

ORIGINAL

UNITED STATES OF AMERICA

Appeal From: Tennessee Supreme Court
Case No. M2022-01395-SC

Tennessee
Respondents,

"On Petition For Writ Of Certiorari To The Supreme Court Of Tennessee"

"Petition For Writ Of Certiorari"

Counsel of Record:
Mr. Tony Gooch.

Mr. Tony Gooch, TDOC# 638596
South Central Correctional Facility
P.O. Box 279
Clifton Tn 38425-0279

"QUESTIONS PRESENTED"

I. "When a State court judgment is shown that counsel of record was ineffective during all three phases of litigation including pre-trial, trial phase, and sentencing phase, and a defendant is permanently-barred from presenting the claim on appeal, after he raises the claim more than once, does that Appellate procedure result in a structural error?

II. When a defendant is punished for two convictions arising from the same criminal offense, is that standard consistent with Congress Congressional Intent?

III. Whether a State Supreme Court unconstitutionally forfeits an accused rights to be protected from double jeopardy when it instructs criminal defendants to file a motion for new trial in order to raise issues on appeal? (Issue Of First Impression)

"LIST OF PARTIES"

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

[x] A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- (1) ADA Jennifer M. Charles
- (2) Defense Attorney Nicholas T. McGregor
- (3) Defense Attorney Seth T. Norman
- (4) Defense Attorney George W. Waggoner III, Esquire
- (5) Judge Steve R. Dozier

"LIST OF ALL PROCEEDINGS RELATED"

- Rule 14.1 (b)(ii) provides: "A writ of certiorari shall contain: a list of all proceedings in state and federal trial and appellate courts, including proceedings in this Court, that are directly related to the case in this Court.

Federal Proceedings:

- The United States Middle District of Tennessee Tony Gooch, v. Jennifer Charles et al., No. 3 : 22-cv-00076, 2022 U.S. Dist. LEXIS 100459 Judgment entered July 10, 2023
- The United States Middle District of Tennessee Motion For Reconsideration Denied, Tony Gooch, v. Jennifer Charles et al., No. 3 :22-cv-00076, 2023 U.S. Dist. LEXIS 117796 Judgment entered July 10, 2023
- Application for a stay in the United States Supreme Court Denied on November 7, 2024 Tony Lamons Gooch III v. Tennessee, No. 24A457.
- In Re Tony Gooch v. ADA Jennifer Charles, et al, No. 24-5954, Writ of Mandamus Denied.

State Proceedings:

- The Tennessee Supreme Court Denied T.R.A.P 8 Appeal/Rehearing Gooch v. State M2022-01395-SC-R8-CO, Entry Date June14, 2023, Rehearing Entry Date July 10, 2023
- Application To Tennessee Supreme Court Denied on November 20, 2024 Gooch v. State, M2022-01 395-SC-R11-CD, T.R.A.P. 11 Application
- Direct Appeal Affirmed by the Tennessee Court of Criminal Appeals, Gooch v. State, M2022-01395-CCA-R3-CD, Entry Date June 3, 2024
- Conviction By Jury Verdict In Tennessee Trial Court No. 2020-D-2065, Entry Date March 2, 2022

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

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

OPINIONS BELOW

[x] For cases from **State courts**: The opinion of the Tennessee Trial Court is published and available at No. 2020-D-2065. The opinion of the Tennessee Court of Criminal Appeal is published, and available at M2022-01395-CCA-R3-CD. The opinion of the Tennessee Supreme Court is published, and available at M2022-01395-SC-R1 1-CD, and M2022-01395-SC-R8-CO. See attached exhibit/all court orders.

"JURISDICTION"

[x] For Cases from **State Courts**: Below is a brief summary of the basis for jurisdiction.

- The Judgment of the Tennessee Supreme Court was entered on November 20, 2024. Gooch v. State, 2022-01395- SC-Rll-CD.
- The jurisdiction of this Court is properly invoked under [28 USCS c 2106].
- Title 28 USC 2106 appears on its face to confer upon the United States Supreme Court broad power to vacate . . . any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and . . . require such further proceedings to be had as may be just under the circumstances."

"CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED"

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"STATEMENT OF THE CASE"

This case requires a discussion, and the proper application, of two doctrines: Structural error and ineffective assistance of counsel. It is claimed on behalf of the petitioner that the crimes charged against him, of which he stands convicted, is void. The trial court had no jurisdiction to try the petitioner, and it's judgment and sentence are illegally void. On the record before us, we conclude that the trial judge was without jurisdiction or authority to impose the sentence. In this case, victims of an Hotel robbery near the Williamson County's state line gave Mid-town police first responders a vague description of an suspected vehicle and perpetrators believed to be involved in a robbery. Witnesses described the suspects as strangers who were dressed as masked intruders, wearing all black clothing and possibly escaped in an Orange mustang. Eyewitnesses could not provide a tag description of the vehicle, nor provide the officers with any information regarding the direction of travel the vehicle traveled.

In addition, eyewitnesses were unable to confirm with Mid-town officers whether the suspected vehicle had tinted windows at that time. Consequently, no other information about the vehicle of interest was established other than the color of the vehicle. On the basis of such vague eyewitness information, the suspect description, and vehicle description was aired through an police bolo by Midtown first responders employed by the Midtown Police Precinct. Eyewitnesses testified that they believed the intruders were African American males. Although eyewitnesses indicated that the suspects may have been Black, eyewitnesses testified during two hearings that they did not see any Black suspects or African Americans get inside a particular get-away car. See Prelim Transcript Pg. 40 Line 4. See Vol.7 Trial Transcript Pg. 83 Line 5. Therefore, prior to the initiation of the stop, radio dispatchers and Midtown Hills Precinct were not informed that any suspects left inside a particular vehicle. Approximately 12 miles away from the original crime scene, the petitioner was driving in a car on Rosa Parks Blvd similar to a car that allegedly matched the description of the vehicle leaving the scene near the Williamson County State Line.

The petitioner was driving in an Yellow mustang with tinted windows in a normal manner accompanied by another individual, and was not violating any road traffic laws when he was pursued by North, Tennessee Precinct officers. Tennessee patrolman officer Justin Vaughn and Officer Bryan Musgrave testified that they did not stop, nor seize the petitioner's person or vehicle pursuant to any violations of the law. **See Vol 7 Trial Transcript Pg. 134 Line 24 O. And the blue lights, did those come on as a result of (any type) of traffic violation? Officer Vaughn A. "No".** When the petitioner pulled into a restaurant parking lot, Davidson County officers acted in reliance upon the information exclusively given in the police bolo provided by Mid-Town, and initiated a traffic stop. North precinct Officer Vaughn testified that he did not stop the petitioner's vehicle for investigation of any traffic violations established in the Metropolitan Code of Law. As a matter of department protocol, **MNPD Policy 18.10.010 Section I provides:** "Officers shall base enforcement actions on the circumstances of an violation". North precinct officers arrested the petitioner without an warrant, and impounded Mr. Gooch's vehicle in violation of policy. **Vol. 8 Trial Transcript Page 167 Line 3.**

Subsequently, the petitioner along with his passenger were subjected to an identification procedure, and both occupants were transported in separate vehicles to a police station for questioning at custodial interrogation. See Vol.13 Exhibit 21 c. Because the petitioner was not seized pursuant to any violations of the law, the stop did not comply with **Tennessee Policy 6.020.030 Section (a)** and the petitioner had an (meritorious claim) on this issue had it not been for preliminary counsel and trial counsel's unprofessional errors. The petitioner was initially seized without probable cause, and the custodial interrogation in this case exceeded the limits of an Terry stop, which is inconsistent with the general laws of the land announced in **Dunaway v. New York**, 442 U.S. 200, 203, 99 S. Ct. 2248, 60 L. Ed. 2D 824 & n.1 (1979). In **Dunaway**, the United States Supreme Court Held: "Petitioner's conviction for murder was reversed because the police violated the 4th and the 14th Amendment of the constitution when without probable cause, they seized petitioner and transported him to the police station for interrogation". **Dunaway v. New York**, 442 U.S. 200, 203, 99 S. Ct. 2248, 60 L. Ed. 2D 824 & n.1 (1979).

See **South Dakota v. Opperman**, [No. 75- 76], 428 U.S. At (*383) 376, 96 S. Ct. 3092, 49 L. Ed. 2D 1000 (1976) The United States Supreme Court elaborated: "Inventory searches are conducted in accordance with established police department rules or policy and occur whenever an automobile is seized". {428 US at *383} (Quoted by U.S. Supreme Mr. Justice Powell). According to Ooperman's decision and local Tennessee policy, the police must first have the authority to impound a vehicle, and must then follow the procedures outlined in local policy. Thus, when this court turn to local established police department rules, and policies governing the seizures of automobiles in accordance with Ooperman's decision, we note that any (competent counsel) licensed to practice law in the State of Tennessee, would have timely recognized the law requirements of this state. **See MNPD Policy 6.020.030 Section (a) MNPD Policy 6.020.030 Section (A) of Tennessee provides as follows: "The motor vehicle traffic codes of the Metropolitan government specifically authorize employees of the department to impound any vehicle parked or stopped when the vehicle is in violation of any regulation or ordinance of the Metropolitan Government".**

Accordingly, the record in the present case does not support a finding at any time during the petitioner's initial stop by officers that Mr. Gooch's vehicle was in violation of any motor vehicle traffic code authorized by the Metropolitan Government of Tennessee. In this historic malpractice case, the record established that there was no probable cause for the petitioner's arrest, and no probable cause existed for the petitioner's continued pre-trial detention. The police officers in acting without probable cause, and without a warrant, transported the petitioner to a police station for custodial interrogation. The law has been long established since 1979, that officers acting under similar circumstances was held to have violated the State and Federal Constitution. See **Dunaway v. New York**, 442 U.S. 200, 212-16, (1979). See **Hayes v. Florida**, 470 U.S. 811, 815-16, (1985); Despite of clearly established federal law, neither of the petitioner's former attorneys "timely" objected to the petitioner's illegal detention. During a preliminary hearing on probable cause, the government further introduced proof of two Aggravated robbery charges which contained the same elements.

During the **pre-trial** and **trial-phase**, neither of the petitioner's former attorneys filed a "timely" motion to dismiss the charges on double jeopardy grounds. Since 1932, the law has been well established that if offenses have identical statutory elements or that one is a lesser included offense of the other, then the inquiry must cease, and the subsequent prosecution is barred". Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180 (1932) (Quoting Brown v. Ohio, [No. 75- 6933], {432 US at *165}. Because no objections were made by counsel, the petitioner was left convicted of the charges. The petitioner Tony Lamons Gooch III was convicted as charged by a Tennessee grand jury of two counts of Aggravated robbery. During the **sentencing-phase**, the trial court enhanced the petitioner's criminal sentence, and allowed two convictions to be sustained based upon a single criminal offense. The petitioner received an concurrent sentence of twelve years imprisonment at 85% with judgment of convictions entered on both counts. Subsequently, the petitioner's motion for new trial was denied.

On direct appeal, the petitioner sought review of his judgment of acquittal motion at every level in state court. See Appendix 4. See Appendix 11. Vol. 9 Pg. 47-55. The petitioner argued that his former preliminary counsel and trial counsel failed to "timely" file a motion to suppress the evidence obtained during the traffic stop, and failed to timely raise a double jeopardy claim which formed the basis of petitioner's convictions. The Court of Criminal Appeals affirmed petitioner's convictions, and **banned** the petitioner from challenging his conviction on ineffective assistance grounds. On November 21, 2024 the Tennessee Supreme Court denied review. In terms of exhaustion, the court shall evaluate whether the petitioner properly exhausted any claims in this court. Under Tennessee law, Tenn. Sup. Ct. R. 39 provides: "When a claim has been presented to the Court of Criminal Appeals or the Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies available for that claim".

"HISTORY OF EXHAUSTED CLAIMS PROPERLY BEFORE THE COURT"

The record established that the petitioner presented his ineffective assistance claims to the state trial court during pre-trial, and was denied relief. See Appendix 1 Vol. 4 Pre-Trial Transcript. The petitioner presented the claims again in a motion for new trial, and was **barred** from presenting the claim. See Appendix 3 Vol. 11 Page 12 Line 14-17, Transcript For New Trial. Thereafter, the petitioner appealed, and repeated the same claims to the Tennessee Court of Criminal Appeals asserting that he had been denied ineffective assistance of counsel. {Initial Brief For Petitioner Pg. 12}. See Appendix 4. Gooch v. State, No. M2022-01395-CCA-R3-CD. Once the court of criminal appeals denied relief, the petitioner filed an T.R.A.P. 8 appeal to the Tennessee Supreme Court merely repeating the claims for the third time alleging that he had been denied ineffective assistance of counsel. See Gooch v. State, No. M2022-01395-SC-R8-CO. The Tennessee Supreme Court denied relief, and subsequently denied the petitioner relief in a petition to **rehear**. Accordingly, it follows that the petitioner fairly presented his ineffective assistance claims to the state courts, and properly exhausted his claims. Citing O'Sullivan v. Boerckel, [526 U.S. At *839] ("Holding a state prisoner must present his claims to a state supreme court in a petition for rehearing in order to satisfy the exhaustion requirement").

See 28 U.S.C. 2254(B)(1)(A) (Permitting issuance of a writ of habeas corpus only after the appellant has exhausted the remedies available in the courts of the State"). The Court of Criminal Appeals affirmed the petitioner's conviction on the mistaken ground that the petitioner's claims were waived. See *Gooch v. State*, No. M2022- 01395-CCA-R3-CD. Under Tennessee law, when lower courts "waive" ineffective assistance claims on direct appeal leaving a defendant no chance to present the claim, the Post-Conviction Procedure Act of Tennessee does not authorize a court, nor provide a defendant adequate remedy to seek relief on "waived" claims. Citing *Holland v. State*, No. W2018-01517- SC-R11-PC, {610 S.W.3d at *458}. Therefore, a defendant is permanently barred from presenting an ineffective assistance challenge which eliminates the petitioner from presenting the claim, and infringe upon the defendants 6th Amendment rights secured under the State and Federal Constitution.

As grounds for the judgment of acquittal during trial, trial counsel argued that the evidence was insufficient, and that the initial police stop was unreasonable in violation of the Fourth Amendment of the United States Constitution. See Appendix 11 Vol. 9 Pg. 47-55. Following a hearing, the trial court denied the judgment of acquittal motion concluding that the police stop was reasonable, and finding that the evidence was sufficient. Vol. 9 Pg. 47-55. As previously mentioned, the petitioner challenges the trial court denial of his acquittal motion arguing that both preliminary counsel, and trial counsel was ineffective during **pre-trial** phase by failing to "timely" suppress evidence obtained from the stop. Initial Brief For Appellant Pg. 30. Contrary to the law, the Government argued on direct appeal that the petitioner's claims based on ineffective assistance of counsel were waived. Brief For Appellee Pg. 18. Similarly, the State Court of Criminal Appeals agreed and **barred** review of the petitioner's ineffective assistance claims on the ground that it had been waived. { Appellate Court Opinion Pg. 8}.

The Tennessee Court of Criminal Appeals reached this conclusion despite having repeatedly held that a claim based on ineffective assistance of counsel may be brought even when the underlying substantive issue has been waived or previously determined". See *Bernard Woodard v. State*, No. M2022-00162-CCA-R3-PC. The court should not be persuaded that the petitioner **waived** his claims of ineffective assistance of counsel. Such conclusion by the Tennessee Courts rested on a premise which abruptly departed from and conflicted with it's prior interpretations of the waiver rule under Tennessee law which is not adequate to preclude review of petitioner's federal claims. (Quoting *Cruz v. Arizona*, No. 21-846, 598 U.S. 17; 143 S. Ct. 650; 214 L. Ed. 2d 391; Under State and Federal law, it has been long established that claims of ineffective assistance of counsel are grounds against **state-action** addressed solely to the State. (Quoting *Evitts v Lucey*, [No. 83-1378] {469 US at *396}. Under Tennessee Law, a claim is not waived if it is the result of **state-action**. Citing TC.A. 40- 30-106(g)(2). Therefore, the petitioner's claims based on ineffective assistance were not waived. The Court of Criminal Appeals contrary decision of **waiving** petitioner's claims on direct appeal is unprecedented, and unforeseeable as it lacked fair or substantial support in prior state law which conflicted with it's prior opinion decided in *Bernard Woodard v. State*, No. M2022-00162-CCA-R3-PC.

It follows then that the present case must be guided under the United States Supreme Court holding in *Cruz v. Arizona*, No. 21-846, 598 U.S. 17; **143 S. Ct. at 662**; 214 L. Ed. 2d 391; 2023 U.S. LEXIS 945; 29 Fla. L. Weekly Fed. S 669 "Holding where a state-court judgment rests on a novel and unforeseeable state court procedural decision lacking fair or substantial support in prior state law, that decision is not adequate to preclude review of a federal question. (Quoting *Cruz v. Arizona*, 598 U.S. 17.

"STATE COURT DISPOSITION NOT RESTED UPON INDEPENDENT AND ADEQUATE STATE GROUNDS"

In *Cone v. Bell*, No. 07-1114, { 556 U.S. At *465} the United States Supreme Court stated: **"We have held that when a petitioner fails to raise his federal claims in compliance with relevant state procedural rules, the state court's refusal to adjudicate the claim ordinarily qualifies as an independent and adequate state ground for denying federal review"**. id. {556 U.S. At *465}. Having applied *Bell* principles, the record in the present case does not establish that the petitioner failed to raise his federal claims in compliance with local state procedural rules, nor can the court conclude that the petitioner's claims are procedurally barred. As the United States Supreme Court stated in *Cone v. Bell*, "a claim is procedurally barred when it has not been fairly presented to the state courts for their initial consideration-not when the claim has been presented more than once". {556 U.S. At *467}.

Comparing *Bell* to the present case, the petitioner repeatedly presented his federal claims to the state courts, and was constantly denied relief. Consequently, the court recognize that even if the petitioner claims had been actually waived, the United States Supreme Court held in *Cone v. Bell*, No. 07-1114, that neither prior determination nor waiver provides an independent and adequate state ground for denying review of federal claims when the state courts refusal to consider the claims based on previous determination only indicated that the claim was **exhausted** in state court which does not bar federal review ... id. {556 U.S. At *465}. In the present case, because the Tennessee Courts did not reach the merits of Mr. Gooch's ineffective assistance claims, the United States Supreme Court stated: "Instead, the claim is reviewed de. Novo. {556 U.S. At *472}. **Chief Justice Roberts concur in the judgment.**

“REASONS FOR GRANTING WRIT”

Under the Tennessee Constitution, the allowance of the writ shall hereby be **GRANTED** to the Tennessee Supreme Court on the basis that the Tennessee Courts and it's Appellate Procedure promulgated by the Supreme Court of Tennessee have not allowed, nor provided any **adequate** remedy for the petitioner to collaterally challenge his conviction on ineffective assistance grounds. The petitioner in this case was **banned** from collaterally challenging his conviction through the post-conviction process, and was **banned** from using that avenue to bring a collateral attack against his conviction. All Tennessee residents pursuing an appeal in this state are hereby affected by the same structural errors for the reasons discussed below. We respectfully ask the United States Supreme Court to promptly hear this case in particularly to prevent a miscarriage of justice toward all Tennessee residents affected by the error. While the court understand that it is rare that the U.S. Supreme Court accept to hear cases, the undersigned is of the opinion that Tennessee Courts has so far departed from the accepted and usual course of judicial proceedings by using procedural waiver rules in an unlawful calculated manner to waive defendants claims on direct appeal with intent to delay, hinder, or obstruct justice warranting an exercise of this Court's supervisory power.

Under Tennessee law, once a claim is waived, the Tennessee Post-Conviction Act prevents a defendant from seeking post-conviction relief on those claims. Regardless of whether the claims are **erroneously** waived, a post-conviction court does not have jurisdiction to overrule a higher court precedent who determines that a claim is waived. For instance, the court of criminal appeals in Tennessee are responsible for reviewing all determinations of the lower post-conviction court. This mean once a post-conviction court has jurisdiction to decide a case, and the post-conviction court determines that a panel of the reviewing court has concluded that a particular claim is waived, the post-conviction court does not have authority to overrule that decision even if it believes the claims were wrongly waived, nor does it have authority to consider any waived issues sua sponte.

See *Holland v. State*, No. W2018-01517-SC-R11-PC, 610 S.W. 3D at *459-460 The Tennessee Supreme Court Stated: **“Nothing in the language of the act, or our case law interpreting the Act, gives a reviewing court in post-conviction proceedings the authority to raise an issue sua sponte that has been waived. We hold that the language of the Act controls the scope of review in this instance, and the Court of Criminal Appeals did not have the authority under the Act to consider the issue, or raise it sua sponte for consideration”**. *id.* 610 S.W. 3D at *459-460. The Tennessee Supreme Court decision in *Holland* is binding precedent in this state, which ban residents at the outset from using the post-conviction avenue because it prevent lower courts from considering waived issues sua sponte. Similarly, the petitioner is **banned** from using the post-conviction remedy on 6th Amendment grounds. See *Coleman v. Thompson*, {501 U.S. At *752} The U.S. Supreme Court has repeatedly reaffirmed that, “a petitioner cannot claim constitutionally ineffective assistance of counsel in post-conviction proceedings”. *id.* Therefore, a defendant has no other choice, nor recourse but to bring their claims to Federal court.

We ask the U.S. Supreme Court to decide whether the lower courts banning the petitioner from challenging his conviction on 6th Amendment grounds were contrary to Federal law, and if so, whether the panel abused its discretion by not providing an adequate remedy for the petitioner to raise his 6th Amendment challenge. For example, during petitioner's motion for new trial, the state trial judge wrongly ruled that petitioner's 6th Amendment claims raised in regards to ineffective assistance of counsel were not properly before the trial court because those claims were deemed post-conviction issues, and prevented the petitioner from raising the challenge in the motion for new trial. See Appendix 3 Tech Rec. Vol. 11 Pg. 12 Line 16-20. The Tennessee Court of Criminal Appeal adopted the trial court's point of view in its 2024 opinion stating, "that claims challenging a conviction on ineffective assistance grounds were not appropriate for motions for new trial, and waived the claims. *Gooch v. State*, No. M2022-01395-CCA-R3-CD. Court Opinion Pg. 9. Specifically, if a defendant is **barred** from presenting an ineffective assistance challenge in the trial court as the trial judge did here, and then **barred** on direct appeal, and the Post Conviction Procedure Act forecloses the petitioner's "**waived**" claims, the Tennessee Appellate Procedure will not have provided any adequate remedy for the petitioner to present his 6th Amendment claims at all.

Accordingly, unless the court find that state defendants have a full and fair opportunity to bring their claims, the Holland decision must be overruled. The Tennessee waiver rule always leads to (fundamental unfairness) to litigants in this scenario because when a reviewing court erroneously or intentionally waive a claim, a post-conviction court does not have authority to change that decision. It follows then that a defendant is automatically **barred** at the outset from post-conviction relief on his claims which deny a defendant an opportunity to show that his conviction was **erroneously** obtained. We are of the opinion that if defendants are denied an opportunity to bring a collateral challenge in the trial court at the outset, either by direct appeal, or post-conviction, then that appellate procedure must surely be held suspect, and insufficient to protect the petitioner's rights from erroneous conviction.

It was to prevent such unconstitutionality that the acts of Congress, and the rules of the Tennessee General Assembly adopted T.C.A. 27-8-101 which provides: "When, in the judgment of the court, there is no other plain, speedy, or **adequate remedy**, a writ of certiorari may be **granted** . The U.S. Supreme Court has power to vacate the judgment of the lower courts, and require such further proceedings to be had as may be just under the circumstances. Title 28 USC 2106. The controversy or resolution will have immediate importance far beyond the particular facts and parties involved as the case relates to ineffective assistance challenges. Accordingly, for the reasons stated herein, we ask the United States Supreme Court to grant this writ of certiorari, vacate the orders of the lower courts, and to reconsider its action in light of the U.S. Supreme Court decision rendered in *Fay v. Noia*, [372 US 402].

"ARGUMENT"

I. When The State Court Judgment Was Shown That Counsel Was Ineffective During All Three Phases of Litigation Including Pre-Trial, Trial Phase, And Sentencing Phase. The Tennessee Courts (Permanently-Barred) The Petitioner From Presenting His 6th Amendment Claim Which Resulted In Structural Error.

"PRE-TRIAL PHASE" (FIRST ATTORNEY)

"PRELIMINARY COUNSEL GEORGE WAGGONER FAILURE TO SUPPRESS ILLEGAL STOP"

In the case in question, the petitioner was represented by three former attorneys who currently retain their positions as members of the Tennessee bar. Attorney George W. Waggoner, 028755; Attorney Seth T. Norman, 030286; and Attorney Nicholas T. McGregor, 030798; { Original Brief For Petitioner Pg. 3}. It is argued that Attorney George Waggoner was the first attorney assigned to represent the petitioner at an preliminary hearing setting. The petitioner note that preliminary counsel, and trial counsel was ineffective during pre-trial for failing to file a motion to suppress evidence derived from the illegal stop of Mr. Gooch's vehicle. As a result of these findings, the petitioner reported these claims to the Tennessee Board of Professional Responsibility. See Complaint Number: "60436c-5" Attorney Name George W. Waggoner III, See Complaint Number 65792c-5 Attorney Name Seth T. Norman. See Complaint Number : 65791 c-5 District Attorney Name Jennifer Charles See Complaint Number: 70130c-5 Attorney Name Nicholas T. McGregor.

To the extent that counsel's failure to present this ground was the result of state action pursuant to T.C.A. 40-30-106 (g)(2), the court shall consider whether counsel was ineffective in failing to file a motion to suppress on this ground. (Quoting United States v. Albert Thomas Wendfeldt, No. 3:11-CR-00094-LRH-VPC, 58 F. Supp. 3D 1124. Dunaway v. New York, 442 U.S. 200, 203, 99 S. Ct. 2248, 60 L. Ed. 2D 824 & n.1 (1979). Preliminary counsel's failure to file a timely suppression motion at the preliminary hearing based on illegal seizure grounds was objectively unreasonable given the clear state of the laws of the Constitution. Under Tennessee law, it is well-established law and fundamental that motions to suppress illegally seized evidence are appropriate at the preliminary hearing. See Tennessee Rules of Criminal Procedure, 5.1(a) which provides as follows: "Rules excluding evidence from consideration on the ground that it was acquired by unlawful means are applicable". (Quoting State v. Golden, 941 S.W. 2d at (*907). In the present case, the court finds that preliminary counsel's lack of legal knowledge on this issue, and preliminary counsel's failure to raise a timely objection based on clearly established Federal law at such an critical stage of the petitioner's proceedings, as determined by the Supreme Court of the United States was objectively unreasonable, which did not satisfy Tenn Sup. Ct. R. 1.1 Competent representation. The failure of preliminary counsel adequately to investigate and failure to file a motion to suppress evidence at the preliminary hearing resulted in prejudice to the petitioner for the reasons set forth herein.

**“A REASONABLE PROBABILITY THAT THE OUTCOME WOULD
HAVE BEEN DIFFERENT IS REQUIRED TO SHOW PREJUDICE
UNDER STRICKLAND”**

In the ordinary Strickland case, the term prejudice was described as “a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. (Quoting Strickland v. Washington, [466 US 694]. Having applied this standard, the question then becomes whether or once the weapons and firearm element of T.C.A. 39-13-401(A)(1) is excluded from the government's proof, can the government further prosecute it's case successfully in compliance with Jackson v. Virginia, 443 U.S. 307, 99 S. CT. 2781, 2786-2792, 61 L. Ed. 2D 560 (1979)? That question is easily answered, No. The constitutional standard applied for all criminal convictions is governed under Jackson v. Virginia, 443 U.S. 307, 99 S. CT. 2781, 2786-2792, 61 L. Ed. 2D 560 (1979) where the government has the **burden of proof** to establish every element of the offenses.

Had preliminary counsel properly filed a motion to suppress evidence obtained from the stop at the preliminary hearing, the bb guns that was allegedly discovered in petitioner's vehicle would have been suppressed which would have excluded the use of the firearm-element as defined in T.C.A. 39-13-402 (A)(1) from the government's proof. Therefore, the trial court would not have had jurisdiction to try the petitioner on either (count 2) nor (count 3) if counsel filed a timely suppression motion at the preliminary hearing . That is, because the government cannot establish proof of the "Aggravated element" found in T.C.A. 39-13-402 (A)(1) if the court had suppressed the weapons. It follows then that an essential element of Aggravated robbery would have been excluded. Generally, the lack of an essential element is enough to establish dismissal of any criminal charges. (Quoting Jackson v. Virginia, {443 US at*314}, the United States Supreme Court stated, “a conviction based upon a record wholly devoid of any relevant evidence of a crucial element of the offense charged is constitutionally infirm.{443 US at *314}.

It follows then that if competent counsel had filed a timely suppression motion on the aforementioned grounds, the government cannot further prosecute it's case successfully in compliance with Jackson v. Virginia, 443 U.S. 307, 99 S. CT. 2781, 2786-2792, 61 L. Ed. 2D 560 (1979) because it cannot establish proof of every element of the offenses. Because the petitioner could not have been tried upon a charge except upon proof of every element, it follows that the petitioner have been **prejudiced** by counsel errors. Accordingly, the petitioner was prejudiced because if a timely suppression motion had been successfully granted at that time, the State would have been forced to either dismiss the case, and the trial court would not have had jurisdiction to try the case. Alternatively, had the State refused to drop the case, or proceeded with prosecution resulting in petitioner's conviction, and the petitioner had timely appealed those findings as of right, a reviewing court would have been compelled at liberty to dismiss the charges for lack of proof, and this court would have affirmed. See Burks v. United States, 437 U.S. 1, 10, 57 L. Ed. 2d 1, 98 S. Ct. 2141 (1978).

**"PRELIMINARY COUNSEL GEORGE WAGGONER FAILURE TO
MOVE FOR DISMISSAL ON DOUBLE JEOPARDY GROUNDS
AT PRELIMINARY HEARING"**

Preliminary counsel also failed to timely raise a double jeopardy claim. As a general rule, under the principles of double jeopardy, an accused is protected from (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. *Commonwealth of Puerto Rico vs. Luis M. Sanchez Valle*, No. 15-108, 579 U.S. 59, 136 S. Ct. 1863, 195 L. Ed. 2Dd 179, 2016 U.S. LEXIS 3773, 84 U.S.L.W. 4376, 26 Fla. L. The court particularly find it troublesome that neither preliminary counsel, nor trial counsel moved to **dismiss** both counts of Aggravated robbery on double jeopardy grounds despite the fact, the two offenses charged are in law and fact the same offense. In addressing that inquiry, this court has held, "to determine whether two offenses are the same, a court must look to the offenses elements. *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932). (Quoting *State v. Christopher Scottie Itzol-Deleon*, No. M2014-02380-SC-R11-CD, {537 S.W.3d at *452}.

If two offenses are greater and lesser included offenses, the government cannot prosecute them successively. (Quoting *Brown v. Ohio*, 432 U.S. At* 169, 97 S. Ct. 2221, 53 L. Ed. 2Dd 187. In the present case, the two Aggravated robbery offenses presented at the preliminary hearing were two greater offenses that arose from the same transaction, and the two statutes were not distinct under *Blockburger's* same element test. In other words, the same evidence is required to sustain both convictions. The government could not prosecute the offenses successfully because either under the same element test, or under the two greater offense analysis, both counts are constitutionally prohibited under the clause as the clause speaks of **barring** successive trials for the **same offense**. *Carter v. McClaughry*, 183 U.S. At *395. Because preliminary counsel in the present case could have argued these elementary principles of law at the preliminary hearing, we find it was objectively unreasonable for preliminary counsel's failure to do so.

We reiterate that a timely double jeopardy objection, had it been raised at the preliminary hearing, would have barred the government (**forever**) from trying the petitioner on either (count 2) or (count 3) in the trial court. See *United States v Dixon*, [509 US at *696] ("Holding where the two offenses for which the defendant is punished or tried cannot survive the "same-elements" test, the double jeopardy bar applies". This means, of course, if a dismissal had been entered at the preliminary hearing on suppression grounds, or double jeopardy grounds, petitioner could not be retried for the same offense. It follows then that the trial court would have lacked both jurisdiction and authority to try the petitioner, or sentence the petitioner on both (count 2) and (count 3) offenses had it not been for preliminary counsel unprofessional errors. Because the petitioner lost the opportunity to benefit from conflict-free counsel at such an critical stage of the proceedings, the prejudice showing has been satisfied. Citing *Bell v. Cone*, 535 U.S. 685, 695-96, (Finding per se prejudice when petitioner is denied counsel at a "critical stage" of the proceedings"). (Quoting *U.S. v. Cronin* {466 U.S. At 659}

("PRE-TRIAL PHASE" (SECOND ATTORNEY AND THIRD ATTORNEY"))

"TRIAL COUNSEL SETH NORMAN, AND TRIAL COUNSEL NICHOLAS MCGREGOR FAILURE TO FILE MOTION TO SUPPRESS UNLAWFUL STOP AND FALSE ARREST"

In this case, trial counsel Seth Norman did not file any motions to suppress on any grounds. Therefore, prejudice should automatically be presumed. See **Kimmelman v. Morrison**, No. 84-1661, [477 US at *374] **The United States Supreme Court Held: "While defense counsel's failure to make a timely suppression motion is the primary manifestation of incompetence and source of prejudice advanced by respondent, the two claims are nonetheless distinct, both in nature and in the requisite elements of proof". id. [477 US at *374].** As the United States Supreme Court contemplated in **Kimmelman v. Morrison**: "To establish a successful claim of ineffective assistance of counsel based on counsel's failure to file a motion to suppress evidence on Fourth Amendment grounds, the Petitioner must prove: "(1) a suppression motion would have been meritorious; (2) counsel's failure to file such motion was objectively unreasonable; and (3) but for counsel's objectively unreasonable omission, there is a reasonable probability that the verdict would have been different absent the excludable evidence." id. 477 U.S. At *375.

Although trial counsel Nicholas McGregor filed a motion to suppress challenging the validity of an search warrant obtained from petitioner's cell phone on Fourth Amendment grounds, trial counsel McGregor did not include any grounds to suppress evidence derived from petitioner's false arrest and illegal stop of Mr. Gooch's vehicle. See Vol. 3 Suppression Hearing Transcript. Accordingly, we properly conclude that these claims collaterally attack the **pre-trial** phase of the proceedings. Trial counsel's representation for failure to suppress the stop in this instance was deficient, and objectively unreasonable which prejudiced the petitioner's defense for the reasons previously explained herein. **U.S. v. Wendfeldt**, No. 3: 11-CR-00094-LRH-VPC, 58 F. Supp. 3D 1124. Because the weapons and show up identifications obtained from the stop were never challenged on fourth Amendment grounds, the prosecution was able to present a case which relied heavily on unlawful identification evidence. In all likelihood, the in-court identifications would have been suppressed had defense counsel not lost the opportunity to make such a motion. Thus, the deficient performance of defense counsel prejudiced Petitioner, because had the weapons obtained from petitioner's vehicle properly been suppressed as the fruit of an unlawful seizure, the firearm and weapon element of T.C.A. 39-13-401(A)(1) would have been excluded from the government's proof. This means, the prosecutions burden under **Jackson v. Virginia**, 443 U.S. 307, of proving every element would have failed as insufficient on it's face entitling the petitioner to automatic relief.

**"SECOND ATTORNEY SETH NORMAN'S FAILURE TO FILE
SUPPRESSION MOTION PREJUDICED THE PETITIONER'S
DEFENSE"**

It follows that the petitioner was **prejudiced** by his second attorney Seth Norman's failure to file any suppression motion because once the prosecution's burden had failed as insufficient after the result of a timely suppression motion, double jeopardy would have mandated dismissal on those offenses. It is elementary to our law that when a conviction is reversed for insufficient evidence, or when a prosecution's lack of proof falls on insufficiency grounds, the guarantee against double jeopardy mandates dismissal. See *Burks v. United States*, 437 U.S. 1, 10, 57 L. Ed. 2d 1, 98 S. Ct. 2141 (1978). During **pre-trial**, neither of the petitioner's former attorneys filed a motion to suppress evidence derived from petitioner's arrest without probable cause. Based on these facts, such inaction establishes a pattern of attorneys' failure to adequately investigate, and attorneys' failure to conduct pre-trial discovery into the facts of petitioner's case.

**"THIRD ATTORNEY FAILURE TO FILE SUPPRESSION MOTION OF STOP
RESULTED IN FAILURE TO SUBJECT PROSECUTION'S CASE TO
ADVERSARIAL TESTING"**

The petitioner's third attorney Nicholas McGregor had been completely unaware of pre-trial facts that could have or should have been reasonably discovered during pre-trial. Although trial counsel McGregor later raised an objection to petitioner's illegal seizure, this (late objection) came only after trial evidence was produced by the government during petitioner's criminal trial. Specifically, trial counsel McGregor was assigned to the case in 2020, and waited two years later during the **trial-phase** in 2022 to lodge an objection to the validity of Mr. Gooch's illegal seizure. See Vol. 9 Trial Transcript Pg. 49 See Line 20. Attorney McGregor Statements: "I did want to highlight the testimony that came out (at trial) about the traffic stop, and all of the testimony that did come out. See Line 9 "One of the things that we did here was about this Mustang and that it was not pulled over for a traffic stop". "So I would ask that the Court end this right now for him and acquit him of those charges".

Trial counsel late objections made at trial was not sound strategy, and deemed unreasonable. Specifically, counsel failure to "preserve" errors that he initially objected to could only be interpreted as negligent or intentional misconduct which **deprived** the petitioner of an meritorious defense. As a result, a pattern of attorney errors demonstrated that the government's proof was not subjected to adversarial testing. In this scenario, prejudice should be presumed. See *United States v. Cronin*, 466 U.S. 648, 658, 104 S. Ct. 2039, (1984) the U.S. Supreme Court described a variety of situations in which prejudice should be presumed which included (1)"the complete denial of counsel"; and (2) when "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing" *Id.* at 659-60.

"TRIAL PHASE/GUILT PHASE" THIRD ATTORNEY"

**"TRIAL COUNSEL NICHOLAS T. MCGREGOR FAILURE TO
CHALLENGE EVERY ELEMENT OF CONVICTION
DURING JUDGMENT OF ACQUITTAL MOTION"**

The petitioner argue that trial counsel Nicholas McGregor was ineffective for failing to challenge every element of his conviction during his judgment of acquittal motion, and by failing to challenge his conviction under a specific basis of law applied by the Tennessee Supreme Court to all robbery offenses in *State v. Owens*, 20 S.W.3d 634, 641 (Tenn. 2000) and *State v. Swift*, 308 S.W. 3D 827, 829 (Tenn. 2010). Accordingly, we properly conclude that these claims collaterally attack the **trial-phase** of the proceedings. During the judgment of acquittal motion, trial counsel's defense theory at trial focused solely on the Petitioner's identity and the especially aggravated kidnapping charge. See Appendix 11 Vol. 9 Pg. 47 Line 7.

Specifically, trial counsel made **vague** conclusory assertions during the acquittal motion claiming that the evidence was insufficient under identity basis. See Vol. 9 Trial Transcript Dismissal Motion Pg. 48 Line 17. Vol. 9 Trial Transcript Dismissal Motion Pg. 49 Line 17. However, this standard does not challenge every element of the offenses. Instead, it only challenges one aspect of the prosecution's case which is the identity of the perpetrator. Although it is well established that the identity of the perpetrator is an essential element of any crime. *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006), this theory in itself proves only one element of the government's case. See *State v. Thompson*, 519 S.W.2d at (**793) (Tenn. 1975)) "Holding identity of the accused is only one element necessary to be proved". The Tennessee Court of Criminal Appeals has stated, "[the issue of whether the evidence is sufficient to establish a defendant's identity as the perpetrator is distinct from whether trial counsel provided deficient performance by failing to challenge a conviction on a specific basis. 11 William Boatwright, 2018 Tenn. Crim. App. LEXIS 397, 2018 WL 2324369, at *8.

In the present case, however, nothing prevented trial counsel from challenging every element of the convicting offenses which is the national standard applied under *Jackson v. Virginia* 443 U.S. 307. See Section T.C.A. 39-13-402) which provides as follows: "Aggravated Robbery is Accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon; or (2) Where the victim suffers serious bodily injury. These are the **elements** of the statute the government was required to prove before the State Supreme Court adopted *Owens* and *Swift* decisions. *State v. Owens*, 20 S.W.3d 634. Trial counsel did not mention these elements in the acquittal motion. Instead, counsel only raised an issue with the evidence being insufficient under identity of the perpetrator. Accordingly, for this reason, trial counsel's representation was deficient. Counsel had a duty to challenge every element of the convicting offenses. This court has determined that the serious bodily injury element of (Count 3) is insufficient for any trier of fact to find that element proven beyond a reasonable doubt. In conducting this analysis, the court review the eyewitnesses account of the events in the light most favorable to the prosecution.

Eyewitness Ms. Agosto testified that none of the suspects grabbed her or touched her in any way during the robbery. See Vol.7 Trial Transcript Page 93 Line 5-9. Having properly analyzed Ms. Agosto's testimony concluding that none of the suspects grabbed her or touched her during the robbery, no rational trier of fact could have found the (serious bodily injury) element as defined in T.C.A. 39-13-402(A)(2) proven beyond a reasonable doubt. See Vol.7 Trial Transcript Page 93 Line 5-9 Witness Natalie Agosto Cross-Exam By Attorney Jason Chaffin Q. Nobody put any hands on you? Ms. Agosto: A. "Right". Q. Nobody touched you at any point, right? Ms. Agosto "Right". Based on Ms. Agosto's testimony, the trial evidence in (count 3) does not support a determination that the state's proof met even the basic elements defined in T.C.A. 39-11-106 (A)(3). In Tennessee, "bodily injury -> includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty". A bodily injury is serious if it involves, " [a] substantial risk of death. Because the second suspect did not physically touch the victim under (count 3), no rational trier of fact could have found that the serious bodily injury element was proven beyond a reasonable doubt.

"IMPROPER DENIAL OF JUDGMENT OF ACQUITTAL MOTION"

With respect to the firearm and weapon element of T.C.A. 39-13-401(A)(1), this court has determined that if the trial court had properly ruled in the acquittal motion finding that any evidence obtained from the stop was inadmissible, the bb guns obtained from the stop should have been excluded from the government's proof. It follows that if the trial court had properly excluded the firearm element, both the weapon element and the serious bodily injury element of T.C.A. 39-13-401 would have been insufficient under Federal law, Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 2786-2792, 61 L. Ed. 2D 560 (1979) for any trier of fact to find those elements proven beyond a reasonable doubt. It follows then that once the firearm element is excluded, the government also cannot prove an Aggravated robbery case under State law which require the prosecution to prove the use or display of a weapon preceding, or occurring "contemporaneously" with a taking of property as required under State v. Owens, 20 S.W.3d 634, 641 (Tenn. 2000), and State v. Swift, 308 S.W.3d 827, 829 (Tenn. 2010). Accordingly, a combination of both ineffective assistance, and the trial court abuse of discretion resulted in an improper denial of the judgment of acquittal motion.

"SENTENCE PHASE" (THIRD ATTORNEY)

"TRIAL COUNSEL NICHOLAS T. MCGREGOR FAILURE TO MOVE FOR DISMISSAL ON DOUBLE JEOPARDY GROUNDS"

Last, the petitioner alleges that his two Aggravated robbery convictions violates the principle of the Double Jeopardy Clause in violation of Article 1 Section 10 of the Tennessee Constitution. Liberally construed, it appears that the petitioner alleges that trial counsel was ineffective at sentencing phase for failing to raise an double jeopardy claim at his sentencing hearing as trial counsel did not raise the same element test applied by Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932). Accordingly, we properly conclude that these claims collaterally attack the **sentencing phase** of the proceedings.

II. *When A Defendant Is Punished For Two Convictions Arising From The Same Criminal Offense, The Standard Is Inconsistent With Congress Congressional Intent?*

"MULTIPLE CONVICTIONS FOR AGGRAVATED ROBBERY"

During a sentence hearing, the trial court increased the petitioner's punishment to the maximum range for his sentence on the basis of two enhancement factors. See Vol. 10 Sentence Hearing Transcript Pg. 25 Line 1-2. Because the petitioner's sentence violated the principles of Double Jeopardy at the outset, we note that the petitioner's second conviction for the same offense is an impermissible punishment because it is not authorized under the congressional intent. Congress did not intend for a defendant to be "subjected" to multiple charges for the same offense during trial, and it was objectively unreasonable for trial counsel to not raise the issue during the sentencing phase. See *Ball v. United States*, 470 US 856, 861, 864-865, 84 L Ed 2d 740, 105 S Ct. 1668 (1985) The United States Supreme Court stated: **"An accused may not suffer two convictions or sentences on an indictment for a single offense. Chief Justice Burger noted: 'The remedy of ordering one of the sentences to be served concurrently with the other cannot be squared with Congress' intention. (470 U.S. At 865). One of the convictions, as well as its concurrent sentence is unauthorized punishment for a separate offense. {470 U.S. At 864}. The second conviction, even if it results in no greater sentence, is an impermissible punishment because Congress could not have intended to allow two convictions for the same conduct, even if sentenced under only one". *Ball v. United States*, {470 U.S. At "861}.**

Having concluded that Congress did not intend for a defendant to be subjected to multiple punishments for the same offense, the United States Supreme Court stated, the only remedy consistent with the congressional intent is for the district court to **VACATE** one of the underlying convictions. (Quoting *Ball v. United States*, (470 U.S. At *864). In the present case, however, because the petitioner's separate convictions imposed for Aggravated robbery arose from the same transaction, same criminal offense, and contain the same elements, the Tennessee Court of Criminal Appeal adjudication of petitioner's dual concurrent sentences for the same offense contravene the U.S. Supreme Court decisions rendered in *Ball v. United States*, 470 US 864-865 and is contrary to *United States v. White*, {515 U.S. At *397} ("Holding courts may not impose more than one punishment for the same offense"). Accordingly, the government's proof was not subjected to adversarial testing on double jeopardy grounds. The petitioner has put on proof establishing evidence of a (pattern) as neither attorney timely objected on the aforementioned grounds. We hold that both the petitioner's judgment and sentences are **VOID**. Under Tennessee law, [a] void judgment is one which shows upon the face of the record that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired. *Archer, v. State* 851 S. W.2d at * 164 (citing *Lynch v. State*, 166 S.W.2d at 398-99). Accordingly, as for the reasons discussed below, the petitioner's sentence of imprisonment is illegal, and he is entitled to be discharged from the Tennessee Department of Corrections effective immediately. (Quoting *Fay v. Noia*, [372 US 402].

**“STRUCTURAL ERRORS FOUND IN TENNESSEE APPELLATE
PROCEDURE AND STATE COURT JUDGMENT”**

The United States Supreme Court recognized, that some errors should not be deemed harmless beyond a reasonable doubt. These errors came to be known as structural errors. In *Weaver v. Massachusetts*, No. 16-240, 137 S. Ct. 1899, 198 L. Ed. 2d 420, 2017 U.S. LEXIS 4043, the U.S. Supreme Court described three broad rationales for what the Court deemed structural errors stating: “First, an error has been deemed structural in some instances if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest. Second, an error has been deemed structural if the effects of the error are simply too hard to measure. For example, when a defendant is denied the right to select his or her own attorney, the precise “effect of the violation cannot be ascertained.” *Ibid*. Third, an error has been deemed structural if the error always results in fundamental unfairness. (Quoting *Weaver v. Massachusetts*, {582 U.S. At *295} {198 L. Ed. 2D 431}). Moreover, an error may count as structural even if the error does not lead to fundamental unfairness in every case. (Quoting *United States v. Gonzalez-Lopez*, *supra*, at 149, n. 4, 126 S. Ct. 2557, 165 L. Ed. 2d 409. In the present case, the petitioner asserts that structural error occurred based on two of the reasons listed in *Weaver*'s criteria.

“DENIAL OF IMPARTIAL JUDGE”

In addressing the petitioner's first structural error claim, and for the reasons stated herein, the petitioner asserts that the panel's partiality can reasonably be questioned because before the petitioner's case came on direct appeal, Appellate Judge Tom GreenHoltz for the Tennessee Court of Criminal Appeal recently ruled in *Bernard Woodard v. State*, No. M2022-00162-CCA-R3-PC, that a claim based on ineffective assistance of counsel may be brought even when the issue has been waived or previously determined". The petitioner cited the 2022 *Bernard Woodard* opinion on page 5 of his appellate brief. Brief For Petitioner. Despite the clear state of law, Appellate Judge Tom GreenHoltz who wrote the *Bernard Woodard* opinion also wrote the opinion in the present case, stating that Mr. Gooch claims based on ineffective assistance are waived. We now hold based on the circumstances presented, a person of ordinary prudence in the panel's position knowing all the facts known to the judges, would find a reasonable basis for questioning the panel's impartiality.

The State of the law in Tennessee was sufficiently clear to put the panel members on notice that the petitioner's 6th Amendment claims were not waived. Even after Judge Tom GreenHoltz was put on notice about his recent prior opinion in the petitioner's reply brief, the judge ignored this fact of his new decision, and relied upon old case law to hold that the petitioner's claims were waived. In terms of arbitrary, the proof showed that after the panel ruled on the petitioner's appeal, the same Tennessee panel went on to rely upon *Bernard Woodard*'s decision in another 2024 case for the proposition that a trial court commits error by waiving defendants ineffective assistance claims. See *State v. Donte R. Swanier*, No. M2023-00233-CCA-R3-PC, 2024 Tenn. Crim. App. LEXIS 402.

Accordingly, after the petitioner Mr. Gooch's conviction was ruled upon, the Tennessee panel elaborated in a separate case that all 6th Amendment claims related to ineffective assistance were not waived. See *State v. Donte R. Swanier*, No. M2023-00233-CCA-R3-PC, 2024 Tenn. Crim. App. LEXIS 402 The Tennessee Court of Criminal Appeals Held: **"We agree with the Petitioner that the post-conviction court erred in determining that his issues based on ineffective assistance was waived pursuant to Tennessee Code Annotated section 40-30-106(g). Had the Petitioner asserted as a stand-alone claim that the placement and monitoring of the GPS tracking device was unconstitutional, we agree that the claim would have been waived due to the Petitioner's failure to raise it during the trial proceedings. However, the Petitioner asserts that trial counsel was ineffective in failing to seek to suppress evidence"**.

The Swanier's decision just released in September of 2024 relied upon Bernard Woodard's decision written by Judge Tom Greenholtz's in 2022. In the present case, Mr. Gooch's opinion was issued in June of 2024. The record or timeline reflect that the 2022 decision rendered in Woodard, and the 2024 decision rendered in Swanier right after the petitioner's appeal was ruled on gives evidence of judicial overreaching so egregious that it may be said to unfairly shock the conscience. Both constructional and actual knowledge existed on it's face that the panel members had no reasonable belief to suspect that the petitioner's claims were waived. As a general rule, courts may not use their supervisory powers to circumvent the obligation to assess errors for their prejudicial effect. (Quoting *Bank of Nova Scotia v. U.S.* {487 U.S. At *254} (1988). It follows that the panel acted deliberately without legal justification in waiving the petitioner's claims. Thus, section [18 USCS 242] make it a crime for a state official to act "willfully" and under color of law to deprive a person of rights protected by the Constitution.

Based on the objective standpoint from a reasonable neutral judge, we hold that the panel did not appear to be unbiased, and acted arbitrarily by either deliberately or willfully waiving the petitioner's claims resulting in structural error. See *Tumey v. Ohio*, No. 527. [273 U.S. At *523]. In addressing the petitioner's second structural error claim, the petitioner asserts that his one complete round of the Tennessee established appellate review process was the result of arbitrary rulings, and the panel members "deliberate acts" of waiving his rights could not have been designed to protect him from erroneous conviction but instead protect some other interest. See Murray, *A Contextual Approach to Harmless Error Review*, 130 Harv. L. Rev. 1791, 1813, 1822 (2017) (noting that the "eclectic normative objectives of criminal procedure" go beyond protecting a defendant from erroneous conviction and include ensuring "that the administration of justice should reasonably appear to be disinterested" (quoting *Liljeberg v. Health Services Acquisition Corp.*, 486 U. S. 847, 869-870, 108 S. Ct. 2194, 100 L. Ed. 2D 855 (1988))). In the present case, the petitioner asserts that he **notified** the Supreme Court of Tennessee that the presiding trial judge in his case committed the same reversible error that the State Supreme Court previously condemned. For instance, in *State v. Gonzalo Moran Garcia*, No. M2000-01760-SC-R11-CD, 123 S.W.3d 335; 2003 Tenn. LEXIS 856 Mr. Garcia was not seized pursuant to any violations of the law. Believing an error occurred, Garcia challenged the validity of his seizure.

The trial court judge Steve Dozier held that Garcia's seizure was valid, and upheld Garcia's conviction. State v. Gonzalo Moran Garcia, No. M2000-01760-SC-R11-CD. The Tennessee Supreme Court reversed the conviction holding that the seizure was illegal, and violated the U.S. Constitution. The Supreme Court remanded the case back to Judge Dozier for proceedings not inconsistent with its opinion. Compare Garcia to the present case, the petitioner Mr. Gooch was also not seized pursuant to any violations of the law just like Garcia. Again, the same trial judge Steve Dozier from Garcia's case held that the seizure was valid in the present case, and upheld Mr. Gooch's conviction. Although the petitioner notified the Tennessee Court of Criminal Appeals, and the Supreme Court of Tennessee that the same judge committed the same error, the intermediate court concluded that the petitioner was not entitled to any form of relief, and the State Supreme Court denied review.

Turning to structural error analysis, we now hold primarily based on the petitioner's contentions presented to the Tennessee reviewing courts, the court rulings were arbitrary, and that an impartial panel would have or should have known that the conviction was erroneously obtained, and the State Supreme Court failure to act could not have been perceived as protecting the petitioner from erroneous conviction. For example, with respect to innocence or guilt, the United States Supreme Court held that a defendant is required by law on appeal to present a case where an officer acting under similar circumstances was held to have violated the State and Federal Constitution. Citing City of Escondido v. Emmons, No. 17-1660, 139 S. Ct. 500, 503, 202 L. Ed. 2d 455 (2019). In Escondido v. Emmons, No. 17-1660, 139 S. Ct. 500, 503, 202 L. Ed. 2d 455 (2019). The U.S. Supreme Court held: **"The Court of Appeals made no effort to explain how previous case law prevented officer Craig's actions in this case. That is a problem under our precedents. We have stressed the need to identify a case where an officer acting under similar circumstances was held to have violated the Fourth Amendment"**. Comparing Emmons to the present case, the petitioner met the Emmons requirement by simply notifying the state supreme court that an officer or state judge acting under similar circumstances was held to have violated the Constitution.

This standard was sufficiently clear to put the State Supreme Court on notice of an reversible error in the judgment. In other words, once the petitioner notified the State Supreme Court of the fact that the present case involved the same trial judge of which a panel of its court previously "overturned", the Tennessee Supreme Court would have "clearly" been on notice of an repeated reversible error in the judgment. The State Supreme Court deliberately ignored this fact that it previously vacated the trial judge decision in State v. Garcia, No. M2000-01760-SC-R11-CD, under the same facts, the petitioner raise in his case. Therefore, the state court of last resort failure to intervene to correct the error, when it had opportunity to do so, could not have been perceived as protecting the petitioner from erroneous conviction but instead protect some other interest. For instance, Tennessee courts was put on notice that the petitioner sought to sue the State of Tennessee for civil right violations. See Gooch v. Charles, No. 3:22-cv-00076. Under Tennessee Constitution, defendants have a right to sue the state for violations of constitutional rights. Article 1 Section 17 provides: "Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct".

Once the petitioner's case transferred to the State Supreme Court, the state justices would have likely been on notice of the petitioner's attempts to bring a suit against the State. A reasonable state official would have known that refusing to rule in the petitioner's favor because he "sued" the city would be direct retaliatory action taken by the courts that further interest in the cause or controversy on behalf of the state.

III. Whether Tennessee State Law Automatically or Unconstitutionally Forfeits An Accused Rights To Be Protected From Double Jeopardy? (Issue Of First Impression)

Under Tennessee Law, an accused rights to be protected from double jeopardy violations are automatically forfeited by the Tennessee Appeal process. In other words, this is a case where a defendant have to give up one constitutional right just to secure an appeal which shall now be deemed questionable. A long standing practice in the State of Tennessee affords defendants no option nor protection to be protected from double jeopardy violations. For example, once an accused is convicted by a jury in Tennessee, the only way a defendant can preserve or appeal issues to the Appellate Courts is by filing a motion for new trial. See *Fahey v. Eldrige*, No. M1999-00500-SC-R11-CV, {46 S.W. 3d At *142}. The Tennessee Supreme Court stated: It has long been the rule in this state that in order to preserve errors for appeal, the appellant must first bring the alleged errors to the attention of the trial court in a motion for a new trial". Such standard have been adopted as the State Appellate Process counting back since 1905. See *Memphis Street Railroad Company v. Johnson*, 114 Tenn. 632, 88 S.W. 169 (1905).

In *Memphis St. Rd. Co. v. Johnson*, the Tennessee Supreme Court described the core history and methodology behind motions for new trials. "The Supreme Court of Tennessee stated: "To secure a review in the appellate court of errors committed at the trial, the complaining party must object to the errors and irregularities at the time when the rulings of the court thereon are made, and must call the attention of the trial court to such rulings by assigning them as errors and as grounds for a new trial; Otherwise such errors will be deemed waived. *id.* *Memphis St.* {88 S.W. At "170} {114 Tenn. 639} Unless a motion for a new trial has been presented, and considered by the lower court, and its ruling preserved, the errors assigned in the motion will not be reviewed by the appellate court". *id.* {114 Tenn. 638}. **Mr. Justice Shields further wrote: "A motion for a new trial is an application made in a trial court for a retrial of the issue or issues of fact.**

However, in the present case, this long standing process can no longer be sustainable and must now be abolished. At the outer reaches of our double jeopardy jurisprudence, the U.S. Supreme Court has never sought to regulate the retrial of issues or evidence in the name of the Double Jeopardy Clause which "protects" an accused against a second prosecution for the same offense after conviction. *Brown v. Ohio*, *supra*, at *165, 97 S Ct. 2221, It has long been recognized by the U.S. Supreme Court that the mere filing of a motion for new trial qualifies as the **retrial** of the same offense. See *U.S. v. Dinitz*, 424 U.S 600, 96 S. Ct. 1075, 47 L. Ed. 2D 267 (1976), the U.S. Supreme Court held that a defendant's mistrial motion implicitly invited a second trial, and was enough to foreclose any double jeopardy complaint about it.

In reaching this holding, the court explained, none of the “prosecutorial or judicial overreaching” forbidden by the Constitution can be found when a second trial follows thanks to the defendant's motion. *Id.* At 607, 96 S. Ct. 1075, 47 L. Ed. 2D 267. See *United States v. Scott*, 437 U.S. 82, 98 S. Ct. 2187, 57 L. Ed 2d 65 (1978), the U.S. Supreme Court likewise held that a defendant's motion effectively invited a retrial of the same offense, and “the Double Jeopardy Clause, which guards against Government oppression, does not relieve a defendant from the consequences of [a] “voluntary choice” like that. *Id.*, at 96, 99, 98 S. Ct. 2187, 57 L. Ed. 2D 65. The United States Supreme Court decisions rendered in *Dinitz*, and *Scott* explains or provide guidance for why the motion for new trial rule across the world shall be abolished, repealed, and promptly overruled on it's face. The problem here is that the Appeal Courts instruct criminal defendants that they must seek retrial of the same offense by filing a motion for new trial if they wish to seek an direct appeal. If a defendant doesn't appeal, any issues entitling him to relief is **waived**. If he does appeal, he has also **waived** his double jeopardy rights. In both confronted situations, the defendant has waived a right to relief.

By this procedure, criminal defendants are forced to give up one constitutional right just to secure an appeal. Defendants should be able to pursue an appeal without having to risk waiving their double jeopardy rights which “protects” an accused from the same offense after conviction. If an accused wishes to preserve their double jeopardy rights, and does not wish to seek retrial, he or she has no way to preserve that right in the State of Tennessee. Is this procedure fair? Let's use a Hypothetical scenario. If a defendant preserved his double jeopardy rights during **pre-trial**, and **trial phase**, and a trial court erroneously denied him relief on his claim, and a defendant seeks to reverse the trial court decision, how can he ever get relief that he is entitled to if he appeal the judge's ruling? See {*Burke v. U.S*, 437 U.S. At *6} (“Holding where the accused successfully seeks review of a conviction, there is no double jeopardy upon a new trial”). Although one previously preserved his rights, is it fair that he should now be barred from relief, and his claim unpreserved because he pursued an appeal? Moreover, the government can now argue that the petitioner is barred from double jeopardy relief under *Dinitz*, *Scott*, and *Currier* decisions because he filed a motion for new trial. In the present case, that was the case here. The petitioner's motion for new trial was filed by trial counsel to secure the petitioners rights which is the only way to seek relief in Tennessee. Although the petitioner Mr. Gooch did not consent to the motion for new trial, the primary disadvantage of this procedure is startling.

What benefit does this procedure serve, if the clause of Double Jeopardy **protects** an accused against a second conviction for the same offense after conviction, yet every time a defendant wishes to seek an appeal, the government can always argue that relief is barred because he filed a motion for new trial of the same offense. This rule would provide no protection for an accused double jeopardy rights, nor would it provide protection from the same offense when the courts encourages defendants to seek retrial of the same offense. Accordingly, we do not see how mandating this rule upon defendants “protects” an accused from the same offense after conviction, then once an appeal is commenced, the court has the option to **bar** the defendant from double jeopardy relief at the same time it encourages retrial.

Furthermore, the motion for new trial standard allows the government a second attempt or second bite at the apple to convict, and to present new evidence if the motion is granted. Contrary to the Double Jeopardy Clause which reflects the principle that "the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense. See *Green v. United States*, 355 U.S. 184, 187-188, This issue is of national importance. Tennessee is not the only state to adopt the rule. There are 50 states in the United States of America in which many defendant's will be tricked out of their rights if the motion for new trial rule is allowed to stand. Regardless of whether the defendant filed a motion for new trial or consented to the motion, it is the procedural mechanism of the process that violates the Tennessee, and United States Constitution because it put or subjects defendants to retrial of the same offense **without-notice** to the accused that his double jeopardy rights are waived. Therefore, relief is not barred here. This long standing precedent must now be called into question as suspect, and overruled.

"CONCLUSION"

We carefully reviewed the petitioner's claims during all three phases in light of *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2D 674 (1984). We thoroughly evaluated the petitioner's claims during the pre-trial phase, trial phase, and sentencing phase. The undersigned is of the opinion that the petitioner was denied the benefit of conflict-free counsel during all three phases. As a result, these claims were not subject to plain-error, nor harmless error analysis as the lower courts implied. See *United States v. Cronin*, {466 U.S. At *659}, (1984). Accordingly, absent any findings of prosecutorial misconduct, the petitioner's judgment and sentences are **VOID**, and his detention is not authorized by the laws or treaties of the United States of America. Under the Fourth Amendment, a pretrial detention counts as an unreasonable seizure, and so is illegal, unless it is based on probable cause. (Quoting *Jascha Chiaverini v. City of Napoleon, Ohio*, No. 23-50, {219 L. Ed. 2d 264}, 144 S. Ct. 1745, 2024 U.S. LEXIS 2710;

Here, in the present case, Tennessee officers lacked probable cause to arrest the petitioner. In the Fourth Amendment context, the wrongful initiation of charges without probable cause' is an unreasonable seizure that violates the U.S. Constitution. See *Manuel v. City of Joliet*, 580 U.S., at 364-369, 137 S. Ct. 911, 197 L. Ed. 2d 312. The fact that legal process has gone forward resulting in petitioner's conviction has done nothing to satisfy the Fourth Amendment's probable-cause requirement. (Quoting *Manuel v. City of Joliet*, {580 U.S. At *367}. See *Chiaverini v. City of Napoleon*, {602 U.S. At 557} The United States Supreme Court Held: "If an invalid charge causes a detention to start or continue, then the Fourth Amendment is violated". Accordingly, the State is liable for the **wrongful-use** of judicial process, and the petitioner is entitled to immediate release from the Tennessee Department of Corrections. See *Fay v. Noia*, [372 US 402] The U.S. Supreme Court stated: "It's root principle is that in a civilized society, the government must always be accountable to the judiciary for a man's imprisonment: "If the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release". *id.* {372 U.S. At *402}.

"CERTIFICATE OF COMPLIANCE"

In accordance with Supreme Court Rule 33.1 (h) the total number of words in this brief exclusive of the Title /Cover page, Table of Contents, Table of Authorities, and this Certificate of Compliance is 13, 528. This word count is based upon the word processing system used to prepare this brief. The writ of certiorari applied to this court contain only 32 pages which complies with standards of Rule 14. If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, under penalty of perjury that the foregoing is true and correct. Executed on 7/28/25

"FOOTNOTE SECTION"

(1.) With respect to the Constitution, the petitioner made multiple attempts to present prosecutorial misconduct claims based on ineffective assistance to the State Supreme Court on direct appeal, and presented the claims to the United States Supreme Court in a motion to stay the judgment. The petitioner further presented prosecutorial misconduct claims in a writ of Mandamus, in which the courts denied review. For purposes of the writ of certiorari, the claims based on prosecutorial misconduct need not be resolved here because absent any findings of such claims, the judgment is void and subject to dismissal on it's face.

(2.) This case involve findings of legal malpractice by previous attorneys handling the petitioner's case. The action of the State Supreme Court closing the petitioner's case has effectively ended the prosecution in this matter. The court permanently **barred** the petitioner from presenting his 6 Amendment claims, and closed the entire case leaving the petitioner with no other plain, speedy, or adequate remedy for vindicating an ineffective assistance challenge in State Court. This is tantamount to the denial to the petitioner of it's day in court, and results in the loss of an constitutional right not subject to recapture. In such a case, the petitioner may properly seek review by means of the common law writ of certiorari. See T.C.A. 27-8-101. See *Jennings v. Illinois*, {342 U.S. At *111}, The U.S. Supreme Court Held: **"On remand, the Illinois Supreme Court must decide whether the Post-Conviction Act does not provide an appropriate State remedy in this case. If it does not, petitioner may proceed in Federal court"**. In the present case, because the judgment of acquittal shall be reversed, we hold that remand to the trial court is unwarranted. See *Burke v. United States*, {437 U.S. At *17} ("Holding a person does not waive his right to a judgment of acquittal by moving for a new trial"). The writ of certiorari shall be granted limited to the following questions:

(1) When counsel is ineffective during all three phases, and a defendant is barred from presenting the claim on appeal, does that appellate procedure result in structural error?

(2) Whether the petitioner's two convictions for the same offense is consistent with Congress congressional intent? And

(3) Whether a State Supreme Court unconstitutionally forfeits an accused rights to be protected from double jeopardy? As a general rule, it is common for the United States Supreme Court to answer (three) questions in a writ of certiorari. See *Ankenbrandt v. Richards*, [No. 91-367], {504 U.S. At *693} ("Holding we will address each of these issues in turn").

"CERTIFICATE OF SERVICE"

I, Mr. Tony Gooch, hereby certify that on the 28th day of July 2025, a true and exact copy of the foregoing has been sent postage prepaid first class mail, in order to be sent to the following individuals:

United States Supreme Court Clerk's Office
1 First NE,
Washington, D.C. 20543

Tennessee Department of Corrections
320 6th Ave. North
Nashville, Tn 37423-0465

Tennessee Attorney General Ronald L.
Coleman (035971)
315 Deaderick St. 18th Floor
Nashville, Tn 20207