

Matthew Amick – Inmate #00643527
Whiteville Correctional Facility,
P.O. Box 679,
1440 Union Springs Rd,
Whiteville, TN 38075

DEFENDANT’S AFFIDAVIT IN SUPPORT OF AMENDED
PETITION FOR POST CONVICTION RELIEF

In re:

IN THE CIRCUIT COURT OF HICKMAN COUNTY
AT CENTERVILLE, TENNESSEE

STATE OF TENNESSEE
Plaintiff

vs.

Matthew Amick
Defendant/appellant

) NO. 21-5100-CR; 19-5081-CR; 19-5144-CR; AND
) 17-5274-CR
)
) DEFENDANT’S AFFIDAVIT IN SUPPORT OF
) AMENDED PETITION FOR POST CONVICTION
) RELIEF AND MOTION FOR A NEW TRIAL
)
)

DEFENDANT’S AFFIDAVIT IN SUPPORT OF THE AMENDED PETITION FOR POST
CONVICTION RELIEF AND MOTION FOR A NEW TRIAL

Now Comes, the defendant Matthew Amick and undersigned grantor by special appearance
and not generally, who is over twenty one and competent to make and grant this Rule 8.04
undisputed Knapstad Affidavit based on personal knowledge in compliance with Rule 56.01;
Rule 56.06; Rule 609; State v Knapstad, 107 Wn. 2d 346, 350, 351, 352, 353, 356, 357
[No.52173-5. En Banc. December 4, 1986.]; State v Alberg, 156 Wash. 397, 400, 401, 402
(April 17th, 1930); Felsman v. Kessler, 2 Wn. App. 493, 496, 468 P. 2d 691 (April 1970), in

support of my previously filed Amended Petition for Post Conviction Relief pursuant to Tennessee Code Title 40, Criminal Procedure § 40-30-105; Tenn. R. Crim. Proc. 29; Tenn. R. Crim. Proc. 33, 34, 35, or 36; Tenn. R. Crim. Proc. 37(b)(2); and further submits this Rule 56.06 and Rule 6.04 Affidavit in support of said motion requesting a new trial for the following Court Case Cause Numbers: 21-5100-CR; 19-5081-CR; 19-5144-CR; and 17-5274-CR.

“The defendant initiates this motion by this sworn affidavit and declaration that there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt.” State v. Knapstad, 107 Wn. 2d 346 (Dec. 4, 1986). And;

“Indeed, nor more than affidavits is necessary to make a prima facie case, U.S. v. Kis, 658 F. 2d 536 (CA7, 1981) cert. den., 50 U.S.L.W. 2169 (1982); however, a declaration may be used instead of an affidavit, Summers v. U.S. Dept. of Justice, 776 F. Supp. 575, 577 (D.C.D.C., 1991).”

(Print Name): _____
Matthew Amick

(Sign Name): _____
Matthew Amick

Dated this _____ day of _____, A.D. 2025

NOTARY

STATE OF TENNESSEE)

) SS

COUNTY OF _____)

RULE 8.04 AFFIDAVIT OF MATERIAL AND UNDISPUTED FACTS

1 The undersigned witness Matthew Amick, affirms under penalties of perjury of the laws of
2
3 the State of Tennessee that:

4
5 1) It is a material fact that:

6 “The defendant initiates this motion by this affirmed affidavit and declaration
7 that there are no material disputed facts and the undisputed facts do not establish a
8 prima facie case of guilt.” State v. Knapstad, 107 Wn. 2d 346 (Dec. 4, 1986).

9
10 2) It is a material fact that:

11 “indeed, nor more than affidavits is necessary to make a prima facie case,
12 U.S. V. Kes, 658 F. 2d 536 (CA7, 1981) cert. den., 50 U.S.L.W. 2169 (1982);
13 however, ‘a declaration may be used instead of an affidavit, Summers v. U.S. Dept.
14 of Justice, 776 F. Supp. 575, 577 (D.C.D.C., 1991).”

15 3.) The defendant Matthew Amick objects and argues that the right to the effective
16 assistance of counsel is the right “to require the prosecution's case to survive the crucible of
17 meaningful adversarial testing.” United States v. Cronin, 466 U.S. 648, 656, 80 L.Ed.2d 657,
18 104 S.Ct. 2039, 2045 (1984). “The essence of an ineffective-assistance claim is that counsel's
19 unprofessional errors so upset the adversarial balance between defense and prosecution that the
20 trial was rendered unfair and the verdict rendered suspect.” Kimmelman v. Morrison, 477 U.S.
21 365, 374, 91 L.Ed.2d 305, 106 S.Ct. 2574, 2582 (1986). This guarantee of legal counsel is a
22 fundamental right made obligatory on the states by the Fourteenth Amendment. Gideon v.
23 Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). Under the Sixth Amendment, a
24
25
26
27
28

1 person has the right to be represented by counsel at every critical stage of a proceeding, i.e.,
2
3 where the results might settle the issue. Kirby v. Illinois, 406 U.S. 682, 32 L.Ed.2d 411, 92 S.Ct.
4 1877 (1977). Attachment of the constitutional right to counsel occurs when a prosecution is
5 commenced, which occurs at . . . “[t]he initiation of adversary judicial criminal proceedings -
6 whether by way of formal charge, preliminary hearing, indictment, information or arraignment.”
7
8 Rothgery v. Gillespie County, 554 U.S. 191, 198, 128 S.Ct. 2578, 171 L.Ed.2d 366 (2008)
9 (quoting United States v Gouveia, 467 U.S. 180, 188, 104 S.Ct. 2292, 81 L.Ed.2d 146 (1984)).
10
11 The United States Supreme Court stated, “The Court has identified as ‘critical stages’ those
12 pretrial procedures that would impair defense on the merits if the accused is required to proceed
13 without counsel.” Gerstein v. Pugh, 420 U.S. 103, 122, 95 S.Ct 854, 43 L.Ed.2d 54 (1975).
14
15 “Our decisions make clear that inadequate assistance does not satisfy the Sixth Amendment right
16 to counsel made applicable to the states through the Fourteenth Amendment.” Cuyler v.
17 Sullivan, 445 U.S. 335, 344, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980).
18
19
20
21

22 “Moreover, this Court has concluded that the assistance of counsel is among
23 those “constitutional rights so basic to a fair trial that their infraction can never be
24 treated as harmless error.” Chapman v. California, *supra*, at 23. Accordingly, when a
25 defendant is deprived of the presence and assistance of his attorney, either throughout
26 the prosecution or during a critical stage . . . reversal is automatic. Gideon v.
27 Wainwright, 372 U.S. 335 (1963); Hamilton v. Alabama, 368 U.S. 52 (1961); White
28 v. Maryland, 373 U.S. 59 (1963).” Holloway v. Arkansas, 435 U.S. 475, 489 (April
3, 1978).

1 4.) The defendant Matthew Amick objects and argues that all attorneys and trial counsel
2
3 provided “ineffective assistance of counsel” and that . . . “counsel’s representation fell below an
4
5 objective standard of reasonableness based on consideration of all the circumstances” and
6 therefore, all attorneys and trial counsel failed the “first prong” of the “Strickland Test” as
7
8 established by Strickland v. Washington, 466 U.S. 668, at 688, 80 L.Ed.2d 674, 104 S.Ct. 2052
9 (1984), for all the following reasons as stated below.

10
11 5.) The defendant Matthew Amick objects and argues that “Reversal” of his convictions is
12
13 required because he was unlawfully deprived “assistance of counsel” at a “critical” stage of the
14
15 proceedings, which is a “structural” constitutional error which requires “Reversal” and is not
16 subject to “harmless error” review. Gideon v. Wainwright, 372 U.S. 335; 83 S.Ct. 792; 9
17 L.Ed.2d 799 (March 18, 1963); Faretta v. California, 422 U.S. 806, 819, 95 S. Ct. 2525, 45 L.
18 Ed. 2d 562 (1975), Argersenger v. Hamlin, 407 U.S. 25; 92 S.Ct. 2006, 32 L.Ed.2d 530 (June
19
20 12, 1972).

21
22 “In recognition of these realities of modern criminal prosecution, our cases
23 have construed the Sixth Amendment guarantee to apply to “critical” stages of the
24 proceedings. The guarantee reads: “In all criminal prosecutions, the accused shall
25 enjoy the right . . . to have the Assistance of Counsel for his defense.” (Emphasis
26 supplied.) The plain wording of this guarantee thus encompasses counsel’s assistance
27 whenever necessary to assure a meaningful “defense.”

28 As early as Powell v. Alabama, supra, we recognized that the period from
arraignment to trial was “perhaps the most critical period of the proceedings . . . ,”
id., at 57, during which the accused “required the guiding hand of counsel . . . ,” id.,
at 69, if the guarantee is not to prove an empty right. That principle has since been
applied to require the assistance of counsel at the type of arraignment—for example,

1 that provided by Alabama, 368 U.S. 52, 54. See *White v. Maryland*, 373 U.S. 59.
2 The principle was also applied in *Massiah v. United States*, 377 U.S. 201.” *United*
3 *States v. Wade*, 388 U.S. 218, 224-225 (June 12, 1967).

4 “In *Kirby v. Illinois*, *supra*, a plurality of the Court summarized our prior cases as follows:

5 “In a line of constitutional cases in this Court stemming back to the Court’s
6 landmark opinion in *Powell v. Alabama*, 287 U.S. 45, it has been firmly established
7 that a person’s Sixth and Fourteenth Amendment right to counsel attaches only at or
8 after the time that adversary judicial proceedings have been initiated against him.
9 See *Powell v. Alabama*, *supra*; *Johnson v. Zerbst*, 304 U.S. 458; *Hamilton v.*
10 *Alabama*, 368 U.S. 52; *Gideon v. Wainwright*, 372 U.S. 335; *White v. Maryland*,
11 373 U.S. 59; *Massiah v. United States*, 377 U.S. 201; *United States v. Wade*, 388
12 U.S. 218; *Gilbert v. California*, 388 U.S. 263; *Coleman v. Alabama*, 399 U.S. 1. “. . .
13 [W]hile members of the Court have differed as to the existence of the right to counsel
14 in the contexts of some of the above cases, all of those cases have involved points of
15 time at or after the initiation of adversary judicial criminal proceedings—whether by
16 way of formal charge, preliminary hearing, indictment, information, or arraignment.”
17 *Id.*, at 688-689 (emphasis in original).

18 The view that the right to counsel does not attach until the initiation of
19 adversary judicial proceedings has been confirmed by this Court in cases subsequent
20 to *Kirby*. See *Estelle v. Smith*, 451 U.S. 454, 469-470 (1981); *Moore v. Illinois*, 434
21 U.S. 220, 226-227 (1977); *Brewer v. Williams*, 430 U.S. 387, 398-399 (1977); *United*
22 *States v. Mandujano*, 425 U.S. 564, 581 (1976) (opinion of BURGER, C.J.).*5
23 *United States v. Gouveia*, 467 U.S. 180, 187-188 (May 29, 1984).

24 “Put another way, these errors deprive defendants of “basic protections”
25 without which “a criminal trial cannot reliably serve its function as a vehicle for
26 determination of guilt or innocence . . . and no criminal punishment may be regarded
27 as fundamentally fair.” *Id.*, at 577-578.” *Neder v. United States*, 527 U.S. 1, 8-9
28 (June 10, 1999).

29 “In *Arizona v. Fulminante*, 499 U.S. 279 (1991), we divided constitutional
30 error into two classes. The first we called “trial error,” because the errors “occurred
31 during presentation of the case to the jury” and their effect may “be quantitatively
32 assessed in the context of other evidence presented in order to determine whether
33 [they were] harmless beyond a reasonable doubt.” *Id.*, at 307-308 (internal quotation
34 marks ommitted). These include “most constitutional errors.” *Id.*, at 306. The
35 second class of constitutional error we called “structural defects.” These “defy
36 analysis by ‘harmless-error’ standards” because they “affec[t] the framework within
37 which the trial proceeds,” and are not “simply an error in the trial process itself.” *Id.*,
38 at 309-310. *4 See also *Neder v. United States*, 527 U.S. 1, 7-9 (1999). Such errors
39 include the denial of counsel, see *Gideon v. Wainwright*, 372 U.S. 335 (1963), the
40 denial of the right of self-representation, see *McKaskle v. Wiggins*, 465 U.S. 168,
41 177-178, n. 8 (1984), the denial of the right to public trial, see *Waller v. Georgia*,
42 467 U.S. 39, 49, n. 9 (1984), and the denial of the right to trial by jury by the giving
43 of a defective reasonable-doubt instruction, see *Sullivan v. Louisiana*, 508 U.S. 275
44 (1993).

45 We have little trouble concluding that erroneous deprivation of the right to
46 counsel of choice, “with consequences that are necessarily unquantifiable and
47

1 indeterminate, unquestionably qualifies as ‘structural error.’” *Id.*, at 282.”
2 United States v. Gonzalez-Lopez, 548 U.S. 140, 148-150, 126 S.Ct. 2557, 165
3 L.Ed.2d 409 (June 26, 2006).

4 6.) Deprivation of counsel at a “critical stage of the proceedings” is a “structural error.”

5 United States v. Cronin, 466 U.S. 648, 659, 104 S.Ct. 2038, 80 L.Ed.2d 657 (1984); Missouri v.
6
7 Frye, 566 U.S. 134, 138, 132 S.Ct. 1399, 182 L.Ed.2d 379 (2012).

8
9 “There are, however, circumstances that are so likely to prejudice the accused
10 that the cost of litigating their effect in a particular case is unjustified. *24 See, e.g.,
11 Flanagan v. United States, 465 U.S. 259, 267-268 (1984); Estelle v. Williams, 425
12 U.S. 501, 504 (1976); Murphy v. Florida, 421 U.S. 794 (1975); Bruton v. United
13 States, 391 U.S. 123, 136-137 (1968); Sheppard v. Maxwell, 384 U.S. 333, 351-352
14 (1966); Jackson v. Denno, 378 U.S. 368, 389-391 (1964); Payne v. Arkansas, 356
15 U.S. 560, 567-568 (1958); In re Murchison, 349 U.S. 133, 136 (1955).

16 Most obvious, of course, is the complete denial of counsel. The presumption
17 that counsel’s assistance is essential requires us to conclude that a trial is unfair if the
18 accused is denied counsel at a critical stage of his trial. *25 The Court has uniformly
19 found constitutional error without any showing of prejudice when counsel was either
20 totally absent, or prevented from assisting the accused during a critical stage of the
21 proceeding. See, e.g., Geders v. United States, 425 U.S. 80 (1976); Herring v. New
22 York, 422 U.S. 853 (1975); Brooks v. Tennessee, 406 U.S. 605, 612-613 (1972);
23 Hamilton v. Alabama, 368 U.S. 52, 55 (1961); White v. Maryland, 373 U.S. 59, 60
24 (1963) (per curiam); Ferguson v. Georgia, 365 U.S. 570 (1961); Williams v. Kaiser,
25 323 U.S. 471, 475-476 (1945).” United States v. Cronin, 466 U.S. 648, 658-659
26 (May 14, 1984).

27 “It bears emphasis that the right to be represented by counsel is among the
28 most fundamental of rights. We have long recognized that “lawyers in criminal
courts are necessities, not luxuries.” Gideon v. Wainwright, 373 U.S. 335, 344
(1963). As a general matter, it is through counsel that all other rights of the accused
are protected” “Of all the rights that an accused has, the right to be represented by
counsel is by far the most pervasive, for it affects his ability to assert any other rights
he may have.” Schaefer, *Federalism and State Criminal Procedure*, 70 Harv. L. Rev.
1, 8 (1956); see also Kimmelman v. Morrison, 477 U.S. 365, 377 (1986); United
States v. Cronin, 466 U.S. 648, 654 (1984).” Penson v. Ohio, 488 U.S. 75, 84, 109
S.Ct. 346, 102 L.Ed.2d 300 (November 29, 1988).

“In *Cronin*, we considered whether the Court of Appeals was correct in
reversing a defendant’s conviction under the Sixth Amendment without inquiring into
counsel’s actual performance or requiring the defendant to show the effect it had on
the trial. 466 U.S., at 650, 658. We determined that the court had erred and
remanded to allow the claim to be considered under *Strickland*’s test. 466 U.S., at
666-667, and n. 41. In the course of deciding this question, we identified three
situations implicating the right to counsel that involved circumstances “so likely to

1 prejudice the accused that the cost of litigating their effect in a particular case is
2 unjustified.” Id., at 658-659.

3 First and “[m]ost obvious” was the “complete denial of counsel.” Id., at 659.
4 A trial would be presumptively un-fair, we said, where the accused is denied the
5 presence of counsel at “a critical stage,” id., at 659, 662, a phrase we used in
6 Hamilton v. Alabama, 368 U.S. 52, 64 (1961), and White v. Maryland, 373 U.S. 59,
7 60 (1963) (per curiam), to denote a step of a criminal proceeding, such as
8 arraignment, that held significant consequences for the accused.*3 In a footnote, we
9 also cited other cases besides Hamilton v. Alabama and White v. Maryland where we
10 found a Sixth Amendment error without requiring a showing of prejudice. Each
11 involved criminal defendants who had actually or constructively been denied counsel
12 by government action. See United States v. Cronin, 466 U.S. 648, 659, n. 25 (1984)
13 (citing Geders v. United States, 425 U.S. 80, 91 (1976) (order preventing defendant
14 from consulting his counsel “about anything” during a 17-hour overnight recess
15 impinged upon his Sixth Amendment right to the assistance of counsel); Herring v.
16 New York, 422 U.S. 853, 865 (1975) (trial judge’s order denying counsel the
17 opportunity to make a summation at close of bench trial denied defendant assistance
18 of counsel); Brooke v. Tennessee, 406 U.S. 605, 612-613 (1972) (law requiring
19 defendant to testify at trial or not at all deprived accused of “the ‘guiding hand of
20 counsel’ in the timing of this critical element of his defense,” i.e., when and whether
21 to take the stand); Ferguson v. Georgia, 365 U.S. 570, 596 (1961) (statute retaining
22 common law incompetency rule for criminal defendants, which denied the accused
23 the right to have his counsel question him him to elicit his statements before the jury,
24 was inconsistent with Fourteenth Amendment); Williams v. Kaiser, 323 U.S. 471
25 (1945) (allegation that petitioner requested counsel but did not receive one at the time
26 he was convicted and sentenced stated case for denial of due process)).” Bell,
27 Warden v. Cone, 535 U.S. 685, 696 (May 28, 2002).

28 “Cronic held that a Sixth Amendment violation may be found “with-out
inquiring into counsel’s actual performance or requiring the defendant to show the
effect it had on the trial.” Bell v. Cone, 535 U.S. 685, 695 (2002), when
“circumstances [exist] that are so likely to prejudice the accused that the cost of
litigating their effect in a particular case is unjustified,” Cronic, supra, at 658.
Cronic, not Strickland, applies “when . . . the likelihood that any lawyer, even a fully
competent one, could provide effective assistance is so small that a presumption of
prejudice is appropriate without inquiry into the actual conduct of the trial,” 466 U.S.,
at 659-660,* and one circumstance warranting the presumption is the “complete
denial of counsel,” that is when “counsel [is] either to-tally absent, or prevented from
assisting the accused during a critical stage of the proceeding,” id., at 659, and n. 25.”
Wright, Sheriff, Shawano County, Wisconsin v. Van Patten, 552 U.S. 120, 124-125,
128 S.Ct. 743, 169 L.Ed.2d 583 (January 7, 2008).

7.) Deprivation of the right to “counsel of choice” under the Sixth Amendment while
being held at an “excessive bail” that was set so high that the defendant could not afford to post

1 is the equivalent of being held at “no bail” from the very date of arrest and continuing to be held
2
3 to the very day of trial for the “entire proceedings” which is also structural, because the
4
5 defendant not being able to post sufficient sureties in any amount prevents him from being
6 released so that he could make arrangements to interview an unlimited number of attorneys so
7
8 that he could truly seek and find the effective assistance of “counsel of choice” and depriving
9
10 someone of this separate right are “necessarily unquantifiable and indeterminate,” but taking
11 away this right “pervades the entire trial.” United States v. Gonzalez-Lopez, 548 U.S. 140, at
12 148-149, 126 S.Ct. 2557, 165 L.Ed.2d 409 (June 26, 2006).

13
14 8.) Put simply, “structural errors” are not subject to harmless error review because, even
15
16 though the “prejudice” they cause may be hard to quantify, with such error the reliability of the
17
18 proceeding itself is completely undermined, so that the proceeding “cannot reliably serve its
19 function” or considered “fundamentally fair.” Rose v. Clark, 478 U.S. 570, 577-78, 106 S.Ct.
20 3101, 92 L.Ed.2d 460 (1986); Weaver v. Massachusetts, 582 U.S. ___, 137 S.Ct. 1899, 198
21 L.Ed.2d 420 (2017).

22
23
24
25 9.) The United States Supreme Court in Coleman v. Alabama, 399 U.S. 1, at 3, 90 S.Ct.
26
27 1999, 26 L.Ed.2d 387 (1970) held that the pretrial hearing was a “critical stage” of the
28

1 proceedings, the Court so held, because “the guiding hand of counsel at the preliminary hearing”
2
3 served several important functions which affected the rights of the accused. First, because no
4 charges had yet been brought, at that hearing counsel could help expose weaknesses in the
5 State’s case which might prevent charges from even being filed. Second, by questioning any
6 witnesses, counsel could start developing impeachment. Third, counsel could more effectively
7 start to “discover the case the State has against his client” and begin preparing a proper defense.
8
9 Fourth, the timely provision of defense counsel can help ensure the accuracy and integrity of the
10 criminal legal system. The role of a defense attorney is not merely to cross-examine witnesses at
11 trial; an attorney is required to act competently throughout pretrial proceedings. See, e.g., Lafler
12 v. Cooper, 566 U.S. 156, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012) (right to effective assistance of
13 counsel includes pretrial proceedings). Fifth, and most significant here, “counsel can also be
14 influential at the preliminary hearing in making effective arguments for the accused on such
15 matters as the necessity for an early psychiatric examination or bail.” Coleman v. Alabama,
16 supra at page 9. The Coleman Court concluded that the hearing was a “critical stage.” Coleman
17 v. Alabama, supra, at pages 9 through 10. The Washington State Appellate Court held that:

25 “Attachment of the constitutional right to counsel occurs when a prosecution
26 is commenced, which occurs at “the initiation of adversary judicial criminal
27 proceedings – whether by way of formal charge, preliminary hearing, indictment,
28 information, or arraignment.”” Rothgery v. Giles County, 554 U.S. 191, 198, 128
S.Ct. 2578, 171 L.Ed.2d 366 (2008) (emphasis added) (internal quotation marks

1 omitted) (quoting *United States v. Gouveia*, 467 U.S. 180, 188, 104 S.Ct. 2292, 81
2 L.Ed.2d 146 (1984). The Court in *Rothgery* "reaffirm[ed] what we have held before
3 and what an overwhelming majority of American jurisdictions understand in practice:
4 a criminal defendant's initial appearance before a judicial officer, where he learns the
5 charge against him and his liberty is subject to restriction, marks the start of
6 adversary judicial proceedings that trigger attachment of the Sixth Amendment right
7 to counsel." 554 U.S. at 213." *State v. Charlton*, 23 Wn.App.2d 150, at 158, 515
8 P.3d 537 (August 9, 2022).

9 10.) Then, in 1984, the United States Supreme Court recognized and held that actual or
10 constructive absence of counsel at any "critical stage" of a criminal proceeding was "structural"
11 constitutional error, requiring automatic reversal and not subject to "harmless error" analysis.
12 *United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2038, 80 L.Ed.2d 657 (1984).

13
14 11.) The Constitution(s) requires the Appointment of Counsel at Preliminary Appearances
15 Where Bail is Set. The Tennessee and United States Constitutions require the presence of
16 counsel at a defendants . . . "first appearance before a judicial officer" . . . where . . . "a
17 defendant is told of the formal accusation against him and restrictions are imposed on his
18 liberty." *Rothgery v. Gillespie County*, 554 U.S. 191, 194, 128 S.Ct. 2578, 171 L.Ed.2d 366
19 (2008) (citing *Brewer v. Williams*, 430 U.S. 387, 398-99, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977)).
20 In *Rothgery v. Gillespie County*, 554 U.S. 191, 128 S.Ct. 2578, 171 L.Ed.2d 366 (2008), the
21 United States Supreme Court made clear that "the first formal proceeding is the point of
22 attachment" of the Sixth Amendment right to counsel. 554 U.S. 191, at 203, 128 S.Ct. 2578, 171
23
24
25
26
27
28

1 L.Ed.2d 366 (2008). In reaching this holding, the Court surveyed state law and found that the
2
3 practice of “denying appointed counsel on the heels of the first appearance” was the “distinct
4
5 minority” in our country. Rothgery, at 205. Indeed, the Supreme Court’s statement in Rothgery
6 was a restatement of its observation in McNeil v. Wisconsin, 501 U.S. 171, 111 S.Ct. 2204, 115
7
8 L.Ed.2d 158 (1991), that “[t]he Sixth Amendment right to counsel attaches at the first formal
9 proceeding against an accused, and in most States, at least with respect to serious offenses, free
10
11 counsel is made available at that time and ordinarily requested.” McNeil, supra, 501 U.S. 171, at
12 180-181, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991).

13
14 In Rothgery, the accused was arrested without a warrant by police based on suspected
15 criminal activity, after which he was brought before the court. 554 U.S. at 196-197. The court
16
17 made a finding that the arrest was supported by “probable cause,” then set bail and committed
18
19 Mr. Rothgery to jail. 554 U.S. at 196-197. No charges had yet been filed. 554 U.S. at 197.

20 Later a grand jury indicted him and he was arrested because his bail amount increased. 554
21
22 U.S. at 196-197. Unable to pay, he stayed in jail 3 weeks. When counsel was finally appointed,
23
24 counsel immediately argued for and got bail reduction - and ultimately made the charges go
25
26 away. 554 U.S. at 196-197.
27
28

1 Mr. Rothgery sued, arguing that the deprivation of counsel at the initial hearing had
2
3 violated his Sixth Amendment right to counsel at a “critical stage” of the proceedings. 554 U.S.
4 at 198-199. He lost in the lower court, which found that the relevant hearing was not a “critical
5 stage,” because the magistrate only advised the detained person of the accusations, set conditions
6 of pretrial release, informed them of the right to counsel, and got the “process going if he’s
7 indigent.” Rothgery, 554 U.S. at 201, n. 11. The lower court based its decision in large part on
8 the idea that the right to counsel does not “attach” until a prosecution is “commenced” and the
9 prosecutor’s office was not aware of the arrest so had not decided to “commence” anything.
10
11
12

13
14 The U.S. Supreme Court “flatly rejected” that reasoning. 554 U.S. at 198.
15 “Commencement” of a proceeding occurs when there is an initiation of “adversary judicial
16 criminal proceedings” against a person, the Court held. Id. At that point, the Court noted, the
17 person finds themselves faced with the power of the government and the intricacies of criminal
18 law. Id.
19
20
21

22 The Court also held that the Sixth Amendment right to counsel attaches the “first time
23 before a court” which involves a judge or a magistrate 1.) Informing the accused of the claims
24 prompting the arrest or complaint, 2.) Telling the accused their rights in relation to further
25 proceedings, and 3.) Determining the conditions for pretrial release. Rothgery, 554 U.S. at 199.
26
27
28

1 It is at that point, the Court noted, that the accused “has restrictions imposed on his liberty in aid
2 of the prosecution[.]” Rothgery, 554 U.S. 191. Further, the Court held, at that point “the State’s
3 relationship with the defendant” has already become “solidly adversarial,” regardless whether
4 the prosecutor has gotten involved. Rothgery, 554 U.S. at 198.
5
6

7 The United States Supreme Court made it crystal clear in Rothgery v. Gillespie County,
8 554 U.S. 191, 128 S.Ct. 2578, 171 L.Ed.2d 366 (2008), that the Sixth Amendment right to
9 counsel does not just apply to pretrial proceedings which affect the later fairness of a trial but
10 also to those hearings at which the rights of the accused are limited by the power of the
11 government as a result of a criminal complaint.
12
13
14

15 “Whatever may be the function and importance of arraignment in other
16 jurisdictions, we have said enough to show that in Alabama it is a critical stage in a
17 criminal proceeding. What happens there may affect the whole trial. Available
18 defenses may be irretrievably lost, if not then and there asserted, as they are when an
19 accused represented by counsel waives a right for strategic purposes. Cf. Canizio v.
20 New York, 327 U.S. 82, 85-86. In Powell v. Alabama, 287 U.S. 45, 69, the Court
21 said that an accused . . . “requires the guiding hand of counsel at every step in the
22 proceedings against him. Without it, though he be not guilty, he faces the danger of
23 conviction because he does not know how to establish his innocence. The guiding
24 hand of counsel is needed at the trial “lest the unwary concede that which only
25 bewilderment or ignorance could justify or pay a penalty which is greater than the
26 law of the State exacts for the offense which they in fact and in law committed.”
27 Tomkins v. Missouri, 323 U.S. 485, 489. But the same pitfalls or like ones face an
28 accused in Alabama who is arraigned without having counsel at his side. When one
pleads . . . without benefit of counsel, we do not stop to determine whether prejudice
resulted. Williams v. Kaiser, 323 U.S. 471, 475-476; House v. Mayo, 324 U.S. 42,
45-46; Uveges v. Pennsylvania, 335 U.S. 437, 442. In this case, as in those, the
degree of prejudice can never be known. Only the presence of counsel could have
enabled this accused to know all the defenses available to him and to plead
intelligently.

Reversed.” Hamilton v. Alabama, 368 U.S. 52, 54-55, 82 S.Ct. 157, 7
L.Ed.2d 114 (November 13, 1961).

1 While the United States Supreme Court has never explicitly held that a preliminary
2
3 appearance is void if counsel is not present, this conclusion is inescapable when considering
4
5 what is at stake in a hearing where bail will be determined. As the New York Court of Appeals
6 put it:

7 “It is clear that a criminal defendant, regardless of wherewithal is entitled to
8 “the guiding hand of counsel at every step in the proceedings against him” (Gideon
9 v. Wainwright, 372 U.S. at 345, 83 S.Ct. 792, quoting Powell v. Alabama, 287 U.S.
10 45, 69, 53 S.Ct. 55, 77 L.Ed. 158 [1932]). The right attaches at arraignment (see
11 Rothgery v. Gillespie County, 554 U.S. 191, 128 S.Ct. 2578, 171 L.Ed.2d 366
12 [2008]) and entails the presence of counsel at each subsequent “critical” stage of the
13 proceedings (Montejo v. Louisiana, 556 U.S. ___, 129 S.Ct. 2079, 173 L.Ed.2d 955
14 [2009]). As is here relevant, arraignment itself must under the circumstances alleged
15 be deemed a critical stage since, even if guilty pleas were not then elicited from the
16 presently named plaintiffs, *2 [It is, however alleged that in the counties at issue
pleas are often elicited from unrepresented defendants at arraignment.], a
circumstance which would undoubtedly require the “critical stage” label (see Coleman v. Alabama, 399 U.S. 1, 9, 90 S.Ct. 1999, 26 L.Ed.2d 387 ([1970]), it is clear
from the complaint that plaintiffs’ pretrial liberty interests were on that occasion
regularly adjudicated (see also CPL 180.10[6]) with most serious consequences, both
direct and collateral, including the loss of employment and housing, and inability to
support and care for particularly needy dependents. There is no question that “a bail
hearing is a critical stage of the State’s criminal process” (Higazy v. Templeton, 505
F.3d 161, 172 [2nd Cir.2007] [internal quotation marks and citation omitted]).

17 Recognizing the crucial importance of arraignment and the extent to which a
18 defendant’s basic liberty and due process interests may then be affected, CPL
19 180.10(3) expressly provides for the “right to the aid of counsel at the arraignment
20 and at every subsequent stage of the action” and forbids a court from going forward
21 with the proceeding without counsel for the defendant, unless the defendant has
22 knowingly agreed to proceed in counsel’s absence (CPL 180.10[5]). *3 It does not
23 appear that any of the plaintiffs who were arraigned without counsel and jailed when
24 they could not afford the bail consequently fixed agreed to proceed without a lawyer.
25 The dissent’s assertion (at 32 n. 7, 904 N.Y.S.2d at 311 n. 7, 930 N.E.2d at 232 n. 7)
26 that plaintiffs were not “forced” to participate in bail hearings without counsel is,
27 apart from being without any support in the record, irrelevant given the clear
28 entitlement to counsel under the statute, and indeed the Constitution. Contrary to
defendants’ suggestion and that of the dissent, nothing in the statute may be read to
justify the conclusion that the presence of defense counsel at arraignment is ever
dispensable, except at defendant’s informed option, when matters affecting the
defendant’s pretrial liberty or ability subsequently to defend against the charges are to
be decided. Nor is there merit to defendants’ suggestion that the Sixth Amendment
right to counsel is not yet fully implicated (see Rothgery, 554 U.S. at ___, 128 S.Ct.
at 2589).” Hurrell-Harring v. State, 15 N.Y.3d 8, 20, 930 N.E.2d 217, 223 (May 6,
2010).

1 This statement mirrored that of the Second Circuit Court of Appeals, which in 2004, wrote:

2
3 “[B]ail hearings like probable cause and suppression hearings, are frequently
4 hotly contested and require a court’s careful consideration of a host of facts about the
5 defendant and the crimes charged. . . . Bail hearings do not determine simply whether
6 certain evidence may be used against a defendant at trial or whether certain persons
7 will serve as trial jurors; bail hearings determine whether a defendant will be allowed
8 to retain, or forced to surrender, his liberty during the pendency of his criminal case.
9 United States v. Abuhambra, 389 F.3d 309, 323 (2nd Cir. 2004).

10 The Eighth Amendment of the United States Constitution, Article 1, Section 15 of the
11 Tennessee Constitution and T.C.A. 40-11-101 provide that all defendant’s have a right to bail
12 prior to conviction in all non-capital cases, therefore, preliminary hearings in Tennessee are
13 likewise a significant and “critical stage of the proceedings” that can be “hotly contested” and
14 require the “careful consideration” of a “host of facts” for imposing Money Bail as listed in
15 T.C.A. § 40-11-115 and T.C.A. § 40-11-116; or determine that Bail Security is Required under
16 T.C.A. § 40-11-117 and the defendant needs his defense counsel to determine and be able to
17 argue before the committing magistrate whether or not the defendant meets the factors required
18 to be released on bail pursuant to T.C.A. § 40-11-118. The defendant needs the “guiding hands
19 of counsel” to object and argue that the defendant is eligible for bail prior to conviction and
20 request the magistrate set bond as required by T.C.A. § 40-11-102, and the defendant needs his
21 defense counsel to quote from T.C.A. § 40-11-104, and if the magistrate denies bail, the
22 defendant would need his defense counsel to contact a general sessions court judge, a judge of
23
24
25
26
27
28

1 criminal court jurisdiction, and if the criminal court judge is not present within the court house,
2
3 the court clerk may set a bond pursuant to T.C.A. § 40-11-105. See § 4:4, Bond application.

4 The Washington State Division Two Court of Appeals held that Preliminary Hearing
5
6 combined with “Bail Setting” is a “critical state of the proceedings” and said:

7
8 “1. Meaning of “Critical Stage”

9 [4] Our Supreme Court in *State v. Heddrick* stated, “A critical stage is one ‘in
10 which a defendant’s rights may be lost, defenses waived, privileges claimed or
11 waived, or in which the outcome of the case is otherwise substantially affected.’” 166
12 Wn.2d 898, 910, 215 P.3d 201 (2009) (quoting *State v. Agtuca*, 12 Wn.App. 402,
13 404, 529 P.2d 1159 (1974)). The United States Supreme Court stated, “The Court
14 has identified as ‘critical stages’ those pretrial procedures that would impair defense
15 on the merits if the accused is required to proceed without counsel.” *Gerstein v.*
16 *Pugh*, 420 U.S. 103, 122, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975).” *State v. Charleton*, 23
17 Wn.App. 150, at 160, 515 P.3d 537 (August 8, 2022).

18 A preliminary appearance in the State of Tennessee is not merely a pro forma procedure
19 where a judge followed a mandated prescribed bail schedule, but instead is an individualized
20 determination of conditions of release based on a myriad of factors as listed in T.C.A. §
21 40-11-115 and T.C.A. § 40-11-116. The Second Circuit Court of Appeals has found that bail
22 hearings are “critical stages.” *United States Sec. & Exch. Comm’n v. Ahmed*, 2020 WL 268444,
23 at *4 (D. Conn. Jan. 29, 2020) (“Bail hearings, which determine ‘whether a defendant will be
24 allowed to retain, or forced to surrender, his liberty during the pendency of his criminal case’
25 and which ‘fit comfortably within the sphere of adversarial proceedings closely related to trial,’
26 are ‘critical stages’ for purposes of the Sixth Amendment.”) (quoting *Higazy*, 505 F.3d at 173).

1 Likewise, Courts in the Fifth Circuit have, in a recent series of cases, concluded that
2
3 preconviction bail is a “critical stage.” See Booth v. Galveston Cnty., 352 F.Supp. 3d 718, 738
4
5 (S.D. Tex. 2019) (“There can really be no question that an initial bail hearing should be
6
7 considered a critical stage of trial.” (citing Higazy, 505 F.3d at 172; Caliste, 329 F.Supp. 3d at
8
9 314 (“There is no question that the issue of pretrial detention is an issue of significant
10
11 consequence for the accused.”)).

12 “In New York, arraignment is, as a general matter, such a stage.

13 [6] Also “critical” for Sixth Amendment purposes is the period between
14 arraignment and trial when a case must be factually developed and researched,
15 decisions respecting grand jury testimony made, plea negotiations conducted, and
16 pretrial motions filed. Indeed, it is clear that “to deprive a person of counsel during
17 the period prior to trial may be more damaging than denial of counsel during the trial
18 itself” (Maine v. Moulton, 474 U.S. 159, 170, 106 S.Ct. 477, 88 L.Ed.2d 481
19 [1985]).” Hurrell-Harring v. State, 15 N.Y.3d 8, 930 N.E.2d 217, 224 (May 6,
20 2010).

21 The Washington State Division Two Court of Appeals in State v. Charleton, supra,
22
23 likewise has cited Booth v. Galveston Cnty., supra, with approval and stated that:

24 “Courts in other jurisdictions have held that the setting of bail is a critical
25 stage in the criminal proceedings. Booth v. Galveston County, 352 F.Supp. 3d 718,
26 738-39 (S.D. Tex. 2019; State v. Fann, 239 N.J. Super. 507, 519-20, 571 A.2d 1023
27 (Law Div. 1990). The Court in Fann stated,

28 The setting of bail is certainly a “critical stage” in the criminal proceedings. It
is an action that occurs after adversary criminal proceedings have commenced. Its
importance to defendant in terms of life and livelihood cannot be overstated. The
effect on family relationships and reputation is extremely damaging. Failure of
pretrial release causes serious financial hardship in most cases. Jobs and therefore
income are lost. The immediate consequence of the absence of bail or the inability to
make bail – deprivation of freedom – standing alone, is critically consequential.

239 N.J. Super, at 519.

As noted above, the Court in Coleman referenced arguments regarding bail as
one of the benefits of having counsel at a preliminary hearing. 399 U.S. at 9.” State
v. Charlton, 23 Wn.App.2d 150, at 164, 515 P.3d 537 (August 9, 2022).

1 Even before Rothgery, courts had interpreted Coleman v. Alabama, 399 U.S. 1, at 3, 90
2
3 S.Ct. 1999, 26 L.Ed.2d 387 (1970) as holding that “a bail hearing is a ‘critical stage’ of the
4
5 State’s criminal process at which the accused is as much entitled to such aid (of counsel) . . . as
6
7 at the trial itself.” United States v. Abuhamra, 389 F.3d 309, 323 (2nd Cir. 2004); see State v.
8
9 Fann, 239 N.J. Super. 507, 519-520, 571 A.2d 1023 (1990) (New Jersey) (“[t]he setting of bail
10
11 certainly is a ‘critical stage’ in the criminal proceedings” and its “importance to [the] defendant
12
13 in the terms of life and livelihood cannot be overstated”).

14 “Whatever may be the normal function of the “preliminary hearing” under
15 Maryland law, it was in this case as “critical” a stage as arraignment under Alabama
16 law. For petitioner entered a plea before the magistrate and that plea was taken at a
17 time when he had no counsel.

18 We repeat what we said in Hamilton v. Alabama, supra, at 55, that we do not
19 stop to determine whether prejudice resulted. Only the presence of counsel could
20 have enabled this accused to know all the defenses available to him and to plea
21 intelligently.” We therefore hold that Hamilton v. Alabama governs and that the
22 judgement below must be and is

23 Reversed.” White v. Maryland, 373 U.S. 59, 60, 83 S.Ct. 1050, 10 L.Ed.2d
24 193 (April 29, 1963).

25 “It is settled that a complete absence of counsel at a critical stage of a criminal proceeding
26
27 is a per se Sixth Amendment violation warranting reversal of a conviction, a sentence, or both, as
28
29 applicable, without analysis for prejudice or harmless error.” Van v. Jones, 475 F.3d 292, 311-
30
31 312 (6th Cir. 2007).

32 “Some constitutional violations, however, by their very nature cast so much
33 doubt on the fairness of the trial process that, as a matter of law, they can never be
34 considered harmless. Sixth Amendment violations that pervade the entire
35 proceedings fall within this category.”

1 See *Holloway v. Arkansas*, 435 U.S. 475 (1978) (conflict of interest in
2 representation throughout entire proceeding); *Chapman*, supra, at 23, n. 8 (citing
3 *Gideon v. Wainwright*, 372 U.S. 335 (1963) (total deprivation of counsel throughout
4 entire proceeding)); *White v. Maryland*, 373 U.S. 59 (1963) (absence of counsel
5 from arraignment proceeding that affected entire trial because defenses not asserted
6 were irretrievably lost); *Hamilton v. Alabama*, 368 U.S. 52 (1961) (same). Since the
7 scope of a violation such as deprivation of the right to conflict-free representation
8 cannot be discerned from the record, any inquiry into its effect on the outcome of the
9 case would be purely speculative. “As explained in *Holloway*:

10 “In the normal case where a harmless-error rule is applied, the error occurs at
11 trial and its scope is readily identifiable. Accordingly, the reviewing court can
12 undertake with some confidence it’s relatively narrow task of assessing the likelihood
13 that the error materially affected the deliberations of the jury. But in a case of joint
14 representation of conflicting interests the evil—it bears repeating—is in what the
15 advocate finds himself compelled to refrain from doing, not only at trial but also as to
16 possible pretrial plea negotiations and in the sentencing process. . . . Thus, any inquiry
17 into a claim of harmless error here would require, unlike most cases, unguided
18 speculation.” 435 U.S., at 490-491.” *Satterwhite v. Texas*, 486 U.S. 249, 256-257
19 (1988).

20 Some federal circuit courts have stated that the prejudice prong of the plain error test is
21 automatically satisfied by a showing of structural error. See e.g., *United States v. Adams*, 252
22 F.3d 276, 285-86 (3rd Cir., 2001) (noting that a defendant must “make a specific showing of
23 prejudice, unless he can show . . . that the error belongs in a special category of structural errors
24 that should be corrected regardless of prejudice (i.e., the category of structural errors)” (footnote
25 omitted)); *United States v. Robinson*, 275 F.3d 371, 384 (4th Cir., 2001) (“[B]ecause a violation .
26 . . . is not reviewable for harmlessness, the error necessarily affected Robinson’s substantial
27 rights.” (citation omitted)).

28 “Our decision in *United States v. Cronin*, likewise, makes clear that “[t]he
presump-tion that counsel’s assistance is essential requires us to conclude that a trial
is unfair if the accused is denied counsel at a critical stage of his trial.” 466 U.S., at
659 (footnote omitted). Similarly, *Chapman* recognizes that the right to counsel is
“so basic to a fair trial that [its] infraction can never be treated as harmless error.”

1 386 U.S., at 23, and n. 8. And more recently in *Satterwhite v. Texas*, 486 U.S. 249,
2 256 (1988), we stated that a pervasive denial of counsel cast such doubt on the
3 fairness of the trial process, that it can never be considered harmless error.” *Penson*
4 *v. Ohio*, 488 U.S. 75, 88, 109 S.Ct. 346, 102 L.Ed.2d 300 (November 29, 1988).

5 “Application of Structural Error Our Supreme Court has stated, “A complete
6 denial of counsel at a critical stage of the proceedings is presumptively prejudicial
7 and calls for automatic reversal.” *Heddrick*, 166 Wash.2d at 910, 215 P.3d 201
8 (citing *Cronic*, 466 U.S. at 658-59, 659 n.25, 104 S.Ct. 2039). The Court in *Cronic*
9 emphasized that the Supreme Court had “uniformly found constitutional error
10 without any showing of prejudice when counsel was . . . totally absent . . . during a
11 critical stage of the proceeding.” 466 U.S. at 659 n.25, 104 S.Ct. 2039.” *State v.*
12 *Charlton*, 23 Wash.App.2d 150; 515 P.3d 537 (Aug. 9, 2022).

13 The Ninth Circuit in *Musladin v. Lamarque*, 555 F.3d 830 (9th Cir., Feb. 12, 2009) at page
14 837 to 838 stated that . . . “**Satterwhite did not mention Cronic**” . . . , and went on further to
15 state that:

16 “Because *Cronic* is directly on point, we are required to continue to apply
17 *Cronic*’s rule of automatic reversal in cases involving absence of counsel at a critical
18 stage.

19 Moreover, the Supreme Court has repeatedly cited *Cronic*’s holding
20 approvingly. Less than a year ago the Supreme Court described *Cronic* without
21 indicating any adjustment to its essential holding:

22 *Cronic* held that a Sixth Amendment violation may be found “without
23 inquiring into counsel’s actual performance or requiring the defendant to show the
24 effect it had on the trial,” *Bell v. Cone*, 535 U.S. 685, 695, 122 S.Ct. 1843, 152
25 L.Ed.2d 914 (2002), when “circumstances [exist] that are so likely to prej-udice the
26 accused that the cost of litigat-ing their effect in a particular case is unjustified,”
27 *Cronic*, supra, at 658 [104 S.Ct. 2039]. *Cronic*, not *Strickland*, applies “when . . . the
28 likelihood that any lawyer, even a fully competent one, could provide effective
assistance is so small that a presumption of prejudice is appropriate without inquiry
into the actual conduct of the trial,” 466 U.S., at 659-660 [104 S.Ct. 2039], and one
cir-cumstance warranting the presumption is the “complete denial of counsel,” that is,
when “counsel[is] either totally ab-sent, or prevented from assisting the accused
during a critical stage of the proceeding,” *id.*, at 659, and n. 25, 104 S.Ct. 2039.

Wright v. Van Patten, ___ U.S. ___, ___ 128 S.Ct. 743, 746, 169 L.Ed.2d 583
(2008). (per curiam) (footnote omitted, alterations in original). Similar affirmations
of *Cronic*’s “critical stage” rule are found in numerous other Supreme Court cases
issued after *Fulminante* and *Satterwhite*. See *Bell*, 535 U.S. at 695, 122 S.Ct. 1843
 (“In *Cronic*, . . . we identified three situations implicating the right to counsel that
involved circumstances ‘so likely to prejudice the accused that the cost of litigating
their effect in a particular case is unjustified.’ First, and ‘[m]ost obvious’ was the
complete denial of counsel.’ A trial would be presumptively unfair, we said, where

1 the accused is denied the presence of counsel at ‘a critical stage’” (quoting
2 *Cronic* 466 U.S. at 658-59, 104 S.Ct. 2039)); *Mickens v. Taylor*, 535 U.S. 162, 166,
3 122 S.Ct. 1237, 152 L.Ed.2d 291 (2002) (“We have spared the defendant the need of
4 showing probable effect upon the outcome, and have simply presumed such effect
5 upon the outcome, and have simply presumed such effect, where assistance of
6 counsel has been denied entirely or during a critical stage of the proceeding. When
7 that has occurred, the likelihood that the verdict is unreliable is so high that a case-
8 by-case inquiry is unnecessary.”) *Roe v. Flores-Ortega*, 528 U.S. 470, 483, 120 S.Ct.
9 1029, 145 L.Ed.2d 985 (2000) (“In *Cronic*, *Penson*, and *Robbins*, we held that the
10 complete denial of counsel during a critical stage of a judicial proceeding mandates a
11 presumption of prejudice. . . .”).

[8] Because *Cronic* is directly on point and has not been overruled by the
Supreme Court, its ruling requiring automatic reversal where a defendant was denied
counsel at a “critical stage” is binding on this court.” *Mathew MUSLAND v.*
Anthony LAMARQUE, 555 F.3d 830, 837-838 (Feb. 12, 2009).

And a few months later, the Court again held that harmless error analysis does not apply to
a Sixth Amendment claim that counsel was absent at a “critical stage.” *Penson v. Ohio*, 488 U.S.
at 86. “The deprivation of that right, with consequences that are necessarily unquantifiable and
indeterminate, unquestionably qualifies as “structural error.”” *Sullivan v. Louisiana*, 508 U.S.
275, 281-82, 113 S.Ct. 2078, 124 L.Ed.2d 182 (June 1, 1993). Cf. *United States v. Curbelo*, 343
F.3d 273, 281 (4th Cir., September 11, 2003).

Since *Satterwhite*, the Court has repeatedly so declared. See *United States v. Marcus*, 560
U.S. 258, 263, 130 S.Ct. 2159, 176 L.Ed.2d 1012 (May 24, 2010); *Wright v. Van Patten*, 552
U.S. 120, 124, 128 S.Ct. 743, 169 L.Ed.2d 583 (2008); *U.S. v. Gonzalez-Lopez*, 548 U.S. 140,
149, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006); *Washington v. Recuenco*, 548 U.S. 212, 218-19,
126 S.Ct. 2546, 165 L.Ed.2d 466 (June 26, 2006); *Bell v. Cone*, 535 U.S. 685, 696, 122 S.Ct.

1 1843, 152 L.Ed.2d 914 (2002); Neder v. United States, 527 U.S. 1, 7, 9, 119 S.Ct. 1827, 144
2
3 L.Ed. 35 (1999); Arizona v. Fulminante, 499 U.S. 279, 307-308, 111 S.Ct. 1246, 113 L.Ed.2d
4
5 302 (1991); Perry v. Leek, 488 U.S. 272, 280, 109 S.Ct. 594, 102 L.Ed.2d 624 (1989); Penson,
6 supra.

7
8 These cases reflect the recognition that our system’s fairness depends upon its adversarial
9 nature, without which, no reliable result can obtain.

10
11 Since Rothgery, courts have continued to so hold. See Booth v. Galveston County, 352
12 F.Supp. 3d 718, 739 (2019) (“[t]here can really be no question that an initial bail hearing should
13
14 be considered a critical stage of trial”); Caliste v. Cantrell, 329 F.Supp.3d 296, 314 (E.D. La..
15
16 2018) (citing Coleman for the proposition that “a preliminary bail hearing is a ‘critical stage . . .
17 at which the accused is . . . entitled to [counsel] and that “[w]ithout representative counsel the
18
19 risk of erroneous pretrial detention is high;” because of the “vital importance of pretrial liberty,
20 assistance of counsel is of utmost value at a bail hearing”). Cf. Higazy v. Templeton, 505 F.3d
21
22 161, 172 (2nd Cir. 2007) (“In the Sixth Amendment context, the Supreme Court found that a bail
23
24 hearing is a ‘critical stage of the State’s criminal process at which the accused is as much entitled
25
26 to such aid (of counsel) . . . as at the trial itself.”) (quoting Coleman v. Alabama, 399 U.S. at 9-
27
28 10). Bail hearings “require a court’s careful consideration of a host of facts about the defendnat

1 and the crimes charged,” and counsel’s assistance is necessary to guard against erroneous
2
3 deprivation of the fundamental right to physical liberty enjoyed by those accused but not yet
4
5 proven guilty. See United States v. Abuhamra, 389 F.3d 309, at page 323 (2nd Cir. 2004).

6 In addition, there is strong evidence that pretrial detention correlates to increased
7
8 likelihood of conviction and higher sentences after trial. See Andrew D. Leipold, How the
9
10 Pretrial Process Contributes to Wrongful Convictions, 42 AM. CRIM. L. REV. 1123, 1165
11
12 (2005); Christopher T. Lowenkamp et. al, Investigating the Impact of Pretrial Detention on
13
14 Sentencing Outcomes, Arnold Foundation (Nov. 2013).

15 Failing to provide an arrestee with an attorney to advocate meaningfully for pretrial release
16
17 can lead to outcomes that are deeply harmful to individuals accused of crimes and the
18
19 communities in which they live. Unnecessary pretrial detention and unwarranted delays in the
20
21 appointment of counsel exacerbate racial profiling in the criminal legal system and undermine
22
23 the integrity of criminal investigations.

24 There can be no question that a person cloaked with the presumption of innocence suffers
25
26 significant negative impact on their lives - and their case - depending on the outcome of a
27
28 determination of “bail.” Mr. Amick was completely deprived of counsel at a “critical stage of
the proceedings” and “reversal” is required for this “structural error.”

CONFLICT OF INTEREST

12.) The defendant Mr. Amick objects and argues that his trial counsel Douglas T. Bates, IV, was ineffective because he failed to inform the court of his own conflict(s) of interest which deprived the court of its duty to thoroughly inquire into the factual basis of the defendant's dissatisfaction. Smith v. Lockhart, 923 F.2d 1314, at 1320 (8th Cir. 1991) (quoting United States v. Hart, 557 F.2d 162, 163 (8th Cir.) (per curiam), cert. denied, 434 U.S. 906 (1977)). "Defense counsel have an ethical obligation to avoid conflicting representations and to advise the court promptly when a conflict of interest arises during the course of trial. *11 ABA Code of Professional Responsibility, DR 5-105, EC 5-15 (1976); ABA Project on Standards for Criminal Justice, Defense Function § 3.5 (b) (App. Draft 1971)." Cuyler v. Sullivan, 446 U.S. 335, at 346 (May 12, 1980). "An accused is entitled to zealous representation by an attorney unfettered by a conflicting interest." State v. Thompson, 768 S.W.2d 239, 245 (Tenn., 1989).

"It has generally been assumed that Glasser requires reversal, even in the absence of a showing of specific prejudice to the complaining codefendant, whenever a trial court improperly permits or requires joint representation. See Austin v. Erickson, 477 F.2d 620 (CA8 1973); United States v. Gougis, 374 F.2d 758 (CA7 1967); Hall v. State, 63 Wis. 2d 304, 217 N.W. 2d 352 (1974); Commonwealth ex rel. Whitling v. Russell, 406 Pa. 45, 176 A. 2d 641 (1962); Note, Criminal Codefendants and the Sixth Amendment: The Case for Separate Counsel, 58 Geo. L. J. 369, 387 (1969)." Holloway v. Arkansas, 435 U.S. 475, 487 (April 3, 1978).

The Tennessee Appellate Court has noted that . . . "[A]n actual conflict of interest is usually defined in the context of one attorney representing two or more parties with divergent

1 interests.” State v. Tate, 925 S.W.2d 548, 552 (Tenn.Crim.App.1995). See also Clinard v.
2
3 Blackwood, 46 S.W.3d 177 (Tenn.2001). In other words an actual conflict of interest exists
4 when counsel is placed in a position of divided loyalties.” McCullough v. State, 144 S.W.3d 382,
5 385 (Tenn.Crim.App.2003). There are several potential types of conflict of interest. For
6 example, there is the potential for a conflict of interest during instances of multiple
7 representation; i.e., when one attorney simultaneously represents clients with differing interests.
8
9 See State v. White, 114 S.W.3d 469, 476 (Tenn., 2003). Additionally, a conflict of interest can
10 arise from successive representation, namely when an attorney who once represented a co-
11 defendant or witness currently represents the accused. *3 “Effective March 1, 2003, the Code of
12 Professional Responsibility was replaced by the Tennessee Rules of Professional Conduct,
13 likewise codified at Tennessee Supreme Court Rule 8.” State v. McCullough, 144 S.W.3d 382,
14 385 n. 1 (Tenn.Crim.App.2003). New Rule 1.9(a) of the Rules of Professional Conduct
15 provides:
16

21 “A lawyer who has formerly represented a client in a matter shall not
22 thereafter represent another person in the same or a substantially related matter in
23 which that person’s interests are materially adverse to the interests of the former
24 client, unless the former client consents in writing after consultation.” Tenn. Sup.Ct.
25 R. 8, RPC 1.9(a).

26 See State v. Coulter, 67 S.W.3d 3, 29 (Tenn.Crim.App.2001); see also United States v.
27 Shepard, 675 F.2d 977, 979 (8th Cir.1982). Demonstrating an actual conflict of interest is
28

1 generally more difficult in a successive representation case than in a simultaneous representation
2
3 case. See Enoch v. Gramley, 70 F.3d 1490, 1496 (7th Cir.1995); Smith v. White, 815 F.2d 1401,
4 1405 (11th Cir.1987).

6 “Even as we have held that the right to the assistance of counsel is so
7 fundamental that the denial by a state court of a reasonable time to allow the selection
8 of counsel of one’s own choosing, and the failure of that court to make an effective
9 appointment of counsel, may so offend our concept of the basic requirements of a fair
10 hearing as to amount to a denial of due process of law contrary to the Fourteenth
11 Amendment, Powell v. Alabama, 287 U.S. 45, so are we clear that the “assistance of
12 counsel” guaranteed by the Sixth Amendment contemplates that such assistance be
untrammeled and unimpaired by a court order requiring that one lawyer shall
simultaneously represent conflicting interests. If the right to the assistance of counsel
means less than this, a valued constitutional safeguard is substantially impaired.”
Glasser v. United States, 315 U.S. 60, 70, 62 S.Ct. 457, 86 L.Ed. 680 (January 19,
1942).

13 One of the chief concerns in successive representation cases “is the possibility that the
14 attorney may use or divulge on behalf of the new client confidential or privileged information
15 obtained from the former client.” Coulter, 67 S.W.3d at 29. Successive representation may
16
17 result in an actual conflict ““if the cases are substantially related or if the attorney reveals
18 privileged communications of the former client or otherwise divides his loyalties.’ A corollary
19 danger is that the lawyer will fail to cross-examine the former client rigorously for fear of
20 revealing or misusing privileged information.” Enoch, 70 F.3d at 1496 (quoting Mannhalt v.
21 Reed, 847 F.2d 576, 580 (9th Cir.1988)). Actual prejudice can be found if “(1) counsel’s earlier
22 representation of the witness was substantially and particularly related to counsel’s later
23
24
25
26
27
28

1 representation of defendant, or (2) counsel actually learned particular confidential information
2
3 during the prior representation of the witness that was relevant to defendant's later case." Smith,
4
5 815 F.2d at 1405.

6 "Upon the trial judge rests the duty of seeing that the trial is conducted with
7 solicitude for the essential rights of the accused. Speaking of the obligation of the
8 trial court to preserve the right to jury trial for an accused, Mr. Justice Sutherland said
9 that such duty "is not to be discharged as a matter of rote, but with sound and advised
10 discretion, with an eye to avoid unreasonable or undue departures from that mode of
11 trial or from any of the essential elements thereof, and with a caution increasing in
12 degree as the offense dealt with increase in gravity." Patton v. United States, 281
13 U.S. 276, 312-313. The trial court should protect the right of the accused to have the
14 assistance of counsel. "This protecting duty imposes the serious and weighty
15 responsibility upon the trial judge of determining where there was an intelligent and
16 competent waiver by the accused. While an accused may waive the right to counsel,
17 whether there is a proper waiver should be clearly determined by the trial court, and it
18 would be fitting and appropriate for that determination to appear on the record."
19 Johnson v. Zerbst, 304 U.S. 458, 465.

20 No such concern on the part of the trial court for the basic rights of Glasser is
21 disclosed by the record before us. The possibility of the inconsistent interests of
22 Glasser and Kretske was brought home to the court, but instead of jealously guarding
23 Glasser's rights, the court may fairly be said to be responsible for creating a situation
24 which resulted in the impairment of those rights. For the manner in which the parties
25 accepted the appointment indicates that they thought they were acceding to the
26 wishes of the court. Kretske said the appointment could be accepted "if your Honor
27 wishes to appoint him [Stewart]," and Stewart immediately replied: "As long as the
28 Court knows the situation. I think there is something in the fact that the jury knows
we can't control that." The Court made no effort to reascertain Glasser's attitude or
wishes. Under these circumstances, to hold that Glasser freely, albeit tacitly,
acquiesced in the appointment of Stewart is to do violence to reality and to condone a
dangerous laxity on the part of the trial court in the discharge of its duty to preserve
the fundamental rights of an accused." Glasser v. United States, 315 U.S. 60, 71, 62
S.Ct. 457, 86 L.Ed. 680 (January 19, 1942).

22 In the instant case, there is a plethora of evidence in the record that an actual conflict
23
24 existed because of trial counsel Douglas T. Bates, IV, prior representation of Mr. Amick's ex-
25
26 wife Rebecca Ashton Seaborn Amick.
27
28

1 “Our rules provide that “[a] lawyer shall not represent a client if the
2 representation of that client may be materially limited by . . . the lawyer’s own
3 interest.” Tenn. Sup.Ct. R. 8, RPC 1.7. “Loyalty to a client is . . . impaired when a
4 lawyer cannot consider, recommend, or carry out an appropriate course of action for
5 the client because of the lawyer’s other responsibilities or interests. The conflict, in
6 effect, forecloses alternatives that would otherwise be available to the client.” Id. At
7 cmt. [4].*7 Conflict of interest “includes any circumstances in which an attorney
8 cannot exercise his independent professional judgment free” of competing interests.
9 Culbreath, 30 S.W.3d at 312; see also State v. White, 114 S.W.3d 469, 476
10 (Tenn.2003). Counsel with such a conflict is subject to disqualification. State v.
11 Tate, 925 S.W.2d 548, 553 (Tenn.Crim.App.1995); see also Moran v. State, 4
12 Tenn.Crim.App. 399, 472 S.W.2d 238 (1971); ABA Standard for Criminal Justice
13 Prosecution Function and Defense Function 4-3.5 (3d ed.1993). The term has been
14 defined as a situation in which regard for one duty tends to lead to “disregard for one
15 duty tends to lead to “disregard of another.” State v. Reddick, 230 Neb. 218, 430
16 N.W.2d 542, 545 (1988).

17 . . .
18 See Velarde v. United States, 972 F.2d 826, 827 (7th Cir.1992) (“[T]rial
19 counsel . . . can hardly be expected to challenge . . . his own effectiveness”)
20 (quoting United States v. Taglia, 922 F.2d 413, 418 (7th Cir.1991)).

21 . . .
22 Nevertheless, courts have an independent duty to ensure that all proceedings
23 are conducted are conducted within the ethical standards of the profession and are
24 “fair to all who observe.” Wheat v. United States, 486 U.S. 153, 160, 108 S.Ct. 1692,
25 100 L.Ed.2d 140 (1988). When, therefore, the trial court is aware or should be aware
26 of a conflict of interest, there must be an inquiry as to it’s nature and appropriate
27 measures taken. Sullivan, 446 U.S. at 346-47, 100 S.Ct. 1708; see Wood, 450 U.S. at
28 272, 101 S.Ct. 1097. Otherwise prejudice will be presumed. Sullivan, 446 U.S. at
349-50, 100 S.Ct. 1708.

 In summary, when the trial court knows or should know of a conflict of
interest, it has the responsibility of inquiry. By failing to address the conflict of
interest issue with the knowledge of the delayed appeal and the denial of the
application for permission to appeal to this Court, the trial court committed error.”
Frazier v. State, 303 S.W.3d 674, at 682-683 (Feb. 18, 2010).

13.) The defendant Mr. Amick objects and argues that he was forced to proceed to trial
with counsel Douglas T. Bates, IV, whose ineffectiveness “pervaded” throughout the entire trial
from beginning to end which constituted another “structural error” because he failed to report or
notify the Court of his own conflict of interest that he represented me in Cause No. 17-5274-CR
wherein my then wife, Rebecca Ashton Seaborn Amick made false allegations of aggravated

1 assault against me, and also that he represented me in my divorce proceedings from my then
2
3 wife Rebecca Ashton Seaborn Amick in Cause No. 18-CV-6374, in direct violation of the well
4 settled principles of law as clearly stated in Glasser v. United States, 315 U.S. 60, at pages
5
6 75-76, 62 S.Ct. 457, 86 L.Ed. 680 (1942), which reads:

7
8 “That this is indicative of Stewart’s struggle to serve two masters cannot be seriously be doubted.

9 There is yet another consideration. Glasser wished the benefit of undivided
10 assistance of counsel of his own choice. We think that such a desire on the part of an
11 accused should be respected. Irrespective of any conflict of interest, the additional
12 burden of representing another party may conceivably impair counsel’s effectiveness.

13 To determine the precise degree of prejudice sustained by Glasser as a result
14 of the court’s appointment of Stewart as counsel for Kretske is at once difficult and
15 unnecessary. The right to have the assistance of counsel is too fundamental and
16 absolute to allow courts to indulge in nice calculations as to the amount of prejudice
17 arising from its denial. Cf. *Snyder v. Massachusetts*, 291 U.S. 97, 116; *Tumey v. Ohio*, 273 U.S. 510, 535; *Patton v. United States*, 298 U.S. 342, 347. Of equal
18 importance with the duty of the court to see that an accused has the assistance of
19 counsel is its duty to refrain from embarrassing counsel in the defense of an accused
20 by insisting, or indeed, even suggesting, that counsel undertake to concurrently
21 represent interests which might diverge from those of his first client, when the
22 possibility of that divergence is brought home to the court. In conspiracy cases,
23 where the liberal rules of evidence and the wide latitude accorded the prosecution
24 may, and sometimes do, operate unfairly against an individual defendant, it is
25 especially important that he be given the benefit of the undivided assistance of his
26 counsel without the court’s becoming a party to encumbering that assistance. Here,
27 the court was advised of the possibility that conflicting interests might arise which
28 would diminish Stewart’s usefulness to Glasser. Nevertheless Stewart was appointed
as Kretske’s counsel. Our examination of the record leads to the conclusion that
Stewart’s representation of Glasser was not as effective as it might have been if the
appointment had not been made. We hold that the court thereby denied Glasser his
right to have the effective assistance of counsel, guaranteed by the Sixth Amendment.
This error requires that the verdict be set aside and a new trial ordered as to Glasser.”
Glasser v. United States, 315 U.S. 60, at pages 75-76, 62 S.Ct. 457, 86 L.Ed. 680
(1942).

24 Further, Douglas T. Bates, IV, continued to fail to inform the Court of his own conflict of
25
26 interest on page 125 at lines 15 through 25 of VOLUME I OF II TRANSCRIPTS OF THE
27
28

1 BENCH TRIAL HELD JULY 28, 2022 AND JULY 29, 2022, by failing to cross examine and
2
3 object to District Attorney General Stacey Edmonson's questioning of his ex-wife Rebecca
4
5 Ashton Seaborn Amick if she ever had an incident where she was charged with assaulting the
6
7 defendant Matthew Amick which Rebecca Ashton Seaborn Amick affirmed at line 17. Douglas
8
9 T. Bates in collusion with District Attorney General Stacy Edmonson failed to disclose to the
10
11 Court that he had previously represented Rebecca Ashton Seaborn Amick in that same Domestic
12
13 Violence Assault on January 28, 2019 [unknown case number] in which Matthew Amick was
14
15 named the victim. Douglas T. Bates cross-examination of Rebecca Ashton Seaborn Amick, now
16
17 serving as a key witness against his current client in a closely related matter constitutes a clear
18
19 "conflict of interest" in violation of the well settled principles of law as clearly stated in Glasser
20
21 v. United States, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942); Cuyler v. Sullivan, 446 U.S.
22
23 335, 348, 100 S.Ct. 1708, 1718, 64 L.Ed.2d 333 (1980); Von Moltke v. Gillie, 332 U.S. 708,
24
25 720, 68 S.Ct. 316, 92 L.Ed. 309 (1948); Holloway v. Arkansas, 435 U.S. 475, 490-91, 98 S.Ct.
26
27 1173, 1181-82, 55 L.Ed.2d 426 (1978) and Wood v. Georgia, 450 U.S. 261, 271, 101 S.Ct. 1097,
28
1103, 67 L.Ed.2d 220 (1981), all of which affirm a defendant's constitutional rights to "conflict-
free" legal representation.

1 The defendant objects and argues that he believes that his attorney Douglas T. Bates, IV,
2
3 was ineffective by failing to further question and properly “cross-examine” his former wife
4
5 Rebecca Ashton Seaborn Amick who tried to downplay the defendant’s right to live in his
6 father’s house, falsely stating at page 95 lines 2 through 25 of VOLUME I OF II OF THE
7
8 BENCH TRIAL TRANSCRIPTS HELD JULY 28, 2022 AND JULY 29, 2022 that the
9 defendant was “supposed to have moved away, left, and he did for a little while, but he came
10
11 back and would never leave” which was 100% false, it’s my father’s house, and I have an
12 absolute right to stay there, and further, she has no rights to exclude me. The defendant further
13
14 objects that his attorney failed to bring to the Court’s attention that his former wife Rebecca
15 Ashton Seaborn Amick was being deceptive and lied on page 129 at lines 4 through 8 and again
16
17 at lines 11 through 14 falsely stating that the divorce papers said that she had an “exclusive
18
19 right” to live in the defendant Matthew Amick’s father’s house which she falsely contradicted by
20 her own testimony on page 130 at lines 1 through 25.

21
22 “Glasser v. United States, for example, the record showed that defense
23 counsel failed to cross-examine a prosecution witness whose testimony linked
24 Glasser with the crime and failed to resist the presentation of arguably inadmissible
25 evidence. *Id.*, at 72-75. The Court found that both omissions resulted from counsel’s
26 desire to diminish the jury’s perception of a codefendant’s guilt. Indeed, the evidence
27 of counsel’s “struggle to serve two masters [could not] seriously be doubted.” *Id.*, at
28 75. Since this actual conflict of interest impaired Glasser’s defense, the Court
reversed his conviction.

 ...
Glasser established that unconstitutional multiple representation is never
harmless error. Once the Court concluded that Glasser’s lawyer had an actual

1 conflict of interest, it refused “to indulge in nice calculations as to the amount of
2 prejudice” attributable to the conflict. The conflict itself demonstrated a denial of the
3 “right to have the effective assistance of counsel.” 315 U.S., at 76. Thus a defendant
4 who shows that a conflict of interest actually affected the adequacy of his
5 representation need not demonstrate prejudice in order to obtain relief.” See
6 Holloway, supra, at 487-491.” Cuyler v. Sullivan, 446 U.S. 335, 348-49 (May 12,
7 1980).

8 The defendant further objects and argues that attorney Douglas T. Bates, IV, was
9 ineffective based upon his own conflict of interest by failing to “cross-examine” Rebecca Ashton
10 Seaborn Amick regarding her own admission that she lied in open court in Cause No.
11 17-5274-CR.

12 “Similarly, if counsel entirely fails to subject the prosecution’s case to
13 meaningful adversarial testing, then there has been a denial of Sixth Amendment
14 rights that makes the adversary process itself presumptively unreliable. No specific
15 showing of prejudice was required in Davis v. Alaska, 415 U.S. 308 (1974), because
16 the petitioner had been “denied the right of effective cross-examination” which
17 ““would be constitutional error of the first magnitude and no showing of want or of
18 prejudice would cure it.”” Id., at 318 (citing Smith v. Illinois, 390 U.S. 129, 131
19 (1968), and Brookhart v. Janis, 384 U.S. 1, 3 (1966)).” United States v. Cronin, 466
20 U.S. 648, at 659 (May 14, 1984).

21 When a trial court learns of a conflict between a defendant and his counsel, the court must
22 thoroughly inquire into the factual basis of the defendant's dissatisfaction. Smith v. Lockhart,
23 923 F.2d 1314, at 1320 (8th Cir. 1991) (quoting United States v. Hart, 557 F.2d 162, 163 (8th
24 Cir.) (per curiam), cert. denied, 434 U.S. 906 (1977)).

25 The defendant objects that his attorney Douglas T. Bates, IV, was ineffective because he
26 failed to cross examine and use the testimony of ALICE MAZELL RILEY at page 24, lines 20
27 through line 25 of VOLUME I OF II, of the Transcripts, for the BENCH TRIAL HELD JULY
28

1 28, 2022 AND JULY 29, 2022 to impeach her own testimony falsely stating that the defendant
2
3 “placed his hands on her breasts”, tried to kiss her, was pulling her into him, that he grabbed her
4
5 crotch, and at page 25, lines 1 to 3, she stated that she figured he was intoxicated versus the
6
7 testimony of HAROLD BOWERS on page 32 at lines 1 through 8 of VOLUME I OF II, of the
8
9 Transcripts, for the BENCH TRIAL HELD JULY 28, 2022 AND JULY 29, 2022, stating that
10
11 the defendant had his hands on her, further stating that the defendant had his hands “under her
12
13 blouse” feeling her up and stuff on page 33 at lines 3 to 10 of said transcripts which is the direct
14
15 opposite of what he said on page 34 at lines 3 through 8 stating that he “didn’t know it was under
16
17 her blouse” after stating that when he came to the door, “she was facing away from me, and he
18
19 was facing me, and had his hands on her, I could see, but I thought - - I didn’t know it was under
20
21 her blouse” and my attorney Douglas T. Bates, IV, failed to use the testimony of ALICE
22
23 MAZELL RILEY and failed to use the testimony of HAROLD BOWERS to impeach others
24
25 testimony and failed to impeach their own testimony with their own conflicting statements of
26
27 whether I allegedly touched ALICE MAZELL RILEY on her breasts, meaning outside her shirt
28
versus HAROLD BOWERS falsely stating that I allegedly had my hands “under her blouse” at
page 34, lines 3 to 8, which is entirely false.

1 14.) The defendant further objects that both his attorney Douglas T. Bates, IV, and the
2
3 District Attorney General Stacey Edmonson failed to inform the court of their own personal
4
5 previous “chummy relationship” which constituted a clear “conflict of interest” as evidenced by
6
7 Douglas T. Bates, IV, going on and on about how wonderful the District Attorney General
8
9 Stacey Edmonson was at page 8, lines 11 through 19 of VOLUME I OF II of the Transcripts of
10
11 the BENCH TRIAL held on JULY 28, 2022 AND JULY 29, 2022, and THE COURT even
12
13 acknowledged at page 69, lines 14 through 22 “how proud” that attorney Douglas T. Bates, IV,
14
15 was to end his 21st Judicial District defense with General Edmonson, so THE COURT was sure
16
17 that attorney Douglas T. Bates, IV, would have “all the confidence in her and the way she will
18
19 handle the case” but the Court failed to inquire with the defendant if he accepted this conflict of
20
21 interest between his attorney Douglas T. Bates, IV, and District Attorney General Stacey
22
23 Edmonson in direct violation of the well settled principles of law as clearly stated in Stephens v
24
25 United States, which says:

26 “At the least, the Judge should have explained to Stephens the possible
27 conflict and his rights under the law. Second, as the District Judge found below, the
28 prosecutors were aware of the conflict, yet they did nothing to inform the Court of it
or to correct Asinof’s statement. Finally, we have held that representation by counsel
laboring under an actual conflict of interest, whether counsel be retained or
appointed, renders the trial “fundamentally unfair” such that the requisite
governmental involvement is present whether or not a responsible official is aware of
the conflict. See Alvarez, 580 F.2d at 1256. Long before the dynamic development
of these concerns, we made this clear seventeen years ago in Porter v. United States,
5 Cir., 1962, 298 F.2d 461, 464:

1 Of course such things as this should never happen, and the place to stop it is
2 the professional conscience of the advocate involved. A Court may not countenance
3 it and must, on the contrary, take effective action just as we are certain the careful
4 Judge below would have done had the facts been known at or before the
5 commencement of the criminal trial. But where this has been allowed to occur, either
6 through a calloused conscience of the attorney or ignorance of the true facts by the
7 Judge, the trial is not the fair one demanded by the Constitution.”

8 . . .
9 Here Asinof owed conflicting duties to the defendant and a witness for the
10 prosecution. That appearances indicate he ignored his duties to the witness in favor
11 of those owed the defendant is irrelevant. Just as we do not require a showing of
12 prejudice because cold records “[may give] no clue to the erosion of zeal which may
13 ensue from divided loyalty,” *Castillo v. Estelle*, 5 Cir., 1974, 504 F.2d 1243, 1245, . .

14 In these circumstances we hold that the District Court erred in requiring
15 Stephens to demonstrate that he was prejudiced by the conflict of interest. Stephens
16 was represented by an attorney with an actual, flagrant conflict of interest based on
17 his concurrent representation of a witness for the prosecution to whom he owed the
18 unfettered duty of complete, legitimate support, not the task of undermining and
19 tearing down his acceptability. That prejudice may not be apparent from the record is
20 not significant. The judgment must be reversed and the sentence vacated.” James
21 Edwin Stephens v. United States of America, 595 F.2d 1066, 1069 to 1070 (May 23,
22 1979).

23 “This court recently stated that the sixth amendment right to counsel
24 embodies ““a correlative right to representation that is free from conflicts of
25 interests.”” *Parker v. Parratt*, 662 F.2d 479, 483 (8th Cir. 1981) (quoting *Wood v.*
26 *Georgia*, 450 U.S. 261, 101 S.Ct. 1097, 1103, 67 L.Ed.2d 220 (1981)).” Clarence
27 Alexander v. Vernon Housewright, Director, Arkansas Department of Correction,
28 667 F.2d 556, 558 (December 24, 1981).

 “The right to counsel guaranteed by the Sixth and Fourteenth Amendments is
a right to effective counsel. *Herring v. Estelle*, 5 Cir. 1974, 491 F.2d 125; *McKenna*
v. Ellis, 5 Cir. 1960, 280 F.2d 592. Effectiveness, however, is not a matter of
professional competence alone. As this Court stated in *Porter v. United States*, 5 Cir.
1962, 298 F.2d 461, 463:

 “The Constitution assures a defendant effective representation by counsel * *
* Such representation is lacking, however, if counsel, unknown to the accused and
without his knowledgeable assent, is in a duplicitous position where his full
talents—as a vigorous advocate having the single aim of acquittal by all means fair
and honorable—are hobbled or fettered or restrained by commitments to others.”

 In short, “[w]e consider undivided loyalty of appointed counsel to client as
essential to due process”. *McKenna v. Ellis*, 5 Cir. 1960, 280 F.2d 592, 599.

 Here the defense attorney, without the knowledge or assent of the defendant
was actively representing the defendant’s alleged victim in civil litigation. The
victim of a crime is not a detached observer of the trial of the accused, and his
“private attorney” is likely to be restrained in the handling of that client/witness.

 . . .

1 Here Bardin was not only the victim but also a principal witness for the
2 prosecution. In these circumstances, counsel is placed in the equivocal position of
3 having to cross-examine his own client as an adverse witness. His zeal in defense of
4 his client the accused is thus counter-poised against solicitude for his client the
5 witness. The risk of such ambivalence is something that no attorney should accept
6 and that no court should countenance, much less create. We hold that the situation
7 presented by the facts of this case is so inherently conducive to divided loyalties as to
8 amount to a denial of the right to effective representation essential to a fair trial.

9 We do not ascribe to Castillo's appointed attorney nor to the appointing judge
10 improper motives, but they are chargeable with an error of judgment fatal to a fair
11 trial.

12 [5] The appellant has alleged specific instances of prejudice resulting from the
13 conflicting loyalties of his counsel. We need not inquire into those allegations.
14 When there is a conflict of interest such as exists in this case, even unconscious. It
15 may elude detection on review. A reviewing court deals with a cold record, capable,
16 perhaps, of exposing gross instances of incompetence but often giving no clue to the
17 erosion of zeal which may ensue from divided loyalty. Accordingly, where the
18 conflict is real, as it is here, a denial of the right to effective representation exists,
19 without a showing of specific prejudice. See *Goodson v. Peyton*, 4 Cir. 1965, 351
20 F.2d 905; *United States v. Myers*, E.D.Pa.1966, 253 F.Supp. 55, See also *Glasser v.*
21 *United States*, 1941, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed.2d 680; *Zurita v. United*
22 *States*, 7 Cir. 1969, 410 F.2d 477.

23 We find it unnecessary to reach other issues by the appellant.

24 The judgment of the district court is therefore reversed and the cause
25 remanded with directions to order the appellant discharged from custody unless the
26 State of Texas elects, within a reasonable time to be set by the district court to retry
27 him on the indictment.

28 Reversed and remanded with directions." Gene CASTILLO v. W.J.
ESTELLE, Jr., Director, Texas Department of Corrections, 504 F.2d 1243, at 1245
(Dec. 9, 1974).

The right to counsel is violated when a defendant is forced to proceed with an attorney with
whom he has an irreconcilable conflict or with whom he cannot communicate. Daniels v.
Woodford, 428 F.3d 1181, 1197 (9th Cir. 2005), cert. denied, 550 U.S. 968 (2007); Brown v.
Craven, 424 F.2d 1166, 1170 (9th Cir. 1970).

The defendant objects and argues that each and every Zoom meeting isolated him and
prevented him from being able to communicate effectively with his attorney Douglas T. Bates,

1 IV, in violation of Daniels v. Woodford, supra, and that normally a defendant would be together
2
3 with his attorney at each and every court hearing which would allow him to communicate and
4
5 ask his attorney questions and work together on his defense but holding these Zoom meetings
6
7 caused a severe breakdown in communications between him and his attorney Douglas T. Bates.
8
9 When there is a breakdown in communication between counsel and client, even competent
10
11 counsel may not provide an adequate defense. United States v. Nguyen, 262 F.3d 998, 1003 (9th
12
13 Cir. 2001). A breakdown in communication and loss of trust results in the constructive denial of
14
15 counsel. “Where a criminal defendant has, with legitimate reason, completely lost trust in his
16
17 attorney, and the trial court refuses to remove the attorney, the defendant is constructively denied
18
19 counsel. This is true even where the breakdown is the result of the defendant's refusal to speak
20
21 to counsel, unless the defendant's refusal to cooperate demonstrates “unreasonable contumacy.”
22
23 Daniels v. Woodford, 428 F.3d 1181, at 1198 (9th Cir. 2005), cert. denied, 550 U.S. 968 (2007)
24
25 (quoting Brown v. Craven, 424 F.2d 1166, at 1169 (9th Cir. 1970). And;

26
27
28
A defendant is entitled to a new trial due to a violation of the Sixth Amendment right to
conflict free counsel if the defendant demonstrates that counsel had an actual conflict of interest
that adversely affected counsel's performance. Mickens v. Taylor, 535 U.S. 162, 171-72, 122

1 S.Ct. 1237, 152 L.Ed.2d 291 (2002); State v. Dhaliwal, 150 Wn.2d 559, 573, 79 P.3d 432
2
3 (2003).

4 **DUE PROCESS REQUIREMENTS**

5
6 14.) The defendant Mr. Amick objects and argues that an accused in a criminal case has a
7
8 fundamental right not to be tried while incompetent to stand trial. Drope v. Missouri, 420 U.S.
9 162, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975). The Court ignored the testimony of his former wife
10
11 Rebecca Ashton Seaborn Amick who testified on page 128 at lines 7 through 13 that the
12
13 defendant suffered from head injuries which was made worse by drugs and alcohol, and that his
14
15 anger was never angled at her.

16
17 Prior to proceeding to trial, there is no indication that trial court inquired whether the
18
19 defendant Matthew Amick received any medication between the time of the Court's competency
20
21 finding and the start of trial 1,085 days later ten days short of three years later, during which
22
23 period the defendant remained incarcerated. See Drope v. Missouri, 420 U.S. 162, 181, 95 S. Ct.
24
25 896, 43 L. Ed.2d 103 (1975) ("a trial court must always be alert to circumstances suggesting a
26
27 change that would render the accused unable to meet the standards of competence to stand
28
trial:). The defendant's former wife Rebecca Ashton Seaborn Amick testified on page 132 at
lines 20 through 23 of VOLUME I OF II OF THE TRANSCRIPTS OF THE BENCH TRIAL

1 HELD JULY 28, 2022 AND JULY 29, 2022, that she remembered seeing the defendant's
2
3 medication “Gabapentin” yet the court failed to inquire further whether or not the defendant was
4
5 still taking “Gabapentin” even after the defendant's former wife Rebecca Ashton Seaborn Amick
6 testified on page 133 at lines 1 through 21 that the defendant suffered from headaches from
7
8 taking said medication “Gabapentin” which was aggravated by the defendant's stating that he
9
10 had to drink to make the headaches go away. Ms. Amick again acknowledged that the defendant
11
12 Matthew Amick suffered brain injuries on page 140 at line 8, and further that the defendant
13
14 Matthew Amick was not stable because he was always drinking on page 141 at line 13. In Miles
15
16 v. Stainer, the Ninth Circuit held the trial court erred in not holding a competency hearing and
17
18 specifically erred in failing to inquire whether the defendant was taking his medication despite
19
20 the strong warnings in the court file suggesting the need to ask the question. Miles v. Stainer,
21
22 108 F.3d 1109, 1112-13 (9th Cir., 1997); see also Moran v. Godinez, 972 F.2d 263, 265 (9th
23
24 Cir., 1992) (court's failure to inquire about the four psychiatric medications defendant was taking
25
26 raised doubt about competence on appeal), overruled on other grounds, 509 U.S. 389, 113 S.Ct.
27
28 2680, 125 L.Ed.2d 321 (1993).

25 Dr. Katie Osborn Spirko testified on page 170 at line 25 that she was a forensic and clinical
26
27 neuropsychologist and on page 171 at lines 1 through 18 that she was a professor of psychology
28

1 at Lipscomb University and in private practice, and that she evaluated the defendant Matthew
2
3 Amick in the context of conducting a comprehensive forensic neuropsychological evaluation.
4

5 “Dr. Spirko testified that the defendant Matthew Amick was taking Topamax,
6 Remeron and Lisinopril on page 173 at lines 19 through 25. Dr. Spirko further
7 testified that Mr. Amick had significant impairment that was consistent with the
8 defendant's history of significant head injuries, particularly affecting “the frontal
9 lobe” on page 179 at lines 8 through 25 and on page 180 at lines 1 through 22 Dr.
10 Spirko testified that “What's most striking for Mr. Amick in terms of the history is the
11 multiple repeated head injuries, especially he had three head injuries that were
12 substantial enough to result in a loss of consciousness within three years. Any time
13 you have more than one TBI, you are going to get a - - you are going to expect - -
14 there's going to be a heightened risk for a compounded effect. When the brain doesn't
15 have adequate time to heal and has another head injury sustained on top of that,
16 especially having multiple in a row like that within a short period of time like that,
17 you would expect a much higher risk of significant neuropsychological deficits
18 following that.” Dr. Spirko further testified about the defendant's neuropsych deficits
19 on page 181 at lines 1 through 25, page 182 at lines 18 to 21, page 183 at lines 19 to
20 25, page 184 at lines 1 through 24, page 184 at lines 1 to 25, page 186 at lines 1
21 through 25, page 187 at lines 1 to 25. Further, Dr. Spirko testified on page 186 at
22 lines 17 through 25 that the defendant was taking 2,800 milligrams of gabapentin
23 daily, 6 milligrams of Klonopin, 10 milligrams of Ambien, and 150 milligrams of
24 Effexor, and further stated the negative effects this drugs would have on the
25 defendant Matthew Amick on page 187 at lines 1 through 25 stating that these drugs
26 would have a paradoxical effect on people who have suffered from traumatic brain
27 injuries, and that these drugs would have a profound effect on the defendant's ability
28 to regulate himself.”

18 The defendant further objects that the Court failed to take into account that Dr. Spirko
19 testified on page 187 at lines 20 to 25, that:
20

21 “The defendant had been taken off that medication when he went to
22 Centerstone and that the Fast Pace Physician was prescribing this, they thankfully
23 discontinued this and got him on some responsible medication dosages, and that his
24 psychotic symptoms stopped at that point, so he was no longer having the delusions
25 and hallucinations that were present at the time he was initially brought into custody
26 on page 188 at lines 1 to 8. Further, Dr. Spirko testified on page 188 at lines 9
27 through 25 that the defendant's problem solving and writing was better at the age of
28 10 years old was significantly better than at the time Dr. Spirko assessed him
comparing his current writing to his writings at 10, 12 years old. Dr. Spirko further
testified on page 189 at lines 1 to 7 that the defendant was testing in the range of
someone who would qualify for dementia. Dr. Spirko further testified on page 190 at
lines 1 to 25, page 191 at lines 1 to 11, lines 20 to 25, page 193 lines 1 to 13, lines 17

1 to 25, and further stated on page 194 at lines 19 to 23 that the defendant Mr. Amick's
2 functioning, executive functioning, decision-making and his behavior was in response
3 to repeated head injuries that were “exacerbated” by the medications that he was on at
4 the time. See also Dr. Spirko's testimony on page 195 at lines 1 to 5, line 14 to 25,
5 page 196 at lines 1 to 25, page 197 at lines 15 to 25, page 198 at lines 1 to 21, page
6 199 at lines 10 to 24, page 200 at lines 5 to 25, page 201 at lines 1 to 25, page 202 at
7 lines 1 to 25, page 203 at lines 13 to 22, page 206 at lines 18 to 25, page 207 at lines
8 23 to 25, page 208 at lines 1 to 6, lines 18 to 19, lines 23 to 25, page 209 at lines 5 to
9 10, lines 14 to 20, page 211 at lines 6 to 25, page 212 at lines 1 to 25.”

10 The defendant requests this court to take Rule 201(d) Mandatory Judicial Notice that Dr.
11 Spirko testified on page 211 at lines 11 through 12 that she spent a full day interviewing and
12 questioning and testing the defendant, Mr. Amick until about 9:00 at night. Dr. Spirko finally
13 stated on page 212 at lines 18 to 25 and page 213 at lines 1 to 3 that the change in medication
14 probably accounted for the most significant improvement in the defendant Mr. Amick's
15 behavioral functioning, and on page 214 at lines 15 to 16 Dr. Spirko testified that the defendant
16 Mr. Amick showed symptoms of frontal medial traumatic brain injury that was “exacerbated” by
17 the medications.

18 The defendant objects and argues that the trial Court Judge was biased because he
19 completely ignored the fact that Dr. Joe Mount who works at the Middle Tennessee Mental
20 Health Institute testified on page 331 at lines 14 to 15 in VOLUME II OF II OF THE BENCH
21 TRIAL HELD JULY 28, 2022 AND JULY 29, 2022, that **“I’m certainly not a**
22 **neuropsychologist like my colleague out here”** referring to Dr. Spirko, and further Dr. Joe
23
24
25
26
27
28

1 Mount on page 331 at line 25 stated “**absolutely**” in response to questioning by attorney Douglas
2
3 T. Bates, IV, on page 331 at lines 23 to 24 specifically asking Dr. Joe Mount “**And you**
4 **acknowledge that Dr. Spirko has credentials that you don’t have?**” Further, Dr. Joe Mount
5
6 testified on page 332 at lines 8 through 25 that their evaluation is not nearly as extensive as Dr.
7
8 Spirko. Dr. Joe Mount testified on page 332 at lines 11 through 16 that:

9 “There was no need for us to do that extensive an evaluation. We are
10 evaluating whether or not they are competent to stand trial, what their mental state
11 was at the time of the offense, and whether they are committable. We are not doing a
12 neuropsychological evaluation.”

13 The defendant objects and argues that his attorney Douglas T. Bates, IV, was ineffective
14 for failing to object to the trial Court that the Tennessee Court System in collusion with the
15 Middle Tennessee Mental Health Institute has created a “**boiler plate letter**” based upon a St.
16 Louis test, S-L-U-M, i.e., a St. Louis University Mental Status Examination that provides
17 “**rubber stamped findings**” that every patient is allegedly “**competent**” to stand trial regardless
18
19 of the fact that there is overwhelming evidence of a defendant’s “incompetency” based upon the
20
21 testimony of ER 703 Expert Witnesses who are far more qualified to make that “finding” based
22
23 upon a letter described by Dr. Joe Mount on page 334 at lines 5 through 25, and page 335 at lines
24
25 1 through 6. Dr. Joe Mount further testified on page 336 at lines 24 and 25 that Middle
26 Tennessee Mental Health Institute does not have a “neurologist” on staff. Further, Dr. Joe
27
28

1 Mount testified on page 337 at lines 23 to 25 that “**I did not make his diagnosis**”, that was done
2
3 by other staff in direct violation of Sixth Amendment Confrontation Clause and the well settled
4 principles of law as clearly stated in Bullcoming v. New Mexico, 564 U.S. 647, 131 S.Ct. 2705,
5 180 L.Ed.2d 610 (June 23, 2011); Michigan v. Bryant, 562 U.S. 344, 354, 131 S.Ct. 1143, 179
6 L.Ed.2d 93 (February 28, 2011); Melendez-Diaz v. Massachusetts, 557 U.S. 305, 129 S.Ct.
7 2527, 174 L.Ed.2d 314 (June 25, 2009); Giles v. California, 554 U.S. 353, 376; 128 S.Ct. 2678;
8
9 171 L.Ed.2d 488 (June 25, 2008); Davis v. Washington, 547 U.S. 813, 830, 126 S.Ct. 2266, 165
10 L.Ed.2d 224, 237 (June 19, 2006); Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 1359,
11 158 L.Ed.2d 177 (March 8, 2004). Dr. Joe Mount on page 341 at lines 8 through 16, that the
12 Court gets a two-page letter that only addresses their findings because that’s what the court
13 asked them to address and nothing else basically admitting that the Court has already made up
14 their mind in advance that they are not going to go by what any expert witness has to say unless
15 it’s their own witness and never mind that the State’s expert witness Dr. Joe Mount is not even
16 half as qualified as Dr. Spirko in violation of Tumey v. Ohio, 273 U.S. 510, 535, 47 S.Ct. 437,
17 71 L.Ed. 749 (March 7, 1927), which provides that I have a due process right to have an
18 “unbiased judge.” The defendant further objects that Dr. Joe Mount only spent maybe 30
19 minutes and no more than 45 minutes with him at the very most.
20
21
22
23
24
25
26
27
28

1 In Pate v. Robinson, the Illinois competency statute at issue directed the trial court to hold
2
3 a competency hearing on its own motion whenever there was a “bona fide reason” to doubt
4 competency. Pate v. Robinson, 383 U.S. 375, 378, 85 S.Ct. 836, 15 L.Ed.2d 815 (1966).
5

6 “[W]here there is any conflict between expert testimony and the testimony as
7 to the facts, the jury is not bound to accept expert testimony in preference to other
8 testimony, and must determine the weight and credibility of each in light of all the
9 facts shown in the case.” State v. Sparks, 891 S.W.2d 607, 616 (Tenn.1995) (quoting
10 Edwards v. State, 540 S.W.2d 641, 647 (Tenn. 1976)).” Dellinger v. State, 279
11 S.W.3d 282 (Jan. 22, 2009).

12 Mr. Amick’s demonstrated history of permanent head injuries, repeated injuries and history
13 of incompetence, coupled with more recent evidence of decompensation, was enough to give the
14 trial court reason to doubt Mr. Amick’s competency. See Moore v. United States, 464 F.2d 663,
15 665-66 (9th Cir., 1972) (records showing defendant’s history of mental illness, improper
16 prescription of drugs and instability raised doubt as to competency even though current
17 psychiatric report found him competent); Chavez v. United States, 656 F.2d 512, 518 (9th Cir.,
18 1981) (hearing required when there is psychiatric evidence of past incompetence and more
19 recent evidence indicating that such incompetence may have recurred).
20
21

22 The defendant Mr. Amick objects and argues that his trial counsel Douglas T. Bates, IV,
23 was ineffective because he failed to contest Mr. Amick’s competency. A defendant whose
24 competency is in doubt cannot waive his right to a competency hearing. Medina v. California,
25
26
27
28

1 505 U.S. 437, 449, 112 S.Ct. 2572, 120 L.Ed.2d 353 (1992). Mr. Amick's due process right to an
2
3 evidentiary hearing therefore remained intact despite defense counsel Douglas T. Bates, IV,
4
5 decision to not further contest competency. "State trial judge must conduct a competency
6
7 hearing, regardless of whether defense counsel requests one, whenever the evidence before the
8
9 judge raises a bonafide doubt about the defendant's competence to stand trial." Williams v.
10
11 Woodford, 384 F.3d 567, 603 (9th Cir., 2004). See also Odle v. Woodford, 238 F.3d 1084, 1087
12
13 (9th Cir., 2001); United States v. Denkins, 367 F.3d 537, 547 (6th Cir., 2004); Johnson v. Norton,
14
15 249 F.3d 20, 26 (1st Cir., 2001); Carter v. Johnson, 131 F.3d 452, 459 n.10 (5th Cir., 1997);
16
17 Silverstein v. Henderson, 706 F.2d 361, 369 (2nd Cir., 1983).

18 LACK OF COUNSEL AT A CRITICAL STAGE

19 The defendant Matthew Amick further objects and argues that the trial court violated his
20
21 right to counsel by finding him competent to stand trial in the absence of his attorney at
22
23 arraignment, bail setting or bond setting, and during questioning and during psychiatric and
24
25 psychological evaluations. "For the defendant, the consequences of an erroneous determination
26
27 of competence are dire." Cooper v. Oklahoma, 517 U.S. 348, 364, 116 S.Ct. 1373, 134 L.Ed.2d
28
498 (1996). A defendant is guaranteed the right to the assistance of counsel at every critical
stage of a criminal prosecution. United States v. Cronin, 466 U.S. 648, 658-59, 104 S.Ct. 2039,

1 80 L.Ed.2d 657 (1984). A competency hearing is a critical stage of a criminal proceeding. See,
2
3 e.g., Appel v. Horn, 250 F.3d 203, 215 (3d Cir., 2001); United States v. Collins, 430 F.3d 1260,
4 1264 (10th Cir., 2005); Sturgis v. Goldsmith, 796 F.2d 1103, 1109 (9th Cir., 1986), cert. denied,
5 508 U.S. 918, 113 S.Ct. 2362, 124 L.Ed.2d 269 (1993).
6

7
8 Harmless error analysis under Strickland v. Washington, which requires a showing of
9 actual prejudice is inapplicable to this circumstance. Strickland v. Washington, 466 U.S. 668,
10 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Structural defects in the trial mechanism, such as
11 the outright deprivation of counsel at “any critical stage of the proceedings” defy harmless error
12 analysis and require automatic reversal because they infect the entire trial process. Brecht v.
13 Abrahamson, 507 U.S. 619, 629-630, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993); Penson v. Ohio,
14 488 U.S. 75, 88, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988). The absence of Mr. Amick’s counsel
15 during arraignment, bail or bond setting and during psychiatric or psychological evaluations
16 requires automatic reversal of his conviction.
17
18
19
20
21

22 RIGHT TO TRIAL BY IMPARTIAL DECISION-MAKER

23 The defendant Matthew Amick objects and argues that he was deprived of his due process
24 right to a trial presided over by an impartial judge which “pervaded” throughout the entire trial
25 in violation of Tumey v. Ohio, 273 U.S. 510, 535, 47 S.Ct. 437, 71 L.Ed. 749 (March 7, 1927)
26
27
28

1 and Bracy v. Gramley, 520 U.S. 899, 904-905, 117 S.Ct. 1793, 138 L.Ed.2d 97 (June 9, 1997).

2
3 The Federal Due Process Clause of the Fourteenth Amendment and the Due Process Clause of
4 the Tennessee Constitution, article 1, section 35 guarantee a trial before an impartial judge.

5
6 “Experience teaches that the probability of actual bias on the part of the judge or decision maker

7
8 is too high to be constitutionally tolerable.” Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456,

9 43 L.Ed.2d 712 (April 16, 1975); Caperton v. AT Massey Coal Co. Inc., 556 U.S. 868, 888, 129

10
11 S.Ct. 2252, 173 L.Ed.2d 1208 (June 8, 2009); Marshall v. Jerrico, 446 U.S. 238, 242, 100 S.Ct.

12 1610, 64 L.Ed.2d 182 (April 28, 1980).

13
14 “Despite the strong interests that support the harmless error doctrine, the
15 Court in Chapman recognized that some constitutional errors require reversal without
16 regard to the evidence in a particular case. 386 U.S., at 23, n. 8, citing Payne v.
17 Arkansas, 356 U.S. 560 (1958) (introduction of coerced confession); Gideon v.
18 Wainwright, 372 U.S. 335 (1963) (complete denial of right to counsel); **Tumey v.**
19 **Ohio**, **273 U.S. 510 (1927) (adjudication by biased judge)**. This limitation
20 recognizes that some errors necessarily render a trial fundamentally unfair The State
21 of course must provide a trial before an impartial judge, Tumey v. Ohio, supra, with
22 counsel to help the accused defend against the State’s charge, Gideon v. Wainwright,
23 supra. Compare Holloway v. Arkansas, 435 U.S. 475, 488-490 (1978), with Cuyler
24 v. Sullivan, 446 U.S. 335, 348-350 (1980). Without these basic protections, a
25 criminal trial cannot reliably serve its function as a vehicle for determination of guilt
26 or innocence, see Powell v. Alabama, 287 U.S. 45 (1932), and no criminal
27 punishment may be regarded as fundamentally fair.” ROSE, WARDEN v. CLARK,
28 478 U.S. 570, 577-578 (July 2, 1986).

23 The defendant reminds Attorney Amanda J. Gentry, TSBA# 32498, that she is required to
24 follow through on leads, and tips provided by the defendant, his family and friends pursuant to

25
26 Hooper v. Garraghty, 845 F.2d 471, 474 (4th Cir. 1988); McCoy v. Wainwright, 804 F.2d 1196,

1 1198 (11th Cir. 1986); and Hawkman v. Parratt, 661 F.2d 1161, at 1168 (1981). The defendant
2
3 further reminds the Court and Attorney Amanda J. Gentry, TSBA#32498, that he has a right to
4
5 submit his own brief “pro se” even though he is currently being represented at the same time by
6
7 Attorney Amanda J. Gentry, TSBA#32498, pursuant to Anders v. California, 386 U.S. 738, 18
8
9 L.Ed.2d 493, 87 S.Ct. 1396 (1967); Jones v. Barnes, 463 U.S. 745, at 754 (July 5, 1983);
10
11 Pennsylvania v. Finley, 481 U.S. 551, at 554 (May 18, 1987); Penson v. Ohio, 488 U.S. 75, 88,
12
13 109 S.Ct. 346, 102 L.Ed.2d 300 (1988); McCoy v. Court of Appeals of Wisconsin, 486 U.S.
14
15 429, at 439 (June 6, 1988).

16
17 Finally the defendant reminds this Court that Strickland's two-part test for establishing
18
19 ineffective assistance of trial counsel applies to claims of ineffectiveness on appeal. Smith v.
20
21 South Carolina, 882 F.2d 895, 898 (4th Cir. 1989), cert. denied, 493 U.S. 1046 (1990). “A
22
23 defendant whose lawyer does not provide him with effective assistance on direct appeal and who
24
25 is prejudiced by the deprivation is thus entitled to a new appeal.” Mason v. Hanks, 97 F.3d 887,
26
27 892 (7th Cir. 1996).

28 29 CONCLUSION AND RELIEF REQUESTED

30
31 The defendant respectfully provides this affidavit in support of his previously filed
32
33 Amended Petition for Post Conviction Relief pursuant to Tennessee Code Title 40, Criminal
34
35 Procedure § 40-30-105; Tenn. R. Crim. Proc. 29; Tenn. R. Crim. Proc. 33, 34, 35, or 36; Tenn.

1 R. Crim. Proc. 37(b)(2); and further submits this Affidavit in support of said motion requesting a
2 new trial for the following Court Case Cause Numbers: 21-5100-CR; 19-5081-CR; 19-5144-CR;
3 and 17-5274-CR.
4

5
6 _____
7 Matthew Amick

8
9 Dated this ____ day of _____, A.D. 2025
10

11 I, Notary Public at Large, certify that before me Matthew Amick the undersigned Citizen
12 personally appeared and proved to me on the basis of satisfactory evidence to be the Citizen who
13 subscribed, sworn & affixed his full name to this . . . “AFFIDAVIT IN SUPPORT OF THE
14 AMENDED PETITION FOR POST CONVICTION RELIEF AND MOTION FOR NEW
15 TRIAL” . . . by his signature above, and acknowledge that the signing was done freely and
16 voluntarily for the purposes mentioned in this instrument this ____ day of May, A.D. 2025.
17

18 _____
19 Signature of Notary
20

21 Print name here: _____

22 NOTARY PUBLIC in and for the State of

23 Tennessee, residing at: _____

24 County of _____

25 My Commission Expires: _____
26
27
28