NO 21-7533

IN THE

SUPREME COURT OF THE UNITED STATES

STANCIU ION - PETITIONER

vs.

BOBBY LUMPKIN - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

ORIGINAL

STANCIU ION - PRO-SE

TDCJ # 2116104

ESTELLE UNIT

264 FM 3478

HUNTSVILLE, TEXAS 77320

QUESTIONS PRESENTED

1. WHEN A STATE TOGETHER WITH STATE'S EXPERT WITNESS CHANGE THE ORIGINAL VERSION OF MEDICAL EVIDENCE INTO A NEW COMPLETE DIFFERENT VERSION, TO LINK THE ACCUSED TO THE CRIME, IS IT CONSIDERED AN UNCONSTITUTIONAL DENIAL OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT ?

2. WHEN DEFENSE COUNSEL FAILED TO:

   - PRESENT EXCULPATORY EVIDENCE;
   - TO CROSS-EXAMINE AND CONFRONT THE STATE'S WITNESSES;
   - TO OBJECT OR CORRECT FALSE AND MISLEADING INFORMATION;
   - TO PRESENT A COMPLETE DEFENSE;
   - TO USE EFFICIENTLY HER EXPERT FOR DEFENSE;
   - TO INVESTIGATE THE MEDICAL EVIDENCE;

   CAN ATRIBUTE THAT COUNSEL RENDERED ADEQUATE ASSISTANCE ?

LIST OF PARTIES

Petitioner, pro-se

Stanciu Ion, TDCJ # 2116104, Estelle Unit, 264 FM 3478, Huntsville, Texas 77320.

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RELATED CASES

03 February,2017	Conviction for murder, Harris County, Texas, District Court # 176, Case No. 1454476.
15 Februar,2018	Direct Appeal, affirmed, Texas 14th Court Of Appeals, Case No.14-17-00121-CR.
06 June,2018	Direct Appeal, petition for descretionary review - refused Court Of Criminal Appeals of Texas, Case No. PD-0296-18.
12 February,2021	11.07 Writ Of Habeas Corpus denied, Court Of Criminal Appeals of Texas, Case No. 1454476-A; WR-90; 644-01.
24 March,2021	2254 Writ of Habeas Corpus denied, United States District Court, Southern District of Texas, Case No. 4:20-cv-00938.
30 November,2021	Certificate Of Appealability denied, United States Court Of Appeals For 5th Circuit, Case No. 21-20195.
07 February,2022	Rehearing En Banc denied, United States Court Of Appeals For The 5th Circuit, Case No. 21-20195.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRITR OF CERTIORARI

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

OPINION BELLOW

For case from federal court:

The opinion of the United States District Court For Southern District of Texas appears at Appnedix A pages A-4 to A-29 of this petition and is unpublished.

JURISDICTION

The date on which the United States District Court Of Texas For Southern District decided my case was 24 March,2021, and copy appears in Appendix A-3.

The United States District Court denied a Certificate Of Appealability in same day, and a copy of the order appears at Appendix A-3.

The United States Court Of Appeals For The 5th Circuit denied a Certificate Of Appealability on 30 November, 2021,and a copy appears at Appendix A-2.

The United States Court Of Appelas For The 5th Circuit denied a timely petition for rehearing en banc on 7 February, 2022, and a copy appears in Appendix A-1.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- United States Constitution Amendment VI.
- United States Constitution Amendment XIV.
- Constitutional Law §840.3, 841, 848.
- 28 U.S.C. §2254 (b)(d).
- 28 U.S.C. §2254 (d)(1).

- Federal Rules Of Evidence, Rule 401,402,403,702.

-Texas Penal Code §19.02(b)(1)-(2).

- Texas Penal Code §37.02(a)(1); 37.03(a)(1)(2); 37.04(a); 37.09(a)(1)(2); 37.10(2)(B).

American Bar Association (ABA) Standard Of Criminal Justice §4-4.1 (3d.ed.1993)

- State Bar Rule, Rule 1.15(d).

STATEMENT OF THE CASE

Mr. Stanciu's trial started on 30 January, 2017 and ended on 3 February,2017. Presenting perjured testimonies, not presenting exculpatory evidence, misleading the jury, Mr. Stanciu was found guilty of crime. In the last part of his trial Mr. Stanciu tried to testify for his defense, but defense counsel didn't let him to do it. On 3 February, 2017 Mr. Stanciu was sentenced 60 years to Texas Department Of Criminal Justice.

On direct appeal his appeal attorney, without to consult with Mr. Stanciu, filed the brief and petition for discretionary review. On 15 February, 2018 the 14th Court Of Appeals affirmed the judgment. The petition for discretionary review was refused by Court Of Criminal Appeals Of Texas on 6 June, 2018.

On 11 April, 2019 Mr. Stanciu's 11.07 writ of habeas corpus was filed in court. Without to file any "proposed findings and conclusion of law" or to conduct any "hearing on this application" (See Appendix B-2) the Court Of Criminal Appeals Of Texas denied his habeas corpus without written order on 12 February, 2020. (See Appendix B-1).

On 11 March, 2020 Mr. Stanciu's 2254 writ of habeas corpus was timely filed in court. The court granted motion for discovery and tho months later it was denied. Mr. Stanciu wanted to present new exculpatory evidence from file what was in possesion of his defense attorney, but she refused to released, even Mr. Stanciu requiested help from Texas Bar Association (Appendix B-46). The defense attorney also refused to answer the proposed interrogatories. The court denied evidenciary hearings. On 24 March District Court dismissed the habeas corpus and denied the Certificate Of Appealability. (Appendix A-3).

On 11 April, 2021 Mr. Stanciu sent a notice of appeal and requiested a Certificate Of Appealability from United States Court Of Appeals For 5th Circuit and it was denied on 30 November, 2021.(Appendix A-2).

The petition for rehearing en banc was denied on 7 February, 2022.

REASONS FOR GRANTING THE PETITION

1. When a State together with State's expert witness change the original version of medical evidence into a new complete different version, to link the accused to the crime, is it considered an unconstitutional denial of due process under the Fourteenth Amendment ?

Mr. Stanciu was charged with committing murder by (1) intentionally or knowingly causing the death of the complainant by placing a zip-tie around her neck or (2) intending to cause serious bodily injury by intentionally or knowingly committing an act clearly dangerous to human life that cause the death of the complainant by placing a zip-tie around her neck. See Texas Penal Code §19.02(b)(1)-(2).

Due process requires each element to be proved beyond resonable doubt. Constitutional law 840.3, 841, 848, 14th Amendment, 6th Amendment. See Appendi v. New Jersey, 530 U.S. 466, 120S.Ct. 2348 (2000).

The prose cution had no factual evidence to prove Mr. Stanciu committed the crime. Police searched his house, car, work place, bank accounts, relatives and friends and found no evidence that Mr. Stanciu acquired the zip-ties used for strangulation of Mrs. and Mr. Stanciu.

Police and FBI did DNA and fingerprints test on zip-ties and prosecution expected the test could provide information about Mr. Stanciu involvment in strangulation. When DNA and fingerprints test was done the result shows the followings:

- the zip-tie from Mrs. Stanciu neck has her DNA and inconclusive Mr. Stanciu's DNA (because paramedic cut first Mr.Stanciu 's zip-tie and without changing the gloves, he cut Mrs. Stanciu's zip-tie, in this way transfering DNA from one person to other).

- the zip-ties from Mr.Stanciu neck and hands has his DNA (because he tried

to break/cut them and he touched those two zip-ties).

- the zip-tie used to immobilize Mr. Stanciu's legs, has Mrs. Stanciu's DNA exclusively DNA.

- the unused zip-tie has nobody's DNA.

The DNA result was useless for prosecution and he and the defense counsel decided not to present the DNA and fingerprints evidence to jury. The prosecutor declared:

> "And for hundred of years scientific evidence that we now know and now seem to rely on didn't exist, and yet juries were able to find those people guilty because of the evidence that they have" (Appendix B-40).

The primary interest of prosecution shall not be getting a conviction, but to insure a fair trial to the defendant, and particularly to insure that the trial will bring out, not to hide the truth.

As in Jamison v. Kerestes, 2011 U.S. Dist. LEXIS 74918 (M.D. Pa 2011) the prosecutor in this case was looking to find a smoking gun to prosecute not to bring the truth to the surface. To link Mr. Stanciu to crime he used two corrupted expert witnesses.

The autopsy report was done by Institute Of Forensic Sciences and signed by Michael R. Condron II Assistant Medical Examiner on6 March, 2015 and reviewed by Dwayne A. Wolf M.D. Ph.D. Deputy Chief Medical Examiner on same day, and it was introduced into evidence as State's Exhibit 131.(Appendix B-3). In the autopsy report is presented the original version of ribs fracture. Under "Evidence of Medical Intervention" it is written:

> "Defribilator pads and electrocardiogram electrodes are on torso. -- Consistent with documented use of an Autopulse resuscitation device several mid-level ribs have posterior fracture." (Appendix B-4).

At trial Dr. Condron when did the presentation of autopsy report to jury, he skipped the original version of ribs fracture and come with a second version in contradiction with first one. He concluded the ribs fracture could be done by some mechanical resuscitation device, but is no documentation that Mrs. Stanciu

undervent to that kind of resuscitation and ribs fracture probably was caused by something else. (Appendix B-19, 20). Normally the evidence shall come from expert witness testimony, but in this case the prosecutor questioned and suggested if ribs fractured by pressure being put on somebody's back, either a hand,,or a knee or even standing on a person's back. Dr. Condron agreed with this suggestion, but on cross-examination he could not stand by his agreement and he come with the third version, what is not close to any previous version. He said: "I don't know". (Appendix B-24).

The prosecutor used the modified ribs fracture evidence to connect Mr. Stanciuto crime declaring in Closing Argument that Mr. Stanciu standing on Mrs. Stanciu's back to tie the zip-tie around her neck, he fractured the ribs. ((Appendix B-39).

Looking closely to details can be observed anomalies in evidence, and the prosecutor's statement is an inflamatory statement.

Dr. Condron failed to explain, medically or scientifically, how three ribs fractured and capillary vessels and lymphatic system, what are more fragile than bones, are intact. The tissue surounding those ribs is perfectly normal. Why the fracture on those ribs is from bottom moving upward, and not from back moving forward, how supposed to be if the pressure was applied on the victim's back ? (See ribs'photograph Appendix B-8).

Federal District Court instead to analyze those three versions of expert witness to see if Dr. Condron committed fraud, the court analyzed the argument of prosecutor in Closing Argument, and concluded the prosecor's argument was proper and it was within the record evidence. (Appendix A-18).

Another modified evidence from autopsy report presented to jury is Hyoid bones rupture. Dr. Deborrah Pinto did the anthropology report and she signed it on 23 February, 2015. This report is part of autopsy report (Appendix B-7). Under "Evidence Of Medical Intervention" is written:

"An endotracheal tube is apropriately positioned in the mouth and secured with a collar--" and under "Internal Examination - Neck" is written: "The tongue mucosa is intact and has two small hemorrhages likely associated with endotracheal intubation, which extend to the underlying musculature." (Appendix B-4, 5). These medical findings were not presented to jury.

Dr. Pinto said about "hyoid bones that are situated at base of the tongue and only tongue muscles are attached to those bones." She concluded: "the Hyoid bones ruptured by some type of blunt force trauma to that region," but she did not mentioned enything about force used for intubation, what caused the hemorrages to the tongue. (Appendix B-10, 11).

Again, the prosecutor questioned and suggested that rupture of hyoid bones could be consistent with a ligature strangulation like a zip-tie? And Dr. Condron agreed. (Appendix B-21, 22).

There is no link between strangulation area and those hyoid bones to transmit the force created by zip-tie to those bones, but Dr. Condron ignored any medical or scientific explanation and defense counsel refused to cross-examine Dr. Pinto or ask critical questions to Dr. Condron about hyoid bones rupture.

Federal District Court has no opinion about this evidence, but concluded that Mr. Stanciu's claims are meritless.(Appendix A-19).

The burden of prosecution case rested centrally on medical evidence,autopsy doctors' testimony and their credibility. If medical evidence was presented correctly, as was written in autopsy report, together with (not presented) DNA the entire prosecution case as to all charges would be undermined and prosecution could not prove Mr. Stanciu committed the crime.

A person commits an offense if, with intent to decive and with knowledge he makes a false statement under oath, that person commits perjury. A person commits an offense if the perjury (from above) and the false statement is made during or in connection with an official proceeding and is material. A

statement is material regardless of the admissibility of the statement under the rule of evidence, if it could have affected the course of the official proceeding. A person commits an offense if knowing that an investigation or official proceeding is pending or in progress, he (1) alters or conceals any record, or things with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; (2) makes, present, or uses things with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding. A medical report or a test perform on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action is considered a Governmental Record. See Texas Penal Code Section 37.02(a)(1); 37.03(a)(1)(2); 37.04(a); 37.09(a)(1)(2); 37.10(2)(B).

Since expert evidence can be both powerful and misleading because of the difficulty in evaluating such evidence, a federal judge in weighing, under Rule 403 of Federal Rule Of Evidence the posibility danger of unfair prejudice resulting from such evidence against evidence's probative force - exercises more control over expert than over laywitness. See Daubert v. Merrel Dow, 509 U.S. 579,113 S.Ct. 2789 (1993).

How everebody knows a bone can not be fractured without to have a bruise. Damaging a bone can not be done without damaging the capillary vessels and the lymphatic system. In this case is not just one rib, but three of them and no damage to tissue around ribs,, even at cellular level.There is only one explanation to this issue. When paramedics used the Autopulse resuscitation device it created high voltage impulse to energize the heart's muscles and in same time the intercostal muscles were energized and by sudden strenous contraction those muscles fractured the ribs without to affect the surounding tissue. That why the fracture is from bottom moving upward in plan of intercostal muscles.

The trial prosecutor's statement and Dr.Condron's testimony can not be considered legal. It is deceiving and created high prejudice to the case and the Federal District Court should had applied the clearly establish federal laws. The prosecutor deliberately presented a false picture of the facts by knowingly using perjured testimony. He had the autopsy report and he knew the original version of ribs fracture which was not helpful for him to win the case. Avoiding exculpatory evidence favorable to the defendant be presented to jury, the State filled the gap with false and modified evidence, creating an unfair trial and violated the Due Process Of Law required by Fourteenth Amendment of United States Constitution.

Refering to modified, false evidence, perjured testimonies mentioned above, the Supreme Court affirmed:

> 1. A conviction secured by the use of false evidence must fall under the due process clause where the State although not soliciting the false evidence, allows it to go uncorrected when it appears;
> 2. Deliberate deception of a court and juror in a criminal case, by presentation of known false evidence is incompatible with the rudimentary demands of justice;
> 3. Under the due process clause a new trial is required in a criminal case if false testimony introduced by State, and allowed to go uncorrected when it appeared, could in any reasonable likelihood have affected the judgment of jury;
> 4. When the reliability of a given witness may well be determinative of guilt or innocence, the prosecution's nondisclosure of evidence affecting the credibility justify a new trial under the due process clause, irrespective of the prosecution's good or bad faith;
> 5. Testimony is "material" when is reasonable likely that its admission affected the judgment of jury;
> 6. Knowledge of perjured testimony is imputable to the prosecution team, which include both investigative and prosecutorial personnel.

See Giglio v.United States, 405U.S.150, 92S.Ct.763(1972); Mooney v.Holohan, 294U.S.103,112, 55S.Ct.340(1935); Pyle v. Kansas, 317U.S.213, 63S.Ct.177(1942) Napue v. Ilinois ,360U.S.264, 79S.CT.1173(1959).

Under Mooney-Pyle-Napue line of decisions an appellate court review the record to detrmine if the State "used" the testimony, wheter the testimony was "false", wether the testimony was "knowingly used" and if these questions are

affirmatively answered, there is reasonable likelyhood the false testimony could affected the judgment of the jury, Appellant's claim rights are under Sixth and Fourteenth Amendment Of United States Constitution.

In autopsy report as manner of death is written "Homicide" and Dr. Condron affirmed: "that is based on the findings in the exam and the additional information that was provided by the people at the scene and the police investigation. The term means death caused action of other person" (Appendix B-15).

This is very powerful critical pice of evidence and in his testimony Dr. Condron didn't bring critical elements what made him to draw homicide conclusion. These critical elements suppose to show clearly the difference between strangulation by other person and suicide strangulation and presented the per = son at scene and the police report what convinced him to write homicide.

Neither prosecution or defense counsel asked Dr. Condron to clarify this issue. The due process clause of Federal Constitution prohibits conviction in criminal cases of any person except upon proof of guilt beyond a reasonable doubt. All expert testimony must be relevant and reliable before is admitted. Reliability must be demonstrated by evidence, not simply because an expert say it so. Federal Rule Of Evidence, Rule 401, 402, 702.

National Academy Report 44-48 (discussing documented cases of fraud and error involving the use of forensic evidence) found serious deficiencies in the forensic evidence used in criminal [^{xxx}327] trial.

When forensic analyst, who provides false results under oath in open court, his false testimony shall be reconsidered. See Coy v. Iova, 487U.S.1012,119 108 S.Ct. 2798 (1988).

The prosecution case rested centrally on the autopsy doctor's testimony and his false opinion. The defendand is entitled to have protection against such perjury. See California v. Trombetta, 467 U.S. 479, 104 S.Ct. 2528 (1984).

The Congress in §2254 has selected the federal district court as precisely the forum that are responsable for determining whether state conviction have been secured in accord with federal constitutional law. The federal habeas corpus statute presumes the norm of a fair trial in the State court and adequate state post conviction remedies to redress possible error. See 28 §2254(b)(d). What it does not presume is that these state proceedings will always be without error in the constitutional sense. The duty of federal habeas corpus court to apraise a claim that constitutional error did occur reflecting as it does the belief that the "finality" of a deprivation of liberty through the invocation of the criminal sanction is simply not to be achieved at the constitutional right - is not one that can be so lightly abjurned. But unfortunately sometimes the federal district courts are therefore being directed simply to duplicate the reviewing function that is now being performed adequately by State appellate courts. See Wainwright v.Sykes, 433 U.S.72,80, 97 S.Ct.2497.

2. WHEN DEFENSE COUNSEL FAILED TO: PRESENT EXCULPATORY EVIDENCE, TO CROSS-EXAMINE AND CONFRONT STATE'S WITNESSES, TO OBJECT OR CORRECT FALSE AND MISSLEADING INFORMATION, TO PRESENT A COMPLETE DEFENSE, TO USE EFFICIENTLY HER EXPERT FOR DEFENSE, TO INVESTIGATE THE MEDICAL EVIDENCE, CAN ATRIBUTE THAT COUNSEL RENDERED ADEQUATE ASSISTANCE ?

In the first issue were presented some, not all, fraudulent statements presented at trial. Ms. Tanya Kelly was the trial attorney for defense and she had a duty to protect her client against distorting presentation of evidence and circumstances and made every effort to assure the proceedings at trial

follows the guidance of law of justice. The purpose to have a defense counsel is simply to ensure that criminal defendant receives a fair trial. Fair trial is one which evidence subject to adversarial testing is presented to impartial tribunal for resolution of issues defined in advance of the proceeding.

Defense counsel had exculpatory evidence what prosecutor avoided to present to the jury, as DNA and fingerprints report, autopsy report (and other evidence not related to the above two issues). Ms. Kelly should present the evidence to releave the truth of the event occured on 13 January, 2015, to strike out false evidence and impeach State's witnesses what provided false/ perjure testimonies. Instead the defense counsel in Close Statement said:

> "It's not my job to come up here and tell you what happened that day.
> It's not my job to give you an alternative version of events.
> It's not my job to solve the crime for you."
> "Did you hear about any DNA evidence? No. You don't.
> So, did you get any fingerprints evidence? You didn't get that either.
> You don't have DNA, you don't have fingerprints.
> Does he [the prosecutor] need to bring you that? No. He doesn't."
> (Appendix B-35, 37).

The Federal Constitution guarantees criminal defendants a meaningful opportunity to present a "complete defense". See Crane v.Kentucky, 476 U.S.683,690 106 S.Ct.2142; Holmes v South Carolina, 547 U.S.319; 126 S.Ct. 1727 (2006).

Not presenting exculpatory evidence as DNA and autopsy report where is specified the cause of ribs fracture and hyoid bones rupture, to impeach State's doctor expert and to prove to jury how State knowingly modified the evidence, counsel prejudice the line of defense.

Mr. John Charles Laughlin is a biomechanical engineer and he was the defense expert in this case. When he presented himself to court, but not in presence of jury, he said:

> "I've been asked to do a biomechanical analysis of the injuries in this case and a reconstruction of the events as much as could be. I examine the evidence like the zip-ties and all photographs of the

incident scene. I've also read the police report, the autopsy report and the anthropology report, as well as the associated photographs with that. So, I took the statement and I had the DNA report from the Institute of Forensic Sciences. I looked at that statement that the police wrote up in their report, as well as their analysis, as to what was their chronology of events. I look the mechanism of injuries, as being the zip-ties and correleted that with the autopsy findings and photos.
The testing procedure that he used is widely used in scientific community. One thing that biomechanical engineer study is--the application of forces that are generated within the body to determine how forces affect the body. Hecould do an injury causation analysis by looking at the injuries." (Appendix B-30,31).

How can be observed Mr. Laughlin was very competent and prepared to answer any strategic questions about the injuries and fractures occured to Mrs. Stanciu's body and he could provide his expertise to analyze the medical evidence.

The defense counsel instead to use her defense expert to rebut Dr. Pinto and Dr. Condron misleading statements, she decided to use her expertise just to explain and clarify one single issue - if one of zip-tie found at scene was used to immobilize accused's hands, or not.

Defense counsel didn't cross-examine Dr. Pinto; didn't challange Dr. Condron; didn't present autopsy report; didn't present the DNA report what Mr. Laughlin affirmed that he read it, but in her Affidavit for State Court said:

"I do not believe it would have been beneficial or necessary to present the listed additional evidence for the following reasons: There was no DNA evidence to present, which I belive benefitted Mr. Stanciu
I don't believe it would have been beneficial or necessary to cross-examine Dr. Pinto because I did not think any additional testimony would help Mr. Stanciu's defense and, instead, would have reinforced the doctor's expert testimony.
I do not believe it would have been beneficial or necessary to further quiestion Dr. laughlin. I intentionally limited my quiestioning of defense expert Dr. Laughlin because, based on my investigation and extensive conversation with Dr. Laughlin I already knew that he was notgoing to be helpful to Mr. Stanciu's defense on any other topic, including challenging the testimonies of Dr. Pinto or Dr. Condron". (Appendix B-43, 44).

A person can not incur the loss of liberty for an offence without notice and meaningful opportunity to defend. See Havey v. Eliot, 167 U.S.409, 17 S.Ct. 841; Bodiev v Connecticut, 401 U.S.371, 91 S.Ct. 780.

The Sixth Amendment to the United States Constitution made applicable to the States via the Fourteenth Amendment, provides that all criminal prosecution, the acussed shall enjoy the right to be confronted with the witnesses against him. In Crawford v Washinghton, 541 U.S.36, 124 S.Ct. 1354 (2004) the United States Supreme Court held that the Sixth Amendment guarantees a defendant's right to confront these who bear testimony against him.

The text of the Amendment contemplates two clases of witnesses--those against the defendant and those in his favor.The prosecution must produce the former, the defendant may call the later. There is no third category of witness, helpful for prosecution, but somehow immune from confrontation.

The United States Constitution guarantees one way to challenge or verify the result of a forensic test - confrontation.

The Confrontation Clause may make the prosecution of criminal more burdersome, but that is equally true of the right to trial by jury and the privilege against self-incrimination. The Confrontation Clause like those other constitutional provisions -- is binding, and the Supreme Court may not disregard it as its convenience.

The Confrontation Clause can not be suspended because another preferable trial strategy is available. The Constitution guarantees only one way to find if the evidence is reliable - by confrontation, because conform with a recent study conducted under auspicies of the National Academy Of Sciences "The majority of laboratories producing forensic evidence are administered by law enforcement agencies, such as police department, where the laboratory administrator reports to the head of agency", and "because the forensic scien-

tist often is drive in his work by a need to answer a particular quiestion related to the issue of particular case, hé sometimes face pressure to sacrifice apropriate methodology for the sake of expediency. A forensic analyst responding to a requiest from a law enforcement may feel the pressure -- or have an incentive to alter the evidence in a manner favorable to prosecution"

And of course, the prospect of confrontation will deter fraudulent analyst in the first place, and it bring to surface the incompetent one as well. It's asserted " the legal community now concedes, with varying degrees of urgency, that judiciar system produces erroneous conviction base on discredited forensics". Study in criminal conviction concluded that invalid forensic testimony contributed to the conviction in 60% of the case. See Melandez-Diaz v. Massachusetts, 557 U.S.305, 129 S.Ct. 2527 (2009).

There is little reason to believe that confrontationwill be useless in testing expert's honesty, integrity, proficiency that are commonly the focus in the cross- examination of experts.

Rooted either in the Fourteenth Amendment due process clause or in the Sixth Amendment compulsory process or confrontation clause to a fair opportunity to present a complete defense where the accused's entire defense was that there was no physical evidence to link him to crime. See Washinghton v. Texas, 388 U.S.1423, 87 S.Ct. 1920 (1967); Davis v. Alaska, 415 U.S.308, 94 S.Ct.1105 (1974); California v. Trombetta, 467 U.S.485, 104 S.Ct. 2528 (1984) Strickland v. Washinghton, 466 U.S.668,684-685, 104 S.Ct. 2052 (1984).

In this criminal case, because of the centrality of medical testimony, the failure to consult with or call the defense expert is an indication of ineffective assistance of counsel. See Eze v. Senkowski, 321 F.3d. 110, 127-28 (2nd Cir. 2003).; Pavel v. Hollins, 261 F.3d. 210, 224(2nd Cir. 2001).

This is particularly so, where the prosecution case, beyond the purported medical evidence of abuse,rest on the credibility of autopsy doctors, as opposed to direct physical evidence such as what was originally written in autopsy report regarding ribs fracture, hyoid bones rupture and evidence of DNA report. See Eze, 421 F.3d. 128; Pavel, 261 F.3d. 224.

Here the defense counsel failed to consult in preparation for trial and call the defense expert and cross-examine the prosecution's expert witnesses for their medical abuse. Physical evidence provided enough evidence of paramedics intervention.What defense counsel declared in her Affidavit is a cover up of her ineffective assistance for defence.

Defense medical expert consultation or testimony is particularly critical to an effective defense. In this case where medical evidence could not imply Mr. Stanciu committed the crime, for defense counsel to simply concede the medical evidence without any investigation into whether it could be challenged was performance that the State and the Federal District Court could not reasonably find to be objectively resonable. See Eze.

There is no pro-se rule that requires trial attorney to seek out an expert. However, it is clear that in this case such failure was not justified as an objectively resonable strategic choice.

Here is no facts known to the defense counsel at the time that she adopted a trial strategy that involve conceding the medical evidence could justify that concession. Defense counsel's apparent failure even to requiest to examinethem was a serious derelection of her duty to investigate the facts and circumstance of this case."Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenue leading the facts relevant to the merit of the case. The investigation should include effort to secure information in the possession of the prosecution and law

enforcement authorities". See ABA Standard Of Criminal Justice 4-4.1 (3d.ed. 1993); Rampilla 125 S.Ct. 2466 quoting Wiggings v. Smith, 539 U.S.510, 524, 123 S.Ct. 2527 (2003).

Defense counsel esentially conceded the medical evidence without conducting any investigation to determine whether ribs fractured and hyoid bones ruptered by other means. If counsel conducted such investigation, counsel would likely have discovered that exceptionally qualified defense medical expert would testify that the prosecution's teory of ribs fracture and hyoid bones rupture was not indicative of Mr. Stanciu intervention, but paramedics who tried to resuscitate Mrs. Stanciu, and provided no corroboration whatsoever of the State's doctor's opinion. Counsel could thus have presented a strong affirmative case that the charged crime did not occur and the doctor's opinions were incredible. The most rudimentary duty upon the defense counsel is a constitutional obligation to report to the defendant and to the trial court whenever a government witness lie under oath.

When defense counsel in cross-examination of Dr. Condron revealed that he doesn't know the cause of ribs fracture, she decided to end the confrontation of the witness. With what was originally written in autopsy report she could present to jury the following facts: (1) the ribs fracture and hyoid bones rupture was done by paramedics; (2) that Dr. Condron presented false evidence under oath; (3) credibility of Dr. Condron should be reconsidered; (4) Dr. Condron should be impeach; (5) the prosecution deceived the court.

Defense counsel did nothing to expose those facts. Furthermore when Dr. Condron testified about manner of death as "homicide" based on medical findings at autopsy, people at scene and police report, she failed to ask any critical questions to reveal in detail how Dr. Condron got that conclusion.

From record we don't know what people and police report influienced Dr.

Condron to decide that manner of death, because medical findings are common to any strangulation. Medical findings alone could not make difference between homicide or suicide.

The homicide influienced strogly the jury's mind when they decided between guilt or innocent and defence counsel did absolutely nothing to confront Dr. Condron. Defense counsel didn't ask a single question to Dr. Condron on cross- examination about homicide, considering like anything else "not helpful or necessary for defense".

This court will find that failing to confront State's doctors Witnesses and to present potentially exculpatory evidence could not be explained by any reasonable strial strategy. First, defense counsel "did not" clearly make a strategic choice. The idea that it was a strategic choice is a pure fiction atributed to counsel, devoid of support in the record. Characterizing counsel's mistakes as strategic without foundation has a long history of being in violation of clearly establish federal law.

Defense counsel possesed little understanding of the medical fundamentals and she didn't impact-or expose State's doctors fraudulent deceiving of jury. Failure to introduce evidence because of misaprehension of the law is a classic example of deficiency of counsel. See Quinton Smith v. TDCJ, 417 F.3d. 438(5th Cir. 2005).

District Court dismissing Dr. Condron false statement, missed the enormous evidentiary value of perjury and brushed it outside. The exposure of the perjury could turn the case. It is clearly erronous and objectively unreasonable not to recognize that this conviction won by fraud is a clear violation of due process requiring dismissal,a fundamental error of the most egregious type. See California v Trombetta, 467 U.S. 479, 485-486 (1984).

In William v Taylor,529 U.S.362, 120 S.Ct. 1495 (2000) Judge Stevens of

Supreme Court concluded that Williams was denied constitutionally guaranteed right to the effective assistance of counsel, as defined in Strickland. When his trial attorney failed to investigate and to present substantial mitigating evidence to the sentencing jury and the court's decision was contrary to or involved on unreasonble application of clearly establish Federal Law as determine by Supreme Court of United States 28 USC §2254 (d)(1).

The cumulative errors of counsel presented above prejudiced Mr. Stanciu's right of effective assistance of counsel, but for counsel's unprofessional errors, the result of the proceeding would have been different and there is a reasonable probability that Mr. Stanciu would have not been convicted. See Strickland v Washinghton , 466 U.S. 668,687, 104 S.Ct. 2052 (1984); Rampilla v. Beard, 125 S.Ct. 2456, 2462 (2005).

Defense counsel unprofessional errors prejudice Mr. Stanciu's right to have a fair trial. After trial, conform with State Bar Rules, Rule 1.15(d), Mr. Stanciu's right is to request from former defense attorney his client file for post-conviction proceeding. Refusing to release documents what are belong to him, he could not prove his innocence, and he could not reveal the truth how unfairly he was convicted, and the defense counsel implication in this process. (Appendix B-46).

CONCLUSION

In this case was no due process protection as required by the Fourteenth Amendment and no confrontation done by defense counsel as required by the Sixth Amendment, which is why the United States Supreme Court should grant certiorary.

Respecfully submitted this 25th day of March , 2022.

STANCIU ION , pro-se Ion Stanciu