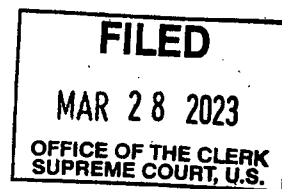


No. 23-6293

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Shallon Hawkins — PETITIONER
(Your Name)

VS.

David Vandergriff — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Shallon Hawkins
(Your Name)

2727 Hwy K
(Address)

Bonne Terre MO 63628
(City, State, Zip Code)

(Phone Number)

Petition for Writ of Certiorari

Questions Presented for Review

Reason for Writ 1: "Questions"

Did the United States District Court error, by denying my claims for procedural default, or not review them, under Martinez, Coleman, fundamental fairness, newly discovered evidence, or actual innocence? Did trial, pre, direct appeal and 2915 counsel(s) commit attorney error or were they inadequate and ineffective and was this sufficient good or just cause for procedural default in the Missouri Court of Appeals, 2915, direct appeal, and 2254 of all claims 1-11? If it was raised in the 2915? Was a denial of access to courts and counsel by the Department of Corrections good or just cause for procedural defaults? If the grievance process evidence is not good enough or taken in good faith could this court stay this action and hold a trial for a 1983 civil rights complaint? Did the Court error by denying me an attorney and evidentiary hearing in the interest of justice? Should this have been granted as well as the other issues 1-11 conviction set aside and corrected?

ISSUE 1: Questions

Was trial counsel constitutionally ineffective for failing to object to not having or not requesting mandatory whether requested or not instructions or instructions with sufficient evidence to support the instructions on instructions of excusable assault of self defense, defense of persons in a dwelling building or vehicle, accident, or crime of passion? Did trial court error by not giving these same instructions that was mandatory whether requested or not or sufficient evidence to support the instructions? Was direct and 2915 counsel(s) constitutionally inelegual and ineffective for failing to raise the court errors, ineffective assistance of trial and direct appeal counsels and to the standard of Strickland in their respective appeals?

ISSUE 2: Questions

Can the state of Missouri suppress evidence beneficial to me by failing to provide me and my attorney evidence I took a breathalyzer test in Kansas City Police Department? Did this violate the Confrontation Clause, Missouri's Sunshine law or Brady because Kansas City Police Department did not record a breathalyzer test taken in Kansas City Police Department? Should I have been given an evidentiary hearing?

ISSUE 3: Questions

Did trial court error by forcing me to wear a leg brace restraint that was "non-visible" or visible? Did the court error by failing to have a hearing for necessity or not on record for a reviewing court to decide or with me not present? Was trial ineffective by failing to object to the use of the "non-visible" or visible leg restraint? Was this an implication of guilt by my attorney and court? Was direct and 2915 counsel(s)

inadequate and ineffective for failing to raise the court error, ineffective assistance of trial counsel or ineffective assistance of direct appeal counsel claims and to the standard of Strickland in their respective appeals?

Issue 4: Questions

Was I provided ineffective assistance of trial counsel for failing to call (as) the only witness in my behalf to testify? Was 2915 counsel constitutionally ineffective for failing to raise or better address this issue on the 2915 and to the standard of Strickland?

Issue 5: Questions

Was trial counsel ineffective or commit attorney error by overlooking the missing and added portion of state exhibit 5/5A or for failing to object to its admission at all stages? Did trial court error by allowing the admission of state exhibit 5/5A into trial over defense's objection he did make? Was direct and 2915 counsel(s) inadequate and ineffective for failing to raise court error, ineffective assistance of trial counsel, and inadequate and ineffective assistance of direct appeal counsel claims to the standard of Strickland in their respective appeals? Should I have been given an evidentiary hearing for state exhibit 5/5A?

Issue 6: Questions

Was I provided ineffective assistance of trial counsel for failing to object to or argue multiple points in trial and for objection in regards to inadmissible testimonies, or opening the door to testimonies of hearsay and speculative opinion testimonies, entrapment or entrapment testimonies, right to remain silent, testifying as an expert witness? Did trial court error by allowing these testimonies over the objection defense attorneys did make or motions in limine? Was direct or 2915 counsel(s) inadequate or ineffective for failing to raise or better address these issues of court error, ineffective assistance of trial counsel, or inadequate or ineffective assistance of direct appeal counsel and to the standard of Strickland in their respective appeals? Did the Missouri Court of Appeals and or 2915 court error clearing these claims due to procedural default or being waived on appeal, failing to meet Strickland's first or second prong, or not being outcome determinative or the court's other reasons? Does this prove ineffectiveness of direct and 2915 appeal counsel(s)?

Issue 7: Questions

Was I provided ineffective assistance of trial counsel for failing to object to or opening the door to testimony I invoked my right to remain silent? Did trial court error allowing this testimony? Was direct and 2915 counsel(s) inadequate or ineffective by failing to raise court error, ineffective assistance of trial counsel, or inadequate and ineffective assistance of direct appeal counsel claims and to the standard of Strickland, or better address the claims? Did the 2915 and Missouri Court of Appeals error, decide contrary to or apply an unreasonable application to clearly established Federal law or where the courts factual facts lack even fair support in record for each of the courts' reasons?

Issue 8: Questions

Did trial court error by allowing prior bad acts in trial over my attorneys objections made in penalty phase? Was I provided ineffective assistance of trial counsel for opening the door to prior bad acts and for not objecting to the use in

the guilt phase? Was direct and 2915 counsel(s) inadequate and ineffective by failing to raise these issues or better address the court error, ineffective assistance of trial counsel, or inadequate and ineffective assistance of direct appeal counsel(s) and to the standard of Strickland in their respective appeals? Did the Missouri Court of Appeals error by denying both appeals from direct and 2915 appeals for their independent reasons for 2915 court error in its reasons as well?

ISSUE 9 : Questions

Did trial court error by giving a voluntary intoxication instruction or improperly, and/or by not explaining the intent of the instruction in regards to the case sufficiently? Could voluntary intoxication be an excuse for first degree assault and Armed Criminal action if nobody was seriously physically injured? Did the court error by giving the instruction over the objection defense did make? Was I provided ineffective assistance of trial counsel because counsel did not object to the use of voluntary intoxication or properly? Was direct and 2915 counsels constitutionally ineffective by failing to address or better address the issues of court error, ineffective assistance of trial counsel, or inadequate and ineffective assistance of direct appeal counsel(s) and to the standard of Strickland in their respective appeals? Did the 2915 court error, make a decision contrary to or apply an unreasonable application to clearly established Federal law and where the courts factual findings lack even fair support in record denying the claim due to not proving Stricklands first and/or second prong or other reasons of the court and by overlooking the issue raised in the 2915?

Issue 10 : Questions

Did the state trial court judge and prosecutor error by sentencing and convicting me outside of sentencing guidelines by, or, being vindictive by requesting and giving a conviction and longer sentence of a higher degree of assault and to so much time because I took it to trial, made an alleged victim testify, and/or because the alleged victim suffered from emotional or psychological injuries, or violate my right to freedom of religion or separation of church and state? Was trial counsel(s) ineffective by failing to object to this in the guilt and penalty phase? Was direct and 2915 counsel(s) inadequate and ineffective by failing to raise these issues of court error, ineffective assistance of trial counsel, or inadequate and ineffective assistance of direct appeal counsel and to the standard of Strickland in their respective appeals? Did 2915 state court decide contrary to or apply an unreasonable application to clearly established Federal law where the courts factual findings lack even fair support in record denying the claim saying there is no such guidelines and/or to Stricklands first and/or second prong?

Issue 11 : Questions

Was I provided ineffective assistance of trial counsel because they did not explain to me all the subsections of second or third degree assault at time of plea? Did trial court error by interrupting my testimony and limiting my testimony? Was direct and 2915 counsel(s) inadequate and ineffective by not raising or addressing these issues of court error, ineffective assistance of trial counsel, or inadequate or ineffective assistance of direct appeal counsel claims to the standard of Strickland in their respective appeals? Did the 2915 court error by overlooking the issue or decide contrary to or apply an

unreasonable application to clearly established federal law or where the courts factual findings lack even fair support in record by denying the claim in general and/or due to Stricklands first and/or second prongs?

Reasons For Writ 2: "Questions"

Did the U.S. District Court error by denying the Certificate of Appealability with the 2254 petition? Was this contrary to clearly established federal law? Was a Certificate of Appealability request considered a notice of appeal and would it be considered timely? Was my petition for Certificate of Appealability, turned in with evidence of when it was placed in the prison mail system, although turned in to the wrong court, sufficient to satisfy a timely filing of the petition? Could the court review it? Did the U.S. District Court error again by denying the Certificate of Appealability a second time based on a motion for continuance of time for a Certificate of Appealability and stay, and abeyance and notice of appeal? Did the U.S. District Court error again by granting the continuance of time in part and then denying the other one requested by the U.S. Court of Appeals? Was the continuance of time to, or the one required by the U.S. Court of Appeals necessary? Should the appeal or certificate of appealability have been granted or reviewed?

Reasons For Writ 3: "Questions"

Did the United States Court of Appeals error again by denying my appeal due to lack of jurisdiction? Was a request for a Certificate of Appealability considered a notice of appeal? Was a continuance of time for a notice of appeal necessary? Did the court of appeal error denying a petition for rehearing? Did they error using Rule 41 as the reason for dismissing the action? Was this in their jurisdiction and should the appeal have been reviewed or granted or atleast the certificate of appealability viewed or granted?

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Appendix A.8 - Order by Clerk of Court to Pay \$505 Filing fees by 11-14-22 / Order if filed in electric file the court will rely on that 10-17-22

Appendix A.9 - Order by Clerk of Court "Appellants Motion For Continuance of time to file a Petition for Rehearing is denied as moot in light of timely filing of petition 12-15-22

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United States District Court For The Western District of Missouri

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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 Judgement Below

Opinions Below

- 1) The order and opinion staying the motion in the United States Court of Appeals on 11-14-22 appears at Appendix A.1 and is reported at *Shallow Hawkins v. David Vandergriff* 22-3145 or is unpublished
- 2) The order and opinion of the United States Court of Appeals dismissed for lack of Jurisdiction on 12-5-22 appears at Appendix A.2 of the petition and is reported at *Shallow Hawkins v. David Vandergriff* 22-3145 or is unpublished
- 3) The Order and opinion of the United States Court of Appeals, petition for rehearing by panel denied on 1-12-23 appears at Appendix A.3 and is reported at *Shallow Hawkins v. David Vandergriff* 22-3145 or is unpublished
- 4) The Order and opinion of the United States District Court denying petitioners motion for appointment of Counsel on 7/13/22 appears at appendix B.1 to the petition and is reported at *Shallow Hawkins v. David Vandergriff* 4:22-cv-00167-GAF or is unpublished
- 5) The opinion and order of the United States District Court denying Habeas Corpus and a Certificate of Appealability on 8/9/22 appears at appendix B.2 of this petition and is reported at *Shallow Hawkins v. David Vandergriff* 4:22-cv-00167-GAF or is unpublished
- 6) The opinion and order of the United States District Court denying petitioners request to stay this action and Certificate of Appealability on 10/14/22 appears at Appendix B.3 to the petition and is reported at *Shallow Hawkins v. David Vandergriff* 4:22-cv-00167-GAF or is unpublished
- 7) The opinion and order of the United States District Court denying petitioners motion for extension of time and transferred back to U.S. Court of Appeals on 11/29/22 appears at Appendix B.4 to the petition and is reported at *Shallow Hawkins v. David Vandergriff* 4:22-cv-00167-GAF or is unpublished
- 8) The opinion and order of the highest State Court to review the merits of court error in direct appeal in Missouri Court of Appeals appears at Appendix E.1 to the petition, Order affirming the conviction on 2/28/2017 and is reported at *State of Missouri v. Shallow Hawkins* WD78698 on WWW.Courts.MO.GOV/CNET/welcome.DO or is unpublished.

9) The order and opinion of the highest state court to review the merits of ineffective assistance of Counsel and court errors in Rule 29.15 was Missouri Court of Appeals and appears at Appendix C.1 to the petition, order affirming judgement, on appeal from Circuit Court of Clay County Missouri on 5/11/21 and is reported at *Shallon Hawkins V. State of Missouri* WD83879 on www.courts.mo.gov/CNET/Welcome.do or is unpublished.

10) The order and opinion of the Division One Circuit Court of Clay County Missouri Seventh Judicial Circuit at Liberty appears at Appendix D.1 to the petition, order denying statement in lieu of amended motion on 4/29/2020 and is reported as *Shallon Hawkins V. State of Missouri* 17CY-CV04525 on www.courts.mo.gov/CNET/Welcome.do or is unpublished.

11) The order and opinion or order of the Division One Circuit Court of Clay County Missouri Seventh Judicial Circuit at Liberty appears at Appendix D.3 of the petition, order striking Statement In Lien and Finding of Abandonment of post Conviction Counsel on 8/23/2017 and is reported at *Shallon Hawkins V. State of Missouri* 17CY-CV04525 on www.courts.mo.gov/CNET/Welcome.do or is unpublished.

12) The opinion and order of the Circuit Court of Missouri Clay County Seventh Judicial Circuit appears at Appendix E.1 to the petition, Verdict of trial court published 11-20-14 and sentence pronounced 5-29-2015 and is reported at *State of Missouri V. Shallon Hawkins* 14CY-CR01225-01 on www.courts.mo.gov/CNET/Welcome.do or is unpublished.

Jurisdictional Statement

The date on which the United States Court of Appeals for the Eighth Circuit decided my case was Dec. 5 2022 and a timely petition for rehearing was denied by the United States Court of Appeals for the Eighth Circuit on Jan 12, 2023 and a copy of the order denying rehearing appears at Appendix A.3. Jurisdiction of this court is invoked under 28 USC § 1254(c) and this court also has occasional jurisdiction for things such as 1983 civil rights complaint lawsuits. With respect to federal courts habeas corpus jurisdiction under 28 USC § 2241 Congress, may without raising any constitutional questions provide an adequate substitute through federal Courts of appeals (Enslin v. State of Mo.). Writ of habeas corpus is procedural device for subjecting executive, judicial, or private restraints on liberty to judicial scrutiny where it is available. It ensures among other things that prisoners may require his jailer to justify his detention under law (Peyton v. Rouse). It has been rule that federal habeas petitioner who claims he is detained pursuant to final judgement of a state court in violation of the U.S. Constitution is entitled to have a federal habeas court make its own independent determination of his federal claim without being bound by the determination on the merits of that claim in state proceedings. This cause and prejudice exception to the Francis rule will afford inadequate guarantee that the rule will not prevent a federal habeas court from adjudicating for the first time the federal constitutional claim of a defendant who in absence of such adjudication will be victim of a

miscarriage of justice (Wainwright v. Sykes). A federal statute gives the United States Supreme Court jurisdictional review by writ of Certiorari cases that are in the court of appeals when the writ is granted 28 USC § 1254. It should be noted according to 28 USC § 2403(a)(6) this may need to be presented to the attorney general of the United States and State of Missouri for presentation of evidence since this does affect the interest of the public.

Constitutional Provision And Statutes Involved

(I) The 1st amendment United States Constitution provides Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise of, or abridging the freedom of speech, or of the press, or the right to peaceably to assemble, and to petition the government for a redress of grievances. This means I have the right to access the courts or criminal proceedings and freedom of or from religion and separation of church and state.

The 5th amendment United States Constitution provides no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when the actual service in time of war or public danger, nor shall any person be subject for the same offense twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation. This means invoking my right to remain silent not to be used against me, nor the state, as District or Court of appeals or Department of Corrections deny me due process of law.

The 6th Amendment United States Constitution provides, in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of state and district where 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 accusations, to be confronted with witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense. Meaning I have the right to know all information concerning the plea, effective assistance of counsel at trial and first appeal as of right, to call, confront, cross examine or not cross examine witnesses and uninterrupted communication with counsel or to act as own counsel.

The 8th Amendment United States Constitution provides bail shall not be required nor excessive fines imposed nor cruel and unusual punishment inflicted. This includes the psychological head games staff plays, the unnecessary inflicting of depression, anxiety, stress from contacting, impeding or not allowing communication with counsel or access to courts and criminal proceedings or the unconstitutional detainment for charges unproven, justified, or actually innocent.

The 11th amendment United States Constitution provides the judicial power of the US shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of a foreign state. Meaning I can sue the state as a citizen of that state.

The 14th amendment United States Constitution section 1 provides, 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 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, or liberty or property without due process of law or denying any person within its jurisdiction the equal protection of the laws. This means the state of Missouri, its District Court of Appeals or state-owned and/or operated facilities may not deny me or make rules that deny my due process, or any other right any or every other person gets. If any person gets to appeal every other person gets to appeal or if in protective custody or general population gets to call their attorney, inmates in administration segregation gets to call their attorney.

(II) The Statutes under which petitioner was prosecuted was RS MO 365.050 assault in the first degree class B. (1) A person commits the crime of assault in the first degree if he "attempts to kill, or knowingly causes, or attempts to cause serious physical injury to another person. (2) Assault in the first degree is class B felony unless in the case thereof the actor inflicts serious physical injury on the victim in which it is class A felony. I was convicted of 2 class B, first degree assault charges. RS MO 571.015 (1) Armed Criminal action, except as provided in subsection 4 of this section, any person who commits any felony under the laws of this state by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon is guilty of the crime of Armed Criminal action. I was also charged with two counts of Armed Criminal action.

(III) The statutes under which petitioner sought relief was direct appeal to Missouri Court of Appeals WD 78698, "MO Con. Act V § RS MO 3477.020. Then to 7th Circuit Court in Clay County, Missouri under Rule 29.15, 17CY-CU04525. Then to the Missouri Court of Appeals WD 83829 appealing denial of Rule 29.15 under MO. Cons. Act V § 3: RS MO 3477.020. It was then appealed to U.S. District Court under 2254 then to U.S. Court of Appeals 28 USC § 1254(1) under appellate Rule 22(B).

Statement Of The Case - "Standard of Review"

Federal habeas relief of a claim that was adjudicated on the merits in state court proceedings, the federal habeas corpus courts inquiry is limited to 1) the state proceedings resulted in a decision contrary to or involved an unreasonable application of clearly established federal law as determined by the Supreme Court or 2) the state proceedings resulted in a decision that was based on an unreasonable determination of the facts in the light of the evidence presented in the state court proceedings. 28 USC § 2254. A federal court may not review procedurally defaulted claims "unless petitioner can demonstrate cause for the procedural default and actual prejudice of the alleged violation of federal law, or demonstrate failure to consider the claim will result in a fundamental miscarriage of justice (Coleman v. Thompson). Under the cause and prejudice test, cause must be something external to petitioner, something that cannot be fairly attributable to him (Id. at 253). In (Martinez v. Ryan) however the court recognized a narrow exception to Coleman by holding 5:3 inadequate assistance of counsel at initial review collateral proceedings may establish cause for procedural default of a claim of ineffective assistance of trial (Id. at 1315). To excuse procedural default of a ineffective assistance of counsel under (Martinez) petitioner must establish either 1) state court didn't appoint counsel at initial review collateral proceedings for a claim of ineffectiveness of trial 2) appointed counsel in the initial review collateral proceedings was ineffective under standard of (Strickland). To satisfy the second circumstance the assistance rendered must have been rendered constitutionally substandard and prejudice must have resulted therefrom. Further more to overcome the default, a prisoner must also demonstrate the underlying ineffective assistance of trial counsel claim is a substantial one which is to say the prisoner must demonstrate the underlying claim has some merit (Martinez 132 S.Ct. 1113/18). In turn (Strickland)

requires demonstrating both (A) post conviction counsel's performance was deficient and (B) there is reasonable probability absent the deficient performance the result of the post conviction proceedings would have been different. Determining whether there was reasonable probability that the result of the post conviction proceedings would be different is necessarily connected to the strength of the argument trial counsel's assistance was ineffective. Ineffective assistance of counsel is cause for procedural default, however the claim must be presented to the state court as an independent claim before it may be used to establish cause for procedural default but if the procedural default is the result of the ineffective assistance of counsel, the 6th amendment requires that responsibility for the default be imputed to the state which must not conduct trial which persons who face incarceration must defend themselves without adequate legal assistance (*Murray v. Carrier*) and ineffective assistance of counsel is guaranteed at trial and first appeal as of right (*Evitts v. Lucey*). Attorney error shield of wholesale ineffective assistance of counsel could constitute (*Wainwright*) cause provided the actor or omission resulting in procedural default emanated from ignorance or oversight due to inadvertence rather than deliberate strategy may constitute attorney error to satisfy the cause prong exception of (*Wainwright*) (*Carrier v. Hutto*) and incompetency should suffice for cause (*Gonzalez v. McCarthy*).

Argument In Chief, "Reason for Writ 1"

The United States District Court violated my 5th and 14th amendment right to due process, abused its discretion, erred, decided contrary to or applied an unreasonable application of clearly established federal law denying these issues due to procedural default (Appendix B.2/P9-10-12, Doc #12 order denying 2254) and they could not be reviewed under *Martinez*, *Coleman*, or actual innocence (Appendix B.2/P10-12, Doc #25 order denying 2254) because each issue was preserved for appeal by good or just cause, could be reviewed under *Martinez*, and/or *Coleman*, that failing to consider the claims at all or under *Martinez*, *Coleman*, or fundamental fairness will result in the fundamental miscarriage of justice of the denial of substantial rights and actual innocence, and the courts federal findings lack even fair support in record. It has been held that the federal habeas petitioner who claims he is detained pursuant to a final judgment of a state court in violation of the U.S. Constitution is entitled to have a federal habeas corpus court make its own independent determination of his federal claim without being bound by the determination in the merits of that claim in state proceedings (*Wainwright v. Sykes*).

The District Court also erred and abused its discretion denying me an evidentiary hearing and an attorney when the court saw the 2254 petition was inadequately written and did not argue the cause and prejudice for the procedural default or *Martinez* or *Coleman* appropriately and that I should have been given an attorney and evidentiary hearing in the interest of justice because as according to 28 USC § 2254(c)(1) and 28 USC § 2254(c)(2), (a)(1) (Att, I, J), (a)(2) (a)(Supp 1993) (*Townsend v. Sain* / *Maddox v. Lord*), that I did not get a full and fair evidentiary hearing in the 2915 and was entitled to one. I should have been given one in the 2254 to review state exhibit 519A (Appendix G.6B and G.6C) for the 2915 hearing and in the 2254 for the video footage of me taking a breathalyser test in Kansas City Police Department (KCPD) (Appendix H) and the report from KCPD saying there was no record of a test taken (Appendix G4), showing the state was suppressing evidence favorable to my defense (*People v. Boyce* - citing *Brady* / *People v. V. Land* / *People v. Fenech*), for the video in Clay County Sheriffs of me wearing leg braces restraint (Appendix I), for the video in Department of Corrections Eastern

Reception Diagnostics and Correctional Center from 10/7/20 to 10/20/20 (Appendix J) showing me receiving my legal work sending mail kits and requesting the legal phone call for the Informal Resolution Request (IRR), grievance, and grievance appeal for SRDCC 20-2470 (Appendix G.1A, G.1B, G.1C) supporting the claim of cause for procedural default by denying me a phone call to my attorney preventing me from obtaining the name and address to the court to turn in my own motion instead of my attorneys when I did not have enough time to make meaningful communication through the postal services satisfying the cause prong of (Coleman v. Thompson) that was external to me and not fairly attributable to my fault and for testimony by my celly Erick Hopper providing me an attorney to better address these issues because I was incompetent to raise these issues adequately in the 2254.

There are (3) reasons for the procedural default in both the direct and 29.15 and also review post collateral proceeding and 2254.

1) Ineffective assistance of counsel is cause for procedural default, however the claim must be presented to the court as an independent claim before it may be used for procedural default but if the procedural default is the result of ineffective assistance of counsel, the both amendment requires the responsibility for the default be imputed to the state which must not conduct trial at which persons who face incarceration must defend themselves without adequate legal assistance (Murray v. Carrier) and effective assistance of counsel is guaranteed at trial and first appeal as of right (Evitts v. Lucey) where the claim was attempted in the 29.15 cover page (Appendix D.5) stating "Each attorney individually and as a whole failed in arguing as asked, mentioning as asked during motions for new trial or acquittal, or during trial, closing arguments, or any appropriate motion, or preserving for appeal all arguments and any error made by the courts. Filed or not filed in this motion or providing defendant with quality advice or information and each failed to remove him or herself from the case or to honor defendants requests of information filed in motions." This was raised as an independent ineffective assistance of trial, direct and 29.15 appeal counsel(s) claims in the 29.15 and testified to clarify that included the appeal(s) processes (Appendix D.7 Record on appeal transcript P20 Line 3-16 / P102 Line 2 - (105 line 4) - P112) (Appendix D.6 P1 movants exhibit 3 speech for court) but if this was not properly raised or come to full fault defendant must show the appeal would have with reasonable probability different outcome if attorney adequately addressed the issue (United States v. DeValina). The state provided me with inadequate and ineffective assistance of counsel at trial for not raising these claims at trial, and at direct and 29.15 appeals violating MD Sup. Ct. R 24.035(e) and MD Sup. Ct. R 29.15(e) because both counsels failed to ascertain whether (1) all claims known to movant was alleged in the pro se motion and (2) all facts supporting the claims are asserted in the pro se motion and if not counsel is to write and amended motion including all claims and facts supporting these claims to adequately attack the judgement and sentence of the conviction. This includes to the standard of Strickland and failing to do so renders both counsel(s) Constitutionally ineffective, denying me the right to raise the issues in a higher state court (Dickens v. Ryan). 29.15 counsel ignored the 29.15 Form 40 motion to vacate set aside or correct the judgement or sentence stating, "Instructions: The Movant is required to include in this motion every claim known to him/her for vacating setting aside or correcting the conviction and sentence or it will be waived or abandoned. Be sure to include every claim." (Riley v. State Violating Fed. R. Crim P 30.06(e)). MD where does this say to only raise winning or meritorious claims. A winning claim is a claim that is winning on

will win not simply meritorious and nowhere does this encourage attorneys to winnow out any claims whatsoever (Anders v. California) where state provided counsel abandoned my claims. Leaving me to represent myself. My 29.15 counsel only turned in my pro se twice refusing to rewrite or allege all my issues and turned in an impermissible hybrid motion that was my petition with an unfinished index (Appendix F.2 or documented in F.3, D.3, D.4, D.5). Also a procedurally defaulted ineffective assistance of counsel claim can serve as cause to excuse the procedural default of another habeas claim if petitioner can satisfy the cause and prejudice standard with respect to the ineffective assistance of counsel claim itself (Edwards v. Carpenter). As the Supreme Court explained in (Arizona v. Fulminante) a structural error is an error that affects "the framework" within which the trial proceeds, rather than simply an error in the trial process itself (Id at 310). Among the rights deemed "structural" by the supreme court is the complete denial of counsel during a criminal trial, see (Gideon v. Wainwright) which so affects "the entire conduct of the trial from beginning to end" (Fulminante 499 us at 309) Structural errors exist where there are no defects in the constitution of the trial mechanism which defy analysis as "harmless" error "standard review" (United States v. Washfar, quoting Fulminante). The 6th amendment right to effective counsel is guaranteed at trial and first appeal as of right (Exhills v. Lucy). The United States Supreme Court has held on several occasions that a constitutional error can be held harmless only if it is found to be harmless beyond reasonable doubt (Harrington v. Cal). Other Supreme Court cases including (Gideon v. Wainwright) which deal with the right to counsel cannot be held harmless regardless of the degree of error. One cannot assume the prejudice was insignificant enough not to undermine the integrity of the trial (State v. Harrison) or judicial proceedings. This court has held gross negligence by counsel amounting to "virtual [abandonment]" can be an "extraordinary circumstance" that justifies vacating a default judgment pursuant to Rule 60(b)(6) (CITY Dental Services v. Taxi). Relief in such a case is justified because gross negligence by an attorney defines "neglect so gross that it is irreparable" v. at (es) the agency relationship that underlies our general policy of attributing to the claim the act of his attorney (Id at 116, 117) (Maples / Tani / Legal). Not only my trial counsel failing to raise these issues in trial but my direct and 29.15 appeal counsel(s) failing to raise these claims or rewrite them better in their respective appeal and to the standard of state (land violated MD Sup Ct R 24.035(e) and MD Sup Ct R 29.15(e) rendering both counsels constitutionally ineffective, s/l egit by state constitution, and amounted to virtual abandonment that affected not only trial or that specific appeal but each appeal thereafter including the 2254 federal habeas corpus review causing the procedural defaults. Now the courts expect too high a standard to obtain relief where if I was provided adequate counsel or my appeals done correctly at first these issues would not exist which is not fair, undermining the integrity of the judicial proceedings. My attorney's actions are external to me and not fairly attributable to my fault (Dickens v. Ryan) for reasons 1, and 2).

In regards to failing to raise issues on federal appeal a claim of ineffective assistance of counsel on appeal is reviewed to determine whether the omitted issues were meritorious, if so, the court must determine whether counsel's failure to raise the claim on federal appeal was deficient and prejudicial. Failure to raise a "dead bang winner" on appeal constitutes ineffective assistance of counsel but the commission of a "dead bang winner" is not necessary to prevail on a claim an attorney was ineffective for failing to raise an issue on appeal (Hawkins v. Hannigan). If this was prejudicial and ineffective assistance of counsel at direct appeal it would also be at

2915 as well because both are indirect review post collateral proceedings. A defendant may only bring ineffective assistance of counsel claim indirect appeal where the record has not fully been developed and not to act would amount to a miscarriage of justice or where counsel's error is readily apparent (*United States v. Washburn*). Ineffective assistance of counsel can cause procedural default if habeas petitioner shows good and just cause and prejudice for failing to raise a federal appeal defendant must show 1) counsel's performance was deficient and reasonable probability of a different outcome 2) the deficient performance prejudiced the defendant (*Edwards v. Carpenter*). In assessing whether an attorney was ineffective for failing to present an issue, courts look first to see if attorney missed a "significant and obvious" issue, if so, the courts compare the neglected issue to those actually raised. If the ignored issues were clearly stronger than appellant counsel was deficient. To show prejudice petitioner must show there is reasonable probability "the omitted" claim would have "altered the outcome" of the appeal had it been raised (*Stallings v. United States / Gray v. Corcoran / Mason v. Hanks / Shaw v. Wilson*). Ineffective assistance of counsel exists if defendant can establish 1) attorney's performance was objectively unreasonable 2) there is reasonable probability that but for errors error the result would be different (*Palmer v. Hendricks*) and if the claim was attempted but didn't come to full front the claim can be reviewed if defendant shows the appeal would have with reasonable probability different outcome if attorney adequately addressed the issue (*United States v. Douville*). Where the claims were attempted in the 2915 but if not, or not properly raised, or came to full front, it was due to direct and 2915 counsel(s) violating MO Sup. Ct. R. 24.03(c) and MO Sup. Ct. R. 29.15(c). Had counsel(s) raised or better addressed these claims to the standard of (*Strickland*) in their respective appeals the appeals would have succeeded.

2) The second reason for procedural default is attorney's error short of wholly ineffective assistance of counsel could constitute (*Wainwright*) cause provided the act or omission resulted in procedural default emanated from ignorance or oversight rather than deliberate strategy may constitute cause (*Carrier v. Hutto / Wainwright v. Sykes*) and incompetency of counsel should suffice for cause (*Carson v. McCarthy*). There is no strategy beneficial to me failing to rewrite or address my claims, and strategy is no excuse for prejudice. It wouldn't matter if counsel(s) were ignorant, incompetent, or inadequate, or if counsel was inadequate by abandoning my claims leaving me to my own counsel where ignorance, incompetence, or inconsiderance can be cause for default because I wrote the 2915 expecting my attorney to rewrite it. Reasons for procedural default 1 and 2 should suffice for good and just cause for procedural default of omitted or partially attempted claims in direct and 2915 appeals.

3) Third reason for procedural default is the Department of Corrections (D.C.) frustrated, hindered, impeded or prevented my attempts to communicate with counsel, access to the courts and criminal proceedings when Mrs Sarah Miller denied me a legal phone call to my attorney to obtain the name and address of the court my motion was due appealing "order denying statement in lieu of amended motion" once I learned my attorney's motion was erroneous and missing issues (*Green v. Davis*) and I have the right to raise my own motion over my attorney's (*United States v. Smith*) when I was in administration segregation (ad-seg) awaiting protective custody (P.C.) bedspace without a violation due to policy or violation of policy, "attorney calls must be initiated by the attorney (Please see Appendix's G1A, G3A, G3.B, G3.C, G3.D) (*Tate v. Woods / Heck v. Humphrey / Howard v. Reddy / John L. U. Adams*) when the (P.C.) wings get three (45) minute recreation periods I could have used the phones but I couldn't make meaningful communication through the postal services over the weekend (*Dickens v. Ryan*).

On 9-16-20 I called my attorney and between that call and letters, he informed me he would look into and raise the issues. On 10-13-20 my attorney turned in his brief appealing the denial of Statement in Lieu of Amended Motion, I received on Friday 10-16-20 and it was due on 10-19-20. I didn't know he wouldn't raise the issues we discussed until I received the petition by my attorney on 10-16-20. Factual predicate says as soon as I know they were not raised I have to make arrangements to obtain the information of which Court and its address, but I did not have enough time to make meaningful communication with my counsel over the weekend through the postal services to get the information once I learned my attorney's brief was erroneous and missing the issues I wanted raised (Green v. Davis) and I have the right to turn in my own motion over my attorney's (United States v. Smith). I asked the warden of the prison about the phone call and he said I had to wait a bit to the case worker. Mr. Mark Wilson was gone Friday so I sent it to Mrs. Sarah Miller (Appendix G2). I told her I could even call Monday 10-19-20 because prison mail box rules say as long as I turn in my petition into the prison mail system on or before the date is due or in the door in (ad seq) it's considered timely (Fed. App. Proc. 3 and 4) (Houston v. Lack) but she denied me due to policy stating "Attorney calls must be initiated by my attorney." I told her I had a deadline and she said she had to check with Mr. Ted Theodore Eaton. She never returned and Monday came by so I asked Mr. Mark Wilson but he said he would let Mrs. Sarah Miller deal with it because I asked her first. She came by two (2) minutes before 4 pm to give me the phone call saying I have "a couple minutes before 4 pm" but she would have to call an officer, call me up, call up my celly, transport me down to the phone, secure the door and unlock me, all in two minutes before the public defenders office closed and said "She thought they closed at 5 pm." This violated my 1st amendment right to access to courts and criminal proceedings, both amendment right to unimpeded communication with counsel and right to represent myself, and 14th amendment right to due process and equal protection denying me the ability to raise issues of merit in a higher state or federal court. This is a state owned and/or operated facility preventing me from turning in a motion and working on my case then the state wants to claim procedural default.

I should have been given an evidentiary hearing for the video footage of my cell asking for the phone call (Appendix J) and the IRR, Grievance, grievance appeal (Appendix G) A, G.1B, G.1C) because this was evidence of the cause for the procedural default that was external to me and not fairly attributable to my fault satisfying (Coleman v. Thompson). This also tends to prove due diligence of me attempting to raise these claims in a higher state and federal court. There is also the issue of the attachment dated the 9th about the 8th of October 2020. This was a clerical error and date provided by staff because I did not have a calendar in (ad seq) and didn't have a reason to ask to call my attorney until I received the motion on 10-16-20. However, I argued even if this occurred on the 9th, I had demonstrated on two separate envelopes turned into Mrs. Ruble and signed by her, first one on 9-2-22 certified mail receipt # 7021, 0950, 0002, 1476, 4628 and certified signed return receipt # 9590, 9402, 6506, 1074, 4354, 73 to Missouri Court of Appeals (Appendix G.2A) and received on 9-15-22 (Appendix G.2B). The second one was sent out on 10-5-22 received by Mrs. Ruble to the United States District Court, certified mail receipt # 7021, 0950, 0002, 1476, 3171 and certified signed return receipt # 9590, 9402, 6506, 1074, 4354, 11 (Appendix G.5A) received on 10-20-22 (Appendix G.5B), that both took much longer than the 11 days from 10-5-20 to 10-19-20 and I still couldn't make meaningful communication through the postal services. The date of the attachment was a clerical error because the actual IRR

was dated on 10-19-20 and according to (Pace v. DiGirolamo) a persons reasonable confusion about the timeliness of the state filing will ordinarily constitute good cause for him to file a protective petition in Federal court which would be another reason for good or just cause for the procedural default. It shows evidence it is explicit in the grievance process the IRR was denied due to policy and implicit it was for another reason such as I didn't ask, or I was given one, or didn't prove a deadline. It states all pertinent information was reviewed and if I didn't ask or was given one they would expressly state that in the denial of the IRR because an interview with the case workers Mrs Sarah Miller, Mr Mark Wilson, Mr Ted Theodore Eaton is part of that pertinent information. If this evidence is not good enough or not taken in good faith, I respectfully ask this court to stop this action and hold a 1983 civil rights complaint lawsuit to sue on the personnel and professional capacity of individuals listed below in regards to Mrs Sarah Miller, Mr Mark Wilson, Mr Ted Theodore Eaton, frustrating, impeding, or preventing my ability to access of courts, counsel, right to represent myself by policy or violation of policy or by conspiracy or as a malicious act. I would also like to add the State of Missouri, Governor(s) Michael Parsons, Eric Greitson, Director of Department of Corrections Anne Prexythe, and Warden David Vandergiff for writing, creating, adapting, conspiracy and or malicious act and for each individual listed enforcing policy, violating policy that confused staff or caused the denial of the phone call to my attorney, as addressed above, under policy or violation of policy and the direct cause for the procedural default of my issues in a higher state or federal court (Murray v. Carrier / Tate v. Woods / Heck v. Humphrey / Howard v. Reddy / John L. v. Manns). The above listed individuals knowingly and or intentionally work together to create laws and policy to prevent inmates and myself from obtaining relief of my criminal proceedings. Governor Michael Parsons was deputy Director of Department of Corrections and knows this happens. I would also like to add the United States Government for creating the 11th amendment which denies the ability to sue a state for monetary gain, although the 11th amendment is in regards to citizens of another state or citizens or subjects of any foreign state where based on the 14th amendment I am a citizen of Missouri if subject to their laws, the state violation of the rights constitutional denying me relief. I was seeking damages of \$1,500,000.00 and accommodations listed in motion to his court of appeals (Appendix G.8)

The IRR was timely. It was dated on 10-19-20 and dismissed on 10-19-20. The Department of Corrections defaulted by failing to respond to the IRR after it was discussed on 10-19-20 within policy timeline of 100 days. It took 108 days for investigating staff to sign it on 2-4-21 and another 35 days for the reviewer to sign it on 3-11-21 and another 14 days for the grievance office to deliver it to me on 3-25-21 equaling 154 days which far exceeds the 100 day policy. I was timely in my response signing. I received the response of the IRR on 3-25-21 and turned in the grievance on 4-1-21 within the 7 days. The grievance office stamped the grievance on 4-23-21 saying they received it from a superintendent on that day but it was not delivered to me until the next Thursday 4-29-21. In every other instance it too two weeks to go from the assistant wardens office to the grievance office and from reviewer to me. They didn't give me the original copy to sign and didn't sign it themselves. Instead gave me my own copy but the grievance appeal was turned in within 7 days. The negligence was on Department of corrections and staff by failing to document the date I received the response by signing and dating it, and also of when the case workers got the IRR, Grievance, Grievance appeal.

* Note: The Department of Corrections does not sell 11"x8.5" paper in compliance with Rule 33.2 and format. I had to purchase this paper from inmates for 8 sheets and 5 rolls of toilet paper for a total of \$8.90. I had family send me the paper with additional lines to ensure I had enough space to turn in a full and complete argument but was rejected due to policy as well as the reasonable accommodation request to submit in court format. (Please See Appendix G, 10A, G, 10B, G, 10C, G, 9X Appendix K)

The US District Court erred by denying me an attorney and evidentiary hearing in the interest of justice and by denying my claims due to procedural defaults and for the reasons addressed in issues 1-11 below. There was good or just cause for the procedural defaults for each aspect of the issues raised such as attorney error for me and all my attorneys, ignorance, incompotence, incompetence, and inadequate assistance of counsel at all stages of trial, direct, and 2915 appeals(s) that was raised in the 2915 "Cover Page" and there was the denial of the phone call to my attorneys by the Department of Corrections due to "policy" and/or a reasonable confusion of the timeliness of the petition in a state court. This was state appointed counsel that was constitutionally ineffective such as state owned and operated facility impeding, frustrating, or hindering my ability to defend myself and to access courts and counsel which is the reasons for the procedural defaults. According to Fed. R. Crim. P. 52(b) plain error that affects substantial rights may be considered even though it wasn't brought to the courts attention and plain error is reviewable if: 1) there is error - 2) it is plain - 3) affected substantial rights 4) seriously affected the fairness, integrity, or public reputation of the judicial proceedings. Denying a claim that is not procedurally defaulted or in which the procedural is imputed to the state, or that could be reviewed under (Mandate v. Ryan) because each claim was in part in regards to ineffective assistance of trial counsel and inadequate assistance of direct and 2915 counsel(s) claim for not raising the ineffective assistance of trial counsel claims, or could be reviewed under (Coleman v. Thompson) or based on the fundamental fairness clause that by failing to review the claim would result in a fundamental miscarriage of justice by denying substantial rights, or by actual innocence, or denying me an attorney and evidentiary hearing for the interest of justice to make a fair and educated decision, was error. It was plain, I denied my 1st, 5th, 6th, 8th, 14th amendment rights and affected the timeliness of the Cardiac care of lypalability, fairness of the judicial proceedings.

Issue 1

The trial court erred by failing to give me mandatory whether requested or not instructions for excusable assault or instructions with substantial evidence to support the instructions. Trial counsel was ineffective failing to object to not having or not requesting or not arguing excusable assault or instructions of self defense, defense of persons in a dwelling, building or vehicle, accident or crime of passion instructions that were mandatory whether requested or not or instructions with sufficient evidence to support the instructions, inadequate assistance of direct and 2915 counsel(s) for failing to raise the court error. I wasn't given the mandatory whether requested or not instructions, or instructions with sufficient evidence to support the instructions of self defense, defense of persons in a dwelling, building, or vehicle, accident, or crime of passion, inadequate assistance of direct appeal counsel for failing to raise the court errors listed above and inadequate assistance of trial counsel for failing to argue or objecting to not having or not requesting mandatory whether requested or not instructions or instructions with sufficient evidence to support the instructions as listed above and to the Standard of (Strickland) in their respective appeals, is the inadequate counsel I was provided.

The evidence of my testimony is, "I pulled up next to Thomas Morrow asking for instructions and informing him I was looking for a woman (Appendix F.1 P469 Line 14-P474 Line 2 t-cl transcript) when he got angry, tried starting a fight, backed up blocking me in (Appendix F.1 P473 Line 21-P474 Line 15/P498 Line 7-21 / P477 Line 8-P478 Line 15 / P474 Line 18-P476 Line 6 / P499 Line 2-7/P504 Line 3-P505 Line 3) and because I thought he had a gun and a concealed carry permit I tried to leave by driving through the yard to get away (Appendix F.1 P464 Line 17-25 trial transcript) and based on my perception he tried to persist in keeping me from leaving a second time (Appendix F.1 P477 Line 8-P478 Line 15 t-cl transcript) by slamming on his brakes in the cul-de-sac when I accidentally hit his car trying to manoeuvre to keep from hitting him and that I was not intoxicated but suffered from a hand injury (Appendix F.1 P479 Line 10-18 t-cl transcript). Thomas Morrow's testimony was I pulled up next to him yelling and giving him to the count of three to leave, counted down and drove through the yard intentionally hitting his car to cause serious physical injury or death to him and his daughter. He stated he could not hear everything I said but I was mumbling or slurring my words. (My testimony was paraphrased by the court and changed)

Trial counsel should have requested the instruction for self defense because there is sufficient evidence to support the instruction, an instruction is supported by evidence (Mo. Rev. Stat §561.051 (2000)) when evidence is adduced to support it and it is a mandatory whether requested or not instruction (State v. Avery / State v. Barnett / State v. White / State v. Hillibidal / State v. January / Stiens v. State / Brown v. United States / Mathews v. United States). The Supreme Court has held that a general proposition a defendant is entitled to an instruction to any recognizable defense for which there exists evidence sufficient for a reasonable jury to find in his favor. In Mo. Rev. Stat §523 (1909) a court must instruct a jury in writing necessary for giving their information of the verdict. Because I stated I thought I was trying to start a fight and based on how he was acting I thought he had a gun or "CCW" and a man has a right to act on appearances (State v. Mannon). There was evidence of a duty to retreat when I drove through the yard to get away because he was trying to start a fight, backing up blocking me, using his car to prevent me from leaving and in my belief attempting to get out of his car with a gun. I drove through the yard to get away because in my belief he was using his car to keep me from leaving and then continuing the altercation trying to stop me again where he could shoot me through the glass at any time giving me the right to use deadly force again (State v. Mannon). I have the right to use any force up to and including deadly force in self defense, driving through the yard to get away is still within justifiable use of force and it would not matter if the collision was intentional or accidental with the self defense instructions. If the instruction was given I would have changed the way the jury viewed the evidence to in the light most favorable to me in self defense, giving me the benefit of the doubt and the state could not get a conviction (Mo. Rev. Stat § 563.031, 563.032 (1)-(2), 301-13), 565.051 (1)-(2) (2000) if the issue is submitted to the trier of fact, any reasonable doubt on the issue requires a finding for the defendant on that issue, and where the state also fails to prove the required element of intent for the charges. He should have argued this unfairly shifts the state's burden of proof from self defense by hitting the car in an attempt to get away justifiably regardless if it was an accident or intentional, to the jury choosing between only if it was accidental or intentional (Gault of U.T. v. Smith). Federal Law requires prosecution to prove absence of self defense beyond reasonable doubt and it would not matter if it was believed defense was intoxicated since nobody was seriously physically injured (State v. Hapel), shifting the burden of proof

again because a person can defend themselves even if intoxicated but intoxication could have been an excuse for the collision since nobody was seriously physically injured (State v. Stubbs, ranch). The Supreme Court has held a state may place the burden of proving self defense on defense but only where such placement doesn't shift prosecution's burden of any element of the crime (Martin v. Ohio / Francis v. Franklin). Proper instructions on the burden of proof are fundamental aspect of a fair trial. The prosecution must prove every element of the crime beyond reasonable doubt and diminishing this burden violates defendant's right to due process.

My attorney at trial should have requested defense of persons in a dwelling, building or vehicle instructions because I had a valid drivers license at the time and legally dwelling or occupying my vehicle. Because self defense and defense of persons in a dwelling building or vehicle track the same requirements, I will use the same argument as above and even if there was not as much evidence to support self defense, there is enough for defense of persons in a dwelling building or vehicle instructions. But in this instruction there is no duty to retreat and as soon as I perceived he was attempting to start a fight, backing up blocking me in and attempting to get out of the car with a gun "as if" to commit a felony of assault or murder that would result in serious physical injury or death, I could use deadly force to prevent a forcible felony from occurring. One could only assume serious physical injury would occur from a forcible felony of assault or murder with a gun and a person does not have to wait for that person to actually cause injury, he could have committed that assault by shooting through or sending a projectile into my vehicle) as of any time and a man can act on appearances alone regardless if the other person actually had a gun or intended on committing the forcible felony (State v. Ivicsics / State v. Mannon). Also, as well as in self defense, in defense of persons in a dwelling building or vehicle, the jury's belief of intoxication or drugged condition would not matter because one can defend himself regardless of intoxication where the requirement is "legally dwelling or occupying and essentially 'being' in the vehicle" but not necessarily the actual what you are doing. However, if at all, the issue of intoxication is still up to the jury to decide and I still should have been given the instruction (State v. Burdett). Had I been given the instruction the jury would have been instructed to give me the benefit of the doubt where the state failed to prove the required elements of the charge. The state also unfairly shifts the burden of proof by denying the instruction and by using the voluntary intoxication instruction because even though intoxication may not be an excuse for hitting the car intentionally, it could be an excuse if it was not intentional only because nobody was seriously physically injured (Francis v. Franklin). State's contradictory instructions as to intent, one of which imports an unconstitutional understanding of the allocation of burdens of persuasion create a reasonable likelihood that a juror understood the instructions in an unconstitutional manner, unless other language in the charge explains the reform language sufficiently to eliminate the possibility. If such a reasonable probability of an unconstitutional understanding exists, a court of review has no way of knowing defendant was not convicted on the basis of the unconstitutional instruction. The state did not explain this to the jury but only intoxication is not an excuse for my conduct not that it could be an excuse for the collision if it was not intentional and robbing a bank is completely different and irrelevant, which all of this was confusing to the jury denying my 14th amendment right due process.

Trial counsel should have requested an accident instruction because there is sufficient evidence to support the instruction of my testimony I drove through the yard to get away and hit his car on accident. Although accident and self defense instructions normally contradict each other, but because just by driving through the yard to get away could be construed as an intentional act

while hitting the car while I was leaving could be done both accidentally and in self defense. He should also have requested the instruction because since nobody was seriously physically injured, if the jury did not believe I hit the car intentionally but the collision was due to intoxication, it could have been an excuse and considered an accident (State v. Erwin / State v. Hafeli). Although intoxication may not be an excuse for hitting the car intentionally, it could be an excuse for the accident where first degree assault is "Attempts to kill (knowingly causes) or attempts to cause serious physical injury." If "knowingly causes" is eliminated then it is only "Attempts to kill or Attempts to cause serious physical injury" to another person, but according to (State v. Gonzalez) one doesn't attempt to commit a crime by recklessly or negligently engaging in conduct with another person regardless of how extreme the negligence or reckless the act may be. So if I didn't "knowingly cause" serious physical injury and if it wasn't intentional act I couldn't have "Attempted" to commit the crime of first degree assault by recklessly or negligently engaging in the act of hitting the car due to an intoxicated or drugged condition, if in an intoxicated or drugged condition. The jury may have believed based on the preponderance of the evidence defendant was to have been intoxicated where it could have been an excuse for the collision and an accident. If my attorney requested this instruction there is reasonable probability I would've been found not guilty and by not requesting the instruction denied my 14th amendment right to due process because the instruction confused the jury and the state didn't explain this sufficiently but that intoxication couldn't be an excuse for my actions which shifts the burden of proof (Francis v. Franklin) states a substantial error in instructions on a material point will be deemed prejudicial unless the error was in defendant's favor or the instructions applied to some higher degree of the crime or separate offense of which he wasn't convicted (State v. Aitkens), and the court found structural error in (Gunn v. Marguer) where the court gave written instructions to the jury and left of reading them in open court. They concluded the error compels an automatic reversal because the impact of the error on the jury's performance of its duties cannot be reviewed.

My trial counsel should have requested a crime of passion instruction because there is sufficient evidence to support the instruction (State v. Burnett) an instruction is supported by the evidence (Mo. Rev Stat §51.051 (2000) when evidence is adduced to support it, and based on my testimony I was there looking for a woman when there was an altercation between me and Thomas Morrow, that he started it, it could have been construed by the jury it occurred out of sudden passion, arising out of adequate cause, and that his testimony was it was an intentional act (Rsmo §65.060, (c) / §65.062 (1)-(7) (State v. Pond / Pond 1313W3d at 734) because as ruled stated in (Ency supra of evidence) states as follows, "The testimony of a party of suit cannot be taken as an admission in that action of truth of any fact but only as evidence like that of any other witness of the case. So the evidence may come from me, the alleged victims, other witnesses, or all testimonies and I am entitled to an instruction of the evidence supports it even if the claim is denied by me (State v. Birdstrup). When differing or conflicting versions of events occur, even when both versions have been provided by the defendant, the courts are instructed to refrain from determining which version is correct because that is up to the jury to decide (State v. Burnett). Even if the court says it is trial strategy, trial strategy is not an excuse for prejudice (Oleware v. Fensterer). There was more benefit requesting the instructions than not wanting to bring attention to the matter because if the jury believed I was an intentional act and in self defense, defense of persons in a dwelling, building, or vehicle, or accident, but rather done in the heat of sudden passion or elements of a crime of passion as an excusable assault or an instruction as a defense with sufficient evidence to

supported the instructions, that is, an inferring guilt but rather providing the jury with a wide range of options to conclude their decision based on facts of the case that would have reduced the sentence to a lesser included charge of second degree assault and concerned because all charges occurred simultaneously. There is no way for us to know why there was a finding of guilt, whether it was lack of instructions of self defense, defense of persons in dwelling, building or vehicle, accident, with intoxication or lack of crime of passion instructions. But had my attorneys requested those instructions there is reasonable probability of a different outcome at trial of lesser included charge and sentence if the other instructions of justification failed, we are not guilty, verdict and/or for justification.

Trail court erred by failing to give mandatory, whether requested or not, instructions, or instructions with sufficient evidence to support the instructions of self defense, defense of persons in dwelling, building or vehicle, accident or crime of passion because there was sufficient evidence to support the instructions and it is the duty of the trial court to instruct the jury for their information in giving their verdict and errors in failing to do so (State v. Bidstrup/State v. Lomack). An instruction is supported by the evidence when evidence is adduced to support it (Mo. Rev. Stat. § 551.051 (2000)). In regards to all instructions (Guam v. Marguerite) the court found structural error where the court was given written instructions to the jury in lieu of reading them in open court. The court concluded the error compels an automatic reversal because the impact of error on the jury's performance of its duties cannot be reviewed. Failing to give court these instructions denies me the ability to argue actual innocence because if I was given the instructions I could prove actual innocence because there is no difference between being convicted of a crime that actually occurred you took no part in than convicted of a crime the state failed to prove the required elements of intent of the charge or was justified in.

Both direct and 2915 counselless were inadequate by failing to address these issues or better addressing them and to the standard of (Strickland) in their respective appeals (Please see "Reason for writ 1, Cause for procedural default 1, 2, 3 for complete procedural default equipment). Direct and 2915 counsel error was inadequate for failing to raise the court error above, ineffective assistance of direct appeal counsel for failing to raise the court error, and ineffective assistance of trial counsel claims addressed above in better (Dickens v. Ryan) because there was sufficient evidence to support the instructions and it is the duty of the trial court to instruct the jury on their information and errors in failing to do so (State v. Bidstrup/State v. Lomack) (Mo. Rev. Stat. § 523 (1902). According to 45 C.F.R. 2.100, 2.101, 2.102, 2.103, 2.104, 2.105, 2.106, 2.107, 2.108, 2.109, 2.110, 2.111, 2.112, 2.113, 2.114, 2.115, 2.116, 2.117, 2.118, 2.119, 2.120, 2.121, 2.122, 2.123, 2.124, 2.125, 2.126, 2.127, 2.128, 2.129, 2.130, 2.131, 2.132, 2.133, 2.134, 2.135, 2.136, 2.137, 2.138, 2.139, 2.140, 2.141, 2.142, 2.143, 2.144, 2.145, 2.146, 2.147, 2.148, 2.149, 2.150, 2.151, 2.152, 2.153, 2.154, 2.155, 2.156, 2.157, 2.158, 2.159, 2.160, 2.161, 2.162, 2.163, 2.164, 2.165, 2.166, 2.167, 2.168, 2.169, 2.170, 2.171, 2.172, 2.173, 2.174, 2.175, 2.176, 2.177, 2.178, 2.179, 2.180, 2.181, 2.182, 2.183, 2.184, 2.185, 2.186, 2.187, 2.188, 2.189, 2.190, 2.191, 2.192, 2.193, 2.194, 2.195, 2.196, 2.197, 2.198, 2.199, 2.200, 2.201, 2.202, 2.203, 2.204, 2.205, 2.206, 2.207, 2.208, 2.209, 2.210, 2.211, 2.212, 2.213, 2.214, 2.215, 2.216, 2.217, 2.218, 2.219, 2.220, 2.221, 2.222, 2.223, 2.224, 2.225, 2.226, 2.227, 2.228, 2.229, 2.230, 2.231, 2.232, 2.233, 2.234, 2.235, 2.236, 2.237, 2.238, 2.239, 2.240, 2.241, 2.242, 2.243, 2.244, 2.245, 2.246, 2.247, 2.248, 2.249, 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, 2.258, 2.259, 2.260, 2.261, 2.262, 2.263, 2.264, 2.265, 2.266, 2.267, 2.268, 2.269, 2.270, 2.271, 2.272, 2.273, 2.274, 2.275, 2.276, 2.277, 2.278, 2.279, 2.280, 2.281, 2.282, 2.283, 2.284, 2.285, 2.286, 2.287, 2.288, 2.289, 2.290, 2.291, 2.292, 2.293, 2.294, 2.295, 2.296, 2.297, 2.298, 2.299, 2.300, 2.301, 2.302, 2.303, 2.304, 2.305, 2.306, 2.307, 2.308, 2.309, 2.310, 2.311, 2.312, 2.313, 2.314, 2.315, 2.316, 2.317, 2.318, 2.319, 2.320, 2.321, 2.322, 2.323, 2.324, 2.325, 2.326, 2.327, 2.328, 2.329, 2.330, 2.331, 2.332, 2.333, 2.334, 2.335, 2.336, 2.337, 2.338, 2.339, 2.340, 2.341, 2.342, 2.343, 2.344, 2.345, 2.346, 2.347, 2.348, 2.349, 2.350, 2.351, 2.352, 2.353, 2.354, 2.355, 2.356, 2.357, 2.358, 2.359, 2.360, 2.361, 2.362, 2.363, 2.364, 2.365, 2.366, 2.367, 2.368, 2.369, 2.370, 2.371, 2.372, 2.373, 2.374, 2.375, 2.376, 2.377, 2.378, 2.379, 2.380, 2.381, 2.382, 2.383, 2.384, 2.385, 2.386, 2.387, 2.388, 2.389, 2.390, 2.391, 2.392, 2.393, 2.394, 2.395, 2.396, 2.397, 2.398, 2.399, 2.400, 2.401, 2.402, 2.403, 2.404, 2.405, 2.406, 2.407, 2.408, 2.409, 2.410, 2.411, 2.412, 2.413, 2.414, 2.415, 2.416, 2.417, 2.418, 2.419, 2.420, 2.421, 2.422, 2.423, 2.424, 2.425, 2.426, 2.427, 2.428, 2.429, 2.430, 2.431, 2.432, 2.433, 2.434, 2.435, 2.436, 2.437, 2.438, 2.439, 2.440, 2.441, 2.442, 2.443, 2.444, 2.445, 2.446, 2.447, 2.448, 2.449, 2.450, 2.451, 2.452, 2.453, 2.454, 2.455, 2.456, 2.457, 2.458, 2.459, 2.460, 2.461, 2.462, 2.463, 2.464, 2.465, 2.466, 2.467, 2.468, 2.469, 2.470, 2.471, 2.472, 2.473, 2.474, 2.475, 2.476, 2.477, 2.478, 2.479, 2.480, 2.481, 2.482, 2.483, 2.484, 2.485, 2.486, 2.487, 2.488, 2.489, 2.490, 2.491, 2.492, 2.493, 2.494, 2.495, 2.496, 2.497, 2.498, 2.499, 2.500, 2.501, 2.502, 2.503, 2.504, 2.505, 2.506, 2.507, 2.508, 2.509, 2.510, 2.511, 2.512, 2.513, 2.514, 2.515, 2.516, 2.517, 2.518, 2.519, 2.520, 2.521, 2.522, 2.523, 2.524, 2.525, 2.526, 2.527, 2.528, 2.529, 2.530, 2.531, 2.532, 2.533, 2.534, 2.535, 2.536, 2.537, 2.538, 2.539, 2.540, 2.541, 2.542, 2.543, 2.544, 2.545, 2.546, 2.547, 2.548, 2.549, 2.550, 2.551, 2.552, 2.553, 2.554, 2.555, 2.556, 2.557, 2.558, 2.559, 2.560, 2.561, 2.562, 2.563, 2.564, 2.565, 2.566, 2.567, 2.568, 2.569, 2.570, 2.571, 2.572, 2.573, 2.574, 2.575, 2.576, 2.577, 2.578, 2.579, 2.580, 2.581, 2.582, 2.583, 2.584, 2.585, 2.586, 2.587, 2.588, 2.589, 2.590, 2.591, 2.592, 2.593, 2.594, 2.595, 2.596, 2.597, 2.598, 2.599, 2.600, 2.601, 2.602, 2.603, 2.604, 2.605, 2.606, 2.607, 2.608, 2.609, 2.610, 2.611, 2.612, 2.613, 2.614, 2.615, 2.616, 2.617, 2.618, 2.619, 2.620, 2.621, 2.622, 2.623, 2.624, 2.625, 2.626, 2.627, 2.628, 2.629, 2.630, 2.631, 2.632, 2.633, 2.634, 2.635, 2.636, 2.637, 2.638, 2.639, 2.640, 2.641, 2.642, 2.643, 2.644, 2.645, 2.646, 2.647, 2.648, 2.649, 2.650, 2.651, 2.652, 2.653, 2.654, 2.655, 2.656, 2.657, 2.658, 2.659, 2.660, 2.661, 2.662, 2.663, 2.664, 2.665, 2.666, 2.667, 2.668, 2.669, 2.670, 2.671, 2.672, 2.673, 2.674, 2.675, 2.676, 2.677, 2.678, 2.679, 2.680, 2.681, 2.682, 2.683, 2.684, 2.685, 2.686, 2.687, 2.688, 2.689, 2.690, 2.691, 2.692, 2.693, 2.694, 2.695, 2.696, 2.697, 2.698, 2.699, 2.700, 2.701, 2.702, 2.703, 2.704, 2.705, 2.706, 2.707, 2.708, 2.709, 2.710, 2.711, 2.712, 2.713, 2.714, 2.715, 2.716, 2.717, 2.718, 2.719, 2.720, 2.721, 2.722, 2.723, 2.724, 2.725, 2.726, 2.727, 2.728, 2.729, 2.730, 2.731, 2.732, 2.733, 2.734, 2.735, 2.736, 2.737, 2.738, 2.739, 2.740, 2.741, 2.742, 2.743, 2.744, 2.745, 2.746, 2.747, 2.748, 2.749, 2.750, 2.751, 2.752, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.762, 2.763, 2.764, 2.765, 2.766, 2.767, 2.768, 2.769, 2.770, 2.771, 2.772, 2.773, 2.774, 2.775, 2.776, 2.777, 2.778, 2.779, 2.780, 2.781, 2.782, 2.783, 2.784, 2.785, 2.786, 2.787, 2.788, 2.789, 2.790, 2.791, 2.792, 2.793, 2.794, 2.795, 2.796, 2.797, 2.798, 2.799, 2.800, 2.801, 2.802, 2.803, 2.804, 2.805, 2.806, 2.807, 2.808, 2.809, 2.810, 2.811, 2.812, 2.813, 2.814, 2.815, 2.816, 2.817, 2.818, 2.819, 2.820, 2.821, 2.822, 2.823, 2.824, 2.825, 2.826, 2.827, 2.828, 2.829, 2.830, 2.831, 2.832, 2.833, 2.834, 2.835, 2.836, 2.837, 2.838, 2.839, 2.840, 2.841, 2.842, 2.843, 2.844, 2.845, 2.846, 2.847, 2.848, 2.849, 2.850, 2.851, 2.852, 2.853, 2.854, 2.855, 2.856, 2.857, 2.858, 2.859, 2.860, 2.861, 2.862, 2.863, 2.864, 2.865, 2.866, 2.867, 2.868, 2.869, 2.870, 2.871, 2.872, 2.873, 2.874, 2.875, 2.876, 2.877, 2.878, 2.879, 2.880, 2.881, 2.882, 2.883, 2.884, 2.885, 2.886, 2.887, 2.888, 2.889, 2.890, 2.891, 2.892, 2.893, 2.894, 2.895, 2.896, 2.897, 2.898, 2.899, 2.900, 2.901, 2.902, 2.903, 2.904, 2.905, 2.906, 2.907, 2.908, 2.909, 2.910, 2.911, 2.912, 2.913, 2.914, 2.915, 2.916, 2.917, 2.918, 2.919, 2.920, 2.921, 2.922, 2.923, 2.924, 2.925, 2.926, 2.927, 2.928, 2.929, 2.930, 2.931, 2.932, 2.933, 2.934, 2.935, 2.936, 2.937, 2.938, 2.939, 2.940, 2.941, 2.942, 2.943, 2.944, 2.945, 2.946, 2.947, 2.948, 2.949, 2.950, 2.951, 2.952, 2.953, 2.954, 2.955, 2.956, 2.957, 2.958, 2.959, 2.960, 2.961, 2.962, 2.963, 2.964, 2.965, 2.966, 2.967, 2.968, 2.969, 2.970, 2.971, 2.972, 2.973, 2.974, 2.975, 2.976, 2.977, 2.978, 2.979, 2.980, 2.981, 2.982, 2.983, 2.984, 2.985, 2.986, 2.987, 2.988, 2.989, 2.990, 2.991, 2.992, 2.993, 2.994, 2.995, 2.996, 2.997, 2.998, 2.999, 3.000, 3.001, 3.002, 3.003, 3.004, 3.005, 3.006, 3.007, 3.008, 3.009, 3.010, 3.011, 3.012, 3.013, 3.014, 3.015, 3.016, 3.017, 3.018, 3.019, 3.020, 3.021, 3.022, 3.023, 3.024, 3.025, 3.026, 3.027, 3.028, 3.029, 3.030, 3.031, 3.032, 3.033, 3.034, 3.035, 3.036, 3.037, 3.038, 3.039, 3.040, 3.041, 3.042, 3.043, 3.044, 3.045, 3.046, 3.047, 3.048, 3.049, 3.050, 3.051, 3.052, 3.053, 3.054, 3.055, 3.056, 3.057, 3.058, 3.059, 3.060, 3.061, 3.062, 3.063, 3.064, 3.065, 3.066, 3.067, 3.068, 3.069, 3.070, 3.071, 3.072, 3.073, 3.074, 3.075, 3.076, 3.077, 3.078, 3.079, 3.080, 3.081, 3.082, 3.083, 3.084, 3.085, 3.086, 3.087, 3.088, 3.089, 3.090, 3.091, 3.092, 3.093, 3.094, 3.095, 3.096, 3.097, 3.098, 3.099, 3.100, 3.101, 3.102, 3.103, 3.104, 3.105, 3.106, 3.107, 3.108, 3.109, 3.110, 3.111, 3.112, 3.113, 3.114, 3.115, 3.116, 3.117, 3.118, 3.119, 3.120, 3.121, 3.122, 3.123, 3.124, 3.125, 3.126, 3.127, 3.128, 3.129, 3.130, 3.131, 3.132, 3.133, 3.134, 3.135, 3.136, 3.137, 3.138, 3.139, 3.140, 3.141, 3.142, 3.143, 3.144, 3.145, 3.146, 3.147, 3.148, 3.149, 3.150, 3.151, 3.152, 3.153, 3.154, 3.155, 3.156, 3.157, 3.158, 3.159, 3.160, 3.161, 3.162, 3.163, 3.164, 3.165, 3.166, 3.167, 3.168, 3.169, 3.170, 3.171, 3.172, 3.173, 3.174, 3.175, 3.176, 3.177, 3.178, 3.179, 3.180, 3.181, 3.182, 3.183, 3.184, 3.185, 3.186, 3.187, 3.188, 3.189, 3.190, 3.191, 3.192, 3.193, 3.194, 3.195, 3.196, 3.197, 3.198, 3.199, 3.200, 3.201, 3.202, 3.203, 3.204, 3.205, 3.206, 3.207, 3.208, 3.209, 3.210, 3.211, 3.212, 3.213, 3.214, 3.215, 3.216, 3.217, 3.218, 3.219, 3.220, 3.221, 3.222, 3.223, 3.224, 3.225, 3.226, 3.227, 3.228, 3.229, 3.230, 3.231, 3.232, 3.233, 3.234, 3.235, 3.236, 3.237, 3.238, 3.239, 3.240, 3.241, 3.242, 3.243, 3.244, 3.245, 3.246, 3.247, 3.248, 3.249, 3.250, 3.251, 3.252, 3.253, 3.254, 3.255, 3.256, 3.257, 3.258, 3.259, 3.260, 3.261, 3.262, 3.263, 3.264, 3.265, 3.266, 3.267, 3.268, 3.269, 3.270, 3.271, 3.272, 3.273, 3.274, 3.275, 3.276, 3.277, 3.278, 3.279, 3.280, 3.281, 3.282, 3.283, 3.284, 3.285, 3.286, 3.287, 3.288, 3.289, 3.290, 3.291, 3.292, 3.293, 3.294, 3.295, 3.296, 3.297, 3.298, 3.299, 3.300, 3.301, 3.302, 3.303, 3.304, 3.305, 3.306, 3.307, 3.308, 3.309, 3.310, 3.311, 3.312, 3.313, 3.314, 3.315, 3.316, 3.317, 3.318, 3.319, 3.320, 3.321, 3.322, 3.323, 3.324, 3.325, 3.326, 3.327, 3.328, 3.329, 3.330, 3.331, 3.332, 3.333, 3.334, 3.335, 3.336, 3.337, 3.338, 3.339, 3.340, 3.341, 3.342, 3.343, 3.344, 3.345, 3.346, 3.347, 3.348, 3.349, 3.350, 3.351, 3.352, 3.353, 3.354, 3.355, 3.356, 3.357, 3.358, 3.359, 3.360, 3.361, 3.362, 3.363, 3.364, 3.365, 3.366, 3.367, 3.368, 3.369, 3.370, 3.371, 3.372, 3.373, 3.374, 3.375, 3.376, 3.377, 3.378, 3.379, 3.380, 3.381, 3.382, 3.383, 3.384, 3.385, 3.386, 3.387, 3.388, 3.389, 3.390, 3.391, 3.392, 3.393, 3.394, 3.395, 3.396, 3.397, 3.398, 3.399, 3.400, 3.401, 3.402, 3.403, 3.404, 3.405, 3.406, 3.407, 3.408, 3.409, 3.410, 3.411, 3.412, 3.413, 3.414, 3.415, 3.416, 3.417, 3.418, 3.419, 3.420, 3.421, 3.422, 3.423, 3.424, 3.425, 3.426, 3.427, 3.428, 3.429, 3.430, 3.431, 3.432, 3.433, 3.434, 3.435, 3.436, 3.437, 3.438, 3.439, 3.440, 3.441, 3.442, 3.443, 3.444, 3.445, 3.446, 3.447, 3.448, 3.449, 3.450, 3.451, 3.452, 3.453, 3.454, 3.455, 3.456, 3.457, 3.458, 3.459, 3.460, 3.461, 3.462, 3.463, 3.464, 3.465, 3.466, 3.467, 3.468, 3.469, 3.470, 3.471, 3.472, 3.473, 3.474, 3.475, 3.476, 3.477, 3.478, 3.479, 3.480, 3.481, 3.482, 3.483, 3.484, 3.485, 3.486, 3.487, 3.488, 3.489, 3.490, 3.491, 3.492, 3.493, 3.494, 3.495, 3.496, 3.497, 3.498, 3.499, 3.500, 3.501, 3.502, 3.503, 3.504, 3.505, 3.506, 3.507, 3.508, 3.509, 3.510, 3.511, 3.512, 3.513, 3.514, 3.515, 3.516, 3.517, 3.518, 3.519, 3.520, 3.521, 3.522, 3.523, 3.524, 3.525, 3.526, 3.527, 3.528, 3.529, 3.530, 3.531, 3.532, 3.533, 3.534, 3.535, 3.536, 3.537, 3.538, 3.539, 3.540, 3.541, 3.542, 3.543, 3.544, 3.545, 3.546, 3.547, 3.548, 3.549, 3.550, 3.551, 3.552, 3.553, 3.554, 3.555, 3.556, 3.557, 3.558, 3.559, 3.560, 3.561, 3.562, 3.563, 3.564, 3.565, 3.566, 3.567, 3.568, 3.569, 3.570, 3.571, 3.572, 3.573, 3.574, 3.575, 3.576, 3.577, 3.578, 3.579, 3.580, 3.581, 3.582, 3.583, 3.584, 3.585, 3.586, 3.587, 3.588, 3.589, 3.590, 3.591, 3.592, 3.593, 3.594, 3.595, 3.596, 3.597, 3.598, 3.599, 3.600, 3.601, 3.602, 3.603, 3.604, 3.605, 3.606, 3.607, 3.608, 3.609, 3.610, 3.611, 3.612, 3.613, 3.614, 3.615, 3.616, 3.617, 3.618, 3.619, 3.620, 3.621, 3.622, 3.623, 3.624, 3.625, 3.626, 3.627, 3.628, 3.629, 3.630, 3.631, 3.632, 3.633, 3.634, 3.635, 3.636, 3.637, 3.638, 3.639, 3.640, 3.641, 3.642, 3.643, 3.644, 3.645, 3.646, 3.647, 3.648, 3.649, 3.650, 3.651, 3.652, 3.653, 3.654, 3.655, 3.656, 3.657, 3.658, 3.659, 3.660, 3.661, 3.662, 3.663, 3.664, 3.665, 3.666, 3.667, 3.668, 3.669, 3.670, 3.671, 3.672, 3.673, 3.674, 3.675, 3.676, 3.677, 3.678, 3.679, 3.680, 3.681, 3.682, 3.683, 3.684, 3.685, 3.686, 3.687, 3.688, 3.689, 3.690, 3.691, 3.692, 3.693, 3.694, 3.695, 3.696, 3.697, 3.698, 3.699, 3.700, 3.701, 3.702, 3.703, 3.704, 3.705, 3.706, 3.707, 3.708, 3.709, 3.710, 3.711, 3.712, 3.713, 3.714, 3.715, 3.716, 3.717, 3.718, 3.719, 3.720, 3.721, 3.722, 3.723, 3.724, 3.725, 3.726, 3.727, 3.728, 3.729, 3.730, 3.731, 3.732, 3.733, 3.734, 3.735, 3.736, 3.737, 3.738, 3.739, 3.740, 3.741, 3.742, 3.743, 3.744, 3.745, 3.746, 3.747, 3.748, 3.749, 3.750, 3.751, 3.752, 3.753, 3.754, 3.755, 3.756, 3.757, 3.758, 3.759, 3.760, 3.761, 3.762, 3.763, 3.764, 3.765, 3.766, 3.767, 3.768, 3.769,

ISSUE

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The State of Missouri violated my 6th amendment right to confrontation clause, the ability for effective cross-examination, to call or confront witnesses (Odewase v. Foster) and their own sunshine law by failing to provide me, defense with evidence critical to his defense when the prosecutor, Jackson County, Clay County, & Kansas City Police Department (KCPD) did not provide evidence in discovery or later defendant took a breathalyzer test in KCPD showing I was not intoxicated violating (Rule 26.2) (Brady v. Maryland / FDIS v. Arriaga / People v. Bryce / City of Brady / People v. Fuentes) and Fed. R. Cr. P. 39(b), 39(c), 60(b)(5). I forgot about the test as stated in my testimony, I suffered from a head injury (P479 Line 10-15 trial transcript / Appendix F.1) and any evidence of intoxication was due to a head injury, knowledge of the breathalyzer test is not knowledge of the results or having the physical information for trial and it is up to the state to provide all evidence to me in favor of my defense. This is in regards to the video footage of me taking a breathalyzer test in KCPD (Appendix H) and the letter from KCPD showing there was no record indicating there was any record of a BAC or sobriety test (Appendix G4) which is evidence the state was suppressing evidence supporting my defense because if the video shows me taking the test and they don't record it or change me it shows I wasn't intoxicated. Although intoxication isn't relevant to the elements of the charge, it tends to prove I wasn't intoxicated and makes the voluntary intoxication instruction irrelevant especially when the instruction forced a conviction based on intoxication and not the required elements of the charge when the state focused on an intoxicated or drugged condition where the jury may have believed the collision was due to intoxication and not intent, providing me credibility where the evidence is circumstantial in nature and had they received the evidence there is reasonable probability of not guilty, would be for accidents this affects Stans 1, 6, 8, 9. I was also provided ineffective assistance of trial for failing to investigate this at depth and 2915 counsel for failing to raise ineffective assistance of trial counsel claim above in the 2915 (Please see Reason For Writ, Cause for procedural default 1, 3, 3, for complete default argument)

ISSUE

3

The court erred by requiring me to wear ("non-visible") leg restraints (P48 Line 7-9, P240 Line 12-19, P426 Line 20-22, P517 Line 5-10 trial transcript / Appendix F.1) and not holding a hearing or recording a hearing for necessity for a restraining court to order it when there was no threat toward public safety, escape, or people whatsoever and completely unnecessary. The constitution forbids the use of visible shackles during the penalty phase and forbids their use during the guilt phase "unless the use is 'justified' by an essential state interest such as courtroom security 'specific' to defendant in trial (Deck v. Missouri). Generally, defendant's rights to due process is violated if the courts failed to make a finding on record justifying the necessity of physical restraints. If defendant is charged with a violent crime then the risk of prejudice increases because shackling conveys an impression he is violent. Both defendant and public have the right to a dignified, inspiring and open court process thus innocent defendants may not be shackled at any point in the courtroom unless there is an individualized showing of need in (Holbrook v. Flynn) though "Deck" dealt with visible shackles, the fact that shackling proposed by the government here would not necessarily be visible by the jury, does not reverse the presumption against shackling because the underlying principle identified in "Deck" still counsel non-visible shackling in this case. In (Estelle v. Williams) we noted that where defendant is forced to wear prison clothes appearing before the jury, the constant reminder of the accused condition implicit in such distinctive identifiable attire may affect a jurors judgment (504-505).

Since no "Essential State Policy" is served by compelling a defendant to dress in this manner (2d at 505) the court went no further and concluded that the practice is unconstitutional. The court emphasized that "a defendant may be prejudiced if he appears before the jury bound and gagged." Not only is it possible the sight of shackles and gags has a significant effect on the jury's feelings about defendant but the issue of technique (444 12) is itself something of an affront to the very dignity and decorum of judicial proceedings the judge is seeking to uphold (3d at 344) *Illinois v. Allen*. "Shackles impose physical burdens, pains and restraints... tend to confuse and embarrass defendants' mental faculties and thereby tend materially to abridge and prejudicially affect his constitutional rights." Finally, 3d at 513, the shackles undermine the judicial process as a "dignified process" though admittedly only not to the same degree as visible shackles (*People v. Harrison* / Deck 544 ns. at 631). Although the leg brace restraint was under my pants most of the time, you could still see it through the pants and I think one day it was outside my pants.

My trial counsel was ineffective for failing to object to the use of ("non-visible") leg restraints or request a hearing or reason for the restraints which was also an implication of guilt by my attorney (*State v. Harrison*) and the court. If I wasn't forced to wear the leg brace restraint, the prejudicial impression of guilt, injury of me being violent person, trying to escape, or as the court had to control me, would not have occurred violating my 14th amendment right to access to criminal proceedings, 14th amendment right to uninterrupted communication with counsel, 14th amendment right to due process denying me a fair trial. As in (*United States v. McClintock*) shackles impose physical burdens, pains, and restraints tend to confuse and embarrass defendants "Mental faculties" and thereby tend to materially to abridge and prejudicially affect our constitutional rights. I had problems saying precise points because I was embarrassed and it caused confusion and clouded my testimony, non-visible shackles undermine the judicial process as a dignified process. 1) this undermines the presumption of defendant is innocent until proven guilty 2) interferes with my right to counsel by making communication with counsel more difficult 3) it challenges the dignity of the judicial process (*People v. Harrison*). Although the leg brace was under my pants, the affects of the "non-visible" restraints was visible, and one day I think it was outside my pants. You could see it through my pants and it was locked so I had to walk stiff legged in front of the jury which could have led the impression I could be a resistant, an injury from the collision, that I was violent, or I was so bad I had to be controlled or prevented from escaping (*Illinois v. Allen*). There was an armed sheriff to prevent that. I had to sit with my leg straight throughout the trial even sitting with my attorney in plain view of the jury. I had problems walking to take the stand and tripped up the steps to testify and the leg restraint was visible through the pants as I was exiting after testifying right in front of their faces. I couldn't stand up for the jury when they came in or left the court room afraid to knock over the table which affected the jury, and the judge in sentencing also. This as identified by the Supreme Court violated my 14th amendment right to counsel and the participation in one's own defense. It was difficult to move and uncomfortable where I had to wobble around distracting the jury from testimonies and since the court didn't hold a hearing or discuss the ward of restraints violated my 14th amendment right to due process and Rule 611(c)(3) (*Sanchez-Gomez*).

My Direct and 2d appeals (counselors) errored or were inadequate by failing to raise these issues or better in their respective appeals and to the standard of (*Strickland*) (Please see Reason for Writ, cause for procedural default 1, 2, 3) of court error, inadequate assistance of direct appeal counsel for failing to raise the court error and inadequate assistance of trial counsel in their respective appeals. There wasn't trial strategy beneficial to my defense by not raising the claim, and a direct appeal, although the one issue she raised had merit, this claim is more meritorious

and would not have hindered the court but had it been raised in either the direct or 2915 appeal(s) there is reasonable probability of a different outcome of a new trial because it satisfied both prongs of (Strickland) and there was prejudice and it was outcome determinative but also according to Fed. R. Crim. P. 52(b) plain error that affects substantial rights may be considered even though it wasn't brought to the court's attention and plain error is reversible if 1) there is Error 2) it was plain 3) effect of substantial rights 4) seriously affected the fairness, integrity or public reputation of the judicial proceedings (United States v. Dwyer (Henderson v. United States)). There was error for forcing me to wear the restraints without just cause and/or by not holding a hearing for me orally or having it on record, it was plain and it affected substantial rights of 14th amendment right to due process that was outcome determinative which seriously affected the fairness and integrity of the judicial proceedings. All my counsel(s) actions fell short of what a reasonable attorney should.

ISSUE

4

The state provided me with ineffective assistance of trial counsel when they failed to raise the issue or call (a) the only witness Richard Thomas. I have to verify, I believed he was the guy I got into a collision with, believing he was Thomas Morrow. That I said he backed into my vehicle causing damages to my truck, that I went back but to the wrong house, I thought I was in an altercation with and suggested we call the police for an insurance claim, offered my insurance information, stayed until the police arrived and wasn't violent with him (P52 Line 20-P53 Line 11, P56 Line 3-P66 Line 4 trial transcript/Appendix F.1) (Bad legal advice, movants exhibit speech for court/Appendix D.6) (Richard Thomas testimony P92 Line 1-P94 Line 10/P99 Line 2-P101 Line 1/Defendants testimony P22 Line 4-7, P23 Line 4-18 Record on appeal transcript/Appendix D.7).

The reason this is so important my attorney raise this issue in trial is I have very little evidence to prove my intent or culpable mental state towards the alleged victims. This is outside third party testimony of my actions that is evidence towards my thought process towards the alleged victims and how I was acting towards who I thought was the alleged victims. This evidence outweighs and disproves the officers testimony of Detective Littlejohn and Officer Probst that resisting arrest or bad behaviors towards officers in regards to unrelated bad acts or charges proved it was an intentional act and of the "impeccable" opinion testimony by Detective Littlejohn that he believed it was an intentional act. It also disproves the alleged victims and their family friend Camaron Kickschick's opinion or speculative testimony. It was them saying they believed it was an intentional act against me saying it was an accident and I wasn't trying to hurt or kill anybody. This testimony provided incredible, clear and convincing evidence of a third party my actions was of a person in a car accident and not of somebody attempting to hurt or kill the people on the road. This testimony tends to corroborate my testimony it wasn't intentional, it was an accident and in self defense, that I was cooperative with society, the alleged victims, and police. The testimony was more beneficial and useful because it was impeaching and exculpatory in nature and even if it caused the jury to believe my behavior was due to intoxication, it wouldn't matter because intoxication is irrelevant to the charges at hand towards the required specific intent and is not within the average lay witnesses experience to differentiate between a head injury or intoxication. The testimony tends to prove actual innocence also because although there was a collision the testimony tends to prove it wasn't intentional it was justified, or accident and the state failed to prove the required elements of the charge, and by this it tends to show the conviction was based on legally insufficient evidence which would constitute a denial of due process (Gibbs v. Florida/Jackson v. Virginia) and the due process clause affords defendants the right to offer the testimony of witnesses and compel

their attendance (United States v. Jones / United States v. Cannon, quoting Washington v. Texas). By its terms the 6th amendment compulsory process clause confers the right to compel witnesses to appear through issuance of subpoena power but the clause has constitutionally been given broader interpretation to include the right to present witness testimony from the courtroom (Anders v. Goose, quoting Taylor v. Illinois). The Supreme Court has said, "Just as an accused has the right to confront prosecutive witnesses for the purpose of challenging their own testimony, he has the right to present his own witnesses to establish a defense." The court explained under the confrontation clause a defendant is afforded two protections, the right to physically face those who testify against him and right to cross examine (Coy, quoting Pennsylvania v. Ritchie) and the confrontation clause guarantees an opportunity for effective cross or recross examinations that is effective in whatever way and to whatever extent defense may wish (Delaware v. Fensterer).

The 2915 counsel was inadequate for abandoning my claims by failing to renew my motion to better address the claim and to the standard of (Strickland) leaving me to act as my own counsel. (Please see "Reason For Writ", cause for peremptory default 12,3).

This claim was accidentally omitted but partly raised or attempted in ("Apthy failed to object to or completely agree speculation 715-17", "Apthy failed to agree and prove defendant's testimony by specifics and provided testimony evidence 82-27", "Apthy failed to agree, reasons, stance, to disprove, discredit, or impeach witnesses 85-10" "Bad legal advice P1" trial transcript / Appendix D.5). It believed I raised the claim in the 2915 and raised Richard Thomas' testimony as evidence to support the claims. Had my attorney addressed the claim properly, there is reasonable probability a different outcome of not guilty or acquitted in the 2915.

ISSUE 5

The 2915 court not only reversed but decided contrary to or applied an unreasonable application of federal law where the courts factual findings lack even fair support in record when the court denied my claim that part of state exhibit 5/5A was missing when it was memorialized from state exhibit 5 to 5A because the court claimed trial counsel could not be found to be constitutionally ineffective for a non-meritous objection (P9 Line 30 - P10 Line 23 / P10 Line 11-19, 24 - P11 Line 27 order denying statement in lieu of amended motion / Appendix D.1), it could be trial strategy, but also no credible evidence was provided to prove otherwise (P11 Line 27-31, P16 Line 17-21 order denying statement in lieu of amended motion / Appendix D.1), and defense failed to prove either prongs of (Strickland) (P13 Line 1-11, 25-31 / P14 Line 16-22 / P16 Line 25-30 order denying statement in lieu of amended motion / Appendix D.1). There was an objection to the admission due to lack of foundation (P249 Line 1-4 / P252 Line 15 - (P253 Line 18-20) - P255 Line 14 trial transcript / Appendix F.1) but not to the most important issue that part of the drawn testimony was missing and is what trial counsel failed to object to or its admission to jury deliberation (P554 Line 17 - P555 Line 6 trial transcript / Appendix F.1) or since the drawn testimony was wiped off it only represented Thomas, Moreous and Cameron Kirkpatrick's testimony but anything beneficial to me was wiped off and removed. Not only was this highly prejudicial to my case because the state exhibit 5/5A was the only specific evidence the jury requested to make their decision and an objection to the missing testimony could not be overruled (P252 Line 15 (P253 Line 21 - P254 Line 1) - P254 Line 19 trial transcript / Appendix F.1) (P11 Line 27-31 order denying statement in lieu of amended motion / Appendix D.1) states no credible evidence was provided to the contrary but state exhibit 5A was introduced under movant's exhibit 2 (Appendix G.6A, G.6B) (P8 Line 3-11 Record on appeal transcript / Appendix D.7) but it wasn't labeled. The court either lost it or didn't consider it credible due to prosecution failing to properly label or handle the evidence. This was a state exhibit from trial introduced as evidence to support my defense. If it

Lacked credibility for my case. I lacked credibility to be admitted in jury deliberations in which trial counsel not could should have addressed this and there in trial where the factual findings lack even fair support in record because the objection could not be overruled and the state exhibit 515A was improperly memorialized, admitted, and tends to be impeaching, exculpatory in nature and tends to prove my claims correct and credible that Thomas Morrow backed up blocking me in. According to Fed R Crim P 52(b) states plain error that affects substantial rights may be considered even though it was not brought to the court's attention and plain error is reversible if 1) there is error 2) it is plain 3) affected substantial rights 4) seriously affected the fairness, integrity, or public reputation of the judicial proceedings (United States v. Dwyer / Henderson v. United States).

Trial counsel conceded and was ineffective for not objecting to the admission of state exhibit 515A into jury deliberation because part of the witness testimony was wiped off and included portions the witness didn't draw himself violating Fed R Evid 43, 602, 702, 801, 902, 901 where Cameron Kirkpatrick drew how Thomas Morrow backed up blocking me in (P250 line 8-17 trial transcript/appendix F1) then marks the car with "C" and truck with "T" (P254 line P23 trial transcript/appendix F1). All three of these portions were wiped off, missing, and there was additional computerized straight lines marking the differences that was not drawn by the witness but rather the prosecutor's testimony. This violates my both an oral and written right to call and confront witnesses, right to cross or not cross examine (Delancey v. Fensterer) and it must be presented when anything is introduced to the court, the addition markings violated Rule 43 because it wasn't by the witness and the extra markings weren't done in open court (United States v. Koushfar, quoting Fulminante). The court ordered the drawn testimonies to be fully memorialized (P282 line 15 - P285 line 14 trial transcript/appendix F1) or it wouldn't be permitted but they only remarked and missed many portions of it. This should have been objected to in the first place before it was introduced as evidence and again before it was introduced into jury deliberation and may have been due to inadvertence or overlooking the additional and missing portions. Regardless trial counsel acted less than a reasonable attorney should have. There was no trial strategy beneficial to my defense by not objecting to the altered and missing testimony because the trial court only allowed it if it was memorialized and couldn't be overruled. The admission of state exhibit 515A was highly prejudicial and it was outcome determinative where the prejudice far outweighed the probative value. It took 4 hours to find me guilty and the only evidence the jury asked for was the state exhibit 515A (P254 - P255 trial transcript/appendix F1) and only found me guilty after receiving the corroborating and inadmissible testimony which was the deciding factor and denied me a fair trial.

Direct and 2915 counsel(s) were inadequate for failing to raise or better address the issues as court committed inadequate assistance of direct appeal counsel for not raising constitutional and ineffective assistance of trial counsel claims in their respective appeals and to the standard of (Strickland). The claims were raised or at least attempted in multiple claims in the 2915 (State exhibit 515A p. 27-28 and multiple constitutional claims based in P2 of 2915 court records, 2915 motion/appendix D, 5. Had counsel(s) at direct and 2915 appeal(s) addressed the issues and to the standard of (Strickland) there is reasonable probability of a different outcome at trial, direct and 2915 appeal(s) of a new trial.

ISSUE

6

I was provided ineffective assistance of trial counsel because counsel failed to object to or argue multiple points for the objection and/or in trial opening the door to testimony regarding Detective Littlejohn, Officer Pruitt, and Barry Molans testimony.

first about hearsay (P10-11/P148 Line 15-P149 trial transcript/Appendix F.1) because Detective Littlejohn testified to statements made to him by the alleged victim Thomas Morrow which denies my right to confront witnesses and he testified about statements made to him about C.M. by Thomas Morrow. Second, because Detective Littlejohn testified I invoked my right to remain silent as well as Barry Nolan and trial counsel was ineffective by either not objecting to this and/or opening the door to this testimony which the State used against me (Miranda Rights P17-18, 29115/Appendix D.5). The third is because Detective Littlejohn testified he was an expert witness and he believed it was not an accidental but an intentional act without hearing C.M.'s or my testimonies or all the evidence (P134 Line 24-P143 Line 3 trial transcript/Appendix F.1) fourth, trial counsel failed to object to or argue these testimonies were based on or violated entrapment, was hearsay and the issues singularly and as a whole prejudiced the trial so badly one could not rely on the decision on the case.

1st reason for ineffective assistance of trial counsel is in regards to hearsay. Detective Littlejohn testified to statements made to him about the alleged victim C.M. she didn't testify to (P148 Line 15-P149 Line 4 trial transcript/Appendix F.1) and after she testified which denied my 6th amendment confrontation clause right to call and confront witnesses, cross examine witnesses (Delaware V. Fensterer) and violates Fed. R. Evid 4b, 602, 801(c), 702 (b)(3)(C), 802 which this claim was raised on the 29115 ("Apthy failed to object to specifically to Littlejohn's testimony of hearsay to what Thomas Morrow described as his daughters statement P10-11, 29115/Appendix D.5). Detective Littlejohn stated he didn't take C.M.'s statement because her dad indicated she was having substantial fears about the suspect in this case coming and finding them and killing them, that they were going to seek counseling professionally or through school or something their insurance would pay for and went on again to say the reason he didn't take her statement was given her fear of the subject and he didn't want to bring it back up because she was having nightmares and seeking counseling to get over it (P141 Line 3-15 trial transcript/Appendix F.1). Even if this was allowed during the penalty phase, C.M. never testified to this at any time but I also signed a jury sentencing waiver (Appendix F.4) which the jury never should have heard this testimony that was used to inflame the jury and Detective Littlejohn had no first hand knowledge of her testimony, the situation, the scene of the incident, arrest scene, didn't hear C.M.'s testimony and couldn't make an accurate or educated decision or statement and made a conclusion outside his expertise. This invaded the jury's province to decide facts in the case and violated several court rules, constitutional rights where the testimony done poisoned the jury's pool of information and belief so badly there is no way to know if they were persuaded by the evidence of intent or by this testimony because a police officer's testimony is normally a reputable evidence but this is inadmissible and certainly outcome determinative.

2nd in regards to Apthy failing to object to or opened the door to me invoking my right to remain silent, this was raised or attempted in two issues ("Apthy failed to object to or Completely Argue Suppression P15-17" and "Miranda Rights p.2218", 29115/Appendix D.5). The state argues the name of Officer Proud and Barry Nolan was not mentioned in state motion but although accidentally omitted it was implied by "other officers". Apthy was ineffective by opening the door to me invoking my rights to remain silent (P144 Line 5-10 trial transcript/Appendix F.1) by asking Detective Littlejohn if he took my statement which lead to a 7 page conversation about me invoking my right to remain silent (P147-P154 trial transcript/Appendix F.1) without an objection that then lead to the state using the fact I invoked my right 6th amendment right to remain silent against me saying, "I sat there and listened to

everybody testify before I did (P495 Line 20 - P469 Line 24 trial transcript/Appendix F1) implying I was lying or using their words against them and then again when the prosecutor said, "I testified that all this occurred after I drove through a yard, not realizing I hit anybody, somebody punched me in the face, and leaves because I was scared, then doesn't tell anybody. It's asinine, ridiculous, and unreasonable (P553 Line 24 - P534 Line 6 trial transcript/Appendix F1) when the judge told me I had the right not to testify which is also 5th amendment (P458 Line 11 - (P458 Line 11-12) - (P459 Line 5) - P460 Line 20) and the jury couldn't use it against me at all. The state has no right to defend their violation to my 5th amendment right to remain silent or to justify why my testimony wasn't received. I only testified because the officers testified (P66 Line 4-17 Record on appeal transcript/Appendix D7) and since they testified first, the statements were not made or used to impeach my testimony but rather why that officer didn't hear my testimony. Even if the other officers tried, that specific officer didn't try and for purposes of the Miranda warning as to the right to remain silent, silence does not mean muteness. It includes the statement of a desire to remain silent as well as of a desire to remain silent until an attorney has been consulted (Miranda v. Greenfield/Miranda v. Arizona). This testimony was highly prejudicial and outcome determinative. I only testified because the officers testified and my testimony was the most damaging to my defense. Had my attorney not opened the door to this testimony or at least objected to the state using it against me, moving for new trial, there is reasonable probability of either not guilty verdict or new trial by mistrial.

3rd is because Apaty not only didn't object to the use of Detective Littlejohn testifying as an expert witness as a detective on the case (P434 Line 24 - P443 Line 10 trial transcript/Appendix F1) and he invited the officers testimony he believed an assault occurred which invaded the province of the jury's duty of fact findings and violated Fed. Evid. R. 43, 46, 602, 702 (a)(6), D.P. 61, 602, 601 where the officer had no first hand knowledge of the case nor received all the information of C.M. or my testimony to make any legal decision. This person works for the government to enforce a law, normally a reputable witness, who doesn't have all the evidence and couldn't make a conclusion as an expert witness in that field, which is the state telling the jury to find me guilty through another source. This testimony doesn't change the facts of the incident but does change the way the jury looks at the evidence towards intent and had my attorney objected based on Fed. Evid. Rules and not just to this issue but Detective Littlejohn's entire testimony, his objection would be granted. The testimony's prejudice far outweighs the probative value and had the jury not been persuaded by Detective Littlejohn's inadmissible testimony there is reasonable probability the jury would've found me not guilty. There is evidence of a collision and of an altercation but the state was limited to speculative or opinion testimony where the officers testimony was the most persuasive provided. It took 4 hours to determine guilt and without the inadmissible testimony it would have tipped the scales of justice my way.

4th is with Officer Pruitt, Apaty should have objected to and fully argued this testimony was based on entrapment and hearsay, which was denied by the 2915 state court because it should have been "flushed out in trial" (P9 Line 23-31 order denying statement in lieu of Grand Jury/Appendix D1). This only agrees with my claim I was provided ineffective assistance of counsel at trial where the prejudice is I was denied a fair trial and 14th amendment right to due process. Officer Pruitt's name was incorrectly written and I wrote Officer Moore instead who never testified but was implied by stating, "Apaty failed to argue that the

officers" at the crime scene, specifically Officer Moore violated entrapment (P28 line 3 of 29115/Appendix D.5) and is the state trying to confuse the court but if 29115 attorney adequately re-wrote my 29115 better addressing the claim, the officers name would've been corrected. Officer Prout's testimony was objected to in regards to a motion in limine of bad acts subsequent to the collision (P406 line 12 - P409 line 22 trial transcript/Appendix F.1) but didn't argue it was observed as the result of entrapment or was entrapment by Officer Moore when the officer induced my behavior to create evidence to support the required specific intent. Officer Prout didn't see most of this which was hearsay but by indicating I resisted arrest was an attempt to show the collision was intentional act or sign of guilt but if he wouldn't have acted badly with me I wouldn't have "resisted."

It was entrapment because I wasn't resisting arrest. I was resisting the officers bad behavior (State v. McGhee, P443 line 17 - P44 line 20 record on appeal transcript/Appendix D.7). I allowed the officer to place me in cuffs when he instructed me to sit in front of the cruiser. I got half way down and asked for help so he pushed me down, jumped on me, was choking me and I felt his penis on my buttocks so I was moving to be able to breathe and get his penis off me. Then because it felt like he was attempting to put something in my hands or plant something on me I started yelling and saying obscene things to get the attention of the neighbors. This had nothing to do with the collision for me. If anything, it could only be about the unrelated charges after the collision. This was entrapment evidence because I was induced to commit the offense through the use of a government agent I wasn't disposed to commit (United States v. Silver). I just needed to breathe and Richard Thomas' testimony corroborates I was cooperative (P89 line 5 - P101 line 11 record on appeal transcript/Appendix D.7) until the officer pushed me to the ground. The officer induced my behavior in an attempt to create evidence of a culpable mental state of intent trying to make me look violent. The reason this is hearsay is Officer Prout only observed my demeanor long after I was in restraints after the abusive behavior by the officers and after I was already seated on the ground (397 line 9 - P406 line 14 / P414 line 14 - P415 line 9 trial transcript/Appendix F.1). This provides an incomplete sequence of transactions that occurred and was also highly prejudicial because this officer testified to situations he never observed which was hearsay violating Fed. Evid. R. 43, 46, 702 (b)(3), 602, 801(c), 802, 803 where the statement "the officers had to take him to the ground" (P414 line 14 - P415 line 9 trial transcript/Appendix F.1) implied I was in a physical confrontation with the officers continuing an assault or being a violent person. That officer didn't actually see the "struggle" part of the situation but only afterwards where I was sitting in front of the cruiser. This is a case about culpable mental state of an alleged violent crime, that violent interactions with law enforcement is highly prejudicial or even if it does constitute "resisting" it couldn't possibly be relevant or link the intent of the collision, especially when it states (P406 line 14-15 trial transcript/Appendix F.1) "There was a white male in custody there for charges not related to my investigation" meaning it would have, if at all, been resisting other charges which is irrelevant to these charges.

Direct and 29115 counsel(s) erred or was inadequate for failing to raise or better address these issues and to the standard of (Strickland) in their respective appeals (Please see "Reason For writ: Cause for procedural default 1, 2, 3 for complete procedural default argument of procedural default argument of Missouri Court of appeals, 29115, and 2254). Had counsel at direct and 29115 appeals adequately addressed these fourth errors of allowing bad acts subsequent to the charges at hand, ineffective assistance of trial counsel for opening the door to this testimony or raising it themselves and without objection, inadequate assistance

of direct appeal counsel for not raising the court error in their respective appeals, there is reasonable probability of a different outcome in the appeals(s). Each issue individually and as a whole was highly prejudicial and outcome determinative and had counsel objected and invited or argued each point raised in this claim and attempted in Apaty failed to object to specifically Littlejohn's testimony of hearsay to what Thomas Morrow described as his daughter's statement, "Mimada Rights". The court erred in allowing the state's inquiry and testimony of defendant invoking his right to remain silent, "Motion in Limine" regarding to allowable testimony and Gailyn Morrow, Apaty failed to completely argue speculation, "Entrapment" ^{appeal in US} there is reasonable probability of a different outcome at trial, direct, and 2915 appeals(s) since the above arguments prove violations to federal court rules and constitutional rights where each claim was outcome determinative singularly and as a whole and does prove trial and all counsels inadequate and ineffective.

The Missouri Court of Appeals also erred, decided contrary to or applied an unreasonable application of clearly established federal law where the courts federal findings lack even fair support in record because they were not raised or properly raised, or the arguments was changed (Please see reason for writ 1, cause for procedural default 1,2,3) these procedural default issues should be good or just cause for procedural default in both Missouri Court of Appeals, 2915, and 2254. Although my attorney did raise or attempt the claim in the higher appeal it was wrong, erroneous, and missing issues and facts. (Green v. Davis) but the Department of Corrections prevented me from raising my issues and the cause for procedural default is addressed in reason for writ 1). The court erred and its decision was contrary to as stated above because they denied my attorneys claims in direct appeal (W0878638)(P7 Line 13-14 memorandum supplementing rule 30.25(b), order affirming verdict (Appendix E.1) and in appeal of denial of statement in lieu of amended motion (W083829)(P14 Line 17-P15 Line 19/P17 Line 22-P18 Line 17 memorandum supplementing order affirming judgment pursuant to Rule 87.16(b), order affirming judgment (Appendix C.1) the claims were waived or failed to prove prejudice, that the probative value of the evidence outweighed any prejudice and was not outcome determinative that trial court said it was barely relevant but the facts introduced were highly prejudicial. As stated above they were based on entrapment and hearsay testimony where the officer missed the majority of the situation that occurred prior to his arrival and since his testimony made the jury believe I was assaulting the police that was induced to create the image of evidence of a culpable mental state, it was highly prejudicial. The court had all this testimony in front of them and know the testimonies violated Fed. Rule 43, 46, 602, 702, 801, 802, 901 that it was prejudicial and outcome determinative, which is contrary to clearly established federal law and where the courts federal findings lack even fair support in the record. Besides it being hearsay and entrapment the jury hearing the testimony of me being uncooperative and taken down by the police for an unrelated incident causes the jury to believe me violent regardless of how limited the testimony was. This was highly prejudicial and outcome determinative.

The 2915 state court erred, decided contrary to or applied an unreasonable application to clearly established federal law by denying each of these claims or issues for failing to prove (Strickland) first or second prong that but for attorneys error there was reasonable probability of a different outcome at trial (P13 Line 1-11, 25-31/P14 Line 16-22/P16 Line 25-30 and denying statement in lieu of amended motion (Appendix D.1) and that the claims were too vague and counsel couldn't be found ineffective for non-miscellaneous objection (P25 Line 6-9, 12-20 order denying statement in lieu of amended motion (Appendix D.1) as argued in the issues, this proves counsels at trial, direct, and 2915 appeals(s) inadequate and the 2915 judge agrees entrapment should have been raised

in trial which also proves counsel inadequate (P13 line 22-23 order denying statement in lieu of amended motion/appendix D.1)

ISSUE

7

The Missouri Court of Appeals erred, decided contrary to or applied an unreasonable application of clearly established federal law where the courts factual findings lack even fair support in record denying my claim in regards to me invoking my 5th amendment right to remain silent (P14 line 17-P18 line 19 memorandum supplementing order affirming judgment pursuant to rule 84.16(6)/appendix C.1 order affirming judgment) that the claims were materially indistinguishable (Green v. Davis). They were essentially the same issue, however the claims were attempted and could be reviewed by that court (United States v. Davis), if there was good or valid cause for the procedural default such as attorney error or inadequate counsel in 2915 (Please see Reason for writ 1 cause for procedural default 1, 2, 3) and then also the denial of the phone call to my attorney by the Department of Corrections (United States v. Smith) and is why I challenge the courts decision on this issue.

I also challenge 2915 state courts decision in they too erred, decided contrary to or applied an unreasonable application of clearly established federal law denying the miranda rights claim, by denying the ineffective assistance of trial counsel claim and by allowing inquiry and testimony of me invoking my right to remain silent where the courts factual findings lack even fair support in record ("Miranda Rights P17-18," "The court erred in allowing the states inquiry and testimony to defendant invoking his right to remain silent P49 of 2915"/Appendix D.5) where the court denied the claim stating it was too vague and defendant didn't meet the burden of (Strickland's) first and second prong of prejudice (P13 line 1-11, 25-31/P14 line 16-22/P16 line 25-30 order denying statement in lieu of amended motion/appendix D.1). The United States Supreme Court has held on several occasions that a constitutional error can be held harmless only if it is found to be harmless beyond a reasonable doubt (Harrington v. Cal.) (Please see claim 6 issue 2 for the ineffective assistance of counsel at trial portion of this claim). If trial counsel would have raised this issue (claim 6 issue 2) in trial or on an objection to using the prejudicial testimony of Detective Littlejohn, or not opening the door to it, the detectives testimony or other officers testimonies would not have been brought in, and without the prejudicial affect the trial was. This was an application of guilt by my counsel and state (State v. Harbison), it was highly prejudicial, outcome determinative and the argument or evidence (claim 6 issue 2) proves it was outcome determinative and had counsel acted, not opened the door to the prejudicial testimony or requested a new trial I would, then have succeeded at trial or given a new trial, and it proves the court erred allowing the testimony or denying the appeal(s).

Both direct and 2915 counsel(s) were inadequate by failing to raise these issues of court error, ineffective assistance of trial counsel, inadequate assistance of direct appeal counsel and to the standard of Strickland or rewrite my petition to better address in their respective appeals (Please see "Reason for writ 1, Cause for procedural default 1, 2, 3). Direct appeal counsel was inadequate for failing to raise the court error I raised in the 2915 "The court erred in allowing the states inquiry and testimony of defendant invoking his right to remain silent (P49 trial transcript/Appendix E.1) on direct appeal because it is the duty of the trial court to ensure I'm given a fair trial and the court is to follow state and federal constitutional laws and rules. The judge told me I had the absolute right not to testify and the state couldn't use it against me at all which is also the 5th amendment right to remain silent (P458 line 11-17/P459 line 5)-P460 line 10 trial transcript/Appendix E.1) and the court erred in allowing inquiry and

testimony. According to Fed. R. Cr. Im. PS2(8) plain error that affects substantial rights can be considered even though it wasn't brought to the court's attention, this includes all courts of direct, 29115, and 2254. The 29115 counsel was also inadequate by failing to rewrite my motion better or better address and include all issues of court error, ineffective assistance of trial counsel, for opening the door to me invoking my right to remain silent, or failing to object to the states use or not requesting a mistrial, and inadequate assistance of direct appeal counsel for not addressing the court errors. Had direct or 29115 counsel(s) raised or better addressed these claims there is reasonable probability of a different outcome in the direct or 29115 appeals, or that the claim would have won.

ISSUE

8

The state provided me with ineffective assistance of trial counsel because counsel raised prior bad acts in trial (P465 Line 1-17, P18 Line 8 trial transcript/Appendix F.1) after the judge granted the motion in limine regarding prior bad acts (P49 Line 12-15 trial transcript/Appendix F.1/P15 order denying statement in lieu of amended motion/Appendix D.1) and opening the door to the states inquiries and use of these prior bad acts against me (P509 Line 11-P510 Line 3 trial transcript/Appendix F.1) without an objection in guilt phase. The prior bad acts were irrelevant nor did it prove defendants character and the probative value didn't substantially outweigh the undue prejudice, it was not harmless and it was inadmissible under Fed. R. Evid. 403, 404(b)(2), 407, 802. To prove a violation to federal law by the state and my attorney, to use prior bad acts one has to establish a link between prior convictions and the events giving rise to the charge at issue (United States v. Hall / State v. Johnson / State v. Deblan). There is nothing that links a possession of a firearm under the influence charge and child endangerment charge because the children was in the house to a car collision where it was alleged I tried to hit the car purposely to cause serious physical injury or death and are completely irrelevant. There was no trial strategy beneficial to me by raising prior bad acts or not objecting to the states inquiring of them in the guilt phase especially when defense counsel tried so hard to keep them out. The jury had no reason to know there was prior bad acts and it tends to cause the jury to believe the defendant was a bad or violent person. Had counsel not raised prior bad acts there was reasonable probability the outcome would've been different and it was outcome determinative. This violates hearsay and double jeopardy issues also in penalty phase, Fed. R. Evid. 43, 602, 702, 801, 802, 901 because the prosecutor talked to the alleged detective who oversaw the case and not to any witnesses which was hearsay. The witnesses or detective never talked to the judge or testified in open court violating both amendment confrontation clause of right to call or confront, cross or re-cross examine witnesses (Delaware v. Fensterer). I also took a no contest plea because I had a gun and was intoxicated but not at the same time but couldn't prove this and the children was left alone in the apartment only because the police ordered me outside which none of these facts were argued in court. This was also in Ohio which was a different state and state constitution where even if the prior bad acts were admissible, the Missouri prosecutor arguing facts of an Ohio case is arguing Ohio law and is outside the courts jurisdiction and double jeopardy because it helped secure a conviction and stricter sentence. Had my attorney not raised prior bad acts, even if it was admissible in the penalty phase, I signed a jury sentencing waiver (Appendix F.4) and the jury never should have heard this testimony and the prior bad acts were irrelevant to the charges at hand which caused the judge to give me a stricter sentence, and the jury to find me guilty because of its admission. Had appeal

Counsel not raised these prior bad acts then there is reasonable probability of different outcome of not guilty, or lesser sentence.

The court erred by allowing the testimony over defense attorney Ann Brady Brown's objection in penalty phase (P639 Line 14 - (P640 Line 7-20) - P641 Line 17 trial transcript/Appendix F.1) because as stated above this violates hearsay, double jeopardy, and violates Fed. R. Evid. 403, 404(B)(2) 407, 602, 702, 801, 802, 901 and according to Fed. R. Crim. P. 22.6) plain error that affects substantial rights may be considered even though it wasn't brought to the court's attention. This includes in all direct, 2915, and 2254 appeals.

The direct and 2915 counsels were inadequate for failing to raise or better address these issues and to the standard of (Strickland) in their respective appeals. (Please see Reason For Writ 1, Cause for procedural default 1, 2, 3) of court error for overruling the objection in penalty phase, inadequate assistance of direct appeal counsel for not raising the court error and ineffective assistance of trial counsel for failing to object to or raising the prior bad acts or raising them himself. Had either one of these attorneys raised these issues there is reasonable probability of a different outcome of trial, direct, or 2915 appeals of new trial.

ISSUE 9

Trial court erred by giving the voluntary intoxication instruction or improperly giving the improper inform for the instruction and by overruling the objection counsel didn't make because it is the duty of the court to instruct the jury on their information (Mo. Rev. Stat. § 573 (1909)) and errors in failing to do so (State v. Bidstrup / State v. Leagale / State v. Stubenruch) and contradictory instructions as to intent of which imparts the jury on unconstitutional understandings of the allocation of persuasion create a reasonable likelihood that a juror understand the instruction in an unconstitutional manner unless language in the charge explains the inform language sufficiently to eliminate the possibility. If such a reasonable probability of an unconstitutional understanding exists, a court of review has no way of knowing the defendant was not convicted on the basis of the unconstitutional instruction (Francis v. Franklin) which the state court never address of the aspect in trial explaining intoxication could be an excuse for the collusion if it was not intentional but said one couldn't rob a bank which is irrelevant to the charges and confused the jury because unless you gave a withdrawal slip to the teller and they wrongly thought it was an attempt to rob them, one could only intentionally rob a bank. An ailing instruction by itself so infected the entire trial that the resulting conviction violated due process (Estelle v. McGuire / Wadlington v. Sengwood) Proper instructions on the burden of proof are a fundamental aspect of a fair trial, the prosecution must prove every element of the crime beyond a reasonable doubt and diminishing this burden violates defendants rights to due process (Tibbs v. Florida / Jackson v. Virginia). An instruction is not supposed to bring on an unfair view or attention to any issue (Leisure / State v. Everett). In (Gunn v. Marquez) we found structural error where the court gave written instructions for the jury in lieu of reading them in open court. We concluded the error compels an automatic reversal because the impact of error on the jury's performance of its duties cannot be reviewed. The error prejudiced the trial and was outcome determinative.

Trial counsel was ineffective for failing to object to the use of voluntary intoxication instruction, that it was entered to the jury twice, or argue against it more than the simple objection of how the instructions were worded in general (P520 Line 4-18) (P528 Line 9-19 / P522 Line 21-25 / P553 Line 18 - 6 trial transcript/Appendix F.1) to instruction #28 that states "The state must prove every element of the crime beyond reasonable doubt. However in determining the defendants guilt or innocence you are instructed

that an intoxicated or drugged condition whether from alcohol or drugs will not relieve a person of responsibility of his conduct. This leaves the jury open to suggestion one couldn't engage in self defense, accident, or that just by being intoxicated or drugged condition the jury had to find me guilty regardless if they believed it was intentional or not. Assault in the first degree is defined as (R.S.M.S. 55.05) one commits assault in the first degree if a person "Attempts to kill, (knowingly causes), or attempts to cause serious physical injury to another person." Since nobody was seriously physically injured, "knowingly causes" is irrelevant which leaves, "Attempts to kill or attempts to cause serious physical injury to another person." Instruction #28 says, "you are instructed that an intoxicated or drugged condition whether from alcohol or drugs will not relieve a person of responsibility of his conduct," which if a jury believed based on the preponderance of the evidence, defense was to have been intoxicated, this instructed them to find me guilty based on intoxication rather than the required elements of the charge of the required specific intent to hit the car intentionally to specifically cause serious physical injury or death. According to (State v. Gonzalez) one does not act with intent to commit a crime by negligently or recklessly engaging in conduct with another person regardless how extreme the negligence or reckless the act may be. Even though I am not using it as an excuse, if the jury believed I was intoxicated or in a drugged condition it could be an excuse for the collision where the instruction #28 forced the jury to find me guilty based on intoxication instead of the required elements of the charge. The jury may have believed I was intoxicated and that I didn't hit the car intentionally but rather found me guilty because they believed me intoxicated. The instructions were improper since nobody was seriously physically injured the instruction was irrelevant but if the jury believed there was minor injury to the one alleged minor victim C.M. then the instruction was only relevant to the one lesser included charge, if they believed the minor injury was even due to the collision and not some external factor and not dance class. This shifted the states burden of proof of intent in which the state would not have proven the the required elements of the charge of intent, forcing a conviction based on intoxication rather than the required specific intent of hitting the car intentionally to specifically serious injury or kill C.M. or Thomas Morrow. Trial counsel should have argued the court erred in giving the voluntary intoxication instruction and twice but had my attorney address these issues at trial and currently there is reasonable probability of different outcome at trial. This also affected the self defense, actual innocence, and denial of breathalyzer test in KCPD, as well.

My direct and 2915 counsel were inadequate by failing to raise or rewrite my petition to better address these issues and to the standard of (Strickland) in their respective appeals. (Please see "Reason for writ I, cause for procedural default" 123) as court erred by giving the voluntary intoxication instruction, twice, or improperly, and by overruling the objection made by defense in regards to all instructions and to instruction #28 as well, ineffective assistance of trial counsel for failing to object to better or more specifically against the voluntary intoxication instruction as stated in the argument above, and inadequate assistance of direct appeal counsel for failing to raise the court error elements. Fed. R. Evid 51(d)(2) states a court may consider a plain error in the instructions that hasn't been preserved as required by Rule 51(d)(1) if the error affects substantial rights. Fed. R. Crim. P. 22(b) states a plain error that affects substantial rights may be considered even though it wasn't brought to the courts attention. Had my direct and 2915 counsel raised these issues and/or better in their respective appeals there is reasonable probability of a

different outcome at trial of not guilty, not direct and 29.15 of new trial. This violated my 6th and 14th amendment right to effective counsel, due process, there was error, it was plain that seriously affected the fairness and integrity of the judicial process.

29.15 court erred, decided contrary to and applied an unreasonable application to clearly established federal law where the courts factual findings lack even fair support in record but they also failed to address the actual issue Erised about giving the intoxication instruction and denied the claim in general stating it was too vague and that defense didn't satisfy (Strecklants) first and or second prong (P6 line 6-9/P13 Line 1-11, 25-31/P14 Line 16-23/P16 Line 25-30 or deny statement in lieu of granted Motion/Appendix D1) for the claims ("Instructions P25-27, 29.15 and "The Court erred by Overruling The Objections made by defense in regards to all instructions and to instruction #28 as well, P63-64, 29.15/Appendix D.5). The claims were raised or at least attempted in the 29.15 and probably the best or fullest claim in the 29.15 but clearly argues the denial of substantial rights (Please see "Reasons for Writ 1, Cause for procedural default 1,2,3) where the procedural default could be cause for 29.15, Missouri Court of Appeals, and 2254 but Fed. R. Civ. 51(d)(1), 51(d)(2) and Fed. Civ. R. P52(b) is for all appeals.

ISSUE

10

The judge and prosecutor erred and violated my 6th amendment right to call and confront witnesses and 14th amendment right to due process and right to go to trial by requesting, giving, or sentencing me to so much time because the minor victim had to testify (P43 line 3-8, -P44 trial transcript/Appendix F1) and because the same alleged victim suffered from hypothetical and improper emotional or psychological injuries and may have a life sentence (P653 Line 22-P654 Line 8, P656 Line 5-11 trial transcript/Appendix F1) (State v. Wright) and violated my 1st amendment right to freedom of religion and separation of church and state (P653 Line 22-25 trial transcript/Appendix F1) by saying "it was by the grace of god nobody was injured" (Thomas Morrow stated "I and nobody else intervened until after the collision was over). It is my religious belief that god is manifested within me and we are one of the same. So the judge was saying since I am god, by the grace of me nobody was injured where god was only attempting to prevent an untimely death to his flesh. The court sentenced me to over a natural life sentence of 35 years, far more than the average 8-9 years due to hypothetical emotional or psychological injuries where no credible evidence was provided the young lady suffered these issues or it will last a lifetime. Even a collision, as stated in my testimony at the evidentiary hearing for 29.15, is perfectly natural and can be beneficial when one learns to drive, for an example, I will cause her to be a better driver. This also violated Fed. R. Civ. 43, 47, 602, 702, 801, 802, 901 because C.M. never testified to this at all and her mom, dad, prosecutor, police, or judge are not qualified to determine these factors because none are licensed psychologists. Of course her parents may have concerns as any parent would, but regardless the elements of the charge are "serious physical injuries," not emotional or psychological injuries which are irrelevant. This was vindictive and according to (United States v. Gallagors-Cunill) to establish a claim of vindictiveness defendant must make an initial showing that charges of increased severity were filed because the accused exercised a statutory, procedural, or constitutional right in circumstances that give rise to an appearance of vindictiveness. The state has the burden to show a non-vindictive reason for bringing the requested charges. The state and court not only charged me for first degree assault because I didn't take a plea, and took it to trial but they requested, charged, and sentenced me to so much time because I utilized my right to go to trial, call and confront witnesses, irrelevant and improper.

hypothetical emotional injuries, and because the judge believed his god wanted me to be in prison longer than everybody else. This shows it was a personal sentence by the judge because he used his personal religious beliefs to determine the length of my sentence and is evident this may have affected trial as well. There is no law supporting this where the 1st amendment forbids it and the 6th amendment confrontation clause guarantees an opportunity for cross or no cross examination, to call and confront witnesses in whatever way and to whatever extent defense may wish (*Owens v. Fensterer*). The judge even made sure he did not give me mandatory whether requested or not instructions or erroneous instructions to secure a conviction on my birthday and interrupted me from explaining why I didn't take the plea. All of this was outside the law, constitution and so outside the sentencing guidelines where the entirety of the law is the sentencing guidelines.

I was provided ineffective assistance of trial counsel for failing to object to this in the guilt phase or penalty phase to remind the judge and prosecution their role in the judicial process and what they were doing was illegal. Had my attorney during trial and penalty phase objected to this or argued the above argument, there is reasonable probability of a material outcome of a lesser included charge or sentence of 5 years and concurrent. This was outside the courts sentencing guidelines and ineffective assistance of counsel for failing to preserve for appeal. I was then provided ineffective assistance of direct and 29.15 general counsels for not raising or rewriting my motion to better address these issues (Please see "Reason for Writ I, Cause for procedural default (7.3) and to the standard of (Strickland) for failing to raise the issues of sound errors as stated above, ineffective assistance of trial counsel as argued above, and inadequate assistance of direct appeal counsel for failing to raise court errors in their respective appeals and to the standard of (Strickland). According to Fed. R. Crim. P. 22(4), plain error that affects substantial rights can be considered even though it wasn't brought to the courts attention. Had my attorneys raised or better addressed these issues, there is reasonable probability that but for attorneys failure to act there would be a different outcome in trial, direct, 29.15 appeals, or a material.

The 29.15 state court counsel, decided contrary to or applied an unreasonable application to clearly established federal law and where the courts factual findings lack even fair support in record when it denied the claim "Court erred in sentencing by sentencing defendant based on C.M. possible emotional injuries, this violated defendants rights and is not within sentencing guidelines (P. 52, 29.15/Appendix D.5) by stating there is no such sentencing guidelines (P. 21 line 4:15 order denying stipulation in lieu of amended motion/Appendix D.1) where the entirety of the law and constitution is the sentencing guidelines, and punishing me to so much time because I utilized my rights to call and confront witnesses, go to trial, and forcing the state to prove every element of the crime beyond reasonable doubt (which is still debatable) (*In Re Winship*) that violates the federal court rules above, 1st amendment right to freedom of religion, 6th amendment confrontation clause to call, confront cross or no cross examine witnesses (*Owens v. Fensterer*) and 14th amendment right to due process, to go to trial, which all was outside sentencing guidelines and vindictive.

ISSUE

I was denied effective assistance of counsel at trial when my attorney failed to explain to me all the subsections to second degree assault at time of plea violating my 6th amendment right to communicate plea and 14th amendment right to due

Process (United States v. Pender/Laffar v. Cooper). I assumed the definition for second degree assault was the same as 1st degree assault but for less time and I refuse to say I hit the car intentionally to cause injury or death when I did not. Even though it was done in self defense I did not know what self defense was and I would have accepted the plea of "Two 2nd degree assault and one armed criminal action concurrent for 10 years at 40% eligibility for parole due to recklessness if I knew the subsections to 2nd or 3rd degree assault. I still didn't take it because at the same time all evidence and testimonies denied injury but I would have changed my own trial strategy from requesting a fast and speedy trial to taking my time to go to trial, tried for a better plea or S.S. probation which would be changing my trial strategy not my attorneys (Borin v. Kenner/Winter v. Galt). If I knew just driving through the yard to get away could be construed as an intentional act, or a belief of my head injury as intoxication would be instructed to find me guilty if the jury believed me to be intoxicated, I would have accepted the plea. My attorney also failed to ensure why I did not accept the plea was on record or any of the subsections was on record because the judge cut me off from explaining this (P72 Line 13-P73 Line 12 trial transcript/Appendix F.1).

Trial court erred by cutting me off and not allowing me to explain why I didn't accept the plea because it is reviewed by the court record to determine violations and prejudice (P72 Line 13-P73 Line 12 trial transcript/Appendix F.1) where I attempted to explain why I wouldn't accept the plea and when I answered the court, I was allowed to say "yes, as far as I know yes," but the court paraphrased my statement (P69 Line 18-(P71 Line 20)-P72 Line 12 trial transcript/Appendix F.1) changing it trying to cover it up or hide the issue. There is no record of the state explaining the lesser included charges of second or third degree assault. It is on record me attempting to explain why I wouldn't accept the plea, being interrupted, and since there is no record of me receiving any explanation of the plea or the subsections of the lesser included charges.

I was provided inadequate assistance of direct appeal and 2915 appeal counsel(s) for failing to raise or better address these issues (Please see "Reason for writ, cause for procedural default 1,2,3) and to the standard of (Strickland) in regards to court error for not allowing me to explain fully why I didn't take the plea, inadequate assistance of direct appeal counsel for failing to raise the court error and ineffective assistance of trial counsel for failing to communicate plea and object to or ensure my reasons was raised before the court or on record, in their respective appeals. Had my attorneys raised these issues or better there is reasonable probability of a different outcome at trial or in both direct or 2915 appeals by granting a new trial, the plea of 10 years or better plea bargain.

The 2915 court erred, decided contrary to or applied an unreasonable application to clearly established Federal law where the courts factual findings lack even fair support on record and completely overlooked the claim in the 2915 (Appendix DS) and on denying it because it was too vague or it didn't satisfy (Strickland's) 1st or 2nd prong (P72 Line 13-P73 Line 12 trial transcript/Appendix F.1) with no record of the subsections explained to me. The claim did assert ineffectiveness of counsel and prejudice that but for attorney's error I would have accepted the plea for 10 years if he explained all the subsections to 2nd or 3rd degree assault. This was obviously outcome determinative and prejudicial of counsel violating my 6th amendment right to effective counsel and right to communicate plea and 14th amendment right to due process, counsel's performance fell short of a reasonable competent attorney would.

Reason For Writ 2

The 2nd reason for this Writ of Certiorari is the United States District Court erred, abused its discretion, denied my 5th and 14th amendment right to due process because the court denied the 2254 and denied the Certificate of Appealability with the 2254 and plainly erred doing so. The 2254 was denied and before I could request a Certificate of Appealability the Court denied that too based on the merits of the 2254 motion which was not adequate to argue the standard of review as announced in (*Barefoot v. Estelle*) and giving me the chance to argue so, according to 28 USC § 2253(c), "a substantial showing of the denial of a constitutional right may be made before a certificate of appealability will issue (*Tennard v. Detke*). The statute "Codified" our standard announced in (*Barefoot v. Estelle*) for determining what constitutes the requisite showing for obtaining leave to appeal a district court's denial of habeas corpus relief, the court has stated this standard requires a petitioner "show" that reasonable jurists could debate whether or agree that the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further (*Slack v. McDaniel*). It is necessary for a "Petitioner" to prove before the issuance of Certificate of Appealability that some jurists would (have) granted the petition for habeas corpus (*Miller-El v. Cockrell*). Indeed a claim can be debatable even though every jurist of reason might agree after the certificate of appealability has been granted and the case has received full consideration that (the) petition will not prevail (*Miller-El* 513 at 338). One would have to argue the 2254 petition as if it had already failed which is highly prejudicial and I couldn't have known the court's decision of why it was denied prior to its denial, and couldn't argue this in the 2254. The language of (*Barefoot v. Estelle*) says, "Petitioner must 'show'". Meaning I must be given a chance to demonstrate the 2254 petition "should have been handled differently or the issues were adequate to deserve encouragement to proceed further or at least reasonable jurists could debate or agree so. This denies my 5th and 14th amendment right to due process and is error that is plain, it affects substantial rights and seriously affected the finality, fairness, integrity, or public reputation of the judicial proceedings (*Henderson v. United States/United States v. Dwyer* Fed. R. Crim. P. 52.6). Had the Court not denied the Certificate of Appealability with the 2254 petition I would have sent the request for Certificate of Appealability back to the District Court for review and not mistakenly to the Missouri Court of Appeals causing the confusion and possible procedural default in the first place, but if the U.S. District Court reviewed my actual motion for Certificate of Appealability, they would have granted it because it shows how reasonable jurists could debate the petition could have been argued or agreed whether the 2254 petition should have been handled differently and the issues presented were adequate to deserve encouragement to proceed further. I also couldn't appeal to show cause for procedural default of the claims or my intended appellants brief.

The U.S. District Court then plainly erred again by denying the Certificate of Appealability the second time based on a motion for "continuance of time for Certificate of Appealability and stay and abeyance, and notice of Appeal" based on the 2254. Neither of these petitions were adequate to represent the standard of review as argued about where both instances of denying the Certificate of Appealability denied my 5th and 14th amendment right to due process and filling the requirements for reversible error. A request for Certificate of Appealability is a notice of Appeal (*Wells v. Ryker*), but the U.S. District Court also plainly erred by waiving the issue of timeliness or granting the motion for continuance of time for notice of Appeal in part without adequately addressing

the issue of granting the notice of appeal or clearly stating it granted. The court wrote an order granting the continuance of time for notice of appeal but denied the motion for Certificate of Appealability and for stay and abeyance that was written in a way that confused me and the Court of Appeals.

The motion for continuance of time for Certificate of Appealability and for Stay and abeyance and notice of appeal explained (Appendix B(b)) I turned in my own motion (Document #27) for Certificate of Appealability and Stay and Abeyance to Missouri Court of Appeals on 8-2-22 believing it was the correct court of Appeals to turn my motion into. (Certified Mail Receipt # 7021, 0950, 002, 1476, 4628 / Certified Signed Return Receipt # 9520, 2402, 6806, 1074, 4354, 73 / Appendix G(2N)) quoting U.S.C.S Fed. app. Proc 24(c)(4)(A): "If a party files in the District Court any of the following motions under federal civil Rules of Civil Procedure and does so within the time allowed by those rules, the time to file an appeal runs for all parties from the entry of the order to the last such motion. 4(a)(5)(A) states a district court may extend the time to file a notice of appeal if (i) party moves no later than 30 days after the time period prescribed by this rule 4(a)(4)(A), and (ii) regardless of whether its motion is filed before or during the 30 days of the time period prescribed by this 4(a)(4)(A), expires and party shows excusable neglect or good cause. According to Rule 4(d) a mistaken filing in the court of appeals (it doesn't say which court of appeals), is good cause, and if a notice of appeal is either Civil or criminal case is immediately mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date it was received and send it to the District clerk. The notice is then considered filed in the District Court on the date so noted. (However federal mail box rule 28 USC 1746 under Fed. Rules App. Proc 24(c)(1). If an institution has a designed system for legal mail on inmate and used that system to receive benefit of this Rule 4(a)(1). If inmate files a notice of appeal in either a civil or criminal case the motion is timely if it is deposited in the institutions internal system on or before the last day and 4(c)(1)(A) and is accompanied with 4(c)(1)(ii) evidence (such as post mark or date stamp showing the notice was deposited and that postage was prepaid, which I did (Houston v. Lack)). The court stated in Document #28 paragraph two (2) (Appendix B.3) "as to petitioners request for a Certificate of Appealability, the request is denied for the reasons explained in this Courts August 9th, 2022 order "Document 25", as to petitioners request to stay this action, the motion is denied as the case has already been dismissed. Lastly, to the extent petitioner seeks to appeal this Courts decision, the case will be forwarded to the United States Court of Appeals for the Eighth Circuit for further processing. The language of this order regarding the petition for continuance of time for notice of appeal was granted because it was requested as a motion for continuance of time then it states in the last paragraph "Accordingly it is Ordered the petitioners motion (Document #27) is denied without prejudice as to this Request to stay this action and a Certificate of Appealability", indicating the continuance of time for a notice of appeal was granted but the other two was denied.

Reason For Writ 3

The third reason for the petition for Writ of Certiorari is the United States Court of Appeals for the Eighth Circuit abused its discretion and violated my 5th and 14th amendment right to due process by denying this appeal and petition for rehearing due to lack of jurisdiction. The district court either wrong the issue of timeliness or granted the motion for continuance of time for notice of appeal based on its discretion, it was a motion for continuance of time that court sent the request for appeal to

the U.S. Court of Appeals and went out of its way to order a denial to the other two issues (Appendix B.3) as argued in the previous argument, but the request for a Certificate of Appealability sent to Missouri Court of Appeals was a notice of appeal (Wells v. Ryker) and it was timely (Appendix G.2A, G.2B) (Please see previous arguments on timeliness and Federal mail box rules). The U.S. Court of Appeals then stayed the motion on 11-14-22 (Appendix H.1) (document 17-25) but the District Court did not find an extension of time to file a notice of appeal was warranted (Appendix B.4). The U.S. District Court already granted the first continuance of time and transferred it to the U.S. Court of Appeals, there was no need to grant another after the Court of Appeals had it.

The U.S. Court of Appeals plainly erred by denying the appeal due to lack of jurisdiction because the district court either waived the timeliness issue or granted the motion for continuance of time for notice of appeal, and that a Certificate of Appealability is a notice of appeal, or because the District Court denied the Certificate of Appealability, because according to 48 USC Fed. Rules App. Proc. 22(a), 22(b), "(a) if a District Court denies an application of 2254 writ of habeas corpus made or transferred to it, removal of the application before a circuit judge is not permitted. The applicant made under 28 USC 2253 appeal to the Court of Appeals from the District Court order denying the application, (b)(1) in habeas corpus proceedings in which the detention complained of arises from process issued by state court, or in a 28 USC 2255 proceedings the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 USC 2253(c). If an applicant files a notice of appeal the District Court clerk must send to the court of appeals the certificate (if any) and the statement described in Rule 11(a) of the rules governing proceedings under 28 USC 2254 or 2255 (if any) along with the notice of appeal and the file of the district court proceedings. If the District Court denied the certificate, the applicant may request a circuit judge to see it. (b)(2) a request addressed to the court of appeals may be considered by a circuit judge or judges as the court prescribes. If no express request for a certificate of appealability is filed, the notice of appeal constitutes a request addressed to the judges of the Court of Appeals." The U.S. Court of Appeals then plainly erred again by denying the petition for rehearing arguing something similar to this. Plain error is reversible if petitioner shows (1) error (2) that was plain (3) affected substantial rights. This court's affected the fairness, integrity, or public reputation of the judicial proceedings (Henderson v. United States/United States v. Drayer). The court erred by denying the appeal for lack of jurisdiction because it was in their jurisdiction for the reasons the district court granted the motion in part, the certificate of appealability was a notice of appeal, but it was because the court erred by waiving the timeliness issue. For error, an error on defense's behalf is not prejudicial but highly prejudicial to take the court error from mere error as generally accepted rule, but it was due to U.S. District Courts denial of Certificate of Appealability, I can and did apply for one with the U.S. Court of Appeals prior to the 11-14-22 dead line. The court erred by denying this argument in the petition for rehearing where a request for Certificate of appealability is a notice of appeal which was timely. All the errors in this issue was plain, violated substantial 5th and 14th amendment rights to due process, it affected the fairness and integrity of the judicial proceedings and had the U.S. Court of Appeals not erred they would have granted the petition for Certificate of Appealability because as explained in the last issue the petition demonstrated and showed how reasonable jurists could debate or agree whether the petition should have

been handled differently or the issues presented were adequate to proceed further (*Boofoot v. Estelle* / *Stack v. McDaniel* / *Miller v. U.S. Cockrell* / *Miller v. El* 573 at 338) and would have overruled the U.S. District Court's decision denying the 2254 writ, setting aside the conviction or sentence by either the 2254 Certificate of Appealability or the intended brief in which I was never allowed to raise these issues or procedural default on appeal.

To further show court error, the U.S. Court of Appeals issued a mandate (Appendix A.6) stating, "in accordance with the judgment of December 5, 2022 and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a). However, according to U.S. Ct. Fed. Rules, Civ. Proc. 41, rule 41 dismissal of actions (a) voluntary dismissal 41(a)(1) by the plaintiff 41(a)(1)(A) without order subject to rules 23(c), 23.1(c), 23.2 and any applicable Federal statute, the plaintiff may dismiss an action without a court order by filing (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment, or (ii) a stipulation of dismissal signed by all parties who have appeared. I did not turn in any notice of dismissal or sign any stipulation of dismissal, 41(a)(1)(A) Effed unless the notice or stipulation states otherwise, the dismissal is without prejudice but if the plaintiff previously dismissed any Federal or State action, (2) anything I asked for a continuance of time from the first continuance of time that was already granted which was irrelevant and even if the second was denied after the first one was granted, this motion for notice of appeal and for Certificate of Appealability was turned in timely based on the U.S. Court of Appeals 10-17-22 order to pay the \$505 appellate fee or move for JEP status by Nov-14-22 was received by the court on 11-7-22 (\$215485) (Appendix A.5) and the original petition for certificate of appealability sent to Missouri Court of Appeals was timely and considered a notice of appeal.

41(a)(2) By Court order except as provided in Rule 41(a)(1) an action may be dismissed at the plaintiff's request only by Court order on terms that the court considers proper. (I am the plaintiff and did not request the action of appeal dismissed and state or federal government made no requests either) If a defendant has pleaded a counter claim before being served with the plaintiff's motion to dismiss the action may be dismissed over the defendant's objection only if the counter claim can remain pending for independent adjudication. I am the petitioner and did not request a dismissal except the Dec. 5, 2022 dismissal due to lack of jurisdiction. However, if the court considers me the defendant, although the state made no requests to dismiss, the action may only be dismissed over defendant's objection only if the counter claim can remain open pending for independent adjudication where the court could only dismiss it if they reviewed the petition for reentry. Unless the order states otherwise a dismissal under paragraph (2) is without prejudice. I was the petitioner and nobody requested a dismissal. This rule is inadequate and did not pertain to me and the petition for reentry should've been granted. The U.S. Court of Appeals denied my appeal prior to reviewing the petition for certificate of appealability and I would have won an appeal which is prejudice and the violation of my 5th and 14th amendment right to due process. It was within the U.S. Court of Appeals' jurisdiction and it was outcome determinative. Had the court reviewed the Certificate of Appealability it would have succeeded and the appeal would have succeeded as well. For all issues raised, reasonable jurists could debate or agree the 2254 petition should have been handled in a different manner and the issues presented were adequate to deserve encouragement to proceed further. (Please see "Reason for Writ 1, Cause for procedural default 1, 2, 3 and issues 1-11 under the reason for Writ 1 umbrella of cause for procedural default.

(I) Course Of Proceedings In State Court And 2254 Case Now Before This Court

This case was tried in the 7th Judicial Circuit Court in Clay County, Missouri, by Honorable Shane T. Alexander from Nov 17-Nov 20, 2014 and sentenced on May 25, 2015 case # 14CV-CR01225-01 (Appendix F) appellate counsel raised petition to Missouri Court of Appeals Western District #WD 78698 (Appendix E) and denied Feb 28, 2017. I filed my 2915 form 40 motion to vacate set aside or correct the judgement or sentence on May 9, 2017 case # 17CV-CV04525-1 (Appendix D) where the Circuit Court of Clay County denied the 2915 petition on April 29, 2020. Defense Counsel appeals to Missouri Court of Appeals Western District on Oct. 13, 2020 WD #WD83825 (Appendix C) where the judgement was affirmed May 11, 2021. My 2254 petition was filed on 2-22-22 in the U.S. District Court Eastern District and denied by the U.S. District Court Western District on 8-9-22 (Appendix B). I requested a Certificate of Appealability on 9-2-22 and stay and abeyance to the Missouri Court of Appeals believing it the correct court which was returned to me unfilled. On 10-5-22 I turned in two separate envelopes one containing the motion for Certificate of Appealability and stay and abeyance with the U.S. Postal Certified Mail Receipt #7021,0950,0002,1476,3171 and certified signed return receipt #9590,9402,6806,1074,4354,11 and regular envelope containing a motion for continuance of time for Certificate of Appealability and stay and abeyance, and notice of appeal to the U.S. District Court. They only reviewed the motion for continuance of time for Certificate of Appealability, and stay and abeyance, and notice of appeal (Document #27) (Appendix B.6) on 10-11-22. The Court reviewed the motion denying the Certificate of Appealability and stay and abeyance but granting the notice of appeal, in part on 10-14-22. The court received the actual motion for Certificate of Appealability on 10-20-22 (Certified signed return receipt #9590,9402,6806,1074,4354,11) (Appendix B.5, G.5B) and returned to me unfilled as well as petition to proceed in forma pauperis. The case was transferred to the U.S. Court of Appeals for the Eighth Circuit on 10-17-22 when I turned in the motion with additional documents that was entered "Stayed" on 11-14-22 in regards to District Court to decide on a continuance of time to file a notice of appeal which was denied on 11-29-22 (Document #134) (Appendix A.5, A.1). The U.S. Court of Appeals then dismissed the case for lack of jurisdiction and other motions denied as moot on 12-5-22 (Appendix A.2). On 12-17-22 I turned in a motion for continuance of time for rehearing and two petitions for rehearing that was denied on 1-22-23, On 1-20-23 I turned in two petitions for writ of Certiorari, one for plain error of U.S. District Court and the other for plain error for U.S. Court of Appeals and on 1-23-22 I turned in one requesting the court to use the third instead, giving the lower courts an opportunity to correct their mistakes before coming to this court, which were all returned to me unfilled. I turned in a petition requesting a statement of facts and conclusion of law for the denial of appeal which was denied and then the court sent me a mandate pursuant to the provisions of Federal Rule of Appellate procedure 41(a) when I turned in a second petition requesting a statement of fact and conclusion of law clarifying the mandate with no response.

(III) Existence Of Jurisdiction Below

Petitioner was convicted in the 7th Judicial Circuit of Clay County Missouri for two counts of first degree assault RSMo 63.050 class B felonies and two counts of Armed Criminal Action RSMo 571.015(2). The conviction was appealed to the Missouri Court of Appeals for Court error, then to the 7th Judicial Circuit Court of Clay County Missouri under Rule 29.15 for ineffective assistance of counsel. Although without my approval, the Missouri Court of Appeals' appealability denial of 29.15. A 2254 petition was appropriately made to the U.S. District Court where procedural default was attempted but denied and then appealed to the U.S. Court of Appeals for the Eighth Circuit where rehearing was sought in the U.S. Court of Appeals. This court has original jurisdiction including 1983 civil right

Complaint Lawsuits

(III) The United States District Court Has Decided Federal Questions In A Way In Conflict With The Applicable Decisions Of That Court. (Please See Reason For Writ 1 and Reason For Writ 2)

(IV) The United States Court of Appeals Has Decided A Federal Question In A Way In Conflict With The Applicable Decisions Of That Court (Please see Reason For Writ 3)

Argument For Allowance Of Writ

The questions raised in this are important and unresolved. I have not had a fair chance in any state or federal court to defend myself or argue these questions appropriately. Even though my trial attorney may have been highly skilled in other cases, he wasn't in mine. I am also afforded effective assistance of counsel in trial and first appeal as of right (*Evitts v. Lucey*) where both direct and 2915 appeal counsel(s) were constitutionally ineffective. I did raise ineffective assistance of direct and 2915 counsel(s) in the cover page and did testify in the evidentiary hearing that included the appeal process(es) and she refused to do anything for me. The Department of Corrections then refused me, by policy or the violation to policy, a phone call to my attorney to obtain the name and address of which court to turn in my motion to appeal the denial of 2915 once I learned my attorney's motion was erroneous and missing issues, hindering, frustrating, and preventing my ability to access the courts and communication with counsel which are the causes of the procedural defaults of raising issues in the 2915 or higher state or Federal court (*Dickens v. Ryan*). These are state appointed counsel(s) and state owned and/or operated facility impeding with my abilities to raise these issues. The U.S. District court then erred by denying the 2254 petition for procedural default when there was good or just cause, or each claim could be reviewed under *Martinez*, *Coleman*, fundamental fairness, newly discovered evidence, and actual innocence. It erred again by denying a certificate of appealability with the 2254 and then again in response to a motion for continuance of time and the 2254 when it was timely and because I wasn't given the opportunity to demonstrate reasonable jurists could debate or agree whether the petition should be handled in a different manner and the issues presented were adequate to proceed further. The court also abused its discretion denying me an attorney and evidentiary hearing on the interest of justice. The U.S. Court of Appeals erred in dismissing the appeal on a Certificate of Appealability due to lack of jurisdiction under appellate Rule 22(b) when I turned in a certificate of appealability timely to Missouri Court of Appeals and then to the U.S. District Court under Fed. App. Proc Rule 3 and 4 (400X4XN) 4(c)(1)(A), 4(d)-3, 4(c)(1), 4(c)(1)(A)(ii) (*Houston v. Lack*), but also because the district court granted the motion for continuance of time for Certificate of Appealability, and stay and Abeyance, and notice and notice of appeal in part specifically in regards to the notice of appeal, and the Certificate of appealability turned in on 9-2-22 was a notice of appeal. The U.S. Court of Appeals erred by denying the petition for rehearing and for rule 41. The questions raised are important and unresolved by any court but most importantly this one because it has issues not addressed by the Supreme Court yet or any court.

Conclusion

The 2915, Missouri Court of Appeals, U.S. District Court, and U.S. Court of Appeals all erred, abused its discretion, decided

Contrary to or applied an unreasonable application to clearly established Federal law by denying my claims on appeal due to procedural default or by failing to prove (Strickland) first and or second prong. I was provided ineffective assistance of counsel at trial, direct and 2915 appeals) where inadequate assistance of counsel can be cause for procedural default if the ineffective assistance of counsel claim is presented in state court as an independent claim (Murray v. Carrier) which it was. Attorney error could be cause for procedural default if the act or omission resulting in procedural default was omitted due to ignorance or inadvertence by oversight rather than deliberate strategy (Carrier v. Hutto and incompetency should suffice for cause (Garrison v. McCarthy). This should suffice for failing to raise or better address the claim in direct or 2915 appeals and to the standard of (Strickland) (Hawkins v. Hannigan / Stallings v. United States / Gray v. Green / Mason v. Hanks / Shaw v. Wilson / Palmer v. Hendricks) and if a claim is attempted but didn't come to full fruit the claim can be reviewed if petitioner shows reasonable probability of a different outcome if attorney adequately addressed the issue (United States v. Dowling) and ineffective assistance of counsel claim that was procedurally defaulted can serve as cause to excuse procedural default of another habeas claim if petitioner can satisfy the cause and prejudice standard with respect to the ineffective assistance of counsel claim itself (Edwards v. Carpenter).

The ineffective assistance of trial, direct, and 2915 appeal counsel (s) claims was raised or atleast attempted in the 2915 "Cover Page" stating, "Each attorney individually and as a whole failed in arguing as asked, mentioning as asked during motions for new trial or rebuttal or during trial, closing argument, or any appropriate motion or preserving for appeal all arguments and any court error made by the courts filed or not filed in this motion or providing defendant with quality advice or information and each failed to remove him/herself from the case or to honor defendants requests of information filed in motions. This was testified to that it included the appeal processes and I sent a letter to the judge at trial stating this. To prove ineffectiveness or inadequate assistance of counsel at direct and 2915 appeals) Md. Sup. Ct. R. 24.035(c) and Md. Sup. Ct. R. 29.15(c) says, "Counsel shall ascertain whether defense has asserted all issues known to him and all facts to support these issues are included in the pro se motion and if not counsel shall write an amended motion to include all issues and facts to attack the judgement or sentence of the conviction." Counsel failing to do so, and to the standard of (Strickland) renders counsel constitutionally ineffective. Counsel ignored the 2915 Form 40 to vacate, set aside or correct the judgement or sentence in "Instructions," "The movant is required to include in this motion every claim known to him/her for vacating, setting aside or correcting the conviction and sentence or it will be waived or abandoned. Be sure to include every claim." Nowhere does this encourage attorneys to narrow out any claims or say only winning or meritorious claims but rather every claim known to defendant (Anders v. California). A winning claim is a claim that is winning or has won, not simply a meritorious claim. So the claim could be reviewed due to good or just cause of inadequate assistance of counsel, attorney error of ignorance, incompetence, inadvertence of overlooking by direct and 2915 appeal counsel(s) or me because counsel(s) abandoned my claims leaving me to act as my own attorney with an unfinished motion not written to the standard of (Strickland) or of a competent attorney. This should suffice for cause for the omitted or partially attempted claims in the direct and 2915 appeals. All of these issues can be reviewed in the federal habeas court by good or just cause for procedural default, under (Martinez v. Ryan) because each issue was on point and regards to ineffective assistance of trial counsel and inadequate

assistance of direct and 2915 initial review post collateral counsel claims for not raising ineffective assistance of trial counsel claims. The claims could be reviewed under (Coleman V. Thompson) cause prong that was external to me and not fairly attributable to me and not fairly attributable to my fault because the Department of Corrections denied me a phone call to my attorney to obtain the name and address to the court my brief appealing the denial of the 2915 order denying statement in lieu of bond and Motion was due once I learned my attorneys brief was erroneous and missing issues and wanted to turn in my own motion over my attorneys and have the right to represent myself (Green V. Davis/United States V. Smith) when I couldn't make meaningful communication with counsel through the postal services over the weekend, due to policy or the violation of policy frustrating and impeding my ability to access courts or communication with counsel. Lastly, the claims could be reviewed under the fundamental fairness clause that by failing to review the claim would result in fundamental miscarriage of justice denying me substantial rights addressed in each issue of due process, fair trial, effective assistance of counsels and the claims could be reviewed for and ^{proves} actual innocence and newly discovered evidence. I have not had a chance to address these issues properly in any state or federal court due to an attorney error, inadequate counsel, or the denial of the phone call by the Department of Corrections. This is state appointed inadequate counsel and a state owned and/or operated facility impeding my right to access the courts, that my counsels adequately addressed these issues, but for attorney error of failure to act is reasonable probability of different outcome at both direct and 2915 appeals for each issue and each issue singularly and as a whole corrupted the trial and appeal process in which the results cannot be relied upon.

I should have been given an attorney in the interest of justice as well as an evidentiary hearing as according to R 8(C) 2845C3 2254 (X)(1) and 1845C33006 (X)(1), (X)(2), (X)(3), (X)(4), (X)(5), (X)(6) because I was denied a full and fair evidentiary hearing in 2915 for the State exhibit 580n, to review the IRR, Grievance, Grievance appeal and video footage in Department of Corrections of me attempting to get the phone call, the video footage of me taking a breathalyzer test in KCPD, video of me wearing "non-visible" or visible leg restraints in Clay County Sheriff's Department in front of U.S. District court ordered by denying my 2254 and then Certificate of Appealability, not once but twice, without receiving a petition for Certificate of Appealability because reasonable jurists could debate or agree whether the 2254 should have been resolved in a different manner or either reviewed or granted and that the issues presented were adequate to proceed further (Stack V. McDaniel/Miller V. Coker/El V. Coker/Barefoot V. Estelle). The U.S. Court of Appeals also erred denying my appeal and certificate of Appealability due to lack of jurisdiction and petition for rehearing due to rule 41.

The judgement above is a unique departure for decisions of this court that requires convictions based on circumstances addressed to be set aside at any time after the conviction. Convictions based on trials where trial court and counsel erred or counsel was ineffective by failing to give or argue, object to not having or not requesting exculpatory assault, mandatory whether requested or not instructions or instructions with sufficient evidence to support the instructions for self defense, defense of persons in a dwelling building or vehicle, accident, or crime of passion. These court errors and ineffective assistance of counsel includes the court forcing me to wear non-visible or visible leg brace restraints without a reason or a rehearing for independent cause and counsel failing to object to or ensure there is a hearing, failing to provide defense or calling (a) the only witness in my behalf

by allowing or not objecting to correctly to state exhibit 515A to be introduced with portions missing and exten testimony by the prosecution. This also includes inadmissible testimonies in regards to hearsay, speculative or opinion testimonies, entrapment, use of defense invoking his right to remain silent against him or testimonies of officers who had no first hand knowledge of the portions of the incident they testified to or the use of prior bad acts introduced into trial by the state and defense. The State giving me voluntary intoxication instruction improperly or without sufficient inform for the instruction and allowing it over the single objection made or without objecting to it correctly, that it could be an excuse, or failing to provide defendant with all the information to communicate plea. This includes vindictive prosecution or sentencing me outside Sentencing guidelines by charging and sentencing me to a higher degree or longer sentence because I used my right to go to trial, call or confront witnesses, or because the alleged victims suffered from irrelevant and improper emotional or psychological injuries or because the judge thinks his god wants me in prison for a longer sentence violating freedom of religion. All of these issues individually and as a whole was prejudicial and outcome determinative but if the claims failed singularly to move this Court to set aside or correct the judgement or conviction, all the prejudices as a whole would be sufficient to change the outcome at trial, direct, 2915, and 2254 appeals and undermines the integrity and confidence of the trial or outcome of the judicial proceedings. The issues sufficient to set aside the conviction includes and error by District Court and U.S. Court of Appeals because Fed. R. App. Proc. R 3, 4(a)(4)(A), 4(a)(5)(a), 4(d), 4(c)(1), 4(c)(1)(A)(ii) with sufficient evidence to support submitting the motions in the prison mail system to Missouri Court of Appeals, U.S. District Court, U.S. Court of Appeals, and the Motion for continuance of time was granted in part, if needed at all. As such it represents a breach on the wall erected by the 1st, 5th, 6th, 8th, 14th amendments and the decisions of this court that were designed to protect a citizen from being convicted by the government through the use of these court errors and inadequate assistance at trial, direct, or 2915 appeals, the U.S. District Court and U.S. Court of Appeals for habeas corpus relief. This petition for Writ of Certiorari should be granted and me released or may I have atleast a new and fair trial with compensation for damages and wrongful incarceration please?

8-8-23

Shallow Hawkins

I respectfully ask this court to press State and or Federal hate crime charges on the individual(s) involved in preventing me from participating in my appeal(s) process(es).