No. 70132

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON JEFFERSON,

Apellant,

VS.

THE STATE OF NEVADA,

Respondent.

Case No. C-10-268351-1

Dept No. IV

FILED

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APELLANT'S OPENING BRIEF

Appeal from denial of post-Conviction Petition for Writ of Habeas Corpus in the Eighth Judicial District Court, Clark County, The Honorable Earley, Kerry District Court Judge.

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16-20170

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BRANDON M. JEFFERSON,
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ISSUES PRESENTED FOR REVIEW

I. TRIAL COUNSEL WAS INEFFECTIVE VIOLATING JEFFERSON'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS TO THE U.S. CONSTITUTION. TRIAL ATTORNEY BRYAN COX FAILED TO DISCOVER AND PRESENT TO THE DISTRICT COURT JEFFERSON'S REQUEST TO REMAIN SILENT DURING CUSTODIAL INTERROGATION THAT WAS IGNORED BY POLICE DETECTIVES.

II. JEFFERSON WAS DENIED HIS RIGHT TO CONFLICT-FREE COUNSEL. JEFFERSON FILED A BAR COMPLAINT AGAINST HIS TRIAL ATTORNEY AND NEVER DISCUSSED OR WAIVED HIS RIGHT TO CONFLICT-FREE COUNSEL. JEFFERSON BEING FORCED TO TRIAL WITH AN ATTORNEY WHO TOLD JEFFERSON HE BELONGED IN PRISON VIOLATED HIS FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION.

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[1] All parenthetical cites refer to the attached Appendix by exhibit numbers from Jefferson's Pro-se post conviction and supplement petition for WRIT OF HABEAS CORPUS, and page numbers from the trial record labeled as "TR.". All cites are in chronological order with respect to the issues presented in each ground.

III. APPELLANT COUNSEL WAS INEFFECTIVE VIOLATING JEFFERSON'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO THE U.S. CONSTITUTION. ATTORNEY AUDREY CONWAY FAILED TO PRESENT TO THIS COURT ON DIRECT APPEAL A FOURTH AMENDENT VIOLATION BASED ON THE DEVELOPED RECORD.

IV. JEFFERSON DID NOT ENJOY A FAIR TRIAL IN VIOLATION OF HIS FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION. PROSECUTOR WILLIAM MERBACK SUBORNED PERJURY FROM DETECTIVE KATOWICH ABOUT THE RELIABILITY OF EXCLUDED EVIDENCE LEADING TO JEFFERSON'S ARREST. THE STATE OBSTRUCTED JUSTICE BY INTIMIDATING A CHILD TO CHANGE HER TESTIMONY FROM ANSWERS THAT WOULD ACQUIT JEFFERSON, INTO WHAT RESULTED IN HIS CONVICTIONS. JEFFERSON IS ACTUALLY AND LEGALLY INNOCENT.

STATEMENT OF PROCEDURAL HISTORY

The State of Nevada filed a Complaint on September 16, 2010, alleging five counts of Sexual assault on a minor under fourteen, and lewdness with a minor under fourteen, two counts. On October 15, 2010 the state filed an Amended Complaint adding three counts of lewdness and one count of Sexual assault. Under the advice of Counsel, Jefferson waived his right to Conduct a Preliminary hearing and he was bound over to the District Court Dept. II. On October 26, 2010, the State filed an Information alleging two Counts of lewdness. When Jefferson refused a "plea deal", the State filed an Amended Information on November 05, 2010, alleging Six Counts of Sexual assault on a minor under fourteen and five counts of lewdness with a minor under fourteen. Jefferson was arraigned and pled NOT GUILTY.

On November 16, 2011, the state filed a Second Amended Information. Before closing arguements, the State filed a Third Amended Information dismissing Count XI. The defense did not oppose, and Count XI was dismissed without the Jurors knowledge. See, **(TR. 1452: 4-20)**. Jurors convicted Jefferson on counts I, IX and X sexual assault on a minor under fourteen, and counts II and IV lewdness with a minor under fourteen. Jurors acquitted Jefferson of all other counts. The court dismissed count II for redundancy. On October 30, 2012, the State filed the Judgement of Conviction. The Court sentenced Jefferson to thirty-five years to life on count I; ten years to life on count IV, Concurrent; thirty-five years to life on count IX, consecutive to counts I and IV; and thirty-five years to life on count X, Concurrent with count IX, plus fees, restitution and lifetime supervision.

Jefferson filed a timely notice of appeal on November 14, 2012. On July, 29, 2014, the Nevada Supreme Court entered an order of affirmance. On September 09, 2014, the court issued Remittitur. On October 02, 2014, Jefferson filed a proper person, Post-Conviction Petition for Writ of Habeas Corpus. On October 28, 2014, Attorney Matthew D. Lay was appointed to represent Jefferson, and filed a Supplemental Post-Conviction Petition for Writ of Habeas Corpus on December 22, 2015. The District Court denied relief on May 19, 2016. This Proper Person Appeal from denial of Jefferson's Writ of Habeas Corpus follows.

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2 The State filed the Third Amended Information because C. did not provide testimony to support count XI, regardless of Jefferson's involuntary admissions to the act. The full colloquy on this matter extends from; **(TR. 1452: 4-20 - 1456)**. Jefferson asserts Mr. Cox, his attorney did not file a Motion to Dismiss count XI, but was motivated by the court to respond to the State's request. Further, the State's actions may amount to constructively amending its informatim without the function of a Grand Jury violating Jefferson's Fifth Amendment Right.

STATEMENT OF FACTUAL HISTORY

In 2010, Brandon and Cindy Jefferson had been together for ten years and were raising their seven year old son Brandon Jr., and five year old daughter C., in Lasvegas, Nevada. In September of 2010, Brandon worked at a Rehabilitation Center, and Cindy worked at a Retail Store. On September 14, 2010, Cindy was angry that Brandon lost his job at the County hospital, and did not approve of his employment at the Rehab Center. Brandon left the apartment, and Cindy Searched for him. When she could not locate Brandon, Cindy picked the children up from School and prepared them dinner. Cindy told the children that she wanted to seperate from their father, and needed their help so it could only be the three of them. Cindy formed a pact with the children in the form of a Promise to share secrets with her.

About thirty minutes later, Cindy claimed that C. said she had a Secret that Brandon told her to keep from Cindy. Cindy claimed C. then said "Daddy makes me suck his tee-tee." Cindy repeatedly asked C. if this was true, and what else did Brandon do. Cindy claimed C. then said Brandon Put his penis down there. Cindy called 911. Detectives' Matthew Demas, and Todd katowich decided to investigate Cindy's hearsay allegations about Brandon further. Police detectives' asked C. directly to explain what happened to her.

Detective Demas told C. to use "Tagalog" words. Detective Demas asked C. had anyone touched her private areas C. said "NOBODY TOUCHES ME AT THE PRIVATES." Detective Demas said, "NOBODY DOES", C. replied "MM-MM." Detective Demas then let C. know he did not believe her: "BUT I HEARD SOMETHING A LITTLE DIFFERENT TODAY!" Detective Demas repeated this statement. C. denied telling anyone that she had been touched, and denied ever being forced to touch anyones' private areas. Detective Demas then told C. that she would be in no "TROUBLE" for confirming his belief she was a sexual victim. C. told Detective Demas that CINDY her mother, was the only one saying that Brandon made C. touch him sexually. After accusing C. of not telling the truth, and repeating suggestive questions, Detectives' Demas, and Katowich obtained the complaint from C. to effectuate Jefferson's arrest.

An examination revealed no signs of sexual assault. This whole time Brandon had returned to the apartment to notice Cindy and the children were missing. Brandon called 911 to file a report. Detectives' Demas, and Katowich met Brandon in front of his apartment and handcuffed him. Detectives did not explain Brandon was under arrest or that he was a suspect in any crimes. During an interrogation, Brandon denied sexually assaulting C. Detectives' said if Brandon wanted to be with his family in the future, a confession was needed. Brandon invoked his right to remain silent. The detectives then ignored Brandon, and threatened harsher treatment from the "D.A.", and only then did Brandon admittedly accept responsibility.

At trial, C. testified **THREE** times during direct examination "**NO**" that she had not been subjected to repeated sexual assaults attributed to Jefferson. C. testified on direct examination "**NO**" she had never even seen her father Brandon's penis. The Prosecutor, William Merback, forced C. to change those answers. During deliberations, the jurors requested for a Playback of C.'s testimony. The court denied their request, and consequently a mixed verdict was returned of guilty on five counts and NOT GUILTY of five Counts.

SUMMARY ARGUMENT

This brief will show that Jefferson received conflict ridden and ineffective assistance of Counsel for both trial and direct appeal for three Seperate reasons. This brief will also show that Jefferson is actually and legally innocent under Nevada State Law. That Jefferson's arrest and trial was not conducted in accord with Due Process. First, the uncontridicted **LAW OF THIS CASE** is Detectives' Demas and Katowich were active participants in the production of an Untrustworthy complaint to effectuate Jefferson's arrest for interrogation Purposes. This arrest was caculated for the sole Purpose of obtaining an incriminating statement from Jefferson to establish Probable Cause. Jefferson's arrest for such a reason violates the concept of the Fourth Amendment and his right thereto because law enforcement were operating on a dubious theory Jefferson committed a felony and knew it. Second, even if Jefferson's arrest is to be characterized as objectively reasonable, the resulting incriminating statement was not voluntarily made.

Jefferson was twenty-nine years old with no criminal record. Jefferson called 911 for help. Jefferson was arrested without being told so. Before Jefferson was advised of the Miranda warning, while handcuffed to a steel bar, detective demas first offered to "UN-ARREST" Jefferson. Agreeing to those conditions, Jefferson waived his Miranda rights. Only then did Detectives' inform Jefferson that he was a suspect in a Sexual assault investigation. Jefferson denied involvement, and after a collateral attack by the detectives' to either confess or risk never seeing his wife and children in the future, Jefferson unequivocally invoked his right to remain silent. The police dishonored Jefferson's civil right, continued the interrogation, ultimately threatening that the "D.A." would make it worse for Jefferson if he did not confess to this alleged crime. Jefferson incriminated himself.

During pre-trial proceedings, Jefferson's Public Defender Mr. Bryan Cox refused to, and failed horribly to work with Jefferson or represent Jefferson's intrests in the District Court. Attorney Bryan Cox told Jefferson to his face that he belonged in Prison three weeks before trial was SUPPOSED to start. This prompted Jefferson to file a Motion to Dismiss, a Complaint to the Nevada Bar Association, and other informal notices to the head Public Defender, and the District Court Judge detailing the conflict. For the next nine months Jefferson objected to Mr. Cox as his attorney of record, but was forced to trial without discussing or waiving his right to Conflict free counsel, with Mr. Bryan Cox as his trial attorney.

During this trial, the Prosecution Suborned perjury from Detective Todd Katowich regarding the trial Courts conclusion that C.'s excluded out-of-Court statement was not trustworthy because of improper questioning techniques used by detective Demas specifically. The Prosecution literally refused to accept testimony from C. indicating Jefferson was innocent of the multiple offenses as charged by the state, and persuaded a Seven year old female to stick to the script. In closing, the Prosecution told Jurors that Cindy's story about Jefferson's alleged misdeeds **"MADE NO SENSE."** On direct appeal, Public Defender Ms. Audrey Conway was a parrot for the Constitutionally worthless arguments of trial counsel Bryan Cox. Jefferson explicitly told attorney Ms. Conway that based on the State's intentional use of perjury from the police detective about C.'s excluded statement leading to his arrest, the virtual admissions by the detectives' that Jefferson was arrested for investigation but could be "UN-ARRESTED," Presumably if a confession was not gathered, that he was arrested without reason to believe that a crime occured. That police violated his individual right under the Fourth Amendment, Ms. Conway presented no such issue to this Court.

ARGUMENT

The Sixth Amendment to the United States Constitution guarantees that, **"IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE".** U.S. Const. Amend. VI.

"A Convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable Professional Judgement." Strickland v. Washington, 466 U.S 668, 690, 104 S.Ct. 2052 (1984). Miranda issues that are "Inadequately developed in State Court are reviewable under Cause and Prejudice". Keeney v. Tamayo-Reyes, 504 U.S. 1, 8-12 (1992). "Eliminating Habeas review of Miranda issues would not prevent a state prisoner from simply converting his barred Miranda claim into a Due Process claim that his conviction rested on an involuntary confession." Withrow v. Williams, 507 U.S. 680, 693, 113 S.Ct. 1745 (1993). Defense counsel has a duty to "Make reasonable investigations or make a reasonable decision that makes particular investigations unnecessary." Strickland v. Washington, 466 U.S. at 691 (1984).

I. TRIAL COUNSEL WAS INEFFECTIVE VIOLATING JEFFERSON'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS TO THE U.S. CONSTITUTION. TRIAL ATTORNEY BRYAN COX FAILED TO DISCOVER AND PRESENT THAT JEFFERSON INVOKED HIS RIGHT TO REMAIN SILENT DURING CUSTODIAL INTERROGATION AT A SUPRESSION HEARING.

Jefferson incorporates in support hereof all of the foregoing grounds of of his Petition and Supplemental Writ of Habeas Corpus, to include all grounds of this Appeal above and below **AS IF FULLY STATED HEREIN.**

On March 25, 2011, Attorney Bryan Cox filed a Motion to Supress the incriminating statements Jefferson made to Detectives' Matthew Demas, and Todd Katowich on September 14, 2010. The District Court held an evidentiary hearing Pursuant to Jackson v. Denno, 378 U.S. 368 (1964).

Attorney Bryan Cox argued that Police Promises of leniency, misrepresentatins of "DNA" evidence, and threats of a life sentence for "Monsters" was grounds for this statement to be supressed. Mr. Cox did not mention that Police arrested Jefferson without telling him so. "I'M NOT ABOUT TO EXPLAIN TO YOU ON THE STREET WHERE YOUR NEIGHBORS CAN HEAR WHAT'S GOING ON - YOU HAVE PRIVACY." See, (EXHIBIT#2, pg.52). Mr. Cox made no mention that police first offered "UN-ARREST" Jefferson while he was handcuffed to a bar, Prior to being advised of Miranda, and that once those conditions were agreed upon, Jefferson merely acknowledged that he UNDERSTOOD those rights not that he WAIVED those rights. See, (EXHIBIT#3, pg.2).

Oddly, Mr. Cox made no mention that Jefferson invoked his Fifth Amendment Right to remain silent in response to a police threat to either confess, or risk seeing his children in the future: "I - WHAT - I MAYBE - MAYBE UM, WHAT - WHAT - ME NOT HAVING MONEY. YOU KNOW, I HAVING A BEER EVERY NOW AND THEN. THAT'S ABOUT IT. THAT'S ALL I CAN SAY." See, (EXHIBIT#5, pg.27). Mr. Cox made no mention that not only did police ignore and deprive Jefferson of his Constitutional guarantees under the Fifth and Fourteenth Amendments, but that police Continued to interrogate Jefferson about the exact same subject matter eventually threatening a harsher legal proceeding from the District Attorney for exercising his Fifth Amendment right. (EXHIBIT#6, pg.40). These fatal omissions probably weighed against the Court Supressing this statement. Jefferson contends that Mr. Cox's deficient performance at that moment, "Resulted in actual and Substantial disadvantage to the Course of Jefferson's defense." Strickland V. Washington, 466 U.S at 682, 104 S.Ct. 2052 (1984).

The Fifth Amendment to the United States Constitution guarantees that "NO PERSON SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF." U.S. Const. Amend. V. An involuntary statement obtained from a defendant in violation of the Fifth Amendment may not be admitted for any purpose. See, Michigan v. Harvey, 494 U.S. 344, 351, 110 S.Ct. 1176 (1990); Henry v. Kernan, 197 F.3d 1021, 1026, 1029 (9TH Cir. 1999). In support of this argument, Jefferson relies on Cooper v. Dupnik, 923 F.2d 1220, 1244-45 (9TH Cir. 1992); California Attorneys for Criminal Justice v. Butts, 195 F.3d 1039, 1047-1049 (9TH Cir. 1999); and Allan v. State, 38 P.3d 175-179 (Nev. 2002).

In each of these cases, the court found these defendants' statements were involuntary because law enforcement disregarded these defendants' attempt to assert their right to remain silent, right to counsel, or both. In Jefferson's case, he does not believe his trial, and Appellate Counsel Mr. Bryan Cox, and Ms. Audrey Conway did or could not recognize see, (EXHIBIT #5, pg. 27). Wherein response to a police threat, Jefferson stated: "THAT'S ABOUT IT. THAT'S ALL I CAN SAY." Without presenting this to the District Court, or The Nevada Supreme Court as a deliberate violation of Jefferson's right to remain silent under the Fifth Amendment. Once Jefferson said: "THAT'S ALL I CAN SAY", Detectives' Demas and Katowich were to "SCRUPULOUSLY HONOR" Jefferson's right to cut off interrogation. See, Miranda v. Arizona, 384-U.S. 436, 473-474, 86 S.Ct. 1602 (1966).

Because Jefferson DID NOT request for an attorney, the questioning could resume only after Jefferson's right to silence was honored, Some time had elapsed, and Detectives' readvise Jefferson of the Miranda Warning. See, Michigan V. Mosley, 423 U.S. 96, 104-107, 96 S.Ct. 321, 327-28 (1975). Here, Jefferson was questioned not even a second after he indicated he did not want to answer any more questions of the Detectives'. Detective Demas's question: "WELL, WHEN YOU ASK HER TO COME TO YOUR ROOM, WHAT GOES ON?" was "Reasonably likely to elicit an incriminating response." See, Rhode Island V. Innis, 446 U.S. 291, 301 (1980). See, (EXHIBIT #5, Pg. 27).

This was custodial interrogation. Jefferson argues his words, "THAT'S ALL CAN SAY," were not a mere figure of speech. The Ninth Circuit Court of Appeals defined ambiguity as words open to "More than one interpretation." See, Anderson V. Terhune, 516 F.3d at 781 (9TH cir. 2008). "A Suspect seeking to invoke his right to remain silent need not provide any statement more explicit or technically worded than I HAVE NOTHING TO SAY." See, Arnold V. Runnels, 421 F.3d at 865 (9TH Cir. 2005); United States V. Garcia-Cruz, 978 F.2d at 542 (1992) (the court found police ceased questioning after the defendant stated: "No. Well I know because like I said since, I'm not gonna get all off into that, but like I told you, I do dictate the gang. And, and, and, and I'm not, THAT'S ALL I CAN SAY). See also, Allan V. State, 38 P.3d at 177 (Nev. 2002), This court acknowledged the defendant's statement "I DON'T HAVE ANYTHING TO SAY," and police interrogation that followed resulted in an involuntary confession.

The state must prove "Beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." See, Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 828 (1967). The admission of an involuntary statement is reviewed for harmless error. See, Arizona v. Fulminante, 499 U.S. 279, 310, 311, 312, 111 S.Ct. 1246 (1991)." To say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record." See, Yates v. Evatt, 500 U.S. 391, 111 S.Ct. 1884, 1893 (1991)." When a Federal Judge in a Habeas Proceeding is in grave doubt about whether a trial error of Federal Law had a Substantial and injurious effect or influence in determining the jury's verdict, that error is not harmless, and the petitioner must win." See, O'Neal v. McAninch, 513 U.S. 432, 115 S.Ct. 994, 999 (1995).

Jefferson argues the State's use of this involuntary confession was not "unimportant", "harmless," and had a "substantial and injurious effect" on the verdict for these following reasons. Jefferson was forced to waive his Constitutional right to testify on his behalf out of fear of impeachment. See, Allen v. State, 38 P.3d 175-179 (Nev. 2002). The State relied heavily on the confession during closing arguments. See, (TR. 1537: 15-1539). Specifically, this portion of closing, the Prosecutor boasted to Jurors that Jefferson could have used a myriad of statements similar to his statement, (THAT'S ABOUT IT. THAT'S ALL I CAN SAY) to invoke his Fifth Amendment right to silence. See, (TR. 1538: 1-3). The Prosecutor then reiterated the first question Detective Demas asked Jefferson, after he ignored Jefferson's request for silence. See, (TR. 1539: 1-5). And Compare that with, See, (EXHIBIT #5, pg. 27)." WELL, WHEN YOU ASK HER TO COME TO YOUR ROOM, WHAT GOES ON?"

This Prosecutor, Michelle Fleck, was obviously familiar with Jefferson's statement and what would qualify as an unambiguous statement invoking the Privelage against Self incrimination. These arguments of Prosecutor Ms. Fleck, seem to indicate that she turned a blind eye and deaf ear to Jefferson's request for silence while unfairly taking advantage of Jefferson's trial attorney's own incompetance to make the State's Case. Jefferson asserts her actions are, were Sinister with respect to her integrity before the Court and Jurors.

Similarily, Detective Demas cloaked with integrity and honesty within a free society testified he would have "RESPECTED HIS RIGHT TO REMAIN SILENT." See, (TR. 1267: 6-25), but Jefferson, "NEVER DID," invoke his right to remain silent. See, (TR. 1268: 1). Should this court agree that Jefferson claimed his right with words reasonably expected to be understood as ordinary people would understand them, Then Jefferson ask this court to find Detective Demas had not told the jury the truth about respecting Jefferson's Fifth Amendment Rights.

"Jury's who request readbacks of testimony, express confusion or concern with the state's evidence, and lengthy deliberations make it difficult to conclude the admission of prejudicial evidence did not tip the scales against the defendant, that the evidence was harmless, or that there was overwhelming evidence of the defendant's guilt as to require reversal of the convictions." See, Neri v. Hornbeak, 550 F.Supp.2d. at 1177 (C.D. Cal. 2008). During deliberations, this jury asked for a playback of C.'s testimony. The court denied their request. Jefferson argues that note served to put the court on notice that the Prosecutor cheated Jefferson out of testimony that would have resulted in his acquittal. That here, the confession probably "TIPPED THE SCALES AGAINST HIM" See, (TR. 1591: 14-25)

Trial Attorney Bryan Cox's failure to conduct a reasonable investigation into the involuntariness of Jefferson's statement to Detectives' Demas and Katowich means he could not have possibly made a reasonable decision about how to prepare Jefferson's defense as to undermine the reliability of his convictions and the absurd notion Jefferson's trial was "FAIR." Mr. Cox omitting a real Fifth Amendment attack against this confession resulted in Jefferson's defense being actually and substantially withdrawn. Strickland, supra at 685-687. This Court has held that "Evidentiary hearing regarding defense Counsel's motives or strategy not necessary where Supreme Court determines that no good reason for Counsel's actions could exist." See, Mazzan v. State, 675 p.2d 409, 100 Nev. 74 (1984). Jefferson respectfully requests this Honorable Court to remand this case to the District Court with instructions to Grant his Petition For Writ of Habeas Corpus, and should the State elect to retry him, they do so without a Coerced confession.

II. JEFFERSON WAS DENIED HIS RIGHT TO CONFLICT-FREE COUNSEL IN VIOLATION OF HIS FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS TO THE U.S. CONSTITUTION. JEFFERSON MOVED TO DISMISS HIS TRIAL ATTORNEY AND REFFERED HIS ATTORNEY TO THE NEVADA BAR FOR DISCIPLINE. JEFFERSON NEVER WAIVED OR DISCUSSED THE CONFLICT.

Jefferson incorporates in support hereof all of the foregoing grounds of of his Petition and Supplemental Writ of Habeas Corpus, to include all grounds of this Appeal above and below AS IF FULLY STATED HEREIN.

The Sixth Amendment guarantees a criminal defendant the right to conflict-free representation. See, Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052 (1984). Defense Counsel has an ethical obligation to avoid conflicting representations AND TO ADVISE THE COURT PROMPTLY WHEN A CONFLICT OF INTEREST ARISES DURING THE COURSE OF TRIAL. See, Holloway v. Arkansas, 435 U.S. 475, 485-486, 98 S.Ct. 1173 (1978). "An attorney who adopts and acts upon a belief that his client should be convicted fails to function in any meaningful sense as the government's adversary." See, United States v. Cronic, 466 U.S. 648, 666, 104 S.Ct. 2039 (1984).

Jefferson asserts Trial attorney Bryan Cox had an "ETHICAL OBLIGATION" to to notify the District Court that the representation had been Comprimised because Jefferson filed a Bar Complaint against him for "ADOPTING A BELIEF" that Jefferson belonged in Prison, and he was actively laboring under a Conflict of interest. See, "LETTER FROM STATE BAR OF NEVADA TO BRANDON JEFFERSON," March 11, 2015. The Ninth Circuit Court of Appeals held under Frazer v. United States, 18 F.3d 778-786 (9TH Cir. 1994), That the defendant was entitled to an evidentiary hearing and was not required to establish Prejudice regarding his attorney's alleged use of racial epithets toward his client, and threats to deny legal assistance. See, Bland v. California Department of Corrections, 20 F.3d 1469, 1475, 1477, 1478 (9TH Cir. 1994)

Holding the trial court erred in denying the defendants request to replace Counsel, without adequate inquiry into whether there was irreconcilable Conflict, the defendant had filed a Bar Complaint about his attorney's Conduct. See, United States v. D'Amore, 56 F.3d 1202, 1204, 1206, 1207 (9TH Cir. 1995), Holding the trial court abused its discretion by not replacing counsel because the defendant filed a Motion to dismiss his Counsel, and mailed a letter to the Court detailing his conflict with his attorney.

In Mathis v. Hood, 937 F.2d 790, 795 (2nd Cir. 1991), The Court ordered a new trial for the defendant with a different attorney because the defendant received Ineffective assistance of Counsel, PER SE, due to a Bar Complaint he had active against his trial attorney. Similarily, in Atley v. Ault, 21 F. Supp. 2d. 949, 960 (S.D. Iowa), The Court granted the defendant's Writ of Habeas Corpus due to the threat of filing a Bar Complaint against his attorney. (1998).

The U.S. Supreme Court defined the disciplinary process as; "Adversary Proceedings of a Quasi-Criminal nature due to the threat of disbarment and the loss of Professional standing, reputation, and livelihood." See, In re Ruffalo, 390 U.S. 544, 551 (1968). Jefferson asserts the Bar Complaint he filed against his trial Counsel disclosed to the Court upon adequate inquiry would have required the appointment of new Counsel who did not have personal distaste for Jefferson or the alleged offenses he faced. Counsel who would zealously represent Jefferson's intrest without reservation. That is, his arrest was based on a false Complaint, and police knew it. That his request for Silence was disposed of during an illegal interrogation.

In Wood v. Georgia, 450 U.S. 261, 265, n.5, 101 S.Ct. 1097 (1981), The Court wrote, "It is unlikely that the lawyer on whom the Conflict of interest charge focused would concede that he continued to improperly act as Counsel." Jefferson request this Honorable Court not to hold him responsible for Mr. Cox's ethical obligations, his Silence about the Bar Complaint. To remand to the District Court with instructions to Grant a Writ of Habeas Corpus, and should the State elect to retry him, that the Public Defender be disqualified as Jefferson does not waive any Conflicts of interest.

III. APPELLATE COUNSEL WAS INEFFECTIVE VIOLATING JEFFERSON'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO THE U.S. CONSTITUTION. APPELLATE COUNSEL FAILED TO PRESENT JEFFERSON WAS SUBJECT TO AN UNLAWFUL ARREST IN VIOLATION OF HIS FOURTH AMENDMENT RIGHTS TO THE U.S. CONSTITUTION.

Jefferson incorporates in support hereof all of the foregoing grounds of his Petition and Supplemental Writ of Habeas Corpus, to include all grounds of this Appeal above and below AS IF FULLY STATED HEREIN.

A criminal defendant has the right to effective assistance of Counsel on his direct appeal. See, Evitts v. Lucey, 469 U.S. 387 (1985)." Restrictions on Habeas Corpus review of Fourth Amendment claims held not applicable to Sixth Amendment claims that assistance of counsel was ineffective because of incompetent representation on Fourth Amendment issues." See, Kimmelman v. Morrison, 477 U.S. 365, 375, 378, 383-384 (1986). Under the Fourth Amendment to the U.S. Constitution, a confession obtained by the exploitation of an unlawful arrest may not be admitted against a criminal defendant. U.S. Const. IV. See, Davis v. Mississippi, 394 U.S. 721, 726, 727 (1969); and Arterburn v. State, 901 P.2d 668 (Nev. 1995). In Dunway v. New York, 442 U.S. 200, 212, 216, 99 S.Ct. 2248 (1979). The court held," Detention for Custodial interrogation regardless of its label intrudes so severly on intrests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against Illegal Arrest."

The U.S. Supreme Court noted, "The impropriety of the arrest was obvious; awarness of that fact was virtually conceded by the two detectives when they repeatedly acknowledged in their testimony that the purpose for their action was for investigation." See, Brown v. Illinois, 422 U.S. 605, 95 S.Ct. 2254 (1975). Jefferson argues he too, was arrested without probable cause and incriminated himself. See, (EXHIBIT #3, Pg. 2). And evidently, he had been arrested, but was told he could be un-arrested because: "WE'RE TRYIN' TO CLEAR UP A, AN INVESTIGATION, HAPPENS TO ALOT OF THESE OKAY?" Like Brown, Dunway, and Davis, Jefferson was not free to leave.

In obtaining consent to search or interrogate a defendant the U.S. Supreme Court warned that police officers "May not convey a message that compliance with requests is required." See, Florida v. Bostick, 501 U.S. 429, 437, 111 S.Ct. 2382 (1991). In support of this argument, Jefferson relies on, Streetman v. Lynaugh, 812 F.2d 950 (5TH Cir. 1987); Williams v. Withrow, 944 F.2d 284, 289 (6th Cir. 1991); United States v. Pinto, 671 F. Supp. 41, 58-60 (D. Me. 1987); and State v. Kysar, 757 P.2d 720 - (Idaho. App. 1988). In each of these cases, the defendants Miranda waivers were ruled involuntary because while in custody and before being advised of their rights, police first offered to release them, or keep them from going to jail, or keep them in custody until they waived their rights. "Miranda warnings alone and per se cannot always break, for Fourth Amendment purposes, the causal connection between the illegality and the confession." Brown, supra at 603. With respect to Jefferson's allegations, He respectfully requests this Court to extend the holdings of these cases to the particular facts of his case.

The fact that a person gives some form of consent to the officers does not render the encounter non-custodial if the circumstances as a whole indicate that he was in custody. See, Kaupp v. Texas, 538 U.S. 626, 629-633, 123 S.Ct. 1843 (2003). Jefferson contends he was arrested, was not told he was under arrest was not imediately processed on sexual assault, but told he could be un-arrested. Jefferson's attempt to conduct an interview with Detectives' Demas and Katowich was not an invitation for a full blown arrest, under Kaupp supra at 632-633. Jefferson wanted to file a Missing Person's Report, not turn himself in for alleged crimes.

Jefferson argues Detectives lacked reasonably trustworthy information to believe he committed a crime. See, Beck v. Ohio, 379 U.S. 89, 91 (1964). "Evidence obtained as a result of arrest cannot support the existence of probable cause." Beck supra at 93 (1964). The inquiry Jefferson puts before this Court is whether Detective Demas's methods in obtaining a Complaint from C. were objectively reasonable. See, (EXHIBIT #22, pgs. 14-15). Jefferson vehemently contends that this Detective doggedly pursued and pressured a five year old C. to confirm the hearsay allegations of her mother Cindy against her wishes. C. not only denied being sexually assaulted, but implicated Cindy as reporting a false accusation.

Despite having direct knowledge of Cindy's spiteful motives against Jefferson, Detective Demas actively participated in the formulation of a false Complaint. See, United States v. Evans, U.S. Dist. Lexis 56564 (D. Nev. 2006). Here, the Court warned that a Hearsay informant may be prosecuted under NRS. 199.130 if he caused a false affidavit to be signed to search the defendant's computer for child pornography. A Category (D) felony. NRS. 199.130, also covers false complaints to effect arrests.

In Contrast with Evans, Supra, Detectives' Demas and Katowich DID investigate Cindy's hearsay allegations. They learned from C. the only person in the position to know whether Jefferson committed these alleged offenses, was that he did not. They learned Cindy started the rumor from C. herself. Jefferson asserts his arrest for interrogation, under these circumstances, was not objectively reasonable by any standard of the Fourth Amendment. See, Hiibel v. Sixth Judicial District Court of Nevada, 124 S.Ct. 2451, 2457 (2004).

See, McMillian v. Johnson, 878 F.Supp. 1486-1488, 1537-1538 (Ala. 1995). Here the court denied Summary Judgement for three police officers for their roles in Pressuring an adult male to accuse the defendant of Sexual assault. The court found police knew the accusation was false, arrested the defendant anyway, and then omitted relevant facts from the arrest report, in an effort to frame the defendant for Murder. The court also noted this misconduct resulted in Police perjury at the trial.

See, United States v. McDermott, 918 F.2d 319, 321, - 324 (2nd Cir. 1990). This Court, upheld the convictions of two Police officers for the false arrests of Seven men for Sex abuse, one case involved a twelve old girl. All of these purported victims tried telling these officers "NOTHING HAPPENED TO THEM ON THE SUBWAY!" that they would not press charges, but the alleged peppetrators were arrested anyway.

See, Grant v. City of New York, 848 F. Supp. 1131-1134 (S.D.N.Y. 1994). Here, A woman retracted being raped by her Companion the same day the allegation was made. The state declined to Prosecute, and the defendant was released within twenty-four hours.

It should be mentioned that in attempt to explain away a medical document, The State told Jurors that Cindy's account of Jefferson's alleged misdeeds, "MADE NO SENSE." See, (EXHIBIT #18, TR. 1570: 7-22). The State urged Jurors to consider what C. told police although that evidence was excluded behind Police misconduct. See, (EXHIBIT #12). Jefferson submits under Kimmelman, Supra, He received Ineffective assistance of Counsel for direct appeal because police cajoled C. who was only Five years old to level a Complaint outside her own knowledge, spared Cindy of liability under NRS. 199.130, and arrested Jefferson for interrogation. As will be shown later, the State suborned perjury about C. excluded statements to police, and ADMITTED Cindy's story about Jefferson was worthless.

For these reasons, Appellate attorney Ms. Audrey Conway should have Presented a Fourth Amendment challenge against Jefferson's apprehension. This may have resulted in suppression of Jefferson's Statement, DNA, and Blood samples as fruit of an illegal arrest. Jefferson would be entitled to a new trial. This court has held counsel ineffective when meritorious issues are not raised on direct appeal. See, Clark v. State, 851 P.2d 426 (Nev. 1993). Smith v. Robbins, 528 U.S. 259 (2000). Jefferson requests this Honorable Court to remand with instructions that the District Court grant his Writ of Habeas Corpus, and should the State retry him they do so without any evidence gathered from the unlawful arrest. Further, pursuant to NRS. 34.500, they produce evidence legally obtained on September 14, 2010, or release Jefferson.

IV. JEFFERSON DID NOT ENJOY A FAIR TRIAL. THE STATE SUBORNED PERJURY ABOUT EXCLUDED EVIDENCE. JEFFERSON IS ACTUALLY AND LEGALLY INNOCENT. C.'S TESTIMONY WAS FORCED AND DID NOT ESTABLISH THE CRIMES CHARGED OCCURED. HIS IMPRISONMENT VIOLATES HIS EIGHTH AND FOURTEENTH AMENDMENT RIGHTS TO THE U.S. CONSTITUTION.

Jefferson incorporates in support hereof all of the foregoing grounds of his petition and Supplemental Writ of Habeas Corpus, to include all grounds of this Appeal above and below AS IF FULLY STATED HEREIN.

A claim that the evidence was insufficient to support a guilty verdict must be evaluated under Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979). This requires viewing the evidence in the light most favorable to the prosecution and determining that no rational trier of fact could have found the essential elements of guilt beyond a reasonable doubt. The use of false testimony by the prosecutor, whether known at the time it is offered or uncorrected after it is discovered violates the defendant's Fourteenth Amendment rights. Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173 (1959) citing, Mooney v. Holohan, 294 U.S. 103, 112, 55 S.Ct. 340 (1935); Pyle v. Kansas, 317 U.S. 213, 216, 63 S.Ct. 177 (1942); and Alcorta v. Texas, 355 U.S. 28-30, 78 S.Ct. 103 (1957). Here, the state achieved the desired effect of artificially bolstering the credibility of police detectives and their investigation by having Detective Katowich testify affirmatively, but falsely, that the interview techniques used on a "FIVE YEAR OLD C." were designed to elicit truthful responses. See, (TR. 1156-1157, EXHIBIT #11).

The Prosecutor knew the District Court determined that C. had not given the Detectives' a trustworthy account of being sexually assaulted because Police subjected C. to repetitive questioning. (See, EXHIBIT #12). This was suppressed evidence favorable to Jefferson. Pyle, Supra, at 216. The prosecutor encouraged Detective Katowich to pejure himself, and stood mute while he did so. Alcorta, Supra, at 31. Had the jury known that the state had just told them a cross-eyed lie about the reliability of C.'s statement, the verdict may have been different. Belmontes v. Woodford, 350 F.3d 861, 881 (9th Cir. 2003).

Under Nevada Law, a conviction for sexual assault may not be rightfully obtained unless the accuser testifies with "Some particularity regarding the incident, there must be some indicia that the number of acts charged actually occured." See, Lapierre v. State, 108 Nev. 528, 531, 826 P.2d 56 (1992). Because C. testified THREE times on direct examination, "NO", Jefferson had not subjected her to multiple incidents of sexual assault, and "NO" she had never even seen Jefferson's penis. The Jury's finding of guilt for five offenses is unreliable under Lapierre, supra. See, (EXHIBIT #10, TR. 921: 17-22); (TR. 924: 10-12); (TR. 926: 1-3); and (TR. 933: 7-11). As revealed from these portions of the state's direct examination, the Prosecutor William Merback in an act of desperation shamelessly repeated the exact same questions because he WAS NOT going to accept any testimony that would result in Jefferson being acquitted. Guerra v. Collins, 916 F. Supp. 626, 627, 635, 637 (D. Tx. 1995). Here, the court annouced that "The Prosecutor persuading a child to change his testimony because the answers did not conform to the theory that Guerra was the shooter in the murder of a Police officer, because the prosecutor did not like the child's answers, denied Guerra's due process gaurantee to a fair trial." (I.d. at 626).

The Guerra Court held further, "The intentional act of causing to be admitted tainted, unreliable, perjured testimony had not been proven harmless by the state, and but for the conduct of the police and Prosecutor the defendant either would not have been charged with the offense or the trial would have resulted in an acquittal." (I.d. at 635). The Court Granted Guerra a Writ of Habeas Corpus because police and prosecutors were sucessful in intimidating and manipulating children to testify Contrary to what they knew or did not know at all. (I.d. at 637)

Jefferson asks this court to Consider a Precedent from Oregon. See, State V. Remme, 23 P.3d at 376-379 (Or. App. 2001). Here, the defendant was charged with Sexually abusing his stepson. Immediately after the child testified in front of a Jury that he had not been touched by the defendant, nor had he been forced to touch the defendant's penis, The state dismissed all Sexual abuse allegations (I.d at 385, n.2). The Prosecutor in rebuttal closing said in relevant part: "He did not tell you the touching happened HE SAID IT DIDN'T. His explanation of why he earlier mentioned it was not one hundred percent complete. AND THAT'S ENOUGH PROPERLY TO GET RID OF THOSE CHARGES." The prosecutor also told that Jury that it was not acceptable for the child to falsely accuse the defendant of Sexual assault just to keep the defendant in jail away from him and his mother.

See, Hays V. Farwell, 482 F. Supp. 1180, 1183-1189, 1194-1196 (D. Nev. 2007). Here, a Las Vegas man Spent over ten years in State Prison wrongfully Convicted of Sexually assaulting his then eight year old daughter. The court found the child had been Coerced by her mother and a CLARK COUNTY PROSECUTOR (TOM MOREO) to falsely accuse her father of Sexual assault. Specifically, the court found that this Prosecutor knew the child denied being Sexually assaulted by her father, but threatened the child to testify she had been Sexually assaulted. "Had she testified Hays did not assault her, A CONVICTION WOULD HAVE BEEN IMPOSSIBLE." (I.D. 1194-1195). The Court held Hays had been improperly denied relief in the State Courts', and ordered his immediate release. (I.D. 1201-1202).

Jefferson pleads to this Court to extend the wisdom of the courts in Remmo, supra; Guerra, supra; and Hays to the particular, and obviously similar circumstances of Jefferson's case. Jefferson asserts the prosecutor's conduct here (Mr. Merback) was even more arbitrary, malicious, and abusive then the prosecutor's was in the Hays controversy. Mr. Merback knew C. denied being sexually assaulted by Jefferson September 14, 2010, in her statement to police, but implicated her mother as accusing Jefferson falsely. Mr. Merback knew this statement excluded because of police impropriety, and Suborned perjury on the matter. Moreover, in 2012, C. tried to explain to a JURY THREE times there was NO multiple sexual assaults, and that she never even seen her father exposed.

This made it inherently impossible Jefferson committed or was involved in this type of allegation. Mr. Merback knew if Jefferson was to be acquitted of this alleged act C. would have had to offer the testimony she did. Mr. Merback humiliated C. into changing her answers, and accordingly, the Jurors must have entertained a reasonable doubt Jefferson committed these acts. (TR. 1591:14-25). The Jurors note establishes Mr. Merback's methods were just as distasteful of the Police and he should be held to a higher standard, and implicates the above cited authorities.

Jefferson's Continued imprisonment on this record, without relief, would violate his Constitutional rights against Cruel and Unusual punishment, and due Process of law. U.S. Const. Amend. VIII, XIV.

Jefferson for the above cited grands, respectfully request this Honorable Court to issue a Writ of Habeas Corpus.

CONCLUSION

Jefferson faces the most inflammatory and repulsive accusation in the United States today, that is impossible to disprove given the overly Politicized National view that the guarantees of Our Constitution do not apply for the accused of Sex Crimes, and regardless of his actual innocence, he is Presumed guilty as a matter of public opinion.

This Case involves a Woman Scorned who Selfishly recruited her own children to assist in a divorce plot against Jefferson their father. Once the police were Summoned Cindy's plan Spoiled. C. told Detectives the idea to accuse Jefferson of sex assault was her mother's. Detectives' Demas and katowich, however, acted as if Jefferson had no Fourth Amendment rights. They pressured a five year old C. to Confirm hearsay against her wishes. They Callously and deliberately used this phony Statement to arrest Jefferson for interrogation purposes. Detectives' did not concern themselves with Jefferson's Fifth and Fourteenth Amendment rights either. Detectives Completely ignored Jefferson's Verbal request to remain Silent, and threatened the D.A. would make it worse for him if he did not Confess to obtain an admission.

Jefferson's Trial attorney told him he should be Convicted, and allowed the State to manipulate the facts of this case, due to an active Conflict of interest. Mr. Cox's deficient performance as detailed is inexcusable. On direct Appeal, Ms. Conway presented "Moral Sympathy" issues. Not Constitutional violations what so ever.

In Sum, even Sexual assault investigations, like any other Criminal investigation, requires Law Enforcement to Comply with the Suspect's Fourth, Fifth, and Fourteenth Amendment rights, and the defendant deserves Counsel who will defend these rights. Jefferson requests this Honorable Court to issue a Writ of Habeas Corpus because he did not receive these protections guaranteed to him

Dated: June 19, 2016.

Respectfully Submitted,

Brandon M. Jefferson

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with N.R.A.P. 24, which allows for a party to proceed In Forma Pauperis on Appeal, and N.R.A.P. 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript of the Appendix where the matter relied on is to be found.

DATED this 19TH day of June, 2016.

Prepared by,

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CERTIFICATE OF SERVICE

I hereby certify pursuant to NRCP 5(b) that I am the applicant, Appellant, in the foregoing APPELLANT'S OPENING BRIEF, and that on this 22 day of June 2016, I did serve a true and correct copy of the same, by giving it to a Prison guard at the Ely State prison to deposit in the U.S. Mail, Sealed in an envelope, postage pre-paid, adressed to the following:

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