

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ARTHUR A MILLER -PETITIONER
(Your Name)

KEITH BUTTS -RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS (7th Cir)
(NAME THE COURT THAT LAST RULED ON THE MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ARTHUR A MILLER
(Your name)

P.O. Box A
(Address)

New Castle, IN 47362-1041
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

1.) Court appointed counsel was ineffective for failing to conduct a proper independent investigation, prepare for trial, meet with defendant face to face to discuss trial strategy, subpoena witnesses on behalf of the defendant, and conspiring with the prosecutor to withhold material exculpatory evidence. Denying the defendant a guarantee constitutional right to a fair trial under the Sixth Amendment, and due process under the Fifth and Fourteenth Amendment to our United State Constitution,

2.) The State Prosecutor's committed Brady's violations by withholding material exculpatory evidence. Conspiring with court appointed counsel not to conduct a handwriting analysis, evidence that alleged victim had been drinking. Denying the defendant

a guarantee right to a fair trial under the Sixth Amendment and due process under the Fifth and Fourteenth Amendments.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ 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:

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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

☐ For cases from Federal Courts:

The opinion of the United States Courts of Appeals appears in Appendix E to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States District Court appears at Appendix F to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix G to the petition and is

☐ reported at Indiana Court of Appeals; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Court of Appeals (Indiana) court appears at Appendix H to the petition and is

☐ reported at Petition to Transfer Denied; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 3.20.18.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of the Court is invoked under 28 U.S.C. §1254(1).

☐ For cases from the state courts:

The date on which the highest state court decided my case was 1/7/18.
A copy of that decision appears at Appendix N/A.

☐ A timely petition for rehearing was thereafter denied on the following date: 1/10, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Appendix No. N/A A N/A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Court appointed counsel substantially violated the defendant constitutional rights to effective assistance of counsel and a guarantee fair trial under the six amendment, and due process under the Fifth and Fourteenth amendment.

The prosecutor violated the defendant due process under Brady the Fifth and Fourteenth amendments, and a right to a fair trial under six amendment

STATEMENT OF THE CASE

The defendant was charged on 30 January 2002 with rape and one from 20 November 2002 under the same case number. Defendant ex-girlfriend accused defendant. The alleged rapes were two and a half months apart, Defendant and alleged victim spent New Year's Eve and Day together having sex. Defendant was sentenced to 90 years

REASONS FOR GRANTING THE PETITION

The United State Court of Appeal erred when they denied defendant certificate of appealability. Stating that defendant had no substantial showing of constitutional right violations. Court appointed counsel (Jaffe) was ineffective for several reasons. The first was he failed to conduct his own proper independent investigation of defendant case's. Counsel appointed counsel Jaffe, stated for the record that the only investigating in the defendant case's consisted solely of him reviewing and familiarizing himself with the prosecution

case files. In Thomas v. Lockhart,
738 F.2d 304 (1984) U.S. App., an attorney's
investigation of a case consisting
solely on reviewing the investigative
files of the prosecuting attorney, and
failing to interview the police
officers involved, nor interview the
victim is in fact ineffective assi-
stance of counsel. The second, was
counsel failed to prepare for trial,
counsel tried to request a contin-
uance the day of trial due to the

fact that he was not prepare for trial, nor had he done any need investigative work, Trial court do not grant continuance because counsel isn't prepared for trial, Had counsel done any need kind of investigation at all, he would have knew to subpoena the alleged victim telephone record and the defendant cellphone record. Those records would have shown that the alleged victim (Taylor) had called the de-

defendant three times the night of the alleged attack. The first call was made at 6:45 p.m., inviting the defendant over to her house. However she testified that she did not call the defendant because she was not home at that time. She testified that she was at the Goodwill Store. Thirdly, counsel would have known to subpoena the ADT technician who actually installed the alarm system. The alleged victim (Taylor) was the

one home that day and forged the defendant signature on the ADT documents to make it look as if the defendant was there, instead of at work, which the defendant work record would have proven, had counsel bother to investigate. The alleged victim testified that the defendant was the one home the day the alarm system was installed, which she perjured herself again. Hall v. Washington, 796, F3d 742 (2th Cir, 1992), trial counsel's

failure to investigate, (See Appendix B7C),
Counsel would have been able to show
the jury that the alleged victim was
nothing but a liar. Fourth, counsel
fail to request a severance of charges,
where defendant was being charged
with two alleged assault, that were
two and a half months apart under
the say cause number. In Williams v.
Washington, 59 F3d 672 (2nd Cir. 1995),
trial counsel failure to move for a
severance constituted ineffective ass-

instance,

Fifth, counsel was ineffective for allowing a video tape into evidence.

The state prosecutor viewed the video tape and returned it to the alleged victim saying the tape was of poor quality. The day of the defendant trial the alleged victim was allowed to bring the video tape from home for the jury to view. In Lilly v. State 482 N.E.2d 457 (Ind. S.Ct 1985, to establish a chain of custody, the State of Indiana

must provide evidence that strongly suggests the exact whereabouts of the item proffered while in possession of the police. The rule applies with diminishing strictness as the items concerned become decreasingly susceptible to alteration, tampering or substitution.

Court appointed counsel failure to object was ineffective. For allowing alter evidence in Six, counsel was ineffective for conspiring with prosecutor to convict an innocent man and not enter material

exculpatory evidence. Counselor Jaffe
enter into an agreement with the pro-
secutor not to do a handwriting analysis
of the signature on the ADT documents.

Had counsel not betray his oath to
the defendant he would have knew the
signature on the ADT documents was not
the defendant. (See Appendix A). Lastly,
during the alleged victim testimony she
was allowed to nod her head which was
record by the record instead of answering
questions verbally for the record.

The Sixth Amendment imposes upon counsel the obligation to conduct a professional investigation into the facts and circumstance of the case. A professional investigation must include an independent examination of the facts. There can be no strategic choice that renders such an investigation unnecessary in a criminal case. Strickland v. Washington, 466 U.S. 668, 104 S. CT. 2052, 2060-2061 (1984).

The purpose of the Sixth Amendment effective assistance guarantee is to

ensure that criminal defendant receive
a fair. Strickland v. Washington 104 S. CT.

2052

The failure to conduct any meaningful
pretrial investigation and to properly
present the defendant case and evi-
dence was prejudicial and deprived
defendant of a fundamental fair trial

Strategic decision are made only after
a reasonable investigation are conducted.

The minimum requirement of professional
competant representation demand that

counsel conduct an independent investigation of the case facts and circumstance. U.S. v. Fairman, 819 F2d 1391-1392 (2nd Cir 1996).

Counsel action were far below the minimum standard making it impossible for the defendant to receive a constitution guarantee right to a fair trial and due process. Especially when counsel fail to conduct a proper investigation and conspire with the prosecutor to conceal material exculpatory evidence.

There is already been precedent set exactly for this type of ineffective assistance of counsel. When counsel chose to familize himself with the prosecutor case's. Instead of doing his own independent investigation and prepare for trial. Counsel chose to be ineffective depriving defendand of his guaranteed constitution rights to a fair trial effective of assistance and due process, which are very substantial indeed. The jury do not get an opportunity

to view or hear material exculpatory evidence about the signature on the ADT documents, because trial counsel agreed with the prosecutor not to do a handwriting analysis on this evidentiary matter. This cannot be considered trial strategy because trial counsel never discussed that evidence with defendant. This would have given the jury reasonable probability.

The right to counsel is the right to effective counsel. *McCann v. Richardson*

387 U.S. 759, 771 (1970)

2. The prosecutor withheld material exculpatory and impeaching evidence. In Brady v. Maryland, 373 U.S. 83, 83 S. CT. 1194, 10 L. Ed 2d 215 (1963), creates a duty on the part of the government to provide the defense with potential exculpatory or impeachment evidence. Evidence bearing on witness credibility can be material under Brady when it has significant impeachment value.

Evidence is "material under Brady if had it been disclosed there is

a reasonable probability that the outcome of the trial would have been different, and did defendant receive a fair trial absent the evidence

U.S.C.A. Constitution Amendment
5th and 14th,

The prosecutor suborn perjury by soliciting testimony she knew to be false. Prosecutor had subpoenaed defendant cellphone record and the alleged victim home phone record, and that she called the defendant at 6:25pm.

However, the prosecutor allowed her to testified that she did not call defendant because she was not home at that time. Which the prosecutor knew to be false due to the phone records she subpoenaed. Also prosecutor had the ADT documents that she subpoenaed with the defendant forged signature on them. Instead of doing a handwriting analysis she elected to conspire with defendant counsel not to profound a handwriting analysis

which would have clearly shown that the defendant signature did not match. The defendant was at work on this, however the solicited perjured testimony from the alleged victim again.

That the defendant was home and received the alarm codes for the ADT technician. A conviction which has been obtained through the use of false evidence has long been recognized by the Supreme Court. Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed.

291 (1985); ~~Napue v. Illinois~~, 360 U.S. 264,

~~29 S. Ct. 1173~~, 31 Ed. 2d 1217 (1985).

As Agurs noted, this conduct not only violates constitutionally mandated disclosure obligations, but "involves prosecutorial misconduct" and a corruption of the truth-seeking function of the trial process." 427 U.S. 104, 96 S.Ct. 2397. The Supreme Court has therefore imposed "a strict standard of materiality" where the prosecution uses evidence that it knew or should

have known was false. In such a case, the conviction "must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury". The prosecution knew from the alleged victim phone records and the defendant cellphone records that Taylor (alleged victim) had perjured herself about called the defendant at 6:25 pm. and committed perjury on several more occasions. Which the pro-

secutor did not attack her credibility.

It had been well established that a conviction obtained through use of false evidence known to the State, must fall under the Fourteenth Amendment. The same result obtains when the State, although not soliciting false evidence allows it to go uncorrected when it appears. In Ashburn v. Korte, 761 F.2d 741 (7th Cir. 2014) A prosecutor's knowing use of false testimony violates a defendant's right to due process.

Also the prosecutor used tainted evidence by allowing the alleged victim to take a video tape to her house and bring the video tape to the defendant trial to be viewed by the jury.

The prosecutor viewed the video tape, she said it was of poor quality and return it to the alleged victim, She kept the video tape in her possession and control without a chain of custody. To establish a chain of custody, the

State of Indiana must provide evidence that strongly suggests the exact whereabouts of the item proffered while in possession of the police. The rule applies with diminishing strictness as the item concerned become increasingly susceptible to alteration, tampering or substitution. Prosecutor and counsel has already conspired against the defendant not to use material exculpatory evidence. The prosecutor

and trial counsel agreed not to do a handwriting analysis of the signature on the ADT documents. The jury never had a opportunity to judge that evidence for themselves. Now for the second time the prosecutor and trial counsel conspired. This time to use tainted evidence which mostly was altered. The prosecutor viewed a video tape then returned it to the alleged victim stating that it was of poor quantity and she was not going

to use the video tape. That why she
return it to the alleged victim,

On the of defendant trial the alleged
victim was allowed to bring the video
from her home. There was no chain
of custody for the video tape, nor did
the state prove or show that the
tape had not been altered. By using
tainted evidence both the prosecutor
and trial counsel deprived the de-
fendant of a fair trial fundamental
due process and prejudice the jury

against the defendant. All to convict an innocent man.

Defendant has shown that court appointed counsel violated his guarantee substantial constitutional rights. By counsel failure to conduct any investigation whatsoever, interview police involved the alleged victim, and just familiarizing himself with the prosecution case's file. Also counsel failure to subpoena the ADT technician who installed the alarm, defendant's cellphone records

alleged victim home phone records. Which would have provided critical evidence that would have shown that the alleged victim was lying. That she did call the defendant the day of her alleged assault. Also that she forged the defendant signature on the AIT document. There was no strategic reasons for counsel not to conduct an investigation or discuss evidentiary matter with the defendant. Counsel conspired with the prosecutor not to do a handwriting

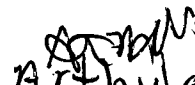
analysis to show that the defendant
signature was forged on the ABT doc-
uments.

Defendant respectfully requests this Court to reverse the decision of the United State Court of Appeals, and grant defendant certificate of appealability.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,


Arthula Miller

Petitioner, *pro se*

Date: 4.6.18