

No. 23-6182

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

OCT 05 2023

OFFICE OF THE CLERK

Joshua Anthony Peterman PETITIONER
(Your Name)

VS.

State of Mississippi — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MS Supreme Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Joshua Anthony Peterman #135144
(Your Name)

MSP, 296, Bzone, Bed #124

Hwy 49 West

(Address)

Porchman, MS 38738

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(1) Whether trial Court erred in amending indictment after trial and before sentencing to 99-19-83 Habitual in violation of Miss. R. Crim. P. Rule ~~22~~ 14.1 (b)

(2) Whether trial Court erred in using a 2007 burglary charge as a violent crime for 99-19-83 Violent Habitual in violation of a Mississippi Supreme Court ruling in Brown v State 102 So.3d 1087 (2012).

(3) Whether trial Court violated Petermans Constitutional Right to a fast and speedy trial.

(4) Whether the State and trial Court committed Giglio error, Brady Claim, Judicial & Juror bias, Prosecutorial Misconduct, and Petermans right to a fair trial.

(5) Whether Counsel was ineffective in violation of Cronic 839 F.2d 1401 (CA10 1985); US v Cronic 466 US 648, 104 S.Ct. 2039, 80 LEd 2d 657 (1984); & Strickland v Washington 466 US 668, 80 LEd 2d 674, 104 S.Ct. 2052 (1984).

(6) Whether Petermans Constitutional Right to cross examine witnesses was violated.

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:

Miss. Attorney General

Ms Lynn Fitch

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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☐ is unpublished.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☐ is unpublished.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 _____ to the petition and is

- ☒ reported at Peterman v State 294 So 3d 1208, 2019 Miss. App. LEXIS 570,; or, 2019 WL 6318026
☐ has been designated for publication but is not yet reported; or, 2022-M-00162
☐ is unpublished.

The opinion of the Miss Supreme Court of Appeals court appears at Appendix _____ to the petition and is

- ☒ reported at Peterman v State 294 So 3d 1208, 2019 Miss App LEXIS 570,; or, 2019 WL 6318026
☐ has been designated for publication but is not yet reported; or, 2018-KA-01161-COA
☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Case at bar is Contrary to the Miss. Supreme Court ruling in *Brown v State* 102 So3d 1087 (2012); *Hughes v State* 291 So3d 792 (2020); *Atkins v State* 493 So2d 1322 (Miss 1986); and *Perry v State* 419 So2d 194-98 (Miss 1982), in violation and in accordance with *Price v Vincent* 538 US 634, 155 LEd 2d 877, 123 Sct 1848 (2003).

This Case at bar is in violation of the 6th & 14th Amendment US Constitution.

This Case at bar is in violation of the Miss Constitution Art 3 Sec's 14 & 26.

ISSUE I: WHETHER TRIAL COURT ERRED IN
AMENDING INDICTMENT AFTER CONVICTION AND
BEFORE SENTENCING TO ENHANCED 99-19-83 HABITUAL

On October 10, 2015 Peterman was arrested by Gulfport Police Dept' for the murder of Tena Marie Broadus. Peterman was charged with Capital Murder under Miss. Code Ann. Section 97-3-21. Peterman remained in Harrison County Jail and was indicted on December 29, 2016 by A grand jury for Capital murder under Miss. Code Ann. Section 97-3-21 as a Habitual offender under Miss. Code Ann. Section 99-19-81. Peterman was arraigned on January 18, 2017, Honorable F. Philip Wittmann IV was appointed to represent Peterman. Peterman pled not guilty and trial was set for May 8, 2017. On January 23, 2017 Peterman inserted his right to a speedy trial in his motion for Production and inspection, Section VII "To Speedy And Public Trial." (EXHIBIT "A-4"), State filed with the Circuit Clerk a motion to amend indictment from Miss. Code Ann. Section 99-19-81 to enhanced Life habitual under Miss. Code Ann. Section 99-19-83. Peterman never received said motion until the first day of trial on June 26, 2018. On June 26, 2018 the State brought motion to amend before the Court before the jury was sworn in, Judge Roger T Clark postponed ruling on the motion until after the trial. Trial ended on June 29, 2018 with

a guilty Verdict, and Sentencing was postponed until July 12, 2018. On July 12, 2018 Judge Clark ruled on the States motion to amend indictment to 99-19-83 and then sentenced Peterman to Life in prison without parole, probation, or early release for Capital Murder under 97-3-21 as Life habitual under 99-19-83. Peterman was unduly Suprised at trial because He never saw the States motion to amend until trial. Peterman had no time to prepare a defense for the States motion before trial. This motion severely prejudiced Peterman in that He was offered a plea for 20 years on 2nd degree murder, but Peterman refused the States offer and Chose His 6th Amendment to go to trial. Then out of vindictiveness by the State for refusing the plea, On the first day of trial the State moved to amend the indictment. Had Peterman know about the States intentions to amend indictment to 99-19-83 Life habitual He would of taken the 20 year plea deal.

States failure to amend indictment atleast 30 days before trial violated Miss. R. Crim. P. 14.1(b) as follows:

14.1(b) - after indictment, and atleast 30 days before trial or entry of a plea of guilty, file with the Court formal notice of Such prior Convictions. The notice shall be served upon the defendant or the defendants attorney and Shall contain the same information Specified in Subsection (1) of this rule. An untimely-filed formal notice is permitted only when the 30 day requirement is expressly waived in writing by the defendant.

State had 1½ years from indictment on Dec. 29, 2016 till trial on June 26, 2018 to have the motion to amend heard, but the motion was not heard till trial, only because Peterman refused the states plea offer. Defense Counsel objected to the motion, but Judge Clark overruled it.

In Turner v State of Tenn. 940 F.2d 1000 (CA 6 1991), Turner was granted a new trial on the grounds that he recieved ineffective assistance of counsel in deciding to reject the 2-year plea offer. Any unexplained change in the sentence is therefore subject to a presumption of vindictiveness. Alabama v Smith 390 us at 802, 109 S.Ct at 874.

Whether the trial court erred by allowing the indictment to be amended on the day of trial is an issue of law and is reviewed de novo. Ferguson v State 136 So 3d 421, 423, (118) (Miss. 2014).

Every prosecution and sentence must be in compliance with statutory authority, case precedent, and the procedural rules of court. Hughes v State 291 So 3d 792 (2020).

In Atkins v State 493 So 2d 1322 (Miss. 1986), This Court held that an amendment to an indictment which changed the habitual offender charge from the "little" enhancement (section 99-19-81) to the "big" enhancement (section 99-19-83) was an impermissible amendment. In that case, defendant originally was charged as an habitual offender under Miss. Code section 99-19-81, and thus faced a

maximum penalty of 30 years is convicted of aggravated assault on a police officer. After his conviction and before sentencing, the State was allowed to amend the indictment to have the defendant sentenced to imprisonment for life under Miss. Code Section 99-19-83. On Appeal, this Court held that the amendment was improper, and this Court vacated the defendant's enhanced sentence,

In the case at bar, Peterman's indictment was improperly amended the day of the sentencing on July 12, 2018, 16 days after conviction. In the interest of justice, the only relief available is for this Court to vacate the enhanced portion of sentence.

ISSUE II WHETHER TRIAL COURT ERRED IN USING A 2007 BURGLARY OF DWELLING AS A VIOLENT CRIME TO AMEND INDICTMENT TO LIFE HABITUAL, MISS. CODE ANN. SECTION 99-19-83, AND NOT SERVED 1 YEAR OR MORE ON EACH PRIOR CONVICTION.

The State moved to amend Peterman's indictment to enhance sentence to life habitual under Miss. Code Section 99-19-83. The State presented 3 prior convictions in the motion to amend, ⁽¹⁾ Burglary of A Dwelling Conviction from December 10, 2007, Cause No: B2401-2007-512. ⁽²⁾ Burglary Conviction from December 10, 2007, Cause No: B2402-2007-250. ⁽³⁾

Unlawful possession of firearm or weapon/Convicted felon,
Conviction from September 8, 2009, Cause No: B2401-2008-937.
Motion To Amend Indictment EXHIBIT "B", Indictment EXHIBIT "A".
The State used The Burglary of A Dwelling in Cause No: B2401-
2002-572, from December 10, 2007 for the violent crime to
meet the threshold of Miss. Code Section 99-19-81. Peterman
was convicted in 2007 on the Burglary of A Dwelling as a
nonviolent crime. Burglary of A Dwelling was not made a
violent crime by the Legislature until July 1, 2014. Since
Peterman was convicted as nonviolent in 2007, He was grand-
fathered in as nonviolent when Burglary of A Dwelling became
a violent crime on July 1, 2014.

Gentry v Sinclair 293 F.3d 867, (CA 9 2012) P. 891 - The
Ex Post Facto Clause bars the government from passing laws that
impose a new punishment or increase punishment for a crime comm-
itted before passage of the law. see Weaver v Graham 450
US 24, 28, 101 S.Ct 960, ... (1981). The Clause serves two purposes:
(1) to ensure that the Legislature provides fair notice to
individuals regarding the effect of their actions, and (2) to
prevent the government from arbitrarily and vindictively
using its power to convict individuals. Weaver 450 U.S.
at 28-29, 101 S.Ct 960.

Miller v Florida 519 U.S. 437, 137 LEd 2d 63, 117 S.Ct
891, (1997); Focus Note; This case deals with the application

of revised Sentencing laws to Miller's Case upon his remand for resentencing."

P.2450.- Article 1 of the U.S. Constitution provides that neither Congress nor any other State shall pass any "ex post facto laws."

Our understanding of what is meant by ex post facto largely derives from the case of Calder v Bull 3 Dall. 386, 1 LEd 648 (1798), in which this court first

considered the scope of the ex post facto prohibition.

P.2451.- A law is retrospective if it "changes the legal consequences of acts completed before its effective date."

Weaver, Supra.

In Brown v State 102 So 3d 1087 (2012), A Trial Judge held that a prior Burglary Conviction satisfied the violent-crime requirement for habitual-offender status. Court of Appeals held per-se a crime of violence, on Writ of Certiorari we reverse.

The Harrison County grand jury indicted Mark Kee Brown for felony escape, and as a habitual offender under Miss. Code section 99-19-81. The State later moved the trial Court to amend the grand jury's Indictment to charge Brown as a habitual offender under section 99-19-83- A statute that requires a life Sentence for defendants with two previous felony Convictions, one of which was a "Crime of Violence."

Miss. Code Ann. Section 99-19-83, (Rev. 2007).

Every person convicted in this state of a felony who shall have been convicted twice previously of any felony... and who shall have been sentenced to and served separate terms of 1 year or more in any state and/or federal penal institution, whether in this state or elsewhere, and where any ~~one~~ 1 of such felonies shall have been a crime of violence shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

In the case at bar, Brown argues that Burglary of A Dwelling is not a "Crime of Violence" within the meaning of Section 99-19-83.

Court held Burglary of A Dwelling is not per se a crime of violence for purposes of habitual offender status. We therefore reverse the COA's decision, affirm the conviction of felony escape, vacate the sentence rendered by Harrison County Circuit Court, and remand to the trial court for sentencing consistent with this opinion.

Peterman contends that he hadn't served 1 year or more on any of the prior convictions used to enhance sentence for purposes of Section 99-19-81. The state added the time Peterman spent in Harrison County Jail on his pending capital murder charge from his arrest on October 10, 2015 to his prior convictions to cross the threshold to satisfy the 1 year

Served requirement on prior convictions, (T. 714) (EXHIBIT "C").

For the above and foregoing reasons, Peterman's indictment was improperly amended, so in the interest of justice and in accordance with law the only relief available is for this Court to vacate the enhanced portion of sentence.

ISSUE III WHETHER THE STATE VIOLATED THE
DEFENDANT'S 6th AND 14th AMENDMENT TO THE UNITED
STATES CONST. AND ART. 3 SECTION 14 AND 26 TO THE
MISS. CONST. FOR FAILURE TO PROVIDE FAST AND SPEEDY
TRIAL UNDER MISS. CODE ANN. SECTION 99-17-1

On October 10, 2015, Peterman was arrested by Gulfport Police Dept' and charged with Capital Murder pursuant to Section 97-3-21 in Cause NO: B2401-2016-834, Peterman remained in Harrison County Jail and was indicted by a grand jury on December 29, 2016 for Capital Murder pursuant to 97-3-21 as a habitual offender pursuant to 99-19-81. Peterman was arraigned on January 18, 2017, Honorable Frank Philip Wittmann IV was appointed to represent Peterman. Peterman pled not guilty and Trial was set for May 8, 2017. On May 8, 2017, trial was continued until September 18, 2017. Peterman inserted his right to a speedy trial on January 23, 2017 in the motion for production And inspection

Section VII Labeled "To Speedy and Public Trial" (EXHIBIT "A"-4) filed in Harrison County Circuit Court. The Continuance on May 8, 2017 was against my wishes as I made it clear that I did not want any Continuances, I wanted a trial. I never asked for a continuance and I never signed a waiver. On September 18, 2017 trial did not take place. On October 4, 2017 trial was Continued until January 22, 2018 for docket call, then on the new trial date February 5, 2018 trial was Continued again till May 7, 2018, but trial didn't take place until June 26, 2018. Trial ended on June 29, 2018 and Sentencing was on July 12, 2018 after a verdict of guilty. There was a 990 day delay from arrest until trial, 524 day delay from arraignment until trial, 519 day delay from inserting my right to a speedy trial until trial.

The right to a speedy trial is not a theoretical or abstract right, but one rooted in hard reality in the need to have Charges promptly exposed.

The 14th Amendment (applying) the 6th Amendment right to a speedy trial is enforceable against the States as one of the most basic rights preserved by our Constitution.

Miss. Supreme Court Concluded in Perry v State 419 So 2d 194-98, (miss 1982) that the Constitutional right to a speedy trial attaches when a person has been accused.

Prosecution begins when arrest warrant is issued, 99-171, Cannaday v State 455 So 2d 713, 722, (miss 1984); Page

V State 495 So2d 436, 439, (miss 1986).

In Barker v Wingo 407 US 514, 92 S.Ct. 2182, 33 LEd. 2d 101, (1972) The US Supreme Court announced a 4 part balancing test involving the following factors, (1) Length of delay, (2) Reason for delay, (3) Assertion of his right, (4) Prejudice to the defendant.

In Bailey v State Supra 463 So2d at 1062, this Court found a delay of 288 days to be a Substantial Period of time to require a balancing of all the Barker factors. In Beavers v State Supra 498 So2d at 990 ("8) this Court found a delay of 423 days was sufficient to require reversal. See Blake v Katter 693 F2d 677, 681-82 (7th Cir 1982) A 7 month delay is enough to warrant an inquiry into the remaining Barker factors.

In Smith v State 550 So2d 406 (1989) This Court has made it clear, however, that Compliance with Section 99-17-1- (unless good cause be shown, and a continuance duly granted by the Court, all offenses for which indictments are presented to the Court shall be tried no later than 270 days after the accused has been arraigned.) does not necessarily mean that a defendants Constitutional right to a speedy trial has been respected. Bailey v State 463 So2d 1059, 1062, (miss 1985); Perry v State 419 So2d 194, (miss 1982);

In Maples v Stegall 427 F.3d 1020 (CA 6 2005), and Kopher v North Carolina 386 US 213, 87 S.Ct. 988, (1967) The length of delay is measured from the date of indictment or the date of arrest, whichever is earlier, U.S. v Marion 404 US 307, 320, 92 S.Ct. 455. A delay approaching 1 year is presumptively prejudicial and triggers application of the remaining 3 Barker factors. Doggett Id.

In the case at bar, Peterman's ⁽¹⁾ Length of delay is as follows - from Arrest till trial 990 days; from arraignment till trial 524 days; from insertion of right till trial 519 days. Delay is sufficient enough to require reversal and inquiry into the remaining 3 Barker factors.

(2) Reason For Delay - Peterman never asked for a Continuance, never signed a Continuance form or a waiver, Peterman sit in Jail for 447 days waiting to be indicted, and 467 days until I was finally arraigned and was appointed an Attorney. Filed my insertion for speedy trial 6 days after arraignment and never asked for any type of delay. Reason for delay weighs against the State.

(3) Assertion of Right - Filed on January 23, 2017, 519 days before trial, weighs against the State.

(4) Prejudice to defendant - Being in Harrison County Jail for 990 days in a 54 sq. feet cell with another man, Stressed and trying to get help defending my life Caused severe mental and emotional distress, great anxiety, unrest and sleep deprivation,

my father passed away shortly after my arrest, my mother and family quit talking to me and stopped bringing my daughter to see me, I had to be put on medication, I still have problems resting and just thinking about this case causes great anxiety. Weighs against the state.

It is clear from the above and foregoing that all 4 Barker factors weigh in favor of defendant. There are no way the state can justify its actions in taking 447 days to get an indictment, or taking 990 days to go to trial. Defendants Statutory and Constitutional rights are severely violated for failure to provide a fast and Speedy trial.

Of course, the sole remedy for denial of a defendant's right to a speedy trial is dismissal of the charges against him. Perry v State supra 419 So 2d at 197 (citing Strunk v United States 412 us 434, 93 S.Ct. 2260, 37 L.Ed 2d 56 (1973))

This Court must dismiss charges and discharge this defendant in the interest of justice and in accordance with law.

ISSUE IV WHETHER THE STATE VIOLATED GIGLIO ERROR, BRADY CLAIM, AND PROSECUTORIAL MISCONDUCT VIOLATING HIS RIGHT TO A FAIR TRIAL.

The State gave the jury His personal opinion about Peterman in the opening and closing arguments (p. 108)

and (T.663) (EXIBIT "D." & "E") by repeatedly telling the jury "They're absolute dregs of Society."

(T.664) (EXIBIT "F") - Ladies and gentlemen, these are meth heads. You know, Plans hatched in hell don't have angels for witnesses, These are meth heads and they're his meth heads. People that he fueled up with meth. People (T.665) (EXIBIT "G") that were scared of him.

(T.663) EXIBIT "E" "There not the states friends, they're not your friends."

(T.667) EXIBIT "I" "Ladies and gentleman, don't give him credit for how heinous this crime is."

(T.668) EXIBIT "J" "Don't let him get away with it. Your Choices when you go back are first degree or second degree murder."

At the very least, at the very least he's guilty of Second degree. (Cont. Lines 5-10, 12-14, & 16-25,

(T.669) EXIBIT "K" "Hold this defendant accountable for the brutal murder of Tena Broadus."

(T.697) EXIBIT "L" "You wouldn't believe his stories or these other stories anywhere else, so why would you believe it now."

(T.699) Lines 10-14 (EXIBIT "M") state adm. 7s to the deal with Devin Gregory (22 years) Kari Parker (12

20) years.

(T. 702) EXHIBIT "N" - Find him guilty of murder because that's what he did. (T. 703) EXHIBIT "O"

These are all improper comments by the prosecutor. He told the jury that the only choice they had was 1st or 2nd degree murder. He didn't give them a choice for not guilty. He steadily said "Find him guilty." State claims defendant was robbing Coke machines and a drug dealer but defendant was never charged or convicted of either offense. In fact 2 State witnesses were convicted for distributing meth, Natasha Sellers and Aaron Bobinger (T. 691 EXHIBIT "P"). Peterman refused a 20 year plea the State offered for 2nd degree murder so out of prosecutorial vindictiveness, the State delayed trial until Peterman served 1 year so the indictment could be amended to 99-19-83 Life habitual.

In Turner v State of Tenn 940 F2d 1000, (CA 6 1991) P. 100 Turner was granted a new Trial on the grounds he received ineffective assistance of Counsel in deciding to reject the 2 year plea offer. Any unexplained change in the sentence is therefore subject to a presumption of vindictiveness, Alabama v Smith 390 US at 802, 109 S.Ct. at 874.

The State withheld Jenck's Materials in violation of U.S. v Hodgkiss 116 F3d 116 (CA 5 1997); & Clancy v U.S.

365 U.S. 312, 313, 81 S.Ct. 645-646, 5 LEd 2d 574 (1961)

by not giving defense original oral and written Statements made to Law enforcement by witnesses (co-defendants), and back ground Criminal Histories of witnesses (co-defendants as requested in motion for Production and Inspection I, III, and failure to reveal any agreement with co-defendants IV filed on Jan 23, 2017 EXHIBIT "A" 1, "A" 2 & "A" 3. in violation of Brady Claim, Brady v Maryland 397 US 753 (1970); Bass v Pierce 263 F3d 734 (CA 7 2001); & Slutzker v Johnson 393 F3d 373 (CA 3 2004)

In Brady the U.S. Supreme Court held that federal and State prosecutors are supposed to seek Justice, not merely Score convictions. Of course this prosecutorial misconduct is not a new revelation. Withholding evidence, the Court held violates Due Process, that is, the right to a fair trial. Many cases overturned are premised on this type of prosecutorial misconduct.

4 Common areas of misconduct: (1) Witness Selection process, called voir dire; (2) Police reports for Suppressed Evidence; (3) Government witness who were given special incentives to testify; (4) The prosecutors open & closing arguments. See Goudy v Basinger 604 F3d 394, 398 (CA 7 2010)

The State committed Biglio Error by allowing State witnesses to give perjured testimony in exchange for plea deals. Testimony was different than Statements.

Ventura v Attorney General, Fla 419 F3d 1269 (CA 11 2005)

P. 1276, Giglio error is a species of Brady error that occurs when the undisclosed evidence demonstrates that the prosecutors case included perjured testimony (P. 1277) and that the prosecutor knew, or should of known, of the perjury. U.S. v Agurs 427 US 97. "If false testimony surfaces during a trial and the government has knowledge of it, the government has a duty to step forward and disclose. Brown v Wainwright 285 F2d 1457, 1464, (11th Cir 1986); Giglio v US 405 US 150, 153, 92 S.Ct 263, 31 L.Ed2d 104 (1972),"

In Goudy v Basinger 604 F3d 394 (CA 7 2010) P. 398,

Goudy argues that the prosecution violated his right to a fair trial under Brady by failing to turn over witness statements.

State said He knew the witnesses were not going to tell the truth. (T. 100) EXHIBIT Q

Judge Roger T Clark was a bias Judge in that He overruled or denied every single motion and objection from the defense and granted every single motion and objection from the State. Judge failed to strike 2 Jurors with admitted relationships with Law enforcement officers active in this case, causing an unfair trial.

Juror 17 Tyler Watters The forman of the jury told the Court He was real good friends with Investigator Brian Sullivan active in this case. Juror 22 Corinne Bucholz Told

the Court She knows Officer Wayne Payne active in this case and the arresting officer.

In US V Gonzalez 214 F3d 1109 (CA9 2000) P.1111, The 6th Amendment guarantees a Criminal defendant a verdict by an impartial jury. Dyer v Calderon 151 F3d 920, 923, (9th Cir 1998). The bias or prejudice of even a single juror is enough to violate that guarantee. Id. Accordingly, The presence of a bias juror cannot be harmless. The error requires a new trial without a showing of actual prejudice, Dyer 151 F3d at 923, n.2, See Also, US V Martinez-Salazar 528 US 305 120 S.Ct 774, 782, 145 LEd2d 792 (2000). In Contrast, Implied bias presents a mixed question of Law and fact which is relivable de novo Dyer 151 F3d at 929.

This Court has no choice but to reverse and remand in the interest of Justice.

In U.S. V Delgado 631 F3d 685 (CA5 2011) p.701 By effectively Calling Delgado a liar and declaring that she had lied to investigating government agents, the prosecutor threw the weight of his own credibility as a representative of the United States behind this personal opinion giving his personal opinions much weight... when they should properly carry none. Berger v US 395 US at 88, 55 S.Ct. 629 (Conviction vacated under cumulative error doctrine.)

The Judge read the indictment to the jury.

Prosecutor refused to give defense Counsel witness Statements.

Defendant did not receive a fair trial.

ISSUE V WHETHER DEFENDANT RECEIVED
INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF
THE 6th AND 14th AMENDMENT U.S. CONST,

Defendant received ineffective assistance of Counsel under Strickland v Washington 466 US 668, 80 LEd2d 674, 104 S.Ct. 2052 (1984); McMann v Richardson 397 US 759, 771, n.14, 90 S.Ct 1441, 1449, n.14, 25 LEd2d 263 (1970); & US v Cronic 839 F2d 1401 (CA 10 1985), US v Cronic 466 US 648, 104 S.Ct 2039, 80 LEd2d 657 (1984)

Peterman wrote defense Counsel 6 Letters (EXIBITS "R" 1-6) with no response, a Bar Complaint filed October 19, 2017, and a Letter to the Court filed on Nov. 1 2017 (EXIBITS "S" & "T")

Defense Counsel admits that he withheld some of the motion of discovery from defendant. (T. 6, 7) (EXIBITS "H" 1, "H" 2) Defense Counsel tells the Court "I think that I have a duty to withdraw," "I don't think I can proceed with representing him," etc, etc. (T. 7) (EXIBIT "H" 2).

Defendant and defense Counsel had a complete break

down in Communication. Defense Counsel refused to visit defendant, refused to answer letters or phone calls, did not investigate State witnesses criminal history's or Statements, withheld discovery, did not object at Critical Stages of trial such as directed verdict in violation of Cronic 466 US at 658, never visited the Crime Scene, in collusion with prosecution in continuances behind defendants back, didn't object during opening and closing arguments at prosecutors improper comments.

In Larkin v State 44 F.Supp 2d 897 (E.D. Mich 1999) p. 900, a defendant's Communication with Counsel is critical to the Attorney's representation. Geders v U.S., 425 US 80, 91, 96 S.Ct 1339, 47 L.Ed 2d 592, (1976). Denial of this opportunity is Constitutional error requiring reversal. 6. Mr. Larkin was denied the right to Counsel; Counsel means open and complete Communication. The fact that Mr. Larkin was denied the opportunity to speak freely with his Attorney denied him Counsel.

Plumlee v Sue Del Papa 426 F3d 1095 (CA 9 2005)
P. 1103. No retreat from the principle that the defendant is entitled to an attorney who acts as his advocate, or a rejection of the theory that an Attorney-Client relationship can be so dysfunctional as to render Counsel unable to provide the Constitutional minimum of adequate representation in the role

of advocate. See Brown v Craven 424 F3d 1166, 1170, (9th Cir 1978); Crandell v Bunnell 144 F3d 1213 (CA9 1998)

The 6th Amendment right to effective Counsel extends to "All critical stages of the criminal process." Iowa v Tovar 541 US 77, 80-81, 124 Sct 1379, 158 LEd2d 209 (2004); Summerlin v Schriro 427 F3d 632 (CA9 2005).

Counsel did not object, but kept silent when the Court denied JNOV and directed verdict against Peterman. JNOV being a Critical Stage, EXHIBITS "U-1-5"

Handing v Davis 878 F2d 1341 (CA 11 1989) p. 1345; Atty. (Lovelace) was silent throughout virtually the entire trial, but most crucially, he remained silent as the Judge directed a verdict against his criminal defendant client. We hold that his silence at the point the verdict was directed against his client was so likely to prejudice Handing that the cost of litigating its effects is unjustified and prejudice is presumed. US v Cronin 466 US at 658.

Myers v Collins 8 F3d 249 (CA 5 1993) p. 252- Whether at trial or appeal, a defendant is not required to accept unwanted Counsel. See Also, Myers v Johnson 76 F3d 1330 (5th Cir 1996); Vega v Johnson 149 F3d 354 (5th Cir 1998).

Pazden v Mauder 424 F3d 303 (CA 3 2005) p. 313; Therefore, a reviewing Court must be "Confident the defendant is not forced to make a choice between incompetent or adverse

Counsel or appearing pro-se. US v Taylor 113 F3d 1135
1140, (10th Cir 1997).

Peterman was denied effective assistance of Counsel in violation of the 6th & 14th Amendment, US Const. & Art. 3 Sections 14 & 26, Miss. Const.

ISSUE VI WHETHER DEFENDANTS 6th & 14th
AMENDMENT RIGHT TO CROSS-EXAMINE WITNESSES
WERE VIOLATED

Buccal Swabs were taken from Tena Broadus' mother Barbara Broadus and her brother Ronald Broadus to test against the remains found in the Biloxi River. 2 teeth from the recovered skull were crushed to test for DNA. Crime Lab Tech. Katherine Rodgers testified (T.514) (EXHIBIT "V") She was not the author of the review. (T515) (EXHIBIT "V") On Oct 29 2015 the mother and Childs DNA were Swapped.

MS Rodgers admits to a mistake in the DNA Results, but Peterman was denied the right to properly Cross-Examine the author of the testing because she didn't testify to her test results or mistakes.

Due Process protects the right to Cross-examine the witness, thus precluding impeaching evidence violates the

14th Amendment. Holley v Warbarough 568 F3d 1091,
Bullcoming v New Mexico — US —, 180 LEd2d 610,
131 Sct 2205 (2011) p. 2207 - The Confrontation Clause, the
Opinion Concludes, does not permit the prosecution to
introduce a forensic laboratory report containing a test-
imonial Certification, made to prove a fact at a Criminal
trial, through the in-Court testimony of an analyst who
did not Sign the Certificate or personally observe the
performance of the test reported in the Certification. The
accused's right to be Confronted with the analyst who
made the Certification, unless that analyst is unavailable
at trial, and the accused had an opportunity, pretrial, to
Cross-examine that particular Scientist.

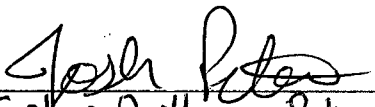
Peterman is entitled to a reversal due to a
Supreme Court ruling in Suan v State 511 So2d 144, 146-
48, (miss 1987), The Supreme Court reversed an escape
Conviction because the Court limited defenses right to Cross-
examine a prosecution witness. The Supreme Court held
"One accused of a crime has a right to broad and
extensive Cross-examination of witnesses against him.
Id. See Also Myers v State 296 So2d 695, 700, (miss 1974),
Rule 611(b) Miss. R. Evid., US Const. 6th & 14th Amend. &
Art. 3 Sections 14 & 26 Miss. Const.

Peterman's rights are clearly violated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


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