

24-5840

No.

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID R. SCHACHTNER,
Petitioner

VS.

CHRIS BREWER, WARDEN, CRCC,
Respondent

FILED

AUG 07 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DAVID R. SCHACHTNER

#1284153

Crossroads Correctional Center

1115 E PENCE ROAD

Cameron, Mo 64429

RECEIVED

AUG 13 2024

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SUPREME COURT, U.S.

Questions Presented For Review

1. Can a state usurp the factual findings of a jury and the oral pronouncement of the Judge at sentencing to uphold a conviction and sentence for a crime that was clearly disproven at trial?
2. Does a court abuse its discretion in denying defendant's motion for dismissal of conviction for respondent's failure to disclose and to suppress impeachment evidence in their possession?
3. Are uncharged and unadjudicated prior bad acts allegedly committed while defendant was a juvenile against another juvenile admissible as propensity evidence to prove an attempt to commit a crime?
4. Does a defendant invite error or waive error in the admission of evidence by crossexamining a witness on that evidence after it was presented over objection?
5. Can the state misconstrue and misrepresent DNA evidence to bolster and make false claims to the jury?
6. Can a defendant be sentenced and convicted of a crime where age is a key element, without a jury determination of fact on that element?
7. Can a defendant in a criminal case be sentenced on the basis of an invalid premise or inaccurate information?
8. Does the best evidence rule apply to the record contents of cell phones, such that, before admission of secondary evidence of those contents, the primary evidence must be unavailable and inaccessible, not in their possession and disproven

LIST OF PARTIES IN COURT BELOW

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

LIST OF CASES DIRECTLY RELATED TO THIS CASE

- Schachtner v. Brewer, No. 23-3707
U.S. Court of Appeals for the Eighth Circuit
Appeal from U.S. District Court for the Western
District of Missouri Joplin (3:23-cv-05084-MDH)
Application for Certificate of Appealability
Denied and Dismissed April 03, 2024
Petition for Rehearing en banc and Petition for Rehearing
Denied May 13, 2024
- David R. Schachtner v. Chris Brewer, No. 3:23-cv-05084-MDH
U.S. District Court for Western District of Missouri
Petition under 28 U.S.C. § 2254 for Writ of
Habeas Corpus by a person in state custody
Writ and Certificate of Appealability
Denied and Dismissed November 28, 2023
- State of Missouri v. David R. Schachtner, No. SD37619
Circuit Court case No. 21AO-CC00070
Missouri Court of Appeals for the Southern District
Motion for Rehearing or, in the Alternative Transfer
to the Supreme Court of Missouri
Denied June 14, 2023

- David Schachtner v. State of Missouri, No. SD37619
Supreme Court of Missouri
Motion for Rehearing or, in the Alternative Transfer
to the Supreme Court of Missouri
(Due to issues with notification and the mail, this was
considered to be filed out of time and therefor not
considered compliant with the court rules.)
Closed May 23, 2023
- David Rodney Schachtner v. State of Missouri, No. SD37619
Missouri Court of Appeals Southern District
Appeal to Missouri Court of Appeals
Claim was Denied May 2, 2023 Mandate issued May 23, 2023
- David R. Schachtner v. State of Missouri, No. 21AO-CC00070
Circuit Court of Jasper County Missouri
Amended Motion to Vacate, Set Aside or Correct
Judgment and Sentence / Supreme Court Rule 29.15 motion
Denied May 24, 2022
- David R. Schachter v. State of Missouri,
No. SC98824 SD36093
Supreme Court of Missouri en banc
Application for Transfer from Missouri Court of
Appeals, Southern District to the Supreme Court of Missouri
Denied December 22, 2020

- ✓
- State of Missouri v. David R. Schachtner, No. SD36093
Missouri Court of Appeals Southern District
Appeal to the Missouri Court of Appeals Southern
District from the Circuit Court of Jasper County Missouri
Affirmed and Remanded with Instructions October 6, 2020

- State of Missouri v. David R. Schachtner, No. 17AO-CR00796-01
Circuit Court of Jasper County, Missouri
Convicted of Attempted Statutory Sodomy
Conviction January 10, 2019
Sentenced to life Imprisonment April 15, 2019

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

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

CITATIONS OF OPINIONS AND ORDERS IN CASE

The Petitioner was convicted of attempted statutory sodomy in the 29th Judicial Circuit, Jasper County Missouri Case no. 17AO-CR00796-01 as set forth in APPENDIX H

The conviction of Petitioner was appealed to the Missouri Court of Appeals for the Southern District, which remanded with instructions for entry of written sentence of judgment in accord with the trial court's oral pronouncement of sentence and affirmed in all other respects. This decision affirmed a conviction for commission of statutory sodomy, a charge that was clearly disproven at trial. case SD36093 as set forth in APPENDIX E.

The conviction for attempted statutory sodomy was challenged through an ~~am~~ Amended Motion to Vacate, Set Aside or Correct Judgment and Sentence under Supreme Court Rule 29.15 in the Circuit Court of Jasper County, Missouri Division I, which Denied his motion and affirmed a judgment not made by the same judge at sentencing. Case no. 21AO-CC00070 at APPENDIX D

The denial of Petitioner's 29.15 motion was appealed in the Missouri Court of Appeals Southern District case no. SD37619 which affirmed a judgment and conviction not made at trial relying on facts that were clearly disproven at trial as set forth in APPENDIX C.

The Petitioner's section 2254 motion appealed the original conviction for one count of attempted statutory sodomy to the United States Court for the Western District of Missouri Southwestern Division, this court claimed Petitioner was charged with either commission of statutory sodomy or attempted statutory sodomy which materially differs from the trial court's oral pronouncement, claiming facts, findings, and a charge that were clearly disproven at trial. The court denied petition for writ of habeas corpus and Denied a certificate of appealability and Dismissed the case. Case no. 23-05084-cv-SW-MDH-P in APPENDIX A

The Petitioner appealed the denial of the section 2254 motion by the United States District Court for the Western District of MISSOURI SOUTHWESTERN DIVISION to the United States Court of Appeals for the Eighth Circuit case no. 23-3707 the Judgment denying rehearing is set forth in, APPENDIX B.

JURISDICTIONAL STATEMENT

The judgment of the United States court of Appeals for the Eighth Circuit was entered on April 03, 2024. The petition for rehearing was Denied May 13, 2024. The jurisdiction of this court is invoked Under 28 U.S.C. § 1254(1)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fifth Amendment, United States Constitution, provides:
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
2. The Sixth Amendment, United States Constitution, provides:
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the ~~same~~ 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 defense.

3. The Fourteenth Amendment Section 1. United States Constitution,
Provides: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
4. The statute under which Petitioner was prosecuted was Mo. Rev. Stat. § 566.062 Statutory Sodomy and attempt to commit, First degree APPENDIX F (LF DOC-37)
5. The statute under which Petitioner sought Post conviction relief was 28 U.S.C. § 2254
6. Mo. Const. Art. I § 10 - Due Process of law Provides:
That no person shall be deprived of life, liberty or property without due process of law.
7. Mo. Const. Art. I § 17 - Indictments and informations in criminal cases - exceptions Provides:
That no person shall be prosecuted criminally for felony or misdemeanor otherwise than by indictment or information,

which shall be concurrent remedies, but this shall not be applied to cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger, nor prevent arrests and preliminary examination in any criminal case

8. Mo. Const. Art. I §18(a) - Rights of accused in criminal prosecutions Provides: That in criminal prosecutions the accused shall have the right to appear and defend, in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face, to have process to compel the attendance of witnesses ~~against him~~ in his behalf; and a speedy public trial by an impartial jury of the county.

9. Mo. Const. Art. I §18(c) - Admissibility of evidence Provides: Notwithstanding the provisions of sections 17 and 18(a) of this article to the contrary, in prosecutions for crimes of a sexual nature involving a victim under eighteen years of age, relevant evidence of prior criminal acts, whether charged or uncharged, is admissible for the purpose of corroborating the victim's testimony or demonstrating the defendant's propensity to commit the crime with which he or she is presently charged. The court may exclude relevant evidence of prior criminal acts if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

10. Mo. Const. Art. IV § 2 - Supreme Court - controlling decisions
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22. Missouri Supreme Court Rule 28.02 - Use of Instructions
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23. ~~28.02~~ Missouri Supreme Court Rules 29.11 (b) and 29.11 (d) -
Misdemeanors or Felonies -- After Trial Motions -
Preservation of Error

24. Missouri Supreme Court Rule 29.15 - Conviction
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25. Missouri Supreme Court Rule 30.20 - Errors Considered

26. Missouri Supreme Court Rule 30.26 - Post -- Dispositions
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27. Missouri Supreme Court Rule 83.02 - Transfer on
Order of Court of Appeals

28. Missouri Supreme Court Rule 83.04 - Transfer by
this Court After Opinion by Court of Appeals

29. Missouri Supreme Court Rule 84.17 - Post-Disposition
Motions

30. USCS Fed Rules Crim Proc R 32 - Sentencing and Judgment
APPENIX F (LF DOC-51)

31. MAI-CR 4th 420.16

APPENDIX K PG 23

STATEMENT OF THE CASE

Petitioner was arrested June 29, 2017 and charged November 30, 2017 with committing the felony of statutory sodomy in the first degree APPENDIX F DOC-33 and was held on that charge until the day before trial on January 07, 2019. The State of Missouri, realizing they could not meet the burden of proof for that charge at trial, amended the charging information to include "or in the alternative" that Petitioner committed the felony of attempted statutory sodomy in the first degree. (APPENDIX F LF DOC-34) Mo. Sup. Ct. R. 23.08 Missouri Courts consistently held that it is not permissible to amend information if the effect of the amendment is to charge an offense different from the one originally charged. A lesser included offense, however is not a different offense within the foregoing rule *State v. Mesa* 914 S.W.2d 53, 1996. The state is claiming the attempt charge as a parallel or equal charge not as a lesser included. This would require a separate indictment and preliminary hearing. The state does not claim as fact any of the findings of the jury and affirms on appeal that Petitioner was found guilty of committing statutory sodomy, a charge that was clearly disproven at trial. APPENDIX K Question 1 Schachtner was sentenced based on this charge not the lesser included charge of attempted statutory sodomy which the state provided no evidence of at trial. The jury found no elements or methods of attempting this crime of attempt. APPENDIX P Question 7

The court also enhanced the minimum sentencing guideline because the alleged victim was less than 12 years of age without a jury finding of that fact.

APPENDIX O Question 6

During trial the court allowed propensity evidence to be presented alleging misconduct of the Petitioner as a juvenile aged 13 against a juvenile aged 10 to prove that as a 37 year old man he attempted to commit statutory sodomy with a 7 year old. This allegation was never made prior to accusation. It was not reported, investigated, charged, or adjudicated. The State of Missouri lacked jurisdiction to rule on the believability of this allegation of juvenile conduct 24 years prior at a home in the State of Kansas. APPENDIX M Question 3. The State of Missouri claims Petitioner waived or invited any claim of error by cross examining this witness after objection. APPENDIX N Question 4

There was "DNA" evidence presented at trial.

This "DNA" was found on clothes with an unknown chain of custody. The prosecution claimed "there is no contamination evidence." The state provided a DNA report dated 12/19/2018 before trial and a revised report after trial dated 12/21/2018 APPENDIX F LF Doc 20 and 21 with the "added statement regarding inconclusive data for the minor component profile item 1.1" (Underwear from alleged victim) and "The minor component is inconclusive due to loss of data." This statement and second report was purposely created to be withheld from defense. There were 2 male profiles developed, the

prosecutor claimed there was only one, and that it was consistent with the Petitioner, when the only thing consistent was that the partial component was male, which is consistent with around half of the world's population.

APPENDIX O Question 5

The state had possession of Petitioner's cell phone, applied for and received a warrant to search that phone. A cellbrite forensic exam was done and when deposed Detective Holt testified he "did not see anything of concern" when he reviewed the report. Even though this evidence was disproven and objected to, the court allowed unclear testimony describing either a browser search history, a picture, a video or website. It was unknown media source that was alleged to be child pornography. Any description of this accusation was disproven by cellbrite before trial. There was no evidence of erasing, deleting or destruction by the Petitioner. There was no charge for possession of child pornography because there was no basis for the charge. APPENDIX Q Question 8

The prosecutor failed to disclose Brady Impeachment evidence. A counselling Trauma Narrative. This was a different telling of the events of the night in question and did not appear in the police report or depositions. These details were known only to the prosecution and mirrored the prosecutions line of questioning at trial. It was deliberately withheld because of its exculpatory value and to gain unfair advantage at trial. This Trauma Narrative was suppressed and not disclosed until after trial.

APPENDIX L Question 2

The state never presented evidence at trial of an attempt to commit statutory sodomy. Throughout appeals the attempt conviction was argued by the Petitioner and a commission conviction was affirmed by the state of Missouri. Evidence was presented and allowed at trial as if the trial was for commission, Petitioner was sentenced based on sentencing guidelines for commission. The findings of fact by the jury were inadequate to support either conviction. In APPENDIX I the Response to Order to Show Cause the Attorney General submitted that "Missouri imposed a conviction and life sentence for first-degree statutory sodomy" and tries to separate the attempt conviction as "a concurrent life sentence for another offense that is not the subject of this petition. 28 U.S.C. § 2254. The judge in APPENDIX B claimed there can be and petitioner was convicted of "statutory sodomy or attempted statutory sodomy" which in itself would be unconstitutional if true. The trial judges oral pronouncement was "for the crime of felony of attempted statutory sodomy in the first degree." APPENDIX F LF DOC 2 pg 541 and APPENDIX H. The State of Missouri by passed several legal fail safes designed to prevent an unclear verdict with multiple interpretations.

ARGUMENT FOR ALLOWANCE OF WRIT

I. The United States District Court for the Western District of Missouri has Decided Question 1 APPENDIX K in a way that violates the Petitioner's federal constitutional protections in a way as to call for an exercise of this Court's Supervisory power. The district court judge APPENDIX B Interpreted the argument in Ground 22 of Petitioner's §2254 petition as an "infirmity" or clerical error, and therefor not cognizable and, alternatively without merit. On page 1 of this Order (note 1, supra) the judge acknowledges this error exists, that Petitioner's charge was clarified by the trial judge "it was attempt to commit that the jury found" which is what the judgment would clarify. In opening the court gives their own interpretation of the conviction as "statutory sodomy or attempted statutory sodomy." APPENDIX H These deceptions by the courts were done to maintain a conviction for a crime that was disproven at trial and to maintain the life sentence given to a man found guilty of licking a child's leg. The United States District Court Judge protected the false narrative and malicious misinterpretation by the State of Missouri.

Having two separate, competing charges during and after trial with different elements such as commission or attempt violated Petitioner's Fifth and Fourteenth Amendment Rights to due process and his Sixth Amendment Rights because there is still not a clear understanding of the nature and cause of the accusation or conviction. The Missouri Appellate Court Judge APPENDIX E PG 16 claims there was an admission by Petitioner but does not cite such admission or say whether it was for commission or attempt,

II. The United States District Court for the Western District of Missouri has Decided Question 2 APPENDIX L in a way that conflicts with the United States Constitution and relevant decisions of this court. The District Court erroneously relied on the Missouri appellate court's findings that the trauma narrative attributed to the alleged victim (but clearly typed by someone else) would not have assisted in Petitioner's defense. This information was clearly in possession of and used by the prosecution at trial. Knowing these details not appearing elsewhere in the record would have

assisted in impeachment and shaping his defense. This violated Petitioner's due process rights to confront the witnesses against him, and a fair trial under the Sixth and Fourteenth Amendments to the United States Constitution. This undisclosed evidence was withheld and suppressed to gain advantage.

III. The United States District Court for the Western District of Missouri has decided Question 3 APPENDIX M. Relying on the Missouri Appellate Court's findings that "some of the challenged evidence was adduced by defense counsel during cross-examination of the propensity witness" and that Petitioner "May not take advantage of self invited error or error of his own making." Permitting this "propensity" witness to testify to uncharged alleged misconduct when Petitioner was 13 and she 10 to prove that as a 37 year old man Petitioner would attempt statutory sodomy on a 7 year old violated Petitioner's rights to be tried ~~only~~ for the offense for which he is charged, to due process of law, and to a fair jury trial under the Sixth and Fourteenth Amendments to the United States

Constitution. Mo. Const. Art. I 18(c) allows some propensity evidence "for the purpose of corroborating the victim's testimony or demonstrating the defendant's propensity to commit the crime with which he or she is presently charged". This does not allow for this evidence to prove propensity to attempt a crime.

IV. The United States District Court for the Western District of Missouri has decided Question 4 APPENDIX M Pages 18-22 and 26-27 Pages 28-33 and 35-36 That Petitioner invited error in questioning "propensity" witness after her testimony was allowed over his objection violating petitioner's rights to due process of law and a fair trial under the Sixth and Fourteenth Amendments to the United States Constitution. The United States District Court has sanctioned a departure by the lower courts from the usual course of judicial proceedings, as to call for an exercise of this court's supervisory power.

V. The United States District Court for the Western District of Missouri has decided Question 5 APPENDIX N that prosecution was allowed to make false claims about the DNA evidence mischaracterizing the evidence

to the jury and created a manifest injustice depriving Petitioner of his right to due process of law and a fair trial as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. This was clearly misconduct by the prosecution at trial.

VI. The United ~~States~~ States District Court for the Western District of Missouri has Decided Question 6 APPENDIX O in a way that violates the Petitioner's federal constitutional protections to due process of law and to a jury trial under the Sixth and Fourteenth Amendments. That petitioner can be convicted and sentenced without a jury finding beyond a reasonable doubt of all the elements of the crime. A manifest injustice or miscarriage of justice has occurred. Apprendi v. New Jersey, 530 U.S. 466, 477 (2000)

VII. The United States District Court for the Western District of Missouri has Decided Question 7 APPENDIX P in a way that violates the Petitioner's federal constitutional protections to due process of law and a fair trial as guaranteed by the

Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. It is clear petitioner was sentenced based on inaccurate, false, and disproven information. Petitioner was also sentenced for a crime that was disproven at trial. APPENDIX P Page 21

VIII. The United States District Court for the Western District of Missouri has decided Question 8 APPENDIX Q. Relying on the Missouri ~~State~~ Court's rulings and violating Petitioner's right to due process of law under the Sixth and Fourteenth Amendments to the United States Constitution. The testimony at trial was not cumulative of Petitioner's testimony as claimed. This evidence that was disproven by cellbrite prior to trial was not harmless. This accusation was uncharged because there was no basis for a charge. This did not meet the standards of best evidence.

When Petitioner's Brady claim was denied based on a defense imagined by the state. These were not presented by the petitioner who showed this document was withheld by the prosecution and used to the states advantage in questioning the alleged victim at trial, fatally infecting the whole trial and rendering the entire trial unfair. This decision was clearly contrary to, or an unreasonable application of, clearly established Federal law, and was based on an unreasonable determination of the facts in light of evidence presented in state court proceedings.

For the foregoing and those reasons set forth in Questions 3 and 4 APPENDIX M, the United States District Court for the Western District of Missouri abused it's discretion in Judgment denying Petition for Habeas Corpus because Petitioner "may not take advantage of self invited error or error of his own making". When petitioners argument was that allowing this "Propensity" witness to testify at all violated his rights to due process. Uncharged allegations of juvenile misconduct have never been allowed to prove propensity, and the state courts theory has no basis in, and is contrary to, existing law.

For the foregoing and those reasons set forth in Question 5 APPENDIX N, the United States District Court for the Western District of Missouri abused it's discretion in ~~the~~ Judgment denying Petition for Habeas Corpus because the state of Missouri made false claims about

and misinterpreted DNA Evidence to the jury, actual prejudice resulted from their violations of due process and the failure to consider this claim resulted in a miscarriage of justice.

For the foregoing and those reasons set forth in Question 6 APPENDIX O, The United States District Court for the Western District of Missouri abused its discretion in Judgment denying Petition for Habeas Corpus. Because the trial court failed to require the jury to find the aggravating fact of the alleged victims age beyond a reasonable doubt. Petitioner was erroneously sentenced under a falsely enhanced mandatory minimum sentence based on the additional element of the crime. Petitioner's sentence was passed under the false pretense of an incorrect range of punishment, such was a miscarriage of Justice.

For the foregoing and those reasons set forth in Question 7 APPENDIX P The United States District Court for the Western District of Missouri abused its discretion in Judgment denying Petition for Habeas Corpus, because Petitioner was clearly sentenced based on false, disproven, and inaccurate information in derogation of Petitioner's rights to due process of law and his right not to be sentenced on the basis of an invalid premise or innacurate information. Under USCS fed Rules Crim Proc R.32 Right to a fair sentencing hearing. ~~Petitioner~~ Petitioner was sentenced based on a crime and findings clearly disproven at trial.

For the foregoing and those reasons ~~as~~ set forth in Question 8 APPENDIX Q, the United States District Court for the Western District of Missouri abused its discretion in Judgment denying Petition for Habeas Corpus because the state allowed evidence from a witness at trial that was disproven, about the contents of a cell phone. The originals could not be presented because the evidence never existed. It was described as a photo, website, video and browser history. It is unclear what the accusation was and just prejudiced the Petitioner at trial. The testimony about this accusation of uncharged and unadjudicated prior bad acts violated Petitioner's due process.

Therefore the petition for a writ of certiorari should be granted.

Respectfully submitted,

Paul R. Schut

August 07, 2024

Conclusion

For the foregoing and those reasons set forth in Question 1 APPENDIX K, The United States District Court for the Western District of Missouri abused its discretion in Judgment denying Petition for Habeas Corpus. It is clear from the record that Petitioner was found guilty of the lesser crime of attempted statutory sodomy and sentenced for committing statutory sodomy. The petitioner on appeal was challenging attempt and the state in order to uphold the maximum sentence imposed for commission was affirming a charge relying on facts that were disproven at trial. The state of Missouri has clearly violated Petitioner's rights protected under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. There was no preliminary hearing on attempt to commit statutory sodomy, it was introduced as a lesser included offense, but sentenced as equal. There are still multiple interpretations of the conviction violating Petitioner's right to know the nature and cause of the accusation against him. These violations have so infected the whole process of trial, conviction appeal to deprive petitioner's due process rights and call for an exercise of this Court's supervisory power.

For the foregoing and those reasons set forth in Question 2 APPENDIX L the United States District Court for the Western District of Missouri abused its discretion in Judgment denying Petition for Habeas Corpus.