

No. 21-8178

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JING HUA WU (Pro Se) — PETITIONER
(Your Name)

vs.

JAMES ROBERTSON (Warden) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

JING HUA WU - AR0920

(Your Name)

P. O. Box 7500

(Address)

Crescent City, CA 95532

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

I. Jury Misconduct

In applying 28 USC § 2254 (d)(2), both the state courts' and Federal Courts' decisions were based on an unreasonable determination of the facts that Jurors prejudged the petitioner and the case presented in the state court proceeding. Thus, it violated petitioner's right of U.S. constitution of 6th Amendment.

II. Prosecution Misconduct and Corruption

In applying 28 USC § 2254 (d)(2), both state courts' and Federal Courts' judgements were based on an unreasonable determination of the facts that prosecution purposely, professionally and deliberately staged murder-like crime scene and fabricated petitioner's Mental Health test result (MMPI-2) presented in the state court proceeding. Thus, it violated petitioner's right of U.S. constitution of 5th and 14th Amendment. It is a typical prosecution fabrication and corruption case nationwide. This Court has the final say to stop and correct it nationwide.

III. Ineffective Assistance of Defense Counsel

In applying 28 USC § 2254 (d)(2), both state courts' and Federal courts' decisions were based on an unreasonable determination of the facts that defense counsel failed to prepare the case before the trial and failed to strike and rebut the prosecution's fabrication and corruption, and failed to effectively defend the petitioner presented in the state Court proceeding. Thus, it violated petitioner's right of U.S. constitution of 6th Amendment.

IV.. Cumulative Prejudice

All above three claims are within U.S. constitution dimension. The cumulative effect is more severe. It deprived petitioner's right of U.S constitution of the 5th, 6th, and 14th Amendment.

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:

Petitioner. JING HUA WU, is a California State prisoner who was sentenced to life without parole and currently incarcerated in Pelican Bay State Prison of California.

Respondent. James Robertson is the warden of Pelican Bay State prison of California.

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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 to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished. *It is a summary judgement.*

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

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

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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

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

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

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 14, 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including June 13, 2022 (date) on April 1, 2022 (date) in Application No. 21 A 568.

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

Cases in the Courts of appeals may be reviewed by Supreme Court by the following method: (1) By writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgement or decree.

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. AEDPA 28 USC § 2254 (d) (1), (2)

(d) An application for a writ of Habeas Corpus on behalf of person in custody pursuant to the judgement of a State court shall not be granted..., unless the adjudication of the claim -

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

2. U.S. Constitution

Amendment 5: No person shall be ... deprived of life, liberty, or property, without due process of law; ...

Amendment 6: In all criminal prosecutions, the accused shall enjoy the right to ... have the Assistance of Counsel for his defense.

Amendment 14: ... nor shall any State deprive any person of life, liberty, or property, without due process; nor deny to any person within its jurisdiction the equal protection of the laws.

3. 28 USC § 1541 (1)

Cases in the Courts of appeals may be reviewed by Supreme Court by the following method:

(1) By writ of Certiorari granted upon the petition of any party to

any civil or criminal case, before or after rendition of judgement or decree.

4. In *Miller-El v. Cockrell*, 537 U.S. 322, 123 S. Ct 1029 (2003), this Court clarified the standards for issuance of a Certificate of Appealability [COA]:

- ... A prisoner seeking a COA need only demonstrate a "substantial showing of the denial of a constitutional right". A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further
- ... We do not require petition to prove, before the issuance of a COA, that some jurists would grant the petition for Habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.

Id., 123 S. Ct at 1034, citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

STATEMENT OF THE CASE

This tragedy was happened in SiPort Inc., a semiconductor IC design startup company, in Santa Clara County of California on November 14, 2008. Petitioner was then the lead Test & Product engineer of the company and been laid-off on that day. Petitioner was arrested on next day.

After tragedy happened, the polices arrived the site very soon. They professionally altered the site scene by:

- (1) Moved the chair away from victim. That chair was used by the victim to hit petitioner and thus it triggered petitioner's psychic break.
- (2) Piled two victims' bodies one above another, ^{and mental}

So that the site scene been changed as murder-like crime scene. It is definitely impossible that two bodies piled together, one above another, without polices' maneuver. And the chair can not walked away by itself.

Before the trial, several doctors diagnosed Petitioner's mental and psychological health. Prosecution expert witness, Dr. Mohandie, fabricated petitioner's MMPI-2 test result and accused petitioner malingering.

Except Dr. Mohandie, all other doctors diagnosed that petitioner had severe mental and psychological illness more or less.

Except Dr. Mohandie, all doctors who tested petitioner's honesty stated that petitioner was honest and no malingering.

Dr. Mohandie was paid \$450 per hour by prosecution, he made over \$60,000 for testifying this case representing prosecution.

Defense counsel failed to preview all case material, to interview petitioner in detail before the trial so that the counsel failed to understand the case, failed to strike and rebut the police fabricated crime scene during the trial. Counsel also failed to discover Dr. Mohandie's fabrication of MMPI-2 test result (Answer sheet), so that Dr. Mohandie's fabrication has not been exposed to Jury and the court, it ruined petitioner's credibility and defense case.

The guilty phase trial began at the early of January, 2013. The multiple police officers, who were among the first arrived the site and represented prosecution, employed their staged murder-like crime scene photos, testified and accused petitioner, and purposely misled and inflamed Jury.

Then, the civil witnesses including SiPort employees who witnessed the site scene before police arriving the site testified.

Then, the expert witnesses testified for both sides.

The whole trial was completely contaminated by the faked crime scene and prosecution expert witness Dr. Mohandie's fabricated accusation.

During the trial, two jurors prejudged petitioner and the expert witnesses.

Juror 5 prejudged petitioner by proclaiming "Wu is guilty, we all know it." before deliberation. Juror 5 also expressed "It should be over." referring to the trial at the early stage of the trial.

Juror 4 prejudged expert witness by expressing "Only Dr. Mohandie's answers are correct. The other doctors answers are not correct." two time before deliberation.

The sanity phase began in the middle of March, 2013.

On March 8, 2013, Petitioner was convicted three counts of murder, (California Penal Code 187) in California superior court, Santa Clara County.

On March 22, 2013, Jury found petitioner sane to all three counts in California Superior Court, Santa Clara County.

On July 26, 2013, the trial Court denied the defense motion for new trial.

On August 2, 2013, petitioner was sentenced 75 years in prison without possibility to parole.

After that, petitioner complied with state's and Federal Law, timely filed direct appeal and Habeas petition in both state Courts and Federal Courts.

On June 11, 2014, petitioner represented by appellate lawyer filed Opening Brief in California Appeal Court, Sixth District. No. H040066

On December 15, 2014, Respondent, Deputy AG, filed Respondent's Brief in California Appeal Court. No. H040066

On January 26, 2015, Petitioner filed Appellant's Reply in California Appeal Court. No. H040066

On February 16, 2016, Opinion: Affirmed the judgement in California Appeal Court. No. H040066

On February 29, 2016, Petitioner filed Petition For Rehearing in California Appeal Court. No. H040066

On March 3, 2016, Order Denying Rehearing in California Appeal Court. No. H040066

On March 21, 2016, Petitioner filed Petition For Review in California Supreme Court. No. S233160

On May 11, 2016, Order Denying Petition For Review in California Supreme Court. No. S233160

On March 14, 2017, Petitioner filed Petition For Writ Of Habeas Corpus in California Superior Court, Santa Clara County. No. 211490

On June 30, 2017, Order Denying Petition For Writ Of Habeas Corpus in California Superior Court, Santa Clara County. No. 211490

On August 27, 2017, Petitioner filed Petition For Writ of Habeas Corpus in California Appeal Court, Sixth Appellate District. No. H045015

On May 15, 2018, Order Denying Petition For Writ Of Habeas Corpus in California Appeal Court, Sixth Dist. No. 045015

On July 11, 2018, Petitioner filed Petition For Writ Of Habeas Corpus in California Supreme Court. No. S250008

On November 28, 2018, Order Denying Petition For Writ Of Habeas Corpus in California Supreme Court. No. S250008

On December 28, 2018, Petitioner filed Petition For Writ Of Habeas Corpus in U.S. Dist. Court, Northern Dist. of California. No. 17-CV-02036 LHK (PR)

On January 28, 2019, Order Reassigning Case in U.S. Dist. Court, Northern Dist. of California. No. 17-CV-02036 WHA (PR)

On October 7, 2019, Respondent filed Answer To Petition For Writ of Habeas Corpus and Memorandum of B&As. in U.S. Dist. Court. No. 17-CV-02036 WHA

On January 9, 2020, Petitioner filed Petitioner's Reply To Respondent's Answer in U.S. Dist. Court, Northern Dist. of California. No. 17-CV-02036 WHA

On September 30, 2020, Order Denying Petition For Writ of Habeas Corpus and COA in U.S. Dist. Court, Northern Dist. of California. No. C17-2036 WHA

On August 9, 2021, Petitioner filed Motion For Certificate of Appealability in U.S. Court of Appeal for Ninth Circuit. No. 20-17142

On January 14, 2022, Order Denying Petition For COA in U.S. Court of Appeal for Ninth Circuit. No. 20-17142

On March 21, 2022. Petitioner filed Motion For Extension of Time To File Application of COA in U.S. Supreme Court.

On April 1, 2022, Order to grant extension of time to file a writ of Certiorari to and including June 13, 2022. Application No. 21A568

REASONS FOR GRANTING THE PETITION

I. Jury Misconduct

On March 12, 2013, after guilty phase trial ended and before sanity phase started, Juror 3 came forward with a writing note that states: "Juror 5 was speaking out about case & about the defendant JING HUA WU, as we juror entered the elevator for lunch. This is not the 1st time, this has happened with this Juror & the guilty of defendant. Also: Juror 4 makes comments the defense witness are all wrong only Dr. Mohandie's testimony is correct. Time and again throughout trial." (Court Exhibit 39: Juror 3 Note)

Because of it, the trial Court held an inquiry of all jurors on March 12 afternoon and the morning of March 13, 2013. (70 RT 11404-11600; TIRT 11601-11703)

1. Juror 5 Misconduct

Juror 5 prejudged Petitioner by proclaiming "Wu is guilty, we all know it." prior to deliberation. Juror 5 also expressed "It should be over" referring to the trial at the early stage of the trial. Juror 5 was been shushed silent when he just started to comment petitioner by several fellow jurors. Juror 5 expressed his uncertainty to have an open mind in the coming sanity trial. Finally, just after sanity trial ended, Juror 5 immediately send a condemning Email to defense counsels. (Augmented Clerk Transcript; Page 83)

a. Juror 3 Testimony

On March 12, 2013, in the inquiry of the trial Court, Juror 3 solidly testified that Juror 5 prejudged petitioner by proclaiming "Wu is guilty,

"We all know it," multiple times from the early stage of the trial to the guilty phase deliberation. Juror 3 also made the little markings in his note whenever Juror 5 makes prejudgement comments. (70 RT 11409 Line 24 - 11415 Line 20)

On March 13, 2013, after the trial Court's intensive questioning and scrutinizing, Juror 3 solidly confirmed three incidents that Juror 5 proclaimed "Wu is guilty, We all know it." outside the jury deliberation room prior to deliberation. (71 RT 11646 Line 24-28)

Juror 3 also testified that he distinguished Juror 5's voice very well whenever Juror 5 stated his prejudgement "Well, we all know the defendant is guilty." (71 RT 11632 Line 27 - 11633 Line 3)

Juror 3 ^{also} confirmed that Juror 5 made his preformed opinion known within the jury deliberation room multiple times and jurors did try to shush him up because it's just too much. (71 RT 11637 Line 2-6)

b. Juror 4 Testimony

On March 13, 2013, Juror 4 testified that Juror 5, at the early stage of the trial, formed an opinion and expressed "It should be over" in referring to the trial. (71 RT 11654 Line 4 - 11656 Line 7)

Juror 4 testified that Juror 5 commented something intense in elevator and everybody immediately stopped Juror 5 just at Juror 5 opened his mouth. (71 RT 11663 Line 3-19)

Juror 4 testified that at the early of the trial Juror 3 expressed to her that Juror 3 felt that some fellow jurors had formed opinion and he very concerned about that maybe weren't acting properly. (71 RT 11660 Line 24 - 11662 Line 10)

C. Juror 6 Testimony

On March 12, 2013, Juror 6 testified that some fellow jurors had preformed opinion about the case and petitioner prior to deliberation (70 RT 11427 Line 3-10). The trial court failed its duty to elicit who are the jurors preformed opinion.

Juror 6's demeanor was abnormal during the inquiry regarding Juror 5's conduct. Juror 6 try to avoid eye contact, eye looked up pausing, hesitating. Very alert and nervous. (71 RT 11684 Line 1-5; 71 RT 11688 Line 17-21; 71 RT 11680 Line 27-11681 Line 8; 71 RT 11693 Line 27-11694 Line 3)

After verdict, the Court called every juror's confirmation, Juror 6 was almost crying. She knew she did not tell the all truth and facts during the court inquiry, she felt guilty about it. Petitioner witnessed all above.

d. Both Juror 3 and Juror 4 testified that Juror 5 was been shushed silent when Juror 5 started to comment petitioner in the elevator.
(71 RT 11663 Line 3-19; 70 RT 11411 Line 2-7)

e. Juror 5 Testimony

On March 13, 2013, the Court inquired Juror 5. In the inquiry, Juror 5 expressed his uncertainty to keep an open mind throughout the trial of sanity phase. (71 RT 11669 Line 22-24)

- The Court: Have you continued to keep an open mind throughout the sanity phase regarding Legal sanity?
- Juror 5: I'm trying.

Juror 5's answer clearly reflected that his mind is not "open", so he need "trying" to open. If his mind is "open" for the trial, he doesn't need "trying" to open.

Juror 5, at early morning 6:52 AM, March 23, 2013, just after the sanity phase ended on the afternoon March 22, 2013, send a condemning Gmail to the defense counsel. The mail states: "I was a juror in JING HUA Wu case, I just want to say that I appreciate your vigorous defense of Wu. In the end, you had the insurmountable disadvantage of a guilty client."

(Augment Clerk Transcript: Page 83, Gmail from Kenneth Kellum)

Legal Argument

From the Jurors' testimonies including Juror 5's testimony and his Gmail, Juror 5 formed opinion at early of the trial. He prejudged petitioner throughout both the guilty phase and sanity phase. Above evidences are essential and substantial. Juror 5's conducts illustrated ^{that} he biased and prejudiced petitioner inherently and coherently.

The ~~State~~ Courts and Federal Court completely denied Juror 3's testimony about Juror 5 and claimed that Juror 3 was mistaken. The state Courts and Federal Courts never answer and rebut Juror 4's testimony that Juror 5 expressed "It should be over" referring to the trial. The state Courts and Federal Courts never answer and rebut Juror 6's testimony that some of jurors preformed opinion about case and petitioner.

The State Courts and Federal Courts purposely ignored and skipped those evidences which are essential and substantial, and these evidences are in the State trial court proceeding and petitioner's Habeas

petitions from State to Federal.

The state Courts and Federal Courts never answer and rebut the Juror 6's "trying" to open mind state.

The state Courts and Federal courts pretended that above evidences are not existed. All those evidences are clearly and solidly in the trial court proceeding and in petitioner's Habeas petitions. As required per AEDPA "This court is required to independently review the record to assess the reasonableness of state court denial of relief which failed to address an essential element of petitioner's claim." Rompilla V. Beard, 545 US 374 (2005). The State Courts and Federal Courts failed to complied with it.

"A defendant accused of a crime has a constitution right to a trial by unbiased, impartial jurors. (US const. 6th and 14th Amendment)" Irvin V. Dowd (1961) 336 US 717, 722.

The State Courts' and Federal courts' decisions and judgements were based on unreasonable determination of the facts in light of evidence in the state court proceeding. Thus, the state Courts' and Federal courts' decisions and judgements were contrary to clearly established federal law, as determined by the Supreme Court.

2. Juror 4 Misconduct

Juror 4 prejudged witnesses by expressing that "Only Dr. Mohandie's answers are correct. The other doctors answers are not correct." This statement was made twice during the guilt phase before the deliberation between Juror 3 and Juror 4 alone.

a. Juror 3 Testimony

On March 12, 2013, Juror 3 testified that, between Juror 3 and Juror 4, Juror 4 expressed "They're twisting the answers incorrectly. Only Dr. Mohandie's answers are correct." and "Only Dr. Mohandie's answers are correct. The other doctors' answers are not correct." and [Juror 4] "didn't want hear nothing else about other doctors." Those incidents happened at first time Dr. Mohandie was up the Court during the guilt phase at the assembly room between Juror 3 and Juror 4. alone. (70 RT 11407 Line 3 - 11409 Line 9)

On March 13, 2013, the Court scrutinized Juror 3 again. Juror 3 clearly and solidly confirmed what he experienced with Juror 4 regarding Juror 4's prejudgement expressions and where they were happened. Also Juror 3 just ignored Juror 4's prejudgement comments after Juror 4 did that two times. (71 RT 11625 Line 16 - 11627 Line 17)

b. Juror 4 Testimony

On March 13, 2013, the court inquired Juror 4. Juror 4 testified that she and Juror 3 had talks regarding doctor's conduct and attitude, and she had opposite feeling from Juror 3. (71 RT 11657 Line 23 - 11659 Line 5) These incidents happened in Jury assembly room or walking to the garage

between her and Juror 3 alone. (71 RT 11666 Line 9 - 11667 Line 8). They alone had lunch together in the [Jury assembly] room quite a bit. (71 RT 11665 Line 3-10). They alone walked a lot together. (71 RT 11657 Line 26-27)

Juror 4 also testified that someone [a fellow juror] had a comment about a doctor's testimony. The Court failed its duty to elicit who the juror is. (71 RT 11651 Line 5-12)

Juror 4's demeanor, during the inquiry, was very abnormal. She was ~~was~~ very nervous. Her voice was shaking. Her speaking sentences were broken. She was hesitating and pausing. Her face was rash and sweaty. (71 RT 11681 Line 13-15); (71 RT 11684 Line 1-5); (71 RT 11699 Line 27-28); (71 RT 11688 Line 12-16). Petitioner witnessed Juror 4's abnormal demeanor and appearance during the inquiry.

Legal Argument

There were two clear and solid incidents that Juror 4 prejudged witnesses in favor of prosecution testified by Juror 3. Those two incidents were happened between Juror 4 and Juror 3 alone. There was no other Juror involved in those two incidents.

The state Courts' and Federal courts claimed that Juror 3 was mistaken by the reason: (1) No other juror knew Juror 4's prejudgement comments; (2) Juror 3 was not concentrated, a time or two sleepy at the trial.

These two reasons do not related and interfered with Juror 3's experience of Juror 4's prejudgement comments and they both walked together, had lunch together, talked together alone. Juror 3's testimony were clear and solid. Also, Juror 4 admitted that she had talk with Juror 3

regarding doctor's conduct or attitude something, and they get together a lot, and someone had a comment about a doctor's testimony. More obvious and important fact is Juror 4's demeanor during the inquiry that reflected her inner struggling to hide the true facts. She was a senior school teacher, she was not shy to speak in public. She was not lacking of correct words and sentences. She was lying and hiding in fact.

The state Courts' and Federal Courts' determinations were based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

Even worse, in state Deputy AG's "Memorandum of Ps & As in support of Answer To Petition For Writ of Habeas Corpus" page 76, Line 8-10, it states: "---- conversation between Juror No. 3 and 4, that neither could recall whether this happened during deliberation or outside deliberation room ----" This statement is untrue. Deputy AG fabricated it.

The state Courts' and Federal courts' judgements were contrary to this Court's decision in Irvin V. Dowd, supra, and Rompilla V. Beard. Supra. It violates Petitioner's right of U.S Const. of 6th and 14th Amendment.

II. Prosecution Misconduct and Corruption

1. Police Staged The Site Scene As Murder-Like Scenario

Before Police arriving the crime site, SiPort CEO Mr. Agrawal's office, three witnesses who were SiPort employee witnessed the site scene inside of Agrawal's office. They all testified that:

- (1) There was a chair next to or with the victim Mr. Pugh's body;
- (2) Victim Mr. Agrawal's body was apart from Victim Mr. Pugh's body.

After police teams (1st squad, CIS team, photographer, ...) Went and worked through the crime site, the scenario of the site scene was dramatically changed. The crime scene photos that was provided by prosecution as discovery material shows that:

- (1) There is no chair next to or with Mr. Pugh's body. But the chair with blood stain was been moved to the other side of the office against wall.
- (2) Victim Agrawal's body and Victim Pugh's body were piled up one above another.

a. Witness Edward Wu's Testimony

Mr. Edward Wu, a SiPort engineer, testified solidly that:

- (1) There was a chair been threw over next to Mr. Pugh's body. (30RT 2628 Line 14 - 2629 Line 14 ; 2644 Line 28 - 2648 Line 27)

- (2) Mr. Agrawal's body and Mr. Pugh's body were apart from each other, and Mr. Agrawal's body was not at where police photos and markers showed. (30RT 2674 Line 20 - 2675 Line 9)

b. Witness Mr. Raman Thiara's Testimony

Witness Mr. Raman Thiara, a SiPort design manager, testified that:

- (1) There was a chair next to and with Mr. Pugh's body, and Mr. Pugh's body forward slumped.
- (2) Mr. Agrawal's body did not pile up onto Mr. Pugh's body, they were apart. (30 RT 2755 Line 18-27; 30 RT 2758 Line 7-15; 30 RT 2751 Line 6-2752 Line 2)

c. Witness Mr. Jeff Hill's Testimony

Witness Mr. Jeff Hill, a SiPort engineer, testified that there was a chair next to and with Mr. Pugh's body, and there was no bodies piled up each other. (31 RT 2975 Line 28-2976 Line 8; 31 RT 2994 Line 17-21)

d. The scenario of above three witnesses testified matches what petitioner told to Police after petitioner was arrested, and matches petitioner's testimony in the trial physically and logically. (51 RT 7516-7524; 54 RT 8164-8165, 8172)

e. Prosecution had a number of police personnel, including those among the first arrivings on the site, represented prosecution and testified at the beginning of the trial. They delivered convincing and unforgettable testimonies associated with the illustration and guidance of prosecution's crime scene photos projected on a big screen.

The three Siport employee witnesses' testimonies, petitioner's testimony and those staged crime scene photos are the solid evidences that police altered the crime scene and professionally staged it as a murder-like scenario.

Legal Argument

Because prosecution police removed the chair, that victim Mr. Pugh used to hit petitioner and caused petitioner's shooting and mental break down, away from Mr. Pugh's body, then it becomes like Mr. Pugh simply been killed by petitioner without provocation. That makes petitioner a liar for what he testified about the hitting chair and Mr. Pugh's provocation.

Because prosecution police piled two victims' bodies up together, then it becomes that Mr. Pugh and Mr. Agrawal been killed one by one by a cold-blood murder.

Prosecution employed this staged scenario, built up its prosecution theory that Petitioner premeditately rushed into Mr. Agrawal's office, closed the door blocked the door way, had a few words exchange, then excited them one by one cold-bloodly.

This staged crime scene sufficiently altered the crime scene to a point where any theories derived from it were untrue.

Prosecution used this staged crime scene to mislead and inflame the jurors times and times from the beginning of the trial throughout the trials.

Prosecution used this murder-like staged crime scene accused and convicted petitioner. The due process did not exist any more in the trials.

The Chair Can Not Walked Away By Itself

The Body Can Not Piled Up By Itself
be

The state court and Federal courts claim that this issue is just a discrepancies between witnesses' testimonies and crime scene photos and jurors know it, and it is not prejudice.

The fact is that the witnesses' testimonies and the photos of staged crime scene are the evidences of prosecution professionally fabricated the crime scene, the evidence of the corruption of prosecution and law enforcement.

This is not only a corruption of Santa Clara justice system but also nationwide. They make the justice and justice system phony.

The State Courts' and Federal Courts' decisions can not justify the corruption happened in this case.

This Court should take action to stop this kind of corruption and correct it. Only this Court has the final say.

Because of this corruption, both the crime scene and prosecution theory were fake, and Jury was mislead. The whole trial process was severely contaminated and distorted. There was no more due process to petitioner. It violated petitioner's right of U.S. constitution of the 5th, 14th Amendment.

The state courts and Federal Courts' decision were based on an unreasonable determination of the facts in light of evidence presented in the State court proceeding. Their judgements were contrary to U.S. Const. of 5th and 14th Amendment.

As this Court ruled: "Prosecution violates 14th Amendment by knowing use of false evidence" ^{se}Miller V. Pate, 386 U.S 1 (1967). Also, "Prosecutor knowingly use false evidence deprived the accused the right of due process" Giglio V. U.S., 405 U.S 150, 153 (1972).

2. Prosecution Expert Witness Dr. Mohandie Deliberately Fabricated Petitioner's MMPI-2 Test Result And Accused Petitioner Malingering

Prosecution expert witness Dr. Mohandie professionally and deliberately fabricated petitioner's MMPI-2 test result (answer sheet) and then accused petitioner malingering.

The copy of MMPI-2 test result provided by Dr. Mohandie is in (7 CT, page 1632-1634).

Here, MMPI-2 : Multiphasic Personality Inventory - 2
CT: Clerk Transcript

In MMPI-2 test, there are total 567 questions. For each question, the answer can be "TRUE", or "FALSE", or neither. The examinee answers the question by filling answer mark (T), or (F), or leave them blank if neither applies.

a. The total number of unanswered questions by petitioner are 10 to 15 percent : (10-15)%. (73 RT 12302 Line 16-17; 74 RT 12511 Line 12-16; 58 RT 8910 Line 5-8). So the total unanswered questions are $567 \times (10-15)\% : 567 \times (10-15)\% = 57$ to 85

That were 57 to 85 blank answers throughout all test.

b. But, the total unanswered questions, e.g. blank answers, on the ^{MMPI-2} Answer Sheet provided by Dr. Mohandie are only 10. (No. 333, 376, 377, 430, 436, 470.

495, 520, 538, 563) They are all located in the 2nd half of test. (7 CT, 1634)

At the end of the test, Dr. Mohandie, using his ballpoint-pen, selectively marked about 10 blank answers (No. 316, 335, 396, 407, 408, 433, 439, 470, 520, 563) (7 CT, 1634) out of those original (57 to 85) blank answers and demanded petitioner to fill them. Petitioner marked majority of those 10 blank answers selected by Dr. Mohandie. (73 RT 12302 Line 21 - 12303 Line 24); (74 RT 12511 Line 22 - 12512 Line 3); (58 RT 8910 Line 14-23) There were 7 blank answers out of that 10 marked blank answers been filled by petitioner actually (7 CT, 1634) (No. 316, 335, 396, 407, 408, 433, 439) The facts of above description were solidly recognizable on the Answer Sheet. (7 CT, 1634)

So the total ^{original} unanswered blank answers, before petitioner filled 7, on the Answer sheet provided by Dr. Mohandie are 10 (blank answers) + 7 = 17.

There should be $[57 \text{ to } 85] - 17 = (40 \text{ to } 67)$ ^{more} _{answers} blank answers on the Answer Sheet. These 40 to 67 blank completely disappeared from the original Answer Sheet. Only Dr. Mohandie had chance to fill these 40 to 67 blank answers, and he did. He did it professionally and deliberately.

Legal Argument

Dr. Mohandie was a member of Law enforcement of Los Angeles PD, ^{the unit had} a corruptional history, before he became a professional expert witness. He was paid \$450/ per hour by Santa Clara County DA office. He made around \$45,000.00 for testifying the guilt phase of this case. (59 RT 9107; 62 RT 9760, 9762). By estimation, He made well over \$60,000.00 for testifying both the guilt phase and the

the sanity phase of this case.

Dr. Mohandie is the only doctor, among four doctor who examined petitioner's honesty and malingering, accused petitioner malingering.

During the MMPI-2 test, Dr. Mohandie provided petitioner an erasible pencil to fill the answer sheet. He closely monitored petitioner's progress by keeping input something into his computer. It seems that he was evaluating the test result.

During the testifying and cross-examination, Dr. Mohandie testified that he is an expert of all MMPI tests. He possesses the software and compiler of MMPI tests. He must have the blank answers filled in order to make the MMPI tests functional. (59 RT 9159 Line 7 - 9162 Line 2) The MMPI tests were just a manipulative tool for Dr. Mohandie. He had the knowledge, capability, all software to manipulate petitioner's MMPI-2 test. He knew how to manipulate those 40 to 67 blank answers to reach his purpose. Under DA office's \$450 per hour incentive, Dr. Mohandie fabricated the test result, accused petitioner malingering, devastated defense case, ruined petitioner's credibility.

Juror 4 prejudged this case by expressing "Only Dr. Mohandie's answers are correct...." proved that Dr. Mohandie's misconduct is prejudice.

The state Courts had no argument that Dr. Mohandie fabricated petitioner MMPI-2 test result. The Deputy AG on purposely misinterpreted petitioner's argument, on purposely miscalculated the MMPI-2 test unanswered question Number, then, claimed that petitioner is wrong and there is no error of unanswered questions.

The Federal Courts ^{rely} solely on the state courts and Deputy AG's determinations, and claimed there is no evidence that Dr. Mohandie fabricated MMPI-2 test result.

Both state Courts and Federal courts [didn't rebut] the solid evidences that petitioner raised in his Habeas petition. Their decisions were based on an

unreasonable determination of the facts in light of the evidence presented in the State court proceeding. They violated this Court's precedent "Convict obtained by knowing use of perjury testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgement of Jury." U.S. V. Illinois, 360 US 264 (1959); also "Prosecution violates 14th Amendment by knowing use of false evidence." Miller V. Pate, *supra*; and "prosecution knowingly use false evidence deprived the accused the right of due process" *Giglio V. U.S.*, *supra*.

Only this Court can stop the prosecution's fabrication and corruption right here, right now.

III. Ineffective Assistance Of Defense Counsel

1. Counsel Failed To Strike and Rebut The Prosecution Staged Murder-Like Crime Scene

Counsel failed to preview the discovery packet provided by prosecution; failed to interview petitioner and understand the case in detail prior to the trial. Thus, counsel had no clear idea what the crime scene should be, so that counsel failed to strike and rebut the prosecution staged crime scene. Counsel failed to do so even after three witnesses' testimonies implied that crime scene had been altered and staged.

Under such a circumstance of counsel's deficient performance, this staged crime scene was permissively and passively accepted throughout the trials by all parties. This staged crime scene became natural, normal and real to Jury. Jurors naturally and psychologically took this staged crime scene as the crime scene that they were working on.

Prosecution purposely and fully utilized this situation, developed its murder theory, used this staged crime scene and bumped Jury at the beginning of the trial and throughout the trials. Jurors' mind and feeling had been saturated in this staged crime scene and Jurors naturally became in favor of prosecution, prosecution's theory, and prosecution's accusation and judgement. It was proved by Jurors' prejudices before deliberation.

2. Counsel Failed To Discover That Dr. Mohandie Fabricated Petitioner's MMPI-2 Test Result

Counsel failed to discover that prosecution professional expert witness

Dr. Mohandie fabricated petitioner's MMPI-2 test result (Answer sheet) during the trials; failed to provide the MMPI-2 test answer sheet to petitioner to review and verify; failed to be present at MMPI-2 test so that allowed Dr. Mohandie had the chance to manipulated and fabricate what he want.

Juror4's prejudged expression "Only Dr. Mohandie's answers are correct, ..." is a solid prejudice to this case.

Legal Argument

Because of counsel's ineffective assistance, ^{and} deficient performance, it allowed the prosecution's corruption; staged crime scene and fabricated MMPI-2 test result, went through the trials. That contaminated whole trials' process and Jury. The effects were solidly and clearly reflected in Juror6's testimony that some fellow jurors had preformed opinion about the case and petitioner prior to deliberation; (70 RT 11427 Line 3-10) in Juror4's testimony that at the early of the trial Juror3 expressed to her that Juror3 felt that some fellow jurors had formed opinion; (71 RT 11660 Line 24 - 11662 Line 10) also in Juror5's and Juror4's Prejudging misconducts testified by Juror3 and Juror4 in the claim I of this petition.

The counsel's performance was deficient and ineffective. It caused prejudice effects, as stated above.

In *Strickland v. Washington*, 466 US 668, 691.

Two-Part Test: 1). Counsel's deficient performance and
2). a reasonable probability that but for counsel's error the result of the proceeding would have been different.

The state courts and Deputy AG denied IAC and claimed that this IAC claim is meritless. They claimed there were no prosecution misconduct, no juror misconduct, so there was no prejudice of IAC. The fact is that all those prosecution misconducts and jurors' misconducts are in the trial court proceeding as Petitioner brought up in Habeas petition from state courts to Federal courts.

The Federal courts solely relied on the state courts' decisions without independently examine the state court proceeding as this Court required "This court is required to independently review the record to access the reasonableness of a state court denial of relief which failed to address an essential element of petitioner's claim." Rompilla V. Beard, *supra*.

Both State Courts' and Federal Courts' decisions were based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. Their decisions violated petitioner's right of US const. of the 6th Amendment.

IV. Cumulative Prejudice

There are three main claims raised in this petition

I. Jury Misconduct

1. Juror 5 prejudged the case and petitioner
2. Juror 4 prejudged the expert witnesses

II. Prosecution Misconduct and Corruption

1. Prosecution purposely, professionally staged the crime scene as Murder-Like Scenario
2. Prosecution Professional Expert Witness Dr. Mohandie Purposely, professionally and deliberately fabricated petitioner's MMPI-2 Test Result

III. Ineffective Assistance of Defense Counsel

1. Counsel failed to preview the case and failed to strike and rebut the prosecution staged murder-Like crime scene.
2. Counsel failed to discover that prosecution expert Dr. Mohandie fabricated petitioner's MMPI-2 test result

Even under above I, II and III circumstance that the trials were completely contaminated and unfair, the Jury still took two whole days for deliberation. And during the deliberation, the forewoman of Jury submitted question to the court to ask the judge to explain the fine difference between the 2nd degree and 1st degree murder. Clearly, the Jurors' mind was not straightly "1st degree". (6 CT 1490; 65 RT 10411). All those three claims mattered, they clearly, solidly

influenced jurors' decisions.

This Court ruled "The fundamental question in determine whether the combined effect of trial errors violated a defendant's due process right is whether the errors rendered the criminal defense 'far less persuasive' ... and thereby had a 'substantial and injurious effect or influence' on the jury's verdict." *Chambers V. Mississippi* (1973) 410 U.S. 284, 294.

Also "The 9th circuit has concluded that under clearly established Law 'the combined effect of multiple trial errors may give rise to Due Process violation if it renders a trial fundamentally unfair, even where each error considered individually would not require reverse'" *Donnelly V. Dechristofor* (1974) 416 U.S. 637

The state Courts and Deputy AG denied petitioner's claim of cumulative prejudice. They claimed that each claim raised by petitioner is meritless, then the cumulative prejudice is meritless. The state courts' decisions were based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. Their decisions were contrary to clearly established Federal Law.

The Federal courts solely relied on the state courts' determination without independently examine the state court proceeding as required by this Court in *Rompilla V. Beard, supra*.

All claims petitioner presented are within U.S. constitution dimension. The cumulative effect is severe and it violated petitioner's right of U.S constitution of the 5th, 6th, 14th Amendment.

CONCLUSION

Petitioner, JING HUA Wu, respectfully petitions for a writ of certiorari to review the judgements of U.S. Court of Appeal for the Ninth Circuit and U.S. District Court for the Northern District of California, denying petitioner's application for Certificate of Appealability.

This is a typical prosecution fabrication and corruption case. The important is to stop and to correct prosecution's corruption nationwide. This Court has the power of the final say and determination. Only this Court.

Based on foregoing, this Court should grant the Petition for writ of certiorari and order full briefing.

Respectfully Submitted:



Date: June 8, 2022