

No. _____

IN THE
Supreme Court of the United States

Mr. John Tedesco, Petitioner
ML 8942

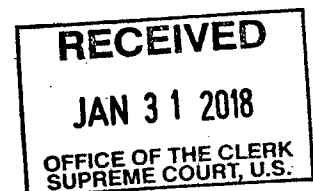
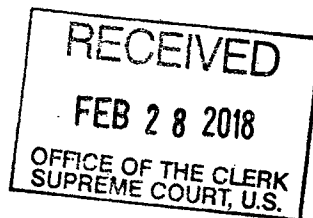
v.

Mr. Mooney, et al., Respondent(s)

On Petition For Writ of Certiorari
To The Pennsylvania Supreme Court

PETITION FOR WRIT OF CERTIORARI

Mr. John Tedesco,
Pro Se^o
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18621-3136



RULE 14 . CONTENT PETITION FOR A WRIT OF CERTIORARI
QUESTIONS PRESENTED

QUESTION #1. Was Mr Tedesco convicted and sentenced to crimes not charged with--and convicted and sentenced to those crimes.

QUESTION#2. Did the District Attorney of Monroe County illegally amend the criminal information and jury verdict slip to have Mr Tedesco convicted of conspiracy to commit third -degree-murder.

QUESTION#3. Was Mr Tedesco maliciously prosecuted and were his Constitutional Rights violated by the acts or omissions of the District Attorney of Monroe County.

QUESTION#4. Was Mr Tedesco's Attorney Robert Saurman , ineffective for letting Mr Tedesco get convicted and sentenced to crimes he was not charged with.

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- United States v. Cotton 535 U.S. 625.122 S.C.T. 1781 152 L.ED 2d 860 (2002) and Washington v. Recyenco, Page 5.
- United States v. Gary D. Hoover 467 F.3d 497 2006 U.S. App Lexis 25446, Page 4.
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Basis of Jurisdiction

This appeal comes from the Pennsylvania Supreme Court Order dated, September 19th, 2017, Lexis 2198 No. 159.

The Petition for Allowance of Appeal from the order of the Superior Court, dated, February 13, 2017, Commonwealth v. Tedesco.161.A.3d.375.2017.Pa Super Unpub Lexis 529, Respondent v. John Tedesco, Petitioner.

The Court of Common Pleas of Monroe County, ~~Forty~~-third Judicial District, Commonwealth of Pennsylvania, Respondent v. John Tedesco, Petitioner. No. 2228 Cr 2013, dated March 3, 2016.

Statutory Provision of Jurisdiction

28 U.S.C.S. § 1257, By right of final judgment from the Pennsylvania Supreme Court.

Concise Statement of Case Rule 14.1G

Mr. Tedesco and his wife Tina Tedesco were charged with 18 § 2502 Third-degree Murder 18 § 2713 A1 Neglect of a Care Dependent Person and 18 § 903 Conspiracy Neglect of a Care Dependent Person. They were arrested in July of 2013 in the death of a family friend whom John and Tina Tedesco had been taking care of since 1988. Mr. Tedesco and his family were subpoenaed by a grand jury in Monroe County, Pennsylvania several times before their arrest in July of 2013. After a coerced plea deal that would have not protected the Tedescos from multiple prosecutions and constitutional violations of the Fifth and Sixth Amendments as well as double jeopardy rights (Pages 6, 8, 9, 13.) The Tedescos' pleas were withdrawn and they had a jury trial in August of 2015. Due to the illegal amendment by the District Attorney of Monroe County to the criminal information and jury verdict slip. (Pages 6, 7, 8, 9.) The Tedescos were convicted and sentenced to § 903 Conspiracy to Commit Third-degree Murder (Pages 6, 7, 8, 11; Appendix B, Exhibit 1, 2, 3, 4; Appendix C, Exhibit 1, 2, 3; Appendix D, Exhibits 1, 2, 3, 4, 5; Appendix E, Exhibits 1, 2, 3.) The Tedescos' constitutional rights of the Fourth and Fourteenth Amendments (Pages 11, 12, 13) were violated by the acts and/or omissions of the illegal amendments to the jury verdict slip and criminal information (Appendix E, Criminal Exhibits 4, 5.) Mr. Tedesco and his wife were unconstitutionally convicted and sentenced (Appendix D, Exhibits 1, 2, 3, 4, 5) to the crime of Conspiracy to Commit Third-degree Murder, a crime that for which no Prima Facie was established at the Preliminary Hearing (Pages 6 and 7) nor probable cause. Mr. Tedesco notified his attorney as well as his wife's attorneys that they were never charged with § 903 Conspiracy to Commit Third-degree Murder, yet they were just convicted of the charge at trial on August 14th, 2015. Mr. Tedesco brought the concerns of his judgment of the illegal and substantive amendment (Pages 7, 8) right after and following trial, as well as at his Sentencing Hearing on October 26th, 2015. Mr. Tedesco has made numerous requests for the trial and sentencing transcripts, but still has not been provided with either of the transcripts. Mr. Tedesco had his attorney, Robert Saurman, bring up the issues of the illegal amendment in a Motion for Reconsideration (Appendix C, Exhibits 1, 2, 3 and Appendix B, Direct Appeal Exhibits 1, 2, 3, 4, 5, 6, 7.) Unfortunately, Mr. Tedesco's attorney, Robert Saurman, never brought up any of the constitutional violations that occurred by the malicious acts of the District Attorney of Monroe County (Pages 9, 10.) Mr. Tedesco has never received any information in regard to his Petition for an Appeal to the Supreme Court, only a letter indicating his Petition for Allowance of Appeal (Appendix A, Exhibits 1, 2, 3) was denied on September 19th, 2017.

H. Concise Argument 14.1H

Mr. Tedesco was initially charged with Conspiracy Neglect of a Care Dependent Person at his Preliminary Hearing on September 19th, 2013. See attached police criminal complaint and information that was filed. All charges were bound over to the Court of Common Pleas of Monroe County. The criminal information was filed on October 10th, 2013. After a coerced plea that did not bar the Tedescos from future prosecutions on double jeopardy grounds due to the illegal amendment by the District Attorney's Office of Monroe County. Mr. Tedesco withdrew his plea and Tina Tedesco's plea was not accepted by the court. The Tedescos had a trial in August of 2015 and were convicted and sentenced to crimes not charged with, by way of criminal information, and sentenced to those crimes that were unconstitutionally accounted for at least fifty percent of the Tedescos' sentence according to the Pennsylvania sentencing guidelines. The Tedescos' criminal information was filed after their preliminary hearing. The Tedescos were charged with § 903 Conspiracy-Neglect of a Care Dependent Person at the Preliminary Hearing. Never at any time were they charged with Conspiracy to Commit Third-degree Murder. The District Attorney of Monroe County, Michael Mancuso, took it upon himself to illegally amend the criminal information and jury verdict slip resulting in multiple constitutional violations. The Tedescos were sentenced fifteen to thirty years for those crimes.

(1st Question.) Was Mr. Tedesco convicted and sentenced to crimes for which he was never charged?

Rule 109 defects in form content or procedure a defendant shall not be discharged nor shall a case be dismissed because of a defect in form or content of a complaint, citation, summons, or warrant, or a defect in the procedures of these rules unless the defendant raises the defect before the conclusion of the preliminary hearing in a court case and the defect is prejudicial to the rights of the defendant. The Tedescos could not raise any type of defect on the conspiracy count of Neglect of a Care Dependent Person because, initially, that was the only conspiracy they were charged with at the Preliminary Hearing. See police criminal complaint and Affidavit of Probable Cause. The charges had yet to be filed by way of criminal information. The criminal information was filed on October 10th, 2013. The Tedescos' Preliminary Hearing was held on September 19th, 2013.

PA Crim P 135. According to the court docket, Mr. Tedesco could not even have been sentenced correctly because the court docket had already documented the charge for § 903 Conspiracy-Neglect of a Care Dependent Person. P.A.R. Crim P 135; any defect properly raised under this rule shall be specifically described on the docket by the issuing authority. The Tedescos' docket clearly states that they were charged with Conspiracy-Neglect of a Care Dependent Person. If the issuing authority determines that a defect is prejudicial, it is intended that the decision be recorded on the docket pursuant to Rule 135 (B) (12) shall be discharge of the defendant or dismissal of the case. In the Tedescos' case, the substantive defect on the Conspiracy count allowed District Attorney Michael Mancuso to amend the criminal information and jury verdict slip to have the Tedescos convicted and sentenced to crimes that they were never charged with, resulting in multiple Constitutional violations of the Fourth, Fifth, Sixth, and Fourteenth Amendments as well as Double Jeopardy violations. See United States v. Bobo 349F.3d 1076. As the scheme to defraud alleged in Count Two was insufficient to state an offense Count One of the Conspiracy Count based on the substantive count also being deficient. Clearly, the Tedescos were charged with Conspiracy Neglect of a Care Dependent Person--not Conspiracy to Commit Third-degree Murder. See Commonwealth v. Weigle 949A.2d.899.903.PA Super 2008. The Commonwealth's adding of criminal charges was in violation as the charge was dismissed. The Superior Court affirmed that the trial judge reiterated that the Commonwealth could not add bills on non-cognate offenses without authority from a judge who found that a Prima Facie had not been demonstrated. The Superior Court explained that the Commonwealth cannot add a criminal information for a charge that was dismissed, even if it disagrees with the judge's decision as to whether or not the Prima Facie case had been made out. If the Commonwealth wished to challenge that determination, then it would have been necessary to appeal to this court order pursuant to our Supreme Court's holding in Prado. Furthermore, if we accept the Commonwealth's argument, we would render the Preliminary Hearing meaningless, as the Commonwealth would have free reign to ignore the issuing authority's determination as to a Prima Facie case, and simply refile the the original charges by way of criminal information. Thus, under the Rules of Criminal

Procedure and Appellate Precedent, the Commonwealth is required to follow procedures if it wishes to seek to reinstitute prosecution on a charge that has been dismissed at the Preliminary Hearing. If the Commonwealth opts not to rearrest on the dismissed charge, it must appeal to the Court of Common Pleas Motions Court under PA R. Crim P 544. If the District Attorney's Office of Monroe County deems itself aggrieved by the Conspiracy Count, it could have brought the matter again before any other officer empowered to hold preliminary hearings. The District Court's injunction bars the District Attorney from ever reinitiating charges without prior judicial approval. By way of contrast, the Presiding Judge at the Preliminary Hearing must find that the Commonwealth has not presented a Prima Facie case unless it has produced information in legally admissible form substantiating each element of the offense. See Commonwealth v. Verbonitz 525 PA 413.581.A.2d 172 174 PA 1990 C.holding that where the Commonwealth relied on inadmissible hearsay to establish a Prima Facie case, it did not meet its burden on producing at the legally competent evidence to demonstrate the existence of facts which connect the accused to the crime.

On January 1st, 2000, the current version of PA R. Crim P 544 (then PA R. Crim P143) went into effect. The Rule provides reinstituting charges following withdrawal or dismissal (A) when charges are dismissed or withdrawn at or prior to preliminary hearing. The attorney for the Commonwealth may reinstitute the charges by approving in writing the refile of a complaint with the issuing authority who dismissed or permitted the withdrawal of charges. (B) Following the refile of a complaint pursuant to Paragraph (1). If the attorney for the Commonwealth determines that the preliminary hearing should be conducted by a different issuing authority, the attorney shall file a Rule 23 Motion with the Clerk of Courts requesting that the President Judge or a judge designated by the President Judge assign a different issuing authority to conduct the preliminary hearing. The motion shall set forth reasons for requesting a different issuing authority PA R. crim. P 544.

2nd Question: Did the District Attorney of Monroe County illegally amend the criminal information and jury verdict slip to have Mr. Tedesco convicted of Conspiracy to Commit Third-degree Murder?

PA crim P 564. The court may allow an information to be amended when there is a defect in form the description of the offenses. The description of any person or any property or date charged provided the information as amended does not charge an additional or different offense upon amendment. The court may grant such postponement of trial or other relief as is necessary in the interests of justice. The Tedescos were only charged with Conspiracy Neglect of a Care-Dependent Person, not Conspiracy to Commit Third-degree Murder, a felony of the First Degree, punishable up to 40 years of imprisonment. A defendant cannot be charged with one subsection and be presented with proof of allegations of a different subsection at the trial without an amendment approved by the defendant where the proof required for different subsections and the penalties involved are substantially different. Criminal Conspiracy is not merely a lesser crime included in the completed substantive offense. For purposes of amending an information,

a substantive amendment is one that changes the nature of the grade of the offenses charged and such an amendment has been held improper when it was made at the close of the Commonwealth's case, as was also in the Tedesco's trial.

H. Concise Argument, Continued.

[Question #2, Continued.] Did the District Attorney illegally amend the criminal information and jury verdict slip to have Mr. Tedesco convicted of Conspiracy to Commit Third-degree Murder?

Criminal Conspiracy in any one particular incident is the same grade offense as the most serious offense which is the object of the Conspiracy, Commonwealth v. Perkins 302 PA Super 12, 498.A.2d 70. Where there are in fact separate conspiracies, they should be separately charged, Commonwealth v. Riley 330 PA Super 201 479 A.2d 509 1984. PA Super Lexis 4924. The Tedescos were charged with one Conspiracy § 903 Neglect of a Care Dependent Person. District Attorney Michael Mancuso illegally had the jury verdict slip amended, split a single conspiracy on the information into multiple counts of conspiracy. See United States of America v. Gary D. Hoover 467 F.3d 497 2006 US App Lexis 25346.

See United States of America v. John J. Riggs. Timothy J. Riggs 605 F.3d 194 2010 US App Lexis 9670.2010.1-US Tax Cas (Cch) P50.412.105 A.F.T. R.2d.

The Double Jeopardy Clause prohibits the government from splitting one conspiracy into several prosecutions. Additionally, a single conspiracy should not be divided into multiple prosecutions, each alleging different overt acts. This is exactly what happened to the Tedescos at trial. United States v. Aguilar 756 F.2d 1418.1420 N.2 (9th Cir 1985). "The vices of duplicity" arise from the breaches of the defendant's Sixth Amendment right to knowledge of the charges against him since conviction on a duplicitous count could be obtained without a unanimous verdict as to each of the offenses contained in the count. A duplicitous indictment could also eviscerate the defendant's Fifth Amendment protection against Double Jeopardy because of a lack of clarity concerning the offense for which he is charged or convicted. Further, one vice of duplicity is that a general verdict could prejudice the defendant in protecting himself against Double Jeopardy United States v. Starks 515 F.2d 112.116 (3rd Cir 1975) given the determination that the plain language of 18 U.S.C. § 371 reveals Congress' intent to create a single criminal offense that may be violated in two alternative ways. In addition to the Tedescos' case, they were charged under 18 PA C.S. § 903 C. The Superior Court based its decision upon a Statutory directive that if a person conspired to commit a number of crimes, he was guilty of only one conspiracy so long as such multiple crimes were the object of the same agreement or continuous conspiratorial relationship. See Commonwealth of Pennsylvania v. Maurice Barnes, Supreme Court of Pennsylvania 592 PA 301; 924 A.2d 1202 2007 PA Lexis 1317 No 66 MAP 2006 18 PA CSA §903 (C) precludes multiple convictions where there is but one conspiracy. Challenges to

an illegal can never be waived and may be reviewed sua sponte by this court. See Commonwealth v. Randall, 2003 PA Super 465 837 A.2d 1211. 1214 PA Super 2003. An implicit or constructive amendment occurs when it permits the defendant to be convicted upon a factual basis that effectively modifies an essential element of the offense charged. United States v. Reasor 418 F.3d 466.475 5th Cir 2005 sentencing a defendant for a crime that was not charged in the indictment renders the criminal proceedings fundamentally unfair. An indictment or, in the 'Tedescos' case, an information that charges a different crime than the one for which a defendant is sentenced does not merely affect the criminal proceeding.. It fundamentally alters that proceeding. Put another way, the charging instrument is "the framework within which the trial proceeds." Gonzalez-lopez 548-US at 148 (quoting Fulminante 499.US at 310 and forms the basis for the government's proof). the accused's defense and the trial court's rulings). Indeed, whether a defendant decides to plead guilty or instead exercises his right to trial by jury may depend on the charges he faces and his potential punishment thus failing to notify a defendant of the crime of which he is accused "infect[s] the entire trial process" Neder 527 US at 8 (quoting Brecht v. Abrahamson 507 US.619.630.113 S.C.T. 1710.123 L.ED 2D 353 (1993)), and undermines any confidence that the sentence imposed reflects a just outcome. Further, inquiry into whether an error of this nature was harmless is inherently unreliable. See Gonzalez v. Lopez at 149 N.4. (holding error was structural because of "the difficulty of assessing the error"). In an effort to demonstrate that the error was harmless, the majority also distinguishes the Supreme Court precedent on which the government relies, including United States v. Cotton 535 U.S. 625.122 S.C.T. 1781.152 L.ED.2d 860 (2002) and Washington v. Recyenco.

Argument: Question #3. Was Mr. Tedesco maliciously prosecuted and had his Constitutional rights violated by the acts or omissions of the District Attorney of Monroe County?

It is apparent the District Attorneys of Monroe County and their misconduct deprived defendants of real opportunity to object US v. Wilson 149 F.3d 1298 11th Cir 1998. The constructive amendment of the information or indictment constituted reversible error in violation of the Fifth Amendment. Misconduct is intended to provoke the defendant into moving for a mistrial. But also when the conduct of the Prosecutor is intentionally undertaken to prejudice defendant to the point of the denial of a fair trial. Smith.532 PA at 186.615 A.2d at 325 (quoted in Commonwealth v. Maitorano 559.PA 533.537-538 741 A.2d 1221.1223 (1999)).

In contrast to prosecutorial error, overreaching is not an inevitable part of the trial process and can not be condoned. It signals the breakdown of the integrity of the judicial proceeding and represents the type of prosecutorial tactic which the Double Jeopardy Clause was designed to protect.

Due to the District Attorney of Monroe County's illegal amendment and the biased conclusion about the strength of his case, any type of system that conditions an individual's liberty on those motivations can hardly offer the protection that the Fourth Amendment requires, NO MATTER HOW WELL-INTENTIONED the Prosecutor may be. Experience has therefore counseled that safe guards must be provided against the dangers of the overzealous as the as the despotic. The awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore (275 F.3d 243) divided into different parts responsibility for which is separately vested in the various participants upon whom the criminal law relies its vindication, Id at 118 Citing McNabb v. United States 318 US 332 87 LED 819.63 S.C.T. 608 (1943). That is why we have neutral magistrates. That is why the Supreme Court restricted the prosecution's authority to detain absent review of a neutral magistrate.

A Prosecutor's official oath can not furnish probable cause Gerstein 420 US at 117. If a defendant can not initially be detained "solely on the decision of a Prosecutor," it would stand the Constitution on its head to allow the Prosecutor that power after a judge has ruled that the Prosecutor lacks probable cause to detain the defendant and orders felony charges dismissed, Gerstein 420 US at 106. In Gerstein, the court determined that the practicalities that justified an initial warrantless arrest could not justify continued detention without a judicial determination of Probable Cause.

The Tedescos had only one preliminary hearing in September of 2013, and the Commonwealth neglected to allege the possession of any additional evidence to establish a Prima Facie case of Conspiracy to Commit Third-degree Murder, only Conspiracy-Neglect of a Care Dependent Person was established at the Preliminary Hearing.

2713 Neglect of a Care-Dependent Person

(A) Offense defined, A caretaker is guilty of Neglect of a Care-Dependent Person if he:

(1) Intentionally, knowingly, or recklessly causes bodily injury or serious bodily injury by failing to provide treatment, care, goods, or services necessary to preserve the health, safety, or welfare of a care-dependent person for whom he is responsible to provide care.

(B) Penalty:

(1) A violation of Subsection (A)(1) Constitutes a Misdemeanor of the First Degree if the victim suffers bodily injury.

(2) A violation of Subsection (A)(1) constitutes a Felony of the First Degree if the victim suffers serious bodily injury. The Tedescos were clearly on notice for the Conspiracy Count of Neglect of a Care-Dependent Person. At the Tedescos' trial, no serious bodily injury was found by

the jury. At no time were the Tedescos charged with Conspiracy to Commit Third-degree Murder, and were only on notice for the Conspiracy Neglect of a Care-Dependent charge. It is evidently clear that District Attorney Michael Mancuso illegally amended the charges of the criminal information to have the Tedescos sentenced as well as an illegal amendment to the jury verdict slip to have the Tedescos convicted. A cause of action for Malicious Prosecution may be based on the prosecution of more than one charge and the validity of the prosecution on each individual charge which is likely to have placed an additional burden on the Plaintiff. Probable Cause on one charge does NOT foreclose a Malicious Prosecution cause of action against a defendant for having brought criminal charges involving different elements.

To prove a Malicious Prosecution under 42 U.S.C.S. § 1983 when the claim is under the Fourth Amendment. A Plaintiff must show that: (1) the defendant initiates a criminal proceeding, (2) the proceeding ends in his favor, (3) the defendant initiates the proceeding without Probable Cause, (4) the defendant acts maliciously or for a purpose other than bringing the plaintiff to justice, and (5) the plaintiff suffers deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. Malicious Prosecution differs from False Arrest inasmuch as a claim for False Arrest, unlike a claim for Malicious Prosecution, covers damages only for the time of detention until the Issuance of Process or Arraignment and not more. See Johnson v. Knorr Civ No 01-3418.2003 US Dist Lexis 202 11.2003 WL22657125 at 1ED. See POSS, 944 F.2d (477 F.3d 84) at 106. The result reached by the District Court.

1.) Pre-trial Detention Fourth Amendment. The Fourth Amendment establishes the standards and procedures governing pre-trial detention and those Constitutional protections apply even after the start of legal process in a criminal case.

2. Dismissal Factual Allegations. If an Appellate Court is reviewing an order dismissing a plaintiff's suit, the court accepts as true all the factual allegations in the complaint.

3. 42 U.S.C.S. 1983. A judicial finding of Probable Cause is required following a warrantless arrest to impose any pre-trial restraint on liberty 725 ILCSS / 109-121010, implements that Constitutional rule.

4. 42 USCS § 1983 creates a species of tort liability for deprivation of any rights, privileges, or immunities secured by the Constitution § 1983.

5. Official Restraint - Reasonableness. The Fourth Amendments protects the rights of people to be secure in their persons against unreasonable seizures. A person is seized whenever officials restrain his freedom of movement such that he is not free to leave the general rule is that

Fourth Amendment seizures are reasonable only if based on Probable Cause to believe that the individual has committed a crime.

6. Pre-trial Restraint on Liberty - Probable Cause. The U.S. Supreme Court has looked to the Fourth Amendment to analyze and uphold a claim that a pre-trial restraint on liberty is unlawful unless a judge or grand jury first makes a reliable finding of Probable Cause. The Fourth Amendment establishes the minimum Constitutional standards and procedures not just for arrest, but also ensuing detention. In choosing that Amendment as the rationale for decision, the court responded to a view that Due Process Clause offered the better framework. The Fourth Amendment is tailored explicitly for the criminal justice system, and it has always been thought to define the appropriate process for seizures of persons in criminal cases including the detention of suspects pending trial. The Amendment standing alone guarantees a fair and reliable determination of Probable Cause as a condition for any significant pre-trial restraint.

7. Commencement of Legal Process. Those objecting to pre-trial deprivation of liberty may invoke the Fourth Amendment when that deprivation occurs after legal process commences, C 197 L.ed 2d 314.

8. Pre-trial detention can violate the Fourth Amendment not only when it precedes, but also when it follows the start of legal process in a criminal case. The Fourth Amendment prohibits government officials from detaining a person in the absence of Probable Cause. That can happen when the police hold someone without any reason before the formal onset of a criminal proceeding. But it can also occur when legal process itself goes wrong. For example, a judge's Probable-cause determination is predicated solely on a police officer's false statements, then too a person is confined without Constitutionally adequate justification. Legal process has gone forward, but it has done nothing to satisfy the Fourth Amendment's Probable-cause requirement, and for that reason, it cannot extinguish the detainee's Fourth Amendment claim or somehow convert that claim into one founded on the Due Process Clause. If the complaint is that a form of legal process resulted in pre-trial detention unsupported by Probable Cause, then the right allegedly infringed lies in the Fourth Amendment.

9. Pre-trial Detention, Probable Cause, Conviction, and Incarceration - Due Process. Nothing in the nature of the legal proceeding establishing Probable Cause makes a difference for purposes of the Fourth Amendment whatever its precise form. If the proceedings are tainted and the result is that Probable Cause is lacking, then the ensuing pre-trial detention violates the confined person's Fourth Amendment rights. By contrast, once trial has occurred, the Fourth Amendment drops out. A person challenging the sufficiency of the evidence to support both a conviction and ensuing incarceration does so under the Due Process Clause ~~Fourth~~ Amendment. In other words, the Framers drafted the Fourth Amendment to address the matter of pre-trial deprivations of liberty and the Amendment thus provides standards and procedures for the detention of

suspects pending trial. The standards and procedures governing pre-trial detention in Gerstein v. Pugh 420 US 103955.CT 854 43 LED 2d S4 (1975) and those Constitutional protections apply even after the start of legal process in a criminal case; here, that is after the judge's determination of Probable Cause. See Albright v. Oliver 510 US 266.274 114 S.C.T. 807 127 Led 2d 114. After all, the Fourth Amendment prohibits all unreasonable seizures regardless of whether a § 137.Ct926 § Prosecution 197 L.ED 2d 330 is ever brought or how a prosecution ends.

Lack of evidence supporting conviction of criminal offense as violation of Due Process Clause of the Federal Constitution's Fifth or Fourteenth Amendment § 146 L ed 2d 1135. The court writes that nothing in the nature of a legal proceeding establishing Probable Cause makes a ~~difference~~ difference for the purposes of the Fourth Amendment, Ante at -, N8197 Led 2d at 323. If the proceeding is tainted as here by fabricated evidence and the result is that Probable Cause is lacking, the court continues then the ensuing pre-trial detention violates the confined person's Fourth Amendment rights.

Answer to Question #4. Was Mr. Tedesco's Attorney Robert Saurman ineffective-for letting Mr. Tedesco get convicted and sentenced to crimes that he was never charged with?

It is apparent that Mr. Tedesco's court-appointed attorney was deficient, Mr. Tedesco was convicted and sentenced to crimes not charged with. It was also brought to Attorney Robert Saurman's attention that witnesses noticed a juror sleeping during major portions of the trial, and Attorney Robert Saurman was provided with affidavits of the witnesses who noticed the juror sleeping, yet he never provided the Superior Court with a review of those affidavits on Mr. Tedesco's direct appeal. Consequently, besides the infallible representation, Mr. Tedesco was forced to utilize Attorney Robert Saurman, and use him on the direct appeals. The Department of Corrections for the State of Pennsylvania lost all of Mr. Tedesco's direct appeals that he spent months working on, as well as his wife's direct appeal. 4,000 pages of legal documents. Trial transcripts. Preliminary Hearing transcripts. Grand Jury transcripts. All of Mr. Tedesco's letters to the Court complaining of Attorney Robert Saurman's indolent representation--as well as all other documents pertaining to his case (during his transfer from S.C.I. Graterford to S.C.I. Camp Hill. Indeed, all of Mr. Tedesco's legal documents, dating back to 2011, went missing and have not been returned to him. As a result, he has not had his documents for 17 months during the most important time of the appeals process.

Also, during Mr. Tedesco's trial in August of 2015, two jurors approached Mr. Tedesco's mother and aunt who were attending the trial, and they exchanged words with them in the parking lot with regard to the case, causing bias towards Mr. Tedesco. The two trial jurors were asked about the incident in front of the judge. Instead of replacing

the two jurors with two alternate jurors who were already non-amicable toward Mr. Tedesco, Attorney Robert ~~Saurman~~ refused to replace the two jurors at Mr. Tedesco's request. It is apparent that Attorney Scurman's representation before, during, and after-trial was deficient.

Reasons for Granting Petition

John and Tina Tedesco were convicted and sentenced to crimes for which no Prima Facie nor Probable Cause was established. Yet, they are incarcerated on a charge that has counted toward half of their sentence. Mr. Tedesco has done everything to bring the matter before the court. The erroneous decisions of the courts refuse to acknowledge that the rules of criminal procedure were not followed, indeed being bypassed altogether.

The Court of Appeals for the Second Circuit has held, however, that Probable Cause on one charge does not foreclose a Malicious prosecution cause of action against a defendant for having brought criminal charges involving different elements POSR v. Doherty 944 F. 2d 91.100 (2nd Cir 1991). See POSR 944 F.2d § 477 F.3d 84 § at 100 as was true of the result reached by the District Court in POSR. The result reached by the District Court here would allow law enforcement officers to "tack on more serious unfounded charges" for which there was not Probable Cause, either for the arrest or for the initiation of the criminal proceedings merely because there was Probable Cause for the arrest for ANY charge.

The guarantee against Double Jeopardy is "fundamental to the American scheme of justice," Benton v. Maryland Supra at 796 23 LED 2D at 717 designed to ensure "the state with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense thereby subjecting him to embarrassment. Expense and ordeal compelling him to live in a continuing state of anxiety and insecurity as well as enhancing the possibility that even though innocent, he may be found guilty," Green v. United States 355 US 184.187-188.2LED 2d 194.204 78 S.C.T. 221.61 AIR 2d 1119 (1957). Mr. Tedesco has asked the Federal Court to intervene on his behalf on the basis that the net source of injury was free from the State Court judgment itself; he is also being told by the Federal Court in Scranton, Pennsylvania that he must prove that his conviction has been invalidated. There is no way for Mr. Tedesco to prove that his conviction is unconstitutional if he is forced to litigate in a district court that had denied his direct appeals in the first place.

Mr. Tedesco has asserted a claim that is an independent claim, outside the scope of the Rooker-Feldman Doctrine, inextricably intertwined. If the state and federal courts will not intervene, Mr. Tedesco has full faith the the Supreme Court will intervene and correct the miscarriage of justice that happened to John and Tina Tedesco before, during, and after incarceration.

Respectfully Submitted,
John Tedesco
660 State Route 11
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Conclusion

For the reasons herein before set forth, due to the malicious acts of the District Attorneys of Monroe County, and Mr. Tedesco's improper legal representation by Attorney Robert Saurman (resulting in multiple Constitutional violations), the illegal amendment to the jury verdict slip on August 14th, 2015 should be set aside, vacated, and/or dismissed. We are asking the same of the illegal incarceration and sentencing that took place on October 26th, 2015. In the alternative, Mr. Tedesco should have the illegal part of his sentence vacated and/or have his sentence reduced seven-and-one-half to fifteen years on the Conspiracy to Commit Third-degree Murder count, a count for which no Probable Cause existed, and for which no Prima Facie was ever established--and for which the Tedescos stand convicted and sentenced to this day and yet today.

Respectfully Submitted,
John Tedesco

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