

No.

25-5919

ORIGINAL

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Kevin Griffin, Petitioner,

v.

N.Y.S. Department of Corrections, Respondent(s).

On Petition For A Writ Of Certiorari To The
New York State Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Kevin Griffin, 04A6249
P.O. Box 1000
Woodbourne, NY 12788-1000

QUESTIONS PRESENTED

1. Did the State Courts error by denying Petitioner's Fourteenth Amendment's Due process rights by the State's knowing use of false testimony and the suppression of Brady material (the video)?
2. Did the State Courts error by denying Petitioner of his Fourth and Fourteenth Amendment Rights due to the search warrants failure to state any offense and the failure to unequivocally incorporate any supporting documents?
3. Was Petitioner erroneously charged with Criminal Possession of a Weapon as a police officer in violation of Penal Law 265.20 (a)(1)(b)?

LIST OF PARTIES

The caption of this case contains the names of the parties to the proceedings in the Courts below and in this Court.

The Petitioner is Kevin Griffin.

The Respondents are The People of the State of New York.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgement below.

OPINIONS BELOW

On August 3, 2024 petitioner filed a Motion Seeking Leave to Appeal in the New York State Court of Appeals which was denied on October 22, 2024 at 42 NY3d 1020 (2024) (Ex.-1). On November 18, 2024 a timely Motion for Reconsideration was filed which was denied on April 14, 2025 at 43 NY3d 963 (2025) (Ex.-2). On April 24, 2025 petitioner filed a Motion for Enbanc Review which was denied on April 28, 2025, unreported (Ex.-3).

JURISDICTION

The judgement of the New York State Court of Appeals Notice of Entry was entered on October 31, 2024; reconsideration motion was entered on April 28, 2025; enbanc motion was not entered. The jurisdiction of this Court rests in 28 U.S.C.A. 1257(a) and Rule 10(c).

PROCEDURAL HISTORY

On July 14, 2021 petitioner filed a C.P.L. 440.10 Motion in the Orange County Supreme Court which was denied on March 1, 2024 (Ex.-4).

On April 24, 2023 petitioner filed a Coram Nobis petition in the New York State Appellate Division - Second Department which was is still pending.

On March 28, 2024 petitioner filed a C.P.L. 440.10 appeal in the Appellate Division - Second Department which was denied on June 28, 2024 (Ex.-5).

On August 3, 2024 petitioner filed a Motion Seeking Leave to Appeal in the Court of Appeals which was denied on October 22, 2024 (Ex.-1).

On November 18, 2024 petitioner filed a reconsideration motion in the

Court of Appeals which was denied on April 14, 2025 (Ex.-2).

On April 24, 2025 petitioner filed a Motion for En Banc Review which was denied on April 28, 2025 (Ex.-3).

The jurisdiction of this Court is invoked under 28 U.S.C.A. 1257(a) and Rule 10(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI cl.2 states: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof: and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Fourteenth Amendment states: ... nor shall any State deprive any person of life, liberty, or property, without Due Process of Law; nor deny to any person within its jurisdiction the equal protection of the laws.

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,

Sixth Amendment states: In all criminal prosecutions, the accused shall enjoy the right to ... and to have the Assistance of Counsel for his defense.

N.Y.S. Constitution Article 1§11 states: No person shall be denied the equal protection of the laws of this State or any subdivision thereof.

N.Y.S. Constitution Article 1§6 states: ... In any trial in any Court whatever the party accused shall be allowed to appear and defend in person and with counsel ... No person shall be deprived of life, liberty, or property without Due Process of Law.

N.Y.S. Constitution Article 13§1 states: ... "I do solemnly swear)or affirm) that I will support the Constitution of the United States, and the

Constitution of the State of New York, and that I will faithfully discharge the duties of the office of ***** according to the best of my ability."

N.Y.S. Penal Law 265.01(2) states: a person is guilty of criminal possession of a weapon in the fourth degree when: (2) He or she possesses any ... deadly instrument or weapon with intent to use the same unlawfully against another;

N.Y.S. Penal Law 265.20(a)(1)(b) states: Exemptions:

- a. Sections 265.01, 265.02, 265.03, 265.04, 265.05, 265.10, 265.11, 265.12, 265.13, 265.15, and 270.05 shall not apply to:
 1. Possession of any of the weapons, instruments, appliances or substances specified in sections 265.01, 265.02, 265.03, 265.04, 265.05, and 270.05 by the following:
- (b) Police Officers as described in subdivision thirty-four of section 1,20 of the Criminal Procedure Law.

STATEMENT OF THE CASE

Petitioner was indicted on or about April 22, 2004 for the fatal shooting of Mr. Timothy Ruiz and charged with Murder in the second degree; Manslaughter in the first degree; Criminal Use of a Firearm in the first degree; Manslaughter in the second degree; Reckless Endangerment in the first degree; Criminal Possession of a Weapon in the fourth degree; Stalking in the fourth degree; and Harassment in the fourth degree. Petitioner was found guilty of Murder in the second degree; Criminal Possession of a Weapon in the fourth degree; and Stalking in the fourth degree. Petitioner was sentenced on November 22, 2004 to an indeterminate term of 25 years to life.

Petitioner fairly presented the Constitutional claims to the State Courts in order to give the State the opportunity to correct mthe State and Federal Constitutional violations. Duncan v. Henry, 513 U.S. 364. 365 (1995); Baldwin v. Reese, 541 U.S. 27 (2004); Picard v. O'Connor, 404 U.S. 270 (1971); O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999).

REASONS FOR GRANTING

This Honorable Court has the opportunity to grant this petition for the following reasons. The State Courts have decided important federal questions which were contrary to the U.S. Constitution's Fourth and Fourteenth Amendments and relevant Supreme Court decisions. The issues addressed are newly discovered Brady material (a video reviewed by County Court Judge Kim) and the search warrants which failed to state any crime in relation to the items sought to be seized and failed to incorporate any supporting documents pursuant to Groh v. Ramirez, 540 U.S. 551 (2004).

SUMMARY OF ARGUMENT

Petitioner has exhausted these issues to the Highest State Court. The State Courts should have the first opportunity to address and correct violations of petitioner's federal rights, which they failed to do. Coleman v. Thompson, 501 U.S. 722, 731 (1991). Petitioner gave the State Courts numerous opportunities to correct the federal constitutional errors which the State Courts failed to do.

Petitioner was denied his equal protection of the laws pursuant to the Due Process Clause of the Fourteenth Amendment and the N.Y.S. Constitution Article 1§11.

The U.S. Constitution is the Law of the Land as is the U.S. Supreme Court Decisions, which ought to be adhered to by all Courts, which the State Courts failed to do. The Constitution and Supreme Court Decisions are binding upon State Courts.

Petitioner's Fourteenth Amendment was violated when petitioner was denied a fair trial due to the newly discovered Brady material (video recording of petitioner's interrogation). Judge Kim's review of the video in her decision is the first time petitioner received confirmation that a video of the interrogation actually exists after repeated denials by the People's

key witness Inv. Kevin McGrath.

Petitioner's Due Process Rights were violated when the People and the Courts refused to follow the Constitution's Fourth and Fourteenth Amendments, as the search warrants in petitioner's case failed to 'state any crime in relation to the items sought to be seized and failed to unequivocally incorporate any supporting documents'.

The People stated that appellate counsel should have raised these issues on direct appeal. In the People's Coram Nobis opposition, the People stated these issues were unpreserved for appeal, which goes back to trial counsel's ineffectiveness and denial of a fair trial.

Had the jury seen the suppressed video of petitioner's interrogation and had the search warrants been suppressed or not issued in the first instance, there is a reasonable probability that the outcome of petitioner's trial would have been different.

It is petitioner's belief that the U.S. Constitution should supersede any procedural errors that may have occurred as a result of petitioner's pro-se filings.

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Petitioner's Fourteenth Amendment was violated when petitioner was denied a fair trial due to the newly discovered Brady material (video recording of petitioner's interrogation). Judge Kim's review of the video in her decision is the first time petitioner received confirmation that a video of the interrogation actually exists after repeated denials by the People's key witness Inv. Kevin McGrath.

Petitioner's Due Process Rights were violated when the People and the Courts refused to follow the Constitution's Fourth and Fourteenth Amendments, as the search warrants in petitioner's case failed to 'state any crime in relation to the items sought to be seized and failed to unequivocally incorporate any supporting documents'.

The People stated that appellate counsel should have raised these issues on direct appeal. In the People's coram nobis opposition, the People

stated these issues were unpreserved for appeal, which goes back to trial counsel's ineffectiveness and denial of a fair trial.

Had the jury seen the suppressed video of petitioner's interrogation and had the search warrants been suppressed or not issued in the first instance, there is a reasonable probability that the outcome of petitioner's trial would have been different.

It is petitioner's belief that the U.S. Constitution should supersede any procedural errors that may have occurred as a result of petitioner's pro-se filing.

ARGUMENT

POINT ONE

PETITIONER'S FOURTEENTH AMENDMENT'S DUE PROCESS RIGHTS WERE VIOLATED PURSUANT TO NAPUE AND BRADY.

A. The State's Knowing Presentation of False Testimony Violated Napue and the Fourteenth Amendment.

In Napue v. Illinois, 360 U.S. 264 (1959), this Court recognized as "implicit in any concept of ordered liberty" that the State "may not knowingly use false evidence, including false testimony, to obtain a tainted conviction." id. @269. Under the Due Process Clause, a prosecution has "the responsibility and duty to correct what he knows to be false," and a denial of due process occurs when the State allows false testimony to "go uncorrected." id. @269-270. A conviction obtained through the knowing use of false testimony "must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's verdict." U.S. v. Bagley, 473 U.S. 667, 670 (1985); Giglio v. U.S., 405 U.S. 150, 154 (1972); U.S. Const. Amend. XIV.

More than 50 years ago the Supreme Court held that the Fourteenth Amendment cannot tolerate a State criminal conviction obtained by the knowing use of false testimony. Miller v. Pate, 386 U.S. 1 (1967).

Petitioner's Due Process Rights are violated whenever the prosecution's case includes false evidence which is material to the outcome, and which the prosecution either knew or should have known was false. Mooney v. Holohan, 294 U.S. 103 (1935); Napue v. Illinois, supra; Giglio v. U.S., supra.

The prosecution knowingly failed to correct the perjured testimony of Inv. Kevin McGrath who lied under oath during trial before the jury regarding any video recording of petitioner's interrogation. N.Y.S. Const. Art.13§1; Miller v. Pate, supra; Glossip v. Oklahoma, 604 U.S. ____ (2025), 154 S.Ct.

612 (2025); People v. Schwartz, 240 AD2d 600 (2d Dept. 1997).

The following trial transcripts show the Inv. McGrath knowingly and intentionally lied during trial.

McGrath's Perjured Testimony

TT-1022

@ 9-10 Q: You have the ability to videotape something, correct, sir?

@ 11-12 A: The State police, I assume, has video equipment that could be used for that purpose, yes.

@ 13-14 Q: And you also have tape recorders available to you, correct, sir?

@ 15 A: Yes.

TT-1033

@ 17-18 Q: Did you tape record at all the waiver of the rights?

@ 19 A: No.

@ 20 Q: Videotape it?

@ 21 A: No.

TT-1045

@ 11-13 Q: If in fact the matter was being recorded or videotaped. And if he did ask for a lawyer, questioning would have to cease at that moment, is that correct, sir?

@ 14-15 A: As it would, whether it was being recorded or not, that's correct.

TT-1046

@ 6-11 Q: And again there is no, other than your testimony, Inv. DeWitt's testimony and Mr. Griffin's testimony, there is no recording of what was put down on paper by Inv. DeWitt, there is no recording of how that statement was formulated, correct, sir, no tape recording or videotaping of that event either correct?

@ 12-13 A: No recording of it, as far as audio tape or videotape, that's correct.

The trial court's March 1, 2024 decision by Judge Kim on page 7 (Ex.-4) stated "defendant confessed to the crime in writing and on video." Judge Kim's decision is newly discovered evidence supporting the false testimony of

Inv. McGrath, as Judge Kim reviewed the video in order to make said statement. Judge Kim's decision is the first time petitioner has received actual confirmation that a video exists and that petitioner was blatantly denied a fair trial and Brady material due to McGrath's false testimony.

The prosecution should have exposed the lie of the witness and failure to do so constituted error so fundamental and substantial that the verdict of guilty would not be permitted to stand, even if proof of petitioner's guilt may have been convincing. Miller v. Pate, supra; Glossip v. Oklahoma, supra.

The suppressed video would have shown that petitioner requested counsel at the beginning of the interrogation. The police falsely testified that petitioner didn't ask for counsel until after the questioning. Had the video not been suppressed, petitioner's statements would have been suppressed and the outcome of the trial would have been different. Williams v. Taylor, 529 U.S. 362 (2000); U.S. v. Thompson, 981 F.Supp.2d 229 (SDNY 2013).

The record in this case clearly leaves no doubt that petitioner has established "actual prejudice as a result of the Napue violation." Coleman v. Thompson, supra.

This Court has long distinguished between falsity and intent to lie. Bose Corp. v. Consumer's Union of U.S., Inc., 466 U.S. 485, 511 (1984) ("significance between proof of actual malice and mere proof of falsity"). Napue concerns the "corruption of the truth-seeking function of the trial process," not the shortcomings with any given witness. U.S. v. Agurs, 427 U.S. 97, 104 (1976).

The record itself shows the prosecution's use of false testimony and the withholding of evidence favorable to petitioner.

B. The State's Suppression of Evidence Concerning the Video Violated Brady.

In Brady v. Maryland, 373 U.S. 83 (1963), the Court held that the government violates the Constitution's Due process Clause "if it withheld evidence that is favorable to the defense and material to the defendant's guilt or punishment." Smith v. Cain, 565 U.S. 73, 75 (2012); Turner v. U.S., 582 U.S. 131 (2017); U.S. Const. Amend. XIV; N.Y.S. Const. Art. 1§11.

Evidence is 'material' within the meaning of Brady when there is a reasonable probability that, had the evidence (video) been disclosed would have changed the outcome of the proceeding. Cone v. Bell, 556 U.S. 449 (2009); U.S. v. Bagley, 473 U.S. 667, 678 (1985) (A 'reasonable probability' of a different result is one in which the outcome of the trial undermines confidence in the trial). Kyles v. Whitley, 514 U.S. 419, 439 (1995); Turner v. U.S., 582 U.S. 131 (2017); U.S. Const. Amend. XIV; N.Y.S. Const. Art. 1§11.

The State Courts ignored the prosecution's failure to disclose Brady material (video) which was specifically requested by counsel, requires reversal if there is a reasonable probability that, had that material been disclosed, the result would have been different.

Trial counsel was never provided with, as requested, any recordings pursuant to discovery material in the May 26, 2004 Omnibus Motion and the Affirmation of Paul Trachte (trial counsel) dated May 26, 2004 as follows:

TT-17

G. For an Order for disclosure pursuant to Brady v. Maryland.

TT-27

21.d) Any written, recorded or oral statement of the defendant;

21.i) anything required to be disclosed prior to trial to the defendant by the prosecutor....

TT-30

G. As to defendant's motion for discovery of Brady Material.

In Brady, the 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 punishment, irrespective of the good or bad faith of the prosecution." 373 U.S. 83, 87 (1963); Weary v. Cain, 577 U.S. 385 (2016). The withheld evidence was not inadvertent, as McGrath had ample opportunity to produce the videotape(s).

The government has a duty to disclose all material evidence to a criminal defendant, which extends to corrections, mistakes or falsehoods by witnesses whose testimony is incorrect. Brady v. Maryland, supra; Youngblood v. West Virginia, 547 U.S. 867, 869 (2006); U.S. v. Meregildo, 920 F.Supp.2d 434 (SDNY 2013); Giglio v. U.S., supra. When the government violates this duty and obtains a conviction, it deprives petitioner of his liberty without Due Process of Law. U.S. v. Rivas, 377 F.3d 195, 199 (2d Cir. 2004); U.S. v. Triumph Capitol Group, Inc., 544 F.3d 149 (2d Cir. 2008); U.S. Const. Amend. XIV; N.Y.S. Const. Art. 1§11.

Evidence that is not disclosed is suppressed for Brady purposes even when it is "known only to police investigators and not the prosecution." Kyles v. Whitley, supra; Strickler v. Greene, 527 U.S. 263, 281-282 (1999).

The Brady material (video) would have shown that petitioner requested counsel at the beginning of the questioning. The police falsely stated that petitioner didn't ask for counsel until after the questioning. Had the video been shown, the judge would have suppressed petitioner's statements and the jury would have had a different verdict.

Petitioner has established the prejudice necessary to satisfy the materiality inquiry in Strickler v. Greene, supra, a new trial should be warranted.

The State Courts adjudication of the claim resulted in a decision that

was/is contrary to and involved an unreasonable application of clearly established Federal Law, as determined by the Supreme Court. Cone v. Bell, supra; U.S. Const. Amend. XIV; N.Y.S. Const. Art. 1§11.

This Honorable Court now has the opportunity to correct the injustice and grant petitioner a new trial.

POINT TWO

PETITIONER'S FOURTH AND FOURTEENTH AMENDMENTS WERE VIOLATED AS THE SEARCH WARRANTS WERE PLAINLY DEFICIENT UNDER LONG-ESTABLISHED LAW: NO REASONABLE OFFICER WOULD HAVE RELIED ON THE WARRANTS.

A. The State Courts Erred By Not Following The U.S. Constitution, Supreme Court And State Court Decisions.

The New York State Court of Appeals held it to be the duty of every Judge and every Court to examine its own decisions, and the decisions of other courts without fear, and to revise them without reluctance. Baker v. Lorillard, 4 NY 257, 261 (1850).

If a state collateral proceeding is open to a claim controlled by Federal Law, the state court "has a duty to grant the relief that Federal Law requires." Yates v. Aiken, 484 U.S. 211, 218 (1988). States may not disregard a controlling constitutional command in their own courts. Martin v. Hunter Lessee, 14 U.S. 304 (1816).

Orange County Judge DeRosa erred by issuing the search warrants which failed to conform to the requirements of the Fourth Amendment.

Orange County Judge Kim's decision (Ex.-4) was in error as she ignored the specific factual constitutional issues presented. Judge Kim did not address the Constitutional violations.

Judge Kim erroneously stated that trial counsel raised the search warrant issues. Trial counsel raised the 'lack of probable cause' and the statements at the Huntley Hearing. Trial Judge Rosenwasser erroneously stated that the search warrants were "issued upon an application which set forth facts which establish probable cause" Appellate counsel raised the lack of probable cause (Ex.-6). Neither counsel raised the issues at bar. The warrants failed to state any crime or unequivocally incorporate any supporting documents, such as the application, therefore the warrants were not issued based upon probable cause as stated by Judge Rosenwasser, in violation of the Fourth Amendment.

The Court of Appeals and the Appellate division - Second Department erred in agreeing with Judge Kim's decision.

The State Courts decisions were contrary to clearly established Federal Law and Supreme Court decisions in violation of the Due Process Clause of the Fourteenth and Fourth Amendments. U.S. Const. Amends. IV & XIV; Art. VI cl.2.

B. Petitioner's Due Process Rights Were Violated As The Search Warrants Failed To State Any Crime Pursuant To The Fourth Amendment.

Petitioner was denied his Due Process Rights to the Equal Protection of the Laws. U.S. Const. Amends. IV & XIV; N.Y.S. Const. Art. 1§11.

The New York State Court of Appeals stated: All Courts are, of course, bound by the United States Supreme Court's interpretation of Federal Statutes and the Federal Constitution. People v. Kin Kan, 78 NY2d 54 (1991); Flanagan v. Prudential-Bache, Securities, Inc., 67 NY2d 500, 506 (1986).

Petitioner's Equal Protection Rights were violated as the Second Circuit held that, a warrant must "identify the specific offense for which the police have established probable cause." U.S. v. Galpin, 720 F3d 436, 445 (2d Cir. 2013); U.S. v. Bianco, 998 F2d 1112, 1116 (2d Cir. 1993); 650 Fifth Ave., 830 F3d 66, 99 (2d Cir. 2016) ("... a warrant ... must identify the alleged crime for which evidence is sought."||; U.S. v. George, 975 F2d 72, 75-76 (2d Cir. 1992) ("[n]othing on the face of the warrants tells the searching officer(s) for what crimes the search is being undertaken"); see also, U.S. v. Purcell, 967 F3d 159, 178 (2d Cir. 2020). A warant is facially unconstitutional if it fails to comply with any of the Fourth Amendment requirements. U.S. v. Purcell, supra; Groh v. Ramirez, 540 U.S. 551 (2004); Stanford v. Texas, 379 U.S. 476 (1965). Davis v. U.S., 564 U.S. 229 (2011), bars the prosecution from introducing evidence obtained by way of a Fourth Amendment violation.

Given that the particularity requirement is set forth in the text of

the Constitution, no reasonable officer could believe that a warrant that plainly did not comply with the requirement was valid. Groh v. Ramirez, supra; Harlow v. Fitzpatrick, 457 U.S. 800, 818-819 (1982) (... a reasonably competent public official should know the law governing his conduct).

"The uniformly applied rule is that a search conducted pursuant to a warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional." Massachusetts v. Sheppard, 468 U.S. 981 (1984); Groh v. Ramirez, supra.

The Fourteenth Amendment is source of Supreme Court's power to decide whether petitioner in State proceeding received a fair trial, that is whether his deprivation of liberty was without Due Process of Law. Danforth v. Minnesota, 552 U.S. 264, 278 (2008).

The Supreme Court held that State prisoners are entitled to the benefits of any Supreme Court decision that came down before their conviction became final. Danforth v. Minnesota, supra.

The Honorable DeRosa erred in issuing the search warrants (Ex.-7) as presented to him without any crimes listed pursuant to the Fourth Amendment. Trial Judge Rosenwasser, ADA Brown and trial counsel should have known that the search warrants failed to meet the requirements of the Fourth Amendment, which denied petitioner of his Due Process Rights pursuant to the Fourteenth Amendment. U.S. Const. Amends. IV & XIV; N.Y.S. Const. Art. 1§11; Strickland v. Washington, 466 U.S. 668 (1984).

Judge Karas has noted (one of) two factors that, above others tend to define a warrant's unconstitutionality. U.S. v. Vilar, 2007 WL1075041 @22 (SDNY 2007), as follows:

First, warrants are generally found to be insufficiently particular where nothing on the face of the warrant tells the searching officers for what crime the search is being undertaken

Failure to reference the suspected crimes would alone be enough to

render the warrants unconstitutional. U.S. v. Wey, 256 F.Supp.3d 355 (SDNY 2017); 650 Fifth Ave., supra.

There was no reasonable strategic reason for trial counsel not to raise the fact that the search warrants (Ex.-7) failed to meet the requirements of the Fourth Amendment. Counsel should have been familiar with the Constitution. U.S. Const. Amends. VI & XIV; N.Y.S. Const. Arts. 1§§6&11; Strickland v. Washington, supra.

Contrary to Judge Kim's decision on page 6 (Ex.-4), trial counsel moved to suppress petitioner's statements and the search warrants due to the 'lack of probable cause'. Which has nothing to do with the failure to state any crime in violation of the Due Process Clause of the Fourth and Fourteenth Amendments.

Trial counsel's representation fell below an objective standard of reasonableness and the lack of familiarity regarding the Fourth Amendment's requirements which seriously prejudice petitioner of a fair trial. Had trial counsel preserved/raised this issue, there is a reasonable probability that the search warrants would have been suppressed and as fruits of the warrants were petitioner's statements which were strongly used against petitioner. Strickland v. Washington, supra; Williams v. Taylor, 529 U.S. 362 (2000); U.S. Const. Amends VI & XIV.

Petitioner's statements were the result of the weapon being seized. There was no crime in relation to the weapon listed in the warrants. The weapon was unconstitutionally seized, and the warrants failed to describe the weapon. In the warrants application #4 (Ex.-8), Inv. Golding stated the weapon was a .22 caliber Marlin rifle, but in the warrants Golding stated "Any." Without the weapon or statements (as fruits of the discovery of the weapon) there is a reasonable probability that the outcome of the trial would have been different.

The State Court of Appeal's decision was in error as the Appellate Courts reversed decisions regarding the same issues and cases cited by petitioner. People v. Melamed, 178 AD3d 1079, 1080 (2d Dept. 2019); People v. Williams, 187 AD3d 1222 (2d Dept. 2020); People v. Wiggins, 229 AD3d 1095 (4th Dept. 2024); People v. Saeli, 219 AD3d 1122 (4th Dept. 2023); People v. Gordon, 36 NY3d 420 (2021). The Court of Appeals failed to follow its own decision, " It is the duty of every Judge and every court to examine its own decisions, and the decisions of other courts without fear, and to revise them without reluctance." Baker v. Loillard, supra; Garcia v. Herbert, 2018 WL6272778 (EDNY 2018).

Petitioner has established that he was denied the Due Process of Law, as the search warrants failed to comply with the Fourth Amendment's particularity requirement by failing to state any crime/offense in relation to the items sought to be seized.

Petitioner was denied his Due Process Rights pursuant to the Fourteenth Amendment as the People and Courts failed to uphold their Oaths of Office by not upholding the U.S. Constitution which denied petitioner of his equal protection of the laws.

Petitioner prays this Honorable Court suppresses the warrants and statements as well as the warrant application used to obtain the unconstitutional warrants.

C. The Search Warrants Plainly Failed to Unequivocally Incorporate Any Supporting Documents Denying Petitioner of His Fourth And Fourteenth Amendment's Due Process Rights to the Equal protection of the Laws.

The Supreme Court stated that state prisoners are entitled to the benefit of any Supreme Court decision that came down before their conviction became final. Danforth v. Minnesota, supra.

Groh v. Ramirez, 540 U.S. 511 (Feb. 24, 2004) was decided just prior to petitioner's case (warrants issued on 4/8/04) in violation of the Fourth Amendment. All state courts, ... are bound by the determinations of the

Supreme Court U.S. v. American Radiator and Standard Sanitary Corp.,
supra.; Miller v. Boles, supra.

Had the Groh decision been applied to petitioner's case, the search warrants (Ex.-7), the application (Ex.-8) and petitioner's statements would have been suppressed and the outcome of the case would have been different.

The search warrants failed to incorporate any supporting documents Groh, supra. Since the warrants did not incorporate any supporting documents, the warrants were issued without probable cause. Judge DeRosa issued the warrants without any supporting facts or probable cause, denying petitioner of his Due Process Rights to the Equal Protection of the Laws and a fair trial.

Trial Judge Rosenwasser erroneously and prejudicially stated the warrants were issued upon an application supported by probable cause. The warrants were not issued upon probable cause since the warrants failed to include any such application in the warrants.

The Groh Court held that given the requirement is set forth in the text of the Constitution, no reasonable officer could believe that a warrant that plainly did not comply with the requirement was valid. 540 U.S. 551 (2004).

Any specificity in the application for a warrant does not cure failed deficiencies in the warrants. The warrants must contain 'deliberate and unequivocal language of incorporation.' U.S. v. Wey, 256 F.Supp.3d 355 (SDNY 2017). The Amended warrant was issued without any application to amend the original warrant.

Article 690 of the N.Y.S. Criminal Procedure Law provides that warrants and warrant applications are distinct operative documents with differing requisites and consequences. The Fourth Amendment by its terms requires particularity in the warrants not the supporting documents. Groh, supra; Massachusetts v. Sheppard, supra; U.S. Const. Amends IV & XIV.

D. **Petitioner Was denied His Due Process Rights to the Effective Assistance of counsel in Violation of the Sixth And Fourteenth Amendment.**

In Williams v. Taylor, supra, the Supreme Court held trial counsel's failure to investigate potentially helpful evidence (search warrants) constitutes ineffective assistance under Strickland v. Washington, supra.

Where trial counsel's failure to litigate a Fourth Amendment claim competently is the principle allegation of ineffectiveness and there is a reasonable probability that the outcome would have been different. Kimmelman v. Morrison, 477 U.S. 365, 375 (1986).

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigation unnecessary." Kimmelman v. Morrison, supra. Constitutional violations are not unnecessary. U.S. Const. Amends. VI & XIV; N.Y.S. Const. Art. 1§§6&11.

Trial counsel failed to effectively review the search warrants leaving petitioner with illegally seized evidence and statements used against him. Trial counsel's performance was afr from "objectively reasonable" and it undeniably prejudiced petitioner. Wiggins v. Smith, 539 U.S. 510 (2003).

"Cousel's failure to uncover and present mitigating evidence, cannot be justified as a tactical decision." Andrus v. Texas, 590 U.S. 806, 816 (2020); Wiggins v. Smith, supra.

POINT THREE

Petitioner was Unconstitutionally Charged With Criminal Possession of a Weapon in the Fourth Degree in Violation of the Fourteenth Amendment's Due Process Clause, Equal Protection of the Laws Pursuant to; U.S. Const. Amend. XIV; N.Y.S. Const. Art. 1§11; N.Y.S. Penal Law 265.20 (a)(1)(b).

This issue has been exhausted in the State Courts with due diligence as soon as petitioner became aware of this violation. Petitioner's equal protection rights were violated when the People knowingly and prejudicially charged petitioner with criminal possession of a weapon in the fourth degree (PL 265.01) in violation of Penal Law 265.20(a)(1)(b) as petitioner (a police officer) was exempt from said charges. Yick Wo v. Hopkins, 118 U.S. 356, 373-74 (1886); U.S. Const. Amend. XIV; N.Y.S. Const. Art. 1§11.

Pursuant to N.Y.S. Penal Law 265.20 (a)(1)(b), Criminal Possession of a Weapon in the Fourth Degree, petitioner was exempt from 265.01.

§265.20 Exemptions

- a. Section 265.01, 265.02, 265.03, 265.04, 265.05, 265.10, 265.11, 265.12, 265.13, 265.15, and 270.05 shall not apply to:
 - 1. Possession of any of the weapons, instruments, appliances, or substances specified in sections 265.01, 265.02, 265.03, 265.04, 265.05, and 270.05 by the following:
- (b) Police officers as defined in subdivision thirty-four of section 1.20 of the Criminal Procedure Law.

Quoting People v. Vera, 9 AD3d 413 (2d Dept. 7/12/04)

The People knew petitioner was exempt from P.L. 265.01 pursuant to P.L. 265.20 as petitioner was a duly sworn police officer at the time. During the trial the People continuously made reference to the jury that petitioner was a police officer. The charges should never have been filed since Vera was decided just months before petitioner's trial.

The People prejudicially stated "the charge is only a misdemeanor" as if it doesn't matter. It does matter. The People violated petitioner's Due Process Rights. U.S. Const. Amend. XIV; N.Y.S. Const. Art.1§11.

The People went as far as stating "even if defendant were correct." (App. Opp. Br. p.18). There is no "if", the statute clearly states the exemptions without any restrictions or requirements. Even though petitioner was on disability leave from an accident, he was still a duly sworn police officer at the time.

The failure of the legislature to include a [any] matter within a particular statute is an indication that its exclusion was intended. U.S. v. Matthews, 205 F.3d 544 (2d Cir. 2000); People v. Kisina, 14 NY3d 153, 158 (2010); Kramer v. Phenix Life Ins. Co., 15 NY3d 539, 550 (2010); U.S. Const. Amend. XIV; N.Y.S. Const. Art. 1§11.

A review of the charges, shows that petitioner's counsel did not 'function' as a reasonable advocate and the result of petitioner's trial would have been different if not for counsel's ineffectiveness. Wiggins v. Smith, supra; Pavil v. Hollins, 261 F.3d 210 (2d Cir. 2001); Williams v. Taylor, supra; Strickland v. Washington, supra; U.S. Const. Amends. VI & XIV.

Had the weapons charge been dismissed, as fruits of the weapon's discovery were petitioner's statements which would have been and should now be suppressed. Without the statements the result of the trial would have been different. U.S. Const. Amends. VI & XIV.

There was no strategic reason for trial counsel's failure not to review the charges. Had counsel had the weapons charge dismissed the jury would have had a reasonable doubt as to the murder charge, since without possessing a weapon, one could not discharge a weapon (e.g., one cannot mop a floor without a mop). Petitioner was prejudiced due to counsel's ineffectiveness and the prosecution's filing a false charge.

In analyzing a State law claim, the standard focuses on "the fairness of the process...." Petitioner has shown he was denied a fair trial. People v. Benevento, 91 NY2d 708, 714 (1998).

SUMMARY

Petitioner has shown that the video was unconstitutionally suppressed by the prosecution.

Petitioner has shown that the search warrants were unconstitutional as they did not state any crime or incorporate any supporting documents.

Petitioner was erroneously charged with criminal possession of a weapon in the fourth degree as he was a police officer at the time.

The Constitutional violations were not harmless. The State Courts failed to abide by the Constitution's Fourth and Fourteenth Amendments. The Constitution should supersede any errors made in petitioner's motion.

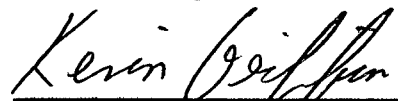
Your Honor this case was botched from the beginning. If not granted this petition, petitioner stands to be continuously incarcerated in violation of the U.S. Constitution.

This Honorable Court should grant the Writ of Certiorari in the interest of justice.

CONCLUSION

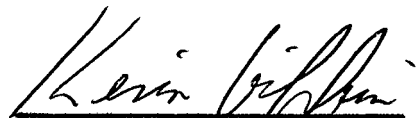
Petitioner humbly prays that the Writ of Certiorari is granted.

Respectfully submitted,


Kevin Griffin, 0446249

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: September 4, 2025


Kevin Griffin, 0446249