

No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

Darnell Rush — PETITIONER  
(Your Name)

vs.

Randee Rewerts — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, For The 6th Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Darnell Rush  
(Your Name)

10274 Boyer Rd.  
(Address)

Carson City, Mi, 48811  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## QUESTION(S) PRESENTED

I.

Is Defendant-Appellant Entitled To A New Trial Where The Trial Court Erred In Failing To Suppress His Statement ?

Trial Court Did Not Answer

Defendant-Appellant Answers: YES

II.

Is Defendant-Appellant Entitled To Dismissal Of The Conviction And Sentence For First Degree Home Invasion Where There Was Insufficient Evidence To Find For This offense ?

Trial Court Did Not Answer

Defendant-Appellant Answers: YES

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the Michigan Appeals court appears at Appendix D to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April, 30, 2018.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 06-20-2014. A copy of that decision appears at Appendix   C  .

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Under Mich. Const. art. 2 § 16 \_\_\_\_\_ § 26;

U.S. Const. Amend. I \_\_\_\_\_ p. 41;

U.S. Const. Amend. IV \_\_\_\_\_ p. 32, 33;

U.S. Const. Amend. V \_\_\_\_\_ pgs. 17, 18, 21, 33, 34, 37;

U.S. Const. Amend. VI \_\_\_\_\_ p. 38;

U.S. Const. Amend. ~~XIII~~ \_\_\_\_\_ pgs. 25, 32, 33, 37, 38;

M.C.L. 750. 110 a (2) \_\_\_\_\_ p. 28

M.C.R. 6. 433 \_\_\_\_\_ p. 41

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404 (B) \_\_\_\_\_ p. 36

Judicial Conduct Cannon 2, (a)(b)(c) \_\_\_\_\_ p. 25

## STATEMENT OF FACTS

On June 18, 2012, before the Honorable Vera Massey-Jones, Wayne County Circuit Court Judge, a jury trial was begun in the matter of **People of the State of Michigan v. Darnell Rush**, Wayne County Circuit Court No: 12-934.

At the same time, before a separate jury, the case of **People of the State of Michigan v. Darius Rush** was also heard, Wayne County Circuit Court No: 12-1081.

Appellant Rush was charged in the Information with Armed Robbery, MCL 750.529; Carjacking, MCL 750.529a; First Degree Home Invasion, MCL 750.110a(2); Conspiracy to Commit First Degree Home Invasion, MCL 750.110a(2); Receiving and Concealing Stolen Property between \$200-\$1,000, MCL 750.535.

He was additionally charged as a habitual offender, fourth offense, MCL 769.12.

It was alleged that on or about January 9, 2012, at 4325 Ashland, a residence in the City of Detroit, County of Wayne, State of Michigan, defendant did, while armed with a razorblade, put in fear Mr. Fulgiam, while committing the larceny of a wallet, money, and keys; did assault him, use force or violence in the taking of a motor vehicle, did enter without permission a dwelling while he was present, and did confederate and agree together with Desmond Robinson, Deandre Cannady, and other persons to commit first degree home invasion while armed with a razor blade, and did buy, receive, possess, conceal, or aid in the concealment of stolen jewelry the value of which was between \$200-\$1,000.

The people were represented by Mr. Daniel Williams, assistant county prosecutor; defendant-appellant by Mr. Eric Goze, Darius Rush by Mr. Brian Gagniuk.

Prior to trial, after hearing testimony and argument, the court determined Appellant's statement was admissible. (*Walker*<sup>1</sup> Hearing, 04/27/12, 66-67). The court also permitted defendant's prior conviction could be utilized if he chose to testify. (MH, 06/15/12, 3-8).

The following witnesses testified: Floyd Fulgiam, Deandre Cannady, John Shook, Detroit Police Sergeant Matthew Fulks, Detroit Police Detective Sergeant Cregg Hughes, Detroit Police Sergeant Ron Gibson, Detroit Police Officer Michael Reisin, Detroit Police Officer Beshawn Gains, Detroit Police Officer Brandon Knobelsdorf, and Defendant Darnell Rush.

The court addressed procedural problems. (I, 3-13).

After a jury was empanelled, preliminarily instructed (I, 13-303; II, 5-69, 77-98) and opening arguments made (prosecutor, II, 98-104, defendant, II, 104-110; both sides for Darius Rush, II, 110-120), the following testimony was taken:

Mr. Fulgiam (80 years old) was living at 4325 Ashland. Although he was married, he was home alone on January 9, 2012. Around 10:30am, he answered a knock on his front door. He looked out and saw someone he had seen a year earlier asking about buying his station wagon. He told them he wasn't selling the station wagon; another person appeared. The first person told him if he fixed it up he would pay \$3,000, so Mr. Fulgiam opened the door to get more information from the person: his name, address, and phone number. (II, 122-127).

The other person rushed him, pushing him back through the doorway and down on his living room couch. The person held a razorblade at his throat and he was told not to move. He thought there were four people in the house: the one pinning him down, another one going through his pockets, another one went upstairs and took a computer, and a fourth went into his bedroom. His wallet and his keys to another car were taken from his pocket. Some of his wife's jewelry was also taken.

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<sup>1</sup> *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

Eventually he was let up and told to go into his bedroom which he did. They left through the front door; he got his revolver and ran out after them and as they were jumping in their car, he shot at them. He was able to get his car back through On Star. He was unable to identify anyone in the courtroom. (II, 127-137).

He thought they had parked about a house down from his house. The police arrived the same day and he told them what happened, but now did not remember if he gave the police names and phone numbers, but did recognize his signature on the statement. Although he attended a lineup on January 14, 2012, he did not identify anyone. The person that forced his way into his house had a razorblade. He denied being kicked or punched in the head. He did not remember if he gave the police a description of the individuals. He admitted he had a problem seemed because his eyesight was not good. (II, 137-154).

Mr. Cannady was testifying in return for a plea agreement. He had pled to unarmed robbery, first degree home invasion, conspiracy to commit first degree home invasion, receiving and concealing stolen motor vehicle, and unlawfully driving away an automobile, with a sentence agreement of 5-20 years in prison and testimony. (II, 155-161).

On the day in question, defendant and Darius had stopped by his house. They were picked up by Mr. Robinson. They were driving around, smoking marijuana when Mr. Robinson talked about doing a 'B&E'. They went over to a house that Mr. Robinson knew.

Defendant had a razorblade, a small box cutter. Mr. Robinson and defendant got out after they pulled up and Mr. Robinson knocked on the door, while defendant held back. Mr. Robinson talked to Mr. Fulgiam through the front door. As the two walked away, Mr. Fulgiam came outside and called them back, and talked to them for a minute. He saw defendant force his way into the house, throwing a kick, and forcing Mr. Fulgiam inside. Mr. Robinson also went in and motioned for the other two to join him.



When Mr. Cannady got into the house, he saw Mr. Robinson going into Mr. Fulgiam's pockets and defendant was on top of him. Darius went to the back of the house. Mr. Robinson gave him some keys to Mr. Fulgiam's car and told him to leave. He drove to his child's mother's house, with the other three following in the other car.

While at the house, he saw some jewelry and a computer in the front seat of their car and the others said they were going to sell it at some store in Grosse Pointe. He did not go with them. He had parked the car he took in the backyard of an abandoned house on Beaconsfield. He had known Mr. Robinson for about 6-12 months, was friends with Darius and had met defendant, Darius's uncle, about a month before the incident. (II, 161-176).

He gave a statement to the police which included nicknames of both defendants. In a second statement, he named defendant.

His police statement indicated defendant had pushed Mr. Fulgiam and started punching him in his head and back. He did not see defendant take anything from Mr. Fulgiam, had met defendant only twice before. He agreed Detective Hughes took him from his holding cell at the precinct to identify defendant. He did not recall speaking to defendant.

He reviewed his agreement, agreed he wrote a letter to Mr. Fulgiam which indicated he went along because he was afraid. He went to the police station after he was convinced by his sister to go and he hoped he would not be charged. He was in the car with the others for 30-40 minutes, indicated there was not really a plan to rob the house, that it was more of a suggestion. He did not know what was going to happen even after arriving at the house. He described Mr. Robinson. He agreed defendant had some facial hair. (II, 176-202)

The discussion started as soon as they were picked up, but there was also some talk about Mr. Robinson buying a car.

Before defendant's jury only, he testified he was on his way to district court with defendant when defendant indicated he was mad because Mr. Cannady made a statement, and told him if they got sent to the same 'joint', he (defendant) would beat Mr. Cannady if he put defendant's name in. (II, 206-208).

In the letter, he indicated he was sorry, that what he did was wrong and felt like he was forced into it because he was scared. He had gone to the police on his own because he wanted to help. After he was there for a couple of days, a Sergeant wanted him to identify defendant. He was in the room with defendant for only a few seconds, but could not recall what he said to defendant. Nobody told him what to say. (II, 202-216).

On January 9, 2012, around noon, Mr. Shook was working at the Gold Shop Coins and Stamps, a pawn shop in Grosse Pointe. Darius, whom he knew, came into the store to sell scrap gold (rings, chains, and a bracelet). Although he came in with others he did not recognize anyone else. He identified a receipt from the transaction. (III, 5-10).

Before defendant's jury only, Sergeant Fulks testified he conducted a 45 minute interview with defendant on January 14, 2012, at approximate 2:45pm. He was present when Mr. Cannady was brought into the room and told defendant tell the truth (II, 15), and then taken away. Defendant was then advised of his rights<sup>2</sup> and was interviewed, lasting approximately 45 minutes. Defendant's statement was read into the record. (II, 20-23).

He agreed he had an additional conversation with defendant which was not recorded before defendant was advised of his rights. He agreed he had information as to what happened before he interviewed defendant. The interview was neither audio nor videotaped. He agreed he was the one who wrote down the question/answers and did not write down anything before advising defendant of his rights because he knew it would not be admitted in court. He did not

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<sup>2</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

know where defendant was taken after the interview. He did not question defendant regarding any medication he may have been taking. (III, 11-41).

Also before Defendant's jury only, Det.-Sgt. Hughes, Officer-in-Charge, testified he interviewed Mr. Fulgiam, was present when OnStar located Mr. Fulgiam's vehicle, and was present in recovering it. He had brought Mr. Cannady into the room with defendant.

His report indicated defendant had initially denied any involvement which was the reason he brought Mr. Cannady into the room. He also indicated the technique worked with Darius Rush as well.

He agreed he gave Sgt. Fulks information prior to defendant's interview, that defendant was a suspect. He also wrote down Mr. Fulgiam's interview, requested and obtained a search warrant to a location where he believed some of the items may have been taken. He had information from Mr. Fulgiam which included two telephone numbers and two names, including Mr. Robinson, as well as a description of the person with the razor blade. (III, 42-66).

Testimony was taken before defendant Darius Rush's jury only. (III, 67-84). Waiver of witnesses was agreed upon.

Sgt. Gibson was sent by Det.-Sgt. Hughes to the Coin Shop to obtain the surveillance video regarding the transaction. He developed several still photographs from the video on January 14, 2012, which he identified for the jury. (III, 87-91).

Off. Reisin arrested Mr. Robinson, found in an abandoned house, under a table. His report indicated Mr. Robinson was 19 years old, 5'7", 140 pounds, clean shaven. (III, 92-95).

Off. Gains arrested defendant on January 14, 2012, at approximately noon, at a house in Detroit. Defendant offered no resistance. (III, 95-98).

Off. Knobelsdorf participated in the arrest of Darius Rush on January 14, 2012, locating him with the assistance of defendant. (III, 98-101).

Prosecution rested. (III, 102). The court granted a motion reducing the Receiving and Concealing Stolen Property charge (Count V) to less than \$200, MCL 750.535(5). (III, 103-108).

Defendant testified on the day in question he was at home with his sister and common-law wife. His wife's son, Christopher Alexander, picked him up so he could look at a car he was thinking about buying. He generally woke up around 10:30am because he had five younger nieces and nephews that stayed with him.

After Christopher showed up, they went to look at the car on Beaconsfield Street, arriving approximately 11:40am. He did not buy it because the car was riddled with bullet holes. Darius, a person he knew only as Desmond (later learning it was Desmond Robinson) who he had met once before when he came to his house with his nephew Darius, and several others were also present. He never saw Mr. Cannady. (III, 114-121).

He recalled the day he was arrested. He was currently on medication, taking Cellex-C (sic)<sup>3</sup> in the morning, and Remeron and Sinequan at night. When he did not take Celexa, he would get depressed and he would 'drift'. He had not taken it the day he was arrested, and the police never gave him an opportunity to take it even though he had requested it several times. He eventually he was taken to the hospital where he was given the medication.

He admitted being at the Gold and Coin Pawn Shop with Christopher and Darius, but he did not sell anything. After he was arrested, he learned what he was charged with, was placed in a line-up and the officers told him he was not identified.

Even though Mr. Cannady told him to tell the truth, he did not know what he was talking about and had never seen him before. There were three officers in the interview room with him.

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<sup>3</sup> Probably Celexa, an anti-depressant. Cellex-C is a skin care company/product.

During his interview, he denied committing the offense. The statement that was read into the record was not the same one he had signed. The only thing he did sign was his constitutional rights form. He thought he was taken from his cell to the interview room numerous times over several hours. Although he signed some other documents, he did not read them over before signing. He took his medication at night because he had nightmares. (III, 121-137).

His wife and Christopher were not present at trial. He agreed he answered the officer's questions, denied being in the Ashland Street area because he had gotten shot 16 times over there. He admitted being at the pawnshop where Darius sold silver and gold items. He agreed he assisted the officers in locating Darius, agreed he told the officer that he had talked to Darius, who told him about the robbery. He denied any involvement in it.

He denied Mr. Cannady knew him, or that he threatened him. While both were being transported to court, he questioned Mr. Cannady about Darius' involvement in the incident. He admitted having prior convictions for theft/dishonesty. While he agreed he signed the bottom of the papers containing the statements, he did not put his initials on the form. (III, 137-159).

Defense rested. (III, 160). Jury instructions were reviewed. (III, 161-172).

After closing arguments (prosecutor, III, 173-191, 202-210; defense, III, 191-202), the jury was instructed. (IV, 6-33).

Defendant was found guilty of the charges as amended. (IV, 48-49).

On July 11, 2012, before Judge Jones, the presentence report and sentencing guidelines were reviewed and corrected. (ST, 4-29).

Defendant was sentenced to concurrent terms of incarceration of: 360-720 months (Armed Robbery), 99-240 months (Conspiracy to Commit First Degree Home Invasion), 360-720 months (Carjacking), time served (Receiving & Concealing Stolen Property less than \$200, and a consecutive sentence of 99-240 months (First Degree Home Invasion).

From these convictions, defendant appeals as of right.

## REASONS FOR GRANTING THE PETITION

For reasons: (1) That I am being held in violation of rights, privileges, and immunities of the Constitution and Laws of the United States, and Treaty Law of the United States;

(2) State Court Presumption of the facts is incorrect. And conviction was objectively unreasonable in light of evidence presented in the state court proceedings. And this conviction should be overturned. *Miller-Ell V. Cockell*, 537 U.S. 322, 340 (2003); 2011; quoting *Miller-Ell V. Cockell*, 537 U.S. 322, 340 (2003);

(3) These errors were Prejudicial, and seriously affected the fairness, integrity, or public reputation of the judicial proceedings independent of petitioner's innocence. [Schutte, Supra at 720];


(4) Do to contrary butory negligence the evidence did not support the verdict. This case should be reopened and argued before a jury. The evidence was not legally sufficient to support the verdict under the constitution standard of *Jackson v. Virginia*, 443 U.S. 387 (1979);

(5) That there has been such a denial or infringement of the constitutional rights of the petitioner as to render the judgment vulnerable to collateral attack, the court should vacate and set aside the judgment, and should discharge the petitioner, or grant a new trial.

## Reasons for Granting the Petition

(6) Because of trial court delaying timely request for transcripts / documents violated M.C.R. 6.433. Resulted in petitioners filings being, untimely, defective, labeled abandoned issues / barred. (Heavily disadvantaged the petitioner without having an effective opportunity to respond;

And lastly (7), Substantial issues (s) among other issues worthy of consideration... For these reasons, Petitioner, Darnell Rush, asks that this Court grant this request for a Writ of Certiorari, for the claims presented in this petition.

 Respectfully Submitted  
by Darnell Rush

Dated: July 23, 2018

10274 Boyer Rd.  
Carson City, MI 48811



### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darnell Rush

Date: June 30, 2018