21-8262 ORIGINAL

No. 20-

In The

Supreme Court of the United States

ANTONIO JONES,

Petitioner,

v.

WARDEN OF WABASH VALLEY CORRECTIONAL FACILITY,

Respondent.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

ANTONIO JONES, DOC #145609
WABASH VALLEY CORRECTIONAL FACILITY
P.O. BOX 1111
CARLISLE, IN. 47838

Petitioner, Pro-se

QUESTION PRESENTED

I. Whether the Sixth and Fourteenth Amendments, as constructed in *Crawford v. Washington,* 541 U.S. 36 (2004), *Dutton v. Evans,* 400 U.S. 74 (1970) and *Bruton v. United States,* 391 U.S. 123 (1968), were violated when the jury were invited to infer Jones' guilt and participation in the crime from the testimony by Detective, Michael J. Jackson and C.I., Jeffery L. Lewis; regarding statements made by James W. Parks wherein: Jones did not have an opportunity to cross-examine and confront James W. Parks, the course of Police Investigation was not at issue during Jones's second trial; and the testimony by both Lewis and Detective Jackson were used to bolstered the credibility of Lenzo Aaron, a witness whose testimony was deemed by the 7th Circuit in *Jones v. Basinger,* 635 F. 3d. at 1054 to be: *"inherently unbelievable"* and the only allege witness to the crime? Moreover, the error was not harmless.

II. Whether the Sixth and Fourteenth Amendments, as constructed in *Chambers v. Mississippi,* 410 U.S. 284 (1973), *California v. Trombetta,* 467 U.S. 489 (1984), and *Crawford v. Washington,* 541 U.S. 36, 56, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), were violated when the trial court committed error in restricting Jones from cross-examining Aaron as to retaliation, revenge and bias against Jones as a confrontation violation, a restriction on his right to present a complete defense and due process violation?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding below are Petitioner Antonio Jones and Respondent Warden of Wabash Correctional Facility-Frank Vanihel. There are no non-governmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

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INTRODUCTION

This case presents ~~three~~ (2) serious issues of Constitutional violations; wherein, the Lower Courts refuse to abide by clearly established United States Supreme Court Law. Moreover, Jones was framed based upon fabricated evidence made by the Lake County Prosecutor's Office and said prosecution also ignore numerous items of physical evidence supporting Jones's innocence, as well as evidence contradicting the State's only witness's testimony. Jones's wrongful conviction amounts to a travesty of justice and should be corrected. See the following issues:

I. This case presents a split between the lower court's decision in Jones' case and existing United States Supreme Court law regarding whether Jones was denied his Sixth and Fourteenth Amendments rights to a fair trial and constitutional right to cross-examine and confront James W. Parks; wherein, Detective, Michael J. Jackson and Confidential Informant, Jeffery L. Lewis both were allowed to testify to *"information"* given by *Parks* a codefendant, who allegedly confessed to Lewis his, Jones and Aaron's allege involvement in the crime. Moreover, Lewis informed Detective Jackson regarding Parks confession and the other allege involvement and Detective Jackson put surveillance on Jones, Parks and Lenzo. Next, he attained search warrant for the three residence and people affiliated with the three, which ultimately led to their arrest. Jones did not have an opportunity to cross-examine and confront James W. Parks and the jury were invited to infer Jones's guilt and participation in the quadruple homicide based upon Lewis and Det. Jackson's hearsay testimony regarding information given by Parks.

The District Court erroneously found: *"the court of Appeals of Indiana rejected this claim, finding that the testimonies of Lewis and Det. Jackson did not convey what Parks had told Lewis or what Lewis had told Det. Jackson in the early stage of the investigation and thus finding no-hearsay. ECF 18-7 at 3-6. Moreover, the Court further held that, Jones argued that the jury could have inferred the existence of accusatory inadmissible hearsay statements, but, critically, he cites no authority to suggest that this inference in itself constitutes a violation of the Confrontation Clause.* See (App. A, pp. 13a-17a)

In *Dutton v. Evans,* 400 U.S. 74 (1970), this Honorable Court observed that: *"a confrontation issue does arise if the jury is invited to infer that the declarant had identified the defendant as the perpetrator of the allege crime."* Also, in *Richardson v. Marsh,* 481 U.S. 200 (1987), this Honorable Court found: *"the admission of a non-testifying codefendant's confession does not violate a defendant's right to confrontation if: (1) the confession is redacted to, to eliminate not only the defendant's name, but any reference to his or her existence* and *(2) the trial court provides a proper limiting instruction."*481 U.S. at 211. See also *United States v. Ward,* 377 F. 3d 671, 676-77 (7th Cir. 2005); Next see *United States v. Sutton,* 337 F. 3d 792, 799 (7th Cir. 2003). In addition, this court clarified in *Gray v. Maryland,* 523 U.S. 185, 185, 192, 118 S. Ct. 1151, 140 L. Ed. 2d 294 (1998), that the redactions must not be so *"obvious"* so as to *"closely"* resemble an unredacted statement. This court reasoned is because a jury can directly infer from such *"obvious"* redactions that: "*the confession refers specifically to the defendant." Id.* at 193. Last, in *Bruton v. United States,* 391 U.S. 123 (1968), the government introduced at trial the confession of a codefendant which expressly implicated the defendant in the crime. *Bruton,* 391 U.S. at 124.Eventhough the trial judge instructed the jury to consider the statement only as evidence against the codefendant, this Court held that: *"the statement violated the defendant's right under the confrontation clause because the defendant could not subject his codefendant to cross-examination. Id. at* 317. *It explained further that powerfully incriminating extrajudicial statements of a codefendant, like the confession of a codefendant, are generally inadmissible, even with proper jury instruction. Id. at* 135-36. In *Jones's* case the State wasted no time during the opening statement with the following: *("Now you will hear from Jeffery Lewis as well. Jeffery Lewis is the brother of James Parks. Lewis gives a statement to Commander Jackson. Based on that information that Commander Jackson receives, he is going to , in fact, put surveillance on three individuals James Parks, Antonio Jones—" (Tr. ,p. 302).*The Defense timely requested a mistrial, which was denied. *(Tr., pp. 311-322).* The saturation of the record with this summary hearsay began in the State's opening and permeated the

entire trial. The court read specific portions of *Jones* decision, outside the hearing of the jury, and instructed the State to avoid the substance of what Parks told Lewis. *(App. H, pp. 200a),* See also *(Tr., pp. 322-23).* The deputy prosecutor ignored these prophylactic instructions. The prosecution began by pointing out that Lewis and Parks are brothers. *(Tr., p. 471).* The prosecutor begins a drum beat repetition reminding the jury that these two are brothers, with one of the first questions asked of Lewis. *(App. J, 237a-250a, Vol. II, pp. 1a-13a) or (Tr., pp. 960-61).* Lewis is then questioned about his brother owning an AK-47, and immediately thereafter asked *"did you, in fact, give a statement to Gary Police back in 2004?"* Implying that he had knowledge of the bad acts of his brother which he shared with the police. *(Tr., p. 977).* The prosecutor hammered Lewis with leading questions: *"after this quadruple homicide occurred, did you, in fact contact the Gary Police?. . .Isn't it, in fact, true that you did contact Det. Jackson initially on January 19th of 2004, isn't it true that the source of the information from that statement came from your brother?" (App. J) or (Tr., pp. 990-91)(emphasis supplied).* After linking statements Lewis made to the police and knowledge that he gained from his brother as the basis for these statements, the prosecutor then questioned Commander Jackson, the Officer that took Lewis' statement. The State elicited answers such as: *"Officers were instructed to go to three separate locations that were provided by Mr. Lewis. They were to monitor those locations for three separate individuals, whose identities were provided by Mr. Lewis. . . "(App. K, 14a-36a) or (Tr. Pp. 1056-57).* By this deliberate, calculated tactic, the prosecution linked statements that Lewis made to the police and knowledge that he gained from his brother as being the basis for those statements, and revealed the contents. Hence, the State ignored *Jones* and sought to *bolster* the credibility of the allege accomplice, Lenzo Aaron. See *(The testimony of both Lewis & Det. Jackson bolstered the testimony of Lenzo Aaron, whose credibility was called into question).* Because Jones' defense was that he was not present, any evidence suggesting otherwise must be viewed as bolstering.

In the prosecutor's closing argument, the State illustrated how the information from Lewis, brother of

Parks given to Commander Jackson caused Jackson to go after the three defendant's: *"this whole thing started with Jeff Lewis, the police go looking for three people. Lenzo Aaron, James parks and the defendant, Antonio Jones. Based on the information from Lewis, the police obtained search warrants of residences affiliated with Lenzo Aaron, James Parks and this defendant. This is before the police have ever spoken to Lenzo." (Vol. II, App. N, pp. 88a-124a) Or (Tr., pp. 2306-07).* The jury asked Det. Jackson, after Lewis's statement, what did you do next? Although, the court claimed this question was not answered. *(Tr., pp. 2308:22-24).* The State explained Det. Jackson next steps as demonstrated above. The prosecution, by repetitive drumming, beat it into the minds of the jury that: *"Parks and Lewis are brothers; that is where this information came from; and the resulting inference that it must be trust worthy information if a person's own brother gives him up."* This clearly steps outside the boundary announced by this Court in *Dutton, Richardson, Gray* and *Bruton.*

II. The District Court erroneously determined the following: *"During bench arguments, trial counsel conceded that Jones' testimony on threat was inadmissible hearsay. Id at 2040. The trial court excluded the testimony after noting the testimony that Jones and Aaron had amicably played cards on the same team at the party shortly before agreeing to rob McClendon. Id. at 2042-43. On direct appeal, the Court of Appeals of Indiana found that trial counsel had waived this issue and that the exclusion of the testimony fell short of fundamental error, concluding that the proffered evidence was not credible and lacked probative value. ECF 1807 at 6-7. The appellate court noted the alleged threat, and Aaron's interview with law enforcement as well as the friendly interaction between Jones, and Aaron at the party. Id." (Decision at p. 35).* Jones's counsel made an offer of proof; however, he was prohibit by the trial court to actually present said evidence. In fact, the following exchanges took place:

THE COURT:

You know what? You change your mind so much and you change your arguments of what you're trying to do repeatedly throughout the trial. I never really know what it is you're intending to do. So I'll tell you what,

why don't you make your offer of proof and I'll rule after that. *(Tr., p. 1265).* After defense counsel's Offer of Proof, the trial court stated the following:

THE COURT:

In addition to this lawyer has a history of acting as the absent minded professor and indicating that he's gonna do something and then changing his mind later on. And it's not really his ultimate decision as to whether or not the client testifies, and I would suspect that if I let this in, that the Defendant would change his mind later on and not testify, but I'm not trying to force the Defendant to testify and I would reverse my ruling if, in fact, there is some relevant reason why in fact this is placed forward. Right now it is a fishing expedition. *(Tr., p. 1273).* Jones made an offer of proof that Aaron implicated him *(Jones)* in retaliation for Jones prior testimony in an unrelated matter which helped obtain a conviction against Aaron's friend. *(Tr., pp. 2038-2040).* Jones was forced by the court to testify to the events regarding his testimony against the State's star witness's friend, which opened the door to Jones incarceration / conviction for distribution of drugs. The court had no intentions on allowing this evidence before the jury, but tricked Jones into testifying to get inadmissible evidence before the jury to prejudice Jones. The Lower Court's decision violated this Court's decision in *Davis v. Alaska,* 415 U.S. 308, 315, 39 L.Ed. 2d 347, 94 S. Ct. 1105 (1973); wherein, this court held: *"trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issue, the witness' safety or interrogation that is repetitive or only marginally relevant."* In *Delaware v. Arsdall,* 475 U.S. 673, 679, 89 L.Ed. 2d 674, 106 S. Ct. 1431 (1986), this court held: *"when reviewing the adequacy of a cross-examination, the question is whether the jury had sufficient information to make a discriminating appraisal of the witness's motives and bias." United States v. DeGudino,* 722 F. 2d 1351, 1354 (7th Cir. 1983). Moreover, the exposure of a witness' motivation in testifying is proper and important function of the constitutionally protected right of cross-examination. *Davis v. Alaska,* 515 U.S. 308 (1974); Citing also *Greene v. McElroy,* 360 U.S. 474, 496 (1959). In *Smith*

v. Brookhart, 996 F. 3d 402 (7th Cir. 2021), this court held: *"to determine whether a State evidentiary ruling passed muster under Chambers v. Mississippi,* 410 U.S. 284 (1973), *we must balance a State's legitimate interest in an efficacious criminal trial process against the defendant's constitutional rights to present a complete defense, with a heavy thumb on the side of that issue. Kubsch v. Neal,* 838 F. 3d 845, 855 (7th Cir. 2016)." Habeas Corpus is available, when a State Court presiding over a murder trial arbitrarily applies an evidentiary rule to exclude reliable and trustworthy evidence that is essential to the defense and not otherwise inadmissible. Relying on *Crane v. Kentucky,* 476 U.S. 683, 106 S. Ct. 2142, 90 L.Ed 3d 636 (1986) and *Rock v. Arkansas,* 483 U.S. 44, 107 S. Ct. 2704, 97 L. Ed. 2d 37 (1987), this court held: *"a State Court unreasonably applied Supreme Court precedent when it excluded this type of evidence."* Jones contends in response to the lower court's decision that, a State Rule cannot trump a Constitutional violation. Furthermore, being that, Lenzo Aaron was the only trial evidence against Jones, it was material to Jones's defense to discredit Aaron with evidence of his bias and motive for wanting to lie on Jones. Aaron had originally denied any involvement in the crime or knowledge of who may have committed the crime. See *(App. L, pp. 54a)* See also *(App. P)* Also, when this court consider the fact that, Aaron's testimony was inconsistent with numerous items of physical evidence, and there being mountains of inconsistencies in Aaron's testimony, this court cannot say that, Jones was not prejudice as a result of the trial court's decision.

OPINIONS BELOW

The 7th Circuit Court of Appeals denied Jones' Amended Petition for Certificate of Appealability without an opinion (App. O, pp. 125a) is reported at *Jones v. Vanihel,* No. 21-2165. However, the District Court's Opinion (App. A, pp. 1a-36a) is available at *Jones v. Warden,* No. 3:180CV-4-JD-MGG.

JURISDICTION

The U.S. Court of Appeals for the 7th Circuit denied Jones's Amended Petition for Certificate of Appealability

on: January 4, 2022, without an opinion. This Court has jurisdiction under 28 U.S.C. § 1254 (1)

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The Sixth Amendment to the U.S. Constitution provides:

> In all criminal prosecutions, the accused shall enjoys the right to be confronted with the witnesses against him. Moreover, the U.S. Supreme Court has held that the guarantee, which is extended against the states by the Fourteenth Amendment, includes the right to cross-examine witnesses. And this fundamental constitutional right is quite properly an almost total ban on the introduction of accusations against the accused by persons not present for cross-examination.
>
> Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, *Chambers v. Mississippi, supra*, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, ... the Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense." ... In observing that an essential component of procedural fairness is an opportunity to be heard. ...That opportunity would be an empty one if the State were permitted to exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant's claim of innocence. *Id.* at 690

Also, the Sixth Amendment to the U.S. Constitution provides, in relevant part:

> *"In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."*

Next, and as it relates to the Fourteenth Amendment to the U.S. Constitution, which provides, in relevant part:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) provides, in relevant part:

> (a) The Supreme Court, a justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State Court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. . .
>
> (d)An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State Court shall not be granted with respect to any claim that was adjudicated on the merits in State Court proceedings 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. 28 U.S.C. § 2254.

STATEMENT

After a jury trial, Petitioner was convicted of four (4) counts of Murder in the Perpetration of Robbery. The court sentenced him to a total of two-hundred and forty (240) years in prison, sixty (60) years on each count to run

consecutively to one another. The Court of Appeals of Indianan affirmed the judgment, with a written opinion. *Jones v. State,* Cause No. 45A03-1111-CR-00496' See also *(App. C, pp. 85a-106a).* The Indiana Supreme Court affirmed the judgment without a written opinion. Jones then filed a Petition for a Writ of Habeas Corpus, who also affirmed his conviction and sentence. *Jones v. Warden,* Cause No. 3:18-CV-4-JD-MGG; See also *(App. A, 1a-36a)* and *(App. G).* Last, Jones filed his Certificate of Appealability; wherein, the United States Court of Appeals for the 7th Circuit affirmed the judgment without issuing a written opinion. As a result, this petition ensued.

1. Factual Background

On January 16, 2004, Maurice Fuller and Anita Goldsby held a party at their apartment in Gary that started around 7:00 p.m. There was about twenty people at the party, and James Parks, Lenzo Aaron, and Jones were there and playing cards for money. At some point, Fuller bumped into Jones in the kitchen. The two were "joking around," and Jones lifted up his shirt and revealed the butt of a gun. Tr. p. 1159-60. Jones said, "You don't want none of this." Id. Fuller described Jones's handgun as an automatic, "like a 9mm or a .45." *Id. at 1160.*
While the three were playing cards at the party, Aaron and Parks got into an argument over some money. Jones was Aaron's partner in the card game. The argument was settled, and Aaron told Parks to keep the money in dispute. At some point, Jones walked into the kitchen and said, "We just got a call from some dude...do you want to go rob him?" *Id. at 1198.* Jones said that the caller had $6000 and some drugs in his possession. Aaron and Parks both agreed to rob the caller, and Parks and Jones left. However, they returned to pick up Aaron, and the three then left again in Jones's white Buick Roadmaster to commit the robbery. By this point, Aaron had seen the butt of the black semi-automatic handgun tucked into Jones's waist. An AK-47 assault rifle was also on the backseat of Jones's vehicle.
When the three arrived at the Polk Street residence, Jones went in first, followed by Parks and then

Aaron. Aaron was carrying the AK-47 rifle. After the three went up stairs, Jones knocked, someone came to the door and asked who was there, and Jones replied, "It's Tone." Id. At 1210. As soon as the person inside opened the door, someone fired five or six shots. After the three entered, Aaron saw Laurice and A.J. on the couch. Parks and Jones had gone to the back of the residence, and at some point, Aaron heard Parks say, "Where the sh*t at, man?" *Tr. p. 1211.* The man he was talking to responded, "Tone, James G. It's like this man? It's like this?" *Id. at 1216.* Laurice was pleading with Aaron, "Please, sir, don't kill me. Please don't kill me." *Id. at 1213.* Aaron shook his head to indicate he was not going to harm her. However, Aaron, who was unable to see into the back of the apartment because a sheet was hanging in the doorway, heard Parks say, "Finish him off. Finish him off." *Id. at 1216.* The others returned to the living room and grabbed the AK-47 off Aaron's shoulder. Thereafter, they went to the rear of the apartment and Aaron heard two more shots.

Jones left, while Aaron and Parks remained in the living room, Parks told Aaron, "Finish the lady off, man." *Tr. p. 1216.* Aaron told Parks, "Man I didn't come here for that, I ain't killing nobody," then left the apartment. *Id. at 1217.* As Aaron was leaving, he heard two more shots. *Id.*

Aaron did not take anything from the apartment, nor did he see Parks or Jones take anything. However, he was originally told that they were going to steal $6000, with each of them to take $2000 from the robbery.

The day after the murders, Parks knocked on Aaron's door, gave him $230, and asked him, "was [he] straight," which Aaron took to mean, was he 'cool with the $230." *Tr. p. 1232.* Aaron feared for his life and that of his girlfriend, so he accepted the $230. *Id. at 1233-34.*

On January 26, 2004, Aaron was arrested, and Parks was arrested the next day. On the same day, Jones entered the police station and stated that some detectives from Gary were looking for him. Jones was also placed under arrest.

When Aaron was asked about the incident on Polk Street, he requested legal counsel, and the

> questioning ceased. Aaron later asked to talk with Detective Richardson, and he provided a formal written statement on January 28, 2004. Aaron implicated himself in the murders on two occasions and was initially charged with four counts of felony murder. Aaron subsequently entered into a plea agreement on May 6, 2004.
>
> On January 29, 2004, Jones was charged with four counts of felony murder. Following a jury trial on May 17, 2004, Jones was found guilty as charged, and was subsequently sentences to 240 years of incarceration. We affirmed Jones's conviction on direct appeal, and he subsequently petitioned for post-conviction relief. Following a hearing on February 26, 2007, the post-conviction court denied his request for relief on September 11, 2007. After we affirmed the denial of post-conviction relief, Jones petitioner for a writ of habeas corpus on February 13, 2009. The district court denied Jones's request for relief, finding that Jones had failed to establish a violation of due process with respect to the admission of the challenged statements and determining that we had reasonable found any error to be harmless.
>
> However, on March 31, 2011, the United States Court of Appeals for the Seventh Circuit reversed the district court's holding with regard to the propriety of the hearsay statements that were admitted. As a result, Jones was ordered to be released if he was not tried within 120 days of the mandate. ***Jones v. Basinger***, *635 F.3d 1030 (7th Cir. 2011).* Jones was retried on four counts of murder, and a jury found him guilty as charged.

Jones v. State, *45A03-1111-CR-496 (Ind. Ct. App. September 14, 2012).*

REASONS FOR GRANTING THE PETITION

I. The Lower Courts failed to abide by clearly Established Supreme Court Law in light of *Dutton, Richardson, Gray* and *Bruton.*

Jones contends that his Sixth and Fourteenth Amendments rights were violated; wherein, Jones was denied of his right to

cross-examine and confront James W. Parks, which as a result, denied him of his right to a fair trial.

The 7th Circuit Court in *Jones v. Basinger,* 635 F. 3d 1030 (7th Cir. 2011), correctly found that: *"Jones's Sixth Amendment right was violated, when two detectives were allowed to testify to information given to them by C.I., Jeffery Lewis regarding information he had allegedly received from Parks. This hearsay information implicated Jones and denied Jones of an opportunity to cross-examine and confront Lewis and Parks."* The case today hasn't changed, only the names, rather than it being two detectives testifying to hearsay information, it is one detective and a C.I., but unlike the first trial; wherein, detectives were allowed to testify to the content of Parks' statement to Lewis implicating Jones- - this time, the jury was able to infer Jones's allege involvement in the quadruple homicide, but the material fact remains the same, Jones did not have an opportunity to cross-examine and confront James W. Parks; wherein, the 7th Circuit made it clear that Jones had a right to cross-examine and confront Parks, if the State was going to rely on anything related to information given by Lewis. The State relied on inadmissible hearsay and the Lower Courts failed to consider the difference between the reason why the inadmissible hearsay was allowed in the first trial as opposed to the second trial. See the following

A. A Confrontation issue does arise if the jury is invited to infer that the hearsay witnesses had identified the defendant as the perpetrator of the allege crime.

In *Dutton v. Evans,* 400 U.S. 74 (1970), this Honorable Court observed that: *"a confrontation issue does arise if the jury is invited to infer that the declarant had identified the defendant as the perpetrator of the allege crime."* Also, in *Richardson v. Marsh,* 481 U.S. 200 (1987), this Honorable Court found: *"the admission of a non-testifying codefendant's confession does not violate a defendant's right to confrontation if: (1) the confession is redacted to, to eliminate not only the defendant's name, but any reference to his or her existence* and *(2) the trial court provides a proper limiting instruction."*481 U.S. at 211. See also *United States v. Ward,* 377 F. 3d 671, 676-77 (7th Cir. 2005); Next see *United States v. Sutton,* 337 F. 3d 792, 799 (7th Cir. 2003). In addition, this court clarified in *Gray v. Maryland,* 523 U.S. 185, 185, 192, 118 S. Ct. 1151, 140

L. Ed. 2d 294 (1998), that the redactions must not be so *"obvious"* so as to *"closely"* resemble an unredacted statement. This court reasoned is because a jury can directly infer from such *"obvious"* redactions that: *"the confession refers specifically to the defendant." Id.* at 193. Last, in *Bruton v. United States,* 391 U.S. 123 (1968), the government introduced at trial the confession of a codefendant which expressly implicated the defendant in the crime. *Bruton,* 391 U.S. at 124.Eventhough the trial judge instructed the jury to consider the statement only as evidence against the codefendant, this Court held that: *"the statement violated the defendant's right under the confrontation clause because the defendant could not subject his codefendant to cross-examination. Id. at* 317. *It explained further that powerfully incriminating extrajudicial statements of a codefendant, like the confession of a codefendant, are generally inadmissible, even with proper jury instruction. Id. at* 135-36; See Blockower v. Board of Higher Education, 350 U.S. 551, 557-58.

II. In *Jones's* case the State wasted no time during the opening statement in presenting inadmissible hearsay. *(Tr. ,p. 302).*The Defense timely requested a mistrial, which was denied. *(Tr., pp. 311-322).* The saturation of the record with this summary hearsay began in the State's opening and permeated the entire trial. The court read specific portions of *Jones* decision, outside the hearing of the jury, and instructed the State to avoid the substance of what Parks told Lewis. *(App. H, pp. 200a),* See also *(Tr., pp. 322-23).* The deputy prosecutor ignored these prophylactic instructions. The prosecution began by pointing out that Lewis and Parks are brothers. *(Tr., p. 471).*The prosecutor begins a drum beat repetition reminding the jury that these two are brothers, with one of the first questions asked of Lewis. *(App. J, 237a-250a, Vol. II, pp. 1a-13a) or (Tr., pp. 960-61).* Lewis is then questioned about his brother owning an AK-47, and immediately thereafter asked *"did you, in fact, give a statement to Gary Police back in 2004?"* Implying that he had knowledge of the bad acts of his brother which he shared with the police. *(Tr., p. 977).* The prosecutor hammered Lewis with leading questions: *"after this quadruple homicide occurred, did you, in fact contact the Gary Police?. . .Isn't it, in fact, true that you did contact Det. Jackson initially on January 19th of 2004, isn't it true that the source of the information from that statement came from your brother?" (App. J) or (Tr., pp. 990-91)(emphasis supplied).* After linking

statements Lewis made to the police and knowledge that he gained from his brother as the basis for these statements, the prosecutor then questioned Commander Jackson, the Officer that took Lewis' statement. The State elicited answers such as: *"Officers were instructed to go to three separate locations that were provided by Mr. Lewis. They were to monitor those locations for three separate individuals, whose identities were provided by Mr. Lewis. . . "(App. K, 14a-36a) or (Tr. Pp. 1056-57).* By this deliberate, calculated tactic, the prosecution linked statements that Lewis made to the police and knowledge that he gained from his brother as being the basis for those statements, and revealed the contents. Hence, the State ignored *Jones* and sought to *bolster* the credibility of the allege accomplice, Lenzo Aaron. See *(The testimony of both Lewis & Det. Jackson bolstered the testimony of Lenzo Aaron, whose credibility was called into question).* The Lower court's decision was contrary to this court's holding in ***Dutton, Richardson, Gray*** **and** ***Bruton.***

B. Jones was denied of his opportunity to cross-examine and confront James W. Parks.

Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004) and *Bruton v. United States,* 391 U.S. 123, 126 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968) both protect a criminal defendant's Sixth Amendment right to be confronted with the witnesses against him and to cross-examine those witnesses. *U.S. Const. Amend. VI.* Per *Crawford* , the confrontation Clause of the Sixth Amendment bars out-of-court testimonial statements *("also known as testimonial hearsay")* unless the defendant had a prior opportunity to cross-examine the declarant and the declarant is unavailable to testify. See also *Jones v. Basinger,* 635 F. 3d 1030, 1041 (7th Cir. 2011); *United States v. James,* 487 F. 3d 518, 525 (7th Cir. 2007). For that reason, out-of-court confessions by a non-testifying codefendant cannot be introduced as evidence against a defendant at trial. *Bruton,* 391 U.S. 123, 126, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968).

Jones contends that, when this Court reversed his conviction in *Jones v. Basinger,* 635 F. 3d 1030 (7th Cir. 2011), this Court held the following:

> *"The Constitution demands that Jones have an opportunity to confront Parks, if his statements to*

Lewis, as reported to the police detectives, are to be used as evidence against Jones."

James W. Parks *was not* unavailable and has been incarcerated in the Indiana Dept. of Corrections since (2005). Moreover, the State had Mr. Parks on its witness's list, but for whatever reason decided not to call Mr. Parks, but instead, decided to ignore this court's ruling and called both Jeffery L. Lewis and Det. Michael J. Jackson. Both of these witnesses were allowed to testify to *Hearsay Information* given by Parks to Lewis, and from Lewis to Detective Jackson. *(Tr., pp. 960-61, 977, 990-91, 1056-57).* As a result of said *Hearsay Information* received, Det. Jackson ordered other law enforcement officers to surveillance Jones, Parks & Aaron. Moreover, search warrants were issued for Parks, Aaron & Jones's residences and residences affiliated with the three. *(Tr., pp. 301-02, 926-27, 1056-57, 2306-07).*

Lewis was also allowed to testify to weapons used in the commission of the crime, which the State claimed that Mr. Lewis had personal knowledge of these weapons, prior to the crime, but if this court review Jeffery Lewis' January 22, 2004, statement, the following questions and answers were given:

*"**Q.** When and where did this incident occur?*

***A.** The shooting took place at 2600 Polk St., in Gary and the conversation with my brother took place in the Oak Knolls Apartment Complex in the parking lot Monday, January 19, 2004.*

***Q.** Could you please tell me in your own words what it is that your brother James W. Parks told you regarding the shooting that took place at 2600 Polk St., where 4 people were killed.*

***A.** We went to stick up Smoke (Anthony McClendon), me, Tone, & Thirst. He said that Tone knocked on the door of Smoke House and Smoke came to the door and asked who it was, Tone replied its me Tone and Smoke opened the door. My brother then stated that him, Thirst and tone rushed in the House and Tone shot at Smoke in the lower part of his body and then asked him where it was at, Thirst was carrying the AK-47 and Tone had the .45 and my brother had a .22 handgun with 10 shots."*

See *(Petitioner's Ex. 2, p. 2)*

Lewis *did not* have personal knowledge of these weapons, but was relating *Hearsay Information* he had received from James Parks. To further prove this point, Jones points to the testimony of both Maurice Fuller and Shawn Dixon, both witnesses testified to Dixon, Parks and Fuller being present for the purchase of said weapon. See *(Tr., pp. 1150-53, 1489-90).* Again, meaning Lewis obtained his *Hearsay Information* from Parks. Also, there is no mention of Lewis being present during the purchase of the .22 caliber, Fuller testified that he was with Parks when he purchased the .22 from a person for drugs. However, he never indicated that Lewis was present, so Lewis obtained this *Hearsay Information* from Parks as well. See *(Tr., pp. 1150-1153).*

Jones contends that the reliance on hearsay, even where the specific statements are not admitted, is nevertheless error. That is, where a witness testifies that he relied on hearsay to determine that Jones was a suspect, the reliance on a summary of the out – of – court statements should warrant the same treatment afforded the specific statements. *Richardson v Griffin*, 866 F.3d 836, 840 (7th Cir. 2017), which held that: ("*an out of court statement identifying shooter by first name, relayed by a police officer at trial, was inadmissible*"). Moreover, Jones argues that, the inability to cross-examine exists in both scenarios. Jones could not cross-examine Parks as to what he told his brother, Lewis that inspired Lewis to go to the police. *Id.* Jones filed a motion in limine, which was granted, that sought to exclude all reference to Parks being the source of information for Lewis' testimony. The prosecution then wasted no time in ignoring the rulings of the court (*and the Seventh Circuit*) in its opening statement: "*Now you will hear from Jeffery Lewis as well. Jeffery Lewis is the brother of James Parks. Lewis gives a statement to Commander Jackson. Based on that information that Commander Jackson receives, he is going to, in fact, put surveillance on three individuals James Parks, Antonio Jones--"(Tr., P. 302).* The Defense timely requested a mistrial, which was denied. (Tr., pp. 311-322).

The saturation of the record with this summary hearsay began in the State's opening and permeated the trial. The court read specific portions of the *Jones* decision, outside the hearing of the jury, and instructed the State to avoid the substance of what Parks told Lewis. (Tr., pp. 322-23). The deputy prosecutor ignored these prophylactic instructions. The prosecution began by pointing out that Lewis and Parks are brothers. (Tr., p. 471).

The prosecutor begins a drum beat repetition reminding the jury that these two are brothers, with one of the first questions asked of Lewis. (Tr., pp. 960-61). Lewis is then questioned about his brother owning an AK-47, and immediately thereafter asked "*did you, in fact, give a statement to Gary Police back in 2004*?" Implying that he had knowledge of the bad acts of his brother which he shared with the police. (Tr., p. 977). The prosecutor hammered Lewis with leading questions: "*after this quadruple homicide occurred, did you, in fact contact the Gary police? ... Isn't it, in fact, true that you did contact Det. Jackson initially on January 19th of 2004, isn't it true that the source of the information from that statement came from your brother*?" (Tr. pp. 990-91) (emphasis supplied). After linking statements Lewis made to the police and knowledge that he gained from his brother as the basis for these statements, the prosecutor then questioned Commander Jackson, the officer that took Lewis' statement.

The State elicited answers such as: "*officers were instructed to go to three separate locations that were provided by Mr. Lewis. They were to monitor those locations for three separate individuals, whose identities were provided by Mr. Lewis...*" (Tr., pp. 1056-57). By this deliberate, calculated tactic, the prosecution linked statements that Lewis made to the police and knowledge that he gained from his brother as being the basis for those statements, and revealed the contents. Hence, the State ignored Jones and sought to bolster the credibility of the allege accomplice, Lenzo Aaron. See (The testimony of both Lewis & Det. Jackson bolstered the testimony of Lenzo Aaron, whose credibility was called into question). Because Jones' defense was that he was not present, any evidence suggesting otherwise must be viewed as bolstering.

In the prosecution's closing argument, the State illustrated how the information from Lewis, brother of Parks given to Commander Jackson caused Jackson to go after the three defendant's: "*this whole thing started with Jeff Lewis, the police go looking for three people. Lenzo Aaron, James Parks and the defendant, Antonio Jones. Based on the information from Lewis, the police obtained search warrants of residences affiliated with Lenzo Aaron, James Parks and this defendant. This is before the police have ever spoken to Lenzo.*" (Tr., pp. 2306-07). The jury asked Det. Jackson, after Lewis' statement, what did you do next? Although, the court claimed this question was not answered. (Tr., p. 2308:22-24). The State explained Det. Jackson next steps as demonstrated above. The prosecution, by repetitive drumming, beat it into the minds of the jury that: "*Parks and Lewis are brothers; that is where this information came from; and the resulting inference that it must*

be trust worthy information if a person's own brother gives him up." This clearly steps outside the boundary announce by this Court in *Jones v. Basinger*, 635 F.3d 1030 (7th Cir. 2011). It was important for the State to show that the hearsay summary was credible, and relied upon, by the police before speaking with Aaron, because it bolsters the incredibly dubious testimony of Aaron. Jones inability to be able to cross-examine and confront James W. Parks violated both *Crawford v Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004) and *Jones v Basinger*, 635 F.3d 1030 (7th Cir. 2011); *Bruton v United States*, 391 U.S. 123, 126 88 S. Ct. 1620, 20 L.Ed.2d 476 (1968); See United States v. Zafiro, 945 F.2d 881, 888 (7th Cir. 1991).

C. Course of the Police Investigation Was Not At Issue.

Whether a statement is hearsay... will most often hinge on the purpose for which it is offered. *United States v Linwood*, 142 F.3d 418, 425 (7th Cir. 1998); *Blount v State*, 22 N.E.3d 559 (Ind. 2014).

Although course – of – investigation testimony may help prosecutors give the jury some context, it is often of little consequence to the ultimate determination of guilt or innocence. *Kindred v State*, 973 N.E.2d 1245, 1252 (Ind. Ct. App. 2012).

The core issue at trial is, of course, what the defendant did (*or did not do*), not why the investigator did (*or did not do*) something. Thus, course – of – investigation testimony is excluded from hearsay only for a limited purpose: "*to bridge gaps in the trial testimony that would otherwise substantially confuse or mislead the jury*" *Jones*, 635 F.3d 1030, 1046 (7th Cir. 2011).

The possibility the jury may wonder why police pursued a particular path does not, without more, make course – of – investigation testimony relevant. *Kindred*, 973 N.E.2d at 1252-53.

Indeed, such testimony is of little value absent a direct challenge to the legitimacy of the investigation. *E.g., Jones, 635 F.3d at 1046 ("the probative value of a tip on which an investigation was based is marginal, at best, absent perhaps a (relevant) allegation of police impropriety").* (Internal quotations omitted); *McIntyre v State*, 717 N.E.2d 114, 123 (Ind. 1999) (*"finding, although witness's out – of – court statement showed police did not act arbitrarily in their investigation, it lacked probative value since the propriety of the police investigation was not otherwise question;* See also *Jones v Basinger,* 635 F.3d 1030 (7th Cir. 2011).

Also, in *Carter v Douma*, 796 F.3d 726, 736 (7th Cir. 2015), this Court held: "*The used of course of investigation gambit is often*

abused and / or misunderstood that it is an evidentiary constitutional minefield."). Court's properly treat statements heard by an officer during the course of his or her investigation as non – hearsay when offered only to show the effect they had on the police. *United States v Eberhart*, 434 F.3d 935, 939 (7th Cir. 2006). To convict a defendant, after all, the prosecution does not need to prove its reasons for investigating him. *Carter,* 796 F.3d at 736; See also *Jones v Basinger,* 635 F.3d 1030 (7th Cir. 2011).

During Jones's first trial, Jones' defense counsel vigorously challenged Aaron's credibility. See *Jones v Basinger*, 635 F.3d 1030 (7th Cir. 2011). In her opening statement, Jones' attorney noted that Aaron was the only witness who placed Jones at the crime scene of the crime. She asserted that Aaron did so only in order to get the deal he got. They have no evidence, the attorney claimed, other than a man who made a tremendous deal. In an attempt to counter Jones's attack on the foundation of its case, the prosecution requested and received the trial court's permission to present testimony detailing the tip that had led to Jones' arrest. The prosecution argued that Jones had opened the door to such testimony by repeatedly implying that Aaron's testimony was the only evidence of Jones' guilt.

Jones argues that, this door was not opened during his second trial, so, for the trial court to allow testimony from Det. Jackson and Lewis regarding statements / hearsay information given by Parks implicating Jones in the four homicides were improper.

Jones contends that the course of police investigation was irrelevant during his second trial because there was absolutely no challenge by the defense to the legitimacy of the investigation. The State used Det. Jackson and Lewis for two reasons: *One*, to prejudice the jury against Jones; and *two*, to bolster Aaron's credibility, whose testimony was called in to questioned by this court. See *Jones,* 635 F.3d at 1054. There was no need for the jury to know why the police started investigating Jones and if the State felt the jury needed to know, they could have did as this court instructed, which was informed the jury that: "*Police acted upon information received by Jeffery Lewis.*" *Jones*, 635 F.3d 1030.

D. *Jones v. Basinger,* 635 F. 3d 1030 (7th Cir. 2011), *cannot* be read as blessing the State to use the admission of hearsay or inference so long as it lacks detail.

Police testimony about the content of statements given to them by witnesses are testimonial under *Crawford*; officers cannot refer to the substance of statements made by a non-testifying witness

when they inculpate the defendant. Where an officer's testimony leads to the clear and logical inference that out – of – court declarants believed and said that the defendant was guilty of the crime charged, Confrontation Clause protections are triggered, Officer testimony regarding statements made by witnesses is thus inadmissible where it allows a jury to reasonably infer the defendant's guilt. Similarly, a prosecutor's questioning may introduce a testimonial statement by a non-testifying witness, thus implicating the Confrontation Clause.

Statements exceeding the limited need to explain an officer's actions can violate the Sixth Amendment – where a non-testifying witness specifically links a defendant to the crime, testimony becomes inadmissible hearsay. See *Taylor,* 545 F.3d at 335; *Johnson,* 127 F.3d 394 ("*The more directly an out – of – court statement implicates the defendant, the greater the danger of prejudice*"). *United States v Evans,* 950 F.2d 187, 191 (5th Cir. 1991); *United States v Hernandez,* 750 F.2d 1256, 1257 (5th Cir. 1985); See also *United States v Silva,* 380 F.3d 1018, 1020 (7th Cir. 2004). Questions by prosecutors can also trigger Confrontation Clause violations. See *Johnston,* 127 F.3d at 402-03; *Favre,* 464 F.2d at 362-64; *Meises,* 645 F.3d at 21-23; Dixon, 420 F. Supp. at 740.

Last, a prosecutor may violate the Confrontation Clause by introducing an out of court statement, even indirectly, if offered for its truth by suggesting a defendant's guilt. *Johnston,* 127 F.3d at 394-95.

The District Court erroneously held: "*Jones argues that the jury could have inferred the existence of accusatory inadmissible hearsay statements, but, critically, he cites no authority to suggest that this inference in itself constitutes a violation of the Confrontation Clause.*"

Jones argues that, the State's opening statements, both ("*Jeffery Lewis* and *Det. Michael Jackson's*) testimony and the State's closing argument left the jury with a logical inference that Jones committed the quadruple homicide with James Parks, who confessed his involvement to his brother; wherein, his brother reported it to Det. Jackson, (*Tr., pp. 301-02, 324-27, 960-61, 990-91, 1056-57, 2306-07, 2313*). Moreover, then there is the testimony of Lenzo Aaron, who turned states and agreed to testify against Jones. (*Tr., pp. 1185-1318*).

Jones cites to both *Dutton v Evans,* 400 U.S. 74 (1970) and *Favre v Henderson,* 464 F.2d 359 (5th Cir. 1972). In *Dutton,* the U.S. Supreme Court observed in *Dutton* that a confrontation issue does arise if the jury is invited to infer that the declarant had identified

the defendant as the perpetrator of the allege crime. Jones also cites to *Favre*; wherein, *Favre* like *Jones* was tried separately from his alleged accomplice. The arresting officer was asked about his investigation, and responded that he had a confidential informant. Upon being asked if he then sought the arrest of the defendant, he responded in the affirmative. The officer also testified as to the past reliability of the informant. The Fifth Circuit held the testimony served to bolster the identification of the defendant by the other witnesses and also served to create an inference that the informant thought the defendant was guilty. *(464 F. 2d at 362).* The Court concluded that the statement did have hearsay aspects, in light of logical inferences to be made thereafter, even though the officer never testified to the contents of the statement. The Court then proceeded to analyze the indicia of reliability discussed in *Dutton supra.*

The court noted that although the statement did carry a warning on its face to the jury against giving the statement undue weigh, it did carry an assertion of fact. In *Jones'* case, there was absolutely no warning given to the jury at all. Moreover, Lewis was allowed to testify to Parks being his brother. *(Tr., pp. 960-61).* Lewis is then questioned about his brother owning an AK-47, and immediately thereafter asked "*did you, in fact, give a statement to Gary Police back in 2004*?" Implying that he had knowledge of the bad acts of his brother which he shared with the police. (Tr., p. 977). The prosecutor hammered Lewis with leading questions: "*after this quadruple homicide occurred, did you, in fact contact the Gary police? ... Isn't it, in fact, true that you did contact Det. Jackson initially on January 19th of 2004, isn't it true that the source of the information from that statement came from your brother*?" (Tr. pp. 990-91) (emphasis supplied). After linking statements Lewis made to the police and knowledge that he gained from his brother as the basis for these statements, the prosecutor then questioned Commander Jackson, the officer that took Lewis' statement.

The State elicited answers such as: "*office were instructed to go to three separate locations that were provided by Mr. Lewis. They were to monitor those locations for three separate individuals, whose identities were provided by Mr. Lewis...*" (Tr., pp. 1056-57).

Likewise, Jones argues that the jury was left with a logical inference that he was guilty of the 2600 Polk Street murder / robbery.

First, Jones contends that, the State relied on the hearsay information during its "*opening statement,*" its "*case -in -chief*" and during its "*closing argument.*"

Second, the jury could infer from the testimony of Jeffery Lewis that:

1.) He (Lewis) received "*hearsay*" information from his brother, (*James W. Parks*) regarding the 2600 Polk Street murder / robbery;

2.) As a result of the "*hearsay information,*" Lewis received from (Parks), Lewis contacted Det. Jackson;

3.) That, as a result of "*hearsay information*" Det. Jackson received from Lewis, Det. Jackson ordered other law enforcement officers to surveillance Jones, Parks, and Aaron. Moreover, search warrants were issued for the three allege suspects' residences and residences of people affiliated with the three. Further, Aaron, Parks, Jones were ultimate arrested. (*Tr., pp.* 301-02, 324-27, 960-961, 990-91, 1056-57, 2306-08, 2313).

Jones argues that, the jury knew the source of Lewis's information who was Mr. Parks – (*a participant in the crime*). Also, the jury knew the content of what Parks told Lewis, which was his participation and (*the parties involved*).

Next, Lewis was allowed to testify to the weapons involved in the commission of the crime, which Lewis' description of the weapons involved were later corroborated by the testimony of Maurice Fuller, (*Tr., pp.* 1150-54); Shawn Dixon (*Tr., pp.* 1488-1490); Ballistics Experts – Henry Hatch, (*Tr., pp.* 1787- 1826); Kevin Judge, (*Tr., pp.* 1826-1865) and Jay Cruz, Tr., pp. 1866-1881). The State went far beyond what this Court ordered them to do in *Jones v Basinger*, 635 F.3d 1030 (7th Cir. 2011).

Last, Jones asserts that when this Court consider the fact that, the jury wasn't admonished at all not to consider Lewis and Det. / Commander Jackson's testimony as evidence of Jones's guilt, (*Tr., pp.* 1006-1022), rather the jury were instructed to use Lewis's Deposition as substantive evidence of Jones guilt. *Id.*

E. The testimony of both Lewis and Det. Jackson bolstered the credibility of Lenzo Aaron.

Jones argues that, Lenzo Aaron's testimony lack credibility because *One,* his testimony was inconsistent with numerous items of physical evidence and prior statements and testimony made on different occasions. See Attached Document Titled: *(The Inconsistencies of Lenzo Aaron's Testimony which calls into Question his Believability). Two,* this Honorable Court found Aaron's testimony to be: *"inherently unbelievable and inconsistent with other evidence".* See *Jones v. Basinger,* 635 F. 3d at 1054. There was no other evidence linking Jones to this crime, *"No blood, ballistics evidence, DNA, etc. . . or any other eyewitness other than Aaron links Jones to the scene of the crime." Id.* As a result, Jones argues that, the main reason why the State called Jeffery Lewis and Commander Jackson to testify to what Parks told Lewis was not to show the course of the police investigation, but to bolster their weak witness's credibility, which is prohibit pursuant to this court in *Jones v. Basinger,*

"[B]y incorporating [this] hearsay into [its] testimony, the government received the benefit of having, in effect, an additional witness . . . while simultaneously insulating from cross-examination that witness, {2011 U.S. App. LEXIS 60}a witness [who] we can safely assume would have been subjected to a scathing, and perhaps effective cross-examination by defense counsel." *Check,* 582 F.2d at 683. Given the obvious importance of Aaron's testimony, it is simply impossible to believe that this improper use of Lewis' statement to bolster Aaron's credibility {635 F.3d 1055} was harmless, given the lack of other direct evidence of Jones' involvement in the killings. See, *e.g., United States v. Williams,* 133 F.3d 1048, 1053 (7th Cir. 1998) (holding that "actual prejudice" had been shown where government's evidence "was bolstered by inadmissible hearsay"). The improper hearsay evidence was used to bolster Aaron's credibility, not to prove the course of police investigation, which was not at issue.

F. The error Was Not Harmless.

Federal habeas relief is appropriate only if the prosecution cannot demonstrate harmlessness. *Davis v Ayala,* 576 U.S. 257, 135 S. Ct. 2187, 192 L.Ed.2d 323 (2015).

Habeas relief based on trial error and Appellate must prove actual prejudice. *Brecht v Abrahamson,* 507 U.S. 619, 637, 113 S. Ct. 1710, 123 L.Ed.2d 353 (1993). In other words, relief is proper only if federal court has grave doubt about whether a trial error of federal law had substantial and injurious effect or influence in

determining the jury's verdict. *O'Neal v McAninch*, 513 U.S. 432, 436, 115 S. Ct. 992, 130 L.Ed.2d 947 (1995); *Jones v Basinger*, 635 F.3d 1130. 1052 (7th Cir. 2011).

Jones contends that the errors made by the State regarding Lewis and Commander Jackson's hearsay testimony were not harmless.

First, Jones argues that, "*there was no physical evidence linking him to this crime. No blood, ballistics evidence, DNA, etc... or any other eyewitnesses except for the dubious testimony of Lenzo Aaron linking him to this crime.*" See *Jones v Basinger,* 635 F.3d at 1054.

As it relates to Aaron's testimony, this Court found Lenzo Aaron's testimony to be: "*Inherently unbelievable and inconsistent with other evidence.*" *Id.* See also (Attached-Document Titled: *Aaron's inconsistent Statement / Testimony Which Calls Into Question His Credibility).* See Also

On top of the above, Jones argues that: (1) he didn't have an opportunity to cross-examine and confront James W. Parks; (2) The course of police investigation *was not* at issue in this case; (3) The hearsay information was used to prove Jones allege involvement in the 2600 Polk Street murder / robbery; (4) Also, it was used to bolster Aaron's credibility that has been called into question by this Court, other evidence in the case and prior statements he made on a different occasion; (5) No admonishment were given to the jury to minimize the damage.

The error made by the trial court to allow Lewis and Commander Jackson to testify to information given to Lewis from Parks and from Lewis to Commander Jackson had a substantial and injurious effect or influence on the juror's verdict. See Douglas v. Alabama, 380 U.S. 415 (1965).

The Lower Courts failed to abide by *Chambers v. Mississippi,*410 U.S. 284 (1973)

The Sixth and Fourteenth Amendments grant a criminal defendant in State Court the right to effective cross-examination. See *Davis v Alaska*, 415 U.S. 308, 315, 39 L.Ed.2d 347, 94 S. Ct. 1105 (1973). The Supreme Court has, however, qualified the right to effective cross-examination: "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the

issues, the witness' safety or interrogation that is repetitive or only marginally relevant." *Delaware v Van Arsdall*, 475 U.S. 673, 679, 89 L.Ed.2d 674, 106 S. Ct. 1431 (1986). This Court has stated that when reviewing the adequacy of a cross-examination, the question is whether the jury had sufficient information to make a discriminating appraisal of the witness's motives and bias. *United States v DeGudino*, 722 F.2d 1351, 1354 (7th Cir. 1983).

Moreover, the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. *Davis v Alaska*, 515 U.S. 308 (1974); Citing also *Greene v McElroy*, 360 U.S. 474, 496 (1959).

Recently in *Delaware v Van Arsdall*, 475 U.S. 673 (1986), we reaffirmed *Davis*, and held that a criminal defendant states a violation of the Confrontation Clause by showing a prototypical form of bias on the part of the witness, thereby to expose to the jury the facts from which jurors... could appropriately draw inferences relating to the reliability of the witness. 475 U.S., at 680, quoting *Davis, Supra at 318.*

Jones has a constitutional right to completely cross –examine the witness against him and present a complete defense.

The District Court erroneously determined the following:

> *"During bench arguments, trial counsel conceded that Jones' testimony on the threat was inadmissible hearsay. Id. at 2040.*
> *The trial court excluded the testimony after noting the testimony that Jones and Aaron had amicably played cards on the same team at the party shortly before agreeing to rob McClendon. Id. at 2042-43.*
> *On direct appeal, the Court of Appeals of Indiana found that trial counsel had waived this issue and that the exclusion of the testimony fell short of fundamental error, concluding that the proffered evidence was not credible and lacked probative value. ECF 1807 at 6-7. The appellate court noted the two-year intervals between Jones' participation in the Wash trial, the alleged threat, and Aaron's interview with law enforcement as well as the friendly*

interaction between Jones, and Aaron at the party. Id.

(*Decision, pg. 35*).

Jones's counsel made an offer of proof; However, he was prohibit by the trial court to actually present said evidence. In fact, the following exchanges took place:

THE COURT:

You know what? You change your mind so much and you change your arguments of what you're trying to do repeatedly throughout the trial. I never really know what it is you're intending to do. So I'll tell you what, why don't you make your offer of proof and I'll rule after that. *(Tr., p. 1265).*

After defense counsel's Offer of Proof, the trial court stated the following:

THE COURT:

In addition to this lawyer has a history of acting as the absent minded professor and indicating that he's gonna do something and then changing his mind later on. And it's not really his ultimate decision as to whether or not the client testifies, and I would suspect that if I let this in, that the Defendant would change his mind later on and not testify, but I'm not trying to force the Defendant to testify and I would reverse my ruling if, in fact, there is some relevant reason why in fact this is placed forward. Right now it is a fishing expedition. *(Tr., p 1273).*

Jones made an offer to prove that Aaron implicated Jones in retaliation for Jones prior testimony in an unrelated matter which helped obtain a conviction against Aaron's friend. *(Tr., pp. 2038-2040).* Even after the Defendant testified, the trial court still would not let the evidence regarding Aaron's bias against Jones before the jury.

In response to the District Court's erroneous decision regarding "*Jones' trial counsel conceded that Jones' testimony on the threat was inadmissible hearsay*" See (*Decision at p. 35*). Jones argues that the District Court is relying on State Hearsay grounds to exclude Jones' testimony regarding Aaron's bias and motive for wanting to lie on Jones, it has been clearly established by this Court that, State Courts relying on State Law to exclude admissible evidence does not have the last word in these situations. Citing *Smith v Brookhart*, 996 F.3d 402 (7th Cir. 2021).

The Court held in *Smith* that: "*to determine whether a State evidentiary ruling passed muster under Chambers v Mississippi,* 410 U.S. 284 (1983), *we must balance a State's legitimate interest in an efficacious criminal trial process against the defendant's constitutional rights to present complete defense, with a heavy thumb on the side of that issue. Kubsch v Neal*, 838 F.3d 845, 855 (7th Cir. 2016)." This Court explained their understanding of the Supreme Court's *Chambers* line of cases. Habeas Corpus relief is available, these cases hold, when a state court presiding over a murder trial arbitrarily applies an evidentiary rule to exclude reliable and trustworthy evidence that is essential to the defense and not otherwise inadmissible. *Id. at* 858. Relying on the Supreme Court's decision in *Crane v Kentucky*, 476 U.S. 683, 106 S. Ct. 2142, 90 L.Ed.3d 636 (1986), and *Rock v Arkansas*, 483 U.S. 44, 107 S. Ct. 2704, 97 L.Ed.2d 37 (1987), the Supreme Court recently found that a State Court unreasonably applied Supreme Court precedent when it excluded this type of evidence. *Fieldman v Brannon*, 969 F.3d 792 (7th Cir. 2020). The trial court *did not* permit the defendant to present evidence that would have offered an innocent explanation for his meeting with a potential hitman. In finding for the petitioner, we noted the lack of parity between the prosecution and the defense with respect to the period in which evidence was deemed relevant to *Fieldman's* intent. *Id. at 808.*

For the prosecution, that period stretched back for months; for the defense, a few weeks was too long. That left the jury adrift, trying to understand the defendant's intent without crucial evidence.

Jones contends that a State rule cannot trump a Constitutional violation. Furthermore, Jones argues that the excluded evidence was relevant and probative to his defense because the jurors needed to know Aaron's motive for picking Jones as a participant. Like for instant, during defense counsel's closing argument the following was said:

> "And this officer believes that three people were involved. Why did he pick Antonio Jones? Who knows. They happened to be with him before at that card playing party. They were at the same table. Don't know why or how he picked him, but clearly that he did."

(Tr., pp. 2289-90).

As demonstrated above, there was evidence showing Aaron's motive for choosing Jones as a participant, but said excluded evidence prevented Jones from presenting evidence of Aaron's bias against Jones and motive for implicating Jones in the

2600 Polk Street murders. Also, Jones contends absent the excluded evidence, there was absolutely no other evidence presented to prove Aaron's motive or bias against Jones.

Further, Jones asserts that, the excluded evidence was *not* harassment, prejudice, confusing of the issue, the witness' safety was not in jeopardy, the interrogation of the witness was not repetitive and the excluded evidence was not marginally relevant, but extremely relevant because it went to the heart of Aaron's bias against Jones and motive for implicating him in the murders.

Next, Jones contends that the court erred by excluding Jones' evidence because Jones & Aaron had amicably played cards on the same team at the party shortly before agreeing to rob McClendon.

First, Jones argues that the Court's above decision does not undermine Jones's claim and it is for the jury to weigh the evidence had it been allowed.

Second, Jones contends that, the court's decision was arbitrary because the court persuaded Jones into testifying in his own defense, under the false assumption that if Jones testify, he will be able to testify to Aaron's bias and motive for implicating him in the murder / robbery. (*Tr., pp. 1256-1275*). At the time Jones testified on his own behalf, the court prohibit Jones from testifying to Aaron's motive and bias against him. (*Tr., pp. 2038-2040*). In the same vein, the court's decision was arbitrary because Jones's testimony regarding Aaron threatening him was excluded, while the court allowed Janeth Alexander to testify to Jones allegedly threatening her. (*Tr., pp. 1670-71*).

Also, and as it relates to the State's argument in the trial record of there being no evidence to substantiate Jones's claim regarding Aaron threating Jones. Jones argues that, the court allowed the State to enter a substantial amount of inadmissible evidence that, was not substantiated by any other evidence. Like for instant, Janeth Alexander was allowed to testify to Jones allegedly calling her job from the Lake County Jail Phone System, which were monitored and recorded and allegedly threatened her. (*Tr., pp. 1670-71*). However, Jones contends that no calls were entered in to the evidence to substantiate Ms. Alexander's testimony / claim of a threat.

Next, Ronyale Hearne was allowed to testify to "*Jones allege desire to date her.*" (*Tr., pp. 405-06*). However, there was no evidence presented by the State to substantiate Ms. Hearne's testimony. In fact, Mr. Hearne admitted that "*Jones never verbally*

said anything to her, but he allegedly made comments." (*Tr., pp. 429-431*).

Jones contends that all of the unsubstantiated evidence was made up to cast him in a negative light before the jury or misled this Court to affirm Jones' wrongful conviction on appeal.

Jones argues that the State Court's decision to exclude Jones's evidence aimed to show Aaron's bias and motive for testifying against Jones was not harmless because the jury had a right to know Aaron's motive for naming Jones as a participant, and the excluded evidence was essential to Jones's ability to present a defense.

If this Court look at this case in its entirety, Jones was denied of his Constitution right to a fair trial. ***First***, there is mountains of evidence proving Lenzo Aaron lack credibility, See (*Aaron's Inconsistent Statement Statement / Testimony which calls into Question his credibility*); ***Second***, Jones was denied of his constitutional right to cross-examine and confront Parks, See (Ground – A); ***Third***, Jones was denied of an opportunity to put forth a complete defense, See (*Ground – C*); ***Four***, the State used a substantial amount of accusations that was not supported by any evidence, but used solely for the purpose to cast Jones in a negative light. Jones was denied of his Sixth and Fourth Amendments right to a fair trial in light of *Olden v Kentucky*, 488 U.S. 227 (1988); *Chambers v Mississippi*, 410 U.S. 284 (1983); *Kubsch v Neal*, 838 F.3d 845, 855 (7th Cir. 2016).

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

Antonio Jones

Date: 4-3-22

Petitioner, *Pro-se*

Note: on 4-3-22, a correct & complete copy of this Petition and other filing sent to the Atty. General Office.

A. Jones