21-8205 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

No.: _____

BOBBY CHARLES BYRD
Petitioner

Versus

TIM HOOPER, Warden
Louisiana State Penitentiary
Respondent

PETITION FOR WRIT OF CERTIORARI IN THE
UNITED STATES SUPREME COURT TO THE
UNITED STATES COURT OF APPEAL FOR THE FIFTH CIRCUIT

From Denial of COA in the United States Fifth Circuit Court of Appeal
No. 21-30512; on appeal from Denial of Habeas Corpus Relief
in the U.S.D.C., Western District of Louisiana, No. 5:18-CV-748

Respectfully submitted, *pro se*, this 14th day of June, 2022.

Bobby Charles Byrd #299312
M.P. - Oak 2
LA State Prison
Angola, LA 70712

QUESTIONS PRESENTED

PCR ISSUES

1. Whether Mr. Byrd was denied his right to effective assistance of appellate counsel when counsel failed to litigate non-frivolous issues in his merits brief in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

2. Whether Mr. Byrd was denied a fair trial when the prosecution knowing used false evidence to obtain his conviction in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

3. Whether Mr. Byrd was denied his right to effective assistance of counsel when counsel failed to pursue the viable defense that Chad Morris was the driver of the vehicle in the aggravated flight and not Mr. Byrd.

PCR SUPPLEMENTAL ISSUE

1. Whether Mr. Byrd's right to be represented by counsel of choice was infringed upon in violation of the Sixth and Fourteenth Amendments to the United States Constitution and the Louisiana Constitution Article 1 § 13.

DIRECT APPEAL ISSUE

1. Whether the State presented insufficient evidence to establish Mr. Byrd committed an aggravated flight from an officer in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

TABLE OF CONTENTS

page

COVER

TABLE OF CONTENTS i

INDEX OF EXHIBITS ii

TABLE OF AUTHORITIES ii

INTERESTED PARTIES vi

QUESTIONS PRESENTED vii

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

STATEMENT OF TIMELINESS 5

ISSUES PRESENTED ON HABEAS CORPUS 5

STANDARD OF REVIEW 6

PCR ISSUES 7

PCR SUPPLEMENTAL ISSUES 7

DIRECT APPEAL ISSUES 7

SUPPLEMENTAL HABEAS ISSUES 8

LAW AND ARGUMENT 8

CONCLUSION 30

CERTIFICATE OF SERVICE 31

INDEX OF EXHIBITS

EXHIBITS

Exhibit A	05/31/18	Original Pro-Se Petition for Writ of Habeas Corpus
Exhibit B	----	State's Response
Exhibit C	10/30/20	Traverse to State's Response
Exhibit D	06/15/21	Magistrate's Report and Recommendation
Exhibit E	06/30/21	Objection to Magistrate's Report and Recommendation
Exhibit F	07/23/21	Federal District Court Denied Habeas Relief
Exhibit G	09/30/21	Application for COA
Exhibit H	02/24/22	5th Circuit Denied COA
Exhibit I	03/07/22	Motion for Rehearing
Exhibit J	03/29/22	5th Circuit Denied Rehearing

TABLE OF AUTHORITIES

page

CONSTITUTION

Louisiana Constitution Article 1 § 13.....6-7, 17
Louisiana Constitution, Article XII, § 3.....28
United States Constitution, Amendment 5.....2, 30
United States Constitution, Amendment 6.....2, 8-9,15, 30
United States Constitution, Amendment 14.....2, 6, 8-9, 13, 15, 20, 27-28, 30
United States Constitution, Article III, § 2.....2

CODE

28 U.S.C. § 1254.....2
28 U.S.C. § 2253.....6-7, 30
28 U.S.C. § 2254.....1-2
La. C.Cr.P. Art. 930.3.....20
La. C.Cr.P. Art. 930.8.....21
La. R.S. 14:108.1.....19, 23-24
La. R.S. 44:31.1.....28

FEDERAL CASES

Alcorta v. Texas, 355 U.S. 28, 78 S.Ct. 103, 2 L.Ed.2d 9 (1957).....21
Barefoot v. Estelle, 463 U.S. 880, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983).....6, 30
Brown v. Texas, 443 U.S. 47, 99 S.Ct. 2637 (1979).....12
Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 109 S.Ct. 2646, 105 L.Ed.2d 528 (1989).....17
Dolan v. Dretke, 168 Fed.Appx 10 (5th Cir. 2006).....5
Drinkard v. Johnson, 97 F.3d 751 (5th Cir. 1996).....6
Dunaway v. New York, 442 U.S. 200, 98 S.Ct. 2248 (1979).....10

Fuller v. Johnson, 114 F.3d 491 (5th Cir. 1997)....7
Gigilio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972)....21
Goodwin v. Dretke, [2004 U.S. App.Lexis 13433 (5th Cir. 2004)]....5
Gordon v. Dretke, 107 Fed. Appx. 404 (5th Cir. 2004)....5
Hohn v. United States, 524 U.S. 236, 118 S.Ct. 1969, 141 L.Ed.2d 242 (1998)....2, 30
House v. Bell, 547 U.S. 518, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006)....20
Houser v. Dretke, 395 F.3d 560 (5th Cir. 2004)....30
Howland v. Quarterman, 507 F.3d 840 (5th Cir. 2007)....5
Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)....19
Kaley v. United States, 134 S.Ct. 1090 (2014)....9
Kimmelman v. Morrison, 106 S.Ct. 2574 (1983)....10
Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 (1935)....21
Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959)....13, 21-22
Phillips v. Donnelly, 216 F.3d 508 (5th Cir. 2000)....5
Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932)....9, 16
Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000)....7
Smith v. Murray, 477 U.S. 527, 106 S.Ct. 2661 (1986)....8
Smith v. Robbins, 528 U.S. 259, 120 S.Ct. 746 (2000)....8
Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)....8, 15
Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)....10, 12, 19
United States v. Gonzalez-Lopez, 548 U.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006)....9, 16, 18
United States v. McCollom, 426 U.S. 317, 324, 96 S.Ct. 2086 (1976)....29
United States v. Wynn, 292 F.3d 226 (5th Cir. 2002)....5
Wheat v. United States, 486 U.S. 153, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988)....9, 16
Whitehead v. Johnson, 157 F.3d 384 (5th Cir. 1998)....30
Williams v. Taylor, 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000)....6
Womack v. Thaler, 591 F.3d 757 (5th Cir. 2009)....30
Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)....13

STATE CASES

Byrd v. City of Bossier, Et al., No. 5:12-CV-01956 (U.S.D.C. W.D.La. 2017).....22-24, 28

Johnson v. Stalder, 97-0584 (La App. 1 Cir. 12/22/98), 754 So.2d 246.....28

Pierre v. East Baton Rouge Parish Clerk of Court, 2017-0688, 233 So.3d 92 (La. App. 1 Cir. 11/1/17) 28

State ex Rel. Bernard v. Orleans Parish Criminal Dist. Court Section J,
653 So.2d 1174 (LA. 1995).....6, 8, 22, 27-29

State v. Ashley, 768 So.2d 817 (La App. 2 Cir. 2000).....15, 19, 23, 27

State v. Bickman, 404 So.2d 929 (La. 1981).....11

State v. Broadway, 96-2659, 753 So.2d 801 (La. 10/19/99).....21

State v. Byrd, 2014-KO-1613, 161 So.3d 14 (La. 2015).....4, 24

State v. Byrd, No. 49, 142-KA, 145 So.3d 536 (La.App. 2 Cir. 6/25/14).....4

State v. Conway, 816 So.2d 290 (2002).....20

State v. Dasall, 385 So.2d 207 (La. 1980).....11

State v. Deruise, 1998-0541, 802 So.2d 1224 (La. 4/3/01).....21

State v. Jones, 1997-2593, 707 So.2d 975 (La. 3/4/98).....17

State v. Louis, 496 So.2d 563 (La.App. 1 Cir. 1986).....11

State v. Reeves, 2006-2419, 11 So.3d 1031 (La. 5/5/09).....17

State v. Sims, 2007-2216, 968 So.2d 721 (La. 11/16/07).....17

INTERESTED PARTIES

Bobby Charles Byrd *pro se* Petitioner herein, certifies that the following persons have an interest in the outcome of this cause. These representations are made in order that the Justices of this Honorable Court may evaluate possible disqualifications or recusal.

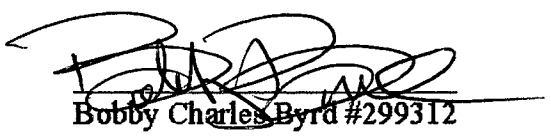
Tim Hooper, Warden
Administration Building
Louisiana State Penitentiary
Angola, Louisiana 70712

James Stewart, District Attorney
1st Judicial District
501 Texas Street, 5th Floor
Shreveport, LA 71101-5408

Bobby Charles Byrd #299312
M.P. - Oak 2
LA State Prison
Angola, LA 70712

There are no other parties to this action within the scope of Supreme Court Rule 29.1.

Respectfully submitted this 14th day of June, 2022.



Bobby Charles Byrd #299312
M.P. - Oak 2
LA State Prison
Angola, LA 70712

SUPPLEMENTAL HABEAS ISSUES

1. Whether Mr. Byrd's conviction for the crime of Aggravated Flight From an Officer rests on violations of due process and the equal protection cause of the 14th Amendment to the United States Constitution because the prosecution knowingly used false evidence to obtain Mr. Byrd's conviction resulting in the wrongful conviction of an innocent man.

2. Whether the district court abused its discretion by denying Mr. Byrd's Application for Post Conviction Relief without conducting an evidentiary hearing to provide Mr. Byrd an adequate opportunity to present his new evidence fairly, in violation of the due process and equal protection clauses of the 14th Amendment to the United States Constitution.

3. Whether the district court abused its discretion, in violation of the due process and equal protection clauses of the 14th Amendment to the United States Constitution, by denying Mr. Byrd's motion pursuant to State ex Rel. Bernard v. Orleans Parish Criminal Dist. Court Section J, 653 So.2d 1174 (LA. 1995), because the trial transcripts of the civil trial are necessary to adequately review the claims presented.

IN THE

SUPREME COURT OF THE UNITED STATES

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PETITION FOR WRIT OF CERTIORARI IN THE
UNITED STATES SUPREME COURT TO THE
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From Denial of COA in the United States Fifth Circuit Court of
Appeal, No. 21-30512, on appeal from Denial of Habeas Corpus Relief
in the U.S.D.C., Western District of Louisiana, No. 5:18-CV-748

MAY IT PLEASE THE COURT:

NOW COMES, Bobby Charles Byrd, *pro se* Petitioner, suggesting to this Honorable Court that a Writ of Certiorari should issue relative to the Fifth Circuit's opinion denying a Certificate of Appealability [COA] to review the denial of his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, and allow his claims to proceed on appeal.

OPINIONS BELOW

The opinion of the United States Fifth Circuit in this case is unreported, and is reproduced in the appendices hereto, (Exhibit H), along with the United States Fifth Circuit's denial of Rehearing En Banc. (Exhibit J) The decision of the United States District Court in this case is unreported, and is reproduced in the appendices hereto. (Exhibit F).

JURISDICTION

Jurisdiction is conferred upon this Honorable Court pursuant to the United States Constitution, Article III, § 2, and 28 U.S.C. § 1254(1). Further, the United States Supreme Court has jurisdiction to review decisions of Courts of Appeals denying certificates of appealability under the Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA). *Hohn v. United States*, 524 U.S. 236, 118 S.Ct. 1969, 141 L.Ed.2d 242 (1998).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and 28 U.S.C. § 2254, as amended by the AEDPA.

Specifically, Petitioner has been denied procedural due process and access to the courts by denial of Habeas Corpus Relief and COA. The federal district court has misapplied 28 U.S.C. § 2254, which has been sanctioned by the Fifth Circuit Court of Appeal.

STATEMENT OF THE CASE

On May 15, 2012, the Caddo Parish District Attorney filed a Bill of Information charging Mr. Bobby Charles Byrd with Aggravated Flight From an Officer (R.pp. 1, 7). Specifically, the State alleged that Mr. Byrd intentionally refused to bring a vehicle to a stop, under circumstances wherein a human life was endangered, to wit, "he ran through four (4) red lights on Traffic Street and drove through two (2) stop signs without stopping" (R.p. 7). Mr. Byrd entered a plea of not guilty on May 15, 2012, after waiver of formal arraignment (R.p. 1). On January 15, 2013, the Caddo Parish District Attorney filed an amended Bill of Information charging Bobby Charles Byrd with Aggravated Flight From an Officer (R.pp. 2-3, 299-304, 315-316). Specifically, the State alleged that Mr. Byrd intentionally refused to bring a vehicle to a stop, under circumstances wherein human life was endangered, to wit, he drove through red lights and stop signs without stopping (R.pp. 8, 299-304, 315). Mr. Byrd entered a plea of not guilty on January 28, 2013, after waiver of formal arraignment (R.pp. 2-3). Jury selection commenced on January 15, 2013. (R.pp. 2-3). A jury trial followed on January 16, 2013. (R.pp. 3-4, 307-456). The jury returned a verdict of guilty as charged, by a vote of 11 guilty and 1 not guilty (R.pp. 3-4, 143, 451-452).

On January 28, 2013, he State filed a Fourth and Subsequent Felony Habitual Offender Bill (R.pp. 4, 144-145). Bobby Charles Byrd entered a plea of not guilty on January 28, 2013, after waiver of formal arraignment. (R.p. 4). On January 28, 2013, Mr. Byrd filed a Motion for New Trial, which was denied on March 27, 2013 (R.pp. 4, 146-48, 464). On March 27, 2013, a multiple offender hearing commenced in the presence of Mr. Byrd and his counsel. (R.pp. 4, 457-500). On March 27, 2013, the trial court found that Mr. Byrd was a Fourth Felony Offender (R.pp. 4-5, 492). On March 27, 2013, the trial court sentenced Mr. Byrd to 25 years of imprisonment at hard labor without the benefit of Parole, Probation or Suspension of Sentence, a lesser sentence then the mandatory of life imprisonment (R.pp.

4-5, 496-98). On July 15, 2013, after the State and Mr. Byrd filed Motions to Reconsider Sentence, the trial court then sentenced Mr. Byrd to life imprisonment at hard labor without the benefit of parole, probation or suspension of sentence (R.pp. 5-6, 189-91, 203-10, 501-17).

On May 29, 2013, Mr. Byrd filed a Motion for Appeal, and the order of appeal was entered on September 12, 2013 (R.p. 6, 211-12, 219). On February 17, 2014, counsel for Mr. Byrd filed the Original Appellate Brief on the behalf of Mr. Byrd. The Louisiana Court of Appeal for the Second Circuit affirmed Mr. Byrd's conviction and sentence. *State v. Byrd,* No. 49, 142-KA, 145 So.3d 536 (La.App. 2 Cir. 6/25/14). On July 24, 2014, Mr. Byrd filed a timely Writ of Certiorari in the Louisiana Supreme Court. The Louisiana Supreme Court denied Certiorari on March 6, 2015. *State v. Byrd,* 2014-KO-1613, 161 So.3d 14 (La. 2015).

On May 16, 2016, Mr. Byrd filed a timely application for post-conviction relief in the First Judicial District Court. On September 1, 2016, he supplemented the "PCR." The district court denied Mr. Byrd's application for post conviction relief on November 10, 2016. Mr. Byrd received a copy of the ruling on November 22, 2016. He then filed a notice of intent to apply for supervisory writs. On December 11, 2016, Mr. Byrd filed his application for supervisory writ of review in the Court of Appeal, Second Circuit. The Court of Appeal, Second Circuit denied writs on February 9, 2017.

On March 8, 2017, Mr. Byrd filed an application for supervisory writs to the Louisiana Supreme Court. The Louisiana Supreme Court denied writs on March 18, 2018.

On May 31, 2018, Mr. Byrd timely filed his Writ of Habeas Corpus. (Exhibit A). On October 26, 2020, the State filed its Answer, (Exhibit B), and Mr. Byrd filed his Traverse to the State's Response. (Exhibit C).

On June 15, 2021, the Magistrate filed its Report and Recommendation, (Exhibit D), and Mr. Byrd timely filed his Objection. (Exhibit E). On July 23, 2021, the federal district court denied his petition for writ of habeas corpus. (Exhibit F).

On September 30, 2021, Mr. Byrd timely filed for COA, (Exhibit G), which was denied on February 24, 2022. (Exhibit H). A Motion for Rehearing Before the En Banc Court was filed on March 07, 2022, (Exhibit I), which was denied on March 29, 2022. (Exhibit J).

This timely filed Application for Certiorari follows.

STATEMENT OF TIMELINESS

Mr. Byrd has been timely filed in all courts throughout the case at bar, and shows he has diligently pursued his right to Federal Habeas Corpus Review. *Howland v. Quarterman*, 507 F.3d 840 (5th Cir. 2007); *Dolan v. Dretke*, 168 Fed.Appx 10 (5th Cir. 2006); *Gordon v. Dretke*, 107 Fed. Appx. 404 (5th Cir. 2004); *Goodwin v. Dretke*, [2004 U.S. App.Lexis 13433 (5th Cir. 2004)]; *United States v. Wynn*, 292 F.3d 226 (5th Cir. 2002), (all citing *Phillips v. Donnelly*, 216 F.3d 508 (5th Cir. 2000)).

ISSUES PRESENTED ON HABEAS CORPUS

Direct Appeal:

Reasonable jurists would determine that Mr. Byrd's conviction was obtain with Insufficient Evidence.

Collateral Review Claims:

Reasonable jurists would conclude that Mr. Byrd was denied effective assistance of appellate counsel

Reasonable jurists would determine that Mr. Byrd was denied a fair trial when the State knowingly used false evidence to obtain Mr. Byrd's conviction;

Reasonable jurists would conclude that Mr. Byrd was denied effective assistance of trial counsel;

Reasonable jurists would determine that Mr. Byrd was denied the right to counsel of choice

Supplemental Issues on Habeas:

1. Mr. Byrd's conviction for the crime of Aggravated Flight From an Officer rests on violations of due

process and the equal protection cause of the United States Constitution, Amendment 14, because the prosecution knowingly used false evidence to obtain Mr. Byrd's conviction resulting in the wrongful conviction of an innocent man; and reasonable jurists would conclude that he is entitled to a new trial.

2. The district court abused its discretion by denying Mr. Byrd's Application for Post Conviction Relief without conducting an evidentiary hearing to provide Mr. Byrd an adequate opportunity to present his new evidence fairly, in violation of the due process and equal protection clauses of the United States Constitution, Amendment 14.

3. The district court abused its discretion, in violation of the due process and equal protection clause of the United States Constitution, Amendment 14, by denying Mr. Byrd's motion pursuant to *State ex Rel. Bernard v. Orleans Parish Criminal Dist. Court Section J,* 653 So.2d 1174 (LA. 1995), because the trial transcripts of the civil trial are necessary to adequately review the claims presented.

STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 2253(c)(2), a COA is to be granted if the Petitioner makes: "a substantial showing of the denial of a Constitutional right." This Court has held that the standard for obtaining a COA is the same as that for obtaining a Certificate of Probable Cause, (CPC) under prior law. *Drinkard v. Johnson*, 97 F.3d 751, 756 (5th Cir. 1996). In order to obtain a COA, Petitioner has to make a "substantial showing of the denial of a federal right." *Barefoot v. Estelle,* 463 U.S. 880, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983)(internal quotation marks and citations omitted). A "substantial showing" required the Petitioner to "demonstrate that the issues are debatable among jurists of reason; that a court could resolve the question in a different manner; or that the questions are adequate to deserve encouragement to proceed further." *Barefoot*, 463 U.S., at 893 n. 4 (emphasis in original; internal quotation marks and citation omitted), also See, *Williams v. Taylor,* 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000). Any doubt regarding whether to grant a COA should be resolved in favor of a

Petitioner, and the Court may consider the severity of the penalty in making the determination. *Fuller v. Johnson*, 114 F.3d 491, 495 (5th Cir. 1997),

Mr. Byrd's *pro se* claims demonstrate "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253 (C)(2); *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). Further, since the district court's denial of relief is based upon procedural grounds, without analysis of the underlying constitutional claims, "a COA should issue when a prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* 529 U.S. at 484.

Mr. Byrd submits that he meets the standard of review, and can demonstrate that reasonable jurist could debate whether the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further, and requests a COA on each of the claims presented herein.

PCR ISSUES

1. Mr. Byrd was denied his right to effective assistance of appellate counsel when counsel failed to litigate non-frivolous issues in his merits brief in violation of the Sixth and Fourteenth Amendments to the United States Constitution.
2. Mr. Byrd was denied a fair trial when the prosecution knowing used false evidence to obtain his conviction in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
3. Mr. Byrd was denied his right to effective assistance of counsel when counsel failed to pursue the viable defense that Chad Morris was the driver of the vehicle in the aggravated flight and not Mr. Byrd.

PCR SUPPLEMENTAL ISSUES

1. Mr. Byrd's right to be represented by counsel of choice was infringed upon in violation of the Sixth and Fourteenth Amendments to the United States Constitution and the Louisiana Constitution Article 1 § 13.

DIRECT APPEAL ISSUES

1. The State presented insufficient evidence to establish Mr. Byrd committed an aggravated flight from an officer in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

SUPPLEMENTAL HABEAS ISSUES

1. Mr. Byrd's conviction for the crime of Aggravated Flight From an Officer rests on violations of due process and the equal protection cause of the 14th Amendment to the United States Constitution because the prosecution knowingly used false evidence to obtain Mr. Byrd's conviction resulting in the wrongful conviction of an innocent man.

2. The district court abused its discretion by denying Mr. Byrd's Application for Post Conviction Relief without conducting an evidentiary hearing to provide Mr. Byrd an adequate opportunity to present his new evidence fairly, in violation of the due process and equal protection clauses of the 14th Amendment to the United States Constitution.

3. The district court abused its discretion, in violation of the due process and equal protection clauses of the 14th Amendment to the United States Constitution, by denying Mr. Byrd's motion pursuant to *State ex Rel. Bernard v. Orleans Parish Criminal Dist. Court Section J,* 653 So.2d 1174 (LA. 1995), because the trial transcripts of the civil trial are necessary to adequately review the claims presented.

LAW AND ARGUMENT

PCR ISSUE NO. 1: Ineffective assistance of appellate counsel.

Mr. Byrd contends that he received ineffective assistance of appellate counsel when appellate counsel failed to present critical facts and law on appeal regarding his Sixth and Fourteenth Amendments right to be represented by counsel of choice and failing to litigate Mr. Byrd's Fourteenth Amendment claim.

STANDARD OF REVIEW

According to the United States Supreme Court, the standard for evaluating a claim of ineffective assistance of appellate counsel enunciated in *Smith v. Robbins,* 528 U.S. 259, 120 S.Ct. 746 (2000); *citing Smith v. Murray,* 477 U.S. 527, 535-536, 106 S.Ct. 2661 (1986).

The *Robbin*'s Court explained that:

> Respondent must first show that his counsel was objectionably unreasonable, *see, Strickland,* 466 U.S., at 687-691, 104 S. Ct. 2052, in failing to find arguable issues to appeal--that is, that counsel unreasonably failed to discover non-frivolous issues and to file a merits brief raising them. If [Respondent] succeeds in such a showing, he then has the burden of demonstrating prejudice. That is, he must show a reasonable probability that, but for his counsel's

> unreasonable failure to file a merits brief, he would have prevailed on his appeal. [528 U.S. 286] *See, Id.*, at 694, 104 S.Ct. 2052 (defendant must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different"). (FN14).

Id. at U.S. 285-286.

1. Counsel of Choice

Mr. Byrd have protected constitutional rights to be represented by counsel of choice under the United States Constitution, Amendments 6 and 14.

A defendant has a constitutional right to retain counsel of their own choosing. *See Wheat v. United States,* 486 U.S. 153, 159, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988). In *Kaley v. United States,* 134 S.Ct. 1090 (2014), the Supreme Court has:

> described that right as separate and apart from the guarantee to effective representation, as "the root meaning" of the Sixth Amendment. *United States v. Gonzalez-Lopez,* 548 U.S. 140, 147-148, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006); cf. *Powell v. Alabama,* 287 U.S. 45, 53, 53 S.Ct. 55, 77 L.Ed.2d 158 (1932)("It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice"). The Court also held that the wrongful deprivation of choice of counsel is "structural error," immune from review for harmlessness, because it "pervades the entire trial." *Gonzalez-Lopez,* 548 U.S., 150, 126 S.Ct. 2557. Different lawyers do all kinds of things differently, sometimes "affecting whether and on what terms the defendant ... plea bargains, or decides instead to go to trial" – and if the latter, possibly affecting whether she gets convicted or what sentence she receives. So for defendants like the Kaheys, having the ability to retain the "counsel [they] believe to be best" – and who might in fact be superior to any existing alternatives – matters profoundly. Id., at 146, 126 S.Ct. 2557.

Kaley v. United States, 134 S.Ct., at 1102-1103 (2014).

In the instant case, Petitioner was represented by retained counsel of choice, Attorney Phillip Terrell. R. 129-131. Mr. Terrell was initially enrolled as counsel of record to represent Mr. Byrd in this criminal matter. Sometime before trial, a motion for continuance was filed so that Mr. Byrd could be

represented by counsel of choice, Mr. Phillip Terrell. (Transcript of continuance hearing). Attorney B. Gerald Weeks, however, was appointed and enrolled as counsel to represent Mr. Byrd. (R.1). Mr. Weeks then represented Mr. Byrd throughout the trial and sentencing. (R. 1-5). The evidence is clear that Mr. Byrd desired to be represented by Attorney Phillip Terrell, but his right to be represented by his counsel of choice was totally ignored.

Clearly, Mr. Byrd's appellate counsel was ineffective in failing to raise this non-frivolous issue in a merits brief on direct appeal. The only resolution to this matter is to reverse Mr. Byrd's convictions and sentence.

2. Fourth Amendment Claim

Mr. Byrd also contends that his appellate counsel also failed to litigate this non-frivolous issue in his merits brief on direct appeal regarding the motion to suppress evidence based on lack of probable cause or reasonable cause for an investigatory stop.

Standard of Review

To demonstrate actual Prejudice in a counsel's failure to litigate a Fourth Amendment claim, a defendant must prove a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice. *Kimmelman v. Morrison,* 106 S.Ct. 2574 (1983). Probable cause to arrest exist where facts and circumstances within the arresting officer's knowledge which they have reasonable trustworthy information sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed by the person to be arrested. *Dunaway v. New York,* 442 U.S. 200, 98 S.Ct. 2248 (1979).

In the matter before the Court. the basis for the officer stopping Mr. Byrd was not supported by probable cause nor was there even evidence to conduct a *Terry* stop. Therefore, the alleged incriminating statement made by Mr. Byrd should have been suppressed as it prejudiced his defense. Specifically, Detective Gordon testified that Mr. Byrd stated "boss, you really ought to reduce that charge because I wasn't really going that fast and all those lights were green...."

Reasonable cause for an investigatory stop or detention, officers must "have articulate knowledge of particular facts significant reasonably to suspect the detained person of criminal activity." *State v. Dasall,* 385 So.2d 207, 209 (La. 1980). In establishing reasonable cause, a critical element is knowledge that an offense has been committed. "When the officer making the stop knows a crime has been committed, he has only to determine whether the additional trustworthy information justifies a man of ordinary caution to suspect the detained person of the offense." *State v. Bickman,* 404 So.2d 929, 932 (La. 1981); *State v. Louis,* 496 So.2d 563, 566 (La.App. 1 Cir. 1986).

In July 2011, Detective Robert Gordon of the Shreveport Police Department was investigating a string of burglaries, including a burglary of the Tiki Bar and Grill by a white or Hispanic male who was possibly driving a white or light colored, 1990's model, Dodge or Chrysler minivan that was missing the right front hubcap. (R.pp. 369-71). On July 20, 2011, officers acting on a BOLO, told Detective Gordon they spotted a car being driven by a white male in the Allendale neighborhood. (R.pp. 372, 404). Detective Gordon, then, found a Plymouth van at the Livingston Hotel. (R.pp. 366, 372). The vehicle was unoccupied and registered to a female out of Minden, LA. (R.p. 372).

After spotting the vehicle, Detective Gordon moved to the entrance of the hotel and continued his observation. (R.pp. 372-73). Sometime thereafter, the vehicle left the parking lot of the hotel (R.pp. 372-73). Because Detective Gordon could not see the driver, he ordered officers to stop the vehicle so that he could determine who was driving. (R.pp. 351-52, 366, 373). After officers activated their lights, Mr. Byrd stopped the van. (R.p. 373). When the police approached, however, Mr. Byrd drove away. (R.pp. 343-48, 358-61, 373-75). There was no evidence that officers had reasonable grounds to believe that the driver of the van, Bobby Charles Byrd, was involved in criminal activity to justify stopping Mr. Byrd. (R.pp. 351-52, 366, 272-73). Clearly, there existed no reason for officers to stop Mr. Byrd.

The Fourth and Fourteenth Amendments prohibition of searches and seizures that are supported by some objective justification governs all seizures of the person, "including seizures that involve a brief

detention short of traditional arrest. *Terry v. Ohio,* 392 U.S. 1, 16-19, 88 S.Ct. 1868, 1877-1878, 20 L.Ed.2d 889 (1968). While the Supreme Court has recognized that in some circumstances a person may be detained briefly, without probable cause to arrest him, any curtailment of a person's liberty by the police must be supported at least by a reasonable and articulable suspicion that the person seized is engaged in criminal activity. *See Brown v. Texas,* 443 U.S. 47, 51, 99 S.Ct. 2637, 2640 (1979).

The amount of evidence, the quality of the evidence and the contents of the evidence all fall short of indicia supporting reasonable suspicion or reasonable belief that the driver of the van had committed any crime. There was no testimony at all that indicated the driver of the van had anything to do with the alleged burglary. The only thing that the video showed was a dark and grainy photo of a van entering and exiting a parking lot, which may or may not have been the Tiki Bar and Grill. There was never any evidence put on that showed anyone coming from the van or from the bar to the van.

No officer actually observed who was driving the vehicle prior to, during or after the chase. Detective Gordon testified that he could not see the driver of the vehicle. (R.pp. 351-52, 366, 373). Corporal Garrett testified that she did not see who initial was in the van, who was driving the van or got out of the van. R. 351. Corporal Garrett also admits that she did not know how many people were in the van. *Id.* Corporal Morman also could not identify the individual driving the van prior to, during or after the chase. R. 355-368.

Chad Morris was driving the minivan that Mr. Byrd was alleged to have been driving which resulted in Mr. Byrd being charged with aggravated flight from an officer. Had counsel investigated, he would have discovered that officers had obtained the fingerprints of Chad Morris being located on the drivers side of the vehicle. Armed with this evidence, Mr. Byrd would have had a valid defense to the crime of which he was convicted as the state would not have been able to present to the jury that Mr. Byrd was the only occupant of the vehicle during the chase. This evidence would have proved that Chad Morris was driving the vehicle during the chase and managed to get away from officers.

Other than the evidence obtained from the poisonous tree, Mr. Byrd's alleged statement to Detective Gordon that he was driving the vehicle, R. 395, the remaining evidence does not support that Mr. Byrd committed the crime of aggravated flight. Thus, his counsel was ineffective for failing to litigate this Fourth Amendment claim.

The exclusionary rule generally prohibits the receipt of evidence at trial which was acquired as a result of an illegal arrest. All evidence which is derived or tainted by an illegal arrest is inadmissible as "fruit of the poisonous tree." *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

Thus, Mr. Byrd's conviction and sentence should be reversed.

PCR ISSUE NO. 2: Prosecution knowing use of false evidence to obtain a conviction.

Mr. Byrd's right to a fair trial was violated when the state knowingly used false evidence to obtain his conviction. Fourteenth Amendment.

Standard of Review

The prosecution's knowing use of false evidence to obtain a conviction is governed by the Fourteenth Amendment to the United States Constitution. In *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), the Supreme Court reasoned that if the false evidence effect the outcome of the trial, the judgment must be reversed. Moreover, that it does not merely cease to apply because the false evidence goes only to the credibility of the witness. *Id.* at U.S. 270, S.Ct. 1177.

During pre-trial motion to suppress or quash, Detective Gordon testified that he was investigating a string of burglaries. (R.p. 261). That he obtained information on the burglary at the Tiki Bar, in the form of a grainy video of a white or Hispanic male inside the building, but he could not make an identification from the video because of the darkness inside. R.p. 262. He obtained a video of "the suspect vehicle [that] was captured on ... camera at the same business, in a parking lot, and it was noted that it was an early to mid '90s Dodge or Plymouth minivan that was white or light colored, and

was missing the right front hubcap. *Id.* Detective Gordon alleged to have obtained information that the van was spotted in the Allendale area being driven by a white male. R. 262. He then proceeded to the Allendale area where he spotted the van at the Livingston Motel. R. 262-263.

Needing to identify the driver, he backed away and gained a vantage point down the street. R. 263. The van exited the parking lot so he called on the radio for officers in marked units to conduct a traffic stop in an attempt to identify the driver. *Id.* The purpose of the stop was to identify the driver and see if the vehicle was actually the one that was on the video of the bar that had been burglarized, and to try to gain as much information as possibly could. (R.p. 263). Detective Gordon admitted he did not see the person that was driving the van. (R.p. 264).

At trial, however, Detective Gordon testified falsely that he advised officers to stop the vehicle because he had a possible burglary suspect that was operating the vehicle that he needed to identify. R. 373. Prior to trial, at no time did Detective Gordon mention that he believed that the driver of the van was a possible burglary suspect. Note that the burglary at the Tiki Bar had occurred three of four days prior to this incident. (R.p. 267). To add, there no License plate from video. (R.p. 267). Moreover, the vehicle registered to a white female in Minden. (R.p. 268). According to Detective Gordon, he did not see who was driving the vehicle and only asked officers to stop the vehicle so that they could identify the driver. (R.p. 269).

Without the false evidence, the prosecution would not have been able to meet their burden of proving aggravated flight from an officer as the element of reasonable grounds to believe that the driver of the van had committed the offense of burglary.

To sustain Mr. Byrd's conviction for aggravated flight from an officer, the State had to establish that Mr. Byrd "intentionally refused ... to bring the vehicle to a stop, under circumstances wherein human life is endangered, knowing the ... [Mr. Byrd] has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe .... [Mr. Byrd] had committed the

offense." *State v. Ashley, supra* (citing LSA-R.S. 14:108.1).

Since the false evidence tainted Mr. Byrd's trial, his conviction and sentence should be reversed.

PCR ISSUE NO. 3: Ineffective assistance of counsel.

Mr. Byrd was denied his right to effective assistance of counsel when counsel failed to investigate his only viable defense that Chad Morris was the driver of the minivan that Mr. Byrd was convicted of driving resulting in his conviction for aggravate flight from an officer in violation of the United States Constitution, Amendments 6 and 14.

Standard of Review

Trial counsel's ineffective assistance is govern by the 6th and 14th Amendment of the United States Constitution. To make a successful claim of ineffective assistance of counsel, a defendant must show that his counsel's performance was deficient and that the deficient performance prejudiced his defense. *Strickland v. Washington,* 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Prejudice is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 104 S.Ct. At 2068.

Mr. Byrd's counsel failed to investigate evidence that shows that Chad Morris was driving the minivan that Mr. Byrd was alleged to have been driving which resulted in Mr. Byrd being charged with aggravated flight from an officer. An investigation would have lead to the discovery that officers had obtained the fingerprints of Morris on the drivers side of the vehicle. Armed with this evidence, Mr. Byrd would have had a valid defense to this crime. The evidence would have proved that Mr. Byrd was not the only occupant of the vehicle during the chase. This evidence would also have proved that Morris was driving the vehicle during the chase, but he managed to get away from officers once crossing over the levee and escaping through the river bank's brush.

No officer actually observed who was driving the vehicle prior to, during or after the chase. Detective Gordon testified that he could not see the driver of the vehicle. (R.pp. 351-52, 366, 373).

Corporal Garrett testified that she did not see who initially was driving the van or who got out of the van. R. 351. Corporal Garrett also admits that she did not know how many people were in the van. *Id.* Corporal Morman also could not identify the individual driving the van prior to, during or after the chase. R. 355-368. Although she alleged to have looked down on the driver of the van as the basis of her identification of Mr. Byrd as being the driver, the video implicitly shows that as soon as Corporal Morman walked up to the driver side door of the van, the van pulled off leaving her with no opportunity to obtain a description of the driver. See MSV Video.

Clearly, trial counsel's failure to investigate into Chad Morris driving the minivan at the time of this incident prejudiced Mr. Byrd's defense. Mr. Byrd is entitled to a reversal of his conviction and sentence as a result of ineffective assistance of counsel.

PCR SUPPLEMENTAL ISSUE NO. 4: Counsel of choice

Mr. Bobby Byrd's right to be represented by counsel of choice was clearly violated when the trial court mistakenly forced Attorney B. Gerald Weeks who has limited experience in criminal law which experience occurred early in Mr. Weeks's legal career sometime in the 1970's.

STANDARD OF REVIEW

In *United States v. Gonzalez-Lopez,* 548 U.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006), the Court explained that:

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." We have previously held that an element of this right is the right of a defendant who does not require appointed counsel to choose who will represent him. See *Wheat v. United States,* 486 U.S. 153, 159, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988). Cf. *Powell v. Alabama,* 287 U.S. 45, 53, 53 S.Ct. 55, 77 L.Ed. 158 (1932)("It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice"). The Government here agrees, as it has previously, that "the Sixth

Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds." *Caplin & Drysdale, Chartered v. United States,* 491 U.S. 617, 624-625, 109 S.Ct. 2646, 105 L.Ed.2d 528 (1989).

> Deprivation of the right is "complete" when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received. To argue otherwise is to confuse the right to counsel of choice – which is the right to a particular lawyer regardless of comparative effectiveness – with the right to effective counsel – which imposes a baseline requirement of competence on whatever lawyer is chosen or appointed.
>
> The Court also had "little trouble concluding that erroneous deprivation of the right to counsel of choice, 'with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.'"

Id. at U.S. 147-150.

Likewise, Louisiana Constitution Article 1 § 13 provides in pertinent part, "At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment." The Louisiana Supreme Court has also determined that "the right to counsel of choice extends to a criminal defendant who has hired his own counsel." *State v. Reeves,* 2006-2419, 11 So.3d 1031 (La. 5/5/09). In addition, the right to counsel of choice extends to a criminal defendant who has had an attorney hired for him by a collateral source." Citing *State v. Jones,* 1997-2593, 707 So.2d 975 (La. 3/4/98). The Court also recognized that "the right to counsel extends under the state constitution to a criminal defendant for whom an attorney volunteers his services." Citing *State v. Sims,* 2007-2216, p. 1, 968 So.2d 721, 722 (La. 11/16/07).

In May 2012, Attorney B. Gerald Weeks attended the initial arraignment in Attorney Phillip Terrell's stead, because Mr. Terrell sought inpatient treatment at Palmetto facility for personal problems. (Affidavit of Attorney B. Gerald Weeks). Mr. Weeks never intended to represent Byrd

through the conclusion of the criminal proceedings, but because of the situation with Terrell, and the progressing criminal proceedings, he continued to appear on Byrd's behalf. (Affidavit of Attorney B. Gerald Weeks). According to Mr. Weeks, he recalls on two (2) occasions, he raised the problem of Byrd not having his chosen counsel to represent him in his criminal proceedings with the Trial Court. (Affidavit of Attorney B. Gerald Weeks). At the beginning of trial, Mr. Weeks again recalls making a similar motion on the issue that Byrd was not represented by his chosen criminal counsel to the Trial Court. (Affidavit of Attorney B. Gerald Weeks). Mr. Weeks attempts of having Mr. Byrd represented by his counsel of choice were fruitless, as the Trial Court was steadfast in Mr. Weeks representing Byrd.

Mr. Byrd has tried every possible avenue in obtaining a true copy of the trial record or minute entries regarding the hearings and discussions regarding being represented by his counsel of choice (Attorney Phillip Terrell), to no avail.

Nonetheless, the law is unambiguous, deprivation of the right is "complete" when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received. *United States v. Gonzalez-Lopez,* 548 U.S. 140, 147-150, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006).

Mr. Byrd further submits as evidence of Attorney Phillip Terrell as counsel of Mr. Byrd's choosing, the contract that is a part of the trial record which Attorney Phillip Terrell provided to Mr. Byrd prior to Mr. Terrell seeking in-patient treatment at Palmetto facility. As can be seen, Mr. Byrd endorsed the contract prior to trial. Mr. Byrd doubtlessly had chosen Attorney Phillip Terrell to represent him in this matter. (R. 129-131). In fact, a total of $4000.00, was paid to Mr. Terrell by Mr. Weeks from a settlement that Mr. Weeks had represented Mr. Byrd in prior to this incident. The only resolution available is to reverse Mr. Byrd's conviction and sentence.

DIRECT APPEAL ISSUE NO. 1: Insufficient Evidence

The testimony at trial established that the police did not know who was driving the van, which was

being operated by Mr. Byrd, when the police pulled over the van and before Mr. Byrd drove off. While the police may have had reasonable cause to believe that the van had been involved in a burglary, they did not know who was driving the van, they knew that the van was owned by a female from Minden, and they knew that the van was a different model than in the BOLO. Before the stop, there was no evidence that this particular van was being driven by a male, much less a white or Hispanic male. Accordingly, when Mr. Byrd was pulled over, officers had no reasonable grounds to believe that the driver of the van had committed the offense, all they knew was that the van was of a different model than the one used in a burglary.

While this knowledge may have been sufficient for a *Terry* stop, it was insufficient to establish an element of Aggravated Flight From an Officer. Accordingly, the evidence introduced at the trial of this case, when viewed under the *Jackson v. Virginia,* 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) standard, was insufficient to prove all of the elements of the offense of Aggravated Flight From an Officer beyond a reasonable doubt.

To sustain Mr. Byrd's conviction for Aggravated Flight From an Officer, the State had to establish that Mr. Byrd "intentionally refused ... to bring the vehicle to a stop, under circumstances wherein human life is endangered, knowing the ... [Mr. Byrd] has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe .... [Mr. Byrd] had committed the offense." *State v. Ashley, supra*, citing La. R.S. 14:108.1. Further, the State had to prove that "the signal ... [was] given by an emergency light and a siren on a vehicle marked as a police vehicle." 33,880, at **5-6 768 So.2d 820, citing La. R.S. 14:108.1. Finally, the State had to establish that Mr. Byrd engaged in "circumstances wherein human life is endangered include: leaving the roadway; forcing another vehicle to leave the roadway; exceeding the posted speed limit by 25 miles per hour or more; ... traveling against the flow of traffic;" running stop signs; or running red lights. 33,880, at *6; 768 So.2d at 820, citing La. R.S. 14:108.1; two of these listed elements must be established).

As set forth above, the State failed to offer any evidence that officers had reasonable grounds to believe that the driver of the van, Bobby Charles Byrd, had committed an offense at the time they gave the van he was driving a visual and audible signal to stop by officers (R.pp. 351-52, 366, 272-73).

Further, there was evidence that Mr. Byrd ran red lights in Caddo Parish (R.pp. 343-48, 358-61, 373-75). However, there was no evidence that he ran a stop sign in Caddo Parish. *Id.*, *but see* (R.p. 244).

Given the evidence at trial, the State failed to meet its burden of proof. Accordingly, Mr. Byrd's conviction of Aggravated Flight From an Officer must be reversed and his sentence should be vacated.

SUPPLEMENTAL ISSUE No. 1 (Habeas)

> 1. Mr. Byrd's conviction for the crime of Aggravated Flight From an Officer rests on violations of due process and the equal protection cause of the 14th Amendment to the United States Constitution because the prosecution knowingly used false evidence to obtain Mr. Byrd's conviction resulting in the wrongful conviction of an innocent man.

Mr. Byrd maintains that he is actually innocent of the crime for which he was convicted and that constitutional violations resulted in a manifest miscarriage of justice. Mr. Byrd contends that the prosecution knowingly used false evidence to obtain his conviction in violation of the United States Constitution, Amendment 14.

STANDARD OF REVIEW

A petitioner is entitled to avail himself of the provisions of La. C.Cr.P. Art. 930.3, on the ground that he is actually innocent. *State* v. *Conway*, 816 So.2d 290 (2002); See Also, *House* v. *Bell*, 547 U.S. 518, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006). The *Conway* Court explained that "a bona fide claim of actual innocence must involve 'new, material, noncumulative,' and 'conclusive' evidence' which meets an 'extraordinarily high' standard and which 'undermines the prosecution's entire case.'" Similarly, the innocence standard expressed in *House* requires a Petitioner to establish that:

> ... in light of new evidence, "it is more likely than not that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt." This formulation... ensures that Petitioner's case is truly 'extraordinary,' while providing Petitioner a meaningful avenue by which to avoid a manifest injustice.... Yet a petition supported by a *Schlup* gateway showing "raise[s] sufficient doubt about [the Petitioner's] guilt to undermine confidence in the result of the trial without the assurance that that trial was untainted by constitutional error..."
>
> To be credible...the claim requires "new reliable evidence-whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial," the...analysis is not limited to such evidence. If new evidence so requires, this may include consideration of "the credibility of the witnesses...."

The exception to the time limits of La. C.Cr.P. Art. 930.8, provided by La. C.Cr.P. Art. 930.8(A)(1) for claims based upon "new facts discovered pursuant to this exception [that was not known to the petitioner or his attorney] shall be submitted to the court within two years of discovery]. La. C.Cr.P. Art. 930.8(A)(1)

The United States Supreme Court has recognized that a prosecutor's knowing presentation of false testimony is inconsistent with the rudimentary demands of justice. *Mooney v. Holohan,* 294 U.S. 103, 112, 55 S.Ct. 340, 342, 79 L.Ed. 791 (1935). it is also a violation of the Due Process Clause for a prosecutor to fail to correct testimony he knows to be false. *Alcorta v. Texas,* 355 U.S. 28, 78 S.Ct. 103, 2 L.Ed.2d 9 (1957), even when the falsehood in the testimony goes only to the witness' credibility. *Napue v. Illinois,* 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959). See also, *Gigilio v. United States,* 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972)(new trial required when Government witness testified falsely on matters relating to credibility and the prosecutor who served as trial counsel should have been aware of the falsehood). See also *State v. Deruise,* 1998-0541, 802 So.2d 1224 (La. 4/3/01); and *State v. Broadway,* 96-2659, 753 So.2d 801 (La. 10/19/99).

The Court in *Broadway* explained that:

> To prove a *Napue* claim, the accused must show that the prosecutor acted in collusion with the witness to facilitate false testimony. When a prosecutor allows a state witness to give false testimony without correction, a conviction gained as a result of that perjured testimony must be reversed, if the witness's testimony reasonably could have affected the jury's verdict, even though the testimony may be relevant only to the credibility of the witness.

Broadway, 753 So.2d 801, 814 (La. 1999).

In the instant case, the prosecution failed to correct the false testimonies of officers Ms. Mary Garrett, Corporal Kelly Mormon, and retired Detective Robert Gordon in Mr. Byrd's trial for aggravated flight from an officer. Mr. Byrd discovered that these witnesses had testified falsely during his civil trial which occurred between the dates of June 12, 2017 through June 16, 2017. *Byrd v. City of Bossier, Et al.,* No. 5:12-CV-01956 (U.S.D.C. W.D.La. 2017) During the civil trial, officers Ms. Mary Garrett, Corporal Kelly Mormon, and retired Detective Robert Gordon conceded that their testimonies in Mr. Byrd's criminal trial for aggravated flight from an officer was false. See Motion for Production of Transcripts pursuant to *State ex rel. Bernard v. Orleans Parish Criminal Dist. Court Section J,* 653 So.2d 1174 (1995).

Detective Robert Gordon of the Shreveport Police Department was investigating a string of burglaries, including a burglary of the Tiki Bar and Grill by a white or Hispanic male who was possibly driving a white or light colored, 1990's model, Dodge or Chrysler minivan, missing the right front hubcap (R.pp. 369-71). Officers acting on a BOLO, told Detective Gordon they spotted a car being driven by a white male in the Allendale neighborhood. (R.pp. 372, 404). Detective Gordon found a Plymouth van at the Livingston Hotel, 400 Pete Harris (R.pp. 366, 372). The vehicle was unoccupied and registered to a female from Minden, Louisiana. (R.p. 372).

Detective Gordon moved to the entrance of the hotel and continued his observation. (R.pp. 372-73). The vehicle then left the parking lot of the hotel. (R.pp. 372-73). Because Detective Gordon could not see the driver, he ordered officers to stop the vehicle so he could determine who was driving. (R.p.

373). When the police approached, however, Mr. Byrd drove away. (R.pp. 343-48, 358-61, 373-75). Corporal Garrett testified that at 500 yards away (1500 feet), she observed Mr. Byrd running red lights. (R.p. 345). Corporal Garrett also testified that the speed limit on the bridge was thirty-five (35) and that she was traveling at fifty-nine miles per hour and that Mr. Byrd was getting farther away. (R.pp. 346-347). Although these officers testified that Mr. Byrd ran stop signs and red lights, an enlargement of the Motor Vehicle Surveillance ("MVS video") which captured the whole incident shows that Mr. Byrd did not run any red lights or stop signs. *Byrd v. City of Bossier, Et al.*, No. 5:12-CV-01956 (U.S.D.C. W.D.La. 2017).

In Mr. Byrd's criminal trial, the prosecution relied heavily on these officer's testimonies and the MVS video to obtain Mr. Byrd's conviction. The prosecution knew these officers were testifying falsely because the prosecution had viewed the contents of the MVS video prior to trial. (R.p. 214). In fact, the prosecution offered the MVS video as evidence in Mr. Byrd's trial. Ibid. In opening arguments the prosecution spoke in great length regarding the incident. (R.pp. 222-255).

The quagmire presented here involves the fact that the MVS video was enlarged during Mr. Byrd's civil trial to reveal that Mr. Byrd did not commit any traffic violations.[1] After the prosecution's chief witnesses in Mr. Byrd's criminal trial viewed the enlarged video in Mr. Byrd's civil trial, they conceded that Mr. Byrd did not commit any traffic violations. (See Footnote 1).

To convict Mr. Byrd of aggravated flight from an officer, the prosecution was required to prove that Mr. Byrd's "intentionally refused ... to bring the vehicle to a stop, under circumstances wherein human life is endangered, knowing that ... [Mr. Byrd] has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe .... [Mr. Byrd] had committed the offense." *State v. Ashley*, 768 So.2d 817, 819-820 (La.App. 2 Cir. 2000), citing La. R.S. 14:108.1. The

1 Mr. Byrd has submitted a Motion for Production of Transcripts for the transcripts in *Byrd v. City of Bossier, Et al.*, No. 5:12-CV-01956 (U.S.D.C. W.D.La. 2017), pursuant to *State ex rel. Bernard v. Orleans Parish Criminal Dist. Court Section J*, 653 So.2d 1174 (La. 1995), as evidence to adequately establish his claim that the prosecution knowingly used false evidence to obtain Mr. Byrd's conviction.

Prosecution also had to prove that "the signal ... [was] given by an emergency light and a siren on a vehicle marked as a police vehicle." *Id.* at 768 So.2d 820, citing La. R.S. 14:108.1. In addition, the Prosecution had to establish that Mr. Byrd engaged in "circumstances wherein human life is endangered which includes: leaving the roadway; forcing another vehicle to leave the roadway; exceeding the posted speed limit by 25 miles per hour or more; ... traveling against the flow of traffic;" running stop signs; or running red lights. *Id.* at 768 So.2d at 820, citing La. R.S. 14:108.1; two of these listed elements must be established).

According to the Court of Appeal, Second Circuit, in *State v. Byrd*, 49, 142, p. 6, 145 So.3d 536 (La.App. 2 Cir. 2014), Mr. Byrd exceeded the speed limit by more than twenty-five miles per hour, failed to stop at stop lights, and failed to stop at stop signs.

As Mr. Byrd stated above, new evidence proves that he did not commit any traffic violations under circumstances wherein human life is endangered, knowing that he had been given a visual and audible signal to stop by a police officer when the officer had reasonable grounds to believe Mr. Byrd had committed an offense. The facts developed in his civil trial which occurred between the dates of June 12, 2017 through June 16, 2017, implicitly establish that the prosecution's chief witnesses testified falsely during Mr. Byrd's criminal trial. *Byrd v. City of Bossier, Et al.*, No. 5:12-CV-01956 (U.S.D.C. W.D.La. 2017)(See Footnote 1). During the civil trial, officers Ms. Mary Garrett, Corporal Kelly Mormon, and retired Detective Robert Gordon conceded that their testimonies in Mr. Byrd's criminal trial were false (See Footnote 1).

On direct examination of Corporal Garrett in the civil trial, Attorney Robert Kennedy enlarged the MVS video for the Court at Mr. Byrd's request. (See Footnote 1). The enlarged MVS video showed clearly that the stop lights that Ms. Mary Garrett, Corporal Kelly Mormon, and retired Detective Robert Gordon testified to in Mr. Byrd's criminal trial as being red, were actually green. (R.pp. 256-264). The prosecution knew that Mr. Byrd did not run any stops signs or red lights as the MVS video was in his

possession prior to trial. The prosecution, however, allowed these witnesses to testify falsely without correction or even graver, the prosecutor acted in collusion with the witness to facilitate false testimony. In the civil trial, Ms. Mary Garrett and Corporal Kelly Mormon conceded that the lights that were alleged to have been red when Mr. Byrd traveled through them were actually green when Mr. Byrd traveled through them. (See Footnote 1).

During Mr. Byrd's civil trial, Ms. Mary Garrett admitted that her testimony in Mr. Byrd's criminal trial was false regarding Mr. Byrd running red lights as the traffic signals were actually green when Mr. Byrd passed them. (See Footnote 1). This new admission establishes that Ms. Garrett falsified evidence which affected the outcome of Mr. Byrd's trial. In addition, Ms. Garrett testified that the reading of the speed odometer as stated being forty-nine (49) mph at Mr. Byrd's trial was incorrect, because it was shown that Ms. Garrett's vehicle has a digital speed odometer that upon initial acceleration it reads at a higher speed than the actual speed of the vehicle prior to leveling out to the correct speed. (See Footnote 1). This fact also affected the outcome of Mr. Byrd's trial as this evidence proves that Mr. Byrd was not traveling at a speed over twenty-five mph over the speed limit.

Likewise, Corporal Kelly Mormon admitted that Mr. Byrd did not run the stop lights as indicated in her testimony in Mr. Byrd's criminal trial. (See Footnote 1). Specifically, Mr. Byrd asked Corporal Mormon, "is it her testimony that a green light means stop?" She said, "yes you still should have stopped and at least looked both ways." (See Footnote 1). Corporal Mormon's admission also affected the outcome of Mr. Byrd's criminal trial as it disproves the State's case that Mr. Byrd ran stop lights.

Retired Detective Robert Gordon admitted there was no reasonable grounds to believe or reasonably suspected Mr. Byrd was involved in past, present, or imminent criminal activity, committed an offense, was in the process of committing an offense, or was about to commit an offense. (See Footnote 1). This fact is imperative not only in proving that Mr. Byrd committed the aggravated flight from an officer but also to establish grounds for a Fourth Amendment stop.

Retired Detective Gordon admitted in Mr. Byrd's civil trial that he did not know where Detective Courtney got the video. Gordon thought Detective Courtney picked it up from the owner that morning (4 days later). (See Footnote 1). Gordon also admitted that he did not know whether the video had been scientifically tested as authentic or downloaded by the crime lab. (See Footnote 1). Gordon admitted that he had not actually seen the video. Gordon testified that he had only been told of the contents of the video. (See Footnote 1). Gordon also admitted that he could not see the driver's side tire when entering the parking lot and that the person driving the car could have had a flat and merely pulled in to change a tire. (See Footnote 1).

Gordon testified that it was possible that the person driving the minivan could have been a witness. (See Footnote 1). Gordon admitted that he would have pulled over anyone driving the minivan. (See Footnote 1). Gordon testified that he would have pulled over his lawyer, the judge, anyone in the jury, anyone driving the van that day. (See Footnote 1). Gordon testified that he intended to stop and frisk the person driving the minivan and to search the vehicle. Gordon testimony showed there intention was to arrest as all officers involved had drawn their weapons prior to knowing whether Mr. Byrd was involved in any criminal activity. (See Footnote 1). Gordon testified that the other cruiser's video (video in Mormon's vehicle) was review, recorded, tagged, and downloaded. (See Footnote 1). Gordon and his supervisor then burnt a D.V.D. and forwarded both to the D.A.'s Office. (See Footnote 1).

At trial, however, Detective Gordon testified falsely that he advised officers to stop the vehicle because he had a possible burglary suspect that was operating the vehicle that he needed to identify. (R.p. 373). Prior to trial, at no time did Detective Gordon mention that he believed that the driver of the van was a possible burglary suspect. Note that the burglary at the Tiki Bar had occurred three of four days prior to this incident. (R.p. 267). To add, there no License plate from video. (R.p. 267). Moreover, the vehicle registered to a white female in Minden. (R.p. 268). According to Detective Gordon, he did not see who was driving the vehicle and only asked officers to stop the vehicle so that they could

identify the driver. (R.p. 269).

Without the false evidence, the prosecution would not have been able to meet their burden of proving aggravated flight from an officer as the element of reasonable grounds to believe that the driver of the van had committed the offense of burglary.

To sustain Mr. Byrd's conviction for aggravated flight from an officer, the State had to establish that Mr. Byrd "intentionally refused ... to bring the vehicle to a stop, under circumstances wherein human life is endangered, knowing the ... [Mr. Byrd] has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe .... [Mr. Byrd] had committed the offense." *State v. Ashley*, 768 So.2d 817, 819-820 (La.App. 2 Cir. 2000), citing La. R.S. 14:108.1.

The prosecution clearly knew that Mr. Byrd did not run any stop signs or red lights. The prosecution also knew that Mr. Byrd did not intentionally refuse to stop under circumstances wherein human life is endangered. In addition, the prosecution knew that the police officers did not have reasonable grounds to believe that he had commit an offense for purpose of conducting a stop of the vehicle. Since the false evidence tainted Mr. Byrd's trial, his conviction and sentence should be reversed.

SUPPLEMENTAL ISSUES Nos. 2 and 3 (Habeas)

The district court abused its discretion by denying Mr. Byrd's Application for Post Conviction Relief without conducting an evidentiary hearing to provide Mr. Byrd an adequate opportunity to present his new evidence fairly, in violation of the due process and equal protection clauses of the 14th Amendment to the United States Constitution.

The district court abused its discretion, in violation of the due process and equal protection clauses of the 14th Amendment to the United States Constitution, by denying Mr. Byrd's motion pursuant to *State ex Rel. Bernard v. Orleans Parish Criminal Dist. Court Section J,* 653 So.2d 1174 (LA. 1995), because the trial transcripts of the civil trial are necessary to adequately review the claims presented.

Mr. Byrd contends that the district court abused its discretion when it denied his application for post

conviction relief and motion for evidence under *State ex rel. Bernard v. Orleans Parish Criminal Dist. Court Section J,* 653 So.2d 1174 (La. 1995).

STANDARD OF REVIEW

In *Pierre v. East Baton Rouge Parish Clerk of Court,* 2017-0688, 233 So.3d 92 (La. App. 1 Cir. 11/1/17), the court interpreted a prisoners right to access of public records as:

> The right of access to public records is a fundamental right guaranteed by Louisiana Constitution, Article XII, § 3. *Johnson v. Stalder,* 97-0584 (La App. 1 Cir. 12/22/98), 754 So.2d 246, 248. An inmate in custody following a felony conviction, however, is only permitted access to public records if he has exhausted his appellate remedies and the request is limited to grounds upon which the inmate could file for post conviction relief. See La. R.S. 44:31.1. If an inmate has identified specific constitutional errors in the proceedings leading to his conviction and sentence, and he specifies with reasonable particularity the factual basis for such relief, he thereby meets the initial requirements set for invoking post conviction relief. See *State ex rel. Bernard v. Criminal Dist. Court Section "J"*, 94-2247 (La. 4/28/95), 653 So.2d 1174, 1175 (per curiam).

Id. at 94-95.

In the instant case, Mr. Byrd properly filed an application for post conviction relief in the district court which alleged an identifiable constitutional violation, that is, his rights to Due Process and Equal Protection under the Fourteenth Amendment of the United States Constitution were violated when the prosecution knowingly used false evidence to obtain Mr. Byrd's conviction resulting in the wrongful conviction of an innocent man. Mr. Byrd also filed a *Bernard* motion requesting a copy of the trial transcripts of his civil trial, *Byrd v. City of Bossier, Et al.,* No. 5:12-CV-01956 (U.S.D.C. W.D.La. 2017), which contains the evidence of the prosecution knowingly using false evidence to obtain Mr. Byrd's conviction.

The district court, however, misinterpreted Mr. Byrd's *Bernard* request as a request for "Transcript of *Boykin* Examination, Verbatim Copy, filed July 27, 2017", which the district court granted prior to Mr. Byrd's June 12, 2018 filing of the instant application for post conviction relief and *Bernard* motion. Mr. Byrd has provide a particularized need for the documents necessary to establish the claims presented in his state application for post conviction relief, and federal habeas petition.

Moreover, this Honorable Court has the supervisory power to either grant Mr. Byrd relief on "PCR" or to order an evidentiary hearing in order to further develop the facts of the case. Mr. Byrd avers that he has set forth a claim which, if proven, would entitle him to Habeas Corpus Post Conviction Relief. His Original state Application for Post Conviction Relief sets out a specific claim of constitutional error that require the discovery of documents for support and development of these claims. *State ex rel. Bernard v. Crim.Dist.Court*, 653 So.2d 1174 (La. 1995), at 1175. The evidence obviously has exculpatory and/or impeachment value. Denial of this violates the federal laws and constitution.

Additionally, Mr. Byrd asserts that a denial of the foregoing request(s) would deprive him of an "adequate opportunity to present [his] claims fairly." *United States v. McCollom*, 426 U.S. 317, 324, 96 S.Ct. 2086, 2091 (1976). To this end, he specifically reserves the right to supplement these claims, once he acquires the requested documents and records, with additional argument and relevant facts developed from said records. He moves this Honorable Court to grant an evidentiary hearing on his claims, with appointed counsel, to ensure the maintenance of his rights to due process and equal protection of the law. It is also necessary to have counsel appointed to aid him because of the complex issues involved, the need to competently develop the facts, and to properly present them in court.

Mr. Byrd claims that this discovery is necessary whether this Honorable Court decides to grant him relief or grant an evidentiary hearing.

Wherefore, Mr. Byrd, contends that his right to a fair trial was violated when the prosecutor allowed the witnesses to testify falsely without correction, or acted in collusion with the witnesses to facilitate false testimony, in order to obtain Mr. Byrd's conviction for aggravated flight from an officer. Mr. Byrd asserts that he has brought forth viable claims, and he has pointed to sufficient record evidence, therefore, he is entitled to the relief he seeks in his federal habeas corpus petition.

Mr. Byrd's conviction should be reversed and the charges dismissed with prejudice, or, at least reversed and remanded for a new trial.

CONCLUSION

Wherefore, Petitioner prays this Honorable Court will remand this case to the U.S. Fifth Circuit to issue a Certificate of Appealability in accordance with 28 U.S.C. § 1291, 28 U.S.C. § 2253, and AEDPA, *Hohn v. United States*, 524 U.S. 236, 118 S.Ct. 1969, 141 L.Ed.2d 242 (1998), which gives this Court authority to entertain this appeal and to issue a COA.

Petitioner has raised substantial issues regarding constitutional violations that makes his State conviction and sentence unconstitutional and worthy of Federal Habeas Corpus Relief. Petitioner states that he has pointed to enough procedural errors in the lower courts, and enough questionable law and facts to warrant a COA, where the issues can be decided by a panel of judges - whether Petitioner has made a "substantial showing of the denial of a federal right." *Barefoot v. Estelle*, 463 US 880, 893, 103 S.Ct. 3383, 77 L.Ed.2d 185 (1982).

Petitioner has shown, on the record before this Honorable Court, that he has satisfied the COA standard with respect to averring a facially valid constitutional claim. U.S. Constitution, Amendments 5, 6, and 14. *See, Houser v. Dretke*, 395 F.3d 560, 562 (5th Cir. 2004).

This Honorable Court should vacate the judgment of the lower courts denying habeas corpus relief, and remand this case to the U.S. Fifth Circuit for a COA, or to the federal district court to address the merits of Petitioner' habeas corpus claims in the first instance. *See, Womack v. Thaler*, 591 F.3d 757, 757-758 (5th Cir. 2009); *Whitehead v. Johnson*, 157 F.3d 384, 388 (5th Cir. 1998).

Finally, Petitioner contends that his Application clearly meets the requirements of the U.S. Supreme Court in order to proceed, and that these issues could be resolved in a different manner by jurist of reason. Petitioner maintains the position that, among jurists of reason, it could be found that he is timely filed and should be reviewed on Habeas Corpus by this Court. Therefore, the requested COA should be issued by this Honorable Court.

Respectfully submitted, *pro se*, this 14th day of June, 2022.

Bobby Charles Byrd #299312
M.P. - Oak 2
LA State Prison
Angola, LA 70712

VERIFICATION OF WRITS / CERTIFICATE OF SERVICE

I, Bobby Charles Byrd, the aforementioned *pro se* Petitioner, do hereby attest and affirm that the information contained herein is true to the best of my knowledge and belief. Further, that all allegations in the foregoing are those of Bobby Charles Byrd.

Additionally, I hereby certify that a copy of the foregoing has been sent, via U.S. Mail, postage prepaid and properly addressed to:

James Stewart, District Attorney
1st Judicial District
501 Texas Street, 5th Floor
Shreveport, LA 71101-5408

Done and signed this 14th day of June, 2022, at Angola, Louisiana.

Bobby Charles Byrd #299312
M.P. - Oak 2
LA State Prison
Angola, LA 70712