24-5538

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN ROSS STENBERG — PETITIONER

vs.

DONALD LANGFORD — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT OF KANSAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE

PETITION FOR WRIT OF CERTIORARI

JOHN ROSS STENBERG KDOC# 0113332
ELLSWORTH CORRECTIONAL FACIITY
(Your Name

P.O. BOX 107
(Address)

ELLSWORTH, KS 67439-0107
(City, State, Zip Code)

N/A
(Phone Number)

VOLUME 1 OF 2

QUESTION(S) PRESENTED

1. Did the United States District Court for the District of Kansas err when it failed to find in Mr. Stenberg's favor regarding the suppression issue of his written and oral statements to Law Enforcement when Law Enforcement overbore Mr. Stenberg's will by misrepresenting the law and the evidence against him, using implied promises and implicit threats, and using the trust Mr. Stenberg had in the Law Enforcement officer conducting the interview, against him in order to coerce an involuntary, false confession from Mr. Stenberg, thus violating Mr. Stenberg's Fifth and Fourteenth U.S Constitutional Amendment Rights.

2. Did the United Stattes District Court for the District of Kansas err when it found Mr. Stenberg was effectively represented by his trial counsel even though trial counsel provided ineffective assistance of counsel by failing to contact potential defense witnesses, failing to consult an expert witness, failing to perform any form of investigation of the alleged crimes, failing to perform certain pre-trial/post-trial functions, failing to prepare Mr. Stenberg to testify on his own behalf, failing to have any viable form of trial strategy or defense, and failing to put the state to adversarial testing, thus violating Mr. Stenberg's Sixth and Fourteenth U.S Constitutional Amendment Rights.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIRARI

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

OPINIONS BELOW

[X] For cases from **federal courts:**

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

[X] reported at Stenberg v. Langford, 2024 U.S. App, LEXIS 8047 ; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

[X] reported at Stenberg v. Langford, 2023 U.S. Dist., LEXIS 149584 or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts:**

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

[ ] reported at_____ or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

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

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was April 4, 2024.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 4, 2024, and a copy of the order denying rehearing appears at Appendix A.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including September 2, 2024 on June 20, 2024 in Application No. 23A1125.

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

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was Feb. 25, 2022
A copy of that decision appears at Appendix D.

[X] A timely petition for rehearing was thereafter denied on the followin date: September 30, 2022, and a copy ot the order denying rehearing appears at Appendix E.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the Constitution of the United States

Sixth Amendment to the Constitution of the United States

Fourteenth Amendment to the Constitution of the United States

K.S.A. 60-1507

STATEMENT OF THE CASE

Mr. Stenberg was found guilty of 1 count Aggravated Indecent Liberties with a Child, 1 count Rape, and 2 counts Agravated Sodomy on January 16, 2016 based on allegations made by K.P. and A.P. of sexual abuse. Mr. Stenberg contends that:

1. His Fifth Amendment Right through the Due Process Clause of the Fourteenth Amendment of the United States Constitution was violated even though Mr. Stenberg signed a waiver of his Miranda rights. He did so due to the fact that Undersheriff Sharp told Mr. Stenberg that he was required to read Mr. Stenberg his Miranda rights and have him sign a miranda waiver if he was willing to talk to Sharp due to Mr. Stenberg already being in police custody. Undersheriff Sharp did not specify what he wanted to speak with Mr. Stenberg about and Mr Stenberg mistakenly believed it was going to be about a work release motion Mr. Stenberg had before the court. Mr. Stenberg contends that his statements, both oral and written, were involuntarily and falsely made to the interrogating Law Enforcement officer when Mr. Stenberg's will was overborne due to the Law Enforcement officer's use of illegal coercive tactics of making inappropriate implied promises, making implicit threats, and mis-represention of both the evidence against him and the law. Mr. Stenberg had limited communication with the outside world, and he wasn't thinking clearly due to the seriousness of the allegations being made against him, his lack of sleep, his poor stress coping ability, and his worry about the physical and mental welfare of his wife Stacy Stenberg. Furthermore, the Law Enforcement officer performing the custodial interrogation used his knowledge of Mr. Stenberg's character, sense of responsibilty, his need to protect the ones he loves, and the trust Mr. Stenberg had in that officer, against him,

2. Trial Counsel failed to provide him with his U.S. Constitutional Sixth Amendment Right to Effective Assistance of Counsel through the Due Process Clause of the Fourteenth Amendment of the United States Constitution..

After Mr. Stenberg's sentencing on April 5. 2016, he timely filed an appeal of his conviction and sentence. On direct appeal, Mr. Stenberg argued that:

A. The District Court erred in denying Mr. Stenberg's motion to suppress.

B. The District Court committed reversible error in failing to instruct the jury on the lesser included offense of attempted rape.

C. The District Court erred in imposing lifetime postrelease supervision.

Even thoughthe Court of Appeals agreed that there was some questionable tactics used by Undersheriff Sharp, the Court of Appeals still affirmed the conviction of the B. District Court in paart and reversed the lifetime post-release supervision. Mr. Stenberg's Petition for Review was denied by the Kansas Supreme Court. Mr. Stenberg then filed a 60-1507 motion against his trial counsel, alleging his trial counsel's assistance was deficient due to:

A. Trial counsel's failure to conduct any form of investigation into the case

B. Trial counsel's failure to perform certain pre-trial / post-trial functions

C. Trial counsel's failure to contact any of the potential defense witnesses Mr. Stenberg provided trial counsel with

D. Trial counsel's failure to have any form of a viable defense strategy, after the motion to supress Mr. Stenberg's written and oral statements was denied, other than to "hope the state made mistakes."

E. Trial counsel's failure to prepare Mr. Stenberg to testify on his own behalf

F. Trial counsel's failure to procure an expert witness to not only review the victims' forensic interviews and the interviewer's tactics, but also to refute the testimony of the state's expert witness.

G. Trial counsel's failure to put the state to advesarial testing.

The District Court found in favor of Mr. Stenberg's trial attorney and denied Mr. Stenberg's 60-1507 motiom. After a timely filed appeal of the court's decision, the Appellate Court affirmed the District Court's decision.

Upon the decision of the Appellate Court Mr. Stenberg filed a timely 2254 Writ of Habeas Corpus Motion contending:

A. Ineffective Assistance of Trial Counsel

B. Ineffective Assistance of Appellate Counsel

C. Denied due process under the Fifth Amemdment to the Constitution of the United States

D. Denied the Sixth Amendment right to a fair trial in violation of the Sixth Amendment to the Constitution of the United States

The United States District Court for the District of Kansas denied the 2254 Writ of Habeas Corpus Motion on August 24, 2023 and declared there would be no Certificate of Appealability issued.

Mr.Stenberg filed a notice of appeal and then filed a Combined Opening Brief and Application for a Certificate of Appealability. On April 4, 2024, the United States District Court of Appeals denied Mr. Stenberg a Certificate of Appealability.

REASONS FOR GRANTING THE PETITION

This is a case about the violation of rights awarded to every citizen of these United States of America. The Constitution of the United States was created to protect the rights of our citizens from abuse and the denial of those rights. In this case Stenberg will address the violation of three (3) of those Constitutional Amendments.

The Fifth Amendment - in this case - guarantees no person shall be compelled in any criminal case to be a witness against himself, to remain silent unless he chooses to speak in the unfettered exercise of **his own free will,** and to suffer no penalty for such silence.

The Sixth Amendment - in this case - guarantees to be confronted with the witnesses against himi; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Fourteenth Amendment - in this case - No State shall deprive any person of life, liberty, or property, without due process of law; A guarantee of due process, requiring a competent and impartial tribunal, the right to be represented by counsel, the right to cross-examinae adverse witnesses, and the right to offer testimony on one's own behalf. "Due process of law" implies and comprehends the administration of laws equally applicable to all under established rules which do not violate fundamental principles of private rights,

The violation of these Constitutional Amendments affects not only the accused, but every person charged with a crime, past, present or future. The reversal of Stenberg's conviction will benefit others who have had their rights violated, or will have in the future, by the illegal actions of law enforcement and the ineffectiveness of representation of counsel, . Every person deserves this chance at freedom and the chance to not have their Constitutional Rights violated.

Review by this court in this case is necessary for two fundamental reasons:

Reason 1) When Law Enforcement takes a person into custody to interrogate them about a crime, that person has the fundamental Amendment Right to remain silent, to not incriminate himself, and the Fourteenth Amendment Right Due Process Clause to be protected against illegal interrogation tactics in order to obtain an involuntary confession. Whether that person is normally a law abiding citizen or a known hardened criminal with a long history with law enforcement, that person still has rights undet the Fifth and the Fourteenth Amendments of the Constiution of the United States. Law Enforcement can't be allowed to continually badger, cajole, lie, misrepresent the law, misrepresent the facts about the evidence they say they currently have, threaten the person with violence or dire consequences for not cooperating, or make promises of leniency for cooperating, in order to get a confession, whether it may be a true confession or a false one. Due to these illegal and unfair tactics used by Law Enforcement, many innocent people are making false, coerced confessions out of fear of the consequences Law Enforcement puts forth for being seen as not cooperating. Even if a person waives his Miranda rights and gives a confession, depending on the situation and the person giving the confession, the illegal tactics used by an interrogaing officer can still produce a false, coerced confession, by overbearing the will of the interrogated person.

The Fifth Amendment applies to the States through the Due Process Clause of the Fourteenth Amendment, which protects the right of a person to remain silent unless he chooses to speak in the unfettered exercise of **his own free will,** and to suffer no penalty for such silence. **Malley f. Hogan, 378 U.S. 1 (1964)**. "The Fifth Amendment test for voluntariness substantially tracks the voluntariness test under the due Process clause of the Fourteenth Amendment." **Colorado v.**

Connelly, 479 U.S. 157 (1986). "Under the Due Process Clause, certain interrogation techniques either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned." **SEE Miller v. Fenton, 474 U.S. 104 (1985)**.

"The concept of due process protection against involuntary confessions flows from a set of values reflecting society's deeply felt belief that the criminal law system cannot be used as an instrument of unfairness and that the possibility of unfair and even brutal police tactics poses a real and serious threat to civilized notions of justice." **Schneckloth v. Bustamonte, 412 U.S. 218 (1973)**. There are two paths "for applying due process protection against involuntary confessions" (1) Those that are inherently coercive and a pro se violation of the Dur Process Clause and (2) those where a state official uses interrogtion techniques that because of the unique circumstances of the suspect are coercive." **SEE Fenton.**

Cases involving the second part occurs "when the interrogation techniques were improper only because in the particular circumstances of the case, the confession is unlikely to have been the product of a free and rational will." **SEE Fenton.**

Courts are to "assess the totality of all the surrounding circumstances -- both the characteristics of the accused and the details of the interrogtion" -- to determine whether a confession is a "free and unconstrained choice by its maker," **SEE Schneckloth.** "In applying this totality of the circumstances examination, coercive police activity is a necessary predicate to the finding that a confession is not voluntary." **SEE Connelly**.

The Court set forth its updated, non-exhaustive list of factors to be considered when examining the details of the interrogation includes; (1) the length of the inerview, (2) the ability of the

accused to communicate with the outside world, (3) delays to arraignment, (4) the length of custody, (5) the general conditions under which the statement took place, (6) the physical /psychological pressures placed on the accused, and (7) the officer's fairness in conducting the interview to include "promises of benefit, inducements, threats, methods or strategies used to coerce or compel a response." **SEE State v. Gilliland, 276 P.3d 165 (Kan. 2012)**.

Prong 1: The interrogation lasted for about two and one-half hours and for approximately the first thirty (30) minutes of the interrogation, Undersheriff Sharp concentrated on asking Stenberg about his family life, his background, his childhood, and his marriages. After the first thirty (30) minutes, Sharp went into the reasons for the interrogation and for about the next ninety (90) minutes, Stenberg denied all accusations and continued to deny any wrong doing until Sharp overbore Stenberg's will and Stenberg made both oral and written statements, confessing to some minor sexual acts, adapted from the accusations made against him and Sharp's implied suggestion that admitting to something smll was better than nothing at all.

Prong 2: Stenberg had a severly limited ability to communicate with the outside world due to being already incarcerated by Gray County Sheriff Department at Meade County Jail.

Prong 3: Stenberg hadn't been charged with any crime as of the time of the interrogation, so there was no delay in arraignment at that time.

Prong 4: At the time of the interrogation, Stenberg was currently serving a twelve (12) month sentence for Interferring with Law Enforcement and had been incarcerated for almost six (6) months, again, with extremely limited communication with the outside world.

Prong 5: Stenberg's interrogation was held in a small, windowless, interrogation room located in the Gray County Sheriff Department and due to his current incarceration status,

Stenberg was not allowed to leave.

Prong 6: Mr. Stenberg doesn't respond well under stress and has been known to act recklessly in the past due to stress. Just the nature and seriousness of the accusations made against Stenberg by his stepdaughters was enough to send Stenberg's mind into overload and self-preservation mode and say whatever was necessary to make the interrogation end and in his mind help his family to be together again. He was already stressed out over worry about the mental and physical welfare of his wife, Stacy Stenberg and the welfare of his stepchildren who were in foster care and he wasn't allowed contact with them. Undersheriff Sharp applied considerable psychological pressure on Stenberg when he mentioned victimizing the girls again, and "If we have to put the girls on the stand and put them through that, He's going to beg that you go to a jury trial because he knows that you're probably going to look at quite a bit of time at that stage." Stenberg has a strong sense of protection for his family and loved ones. and anything that threatens their security and safety stresses him out and makes him act irrationally.

Prong 7: SEE Implied promises and Implicit threats below.

In **Swanigan**, the Supreme Court reviewed whether this type of interrogation tactic could render a statement involuntary. The officers in **Swanigan** repeatedly told the defendant that they needed to be able to put in the report that he had cooperated. **Swanigan, 279 Kna. 18 at 33**. They also told the defendant that if he didn't cooperate there would be negative consequences -- including that the prosecutor would reject any deal for leniency. **Swanigan, 279 Kna. 18 at 33**. The Court in Swanigan held that threatening the defendant with "telling the county attorney, "of his lack of cooperation," is inconsistent with his rights articulated in **Miranda v. Arizona,384U.S. 436D, 16 L. Ed. 2d 694, 86 S Ct. 1602 (1966)".Swanigan, 279 Kan.18 at 36** .The Court stated "we fail to

see how law enforcement can be required by Miranda to advise Swanigan of his right to remain silent, and then can be allowed to warn him of punishment for his "noncooperation" when he exercises that right." **Swanigan, 279 Kan. at 37**. Undersheriff Sharp used the exact same tactic in Mr. Stenberg's interrogation that the ***Swanigan Court*** and the ***G.O. Court*** held to be a violation of the defendant's **Fifth Amendment Rights under Miranda.** Even though Stenberg had signed the Miranda form and agreed to talk to Undersheriff Sharp, the ninety (90) minutes of continual denial of the accusations by Mr. Stenberg could be construed as Stenberg exercising his **Fifth Amendment Right to remain silent under Miranda.**

The United States District Court for the District of Kansas erroneously failed to grant Mr. Stenberg's motion to suppress his oral and written statements to Law Enforcement. Mr. Stenberg asserted that the statements were not voluntary due to the unfair interrogation tactics employed by Undersheriff Sharp (R. I, 49, 53-55, 187-205).

In at least 14 points during the investigation, Undersheriff Sharp strongly inplied either that (1) Mr.Stenberg would be in a better postition if he confessed, or (2) Mr. Stenberg would have no chance of negotiating a deal for less that life in prison if he did not confess. Additionally, when Undersheriff Sharp told Mr. Stenberg that if he confessed, law enforcement could essentially guarantee him a plea offer when he said, **"if you accept this that you make a mistake and you man up to things, Giardind will take a plea agreement on it at my recommendation."** (R. IX, Appendix B, Title 2). (Emphasis Added). While this was not a promise of a specifice benefit, as noted by the Court of Appeals, it was a promise of leniency by a public official (the County Attorney), made by the lead police officer in the case. There was no reason for Mr. Stenberg to believe that Undersheriff Sharp did not have the power or authority to execute the

promise, and get the County Attorney to give him a plea agreement. The only reason for Mr. Stenberg to enter a plea agreement would be for leniency. While a specific amount of leniency was not promised, leniency was nonetheless implicitely promised if Mr. Stenberg confessed. Additionally, given the content of the rest of the interview, including the misrepresentation of law, and the overselling of the strength of the State's case, the tactic was likely to induce false statements. This unfair tactic worked to render Mr. Stenberg's statements involuntary under the totality of the circumstances.

Implied promises and Implicit threats:

1. I understand that you feel that you have a great amount to lose, but without having some type of rationalization or admission of what's going on, I got to present what they're saying to the County Attorney's office. (R. IX. Appendix B, Title 2).
2. I understand in your mind, your're thinking, I've got everything to lose on this. But I can tell you this -- and you can believe me or not -- but I swear to you as I'm sitting here talking to you, everything I have and the badge I've worn for 22 some odd years, I am being honest with you. When the County Attorney gets these kinds of cases and the evidence we currently have, they do not want to make a deal, they do not want to have any reason to have a conversation with you. And what I mean by that, and I'm not threatening you, but my conversations with them about this is when something like this happens and we don't get the information from the person we talk to, and we know that information is there, they very much want to take this to a jury type trial. And if that would happen in a case like this, with the information we have... When I talk to the prosecutor and he says that he wants to take this to a jury trial, and if that would happen

with those two girls getting on the stand, with those two girls saying what they've said, and with a taped interview, your chances are slim to none (R. IX, Appendix B, Title 2).

3. If you talk to me that there's a reason... But I'm throwing you a life preserver here. (R. IX, Appendix B, Title 2).
4. But the basis of fact that there are things that occurred between you and the girls. You can deny that all you want to, but on their information it happened. What I'm trying to get from you today is your cooperation. Because I'm telling you, it doesn't matter if it's a Gray County Jury, a Ford County Jury, the State of Kansas with conservative people we have in this state - you've lived here 10 years - if there's a five year old and a four year old go up on the stand, and they have to sit there and say, "my dad my step-dad did this to me," people are going to want to have your head on a platter. (R. IX, Appendix B, Title 2)
5. I have one side of the story. And without your side of the story, I have to go with theirs. I don't have any other choice. My thing is not here to put you in prison for the rest of your life. I want to know what the truth is, because the truth is the only thing that is going to take care of this matter. I've been around the block enough to know what the other outcome is and that doesn't look good for you. So talk to me about what happened. (R. IX, Appendix B, Title 2).
6. I'm telling you the only person that can save you, at least a little bit of grief, is me. (R. IX, Appendix B, Title 2).
7. I can't go to the prosecutor and help you out if you sit there and say ... If I tell them like you don't know, you don't know, there's circumstancial this, circumstantial that. If I can't give them anythng, the prosecutor is going to want to take you to court. He's not going to

8. want to make a plea agreement. (R. IX, Appendix B, Title 2). You show that to a jury -- that DVD interview -- and they see that and then you show, they have them up there on the stand, that's not going to work well for you. We're to the point of this - it's not whether it happened or didn't happen, it's how many times it happened. (R. IX, Appendix B, Title 2).

9. If I go over there and tell them that you skirted around the issue, and you bounced around the issue and we sat here and talked and you had realy no real information to give me, he's going to want to take you to jury trial. He's going to beg that you go to a jury trial because he knows that you're probably going to look at quite a bit of time at that stage, because he's going to say that you're being untruthful about it.(R. IX, Appendix B, Title 2)

10. It's not a matter if you did or you didn't -- you need to tell me what happened on your behalf. Because I really can't go to the prosecutor and tell him... if you have remorse about what happened there's a chance that things are going to be less than what they are right now. Because if we have to put the girls on the stand and put them through that, he's going to request anything and everything he possibley can, plus the kitchen sink to throw at you. ***if you accept this that you made a mistake and you man up to things, Giardind will take a plea agreement on it at my recommendation.*** But if he sees you're in here for two and three hours and you're not wanting to play ball...(R. IX, Appendix B, Title 2). (Emphasis added)

11. They are going to take this as an unwillingness once we have evidence and information that you don't want to go forward and they're going to take a hard stance on it. So, believe me or not and I hope you do because I am being honest with you, ***I'm your only saving***

grace. I an it. I'm it. I'm a life preserver. The boat has capsized and you're alive and breathing, but you've got to reach out. (R. IX, Appendix B, Title 3)

12. **"I'm not kidding you. The only saving grace you have is me if you get this out in the open and we take it. The only reasonable expectation you have on a plea agreement is that."**

13. You're leaving me no choice but to go into my office and draw up that criminal affidavit, and I'm not saying you're not cooperating but you're not cooperating. You've got stories and you're not telling me.

14. I understatd from your perspective you're thinking if I confess to this then I'm screwed, but you not confessing to things that you've done is screwing you. (R. IX, Appendix B, Title 4)

The above statements clearly suggest to Mr. Stenberg that Undersheriff Sharp is his only chance for leniency by confessing. One statement in particular, "*if you accept this that you make a mistake and you man up to things,* ***Giardind will take a plea agreement on it at my recommendation,***" is **clearly an implied promise** that if Stenberg cooperates and confesses, **Undersheriff Sharp would go to the prosecutor "Giardine" who would accept [take] a plea agreement on it at Undersheriff Sharp's recommendation.** At the very least, Undersheriff Sharp is promising to make the recommendation, which the rest of the promise "Giardine will take a plea agreement on it..." is beyond Undersheriff Sharp's authority to produce the results promised. The manner in which the statement was made by Undersheriff Sharp imlies a **promise of Leniency for the Comfession.** It is unlawful when police promise leniency for a confession. **SEE** State v. G.O. 543 P.3d 1096 (Kan. 2024). Also **SEE** Moore v. Czerniak 534 F.3d 1128

(CA9 2008), when the petitioner, a state prisoner who had pled no contest to one count of felony murder with a firearm, appealed from a judgement of the United States District Courd for the District of Oregon, which denied his petition for a Writ of Habeas Corpus under 28 U.S.C. 2254.

On appeal, the Court found that the prisoner's taped confession was obtained by the police by unconstitutional means based on a promise of leniency by the interrogation officers. In Czerniak, the police officers, during interrogation, told Moore... that they "could go to bat for him as long as they got the truth." **SEE State v. Harris, 284 Kan. 560, 579-80, 162 P.3d 28 (2007)** (" In order to render a confession involuntary as a product of a promise of leniency, the promise must concern action to be taken by a public official; it must be such that it would be likely to cause the accused to make a false statement... and it must be made by a person whom the accused reasonably believed to have the power or authority to execute it").

In **State v. G.O., 543 P.3d 1096 (Kan. 2024)**, G.O.'s stepsister revealed that G.O. had molested her. At the police station, the detective told G.O. that he wasn't under arrest; that the purpose of the interview was only "to help G.O.'s stepsister heal... to get the family back together." and that the interview was not "about getting people in trouble." the detective then produced a form to waive G.O.'s right under **Miranda v. Arizona, 384 U.S. 436 (1966)**. and encouraged G.O. to sign it as a "formality" because they were at the police station. The detective again assured G.O that he wouldn't be arrested, but he also said that if G.O. didn't tell him everything or if G.O. told him things that turned out to not be true,"then that's when things start to get out of control." G.O. eventually relented and described to the detective sexual acts with his stepsister. After being charged with over 60 sex-related felonies, G.O. moved to suppress his statement to the detective

arguing his waiver of rights and his confession were not knowing and voluntary. After a hearing the trial court granted the motion.

Reason 2) In today's society too many innocent individuals are convicted of crimes, and are incarcerated in either a county jail or a state prison, when an attorney fatally fails to effectively represent that individual. The attorney representing that individual is performing a major injustice. Not only is the attorney violating the clients Sixth Amendment Right to effective representation of counsel but also his Fourteenth Amendment Right to Due Process.

Every person is given the Sixth and Fourteenth Constitutional Amendment Rights to effective assisstance of counsel through due process. An attorney must look into every avenue of the case. He must put forward the best defense possible. That means thoroughly investigating the case. Whether he believes his client to be innocent or guilty is irrelevant.

Stenberg argues seven (7) issues which point to his Sixth Constitutional Amendment Right to effetive assistance of counsel and his Fourteenth Constitutional Amendment Right to due process, being violated.

1. Trial Counsel's failure to contact any potential defense witnesses provided by Stenberg.
2. .Trial Counsel's failure to conduct any form of investigation into the case.
3. Trial Counsel's failurre to have any form of a viable defense strategy.
4. Trial Counsel's failure to perform certain pre-trial / post-trial functions.
5. Trial Counsels failure to prepare Mr. Stenberg to testify on his own behalf.
6. Trial Counsel's failure to procure an expert witness to not only review the victims' forensic interviews and the interviewer's tactics, but also to refute the testimony of the state's expert witness.

7. Trial Counsel's failure to put the State to adversarial testing.

Issues 1 & 2: In **Hargrave-Thomas v. Yulkins, 236 F.Supp.2d 750 (E.D. Mich 2002) at page 769.** Counsel Venditelli admitted that he had failed to interview any witnesses or conduct any other type of investigation before Petitioner's trial for first degree murder and the burning of a dwelling house. Mr. Venditelli's excuse for his listlessness was that he never considered Petitioner to be his client, but merely his potential client. The court held that Petitioner has proven prong one of the Strickland test. At a bare minimum, a lawyer must "interview potential witnesses and make an indepentant investigation of the facts and circumstances in the case." **Bryant v. Scott, 28 F.3d 1411, 1415 (5th Cir. 1994)**. In **Dobbs v. Turpin, 142 F.3d 1383, 1388 (11th Cir. 1998)**, Trial Counsel was found to be ineffective when he failed to interview potential witnesses who could have testified regarding the defendant's unfortunate childhood. In **King v. Strickland, 748 F.2d 1462 (11th Cir. 1984)**, Counsel's failure to present character witnesses at penalty phase was not the result of a strategic decision made after reasonable investigation. In **Campbell v. Reardon, 780 F.3d 752 (7th Cir. 2015** Counsel's failure to interview eyewitnesses was not reasonable and prejudiced petitioner.

Stenberg provided Trial Counsel with a list of seven (7) potential defense witnesses, two (2) of which (grandmother and uncle of the victims) came forward requesting to testify on Stenberg's behalf. Trial Counsel failed to investigate, interview or even contact any of the names on the list, believing them to be nothing but character witnesses. **SEE Appendix F (page 69 line 20 thru page 72 line 4.)** Trial Counsel wanted to avoid what he called introducing character witnesses due to Stenberg's past sexual offenses, afraid that his past would then come into play as bad character to counter any good character possible presented by witnesses. At Stenberg's **K.S.A.**

60-1507 Evidentiary hearing Motion Counsel's examination of Trial Counsel went as follows;

Q. Mr. Antosh, you mentioned the priors being of a sexual nature type of offense; correct?

A. Yes

Q. But, also, they were very different, fact pattern-wise, than what he was accused of here. Do you agree with that?

A. I -- I don't know that I'm -- that I would make any characterizations as far as how dirrerent they were. I mean, there are similarities in those differences. Certainly, they weren't -- I think there was only one prior bad act incident where it was suggessted that he had physical contact of a sexual nature with -- with a younger female. But, they were different, but they were sexual.

Q. But -- but, you would agree, at least , that this 2014 case was significantly more serious conduct than any of the priors?

A. Yes

Q. They were essentially exposure-type cases, and that sort of thing: is that corrrect?

A. Yes

Q. All right. So, troublesome. But, if we were going under the old rule of strikingly similar conduct, they may not have passed muster. Would you agree with that?

A. Well, yes, although I think that there is -- there is a little bit of danger when, as the defendant, you introduce your client -- or, evidence of your client's good character, I think you open the door for all kinds of bad stuff to come in. And, then, since there had already been a pretrial hearing with regard to evidence, prior bad acts evidence, where Judge Hood had said you can use it for any reason you want, however you want, Mr. Giardine.

As far as we were concerned on the day of trial, it was more likely to come in than not. **SEE Appendix F page 91 line 20 thru page93 line 7**

If Trial Counsel had performed even the rudimentary investigation into Stenberg's past, Trial Counsel would have discovered the true nature of Stenberg's prior bad acts and that there was no sexual contact between Stenberg and a younger female other wise there would have been

criminal charges placed against Stenberg instead of just a PFA. His prior bad acts were irrelevant and the fear of them coming into play was unfounded. **SEE Appendis G**

Trial Counsel cannot possibly know to what extent a witness may or may not contribute to the defense without interviewing that person, to investigate what that person has to offer. At a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. **Nealy v. Cabana, 764 F2d 1173, 1177 (5th Cir. 1985)**. The duty to investigate includes an obligation to investigate all witnesses who may have information concerning his or her client's guilt or innocence. **Bryant v. Scott, 28 F.3d 1411, 1415 (5th Cir. 1994)**. In **Ramonez v. Berghuis, 490 F.3d 482 (CA 6 2007)** Trial Counsel Frederick Moore failed to investigate and call three (3) witnesses, which Ramonez complained that he had told Moore about those witnesses months earlier. There the Court summed it up with this point: Constitutionally effective counsel must develope trial strategy in the true sense -- not what bears a false level of "strategy" -- based on what investigation reveals witnesses will actually testify to, **not based on what counsel guesses they might say in the absence of a full investigation.** Moore's perfomance fell well on the wrong side of that line. **[Writ Granted]**

Stenberg contends his trial was prejudiced by the fact the jury never got to hear the testimony of witnesses who would have testified to the facts: **the girls would do anything to get their mothers' attention, the girls had prior inadvertant exposure to sexual acts and had previously acted them out,** unlike the girls' testimony--**the girls would go to bed with their pajamas on but would frequently take them off during the night,** and that **when the girls were in their parent's bedroom with Stenberg, the door to the bedroom was always open.** Such testimony would have bolstered the defense. Counsel has a duty to make a reasonable

investigation or to make a reasonable decision that makes particular investigation unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgement. **Strickland v. Washington, 466 U.S. at 690-691, 104 S.Ct, 2052 (1984)**. In **Turner v. Duncan, 158 F.3d 448 (CA 9 1998) p451**, Billy Carl Turner, a defendant facing first degree murder charges, paid an attorney $1,000 to represent him at trial. In return, his lawyer delivered one of the most minimal efforts we have seen in a case of this magnitude. Turner's attorney failed to take even the most basic steps to investigate and prepare Turner's defense, although evidence relevant to his mental state was readily available and could have been discovered simply by reading the case file. This deficient representation deprived Turner of the best evidence that he could have presented to corroborate his testimony that he had killed the victim, Arthur Dennis, while in a state of anger and fear due to months of severe physical and sexual abuse. [Remanded for a hearing to determine prejudice.] The heart of effective assistance of counsel is preparation. **SEE United States v. Tucker, 716 F.2d 576 (CA 9 1983), p584,** Attorney Keating failed to prepare his client's defense competently under the most tolerant standard of evaluation. He failed to obtain legally relevant facts from his client; he failed to pursue obvious leads provided by his client, and failed completely to garner corroborating evidence for his cient's testimony. He failed to interview or attempt to interview key witnesses, and his review of the trial exhibits made available by the government was inadequate. In **Richter v. Hickman, 578 F.3d 944 (CA 9 2009) p946**, Reinhardy, Circuit Judge: To not prepare is the greatest of crimes; to be prepared beforehand for any contingency is the greatest of

virtues.

-- Sun Tzu, The Art of War 83 --

(Samuel B. Griffith trans. Oxford University Press 1963)

At the heart of an effective defense is an adequate investigation. Without sufficient investigation, a defense attorney, no matter how inteligent or persuasive in court, renders deficient performance and jeopardizes his client's defense.

Although it was apparent that an issue critical to the out-come would best be resolved through the presentation of forensic evidence, Counsel failed at each stage of the case to consult with a forensic expert of any type and thus failed to conduct the rudimentary investigation necessary in order to (1) decide upon the nature of the defense to be presented, (2) determine before trial what evidence he should offer, (3) prepare in advance how to counter damaging expert testimony that might be introduced by the prosecution, and (4) effectively cross-examine and rebut the prosecution's expert witnesses once they did testify during the course of the trial. There was in fact no strategic reason for Counsel's failure to do so. As it turned out, these repeated failures to investigate were prejudicial: Available forensic testimony would have contradicted the prosecution's explanation of the events that transpired and would have strongly supported the defense'e version. [Writ Granted]

Because the Defense Counsel failed to investigate the list of witnesses Stenberg provided him with, Counsel failed to call on these witnesses, and Counsel failed to perform even the most rudimentary investigation into the case, Stenberg asserts he did not get to put on the defense he wanted in completeness, and Counsel's performance fell well below the objective standard of reasonableness, thereby prejudicing Stenberg's defense as stated above.

Issue 3: Defense Counsel based all of his defense strategy on the suppression of both Stenberg's verbal and written statements. When the suppression motion was denied, Counsel failed to have any other form of a viable defense strategy. Counsel's remaining defense strategy was to hope the State "made some mistakes." Counsel cannot explain away his failure to investigate or interview witnesses, or to fail in preparing the defendant to testify as having been a strategic decision. **SEE Appendix F (page 66 line 12 thru page 72 line 4.)**

Trial Counsel acknowledged that, early on and throughout the pendency of the case, the defense would necessarily rest on one line of defense -- challenging the admission of those statements was the only defense strategy and realizing those statements were going to be admitted following the denial of Stenberg's motiono to suppress, Counsel failed to investigate any alternate defenses, including preparation of Stenberg to testify and be given an opportunity to explain his statements. Instead, Counsel relied on "hoping" the State of Kansas would make "reversible error" and then winning on the suppression issue on appeal. Counsel essentially conceeded a guilty verdict and made no attempt to put together an alternative defense strategy. In Stenberg's **K.S.A. 60-1507** evidentiary hearing, Trial Counsel was asked:

Q. But, focusing strictly on trial strategy, you've acknowledged a pretty low chance of aquittal. You had a sparse defense. Would you agree with that?

A. Yes

Q. And, you presented zero witnesses. You agree with that?

A. Yes

Q. And, you also agree that of the potential witnesses you made the decision, without discussing with them, that they would be probably maybe more harmful that helpful?

A. Yes, I would agreee with that.

SEE Apendix F page 84 lines 12-24.

When Counsel was asked about his defense strategy:

Q. You didn't have a defense; is that true?

A. "Um... I guess it depends on what you mean by a defense. Did we have a case in chief that we were presenting? Did we have a strategy? Did we have an alternate version of facts? Did we have a coherent you're going to either believe this by the State or you're going to believe this by us, you are going to weigh it how you weigh it? Did we have a big plan? **No! The strategy, the defense, was to see if the State makes mistakes, catch them on mistakes."**

Q. So, your --

A. Don't make any mistakes, and -- and keep it clean so that you have the ability to, on appeal, maybe get that confession tossed. In which case, it looks a lot better for Mr. Stenberg on retrial.

Q. So, but -- but. you didn't present a defense during the case in chief; correct?

A. Yes, that's correct.

Q. And, you were basically hoping the State's offense stunk; right?

A. Oh, certainly, yes.

Q. Yeah, You were hoping they did?

A. Yes

Q. But, if they didn't, you had nothing to present in that contradiction to their case?

A. Um...

Q. Is that true?

A. That's correct.

Trial Counsel admitted that the defense did nothing to contradict the State's case. SEE Appendix F page 99 line 8 thru page 100 line12. After they lost the suppression motion, there was no attempt to formulate a defense. "Counsel basically said we had a 10% chance of winning at trial, and that we would win it on appeal." Counsel agreed that "an enormous amount" of his

trial strategy was to suppress Stenberg's statements. He testified that the comment about a 10% chance of winning at trial "sounds like verbatim, like something I would have said, yes." **SEE Appendix F (page 69 line 20 thru page 72 line 4 and page 84 lines 12-24)**

Trial Counsel's declared trial strategy of "**hoping the State would make mistakes,**" was ultimately not an effective, viable or reasonable trial strategy and prejudiced Stenberg's constitutional right to a fair trial and his constitutional right to effective assistace of counsel.

Issue 4: Counsel failed to perform certain pre/post-trial functions when he failed to investigate witnesses, failed to investigate Stenberg's past as it related to current charges against him, failed to procure or even consult an expert witness, failed to prepare Stenberg to testify and failed to file a downward departure at sentencing. Sentencing "is an adversarial procress--when the sentencig judge had choices to make, the State often seeks a more severe sentence than the defendant suggests, and each side presents arguments for their desired sentence." **Baker v. State, 57 Kan. App. 2d 561, 581,457 P.3d 183 (2019), /review denied (Sept. 29,2020), Leben, J., Dissenting**, "A sentencing hearing 'is sufficiently like a trial in its adversarial format and in the existence of standards for decision that counsel's role in the proceeding is comparable to counsel's role at trial-- to ensure that the adversarial testing process works to produce a just result under the standards governing decision."Id. In other words, there was no reason Trial Counsel couldn't have at least argued for concurrent sentences.

Issue 5: Counsel failed to prepare Stenberg to testify. Although Stenberg had prior convictions, the uncontroverted evidence was that this was his first trial. There was no evidence presented that Stenberg was "above average in regard to his understanding of his rights and responsibilities in the trial process." And there was no evidence that he had ever faced charges as serious as

these. **SEE Appendix G.** As for Stenberg testifying, the court found "the facts are clear Stenberg was prepared both before the trial and had additional time at the trial to again consult with Counsel before he made the final decision not to testify." Again, the first part of this statement was not supported by substantial competent evidence. Trial Counsel admitted he knew from his first or second conversation with Stenberg -- in a representation that lasted 14 $^{1}/_{2}$ months from the time he was appointed to the first day of trial -- **that he didn't want Stenberg to testify**. **SEE Appendix F page 98 lines 7-12.** Talkng to someone about how it would be "terrible" if they testified is not "preparing" them to testify. There was no evidence presented that Trial Counsel and Stenberg actually prepared in the event Stenberg went against Counsel's unwaivering advice that he not testify. **SEE Appendix F page 76 line 25 thru page 78 line 10.** Stenberg wanted to testify, to explain why he finally gave his confession, the reasons behind the confession and what was going on in his mind when he made his confession. But due to the fact that Counsel informed him certain portions of the interrogation (implied promises of leniency for a confession and implicit threats of more severe consequences for not confessing) would not be allowed to be heard by the jury, Stenberg's whole reason for testifying was mute. In other words, the uncontroverted evidence being there was no time spent actually preparing Stenberg to testify in his own defense either to defend himself against the accusations made against him or being able to testify about the reasons for his confession to law enforcement,--without the context of material the jury would not have been allowed to hear.

Issue 6: Trial Counsel failed to procure or even consult an expert witness to not only review the victims' forensic interviews and the interviewer's tactics, but also to refute the testimony of the State's expert witness. Trial Counsel admitted during examination at Stenberg's **K.S.A. 60-1507**

Evidentiary hearing that he hadn't even thought to consult or procure an expert witness for the defense.

Q. Did your client suggest, or, did either of you bring up the potential of having an independant expert review the interview with the two alleged victims to determine whether any potential tainting, leading, etcetera, had occurred?

A. I -- I can neither confirm or deny, because I don't remember whether Mr. Stenberg may have reuested somethng like that. I didn't independently come up with anything. We did ask for a Gregg evaluation, which was denied out-of-hand by Judge Hood. So, we were never going to be able to get an independent psychiatrist/psychologist to iinterview the girls.

Q. But, what about having an independent expert to simply review the interviews to determine if they had been overly suggestive? Did that occur, or did it cross your mind to potentially do that?

A. Probably it wouldn't hurt. It didn't cross my mind.

Q Are you aware of any recent case law, probably admittedly after 2014, that suggests in most cases such as this one, that sort of an expert should be conferred with? Are you aware of any Kansas case law that suggests that?

A. I'm not. But, that's not to say that I don't think there is any out there. I wouldn't be surprised. **SEE Appendix F page 74 line 25 thru page 76 line 18**

In **Miller v. Snokowski, 268 F.Supp.2d 296 (E.D. Y. 2003),** David Miller was convicted of sodomy in the first degree and endangering the welfare of a child. Thereafter, he petitioned for Federal Habeas Corpus. Shortly before trial, the court appointed John Jiras to represent the defendant. Over a year after Jiras' appointment, the prosecution obtained Dr. Gordon's report detailing the observed condition of the alleged victim's hymen. In the intervening year, Miller's prior attorney Allen made no effort to retain an expert. However, on the third day of jury selection, Jiras made two ex parte motions for leave to employ a child psychologist and a medical doctor, respectively. These motions were granted by the court. There is no evidence that Jiras ever retained the services of either type of expert. He assuredly did not present such expert

testimony at trial. In **Pavel v. Hollins, 261 F.3d 210 (2nd Cir. 2001),** the failure to investigate the medical claims that formed the physical evidence for sexual abuse charges was unreasonable and formed the basis for constitutionally ineffetive assistance of counsel. (Quoting Lindstadt) "In sum, Defense Counsel's failure to consult an expert, failure to conduct any relevant research, andfailure even to request copies of the underlying studies relied on by Dr. Gordon contributed significantly to his ineffectiveness." **Lindstadt, 230 F.3d at 202.**

Stenberg contends Counsel failed to consult an expert, failed to conduct any relevant research regarding the prosecution's expert, and/or any of the underlying studies relied on by the prosecutions expert. Stenberg will rely on Counsel's testimony at the **K.S.A. 60-1507** Evidentiary hearing and the record to prove Counsel's deficiency in this area. **SEE Appendix F page 74 line 25 thru page 76 line 18** Stenberg contends Counsel's failure prejudiced the defense in that he was denied the opportunity to refute the State's expert testimony, to have the victims' testimony and forensic interviews evaluated for suggestibility, or to have the Expert witness's interviewing tactics evaluated.

Issue 7: Trial Counsel failed to put the State to adversarial testing when it failed to consult with and call upon an expert witness for the defense (addressed in Issue 6 above) and it failed to properly cross-examine the victims. At Stenberg's **K.S.A. 60-1507** Evidentiary hearing. Motion Counsel's examination of Trial Counsel as well as the trial record of the cross-examination of the girls shows just that. At Stenberg's trial on January 13. 2016 the State's direct examination of the alleged victims lasted a total of 35 minutes. The State asked leading questions to coax the answers the State wanted when those answers weren't forthcoming and when it came time to identify Stenberg as "Daddy John", A.P. had no clue who Stenberg was, either by picture or in

person.. At one point in the examination A.P. even confused "Daddy Chris" as the one who touched her instead of "Daddy John". The State went into detail about what allegedly happened to A.P. and K.P. and asked questions to determine their intelligence level, as well as if they knew the difference between a lie and the truth. When Trial Counsel performed his cross-examination of A.P., and K.P., Trial Counsel spent a total of 19 minutes between the 2 girls and was able to draw out that A.P. and K.P. both had been coached the day before on what their answers would be, but Trial Counsel never asked them about the allegations they made about Stenberg. He mainly concentrated on whether they knew the difference between the truth and a lie. **SEE Appendix H** At Stenberg's **K.S.A. 60-1507** Evidentiary hearing. Motion Counsel's examination of Trial Counsel went as follows:

Q. You mentioned on cross-examination that these witnesses are really young and you don't score points by beating up on them, basically; right?
A. Right.
Q. So, in a case like this, you have a credibility contest between someone says this happened and Defendant is saying it didn't happen. You agree that's kind of a credibility contest?
A. But, that wasn't the case here.
Q. No, you -- right. You had the confession. But, I'm talking about, like, you say you have a run-of-the-mill adult victim rape case?
A. Okay.
Q. And, that person is saying it happened, and the defendant is saying to you it didn't happen, one of the strategies common in those cases is cross-examining the victim. Do you agree with that?
A. Certainly, yes.
Q. So, you really have to. Strategy-wise, though, you -- you explained the difference. You're dealing with small children, vulnerable. The jury may not like that. so, your strategy, one of them, was I can't really go after the girls and try to nitpick everything they've said, because I look like a bully. Do you agree with me on that?
A. Um... Somewhat.....
Q. ...What I'm getting at here is your statement about basically going a little easier because of their tender ages.

SEE Appendix H page 96 line 9 thru page 97 line 23.

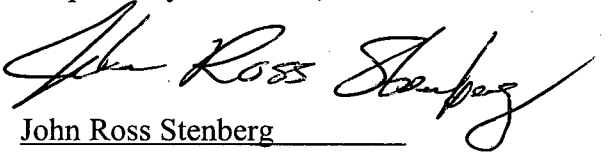
Stenberg contends his trial was prejudiced because of those violations and furthermore, when the court denied his motion to suppress his written and verbal confession, made to Law Enforcement, when such statements were clearly made due to the illegal interrogation tactics used by Undersheriff Sharp and the overbearing of Stenberg's will to get that confession. Stenberg further contends that his trial was prejudiced when Trial Counsel took it easy on the young victims and failed to fully cross-examine them because Counsel was afraid of what the judge and jury would think of him due to the victims' young age. Granted, Stenberg agrees that Counsel couldn't cross-examine the young girls as aggressively as he would an adult, but Counsel still had the duty to cross-examine the young girls to the full extent of his ability to get to the truth, regardless of their age. Stenberg further contends his trial was prejudiced when Trial Counsel failed to call on witnesses for his defense, failed to consult an expert on young children interviews, failed to investigate any portion of the case in general or even Stenberg's background, and failed to have any form of a viable and effective form of defense. Stenberg contends that Trial Counsel failed at every turn of the case to effectively represent and defend him at trial.

Stenberg, therefore, contends that his **Fifth, Sixth, and Fourteenth Constitutional Rights** were violated in his case.

CONCLUSION

This petition for a Writ of Certiorari should be granted.

Respectfully submitted,



John Ross Stenberg

Date August 29, 2024