

No.: 17A568

IN THE
SUPREME COURT OF THE UNITED STATES

IVAN TORRENCE TATE
PETITIONER,

vs.

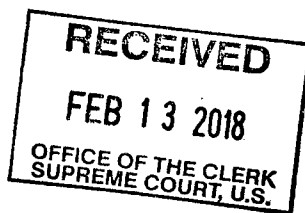
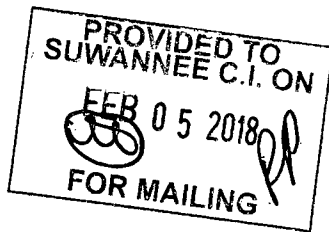
STATE OF FLORIDA
RESPONDENT(S).

ON PETITION FOR A WRIT OF CERTIORARI TO

FLORIDA- FOURTH DISTRICT COURT OF APPEAL
(NAME OF THE COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SUBMITTED TO: JUSTICE THOMAS



Respectfully Submitted,

/s/

Ivan Torrence Tate DC# C09874

Petitioner, *Pro Se*

Suwannee Correctional Institution

5964 U.S. Highway 90

Live Oak, FL 32060

QUESTION(S) PRESENTED

DISCOVERY VIOLATION

Is it a violation of a defendant's U.S. Constitutional right to procedural due process of law where the prosecution intentionally provided a supplemental discovery listing a key witness they intended to call to testify at jury trial, to an attorney other than counsel of record, precluding the preparation of a defense and its ability to submit a pretrial motion to suppress the evidence, stemming from an illegal search and seizure, as a direct result of falsified information within the warrant affidavit, arrest reports, deposition and trial testimony put forth by law enforcement?

WARRANTLESS SEARCH AND SEIZURE

Is it a violation of a defendant's U.S. Constitutional right against a warrantless search and seizure and due process of law if probable cause to extract blood in a driving under the influence-manslaughter case, was based upon falsified information within the warrant affidavit, arrest reports, and deposition and trial testimony which said information can be proven beyond all doubt to be intentionally misrepresented?

Is §316.1933, Fla. Stat. (2002) **Blood test for impairment or intoxication in cases of death or serious bodily injury, right to use reasonable force**; which permits warrantless blood withdrawals not incidental to a lawful arrest unconstitutional and a violation of defendant's 4th Amendment right against unreasonable searches and seizures; in light of this courts decision in *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2185, 195 L. Ed. 560 (2016), which makes clear that blood...tests...are not subject to the search incident to arrest exception to the 4th Amendment's general warrant requirement?

FAILURE TO PRESENT EXCULPATORY EVIDENCE

Is it a denial of a defendant's due process right to present evidence under the 14th Amendment of the U.S. Constitution, where counsel fails to introduce at jury trial, relevant, and fundamental, exculpatory evidence surrounding the element of causation to the charged offense?

LIST OF PARTIES

- [X]** All parties **do** 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 the petition is as follows:

**Florida- Fourth District Court of Appeal
110 South Tamarind Avenue
West Palm Beach, Florida 33401**

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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

The Opinion of highest state court to review the merits appears at **Appendix-A** to the petition and has been designated for publication but is not yet reported.

JURISDICTION

The date on which the highest state court decided my case was September 6, 2017, A Copy of the decision appears at **Appendix-B**.

An extension of time to file the petition for writ of certiorari was granted to and including February 3, 2018 on November 21, 2017 in **Application No.: 178568**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS

AMENDMENT 4

Unreasonable Searched and Seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5

Criminal actions-Provisions concerning- Due Process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT 14

Section 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor deny to any person within its jurisdiction the equal protection of the laws.

FLORIDA STATUTE § 316.193
Driving under the influence; penalties

(3) Any person:

(c) Who, by reason of such operation, causes or contributes to causing:

3. The death of any human being or unborn child commits DUI manslaughter, and commits:

- a. A felony of the second degree, punishable as provided in § 775.082., §775.083, or §775.084

FLORIDA STATUTE § 316.193
Driving under the influence; penalties

(3) Any person:

(c) Who, by reason of such operation, causes or contributes to causing:

- 2. Serious bodily injury to another, as defined in § 316.193, commits a felony of the third degree, punishable as provided in § 775.082., §775.083, or §775.084

FLORIDA STATUTE § 316.1933
Blood test for impairment or intoxication in cases of death or serious bodily injury, right to use reasonable force;

(1)(a) If a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, a law enforcement officer shall require the person driving or in actual physical control of the motor vehicle to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in s. 877.111 or any substance controlled under chapter 893. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s.316.1932, the testing required by this paragraph need not be incidental to a lawful arrest of the person.

STATEMENT OF THE CASE

This case originated out of St. Lucie County, Florida, in the Nineteenth Judicial Circuit.

State trial court case no.: **56-2012-CF-2085-A**

Case Filed: **July 12, 2012**

Information Filed: **July 20, 2012**

Jury Trial: **May 4-6, 2015**

Sentence: **May 6, 2015**

Count 1 - Driving under the influence- Manslaughter
Fla. Stat. § 316.193 3(c) 3(a)

Disposition: Adjudicated Guilty

Count 2 - Driving while license suspended (Damage to Property or Persons)
Fla. Stat. § 322.34 2(c)

Disposition: *Nolle Prosequi*

Count 3 - Driving under the influence- Impairment and/or
Damage to Property or Persons-Serious Bodily Injury
Fla. Stat. § 316.193 3(c) 2

Disposition: Adjudicated Guilty

Count 4 - Vehicular Homicide
Fla. Stat. § 782.071

Disposition: Dismissed

Direct appeal was sought in the Fourth District Court of Appeal, Florida.

State Appellate Court Case No.: **4D15-2087**

Notice of Appeal Filed: **June 1, 2015**

Direct Appeal Disposition: **Judgment & Sentence - *Per Curiam Affirmed***
July 7, 2017

Rehearing Denied: **August 17, 2017**

Discretionary Review was sought from The Supreme Court of Florida

Notice to invoke Discretionary Jurisdiction filed: **August 28, 2017**

Jurisdictional Brief Submitted: **September 8, 2017**

Jurisdictional Brief was filed: **September 19, 2017**

Discretionary Review proceeding dismissed: **September 6, 2017**

Discretionary Review final order acknowledgement letter sent: **September 19, 2017**

An Extension of time to file the petition for writ of certiorari was docketed on: **November 21, 2017**; Application No.: **17A568** and Granted from: **December 5, 2017 to February 3, 2018**

Per Rule 30: **Computation and Extension of time** the last day of the period...shall be included, unless it is a Saturday...or day on which the court building is closed...in which event the period shall extend until the end of the next day that is not a...day on which the Court building is closed. Because February 3, 2018, falls on a Saturday, this petition was submitted on Monday February 5, 2018 and is therefore timely.

STATEMENT OF THE FACTS

Petitioner, A 100% Disabled Veteran for Grand Mal Seizures and a true first time felony offender was involved in a car accident that occurred on Monday, February 6, 2012 at approximately 13:45 in the city of Port St. Lucie, Florida.¹

Petitioner was traveling in his 2009 Toyota Camry in the southbound lane of State Road 707, and was unable to slow the vehicle at a sharp curve in the road due to floor mat becoming entrapped causing sudden unintended acceleration. The vehicle proceeded onto the shoulder of the road, striking an ATT cable box with its front passenger corner. Following the initial impact the vehicle became redirected, reentering the road, crossing into the northbound lane into oncoming traffic, colliding head-on with a vehicle traveling southbound, which caused the serious bodily injury to Norbert Stege and the unfortunate death of the passenger Esther Stege. (R. 295, 296 T. 157, 158, 160, 161). (**Appendix-C**)

Upon investigation, officers learned from the speedometer that the vehicle had accelerated to 68 miles per hour between the first impact with the AT&T Cable Box and the second impact with the other vehicle. Additional investigation days later revealed two witnesses petitioner passed before the accident, James Craddock and Thomas Kenney that did not see the accident but arrived shortly thereafter. The witnesses who engaged petitioner testified they **failed to identify any signs of impairment** (Emphasis Added). (T. 171-173, 181-185). Both witnesses departed the accident scene prior to the arrival of the Crash Investigator and the investigating officer and did not speak to any officers investigating the accident on that day. (T. 136,145).

Deputy Glenn Cooper of the St. Lucie County Sheriffs Office was the first law enforcement official on scene. (T. 187) He made contact with the petitioner who was conscious and aware and proceeded to secure the accident scene. (T. 193) He testified to no indication of intoxication. (Emphasis Added) (T. 195):

Petitioner departed the scene of the accident by ambulance at **13:56** and arrived at Lawnwood Regional Medical Center in Fort Pierce, Florida as a trauma alert at **14:30** (**Appendix-D: R. Pg. 607 Time Entry 21:02:15**)². Upon petitioner's arrival to the hospital he spent sixty (60) minutes critical care time as a patient of Dr. Jose A. Diaz (**Appendix-E: Pg. 8 of 17**) and Dr. Mark Gonwa (**Appendix-E: Pg. 12-13, 15-17 of 17**).

¹ Monday, February 6,2012 was a standard, non-holiday workday.

² From the time petitioner departed the accident scene and arrived to the hospital was thirty-four (34) minutes travel time.

Officer Wyatt ID #671, the crash investigator, arrived to the accident scene at **14:41**, and departed thereafter at **14:51** en route to Lawnwood Regional Medical Center (**Appendix-D: R. Pg. 605-6**). Officer Wyatt spent a total of ten (10) minutes at the accident scene.

Officer Ruiz ID # 964, the traffic homicide investigator, arrived to the scene of the accident at **15:08**(T. 144), 17 minutes after Officer Wyatt's departure. (**Appendix-D: R. Pg. 605**). The Investigative Report, Warrant Affidavit and Arrest Report(s) submitted to the court (falsely) establish contact with Officer Wyatt, detailing an exchange of pertinent accident information (R.5-7 & 16-18). Officer Ruiz contends that it was he who instructed Officer Wyatt to go to the hospital (T. 206-207). This assertion is incorrect, it was **Officer Michael Lanam ID # 370** (**Appendix-D: R. Pg. 605**).

Officer Wyatt arrived to Lawnwood Regional Medical Center, at **15:14** and made contact with a conscious petitioner (**Appendix-D: R. Pg. 606**)³. At **15:53** Officer Wyatt contacted the Lake Worth Regional Communications Call Center relaying information given to her by Petitioner, identifying where the documentation referring to the validity of his license could be located, in the "Glove Box". (**Appendix-D: R. Pg. 89-91**). At no point and time during this interview was petitioner read any implied consent warnings, mirandized, told he was under arrest, made aware that he was the subject of an investigation, or requested to provide blood.

Petitioner's blood was drawn at **16:02** absent a warrant (T. 213). The results of the blood test were not immediate, the sample obtained was submitted to the Florida Department of Law Enforcement (F.D.L.E.) crime laboratory for analysis. The result of the test of the warrantless blood draw showed a B.A.C. of .09 and was published on March 30, 2012. (T. 276, R. 299). Petitioner was arrested on July 12, 2012.

³ From the time Officer Wyatt departed the accident scene and arrived to the hospital was twenty-three (23) minutes travel time.

REASONS FOR GRANTING THE PETITION

While in determining whether state court judgment should be reviewed on writ of certiorari, the Supreme Court, under predecessor to Rule 10 might take into consideration that judgment...had decided it in a way probably not in accord with applicable decisions of Supreme Court. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 75 S. Ct. 614, 99 L. Ed 897.

In cases in which there is a claim of denial of rights under the Federal Constitution, this court is not bound by the conclusions of lower courts, but will reexamine the evidentiary basis on which those conclusions are founded. *Niemotko v. Maryland*, 340 U.S. 268, 271, 71 S. Ct. 325, 95 L.Ed. 267 (1951).

WARRANTLESS SEARCH AND SEIZURE

IS IT A VIOLATION OF A DEFENDANT'S U.S. CONSTITUTIONAL RIGHT AGAINST A WARRANTLESS SEARCH AND SEIZURE AND DUE PROCESS OF LAW IF PROBABLE CAUSE TO EXTRACT BLOOD IN A DRIVING UNDER THE INFLUENCE-MANSLAUGHTER CASE, WAS BASED UPON FALSIFIED INFORMATION WITHIN THE WARRANT AFFIDAVIT, ARREST REPORTS, AND DEPOSITION AND TRIAL TESTIMONIES WHICH SAID INFORMATION CAN BE PROVEN BEYOND ALL DOUBT TO BE INTENTIONALLY MISREPRESENTED?

Petitioner was denied his Due Process right to challenge the probable cause surrounding the initiation of a DUI investigation where a communication presented in the record falsely sets forth a detailed account of accident information supposedly provided from the crash investigator, Officer Pamela J. Wyatt, to the traffic homicide investigator, Officer Robert T. Ruiz. This exchange is factually impossible and could not have occurred because Officer Wyatt departed the scene of the accident seventeen (17) minutes before officer Ruiz arrived. A facial showing of probable cause may, however, be challenged. In particular, government investigators can be held "liable for violating the Fourth amendment when they submit false material information in a warrant affidavit." *Galbraith v. County of Santa Clara*, 307 F. 3d 1119, 1126 (9th Cir. 2002).

Where a claim is based on such "judicial deception," the petitioner is required to show: (1) the affidavit "contained misrepresentations or omissions material to the finding of probable cause"; and (2) "misrepresentations or omissions were made intentionally or with reckless disregard for the truth." *Bravo v. Santa Maria*, 665 F. 3d 1076, 1083 (9th Cir. 2011).

This issue is properly preserved on the record in "Appellants Reply Brief" and "Petitioners Jurisdictional Brief" to the Florida Supreme Court and is ripe for this courts review

The facts surrounding the intentional falsification of information as outlined in the Warrant Affidavit, Arrest Report, the Investigative Report, and both trial and deposition testimonies was fabricated insofar as there was no contact between the officer who purports requesting the blood draw, the traffic homicide investigator Officer Robert Ruiz, and the officer that effectuated the warrantless blood draw, the crash investigator, Officer Pamela Jean Wyatt.

Each Report states verbatim the following:⁴

⁴ Warrant Affidavit Dated: July 12, 2012

Report Completed By: Cpl. Robert T. Ruiz ID# 2135(R.5-7 & 16-18) (Appendix-F-1)

"UPON MY ARRIVAL [CPL RUIZ], I MET WITH CORPORAL PAMELA J. WYATT WHO WAS THE FIRST TROOPER ON SCENE.

- **CORPORAL WYATT ADVISED ME THAT SHE HAD SECURED THE CRASH SCENE UPON HER ARRIVAL.**
- **CORPORAL WYATT CONVEYED THAT THIS WAS A HEAD ON TYPE COLLISION THAT HAD OCCURRED IN THE NORTHBOUND LANE OF STATE ROAD 707.**
- **CORPORAL WYATT FURTHER CONVEYED THAT V-1 HAD TRAVELED OFF OF THE SOUTHBOUND LANE OF STATE ROAD 707 AND STRUCK A METAL TELEPHONE AND CABLE BOX WITH ITS RIGHT FRONT (1ST A.O.C).**
- **CORPORAL WYATT STATED THAT AFTER STRIKING THE METAL ELECTRICAL BOX, V-1 TRAVELED BACK INTO THE SOUTHBOUND LANE OF STATE ROAD 707 AND PROCEEDED TO TRAVEL INTO THE NORTHBOUND LANE OF STATE ROAD 707 AND STRUCK V-2 HEAD ON (2ND A.O.C.).**
- **CORPORAL WYATT STATED THAT AFTER THE COLLISION V-1 CAME TO FINAL REST PARTIALLY STRADDLING BOTH LANES OF STATE ROAD 707 FACING IN A NORTHEASTERLY DIRECTION.**
- **CORPORAL WYATT THEN STATED THAT AFTER THE COLLISION V-2 CAME TO FINAL REST ON THE EASTERN GRASS SHOULDER OF STATE ROAD 707 FACING IN A WESTERLY DIRECTION.**
- **CORPORAL WYATT CONVEYED THAT SHORTLY AFTER HER ARRIVAL, D-1 AND D-2 WERE TRANSPORTED TO LAWNWOOD REGIONAL MEDICAL CENTER IN FORT PIERCE, FLORIDA.**
- **CORPORAL WYATT INFORMED ME THAT O-1 OF V-2 WAS PRONOUNCED DECEASED ON SCENE AT**

Arrest Report Dated: July 12, 2012

Report Completed By: Cpl. Robert T. Ruiz ID# 2135 (R.16-18) (Appendix-F-2)

Investigative Report Dated: July 12, 2012

Report Completed By: Cpl. Robert T. Ruiz ID# 2135 (Appendix-F-3 Pgs. 11-12)

APPROXIMATELY 1:58 P.M., BY ST. LUCIE COUNTY FIRE
LIEUTENANT SANDRA ERERIA.

**UPON COMPLETION OF OUR CONVERSATION,
CORPORAL WYATT DEPARTED THE SCENE AND
TRAVELED TO LAWNWOOD REGIONAL MEDICAL
CENTER IN FORT PIERCE, FLORIDA."**

The Lake Worth Regional Communications Center Call Record factually proves that both of Officer Ruiz's sworn trial and deposition testimonies (**Appendix-D**). The record tracks and logs officer movement when responding to official duties. This record verifies that Officer Wyatt had departed the scene of the accident seventeen (17) minutes prior to Officer Ruiz's arrival and vitiates his representations above, placing the truthfulness of his investigation and his credibility in question. (**Appendix-G**)

Date/ Time	Call No:	Agency	Description	Call Note/ Dispatcher:
02/06/2012 14:41:57	#671- Officer Wyatt	FHPL	On Scene	LBT1132
02/06/2012 14:48:27	#370- Officer Lanam	FHPL	#370 ADV Wants #671 X51 Lawnwood	LBT1132
02/06/2012 14:51:06	#671- Officer Wyatt	FHPL	#671 X51 Lawnwood	LBT1132
02/06/2012 15:08:20	#964- Officer Ruiz	FHPL	On Scene	JFT256
02/06/2012 15:14:56	#671- Officer Wyatt	FHPL	#671 X97 Lawnwood	JFT256
02/06/2012 16:52:56	#671- Officer Wyatt	FHPL	#671 X98 Lawnwood X51 Back to Scene	LBT1132

⁵Legend: X51: En Route X97: On Scene X98: Departs

The trial testimony of Officer Ruiz verified his arrival time to the accident scene as 3:08 [pm]. (T.144. L. 2)

During the state's re-direct examination Officer Ruiz confirmed for the record his request to Officer Wyatt to go and obtain petitioner's blood:

Q: A..S.A. Hendriks: Okay. Do you remember who the trooper was that you instructed to go and recover bloodwork from Mr. Tate?

A: It was Corporal Wyatt. (T.197 line(s) 12-14)

⁵ Florida Highway Traffic Ten Codes Legend: (**Appendix-H**)

In the deposition testimony dated July 8, 2013 when questioned by A.P.D. Mary Celidonio, Officer Ruiz identified for the record in clear unambiguous language that it was he who instructed Officer Wyatt to obtain a warrantless blood draw. **(Appendix-G)**

A: I requested Corporal Wyatt to go to Lawnwood to draw blood. (D.32 line 17)

The dissemination of information as provided by Officer Ruiz to Officer Wyatt and reasserted consistently throughout the proceedings could not have happened because OF. Wyatt departed the scene of the accident at **14:51**, en route to the hospital. Officer Ruiz arrived to the accident scene at **15:08**. The Probable cause for the warrantless blood withdrawal was based on false and misleading information, which, if excised, would eliminate the nexus between the alleged criminal activity and the accident. Furthermore, "falsifying facts to establish probable cause is patently unconstitutional". *Kingsland v. City of Miami*, 382 F. 3d 1220, 2004 U.S. App. Lexis 9215 (11th Cir. Fla. 2004).

In light of the clarifications presented to this court that:

- Officer Ruiz arrived after Officer Wyatt departed the accident scene and the misrepresentations in the warrant affidavit, arrest report, and the investigative report clearly state otherwise the premise of the DUI investigation remains unclear;
- Because Call ID# 964 [Officer Ruiz] is not Call ID # 370 [Officer Lanam] and the Lake Worth Regional Communications Call Center Log identifies that it was Call ID# 370 who advised Call ID# 671 [Officer Wyatt] to proceed to the hospital twenty (20) minutes before Call ID# 964 [Officer Ruiz] arrived to the scene;

The trial testimony and deposition testimony suggesting that Officer Ruiz directed Officer Wyatt to the hospital to obtain petitioner's blood is also false. As *Napua, supra* recognizes "It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject...that the district attorney's silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair".

WARRANTLESS SEARCH AND SEIZURE

IS § 316.1933, FLA. STAT. (2002) **BLOOD TEST FOR IMPAIRMENT OR INTOXICATION IN CASES OF DEATH OR SERIOUS BODILY INJURY, RIGHT TO USE REASONABLE FORCE**; WHICH PERMITS WARRANTLESS BLOOD WITHDRAWALS NOT INCIDENTAL TO A LAWFUL ARREST UNCONSTITUTIONAL AND A VIOLATION OF DEFENDANT'S 4TH AMENDMENT RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; IN LIGHT OF THIS COURTS DECISION IN *BIRCHFIELD V. NORTH DAKOTA*, 136 S. CT. 2160, 2185, 195 L. ED. 560 (2016), WHICH MAKES CLEAR THAT BLOOD...TESTS...ARE NOT SUBJECT TO THE SEARCH INCIDENT TO ARREST EXCEPTION TO THE 4TH AMENDMENT'S GENERAL WARRANT REQUIREMENT?

Petitioner's blood was taken for chemical testing without first obtaining a search warrant pursuant to the Fourth Amendment. Where no circumstances established justification for departing from the warrant requirement. In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth amendment mandates that they do so. *McDonald v. United States*, 335 U.S. 451, 456, 69 S. Ct. 191, 93 L. Ed. 153 (1948).

The exclusionary rule is a judicially-created doctrine, which gives effect to the rights granted by the Fourth amendment. *Herring v. United States*, 555 U.S. 135, 139-40, 129 S. Ct. 695, 172 L. Ed. 2d 496 (2009). "Under the exclusionary rule, evidence obtained by federal or government officials in violation of the fourth amendment cannot be used in a proceeding against the victim of the illegal search and seizure". *Romano v. Home Ins. Co.*, 490 F. Supp. 191, 193 (N.D. Ga. 1980)(citing *United States v. Calandra*, 414 U.S. 338, 343, 94 S. Ct. 613, 38 L. Ed. 2d 561 (1974).

The United States Supreme Court decision in *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2185, 195 L. Ed. 2d 560 (2016) makes clear that blood and urine test raise more substantial privacy concerns and are not subject to the search incident-to-arrest exception to the Fourth Amendment's general warrant requirement. Petitioner was not under arrest when his blood was drawn.

In *United States v. Johnson*, 457 U.S. 537, 542-48, 102 S. Ct. 2579, 73. L. Ed. 2d. 202 (1982), it is now settled that "a decision of [the Supreme] Court construing the Fourth Amendment is to be applied retroactively to all convictions that were not yet final at the time the decision was rendered," *id.* at 562. Accordingly to *Glazner v. Glazner*, 347 F. 3d 1212, 1217

(11th Cir. 2003) (" [F]or newly announced rules governing criminal prosecutions, the Supreme Court has completely rejected... pure prospectivity, which occurs where a court gives a newly announced rule no retroactive effect.").

The present case falls in line with this Supreme Court Precedent as the petitioner's case was pending on direct appeal when *Birchfield* was decided, petitioner contends that a reasonable jurist reviewing the case at bar would consider the retroactivity of *Birchfield* and be dictated by the holding. To concede to the state courts holding would invalidate reasonable good faith interpretations of existing precedent established by this court.

FAILURE TO PRESENT EXCULPATORY EVIDENCE

IS IT A DENIAL OF A DEFENDANT'S DUE PROCESS RIGHT TO PRESENT EVIDENCE UNDER THE 14TH AMENDMENT OF THE U.S. CONSTITUTION, WHERE COUNSEL FAILS TO INTRODUCE AT JURY TRIAL, RELEVANT, AND FUNDAMENTAL, EXCULPATORY EVIDENCE SURROUNDING THE ELEMENT OF CAUSATION TO THE CHARGED OFFENSE?

The case was presented to a jury at trial without the knowledge of a negligent design on Petitioners vehicle where sudden unintended acceleration from floor mat entrapment resulted in excessive speeds and non-responsive brakes⁶. Lost or un-preserved evidence is "material" in this sense "if the omitted evidence creates a reasonable doubt that did not otherwise exist." *State v. Sobel*, 363 So. 2d 324,327(Fla. 1978) (citing *United States v. Agurs*, 427 U.S. 97, 109, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976). Defense Counsel was in possession of this exculpatory evidence prior to trial.(Appendix-I)

The constitution guarantees criminal defendant's "A Meaningful opportunity to present a complete defense". *Crane v. Kentucky*, 476 U.S. 683, 106 S. Ct. 2142, 90 L.Ed. 2d 636 (1986)

The right to present evidence on one's own behalf is a fundamental right basic to our adversary system of criminal justice, and is part of the "due process of law" that is guaranteed to defendants in state criminal courts by the Fourteenth Amendment. A judgment is void if, in the proceedings leading up to the judgment, there is a violation of the due process guarantee of notice and an opportunity to be heard. Petitioner was denied the ability to be heard.

(NHSTA) VEHICLE RECALL ID: 09V388000

VEHICLES SPEED CONTROL: ACCELERATOR PEDAL
TOYOTA IS RECALLING CERTAIN MODEL YEAR 2004-
2010 PASSENGER VEHICLES. THE ACCELERATOR PEDAL
CAN GET STUCK IN THE WIDE-OPEN POSITION DUE TO
ITS BEING TRAPPED BY AN UNSECURED OR
INCOMPATIBLE DRIVER'S FLOOR MAT. A STUCK OPEN
ACCELERATOR PEDAL MAY RESULT IN VERY HIGH
VEHICLE SPEEDS AND MAKE IT DIFFICULT TO STOP THE
VEHICLE, WHICH COULD CAUSE A CRASH, SERIOUS
INJURY OR DEATH.⁷(Appendix-J)

⁶ National Highway Safety Traffic Administration Recall No.: 09V388000
Issued: 10/08/2009 NO. OF VEHICLES: 3,800,000

⁷ CCC ONE MARKET VALUATION REPORT Owner: Ivan Tate
CLAIM REFERENCE: 0433028160101018-01 National Highway Safety Traffic Administration

In petitioner's prosecution for DUI manslaughter, where evidence established victim died of trauma sustained from the head-on impact of the colliding vehicles. The omission of the vehicle recall as prima facie evidence during jury trial that would have provided an affirmative defense surrounding the excessive speed factor and the in-operability of the vehicle; relieving petitioner of culpability, improperly deprived him of the true defense as to causation⁸, that is a material element of the offense. The omission of this evidence undermines the confidence in the jury's verdict as the State relied heavily on the excessive speed factor⁹. Petitioner contends sudden unintended acceleration from floor mat entrapment should have been subject to further discovery and disclosed to the finder of fact. Because the defect was present and material, if presented, would have negated the element of causation (excessive speed) that is necessary to sustain the charge of DUI Manslaughter (Count 1) and DUI Serious Bodily Injury (Count 2).

The National Highway Traffic Safety Administration recall on Petitioners 2009 Toyota Camry, identifying floor mat entrapment as an antecedent to excessive speed, in tandem with a photograph depicting an entrapped floor mat lodged beneath the accelerator pedal in petitioners vehicle should have been presented to the jury at trial (**Appendix-K**). As the states case hinged on an "excessive speed factor", petitioner avers, had this evidence been presented with Toyota's own conclusions that...(other than pedal misapplication") potential floor mat entrapment was the cause in unintended acceleration", *In re Toyota Motor Corp.*, 2013 US. DIST. LEXIS 94485 (C.D. CAL., June 17, 2013)", it is inconceivable that a rational juror would support a verdict of guilt.

As explained in *In re Toyota Motor Corp.*, *supra*, "Ordinarily, drivers want the vehicle to stop, or they want the vehicle to go. To effectuate their intent, they apply the brake, or they apply the accelerator until the desired result is achieved. In normal driving conditions, conflicting inputs from the brake pedal and accelerator pedal simply should not ever occur. However with a floor mat entrapped under the accelerator pedal, when a rational driver applies the brakes to stop, the Engine Control Module (ECM) receives conflicting inputs. Floor-Mat issues were addressed

VEHICLE RECALL ID: 09V388000 ISSUED: 10/08/2009 NO. OF VEHICLES 3,800,000

⁸ § 316.193(3)(c), Fla. Stat., as amended in 1986, regarding driving under the influence manslaughter, expressly requires causation by an intoxicated operator of a motor vehicle... *Van Hubbard v. State*, 748 So. 2d 288 (Fla. 1st DCA 1998)

⁹ Florida courts have recognized three general categories of affirmative explanations that will serve to rebut the presumption of negligence. First affirmative testimony regarding a mechanical failure is sufficient to rebut the presumption... *Tozier v. Jarvis*, 469 So. 2d 884, 886-88 (Fla. 4th DCA 1985)

by a separate recall... There is no expiration date on this recall... Vehicles that "were not subject to the floor mat entrapment recall," are not subject to the danger described".¹⁰ Unbeknownst to petitioner his particular vehicle was subject to floor mat entrapment.

Because excessive speed is a major factor in finding the culpable negligence required to sustain a conviction of DUI Manslaughter due to the recklessness associated surrounding a disregard for human life, and the safety of persons exposed to the speed, the nexus between the NHTSA vehicle recall for petitioner's 2009 Toyota Camry for entrapment by an unsecured drivers floor mat combined with the photographic evidence depicting floor mat entrapment is relevant and present and should have been proffered to the jury. A judgment is void if, in the proceedings leading up to the judgment, there is a violation of the due process guarantee of notice and an opportunity to be heard

As a general proposition, "the right to present evidence on one's own behalf is a fundamental right basic to our adversary system of criminal justice and is a part of the 'due process of law' that is guaranteed to defendant's in state criminal courts by the Fourteenth Amendment to the Federal Constitution. *Gardner v. State*, 530 So.2d 404, 405 (Fla. 3rd DCA 1988) (citing *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d. 562 (1975)).

¹⁰ Reasonable-doubt standard of criminal law has constitutional stature, and due process clause protects accused against conviction except upon proof beyond reasonable doubt of every fact necessary to constitute crime with which he is charged. U.S.C.A. Const. Amend. 14.

(Brady Violation: Witness Glenn Cooper)

IS IT A VIOLATION OF A DEFENDANT'S U.S. CONSTITUTIONAL RIGHT TO PROCEDURAL DUE PROCESS OF LAW WHERE THE PROSECUTION INTENTIONALLY PROVIDED A SUPPLEMENTAL DISCOVERY LISTING A KEY WITNESS THEY INTENDED TO CALL TO TESTIFY AT JURY TRIAL, TO AN ATTORNEY OTHER THAN COUNSEL OF RECORD, PRECLUDING THE PREPARATION OF A DEFENSE AND ITS ABILITY TO SUBMIT A PRETRIAL MOTION TO SUPPRESS THE EVIDENCE, STEMMING FROM AN ILLEGAL SEARCH AND SEIZURE, AS A DIRECT RESULT OF FALSIFIED INFORMATION WITHIN THE WARRANT AFFIDAVIT, ARREST REPORTS, DEPOSITION AND TRAIL TESTIMONY PUT FORTH BY LAW ENFORCEMENT?

This issue is properly preserved on the record in "Appellants Supplemental Brief" and is ripe for this courts review.

Where state procedures fall below the minimum requirements of the due process clause, those procedures are invalid. *Rogers v. Okin*, 738 F. 2d. 1 (1984)

The State committed prejudicial error on the face of the record, in its intentional failure to discover witness, Retired Deputy Glenn Cooper, the first and only law enforcement officer to engage petitioner at the scene of the accident, prior to trial. The prosecution had an affirmative duty to disclose certain information within its possession, the witness. The failure to disclose Glenn Cooper as state's witness was willful and motivated by a desire to obtain a tactical advantage that would minimize the effectiveness of cross-examination and the ability to adduce rebuttal evidence. The *Brady* violation precluded the defense in its ability to submit a pretrial motion to suppress the blood draw results as unreasonable challenging the legality and the validity of the warrantless search and seizure.

ADDITIONAL FACTS RELEVANT TO ISSUE

- On August 1, 2012 the defense initiated the procedural process of discovery (R.24-27).
- On August 6, 2012 the State responded with a Motion for Demand for Reciprocal Discovery/Alibi. (R.34-36).
- On March 13, 2015, Honorable Judge Dan Vaughn ordered the substitution of retained private counsel Wendy F. Young, P.A. replacing Tameika Jackson, Assistant Public Defender as attorney of record for the petitioner. The order specifically notes Jeff Hendriks, Assistant State Attorney was provided notice via Courthouse Box. (R. 188).

- On March 17, 2015, the same A.S.A. Hendriks was provided a copy of the Assistant Public Defenders petition to withdraw as court appointed counsel. (R. 192).
- On March 17, 2015, a docket/status hearing was held where all parties were present to include both Wendy F. Young, P.A. [Retained Private Counsel] and A.S.A. Hendriks. Petitioner entered into the record a change of address. (R. 194 & Docketing Statement Page 11 of 15 (**Appendix-L**)).
- On March 19, 2015, A.S.A. Hendriks emailed defense counsel Wendy F. Young regarding a possible bond revocation. (**Appendix-M**)
- On March 20, 2015, A.S.A. Hendriks again emailed Defense Counsel Young, striking the proposed hearing, closing the email with the following message:

"AS WE GET CLOSER TO TRIAL- I CERTAINLY DON'T HAVE A PROBLEM SENDING YOU OVER A WITNESS LINEUP, EVIDENCE SHEET, ETC...ALL IN THE INTEREST OF MAKING IT A CLEAN TRIAL..."(**Appendix-M**)

- On March 23, 2015, a subsequent order granting the Assistant Public Defenders withdrawal was signed into effect and provided to A.S.A Hendriks. (R. 195).
- On April 1, 2015, (8) eight days after the last notice, A.S.A. Hendriks E-filed the 10th Supplemental Demand certifying service to Tameika Jackson, Assistant Public Defender who is not privately retained counsel Wendy F. Young P.A. (R. 200-01). (**Appendix-N**)
- On May 4, 2015 Petitioner's jury was sworn in for voir dire and jury trial commenced.
- On May 5, 2015, The State proffered evidence and testimony of all witness to include Ret. Deputy Glenn Cooper before a Jury trial. The results of petitioner's warrantless blood draw, .09 were introduced surrounding the element of impairment and the excessive speed of 68 Mph, surrounding the element of causation.
- On May 6, 2015 Petitioner was found guilty of Count I, DUI Manslaughter and Count III, Serious Bodily injury and sentenced to 15 years on Count I to run concurrent with 5 years on Count III.

The State's non-compliance during discovery denied the petitioner his right to preparation prior to confrontation, hindering the adversarial testing process and prohibiting the defense from filing a motion to suppress the results of the warrantless blood withdrawal, placing the legality before the court on the probable cause element. Furthermore not discovering the witness before trial was prejudicial error as the trial testimony proffered, character evidence testimony in the form of the witnesses present sense impression at the time of his interaction with

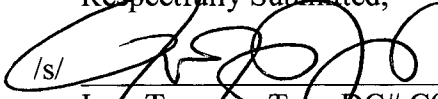
the petitioner goes to the manifest weight of the evidence. Specifically, the collective knowledge doctrine does not allow an officer to assume probable cause, which is a necessary element for a warrantless search and seizure, from un-communicated and/or information promulgated on false testimony.

CONCLUSION

The nature of the relief sought by this petition is a writ of certiorari directed to the State of Florida, reversing Mr. Tate's judgment and conviction and remanding petitioner to be brought before the circuit court for new trial proceedings. Whereby a full introduction of the evidence presented herein can be included as is consistent with petitioner's U.S. Constitutional right under the 14th Amendment to due process for a fair opportunity to defend against the States accusations.

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

/s/ 

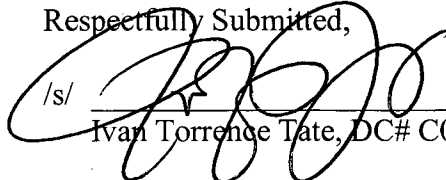
Ivan Torrence Tate, DC# C09874
Petitioner, *Pro Se*
Suwannee Correctional Institution
5964 U.S. Highway 90
Live Oak, FL 32060

UNSWORN DECLARATION Pursuant to 28 U.S.C. §1746

I declare under penalty of perjury that the following is true and correct.

Executed on this 5th Day of February, 2018

Respectfully Submitted,

/s/ 

Ivan Torrence Tate, DC# C09874