

22-7080 ORIGINAL
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
MAR 14 2023
OFFICE OF THE CLERK

James Aho, pro se — PETITIONER
(Your Name)

vs.

State of Connecticut, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of the State of Connecticut
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Aho
(Your Name)

900 Highland Avenue
(Address)

Cheshire, CT 06410
(City, State, Zip Code)

(203) 651 - 6257
(Phone Number)

QUESTION(S) PRESENTED

Whether actually, factually, truthfully innocent Petitioner should be granted relief when State convicted against all exonerating evidence with malice, evil intent, and callous indifference to the truth/federally protected rights of Petitioner.

Any/all other questions apparent upon Statement Of The Case and establishment of complete record.

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:

Chief Public Defender, Tashun Yulunda Bowden-Lewis, Juris 416664
400 Grand Street, Waterbury, CT 06702
(203)236-8188 Email: Tashun.Bowdenlewis@jud.ct.gov

Law Offices of Jack O'Donnell, Juris 105083
683 State Street, New Haven, CT 06511
(203)865-0667 Email: jack@jackodonnellaw.com

State Attorney, Amy L. Sedensky, Juris 415050
400 Grand Street, Waterbury, CT 06702
(203)236-8130 Email: amy.sedensky@ct.gov

RELATED CASES

State of Connecticut v. James R. Aho, UWY-CR18-0454260-T; UWY-CR18-0454261-T; UO4W-CR18-0453294-S; UO4W-CR18-0453297-S, Waterbury JD Courthouse. Judgment entered Jan. 7, 2020.

State of Connecticut v. James R. Aho, SC 20453 Supreme Court of the State of Connecticut. Judgment entered Dec. 19, 2022.

James Aho v. Commissioner of Correction, TSR-CV21-5000854-S.

James Aho, pro se v. State of Connecticut, et al. Supreme Court Of The United States.

LIST OF PARTIES

Governor, Ned Lamont
State Capitol, Room 200 Hartford, CT 06106
(860)566-4840

Attorney General, William Tong
55 Elm Street, Hartford, CT 06106
(860)808-5318

Trial Judge, Hon. Corinne L. Klatt
Waterbury JD Courthouse 400 Grand Street, Waterbury, CT 06702

State Attorney, Don Edgerton Therkildsen, Juris 417926
400 Grand Street, Waterbury, CT 06702
(203)238-6125 Email: don.therkildsen@ct.gov

Waterbury Court Monitor, Janet Orozco
400 Grand Street, Waterbury, CT 06702
(203)236-8195 x 4101

Waterbury Court Monitor, Nancy Zanfardino
400 Grand Street, Waterbury, CT 06702
Email: Nancy.Zanfardino@jud.ct.gov

State Police Detective, Matthew Geddes
Troop I 631 Amity Road, Bethany, CT 06525
(203)393-4200

Naugatuck Police Detective, Mark Pettanicci
211 Spring Street, Naugatuck, CT 06770

Naugatuck Police Detective, Jonathan Slavin
211 Spring Street, Naugatuck, CT 06770

Naugatuck Police Officer, Nicholas Lavoie
211 Spring Street, Naugatuck, CT 06770

Samantha Cota
18 New Haven Avenue, Derby, CT 06418

Anthony Cota
51 Rorringbrook Road, Prospect, CT 06712

Karla Trombetta
51 Roaringbrook Road, Prospect, CT 06712

Michael Trombetta Sr.
75 Melbourne Court, Naugatuck, CT 06770

Michael Trombetta Jr.
75 Melbourne Court, Naugatuck, CT 06770

LIST OF PARTIES

Jared Civitelli
100 Hawkins Street, Derby, CT 06418

Kristy Allen
100 Hawkins Street, Derby, CT 06418

Any/all other parties that will become apparent upon establishment
of complete record.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3-4
STATEMENT OF THE CASE	5-30
REASONS FOR GRANTING THE WRIT	31-32
CONCLUSION.....	33

INDEX TO APPENDICES

APPENDIX A Opinion of the Connecticut Supreme Court

APPENDIX B Opinion of the Waterbury JD Courthouse

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

QUESTION(S) PRESENTED..... i

LIST OF PARTIES..... ii,iii,iv

RELATED CASES..... ii

TABLE OF AUTHORITIES:

CASES..... vi, vii, viii, ix, x, xi

STATUTES AND RULES..... vi

OTHER..... vi

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Abdus-Samad v. Bell, 420 F.3d 614, 625 (6th Cir. 2005).....	31
Baer v. Neal, 879 F.3d 769, 786-89 (7th Cir. 2018).....	21
Bell v. Miller, 500 F.3d 149, 157 (3d Cir. 2007).....	8
Bellamy v. City of New York, 914 F.3d 727, 751-53 (2d Cir. 2019)....	6, 26
Berghuis v. Smith, 559 U.S. 314, 319 (2010).....	15
Brady 373 U.S. at 87.....	
Bronowitz v. Allegheny County, 804 F.3d 338, 347-48 (3d Cir. 2015)..	31
Burks v. U.S., 437 U.S. 1, 17-18 (1978).....	15
Carrier, 477 U.S. at 496.....	31
Close v. U.S., 679 F.3d 714, 717-18 (8th Cir. 2012).....	20
Cone v. Bell, U.S. 449, 469-70 (2009).....	

STATUTES AND RULES

Supreme Court Rule 10 Considerations Governing Review on Certiorari (a)...or 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.

Any/all other Statutes and Rules that will become apparent upon Statement Of The Case and establishment of complete record.

OTHER

Any/all applicable OTHER that will become apparent upon Statement Of The Case and establishment of complete record.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Cuyler v. Sullivan, 446 U.S. 335, 344-45 (1980).....	16
Dat v. U.S., 920 F.3d 1192, 1194-95 (8th Cir. 2019).....	29
DeMassa v. Nunez, 770 F.2d 1505, 1506 (9th Cir. 1985).....	6
Dennis v. Sec'y, Pa. Dep't of Corr., 834 F.3d 263, 294-96 (3d Cir. 2016).....	8
Doe v. U.S., 915 F.3d 905, 910 (2d Cir. 2019).....	28
Fernandez v. Capra, 916 F.3d 215, 230 (2d Cir. 2019).....	17
Finch v. McKoy, 914 F.3d 292, 302 (4th Cir. 2019).....	31
Floyd v. Vannoy, 894 F.3d 143, 160 (5th Cir. 2018).....	31
Franks v. Del., 438 U.S. 154, 171-72 (1978).....	19
Fuentes v. Griffin, 829 F.3d 233, 250-53 (2d Cir. 2016).....	31
Glover v. U.S., 531 U.S. 198, 202-04 (2001).....	30
Grand Jury Subpoenas Duces Tecum, 773 F.2d 204, 207 (8th Cir. 1985).....	7
Greene v. Massey, 437 U.S. 19, 24 (1978).....	31
Griffin v. Harrington, 727 F.3d 940, 945-46 (9th Cir. 2013).....	15
Hansen v. U.S., 956 F.2d 245, 248 (11th Cir. 1992).....	25
Harrison v. McBride, 428 F.3d 652, 670 (7th Cir. 2005).....	14
Heard v. Addison, 728 F.3d 1170, 1180-87 (10th Cir. 2013).....	27
Heck v. Humphrey, 512 U.S. 477, 489-90 (1994).....	31
Hooks v. Workman, 606 F.3d 715, 748-51 (10th Cir. 2010).....	31
Jefferson v. GDCP Warden, 941 F.3d 452, 487 (11th Cir. 2019).....	8
Johnson v. Mithell, 585 F.3d 923, 935-36 (6th Cir. 2009).....	20
Jones v. Cain, 600 F.3d 527, 539 (5th Cir. 2010).....	15
Jones v. Calloway, 842 F.3d 454, 462 (7th Cir. 2016).....	5
Kastigar, 406 U.S. at 460, 466-67 (1978).....	7
Key v. U.S., 806 F.2d 133, 136-37 (7th Cir. 1986).....	29

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Langston v. Smith, 630 F.3d 310, 320 (2d Cir. 2011).....	20
McCleskey, 499 U.S. at 494.....	31
McDonough v. Smith, 139 S.Ct 2149, 2144-45 (2019).....	20
McKernan v. Superintendant Smithfield SCI, 849 F.3d 557, 566-67 (3-d Cir. 2017).....	14
Mooney v. Holohan, 294 U.S. 103, 112 (1935).....	19
Munchinski v. Wilson, 694 F.3d 308, 335-37 (3d Cir. 2012).....	
Napue v. Ill., 360 U.S., 264, 269 (1959).....	20
Orlando v. Nassau Cty. Dist. Att'y Off., 915 F.3d 113, 127 (2d Cir- 2019).....	15
Padilla v. Ky., 559 U.S. 356, 374 (2010).....	28
Parker v. Matthews, 567 U.S. 37, 43 (2012).....	31
Phillips v. U.S., 849 F.3d 988, 992-94 (11th Cir. 2017).....	11
Powers v. Hamilton Cty. Pub. Def. Comm'n, 501 F.3d 592, 612-13 (6 - th Cir. 2007).....	12
Quezada v. Smith, 624 F.3d 514, 521-22 (2d Cir. 2010).....	32
Raysor v. U.S., 647 F.3d 491, 496 (2d Cir. 2011).....	5
Reeves v. Fayette SCI, 897 F.3d 154, 164-65 (3d Cir. 2018).....	5
Rivas v. Fischer, 780 F.3d 529, 550-52 (2d Cir. 2015).....	32
Saddiqi v. U.S., 98 F.3d 1427, 1438-39 (2d Cir. 1996).....	32
Sealed Case, 901 F.3d 397, 400-04 (D.C. Cir. 2018).....	
Smith v. Cain, 565 U.S. 73, 75-76 (2012).....	6
Smith v. Wade, 461 U.S. 30, 51 (1983).....	32
Strickland v. Washington, 466 U.S. 668, 692 (1984).....	24
Strunk v. U.S., 412 U.S. 434, 440 (1973).....	13
Tollett v. Henderson, 411 U.S. 258, 266-67 (1973).....	29

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Tower v. Glover, 467 U.S. 914, 919-20 (1984).....	12
U.S. v. Acosta, 924 F.3d 288, 300 (6th Cir. 2019).....	21
U.S. v. Alexander, 741 F.3d 866, 872 (7th Cir. 2014).....	20
U.S. v. Allen, 864 F.3d 63, 96-97 (2d Cir. 2017).....	7
U.S. v. Bagley, 473 U.S. 667, 676 (1985) (quoting Brady, 375 U.S. at 87).....	26
U.S. v. Barnes, 895 F.3d 1194, 1204-05 (9th Cir. 2018).....	23
U.S. v. Bui, 795 F.3d 363, 367-68 (3d Cir. 2015).....	29
U.S. v. Cano-Varela, 497 F.3d 1122, 1134 (10th Cir. 2007).....	28
U.S. v. Casas, 356 F.3d 104, 112 (1st Cir. 2004).....	
U.S. v. Certified Envtl. Servs., Inc., 753 F.3d 72, 96-97 (2d Cir. 2014).....	21
U.S. v. Correia, 531 F.2d 1095, 1098-1100 (1st Cir. 1976).....	12
U.S. v. Dortch, 5 F.3d 1056, 1060 (7th Cir. 1993).....	19
U.S. v. Fisher, 624 F.3d 713, 717-18 (5th Cir. 2010).....	28
U.S. v. Flores-Rivera, 787 F.3d 1, 18 (1st Cir. 2015).....	27
U.S. v. Gouveia, 467 U.S. 180, 192 (1984).....	14
U.S. v. Haynes, 729 F.3d 178, 191-92 (2d Cir. 2013).....	16
U.S. v. Hemphill, 748 F.3d 666, 677 (5th Cir. 2014).....	28
U.S. v. Hogan, 712 F.2d 757, 761 (2d Cir. 1983).....	20
U.S. v. Hubbell, 530 U.S. 27, 45 (2000).....	7
U.S. v. Huynh, 884 F.3d 160, 165-66 (3d Cir. 2018).....	29
U.S. v. Jernigan, 492 F.3d 1050, 1056 (9th Cir. 2007).....	22
U.S. v. Johnson, 592 F.3d 164, 171 (D.C. Cir. 2010).....	5
U.S. v. Jones, 193 F.3d 948, 951 (8th Cir. 1999).....	16

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
U.S. v. Kechedzian, 902 F.3d 1023, 1028-31 (9th Cir. 2018).....	16
U.S. v. Kyle, 734 F.3d 956, 966 (9th Cir. 2013).....	23
U.S. v. Lewter, 402 F.3d 319, 329 (2d Cir. 2005).....	26
U.S. v. Lockhart, 58 F.3d 86, 88-89 (4th Cir. 1995).....	26
U.S. v. McDowell, 888 F.2d 285, 289 (3d Cir. 1989).....	19
U.S. v. Mendenhall, 446 U.S. 544, 557 (1980).....	29
U.S. v. Molt, 589 F.2d 1247, 1251-52 (3d Cir. 1978).....	29
U.S. v. Norman, 776 F.3d 67, 84-85 (2d Cir. 2015).....	
U.S. v. Pasha, 797 F.3d 1122, 1135-38 (D.C. Cir. 2015).....	27
U.S. v. Ponds, 454 F.3d 313, 329 (D.C. Cir. 2006).....	7
U.S. v. Preston, 873 F.3d 829, 844 (9th Cir. 2017).....	21
U.S. v. Reese, 917 F.3d 177, 183 & n.7 (3d Cir. 2019).....	13
U.S. v. Rios-Rivera, 913 F.3d 38, 42 (1st Cir. 2019).....	29
U.S. v. Rothstein, 939 F.3d 1286, 1291 (11th Cir. 2019).....	30
U.S. v. Runyon, 707 F.3d 475, 517 (4th Cir. 2013).....	
U.S. v. Sampson, 898 F.3d 287, 313 (2d Cir. 2018).....	19
U.S. v. Schindler, 614 F.2d 227, 228 (9th Cir. 1980).....	15
U.S. v. Smith, 618 F.3d 657, 664-65 (7th Cir. 2010).....	28
U.S. v. St. Louis, 889 F.3d 145, 157 (4th Cir. 2018).....	20
U.S. v. Tigano, 880 F.3d 602, 616-17 (2d Cir. 2018).....	13
U.S. v. Torres-Estrada, 817 F.3d 376, 380 (1st Cir. 2016).....	14
U.S. v. Vinas, 910 F.3d 52, 62-63 (2d Cir. 2018).....	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Wearry v. Cain, 577 U.S. at 392-93.....	
Workman v. Superintendent Albion SCI, 915 F.3d 928, 944 (3d Cir. 2019).....	22

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 _____ to the petition and is

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

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

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

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

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

The opinion of the Waterbury JD Courthouse court appears at Appendix B to the petition and is

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 _____.

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 Dec. 19, 2022. A copy of that decision appears at Appendix A .

A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment To The Constitution Of The United States: 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 persons or things to be seized.

The Fifth Amendment To The Constitution Of The United States: 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 offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor shall private property be taken for public use, without just compensation.

The Sixth Amendment To The Constitution Of The United States: 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 defence.

The Fourteenth Amendment To The Constitution Of The United States: 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 laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of male citizens twenty-one years of age in such State.

Section 3. No person shall be Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection and rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Any/all other applicable Constitutional and Statutory provisions that may/will become apparent upon establishment of a thorough record.

STATEMENT OF THE CASE

1. I am actually, truthfully, factually innocent of the crimes I have been falsely accused of and wrongfully convicted for, Reeves v. Fayette SCI, 897 F.3d 154, 164-65 (3d Cir. 2018) (newly discovered evidence of actual innocence includes ineffective assistance of counsel claim that counsel did not present evidence of actual innocence). My cooperation from the beginning with law enforcement, my statement on DVD to , my writings from day one along with certified letters and hand-drawn exhibits I sent to attorneys (Chief Public Defender, Tashun Yulunda Bowden-Lewis and privately retained counsel, John Bowdren) with the evidence enumerated throughout from the onset of this fraudulent case to the writing of this petition are not only credible, accurate and reliable because they are true but are all verified by exonerating/vindicating physical & forensic evidence and eyewitnesses, all of which was kept off the trial record, as the evidence will show, by the state and complicit defense counsel, Jones v. Calloway, 842 F.3d 454, 462 (7th Cir. 2016) (habeas relief granted because petitioner produced consistently credible evidence that raised sufficient doubt and counsel's deficient performance prejudicial); Raynor v. U.S., 647 F.3d 491, 496 (2d Cir. 2011) (evidentiary hearing required for ineffective assistance of counsel claim because petitioner's testimony provided "objective evidence" supporting need for further factfinding); U.S. v. Johnson, 592 F.3d 164, 171 (D.C. Cir. 2010) (Brady violation because undisclosed evidence undermined confidence in defendant's conviction and directly contradicted prosecution).

2. The evidence includes but is not limited to DVD recorded inter-

STATEMENT OF THE CASE

-views/statements, AXON Body/Deck Cam footage, etc., of each and every state witness including police and coached complainants prior to trial giving testimony drastically different from that given at trial which was changed to omit/nullify my exonerating evidence/proof of innocence in my handwritten statements and exhibits which are in the defense file, documented/witnessed disputes between states witnesses and myself including their repeated verbal and physical assaults and prior false accusations upon me with proof thereof that I sent to defense counsel well in advance of trial certified mail, Bellamy v. City of New York, 914 F.3d 727, 751-53 (2d Cir. 2019) (evidence material under Brady where prior inconsistent statements by key witnesses had impeachment value and could change outcome of trial); Smith v. Cain, 565 U.S. 73, 75-76 (2012) (Brady violation because witness's testimony was only evidence linking defendant to crime and undisclosed statements directly contradicted witness's trial testimony).

3. Somehow this material became essential part in prosecutions case-in-chief at trial, in that, it was kept off the record to make the state's non-case plausible through the alterations/omissions made to its witnesses/coached complainants prior statements, nor can the state explain or produce any possible means by which they could have obtained so specifically the changes in testimony or explain the precise omissions/deletions to the trial record/transcripts of entire Q&A's but for my very real and exonerating evidence mentioned above and more, DeMassa v. Nunez, 770 F.2d 1505, 1506 (9th Cir. 1985) (per curiam) ("[A]ttorney client privilege confers...an expectation of privacy in [the

STATEMENT OF THE CASE

- client's] confidential communications with the attorney"); Grand Jury Subpoenas Duces Tecum, 773 F.2d 204, 207 (8th Cir. 1985) (attorney-client privilege prevents attorney representing corporation from producing corporate documents absent *prima facie* showing of fraud or crime by attorney); U.S. v. Hubbell, 530 U.S. 27, 45 (2000) (government's burden to prove evidence "was derived from legitimate sources wholly independent of the testimonial aspect of respondent's immunized conduct") (citing *Kastigar*, 406 U.S. at 460)); U.S. v. Allen, 864 F.3d 63, 96-97 (2d Cir. 2017) (indictment dismissed because mere denial of taint after witness altered testimony following exposure to defendant's immunized testimony insufficient to satisfy government's burden); U.S. v. Ponds, 454 F.3d 313, 329 (D.C. Cir. 2006) (conviction reversed because government could not demonstrate outside knowledge of immunized information used in conviction).

4. Other relevant evidence includes fleet tracking data of state and municipal police vehicles and UBER vehicle on specific date and times, including vehicle manufacturer Telemetry Data showing vehicle in drive, park, on/off, moving, etc., bluetooth pings when register with vehicle, Onstar Data showing vehicle Longitude/Latitude, date, time, MPH, etc., phones connecting to vehicle when in close proximity, internet provider shows connections and with what phones, cell phone tower pings, whose and where, UBER App live satellite feed on exact route, driver statement, phone records to include call logs, voice-mails, text messages, recorded phone calls/voicemail between police and myself on relevant dates, social media messages of state witnesses

STATEMENT OF THE CASE

coupled with eyewitnesses directly refuting their trial testimony, Dennis v. Sec'y, Pa. Dep't of Corr., 834 F.3d 263, 294-96 (3d Cir. 2016) (evidence material under Brady where time-stamped material supported defendant's alibi and would have changed 'jury's' perception of government witness), email chains, text records proving familial/fraternal relations of state witnesses to police officials directly involved in this non-case, ballistic tracing/scene reconstruction forensics including my bullet entry/exit wounds and extracted bullet fragment essential/irrefutable evidence of where I and the shooter stood when I was shot, compiled with crime scene investigation videos, photos, reports & statements, supplemented by AXON Body/Deck Cam footage of state and municipal personnel/vehicles also proving I never charged the shooter before getting shot as I am also falsely accused of doing.

5. Additional evidence includes a forensic medical examination to prove no neurological/physiological damage to the brain, thereby, irrefutably disproving false accusation of repeated strangulation into unconsciousness over four years, Bell v. Miller, 500 F.3d 149, 157 (3d Cir. 2007) (counsel deemed ineffective for not introducing expert testimony because medical expert could have offered reasons for identification unreliability); Jefferson v. GDCP Warden, 941 F.3d 452, 487 (11th Cir. 2019) (counsel ineffective because defendant prejudiced by counsel's unreasonable failure to investigate evidence of organic brain damage), home alarm panel logs, hotel, motel, lodge, inn, etc., vacancies on specific date disproving state witness/attempted murderers claims,

STATEMENT OF THE CASE

a mountain of highly damning and relevant contemporaneous events to the false accusations including sudden reappearance of complainants biological father onto the scene after being AWOL for the several years I was in the picture, complainant repeatedly asking me and her mother if she could see her dad, phone records and social media records of complainants state witness aunt in constant communication with him the entire time when myself and complainants mother even wondered if he was even alive. This same aunt encouraged me a year before my wedding to complainant's mother to get a mortgage life insurance policy given the "hazards of my occupation" in the oil fields of North Dakota, which I did get. This same aunt verbally and physically assaulted me in my home a year before the wedding after I overheard her telling my step-daughter/complainant not to listen to me, that I am a stupid ***hole, after I had disciplined her for not listening to her mom. When I called her out for being out of place in what she just said, she stabbed me in the eye with her finger while power shoving me in the chest back up the hallway, screaming in my face that I am a piece of **** and to go **** myself. She then with her state witness boyfriend and his state witness daughter who was then living with us (before she was thrown out for leaving drugs on the deck table that I reached just before my baby daughter and her infant cousin and also for verbally and physically attacking me in front of complainants and their mom, screaming that I was a racist because I repeatedly told her her drug dealer friend is not welcome to our home to "hang out" with her and her friends. She then took to social media calling me a racist) took the girls to the

STATEMENT OF THE CASE

aunt and her state witness boyfriends (the ex boyfriend of my then fiance and father of her oldest state witness daughter) house and after getting the complainants coached, they called their mom, her brother and their father (state witness/shooter) who were living with us, up to their home to hear the girls tell them they witnessed me strangle their aunt in the hallway until she turned blue and red and her eyes rolled back into her head. It was these same three that verbally and physically assaulted me in my home on my wedding night in front of dozens of eyewitnesses when I told people to leave, they were pushing and shoving me, screaming in my face telling me to go **** myself and calling me a piece of **** with the state witness who had previously called me a racist and was recently on social media and in text messages to her mom asking repeatedly to come live with us again, that she has matured and is sorry for being disrespectful to me and my wishes when she lived with us, to which I said no to her ever coming back because it was hell before, she now called me a child molester. The only crime I am guilty of occurred at this point when I told her dad to get his daughters fat lying face out of my face and home before I kill her ***. They refused to leave my home and continued assailing me. When they did eventually leave they took complainants to their home and the next day called the girls mom, her brother and their dad up to their home where they now heard false accusations that I threatened to chop my entire families heads off, that I was molesting my step-daughters and strangling one of them into unconsciousness for four years. The girls aunts ex boyfriend and father of her

STATEMENT OF THE CASE

daughter had also threatened me and the girls mother on social media a few years earlier, he is the best friend of complainants father, he took to social media telling me the family is not mine and I am going to have it taken from me. The girls aunt and her current state witness boyfriends proclivities for violently attacking people were not limited to me alone as the aunt is on video just before my wedding verbally and physically assaulting a female patron at a bar that she did not know with dozens of eyewitnesses to the attack, and her boyfriend had recently been involved in another public disturbance at another residence and arrested when he assaulted the responding officer, all charges against the state witness were dropped and the arresting officer was fired due to state witness law enforcement ties.

6. Perjured testimony at trial by each and every single state witness including police and coached complainants without exception and more went totally uncontested by defense counsel despite knowledge that it was perjury and the means of proving that immediately available, Phillips v. U.S., 849 F.3d 988, 992-94 (11th Cir. 2017) (prosecutor's introduction of police officer's false testimony improper) id 993-94 (admission of investigators false testimony when prosecution knew or should have known it was false cast grave doubt on reliability of verdict). Note, however, the empty defense file at trial. Public Defender ceaselessly brow beat me that I was guilty because accused, that this is the era of #metoo and I needed to cop out, that she could get me offers for less time when I never wanted offers to begin with, only Speedy Trial which I constantly insisted on even at arrest so I

STATEMENT OF THE CASE

could go to trial and remove as soon as possible the stigmatizing stain the vile false accusations against me have. I also repeatedly told counsel to have me arrested for threatening the state witness that verbally and physically assaulted me in my home on my wedding night, that I would in fact plead guilty to a crime I in fact committed, to no avail.

7. Public Defender kept putting off Speedy Trial while telling me it will start next month, next month. In one such motion the Judge asked the state attorney if the motion for Tolling was O.K. with the state to which she replied it was not her case. When the Judge asked if the state could answer for the state, she remained silent. At this moment the Public Defender said I can answer that question your honor, to which he asked her if she could and she said yes I can, it is O.K. This entire dialogue is deleted/omitted from the transcript and a fictitious dialogue is entered instead showing the state attorney answering in the transcript July 25, 2019 pg.1:22-27 pg.2:1-3 (hear audio record, however), Powers v. Hamilton Cty Pub. Def. Comm'n, 501 F.3d 592, 612-13(6th Cir. 2007) (public defender acted under color of state law when failing to request indigency hearing because such conduct "administrative" and systematic, serving interests of state rather than client's interests or societal interest in judicial fairness); Tower v. Glover, 467 U.S. 914, 919-20(1984) (appointed counsel may have acted under color of state law when conspiring with state officials to deprive client of Constitutional rights); U.S. v. Correia, 531 F.2d 1095, 1098-1100(1st Cir. 1976)(dismissal of indictment warranted when government moved for continuance 4 days

STATEMENT OF THE CASE

before expiration of 180 days since indictment).

8. At another subsequent hearing before another Judge, the Judge said it is his understanding from speaking with the Public Defender that she was getting express consent from me for continued tolling. He asked her if that was correct and she said yes, he then asked me if that was accurate and in my then ignorance to the tolling term and Public Defender prompt, I too said yes. However, I was never once asked if it was O.K. I did, however, repeatedly ask when Speedy Trial was going to start. It was at this time when I needed every ounce of credibility possible given the vile nature of the false accusations against me that the Public Defender put me on trial with my only lifeline, my family, when they asked her why Speedy Trial had not started, she told them she has no idea where I'm getting my Speedy Trial ideas from (this is a recorded phone conversation). However, I have a letter from Public Defender dated March 5, 2019 telling me to let her know if I want Speedy Trial, to which I immediately responded yes in a letter and sent it to her certified mail signature verification. I have a copy of the letter and a signed receipt. I also sent a similar letter to Private Counsel which I also have a copy of with signed receipt, *Strunk v. U.S.*, 412 U.S. 434, 440 (1973) (vacating sentence and dismissing indictment "only possible remedy" for defendant denied right to speedy trial while serving state prison sentence); *U.S. v. Reese*, 917 F.3d 177, 183 & n.7 (3d Cir. 2019) (defendant's consent or failure to object to continuance insufficient to exclude time under act); *U.S. v. Tigano*, 880 F.3d 602, 616-17 (2d Cir. 2018) (delay caused by assigned counsel weighed against government when

STATEMENT OF THE CASE

defense counsel acted against wishes of objecting defendant).

9. Speedy Trial delays it turns out were tactical in nature as they benefitted the state in lasting long enough to have a new Judge assigned and suddenly trial started, delays no more, U.S. v. Gouveia, 467 U.S. 180, 192 (1984) (indictment brought within statute of limitations violated Due Process Clause if government delay was to gain advantage over defendant), however, the trial Judge should have at minimum recused herself due to prior occupation as supervisor of attorneys to the trial prosecutor in trial and defense counsel should have put forth a motion for recusal. Neither happened, and it became immediately apparent that this would become a prototypical case for recusal as due process continued to be thrown out the window, McKernan v. Superintendent Smithfield SCI, 849 F.3d 557, 566-67 (3d Cir. 2017) (counsel's failure to move for recusal of trial judge ineffective assistance because convinced defendant to go before court that appeared biased against defendant); Harrison v. McBride, 428 F.3d 652, 670 (7th Cir. 2005) (state judges failure to recuse self from case where personal knowledge of illegal activity would arise during trial constituted structural defect); U.S. v. Torres-Estrada, 817 F.3d 376, 380 (1st Cir. 2016) (balance tips in favor of recusal when § 455 (a) question is close).

10. During introduction to successive jury pools and during individual voir dire the prosecutors presented to the jury a list of 50 plus state and municipal police witnesses, of which three testified and committed absolute and verifiable perjury and collusion with the state along with the states other false witnesses, the architects of this

STATEMENT OF THE CASE

fraud. In addition, the prosecutors repeatedly told the prospective and actual jurors that they will be hearing graphic testimony from doctors at Yale about injuries I inflicted on complainants. This lie was never objected to by defense counsel, the Judge never made a corrective admonition to the prosecutors for fabricating evidence and inflaming the passions of the jury and I was denied the opportunity to confront fictitious witnesses as they do not exist because I never harmed the girls in any way, shape or form, ever, nor could I, These comments by the prosecutor are deleted from the transcripts, *Burks v. U.S.*, 437 U.S. 1,17-18(1978)(double jeopardy bar because judge reversed conviction due to insufficient evidence); *Griffin v. Harrington*, 727 F.3d 940, 945-46(9th Cir.2013)(counsel's failure to timely object to unsworn testimony ineffective assistance because decision "unwittingly sealed...client's fate" and failure to object constituted waiver of objection); *Jones v. Cain*, 600 F.3d 527, 539(5th Cir.2010)(due process violated because state court admitted hearsay statements in violation of confrontation clause); *Orlando v. Nassau Cty. Dist. Att'y Off.*, 915 F.3d 113, 127(2d Cir.2019)(state courts admission of evidence in violation of defendant's Confrontation Clause rights had substantial and injurious effect); *U.S. v. Schindler*, 614 F.2d 227, 228(9th Cir.1980)(prosecutor's opening statement improper because referred to inadmissible evidence).

11. During jury selection the Public Defender made strategically deceitful motions to strike for cause jurors to give an outside observer of the trial record the perception that I received a fair and impartial jury, *Berghuis v. Smith*, 559 U.S. 314, 319(2010) ("The 6th Amendment secures

STATEMENT OF THE CASE

to criminal defendants the right to be tried by an impartial jury drawn from sources reflecting a fair cross section of the community"). My appellate counsel even pointed to these motions to strike as to highlight that very perception in letter responding to jury shenanigans among others that I brought to her attention. However, Public Defender then instructed Private Counsel against his and my objections (Private Counsel ineffectual due to subordinate role to Public Defender as legal coach of per Public Defender wishes and sanction of trial Judge) to put jurors onto the jury, immediately after striking for cause jurors who said they will be impartial, jurors that responded vaguely that they could probably, possibly, maybe, I think so be impartial, *Cuyler v. Sullivan*, 446 U.S. 335, 344-45 (1980) (distinguishing between appointed and retained counsel would deny equal justice to defendant's who must retain own attorney); *U.S. v. Kechedzian*, 902 F.3d 1023, 1028-31 (9th Cir. 2018) (error in refusing to excuse for cause juror who was victim of identity theft and repeatedly failed to give assurances of impartiality), including a juror who said I was guilty as I sat there, *U.S. v. Haynes*, 729 F.3d 178, 191-92 (2d Cir. 2013) (abuse of discretion to fail to investigate credible claims of jury misconduct when 1 juror told another juror that defendant likely guilty because "she's here"), that there is something about a man in uniform that is hard to resist, that she will give police more credibility and does not think they could lie on the stand, Transcript Oct. 10, 2019 pg. 8:13-15, pg. 11:18-27, *U.S. v. Jones*, 193 F.3d 948, 951 (8th Cir. 1999) (error in refusing to strike juror clearly likely to "find testimony of police officers inherently more

STATEMENT OF THE CASE

credible" than testimony of other witnesses), and lie they did, there is physical and forensic evidence they lied about absolutely everything and committed perjury/collusion/obstruction of justice with prosecutors , defense counsel and other state witnesses in their own AXON Body/ Deck Cam footage and testimony at trial along with phone records, videos, texts, etc., Fernandez v. Capra, 916 F.3d 215, 230 (2d Cir. 2019) (prosecutors knowing use of perjured witness testimony procured by police officer improper) id 230-31 (due process violated because prosecutor introduced perjured testimony that prejudiced defendant)). Another juror who worked for the state for 36 years as a social worker and viewed me as either guilty or innocent by reason of insanity and stated she could not leave her experiences at the door, that she would use it to persuade other jurors was also put onto the jury. Transcript Oct. 10, 2019 pg.32:12-27 pg.33:1-12.

12. Public Defender then put onto the jury among others, an alternate juror who personally knows the lead investigator and another police official from the same department involved directly in this non-case. I objected to this alternate as the lead investigator she knows sensationalized his arrest affidavit of Oct. 4, 2018 making no mention that I immediately accepted the offer of a polygraph examination when he put the offer on the table in my one and only (DVD recorded) interview on Aug. 29, 2018 after I was falsely accused on Aug. 4, 2018- Aug. 5, 2018 shot on Aug. 5, 2018 immediately arrested in the hospital and released on bond Aug. 7, 2018 (after being taken from the hospital to court and served a warrant upon by state witness state police detective

STATEMENT OF THE CASE

for throwing a beer at state witness/attempted murderer to save my life as he was threatening me with death, the state witness state police detective then closed the case upon my arrest without ever interviewing me). I never received the polygraph despite several follow-up phone calls from myself to him after being told it will be scheduled, nor did he in his arrest affidavit explain that he was responsible for the majority of the three-week delay in my one and only interview I ever had, wherein that recorded phone call I said I have an available vehicle and am on my way in for the scheduled interview and he said that he had actually just pulled a 24 hour shift, is exhausted then told me to come in 13 days later on the 29th of Aug.2018. I then had my only interview which was with him and another detective who is personal family friends with the state witness who started this entire fraud with his calls to police to report me for crimes I never committed on Aug.5,2018. This same detective accompanied the lead investigator when they arrested me on Oct.4,2018 the body cam footage of which has disappeared wherein I am on video telling them I am innocent and going to trial to prove my innocence.

13. Nearly every juror who said they will be impartial was rejected as was one juror after being impaneled. I was for unexplained reasons not called to court when I was supposed to be there to continue jury selection and it was on that day that the impaneled juror was removed and replaced with an alternate. Transcript Oct.8,2019 pg.2:25-27. Defense counsel then made these non-impartial jurors an issue I was unable to raise on appeal to the Connecticut Supreme Court by leaving four of seven peremptory challenges remaining at the end of voir dire

STATEMENT OF THE CASE

thereby precluding appellate review. When before trial I said I will be exonerated on appeal, the Public Defender told me the appellate court will only review the trial record. Her investigator was present for this conversation as well, U.S. v. Dortch, 5 F.3d 1056, 1060 (7th Cir. 1993) (appellate court's role is to provide "review on the merits, in light of the trial record and other relevant evidence"). When appellate counsel requested the trial transcripts and several transcript to audio verification requests including of individual voir dire of several jurors they contained omissions/deletions including requested voir dire of alternate juror who knows several law enforcement officials in this case which was omitted entirely of its voir dire portion to only contain jurors exit, jurors questioned. Transcript Oct. 15, 2019 pg. 17:23-24. The Public Defender and court reporters then sent emails to appellate counsel insisting there are no omissions/deletions to the transcripts, U.S. v. McDowell, 888 F.2d 285, 289 (3d Cir. 1989) (particularized need shown by government because materials could prove witness's perjury and whether defendant induced false testimony); U.S. v. Sampson, 898 F.3d 287, 313 (2d Cir. 2018) (special-skill enhancement applied because defendant used skills as an attorney to obstruct justice); Franks v. Del., 438 U.S. 154, 171-72 (1978) (hearing on validity of wiretap affidavit may be warranted when defendant makes provable allegations of deliberate falsehood or reckless disregard for the truth).

14. Throughout this trial perjury prevailed as that is what this non-case is built upon, Mooney v. Holohan, 294 U.S. 103, 112 (1935) (per curiam) (prosecutors use of perjured testimony as basis of conviction as

STATEMENT OF THE CASE

improper as obtaining conviction by intimidation); Napue v. Ill., 360 U.S. 264, 269 (1959) (prosecutors knowing failure to correct false testimony affecting witnesses credibility improper). Prosecutors in opening statements, sentencing statements and everywhere in between, repeatedly and with impunity mischaracterized and fabricated evidence, Johnson v. Mitchell, 585 F.3d 923, 935-36 (6th Cir. 2009) (prosecutors closing statements suggesting defendant left-handed improper because not supported by evidence); Langston v. Smith, 630 F.3d 310, 320 (2d Cir. 2011) (due process violated because no evidence presented by prosecution to support theory besides "pure conjecture"); McDonough v. Smith, 139 S.Ct. 2149, 2144-45 (2019) (under federal law, statute of limitations for §1983 claims of fabricated evidence and malicious prosecution accrued when criminal proceedings terminated in plaintiff's favor); U.S. v. Hogan, 712 F.2d 757, 761 (2d Cir. 1983) (prosecutorial misconduct when prosecutor deceived grand jurors as to quality of hearsay testimony; allowed government agents to make false and misleading statements because prejudicial to defendant), repeatedly vouched for their witnesses credibility with comments such as, what possible motive did they have to lie, Close v. U.S., 679 F.3d 714, 717-18 (8th Cir. 2012) (prosecutors statement that witness was sworn police officer for 17 years, had no motive to lie, and would lose job if he lied improper); U.S. v. Alexander, 741 F.3d 866, 872 (7th Cir. 2014) (prosecutors suggestion that police officer would not lie is "improper vouching"), they have no horse in this race, the testimony was so compelling, etc., all of which went uncontested, U.S. v. St. Louis, 889 F.3d 145, 157 (4th Cir. 2018) (considering degree to which prosecutors remarks misled jury and

STATEMENT OF THE CASE

prejudiced accused, whether remarks were isolated or extensive, evidence against accused, whether comments were deliberate, whether remarks were invited by improper conduct of defense counsel, and whether curative instructions were given); U.S. v. Certified Env'tl. Servs., Inc., 753 F.3d 72, 96-97 (2d Cir. 2014) (outrageous government conduct because impropriety existed at every stage of trial); U.S. v. Preston, 873 F.3d 829, 844 (9th Cir. 2017) (prosecutors 3 assertions that government witnesses "told the truth" improper); U.S. v. Acosta, 924 F.3d 288, 300 (6th Cir. 2019) (prosecutors description that witness is "fine young man," "remembered everything," and testified "very well" improper because personal view on witness's reliability). Defense counsel only and at the end of trial made a tepid generalized side comment, not even an objection to their misconduct to which the Judge replied, point is ended, transcript Oct. 28, 2019 pg. 56:1-27, Baer v. Neal, 879 F.3d 769, 786-89 (7th Cir. 2018) (counsel's failure to object to prejudicial prosecutorial comments ineffective assistance because prosecutors misstatements were "prolific and harmful" to defendants case).

15. Throughout trial defense counsel made or failed to make objections /strikes of the record specific to benefit the state and to my harm. At the end of trial privately retained counsel is on audio record (as is all the truth of what did and did not happen in this Soviet style show-trial as the transcripts are totally unreliable) saying everything he wanted to say or do Public Defender kept saying no, no, no to everything. This lack of creating a record was not to go unnoticed by the Connecticut Supreme Court in its affirming the conviction when in one example of many

STATEMENT OF THE CASE

that rely directly on perjured testimony and willfull failure of counsel to create a record, stated, state witness, state police detective established the disorderly conduct charge portion of the threatening case without challenge, Appendix A page 31 of the Connecticut Supreme Court Opinion affirming conviction, U.S. v. Jernigan, 492 F.3d 1050, 1056 (9th Cir.2007)(new trial warranted because withheld evidence undermined appellate court's confidence in outcome of trial and therefore was material); U.S. v. Young, 470 U.S. 1, 18-19(1985)("The prosecutors vouching for the credibility of witnesses...carries with it the, imprimatur of the government and may induce the jury to trust the governments judgment rather than its own view of the evidence").

16. Defense counsel presented no evidence, Workman v. Superintendant Albion SCI, 915 F.3d 928, 944 (3d Cir.2019)(counsel's failure to present case for defendant prejudicial because there was reasonable probability that outcome of trial would be different) id 928, 933 (no procedural default because trial counsel's assistance was manifestly ineffective), nor did it present among voluminous evidence, state witnesses recorded threats to me a year before my wedding, after a dispute wherein he went into a rage accusing me of sexually assaulting his girlfriend after I went to a bar with her and her sister (my then fiance) and said he can put me in prison with a simple phone call. He only ceased his rabid behavior after I told him to call the police and have himself arrested for being a psychotic loser, that this won't be a repeat of past problems where I apologize to keep the peace and my family. This state witness is the son and nephew of several high ranking police

STATEMENT OF THE CASE

officials in surrounding towns & municipalities, he is also personal friends with the captain of the investigating police department along with one of the two detectives in my one and only interview with police on Aug.29,2018, 25 days after he called police with false accusations that I had threatened to chop my entire families heads off and accusing me of molesting both and strangling one of my step-daughters. He also colluded with another detective state witness from the same department to give the same perjured/conjured tale at trial, and also colluded with state witness state police detective who also gave perjured testimony at trial in adopting the state witnesses fictitious version of events by lying under oath at trial about how many people witnessed/participated in the attempt to murder me at his residence when I showed up to bring my family home. Every aspect of their lies is provable by the trial audio record, AXON Body/Deck cam footage, phone call and text records, their own statements on DVD, etc.

17. It was this same state witness who two weeks before the start of my trial planted a knife on his property in the same bush my beer can was in after I threw it at state witness/attempted murderer in attempt (successful) to save my life after being ambushed and threatened with death by him, the other state witness,while a third person was blinding my eyes with a flashlight so I couldn't see as I tried to get off the property to the street to call the police,U.S. v. Barnes,895 F.3d 1194, 1204-05(9th Cir.2018)(upholding requirement that defendant provides sufficient proof to show actions sought to prevent imminent harm for necessity defense)after planting the knife he again called police to

STATEMENT OF THE CASE

report me for another crime I did not commit via the knife he staged as mine then said at trial I had it on me the night I was shot by them. Police crime scene investigation videos, photos, AXON Body Cam irrefutably prove state witness planted the knife as it was certainly not in the bush the night I was shot. When Privately Retained counsel asked this state witness where the knife came from, he said I'm not allowed to comment on that. The Public Defender then had the jury leave the room and told Private counsel to have this state witness I can't comment on that comment struck from the record, to which the Judge agreed after saying it sounds like someone told him to be dishonest and had the comment struck from the record. Public Defender then told Private counsel not to continue with this line of questioning, Transcript Oct.23,2019 pg.36-41,Strickland v. Washington, 466 U.S. 668, 692(1984)(right to effective counsel may be impaired when defense counsel operates under conflict of interest because "counsel breaches the duty of loyalty").

18. The state can answer for itself along with its perjury committing witnesses and complicit defense counsel why all exonerating evidence of any/all wrongdoing on my part was left out of the states case-in-chief, nor presented by defense counsel including lies that were readily available to be proven the lies they were 100% the moment they were told, such as when the states state police detective witness was asked how many people witnessed/participated in the shooting, he answered two. Transcript Oct.23,2019 pg. 83:10-18. However, see state witness state police detectives DVD recorded interviews of all three

STATEMENT OF THE CASE

directly involved/participating/witnessing the attempt to take my life just as I also asserted right after I was shot and from thereafter. Not a single one was placed in cuffs or arrested, I however was arrested immediately and without interview by this state witness state police detective and the case was closed upon my arrest. See three DVD interviews dated Aug. 7, 2018 of all three participants acknowledging their direct roles. This same state police detective state witness was also asked by the prosecutor if there were any police in the area when I was shot. He again lies and says no, this entire Q & A is deleted from the transcripts.

19. After eight months of browbeating by Public Defender in lead up to trial, I would sit down with her investigator and watch four DVD's: the two coached complainants, one laughing behind the forensic interviewers back while giving a thumbs up to the camera after told the interview was over (appellate counsel informed me this DVD was intentionally not turned into a full exhibit), the Judge at trial when this same coached complainant was being questioned by the prosecutor said counselor I'm dismissing this witness, she then asked her a series of questions, looked at the prosecutor and said O.K. counselor. The I'm dismissing this witness portion is deleted from the transcripts, Transcript Oct. 22, 2019 pg.118:9-12(hear audio); Hansen v. U.S., 956 F.2d 245, 248(11th Cir.1992)(petitioner allowed access to court reporters original tape recording of proceeding because transcript allegedly omitted comments made by judge). The other coached complainant changed pre-trial substantiated testimony on DVD to nullify my countervailing exonerating

STATEMENT OF THE CASE

evidence I had presented to defense counsel after watching the DVD's. The two remaining DVD's were of the two of three involved in the shooting, giving the exact opposite testimony at trial including who was involved, roles taken, where they were, etc. See also the Judge saying of shooter, he may have some culpability in the disorderly conduct, Transcript Oct.28,2019 pg.77:4-16. however, at sentencing, the Judge then said she found the trial testimony overwhelmingly convincing of my guilt, transcript Jan.7,2020 pg.35:21-27. In addition, the Public defender never even bothered to go over the pre-sentence report with me, U.S. v. Lockhart, 58 F.3d 85,88-89(4th Cir.1995)(court erred because it did not expressly ask whether defendant and counsel read and discussed PSR and record did not adequately support inference report was read and discussed); U.S. v. Lewter, 402 F.3d 319,329(2d Cir.2005)(court erred because it did not allow defendant to access PSR).

20. After the exonerating evidence, I was able to not only verify my statements from the beginning to be accurate,credible and reliable because they are true, but also the additional exonerating evidence I presented in writing after watching the DVD's with the investigator, I would see no more exculpatory material, nor would I find out there was a mountain of exculpatory material until appellate counsel sent me an itemized list Feb.15,2021, 16 months after conviction, 13 months after sentencing for crimes I never committed, U.S. v. Bagley, 473 U.S. 667,673(1985) ("A Constitutional error occurs, and the conviction must be reversed...if the evidence is material in the sense that its suppression undermines confidence in the outcome of trial); Bellamy v. City of New York, 914 F.3d 727,751-53(2d Cir.2019)(evidence material

STATEMENT OF THE CASE

under Brady where prior inconsistent statements by key witnesses had impeachment value and could change outcome of trial); U.S. v. Pasha, 797 F.3d 1122, 1135-38 (D.C. Cir. 2015) (evidence material under Brady where witnesses initial conflicting statements had impeachment value and witness was critical to prosecutions case).

21. When it came time for defense counsel to present its case at trial, Public Defender told me she has an expert witness who she will not be allowing to testify, that she will not be presenting her investigators report, none of my writings/exhibits, any of the DVD's, Body Cam footage or any evidence whatsoever to support my testimony when I testify, that it will just be my word against theirs. At this, compiled with the non-impartial jury, I declined to testify, Heard v. Addison, 728 F.3d 1170, 1180-87 (10th Cir. 2013) (counsel ineffective because defendant prejudiced by counsel's failure to share valid possible defenses that any competent attorney would have identified); U.S. v. Flores-Rivera, 787 F.3d 1, 18 (1st Cir. 2015) (Brady violation where cumulative value of undisclosed evidence played essential role in conviction).

22. At the end of trial and very clearly on the record, when asked how I plead to being a violent persistent felony offender (I rightfully sat in prison for 13 years and 3 months 1997-2010, 18 years old to 32 years old for the armed robberies I committed when I was a young selfish punk, and upon release I worked very hard to atone for my past sins, in other words I lived as an ordinary American citizen, free and thankful) I again maintained my innocence to this question and said I am not guilty

STATEMENT OF THE CASE

being a violent persistent felony offender as I did during evidentiary hearing response to this same question and my desire for trial on this question as well, Transcript Oct. 4, 2019 pg.4:14-22, U.S. v. Fisher, 624 F.3d 713, 717-18 (5th Cir. 2010) (consent not implied because defendant explicitly objected to mistrial when asked by the judge), however, after I say not guilty, the Judge asks Public Defender to talk to me, U.S. v. Kyle, 734 F.3d 956, 966 (9th Cir. 2013) (miscarriage of justice because court's remarks in plea discussion could be reasonably perceived as "inconsistent with the court's role as a neutral arbiter of justice"); id. at 955-66 (appellate waiver invalid when district court's statements encouraged plea agreement); U.S. v. Hemphill, 748 F.3d 666, 677 (5th Cir. 2014) (judge violated Rule 11(c)(1) by going beyond commenting on pros and cons of plea and instead advocating guilty plea); U.S. v. Smith, 618 F.3d 657, 664-65 (7th Cir. 2010) (appellate waiver invalid when court briefly mentioned waiver to defendant's attorney instead of questioning defendant); U.S. v. Cano-Varela, 497 F.3d 1122, 1134 (10th Cir. 2007) (miscarriage of justice because court participated in plea discussions) it is at this point Public defender reminds me of conversation she had with me before I was brought into the courtroom, that pleading guilty to this question is a mere formality at this point given the jury had just convicted on all counts, I then say yes I remember and apologize, Transcript Oct. 29, 2019 pg. 29:13-21, Doe v. U.S., 915 F.3d 905, 910 (2d Cir. 2019) (performance deficient because counsel misadvised defendant about immigration consequences of plea); Padilla v. Ky., 559 U.S. 356, 374 (2010) (performance deficient if counsel fails to advise defendant whether

STATEMENT OF THE CASE

plea "carries risk of deportation"); *Tollett v. Henderson*, 411 U.S. 258 266-67 (1973) (federal habeas claims of pre-plea ineffective assistance of counsel permitted when counsel's actions prevented prisoner from making a knowing and voluntary plea); *U.S. v. Bui*, 795 F.3d 363, 367-68 3d Cir. 2015) (plea not knowing because defendant relied on counsel's incorrect advice); *U.S. v. Molt*, 589 F.2d 1247, 1251-52 (3d Cir. 1978) (consent not voluntary because defendant's college education, business experience and consultation with attorney prior to consenting did not overcome defendant's erroneous belief, which stemmed directly from innocent misrepresentations by agents, that defendant had no choice but to consent), the question is then asked a second time to which I now plead to, Transcript Oct. 29, 2019 pg. 30:16-18, *Key v. U.S.*, 806 F.2d 133 136-37 (7th Cir. 1986) (guilty plea did not bind defendant to responses to court's questions about whether confession was coerced if defendant presented new, specific allegations as to voluntariness in collateral proceedings); *U.S. v. Rios-Rivera*, 913 F.3d 38, 42 (1st Cir. 2019) (guilty plea did not waive claim that prosecution was unconstitutional); *U.S. v. Mendenhall*, 446 U.S. 544, 557 (1980) (consent not voluntary if "product of duress or coercion, express or implied"); *U.S. v. Huyhn*, 884 F.3d 160, 165-66 (3d Cir. 2018) (in plea agreement context, defendant receives benefit of doubt given governments greater bargaining power during plea negotiations and defendants surrender of certain Constitutional rights), however, the record clearly shows but for deceitful counsel, I was going to trial on this as I desired, *Dat v. U.S.*, 920 F.3d 1192, 1194-95 (8th Cir. 2019) (counsel's incorrect advice on deportation consequence of plea deal prejudicial because evidence substantiated that defendant would have

STATEMENT OF THE CASE

otherwise refused plea and insisted on trial). I know now that as a result of being intentionally mislead I received decades more in prison for crimes that never occurred, *Glover v. U.S.*, 531 U.S. 198, 202-04(2001)(6 to 21 month increase in defendant's sentence allegedly caused by defective performance of defendant's counsel prejudicial because significant enough to render trial fundamentally unfair); *U.S. v. Rothstein*, 939 F.3d 1286, 1291(11th Cir. 2019)(in plea agreement context, defendants reasonable understanding not meant as "rigidly literal" reading).

23. This Petition is in no way, shape or form complete as a fraction of the evidence has been submitted as space allows. After all the evidence is actually reviewed, however, I will be proven beyond any doubt to be actually, truthfully, factually innocent of any/all wrongdoing, it will also be proven that this was known long before trial commenced and was willfully, intentionally, maliciously suppressed when members of law enforcement and the judiciary conspired with a criminal element to manufacture my guilt and collectively destroyed my life.

REASONS FOR GRANTING THE PETITION

Abdus-Samad v. Bell, 420 F.3d 614, 625 (6th Cir. 2005) (petition cognizable as false-testimony claim is fundamental defect).

Bronowitz v. Allegheny County, 804 F.3d 338, 347-48 (3d Cir. 2015) (cognizable § 1983 claim for wrongful imprisonment because state court judgment vacated in light of Constitutional errors at trial level).

Burks v. U.S., 437 U.S. 1, 17-18 (1978) (double jeopardy bar because judge reversed conviction due to insufficient evidence).

Carrier, 477 U.S. at 496 (procedural default excused, even in absence of cause, when Constitutional violation likely resulted in conviction of innocent person).

Finch v. McKoy, 914 F.3d 292, 302 (4th Cir. 2019) ("totality of the evidence, both old and new, would likely fail to convince any reasonable juror of his guilt, beyond a reasonable doubt").

Floyd v. Vannoy, 894 F.3d 143, 160 (5th Cir. 2018) (habeas relief not defaulted because petitioner established actual innocence by providing new evidence).

Fuentes v. Griffin, 829 F.3d 233, 250-53 (2d Cir. 2016) (Brady violation because undisclosed impeachment evidence not cumulative, no physical evidence inculpated defendant).

Greene v. Massey, 437 U.S. 19, 24 (1978) (citing Burks v. U.S., 437 U.S. 1, 11 (1978) (federal rule that retrial barred when conviction reversed due to insufficiency of evidence applies to states because integral part of 5th Amendment)).

Heck v. Humphrey, 512 U.S. 477, 489-90 (1994) (under federal law, cause of action for damages due to unconstitutional conviction accrues only when conviction reversed, expunged, invalidated, or impugned by grant of writ of habeas corpus).

Hooks v. Workman, 606 F.3d 715, 748-51 (10th Cir. 2010) (claim of error cognizable because prosecutorial misconduct Constitutional violation).

McCleskey, 499 U.S. at 494 (federal courts retain authority to issue writ of habeas corpus despite "petitioner's failure to show cause for procedural default" when Constitutional violation probably caused conviction of innocent).

Parker v. Matthews, 567 U.S. 37, 43 (2012) (habeas relief possible if prisoner can show no rational trier of fact could have found essential elements of crime beyond reasonable doubt).

REASONS FOR GRANTING THE PETITION

Quezada v. Smith, 624 F.3d 514, 521-22 (2d Cir. 2010) (claim allowed because petitioner made prima facie case of witness perjury and Brady violation).

Rivas v. Fischer, 780 F.3d 529, 550-52 (2d Cir. 2015) (habeas relief granted because petitioner produced credible and compelling evidence calling into doubt evidence linking petitioner to crime and counsel's deficient performance was prejudicial).

Saddiqi v. U.S., 98 F.3d 1427, 1438-39 (2d Cir. 1996) (petition cognizable as jury conviction on factual issue not grounded in fact is fundamental defect).

Smith v. Wade, 461 U.S. 30, 51 (1983) (punitive damages proper in §1983 case involving "reckless or callous disregard for plaintiff's rights" and "intentional violations of federal law").

Supreme Court Rule 10 Considerations Governing review on Certiorari

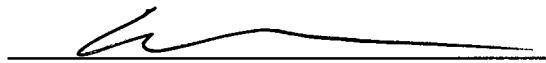
(a)...or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

The decision of the lower court and the subsequent affirmation of the verdict are erroneous as they substantiated fraud, thereby they are in direct conflict not only with the interests of justice but the very premise of the Constitution of the United States. Every American should be in dread of being accused of crimes they did not commit with the prospect of facing a tribunal that will instead of being a mechanism of vindication and relief, will instead meticulously and methodically orchestrate trial in such a way that not only is conviction guaranteed but appellate review is sealed in favor of affirmation before the case even presents at the appellate level as happened here to me.

CONCLUSION

The petition for a writ of certiorari should be granted.

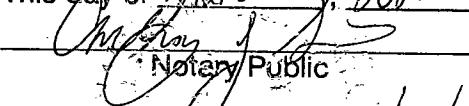
Respectfully submitted,



Date: 3/6/23

Subscribed and sworn to before me

This day of March 6, 2023



Notary Public

My Commission Expires 3/31/24