IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

WILLIAM JASON TEETS) PETITIONER,) Vs.) RICKY D. DIXON OF) THE FLORIDA DEPARTMENT) OF CORRECTIONS AND THE) STATE OF FLORIDA,) RESPONDENT(S).) _____)	CASE NO.: 8:18-CV-02992-SDM-JSS

PETITION UNDER 28 U.S.C. 2254 FOR WRIT OF FEDERAL HABEAS CORPUS AND REQUEST FOR AN EVIDENTIARY HEARING

Petitioner, WILLIAM JASON TEETS, PRO SE. This is an Amended Petition for a Writ of Habeas Corpus, a factual claim of innocence, seeking relief to remedy Petitioner's, miscarriage of justice, of an unlawful conviction. Said conviction was pursuant to a judgment of the Tenth Circuit Court of Polk County, Florida. The Rules Governing Proceedings in the United States District Courts under said section, and the Due Process Provisions of the Fifth and Fourteenth Amendments to the United States Constitution, respectfully moves this Court for an Order vacating the conviction and sentence in *State of Florida v. William Teets*, No. 12CF-5644. Petitioner requests an evidentiary hearing to further develop the allegations set forth herein.

This pleading is set forth in the form dictated by the Rules Governing Proceedings in the United States District Courts Under 2254 of Title 28, United States Code, and the Model Form for Motions under 28 U.S.C. 2254. The opening section states the offense of conviction and sentence imposed; Part I sets forth the history of this proceeding through trial and direct review; Part II sets forth any collateral proceedings that were pursued; Part III states the ground and supporting facts upon which Petitioner claims his conviction is in violation of the Constitution.

In support of this request for relief, Petitioner states the following:

CONVICTION AND SENTENCE IMPOSED

1. *Name and location of court where conviction entered.*

   Conviction and sentence in Case No. 12CF-5644 was imposed by the Tenth Circuit Court of Polk County, Florida, Judge John K. Stargel, presiding.

2. *Date of Judgment and Conviction*

   Petitioner entered a plea of not guilty. The first jury trial ended in an acquittal of 30 of the 67 counts against the Petitioner, leaving a total of 37counts. The trial ended with a deadlocked jury and mistrial was declared. The morning of and moments prior to the start of the second trial on August 29th, 2016, the State of Florida moved to drop an additional 31 counts against the Petitioner, leaving only 6 counts remaining. The second Jury trial returned a verdict of Guilty as to counts 1 to 6 and the case was set for sentencing on December 8th, 2016.

3. *Nature of offense involved.*

   Petitioner was charged by information as to sixty-six (66) counts of possession of child pornography in violation of Florida State Statute 827.071(5) and one (1) count of illegal use of a two-way communication device in violation of Florida State Statute 934.215.

4. *Length of Sentence.*

   On, December 8th, 2017 - the Petitioner was sentenced to Five (5) years Florida State Prison as to Counts 1, 2, and 3, followed by five (5) years of Sex Offender Probation as to Counts 4, 5, and 6, with Court fines and costs attached.

5. *Details of Petitioner's Plea*

   Petitioner has maintained his innocence from the start and entered a plea of not guilty and proceeded to a Jury Trial, twice.

PART I – TRIAL AND DIRECT REVIEW

1. *Kind of Trial.*

   Petitioner exercised his right to a jury trial.

2. *Whether Petitioner Testified.*

   Petitioner did not testify at either trial.

3. *Kind of Appeal.*

   Petitioner filed an appeal from the judgment of conviction in the Appellate Court of the State of Florida, Second District Court of Appeals, No. 2D17-0141. On appeal Petitioner argued:

I. Trial Court Erred in Denying the Defendant's Several Motions for Judgment of Acquittal.

II. Trial Court Erred in Allowing the Prosecutor's Inappropriate Closing Arguments.

III. Trial Court Erred in Denying the Defendant's Motion to Dismiss the Charges Against Him for Destruction of Evidence.

IV. Trial Court Erred in Denying the Defendant's Motion to Suppress, Which Challenged the Voluntariness of his Statements to Police.

V. Trial Court Erred in Convicting and Sentencing the Defendant/Appellant on More than Two Counts of the Information.

Direct Appeal was Denied / Per Curiam Affirmed on June 27th, 2018.

4. *Petitioner did file for a Rehearing.*

Rehearing was denied on July 27th, 2018.

5. *Petitioner did not petition the Florida Supreme Court* as he was barred from doing so by the PER CURIAM AFFIRMANCE, by the Florida Second District Court of Appeal.

PART II – COLLATERAL PROCEEDINGS

1. *Pervious petitions, applications or motions.*

   a. Petitioner did previously file this Writ, which was placed into Administrative hold pending the Petitioner exhausting his State remedies. ORDER dated February 6th, 2019.

b. Petitioner did file for Post-Conviction relief via Florida Rule 3.850, Ineffective Assistance of Counsel, as Amended on January 28th, 2021.

    i. Amended Motion was denied on August 5th, 2021.

c. Petitioner has not filed any other petitions, applications, or motions other than his Direct Appeal and Motion to Vacate, Set Aside or Correct Sentence, Fla. R. Crim. P. 3.850.

d. Petitioner has filed no previous petitions for habeas corpus relief in federal court with respect to this conviction – with the exception of this filing, which again was placed on Administrative hold pending the exhaustion of State remedies.

e. This Honorable Court so entered an ORDER, on February 6th, 2019 – allowing Petitioner to place this Writ into "administrative hold" or "stayed", pending the exhaustion of his state remedies. The Court also found that "The present action, filed December, 2018, is timely".

f. Once Petitioner had exhausted his State remedies, he petitioned the court to lift the "Order to Stay" and proceed with this Amended Writ. This Honorable Court additionally GRANTED, at the request of Petitioner, a Motion for Enlargement of Time. Giving Petitioner until March 7th, 2022 to file an *amended* application. Thus, comes now this timely, *amended* application.

g. There are no other legal proceedings pending in any other court other than this petition with respect to this conviction.

PART III – PETITIONER'S CLAIMS

Petitioner realizes that his indigency (as previously recognized by this Court) prevents him from hiring a forensic expert to conduct an additional evidentiary review to submit with this Petition, marshaling the facts associated and needed as proof of malicious tampering and fabrication of evidence by law enforcement.

Petitioner refers instead, to uncontradicted evidence of alterations and tampering of the underlying evidence in the instant case as testified to by the Petitioner's expert witness in both pre-trial proceedings and during trial testimony, and as admitted to in pre-trial and trial testimony by the State's expert witness. The anomalies in question completely undermine the reliability of the State's evidence, occurred when, by the State's own admission, the evidence was outside the dominion and control of the Petitioner, either in the possession of a private third party and subsequently (and more disturbingly) under the dominion and control of law enforcement itself.

Thus, Petitioner here amends and again asserts his innocence and that his conviction and sentence are in violation of the Constitution of the United States. Challenging Petitioner's conviction on counts 1 to 6, in that: 1) He has been wrongfully convicted of offenses of Section 827.071 (5) Florida Statutes for which insufficient evidence exists to support the convictions, as guaranteed by the Fifth and Fourteenth Amendment and the principles enunciated in the Supreme Court's opinion in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979).

I. STATEMENT OF FACTS

a. CITATIONS OF THE COURT RECORD

Due to indigency, Petitioner is using the citation(s) documents and incorporates such by reference of the "Record on Direct Appeal" to the Florida Second District Court of Appeal, using the paginated stamp at the bottom right of each page shall be cited as (R-), citing appropriate page number(s). The trial and hearing transcripts from the second jury trial of August 29th 2016, were paginated separately from the record documents by the Clerk of Court. The pages from the second trial transcript that are cited shall be indicated as (T-), citing appropriate page number at the top right corner of each page.

Petitioner filed a Motion for Approval (February 1st, 2022, docket # 29) with this honorable court for an exception to 1) allow for additional pages to Petitioners application, and 2) to use citations to the record on appeal, as paginated by the Clerk of Courts of Polk County, Florida. Petitioner now faces a deadline of March 7th, 2022 – not having the benefit of direction from the court, again being Pro Se, Petitioner submits his application as requested in said motion. Should this court not GRANT, Petitioner's motion, in particular the additional pages requested, Petitioner pleads with this honorable court to again amend and refile, requesting 2-weeks, for reduction of his argument. The record is over 3,000 pages, not including forensics. It is very important Petitioner has this ability to marshal the facts as many pertinent facts are encompassed in the ending pages of this application.

b. THE TRIAL EVIDENCE

Det. Amy Harvill of the Polk County Sheriff's Office (PCSO) was called to South Combee Pawn, in Lakeland, Florida on June 6th, 2012, where she seized and took into evidence two (2) cell phones, allegedly belonging to the Petitioner, which said phone(s) did not have passwords, as evident of the third-party pawn shop usage of the phone(s). The pawnshop claimed to have been preparing the phones for resale and found what they believed to be child pornographic images. Det. Harvill performed a manual on-site examination of the devices and sought a Search Warrant. Said Search Warrant was executed in this cause on June 26th, 2012. (R-30-32). Thereafter, the State filed an Information charging 67 counts of criminal charges against the Petitioner (R-33-57). The Petitioner was charged with possession of child pornography on electronic devices. (R-33-57). The Petitioner was originally arrested on June 26th, 2012. (R-30-32). He was rearrested on additional charges contained in the Information on July 30th, 2012. (R-461). A written plea of Not Guilty was entered by the Petitioner on August 9th, 2012. (R-61)

The Petitioner filed pretrial motions including - a Motion to Dismiss for Destruction of Evidence, Motion in Limine, and Motion to Suppress Evidence. (R-76, 584, 686, 699, 704) These motions were heard by the trial Court on December 17th and 18th, 2015. (R-1862-2161). The motions were all denied by the trial Court on January 22nd, 2016. (R-731-736).

The case was tried before a Jury twice in the Florida Tenth Judicial Circuit Court. (R-2248). The first trial was conducted from May 4th to May 6th, 2016. (R-795). The result

was a deadlocked jury, and the judge declared a mistrial. (R-795, 1760). In the course of the first trial, the State's own forensic evidence showed, and the State's expert witness conceded, that contraband was downloaded onto the cell phone in question when it was in the exclusive and actual possession of a third party – the pawn shop – and not in the possession of the Petitioner. (R-1461 – 1465, to line 11 - 14). During the trial, the Court acquitted the Petitioner of counts 37 to 66 charged under the Information. (R-797). A mistrial was entered on the remaining counts (Counts 1-36, and 67); as the trial Jury could not agree on a verdict. (R-1760).

The second trial was conducted from August 29th to August 31st, 2016. (R-838). Approximately 90 minutes prior to the start of the second trial, the State unexpectedly withdrew and subsequently Nolle Prossed counts 7 to 36 and 67 of the Information on August 29th, 2017. (R-835-836, 2248). This effectively barred Petitioner from using exculpatory evidence associated with said Nolle counts to prove his innocence. Counts 1 to 6 (each alleging possession of media depicting sexual conduct by a child under 18 years of age) were tried and submitted to the Jury for its decision. (T-403-404). Though the Petitioner was now restricted to a narrower presentation of evidence in this second trial, nevertheless, the State's expert witness admitted that evidence outside of Petitioner's possession and control had been modified, while in the exclusive custody of the PCSO, without offering any explanation. (R-1463 – 1465:14)

The jury found the Petitioner guilty of all six (6) counts on August 31st, 2016. (T-403-404).

The trial Court conducted sentencing on December 8th, 2016. (R-889). Mr. Teets was found guilty on counts one (1), two (2) and three (3) and sentenced to five (5) years Florida State Prison on these counts. (R-2262). Further, the Petitioner was found guilty on counts four (4), five (5) and six (6) and sentenced to five (5) years of sex offender probation on those counts. (R-889; 2262).

The lower Court's judgment of guilt and sentence was reduced to a written order. This judgment was filed with the Clerk of Court on December 12th, 2016. (R-911-921, 894-898). The Petitioner filed his timely Notice of Appeal in the Circuit Court on January 9th, 2017. (R-899, 905). The Petitioner filed a timely Fla. R. Crim. P. Rule 3.800 (b)(2) motion, pending appeal on August 1st, 2017. The State filed a response thereto. The Circuit Court took no action on the motion.

CUSTODY

The Petitioner was in the custody of the Polk County Sheriff's Office (PCSO) from June 26th, 2012, until January 2017 – when he was transferred to State Custody and ultimately released on May 22nd, 2017. He then began serving his five (5) year sex offender probation sentence under the department of corrections of Florida.

JURISDICTION

This action arises under the Constitution of the United States and Article 28 U.S.C. 2254(a); (d)(1) and/or (2).

VENUE

Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, (1973), venue lies in the United States District Court for the Middle District of Florida, Tampa division – the judicial district where the Petitioner currently resides.

PARTIES

Respondent, Ricky D. Dixon, was appointed Secretary of the Department of Corrections (DOC) of Florida in November 2021. As such he has responsibility and oversight of the Department of Corrections, which currently the Petitioner, having been retrained of his liberty, is under the control of said Department.

DEPOSITION AND PRETRIAL MOTION HEARINGS

The Petitioner (pro se) conducted a series of depositions and hearings in the course of this case, including the deposition of former PCSO Det. Nathaniel McFelia, and the deposition of PCSO Det. Amy Harvill. Petitioner filed several pretrial Motions. (R-686-710). The hearings on the Petitioner's motions to dismiss, in limine, and to suppress were held on December 17th and 18th, 2015. (R-1862 – 2170).

Standards for Safeguarding the Integrity of Digital Evidence.

On June 12th, 2015, the Petitioner (pro se) deposed Special Agent Nathaniel McFelia of the FDLE. Agent McFelia was previously affiliated with the PCSO and at the time of the Petitioner's arrest was a Detective in the PCSO Computer Crimes Unit. Agent McFelia testified as to the certification of digital forensic examiners as well as his own

(See COC Action Docket, sequence # 302, pg. 5:17-6:9), concurred with the standards promulgated in the US DOJ's April 4th 2004 *Forensic Examination of Digital Evidence, A Guide for Law Enforcement* – "this is a great publication" (COC # 302 - depo 15:20), and testified that the PCSO maintains written standards (i.e. directives, policies, General Orders) with regard to maintaining the integrity of digital evidence. (COC #302 – depo pg. 23:7-24).

On June 12th, 2015, the Petitioner (pro se) deposed Det. Amy Harvill of the PCSO, who combined the roles of lead detective and forensic examiner in the Petitioner's case. After reviewing her qualifications (See COC Action Docket, sequence #295, depo pg. 5:14-19) which did *not* include certifications, Det. Harvill acknowledged (also from DOJ document referenced in the McFelia deposition) the expert authority of the US DOJ in digital forensic matters (COC #295 - depo pg. 6:3-6). She was given document excerpts regarding the integrity of a forensic examination and acknowledged their validity, "so you say it is from the Department of Justice, so, okay". (COC # 295 - depo 9:14-17). Det. Harvill further acknowledged she had stated in her Search Warrant the importance of "a controlled environment" to preserve data integrity (COC # 295 - depo pg. 5:4-12) and the existence of PCSO General Orders with regard to evidence gathering (COC # 295 - depo pg. 9:7-9). In the December 18th, 2016, hearing, Det. Harvill admitted that she conducted a critical forensic extraction without supervision. {R-2061:10-14). Later, Det. Harvill contradicted prior sworn testimony, now testifying that the PCSO did *not* have standards and General Orders with regard to gathering and handling digital forensic evidence.

<u>On Corruption and Tampering of Forensic Evidence in the Instant Case</u>

During the June 12th, 2015 deposition of Det. Amy Harvill, she acknowledged that file access dates on the seized phones had already been modified by handling – "… in part law enforcement, in part pawnbroker" (See COC sequence # 295, pg. 103:1-22) nor could she differentiate between the sources of manipulation (COC #295 - depo pg. 104:17-21).

At that hearing, the Petitioner's digital forensic expert witness, gave fact and opinion testimony. (R-1887-2016). The Expert's testimony was that on the cellphone on which the Petitioner was alleged to have child pornography, digital files were altered on June 6th, 2012, and in November 2013. while the devices were in the exclusive custody of law enforcement. (R-1936-1937). The expert testified that in the course of that evidence handling, some of the forensically useful data had been eliminated from the subject cell phone. (R-1949). The expert agreed when questioned by the Petitioner (pro se) that, wholesale modifications had been made to the digital evidence on the phone. (R-1966-1972). Det. Harvill likewise testified that the cell phone in question had been contaminated in the course of being handled, "A. It would have contaminated the phone even more…" (T-215:11). In the December 18th, 2015, hearing, Det. Harvill, under questioning by Judge John Stargel admitted her forensic examination on the evening of June 6th, 2012 "may have" altered forensically-important metadata on the examined device: "… it is, uh, it is, yes, there is a potential for that". (R-2059:25-2060:3; see also 2060:23-2061:5)

Under direct examination during the trial of August 29th 2016, Det. Harvill testified that the three dates on which data was altered was in the exclusive custody of PCSO were the same dates the devices in question underwent a forensic examination by law enforcement, "Q: What happened on those dates?... A… "Forensic examinations" (T-246:5-6)

Further, the Defense expert testified that the SD (memory) card of the subject phone was tampered with, at a time when the device was in the possession of the pawn shop. The expert stated he found forensic traces showing that the SD card was removed from the subject cell phone. (R1920-1928). Multiple suspect electronic file(s) were added to the card by another device. (R-1920-1928). Then the SD card was reinserted into the subject phone; and the phone was powered up. (R-1920-1928), causing the SD card's newly added files to be pushed onto the subject phone.

Evidence Contradicting State's Claim of Constructive Possession

The Petitioner's expert witness opined those changes were made during forensically determined time periods occurring after the Petitioner transferred the phone to the pawn shop's possession and before the Petitioner was arrested. (R-1921:7-8 and 17-22). In Deposition testimony Det. Harvill acknowledged she was aware of the cell phone being actively used while in the pawn shops exclusive possession. (R-618-pg. 22:25 to pg. 23:2; pg. 25:6-9), resulting in the downloading of 85 files according to the State's own forensic evidence. (R-618-pg 22:1 – pg. 23:2).

Notwithstanding the forensic findings of serious anomalies occurring with the digital evidence while outside of the Petitioner's possession, the Court denied the Defendant's motions in a written order dated January 22nd, 2016. (R-731-736).

STATEMENT OF FACTS

FIRST JURY TRIAL

The first jury trial in this cause was conducted on May 4th to 6th, 2016. This trial involved two cell phones (M-835 & M-860) and a Dell computer tower allegedly belonging to the Petitioner. (R201-240, 349-410, 448-596). The Defense renewed all of its prior motions. (R-1078, 1092).

At the close, of the State's case the Defense made a motion for judgment of acquittal. (R-1558). This motion challenged the sufficiency of the evidence to prove the crimes charged. (R1558-1585).

The Defense called its expert digital forensic witness to the stand. (R-631). His testimony at trial was consistent with his pre-trial hearing testimony discussed above. (R-631-728).

At the close of its presentation, the Defense renewed its motion for judgment of acquittal on the same grounds. (R-1700-1707). The Court acquitted the Petitioner of counts 37 to 66 charged under the State's Information. (R-797, 2248). The Petitioner's motion for judgment of acquittal was denied as to the remaining counts (1-36 and 67) by written order dated June 6th, 2016. (R-811). A mistrial was declared on the remaining Counts due to Jury deadlock. (R-811).

STATE'S PLEA OFFER

On August 29th, 2016 – the State proffered a plea agreement to the Petitioner for time served, no probation and no sex offender label, in which he would plead guilty to Count 67 (Section 934.215 Florida Statute) as to illegal use of a two-way communications device. As of that day, the Petitioner had been incarcerated in the South County Jail in Frostproof, Florida for 1,540 days. The Petitioner refused the offer, maintaining his innocence and proceeded to the second jury trial.

SECOND JURY TRIAL

Approximately 90 minutes prior to the beginning of the trial, the State unexpectedly withdrew and subsequently Nolle Prossed counts 7 to 36 and 67 of the Information on August 29th, 2016 (R835-836, 2248). Thus the case proceeded to its second jury trial on Counts 1 to 6 alone – the only surviving counts of the original Information - on August 29th, 2016. (T-1-409). This trial involved only one cell phone (M860) that was alleged to have been previously owned by the Petitioner. (T-160). All prior objections and motions were raised again at this trial. (T359-360). The Circuit Court noted that it considered all such prior objections and motions preserved. (T-360).

The State called Polk County Sheriff's Office (PCSO) Detective Amy Harvill, who served as both the lead detective and the State's forensic expert, as a witness. (T-157). Det. Harvill testified that she responded to the South Combee Pawnshop on June 6th, 2012. (T-159). Once there she collected a cell phone from the shop. (T-159). She then identified the State's Exhibit 7 as the cell phone that she obtained that day.

The Detective attempted to use a forensic machine to examine the cell phone on June 6th, 2012. (T-161). Later on June 27th, 2012, the Detective was able to extract some additional data from the phone. (T-161-167). This examination was labeled by the Detective as a "logical extraction". (T-162). Seventeen months following the "logical extraction", a "physical extraction" was performed on November 22nd, 2013. (T-162).

Based on the extraction of data from the phone, the Polk County Sheriff's Office recovered photographic images it alleged were contraband. (T-163). The State moved the alleged contraband images into evidence at trial, State's Exhibits 1 and 2. (T-163). The Defense objected, and as grounds raised the inadmissibility of the images which had been altered by the State. The State selected, cropped, and enlarged a single image for each child from the original collage image. (T-164-165). This alteration occurred after the image files were forensically extracted from the phone in their original, collage format. (T164-166). The State's images numbered 1 and 2 were admitted into evidence over the Defense objection. (T-169:2-18).

The Detective testified that she recovered other images from the subject cell phone. (T-171). As with the first two cropped enlarged exhibits, these images were admitted into evidence individually, modified in the same way, rather than remaining in their original thumbnail collage format, over the same Defense objection (State's Exhibits 3 to 6 - T-171). The Detective referred to the images recovered from the phone (State's Exhibits 1 to 6) as only "contraband" when questioned about them. (T-163).

The Detective stated that Petitioner admitted that the subject cell phone had been his, but that he had since pawned it (paraphrased) (T-179-181). She said Mr. Teets, allegedly told her that he used the cell phone to look at "pornography". (T-181). She also claimed that he used it to look at "younger girls", but he stated to her that "they were all legal". (T-181:13 – 16). These statements were challenged earlier in pre-trial motions. (R-186-220).

Detective Harvill was cross-examined by Defense Counsel. (T-183). During this questioning, she admitted that at the time she recovered the subject cell phone, it was the property of South Combee Pawn Shop. (T-186). When questioned, Det. Harvill admitted that she *was not certified* to use either of the two data extraction tools used by certified digital forensic experts on digital devices; including cell phones. (T-184-185). These tools were used in her investigation and were known as "Encase" and a machine called "Cellebrite". (T-184-185). The Detective testified that while at the pawn shop the Petitioner's cell phone may not have been under lock and key. (T-188). The Detective became aware that two employees of the pawn shop could have had access to the cell phone during the extensive period of time in which it was in the exclusive possession of the pawn shop. (T-189). However, the Detective elected not to interview these two employees, instead focusing on the Petitioner, because she "knew" the pawnshop owners. (T-189).

Further, Det. Harvill agreed with defense counsel that the two suspect images on the subject phone were accessed during the period in which the phone was in the pawn

shop's exclusive possession, each time the last access date of images changed, thus leaving a digital forensic trial that implicates someone other than the Petitioner. (T-191). The Detective said this happened before she arrived, and later in her presence. (T-190-191). Detective Harvill also testified that she did not check the "hash value" (a technical property of a digital file, analogous to a "digital fingerprint" that can be used to establish a file's uniqueness) of the extractions before and after the data retrieval. (T-193). Defense Counsel then asked the Detective,

> DEFENSE: "So there was no way to determine whether or not the phone had the exact same information on it before and after?"
>
> HARVILL: "No". (T-194:1-3).

Later, when asked if the actual cell phone file contained a multiple image collage, the Detective stated, "it's one file with multiple victims, yes". (T-200:2). The created date for that image in the cell phone date was July 16th, 2011. (T-200). The last access time for the phone was indicated as November 22nd, 2013 at 12:00 a.m. (T-202). This was after the cell phone had "been out of Mr. Teets possession, is that correct?...Yes". (T-202:22-25). Detective Harvill also testified that she learned that the subject cell phone was pawned on July 5th, 2011. (T-206-207). The subject cell phone was pawned again on August 15th, 2011. (T-209). **The Detective testified that she had no information about who had the subject cell phone between July 5th, 2011, and August 15th, 2011.** (T-209).

Defense Counsel next inquired if the incoming and outgoing cell phone calls involving the phone were made after the phone was pawed on July 5th, 2011. The

Detective agreed that this was true based on the cell phone data. (T-211). Harvill said the same cell phone had also been previously pawned in April and May, 2011. (T-212-213).

The Detective testified that according to the data that she received, the collage photo file created on July 16th, 2011, ***was not*** sent to the subject cell phone via text message, email, or multimedia file or internet download. (T-226:1-20). The only way that the suspect file could have come into existence was if it had been created by an electronic device other than the subject cell phone. (T-226-227:21). Det. Harvill's testimony aligned with the testimony the defense expert gave in his June 12th. 2015, deposition.

> DEFENSE: "Okay. So as far as your extraction is concerned, this file *was not* downloaded by this phone on this date?"
>
> HARVILL: "According to the data retrieved, no." (T-226:1-3)
>
> DEFENSE: "Okay. So the only other way that this file could have come into existence is if it was created not on the phone or the SD card but on another device; is that correct?"
>
> HARVILL: "Yes".
>
> DEFENSE: "And at some point in time it was moved from that device to this SD card?"
>
> HARVILL: "I'm assuming it was. I mean, **there's no other way for it to get onto an SD card without it."** (T-226:21-T-227:3).
>
> DEFENSE: "Okay. So as you sit here this just appeared out of nowhere and moved on this SD card and you have no idea what the source of the file is?"
>
> HARVILL: "Correct". (T-227:18-21).

Apparently, the suspect file images were moved from the creating device to the subject cell phone SD (or memory) card. (T-226:21-227:3). Detective Harvill further testified that she had no idea what the source of the subject July 16th, 2011 image file was. (T-227:18–21). The Detective agreed that there was no evidence that the suspect file was

ever opened on the subject phone by anyone except the pawn shop and herself. (T-233 – 234).

After Detective Harvill testified, the State rested its case. The Defense made a motion for judgment of acquittal based on lack of evidence. (T-257-259). This motion was taken under advisement by the Trial Court. (T-259; R-892).

The Defense called Mr. Jason Clement, the pawn shop owner, back to the witness stand. (T-272-281). Mr. Clement testified at the second trial that he owned the subject pawn shop. The pawn shop had computers with internet access. (T-275-276). Any pawn shop employee would have access to the pawned items (which included the subject phone). (T-276). A "kid", who worked for Mr. Clement, discovered a suspect file on the pawned subject phone (M860) on June 6th, 2012. (T-276-277). Mr. Clement called law enforcement when the file was discovered. (T-276). Mr. Teets previously pawned the cell phone on which the suspect file was discovered. (T-279). The date of the last pawn contract between Mr. Teets and Mr. Clement's pawn shop for the subject phone was July 5th, 2011. (T-281).

The Defendant's expert, testimony at trial was consistent with his pretrial hearing testimony discussed above. (T-282-348). The subject device, or cell phone, had been provided to him for examination at the PCSO headquarters. This was the M860 cell phone. (T-286). He extracted Universal Forensic Examination Data (UFED) from the subject M860 cell phone. (T-286). Both his pre and post hash-tags matched, verifying no changes had occurred.

There was no forensic data that proved that Mr. Teets was the person who put the suspect files, 08.jpg image file and 10.jpg image file on the M860 cell phone or its SD card located inside of it. (T300, 342). The two electronic files were small thumbnail collages containing 6 images. (T-301-302). The two collages were each like a mosaic. (T-302).

The two suspect files were the only files on the SD card that were not downloaded from the internet by the phone. (T-307). The two files did not have the 13-digit sequential code that would have been on them if the phone made (or downloaded) the images, further confirming they had been inserted, on the SD card, by other means from an external source. (T-307). No other electronic device possessed by Mr. Teets, seized by the PCSO and subsequently made available to the expert witness, contained the two suspect files. (T-309, 342, 348). This was undisputed and likewise stipulated to by Detective Harvill. (T-226 – 227). The creation date for the 08.jpg image file was July 21st, 2011. Its last access date was November 22nd, 2013. (T-309). The creation date for 10.jpg image file was July 16th, 2011. (T-315). The last access date for this file was November 22nd, 2013. (T-319). The creation date and last access date for the subject files on the cell phone were "stomped over", i.e. modified, according to the expert witness. (T-318:5–18). The two suspect files were created on another device then moved to the phone via its SD (memory) card. (T347-348). This, analysis was, undisputed and stipulated to by the State's own expert, Detective Harvill. (T-226–227:21).

The Petitioner's forensic expert testified that he found evidence that the subject cell phone (M860) was used at the pawn shop. (T-343). Further, he stated that law

enforcement had overwritten "some things" in performing their analysis. He found digital material that was created on the subject cell phone while it was at the pawn shop. (T-343-344). He testified that there was web activity by the subject cell phone while it was pawned on June 6th, 2012 at 2:18 a.m. (T-343). This was believed to be before law enforcement acquired the phone. (T-343). When asked by Defense Counsel about his findings the expert testified,

> "…We already know that there was some stuff that was done. There is not an associated file through an index with this particular activity, so it's really hard to tell other than the fact that there was activity on the phone at the pawnshop when there shouldn't have been and while it was stated there wasn't…"
>
> (Page 343:22 to Page 344:13)

After deliberation, the second trial Jury returned a guilty verdict as to counts 1 to 6. (R-869-870, T-403-404). The case came before the Circuit Court for sentencing on December 8th, 2016. This left six (6) counts tried by the jury during the second trial. One for each pictured person. (R-2248) The Court recognized that it still had pending for decision the Petitioner's renewed motion for judgment of acquittal (based on lack of evidence). (R-892-893, 2248). Then the court denied the Petitioner's renewed motion and entered a written order thereon. (R-892-893).

GROUNDS OF UNCONSTITUTIONALITY OF PETITIONER'S CONVICTION AND SENTENCE

Petitioner, William Jason Teets, Pro Se, [Petitioner is a layman and asks the Courts understanding – *Haines v. Kerner*, 92 S.Ct. 594 (1972) and *Erickson v. Pardus*, 192 S.Ct. 219 (2007) (pro se pleadings must be liberally construed in favor of litigant)] and petitions

this Honorable Court for a Writ of Habeas Corpus to remedy a miscarriage of justice and his unlawful conviction.

On federal habeas review, an application for writ of habeas corpus may be GRANTED where the state court's adjudication of the claim has resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court. 28 U.S.C. 2254 (d)(1) and (2); *Boss v. Pierce*, 263 F.3d 734 (7th Cir. 2001). In other words, a federal court may grant habeas relief when a state court has misapplied a governing legal principle to a set of facts different from the case in which the principle was announced. *Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527 (2003). Thus, a writ of habeas corpus may be granted where the state court's application of the governing legal principle was objectively unreasonable.

I. THE EVIDENCE AT TRIAL WAS LEGALLY INSUFFICIENT TO SUPPORT THE CONVICTION WHERE THE STATE OF FLORIDA PRESENTED INSUFFICIENT EVIDENCE TO SHOW THAT THE PETITIONER COMMITTED THE OFFENSES AS CHARGED.

The Due Process Clause of the United States Constitution prohibits the criminal conviction of any person except upon sufficient proof of guilt of ***every element*** of the charged offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979); In re *Winship*, 397 U.S. 358 (1970). It thus remains axiomatic that, "it would not satisfy the [U.S. Constitution] to have a jury determine that the Defendant is probably guilty." *Sullivan v. Louisiana,* 508 U.S. 275, 278 (1993).

Indeed, it is well settled that habeas relief is mandated if after viewing the evidence adduced at trial, in the light most favorable to the prosecution, it is found that no rational trier of fact could have found proof of guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 324 (1979). As Justice Stewart held:

> A federal court must entertain a claim by a state prisoner that he or she is being held in "custody in violation of the Constitution or laws or treaties of the United States." Under the *re Winship* decision, it is clear that a state prisoner who alleges that the evidence in support of his state conviction cannot be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt has stated a federal constitutional claim. Thus, assuming that state remedies have been exhausted and that no independent and adequate state ground stands as a bar, it follows that such a claim is cognizable in a federal habeas corpus proceeding.

Accordingly, in a habeas corpus proceeding such as this, a claim that the Petitioner has been convicted in state court upon insufficient evidence rests on the Due Process guarantee "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof-defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every other element of the offense." *Jackson*.

In following this guidance, federal courts have consistently held that a Defendant's conviction is constitutional infirm and must be vacated if attacked on a federal habeas corpus petition where no rational trier of facts could have found the Defendant guilty beyond a reasonable doubt. *Bowen v. Kemp*, 832 F.2d 546 (11th Cir. 1987) (evidence was insufficient to establish that Defendant personally inflicted victim's fatal stab wound to sustain conviction for aggravated murder).

For the reasons that follow, it was objectively unreasonable for the Florida State Tenth Circuit Court to deny Petitioner's multiple motions for Acquittal and for the Second District Court to Per Curiam Affirm Deny the Petitioner's Direct Appeal. The State of Florida **did not present sufficient evidence to prove that the Defendant knowingly possessed child pornography.** The *Jackson* standard for reviewing the sufficiency of the evidence in a habeas corpus proceeding must be applied with the explicit reference to the substantive elements of the criminal offense as defined by state law. *Jackson*, 443 U.S. at 324, (indicating that federal courts in reviewing habeas petitions that allege insufficiency of the evidence avoid intrusions upon state power to define criminal offenses by referencing "the substantive elements of the criminal offense as defined by state law").

In this case, it was undisputed at trial that the subject electronic device / cell phone that contained **the alleged contraband left the Defendant's possession and control in July 2011 when it was pawned**. The state law at issue is Florida Statutes 827.071 (5) 2011, which states in relevant part:

> "… It is unlawful for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession of each such photograph, motion picture, exhibition, show, representation, or presentation is a separate offense. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in 775.082, 775.083 or 775.084.."

In the instant case therefore, it is undisputed that the Petitioner was not in possession of the electronic device, thus, at best this would fall under "constructive

possession". In *Bussell v. State*, 66 So.3d 1059 (Fla. 1DCA 2011), the court opined that constructive possession is a frequent issue in drug possession appeals; thus, we find those opinions discussing and defining constructive possession of drugs to be instructive. *See, e.g., Evans v. State,* 32 So.3d 188 (Fla 1DCA 2010) (discussing constructive possession of drugs and drug paraphernalia in a home where several people had access to place where contraband was found). "Constructive possession exists where the accused does not have physical possession of the contraband **but knows of its presence.. and can maintain dominion and control over it"**. Where contraband is found on premises in joint possession, knowledge of the contraband can be established with actual knowledge or circumstantial evidence from which the jury could infer guilt.

Petitioner finds his case to be on four corners with and cites as his case in chief, *United States v. Moreland*, 665 F.3d 137 (5th Cir. 2011). Here, like *Evans*, the court was faced with constructive possession of child pornography. The elements of Constructive possession are 1) ability to exercise dominion and control; 2) knowledge of the contraband and 3) knowledge of the illegal and illicit nature of the contraband.

Petitioner finds his arguments can not be framed better than previous arguments on this issue, therefore, he re-iterates his previous position.

SUMMARY OF THE ARGUMENT

ISSUE 1

The trial court erred in Denying the Defendant's several Motions for Judgment of Acquittal.

Here, the State only proved that the subject cell phone had previously belonged to the Petitioner before being pawned. **The Detective agreed that there was no evidence that the suspect file was ever opened on the subject cell phone by anyone except the pawn shop and herself.** (T-233-234). The State did not prove that the suspect images were placed on the cell phone by Mr. Teets; or that this was done while he had possession of it. (R-1566, T-225-250:5). Said another way, the State never proved how the images were placed on the cell phone; when the images were placed on the cell phone or by whom. (R-1566, T-225-250:5).

It was not proved that Mr. Teets had knowledge of the suspect images on the subject cell phone in any way. **No direct or circumstantial evidence was admitted that proved that the suspect images were ever opened or viewed by Mr. Teets.** In every criminal case, the prosecution is required to prove beyond a reasonable doubt each specific element of the charged offense. The State of Florida did not prove one (1), let alone all three (3) elements of the charged offenses. In fact, the evidence adduced in trial one established factual innocence as illegal images were being pushed onto the digital device when in the actual and exclusive possession of the third party – pawn shop. As a result, his conviction and sentence are in violation of his Fifth and Fourteenth Amendment rights to Due Process and must be vacated.

ARGUMENT – ISSUE 1
The trial Court erred in Denying the Defendant's several Motions for Judgment of Acquittal.

The first jury trial in this cause was conducted on May 4 – 6, 2016. At the close of the State's case the Defense made a motion for judgment of acquittal. (R-1558). This motion challenged the sufficiency of the State's evidence to prove the crimes charged. (R-1558-1585). The relevant part of this motion is perhaps best summarized by the following exchange between Defense Counsel and the trial Court. (R-1566:3-19):

> MS. SPOHR (Defense Counsel):
>
> "…However, to prove that he viewed or had dominion and control over the actual files they would have to establish that somehow he looked at them or somehow he put them on the phones. There has been no prima facie showing that that's how this happened.
>
> With the phones we went through in great detail those dates and those times there is nothing corresponding to them that would show an active user putting those files on the phone at that time. What we have instead is just these are amorphous files that appear on the phone.
>
> THE COURT: And I understand. So your argument is basically someone else could have put an SD card in it at a later date, the creation date was there, and then - - because there's no other way to show how it got there?
>
> MS. SPOHR: Yes."

At the close of all evidence in the first trial, the Defense renewed its motion for judgment of acquittal on the same grounds. (R-1700-1707). During the first trial, the Court acquitted the Defendant of counts 37 to 66 charged under the State's Information. (R-797, 2248). The Circuit Court committed reversible error in denying the Petitioner's motion for judgment of acquittal in the first trial as to all Counts pled by the State.

During the second trial, the Defense made its initial motion for judgment of acquittal after the State rested its case. (T-257-259:7). The second Defense motion for judgment of acquittal was made after the close of all the evidence in the case. (T-351-355).

Both motions challenged the sufficiency of the State's evidence that might prove its prima facia case. (T-257-259, 351-355). The trial Court ultimately denied the Defense motions. (T-259, R-892-893, 2297). The Circuit Court again committed reversible error in denying the Petitioner's motions for judgment of acquittal in the second trial.

In both trials, the State's evidence fell short – that is failed to meet the bar of legally sustaining a guilty verdict on counts 1 to 6 of the Information. (R-33-57, R-1558-1585, T-257-259, T-351-355). Additionally, the jury's verdict cannot be sustained as a matter of law if it requires the pyramiding and stacking of inferences and assumptions upon assumptions. See, *State v. Simms*, 110 So.3d 113 (FLA 1DCA 2013). Such would be the case here if a guilty verdict could be sustained at all.

As the Defense argued in both trials, the State totally failed to prove that the Petitioner had knowledge that the suspect images were created on the subject cell phone. (T-352). The State's investigator admitted that the suspect files were opened on the cell phone only by the pawn shop workers and law enforcement officers. (T-233-234). Further, that the images were not received by the cell phone in any form of cellular transmission, or download. (T-222-227). Rather, that the only way the suspect files got on the phone was the SD (memory card) download. (T-227). This did not involve the traditional cell phone reception function. (T-225:16-227:3). The State could not prove exactly when the images were placed on the cell phone. (T-222-227, 233-234, 249). Further, it could not prove how the suspect images, or files, got on the cell phone. The State did not prove who placed the files on the cell phone. Additionally, the State never proved that Mr. Teets

knew of the images, or that he had opened them on the cell phone. (T-222-227, 233-234, 249).

While the State also tries to argue that Mr. Teets statements, the validity of which was challenged in pre-trial motions and hearings, were inculpatory. This is not so. He allegedly said that he used the cell phone in the past to view pornography of legal age females. The trial Court even so instructed the jury that such activity was not illegal. (T-248-252). This statement proved nothing. In fact, in side bar proceedings, the State's Attorney, when asked by the presiding judge,

> TRIAL COURT: "Do you have any proof he looked at these" (contraband images)?
> THE STATE ATTORNEY: "No".
> (T-249:16-250:5)

The Detective testified that the original contraband files were not found on any electronic devise belonging to Mr. Teets. And that he had no device that the files were moved from to the subject phones SD (memory) card. (T-226-227).

It was undisputed in the State's evidence that the Petitioner pawned the subject cell phone multiple times and at various times. (T-209-213). Further, that when the suspect images were eventually opened on the subject phone, that this opening was done only by the pawn shop workers or law enforcement. (T-233-234). **The Detective agreed that there was no evidence that the suspect files were ever opened on the subject cell phone by anyone except the pawn shop workers and herself.** (T-233-234). When the Polk County Sheriff's Office took the subject phone, it was owned by the pawn shop. (T-

138). **The workers at the pawn shop had access to the cell phone for about 336 days,** before it was taken by the PCSO. (July 5, 2011 – June 6, 2012) (T-209-213).

To prove the crime charged, the State was required to prove beyond a reasonable doubt that the Petitioner knowingly possessed a picture, movie, or other presentation which the Petitioner knows to include sexual conduct by a child under 18 years of age. See FLA Statute 827.071(5); *Bussell v. State*, 66 So.3d 1059 (FLA. 1 DCA 2011). The record before this Court simply lacks sufficient proof of the required elements of the crimes charged, as to both trials.

Here as to Mr. Teets, the State only proved that the subject cell phone had previously belonged to him. However, the State did not prove that the suspect images were placed on the cell phone by Mr. Teets; or that this was done while he had possession of it. (T-233-234, 247). Said another way, the State never proved how the images were placed on the cell phone, or by whom. (T-233-234, 247). No direct or circumstantial evidence was admitted that proved the suspect images were ever opened or viewed by Mr. Teets. Likewise, there was no proof that he knew the images were on the cell phone. (T-233-234:8, 249). The State agreed that Mr. Teets never opened the images on the cell phone. (T-249-250). Additionally, the State could not prove exactly when the images were placed on the cell phone. (T-222- 224, 233-234, 249).

The requirements of the Due Process Clause of the United States Constitution are that each element of the crime charged must be proved beyond a reasonable doubt. This must be done for a guilty verdict to be sustained as a matter of law. See, *In Re: Winship*,

397 U.S. 358 (1970); *U.S. v. Moreland*, 665 F.3d 137 (5th Cir. 2011). Here, this burden was not met by the State. As a result, his conviction and sentence are in violation of his Fifth and Fourteenth Amendment rights to Due Process and must be vacated, to remedy this significant harmful error. See, *Winship* and *Moreland*, supra. This argument was made to the trial Court. (T-257-259 / R-1558-1566, 2297).

In the case of *U.S. V Moreland,* the Federal Appeals Court reviewed the sufficiency of the evidence in a constructive possession child pornography case. That Court held that to satisfy the Constitutional reasonable doubt standard required to convict, the Government must prove that the Defendant had joint custody of the electronic device containing the contraband, proof that the Defendant knew that the contraband was on the electronic device, that the Defendant had the knowledge and ability to access the images, and that the Defendant could exercise dominion and control over the images. At. Pg. 153 from *Moreland*. None of these Constitutional requirements were met by the State's evidence.

Here, in light most favorable to the State, it was only proven that Mr. Teets had previously owned and possessed the subject cell phone. The State presented no direct proof that he obtained, possessed, or opened the suspect images at any time. Mr. Teets hypothesis of innocence was that: 1) he did not possess the phone when the suspect images were placed on it; 2) that he did not know the images were on the cell phone; and 3) that he did not commit any elements of the crimes charged. Rather, other persons

placed the images on the cell phone without his knowledge, while in the exclusive possession of the pawn shop. (R-33-57, R-1558-1585, T-188-189, T-257-259, T-351-355).

Additionally, in *Moreland*, the Court also held that Constitutional Due Process requires more than mere suspicion, speculation, conjecture or stacking of inferences for a criminal conviction to be sustained. At pg. 149. It is clear that under *Moreland* the U.S. Constitutions Due Process Clause was violated by Mr. Teets conviction on the facts contained in this record. *Moreland* is on all fours with the instant case.

In the case at bar, Detective Harvill testified that two employees of the pawn shop had access to the former Teets cell phone. (T-187-188). However, she did not interview these witnesses about the cell phone, or the suspect images. Nor did she examine the external devices used by the pawn shop. (T-189). Neither did the State call these witnesses to testify at trial. Here, the facts do not meet the level of proof that was established by the State in *Bussell*. (Additionally, in Bussell, the suspect images were admitted to be contraband by the defense. Here this stipulation was not made.)

In *Bussell* the Court found constructive possession of the subject computer. However, there the Court ruled that the Defendant had knowledge of the contraband and could have maintained dominion and control over it. At pg. 1062. Here, it was undisputed in the State's evidence that the pawn shop had actual, physical, exclusive and sole possession, dominion and control over the subject cell phone at the *key* times involved.

Here, the State did not meet its burden of proof to rebut every reasonable hypothesis of innocence, nor establish any elements of the crime charged. This must be

done for a guilty verdict to be sustained as a matter of law. See, *In Re: Winship*, 397 U.S. 358 (1970); *U.S. v Moreland*, 665 F.3d 137 (5th Cir. 2011). As a result, the Petitioner's conviction and sentence are in violation of his Fifth and Fourteenth Amendment rights to Due Process and must be vacated. Justice requires that such be entered herein.

CONCLUSION

The Petitioner asks this court to consider, in its deliberations, whether Det. Amy Harvill of the Polk County Sheriff's Office, knew or should have known of potentially fatal defects in this case indicating the need for a much more diligent investigation. The warrant application, arrest affidavit and statements of fact supporting probable cause, are completely devoid of any of the material key exculpatory facts cited supra. That at best renders problematic a finding of probable cause if not barring completely.

> MR. TEETS: "Were you aware of these 85 downloads (while the phone was in pawn)."
>
> HARVILL: "Well, they are in the forensic report, so yeah." (R-616, deposition pg. 22:25 to pg. 23:1)
>
> MR. TEETS: "Ok, was that phone being used while it was in the pawn shop according to that phone pawn contract."
>
> HARVILL: "According to the dates and times on the back it would appear so." (R-616, deposition pg. 25:6-9)

Similarly, the State's own forensic evidence, produced by the PCSO's three digital forensic extractions, each more destructive than the last, altering the very evidence they were supposed to safeguard, was known to the State Attorney's Office to be

compromised or "not reliable", as indicated by the ASA during re-direct examination of Det. Harvill in the trial of August 30th, 2016. (T-244:21-255:2).

ASA ORR: "All right. Then I want to ask you a couple of questions about the idea of this – these root files or other things that were created. You indicated, I think counsel brought up several examples, that there were some files that were created on one of three days, 6/6/2012, (sic) 6/27, or November 23rd, 2013. Is that correct?

ASA ORR: "what happened on those three dated?"

HARVILL: "Forensic examinations".

Det. Harvill conflated the roles of lead detective and forensic analyst, contradicted herself own sworn testimony as to whether standards for forensic evidence examination did or did not exist within her agency, performed unsupervised examinations and failed to keep adequate records not only of the procedures she used in her own forensic examinations, but of basic elements of the investigation itself. Interested in convictions, not justice, the State simply tried to make the best of her dangerously marginal professional abilities and its consequences, as was evident in the State's closing argument in both the first and second trials. For instance:

ASA ORR: "So were there mistakes in the investigation and the extraction? Did Detective Harvill do something she shouldn't. Maybe. Sure. " (T-389:12-14).

As outlined supra, the questions surrounding the key elements of 827.071(5) Florida Statutes are 1) Possession – the ability to control the contraband, and 2) knowledge of the contraband, and 3) knowledge of the illegal and illicit nature of the contraband. In the Petitioner's case, the issue involves images that were "moved or downloaded" on to the cellular device's SD card. Testimony of both the States expert

witness and the defense expert witness indicated, the SD card was removed from the cellular device, attached to an "external device" and images were, again, "moved or downloaded" from said external device. The testimony elicited at trial is that only the pawn shop removed the SD card and attached such to an "external device". In fact, both the State's and defense experts testified that the device(s) examined by them and own by the Petitioner, were not capable of "transferring or moving" data to the phones SD card.

This is important to note for several reasons. First and foremost, dominion and control and then, knowledge. This case is a text book example of why these cases require a thorough investigation, prior to charging and arresting an entirely innocent person. There was a third party in this case, the pawn shop. Were their actions nefarious, were they using the cellular device in a nefarious or illegal manner? We will never know. No investigation was done, no examination was performed of the pawn shops "external device", no pawn shop employees – who had access to the Petitioner's former devices for months (336 days) were interviewed – presumably because the Detective "knew" the people at the pawn shop. It is certainly possible that the actions by the pawn shop of removing the SD card and attaching to an external device, perhaps, one used for "cleaning" pawned devices – resulted in contraband images which were then inadvertently transferred to the Petitioner's former cell phone and SD card to which the pawn shop's device was connected.

Finally, should there be any question as to whether or not the evidence was sufficient to sustain a guilty verdict, we need not look any further than the Tenth Circuit State Attorney, Jacob Orr's own admission and statements to the Court:

> COURT: "Well, I think the purpose for the objection is the way – you could have asked about image of scenery as a proof that he looked at any other images…"
>
> SA ORR: "I don't [have] any proof of that."
>
> COURT: "What?"
>
> SA ORR: "I don't have that proof….." (T-249:10-16).
>
> SA ORR: "I don't have anyway to prove he looked at that [contraband]."
>
> (T-249:21-22).

Thus, his conviction and sentence are in violation of his Fifth and Fourteenth Amendment rights to Due Process and must be vacated, justice demands such.

Judge Gross remarked in *Jackson v. State*, 736 So.2d 77 (1999) a similar case involving the sufficiency of evidence:

> "The finger of suspicion implicit in circumstantial evidence is a long one and may implicate both the innocent and guilty alike. Persons caught in a web of circumstances may often appear guilty upon first impression, but in fact be entirely innocent as surface appearances are frequently deceiving. A person ought not be convicted of a crime, it is thought, and his freedom taken from him based on such tenuous and ambiguous evidence. To avoid, then, convicting entirely innocent people based on suspicion and innuendo, the law has long demanded a high standard of proof when reviewing convictions based entirely on circumstantial evidence. Given our long-standing commitment to the ideal of individual freedom, this result seems both fair and reasonable. As has been often stated, "[o]ur responsibility in such circumstances – human liberty being involved – is doubly great," *Head v. State*, 62 So.2d 41 (FLA 1952), because "[t]he cloak of liberty and freedom is far too precious a garment to be trampled in the dust of mere inference compounded." *Harrison v. State*, 104 So.2d 391 (FLA 1DCA 1958).

RELIEF REQUESTED

For the reasons set forth above, this Court should grant the petition herein.

WHEREFORE, Petitioner prays that this Court:

(A) Dismiss all charges against Petitioner; or in the alternative,

(B) Grant a hearing on this matter, and if applicable;

(C) Grant any such other and further relief as this Court may deem just, proper and equitable.

DECLARATION

I, William Jason Teets, Pro Se, the Petitioner, do hereby declare under penalty of perjury, that he is the person named as Petitioner herein, and who executed the above and foregoing "Petition for Writ of Federal Habeas Corpus – Pursuant to 28 U.S.C. 2254". That he has read said Petition, its references, incorporated into the record, citations as found in the record and believes that each and every allegation contained here within and to the record are true and correct, and "attests to its truth unqualifiedly".

JURAT 28 U.S. CODE

In accordance with Federal Statutes, executed at 2839 Delrose Drive North, Lakeland – Polk County, Florida. On this 3rd day of March, 2022.

WITNESS: _____ DEPONENT: _____

NAME: SAMUEL OKLESH NAME: WILLIAM JASON TEETS

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail to 1) SAM M GIBBONS UNITED STATES COURTHOUSE – TAMPA DIVISION – CLERCK - 801 North Florida Avenue Tampa, FL. 33602. And to Assistant Attorney General, Mrs. Tonja Rook, via electronic mail delivery: Tonja.Rook@myfloridalegal.com - On this 3rd day of March, 2022.

Respectfully Submitted,
William Jason Teets, Pro Se

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