No. _____

_____

IN THE

**SUPREME COURT OF THE UNITED STATES**

Anthony Eason, Petitioner

Vs.

Harold W. Clarke, Respondent

**ON PETITION FOR A WRIT OF CERTIORARI TO**

**THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

# PETITION FOR WRIT OF CERTIORARI

**Anthony Eason**
Augusta Correctional Center
1821 Estaline Valley Road
Craigsville, Virginia 24430

## QUESTIONS PRESENTED

**ONE**

Petitioner alleges that this is an issue **of national importance**. What rights does a defendant (petitioner) have to the medical history of serious mental health diseases of a co-defendant when ***after trial***, prior to sentencing it is discovered that this individual has lifelong history of serious mental health diseases, a record of numerous complications while incarcerated and is than **declared incompetent**? **(Exhibit#1)**

**Did the Fourth Circuit make an unreasonable determination of fact and unreasonable application of clearly established federal law in regards to ineffective assistance of counsel for failing to communicate with co-defendants attorney and discover mental health issues of codefendant material to petitioners culpability/guilt/defense/sentencing?**

**TWO**

Petitioner alleges that trial counsel was ineffective for failing to investigate and compel petitioner key witness. Counsel failure to properly submit petitioner financial status allowed the court to unconstitutionally hold petitioner, an incarcerated, indigent defendant responsible for paying the travel expenses to secure testimony of an material out of state witness.

**Did the Fourth Circuit make an unreasonable determination of fact and unreasonable application of clearly established federal law in regards to ineffective assistance of counsel for failing to investigate and failing to compel defendant key witness to attend trial?**

**THREE**

The person responsible for the shooting was identified within two weeks of the crime by the victim and another Government witness. This individual was not petitioner or his co-defendant Mitchell. This implication of third party guilt indicated a **Brady** violation was

committed because it was never discovered or disclosed to petitioner that another individual was identified as the "shooter".

**Did the Fourth Circuit make an unreasonable determination of fact and unreasonable application of clearly established federal law in regards to ineffective assistance of counsel by failing to object to a BRADY violation when the testimony of two prior misidentifications were presented implying third party guilt?**

**FOUR**

The prosecution made numerous statements that Jamel Bennette was shot nine times. There was never any evidence presented as to where Bennette was shot or how many times Bennette was shot. Petitioner guidelines of 13 to 29 years were disregarded and the factfinder sentenced petitioner to serve 53 years due to unreasonable force being used.

**Did the Fourth Circuit make an unreasonable determination of fact and unreasonable application of clearly established federal law in regards to ineffective assistance of counsel by failing object to numerous occasions of prosecutor misconduct?**

**FIVE**

The commonwealth attorney knowingly allowed Devon Thomas to testify falsely that he seen a firearm in petitioner's hand. The ***Commonwealth had previously conceded*** on **record** that Devon Thomas ***DID NOT*** see a Firearm in petitioner's hand.

**Did the Fourth Circuit make an unreasonable determination of fact and unreasonable application of clearly established federal law in regards to ineffective assistance of counsel when counsel allowed the prosecution to present knowingly false testimony?**

## LIST OF PARTIES

[X] 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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## INDEX TO APPENDICES

## TABLES OF AUTHORITIES CITED

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**OTHER**

**IN THE**

**SUPREME COURT OF THE UNITED STATES**

**PETITION FOR WRIT OF CERTIORARI**

Petitioner, Anthony Eason respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

The opinion of the United States court of appeals appear at appendix "A" to the petition and is unpublished.

The opinion of the United States district court appears at appendix "B" to the petition and is unpublished.

The opinion of the highest state court to review the merits appear at appendix "C" to the petition and is unpublished.

The opinion of The Circuit Court of Newport News court appears at appendix "D" to the petition and is unpublished.

## JURISDICTION

The date on which the United States Court of Appeals decided my case was August 25th 2017.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 26, 2017 and a copy of the order denying rehearing appears at Appendix "E"

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**The following statutory and constitutional provisions are involved in this case.**

U.S. CONSTITUTIONAL AMENDENDMENT VI. (See appendix G)

U.S. CONSTITUTIONAL AMENDENDMENT XIV. (See appendix G)

28 U.S.C.A. § 2254. State custody; remedies in Federal courts (See appendix G)

Code of Virginia 19.2-298.01 (b). (See appendix G)

## STATEMENT OF THE CASE

On November 10th, 2006, at 301 Seagull Court in Newport News, Virginia Devon Thomas ("Thomas") and Jamel Bennette ("Bennette") were shot. ("the incident").

Petitioner was convicted solely based upon the eyewitness testimony of witnesses highly biased against petitioner. There were no forensic evidence implicating petitioner. There were no DNA testing implicating petitioner. There were no videos of the crime. There was no ballistic evidence tying petitioner to the crime. There was not even any ballistic evidence that proved that there was more than one shooter in the incident or that petitioner ever fired a single shot. There was no medical evidence presented of how many times the victims were shot or to the location of their gunshot wounds. Accordingly, petitioner's case turned entirely upon witness credibility.

The day before the incident for which petitioner is convicted petitioner witnessed a altercation taking place in the parking lot as he arrived home. This incident involved Lanita White (herein after White) Devon Thomas (herein after Thomas), Jamel Bennette (hereinafter Bennette) and **"Rio"**. This confrontation was also testified to by White (see trial transcripts t.t.437.3-8 herein after t.t.-herein after the first number referencing the page number of the transcript with the numbers following the period referencing line numbers). Petitioner personally knew none of these individual other than White. Petitioner successfully intervened to peacefully resolve the confrontation. This was one of the few brief occasions that petitioner saw "**Rio**". The Government witnesses all testified to seeing petitioner on numerous occasions and knowing

petitioner for an extended time period and all admit to never seeing petitioner with "Rio". "Rio" was only known to petitioner as a kid in the neighborhood and was only seen in passing. A major focal point at petitioner's trial was the identity of "Rio" and if he was in fact Julian Mitchell. There were numerous description giving of "Rio".

On the day in question, petitioner was at home awaiting his son's arrival from school. Petitioner's mother notified petitioner that White drove by with petitioner's child (t.t.244.7-12). White was the girlfriend of petitioner's child mother (peaches) and held a personal grudge and was jealous toward petitioner because of his close relationship with his child mother. Petitioners had already established that White was not to be alone with petitioner's child due to her hostile actions toward petitioner child. Petitioner then went by himself and picked his son up from White and simply stated "I told you to stay away from my son, you need to leave him alone, tell Peaches to pack his stuff up (t.t.246.5-7). Petitioner than left with his son, ***there was no physical altercation with petitioner***, this is supported by Whites initial statement given to Detective Best the day of the crime. There was testimony of white having a conflict with Rio after petitioner was gone, this had nothing to do with petitioner.

According to Government witnesses testimony White than went and told Bennette, Thomas, Williams and Benjamin that petitioner had beaten her up (t.t. 338.15-339.8). After getting angry and agreeing to go confront petitioner the group seen "Rio" walking in the neighborhood and told him to go get petitioner (t.t.145.7-9). Petitioner than testified that 30 minutes to an hour after picking his child up while at home "Rio" knocked on his door and tells him that his child mother and her friends said

to come and talk to them and pick up his things (t.t.248.2-8). Petitioner left immediately to go to petitioner child's mother house to retrieve his son's belongings. Not knowing he was walking into an ambush.

Upon arriving at petitioner's Childs mother house and exiting the vehicle petitioner states that a large, angry, loud and aggressive individual (Bennette) and Thomas came storming across the parking lot toward him shouting a bunch of things about someone beating up his home girl (t.t.251.25-252.20). Petitioner testified that he was attempting to calm down Bennette (t.t.252.24-253.6). This testimony is supported by White who testified that she witnessed petitioner gesturing by waving his hands with his palms down and shaking his head no as Bennette who was admittedly angry was pumping his hands into his fist. **Stacy Chapman** testified that she also witnessed petitioner trying to calm down the situation prior to guns being pulled out by Thomas and Bennette (t.t.110.13-18).

**Stacy Chapman (hereinafter Chapman)**

Chapman was a resident of seagull court at the time of the incident in which petitioner is convicted. **(t.t.105.12-14).** Chapman testified that she witnessed both altercation take place that day. The initial altercation with "Rio" prior to White leaving to go get Bennett, Thomas, Williams and Shelvin and then the actual shooting. Chapman testified that she witnessed the entire incident from her third floor apartment window exactly above where the incident took place. **(t.t.114.3-5).** Chapman goes on to describe Petitioner's actions in the moments prior to the shooting as trying to calm things down **(t.t.108.11-20)(t.t.110.1-18).** Prior to guns being pulled out by the guys

who came in the truck **(t.t.110.13-112.23).** Chapman testified that she never saw petitioner with a weapon **(t.t.118.3-7).** During Chapman's testimony she was adamant about who she witnessed get out of the truck in which she described a real big dark skinned guy who she has not seen at court. **(t.t.129.11-21).** This individual was determined to be Bennett. She also identified Thomas as the individual in the wheelchair who she has recognized in court **(t.t.129.23-130.3)** who got out of the truck with Bennette. **Chapman than once again testified that these were the two individuals that she witnessed pull out guns.** (t.t.130.4-6). Chapman testified that when the shots began she kind of ducked for cover. Chapman than testified that after the shooting she witnessed a kind of short dark and heavy set individual go check on both victims and then she did not see him anymore **(t.t.125.5-124.8).** This individual was Rodney Williams, (hereinafter Williams) one of the individual who fled the scene armed as reported by **Gwendolyn Priest**. Chapman's testimony of the actions of the victims and defendants were consistent with all other testimony in regard to the positions and locations and actions prior to the shooting. Chapman stated that she never talked to the police the night of the shooting about what she saw and that she waited and thought they would come, they never did **(t.t.138.23-25).** Chapman testified that she did not want to speak with counsel prior to trial **(t.t.141.7-11)** and that she wanted nothing to do with court **(t.t.141.16-17).** After Chapman expressed her feelings about not wanting anything to do with court Chapman testified that she had testified truthfully **(t.t.141.22-24).**

**Gwendolyn Priest (Herein after Priest)**

Priest was also a resident of Aston green apartment complex who resided in a first floor apartment in front if where the incident took place. Priest called 911 and reported the shooting and upon arrival of the police, Priest approached a detective and reported what she saw and heard **(see trial transcripts herein after T.T.205.25-206.8).**

Petitioner's counsel called old phone numbers listed in the police report to speak with Priest. Counsel than notified petitioner and petitioner's family that Priest was a material witness and said that it was nothing else that he could do to find her and notified petitioner and petitioner's family of a private investigator of whom he works closely with. In desperation petitioner then sought assistance from family to hire an investigator to locate Priest so that she could be subpoena to trial as a material witness. Over time Petitioner's family was eventually able to collect the money to hire an investigator **(See exhibit 2)**. With the money paid the investigator was only able to supply counsel with an address for Priest due to the fact that Priest was located in New York. Petitioners family notified counsel that they were unable to assist any further due to financial problems **(see exhibit 3)**. On April 15th 2011 petitioners counsel filed a motion for out of state witness subpoena **(see exhibit 4).** On April 20th the court granted the certification of out of state witness **(see exhibit 5).**On May 12th 2011 petitioner counsel forwarded a request to the courts requesting that a summons be issued upon Priest to appear, attend and testify at Petitioners hearing on June 28th 2011, Also, that a warrant be made payable to Priest for travel expenses **(exhibit 6).** On May 17th 2011 Judge Fisher sent petitioners counsel a letter stating a summons should be issued

requiring her to appear in Newport News circuit Court on June 28th 2011 and that no travel expenses would be forwarded to Priest pending determination by the courts that petitioner was unable to pay and at this point the courts would anticipate payment, if any to the witness would be made after her attendance on June 28th 2011 **(exhibit 7).** On May 18th the judge amended motion for out of state witness to not cover travel expenses **(exhibit 8).** On June 9th 2011 the Cayuga County Court in New York dismissed petitioners out of state subpoena request because it did not cover travel expenses **(t.t.5.12-6.3). Counsel took no further actions in regards to Priest until the night before trial (see exhibit 9).**

Petitioner was unaware of the Cayuga County Courts dismissal of out of state subpoena request until the morning of trial on June 28th 2011 **(t.t.5.12-6.5).** ***Counsel advised petitioner that the commonwealth attorney had a statement from Priest*** and was willing to stipulate to Priest statement if the defense was willing to proceed to trial **(see sentencing transcripts herein after s.t.13.13-17).** ***Most importantly counsel told petitioner that it was determined by the New York Courts that Priest was not a useful witness for the defense therefore there was no need to continue the case to pursue Priest as a witness.*****(see motion for new trial PG#11)(brief of appellant dated November 13th 2012 PG#35).** After being given this information and being advised by counsel petitioner proceeded with trial. **(t.t.5.12-22).**

During the motion part of trial which was incorporated into petitioner's trial detective Hahn testified as to What Priest told him the night of the crime. (t.t.205.10-210.8) **Detective Hahn testified** that Priest told him that she witnessed **one individual**

**carrying 1 firearm** leaving the crime scene. (t.t.209.15-21). Priest also identified Marcus George, (hereinafter George), and his vehicle as the suspect's vehicle she witnessed leaving the scene immediately after the shooting (t.t.190.1-192.14) (t.t.208.9-12). Detective Hahn testimony regarding Priest was testified to from ***a summary of his notes*** *taken the night of the crime. There was"* ***NO STATEMENT"*** *to be presented to the courts* ***(t.t.298.4-7) as petitioner was INFORMED.***

After trial petitioners family was able to hire an investigator to speak with Priest in New York. Priest wrote an affidavit stating that she called 911 and reported the shooting and that when the police arrived she told them also. *Priest affidavit states that she told the police that she witnessed* ***two individual*** *running from the scene,* ***both carrying firearms*** as opposed to detective's erroneous testimony that was presented. Priest also stated that she had spoken to the commonwealth attorney who was admittedly Mrs. Burge (hereinafter Burge) and that she did not know anyone involved in this incident **(See affidavit exhibit #10)**

**LANITA WHITE**

White's testimony was wholly inconsistent, contrary to the physical evidence at the scene, contrary to the Governments other witnesses and inherently incredible. White consistently denied the fact that her lies as being the sole reason for the confrontation. White harbored hate against petitioner due to petitioner's relationship with his child's mother. White's lies to Bennette, Thomas, Williams and Benjamin were for the sole purpose of doing harm to petitioner.

***White's initial statement was that she did not see a weapon in petitioner's hand and could not even identify the color of a weapon.*** After being flown in as a out of state witness and ***being driven to and from court by the lead detective*** not only did Whites recollection change but it was inherently incredible. ***White could now identify the color of a firearm and could now even identify the caliber of the firearm.*** White testified that petitioner had a 9mm caliber firearm, the **same caliber as the only shell casings found at the scene of the crime in which the lead detective, White's ride to and from court was well aware of**. White also testified that petitioner walked up on Bennette as he laid in the grass and was shooting him in the back as he laid in the grass. There were no shell casing anywhere in this area to support this testimony.

**DEVON THOMAS**

Devon Thomas was a convicted felon and previously convicted of 2 counts of forgery, grand larceny and public swearing or intoxication.

At trial Thomas testified that he was ready to retaliate on whoever he could get at (t.t.166.15-25). Thomas further testified that he seen both defendants walking down the sidewalk shooting (t.t.151.16-20). This was contrary to his initial statement stating ***"just one shooting",*** contrary to his preliminary hearing testimony ***repeatedly stating that he did not see a firearm in petitioner's hand*** (see preliminary hearing transcripts 46.19-24), ***contrary to the forensic evidence at trial which showed no shell casings in the vicinity of the sidewalk and this testimony was also contrary to that of Lanita white who testified petitioner was across the street from the sidewalk shooting***

***Bennette.*** Thomas testified that he did not know why he was going to Ashton Green apartment complex and that he got in the car just to go for a ride. Thomas further testified that he was unarmed contrary to Stacy Chapman's and petitioner's testimony.

**Marcus George (hereinafter George)**

After Priest reported the shooting incident a description was put out on the vehicle involved **(t.t.184.8-18) (t.t.190.2-6).** With this information the police stopped George and Williams as suspects **(t.t.187.7-17) (t.t.190.2-10) (t.t.190.13-17) (t.t.236.2-6).** During this stop George got into a fight with the police officers sending one officer to the hospital **(t.t.184.24-185.13) (t.t.191.23-192.9).** After detaining George and Williams a firearm was recovered from George's vehicle. **(t.t.190.7-9)(t.t.236.3-4)** George and Williams were both released and George was given a summons for the firearm. **(t.t.193.5-16).** The entire incident as it pertains to George's traffic stop was not put into petitioners file **(t.t.313.8-12).**The firearm that was reported to be at the scene by Priest that was recovered was not marked as evidence in petitioners case due to the fact that the lead detective didn't think she needed it **(t.t.313.13-16).** The officers who participated in Georges traffic stop never did a report or testified their report got lost when the Newport News record system got changed. **(t.t.187.13-15) (t.t.191.17-22) (t.t.194.8-11) (t.t.236.15-18).** The firearm was destroyed prior to petitioner's arrest on April 20th 2009.

**Julian Mitchell (herein after Mitchell)**

Mitchell was being held in Michigan for a murder charge prior to being extradited to Virginia to stand trial with petitioner. Petitioner allegedly planned and participated in the double shooting of Bennett and Thomas with Mitchell. Mitchell and petitioner filed a motion to sever and asked for separate trials on May 19th 2010 in which was denied **(see transcripts dated May19th 2010) also (transcripts dated Feb.24th 2011).**

Prior to trial petitioner advised counsel that he did not know Mitchell and did not believe Mitchell was the suspect wanted in this incident known as "Rio". Petitioner's counsel never attempted to investigate the identity of Mitchell or communicate with Mitchell or Mitchell's attorney to discovery any material information about Mitchell or to develop any type of trial strategy.

The morning of trial Mitchells counsel had failed to subpoena witnesses and failed to disclose any evidence in support of an alibi defense or any type of defense. At trial Mitchell's identity was a major focal point. There were numerous descriptions given of the suspect known only as "Rio". Please see table below.

| **Witness** | **Height** | **Facial hair** | **Tattoos** |
|---|---|---|---|
| Kioda Christen | 5'5-5'6 | | |
| Stacey Chapman | 5'8-5-9 | No, it was not long | |
| Lanita white | 6 feet tall | | |
| Rodney Williams | | Full heavy beard | Don't know |
| Devon Thomas | 5'10-5'11 | None | Don't know |

At trial Devon Thomas testified that he ***identified "Rio"*** the individual responsible for shooting him ***WITHIN WEEKS OF THE SHOOTING*** **(t.t 180:4.25)**.

Williams also describes two separate occasions in which he identified **"Rio"** the individual responsible for the shooting in a photo spread brought to him by Detective Best ***WITHIN WEEKS OF THE SHOOTING*** **(t.t. 376.9 – 379.2)**.

**Neither** of **these prior two identifications** were disclosed to the defense.

Detective Best testified that Mitchell ***DID NOT become a suspect*** in this crime and that she **DID NOT HAVE A PICTURE OF MITCHELL** until ***1 YEAR AND 3 MONTHS after*** the crime.

Mitchell and petitioner were both convicted off of the testimony of these witnesses on all counts, to include 2 counts of aggravated malicious wounding, 2 counts of possession and discharge of a firearm and petitioner was convicted additionally of possession of a firearm by a convicted felon.

The factfinder stated that he found unreasonable force was used due to the prosecutions repeated statement of Bennett being shot 9 times and that in order to go outside of petitioner guidelines he would have to prepare a written explanation pursuant to **Code of Virginia 19.2-298.01 (b)** of the reason for the departure and that he was prepared to do just that. Petitioner guidelines were 13 to 29 years and the factfinder sentenced petitioner to serve 53 years with none suspended. The judge filed no explanation as he stated he would to be in compliance with **code of Virginia 19.2-298.01 (b)**. There was no medical evidence at trial to prove or show any amount of force used. There was ***no evidence at all pertaining to the victims injuries.***

**Post trial**

After trial and prior to sentencing petitioners counsel filed a motion to have sanity at the time of offense and at the time of trial of Mitchell to be evaluated **(See motion for new trial Dec. 9th 2011).** Petitioners motion was brought about due to the fact that Mitchell was found to be incompetent after trial. Mitchell's was determined to be incompetent by a psychologist prior to sentencing. Mitchell's medical records were discovered which revealed that Mitchell has a lifelong history of serious mental health defects that pre dated our trial and his records revealed that he was having numerous mental health issues while incarcerated. All of these issues discovered pre dated our trial. Petitioner's motion was denied. **(s.t.19.9-11).**

## REASONS FOR GRANTING THE PETITION

**GROUND ONE**

**Did the Fourth Circuit violate petitioner 6th and 14th amendment rights by making an unreasonable determination of fact and unreasonable application of clearly established federal law in regards to ineffective assistance of counsel for failing to communicate with co-defendants attorney and discover mental health issues of codefendant material to petitioners culpability/guilt/defense/sentencing?**

Giving the increased awareness of mental health disease in our nation petitioner argues that this is a matter of **national importance** and needs to be addressed by the Court. Petitioner points out that it is unconstitutional to try an incompetent individual. In petitioner case the incompetent individual mental health and incompetence was not discovered or brought to the courts attention until after trial. This individual still remains incompetent, too incompetent to seek any post trial relief or assert any rights. Petitioner raises the issue that it is unconstitutional to be tried and convicted with an incompetent individual with a lifelong history of mental illness and not be disclosed this information pretrial. Petitioner argues that a failure by counsel or the commonwealth to discover or disclose this information is a miscarriage of justice.

The court determined that Eason's claims that Mitchell was found incompetent are not based on facts. The court findings are clearly erroneous and could only be reached by a failure to evaluate petitioner claim.

In **Strickland v. Washington 104 S. Ct. 202 466 U.S 668** the court ruled that in order to prove ineffective assistance of counsel you must satisfy two components

First, defendant must show that counsel performance was deficient, requiring that counsel made error so serious that counsel was not functioning as counsel guaranteed by the sixth amendment

Once Mitchells medical records were discovered post trial Petitioners counsel filed a motion for new trial based on newly discovered evidence.**(see motion for new trial, bond and to set aside verdict, and renewed motion to dismiss the charges due to destruction of evidence).** Counsel put forth a lengthy argument as to how Mitchell's mental health records and history were material at petitioner's trial and defense. Counsel than requested to have Mitchell's sanity at the time of the offense and at the time of trial evaluated. Judge Fisher denied the request and motion due to being untimely made. This motion and argument proves that counsel recognized this as being a material issue that should have been brought forth prior to Petitioner's trial. Petitioner asserts that since it was determined by the fact finder that Mitchell was in fact involved in the crime that Mitchell's mental history and mental health diseases are highly material and plays a major part in Petitioner's trial.

Counsel's failure to discover material information that could have been discovered with reasonable investigation and communication pretrial proves counsel's performance was deficient and not functioning as counsel guaranteed by the **sixth amendment**. This failure to investigate as required under **Wiggins v. Smith, 539 U.S. 510 (2003)** establishes that counsel performance was deficient.

Second, the defendant must show that the deficient performance prejudiced the defense by showing that counsel's errors were so serious as to deprive defendant of a fair trial whose results is reliable.

Petitioner argues that counsel's failure to discover Mitchell's records Prejudiced petitioner defense severely. Counsels error denied petitioner his right to put forth a complete defense due to the fact that petitioner was forced to go to trial with Mitchell and found to be in concert with Mitchell. The discovery of Mitchell's medical history pretrial would have demanded testimony from a medical expert in which would have proved that an individual suffering from Mitchell conditions in a hostile environment would act out impulsively in fear of threat or harm. This information presented would prove there was no concert of action. This information would have undoubtedly would have affected the evidentiary picture and determination of unreasonable force. (A mental condition, though insufficient to exonerate may be relevant to specific mental elements to certain crimes or degrees of crimes **U.S. V. Brawner (1972)**.

Petitioner was also prejudiced from being tried jointly with Mr. Mitchell While Mr. Mitchell was incompetent. Petitioner points out that it is unconstitutional to try an incompetent defendant. Mitchell failed pretrial to prepare a defense and put forth no evidence to support any type of defense. Mitchell was found incompetent after trial and it was never determined when Mitchell became incompetent. Mitchell lifelong medical history and jail records which petitioner has consistently been denied access to would prove that Mitchell was in fact incompetent prior to trial, at trial and

still remains incompetent. Petitioner also points out that Mitchell has always maintained his innocence but to petitioner knowledge has never filed any direct appeals or sought any post-conviction relief.

The factfinders following statements in determining Mitchell was competent at trial are contrary to U.S. Supreme Court law and a blatant miscarriage of justice. The fact finder stated:

First, the factfinder disregarded the mental health history and the psychiatric report by the physiatrist that deemed Mitchell incompetent and negligently deemed Mitchell's mental incompetence a "**delaying tactic**".

The factfinder later stated

"I make I make an interesting observation, he was competent enough to say he had an alibi defense, which was denied, ***this case has been pending for years, and he made no effort or a little effort to come up with the witness***, his sister which may have been from Kansas, So, he was sufficiently competent to raise that issue."

Petitioner argues that this is a clear indication that Mitchell did not have the "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding--and whether he has a rational as well as factual understanding of the proceedings against him."

This is clear that Mitchell failed to consult with his counsel for years. Mitchell also stated the morning of his trial that it had been some time since he had any communication with his attorney. Mitchell also had a number of different attorney's

assigned and then dismissed from his case throughout the pretrial process due to conflicts.

The factfinder further stated:

"I never had any suggestion during the trial that he was not competent in any way, most of the people who are not competent are easily identified around here, they can't even come out of their cells, **they're drooling when there in the courtroom"** (Sentencing transcripts pg 66.22-25).

The court fact-finding was limited to observing Mitchell demeanor and, as the Supreme Court indicated in Pate, demeanor is not dispositive. > **Pate, supra, 383 U.S. at 386, 86 S.Ct. at 842.** > (FN13) "[T]he existence of even a severe psychiatric defect is not always apparent to laymen."

**Pate,** supra, 383 U.S. at 386, 86 S.Ct. at 842. "One need not be catatonic, raving or frothing, to be [legally incompetent.]" > **Lokos,** supra, 625 F.2d at 1267.

Petitioner asserts that counsel" failure to investigate Mitchell denied Petitioner highly material evidence. Mitchell was tried and convicted while incompetent thereby Mitchell trial and conviction is null and void, thereby making petitioner trial null and void and requiring an automatic reversal.

These medical records discovered pretrial would have opened an entire new line of investigation, altered the defense strategy, and affected the culpability of Petitioner. Counsel's error has caused a miscarriage of justice and denied petitioner his sixth amendment right to effective assistance of counsel and his fourteenth amendment due process rights to a fair trial.

**Ground two**

**Did the Fourth Circuit violate petitioner 6th and 14th amendment rights by making an unreasonable application of clearly established federal law in regards to ineffective assistance of counsel for failing to investigate and failing to compel defendant key witness to attend trial.**

The Fourth Circuit adopted the district court finding when the court stated: "Trial counsel made significant efforts to both investigate and to compel out-of-state witness Gwendolyn Priest to attend petitioner's trial".

The states arguments previously presented by the state to deny petitioner's motion for new trial and direct appeal **are contrary**. Prior to denying petitioners motion for new trial the trial court determined that *counsel* ***did not take*** *the necessary pretrial investigation to obtain Priest statement* **(S.T.10.4-10).**

The commonwealth attorney brief in opposition submitted to the **Court of Appeals of Virginia** on **12/7/12** supports petitioners argument that ***counsel did not use reasonable diligence*** in its efforts to speak to priest or to obtain a statement from priest pretrial **(See commonwealth brief in opposition dated 12/7/121 record number 0002-12-1).**

The **Court of Appeals of Virginia** also supports petitioner argument in its memorandum opinion record number **0002-12-1** dated **2/19/13** when it determined that ***reasonable diligence was not used*** *to obtain a statement from Priest prior to trial.*

Counsel's pretrial investigation included the following:

1. Counsel called the phone numbers listed in the police report.

These numbers were disconnected.

Petitioner's family (not counsel as misrepresented by the court) then hired a private investigator to locate Priest. The investigator located an address for Priest in New York and requested additional funds to speak with Priest. Petitioner's family notified counsel of their financial instability and their inability to further assist with petitioner's defense. At this point, once Priest location was discovered, counsel took the following actions to discover what Priest witnessed and to compel Priest to attend trial.

2. Counsel *unsuccessfully* filed a motion for out of state subpoena on 4/15/11 **(see exhibit #4)**

Petitioners out of state subpoena was ordered by the fact finder on **4/20/11** acknowledging that Priest was a material witness and that Priest travel expenses would be provided **(See exhibit #5)**. Petitioner's out of state subpoena was *amended to exclude travel expenses on **5/18/11**.* **(See exhibit #8).** Counsel failed to move the court to reconsider or put forth the proper documents declaring petitioner's indigence. Petitioner's out of state subpoena was then denied on **6/9/11** by the Cayuga county court in New York.

Petitioner argues that counsel failure to move the court to reconsider Or to submit the proper documents declaring petitioners indigence allowed the trial court to deny petitioner compulsory process for obtaining witnesses in his favor. "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide

where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law." **Washington v. Texas**, 388 U.S. 14, 19, 87 S.Ct. 1920, 1923, 18 L.Ed.2d 1019 (1967).

Petitioner's counsel **only investigative action** to speak with Priest or to discover what Priest witnessed after Priest address was discovered and Priest was subpoena to court in New York was the following:

3. Counsel emailed an out of state prosecutor the *night before trial on 6/27/11* to try to discover what occurred three weeks earlier on *6/9/11* when the out of state court conducted a hearing with Priest **(see exhibit #9).**

Petitioner argues that counsel's **last minute email does not** meet the standard to investigate as required under **Wiggins v. Smith, 539 U.S. 510 (2003)** and establishes that counsel performance was deficient.

The Fourth Circuit adopted the trial court finding when the state stated: "Petitioner wished to proceed with the trial without Priest".

Petitioner was misadvised by counsel due to counsel failure to investigate and speak with Priest that the commonwealth had a statement from Priest. Counsel also misinformed petitioner that Priest was not a useful witness for the defense. ***Under this misinformation*** petitioner proceeded to trial.

The Fourth Circuit adopted the court finding when the court stated: "trial counsel did the best he could under the circumstances to obtain the cooperation of witnesses"

There was never a problem to obtain cooperation of Priest as the court states. The only problem was counsel lack of effort to speak with Priest. Gwendolyn Priest was a willing and cooperative witness. Priest called 911 and reported the crime, approached and spoke with investigator at the crime scene, went to court in New York upon a subpoena to determine if she was needed to attend petitioner's trial and spoke with the commonwealth attorney prior to trial via telephone and voluntary filled out an affidavit. Priest was the only known independent witness that gave a statement the day of the crime. Counsel's efforts to speak with Priest fell well below the standard in **Strickland** and **Wiggins**. The courts determination is clearly erroneous.

The Fourth Circuit also accepted the state findings when the state stated: "The discrepancy in whether she saw one or two guns potentially in the possession of George and Williams after the shooting does not change the theory the police had in investigating the crime and the courts finding petitioner guilty".

Petitioner argues the discrepancy in Detective Hahn notes presented to the court as opposed to Priest actual statement presented in her affidavit is **highly material (see exhibit #10)** and changes the evidentiary picture and investigation drastically.

The prosecution presented the case that Priest witnessed just one individual, Marcus George arrive after the shooting in possession of a firearm which was lawfully registered to him. Upon arriving on the scene after the shooting was over and the

assailants had drove off, Mr. George than picked up Rodney Williams and sped off attempting to chase down the assailants.

Petitioner argues this is much different than what priest actually reported. Petitioner points out in excerpts of Priest affidavit in which Priest states:

"I was in my first floor apartment when I heard firecrackers or gunshots outside"

"I opened the sliding door and observed a black male running toward a green Chevy impala"

"I noticed this male carrying a chrome plated gun"

"he opened the vehicle door took out a coat and wrapped the gun inside a coat. He then threw the coat/gun in the back seat"

"a black male jumped into the green Chevy and he was carrying a gun also. This male jumped into the passenger side of the vehicle"

Priest affidavit makes it incredible and beyond belief that George and Williams were just attempting to chase down the assailants who had just shot their friends. No person of reason would believe that someone who just witnessed their friends being shot would take the only firearm in their possession, wrap it in a coat and place it in the backseat prior to going after the assailants. Priest also places Mr. George and two firearms at the scene of the crime immediately after shots were fired, as opposed to arriving later as presented by the prosecution.

A major focal point at petitioner's trial that was disputed was whether the victims were armed or unarmed. All of the government's witnesses who were friends and came to Aston green together to confront petitioner all deny being armed.

Chapman, a resident of a third floor apartment in front of where the incident took place testified that she witnessed the victims pull out guns **(t.t. 112.4-7)**. Petitioner also testified that Thomas was armed **(t.t.254:2-5)** and that Bennett was armed**(t.t. 255.3)**

Judge Fisher stated " if Thomas and Bennett had weapons one of them should still be at the scene" **(t.t. 566.1-5)** and "one of these guns should still be at the scene; not there"**(t.t.566.13-14)** Judge Fisher goes on to discredit Chapman testimony due to no gun being found at the scene **(t.t.566.7-14)** and upon that reasoning judge fisher stated "now the possibility of these two gentlemen having weapons simply doesn't exist. I don't find that credible in any way shape or form **(t.t.566.22-24)**. **Priest testimony would have changed the entire evidentiary picture and not allowed the fact finder to make these determinations.**

The court also noted that the case went above and beyond unreasonable force and self defense.

Petitioner disputes this finding as clearly erroneous due to the fact that there was never any evidence presented anywhere in the record as to force used.

The Court unreasonably described the evidence against petitioner as "overwhelming" when in fact such evidence was limited to inconsistent statements of three witnesses whose actions were criminal that came to petitioner's residence and initiated the confrontation and were admittedly "out for Retribution".

**Ground Three**

**Did the Fourth Circuit violate petitioner 6th and 14th amendment rights by making an unreasonable determination of fact and unreasonable application of clearly established federal law in regards to ineffective assistance of counsel by failing to object to a BRADY violation when the testimony of two prior misidentifications were presented implying third party guilt?**

The prosecution's failure to disclose evidence favorable to an accused violates due process where the evidence is material to guilt or punishment regardless of good faith or bad faith of the prosecution **Brady v. Maryland, 373 U.S. at 87, 83 S.Ct. 1194.** The prosecution duty encompasses both impeachment material and exculpatory evidence and it includes material that is known to police investigators and not to the prosecutor **Kyles, 514 U.S. at 438 115 S.Ct. 1555.**

The Fourth Circuit adopted the finding of the district court in which the court stated: Petitioner failed to demonstrate a Brady violation" in part because he was "misrepresenting the record" and "failed to proffer any facts that the prosecutor suppressed exculpatory photo arrays that the witnesses identified other potential suspects.

Petitioner argues that this determination is clearly erroneous as proven by the record and can only be determined by failing to evaluate petitioner records. Petitioner also points out that the courts failure to acknowledge and review the record is fatal to the courts order denying petitioner claim.

Thomas testified that he **(Thomas)** identified Rio as the individual who shot him**(Thomas)** within weeks after the shooting occurred**(t.t 180:4.25)**. Thomas testified

that Detective Best came to see him at rehab, then a second time at his house and both times had photos in which he identified "Rio" **(t.t. 180:5 – 181:16)**.

The prosecution also suppressed the photo identification by Williams in which Williams identified the individual who shot Thomas, who he **(Williams)** knows as Rio **(t.t. 376.10-379.21)**. Williams testified that he **(Williams)** identified Rio within weeks **(t.t. 376.9-24)**. Williams also describes two separate occasions in which he identified Rio in a photo spread brought to him by Detective Best within weeks after the shooting **(t.t. 376.9 – 379.2)**.

What makes this testimony relevant and material is the fact that Detective Best did not have an identification or picture of Mitchell until 1 year and 3 months after the shooting **(T.T.387.23-388.7).** So who was identified within two weeks? The photo identifications that Thomas and Williams testify to as identifying the shooter and individual known as Rio were never disclosed or known until the testimony was presented at trial.

Officer Insley testified to looking for a suspect known as Insley for some time after the crime. Who is Insley?

Judge Fisher acknowledged that Devon Thomas identified two individuals (t.t.392.10-11). If The defendant does not receive such evidence or if he learns of the evidence at a point in the proceedings when he cannot effectively use it his due process rights are violated >**Bauman V. Com** 248 Va 130,445 SE 20 110 (1994).

The court found that petitioner failed to demonstrate how an identification of Mitchell would have any bearing on his own culpability

Mitchell identity was in question from day one. Petitioner acknowledged being at the crime scene but, denied planning or participating in any way with the crime. Petitioner advised counsel pre-trial that Petitioner did not believe Mitchell to be Rio the other suspect. Counsel later informed petitioner that the government would be willing to offer a deal if Petitioner would be willing to cooperate and testify against Mitchell. Petitioner told counsel that he could not do that due to his beliefs that Mitchell was not Rio.

With these photo spreads, counsel would have been able to open up a whole new line of investigation into the identity of Rio. In closing arguments, counsel made an argument into Mitchell's misidentification **(t.t.544.14-21)** but had no evidence to support it other than Petitioner's testimony **(t.t.244.13-18)**. Petitioner was forced to answer direct questions regarding Mitchell's identity **(t.t.248.11 -250.7)** in which affected Petitioner's credibility in a prejudicial way. Judge Fisher stated that Mitchell's ID was the most significant of the controversial facts at Petitioner's trial **(t.t.560.1-6)**. Petitioner testified that Petitioner did not know Rio, had only seen him a couple of times and that Mitchell's features are different and Rio had a tattoo on his neck **(t.t.244.13-18)**. Mitchell does not have a tattoo on his neck **(t.t.486. 3-5)** Petitioner's testimony was in conflict with the government's witness in regards to Mitchell's identification in which judge Fisher found Petitioner to be incredible. The judge also determined that Rio did not have a tattoo **(t.t.564. 15-16)** as Petitioner had testified. The prosecuting attorney attacked petitioner's testimony regarding petitioner not being able to identify Mitchell as Rio **(t.t.532.10 -533.8)**. When she (Burge) knew of the suppressed photo

spread implying third party guilt or had the obligation to know of due to the fact it was within the investigator's knowledge.

The photo spread are material in this regards due to the following facts, they are impeaching to the government's witnesses on a key issue in Petitioner's trial, they support petitioners testimony and defense, the photo spreads imply third party guilt and the Government's failure to turn over the photo spread was a Brady violation that severely and prejudicially affected Petitioner's line of investigation, ability to put forth a complete defense, of exculpatory testimony and denied petitioner's right to a fair trial.

**GROUND FOUR**

**Did the Fourth Circuit violate petitioner 6th and 14th amendment rights by making an unreasonable determination of fact and unreasonable application of clearly established federal law in regards to ineffective assistance of counsel by failing object to numerous occasions of prosecutor misconduct**

In. **U.S.V. Flaharty 295 f3d 182,202 2d cir (2002)**. Appellate review of prosecutorial misconduct consist of a two part test.

First, whether the prosecutors conduct was actually improper.

Burge made a total of **six statements** of **non**-existent evidence that Bennett was shot nine times throughout Petitioners pretrial, trial and sentencing hearings. (p.t.4.18)(p.t.59.25)(m.t.10.3) (t.t.188.21-22) (s.t.53.17) (s.t.53.25).

There was no Medical testimony or evidence presented or introduced to support these statements. They were a lie.

Second, whether the misconduct taken in the context of the trial as a whole violated defendants due process rights.

This pattern of misconduct by the prosecutor created a false sense of unreasonable force, malice and was in direct opposition to petitioner defense. There was never any medical evidence as to where Bennett was shot or how many times Bennett was shot. The testimony given of the incident in which Bennett was shot came from three government's witnesses accounts and were conflicting, contrary to physical evidence found at the scene (shell casings) and no one ever testified as to how many times Bennett was shot.

The prosecution used repeated instances of repeating a lie to support her theory of the case that both Mitchell and petitioner were armed and shooting, contrary to petitioner's defense.

Counsel failure to object allowed the prosecution to establish unreasonable force by numerous statements of nonexistence evidence.

Accordingly, the Court has previously held that "a failure to object to prosecutorial misconduct can amount to ineffective assistance of counsel **Berger v. United States, 295 U.S. 78 (1935).**

The court further states: "Trial counsel could weigh the benefits and risk of requiring the commonwealth to bring in the substantial medical testimony and photographs of the grievous injuries.

Petitioner finds this to be clearly erroneous due to the fact that counsel eventually objected to the prosecutions statements **(S.T.54.18)**. Petitioner asserts that

this proves that the decision not to object was not counsel's strategic plan as the court determined. For the court to contend that somehow objecting to a misrepresentation of **nonexistent evidence** about how the number of wounds inflicted upon the victim that is contrary to the physical evidence would somehow "invoke the sympathies of the fact finder" is clearly erroneous and objectively unreasonable.

The court further dismissed for failure to adequately demonstrate deficient performance or prejudice as required by **STRICKLAND**.

Petitioner was prejudiced because the finder of fact in the state court case would have had a reasonable probability of finding petitioner's testimony that he did no shooting credible if the fact finder would have known that the total number of wounds inflicted on the victims were consistent with petitioners testimony. The factfinder would have had to reweigh the credibility of the governments witnesses of whom were bias against petitioner and admittedly out for retribution. The court also determined excessive force was used, not due to evidence presented by the state but because the numerous times the prosecution repeatedly stated a lie. As a matter of due process an offender must not be sentenced upon mistaken facts or unfounded assumptions. **Townsend v. Burks 334 U.S.736, 740-41 (1948)**.

The factfinder stated that he found unreasonable force was used and that in order to go outside of petitioner guidelines he would have to prepare a written explanation pursuant to **code of Virginia 19.2-298.01 (b)** of the reason for the departure and that he was prepared to do just that. Petitioner guidelines were 13 to 29 years and the factfinder sentenced petitioner to serve 53 years with none suspended. The judge

filed no explanation as he stated he would to be in compliance with **code of Virginia 19.2-298.01 (b)**. There was no medical evidence at trial to prove or show any amount of force used. There was ***no evidence at all pertaining to the victims injuries.***

The Court unreasonably described the evidence against petitioner as "overwhelming" when in fact such evidence was limited to inconsistent statements of three witnesses whose actions were criminal that came to petitioner's residence and initiated the confrontation and were admittedly "out for Retribution".

**GROUND FIVE**

**Did the Fourth Circuit violate petitioner 6th and 14th amendment rights by making an unreasonable determination of fact and unreasonable application of clearly established federal law in regards to ineffective assistance of counsel when counsel allowed the prosecution to present knowingly false testimony?**

**The Prosecuting attorney Ruth Burge had previously stated in the court of law that Thomas did not see a firearm in Petitioner's hand**

Mrs. Burge failure to correct governments key witness false testimony and subsequent attempt to bolster witness credibility violated defendants due process rights **JENKINS V. ARTUZ 294,F3D 284, 294 2D CIR (2002)** a conviction obtained through the use of false evidence known to be such by the representatives of the state must fall under the 14th amendment. We have refined this principle over the years, finding a due process violation when a prosecutor fails to correct testimony he knows to be false, > **Alcorta v. Texas**, 355 U.S. 28, 78 S.Ct. 103, 2 L.Ed.2d 9 (1957), even when the falsehood

in the testimony goes only to the witness' credibility, > **Napue v. Illinois**, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959). See also > **Giglio v. United States,** 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) (new trial required when Government witness testified falsely on matters relating to credibility and the prosecutor who served as trial counsel should have been aware of the falsehood).

The prosecution in the present case allowed their key witness Thomas to testify falsely to seeing a firearm in petitioner hand

(T.T. 417.14-16) Q. You're saying you saw a gun in my client's hand; right?

A. yes.

Q. when he was walking?

A. yes.

Burge knew Thomas lied yet still vouched for his credibility in her closing arguments. (T.T. 557. 18-19)

Thomas told you he didn't want to go through the court process. Those aren't the words of a man who's plotting and scheming to come into court and lie about this.

Burge used false testimony to attack petitioner's credibility and to further support the government's theory of the case. Burge disregarded the truth that was within her knowledge and the following facts to obtain a conviction.

1. Burge knowledge of Thomas statement giving to Detective Best that was Introduced at petitioner's trial referencing the number of people shooting the day in question. Stating: "**just 1 shooting**" **(Exhibit 10)**

2. Burge knowledge of the notes taken by Officer Mike Davenport confirming the notes stating suspect **#2 didn't take any action** and also stating just **one shooter 5'9-5'10** were the statements of Thomas at the hospital on November 10th 2006. (Petitioner stands at least 6 feet 2 inches tall)

3. Thomas testimony at the preliminary hearing dated December 18th 2009 in which Thomas testified. (P.T.45.19-21)

Q. All right. Now, you did not see the firearms in their hands; isn't that true?

A. No, I didn't (P.T.46.19-24)

Q. Okay. So, just to be clear, you did not see a weapon in Mr. Eason's hand; is that correct?

A. No, I didn't'.

Q. you did not see a weapon in his hand, correct?

A. no, I did not

4. Through Burge's own arguments at a motions hearing on May 19th 2010 Burge acknowledges that Thomas assumes Defendants were both firing.

(M.T.17.16).

and that he can't be for sure he saw a gun in defendant's hand

(M.T.17.18-19)

**most importantly Burge conceded that Thomas did not see a firearm (see motion hearing transcripts dated** May 19th 2010 **M.T.pg.25.20-25).**

Perjury is a crime, which directly impacts the testimony, credibility and constitutional rights to a fair trial. Any witness willing to commit a crime in a court of

law to see another person convicted shows that witnesses blatant disregard for the law and the criminal justice system. That witness testimony should be completely disregarded and struck from the record, Not as in petitioners case where perjury was committed and the testimony was vouched for by the prosecutor (T.T. 557:17-19) and understood by the judge (T.T. 474:11-15). Any prosecutor who overlooks known perjured testimony in the interest of a conviction completely fails in their duty and obligation as a government official and completely disregards the United States constitution. A defendant who is brought into the court of law to defend against a witness willing to commit perjury and a government official that is willing to support perjured testimony and vouch for that witnesses credibility cannot be said to have had a fair trial by any means. Burge's repeated actions of misconduct in Petitioner's case show a blatant disregard for the truth and that her intentions were not to establish justice but to achieve victory. Burge actions were prejudicial to defendant due to her attacks on defendant's credibility and by denying the Petitioner the right to a fair trial by allowing the governments witnesses to testify falsely against Petitioner.

Counsel in Petitioner case failed to raise an objection when known perjury was committed. Accordingly, the Court has previously held that "a failure to object to prosecutorial misconduct can amount to ineffective assistance of counsel." See **Berger v. United States**, 295 U.S. 78 (1935). Counsel failed to hold the prosecuting attorney responsible for correcting known perjured testimony of the government's witness. **Burge had previously stated in the court of law that Thomas did not see a firearm in Petitioner's hand** (M.T. 17.16-19)(M.T.25, 20-25) Petitioner's counsel should have

brought this previous acknowledgement by Burge to the court's attention and had Thomas's testimony struck from the record, ask for a mistrial or outright dismissal of all charges.

Petitioner was prejudiced by the fact that Thomas perjured testimony was in conflict with Petitioner's testimony in which contributed to Petitioner's testimony being found incredible. This perjured testimony went to the direct issue of guilt of petitioner. The prosecution also attacks Petitioner's credibility in this regard and vouched for Thomas' credibility after she knew Thomas committed perjury.

Petitioner asserts that counsel impeached Thomas with prior inconsistencies, but knew that Burge was allowing perjured testimony to be presented against Petitioner and failed to raise this violation. This issue being raised at Petitioner's trial would have altered the entire proceedings and weakened the prosecution's case.

The Court unreasonably described the evidence against petitioner as "overwhelming" when in fact such evidence was limited to inconsistent statements of three witnesses whose actions were criminal that came to petitioner's residence and initiated the confrontation and were admittedly "out for Retribution".
Counsel's failure to object violated petitioner's due process and denied petitioner his sixth Amendment Right to effective assistance of counsel and 14th Amendment due process right to a fair trial.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: DECEMBER 18th 2017

ROBERT DZUBA
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
REGISTRATION #7524794
MY COMMISSION EXPIRES JULY 31, 2020

12/18/17

CERTIFICATE OF ACKNOWLEDGMENT

CITY/COUNTY OF Augusta

COMMONWEALTH OF VIRGINIA

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 18 DAY OF Dec, 2017 BY

(NAME OF PERSON SEEKING ACKNOWLEDGMENT)

NOTARY PUBLIC SIGNATURE

NOTARY REGISTRATION NUMBER: 7531652

My COMMISSION EXPIRES 8/31/20

RICHARD CLAYTON ATKINS, JR.
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
REGISTRATION #7531652
MY COMMISSION EXPIRES AUG. 31, 2020