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8 I. Appendix A

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1. District Court Order (Dox.60) Case 3:20-cv-08327-JAT
2. Excerpt magistrate Judge Report and Recommendation (Dox.56)
Case 3:20-cv-08327-JAT.
3. Court of Appeals Order 12-18-24 No. 24-3230
4. Court of Appeals Order 1-07-25 No. 24-3230

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II. Appendix B

1. Copy of Original Habeas Corpus Petition 12-07-20.
2. Copy of New 'First Petition' not previously filed.

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III Appendix C

1. Copy of Attachment - STATE of Arizona Prop. Ct. V18002701580451
2. Excerpt of RT 9-19-15

APPENDIX

A

EXHIBIT

A

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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Gerald Vaughn Gwen,

No. CV-20-08327-PCT-JAT

10 Petitioner,

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v.
Attorney General of the State of Arizona, et
al.,

Respondents.

ORDER

Pending before this Court is Petitioner's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 ("Petition"). The Magistrate Judge to whom this case was assigned issue a Report and Recommendation ("R&R") recommending that the Petition be denied. (Doc. 56). Petitioner filed objections to the R&R. (Doc. 57). Respondent replied to the objections. (Doc. 58).

I. Review of R&R

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). It is "clear that the district judge must review the magistrate judge's findings and recommendations *de novo if objection is made, but not otherwise.*" *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (emphasis in original); *Schmidt v. Johnstone*, 263 F.Supp.2d 1219, 1226 (D. Ariz. 2003) ("Following *Reyna-Tapia*, this Court concludes that *de novo* review of factual and legal issues is required if objections are made, 'but not otherwise.'"); *Klamath Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 589 F.3d

1 1027, 1032 (9th Cir. 2009) (the district court “must review *de novo* the portions of the
2 [Magistrate Judge’s] recommendations to which the parties object.”). District courts are
3 not required to conduct “any review at all . . . of *any issue* that is not the subject of an
4 objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (emphasis added); *see also* 28 U.S.C.
5 § 636(b)(1) (“the court shall make a *de novo* determination of those portions of the [report
6 and recommendation] to which objection is made.”).¹

7 Accordingly, the Court will review the portions of the R&R to which there is a
8 specific objection *de novo*. The Court notes that at page 2 of his objections Petitioner states
9 that he objects to the entirety of the R&R. The Court is not obligated to review every word
10 of the 53-page R&R *de novo* based on this global objection. *Accord Martin v. Ryan*, 2014
11 WL 5432133, *2 (D. Ariz. October 24, 2014) (“...when a petitioner raises a general
12 objection to an R&R, rather than specific objections, the Court is relieved of any obligation
13 to review it.”) (collecting cases); *Warling v. Ryan*, 2013 WL 5276367, *2 (D. Ariz.
14 September 19, 2013) (“A general objection has the same effect as would a failure to
15 object”) (internal quotations and citation omitted). Thus, Petitioner’s general objection
16 cannot overcome this Circuit’s *en banc* case law that this Court need only review *de novo*
17 factual and legal issues to which there is a specific objection. *See Reyna-Tapia*, 328 F.3d
18 at 1121. As a result, this general objection is overruled and the Court will turn to
19 Petitioner’s specific objections where the Court can discern them.

20 II. Default

21 The R&R concludes that Respondents have not failed to defend this action;
22 therefore, Petitioner is not entitled to default or default judgment. (Doc. 56 at 9-10).
23

24 ¹ The Court notes that the Notes of the Advisory Committee on Rules appear to
25 suggest a clear error standard of review under Federal Rule of Civil Procedure 72(b), citing
26 *Campbell*, Fed. R. Civ. P. 72(b), NOTES OF ADVISORY COMMITTEE ON RULES—
27 1983 citing *Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879 (The court “need only satisfy itself that there is no clear error on the
28 face of the record in order to accept the recommendation.”). The court in *Campbell*, however, appears to delineate a standard of review specific to magistrate judge findings in the motion to suppress context. *See Campbell*, 501 F.2d at 206–207. Because this case is not within this limited context, this Court follows the Ninth Circuit’s *en banc* decision in *Reyna-Tapia* on the standard of review for an R&R.

1 Petitioner objects to this recommendation. (Doc. 57 at 9). The Court has reviewed the
2 relevant filings in this case and agrees with the R&R that Petitioner is not entitled to default.
3 This objection is overruled.

4 **III. Factual Background**

5 The R&R summarized the history of this case in state court. (Doc. 56 at 1-5). While
6 Petitioner objects to the accuracy of the state court's recounting of its own proceedings and
7 findings, Petitioner does not specifically object to the R&R's summary of what transpired
8 in state court. (See Doc. 57). This Court accepts and adopts the R&R's recounting of the
9 state court proceedings.

10 In short summary, Petitioner proceeded to a jury trial, pro se with advisory counsel,
11 and was convicted of identity theft, credit card theft, theft, fraud and forgery. (Doc. 56 at
12 2-3). Petitioner was sentenced to 5 years incarceration. (*Id.*). It appears Petitioner has
13 completed his sentence, but no one argues the Petition is moot.

14 **IV. Habeas Petition**

15 The R&R quoted the claims raised in the habeas petition. (Doc. 56 at 5-7). The
16 R&R then endeavored to summarize that narrative into grounds for relief. (Doc. 56 at 7-
17 8). The R&R summarized Petitioner's claims/ground as follows:

- 18 - Ground 1A – use of perjured testimony at grand jury
- 19 - Ground 1B – insufficient evidence at grand jury
- 20 - Ground 2A – improper vacating of preliminary hearing
- 21 - Ground 2B – inadequate notice and right to counsel at grand jury
- 22 - Ground 3 – search and seizure upon arrest
- 23 - Ground 4 – search and seizure of car, residence and truck
- 24 - Ground 5A – procedural defects of (1) insufficient indictment, (2) prosecutorial misconduct in arguments, (3) variance from the indictment, (4) verdict not unanimous, and (5) denial of access to exculpatory evidence
- 25 - Ground 5B – insufficient evidence of (1) theft and negotiation of checks, and (2) certified proof of loss from credit card
- 26 - Ground 6A – admission of false evidence, unauthenticated records, incorrect legal decisions and denial of evidentiary hearing
- 27 - Ground 7A – evidence tampering
- 28 - Ground 7B – *Brady* violations
- Ground 8 – denial of substitute counsel
- Ground 9A – judicial bias on relationship
- Ground 9B – judicial bias based on rulings on: (1) March 19, 2018 order on motion to dismiss/suppress; (2) unauthenticated computer records; (3) filing of motions for a change of judge; (4) failure to disclose; (5) check records; (6) prosecution's improper arguments; and (7) Petitioner's motion for acquittal.

(Id.)

Petitioner objected to some of this summary, which will be discussed more fully below. Otherwise, the Court accepts the R&R's characterization of the claims in this case.

V. Unexhausted and Procedurally Defaulted Claims

The R&R concludes that Grounds 1B, 5A(4), and 9 are unexhausted and defaulted, without excuse, and must be dismissed with prejudice. (Doc. 56 at 16, 19, 21-22, 24). Petitioner generally objects and states that he exhausted all his claims. (Doc. 57 at 9). However, Petitioner does not offer any specifics as to when in state court he presented these claims in a procedurally correct manner. (Doc. 57 at 9-11). The Court agrees with the R&R that these claims are unexhausted and this Court cannot consider their merits unless Petitioner shows cause and prejudice or a fundamental miscarriage of justice/actual innocence to overcome his failure to exhaust. The Court finds the R&R correctly stated the law governing these exceptions to the exhaustion requirement (Doc. 56 at 22-24) and Petitioner's objection (Doc. 57 at 14) that the R&R incorrectly stated the governing law is overruled.

The R&R concludes that Petitioner has not shown cause and prejudice or a fundamental miscarriage of justice. (Doc. 56 at 24). Petitioner objects to the R&R's reliance on the state court record/decisions. (Doc. 57 at 9). Petitioner argues that the state court's decisions do not reflect what actually transpired in state court. (*Id.*). Under 28 U.S.C. § 2254, this Court cannot review the state court's record or decisions *de novo*, nor could the Magistrate Judge in preparing the R&R. Thus, the R&R's reliance on and citation to the state court's decisions was appropriate and this objection is overruled.

The Court accepts the R&R's determination that Grounds 1B, 5A(4), and 9 are exhausted and defaulted, without excuse, and must be dismissed with prejudice.²

² Petitioner objects to the R&R's characterization of Ground 9 as judicial bias; Petitioner indicates he intended to argue an inappropriate exercise of judicial power. (Doc. 7 at 13-14). First, the Court agrees with the R&R that the closest legal theory to the words Petitioner is using (notably Petitioner offers no citation to any law discussing judicial use of power as a cognizable theory) is judicial bias. But regardless of how Petitioner intended to cast this claim, this Court's conclusion that the claim is unexhausted without excuse is unchanged. Thus, this objection is overruled as irrelevant to the decision.

1 **VI. Remaining Claims**

2 With respect to any claims that Petitioner exhausted before the state courts, under
3 28 U.S.C. §§ 2254(d)(1) and (2) this Court must deny the Petition on those claims unless
4 “a state court decision is contrary to, or involved an unreasonable application of, clearly
5 established Federal law”³ or was based on an unreasonable determination of the facts. *See*
6 *Lockyer v. Andrade*, 538 U.S. 63, 71 (2003). Additionally, “[a]n application for a writ of
7 habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to
8 exhaust the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(2).

9 At this point, Petitioner makes two additional global objections. (Doc. 57 at 13).
10 First, Petitioner argues that the R&R subcategorizing his claims violates his due process
11 rights. (*Id.*). As discussed in footnote 2, the Magistrate Judge in preparing the R&R
12 attempted to analyze Petitioner’s words as legal claims. The claims in Petitioner’s Petition
13 span 10 pages, but only ground six contains a legal citation, and it is to a state case not a
14 federal one. (Doc. 1 at 6-15). By Petitioner failing to offer any legal support for his
15 arguments, the Court must either deny relief with no analysis, or determine whether there
16 is any legal support for the factual theories presented. There is no due process violation in
17 the Court researching the claims to the best of its ability. Moreover, in his objections,
18 Petitioner offers no alternative legal theory to support his factual allegations. For all of
19 these reasons, this objection is overruled.

20 Next, Petitioner argues that it is inconsistent for the R&R to determine that some
21 claims were exhausted and some claims remain unexhausted, but procedurally defaulted,
22 in state court. (Doc. 57 at 15-16). The R&R is legally correct that some claims may have
23 been exhausted in state court while other claims have not been exhausted in state court.
24 *See, e.g., Bradford v. Davis*, 923 F.3d 599 (9th Cir. 2019) (finding some claims exhausted
25 and some claims unexhausted). Accordingly, this objection is overruled.

26 At pages 24-51, the R&R discusses the merits of the remaining grounds in the

27

28 ³ Further, in applying “Federal law” the state courts only need to act in accordance
with Supreme Court case law. *See Carey v. Musladin*, 549 U.S. 70, 74 (2006).

1 Petition. (Doc. 56 at 24–51). The R&R reviews certain grounds de novo. (See e.g., Doc.
2 56 at 27). Ultimately as to all remaining grounds, the R&R determines that they are either
3 without merit or that the state court decision was not contrary to or an unreasonable
4 application of clearly established federal law or an unreasonable determination of the facts.
5 Petitioner makes no specific objections to this portion of the R&R and the Court accepts
6 pages 24–51 and the conclusions therein.

7 **VII. Conclusion**

8 Based on the foregoing,

9 **IT IS ORDERED** that the Report and Recommendation (Doc. 56) is accepted and
10 adopted. The objections (Doc. 57) are overruled. Grounds 1B, 5A(4) and 9 of the Petition
11 are dismissed with prejudice; the remaining Grounds of the Petition are denied with
12 prejudice; the Clerk of the Court shall enter judgment accordingly.

13 **IT IS FURTHER ORDERED** that pursuant to Rule 11 of the Rules Governing
14 Section 2254 Cases, in the event Petitioner files an appeal, the Court denies issuance of a
15 certificate of appealability because dismissal of portions of the Petition is based on a plain
16 procedural bar and jurists of reason would not find this Court's procedural ruling debatable,
17 *see Slack v. McDaniel*, 529 U.S. 473, 484 (2000), and Petitioner has not made a substantial
18 showing of the denial of a constitutional right, *see* 28 U.S.C. § 2253(c)(2).

19 Dated this 15th day of June, 2022.

20
21
22
23 James A. Tegland
24 Senior United States District Judge
25
26
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28

1 Appeals observed:

2 Gwen asserts that he was unable to timely challenge the grand jury
3 determination of probable cause because he was not provided a
4 transcript of the grand jury proceeding until May 2017. But Gwen
5 admits that the transcript was provided to his original public
6 defender- and ultimately provided to him- and he fails to explain why
7 he did not seek relief by special action once he received the transcript.

8 (Exh. GG, Mem. Dec. 1/14/20 at ¶ 8, n. 1.) Petitioner proffers nothing beyond his bare
9 assertions to overcome the presumption of correctness that attaches to the conclusion that
10 the required special action was not filed. See 28 U.S.C. § 2254(e). Consequently, the
11 undersigned finds it was not.

12 Moreover, Petitioner makes no assertion that the applied procedural bar was not
13 independent and adequate, let alone offering “specific factual allegations” and “citation to
14 authority” to support such assertions. See *Bennett*, 322 F.3d 584-585.

15 Accordingly, the undersigned concludes Ground 1B was procedurally barred on an
16 independent and adequate ground.

17 **b. Ground 5A(2) – Prosecutor Misconduct re Arguments**

18 **Claims Adequately Raised** - Petitioner claims in Ground 5A(2) that the prosecutor
19 engaged in misconduct during opening and closing arguments. In the Petition, Petitioner
20 identifies one incident of misconduct. He complains that the prosecutor made “ambiguous
21 remarks” and asserts that in closing arguments the prosecutor argued ““the state cannot
22 prove charge of theft...we are not charging that the defendant stole check.”” (Petition,
23 Doc. 1 at 9(A), 9(B).) This references the following portions of closing argument:

24 One of the things I want to clarify is the defendant is not
25 charged with stealing the checks. That is not a charge. He wasn't
26 charged because there was just no proof. You heard Mr. Dimler
27 indicate he didn't know when the checks were stolen.

28 It's a reasonable inference that -- that he stole the checks, the
defendant stole those checks, 'cause he had access to those checks by
his own testimony. It came out in the testimony that he was there and
had access to the corporate office, to the restaurant's offices both
night and day. He shared those offices.

29 But don't be misled or find that confusing. He's not charged
30 with the theft of those checks. He's charged with using those stolen
31 checks.

1 (Exh. QQ, R.T. 9/19/18 (Day 5) at 29-30.) Petitioner's argument fairly raises a claim of
2 prosecutorial misconduct based on these comments.

3 Petitioner's bare assertions of other misconduct in arguments is not sufficient to
4 state a claim on such bases. Conclusory allegations that are not supported by specific facts
5 do not merit habeas relief. *James v. Borg*, 24 F.3d 20, 26 (9th Cir.), cert. denied, sub. nom.
6 *James v. White*, 513 U.S. 935 (1994).

7 In his Reply, Petitioner makes reference to his Appendix A to his Supplemental
8 Brief (Exh. FF) on direct appeal when arguing the prosecutor's "comments were
9 improper," which (Reply, Doc. 43 at 51) In that Appendix, Petitioner listed a variety of
10 comments in opening statements and closing arguments. But Petitioner cannot use his
11 Reply to amend his Petition. *Cacoperdo*, 37 F.3d at 507.

12 Accordingly, the undersigned addresses only the one supported claim of
13 prosecutorial misconduct.

14 **Procedural Default** - Respondents argue Petitioner did not properly exhaust his
15 claim in Ground 5A(2). Respondents provide no argument on the nature of the deficiency
16 in Petitioner's presentation of this claim. (Answer, Doc. 23 at 25.) Petitioner proffers
17 nothing to show his fair presentation. Nonetheless, the undersigned concludes the claim
18 was fairly presented.

19 In his Supplemental Brief on direct appeal, Petitioner raised claims of prosecutorial
20 misconduct. (See Exh. FF, Supp. Brief, Doc. 23-1 at 296 *et seq.*) And he argued
21 prosecutorial misconduct occurs when the prosecution "improperly argues inferences in
22 its opening statement," "implies or present[s] conflicting or false facts in his comments,"
23 and "unprofessionally makes ad hominem arguments[sic] directed towards Defendant in
24 the presence of jurors." (*Id.* at 296-297.) He argued that the prosecution "failed to include
25 legal grounds in his arguments," "made unfounded insinuations, fraudulent and misleading
26 comments, comments not supported by trial proof, and hides behind insufficient legal
27 theory," "unfairly planted cancerous material." (*Id.* at 297-301.) In Appendix A
28 ("Prosecutor Comments") to his Supplemental Brief, Petitioner provided a litany of

EXHIBIT

C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 18 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GERALD VAUGHN GWEN,

No. 24-3230

Applicant,

ORDER

v.

BRUNO STOLC,

Respondent.

Before: WALLACE, GRABER, and BUMATAY, Circuit Judges.

The application for authorization to file a second or successive 28 U.S.C. § 2254 habeas corpus petition in the district court is denied. The applicant has not made a prima facie showing under 28 U.S.C. § 2244(b)(2) that:

(A) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

Any pending motions are denied as moot.

No further filings will be entertained in this case.

The clerk will serve this order and Form 12 on the applicant.

DENIED.

EXHIBIT

D

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 7 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GERALD VAUGHN GWEN,

No. 24-3230

Applicant,

ORDER

v.

BRUNO STOLC,

Respondent.

The applicant has filed at Docket Entry No. 7 a petition for panel rehearing.

The applicant is informed that the court's December 18, 2024, order, stated: "No further filings will be entertained in this case." The court, therefore, will not take any action on the applicant's filing.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

APPENDIX

B

APPENDIX B

EXHIBIT

E

4. Identify all counts and crimes for which you were convicted and sentenced in this case: (1) THEFT OF A CREDIT CARD, (2) TAKING THE IDENTITY OF ANOTHER, (3) FRAUDULENT SCHEMES AND ART-FICION; (4) THEFT; (5) FORGERY

5. Length of sentence for each count or crime for which you were convicted in this case: 2.5, 1.5, 5, 3.5, 2.5 years - RUN CONCURRENT FOR A TOTAL OF FIVE YEARS.

6. (a) What was your plea?

Not guilty
Guilty
Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details:

(c) If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

7. Did you testify at the trial? Yes No

8. Did you file a direct appeal to the Arizona Court of Appeals from the judgment of conviction?

Yes No

If yes, answer the following:

(a) Date you filed: NOTICE FILED OCTOBER 1, 2018 BRIEF FILED AUGUST 19, 2019

(b) Docket or case number: 1-CA-CR-18-0775

(c) Result: CONVICTION AFFIRMED

(d) Date of result: JANUARY 14, 2020

(e) Grounds raised: MALICIOUS PROSECUTION, ILLEGAL ARREST, ILLEGAL SEARCH AND SEIZURE, PROcedURAL DUE PROCESS, DUE PROCESS OF LAW, DEFECTIVE JURY CHARGE, TAMPERING, Brady VIOLATIONS, SUFFICIENCY OF EVIDENCE, ADMISSIBILITY OF WITNESSES, RIGHT TO COUNSEL, FAIR TRIAL, JUDICIAL MISCONDUCT, PERJURY, SUBORN PERJURY

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

9. Did you appeal to the Arizona Supreme Court? Yes No

If yes, answer the following:

(a) Date you filed: February 20, 2020

(b) Docket or case number: CR-20-0668-PR

(c) Result: Affirmed

(d) Date of result: Affirmed - July 28, 2020

(e) Grounds raised: Appellate Court Abuse of Discretion, Defective conviction, Due process rights to preliminary hearing, illegal arrest, illegal search and seizure, sufficiency of evidence, Brady IAO, Admissibility of evidence, Tampering, rights to counsel, judicial misconduct, prosecutorial misconduct

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

10. Did you file a petition for certiorari in the United States Supreme Court? Yes No

If yes, answer the following:

(a) Date you filed: _____

(b) Docket or case number: _____

(c) Result: _____

(d) Date of result: _____

(e) Grounds raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

11. Other than the direct appeals listed above, have you filed any other petitions, applications or motions concerning this judgment of conviction in any state court? Yes No

If yes, answer the following:

(a) First Petition. *✓\A*

- (1) Date you filed: _____
- (2) Name of court: _____
- (3) Nature of the proceeding (Rule 32, special action or habeas corpus): _____
- (4) Docket or case number: _____
- (5) Result: _____
- (6) Date of result: _____
- (7) Grounds raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(b) Second Petition. *✓\A*

- (1) Date you filed: _____
- (2) Name of court: _____
- (3) Nature of the proceeding (Rule 32, special action or habeas corpus): _____
- (4) Docket or case number: _____
- (5) Result: _____
- (6) Date of result: _____
- (7) Grounds raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(c) Third Petition. *via*

- (1) Date you filed: _____
- (2) Name of court: _____
- (3) Nature of the proceeding (Rule 32, special action or habeas corpus): _____
- (4) Docket or case number: _____
- (5) Result: _____
- (6) Date of result: _____
- (7) Grounds raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(d) Did you appeal the action taken on your petition, application, or motion to the:
Arizona Court of Appeals: _____ Arizona Supreme Court: _____

- (1) First petition: Yes No Yes No
- (2) Second petition: Yes No Yes No
- (3) Third petition Yes No Yes No

(e) If you did not appeal to the Arizona Court of Appeals, explain why you did not: _____

*Review denied to Supreme Court to reconsider its decision; NOT REVIEWABLE
(Decision Attached)*

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: MALICIOUS PROSECUTION, DEFECTIVE INDICTMENT IN VIOLATION OF FIFTH AND FOURTEENTH AMENDMENT RIGHT.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

ON OR ABOUT SEPTEMBER 25, 2015 THE STATE PROSECUTING ATTORNEY BROUGHT A TRAVERSING CASE TO THE GRAND JURY. THE PROSECUTOR ALLOWED THAT THE INFORMATION WAS INSUFFICIENT FOR THE GRAND JURY TO RETURN AN INDICTMENT, THE PROSECUTION WAS PLAGUED WITH LARGE ASSIGNMENTS OF PERSONNEL AND THE PROSECUTING ATTORNEY PRESENTED THIS CASE TO THE GRAND JURY SUBSEQUENT TESTIMONY. THE PROSECUTOR BROUGHT A CASE ON LAWFULNESS TO INDICT CUSTODY TO CONSTITUTIONAL STANDARDS OF A PERMISSIBILITY OF EVIDENCE SUFFICIENT TO DEFENDABLE PROSECUTABLE CASE. ON THIS DATE THE PROSECUTOR ALLEGEDLY PRESENTED A INFORMATION TO A GRAND JURY BEFORE THE DETERMINED PROSECUTABLE CAUSE. BY JUROR ADMISSIBILITY, THROUGH A MOTION FILED IN SUPERIOR COURT ON 3-18-19, WITH A DECLARATION THAT THE STATE DID NOT PRESENT ANY EVIDENCE TO THE GRAND JURY CONCERNING THE ALLEGED OFFENSES CHARGED IN THE COMPLAINT. IT IS FURTHER SUPPORTED BY THE RECORD, THAT THE PROSECUTING ATTORNEY PREPARING THE CASE FOR THE GRAND JURY INSERTED FAIRLY FAIR FACTS TO UNFAIRLY INFLUENCE THE DELIBERATION TO INDICT. THE INDICTMENT WAS UNCONSTITUTIONAL IN VIOLATION OF PLAINTIFF GRAND JURY GUARANTEES ACCORDING TO THE FIFTH AMENDMENT AND OF DUE PROCESS SECURED BY THE FOURTEENTH AMENDMENT TO THE US CONSTITUTION. THE INDICTMENT SIMPLY LACKS PROSECUTABLE CAUSE AND THERE WAS NO EVIDENCE IN SUPPORT OF THE ALLEGATIONS.

(b) Did you present the issue raised in Ground One to the Arizona Court of Appeals? Yes No

(c) If yes, did you present the issue in a:

Direct appeal
First petition
Second petition
Third petition

(d) If you did not present the issue in Ground One to the Arizona Court of Appeals, explain why: _____

(e) Did you present the issue raised in Ground One to the Arizona Supreme Court? Yes No

GROUND THREE: Petitioner was illegally arrested without warrant and without probable cause in violation of the fourth and fourteenth Amendment to the US. Const.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

THE PETITIONER ALLEGES THAT ON SEPTEMBER 18, 2015 HE WAS ILLEGALLY DETAINED AND ARRESTED WITHOUT WARRANT AND WITHOUT PROBABLE CAUSE. ON THIS DATE THE PETITIONER WAS STOPPED AND DETAINED UNIL FALSE PETITIONER BY AN OFFICER FROM THE DEPARTMENT OF PUBLIC SAFETY (DPS) THE RECORDS DEMONSTRATE THAT THE OFFICER WAS CONTACTED BY THE YAVAPAI COUNTY SHERIFF'S OFFICE WITH SPECIFIC INSTRUCTIONS TO STOP THE PETITIONER AND DETAIN UNIL AN OFFICER COULD REPORT FROM THE YAVAPAI COUNTY SHERIFF OFFICE. AN OFFICER ARRIVED AND IMMEDIATELY PLACED PETITIONER IN HAND RESTRAINTS, CONDUCTED A BODY SEARCH AND PLACED THE PETITIONER IN THE BACK OF HIS POLICE VEHICLE WITHOUT A WARRANT AND WITHOUT STATING THE GROUNDS FOR effectuating AN ARREST.

(After the Petitioner was transported to a police station for interrogation.

(b) Did you present the issue raised in Ground Three to the Arizona Court of Appeals? Yes No

(c) If yes, did you present the issue in a:

Direct appeal	<input checked="" type="checkbox"/>
First petition	<input type="checkbox"/>
Second petition	<input type="checkbox"/>
Third petition	<input type="checkbox"/>

(d) If you did not present the issue in Ground Three to the Arizona Court of Appeals, explain why: _____

(e) Did you present the issue raised in Ground Three to the Arizona Supreme Court? Yes No

GROUND FOUR: Petitioner property, papers where illegally SEARCH AND SEIZED
prior to law enforcement obtaining a valid search warrant, in violation
of the fourth Amendment to the U.S. Constitution.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):
The petition Alleges that Petitioners property, papers where illegally searched
and seized by YAVAPAI COUNTY Sheriff Deputy prior to obtaining a valid
search warrant.
The property (SEARCH AND SEIZED INCLUDED), Petitioners vehicle, residence and
a U-Haul rental truck in his possession.
The search took place between September 18, 2015 and September 20, 2015.
A valid search warrant was not obtained for any of the property or locations
where the property was stored until September 24, 2015.
(See Warrant: V1300SW2015580010; V1300SW17015580029).
The petition further Alters that police officers hired by the prosecutors Attorney/
Unlawfully participated in a coverup of the illegal searches.
The record of evidence clearly supports that police searched the petitioners
property prior to obtaining a valid search warrant, thereby concluding and
Suppression of evidence, Brad violated his 4th Amendment rights. And deprive
Petitioner of due process of law.

(b) Did you present the issue raised in Ground Four to the Arizona Court of Appeals? Yes No

(c) If yes, did you present the issue in a:

Direct appeal
First petition
Second petition
Third petition

(d) If you did not present the issue in Ground Four to the Arizona Court of Appeals, explain why: _____

(e) Did you present the issue raised in Ground Four to the Arizona Supreme Court? Yes No

GROUND TWO: URG PROCES, PROCEDURAL DUE PROCES, RIGHT TO COUNSEL RESULTING FROM DEPRIVATION OF PRELIMINARY HEARING, IMPROPERLY VACATED BY A FORM NOT AUTHORIZED BY LAW, AND THE COURT AND STATE MISUSE OF A GRAND JURY
RESULTING TO DENY A PETITIONER IN HOW THAT FAILS TO PROVIDE SUFFICIENT NOTICE OF GRAND JURY PROCESES, THIS PETITIONER PETITIONED FROM REQUESTING REPRESENTATION BEFORE THE GRAND JURY, IN VIOLATION OF THE FIFTH AND FOURTEENTH AND SIXTH AMENDMENT

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):
 GRAND JURY PROCEDURES / PRELIMINARY HEARINGS.

THE PETITIONER ALLEGES THAT HIS PRELIMINARY HEARING WAS VACATED BY A FORM NOT AUTHORIZED BY LAW. IT IS FURTHER ALLEGED THAT THE GRAND JURY PROCEDURES WERE NOT CONDUCTED IN GOOD FAITH AND PETITIONER WAS NOT PROVIDED SUFFICIENT NOTICE AND THEREFORE UNABLE TO REQUEST REPRESENTATION BEFORE THE GRAND JURY.

ON SEPTEMBER 24, 2015 PETITIONER DEMANDED THAT A PRELIMINARY HEARING BE HELD PURSUANT TO ARIZ. R. CRIM. P. Rule 5.1(b). THIS HEARING WAS VACATED AND PLAINTIFF WAS NEITHER NOTIFIED OR ISSUED A COURT MINUTE ENTRY AUTHORIZING THE VACATION. THE STATE PROSECUTING ATTORNEY, IN BAD FAITH HELD A GRAND JURY HEARING ON THIS MORNING OF SEPTEMBER 25, 2015 WHEN HE KNEW THAT THE DEFENDANT HAD REQUESTED A PRELIMINARY HEARING. THE PROSECUTING ATTORNEY WITHHELD NOTICE WHICH MUST BE ACCORDED BY LAW DEPENDING UPON THE TYPE OF PROCESSES. AS A RESULT OF NO NOTICE BEING GIVEN TO PETITIONER HE WAS DENIED HIS RIGHT TO REPRESENTATION OR TO REQUEST REPRESENTATION BEFORE A GRAND JURY.

IT IS NOTED THAT PETITIONER'S PRELIMINARY HEARING WAS SET FOR SEPTEMBER 25, 2015 AT 4:00 PM IN SUPERIOR COURT JUDGE CUNY AND THE STATE PROSECUTING ATTORNEY WERE AWARE OF THIS FACT AND IN BAD FAITH CONTINUED ON WITH AN ACTION HE KNEW WOULD VIOLATE THE CONSTITUTION.

(b) Did you present the issue raised in Ground Two to the Arizona Court of Appeals? Yes No

(c) If yes, did you present the issue in a:

Direct appeal	<input checked="" type="checkbox"/>
First petition	<input type="checkbox"/>
Second petition	<input type="checkbox"/>
Third petition	<input type="checkbox"/>

(d) If you did not present the issue in Ground Two to the Arizona Court of Appeals, explain why: _____

(e) Did you present the issue raised in Ground Two to the Arizona Supreme Court? Yes No

- COUNT FIVE -

- Sufficiency of Evidence Adduced at Trial,

THE PETITIONER ALLEGES HIS CONVICTION WAS UNCONSTITUTIONAL BECAUSE HIS GUILT WAS NOT DETERMINED FROM EVIDENCE PRESENTED AT HIS TRIAL. THERE WAS NO EVIDENCE ON THE RECORD SUFFICIENT ENOUGH TO ESTABLISH GUILT BEYOND A REASONABLE DOUBT.

THE TRIAL COURT FAILED TO OBSERVE THE FUNDAMENTAL FAIRNESS ESSENTIAL TO THE VERY CONCEPT OF JUSTICE, IT OFFERED NO SAFE GUARDS. THE TRIAL COURT ALLOWED THE PROSECUTOR'S COMMENTS TO PROCEED UNCHALLENGED AND THERE WERE NO CORRECTIVE OR DISAPPROVING INSTRUCTIONS TO PROSECUTOR'S AMBIGUOUS REMARKS DURING OPENING AND CLOSING ARGUMENT.

FROM THE ONSET OF THIS PROSECUTION THE INDICTMENT WAS INSUFFICIENT AS A MATTER OF LAW AND LACKED PROBABLE CAUSE. "DUE PROCESS REQUIRES THAT NO PERSON BE MADE TO SUFFER THE DRAWS OF A CRIMINAL CONVICTION EXCEPT UPON SUFFICIENT PROOF, DEFINED AS EVIDENCE NECESSARY TO CONVINCE A JURY OF FACT BEYOND A REASONABLE DOUBT IN RE JACKSON V. NIEZINA, Docket No. 20 WNSAHP . . . 397, U.S. 358, 40 SC. 1028, 25 L. ED 2d. 368.

IN THE INSTANT CASE THE STATE FAILED TO PROVE A SINGLE ELEMENT, THE TRIAL PROOF DOES NOT CORRESPOND TO THE ALLEGED CONDUCT OF THE INDICTMENT AND THERE WERE CHARGES NOT PROVED.

IV. THE OFFENSES OF FRAUDULENT SCHEMES AND ARTIFICES, THEFT OF A CREDIT CARD AND FORGERY WERE NEVER TRIED AT TRIAL. WHEN A STATE FAILS TO PERSUE AN OFFENSE AT TRIAL THE ACCUSED IS ENTITLED TO A JUDGEMENT OF "NON-PROS" AGAINST THE STATE. IN ADDITION TO CHARGE NOT TRIED, DURING THE PROSECUTOR'S CLOSING ARGUMENTS, ABNEGATES THE CHARGE OF "THEFT". HE UNQUALIFIEDLY STATES THAT "THE STATE CANNOT PROVE THE CHARGE OF THEFT.... WE ARE NOT CHARGING THAT THE DEFENDANT STOLE CHECK..... (unquoted)" THE ADMISSEION OF NOT BEING ABLE TO PROVE THE MOST IMPORTANT ELEMENT OF THE ENTIRE INDICTMENT CAST REASONABLE DOUBT AS TO THE CONDUCT ALLEGED IN ALL OTHER COUNTS. WITHOUT THIS CENTRAL OFFENSE OR ELEMENT PROVEN THERE ARE NO RATIONAL BASIS FOR SUPPORT OF THE OTHER OFFENSES.

THE JURY VERDICT WAS NOT UNANIMOUS AS A FACT OF LAW. WITH THE ADMISSEION BY THE STATE'S PROSECUTING ATTORNEY THAT THE TRIAL COURT DID NOT ADMONISH OR ISSUE A DISAPPROVING INSTRUCTION THAT WOULD HAVE DISMISSED THE RISK OF A NON-UNANIMOUS JURY VERDICT.

IN ADDITION TO THE SUFFICIENCY OF EVIDENCE THE STATE AND THE TRIAL COUNSEL IMPEDED, HINDERED, OBSTRUCTED, AND DEFENDED THE DEFENDANT'S ACCESS TO EXONERATING EVIDENCE. UNDER BRADY LAW THE COURT FAIL TO EXERCISE A JUDICIAL AUTHORITY TO REQUIRE THE STATE TO PRODUCE LEGITIMATE PROOF OF LOSS. PROOF OF THE EXISTENCE OF STOLEN BUSINESS CHECKS, USE OF A CREDIT CARD UNAUTHORIZED OR THAT A PARTICULAR BUSINESS CHECK WAS NEGOTIATED AT A CHARGE BANKING CENTER.

Without legitimate certified records showing that a crime had been committed leaving the record void of evidence necessary to sustain a conviction. The Plaintiff's conviction was the result of deception of Court And Jury, presumption and unreasonable inference from facts not in evidence.

- COUNT III -

Admissibility of evidence, The Plaintiff Alleges that the trial court Adm. His evidence of forged or fabricated evidence contrary to clearly established state law. this is a violation of Plaintiff's Fourteenth Amendment to the US. Constitution.

The state law, AR. 13-110(f), Ariz. R Crim Procedure, 701, 902(b) requires authenticity. A computer generated copy must be accompanied by a certificate of authenticity. This requirement was affirm by the state court of appeals in, STATE V. Johnson, 184 Ariz 521, 911, 72d. 527 (1994)

The Plaintiff was denied due process because the trial court made incorrect legal conclusions and because the court denied Plaintiff of his right to hold an evidentiary hearing, pursuant to AR. 13-4238.

- COUNT VII -

TAMPERING, CONCEALMENT, SUPPRESSION OF EVIDENCE IN VIOLATION OF THE FOURTEENTH AMENDMENT AND ACTUALABLE UNDER STATE LAW.

THE PETITIONER ALLEGES THE TRIAL WAS UNFAIR HE WAS DEPRIVED OF DUE PROCESS WHEN THE TRIAL COURT ALLOWED ALLEGEDS OF MISCONDUCT AND TAMPERING TO PROCEED EXCUSED, CHALLENGED, AND WITHOUT AN INVESTIGATION.

THE FOLLOWING ACTIVITY TOOK PLACE PRIOR TO TRIAL AND THE RECORD HAS UNDISPUTED AND DEMONSTRABLE PERTINENT TO SUPPORT THE ALLEGATION. (1) THE POLICE INTRUSIVELY PLANTED EVIDENCE IN THE ACCUSED VEHICLE AND AMONG HIS PERSONAL PROPERTY; (2) THE PROSECUTION ALTERED OFFICERS BODY-CAMERA RECORDINGS; (3) THE PROSECUTION WITHHELD PHOTOGRAPHS, ELECTRONIC FILES FROM FINAL DEVICES WHICH WERE LOST OR DESTROYED, SUBPOENA INFORMATION FROM SuddenLink COMMUNICATIONS, INTERVIEW TAPES OF WITNESSES, POLICE RADIO AND DISPATCH LOGS OR TAPES.

COUNT VIII RIGHT TO COUNSEL

THE PETITIONER ALLEGES THAT THE TRIAL COURT FAILED TO HOLD A HEARING ON TWO SEPARATE INCIDENTS WHEN ACCUSED REQUESTED SUBSTITUTE COUNSEL. ON OCTOBER 30, 2017 PETITIONER PREPARED AND ATTEMPTED TO SUBMIT A TORRES MOTION. THE TRIAL COURT DENIED IT DISCRETIONARILY ALTHOUGH WHEN IT APPROVED THE ISSUE AND STATED THE PETITIONER TOWARDS SELF REPRESENTATION EXPRESSED PERTINENCE OF HIS SIXTH AMENDMENT RIGHT TO COUNSEL IN A CRIMINAL PROSECUTION.

- COUNT IX -

JUDICIAL IMPROPRIETIES THAT VIOLATED PETITIONER'S FOURTEENTH AMENDMENT
TO THE U.S. CONSTITUTION.

THE WORK OF HABEAS CORPUS AND RELIEF ALLEGES THAT THE TRIAL
COURT ACTED UNDER COLOR OF STATE LAW DISCHARGED IN DULY
IN A WAY THAT WAS KNOWN TO HIM TO VIOLATE THE
CONSTITUTION. FIRST, THE TRIAL JUDGE ACCEPTED JURISDICTION TO
PRESIDE OVER A CASE WHICH HE HAD A KNOWN RELATIONSHIP
WITH THE ALLEGED VICTIM IN THIS CASE.

THE RESULTING FACTS DEMONSTRATE A FAITHLESS PATTERN WHERE
THE TRIAL COURT ACTIONS WERE BEYOND THE PLAIN LIMITS
OF HIS AUTHORITY AND DISCRETION. THE PETITIONER WAS PREJUDICED
BY HIS ACTIONS WHICH WERE BIAS AND OBVIOUS, AND CONTRARY
TO CLEARLY ESTABLISHED STATE LAWS. THE TREATMENT OF AN
AFRICAN-AMERICAN, WHO IS PART OF A PROTECTED CLASS, PRO SE PLAINTIFF
WAS SO OBVIOUSLY OFFENSIVE PETITIONER COULD NOT HAVE POSSIBLY
RECEIVED A FAIR TRIAL.

(1) THE TRIAL COURT DENIED SEVERAL PRE-TRIAL MOTIONS ON MARCH 19, 2020
WITHOUT THE BENEFIT OF SUFFICIENT EVIDENCE BY HOPKINS AND WITHOUT
DUE PROCESS; (2) THE TRIAL COURT ALLOWED ADM. HANCO OF COMPUTER
GENERATED COPIES ABOVE DEFENSE OBJECTION AND CONTRARY TO STATUTE,
AS. 13-110(f), WHICH REQUIRES A CERTIFICATE OF AUTHENTICITY; (3)
THE TRIAL COURT UNLAWFULLY IMPEDED, HINDERED, OBSTRUCTED AND
DEFEATED ACCUSED FROM TO FILE UNIMPEDED HIS MOTION REQUESTING
FOR A CHANGE OF JUDGE. THIS ACTION ALSO INVOLVED THE TAKING
OF U.C. MAIL ACTUWABLE UNDER FEDERAL LAW; (4) THE TRIAL
COURT DENIES THE HABEAS BUREAU OF PROOF OF THE STATE ACTION

He denied or decided that the prosecution was compliant with disclosure request, that the record clearly shows witness never presented to the defense; when the trial court failed to exercise its judicial authority to require the state to produce legitimate banking records to validate the alleged victims claims of loss, when the trial court allowed prosecution's unambiguous remarks to go unchallenged, or did not issue any instruction to correct or admonish the prosecution's comments, and lastly, when the trial court made incorrect legal conclusions on defense motion for acquittal upon the states case in chief. He retorted. His decision included an admission that the case lacked direct evidence, but went further to say "A jury could infer your guilt". This conclusion is well beyond the plain limits of the state which requires that at the end of the states presentation of its case in chief that the court make a determination on the evidence sufficient enough to satisfy reasonable doubt.

Please answer these additional questions about this petition:

13. Have you previously filed any type of petition, application or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If yes, give the date of filing, the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available:

(1) CV-18-08186, Dismiss w/out prejudice August 24, 2018 \$ 22541
(2) CV-18-08097, Dismiss w/out prejudice May 22, 2019 \$ 22541
(3) CV-18-08078, Dismiss w/out prejudice May 23, 2019 \$ 22541
(4) CV-20-08039, Dismiss w/out prejudice February 26, 2020 \$ 22541
5 3:20-cv-08225 JAT-JFM Pending \$ 1983

14. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, as to the judgment you are challenging? Yes No

If yes, give the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:

15. Do you have any future sentence to serve after you complete the sentence imposed by the judgment you are challenging? Yes No

If yes, answer the following:

(a) Name and location of the court that imposed the sentence to be served in the future:

(b) Date that the other sentence was imposed: _____

(c) Length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition challenging the judgment or sentence to be served in the future? Yes No UNKNOWN AT THIS TIME SUPERIOR COURT CASE NO.

VI30022 201780290 IS PENDING.

16. TIMELINESS OF PETITION: If your judgment of conviction became final more than one year ago, you must explain why the one-year statute of limitations in 28 U.S.C. § 2244(d) does not bar your petition.*

THE PETITIONER FILED HIS LATEST PETITION FOR RELIEF UNDER 28 U.S.C. § 2254 WHICH THE U.S. DISTRICT COURT DISMISSED WITHOUT PREJUDICE, AND WITHOUT A WRITING DETERMINING THE CONCLUSION OF LAW AS IT RELATED TO EACH CLAIM PRESENTED. SEE CV-20-0839 - FEBRUARY 26, 2020

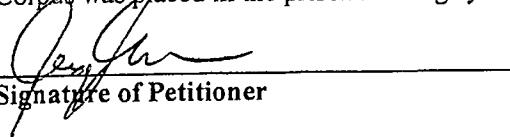
*Section 2244(d) provides in part that:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of:
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

17. Petitioner asks that the Court grant the following relief: declaratory relief, speedy and
impartial review, formal confirmation, reversal of conviction, certificates
of innocence. (See Attached 11a)

or any other relief to which Petitioner may be entitled. (Money damages are not available in habeas corpus cases.)

I declare under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on December 2, 2020 (month, day, year).


Signature of Petitioner

Signature of attorney, if any

Date

7. THE PETITIONER ASKS THAT THE COURT GRANT THE FOLLOWING RELIEF:

A) DECLARATORY JUDGMENT STATING THE FOLLOWING:

- Petitioner was maliciously prosecuted without probable cause.
- Petitioner was denied fairness in the proceeding.
- Petitioner was denied procedural due process, DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AND CIVILAL JURISDICTIONS IN THE PROCEESS.
- THE TRIAL COURT IMPROPRIETIES INFECTED THE ENTIRE TRIAL PROCESS
- THE PROSECUTOR ENGAGED IN CONDUCT HE KNEW TO VIOLATE HIS CONSTITUTION.

B) ISSUE A CERTIFICATE OF INNOCENCE.

C) IMMEDIATE ERASEMENT OF PETITIONER'S CONVICTION.

D) IMMEDIATE RELEASE FROM CUSTODY.

E) DISMISSAL OF MANASAS COUNTY SUPERIOR COURT CASE NO. V1300CKZ01 780299, AS MOOT RELATED TO A FAILURE TO APPEAR OFFENSE IN CONNECTION TO V1300CKZ01580451.

Exhibit 1

JUDGEMENT OF GUILT AND SENTENCE

Exhibit 1

EXHIBIT

F

GERALD GWEW # 332970

Name and Prisoner/Booking Number

ASPC - RED ROCK CORRECTIONAL CTR.

Place of Confinement

1750 EAST ARICA ROAD

Mailing Address

ELOY, ARIZONA 85131

City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

GERALD VAUGHN GWEW,

(Full Name of Petitioner)

Petitioner,

v.

RYAN THORNSH, et al.,
(Name of the Director of the Department of Corrections, Jailor or authorized person having custody of Petitioner),

Respondent,
and

The Attorney General of the State of _____,

Additional Respondent.

CASE NO. _____

(To be supplied by the Clerk)

**PETITION UNDER 28 U.S.C. § 2254
FOR A WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY
(NON-DEATH PENALTY)**

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____
ARIZONA SUPERIOR COURT, YAVAPAI COUNTY,
CAMP VERDE, AZ.
1. (b) Criminal docket or case number: V1300CR20150451
2. Date of judgment of conviction: September 19, 2018
3. In this case, were you convicted on more than one count or crime? Yes No

4. Identify all counts and crimes for which you were convicted and sentenced in this case: 10THFT of A CREDIT CARD; (2) IDENTITY THFT; (3) FRAUDULENT SCHEMES; (4) THFT; (5) Forgery

5. Length of sentence for each count or crime for which you were convicted in this case: 25; 1.5; 5; 35, 2.5 years run concurrent to count III.

6. (a) What was your plea?
Not guilty
Guilty
Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details: _____

(c) If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

7. Did you testify at the trial? Yes No

8. Did you file a direct appeal to the Arizona Court of Appeals from the judgment of conviction?
Yes No

If yes, answer the following:

(a) Date you filed: Notice of Appeal Filed 10/01/18; Brief Filed 8/19/19

(b) Docket or case number: 1-CA-CR-18-0775

(c) Result: Conviction Affirmed by Appellate Court.

(d) Date of result: 01/14/2020

(e) Grounds raised: MALICIOUS PROSECUTION; DEFECTIVE EVIDENCE; DEFECTIVE ARREST; DEFECTIVE SEARCH AND SEIZURE; PROSECUTOR DUE PROCESS, DUE PROCESS VIOLATIONS; TAMPERING WITH EVIDENCE; SUFFICIENCY OF THE EVIDENCE ADDUCED AT TRIAL; ADMISSIBILITY OF EVIDENCE; RIGHT TO COUNSEL; FAIR TRIAL; PROSECUTORIAL MISCONDUCT; JUROR MISCONDUCT.

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

9. Did you appeal to the Arizona Supreme Court? Yes No

If yes, answer the following:

(a) Date you filed: 21/20/20

(b) Docket or case number: CR-20-0008-PR

(c) Result: Review Denied

(d) Date of result: 7/28/20

(e) Grounds raised: Appellate Court Abuse of discretion, All Grounds raised no direct Appeal.

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

10. Did you file a petition for certiorari in the United States Supreme Court? Yes No

If yes, answer the following:

(a) Date you filed: 7/26/23

(b) Docket or case number: 23-5712

(c) Result: NO EXPLANATION

(d) Date of result: 12-11-23

(e) Grounds raised: Deficit Argument, Absolute Immunity, mandatory federal evidentiary Hearings; Denial of cert; Insufficient De novo review; Fair Trial

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

11. Other than the direct appeals listed above, have you filed any other petitions, applications or motions concerning this judgment of conviction in any state court? Yes No

If yes, answer the following:

(a) First Petition.

(1) Date you filed: 10/24/18

(2) Name of court: Arizona Superior Court, Maricopa County

(3) Nature of the proceeding (Rule 32, special action or habeas corpus): Rule 32 special action

(4) Docket or case number: 113WCR201580451

(5) Result: NO RESPONSE

(6) Date of result: _____

(7) Grounds raised: Rule 20 denial, ineffective assistance of counsel, direct miscast, procedural miscast, sufficiency of evidence, defective indictment

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(b) Second Petition.

(1) Date you filed: 5/20/21

(2) Name of court: U.S. Court of Appeals for the Ninth Circuit

(3) Nature of the proceeding (Rule 32, special action or habeas corpus): Habeas - Appeal

(4) Docket or case number: 21-15894 ; related 21-15921; 22-15944

(5) Result: ① Denial of habeas; ② Denial Rule 42-1

(6) Date of result: 7/06/21 & 8/17/21

(7) Grounds raised: Denial of COA; Technical error.

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(c) Third Petition.

(1) Date you filed: _____

(2) Name of court: _____

(3) Nature of the proceeding (Rule 32, special action or habeas corpus): _____

(4) Docket or case number: _____

(5) Result: _____

(6) Date of result: _____

(7) Grounds raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(d) Did you appeal the action taken on your petition, application, or motion to the:

Arizona Court of Appeals:

Arizona Supreme Court:

(1) First petition: Yes No Yes No
(2) Second petition: Yes No Yes No
(3) Third petition Yes No Yes No

(e) If you did not appeal to the Arizona Court of Appeals, explain why you did not: _____

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Alleges unfair presentations before A Grand Jury to violate the
Petitioner's Fifth and Fourteenth Amendment Rights.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):
Petitioner Application for second writ of HABEAS CORPUS RELIEF ALLEGES STATE-
COURT AND STATE OFFICIALS NEVER ESTABLISHED CONSTITUTIONAL STANDARD OF PROBABLE
CAUSE FOR SEEKING AN INVESTIGATION AS PROVIDED BY FIFTH AMENDMENT GRAND JURY
CONVENTION. WHERE PETITIONER WAS DENIED CONSTITUTIONAL RIGHTS TO "FAIR PRESENTATION
OF AN EXCULPATORY EVIDENCE BEARING ON GRAND JURY DETERMINATIONS OF PROBABLE CAUSE,
AND THAT THE INVESTIGATION WAS OBTAINED BY FALSE VICTIMIZATION OF 14TH AMENDMENT RIGHTS
UNDER THE PROCESS CLAUSE.

Supporting facts:

(1) THE ARIZONA SUPREME COURT RULED A DEFENDANT UNDER INVESTIGATION BY AN ARIZONA
GRAND JURY HAVE CONSTITUTIONAL DUE PROCESS RIGHTS TO A FAIR AND IMPARTIAL PRESENTATION
OF THE EVIDENCE. (ARIZ. JUD. RAE 2018, ARIZ. SUPREME COURT (PIMA COUNTY)).

(2) THE PROSECUTION, PRESENTING BEFORE GRAND JURY, ADMITTED TO NOT PRESENTING ANY
EVIDENCE IN GRAND JURY HEARINGS IN STATE MOTION DATE 3/18/19; WHICH CLEARLY
SUPPORTS ALLEGATION OF NOT PRESENTING ALL, CLEAR, EXCULPATORY EVIDENCE STATE HAS
IN ITS POSSESSION OR WAS AWARE OF AT THE TIME; THAT WOULD DETER A FAIR FINDING
THE EXISTENCE OF PROBABLE CAUSE;

(3) PROSECUTION, PRESENTING BEFORE GRAND JURY, KNOWNLY, SUBMITTED FAKE TESTIMONY
OR INSERTED FAKE FACTS KNOWN TO BE OUTSIDE AND WERE SUCH FALSEHOOD NOT
FOUND LATER TO BE SUPPORTED BY EVIDENCE OR TESTIMONY ADMITTED AT THE TRIAL

(b) Did you present the issue raised in Ground One to the Arizona Court of Appeals? Yes No

(c) If yes, did you present the issue in a:

Direct appeal
First petition
Second petition
Third petition

(d) If you did not present the issue in Ground One to the Arizona Court of Appeals, explain why: _____

(e) Did you present the issue raised in Ground One to the Arizona Supreme Court? Yes No

1 (4) Petitioner was deprived right to fair and impartial prosecution when Prosecutor
2 knowingly mislead Grand Jury into believing the possession of a knife constituted
3 offense of 'Prohibited possession'; Despite his knowledge that a knife is not
4 a prohibited weapon under ARS. § 13-105 and possession of a knife is a prohibited
5 right under Arizona law. ARS. § 13-1320(e) "The state shall not enact any
6 ordinance, rule or tax relating to the device, licensing, registration or
7 use of a knife or knife making components in the state"; (5) State knowingly
8 submitted false testimony implicating a second defendant who is not related to the
9 charge filed by complaint; Aims at passing the indictment to create prejudice;
10 (6) State unlawfully withheld exculpatory evidence of obtained through subpoena casting
11 subscriber information on J. ANDRE'S cell phone location where a trans actions (origin-
12 ator, which state has alleged Petitioner made an unauthorized purchase online);
13 (7) State knowingly commits fraud to jury when they present information which
14 alleged Petitioner committed forgery by incorrectly answering question posed on
15 a jail questionnaire form, and not June 20 before state was responsible caused to
16 believe that act was unlawful. While the charge was later dismissed for lack
17 of proof, but has already been submitted to Grand Jury for indictment; (8) STATE
18 prosecutor knowingly submitted false testimony of the person involved in the alleged
19 online purchase of a mountain bike, purporting to be a false statement, by which
20 Prosecutor attempts to convince trial witness the law of the CAMP statute he has
21 duty to notify the trial court of false statement made before a Grand Jury trial
22 would have required a dismissal of the indictment at the time.

GROUND TWO: Petitioner Alleges in 14th Amendment rights were violated because State's case-in-chief did not meet constitutional standard of efficiency necessary to prove every element of offense as charged in indictment beyond a reasonable doubt, that but for court about break no reasonable person could have found him guilty and basis of the evidence admitted at the trial.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim):

(1) "Constitutional law" as a new rule decided by Supreme Court imposes upon District Courts "must determine the conviction upon sufficient proof to convince a Federal Judge that trier of fact could have found the essential elements of the crime beyond a reasonable doubt by taking evidence Anew".

(2) In Court one of the indictment - taking the facility of another on credit and in Court two - Theft of a credit card; State did not meet its burden of proving essential elements as pled in indictment.

(3) The State - Court record clearly establish Alleged victim is one voluntarily provided petitioner with a credit card number in the normal course of performing his duties. The prosecution relied heavily upon hypothesis that a person in possession of credit card information could complete a sale transaction was not sufficient proof establishing a criminal offense as charged.

(b) Did you present the issue raised in Ground Two to the Arizona Court of Appeals? Yes No

(c) If yes, did you present the issue in a:

Direct appeal
First petition
Second petition
Third petition

(d) If you did not present the issue in Ground Two to the Arizona Court of Appeals, explain why: _____

(e) Did you present the issue raised in Ground Two to the Arizona Supreme Court? Yes No

1 (4) The trial proof fails to meet standards for burden of proof constituting an
2 offense for 'THEFT OF A CREDIT CARD' or 'IDENTITY THEFT OF A PERSON OR ENTITY'.
3 There exists no proof Petitioner actually stole company credit cards or used a
4 company credit card without authorization or made an unauthorized purchase or did
5 use another persons identity or entity; (5) The State case failed to provide
6 any documentation by credit card recipient, credit card vendor, or credit card statement
7 showing this unauthorized use of a credit card belonging to DASH RESTAURANT GROUP
8 (entity) or a person employee by DASH RESTAURANT GROUP; (6) under 3rd party law,
9 Petitioner sought through defense, discovery, motion to compel for State to provide proof
10 that the element alleged in indictment actually took place; (7) Testimony given at
11 trial establishes that the credit card numbers were given to defendant, voluntarily,
12 by CFO Dinkins; (8) "if not the credit card the number itself" defense argument
13 of theft of a credit card; (9) The trial proof establishes that the alleged online
14 transactions were used credit cards to purchase no alleged merchant like, thus for there
15 would be no loss incurred by alleged victim, and there were no liability for criminal
16 identity theft of a person or entity because the person who initiated the online
17 transaction used Petitioner full and legal name as the person placing the order and
18 used Petitioner mailing address as the place product was to be sent, thus for there
19 exists not identity theft; (10) The alleged victim in case Donald Subpoena
20 Dicus-Tecum, which compelled them to provide bank statements, credit card statements
21 or any other transaction objects which was in fact to establish unregulated proof
22 that the facts alleged in this charging instrument simply do not exist.

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1 (11) Court held that if indictment 'Fraudulent Scheme and Artifice', State failed
2 to establish proof of each element asserted in the indictment. The petitioner
3 knowingly obtained a benefit from Datti Restaurant Group, China bank, OR
4 Oxfam India, by means of fraudulent promises, representations, promises or
5 material omissions; (12) There was no proof that petitioner possessed a forged
6 instrument or stolen check to a China Banking centre, while the trial proof
7 established that petitioner had a valid account and right to be at the bank on the
8 date and time when he gave a photograph of him standing at a teller window.
9 (13) The trial proof failed to establish that a specific check, which police say was
10 a stolen check, was presented at a China Banking centre and cashed by petitioner;
11 (14) The trial proof did not support that petitioner used false promises or representations
12 knowingly attempts to defraud Oxfam India through purchase of a new vehicle. The
13 trial testimony from the same material witness to the transaction being material,
14 when petitioner presented documents showing his true and correct name alias went
15 on his insurance paper bearing the same full and legal name and just a dozen
16 payment with a certified cheque, he has no reason to believe as the
17 transaction was anything but normal course of business; (15) There was no proof
18 of physical evidence or testimony establishing petitioner obtained a benefit
19 from Datti Restaurant Group on or about Sept. 10, 2015. (16) The CFO, Dimilia,
20 testified he could not find any checks in the possession of company bookkeeper,
21 location of Cucina Rustica Restaurant or at their corporate office which matched
22 the sequence of alleged stolen check; (17) Dimilia also testified to seeing
23 certain the checks were stolen from the location of Cucina Rustica Rest-
24 aurant, but later came in cross-examination that checks were stolen from
25 another location; (18) Dimilia also stated in his testimony that he never checked
26 the Chick Bank at the location of the restaurant, "which would be the joint";
27 (19) Prosecutor at trial submitted false testimony that the checks came from
28 a desk drawer located at the corporate office and upon cross-examination

1 of same witness, he changed his testimony of never actually seeing the
2 checks removed from a York drawer; (20) The Trial court demonstrated
3 that was unable to prove the lawful acquisition of evidence or chain
4 of custody related to "stolen checks", police say were provided to them from
5 a law enforcement representative Mr. Wilson, were printed from the internet.
6 No state representative checked the evidence as it were created nor did
7 police follow-up to obtain original checks or state a reason why the
8 original were unavailable; (21) Some 22 months later than what
9 is required under Applicable Securities laws, state directed two computer
10 generated copies of checks on July 14, 2017 and August 17, 2017;
11 (22) The state failed to establish which of the alleged stolen checks were
12 cashed, which they say was on 9/9/15, at a Chase Bank in Cottleville, MO.
13 (23) Police notwithstanding state they were told by bank manager of Chase that
14 one check was cashed in Cottleville, MO, and another same whilst in California
15 on the same day, but fails to determine the location; (24) The sufficiency
16 of evidence necessary to establish that every element of the offense was non-
17 existent, the alleged victim in case informed Supreme to provide proof of loss,
18 existence of check or that checks were actually cashed at a Chase banking
19 center or that any testimony given pertained to the same "checks" if they
20 exist at all; (25) The jury could not have found defendant guilty beyond
21 a reasonable doubt on basis of prosecutor comment, albeit improper, stating
22 the state had no proof of claim - of theft of checks;
23 (26) The sufficiency of evidence needed to establish every element constituting
24 a charge of forgery in Count - five were never tried at trial. The state did
25 not attempt to prove by evidence or trial testimony that defendant presented or
26 made a forged instrument, to wit he presented a forged instrument to a
27 Chase Banking center or that he completed a forged instrument. The checks
28 were non-existent at the trial and no jury could have found him guilty without proof;

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GROUND THREE: Petitioner alleges His Sixth Amendment Right to a Fair and Impartial trial were violated by judicial misconduct, prosecutorial misconduct and cumulative errors of the trial type resulting in denial of the conviction.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

Summary of claims constituting Sixth Amendment violations:

(1) STATE INTENTIONALLY WITHHELD OR SUPPRESSED EXCULPATORY EVIDENCE;

(2) STATE UNFAIRLY ALLOWED OFFICER TO USE TONY-CARMAN TESTIMONY;

(3) PROSECUTOR MADE IMPROPER REMARKS TO JURY DURING CLOSING ARGUMENT, CONSTITUTING REVERSIBLE ERROR;

(4) TRIAL COURT PERMITTED STATE TO COMMIT AN ERROR NOT ADMITTED AT THE TRIAL ALONE DEFENSE OBJECTED;

(5) PETITIONER WAS DENIED RIGHT TO CHALLENGE THE LEGALITY OF SEARCH WARRANTS AND SEARCH WARRANT AFFIDAVIT;

(6) TRIAL JUDGE INTENTIONALLY OBSTRUCTED DEFENDANT'S RIGHT TO FILE MOTION FOR CHANGE OF JUDGE;

(7) PETITIONER WAS DENIED HIS RIGHT TO PRESENT A FULL AND COMPLETE DEFENSE;

(8) TRIAL COURT PERMITTED PROSECUTOR TO MURK THE INSTRUCTION BY COMMENTING PETITIONER WAS NOT CHARGED WITH THEFT OF BUSINESS CHECKS;

(b) Did you present the issue raised in Ground Three to the Arizona Court of Appeals? Yes No

(c) If yes, did you present the issue in a:

- Direct appeal
- First petition
- Second petition
- Third petition

(d) If you did not present the issue in Ground Three to the Arizona Court of Appeals, explain why: _____

(e) Did you present the issue raised in Ground Three to the Arizona Supreme Court? Yes No

1 Supporting facts:

2 (A) The state knowingly concealed, suppressed or obstructed Petitioner's
3 access to his attorney evidence deprived him right to fair and impartial
4 trial; which (1) knowingly fails to disclose photographs and body camera footage
5 from 9/18/15 of Petitioner's vehicle during his arrest, which tends to show
6 illegal search of his vehicle or tends to establish the pre-arranged search of
7 his apartment conducted on the same day; (2) The state intentionally suppressed
8 name of 8 files which they say were recovered from thumb drive taken
9 from Petitioner's personal property, which tends to show expense reports which
10 were Petitioner used his personal credit card to make small purchases of office
11 supplies to use in the performance of his labor; (3) state intentionally
12 suppressed the return information it has received from Subpoena Diver Telenor
13 regarding Suddenlink communication, which tends to show the Sub-
14 scriber/owner of IP Address used to transact purchase of a Mountain
15 Bike online;

16 (B) The state intentionally altered officer's body-cam footage, which
17 tends to show (1) officer not reading him his Miranda warning, but later
18 substituted the evidence to show deputy reading him his Miranda warning
19 after Petitioner had filed a motion to preclude his prior statements; (2) state
20 altered officer's body-cam footage omitting Deputy Harris' arrival to
21 the scene of the arrest and the illegal search of his vehicle prior to
22 issuing a valid search warrant.

23 (C) The trial judge overruled defense objections to prosecutor's closing remarks.

24 (D) Prosecutor called defendant a "thief" in front of jury; the prosecutor impr-
25 propriely modified charging instrument by telling jury defendant is not being
26 charged with "thief", "He is being charged with carrying those checks - THE
27 STATE CANNOT PROVE A CHARGE OF THEFT OF CHECKS".

1 (D) THE trial Judge obstructs, impedes, OR OTHERWISE interferes with
2 Petitioner's right to Petition for Change of Judge pursuant to Arizona Rules
3 of Criminal Procedure, 10.1; "A Judge being challenged shall take no further
4 action in case until matter is resolved by presiding Judge for the County.
5 Petitioner has filed a total of five different petitions for change of Judge,
6 these sent by U.S. mail, with the caption of Pleaing clearly addressed
7 to the presiding Judge along with the court link. The Trial Judge,
8 either, personally or had conveyed to his person each motion filed, which
9 were taken from U.S. mail in violation of federal code. These times trial
10 Judge entered a judgment on Petitioner's motion in violation of due process
11 protection.

12 (E) THE trial Judge intentionally impeded Petitioner's right to present a
13 complete defense when court, (1) ruled against all motion compelling State
14 to provide exculpatory evidence in their possession or control, (2) when
15 court avoided any evidentiary procedure to authenticate evidence, (3) when
16 court denied motion to contest his illegal arrest and illegal search and
17 seizure or affidavit, without a full and fair opportunity for a hearing,
18 when the court disallows Petitioner from pursuing, at trial, the legality of
19 his arrest or search and seizure of his papers and property, (4) when court
20 overruled and disallowed Petition from summarizing evidence Admitted at
21 trial and making reasonable inference from the evidence thereof.

22 (F) STATES, OJSL OBJECTION WAS PERMITTED TO COMMIT OF HYPOTHETICAL THAT
23 PETITIONER COULD HAVE USED HIS ATM OR ONLINE BANK TO CATCH AN ALIEN'S
24 STOLEN CHECK, WITH THAT WITH NO EVIDENCE PRESENT IN ADMIT AS THE TRIAL.

1 (J) Petitioner's trial was prejudiced by Prosecutorial misconduct, where STATE
2 KNOWINGLY ALTERED OFFICIAL URGENT BODY-CAMERA FOOTAGE ADMITTED AS EVIDENCE,
3 WHICH WOULD TEND TO SHOW POLICE CONDUCTED AN ILLEGAL SEARCH OF HIS VEHICLE PRIOR TO
4 OBTAINING A VALID SEARCH WARRANT; STATE INTENTIONALLY WITHHELD OR DESTROYED PHOTOGRAPH
5 POLICE HAR HAR HAR OF HIS VEHICLE ON Sept. 18, 2015 (DATE OF HIS ARREST) WHICH
6 WOULD TEND TO SHOW THAT POLICE USED THE SAME CAMERA TO PHOTOGRAPH HIS ARREST -
7 MADE ON THE SAME DATE AS PRIOR TO OBTAINING A VALID SEARCH WARRANT

8 (K) Petitioner's trial was prejudiced by Prosecutorial misconduct where Prosecution
9 VIOLATED "THE LAW OF THIS COURT", TO NOT HE IMPROPERLY INTERFERED WITH THE CHARGES
10 INSTRUMENT THROUGH HIS COMMITTEE THAT DEFENDANT WAS NOT CHARGED WITH "THEFT" AT HIS
11 ARREST DUE TO THE DEFENDANT'S "THIEF NOT A CHARGE"; (L) COUNSEL OBJECTION PROSECUTOR
12 WAS PERMITTED TO MAKE RELEVANT COMMENT AND AT PROSECUTOR'S EFFECT OF PURPORTING
13 TO CHARGE AS "A LIE"; (M) PROSECUTOR WAS PERMITTED TO COMMENT ON DEFENDANT NOT TESTIFIED
14 TO AT TRIAL AND WAS NOT ADMITTED AS EVIDENCE; (N) DEFENDANT TRIED TO FILE TESTIMONY
15 THAT WAS PREJUDGED BY THE ADMITTANCE OF EVIDENCE WITHOUT PRELIMINARY CONFERENCES RESOLVED,
16 WHERE EVIDENCE OF COPIES OF CHECKS WITH ADMITTED THAT POLICE SAY WERE PROVIDED
17 TO THEM BY DEFENDANT VICTIM WHO DOWNLOADED THE EVIDENCE FROM THE INTERNET;

18 (O) THE TRIAL PROCEDURES WERE PREJUDGED BY EMPLOYED JUDICIAL COUNSEL, WHERE
19 THE TRIAL JUDGE KNOWINGLY AND INTENTIONALLY OBSTRUCTED OR INTERFERED WITH DEFENDANT'S
20 RIGHT TO FILE timely his MOTION FOR CHANGE OF JUDGE. WHERE TRIAL JUDGE KNOWNLY
21 INTERCEPTED URGENT MAIL OR URGENT MAIL CONVEYED TO HIS PERSON; TO NOT JUDGE TOOK
22 ACTION DISMISSING MOTION FOR CHANGE OF JUDGE ON SOLICIT ATTITUDE BY DEFENDANT TO
23 DO SOON, WHERE THE MOTION WOULD ADDRESSE TO ANOTHER JUDGE IN ANDROUS COUNTY,
24 AT SEPARATE LOCATION FROM TRIAL JUDGE COURT. VICTIM HIS RIGHT TO USE RECORDS
25 AND EQUAL PROTECTION OF THE LAW; (P) DEFENDANT'S RIGHT TO PRESENT A FULL AND
26 COMPLETE DEFENSE WAS PREJUDGED BY TRIAL COURTS INTERFERENCES AND ALLOWING HIM
27 TO COUNSEL OR MAKE RELEVANT DISINFORMATION FROM DEFENDANT ADMITTED AT THE TRIAL AND
28 TESTIFIED TO BY WITNESSES;

1 (G) STATE suppressed, lost, destroyed or fails to disclose exculpatory evidence
2 related to or items bearing upon Court on innocence when state did not
3 provide defense with copies of Mixed value credit card receipts, signed credit
4 card numbers, credit card statement or charge bank statement which would tend
5 to prove or disprove unauthorized use of a credit card belonging to a person or
6 that of prove or disprove that business checks alleged as stolen checks,
7 were actually cashed or whether they ever existed or alleged;
8 (H) STATE suppressed, lost or destroyed or intentionally withheld specific
9 files by means it disclosed as being seized from defendant items seized
10 taken from Petitioner's personal property; that were only letter from state's
11 director as (S) file, which would tend to establish Petitioner used his own
12 personal credit card as submitted monthly expense reports; STATE suppressed,
13 lost or destroyed check stubs seized from Ammons his property and papers,
14 which would tend to show that YAHI restaurant Corp. (Employer), has reimbursed him
15 for monthly expenses of items purchased with his personal credit card;
16 STATE suppressed or intentionally failed to disclose return information of item
17 STATE subpoena Subdlink communications, which tends to establish the
18 subscriber, its address and possible location from which police obtained its
19 place of location within the online transaction was initiated.
20 (I) Petitioner was prejudiced by Trial Court Imposition of obstruction in his
21 right to present a full and complete defense in violation of the 6th Amendment
22 right. While Trial Court ruled adversely to motions regarding relevant material
23 which was in the control of prosecution of state; to not allow defense to
24 obtain or even make proper request for original checks, surveillance rec-
25 orders showing Petitioner purchasing goods at a Walmart Amount to an
26 incomplete investigation which did not allow Petitioner to present his own
27 evidence bearing on the issue.

GROUND FOUR: Fourth Amendment Exclusivity Rule.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

~~PETITIONER APPLIED FOR EXCLUDING WRT OF HABEAS CORPUS RE B11GF. ALLIED THE STATE COURTS VIOLATED THE FOURTH AMENDMENT RULE UNDER EXCLUSIVITY RULE, WITHIN TRIAL COURTS FAILURE TO AFFORD THE OPPORTUNITY FOR FULL AND FAIR HEARINGS ON THE CLAIM. HIS PROPERTY AND PAPERS, APARTMENT, VEHICLE AND A U-HAUL TRUCK HE HAD RENTED WERE ALL ILLEGALLY SEARCHED PRIOR TO POLICE OBTAINING A VALID SEARCH WARRANT AND THAT THE SEARCH WARRANT AFFIDAVIT CONTAINED FALSE STATEMENTS OF FACTS HAD; WHERE AN EVIDENCE OBTAINED BY SUCH CONDUCT IS PROCLUDED UNDER 4TH AMENDMENT EXCLUSIVITY RULE.~~

Supporting facts:

- (1) 4th Amendment Exclusivity rule are cognizable in habeas corpus proceedings where prisoners were denied an opportunity for a full and fair litigation of the claim.
- (2) On February 10, 2016 Petitioner filed motion to exclude evidence on back of illegal search and seizure and search warrant which contained false statements.
- (3) THE TRIAL COURT DENIED MOTION TO SUPPRESS SEARCH-WARRANT(S) ON MARCH 19, 2016 WITHOUT A HEARING MANDATORY UNDER SUPREME COURT DECISION, FRANKS V. WILSON; STONE V. POWELL.
- (4) YAVAPAI COUNTY SHERIFF OFFICE OBTAINED A SEARCH WARRANT COVERING PETITIONER APARTMENT AND A U-HAUL TRUCK RENTED ON 9/24/15 NO. V1300SW201580040.

(b) Did you present the issue raised in Ground Four to the Arizona Court of Appeals? Yes No

(c) If yes, did you present the issue in a:

Direct appeal	<input checked="" type="checkbox"/>
First petition	<input checked="" type="checkbox"/>
Second petition	<input checked="" type="checkbox"/>
Third petition	<input type="checkbox"/>

(d) If you did not present the issue in Ground Four to the Arizona Court of Appeals, explain why: _____

(e) Did you present the issue raised in Ground Four to the Arizona Supreme Court? Yes No

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2 (5) YAVAPAI COUNTY SHERIFF office obtained a SEARCH WARRANT concerning
3 PETITIONER'S vehicle and personal property kept at the JAIL on 9/23/15,
4 NO. J1300SW201580039.

5 (6) Apartment SEARCH:

6 The evidence in the record demonstrates SEARCH of the Apartment took
7 place on 9/18/15 prior to obtaining VALID SEARCH WARRANT. Detective
8 SHILLING, YAVAPAI COUNTY SHERIFF OFFICE, testified he searched the Apartment
9 on around of 9/25/15 and left because it was getting dark. The Return
10 SEARCH WARRANT Supplement contains a records time of 16:25 when
11 evidence was found inside of the Apartment; this taken with PHOTOGRAPHS of
12 Apartment as the time of search clearly shows pictures of Apartment in full
13 sunlight. The Landlord CAROL THORNE, testified that she arrived at the APART-
14 MENT on 9/25/15 around 5pm to let Police into the Apartment, but when
15 she arrived "they were already inside". And identified Detective SHILLING in the
16 control room. The police report fail to state all participants in the search
17 of the APARTMENT.

18 (7) Vehicle SEARCH:

19 POLICE SEARCH PETITIONER'S vehicle on 9/18/15 and had opportunity to continue
20 SEARCH prior to obtaining VALID SEARCH WARRANT.

21 Deputy HARPER describes in detail the search of PETITIONER'S vehicle conducted
22 on 9/18/15 in the police report.

23 The STATE intentionally withheld or suppressed PHOTOGRAPHS of the vehicle
24 interior taken on 9/18/15 during the SEARCH.

25 The STATE unlawfully altered official "FBI-CAM" footage on this Deputy
26 HARPER and Deputy SHREWORTH searching the vehicle on 9/18/15.

27 The vehicle was driven away from the scene of the arrest by a
28 CIVILIAN EMPLOYEE from animal control and not by an authorized police
tow service which is the usual course.

1 Police Report, And Dispatch, And Radio Logs demonstrate the vehicle was
2 At one time parked within the Sheriff Sub Station in Camp Verde, And
3 Some time between 9/18/15 and 9/21/15 was moved to an unsecured
4 Location Identified as float yard for the County.

5 The police cannot demonstrate when the vehicle was moved, by whom or
6 for what circumstance was the vehicle moved or who authorized the
7 movement.

8 The vehicle was picked up for tow by an independent tow service on
9 Sunday, 9/21/15 with intent to deliver the vehicle to the Yavapai
10 County Evidence facility located in Prescott, AZ.

11 The Prescott facility is not open for business on Saturday or Sunday.

12 Police records show the vehicle was not delivered to Prescott facility
13 until Monday 9/22/15 approximately 07:04 hrs. The vehicle was un-
14 accounted for, in the possession of an unknown civilian, for a period
15 of 18 hours. The Prescott facility records showed that they took custody
16 of the vehicle on 9/23/15 at 11:55AM by officer Levy # 5723, which
17 is an additional 12 hours in gap of chain of custody.

18 (8) SEARCH OF UHAUL TRUCK:

19 The evidence in the record demonstrates the search of a Uhaul
20 truck rented by Petitioner was search on or about 9/20/15 prior to
21 obtaining a valid SEARCH WARRANT.

22 AT TRIAL prosecution asked Det. Shilling if HE SEARCHED THE UHAUL
23 TRUCK ON SEPTEMBER 28, 2015. Det. SHILLING RESPONDED QUAR CORRECTLY, HE
24 ANSWERS "NO" THE UHAUL WAS SEARCHED ON SEPTEMBER 20, 2015."

25 THE ARIZONA COURT OF APPEAL DISREGARDED THE EVIDENCE AND RULED VINTERS
26 SIMPLY MADE AN ERROR. GIVING WEIGHT TO HIS TESTIMONY OR SIMPLY VOUCHING FOR
27 POLICE TESTIMONY.

1 Det. Shilling facilitated that f. o. he searched the U-Haul truck with one
2 other person, Evidence technician Boyle. The photographic evidence
3 disclosed by the state clearly show prints of two males searching
4 the back interior of the truck.

5 The state disclosed two separate libraries of photographs of the
6 U-Haul truck during search.

7 The first set of photographs were taken of the interior of the back
8 of truck with no pictures of the exterior or surroundings.

9 The first set of photographs clearly show prints of two males officers,
10 one of which is identified as Deputy Harrel by his wrist watch, of whom
11 lied under oath that he did not search the U-Haul truck.

12 These facts renders the chance in testimony by Det. Shilling false, when he
13 claimed his testimony that he searched the U-Haul on 9/28/15 with one other
14 female evidence technician.

15 The set of photographic disclosed officers opening boxes that were previously
16 secured by packing tape and other boxes not yet open can be seen sealed
17 shut.

18 The second set of photographs took pictures of the interior and exterior
19 with the surroundings area is visible.

20 The second set of photographs clearly shows the purposeful movement
21 of furniture an boxes from the right side and stacked to the left,
22 and clearly shows boxes now opened or the boxes flaps folded inward
23 which is different from the first set of photographs indicating a second
24 search taking place.

25 The evidence in the record demonstrates police disclosed a U-Haul key inside
26 petitioner Apartment on 9/18/15.

27 On or about 9/20/15 the U-Haul truck was driven or moved to a location
28 identified by police record as "CART CART" located in the Village of OAK CREEK.

1 Deputy Maricopa Police report statements and Affidavit in support of a
2 Search warrant that he discovered the U-Haul on the "back side of the mall".
3 Detective Shilling's testimony and Affidavit statement say he discovered the
4 U-Haul truck after listening to jail house telephone records between petitioner
5 and other狱友 company. The records were not disclosed by state.
6 The police dispatcher logs and radio logs demonstrate the U-Haul truck was
7 picked-up from the front of the mall, East corner and not the "back side"
8 of the mall where it was originally parked.

9 **Affidavit**

10 (9) THE SEARCH WARRANT AFFIDAVIT(S) CONTAINED A LARGE NUMBER OF FALSE
11 STATEMENTS, RENDERING THE VALIDITY OF OBTAINING THEM A VIOLATION OF
12 THE PROCESS UNDER FRANK V. DELAWARE AND STATE V. DOWELL.

13 THE SAME AFFIDAVIT WAS ATTACHED TO BOTH SEARCH WARRANTS; 'PETITIONER
14 ORDERED A \$4300 mountain bike online'; 'DAVID DIMIREE FOUND A TOTAL
15 OF THREE CUCINA RUSTICA BUSINESS CHECKS THAT HAD BEEN WRITTEN BY
16 JEREMY (CHRISTIAN); 'PETITIONER WENT TO CHASE BANK LOCATED IN COTTONWOOD,
17 AZ AND CASHED ONE OF THE STOLEN CHECKS'; PETITIONER WENT TO AN
18 (UNSPECIFIED) CHASE BANK SOMEWHERE IN CALIFORNIA AND CASHED A CHECK
19 ON THE SAME DAY'; 'DET. SHILLING DISCOVERED THE RENTED U-HAUL TRUCK
20 THROUGH LISTENING TO JAIL HOUSE TELEPHONE RECORDING'.

21 NONE OF THESE STATEMENTS WERE TRUE, AND WERE NOT SUPPORTED BY
22 TRIAL EVIDENCE OR TESTIMONY ADMITTED AT THE TRIAL, CONSTITUTED A BREACH
23 OF OATH OR AFFIDAVIT REQUIREMENTS TO BE INVALIDATED.

24 THE SEARCH WARRANTS CONTAINED DETAILED INFORMATION, SUCH AS SERIAL NUMBER
25 OF PETITIONER OR OTHER INDICA OR DESCRIPTION THAT COULD ONLY HAVE
26 BEEN OBTAINED BY POSSESSION OF ITEM, INDICATE SEARCH PRIOR TO OBTAINING
27 A VALID SEARCH WARRANT.

1 Grounds file
2 Petitioner's Application for Successive writ of Habeas Corpus against Allister
3 He was denied Due process and Equal Protections of the laws guaranteed
4 by Fourteenth Amendment, without Superior Court of Arizona denies him
5 A "process due" to vacating set preliminary hearing by a form
6 not authorized by law.

7

8 facts in support of claim

9 (1) The Arizona Constitution Art. II, § 30 sets forth Statutorily - Min-
10 imes Preliminary Hearing that can only be dismissed by Person in Writ,
11 "No Person shall be prosecuted for felony by information without had
12 A Preliminary Examination before a magistrate or Justice waives
13 Such Preliminary Examination.
14 Petitioner did not waive right to Preliminary Hearing.
15 (2) Arizona Rules of Criminal Procedure, Rule S.1 and the Sub-Chapter, 20 -
16 Vis the procedure by which that can may be waived.
17 (3) Petitioner was charged by Information by Maricopa County Attorney.
18

19 (4) Arizona Rules of Criminal Procedure, Rule 4.2(3)(g)(1) Requires a Pro-
20 ceeds Due by which magistrate judge must inform defendant of his
21 right to a Preliminary Hearing and set a date for such hearing before
22 defendant is held in jail.
23 (5) Defendants initial Appearance was held on 7/11/15 via video
24 conference without any notifications of right to Habeas Writ A pre-
25 liminary Hearing or waive such hearing.
26 (6) Petitioner did not until April 15th bring cause of Court held Dr-
27 position Hearing that defendant has opportunity to exercise his right
28 and demands a Preliminary Hearing.

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THE trial court set 9/25/15 at 4:00pm for Preliminary Hearing.

(7) Petitioner Court Appointed Attorney informed him on Monday, 9/28/15 his preliminary hearing was not held because he had been re-
dicted by Supervising Enforcement.

(8) Arizona Rule of Criminal Procedure R.7, now repealed, provided that
Supervising Enforcement may issue in lieu of a Summons or Complaint.

THE rule did not authorize substitution for preliminary hearing; in
contrast to Federal Rule 5.0, which clearly states a preliminary hearing may
be vacated if accused is indicted by Grand Jury. THE STATE LAW provides
NO SUCH PROVISION.

(9) THE STATE (what records has intentionally omitted all records, make
available, of proceeding which took place prior to September 25, 2015;
which include but not limited to initial appearance, arraignment and any
other setting or vacating the preliminary hearing.

Please answer these additional questions about this petition:

13. Have you previously filed any type of petition, application or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If yes, give the date of filing, the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available: West of Native Cupus - p 2254

U.S. District Court, District of Arizona

No. 3:20-cv-08327 (PMA - JAT)

Filed: 12-7-2020

14. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, as to the judgment you are challenging? Yes No

If yes, give the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised: _____

15. Do you have any future sentence to serve after you complete the sentence imposed by the judgment you are challenging? Yes No

If yes, answer the following:

(a) Name and location of the court that imposed the sentence to be served in the future:

Arizona Supreme Court in Maricopa County - City of Phoenix - Arizona

(b) Date that the other sentence was imposed: February 26, 2021

(c) Length of the other sentence: 12 years

(d) Have you filed, or do you plan to file, any petition challenging the judgment or sentence to be served in the future? Yes No

16. TIMELINESS OF PETITION: If your judgment of conviction became final more than one year ago, you must explain why the one-year statute of limitations in 28 U.S.C. § 2244(d) does not bar your petition.*

*Section 2244(d) provides in part that:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of-

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

17. Petitioner asks that the Court grant the following relief:

Digitized by srujanika@gmail.com

or any other relief to which Petitioner may be entitled. (Money damages are not available in habeas corpus cases.)

I declare under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, day, year).

Signature of Petitioner

Signature of attorney, if any

Date

APPENDIX

C

APPENDIX C

EXHIBIT

G

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

SEP 25 2015
DONNA McQUALITY, Clerk
By: Laura Crow

STATE OF ARIZONA,
Plaintiff,
vs.
GERALD VAUGHN GWEN,
Defendant.

Superior Court No. V1300CR20158 0451
Grand Jury No. 191-GJ-212415
Division 7
INDICTMENT

The grand jurors of Yavapai County, Arizona, accuse **GERALD VAUGHN GWEN**, charging that in Verde Valley Precinct, Yavapai County, State of Arizona:

COUNT 1
TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about September 7, 2015, **GERALD VAUGHN GWEN**, knowingly took, purchased, manufactured, recorded, possessed or used any personal identifying information or entity identifying information of the Dahl Restaurant Group, without consent of the Dahl Restaurant Group, with the intent to obtain or use the Dahl Restaurant Group's identity for any unlawful purpose or to cause loss to the Dahl Restaurant Group, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 2
THEFT OF A CREDIT CARD

On or about September 7, 2015, **GERALD VAUGHN GWEN**, controlled a credit card, to-wit: Chase Bank debit card ending in 0429 in the name of David Dimler/Dahl Jones Foods, LLC, without the consent of the cardholder, through conduct defined in A.R.S. §13-1802 or §13-1804, in violation of A.R.S. §13-2102, a class 5 felony.

COUNT 3
FRAUDULENT SCHEMES AND ARTIFICES

On or about or between September 8, 2015, and September 9, 2015, **GERALD VAUGHN GWEN**, pursuant to scheme or artifice to defraud, knowingly obtained a benefit from the Dahl Restaurant Group, Chase Bank, and/or Oxendale Chrysler Dodge Jeep, by means of fraudulent pretenses, representations, promises or material omissions, in violation of A.R.S. §13-2310, a class 2 felony.

COUNT 4
THEFT

On or about or between September 8, 2015, and September 9, 2015, **GERALD VAUGHN GWEN**, knowingly controlled property of the Dahl Restaurant Group and/or Chase Bank, to-wit: stolen Cucina Rustica (Dahl Restaurant Group) checks and U.S. currency, of a value of \$4,000.00 or more but less than \$25,000.00, with the intent to deprive the Dahl Restaurant Group and/or Chase Bank of such property, in violation of A.R.S. §13-1802, a class 3 felony.

CONTINUED ON NEXT PAGE

COUNT 5
FORGERY

On or about September 8, 2015, **GERALD VAUGHN GWEN**, with intent to defraud, offered or presented to Chase Bank a forged instrument or one which contained false information, to-wit: Cucina Rustica (Dahl Restaurant Group) check, in violation of A.R.S. §13-2002, a class 4 felony.

COUNT 6
FORGERY

On or about September 18, 2015, **GERALD VAUGHN GWEN**, with intent to defraud, falsely made, completed or altered a written instrument, to-wit: Release Questionnaire, in violation of A.R.S. §13-2002, a class 4 felony.

9/25/2015

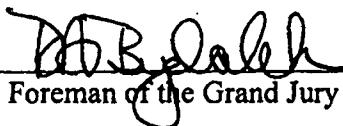
SHEILA SULLIVAN POLK
Yavapai County Attorney

By



A. True Bill

(Foreman writes "A True Bill")


D.B. Dahl

Foreman of the Grand Jury

EXHIBIT

H

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF YAVAPAI

5 STATE OF ARIZONA,

6 Plaintiff,

7 VS.

8 GERALD VAUGHN GWEN.

9 Defendant.

10 ARIZONA COURT OF APPEALS
11 NUMBER: 1 CA-CR 18-0775

12 YAVAPAI COUNTY SUPERIOR COURT
13 CASE NUMBER:
14 V1300CR201580451

15 BEFORE: THE HONORABLE MICHAEL R. BLUFF
16 JUDGE OF THE SUPERIOR COURT, DIVISION SEVEN
17 JURY TRIAL - DAY FIVE

18
19 Camp Verde, Arizona
20 September 19, 2018
21 8:50 o'clock a.m.

22
23 PREPARED BY:

24 M. LISA EDGAR, R.P.R., C.P.
25 ARIZONA CERTIFIED REPORTER
 ARIZONA C.S.R. NUMBER 50273

PREPARED FOR:

MR. TONY GONZALES, ESQ.
Attorney at Law
Record on Appeal
COPY

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1 parties have agreed that my court reporter does not have to
2 report my reading of the final jury instructions. So you can
3 read along with me or sit back and let me to read to you.

4 (Jury instructions were read by the Court and not
5 reported by the court reporter.)

6 THE COURT: Mr. Rodriguez, any additions or
7 corrections to the Court's reading of the final jury
8 instructions?

9 MR. RODRIGUEZ: No, Your Honor.

10 THE COURT: Mr. Gwen?

11 MR. GWEN: No, Your Honor.

12 THE COURT: Okay. Mr. Rodriguez, are you ready
13 with a closing?

14 MR. RODRIGUEZ: State is ready.

15 THE COURT: Closing argument I should say. I'm
16 sorry.

17 You may proceed.

18 MR. RODRIGUEZ: Duty, honor, trust; those are the
19 words the defendant used yesterday in an attempt to describe
20 his qualities and traits. He is a con man, a liar. Those are
21 his qualities and traits.

22 MR. GWEN: Objection, Your Honor.

23 MR. RODRIGUEZ: Don't be fooled --

24 THE COURT: Overruled.

25 MR. RODRIGUEZ: -- by what he says.

1 information. That instrument was the stolen check and the
2 State believes it has certainly met that element. He was on
3 video. We have photographs of him cashing that stolen check.

4 I'd like to draw your attention to page four, and
5 specifically letter C where it starts with proof beyond a
6 reasonable doubt. It's the State's burden to prove the
7 defendant -- prove to you, the jurors, prove beyond a
8 reasonable doubt the defendant is guilty.

9 The definition for proof beyond a reasonable doubt
10 is there for you. Proof beyond a reasonable doubt is proof
11 that leaves you firmly convinced of the defendant's guilt and
12 it recognizes as part of this definition that -- if you just
13 read a little further it says: There are very few things in
14 this world that we know with absolute certainty, and in
15 criminal cases the law -- law does not require -- require proof
16 that overcomes every doubt. If, based on your consideration of
17 the evidence, you're firmly convinced the defendant is guilty
18 of the crimes charged, you must find the defendant guilty.

19 It's okay to have doubt. Doubt is okay. But if
20 you have doubt, it needs to be able to -- it needs to make
21 sense.

22 One of the things I want to clarify is the
23 defendant is not charged with stealing the checks. That is not
24 a charge. He wasn't charged because there was just no proof.
25 You heard Mr. Dimler indicate he didn't know when the checks

*WSB
Cimmerman*

1 were stolen.

2 *fix it*
3 *Amend m'm*

2 It's a reasonable inference that -- that he stole
3 the checks, the defendant stole those checks, 'cause he had
4 access to those checks by his own testimony. It came out in
5 the testimony that he was there and had access to the corporate
6 office, to the restaurant's offices both night and day. He
7 shared those offices.

8 But don't be misled or find that confusing. He's
9 not charged with the theft of those checks. He's charged with
10 using those stolen checks.

11 MR. GWEN: Objection

12 THE COURT: Approach.

13 (The following bench conference between the Court,
14 counsel and Mr. Gwen was held out of the hearing of the jury.)

15 MR. GWEN: Count 4 of the Indictment is -- Count 4
16 is theft and -- and the -- the derogatory statements just made,
17 the prosecution is saying he's not charged with theft, but the
18 checks here, it's stated in the complaint.

19 THE COURT: Mr. Rodriguez.

20 MR. RODRIGUEZ: Your Honor, he's not charged with
21 burglary of the checks. That's the correct terminology. It's
22 not necessary. We didn't charge him with physically of going
23 in there and stealing the checks, theft of the checks.

24 Okay. Mr. Gwen, is that clarified now?

25 MR. GWEN: I will object to him using a new

1 charge. He can't throw out a charge of burglary.

2 THE COURT: He is not throwing out a charge of
3 burglary.

4 MR. GWEN: He is saying he is not charged with
5 burglary which implies that the defendant could have broken
6 into the restaurant, broken into an office.

7 THE COURT: Okay. I will let -- I will disagree
8 with that. I'm going to let Mr. Rodriguez clarify the issue
9 about the theft.

10 (The following proceedings were held within the
11 hearing of the jury panel.)

12 MR. RODRIGUEZ: I'd like to clarify; I just may
13 have said he was not charged with theft. Don't be confused by
14 the theft of the checks. The State is not alleging that he
15 burglarized the Dahl Group restaurant and physically stole
16 those checks.

17 The State's charge of theft is that the defendant
18 possessed the stolen checks and used those stolen checks which
19 caused a financial loss to the Dahl Restaurant Group.

20 As indicated, proof beyond a reasonable doubt
21 indicates proof that leaves you firmly convinced. What are the
22 facts in this case that should leave you firmly convinced of
23 the defendant's guilt? The defendant is on video cashing a
24 stolen check; one. Two: Defendant admits on body camera to
25 cashing the stolen check. False

1 Three: The defendant admits to using money from
2 the stolen checks to buy a 2015 Jeep. Four: Chase Bank
3 received stolen checks from the defendant, two of them, and
4 suffered a loss of six -- \$10,626.12. Number five: Oxendale
5 was made aware that the defendant bought a Jeep with stolen
6 check funds.

15 Number nine: Check number 35940 was cashed at the
16 Prescott Valley Walmart on September 8th, 2015, in the amount
17 of \$823.74. Number 10: The mountain bike the defendant
18 ordered was to be delivered to his home address. Eleven:
19 Defendant possessed the David Dimler/Dahl-Jones credit card
20 information, the entire information necessary to place an
21 on-line order.

C E R T I F I C A T E

STATE OF ARIZONA }
COUNTY OF YAVAPAI }

I, M. Lisa Edgar, certify that I am an official Reporter for the Superior Court of Yavapai County, State of Arizona; that I was present and took down in shorthand all proceedings had in the above-entitled matter, and that the foregoing pages contain a full, true and correct transcript of my shorthand notes so taken, all done to the best of my skill and ability.

DATED at Camp Verde, Arizona, this 29th day of November, 2018.

/s/

M. LISA EDGAR, R.P.R., C.P.
Certified Reporter
Arizona License Number 50273