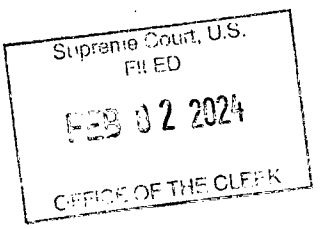
No. 24-5079

ORIGINAL

In The

Supreme Court of the United States

October Term 2023



John Wesley Patton,
Petitioner,

Vs.

State of Louisiana
Respondent,

On Petition of Writ of Certiorari
Louisiana Supreme Court No. 2023-KO-00151

Petition for Writ of Certiorari
United States Supreme Court

John Wesley Patton, Esq.
Pro-Se Petitioner
DPSC No. 327902
BB. Sixty Rayburn Correctional
27268 Hwy 21 North
Angie, Louisiana 70426

(a)
Questions Presented for Review

Questions Number One

1. What defense tools are Louisiana pro-se defendants entitled to when they choose to represent themselves pro-se at trial?

a. Does it Violate Due Process when they are given no defense tools?

b. Is that considered a Fair Trial as guaranteed in the Sixth Amendment?

c. What is the remedy when Stand by Counsel fails to assist Pro-Se Defendants in Pre-Trial Investigations?

d. Are Pro-Se Defendants entitled to Effective Stand by Counsel?

Questions Number Two

2. Is a Freestanding Actual Innocence Claim on its Own Grounds sufficient to overturn a State felony conviction?

a. What is the Proof Required to Present that Claim?

b. Is the Louisiana One Witness Rule Constitutional even though it requires no Corroboration? As a Number of Other States Require Corroboration? When even the Bible requires conviction on two or three witnesses?

Questions Number Three

3. Do Louisiana Defendants have a Constitutional Right to have the Complete Court proceedings transcribed from indictment until sentencing?

a. Is it a Due Process Violation when the Trial Judge Intentionally removes portions of the transcripts that prove the Petitioner objected on the record?

b. Are Louisiana Court Rules that require an "order designating issues" Unconstitutional due to the fact it presents an "incomplete record for the Appellate Court?"

c. Does that rule deny a meaningful review of errors?

d. Are Pro-Se Defendant's entitled to complete trial transcripts?

e. When they elect to represent themselves?

f. Does denial of that violate Due Process?

Questions Number Four

4. Did Defendant receive a fair review on the "perjury claim" when the Record was incomplete? Did the Defendant prove perjury?

a. Was Defendant's Napue claim substantiated When Defendant repeatedly played recorded interviews of J.M. prior testimony to both 911 operators and police detectives for showing that testimony did not match her current trial testimony when in fact the recordings matched Defendant's statements to police detectives?

b. Did Louisiana District Judge, Steven C. Grefer's intentional failure to adhere to the Rules of Evidence and the fact Defendant repeatedly "objected" to the Judge's failure to follow the Rules of Evidence while Defendant was cross examining J.M. and R.D. and C.R. Lead to Defendant's failure to prove perjury?

Questions Number Five

5. Is the Fifth Amendment Provision that requires "Grand Jury" indictments for infamous crimes binding on the State of Louisiana pursuant to the Fourteenth amendment of the United States Constitution thereby abrogating Alexander Vs. Louisiana, 405 U.S. 625, 636, 92 S Ct. 1221 31 L.Ed.2d 536, (1972), and Hurtado Vs. California, 110 U.S. 516, 538, 4 S Ct. 111, 122, 28 L.Ed. 232 (1884)?

a. Does the Louisiana District Attorney's customary use of "bills of informations" to manipulate the random assignment of Louisiana District Judges in intentional efforts to rob Louisiana Defendants Constitutional Right to a fair and impartial Judge violate "due process"? Thereby requiring the Supreme Court to exercise **28 U.S.C.A. § 1251(a)** and **28 U.S.C.A. § 1257(a)** to correct the injustice?

b. Can any Louisiana Pro-Se Defendant or Louisiana criminal Defendant ever expect to receive a Fair and Impartial Trial as long as this practice remains and District Attorneys are allowed to judge shop?

c. Is an impartial gatekeeper fair? Constitutional.

d. Is Louisiana required to provide its citizens with more protection then less in regard to the United States Constitution?

e. Should this Supreme Court exercise its corrective power to redress this unconstitutional practice when this Court normally rules in favor of States rights?

Questions Number Six

6. Did Louisiana District Judge, Steven C. Grefer's repeated interference during cross-examination in itself violate the Defendant's right to Confrontation/Cross-Examination?

a. Did Defendant's inability to provide the Appellate Court a "true and correct" portion of the Transcripts when a "true sand correct" copy of said record was not available to Defendant violate Due Process? Even when the Defendant repeatedly filed valid motions and writs of mandamus that were all summarily denied by the court without written opinion thereby attributing to the Louisiana Court of Appeals for the Fifth Circuit denial of the Defendant's appeal dated December 21, 2022?

b. Did Louisiana District Judge's failure to adhere to the Louisiana Criminal Code of Evidence while the Defendant was in cross-examination of numerous State witnesses. Violate the Defendant's right to Confrontation/Cross-Examination? When the Defendant repeatedly "objected" and repeatedly asked the Judge to instruct the witness to answer the question as it was asked by defendant and Judge failed to instruct any witness to answer the questions as posed to them in itself violate the Defendant's constitutional rights?

c. Are Pro-Se Defendant's entitled to Confrontation?

d. Do Louisiana's procedural rules supersede or violate the United States Constitution?

e. Did the fact that the Defendant was Pro-Se unfairly influence the Appellate Court erroneous decision to deny the Defendant's valid claims?

Questions Number Seven

7. Did Louisiana District Judge, Steven C. Grefer's intentional interference and interruptions of Defendant's direct testimony violate the Defendant's right to testify on his behalf? When Judge Grefer abruptly said "that's it your done" right in the middle of testifying?

a. Are Pro-Se Defendants entitled to testify on their behalf?

b. Was this claim additionally prejudiced by the Trial Court's failure to approve the Defendant's numerous requests to transcribe the record truly and correctly and the Appellate Court's failure to reverse and remand due to that violation as it was unable to reach a valid conclusion without the transcripts to reference to?

c. Was the denial of Pro- Se Defendant's right to testify violation a United States Constitutional Right?

e. Did Louisiana District Judge, Steven C. Grefer's intentional interruption of the Defendant's "opening statement" violate Defendant's Constitutional Right to present a defense as the Defendant's opening statement was a road map to a very complex and complicated set of Facts, when the Trial Judge stopped the Defendant right in the middle of explaining Rachelle Dutreix's part in the massive fabrication?

Questions Number Eight

8. Did Louisiana District Judge, Steven C. Grefer's, hatred of Pro-Se Defendants and overall cumulative interference as "gatekeeper" in Defendant's Pro-Se trial violate the United States Constitution Due Process clause?

a. Did Louisiana District Judge, Steven C. Grefer's order to require all Defendants family, friends, and spectators to view the Defendant's trial in a Courtroom down the Courthouse hall by Zoom and Allow all the Courtroom seats to be filled with Assistant District Attorney's, and Jefferson Parish and Westwego police officer's and detectives violate the Defendant's Right to and Fair and Public trial?

b. What effect did that Order have on the Jury's perception of the Defendant's Guilt or Innocence?

c. Did Louisiana District Judge, Steven C. Grefer's repeated admonishments and three (3) Contempt charges affect the Jury's perception of the Defendant when done in front of the Jury?

d. Did the Judge's sealing of a Letter sent by the Jury in the beginning days of trial violate the Defendant's Right to "Due Process" when the Defendant's was never shown the letter, and the Appellate Court had no idea the letter existed and was unable to consider it in its Appellate Ruling? The letter was buried in the file?

e. Did the fact that the Defendant has repeatedly attempted to recuse the Louisiana District Judge by recusal motions violate the Defendant's Right to a Fair and Impartial Trial? As Defendant repeatedly argued the fact that Louisiana District Judge, Steven C. Grefer could not be fair nor impartial in Defendant's case? Did the Judge's failure to recuse himself violate the Defendant's Rights to a Fair and Impartial Trial, as guaranteed by the United States Constitution?

f. Did the Louisiana District Judge, Steven C. Grefer's repeated clandestine way that the Defendant was brought to Courtroom hearings when no witnesses were in the Courtroom violate the Defendant's Right to a Public Trial?

g. Did the Louisiana District Judge, Steven C. Grefer's repeated ordering of the Defendant to be brought to the Courtroom while the Defendant's stand by counsel was not there? Handing the Defendant defense documents that the Assistant District Attorney gained illegally, when those documents were actually subpoena deuces tecum's that the Defendant requested one year prior to receiving them. Violate the Defendant's Constitutional Rights to **Brady Vs. Maryland**, 373 U.S. 83, 83 S.Ct. or **Kyles Vs. Whitley**, 514 U.S. 419, 115 S.Ct.?

h. Are Pro-Se Defendant's entitled to the same considerations that Attorney's are entitled too? In that the "gatekeeper" rules fairly and unbiased and follows all Rules of Evidence and Courtroom décor?

i. Did the Louisiana District Judge, Steven C. Grefer's intentional concealment of the Issues brought up in the above questions violate the Defendant's right to a Fair review of the record for errors?

Questions Number Nine

9. Did the Jefferson Parish District Attorney's Office, Assistant District Attorneys, Laura S. Schneidau, and Zachary P. Popvich repeated Punitive remarks, laughs and joking while the Jury was in the jurybox affect the Juries perception of the Defendant's Guilt and Innocence?

a. Did the fact Louisiana District Judge, Steven C. Grefer's ordered the Defendant not to object on the prosecutor's arguments violate the Defendant's rights or the United States Constitution?

b. Did the Assistant District Attorney's repeated violations of the Rules and Décor, that it Knew to be against the "rule of law" and in violation of "rules of court" violate **Burger Vs. United States**, 55 S. Ct. 629? Only because it took clear advantage of the Defendant's Pro-Se, status a clear violation of the United States Constitution right to a Fair Trial?

c. Are Assistant District Attorneys required to follow the Rules of the Court, and the Rules of Evidence when the opposing counsel is a Pro-Se Defendant?

d. Is the fact there is no accountability of Louisiana District Attorneys in Jefferson Parish, as they violate the "rules of law" at their whim, since they handpick the Louisiana District Judge who will preside in their upcoming Trials, by and through bills of of informations in itself violate the Defendant's Rights to a Fair and Impartial Trial and Impartial Trial, as provided in the United States Constitution Sixth Amendment?

Questions Number Ten

10. Was the Defendant's Constitutional rights to a fair cross selection of Jefferson Parish citizens violated, when 180 petit jurors were subpoenaed and only 46 showed, and Louisiana District Judge, Steven C. Grefer, refused to issue attachments for the missing jurors? And the defendant objected to the missing jurors? Did that violate the United States Constitutional right to an impartial jury?

a. Did the fact that Louisiana District Judge, Steven C. Grefer, intentionally left out those specific objections and testimony out of the trial record? In itself violate the Defendant's Constitutional Right to a fair review of entire record?

b. Did the fact that the Defendant was both the first (1st) trial after the pandemic and the first (1st) trial post **Ramos Vs. Louisiana**, 140 S.Ct. 1390? Allow Louisiana District Attorney's and the Louisiana District Judge to impanel a "pro prosecution" jury? When only 46 jurors showed out of 180 subpoenaed and everyone of the 46 presented an excuse of why that Juror could not serve on the Defendant's trial of eight (8) days? Violate the Defendant's Rights?

Questions Number Eleven

11. Should the Louisiana District Judge, Steven C. Grefer, have "sua sponte" ordered testing of the evidence that the Defendant repeatedly informed the Judge was planted by the Westwego Police Detectives, since the planted evidence lead the Jury to the wrong conclusion the Defendant may have committed the fabricated rape, Is that a violation of the Defendant's Constitutional Rights?

a. Did the fact that the Louisiana District Attorney's Office did not order testing either? Violate Burger supra?

b. Did the fact that the Defendant was tricked into choosing a "speedy trial" over testing, violate the Defendant's Constitutional Rights? When the Louisiana District Judge, the "gatekeeper" was the main trickster, and the Judge knew that the Defendant had repeatedly told the Judge that the Defendant was being framed and that since no rape had occurred, explaining How could there be evidence of that fabricated fact be in the Defendant's Westwego apartment? The evidence had to have be planted by corrupt Westwego Police Detective, Christopher T. Fisher, did that violate the Defendant's Pro-Se Constitutional Rights to a Fair Trial?

c. Should defendant's conviction be reversed based on both the Judge's and the States failure to request testing? Based on the Defendant's pleas of the Defendant that he was "factually innocent" of the alleged rapes?

d. Is it a "miscarriage of justice" that Chromatography Gas testing was not done, based on the Defendant's pleas of his factual innocence?

Questions Number Twelve

12. Did the fact that the Louisiana District Judge, Steven C. Grefer, denied the Defendant's request to quash the joiner of criminal offenses, when the alleged criminal offenses allegedly occurred some two (2) years apart and Involved two (2) different victims confuse and prejudice the Jury?

a. Were the facts just to complex for a Louisiana Jury to understand based on multiple witnesses testifying for both the State and the Defense out of order, and the fact that the Defendant's defense was very complex and involved, multiple liars outright lying to protect their own selves, of incidents that occurred over years of petty fighting on Facebook and other web sites?

b. Did that increase the Jury perception of the Defendant's guilt, as to clearly violate the Defendant's Right to be innocent until proven guilty, when the Jury could have clearly thought that the Defendant must be guilty? Based on the number of charges and victims?

c. Was the Louisiana Jury able to correctly separate the various charges and evidence to afford the Defendant a Fair Trial?

d. Should the Louisiana District Judge have severed the criminal offenses to assure the Defendant's Right to a Fair Trial?

e. Does the "right to a fair trial" supersede Louisiana's procedure rule, of Criminal Rules Article 493?

Questions Number Thirteen

13. Did the fact that Louisiana Attorney, Martin E. Regan, refused to refund The Defendant's ten thousand ($10,000) dollar retainer fee, after the Defendant fired Mr. Ragan for lack of assistance of counsel, thereby Forcing the Defendant to represent himself. In fact deprive the Defendant of "Right to Counsel? Since Defendant could not Afford to hire another Louisiana Attorney?

a. Did the Defendant present a "prima facie" case of the above? When the Defendant called Attorney Martin E. Regan, as a Defense witness?

b. What is the Constitutional remedy when a Louisiana Attorney steals the Defendant's retainer fee? And the Office of Disciplinary Counsel is lied too by the Attorney? That the Attorney refunded the money? but, the refund was in fact mailed to an address that the Attorney knew the Defendant did not live? Because the Attorney knew it was legal trickery and that the Defendant was in fact in the Parish Jail right where the Attorney had in fact represented the said Defendant before being terminated by the Defendant? and where the Defendant originally paid the retainer fee to Attorney Martin E. Regan by check?

c. Does that claim rise to a Constitutional violation? Of "no counsel at all?" Because the Attorney stole the retainer fee by fraud?

Questions Number Fourteen

14. Did the overall cumulative errors complained of above in 1 – 13 Rob the Defendant of his United States Constitutional right to a Fair Trial as guaranteed by the United States Constitution?

a. Did the Defendant receive the rights to proceed Pro-Se, as this Honorable Court annotated in **McCoy Vs. Louisiana**, 138 S.Ct. 1500 (2019), in which this Honorable Court stated "the right to defend one self is the Life Blood" Of the United States Constitution, and did the overall cumulative errors Of the Defendant's counsel, the Assistant District Attorney's and the Louisiana District Judge assigned to the cause rob the Defendant of His Sixth Amendment as guaranteed by the Constitution and in **Faretta Vs. California**, 95 S.Ct. 2525 (1975).

b. Did the undue influence placed on the prosecution by Lt. Jason Hippler, and Detective Christopher T. Fisher, who were very close friends of the alleged victims thereby deny the Defendant any chance of a Fair or Impartial Trial as guaranteed by the United States Constitution?

(b)(i)
List of Parties

Petitioner's

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In all Parish Prisons and State Prisons of Louisiana.

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The Governor of Louisiana
Jeff Landry
State Capitol
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District Attorney
Paul D. Connick, Jr.
District Attorney for Jefferson Parish
Appellate Section
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200 Derbigny Street
Gretna, Louisiana 70053

(b)(ii)
Proceedings

1. The Defendant was arrested by Westwego Police on September 08, 2018.

2. September 09, 2018 Louisiana Attorney, John Courtney Wilson, agrees to assist the Defendant Pro-Bono. But later the Defendant fires Mr. Wilson, after the Defendant catches Mr. Wilson in several lies. In which Mr. Wilson destroys "evidence" that proves the Defendant was innocent. And Mr. Wilson gives all the Defendant's personal property away to the very fabricators who put the Defendant in jail falsely.

3. A Louisiana Bill of Information is filed on November 30, 2018. Charging the Defendant with Rape, Sexual Battery, False Imprisonment W/Weapon and Attempted Rape. Some Eighty-Three (83) days after the Defendant's arrest. **(see Exhibit 1).**

4. Defendant is assigned to Louisiana District Judge, Steven C. Grefer, 24th Judicial District Court, Division "J" after State of Louisiana filed a untimely Bill of Information.

5. Defendant plead "not guilty" on November 30, 2018 at arraignment.

6. On December 03, 2018, Defendant is appointed indigent counsel, Price Quenin, Attorney at Law. State of Louisiana Indigent Defender Board. (IDB).

7. On February 05, 2019, Defendant hires Attorney Martin E. Regan and gives Mr. Regan, a ten thousand ($10,000) dollar retainer fee **(see Exhibit 2).**

8. On February 12, 2019, Attorney Martin E. Regan, files one "omnibus motion." The only motion Mr. Regan would file. **(see Exhibit 3).**

9. On April 2019, through September 2019 the Defendant writes several letters to the Louisiana District Judge concerning both John Courtney Wilson and Martin E. Regan's ineffectiveness. **(see Exhibit 4).**

10. On September 09, 2019, Attorney Martin E. Regan withdraws from Defendant's case number 18-7474 in Division "J". But, requests the Defendant be evaluated by mental health. This after Mr. Regan becomes upset the Defendant fired Mr. Regan in open court and Defendant requested pro-se status until repayment of Retainer fees.

11. From September 2019 until June 2020 the Defendant files multiple motions, writs and letters to the court. **(see Exhibit 5) (case management review).**

12. In March 2020 the Jefferson Parish Courts are placed on Covid 19 lockdown. Only Zoom hearings are allowed.

13. On March 18, 2020, Price Quenin, Defendant's stand by counsel files for and argues a "motion for bond reduction without the Defendant knowledge or approval. One of many secret hearings held without the Defendant present. **(see Exhibit 5).**

14. On June 03, 2020, Louisiana District Judge, Steven C. Grefer, convinces the Defendant to withdraw the Defendant's Motion to requesting testing on evidence for "Z-Chlorobezalm-Alononitrile, (CS Gas)". Based on evidence that was planted by corrupt Westwego Police Detective, Christopher T. Fisher. That hearing was by zoom. **(see Exhibit 5).**

15. On June 10, 2020 the Defendant files a motion to recuse on Louisiana District Judge, Steven C. Grefer, and that motion is heard on July 09, 2020. (denied). **(see Exhibit 5).**

16. On September 22, 2020 the Defendant was called to a Zoom hearing without notice. The hearing Involved the legality of some letters written by the Defendant to his ex-girlfriend, Christine Rorabaugh, that the Defendant filed a Motion in Limine, in regard to the letters constitutionality. In this hearing the Assistant District Attorney added to defendant's exhibits. The Defendant placed six into the record. But seven ended up in the record. **(see Exhibit 5).**

17. Between October 2020 and April 2021 the Defendant filed multiple motions, letters and writs in the above styled and number cause **(see Exhibit 5).**

18. On March 26, 2021 the Defendant was again ambushed and called to court without prior notice. In which the State by legal subterfuge filed several motions. Louisiana Criminal Code of Procedure, Articles 719 and 404(b) motions. Both had never been served upon the Defendant ever though the Defendant filed a TIMELY request's to be notified of 404(b) issues. **(see Exhibit 5).**

19. On March 24, and 26, 2021 the Defendant objected to both being ambushed and to the ADA's dumping upon the Defendant documents that were Defendant's own subpoena duces tecum, that the Defendant had filed in his defense. **(see Exhibit 5).**

20. On March 29, 2021 another ambush hearing was held in which the State was granted a 404(b) Motion over the Defendant's objection. The Defendant additionally objected to Being ambushed by the Assistant District Attorney withholding numerous Brady and Kyles Material. **(see Exhibit 5).**

21. On April 06, 2021 another ambush hear was held. As Defendant was never told of any of hearings. In this hearing the State was granted "special jury instructions" over Defendant's objections. **(see Exhibit 5).**

22. On April 12, 2021 the Defendant's trial started. The Defendant objected to the Petit Jury only being comprised of 46 members. 180 were subpoenaed. Defendant additionally objected to more Brady and Kyles material being dumped upon him on the first day of trial. And that the Defendant was overwhelmed. **(see Exhibit 5).**

23. On April 13, through April 21, 2021 the Defendant was on trial. On April 19, 2021 the Louisiana District Judge, Steven C. Grefer, placed on the Defendant several bogus contempt charges in which the Defendant was sentenced to 300 additional days to run consecutive. The Defendant "objected" to the clear interference. **(see Exhibit 5).**

24. On May 06, 13, and 17, 2021 Louisiana District Judge, Steven C. Grefer, illegally changed the record. When he ordered the clerks to Nunc Pro Tunc multiple documents put into the record by the Defendant without any notice to the Defendant. **(see Exhibit 5).**

25. On May 14, 2021. The Defendant's motion for new trial was heard. The Defendant argued the reasons the Defendant should be granted a new trial. **(see Exhibit 5).**

26. On May 18, 2021 the Defendant file a bill of exceptions pursuant to Louisiana Code of Criminal Procedure, Article 841(a)(b). After the Defendant noticed the record being changed Illegally without any notice to the Defendant. **(see Exhibit 5).**

27. On May 19, 2021 the Defendant was sentenced to 35 years for rape and 10 years for sexual battery and 10 years for false imprisonment in regard to Johanna Martinez (J.M.), And 15 years in regard to attempted rape of Rachelle Dutriex, (R.D.). The Defendant objected to the fabrication of the cases. And Repeatedly requested the Louisiana District Judge, Steven C. Grefer, have the common decency to look The Defendant in the eye. While the Judge commits such a "miscarriage of justice." Complaining the Defendant Never raped ANY woman and was in fact framed **(see Exhibit 5).**

28. On May 24, 2021 the Honorable Court signed the appeal notice. **(see Exhibit 5).**

29. On August 24, 25, and 26, 2021 the 24th Judicial District Court, Division J would once Again change the record by illegal nunc pro tunc. A common illegal practice of Louisiana District Judge, Steven C. Grefer to railroad Pro-Se Defendant's who Judge Grefer feels are "troublemakers." **(see Exhibit 5).**

30. On or about August 2021, the Court appoint the Louisiana Appellate Project to represent the Defendant in his direct appeal. The Louisiana Appellate Project is run by Bruce Whittaker, the Assistant District Attorney who outright framed John Thompson in **Thompson vs. Connick ,** 131 S.Ct. 1350. Bruce Whittaker, was very rude to the Defendant and would not even return letters or repeated attempts to explain the sham trial. (Defendant was pro-se). **(see Exhibit 5).**

31. On August 2021 the Louisiana Appellate Project and the Court appointed Baton Rouge Attorney, Prentice White, who's specialty is raising one frivolous error that will never reverse or remand the convicted individual's case. The Defendant filed a supplemental brief and argued the real errors. **(see Exhibit 5),** and **State of Louisiana Vs. John W. Patton**, 347 So. 3d 1070 **(see Exhibit 6).**

32. On November 17, 2021, he Defendant's case was reversed on a Louisiana subterfuge known as errors patent review a trick whereby the State of Louisiana can reverse and remand your case to confuse a higher court or as in my case change the sentencing transcripts. It should be noted that the Defendant and the Judge had words that made the Judge very uncomfortable. "the defendant told the judge to look the defendant in the eye when the judge railroads the defendant" "that the Defendant was being framed." The 5th Court of appeals in **State of Louisiana Vs. John**

W. Patton, 347 So.3d 1070 illegally reversed to remove the Defendant's pleas on innocence out of the record. **(see Exhibit 5).** And **State of Louisiana Vs. John W. Patton**, 347 So.3d 1070. **(see Exhibit 6).**

33. On December 14, 20, 2021, the Defendant filed motions in regard to re-sentencing. The Defendant was already in the custody of Louisiana Department of Corrections. The Defendant wrongly assumed t the Defendant Would be bench warranted back to the 24th Judicial District Court, Steven C. Grefer. This baffled the Defendant who was additionally serving 300 days, Parish Prison sentence. When Defendant's original sentences were ruled invalid. The Defendant should have been remanded back to the Parish. But, as the Defendant learns. Louisiana cares less about the rule of law. **(see Exhibit 5).**

34. On January 03, 2022 the Louisiana Appellate Project and the Court once again they appointed Appellate Attorney, Prentice White, who once again filed a one error brief. With the same error that failed before. **(see Exhibit 5).** And **State of Louisiana Vs. John W. Patton**, 355 So.3d 156.
(see Exhibit 7).

35. On January 05, 2022, Louisiana District Judge, Steven C. Grefer, denied the Defendant's request to have the complete record transcribed. Which baffled the Defendant? As the Defendant represented himself. And thereby knew wherein each and every objection and error lay. The Judge granted the Louisiana Appellate Projects motion for transcripts which covered only the witness testimony and not nearly all the errors and objections. Defendant feels this was contrived. **(see Exhibit 5).**

36. Between January 2022 and December 2022, the Defendant repeatedly motioned the courts. Both by motions and writs. For the Honorable Court order the record supplemented. That multiple parts of the entire record were intentionally left out. And that it gave a false impression that the Defendant did not "object to issues", when the opposite is true. **(see Exhibit 5).**

37. On or about March 02, 2023 the Defendant petitioned the Louisiana Supreme Court for review of the Fifth Court of Appeals for Louisiana, **22-KA-112, (355 So.3d 156).**
(see Exhibit 7) The Writ of Certiorari is a discretionary review in Louisiana's highest court. **(see Exhibit 5).** And Supreme Court brief. **(2023-KO-00151) (see Exhibit 8).**

38. On November 08, 2023, the Defendant's writ application was denied by the Louisiana Supreme Court without written order. The court refused to review any of the errors.
(see Exhibit 9).

(c)
Table of Contents

(c)(i)
Constitutional Errors to be Reviewed by the Supreme Court

1. Appellant has been denied his constitutional right to Appellate Review based upon a complete record, by the District Court withholding major portions of the trial record, in violation of Art. 1 §19 of the Louisiana Constitution and the 14th Amendment to the United States Constitution.

2. The prosecutor violated *Napue v. Illinois* when he knowingly used perjury to obtain appellant's conviction in violation of the 6th and 14th Amendments to the United States Constitution.

3. Appellant was denied his right to be charged by a Grand Jury Indictment for the infamous crimes that he is accused of in violation of the 5th and 14th amendments of the U.S. Constitution.

4. Appellant was denied his right to Confrontation/Cross-examination as guaranteed by the 5th, 6th and 14th Amendments to the United States Constitution when he was denied the opportunity to present evidence and effectively cross-examine witnesses.

5. Appellant was denied his Constitutional right to testify on his own behalf when the trial court limited his testimony in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

6. The judge repeatedly reprimanded Appellant and held Appellant in contempt in the presence of the jury violating Appellant's Sixth and Fourteenth Amendment right to a fair trial.

7. The prosecutor made punitive remarks against Appellant for exercising his right to represent himself in violation of Faretta, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

8. Appellant was denied his right to a fair trial with an impartial jury in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

9. The trial court erred by not granting Appellant's Motion for further testing done on State's Evidence for mixture of Z-Chlorobezalm-Alononitrile (C.S. Gas) in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

10. Appellant was denied his right to a fair trial when the trial court refused to severe the charges for the purpose of eliminating prejudicial confusion.

11. John W. Patton, is actually innocent of the crimes of rape, attempted rape, and sexual battery, has maintained his innocence from the very beginning, and a severe miscarriage of justice has occurred in violation of Due Process and the prohibition of Cruel and Unusual Punishment.

12. Appellant was denied his right to counsel of choice through Martin Reagan in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

13. Appellant was denied due process of law when Appellant was given no tools to defend himself against the State's vast resources.

(c)(ii)
Index of Authorities

Supreme Court & Federal Cases

Federal Statutes

Louisiana Cases

Louisiana Statutes

Texas Cases

(e)
Concise Statement Basis for Jurisdiction

The jurisdiction for this writ of certiorari lies in **28 U.S.C.A. 1251(a)** And **28 U.S.C.A. 1257(a).**

The Petitioner feels that this Honorable Supreme Court should and ought to exercise its original jurisdiction to correct the injustices and unconstitutional practices that the State of Louisiana is perpetrating upon it citizens that are complained herein.

Statement of the Case

On November 30, 2018, the Jefferson Parish District Attorney filed a bill of information charging petitioner with attempted second degree rape, false imprisonment while armed with a dangerous weapon, second degree rape, and sexual battery. Petitioner pled not guilty to the charged offenses.

During the course of pre-trial proceedings, defendant requested to represent himself. On October 9, 2019, after a hearing, the trial court granted petitioner's request to represent himself and appointed the Public Defenders Office as standby counsel. Following the resolution of numerous pre-trial motions, the matter proceeded to trial before a twelve-person jury on April 12, 2021. After considering the evidence presented, the jury, on April 21, 2021, unanimously found petitioner guilty on all four counts.

Petitioner thereafter filed a motion for new trial and motion for appeal. On May 14, 2021, the trial court denied petitioner's motion for new trial and granted his motion for appeal. Thereafter, on May 19, 2021, the trial court sentenced defendant to imprisonment at hard labor for 15 years on count one, 10 years on count two, 35 years without benefit of parole, probation, or suspension of sentence on count three, and 10 years without benefit of parole, probation, or suspension of sentence on count four. The trial court ordered that counts two, three, and four be concurrently served "with one another" and consecutively served to count one, for a total of 50 years to be served in actual custody.

Petitioner's appeal was subsequently lodged in the 5th Circuit Court of Appeal. On November 17, 2021, the 5th Cir. Observed that upon granting petitioner's motion for appeal on May 14, 2021, the trial court was without jurisdiction to subsequently sentence petitioner on May 19, 2021. In light of its finding that petitioner's motion for appeal was prematurely granted before sentencing, the 5th Cir. vacated petitioner's sentences and remanded the matter for resentencing on all four counts.

On December 6, 2021, the trial court sentenced petitioner to the same terms of imprisonment previously imposed. In addition, the trial court ordered petitioner to comply with the sex offender registration requirements. Petitioner thereafter filed a motion for appeal. On December 16, 2021, the trial court granted the appeal and appointed the Louisiana Appellate Project to represent petitioner. On December 21, 2022, the 5th Cir. Denied petitioner's appeal.

On March 02, 2023, the defendant filed a writ of certiorari in the Louisiana Supreme Court.

On November 08, 2023 the Louisiana Supreme Court denied the Petitioner's writ of certiorari without written order. **(See Exhibit 9)**

The following United States Supreme Court, writ of certiorari is due on February 06, 2024.

On January 12, 2024 the Petitioner would mail from the B.B. Sixty Rayburn Mailroom. A Motion to Leave to Extend the time to File a Petition for Writ of Certiorari. **(See Exhibit 16)**

Assignment of Reasons for Granting of the Writ

1. Appellant has been denied his constitutional right to Appellate Review based upon a complete record, by the District Court withholding major portions of the trial record, in violation of Art. 1 §19 of the Louisiana Constitution and the 14th Amendment to the United States Constitution.

2. The prosecutor violated ***Napue v. Illinois*** when he knowingly used perjury to obtain appellant's conviction in violation of the 6th and 14th Amendments to the United States Constitution.

3. Appellant was denied his right to be charged by a Grand Jury Indictment for the infamous crimes that he is accused of in violation of the 5th and 14th amendments of the U.S. constitution.

4. Appellant was denied his right to Confrontation/Cross-examination as guaranteed by the 5th, 6th and 14th Amendments to the United States Constitution when he was denied the opportunity to present evidence and effectively cross-examine witnesses.

5. Appellant was denied his Constitutional right to testify on his own behalf when the trial court limited his testimony in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

6. The judge repeatedly reprimanded Appellant and held Appellant in contempt in the presence of the jury violating Appellant's Sixth and Fourteenth Amendment right to a fair trial.

7. The prosecutor made punitive remarks against Appellant for exercising his right to represent himself in violation of Faretta, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

8. Appellant was denied his right to a fair trial with an impartial jury in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

9. The trial court erred by not granting Appellant's Motion for further testing done on State's Evidence for mixture of Z-Chlorobezalm-Alononitrile (C.S. Gas) in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

10. Appellant was denied his right to a fair trial when the trial court refused to severe the charges for the purpose of eliminating prejudicial confusion.

11. John W. Patton, is actually innocent of the crimes of rape, attempted rape, and sexual battery, has maintained his innocence from the very beginning, and a severe miscarriage of justice has occurred in violation of Due Process and the prohibition of Cruel and Unusual Punishment.

12. Appellant was denied his right to counsel of choice through Martin Reagan in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

13. Appellant was denied due process of law when Appellant was given no tools to defend himself against the State's vast resources.

Argument Amplifying Reasons for Granting the Writ

1. Appellant has been denied his constitutional right to Appellate Review based upon a complete record, by the District Court withholding major portions of the trial record, in violation of Art. 1 §19 of the Louisiana Constitution and the 14th Amendment to the United States Constitution.

The 24th judicial district court was ordered by this court to provide this court with a complete trial record. The 24th JDC has provided a record that is missing an entire three days of trial and other portions throughout the trial.

The **Louisiana Constitution, Article I, Section 19** Right to Judicial Review provides:

> "No person shall be subjected to imprisonment... without the right of judicial review based upon a complete record of all evidence upon which the judgment is based..."

In the interest of justice and judicial economy, appellant has filed a motion to supplement the record in this court. This Court of Appeal denied Appellant's Motion to Supplement the Record.

Material omissions from the transcript of the proceedings at trial bearing on the merits of an appeal will require reversal. **La. C.Cr.P. art. 843** requires, in all felony cases, the recording of "all of the proceedings, including the examination of prospective jurors, the testimony of witnesses, statements, rulings, orders, and charges by the court, and objections, questions, and arguments of counsel."

On June 3, 2020, Appellant filed and a Motion to preserve transcription audio and records of all proceedings. The judge granted the motion, and yet here we are missing more than half of the transcripts.

Reasons for Granting the Writ

Criminal Defendant's in Louisiana should be entitled to "a true and complete" copy of their trial transcripts. And Louisiana should offer no less protection then the United States Constitution. Those transcripts should include all hearings, trial testimony, and bench hearings. Petitioner repeatedly requested the said transcripts by motion to supplement the record. And was denied. Thus guaranteeing the Louisiana Supreme Court denial based on incomplete record. A "double edge" sword in Louisiana.

Conclusion

Appellant is raising claims challenging the legality of the composition of the jury pool, the selection of the jurors, limiting opening statements cumulatively with other severe limitations, and improper remarks of the prosecutor in closing arguments. Appellant specifically requested the missing portions of the record. Appellants convictions and sentences should be vacated, and remanded for a new—completely and accurately recorded—trial.

2. The prosecutor violated *Napue v. Illinois* when he knowingly used perjury to obtain appellant's conviction in violation of the 6th and 14th Amendments to the United States Constitution.

The prosecution allowed its witness to testify falsely on at least three instances, uncorrected, and in violation of Napue. The three instances of perjury are listed below and proven to be false by scientific evidence as follows:

a) At trial, J.M. testified that she bit Appellant's penise, causing injury. Appellant showed an enhanced photo of his penise that police took immediately after the report was made. The photo showed there were no bite marks, or any other injuries. The prosecutor knew J.M.'s testimony was false and allowed her to give the false testimony uncorrected. Appellant also introduced pictures of a bite mark on his arm which further showed perjury and inconsistent statements.

b) J.M. also testified that she threw her panties into the living room of Appellant's home before leaving. During the arrest of Appellant, the police deployed C.S. gas that saturated everything in the living room. The panties were recovered by police and turned over to the state as evidence. The crime lab tested the panties for DNA evidence, and the lab tech. testified that the panties had no residue of C.S. gas. The scientific testing and the expert witness completely contradict J.M.'s testimony and prove that she committed perjury. The prosecution knew of the lab results before J.M. gave her testimony and allowed her to testify falsely.

c) J.M. testified that Appellant held her at knife-point, and she grabbed the knife with her bare hands, attempted to take the knife from him. The police took photos of her hands, and the photos showed no injury consistent with her testimony. The police searched the house looking for the knives that she described, and they weren't there. The photos were shown to the jury at trial, and prove that the prosecution once again allowed perjury to be introduced uncorrected.

d) J.M. testified that Appellant sent her a text asking her if she has ever been with a black man, the prosecution produced all text messages between them, and that message was nowhere in the conversation. The prosecution introduced the text messages as exhibits, was fully aware of all of them, would have definitely used that message to bolster J.M.'s credibility and knew for a fact that the message didn't exist. Yet the prosecution still allowed her to testify falsely.

In **Napue v. Illinois**, 360 U.S. 264 (1959), the Court held that there is no difference between false evidence offered by the State and false evidence that goes "uncorrected when it appears" **360 U.S. at 268**. The Court accordingly held:

> "...that a State may not knowingly use false evidence, including false testimony...does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jut's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." ***Id* at 269**

In **Kirkpatrick v. Whitley**, 992 F. 2d 491 (5th Cir. 1993), the Court explained the following:

> "We observe that different standards of materiality apply to *Brady* claims and claims that the prosecution has knowingly used perjured testimony or false evidence. The materiality standard for *Brady* claims... is as follows: The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would be different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. Conversely, if the Prosecutor has knowingly used perjured testimony or false evidence, the standard is considerably less onerous: **the conviction must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's verdict...**" 992 F.2d at 497 (citations and quotation marks omitted) (underline added)

Reasons for Granting Writ

The lower Louisiana court of appeals. Reasoning was contrary to the "rule of law." In that the State knowingly used perjury to contrive a fabricated conviction of an innocent man. And that those claims were defaulted by the Petitioner's failure to "object." The Petitioner did object. The Judge and court reporter intentionally removed that part of the transcription. It does happen quite regular in Louisiana. Due in part to an unknown Louisiana Law that prohibits the Petitioner or a Louisiana Citizen from obtaining the "audio" portion of the trial. Which bars either your Attorney or you from obtaining that. This in turn creates a situation where ADA's and Judge's in can control what is placed into the transcripts. It is impossible to prove you were railroaded with

this law intact. **See William A. Pesnell, Vs. Jill Sessions,** 274 So.3d 686, (La 2nd Cir 05/19).

Conclusion

The credibility of J.M. is clearly material and was relied upon by the prosecutor and the jury The evidence proves that J.M. never bit Appellant on his penise, J.M. did not cut her hands and in turn did not grab a knife, J.M. did not throw her panties into the living room, J.M. is not a reliable witness, and the panties were not in Appellant's house until at least after Appellant was arrested. The truth that J.M. testified falsely and that evidence was tampered with calls into question the reliability of the entire case. Appellant's conviction and sentence should be vacated.

3. Appellant was denied his right to be charged by a Grand Jury Indictment for the infamous crimes that he is accused of in violation of the 5th and 14th amendments of the U.S. constitution.

Appellant was charged with crimes that are infamous crimes, and under the 5th and 14th Amendments of the U.S. Constitution, the court should have obtained a presentment or indictment from the grand jury. Appellant made a timely objection to the filing of a Bill of Information, pointed out that the crimes of which he is accused are infamous crimes, and demanded a grand jury indictment.

The 5th Amendment provides, in pertinent part, "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

Well over 130 years ago, SCOTUS held that the grand jury provision of the 5th amendment does not apply to state prosecutions.[1] Although the **Hurtado** court's reasoning has been specifically rejected,[2] the holding of the case continued to be cited with approval by SCOTUS.[3]

In the dissenting opinion of Ramos v. Louisiana, the dissenter pointed out that the majority's holding will also call **Hurtado** into question.[4]

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[1] **Hurtado v. California,** 110 U.S. 516 (1884)
[2] **Powell v. Alabama,** 287 U.S. 45, 65-66, 53 S.Ct. 55, 77 L.Ed. 158 (1932)
[3] **Rose v. Mitchell,** 443 U.S. 545, 61 L.Ed.2d 739 (1979) & **Beck v. Washington,** 369 U.S. 541, 545, 82 S. Ct. 955, 8 L.Ed.2d 98 (1962)
[4] **Ramos v. Louisiana,** 140 S.Ct. 1390 (2020) "dissenting opinion" (the Grand Jury Clause of the Fifth Amendment, a provision that, like the Sixth Amendment jury-trial right, reflects the importance that the founding generation attached to juries as safeguards against oppression. In

The 5th Amendment has five clauses: **1) Grand Jury Clause** 2) Double Jeopardy Clause 3) Self-Incrimination Clause 4) Due Process Clause 5) Takings Clause. SCOTUS has repeatedly held that all apply to states through the 14th amendment, except one, the Grand Jury Clause. The courts have relied on a case that is over 130 years old, that was handed down in the Jim Crow Era following the Reconstruction Era, and that remains in direct conflict with the 14th Amendment.

A. 14th Amendment—Incorporation

The 14th Amendment states "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." The intent of the 14th Amendment was clearly to incorporate the protections contained in the Bill of Rights, not just portions of it. The 5th and 14th Amendments afford the same due-process rights; the former "applies this limitation to the federal government" while the latter "imposes the same restriction on the states."[5] The Privileges or Immunities Clause is part of the 14th Amendment and is an alternative "vehicle for incorporation." **Timbs, 139 S. Ct. at 691 (Gorsuch, J., concurring)**[6] The Grand Jury requirement for infamous crimes is " a constitutionally enumerated right understood to be a privilege of American citizenship,"[7] and therefore applies in full to the states.

B. 14th Amendment Incorporates the Grand Jury Clause

"According to [Justice Hugo] Black, 'one of the chief objects that the provisions of the [Fourteenth] Amendment's first section, separately, and as a whole, were intended to accomplish was to make the Bill of Rights, applicable to the states.' In other words, the Fourteenth Amendment in general, and the due process clause in particular, incorporates all of the rights included in the Bill of Rights, nothing more nor less." [8] In considering whether the 14th Amendment incorporates a protection contained in the Bill of

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Hurtado v. California, 110 U.S. 516 (1884), the Court held that the Grand Jury Clause does not bind the States and that they may substitute preliminary hearings at which the decision to allow a prosecution to go forward is made by a judge rather than a defendant's peers. That decision was based on reasoning that is not easy to distinguish from Justice Powell's in **Apodaca**.... If we took the same approach to the **Hurtado** question that the majority takes in this case, the holding in that case could be called into question.)

[5] **In re Winship**, 397 U.S. 358 (1970)

[6] **Timbs v. Indiana**, 139 S. Ct. 682 (2019)

[7] *Id.* at 698.

[8] **Joshua Dressler**, Understanding Criminal Procedure, 2d Ed.

Rights, the court must ask whether the right guaranteed—not each and every particular application of that right—is fundamental or deeply rooted.

C. The Grand Jury is a fundamental and deeply rooted right

The right of individual citizens to be secure from an open and public accusation of crime, and from the trouble, expense and anxiety of a public trial, before a probable cause is established by the presentment and indictment of a grand jury, in case of high offences, is justly regarded as one of the securities to the innocent against hasty, malicious and oppressive public prosecutions, and as one of the ancient immunities and privileges of English liberty.[9]

In summing up these privileges, as intended to be secured by the American constitutions, Chancellor Kent states them thus:

> "The right of personal security is guarded by provisions transcribed into the constitutions in this country from Magna Charta and other fundamental acts of the English parliament, and enforced by additional and more precise injunctions. The substance of them is, that no person, except on impeachment, and in cases arising in the naval and military service, shall be held to answer for a capital or otherwise infamous crime, or for any offence above the common law degree of petite larceny, unless he shall have been previously charged on the presentment or indictment of a grand jury."[10]

The 5th Amendment was recommended in 1788 by the Convention of the Commonwealth of Massachusetts which ratified the Federal Constitution, and was approved by Congress and ratified by the states in substantially the form in which it was recommended, becoming effective in 1791.

D. Louisiana is using the Bill of Information for malicious and oppressive advantages over its citizens.

i. The state is well known for maliciously adding charges by bill of information for the oppressive purpose of re-arresting a citizen in the case the citizen makes bail.

ii. The state is using the Bill of Information to select the judge of its choice. This practice has already been deemed unconstitutional in Orleans Parish, but this method is still being used in other parishes; one specifically is Caddo Parish and indirectly, Jefferson Parish.

iii. The state is using the Bill of Information to hastily charge possible witnesses for the purpose of coercing favorable testimony with incarceration.

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[9] **Jones v. Robbins**, 8 Gray 329, 74 Mass. 329, (1857)
[10] **Kent Com. 12**

iv. This Supreme Court Should Overrule the Controlling Precedent of the Jim Crow Era Ruling of Alexander and Hurtado

Reasons for Granting the Writ

The ruling of the U.S. Supreme Court came at a time when some believed that none of the Fifth and Sixth Amendment rights applied to the states. Since then, all of the Sixth Amendment and all but this Clause of the Fifth Amendment have been applied to the states. The ruling of **Hurtado** has not been considered since, but it was mentioned by SCOTUS in **Ramos v. Louisiana**. In **Ramos**, a dissenting justice noted that its holding will without a doubt call into question **Hurtado**. It indeed does, and this Court should be the first to correct this blight on the Constitution and on our judicial integrity. Ramos embarrassed Louisiana in front of the entire world; don't let that happen here.

Conclusion

The SCOTUS decision in **Hurtado** is clearly erroneous. Since **Hurtado**, SCOTUS has repeatedly incorporated several other provisions of the Bill of Rights through the 14th Amendment. **Ramos v. Louisiana** has absolutely created a momentum of correcting old bad law. This issue is no different. The Grand Jury Clause is the last portion of the 5th Amendment that needs to be incorporated. The Grand Jury is fundamental and deeply rooted in our Nation's history and tradition from it's very conception.

4. 6th to Appellant was denied his right to Confrontation/Cross-examination as guaranteed by the 5th, and 14th Amendments to the United States Constitution when he was denied the opportunity present evidence and effectively cross-examine witnesses.

The trial court made numerous erroneous decisions to restrict Appellant's Sixth Amendment right to confrontation, to cross-examination, and to present a defense when it restricted Appellant's questioning of several witnesses. The specific examples are listed below to the best of Appellant's ability without the appellate record:

Restricted cross-examination/impeachment of Detective Fisher

On cross-examination of Det. Fisher, Appellant questioned Fisher about prior police misconduct, prior investigations, and prior convictions of Fisher; the state objected, and the judge sustained the objection. Almost every other question Appellant asked was objected to and sustained. Appellant was denied his right to effectively confront and cross-examine the witness. The following line of questioning is relevant to the credibility of the witness and the reliability of the investigation:

Defense: Were you terminated?

State: Objection.

Court: Sustained.

Defense: Fired?

State: Objection.

Court: Sustained.

Restricted cross-examination/impeachment of Christina Rorabaugh

On cross-examination of Christina Rorabaugh about the medication she is on, the state objected, and the court sustained the objection. Appellant attempted to introduce the pending criminal charges of Rorabaugh for the purpose of showing bias, and showing motivation to testify falsely. The state again objected, and the court again erroneously sustained the objection. Appellant repeatedly requested the judge to instruct the witness to answer questions, and each time the judge denied the request.

Restricted cross-examination/impeachment of J. Martinez

On cross-examination of Martinez, Appellant was going through text messages (State exhibits) and questioning J.M. about them and identifying them for her to agree, disagree, or explain. This is the exact same way the prosecutor started his direct. Unlike with the prosecutor, the judge stopped Appellant and reprimanded him for commenting on the exhibits instead of asking questions.

Shortly after the judge interrupted cross-examination, Appellant asked J.M. if she ever told him her daughter's name, J.M. said she doesn't remember, so Appellant showed the prosecution's exhibit #32 & 5; the judge again interrupts and gives instructions to Appellant at a bench conference.

Appellant asked J.M. about something she said that was inconsistent with earlier testimony, the prosecutor objected, and the judge sustained the objection. This was another missed opportunity to impeach J.M.'s credibility by showing that she can't keep her story straight. The entire point of cross-examination is to expose inconsistencies within the witness's testimony.

When Appellant was questioning J.M about her statement that she made to the 911 operator, Appellant asked her, "Why didn't you say rape...or simple battery?" **The judge reprimanded Appellant, out loud, from across the courtroom, and in front of the jury** and said, "Keep planting ideas in the jury's mind. I can only assume it's intentional. If it happens in the future, you will lose your Sixth Amendment right to pro se." This planted in the jury's mind that Appellant is trying to manipulate them. Besides the

constant admonishments and contempt charges in front of the jury, —which requires reversal alone—the judge erred in interfering with Appellant's right to cross-examine this witness on a legitimate question that Appellant and jury had the right to have answered.

Again, during the cross-examination of J.M. about her statement to Officer Norton, Appellant attempted to play Norton's body cam footage to show inconsistencies in her testimony and to show that she has committed perjury. Again, the prosecutor objected and claimed that there is no legal basis to just play the video, and of course the judge sustained the objection. Why did the judge ignore his constitutional duty to instruct Appellant on the proper method for introducing the evidence? The judge didn't instruct Appellant because Appellant did exactly what is required by law. Appellant asked J.M. about her statement to Norton (brought the statement to the attention of the witness), gave her the opportunity to testify truthfully about what she said (give the witness the opportunity to admit or deny making the statement), and attempted to play the video after she testified inconsistently about her statement.[11] The judge made a severely prejudicial evidentiary ruling, and the judge should have done whatever it takes for to the evidence properly admitted to ensure a fair adversary process.

Restricted cross-examination of Sitara Shirwani

Shirwani was a lab technician at the Jefferson Parish Crime Lab who was admitted as a DNA expert. Appellant asked her if she is aware of misconduct by the lab, and if she is aware of Fred Zain. The prosecutor objected and claimed the questions were irrelevant. Misconduct of the lab can never be irrelevant when the credibility of the lab results may determine guilt or innocence, especially when the lab has been caught falsifying test results to favor prosecution.

Restricted cross-examination of Rachelle Dutreix

During cross-examination of Dutreix, Dutreix testified that she had no contact with Appellant after October 29th, and Appellant attempted to introduce a facebook conversation to expose her perjury. The prosecutor objected, and the judge sustained.

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[11] **La. C.E. Art. 613 Foundation for extrinsic attack on credibility** (Except as the interest of justice otherwise require, extrinsic evidence of bias, interest, or corruption, prior inconsistent statements, conviction of crime, or defects of capacity is admissible after the proponent has first fairly directed the witness' attention to the statement, act, or matter alleged, and the witness has been given the opportunity to admit the fact and has failed distinctly to do so.)

Dutreix testified that Appellant posted online that she was smoking marijuana, drinking and driving with her daughter in the car, and he posted her information on a site called "scamboard"; Appellant then asked her if that made her "pissed off." The judge interrupted before she could answer, reprimanded Appellant, and held Appellant in contempt. Not only did the judge prevent Appellant from getting extremely important testimony, but the judge also made Appellant look like a bad person by reprimanding him during his questioning of the witness. Appellant's defense is that these women were angry with him and colluded to falsely accuse him of these crimes to get retribution and property from his conviction. Dutreix was on the verge of expressing just how angry she was with him, and the judge suppressed that very important fact from the jury by interrupting.

Restricted direct-examination of Dr. Richard Paddock

Both accusing witnesses testified that Appellant used drugs and that Appellant could not obtain erection, so Appellant put Dr. Paddock on the stand to contradict that accusation. Dr. Paddock testified that Appellant never complained of erectile dysfunction, and if Appellant would have, the Dr. would have prescribed medication for that. Appellant asked Dr. Paddock if he noticed drug use in Appellant since Appellant was drug tested by the Doctor at every appointment, and the state objected and the judge sustained. Appellant asked Dr. Paddock about known side effects when testosterone is mixed with other meds, the state objected, and the judge sustained the objection.

Appellant was not allowed to recall Christina Rorabaugh and J. Martinez to impeach with recorded prior statements

Appellant moved to call Christina Rorabaugh and J. Martinez to testify so he could show inconsistencies and demeanor with the videos of their prior interviews. The prosecutor objected to recalling the witnesses, and claimed that Appellant had the chance to cross examine them already. **Appellant argued that his cross-examination of them was shut down by the court**, and both were subpoenaed as defense witnesses. In conclusion, the only way the judge would allow Appellant to introduce the prior statements is if the witnesses are not on the stand. This is a denial of Appellant right to cross-examine and to present a defense.

Law and Argument

Detective Fisher

In **Greene v. Wainwright,**[12] the court held that the trial court erred in preventing the defendant from cross-examining the police officer about his mental condition and about certain criminal actions in which the officer was allegedly involved in, violating the defendant's Sixth Amendment confrontation rights . The case at hand is no different. Detective Fisher is as important to the investigation and the prosecution's case as any other key witness. Police misconduct and collusion is the defense.

Christina Rorabaugh

The trial judge denied Appellant the opportunity to question Rorabaugh about medications she was taking and about pending charges she has in the same district attorney's office that she was testifying in favor of.

The medication issue is relevant to her state of mind and is the same issue mentioned above in **Greene v. Wainwright.**

Appellant has an absolute right to introduce evidence of pending charges of the witness to show motive and bias. In **State v. Vale,**[13] the Louisiana Supreme Court held, "A witness's bias or interest may arise with arrests or pending criminal charges, or the prospect of prosecution, even when he has made no agreements with the State..." This is another clear denial of Appellant's right to cross-examine.

J. Martinez

The trial judge stopped Appellant from laying a foundation for questions, from using previously introduced exhibits to impeach, from asking questions that were relevant and material, and from introducing inconsistent statements even after following the rules of the Code of Evidence.

In **Davis v. Alaska,**[14] SCOTUS observed that, "the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness." In **Delaware v. Van Arsdall,**[15] SCOTUS reaffirmed *Davis*, and held that "a criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on part of the witness, and thereby 'to expose to the jury facts from which jurors... could

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[12] 634 F.2d 272 (5th Cir. 1981)
[13] 666 So.2d 1070 (La. 1/26/96)
[14] 94 S.Ct. 1105 (1974)
[15] 106 S.Ct. 1431 (1986)

appropriately draw inferences relating to the reliability of the witness.'" Speculation cannot justify exclusion of cross-examination with such strong potential to demonstrate the falsity of the witness.[16]

In **State v. Van Winkle**,[17] the Louisiana Supreme Court held "that hearsay evidence supporting the defendant's theory of the case and undermining the state's lead witnesses was relevant; excluding it mandated reversal."(Citing **State v. Vigee**)

Davis v. Alaska also pointed out that "the state's policy interest...cannot require yielding of so vital a constitutional right as the effective cross-examination for bias of an adverse witness."[18]

Sitara Shirwani

The question of misconduct at the lab is obviously relevant and is covered by all controlling caselaw mentioned above.

Rachelle Dutreix

Appellant was denied the right to introduce evidence to show the jury that Dutreix was committing perjury and the right to question her about motive. Then the judge went even further and charged Appellant with contempt of court to discourage Appellant from cross-examining her. Appellant was effectively showing that Dutreix was furious with him and showing that she had a great motive to fabricate these charges on Appellant, and the judge completely suppressed that from the jury. This egregious act of the trial judge absolutely requires reversal. **The judge not only stopped Appellant from cross-examining the witness, but he punished the Appellant for doing so.** No conviction obtained in this manner should stand in the United States of America.

Reasons for Granting the Writ

The 5th Cir. first ruled that there was no abuse of discretion by the trial court, which is a standard that does not apply to these confrontation violations. Then the 5th Cir. cited the five factors to be considered, and only stated that even if there were violations, they are harmless. The 5th Cir. never ruled as to whether there was or was not a violation. This ruling on these serious confrontation violations equate to no ruling at all. This Supreme Court should consider these claims de novo.

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[16] **Olden v. Kentucky**, 109 S.Ct. 480 (1988)
[17] 658 So.2d 198 (La. 1995)
[18] 415 U.S. at 320

Conclusion

In **State v. Gibson**, 391 So.2d 421 (LA. 1980), this Court adopted the test for "harmless error," as stated in **Chapman v. California**, 87 S.Ct. 824 (1967). Under that test, the question is whether there is a reasonable possibility that the admission or exclusion of certain evidence "might have contributed to the conviction." Furthermore, the error must be "harmless beyond a reasonable doubt." The significance of each denial of cross-examination alone is enough to require reversal; the cumulative effect of each denial without a doubt mandates reversal.

5. Appellant was denied his Constitutional right to testify on his own behalf when the trial court limited his testimony in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

Throughout the entire trial, the court refused Appellant the right to present evidence, to properly cross-examine witnesses, to impeach witnesses, to show bias and motive, and as if that where not enough to create a one sided trial, the court also severely limited Appellant's right to testify on his own behalf.

The right to testify on one's own behalf at a criminal trial has sources in several provisions of the Constitution.[19] In fact, the most important witness for the defense in many criminal cases is the defendant himself.[20] Even more fundamental to a personal defense than the right of self-representation, which was found to be "necessarily implied by the structure of the Amendment,[21] is an accused right to present his own version of events in his own words.

Just as a state may not apply an arbitrary rule of competence to exclude a material defense witness from taking the stand, it also may not apply a rule of evidence that permits a witness to take the stand, but arbitrarily excludes material portions of his testimony. SCOTUS reversed the judgment of conviction, holding that when a state rule of evidence conflicts with the right to present witnesses, the rule may "not be applied mechanistically to defeat the ends of justice," but must meet the fundamental standards of due process.[22]

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[19] **Rock v. Arkansas**, 107 S.Ct. 2704 (1987)
[20] *Id.*
[21] **Faretta v. California**, 422 U.S. 806 (1975)
[22] **Chambers v. Mississippi**, 93 S.Ct. 1038 (1973)

In **Rock v. Arkansas**[23], the defendant exercised her right to testify in her own behalf—just as in this case—and the judge restricted portions of her testimony that she remembered after hypnosis therapy. In this case, the trial judge went ten steps further and cut Appellant off completely and said, **"That's it, you're done testifying. We've heard enough."** SCOTUS has determined that far less egregious behavior of the court "infringes impermissibly on the right of a defendant to testify on his on behalf.[24]

Simply allowing Appellant to get on the stand did not satisfy his right to testify and present a defense. From the very first SCOTUS case explicitly identifying the right to testify as a fundamental and substantial right, the trial court only restricted the defendant on specific portions of her testimony. The Louisiana Supreme Court also ruled that restricting portions of the defendant's testimony was clear error requiring reversal.

Conclusion

As demonstrated above, the right to testify on one's own behalf is such a fundamental and substantial right of the accused that a test for harmless error cannot be applied here. Such an egregious error requires a new trial. Appellant's conviction and sentence should be vacated, and remanded for a new trial.

6. The judge repeatedly reprimanded Appellant and held Appellant in contempt in the presence of the jury violating Appellant's Sixth and Fourteenth Amendment right to a fair trial.

Throughout the entire trial, from jury selection to the sixth day of an eight-day trial, the judge repeatedly reprimanded Appellant in the presence of the jury. The judge even on several occasions shouted at Appellant and charged him with contempt. This was done at the most prejudicial of times, like during cross-examination. The judge cut Appellant off during opening statements, cross-examination, and even while testifying on his own behalf. All of the was done in a sarcastic and demeaning manner, and it was done repeatedly in the presence of the jury. This severely deprived Appellant of his right to a fair trial. Appellant tried repeatedly to recuse the judge from the case, filed pretrial judiciary complaints, and requested a mistrial for this very reason.

On the third day of trial, during cross-examination of Detective Fisher, the judge reprimanded Appellant in front of the jury and told him to stop testifying. Appellant made some remark the judge didn't like and so the judge threatened to forbid Appellant from representing himself. The judge reprimanded Appellant at the bench but did so loud enough for the jury to hear the judge's threats.

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[23] 107 S.Ct. 2704 (1987)
[24] *Id.*

On that same day, during cross-examination of Cristina Rorabaugh, Appellant tried to introduce her pending charges to show motive and bias. At some point during the discussion of admissibility, a shouting match ensued between the judge and Appellant, in the presence of the jury. The judge said he is taking away Appellant's pro se privilege. The judge told the prosecutor to call the district attorney, I'm assuming for permission, since the judge was practically working for the prosecution.

On the fourth day of trial, during cross-examination of J. Martinez, Appellant asked Rorabaugh a question to lay foundation to play her prior inconsistent statement, the state objected, and Appellant—at a bench conference—argued that her testimony is inconsistent. The judge again yelled loudly—in the presence of the jury— at Appellant and ordered him to get back to the defense table.

On the fifth day of trial, during cross-examination of Dutreix, Appellant asked her if she was "pissed off" about the things he said, and the judge immediately reprimanded Appellant and charged him with contempt. Again, the Judge did this out loud and in the presence of the jury.

Law and Argument

It is error for a district judge to reprimand the Defendant's attorney or witnesses in the presence of the jury, in the trial of a criminal case.[25] The Louisiana Supreme Court found that a trial judge abused contempt charges for doing much less than the judge in this case.

In **State v. Hammler**,[26] the Louisiana Supreme Court found that "while defense counsels' remarks and questions may have been somewhat repetitious occasionally, their conduct clearly did not merit or justify continuous reprimands of such severity... We find that the many interventions by trial judge in this case deprived the defendants of the fair trial to which they were constitutionally entitled. The cumulative effect of the judge's remarks was highly prejudicial to the defense, very possibly to the extent that the jury may have been given the impression that the judge considered the defendant's case to be of little substance. See **United States v. Coke**,[27] We note that there was not even any attempt on the part of the trial judge to cure the prejudice engendered by his remarks.[28]

Appellant did try to recuse the judge before trial, filed judiciary complaints on the judge prior to trial, moved for a recusal during trial, and even moved for a mistrial pointing to the judge's behavior as cause.

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[25] **State v. Johns**, 65 So. 738 (La. 1914),
[26] 312 So.2d 306 (La. 1975)
[27] 339 F.2d 183, 185 (2d Cir. 1964)
[28] **State v. Hammler**

Conclusion

The judge's bizarre behavior in the presence of the jury alone requires a reversal of conviction. This judge went even further and misused his authority to hold an individual in contempt as a tool to intimidate Appellant from cross-examining and presenting a defense. The judge did not do the same to the prosecution when they made improper remarks. The judge did not interrupt the prosecutions examination of witnesses. Instead, the judge told Appellant not to make objections during the prosecutor's arguments. Appellant was completely denied his rights to present a defense, to cross-examine, and to a fair trial. Appellant has not had an opportunity to review a complete record, and therefore requests this court to review the record to see the full extent of prejudice that occurred. The numerous errors of the trial judge demand a new trial, **and vacation of all Appellant's contempt charges**.

7. The prosecutor made punitive remarks against Appellant for exercising his right to represent himself in violation of Faretta, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

In the prosecution's rebuttal argument, the prosecutor commented that Appellant representing himself proves that he is controlling. Appellant has a constitutional right to represent himself that is fundamental, and for the prosecutor to punish Appellant for exercising his right is extremely prejudicial and thus requires reversal.

The trial judge specifically instructed Appellant not to object during the state's arguments, so Appellant was unable to object. This claim should still be reviewed by this court, and reversal should be granted.

A prosecutor "should refrain from making personal attacks on defense strategy and counsel." **State v. Manning**, 885 So.2d 1044 (La. 2004) While jurisprudence has found that prosecutors may not refer to "personal experience or turn" their "argument into a plebiscite on crime," nonetheless prosecutors have "wide latitude in choosing closing argument tactics." **State v. Clark**, 828 So.2d 1173 (La.App. 4 Cir. 9/25/02)

In **Doyle v. Ohio,**[29] SCOTUS held that a defendant's right to due process is violated when a prosecutor uses his post-arrest silence against him at trial. In **Griffin v. California**[30], SCOTUS held that the prosecutor's comments on the defendant's failure to testify violated the self-incrimination clause of the Fifth Amendment. The rational of the above mentioned cases apply to Appellant's Faretta right.

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[29] 426 U.S. 610 (1976)
[30] 380 U.S. 609 (1965)

Reasons for Granting the Writ

The 5th Cir. cited **C.Cr.P. Art. 774** which provides:

"The argument shall be confined to evidence admitted, to the lack of evidence, to conclusions of fact that the state or defendant may draw therefrom, and to the law applicable to the case.

The argument shall not appeal to prejudice.

The state's rebuttal shall be confined to answering the argument of the defendant."

The state's comments attacking Appellant's right to represent himself violates every portion of that law. In **State v. Manning** this Court held that "A prosecutor should refrain from making personal attacks on defense strategy and counsel." That is exactly what happened here. Prejudice is what the state was seeking, and the 5th Cir. not finding prejudice is obviously an erroneous application of the statutory law and the holding of this Court. This claim should also be reviewed in cumulation with the Denial of Self Representation claim.

Conclusion

Appellant was given his Faretta right to represent himself in theory, but in reality it was constantly used against him. The trial judge charged him with contempt and reprimanded him for cross-examining, and the prosecutor told the jury that Appellant representing himself was proof that he is a controlling person and thus guilty of controlling the women in this case. What she actually said is Defendant representing himself equals control, which equals a final way to demean the victims. Appellant was punished by the prosecutor for exercising his constitutional right that the Supreme Court described as the lifeblood of the Constitution.

8. and Appellant was denied his right to a fair trial with an impartial jury in violation of the Sixth Fourteenth Amendments to the United States Constitution.

The pandemic made a fair trial with an impartial jury impossible. The judge used the pandemic caused anomaly to maliciously select a pro-prosecution jury of his choice.

A. The judge should have granted Appellant's challenge for cause

Appellant's challenge for cause was improperly denied when the juror said she is unable to be impartial in this case because she has two daughters. The judge instructed her that she has to be impartial, she said she would "try", and the judge accepted her.

The judge did strike 33 jurors for causes such as employment obligations, school obligations, because they didn't want to wear a mask, because they didn't want to be around people, and for other impermissible causes. Any juror that specifically says that they cannot be impartial should be immediately excused by the court.

B. The pandemic made a fair trial impossible

This trial was held in the worst possible circumstances. The trial was held in the year 2021, during a pandemic, during stay at home orders, and at a time when the economy was worst than it has been since the great depression. People were losing their businesses, their jobs, their life savings, and their homes. People were unable to buy food they needed. Worst of all, people were losing family, friends, and loved ones. People were emotionally distraught and they were in no condition to participate in a trial.

On one day, 180 people were supposed to show for jury duty, and only 46 appeared. In the end, out of hundreds that were supposed to report for jury duty, only a total of 71 did. Out of that group of 71, every single person gave the same reason to get out of trial, and that reason was the pandemic. Appellant objected to not having a fair cross-selection of Jefferson Parish residents, and even requested the judge to issue attachments on the first day of jury selection.

C. The judge was able to select the entire jury himself, and so he did.

The judge excused 33 for cause out of 71. All gave the same reason that they shouldn't be there, and that reason was the pandemic. The judge was able to use this opportunity to personally select who he did and did not want. When a person the judge did not want used the pandemic as an excuse, the judge excused them for cause, even over Appellant's objections. When a person the judge wanted used the exact same excuse, the judge accepted that individual, even over Appellant's objections.

Law and Argument

A defendant is guaranteed an impartial jury and a fair trial. **LA. Const. art. 1, Section 16**, and the Sixth and Fourteenth Amendments to the United States Constitution. In unusual circumstances, prejudice against the defendant may be presumed.[31]

[31] **State v. Sparks**, 68 So.3d 435 (La. 2011)

Prejudice is presumed when a trial court erroneously denies a challenge for cause and the defendant ultimately exhausts his peremptory challenges.[32]

Also, proceedings entirely lacking in the solemnity and sobriety to which a defendant is entitle, but instead utterly corrupted by press coverage and/or conducted in a carnival-like or inflammatory atmosphere, are presumptively prejudicial.[33]

Reasons for Granting the Writ

Before addressing the repeated demonstration of the 5th Circuit's error in not granting Appellant's motion to supplement the record with the audio recording of the trial, Appellant points to its additional error of accepting the court minutes over the trial transcript.

The 5th Cir. admitted that the juror stated that she could not be fair, but denies the claim anyway because the minute entry notes that the jury was already selected when she made the statement. It is well established that when there is conflict between transcripts and minute entry, transcripts always prevail. This is not new jurisprudence, yet the 5th Circuit's ruling seems to completely disregard it.

The 5th Cir. also denied the other issues in this claim based on the lack of objection. Appellant filed multiple motions to supplement the record due to its missing Appellant's objections. The 5th Circuit's denial of Appellant's motions and denial of this claim without a complete and accurate record is a Gross Departure from Proper Judicial Proceedings.

Conclusion

Appellant was obviously not given a fair trial when the judge was able to personally select the jury to fit his pro-prosecution agenda. Appellant has demonstrated one specific example of the judge's abuse of discretion. Appellant would have shown many more, but was not afforded an opportunity to review the record of the jury selection. Denial of the record should be enough for this court to reverse Appellant's conviction and order a new trial. A judge and prosecutor dictated jury selection absolutely demands a new trial in the name of justice and all that it means to be a citizen of the United States of America.

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[32] **State v. Robertson**, 92-2660, p. 3 (La. 1/14/94), 630 So.2d 1278, 1280

[33] **Murphy v. Florida**, 421 U.S. 794, 798-799 (1975); **Sheppard v. Maxwell**, 384 U.S. 333, 355-356 (1966); **State v. David**, 425 So.2d 1241, 1246 (La. 1983)

9. The trial court erred by not granting Appellant's Motion for further testing done on State's Evidence for mixture of Z-Chlorobezalm-Alononitrile (C.S. Gas) in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

Appellant has claimed from the very beginning that there were never panties in his home, and the one the police claimed to have found were planted. DNA tests were done on the panties and there was no reported evidence of contamination. Appellant filed a Motion to have the evidence tested for C.S. gas contamination. Everything in Appellant's home was covered in C.S. gas, and if the panties weren't planted, then they would have the chemical on them as well.

At trial, the Jefferson Parish Lab Technician testified that she could not confirm that the panties absolutely did not contain C.S. gas, because they would have to be tested for that specifically. During the prosecutor's questioning of the Lab Technician and in closing arguments, the prosecutor repeatedly pointed out that Appellant could have gotten the evidence tested for C.S. gas on his own request. That is just not true. The trial court denied Appellant's right to have it tested, and then allowed the prosecutor to lie to the jury about Appellant's ability to have the testing done.

Appellant has a right to an adversarial process, and to present a defense. This denied Appellant his right to due process, a fair trail and to have the jury consider all the facts for an accurate truth finding trial.

Reasons for Granting the Writ

The 5th Cir. claims on June 3, 2020, Appellant discussed the motion in a Zoom hearing where Appellant indicated that he wanted to withdraw the motion to prevent it from interfering with his right to speedy trial. That is no at all true. Appellant would never withdraw a motion for scientific testing that will prove his innocence. Appellant was not provided with transcripts or any record of that hearing. This court should at the very least remand this issue back to the Appellate court to provide Appellant with a complete copy of the record.

10. Appellant was denied his right to a fair trial when the trial court refused to severe the charges for the purpose of eliminating prejudicial confusion.

On November 12, 2019, the court conducted a hearing on Appellant's motion for severance, which the court properly construed as a motion to quash. Appellant stated the following grounds for the court to sever the offenses: **1)** The jury would be confused by the various counts **2)** The jury would not be able to separate the various charges or evidence **3)** Appellant is presenting different defenses on the two main offenses **4)** Confounding and presenting defenses pro se, it would confuse the jury between the Dutreix

case and the Martinez case. **5)** The jury would infer guilt from both the charges. **6)** The jury would be hostile toward Appellant.

After Appellant gave detailed reasons on each ground, the judge denied the motion without addressing a single ground that Appellant cited. Instead, the judge referred to the offenses arising from the same transaction and two of the offenses being of the same character.

The judge never considered whether Appellant could have a fair trial, the judge never considered the prejudice to Appellant for presenting different defenses, the judge never considered whether the jury would infer guilt, the judge never considered whether the jury would be hostile toward Appellant, and the judge did not consider a single ground that Appellant raised. In fact, while the judge ignored the grounds that Appellant raised, the judge used the erroneous ruling as an attempt to intimidate Appellant from self-representation. The judge is required to consider the possibility of prejudice to Appellant by **C.Cr.P. Art. 495.1**.

In determining whether prejudice results from a joinder of offenses, the trial court should consider the following factors: **(1) whether the jury would be confused by the various counts, (2) whether the jury would be able to segregate the various charges and evidence, (3) whether the defendant would be confounded in presenting his various defenses, (4) whether the crimes charged of several crimes would make the jury hostile.**[34] No prejudicial effect occurs where the evidence as to each offense is simple and distinct and where the jury can easily keep the evidence in each offense separate in its deliberation. The judge has much discretion, and the exercise of discretion involves balancing the interest in judicial economy against the risk of prejudice to the defendant.

Reasons for Granting the Writ

The 5th Cir. denied review of this claim because it was raised in a pretrial Petition for Supervisory Writ. If the Court of Appeal would have revisited the law of the case, it would have been able to consider the undue confusion of the trial that is evident in the trial record. This Supreme Court should review this claim de novo, and grant relief

[34] **State v. Deruise,** 802 So.2d 1224 (La. 2001), quoting **State v. Washington**, 386 So.2d 1368 (La. 1980)

Conclusion

The judge's ruling is an abuse of discretion because he never considered balancing the interest of judicial economy against the risk of prejudice. Appellant was prejudiced by the misjoinder of offenses because appellant was clearly confounded in presenting his defense (the details of the allegations were different, the accusations of drug use were different, and the motives of these women making the false accusations are different) and the misjoinder caused the jury to be hostile and infer a criminal disposition because Appellant was guilty of simple battery on one victim. Therefore, Appellant's conviction and sentence should be vacated, and remanded for a new trial with the offense severed.

11. John W. Patton, is actually innocent of the crimes of rape, attempted rape, and sexual battery, has maintained his innocence from the very beginning, and a severe miscarriage of justice has occurred in violation of Due Process and the prohibition of Cruel and Unusual Punishment.

Appellant has maintained his innocence since before he was charged with these false accusations of rape, he continues to maintain his innocence, and his innocence is supported by DNA. All evidence besides the perjured testimonies of two women support Appellant's version of the facts.

Prior to meeting J.M., Appellant was hospitalized from some form of poisoning. Appellant has suspected somebody drugging him, and has even reported this fact to the police twice. On the night J.M. came to his home, Appellant was not himself. As soon as J.M. came to his door, due to his involuntary intoxication, Appellant attacked J.M., which is also consistent with what she first reported. The only crimes that happened that night are Appellant being drugged and a Simple Battery. After J.M. made contact with her friend at the Jefferson Parish Police Department, she changed her story and said that she was raped.

J.M. said Appellant gave her oral sex, and saliva DNA was found in her vaginal swabs, **but that DNA excluded Appellant.** She said she gave him oral and even bit his penise, but all DNA collected from his penise excluded her, and there were no injuries on his penise when examined by police. All DNA taken from each of them excluded DNA from the other. Martinez claimed that her panties were in the living room when she left, the police covered everything in the house with C.S. gas, and the lab results showed no sign of any contamination, much less C.S. gas.

J.M. testified at first that Appellant only attacked her with his hands, then changed that after speaking to her friend that he attacked her with two different knives, one plastic and the other metal. She testified that she grabbed the knife with her bare hands. When she was examined, she did not have a single

cut or stab wound. When police searched Appellant's home that he never left, they did not find a single knife. J.M. testified that she urinated on the floor of Appellant's home, but police could not find evidence of that, and photos of the house show no sign of such thing.

All evidence disproves her version of the facts, and support Appellant's version. The only evidence the state produced was the dramatically inconsistent and perjured testimony of two women. The state also had a pro-prosecution judge to ensure that the flow of evidence would be in the prosecution's favor. The judge completely shut down Appellant's defense every time he tried to introduce evidence and every time he tried to cross-examine a witness. Everything Appellant tried to introduce was improper or irrelevant. Every meaningful question Appellant asked was interrupted. The judge yelled at Appellant in front of the jury and loudly accused him of trying to manipulate the jury, in the presence of the jury.

Law and Argument

The extremely likely risk that Mr. Patton is innocent of the crimes for which he is convicted justifies a new trial in this case. Due Process and the prohibition of cruel and unusual punishments under both the state and federal constitutions require that a prisoner making a persuasive showing of actual innocence should be granted a new trial. Our system fails any time an innocent person is convicted, no matter how meticulously the procedural requirements governing fair trials are followed. That failure is even more tragic when an innocent person is sentenced to a prison term... We will not elevate from so highly over substance that fundamental justice is sacrificed.[35] The Supreme Court held in **Robinson v. California** that "even one day in prison would be cruel and unusual for the 'crime' of having a common cold."[36]

A persuasive showing of actual innocence acts as a doorway, allowing a petitioner to reach the merits of a claim that may otherwise be procedurally barred.[37] **Schlup** makes plain that the collateral court must consider "all the evidence," old and new, incriminating and exculpatory, **without regard to whether it would necessarily be admitted under "rules of admissibility that govern at trial."**[38] A petitioner's burden at the gateway stage is to demonstrate that, more likely than not, in light of the new evidence, no

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[35] **State v. Thomas**, 586 A.2d 250, 253-54 (N.J. Super. Ct. App. Div. 1991); accord **Commonwealth v. Brison**, 618 A.2d 420, 424 (Pa. Super. Ct. 1992)

[36] 370 U.S. 600, 667 (1962); **Herrera v. Collins**, 506 U.S. 390, 398 (1993) ("The central purpose of any system of criminal justice is to convict the guilty and free the innocent.").

[37] **Schlup v. Delo**, 513 U.S. 298 (1995). *See also* **State v. Allen**, 10-306 (La. 1/7/11); 55 So.3d 757; **State v. Conway**, 816 So.2d 290 (La. 2002)

[38] **House v. Bell**, 547 U.S. 518, 537-8 (2006) (citing **Schlup**, 513 U.S. at 327-28 (*quoting* **Friendly**, Is Innocence Irrelevant? Collateral Attack on Criminal Judgements, 38 U. Chi. L. Rev. 142, 160 (1970))).

reasonable juror would find him guilty beyond a reasonable doubt—or, to remove the double negative, that more likely than not, any reasonable juror would have reasonable doubt. [39]

Reasons for Granting the Writ

The DNA evidence and the testimony of the state's own expert completely contradicted the testimonies of the victims. The 5th Cir. misconstrued the DNA results. If this Supreme Court would review the DNA evidence and the testimony of the State's expert, Appellant's innocence will be evident. This Court should fix this material injustice and vacate Appellant's convictions and sentences.

Conclusion

A review of all evidence the trial court refused to admit and the cumulative effect of all the constitutional violations presented in this appellate proceeding makes it more likely than not that if Mr. Patton would have a fair trial, no reasonable juror would find him guilty beyond a reasonable doubt of the charges for which he was convicted. The excluded evidence demonstrating extreme discrepancies of the witnesses' testimony and conflicting evidence would prove that these women had every reason to lie, and Appellant had plenty of evidence to completely contradict their perjured testimonies. Consequently, Mr. Patton requests intervention from this Court to cure the constitutional deficiencies that have resulted in his wrongful incarceration, and justice requires the same.

12. Appellant was denied his right to counsel of choice through Martin Reagan in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

A criminal defendant has a right to the counsel of his choice, as explicitly acknowledged in **Powell v. Alabama**.[40] While the right to counsel of choice is a procedural right ensuring defendants' individual autonomy and dignity, the right to effective assistance exists solely to ensure fair and reliable trials.[41]

In this case, Appellant paid $10,000 to counsel Martin Reagan, who refused to investigate the case and prepare a defense. Appellant eventually fired Mr. Reagan as a result of Mr. Reagan's refusal to participate in the case that he was hired to defend. After Mr. Reagan's withdrawal from the case, Mr. Reagan

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[39] *Id.*
[40] 287 U.S. 45, 53 (1932)
[41] **Gonzalez-Lopez**, 126 S.Ct. at 2563

lost defense evidence and refused to return Appellant's money in the amount of $10,000. Mr. Reagan claimed that he mailed Appellant's money to his previous home address when Mr. Reagan knew—and has been corresponding with—Appellant at the Jefferson Parish jail[42]. Appellant could not hire counsel to represent him in this case as direct result of Mr. Reagan.

In the year 2019, Appellant informed the judge by mail and in court that Mr. Reagan has not returned Appellant's $10,000, and as a result, Appellant was unable to hire counsel. Appellant was forced to represent himself for the remainder of the case.

Sometime in the year 2019, Appellant filed a complaint to the state bar association on Mr. Reagan. Mr. Reagan responded to the bar that he did lose the evidence, and that Mr. Reagan did refund Appellant's money.

On April 19, 2021, Mr. Reagan came to trial and even testified that he did not refund Appellant's money. Testified that he didn't lose the phone, he didn't lose the water bottles, that he had the video of small needle holes in water bottles made by the individual that found them, and he had the affidavit from Josh Cox that said he was aware that Appellant got sick from poisoning, and that he searched for and found water bottles that had needle holes in the bottles.

Reasons for Granting the Writ

As stated above, Mr. Reagan testified at trial to mailing a check to an address where Mr. Reagan knew Appellant could not receive it due to his incarceration. The record reflects at that same moment that Appellant was unable to hire Counsel of His Choice, and was in turn forced to represent himself. This Supreme Court should decide for the first time if a previous counsel can constructively deny counsel of choice by violating the rules of professional conduct and not refund unearned fees.

Conclusion

Appellant has a Sixth Amendment right to counsel of his choice. Appellant was denied that right by Mr. Reagan robbing Appellant of $10,000. Appellant was denied a fundamental right as a result of Martin Reagan defrauding Appellant of $10,000, and by the judge allowing this to take place when asked to interfere. A denial of such a fundamental right should be remedied with a new trial regardless of who caused the denial.

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[42] *See* **Exhibit 2** (Proof that Mr. Reagan was paid, returned money to a vacant address, and lost evidence)

13. Denial of Right to Pro se Representation in violation of Due Process.

Appellant, John Patton, maintained his innocence as these charges from the moment they were filed against him. He was an active in his defense until his hired attorney attempted to portray Patton before the court as mentally incompetent. Patton fired his attorney and became extremely skeptical of his appointed counsel until he felt his only option was to represent himself.

The trial court conducted a *Faretta* hearing, but did not inform him that he would be denied all means of financial, technological, and legal resources. Patton made numerous objections and complaints that he was denied access to the jail law library, standard office equipment, a means to view the video evidence, a means to communicate with witnesses, and secure storage to keep his paperwork during the trial. The trial court violated Patton's right to due process and by not ensuring that he had the necessary resources to provide a meaningful defense.

A fair trial was impossible while the trial court was depriving Patton of preparation and presentation of a defense. Patton was denied the right to have lab testing of evidence. He was denied the right to timely review the video interviews and police camera footage. Patton was denied the right to research caselaw. Patton was unable to communicate with witnesses. At every recess of trial, Patton was forced to leave his files in the courtroom as he was moved to holding cells, and every time he returned, the files were found to be in disarray with papers missing. Patton made objections to every time he returned to find his already court sanctioned defense had been tampered with further.

Faretta requires the court to advise the defendant of the nature of the charges, the penalty range for the charges, and the dangers and disadvantages of self-representation, "*such as the failure to recognize objections to inadmissible evidence* and *the inability to adhere to technical rules governing trial.*" The court informed Patton that he would receive no more privileges than any other pro se litigant, but Patton didn't understand that he would actually receive much less resources than other pro se litigants. Non-incarcerated pro se litigants would have had an opportunity to timely review the evidence, to research caselaw, to secure files, and much more. In fact, the trial court played games instead of informing Patton what he would be entitled to as is cited by the 5th Cir. in the following excerpt of the trial record:

MR. PATTON:

Well, what's a self—what does a self-representation [sic] litigant get?

THE COURT:

What you're entitled to.

MR. PATTON:

Which is?

THE COURT:

I—I mean, I can't give you an hour or a minute. I'm just telling you, you will get what every other self- represented litigant gets; you understand that?

MR. PATTON

Go head [sic], sir. We'll – we'll – we'll – we'll pursue that down the road. I'm going to cover that anyway.

THE COURT:

Okay. You understand you will have no extra time for preparation, no staff, or investigators?

MR. PATTON:

What do you mean?

...

...

...

MR. PATTON:

I object to that, your honor.

THE COURT:

Okay.

MR. PATTON:

Because that's not – I've read almost all the pro se cases. Although there's none out of the Fifth Circuit and there's certainly none that the Supreme Court has decided, **so I guess this is going to be a vehicle where I'm going to find out exactly what the Supreme Court says the pro se litigant can have** his tools because I need the tools – the same tools as a defense attorney and that's what the Tenth Circuit said, the Eighth Circuit, the Ninth Circuit, but we never had a ruling out of the Fifth Circuit, so I guess we will soon enough. I'm going to object to that, your honor. I'm going to takes writs on – on this – on this issue.

Reasons for Granting the Writ

What exactly is a pro se litigant entitled to? Shouldn't an incarcerated pro se litigant have the same abilities of a non-incarcerated pro se litigant? A pro se litigant should at least have the ability to perform the duties that an attorney is constitutionally required to perform, such as interviewing witnesses and examining evidence. The courts in Louisiana are requiring pro se litigants to meet all the requirements of a defense attorney, but they are not providing the means and abilities of defense attorneys. Other nations,

States, and courts have required the state to specify exactly what a pro se litigant is entitled to ensure a fair trial. The Louisiana Constitution supposedly provides greater protections and rights. Louisiana needs this Supreme Court to decide this unresolved issue.

Conclusion

Appellant was not given a fair trial. His trial was not the truth seeking engine that the framers of the Constitution sought to design. Nearly every protection the Constitution and the Supreme Court have created were denied to Mr. Patton. The Code of Criminal Procedure and the Code of Evidence ceased to exist for Mr. Patton. The trial court denied preservation, examination, and introduction of every piece of evidence that Mr. Patton needed to defend himself. Mr. Patton is innocent of the charges brought against him, and a fair trial would prove exactly that. Each one of the aforementioned errors require reversal, and the cumulative effect of all of them is so prejudicial that justice demands reversal. The numerous and severe errors in this case require a vacation of Mr. Patton's conviction and sentence, and require a new—fair—trial. No Court has ever decided this issue.

Conclusion

WHEREFORE, for the reasons presented herein, that there are extraordinary reasons for the GRANTING of the Petition for Writ of Certiorari contained herein. And requests this Honorable Supreme Court invoke its original jurisdiction 28 U.S.C.A. 1251(a) and 28 U.S.C.A. 1257(a) State Court Certiorari.

Petitioner prays that this Honorable United States Supreme Court grant this Petition for Writ of Certiorari

Reversing the Petitioner's conviction and sentence and remanding for a New Trial.

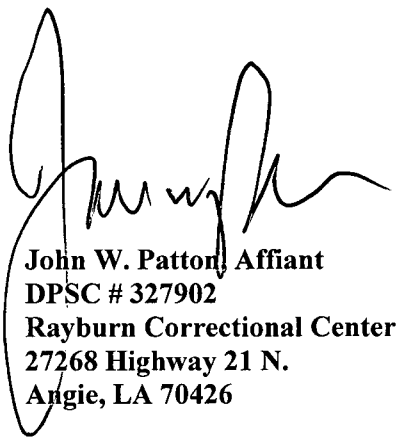
Respectfully submitted on this 2nd day of February 2024 by:

John W. Patton, Pro se
DPSC # 327902
Rayburn Correctional Center
27268 Highway 21 N.
Angie, LA 70426

Verification Affidavit

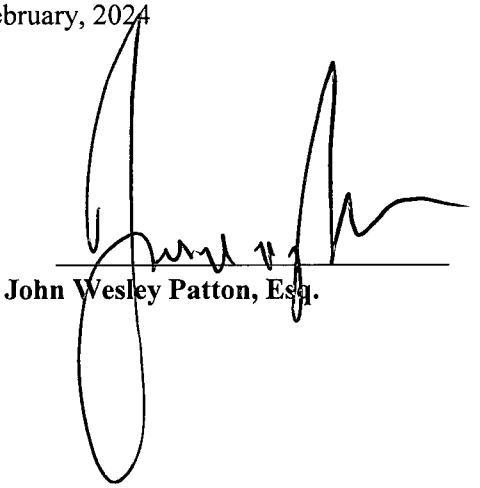
I do hereby swear under the penalty of perjury that the contents of the foregoing are true and correct to the best of my knowledge and understanding.

I further swear pursuant to penalty of perjury, **28 U.S.C.A. 1746**, that I have served a true and correct copy of the foregoing upon all interested parties hereto, by handing the same to the proper prison officials to be mailed on this 2nd day of February 2024, properly addressed and postage prepaid.



John W. Patton, Affiant
DPSC # 327902
Rayburn Correctional Center
27268 Highway 21 N.
Angie, LA 70426

SWORN TO AND SUBSCRIBED, before me this 2nd day of February, 2024



John Wesley Patton, Esq.