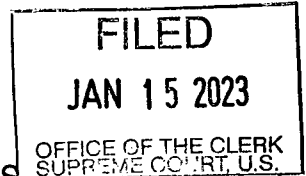


No. **22-6624**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Daniel Ray Loyd Pro Se — PETITIONER
(Your Name)

vs.

Neil McDowell — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Daniel Ray Loyd #BASE34/AS-104-ASU
(Your Name)

Ironwood State Prison
P.O. Box 2199
(Address)

Blythe, CA. 92226
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1) MR. Loyd Strongly States That Trial Counsel WAS ineffective because Trial Counsel Conceded MR. Loyd's Guilt of all charges in his closing Argument, Including Robbery in a Felony murder Rule case, MR. Loyd WAS charged under a Theory OF Felony murder.

Felony murder Jury Instruction:

The Jury Received instructions Relating to Felony murder which Said:

The defendant is charged in Count one with murder under a theory of Felony murder. To prove That the defendant is guilty of First degree murder under this Theory, the People must prove That, one, The defendant committed OR Attempted To commit a Robbery; Two, The defendant intended To commit Robbery; and Three, while committing OR attempting To commit Robbery, The defendant caused the death OF another person.

a person may be guilty OF Felony murder even if the Killing WAS unintentional, Accidental, OR negligent.

Questions Presented

Did TRIAL counsel undermine the proper functioning of the Adversarial process by conceding all of the charges including Robbery in a Felony murder Rule case in his closing Argument such that the TRIAL cannot be relied upon as having produced a Just Result?

was Petitioner prejudiced by counsel's conceding MR. Loyd's Guilt in his closing Argument?

Did TRIAL counsel concede Petitioner's Guilt of Felony murder when he acknowledged that MR. Loyd was Guilty of Robbery in his closing Argument's?

Did the State Supreme court, and the United States District Court of Appeals along with the Ninth Circuit Court of Appeals make a decision of an important question of Federal law that has not been, but should be, settled by this court when it concluded that TRIAL counsel's defense strategy to concede MR. Loyd's Guilt of all charges in his closing Argument was in the wide range of reasonable professional assistance?

Questions Presented

MR. Loyd Strongly States THAT TRIAL Counsel WAS ineffective by going with a claim of Right defense THAT WAS invalid, Because The claim of Right defense does not apply when The Contraband IS illegal.

WAS TRIAL Counsel ineffective by going with an invalid defense (Claim of Right defense) THAT did not Apply ?

WAS TRIAL Counsel ineffective by having MR. Loyd Testify in Support of The Claim of Right defense and Then abandoning The defense because he concluded The defense WAS invalid ?

Did the State Supreme Court, and The United States District Court of Appeals along with The Ninth Circuit Court of Appeals make a decision of an important Question of Federal Law That has not been, But Should be, Settled by This Court, When it concluded That TRIAL Counsel's defense Strategy to go with an invalid Claim of Right defense, and have MR. Loyd Testify in Support of That defense and Then abandoning That defense Fall within The wide Range of Reasonable Professional Assistance ?

Questions Presented

MR. Loyd Strongly States That TRIAL Counsel WAS Ineffective by going with a invalid Cousation and Foreseeability Defense in a Felony murder Rule TRIAL.

WAS TRIAL Counsel Ineffective by going with an INVALID Cousation and Foreseeability defense in a Felony murder Rule TRIAL ?

Felony MURDER JURY INSTRUCTION in Part:

A person may be Guilty of Felony murder even if The Killing was unintentional, Accidental, OR negligent.

Did The State Supreme court and The United States District court of Appeals along with The Ninth Circuit court of Appeals make a decision OF an important Question of Federal law That has not been, But Should be, Settled by This court, when they concluded That TRIAL Counsel's Defense Strategy TO go with another invalid defense Fall Within The wide Range of Reasonable Professional Assistance ?

Questions Presented

WAS MR. Loyd Prejudiced by TRIAL counsel's Failure to ASSERT a Legal Defense, in this case a Second Shooter Defense when the evidence was overwhelming of a Second Shooter, mainly and most importantly THE FACT THAT THE VICTIM WAS THREE FEET HIGHER THAN MR. Loyd with a 13 degree downward bullet wound?

WAS MR. Loyd Prejudiced by TRIAL counsel's Inadequate Knowledge of The Law, mainly and most importantly ASSERTING Two invalid defense's and not going with a Legal Defense?

WAS MR. Loyd Prejudiced by The TRIAL court's Failure to CORRECTLY INSTRUCT The JURY on The CAUSATION Required For Felony MURDER?

Did The United States District Court of Appeals along with The Ninth Circuit Court of Appeals Prejudice MR. Loyd when They deferred to a State Court's Application solely on an error under State Law?

Questions Presented

was MR. Loyd Prejudiced by The TRIAL court's Refusal to Re-Read defense counsel's PROXIMATE ARGUMENT up on The REQUEST OF The JURY?

Did MR. Loyd invoke his Right to Counsel when he Stated to Detectives DREWREY and HERDT when he was ADVISED OF his MIRANDA Rights, "Don't you Think I Should TALK to an ATTORNEY?" I mean Can I Call one So I can Just ASK him Some Questions?

Did The United States District Court of Appeals and The Ninth Circuit Court of Appeals ERR in deferring to The State Court's Finding That MR. Loyd's question, "Can I Call one (meaning an Attorney) So I can Just ASK him Some Questions Did not Rise to The Level of an unambiguous invocation?

Did The United States District Court of Appeals and The Ninth Circuit Court of Appeals ERR in deferring to The State Court's Finding That MR. Loyd was NOT prejudiced by the TRIAL court when it denied The MIRANDA motion?

Questions Presented

WAS MR. Loyd Prejudiced by The TRIAL COURT'S Failure TO INSTRUCT ON Lesser included offenses OF Second degree murder OR manslaughter ?

DID The State Supreme Court and The United States District Court OF Appeals along with The Ninth Circuit Court OF Appeals decide an important Question OF Federal Law THAT has NOT been, BUT SHOULD be, Settled by THIS Court when they decided THAT The CASE AT BAR is NOT a Capital Case, AND THERE'S NO Supreme Court CASES THAT clearly ESTABLISHES THAT The Failure OF State COURT TO INSTRUCT ON Lesser- included offenses in a non-capital CASE VIOLATES The Constitution ?

WAS MR. Loyd Prejudiced by TRIAL Counsel's multiple Cumulative ERROR Relating TO IAC Claims ?

Do ANY OF The Questions MR. Loyd Presented CONSTITUTE STRUCTURAL ERROR ?

Do ALL The Questions THAT MR. Loyd Presented AS a whole CONSTITUTE STRUCTURAL ERROR ?

LIST OF PARTIES

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

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28 U.S.C. § 2254

U.S. CONST., Amend. VI

U.S. CONST., Amend. XIV

IN THE
Supreme COURT OF The United States
Petition FOR WRIT OF CERTIORARI

The Petitioner, Daniel Ray Loyd, Respectfully
Prays That a WRIT OF CERTIORARI issue to Review
The Judgment and opinion OF The United States
DISTRICT COURT NORTHERN DISTRICT OF California
and The United States COURT OF Appeals FOR The
Ninth CIRCUIT.

OPINION BELOW

The United States DISTRICT COURT OF The Northern
DISTRICT OF California AFFIRMED Petitioner's conviction
in its case NO: 18-CV-07228-HSB(PR), on June 3, 2021

The United States COURT OF Appeals FOR The Ninth
CIRCUIT AFFIRMED Petitioner's conviction in its case
NO: 21-16139 on Oct. 26, 2022

Jurisdiction

The Jurisdiction OF This COURT is invoked
under 28 U.S.C. § 1254,

Constitutional and Statutory Provisions

The Following constitutional Provisions and Statutorys ARE INVOLVED in the case :

U.S. Const., Amend. VI

IN all CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

U.S. Const., Amend. XIV

Section 1. All persons born or naturalized in the United States, and Subject to the Jurisdiction thereof, are citizens of the United States and of the State wherein they Reside. no State shall make or enforce Any Law which shall ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; nor shall Any State Deprive any person of Life, Liberty, or property, without Due PROCESS OF LAW; nor Deny TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAW.

28 U.S.C. § 2254

The Supreme Court, a Justice thereof, a Circuit Judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

Statement of The Case

MR. Loyd Feel's That For This Court To get The Full understanding of his Case and The Complexity of his Case That he must Start at The Very beginning.

on The morning of Sep. 13th, 2011, MR. Loyd, Angel Springs, and Cynthia Downing Arranged a drug purchase From Patrick Joey Ryden.

They met Ryden at Sherwood Court in Lucerne, when They got to Sherwood Court MR. Loyd Jumps out of The Vehicle and puts a handgun in Ryden's Face and demands money and drugs.

Ryden hit's MR. Loyd's gun hand and the gun inadvertently discharges.

Ryden Takes off Running, and MR. Loyd get's back in his Vehicle and Leaves.

a Few hours later MR. Loyd get a Phone call and was told That Joey Ryden's girlfriend Cindy Quiett was Shot and Killed on Sherwood Court.

That Phone call Literally Rocked MR. Loyd to his Core, He was Devastated.

MR. Loyd got off The Phone and called Law Enforcement and Turned himself in.

Detectives Drewrey and Herdt came and placed MR. Loyd in custody, and advised him of his Miranda Rights.

Statement of The Case

That's When MR. Loyd invoked his Right to counsel, by asking if he could call an Attorney and ask a question.

There was a custodial statement that was used against MR. Loyd.

MR. Loyd Turned himself in because he thought he caused the death of Lindy Quirett.

MR. Loyd's First Attorney was Bob Boyd, and MR. Loyd's First Investigator was MR. Hermann.

MR. Hermann, upon Reviewing The Autopsy Report discovered that the Victim had a (13) degree downward bullet path.

MR. Hermann went to the Crime Scene and discovered that where MR. Loyd was and where the Victim was, that there was a elevation. meaning, the Victim was Higher than MR. Loyd with a downward bullet path.

MR. Loyd's then Attorney MR. Boyd received MR. Hermann's Report on his concern's of bullet trajectory. Unfortunately, MR. Boyd stepped away from the case.

The case then was appointed to a MR. Hauptman, when MR. Hauptman got the case MR. Hermann expressed his concerns about the bullet trajectory.

MR. Hauptman brought in a MR. Venturi of Venturi Investigations.

Statement of The Case

MR. Venturi did a Grade and Angle Finding of Sherwood Court's Crime Scene and discovered that approximately 55.6 Feet From The Intersection of Sherwood Court and Country Club Drive The Road Raises in elevation approximately (1) meter (3.3 Feet) That is a 6% grade uphill in a northeasterly direction.

This Raises The Question, How does a bullet, which is allegedly Fired Downhill From The Victim Travel Through The Victim in a downward direction.

MR. Loyd was on the Right Side of Sherwood Court and the Victim was on the Left Side of Sherwood Court between 59.2 and 74 Feet away From MR. Loyd and about 3.3 Feet higher than MR. Loyd with a 13 Degree downward bullet wound.

MR. Venturi advised MR. Hauptman that we should hire a company to Reconstruct The Crime Scene because it strongly Looks Like a bullet From MR. Loyd's gun did not Kill The Victim because of The bullet Trajectory. MR. Hauptman agreed, But Unfortunately MR. Hauptman Stepped down From MR. Loyd's case due To Case Load.

at That point a MR. Markham was appointed, the First meeting MR. Loyd had with MR. Markham, MR. Loyd Showed MR. Markham The Diagrams and The Reports From MR. Hermann and MR. Venturi and expressed That There was a Second Shooter.

Statement of The Case

The next meeting MR. Loyd had with MR. MARKHAM, MR. Venturi was There with his Diagrams of the Crime Scene and his Report of the grade and angle Finding of Sherwood Court.

MR. Venturi expressed his concerns about the bullet Trajectory to MR. MARKHAM and advised MR. MARKHAM that we should hire a company to Reconstruct the crime scene because it strongly Looks Like a bullet From MR. Loyd's gun did NOT Kill The Victim.

From That point on MR. MARKHAM did not want to put Together a Second Shooter defense.

There were many meetings over the next few years and three court hearings were MR. Loyd expressed his concern's of MR. MARKHAM's Deficient performance and THAT evidence strongly exists of a Second Shooter, the court denied all three hearings,

MR. MARKHAM hired a Ballistics expert a MR. Barnett, MR. Barnett came up with a few Theories, (1) IS THAT MS. Quirett was bent Forward approximately 12 to 16 degrees when she was shot.

This Theory was disputed by MR. Loyd and MR. Venturi, because IF The Victim was bent Forward the bullet would have hit her Breast, and went over her. (2) MR. Barnett Stated the Trajectory of the shot Through her body could be aligned with a Shot Fired by a Shooter Standing near her on The Same Side of The Street.

Statement of The Case

(3) MR. Barnett's 3rd Theory was if MS. Quiett was Standing in an erect position when STRUCK by The Shot, The Shooter would have to be within approximately Two Feet From The Victim.

The Theories of MR. Barnett and the evidence of the bullet TRAjectory where Reasons to put Together a Reconstruction of The Crime Scene.

MR. MARKHAM Refused to go with the only defense that there was a 2nd Shooter defense that the evidence points to.

The Reason MR. Loyd put all The CARDS on The Table so to speak is to show This Court TRIAL Counsel's Deficient performance From The Start and to better understand The Questions MR. Loyd has Presented.

there is a Reasonable probability that, the proceeding would have been different if MR. MARKHAM would have done his Job, and there is a "Strong" Probability that MR. Loyd is Innocent

Statement of The Case

A Lake County Jury Found Petitioner guilty OF First degree murder under The Theory of Felony murder, assault with a Firearm, possession of a Firearm by a Felon, and possession of Ammunition by a Felon. The Jury also Found True a Special Circumstance allegation that The murder was committed during an Attempted Robbery, as well as a gun-use allegation. The Lake County Superior Court Found True The prior conviction and prior prison term allegations, and Sentenced Petitioner to a Term of Life in prison without The possibility of parole plus an additional Term of Twenty-Six years and Four months.

on December 5, 2017, The California Court of Appeal Affirmed The convictions and Sentence. People v. Loyd, NO. A149159, 2017 WL 6014413 (Cal. Ct. App. Dec. 5, 2017).

on January 12, 2018, Petitioner Submitted a petition For Review to The California Supreme Court Dkt. NO. 26-13; Resp't Ex 10. on March 14, 2018, The California Supreme Court denied The petition For Review. Dkt. NO. 26-13 at 121; Resp't Ex. 11.

on May 4, 2018, Petitioner Filed a habeas petition, Case NO. A154216, in The California Court of Appeal, which was denied on May 16, 2018, without prejudice To The petition First being Filed in The State Superior Court. Dkt. NO. 26-13; Resp't Ex. 12.

Statement of The Case

on July 9, 2018, Petitioner Filed a habeas Petition, Case NO. A154744, in The California Court of Appeal, which WAS denied on July 12, 2018. Dkt. NO. 26-13; Resp't Ex. 13.

on September 24, 2018, Petitioner Filed a petition For Review with The California Supreme Court Seeking Review OF The California Court of Appeal's July 12, 2018 denial OF his State habeas petition Dkt. NO. 26-13; Resp't Ex. 14.

on November 8, 2018, Petitioner Filed a petition in The United States District Court For The Eastern District OF California. Dkt. NO. 1. on November 29, 2018, The case WAS Transferred From The Eastern District To The United States District Court For The Northern District OF California. Dkt. NO. 3. The case WAS Reassigned To The undersigned Judge on December 21, 2018. Dkt. NO. 9. on January 31, 2019, The COURT Found THAT The petition Stated The Following cognizable claims For Federal habeas Relief: (1) The TRIAL COURT ERRED by Failing To CORRECTLY instruct The Jury on The causation Required For Felony murder and by Failing to instruct The Jury THAT IF The Felony-murder Rule did NOT apply, The murder charge WAS governed by The provocative act murder Rule; (2) The TRIAL COURT ERRED by Failing To instruct The Jury on Lesser Included Offenses; (3) The TRIAL COURT ERRED in Failing To Reread defense Counsel's closing ARGUMENT Regarding proximate cause as Requested by The Jury.

Statement of The case

on May 23, 2020, Petitioner notified The Court that his claims had been exhausted. Dkt. no. 23. on July 6, 2020 The Stay was Lifted, and Petitioner's case was Reopened. Dkt. no. 24.

on October 5, 2020, Respondents Filed an answer. Dkt. nos. 25-1.

on November 20, 2020, Petitioner Filed a Traverse. Dkt. no. 26.

on June 3, 2021 The United State District Court of The Northern District of California denied The petition.

on July 28, 2021 Petitioner Filed an application for a Certificate of Appealability and a petitioner Filed a Request to proceed in Forma pauperis. Both where Denied.

on Dec. 28, 2021 Petitioner Filed an Application for a Certificate of Appealability and a Request to proceed in forma pauperis in The United States Court of Appeals for The Ninth Circuit.

on October 26, 2022, The Ninth Circuit denied The Request for Certificate of Appealability.

Reasons for Granting the Petition

- 1) The State Supreme court, the United States District court, along with the Ninth circuit court of Appeals misapplication of the Prejudice standard of Strickland warrants this courts discretionary Jurisdiction.

The State Supreme court, the United States District court along with the Ninth circuit court of Appeals opinion misapplied the Strickland v. Washington, 466 U.S. 668-88 (1984), Test for Prejudice is so many ways. The lower court's flagrantly misstated the record. It stated, that the record shows that defense counsel did not concede petitioner's guilt of Felony murder. This state ment is a flagrant violation of the Rules and Standards in (Strickland) and that decision by the lower courts is an gross error of law and is in conflict with the Decisions of other Appellate courts.

HERE'S why:

First the Petitioner will start with defense counsel's Closing Argument, During closing Argument, defense counsel asked "the Jury (with power points) to find Petitioner guilty of committing the crime of Robbery, assault with a firearm, Felon in possession of a firearm, and Felon in possession of ammunition.

By admitting MR. Loyd was guilty of all crimes consequently by admitting the Robbery in a Felony murder Rule TRIAL, Then the element of Felony murder was met.

Here's why:

Felony murder Rule JURY INSTRUCTION:

The Jury Received instructions Relating TO Felony murder which Said:

The defendant is charged in Count one with murder under a Theory of Felony murder, to prove that the defendant is guilty of First degree murder under this Theory, "The People must prove that, one, the defendant committed or attempted to commit a Robbery," Two, The defendant intended to commit Robbery, and Three, while committing or attempting to commit Robbery, the defendant caused the death of another person.

TRIAL counsel's deficient Performance in his closing argument by asking The Jury to find MR. Loyd guilty of all crimes and consequently by admitting the Robbery in a Felony murder Rule TRIAL Prejudiced MR. Loyd in an unreliable and fundamentally unfair outcome in the Proceeding. STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S. Ct. 2050, 80 L. Ed. 2d 674 (1984);

McLoy v. Louisiana, —, U.S.—, 138 S. Ct. 1500, 200 L. Ed. 2d 821 (2018) The Sixth Amendment Guarantees a defendant the right that his counsel Refrain From admitting guilt, even when Counsel's experience-based view is that confessing guilt offers the defendant the best chance.

O'Neal v. McAninch, 513 U.S. 432, 437-38, 115 S. Ct. 992, 130 L. Ed. 2d 947 (1995) The inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error. It is rather, even so, whether the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand.

Satterwhite v. Texas, 406 U.S. 249, 256, 108 S. Ct. 1792, 100 L. Ed. 2d 284 (1988) If a Sixth Amendment violation pervades the entire proceeding, the violation is enough to overturn a conviction. *State v. Williams*, 133 Ariz. 220, 225, 650 P. 2d 1202, 1207 (1982) See also *Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967).

By Trial Counsel confessing Mr. Loyd's guilt of Robbery in his closing argument, He confessed that Mr. Loyd was guilty of Felony murder. In fact Trial Counsel told the Jury Mr. Loyd was guilty of all the charges he was on Trial for, this deficient performance has prejudiced Mr. Loyd and has resulted in an unreliable and fundamentally unfair outcome and has violated Mr. Loyd's Sixth Amendment right that

Guarantees effective assistance of Counsel, and the opinion's and decisions of The Lower Court's that decided this case is in conflict with the decisions of this court and other appellate court's.

The above cases and facts illustrate the fact that the Lower Court's in this case are out of step with this court and with other circuits in its consideration of the Strickland v. Washington, 466 U.S. 668, (1984) Prejudice prong. CERTIORARI should be granted to correct this error.

- 2) The State Supreme Court, The United States District Court along with The Ninth Circuit Court of Appeals decisions are in conflict with the decisions of other circuits and needs this court's Discretionary Jurisdiction on invalid defenses.

Defense counsel in this case built his defense around a defense that was invalid, called The "Claim of Right defense," the defense counsel also had Mr. Loyd testify in support of this invalid defense and then abandon that defense after he concluded the defense was in fact invalid.

The Lower Court's concluded that Trial Counsel's defense strategy, (mainly Trial Counsel going with an invalid defense and having Mr. Loyd Testify in Support of That defense and then abandon That defense) Fall within the Wide Range of Reasonable Professional Assistance.

Again the Lower Court's in it's decision has misapplied the Strickland v. Washington Test For Prejudice.

Theriault v. State, 8015 ME 137, 125 A.3d 1163 (2015) a Criminal defendant is prejudiced by constitutionally ineffective Representation when the Result of the proceeding is "Unreliable", under Strickland.

Hart v. Gomez, 174 F.3d 1067 (9th Cir. 1999) a Trial Lawyer who Fails adequately to investigate and introduce evidence That demonstrates his client's Factual Innocence Renders deficient Performance.

Bragg v. Galzou, 242 F.2d 1083 (9th Cir. 2001) Defense Counsel's duties include a duty to investigate a Petitioner's most important defense; See also Stouffer v. Reynolds, 214 F.3d 1231 (10th Cir. 2000) also Dugas v. Coplan, 428 F.3d 317, 332 (1st Cir. 2005) Counsel's Failure to investigate possible defense was ineffective assistance. Mr. Loyd was prejudiced by Trial Counsel's Failure to assert a Legal defense, in this case a Second Shooter defense where the evidence was overwhelming of a Second Shooter, mainly and most importantly the fact that the Victim was three feet higher than Mr. Loyd with a (13) degree downward bullet wound.

the decision of the Lower court's on this issue is ERRONEOUS and the above case illustrate the fact that the Lower court's in this case are in conflict with this court and other circuits in its consideration of the STRICKLAND v. WASHINGTON, 466 U.S. 668, 687-88 (1984) Prejudice Prong. CERTIORARI should be granted to correct this error.

3) The Decision of the Lower court's are in conflict with the decisions of other circuits regarding the erroneous Felony murder Rule instruction regarding Causation warrants this court's Discretionary Jurisdiction.

MR. Loyd contends that his constitutional right to a fair trial where denied when the trial court erroneously re-moved the causation element of murder from the jury's consideration, the jury instructions were incorrect and improper because the jury was not told (1) they could not convict MR. Loyd of Felony murder if Ryden's conduct caused Quiett's death; and (2) if the Felony-murder Rule did not apply, the murder charge was governed by the Provocative Act murder Rule.

Defense counsel went with a causation defense, AFTER he abandoned the claim of Right defense, ARGuing THAT Ryden's conduct by hitting the gun caused Quiett's death, BUT THE TRIAL COURT REMOVED THE CAUSATION ELEMENT OF MURDER FROM THE JURY'S CONSIDERATION.

THE COURT HAS A SUA SPONTE DUTY TO INSTRUCT ON THE GENERAL PRINCIPLES OF LAW, AND THAT SUA SPONTE DUTY EXTENDS TO THE DEFENSES STATE V. KRONE, 182 ARIZ. 319, 897 P.2d 621 (1995); IT IS FUNDAMENTAL ERROR TO OMIT AN INSTRUCTION IN A CASE WHEN IT IS SUPPORTED BY THE EVIDENCE.

STATE V. MELLENDEZ, 121 ARIZ. 1, 588 P.2d 894 (1978) A DEFENDANT IS ENTITLED TO A JURY INSTRUCTION ON ANY THEORY REASONABLY SUPPORTED BY THE EVIDENCE.

STATE V. EVANS, 109 ARIZ. 491, 512 P.2d 1225 (1973) IT IS THE DUTY OF THE TRIAL COURT TO INSTRUCT THE JURY UPON THE LAW RELATING TO THE FACTS OF THE CASE AND UPON MATTERS VITAL TO A PROPER CONSIDERATION OF EVIDENCE. SEE ALSO UNITED STATES V. JENKINS, 633 F.3d 788, 807 (9TH CIR. 2011) AN ERROR IN AN INSTRUCTION AFFECTS SUBSTANTIAL RIGHTS WHEN THERE IS A REASONABLE PROBABILITY THE JURY'S VERDICT WOULD HAVE BEEN DIFFERENT HAD THE JURY BEEN PROPERLY INSTRUCTED.

THE DECISION OF THE LOWER COURT'S ON THIS ISSUE IS ERRONEOUS AND THE ABOVE CASES ILLUSTRATE THE FACT THAT THE LOWER COURT'S IN THIS CASE ARE OUT OF STEP WITH THIS COURT AND OTHER CIRCUITS. CERTIORARI SHOULD BE GRANTED TO CORRECT THE ERROR.

4) The Decision OF The Lower Court's ARE in CONFLICT With The Decisions OF other Circuits Regarding The Constitutional ERROR on The ISSUE OF The TRIAL COURT Refusal TO Re-Read Defenses PROXIMATE CAUSE ARGUMENT WARRANTS THIS COURT'S DISCRETIONARY Jurisdiction.

MR. Loyd ASSERTS THAT The TRIAL COURT'S Refusal TO have defense counsel's PROXIMATE CAUSE ARGUMENT Re-Read AT The JURY'S Request Resulted in The deprivation OF his constitutional Due process Rights.

The Lower COURT'S decision on THIS ISSUE is an ERROR OF Law STATING MR. Loyd IS NOT entitled TO Relief FOR This claim Relating TO The TRIAL COURT'S inadequate Response TO The JURY question.

The Record Shows THAT The JURY WAS confused about The causation element OF murder, and Requested Clarification on The defense counsel's ARGUMENT Regarding PROXIMATE CAUSE. In *Bollenbach V. United States*, 326 U.S. 607, 612-13 (1946) The Judge has a Duty TO Respond TO The JURY'S Request FOR clarification with Sufficient Specificity TO eliminate The JURY'S Confusion,

In This case The COURT decided TO Respond TO The JURY'S Request by ReReading The Felony murder Rule JURY instruction.

When a Jury makes explicit its Difficulties a TRIAL Judge should Clear Them Away with concrete ACCURACY. The Jury "cannot" be Presumed to Understand the complexity of The Law, MORRIS V. WOODFORD, 273 F.3d 828, 833 (9th Cir 2001) See also BOYDE V. CALIFORNIA, 494 U.S. 370, 380 (1990).

For the Reason Stated above the decision of The Lower court's on this issue are ERRONEOUS and the Lower court's are out of Step with this court's and other CIRCUITS. CERTIORARI Should be granted TO CORRECT THIS ERROR.

5) The Decision of the Lower court's are in conflict with Decisions of this court and other CIRCUITS and WARRANTS this court's Attention.

MR. Loyd made an unequivocal Request for an Attorney to Detectives DREWREY and HERDT from the Lake county Sheriff's Department. After the Detectives advised MR. Loyd of his MIRANDA Rights MR. Loyd invoked his Right to Counsel by stating, "Do you think I should have a Lawyer?" and then, "Can I just call one so I can ask him some questions?" The Detectives ignored MR. Loyd's Request and took advantage of his devastated state and continued to interrogate him.

The TRIAL COURT denied The MIRANDA motion OF MR. Loyd's Custodial Statement THAT WAS COERCED after he invoked his MIRANDA Rights, stating, a Reasonable officer would not conclude MR. Loyd WAS ASKING For a Lawyer.

The State Appellate court, The State Supreme court along with The United States District court agreed with The TRIAL COURT's Ruling.

MR. Loyd WAS deprived OF his Fifth and Fourteenth Amendment Rights TO Freedom FROM SELF-incrimination by The TRIAL COURT's ERRONEOUS admission OF his Custodial Statement, and this decision by The Lower court's are in CONFLICT with The decisions OF other circuits.

MR. Loyd's Reference TO an Attorney WAS clearly an unambiguous Request For counsel, "CAN I JUST call one So I can ASK him some question's."

Davis V. United States, 512 U.S. 452, 461, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994) See also MIRANDA V. ARIZONA, 384 U.S. 436, 448-50, 455, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) The Requirements OF MIRANDA are "Clearly Established" The ERRONEOUS admission OF a COERCED confession is Subject TO Harmless error Analysis. ARIZONA V. Fulminante, 499 U.S. 279, 306-12 (1991), in other words, Habeas Relief is Appropriate if The COERCED confession had a Substantial and injurious effect or influence in determining The Jury's Verdict (As it did in This case)

The Lower Court's are confused with the True meaning of unambiguous and unequivocal Request For an Attorney.

MR. Loyd's wanting to call and ask a Lawyer some Question's was an unequivocal and unambiguous Request For an Attorney, and the erroneous admission of his coerced confession was substantial and an injurious influence to his Verdict.

For the Reasons Stated above a CERTIORARI should be Granted to CORRECT this ERROR.

- 6) The Decision of the Lower Court's on the Lesser included offenses Jury instructions warrants this Court's Attention.

The Lower Court's opinion on this issue, was that MR. Loyd did not have a constitutional Right to have Lesser included offense Jury instruction because his case was not a Capital case, so there was no constitutional error for the Trial Court's Failure to instruct on a Lesser-included offense. The Lower Court's go on to state, that there's no Federal habeas Relief in this claim because there's no Supreme Court cases clearly establishing that the Failure of a State Trial Court to instruct on Lesser-included offenses in a non-capital case violates the Constitution.

MR. Loyd WAS Sentenced To Life in PRISON without the possibility of PAROLE, MR. Loyd contends THAT his constitutional RIGHTS were denied by The TRIAL COURT'S Failure TO NOT INSTRUCT on Lesser included OFFENSES, even Though TRIAL Counsel objected to giving a Second degree murder instruction, Acknowledging his objecting is a TACTICAL Decision TO FORCE The Jury into - an - all OR nothing decision. State V. WALL, 212 ARIZ. 1, 126 P.3d 148 (2006) Despite The defense's all-OR - nothing defense, The Jury Should have been given instructions on Lesser - included OFFENSES.

United States V. BAKER, 985 F.2d 1248 (4th Cir. 1993) a Defendant is entitled TO an instruction on Lesser included OFFENSE Regardless OF Whether The Lesser OFFENSE is charged. See also Keeble V. United States, 412 U.S. 205, 93 S. CT. 1993, 36 L. Ed. 2d 844 (1973) a defendant is entitled TO an instruction on Lesser included offense IF evidence would permit Jury Rationally TO Find him guilty OF The Lesser OFFENSE and acquit him OF The greater OFFENSE.

FOR The Reasons Stated above a WRIT OF CERTIORARI Should be GRANTED TO CORRECT This ERROR

7) The Lower Court's misapplication of Cumulative ERRORS ANALYSIS WARRANTS THIS COURT'S ATTENTION

MR. Loyd ARGUES THAT TRIAL COUNSEL'S (IAC) ERRORS outlined above has Resulted in Cumulative ERROR. The Lower COURT'S ARE OUT OF STEP WITH THIS COURT'S and other CIRCUITS with The misapplication OF Cumulative ERROR. ALVAREZ V. Boyd, 225 F.3d 820 824 (7th CIR. 2000) The Cumulative EFFECT OF TRIAL ERRORS Substantially Prejudiced The defendant and denied him a Fair TRIAL; Cole V. Trammell, 755 F.3d 1142, 1177 (10th CIR. 2014) In The Federal habeas context, a Cumulative ERROR analysis Aggregates all constitutional ERRORS Found to be harmless and analyzes whether Their Cumulative EFFECT on The outcome OF The TRIAL is Such THAT Collectively they Can no Longer be determined to be harmless.

MAK V. Blodgett, 970 F.2d 614, 622 (9th CIR. 1992), multiple ERRORS, even IF harmless individually, may entitle a petitioner TO Relief IF their Cumulative EFFECT Prejudiced a Defendant, See also Taylor V. Kentucky, 436 U.S. 478, 488, 98 S.Ct. 1930, 56 L.Ed.2d 468 (1978)

Cumulative ERRORS Violates Due Process Guarantee OF Fundamental Fairness and necessitate a new TRIAL.

See also *Parle v. Runnels*, 505 F.3d 922 (9th Cir 2007)
The cumulative effect of multiple TRIAL - Type
Constitutional ERRORS Render a Defendant's TRIAL
Constitutionally INFIRM.

MR. Loyd's TRIAL counsel's Deficient Performance
with his multiple TRIAL ERRORS has prejudiced
MR. Loyd and has resulted in an unreliable and
Fundamentally UNFAIR outcome in the proceedings.

The above case illustrate the fact that the Lower
Court's in this case are out of step with this Court's
and with other Circuits in their cumulative error
analysis and their flagrant misuse of the law has
violated MR. Loyd's Constitutional Rights to a Fair
Trial, therefore a writ of CERTIORARI should be
Granted to CORRECT this ERROR.

Conclusion

For these reasons, MR. Loyd PRAYS that a
WRIT OF CERTIORARI be issued to Review the
Judgment and opinions of the Lower Court's.

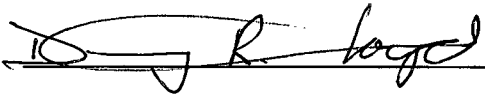
Date: Jan 15TH, 2023

Respectfully Submitted,
D. R. Loyd
Daniel Ray Loyd
pro se Petitioner

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Jan. 15th, 2023