

No. 24-5855

ORIGINAL

SUPREME COURT OF THE UNITED STATES

TERM, 2024

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

ANDREW FIELDS, PRO-SE

PETITIONER,

V.

N.Y.S.D.O.C.C.S.,

RESPONDENTS.

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

PETITION FOR WRIT OF CERTIORARI

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OCTOBER 10, 2024

QUESTIONS PRESENTED

1. DID THE TRIAL COURT CONDUCT EXCESSIVE AND PREJUDICIAL QUESTIONING OF TRIAL WITNESSES WARRANTING A NEW TRIAL?
2. DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT FAILED TO SEVER TWO UNRELATED CHARGES?
3. DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT FAILED TO GRANT PETITIONERS MISSING WITNESS CHARGE?
4. DID EVIDENCE OF NON-INJURY SUPPORTED BY COMPLAINANTS MEDICAL REPORTS WARRANT REVERSAL OF CONVICTION?
5. DID LACK OF CORROBORATION OF IDENTIFICATION EVIDENCE REQUIRE REVERSAL OF CONVICTION?
6. WAS PETITIONERS CONSTITUTIONAL RIGHT TO FACE HIS ACCUSER VIOLATED WHEN HE WAS DENIED THE OPPORTUNITY TO QUESTION N.Y.P.D. SERGANT MARA OF HIS INITIAL IDENTIFICATION?
7. WAS PETITIONER DENIED EFFECTIVE ASSISTANCE OF COUNSEL AND MEANINGFUL REPRESENTATION IN VIOLATION OF CONSTITUTION?
8. DID THE SECOND CIRCUIT COURT, EASTERN DISTRICT COURT AS WELL AS STATE LEVEL COURT FAILURE TO PROPERLY APPLY THE CONTEMPORANEOUS OBJECTION RULE WARRANT REVIEW AND GRANTING OF WRIT OF CERTIORARI?

THE PARTIES TO THE PROCEEDING AND LIST OF RELATED PROCEEDINGS
THE PETITIONER IN THIS CASE IS ANDREW FIELDS. THE RESPONDENT
IN THIS CASE IS THE NEW YORK DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION.

THE FOLLOWING PROCEEDINGS ARE DIRECTLY RELATED TO THIS CASE:
SUPREME COURT OF NEW YORK, QUEENS COUNTY, #2916/2013
THE PEOPLE V. ANDREW FIELDS, JULY 21, 2015, GUILTY VERDICT
BY JURY TRIAL.

APPELLATE DIVISION OF NEW YORK, SECOND DEPARTMENT, #2015-07353
THE PEOPLE V. ANDREW FIELDS, NOVEMBER 21, 2018, AFFIRMED, JULY 2019
FOR LEAVE TO REARGUE APPEAL DENIED.

COURT OF APPEALS OF NEW YORK, THE PEOPLE V. ANDREW FIELDS
FEBRUARY 19, 2019, LEAVE TO APPEAL DENIED, MAY 28, 2019, RECONSIDERATION
FOR LEAVE TO APPEAL DENIED.

SUPREME COURT OF NEW YORK, QUEENS COUNTY, #2916/2013
THE PEOPLE V. ANDREW FIELDS, MARCH 17, 2022, CPL 440.10 MOTION TO
VACATE JUDGEMENT DENIED.

APPELLATE DIVISION OF NEW YORK, SECOND DEPARTMENT, #2022-03918
THE PEOPLE V. ANDREW FIELDS, AUGUST 5, 2022, LEAVE TO APPEAL DENIED.

U.S. DISTRICT COURT E.D.N.Y. #20-CV-00009 (PKC), ANDREW FIELDS V.
N.Y.S. D.O.C.C.S., SEPTEMBER 27, 2023, WRIT OF HABEAS CORPUS DENIED.

U.S. COURT OF APPEALS, SECOND CIRCUIT, #23-7349, ANDREW FIELDS V.
N.Y.S. D.O.C.C.S., MARCH 13, 2024, AFFIRMED

U.S. SUPREME COURT, ANDREW FIELDS V. N.Y.S. D.O.C.C.S., JULY 3, 2024,
EXTENSION TO FILE PETITION WRIT OF CERTIORARI GRANTED.

SUPREME COURT OF NEW YORK, QUEENS COUNTY, #2916/2013
THE PEOPLE V. ANDREW FIELDS, JULY 15, 2024, CPL 440 MOTION TO
③ VACATE JUDGEMENT DENIED.

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APPENDIX (4), ORDER N.Y. SUPREME COURT / FIRST C.P.L. 440.10 MOTION

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PETITION FOR A WRIT OF CERTIORARI

ANDREW FIELDS, RESPECTFULLY PETITION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGEMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT IN THIS CASE.

OPINIONS BELOW

THE DECISION OF THE COURT OF APPEALS AFFIRMING IS UNREPORTED. THE DECISION OF THE DISTRICT COURT DENYING WRIT OF HABEAS CORPUS IS REPORTED AT 2023 WL 6292479. THE DECISION OF THE APPELLATE DIVISION AFFIRMING IS REPORTED AT 166 A.D.3D 897. THE DECISION OF THE STATE OF NEW YORK COURT OF APPEALS DENYING LEAVE TO APPEAL IS REPORTED AT 32 N.Y.3D 1204, RECONSIDERATION DENYING LEAVE TO APPEAL IS REPORTED AT 33 N.Y.3D 1031. THE DECISION OF THE STATE OF NEW YORK DENYING CPL 440.10 MOTION IS UNREPORTED AND THE APPELLATE DIVISION DENYING LEAVE TO APPEAL IS UNREPORTED.

JURISDICTION

ON MARCH 13, 2024, THE COURT OF APPEALS FOR THE SECOND CIRCUIT AFFIRMED THE ORDER DENYING WRIT OF HABEAS CORPUS FROM EASTERN DISTRICT COURT OF NEW YORK. ON JULY 3, 2024 JUSTICE SONIA SOTOMAYOR GRANTED AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO AND INCLUDING AUGUST 12, 2024. THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. CONSTITUTION/FOURTEENTH AMENDMENT

NEW YORK CRIMINAL PROCEDURE LAW 470.05(2)

NEW YORK CRIMINAL PROCEDURE LAW 470.15

28 U.S.C. § 2254(A)

NEW YORK CRIMINAL PROCEDURE LAW 200.20

NEW YORK CRIMINAL PROCEDURE LAW 210.25

NEW YORK CONSTITUTION ARTICLE ONE

NEW YORK CONSTITUTION ARTICLE SIX

U.S. CONSTITUTION SIXTH AMENDMENT

CONTEMPORANEOUS OBJECTION/RULE.

STATEMENT OF THE CASE

THIS CRIMINAL CASE ARISES FROM COMPLAINT DONALD BRADLEY CLAIMING HE WAS ROBBED AT GUNPOINT BY PETITIONER AND CO-DEFENDANT MARLYSENAT AS WELL AS AN UNRELATED HIGH SPEED CAR CHASE WHERE A LOADED HANDGUN WAS RECOVERED. AFTER A JURY TRIAL, THE SUPREME COURT OF NEW YORK ENTERED A GUILTY VERDICT. THE GUILTY VERDICT HAS BEEN UPHELD IN THE STATE APPELLATE DIVISION, THE STATE COURT OF APPEALS, THE APPLICATION FOR A WRIT OF HABEAS CORPUS WAS DENIED BY THE U.S. DISTRICT COURT E.D.N.Y. AND AFFIRMED BY THE U.S. COURT OF APPEALS SECOND CIRCUIT. THESE DECISIONS REST ON A ERRONEOUS VIEW OF THE STATED CONSTITUTIONAL AND STATUTORY PROVISIONS AS WELL AS CITED CASE LAW, CONFLICTS WITH THE DECISIONS OF THIS COURT AND OTHER COURTS, AND RAISES AN IMPORTANT QUESTION OF LAW WARRANTING THIS COURT'S PLENARY REVIEW.

FACTUAL BACKGROUND

A. PETITIONER ARREST - ON AUGUST 30, 2013, DONALD BRADLEY WALKED INTO AN APARTMENT BUILDING AT 106-35 159 STREET IN QUEENS COUNTY, NEW YORK TO VISIT HIS FRIEND BOBBY GARCIA. (TRANSCRIPT (TR.) DKT. 31-2, AT 578:16-579:2.) IN THE HALL OF GARCIA'S APARTMENT BUILDING, PETITIONER AND MARLY SENAT, "ALLEGEDLY", WHO HAD ENTERED THE BUILDING MINUTES BEFORE BRADLEY (TR. 606:5-608:22), APPROACHED BRADLEY FROM BEHIND, PUNCHED BRADLEY IN THE FACE, AND PUT HIM INTO A HEADLOCK. (TR. 582-86.) WHILE PETITIONER WAS HOLDING BRADLEY IN A HEADLOCK, SENAT APPROACHED BRADLEY, TOLD HIM TO SHUT UP, AND HIT HIM IN THE FACE. SENAT THEN SHOWED A GUN TO BRADLEY, AND BRADLEY STOPPED STRUGGLING. SHORTLY THEREAFTER, PETITIONER TIGHTENED HIS HEADLOCK ON BRADLEY, AS BRADLEY LOST CONSCIOUSNESS, PETITIONER AND SENAT RUMMAGED THROUGH HIS POCKETS. WHEN BRADLEY CAME TO, HIS CELL PHONE, CAR KEYS, WALLET AND APPROXIMATELY \$1,160 IN CASH WERE MISSING FROM HIS PERSON.

MAYBE A COUPLE OF DAYS AFTERWARD, BRADLEY CALLED HIS UNCLE, NEW YORK CITY POLICE DEPARTMENT CHIEF PHILIP BANKS, A HIGH RANKING MEMBER OF THE NYPD, TO REPORT THE INCIDENT. ABOUT A WEEK LATER, BRADLEY FILED AN OFFICIAL COMPLAINT WITH THE NYPD. ON SEPTEMBER 17, 2013, NYPD OFFICERS ATTEMPTED TO PULL, "ALLEGEDLY", PETITIONER AND SENAT OVER FOR DRIVING A STOLEN TOYOTA SIENNA MINIVAN DOWN GUY R. BREWER BOULEVARD IN QUEENS, NEW YORK, PETITIONER, WHO WAS DRIVING WHEN THE OFFICERS APPROACHED HIM, SPED AWAY AND CRASHED THE VEHICLE. SENAT WAS UNABLE TO FLEE BECAUSE THE PASSANGER DOOR WAS STUCK, PETITIONER RAN FROM THE CAR, BUT WAS SOON APPREHENDED HOURS LATER.

A LOADED REVOLVER WAS RECOVERED FROM THE VEHICLE. LATER THAT DAY, BRADLEY IDENTIFIED PETITIONER AND SENAT IN TWO SEPARATE POLICE LINE-UPS AS THE INDIVIDUALS WHO HAD ROBBED HIM ON AUGUST 30, 2013.

PETITIONER AND SENAT WERE ARRESTED ON TWO SETS OF CHARGES, ONE RELATING TO THE AUGUST 30, 2013 ARMED ROBBERY OF BRADLEY AND THE OTHER RELATING TO PETITIONER'S AND SENAT'S SEPTEMBER 17, 2013 ATTEMPT TO FLEE AND AVOID BEING STOPPED AND ARRESTED BY THE POLICE. BOTH SETS OF CHARGES WERE LATER JOINED IN A SINGLE INDICTMENT, RETURNED AGAINST PETITIONER AND SENAT ON DECEMBER 5, 2013.

B. PETITIONER'S SEVERANCE MOTION - PRIOR TO TRIAL, PETITIONER MOVED TO SEVER TRIAL WITH RESPECT TO HIS TWO SETS OF CHARGES BASED ON HIS AUGUST 30, 2013 AND SEPTEMBER 17, 2013 ARRESTS. PETITIONER ARGUED, IN SUM AND SUBSTANCE, THAT THE TWO INCIDENTS WERE ENTIRELY SEPARATE AND DISTINCT CRIMINAL TRANSACTIONS UNDER C.P.L. § 40.10(2), AND THAT A SINGLE TRIAL ON BOTH SETS OF CHARGES MISLED THE GRAND JURY INTO SPECULATING THAT THE SAME GUN RECOVERED ON SEPTEMBER 17 WAS ALSO USED IN THE ROBBERY ON AUGUST 30, OR THAT THE GRAND JURY WAS IMPROPERLY LED TO CONCLUDE CRIMINAL PROPENSITY RATHER THAN CONSIDERING THE EVIDENCE SEPARATELY FOR EACH OF THE CRIMINAL TRANSACTIONS. THE HONORABLE MARGIE A. P. HIRSCH OF THE QUEEN'S COUNTY SUPREME COURT DENIED PETITIONER'S MOTION, FINDING THAT THE CHARGES WERE PROPERLY JOINED PURSUANT TO C.P.L. § 200.20(2)(B).

C. STATE COURT TRIAL - PETITIONER'S AND SENAT'S JURY TRIAL
BEGAN ON APRIL 28, 2015 AND ENDED MAY 18, 2015. DONALD BRADLEY TESTIFIED EXTENSIVELY AS TO THE EVENTS OF AUGUST 30, 2013, INCLUDING THAT SENAT SHOWED HIM A CHROME AND BLACK GUN DURING HIS ROBBERY, AND ABOUT IDENTIFYING PETITIONER AND MARLY SENAT IN LINE-UPS. THE PROSECUTION ALSO PRESENTED THE TESTIMONY OF DETECTIVE RICHARD MCCARTY REGARDING THE INVESTIGATION OF THE AUGUST 30, 2013 ROBBERY, INCLUDING THE CALL HE RECEIVED FROM HIS FORMER PARTNER ON SEPTEMBER 17 AND THE SUBSEQUENT LINE-UPS HE CONDUCTED WITH PETITIONER AND SENAT, AND VIDEO SURVEILLANCE FOOTAGE SHOWING TWO MEN BRADLEY IDENTIFIED AS DEFENDANTS ENTERING AND LEAVING THE LOBBY, WITH BRADLEY WALKING OUT MINUTES LATER. IN ADDITION, THE PROSECUTION INTRODUCED THE TESTIMONY OF ANPD OFFICERS DEREK WEBBER, WHO TESTIFIED REGARDING THE MOMENT OF PETITIONER'S ARREST ON SEPTEMBER 17, ROBERT DEFERRARI, AN OFFICER WHO PURSUED DEFENDANTS ON SEPTEMBER 17 BEFORE APPREHENDING SENAT AND THE LOADED REVOLVER FROM THE STOLEN CAR, DETECTIVE DOMINIC CARRIELLO, A FIREARMS EXAMINER IN THE FORENSIC INVESTIGATION DIVISION, WHO TESTIFIED THAT THE RECOVERED REVOLVER WAS OPERABLE, AND THE STOLEN CAR'S OWNER.

DURING BRADLEY'S TESTIMONY AND THROUGHOUT THE TRIAL, THE HONORABLE RONALD HOLLIE, THE PRESIDING QUEENS SUPREME COURT JUSTICE, ASKED NUMEROUS QUESTIONS OF THE WITNESSES. JUSTICE HOLLIE ASKED BRADLEY TO CLARIFY WHO HAD ASK BRADLEY FOR A CIGARETTE BEFORE THE INCIDENT, WHETHER BRADLEY HAD TESTIFIED THAT FIELDS FIRST PUNCHED BRADLEY IN THE FACE, HOW PETITIONER HAD APPROACHED BRADLEY, AND WHO HAD HELD BRADLEY IN A HEADLOCK.

JUSTICE HOLLIE ALSO ASKED BRADLEY ABOUT VARIOUS OTHER DETAILS PERTAINING TO THE SETTING OF THE MURDER, ABOUT WHERE SENAT WAS STANDING WHEN BRADLEY FIRST SAW HIM, AND WHAT SENAT HAD SAID TO BRADLEY. IN ADDITION, THE JUDGE ASKED BRADLEY SPECIFIC QUESTIONS ABOUT WHAT ITEMS WERE TAKEN FROM HIM, THE CIRCUMSTANCES SURROUNDING BRADLEY'S INTERACTIONS WITH FRIENDS ON THE STREET BEFORE GOING TO SEE BOBBY GARCIA, BRADLEY'S DISABILITY AND EMPLOYMENT STATUS, AND BRADLEY'S KNOWLEDGE OF THE VIDEO SURVEILLANCE OF THE INCIDENT. THE JUDGE ALSO ASKED QUESTIONS OF OTHER WITNESSES, INCLUDING DETECTIVE RICHARD MCCARTY REGARDING HIS CONVERSATIONS WITH BRADLEY BEFORE THE LINE-UPS AND WHAT BRADLEY TOLD THE DETECTIVE ABOUT WHAT ITEMS "ALLEGEDLY" HAD BEEN TAKEN FROM HIM.

PETITIONER AND SENAT AGAIN MOVED AT TRIAL TO SEVER THE INDICTMENTS. AFTER BRADLEY AND DETECTIVE MCCARTY TESTIFIED, PETITIONER MOVED FOR SEVERANCE ON GROUNDS THAT DETECTIVE MCCARTY MADE IT CLEAR THAT THE COMPLAINANT DESCRIBED THE GUN THAT WAS "ALLEGEDLY" USED IN THE ALLEGED ROBBERY AS A SEMI-AUTOMATIC GUN IN ALL THE PAPER WORK WITHIN THIS CASE, WHEREAS THE RECOVERED GUN WAS A REVOLVER. THE COURT DENIED THE MOTION WITHOUT EXPLANATION. AT THE CLOSE OF THE PROSECUTION'S CASE, PETITIONER ARGUED THAT THE GOVERNMENT'S EVIDENCE REGARDING THE GUN USED IN THE ALLEGED ROBBERY AND THE GUN RECOVERED FROM THE STOLEN CAR WERE DESCRIPTIONS OF TWO DIFFERENT GUNS AND TWO DIFFERENT FIRING MECHANISMS, AND SINCE THE FIREARM WAS THE LINK BETWEEN THE INCIDENTS THERE IS NO BASIS TO JOIN THE CASE TOGETHER.

NEAR THE END OF THE TRIAL, PETITIONER'S COUNSEL ASKED THE COURT TO GIVE A MISSING WITNESS INSTRUCTION AS TO SEVERAL WITNESSES: 1) BOBBY GARCIA, WHO WOULD HAVE BEEN IN A POSITION TO TESTIFY AS TO BRADLEY'S PHYSICAL APPEARANCE AND INJURIES OR LACK THEREOF AFTER THE ALLEGED ROBBERY, 2) BRADLEY'S MOTHER AND STEPFATHER, WHO HAD BROUGHT BRADLEY AN EXTRA SET OF KEYS AFTER THE ROBBERY AND ALSO WOULD HAVE BEEN IN A POSITION TO TESTIFY AS TO BRADLEY'S INJURIES, AND 3) BRADLEY'S UNCLE, NYPD CHIEF PHILLIP BANKS, WHO COULD HAVE VERIFIED THAT BRADLEY CONTACTED HIM ABOUT THE AUGUST 30 ROBBERY SOON AFTER IT HAD OCCURRED. THE COURT REJECTED PETITIONER'S MISSING WITNESS CHARGE AS TO ALL POTENTIAL WITNESSES.

PETITIONER WAS FOUND GUILTY OF ROBBERY IN THE FIRST DEGREE N.Y. PENAL LAW 160.15(4), TWO COUNTS OF ROBBERY IN THE SECOND DEGREE N.Y. PENAL LAW 160.10(1), (2)(A), STRANGLATION IN THE SECOND DEGREE N.Y. PENAL LAW 121.12, TWO COUNTS OF CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE N.Y. PENAL LAW 265.03(1)(B), (3) AND CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FOURTH DEGREE, N.Y. PENAL LAW 165.45(5). SENAT WAS CONVICTED ON THE SAME CHARGES. ON JULY 21, 2015, THE TRIAL COURT SENTENCED PETITIONER TO AN AGGREGATE SENTENCE OF FIFTEEN YEARS IN PRISON, TO BE FOLLOWED BY FIVE YEARS OF POST RELEASE SUPERVISION.

PROCEDURAL BACKGROUND

A. PETITIONER'S DIRECT APPEAL - IN MARCH 2017, PETITIONER'S POST-CONVICTION ATTORNEY FILED A DIRECT APPEAL WITH THE APPELLATE DIVISION, SECOND DEPARTMENT. PETITIONER RAISED THREE CLAIMS IN HIS COUNSELED BRIEF: 1) THE TRIAL COURT CONDUCTED EXCESSIVE AND PREJUDICIAL QUESTIONING OF TRIAL WITNESSES, WARRANTING A NEW TRIAL 2) THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE SEVERANCE MOTIONS, AND 3) THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO GRANT PETITIONER'S MISSING WITNESS CHARGE. PETITIONER ALSO FILED A PRO-SE BRIEF RAISING ADDITIONAL CLAIMS: 1) THE MEDICAL EVIDENCE OF BRADLEY'S PHYSICAL INJURY WAS INSUFFICIENT TO SUPPORT CONVICTION, 2) THE POLICE SERGEANT WHO RECOGNIZED PETITIONER ON SURVEILLANCE VIDEO FROM THE APARTMENT BUILDING LOBBY WHERE THE AUGUST 30 ROBBERY OCCURRED DID NOT TESTIFY AT TRIAL, WHICH DENIED PETITIONER HIS DUE PROCESS RIGHT TO A FAIR TRIAL AND THE RIGHT TO CONFRONT HIS ACCUSER, AND 3) REITERATING THE SEVERANCE ARGUMENT.

ON NOVEMBER 21, 2018, THE APPELLATE DIVISION AFFIRMED PETITIONER'S CONVICTIONS ON ALL COUNTS. PEOPLE V. FIELDS 166 A.D.3D 897. THE NEW YORK COURT OF APPEALS DENIED PETITIONER'S MOTION FOR LEAVE TO APPEAL ON FEBRUARY 19, 2019 AND DENIED PETITIONER'S APPLICATIONS FOR RECONSIDERATION ON MAY 28, 2019. PEOPLE V. FIELDS 32 N.Y.3D 1204. RECONSIDERATION DENIED 33 N.Y.3D 1031. THE APPELLATE DIVISION ALSO DENIED PETITIONER'S APPLICATION FOR RE-ARGUMENT.

B. PETITIONER'S STATE COURT MOTION TO VACATE HIS CONVICTION -

ON AUGUST 3, 2021, PETITIONER FILED A MOTION TO VACATE HIS CONVICTION PURSUANT TO NEW YORK CRIMINAL PROCEDURE LAW 440.10 (1)(H) WITH THE TRIAL COURT. PETITIONER RAISED TWO CLAIMS: 1) THE TRIAL COURT CONDUCTED EXCESSIVE AND PREJUDICIAL QUESTIONING OF TRIAL WITNESSES IN VIOLATION OF PETITIONER'S FOURTEENTH AMENDMENT DUE PROCESS RIGHT TO A FAIR TRIAL, AND 2) PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL BECAUSE HIS ATTORNEY DID NOT OBJECT TO THE TRIAL COURT'S EXCESSIVE AND PREJUDICIAL QUESTIONING, THEREBY FAILING TO PRESERVE THIS ISSUE FOR APPELLATE REVIEW. THE TRIAL COURT DENIED PETITIONER'S MOTION IN ITS ENTIRETY, FINDING THE FIRST ARGUMENT BOTH PROCEDURALLY BARRED AND MERITLESS, AND THE SECOND ARGUMENT MERITLESS. THE APPELLATE DIVISION DENIED LEAVE TO APPEAL.

C. PETITIONER'S FEDERAL HABEAS PETITION - ON JANUARY 13, 2020, PETITIONER TIMELY FILED THE PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2254. ON DECEMBER 16, 2020, PETITIONER FIRST REQUESTED A STAY AND ABEYANCE PENDING EXHAUSTION OF STATE REMEDIES, AND FILED HIS 440 MOTION IN STATE COURT. IN RESPONSE THE COURT ORDERED PETITIONER TO SUBMIT A LETTER EXPLAINING 1) WHAT CLAIMS HE SEEKS TO EXHAUST AND THROUGH WHICH STATE REMEDIES, 2) WHY HE FAILED TO EXHAUST HIS REMEDIES AS TO THOSE CLAIMS PRIOR TO FILING THE PETITION, AND 3) WHY THOSE CLAIMS HAVE MERIT. AFTER MULTIPLE EXTENSIONS, ON AUGUST 16, 2021, PETITIONER FILED HIS 440.10 MOTION. SHORTLY THEREAFTER, THE COURT STAYED THE CASE PENDING EXHAUSTION OF PETITIONER'S CLAIMS IN STATE COURT.

ON JANUARY 12, 2022, WHILE THE CASE WAS STILL STATED, THE COURT ISSUED A DOCKET ORDER ADMINISTRATIVELY CLOSING THE CASE PENDING EITHER PARTY'S MOTION TO REOPEN IT, INSTRUCTING PETITIONER TO AMEND HIS PETITION TO ADD ALL ADDITIONAL CLAIMS NOT LISTED IN THE PETITION SO AS TO AVOID ANY TIME BAR THAT COULD APPLY TO THOSE ADDED CLAIMS, AND ADVISING PETITIONER THAT HE COULD BE BARRED FROM RE-OPENING THIS CASE IF HE UNREASONABLY DELAYED EXHAUSTING HIS CLAIMS IN STATE COURT OR REOPENING THE CASE IN THIS COURT AFTER EXHAUSTION. ON FEBRUARY 16, 2022, RESPONDENT MAILED THE STATE COURT RECORD TO PETITIONER. ON SEPTEMBER 12, 2022, PETITIONER MOVED TO REOPEN THE CASE, AND TO AMEND HIS PETITION FOR WRIT OF HABEAS CORPUS, RESPONDENT CONSENTED, AND THE COURT GRANTED THE MOTION TO REOPEN AND AMEND THE PETITION. RESPONDENT ANSWERED, FILED THE STATE COURT RECORD, AND SERVED BOTH ON PETITIONER DECEMBER 12, 2022. ON JANUARY 20, 2023, PETITIONER FILED THE AMENDED PETITION TO INCLUDE A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL. ON SEPTEMBER 27, 2023 PETITIONER'S WRIT WAS DENIED. PETITIONER'S MOTION FOR LEAVE TO APPEAL TO THE 66TH COURT OF APPEALS, SECOND DEPT. WAS DENIED ON MARCH 13, 2024.

D. PETITIONER SECOND STATE COURT MOTION TO VACATE HIS CONVICTION -

ON APRIL 21, 2024, PETITIONER FILED A MOTION PURSUANT TO N.Y.C.P.L. 440.10 WITH THE TRIAL COURT. PETITIONER RAISE THREE CLAIMS: 1) THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, 2) HIS SIX AMENDMENT RIGHT TO CONFRONT HIS ACCUSER WAS VIOLATED AND 3) HE WAS ACTUALLY INNOCENT. ON JULY 15, 2024, THE MOTION WAS DENIED.

THE HONORABLE JUSTICE SONIA SOTOMAYOR OF THIS COURT, U.S. SUPREME COURT, GRANTED PETITIONER AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO AND INCLUDING AUGUST 12, 2024.

REASONS FOR GRANTING PETITION

PETITIONER'S REASONS FOR REQUESTING THIS COURT GRANTING PETITION FOR WRIT OF CERTIORARI WILL BE EXPLAINED IN A STEP BY STEP PROCESS, ANSWERING / PRESENTING EACH QUESTION WITH SUPPORTING CASE LAW, CRIMINAL PROCEDURE LAW, CONSTITUTIONAL VIOLATIONS, STATUTORY PROVISIONS, ARGUMENTS AND RELEVANT MATERIALS TO SUPPORT MOTION.

DID THE TRIAL COURT CONDUCT EXCESSIVE AND PREJUDICIAL QUESTIONING OF TRIAL WITNESSES WARRANTING A NEW TRIAL?

YES, THE HONORABLE RONALD HOLLE OF THE SUPREME COURT OF NEW YORK DID THIS. THROUGHOUT THE STATE COURT TRIAL, THE SUPREME COURT CONDUCTED EXCESSIVE AND PREJUDICIAL QUESTIONING OF TRIAL WITNESSES, IN VIOLATION OF PETITIONER'S FOURTEENTH AMENDMENT DUE PROCESS RIGHT TO A FAIR TRIAL. FEDERAL COURTS HAVE EMPHASIZED THE IMPORTANCE OF IDENTIFYING A CLAIM AS A FEDERAL CONSTITUTIONAL CLAIM WHEN CHALLENGING THE CONDUCT OF A STATE COURT TRIAL JUDGE (FIELDING V. LEEVERE, 548 F.2D 1102). A DEFENDANT'S DUE PROCESS RIGHTS ARE VIOLATED BY JUDICIAL INTERVENTION THAT CREATES THE APPEARANCE OF PREJUDICE, OR CLEARLY SIGNALS TO THE JURY THE JUDGE'S PARTISANSHIP (UNITED STATES V. NAZZARO, 472 F.2D 302, 310).

IN THE STATE COURT TRIAL, THE PARTISANSHIP WAS EVOKED BY THE COURT'S INCESSANT APPROPRIATION OF THE PROSECUTORIAL FUNCTION AND PETITIONER'S COUNSEL'S FUNCTION. THERE WAS EXTENSIVE INTERFERENCE BY THE JUDGE DURING THE TRIAL, ASKING QUESTIONS AND RULING ON HIS OWN OBJECTIONS, BUT FAR WORSE, THE COURT SHOWED A PROSECUTORIAL BENT WHEN IT

⑦ DISPLAYED IN FRONT OF THE JURY ITS ADVOCATING FOR THE PEOPLE.

DURING THE COURSE OF DIRECT EXAMINATION AS WELL AS CROSS-EXAMINATION OF THE WITNESSES, THE COURT INTERJECTED ITSELF OVER TEN TIMES AND ASKED OVER 350 FACT SPECIFIC QUESTIONS EVEN THOUGH THERE WAS PARELY A NEED TO DO SO. PETITIONER BRINGS SPECIFIC ATTENTION TO THE PARTS OF THE RECORD WHERE COUNSEL OBJECTED TO THE COURT'S QUESTIONING (SEE TRIAL TRANSCRIPTS PAGE 412 LINE 4, PAGE 413 LINE 6, PAGE 413 LINE 11 AND PAGE 571 LINE 6). THE QUESTIONING OF THE COURT DENIED PETITIONER A FAIR TRIAL, COUNSEL OBJECTED TO THIS MISCONDUCT, THE COURT TOOK A PROSECUTORIAL BENT WHEN IT INTERJECTED IN QUESTIONING OF VARIOUS WITNESSES TO REHABILITATE THE WITNESS'S CREDIBILITY WHEN PETITIONER'S COUNSEL ATTEMPTED TO NULLIFY THEIR PREVIOUS TESTIMONY (SEE TRIAL TRANSCRIPTS PAGE 454 LINE 22, 455 LINE 20 THRU 456 LINE 21, 473 LINE 7). THESE ARE ONLY A FEW EXAMPLES OF THE COURT'S MISCONDUCT. IN PETITIONER'S PRO WRIT OF HABEAS CORPUS PETITION FILED IN THE E.D.N.Y., THE COURT'S DECISION DENYING THE WRIT, THE HONORABLE JUDGE PAMELA K. CHEN, ACKNOWLEDGE THE COURT CONDUCTED EXCESSIVE AND PREJUDICIAL QUESTIONING OF TRIAL WITNESSES, QUOTED THE SPECIFIC PORTIONS OF THE TRIAL COURT RECORD SHOWING THIS MISCONDUCT, COMPARING THE MISCONDUCT IN PETITIONER'S TRIAL TO THE MISCONDUCT IN OTHER'S STATE COURT TRIAL BY THE SAME COURT, BUT STATING "THE COURT DOES NOT MAKE A DETERMINATION" TO THIS ISSUE (SEE MEMORANDUM AND ORDER U.S. E.D.N.Y. #20-cv-0009 (PKC) SEPTEMBER 27, 2023, FOOTNOTE # 7). THE DISTRICT COURT MISAPPLIED THE CONTEMPORANEOUS OBJECTION RULE, WHICH WILL BE ADDRESSED LATER ON IN THIS PETITION.

2) DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT FAILED TO SEVER TWO UNRELATED CHARGES?

PETITIONER SPECIFICALLY CITES THE FOURTEENTH AMENDMENT. TO OBTAIN FEDERAL RELIEF, A PETITIONER MUST ESTABLISH NOT MERELY THAT THE JOINDER OF THE OFFENSES IN A SINGLE TRIAL WAS AN ABUSE OF THE TRIAL COURT'S DISCRETION, BUT THAT THE JOINDER VIOLATED HIS FEDERAL CONSTITUTIONAL RIGHTS (SEE NICHOLS V. SULLIVAN, 867 F.2D 1250, 1253). (OUR RESPONSIBILITY IS TO ENSURE THAT PETITIONER WAS AFFORDED THE PROTECTIONS OF DUE PROCESS) (SEE ALSO UNITED STATES V. LANE, 474 U.S. 438, 446 N.8. "IMPROPER JOINDER DOES NOT, IN ITSELF, VIOLATE THE CONSTITUTION. RATHER, MISJOINDER RISES TO THE LEVEL OF A CONSTITUTIONAL VIOLATION ONLY IF IT RESULTS IN PREJUDICE SO GREAT AS TO DENY A DEFENDANT HIS RIGHT TO A FAIR TRIAL). ("IN OTHER WORDS, TO OBTAIN RELIEF, PETITIONER MUST SHOW THE JOINDER OF OFFENSES ACTUALLY RENDERED PETITIONER'S STATE TRIAL FUNDAMENTALLY UNFAIR AND HENCE, VIOLATIVE OF DUE PROCESS." TRIBBITT V. WAINWRIGHT, 540 F.2D 840, 841). HERE, THAT IS PRECISELY WHAT OCCURRED, BECAUSE THE JURY USED EVIDENCE OF EACH MISJOINED OFFENSE TO RETURN GUILTY VERDICTS ON BOTH THE ROBBERY AND POSSESSION OFFENSES. GIVEN THAT EACH CRIME WAS WHOLLY UNRELATED, THIS RENDERED THE TRIAL FUNDAMENTALLY UNFAIR. ON THE FACTS OF THIS CASE, THE STATE COURT MOTION FOR SEVERANCE SHOULD HAVE BEEN GRANTED BECAUSE THE COUNTS WERE CLEARLY IMPROPERLY JOINED. HERE, THE STATE COURT SHOULD HAVE GRANTED A SEVERANCE, BECAUSE PROOF OF PETITIONER'S "ALLEGED" COMMISSION OF THE ROBBERY, WITH AN AUTOMATIC PISTOL, WAS NOT ADMISSIBLE TO PROVE DEFENDANT'S PETITIONER'S GUILT OF POSSESSIONING "ALLEGEDLY" A REVOLVER, SOME THREE WEEKS "LATER. NOR WAS THE REVOLVER ADMISSABLE TO PROVE THE EARLIER ROBBERY FROM THREE WEEKS AGO.

THE INCIDENTS WERE UNRELATED IN TIME AND PLACE, AND DISSIMILAR IN NATURE. AT THE STATE TRIAL, DETECTIVE RICHARD MCCARTY TESTIFIED THE COMPLAINANT TOLD HIM THAT PETITIONER USED AN "AUTOMATIC" FIREARM (SEE TRIAL TRANSCRIPT PAGE 593). THE POLICE RECOVERED A REVOLVER FROM THE LATER OFFENSE. OFFICER DOMINIC CAPPIELLO, A FIREARMS EXAMINER, TESTIFIED THE GUNS WERE DIFFERENT. ONE WAS A SEMI-AUTOMATIC GUN AND THE OTHER WAS A REVOLVER. EACH HAVE DIFFERENT FIRING MECHANISMS (SEE TRIAL TRANSCRIPT PAGE 655). NEW YORK CRIMINAL PROCEDURE LAW 200.20(2)(B) STATES "CLEARLY, TWO OFFENSES, EVEN THOUGH BASED ON DIFFERENT CRIMINAL TRANSACTIONS, MAY BE JOINED IN THE SAME INDICTMENT WHEN THEY OR THE CRIMINAL TRANSACTIONS UNDERLYING THEM, ARE OF SUCH NATURE THAT EITHER PROOF OF THE FIRST OFFENSE WOULD BE MATERIAL AND ADMISSIBLE AS EVIDENCE IN CHIEF UPON A TRIAL OF THE SECOND, OR PROOF OF THE SECOND WOULD BE MATERIAL AND ADMISSIBLE AS EVIDENCE IN CHIEF UPON A TRIAL OF THE FIRST". THAT IS NOT THE CASE IN THIS MATTER. THERE IS NO RULE OF EVIDENCE WHICH WOULD ADMIT EVIDENCE OF AN UNCHARGED CRIME TO SHOW FLIGHT NOR DOES PETITIONER'S "ALLEGED" POSSESSION OF REVOLVER SHOW HIS GUILTY KNOWLEDGE OF "ALLEGEDLY" ROBBERY COMPLAINANT. THIS MATTER SHOULD BE COMPARED TO, SEE PEOPLE V. BONGARZONE, 69 N.Y.2D 892, 895, PEOPLE V. LANE, 56 N.Y.2D 1, 7, PEOPLE V. GADSDEN 139 A.D.2D 925, 926, PEOPLE V. PABON, 96 A.D.2D 870, 870-871, PEOPLE V. CONNORS, 83 A.D.2D 640, 640-641. YES, THE STATE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO SEVER THE TWO UNRELATED OFFENSES, WARRANTING A NEW TRIAL.

3) DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT FAILED TO GRANT PETITIONER'S MISSING WITNESS CHARGE?

YES, THE TRIAL COURT ABUSED ITS DISCRETION. PETITIONER AGAIN CITES THE FOURTEENTH AMENDMENT TO EXHAUST HIS STATE COURT REMEDIES FOR FEDERAL RELIEF. ORDINARILY, A STATE TRIAL COURT'S JURY INSTRUCTION, SUCH AS A MISSING WITNESS CHARGE, IS A MATTER OF STATE LAW, AND ANY ERROR IN CONNECTION THEREWITH IS NOT COGNIZABLE, SEE 28 U.S.C. 2254(A). HERE, HOWEVER, THE STATE COURT'S FAILURE TO DELIVER THE MISSING WITNESS CHARGE FOR BOBBY GARCIA, THE PERSON THE COMPLAINANT SAW RIGHT AFTER THE "ALLEGED" ROBBERY, SO INFECTED THE TRIAL THAT DUE PROCESS WAS VIOLATED, BECAUSE ONLY HE COULD HAVE RENDERED CRITICAL TESTIMONY THAT TENDED TO PROVE OR DISPROVE PETITIONER'S CLAIM THAT HE HAD BEEN ROBBED. PETITIONER ALSO NOTES THAT BOBBY GARCIA WAS UNDER THE CONTROL OF THE QUEENS COUNTY DISTRICT ATTORNEY'S OFFICE, WHICH COULD OF PROMPTED/SUPERVISED HIM TO TESTIFY AT TRIAL. A UNFAVORABLE INFERENCE MISSING WITNESS CHARGE AGAINST THE PEOPLE SHOULD HAVE BEEN ISSUED FOR THEIR FAILURE TO CALL HIM AS A WITNESS. BOBBY GARCIA WAS NOT JUST A CASUAL FRIEND, RATHER, HE WAS A CLOSE FRIEND WHO THE COMPLAINANT WAS ACTUALLY IN THAT NEIGHBORHOOD TO SEE. THEY WERE SO CLOSE, IN FACT, THAT NOT ONLY DID GARCIA INVITE HIM TO HIS APARTMENT BEFORE HE HAD HIS HAIR BRAIDED, SEE TRIAL TRANSCRIPT PAGE 393, BUT IMMEDIATELY AFTER THE "ALLEGED" ROBBERY, THAT OCCURED IN THE HALLWAY OF GARCIA'S APARTMENT BUILDING, HE RETURNED TO HIS APARTMENT TO USE HIS TELEPHONE TO CALL HIS MOTHER TO COME AND PICK HIM UP, SEE TRIAL TRANSCRIPTS PAGE 509. EVEN AFTER THE "ALLEGED" ROBBERY, THE TWO LEFT THE BUILDING TOGETHER, SEE TRIAL TRANSCRIPTS PAGE 421.

GIVEN HIS CLOSE CONTACT WITH THE COMPLAINANT, SARCIA WAS CLEARLY KNOWLEDGABLE ABOUT A MATERIAL ISSUE UPON WHICH EVIDENCE IS ALREADY IN THE CASE, NAMELY, COMPLAINANT'S PHYSICAL CONDITION AFTER THE "ALLEGED" ROBBERY. THERE WERE NO OTHER WITNESSES TO THIS "ALLEGED" CRIME, THERE WERE NO OTHER WITNESSES TO THIS ISSUE, HENCE, THIS WOULD HAVE BEEN NONCUMULATIVE TESTIMONY. THIS EVIDENCE WAS ABSOLUTELY VITAL IN A CASE WHERE THE COMPLAINANT, A CUSTODIAN, JUST HAPPENED TO BE WALKING AROUND WITH \$1,160 IN CASH IN HIS POCKET, NEVER WENT TO THE POLICE, ONLY REPORTED THE INCIDENT ABOUT A WEEK LATER, AND THEN, WHEN HE WENT TO THE EMERGENCY ROOM A FEW DAYS AFTER THE "ALLEGED" ROBBERY, COMPLAINING OF PAIN TO HIS THROAT, CALMLY SAT EATING A LARGE MEAL OF FRIED CHICKEN AND RICE. EVEN HIS STORY LACKS ALL INDICIA OF CREDIBILITY. COMPARE THIS WITH PEOPLE V. BRUNSON, 270 A.D. 2D 133, 134, PEOPLE V. NASARIO, 258 A.D. 2D 599, 600, PEOPLE V. RODRIGUEZ, 38 N.Y. 2D 116, ARROYO V. RACETTE, 2016 U.S. DIST. LEXIS 135063, CUPP V. NAUGHTEN, 414 U.S. 141, 147. ON THESE FACTS, THE STATE TRIAL COURT'S FAILURE TO DELIVER A MISSING WITNESS CHARGE SO INFECTED THE TRIAL THAT PETITIONER'S DUE PROCESS WAS VIOLATED.

4) DID EVIDENCE OF NON-INJURY SUPPORTED BY COMPLAINANT'S MEDICAL REPORTS WARRANT REVERSAL OF CONVICTION?

COMPLAINANT AS A RESULT OF "ALLEGED" ROBBERY WAS SEEN AT HUNTERDON HOSPITAL, AT THE HOSPITAL, COMPLAINANT ATE LARGE MEAL OF RICE AND FRIED CHICKEN IN WAITING ROOM, SEE DONALD BRADLEY HOSPITAL REPORTS.

THESE REPORTS FURTHER STATE "ZERO SIGNS OF INJURY NOTED". THESE REPORTS STATE THAT HIS NECK WAS "NORMAL", SEVERITY OF PAIN IS "MILD" AND THAT THE POLICE WERE REFUSED TO BE CALLED. PENAL LAW OF NEW YORK 10.09(1) STATES "PHYSICAL INJURY IS DEFINED AS IMPAIRMENT OF PHYSICAL CONDITION OR SUBSTANTIAL PAIN". HERE, THE MEDICAL REPORTS CONTRADICT THE COMPLAINANT'S CLAIM OF A PHYSICAL INJURY, SEE PEOPLE V. WINBUSH, 163 A.D. 2D 591. THE EVIDENCE WAS LEGALLY INSUFFICIENT TO ESTABLISH THAT THE COMPLAINANT SUFFERED AN IMPAIRMENT OF PHYSICAL CONDITION. VERTEBRAL BODY FRACTURE SEEN THIS DISC SPACES APPEAR INTACT. STRAIGHTENING OF THE CERVICAL LORDOSIS IS NOTED. THERE OVERALL OBSERVATION OF COMPLAINANT WAS THAT HE SUFFERED NO INJURIES, SEE DONALD BRADLEY'S MEDICAL REPORTS. THE EVIDENCE IS LEGALLY INSUFFICIENT TO ESTABLISH THAT COMPLAINANT SUFFERED OF IMPAIRMENT OF PHYSICAL SUBSTANTIAL PAIN AND YES, WARRANTS A REVERSAL OF CONVICTION.

5) DID LACK OF CORROBORATION OF IDENTIFICATION EVIDENCE REQUIRE REVERSAL OF CONVICTION?

COMPLAINANT "ALLEGES" THAT ON AUGUST 30, 2013 HE WAS GOING TO VISIT HIS FRIEND BOBBY GARCIA. WHILE HE WAS IN THE HALLWAY OF THE BUILDING WHERE HIS FRIEND LIVED, HE "ALLEGES" THAT HE WAS ROBBED OF \$1,160, CELL PHONE AND CAR KEYS. EVEN THOUGH COMPLAINANT "ALLEGES" HE WAS ROBBED OF HIS BELONGINGS, HE DID NOT REPORT THIS INCIDENT TO THE POLICE UNTIL SEPTEMBER 6, 2013, BECAUSE HE WANTED TO TALK TO HIS FAMILY AND SOME PEOPLE FIRST, SEE TRIAL TRANSCRIPTS PAGE 503.

ON SEPTEMBER 10, 2013 DETECTIVE RICHARD MCCARTY OBTAINED VIDEO OF TWO INDIVIDUALS ENTERING AND EXITING THE BUILDING WHERE THE "ALLEGED" ROBBERY OCCURRED. ON SEPTEMBER 14, 2013 WHILE REVIEWING THE CASE IN REGARDS TO THIS "ALLEGED" ROBBERY, SERGEANT DEMMA IDENTIFIED PETITIONER AS BEING ONE OF THE INDIVIDUALS "ALLEGEDLY" IN THE VIDEO. THE SAME DAY, SEPTEMBER 14, 2013, PETITIONER'S PHOTOGRAPH WAS ADDED TO A PHOTO ARRAY AND COMPLAINANT IDENTIFIED PETITIONER AS THE PERSON WHO TOOK HIS PROPERTY. ON SEPTEMBER 18, 2013 PETITIONER WAS PLACED IN A LINE-UP AND WAS IDENTIFIED AS ONE OF THE INDIVIDUALS WHO "ALLEGEDLY" ROBBED COMPLAINANT. IT WILL BE EXPLAINED IN FURTHER DETAIL IN THE NEXT QUESTION HOW SERGEANT DEMMA WAS KNOWN TO PETITIONER FROM A PRIOR INCIDENT, WHICH OCCURRED OVER FIVE YEARS BEFORE THE INSTANT MATTER, HOW PETITIONER NEITHER RESEMBLED HOW HE ONCE LOOKED AND HOW THE VIDEO DID NOT SHOW PERSON'S FACES AS WELL AS QUALITY OF VIDEO WAS UNVIEWABLE TO RECOGNIZE ANYONE. YES, THIS LACK OF CORROBORATION IDENTIFICATION WARRANTS REVERSAL.

6) WAS PETITIONER'S CONSTITUTIONAL RIGHT TO FACE HIS ACCUSER VIOLATED WHEN HE WAS DENIED THE OPPORTUNITY TO QUESTION ANPD SERGEANT DEMMA OF HIS INITIAL IDENTIFICATION?

DETECTIVE RICHARD MCCARTY TESTIFIED AT THE PRE-TRIAL HUNTLEY/ WADE HEARING ON APRIL 22, 2014 THAT HE AND SERGEANT DEMMA REVIEWED SURVEILLANCE VIDEO OF THE "ALLEGED" HALLWAY WHERE COMPLAINANT WAS "ALLEGEDLY" ROBBED. DETECTIVE MCCARTY TESTIFIED THAT SERGEANT DEMMA RECOGNIZED ONE OF THE INDIVIDUALS IN THE VIDEO TO "SUPPOSEDLY" BE PETITIONER.

SERGEANT DEMMA NEVER WAS CALLED AS A WITNESS TO TESTIFY TO HIS POSITIVE IDENTIFICATION IN REGARDS TO PETITIONER. THE VIDEO THAT WAS ADMITTED INTO EVIDENCE DOES NOT SHOW ANY FACES OF THE "ALLEGED" PERPETRATORS TO THE "ALLEGED" ROBBERY AS WELL AS DOES NOT SHOW AN OCCURRENCE OF THE "ALLEGED" ROBBERY OF THE COMPLAINANT. POLICE OFFICER RODRIGUEZ TESTIFIED ON APRIL 22, 2014 AT SAID PRE-TRIAL HEARING, SEE HEARING TRANSCRIPTS PAGES 57-71. OFFICER RODRIGUEZ TESTIFIED THAT SERGEANT DEMMA ORDERED HIM TO MAKE A PHOTO ARRAY AND TO MAKE PETITIONER THE SUBJECT OF SAID PHOTO ARRAY. SERGEANT DEMMA'S DUTY IN THE N.Y.P.D. 103 DETECTIVE SQUAD IS OF A SUPERVISORY ROLE. HE IS NOT AN INVESTIGATING OFFICER OR AN INVESTIGATING DETECTIVE. HIS DUTY AND ROLE IS TO MAKE SURE THAT ALL OF THE INVESTIGATING OFFICERS/DETECTIVES INVESTIGATIONS ARE DONE CORRECTLY. HIS FUNCTION AS SUPERVISOR IS TO SIGN OFF ON THE REPORTS/DDS'S OF THE INVESTIGATORS ONCE THEY ARE CORRECTLY COMPLETED. SERGEANT DEMMA CANT, I REPEAT CANT AS A SUPERVISOR, WITH UNDUPE PREJUDICE, WITH UNDUPE IMPARTIALITY, TAKE ON A INVESTIGATOR ROLE, REVIEW REPORTS OF AN INVESTIGATION HE MADE A "SUPPOSEDLY" POSITIVE IDENTIFICATION OF PETITIONER AND SIGN OFF THAT THE REPORTS AS WELL AS INVESTIGATION WAS DONE CORRECTLY. PETITIONER'S DUE PROCESS WAS VIOLATED BY SERGEANT DEMMA'S TAKING ON A INVESTIGATORY ROLE AND THAN TAKING ON A SUPERVISORY ROLE TO DETERMINE THE PROOESS OF "HIS" IDENTIFICATION OF PETITIONER WAS DONE PROPERLY. SERGEANT DEMMA SAID HE KNEW PETITIONER FROM A PRIOR INCIDENT. THIS PRIOR INCIDENT WAS FROM JUNE OF 2007. THAT WAS OVER SIX YEARS FROM THE INSTANT MATTER. NOR DO PETITIONER WEIGHT THE SAME, IS THE SAME HEIGHT AND APPERRANCE IS NOT THE SAME. THERE ARE NO FACES SHOWN IN THE VIDEO AND SAID VIDEO IS OF TERRIBLE QUALITY,

PETITIONER'S FUNDAMENTAL, CONSTITUTIONAL RIGHT TO A FAIR TRIAL WAS VIOLATED, CONSTITUTIONAL RIGHT TO DUE PROCESS WAS VIOLATED AND CONSTITUTIONAL RIGHT TO FACE A COUNSELOR WAS VIOLATED. THIS INVESTIGATION LACKED ALL THE FUNDAMENTAL ELEMENTS THAT WARRANTS A CONVICTION. COMPLAINANT "ALLEGES" HE WAS ROBBED AT GUN POINT. HE DID NOT GO TO SEEK MEDICAL ATTENTION FOR THE INJURIES HE "ALLEGES" HE SUSTAINED UNTIL A FEW DAYS LATER. HE DID NOT REPORT THE INCIDENT TO THE POLICE UNTIL ABOUT A WEEK LATER, EVEN THOUGH CHIEF PHILIP BANKS OF THE N.Y.P.D. IS HIS UNCLE, HE DID NOT REPORT THIS INCIDENT IMMEDIATELY AND HIS UNCLE NEVER TOOK ON AN ACTIVE ROLE EVEN WHEN HE WAS THE FIRST PERSON HE REPORTED THIS TO. I STATE ONCE AGAIN, COMPLAINANT STORY LACKS ALL INDICIA OF CREDIBILITY. THERE WAS NEVER ANY PHYSICAL EVIDENCE RECOVERED IN REGARDS TO THIS INCIDENT. THERE WAS NO D.N.A. EVIDENCE RECOVERED. THERE WAS NO FINGER PRINTS RECOVERED. THERE IS NO WITNESSES TO THIS INCIDENT. THE VIDEO SURVEILLANCE DOES NOT SHOW A ROBBERY, DOES NOT SHOW PETITIONER AND DOES NOT SUPPORT IDENTIFICATION OF PETITIONER. COMPARE WITH PEOPLE V. RUSSELL, 99 A.D.3D 211. THIS IS EXACTLY WHAT HAPPENED TO PETITIONER IN THE INSTANT MATTER. THERE WAS NOTHING CONNECTING PETITIONER TO THIS OFFENSE. THERE, THE DISCREPANCIES IN WHAT COMPLAINANT SAYS ARE OVERWHELMING, ALONG WITH THE ISSUES RAISED INVOLVING SERGEANT DEMMA ARE NOT HARMLESS ERROR. SERGEANT DEMMA NEVER TESTIFIED TO HIS INVOLVEMENT IN IDENTIFYING PETITIONER. SERGEANT DEMMA'S TESTIMONY IS CRUCIAL TO THE IDENTIFICATION AND HIS TESTIMONY WOULD HAVE HAD A VITAL IMPACT ON THE OUTCOME OF THIS CASE. THESE MALICIOUS ACTIVITIES AND PROCEDURES WARRANTS REVERSAL. PETITIONER IS ACTUALLY INNOCENT OF THESE CHARGES, SEE AFFIDAVIT OF MARLY SENAT.

7) WAS PETITIONER DENIED EFFECTIVE ASSISTANCE OF COUNSEL AND MEANINGFUL REPRESENTATION IN VIOLATION OF CONSTITUTION?

YES, PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL. UNDER THE UNITED STATES CONSTITUTION, A DEFENDANT IS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL'S PERFORMANCE IS OBJECTIVELY DEFICIENT, THAT DEFICIENT PERFORMANCE PREJUDICED THE DEFENSE, AND THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S ERRORS, THE RESULTS OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT, STROCKLAND V. WASHINGTON, 466 U.S. 668, 687, 694. UNDER THE NEW YORK STATE CONSTITUTION, TO BE CONSIDERED EFFECTIVE, DEFENSE COUNSEL MUST PROVIDE THE DEFENDANT WITH MEANINGFUL REPRESENTATION, PEOPLE V. HENRY, 95 N.Y. 2D 563, 565, PEOPLE V. BALDI, 54 N.Y. 137, 147, PEOPLE V. VILARDI, 76 N.Y. 2D 67. IN THE INSTANT MATTER, TRIAL COUNSEL'S PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS. PETITIONER'S COUNSEL ALLOWED THE MULTIPLE INTERJECTIONS BY THE COURT, TO EXCESSIVELY QUESTION THE PEOPLE'S SINGLE MOST IMPORTANT WITNESS, THE COMPLAINANT AND ALLOWED IT TO HAPPEN AGAIN AND AGAIN. SEE U.S. CONSTITUTION 6TH AND 14TH AMENDMENTS, NEW YORK CONSTITUTION ARTICLE 1 AND 6. THE CONSTITUTIONAL MANDATE EXTENDS TO THE GIVING OF EFFECTIVE AID, WHICH GENERALLY MEANS THE REASONABLE COMPETENT SERVICES OF AN ATTORNEY DEVOTED TO THE CLIENT'S BEST INTERESTS. PETITIONER'S TRIAL COUNSEL HAS NOT TO DATE MADE ANY SWORN STATEMENT, AFFIDAVIT AND/OR CLAIM DENYING THIS ASSERTION. PETITIONER RAISED THIS CLAIM IN THE LOWER COURTS,

PETITIONER'S COUNSEL WAS THE PERSON WHO INFORMED PETITIONER OF THE COURT'S EXCESSIVE AND PREJUDICIAL QUESTIONING OF TRIAL WITNESSES, AS WELL AS ACTING AS A ADVOCATE FOR THE PROSECUTION BY BOLSTERING THE TESTIMONY OF THOSE WITNESSES. IF COUNSEL FELT THAT WHAT THE COURT WAS DOING WAS IMPROPER, COUNSEL SHOULD HAVE OBJECTED TO THIS MISCONDUCT AND STATED THE REASONS WHY ON THE RECORD. INSTEAD COUNSEL ONLY INFORMED PETITIONER AND NEVER FULLY INFORMED THE COURT OF THERE IMPROPER QUESTIONING. COUNSEL DID NOT GIVE THE COURT THE ABILITY TO ATTEMPT TO CORRECT THIS MISCARRIAGE BECAUSE THEY NEVER FULLY INFORMED THE COURT TO IT. ROCHELLE BERLINER ESQ., AMI KIM ESQ., AND KATHY GALLO ESQ. WERE ALL IN AGREEMENT THAT JUSTICE RONALD HOLLIE INTERFERED IN THE PROCEEDINGS, TRYING TO REHABILITATE AS WELL AS BOLSTER THE TESTIMONY OF THE TRIAL WITNESSES, CONDUCTED EXCESSIVE AND PREJUDICIAL QUESTIONING OF THOSE WITNESSES, BUT FAILED TO SPECIFICALLY OBJECT TO THERE BELIEFS AND TO PUT IT ON THE RECORD. ACCORDING TO AMERICAN JURISPRUDENCE TRIALS KEY NOTE 12.75, "TRIAL COURT COUNSEL IS INEFFECTIVE IF IT KNOWS THAT THERE IS MISCONDUCT OCCURRING AND FAIL TO DO ANYTHING TO ATTEMPT TO CORRECT/CURE IT." PEOPLE V. PAUL, 212 A.D.2D 1020, IS A PERFECT EXAMPLE, "AN ATTORNEY HAS THE OBLIGATION TO ZEALOUSLY REPRESENT A CLIENT WITHIN THE CONFINES OF THE LAW. DEFENSE COUNSEL HAS AN OBLIGATION TO PROTECT THE RECORD, AND A TRIAL JUDGE SHOULD NOT BERATE THE ATTORNEY FOR DOING SO." THIS IS A MIRROR IMAGE OF WHAT OCCURED IN PETITIONER'S TRIAL. THIS CONDUCT WAS DETRIMENTAL. THE JUDGE SPOKE IN A HARSH TONE OF VOICE WHEN ADDRESSING PETITIONER'S COUNSEL AND AT SEVERAL POINTS IN THE TRIAL DEMEANED/REBUCKED COUNSEL.

ALL OF THIS OCCURRED IN FRONT OF THE JURY. PEOPLE V. SMITH
193 A.D. 3D 1260, "IN ORDER TO SUSTAIN CLAIM OF INEFFECTIVE
ASSISTANCE OF COUNSEL, APPELLATE COURT MUST CONSIDER WHETHER
DEFENSE COUNSEL'S ACTIONS AT TRIAL CONSTITUTED EGREGIOUS AND
PREJUDICIAL ERROR SUCH THAT DEFENDANT DID NOT RECEIVE A FAIR
TRIAL". COSEY V. LILLEY, 460 F. SUPP. 3D 346, "ON THE PERFORMANCE
OF THE STRICKLAND TEST FOR INEFFECTIVE ASSISTANCE OF COUNSEL,
COURTS APPLY A HEAVY MEASURE OF DEFERENCE TO THE COUNSEL'S JUDGEMENTS".
SEE ALSO STRICKLAND V. WASHINGTON, 466 U.S. 668, 687, 694. THE LOWER
COURTS FAILED TO ESTABLISH OR ADHERE TO THIS PRECEDENCE WHEN
APPLYING IT TO PETITIONER'S CLAIMS. COUNSEL NEVER ANSWERED OR
FILED ANSWORN AFFIDAVIT/DECLARATION ANSWERING TO THE CLAIM
OF INEFFECTIVE ASSISTANCE OF COUNSEL WHICH IS DEFINED BY NEW YORK
CRIMINAL PROCEDURE LAW. THE PRACTICE COMMENTARY FOR THE NEW YORK
APPELLATE DIVISION, SECOND DEPARTMENT STATES "THAT COUNSEL IS
TO RESPOND TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL".
UNITED STATES V. NOLAN, 956 F.3D 71, "TO SUCCEED ON AN INEFFECTIVE
ASSISTANCE OF COUNSEL CLAIM, A DEFENDANT MUST DEMONSTRATE,
FIRST, THAT IN LIGHT OF ALL THE CIRCUMSTANCES, THE ACTS OR OMISSIONS
OF TRIAL COUNSEL WERE OUTSIDE THE WIDE RANGE OF PROFESSIONALLY COMPETENT
ASSISTANCE, AND SECOND, THAT THERE IS A REASONABLE PROBABILITY THAT,
BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS THE RESULTS OF PETITIONER'S
PROCEEDINGS WOULD HAVE BEEN DIFFERENT". YES, PETITIONER WAS
DENIED EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE
UNITED STATES CONSTITUTION AND MEANINGFUL REPRESENTATION.

8) DID THE SECOND CIRCUIT COURT, EASTERN DISTRICT COURT AS WELL AS STATE LEVEL COURT FAILURE TO PROPERLY APPLY THE CONTEMPORANEOUS OBJECTION RULE WARRANT REVIEW AND GRANTING OF WRIT OF CERTIORARI?

YES, THE COURTS IMPROPERLY APPLIED THE NEW YORK CONTEMPORANEOUS OBJECTION RULE. UNDER NEW YORK STATE LAW, TO PRESERVE AN ISSUE FOR APPEAL, A PARTY MUST LODGE A CONTEMPORANEOUS AND SPECIFIC OBJECTION AT TRIAL. N.Y. CRIMINAL PROCEDURE LAW 470.05(2). "THE SECOND CIRCUIT HAS LONG RECOGNIZED NEW YORK'S CONTEMPORANEOUS OBJECTION RULE TO BE A FIRMLY ESTABLISHED AND REGULARLY FOLLOWED NEW YORK PROCEDURAL RULE THAT CONSTITUTES AN INDEPENDENT AND ADEQUATE STATE LAW GROUND," DOWNS V. LAPE, 657 F.3D 97, 104. "THE RULE REQUIRE'S, AT THE VERY LEAST, THAT ANY MATTER WHICH A PARTY WISHES THE APPELLATE COURT TO DECIDE HAVE BEEN BROUGHT TO THE ATTENTION OF THE TRIAL COURT AT A TIME AND IN A WAY THAT GAVE THE LATTER THE OPPORTUNITY TO REMEDY THE PROBLEM AND THEREBY AVERT REVERSIBLE ERROR," PEOPLE V. LUPELON, 623 N.Y.2D 735, 738-39. "THUS, A STATE COURT DECISION BASED ON CONTEMPORANEOUS OBJECTION GROUNDS GENERALLY PRECLUDES FEDERAL HABEAS REVIEW," DOWNS V. LAPE 657 F.3D 103-04. "HOWEVER, WHEN A STATE APPELLATE COURT REFUSES TO REVIEW THE MERITS OF A CRIMINAL DEFENDANT'S CLAIM OF CONSTITUTIONAL ERROR BECAUSE OF HIS FAILURE TO COMPLY WITH A CONTEMPORANEOUS OBJECTION RULE, A FEDERAL COURT MAY REVIEW THE MERITS OF SUCH A CLAIM WHEN THE STATE COURT UNEVENLY APPLIES THE RULE," SILVERMAN V. EDWARDS, 69 F. APP'X 489, 491, QUOTING PETERSON V. SKULL, 896 F.2D 661, 663, AND CITING WILLIAMS V. LANE, 826 F.2D 654, 659.

PETITIONER HAS PROVEN THAT THE LOWER COURTS MISAPPLIED THE CONTEMPORANEOUS-OBJECTION RULE AS WELL AS PROVEN THE LOWER COURTS UNEVENLY APPLIED STATED RULE. WARRANTING THIS COURT TO REVIEW THE CLAIM ON THE MERITS. SPECIFICALLY, PETITIONER BRINGS TO THE COURT'S ATTENTION THE ARTICLE ISSUED BY THE NEW YORK LAW JOURNAL REPORTING ON JUSTICE RONALD HOLLE BEING REVERSED, REPEATEDLY, FOR EXCESSIVE AND PREJUDICIAL QUESTIONING OF TRIAL WITNESSES, SEE NEW YORK LAW JOURNAL ARTICLE. JUSTICE RONALD HOLLE HAS HAD NUMEROUS CONVICTIONS OVERTURNED HE PRESIDED OVER FOR THE EXACT MISCONDUCT PETITIONER ASSERTS HAPPENED AT HIS TRIAL, SEE PEOPLE V. RAMSEY, 174 A.D. 3D 651, PEOPLE V. HENDS, 160 A.D. 3D 983, PEOPLE V. SOKDEO, 164 A.D. 3D 1268, PEOPLE V. ROBINSON, 151 A.D. 3D 758, PEOPLE V. DAVES, 147 A.D. 3D 1077, PEOPLE V. ESTEVEZ, 155 A.D. 3D 650, PEOPLE V. MITCHELL, 184 A.D. 3D 875, PEOPLE V. SAVILLO, 185 A.D. 3D 840, PEOPLE V. SMITH, 181 A.D. 3D 828, PEOPLE V. MARTINEZ, 199 A.D. 3D 834. THATS "TEN" REVERSED CONVICTIONS, BY THE HONORABLE RONALD HOLLE, FOR THE SAME ISSUE, EXCESSIVE AND PREJUDICIAL QUESTIONING OF TRIAL WITNESSES. THE SECOND CIRCUIT, ACKNOWLEDGE THAT THIS SAME MISCONDUCT OCCURRED IN PETITIONER'S, BUT SAID THEY WOULDN'T MAKE A DETERMINATION ON PETITIONER'S CLAIM. THIS WAS AN "UNEVENLY" APPLYING OF THE CONTEMPORANEOUS OBJECTION RULE. IN ALL THE MENTIONED MATTERS, NONE OF THE COUNSEL'S SPECIFICALLY OBJECTED TO THIS MISCONDUCT, BUT THE LOWER COURTS REVIEWED THEIR CLAIMS IN THE INTEREST OF JUSTICE AND REVERSED CONVICTIONS. THATS EXACTLY WHAT PETITIONER ASSERTS AND A MIRROR IMAGE OF HIS CLAIM. YES, THE LOWER COURTS UNEVENLY APPLIED THE CONTEMPORANEOUS OBJECTION RULE.

CONCLUSION

WHEREFORE, PETITIONER RESPECTFULLY REQUEST THAT AN ORDER BE ENTERED GRANTING THIS PETITION FOR WRIT OF CERTIORARI AND ANY OTHER RELIEF THE COURT DEEMS JUST AND PROPER.

SWORN TO BEFORE ME THIS
16 DAY OF October 2024

Casey Cook

NOTARY PUBLIC

CASEY COOK
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CO6439899
Qualified in Jefferson County
My Commission Expires August 28, 2026

RESPECTFULLY SUBMITTED
Andrew Fields

ANDREW FIELDS

#15A4093

GOVERNEUR C.F.

CC: FILE / A.F.

U.S. SUPREME COURT / JUSTICE SONIA SOTOMAYOR
N.Y.S. OFFICE OF THE ATTORNEY GENERAL