

No.24-6365

IN THE  
SUPREME COURT OF THE UNITED STATES

Filed

Timothy GEMELLI - Petitioner  
vs.  
State of La, Perry Nicosia ET AL  
Respondents

ON PETITION FOR REHEARING  
TO THE UNITED STATES SUPREME COURT

"PETITION FOR RE-HEARING"

Timothy M. GEMELLI #188972

12750 Hwy 96 at Ln. 13

Ordway, Colorado 81034

(303)775-9751 Ms. Debra Barnes (sister)

RECEIVED

MAY 15 2025

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

CERTIFICATE OF COUNSEL

I, Timothy Gemekki, "Petitioner" Certify That:  
This Petition For Re-Hearing is Presented  
in Good faith and Not for Delay.

This Petition is limited to intervening  
Circumstances of a Substantial or Controlling  
effect or to other substantial grounds not  
Previously Presented.

This Petition Comply's with Rule 44.2 as  
Required by Supreme Court Rule "44".



3-9-25

Timothy M. Gemekki

Date

Petitioner - Preparer

# Questions Presented

- I. Did the District Court judge abuse her discretion by not considering the lost mail package that contained crucially needed omitted evidence and was sent to Petitioner's attorney in order to present a sufficient motion for summary judgment.
- II. Did the District Court judge abuse her discretion by not adding or considering the content of the omitted evidence from the mother's statement, and her failure to remove the false irrelevancies and errors in Canepa's affidavit which would support Petitioners claim that no probable cause existed for his arrest?
- III. Did the District Court Judge overlook Petitioners **Fourteenth Amendment** claim of the Louisiana Prosecutors committing the **Brady** and **Giglio** violations by **disobeying** three direct **Court Orders** to have a forensic extraction done and to give specific requested exculpatory evidence under the **Brady obligation** to defense council?
- IV. Did this Honorable Court consider the manifest errors of law, fact, and injustice done to Petitioner? By the District Court and the 5<sup>th</sup> Circuit Courts mischaracterization, misrepresentation and misinterpretation of what he claims led to the wrongful conclusions that led to the erroneous rulings.

# Reasons to Grant the Petition

1.

Did the District Courts commit plain error by not giving consideration to the lost and undelivered mail sent to petitioners pro bono attorneys when reviewing petitioner's motion to alter or amend summary judgment due to circumstances beyond his control. See APPX: X

Petitioner filed a motion to alter or amend under F.R.C.P.59 ( e ) and 60 (b) asking the court to amend by allowing petitioner to add critical excluded statements of the mother and remove the irrelevant false un-considerable statements in the tainted affidavit for the reason stated below:

APPX: E Pg. 1-3

1. Petitioner had been given appointed pro bono counsel. He had had many conversations with his counsel regarding the critical omitted statements of the alleged victim's mother that need to be included in his motion for summary judgment.
2. Petitioner had wrote 30 pages of detailed facts, argument, and information to his attorneys in preparation for his attorneys to include in his motion. His attorneys failed to include the much needed crucial contradicting exculpatory material evidence. To prepare a sufficient motion, the left out statements needed to be included.

3. After receiving the denial of his summary judgment and a copy of what the attorneys had filed. Petitioner was very upset and extremely disappointed in their incomplete and incompetence by not including all of the most important parts of the omitted statement evidence of the mother that supports petitioners claims of no probable cause. In which petitioner had supplied to his attorneys through phone conversations.
4. On July 12<sup>th</sup>, 2023, petitioner put a package containing the 30 pages of written info into the inmate legal mail system, postage prepaid, 3 day priority mail w/ a tracking # to his counsel of record so they could file a proper amended motion by the court imposed deadline of July 25<sup>th</sup>, 2023. The package was lost in the mail and was not delivered until September 6<sup>th</sup>, 2023. (Please see included documents APPX: X "Prison and U.S. Post office documents."
5. Needless to say his pro bono counsel failed to prepare a sufficient motion that included the omitted evidence again. They failed to do their due diligence and read, review, and prepare a proper motion even after many discussions.  
(This is ineffective assistance of council). See APPX:I-2

See APPX:I(b) Federal Rule of Civil Procedure 60 (b) permits a party to seek relief from a final judgment and request reopening his case, under a limited set of circumstances Kemp VS. United States 142 S. Ct. 1856, 1861(2022) ("Gonzales vs. Crosby, 545 U.S. 524, 528(2005))

Those limited circumstances that apply are:

- (1) Mistake, inadvertent, surprise, or excusable neglect;

- (3) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an imposing party;
- (6) Any other reason that justifies relief under F.R.CIV.P.60 (b)

All of these issues have interfered with this petitioner's ability to get a proper review by the courts and is beyond his control.

Petitioner has done his due diligence by asking the courts to appoint counsel, which they granted and appointed GORDON ARATA MONTGOMERY, BARNET, McCOLLAM, DUPLANTIS & EAGAN, LLC. Petitioner was represented specifically by Philip J Antis, Jr. Terrence k. Knister, Marianna K. Downer, and Katherine E. Clark.

Petitioner relied on his counsel to prepare and file the complete and what should have been a sufficient motion, but it was not. They left out the most important information, the omitted statements of the mother which is crucial for defeating probable cause and to prevail on summary judgment. So petitioner was forced to file his own motion to alter or amend under F.R.CIV.P. 59(e), 60(b) it was filed timely. See APPX: E-2, ~~E-2~~, and F-2

Canepa's affidavit "omitted" evidence from the mother's statement that supports this petitioner's claim of actual innocence and shows malice and reckless disregard for the truth. This info was not only left out of Canepa's affidavit by her own account, but also by his counsel. As stated previously the pro bono attorneys did not include it in their motions for summary judgment. See APPX:~~E-2~~ Pg. 3

The attorneys only point out two of the six or so false misleading statements of Canepa. See APPX: J-2 the affidavit. See also APPX: E Petitioners motion for summary judgment. See also APPX: E Petitioners motion to alter or amend. The effect of the attorneys failure to include this crucial evidence allowed the district court judge to allege that based on the remaining allegations in the affidavit there was sufficient evidence to find probable cause existed. See APPX: B-2

Once again the omitted evidence was not added to consider and the other irrelevant uncorroborated false allegations were not removed for the reconstruction of the affidavit as required by "Franks". See also APPX: B-2 and APPX: J-2

The disputed facts were never considered by the courts. Petitioner has not had the opportunity to present his evidence, facts and argument on the merit.

#### IV.

The 5<sup>th</sup> Circuit Court Judge misrepresents the law and mischaracterizes petitioner's claim on pg. 4 of APPX: A-2. Precedent 5th circuit law states: "a victim's accusation identifying an individual as the perpetrator is generally sufficient to establish probable cause." See Johnson-V-Bryant: No. 94-10661, 1995 WI. 29317. States: Reliance on a purported victim is justified unless there is an "Apparent Reason" to disbelieve the victim's account. The court mischaracterizes petitioner's claims where he states that, and I quote, "**while Gemelli calms that the victim's retaliatory motive was a reason for officer Capena to disbelieve her account". (Petitioner's actual claims to disbelieve the alleged victim's account is based on the omitted crucial**

information from the mother's statement). (This is a manifest error of fact and caused a manifest error of Justice). The omitted information would rise to that level of **disbelief** as the mother was the primary care taker of the 2, 3, 4 year old and had firsthand knowledge of when and where the alleged victim slept and who bathed her. As the judge stated in his ruling APPX: A-2 the case law states: if there is a reason to disbelieve that gives an avenue to not find probable cause and his misrepresentation of petitioners claim is a manifest error of fact and law. See Stoot: 582 F.3d 910 "H N" 8: In cases involving very young child victims, the courts have repeatedly emphasized the need for some evidence in addition to the statements of the victim to corroborate the allegations and establish probable cause. In the instant case there is no corroboration between the mother and the alleged victim statement furthermore the mother's statement corroborates with the petitioners claims of actual innocence.

The District Court Judge wrongly concludes that by naming an alleged perpetrator in an S.A. case alone gives reason for probable cause. She did not consider that the allegations are proven "Demonstrably False" by the mothers contradicting statements denying both allegations pertaining to Louisiana. See Travis: 654 Fed. APPX 161,165. On Pg. 11 of APPX: B-2 States: Where a plaintiff could not show the alleged victims account of sexual assault to be "Demonstrably False" probable cause exist to arrest the alleged perpetrator. The key word here is GENERALY which means under normal circumstances probable cause could exist. But under this instant case probable cause does not exist because the mother's un-corroborating statement ~~which~~ denies the alleged victims allegations in total.

The question here relates back to the erroneous fact finding of the district court judge and her mischaracterization of what petitioner claims in her conclusions on pgs. 7-11 of APPX: B-2

The judge points to the fact that Canepas affidavit contains information from two police interviews to form the “synopsis” in her affidavit. See APPX: B-2 Pg. 3 One from the alleged 19 year old victim. (Petitioner’s daughter) one from the mother of the alleged victim. (Petitioner’s ex-wife)

The judge then quotes on pg. 5 of APPX: B-2 the requirements of “**Franks**” to consider the faulty affidavit as if those errors and omissions were removed. (You don’t remove omissions, you add them.)

You remove the falsities. Here lies the problem. The judge quotes the requirements but fails to implement them. (As “**Franks**” requires) She did not add or consider the full content of the material omissions from the mother’s statement that was left out of the faulty, tainted affidavit by Canepa.

The judge also failed to remove the faulty errors of un-chargeable, unverified, uncorroborated, irrelevant accusations of alleged acts outside the jurisdiction of Louisiana’s reach that could not be considered for probable cause.

This is a great miscarriage of justice and petitioner has no other recourse to hold those responsible for destroying his life, by evidence suppression and bolstering of unverified and uncorroborated false allegations.

This is a violation of petitioner's constitutional rights. It violates petitioner's 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> amendment rights.

Petitioner asks this honorable court to read and compare the combined 10 pgs. of APPX: J-2, Q-2, and R-2 which is the totality of evidence used to form the basis of the false arrest of petitioner and the prosecution in which he was **proven not guilty**.

The District courts inclusion of other false hearsay uncorroborated, unverified, unspecified alleged acts on other non-complaining persons outside the Louisiana jurisdiction is a complete manifest injustice and should not be included when evaluating the evidence to determine probable cause.

This petitioner is not simply complaining about a ruling that he disagrees with. This is a complaint on the facts being misrepresented by a district court judge. It's that she is wrong in her characterization on the facts of **Double Jeopardy** related to what the magistrate judge states in his findings, report and recommendations. See APPX: C-2 pg. 40, 41. It is also her mischaracterization of this petitioners claim in her erroneous ruling in APPX: G-2 pg. 4

The district court ruling is in direct conflict with the magistrate judge's findings, and a total misstatement of what his order said, and concluded concerning Colorado. Judge Wilkinson dismissed the A.D.A. respondents based on only two of the three prongs being met under the Brady violations. The missing prong was he could not find prejudice due to the ultimate not guilty verdict. "Acquittal" in St Bernard Parish, LA. See APPX: C-2 Pgs. 40, 41.

See APPX: G-2 PG. 3. The district court incorrectly states in her ruling that the magistrate judge considered the foreseeable prosecution and conviction in Colorado.

1. Petitioner never raised that claim until after the conviction had occurred and he dismissed the respondents. There was no reason for the petitioner to raise that claim prior to the dismissal of respondents in the magistrates report and recommendations on April 29<sup>th</sup>, 2020.
2. The court cannot consider an issue not raised by motion of the petitioner.
3. Petitioner only raised a **Double Jeopardy** claim concerning Colorado in his original filing in September, 2019 See APPX: C-2 Pg. 40, 41.

Judge Wilkinson ruled that I raised that claim prematurely as the trial had not taken place at the time and if I were to be convicted I would still have to exhaust all of the state remedy's before I could raise a double jeopardy claim.

Petitioner's direct appeal was not complete until September of 2024 and therefore the magistrate could not consider prejudice from the Colorado conviction.

The District Court Judge wrongfully misrepresents what petitioner claims concerning the Brady and Giglio violations. See APPX: G-2 Pgs. 3, 4.

There is a distinct difference between the two claims. The Double Jeopardy claim is based on a second prosecution on the already proven not guilty verdict on his daughter in Louisiana, and the second trial based on the same factual evidence, person and allegations taking place in Colorado.

The Brady claim is separate and distinct. It is based solely on the **disobeying of the three court orders** by the **Respondents**. They suppressed the evidence that they knew petitioner would be needing for both trials. This is an ongoing problem according the Supreme Court. **See Brown VS Louisiana.**

**Petitioner claims there are three different opinions** before this court that are in conflict with each other and should be decided upon by this court.

1. The magistrate judge found merit to petitioner's fourth amendment claim against officer Canepa's false arrest of petitioner. APPX: C-2 PG. 41-45
2. The magistrate judge found that the respondents had committed Brady violations and only dismissed them because petitioner could not prove the third prong required by Brady of prejudice due to the ultimate acquittal in Louisiana. APPX: C-2 PG.17,18
3. As stated previously: The district court judge did not consider the Brady violations against the district attorneys because of her own failure to understand the **link by causation** and her mischaracterization of petitioners claims "No duty to disclose Brady material to a separate trial in a different state conducted by different prosecutors" APPX: G-2 PG. 4
4. The fifth circuit states no Brady violations had occurred at all because a small portion of the text message evidence contained in petitioners phones were brought to the jury's attention through the testimony of plaintiff's daughter, and that all other evidence in the phones would be accumulative and not material. APPX: A-2 PG. 4 (This was a manifest error of fact and law)

5. The fifth circuit made an evidentiary ruling on the complete contextual content, data info, digital info, photos, dates, times, calendar events, and all complete contents of petitioner's two cell phones without ever seeing or examining and considering the evidence contained in them. APPX: A-2 PG. 4
6. These phones were under "**Direct Court Order**" to be handed over to the defense attorney and was needed for two separate trials pertaining to the same identical alleged victim, witnesses, that petitioner was found not guilty of all charges and he was deprived the use of the Brady evidence and his personal and business cell phones for the Louisiana and Colorado trial. APPX: S-2 PG. 1-8 Brady-V-Maryland, 373 U.S. 83
7. **No Court** has acknowledged the **Disobedience** of officer **Canepa** and the **Respondent District Attorneys** Nicosia, Ward, and Morales to **Comply** with the **Three Court Orders** issued by the **Trial Court Judge**.
  1. The District Court Judge has created manifest errors of **fact** by the mischaracterization of petitioner's actual claims.
  2. The District Court has caused manifest errors of **law** upon which her judgment is based.
  3. This Honorable Court could consider using its discretionary powers to grant this petition for rehearing to prevent a **manifest injustice** from occurring.

The first manifest errors of fact and mischaracterization of false claims is found in APPX: G-2 page 3, 4 and I quote "Plaintiff now argues that the court failed to consider his subsequent conviction and incarceration in Colorado as the prejudice that he suffered. (This statement is

true and correct) This next part is a false mischaracterization of what petitioner claims and is a manifest error of fact

And I quote "Plaintiff alleges that this harm resulted from the failure of Louisiana's St. Bernard parish, district attorney, Perry Nicosia and assistant district attorneys Charles Ward and Mike Morales to disclose exculpatory evidence during plaintiff's criminal trial in Colorado (**not true**).

In other words, plaintiff seeks to hold St. Bernard parish officials liable for a Brady violation that supposedly occurred during a trial in another state conducted by different prosecutors" (This is not what petitioner claims, this is a manifest error of fact)

The judge continues on page 4, and I quote "More importantly the court is unaware of any legal authority for plaintiff's argument that prosecutors in one state have a Brady duty to disclose exculpatory evidence in a criminal trial in a different state conducted by different prosecutors"  
*APPX: G Pg. 4*  
(A complete mischaracterization of petitioner's claims.)

Petitioner is fully aware that prosecutors in one state do not have a duty to disclose Brady material to a criminal trial in a different state conducted by different prosecutors *(Petitioners*  
*actual claim is the St. Bernard parish district attorneys Nicosia, Ward, Morales, and officer*  
*Canepa, do have an Obligation to follow the Direct Court Orders from the Louisiana trial court*  
*Judge DIRECTING them to complete a forensic extraction of this petitioner's cell phones and*  
*HAND OVER the phones and extractions within ten days to defense council Gary Wainwright.)*

*The respondents disobeyed all three court orders and failed to fulfil the Brady and Giglio*  
*obligations by committing the evidence suppression prior to the Louisiana trial, date of January*  
*2019, See APPX: S-2 pages 1-8 (court orders)*

Petitioner claims the Respondents had a duty to Disclose Court Ordered Brady Material for the Louisiana Trial but was also needed for the upcoming Colorado Trial. Their Deliberate Disobedience to Comply with the Three Court Orders for the St. Bernard Trial caused Petitioner Prejudice and Harm in the Colorado Trial as they knew Petitioner would need that same Evidence against the Identical Alleged Victim in Colorado.

Pertaining to petitioner's 4th amendment claim and the "Franks" violation against officer Canepa and her sworn affidavit. The District courts inclusion of other false hearsay uncorroborated, unverified, unspecified alleged acts on other non-complaining persons outside the Louisiana jurisdiction is a complete manifest injustice and should not be considered when evaluating the evidence to determine probable cause.

N.M. Consol. Const. -V- City Counsel of Santa Fe, 97 F Supp.3d.1287

"HN" 38, Elements, Causal, Relationship. Under 42 U.S.C. 1983, individual, non-supervisory defendants may be liable if they knew or reasonably should have known that their conduct would lead to the deprivation of a plaintiffs constitutional rights by other and an unforeseeable intervening act has not terminated their liability. The requisite causal connection is satisfied if the defendants set in motion a series of events that the defendants knew or reasonably should have known would cause others to deprive the plaintiffs of their constitutional rights.

See also: Braillard VS Maricopa County 232, p.3d, 1263, it states; the proximate cause of an injury which in the natural and continuous sequence, unbroken by any efficient intervening cause, produces an injury and without which the injury would not have occurred. There may be

more than one proximate cause without which the resulting injuries would not have occurred, and the defendants act or remission need not be a large or abundance cause of the injury; Even if the defendants conduct contributes only a little to plaintiffs damages liability exists if the damages would not have occurred but for that conduct.

Imagine if these respondents had not suppressed the court ordered evidence of all the other witnesses and defense council would have been armed with the exculpatory impeachment evidence needed. **The outcome of the Colorado Trial would have been different.**

# Conclusion

Petitioner is pleading with this court to use its discretionary powers to review the supplied "appendices" The pages of two very different statements that Canepa used to determine probable cause for arrest. And you decide if the affidavit was faulty, tainted, and if probable cause existed after considering the totality of circumstances.

Petitioner understands that review by the Supreme Court is by discretion and must be of great importance to not only petitioner but more importantly of great concern to a particular group of individuals in the general public and the great effect it would have on them. Petitioner believes he represents a large group of petitioners and respondents in our lower court judicial system where judges have become more bias against certain groups of individual persons who try to right the wrongs that government officials have caused them. As in the present case before this court, the evidence is in black and white of what this police officer and District Attorney respondents did by suppressing evidence, disobeying of court orders, and putting fabricated statements of one person about unspecified allegations on an unnamed non complaining person outside of the arresting officer's jurisdiction and by omitting the mother's detrimental statement that would diminish probable cause and calls into question the credibility of the alleged victim and allegations.

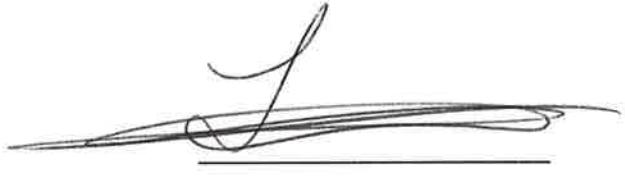
THERE IS A SUPREME COURT MANDATE ACCORDING TO BROWN VS LOUISIANA 143, S. Ct. 886

The Supreme Court States: "WE HAVE REPEATEDLY REVERSED LOWER COURTS AND  
"LOUISIANA COURTS IN PARTICULAR" FOR SIMILAR REFUSALS TO ENFORCE THE FOURTEENTH

AMENDMENTS MANDATE THAT FAVORABLE AND MATERIAL EVIDENCE IN THE GOVERNMENTS  
POSSESSION BE DISCLOSED TO THE DEFENSE BEFORE TRIAL".

The District Court and the 5<sup>th</sup> Circuit Court mischaracterize, misrepresented, misinterpreted petitioners claims which led them to an incorrect conclusion that led to an erroneous rulings against him.

Wherefore petitioner prays that this Honorable Court will grant this petition, reverse and remand to the lower courts for further preceding's.



Petitioner Timothy Gemelli

4-14-25

# Certificate of Service

## And Declaration

I, Timothy Gemelli, do Declare by Penalty of Perjury that I have Placed a True and Correct COPY of The Petition for Re-Hearing in the inmate Legal mail system on April 17th, 2025 at 8:PM. To be sent to the addresses listed below, Via Priority Mail, Postage Prepaid thru the U.S. Postal Service.

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