

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Kelvin James Taylor Pro Se — PETITIONER
(Your Name)

vs.

State Of Mississippi — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals Of The State of Mississippi
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kelvin James Taylor Pro Se
(Your Name)

P.O. Box 1419
(Address)

Leaksville Ms 39451
(City, State, Zip Code)

Don't know
(Phone Number)

QUESTIONS PRESENTED

(1) Whether the appellant's trial counsel rendered ineffective assistance of counsel for to motion to suppress illegally obtained evidence in violation of the Sixth and Fourteenth Amendment to the U.S. Const. ?

(2) Whether appellant's trial counsel was absent at "a critical stage" and failed to entirely put the prosecution's case to a meaningful adversarial testing in violation of the Sixth and Fourteenth Amendment ?

(3) Whether the Mississippi Court of Appeals failed to afford the appellant a full and fair opportunity to litigate his Fourth Amendment issue on direct appeal in violation of *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed. 2d 1081 (1961). ?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Table Of Contents

Questions Presented For Review

Parties To These Proceedings

Table of Content

Index of Appendixes

Table of Authorities

Opinions Below

Jurisdictional Statement

Constitutional Provisions Involved

Statement of the Case

Reasons for Granting the petition

Conclusion

Proof of Service

INDEX OF APPENDICES

- Appendix A Opinion of Mississippi Court of Appeals
- Appendix B Judgement of Trial Court
- Appendix C Amended Motion For Rehearing
- Appendix D Order Granting Motion To Amend Motion For Rehearing
- Appendix E Order Denying Amended Motion For Rehearing
- Appendix F Motion For Extension of Time To File Petition For Writ of Certiorari
- Appendix G Order Granting Extension of Time to File Petition For Writ of Certiorari
- Appendix H Petition For Writ of Certiorari
- Appendix I Motion To Amend Petition For Writ of Certiorari and Motion To Dismiss
- Appendix J Amended Petition For Writ of Certiorari
- Appendix K Order Denying Writ of Certiorari and Amended Petition For Writ of Certiorari
- Appendix L Mandate
- Appendix M Appellant's Brief
- Appendix N Pro Se Supplemental Brief
- Appendix O Appellee's Brief
- Appendix P Trial Transcripts

Appendix A Mississippi Bar Complaint

Appendix R Chatman's Initial Statement To T.C.S.O. 1-31-2012

Appendix S Motion To Compell Production

Appendix T Response To Demand For Notice of Alibi

Appendix U Diagram Depicting Evidence Location

Appendix V Affidavit In Support of Arrest Warrant

Appendix X Indictment

Appendix W Jury Instructions

Appendix Y Chatman's Second Statement 2-16-2012

Appendix Z Order Appointing Attorney

TABLE OF AUTHORITIES CITED

Cases	Page Number
Bell v. Cone, 535 U.S. 685, 122 S.Ct. 1843, 162 L.Ed.2d 914 (2002)	36
Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 46 L.Ed. 2d 416 (1975)	23
Boyd v. U.S., 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 2d	19
Camara v. Municipal Ct., 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed. 2d 930	19
Carroll v. U.S., 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 2d 543	18
Chronic v. U.S., 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984)	31, 32, 33
Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed. 2d 667 (1978)	25
Johnson v. U.S., 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed. 436	20
Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed. 2d 708	21
McDonald v. U.S., 335 U.S. 451, 69 S.Ct. 191, 93 L.Ed. 153	20
Mendenhall v. U.S., 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed. 2d 497 (1980)	18
Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed. 2d 527, 54 USLW 2230 (1983)	25, 35, 38
Kimmelman v. Morrison, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed. 2d 365, 54 USLW 4789 (1986)	24, 25, 29, 30
Lo-Ji Sales, Inc v. New York, 442 U.S. 319, 99 S.Ct. 2319, 60 L.Ed. 2d 920 (1979)	26
Leon v. U.S., 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed. 2d 677 (1984)	26
Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979)	27
California v. Trombetta, 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed. 2d 413 (1984)	27
Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed. 2d 639 (1980)	17, 19, 21, 27, 34
Silverman v. U.S., 365 U.S. 505, 81 S.Ct. 679, 5 L.Ed. 734	20
Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed. 2d 1067 (1976)	38
Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984)	16, 21, 24
Wolf v. Colorado, 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782	21
Wood v. Donald, 135 S.Ct. 1372, 191 L.Ed. 2d 464, 83 USLW 3758, 83 USLW 4227, 15 Cal. Daily Op. Serv. 3071	35

CASES

PAGE NUMBER

Wong Sun v. U.S. 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed. 2d 441 (1963) 17, 19, 21, 22, 27, 34, 38

STATUTES AND RULES

Mississippi Uniform Rules OF Circuit And County Court Practice 27

Mississippi Rules OF Evidence 29

Mississippi Rules OF Appellate Procedure 38

OTHER

American Bar Association Standard For Criminal Justice/Defense Counsel Function
(3d ed. 1993) 19, 26

Fourth Amendment to U.S. Const. 32

Sixth Amendment to U.S. Const. 16

Article 3 Section 26 of the Miss. Const 16

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

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

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the Mississippi Court OF Appeals court appears at Appendix A to the petition and is

☐ reported at _____; or,

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

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

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

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 12-13-2016. A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: July-18-2017, and a copy of the order denying rehearing appears at Appendix B.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including 8-15-2017 (date) on 7-27-2017 (date) in Application No. ____ A _____.

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

JURISDICTIONAL STATEMENT

Kelvin Taylor was convicted of capital murder, Miss. Code Ann. 97-3-19(2)(e) and possession of a deadly weapon by a felon, Miss. Code Ann. 97-37-5 and sentenced to life without parole and 10 years in the Second Judicial District of Bolivar County Circuit Court, Mississippi. Taylor timely filed a notice of appeal to the Mississippi Supreme Court. The Miss. Supreme Court and Miss. Court of Appeals Clerk assigned the case to the Miss. Court of Appeals, (hereinafter referred to C.O.A.). Taylor presented his ineffective assistance question in his Pro Se Supplemental Brief. [Appen. N, page 19]. On Dec-13-2016, the C.O.A. affirmed Taylor's conviction and sentence. ^[Appen A J] On Dec-22-2016, Taylor filed an motion for extension of time to file motion for rehearing. On April-25-2017, Taylor filed his Motion For Rehearing. Taylor then filed a Motion To Amend, or Make Corrections to Motion For Rehearing M.R.A.P. 27(h)(2) on June-5-2017. On June-12-2017, Taylor file a Motion To Dismiss and Motion To Amend Motion For Rehearing M.R.A.P. 27(b)(2) and attached his Amended Motion For Rehearing. On June-23-2017, the C.O.A. granted the requested Relief. [Appen D]. Taylor again raised the question in his Amended Motion For Rehearing. [Appen C page 7]. On July-18-2017, the C.O.A. denied Taylor's Amended Motion For Rehearing. On July-24-2017, Taylor filed a Motion For Extension of Time to File Petition For Writ of Certiorari M.R.

A.P. 27(b)(1). [Appen E]. On July-27-2017, the Miss. Supreme Court granted Taylor's requested Relief. [Appen G]. On Aug-18-2017, Taylor filed his Petition For Writ of Certiorari. Taylor presented his question of counsel's ineffectiveness to the Miss. Supreme Court. [Appen H 2-4]. On ~~Sept-27~~ 2017, Taylor filed a Motion To Amend Petition For Writ of Certiorari M.R.A.P. 27, and Motion To Dismiss. [Appen I]. On Sept-27-2017, Taylor also filed his Amended Petition For Writ of Certiorari to the Miss. Supreme Court. [Appen J]. Taylor raised his ineffective assistance of counsel question based on a Kimmelman vs. Morrison violation to that court. [Appen J page 2-8]. On Nov-13-2017, the Miss. Supreme Court denied Taylor's Petition For Certiorari and his Amended Petition For Writ of Certiorari. [Appen K].

This Court has jurisdiction to hear this Petition For Writ of Certiorari pursuant to 28 U.S.C. section 1257(a).

This Court has jurisdiction because appellant was denied his Sixth and Fourteenth Amendment right to effective assistance of counsel, a fair trial and due process in violation of Kimmelman vs. Morrison, 477 U.S. 365, Cronic vs. U.S., 466 U.S. 648. Appellant request that this court construe his filings liberally. Bounds vs. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).

Constitutional And Statutory Provisions Involved

Fourth Amendment to U.S. Const.

Sixth Amendment to U.S. Const.

Fourteenth Amendment to U.S. Const.

Article 3 section 14 of the Miss. Const.

Article 3 section 23 of the Miss. Const.

Article 3 section 26 of the Miss. Const.

STATEMENT OF THE CASE

Kelvin Taylor was convicted in the Second Judicial District Circuit Court of Bolivar County Mississippi of capital murder and possession of a firearm by a felon, along with codefendants Jerry Stewart and Laddell Maggett Jr, who where all sentenced to life without parole and ten years to run consecutively. Two other codefendants, Treston Chatman and Christopher Anderson where witnesses for the state after making plea agreements. All had initially been charged with capital murder with the underlying felony of kidnapping Miss. Code Ann. 97-3-19 (a)(e).

On Jan-31-2012, the body of Guenton Deon McKay was discovered before sunrise by a passerby on Howden Lake Rd. in Bolivar County, one mile east of U.S. Hwy 61 near Duncan, MS. [Trial Transcript, T.T. 294-96, 298, 300, -01, 311-13, 320, 323, 329, 362-87; Exhibits S1A-C, S1E-F, S2A-G, S3A-H, S4, S11A-C, S12A-E]. McKay's body was laying face up in the gravel road with his hands bound together with duct tape. Five spent shell casings and three spent projectiles were found on the ground around the body. [T.T. 385-87; exs S11A-C, S12A-E]. A firearm and tool mark expert for the state identified the five shell casings recovered from the victim location — four

.45 caliber casings of various manufactures and one .40 caliber casing E.T.T.

1213-16; Ex 12 A-E].

McKay's body had six gunshot wounds -- four in the torso and two to the head. [T.T. 1180, 1188-95; Exs. S115 A-I]. The state's expert pathologist testified that five projectiles were recovered from the body at autopsy, two from the head and three from the torso. [T.T. 1191-92; ex. S13 A-E].

The state's pathologist Dr. Barnheart testified that three of McKay's wounds were fatal -- the two head wounds and one of the shots to the torso which damaged the heart and lungs. [T.T. 1194-95].

Eight projectiles were recovered, four were identified as .44 caliber, all shot from the same weapon, and four were .45 caliber, all shot from a second weapon. [T.T. 1216-21; exs S11 A-C, S13 A-E]. The firearm expert concluded there were at least two different weapons and possibly a third because of the .40 caliber casing; but he was unable to match any of the projectiles to the casings, or a weapon. [T.T. 1220, 1224].

According to state's witness Chatman, he and McKay were acting as middle men in a drug deal for Jerry Stewart to buy a kilogram of powder cocaine for \$25,000.00 from Tyrese Vaughan in Memphis Tn. [T.T. 415-24, 436, 451, 461-62,

469, 479-85, 503-05, 509-10, 512, 521-25, 582-92, 669-71, 1031-33].

According to Chatman, he and Stewart picked McKay up in Tunica, went to Memphis and completed the drug transaction. [T.T. 596-97]. McKay tested the cocaine before they left Memphis to confirm it was cocaine, but that it had a cut to it. [T.T. 600].

According to Chatman, Stewart instructed Chatman to call Christopher Anderson to meet them at Stewart's house and to bring "his cooking utensils". [T.T. 601].

Chatman testified that when Anderson came and opened the drugs, Anderson and Stewart realized the drugs were fake. [T.T. 601-02]. Chatman testified that Stewart went to the back and got a pistol and came back and cocked it and told McKay he had 30 minutes to get somebody on their way to Clarksdale with the money. Chatman testified Stewart told Anderson to call Kelvin Taylor and Laddell Maggett to tell them to bring some plastic. [T.T. 602].

Taylor and Maggett allegedly arrived with some rubber gloves and duct tape in a plastic bag. [T.T. 604, 818].

Chatman testified that McKay was able to continue to make phone calls because his hands were taped in front. [T.T. 604-05].

Chatman stated Stewart decided to move McKay and retrieved a pillow case and put it over McKay's head. [T.T. 606-07]. Everybody left Stewart's house in Stewart's car

and Anderson's Chevrolet Suburban. [T.T. 606-08, 824]. And went to a house on Douglas St. in Clarksdale according to Chatman.

Chatman stated that Stewart told him that the only way that he would be able to walk away from this is if he put the first bullet, if he take the first shot. [T.T. 611, 614]. Chatman testified that McKay was again put into Anderson's S.U.V. and that everyone left in Anderson's truck and Stewart's car. and went down Hwy 61 towards Duncan. [T.T. 616-17]. Both vehicles turned off Hwy 61 onto a gravel road stopped, all exited their vehicles and McKay was taken from the back of the truck. [T.T. 617-18].

Chatman testified Stewart pushed him forward and told Taylor to give him the gun and he shot McKay in the back one time. [T.T. 618-22, 819-22]. McKay fell and Stewart told Taylor and Maggett to "finish him off" and they both allegedly shot McKay as he lay on the ground. Chatman said Taylor shot McKay twice with the same pistol Chatman used, then Maggett shot McKay twice in the head, with an semi-automatic pistol.

Chatman said Stewart told them to get McKay's phone and the pillow case which was still on McKay's head and to burn everything. [T.T. 623].

Later on the morning of 1-31-2012, Chatman was arrested by Clarksdale Police Dept. [

T.T. 625-27]. Chatman was interrogated by Tunica County Sheriff's deputy Lt. Jones in Clarksdale the morning of his arrest and denied seeing McKay during the relevant time periods and denied any involvement in the disappearance of McKay. [T.T. 661-62, 940; ex 817].

After Chatman was transported to Tunica County Jail, he initially told investigators that he and McKay was kidnapped, put in Anderson's truck and taken out on a gravel road in Bolivar County and that he would only have to watch the others kill McKay and that he did not shoot. [T.T. 694-96, 912; ex 817 10].

Chatman's deal was that he was allowed to plead guilty to aggravated assault and conspiracy to possess cocaine with intent to distribute for a total of fifteen years. [T.T. 635-36, 660-61]. The version of events that the jury heard was not developed by Chatman until Nov-2014 once he had made his deal with the prosecution to dismiss the capital murder charge. [T.T. 697]. When he finally did admit to shooting McKay, Chatman said he only shot him once. [T.T. 705-06]. Chatman initially told police that Anderson bound McKay's wrist with duct tape, but changed that later to state that Taylor taped McKay's wrist. [T.T. 711, 819, 911-12; ex 8-17 10].

When McKay was making phone calls to anyone he could, he made it clear that he was being held under threat of death to get the money back for the bad drugs. [T.T.

423-28, 433, 435-36, 451-52, 454-56, 464-70, 488-89, 494]. Word got back to McKay's family that he was being held under threat of death, so McKay's family notified law enforcement that he was missing and possibly kidnapped which led investigators to Chatman on 1-31-2012, after McKay was already dead, the last person allegedly seen with McKay. [T.T. 492, 495, 936-37, 939].

According to Christopher Anderson, he became involved when he was called by Stewart to pick up money from Stewart's brother. [T.T. 1031-32; ex 5-18 I.O.]. Anderson's version of events differs significantly from Chatman and Stewart's. Anderson said he got a call from Maggett, not Chatman, telling him to come to the house on Douglas St. [T.T. 1034-35]. Anderson stated that Stewart told him we have something to handle and showed him McKay in a back room sitting in a chair with duct tape around his wrists. [T.T. 1038-40]. Anderson stated that he did know McKay, and told Stewart, he didn't want to have nothing to do with the situation and tried to walk back out of the house. [T.T. 1040]. Anderson said that Stewart said "he had seen to much", and told Maggett to search Anderson after which Maggett took Anderson's cell phone. [T.T. 1041].

Stewart had Taylor and Maggett put McKay in Anderson's Suburban with Anderson driving and they all left in two vehicles, Anderson, Taylor, and Maggett and McKay in the Suburban, Stewart and Chatman in the Crown Vic. [T.T. 1042].

According to Anderson, Taylor gave him instructions and directions where to drive. [T.T. 1046-48]. Anderson said they ended up on Hwy 61 and Taylor told Anderson to turn onto a gravel road south of Alligator where Taylor said stop. [T.T. 1048-49]. Stewart parked his vehicle and everyone got out. Id Taylor and Maggett got McKay out of the back of the Suburban. Id Stewart told Taylor to give Chatman a pistol saying, "he the one who brought him to me, he the one who going to have to do him". [T.T. 1049-50]. Anderson said McKay started to walk away and Chatman shot him four or five times; McKay fell, and Stewart told Maggett to finish him off. [T.T. 1050-51, 1057]. Anderson said Maggett "walked back and stood over Quenton, and he shot, like three or four times". [T.T. 1051].

Anderson denied that Taylor ever shot McKay. [T.T. 1021; ex. S-18 ID].

Anderson said everybody loaded up and went back to Clarksdale. Id. Anderson dropped Taylor and Maggett back at Douglas St. [T.T. 1053].

The next morning around eight, Stewart and Taylor came by Anderson's house and Taylor allegedly told Anderson, "you remember what we said". [T.T. 1054-55]. Anderson gave consent to search his Suburban, when he was arrested on Jan-31-2012. Anderson did not give investigators his detailed version of events until two weeks later. [T.T. 1058]. Anderson said, during the events, he never saw anything on McKay's head and specifically no pillow case. [T.T. 1151-52].

Anderson's Suburban was processed by the Mississippi Bureau of Investigator (MAI) Crime Scene Investigator (C.S.I.). Ten latent fingerprints were collected from the vehicle's interior, but no fingerprint evidence was presented at trial, [T.T. 539, 545-47, 558-59]. No evidence that would substantiate Chatman and Anderson's account where was admitted at trial that would connect Taylor to any event or crime such as, cell phone records, fingerprints, DNA, ect.

Jerry Stewart testified in his defense. Stewart said Chatman came to his house on 1-30-2012, and told him that he was in the middle of making a deal for his brother and that Stewart's brother told Chatman to ask him if he would give a ride to Tunica once they made the deal. Stewart agreed to give Chatman a ride. [T.T. 1339]. Stewart said he and Chatman went to Tunica and picked up McKay. [T.T. 1345]. Stewart said that McKay told Chatman that the guy he was suppose to meet in Tunica didn't have any drugs but he knew some more dealers in Memphis that had better and cheaper drugs. [T.T. 1346]

Stewart said McKay told Chatman about the different prices and that for another five thousand dollars he could get a whole kilo. Chatman called Stewart's brother Thalmus Pace (hereinafter Pace) and told him but he said he couldn't come up with another five thousand dollars. [T.T. 1346].

Stewart testified he told Chatman to call Doc, Christopher Anderson. [T.T. 1346],

Stewart said Chatman called Anderson, and Anderson said he was going to get the money and for them to meet him at Shady Neck.

Stewart said once they got the money from Anderson they went to Memphis. [T.T. 1350].

Stewart said that they met the dealers at the BP on third St. in Memphis, and followed them to a house where the drugs were exchanged. [T.T. 1350-51, 1353]. Stewart said after the drug deal was done, they left, that McKay never checked the drugs or to take him to get his truck. [T.T. 1356].

Stewart said he told Chatman to call Pace, to tell him to get his keys from Anderson and to tell Anderson to bring his scales to his house to get his stuff. [T.T. 1358]

Stewart testified that he, Chatman, McKay, and Pace went into his house and Pace opened the drugs. [T.T. 1359]. Anderson walked in and was shown the drugs, and that Anderson threaten to beat McKay's up. [T.T. 1360]

Stewart testified that it was Anderson who snatched the phone from McKay while he was trying to get the money back and threatened to kill McKay. [T.T. 1361]. Stewart testified Anderson said "I'll take him to my spot." [T.T. 1361]. Stewart testified that Anderson taped McKay's hand up. [T.T. 1362]. Stewart said that Anderson, Chatman, and McKay left in Anderson truck. [T.T. 1362].

Stewart stated that he did not see Chatman, Anderson, or McKay again. [Appen P pg

1362]. Stewart testified that Taylor was not at his home. [Appen P pg 1363].

Stewart testified that around eleven o'clock he called Anderson to see if they got their money back, and that Anderson told him, "we handled the situation, I'm good." [Appen P pg 1367].

Stewart testified that he did not go with Anderson, Chatman, and McKay to the house on Douglas St. [Appen P pg 1367]. Stewart testified he did not murder or kidnap Quentin McKay. [Appen P. pg 1372-74].

REASONS FOR GRANTING THE PETITION

(1) Whether appellant's trial counsel rendered ineffective assistance of counsel for failing to motion to suppress illegally obtained evidence in violation of the Sixth and Fourteenth Amendment to the U.S. Const?

(2) Whether appellant's trial counsel was absent at "a critical stage", and failed to put the prosecution's case to meaningful adversarial testing in violation of the Sixth and Fourteenth Amendment?

(3) Whether the Mississippi Court of Appeals failed to afford appellant a full and fair opportunity to litigate his Fourth Amendment claim on direct appeal in violation of *Mapp v. Ohio*, 367 U.S. 643?

i. Whether petitioner's trial counsel denied him effective assistance of counsel by failing to motion to suppress illegally obtained evidence in violation of the Sixth and Fourteenth Amendment ?

The Sixth Amendment states in pertinent part, "in all criminal prosecution, the accused shall enjoy the right; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defense."

Miss. Const. Art 3 sec 26 provides in pertinent part; "in all criminal prosecutions the accused shall have a right to be heard by himself, or counsel, or both."

In *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) this court held, "A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's error were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the

conviction or death sentence resulted from a break down in the adversary process that renders the result unreliable." Id at 675.

The court said, "the proper measure of attorney performance remains simply reasonableness under prevailing professional norms."

Petitioner argues that his trial counsel's performance was deficient for failing to investigate, interview, subpoena, and present Tresten Chatman (hereinafter Chatman), Christopher Anderson (hereinafter Anderson), Tunica County Sherrieff Investigator James Jones (hereinafter Inv. Jones), Bolivar County Sherrieff's Dept Deputy's Chief Homicide Investigator Gerald Westly Sr. (hereinafter Inv. Westly Sr.), and Chief Deputy Gerald Westly Jr (hereinafter chief Westly Jr.) testimony upon filing a motion to suppress Chatman statement as the product of an illegal search and seizure and fruit of the poisonous tree in violation of the Fourth and Fourteenth Amendment. *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), *Wong Sun v. U.S.* 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

Petitioner argues that at the time Inv. Jones requested Clarksdale Police (hereinafter C.P.D.) to take Chatman to jail, he did not possess reasonable cause or probable cause to believe that a crime had been committed in Tunica County or reasonable cause or probable cause to believe that Chatman was the one who committed it. *Conerly v. State*

760 So.2d 737, 738 (2000), Henry v. State, 486 So.2d 1209, 1212 (1986), Carroll v United States, 267 U.S. 132, 162, 45 S.Ct. 280, 288, 69 L.Ed. 540.

Petitioner argues that had counsel investigated, and interviewed the above named witnesses, he would have discovered that Inv. Jones did not possess specific and articulable fact that justified a suspicion of criminal activity necessary to request and arrest of Chatman. U.S. v. Mendenhall, 446 U.S. 544, 545, 100 S.Ct. 1870, 1871, 64 L.Ed.2d 497 (1980). Counsel would have learned that Chatman was a suspect, not an informant. That Inv. Jones did not seek a arrest warrant in Tunica Co. because he did not possess specific and articulable fact, as his testimony reveals. [Appen. P 937-41]. Counsel would have also learned that C.P.O. also did not possess reasonable cause or probable cause to believe that a crime had occurred in either Clarksdale, Ms or Tunica Co. or reasonable cause or probable cause to believe that Chatman was the one who committed it at the time C.P.O. arrested Chatman.

Had counsel investigated pretrial Chatman's statement to police on Jan-31-2012, and interviewed Inv. Jones, Inv. Westly Sr. and chief Westly Jr., counsel would have learned that Chatman gave three different accounts of McKay's death. [Appen Rpg. 19-21, 22-24, 28, 29, 32-33, 34-36, 49]. Counsel would have also learned that Chatman's statement was not supported by any corroborative evidence, or any indicia of probable cause. It is noted that Inv. Jones did not testify as to who allegedly last saw Chatman with McKay or any testimony that McKay was kidnapped in Tunica Co.

cause.

The American Bar Association's Standard for Criminal Justice / Defense Counsel Function (3d. ed. 1993) 4-4.1 titled "Duty To Investigate" states in pertinent part: The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities.

Had counsel conducted a thorough pretrial investigation of police reports, Chatman's statement, and interviewed the investigators and Chatman and Anderson, counsel would have learned that C.P.D. made a warrantless entry into Chatman's home and arrested him in violation of *Payton v. New York*, 445 U.S. 573. And that Chatman's statement was not attenuated from the official police illegality of his illegal arrest and prolonged detention and that Chatman's statement must be suppressed as fruit of the poisonous tree under *Wong Sun v. U.S.* 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

Chatman testified as followed; Eappen P. 625-277.

In *Payton v. New York*, this court said, "at the core of the Fourth Amendment, whether in the context of a search or an arrest, is the fundamental concept that any governmental intrusion into an individual's home or expectation of privacy must be strictly circumscribed. see *Boyd v. United States*, 116 U.S. 616, 630, 6 S.Ct. 524, 532, 29 L.Ed. 746, compare *v. Municipal Ct.*, 387 U.S. 523, 528, 87 S.Ct. 1721, 1730, 18 L.Ed.2d. 930.

To achieve that end, the framers of the amendment interposed the warrant requirement between the public and the police, reflecting their conviction that the decision to enter a dwelling should not rest with the officer in the field, but rather with a detached and disinterested Magistrate. *McDonald v. United States*, 335 U.S. 451, 455, 456, 69 S.Ct. 191, 193, 93 L. Ed. 153, *Johnson v. United States*, 333 U.S. 10, 13-14, 68 S.Ct. 367, 368-369, 92 L. Ed. 436. Inasmuch as the purpose of the Fourth Amendment is to guard against arbitrary governmental invasions of the home, the necessity of prior judicial approval should control any contemplated entry, regardless of the purpose for which that entry is sought. By definition, arrest entries must be included within the scope of the amendment, for while such entries are for persons, not things, they are, nonetheless, violations of privacy, the chief evil that the Fourth Amendment was designed to deter. *Silverman v. United States*, 365 U.S. 505, 511, 81 S.Ct. 679, 682, 5 L. Ed. 2d 734. *Id.*, at 577.

Petitioner argues, that based on Chatman's testimony, C.P.O. entered Chatman's home before and without giving him an opportunity to object or to consent. [appen. R 625-26 J.

The court said, "it is a 'basic principal of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable."

Id, at 578. In *Payton*, this court reversed stating, "we now reverse the New York Court of Appeals and hold that the Fourth Amendment to the United States Constitution, made applicable to the State by the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed. 2d 1081; *Wolf v. Colorado*, 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1172, prohibits the police from making a warrantless and non consensual entry into a suspect's home in order to make a routine felony arrest." Id, at 573.

Petitioner argues that counsel's unprofessional errors in failing to conduct a pretrial investigation into Chatman's statement to police, and the facts and circumstances surrounding his arrest, or whether there was probable cause, and to interview the Inv.'s, police reports ect, was objectively unreasonable under prevailing professional norms as reflected in the ABA Standard for Criminal Justice/Defense Counsel Function (3d ed. 1993), and outside the wide range of reasonableness, and cannot be trial strategy, where counsel's errors are not reasonable. *Strickland v. Washington*, 466 U.S., at 675, 104 S.Ct., at 2059, 80 L.Ed.2d 674.

Petitioner also argues that counsel's failure to motion to suppress on grounds that police illegally arrested and prolonged an illegal detention of Chatman in violation of *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441, was objectively unreasonable, outside the wide range of reasonable professional conduct, and not

trial strategy, as his decision not to motion to suppress was not based on reasonableness.

Chatman's testimony regarding his arrest and prolonged illegal detention, was uncontradicted, undisputed, and largely substantiated by Inv. Jones's testimony.

Petitioner argues that Chatman's illegal arrest and prolonged illegal detention violated his Fourth and Fourteenth Amendment rights as his statement was obtained as a result of the official police illegality.

In *Wong Sun*, this court said, "we need not hold that all evidence is fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.' *Id.* at 477, 83 S.Ct. 413, 9 L.Ed.2d 441.

The Fourth Amendment states, "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or

affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Inv. Jones testified that Chatman was under arrest while at the Sherriff's office.

Capen P pg 10031.

Inv. Jones testified that the individuals were held for investigative purposes only.

Capen P pg. 991

Petitioner argues that the flagrancy of the police misconduct in exploiting Chatman's illegal arrest and prolonged detention in the instant case is more severe than in Brown, and which the exclusionary rule was created to deter. Brown v. Illinois, 422 U.S. 590, 95

S.Ct. 2254, 45 L.Ed.2d 416 (1975).

In Brown v. Illinois, this court said, "the temporal proximity of the arrest and the confession, the presence of intervening circumstances, and particularly the purpose and flagrancy of the official misconduct are all relevant. Id, at 595.

Petitioner argues the first Brown factor weighs against the state, because Chatman was arrested in his home by C.P.D. without reasonable suspicion or probable cause, on the authority of Tunica Co. Sherriff Office who also did not possess specific and articulable facts, reasonable suspicion or probable, for over 19 hours before he made his statement. The second factor also weighs against the state because the only inter-

vening circumstances, where that Inv. Jones removed Chatman from Coahoma County Detention Center to Tunica County Detention Center without a warrant for his arrest or court order. At that time Chatman had to Inv. Jones he had not seen McKay, further showing that Inv. Jones lacked probable cause and or specific and articulable facts that would support a continued detention. The third factor weighs against the state, because at the evidence shows that no crime had happened in Tunica Co., that Inv. Jones still did not seek an arrest warrant against Chatman for any crime, and more importantly Inv. Jones testified that the individuals were held for investigative purposes only.

Petitioner argues that counsel was ineffective assistance under *Kimmelman v. Morrison*, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305, 54 USLW 4789 (1986). In *Kimmelman* this court said, "in order to prevail, the defendant must show both that counsel's representation fell below an objective standard of reasonableness, *Strickland*, 466 U.S., at 688, 104 S.Ct., at 2064, and that there exist a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.*, at 694, 104 S.Ct., at 2068. Where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that his Fourth Amendment claim is meritorious and that

there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice. *Kimmelman*, 477 U.S., at 368, 106 S.Ct., at 2577, 91 L.Ed.2d 305.

Petitioner argues that counsel's performance was deficient for failing to motion to suppress on the following Fourth Amendment grounds also. (1) That the affiant of the affidavit in support of the arrest warrant made a false material statement knowingly and intentionally, with reckless disregard for the truth. *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). [*appen.v.*]. (2) That the affidavit in support of the arrest warrant was constitutionally deficient for failing to state sufficient facts and circumstances, provide a source of information relied on, state whether source was reliable and truthful, or state whether information was in affiant's personal knowledge, failed to provide any corroborative evidence, and failed to provide a substantial bases and was without probable cause in violation of *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527, 54 USLW 2230. (3) That the issuing judge wholly abdicated his constitutional duty in violation *Gate v. Illinois*. (4) That the issuing judge was misled by information in the affidavit that affiant knew was false or would have known was false except for his reckless disregard for the truth. *Franks v. Delaware*

(5) That the issuing judge failed to act in a neutral and detached way demanded of judicial officer when presented with the warrant affidavit and who instead acted as an adjunct law enforcement officer. *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319, 326-327, 99 S.Ct. 2319, 2324-2325, 60 L.Ed.2d 920 (1979). (6) That no exception to the warrant requirement applies because the issuing judge was knowingly misled by the affiant's false material statements. *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984).

The ABA Standard for Criminal Justice/Defense Counsel Function (3d ed. 1993) 4-3.6

Prompt Action To Protect the Accused states in pertinent part; "many important rights of the accused can be protected and preserved only by prompt legal action. Defense counsel should inform the accused of his or her rights at the earliest opportunity and take all necessary action to vindicate such rights. Defense counsel should consider all procedural steps which in good faith may be taken, including, for example, motion seeking pretrial release of the accused, or moving to suppress illegally obtained evidence, ect.

Petitioner argues that counsel's unprofessional errors were objectively unreasonable in light of these guides to what is reasonable, and outside the wide range of reasonable professional competence demanded by the Sixth Amendment.

Futhermore the Uniform Rules of Circuit And County Court Practice 2.07 titled Habeas Corpus in Preconviction And Extradition Matters states in pertinent part;

1. The writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his/her liberty, or by which rightful custody of the person is withheld from the person entitled thereto.

A reasonably competent attorney would have filed a petition for habeas corpus to contest petitioner confinement and arrest as illegal and without probable cause.

Petitioner defense was prejudiced because had counsel learned of the facts produced at trial, prior to trial the court would have been required to suppress Chatman's statement under *Payton v. New York*, and *Wong Sun v. U.S.* and Anderson's statement as derivative evidence. Had these alleged witnesses statements been suppressed, a motion to dismiss would have been granted on grounds that the state had insufficient evidence to support the prosecution. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979).

Petitioner argues that his defense was prejudiced by counsel's unprofessional errors because they deprive him of his right to present a complete defense. *California v. Trombetta*, 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed. 2d 413 (1984). Petitioner was further prejudiced by counsel's errors of not attaching the sufficiency of the warrant affidavit, or that the affiant made

material false statements knowingly and intentionally with reckless disregard for the truth to misled the judge, and that no exception to the warrant requirement applies because the judge abdonded his neutral and detached role and acted as a rubber stamp, requiring a reviewing court to suppress Chatman and Anderson's statement, under Franks, Gates, and Leon. Again had Chatman and Anderson's statement been suppress as based on the facts of this case the law requires, the state would have had insufficient evidence to support a prosecution and a motion to dismiss for insufficient evidence would have been granted.

Petitioner argues that Inv. Westly Sr., the affiant of the warrant affidavit trial testimony shows that he relied on Chatman's statement to support his filing the affidavit in support of the arrest warrant. Inv. Westly Sr. watched as Chatman gave different versions of the victims death, in the first version, Chatman never mentions petitioner, in the second, Chatman allege petitioner killed the victim.

Inv. Westly Sr. testified as follows. [see appen P 318].

Petitioner's counsel performance was deficient for failing to cross examine Inv. Westly Sr. about his bias, prejudice and interest in testifying. When the state called Inv. Westly Sr. as a witness the following exchange took place between counsel, the court, and the prosecution. [appen. P pg. 307-08].

Mississippi Rules of Evidence (hereinafter M.R.E.) 611 (b) states; Scope of cross examination: The court may not limit cross examination to the subject matter of the direct examination and matters affecting the witness's credibility.

M.R.E. rule 616 states; Evidences of a witnesses bias, prejudice, or interest -- for or against any party -- is admissible to attack the witness's credibility.

Petitioner argues that a reasonably competent attorney would have known the applicable rules of evidence to attack Inw. Westly Sr's credibility, bias, prejudice, and interest in testifying to show the jury that Inw. Westly Sr. made material false statements in the warrant affidavit and to show that the warrant affidavit was without probable cause. [see appen. Q I].

Petitioner was prejudiced because counsel's unprofessional errors deprived him of his Sixth and Fourteenth Amendment rights to present a defense, to effectively confront and cross examine the witnesses against him, to effective assistance of counsel, to a fair trial, and due process.

In Kimmelman, this court said, "in Strickland we explained that "access to counsel's skill and knowledge is necessary to accord defendant's the ample opportunity to meet the case of the prosecution 'to which they are entitled.'" 466 U.S., at 685, 104 S.Ct., at 2063 (quoting *Adams v United States ex rel. McCann*, 317 U.S. 269, 275, 276, 63

S.Ct. 236, 240, 87 L.Ed.2d 268 (1942). "Counsel ... has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial process," 466 U.S., at 688, 104 S.Ct., at 2065.

The court said, "in making the competency determination, the court "should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." *Id.*, at 690, 104 S.Ct., at 2066. Because that testing process generally will not function properly unless defense counsel has done some investigation into the prosecution's case and into various defense strategies, we noted that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.*, at 691, 104 S.Ct., at 2066. But, we observed, "a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Ibid.*

Petitioner was prejudiced by counsel's unprofessional errors, because they were unreasonable, and contrary to prevailing professional norms. Counsel's acts and omissions were outside the wide range of professional competent assistance.

Petitioner argues that but for counsel's failure to investigate, interview, Inv.

Westly Sr., Chief Westly Jr., Chatman, Anderson, and Inv. Jones, motion to suppress on the above mentioned grounds, Chatman and Anderson's statements would have been suppressed under *Payton v. New York*, *Wong Sun v. United States*, and progeny, there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

Because petitioner was deprived of all rights guaranteed him by the Sixth and Fourteenth Amendment to the U.S. Const., and deprived of his right to effective assistance of counsel which deprived him of his ability to assert his Fourth Amendment claims, petitioner respectfully request this Honorable Court to reverse his convictions of capital murder and possession of a firearm by a felon and remand for a new trial.

2. Whether petitioner's trial counsel entirely failed to put the prosecution's case to a meaningful adversarial testing at "a critical stage" in violation of *Cronic v. U.S.* 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984) ?

In *Cronic*, this court said, an accused's right to be represented by counsel is a fundamental component of our criminal justice system. Lawyers in criminal cases "are necessities, not luxuries." Their presence is essential because they are the means through which the other rights of the person on trial are secured. Without

counsel, the right to a trial itself would be "of little avail," as this Court has repeatedly recognized. "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." 466 U.S. at 649, 104 S.Ct. at 2040.

The special value of the right to the assistance of counsel explains why "it has long been recognized that the right to counsel is the right to the effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771, n.14, 90 S.Ct. 1441, 1449, 25 L.Ed.2d 763 (1970).

The text of the Sixth Amendment itself suggest as much. The Amendment requires not merely the provision of counsel to the accused, but "Assistance," which is to be "for his defense." Thus, "the core purpose of the counsel guarantee was to assure 'Assistance' at trial, when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor." *United States v. Ash*, 413 U.S. 300, 309, 93 S.Ct. 2568, 2573, 37 L.Ed.2d 419 (1973). If no actual "Assistance" "for" the accused's "defense" is provided, then the constitutional guarantee has been violated. *Id.*, at 649.

The court said, thus, the adversarial process protected by the Sixth Amendment requires that the accused have "counsel acting in the role of an advocate." *Anders v. California*, 386 U.S. 738, 743, 87 S.Ct. 1396, 1399, 18 L.Ed.2d 493 (1967).

The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. When a true adversarial criminal trial has been conducted — even if defense counsel may have made demonstrable errors — the kind of testing envisioned by the Sixth Amendment has occurred. But if the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated. *Id.*, at 649, 104 S.Ct., at 2040.

The court said, there are, however, circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified.

Most obvious, of course, is the complete denial of counsel. The presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial. Similarly, if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable. *Ibid.*, at 650.

Petitioner argues that his trial counsel entirely failed to put the prosecution's case to a meaningful adversarial testing which made the adversarial process itself presumptively unreliable, requiring reversal of his conviction and sentence and

Petitioner argues that counsel's failure to motion to suppress during the trial after Inv. Westly Sr., Chatman, and Inv. Jones testified was a "critical stage" of the trial. Based on Inv. Jones testimony that he was investigating a "possible kidnapping," the fact that no testimony was presented demonstrating someone in Tunica Co. witnessed McKay being kidnapped, the fact that Inv. Jones never sought a arrest warrant for Chatman, shows that he did not possess specific and articulable facts that would justify reasonable suspicion or probable cause to believe that a crime had been committed in Tunica Co. or that Chatman was the one who committed it.

Chatman's testimony demonstrating that C.P.D. came in his home without a warrant or his consent, made him walk in front of his gun while he searched the house, and took him to jail without specific and articulable facts, or probable cause shows that police violated his right to be free from illegal search and seizure in violation of Payton v. New York. Chatman illegal arrest and prolonged detention, by C.P.D., and the transference of Chatman by Inv. Jones to Tunica Co. without a warrant or court order, and continued illegal prolonged detention of Chatman until Chatman made statements incriminating petitioner in violation of Wong Sun v. U.S.

The fact that the state did not present any evidence that supported any of Chatman's versions of events, and the fact that Inv. Westly Sr. warrant affidavit failed to state that Chatman was the source of the information he relied on to support filing the affidavit in support of the arrest warrant, or that Chatman had gave two different versions of McKay's death in the same statement rendering his statement unreliable absent any corroborative evidence, and failed to provide any other indicia of probable cause, and the fact that Inv. Westly Sr. sent Anderson's SUV to the Mississippi Crime Lab in an attempt to substantiate Chatman's account shows that probable cause to arrest petitioner was lacking.

Gates v. Illinois,

Petitioner argues that his trial attorney failed to put the prosecution's case to a meaningful adversarial testing as a whole which rendered the adversarial testing process presumptively unreliable.

In *Wood v. Donald*, 135 S.Ct. 1372, 191 L.Ed.2d 464, 83 USLW 3758, 83 USLW 4227, 15 Cal. Daily Op. Serv. 3071, this court said, in *Cronic*, however, we held that courts may presume that a defendant has suffered unconstitutional prejudice if he "is denied counsel at a critical stage of his trial." 466 U.S., at 659, 104 S.Ct., at 2039. And in *Bell v. Cone*, 535 U.S. 685, 696, 122 S.Ct. 1843, 152 L.Ed.2d 914 (2002), we characterized

a "critical stage" as one that "held significant consequences for the accused."

Petitioner argues that had counsel to the trial court that facts demonstrating Chatman's illegal arrest and prolonged detention, and the facts demonstrating that the law required the court to suppress Chatman and Anderson's statements under Payton, Wong Sun, and Gates and Franks v. Delaware during the trial, the motion to suppress would have been granted. The trial indisputably held significant consequences for petitioner.

Petitioner argues that counsel's failure to bring to the court attention the facts and circumstances of this particular case, demonstrate that the law requires suppression of Chatman and Anderson's statements to deter the future police misconduct constitutes counsel entirely failed to put the prosecution's case to a meaningful adversarial testing and that the adversarial process was unreliable as petitioner was denied a fair trial and due process.

Petitioner respectfully request this court to hold his counsel ineffective under Cranic, and reverse his conviction and sentence and remand for a new trial.

3. Whether the Mississippi Court Of Appeals failed to afford petitioner a full and fair opportunity to litigate his Fourth Amendment claim on direct appeal in violation the Due Process Clause of the Fourteenth Amendment?

Petitioner argues that the Mississippi Court Of Appeals (hereinafter M.C.O.A.) denied him a full and fair opportunity to litigate his Fourth Amendment claims on direct appeal in violation of *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976). [appen A pg. 20].

Mississippi Rules Of Appellate Procedure 22 (b) Post-conviction issues raised on direct appeal states. Issues which may be raised in post-conviction proceedings may also be raised on direct appeal if such issues are based on facts fully apparent from the record. Where the appellant is represented by counsel who did not represent the appellant at trial, the failure to raise such issues on direct appeal shall constitute a waiver barring consideration of the issues in post-conviction proceedings.

Petitioner argues that the M.C.O.A. erred in it's opinion because petitioner's substantive right not to be unreasonably seized or seized without probable cause is a fundamental right guaranteed by the Fourth and Fourteenth Amendment. See *Gates v. Illinois*, *Wong Sun v. United States*.

In *Stone v. Powell*, this court said, "we hold, therefore, that where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution does not require that a state prisoner be granted federal habeas corpus

relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial.

Petitioner argues that the M.C.O.A. denied him due process, by denying meaningful appellate review of his Fourth Amendment claims.

Petitioner request this court to recognize "plain error" because the court of appeals deprived him of due process, and reverse and conviction and sentence and remand for a new trial.

STATE OF MISSISSIPPI
COUNTY OF GREEN

AFFIDAVIT OF Kelvin Taylor

I, affiant Kelvin Taylor #86830, first before me being duly sworn deposes as follows.

(1) That I have excersied all the diligence in my power to inform this Honorable Court of the extraordinary circumstances that prevented me from filing my pleadings before the Feb-13-2018 deadline.

(2) That I have written from the trial transcripts I possess the relevant portions in support of the issues I am raising because M.D.O.C. I.L.A.P. does not copy and or allow inmates to or make copies of any transcripts from a court reporter even though M.D.O.C. policy 20-02 states that M.D.O.C. will copy transcript up to three

Volumes.

(3) That I cannot comply with Rules of The Supreme Court of The United States 33 because M.D.O.C.'s I.L.A.P. does not provide a way to comply atleast not at S.M.C.I where I am housed.

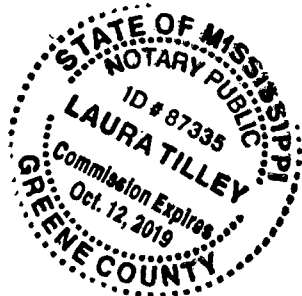
(4) That my trial counsel knew he was undermining my ability to assert my rights under the Fourth, Sixth and Fourteenth Amendment, by failing to motion to suppress Chatman and Anderson's statements prior to trial, and more importantly at trial.

(5) That counsel knowingly deprived me of my right to present a defense, by failing to subpoena all defendant's cell phone records, especially mine, which would factually prove my innocence or at the very least raise a substantial doubt in the minds of the jurors because my cell phone records would show that no one charged with the crime called me before, during, or after the crime. [see appen G].

(6) That counsel knowingly deprived me of my right to effective assistance of counsel by failing to present my alibi defense and interview, subpoena and present my alibi witness Johnecia Harris. [see appen T].

Kelewin Taylor
Affiant's Signature

SWORN TO AND SUBSCRIBED to before me this the 18 day of Apr 2018.



Laura Tilley
Notary Public

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kevin James Taylor

Date: _____