22-6029

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Scurlock — PETITIONER
(Your Name)

vs.

Clark — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

7th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Aaron Scurlock
(Your Name)
Illinois River Correctional Center
P.O. Box 999
(Address)

Canton, IL 61520
(City, State, Zip Code)

Unknown
(Phone Number)

Questions Presented:

Preface: By granting the evidence-supported motion for inordinate delay [Appx. D, Dist Docs, granted by Dist. Doc 126], the Northern District of Illinois found that the state's attorneys' and court reporter's actions in falsifying the trial transcript to include the criminal allegations now appearing to be V.W.'s (the accuser) direct trial testimony, and Post Conviction Assistant State's Attorny ("PC ASA") Colleen Griffin, who sat 2nd chair on the state's trial team, enlisted the help of conflicted Assistant Public Defender ("APD") Jason Strzlecki and two state doctors to falsely have me deemed unfit; invented a process to have my petitions dismissed on "unfitness" grounds where no such dismissal process exists under law; found that they did so in an effort to conceal the transcript falsification crimes from the courts, et al. Then the district court erroneously adjudicated the habeas claims (and denied relief) per the Knowingly falsified trial transcript instead of applying the per se prejudice and inquiring no farther, as required for cases of intentional tampering with the trial court records.

QUESTION ONE: Did the Northern District of Illinois so far depart from the accepted and usual course of judicial proceedings, and did the Seventh Circuit sanction such departure by denying a Certificate of Appealability, so as to call for an exercise of this Court's Supervisory Power, where the district court knowingly adjudicated the habeas claims and denied relief on the basis of the trial transcript it had already ruled so grossly falsified; and where the district court opinion operates to bury the state actors' crimes in the Will County Court that it already found occurred, thereby concealing the already-found public corruption from the public, bar, and courts?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

People v. Scurlock, 2012 IL App. (3d) 100800-U (August 7, 2012). Direct Appeal.

People v. Scurlock, 982 NE 2d 773 (Ill. 2013). Denial of Leave to Appeal. IL. S. Ct.

Scurlock v. Illinois, 571 U.S. 857 (2013) U.S. S. Ct denial of certiorari on direct appeal.

Scurlock v. Clark, 19 C 2174, Northern District of Illinois on Habeas Corpus, inordinate delay granted May 17 [redacted] 2021, relief denied April 27, 2022

Scurlock v. Clark, No. 22-2080, Seventh Circuit Court of Appeals, COA denied August 12, 2022.

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TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

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

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

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

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is N/A per inordinate delay granted

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

The opinion of the _____ court appears at Appendix _____ to the petition and is N/A, supra

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

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was August 12, 2022.

[X] No petition for rehearing was timely filed in my case.

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

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

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

[ ] For cases from **state courts:**

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14th Amendment Right to Due Process of Law

6th Amendment Right to Counsel

U.S. Supreme Court Rule 10

U.S. Supreme Court Rule 10, in relevant part; states: "(a) a United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's Supervisory Power."

U.S. Constitution Amendment Fourteen, in relevant part(s): "... 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.

U.S. Constitution Amendment Six, in relevant part(s): "In all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him, ... and to have the assistance of counsel for his defense."

STATEMENT OF THE CASE

I was accused of various sex crimes by my then-seventeen year-old stepdaughter, V.W. V.W. was about three weeks shy of her twentieth birthday at the time of trial. This was no child accusing me.

Police detectives rejected V.W.'s impossible and near-impossible crimes as not what "actually happened," as did Trial ASA ("Tr. ASA") Mary Fillipitch, who did so several times. These same detectives provided me with an alternative set of more-plausible criminal allegations and threatened me into falsely confessing to them. They charged me per the "confession."

However, these alternate facts simply were not the facts V.W. had alleged and did not coincide with V.W.'s accusations. At trial, V.W. made no specific accusations regarding any exact occurrences of alleged crimes; not even a manner of alleged assault was adduced from V.W. as to any count of the indictment. Illinois' Corpus Delicti Rule doesn't allow police-fed and substantially uncorroborated "confessions" to stand and would have resulted in suppression had counsels acted and had V.W. made her pre-arrest accusations at trial. The jury convictions were obtained solely on the police's alternate fact "confession" dvd ("DVD"), and a generic, non-specific allegation of "intercourse" by V.W., infra.

When the trial transcript was issued, V.W.'s rejected pre-arrest accusations were transcribed into it, made to appear as if V.W. had testified to such matters, even though defense counsel, Tr. ASA Fillipitch, and Trial Judge Edward Burmila all observed how no such specific accusations had been made by V.W. at trial, infra. When the court reporter added V.W.'s pre-arrest accusations to the transcript, she failed to remove the court officers' objections, arguments/admissions, observations, and rulings regarding V.W.'s near-total lack of specifics / criminal incidents / exact occurrences of alleged crimes, times, places, nature of an offense, manner of alleged assault, etc. This issue-controlling evidence by Tr. ASA and Trial Judge is undisputable by the state, and as such

the Warden never even tried.

The trial court knowingly allowed a case with no direct testimony of an actual crime to go to the jury over defense objections and issued a false transcript containing V.W.'s state-rejected sex crimes accusations added, and no "confession" allegations for Corpus Delicti comparison. The transcript merely notes how the alternate fact "confession" is being played to the jury. The trial judge allowed it.

After being denied relief on direct appeal, I filed my post conviction petition in the state circuit court, which advanced it to the second stage and APD Jason Strzlecki was originally appointed to pursue my claims. APD Strzlecki refused to advance my claims, and after 18 months of non-activity, I discharged him and pursued relief on my own. PC ASA Griffin (who also sat second chair on the state's trial team, assisting lead prosecutor, Mary Fillipitch) then filed a motion to dismiss [Dist. Doc. 1 - exh 2015 Mot. Dis] and waived all well-pleaded record-based issues of law [Dist. Doc 1 - Pet. Reply] for not disputing, overlooking arguments actually made, steering the court away from the actual merits, evading the arguments I actually made, failing to cite authority or fact, offering only conclusory arguments, etc. PC ASA's myriad waivers placed APD Strzlecki in neglect of my meritorious legal matters, a sanctionable offense under Illinois' Code of Professional Responsibility. [Dist. Doc 5]. This situation created an actual conflict of interest. The district court agreed [Dist. Doc 126, granting inordinate delay].

I was granted leave to amend the petition to raise the falsified trial transcript claim and did so by Supplemental Petition [Dist. Doc 1 - Supp. Pet.]. I was then removed from the trial court and the case was docketed in another courtroom presided over by Judge Kennedy with no notice nor explanation. My motion to substitute judges back to the trial court as Illinois law provides was denied. I explained to Judge Kennedy how PC ASA Griffin had waived all issues of record and admitted the sufficiency of my legal issues and claims for relief under Illinois law [See Appendix E, attached], and further explained how Tr. ASA's arguments/admissions at trial, Tr. Judge's observations and rulings, infra, conclusively established that

the trial transcript had been falsified and that I was still awaiting PC ASA Griffin's response to the Supplemental Petition. Judge Kennedy ordered her to respond and to provide him copies of the pleadings. Instead, PC ASA Griffin initiated the inordinate delay. This was December of 2016.

I filed the instant petition [Dist. Doc 1] and Inordinate Delay Motion [Appx. D / Dist. Doc 5] in 2019. PC ASA Griffin then filed a motion to have me found fit in state court (I'm still deemed unfit in state court, meaning unable to communicate as I've done all along including right now) and the district court dismissed the habeas petition without prejudice to be heard in the state courts first. After filing my appeal, the district court amended its dismissal order and ultimately granted my inordinate delay motion without comment [Dist. Doc 126] and the petition was docketed to be heard on the merits.

The Warden never disputed any of the factual allegations contained in the inordinate delay motion in any way whatsoever [Dist. Docs. 5 & 67 at 1-14] and admitted them all as true thereby. See Bland v. California Dept. of Corrections, 20 F. 3d 1469, 1474 (9th Cir. 1994)(The state's return must allege facts ... when the state's return fails to dispute the factual allegations contained in the petition and traverse, it essentially admits those allegations); and Cristini v. McKee, 526 F. 3d 888, 902 (6th Cir. 2008)("The petitioner alleges in his petition for a writ of habeas corpus that the prosecutor made these remarks during opening arguments. The Respondent did not refute this factual allegation. When a state's return to a habeas corpus petition fails to dispute the factual allegations contained in the petition, it essentially admits those allegations."). McKee also specifically dealt with trial transcript matters and what was and wasn't said at trial. Where that Respondent didn't dispute, as is the instant case, he admitted that the transcript wasn't accurate.

The Warden's only argument regarding the inordinate delay was essentially a demurrer to the evidence, saying, "So what? His rights weren't harmed because he can go back to state court." The Warden framed no factual disputes of ANY kind whatsoever. As

such, the Warden admitted all constituent facts in the inordinate delay motion under Bland and Cristini. [Dist. Docs 117 at 4-8; 110 at 8-10 et al.].

THE FACTS SO ADMITTED

Among others, the Warden admitted that PC ASA Griffin inordinately and unjustifiably delayed where she had the now-conflicted APD Strzlecki forced back onto my case to wrest control from me and to falsely stipulate that I can't communicate (the post conviction fitness standard under People v. Owens, 139 Ill. 2d 320 (1990)), and enlisted the help of two state doctors to falsely recommend unfitness while concurrently documenting how I am ARTICULATE, COOPERATIVE, pleasant, well-versed in legal matters for a pro se litigant, and showed NO SIGNS OF PSYCHOSIS. [Dist. Doc 5]. They falsely recommended unfitness for my AGREEING with Trial Judge Burmila's observations of V.W.'s testimony and rulings in part, as well as with Tr. ASA Fillipitch's arguments/admissions as to same testimony by V.W., infra. (Nobody has even alluded that Tr. Judge Burmila and Tr. ASA Fillipitch are "delusional" for observing, admitting, and ruling on V.W.'s trial testimony, with which admissions and observations I agree regarding her trial testimony, infra). The district court found that the above state actors operated in unison to fraudulently conceal the false transcript from the courts in support of the PC ASA's invention of the "fitness dismissal" process, which they achieved, and by which she avoided merits review in state court. The district court found the above facts - supported and proved by the inordinate delay motion - were inordinate and unjustifiably delayed my case [Dist. Doc. 5; granted Dist. Doc. 126]. The Warden's only argument, to the alleged lack of harm to my right of swift review, simply didn't denounce any fact at all.

DISTRICT COURT'S DENIALS OF EVIDENTIARY HEARING AND COUNSEL

The district court indicated that it knew the Warden never disputed ANY factual alleg-

ations where he denied an evidentiary hearing and appointment of counsel entirely [Dist. Doc. 135 at 25; Dist. Doc 157 at 32; Appx. E Request for Certificate of Appealability ("Req. COA") at 4].

"When the facts are in dispute, the federal court in habeas must hold an evidentiary hearing if the applicant did not receive a full and fair hearing in state court." Simpson v. Norris, 490 F. 3d 1029 (8th Cir. 2007); "Interests of justice require district court to appoint counsel when it conducts an evidentiary hearing on a habeas petition." Armstrong v. Kemna, 534 F. 3d 857. If the Warden would have denied/disputed the actual evidence presented in support of the falsification or cover-up, she would have set up genuine disputed material facts and counsel would have been appointed to investigate, gather evidence, interview witnesses, conduct hearings, etc., regarding the falsification and concealment, as the falsification occurred after the trial and as such, the facts constituting the falsification and concealment are/were raw facts and no hearing nor testimony has ever been had concerning it. All we have is the Warden's lies to the district court as to what the evidence of falsification consists of, and likely Ghost-written decisions by the Warden, infra. [See Dist. Doc. 110 at 5; at 6-7; et al].

I again moved for appointment of counsel if the Court should find the RAW, unadjudicated facts of the falsification were disputed by the Warden [Dist. Doc 133]. The district court denied the motion [Dist. Doc 134]. The district court's repeated denials of counsel and evidentiary hearings indicated beyond any doubt that it knew the Warden never disputed the falsification of the transcript at least twice — once regarding the inordinate delay claim and again for the substantive False Transcript/Ineffective Assistance of Counsel ("IAC") claim [Dist. Doc 1, Claim One; Dist. Dec 5; Dist. Doc 67 at 21-32, et al], [Dist Doc 134.; Dist Doc 157 at al].

DISTRICT COURT'S GRANT OF INORDINATE DELAY FOUND THE UNDISPUTED FACTS IN MY FAVOR.

The district court granted my unopposed motion for inordinate delay without comment

[Dist. Doc 5.; granted, Dist. Doc 126]. As such, all factual allegations, supported with trial transcript evidence, mental health documentation, et al, were found in my favor by the district court. See. In re Fossum, 764 F. 2d 520, 522 ("A district court's findings of fact must be liberally construed and found to be in consonance with the judgment if the judgment has support in the record evidence. This is so even if the findings are not as specific or detailed as might be desired.") [Req COA at 4]. Accordingly, the district court found that the trial transcript was criminally falsified to its current condition, that the PC ASA tried to cover it up by her invention of the "fitness dismissal" procedure, [redacted] that conflicted APD Jason Strzlecki assisted her in the concealment, and that two state doctors helped them by falsely recommending unfitness in order to achieve the dismissal. [Dist. Doc 5, granted by Dist. Doc 126].

THE WARDEN FORSOOK THREE OPPORTUNITIES TO DISPUTE THE TRANSCRIPT FALSIFICATION

The Warden first challenged exhaustion / inordinate delay in a pre-answer response [Dist. Doc. 23] where she first didn't dispute the falsification and concealment. She then issued her answer where she [redacted] again didn't dispute the falsification and cover-up under the inordinate delay issue [Dist. Doc 31 at]. She then steered the court away from the evidence I actually presented where she lied to the district court as to the evidence I'd actually presented Id at . The Warden passed on her chances to dispute the fact that the transcript was falsified THREE TIMES, and the district court acknowledged this lack of dispute by refusing to appoint counsel to investigate with the court reporter, trial judge, trial prosecutor, defense counsel, obtain stenographic evidence, audio recordings, etc., and hold a full and fair hearing to determine this RAW factual matter, [redacted] as is required when facts are in dispute, supra. As such, the district court's refusal of counsel and a hearing confirmed beyond doubt that it knew that the falsification of the transcript was never once in dispute. (Whoever

wrote the lies into the court's denial order is addressed below regarding fabrication of statements not in the transcript, lies at to the matter I relied on, alteration of the trial prosecutor's statements, etc.). Under Cristini and ~~Mckee~~ Bland, supra, the district court knew that the Warden admitted that the trial transcript was intentionally grossly falsified by a court reporter and states attorney(s) to overcome serious trial/appeal problems posed by Illinois' Corpus Delicti Rule for crimes that the Tr. ASA repeatedly rejected in court, infra. Accordingly, the district court knowingly adjudicated the habeas claims on a trial transcript it found was a fake (when it granted inordinate delay).

THE UNDISPUTED FALSE TRANSCRIPT AND CORPUS DELICTI CLAIMS

The falsification of the transcript and the conduct of the state's presentation at trial is better understood with the "why" the state needed to do so. I've therefore provided both claims for the benefit of clarity. From my Request for Certificate of Appealability (Req. COA):

"

V.

THE DISTRICT COURT WRONGLY DECIDED THE FALSE TRANSCRIPT/IAC CLAIM WHERE IT REFUSED TO DEFER TO THE TRIAL COURT'S OBSERVATIONS OF THE TRIAL, ITS FACTUAL FINDINGS, AND TRIAL PROSECUTOR'S REPEATED ADMISSIONS THAT V.W. HAD NOT TESTIFIED TO SPECIFICS NOR EXACT OCCURRENCES OF CRIMES, THOUGH THE TRANSCRIPT NOW SHOWS SHE DID,

30) In Illinois, matters occurring in the presence of the judge are within the personal knowledge of the court, Hymes v. Johnson, 104 Ill. App. 2d. 217 (1968), and when a matter falls within the domain of judicial knowledge, it is beyond

the realm of dispute, Nicketta v. National Tea Co., 338 Ill. App. 159 (1st Dist. 1949). Accordingly, the trial judge's personal observations of the trial cannot be disputed nor questioned. The Warden never even tried, yet the district court found contrary to the trial judge's personal observations of V.W.'s testimony.

31) During the course of V.W.'s testimony the [state's] attorney ALSO agreed and concurred with that which the trial judge observed. Defense objections to V.W.'s lack of specificity at trial were agreed to by Tr. ASA Fillipitch. Tr. ASA first argued:

> '...she cannot give us exact **dates**, **times**, and **places** where each of these acts occurred other than it was an ongoing event that occurred every year of her life.' [R 714]

32) Trial Judge Burmila specifically concurred, personally observing that V.W. had not, in fact, provided specificity:

> 'I understand the thrust of the witness' testimony, **but the defendant is entitled to some specificity**, or at least to the extent it can be supplied. So of course I'm not going to tell you what questions to ask, but I think at a minimum **you'll have to establish** with this witness if all these events occurred **in the home, some place outside the home, that they occurred**, and if she can narrow it down to any particular **dates**. If she says she can't then she can't but I do think the **defendant is entitled to some specificity in regards to the nature of the occurrences**... But I mean if she can't do it she can't do it. **At least those questions need to be asked.**' [R 714-15; D. Doc. 67 at 25]" [Req. COA at sic 23]

"Trial Judge Burmila specifically observed how Tr. ASA Fillipitch had never even asked, and V.W. had never provided answers to, questions regarding dates, time frames, places of alleged crimes, nor specifics regarding the nature of the alleged criminal acts. Accordingly, since ASA's arguments are admissions and Judge's personal observations cannot be disputed, **AS A MATTER OF LAW**, the specificity now appearing in V.W.'s direct testimony was not what actually was adduced from V.W. at trial up to that point (R 714). **As such, AS A MATTER OF LAW, the trial transcript was falsified so as to contain those alleged specifics.**

"33) Direct examination of V.W. continued:

'Q: I've asked you a series of questions regarding the frequency that the sexual contact occurred.

MR. DELUCA: Objection. Judge. Foundation. Where. What.

THE COURT: All right. Objection sustained.' [(R 715-16) Dist. Doc. 67 at 26, et al.]

Trial ASA again admitted that the questions so far only pertained to the frequency of the alleged sexual contact. **Trial Judge again observed** that no places nor what criminal criminal act was adduced from V.W.

"34) Then at the motion for directed verdict hearing, defense counsel so moved based on, among other things, the fact that V.W. had not testified to any dates of any alleged crimes, to any time frames of alleged criminal acts, any locations, nor other specificity from age 11 and forward to age 16 (R-1033). The Trial ASA argued:

'The witness stated it occurred continuously by the defendant's own admission to the age of 16. He admitted he had sexual intercourse with her. **She indi-**

"cated she had sexual intercourse. The fact that she can't remember a date or time or be more specific doesn't mean ..." [(R 1034); D.Doc 67 at 23 et al]

"Trial ASA explicitly agreed that V.W. had never testified to anything more specific than a bald claim of 'intercourse' from 11-16 years of age. No time frames, no dates, no specific criminal [redacted] incidents or occurrences. The Trial Judge erroneously denied the motion without comment. [There was no direct testimony of a crime].

" 35) At the post-trial motion/sentencing hearing, **ALL COURT OFFICERS AGAIN AGREED that V.W. didn't testify to specifics** (that are now in her direct testimony in the transcript):

DEFENSE COUNSEL:

"... Judge, I argued it at the time of the motion for directed verdict finding ... during the testimony of [V.W.] in this matter, from the time she was 11 to 12 to December of 2006, with the last allegation, she was not specific ... upon cross-examination she was unable to articulate any specificity ..." [R 1409]

TRIAL ASA FILLIPITCH:

"The defendant did testify to some specifics' (which is patently untrue and does not exist in the transcript nor DVD) '... But Judge, just because she can't come up with specific dates, times, and exact occurrences of this -- of the offense, don't make it improper to instruct the jury ...' [R 1412; D.Doc. 1 - Pet Reply, et al]

TRIAL JUDGE:

'The fact that the victim's testimony might have come across -- and she might have used the word that the abuse had become routine, does not distract, or detract as

"I should say, from the ability of the jury to ASSESS her credibility and WHAT MANNER OF ASSAULT SHE WAS REFERRING TO..." [R 1415; D. Doc 1 ~ Supp. Pet, etal]

"All court officers explicitly agreed that V.W. did not testify to the specifics (now in the transcript) as her direct testimony. The Trial Judge concurred with counsels and further personally observed that V.W. had not even identified a manner of assault as to any count of the indictment. Trial ASA argued how no exact criminal occurrence was adduced from V.W. at trial. As A MATTER OF LAW, therefore, the trial transcript is not a true account of the trial. The transcript is false as a matter of law, and the district court was required to uphold the trial judge's personal observations and concurring findings of undisputed/agreed-to fact. The district court refused to do so.

"36) The following are specifics that all court officers agreed were not forthcoming from V.W. in reality at trial (bold parentheticals indicate what 'specific' was agreedly not adduced):

'April 22, 1999 (DATE), my bedroom (PLACE), in my bed (PLACE), touching on top of clothes (MANNER/WHAT/NATURE/OCCURRENCE) [R 682] (not a charged offense); Touching under clothes (MANNER/WHAT), nighttime (TIME), in my bed (PLACE), shortly after "hospital" allegation (TIME) [R 683-84] (also not a charged offense); My room (PLACE), at night (TIME), lying on his back, white shorts, dark shorts down to mid-thigh, on knees, between my legs (NATURE) mouth on penis (MANNER/WHAT) [R 683-85]; Summertime (TIME), my bed (PLACE), laying down, watching TV, went back to sleep (NATURE), touching under clothes (MANNER), oral sex performed on her (MANNER/WHAT), legs locked under arms, he lets go of her, inserts finger into vagina (NATURE/MANNER), making her bleed (WHAT/NATURE) [R 684-92]; Bathing babies, getting them ready for bed in the evening (TIME/WHAT), left two babies in the tub of water, laid down on his bed (PLACE/NATURE), with butt hanging off, vaginal sex (MANNER), a few months after finger

"rape (TIME), was going on 11 (TIME) [R 692-96]; Punished with forced blow jobs, which means penis in mouth (MANNER/NATURE), to go to dance during sophomore year (TIME/NATURE) [R 709-10]; at his birthday he'd ask for a present (TIME/NATURE) [R 712]

"It's at this point that the first objection occurs (R 714-16, supra), and Trial ASA admitted V.W. had never provided such 'specifics' of times, places, etc., and Trial Judge personally observed that none had been established by the witness, the Trial Judge's FIRST observation/factual finding.

"37) The trial transcript continues:

"... his room or her room at the house (PLACE) [R 716]; In the living room (PLACE) around 11:00 or 12:00 at night (TIME) [R 716-17]; In bed (PLACE), he'd try to wake her, he'd reach under the blankets and touch her (MANNER/NATURE), she'd follow orders to go to the living room (NATURE), sex would last a few minutes and she'd go back to bed (NATURE), when watching T.V. in the living room (PLACE) in 2004 (TIME/DATE), oral sex (MANNER) [R 717-19]; At 14 years old (TIME), all alleged crimes at the house on McCameron Ave (PLACE) [R 719]; sexual intercourse (MANNER), he's standing, she's on bed, pillow covering her own face waiting for it to be done (NATURE/PLACE), during the day (TIME); sexual intercourse (MANNER) December '06 (TIME/DATE), at house (PLACE), conversation in the computer room (PLACE) [R 726]; during track conditioning (TIME) in the evening (TIME), she'd come home (PLACE), had a pulled hamstring during the fall (TIME), he took off her pants and had sexual intercourse (MANNER/NATURE), he rapes her, ejaculates onto the floor, she carries on with her evening (NATURE); all 'over 20' alleged sex crimes now in 15-20 minutes after school (TIME) [instead of the 'specifics' above] [D.Doc 67 at 25-28]"

"Tr. ASA argued how V.W. wasn't able to provide times, places, dates, or exact occurrences of a criminal offense, supra. Trial Judge Burmila personally observed that no specifics came forth from V.W. as to places, what allegedly occurred, the nature of the charged crimes, and not even a manner of alleged assault (beyond a bald allegation of 'intercourse'). These were not fluke utterances — **they were continuing personal observations of the Trial ASA and Trial Judge**, that the state and district court are bound to /must defer to, respectively. The final pronouncements of their observations came AFTER THE TRIAL WAS OVER, AT THE POST-TRIAL MOTION /SENTENCING HEARING [R 1409-1415, supra], and the district court was required to defer to the Trial Judge's personal observations /findings. See Miranda v. Leibach, 394 F. 3d 984, 998 (7th Cir. 2005) ("We presume that a state court's factual [redacted] determinations are correct"); Vasquez v. Hillery, 474 U.S. 254, 258, 106 S.Ct. 617 (1986) ("Factual determinations by state courts are presumed correct in federal habeas proceedings."). Under Petzold v. Jones, 349 Fed. Appx. 295, the trial judge's findings are the law of the case and must be upheld without the proper clear and convincing showing by the Warden that his findings were wrong. The Warden made no showing [D. Doc. 135 at 14-16].

"38) The Warden didn't address the merits of the claim. She overlooked the true merits and misleadingly [lied] told the district court:

> 'Rather, petitioner moved for a directed verdict on the counts alleging offenses against V.W. when she was eleven years old." [D. Doc 31 at 21]; and, 'Nor did the prosecutor concede a lack of evidence during closing argument' [D. Doc 31 at 22].

The Warden clearly never disputed the claim I actually made, supra, but told the district court that directed verdict was only to a single year alleged in the indictment instead of the six of seven years, and a complete fabrication of a concession during closing arguments. **It's a fake. It's a red herring by the Warden.** I alerted the district court that the Warden overlooked the theory of the claim I actually made and thus waived it as meritor-

"ious [D. Doc 67 at 21-32]. The district court refused to apply waiver AND refused to defer to Trial Judge's observations and findings. The district court refused to bind the state to Trial ASA's arguments/admissions, supra.

39) The district court held:

'...as neither the prosecutor nor judge 'admitted that no specific allegations were adduced at trial.' Doc 1 at 6. Scurlock's submission that the transcript must have been falsified is baseless' [D. Doc. 157 at 14]

The district court ruled completely contrary to Illinois law in that Trial ASA's trial arguments are specifically admissions under Cruz, supra, when referencing 'Doc 1 at 6'. Also, Judge Feinerman ruled contrary to Illinois law in that the trial judge's personal observations of the trial testimony are indisputable, and Trial Judge agreed with both state and trial [defense] counsels in the context in which the observations were made - objection, motion for directed verdict, and motion past trial. The trial courts' officers were ALL in specific explicit agreement that V.W. had NOT provided any specificity as to dates, times, places, nature of offenses, manner of offenses, and what V.W.'s 'blur' was from 11-16 years of age, supra.

40) The district court already found that V.W. did NOT testify to the specifics that defense counsel was specifically trying to elicit from V.W. on cross-examination, supra. By granting the inordinate delay motion, the district court already found that PC ASA enlisted the help of other state employees to conceal the falsification crimes from the new Post Conviction Judge, supra, by the fraudulent 'fitness dismissal' process PC ASA invented and with well-documented false recommendations of unfitness by state's doctors (none of which was ever challenged by the Warden whatsoever). The district court refused to apply waiver against the Warden as to this claim. The district court refused to uphold the trial courts' personal observations of V.W.'s actual testimony, and refused to bind the state to the Trial ASA's admissions as to

"same testimony. Trial Judge's observations are tantamount to an ipso facto ruling that V.W.'s trial transcript testimony is fake. Accordingly, reasonable jurists would find it at least debatably wrong for the district court to ignore all of the above mandates of the law and find contrary to Trial Judge Burmila's undisputable personal observations of V.W.'s testimony. I ask the Court to certify this claim for appeal. The trial transcript was falsified as a matter of law." [Req. COA at 22-29 sic].

My Request for a Certificate of Appealability continued:

"VI.

THE DISTRICT COURT WRONGLY DENIED THE IAC/CORPUS DELICTI CLAIM, IGNORING MY UNDISPUTED THEORY OF ILLINOIS' CORPUS DELICTI RULE

"41) In addition to the theory that the district court cites, the 'I did it' facet of Illinois' Corpus Delicti Rule, I raised another theory for relief under the rule. The district court completely ignored the 'practical relation test' theory and the 'origination' theory that I raised regarding the state's 'confession' [D. Doc. 67 at 105-111, citing D. Doc. 1-Pet. Reply at 25-26 et al; citing Pet. Reply at 45, 40 et al.]

"42) Illinois' Corpus Delicti Rule has more than one provision and the district court wrongly held that Illinois courts wouldn't apply the rule in my case had counsels acted. Application of the rule is dependent upon state's evidence at trial, so for purposes of the claim, I IN NO WAY CONCEDE THAT V.W.'S TRANSCRIPT TESTIMONY WAS V.W.'S ACTUAL TRIAL TESTIMONY. The transcript falsified V.W.'s testimony as a matter of law, supra. Trial ASA argued how "exact occurrences" of criminal offenses were not adduced from V.W. at trial.

"43) The Warden waived these merits for never disputing these theories into controversy [D.Doc. 67 at 107]. PC ASA waived in state court [D.Doc. 1 - Pet Reply].

"44) In People v. Willingham, 89 Ill. 2d 352, 59 Ill. Dec. 917 (1982), Illinois Supreme Court held that the practical relation of the admission to the government's case, rather than its theoretical relation to the definition of the offense is the critical test of reliability of an extra-judicial confession. The Rule stands to prevent statements from coming before the trier of fact that do not constitute 'a clear reflection of his past.' Willingham.

"45) Although police detectives originally denied providing the information on the DVD 'confession', lead detective Brian O'Leary explicitly admitted that he had, in fact, done so, fully confirming my suppression hearing testimony, and directly contradicting his own. Once the following admission was made, judicial estoppel prevents him from retracting it or disputing it, as the state can't play so fast and loose with the facts as the exigencies of the moment arise:

'Q: Did you tell him during the course of that interview the various allegations that [V.W.] made against him?

A: Yes, we did.

Q: Okay, so you told him the various things you had written down, you said she said this and this?

A: I told him what the allegations were, what she said had allegedly taken place (R 843-44)' [D.Doc. 67 at 80-81, citing D.Doc 1 - Def. Pet. at 25; Pet. Reply at 36-37].

"46) At the suppression hearing, the same detective told how the discussion included 'time frames, ages of the victim, as well as where things were happening, and specifics as to what took place' (R 99-100). At the time, however, police disclaimed telling me the DVD's specifics that Detective O'Leary explicitly admitted to on cross examination at trial, supra,

"47) In People v. Rivera, 2011 App (2d) 091060 (2011), the court held that even though a crime had undoubtedly occurred, and even though the details of Rivera's 'confession' matched the circumstances and details of the state's case, the confession still had to be suppressed under the rule. His statement was unreliable as a matter of law because the crime scene details were suggested to him by police or were available to him by various news outlets, and the state's other evidence tended to show that he didn't commit the crimes, thereby undercutting the statement's reliability as a 'candid reflection of his past.' The source of the details was a critical factor as to reliability, as was state's other evidence tending to prove he didn't commit the crimes alleged in the state's case, sexual assault and murder. Under Rivera's Corpus Delicti theory, the key was not whether a crime occurred nor whether his confession was corroborated by state's other evidence, because both were abundantly clear. He was unable to prove coercion, but insisted police had done so and that he didn't commit the crimes, ergo that the confession was not an accounting of HIS past. The Appellate Court properly suppressed Rivera's fully corroborated confession primarily due to the source of the contents, holding that because the details **could have** come from police suggestions and newspaper articles, the confession wasn't reliable as a candid reflection of his past.

"48) Here, the same practical relation test as in Willingham further supports a finding of unreliability, as the crimes confessed to simply weren't the crimes accused. Det. O'Leary explicitly told how he'd provided me the 'lovers theory' that went onto the DVD, and this providing went on throughout the entire process, and NOT just for the first ten minutes as police previously alleged (R 844).

THE POLICE-PROVIDED LOVERS THEORY

"49) Police confirmed that they'd provided the DVD's 'lovers' allegations. However,

"V.W.'s accusations of forced sex / sexual punishments / restraint and rape, etc. (which the Tr. ASA rejected as 'not actually happened,' infra), don't corroborate the DVD under the practical relation test. V.W. never claimed any of the police / DVD allegations to be true:

'(i) V.W. never claimed to have jumped on [my] lap, initiating the alleged contact (DVD); (ii) V.W. never claimed that she rubbed herself onto me nor me onto her (DVD); (iii) V.W. never claimed that we had a mutually pleasurable sexual relationship (DVD); (iv) V.W. never claimed that her sexual advances culminated in oral sex at 15 years old (DVD); (v.) V.W. never claimed that the alleged mutual sexual relationship culminated in sexual intercourse at 16 years old (DVD); (vi) V.W. never claimed that they would go to each other for sex whenever one or the other wanted it (DVD); (vii) V.W. never stated that she started her alleged aggressions at age 13 (DVD); (viii) V.W. never claimed that there were an alleged 50-100 lovemaking sessions (DVD); (ix) police espoused these DVD claims as 'what actually took place,' and [Tr. ASA] Fillipitch espoused these judicial rejections of V.W.'s accusations no less than seven times at suppression (See 4th Amendment Claim below), acknowledged the inherent irreconcilable inconsistencies [between V.W.'s accusations and the DVD] (R 250), attacked the DVD confession as unreasonable (R 1250), and judicially admitted to its inadmissibility; (x) The police finally admitted at trial to feeding, and therefore fabricating, the uncorroborated, 'unreasonable' DVD allegations to [me] at interrogation, including 'time frames,' ages of the 'victim,' as well as where things were happening, and specifics as to what took place' (R 99-100). It all came from police and was unreasonably incongruous to V.W.'s accusations, which the police and Fillipitch rejected as well [D. Doc. 1- Def. Pet. at 25-26; D. Doc. 67 at 105-111].

The Warden overlooked these theories of Corpus Delicti and **again waived** that the 'confession' would have been suppressed and a different outcome is likely. The Warden waived

" that PC ASA waived in state court, also by not disputing these theories of Corpus Delicti, which stand as admitted as meritorious in Illinois courts [D. Doc. 67 at 107-111]. They waived that the detective's admission that they provided the details requires a finding that the 'confession' is unreliable. They waived that the police 'lovers theory' doesn't pass the practical relation test juxtaposed to V.W.'s 'forced sex' type of allegations. They waived that the state's other evidence (V.W.'s transcript testimony) only tends to establish that no crimes occurred, infra, and ultimately that the DVD confession should have been suppressed on these grounds had counsels acted.

"TRIAL ASA's ATTACK ON THEIR OWN DVD EVIDENCE

" 50) Trial ASA Fillipitch attacked the substance of their 'lovers' allegations (R 1250), and I agreed that it's not even a reasonable accounting of actual crimes. PC ASA waived that this attack on their own police-fed, police-created evidence was intended as an assertion stating that the state knew the DVD to contain a false confession [D. Doc 1 - Def. Pet. at 25-27; D. Doc 1 - Pet. Reply at 39, at 7]. It admitted the state's position on its own evidence - that the DVD confession was unworthy of belief, i.e. false. PC ASA's plentitude of waivers for disputing PSEUDO claims, issues, etc., are at [D. Doc 67 at 75, citing Pet. Reply, pp. 5 ¶ 1 (l, o, p); p. 6 ¶ 1 (4); p. 7 ¶ 1 (dd, cc); p. 56 ¶ 38 (a, b)] ('Ms. Griffin has waived that Ms. [Fillipitch] declared the DVD 'confession' unworthy of belief by attacking it as unreasonably unbelievable, II. 1 (ee) p. 7, supra, and Ms. Griffin cannot oppose it now). The Warden waived for not disputing the issues I raised - that PC ASA's waivers ADMIT the legal issue in a motion to dismiss in Illinois, supra. Although the Warden's arguments seem to imply the need for explicit verbal admissions of the false character of the DVD, such is not the law, nor was it ever asserted by me (other than Tr. ASA's verbal attack at trial). Accordingly, for not disputing IN TWO COURTS Tr. ASA's attack on the DVD as not reasonable, the state has admitted/waived

" that the attack asserted that the DVD confession was knowingly a false confession. 'Motions objecting to pleadings must point out specifically the defects complained of, and the failure to posit objections to pleadings in this manner results in waiver of the objections.' Segall v. Berkson, 139 Ill. App. 3d 325 (1985). 'Defendant's default results in his admission' Wells Fargo Bank, N.A. v. Sanders, 2015 IL App. (1st) 141272 (2015) ¶ 39 [D. Doc. 1 - Pet. Reply at 38]."

" **STATE'S OTHER EVIDENCE TENDED TO PROVE THAT I DIDN'T COMMIT THESE CRIMES**

" 51) V.W.'s "trial" accusations tended to prove that I did not commit these crimes:
(Again, I DO NOT CONCEDE THAT V.W.'S CAC ALLEGATIONS WEREN'T [ALTERED AND] FALSELY TRANSCRIBED INTO THE TRIAL TRANSCRIPT).

PC ASA waived that the following were physically impossible accusations for choosing NOT to dispute them:

'I. 1. (a)(i) V.W.'s first... event was an allegation of oral sex in [my] bed at night (R 684) ... during which V.W. claimed [I] was laying on my back with my shorts to mid-thigh, almost my knee (R 685), and she was told to kneel down on the bed in front of me and put her mouth on my penis, she simply complied and moved her head in a bobbing motion, and... nothing was said when this was over (R 685). Aside from the palpable improbability of being in my bed at night **without Gwen noticing**, V.W. could not have been where she claimed, doing what she claimed. To be between the legs on the bed, the shorts would have to be taut, having to spread the legs apart for her to be between ... She could only have been on top of his legs kneeling next to Gwen without Gwen noticing, but this is not the claim. If this were a true event, V.W. would have known this; that due to the shorts her claim is physically impossible and Gwen would have seen all of this [D. Doc 1- Def. Pet. at 7]. **PC ASA waived as impossible** [D. Doc 1 - Pet. Reply at 4, at 11, et al]

"(ii) V.W. claimed to have stayed home from school in the summer because of lice, and that when lice was discovered, Gwen cleaned it all up at once, that same day (R 705; 763-64, 764). V.W. claimed she took a nap in my bed as it was the only one disinfected; despite there never being a time with only one bed disinfected without Gwen at home,... V.W. claimed she saw me masturbating (R.686) but didn't know whether or not my penis was exposed (R 691). She claimed I gave her oral sex and pulled her to the edge of the bed, ... restrained her legs under my arms, and let go of her (R 687-88). She claimed her butt was hanging off the bed, as it would have to be, so as not to get any blood on the bedding, which allegedly went onto the floor and not the bedding (R687-88). V.W. said he let go of her, as he'd obviously have to in order to penetrate her vagina with his fingers as she claimed ... but failed to explain how she didn't fall directly to the floor when he allegedly let go of her ... If a girl in this position didn't have her butt fully past the edge of the bed out to her lower back, and was penetrated and made to bleed as V.W. claimed, any blood, due to capillarity, would necessarily run down her body and onto the bedding and thus could not make it to [redacted] the floor. If this were a true event, V.W. surely would have known that she is subject to gravity like the rest of us and would have fallen when released, and Gwen would surely have wondered why they would have been at least partially naked and her husband having sex with her child while she was also at home cleaning up lice. Gravity makes this allegation physically impossible [D. Doc 1- Def. Pet. at 7-8]. **PC ASA admitted/waived as impossible** [D. Doc. 1- Pet Reply at 12; D. Doc. 67]

"(iii) V.W.'s next allegation is of vaginal intercourse (R692)... V.W. claimed to be helping bathe the kids, claimed she agreed to have sex, she laid down onto the bed with her butt hanging off, pulled down her pants, and closed her eyes (R 694-95). She claimed she remembered ejaculate going all over the floor and him 'jerking off' to finish while she lay there with her eyes closed. She can't possibly lay down onto a bed with her butt hanging off...

"especially can't do this and pull her own pants down without succombing to gravity. The most she'd be able to do would be to lean against the bed, but this is not the claim, nor is it conducive to sexual intercourse assault. Gravity prevents this event from occurring ... Assuming arguendo that V.W. could levitate ... she still couldn't possibly see him 'jerk off' and ejaculate all over the floor unless she could see through her own eyelids and the bed ... [D. Doc. 1 - Def Pet. 9]. PC ASA waived /admitted it as physically impossible [D. Doc. 1- Pet Reply at 9, et al; D. Doc 67 at]

"(b) V.W. denied knowledge of ANY specific allegations or time frames, from 10, 11, 12, or 13 and knew NO time frames to any alleged events (R 719-20), and nothing specific and no time frames whatsoever from age 11-16 (R 778) regarding her alleged crimes ... V.W. said in the years she picked up her siblings from school, the bus schedule was too tight to allow her to stop home first (R 775) ('Q: Would you go directly to the middle school from your school to pick up the kids? A: Depending on what time I got off the bus"), and that she was on-time or just early to get them. (R 795), and she'd call Gwen to confirm she had the kids (R 776). Gwen confirmed V.W.'s known punctuality (R 1127) and how she'd witnessed V.W. get off the bus and go straight to the school (R 1128), and V.W. said how it only took less than five minutes to get to the kids' school (R 795). (V.W. herself established that it took less than five minutes to get to the school and that she could only step home, drop off her stuff, and go grab them, which meant putting her book bag and purse inside the house (R 795)). She admitted herself that she 'would get there before them or right when they were getting out' (R 793). She firmly established her chronology of events and that these events allowed her less than five minutes to get off her bus and get to the school. She knew of NO TIME FRAMES OF ALLEGED ASSAULTS from 10, 11, 12, 13 years old (R 719-20) and again no specifics and NO TIME FRAMES whatsoever from 11-16 (R 778). She admitted that she knew NOTHING about the police's after school time frame, given to Scurlock by Detective O'Leary, supra. ... V.W. was asked whether her siblings or her

"mother ever awoke during any of the alleged 'over 20' sexual assaults in beds with them (R 770)... On redirect [Tr. ASA-elicited] V.W.'s new claim was that the sexual contact was now in this after school time frame (R 796) when she was not home, gone getting her siblings from school, and was on-time or early. But now, V.W. claimed that 15-20 minutes were available after she got off the bus. (**Tr. ASA Fillipitch is judicially estopped** from eliciting such contradictory testimony from V.W. as the exigencies of the moment require). **V.W.'s total 'over 20' alleged assaults got moved to this new time frame** (R 800) [instead of when V.W. was 10, 11, 12, 13, 14 years old, etc.; **specifically admitting that all the prior accusations** in those years, at night, in the evening, during the day, et al, **DID NOT HAPPEN**], "insted of at night in bed with her mother (R 716-17), or with her siblings in bed (R 769) or in the living room at night in a tiny house full of people (R 770)' [D. Doc 1 - Def. Pet. at 9-11]. **PC ASA waived/admitted V.W.'s accusations were impossible because V.W. can't possibly be at home getting raped AND gone getting the kids** [D. Doc. 67 at];

"(c)... Tr. ASA Fillipitch impeached V.W.'s impossible [time frame after school] entirely with Jolleen Manietta, V.W.'s aunt's friend and V.W.'s siblings' teacher from whom V.W. picked up the kids. Fillipitch elicited testimony from Manietta that stated that V.W. would NOT get there on-time, but was 10-15 minutes late once per week, impeaching V.W.'s time frame completely... Fillipitch needed an opportunity for me to commit a crime and V.W. admitted that there was none... **By impeaching V.W.'s own testimony that she would get there just ass, or just before the kids got out, and that she actually had only about five minutes to get off the bus and get to the school** [this 15-20 minutes on re direct didn't exist at trial, see false transcript claim, supra], Tr. ASA admitted V.W. was unworthy of belief [the Illinois Supreme Court has repeatedly iterated that the ONLY reason to impeach a witness is to destroy credibility, People v. Bradford, 106 Ill. 2d 492, 88 Ill. Dec. 615 [Def. Pet. at 13]], but sought convictions anyways. (If this 15-20 minute time frame actually existed from V.W. at trial there'd be no

"materiality in using Manietta as they did, as PC ASA admitted, **to establish** opportunity [2015 Mot. Dis. at 9] to assault V.W.). They explicitly impeached V.W. to establish time frame/opportunity that specifically didn't exist, or is precluded by V.W.'s accusations, and by said act of impeachment of V.W.'s total 'Over 20' allegations 'after school,' declared V.W. to by lying about all of it. [D. Doc 1 - Def. Pet. at 11-12]. **PC ASA waived/admitted that this act of impeachment constitutes Tr. ASA's judicial admission that they knew V.W. was lying** [D. Doc 1 - Pet. Reply at 33, 12] and still [redacted] sought to convict.

"(e)(ix) ... V.W. never explains why they would have been in the living room at all, for T.V. or sexual assault, since she allegedly had a couple dozen sexual assaults in beds full of family members with a 500-pound man without anybody noticing (R. 716-17, 770)." [Def. Pet at 15].

"(x) V.W. claimed to have been sexually assaulted on her bedroom floor after track conditioning, where [I] allegedly removed her pants and vaginally assaulted her (R. 729), though the entire family is home when she would get home from track (R. 777) around 6:30-6:45 (R. 1085), yet none of her other five family members ever noticed a thing. **This allegation, too, was abandoned by V.W.** ... admitting it false. [Def. Pet. at 15, at 12, at 13].

"(xi-xiii) ... the new-at-trial final event was also to have been vaginal intercourse assault, but is now in [my] bedroom during the day (R. 727-28), and alleged that she put a pillow over her own face, and was never alleged at the CAC and never existed, per Tr. ASA Fillipitch, after years of diligent but fruitless interviews (R. 318-19), but the final assault was to have been followed by a threat by V.W. to stop the alleged abuse, which was to have been in the family computer room (R. 729-30). At the CAC, the final assault was in the evening, after track, in a house full of people (R. 777, 1053, 1085), and thus the threat would also have been in the family computer room with a house full of people (R. 777). A threatening conver-

"sation after track in a house full of people had to change. There would have been a family of witnesses (if real). A new final event was then created that Tr. ASA admitted never existed (R 318-19). **This allegation, too, was abandoned** when Tr. ASA elicited self-contradicting testimony from V.W., now claiming that all 'Over 20' alleged assaults occurred when V.W. got off the bus and was gone picking up her siblings from school, supra. [Def. Pet. 15-16]

"52) The state's other evidence, aliunde the DVD statement doesn't tend to prove that I committed these crimes, in fact they tend to prove that I didn't commit any of them. Many of the crimes were alleged to take place in impossible circumstances (in my bed at night where Gwen was every night of our relationship; in front of Gwen while Gwen was home cleaning up lice infestations; between my legs though blocked by shorts around my knees [right next to Gwen]; hanging far enough off the bed so as not to get alleged blood on the bed, while not falling to the floor when released, preventing assault; being able to see through the bed; having to stop-and-go so as to get to the school just as the kids were getting out with the five minutes available, never having been late; etc., then moving all 'Over 20' alleged assaults to this new time frame when asked about family members waking up [thereby] **ABANDONING 100% of her substantive accusations when impeached**, etc.). **Tr. ASA elicited this self-contradictory testimony from V.W., initiating abandonment of all accusations to the 'after school' time frame, all 'Over 20', explicitly.** None of the impossible, palpably improbable, and wholly abandoned accusations tend to prove these alleged crimes were even committed at all, much less by me. **PC ASA never denied that V.W.'s abandonment of her prior accusations was an admission that V.W.'s crimes never happened, both by V.W. AND by Tr. ASA who initiated the response** [D. Doc 1 - Pet Reply at 4; Def. Pet. 10-11]. **The prosecutors AGAIN [redacted] acknowledged that the crimes never happened.**

"TRIAL ASA'S OTHER REJECTIONS OF V.W.'S ACCUSATIONS

"53) At the suppression hearing, Tr. ASA Fillipitch distinguished the 'Lovers Theory' DVD

from V.W.'s accusations noting that they're inconsistent and Tr. Defense counsel agreed (R 250). Tr. ASA Fillipitch went on to at least implicitly reject V.W.'s accusation no less than seven times. She asserted that the 'Lovers Theory' DVD allegations were NOT fabrications (R 251); she asserted that the DVD was the truth, arguing, 'It wasn't lines that were fed to him as he wants the court to believe. This is what happened,' (R 252), explicitly arguing that V.W.'s inconsistent accusations had NOT happened; She argued, 'We don't have a stilted conversation, we don't have him grasping for answers. It flows. It flows like a man telling his story would tell his story.' (R 252), asserting that the DVD is the truth; She argued, 'This isn't he's not grasping for dates that were supposedly fed to him, ages, locations. He puts his head down. He tells it like it is,' (R 252), asserting that the DVD 'Lovers Theory' is the truth; She argued, 'Supposedly we have a man who was been beaten down in some way or told what to say,' asserting that I was not told what to say, and that the DVD is a true account; She argued, 'and if we are going to believe his [redacted] testimony we have to look at it in light of all his testimony and his statement to the Court is essentially that the whole thing I said was fabricated, and I kinda made it up as I went along and was fed things to say. Now if we are going to believe that, which I think is not to be believed...' (R 261), again asserting that my assertions of the falseness of the DVD were untrue, that the DVD was the truth of the matter instead of V.W.'s accusations; Detective O'Leary also rejected V.W.'s accusations, declaring the DVD as 'what actually took place,' making clear distinction between V.W. and DVD (R 100), and also rejecting V.W. [D. Doc 1 - Pet. Reply at 7 (44); Def. Pet. at 62-70], (**waiving / admitting that Trial ASA's rejections of V.W.'s accusations admitted them as knowingly false,** as well as the police's knowledge of V.W.'s false accusations.

54) As mentioned above at ¶ 51 (c) pp. 37-38, supra [sic], PC ASA explicitly admitted that she and Tr. ASA Fillipitch impeached V.W.'s 'after school' testimony, where she firmly established how she had about enough time when she got off the bus to occasion-

"ally drop her purse and books and get up to the kids' school to get there on time or just as the kids were getting out, which took specifically about five minutes. She had to call her mom, Gwen, when she'd be at the school with the kids. V.W. established she was on-time. Gwen confirmed by V.W.'s phone calls. **V.W. was on-time according to V.W., fully corroborated by Gwen** and myself. Then V.W. was impeached with the question of, in her sexual assault stories, 'Did anyone ever wake up?". She'd claimed assaults in my bed at night (with Gwen), in her bed at night (with her siblings), at home when Gwen was home cleaning lice, when I was at the hospital birthing my son with my wife, etc. **Tr. ASA elicited V.W. to change/contradict her prior testimony, now moving the total 'Over 20' alleged crimes to this new 'after school' time frame,** supra, instead of at night in beds full of [redacted] family members, in a tiny house full of people that could just walk in at any time, etc. PC ASA (2nd ASA at trial) told [redacted] in her 2015 motion to dismiss how they impeached V.W. with Jollene Manietta, (V.W.'s aunt's friend) claiming V.W. was late to get the kids about once a week, **admitting, 'That lateness provided the time frame within which defendant had the opportunity to molest the victim.... Ms. Manietta's[sic] testimony was presented as a timeline...'** [D.Doc. 1- 2015 Mot. Dis. at 9], and, **'That the victim testified she was not late in picking up the children...'** [Id. at 9], and why they did it. These statements by the 2nd chair Trial ASA admit several key matters:

"(a) She admits that indeed V.W. testified herself that she was not ever late to pick up the kids, which **judicial estoppel bars controversion. They can't play fast and loose with the facts** as needed;

"(b) That indeed V.W.'s total 'Over 20' alleged crimes were now moved to the 'after school' time frame as 'That lateness provided **THE** time frame...', **not A** time frame, **not one of many** time frames; **THE TIME FRAME**;

"(c) That all of V.W.'s substantive transcript accusations NEVER HAPPENED (the crimes never happened). None were in this after school time frame. The crimes were to have taken place at night, in my bed next to Gwen, in her bed next to her siblings, when Gwen was home cleaning up lice, when I was with Gwen having a baby, in a tiny house full of people who could walk in at any time, etc. None occurred in 2000, 2001, 2002, 2003, or 2006, **ASA Griffin specifically admitted.** See [D. Doc 1-Def. Pet 12-13]. There were no substantive accusations ever alleged in this 'after school' time frame at all. V.W. picked up the kids in the 04-05 and 05-06 school years [Id], and V.W. established that she was gone, picking up the kids, had five minutes to do so, and was on-time. **V.W. established that there was never an opportunity to assault her.** PC ASA Griffin confirmed this by impeaching V.W.'s testimony to 'provide a time frame,' supra, even though Manietta's rebuttal testimony cannot be used to establish facts (though they tried). **Accordingly, the state has repeatedly admitted that there was no opportunity to assault V.W. and that no substantive accusations' crimes ever actually happened. They abandoned V.W.'s accusations when V.W. was impeached by defense counsel, and the Tr. ASAs admitted that no crimes could have occurred as there was no opportunity.**

"55) IN SUM, the state's other evidence aliunde the DVD 'confession' did not tend to prove that I committed a crime. It wholly proved, and the ASA's admitted, that there was no opportunity to do so. The detectives' feeding me the 'lovers theory' on the DVD confirms that they, too, knew that V.W.'s stories weren't plausible, the accusations, locations, time frames, etc. If they'd believed V.W., it's reasonable that they would have provided details of what V.W. actually said happened. They instead fed me the 'lovers theory,' that isn't corroborated in ANY PRACTICAL RELATION by the state's case; and being admittedly made up by the police, can't reasonably be considered a candid reflection of my past; and is therefore not reasonably reliable and would have been suppressed had counsels taken action; and with the admitted absence of opportunity to assault, among other things,

"there is a highly likely chance of acquittal at trial. Ineffectiveness has been established.

"56) The district court's ruling that '... facts or circumstances independent of the confession, and consistent therewith, tending to confirm and strengthen the confession," exist, ignores the merits of the claim I raised, supra. The 'facts' that are in the state's unreasonable confession were, Detective O'Leary admitted, **provided by police** and are therefore unreliable as a candid reflection of my past under Rivera. Thus the district court's ruling on this point is wrong. That V.W.'s testimony alleged crimes with the whole family present does not 'tend to confirm and strengthen the 'confession'.' **To the contrary, V.W.'s testimony wholly undercuts and weakens the confession with accusations of crimes that just could NOT have happened**, to the point of nullifying it completely. V.W. accused false crimes that could not have happened, and the police fed me a false confession that they forced me to make, and the state confirmed/acknowledged/admitted all of it before, during, and after trial, and even on collateral review. As such, reasonable jurists would find it at least debatably wrong, if not outright so, the district court's denial of this claim. I ask the court to certify it for review." [Req COA at 30-43]

The above two claims clearly illustrated why the state and court/court reporter had to falsify the transcript - because Illinois' Corpus Delicti Rule would have required suppression of the false confession had V.W.'s accusations AND the false confession DVD been both presented at trial. Then, by adding V.W.'s accusations to the transcript for appeal, the substance of the DVD would not be available for the appellate court to review. It worked. Now on collateral review (de novo review since the state courts never adjudicated due to the state court officers concerted efforts to cover up the false transcript crimes/basis of inordinate delay) the Warden never disputed the reason for the criminal tampering [Dist. Doc 1 - Supp. Pet.] and the district court held such

to be true (inordinate delay granted by [D. Doc. 126]). The falsification crimes, the motive, and the concerted cover-up were all found in my favor by the district court's grant of inordinate delay. All three are part and parcel of the inordinate delay motion; the falsification is the heart of the cover-up. All were entirely undisputed. All were necessarily found by the district court's grant of inordinate delay.

The district court should have deemed the falsification issue settled. See In re Marriage of Hundley, 2019 IL App. (4th) 180380 ¶ 51 (The law-of-the-case doctrine bars relitigation of an issue previously decided in the same case 'and encompasses not only the court's explicit decisions, but those decided by necessary implication'); Capp v. O'Leary, 167 F. 3d 1124, 1126 (7th Cir. 1999) ("The ruling granting ... judgement in favor of [Plaintiff] was the law of the case. The district court could not change it without a good reason ... even when the leeways built into the law of the case doctrine would allow a district court judge to change her prior ruling if the party urging the change had preserved the ground for the change, if he has not done so the judge may be barred by the party's waiver [redacted] The doctrine of waiver would have little bite otherwise). Instantly, the Warden never asked for a change of the ruling granting inordinate delay and finding the falsification and cover-up. Therefore, the district court was not at liberty that it took to deny the substantive transcript falsification claim as it did. The district court was not free to bury the state court's corruption as it did in its opinion without even a suggestion by anyone that it was in error. The ruling finding inordinate delay was the good and proper ruling and ALL dispute was repeatedly forsaken by the Warden, counsel was never appointed to investigate the falsification, and no evidentiary hearing to determine disputed material facts was ever held. The district court was therefore barred from finding the trial transcript not falsified in its merits denial.

THE DISTRICT COURT SPECIFICALLY FOUND THAT V.W. HAD NOT TESTIFIED TO THE SPECIFICS TRIAL COUNSEL TRIED TO ELICIT ON CROSS EXAMINATION AS TO WHAT ALLEGEDLY HAPPENED

Further corroborating the district court's initial rulings finding the corruption in the Will County, Illinois Courts, State's Attorney's Office, Public Defender's Office, State doctors, etc., is the district court's finding that V.W. did not testify to the specifics now in the transcript, which trial defense counsel was trying to elicit from her. [See Appendix E, Req. COA at 5-22, specifically at 18-22]. **V.W. testified that from the time she was 11-16 years of age, she didn't remember anything happening, (that it was just a blur) that she didn't want to remember** (R 778) Req. COA at 18-20, citing Dist. Doc 1 - Def. Pet. at 89; Dist. Doc 67 at 103, et al]

The Warden agreed that V.W. had not testified to specifics of alleged crimes from 11-16, including what allegedly took place from, at least, ages 11-16, entailing possibly all counts:

> "Petitioner identifies questions that she was unable to answer, either because she did not remember or did not know the information sought" [Dist. Doc 31 at 33]" [Req. COA at 20].

Again, at the post trial motion hearing, defense counsel reiterated the lack of specificity entailed ANY specificity, not just dates and instances of alleged crimes she claimed to the Sheriff and Forensic Interviewer, as the court held in merits denial contradicting the inordinate delay ruling:

> "...Judge, I argued it at the time of the motion for directed verdict finding ... **during the testimony of** [V.W.] in this matter, from the time she was 11-12 to December of 2006, with the last allegation, **she was not specific** ... **upon cross-examination she was unable to articulate ANY specificity** ... [R 1409]", supra at 10.

Defense counsel SPECIFICALLY addressed direct and cross examinations.

Tr. ASA Fillipitch agreed, stating how V.W. couldn't come up with specific dates, times, **and exact occurrences of this -- of the offense**... supra at 10. Trial Judge agreed, telling how he let the jury decide **what manner of assault she was referring to** (since no exact occurrences of a crime were adduced for ages 11-16), possibly all counts. [supra at 11].

The district court then ruled that V.W. indeed testified to no specifics / occurrences of a crime, the current transcript notwithstanding, where its authorities addressed instances where the witness couldn't remember the information being sought (i.e. exact occurrences of a crime and manner of alleged assault, supra), and where the witness revealed a "genuine lack of recollection on germane matters" [Dist. Dec. 157 at 21-22]. THE DISTRICT COURT SPECIFICALLY RULED THAT V.W. WAS UNABLE TO TESTIFY TO ANY EXACT OCCURRENCES OF ALLEGED CRIMES NOR EVEN A MANNER OF ALLEGED ASSAULT. See Davidoff Extension S.A. v. Davidoff Intern., Inc., 612 F. Supp. 4 (Where any conclusion of law, in whole or in part, can be deemed a finding of fact, it shall). The Sixth Amendment claim pertained to V.W.'s direct "transcript" testimony, and her actually testifying on Cross how she explicitly could not provide such germane matters as specifics or exact occurrences of a crime nor even a manner of alleged assault. All trial officers concurred. The Warden concurred. The district court so found (and again by granting inordinate delay). **THEN THE DISTRICT COURT BURIED THE STATE COURT'S CORRUPTION BY ITS FALLACIOUS MERITS DENIAL.**

The district courts rulings on V.W.'s lack of germane exact occurrences of an offense, and lack of germane manner of assault, as well as times, places, dates, etc, and grant of inordinate delay became the law of the case and were required to control later phases of the same case, invoking two levels of per se prejudice, stopping further inquiry (and ergo, denials). One application of presumed prejudice for impeding defenses (i.e. Reasonable Doubt on direct appeal), and one application for constructively denying counsel to appeal the actual trial. This was never disputed by the Warden, also. **THE DISTRICT COURT SHOULD NEVER HAVE TAKEN THE ADVOCACY ROLE OF BURYING THE CORRUPTION IT ALREADY FOUND OCCURRED.**

THE DISTRICT COURT'S DENIAL HAS THE SAME PATTERN OF, AT LEAST, RECKLESS DISREGARD FOR THE TRUTH AS THE WARDEN SET OUT IN HER ANSWER AND OTHER DOCUMENTS.

The district court Magistrate Judge never issued a Report & Recommendations to object to. I was never invited to submit a proposed findings and conclusions. Notice was not given that the Warden was submitting findings and conclusions to object to. Three years of telephonic appearances were always postponed and ultimately cancelled. I was therefore never given opportunity to speak up and direct the court to the state's ubiquitous falsehoods propounded to the court. (See Dist. Doc 67, 136 pages painstakingly delineating the Warden's unending falsehoods and thus waivers of the actual evidence and claims). I was only allowed to object on paper and those went unaddressed nearly completely. I was never allowed to speak up.

Now, the district court's opinion follows that same pattern of lies as to what facts and evidence and legal principles I relied on for substantive relief as well as antecedent procedural issues (See Appendix E, my Req. COA, laying out the district court's clear errors on substance and procedural matters).

Regarding the false transcript and cover up, the opinion states that the district court first found the state court's corruption was "... not so inordinate and unjustified so as to render those proceedings ineffective and thereby excuse his failure to exhaust" [Dist. Doc. 157 at 6]. **However, the court never so held.** In fact, the district court **specifically declined** to go into the unopposed factual base of the motion; when it first dismissed for exhaustion purposes it held, "Scurlock casts aspersions on the state's reasons for seeking the delay, but this court need not plumb the state's motivations to take stock of the progress of his case" [Dist. Doc. 81 at 4]. The district court called the falsification and cover-up, "casting aspersions," and specifically declined to address the matter, and sent the case back to the state court.

It simply never ruled that the falsification and cover up weren't inordinate and unjustified.

The opinion disregarded the truth of what the court prior held – that since the state filed

a motion to have me found fit in 2019, the case was "moving forward" and had to go backs to be heard there first (the case has still not gone forward in state court and I allegedly still cannot communicate as I'm doing right now).

The state's falsification of the trial transcript and its cover-up, including the fallacious "fitness dismissal" process, are the heart of the inordinate delay motion. That motion was granted [Dist. Doc. 126] on the ABSOLUTELY UNDISPUTED RAW FACTS. The court therefore found that the falsification and cover-up occurred and were inordinate and unjustified.

THE DISTRICT COURT OPINION OBFUSCATES THE EVIDENCE IT FIRST RELIED ON IN GRANTING INORDINATE DELAY RELIEF.

In the merits denial, the district court confuses, alters, and omits evidence that it previously relied on in granting the false transcript/inordinate delay motion (and does the same as to every last claim). It misleads as to the trial ASA's actual actions and arguments at trial, as well as to the Trial Judge's indisputable observations of the accuser's actual trial testimony. As seen above, Trial ASA's admissions and Trial Judge's observations and rulings were made in the context of trial objections, motion for directed verdict, and post trial motion. Where the court alters the wording of the transcript evidence to fit its finding to support the state's desired outcome, it is a clear sign of advocacy instead of impartiality.

First, the court states, "As neither the prosecutor nor judge 'admitted' that no specific allegations were adduced at trial in Scurlock's submission that the trial transcript must have been falsified is baseless." (Dist. Doc. 157 at 14). This seems to imply to the public that a hearing was held and that the prosecutor and judge testified, for only as a witness or an agent can facts be "admitted". The judge can observe and rule in his capacity of judging a trial, but he does not adduce nor admit disputed facts. It's plainly misleading. The district court first found the undisputed facts in my favor by its grant of inordinate

delay. Therefore it already found that the Trial ASA and Trial Judge undisputedly established that no specific allegations of crimes were adduced at trial.

The district court opinion states how Trial ASA argued (prosecuters arguments are admissions [See Appendix E at 12]) how V.W. "cannot give us dates, times, places..." [Dist. Doc 157 at 14] and how Trial ASA, although arguing that she would, never actually went into specific allegations with V.W. at trial where Trial ASA specifically argued, later, AFTER TRIAL, in response to defense counsel's motion. Defense counsel addressed both V.W.'s direct testimony and cross-examination, and how V.W. was not specific on her testimony, and that on cross-examination, V.W. didn't articulate ANY specificity [R 1409] [Req. COA at 25 (Appendix E)], and how Trial ASA AGAIN argued/admitted how V.W. CAN'T COME UP WITH SPECIFIC DATES, TIMES, AND EXACT OCCURRENCES OF THIS -- OF THE OFFENSE [R 1412; Req COA at 25; Dist. Doc 157 at 14, et. al].

The court ominously omitted that it knew Trial ASA had not ever actually gone into specifics as she claimed she would, as the above argument/admission came after trial, and the alleged "exact occurrences" now in the transcript (their total abandonment notwithstanding) were never actually adduced. Such was EXPLICITLY argued/admitted by the Trial ASA here and at several other points, supra, and was CONCURRED IN BY THE TRIAL JUDGE in his observation/ruling that the jury would have to assess/guess at what manner of assault V.W.'s crimes referred to, supra. Implying the need for word-for-word acknowledgements, or that a hearing occurred and nobody admitted it obfuscates for the public and bar the legal nature of the evidence of Trial ASA's arguments/admissions and Trial Judge's observations and rulings. Misleading the public and higher courts abandons the role of impartial jurist and assumes the advocacy position.

Also from the above passage, the district court altered the text of the evidence, which leaves the impression that the "[witness]" did testify to some specifics," that this "[witness]" was V.W., which would tend to negate my claim and goes directly to the heart of my claim. The "[witness]" in the actual passage was "defendant", which Trial ASA seemed to try to make to appear as if

I had made specific allegations, which just don't exist - neither on the DVD "confession" nor at trial. Again, the court's opinion altering the evidence to favor one side evinces impassioned advocacy.

The district court stated that I relied on the Trial Judge's wording of "the abuse," instead of any "MANNER OF ASSAULT" that the jury had to guess at because none was alleged at trial. Misrepresenting the evidence so many times, I submit, cannot be accidental. The altered, misleading, and omitted evidence went right to the heart of the claim, and the opinion discarded Trial Judge's observations contemporaneous to V.W.'s testimony upon objections completely. The district court first found this evidence to be true and granted inordinate delay before the misleading opinion about-faced and denied substantive relief. By doing so, the opinion buried the falsification it already found had occurred in the Will County, Illinois courts.

REASONS TO GRANT THE WRIT

The district court's adjudication on the basis of the trial transcript it already found falsified is horrific. Per se prejudice should have ensued.

Just as horrific is the district court allowing the Warden and PCASA to get away with the same lying, deceiving, misleading that they did in their respective courts' pleadings. The Warden never even addressed it, yet the district court found all matters well-disputed and refused to apply even a single waiver against State, even as the district court acknowledged the State's complete lack of factual dispute, at least, by refusing to appoint counsel as to RAW unadjudicated factual matters. It's horrific that the district opinion created evidence that doesn't exist by, at least, holding that I demanded fact-for-fact denials when no such demand exists, and discarded the actual evidence controlling my claims and actual evidence of the state's waivers. The opinion lied about the district's prior findings an inordinate delay - the falsification and cover-up were just as inordinate and unjustifiable at first as when granted. The opinion hides it from the public, bar, and courts.

All of my defensive claims were affected by the falsification, and per se prejudice should have ensued (although the doubled edge sword of deception allowed me to prove by the matters falsified that no crimes ever occurred in this case and the prosecutors knew it). The inquiry should never have gone any farther than the grant of inordinate delay, as adjudication on the basis of the transcript the court had

just ruled fake is a great waste of resources of all involved and still has not adjudicated what actually happened at trial. It was completely futile. Further, the act of fabrication itself acknowledged that the State and Court knew that they didn't have the evidence to convict, as they'd not need to fake the evidence on appeal. The district court should have granted the claims [Appx E, et al, i.e. seven remaining claims aliunde Appx. E], instead of further concealing the state courts' corruption from the public, bar, and courts once inordinate delay was granted. The opinion's concealment worked- the Seventh Circuit read it, confirmed the facts per the false record, and denied a COA [Appx. A]. Whether the district court lied to itself or the Warden ghost-wrote the opinion is to be seen. The public needs to know that the federal courts don't stand to continue to cover for the ASA's crimes as occurred here.

IN SUM, the district court knowingly adjudicated this habeas case on the basis of the fake trial transcript it had already found was faked into its current state. The opinion repeatedly lied as to what evidence I relied on, altered that evidence, and misled the pubic and other courts as to the actual merits of my case and claims. The opinion further shields the state-court actors from accountability for their crimes the district court found occurred in granting inordinate delay, which shielding worked on/duped the Seventh Circuit. These actions do, I submit, clearly show that the district court has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's Supervisory Power. [S.Ct. Rule 10]

CONCLUSION

The Petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

11/1/22