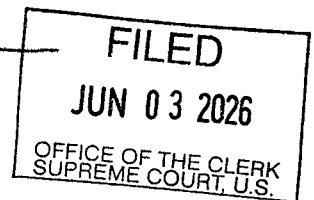


ORIGINAL

No. 26-5650



IN THE
SUPREME COURT OF THE UNITED STATES

KEVIN JAMES LEE

Petitioner

vs.
THE STATE OF GEORGIA

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of Georgia

PETITION FOR WRIT OF CERTIORARI

Kevin Lee 1003091237
Calhoun State Prison
P.O. Box 249
Morgan, GA 39866

QUESTIONS PRESENTED

1. Where the State, just as announced in *Doggett v. United States* 505 U.S. 647, 42 S.Ct. 2686, 120 L.Ed. 2d 520 (1992), when denying Lee a speedy trial, violated his Sixth Amendment right.
2. Where the State, just as announced in *U.S. v. Seltzer* 595 F.3d 1170 (10th Cir. 2010), by denying Lee a bond hearing or granting him a bond, violated his Eighth Amendment right.
3. Where the State, just as announced in *Strickland v. Washington* 466 U.S. 668, 688, 694, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984), violated Lee's Sixth Amendment right to effective assistance of counsel.
4. Where the State, just as announced in *Kitchens v. State* 287 S.E. 2d 316, 160 Ga.App. 492 (Ga.App. 1991), knowingly presented perjured testimony, violated Lee's Fifth and Fourteenth Amendment right to the due process of a fair trial.
5. Where the State, just as announced in *Pierce v. United States* 86 F.2d 949 (6th Cir. 1936), knowingly or unknowingly injected false statements into his closing argument, unsupported by record evidence, violating Lee's Fifth and Fourteenth Amendment right to the due process of a fair trial.

QUESTIONS PRESENTED

1. Speedy Trial Violation

a. Sixth Amendment, Fourteenth Amendment

B. Right to a Speedy Trial, Due Process

C. Doggett v. U.S. 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed. 2d 520 (1992)

Barker v. Wingo 497 U.S. 514, 528, 92 S.Ct. 2182, 33 L.Ed. 2d 101 (1972)

2. Ineffective Assistance of Counsel

a. Sixth Amendment, Sec. 35:1, Sec. 35:4

B. Adequate Assistance of Counsel

C. Strickland v. Washington 466 U.S. 668, 688, 694, 104 S.Ct. 2052, 80 L. Ed. 2d 674 (1984)

3. Denial of Expert Assistance

a. Sixth Amendment, Sec. 35:6

B. Compulsory Process for Obtaining Witnesses, Duty to Investigate

C. Strickland v. Washington 466 U.S. 668, 688, 694, 104 S.Ct. 2052, 80 L. Ed. 2d 674 (1984)

4. Speedy Trial (Dismiss Indictment Violation)

a. Fourteenth Amendment, Sec. 38:9

B. Motion to Dismiss Indictment for Speedy Trial Violation, Prejudice From Delay

C. United States v. Taylor 487 U.S. 326 (4th Cir. 1988)

Barker v. Wingo 497 U.S. 514, 528, 92 S.Ct. 2182, 33 L.Ed. 2d 101 (1972)

QUESTIONS PRESENTED

5. Due Process Violation, No Bond

A. Fourteenth Amendment, Eighth Amendment

B. Due Process

C. U.S. v. Seltzer 595 F.3d 1170 (10th Cir. 2010)

6. Prosecutor Misstating Record Evidence

A. Sec. 46:9, Sec. 46:18

B. False and Misleading Argument, Prejudicial Error

C. U.S. v. Azubike 504 3d 30, 38 (1st Cir. 2007)

Washington v. Hofbauer 228 F.3d 689, 700, 54 Fed. Evid. Serv. 1118, 2000 FED app. 0357P (6th Cir. 2000)

1118, 2000 FED app. 0357P (6th Cir. 2000)

Pierce v. United States 86 F.2d 949, 952 (C.G.O. 6th Cir. 1936)

7. Prosecution Presenting Perjured Testimony

A. Fifth Amendment, Fourteenth Amendment

B. Due Process of a Fair Trial

C. Napue v. Illinois 360 U.S. 264, 79 S.Ct. 1173 3 L.Ed. 2d 1217

Kitchens v. State 287 S.E.2d 316, 160 Ga. app. (Ga. app. 1981)

LIST OF PARTIES

KEVIN JAMES LEE

Petitioner

THE STATE OF GEORGIA

Respondent

RELATED CASES

State of Georgia v. Kevin James Lee No. 2012CR0407
In The Superior Court of Coweta County, State of Georgia
Judgement entered October 18, 2024

S2521002 LEE v. THE STATE No. S2521002
In The Supreme Court of Georgia
Judgement entered December 9, 2025

KEVIN JAMES LEE v. THE STATE No. S2521002
In The Supreme Court of Georgia
Judgement entered January 21, 2026

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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 be issued to review judgements below.

OPINIONS BELOW

The opinion of the highest state court on review of the merits appears at APPENDIX B to this petition.

The opinion of the highest state court to rehear the merits appears at APPENDIX C to this petition.

The opinion of the lower court on review of the merits appears at APPENDIX A to this petition.

JURISDICTION

The date on which the Supreme Court of Georgia decided my case was December 9, 2025. A copy of that decision appears at APPENDIX B.

a timely petition for rehearing was thereafter denied on January 21, 2026, and a copy of that order denying rehearing appears at APPENDIX C.

an extension of time to file the petition for writ of certiorari was granted to and including May 21, 2026 on March 25, 2026 in application No. 25a1058.

another extension of time to file the petition for writ of certiorari was granted to and including June 22, 2026 on May 8, 2026 in application No. 25a1058.

On June 16, 2026 I was instructed to correct petition then resubmit within 60 days.

On August 12, 2026 I was again instructed to correct petition then resubmit within 60 days.

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

Constitutional Provisions and Statutes Involved

The United States Constitution, Amendment V: No person shall be _____ 16
held to answer for a capital or otherwise infamous crime unless on a
presentment or indictment of a grand jury, nor be deprived of
life or liberty without the due process of law.

The United States Constitution, Amendment VI: In all criminal _____ 8, 10,
prosecutions, the accused shall enjoy the right to a speedy and 11, 15
public trial by an impartial jury, to be informed of the nature and
cause of the accusation, to have a compulsory process for obtaining
witnesses in his favor, and to have the assistance of counsel for his
defense.

The United States Constitution, Amendment VIII: Excessive bail shall _____ 9, 10
not be required, nor cruel and unusual punishment be inflicted.

The United States Constitution, Amendment XIV: All persons born or _____ 10, 16,
naturalized in the United States shall not be deprived of life or liberty 19
without the due process of law.

Constitutional Provisions and Statutes Involved

U.S.C. Sec. 35:1 The Right to Effective Assistance of Counsel is recognized — 13
not for its own sake, but because of the effect it has on the ability of the
accused to receive a fair trial.

U.S.C. Sec. 35:4 Under Strickland, a petitioner asserting a claim of — 12, 14
ineffective assistance of counsel must show:

1. that the trial counsel performance fell below an objective standard
of reasonableness; AND
2. that there's a reasonable possibility that but for counsel's unprofessional
errors, the result of the proceeding would have been different.

U.S.C. Sec. 35:6 Duty To Investigate — 12
Defense counsel has an affirmative duty to investigate the facts leading
to possible defense.

Commentary to Std. 4-4.1 states:

Effective investigation by the lawyer has an important bearing on
competent representation at trial, for without adequate investigation
the lawyer is not in a position to make the best use of such mechanisms
as cross-examinations or impeachment of adverse witnesses at trial. Failure
to make adequate pretrial investigation and preparation may be grounds for
finding ineffective assistance of counsel.

U.S.C. Sec. 38:7 Defendants Assertion of his Right to a Speedy Trial — 9, 11
A defendant's assertion of his speedy trial right is often "entitled to stronger
evidentiary weight in determining whether a defendant is being deprived
of that right." Frequent forceful demands are entitled to greater weight.

Constitutional Provisions and Statutes Involved

U.S.C. Sec. 3819 Prejudice From Delay - Length of Delay _____ 9

This burden can be satisfied with or without a particularized showing of prejudice, if there is an extreme delay may rely on the presumption of prejudice created by the delay. The longer the delay between indictment and trial extends beyond the bare minimum, the heavier the factor weighs in favor of the defendant.

U.S.C. Sec. 4619 Types of Improper Remarks - False and Misleading Argument _____ 18

It is inappropriate for the prosecutor to misstate record evidence. The government must take care to ensure that the statements made in opening and closing arguments to the jury are supported by evidence introduced at the trial.

U.S.C. Sec. 4618 Prejudicial Error

A claim based on a prosecutor's remark to the jury is approached in two ways:

1. determine whether the challenged remark was improper; AND

2. determine whether the remark, in light of the entire record, deprived the defendant of a fair trial.

U.S.C. Sec. 3162(a)(2) Speedy Trial Act, Remedy Provision _____ 11

If a defendant is not brought to trial within the time limit required by 3161(c) as extended by 3161(h), the information or indictment shall be dismissed on motion of the defendant.

STATEMENT OF THE CASE

- The crime Lee was convicted of, was suspected to have occurred on 7/31/91.
- The 1st documented record available of any report is dated 3/5/97, established by Investigator Ricky Atkins of the Coweta County Sheriff's Department, opened as a missing persons report, Ann Berry, the person of interest.
- The material statements reported were made by Shellie Storey, Berry's sister.
- Atkins discovered through Berry's employer, Shoney's, that there was record of a fight over cocaine that Berry engaged in with a coworker a few days prior to her disappearance (pg 6 exhibit 17)
- The case turned into a murder investigation on 4/15/11, when Berry's remains were found.
- John Lewis led the investigation, disregarding Atkins report, focusing on Lee and/or Larry Cook, as the prime suspects.
- Documented in Lewis' report (pg 3 exhibit 2) is an incident report listing Lee as a suspect, documenting:
 - 45, age
 - 12/14/65, DOB
 - 612 Amador St Richmond, California, address
- Between 12/14/10 - 12/13/11 Lee was age 45
- Between 2007 - 8/2/2018 Lee resided at the address listed
- Lewis presented this case before the grand jury on 6/4/12

STATEMENT OF THE CASE

- Lewis took out 3 warrants for Lee's arrest:
 - 4/20/12 (exhibit 3)
 - 4/23/12 (exhibit 4)
 - 5/8/12 (exhibit 5)
- Lewis documented 3 interactions with the US Marshalls:
 - 5/25/12 (pg 99 exhibit 6)
 - 9/19/12 (pg 102 exhibit 7)
 - 11/12/12 (pg 103 exhibit 8)
- Lewis' knowledge of Lee's whereabouts was documented long before any of the relevant dates.

(citing *Doggett v. U.S.*) "the governments investigators made no serious efforts to test their progressively more questionable assumptions... had they done so, they would have found him within minutes."

(citing *U.S. v. Cardona*) "In light of the defendants open presence, the governments failure to execute an arrest warrant was negligent."

(citing *U.S. v. Ingram*) "No reasonable explanation for the governments neglect in executing the warrant given the governments knowledge of Ingrams whereabouts."

(citing *U.S. v. Mendoza*) "where the defendants not attempting to avoid detection and the government makes no serious effort to find him, the government is deemed negligent."

STATEMENT OF THE CASE

SIXTH AMENDMENT SPEEDY TRIAL VIOLATION

The State erred by violating Lee's Sixth amendment right to a speedy trial guaranteed him under the Constitution, when denying his Motion For Speedy Trial on 9/14/21.

Excluding the 16 month period covered by the Statewide COVID-19 Judicial Emergency Order (3/14/20-7/21/21), the pre-trial delay was presumptively prejudicial. The shorter of the two calculations, to wit: from Lee's 10/23/18 arrest in California to the 1st day of trial, 3/7/22, is 24 months. The longer calculation, from the indictment, 6/4/12, to the 1st day of trial is 101 months (8 1/2 years). Both calculations far exceed one year.

Because the delay exceeded one year, it was presumptively prejudicial. With presumption of prejudice, the trial court was obligated to conduct the second balancing step of the speedy trial clause test:

1. The length of the delay weighs heavily against the State because the Supreme Court of Georgia has held that delays of 2 years or more are "deplorable." (quoting *Perry v. Mitchell* 253 Ga. 593, 594 (322 SE 2d 273) (1984)).

Lee's 8 1/2 year delay from indictment to trial is much longer than the 5 year delays roundly condemned by our Courts as so egregious and so long that actual prejudice is presumed. (citing *Brannen v. State* 274 Ga. 454, 455 (2001) (7 1/2 years) and (*State v. White* 282 Ga. 859 (2008)) (5 1/2 years))

STATEMENT OF THE CASE

2. The State is responsible for the delay because it made no significant effort to arrest Lee for over 6 years after taking this case to the grand jury, and information concerning his whereabouts were known and documented in Lewis' report. (pg 3 exhibit 2)
3. Lee invoked his right to a speedy trial because upon extradition to Georgia, he filed over 20 letters and pro se motions to his appointed counsel and Clerk of the Court seeking to demand his right to a speedy trial. (Citing Sec. 38:7 a defendant's assertion of his speedy trial right is often "entitled to stronger evidentiary weight in determining whether a defendant is being deprived of that right")
4. Because the first 3 Barker factors weigh heavily against the State, Lee need not show actual prejudice, but assuming actual prejudice is required, he can show prejudice because the egregious delay caused adverse consequences that the speedy trial clause was designed to prevent:
 - anxiety shown through Lee's repeated attempts to file pro se motions and document matters with the Court, believing his counsel's performance was deficient.
 - Lee's 1st appearance in court, 5/20/21, 31 months after his arrest, or 28 months after his extradition to Georgia.
 - Oppressive pre-trial incarceration (jailed without bond or a bond hearing). (Citing Sec. 38:9 Eighth Amendment right to bond/hearing) (Citing U.S. v. Seltzer) The 4th Barker prejudiced the defendant by not bringing him into court, he was denied the right to a bond hearing also, by the delay, in his initial appearance, it deprived him of a chance of invoking his statutory right to a speedy trial at an earlier date.

STATEMENT OF THE CASE

- The absence of the 'then' available witness, Ricky Atkins
- The absence of the 'then' available Shoney's Corporate headquarters records which documented a drug related motive as well as a possible 3rd suspect

With all 4 Barker factors shown;

a violation of the Sixth Amendment right to a speedy trial is established; AND

a violation of the Fourteenth Amendment right to due process; AND

a violation of the Eighth Amendment right to a bond hearing / due process of a bond.

STATEMENT OF THE CASE

SIXTH AMENDMENT-EFFECTIVE ASSISTANCE

a. With the Sixth Amendment right to a speedy trial violation established, grounds for ineffective assistance due to counsel's failure to file a plea in bar under the Sixth Amendment Speedy Trial Clause for unconstitutional delay is shown:

- as noted within the amended Motion For New Trial (Appendix B), Lee had filed over 20 requests and pro se motions to counsel as well a Clerk of the Court, invoking his right to a speedy trial, demonstrating the manner in which he wished his case to proceed. (Citing Sec. 38:7 Defendants assertion of his Right to a Speedy Trial - a defendant's assertion of his speedy trial right is often "entitled to strong evidentiary weight in determining whether a defendant is being deprived of that right.")

- Lee also filed with the court pro se:

- 12/3/20 Motion To Dismiss Indictment

- 12/28/20 Defendants Motion To Dismiss Indictment for Speedy Trial Violation (see 3162(a)(2))

- 6/30/21 Motion To Dismiss Indictment

- 6/30/21 Defendants Motion To Dismiss Indictment for Speedy Trial Violation (see 3162(a)(2))

- Counsel seemingly excluded exposing Constitutional violations committed for Lee's defense.

B. Counsel failed to thoroughly investigate all the material evidence and subpoena all available witnesses and/or reports and records for Lee's defense. Had he done so, he would have been in a position to adequately cross-examine the State's key ~~witness~~ and material witness, Storey, (for whom the residual hearsay exception was granted (pg 6° 1-16 exhibit 19))

STATEMENT OF THE CASE

and expose numerous contradictions from her statement given to Atkins, and trial testimony, showing her untrustworthy character and her testimony impeaching (pg 2,3 exhibits 9,10)

(Citing Davis v Alaska) No specific showing of prejudice was required because the petitioner has been denied the right to effective cross-examination which would be a Constitutional error of the highest magnitude.

(Citing Sec 35:6 defense counsel has an affirmative "Duty To Investigate" the facts relating to possible defense)

C. as previously stated, there was a report documented March 5, 1997 filed by Ricky Atkins in which was reported:

1. The 1st statement documented on record of Storey's account of the events leading up to Berry's disappearance.
2. a statement Storey says was told to her by Jackie Shelhutt (who would have been the last person to have seen Berry), stating Berry was seen getting into a red truck then leaving (pg exhibit 9)
3. Storey confirming Cook owned a red truck at that time (pg 3 exhibit 10)
4. Atkins also documented his contacting Berry's employer, Shoney's, in which they had records on file of a fight Berry was in with a co-worker, over cocaine a few days prior to her disappearance (pg 6 exhibit 17)

Atkins and/or his report as well as Shoney's records were available by a subpoena, both records and report was material and relevant for Lee's defense theory.

(Citing Sec 35:4 under Strickland, a petitioner asserting a claim of ineffective assistance of counsel must show:

STATEMENT OF THE CASE

1. that the trial counsel's performance fell below an objective standard of reasonableness; AND
 2. that there is a reasonable possibility that but for counsel's unprofessional errors, the result of the proceeding would have been different.
- While trial counsel claims that he investigated Atkins and his report, he 'strategically' decided it was of no use for Lee's defense, because through their phone conversation (which was not recorded as an interview like all the other phone interviews documented in this case), counsel stated, Atkins didn't remember the reports.

(Citing *Darst v. State*) "We accept the trial court's factual findings and credibility determinations unless clearly erroneous." We conclude that Darst has demonstrated that some of the information in the records at issue here was clearly favorable to his defense theory.

(Citing *Sec. 35:1*) The right to effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial.

At the hearing on the Motion For New Trial, upon the questioning of the trial counsel, appellate counsel entered into evidence, Atkins Summary Report as an exhibit for Lee's defense (unable to verify, due to appellate counsel's failure to timely provide case filings and briefs requested).

Had trial counsel subpoenaed Atkins or his report, as well as the records from Shoney's corporate headquarters, which documented the incident Berry was involved in, it would have exposed Storey's impeaching testimony, a drug related motive, and a possible 3rd suspect (pg 6 exhibit 17)

STATEMENT OF THE CASE

(Citing Darst v. State) Darst has demonstrated that the records were available pursuant to a subpoena. Under these circumstances, we find that Darst has met his burden of demonstrating that the counsel's failure to obtain evidence that was both available and favorable to the defense constituted deficient performance.

E. Counsel failed to investigate a statement made by Carol Boggs during her interview with Lewis. The statement was regarding a threat Cook was to have made to his (then) wife, Tammy Rowe, that he "would kill her and bury her in the woods, because he had done it before" (pg 87 exhibit 23). Rowe's statement was to have been ~~made~~ documented by Atkins, during the Conklin murder investigation, for which Cook was convicted of.

(Citing Sec. 36:16 "While the information was not admissible in its present form, a thorough investigation" could have potentially led to admissible evidence." Berry and Conklin were both found buried in shallow graves, in wooded areas.

Had Lee's counsel diligently investigated all defense theories, it could have led to even more potentially admissible evidence against the 2nd suspect in this case, Cook (pg 4, exhibit 34)

F. Counsel failed to argue the motion in limine excluding any possibility that the crime was actually committed by someone else (pg 27-9-11 exhibit 1). Had he done so, he could have addressed the fact that Cook was the 2nd suspect, that there was a drug related motive, as well as a possible 3rd suspect (exhibit 17)

For these deficiencies, Lee can show (Citing Sec 35:4)

1. counsel's performance fell below an objective standard of reasonableness?
AND

2. that there is a reasonable possibility that but for counsel's unprofessional errors, the result of the proceeding would have been different.

STATEMENT OF THE CASE

When trial counsel was questioned at the hearing for Motion For New Trial, when asked whether or not he thought Atkins report was relevant and material for Lee's defense, he stated "we didn't even think he done it." Instead, trial counsel made a "strategic decision" not to call any witnesses not present any evidence for Lee's defense, choosing to argue to the jury that the state failed to prove their case.

(Citing *Darst v. State*) Trial counsel offered no reasonable explanation for his failure to conduct any investigation into the availability of the records, instead he decided to forfeit the possibility that the records supported his only defense at trial for the chance to argue to the jury that the state failed to present evidence.

(Citing *Strickland v. Washington*) Sixth Amendment imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options.

With all documented deficiencies shown, violation of the Sixth Amendment right to effective assistance of counsel is established.

STATEMENT OF THE CASE

FIFTH AND FOURTEENTH AMENDMENT

DUE PROCESS VIOLATION

PROSECUTION PRESENTING PERJURED TESTIMONY

Examining the new evidence not introduced at trial, Storey's statement (for whom the residual hearsay exception was granted) (pg 60 1-16 exhibit 19) the government was fully aware of the evidence documented in Atkins report (pg 49 9-11 exhibit 20), as well as Lewis (pg 23, 58 exhibit 21, 22). Storey made 5 statements during her testimony which contradicted her statements documented by Atkins in 1997.

1. Reason for coming over (pg 2 exhibit 9) Atkins report

212.14 (exhibit 11)

214.15 (exhibit 12)

2. Timeline: Storey called, talked to Lee (pg 2 exhibit 9) Atkins report

215.8-9 (exhibit 13)

215.16 (exhibit 13)

216.15 (exhibit 14)

216.19 (exhibit 14)

217.3 (exhibit 15)

217.5-6 (exhibit 15)

3. Who Storey says 'Lee said' Berry left with (pg 2 exhibit 9) Atkins report

217.15-16 (exhibit 15)

4. Storey's statement of Berry seeing someone (pg 3 exhibit 10) Atkins report

217.20 (exhibit 15)

5. When Storey says she came to residence (pg 2 exhibit 9) Atkins report

218.13 (exhibit 16)

STATEMENT OF THE CASE

Prosecution also presented perjured testimony by Lewis when stating/agreeing that Tammy (Riley), Shelia (Storey) and Jackie (Shelnett) all told him they saw marks (pg 386-14-15 exhibit 33)

Riley never stated seeing marks (pg 30, 33, 34 exhibits 24, 25, 26), and shelnett specifically states she "never saw any physical injuries from the abuse." (pg 79 exhibit 33)

(citing Kitchen v. State) Conviction of a crime following a trial in which perjured testimony on a material point is knowingly used by the prosecution is an infringement on the accused Fifth and Fourteenth amendment rights to due process of law.

(citing Napue v. Illinois) It is now so well settled that the Court was able to speak... of the "long course of judicial construction which established as a principle that the duty rests on this Court to decide for itself facts or constructions upon which Federal Constitutions rest." Our own evaluation of the record here compels us to hold that the false testimony used by the State in securing the conviction of petitioner may have had an effect on the outcome of the trial.

Accordingly, the judgment must be reversed.

Constitutional rights guaranteed by the Fifth and Fourteenth amendments to the due process of a fair trial are shown, and the violation ~~established~~ established.

STATEMENT OF THE CASE

PROSECUTIONS FALSE STATEMENTS

The prosecution misstated evidence presented at trial in his closing arguments, presumptively influencing the jury's verdict, and prejudicing the accused, when misstating Storey's testimony (pg 436-2-3 exhibit 28), while her actual testimony was (pg 205-22-25 exhibit 29). He then, once again, misstated Riley's testimony (pg 457-19-20 exhibit 30) yet her actual testimony documented (pg 342-25, 343-1 exhibits 31, 32)

(citing U.S. v. Dzubike) The government admits that the recitation of the evidence was factually incorrect... accordingly, the misstatements constituted prosecutorial misconduct.

(citing Pierce v. United States) We are not here so much concerned with the improper argument springing from the heat and enthusiasm of advocacy, as we are with what appears to have been a studied effort to inject into the case irrelevant and prejudicial matter for the purpose of influencing the verdict. That it was intended to prejudice the jury is sufficient ground for a conclusion that it in fact did so.

Sometimes a single misstep on the part of the prosecutor may be so destructive of the right of the defendant to a fair trial that reversal must follow.

(citing U.S.C. Sec. 46-9 Types of Improper Remarks - False and Misleading argument) It is inappropriate for the prosecutor to misstate the record evidence. The government must take care to ensure that the statements made in opening and closing arguments to the jury are supported by evidence introduced at trial.

STATEMENT OF THE CASE

(citing Washington v. Hofbauer) Misrepresenting facts in evidence can amount to substantial error because doing so may profoundly impress a jury, and may have significant impact on the jury's deliberation.

With the prosecution's misleading argument when misstating record evidence established a Fifth and Fourteenth Amendment violation of due process of a fair trial is shown.

REASON FOR GRANTING THE WRIT

Due to the numerous Constitutional violations guaranteed by Federal law protecting the accused with the due process of law and a fair and speedy trial;

due to the numerous Constitutional violations committed by the government and appointed counsel, which began prior to the presentation before the grand jury, and continued till the closing argument;

due to the lower courts Constitutional violations when denying Lee his right to the due process of a speedy trial, and denying those grounds for a new trial; AND

due to the Supreme Court of Georgia's failure to observe and follow Federal and State Constitutional laws;

Lee invokes this Honorable Supreme Court of the United States under 28 U.S.C. Sec. 1257 and propensity regarding Rule 19, due to the lower courts departure from "the settled and usual course of judicial proceedings"; and their rulings being contrary to decisions of the Supreme Court and other courts, and contrary to the principles of the Constitution.

REASON FOR GRANTING THE WRIT

Doggett v. United States 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992)
reversed

We consider whether the delay of 8-12 years between indictment and arrest violated his Sixth Amendment right to a speedy trial. We hold that it did. Magistrate report, "clearly, was attributable to the negligence of the government."

U.S. v. Seltzer 595 F.3d 1170 (10th Cir. 2010)
dismissed with prejudice

The 4th Barker prejudiced defendant by not bringing him into court, he was denied the right to a bond hearing, keeping him incarcerated longer than might otherwise be necessary. Also, by the delay in his initial appearance, it deprived him of a right chance to invoke his statutory right under the Speedy Trial Act at an earlier date.

Strickland v. Washington 466 U.S. 668, 688, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)
reversed

Sixth Amendment imposed on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options into that line of defense, since there can be no strategic choice that renders such investigation unnecessary.

REASON FOR GRANTING THE WRIT

Dorst v. State 746 S.E. 2d 865 (2013)

Reversed

When this court reviews a trial court's ruling on an ineffective assistance claim on appeal "we accept the trial court's factual findings and credibility determinations unless clearly erroneous."

We conclude that Dorst has demonstrated that some of the information in the records at issue here was clearly favorable to his defense theory. Further, the records were relevant and necessary... Dorst has demonstrated that the records were available pursuant to a subpoena. Under these circumstances, we find that Dorst has met his burden of demonstrating that counsel's failure to obtain evidence that was both available and favorable to the defense constituted deficient performance.

Kitchens v. State 287 S.E. 2d 316, 160 Ga. app. (Ga. app. 1981)

Reversed

Conviction of a crime following a trial in which perjured testimony on a material point is knowingly used by the prosecution is an infringement on the accused's Fifth and Fourteenth Amendment right to due process of law.

Napue v. Illinois 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217

Reversed

"In cases which there is a claim of denial of rights under the Federal Constitution, this Court is not bound by the conclusion of lower courts, but will re-examine the evidentiary basis on which those conclusions are founded." Our own evaluation of the record here compels us to hold that the false testimony used by the State in securing the conviction of petitioner may have had an effect on the outcome of the trial. Accordingly, the judgment must be reversed.

REASON FOR GRANTING THE WRIT

U.S. v. Azubike 504 F.3d 30, 38 (1st Cir. 2007)

Vacated and Remanded

The government admits that the recitation of the evidence was factually inaccurate . . . accordingly, the misstatements constitute prosecutorial misconduct.

Pierce v. United States 86 F.2d 949, 952 (C.G.D. 6th Cir. 1936)

Reversed and Remanded for retrial, based on newly discovered evidence

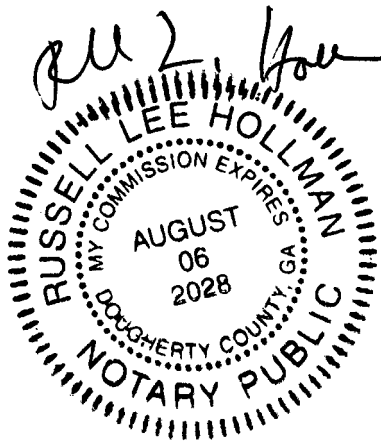
Sometimes a single misstep on the part of the prosecutor may be so destructive of the right of the defendant to a fair trial that a reversal must follow.

We are not here so much concerned with the improper argument springing from the heat and enthusiasm of advocacy, as we are with what appears to have been a studied effort to inject into the case irrelevant and prejudicial matter for the purpose of influencing the verdict. That it was intended to prejudice the jury is sufficient ground for a conclusion that it in fact did so.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Honorable Court to grant a writ of certiorari, to review judgement of the Supreme Court of Georgia, and after review, reverse and vacate the lower courts decision.

Dated this 26 day of August 2026



respectfully submitted,

[Signature]
signature