

NO. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

Petitioner

Robert E. Eastwood

VS.

Indiana Attorney General

Wendy Knight

Superintendent of Correctional Industrial Facility

On Petition for a Writ of Certiorari to 7th Circuit Court Chicago, Illinois

PETITION FOR WRIT OF CERTIORARI

A handwritten signature in black ink, appearing to read "Robert E. Eastwood", with a long horizontal flourish extending to the right.

**Robert E. Eastwood DOC# 220911
5124 W. Reformatory Road
Pendleton, Indiana 46064**

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MAR 12 2018

QUESTIONS PRESENTED

1. Did the Indiana Court of Appeals and the Indiana Supreme Court disregard their own holdings with respect to fundamental error in denying Eastwood's appeals?
2. Was Trial Counsel ineffective according to the Strickland V. Washington standard for failing to object to State's Motions in Lemine?
3. Was Trial Counsel ineffective for not preparing Eastwood for trial?
4. Was Trial Counsel ineffective for not introducing daycare and school records showing accuser's motive and lack of opportunity for the defendant, even after being requested to do so numerous times?
5. Was Trial Counsel ineffective for refusing to introduce a letter from attorney David Grupenhoff showing that the accuser's mother had used similar accusations before to gain custody of her children in a divorce?
6. Was Trial Counsel ineffective for refusing to call defense witnesses who were in the courthouse and ready to testify as eyewitnesses?
7. Was Trial Counsel constitutionally ineffective for allowing an all women jury, without objection, while men were still available to choose from in the jury pool?
8. Did the District Court err when it denied Eastwood's Habeous Corpus due to 'procedural error'?
9. Did the 7th Circuit err when it denied Eastwood's appeal due to lack of showing of 'substantial' denial of Eastwood's rights?

LIST OF PARTIES

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

Attorney General Of Indiana
Curtis Hill

Southern District Court
Tonya Walton Pratt

7th Circuit Court
Judge Joel M. Flaum
Judge Daniel A. Manion

Indiana Court of Appeals

Indiana Supreme Court

A handwritten signature in black ink, reading "Robert E. Eastwood". The signature is fluid and cursive, with the first name "Robert" and last name "Eastwood" clearly legible.

Robert E. Eastwood DOC# 220911
Correctional Industrial Facility
5124 W. Reformatory Road
Pendleton, Indiana 46064

TABLE OF CONTENTS

	Pages
Questions Presented	i
List of Parties	ii
Table of Contents and Index to Appendices	iii
Table of Authorities Cited (Cases)	iv
Table of Authorities Cited (Statutes and Rules)	v
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions Involved	3
Statement of the Case	4-6
Reasons for Granting the Petition	7-20
Conclusion	21-22

INDEX TO APPENDICES

Appendix A – Denial from 7 th Circuit Court of Appeals for rehearing	1
Appendix B – Denial from 7 th Circuit Court for certificate of appeal ability	2
Appendix C – District Court denial of Habeous Courpus	3-14
Appendix D – Denial of Transfer by Indiana Supreme Court	15
Appendix E – Petition to Transfer to Indiana Supreme Court	16-35
Appendix F – Indiana Court of Appeals denial of Post-Conviction relief	36-50
Appendix G – Brown County Circuit Court denial of Post-Conviction relief	51-63
Appendix H – Transfer to Indiana Supreme Court from Direct Appeal	64-72
Appendix I – Indiana Court of Appeals denial of Direct Appeal	73-82
Appendix J – Appellant’s Reply Brief for Direct Appeal	83-92
Appendix K – Appellant’s Brief of Direct Appeal	93-111
Appendix L – State’s Motion in Limine	112-115
Appendix M – State’s second Motions in Limine	116-118
Appendix N – Appellee’s Brief of Direct Appeal	119-134
Appendix O – Exhibits	135-160

TABLE OF AUTHORITIES CITED

CASES	PAGES
Kindred Vs. State	7
Eastwood Vs. State	7
Ortiz Vs. State	7
McIntyre Vs. State	7
Craig Vs. State	7,8
Baker Vs. State	9
Gutierrez Vs. State	9
Stavrapoulos Vs. State	11
Palko Vs. State	16
J.E.B. Vs. Alabama	18
Amadeo Vs. Zant	18
Balson Vs. Kentucky	18
Galarza Vs. Keane	18
Jordan Vs. Lefevre	18
Turner Vs. Marshall	18
Jackson Vs. Shanks	19
Murray Vs. Carrier	19
Coleman Vs. Thompson	19
U.S. Vs. Frady	19
Slack Vs. McDaniel	20
Barefoot Vs. Estelle	20
Jones Vs. Basinger	20
Peterson Vs. Douma	20
Strickland Vs. Washington	18,21
Cossell Vs. Miller	12
Brown Vs. Myers	22

TABLE OF AUTHORITIES CITED

STATUTES AND RULES	PAGES
Indiana Rule of Evidence 803	3,8
Indiana Rule of Evidence 704 (b)	3,9
Indiana Constitution Article I, Section 12	3
Indiana Constitution Article I, Section 13	3
Indiana Constitution Article I, Section 16	3
Indiana Constitution Article I, Section 23	3
28 U.S.C §1254 (1)	2
28 U.S.C §2253 (c)(2)	20
28 U.S.C §1257 (a)	2
5 th Amendment to the U.S. Constitution	3,15
6 th Amendment to the U.S. Constitution	3,15
8 th Amendment to the U.S. Constitution	3,16
14 th Amendment to the U.S. Constitution	3,15

**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a Writ of Certiorari be issued for review of the judgment below.

OPINIONS BELOW

From Federal Courts:

The opinion of the United States Court of Appeals appears in Appendix B to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix C to the petition and is unpublished.

From State Courts:

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

The opinion of the Indiana Court of Appeals appears at Appendix I to the petition and is unpublished.

JURISDICTION

Cases from Federal Courts:

The date on which the United States Court of Appeals denied Eastwood's case was November 3, 2017.

A timely petition for rehearing was denied by the United States Court of Appeals on December 18, 2017 and a copy of the order denying rehearing appears at Appendix A.

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

Case from State Courts:

The date on which the highest state court decided Eastwood's case was October 22, 2015.

A copy of that decision appears at Appendix D.

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

**CONSTITUTIONAL AND STATUTORY
PROVISION INVOLVED**

5th Amendment to U.S Constitution ----- Due process right to a fair trial.

6th Amendment to U.S Constitution ----- Right to effective assistance of counsel.

8th Amendment to U.S Constitution ----- Protection against cruel and unusual or -----
disproportionate punishment.

14th Amendment to U.S Constitution ----- Equal protection of the laws.

Indiana Constitutional Article I Section 12 Right to present a defense.

Indiana Constitutional Article I Section 13 Right to confront.

Indiana Constitutional Article I Section 16 Protection against cruel punishment.

Indiana Constitutional Article I Section 23 Equal protection of the laws.

Indiana Rule of Evidence 803 Hearsay.

Indiana Rule of Evidence 704 (b) Fundamental Error.

STATEMENT OF THE CASE

Between the summer of 2002 and 2003 H.S. [REDACTED] along with her younger brother and sister attended Jackie Eastwood's home daycare. Robert E. Eastwood had no care, custody or control over any of the children in his wife's (Jackie Eastwood) daycare. Jackie simply ran the daycare from their home.

Between the summer of 2002 and 2003 H.S. attended Kindergarten at Nashville Elementary from 12:00 noon to 4:00 p.m. (Appendix O page 135). The time period that H.S. was in school was the same time period that Jackie laid her daycare children down for a nap. (Appendix O page 147-160).

Sometime during the summer of 2003 the mother of H.S. remarried and consequently moved, removing the children from the daycare. Jackie then asked that the mother (Dana Stone), pay up her overdue daycare bill, since the children would no longer be attending her daycare. Jackie then received a phone call from the new husband (Jeremy Hurd), who threatened her and said that '... he would have her daycare shut down.' Jackie had previously told the accuser's mother that she intended to file a claim in small claims court for back daycare charges amounting to around \$2000.00. Within a day of the threatening phone call from Jeremy Hurd, CPS and a local sheriff's deputy came to the Eastwood's home and accused Robert of child molest and closed the daycare.

At some point, H.S. along with her mother (Dana Stone) and her aunt (Debbie Hilligoss) went to the Brown County Sheriff's department, where H.S. gave a recorded statement while her mother and aunt participated in the interview. After the audio recorded interview, detective Steve Brahaum told the mother to come back if they remembered anything else. Dana Stone took H.S.

back to the sheriff's department the next day with more and newly remembered allegations.

Between the months of October 2003 and February 2004, detective Steve Brahaum never attempted to contact Eastwood for an interview or to even get Eastwood's side of the accusations. During that time period though, Eastwood received death threats in his mailbox and a cross burnt in his front yard. (Appendix O page 137-138)

Fearing for his family's safety and since the detective had not made any effort to contact him; Eastwood moved his family to his daughter's home in Kentucky. Ultimately Eastwood bought a home and settled in Robinson, Illinois.

Around September of 2011, Eastwood heard his small cocker spaniel yelp as if it had been hurt and then a crash at the kitchen door. There had been no contact with the Brown County Sheriff's Department in over 7 years and so Eastwood assumed the ridiculous allegations had long been dropped and assumed the crashing sounds were due to a home invasion (which was a frequent event in this residential area).

Eastwood quickly jumped into a laundry room closet and waited until the sounds of crashing and items breaking subsided. Eastwood then looked out of the closet door to see if the home invaders had left. At that point he saw police cars in the back yard.

Before he could get their attention, K9 units and a task force came crashing in and cuffed Eastwood.

Eastwood was detained and arrested inside his home prior to a search warrant being obtained by Federal Marshall Pete Kell. (Trial Transcript page 531-535).

Marshall Kell testified under oath, during trial, that he had not yet obtained a search warrant for Eastwood's home and was still in fact on his cell phone with the Illinois attorney

general trying to get a warrant when he '... sent in his K-9 unit and task force'.

Eastwood was extradited to Brown County Indiana from Robinson Illinois where he pled not guilty to all charges. A trial by jury ensued and in December of 2011, Eastwood was found guilty by a jury of 12 women of Class A child molesting, class C child molesting and class D fondling. The following month the Brown County Circuit Court sentenced Eastwood to a 30 year presumptive sentence for a first offense.

These convictions were affirmed on direct appeal. (Appendix I page 73-82) Eastwood petitioned the Indiana Supreme Court for Transfer and was denied (Appendix H page 64-72). Eastwood then filed for post-conviction relief in the Brown County Circuit Court and was denied (Appendix G page 51-63). Eastwood then appealed the post-conviction denial in the Court of Appeals and was denied (Appendix F page 36-50). Eastwood then petitioned the Indiana Supreme Court for transfer from post-conviction appeal denial and was denied Transfer (Appendix D page 15). Eastwood filed a timely petition for a Writ of Habeous Corpus with the District Court of Southern Indiana and was denied due to 'procedural error' (Appendix C page 3-15). Eastwood then filed for a 'certificate of appeal ability' and was denied by the 7th Circuit (Appendix B page 2), because they said they found no 'substantial' denial of any rights. A petition for rehearing was timely filed and summarily denied (Appendix A page 1). Eastwood now petitions this honorable court for a Writ of Certiorari.

REASONS FOR GRANTING PETITION

Trial Court errors worked to such actual and substantial disadvantage to Eastwood, infecting the entire process to Constitutional dimensions, that a fair trial was impossible.

Fundamental error combined with constitutionally ineffective counsel, worked to deny Eastwood of his 5th, 6th, 8th and 14th Amendment rights to a fair trial.

The Indiana Court of Appeals and the Indiana Supreme Court, during direct appeal, disregarded their OWN HOLDINGS with respect to fundamental error.

The Indiana Court of Appeals affirms the State's speculation as to the motivation of defense counsel in failing to object to inadmissible hearsay and repetitious evidence. Although such speculation may be relevant to rebut an ineffective assistance of counsel claim on post-conviction relief, it is not appropriate on direct appeal.

The Indiana Court of Appeals (during Direct Appeal), FAILED TO ADDRESS the issue of fundamental error raised by the petitioner, never responding to questions about the essential fairness of the trial proceedings.

The Indiana Court of Appeals put to rest the "course of the investigation" as inadmissible hearsay statements to explain the reasons certain steps were taken in a criminal investigation in Kindred Vs. State 973 N.E 2d 1245 (IND CT APP 2012), yet resurrected this exception in Eastwood Vs. State.

In addition, the Indiana Supreme Court has held that testimonies regarding the steps taken by law enforcement officers in their investigations are generally not relevant to any material issue. (Ortiz Vs. State 741 N.E 2d 1203, 1207-08 (IND 2001); (McIntyre Vs. State 777 N.E 2d 114 (IND 1999); (Craig Vs. State 630 N.E 2d 207, 211 (IND 1994) This holding was reiterated

in Kindred Vs. State 973 N.E 2d 1245 (IND CT APP 2012). (Kindred was decided on just a few short months prior to Eastwood.)

Kindred was a child molesting case very similar to Eastwood's case, where the Indiana Court of Appeals reversed the Trial Court's decision. Finding the Trial Court erred by admitting irrelevant and potentially prejudicial "course-of-investigation" testimony. ID at 1254.

In Kindred, the genesis, development, or quality of the investigation was not at issue – so the testimony "had no conceivable relevance apart from proving the facts asserted in the statements". ID, citing Craig Vs. State 630 N.E 2d 207, 212 (IND 1994)

In Kindred supra, the error was not harmless as the victim's credibility was in question. In Eastwood's trial, the "course-of-investigation" testimony along with numerous hearsay statements created a prejudicial drumbeat repetition of the allegations against Eastwood. The cumulative effect of admitting extensive erroneous hearsay and vouching testimony was fundamental error based on the unique facts of this case, which turned ENTIRELY on the victim's credibility.

These errors, cumulatively rendered Eastwood's trial unfair, fatally undermining the reliability of the jury's verdict.

THERE ARE NO FACTS that distinguish Eastwood's case from Kindred, which should have laid to rest, once and for all the "course-of-investigation" hearsay "exception".

The Indiana Rule of Evidence list twenty-three (23) hearsay exceptions, "course-of-investigation" IS NOT among them. (Indiana Rule 803 'Hearsay Exceptions')

Indeed, Kindred recognizes that this is an exception that swallows the rule because in every criminal case there is an investigation during the course of which hearsay evidence is present.

The adversarial process breaks down, AS IT DID HERE, when the rules are not fairly applied.

In its memorandum opinion of Eastwood's Direct Appeal, the Court of Appeals explicitly states that the hearsay "evidence was relevant to show the various investigative steps that Detective Brahaum took and why he took them". (Appendix I page 82) Detective Brahaum's investigation was never an issue, and thus the holding CONTRAVENESS ruling precedent.

The Indiana Supreme Court affirmed the Indiana Court of Appeals on this issue.

**THE INDIANA COURT OF APPEALS AND THE INDIANA SUPREME COURT
DISREGARDED THEIR OWN HOLDING WITH RESPECT TO FUNDEMENTAL ERROR.**

In its memorandum opinion, the Indiana Court of Appeals refused to find fundamental error where there was a 'drumbeat repetition' of the accuser's inadmissible hearsay statements BEFORE she testified and was subject to cross-examination. The relentless repetition of hearsay from opening statement, throughout the trial, and into closing statement rendered a fair verdict unattainable. (Baker Vs. State 948 N.E 2d 1169, 1178-79 (IND 2011); (Gutierrez Vs. State 961 N.E 2d 1030, 1034 (IND CT APP 2012) Violating Rule 704 (b) establishing fundamental error.

Eastwood's claim of fundamental error on Direct Appeal was not addressed by the Indiana Court of Appeals or the Indiana Supreme Court, because they accept the State's argument that failure to object to certain instances of inadmissible hearsay was a 'tactical decision' by defense counsel and any resulting unfairness, therefore is not subject to a fundamental error analysis.

There is NO EVIDENCE in the RECORD of any 'intentional tactical decision' on the part of defense counsel to withhold objection to inadmissible hearsay testimony, and such a conclusion is purely speculation. Although such speculation may be appropriate in arguing

against an ineffective assistance of counsel claim on post-conviction relief proceedings, NO SUCH argument was made at direct appeal, **rendering discussion of speculated defense strategy irrelevant.**

Furthermore, such speculation by the Indiana Court of Appeals and the Indiana Supreme Court is by itself inappropriate as they were never given charge to make a fantasy decision as to why Trial Counsel sometimes objected to the same testimony that the next time he did not object to and the State makes no reference to any evidence of it in the Record.

Direct Appeal is not a place for baseless excogitation. Fundamental error occurred when there was a ‘drumbeat repetition’ of H.S’ inadmissible hearsay statement BEFORE she testified and was subject to cross-examination.

The State claimed, and the Indiana Court of Appeals along with the Indiana Supreme Court agreed that Eastwood was not unduly prejudiced, because if failing to object to hearsay testimony ‘was a deliberate choice, the defendant cannot claim prejudice that was undue’.
(Appendix N page 132)

The Indiana Court of Appeals and the Indiana Supreme Court both ignored the principle of fundamental error on the basis of their INVENTED and UNSUBSTANTIATED failed defense strategy theory, leaving the heart of the matter unaddressed – did Eastwood receive a fair trial?

Had inadmissible hearsay been properly excluded, had its ‘drumbeat of repetition’ been disallowed – a fair trial would have resulted; a trial in which, with NO corroborating evidence outside the accuser’s own testimony, they jury would have been allowed to decide fairly and without prejudice who was telling the truth. The jury was denied that opportunity.

Eastwood was denied the fundamental fairness our jurisprudence demands.

Additionally, the Indiana Court of Appeals avers and the Indiana Supreme Court agrees that any damage to Eastwood's Constitutional Rights could have been ameliorated because: 'Had Eastwood objected, the Trial Court would at the very least, have given a limiting instruction regarding the use to which the jury could consider the hearsay testimony. For instance, the Trial Court could have explained that the statement was introduced to show the next step that Hillgoss took with regard to the allegations. However, because Eastwood's counsel appears to have chosen not to object as part of a deliberate strategy, Eastwood's claim of fundamental error fails.' (See: Stavropoulos Vs. State 678 N.E 2d 397, 398 (IND 1997) observing that defense counsel's failure to object to hearsay evidence in a child sexual assault case that consisted of mother's testimony as to what the child told her regarding the alleged assault and a police officer's testimony as to the mother's report of the child's statement were not particularly prejudicial, did not amount to ineffective assistance of counsel and did not rise to the level of fundamental error requiring reversal.'

{Memorandum Opinion [Appendix I page 80-81]}

Note here that the case cited by the Indiana Court of Appeals agreed to by the Indiana Supreme Court as precedent for this argument was in regard to an ineffective assistance of counsel argument, completely irrelevant here.

Here, the reverberating clang of inadmissible hearsay echoing in the 'drumbeat repetition' of prejudicial testimony made objectivity to Eastwood beyond the compass of the jury, rendering his trial fundamentally unfair.

Trial Counsel was constitutionally ineffective for failure to object to State's motions in limine.

Trial Court granted every Motion in Limine that was offered by the State (Appendix L and M) without objection by Trial Counsel.

Each Motion in Limine that was granted to the State by Trial Court effectively disallowed Eastwood from presenting any kind of defense to the inadmissible hearsay testimony.

The failure of Trial Counsel to object did result in ineffective assistance and did prejudice Eastwood so that he did not receive a fair trial. Petitioner's counsel was ineffective for failing to object to its admission and that the State Courts' rejection of petitioner's ineffective assistance claim was an unreasonable application of clearly established federal law. (Cossell Vs. Miller 229 F 3d 649 (7th Cir. 2000))

The following is a list of Motions in Limine granted to the State by the Trial Court. All without objection from Trial Counsel and not to be mentioned while the jury was still in the courtroom. (A complete detail is shown in Appendix L and M.)

The jury was to be out of the hearing of the proceedings if the following were to be discussed:

1. The range of penalties if convicted
2. Negotiations or offers to resolve this case
3. Evidence or argument for jury nullification
4. Evidence of polygraph test
5. Evidence that another person committed the crime
6. Correspondence to Jackie Eastwood from the Court or from David Grupenhoff about the accuser's mother
7. Opinion by ex-husband as to the truthfulness of accuser's mother

8. Opinion as to the accuser's or the accuser's mother's motive or bias to fabricate allegations against Eastwood
9. Character evidence regarding the accuser or any witness
10. Evidence that the accuser's mother was the victim of domestic violence or that the father committed domestic violence
11. Evidence that the accuser's step dad threatened Eastwood's wife
12. Evidence that the accuser's mother threatened to report that the accuser was molested by another person (other than Eastwood)
13. Evidence that the accuser's mother 'abandoned' the children at the Eastwood's home and that a missing person's report was filed
14. Evidence that the accuser's mother accused someone of 'attempted murder' (her stepdad who was exonerated in 2003)
15. Evidence that the accuser's mother threatened to report that the accuser was molested by her cousin (T.S) in order to get full custody

The State, by prosecutor James Oliver, was given carte blanc to disallow or allow evidence as he saw fit through the granting of his Motions by the Trial Court and unobjected to by Trial Counsel.

This prejudiced Eastwood by removing the jury from the courtroom for any exculpatory evidence and leaving them in the jury box to hear repetitious illegal inadmissible 'drumbeat repetition' hearsay. This is nothing short of prosecutorial abuse and ineffectual counsel at its worst.

As if the first 15 (fifteen) evidence motions were not damaging enough, the very next day the State asked for another 8 (eight) motions in Limine knowing that he would have them granted due to no resistance from Trial Counsel.

The 'Second Motions in Limine' (Appendix M) are as follows: the jury was to be removed from the courtroom if the following questions were asked of a witness,

1. Opinion as to the guilt of the defendant or the truth or falsity of the allegations.
2. Character evidence regarding the accuser
3. Evidence that the accuser's mother has been sued in the past
4. Evidence of Eastwood's character
5. That Eastwood is a religious or otherwise pious person
6. That Eastwood has not molested anyone else or is of character of someone whom would do such acts
7. That Eastwood does not exhibit unusual sexual urges
8. Evidence that the accuser's mother forges a document of divorce while working at a law firm

This is nothing short of prosecutorial abuse and should never be swept under the rug or labeled as 'procedural error', 'harmless error' or 'lack of substantial error' to deny someone of their Constitutional Rights.

The Appeals Court have not wanted to address the fairness issues of Eastwood's case, so they have just ignored them or danced around the REAL issue.

As the Record shows, Eastwood's hands were tied throughout the trial by State's Motions in Limine, as provided by the Trial Court and unobjected to by Trial Counsel.

This act of fundamental error allowed by ineffectual counsel did prejudice Eastwood so severely that a fair trial was unattainable due to the jury being disallowed from hearing any exculpatory evidence for Eastwood.

The jury was outside of the courtroom during witness testimony more frequently than they were in the courtroom during testimony.

It was impossible for the jury to come to an educated verdict due to this issue.

In addition, Eastwood's Trial Counsel was constitutionally ineffective because he allowed all the Motions in Limine without objection.

The Petitioner's constitutional rights were substantially denied as follows:

1. Right to confront State's witnesses (U.S. Constitutional 6th Amendment, Indiana Constitution Article I Section 13)
2. Right to effective assistance of counsel (U.S. Constitutional 6th & 14th Amendment, Indiana Constitution Article I Section 13)
3. Right to present a defense (U.S. Constitutional 6th Amendment, Indiana Constitution Article I Section 12 & 13)
4. Right to call witnesses on his own behalf (U.S. Constitutional 6th Amendment, Indiana Constitution Article I Section 12 & 13)
5. Due process right to a fair trial (U.S. Constitutional 5th & 14th Amendment, Indiana Constitutions Article I Section 12 & 13)
6. Equal protection of the laws (U.S. Constitutional 14th Amendment, Indiana Constitutions Article I Section 23)

7. Protection against cruel and unusual or disproportionate punishments (U.S. Constitutional 8th & 14th Amendment, Indiana Constitutions Article I Section 16)

In addition to these fundamental rights violations, Eastwood's Trial Counsel was ineffective in that he did not object to these errors nor did he file a motion to correct errors.

'Fundamental fairness is not a sword wielded to uphold the rulings of a court, but a shield brandished to protect a citizen from injustice – whether intentional or accidental. Fundamental fairness is the principle that undergirds our system of criminal justice, is the bedrock of our Constitution and the rules of evidence forged for its protection, and is implicit in the concept of ordered liberty.' (Palko Vs. Connecticut 302 U.S 319, 325 (1937))

Trial Counsel was constitutionally ineffective for the following reasons of below standard effectiveness:

1. Trial Counsel did not prepare Eastwood for trial. Counsel spent a maximum of 30 minutes with Eastwood to prepare him for trial.
2. Trial Counsel was inattentive during witness testimony. Trial Counsel admitted on several occasions during the trial that he was distracted and not paying attention, "... I may have missed several (intended objections) with regard to what she told him". (Trial Transcript page 457)
3. Trial Counsel refused to produce daycare and school records to prove lack of opportunity. School records (Appendix O page 135) show that H.S was not at Jackie Eastwood's daycare during naptime when the alleged molestations took place. Also, daycare records show that H.S.' mother owed several thousand dollars to the daycare at the time the allegations surfaced. (Appendix O page 147-160)

4. Trial Counsel failed to call exculpatory witnesses to testify. These were eye witnesses who were at the daycare on a full time basis. (Appendix O pages 139-146) Their testimony would have exonerated Eastwood, so the prejudice caused by counsel's inaction was so severe that a fair trial was unattainable.

5. The accuser's mother had used allegations of molestation in the past to gain full custody of her 3 children during divorce proceedings. Eastwood had initially gone to attorney David Grupenhoff to seek his assistance when the allegations were first announced. Mr. Grupenhoff had represented the accuser's mother during the divorce proceedings where the mother had threatened child molestation in order to get full custody of the 3 children. A question as to whether Mr. Grupenhoff could represent Eastwood due to a conflict of interest was discussed. Mr. Grupenhoff said that Dana Stone, the accuser's mother, threatened the children's father with accusing his nephew of using 'fingers, food, toys and anything else in a sexual manner on with H.S'.

Mr. Grupenhoff ultimately decided that he could not represent Eastwood because the cases were so much alike as to Dana Stone's allegations, 'same or substantially related matter as a previous representation'. (Appendix O page 136)

This statement from Grupenhoff was readily available during trial and requested by Eastwood. Trial Counsel refused to introduce this letter showing that the mother had a history of false allegations to get what she wanted.

Trial Counsel's failures in these issues were enough to ensure that Eastwood could not receive a fair trial.

Trial Counsel allowed the State to select an all women jury without objection.

Trial Counsel did allow the State's prosecutor to abuse his power by selecting an all women jury while there were still men in the jury pool to choose from, all over no objection by the trial counsel. As a matter of fact, the Record shows that during trial counsel's testimony during the post-conviction relief hearing, he admitted that he allowed the all women jury because in his opinion "... an all women jury of middle age women would be sympathetic to a man charged with child molesting". (PCR Transcript)

The Supreme Court has long opinioned that these types of juries are prejudicial to the defendant. (J.E.B. Vs. Alabama ex. rel. T.B 511, U.S 127, 114 S Ct 1419, 128L Ed 2d 89 (1994) Use of peremptory challenge to exclude members of particular gender violates the Equal Protection Clause.

See also: (Amadeo Vs Zant 486 U.S 214, 108 S Ct 1771, 100 L Ed 2d 249 (1988), (Batson Vs. Kentucky 476 U.S 79, 106 S Ct 1712, 90 L Ed 2d 69 (1986), (Golarza Vs. Keane 252 F 3d 630 (2d Cir 2001), (Jordan Vs. Lefevre 206 F 3d 196 (2d Cir 2000), (Turner Vs Marshall 121 F 3d 1248 (9th Cir 1997)

Trial Counsel was constitutionally ineffective in this instance and should require reversal of conviction, and in addition the Strickland test in this issue has shown prejudice to Eastwood.

The Southern Indiana District Court did err when it denied Eastwood's petition for Habeas Corpus due to 'procedural error'. (Appendix C page 14)

The District Court wrongly attributed all technical and procedural errors to Eastwood himself when in fact Eastwood had very little if any involvement in procedural decisions.

The root of any procedural problems lies ultimately with trial counsel's lack of objections at trial. One Rule of Law in the State of Indiana is that '... if not objected to at trial level then the

issue cannot be appealed’.

The District Court did err when it applied the ‘procedural errors’ of trial counsel to Eastwood, simply because Eastwood was forced to go pro-se on his petition for Habeas Corpus.

“State procedural default rule that claims not raised on direct appeal are procedurally barred cannot be applied to ineffective assistance of counsel claims, because to do so would deprive petitioner of any meaningful review of the ineffective assistance of counsel claim.”

(Jackson Vs. Shanks 143 F 3d 1313, 1318-19 (10th Cir 1998) “..... failing to follow state procedural rules provides Petitioner with constitutionally ineffective assistance of counsel.”

(Murray Vs. Carrier 477 U.S 478, 488, 106 S Ct 2639, 2645, 91 L Ed 2d 397, 408 (1986)

Reaffirming that the “fundamental miscarriage of justice exception applies to procedurally defaulted claims”. (Coleman Vs. Thompson 501 U.S 722, 750, 111 S Ct 2546, 2565, 115 L Ed 2d 640, 669 (1991)

“Errors at trial ... worked to Petitioner’s actual and substantial disadvantage, infecting Petitioner’s entire trial with error of constitutional dimensions.” (U.S Vs. Frady 456 U.S 152, 170, 102 S Ct 584, 1596, 71 L Ed 2d 816, 832 (1982)

The District Court ignored the claims of ineffectual counsel and fundamental error, chalking everything up to ‘procedural error’.

In addition, the District Court never averred to the probable innocence of Eastwood, only that the procedure to get to their court may have been improper.

The 7th Circuit Court of Appeals did err when it denied Eastwood’s appeal due to what it called “... no showing of a substantial violation” of Eastwood’s rights as guaranteed by the constitution. (Appendix B page 2)

Notice here that the 7th Circuit did not echo the District Court's claim of 'procedural error'. Only that there was no 'substantial' rights denied.

Eastwood has shown that his 5th, 6th, 8th and 14th rights were violated.

That issue should be seen as substantial by this Honorable Court.....

The statute governing Habeas relief requires a prisoner who seeks to appeal a district court's denial of his petition first to obtain a certificate of appeal ability from the 7th Circuit Court in Chicago by making a 'substantial' showing of the denial of a constitutional right. (28 U.S.C §2253 (c)(2))

"The prisoner need not show he is likely to prevail, but he must show that 'reasonable jurists' could debate whether (or, for that matter, agree that) the petitioner should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further". (Slack Vs. McDaniel 529 U.S 473, 484, 120 S Ct 1595, 146 L Ed 2d 542 (2000), (Barefoot Vs. Estelle 463 U.S 880, 893, 103 S Ct 3383, 77 L Ed 2d 1090 (1983), (Jones Vs. Basinger 635 F 3d 1030, 1039-40 (7th Cir 2011), (Peterson Vs. Douma 751 F 3d 524, 527 (7th Cir 2013))

Eastwood did show a 'substantial denial' of his 5th, 6th, 8th and 14th Constitutional rights and that reasonable jurists would agree that the issues presented were adequate to deserve encouragement to proceed further.

The 7th Circuit did err in its decision to deny Eastwood his fundamental right to a fair trial.

The 7th Circuit's denial of Eastwood's petition for rehearing was opinioned without any explanation for its denial. (Appendix A page 1)

CONCLUSION

The Indiana Court of Appeals and the Indiana Supreme Court failed to address the issue of fundamental error raised by the Petitioner, never responding to questions about the essential fairness of the trial proceedings and disregarded their OWN HOLDINGS with respect to fundamental error.

The reverberating clang of inadmissible hearsay, echoing in the drumbeat repetition of prejudicial testimony, made objectively to Eastwood beyond the compass of the jury, rendering Eastwood's trial fundamentally unfair.

The District Court did err when it denied Eastwood's petition for Habeas Corpus due to 'procedural error'.

The 7th Circuit did err when it denied Eastwood's appeal due to 'no substantial denial of petitioner's rights'. Abuse of Eastwood's 5th, 6th, 8th and 14th amendment rights is indeed 'substantial'.

The Record shows and the facts prove that trial counsel was ineffective and the petitioner has satisfied both prongs of the 'Strickland' test in that:

1. Trial Counsel has been shown by the Record to have been ineffectual and below an acceptable standard due at least in part to; allowing an all women jury, allowing prejudicial Motions in Limine, ignoring sleeping juror, inattentiveness at trial and missing objections, etc...
2. The prejudice caused by trial counsel's errors and mistakes resulted in a fair trial being unattainable and prejudicing Eastwood. Without these mistakes Eastwood would have been exonerated.

In addition, even if this Court should look only at the issues of trial counsel's mishandling of hearsay and refusal to investigate and call witnesses as requested, to testify, those issues alone are more than enough to show a 'substantial' denial of Eastwood's right to effective counsel guaranteed by the 6th amendment to the U.S. Constitution.

"Counsel failed to investigate and present available testimony supporting petitioner's alibi". (Brown Vs. Myers 137 F 3d 1154 (9th Cir 1998)

So many mistakes, either accidental or intentional, during Eastwood's trial have been swept under the rug by each appeal in turn over the years.

Eastwood would ask this Honorable Court to grant the Writ, vacate his convictions and remand back to the lower court.