22-5917

No. (TO BE ASSIGNED)

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN DAVID STAHLMAN — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

JOHN DAVID STAHLMAN
(Your Name)

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Federal Correctional Complex
P.O. Box 1031
(City, State, Zip Code) Coleman, FL 22421

(Not Applicable)
(Phone Number)

QUESTIONS PRESENTED

1.) DID THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT VIOLATE PETITIONER'S SUBSTANTIAL RIGHTS; TO INCLUDE HIS RIGHT TO A FAIR TRIAL, HIS RIGHT TO DUE PROCESS OF LAW, AND HIS RIGHT TO DISCOVERYT UNDER FEDERAL RULE OF CRIMINAL PROCEDURE 16 AND FEDERAL RULES OF EVIDENCE 702, 703, AND 705; WHEN THE COURT ALLOWED A FEDERAL RULE OF CRIMINAL PROCEDURE 16 VIOLATION TO GO UNCORRECTED AND DISMISSED THE CLAIM AS HARMLESS ERROR?

2.) DID THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT; WHEN DENYING PETITIONER'S CLAIM ON APPEAL, ENTER A DECISION IN CONFLICT WITH ITS OWN PRECEDENT, IN CONFLICT WITH ITS SISTER CIRCUITS, AND IN CONCLIFT WITH LAW; NAMELY FEDERAL RULE OF CRIMINAL PROCEDURE 16 AND FEDERAL RULES OF EVIDENCE 702, 703, AND 705?

3.) DID THE ELVENTH CIRCUIT'S RULING ABOVE SET A PRECEDENT; NOT ONLY AFFECTING DEFENDANTS IN THE ELEVENTH CIRCUIT, BUT ALSO POTENTIALLY INFECTIONG OTHER CIRCUITS; THAT WILL ALLOW THE COURTS TO VIOLATE A DEFENDANT'S RIGHT TO A FAOR TRIAL, TO DUE PROCESS OF LAW, AND TO DISCOVERY IN VIOLATION OF LAW THAT REQUIRES THIS COURT'S INTERVENTION AND REVERSAL?

TYPE OF RELIEF SOUGHT

Petitioner, John Stahlman, submits this Extraordinary Writ under Supreme Court Rule 20 seeking Habeas Corpus relief. Supreme Court Rule 20(4)(a).

Petitoner explains that he did seek relief at the district court of the district where he is held and was denied; which is why he now seeks relief from this Court on page 11.

CORPORATE DISCLOSURE STATEMENT

No party to this action is a non-governmental entity with a parent corporation or has a publicly traded company with any stock in such a corporation.

LIST OF PROCEEDINGS

Criminal Trial

United States District Court for the Middle District of Florida
6:17-cr-00045-CEM-DCI-1
Judgment entered on September 14, 2021

Direct Appeal

United States Court of Appeals for the Eleventh Circuit
Appeal Nos. 17-14387, 18-12866
Judgment entered on August 19, 2019
Opinion published at United States v. Stahlman, 934 F.3d 1199 (11th Cir. 2019)

Petition for Certioari

United States Supreme Court
Denial published at Stahlman v. United States, L. Ed. 2d 347, 2019 U.S. LEXIS 7064 (2019)
Certioari denied on November 18, 2019

Motion under 28 U.S.C. § 2255

United States District Court for the Middle District
6:20-cv-1887-Orl-41DCI
6:20-cv-1887-CEM-DCI
Judgment is pending

Interlocutory Appeal

United States Court of Appeals for the Eleventh Circuit
Appeal No. 21-13171-F
Judgment is pending

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CITATIONS OF THE REPORTS OF THE OPINIONS AND ORDERS

Petitoner respectfully requests that an Extraordinary Writ be granted to review the opinion and judgement below.

The Opinion of the United States Court of Appeals for the Eleventh Circuit, which appears at Appendix A of this Petition, was entered on August 19, 2019, and is published at United States v. Stahlman, 934 F.3d 1199 (11th Cir. 2017).

The judgement of the United States District Court for the Middle District of Florida, Docket Entry 6:17-cr-00045-CEM-DIC-1, in which judgement was entered on September 14, 2017, is unpublished. Excerpts from Petitoner's Criminal Proceedings are appended at Appendix B of this Petition, as required by the Supreme Court rules and a Table of Contents is contained therein.

Excerpts and references to the judgement in the district court are included for clarity and reference only, for this court's convience.

STATEMENT OF JURISDICTION

Petitioner seeks review of the opinions of the United States Court of Appeals for the Eleventh Circuit entered on Auguust 19, 2019.

Petitoner asserts this Petition is requested pursuant to Supreme Court Rule 20. Under this Rule, "Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is [] a matter... of discretion. To justify such a writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exervise of the Court's discretionary powers , and that adequate relief cannot be obtained in any other form or from any other court." Supreme Court Rule 20(1).

Petitioner hereby asserts that reivew of the opinion of the lower court "will be in aid of the Court's appellate jurisdiction," that "exceptional circumstances warrant the exercise of [this] Court's discretionary powers," and that the lower court's rulings allow district courts to violate a defendant's substantial right to a fair trial, Due Process of Law, and their right to Discovery. As Petitioner's case has already passed tje appellate state, and his judgement has become final; and as the District Court's review of Petitoiner's § 2255 motion is bound by the now-standing precedent set in Petitioner's appeal; Petitioner's only source of relief from the violation of his substantial right is via this Court and an extraordianry writ. Petitoiner asserts his is an "exceptional circumstance" warranting application of this Court's "discretionary powers."

Thus, this Court may exercise its discretionary powers and grant itself jurisdiction to review Petitoner's claim under Supreme Court Rule 20.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 5 TO THE CONSTITUTION OF THE UNITED STATES

"Criminal actions-Provisions concerning-Due Process of law and just compensation clauses

No personal shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or of indictment of Grand Jury except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense twice put in jeopardy of life or limb; nor shall be compelled in any criminal defense to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; not shall private property be taken for public use, without just compensation."

Title 28 United States Code Service § 2072: Rules of Procedure and Evidence; power to prescribe

"(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence in cases in the United States district courts (including proceedings before Magistrates thereof) and courts of appeals. (b) Such rules shall not abridge, enlarge or modify and substantive right. All laws in conflict with such rule shall be of no further force or effect after such rules have taken effect."

STATEMENT OF THE CASE

This case surrounds a defendant's substantial right to Due Process of Law ("Due Process") pursuant to the Fifth Amendment to the U.S. Constitution ("Fifth Amendment"). "[T]he right to due process of law is quite clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that clause... violates a clearly established right." Anderson v. Creighton, 483 U.S. 635, 639, 97 L. Ed. 2d 523, 530 (1987). Under this protected right is the right to discovery pursuant to Federal Rules of Criminal Procedure 16 ("F.R.Crim.P."). "The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district court... and courts of appeals... Any laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." 28 U.S.C. § 2072(a) and (b). These rules have the force of law. "...the Federal Rules of Criminal Procedure, formulated by this Court and having the force of law..." United States v. National City Lines, 334 U.S. 573, 600, 92 L. Ed. 1584, 1599 (1948). See act of June 29, 1040, ch. 445 and act of Jan. 2, 1975, P. L. 93-595. Under this protected right is the right to discovery pursuant to Federal Rules of Criminal Procedure 16 ("F.R.Crim.P."). F.R.Crim.P. 16 states, in relevant part:

> "Rule 16: Discovery and Inspection. (a) Government's Disclosure (1) Information Subject to Disclosure (G) Expert Witnesses. At the defendant's request, the government must give to the defendant a written summary of any testimony that the government intends to use under Rules 702, 703, and 705 of the Federal Rules of Evidence during its case-in-chief at trial... The summary under this subparagraph must describe the witness's opinions, the basis and reasons for those opinions, and the witness's qualifications."

F.R.Crim.P. 16(a)(1)(G).

See also United States v. Vargas, 915 F.3d 417, 421 (7th Cir. 2019). "[F.R.Crim.P. 16] is designed to ensure that each side knows what an expert's testimony would cover. See, e.g., United States v. Bresil, 767 F.3d 124, 127 (1st Cir. 2014); United States v. Barlie, 286 F.3d 749, 758 (4th Cir. 2002)."

"These rules should be construed so as to administer every proceeding fairly... and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination." Federal Rules of Evidence 102 ("F.R.E.").

For a court, be it a district court or a court of appeals, to deny a portion of discovery would be to ignore the purpose of such discovery. "Modern instruments of discovery serve a useful purpose. They together with pretrial procedures make a trial less of a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practical extent." United States v. Proctor & Gamble Co., 356 U.S. 677, 682, 2 L. Ed. 2d 1077, 1082 (1958). Denial of a substantial right of Due Process, such as the right to discovery, would amount to an unfair trial. "A defendant is entitled to a fair trial, but not a perfect one." Lutwak v. United States, 344 U.S. 604, 619, 97 L. Ed. 539, 605 (1953). Further, "It is fundamentally unfair to require a defendant to divulge the details of his own case while at the same time subjecting him to the hazard of surprise concerning refutation of the very pieces of evidence which he disclosed to the [opposing party]." Wardus v. Oregon, 412 U.S. 470, 476, 37 L. Ed. 2d 82, 88 (1973).

In the instant case, the United State violated Petitioner's right to Due Process, that is, his right to discovery pursuant to F.R.Crim.P. 16, and the District Court for the Middle District of Florida ("District Court") not only allowed the violation over proper objection, but took no curative action to remedy the error. On appeal to the United State Court of Appeal for the Eleventh Circuit ("COA"), the COA recognized the violation to Petitioner's rights, but dismissed the violation as "harmless". The COA's ruling not only finds itself in conflict with law; namely the Federal Rules of Criminal Procedure 16 and the Federal Rule of Evidence 701, 702, 703, and 705; but also in conflict with its sister circuit. See United States v. Tin Yat Chin, 746 F.3d 144, 146 (2nd Cir. 2007).

The District Level Proceedings

Prior to Petitioner's trial, on April 17, 2017, the United States submitted their "witness list," stating it was a "list of witnesses to be called in the government's case-in-chief." As this disclosure did not conform to F.R.Crim.P. 16(a)(1)(G)'s summary requirement, all witnesses on the list were "lay" witnesses intending to testify pursuant to F.R.E. 701. The first entry on the United States' witness list is Rodney Hyre. This witness, was, in fact, Special Agent Rodney James Hyre of the Federal Bureau of Investigation ("FBI") and the "case agent" in the case.

On May 10. 2017, Petitioner filed his "Expert Witness List" which included "Dr. Richard Connor" and "Chris Carr, Ph.D." Petitioner submitted summaries of the experts' testimonies pursuant to F.R.Crim.P. 16(a)(1)(G) under seal. See D.E. 51-1, files on May 17, 2017, of the criminal proceeding.

On the first day of trial, the United States challenged the testimonies of the two proffered defense expert witnesses and the district court held a voir dire hearing. While both experts were deemed experts in their respective disciplines, both their testimonies were excluded from trial based upon other grounds.

On the second day of trial, during its case-in-chief, the United States called their lay witness, Rodney Hyre, to the stand. The United States began dressing the witness in all the impressive credentials and extensive specialized knowledge of an expert. After eliciting that the agent was a member of the FBI, had been for 16 years, and was the "coordinator for the Violent Crimes Against Children Taskforce," the United States began questioning the witness about his extensive training. Training is a specific category that qualifies a witness as an expert. Questions such as "Have you received training to conduct [solicitation and enticement] investigations?" "Can you describe what additional training you've received, sir?" "Does your training include how to identify common websites used?" and "Does your training include terminology?" These questions go beyond the agent's "experience" as a law enforcement officer and lay a foundation of an individual with highly specialized knowledge in his discipline.

To be sure, the agent answered with, I've received "advanced undercover training, and a lot of other training to go with that." The witness also testified that he attended five "week-long symposiums" which "help us get better at what we do and just showing us different techniques."

When defense counsel challenged the witness's expert credentials, that he could not testify under 702 or as an expert, the District Court stated, "[The United States] laid a predicate on him of all the training he did... every single trial [Agent Hyre has] testified in these types of cases, he's either been able to testify under 702 or qualified as an expert." When defense counsel argued that the witness's testimony included specialized knowledge within the scope of 702, the District Court admitted that "there is a mix of that." "The amendment [to Rule 702] makes clear that any part of a witness's testimony that is based on scientific, technical, or specialized knowledge within the scope of Rule 702 is governed by the standards of Rule 702 and the corresponding disclosure requirements of the Civil and Criminal Rules." Notes of Advisory Committee on 2000 amendments to Rule 702 (emphasis added). Here, the District Court knew the witness's expert testimony should have been disclosed prior to trial and that the lack of proper disclosure violated Petitioner's right to Due Process. The District Court had several options available to remedy the violation.

See United States v. Millhouse, 346 Fed. Appx. (3d Cir. 2009) where it was ruled that the District Court did not abuse its discretion when it allowed expert to testify despite possible Fed.R.Crim.P. 16 violation because it adequately resolved parties' dispute by permitting voir dire of expert outside of presence of jury and giving time in which to prepare for cross-examination. See also United States v. McLean, 715 F.3d 129 (4th Cir. 2013) where defendant's argument that District Court erred by allowing government to conduct voir dire of defendant's expert day before expert was scheduled to testify failed because defendant did not provide adequate disclosures as to expert's testimony as required under Fed.R.Crim.P. 16(b)(1)(C),

District Court had discretion to determine proper remedy, and government's need to discover bases and reasons for expert's options was pressing. See also United States v. Beavers, 756 F3d. 1044 (7th Cir. 2014) where voir dire of defendant's expert witness was appropriate remedy for defendant's submission of insufficiently detailed summaries that failed to provide specific information about expert's opinions or bases for opinions. See also United States v. Smith, 354 F.3d 390 (5th Cir. 2003) where it was found that in denying defendant's objection to government's expert's testimony on grounds that expert's opinion exceeded pre-trial disclosure mandated by Fed.R.Crim.P. 16(a)(1)(G), District Court did not abuse its discretion in interrupting examination of government's expert witness to permit voir dire inquiry into basis of his option where inquiry eliminated risk of surprise and allowed defense counsel to obtain admission from expert. Lastly, Compare the issue in the case at bar with the remedy applied in United States v. Willock, 682 F. Supp. 2d 512 (D. Md. 2010) where testimony from expert witness who specialized in gang activity might be admissible under F.R.E. 702; after Government proffered its experts' testimony, defendant would be permitted opportunity to voir dire experts on their qualifications and expertise, and court would then determine whether they were qualified to testify as experts, and Government satisfied Fed.R.Crim.P. 16's summary requirements by providing bases and reasons for options of experts, including their work as detectives who investigated gang activities.

These remedies, as explained, are to "eliminate the risk of surprise" and to allow an investigation into the proffered expert's "bases and reasons for their opinions." Here, the District Court chose not to take any curative action. Instead, the District Court, in over-ruling defense counsel's motion for mistrial ("Based on the Court's rulings, specifically on Special Agent Hyre's improper opinion testimony, I would move for mistrial."), the District Court ruled, "I don't think the defense was ambushed by this testimony... [the defense] knew, or reasonably knew, that Special Agent Hyre, considering his background, was going to be testifying about these particular emails."

The District Court's ruling violated Petitioner's right to Due Process and left the trial, without a curative action, fundamentally unfair.

> "At a minimum, this was a sharp practice, unworthy of a representative of the United States...[As] [i]t does not follow that the Government has carte blanche in every case to spring a surprise expert witness on an unsuspecting defendant who has long since disclosed his own expert's prospective testimony. For no defense counsel, no matter how experienced, can fairly be asked to cross-examine on a moment's notice a witness who comes clothed with all the impressive credentials and specialized training of an expert whose opinions and methods with respect to the case at hand have been subject to no prior scrutiny. In an appropriate case, such an ambush might well violate due process."

United States v. Tin Yat Chin, 476 F.3d 146 (2nd Cir. 2007) citing Wardus, 412 U.S. at 476, supra, (emphasis added).

See also United States v. Hawkins, 934 F.3d 1251, 1266-67 (11th Cir. 2019).

> "This Court has recognized, as have other circuits, that particular difficulties, warranting vigilance by the trial court, arise when an expert, who is also the case agent, goes beyond interpreting code words and summarizes his beliefs about the defendant's conduct based upon his knowledge of the case... The dangers presented by such dual testimony include, among others: that it confers upon the agent an air of special reliability and trustworthiness... that the agent could stray from applying reliable methodology and convey to the jury the witness's sweeping conclusions about appellant's activities... and the jury could conflate the witness's expert and fact witness testimony.... And as noted in [United States v. Emmanuel, 565 F.3d 1324 (11th Cir. 2009)], such expert testimony may unfairly provide the government with an additional summation by having the expert interpret the evidence, and may come dangerously close to invading the province to the jury. [] In this case, these dangers became reality. Agent Russell's testimony placed the imprimatur of expertise on his view of the facts of the case. This testimony went to the crux of the Government's case, and the jury may well have afforded unusual authority to the agent, who was presented s having expertise, as well as knowledge beyond that available to the jury. [] In sum, Agent Russell provided improper testimony by summarizing the evidence, interpreting plain language, and drawing inferences from the evidence that the jury itself must draw (or not draw) for itself. And even if Agent Russell provided only lay testimony... his testimony was still largely improper. Put simply, it matters not how Agent Russell or his testimony is classified. Expert or lay, the testimony was improper, and admitting it constituted clear and obvious error."

United States v. Hawkins, 934 F.3d 1251, 1266-67 (11th Cir. 2019)(internal citations omitted).

Compare the testimony given by Agent Russell to that given by Agent Hyre in the instant case. Agent Hyre, too, interpreted "code words," based upon his "training in terminology". He also explained that "Craigslist" was a site used by adults as a "kind of hook-up site.... [frequented by] sexual predators," testimony grounded

in his "Training on website used," and the "Tickle game," knowledge clearly outside the jury's understanding. Then, interpreting "plain language," Agent Hyre gave interpretations of Petitioner's emails, such as when Petitioner said, "Definitely interested," "little," and "poser." These inferences were up to the jury "to draw (or not draw) for itself." The exact scenario played out in Hawkins, supra, and Tin Yat Chin, and specifically prescribed by F.R.Crim.P. 16 and the F.R.E. 702 and 703, played out with surprising clarity in Petitioner's trial, yet the District Court took no corrective action and, instead, overruled Petitioner's proper challenge to the violation of his right to Due Process.

At the close of Petitioner's trial, he timely appealed to the COA.

The Appellate Level Proceeding

The COA, whose opinion is published at 934 F.3d 1199 (11th Cir. 2017), dismissed the majority of Agent's testimony as proper lay opinion despite the District Court's ruling to the contrary and the agent's clear foundation in his extensive training. The COA went on to state, "Moreover, even if some of Agent Hyre's testimony veered into the realm of specialized knowledge that ought to have been disclosed and presented as expert testimony, any error in admitting this testimony as lay testimony is harmless." Stahlman, 934 F.3d at 1224. Why? Because "...the district court explicitly stated at trial that, had Agent Hyre been offered as an expert, the district court would have admitted him as such. So we know that any motion in limine [Petitioner] might have raised to exclude Agent Hyre's expert testimony would likely have failed." Id.

This was a fatal flaw in the COA's ruling. This ruling assume that, so long as a witness can qualify as an expert in their discipline, any testimony will be admissible. This position is specious.

There was no dispute, at Petitioner's trial, that Dr. Richard Connor and Chris Carr, Ph.D., were experts in their discipline. However, both their testimonies were excluded. Thus, the mere qualification as an expert is only one leg that expert testimony must clear to be admissible at trial. To be sure, F.R.E. 702 has four legs.

Not only must the expert be qualified by ..."training"..., but his testimony must be "based upon sufficient facts or data," the testimony must be the "product of reliable principles and methods" and it must be determined that "the expert has reliably applied the principles and methods to the facts of the case." F.R.E. 702 (b), (c), and (d). The COA's ruling shielded the witness's testimony from this challenge, a substantial right of Petitioner. As clearly stated in Tin Yat Chin, the witness's "opinions and methods with respect to the case at hand have been subject to no prior scrutiny." This is the "gatekeeping function" laid upon the District Court by F.R.E. 702. "...the Federal Rules of Evidence-especially Rule 702-do assign to the trial judge the task of ensuring that an expert's testimony both rest on a reliable foundation and is relevant to the task at hand." Daubert v. Merrell Dow, 509 U.S. 579, 597, 125 L. Ed. 2d 469, 485 (1993).

> "Unlike ordinary witnesses, see Rule 701, an expert is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or observation... Presumably, this relaxation of the usual requirement of firsthand knowledge... is premised on an assumption that the expert's opinion will have a reliable basis in the knowledge and expertise of his discipline. Faced with the proffer of expert's testimony, then, the trial judge must determine at the outset, pursuant to [F.R.E.] 104(a) whether the expert is proposing to testify to (1) [specialized] knowledge that (2) will assist the trier of fact to understand or determine a fact at issue. This entails a preliminary assessment of whether the reasoning and methodology underlying the testimony is [] valid and of whether the reasoning and methodology properly can be applied to the facts at issue. Ordinarily, a key question to be answered in determining whether a theory or technique is [specialized] knowledge that will be helpful to the trier of fact will be whether it can be (or has been) tested."

Daubert, 509 U.S. at 592-93 (emphasis added).

The COA's finding stripped Petitioner of his right to Due Process to ensure the witness's testimony followed the requirements of F.R.E. 702 by allowing the District Court to "skip" the test of the witness's reasoning and methodology under the guise that, since the District Court would have accepted the witness as an expert, then any challenge to his expert testimony, such as those under F.R.E. 702 or even under the grounds Petitioner's own witness's were excluded (such as under F.R.E. 104(a)), were unnecessary. This ruling allows any further expert, so long as he

can be determined to be an expert, to testify without having to have to explain or prove the reliability of his reasoning and methodology. The COA's finding, too, stripped the District Court of its gatekeeping function as prescribed pursuant to F.R.E. 702.

As in Petitioner's case, while Agent Hyre was, undoubtedly, an expert witness, but this qualification does not leave his proposed testimony immune to scrutiny under the requirements of F.R.E. 702 and 703. Agent Hyre's testimony, at least the testimony that "veered in the realm of specialized knowledge that ought to have been disclosed and presented as expert testimony," was subject to "preliminary assessment [by the District Court] of whether the reasoning or methodology underlying the testimony is [] valid and of whether that reasoning or methodology properly [could have been] applied to the facts in issue." Daubert, 509 U.S. at 592-93. This fundamental failure of the District Court's gatekeeping function, violation of law, and violation of Petitioner's right to Due Process cannot be ruled as "harmless."

Thus, the COA's ruling finds itself in conflict with Daubert, supra, F.R.Crim.P. 16, F.R.E. 702, Tin Yat Chin, and Hawkins.

> "Judges are not, in defining due process, to impose on [a litigant] our personal and private notions of fairness and to disregard the limits that bind judges in their judicial functions. Our task is more circumscribed. We are to determine only whether the action complained of [] violates those fundamental concepts of justice which lie at the base of our civil and political institutions and which define the community's sense of fair play and decency."

United States v. Lovasco, 431 U.S. 738, 790, 52 L. Ed. 2d (1977)(internal citations and quotations omitted).

Lastly, the COA stated, "Additionally, we will not reverse a conviction based on a Rule 16 expert disclosure violation unless the violation prejudiced the defendant's substantial right.", Stahlman, supra, N.10 citing United States v. Tinoco, 304 F.3d 1088 (11th Cir. 2021) where the COA dismissed a similar claim where defendant's "failed to show actual prejudice.." Tinoco, 304 F.3d 1119. This position is specious. "To say that prejudice can be established only by showing that the cross-examination, if pursued, would necessarily have brought out facts tending to discredit the testimony in chief, is to deny a substantial right and withdraw one of the safeguards essential

to a fair trial... In this respect a summary denial of the right of cross-examination is distinguishable from the erroneous admission of harmless testimony." Alford v. United States, 282 U.S. 687, 692, 75 L. Ed. 624, 629 (1931)(internal citations omitted). Petitioner was denied a proper cross-examination as "no defense counsel... can fairly be asked to cross-examined on a moment's notice a witness who comes clothed with all the impressive credentials and specialized training of an expert..." Tin Yat Chin, supra. This was a violation of a "substantial right" and the error was plain. The COA abused its discretion, here, by dismissing the violation as "harmless," in conflict with this Court's ruling in Alford, supra.

Conclusion

The District Court and the COA both had tools of remedy. Both courts abused their discretion and failed to correct the fundamental errors and violations of Petitioners substantial right to Due Process. These rulings, in conflict with this Court, sister courts, and Law, must be corrected or other defendant's may be put in hazard of standing precedent allowing their constitutionally protected right to be trampled. A violation of a substantial right, especially one so closely tied to fairness as a right to discovery, cannot so easily be dismissed as "harmless." Such a finding, should it be let stand, would undercut the very principles and foundation of the federal court system and might very well cause the common man to lose faith in the institution and political power that is the federal government.

REASONS FOR GRANTING THE PETITION

Extraordinary Writ should be granted to review the Court of Appeals for the Eleventh Circuit's rulings and ensure that district courts, under the now-standing precedent set forth by the Eleventh Circuit, do not continue to deprive defendants their right to a fair trial, right to Due Process of Law, and right to Discovery under Federal Rules of Criminal Procedure 16 and Federal Rules of Evidence 701, 702, 703, and 705. Should this precedent stand, and should it infect other circuits, defendants across the country could have their claims of a Rule 16 discovery violation summarily dismissed as "harmless error" simply by citing Petitioner's precedential case. The Fifth Amendment is clear, and a defendant's right to Discovery is, too, clear, as a matter of law pursuant to 28 U.S.C. § 2072. Thus, the Eleventh Circuit's ruling, modifying a defendant's right to discovery under Federal Rule of Criminal Procedure 16 attempts to side-step this Rule. The Rule is law and this precedent requires reversal.