

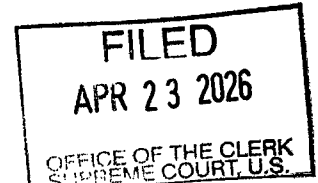
No. _____

25-7629

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Kurt Carpentino — PETITIONER
(Your Name)

vs.

United States Of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The First Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kurt Carpentino
(Your Name)

(ID # 15810 - 049) Federal Correctional Institution

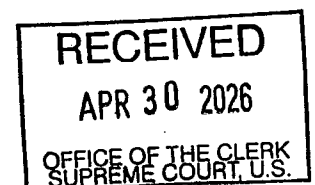
(Address) P.o. Box 420

Fairton, N.J. 08320

(City, State, Zip Code)

N/A

(Phone Number)



FUNDAMENTAL QUESTION TO ALL QUESTIONS:

Whether [Appellant] has presented claims worthy of a COA?

1. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS FAIL TO OBJECT TO GOVERNMENT INTRODUCTION OF PRIOR BAD ACT EVIDENCE WITHOUT PROVIDING THE MANDATORY 'PRIOR NOTICE' PURSUANT TO FEDERAL RULES OF EVIDENCE 404(B); OBJECT WHEN 'INTENT' IS NOT IN DISPUTE; AND FAIL TO REQUEST A 'LIMITING INSTRUCTION' ON THE PURPOSE OF THE PRIOR BAD ACT EVIDENCE FOR JURY CONSIDERATION?
2. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIMS THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS FAIL TO CALL ALIBI WITNESS TO DISPUTE THE CREDIBILITY OF A VICTIMS ALLEGATIONS OF A PRIOR SEXUAL ABUSE AND WHERE THE WITNESS WILL BOLSTER THE DEFENDANTS DEFENSE AND CREDIBILITY?
3. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS FAIL TO PRESENT DNA FORENSIC EXPERT TESTIMONY TO DISPUTE VICTIMS CREDIBILITY TO BEING EJACULATED ON BY THE APPELLANT AND THEN WIPING THE SEMEN OFF?
4. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS FAIL TO INVESTIGATE SEXUAL ASSAULT NURSE TO DISPUTE VICTIMS CREDIBILITY TO BEING SEXUALLY ABUSED ON THE CHARGED OFFENSE DATE OF 4/27/2017?
5. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS FAIL TO INVESTIGATE ALIBI DEFENSE OF CELL LOCATION DATA TO DISPUTE THE VICTIMS ALLEGATIONS OF (WHEN) A TRANSPORTATION CRIME WAS INITIATED AND DISPUTE EYE WITNESS ACCOUNT OF (WHEN) ALLEGEDLY SEEING THE DEFENDANT WITH THE VICTIM IN ROCKINGHAM VERMONT ON 4/27/2017?
6. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS FAIL TO PROPERLY CROSS EXAMINE AN ALLEGED VICTIM ABOUT THEIR INCONSISTENT STATEMENTS AND IDENTIFICATION OF ITEMS IN A CAR?
7. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS FAIL TO RE-DIRECT EXAM THE APPELLANT AND INVOKE THE RULE OF COMPLETENESS TO COUNTER THE GOVERNMENTS MISREPRESENTATION OF EVIDENCE IN APPELLANTS CONTESTED CONFESSONAL STATEMENTS TO POLICE?

QUESTIONS CONTINUED

8. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND
= ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A
DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS
ARE VIOLATED WHERE COUNSELS ACTIONS IN THE CUMULATIVE HAVE DEPRIVED A
DEFENDANT OF A TRIAL THAT IS FAIR AND A RESULT THAT IS RELIABLE?

LIST OF PARTIES

LIST OF PARTIES

PETITIONER: KURT CARPENTINO, pro se
(ID# 15810-049) Federal Correctional Institution
PO Box 420
Fairton, NJ 08320

RESPONDENT: UNITED STATES OF AMERICA
SOLICITER GENERAL OF THE U.S.
ROOM # 5614, Dept' of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001

RELATED CASES

Carpentino v. US, Appeal No. 25-2102 (1 Cir. 2025)
Pending COA Approval for Rule 60(d)(3) Fraud On The Court.

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STATUTES AND RULES

18 U.S.C. 2423(a) Transportation of a Minor with Intent to engage in Criminal Sexual Activity. A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that individual engage in prostitution, or any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life.

Federal Rules Of Evidence 404(b) Other Crimes, Wrongs or Acts.

- (b)(1) Prohibited Use. Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
- (b)(2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.
- (b)(3) Notice in Criminal Case. In a criminal case, the prosecutor must:

Federal Rules Of Evidence 404(b) -- CONTINUED --

- (b)(3)(A) provide reasonable notice of any such evidence that the prosecutor intends to offer at trial, so that the defendant has a fair opportunity to meet it;
- (b)(3)(B) articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose; and,
- (b)(3)(C) do so in writing before trial - or in any form during trial if the court, for good cause, excuses lack of pretrial notice.

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

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

OPINION BELOW

The opinion of the United States District Court appears at Appendix (1) to this petition and is unpublished.

The opinion of the United States Court of Appeals appears at Appendix (2) to this petition and is unpublished.

A timely petition for rehearing was denied by the United States Court of Appeals on 2-2-2026, and a copy of the order appears at Appendix (3).

JURISDICTION

Appellants petition for Certificate of Appealability was denied by the U.S. Court of Appeals on 11-18-2025. SEE: Appendix (2); and a timely petition for rehearing was denied on 2-2-2026. SEE: Appendix (3).

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

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

United States Constitutional Amendment Sixth:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have Assistance of Counsel for his defense."

STATEMENT OF THE CASE

On October 4, 2017, a grand jury sitting for the district of New Hampshire returned a four-count indictment charging Appellant with two (2) counts of Sexual Exploitation of a minor 18 USC §2251(a); Possession of Child Pornography 18 USC §2252(a)(4)(B); and Transportation of a Minor with Intent to Engage in Criminal Sexual Activity 18 USC §2423(a).

Appellant entered plea of "NOT GUILTY" on October 12, 2017.

On April 17, 2018, and May 5, 2018, all charges of 18 USC 2251(a); and the 18 USC 2252(a)(4)(B) were dismissed due Appellants 'FACTUAL INNOCENCE.'

On June 5, 2018, a jury trial commenced for the criminal charge of 18 USC 2423(a).

On June 11, 2018, the jury returned a verdict of guilty.

On October 1, 2018, the district court sentenced Appellant to 384 months imprisonment and a life term of supervised release. Appellant appealed the district courts ruling that Appellants confession was not made in violation of a Miranda Rights. The Appeal was denied.

SEE: US v. Carpentino, 948 F.3d 10 (1 Cir. Jan. 17, 2020).

On February 3, 2020, Appellant filed a pro se Motion under 28 U.S.C. §2255.

On October 3, 2022, Appointed Counsel filed an "Amended Restated and Supplemental Motion" under 28 U.S.C. §2255.

The district court denied Appellants relief and declined to issue a COA. The First Circuit Court of Appeals declined to grant a COA.

THIS WRIT OF CERTIORARI FOLLOWS.

QUESTIONS PRESENTED AND REASONS FOR GRANTING THE WRIT OF CERTIORARI

QUESTION #1:

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS FAIL TO OBJECT TO GOVERNMENT INTRODUCTION OF PRIOR BAD ACT EVIDENCE WITHOUT PROVIDING THE MANDATORY 'PRIOR NOTICE' PURSUANT TO FEDERAL RULES OF EVIDENCE 404(B); OBJECT WHEN 'INTENT' IS NOT IN DISPUTE; AND FAIL TO REQUEST A 'LIMITING INSTRUCTION' ON THE PURPOSE OF THE PRIOR BAD ACT EVIDENCE FOR JURY CONSIDERATION?

Appellant was charged under 18 U.S.C. §2423(a), where the victim (MH) testified that on (4/27/2017) Appellant did TRANSPORT her from New Hampshire (NH) to Vermont (VT) and did ENGAGE IN CRIMINAL SEXUAL ACTS of unprotected sexual intercourse where it is also alleged that Appellant did EJACULATE on MH.

Appellants sole defense is that he did 'NOT' TRANSPORT the victim and ENGAGE IN CRIMINAL SEXUAL ACTS on the charged offense date of (4/27/17).

SEE: Document (Doc.41)(§2255 Brief); and, (Doc.46)(§2255 Reply Brief).

SEE: Appendix (App.4)(p.15-19)(Application For COA); and,
(App.5)(p.56-57)(Petition For Rehearing/En Banc); and,
(App.5)(p.228-230)(§2255 Reply Brief).

SEE: (App.5)(p.84; [L.6-17])(Excerpt Of Trial Transcripts):

"So finally he served them with an eviction notice...April 20, 2017.
These allegations came about shortly after...he did not transfer her

to Vermont on the 27th and have sex with her...This is a case that involves false allegations..."

SEE: (App.5)(p.186; [L.24-25]); and, (p.187; [L.1], and, [L.6-8])(MH's Testimony)

Q. "...did you ever hear them argue about her not paying rent?"

A. "Yes, ma'am."

Q. "Did you ever hear your mom threaten Kurt that she'd have him arrested if he evicted her?"

A. "Yes."

SEE: (App.5)(p.85; [L.23-25]); and, (p.86; [L.1-2])(Closing Statements Defense)

"Kurt Carpentino did not sexually assault [MH]. He didn't transport her from New Hampshire to Vermont. This case has been about..Carol Pino's promise and threat to get Kurt arrested if he evicted them."

Nevertheless, the governments primary focus and call for guilt rested on the idea that Appellant is a PREDATOR who had been sexually abusing MH for several months prior to the charged offense before the jury.

SEE: (App.5)(p.100; [L.8-15])(Governments Opening Statements):

"This case is..about manipulation...it was manipulation for sex."

(Id.)(p.102; [L.19-25]); and, (p.103; [L.1-2]; and, [L.20-22]):

"..you'll hear that..in the fall of (SIC, 2016)...And later that night ..they had sexual intercourse. And you'll hear over the next several months there were multiple sexual encounters...It was a sexual relationship from November to the end of April, and then we have the events of April 27."

(The Charged Offense Date Of 4/27/17).

SEE: (App.6)(p.284; [L.23-25])(Governments Closing Statements):

MH "was vulnerable. she was prey to a predator. She was easily manipulated. And in the fall of 2016, the defendant began his manipulation."

SEE: (App.7)(p.286; [L.10-15])(Governments Closing Statements):

"Ladies and gentlemen, when you evaluate the evidence in this case, I ask that you use your common sense. When you do, you'll find that it shows that the..defendant..manipulated..MH into believing -- somehow believing in her 14-year-old mind that she was his girlfriend..."

SEE: (App.5)(p.85; [L.15-18])(Governments Closing Statements):

"When you review the evidence, I urge you to do so using your common sense. And when you do, I suggest that you will find that the defendant is guilty."

After Appellant was found guilty of a 18 U.S.C. §2423(a) offense, based on a jury's "common sense" of a prior criminal sexual abuse of MH, Appellant raised a Sixth Amendment violation for Trial Counsels failure to object to the prior bad act of alleged sexual abuse with the alleged victim of the charged offense.

Trial Counsel should have objected on two (2) grounds. GROUND ONE should have been for the governments failure to provide reasonable notice of it's intent to introduce the prior bad act allegations pursuant to Fed. R. Evid. 404(b)(3)(A). And, GROUND TWO should have been that the prior bad act allegations are inadmissible because Appellant has denied the entire charged offense and has not raised an issue of a (Lack Of Intent) as part of his defense.

Furthermore, Trial Counsel should have requested a 'Limiting Instruction' to prevent the jury from prejudicial misuse of the allegation and convict the Appellant based on the jury's (common sense) belief that Appellant was sexually abusing MH prior to the charged offense.

The District Court refused to fault Trial Counsel for their error. In doing so, the district court made a post hoc rationalization for Trial Counsels decision making and claimed that the prior bad act of sexual abuse is not subject to Fed. R. Evid. 404(b).

SEE: (App.5)(p.73; [L.17-25])(The Court):

"..on the issue of the 404/403 prior sexual relationship issue...
-- it's my view as a matter of view it's not a 404 issue. If it were, it would be admissible..."

(Id.)(p.76; [L.11-16])(The Court):

"The prior sexual relationship...not even subject to Rule 404. To the extent it was, it would have been admissible on intent grounds."

Appellants COA petition (App.4)(p.15-19), asserted that the district courts "view" is not just debatable but is in fact a wrong "view" of the law. Fed. R. Evid. 404(b) states "Other Crimes, Wrongs, or Acts." In the state of New Hampshire, the sexual abuse of a minor for a period of several months is a crime under NH Law RSA. 632-A:2. The Federal Criminal Code does not cover a 'sexual abuse' of a minor - per se. Appellant cited and quoted US v. Raymond, 697 F.3d 32, 36 (1 Cir. 2012), where the Circuit Court had previously held that prior sexual contact with the named victim of a 18 U.S.C. §2423(a) offense "implicates Federal Rule of Evidence 404(b)."

Prior sexual abuse of a victim involved in a Federal Crime implicates Fed. R. Evid. 404(b). See, e.g. US v. Gonyer, 761 F.3d 157, 162-64 (1 Cir. 2014)(Prior Sexual Abuse of the victim admissible under Fed. R. Evid. 404(b)); See, also, US v. Jass, 331 Fed. Appx. 850, 855 (2 Cir. 2009)(same); US v. Reid, 751 F.3d 763, 768 (6 Cir. 2014)(same); US v. Johnson, 132 F.3d 1279, 1282-83 (9 Cir. 1997).

Therefore, the district courts "view" is entirely wrong. The allegations that Appellant was sexually abusing the victim prior to the charged offense is legally subject to Fed. R. Evid. 404(b), which requires the government to provide reasonable notice of it's intent to introduce prior bad act evidence at trial. See, e.g. US v. Oliver, 653 Fed. Appx. 735, 740 (11 Cir. 2016)(Fed. R. Evid. 404(b)(3)(A) "states that the government must provide notice of request"); US v. Watson, 766 F.3d 1219, 1235 (10 Cir. 2014)(same); US v. Christensen, 624 Fed. Appx. 466, 481 (9 Cir. 2013)(same); US v. Green, 275 F.3d 694, 701 (8 Cir. 2001)(same); US v. Gomez, 763 F.3d 845, 860 (7 Cir. 2014)(same); US v. Todd, 825 Fed. Appx. 313, 320 (6 Cir. 2020)(same); US v. McIntosh, 660 Fed. Appx. 119, 203 (4 Cir. 2016)(same).

Furthermore, the district courts "view" that the prior sexual abuse of MH is "admissible on intent grounds" (App.5)(p.76; [L.11-16]), is also a wrong legal view. Appellant cited and quoted First Circuit District Court, US v. Paniagua-Ramos, 182 F.R.D. 376, 378 (DPR 1998)(discussing prior bad act evidence is inadmissible when defendants do not raise issue of his intent as part of his defense. Citing US v. Lynn, 856 F.2d 430 (1 Cir. 1988)). See, also, US v. Varoudakis, 233 F.3d 113, 123-24 (1 Cir. 2000)(same). This reasoning is echoed by the Circuit Courts, see, e.g. US v. Hall, 249 F.3d 707, 710 (8 Cir. 2001)

"the nature of a defense put forth by the defendant may reveal that knowledge and intent, while technically at issue, are not really in dispute" Colon, 808 F.2d at 656 (quotations omitted). Past crime evidence showing intent..appropriate if..defendant claims he 'did the act innocently..' but not where the defendant claims he 'did not do the charged act at all.' Id. at 657."

See also, US v. Kramer, 995 F.2d 479, 492 (7 Cir. 1992)(discussing other courts with this view).

The district court also indulged in post hoc rationalization for Trial Counsels failure to request a 'Limiting Instruction' and dismissed the claim based on the district courts view that Counsel was not ineffective because the court could not "conceive what a limiting instruction would be..."

SEE: (App.8)(p.288; [L.12-18])(The Court):

"I don't think it was ineffective..not to request a limiting instruction..
I can't conceive what a limiting instruction would be.."

The prior sexual abuse allegations were not used for considering Appellants intent or state of mind. The allegations were used only to inflame the jury's passion into considering Appellant as a "predator" (App.6)(p.284; [L.23-25]). Appellant quoted Raymond, 697 F.3d at 38 ("the testimony was not introduced to prove that the defendant was a predator but, rather, to shed light upon his intent") (App.4)(p.17). Not only was the evidence misused but in this context a Limiting Instruction was critical to direct the jury to consider the allegations only for the limited purpose of determining Appellants 'INTENT.'

The First Circuit has "a long-standing presumption that jurors follow instruction, and, as a consequence, any prejudice resulting from the admission of testimony related to prior bad act may be ameliorated by jury instructions." US v. Altvater, 945 F.3d 45, 35 (1 Cir. 2020); thus, for a district court to have an inability to ("conceive what a limiting instruction would be") is a fundamental miscarage of justice. See, e.g. US v. Lindsey, 3 F.4th 32, 2021 US App. LEXIS 19265, at LEXIS *9

"The district court gave a limiting instruction to the jury...You may only consider the evidence solely for the limited purpose of deciding whether the defendant had the..intent to.."

US v. Lindsey, 3 F.4th 32 (1 Cir. 2021), LEXIS *9

Appellant now moves this Honorable U.S. Supreme Court "to decide only whether [Appellant] has presented claims worthy of a COA" Medellin v. Dretke, 544 US 660, 681; 125 S.Ct 2088, 161 L.Ed 2d 982 (2005).

A prior 'Sexual Abuse' of a victim is by definition "Other Crimes," pursuant to Fed. R. Evid. 404(b). Therefore, Appellant has clearly established that the lower

courts view that allegations of a prior sexual abuse of a victim in a Federal Crime is "not even subject to Rule 404" is debatable or wrong pursuant to Slack v. McDaniel, 529 US 473, 483, 120 Sct 2595, 146 LEd 2d 542 (2000); the introduction of prior bad act evidence is "admissible on intent grounds" is debatable or wrong pursuant to Slack; and, the courts inability to "conceive what a limiting instruction would be" is debatable or wrong pursuant to Slack.

Furthermore, Trial Counsel provided no reasoning for their failure to object and ask for a limiting instruction. The district court abused it's discretion by making post hoc rationalization for counsels blunders:

"..on the issue of the 404/403..I don't need to hear any testimony from the witness [Trial Counsel] about that. As pure matter of law...it's my view..it's not a 404 issue...So I don't want to waste any time on questioning..."

SEE: (App.5)(p.73; [L.17-25]).

The "court's may not indulge in 'post hoc rationalization' for counsel's decision making that contradicts the available evidence of actions," Harrington v. Richter, 526 US 86, 131 Sct 770, 178 LEd 2d 624, 645 (2011) (citation omitted).

Trial Counsels deficient performance of failing to object to the admission of prior bad act ALLEGATIONS where the government failed to give the mandatory prior notice pursuant to Fed. R. Evid. 404(b); failing to object to the admissibility of the prior bad act ALLEGATIONS when Appellant denied the charged conduct in its entirety and raised no (Lack Of Intent) as part of his defense; and, where Trial Counsel failure to request a limiting instruction -- See Huddleston v. US, 485 US 681, 691-92, 108 Sct 1496, 99 LEd 2d 771 (1988)(discussing Rule 404(b) and available limiting instruction when requested by defendant) -- caused the Appellant to suffer prejudice from a fundamentally unfair trial where the verdict is now unreliable due to Trial Counsel depriving the Appellant of a "procedural right." See Lockhart v. Fretwell, 506 US 364, 113 Sct 838, 844, 122 LEd 2d 180 (1993)

"unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive or procedural right to which the law entitles him."

Fed. R. Evid. 403/404(b) is a substantive procedural right that mandates the government to provide reasonable notice of it's intent to introduce prior bad act evidence and to articulate the proposed purpose of said evidence. This procedural right also mandates that the district court provide a Rule 403 review to ensure that there can be no UNFAIR PREJUDICE. And, grants the Appellant the right to request a Limiting Instruction should the court deem the evidence admissible.

Therefore, if Trial Counsel fails to protect these procedural safeguards, they are ineffective and have violated Appellants Sixth Amendment rights. See, e.g. Strickland v. Washington, 466 US 668, 687, 104 Sct 2052, 80 LEd 2d 674 (1984); and Kimmelman v. Morrison, 477 US 365, 374, 106 Sct 2574, 91 LEd 2d 305 (1986).

"In cases where a habeas petition makes a threshold showing that his constitutional rights were violated, a COA should issue." Jordan v. Fisher, 576 US 1071, 1078, 135 Sct 2647, 192 LEd 2d 948 (2015).

At the very least, "the issues presented [is] adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 US 322, 327, 123 Sct 1029, 154 LEd 2d 931 (2002).

QUESTION #2;

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS FAIL TO CALL ALIBI WITNESS TO DISPUTE THE CREDIBILITY OF A VICTIMS ALLEGATIONS OF A PRIOR SEXUAL ABUSE AND WHERE THE WITNESS WILL BOLSTER THE DEFENDANTS DEFENSE AND TESTIMONY?

As stated in (QUESTION #1), Appellant was accused of having a prior criminal 'Sexual Relationship' with the victim of the (4/27/17) charged offense. This criminal allegation of prior sexual abuse of the victim is strictly dependent on the victims -- CREDIBILITY -- that the Appellant was living in the attic of MH's home. The jury heard, by both the government and the victim, that Appellant was living in the attic of MH's home where Appellant sexually abused MH for several months -- And Then COMMITTED The (4/27/17) Charged Offense.

SEE: (App.5)(p.102; [L.19-25]); and, (p.103; [L.1-5], [L.20-22])(Government):

"..you'll hear that that relationship changed one night in the fall of (SIC, 2016)...that night [MH] ended up in that semi-finished attic with Kurt Carpentino and..they had sexual intercourse. And you'll hear that over the next several months there were multiple sexual encounters between [MH] and Kurt...It was a sexual relationship from November to the end of April, and then we have the events of April 27."

(The Charged Offense Date Of April 27, 2017).

SEE: (App.5)(p.165; [L.1-3])(MH's Testimony):

Q. "And where in the house would he stay..?"

A. "The attic."

(Id.)(p.166; [L.10-16]):

Q. "So you told us..early fall of 2016, Mr. Carpentino started to spend some nights at..76 Glen Street; is that right?"

A. "Yes."

Q. "Did he spend every night there?"

A. "Yes."

(Id.)(p.168; [L.21-25]):

A. "I went up to the attic with him."

Q. "And is that where he was staying?"

A. "Yes."

Q. "And what happened in the attic that night?"

A. "We had sex."

(Id.)(p.169; [L.9-23]):

Q. "How old were you on that night in the attic?"

A. "14."

Q. "After that night in the attic, did you continue to have a sexual relationship with Mr. Carpentino?"

A. "Yes."

Q. "Did you have sex in other places at the Glen Street house?"

A. "Yes."

Q. "Besides the attic, what were some of those places?"

A. "The living room, the kitchen, and the hallway."

Q. "Did you..consider Mr. Carpentino to be your boyfriend?"

A. "Yes."

SEE: (App.5)(p.121; [L.16-19])(Appellants Testimony):

Q. "Did you live there?"

A. "No, I did not."

Q. "Did you have a room in the attic?"

A. "No, I did not."

After Appellant was convicted, Appellant raised a Sixth Amendment violation for Trial Counsels failure to call the victims mother, Carol Pino, to dispute the victims allegations Appellant stayed in the attic and sexually abused her.

SEE: (Doc.41; [p.31-35]); and, (App.5)(p.231-232)(\$2255 Reply Brief)

The district court refused to fault Trial Counsel for their failure to call

Carol Pino based on the courts post hoc rationalization and speculation that Carol Pino would be "problematic" and would "blow[] up in the defense face."

SEE: (App.5)(p.76; [L.21-25]); and, (p.77; [L.1-10])(The Court):

"The failure to call Carol Pino...Carol Pino is a very problematic witness...the government acknowledging to me how challenging a witness Carol was going to be...The danger, the risk that Carol Pino blows up in the defense face as a witness is overwhelming here."

Appellants COA petition (App.4)(p.19-22); and, Rehearing petition (App.5)(p.60-64), addressed the district courts erroneous opinion that is baseless and unsupported by the record. And, addressed Trial Counsels speculative reasoning for not calling Carol Pino -- where Trial Counsel claimed to have not called Carol Pino based on the following speculations:

1. Carol Pino (COULD) deny that she fabricated these allegations due to Appellant moving to evict her.
SEE: (App.4)(p.19; [#17.(a)]); and,
(App.9)(p. 291 ; [L.22-25]), and, (p.2292 ; [L.1])(Trial Counsel).
2. Trial Counsel speculated that Carol Pino and Appellant were in a romantic relationship.
SEE: (App.4)(p.19; [#17.(b)]); and,
(App.9)(p. 292 ; [L.2-4])(Trial Counsel).
3. Trial Counsel falsely stated that there is evidence that Carol Pino had direct knowledge that Appellant had taken her daughter and falsely claimed to have seen text messages to support this.
SEE: (App.4)(p.19-20; [#17.(c)]); and,
(App.9)(p. 292 ; [L.5-8])(Trial Counsel).

Appellants COA petition should have been "liberally construed" Estelle v. Gamble 429 US 97, 106, 97 SCt 285, 50 LEd 2d 251 (1967). Appellant cited cases to show that it is unfair to hold the Appellant to a requirement of providing the court with a record of what a witness will say or be denied a §2255 claim based on 'speculations' of what a witness could say. (App.4)(p.20; [#19.(a)]). Yet, Trial Counsel made a decision not to call Carol Pino based on speculations to what she could have said.

Appellant then focused on the First Circuits deficiency standard for Trial Counsels decision making for calling witnesses, which the Court held must be a "balancing..of the anticipated testimony." Lema v. US, 987 F.2d 48, 54 (1 Cir. 1993)

Such "anticipated testimony" Lema, can only be derived from the record of a witness statements. Thus, Trial Counsels decision making was deficient because Counsel based their decisions on speculations and not based on facts in the record or Carol Pino's actual "anticipated testimony."

Appellant then turned to the First Circuits prejudice standard. To show prejudice, Appellant must show that "the failure to call [Carol Pino] 'deprived him of a viable defense.' United States v. Porter, 924 F.2d 395, 397 (1st Cir. 1991)." US v. Girard, 1996 US App. LEXIS 25367, at LEXIS *9 (1 Cir. 1991).

On petition for Rehearing, Appellant articulated that the district courts opinion that Carol Pino would be "problematic" and would "blow[] up" in the Appellants face is baseless and unsupported by the record.(App.5)(p.60; [B]). And provided the Circuit Court with the record of Carol Pino's anticipated testimony. (App.5)(p.210-220)(Carol Pino's Record Of Statements).

Appellant articulated the "viable defense" that Trial Counsel deprived him of. Girard. See, also, US v. Valenzuela-Bernal, 458 US 858, 870-71, 102 SCt 3440, 73 LEd 2d 1193 (1982)(must show witnesses testimony would be favorable):

1. Carol Pino's anticipated testimony would have bolstered Appellants credibility, supporting his testimony that the confession is false;
2. Carol Pino's anticipated testimony would have bolstered Appellants credibility to not having a room in the attic, and discredit the victims credibility to allegations that Appellant stayed in the attic;
3. Carol Pino's anticipated testimony would have helped support Dr. Laken's Expert Opinion discussing how Appellants 'Skin Cell' DNA could have gotten on MH's clothing -- because Appellant was at 76 Glen Street less than 24 hours before the alleged charged offense and either Appellant had direct contact with MH or MH had direct contact with Appellants clothes.

SEE: (App.5)(p.60-64); and.

4. Appellants defense that Carol Pino's motive to have the Appellant arrested for his plan to evict them -- A Threat Confirmed By The Victim -- is also supported by Carol Pino's (4/27/2017)(12:09 - 12:12 AM) Text Messages that support a threat to make Appellant "really hate" Carol Pino based on doing something that involved the police at Appellants "door" a hour before MH alleged being transported at (1 AM) on (4/27/2017). (App.5)(p.61; [(1)] - p.63).
SEE: (App.5)(p.236-239)(Carol Pino's Text - 4/27/17, 12:09-12:12 AM - Texts)

Appellant now moves for this Honorable U.S. Supreme Court "to decide only whether [Appellant] has presented claims worthy of a COA." Medellin.

The First Circuits standard for counsels decision making whether to call a witness or not must be a "balancing..of the anticipated testimony." Lema. Here, Counsel did not such "balancing" of Carol Pino's "anticipated testimony" Id. but relied on speculations to what Carol Pino may have said.

"[T]he Court observed that the public interest in fair and accurate judicial proceedings is at its height in the criminal setting, where our common commitment to justice demands that 'guilt shall not escape' nor 'innocence suffer' Id., at 709, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (internal quotation marks and alterations omitted)...these dual aims would be 'defeated if judgments' were 'founded on a partial or speculative presentation of the facts...'"

Trump v. Vance, 591 US , 140 SCt , 207 LEd 2d 907, 919, 2020 LEXIS 3552.

Appellant was deprived of his only "viable defense" against MH's allegations

Girard, Porter. Thus, the failure to call Carol Pino is easily debatable because:

"[T]he real underlying question is whether [Appellants] case would have been strengthened or weakened by calling [Carol Pino] and by how much. The 'how much' bears on both halves of the Strickland standard"

Epson v. Hall, 330 F.3d 49, 53-54 (1 Cir. 2003).

See, e.g. Pavel v. Hollins, 261 F.3d 210, 217-19 (2 Cir. 2001):

Failure to call witness whose testimony would bolster defense is not strategic and are "decisions [with] no regard for client's interests."

Jaynes v. Grace, 442 Fed. Appx. 645, 648-49 (3 Cir. 2008):

Finding counsel ineffective for failing to call witness who's "testimony would have directly contradicted the..victim's..testimony."

Cosper v. Boyd, 2022 US App. LEXIS 25872, at LEXIS *11-12 (6 Cir. 2022):

Discussing 2nd, 4th, and 6th Circuit Courts granting COA for counsels failure to call witness "because trial counsel called no witnesses and presented no evidence, the failure to provide the jury with any alibi defense was likely prejudicial."

Yun Hesng Liao v. Junious, 812 F.3d 741, 756 (9 Cir. 2015):

Failing to call alibi witness to corroborate defendants testimony was prejudicial because it left defendant with only his 'bare testimony [leaving defendant] without any effective defense."

US v. Valenzuela-Bernal, 458 US, at 867 (1982):

Sixth Amendment grants defendants the right to call "witnesses in his favor" and whose testimony is "material and favorable to his defense."

Trial Counsels deficient performance of failing to call Carol Pino caused the Appellant to suffer prejudice by depriving him of a viable defense and rendered the criminal proceeding fundamentally unfair with a verdict that is unreliable due to Trial Counsel depriving Appellant of a substantive right to which the

the Sixth Amendment entitles him to (a) Effective Assistance of Counsel; and, (b) the right to call witnesses material and favorable to his defense. See, e.g. Lockhart, "unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive..right..the law entitles.."

The district court made post hoc rationalizations for Trial Counsels decision making based on the governments position that Carol Pino would be "problematic" and then speculated that Carol Pino would "blow[] up in the defense face." (App.5) (p.77; [L.2-10])(The Court).

The "court's may not indulge in 'post hoc rationalization' for counsel's decision making that contradicts the available evidence.."

Harrington.

The "interest in fair and accurate judicial proceedings..where our.. commitment to justice demands that guilt shall not escape or innocence suffer..would be defeated if judgments were founded on a partial or SPECULATIVE presentation of the facts..."

Trump (quotation marks and citation omitted)(emphases added).

"Additionally, the court based it's conclusion..on clear factual error.. the records contain no [evidence Carol Pino would be problematic or blow in the defense's face]. This..reliance on erroneous factual findings.. highlights the unreasonableness of the..court's decision."

Wiggins v. Smith, 539 US 510, 528, 123 Sct 2527, 156 LEd 2d 471 (2003).

Appellant has established that the district courts opinion in denying Appellants ineffective claim of Trial Counsels failure to call Carol Pino is debatable, if not factually wrong pursuant to Slack. And, at the very least "the issues presented are adequate to deserve encouragement to proceed further." Miller-El.

This court should issue a remand with an order to grant a COA because when "a habeas petition makes a threshold showing that his constitutional rights were violated, a COA should issue." Jordan.

QUESTION #3:

WHETHER THE UNITES STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS FAIL TO PRESENT DNA FORENSIC EXPERT TESTIMONY TO DISPUTE VICTIMS CREDIBILITY TO BEING EJACULATED ON BY THE APPELLANT AND THEN WIPING THE SEMEN OFF?

In this particular case, there should be (SEXUALLY NATURED) DNA, such as semen,

found on MH because she reported and testified that Appellant did TRANSPORT her to (VT) and did ENGAGE IN CRIMINAL SEXUAL ACTS by 'ejaculating on her' and she wiped the ejaculation off. Then, on the same day, and only a few hours later, MH went to the hospital where a DNA Rape Kit was done to Forensically Search for semen DNA.

After Appellant was convicted, Appellant filed his §2255 raising Ineffective Assistance of Counsel for failing to call DNA Expert Dr. Laken.

SEE: (App.5)(p.88-94)(Excerpt Of (Doc.41; [p.12-18]));(p.225)(§2255 Reply Brief)

After Appellants §2255 claim was denied, Appellant filed a COA petition and a Rehearing petition addressing the district courts erroneous opinion.

SEE: (App.4)(p.28-31); and, (App.5)(p.58-60).

Trial Counsel stated reason for not calling Dr. Laken rested solely on counsel not wanting MH's bra with Appellants 'Skin Cell' DNA presented to the jury.

SEE: (App.4)(p.28; [#44.(a)]); and,

SEE: (App.10)(p.294; [L.22-24])(Trial Counsel).

If Trial Counsel was truly concerned about the 'Bra with Skin Cell DNA' being admitted due to calling Dr. Laken to testify, Trial Counsel should have moved to have the evidence suppressed on the grounds that the evidence was mishandled by the (VT) police and bagged with MH's T-shirt, causing cross-contamination.

SEE: (App.5)(p.209; [#31])(Dr. Laken's Opinion - Evidence Was "mishandled").

Appellant now moves for this Honorable U.S. Supreme Court "to decide only whether [Appellant] has presented claims worthy of a COA." Medellin.

"This case is..about manipulation...it was manipulation for sex." (App.5)(p.100; [L.8-15])(The Government). A case where the victim alleged being TRANSPORTED and ENGAGING IN CRIMINAL SEXUAL ACTS where it is alleged Appellant ejaculated on her.

Appellant denied TRANSPORTING the victim and ENGAGING IN CRIMINAL SEXUAL ACTS. During trial, Trial Counsel repeatedly noted the DNA Testing and lack of DNA or any physical evidence before the jury. Then Trial Counsel undermined this (Lack Of Evidence) defense by eliciting testimony from MH that she wiped the semen (DNA) off with a sponge and some water. This left the jury with a reasonable conclusion as to why no DNA was found during the forensic DNA test.

SEE: (App.11)(p.296; [L.1-10])(Excerpt Trial Transcript Day 2)(Defense Opening):
"..any time there's an allegation of sexual abuse..that person is..taken to a hospital..to collect evidence...a test kit to see if there was any physical evidence BECAUSE THAT'S AN IMPORTANT PART OF A CASE LIKE THIS."

SEE: (App.12)(p.298; [L.4-9])(Excerpt Trial Transcript Day 2)(Defense Opening):
"..I told you..bringing her to the hospital to have a test kit to see if there was DNA, I WANT YOU TO REMEMBER THAT AND...SEE IF THERE'S..
EVIDENCE OF THAT."

SEE: (App.13)(p.301; [L.1-16])(Excerpt Trial Transcript Day 4)(Defense Closing):
"You heard [MH] tell you that Kurt EJACULATED on her..you heard and saw no SCIENTIFIC or FORENSIC EVIDENCE that Kurt had sex with [MH]."

SEE: (App.13)(p.302; [L.8-13])(Id.)(Defense Closing):
"DNA test and forensic science don't take sides..they assist in..helping you determine if a crime was committed...what did you hear about that kind of evidence?"

*** NOTHING ***

Nevertheless, Trial Counsel did not call Dr. Laken who would have testified, in expert capacity, that the Forensic Test would have recovered the Appellants semen DNA even if MH had wiped it off or even bathed herself.

SEE: (App.5)(p.208; [#25])(Dr. Laken's Opinion).

Appellant now moves for this Honorable U.S. Supreme Court "to decide only whether [Appellant] has presented claims worthy of a COA." Medellin.

Here, Trial Counsel made no "balancing..of [Dr. Laken's] anticipated testimony" Pheonix v. Matesanz, 233 F.3d 77, 83 (1 Cir. 2000)(quoting Lema standard for decision to call expert). See also, Valenzuela-Bernal, 458 US, at 870-71 (must show witnesses testimony would be favorable):

1. Dr. Laken's anticipated testimony that Appellants semen DNA would have been found on MH even if she wiped herself or bathed herself - is highly favorable and Appellants -- ONLY -- defense available against MH's ejaculation claim.
SEE: (App.5)(p.208; [#25])(Dr. Laken's Opinion).
2. Dr. Laken's anticipated testimony on Appellants 'Skin Cell' DNA on MH's bra is highly favorable and Appellants -- ONLY -- defense against the evidence on two grounds, (a) There is an innocent explanation to how Appellants 'Skin Cell' may have gotten on MH due to direct contact with MH on April 26, 2017, or her direct contact with Appellants dirty clothes on April 26, 2017; and, (b) The 'Skin Cell' could have come from MH's T-shirt due to (VI) police mishandling where Dr. Laken supported his opinion by the fact that "DNA is also clearly found from a person who is not the defendant, or the alleged victim and is on the bra." SEE: (App.5)(p.59-60);and, (p.209; [#30-31]).

Trail Counsels deficient performance caused prejudice by depriving him of a "viable defense" against MH's claim that Appellant ejaculated on her and she wiped it off. See, Girard; and, Porter. See also, Hinton v. Alabama, 571 US 263, 267, 134 S Ct 1081, 188 L Ed 2d 1 (2014)(prejudice can be shown if a "expert..would have instilled in the jury a reasonable doubt as to [Appellants] guilt.").

"In sex abuse cases..the failure to..call a..expert is often indicative of ineffective assistance of counsel..This is particularly so where the..case ..rest on the credibility of the..victim, as opposed to direct physical evidence such as DNA."

Gersten v. Senkowski, 426 F.3d 588, 607 (2 Cir. 2005).

Trial Counsel repeatedly emphasized the significance of the roll DNA test play in a sex abuse case and repeatedly noted the victims claim that the Appellant ejaculated on her and then asked the jury about what they ("heard") on ("scientific and forensic evidence that Kurt had sex with") MH, and that ("DNA test and forensic science..help[] you determine if a crime was committed") (Id. at (App.5)(p.302; [L.8-13])).

"Counsel's failure to present expert..did not go unnoticed.."

Richter v. Hickman, 578 F.3d 944, 961-61 (9 Cir. 2008).

Trail Counsels deficient performance also rendered the trial fundamentally unfair with a verdict that is unreliable because counsel deprived the Appellant of a substantive Sixth Amendment right to (a) Effective Assistance of Counsel; and (b) the right to call witnesses "material and favorable to his defense" Velenzuela-Bernal, 458 US, at 867. See also, Lockhart ("unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive..right to which the law entitles him").

Furthermore, the district court made post hoc rationalizations for Trial Counsels decision making and altered the facts of the charged offense to deny Appellants ineffective claim of failing to call Dr. Laken.

1. In opposition of Dr. Laken's opinion on the innocent explanation of how the Appellants 'Skin Cell' could have gotten on MH's bra; and in disregard of the fact that the evidence was mishandled and there is a third unknown parties DNA on MH's bra. (App.5)(p.209; [#30-31]). The district court held that the evidence "would be potentially very damaging to the defendant."
SEE: (App.5)(p.58; (A.))(Quoting The Court At (App.5)(p.75; [L.15-25])); and, (p.76; [L.1-4])).
2. The district court made a post hoc rationalization that had counsel called

Dr. Laken, Appellants confessional "statement that there was no ejaculation ..would explain the negative vaginal swab.." regardless that the victim testified Appellant did ejaculate on her.

SEE: (App.5)(p.58; (A))(Quoting The Court At (App.5)(p.75; [L.16-16])).

3. The court altered the facts of the charged offense from MH's account of sexual abuse that included 'Oral Contact' with her breast and genitals; 'unprotected sexual intercourse'; and, claims of being 'ejaculated on.' The district court dismissed Dr. Laken's favorable opinion on the lack of semen DNA by finding a "absence of DNA," in the courts view, is not "an indication that they never had the kind of sexual contact..necessary to support..guilt here."

SEE: (App.5)(p.64)(Quoting The Court At (App.5)(p.81; [L.19-25])); and, (p.82; [L.1-5])).

"The district court's finding's..not..drawn from [Dr. Laken's] testimony.. It's conclusion..is thus, contradicted by the record."

Kosilek v. Spencer, 774 F.3d 63, 89 (1 Cir. 2014) --

"The district court ignored or minimized significant portions of [Dr. Laken's opinion and] testimony...As explained above, in doing so the court improperly supplanted..it's own decision based on a layman's view, and terming [Dr. Laken] view's imprudent." Id., at 115, n.11.

The "court's may not indulge in 'post,hoc rationalization' for counsel's decision making.." Harrington.

"Additionally, the court based its conclusion..on clear factual error...This ..erroneous..findings further highlights the unreasonableness of the..court's decision." Wiggins.

Appellant has clearly established the district courts opinion that denied the Appellants ineffective claim of Trial Counsels failure to call Dr. Laken, is debatable, if not actually wrong pursuant to Slack. And, at the very least "the issues presented are adequate to deserve encouragement to proceed further" Miller-El.

The Court should issue a remand with an order to grant a COA because when "a habeas petitioner makes a threshold showing that his constitutional rights were violated, a COA should issue." Jordan.

QUESTION #4:

WHEIHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS FAIL TO INVESTIGATE SEXUAL ASSAULT NURSE TO DISPUTE VICTIMS CREDIBILITY TO BEING SEXUALLY ABUSED ON THE CHARGED OFFENSE DATE OF 4/27/2017?

As stated in (QUESTIONS #1-3), this 'TRANSPORTATION' charged offense has been heavily reliant on prejudicial allegations of sexually abusing the alleged victim.

MH alleged that on 4/27/17, the Appellant TRANSPORTED her to (VT) and did ENGAGE IN CRIMINALS SEXUAL ACTS of several hours of sexual intercourse that consisted of allegations of digital and penal penetration of MH's vagina. MH also alleged that Appellant ejaculated on her. See (QUESTION #3).

On the same day of the alleged charged offense (4/27/17), MH went to a hospital and was medically assessed by a Sexual Assault Nurse Examiner (SANE). This SANE reported that MH's "labia revealed no swelling, inflammation..lesions or clear bruising...The hymen..no..scars, lesions, or tissue disruptions."
SEE: (App.14)(p.304)(Excerpt Of SANE Report).

After Appellant was convicted, Appellant filed a §2255 raising a Sixth Amendment violation for Trial Counsels failure to investigate a Defense SANE Expert.
SEE: (Doc.41; [p.5-12]); and, (App.5)(p.223-224)(§2255 Reply Brief).

After Appellants §2255 was denied, Appellant filed both a COA and Rehearing petition asserting the district courts opinion is debatable and wrong.
SEE: (App.4)(p.31-34); and, (App.5)(p.64-65).

Appellant now moves this Honorable U.S. Supreme Court "to decide only whether [Appellant] has presented claims worthy of a COA" Medellin.

Here, Trial Counsel provided the following reason for not investigating a SANE:

A. "I think generally that report was very similar to many of the sexual assault report cases that I've seen in my state practice...So I think I looked at that and just probably took it at face value and said, okay, this is very similar to many of the reports that I've seen."
SEE: (App.15)(p.306; [L.11-18])(Trial Counsel).

The district court ignored Appellants Defense SANE Expert Opinion and stated:

"The way I take the evidence and understand evidence in this area is the Ms. Graham [Trial Counsel] testified, which is sometimes you'll find evidence when there's been a sexual assault and sometimes you won't. So that you didn't see..trauma..associated with..rape doesn't in my mind cast serious doubt on the overwhelming evidence of the defendants guilt...nor is there evidence to suggest that the absence of evidence is an indication that they never had the kind of sexual contact..necessary to support..guilt here."

SEE: (App.5)(p.64)(Quoting The Court At (App.5)(p.81; [L.19-25]): and, (p.82; [L.1-5])).

Appellant articulated that Trial Counsels reason for not investigating a SANE is

not a reasonable professional standard for 'Sexual Abuse Cases' quoting First Circuit District Court, Reyes v. Mitchell, 2020 US Dist. LEXIS 57078, at LEXIS *14-15 (D. Mass. 2020)(discussing cases involving sexual abuse where counsel has been held ineffective for failing to speak with expert. Citing, Holsomeback v. White, 133 F.3d 1382, 1388 (11 Cir. 1998); and, Anderson v. Johnson, 338 F.3d 382, 392 (5 Cir. 2003)). See also, Pavel v. Hollins, 261 F.3d at 224 (failure to consult SANE is ineffective).

The First Circuits standard for showing prejudice from counsels failure to investigate states that Appellant must "show how and why such failure deprived him of a viable defense" Porter, 924 F.3d 397. More recently, the First Circuit has held that "if it turns out that the investigation would not have led to any information that counsel would have used at trial" there is no "prejudice" Lang v. DeMoura, 15 F.3d 63, 69 (1 Cir. 2021).

Here, Trial Counsel made no comments in regards to whether they would have used Appellants Defense SANE Expert, Dr. Rotolo, at trial. Appellant was deprived of the following "viable defense" Porter. See also, Valenzuela-Bernal, 458 US, 870-71 (must show witnesses testimony would be favorable):

- "1. The forensic nurse examiner should have been called by the defense during trial....a patient who presents closer in time (assault to exam) is at an increase rate of identifying injuries after penetration...patients who are presented within 24 hours, 'anogenital trauma was documented in 73% of adolescent females after consensual sexual intercourse...'
2. In addition,...'.a history of blood being reported at the time of the molest.'
3. In this case, no reports of bleeding were documented, and the patient reported at least one episode of penile-vaginal penetration within 24 hours.
4. Finally, the forensic nurse could have testified...."

SEE:(App.16)(p.309-311)(Dr. Rotolo's Opinion)(Id. at (p.310)).

The failure to investigate MH's claims of sexual abuse, claims Trial Counsel knew the government would rely on is ineffective. See, e.g. Rompilla v. Beard, 545 US 374, 386-87, 125 Sct 2456, 162 LEd 2d 360 (2005); and, Wiggings, 539 US, 527-28. ("In light of..the..records..counsel chose to abandon their investigation at an unreasonable juncture, making a fully informed decision with respect to [A Defense

Against Sexual Abuse] strategy impossible...As we established in Strickland, 'strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.' 466 US, at 690-691,").

Taking a SANE's report evaluating a victim at face value should never be reasonable professional judgments to support a decision not to investigate because this is precisely a "Criminal case[.]..where the only reasonable and available defense strategy require[d] consultation with..[and the] introduction of expert evidence" Harrington, 178 LEd 2d 624, 643. And, precisely the type of case where only a Defense SANE, such as Dr. Rotolo, "would have instilled in the jury a [73% probability] reasonable doubt as to [Appellants] guilt" to having committed the alleged CRIMINAL SEXUAL ACTS on 4/27/17, because there is a 73% chance that the victim would have had trauma and a documented report of blood had Appellant actually ENGAGED IN CRIMINAL SEXUAL ACTS with MH on 4/27/17. Hinton.

Trial Counsels deficient performance of failing to investigate a Defense SANE Expert (Dr. Rotolo) to inform the jury that MH is at an increased likelihood of 73% scientific finding of trauma and that there should have been blood also found during her SANE, caused Appellant to suffer prejudice because counsel "deprived him of a viable defense" Porter; and, caused Appellants trial to become fundamentally unfair with a verdict that is unreliable because counsel deprived Appellant of a substantive Sixth Amendment right to (a) Effective Assistance of Counsel; (b) Make Reasonable Investigations; and (c) Call Witnesses Who Are material and favorable to his defense. See, Wiggins; Valenzuela-Bernal; Lockhart.

Furthermore, "The district court's finding's..not..drawn from [Dr. Rotolo's opinion]. It's conclusion..is thus, contradicted by the record" Kosilek, at 89. "The district court ignored..[Dr. Rotolo's opinion]...As we explained above, in doing so the court improperly supplanted..it's own decision based on a layman's view, and terming [Dr. Rotolo's] view's imprudent." Id., at 115, n.11.

"Additionally, the court based its conclusion..on clear factual error...This ..highlights the unreasonableness of the..court's decision." Wiggins, 539 US, 528.

The Appellant has clearly established that the district courts opinion denying Appellants ineffective claim for Trial Counsels failure to investigate a Defense SANE Expert, such as Dr. Rotolo, is debatable, if not actually wrong pursuant to Slack. And, at the very least "the issues presented are adequate to deserve encouragement to proceed further" Miller-El.

The Court should issue a remand with an order to grant a COA because when "a habeas petitioner makes a threshold showing that his constitutional rights were violated, a COA should issue." Jordan.

QUESTION #5:

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS FAIL TO INVESTIGATE ALIBI DEFENSE OF CELL LOCATION DATA TO DISPUTE THE VICTIMS ALLEGATIONS OF (WHEN) A TRANSPORTATION CRIME WAS INITIATED AND DISPUTE EYE WITNESS ACCOUNT OF (WHEN) ALLEGEDLY SEEING THE DEFENDANT WITH THE VICTIM IN ROCKINGHAM VERMONT ON 4/27/2017?

As evident in (QUESTIONS #1-4), this case has an overwhelming allegation of sexual abuse that overshadow's the 'FUNDAMENTAL CRIMINAL ELEMENT IN DISPUTE' here:

**** APPELLANT DID NOT 'TRANSPORT' THE VICTIM TO VERMONT ON 4/27/2017 ****

Trial Counsel left Appellant with no effective defense on this criminal element in dispute. After Appellant was convicted under 18 U.S.C. 2423(a), Appellant filed a §2255, raising a Sixth Amendment violation for counsels failure to investigate Appellants Cell Phone Location Data to dispute the victim's claim that Appellant was at her window on 4/27/17, at (1 AM) (noted by a text messaging) to initiate the TRANSPORTATION crime; and, the victim's friend -- and eye witness -- Patrick Elmore's claim of seeing Appellant with the victim in Rockingham (VT), confirming an alleged TRANSPORTATION crime.

SEE: (Doc.41; [p.18-23]); and, (App.5)(p.227-228)(§2255 Reply Brief).

After the district court made post hoc rationalizations for counsels failure to investigate; and, altered the facts in the record, the court denied Appellants

ineffective claim, Appellant filed both a COA and Rehearing petition.

SEE: (App.4)(p.34-37); and, (App.5)(p.65-68).

Appellant now moves for this Honorable U.S. Supreme Court "to decide only whether [Appellant] has presented claims worthy of a COA." Medellin.

Here, Trial Counsel provided no "reasonable professional judgments [to] support the [failure to] investigat[e]" Wiggins, 539 US, at 527-28 (quoting Strickland 466 US, at 690-91). And, the government did not challenge this deficiency:

THE COURT: "...the government is not challenging your contention..that reasonable counsel would have explored..that. There are tactical judgments like, FOR EXAMPLE..they could..alert the government. If it turns out, as in this case here, AT LEAST IN MY VIEW, the record tends to support the government's view...That's the..TACTICAL JUDGMENT THAT A LAWYER WOULD HAVE TO MAKE."

SEE: (App.17)(p.315; [L.7-22])(The Court).

THE COURT: "I get Ms. Graham's [Trial Counsel] point is, hey, with the benefit of hindsight, yeah, I can understand why someone would say I should have gotten that cell phone data."

SEE: (App.17)(p.316; [L.10-13])(The Court).

This was not an issue of "hindsight" Appellant requested at the start of this case for Trial Counsel to investigate his Cell Location. SEE: (Doc.41; [p.18-23])

The district court faced with a true ineffective assistance of counsel claim, then denied the claim on the above post hoc rationalizations for counsels failure to investigate; and then, refused to credit Appellants Cell Phone Location Data Expert, while altering the facts of the record:

1. THE COURT: "...the cell phone tower evidence. I do not credit the expert's conclusion,"

SEE: (App.5)(p.65; [B.])(Quoting The Court At (App.5)(p.80; [L.13-14])).

2. The court alter the following facts of the record to improperly conclude that Cell Location Data supports the governments case:

2.(A): MH stated that "she received a message from 'Kurt' around 1 am of 4/27 indicating that he was outside..and wanted her to..run away with him."

SEE: (App.5)(p.245)(Second Paragraph).

2.(B): Appellants Cell Phone Data and Expert Spencer McIanaille's opinion entirely discredits MH's statements because (a) There Is No Text Messages Sent To MH's Cell Phone From Appellants Phone At (1 AM); and, (b) At precisely (1:21 AM) on 4/27, Appellant used his phone and was found using a cell tower that is a minimum of 23 miles "as the crow flies" from the MH's Hinsdale, (NH) home; and, is on the cell towers vector that is pointing Northeast (away) from the MH's home.

Thus, it is impossible for the Appellant to have sent a (1 AM) text to

MH's cell phone and impossible for the Appellant to have (any other way) initiated contact with MH at (1 AM), and take the very minimum amount of time of at least (5 Minutes) for MH to climb out her window; run into the woods to the train tracks - at an undisclosed distance; run down those train tracks -at an undisclosed distance and undisclosed location other than 'the end' where Appellants car is alleged to have been; and then, for Appellant to drive a minimum of 23 miles all within precisely * 21 Minutes * where Appellants Cell Location Data places him on the cell tower vector facing away (Northeast) of Hinsdale, (NH) at precisely (1:21 AM).

SEE: (App.5)(p.66; [1(a)-1(b)])(Citing (App.5)(p.256; [L.#70-74])); and, (p.262; [L.18-19])).

- 2.(C): The district court altered the above facts in (2.(B)), by --
- (a) Improperly supplanting the courts alternate theory that Appellant (COULD) have initiated the 'TRANSPORTATION' crime "anywhere between 10:40 and 1:10..when they left the Hinsdale area,"
SEE: (App.5)(p.66; [1(b)])(Quoting The Court At (App.5)(p.269; [L.1-20]))
This undermines MH's statement of facts and creates a SPECULATIVE version of criminal events.MH, clearly stated (1 AM).
- (b) Improperly supplanting the courts alternate theory that Appellants Cell Location Data places him in Alstead (NH) cell tower (23 miles from Hinsdale, NH) at [1:40 AM] and not at the records (1:21 AM). This allowed the court to SPECULATE that Appellant "could..as late as 1:20 that they left the Hinsdale area,"
SEE: (App.5)(p.66; [1(b)])(Quoting The Court At (App.5)(p.269; [L.12-14])).
3. The court then focused only on Patrick Elmore's testimony where he thought it was around (7 AM) when he made the initial sighting of the Appellant and MH at the 12 Alden Rd., Rockingham, VT, crime scene.
SEE: (App.5)(p.67)(The Court At (App.5)(p.270-271)).
- 3.(A): Appellant provided the First Circuit with the COMPLETE RECORD of facts to show that Patrick Elmore's eye witness account is actually at (8:07 AM) and not his trial testimony that was based on unclear memory. This was supported by two facts in the record (1) Patrick Elmore's later stated "when I first saw them my wife called the police" Id. at (App.5)(p.273; [L.22-23])(Patrick Elmore's trial testimony); and, (2) The Vermont police report noting Kimberly Elmore's 911 call (8:07 AM).
SEE: (App.5)(p.261)(Vermont Police Report).
- 3.(B): Appellants Cell Phone Location Data places him on the same Alstead, NH cell tower at (6:56 AM).
The next Cell Location Data places Appellant on a cell tower that is 15-20 miles south of Rockingham, VT, and on a vector that is pointing south (away) from Rockingham, VT, at precisely (7:28 AM).
Therefore, Appellant has traveled a minimum of 15-20 miles in (36 Minutes) moving away from Rockingham, VT, in a southerly direction. This would make it near impossible for the Appellant to have been in Rockingham, VT, and be in the woods on foot for Patrick Elmore to have seen him at (8:07 AM).
SEE: (App.5)(p.67)(Citing 2255 Brief at (App.5)(p.257; #80); and, (p.263; [L.15-20])(Spencer McInaille).
- 3.(C). Therefore, the courts conclusion is based on a partial record.

Trial Counsel provided no reasoning for a decision to exclude a investigation

of Appellants Cell Phone Location Data and Expert. See, e.g. Wiggins, 539 US, at 572-28 ("counsel chose to abandon their investigation at an unreasonable juncture, making fully informed decision with respect to [A Defense Against TRANSPORTATION of a minor] strategy impossible.").

Trial Counsel made no comment in regards to whether they would have used the Appellants Cell Phone Location Data with Expert McNaille. See, e.g. Lang ("if it turns out that the investigation would not have led to any information that counsel would have used at trial" no "prejudice").

The district court acknowledged that the government "is not challenging.. reasonable counsel would have explored" the Cell Phone Location Data.
SEE: (App.17)(p.315; [L.7-22])(The Court).

The district court went directly to post hoc rationalization for counsels decision making:

"There are tactical judgments like, for example..they could..alert the government. If it turns out, as in this case here, at least in my view, the record tends to support the government's view..That's the..tactical judgment that a lawyer would have to make."

SEE: (App.17)(p.315; [L.7-22])(The Court).

The court "may not indulge in 'post hoc rationalization' for counsel's decision making" Harrington.

Furthermore, the "court's finding's..not..drawn from [Cell Phone Location Data Expert Spencer McNaille's] testimony. It's conclusion..is thus contradicted by the record" Kosilek, at 89. "The district court ignored.. [Cell Phone Location Data Expert McNaille]...As explained above, in doing so the court improperly supplanted..it's own decision [and speculations] based on a layman's view, and terming [Spencer McNaille's] views imprudent." Id. at 115, n.11.

Where the "court observed that...guilt shall not escape or innocence suffer..these dual aims would be defeated if judgments were founded on a partial or speculative presentation of the facts" A COA should issue.

Trump. See, also Wiggins, at 528. ("highlight the unreasonableness of the.. court's decision.").

Trial Counsels deficient performance of failing to investigate Cell Phone Location Data with Expert Opinion, such as Spencer McNaille, deprived Appellant

of a "viable defense" against both the victims and eye witness account of the alleged crime. Porter.

An alleged TRANSPORTATION crime is precisely a "Criminal case[.]..where the only reasonable and available defense strategy require[d] consultation with..[and the] introduction of [Cell Phone Location Data and] expert evidence" Harrington 178 LEd 2d, 643. Because only with Cell Phone Location Data with Expert opinion could "have instilled in the jury a reasonable doubt as to [Appellants] guilty" Hinton.

Trial Counsels failure it investigate caused Appellants trial to become fundamentally unfair with a verdict that is unreliable because counsel deprived Appellant of a substantive Sixth Amendment right to (a) Effective Assistance of Counsel; (b) Making Reasonable Investigations; and (c) The Right to Call Material Witnesses To His Defense. See, Strickland, Valenzuela-Bernal. Lockhart.

Appellant has clearly established that the district courts opinion in which the court denied Appellants ineffective claim of Trial Counsels failure to investigate Cell Phone Location Data with Expert, is debatable, if not actually wrong pursuant to Slack. And, at the very least "the issues presented are adequate to deserve encouragement to proceed further." Miller-El.

The Court should issue a remand with an order to grant a COA because "where a habeas petitioner makes a threshold showing that his constitutional rights were violated, a COA should issue." Jordan.

QUESTION #6:

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIHGTS VIOLATED WHERE COUNSELS FAIL TO PROPERLY CROSS EXAMINE AN ALLEGD VICTIM ABOUT THEIR INCONSISTENT STATEMENTS AND IDENTIFICATION OF ITEMS IN A CAR?

"In all of our traditional efforts to protect the individual against oppression and false conviction...we have relied basically and primarily on confrontation and cross-examination. By no other means can those who must judge their fellow man minimize to the fullest and desired extent the mistake which humans make. Without recourse to these means, it is

impossible for anyone accused of anything to protect himself fully against enemies whose evidence may consist of nothing more than malice.. or a perverted desire to destroy."

Jay v. Boyd, 351 US 345, 376, 76 Sct 919, 100 LEd 2d 1242 (1956).

Here, in this case, there is actual evidence of a motive of malice and a perverted desire to destroy the Appellant. Appellant was a Land-Lord who was renting his 76 Glen St., Hinsdale, NH, home to one Carol Pino. When Carol Pino faced eviction, Carol Pino threatened the Appellant with being arrested for a false allegation of molestating her daughter and the alleged victim in this case MH. The victim, MH, admitted to hearing Appellant and her mother argue about her not paying rent and that MH's mother (Carol Pino) then threatened Appellant with being arrested if he evicted them. SEE: (App.5)(p.85; [L.23-25]); (p.87; [L.1-2]):

"Kurt Carpentino did not sexually assault [MH]. He didn't transport her from New Hampshire to Vermont. This case has been about the delivery of a promise, Carol Pino's promise and threat to get Kurt arrested if he evicted them."

SEE: (App.5)(p.186; [L.21-25]); (p.186; [L.1]; and, [L.6-8]):

Q. "And were there times that you were present when they argued?"

A. "Yes, ma'am."

Q. "And did you ever hear them argue about her not paying rent?"

A. "Yes, ma'am."

Q. "Okay. Did you ever hear your mom threaten Kurt that she'd have him arrested if he evicted her?"

A. "Yes."

After Appellant was convicted for a crime he did not commit, he filed a \$2255 petition raising a Sixth Amendment violation for Trial Counsels failure to properly cross examine MH on her inconsistent statements; confront her with the police inventory of Appellants car, in light of MH's allegations that Appellant had everything packed in his car for their get-away; and, for failing to ask a follow-up question about MH's claim that "it didn't work very well" -- a follow up question to cross examination of being ejaculated on and wiping it off.

SEE: (Doc.41)(p.39)(\$2255 Brief); (App.4)(p.37-40)(COA Petition); and,

(App.5)(p.68-69)(COA Rehearing Petition with \$2255 Reply Brief at (p.232-233))

Appellant moves this Honorable U.S. Supreme Court "to only decide whether [Appellant] has presented claims worthy of a COA." Medellin.

During Appellants §2255 hearing, Trial Counsel was only questioned on their failure to ask the follow up question about MH's claim that it (didn't work very well) after being cross examined on MH's allegations that Appellant did ejaculate on her and she wiped it off with sponge and water. Towhich, Trial Couanel repeatedly stated that they had no reason for not asking the follow-up question. SEE: (App.19)(p.355; [L.14-25]); (p.356; [L.1-21])):

- Q. "And you were aware..that the alleged victim..explained..that Kurt had ejaculated on her genital area, correct?"
A. "Correct."
Q. "And you were aware that she..had tried to wipe it off with a sponge and water, but that did not work very well?"
A. "Correct."
Q. All right. And do you recall that you never asked her about the sponge and water not working very well?"
A. "Correct."
Q. "And was there a reason why you didn't ask her about that?"
A. "I can't give you a reason. I don't recall. I remember her being a very sort of fragile witness, you know, and so I had to tread lightly."
Q. "Right. But you had asked her about being ejaculated on, correct?"
A. "Yep."
Q. "You had asked her about washing with a sponge and water, correct?"
A. "Yes."
Q. "And both of those are fairly personal things, correct?"
A. "Yes."
Q. "But there wasn't any reason that you can give us as to why you didn't follow up with the fact taht when she did wipe herself off, according to her statement, it did not work very well?"
A. "I didn't ask that and I can't tell you why I didn't ask her that."
Q. "And do you see how that might undermine the theory of the defense that there was no physical evidence?"
A. "Sure..."

Even though Trial Counsel could not provide any strategic rational as to why they did not ask this follow up question and Trial Counsel was not questioned on their reasoning for not cross examining MH on her inconsistent statements or confronting MH with the police inventory of Appellants car compared to her statements that Appellant car was packed with clothes, the district court again indulged in post hoc rationalizations to dismiss Appellants ineffective claim:

"The examination of the victim is such a delicate tactically important judgment call. You have -- in this case..the victim was extremely child-like, vulnerable. She had a hearing impairment..She was very unsophistecated. She was very sympathetic. Counsel needed to tread very carefully in examing the victim in this case, and I don't find any deficient performance in the way the victim was examined."

SEE: (App.5)(p.78; [L.2-9])(The Court).

Appellants ineffective cross examination of MH centered on the following:

1. Trial Counsel elicited testimony from MH that Appellant allegedly ejaculated on her and that she wiped it off with a sponge and water; Trial Counsel then failed to ask the 'follow-up question' about MH's claim that it did not work very well.

And, that the failure to ask this follow up question undermined the 'Lack Of Physical Evidence' defense.

SEE: (App.4)(p.37; [#70-72]); and, (App.5)(p.68; [(A)(1)]).

2. Trial Counsel failed to confront MH on her inconsistent statements about the 'ATTIC' bedroom. At trial MH stated that her bedroom was on the 'Second Floor' while Appellant stayed in the 'ATTIC.'

MH provided statements that her bedroom was in the 'ATTIC' while Appellant was in her mothers bedroom.

SEE: (App.4)(p.37; [(a) and (b)]); and, (App.5)(p.68; [(A)(3)])(Citing MH's Testimony At (App.5)(p.168; [L.21-23]); (p.173; [L.20-21]); (p.189; [L.10-12]); (p.190; [L.12-17]); and, (p.191; [L.16-19])).

3. Trial Counsel failed to confront MH on her statement that Appellant had everything packed in his car for their get away; compared with the VT police inventory of what is actually in Appellants car.

SEE: (App.4)(p.37; [#73 (c) and (d)]); and, (App.5)(p.68; [(A)(2)]).

SEE: (App.18)(p.318-352)(VT Police Photo's and Inventory Of Appellants Car).

The district courts contention that Trial Counsel was not ineffective for their failure to cross examine MH on the above facts was based on the courts speculative reasoning that these question were to sensitive to ask because MH had a "hearing impairment" she "was extremely child-like, vulnerable..unsophisticated... sympathetic." (App.5)(p.78; [L.2-9]). Appellant does not know what to say other than this is not a valid reason for a Trial Counsel improper cross examination. If this was to stand, no criminal defendant would ever be allowed to cross examine a victim about inconsistent statements and facts to help the jury determine if a criminal defendant is being set up by false allegations.

Furthermore, the "court's may not indulge in post hoc rationalization for counsel's decision making.." Harrington. And, "fair and accurate judicial proceedings...would be defeated if judgments were founded on a partial or speculative presentation of the facts," Trump.

Trial Counsels failure to properly cross examine MH is deficient. See, e.g. US v. Correia, 2002 US Dist. LEXIS 17218, at LEXIS *7-8 (D. Mass. 2002)("See Berryman v. Morton, 100 F.3d 1089, 1098-99 (3rd Cir. 1996)(holding that defense

counsel acted unreasonably in failing to use..inconsistencies in the victim's testimony.."); See, also, Stephens v. Hall, 294 F.3d 210, 213 (1 Cir. 2002) ("counsel attempted to impeach [victim's] credibility by pointing out inconsistencies between her trial testimony and..statements..to police..").

Trial Counsels deficient performance of failing to confront the victim caused prejudice to Appellants trial and deprived Appellant to supporting his only defense that the allegations are false -- made up. Trial Counsels actions also deprived Appellant of a substantive right to confront MH and thus violated the Appellants Sixth Amendment rights to (a) Effective Assistance of Counsel; and, (b) Confrontation Rights. The trial was fundamentally unfair and the verdict is unreliable. See, Lockhart. Strickland. Stephens.

Appellant has clearly established that the district courts opinion is debatable, if not actually wrong pursuant to Slack. And, at the very least "the issues presented are adequate to deserve encouragement to proceed further" Miller-El.

The Court should issue a remand with an order to grant a COA because when "a habeas petitioner makes a threshold showing that his constitutional rights were violated, a COA should issue." Jordan.

QUESTION #7:

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS FAIL TO RE-DIRECT EXAM THE APPELLANT AND INVOKE THE RULE OF COMPLETENESS TO COUNTER THE GOVERNMENTS MISREPRESENTATION OF EVIDENCE IN APPELLANTS CONTESTED CONFESSONAL STATEMENTS TO POLICE?

Appellants defense to the confession to the charged offense that was elicited by VT police during a 'Second Interrogation' was based on the fact that the VT police informed the Appellant of the information that was gathered and the police continued pressures to have Appellants statements "line up" with that information.

On cross examination by the government, Appellant was repeatedly ambushed by

the governments false claim that the VT police did not provide Appellant with the information about using the "train tracks" in the charged offense.

After Appellant was convicted for a crime that he did not commit, Appellant filed a §2255 raising a Sixth Amendment violation for Trial Counsels failure to protect Appellant from the governments miscarage of justice -- manipulating the facts to imply that Appellant was not provided the "train track" information by the VT police.

SEE: (Doc.41)(p.45).

SEE: (App.4)(p.43-46); and, (App.5)(p.69).

Here, the district court never formerly addressed this issue. However, the court did deny Appellants claims and did comment on the fact that the court understood that the "train tracks" were commented by the VT police in the first interrogation. The court essentially dismissed this claim based on the idea that because the Appellants confession contained two element (a 'Halloween hay ride' and 'Sex in the Attic') that the VT police did not inform Appellant of and that MH did state in her police report -- Trial Counsels failure to invoke the rule of completeness was irrelevant. SEE: (App.20)(p.359-364):

(p.359; [L.5-25]): Q. "...do you recall that Mr. Carpentino..got into a back and forth..with the prosecutor over whether or not the police had told him..railroad tracks.."

A. "I do."

Q. "...your team actually had..exhibits..of..audio..snippets from..the first statement.."

(p.360; [L.7-25]): THE COURT: "...The railroad tracks comment was in the first interview. So, I'm aware of that. There are other comments he made in the second interview that are not in the first..."

Q. "So when that occurred..hey, we need to play this..for the jury so they could see that Mr. Carpentino is telling the truth and that this was something..police told him?"

A. "I did not have that conversation."

Q. "And do you agree with me that it put Mr. Carpentino --"

(p.361; [L.1-25]): -- "in an unfair light with respect to that particular series of questions?"

A. "I'm not sure I understand..."

Q. "...My argument is that they..claimed that it lined up with what [MH] said because he told the police..he went to the railroad tracks, and his answer was, no..they told me that in the first conversation."

A. "Okay."

Q. "And then they played the audio of the second statement during closing.. Again, the jury had no understanding that that what Mr. Carpentino had said..was in fact correct..?"

A. "Okay, yes. I understand now."

Q. "...you knew..his testimony was going to be that what I said in that second statement, I was just parroting what they told me, correct?"

A. "I guess. I'm not sure I knew what he would --"

(p.362; [L.1-25]): -- "defineitly say. I mean...I guess..."

Q. "...I mean, your client took the witness stand after a confession was put into evidence. He would have to explain the confession..?"

A. "Right. Yeah."

Q. "And part of the way that he explained it was I was just parroting what they told me in the first --"

A. "Sure."

THE COURT: "But he also said in that second statement that the relationship began on the..hayride...they first had sex in the attic.."

MR. IACOPINO: "But if I may, your Honor, in the exchange that occurred during the course of the trial, he was on the witness stand at the time, he was not asked to defend those statements on cross. He was asked about this statement about the railroad tracks, and he had a very good and true reason for --"

(p.363; [L.1-25]): THE COURT: "That he had a good explanation as to one, which I understand, highlights the absence of an explanation with respect to..closing arguments as a reason his confession was not fabricated...isn't any evidence that anybody fed to him his statement that the relationship began on a Halloween hayride."

MR. IACOPINO: "...but what I'm addressing is what he --"

THE COURT: "I get your point..."

The district court refused to accept the fact that the government misrepresented the fact, before the jury, that the "train tracks" were NOT mentioned to the Appellant by the police and that Trial Counsel had the means (Exhibit 9) to play for the jury to correct this misrepresentation.

The "train tracks" information are critical elements of the charged offense to which the Appellant confessed to under police pressures to line this up with the information they gave him. Any reliance on a 2016 Halloween hayride or 2016 'Sex In The Attic' - by the court - does not dismiss the claim at hand.

The district courts opinion is not just debatable, it is misplaced and wrong pursuant to Slack. At the very least this issue "deserves encouragement to proceed further" Miller-El. "[A] COA should issue." Jordan.

QUESTION #8:

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ERRED AND ABUSED IT'S DISCRETION BY FINDING IT IS NEITHER DEBATABLE OR WRONG WHEN A DISTRICT COURT DENIES CRIMINAL DEFENDANTS CLAIM THAT SIXTH AMENDMENT RIGHTS ARE VIOLATED WHERE COUNSELS ACTIONS IN THE CUMULATIVE HAVE DEPRIVED A DEFENDANT OF A TRIAL THAT IS FAIR AND A RESULT THAT IS RELIABLE?

The district courts conclusion of Appellants ineffective assistance of counsel claims are that even "if there was any deficeint performace" "there was no unfair prejudice as a result of counsel's deficeint performance."

SEE: (App.5)(p. 82 ;[L.23-25]); and, (p. 83 ; [L.1-16])(The Court):

"When I look at it in the aggregate, I see no prejudice being established at all here...there was no unfair prejudice as a result of counsel's deficient performance if there was any...This is a case in which there's overwhelming evidence of the defendant's guilt...Accordingly, I deny the defendant's 2255 motion...I also decline to issue a [COA]..."

As defined in (QUESTIONS #1-7), Trial Counsels actions are clearly deficeint and argubally caused severe prejudice to the Appellant by depriving him of his Sixth Amendment right to effective assistance of counsel by providing "meaningful adversarial testing" of the governments case. US v. Cronic, 466 US 648, 659, 104 SCt 2039, 80 LEd 2d 657 (1984):

1. The charged offense became a -- PRIOR SEXUAL ABUSE CASE -- with substantial prejudicial impact on Appellants (CHARACTER) that made the Appellant appear to be some sick CHILD-SEXUAL-PREDATOR.

Trial Counsel provided no meaningful adversarial testing to this crimanal allegation of being a "predator" (App.6)(p.284; [L.23-25])(The Government), by --

(QUESTION #1)

- (A) Objecting and invoking Fed. R. Evid. 403; and, 404(b).
- (B) Objecting to the admission of 404(b) evidence when Appellant denied the entire elements of the charged offense and made no (Lack Of Intent) plea.
- (C) Failed to request a limiting instruction to cure the inhearent prejudice of the government calling the Appellant a "predator" after the misuse of the Rule 404(b) evidence intended purpose -- to show only a defendants state of mind or intent.

(QUESTION #2)

- (D) Failed to call Carol Pino, the victims mother, to explain to the jury that Appellant did not stay in the (ATTIC) where a several month long 'SEXUAL ABUSE' is alleged to have occurred. And, that Appellant was never left alone with the victim (MH).
2. The elements of the charged offense alleged that Appellant TRANSPORTED the victim (MH) from her home at 76 Glen St., Hinsdale, NH, to 12 Alden Rd., Rockingham, VT, on 4/27/2017. With Eye-Witness Patrick Elmore who's testimony

supports this criminal element of the charged offense.

Trial Counsel provided no meaningful adversarial testing to this criminal allegation of TRANSPORTATION of a minor by --

(QUESTION #5)

- (A) Investigate Appellants Alibi 'Cell Phone Location Data with Expert Opinion to establish Appellants LOCATION at the time's alleged by both the victim (MH) and witness Patrick Elmore in their statements to police.

Trail Counsel left Appellant completely defenseless and with only his bare testimony to dispute both the victim and witness allegations.

- 3. The elements of the charged offense alleged that Appellant committed CRIMINAL SEXUAL ACTS with the victim (MH) on 4/27/2017. Allegations that involved unprotected sexual intercourse, oral contact with victims breast and genital; and, allegations that Appellant (EJACULATED) on the victim and that she removed the semen DNA -- an allegation that a layman would construe as a reasonable method of avoiding a Forensic DNA Swab Test.

Trail Counsel provided no meaningful adversarial testing to this CRIMINAL SEXUAL ACT by --

(QUESTION #3)

- (A) Failing to call DNA Expert Dr. Laken to testify that in his expert field it is expected that semen DNA would still be recovered after a victim wiped herself or even bathed. Furthermore, Dr. Laken could have also the jury that no saliva DNA of the Appellant was found to be on MH.

(QUESTION #4)

- (B) Failing to investigate a Defense SANE Expert, such as, Dr. Rotolo, who would have testified in her expert field that there is a "73%" reasonable likelihood that the victim (MH) would have shown signs of trauma after engaging in even "consensual sexual intercourse" and that there should have been - at a minimum - a SANE finding of blood being detected in the victims vaginal exam.

- 4. The defense theory presented to the jury was a combination of a defense that the victim (MH) was making false allegations based on her mother, Carol Pino's threat to have Appellant arrested for his plan to evict them; and, a defense that highlighted the (Lack Of Physical Evidence) to any of the victims alleged (4/27/2017) CRIMINAL SEXUAL ACTS.

Trial Counsel provided no meaningful adversarial testing to these criminal and undermined the defense by --

(QUESTION #6)

- (A) Failing to properly cross examine the victim (MH) by highlighting her inconsistent statements of who's bedroom was in the 'ATTIC'; and, failing to confront the victim (MH) on her statements that Appellant had his car packed for their get away -- compared to the VT police inventory of the Appellants car that had NOTHING PACKED to suggest a planned get away.

- (B) Counsel undermined the (Lack Of Physical Evidence) defense when counsel elicited -- ONLY -- the victims testimony that she had wiped the semen off with a sponge and water. Failing to confront the victim with her statement that it did not work very well -- compared with the negative Forensic DNA Swab Test.

- 5. The charged offense included a contested confession submitted to the jury. Appellants only defense against the elements of the charged offense were based on the fact that the information provided in the confession to the elements of the charged offense were given to him by the VT police with the VT police pressuer to "line up" his statements with the information they

provided him during the First Interrogation.

The government maliciously undermined Appellants defense of a false confession defense based on 'Police Provided Information' by only playing parts of the Second Interogation where police did not provide any information and ambushed the Appellant by asking if he heard the police say anything about "train tracks" -- this unfairly implied to the jury that Appellant had no reason to know about the "train tracks" and thus, unfairly implied that Appellants confession was not just a parroit of information provided by the VT police.

Trial Counsel provided no meaningful adversarial testing to the governments malicious contention by --

(QUESTION #7)

(A) Conducting proper Re-Direct Examination of the Appellant and play the (Exhibit 9) that contained the First Interogation where the VT police did in fact inform the Appellant of the "train tracks" information.

6. These issue's standing alone, arguably, are enough to earn a COA. The issues in the cumulative show that Appellant was placed on trail were Trial Counsel did nothing to support or help Appellant even attempt to prove his actual innocence. (QUESTION #8).

Appellant, pro se, has provided this Court with QUESTIONS and REASONS, that are supported by the record, to show that the d^lstrict court and Appellat courts opinions are debatable and/or wrong pursuant to Slack. And, at the very least the ineffective assistance of counsel claims are "issues presented [that] and adequate to deserve encouragement to proceed further." Miller-El.

For these reasons, especially in the cum^llative, Appellant moves this Honorable U.S. Supreme Court, not to rule on the mer^lits but "to decide only whether [Appellant] has present^led claims worthy of a COA." Medellin.

CONCLUSION

The de^lial of Appellants §2255 petition and COA has prevented the Appellant from address^ling the (MERITS) of his claim in the Great Writ entirely.

"Dismissal of a firs federal habeas petition is a particularly serious matt^ler, for that dismissal d^lies the petitioner the prot^lections of the the Great writ entirely, risking injury to an important interest in human liberty."

Lonchar v. Thomas, 517 US 314, 324, 116 Sct 1293, 134 LEd 2d 440 (1996).

"The right to counsel is a fundamental right of criminal defendants; it assures the fairness, and thus the legitimacy of our adversary process.. The essence of an ineffective-assistance claim is that counsel's

unprofessional errors upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect."

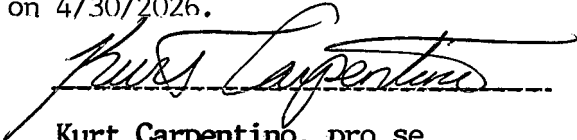
Kimmelman, 477 US at 374.

The Appellants QUESTIONS and REASONS presented in (QUESTIONS #1-8) are claims of Trial Counsels errors that upset the adversarial balance between the Appellants defense and the prosecutions theory of guilt because Trial Counsel made no meaningful adversarial testing to the governments theory of guilt.

Appellant prays to GOD, Country, and this Honorable Court to issue a remand with an order to grant a COA on the grounds that Appellant has made "a threshold showing that his constitutional rights were violated, a COA should issue." Jordan.

Respectfully Submitted on 4/23/2026; Received on 4/30/2026.

Respectfully Re-Submitted on 5/21/26.


Kurt Carpentino, pro se

CERTIFICATE OF SERVICE

I, Kurt Carpentino, swear that a true copy of the (Re-Submitted) Petition for a Writ Of Certiorari was sent to the US Solicitor General, Room 5614, D.O.J., 950 Pennsylvania Ave., NW, Washington, D.C. 20530-0001.

Executed On 5/21/26.

