No.

IN THE

SUPREME COURT OF THE UNITED STATES

CHESTER LARVELL STARNES, JR. — PETITIONER

vs.

SHANE JACKSON, WARDEN — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH

PETITION FOR WRIT OF CERTIORARI

Chester Larvell Starnes, Jr., *In Pro Se*
LRF 950445
E.C. Brooks Correctional Facility
2500 South Sheridan Drive
(Address)
Muskegon Heights, MI 49444
(City, State, Zip Code)

QUESTION PRESENTED

WAS PETITIONER DENIED HIS FUNDAMENTAL AND CONSTITUTIONAL RIGHT TO DUE PROCESS AS GUARANTEED UNDER BOTH STATE AND FEDERAL CONSTITUTIONS, WHEN THE SIXTH CIRCUIT COURT OF APPEALS NOT ONLY DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, BUT ALSO SANCTIONED THE LOWER COURT'S DEPARTURE, WHICH CALLS FOR THIS HONORABLE COURT'S EXERCISE OF SUPERVISORY POWER TO CORRECT THIS MANIFEST INJUSTICE?

LIST OF PARTIES

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

[x] All parties **do not** appear in the caption of the case on the cover

all parties to the proceeding in the court whose judgment is the subject of this

Michigan Attorney General

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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.

OPINION BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which he United States Court of Appeals decided my case was August 13, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Const, Am V – No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

US Const, Am VI – In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

US Const, Am XIV, Section 1 – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Supreme Court Rule 10 – Considerations Governing Review on Certiorari – Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; ***or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power***;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. [Emphasis added].

STATEMENT OF THE CASE

Petitioner respectfully submits that the Sixth Circuit Court of Appeals abused its discretion when it departed from the accepted and usual course of judicial proceedings, and then, sanctioned such a departure by the lower court – which invokes this Honorable Court's supervisory power to correct a manifest injustice. The Sixth Circuit Court of Appeals and the lower Federal Courts have taken a position that is far removed from the original Sixth Circuit decision rendered in ***Rosencrantz v. Lafler,*** 568 F.3d 577 (6th Cir. 2009), where the Court, adopting ***Giglio v. United States,*** 405 U.S. 150, 92 S.Ct. 31 L.Ed2d 104 (1972), held:

> "A conviction obtained by the knowing use of perjured testimony must be set aside if the false testimony could ... in any reasonable likelihood have affected the judgment of the jury." ***Id.,*** at 583.

The ***Rosencrantz, supra*** mandate was adopted by various jurisdictions throughout the Country, to include: ***People v. Medina***, 260 P.3d 42, 48 (Colo.App. 2010), ***Rubashkin v. United States***, 2017 U.S. Dist. LEXIS 11694 (N.D. Iowa, 2017) and ***Steele v. Beard***, 830 F.Supp2d 49 (W.D. Pa. 2011).

Moreover, ***Rosencrantz, supra***, was reiterated by the Sixth Circuit most recently in the case of ***Cleveland v. Bradshaw***, 2016 U.S. App. LEXIS 23573 (2016).

Yet, by the time Petitioner appealed to the Sixth Circuit, that Court seemed to have forgotten its mandate; thus, denying Petitioner of Due Process.

The Sixth Circuit ignored its mandate; especially when considering that the jury never heard all of the facts to make its determination as to my guilt or innocence. This caused the prosecutor to allow the so-called victim testify to facts that did not exist. Moreover, this insufficiency was exacerbated with evidence that defied the laws of physics as will be discussed later.

Examples of the disparity of the victim's testimony from the police reports, and specific pages from the preliminary examination testimony – both in the absence of a jury – with that of specific pages of the testimony at trial.

On page 12, line 10, she says, I flipped the light off. Then I whipped out my privates on her. Go right to line 22 where the State asks, "Is the light still off?" Her answer at line 23 was, "the light was still off."

At page 13, line 1, when "I (Ms. Martin) flipped the light on, his pants were already down. At line 4, she was asked, "And he exposed his penis to you?" Line 5, the answer was, "Yeah."

At page 14, line 10, she says that she cut the light off. Then at line 15, she says he was choking me and pulling my hair. Yet, at page 15, lines 18-19 during cross-examination, she says she cut the light on.

On page 23, she was questioned: "Okay, after you indicated that you grabbed his penis, you indicated that he hit you. Is that correct? The answer was: "Uh huh." The clarification to that answer followed. "Is that a yes?" The answer was, "Yes, very sorry." The questioning followed by: "And where was he hitting you?" The answer was: "Well, he was hitting me in my head and he was 'pulling' my hair."

At page 24 of the preliminary examination, line 1, the question was: "If you could just answer the question where he was hitting you on your body. Was he hitting you in your face?" The answer was: "No, he was hitting me in my head." On page 62 during cross-examination at trial, she states that I was "attempting" to hit her, not that I hit her. At the preliminary examination on page 13, line 15, in the bathroom, she states that I was choking her and pulling her hair while trying to punch her head into a mirror. But at trial, on page 59 during cross-examination, at line 4, she states, "Yes he was trying to force me onto the sink; like trying to hit my head against the mirror on the sink." The next question was, "Did he have a hold of your hair? The answer was, "No."

On pages 52 and 53 of the trial transcript, the State introduces pictures taken the next day – February 5, 2014 - that were taken way after the police and medical personnel were gone from Ms. Martin's supervision. Trial Counsel did nothing to object to this. During this period, she had ample time and opportunity to place marks on her person that were not there the previous night. The timeline clearly does not add up.

See further the following material facts that inured to the so-called victim's perjury – especially where the prosecutor knew that the so-called victim was committing perjury.

At trial during re-cross, the Prosecutor at page 157, line 4, asked:

> "Q: Sir, you were present in the courtroom back on February 20th in front of Judge Boyd down in Mason when Ms. Martin testified against you. Correct?
> A: Yes.
> Q: And you heard her version of the events that occurred at that time. Correct?
> A: Yes."

Further, at page 157, line 11:

> "Q: So between from that time to the time you've testified you knew what she was going to testify to isn't that fair to say?
> A: I thought I knew."

Ending at page 157, line 15:

> "Q: Well, it's the same as she testified before, isn't that correct?
> A: No, it's not."

At the preliminary hearing on page 13 at line 15, the victim stated:

> "A: Because he was like choking me up and pulling my hair. You know, trying to hit me and wrestling, like he was fighting in the bathroom. He tried to take my head and hit it against the mirror."

However, at trial on cross-examination on page 59, at line 4, the victim stated:

> "A: Like trying to hit my head against the mirror."

Continuing at line 6:

> "Q: Did he have a hold of your hair?"

Concluding at line 8:

> "A: No."

Throughout the entire trial, the victim only testified that I "tried" to hit her. Yet, at the preliminary hearing, she testified on page 23, line 15:

> Q: And after you – you indicated that you grabbed his penis, you indicated that he hit you. Is that correct?
> A: Uh, huh.
> Q: Is that a yes?
> A: Yes, yes sorry.

> Q: And where was he hitting you?
> A: Well, he was hitting me like in my head, and he was pulling my hair."

At the preliminary hearing, she also testified at page 24, line 2:

> "Q: Was he hitting you in your face?
> A: No. He was hitting me in my head."

Yet, during the preliminary hearing, she further testified at page 62, line 10:

> "Q: And you were holding onto his penis?
> A: Yea. Yes.
> Q: And he could not grab your hands?
> A: I mean, he was trying to hit me."

The victim further testified at the preliminary examination as to the following at page 7, line 20:

> "Q: Okay, were you drinking?
> A: No."

Page 8, line 1 of the preliminary examination transcript:

> "A: So I smoke, he don't. He drinks, but he "didn't" drink that night. [Note: The victim volunteered this on her own]. This statement is corroborated by the exchange between the victim and the 911 Operator – when asked specifically by the operator. She says she did not know if he had been drinking.

Yet, at Petitioner's jury trial, on page 14, line 8:

> "A: I could tell that he had been drinking. He was drunk."

The problem here is that Petitioner's jury convicted on the evidence at hand. However, none of the unproduced evidence in the hands of the prosecutor's office corroborated the victim's claims. Moreover, the jury did not

know that a 911 operator was involved, nor was the jury privy to the exchange between the 911 operator and the victim. There was no testimony by the EMS personnel at the crime scene, nor was the EMS report presented at trial. The prosecutor failed to present any evidence from the EMS Personnel at the scene that there were any injuries to Ms. Martin whatsoever. The pictures that police personnel took showed no wounds or marks whatsoever. Yet, the next night – some 24 hours later and outside the scope of any observation by law enforcement – the police photographed the victim that showed a mark.

Rosencrantz, supra, which adopted ***Giglio***, was supposed to protect Petitioner's Due Process rights. Yet, the Sixth Circuit Court of Appeals and the District Court's magistrate and judge departed from the ***Rosencrantz*** mandate and denied the very relief that Petitioner trusted would protect him.

These aforementioned illustrations also clearly contravene the well-settled case of ***People v. Lemmon***, 456 Mich 625; 576 NW2d 129 (1998), where the Court, adopting federal standards, held:

> "'In general, conflicting testimony or a question as to the credibility of a witness are not sufficient grounds for granting a new trial,' United States v. Garcia, 978 F.2d 746, 748 (1st Cir. 1992), quoting with approval United States v. Kuzniar, 881 F.2d 466, 470 (7th Cir. 1989), federal courts have carved out a very narrow exception to the rule that the trial court may not take the testimony away from the jury. Id. at 470-471. Defining the exception, the federal courts have developed several tests that would allow application of the exception; for example, if the 'testimony contradicts indisputable physical facts or law,' id., 'where testimony is patently incredible or defies physical realities,' United States v. Sanchez, 969 F.2d 1409, 1414 (2nd Cir. 1992), 'where a witness's

> testimony is material and is so inherently implausible that it could not be believed by a reasonable juror,' Garcia, supra at 748, or where the witnesses testimony has been seriously 'impeached' and the case marked by 'uncertainties and discrepencies.' United States v. Martinez, 763 F.2d 1297, 1313 (11th Cir. 1985). This does not mean that 'a judge's disagreement with the jury's verdict,' United States v. Arrington, 757 F.2d 1484, 1486 (4th Cir. 1985), or a 'trial judge's rejection of all or part of the testimony of a witness or witnesses,' entitles a defendant to a new trial. Sanchez, supra at 1414. Rather, a trial judge must determine if one of the tests applies so that it would seriously undermine the credibility of a witness' testimony and, if so, is there 'a real concern that an innocent person may have been convicted' or that 'it would be a manifest injustice' to allow the guilty verdict to stand. Id." ***Id.,*** at 643-644.

For example, during cross-examination, Ms. Martin, when questioned questioned by Defense Counsel, whether I tried to grab her hands while she was holding me, testified that I could not because she was holding me – even though my arm-span is nearly twice as long as hers. This would make her testimony incredible and defies the laws of nature.

See also, the case of ***Born v. Osendorf***, 329 F.2d 669 (8th Cir. 1964), where the Court held:

> "We are cognizant of the general rule that a verdict cannot be based on evidence which cannot possibly be true, is inherently unbelievable, or is opposed to natural laws. 32 C.J.S. Evidence § 1042, pp. 1125-1126; 20 Am Jur., Evidence § 1183, pp. 1033-1034. Where undisputed physical facts are entirely inconsistent with and opposed to testimony necessary to make a case for the plaintiff, the physical facts must control. No jury can be allowed to return a verdict based upon oral testimony which is flatly opposed to physical facts, the existence of which in

> incontrovertibly established. Stolte v. Larkin, 110 F.2ds 226, 229 (8th Cir. 1940)." ***Id.***, at 672.

Thus, Petitioner submits that based on the inconsistencies, perjury, and physical impossibility testified to as evidenced by the trial record, there is every likelihood that jurists of reason would agree with Petitioner that had the jury heard the complete testimony and had the jury known that victim - the "key witness" - perjured herself; which the prosecution did not correct, the outcome would have been different.

The Sixth Circuit mandate was corrupted by its own doings and that of the lower Federal courts. As a result, under AEDPA, the Sixth Circuit Court of Appeals and the lower Federal Courts decided this issue in a manner that is contrary to, or an unreasonable application of clearly established law as determined by the United States Supreme Court espoused in ***Williams v. Taylor***, 529 U.S. 362, 397, 120 S.Ct. 1495, 1515, 146 L.Ed2d 389 (2000).

As such, Petitioner avers that what has occurred is also is contrary to the doctrine of fundamental fairness as espoused in ***Blackburn v. Alabama***, 361 U.S. 199, 206, 80 S.Ct. 274, 280, 4 L.Ed2d 242 (1960), citing ***Lisenba v. California***, 314 U.S. 219, 236, 62 S.Ct. 280, 290, 86 L.Ed 166 (1941), and in ***Rochin v. California***, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed 183 (1952).

Petitioner believes that he has established that he was denied his constitutional right to due process of law under this Honorable Court's mandates argued herein.

REASONS FOR GRANTING THE PETITION

The very evidence that the Prosecution had and knew would exonerate me was suppressed and would have very definitely made a difference in my case. The prosecution knowingly used false and perjured testimony; even mentioning during jury selection that all he had was testimony to go to trial with; as there was no evidence. In violation of ***Napue v. Illinois,*** 360 U.S. 264, 79 S.Ct. 3 L.Ed2d 1217 (1959) and ***Giglio, supra***, the Prosecution did nothing to correct the perjury that took place throughout my trial.

Based upon the foregoing points and authorities, the Petitioner respectfully requests this Honorable Court to grant the within writ and reverse the judgment of the court below. The petition for a writ of certiorari should be granted as Petitioner was denied his fundamental constitutional due process rights and protections.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Chester L Starnes

Dated: October 5, 2018

Chester Larvell Starnes, Jr.
LRF 950445
E.C. Brooks Corr Facility
2500 South Sheridan Drive
Muskegon Heights, MI 49444