No.

IN THE

SUPREME COURT OF THE UNITED STATES

SHERMAN L. WASHINGTON. — PETITIONER

vs.

CARMEN PALMER. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

SHERMAN L. WASHINGTON # 207519

In Pro Se

Gus Harrison Correctional Facility

2727 E. Beecher Rd.

Adrian, MI. 49221

(City, State, Zip Code)

QUESTION(S) PRESENTED

I. WHETHER PETITIONER WAS DENIED A FAIR TRIAL BY THE ADMISSION OF IRRELEVANT OTHER BAD ACTS TESTIMONY; THE EVIDENCE WAS NOT ADMISSIBLE UNDER EITHER MRE 404B OR THE "RES GESTAE" EXCEPTION AND TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT. US CONST AM VI, XIV.

Court of Appeals answered "No"
Petitioner answered "Yes"

II. WHETHER PETITIONER WAS DENIED A FAIR TRIAL BY THE INTRODCTION OF IRRELEVANT EVIDENCE THAT WAS UNCONNECTED TO THE CRIME AND COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT. US CONST AM VI, XIV.

Court of Appeals answered "No"
Petitioner answered "Yes"

III. WHETHER PETITIONER WAS DENIED A FAIR TRIAL BY THE INTRODCTION OF IRRELEVANT AND HIGHLY PREJUDICIAL EVIDENCE IMPLYING THAT HE HAD A CRIMINAL PAST AND TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT. US CONST AM VI, XIV.

Court of Appeals answered "No"
Petitioner answered "Yes"

LIST OF PARTIES

[X] 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

Federal Courts.

The opinion of the United States Court of Appeals for The Sixth Circuit appears at Appendix [A] to the petition and is Unpublished

The opinion of the United States DistrictCourt appears at Appendix [B] to the petition and is Unpublished

State Courts

The opinion of The Michigan Supreme Court appears at Appendix [C] to the petition and is Unpublished.

The opinion of The Michigan Court of Appeals appears at Appendix [D] to the petition and is Unpublished.

JURISDICTION

Petitioner, Sherman L. Washington is filing this Petition for Writ of Certiorari pursuant to 28 U.S.C.A. § 1254(1) and 28 U.S.C.A. § 1257(a), as a state prisoner convicted in the 30th Judicial Circuit Court for the County 0f Ingham, in the State of Michigan, where his conviction for (1) count of First Degree Home Invasion violates his constitutional rights. And seek relief from an unconstitutional detention. As such, this Petition for Writ of Certiorari is being filed within the 90-day period of the final decision from the United States Court of Appeals for the Sixth Circuit denying, a Petition for Writ of Habeas Corpus. And a Certificate of Appealability on. May 8, 2018.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due process under the U.S. Const. 14th Amendment, and Const. 1963, art 1, sec. 17, 20. Requires that a defendant have the effective assistance of counsel during trial and all critical stages of the case. The determination of whether there is reasonable provocation is a question of fact for the fact-finder and matter of right to trial by jury. U.S. Const. V, VI, and XIV;

STATEMENT OF THE CASE

Petitioner, Sherman L. Washington was charged with one count of First Degree Home Invasion in violation of MCL 750.110a (2), for entering the home of Debra Cook and allegedly drinking her vodka. Petitioner wanted to represent himself. The trial court granted this request and assigned stand-by counsel. At the next pretrial hearing, Petitioner told the court that he had filed two motions and the judge said he did not receive them. Petitioner also objected to his shackles. Petitioner represented himself at the voir dire and chose a jury. The jury was sworn. The second day of trial, Petitioner was still representing himself. He began to give his opening statement, and the prosecutor objected to him saying that he could not afford a lawyer. The judge excused the jury and told stand-by counsel to go over Petitioner's opening statement before Petitioner was allowed to continue. The trial court instructed the jury that the comment by Petitioner was a ploy to get sympathy and told them to disregard the remark. Id. at 35. Petitioner continued his opening statement without interruption until he mentioned the penalty for home invasion was 20 years. The trial court immediately declared a mistrial and ordered stand-by counsel to represent Petitioner, and telling Petitioner that he was not allowed to represent himself.

The trial started over the next day and Petitioner stated that he was not opposed to counsel representing him "at this time." A new jury had to be selected. Debra Cook testified that she lived at 217 N. Hayford in Lansing MI. On May 7, 2011 at about 1:15 am, while she was asleep, she heard someone in her house. She was there alone because her daughters were away at college. She saw a man (identified as Petitioner) in her daughter's bedroom going through the bottom drawer of the dresser. He was holding a bottle of vodka. Petitioner asked, "Is Chelsea here?" Ms. Cook said "no" and told Petitioner to get out. Ms. Cook claimed that Petitioner had her sunglasses (which had been in her car last she saw them) and she demanded that Petitioner give them to her, which he did immediately. Ms. Cook admitted that her daughter had a friend named Chelsea in high school, but that was five years ago. She thought she had locked her doors that night. She later came up with the story that she noticed some house keys were no longer in her car and that she found them later in her daughter's room. She did not tell this to the police either. Ms. Cook testified that the vodka was cherry flavored and it was half full. This was not in the police report either. There was no damage to her door. Petitioner never threatened her, he did not run away, he gave her, her glasses back, and he asked for Chelsea.

Police Officer Nathan Osborne received a call about an auto larceny and he noticed that the description matched the person involved in the home invasion. Petitioner was located eight blocks from Vine St. Officer Lindeman told Petitioner to turn and put his hands up, but Petitioner was not responsive. He was cuffed. Officer Osborne described him as highly intoxicated. Petitioner identified himself as Sherwin Williams. The officer testified that it is not unusual to be given a false name. Petitioner was wearing a white sweatshirt, gray sweatpants, and a red shirt; not a good choice of outfit for doing B&Es at night. He had a back pack. Petitioner did not attempt to flee. He was disoriented. Officer Corey Campbell responded to the home invasion. He testified that the back door was slightly ajar. The homeowner was frightened. The officer was allowed to relate what Ms. Cook told him (with no objection). She described the perpetrator as wearing beige pants, a red shirt, and a cream sweatshirt, 5' 4" and 140 pounds. A dog attempted to track the man, but was unable. Ms. Cook did not indicate that she saw Petitioner in possession of beer or vodka. She did not say where the sunglasses had been. Petitioner gave them back. There was no damage to gain entry. The officer thought it was a crime of opportunity. He never followed up to ask Ms. Cook's daughter if she knew Chelsea. Officer Jacki Lineman received a call regarding a suspect and proceeded to Vine St. near Ferguson at 2:45 a.m. She saw Petitioner and told him to put his hands behind his back three times, but Petitioner did nothing. She and Officer Osborne took him to the ground and cuffed him. He apologized. He was incoherent and intoxicated and said his name was Sherwin Lee Williams. He reported his D.O.B. as Oct 7, 1986, stating that he was 25 years old. The officer ran the information and there was no record of such an individual. She found a paper in his backpack with the name Sherman Washington and she looked in the database of perpetrators and victims. She obtained a D.O.B. and a picture of Petitioner on her vehicle computer. Petitioner denied that it was him. A Photo of Petitioner in his jail cell and an intake photo were admitted and exhibited to the jury. Petitioner was located three to six blocks from the complainant's house. He had no alcohol or any other property on his person. Petitioner was not named as a suspect in the home invasion; he was not concealing his identification because of that. One of Petitioner's addresses was a homeless shelter. Petitioner requested an instruction on entry without permission (unlawful entry) and the request was denied. The trial court left it "in the hands of the jury." Petitioner himself requested and instruction on third-degree home invasion. The trial court denied his request because his attorney had not asked for it, Petitioner had his chance, and the judge threatened to hold Petitioner in contempt. During closing argument, the prosecutor mentioned the photo from the LEIN obtained

by the officer. Petitioner was found guilty of first-degree home invasion. The guidelines recommended a minimum sentence of 78 to 260 month. The probation department recommended a minimum sentence of eight years, the prosecutor recommended 15 years, and the trial judge decided to sentence Petitioner to a 20-year minimum sentence, stating that he was afraid of Petitioner and that Petitioner was not capable of being rehabilitated.

Petitioner now files with this Honorable Court his petition for Writ of Certiorari.

ISSUE 1

PETITIONER WAS DENIED A FAIR TRIAL BY THE ADMISSION OF IRRELEVANT OTHER BAD ACTS TESTIMONY; THE EVIDENCE WAS NOT ADMISSIBLE UNDER EITHER MRE 404B OR THE "RES GESTAE" EXCEPTION AND TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT. US CONST AM VI, XIV.

Discussion

Criminal defendants possess a due process right to a fair trial that should not be denied by admission of improper evidence. US Const, Am V, XIV; Const 1963, art 1, sec 20. The evidence was not offered under the "similar acts" rule, nor was it admissible as such. It is widely acknowledged that evidence that a defendant has committed other bad acts has a devastating effect on the jury's deliberations. As Professor Imwinkelried explains:

> Experienced trial attorneys know that the judge's ruling on the admission of Uncharged misconduct can be the turning point in a trial. Uncharged misconduct Evidence "will usually sink the defense without (a) trace." Some veteran defense Attorneys shape their entire trial strategy to avoid the admission of uncharged Misconduct.
>
> The available research data confirms this belief... [T]he admission of a defendant's Uncharged misconduct significantly increases the likelihood of a jury finding of Liability or guilt... [A]s a practical matter, the presumption of innocence operates Only for defendants without prior criminal records. Evidence of uncharged Misconduct strips the defendant of the presumption of innocence. The uncharged Misconduct stigmatizes the defendant and predisposes the jury to find him liable Of guilty. Uncharged Misconduct Evidence (rev 10/06) sec 1:2 (citations omitted).

Two concerns are often implicated in permitting such evidence: (1) that the jury may convict a "bad person" who deserves to be punished not because he is guilty of the crime charged but because of his prior or subsequent misdeeds; and (2) that the jury will infer that because the accused committed other crimes, he probably committed the crime charged. *United States v Phillips,* 599 F2d 134, 136 (CA 6, 1979). The guilt or innocence of an accused must be established by evidence relevant to the particular offense being tried, not by showing that the

defendant has engaged in other acts of wrong doing. 1A J. Wigmore, Wigmore on Evidence, 58.2, 1212-1213 (3d ed Tiller rev 1983).

In *People v Vander Vliet,* 444 Mich 52 (1993), which was based on the ruling of the United States Supreme Court in *Huddleston v United States,* 485 US 681 (1988), the Michigan Supreme Court set forth a framework for determining whether evidence of a defendant's other bad acts can be admitted under MRE 404(b). *Vander Vliet* held that such evidence is admissible only if; (1) it is offered for a proper purpose; (2) it is relevant under MRE 402; and (3) its probative value is not substantially outweighed by unfair prejudice.

Michigan Rule of Evidence 404(b) defines the "proper purpose" referenced in *Vander Vliet:*

"(b) Other crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity Therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system, in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, contemporaneous with, or prior or subsequent to the conduct at issue in the case. "

At best, the other acts evidence offered here bore only marginal relevance to the counts charged in the information and demonstrated nothing more than the mere performance of other marginally similar acts, which is expressly what *Sabin* prohibits Id at 64-65. General similarity between the charged and uncharged acts does not, by itself, establish a plan, scheme, or system used to commit the acts:

But where the conduct offered consists merely in the doing of other similar Acts, it is obvious that something more is required than that mere similarity, Which suffices for evidencing intent...? The object here is not merely to Negative an innocent intent at the time of the act charged, but to prove a Preexisting design, system, plan, or scheme, directed forwards to the doing Of that act. In the former case (of intent) the attempt is merely to negative The innocent state of mind at the time of the act charged; in the present case The effort is to establish a definite prior design or system which included the Doing of the act charged as part of its consummation. In the former case, the

Result is to give a complexion to a conceded act, and ends with that; in the Present case, the result is to show (by probability) a precedent design which In its turn is to evidence (by probability) the doing of the act designed.

The added element, then, must be, not merely a similarity in the results, but Such a concurrence of common features that the various acts are naturally to Be explained as caused by a general plan of which they are the individual Manifestations." *Sabin* at 64 (citing 2 Wigmore, Evidence (Chadbourn rev), sec 304, p 249).

There is no individual manifestation in the other acts that is part of a common plan with the charged acts, as required by *Sabin.* "If the prosecutor fails to weave a logical thread linking the prior act to the ultimate inference, the evidence must be excluded, notwithstanding its logical relevance to character." *People v Crawford,* 458 Mich 376, 390 (1998). The "thefts and larcenies" were only relevant to the prohibited purposes of propensity and character and the evidence was therefore inadmissible under MRE 404b.

Again, no justification was offered for the testimony, but assuming it was offered, in the alternative, as part of the "res gestae," Petitioner's actions an hour and a half after the alleged home invasion, a half-mile away, were not inextricably linked to the home invasion and were relevant, if at all, only to the arrest.

Res gestae are the circumstances, facts and declarations that grow out of the main fact, are contemporaneous with it, and serve to illustrate its character. *People v Kayne,* 268 Mich 186, 191 (1934). The res gestae exception applies where evidence of a defendant's other acts is offered to explain circumstances leading to the charged offense. Without direct evidence linking Petitioner to the prior crime, it is error to allow speculation that the two crimes might be related. *People v Bowers,* 136 Mich App 284 (1984). The other crime evidence was not contemporaneous with the home invasion, and it did not explain the circumstances leading to the charged offense. In the analogous situation of a murder following the predicate felony, the courts have required continuity, which does not exist if the Petitioner has reached a place of "temporary safety." In order to determine whether a particular murder occurred within the res gestae of the predicate felony, "[c]ourts have usually required that the killing and the underlying felony be "closely

connected in point of time, place and causal relation." *People v Gillis,* 474 Mich 105, 126-27 (2006). Courts require that there have been "no break in the chain of events," as to which a most important consideration is whether the fleeing felon has reached a "place of temporary safety." Id at 130. In the instant case, the home invasion and the "auto thefts" were not closely connected as to time, place, or causal relation. The two events occurred nearly two hours and a half-mile apart and had no causal connection. In those cases where evidence of other crimes has been admitted as part of the res gestae, the courts have found that the evidence was relevant to the charged offense. For example, in *United States v Frederick,* 406 F3d 754 (CA 6, 2005), testimony from someone who claimed to have worked for the defendant in the defendant's drug distribution operation two years previously was admissible as part of the res gestae or background because it dealt with events that were inextricably related to the government's theory of the case. The evidence of the "auto thefts" in the instant case was not relevant in any way to whether Petitioner entered Debra Cook's house an hour and half earlier with the intent to commit larceny. MRE 402 provides that evidence which is not relevant is not admissible. MRE 403 provides for the exclusion of evidence whose probative value is outweighed by its prejudicial impact. To be admissible, evidence must logically tend to prove some fact which is significant to determining the ultimate question. *People v Lewis,* 264 Mich 83 (1933). There are many reasons why the introduction of other acts evidence under the "res gestae" or "inextricably intertwined" exception to the prohibition against the admission of character evidence should not be allowed. The Third Circuit in *United States v Green,* 320 F3d 452 (CA 3, 2003), observed that the test to determine when other-acts evidence is inextricably intertwined "creates confusion because, quite simply, no one knows what it means." The Green Court found the standard to be "vague, overbroad, and prone to abuse." The DC Circuit in *United States v Bowie,* 232 F3d 923 (CA DC, 2000) expressed concern that the res gestae exception threatens to undermine Rule 404(b). The prosecutor's desire to present the "complete story" should not be allowed to outweigh the defendant's constitutional right to a fair trial. "The fact that omitting some evidence would render a story slightly less complete cannot justify circumventing Rule 404(b) altogether." The Bowie Court held that "there is no general 'complete the story'... exception to Rule 404(b)." Id. at 248. The Seventh Circuit called the doctrine one that has outlived its usefulness and held that it is unavailable when determining a theory of admissibility. *United States v Boone,* 628 F3d 927 (CA 7, 2010). See Leibman, Alain, "The 'Inextricably Intertwined' Doctrine: No Longer a Reliable Prosecutorial Standby?" 89 CrL 99 (2011). The New Jersey Supreme Court recently ruled that

the doctrine of res gestae no longer has validity in light of the formal Rules of Evidence and stated that it will no longer allow judges and prosecutors to invoke the doctrine as a basis for admitting evidence in criminal cases. *State v Rose,* NJ (#A-111-09, 6-8-11). The evidence regarding the "auto Thefts" was inadmissible as a "similar act" under MRE 404b, it was inadmissible under the discredited "res gestae" exception, and it was far more prejudicial than probative. Its admission denied Petitioner a fair trial and his conviction should be reversed. In the alternative, trial counsel was ineffective in failing to object. US Const, Am VI, XIV; Const 1963, art 1, sec 20; *Strickland v Washington,* 466 US 668, 104 S Ct 2052 (1984). *People v Pickens*, 446 Mich 298, 302-03 (1994) (adopting the federal Strickland standard). To prevail on an ineffective assistance of counsel claim, the defendant must establish that counsel's performance fell below an objective standard of reasonableness and the deficiency prejudiced the defense. *Strickland v Washington,* supra at 687-88. An action is not objectively reasonable unless it is considered a sound trial strategy. *Strickland,* supra at 687-88. There was no sound strategic reason in this case not to object to the admission of this evidence. See *Byrd v Trombley,* unpublished opinion (#08-2319, Nov 5, 2009), where the Sixth Circuit found counsel ineffective in a Michigan case for failing to object to the introduction of the petitioner's prior conviction. The prejudice in the instant case was the real possibility that Petitioner was improperly convicted on the basis of evidence that was not connected to Petitioner. Admission of the evidence rendered Petitioner's trial fundamentally unfair. *Clemmons v Sowders,* 34 F3d 352 (CA 6, 1994).

ISSUE II

PETITIONER WAS DENIED A FAIR TRIAL BY THE INTRODUCTION OF IRRELEVANT EVIDENCE THAT WAS UNCONNECTED TO THE CRIME AND COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT. US CONST AM VI, XIV.

Discussion

Criminal defendants possess a due process right to a fair trial that should not be denied by admission of improper evidence. US Const, Am V, XIV; Const 1963, art 1, sec 20. Mich Rule of Evidence 402 provides that evidence which is not relevant is not admissible. MRE 403 provides for the exclusion of evidence whose probative value is outweighed by its prejudicial impact. To be admissible, evidence must logically tend to prove some fact which is significant to determining the ultimate question. *People v Lewis,* 264 Mich 83 (1933). "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401; People *v Mills,* 450 Mich 61, 66-67, (1995); *Waknin v Chamberlain,* 467 Mich 329, 333-34 (2002). Further, even relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury..." MRE 403. According to the Supreme Court, "[w]hat is meant here is an undue tendency to move the tribunal to decide on an improper basis, commonly, though not always, an emotional one." *Waknin v Chamberlain,* supra at 334 (quoting *People v Vasher,* 449 Mich 494, 501, 537 (1995). The Supreme Court has explained, "[e]vidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *People v Crawford,* 458 Mich 376, 398 (1998), quoted in *Waknin v Chamberlain,* supra at 334 n 3. The Courts have expressed accord with the view that a sufficient nexus must be established between the accused, the crime charged and an object before the object is admitted as real evidence. Cases applying this rule almost invariably involve physical

evidence taken from the accused for use against him at trial. See *Gass v United States,* 416 F2d 767, 770 n 8 (CA DC, 1969). See also 7 Wigmore Evidence, 2129; *People v O'Brien,* 113 Mich App 183, 204 (1982); *People v Philip Drake,* 142 Mich App. 357 (1985). When there are gaps in the logical connection between the evidence and the crime, the evidence should be excluded. Here the beer bottles were not relevant because they were not sufficiently connected to the crime. Ms. Cook found the bottles in her yard months after the incident. The police searched the yard and did not see any beer bottles. Petitioner's fingerprints were not on any of the bottles and he did not have any beer bottles when he was stopped by police. The beer bottles were not connected to Petitioner in any other way. Ms. Cook merely assumed, with no basis in fact, that Petitioner must have put them there months earlier. Obviously, the admission of the irrelevant evidence was highly prejudicial. The jury could have based Petitioner's conviction solely on the theft of the beer bottles. Petitioner is entitled to a new trial. Alternatively, Petitioner is entitled to a new trial under the standard for ineffective assistance of counsel. Trial counsel rendered ineffective assistance of counsel by failing to object to the admission of this evidence. US Const, Am VI, XIV; Const 1963, art 1, sec 20; *Strickland v Washington,* 466 US 668, 104 S Ct 2052 (1984). The Sixth Circuit found counsel ineffective in a Michigan case for failing to object to the introduction of the petitioner's prior conviction. The prejudice in the instant case was the real possibility that Petitioner was improperly convicted on the basis of evidence that was not connected to Petitioner. Admission of the evidence rendered Petitioner's trial fundamentally unfair. *Clemmons v Sowders,* 34 F3d 352 (CA 6, 1994).

ISSUE III

PETITIONER WAS DENIED A FAIR TRIAL BY THE INTRODUCTION OF IRRELEVANT AND HIGHLY PREJUDICIAL EVIDENCE IMPLYING THAT HE HAD A CRIMINAL PAST AND TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT. US CONST AM VI, XIV.

Discussion

Criminal defendants possess a due process right to a fair trial. US Const, Ams V, VI, XIV; Mich Const 1963, art 1, "17, 20. Improper evidentiary rulings may deny the accused's right to a fair trial. *Walker* v *Engle,* 703 F2d 959, 962-63 (CA 6, 1983). Evidence of collateral crime unconnected and unrelated with the offense charged is inadmissible. Such evidence is irrelevant and prejudicial since it does not tend to establish the commission by the accused of the offense charged and its tendency to prejudice the trier of fact outweighs its probative value. *Bruton v United States,* 391 US 123, 88 S Ct 1620 (1968); *United States v Wells,* 431 F2d 432 (CA 6, 1970), Cert Denied 400 US 967.

Evidence of the fact that Petitioner was known to the police and used an alias clearly implied that he had been in trouble with the police on previous occasions. This Inflammatory evidence was not relevant to the charges and should not have been admitted. Evidence that Petitioner was known to the police had no tendency to make it more probable that he committed the charged offenses. Petitioner's use of Sherwin Williams was not relevant because at the time he gave that name, he did not know he was accused of having broken into Ms. Cook's house. This evidence served no purpose other than the forbidden one to demonstrate Petitioner's propensity to commit bad acts. Moreover; a finding of relevancy will not alone determine the question of admissibility. Relevant evidence may not be admitted if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury" MRE 403. The probative value of evidence will be substantially outweighed by the danger of "unfair prejudice" when the evidence threatens the fundamental goals of MRE

403 – namely, accuracy and fairness. MRE 404(b) (which does not apply in the instant case) - is an exception to the general rule that evidence of a defendant's other crimes or bad acts is inadmissible to prove the defendant's bad character. Such evidence is excluded because of the perceived potential for the defendant's character (as a "bad man") to divert the trier of fact from an objective appraisal of the defendant's claimed conduct (the charged offense). *People v Demartzex,* 390 Mich 410 (1973). The guilt or innocence of the accused must be established by evidence relevant to the particular offense being tried, not by showing that the Petitioner has engaged in other acts of wrong doing. 1 A J. Wigmore, Wigmore on Evidence, sec 58.2 at 1212-13 (3d ed Tiller rev 1983). The inflammatory innuendo that Petitioner was known to the police and, impliedly, had committed other offenses was clearly irrelevant to the charges against him, and the prejudice that emanated from this evidence far outweighed any probative value. Likewise, the extensive use of the fact that Petitioner gave a false name to police was more prejudicial than probative. The introduction of an alias at trial is strongly disapproved. *Petrilli v United States,* 129 F2d 101, 104 (CA 8, 1942); *United States v Wilkerson,* 456 F2d 57, 59 (CA 6 1972). Petitioner's use of Sherwin Williams was not relevant because at the time he gave that name, he did not know he was accused of having broken into Ms. Cook's house. He was intoxicated, it is not unusual for someone to give a false name to police, and the evidence merely created the inference that Petitioner had been in trouble before. Evidence that Petitioner lived in a homeless shelter was also irrelevant and prejudicial. Testimony concerning Petitioner's poverty and unemployment is neither legally nor logically relevant to the charge and is patently prejudicial. *People v Johnson,* 393 Mich 488 (1975). Even if the Detective's testimony concerning the information from the list of perpetrators and victims could be considered unresponsive, that does not excuse the error. Police officers are under a greater obligation to refrain from making statements which could prejudice a defendant. Such testimony, even if it is

nonresponsive, may require reversal. In the alternative, defense counsel's failure to object denied Petitioner the effective assistance of counsel. Counsel's failure in this regard denied Petitioner his right to effective assistance of counsel. US Const, Ams VI, XIV; *Strickland v Washington,* 466 US 668 (1984). To prevail on an ineffective assistance of counsel claim, the defendant must establish that counsel's performance fell below an objective standard of reasonableness and the deficiency prejudiced the defense. Id. at 687-88. To establish prejudice, the "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 694. A defendant need not show that counsel's error more likely than not affected the outcome. The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome. A reasonable probability is simply a probability sufficient to undermine confidence in the outcome. Knowledge of the law applicable to the defendant's case is of course essential to a rending of effective assistance. *People v Pickens,* 446 Mich 298, (1994); *Mason v Hanks,* 97 F3d 887 (CA 7, 1996). The objective-to error was not harmless as the evidence was not overwhelming. Although, if Ms. Cook is to be believed, it was Petitioner who was in her house, the evidence that he entered with the intent to commit larceny is not clear at all. An equally reasonable inference is that he believed he was entering the house of a friend and that he would have been welcome to drink some of her liquor. By informing the jury that he had been in trouble with the law before, the prosecution was allowed to introduce the forbidden propensity assumption. This evidence likely tipped the scales against Petitioner, and reversal is required.

REASONS FOR GRANTING THIS PETITION

Petitioner is entitled to post-conviction relief where he was deprived of his right to due process and a fair trial under the XIV Amendment to the United States Constitution and also under Mich Const 1963 art 1 sec 17. Petitioner is also entitled to relief where he was deprived of his V and XIV Amendment rights to the United States Constitution and under Mich Const 1963 art 1 sec 20 where he was denied the effective assistance of counsel where counsel's failure to make proper objections, and for the reasons stated in Issues I, II and III, A new trial is required.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

S. Lance Washington

Sherman L. Washington # 207519