIFICATE OF GROUNDS
AND
INTENT OF PETITION

I, Delbert Keyes, Petitioner named herein -- do hereby "CERTIFY" That, The grounds, [e.g., ineffective assistance of Trial counsel and Deprivation of due process rights], are limited to intervening circumstances of substantial and/or controlling effect -- or, other substantial grounds not previously presented.

I, further "CERTIFY" That, This "Petition for Rehearing" is filed (presented) in good faith and not for delay.

This the 9 day of June, 2022.

[relative of certiorari petition notarized 05/12/22]

Respectfully Submitted,



DELBERT KEYES
(PETITIONER PRO SE)