No. 22-6735

ORIGINAL

IN THE
UNITED STATE SUPREME COURT

IN RE ECHO WESTLEY DIXON,

PETITIONER.

V.

THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT(S).

ON PETITION FOR A WRIT OF CERTIORARI TO NEW YORK STATE SUPREME COURT APPELLATE DIVISION FIRST JUDICIAL DEPARTMENT

PETITION FOR WRIT OF CERTIORARI

Echo Westley Dixon
#00A6365
Fishkill Corr. Fac.
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P.O. Box 1245
Beacon, NY 12508

QUESTIONS PRESENTED

1. Whether the People of the State of New York, while investigating child abuse and neglect and crime, interfered with Petitioner's first and fourteenth amendment free exercise rights when they caused his Tripartite Christian Name to be misrepresented, suppressed and concealed during family and criminal court proceedings, and his convictions and appeals to be adjudicated under misnomers?

2. Whether, on the record at bar, Petitioner was deprived of due process of law in violation of Brady v. Maryland, 373 U.S. 83 (1963), when the People of the State of new York suppressed one hundred and twenty-five dollars, the misnomer Edie Dixon, and his Tripartite Christian Name?

3. Whether the fabrication, misrepresentation, suppression, and concealment of evidence knowingly and intentionally in affidavits to secure warrants of arrest, during grand jury and trail proceedings, appeals, and federal Habeas review constitutes fraud on the courts when prosecutors and defense attorneys are involved?

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JURISDICTION

The date on which the highest court decided my case was the 30th day of November, 2022.

This petition is timely and that it is being filed within 90 days of that date.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment of the United States Constitution provides:

Congress Shall Make No Law Respecting An Establishment Of Religion, Or Prohibiting The Free Exercise Thereof; Or Abridging The Freedom Of Speech, Or Of The Press; Or The Right Of The People Peaceably To Assemble, And To Petition The Government For A Redress Of Grievances.

The Fourth Amendment of the United States constitution provides:

The Right Of The People To Be Secure In Their Persons, Houses, Papers, And Effects, Against Unreasonable Searches And *Seizures*, Shall Not Be Violated, And No Warrants Shall Issue, But Upon Probable Cause, Supported By Oath Or Affirmation, And *Particularly Describing* The Place To Be Searched, And The *Person* Or Things To Be *Seized*.

The Fifth Amendment Of The United States Constitution Provides:

No Person Shall Be Held To Answer For A Capital, Or Otherwise Infamous Crime, Unless On A Presentment Or Indictment Of A Grand Jury, Except In Cases Arising In The Land Or Naval Forces, Or In The Militia, When In Actual Service In Time Of War Or Public Danger; Nor Shall Any Person Be Subject For The Same Offense To Be Twice Put In Jeopardy Of Life Or Limb; Not Shall Be Compelled In Any Criminal Case To Be A Witness Against Himself, Nor Deprived Of Life, Liberty, Or Property, Without Due Process Of Law; Nor Shall Private Property Be Taken For Public Use, Without Just Compensation.

The Sixth Amendment Of The United States Constitution Provides:

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 Assistance Of Counsel For His Defense.

The Eighth Amendment Of The United States Constitution Provides:

Excessive Bail Shall Not Be Required, Nor Excessive Fines Imposed, Nor Cruel And Unusual Punishments Inflicted.

The Ninth Amendment Of The United States Constitution Provides:

The Enumeration In The Constitution, Of Certain Rights, Shall Not Be Construed To Deny Or Disparage Others Retained By The People.

The Fourteenth Amendment Of The United Sates Constitution Provides In Pertinent Part:

No State Shall*** 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

STATEMENT OF THE CASE

This is a New York State Criminal Procedure Law §§440.10, 440.30(1-a), 450.10 and 460.15 proceeding for vacatur of judgments, DNA testing, and appeal of the denial to grant such relief premised upon fraud on the courts and procurement of judgments in violation of the United States constitution brought by Petitioner Echo Westley Dixon (hereinafter "Petitioner" or "Mr. Dixon").

In his motion and supporting affidavit, Mr. Dixon alleged that since his infancy and throughout his adulthood the People of the State of New York (hereinafter "respondent" or the "People"), via police, prosecutors and attorneys, fabricated, misrepresented, suppressed, and concealed his Tripartite Christian

Name by omitting his middle name therefrom, caused him to, during transition from infancy to adulthood, acquiesce to the omission, wrongfully arrested, imprisoned, indicted, prosecuted, and convicted him under misnomers as an infant and adult, knowingly and with reckless disregard for the truth supplied judges with the misnomers in their affidavits to secure warrants of arrest, along with falsified evidence of one hundred and twenty-five dollars (hereinafter "$125"), procured convictions through the fabrication, misrepresentation, suppression, omission and concealment of evidence, Destroyed his rights to fair hearings and trial before impartial judges and jurors, and prepared and disseminated a "violent sexual predator" rap sheet against the misnomers to publicly defame him and cause him undue hardship while incarcerated. The constitutional violations were perpetrated pursuant to a New York State rule, regulation, statute, policy, custom, or usage. As a result of these violations, Petitioner was wrongfully arrested, indicted, prosecuted, found guilty by jurors and sentenced by judges as Echo Dixon, Echo Dickson and Edio Dixon, and upon "one hundred and twenty some odd dollars in cash", even though his Tripartite Christian Name is Echo Westley Dixon and the monetary amount complained of in Dixon v. Barretto, et al. 03-CV-8103 (S.D.N.Y. 2002), was $125.

On November 21, 2000, Mr. Dixon entered the New York State enological system as Echo Dixon, having never employed an alias. In December 2000, Mr. Dixon was custodially transferred from the New York State Penological system to Riker's Island. Due to the gelid conditions at the latter, Petitioner allegedly set a still fire in the cell he occupied; to wit, he was arrested and arraigned as

Edio Dixon and coerced by his attorney and the prosecutor to enter a plea of guilty to a misdemeanor; which he did.

In February and March 2001, Mr. Dixon set three separate still fires in three different cells he occupied. On all three occasions, Petitioner was arrested and indicted as Edio Dixon.[1]

In the midst of the aforementioned, Mr. Dixon proceeded to a trial before a judge and jury in the $125 robbery case. During the trial, the robbery victim unequivocally testified that Petitioner purloined $125 from him. However, the jury was unable to agree on a verdict and the court declared a mistrial.

In 2002, Mr. Dixon, after viewing statements of the robbery victim and the robber containing matching $125 planted evidence, the former purporting Mr. Dixon purloined $125 from him, and the latter claiming Mr. Dixon needed $125 prior to the crime, Petitioner filed a 42 U.S.C. §1983 action complaining the matching $125 statements constituted circumstantial evidence of a meeting of minds sufficient enough to establish a conspiracy among them, police, and prosecutors to frame Petitioner for the robbery.

In March 2003, Petitioner proceeded to a retrial before a judge and jury in the $125 robbery case. During the retrial, and while his 42 U.S.C. §1983 action was pending that complained of the $125 matching statements, the robbery victim testified that he was robbed of "one hundred and twenty some odd dollars in case", without objection by Mr. Dixon's counsel, correction by the prosecutor or court,

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[1] On March 27 or 29, 2001, at 11:59 a.m., the People prepared and disseminated a "violent sexual Predator" rap sheet against the misnomers Echo Dixon and Edio Dixon.

or intervention by the federal district court.[2] The state court had not only interceded excessively during direct examination of the robbery victim, but it deprived Petitioner of counsel for his defense, compulsory process, due process of law, equal protection of the laws, a fair trial before a partial judge and jury, and forced him to attend trial groomed in prison garb. The jury returned a guilty verdict in under two hours.

In August 2003, Mr. Dixon filed a post-conviction motion claiming prosecutorial misconduct and seeking DNA testing of evidence to prove his innocence. Contrary to New York State Criminal Procedure Law §§ 440.10 (1)(a)-(h) and 440.10.30 (1-a) (2) (ii), the court denied the motion.

In 2005, the New York State Supreme Court Appellate Division, First, Judicial Department, affirmed Mr. Dixon's conviction, and the New York State Court of Appeals denied his certificate of leave to appeal. However, the courts aided and abetted in the misrepresentation, suppression and concealment of the misnomer Edio Dixon, the $125, and Petitioner's Tripartite Christian Name.

In 2006, Mr. Dixon, filed two federal petition for writ of habeas corpus. During the consideration of such petition, the misrepresentation, suppression and concealment of the $125 and the misnomer Edio Dixon was ratified and adopted by federal judges.

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[2] In January 2003, Petitioner proceeded to a trial before a judge and jury as Edio Dixon. The jury returned a guilty verdict against him as Edio Dixon and the trial court sentenced him as Edio Dixon.

REASONS FOR GRANTING THE WRIT

The reasoning of the New York State Supreme Court Appellate Division, First Judicial Department, conflicts with its own decisions, other decisions of the State Courts, decision of the United States Court of Appeals and with applicable decision of this Court.

Mr. Dixon's guilty pleas, convictions, and sentencing as Echo Dixon and Edio Dixon, and being convicted upon "upon hundred and twenty some odd dollars in cash," retrial perjuries testimony, resulted from ineffective assistance of counsel and the failure of the People to provide to his attorneys, upon request, and becoming aware of fabricated, fraudulent, misrepresented, suppressed, and concealed evidence, and false testimony, significant, material, exculpatory evidence of Petitioner's Tripartite Christian Name, the misnomers Echo Dixon and Edio Dixon, and the matching $125 statements of the robber and robbery victim. Because of such practices, policies, customs, usages, statues, rules, regulations, and constitutional violations, Mr. Dixon was deprived of rights, privileges, and immunities secured to him by the constitution and laws of the United States.

THE PEOPLE, WHILE INVESTIGATING CHILD ABUSE AND NEGLECT AND CRIME, INTERFERED WITH PETITIONER'S FIRST AND FOURTEENTH AMENDMENT FREE EXERCISE RIGHTS WHEN THEY CAUSED HIS TRIPARTITE CHRISTIAN NAME TO BE MISREPRESENTED, SUPPRESSED AND CONCEALED DURING FAMILY AND CRIMINAL COURT PROCEEDINGS, AND HIS CONVICTIONS, APPEAL AND FEDERAL PITONS FOR WRITS OF HABEAS CORPUS TO BE ADJUDICATED UNDER AND AGAINST HIM AS MISNOMERS

The Free Exercise Clause of the First Amendment, which has been applied to the states through the fourteenth Amendment, see Cantwell v. Connecticut, 310 U.S. 296, 303 (1940), provides that "congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ***" The Respondent has not, nor cannot, argue that possessing a Tripartite Christian Name is not "religion" within the meaning of the First Amendment. Although misrepresenting, suppressing, or concealing someone's Tripartite Christian Name is trivial, "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707, 714 (1981). Given the historical association between Tripartite Christian Names reflecting Christians' belief in the Holy Trinity, Mr. Dixon's assertion that his first, second and third name is representational of "The Father, the Son and the Holy Spirit" as an integral part of his and his family's religion "cannot be deemed bizarre or incredible". Frazee v. Illinois Dept. of Employment Security, 489 U.S. 829, 834, n.2 (1999). Neither Respondent nor the courts below, moreover, have questioned the sincerity of Petitioner's professed desire to remain secure in his Tripartite Christian Name from taking and unreasonable seizure, without just compensation, due process of law, and equal protection of the laws.

A review by this Court will confirm that the laws in question were enacted or acquiesced in by officials who did not understand, failed to perceive, or chose to ignore, the fact that their official actions violated the Nation's essential

commitment to religious freedom. The challenged laws have an impermissible object; and in all events the principle of general applicability was violated because the secular ends that can be asserted in defense of the laws were pursued with respect to identification motivated by religious beliefs. The principle that government may not enact laws that suppress religious beliefs or practices is so well understood that few violations are recorded in the Court's opinions. McDaniel v. Paty, 435 U.S. 618 (1978); Fowler v. Rhode Island, 345 U.S. 67 (1953).

The proposition that the several states have no greater power to restrain the individual freedoms protected by the First Amendment than Congress is firmly embedded in constitutional jurisprudence. The First Amendment was adopted to curtail Congress' power to interfere with Mr. Dixon's freedom to believe, to worship, and to express himself in accordance with the dictates of his own conscience.

This Court must concede that under the Religion Clauses religious beliefs are absolutely free from the states' control. The Court's decisions have rejected the idea that religiously grounded conduct is always outside the protection of the Free Exercise Clause. To agree that religiously grounded conduct must be subject to broad police power of the state is to deny that there are areas of conduct protected by the Free Exercise Clause and thus beyond the power of the state to control, even under regulations of general applicability, e.g., Sherbert v. Verner, 374 398, 402-403 (1963); Murdock v. Pennsylvania, 319 U.S. 105, 108 (1943); Cantwell, 310 U.S. at 303, 304. This case, therefore, becomes easier because

Petitioner has never viewed his Tripartite Christian Name in its unadulterated form in any document since infancy.

In Sch. Dist. of Abington Tp., Pa. v. Schempp, 374 U.S. 203 (1963), this Court found that "the free exercise clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, [is] free of any compulsion from the state. This the free exercise clause guarantees." Id. at 222. It further found that if an enactment either advances or inhibits religion "then the enactment exceeds the scope of legislative power as circumscribed by the Constitution." Id. (citing Everson v. Bd. of Ed., 330 U.S. 1, 15 (1947)). As the court observed in Obergefell v. Hodges, 13 S.Ct. 2584 (2015), "[t]he first amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths." Id. at 2607.

The Respondent in this case has forcibly taken Mr. Dixon's property of his Tripartite Christian Name for public use, without due process of the law, just compensation, and equal protection of the laws, misrepresented to the courts, the public and himself that he is Echo Dixon and Edio Dixon, changed the latter into the former during his direct appeal to the New York State Supreme Court Appellate Division, First Judicial Department, as of right, during his certificate of leave to appeal to the New York State Court of Appeals, while the commitment order reflected Edio Dixon, and, due to infantile and adulthood transactions of these occurrences, resulting in the infliction of a mental disease or defect upon

Petitioner's psychological well-being, the People forced Mr. Dixon to relinquish his Tripartite Christian Name. The preparation and dissemination of the "violent sexual predator" rap sheet against Mr. Dixon as Echo Dixon and Edio Dixon implicates the "stigma plus" required to null and void any judgment associating Petitioner's Tripartite Christian Name with the misnomers.

The protections of the Free Exercise Clause are applicable here because New York State action discriminates against Mr. Dixon and regulates and prohibits identifying him by his Tripartite Christian Name, which such identification constitutes conduct undertaken for religious Reasons. See, e.g. Braunfeld v. Brown, 366 U.S. 599, 607 (1961)(plurality opinion); Fowler, 345 U.S. 67, 69-70 (1953).

The Free Exercise Clause commits government itself to religious tolerance, and upon even the slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the constitution and the rights it secures. New York State Civil Service Law §62; 5 U.S.C. § 3331. Those in office must be resolute in resisting importunate demands and must ensure that the sole reasons for imposing the burdens of law and regulation are secular. Judges, Legislators and Executive officials may not devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices. See Church of Lukumi Bablu Aye, Inc. v. Hialeah, 508 U.S. 520, 547(1993).

The liberty to be identified by his Tripartite Christian Name is Mr. Dixon's personal choice central to his individual dignity and autonomy, including his

intimate choice that defines his personal identity and Christian heritage and beliefs. See, e.g., Eisenstadt v. Baird, 405 U.S. 438, 453 (1972); Griswald v. Connecticut, 381 U.S. 479, 484-486 (1965).

In light of Petitioner having not viewed his Tripartite Christian Name since infancy, and having converted to Islam over 34 years ago at the age 17, as well as knowingly, or with reckless disregard for the truth, supplying such false identification evidence in affidavits to obtain warrants of arrest, Franks v. Delaware, 438 U.S. 154, 171-172 (1978), the First, Fourth and Fourteenth Amendments are implicated.

Accordingly the decision of the court below conflicts with relevant decisions of this Court. Therefore, the decision should be reversed.

> ON THE RECORD AT BAR, MR. DIXON WAS DEPRIVED OF DUE PROCESS OF LAW IN VIOLATION OF BRADY V. MARYLAND, 373 U.S. 83 (1963). WHEN THE PEOPLE OF THE STATE OF NEW YORK SUPPRESSED EVIDENCE OF ONE HUNDRED AND TWENTY-FIVE DOLLARS, THE MISNOMER EDIO DIXON AND HIS TRIPARTITE CHRISTINA NAME

As long ago a Mooney v. Holohan, 294 U.S. 103, 112 (1935), the Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice" Id. at 112. This was reaffirmed in Pyle v. Kansas, 317 U.S. 213 (1942). In Napue v. Illinios, 360 U.S. 264 (1959), it said, "[t]he same result obtains when the state, although not soliciting false evidence, allows it to go uncorrected when it appears" Id. at 269. Thereafter Brady v. Maryland, 373 U.S. 83 (1963), held that the suppression of material evidence justifies a new trial" irrespective of the good

faith or bad faith of the prosecution" Id. at 87; see American Bar Association, Project on Standards for Criminal Justice, Prosecution Function and the Defense Function §3.11(a).

Here, the $125's transmogrification into "one hundred and twenty some odd dollars in cash", along with Edio Dixon, went uncorrected when they appeared, although the Respondent did not solicit such false testimony. There was a combination of a false representation of Petitioner's Tripartite Christian Name, the misnomer Echo Dixon and Edio Dixon, coupled with a suppression of material evidence required by Brady.

Furthermore, there was a statutory and constitutional duty to speak on the part of the People. In the face of this duty to reveal the aforementioned information, there was not only a deliberate non-disclosure of these facts the Legislature and the Court deemed material, but also an intentional disclosure of false, material facts which served to further deceive Mr. Dixon.

Brady proscribes "the suppression by the prosecution of evidence favorable to [Petitioner] *** where the evidence is material either to guilt or to punishment". Id. at 87. "The Brady rule is based on the requirement of due process," and "[i]ts purpose is not to displace the adversary system as the primary means by which truth is uncovered," but to ensure that Mr. Dixon receives a fair trial. U.S. v. Bagley, 473 U.S. 667, 675 (1985). New York, in its role as a truth-seeker in criminal trials, has a "broad obligation to disclose exculpatory evidence", but a mere breach of this duty does not offend Petitioner's due process rights unless all the "components of a true Brady violation" are established. Stickler v. Greene,

527 U.S. 263, 281 (1999); see also Bagley, 473 U.S. at 675 ("[U]nless the omission deprived the defendant of a fair trial, there was no constitutional violation *** and absent a constitutional violation, there was no breach of the prosecutor's duty to disclose"). To make a successful Brady claim, Mr. Dixon "must show that (1) the evidence is favorable to [him] because it is either exculpatory or impeaching in nature; (2) the evidence was suppressed by the prosecution; and (3) prejudice arose because the suppressed evidence was material." People v. Fuentes, 12 N.Y.3d 259, 263 (N.Y.Ct. of App. 2009)(citing Stickler, 527 U.S. at 281-282; see People v. Hayes, 17 N.Y.3d 46, 50 (N.Y.Ct. of App. 2011); People v. LaVelle, 3 N.Y.3d 88, 109-110 (N.Y.Ct.of App. 2004).

In this case, Petitioner contends that all three essential Brady components have been satisfied. First, the evidence of his Tripartite Christian Name, the misnomer Edio Dixon and the $125 were favorable to him because they are exculpatory and impeaching in nature, as well as material to guilt and to punishment. Second, that evidence was suppressed by the prosecution. And, third, prejudice ensued because the suppressed evidence was material.

"Evidence is favorable to [Mr. Dixon] if it either tends to show that [he] is not guilty or if it impeaches a government witness." U.S. v. Gil, 297 F.3d 93, 101 (2d Cir. 2002)(citing Strickler, 527 U.S. at 281-282; see also Fuentes, 12 N.Y.3d at 263). Impeachment evidence "falls within the Brady rule" because, when used effectively, it "may make the difference between conviction and acquittal." Bagley, 473 U.S. at 676; see People v. Baxley, 84 N.Y.2d 208, 213 (N.Y.Ct. of

App. 1994). However, the "favorable tendency" of impeachment evidence should be assessed without regard to the "weight of the evidence" as a whole.Kyles v. Whitley, 514 U.S. 419, 451 (1995); see Walker v. Kelly, 589 F.3d 127, 140 (4t Cir. 2009); see also Lambert v. Neard, 537 Fed. Appex. 78, 86 (3rd Cir. 2013) (citing Kyles and stating that the Court "has made clear that impeachment evidence is 'favorable to the defense' even if the jury might not afford its significant weight'). In other words, impeachment evidence may be considered favorable to Mr. Dixon even if is not material to his case.

Here, the allegation against the Respondent is favorable to Petitioner as impeachment evidence, Strickler, 527 U.S. at 281-282 Kyles, 514 U.S. at 450-5451. Mr. Dixon argues that during the investigation stage of his case, at pre-arrest probable cause hearings and pre-and post-trial proceedings, Respondent knowingly and intentionally misidentified Mr. Dixon, coerced victims of crime, eyewitnesses, and himself to the misidentification, and further coerced them to misrepresent, suppress and conceal his Tripartite Christian Name, the §125 and the misnomer Edio Dixon, or in the alternative aided and abetted in the same; although Mr. Dixon explicitly alleged that the aforementioned evidence is and was false, his motion and other papers described coercive tactics employed by Respondent to extract positive misidentification by victims and eyewitnesses of crime, matching false §125 statements from the robber and the robbery victim, and false confessions to crime from him as Echo Dixon and Edio Dixon. This evidence clearly possesses and impeachment character that favor Mr. Dixon's theories of constitutional tort, and this Court should arrive at the same conclusion

without determining what, if any, "effect" the weight of the evidence may have had on the verdict as a whole. Walker, 589 F.3d at 140; see Kyles 514 U.S. at 451.

The Court should now consider under Brady's second component, whether the People "suppressed" the favorable evidence, "either willfully or inadvertently." See Strickler, 527 U.S. at 282.

Exculpatory or impeaching evidence is subject to Brady disclosure only if it is within the prosecution's custody, possession, or control. See People v. Santorelli, 95 N.Y.2d 412, 421 (N.Y. Ct. of App. 2000); see People Wright, 86 N.Y.2d 591, 596 (N.Y. ct. of App. 1995); see also Lavallee v. Caplan, 37 4 F.3d 41, 43 (1st Cir. 2004). What constitutes "possession or control" for Brady purposes "has not been interpreted narrowly." Santorelli, 95 N.Y.2d at 421, and it is beyond cavil that the government's duty to disclose under Brady reaches beyond evidence in the prosecution. Id.; U.S. v. Risha, 445 f.3d 298. 303 (3rd Cir. 2006); see Kyles, 514 U.S. at 437-438. Specifically, the duty "encompasses evidence 'known only to police investigators and not to the prosecutor'". Strickler, 527 U.S. at 280-281 (quoting Kyles, 514 U.S. at 438). As explained by the court in Kyles, in order to comply with Brady, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." Kyles, 514 U.S. at 437. Here, the Respondent had and still has custody, possession, and control of Petitioner's original birth certificate depicting his Tripartite Christian Name, actual and constructive knowledge of notices of intent to sue the city of New York Mr. Dixon filed, 42 U.S.C. §1983 actions he filed as Echo Westley Dixon and complained

about the matching $125 statements, Dixon v. Barretto, et al., 03-CIV-8103 (S.D.N.Y. 2002), and, therefore, exculpatory and impeaching evidence of his Tripartite Christian Name and $125.

Applying Kyles, the New York State Court of Appeals "has charged the People with knowledge of exculpatory information in the possession of the local police, notwithstanding the trial prosecutor's own lack of knowledge. Santorelli, 95 N.Y.2d at 421; see Wright, 86 N.Y.2d at 598. Similarly, the court observed, as have many federal courts, that the People may be in "constructive" possession of information known to government officials who "engaged in a joint or cooperative investigation" of Mr. Dixon's cases. Santorelli, 95 N.Y.2d at 421; see, e.g., U.S. v. Paternina-Vergara, 749 F.2d 993, 997-998 (2d Cir. 1984). The rationale for the imputation of knowledge is that, when police and other government agents investigator or provide information with the goal of prosecuting a defendant, they act as an "arm of the prosecution," and the knowledge they gather may reasonably be imputed to the prosecutor under Brady. See U.S. v. Stewart, 433 F.3d 273, 298 (2d Cir. 2006).

Particularly relevant to this case, the New York State Supreme Court, First and Third Judicial Department, held that "[a] police officer's secret knowledge of his own prior illegal conduct in [an] unrelated case[] will not be imputed to the prosecution for Brady purposes where the People had no knowledge of the corrupt officer's 'bad acts' until after *** trial." People v. Vasquez, 214 A.D.2d 93, 95 (N.Y.A.D. 3d Dept. 1996); see, e.g., People v. Kinney, 107 A.D.3d 563, 564 (N.Y.A.D. 1st Dept. 2013); People v. Longtin, 245 A.D.2d 807, 810 (N.Y.A.D. 3d

Dept. 1997), aff'd on other grounds, 92 N.Y.2d 640 (N.Y.Ct. of App. 1998), cert. denied, 526 U.S. 1114 (1999).

The difference in Vasquez and Johnson distinguishable here, is that the People received actual or constructive knowledge of officers' misconduct prior to commencement of trial in both of Mr. Dixon's cases and knew that he had filed a notice of intent to sue the city of New York, and that he identified himself by his Tripartite Christian Name as well as called into question the §125. Dixon v. Laboriel, et al., 01 Civ. 3632 (S.N.Y.D. 2001); Dixon v. Barretto, et al., 03 Civ. 8103 (S.D.N.Y. 2002).

A prosecutor's duty to learn of favorable evidence known to those acting on the government's behalf has generally been held to include information that directly relates to the prosecution or investigation of Petitioner's cases. Kyles, 514 U.S. at 429, 437-440; see e.g. Youngblood v. West Virginia, 547 U.S. 867, 868-870 (2006); Bagley, 473 U.S. at 670-672; Wright, 86 N.Y.2d at 596. It follows that, when police engage in illegal conduct during their investigation or prosecution of Mr. Dixon, knowledge of that misconduct may be imputed to the People for Brady purposes, regardless of the officer's motivation or the prosecutor's awareness. See Freeman v. State of Georgia, 599 F.2d 65, 69 (5th Cir. 1979), cert. denied, 444 U.S. 1013 (1980); see also In re Siggers, 615 F.3d 477, 480 (6th Cir. 2010); compare People v. Robertson, 12 N.Y.2d 355, 359-360 (1963).

Finally, in the context of this case, the value of the undisclosed of information severely prejudiced Mr. Dixon – the final element of a true Brady claim – and such exculpatory and impeachment evidence would have been

monumental. Since testimony at Petitioner's trials was largely contradicted by his Tripartite Christian Name and the monetary amount of $125 employed in 42 U.S.C. §1983 actions, it is actual and factual that the outcome of his trials would have been different, for they would have concluded against him as Echo Westley Dixon and upon $125, not as Echo Dixon or Edio Dixon or upon "one hundred and twenty some odd dollars in cash."

Accordingly, the decision of the court below conflicts with its own decisions, decisions of other courts of last resort, decisions of United States' courts of appeals, and with relevant decisions of this Court on the same important matters. Therefore, the decision should be vacated as Mr. Dixon's due process rights under Brady have been violated.

FABRICATION, MISREPRESENTATION, SUPPRESSION, AND CONCEALMENT OF EVIDENCE KNOWINGLY AND INTENTIONALLY IN AFFIDAVITS TO SECURE WARRANTS OF ARREST, DURING GRAND JURY AND TRAIL PROCEEDINGS, APPEALS, AND FEDERAL HABEAS REVIEW CONSTITUTES FRAUD ON THE COURTS WHEN PROSECUTORS AND DEFENSE ATTORNEYS ARE INVOLVED

A fraud on the court occurs where it is established by clear and convincing evidence "that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a mater by unfairly hampering the presentation of the opposing party's claim or defense." McMunn v. Mem'l Sloan-Kettering Cancer Ctr., 191 F.Supp.2d 440, 445 (S.D.N.Y. 2002)(quoting Aoude v. Mobil Oil Corp., 892 f.2d 1115, 1118 (1st Cir. 1989)). The essence of fraud on the court is "when a party lies to the court and

his adversary intentionally, repeatedly, and about issues that are central to the truth-finding process." McMunn, 191 F.Supp.2d at 445. Fraud on the court, therefore, does not merely "embrace any conduct of an adverse party of which the court disapproves," rather, it "embrac[es] only that species of fraud which does, or attempts to, defile the court itself." Kupferman v. Consol. Research & Mfg. Corp., 459 F.2d 1072, 1078 (2d Cir. 1972)(citation and internal quotation marks omitted).

As Hargrove v. Riley, No. 04Civ.4587, 2007 WL 389003, at *11, 2007 U.S. Dist. LEXIS 6899, at *11, *38 (E.D.N.Y. Jan. 31, 2007), Shangold v. Walt Disney Co., No. 03Civ.9522, 2006 WL 71672, at *5, Scholastic, Ind. v. Stouffer, 221 F.Supp.2d 425, 439 (S.D.N.Y. 2002), McMunn, 191 F.Supp.2d at 452, 454, 462, and Cerruti 1881 S.A. v. Cerruti, Inc., 169 F.R.D. 573, 574 (S.D.N.Y. 1996), demonstrate, submitting false evidence to a court may rise to the level of a fraud on the court; however, it is not the only way to commit a fraud on the court. A fraud on the court occurs where a party: (1)"improperly influence[es] the trier," McMunn, 191 F.Supp.2d at 445 (citation and internal quotation marks omitted); (2)"unfairly hamper[s] the presentation of the opposing party's claim or defense," Id.; (3)"lies to the court and his adversary intentionally, repeatedly, and about issues that are central to the truth-finding process," id.; or (4) knowingly submits fraudulent documents to the court. Scholastic, 221 F.Supp.2d at 443.

Given this clarification, the Court should hold that the $125 and "one hundred and twenty some odd dollars in cash" retrial perjuries testimony, Mr. Dixon's Tripartite Christian Name and the misnomer Echo Dixon and Edio Dixon

are evidence under Brady, that the People sentimentally set in motion unconscionable schemes calculated to interfere with the judicial system's ability impartially to adjudicate his cases by unfairly hampering the presentation of Petitioner's claims and defense, by lying to the court and Mr. Dixon intentionally, repeatedly, and about issues central to the truth-finding process, and knowingly submitted fraudulent documents to the court.

As the New York State Court of Appeals in CDR Creances S.A.S. v. Cohen, 23 N.Y.3d 307 (2014), stated: "Fraud on the court involves willful conduct that is deceitful and obstructionistic, which injects misrepresentations and false information into the judicial process 'so serious that it undermines *** the integrity of the proceeding.' *** It strikes a discordant chord and threatens the integrity of the legal system as a whole, constituting 'a wrong against the institutions set up to protect and safeguard the public.'"Id. at 318 (citations omitted).

As the movant claiming fraud on the Courts, Mr. Dixon bears the burden of proving the sanctionable conduct by clear and convincing evidence. Under this high standard, this court may only find a fraud upon the court based on evidence that "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. Blair v. Inside Ed. Prods., 7 F.Supp.3d 348, 358 (S.D.N.Y 2014).

As for the standard applicable to New York State Criminal Procedure Law §§440.30(1-a), 440.10(1)(a)-(h), and 450.10 and 460.15 motions, and second or successive appeals as of right, certificates of leave to appeal, and second or successive petitions for issuance of federal writs of habeas corpus, "fraud on the court" is a "nebulous concept." Wilkin v. Sunbeam Corp., 966 F.2d 714, 717 (1st Cir. 1972). At a high level of misconduct that transcends the interest of the individual parties and more directly implicates the administration of justice. The court spoke of situations in which "the very temple of justice has been defiled, "Universal Oil Prods. Co. v. Root Refining Co., 328 U.S. 575, 580 (1946), and the "integrity of the judicial process" undermined. Hazel-atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246 (1944), overruled on other grounds by Standard Oil Co. California v. U.S., 429 U.S. 17 (1976). Fraud on the court is a "wrong against the institutions set up to protect and safeguard the public." Id. It is because this kind of misconduct is an affront to the administration of justice that some of the ordinary procedural barriers to post-judgment relief are waived – for example there is no limitation for seeking relief from fraud on the court, and equitable bars like laches and unclean hands may not apply. See id.; In re Old Carco LLC, 423 B.R. 40, 51 (S.D.N.Y. 2010). Indeed, the court has inherent authority "to conduct an independent investigation in order to determine whether it has been the victim of fraud," Chambers v. Nasco, Inc., 501 U.S. 32, 44 (1991), and to take action sua sponte to "expunge [a] judgment" obtained by fraud on the court. Martina Theatre Corp. v. Schine Chain Theatres, Inc., 278 F.2d 798, 801 (2d Cir. 1960).

As the Second Circuit routinely phrased it, fraud on the court embraces "only that species of fraud which does or attempts to [] defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases. King v. First Am. Investigations, Inc., 287 F.3d 91, 95 (2d Cir. 2022); Martina, 278 F.2d at 801. Similarly, it has said that fraud on the court "is limited to process of litigation." King, 287 F.3d at 95. This may in part explain why courts consider an attorney's participation in the discovery misconduct to be highly relevant, if not necessary, to a claim of fraud on the court. See Hawkins v. Lindsley, 327 F.2d 356, 359 (2d Cir. 1964).

INEFFECTIVE ASSISTANCE & PROSECUTORIAL MISCONDUCT

The Sixth Amendment is not narrow in its reach. It requires effective assistance of counsel at critical stages of a criminal proceeding. See Evitts v. Lucey, 469 U.S. 387 (1985); Strickland v. Washington, 466 U.S. 668, 686 (1984).

The right to counsel is guaranteed by the Sixth and Fourteenth Amendments. It has been interpreted to mean the right to effective counsel: "It has long been recognized that the right to counsel is the right to effective assistance of counsel." McMann v. Richardson, 397 U.S. 795, 771, n.14 (1970). "In an adversarial system of justice, the fundamental right to effective assistance of counsel is essential to a criminal defendant's due process entitlement to a fair trial." People v. Dean, 50 A.D.3d 1052, 856 N.Y.S.2d 649 (N.Y. A.D. 2d Dept. 2008) (coting People v. Benevento, 91 N.Y.2d 708, 711, 674 N.Y.S.2d 629, 697 N.E. 2d 584 (N.Y. Ct. App. 1998). The mandate for effective assistance of counsel generally means "the

reasonable competent service of an attorney devoted to the client's best interest." People v. Ortiz, 76 N.Y.2d 652. 65656 (N.Y. Ct. App. 1990); see also People Bennett, 29 N.Y.2d 462, 466 (N.Y. Ct. App. 1972) ("the right "means more than just having a person with a law degree nominally represent [Mr. Dixon] upon a trial and ask questions").

As the Court in Strickland, "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 686. Under federal law, a defendant claiming ineffective assistance of counsel must show first that defense counsel's performance was deficient. Second, a defendant must also show that he was prejudiced. Prejudiced in this context means "a reasonable probability that but for counsel's unprofessional errors, the results of the proceeding would have been different." Id., at 694.

An attorney, analogous to a prosecutor to a certain degree, is as an officer of the court and must act with integrity and honesty before it. Kupferman v. Consol Research mfg. Corp, 459 F.2d 1072, 1080 (2nd Cir. 1972). The legal system may contemplate that litigants will root out perjury or fabricated evidence in the ordinary course of litigation. Great Coastal Exp. Inc., v. Int'l Broth of Teamster, 675 F.2d 1349, 1357 (4th Cir. 1982). But it does not expect or presume that an attorney will be untruthful in his representations to the court. The opposite is true. See Kupferman, 459 F.2d at 1080. Therefore, as here, perjury, non-

disclosure, or other disclosure misconduct effectuated through counsel/prosecutors has a higher likelihood of short-circuiting the judicial machinery than that carried out by a witness or party. But importantly, the issue of concern is an attorney's deliberate or knowing fabrication, misrepresentation, and suppression of evidence.

Of course, not all evidence sought to be disclosed by Mr. Dixon's attorney and prosecutors was favorable to him. But as the court correctly should observe, the failure to introduce the comparatively voluminous amount of evidence that did speak to Petitioner's Tripartite Christian Name being Echo Westley Dixon and the monetary amount being $125 spoke in his favor was not justified by a tactical decision to permit the $125 an the misnomer Edio Dixon to go uncorrected when they were suppressed. Whether or not these Omissions were sufficiently prejudicial to have affected the outcome of the trial and sentencing, they clearly demonstrate Mr. Dixon's trial and appellate counsel did not fulfill their obligation to conduct a thorough investigation of his background. See 1 ABA Standards for Criminal Justice 4-4.1, commentary, p. 4-55 (2nd.3d 1980). This Court should be persuaded that the Petitioner's attorneys' unprofessional services prejudiced him within the meaning of Strickland. After the contentions advanced by Mr. Dixon over the course of two decades, this Court should conclude that there exists a reasonable probability that the result of his trial and sentencing stage of his convictions would have been different if the jury had heard the evidence as presented here.

It is one of the fundamental tenets of Anglo-American law that a fraud may be committed by a suppression of the truth as well as by the suggestion of falsehood. 24 N.Y. Jury. Fraud and Deceit, §103; New York State Judiciary law §487.

It is well settled that an attorney's duty to disclose pertinent information to the court and to advance the interest of his client is circumscribed by an "equally solemn duty * * * to prevent and disclose frauds upon the court." People v. Depallo, 96 N.Y.2d 437, 441 (N.Y. ct. App. 2001) (quoting Nix v. Whiteside, 475 U.S. 157, 168-169 (1986).

This solemn duty mandated that Mr. Dixon's trial and appellate attorney and prosecutor in the $125 robbery case, Edio Dixon arson cases, and during his plea deals, reveal the potential for witness perjury to the court.

The People do not deny the serious charges made against them and have admitted the significant factual allegations of Petitioner's New York State Criminal Procedure Law §§440.10(1)(a)-(h) and 440.30(1-a) motions. There are claims that the People gained a tactical advantage over Mr. Dixon from their misconduct, such as procedural bar provisions of the aforesaid statutes, the second successive federal bar provision for habeas review, and other adverse ramifications emanating from the misconduct, and that they were motivated by a class-based invidious discriminatory animus.

Petitioner has submitted affidavits and submissions stating that the litigation which the People instituted is now concluded, that he has suffered loss due to their fraud on the courts, misrepresentations, and falsity involved in

countless cases before the courts, and that he diligently pursued his rights over the course of two decades. It is noted that the Respondent's conduct involving fraud on the court, apparently for the purpose of concealing the fact that Mr. Dixon's, Tripartite Christian Name is Echo Westley Dixon. not Echo Dixon, Echo Dickson or Edio Dixon, that the re-trial perjuries testimony to "one hundred and twenty same add dollars in cash "is §125, that such involved foregoing official legal documents for the purpose of committing fraud upon the courts, and to affect his rights pertinent to criminal proceedings thereto, and that they framed Petitioner for crimes he did not commit, as someone who he is not.

Because prosecutors are government attorneys, their misconduct is still a product of an attorney held to the same ethical obligations of attorneys. The involvement of Petitioner's attorneys, police, and prosecutors in the perpetration of fraud on the courts are key factors in determining the existence of fraud upon the courts. As officers of the court, their subordination of perjury and intentional fabrication, misrepresentation, suppression and concealment of evidence supports setting aside judgments due to fraud upon the courts. Moreover, whereas Mr. Dixon's attorneys corruptly sold out his interests to the prosecution, such that there was no real contest in the trial or appeal anent the hearing of his case, the decision below should be set aside and annulled. If this Court did so in Hazel-Atlas with respect to a twelve (12) year old judgment, it should do so here.

The Court works in an adversarial system. When a lawyer abdicates his responsibility to zealously defend his client, it is not just his client who suffers, but the whole system.

Accordingly, the Respondent has perpetrated fraud upon the courts, and Mr. Dixon has proven that officers of the court actively participated in the fraud; therefore, the court's decision below conflicts with its own decisions, decisions of other New York State Courts, decisions with United States' Court of Appeals, and applicable decisions of this Courts on the same important matter.

CONCLUSION

The petition for a writ of certiorari should be granted, or in the alternative, writ of habeas corpus, mandamus, and prohibition granted.

Dated: May 13, 2022
Beacon, New York

Respectfully submitted,
Echo W. Dixon
Mr. Echo W. Dixon