

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES WARRELL BROWN

- PETITIONER

v.

FELIX TAYLOR ET. AL.

- RESPONDANT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS, FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JAMES WARRELL BROWN
527 COMMERCIAL DRIVE
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QUESTIONS RAISED

1. Did the Lower Federal Courts err in upholding State Court's violations of Petitioner's 4th, 5th, 6th and 14th Amendment Rights Based Upon Brady violations where the State withheld key impeachment evidence, returned for perjury?

2. Did the Lower Federal Courts err in upholding State Court's violations of Petitioner's 4th, 5th and 14th Amendment Rights Based Upon Prosecution's known and allowed use of REDUCED TESTIMONY; OFFICIAL MISCONDUCT; TAMPERING, REMOVAL, ALIBI and MISMANAGEMENT?

3. Did the Lower Federal Courts err in upholding State Court's violations of Petitioner's 4th, 5th and 14th Amendment Rights Based Upon OBTAINING AND UTILIZING A COERCED STATEMENT TAKEN WHILE PETITIONER WAS UNDER ARREST WHILE MIRANDA RIGHTS WERE WITHHELD?

4. Did the Lower Federal Courts err in upholding State Court's violations of Petitioner's 4th, 5th and 14th Amendment Rights Based Upon COERCION AND UTILIZING A FALSIFIED STATEMENT NOT GIVEN BY NOR AUTHENTICATED BY PETITIONER?

5. Did the Lower Federal Courts err in upholding State Court's violations of Petitioner's 4th, 5th and 14th Amendment Rights Based Upon CONVICTION AND SENTENCING PETITIONER IN THESE INDICTMENT CHARGES FAILING TO INCLUDE ALL CORRECT ESSENTIAL ELEMENTS, REVENGING THE CHARGES DEFECTIVE?

6. DID THE LOWER FEDERAL COURTS ERR IN UPHOLDING STATE COURT'S VIOLATIONS OF PETITIONER'S 4TH, 5TH AND 14TH AMENDMENT RIGHTS BASED UPON CONVICTION AND SENTENCING PETITIONER IN FOUR INDICTMENT CHARGES WITHOUT EVIDENCE TO PROVE VIOLATION OF ALL ESSENTIAL ELEMENTS TO THE CHARGED OFFENSES?

7. DID THE LOWER FEDERAL COURTS ERR IN UPHOLDING STATE COURT'S VIOLATIONS OF PETITIONER'S 4TH, 5TH AND 14TH AMENDMENT RIGHTS BASED UPON IMPROPER SEARCH AND SEIZURE; AND USE OF EVIDENCE NOT LISTED IN WARRANT NOR PROBABLE CAUSE?

8. DID THE LOWER FEDERAL COURTS ERR IN UPHOLDING STATE COURT'S VIOLATIONS OF PETITIONER'S 5TH, 6TH, 8TH AND 14TH AMENDMENT RIGHTS BASED UPON BIAS AND PREJUDICE OF TRIAL JUDGE WHOM PUBLICALLY EXPRESSED HIS OPINION IN OPEN COURT AND BEFORE THE MEDIA?

LIST OF PARTIES

ALL PARTIES DO NOT APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE.

A LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS THE SUBJECT OF THIS PETITION IS AS FOLLOWS:

1. FELIX TAYLOR, SUPERINTENDANT OF PRISQUOTANK CORRECTIONAL INSTITUTION.
2. KENNETH LASSIGNOR, DIRECTOR OF NORTH CAROLINA DEPARTMENT OF CORRECTIONS.

PREVIOUS APPEALS LIST A DIFFERENT RESPONDANT(S), HOWEVER, SINCE THE PREVIOUS STATE ELECTIONS AND PETITIONER HAS TRANSFERRED LOCATIONS, CHANGED RESPONDANT. PETITIONER HAS NOTIFIED THE COURT OF APPEALS ON THIS ISSUE ALBEIT THEIR RECORDS CONTINUE TO LIST PREVIOUS RESPONDANTS TO THIS CASE.

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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.

OPINION BELOW

THE OPINION OF THE UNITED STATES COURT OF APPEALS APPEARS AT APPENDIX A TO THE PETITION AND IS UNPUBLISHED.

THE OPINION OF THE UNITED STATES DISTRICT COURT APPEARS AT APPENDIX B TO THE PETITION AND IS REPORTED AT CASE 1:16-cv-00160-FDW, DOCUMENT 12, FILED ON 2/15/17.

JURISDICTION

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED MY CASE WAS 8/14/17.

A TIMELY PETITION FOR REHEARING WAS DENIED BY THE UNITED STATES COURT OF APPEALS ON 10/2/17, AND A COPY OF THE ORDER DENYING REHEARING APPEARS AT APPENDIX C.1, WITH AN EFFECTIVE DATE OF 10/10/17, AS APPEARS AT APPENDIX C.2.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 USC § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION:

FOURTH AMENDMENT (4TH)

FIFTH AMENDMENT (5TH)

SIXTH AMENDMENT (6TH)

EIGHTH AMENDMENT (8TH)

FOURTEENTH AMENDMENT (14TH)

STATUTORY PROVISIONS

SUPREME COURT OF THE UNITED STATES:

RULE 10: "(a) A U.S. COURT OF APPEALS HAS ENTERED A DECISION IN CONFLICT WITH A DECISION OF ANOTHER U.S. COURT OF APPEALS ON THE SAME IMPORTANT MATTER; HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH A DECISION BY A STATE COURT OF LAST RESORT; OR HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS . . .; (b) A STATE COURT OF LAST RESORT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISION OF ANOTHER STATE COURT OF LAST RESORT OR OF A U.S. COURT OF APPEALS. "

STATEMENT OF THE CASE

IN THE U.S. DISTRICT COURT ORDER (2/2017) I, "BACKGROUND" [SEE APPENDIX B] GIVES A RELATIVELY ACCURATE SUMMARY OF THE PROCEEDINGS OF THIS CASE AT BNL. PETITIONER PRESENTS IN THE FOLLOWING, WHAT HE FEELS IS THE MISSING PARTS: BEFORE TRIAL, SENSITIVE EVIDENCE SUSCEPTABLE TO ALTERATIONS WAS NOT PLACED INTO EVIDENCE STORAGE NOR WAS PROPERLY DOCUMENTED TO BE DISCLOSED AS EVIDENCE. IN TRIAL, THE UNDISCLOSED DOCUMENTATION EVIDENCE COULD HAVE BEEN UTILIZED BY DEFENSE TO GIVE REASONABLE DOUBT TO THE "INTEGRITY" OR "GOOD FAITH" OF ARRESTING OFFICERS, THE EVIDENCE THEY HANDLED AS THEY TESTIFIED TO. THIS "GOOD FAITH" HAS BEEN KEY TO ALL ISSUES IN PETITIONER'S RELIEF EFFORTS THEREAFTER. ON 6 NOV 2006, PETITIONER APPLIED FOR POST-CONVICTION DISCOVERY (PCD) WHEREIN ON 16 NOV 2006, PROSECUTOR PGE AFFIDAVIT TESTIFIED TO FULL DISCLOSURE, IN WHICH PETITIONER'S MOTION WAS DENIED [ORDER (12/2006)], BY STATE DISTRICT COURT. AFTER FILING FOR MOTION FOR APPROPRIATE RELIEF [MAR (1/2008)], PETITIONER AGAIN FILED FOR DISCOVERY. IN NOVEMBER 2008, THE PROSECUTION RELINQUISHED A PCD (11/2008) CONTAINING 25 PAGES OF UNDISCLOSED MATERIALS MOTIONED FOR PRE-TRIAL, IN A "PARTIAL DISCLOSURE." PETITIONER FILED A MOTION TO DISMISS (1/2011) ON THE ISSUE OF STATE CONTINUING TO WITHHOLD EVIDENCE. PETITIONER THEN RECEIVED ADDITIONAL "PARTIAL DISCLOSURE" CUMULATIVE INTO ISSUES RELATIVE TO QUESTIONS #1-4 IN THIS PETITION. DISTRICT COURT GAVE IT'S ORDER ON MAR [ORDER (1/2012)] DENYING ALL MAR ISSUES EXCEPT 4 BEING UPON PRE AND POST-MIRANDA STATEMENTS, SEIZED EVIDENCE AND COMPUTER INVESTIGATION ISSUES. THESE WERE LEFT OPEN FOR CONTINUATION. PETITIONER SUBMITTED AMENDMENT TO MAR (4/2014) ADDRESSING 3 NEW ISSUES WHICH WAS DENIED IN ORDER (8/2014), WHICH CUMULATES QUESTIONS #5-6, IN THIS PETITION. IN

HEARING JULY 2014, PROSECUTION SUBMITTED ADDITIONAL DISCLOSURE AGAINST PETITIONER; WITHHELD PRE-TRIAL. PETITIONER SENT TO DEFENSE COUNSEL AN AMENDMENT TO MAR (8/2014) ADDRESSING AN ADDITIONAL NEW ISSUE WITH EVIDENCE AND CASES CITED. COUNSEL DID NOT SUBMIT IT TO COURT. DEFENSE COUNSEL SUBMITTED BRIEF ON COURT ORDER (1/2012) IN AUGUST 2014. PETITIONER SUBMITTED AMENDMENT TO BRIEF TO COUNSEL IN SEPTEMBER 2014 CIVING ADDITIONAL AUTHORITY AND DETAILING FACTS NOT PREVIOUSLY KNOWN AS ADDRESSED IN QUESTIONS #1-4 AND 8 IN THIS PETITION. COUNSEL FAILED TO SUBMIT THIS TO THE COURT. DISTRICT COURT FINALIZED IN DENIAL OF EVIDENCE ISSUES WITHOUT ALL FACTS IN ORDER (12/2014). PETITIONER FILED 2ND MAR (2/2016) UPON DEFENSE COUNSEL FOR FAILURE TO SUBMIT THE PERTAINANT DOCUMENTS [FOUND IN 2ND MAR (2/2016) APP #1 AND 2] WHICH WAS SUMMARILY DENIED IN ORDER (3/2016); WHICH IS PERTAINANT TO ALL ISSUES IN THIS CASE AS ADDRESSED IN QUESTIONS #1-4 AND 7-8, WITHIN THIS PETITION. AFTER STATE COURT OF APPEALS DENIED PETITIONER'S WRIT OF CERTIORARI, PETITIONER FILED TIMELY RECONSIDERATION TO WAIT ON 24 MAR 2016, WHICH WAS DENIED IN 13 APR 2016. IN THIS, RESUME BACK TO "BACKGROUND" WITHIN THE FEDERAL DISTRICT ORDER 2/15/17; WHEREIN PAGE 3, LINE 2 DID NOT STATE CORRECTLY PETITIONER'S ISSUE ON #12. THIS WAS THE POST-MIRANDA STATEMENT WHICH WAS NOT AUTHENTICATED NOR SIGNED PER LAW AS ADDRESSED IN QUESTION #4. AFTER DENIAL OF PETITIONER'S WAIT (APPENDIX B), PETITIONER FILED AN APPEAL TIMELY ON 28 APR 2017 WHICH WAS DENIED ON 4 AUG 2017 (APPENDIX A). PETITIONER FILED EN-BANC TIMELY ON 21 AUG 2017 WHICH WAS DENIED ON 2 OCT 2017 (APPENDIX C.1) WITH AN EFFECTIVE DATE OF 10 OCT 2017 (APPENDIX C.2). IN REGARDS TO DISCLOSURE ISSUES, PETITIONER SHOWS RESPONDANT WITHHELD DOCUMENTS FROM THE FEDERAL DISTRICT COURT IN THEIR RESPONSE. THIS ISSUE IS ADDRESSED IN APPENDIX D, WHICH ALSO LISTS ALL DOCUMENTS PERTAINANT WHICH PETITIONER WILL REFORGEE IN THIS PETITION.

REASONS FOR GRANTING THE PETITION

PETITIONER, THROUGH WHAT HE BELIEVES TO BE A SERIES OF CONSTITUTIONAL ERRORS WAS CONVICTED IN A JURY TRIAL AND THUS SENTENCED AS GIVEN IN THE FOREGOING, FOR A PERSON WHO HAD NO PRIOR AND OFFENSES. THEREAFTER, THE LOWER COURTS HAVE MAINTAINED PETITIONER'S CONVICTION IN WHAT HE BELIEVES TO BE CONTINUED ERRORS AND ADDITIONAL CONSTITUTIONAL ERRORS STEMMING FROM THE TRIAL AND DIRECT APPEAL RESULTS. PETITIONER UNDERSTANDS THAT THE PURPOSE OF THIS HONORABLE COURT IN THIS CASE AT BAR IS TO DETERMINE THE FACTS INVOLVING THESE POSSIBLE CONSTITUTIONAL ERRORS OR IF THE CIRCUMSTANCES ARE IN FACT ERRORS PER SUPREME RULE 10.

ALSO
N.C. v. BONE 535 U.S. 940 (2002) "THE QUESTION FOR REVIEW IS WHETHER THE RULING OF THE TRIAL COURT WAS CORRECT AND NOT WHETHER THE REASON GIVEN IS SOUND OR TENABLE."

PETITIONER APPEALS TO THIS HONORABLE COURT FOR DECISIONS AS IT IS RELEVANT TO THE QUESTIONS PRESENTED. ADDITIONALLY, PETITIONER RESPECTFULLY REMINDS THIS HONORABLE COURT HE IS A LAYMAN AT LAW,

PRO-SE, INDICENT THUS REQUESTS A MEASURE OF LENIENCY AFFORDED IN PROCEEDINGS PER COMEZ-DIAZ V. U.S. 443 F3d 288 (11th Cir 2005) "PRO-SE LITIGANT'S PLEADINGS ARE TO BE CONSTRUED LIBERALLY AND HELD TO A LESS STRINGENT STANDARD THAN FORMAL PLEADINGS DRAFTED BY LAWYERS; IF THE COURT CAN REASONABLY READ PLEADINGS TO STATE VALID CLAIMS OR WHICH LITIGANT COULD PREVAIL, IT SHOULD DO SO DESPITE FAILURE TO CITE PROPER LEGAL AUTHORITY, CONFUSION OF LEGAL THEORIES, POOR SYNTAX SENTENCES IN CONSTRUCTION, OR LITIGANT'S UNFAMILIARITY WITH PLEADING ARGUMENTS."

PETITIONER WILL CAUTIOUSLY ATTEMPT NOT TO DECLARE CONCLUSIONARY STATEMENTS ALBEIT, IN SEVERAL OF THE QUESTIONS PRESENTED. CONCLUSIONS BECOME APPARENT THROUGH EVIDENCE OR LACK OF THEREIN; JUSTIFIED BY LAW CITATIONS. PETITIONER ASKS THIS HONORABLE COURT TO CONSIDER THESE CITED CASES WHEREIN THE STATE AND LOWER COURTS DENIED PETITIONER'S RELIEF ATTEMPTS

IN MOST INSTANCES; EVEN WHEN PETITIONER PLAINLY SHOWED BY STATE'S OWN STATUTES AND CASE LAWS

WARRANTED RELIEF. UNDER HILL v. U.S. 338 U.S. 424, 428 (1982) "FAILURE TO COMPLY WITH PROCEDURAL REQUIREMENTS OF STATE STATUTES CONSTITUTES A 'FUNDAMENTAL DEFECT' WHICH ULTIMATELY RESULTED IN A MISCHANCE OF JUSTICE." [ALSO IN U.S. v. TIMMERK 444 U.S. 780 (1979)].

THUS, PER HILL-TIMMERK IT IS A "FUNDAMENTAL DEFECT" AND A "MISCHANCE OF JUSTICE" WHEN THE STATE AND LOWER COURTS DO NOT COMPLY WITH STATE'S OWN STATUTES AND PROCEDURAL REQUIREMENTS FOUND IN STATE'S OWN CASE LAWS; IN THIS CASE AT BIR, TO "REJECT" THE RULINGS WHEN IT FAVORS THE PETITIONER. ADDITIONALLY, THE STATE AND LOWER COURTS LACKED "FAIR PLAY" AGAINST PETITIONER FROM ARREST OBTAINED AND SHOWN IN MISCONDUCT OF OFFICIALS. IN THIS, WHEN THE SCALES OF JUSTICE TIPPED BEYOND REASONABLE DOUBT FAVORING PETITIONER, INFERENCES WERE STILL GIVEN TO STATE THEREIN PETITIONER'S PLEAS WERE "REJECTED" (HILL-TIMMERK) AS IT APPEARED LOWER COURTS RULED ONLY TO "PROTECT THEIR OWN" BY DENYING RELIEF. UNDER U.S. v. TWILLEY 722 F2d 1892 (9TH CIR 2000) "THERE IS NO 'GOOD FAITH' EXCEPTION TO THE EXCLUSIONARY RULE OF POLICE WHO DO NOT ACT IN ACCORDANCE WITH GOVERNING LAWS."

ALSO

U.S. v. WHITE 222 F3d 363 (7TH CIR 2000) "THE GOVERNMENT HAS A SPECIAL RESPONSIBILITY TO INSURE THE INTEGRITY OF THE CRIMINAL JUSTICE PROCESS BY LIVING UP TO THE CODE OF PROFESSIONAL ETHICS AND FAIR PLAY AT ALL TIMES."

PER HILL-TIMMERK, PETITIONER WILL SHOW FUNDAMENTAL DEFECTS AND MISCHANCES OF JUSTICE WHERE HE BROUGHT FORTH "STATE'S OWN LAWS" ONLY TO BE DENIED, OVERLOOKED OR "REJECTED." IN TWILLEY-WHITE WILL BE SHOWN WHERE THE STATE'S WITNESSES WERE "BELIEVED" IN "INTEGRITY" AND "GOOD FAITH" OVER PETITIONER IN SPIRE OF EVIDENCE FAVORING PETITIONER. THIS IS A DISREGARD OF "FAIR PLAY" TO PETITIONER. PETITIONER WILL SHOW THIS HONORABLE COURT WHERE HE BELIEVES THESE ERRORS OCCURRED

THROUGH INCORPORATION OF COURT DOCUMENTS AND LAW CITATIONS OF PETITIONER'S TRIAL AND RELIEF EFFORTS AS APPLICABLE. ALSO WHEN APPLICABLE, PETITIONER WOULD ASK FOR CONSIDERATION OF "HOW THE JURY SAW THE ISSUES" OR "HOW THE JURY COULD HAVE BEEN AFFECTED" BY THE SEEN AND HEARD AS WELL AS THE UNDERLYING INFERENCE AND INNUMEROS CREATING ERRONEOUS CIRCUMSTANCES PER KOTTEAKES V. U.S. 328 U.S. 776 (1946) 'UNDER 'KOTTEAKES STANDARD' THE INQUIRY FOCUSES ON WHETHER THE ERROR 'HAD SUBSTANTIAL AND PREJUDICIAL EFFECT OR INFLUENCE IN DETERMINING JURY VERDICT'." [QUOTED IN BRECHT V. ABRAMSON 507 U.S. 619 (1993)].

PETITIONER WOULD ASK THIS HONORABLE COURT TO ALSO CONSIDER THERE ARE CERTAIN PARTICULAR FACTS ASSUMED WITHOUT QUESTION TO BE TRUE UNDER "PRESUMPTION OF LAW" [BLACK'S DICTIONARY OF LAW (2013)] "A LEGAL ASSUMPTION THAT A COURT IS REQUIRED TO MAKE IF CERTAIN FACTS ARE ESTABLISHED AND 'NO CONTRARY EVIDENCE IS PRODUCED'." EXAMPLE "A CRIMINAL DEFENDANT IS 'PRESUMED INNOCENT' UNTIL PROVEN GUILTY BEYOND REASONABLE DOUBT HE HAS VIOLATED ALL KEY ELEMENTS OF AN INDICTMENT CHARGE."

THIS IS ALSO PART OF THE "STANDARD REVIEW" PER FIERE V. WHITE 121 SCT 712 (2001) "THE DUE PROCESS CLAUSE REQUIRES THE GOVERNMENT TO PROVE BEYOND REASONABLE DOUBT EVERY ELEMENT OF THE CRIME FOR WHICH THE DEFENDANT IS CHARGED. BEFORE A CHARGE CAN BE SUBMITTED TO A FACT FINDER, THE PROSECUTION MUST HAVE PROVIDED SUFFICIENT EVIDENCE FROM WHICH A REASONABLE FACT FINDER CAN FIND ALL ELEMENTS OF THE CHARGE [VIOLATED] BEYOND REASONABLE DOUBT." [ALSO IN SULLIVAN V. LOUISIANA 113 SCT 2028 (1993)].

PETITIONER WILL SHOW WHERE PRESUMPTION OF LAW AND STANDARD REVIEW WAS NOT EQUALLY APPLIED IN THIS CASE AT BNC, AGAINST PETITIONER TO INSURE CONVICTION, VIOLATING CONSTITUTIONAL RIGHTS THEREIN.

QUESTION #1. PRE-TRIAL, DEFENSE MOVED FOR DISCOVERY 2 TIMES AND FOR EXCULPATORY EVIDENCE 1 TIME [DOCUMENTS IN TRIAL TRIBUNAL (12/2004) p. 11, 15 AND 16]. DURING TRIAL, DEFENSE INFORMED THE COURT OF A "BROKEN 'CHAIN-OF-CUSTODY'." [C of C's] (Vol II p. 48 AND III p. 36 AND 46); WHEREIN NO C of C's WERE INCLUDED IN THE PRE-TRIAL DISCLOSURE. FOUR YEARS AFTER TRIAL IN PCD (11/2008),

THE STATE RELINQUISHED A DOCUMENT [PCD (11/2008)] CONTAINING 25 PAGES OF UNDISCLOSED MATERIALS. THIS

PCD CONTAINED KEY DOCUMENTS REQUESTED PRE-TRIAL AND STATED MISSING DURING TRIAL INCLUDING

MISSING MEDICAL EXAMINER'S REPORTS AND COFCS. UNDER BRADY v. MARYLAND 373 U.S. 83, 87 (1963) "A VIOLATION OCCURS WHEN; (1) EVIDENCE IS FAVORABLE BECAUSE IT IS EXCULPATORY OR IMPEACHING; (2) WAS SUPPRESSED BY THE STATE WILFULLY OR INADVERTENTLY; (3) PREJUDICE ENSUED."

THESE COFCS SHOW CASE DETECTIVE ROBERT BEALL AND OFFICER CECIL CARSON COMMITTED DIRECT PERJURY GIVEN THROUGH THEIR TRIAL TESTIMONIES. INCLUDE DETECTIVE JIMMY LYAN; ALL 3 ARE PROVEN IN

EVIDENCE MISHANDLING BY THE BRADY EVIDENCE IMPEACHING THEIR TESTIMONY. PER U.S. v. BAGLEY 473 U.S. 676 (1989) "EVIDENCE 'FAVORABLE TO AN ACCUSED' INCLUDES EXCULPATORY EVIDENCE AND EVIDENCE THAT IMPEACHES A GOVERNMENT'S WITNESS." [QUOTING BRADY (AT 87)].

PETITIONER BELIEVES HE WAS HIGHLY PREJUDICED THROUGH STATE'S WITHHOLDING OF THIS BRADY EVIDENCE AS,

TO BE SHOWN, IMPEACHING OF THESE OFFICER'S TRIAL TESTIMONIES THUS GIVING REASONABLE DOUBT TO

THEIR "INTEGRITY" AND "GOOD FAITH" (V. TWILLY WHITE) ON THESE AND OTHER MATTERS THEY TESTIFIED

UPON IN TRIAL. UNDER STRICHLER v. GREENE 527 U.S. 213, 281-82 (1989) "WHEN THE STATE WITHHOLDS FROM A CRIMINAL DEFENDANT EVIDENCE THAT IS MATERIAL TO HIS GUILT OR PUNISHMENT, IT VIOLATES HIS RIGHTS TO DUE PROCESS OF THE 14TH AMENDMENT."

ALSO

"WE NOW HOLD THAT THE SUPPRESSION BY PROSECUTION OF EVIDENCE FAVORABLE TO AN ACCUSED UPON REQUEST VIOLATES DUE PROCESS WHERE THE EVIDENCE IS MATERIAL TO GUILT OR PUNISHMENT, IRRESPECTIVE OF THE GOOD FAITH OR BAD FAITH OF THE PROSECUTION." [BRADY (AT 87, 1197)].

IT WAS UPON THE "GOOD FAITH" OF PROSECUTION WHEREIN DEFENSE BELIEVED THE STATE GAVE FULL DISCLOSURE

PRE-TRIAL. ALSO, IT WAS UPON THE "GOOD FAITH" ALLOWED TO A STATE OFFICIAL (BEALL) OVER PETITIONER

UPON EVIDENTIARY HEARING TESTIMONY UPON WHICH TRIAL JUDGE RELIED TO PROCEED INTO TRIAL. AND

PETITIONER POSSESSION OF THE BRADY EVIDENCE PRE-TRIAL, AND THUS THE ABILITY TO CONFRONT BEALL'S

TESTIMONY, WOULD HAVE IMPROVED BEALL TO REVEAL HIS PERJURIES THUS POTENTIALLY HAVING HIM AND HIS EVIDENCE SUPPRESSED AND/OR NOT PROCEED INTO TRIAL. "WHEN THE STATE DOES NOT DISCLOSE INFORMATION IN ITS POSSESSION THAT MIGHT REASONABLY BE CONSIDERED FAVORABLE TO DEFENSE, IT PRECLUDES THE TRIER OF FACTS FROM GAINING ACCESS TO SUCH INFORMATION AND THEREBY UNDERMINES THE RELIABILITY OF THE VERDICT." [BAGLEY (AT 693)].

ALSO
CONN. V. BELL 129 U.S. 1769, 1793 (2009) "EVIDENCE IS 'MATERIAL' WITHIN THE MEANING OF BRADY WHEN THERE IS A REASONABLE PROBABILITY THAT HAD THE EVIDENCE BEEN DISCLOSED, THE RESULTS OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT."

AS SHOWN IN BAGLEY AND CONN., DISCLOSURE PRE-TRIAL COULD HAVE BEEN A DETERMINING FACTOR WHETHER TO PROCEED INTO TRIAL OR NOT, THEREFORE COULD HAVE MADE A SIGNIFICANT DIFFERENCE IN TRIAL OUTCOME. PROSECUTION DECLARED IN FORESTATED POST-CONVICTION AFFIDAVIT TO THE LOWER COURTS THAT THE STATE HAD DISCLOSED ALL EVIDENCE TO PETITIONER FULFILLING ALL ASPECTS OF STATE DISCLOSURE STATUTES [AFFIDAVIT IN MOTION TO DISMISS (1/2011) APP #1]. HEREIN, THE STATE VIA PROSECUTION CONTINUES IN "BAD FAITH" [BRADY (AT 87, 1197)] (TWILLEY-WHITE). THE PCD DISCLOSURES OF THE BRADY EVIDENCE PROVES IN 20 NOV 2008 (PROSECUTION SIGNED THE PCD COVER LETTER), THAT PROSECUTION IN FACT IS IN MISCONDUCT OF "BAD FAITH" AND PERJURY. AS TO THE OFFICERS' MISCONDUCT; IN CONJUNCTION WITH TRANSCRIPT RECORDS SHOWS THESE FACTS: FIRST, BEALL TORTIFIED ALL KEY EVIDENCE IN THE FORM OF PETITIONER'S 3 COMPUTERS AND COMPONENTS WERE PLACED INTO EVIDENCE STORAGE (VOL II p. 35-40) BY LYNN AND HIMSELF, BY-LINE AND SERIAL NUMBER FROM EVIDENCE INVENTORY CREATED 2 DAYS AFTER SEIZURE (PCD p. 70). THE BRADY EVIDENCE IN THE FORM OF COF C'S RELINQUISHED 4 YEARS LATER POST-CONVICTION SHOWS NONE OF THE COMPUTER EVIDENCE WAS PLACED INTO STORAGE PRIOR TO TRANSFER OF EVIDENCE TO STATE SBI LABS FOR FORENSIC ANALYSIS; 22 DAYS AFTER SEIZURE ON 12 NOV 2003, THIS

IMPEACHING BEALL'S TRIAL TESTIMONY (PCD p. 71). HAD PETITIONER THE BRADY EVIDENCE PRE-TRIAL, COULD HAVE CONFRONTED BEALL IN EVIDENTIARY HEARING UPON THIS ISSUE. SECOND, OFFICER CARSON TESTIFIED HE PICKED UP THE EVIDENCE (COMPUTERS) FROM THE SBI LABS "ROUGHLY 12, 12:30", ON 11 JUL 2004 TRANSPORTING THE EVIDENCE "RIGHT AT THE EVIDENCE ROOM AND I TURNED ALL THIS EQUIPMENT OVER TO THE EVIDENCE TECHNICIAN ... ROUGHLY 4, 4:30." (Vol III p. 7). THE BRADY EVIDENCE (C of Cs) SHOWS TRANSPORTED EVIDENCE WAS NOT PLACED INTO STORAGE UNTIL THE NEXT DAY (PCD p. 82) THIS IMPEACHING CARSON'S TRIAL TESTIMONY. THE BRADY EVIDENCE IMPEACHES BOTH OFFICER'S SWORN OATHS AS PERJURIES. UNDER U.S. v. CUFFIE 80 F3d 514, 518 (D.C. Cir 1996) "UNDISCLOSED EVIDENCE OF WITNESS'S PRIOR PERJURIES COULD HAVE IMPACHED WITNESS----"

ALSO
DAVIS v. ALASKA 415 U.S. 308, 318, 111 (1974) "THE COURT OF APPEALS HELD THAT THE GOVERNMENT'S FAILURE TO DISCLOSE REQUESTED IMPEACHMENT EVIDENCE THAT THE DEFENSE COULD USE TO CONDUCT AN EFFECTIVE CROSS-EXAMINATION OF IMPORTANT PROSECUTION WITNESS CONSTITUTES 'CONSTITUTIONAL ERROR OF THE FIRST MAGNITUDE REQUIRING AUTOMATIC REVERSAL'."
[QUOTED IN BAGLEY (AT 677)].

THIS IS PETITIONER'S CASE, AS PETITIONER HAS QUALIFIED CUFFIE, DAVIS AND BAGLEY, SINCE THE BRADY EVIDENCE IS 'SUBSTANTIAL' TO PROVE IMPEACHMENT PER TRIAL TESTIMONIES; AND 'MATERIAL' TO SUPPORT A CONCLUSION. PER N.C. v. ROBINSON 537 U.S. 1096 (2006) "SUBSTANTIAL EVIDENCE IS SUCH RELEVANT EVIDENCE AS A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION."

THE LAKE COUNTY BARRER THIS ISSUE FROM FURTHER LITIGATION [ORDER (1/2012) SECT IV, E] THIS SUPPRESSING THE BRADY EVIDENCE AFTER USEAGE IN DISCLOSURE. THIS PREVENTED PETITIONER FROM THE ABILITY TO UTILIZE SUBSTANTIAL EVIDENCE FAVORABLE TO HIM TO PROVE FACTS OF THE MATTER IN WHAT PETITIONER BELIEVES IS AN ATTEMPT OF THE STATE 'TO PROTECT THEIR OWN' THROUGH CONTINUED SUPPRESSION.

PER DAVIS SUPRA BALLEW, THIS COULD ALSO BE A "CONSTITUTIONAL ERROR OF THE FIRST MAGNITUDE REQUIRING AUTOMATIC REVERSAL," THEREIN A DUE PROCESS VIOLATION UPON PETITIONER. PER RULE-10, THE LOWER COURT RULED AGAINST HIGHER COURT DECISIONS. IN SUMMARY, BRADY WAS VIOLATED THROUGH MATERIAL EVIDENCE WITHHOLDING. AS SHOWN THROUGH BALLEW, CONG, BRADY AND STRICKLER, THIS WITHHOLDING DENIED PETITIONER THE ABILITY TO CONFRONT STATE'S PRINCIPLE WITNESS UPON PROBABLE MISCONDUCT AND PERJURIES THROUGH IMPERHEMENT AS GIVEN IN CLEGG AND DAVIS WHICH REQUIRES "AUTOMATIC REVERSAL," WHICH MADE THE EVIDENCE SUBSTANTIAL PER ROBINSON; THUS THE LOWER COURTS SUPPRESSED IT AGAINST PETITIONER. PETITIONER ASKS THIS HONORABLE COURT TO CONSIDER IN TOTALITY ALL THE FOREGOING ISSUES OF STATE WITHHOLDING, THEN SUPPRESSING THE USE OF BRADY EVIDENCE COULD HAVE AFFECTED THE PROCEEDINGS IN THIS CASE AS WELL VIOLATING PETITIONER'S 4TH, 5TH, 6TH AND 14TH AMENDMENT RIGHTS.

QUESTION #2. IN CONJUNCTION WITH THE FOREGOING IN QUESTION #1, THE COFC'S WERE MATERIAL AND SUBSTANTIAL TO PROVE. ALBEIT THESE WERE WITHHELD IN TRIAL AND AFTER DISCLOSURE; SUPPRESSED BY THE LOWER COURTS, ARGUMENTS IN TRIAL WERE ALSO REJECTED. DURING TRIAL, THE COURT OVERRULED ALL COFC ISSUES MADE BY DEFENSE (VOL II p. 50) AND STRONGLY REAFFIRMED THE OVERRULE LATER IN TRIAL WHEN THE ISSUE BECAME PERTINANT AGAIN (VOL III p. 99). THIS SQUASHED A VALID AND COUNTERSTABLE ISSUE ON PETITIONER'S BEHALF, AS DEFENSE AT TRIAL BELIEVED IT HAD FULL DISCLOSURE. IN REGARD TO BEALL, THE WITHHELD BRADY MATERIALS (COFC'S) SHOWS HIS "BAD FAITH" IN IMPERHEMENT WHICH GIVES REASONABLE DOUBT TO HIS "GOOD FAITH" IN OTHER MATTERS HE TESTIFIED TO DURING TRIAL. THIS LEADS TO DETECTIVE LYAN: FIRST, LYAN TESTIFIED THAT HE REMOVED THE HARD DRIVES FROM THE COMPUTER

EVIDENCE (VOL III p. 15-16), LEAVING THESE DRIVES INSECURE IN HIS OFFICE (VOL III p. 24-25) EQUATING TO EVIDENCE TAMPERING AND MISHANDLING. IT ALSO TESTIFIES TO BEALL'S IMPEACHMENT OF THE DAY PRIOR, AND LEFT THE DRIVES SUSCEPTABLE TO ALTERATIONS. IN VIEW OF THILLEY-LUNING, LYAN IS ALSO SHOWN IN "BAD-FATH" AND UNRELIABLE. WHEN LYAN TESTIFIED TO TAMPERING, PROSECUTION MADE NO ATTEMPT TO CORRECT THIS MISSTATEMENT OF STATE'S WITNESS'S TESTIFIED MISCONDUCT. IT ALSO NEEDS TO BE KNOWN THE STATE BUILT AN INFLAMMATORY CASE AROUND THIS EVIDENCE AS IT TOOK ALMOST 1 1/2 DAYS TRIAL TIME REGARDING THIS EVIDENCE OF A 3 DAY TRIAL BASED UPON DATA EXTRACTED FROM THE COMPUTER'S HARDDRIVES. SECOND, DIRECTLY AFTER LYAN TESTIFIED, BEALL RETURNS TO TESTIFY BY-LINE AND SERIAL NUMBER, THAT EVERY COMPUTER AND COMPONENTS WERE LEFT [UNSECURE] IN LYAN'S OFFICE (VOL III p. 25-31) WHEREIN BEALL IMPEACHES HIS OWN TESTIMONY OF EVIDENCE SECURITY OF THE PREVIOUS DAY (VOL II p. 35-40) AND HIS OWN STATEMENTS A FEW MINUTES BEFOREHAND. THEREIN, BY DEFAULT, BEALL IMPEACHES HIS OWN TESTIMONY AND VALIDATES THE BRADY EVIDENCE AND PETITIONER'S POST-CONVICTION CLAIMS. WHEN IT BECAME APPARENT BEALL IMPEACHED HIMSELF FROM THE PREVIOUS DAY AND MINUTES BEFORE, PROSECUTION MADE NO ATTEMPT TO CORRECT STATE WITNESS PERJURIES. PER U.S. v. McCARTHY 271 F3d 287 (2d Cir 1991) "TO PREVAIL ON A MOTION FOR A NEW TRIAL BASED UPON ALLEGATIONS OF PERJURED TESTIMONY, DEFENDANT MUST SHOW; (1) THE WITNESS ACTUALLY COMMITTED PERJURY; (2) THE ALLEGED PERJURY WAS MATERIAL; (3) THE ALLEGED PERJURY WAS AT THE TIME OF TRIAL; (4) THE PERJURY REMAIN UNDETECTED DURING TRIAL."

PETITIONER HAS RELIED McCARTHY, AS PETITIONER DID NOT HAVE THE BRADY EVIDENCE TO PROVE UNTIL PCD DISCLOSURE, AND TRIAL COUNSEL DID NOT "CATCH" THE 3RD DAY SELF-IMPEACHMENT OF THE 2ND DAY TESTIMONY OF BEALL. ALL LOWER COURT RELIEF EFFORTS WERE DENIED, "REJECTED" (V. HILL-FIMMERICK) AND RECORDED [ORDER (1/21/12) SECT IV, A, C, D AND E]. UNDER PYLE v. KANSAS 317 U.S.

213, 215-16 (1942) 'PETITIONER'S PAPERS WERE INEFFECTUALLY DRAWN, BUT THEY DO SET FORTH ALLEGATIONS THAT HIS IMPRISONMENT RESULTED IN PERJURED TESTIMONY, KNOWN USED BY THE STATE AUTHORITIES TO OBTAIN HIS CONVICTION, AND FROM DELIBERATE SUPPRESSION BY THOSE SAME AUTHORITIES OF EVIDENCE FAVORABLE TO HIM. THESE ALLEGATIONS SUFFICIENTLY CHARGE A DEPRIVATION OF RIGHTS GUARANTEED BY FEDERAL CONSTITUTION, AND, IF PROVEN, WOULD ENTITLE PETITIONER TO RELEASE FROM HIS PRESENT CONVICTION.' [QUOTED IN BRADY (AT 83, 87)].

ALSO, THE SUPPRESSION DOES NOT HAVE TO BE DELIBERATE. [BRADY (AT 83, 87)].

"CONSTITUTIONAL REQUIREMENT THAT STATE DISCLOSE EVIDENCE FAVORABLE TO DEFENDANT AND THAT STATE NOT USE FALSE OR PERJURED EVIDENCE." [BRADY (AT 83)].

AS SHOWN, IN THE FOREGOING, THE BRADY EVIDENCE WAS WITHHELD BY THE STATE AND PROSECUTION SUBMITTED AN AFFIDAVIT DECLARING STATE'S FULL DISCLOSURE WHICH PROVES "BAD FAITH" OF PERJURY AND PROSECUTORIAL MISCONDUCT AS PROVEN BY THE CONTENTS RELINQUISHED IN THE PCD (1/2005). HEREIN, PYLE IS PETITIONER'S CASE. IN THIS CASE AT BAR, PROSECUTION KNOWINGLY ALLOWED BEALL TO TESTIFY ON MATTERS WITHOUT CORRECTING TESTIMONY WHEN IT BECAME APPARENT BEALL IMPRISONED HIMSELF AS SHOWN IN THE FOREGOING. IN THIS, PETITIONER HAS QUALIFIED PYLE SUPRA BRADY. THIS IS SUBSTANTIAL

AND CASE MATERIAL, AND IS SUFFICIENT TO VALIDATE PETITIONER'S CLAIMS. UNDER NAPUE V. ILLINOIS 360 U.S. 264, 269 (1959) 'CONVICTION OBTAINED THROUGH THE USE OF FALSE TESTIMONY, KNOWN TO BE SUCH BY REPRESENTATIVES OF STATE IS A DENIAL OF DUE PROCESS.'

ALSO
"WE EXTEND THE SAME TEST FORMULATED IN MOONEY V. HOLLOMAN [294 U.S. 103 (1935)] WHEN WE SAID 'THE SAME RESULTS OBTAINED WHEN STATE ALTHOUGH NOT SOLICITING FALSE EVIDENCE, ALLOWS IT TO GO UNCORRECTED WHEN IT APPEARS.'" [NAPUE (AT 264, 269)].

PETITIONER HAS QUALIFIED MOONEY AND NAPUE. "THE PRINCIPLE OF MOONEY V. HOLLOMAN IS NOT PUNISHMENT OF SOCIETY FOR MISTAKES OF A PROSECUTOR BUT AVOIDANCE OF AN UNFAIR TRIAL TO THE ACCUSED --- A PROSECUTION THAT WITHHOLDS EVIDENCE ON DEMAND OF AN ACCUSED WHICH, IF AVAILABLE, WOULD TEND TO EXCULPATE HIM OR REDUCE THE PENALTY HELPS SHAPE A TRIAL THAT BEARS HEAVILY ON THE DEFENDANT, THAT CASTS THE PROSECUTION IN THE ROLE OF ARCHITECT OF A PROCEEDING THAT DOES NOT CONFORM WITH STANDARDS OF JUSTICE." [BRADY (AT 83, 88)].

THIS IS ALSO PETITIONER'S CASE. AS SHOWN IN THE FOREGOING, PROSECUTION IS RESPONSIBLE FOR STATE'S WITNESSES, DISCLOSURE AND SUPPRESSION OF STATE ERRORS; I.E. BEALL'S SELF-IMPEACHMENT, BRADY EVIDENCE DISCLOSURE OF CofC's AND SUPPRESSION OF LYAN AND EVIDENCE HE TAMPERED WITH. ALL OF THESE SHOW "BAD FAITH" ON PROSECUTION FOR NON-COMPLIANCE TO HIS DUTY OF OFFICE, ALL OF WHICH HIGHLY PRESUDICED PETITIONER. ON THE ISSUE OF NON-DISCLOSURE: "THE COURT OF APPEALS HELD THAT GOVERNMENT'S FAILURE TO DISCLOSE THE NECESSARY IMPEACHMENT EVIDENCE THAT RESPONDANT COULD HAVE USED TO CONDUCT EFFECTIVE CROSS-EXAMINATION OF GOVERNMENT'S PRINCIPLE WITNESS REQUIRES AUTOMATIC REVERSAL." [BAGLEY (AT 1462)].

AGAIN, THIS IS PETITIONER'S CASE, AS PETITIONER HAS QUALIFIED BAGLEY. HEREIN, GOVERNMENT'S PRINCIPLE WITNESS WAS BEALL. PROSECUTION WITHHELD BRADY EVIDENCE UNTIL POST-CONVICTION WHETHER WILFULLY OR INADVERTENTLY [BRADY (AT 83,87)] AND TESTIFIED PER AFFIDAVIT TO FULL DISCLOSURE OF EVIDENCE PRIOR TO PCD (11/2008). THIS NON-DISCLOSURE PER BAGLEY (AT 1462), REMOVED PETITIONER'S ABILITY TO CROSS-EXAMINE BEALL WITH SUBSTANTIAL EVIDENCE TO PROVE IMPEACHMENT AND PERJURY DURING TRIAL THUS REMOVING PETITIONER'S ABILITY TO PROVE REASONABLE DOUBT UPON BEALL'S "COERCE FAITH." PER NEW YORK V. SARRAIDES 1 N.Y. 2d 554, 557,

"IT IS OF NO CONSEQUENCE THAT THE FALSHOOD BORE UPON THE WITNESS' CREDITABILITY RATHER THAN DIRECTLY UPON DEFENDANT'S GUILT. A LIE IS A LIE, NO MATTER WHAT IT'S SUBJECT, AND, IF IT IS ANY WAY RELEVANT TO THE CASE, THE DISTRICT ATTORNEY HAS THE RESPONSIBILITY AND DUTY TO CORRECT WHAT HE KNOWS TO BE FALSE AND ELICIT THE TRUTH." [QUOTED IN NAPUE (AT 270)].

PER RULE 10, THE LOWER COURT RULED AGAINST UPPER COURT DECISIONS EVEN TO BAR LITIGATION UTILIZING PCD DISCLOSED EVIDENCE FAVORABLE TO PETITIONER. IN SUMMARY, PROSECUTION FAILED IN "BAD FAITH" TO SUPPRESS LYAN'S TESTIMONIAL AND REMOVE TAMPERED EVIDENCE; TO SUPPRESS BEALL'S TESTIMONY UPON SELF-IMPEACHMENT, WHEN IT BECAME APPARENT. ANY REASONABLE MINNED PERSON COULD SEE

14.

THIS WOULD HAVE MADE A SIGNIFICANT DIFFERENCE IN TRIAL OUTCOME. PER McCarthy, THIS REQUIRES A NEW TRIAL DUE TO PROSECUTION'S ACTS OF "BAD FAITH," THIS WAS CULPABLE WHICH ENTITLED PETITIONER "RELEASE FROM HIS PRESENT CONVICTION" OR "AUTOMATIC REVERSAL" PER Pyle, Brady, Mooney AND Bagley. PETITIONER ASKS THIS HONORABLE COURT TO CONSIDER THE FOREGOING ISSUES IN TOTALITY OF STATE OFFICIALS WITHHOLDING EVIDENCE OF PERJURY AND MISCONDUCT AND OF THE SAVING OF THESE OFFICIALS; THE LOWER COURT BARRED LITIGATION ONCE THE FRUITS OF DISCOVERY PROVED FAVORABLE TO DEFENDANT/PETITIONER AND HOW OVERALL IT AFFECTED TRIAL OUTCOME AS IT VIOLATED PETITIONER'S 4TH, 5TH AND 14TH AMENDMENT RIGHTS.

QUESTION #3. AS SHOWN IN THE FOREGOING, ARE THIS ISSUES OF WITHHELD BRADY EVIDENCE WHICH COULD HAVE BEEN UTILIZED BY PETITIONER TO IMPROVE BEALL GIVING REASONABLE DOUBT IN OTHER MATTERS BEALL TESTIFIED TO IN "GOOD FAITH" (V. TWILLEY-WHITE) DURING EVIDENTIARY HEARING. IN THIS, BEALL WAS "BELIEVED" OVER PETITIONER IN ALL THINGS. PETITIONER CONTENDS BEALL COERCED A STATEMENT [REFERRED TO AS "PRE-MIRANDA"] WHILE PETITIONER WAS UNDER ARREST THIS VIOLATING PETITIONER'S RIGHTS UNDER CONSTITUTIONAL AND STATUTE LAWS. THIS ALSO INCLUDED BRADY (AT 83) FOR FALSE TESTIMONY UPON BEALL. THE PRE-MIRANDA BECAME THE FOUNDATION AGAINST ALMOST ALL OF PETITIONER'S RELIEF EFFORTS BASED UPON BEALL'S "GOOD FAITH" TESTIMONIES. [ORDER (1/10/12) SECT II omits SEVERAL TRANSCRIPT RECORD ACCOUNTS FAVORING PETITIONER FROM THE LOWER COURTS]. BEALL TESTIFIED THAT PETITIONER VOLUNTARILY DROVE TO POLICE STATION (VOL I p. 15). AFTER ARRIVAL, PETITIONER WAS LOCKED INTO INTERVIEW (VOL I p. 42); WAS NOT UNDER ARREST, BUT FREE TO LEAVE (VOL I p. 39);

WAS NOT INJURED (VOL I p. 42); WAS NOT UNDER THE INFLUENCE OF NARCOTIC MEDICATION [HYDROCODONE] (VOL I p. 47); AND THAT BEALL DID NOT THREATEN NOR COERCE PETITIONER (VOL I p. 53). LATER IN TRIAL, BEALL TESTIFIED PETITIONER "WAS NOT ENTITLED TO AN ATTORNEY" AT INTERROGATION (VOL II p. 77) AS BEALL MAINTAINED PETITIONER WAS NOT UNDER ARREST, NOR WAS ALLOWED MIRANDA WARNINGS FOR THE SAME REASON. [MIRANDA v. ARIZONA 384 U.S. 436, 448-50, 455 (1966) "THE SUPREME COURT HELD THAT BECAUSE OF INHERENTLY COERCIVE NATURE OF CUSTODIAL INTERROGATION, A PERSON MUST BE ADVISED OF HIS RIGHTS PRIOR TO INTERROGATION." QUOTED IN U.S. v. BUTNER 249 U.S. 1084 (2001)].

SINCE THE ONSET OF TRIAL AFTER HEARING BEALL'S TESTIMONY, PETITIONER HAS CHALLENGED MUCH OF THIS AS FALSE INASMUCH AS REQUESTING WITHIN RELIEF MOTIONS FOR A "LIE DETECTOR TEST" UPON THESE ISSUES; ALL DENIED (LOWER COURT NEVER ADDRESSED THIS). HOWEVER, TRANSCRIPT RECORDS ALSO SHOWS THE FOLLOWING: BEALL BROKE INTO PETITIONER'S RESIDENCE TO SEIZE EVIDENCE BEFORE ATTEMPTING TO CONTACT PETITIONER (VOL I p. 14). AFTER SEIZURE, THEN CONTACTED PETITIONER THROUGH EMPLOYER VIA CELL PHONE, FIRST ASKING [REQUEST] PETITIONER TO COME TO POLICE STATION (VOL II p. 55-56) THEN AFTER "SEVERAL" CALLS, BEALL TESTIFIED PETITIONER WAS CALLED INTO THE STATION [SUMMONS / ORDER / DIRECTIVE] (VOL II p. 73) [THIS FACT WAS OMITTED IN ORDER (1/2012) SECT II]. AFTER THIS BEALL ORDERED BY AN IDENTIFIED LAW

OFFICER, PETITIONER DROVE TO THE STATION ON HIS WAY HOME FROM WORK. UNDER N.C. v. SANDERS 454 U.S. 434, 447, 525 (1981) "IF LAW ENFORCEMENT OFFICER BY ORDER OR CONDUCT INDICATES THE PERSON IS TO REMAIN IN THE OFFICER'S PRESENCE OR COME TO THE POLICE STATION, SUCH PERSON IS FOR PRACTICAL PURPOSES UNDER ARREST BECAUSE OF THE IMPOSITION OF THE WILL OF THE POLICE OFFICER OVER THE FREEDOM OF THE PERSON." [QUOTING HUBNER v. WISCONSIN 33 WIS. 505 (1967) AND IN N.C. v. CHAS 345 N.C. 647, 663 (1997)].

THIS IS PETITIONER'S CASE, AND WAS SUBMITTED TO LOWER COURTS IN 2ND MAR (2/2016) APPth 1, SECT A, SUBth 1, AND WAS "REJECTED" (V. HILL-TIMMEBECK) IN LOWER COURTS [ORDER (3/2016) SUM DEN'D].

PER SHANDERS SUPRA HUBNER, THUS ORDERED [CALLED INTO] THE STATION, PETITIONER HAD NO "LEGAL" CHOICE THERESELF DID NOT VOLUNTARILY TRAVEL TO THE STATION, AND, FACTUALLY WAS UNDER ARREST, WITH THE "CALLED INTO" THE STATION BY THE OFFICER. ALL PETITIONER WANTED WAS TO GO HOME, BATH, EAT AND SLEEP DUE TO HUNGER AND EXHAUSTION [SEE AFFIDAVIT IN 2ND MAR., APP #1, SECT 4 p. 2]. UPON ARRIVAL AT THE STATION AND STILL SUFFERING HEADACHES FROM THE CONCUSSION, AND HAVING HYDROCODONE IN HIS POCKET (VOL I p. 51-52), TOOK THEM BEFORE ENTERING THE STATION FOR THE PAIN AND, FOR OBVIOUS REASONS; IT IS UNETHICAL TO CARRY AROUND LOOSE NARCOTICS ON ONE'S PERSON IN A POLICE STATION REGARDLESS THE REASON (VOL I p. 47). AFTER REPORTING IN AS INSTRUCTED ON THE PHONE, PETITIONER WAS ESCORTED TO AND LOCKED INTO INTERROGATION (VOL I p. 42) REMOVING ANY LIBERTY OR FREEDOM THROUGH THIS DETENTION. PETITIONER HAD TO BE "ALLOWED" [PERMIT/CANNOT/ APPROVE] TO EVEN GO TOILET OR TO VENDING (VOL I p. 21); NOT FREE TO CHOOSE OR LEAVE. PETITIONER TESTIFIES HE WAS NEVER TOLD HE COULD, NOR WAS ALLOWED TO LEAVE; EXCEPT ONCE, UNDER ESCORT, WAS "ALLOWED" TO GO TO VENDING. BEALL'S STATEMENT THAT PETITIONER WAS "FREE TO LEAVE" WAS NEVER DOCUMENTED (VOL I p. 39-41). AT THE BEGINNING OF INTERROGATION, PETITIONER WAS INTIMIDATED BY THREATS (VOL I p. 54) INTO GIVING A STATEMENT, WHILE EXHAUSTED (VOL I p. 58) DUE TO BEING UP WITH PAIN ALMOST 2 DAYS AND A DAY OF WORK. ALL THIS OCCURRED WITHOUT MIRANDA RIGHTS THUS VIOLATING FEDERAL CITY AND STATE STATUTE LAWS ON ARREST PROCEDURES. UNDER STATE STATUTE PROCEDURES: N.C.G.S. 15A-501. "(1) THE ARRESTING OFFICER MUST INFORM THE RESTRAINED INDIVIDUAL OF THE CHARGES AGAINST HIM; (5) MUST WITHOUT UNNECESSARY DELAY, ADVISE THE PERSON ARRESTED OF HIS RIGHTS TO COMMUNICATION WITH COUNSEL AND FRIENDS AND MUST ALLOW HIM ... TIME AND REASONABLE OPPORTUNITY TO DO SO."

PETITIONER WAS NOT ALLOWED THESE STATUTORY RIGHTS THUS VIOLATING N.C. CONSTITUTION, ART I, SECT 23 NOR

MIRANDA, THUS VIOLATING U.S. CONSTITUTION, 5TH AMENDMENT AS WELL APPLICABLE CITY LAWS. THIS WAS "REJECTED"

BY THE LOWER COURTS [ORDER(S) (1/2012) SECT C-D AND (3/2016) SUM DEN'D]. UNDER U.S. v. MENDENHALL 446 U.S. 544, 554 (1980) "WE CONCLUDE THAT A PERSON HAS BEEN 'SEIZED' WITHIN THE MEANING OF THE 4TH AMENDMENT ONLY IF, IN VIEW OF ALL CIRCUMSTANCES SURROUNDING THE INCIDENT, A REASONABLE PERSON WOULD HAVE BELIEVED THAT HE WAS NOT FREE TO LEAVE. EXAMPLE, -- EVEN WHEN THE PERSON DID NOT ATTEMPT TO LEAVE, USE OF LANGUAGE OR TONE OF VOICE INDICATED THAT COMPLIANCE WITH OFFICER'S REQUEST MIGHT BE COMPELLED." [QUOTED IN N.C. v. DAVIS 398 N.C. 400, 410 (1982)].

ALSO

N.C. v. GARCIA 543 U.S. 1156 (2005) "A PERSON IS IN CUSTODY FOR THE PURPOSE OF MIRANDA WHEN IT IS APPARENT FROM THE 'TOTALITY OF CIRCUMSTANCES' THERE IS A FORMAL ARREST OR RESTRAINT OF FREEDOM OF MOVEMENT TO THE DEGREE ASSOCIATED WITH FORMAL ARREST." [QUOTING N.C. v. BUCHANAN 353 N.C. 337, 339 (2001)].

PER MENDENHALL IS EXACTLY PETITIONER'S CASE. PETITIONER SUBMITTED GARCIA IN THE 2ND MAR (2/2016)

APP#1, SECT A, SLB#2 WHICH WAS "REJECTED" BY THE LOWER COURTS [ORDER (3/2016) SUM DEN'D].

HOWEVER, THE SUBSTANTIATED CIRCUMSTANCES SHOWN PER MENDENHALL SUPRA DAVIS AND GARCIA SUPRA

BUCHANAN THAT THROUGH PETITIONER'S BELIEF, HE COULD NOT LEAVE WHETHER HE WAS ACTUALLY "ALLOWED"

OR NOT, THUS HE WAS DETAINED. PER MENDENHALL SUPRA DAVIS, "IN VIEW OF ALL THE CIRCUMSTANCES

SURROUNDING THE INCIDENT;" THESE ARE THE COURT RECORD FACTS: DETECTIVES DROVE OVER 100 MILES WITH

PERMISSIBLE CHARGE STATEMENT AND AFFIDAVIT, ARREST AND SEARCH WARRANTS IN HAND; SECURED LOCAL POLICE

WELD TO RAID PETITIONER'S HOUSE BEFORE ATTEMPTING TO CONTACT HIM. AFTERWARDS, CALLED PETITIONER

REPEATEDLY CUMULATING IN "ORDER" TO COME TO POLICE STATION. UPON ARRIVAL, WAS ESCORTED INTO LOCKED

INTERROGATION WHERE HE WAS ONLY "ALLOWED" TO GO TO THE TOILET, AND THEN THIS WAS UNDER ESCORT. PETITIONER

WAS INTERROGATED WITHOUT ANY RIGHTS BEING ALLOWED. MINUS THE PART ABOUT "ESCORT," THIS IS A

EXACT SUMMARY OF THE ARRESTING OFFICER BEALL AS GIVEN IN TRANSCRIPTS. IN ADDITION, PETITIONER WAS INTERROGATED WHILE EXHAUSTED, "UNDER THE INFLUENCE" AFTER BEING THREATENED; A FORM OF COERCION. THE ONLY WAY PETITIONER COULD PROVE THESE LATTER TRUTHS AND REASONABLE DOUBT AGAINST BEALL IN THE MATTER WAS SUPPRESSED BY THE BARRY EVIDENCE WITHHOLDING, PREVENTING EVIDENCE FOR EFFECTIVE CROSS-EXAMINATION OF BEALL; ONLY TO BE BARRED BY THE LOWER COURTS AS FORESHOWN; OR, A POLYGRAPH TEST (NOT ALLOWED POST-CONVICTION). [IT SHOULD BE NOTED THAT PETITIONER'S IN TRIAL TESTIMONIES WAS "UNDER THE INFLUENCE" OF PRESCRIBED NARCOTICS BY JAIL MEDICAL STAFF. THIS WITH INTERROGATION, PETITIONER'S TRIAL TESTIMONY WAS GIVEN UNDER NARCOTICS. PETITIONER REQUESTED THESE MEDICAL RECORDS POST-CONVICTION BUT REMAINED UNDISCLOSED]. PER U.S. v. OLLIE 442 F3d 1135, 1143 (8th CIR 2006) "EXCLUSION OF DEFENDANT'S STATEMENT PROPER WHEN OFFICER GAVE MIRANDA WARNINGS ONLY AFTER DEFENDANT AGREED TO WRITE DOWN A CONFESSION."

THE KEY DIFFERENCE BETWEEN OLLIE AND THIS CASE AT BAR IS PETITIONER WAS NOT ALLOWED ANY RIGHTS

UNTIL STATEMENT WAS COMPLETED AND SIGNED, THEREIN, PART OF THE COERCION. UNDER ARIZONA v. GULLEY 499 U.S. 279 (1991) "CONFESSION INVOLUNTARY WHERE UNDER TOTALITY OF CIRCUMSTANCES, IT WAS COERCED BY THREATS OR PROMISES."

ALSO
OREGON v. FISTAD 492 U.S. 298 (1985) "PRE-MIRANDA TESTIMONY TECHNICALLY ILLEGAL EVEN THOUGH DEEMED VOLUNTARY."

FURTHERMORE, DUE TO THE LOWER COURT "REJECTION" AND "BARREING" PETITIONER'S CLAIMS, UNDER

WASHINGTON v. MURRAY 952 U.S. 1492, 1476 (1991) "DEFENDANT PETITIONER OFFERS CLAIMS AND FACTS WHICH WEREN'T RESOLVED IN STATE COURTS."

ALSO
JACKSON v. DENNE 378 U.S. 318 (1964) "WITHOUT REGARD TO THE TRUTH OR FALSITY OF A CONFESSION, AND GIVEN THOUGH THERE IS AMPL EVIDENCE ASIDE FROM THE CONFESSION TO SUPPORT A CONVICTION, A DEFENDANT IN A CRIMINAL CASE IS DEPRIVED OF DUE PROCESS OF LAW IF HIS CONVICTION IS BASED IN WHOLE OR IN PART UPON INVOLUNTARY CONFESSION."

THIS IS PETITIONER'S CASE WHICH HE SUBMITTED THESE CASES IN 2ND MAR (2/2016) APP #1, SECT A, SLB #2 BUT WAS "REJECTED" BY THE LOWER COURTS [ORDER (3/2016) SUM DEN'D]. THIS ISSUE RELATES DIRECTLY TO FOREGOING QUESTIONS AS BEALL WAS SHOWN IN "BAD FAITH" AS GIVEN IN HIS SELF-IMPEACHMENT AND BRADY EVIDENCE PROVING HIM IN PERJURY. PETITIONER AS SHOWN, WAS DEPRIVED OF THE ABILITY TO CONFRONT BEALL TO PROVE REASONABLE DOUBT PER BAGLEY (AT 676) AND DAVIS SUPRA BAGLEY (AT 677) THEREFORE, ALL BEALL TESTIFIED TO WAS "BELIEVED" OVER PETITIONER. UNDER CHAVIS V. N.C. 637 F2D 226 (1980) "THE MAIN AND ESSENTIAL PURPOSE OF THE 6TH AMENDMENT RIGHT TO CONFRONTATION IS TO SECURE THE OPPORTUNITY FOR CROSS-EXAMINATION."

ALSO

"WHERE PROSECUTION FAILED TO DISCLOSE TO THE DEFENDANT THE [EVIDENCE] OF THE STATE'S MOST CRUCIAL WITNESS, WHO'S CREDITABILITY WAS THE BASIC ISSUE IN THE CASE, THE FAILURE TO DISCLOSE CONSTITUTED A VIOLATION OF DEFENDANT'S DUE PROCESS RIGHTS. -- SINCE THE [EVIDENCE] WOULD HAVE REVEALED THE WITNESS'S PERJURY AND THE PRODUCT OF THE [EVIDENCE] WAS REQUESTED AT LEAST 6 TIMES." [CHAVIS (AT 213)].

THIS IS ALSO PETITIONER'S CASE, WHERE BEALL IS THE CRUCIAL WITNESS AND THE WITHHELD BRADY EVIDENCE WAS REQUESTED AT LEAST 3 TIMES PRE-TRIAL. "TO AFFORD THE JURY A BASIS TO INFER THAT THE WITNESS' CHARACTER IS SUCH THAT HE WOULD BE LESS LIKELY THAN THE AVERAGE TRUSTWORTHY CITIZEN TO BE TRUTHFUL IN HIS TESTIMONY -- THE JURORS WERE ENTITLED TO HAVE THE BENEFIT OF DEFENSE THEORY BEFORE THEM SO THEY COULD MAKE AN INFORMED JUDGEMENT AS TO THE WEIGHT ON [WITNESS] TESTIMONY. --" [DAVIS (AT 110) SUPRA CHAVIS (AT 226)].

DAVIS SUPRA CHAVIS SHOWS THAT WITHOUT CONFRONTATION OF THE BRADY EVIDENCE; BEALL WAS "BELIEVED" TO BE TRUSTWORTHY IN "GOOD FAITH," THIS TRIAL COURT BELIEVED BEALL ON THE PRE-MIRANDA CIRCUMSTANCES TO ALLOW TRIAL. PER BAGLEY (AT 693), HAD PETITIONER BEEN ABLE TO REVEAL BEALL'S PERJURIES, THERE MIGHT HAVE BEEN A DIFFERENT TRIAL OUTCOME. UNDER KYLE V. WHITNEY 514 U.S. 419 (1995) "A 'REASONABLE PROBABILITY' OF A DIFFERENT RESULT IS ACCORDINGLY SHOWN WHEN THE GOVERNMENT'S EVIDENCE SUPPRESSION 'UNDERMINES CONFIDENCE IN THE OUTCOME OF THE TRIAL'." [QUOTING BAGLEY (AT 678)].

ALSO

" 'BRADLEY ERROR' wherein 'A REASONABLE PROBABILITY THAT, HAD THE EVIDENCE BEEN DISCLOSED, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT', " [BRADLEY (AT 682)].

AGAIN, THIS IS PETITIONER'S CASE, AS PETITIONER HAS CHALLENGED DAVIS, CHAVIS, KYLE AND BRADLEY. IN REGARDS TO THE BRADY EVIDENCE, THROUGH THE LOWER COURTS "REJECTING" THEN "PARIAL" USAGE OVERLOOKED THE "COMMON DENOMINATOR" OF THIS EVIDENCE: THE TOTALITY, TO ONLY CONSIDER EACH INSTANCE IN THE SINGULAR INSTEAD OF THE COMPOSITE PER STRICKLER. "REGARDLESS OF REQUEST, FAVORABLE EVIDENCE IS MATERIAL IN [WHICH] SUPPRESSED EVIDENCE CONSIDERED COLLECTIVELY, NOT ITEM BY ITEM." [QUOTED IN KYLE (AT 436) SUPRA BRADLEY (AT 682)].

WITHOUT THE ABILITY TO CONFRONT BEALL'S TESTIMONIES PRIOR TO HIS SELF-IMPEACHMENT, BEALL IN THE EVIDENTIARY HEARING TESTIFIED TO "EXACTLY" WHAT WAS NEEDED TO INSURE CASE WENT TO TRIAL, INCLUDING CONTENTED ISSUES INVOLVING THE PRE-MIRANDA. IN TRIAL, BEALL TESTIFIED TO "EXACTLY" WHAT WAS NEEDED TO INSURE EVIDENCE WAS ADMITTED; WHICH WOULD HAVE BEEN IMPERCHED BY BRADY EVIDENCE OF COFFS. IN BOTH INSTANCES, ANYTHING HARMFUL TO PETITIONER REGARDLESS OF TRUTH OR FALSITY, BEALL QUICKLY RECALLED. ANYTHING HELPFUL TO PETITIONER, BEALL JUST AS QUICKLY FORGOT. HE BECAME LIKE A "STUCK RECORD" REPEATING "I CAN'T REMEMBER" OR "I DON'T RECALL" (VOL I p. 40, 41, 46, 47, 48; II p. 43, 44, 45, 46, 48, 72, 79 AND III p. 31); FOR A WITNESS WITH HIS (UNDISCLOSED) NOTES ON HIS PERSON (VOL III p. 25). IN SUMMARY, PER RULE 10, IT IS A CONTINUATION OF THE ERRORS FROM QUESTIONS #1-2 WITH THE LOWER COURTS DENIAL OF UPPER COURT DECISIONS IN THE MATTER. PER BONE, THE TRIAL COURT ERRED IN RULING AS FAVORING THE STATE PER STATUTE AND CASES SANDERS AND MENDENHALL; ALBERT BEALL WITHHELD TESTIMONY OF BEING "CALLED INTO" DURING EVIDENTIARY HEARING. THEREIN, TRIAL COURT LACKED TOTALITY. ALSO, LOWER COURT'S OMISSION OF THAT POINT, WHETHER WILFULLY OR INADVERTANT;

WHICH REFLECTS ON FORESTATED STRICKLER AND KYLE SUPRA BAGLEY. PETITIONER SHOWS THE IMPERMEABILITY OF BEALL COULD HAVE MADE A DIFFERENCE IN OUTCOME. THE PRE-MIRANDA AS TAKEN WITHOUT MIRANDA, ALBEIT PETITIONER WAS IN FACT UNDER ARREST AND IN DETENTION OF ADVERSE PHYSICAL AND MENTAL CONDITION, WAS CONSTITUTIONAL VIOLATION THEREIN PART OF THE COERCION AS GIVEN IN GARCIA AND MUST BE ADDRESSED PER FULMINANTE, ELSTAD, JACKSON, KYLE AND BAGLEY. PER THESE SAME FORESTATED CASES REQUIRES 'AUTOMATIC REVERSAL.' PETITIONER ASKS THIS HONORABLE COURT TO CONSIDER IN TOTALITY THE FOREGOING ISSUES INVOLVING PETITIONER'S ARREST, INVOLUNTARY CONFESSION IN COERCION WITHOUT MIRANDA BY OFFICIALS WHOM WERE SHOWN IN REASONABLE DOUBT OF GOOD FAITH, PERJURY AND MISCONDUCT THEREBY VIOLATING PETITIONER'S 4TH, 5TH, 6TH AND 14TH AMENDMENT RIGHTS.

QUESTION #4. AFTER PETITIONER SIGNED THE PRE-MIRANDA, HIS MIRANDA RIGHTS WERE "ALLOWED" IN WHICH HE WAIVED. HE WAS THEN HAND-CLIPPED BEHIND HIS BACK AND PLACED IN THE FRONT-RIGHT SEAT OF THE CAR, SEAT-BELTED AND SHOULDER-STRAPPED IMMOBILE. LYNN DROVE WHILE BEALL ENTERED THE REAR-RIGHT DOOR; PER BEALL'S TESTIMONY (VOL I p. 30). DURING PRE-MIRANDA INTERROGATION, BEALL HAD ASKED, THEN THREATENED PETITIONER ABOUT A "DANIELLE" PERSON. STILL NOT KNOWING THIS PERSON, PETITIONER INQUIRED WHO SHE WAS (VOL I p. 53). WITH THIS, BEALL WENT INTO A FULL 2ND INTERROGATION ATTEMPTING TO "BAIT" PETITIONER, BUT WHICH PETITIONER DID NOT REPEAT ANYTHING FROM 1ST INTERROGATION (VOL I p. 54). BETWEEN LULLS, ALL ELSE PETITIONER SAID WAS ABOUT COUNTRYSIDE SCENERY AND ONCE SAID "I'M ALL MESSED UP, IT'S MY FAULT." (VOL I p. 54). FROM THESE SINGULAR PHRASES, BEALL CREATED THE DETAILED STATEMENT [REFERRED TO AS POST-MIRANDA] CLOSELY MATCHING THE PRE-MIRANDA, EXTRACTED FROM SUPPOSED NOTES (UNDISCLOSED) AS BEALL STATED "I BELIEVE I WAS TAKING NOTES." (VOL I p. 45).

BEALL CLAIMS IT IS "EXACTLY WHAT HE [PETITIONER] SAID," BUT NOT VERBATIM [!?] (Vol I p. 45-46); TO ADMIT GUILT TO ALL CHARGES LAYED IN WARRANTS. PETITIONER READ THIS POST-MIRANDA FIRST TIME 2 MONTHS AFTER ARREST AND HAS DENIED IT'S FALSITY. A STATEMENT IS DEFINED IN N.C. UNDER APPLICABLE STATE LAW AT THE TIME AS: "A WRITTEN STATEMENT MADE BY THE WITNESS AND SIGNED OR OTHERWISE ADOPTED OR APPROVED BY HIM." [N.C.G.S. 15A-903(f)(5) a. (1988)].

BEALL CLAIMS PETITIONER STATED THE INFORMATION HE USED TO CREATE THE POST-MIRANDA IN WHICH PETITIONER NEVER SIGNED. HOWEVER, DUE TO BEALL'S "INTEGRITY" AND "GOOD FAITH," THE TRIAL COURT DENIED DEFENSE OBJECTIONS, TO ADMIT THE POST-MIRANDA VIOLATING STATE STATUTE LAW AND, PER N.C. v. SOLOMAN 516 U.S. 996 (1995) "A WRITTEN STATEMENT IS NOT ADMISSIBLE AS EVIDENCE WITHOUT PROPER IDENTIFICATION OR AUTHENTICATION."

PETITIONER SUBMITTED THIS ISSUE IN DETAIL IN 2ND MAR (2/2016) APP #1, SECT B, SUB #2 UTILIZING

N.C. v. SHEDD 117 N.C. APP 122, 121 (1994) "EVEN IF THE TRIAL COURT BELIEVED [WITNESS] GAVE A STATEMENT, THERE IS NO EVIDENCE [WITNESS] SIGNED, ADOPTED OR OTHERWISE APPROVED OF THE STATEMENT, WE FIND THAT THERE IS NO STATEMENT AS DEFINED IN SECTION §15A-903." [CITED IN N.C. v. SHANNON 182 N.C. APP 350 (2007)].

SHANNON STATES THE "DATE OF TAKING" WOULD APPLICABLE WHERE IN NEW VERSION OF N.C.G.S. 15A-903

(10/2004) NOT RETROACTIVE IN THIS CASE AT BAR. THE LOWER COURT'S "REJECTED" PETITIONER'S APPLICATION [ORDER (3/2016) SUM DEN'D]. ACCORDING TO STATUTE AND CASE LAWS SOLOMAN AND SHEDD, SINCE PETITIONER

DID NOT SIGN THE STATEMENT NOR AUTHENTICATE OR ADOPT IT; IS VOID AS EVIDENCE. PROSECUTION HAD

BOTH PRE AND POST-MIRANDA READ IN TRIAL BEFORE ADMITTED INTO EVIDENCE AS A GROSS MISCHANCE

OF JUSTICE PER HILL-PIMMRECK (Vol II p. 57-61 and p. 67-69) [STATE'S EVIDENCE (SE-) 10A AND 10B].

THE TRIAL COURT ACCEPTED THOSE "AFTER" BEING READ (Vol II p. 71) WHEREIN THE DAMAGE WAS ALREADY

DONE NO MATTER HOW THE COURT RULED. THE ACTIONS OF BEALL IS REFERRED TO AS THE "JUSTICE

KENNEDY TEST" IN MISSOURI V. SEIBERT 542 U.S. 620, 622 (2004) "WHEN POLICE DELIBERATELY INTERROGATE A SUBJECT WITHOUT MIRANDA WARNINGS BEFORE A SECOND PROPERLY WARNED INTERROGATION TO ELICIT A WARNED CONFESSION, THE SECOND MUST ALSO BE EXCLUDED."

ALSO, BEALL SHOWED DURING EVIDENTIARY HEARING HE UTILIZED PRE-MIRANDA INFORMATION TO CREATE THE POST-MIRANDA. AS EXAMINED BY THE COURT, BEALL TESTIFIED "HE [PETITIONER] LOOKED AT ME WITH A 'PUZZLED LOOK' ON HIS FACE, LIKE, WHO IS DANIELLE?" (VOL I p. 49); REFERENCING THE HIGHWAY TRIP CONVERSATION. FIRST, IT WAS PHYSICALLY IMPOSSIBLE FOR BEALL TO SEE PETITIONER'S FACE DURING THE TRIP AS NOTED IN SEATING ARRANGEMENT. SECOND, THE PRE-MIRANDA, BEALL SAT ACROSS FROM PETITIONER WHEN BEALL ASKED ABOUT DANIELLE TO SEE THE "PUZZLED LOOK." THIRD, IT WAS PETITIONER WHOM ASKED ABOUT DANIELLE ON THE TRIP, NOT BEALL (VOL I p. 42 V. VOL I p. 53). ANY REASONABLE MINDED PERSON COULD SUMMERIZE BEALL UTILIZED PRE-MIRANDA DATA CREATING THE POST-MIRANDA CONSIDERING THE TOTALITY OF FOREGOING CIRCUMSTANCES. IN ALL THESE ISSUES, PROSECUTION DID NOT VENTURE TO CORRECT ANY MISTAKE WHEN IT BECAME APPARENT PER SAUVAGES SUPRA NATURE.

UNDER HALL V. DIR. OF CORR. 343 F3d 976 (9TH CIR 2005) "DENIAL OF DUE PROCESS OCCURS WHERE THE STATE ALLOWS FALSE TESTIMONY TO GO UNCORRECTED."

IN RETALIAS, NEITHER LYAN NOR BEALL COULD TESTIFY TO A SINGLE INCRIMINATING STATEMENT FROM PETITIONER AS FOUNDED IN EITHER THE PRE-OR POST-MIRANDA. LYAN COULD ONLY TESTIFY TO EXACTLY PETITIONER STATED ABOUT "BEING MESSED UP." (VOL III p. 17), HARDLY A FOUNDATION FOR A CONFESSION AS BEALL DETAILED. BEALL COULD ONLY TESTIFY ON THE "DANIELLE" INQUIRY (VOL I p. 48-49). NEITHER OFFICER COULD TESTIFY TO MORE. THEREFORE, IT APPEARS BEALL CREATED THE POST-MIRANDA PER SEIBERT WITHOUT EVIDENCE TO PROVE, NOR THEIR OWN TESTIMONIES TO CORROBORATE EXCEPT "THEY SAID SO;"

COMING FROM 2 OFFICERS SHOWN IN PERJURIES, EVIDENCE TAMPERING AND MISCONDUCT ON PREVIOUS ISSUES.

SUBMISSION AND USE OF THE POST-MIRANDA MARKS FURTHER IN BEALL'S "BAD FAITH" AND WAS A "FUNDAMENTAL DEFECT" UNDER STATUTE LAW PER HILL-TIMMRECK AND TWILLEY-WHITE. PER CLINE V. WAL-MART INC. 144 F3d 294 (4th Cir 1998) "NEW TRIAL WILL BE GRANTED IF; (1) IT IS AGAINST THE CLEAR WEIGHT OF THE EVIDENCE; (2) IS BASED UPON EVIDENCE WHICH IS FALSE; OR (3) WILL RESULT IN A MISCARriage OF JUSTICE, EVEN THOUGH THERE MAY BE SUBSTANTIAL EVIDENCE WHICH WOULD PREVENT DIRECTON OF VERDICT."

IN SUMMARY, PER RULE 10 AND BONE, THE TRIAL AND LOWER COURTS ERRED IN DENYING SUPPRESSION OF THE POST-MIRANDA AS REQUIRED UNDER STATE STATUTE AND CITED CASES OF SOLOMAN AND SHEDD WHICH VIOLATED DUE PROCESS. IT IS APPARENT IN VIEW OF TOTALITY THE POST-MIRANDA WAS CREATED PER SEIBERT WITHOUT CORROBORATORY EVIDENCE IN VIOLATION OF HALL AND THAT IT WAS NOT AUTHENTICATED, THUS USED IN TRIAL AND AGAINST PETITIONER IN POST-CONVICTION EFFORTS PER HILL-TIMMRECK AND CLINE. BASED UPON THE SAME LOGIC AS QUESTION #3, THE POST-MIRANDA SHOULD BE SUPPRESSED AND COULD REQUIRE "AUTOMATIC REVERSAL" AS BEALL WAS THE PRINCIPLE WITNESS WHOM WAS IMPEACHED PER WYLE AND BAGLEY. PETITIONER ASKS THIS HONORABLE COURT TO CONSIDER IN TOTALITY THE FORESTATED ISSUES WHERE STATE INTRODUCED AND TRIAL COURT ADMITTED A FALSIFIED, UNAUTHENTICATED STATEMENT AGAINST STATUTE LAW BY OFFICERS SHOWN IN REASONABLE DOUBT OF GOOD FAITH, PERJURY AND MISCONDUCT THEREBY VIOLATING PETITIONER'S 4th, 5th, 6th AND 14th AMENDMENT RIGHTS.

QUESTION #5. THE GRAND JURY INDICTED PETITIONER ON 3 INDICTMENTS CONTAINING 8 CHARGES. IN EACH INDICTMENT IS 1 COUNT EACH OF "FIRST DEGREE BURGLARY" N.C.G.S. 14-51. THE TRIAL JURY FOUND PETITIONER GUILTY OF 1 COUNT N.C.G.S. 14-51 AND 2 COUNTS LESSER INCLUDED OFFENSE

"Felonies Breaking or Entering" N.C.G.S. 14-54; A MUCH LESSER OFFENSE. SEVEN YEARS AFTER TRIAL,

PETITIONER DISCOVERED THAT THE 1ST ELEMENT OF ALL N.C.G.S. 14-51 CHARGES WERE FATAL. PER N.C. v. BELL 285 N.C. 246 (1974) "FIRST DEGREE BURGLARY IS DEFINED IN NORTH CAROLINA AS THE BREAKING AND ENTERING, AT NIGHT, OF THE OCCUPIED DWELLING HOUSE, -- WITH THE INTENT TO COMMIT A FELONY THEREIN."

PER BELL, THE 1ST ELEMENT IS "BREAKING AND ENTERING." THE PUBLISHED INDICTMENT (TRIAL TRIBUNAL p. 7-9) IN THIS CASE AT BMR SHOWS FATAL ERROR AS "BREAKING OR ENTERING" WHICH IS THE 1ST ELEMENT IN N.C.G.S. 14-54. TRANSCRIPT RECORDS SHOW THE TRIAL COURT'S JURY INSTRUCTIONS CONSTRUCTIVELY

ALTERED THE PUBLISHED INDICTMENT TO READ "BREAKING AND ENTERING" (Vol III p. 156-157). IN

PETITIONER'S Amend. to MAR (4/2014) SECT A, p. 6 AND C, p. 5 WAS SUBMITTED U.S. v. RANDALL 771 F3d 191 (4th Cir 1991) "THE 5TH AMENDMENT, U.S. CONSTITUTION GUARANTEES THAT A CRIMINAL DEFENDANT WILL BE TRIED ONLY ON CHARGES IN A GRAND JURY INDICTMENT, AND THUS, ONLY THE GRAND JURY MAY BROADEN OR ALTER THE CHARGES IN THE INDICTMENT." [ALSO IN U.S. v. BOLDEN 325 F3d 417 (4th Cir 2003)]

BASED UPON RANDALL - BOLDEN, THE TRIAL COURT LACKED JURISDICTION TO ALTER THE PUBLISHED INDICTMENT.

PETITIONER ALSO SUBMITTED IN THE Amend. to MAR (4/2014) SECT A, p. 7 AND C, p. 4: N.C. v. ELLIS 168 N.C. APP 651 (2008) "AN INDICTMENT MUST INCLUDE ALL THE FACTS NECESSARY TO MEET THE ELEMENTS OF THE OFFENSE. IF IT DOES NOT, THE TRIAL COURT LACKS JURISDICTION OVER DEFENDANT AND SUBSEQUENT JUDGEMENTS ARE VOID AND MUST BE VACATED." [QUOTED IN N.C. v. WILLIAMS 318 N.C. 624, 628 (1996)]

THE LOWER COURTS "REJECTED" BOTH FEDERAL AND STATE CASES IN THE MATTER [ORDER (5/2014) #38-45] TO CONCLUDE

THE ERRORS OF THE COURT WERE "INADVERTANT" ALTERING THE READING AND THE PUBLISHED INDICTMENT AS "NEARLY CLERICAL ERROR" WHICH "DID NOT SIGNIFICANTLY ALTER" THE CHARGES THEREIN, PETITIONER WAS "ADEQUATELY

WARNED" THAT HIS CLAIMS WERE MERITLESS. INASMUCH HAD THE ERRORS OCCURRED 1 OR 2 TIMES,

PETITIONER MIGHT AGREE. HOWEVER, THIS PLAIN ERROR OCCURRED 9 TIMES WITHOUT A SINGLE CORRECT

PUBLISHING. THEREIN, ANY REASONABLY MINDED PERSON WOULD ONLY UNDERSTAND THE 1ST ELEMENT AS

PUBLISHED IN THE 3 CHARGES WAS "BREAKING OR ENTERING." PER U.S. v. SUTTON 461 U.S. 476 (1992)
"FAILURE TO INCLUDE SCENARIO ELEMENTS RENDERS INDICTMENT FATALLY DEFECTIVE."

ALSO

HODGSON v. VERMONT 168 U.S. 262, 269 (1997) "DUE PROCESS OF THE 14TH AMENDMENT GUARANTEES
THE RIGHT TO A STATE COURT PLEADING WHICH ALLEGES EVERY ELEMENT OF THE OFFENSES."

ALSO

U.S. v. LANDHAM 21 F3d 1077, 1082 (6th Cir 2001) "INDICTMENT ... INSUFFICIENT BECAUSE
INDICTMENT OMITTED ... ESSENTIAL ELEMENTS."

WHETHER THE READING WAS INADVERTANT, CLERICAL ERROR OR IF PETITIONER WAS ADEQUATELY WARNED IS

MOOT. THE DEFECTIVE ELEMENTS ARE A CONSTITUTIONAL VIOLATION OF LAW BECAUSE INDICTMENT CHARGES

OMITTED "... ESSENTIAL ELEMENTS," THUS CHARGES ARE "INSUFFICIENT" PER SUTTON AND LANDHAM.

THEREFORE, TRIAL JUDGE LACKED JURISDICTION TO CHARGE, NOR CONSTRUCTIVELY ALTER PER RANDALL-BOEDEN.

THEREIN, PETITIONER'S CONVICTIONS UNDER THESE 3 CHARGES "... WAS OBTAINED IN VIOLATION OF
CONSTITUTION." [MURRAY (AT 1484)] IN REGARDS TO GUILTY FINDINGS ON LESSER INCLUDED OFFENSES,

IN PETITIONER'S AMEND. TO MAR (4/2014) SECT 1 p. 4 AND C p. 7 SUBMITTED N.C. v. BOWEN
139 N.C. APP 18 (2000) "BY IT'S FAILURE TO SUBMIT THE PROPER JURY INSTRUCTIONS TO THE
JURY, THE TRIAL COURT EFFECTIVELY DISMISSED THE CHARGE. [CITING WILLIAMS]."

ALSO

"THE FAILURE OF THE COURT TO SUBMIT THE CASE TO THE JURY PURSUANT TO THE CRIME CHARGED
IN THE INDICTMENT AMOUNTED TO A DISMISSAL OF THAT CHARGE AND ALL LESSER INCLUDED
OFFENSES." [WILLIAMS].

IN PETITIONER'S 2ND MAR (2/2016) APP #2 ALSO ADDRESSES LESSER INCLUDED OFFENSES THE TRIAL COURT
ERRED UPON. THE LOWER COURT "REJECTED" ALL THESE ISSUES AND STATE'S OWN LAWS [ORDER(S) (5/2014)]

"1-45 AND (7/2016) SUM DEN'D". BASED UPON BOWEN SUPRA WILLIAMS AND WILLIAMS, THE LESSER

INCLUDED OFFENSES AUTOMATICALLY ARE VOIDED WITH THE GREATER CHARGES. PETITIONER ADDRESSED THIS

IN THE FHP IN MEMORANDUM, ISSUE #3. IN SUMMARY, PER RULE 10, THE LOWER COURTS VIOLATED FEDERAL CONSTITUTIONAL AND CASE LAWS PER RANDOLPH-BOLDEN. PER BOLG, THE TRIAL COURT WAS APPARENTLY UNAWARE OF THE ERROR; HOWEVER, STILL LACKED JURISDICTION TO CHARGE THE JURY PER SCOTTON, HODGSON AND LANDHAM. THE LOWER COURTS ALSO WAS IN VIOLATION DENYING STATE'S OWN LAWS PER ELLIS, WILLIAMS AND BOWEN, TO DENY RELIEF. IN ALL INSTANCES, THE GREATER AND LESSER CHARGES ARE FATAL THIS SHOULD BE VACATED. PETITIONER ASKS THIS HONORABLE COURT TO CONSIDER IN TOTALITY THE FORESTATED ISSUE OF FATAL INDICTMENT CHARGES WHERE THESE CONTAINED IMPROPER CITED ELEMENTS TO CHARGE THE OFFENSES AGAINST PETITIONER VIOLATING HIS 5TH, 8TH AND 14TH AMENDMENT RIGHTS. PETITIONER WOULD HAVE THIS HONORABLE COURT ALSO REVIEW THE FHP MEMORANDUM IN ENTIRETY ON THIS SUBJECT MATTER.

QUESTION #6. UNDER FIORÉ, THE "STANDARD OF REVIEW" = "THE PROSECUTION CHARGE REQUIRES THE GOVERNMENT TO PROVE BEYOND REASONABLE DOUBT EVERY ELEMENT OF THE CRIME FOR WHICH A DEFENDANT IS CHARGED...."

AS PETITIONER UNDERSTANDS FIORÉ, A CRIMINAL DEFENDANT IN A JURY TRIAL CAN ONLY LEGALLY BE FOUND GUILTY OF AN OFFENSE IF: EVERY KEY ELEMENT IN A GRAND JURY INDICTMENT CHARGE IS PROVEN VIOLATED BEYOND REASONABLE DOUBT; ONLY IN TRIAL BEFORE THE JURY WITH EITHER DIRECT, CIRCUMSTANTIAL, SUBSTANTIAL OR SUFFICIENT EVIDENCE. ANYTHING LESS THAN THESE CONDITIONS DOES NOT PROVE A CONVICTION THIS VOIDS THE CHARGE. UNDER "PRESUMPTION OF LAW" (BLACKS); UNLESS A CRIMINAL DEFENDANT IS PROVEN GUILTY BEYOND REASONABLE DOUBT, [PER FORESTATED CONDITIONS], THE DEFENDANT IS NOT GUILTY, OR, IN LAYMAN TERMS: A PERSON IS INNOCENT UNTIL PROVEN GUILTY UNDER FORESTATED CONDITIONS.

IN THIS CASE AT BMR, 4 OF THE CHARGES IN THE 3 GRAND JURY INDICTMENTS ARE OF STATUTORY RACE/SEX OFFENSE N.C.G.S. 14-27.7A, WHICH EACH CONTAIN 5 IDENTICAL ESSENTIAL ELEMENTS. THE STATE HAS NOT AT ANY LEVEL, DURING TRIAL AS REQUIRED, PROVEN THROUGH ANY OF THE FORESTATED CONDITIONS THAT PETITIONER VIOLATED ELEMENT #4 OF ANY OF THE 4 CHARGES OF N.C.G.S. 14-27.7A. SIMPLY PUT, PETITIONER HAS NEVER BEEN PROVEN GUILTY. ALL PROSECUTOR'S ATTEMPTS ON THIS ISSUE HAS BEEN INFERENCE UPON INFERENCE ORIGINATING FROM SUPPOSITION. BASICALLY, IF YOU SAY "HE'S GUILTY" ENOUGH TIMES, IT IS BELIEVED. AS PETITIONER UNDERSTANDS, SUPPOSITION HAS NEVER BEEN A STANDARD FOR EVIDENCE. IN HIS AMEND. TO MMR (4/2014) SECT B p. 20, PETITIONER SUBMITTED N.C. v. POWELL 218 N.C. 202 (1966) "INFERENCE CANNOT BE BASED UPON INFERENCE. EVERY INSTANCE MUST STAND UPON SOME CLEAR OR DIRECT EVIDENCE AND NOT UPON SOME OTHER INSTANCE OR PRESUMPTION." [ALSO IN LANG V. BRAYSON 243 N.C. 108, 112 (1957)].

THE LOWER COURT "REJECTED" STATE'S OWN LAWS ON THE ISSUE [ORDER (5/2014) #46-59]. UNDER

U.S. v. LATIMER 385 F3d 947 (6th CIR 2004) "CONVICTION MAY NOT BE OBTAINED BY PILING INFERENCES UPON INFERENCES." [ALSO IN U.S. v. HESTER 140 F3d 753 (1998)]

THE ONLY WITNESS QUESTIONED ON THIS ELEMENT TESTIFIED "NOT TO MY KNOWLEDGE." (VOL II p. 157).

WHEN ASKED HOW HE FOUND OUT INFORMATION RELATED TO THE SUPPOSED CRIMES, WITNESS TESTIFIED

"I TALKED WITH A FRIEND OF MINE, ... I GOT A PHONE CALL." (VOL II p. 161). WHEN ASKED ABOUT

DEFENDANT/PETITIONER, WITNESS TESTIFIED "NO, I'VE NEVER LAID EYES ON HIM UNTIL THIS

CONSPIRACY." (VOL II p. 158). FIRST, THE SUPPOSED "FRIEND" WAS NOT IDENTIFIED NOR CALLED TO

TESTIFY MAKING WITNESS TESTIMONY HEARSAY. SECOND, WITH WITNESS TESTIMONY OF A LACK OF

KNOWLEDGE AND NEVER SEEN PETITIONER BEFORE DISQUALIFIES HIMSELF AS A WITNESS IN THE MATTER. THE

ONLY OTHER EVIDENCE PRESENTED IN TRIAL RELATING TO THE ELEMENT IN QUESTION WAS EMAILS. IN TRIAL,

STATE PRODUCED 22 EMAILS AS ADMITTED FROM WITNESS AND "HANDLED" BY BGALL AND LYAN. MONTHS BEFORE TRIAL, WITNESS WENT PUBLIC TO DENOUNCE PETITIONER STATING TO THE NEWS MEDIA THAT HE HAD FOUND "OVER 40" EMAILS ON HIS COMPUTER [ARTICLE IN MAR (1/2008) p. 70-73 AND APP. S, 1-2], SHOWING A NON-DISCLOSURE OF 'OVER 17" EMAILS. SEVERAL DISCLOSED EMAILS SHOWED SIGNS OF TAMPERING AND ALTERATIONS TO THE TEXTUAL CONTENT. PETITIONER ALSO ADDRESSED THIS ISSUE IN SUPPLEMENTS TO ACTIONS: Amend. to MAR (4/2014) SECT B, SUPPL. p. 28-37 AND 2nd MAR (2/2016) APP #1, SECT A, SUPPL. B p. 37-41. LIKE THE PRE AND POST-MIRANDA STATEMENTS, THE EMAILS WERE READ IN TRIAL BEFORE ADMITTED INTO EVIDENCE [S-E #7; VOL II p. 108-136, ADMITTED VOL II p. 162-163] AS A GROSS MISFEASANCE OF JUSTICE PER HILL-TIMMERACK AS DAMAGING BEFORE ADMISSION. THESE EMAILS ARE SHOWN NOT ONLY IN INSUFFICIENT QUANTITY AND IN ALTERATIONS, BUT NOT IN ORIGINAL COPY AS TESTIFIED "RE-SENT" AND "RE-COPIED" THIS BECOMING HEARSAY PER STATUTE LAW. AFTER INDEPENDENT FORENSIC ANALYSIS, IT IS PROVEN THE EVIDENCE IS INSUBSTANTIAL WITHOUT ORIGINAL COPY AND UN-ALTERED PROOF OF SOURCE. THE LOWER COURT MAINTAINED THESE AS EVIDENCE. OTHER THAN EMAILS, THERE WAS NO PHYSICAL, NO MEDICAL EXAMINER'S REPORTS (RELINQUISHED BRADY EVIDENCE IN PCD) NOR ANY FORENSIC EVIDENCE SHOWING PETITIONER VIOLATED ELEMENTS #1 NOR #4 NOR EVIDENCE PLACING PETITIONER AT SUPPOSED CRIME SCENE EXCEPT TESTIMONIAL. THIS EVIDENCE WAS ASKED FOR IN DISCLOSURE [TRIAL TRIBUNAL (12/2004) p. 11, IS 2016] PRE-TRIAL AND ASKED FOR IN-TRIAL (VOL II p. 78-80 AND III p. 18-23). PETITIONER CONTENDS HAD THIS EVIDENCE "FRUITFUL" TO STATE, IT WOULD HAVE BEEN UTILIZED BY PROSECUTION IN TRIAL. [EVIDENCE IN FORM OF RAPG KIT, HAIR AND TAPES SAMPLES] (PCD p. 83-84). SINCE THE EVIDENCE WAS NOT FRUITFUL TO STATE, IT IS POTENTIALLY FAVORABLE TO DEFENSE, THEREFORE PETITIONER

30.

(IN SUPPOSITION) CALCULATES WHY IT WAS NOT DISCLOSED OR USED IN TRIAL. HOWEVER, POST-CONVICTION, PETITIONER DID REQUEST THIS EVIDENCE [MOTION FOR PED (1/2008)] BUT WAS UNDISCLOSED BY PROSECUTION. WITHOUT THIS

EVIDENCE, PETITIONER COULD NOT EVALUATE IT FOR CLAIMS UNDER MERITS OF BRADY. PER U.S. v. PETERSON 276 F3d 848 (7th Cir 2001) "(1) TO RENDER A GUILTY VERDICT, JURY MUST HAVE SUFFICIENT EVIDENCE TO AVOID RESORTING TO EXCESSIVE INFERENCES OR GUESSWORK; (2) WHEN A VERDICT MAY HAVE RESTED UPON ANY OF SEVERAL GROUNDS, ONE OF WHICH IS IMPROPER, THE CONVICTION CANNOT BE UPHOLD."

ALSO
U.S. v. BALISTIA 254 F3d 141 (2nd Cir 2001) "ABSENCE OF EVIDENCE IN CRIMINAL CASE IS VALID BASIS FOR REASONABLE DOUBT."

PETITIONER HAS QUALIFIED PETERSON AND BALISTIA IN THIS CASE AT BAR WHERE THE STATE UTILIZES INFERENCES INSTEAD OF FACTS, HEARSAY INSTEAD OF EVIDENCE TO PROVE ELEMENT #4 THIS GIVING "REASONABLE DOUBT" WHEREIN "THE CONVICTION CANNOT BE UPHOLD." AS THERE IS NO TRIAL EVIDENCE TO PROVE VIOLATION TO ALL ELEMENTS OF THE CHARGES, PETITIONER IS SERVING SENTENCES GROUNDESLY. BESIDES THE "RELIABILITY" AND "GOOD FAITH" OF BEALL WITH FOREGOING ISSUES OF PRE- AND POST-MIRANDA, ONLY THE WITNESS/VICTIM GIVES TESTIMONY ON OTHER ELEMENTS. SHE ALSO IMPEACHES HERSELF [FORTHCOMING IN QUESTION #7.] REMOVAL HER "GOOD FAITH." TRIAL COUNSEL FOR DEFENSE AT CLOSE OF EVIDENCE MOVED TO DISMISS ALL CHARGES DUE TO "LACK OF PROVING ALL THE ESSENTIAL ELEMENTS OF THE CRIMES." TRIAL COURT SUMMARILY DENIED THE MOTION WITHOUT REVIEWING THE EVIDENCE (VOL III p. 131). "WHEN DEFENDANT MOVES TO DISMISS A CHARGE AGAINST HIM ON THE GROUNDS OF INSUFFICIENCY OF EVIDENCE, THE TRIAL COURT MUST DETERMINE 'WHETHER THERE IS SUBSTANTIAL EVIDENCE OF EACH ESSENTIAL ELEMENT OF THE OFFENSE CHARGED'..." [GARCIA (AT 412, 61-62)]

PER GARCIA, THE COURT MUST MAKE A DETERMINATION WHICH WOULD REQUIRE EVIDENCE REVIEW. IN THIS CASE AT BAR, THE TRIAL COURT (FOR SOME UNKNOWN REASON) DIDN'T TAKE A MOMENT'S PAUSE BEFORE DENYING DEFENSE MOTION; MUCH LESS REVIEW FOR DETERMINATION FOR ORDER STATE TO

PRODUCE EVIDENCE. PETITIONER IN AMEND. TO MAR (4/2014) SECT B p. 12-13 SUBMITTED: N.C. v. NOBLES
35 N.C. 484 (1999) "IN CONTEXT OF A MOTION TO DISMISS, THE STATE MUST PRESENT
SUBSTANTIAL EVIDENCE OF EACH ELEMENT OF THE CHARGED OFFENSE."

MSB
N.C. v. MALLOY 309 N.C. 176, 179 (1983) "HOWEVER, IF THE EVIDENCE 'IS SUFFICIENT ONLY
TO RAISE SUSPICION' OR CONJECTURE AS TO COMMISSION OF THE OFFENSE OR IDENTITY OF THE
DEFENDANT AS THE PERPETRATOR, THE MOTION TO DISMISS MUST BE ALLOWED." [CITED IN
NOBLES].

THEREFORE, PER NOBLES, THE STATE MUST PRESENT SUBSTANTIAL EVIDENCE UPON MOTION. IF THE STATE DOES NOT,
THE MOTION TO DISMISS MUST BE ALLOWED PER MALLOY SUPRA NOBLES. IN THIS CASE AT BAR, THE STATE DID
NOT PRODUCE ANY EVIDENCE UPON MOTION (VOL III p. 130-131). IN THIS, THE LOWER COURTS 'RESPECTED' STATES'
OWN LAWS TO DENY RELIEF [ORDER (5/2014) #46-59] PER WILL-TIMMERLICK. ADDITIONALLY, THE LOWER COURTS
DID NOT CITE ANY AUTHORITY TO SUPPORT THEIR FINDINGS TO DENY RELIEF ON THIS ISSUE. DEFENSE COUNSEL
WAS IN PART INEFFECTIVE ASSISTANCE ON THIS ISSUE WHEREIN COUNSEL WAS NOT SPECIFIC TO THE TRIAL COURT
WHICH ELEMENTS OF WHICH CHARGES WERE NOT PROVEN IN THE MOTION TO DISMISS (VOL III p. 130-131); ALBEIT,
UPON MOTION, GARCIA REQUIRED COURT REVIEW AND NOBLES REQUIRED STATE TO PRODUCE SUBSTANTIAL
EVIDENCE. ALSO, COUNSEL DID NOT VOIR DIRE NOR CROSS-EXAMINE WITNESS, IF ONLY TO CLARIFY
HIS SUPPOSITION, HENRSHY AND EMAIL EVIDENCE HANDLING ISSUES (VOL II p. 163). COUNSEL ALSO LOST
DUE TO "SUPERIOR SLEIGHTS" OF PROSECUTOR BASED UPON FORECASTED MULTIPLICITY OF INFERENCES
FOUNDED UPON SUPPOSITION AND HENRSHY; AND USE OF HIGHLY INFLAMMABLE EVIDENCE WHICH WAS PROVEN
IN TRIAL NOT AUTHENTICATED TO PETITIONER BY SBI FORENSIC EXPERT ON SUBJECT MATTER (VOL III p. 124
AND p. 127-128). BEING THERE WAS NO EVIDENCE NORMALLY CONSIDERED LEGAL PRESENTED AT TRIAL TO
PROVE VIOLATION TO ALL KEY ELEMENTS OF THE 4 CHARGES, AND HAD THE TRIAL COURT AND PROSECUTION

(A.K.A. STATE) COMPLIED WITH STATE'S OWN LAWS UNDER POWELL, CARCIA, NORLES AND MALLOY PER HILL-

TIMBRECK, THEN PETITIONER'S CHARGES WOULD NOT HAVE BEEN SENT TO THE JURY. THIS WOULD HAVE CHANGED

THE ENTIRE FACE OF THE PROCEEDINGS. UNDER PARKER v. DUBBER 498 U.S. 308 (1991) 'EVIDENCE INSUFFICIENT TO SUPPORT A FACTUAL DETENTION CAN BE OVERTURNED BY FEDERAL COURT WHERE FINDINGS NOT FULLY SUPPORTED BY THE RECORD.'

PETITIONER HAS QUALIFIED PARKER. THE LOWER COURTS CONTEND PETITIONER HAS "NOT PROVEN HIS INNOCENCE."

UNDER 'STANDARDS OF REVIEW' AND 'PRESUMPTION OF LAW', IN TRIAL, THE BURDEN IS UPON THE STATE TO

PROVE GUILT, NOT A DEFENDANT TO PROVE INNOCENCE; NOR THE 'POST-HOC' INFERENCES OF THE LOWER COURTS

TO PROVE. IN THIS, LOWER COURT'S CLAIMS ARE MOOT AS THIS MATTER OF LAW WAS NOT PRESENT IN

TRIAL. TRIAL RECORDS SHOW THIS AS FACT WHEREIN PARKER APPLICABLE. INREGARDLESS OF LOWER COURT'S

'POST-HOC' ACTIONS TO DENY RELIEF [ORDER (5/20/14) #46-59], COMBINED WITH THE HIGHLY INFLAMMABLE

UNAUTHENTICATED EVIDENCE AND THE INFERENCES OF WHAT IS 'BELIEVED,' OR, IN THE WORDS OF

MALLOY SUPRA NORLES "RAISED SUSPICION," THE BOTTOM-LINE IS THAT DURING TRIAL, PETITIONER WAS

NOT PROVEN GUILTY AS BY REQUIREMENTS OF LAW. PER CITED CASES, PETITIONER IS ERRONEOUSLY SERVING

SENTENCES IN THIS CASE AT BAR, WHEREIN, PETITIONER SHOULD NOT HAVE BEEN CHARGED TO THE JURY WITHOUT

SUFFICIENT EVIDENCE TO PROVE VIOLATION OF EVERY KEY ELEMENT OF STATED CHARGES. IN THE TOTALITY OF

THE FOREGOING, USED IN TRIAL AND POST-CONVICTION RELIEF AGAINST PETITIONER CUMULATES TO CONSTITUTIONAL

ERROR IF BY NO OTHER MEASURE THAN ISSUES OF FAIRNESS PER THULLY-WHITE AND IN DOWLING v. U.S.

493 U.S. 342, 356 (1990) "VIOLATIONS TO STATE LAWS WHICH DO NOT INFRINGE ON FEDERAL CONSTITUTION ARE NOT RECOGNIZED WITH EXCEPTION; (1) FUNDAMENTAL FAIRNESS; SUBSTANTIVE ERROR OCCURS IN CIRCUMSTANCES IMPLYING 'FAIRNESS'."

THIS ISSUE WAS ADDRESSED IN THE FHP IN MEMORANDUM, ISSUE #2. IN SUMMARY, AS A MATTER

OF STANDARD OF REVIEW AND PRESUMPTION OF LAW, PETITIONER HAS NEVER BEEN PROVEN GUILTY OF ALL ESSENTIAL ELEMENTS OF FORESTATED CHARGES, IN TRIAL, AS REQUIRED WITH SUBSTANTIAL EVIDENCE. PER RULE 10, LATTIMER SHOWS INFERENCE NOT SUFFICIENT WHEREIN PETERSON AND BALISTA GIVES REASONABLE DOUBT TO WHERE THE "CONVICTION CANNOT BE UPHOLD." PER BONE, THE TRIAL COURT AND STATE ACTED IN ACCORDANCE WITH THEIR OWN STATE RULES AS SHOWN IN FOREGOING CITATIONS. THE "POST-HOC" ATTEMPTS OF THE LOWER COURT TO CONVINCE PETITIONER IS UNREASONABLE SINCE CONVICTION REQUIRES A TRIAL SETTING. AS THE LOWER COURT DID NOT CITE AUTHORITY FOR ITS FINDINGS, THIS IS POSSIBLY A NEW ISSUE FOR ARBITRATION OF THESE SENIOR COURTS. DUE TO THESE FOREGOING ISSUES, THIS HONORABLE COURT HAS THE AUTHORITY TO "OVERTURN CONVICTION" PER BALISTA AND PARKER. PETITIONER ASKS THIS HONORABLE COURT TO CONSIDER IN TOTALITY ALL THE FOREGOING FACTS IN RESPECTS TO THE LACK OF EVIDENCE TO PROVE, IN TRIAL, BEFORE THE JURY, AS REQUIRED, OF ALL ESSENTIAL ELEMENTS OF STATED CHARGES IN THAT PETITIONER WAS NEVER PROVEN GUILTY BY LAW THEREIN VIOLATING PETITIONER'S 4TH, 5TH, 8TH AND 14TH AMENDMENT RIGHTS. PETITIONER WOULD HAVE THIS HONORABLE COURT ALSO REVIEW THE FHP MEMORANDUM IN ENTIRETY ON THIS SUBJECT MATTER.

QUESTION #7. OFFICERS LYNN AND BEALL, IN THE PROCESS OF CATCHING WARRANT LISTED ITEMS SEIZED 4 ITEMS NOT LISTED. UNDER MARYLAND V. GARRISON 480 U.S. 79. 83 (1987) "PROBABLE CAUSE REQUIRED REASONABLENESS OF SEARCH WARRANT; AND IS RECORDED AS 'FAIRNESS PROBABILITY'; ITEMS TO BE SEIZED MUST BE SPECIFICALLY ITEMIZED ON WARRANT RAISED BY PROBABLE CAUSE."

THE 4 ITEMS WERE NOT ON PROBABLE CAUSE. OF THESE, ONLY 1 WAS USED IN TRIAL; A PIECE OF MILITARY UTILITY CAMOUFLAGE NET [NET] (PCD p. 78 AND 90). THE PROBABLE CAUSE STATEMENT [PCS]

SHOWS THAT PETITIONER WORE "CAMOUFLAGE CLOTHING" WITH A "BLACK SKI MASK" ON HIS FACE DURING
SUPPOSED CRIMES [BOTH RECOGNIZABLE GARMENTS] (VOL II p. 154). NO ITEMS AS DESCRIBED IN PCS WERE
SEIZED ALBEIT PETITIONER, BEING IN YEARS OF MILITARY SERVICE HAD AMPLE CAMOUFLAGE CLOTHES. THE
OFFICERS SEIZED A PIECE OF 'NET,' OF WHICH PETITIONER ALSO HAD SEVERAL. NORTH CAROLINA UTILIZES
'PLAIN-VIEW' DOCTRINE TO SEIZE NON-WARRANT LISTED ITEMS, PROVIDED IT IS STATED OR DESCRIBED IN THE
PCS. THIS WOULD HAVE JUSTIFIED SEIZURE OF RECOGNIZABLE CLOTHING ITEMS RESEMBLING A BLACK:
TOBACCAN/STOCKING OR COLD WEATHER CAP, "DEW RAG" OR EVEN A HOCKEY MASK; BUT NOT A CAMOUFLAGE
(NOT BLACK) NET (NOT A RECOGNIZABLE GARMENT). UNDER CROSS-EXAMINATION AS BEALL WAS ASKED ABOUT
THE NET SEIZURE TESTIFIED; "I DON'T SEE WHERE THERE'S ANY CLOTHING LISTED ON THE APPLICATION."
(VOL I p. 37); ALBEIT THE NET IS NOT CLOTHING. THE TRIAL COURT ADMITTED THE NET AS
EVIDENCE [S.E. #9] UNDER OBJECTION (VOL II p. 55) APPARENTLY UPON BEALL'S "GOOD FAITH." BEALL
JUSTIFIED THE NET SEIZURE UNDER 'PLAIN-VIEW' (VOL I p. 48) WITHOUT IT BEING DESCRIBED IN THE
PCS. THE LOWER COURTS DENIED PETITIONER'S CLAIMS ON THE ISSUE THIS IGNORING THAT PLAIN-VIEW
AND WARRANT REQUIRES PROBABLY CHRG. IN WHAT APPEARS TO BE AN ATTEMPT TO CIRCUMVENT
PETITIONER'S 4TH AMENDMENT CLAIMS, THE LOWER COURT REWRITING THE "NET" TO READ AS A "SCARF"
TO JUSTIFY SEIZURE AS CLOTHING FROM THE PCS. THIS ALSO IGNORES ALL TESTIMONIAL AS A "PIECE OF
NET" [NOT SCARF] AND ALL SEIZURE INVENTORIES PLAINLY LISTS THE ITEM AS "CAMOUFLAGE NET"
(PCS p. 78 AND 90). ALSO, THE LOWER COURTS TRIES TO JUSTIFY SEIZURE AS "INADVERTANT" [ORDER
(2/10/12) SECT III #71-79 AND #96-97]. IT APPEARS THE LOWER COURTS WOULD GO TO "ANY LENGTH"
TO OBTAIN PETITIONER JUSTIFIABLE RELIEF. PER MAPP V. OHIO 367 U.S. 643 (1961) "EVIDENCE

OBTAINED BY SEARCH IN VIOLATION OF THE 4TH AMENDMENT IS INADMISSABLE IN STATE AND FEDERAL CRIMINAL TRIALS.

PETITIONER MIGHT NOT HAVE RAISED THIS ISSUE EXCEPT SUPPOSED VICTIM/WITNESS IMPEACHED HIMSELF ON THIS EVIDENCE. WITNESS GAVE THE PCS AS RECORDED BY DETECTIVE BECKY BRENDLE WHEREIN WITNESS SIGNED THE PCS FOR CONTENT, ACCURACY AND AUTHENTICATION [PER SOLOMAN (AT 217-218, 8)] (VOL II p. 150 AND p. 154-155). PROSECUTION UTILIZED THE NET [NEVER STATED AS "SCARF"] TO HAVE WITNESS GIVE WHAT APPEARED TO BE A "WELL COACHED" TRIAL TESTIMONY "TO FIT" THE NET EVIDENCE STATING "PETITIONER WORE A 'CAMOUFLAGE TRUNK THAT WENT OVER HIS FACE, ... A NET'." (VOL II p. 98) [NOT A SCARF]. THIS IS A COMPLETELY DIFFERENT TESTIMONY FROM HER PCS THIS MAKING THE NET KEY EVIDENCE. UNDER CROSS-EXAMINATION, WITNESS BEING CAUGHT IN IMPEACHMENT, ATTEMPTED TO SHIFT BLAME TO BRENDLE STATING "I DON'T KNOW WHAT A BLACK SKI MASK IS, I DO NOT KNOW WHAT ONE LOOKS LIKE, ...," ALSO STATING "BRENDLE JUST MADE IT UP." (VOL II p. 146-147), OMITTING THE FACT SHE GAVE, READ, AND AUTHENTICATED THE PCS (VOL II p. 150 AND p. 154-155) [PCD p. 21-24]. EXAMINING WITNESS' TRIAL TESTIMONIES V. HER PCS SHOWS SHE IMPEACHES HERSELF 4 SEPARATE TIMES ON DIFFERENT MATTERS SHOWING HER IN PERJURY. PROSECUTION CLAIMED THE PCS AS CORROBORATION INSTEAD OF IMPEACHMENT (VOL II p. 151). GIVEN UNDER SAUVAIDES SUPRA MAPLE, THE IMPROPERLY SEIZED EVIDENCE HAD WITNESS ALTER HER PRIOR TESTIMONY KNOWINGLY UTILIZED BY PROSECUTION WHOM LED WITNESS INTO CONFLICTAL TESTIMONY OF "BLACK SKI MASK" V. "NET." THIS SHOWS "BAD FAITH" OF BOTH PARTIES OF WITNESS AND PROSECUTION VIOLATING PETITIONER'S RIGHTS PER SAUVAIDES SUPRA MAPLE OVER THE IMPROPERLY SEIZED EVIDENCE. IN SUMMARY, PER RULE 10, IT IS CONSTITUTIONAL LAW THAT EVIDENCE SEIZED WITHOUT PROBABLE

CASE; REGARDLESS OF WARRANT OR PLAIN-VIEW IS INADMISSABLE PER CARRISON AND MAPD. ALSO, IT IS A VIOLATION FOR PROSECUTION TO LEAD A WITNESS INTO SELF-IMPEACHMENT PER SALVADRES SUPRA MAPUG, CREATING "BAD FAITH" FOR BOTH PROSECUTION AND WITNESS. ALL OF THE FORESTATED CONDITIONS WARRANTS THE SUPPRESSION OF THE ILLEGALLY SEIZED EVIDENCE INCLUDING WITNESS AND THEIR STATEMENTS. LOWER COURT "RECLASSIFYING" THE EVIDENCE TO CIRCUMVENT PETITIONER'S CONSTITUTIONAL RIGHTS DOES NOT CORRECT THE MEASURE NOR REMOVE CONSTITUTIONAL VIOLATION IN THIS CASE AT BAR. PETITIONER ASKS THIS HONORABLE COURT TO CONSIDER IN TOTALITY THE CIRCUMSTANCES INVOLVING THE IMPROPER SEIZURE OF EVIDENCE; LOWER COURT'S ATTEMPTS TO JUSTIFY, AND THE IMPACT ON TRIAL PROCEEDINGS FOR PROSECUTION TO GUIDE A WITNESS INTO IMPEACHMENT VIOLATING PETITIONER'S 4th, 5th AND 14th AMENDMENT RIGHTS.

QUESTION #8. ACCORDING TO JUDICIAL RULES OF CONDUCT AS PETITIONER UNDERSTANDS, A TRIAL COURT JUDGE CANNOT IN ANY FORM OR MANNER EXPRESS THEIR OPINION NEITHER OPENLY NOR IN OR OUT OF JURY PRESENCE, UPON SUBJECT MATTER. JUDICIAL EXPRESSION OF OPINION IS TOTALLY IMPROPER AND STRICTLY FORBIDDEN AS IT TENDS TO SHOW POTENTIAL FOR BIAS, PREJUDICE OR LACK OF IMPARTIALITY. PER CHAPTER 28 (SC § 455(b)) "ANY JUSTICE, JUDGE OR MAGISTRATE SHALL DISQUALIFY ON CIRCUMSTANCES INVOLVING BIAS, OR A PROBABILITY OF BIAS."

ACCORDING TO GARCIA (AT 409, 53-54), THIS IS AN ISSUE OF "STRUCTURAL ERROR" IN TRIAL PROCEEDINGS. IN THIS CASE AT BAR, DURING VOIR DIRE OF FORESTATED HIGHLY INFLAMMATORY EVIDENCE, THE TRIAL JUDGE EXPRESSED HIS OPINION IN OPEN COURT AND TO MEDIA STATING "... QUITE FRANKLY, MY CONCLUSION IS THAT IF THE JURY WATCHES THAT MOVIE, THE DEFENDANT'S CASE IS COOKED. I JUST DON'T KNOW ANY JURY COULD VIEW THAT MOVIE AND NOT BE INFLAMED TO SUCH A POINT THEY WOULDN'T CONVICT THE DEFENDANT ... GIVEN THE FACT THAT THE MOVIE IS SO TOTALLY AND COMPLETELY DISCUSSING..." (VOL III p 95-96).

AFTER SUPPRESSING THE MOVIE EVIDENCE, THE JUDGE CHARGED THE JURY THEN DISMISSED THE COURT UNTIL THE NEXT MORNING FOR DELIBERATIONS (VOL III p. 165-166). THAT NIGHT, THE LOCAL NEWSPAPER PUBLISHED AN ARTICLE FOR IT'S MORNING RELEASE QUOTING THE TRIAL JUDGE'S OPINION VERBATIM. [ARTICLE IN MAR (1/2008) APP, V. p. 1-2]. IN THIS, THERE WAS A HIGH POTENTIAL OF AT LEAST 1 JURY MEMBER TO HAVE BEEN EXPOSED TO JUDICIAL EXPRESSION OF OPINION IN THE MATTER. PETITIONER IN 2ND MAR (2/2016) APP #1, SECT C, SUB 2-6

SCRUTINIZED: N.C. v. WILHELM 59 N.C. APP 298 (1982) "IT IS IMMATERIAL HOW AN OPINION IS EXPRESSED OR IMPLIED, WHETHER IN THE CHARGE OF THE COURT, IN THE EXAMINATION OF A WITNESS, IN THE RULINGS ON OBJECTIONS TO EVIDENCE OR ANY OTHER MATTER, THERE IS NO JUSTIFICATION FOR EXPRESSION OF OPINION."

ALSO
N.C. v. SIBBLEY 64 N.C. APP 306 (1983) "TRIAL JUDGES MUST BE CAREFUL OF WHAT THEY SAY AND DO BECAUSE A JURY LOOKS TO THE COURT FOR GUIDANCE, ETC, AND PICKS UP THE SLIGHTEST INTIMIDATION OF AN OPINION. IT DOES NOT MATTER WHETHER THE OPINION OF THE TRIAL JUDGE IS CONVEYED TO THE JURY DIRECTLY OR INDIRECTLY AS EVERY DEFENDANT IN A CRIMINAL CASE IS ENTITLED TO A TRIAL BEFORE AN IMPARTIAL JUDGE AND AN IMPARTIAL JURY."

THE LOWER COURTS "REJECTED" THEIR OWN STATE LAWS ON THIS ISSUE [ORDER(S) (1/2012) SECT VIII AND

(3/2016) SUM DEN'D]. UNDER U.S. v. SARKIS 197 F3d 966 (9th Cir 1999) "DEFENDANT'S 6TH AMENDMENT RIGHTS WERE VIOLATED EVEN IF ONLY ONE JURY MEMBER WAS UNWITTINGLY OR IMPROPERLY INFLUENCED."

THE LOWER COURTS MADE 2 RULINGS ON THIS ISSUE: (1) "SINCE THE TRIAL JUDGE SUPPRESSED THE MOVIE EVIDENCE, VIOLATED PETITIONER'S CLAIMS OF POTENTIAL BIAS." [PARAPHRASED]. HOWEVER, TRANSCRIPT RECORDS SHOW POTENTIAL JUDICIAL LEANING AGAINST PETITIONER IN LATER PROCEEDINGS (SEE COMMING). (2) "SINCE THE PETITIONER DID NOT PROVE ANY JURY HAD BEEN INFLUENCED NOR HAD SEEN THE NEWS ARTICLE, HIS CLAIMS ARE MERITLESS." [PARAPHRASED]. FIRST, TO PROVE JUDICIAL INFLUENCE OR ARTICLE READ IS IMPOSSIBLE FOR PETITIONER WHO IS NOT ALLOWED ACCESS TO JURY MEMBER IDENTIFICATION INFORMATION. SECOND, IT IS NOT PETITIONER'S BURDEN TO

PROG AS PETITIONER MAKING THE CHARGE. IT APPROVES THE LOWER COURT ACTIONS IS AN EFFORT TO "PROTECT THEIR OWN" SHOWING POTENTIAL LACK OF IMPARTIALITY ON BOTH TRIAL AND LOWER COURTS. THIRD, CURIOSITY AND HUMAN NATURE. EVEN A REASONABLE MINDED FACT FINDER WOULD WANT TO READ ABOUT THE CASE THEY ARE INVOLVED WITH REGARDLESS OF COURT'S INSTRUCTIONS (VOL III p. 164). PETITIONER KNOWS HE WOULD. UNDER U.S. v. WEAVER 282 F3d 302 (4th Cir 2007) "NEW TRIAL REQUIRED IF DISTRICT COURT UNABLE TO COMPLY WITH REQUIREMENTS OF IMPARTIALITY."

FOR THE TRIAL COURT: HALL v. DILLARD 17 F3d 295 (9th Cir 1994) "RIGHT TO A FAIR TRIAL IS BASIC REQUIREMENT OF DUE PROCESS AND INCLUDES RIGHT TO UNBIAS JUDGE."

ALSO
M.C. v. FLOMIN 528 U.S. 941 (1999) "THE LAW IMPOSES THE TRIAL JUDGE THE DUTY OF ABSOLUTE IMPARTIALITY."

REGARDLESS OF LOWER COURT'S "POST-HOC" RULINGS, THE FACT REMAINS IN THIS CASE AT BAR, THE TRIAL JUDGE DID FACTUALLY AND PUBLICALLY EXPRESS HIS OPINION IN THE MATTER. IT QUESTIONS IF THE COURT WAS IMPARTIAL OR AGAINST PETITIONER IN OTHER MATTERS. TRANSCRIPT RECORDS SHOW THAT AFTER TRIAL JUDGE COMPLETED VOIR DIRE OF THE HIGHLY INFLAMMABLE EVIDENCE, HE DENIED EVERY MOTION AND OVERRULED EVERY OBJECTION MADE BY DEFENSE THEREAFTER IN PROCEEDINGS. THEN, AS FORESTATED, TRIAL JUDGE SENTENCED PETITIONER TO MAXIMUM PENALTIES UNDER LAW FOR A PERSON WITH NO PRIORS, NO RECORD, AND EVEN A TRAFFIC TICKET IN OVER 5 YEARS. IT GIVES THE APPEARANCE OF JUDICIAL LEARNING AGAINST PETITIONER PER USC § 455(b). IN SUMMARY, THE SHOWN EXPRESSION OF OPINION AND POST-VOIR DIRE ACTIONS OF THE TRIAL JUDGE SHOWS A POTENTIAL VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHTS. PER RULE 10; GARCIA SHOWS "STRUCTURAL ERROR" WHERE THE TRIAL JUDGE EXPRESSED OPINION IN OPEN COURT WHICH IS STRICTLY FORBIDDEN. PER BONE, PETITIONER SHOWS WHERE UNDER WILHELM AND SID BERRY THERE IS NO JUSTIFICATION FOR EXPRESSION OF JUDICIAL OPINION IN OR OUT OF JURY PROSEC. PER SARKINIAN 39.

THIS VIOLATES STANDARDS UNDER 6TH AMENDMENT GIVING THE IMPRESSION OF A LACK OF IMPARTIALITY; PER DILLARD AND FLEMING; REQUIRING NEW TRIAL PER WEAVER. LOWER COURT RULINGS DOES NOT REMOVE THE FACT TRIAL JUDGE EXPRESSED HIS OPINION NOR REMOVE THE POTENTIAL BIAS BROUGHT UPON PETITIONER PER USC § 455(b). PETITIONER ASKS THIS HONORABLE COURT TO CONSIDER IN TOTALITY THE FOREGOING FACTS OF THE TRIAL JUDGE EXPRESSING HIS OPINION IN OPEN COURT AND TO MEDIA AND SHOWING POTENTIAL CIRCUMSTANCES OF JURY INFLUENCE, JUDICIAL BIAS AND PREJUDICE WHICH QUESTIONS THE TRIAL COURT'S IMPARTIALITY AS IT VIOLATED PETITIONER'S 5TH, 6TH, 8TH AND 14TH AMENDMENT RIGHTS.

THE FOREGOING § ISSUES GIVES FOUNDATION TO GRANT THIS WRIT. ALSO, THERE IS NO NEED FOR 'NEW LAW' AS EXISTING LAWS SHOWN ARE APPLICABLE AND JUSTIFYING. UNDER MANCUSA V. OLIVAREZ 292 F3d 971 (9TH CIR 2002) "CUMULATIVE ERROR APPLIES WHEN, ALTHOUGH NO SINGLE TRIAL ERROR EXAMINED WARRANTS REVERSAL, THE CUMULATIVE EFFECT OF MULTIPLE ERRORS MAY STILL PREJUDICE DEFENDANT."

THIS ALSO IS PETITIONER'S CASE AND JUSTIFIES THE FOREGOING REASONS TO GRANT THIS PETITION.

CONCLUSIONS

THIS PETITION FOR A WRIT OF HABEAS CORPUS SHOULD BE GRANTED. PETITIONER RESPECTFULLY PRAYS THIS HONORABLE COURT TO GRANT THIS ACTION IN ENTIRETY AND GRANT ANY OTHER ACTION THIS COURT DEEMS FIT AND PROPER AS JUSTIFIED THROUGH FOREGOING CITATIONS OF LAW AS APPLICABLE.

RESPECTFULLY SUBMITTED,


- PETITIONER -

11 DEC 2017