

NO: _____
IN THE UNITED STATES
SUPREME COURT

State of Minnesota,

Respondent,

vs.

Aaron Jude Schnagl,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

**THE UNITED STATES SUPREME
COURT**

Supreme Court Building
1 First St. NE
Washington, DC 20543

JANET REITER

Chisago County Attorney

NICHOLAS HYDUKOVICH

Special Asst. Chisago County Attorney
Washington County Attorney's Office
15015 – 62nd St. N. P.O. Box 6
Stillwater, MN 550802

AARON JUDE SCHNAGL

OID#240175
MCF- Lino Lakes
7525 4th Ave.
Lino Lakes, MN 55014

ATTORNEYS FOR RESPONDENT

PETITIONER *Pro Se*

QUESTIONS PRESENTED

1. Is Petitioner's murder conviction illegal and must be vacated because there was never an official cause or manner of death and the decedent's death was never ruled a homicide?
2. Does not disclosing exculpatory evidence to a grand jury violate *Brady v. Maryland* and the Petitioner's right to Due Process under the 6th and 14th Amendment?

PARTIES

The parties' and attorney's names appear in the caption on the cover of this petition.

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PRIOR OPINIONS AND ORDERS

December 13, 2013: Indictment filed in Chisago County District Court charging petitioner Aaron Jude Petitioner with third-degree murder, Minn. Stat. §609.195(b).

August 5, 2014: Contested omnibus hearing, Judge Todd R. Schoffelman presiding.

January 29 and May 15, 2015: Pretrial hearings, Judge Schoffelman presiding.

June 15, 2015: Trial continued for *Brady* violation issue.

August 13 and December 11, 2015: Pretrial hearings, Judge Schoffelman presiding.

January 5-February 5, 2016: Jury trial, Judge Schoffelman presiding; the jury convicted petitioner of third-degree murder and found he did not conceal the decedent's body.

March 31, 2016: Post-trial motions hearing, Judge Schoffelman presiding.

June 24, 2016: Sentencing hearing, Judge Schoffelman presiding; the Court sentenced petitioner to an executed prison term of 160 months.

September 21, 2016: Petitioner filed a notice of appeal with the Clerk of Appellate Courts.

December 18, 2017: Court of appeals filed a published decision affirming petitioner's conviction.

February 28, 2018: The Minnesota Supreme Court entered final judgment in Petitioner's petition for review.

JURISDICTION

The Minnesota Supreme Court denied Petitioner's Petition for review and render final judgment in this case on February 28th, 2018. This Court has proper jurisdiction in petitioner's case for which he seeks relief. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. Const. 5th, 6th, and 14th Amendments.

PETITION FOR CERTIORARI

This case offers this Court an ideal vehicle to resolve and answer several constitutional questions that were raised in this case with the Minnesota State Courts in relation to drug overdose deaths that has plagued this country and to allow this Court to uphold the landmark case of *Brady v. Maryland*.

STATEMENT OF THE CASE

INTRODUCTION

Petitioner's case garnered an enormous amount of publicity and was more of a witch-hunt than a legal criminal prosecution. Petitioner's case stems from December of 2012 and involves Petitioner, Aaron Jude Schnagl, a 27 year old business owner who was carrying on a secretive relationship with an energetic and attractive bank manager, Danielle Jelinek (DJ), the decedent in this case—who had a history of substance abuse, was dating several different men and suddenly vanished from Petitioner's house in the middle of the night for five months during one of the worst snowstorms Minnesota seen in 2012—after a night of partying and using cocaine with Petitioner. DJ's sudden disappearance and Petitioner's frantic actions the next morning due to his involvement with marijuana trafficking led authorities to start a state wide missing person investigation—that turned into a drug and murder investigation that involved multiple State and County agencies.

On December 9th, 2012, Petitioner was jailed on unrelated drug charges and later sent to prison in February of 2013. Five months later in May of 2013, DJ's body was

found, partially clothed floating in a pond 440 yards from Petitioner's house. Murder charges were not brought against Petitioner until six months later while petitioner was in prison on drug charges and after the State had gotten statements from multiple cell mates of the petitioner while he was in prison. This case involved multiple drug convictions, multiple attorneys and prosecutors over the course of its three year history.

In Petitioner's case, there was never an official cause or manner of death found in DJ's autopsy. Petitioner was indicted by a grand jury in December of 2013 and later convicted by a jury in Chisago County district court in the State of Minnesota on February 5th, 2016 in D.C. File No. 13-CR-13-1022 (*State of Minnesota v. Aaron Jude Schnagl*) for violation of Minn. Stat. 609.195(b) third degree unintentional murder for allegedly "giving away" cocaine that resulted in the death of DJ. That same jury acquitted Petitioner of moving DJ'S body. Petitioner was sentenced to 160 months in prison by Judge Todd Schoffelman which ran concurrent with all of his previous drug charges.

Petitioner appealed to the MN Court of Appeals, where the Court of Appeals affirmed his conviction on December 18, 2017 and subsequently Petitioner petitioned for review to the MN Supreme Court—where the Supreme Court ultimately denied his petition.

Petitioner now seeks this Writ of Certiorari to be answered by this Court and believes these answers will have a nationwide impact on the country's growing drug overdose epidemic and charging people with murder for their death and to answer if it is a *Brady* violation to withhold exculpatory evidence from a grand jury proceeding.

THE COCAINE DEAL

On December 8th, 2012, between 3 p.m. and 7 p.m. Elliott Tuccitto Bonngard (ET), Petitioner's business partner drove to South Minneapolis and met someone named "H" to purchase ten ounces of cocaine. ET told authorities he traded three pounds of marijuana for ten ounces of cocaine and drove it back to his home in Scandia, MN. ET also told authorities that he picked up the cocaine at the request of Petitioner. However earlier that day, ET had been in contact with one of his drug customer's, Charles Sorenson (Sorenson) and made arrangements to pick up the cocaine, cut it and then distribute it to Sorenson and a few other people for profit.

Also on December 8th, while out shopping and eating, DJ asked Petitioner if they could buy some cocaine for the night in order for them to have fun and party together. Petitioner called ET and told him that DJ and he were stopping by to pick up cocaine. ET asked Petitioner if he could stop by his house and grab some mixing supplies to finish cutting the cocaine because ET had recently moved into his lakefront home and his house was empty. Petitioner and DJ stopped by petitioner's house three-miles away from ET's house in Scandia, MN grabbed some supplies—so ET could finish cutting the cocaine.

While at ET's house, Petitioner and DJ drank a beer or two while ET began cutting the cocaine in a blender in his kitchen. Petitioner and DJ asked ET for some of the "uncut" cocaine for their own personal use. DJ and petitioner then jointly purchased between 5-7 grams of cocaine from ET for \$80 dollars—according to Petitioner's testimony at trial. DJ put the cocaine in her purse and they left while ET was still cutting and bagging the cocaine and on his phone making arrangements to meet people later.

Sometime that night, ET asked Sorensen come to his house where he gave him a total of 6 ounces of cocaine that were bagged up separately in two different qualities, one was cut, and the other "uncut." Sorensen later gave a critical 93 page statement to authorities about the events surrounding the cocaine sale and the night of DJ's disappearance on December 8th, 2012. In his statement Sorensen said specifically the cocaine was still in the freezer on a plate and that ET had to vacuum seal it for him before he left his house. Sorensen also told authorities that he had bought cocaine from ET in the past and knew he and his family were heavy in the drug game. ET would give a completely different account of events to investigators after he was granted immunity and told them he only sold cocaine this one time for Petitioner and placed the entire onus of obtaining the cocaine on the Petitioner and that he did this one time as a favor.

DJ'S DISAPPEARANCE

On December 8th, 2012, Petitioner and DJ were drinking and snorting cocaine at Petitioner's house in Chisago City, MN. DJ went missing in the middle of a whiteout snowstorm sometime between 9:30 p.m. and 3:30 a.m. while Petitioner was passed out. During the defense's investigation it was learned that DJ had also spent the week leading up to the night of December 8th partying, using drugs and drinking with her girlfriends in downtown Minneapolis at a Christmas party event before meeting up with petitioner. DJ had been a lifelong stimulant abuser and had failed treatment 3 times in the past, but her family claimed they did not know she was still using at the time. According to testimony at trial, DJ had also been displaying erratic behavior like; falling down in the street with

no shoes on and seemed severely depressed to her friends and fighting with other boyfriends the week of her disappearance.

That night Petitioner met DJ at his house in Chisago City to go Christmas shopping and eat in Maplewood, MN. After leaving Maplewood, they went to ET's, and purchased the cocaine and returned home. The last thing Petitioner remembered was performing oral sex on DJ in his bed upstairs after she had shaved in the tub and then going down stairs, where DJ chopped lines of cocaine and poured shots of vodka and whiskey for the both of them.

According to evidence at trial, starting at 2:38 a.m. on the morning of December 9th, Petitioner's house alarm went off a couple times. Petitioner at the time, was highly intoxicated, but told his alarm company that it was just his girlfriend messing around outside and cleared the alarms and passed back out for the remainder of the night. When Petitioner awoke the next morning sometime between 7:30 a.m. and 9:30 a.m. DJ wasn't in bed, so he sent a text to DJ's friend, Jordan Quickstad and Jess Schweitzer. DJ had left Petitioner's house several times in the middle of the night in their two and half year relationship. Petitioner searched his house and property, and noticed DJ had left her shoes, coat and cellphone at his house and was worried maybe DJ had wandered off all "messed up" according to what he told deputies. Petitioner also crashed his Chevy Tahoe in the neighbor's driveway while out looking for her. Petitioner also called and talked to his neighbors, and asked if they had seen DJ that morning or night.

After searching and calling and texting friends, Petitioner talked to DJ's family—who contacted law enforcement. Authorities went to Petitioner's house in Chisago City to

perform a welfare check on DJ. During that time Petitioner panicked because he knew law enforcement would be coming to his house to look for DJ. Petitioner was on probation for a drug charge in 2007, and was not supposed to be drinking or using controlled substances. So Petitioner contacted ET and texted his other business associate Josh Jeans (JJ) who owned Cutting Edge right next door to the business Petitioner and ET owned called, Good Guys Auto Group (Good Guys) in Forest Lake, MN. Petitioner asked JJ to remove a large quantity of marijuana being stored by ET in his garage in a BMW. Petitioner then drove to ET's house to try get into his house and figure out when the marijuana would be removed, but ET was out plowing from the snowstorm the night before and he got a car stuck in ET's driveway.

Meanwhile JJ arrived at Petitioner's house and realized Petitioner wasn't there and called his cellphone—Petitioner told JJ that DJ was missing and just go ahead and remove the duffel bag and the two boxes in the trunk of the BMW, but JJ only removed one duffel bag in the back seat. Justin Kennetz brought Petitioner back to his house so he could talk to authorities. When law enforcement arrived at Petitioner's house—he let in Deputy Helin and gave a two hour statement about the circumstances the night before and let him search the house. Another officer arrived, and questioned petitioner about the smell of marijuana in the house and that's when Petitioner asked law enforcement to leave his residence or get a search warrant. Ultimately petitioner went on his own to the Chisago County Sherriff's office to give a statement about DJ. Law enforcement began their investigation and got Judge Schoffelman to issue a search warrant for Petitioner's house—that turned up 12 pounds of high-grade marijuana in the trunk of a BMW.

The welfare check then turned into a drug investigation/potential homicide case and after searching for DJ for several days—law enforcement asked the public to help with any information in the case. A tip line was setup for people to call in with any information on the case.

On December 12, 2012, after petitioner's arrest for the marijuana found in the trunk of the BMW, Petitioner gave investigators another two hour interview in the presence of his attorney, Rachael Goldberger about his knowledge of the night in question, and the details of DJ and their history. During that interview Petitioner also agreed to a lie detector test—although one was never administered. The State also offered petitioner one year in jail in exchange for telling authorities where DJ's body was located and, "to end this for everyone." Petitioner told investigators he did not know where DJ went, and maintained throughout the investigation, he did not know what happened to DJ or where her body was located.

THE DRUG INVESTIGATION

As a result of the marijuana found in Petitioner's garage during the welfare check, he was charged with 5th degree drug possession and booked into Chisago County Jail. Authorities began to learn that Petitioner and DJ were involved in the drug scene, as well as Petitioner's business partners and most of their friends. It was learned Petitioner and DJ regularly used cocaine and other drugs together and would disappear for the weekend without telling anybody. After authorities learned Petitioner had been in contact with ET—they served a warrant at his house. ET admitted to investigators that he knew Petitioner and DJ had used cocaine together that night and that Petitioner and he were involved with

trafficking large amounts of marijuana from California. Subsequently, authorities served multiple search warrants and interviewed hundreds of witnesses in this case and followed all leads that got from the tip line they had set up with the Sherriff's office. From that tip line the lead investigator, Cliff Sheppeck (Sheppeck) developed a theory from an anonymous caller named "Shawna" that she had seen on Facebook that Petitioner had contacted a Gene Smetana (Smetana) in the middle of the night on December 8th, and told him DJ had overdosed and he needed to know what to do with her body. Investigator Sheppeck had interviewed Gene Smetana with Investigator Brandenburg about this story on Facebook, and found out it was not true. Investigators also learned Smetana hadn't talked to Petitioner since high school. During Petitioner's interview with investigators they still told him their "theory" about DJ overdosing and they thought he hid the body—even though they had dumped Smetana's cell phone and learned that there hadn't been any contact between the two and Smetana was released by authorities.

As a result of this interview, Petitioner went back to his cell in Chisago County Jail in a frantic state. After watching his case on the news Petitioner told his roommate, Donald Heilman III (Heilman) that investigators thought DJ overdosed and he hid her body somewhere. Heilman was a well-known jail snitch, and he later asked to talk to prison officials about Petitioner's case and began trying to cut deals. Heilman said Petitioner had confessed to him that DJ had overdosed and he hid her body in body of water, but he did not specify where at. Heilman had access to all the papers and media reporting on Petitioner's case.

After DJ's disappearance, authorities began interviewing people about the drug circle uncovered that involved petitioner, ET and JJ. In the first week of the investigation, ET was granted immunity by the State to give full disclosure after it was found out that he had not been initially truthful to investigators. ET told authorities he and Petitioner were involved in marijuana trafficking and had done so to supplement their business, Good Guys. ET also admitted he had picked up cocaine and sold it that night, but he had only do so at the petitioner's request and stated he had never sold cocaine—except this one time. Law enforcement searched ET's home and found baggies and drug notes in the garage and garbage can in his kitchen. Investigators also applied for a search warrant for both of ET's phones, but it later was claimed that they never collected his phones. ET admitted to the sale and distribution in relation to the cocaine involved in this case.

Investigators also searched Petitioner's business; Good Guys after it found out through the investigation that items were removed from the business. After Petitioner was jailed on drugs, ET contacted JJ to go break into the business and remove drugs, drug paraphernalia, scales and baggies. JJ then took the drugs and related items from the shop including marijuana, pills and possibly cocaine and went to Curt Bennett's house in Wyoming, MN where he stashed the duffel bag full of marijuana and put the additional items in the bag, wrapped it up, and put it in the snowbank. Law enforcement went JJ's shop on multiple occasions after it was learned that he had lied to authorities. JJ then admitted to selling cocaine and a search of his phone corroborated this evidence.

THE DUFFEL BAG

During the investigation, authorities learned from ET, that JJ went to Petitioner's house on the afternoon of December 9th and removed a duffel bag containing nine pound of marijuana and brought it to Curt Bennett's (CB) house in Wyoming, MN. The duffel bag was then later brought to CB's sister-in-law's house in Ham Lake—after JJ had added the additional items he recovered from Good Guys business.

On December 14, 2012 authorities recovered the duffel bag from under a bed in Ham Lake, MN, containing 9 pounds of marijuana, an additional paper bag containing; benocyclidine pills (*that were expected ecstasy pills*), additional bags of marijuana, two digital scales, 23 grams of cocaine, and a type of sugar used as a cutting agent. Petitioner told investigators there was only marijuana in the duffel bag when JJ came to his house to retrieve it and the additional items were added later by JJ.

JJ gave several different statements to law enforcement about the contents of the bag. Then in January of 2015 JJ contradicted his original statement to investigators about seeing cocaine in the bag. JJ originally stated that the cocaine was in the bag already, but later at trial, JJ testified that he did not see cocaine in the duffel bag, but the cocaine may have been the items grabbed from the shop, but, "he wasn't sure." The State also charged JJ and CB with aiding and abetting second degree drug possession. The State also amended Petitioner charges to aiding and abetting second degree possession of cocaine.

JELINEK'S BODY RECOVERED

On May 10th, 2013, after the snow melted from winter—law enforcement found DJ's body in pond 440 yards from Petitioner's house while flying over in a State Patrol

helicopter. Her body was recovered from Peterson slough and the area was canvased for evidence. The official autopsy report conducted by the State medical examiner, Dr. Ann Strobl listed DJ's cause or manner of death as ***unknown*** and ***undetermined***. (*emphasis added*). Dr. Strobl couldn't conclude if DJ died from hypothermia, exposure or cocaine toxicity. All of DJ's blood had evaporated from her body and Dr. Strobl had to test her spleen for drugs and alcohol—which is not highly regarded. It was found DJ had cocaine metabolites in her system, as well as antihistamine. DJ's BAC was still .139, even after five months. Dr. Strobl listed alcohol and cocaine as contributing factors, but could not determine how DJ died or rule her death a homicide. DJ's family had her body cremated and no blood or hair samples were preserved for the defense to do any further testing.

INDICTMENT AND TRIAL

In December of 2013, the Chisago County attorney's office presented Petitioner's case to a grand jury in Chisago County District Court seeking one count of third-degree murder, Minn. Stat. §609.195(b), based on the allegation that Petitioner "***proximately caused***" the death of DJ by "selling" or in this case "giving away" cocaine that led to her death and that he hid her body. (*emphasis added*).

Over four days of the grand jury, 18 witnesses testified about various drug trafficking incidents as well as domestic abuse incidents that were irrelevant and never even allowed to come in at trial. The State also elicited unreliable testimony from two of Petitioner's cell mates about alleged confessions he made to them about what happened to DJ the night of December 8th, 2012. The grand jury ultimately indicted petitioner on third degree murder in violation of Minn. Stat. §609.195 (b).

Petitioner moved the district Court to dismiss the indictment for eliciting domestic abuse testimony and admitting unreliable snitch testimony. Petitioner also moved the court for a change of venue due to the pre-trial publicity in Petitioner's case. Judge Suzanne Bollman denied all of Petitioner's motions to dismiss the indictment and the case was set for trial in June of 2015. Petitioner hired private trial attorney, Melvin Welch to take over the case and do a thorough investigation.

In June of 2015, before trial, the State disclosed a 93 page statement from a CI, Charles Sorenson (Sorenson) to the defense. Judge Todd Schoffelman postponed the trial for nearly six months for the potential *Brady* violation for the State's failure to turn over the 93-page statement, and both parties were ordered to brief the Court on what happened with the non-disclosure of the statement. Petitioner motioned the Courts again to dismiss the indictment for violating *Brady*, for failure to present the Sorenson statement to the grand jury. Judge Todd Schoffelman denied the dismissal of the indictment, but preserved the *Brady* issue for trial and set trial for December of 2015.

Trial started in January of 2016, at the opening of trial, the State introduced pictures and evidence that was never disclosed to the defense and also ruled by the District Court not to come in. The defense moved the Court for a mistrial and raised the *Brady* issues to the Courts, but the Court ultimately denied petitioner's requests and the trial continued.

At trial, DJ's friends testified they had witnessed DJ up all weekend with no sleep. Alicia Faulk told authorities DJ was also using drugs with friends at a downtown Minneapolis bar before meeting petitioner at his house, and Ms. Faulk was concerned

about DJ's condition a day before the December 8th incident. Other witnesses also testified DJ was having problems with her ex-boyfriends, Jay Thomas and Curtis Ford and witnessed fights over the phone with other men, and DJ was planning to meet other men in the next few days. Investigators also testified they learned DJ was using other substances all week and drank so much the week before, she fell down in the street with no shoes and hit her head really hard, according to Chantel Phillips. There was also testimony DJ had called her friend, Chantel Phillips and told her she was in a bad place in life and wasn't doing so well. Investigators additionally testified someone by the name of Garret Munson told them he had remembered picking DJ up at a gas station in the middle of a storm with no jacket on, near her sister's house in Oakdale where DJ lived—prior to the week of the December 8, 2012 incident.

Also at trial, ET testified under full immunity, and claimed he had acquired cocaine only at petitioner's request— because petitioner was busy with DJ. ET also testified to the grand jury he had never sold cocaine other than that night. ET also corroborated Petitioner and DJ came to his home that night, where he said Petitioner cut the 10 ounces of cocaine and took 5-7 grams for his and DJ's personal use that night. ET also admitted he distributed the remaining ten or so ounces of cocaine to various people he had been in contact with that day and later collected the money for that cocaine from Sorenson and other people.

Contrary to ET's testimony, Petitioner testified he and DJ jointly "purchased" about 5-7 grams of cocaine from ET and he had no knowledge of what happened to the remaining cocaine that night. The State claimed Petitioner "***sold***" the cocaine to DJ under

the broad statutory definition of “sale.” When it came time for Sorenson to testify for the defense at trial, Sorenson was advised by Judge Schoffelman of his 5th Amendment right to remain silent, and Sorenson then refused to testify. The District Court denied petitioner’s request for a jury instruction under *State v. Carither’s*, 490 N.W.2d 620 (Minn. 1992), that he could *not* be convicted of third-degree murder for “selling” cocaine to DJ that proximately caused her death if petitioner and DJ had jointly acquired the cocaine from ET. On February 5th, 2016, petitioner was convicted of third degree murder, Minn. Stat. §609.195(b) in Chisago County District Court for allegedly selling “giving away” cocaine resulting in the death of DJ. However the jury acquitted him of concealing DJ’s body. In June of 2016 petitioner was sentenced to a 160 months in prison by Judge Schoffelman.

THE APPEALS

Petitioner appealed and lost both cases tied to this investigation. After JJ’s statement came out in 2015, Petitioner began a post-conviction petition to withdraw his plea on the grounds his plea was no longer valid. See *State v. Schnagl*, 2017 Minn. App. Lexis 334, District Court File No. 13-CR-12-919 (*MN Appellate Court No. #A16-1998*). The post-conviction was postponed until after trial, because the facts of this case were deeply intertwined and related. District Court Judge John McBride later denied petitioner’s post-conviction relief after an evidentiary hearing. Petitioner also appealed and the district Court’s decision was affirmed by the Court of Appeals. Petitioner then petitioned for review to the Supreme Court and the appellate Court’s decision was affirmed. See *State v. Schnagl*, No. A16-1998, 2017.

On September 21st, 2016 Petitioner appealed his murder conviction to the MN Court of Appeals, arguing in his principal brief the evidence was insufficient to support the verdict and the District Court erred by refusing to instruct the jury on the joint acquisition defense. Petitioner also raised several additional arguments in his *pro se* supplemental brief. Including the double jeopardy protection granted under Minn. Stat. §609.035 and also raising the *Brady* violation for the State's failure to present the Sorenson statement to the grand jury, among other exculpatory evidence. The Court of appeals affirmed the conviction. *State v. Schnagl*, -- N.W.2d 2017 --, WL6418215 (Minn. App. 2018). Petitioner then petitioned the Supreme Court for further review and was denied. (*MN Appellate Court #A16-1509*). Final Judgment was entered in Petitioner's murder case on February 28, 2018. This petition for writ of certiorari is as follows.

ARGUMENT

Petitioner attempted at every stage to raise the claim the State violated the Equal Protection Clause of the 6th and 14th Amendment of the U.S. Const. and Petitioner's right to Due Process. The following arguments were raised by Petitioner to the State appellate Court in his principal brief and also petitioner's *pro se* supplemental brief.

I.

Petitioner was convicted of third-degree murder in this case despite the State's Medical Examiner not being able to determine a *cause or manner* of death in this case. (*emphasis added*). The manner and cause of death was ruled *unknown* and *undetermined*—

therefore DJ's death could not be categorized as a homicide. (*emphasis added*). The State's Medical Examiner, Dr. Strobl and Petitioner's Medical Examiner, Dr. Wigren couldn't state with a medical degree of certainty exactly how DJ died. All that either of them could say is that DJ had cocaine and alcohol in her system at her time of death and that it *could have* possibly contributed to DJ's death. (*emphasis added*). Both medical examiners also testified that DJ could have died from hypothermia, exposure or drowning in this case. This left the option available that due to DJ's behavior, she simply had enough of her complex life and decided to commit suicide and walk out into the snowstorm or an argument ensued and she left in a panicked state and lost her way.

Petitioner argues his murder conviction is illegal and the State must be able to prove DJ's death was a homicide—in order to sustain a murder conviction.

In this case, the State not only lacked the sufficient evidence to charge Petitioner of murder, it lacked an adequate cause or manner of death available even to legally state DJ's death could be ruled a homicide. At trial it was proven, D.J. was three times the legal limit of alcohol and from the testimony of her friends, DJ had been using cocaine and other drugs all weekend such as: Molly, Adderall and Xanax—prior to going to Petitioner's the night of December 8th. Petitioner argued sufficiency of evidence in his direct appeal and argued there was a rational hypothesis theory that DJ could have committed suicide, or died from other unknown circumstances. Her death was shrouded in mystery and the only thing the State had as evidence was testimony from two of Petitioner's cellmates saying he admitted DJ had overdosed and he hid her body. The jury found that theory not credible and acquitted Petitioner of moving DJ's body. Given the

absence of expert's ability to say what caused DJ's death, the Court of appeals' conclusion that Petitioner's alternative theories are unreasonable were without merit and lacked logical sense. The experts in this case agreed Petitioner's alternative theories were possible and the Court of Appeals failed to realize that the jury also acquitted petitioner of moving DJ's body, furthering the claim they did not believe the States theory—that D.J. overdosed and Petitioner hid her body. The Court of appeals' completely ignored the jury acquitting petitioner of that part of the case and never even addressed it in its analysis. There was never an official cause or manner of death in Petitioner's case and DJ's death was never even classified as a homicide—therefore Petitioner's murder conviction is illegal and must be vacated.

II.

Petitioner also argues the State failed to present exculpatory evidence negating his guilt to the grand jury and therefore violated *Brady* and Petitioner's right to Due Process.

The State knew that didn't have a cause or manner of death and the only evidence they possessed was the Petitioner was a convicted drug dealer and people were lining up the County attorney's office ready to make a deal for a time cut on their sentence. The State presented testimony from 18 witnesses about drug trafficking and alleged domestic abuse that was later ruled out by trial judge, Judge Schoffelman. ET was allowed to testify under full use immunity for the State and testified that he had never sold cocaine before and only did this one time because the Petitioner asked him too.

However, in June 2015, as trial was set to begin, the State disclosed the 93-page Sorenson statement to Petitioner on the eve of the trial. Judge Schoffelman suspended the

trial and both parties briefed the Court on the potential *Brady* Violation. Petitioner argued that the Sorenson statement would have had a great impact on the jury's decision to indict. In that statement, Sorenson contradicted ET's testimony about the cocaine being prepackaged and ready for sale and also contradicted ET's testimony that he had never sold cocaine before and he was only doing Petitioner a favor. Sorenson gave detailed dates and accounts about previous cocaine purchases from ET and said that he had even paid ET for the cocaine several weeks after the December 8th incident. The State's main witness on how and why the cocaine was procured and for what purpose was no longer credible due to this statement and completely contradicted his entire grand jury testimony. Petitioner raised this issue as a *Brady* violation and the State responded that the Sorenson statement was part of a separate drug investigation, even though all this stemmed from one course of conduct and the same batch of cocaine that allegedly caused DJ's death. The district Court ruled that the State did not violate *Brady* and the trial was delayed nearly six months.

The common idea is that that an accused has right to know all of the evidence to be used against him at trial. This comes from the decision made by this Court in *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1195, 10 L. Ed. 2d 215 (1963). Under *Brady v. Maryland*, prosecutors must disclose exculpatory evidence only when it is "material either to guilt or punishment. 373 U.S. 83, 87 (1963). In this case, the Sorenson statement was directly related to who was responsible for obtaining the cocaine that allegedly led to DJ's death. The prosecution has an affirmative duty to disclose evidence favorable to the defendant. *Kyles v. Whitley*, 514 U.S. 419, 432, 131 L. Ed. 2d 490, 115 S.

Ct. 1555 (1995) (citing *Brady v. Maryland*, 373 US 83 (1963)). In *Brady*, this Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith of the prosecution.” *Brady*, 373 U.S. at 87. This Court later determined that failure to request favorable evidence did not relieve the State of its obligation to disclose evidence favorable to the defendant. *United States v. Agurs*, 427 U.S. 97, 107, 49 L. Ed. 2d 342, 96 S. Ct. 2392 (1976). More recently, in *United States v. Bagley*, the Court applied a materiality standard for favorable evidence and held that “evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” 473 U.S. 667, 682, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985). An allegation of a *Brady* violation requires a demonstration that the undisclosed favorable evidence “could be reasonably taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Kyles*, 514 U.S. at 435. The prosecution did not disclose this statement to the grand jury and also kept it from the defense, until Friday, June 12, 2015 at 5:30 p.m. The eve of the weekend before trial was set to begin. The statement had no date or time and was unaccompanied by a police report. The State made its assertion that it was part of an “unrelated investigation” and that was the reason they didn’t disclose the statement. The statement only came about because investigators were looking into the disappearance of DJ and that it may have been involved with drug trafficking somehow. The nondisclosure put the defense at a complete disadvantage to make use and challenge this, and also the grand jury was not allowed to hear this key piece of evidence. The

State then allowed ET to tailor his testimony to their theory that ET had never sold cocaine and only did it this time because Petitioner had asked him as a favor, contrary to Sorenson detailing specifics deals with times and amounts of cocaine he had gotten from ET over a ten year span. The State made an immunized deal with the man that bought, sold and collected the money of the cocaine that was given to DJ that allegedly caused her death, and the State suppressed that statement because they knew it was detrimental to their case.

The State presented a false and fabricated version of the events that night by suppressing the Sorenson statement and created this confabulation of a theory put forth by witnesses that made whatever deals they could with the State and the State was desperate enough to buy it due to the publicity garnered in this case. The State also allowed ET to elicit perjured testimony to the grand jury and the State never corrected this error and the MN State Courts erred by not following precedent set by this Court in the landmark case of *Brady v. Maryland*.

CONCLUSION

The State was aware there was no cause or manner of death this case and therefore Petitioner's murder conviction is illegal because DJ's death was not ruled a homicide nor could the State establish the cocaine caused her death.

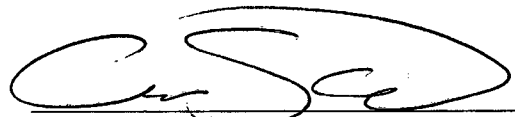
Furthermore, the State took this case to a grand jury, used unreliable jailhouse snitch testimony and suppressed exculpatory evidence because the State lacked the legal

mustard to charge Petitioner by criminal complaint and needed the case to fit their theory they concocted with unreliable witnesses.

In addition, the State wobbled this case to trial by hiding exculpatory evidence—the Sorenson statement basically debunked the State's theory and contradicted ET's entire immunized testimony. Suppression by prosecution of evidence favorable to an accused upon request violates Due Process where evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of prosecution. See U.S. Const. 14th Amendment.

Therefore this Court should grant Petitioner's writ of certiorari and answers Petitioner's question in the interest of justice and for the impact this case would have on Brady violations during grand jury proceedings and if a murder conviction is legal without an official cause or manner of death.

Respectfully submitted this 24th day of May, 2018.

A handwritten signature in black ink, appearing to read 'A. Schnagl', is written over a horizontal line.

Aaron J. Schnagl #240175, *petitioner*
MCF- Lino Lakes
7525 4th Ave.
Lino Lakes, MN 55014