

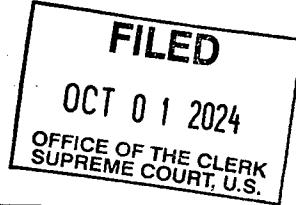
No. \_\_\_\_\_

24-5726

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



William Hudson — PETITIONER

VS.

Warden JTVCC, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

William Hudson

James T. Vaughn Correctional Center

1181 Paddock Road

Smyrna, DE 19977

## QUESTION(S) PRESENTED

- I.) William Hudson's case raises an important issue not settled by this Court and one that is in conflict with other United States Court of Appeals and other state courts of last resort: whether and to what extent are expansive digital searches, specifically for the entire contents of a computer as they pertain to the Fourth Amendment's particularity requirement, tolerable because of the complexities of a digital search. Does a Sixth Amendment violation of effective assistance of counsel occur when defense counsel fails to object to the defective warrant?
- II. Does the tenants of the Sixth Amendment effective assistance of counsel tolerate when appointed defense counsel fails to request and obtain all of the records (specifically trial transcripts) necessary for a thorough and conscientious examination of the record for appealable issues? Did the courts err when they utilized the *Strickland* test instead of a *Chronic* test because there was no adversial test when the courts analyzed themselves the record for appealable issues of defense counsel?

## LIST OF PARTIES

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

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

## RELATED CASES

Hunter v. State, 89 A.3d 477, 2014 Del. LEXIS 141 (Del. Supr. Ct. March 24, 2014)  
State Supreme Court Direct Appeal Denial

State v. Hunter, 2017 Del. Super. LEXIS 645, 2017 WL 5983168 (Del. Super. Ct. Sept. 29, 2017)  
State Superior Court Postconviction Denial

State v. Hunter, 2018 Del. Super. LEXIS 184 (Del. Super. Ct. April 25, 2018)  
State Superior Court Supplemental Postconviction Commissioner's Report (Denial)

State v. Hunter, ID No. 1104009274, Rennie, J. (Del. Super. Ct. July 10, 2018) (ORDER)  
State Superior Court Supplemental Postconviction Commissioner's Report Adoption

Hudson v. State, 225 A.3d 316, 2020 Del. LEXIS 28, 2020 WL 362784 (Del. Supr. Ct. Jan. 21, 2020 reargument denied Feb. 14, 2020)  
State Supreme Court Postconviction Appeal Denial

Hudson v. May, et al., 2023 U.S. Dist. LEXIS 173659 (D. Del. Sept. 27, 2023)  
Delaware District Court Federal Habeas Corpus and Certificate of Appealability Denial

Hudson v. Warden JTVCC, et al., C.A. 23-2811 (3rd Cir. March 15, 2024 rehearing denied May 8, 2024)  
3<sup>rd</sup> Circuit Court of Appeals Appeal and Certificate of Appealability Denial

## TABLE OF CONTENTS

	<b>PAGE(S)</b>
QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	ii
RELATED CASES.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv-vi
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4-5
REASONS FOR GRANTING THE WRIT.....	6
I. THE THIRD CIRCUIT COURT OF APPEAL'S VIOLATION OF THE SIXTH AMENDMENT'S EFFECTIVE ASSISTANCE OF COUNSEL AS IT PERTAINS TO THE ANALYSIS OF THE FOURTH AMENDMENT'S PARTICULARITY REQUIREMENT AND GENERAL WARRANTS IN THE ELECTRONIC DOMAIN WARRANTS THIS COURT'S ATTENTION.....	6-12
II. THE THIRD CIRCUIT'S VIOLATION OF THE SIXTH AMENDMENT'S EFFECTIVE ASSISTANCE OF COUNSEL AND MISAPPLICATION OF <i>STRICKLAND</i> WHEN <i>CRONIC</i> SHOULD APPLY WARRANTS THIS COURT'S ATTENTION.....	13-14
CONCLUSION.....	15

## INDEX TO APPENDICES

- Appendix A: 3<sup>rd</sup> Circuit Court of Appeals Certificate of Appealability Denial
- Appendix B: District Court of Delaware Habeas Corpus Denial
- Appendix C: 3<sup>rd</sup> Circuit Court of Appeals Rehearing Denial
- Appendix D: Delaware Supreme Court Postconviction Appeal Denial
- Appendix E: Delaware Superior Court Postconviction Denials (3)
- Appendix F: Delaware Supreme Court Direct Appeal Denial

## TABLE OF AUTHORITIES CITED

CASES	PAGE(S)
<i>Anderson v. Maryland</i> , 427 U.S. 463 (1976).....	7, 9
<i>Buckham v. State</i> , 185 A.3d 1 (Del. Supr. Ct. Jan. 24, 2018) .....	10, 11
<i>Burns v. United States</i> , 235 A.3d 758 (D.C. 2020).....	10, 11
<i>Commonwealth v. Green</i> , 265 A.3d 541, 2021 Pa. LEXIS 4283 (Pa. Supr. Ct Dec. 22, 2021).....	10
<i>Commonwealth v. McDermott</i> , 2007 Mass. LEXIS 257 (April 13, 2007).....	12
<i>Commonwealth v. Snow</i> , 138 N.E. 3d 418 (Mass. 2019).....	10
<i>Commonwealth v. Snow</i> , 160 N.E. 3d 277 (Mass. 2021).....	10, 11
<i>Coolidge v. New Hampshire</i> , 403 U.S. 443 (1971).....	7, 11
<i>Guest v. Leis</i> , 255 F.3d 325 (6th Cir. 2001).....	11
<i>Herring v. New York</i> , 422 U.S. 853 (1975).....	14
<i>Hudson v. May et al.</i> , 2023 U.S. Dist. LEXIS 173659 (D. Del. Sept. 27, 2023).....	5, 7, 10, 13
<i>Hudson v. State</i> , 225 A.3d 316, 2020 Del. LEXIS 28 (Del. Supr. Cr. Jan. 2020).....	5, 7, 10, 13
<i>Hudson v. Warden JTVCC, et al.</i> , C.A. 23-2811 (3rd Cir. March 15, 2024 rehearing denied May 8, 2024).....	5, 6, 13
<i>Hunter v. State</i> , 89 A.3d 477, 2014 Del. LEXIS 141 (Del. Supr. Ct. March 24, 2014).....	4
<i>In re Edward Cunnias</i> , 770 F. Supp. 2d 1138 (W.D. Wash. 2011).....	10
<i>In re Search Warrant</i> , 195 Vt. 51, 89, 2012 Vt. LEXIS 100 (Vt. 2012).....	11
<i>Marron v. United States</i> , 275 U.S. 192 (1927).....	7
<i>Maryland v. Garrison</i> , 480 U.S. 78 (1987).....	7
<i>People v. Herrera</i> , 357 P.3d 1227 (Colo. 2015).....	10
<i>People v. Hughes</i> , 2020 Mich. LEXIS 2307 (Mich. Dec. 28, 2020).....	10

<i>Prince v. State</i> , 119 N.E.3d 212, 2019 Ind. App. LEXIS 82 (Ind. Feb. 22 2019).....	10
<i>Rickert v. Sweeney</i> , 813 F.2d 907 (8th Cir. 1987).....	8
<i>Riley v. California</i> , 573 U.S. 373, 134 S. Ct. 2473 (2014).....	8
<i>Stanford v. Texas</i> , 379 U.S. 476 (1965).....	7
<i>State v. Castagnola</i> , 46 N.E.3d 638 (Ohio 2015).....	10, 11
<i>State v. Henderson</i> , 2014 Neb. LEXIS 162 (Neb. Oct. 17, 2014).....	10
<i>State v. Hunter</i> , 2017 Del. Super. LEXIS 645 (Del. Super. Ct. Sept. 29, 2017).....	4
<i>State v. Manor</i> , 2016 Ore. App. LEXIS 952 (Ore. July 27, 2016).....	11
<i>Steele v. United States</i> , 267 U.S. 498 (1925).....	7
<i>Strickland v. Washington</i> , 466 U.S. 688 (1984).....	5, 13, 14
<i>United States v. Abrams</i> , 615 F.2d 541 (1st Cir. 1980).....	8
<i>United States v. Bishop</i> , 910 F.3d 335 (7th Cir. 2018).....	11
<i>United States v. Blake</i> , 868 F.3d 960 (11th Cir. 2017).....	11
<i>United States v. Canady</i> , 2024 U.S. Dist. LEXIS 65500 (N.D. Ala. Feb. 27, 2024).....	12
<i>United States v. Cardwell</i> , 680 F.2d 75 (9th Cir. 1982).....	8
<i>United States v. Carroll</i> , 886 F.3d 1347 (11th Cir. 2018).....	12
<i>United States v. Cohan</i> , 628 F. Supp. 2d 355 (E.D.N.Y. 2009).....	12
<i>United States v. Cronic</i> , 466 U.S. 648 (1984).....	13, 14
<i>United States v. Deppish</i> , 994 F. Supp. 2d 1211 (D. Kan. 2014).....	12
<i>United States v. Ford</i> , 184 F.3d 566 (6th Cir. 1999).....	11
<i>United States v. Fuccillo</i> , 808 F.2d 173 (1st Cir. 1987).....	11

<i>United States v. Galpin</i> , 720 F.3d 436 (2nd Cir. 2012).....	10
<i>United States v. Kow</i> , 58 F.3d 423 (9th Cir. 1995).....	11
<i>United States v. Leary</i> , 846 F.2d 592 (10th Cir. 1988).....	8
<i>United States v. Meek</i> , 366 F.3d 705 (9th Cir. 2004).....	10
<i>United States v. Morrison</i> , 449 U.S. 361 (1981).....	14
<i>United States v. Ninety-Two Thousand Four Hundred Twenty-Two Dollars &amp; Fifty-Seven Cents</i> (92,422.57), 307 F.3d 137 (3rd Cir. 2022).....	11, 12
<i>United States v. Otero</i> , 563 F.3d 1127 (10th Cir. 2009).....	9
<i>United States v. Purcell</i> , 967 F.3d 159 (2nd Cir. 2020).....	12
<i>United States v. Riccardi</i> , 405 F.3d 852 (10th Cir. 2005).....	10
<i>United States v. Spilotro</i> , 800 F.2d 959 (9th Cir. 1986).....	8
<i>United States v. Stabile</i> , 633 F.3d 219 (3rd Cir. 2011).....	9
<i>United States v. Tracy</i> , 597 F.3d 140 (3rd Cir. 2010).....	10
<i>United States v. Triumph Capital Group</i> , 211 F.R.D. 31 (D. Conn 2002).....	12

## STATUTES AND RULES

28 U.S.C. § 1254.....	2
United States Constitution Amendment IV.....	3, 6, 7, 9, 12
United States Constitution Amendment VI.....	3, 6, 12, 13, 14

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

For cases from **federal courts**:

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

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

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

reported at 2023 U.S. Dist. LEXIS 173659; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

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

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

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

reported at  
 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 March 15, 2024.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 8, 2024, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including October 7, 2024 on July 11, 2024 in Application No. 24A26

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

For cases from **state courts**:

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

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

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

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **United States Constitution, Amendment IV:**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue; but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### **United States Constitution, Amendment VI:**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

## STATEMENT OF THE CASE

In April 2011, Mr. Hudson (the Petitioner) was arrested for sexual abuse of his daughter. The New Castle County Police executed two warrants, one of them for Mr. Hudson's entire digital universe – specifically the contents of his computers.

Mr. Hudson was appointed counsel to represent him at trial. Trial counsel never objected to the general warrant and ultimately Mr. Hudson was convicted at trial in February 2012.

Trial counsel withdrew as counsel and new counsel was appointed to represent Mr. Hudson at sentencing. Mr. Hudson was sentenced in January 2013 to 122 years of prison time.

Appellate counsel appealed the judgment to the Delaware Supreme Court. Appellate counsel ordered only a partiality of the available trial transcripts and submitted a brief on behalf of Mr. Hudson without review of the missing transcripts. Counsel raised a prior bad acts argument in the brief. The Delaware Supreme Court affirmed the judgment of conviction. *Hunter v. State*, 89 A.3d 477, 2014 Del. LEXIS 141 (Del. Supr. Ct. March 24, 2014) (Appendix F).

Mr. Hudson submitted a pro se Motion for Postconviction Relief to the Delaware Superior Court and was appointed postconviction counsel. Initially, counsel requested more time to review the case because there were missing transcripts, but without ever ordering the transcripts and without consultation of his client, postconviction counsel filed a Motion to Withdraw as Counsel. Mr. Hudson submitted his own pro se brief in which the issue of ineffective assistance of counsel for failing to object to the general warrant was raised amongst other issues. The Delaware Superior Court denied the motion and even though it acknowledged the ground of an overbroad or general warrant, the response discussed the issue of probable cause and ignored the issue of particularity. *State v. Hunter*, 2017 Del. Super. LEXIS 645, 2017 WL 5983168 (Del. Super. Ct. Sept. 29, 2017) (Appendix E).

Mr. Hudson appealed the postconviction motion to the Delaware Supreme Court. The issue of the general warrant was raised again. Also at this point, Mr. Hudson noticed that appellate counsel and postconviction counsel failed to obtain all of the transcripts and requested them himself from the Delaware Superior Court. Once finally received, Mr. Hudson requested remand so counsel could review the transcripts. The Delaware Supreme Court denied the appeal. *Hudson v. State*, 225 A.3d 316, 2020 Del. LEXIS 28 (Del. Supr. Ct. Jan. 21, 2020 reargument denied Feb. 14, 2020) (Appendix D). Addressing the transcript claim, it stated Mr. Hudson did not identify any viable issues in the transcripts and its own review showed none either. Addressing the general warrant, it never explicitly addressed the issue, but noted that the evidence found outside the time frame listed in the warrant affidavit was generally within the time frame of the alleged abuse, so the warrant was sufficient. *Id.*

Mr. Hudson then filed a Writ of Habeas Corpus in the Delaware District Court. Claims brought up included the issue of the trial transcripts and the general warrant. The District Court denied the motion and denied a Certificate of Appealability. *Hudson v. May, et al.*, 2023 U.S. Dist. LEXIS 173659 (D. Del. Sept. 27, 2023) (Appendix B). It denied the transcript claim by stating the Delaware Supreme Court reasonably applied *Strickland*. (*Strickland v. Washington*, 466 U.S. 688 (1984)). It denied the general warrant claim claiming the warrant was sufficiently particularized. *Hudson v. May, et al.* (D. Del. 2023).

The Delaware District Court decision was appealed to the Third Circuit Court of Appeals (hereafter “Third Circuit COA”) and requested a Certificate of Appealability. This request was denied without opinion. *Hudson v. Warden JTVCC, et al.*, C.A. 23-2811 (3<sup>rd</sup> Cir. March 15, 2024 rehearing denied May 8, 2024) (Appendix A, C).

This Petition for Writ of Certiorari follows.

## REASONS FOR GRANTING THE WRIT

### **I.) THE THIRD CIRCUIT COURT OF APPEAL'S VIOLATION OF THE SIXTH AMENDMENT'S EFFECTIVE ASSISTANCE OF COUNSEL AS IT PERTAINS TO THE ANALYSIS OF THE FOURTH AMENDMENT'S PARTICULARITY REQUIREMENT AND GENERAL WARRANTS IN THE ELECTRONIC DOMAIN WARANTS THIS COURT'S ATTENTION.**

The Third Circuit COA in *Hudson v. Warden JTVCC, et al.*, C.A. 23-2811 (3<sup>rd</sup> Cir.

March 15, 2024 rehearing denied May 8, 2024) entered its decision in conflict with other United States Court of Appeals and other state courts of last resort on an important issue not settled by this Court: whether and to what extent does the Fourth Amendment's particularity requirement tolerate expansive digital searches because of the complexities of digital searches.

The Third Circuit COA, by "affirming" the Delaware District Court, violated the Sixth Amendment because Petitioner's counsel failed to object to a warrant that failed to apply the principles of particularity in a warrant for electronic information which caused the warrant to become a general warrant. In this instant case, the Delaware District Court stated that "[T]he Delaware Supreme Court did not explicitly address the Fourth Amendment's particularity requirement," but later concluded, "After reviewing the second warrant and supporting affidavit for 'practical accuracy' while also considering the complexity of the search, the crime under investigation, and the nature of the evidence sought, the Court concludes that the Delaware Supreme Court did not unreasonably determine the facts or unreasonably apply clearly established federal when determining that the second warrant was sufficiently particularized and not overbroad. While the warrant contained an expansive list of specific electronic equipment to be seized, the descriptions in the warrant limit the search to evidence the police reasonably was

“used during the commission of SACPPT and continuous sexual abuse of a child investigation.””

*Hudson v. May et al.*, 2023 U.S. Dist. LEXIS 173659 \*25-26 (D. Del. Sept. 27, 2023) (internal citation omitted) discussing *Hudson v. State*, 225 A.3d 316, 2020 Del. LEXIS 28, 2020 WL 362784 (Del. Supr. Cr. Jan. 21, 2020).

In summary, the Delaware Supreme Court, the Delaware District Court, and the Third Circuit COA concluded that a warrant that authorizes search of the contents of the computers for evidence used during the commission of SACPPT and continuous sexual abuse of a child with no other limitations is sufficient to meet the particularity requirement. When the only limiting language states it is sufficient to search an entire computer for evidence of a crime, the warrant is a general warrant despite the complexities of an electronic search because it vests the officer with the discretion as to what is and what is not allowable in contrast to *Anderson v. Maryland*, 427 U.S. 463, 480 (1976) (particularity requirement “prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.” (quoting *Marron v. United States*, 275 U.S. 192, 196 (1927))).

The Fourth Amendment requires a warrant describe with “particular[ity]...the place to be searched and the persons or things to be seized” and has been clarified in several cases. This limitation safeguards the individual against “the wide-ranging exploratory searches the Framers intended to prohibit.” *Maryland v. Garrison*, 480 U.S. 78, 84 (1987). See also *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971) (plurality opinion) (particularity requirement protects against “general, exploratory rummaging in a person’s belongings”). Additional case describing particularity and general warrants can be found with *Steele v. United States*, 267 U.S. 498 (1925) and *Stanford v. Texas*, 379 U.S. 476 (1965).

Warrants in the pre-electronic era to search for evidence of an unadorned statute/crime

have been found to be insufficiently particular. See, e.g. *United States v. Cardwell*, 680 F.2d 75 (9<sup>th</sup> Cir. 1982) (warrant describing search of business papers that required evidence to be the instrumentality or evidence of a general tax evasion statute is not enough to satisfy particularity requirement); *United States v. Abrams*, 615 F.2d 541, 542-43 (1st Cir. 1980) (warrant limited only by reference to records and federal fraud statute is overbroad); *Rickert v. Sweeney*, 813 F.2d 907, 909 (8<sup>th</sup> Cir. 1987) (warrant limited only by references to general conspiracy and tax evasion statutes did “not limit the search in any substantive manner”); *United States v. Spilotro*, 800 F.2d 959, 965 (9<sup>th</sup> Cir. 1986) (“effort to limit discretion solely by reference to criminal statutes was inadequate”); *United States v. Leary*, 846 F.2d 592 (10<sup>th</sup> Cir. 1988) (warrant for records limited to those in violation of the Arms Export Control Act and the Export Administration Act of 1979 is not sufficiently particular).

When search applications started in the electronic era, the rulings started to vary.

This Court, in *Riley v. California*, 573 U.S. 373, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014), recognized the enormous potential for privacy violations flowing from unconstrained searches of cell phones. “Cell phones differ in both a quantitative and qualitative sense from other objects that might be kept on a arrestee’s person. The term ‘cell phone’ is misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as telephones.” *Id.* at 2489. The Court observed that “[a cell] phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form...” and that digital searches permit the government access to “far more than the most exhaustive search of a house...” *Id.* at 2491.

The modern development of the personal computer and its ability to store and intermingle

a huge array of one's personal papers in a single place increases law enforcement's ability to conduct a wide-ranging search into a person's private affairs, and accordingly makes the particularity requirement that much more important. *United States v. Otero*, 563 F.3d 1127, 1132 (10<sup>th</sup> Cir. 2009). Courts that have addressed the permissible breadth of computer-related searches have grappled with how to balance two interests that are in tension with each other. On one hand, it is clear that because criminals can – and often do – hide, mislabel, or manipulate files to conceal criminal activity, a broad, expansive search of the hard drive may be required. On the other hand, granting the Government a carte blanche to search every file on the hard drive impermissibly transforms a limited search into a general one. *United States v. Stabile*, 633 F.3d 219, 237 (3<sup>rd</sup> Cir. 2011). But in all the cases reviewed where a similar affirmation is stated (e.g. this current case), it has always been based on an officer's contention and never without any tangible evidence that the suspect used such techniques.

It is notable to keep in mind that "The complexity of an illegal scheme may not be used as a shield to avoid detection when the State has determined probable cause to believe that evidence of this cache is in the suspect's possession." *Anderson* at 482. However, since the complexity of the crime is not the complexity of the search and there is no probable cause to believe the entire computer is linked to criminal activity expanding a digital data search unreasonably violates the privacy of individuals and subsequently violates the Fourth Amendment. In most current digital data search applications, the courts appear to hide behind the complexities of an electronic search to allow broad-ranging access that is open to the officer's discretion. Clarity is necessary because the Delaware courts and the Third Circuit COA are allowing general warrants in the electronic domain.

The various appellate bodies, both federal and state, vary from jurisdiction to jurisdiction

on rulings regarding warrant particularity for digital searches.

Some jurisdictions have ruled that a digital search that is limited only to evidence relating to a crime or statute is sufficiently particular. See, e.g. the instant case *Hudson v. May*, et. al. (D. Del. 2023), *Hudson v. State* (Del. Supr. Ct. 2020) (warrant authorizing search of the contents of computers limited by evidence used during the commission of SACPPT and continuous sexual abuse of a child investigation).

See also *United States v. Tracy*, 597 F.3d 140 (3<sup>rd</sup> Cir. 2010); *United States v. Riccardi*, 405 F.3d 852 (10<sup>th</sup> Cir. 2005); *Commonwealth v. Green*, 265 A.3d 541, 2021 Pa. LEXIS 4283 (Pa. Supr. Ct., Dec. 22, 2021) (but note the dissent disagrees); *People v. Herrera*, 357 P.3d 1227 (Colo. 2015); *People v. Hughes*, 2020 Mich. LEXIS 2307 (Mich. Dec. 28, 2020); *Prince v. State*, 119 N.E.3d 212, 2019 Ind. App. LEXIS 82 (Ind. Feb. 22, 2019).

Other jurisdictions have ruled that a digital search limited only to evidence relating to a crime or statute is not sufficiently particular. See, e.g. *Buckham v. State*, 185 A.3d 1 (Del. Supr. Ct. Jan. 24, 2018) (warrant for cell phone search for all data for evidence of attempted murder 1<sup>st</sup> degree lacked particularity).

See also *United States v. Galpin*, 720 F.3d 436 (2<sup>nd</sup> Cir. 2012); *In re Edward Cunnias*, 770 F. Supp. 2d 1138 (W.D. Wash. 2011); *State v. Castagnola*, 46 N.E. 3d 638 (Ohio 2015); *State v. Henderson*, 2014 Neb. LEXIS 162 (Neb. Oct. 17, 2014); *Burns v. United States*, 235 A.3d 758 (D.C. 2020); *Commonwealth v. Snow*, 138 N.E. 3d 418 (Mass. 2019) (further clarified in *Commonwealth v. Snow*, 160 N.E. 3d 277 (Mass. 2021)).

Taking both sides into account, “the proper metric of sufficient specificity is whether it was reasonable to provide a more specific description of the items at that juncture of the investigation.” *United States v. Meek*, 366 F.3d 705, 716 (9<sup>th</sup> Cir. 2004). “Specificity is a relative

matter. A warrant may be thought too general if some more-specific alternative would have done better at protecting privacy interests while permitting a legal investigation.” *United States v. Bishop*, 910 F.3d 335, 339 (7<sup>th</sup> Cir. 2018). When a warrant fails to describe the items to be seized with as much specificity as the government’s knowledge and circumstances allow, it fails to specify as nearly as possible the distinguishing characteristics of the goods to be seized. See, e.g. *United States v. Fuccillo*, 808 F.2d 173 (1<sup>st</sup> Cir. 1987); *Guest v. Leis*, 255 F.3d 325 (6<sup>th</sup> Cir. 2001). The whole reason of the warrant requirement is to ensure that “those searches deemed necessary [are] as limited as possible.” *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971) (emphasis added).

One such means of particular limits, warrants that discuss whether temporal limitations, specifically when one is available, are dispositive to participants appear to be more consistent regarding digital and non-digital searches but disparities still continue to exist from jurisdiction to jurisdiction. Most jurisdictions argue that warrant applications that lack temporal constraints where relevant dates are available are general warrants. See, e.g., *Buckham*, 185 A.3d at 19 (Del. 2018).

See also *United States v. Blake*, 868 F.3d 960, 974 (11<sup>th</sup> Cir. 2017); *United States v. Ford*, 184 F.3d 566, 576 (6<sup>th</sup> Cir. 1999); *United States v. Kow*, 58 F.3d 423, 427 (9<sup>th</sup> Cir. 1995); *Burns v. United States*, 235 A.3d 758, 774 (D.C. 2020); *In re Search Warrant*, 195 Vt. 51, 89, 2012 Vt. LEXIS 100 \*72 (Vt. 2012), *State v. Manor*, 2016 Ore. App. LEXIS 952 (Ore. July 27, 2016); *Castagnola*, 46 N.E. 3d at 659 (Ohio 2015); *Commonwealth v. Snow*, 160 N.E. 3d 277 (Mass. 2021).

A few jurisdictions deem warrants lacking temporal limitations are not always fatal and at the most overbroad. See, e.g., *United States v. Ninety-Two Thousand Four Hundred Twenty-*

*Two Dollars & Fifty-Seven Cents* (92,422.57), 307 F.3d 137, 156 (3<sup>rd</sup> Cir. 2022); *Commonwealth v. McDermott*, 2007 Mass. LEXIS 257 (April 13, 2007); *United States v. Triumph Capital Group*, 211 F.R.D. 31, 58 (D. Conn 2002); *United States v. Purcell*, 967 F.3d 159 (2<sup>nd</sup> Cir. 2020); *United States v. Canady*, 2024 U.S. Dist. LEXIS 65500 (N.D. Ala. Feb. 27, 2024); *United States v. Deppish*, 994 F. Supp. 2d 1211, 1220 (D. Kan. 2014); *United States v. Cohan*, 628 F. Supp. 2d 355, 365-66 (E.D.N.Y. 2009); *United States v. Carroll*, 886 F.3d 1347, 1352 (11<sup>th</sup> Cir. 2018).

In some jurisdictions there can be alternate rulings or even a lack of consensus within the jurisdictions leading to even more confusion. To add to the confusion, the Delaware Supreme Court previously ruled in *Buckham* that temporal restraints were needed but in the instant case, the Court ignored the temporal argument despite being raised.

Because the Sixth Amendment and the Fourth Amendment and the particularity requirement were violated, Mr. Hudson respectfully requests this Court issue a Writ of Certiorari to review the judgment of the Third COA.

**II.) THE THIRD CIRCUIT'S VIOLATION OF THE SIXTH AMENDMENT'S  
EFFECTIVE ASSISTANCE OF COUNSEL AND MISAPPLICATION OF  
*STRICKLAND* WHEN *CRONIC* SHOULD APPLY WARRANTS THIS COURT'S  
ATTENTION.**

Trial proceedings were held for the Petitioner on 1/31/12, 2/1/12, 2/3/12, 2/6/12, and 2/7/12. Initially trial transcripts were transcribed for 2/2/12 – 2/7/12, omitting 1/31/12 and 2/7/12. Appellate counsel and postconviction counsel conducted their review for appellate grounds without the missing transcripts.

Appellate counsel filed a direct appeal citing an issue relating to prior bad acts.

Postconviction counsel moved to withdraw citing no appealable issues. Once appearing pro se, this Petitioner noticed the missing transcripts issue and fought the state court to obtain them. Once received, he requested remand of his postconviction appeal so that counsel could be afforded the opportunity to review them (for appealable issues). The Delaware Supreme Court denied this claim stating, “All of the transcripts have now been prepared, and Hudson has not identified any viable issue for review arising from those transcripts, nor has this court found any.” *Hudson v. State* (Del. Supr. Ct. 2020). The Delaware District Court denied this claim in one sentence. “Given Petitioner’s failure to demonstrate how his direct appeal would have been different but for his appellate counsel’s failure to review transcripts, the Court concludes that the Delaware Supreme Court reasonably applied *Strickland* when denying the instant IAAC argument in Claim Two.” *Hudson v. May* (D. Del. 2023) discussing *Strickland v. Washington*, 466 U.S. 688 (1984). The Third Circuit COA denied the habeas corpus motion with no written opinion. *Hudson v. Warden JTVCC, et al.* (3<sup>rd</sup> Cir. 2024).

When the court performs the analysis for appealable issues instead of appointed counsel,

it circumvented the adversarial process that protects the criminal defendant. In doing so, it violated the Sixth Amendment. The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free. It is that very premise that underlies and gives meaning to the Sixth Amendment. It is meant to assure fairness in the adversary criminal process. *United States v. Cronic*, 466 U.S. 648, 655-56 (1984) citing *Herring v. New York*, 422 U.S. 853, 862 (1975) and *United States v. Morrison*, 449 U.S. 361, 364 (1981) (internal quotation marks and citations omitted). Furthermore, the Court utilized *Strickland*, but a *Cronic* analysis should have been utilized.

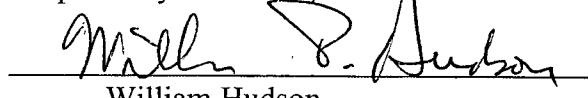
The state courts, in this instance, have decided an important question of law that has not been specifically addressed by this Court, but should be.

Because the adversarial test of the Sixth Amendment and *Cronic* was violated, Mr. Hudson respectfully requests this Court issue a Writ of Certiorari to review the judgment of the Third Circuit COA.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



William Hudson

Date: 9-30-84