

This case is far from the ordinary, and petitioner has argued extensively that the “interest of justice” exceptions should apply. The record shows that this case is loaded with errors of every nature, be it structural, procedural, or Constitutional. When a petitioner presents proof, such as the proof that petitioner has, the state should not shrink from the possibility that an error has occurred. Rather our system of justice is strengthened by recognizing the need for, and imperative of, a safety valve in these rare instances where objective proof the convicted actually did not commit the offense becomes available through the exercise of due diligence.

The doctrine of plain error follows from the recognition that a rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with the rules of fundamental justice. *United States V. Olanc, 507, U.S. 725, 723, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993)*

Fed. R. of Crim. P. 52 (b) codifies the common-law plain error rule, similarly draws no distinction between factual errors and legal errors. It states; “a plain error that affects substantial rights may be considered even though it was not brought to the court’s attention,” all plain errors fall within the rules ambit. Rule 52 (a) Harmless errors- any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded. (b) Plain error- a plain error that affects substantial rights may be considered even though it was not brought to the court’s attention. 28 U.S.C. §2254 (d) demands an inquiry into whether a prisoners claim has been adjudicated on the merits in state court. In the case at hand there have been numerous errors, the cumulative effect of these errors has surely influenced the jury. Cumulative errors exist when the cumulative effect of the errors and indiscretions, none of which alone might have been enough to tip the scales, operates to the defendant’s prejudice by producing a biased jury.

CONCLUSION

While there may be no guarantee of a trial free from defects, the Constitution does guarantee a trial based on truthful facts. When the innocent can prove the state has stacked the deck, there must be some avenue of relief. Without such relief there is no Constitution or justice in our system.

Petitioner has demonstrated more than adequately that he has sustained an actual substantial disadvantage, which has infected his trial, and appeal processes with errors of structural, procedural, and Constitutional dimensions, and that the state was the source of this disadvantage. It is for these reasons that petitioner’s petition for post-conviction relief should be granted.