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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

FEB 28 2024

OFFICE OF THE CLERK

Christopher James Michelotti — PETITIONER
(Your Name)

vs.

State of Montana — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ninth Circuit
The Supreme Court of The State of Montana
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher James Michelotti
(Your Name)
United States Penitentiary Victorville
P.O. Box 3900
(Address)

Adelanto, CA 92301
(City, State, Zip Code)

(Phone Number)

Chris Michelotti
Signature Feb 28th 2024

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MAR 08 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Question (S) Presented

In the case the district court abused it's description by admitting evidence that Michelotti is affiliated with a gang. District court erred by denying Michelotti's motion for mistrial because of warrants (bad acts) Montana overlooked the prejudice that the unnecessary repetitive mention of gang affiliation brings and how it deprived Michelotti of a fair trial which is his constitutional right. In a case where there was no physical evidence backed by forensic's, proper police protocol at the scene of a shooting was not followed, and one of the people Michelotti was convicted of assault with a weapon on did not show up at trial yet Michelotti yet Michelotti was still convicted with assault with a weapon on Garrick Gonzalez due to the prejudice of gang affiliation and a warrant (bad acts) being brought up at trial. Due to Montana's lack of Gang experience they failed to be able to recognize the prejudicial effect constant Gang affiliation being mentioned can cause. There's several other courts that recognize the prejudice that comes with Gangs. After all it is proven to be more prejudicial to be a Gang member then to be on probation, and cases are reversed for the mention of probation. The Gang evidence in this case was substantially more prejudicial then productive and the State introduced it to plant a seed of fear in the jury. Which this court has already ruled that the State cannot do this in other cases *U.S. v Elkins* 70 F.3d 81 (10th cir. 1995), *U.S. v. Abel* 469 U.S. 45 83 L. Ed 2d 480. The question presented in this case is were Christopher Michelotti's 5th amendment constitutional rights violated. Yes they were. The Court should reverse the decision.

Questions presented

In this case exculpatory evidence was withheld in violation of Brady v. Maryland. Which clearly is against my 5th and 14th Amendment Constitutional rights. Said withheld evidence Aden Resinder's GSR results. Yes Aden was not on trial and Yes Aden did say he shot me. However his negative GSR results that were withheld would show he did not shoot me and that he was not in the vicinity of a Gun Shot which would be impeaching evidence against everyone that testified making them all unreliable and uncreditable witnesses. This would change the outcome of the trial because this case mainly relied on witness testimony. There has been a clear unreasonable application of Federal law because rather than applying a "reasonable probability" standard for materiality of suppressed evidence. The court unreasonably tries to explain away this evidence as not being needed because of Aden's statement. The reasonable probability standard for materiality of suppressed evidence is less rigorous than a preponderance of the evidence standard in that a petitioner need only show that the new evidence undermines confidence in the verdict. *Kyles v. Whitley* 514 U.S. 419, 434 115 S.Ct. 1555, 131 L.Ed 2d 490 (1995) The court tries to justify not having evidence as it not needed because it doesn't prove my innocence because Aden is not on trial. This evidence does impeach everyone testifying and meets the clearly established principles laid out in *Kyles*, 514 U.S. at 434, 115 S.Ct. 1555. *Bagley* 473 U.S. at 682, 105 S.Ct 3375 and *Agurs* 427 U.S. at 112 14 96 S. Ct 2392

Thus the Supreme Court has long recognized that suppression of strong and non-cumulative evidence related to the credibility of an important witness is material under Brady at least when the witnesses' testimony is critical to the prosecution's case. See also *Kyles* 544 U.S. 441-42 115 S.Ct 1555 (holding that the state's case relied heavily on the testimony of eye witnesses who identified the defendant as the murderer, therefore failure to disclose impeachment evidence related to those witnesses was material under Brady and *Deary v. Cain*, U.S. 1365 S.Ct 1002, 1007, 194 L.Ed.2d 78 (2016) (withholding impeachment evidence of star witness violated Brady.))

The question is Does this violate Brady v. Maryland and my 5th and 14th Amendment constitutional rights. Yes it does and the Court should reverse and remand for a new trial.

Siegman ineffectively represented me in several ways. One was by not recalling Valerio and subject his direct testimony to proper cross examination, deprived me of "the greatest legal engine ever invented for the discovery of truth" *California v Green* 399 U.S. 149, 158 90 S.Ct 1930, 22 L.Ed 489 (1970) quoting Wigmore, Evidence 1367. Finding Ineffective Assistance of counsel where among other things counsels: "failure to investigate prevented an effective challenge to the credibility of the prosecution's eyewitnesses *Berryman v Morton*, 100 F.3d 1089, 1099 3rd Cir 1996. Had Siegman compared original statements to testimony he would have showed inconsistencies. Finding deficient performance where Counsel failed to confront the prosecution's star witness with inconsistent statements thus sacrificing an opportunity to weaken the star witnesses inculpatory testimony *Blackburn v.*

Fultz 828 F2d. 1177, 1183 (6th CIR 1987) Add this to Siegman's failure to properly investigate and discover exculpatory impeaching evidence within his grasp; I ask the question was Siegman ineffective in his representation of me against my 6th Amendment Constitutional right and was there a conflict of interest with him representing me. Yes there was Due to this the trial should be deemed constitutionally unfair and decision should be reversed and remanded for a new trial.

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

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

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

violation of 5th amendment U.S.C.A. Constitutional Due Process
deprived of life liberty without due process of law

Violation of 14th amendment U.S.C.A. Constitutional state
deprive any person of life liberty without due process of
law nor deny any person equal protection of the law

Violation of 6th amendment U.S.C.A.

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

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

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

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

☒ For cases from **state courts**:

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

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

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

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

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was Nov 17 2023.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Dec 15 2023, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was July 12. A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

STATEMENT OF THE CASE

The State charged Christopher Michelotti with aggravated burglary of in the alternative, with 5 counts of assault with a weapon based on the events that occurred on May 11, 2014 in Billings, Montana. (District Court Documents (D.C. Doc.)33.) The charges were based on allegations that Christopher and a friend entered a home in Billings and caused reasonable apprehension of fear to the occupants. (D.C. Doc 33.) The State filed an assault with a weapon charge with regard to each of the five adult occupants in the home: The homeowner (Adan Resendiz), his wife (Carla Resendiz), his son (Valerio Resendiz), his son's girlfriend (Sabre Dillon), and his son's friend (Garrick Gonzales). (D.C. Doc 33). All the occupants in the home testified except for Garrick. Prior to trial, Christopher filed a motion in limine in which he moved the court for an order excluding evidence or any reference to other crimes, prior bad acts or wrongs and illegal associations. (D.C. Doc.46). The State responded that it did not intend to introduce evidence that Christopher belonged to a gang. (Trial Transcript (Tr.)13) The State argued that the gang related evidence was admissible pursuant to the transaction rule. (Tr.13.) Defense counsel argued the gang evidence, under Mont. R. Evid.403, would be more prejudicial than probative. (Tr.15.) Christopher's counsel explained that the gang evidence created a risk that the Jury would convict Christopher "because he is an unsavory person." (Tr.16) Defense counsel explained that, even more than knowledge that a defendant was on probation, that the prejudice from gang affiliations [is] even more damning."(Tr. 17,18.)

STATEMENT OF THE CASE (CONT)

"He would be convicted as much for his past gang affiliations as for his offense." (Tr.19.) The court ruled that the State could not mention prior gang activity but could introduce evidence of Christopher's purported gang affiliations relevant to the day of the alleged offenses.(Tr.22.) The court made no explicit holding on the issue of whether this evidence was unduly prejudicial under Rule 403. (Tr.22.)

Despite the prosecutor's concession the previous day that the State did not intend to introduce evidence of Christopher's prior convictions and a pending federal matter on the second day of trial, The State presented testimony about Christopher's pending arrest warrant. (Tr.13,341.) Sergeant Shane Winden, who had thirteen years of experience with the Billings Police Department, told the jury that after identifying Christopher, he ran a warrant check and confirmed that Christopher had an active warrant.(Tr.341) Defense counsel objected and moved for a mistrial.(Tr.341,343-345.) The court agreed that the testimony about the warrant was prejudicial, sustained the objection, but denied the motion for a mistrial and instead chose to offer a curative instruction. (Tr.347,349.)

The Jury convicted Christopher of aggravated burglary and four counts of assault with a weapon. The court sentenced Christopher to forty years in prison for the aggravated burglary and twenty

REASONS FOR GRANTING THE PETITION

My Constitutional Rights have been violated. The stand your ground law is being manipulated and therefore police did not properly investigate the case. Exculpatory evidence was withheld that would have changed the outcome of the trial Adan Resendiz's GSR results. They would be negative thus becoming impeaching evidence against everyone who testified making them all unreliable and uncreditable witnesses thus changing the outcome of the trial and creating reasonable doubt in a jurys mind. Because this case relied on witness testimony not evidence. The stand your ground law was manipulated and police officers used it as a reason not to properly investigate all available evidence in this case.

Had they done so I would have had evidence and been able to show a lack of evidence to prove my innocence. These are the reasons in the intrest of Justice for Granting the Petition

CONCLUSION

Montana failed to recognize the prejudice repetitive Gang affiliation and warrants (bad acts) being mentioned can cause. Michelotti was deprived of a fair trial. In a case where there was no physical evidence backed by forensic's, proper police protocol GSR test from everyone at the scene of a shooting was not followed denying Michelotti the chance to have exculpatory evidence to show he did not fire a weapon, the state went above and beyond the probative use of Gang affiliation and turned it from probative to prejudice. Michelotti was convicted of assault with a weapon on Garrick Gonzales who did not show up to testify at trial. Montana's lack of experience dealing with gangs failed to recognize the prejudice that comes with the repetitive unnecessary mention of Gang affiliation brings. The court in the mind of Justice should remand this case for a new trial and dismiss the assault with a weapon charge on Garrick Gonzales.

The District Court erred by failing to exclude, under Mont. R. Evid 403 evidence of Christopher's alleged gang affiliation although the evidence allowed the State to construct a more cohesive narrative it's probative value was substantially outweighed by the danger of unfair prejudice caused by the risk that the jury would convict Christopher based on their fear of gangs. Therefore, the evidence prompted the jury to decide the case on improper basis. Further compounding the jurors biasness against Christopher, the state then in violation of the District Courts order introduced testimony that Christopher had a pending warrant. The combination of the gang evidence coupled with the testimony that a warrant existed for Christopher prejudiced Christopher and resulted in convictions without sufficient evidence. This is demonstrated with the jury's conviction of Count 6 assault with a weapon by reasonable apprehension of fear involving Garrick Gonzales. Garrick did not testify at trial and the State presented insufficient evidence from the other witnesses as to whether Garrick was ever in fear of Christopher. Christopher's conviction for Count 6 should be reversed and vacated and the other convictions reversed and remanded for a new trial.

1. The District Court denied Christopher the opportunity to a fair trial when it allowed the State to tint the jury with the evidence of Christopher's alleged gang membership in the Sureños Gang.

A. Evidence must be excluded, pursuant of rule 403. When it's probative value is outweighed by prejudice. Generally, "all relevant evidence is admissible" unless otherwise provided by law. M.R. Evid 402.

State v Saylor, 2016 MT 226 ¶13, 384 Mont. 497, 380p. 3d 743. Here the District Court ruled that evidence regarding Christopher's alleged gang affiliation was admissible as part of the same transaction rule. (Tr. 22-23) Montana Code Ann Section 26-1-103 provides "where the declaration, act, or omission forms part of a transaction which is itself the fact in dispute of evidence of that fact, such declaration, act, or omission is evidence as part of the transaction," Saylor ¶13. The Court has held the §26-1-103, MCA, allows transaction evidence when acts are inextricably linked and explanatory of the charges. Saylor ¶14 (citations omitted).

However the Court has been careful in limiting the transaction rule's application and subjecting it to fact specific balancing under M.R. Evid 403 Saylor ¶14 (citations omitted). Montana Rules of Evidence 403 provides: "Although relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

"Montana Rule of Evidence 403 allows the court to exclude otherwise admissible and relevant evidence when it's prejudicial effect substantially outweighs it's probative value. Saylor ¶14 (citations omitted). Unfair prejudice may arise from evidence

that arouses the jury's hostility or sympathy for one side confuses or misleads the trier of fact, or unduly distracts the jury from the main issue. State v Franks, 2014 MT 273 T16, 376 Mont. 431, 335 P 3d 725. Where the probative value of evidence is substantially outweighed by its unfair prejudice, admission of the evidence may be reversible error. Franks T16 (citation omitted) (holding that the probative value of newspaper article concerning other charges was substantially outweighed by the danger of unfair prejudice). If the prejudicial material severely undermines the fairness of the trial, a new trial is the remedy. Franks T16 citing Havens v State, 285 Mont. 195, 200-201, 945 P 2d 241, 944 (1997)

Christopher's objection to the omission of the gang affiliation allegations under Rule 403. (D.L. DOC. 46 at 3-4, Tr 14-17). The District Court failed to balance the factors under Rule 403 but merely issued its ruling based on its transaction rule analysis. (Tr. 22-23) Accordingly this Court must examine the record and balance the Rule 403 factors *de novo* Clifford, MS2.

The probative value of the evidence was limited: it put into context Valerio's and Garrick's potential connection to Christopher, but in and of itself doesn't prove any elements of the offense. The danger of unfair prejudice, however, substantially outweighed the evidence's probative value. The Court has recognized that "prior acts or crimes are highly prejudicial to the defendant."

"Derbyshire MSI (Citation omitted) "Evidence of a defendant's prior acts or unchanged misconduct creates the risk the jury will penalize him simply for his past bad character, or prejudge him and deny him a fair opportunity to defend against the particular crime charged.

"Derbyshire MSI (Citation omitted)"

B. Evidence regarding gang involvement is particularly damaging.

The label a "gang member" invokes an extremely potent stereotype. Mitchell Eisen, Brenna Dotson, and Gregory Dohi Probative or Prejudicial, Can gang evidence trump reasonable doubt, 62 UCLA L. Rev Discourse, 2.5 (2014). A recent study examined the biasing effect of gang evidence on jury verdicts Eisen, Dotson, and Dohi *supra* at 6. Mock jurors reviewed one of two versions of a simulated trial, Eisen, Dotson, and Dohi *supra* at 8-9. Half of the participants saw a version of the trial that included no mention of gang involvement, while the other half saw a version in which the prosecutor argued that the criminal activity was committed for the benefit of a criminal street gang. Eisen, Dotson, and Dohi *supra* at 9-16. By design the prosecutors case was weak and the trial was designed for acquittal Eisen, Dotson, and Dohi *supra* 6-7, 9.

Before deliberations only 12% of those who saw the trial without the gang evidence voted guilty, compared to the 33% that heard evidence of the gang involvement. Eisen, Dotson, and Dohi *supra* at 12. After deliberations nine of the jurors in the "no gang"

evidence group found the defendant guilty. Eisen, Dotson, and Dophi Supra at 12. However, when gang evidence was introduced ten percent of the jurors continued to vote guilty. Eisen, Dotson, and Dophi, Supra at 12. The most common reason provided by the participants in the gang condition who voted guilty pre-deliberations was the defendant's gang affiliation and/or his criminal background. Eisen, Dotson, and Dophi, Supra at 13. Therefore the jurors must have inferred this by virtue of his gang affiliation. Eisen, Dotson and Dophi Supra at 13. Although the prejudicial effect of gang evidence has not yet been addressed in Montana, other federal courts and state courts have considered this issue in detail. Given its highly inflammatory impact. The California Supreme Court has condemned the introduction of such evidence, *id.* as only tangentially relevant to the charged offense People v Albarran, 149 Cal App. 4th 214, 223 (2007). The trial court must carefully scrutinize gang related evidence before admitting it because of its potentially inflammatory impact on the jury. Albarran at 224 citing People v. Carter, 70p. 3d 981 (Cal 2003) evidence of defendant's gang membership, although relevant to motive or identity, created a risk the jury will improperly infer defendant has a criminal disposition and is therefore guilty of the charged offense and this must be carefully scrutinized.

. Similar to the UCLA study other states and federal courts have recognized that "evidence of a defendant's gang membership creates a risk the jury will improperly infer the defendant has a criminal

disposition and is therefore guilty of the offense charged. "People v Arita, 127 Cal App 4th 185 (2005). See also Coree v. State, 746 So 2d 829 (Miss 1999) (Probative value of evidence of defendants gang affiliation was substantially outweighed by the unfair danger of unfair prejudice). Burris v State 78 A.3d 371, 382 (Md 2013). Courts must be vigilant in guarding against the improper use of gang affiliation evidence "as a backdoor means of introducing character evidence by associating the defendant with a gang and describing the gang's bad acts")

United States v Irvin, 87 F.3d 860, 865 (7th Cir 1996) (Gangs generally arouse negative connotations and often involve images of criminal activity deviant behavior. There is therefore always the possibility that a jury will attach a propensity for committing crimes to defendants who are affiliated with gangs or that a jury's negative feelings towards gangs will influence its verdict")

United States v Yranda-Diaz, 31 F. Supp. 3d 1285 (N.M. 2014). Although relevant the probative value of defendants statements about his gang affiliation was substantially outweighed by the danger of causing the jury to condemn the defendant for his gang membership, rather than deciding the case on evidence presented)

Macias v. State 959 S.W.2d 332, 340 (Tex 1997)

Collateral implication of the state's gang evidence is that the defendant is a criminal because he belongs to a gang): State v. Ra 175 P.3d 609 (Wah. 2008) Defendant prejudiced by prosecutors admission of gang evidence.)

Christopher's counsel multiple times argued the prejudicial impact of gang evidence. If your Honor mentioning that somebody is on probation 44 times is enough to overturn a decision then I would suggest somebody that had gang affiliations are even more damning, mention of gangs, then the fact that he is on probation again I submit to you, your Honor, that being affiliated with a gang is equal to if not worse than being on probation. (Tr 18)

As recognized by a multitude of courts and social science studies a significant risk existed that the jury penalized Christopher for his alleged gang activity and denied him a fair opportunity to defend against the charged allegations. As Christopher's attorney argued "... the gang association, the implied gang association however they want to bring that out would make him the kind of unsavory person that the Court in Derbyshire, you know warned us about." (Tr 16)

The prosecution through Valerio's testimony, established that Christopher belonged to a gang, specifically the Surenos. The state then capitalized on this alleged gang involvement in it's closing argument "if you want motive, how is this for one forced gang activity recruitment" (Tr. 572) The prosecution then suggest that the razor found in Christopher's pocket at the time of his arrest was to shave heads at the alleged victims house. (Tr 573) Specifically identifying Christopher as a gang member, and his particular alleged gang, the Surenos, was unnecessary

as motive is not a element of the charged offense. The prosecution could have argued that Chris had an interest in Valerio and Garrick helping him with a potential criminal job, based on their friendship with Daniel without poisoning the jury with the specific's gang label. The unfair prejudice resulting from the gang label outweighed any potential probative value. The only reason to specifically label Christopher as a Surenos gang member was to plant a seed of fear with the jury.

2. The District court should have held the state accountable and granted Christopher's request for a mistrial after the state violated the courts order and introduced evidence that Christopher had a pending warrant.

A. The testimony regarding Christopher's pending warrant was inadmissible.

Despite the court ruling that evidence regarding Christopher's prior criminal matters was inadmissible, through questioning by the prosecution. Officer Widen told the jury that after identifying Christopher he ran a warrant check and confirmed that Christopher had an active warrant was prejudicial but denied Christopher's motion for a mistrial and instead choose to offer a curative instruction (Tr 347)

A District Courts determination of whether to grant a motion for a mistrial must be based on whether the defendant has been denied a fair and impartial trial State v. Weblele, 2003 MT

117, 1175, 315 Mont. 452 69 P.3d 1162 (citation omitted.) If a reasonable probability exists that inadmissible evidence might have contributed to the conviction, a mistrial is appropriate.

Weldele 1175 citing Partin 238 Mont. at 18 951 P.2d at 1005-1006. In determining whether a probative statement contributed to a conviction, this Court considers the strength of the evidence against the defendant, the prejudicial effect of the testimony, and whether a cautionary jury instruction could cure any prejudice. Weldele 1175 (citation omitted)

In Partin, the state had charged Partin with felony forgery and Partin had moved to exclude evidence of a prior arrest. Partin, 283 Mont. at 14. The state did not oppose this request and the district court granted the motion in limine. Partin, 283 Mont. at 14. Nonetheless, during the trial, the state's detective testified that he compared Partin's handwriting from his prior arrest. Partin 283 Mont. at 14-15. Similar to the response from the prosecutor in Christopher's case, here the State contended that the detective's prior arrest comment did not necessarily indicate a prior conviction and argued that a cautionary instruction was sufficient. Partin 283 Mont. at 18 (Tr. 344). This Court recognized that a defendant has been arrested on a prior occasion is inherently prejudicial. Partin Mont. at 20. Thus, the Court concluded that the detective's prior arrest comment denied Partin a fair trial and impartial trial, and that the district court erred when it failed to grant his motion for a new trial Partin,

283 Mont at 22. As in Artin Winden's comment about Christopher's pending arrest warrant severely prejudiced Christopher. The District court had already allowed the state to introduce evidence of Christopher's gang membership. Therefore Winden's warrant testimony further reinforced to the jury that they should convict based merely on Christopher's character. B. The Trial courts curative instruction was insufficient to remedy the prejudice. Although the court told the jury not to consider Winden's final testimony, in light of the other considerations, and considering the prejudicial impact of Winden's testimony, the instruction was not sufficient to cure the problem. While a juror is required to follow the instruction ~~to assess~~ as how to assess evidence of other acts should not be considered a panacea to all harm posed by such evidence. "The naive assumption that prejudicial effects can be overcome by instructions to the jury all practicing lawyers know to be unmitigated fiction." Thompson v United States, 546 A.2d 414-419 (4th Cir 1988). Studies also show that a limiting instruction does not cure the prejudice. Thompson cites studies which support a concern that adherence to a limiting instruction may not be "easily or universally secured". Thompson, 546 A.2d at 425. With regard to rule 404 (6) evidence. "Numerous studies with simulated juries show that proof of a defendant's involvement in similar crimes significantly increases guilty verdicts and that jurors cannot and/or will not limit their use of that information Tanford, The law and Psychology of Jury Instructions, 69 Neb. L. Rev 71, 98 (1990) (footnote omitted). "Once evidence of prior

Crimes reaches the jury, it is most difficult, if not impossible to assume continued integrity of the presumption of innocence" Thompson, 546 A.2d at 419

The Court has also recognized that curative instructions must be evaluated carefully to ensure that no reasonable probability exists that inadmissible evidence contributed to the conviction.

Patin, 283 Mont. at 21; Derbyshire, 4150 (Jury instruction insufficient to cure witness reference to the defendant being on probation.)

The testimony about Christopher's ~~pending~~ arrest pending arrest warrant cannot be considered harmless. Since the testimony about the arrest warrant was not admitted to prove an element of the offense, the state must demonstrate that qualitatively there is not possibility the tainted evidence might have contributed to the conviction. Derbyshire 4147, 4154 (citing State v. Vankirk, 2000 MT 184, 4154, 306 Mont. 215, 32 P.3d 735).

The prosecution had already been allowed to paint a picture of Christopher as a gangster thug. The testimony about a pending warrant reinforced this image to the jury. Qualitatively, the testimony that Christopher had an outstanding warrant likely contributed to his conviction. Montana overlooked the prejudice that the unnecessary repetitive mention of gang affiliation brings. and how it deprived me of a fair trial which is my constitutional right. In a case where there was no physical evidence backed by forensic's, proper police protocol was not followed at the scene of a shooting, one of the people I was convicted of assault

with a weapon on did not show up at trial yet I was still convicted of assault with a weapon on Garrick Gonzalez due to the prejudice of gang affiliation and a warrant (bad acts) being brought up at trial. Due to Montana's lack of gang experience, they failed to be able to recognize the prejudice constant Gang affiliation being mentioned can cause. There are other Courts in the 9th Cir and other Cir. That recognize the prejudice that comes with Gangs after all it is more prejudicial to be a Gang member than to be on probation, and cases are reversed for the mention of probation. The Gang evidence in this case was substantially more prejudicial than probative and the State introduced it to plant a seed of fear in the Jury. It did in fact violate my 5th and 14th amendment constitutional rights. The court has already ruled in similar cases to this in U.S. vs Elkins 70 F3d (10th Cir/1995) and U.S. v Abel 469 U.S. 45 83 L Ed. 2d 450

Montana is a stand your ground state. Knowing that all the witnesses in this case manipulated the courts, to falsely convict and imprison me. Police did not properly investigate all available evidence in this case. Had they I would have had exculpatory evidence to prove my innocence. Siegman also did not point these things out. For instance had they gave everyone at the scene of a shooting GSR test I would have had exculpatory evidence showing I did not fire a gun. The prosecutors did in fact with hold evidence, Siegman ineffectively represented me in many ways including not properly investigating. The Constitution does not permit exculpatory evidence to be with held and not investigated because a Detective and other law enforcement see it as unnecessary. Especially when this evidence could be impeaching evidence to everyone who testified in a case that relied mainly on witness testimony.

At this point I ask the court is not witness credibility a major factor in whether a jury believes what they say or not? Would not forensic evidence that proves witness testimony to not be true not only be impeaching evidence but show through factual information that the witness is lying?

Being that this case relied mostly on witness testimony, being able to prove the witness as unreliable would change the outcome of the trial. Therefore Aden's GSR test results should have been completely investigated and given as I told Siegman to Get them. Gonzales v Sobeval v United States, 244 F.3d 273 (1st CIR 2001) Trial lawyer was ineffective where he failed to use documentary evidence to impeach the only adverse witness. It is not detective Tucker's job to be

the judge, jury and executioner. It is his job to properly investigate. Not to say someone is telling the truth just because he heard what they had to say. As a matter of fact, GSR tests supposed to be given to everyone at the scene of a shooting, this is proper police protocol. As this was not done it took away a chance for me to prove through forensic evidence that I never fired a gun. Had Aden's GSR test results been given, they would be negative, which proves that everyone testifying is lying rendering them all unreliable witnesses which would change the outcome of the trial. There is no evidence against me. There was not a weapon found on my person nor was there a weapon found with my fingerprints. This shows that I did not possess a weapon. Therefore making it impossible for me to have fired a weapon.

United States v. Chronic, 466 U.S. 468. The Chronic decision should bring to mind one of the greatest risks the Court and the government attempt to pull on defense. They will attempt to make you believe that it is the defendant that is on trial rather than the government's evidence.

At many trials you will discover that the government is presenting, and the defense counsel is questioning testimony rather than evidence. The problem is most evident when the people testifying have their best interest involved. So the prosecutors will

make witnesses collaborate the story they want to be told in more of a play like trial rather than present actual evidence. In these cases, the defense completely fails to ask if the government has any evidence to offer. As you might imagine, evidence is the due process backbone of any criminal trial. Without sufficient evidence to prove the elements of a crime, a conviction cannot stand under the Constitution of the United States. Any verdict of guilt without evidentiary support is invalid.

Fiore v. White 531 U.S. 255 (2001) (per curiam) (granting Federal Habeas Corpus Relief because prosecution failed to present sufficient evidence to prove the elements of a crime and therefore petitioner's "conviction is not consistent with the demands of the Federal Due Process Clause.) There was no gun or GSR found on my person and there was no gun found with my fingerprints.

The state made a lame argument saying how about a razor to show motive. However, they did not point out the fact that I also had deodorant, a toothbrush, and other hygiene items on me. This is a clear intentional misrepresentation of evidence similar to Davis v. Zant, 36 F.3d 1538 (11th Cir. 1994) ("prosecutor's 'repeated and clearly intentional misrepresentations' in objection and closing argument rendered trial fundamentally unfair in violation of the Due process clause.") The prosecution could clearly see the razor was a hygiene item, not a motive. But they also knew there is no evidence. Not only was there no evidence, but the evidence that could have been, Aden Resendez's GSR test results, was withheld. These negative results

would change the outcome of the trial because it would impeach all who testified making them all unreliable witnesses. Brady v Maryland 373 U.S. 83, 87 (1963) United States v Bagley 473 U.S. 667, 674 (1985)

Wearry v Cain 577 U.S. 385, 392 (2016) Strickler v Green 527 U.S. 263,

280 (1999) The prosecutor's duty to disclose material evidence to the defense is "applicable even though there has been no request by the accused and encompasses impeachment evidence as well as exculpatory evidence" the ABA Standard 4-4.1 Duty to Investigate and Engage Investigator. The new version of the standards now reads that "Investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities." The GSR test results of Aden Resendez were in Law enforcement's possession. Also in the ABA Guidelines it states "the duty to investigate is not terminated by factors such as the apparent force of the prosecution's evidence see Exhibit (C)

There was in fact a conflict of interest. A newspaper article showing Lira to have been charged and represented by the same office as me, the Billings office of the Public Defender, until his charges were dismissed. See Exhibit (A) It should be noted that Siegman refused to call Lira as a witness, who originally gave a completely different story than everybody else that testified. United States v. Holder 410 F3d 651 (10th Cir 2005) Remand for IAC determination where trial lawyer failed to call the only two witnesses to the shooting. Siegman could not have had my best interest involved beings that

he did not call Lira to testify. Here also is a newspaper article from October 13, 2016 showing "the public defenders are overburden." Yellowstone County Attorney Scott Twito. See article by Ashley Nerbovig, Exhibit (B). The conflict of interest gives more reason for Siegman's ineffectiveness. He did not get GSR test results, he did not recall Valerio and use his black and white statements to impeach him through contradictory statements as instructed to do by Judge Gustafson and myself. When I told him to do this, he told me "I run the show and I'm not going to." Judge Gustafson told him to impeach Valerio, he had to ask the questions he was asking Det. Brad Tucker to Valerio, not Detective Tucker. This also shows he saw reason in asking the questions as he was asking them to Det. Tucker. There is no reasonable explanation as to why he would not recall Valerio and ask the questions of him.

Higgins v Remco 470 F.3d 624 (6th Cir 2006) (Counsel was ineffective in foregoing cross-examination of key prosecution witness state claim as tactical judgement is rejected as "too implausible to accept" "there was no conceivable tactical justification for failure to cross examine the key witness in the case") DeShields v Shannon 338 Fed Appx. 120, 2009 U.S. App LEXIS 15416 (3rd Cir July 10th 2009)

(cumulative effect of counsel's failures, "taken individually," "would perhaps be insufficient for us to conclude that his performance was

constitutionally deficient." Counsel failed to confront eye witness with the clear contradiction between her testimony and the statements made to a (police officer) on the night of the incident." Counsel failed to "introduce evidence that the accused's clothing was tested for shot residue and the results were inconclusive," and counsel failed to call potential defense witnesses "who would have testified that they were with or near DeShields during the altercation and that he neither possessed nor fired a gun." After all, he had statement's showing Valerio to be changing his own story Siegman also did not properly investigate as can be shown with the lack of GSR test results and not having all of the guns fingerprinted, taking away a chance for me to prove through exculpatory evidence that I never possessed a weapon. Another conflict of interest is Siegman is also the victim of a home invasion, which he stated was less serious than what I am being accused of, but he still holds resentments against the people who invaded his home. I was not aware of this until the day of trial, which also goes to explain why Siegman did not properly investigate or represent me. Siegman says he was aware of the assault with a weapon charge on Garrick Gonzales, he was not. I asked him to ask for a direct verdict and dismissal of the charge assault with a weapon on Garrick Gonzales. He stated at this time I was not charged with assault with a weapon on Garrick Gonzales. Had he been aware of it, he would have asked for the direct verdict being that Garrick

did not testify. Siegman says he met with me 26 times, the only way he can say he met with me 26 times is if you are talking about saying hello to me as he is just stopping by the jail to see one of his many other clients on his overloaded case load. Siegman is very incompetent as he was not even able to recognize he was removed from my case after the Finkel Hearing by the Judge until someone else from his office advised him of this. At the end of the day there is no excuse or reason not to properly investigate all evidence, not to use documented statements to impeach witnesses, and not to call witnesses that tell a different story. Siegman did in fact ineffectively represent me.

This is in fact a valid claim of the denial of my constitutional rights and a jurists of reason would find it debatable whether the district court was correct in its procedural ruling. "Ineffective assistance of counsel is violation of the Sixth Amendment applies to state through 14th Amendment (U.S.C.A.) See Gideon v. Wainwright 372 U.S. 335 (1963) (see also) Johnson v. Zerbst 304 U.S. 458 (1938). Thus all in violation of the 6th U.S.C.A. and 14th U.S.C.A.

Counsel's outrageous errors violated due process to a fair trial 5th Amendment U.S.C.A. 5th Amend. See U.S. v. Black 733 F.3d 294 (9th Cir. 2013) quoting U.S. v. Russell 411 U.S. 423 (1973) The gang evidence in this case was substantially more prejudicial than probative and the state introduced it to

to plant a seed of fear in the jury. It did in fact violate my 5th and 14th amendment Constitutional rights. The court has already ruled in similar cases to this in U.S. v. Elkins 70 F.3d (10th Cir 1995) and U.S. v. Abel 469 U.S. 45 83 L.Ed 2d 450

The Brady Violation is violation of my 5th Amendment and 14th Amendment of the United States Constitution had GSR results been presented it would change the outcome of the trial and would have been evidence to impeach everyone who testified making them all unreliable witnesses. Thus changing the outcome of the trial this case relied on witness testimony not evidence the backbone of due process in a criminal trial.

Montana is a stand your ground state. Knowing that all the witnesses in this case manipulated the courts, to falsely convict and imprison me. Police did not properly investigate all available evidence in this case. Had they I would have had exculpatory evidence to prove my innocence. Siegman also did not point these things out. For instance had they gave everyone at the scene of a shooting GSR test I would have had exculpatory evidence showing I did not fire a gun. The prosecutors' did in fact withhold evidence, Siegman ineffectively represented me in many ways including not properly investigating. The Constitution does not permit exculpatory evidence to be withheld and not investigated because a detective and other law enforcement see it as unnecessary. Especially when this evidence could be impeaching

evidence to everyone who testified in a case that relied mainly on witness testimony

A number of courts have found deficient performance where, as here. Counsel failed to challenge the credibility of the prosecution's key witnesses. See e.g. Lindstadt v. Keane, 239 F.3d 191, 204 (2d Cir 2001) (finding ineffective assistance of counsel where among other things, counsel's "failure to investigate prevented an effective challenge to the credibility of the prosecution's only eyewitness") Berryman v. Morton, 100 F.3d 1089, 1099 (3rd Cir 1996) (finding deficient performance where counsel failed to raise the victim's prior inconsistent identification testimony, given that "the reliability of this victim's uncorroborated identification of the defendant cut directly to the heart of the only evidence against the defendant"; Tomlin v. Myers 30 F.3d 1235, 1238 (9th Cir 1994) (finding deficient performance where counsel failed to challenge an eye-witness's in-court identification in a case that hinged on an eyewitness's testimony; Nixon v. Newsome 888 F.2d 112 115 (11th Cir, 1989) (finding deficient performance where counsel failed to confront the prosecution's star witness with inconsistent statements, thus "sacrificing an opportunity to weaken the star witness's inculpatory testimony"); Blackburn v. Foltz 828 F.2d 1177, 1183 (6th Cir 1987) (finding deficient performance where counsel failed to impeach an eyewitness with previous inconsistent testimony, "weakening (the witness's) testimony was the only possible hope (the defendant) had for acquittal).

Had this case been properly investigated there would have been evidence to prove I did not fire a gun or possess a gun. There would have been exculpatory evidence that would impeach everyone that testified making them all unreliable witnesses in a case that relied on witness testimony, not evidence. The accumulation of violations of my constitutional rights deprived me of a fair trial and the trial would have had a different outcome had my constitutional rights not been violated.

Petitioner request Certificate of Appealability be granted.
My conviction and sentence dismissed and remanded for a new trial.

Chris Michelotti

Chris Michelotti

Signature

Feb 28th 2024

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher Michelotti Chris Michelotti

Date: December, 2, 2018 February 28th 2024