NO._____

IN THE
SUSPREME COURT OF THE UNITED STATE

LONZO BONNER---PETITIONER

VS.

STATE OF MICHIGAN---RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

THIRD CIRCUIT COURT FOR WAYNE COUNTY, MICHIGAN

PETITION FOR WRIT OF CERTIORARI

LONZO BONNER No.248227
Petitioner In Pro. Per.
Thumb Correctional Facility
3225 John Conley Dr.
Lapeer, Michigan 48446

QUESTION(S) PRESENTED:

I

WHETHER PETITIONER WAS DEPRIVED OF HIS STATE AND FEDERAL CONSTITIONAL RIGHT TO A FAIR TRIAL AND DUE PROCESS OF LAW WHEN THE PROSECUTION DELIBERATELY WITHHELD PETITIONER'S FOURTH AMENDMENT VIOLATION AND STILL IN VIOLATION OF BRADY MATERIAL.

II

WHETHER PETITIONER WAS DENIED HIS STATE AND FEDERAL CONSTITIONAL RIGHT TO A FAIR TRIAL AND DUE PROCESS WHEN THE PROSECUTOR KNOWINGLY PRESENTED PERJURED AND MISLEADING TESTIMONY TO THE JURY.

III

WETHER PETITIONER WAS DENIED HIS STATE AND FEDERAL CONSTITITIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL FAILED TO DISCOVER AND LITIGATE PETITIONER'S FOURTH AMENDMENT CLAIM THAT HE WAS ILLEGALLY ARRESTED WITHOUT PROBABLE CAUSE OR A ARREST WARRANT, INVESTIGATE EXCULPATORY EVIDENCE, RETAIN A FIREARM EXPERT AND CROSS-EXAMIN THE WITNESS.

LIST OF PARTIES:

All Parties appear in the caption of the case on the cover page.

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CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

No._____

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

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

OPINIONS BELOW

The opinion of the Michigan Court of Appeals to review the merits appears at Appendix-1 and is unpublished. The opinion of the Third Circuit Court appears at Appendix-2 and is unpublished. The opinion of Michigan Supreme Court, denying discretionary review appears at Appendix 3.

JURISDICTION

The date on which the highest state court decided the appeal of Lonzo Bonner was the 27 day of July, 2018, and a copy of the notice appears at Appendix 3.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment to the Constitution of the United States

Fifth Amendment to the Constitution of the United States

Sixth Amendment to the Constitution of the United States

Fourteenth Amendment to the Constitution of the United States

STATEMENT OF THE CASE

Petitioner Lonzo Bonner and co-defendant were tried together but by different jurys on three counts of First Degree Murder, eight counts of Assault With Intent to Murder, and one count of Felony Fiream. Petitioner was found guilty on all counts and co-defendant was found not guilty on all counts.

The Courts granted Petitioner two discovery orders in this case, one on May 24, 1995, before Preliminary Examination, (Appendix 4), and one after Petitioner was bondover for trial on June 16, 1995. (Appendix 5). Both orders among other things requested: The arrest and coviction record of the defendant(s) and all statements of the defendant(s), Which statements are recorded or have been reduced to writing.

At trial, Investigator Donald Stawiawz the officer in charge of the case testified that on May, 8 1995, he took a statement from Petitioner after advising him of his rights. (Vol III p.160-163) Appendix 6; He read into the record before the jury this allege statement in part that Petitioner stated that he got into a fight with several individuals at the club, the next day he fire shots after individuals on the porch fired at him first.

Officer David Pauch of the Detroit Firearms Identification Unit testified that he examined the bullets on laboratory analysis sheet F95-0359, and determined that they were fired from the same weapon an S.K.S and an AK47 type weapon. (Vol IV p.11-15). Appendix 7;

REASONS FOR GRANTING THE PETITION

Issue Presented:

I

PETITIONER WAS DEPRIVED OF HIS STATE AND FEDERAL COSTITUTIONAL RIGHT TO A FAIR TRIAL AND DUE PROCESS OF LAW WHEN THE PROSECUTION DELIBERATELY WITHHELD PETITIONER'S FOURTH AMENDMENT VIOLATION AND STILL IN VIOLATION OF BRADY MATERIAL.

The allegation of facts and documentation surrounding Petitioner's claim that the prosecution deliberately withheld evidence surrounding his unlawful arrest, would constitute a Brady v. Maryland, 373 US 83; (1963) violation. All Brady claims rest on proof of three essential elements; "the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the state, either willfully or inadvertently; and prejudice must have ensued. Banks v Dretke, 540 US 668,691 (2004)(quoting Strickley v Greene, 527 US 263,281-282 (1999). Such evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the results of the proceeding would have been different." United State v Bagley, 473 US 667,682 (1976); Kyles v Whitley, 514 US 419,433-434 (1995). Brady applies to evidence known only to the police and not to the prosecutor. Kyles, supra, 514 US at 437-438.

The circumstances and efforts that the Petitioner offers to satisfy these requirements are that on February 5, 1996, In the prosecutor's opening statement to the jury that; "then Lonzo Bonner once he was picked up by the police, told the police what happen."(Vol II p.94) Appendix 8; On Febraury 6, when the officer in charge of the case, Donald Stawiazs was question by defense counsel as to how the Petitioner ended up in police custody, stated that he could not recall if the Petitioner surrendered or if he was arrest, counsel then ask the Judge could he and the prosecutor approach the bench, the prosecutor stated; "may I have a minute first just so I can answer the question." (Vol III p.179) Appendix 9; On February 8, counsel told the judge that, Petitioner wanted the officers who arrested him, the prosecutor stated; "when counsel ask me this morning at which time I went through the entire Bonner file. I went through all the P.C.R.'s and there is nothing in the file that indicated how that happened or how it came about and beyond that I don't know what I can do." That

"we don't know who it was and I asked Mr. Walton to have Mr. Bonner at least give us an idea of what those people looked like and I was told that it was someone with a broken leg."Now that say to me that's Investigator Ivy who was in here the other day cause remember I told you he had just had the cast off. And I told Mr. Walton that as soon as we were through with the due diligence hearing that I would have the officer go and call and he will do that but beyond that I don't know what I can do." (Vol V p.73,74) Appendix 10; But just three days before on the 5th, the prosecutor knew the answer to counsel question by stating in her opening statement: "Once he was picked up by the police." (Vol II p.94) Appendix 8;

As pointed out above, Petitioner has tried before and during trial to uncover the facts surrounding his unlawful arrest. So, he focused primarily on locating the names of the arresting officers and any documentation (i.e, arrest report and the statement those arresting officers took from him) containing details indicating how he ended up in police custody. He urged his defense counsel to raise the issue at trial, counsel asserted to the trial court that the defense "never" received any discovery about those witnesses,(the arresting officers). (Vol V p.75) Appendix 11; The prosecutor stated in closing argument that there is not one piece of evidence on this record that indicates that Petitioner turned himself in. (Vol VI p.121) Appendix 12;

Petitioner even pressed his appellate attorney to try and discover the information surrounding his unlawful arrest. Appellate counsel did nothing more than look for the trial attorney's name in a lawyer's directory. Appellate counsel wrote to Petitioner:

> I received your letter and wish to responed. The only person that I can possibly get the reports that you want would be your lawyer, Mr. Anthony Walton. The problem there is that Mr. Walton has lost his license to practice law and he is not listed in the lawyer's directory and I don't know how to communicate with him. Even if I could find him I don't know whether or not he has those records and documents from the police.

> I don't know what other method I can use to find the two Police Officers that you refer to in your letter, but I will try to look into it and see if I can find anything to answer your questions. (Appendix 13)

After years of trying to get any documents surrounding his illegal arrest, Petitioner was able to uncover from the Detroit Police Department the arrest report on December 29, 2005, through family and friends submitting FOIA (Freedom of Information Act) Requests to the Detroit Police Department and prosecution office. (Appendix 14)

Within this arrest report is the name of the arresting officer, which is (Lieutenant William Presley). At trial, the prosecutor had Lieutenant Presley presence waived stating; he took a statement from Robbie Prosser and that he had no direct contact with the case other than that. (Vol IV p.108) Appendix 15; We know now why she had his presence waived, to hide the fact that Lieutenant William Presley had direct contact with the case other than what was presented to the judge. He also took statements from several witnesses and searched the home of one of the witnesses. He also took a statement from Petitioner stating, he did not do it, which is still being withheld by the prosecutor/police. See A. below. The arrest report states that Petitioner was arrested at 1300 Beaubien at 8:00 a.m on May 8, 1995, and refer the reader to Homicide File 95-162/163.(Appendix 16).

Contained within Homicide File 95-162/163 is a P.C.R. (Preliminary Complaint Record). This P.C.R. holds information that the complainant heard one of the shooters, whom she referred to as "Den-Den," an obvious reference to prosecution witness "Dennis Paige" arguing with the owner because he could not get into the party taking place inside the club. According to the complainant, "Den-Den" told the owner that, "if I can't get in I'll shoot it up!" complainant said about ½ hour later while she was on the porch, she heard gun fire & unk per was shooting toward the party and she was hit by one shot in her right jaw.

(Appendix 17)

In another P.C.R. it indicates that the owner (Stanley Williams) had an ongoing rivalry with a gang called the Vinewood Boys. The Vinewood Boys would Drive by and fire shots at the club. The dispute had been ongoing for approximatly two and a half years. During that time Stanley Williams girlfriend had been shot, as well as two or three other persons who claimed to be "Deuce Eight" (from the 28th Street After Hours Club).(Appendix 18)

These pieces of evidence Petitioner believes showed that the police did not have probable cause to go to his home and arrest him. (See Petitioner's Affidavit In Support dated January 30, 2009, Appendix 19). On January 30, 2009, Petitioner file a Motion For Relief From Judgment and a motion for an evidentiary hearing in the Third Judicial Circuit Court of Wayne County raising this and several other issues. On April 22, 2009, The Judge issued an order and opinion denying the motion for relief from judgment but fail to rule on the evidentiary hearing motion. In its opinion concerning this issue, the court:

> For example, with regard to Defendant's 4th Amendment claim that he was arrested without probable cause and his statement made at the time were therefore inadmissible, Defendant's position is tenuous at best and ask the court to assume that he was arrested illegally. He claims that he was never given all the discovery requested before trial, which is clearly an issue that, if true, should have been raised on appeal. (Appendix 20).

After appealing the Third Judicial Circuit Court denial, Petitioner through family and friends sought out several more freedom of information act requests hoping to find any additional evidence suounding his illegal arrest. On February 12, 2016. Petitiner received from a another freedom of information act request, (Appendix 21) A report/order from Investigator Richard Ivy that states: (Subject wanted for questioning fatal multi shooting that occurred, Subject wanted: 2. Lonzo Dawan Bonner, Subject Last seen driving A Large older mdl Blue vehicle, if found arrest and convey same to Homicide Section).(Appendix 22)

This report is clearly an order to arrest Petitioner for questioning, which is a long condemned illegal police practice held by this court, and not based upon probable cause. In Brown v. Illinois, and Dunaway v. New York, the police arrested suspects without probable cause for questioning. The suspects were transported to police headquarters, advised of their Miranda rights, and interrogted. This Court held that the confessions were not admissible at trial, reasoning that a confession obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events break the causal connection between the illegal arrest and the confession so that the confession is sufficiently an act of free will to purge the primary taint. Brown v. Illinois, 422 US 590,602 95 S,Ct 2254,2261 (quoting Wong Sun v. United States, 371 US 471,486, 83 S.Ct 407,416)(1963); Dunaway v. New York, 442 US 200,217, 99 S.Ct 2248,2259. (1979) This Court identified several factors that should be considered in determining whether a confession has been purged of the taint of the illegal arrest: the temporal proximity of the arrest and the confession, the presence of intervening circumstances, and particularly, the purpose and flagrancy of the official misconduct. Brown, supra, at 603-604, 95 S.Ct., at 2261 (citation and footnote omitted); Dunaway, supra, at 218, 99 S.Ct., at 2259. The state bears the burden of proving that a confession is admissible. Ibid.

In Brown and Dunaway, this Court firmly established that the fact that the confession may be "voluntary" for purposes of the Fifth Amendment, in the sense that Miranada were given and understood, is not by itself sufficient to purge the taint of the illegal arrest. In this situation, a finding of "voluntariness" for purpose of the Fifth Amendment is merely a threshold requirement for Fourth Amendment analysis. See Dunaway, supra, at 217, 99 S.Ct., at 2259. The reason for this approach is clear: "the exclusionary rule,..when utilized to effectuate the Fourth Amendment, serves interests and policies that

are distinct from those it serves under the Fifth Amendment." Brown, supra, at 601, 95 S.Ct., at 2260. If Miranda warnings were viewed as a talisman that cured all Fourth Amendment violation, then the constitutional guarantee against unlawful searches and seizures would be reduced to a mere "form of words." Id., at 603, 95 S.Ct., at 2261 (quoting Mapp v. Ohio, 367 US 643,648, 81 S.Ct. 1684, 1687, 6 L.Ed.2d 1081 (1961).

The United States Department of Justice also found in its investigation of the Detroit Police Department that the Detroit Police arrest suspects without probable cause and then continue to investigate the case to develop probable cause. (See Detroit Police Dept. Witness Detention Findings Letter, B. Arrest of suspects pages 3,4. Appendix 23)

See also another P.C.R, that was located within Homicide File 95-162/163. It show per Donald Stawiasz, the officer in charge of the case, ordered the arrest of two individuals for the same crime hours after Petitioner was arrested and give this allege statement to him. This P.C.R. states; 2-ARR.MURDER, DEF.1 GREGORY LONDON HUDGENS and DEF.2 JOHN JACKSON. (Appendix 24)

These pieces of evidence together took Petitioner over 21 years to uncover, (1) the arrest report, (2) the three P.C.R's, (3) the finding from the United States Department of Justice, and (4) now the order to arrest Petitioner for questioning, show that, the Detroit Police did not have probable cause to go to his home and arrest him. (See Appendixes 16,17,18,22,23,24, and Petitioner Affidavit in support Appendix 19). Had Petitioner had this evidence before trial, the defense would have filed a pretial motion to suppress the allege statement to Donald Stawiasz in violation of Petitioner's Fourth Amendment Right, (under the fruit of the poisonous tree doctrine).

By witholding these documents from the defense, the prosecutor/police was able to use this illegally obtained, inadmissble evidence against the Petitioner

to get a conviction. No witness identified him as being there the night of the crime or a shooter. There was no fingerprint or DNA evidence to connect him to the crime, and the weapon the prosecutor argued he used when he committed this crime, turns out not to be the weapon used to commit this crime. See ISSUE II.

The prosecutor relied heavily on this statement to convict Petitioner. She referred to it in her opening statement, (Vol II p.94) Appendix 8; had it read to the jury, and had it entered into evidence, (Vol V p.76) Appendix 25; emphasized its importance in closing argument, (Vol VI p.90,95,98,99,100) Appendix 26; and during rebuttal. (Vol VI p.120,122) Appendix 12; Without this allege statement, no reasonable jury would have found Petitioner guilty.

According to the arrest report, Petitioner was arrested at 1300 Beaubien at 8:00 a.m on May 8, 1995. The officer in charge Donald Stawiasz testified at Preliminary Examination that he took a statement from Petitioner at 10:15am on May 8, 1995.(Pre.Exam p.43) Appendix 27 ;The arrest warrant was issued two days later on May 10, 1995. (Appendix 28) There was no intervening events that broke the connection between Petitioner's illegal arrest and the statement, therefore, this statement should have been suspressed.

After Petitioner received this report/order to arrest Petitioner for questioning, he file a Successive Motion For Relief From Judgment under MCR 6.502(G)(2), and Motion to Remand for an evidentary hearing in the Third Judicial Circuit Court of Wayne County. On March 9, 2017, it was denied. In the Court's Opinion and Order, The Court states:

> Upon review of said motion, defendant has failed to bring to the court's attention either newly discovered evidence or a retroactive change in the law that would entitle him to relief. (Appendix 2)

MCR 6.502(G)(2) provides, in relevant part, that a defendant "may file a second or subsequent motion for relief from judgment based on...a claim of

new evidence that was not discovered before the first such motion." Petitioner discovered this new evidence on February 12, 2016, years after the first motion was filed in 2009, from a freedom of information act request that was withheld by the prosecution/police, A constitutional violation under Brady v Maryland, 373 US 83; 83 S.Ct 1194 (1963). Therefore, the trial court made an error when ruled that Petitioner failed to bring the court's attention to newly discovered evidence.

A. PETITIONER'S SUPPRESSED EXCULPATORY STATEMENT.

The prosecution/police is actively suppressing the statement taken by the arresting officer from Petitioner. Petititioner states in his Affidavit dated January 30, 2009, that he was asleep at the dinning room table, when he was woke up by two police officers telling him to get up and put his hands behind his back, that he was wanted dowmtown, that after being taken downtown and put in a little room and handcuff to a chain coming from the floor. He told them that he did not do it, that he drop off a guy name mike and went to his sister and cousin house and went to sleep. The officer had him sign his name at the bottom of some papers. (Appendix 19).

As pointed out above, two discovery orders was granted in this case, both orders requested among other things; The arrest and conviction record of defendant(s) and all statements of the defendant(s), which statement are recorded or have been reduced to writing. (Appendices 4,5).

Had the defense had that suppressed statement, it would have undoubtedly shown that after Petitioner was arrested, stated he did not do it. Which would have also shown that the officers embarked upon this expedition for evidence in the hope that something might turn up. Brown v. Illinois, 422 US 590,605. Once done, disclosure of that suppressed statement could "reasonable be taken to put the whole case in such a different light as to undermine confidence in

the verdict." Kyles, supra, at 698.

That suppressed statement could have further been used to contradict the prosecution's assertion to the jury that "once he was picked up by the police (he) told the police what happened." (Vol II p.94) Appendix 8; This was an obvious reference to Donald Stawiasz and the statement he claimed he took from Petitioner. Among the other material purpose of that suppressed statement is that, had the Stawiasz statement been suppressed, Petitioner alibi witnesses would have bolstered Petitioner's defense, and would have stripped the prosecution of any opportunity to emphasize Stawiasz inculpatory to the jury throughout trial and during closing.

II

PETITIONER WAS DENIED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHT TO A FAIR TRIAL AND DUE PROCESS WHEN THE PROSECUTOR KNOWINGLY PRESENTED PERJURED AND MISLEADING TESTIMONY TO THE JURY.

The Fourthteeth Amendment due process right is violated when there is any reasonable likelihood that a conviction was obtained by the knowing use of perjured testimony. Napue v. Illinois, 360 US 264; 79 S.Ct 1177 (1959); Miller v. Pate, 386 US 1, 87 S.Ct 785 (1967). It must be set aside if there is any reasonable likelihood that the false testimony could have effected the judgment of the jury. Giglio v. United States, 405 US 150,154-155; 92 S.Ct 763 (1972) This rule applies to both the solicitation of false testimony and the knowing acquiesce in false testimony, Napue, supra at 269.

This issue is about a lab report perpared by Detroit Police Firearm Expert David Pauch, (See Appendix 29) which states:

RESULTS OF EXAMINATION

The submitted evidence was examined and classified as stated. A microscopic comparison of the fired evidence on tag 196595, 196596, 196597, 196598, 196599, yielded results they were all fired in the same weapon. All evidence sent to

property section pending the recovery of a suspected weapon. Probable make of weapon determined and listed below.

PROBABLE MAKE OF WEAPON 1.SKS 2.AKA

On August 14, 2016, Petitioner wrote a letter to Daniel O'Kelly at International Fivearm Academy concerning the cost for testing SKS and or AK-47 bullets, but first, Petitioner ask some questions concerning both guns, and the lab report in question. (Appendix 30) The response letter from expert O'Kelly revealed that expert Pauch commited perjury and knew that an AK-47 was not the suspected weapon used in this case. (Appendix31).

Petitioner point to questions 6 and 8 in his letter, and 6 and 8 in expert O'Kelly answer:

6.(Petitioner) Are there any distinguishing marks left on a fired SKS bullet from a Fired AK-47 bullet, that will tell the different between the two?

6.(O'Kelly) The fired bullet can be identified in some cases, as to whether it was fired through an AK47 versus an SKS.

8.(Petitioner) If a laboratory report states: Probable Make Of Weapon 1.SKS 2.AKA. What do this mean?- Do it mean the expert did a test to determine the make of the weapon?

8.(O'Kelly) if a lab report states "Probable Make of Weapon 1.SKS," that would mean that they believe the suspect gun to be an SKS rifle. I have no idea what information they used to determine that. The "2.AKA" part of the report makes no sense. The is no such gun as an AKA.

At trial, while reading from the lab report he prepared in this case, expert Pauch testified that all the bullets on laboratory analysis sheet f95-0359, he microscopically compared them against each other for the lands and grooves and the striation left on the bullets once they pass through the barrel and it was determine that they were fired from the same weapon. He than was ask

by the prosecutor:

Q:(Prosecutor) And can you tell what kind a gun they were fired from?

A:(Pauch) I can give you probable make. It does not perclude any other make of weapon, but I give you a probable make of a SKS and an AK-47 type weapon. (Vol IV p.12,13) Appendix 7;

This was clearly false and misleading testimony, which can be established by looking at number 8 of the response letter from expert O'Kelly clarifying what "Probable Make of Weapon 1.SKS 2.AKA" mean, and by just looking at the actual lab report which say nothing about an AK-47. The prosecutor ask him questions about the power and operation of an AK-47, and not about the SKS gun that was actually in the report. (Vol IV p.13) Appendix 7);

Expert David Pauch simply added 2.AKA to the report to mislead the reader, who have no knowledge about guns, to make it seem as if it mean AK-47. As expert O'Kelly states in answer 8, that the 2.AKA part of the report makes no sense, The is no such gun as an AKA. (Appendix 31) His perjured and misleading testimony was designed to help the prosecutor's case and to support it's theory that Petitioner possessed and used an AK-47 to commit this crime. In the prosecutor's opening statement to the jury:

(Prosecutor) At 3:15 Mr. Bonner and Mr. Strawder takes two AK-47, big guns serious guns, to the ally across the street.

The shell casing all are from AK-47s two different guns.

And then they executed anyone who happen to be within reaching distance of their AK-47.

(Vol II p.88,89,90,) Appendix 32;

There was also perjured testimony given at Preliminary Examination from this lab report. Donald Strawiasz, the officer in charge of the case testified that he received all the tests done on the bullets and shells casing found near

the alley across from the scene and in the house, and also received a phone call from the officer who did the scientiffic work, that it was determined that there were two weapon used in the shooting and they both were AK's. (Pre Exam p.54,55) Appendix 33;

It must be brought to this Court's attention that Firearm Expert David Pauch and Officer in charge of this case Donald Strawiasz, was responsible for the wrongful conviction of Desmond Ricks. After 25 years in prison, Desmond Ricks was exonerated June 1, 2017. These two officers framed Ricks by fabricating bullet evidence and withholding evidence in that case in 1992.

In Ricks v. Pauch, 2018 US Dist. LEXIS 89453, officers David Pauch and Donald Stawiasz argued that they were not obligated in 1992 to disclose to the prosecutor that they had fabricated evidence and possessed exculpatory and impeaching evidence favorable to the defense until the Sixth Circuit decided Moldowan in 2009. (p.7,8) If they thought that in 1992, they were not obligated to turn over favorable evidence to the defense until 2009, than in 1995, officer Donald Stawiasz thought he was not obligtion to turn over evidence in Petitioner case. Petitioner believes that officer Strawiasz was apart of all the withheld evidence in this case, and is still withholding the statement taken by the arresting officers.

The prosecutor knew that the lab report did not say anything about an AK-47, but gave the false impression to the judge and the jury through these two officers that it did. The lab report was not entered into evidence. Petitioner's due process rights were violated in this case.

Had officer Pauch testified to what was in his actual lab report, and what method he took to determine that an SKS rifle was the suspected weapon used in this case, and not an AK-47, clearly would have change the outcome at trial.

Again, the trial court made an error when ruled that Petitioner failed

to bring the court's attention to newly discovered evidence. (Appendix 2) Petitioner received this new evidence on October 20, 2016, years after the first motion was filed in 2009, meeting the requirements of court rule MCR 6.502(G)(2).

III

PETITIONER WAS DENIED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL FAILED TO DISCOVER AND LITIGATE PETITIONER'S FOURTH AMENDMENT CLAIM THAT HE WAS ILLEGALLY ARREST WITHOUT PROBABLE CAUSE OR A ARREST WARRANT, INVESTIGATE EXCULPATORY EVIDENCE RETAIN A FIREARM EXPERT AND CROSS-EXAMIN THE EXPERT WITNESS.

An accused's right to encompasses the right to effective assistance of counsel. US Const, Am VI; Const 1963, Art 1 §20; Powell v. Alabama, 287 US 45; 53 S.Ct 55 (1963). To justify reversal under the two part test articulated by this Court in Strickland v. Washington, 466 US 668; 104 S.Ct 2052 (1984). "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not performing as counsel guaranteed by the Sixth Amendment." Strickland, supra, at 687. In doing so, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. Id at 690. "Second, the defendant must show that the deficient performance prejudiced the defense." Id 687. To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. Id at 694. "A Reasonable probability is a probability sufficient to undermine confidence in the outcome."

A. COUNSEL FAILED TO DISCOVER AND CHALLENGE PETITIONER'S ILLEGAL ARREST.

As established earlier in ISSUE I, Petitioner was illegally arrested without probable cause and his allegal statement to Donald Stawiasz should have been suppressed in violation of Petitioner's Fourth Amendment right under the "fruit of the poisonus tree doctine." Petitioner tried before trial to get counsel to find the arresting officers. (See Petitioner's affidavit, Appendix 19) After

that didn't work, Petitioner wrote a letter to the judge several months before trial trying to fire counsel stating:

> Dear Mrs. Baxter, I have fired my attorney E. Walton. He havn't came to see me, and he haven't fouled for three Motion that sapose ben foul along time ago. And every time that we came to Court he was in a rush to go, he is playing wit my life. Would you please send me another Attorney son as you can. (See Appendix 34)

The Judge denied Petitioner's request and trial started on February 1, 1996. As you can see from the letter Petitioner wrote to the judge, Petitioner and defense counsel was conflict from the start. Counsel refuse to listen to Petitioner about anything, he simply did whatever he wanted to do. Defense counsel only brought it to the court's attention about never receiving any discovery about the arresting officers, only after Petitioner threaten to get up and ask the judge himself. (See affidavit dated 2009, Appendix 19) and not by his own investigation before trial. Kimmelman v. Morrison, 477 US 365; 106 S.Ct 2574 (1986)(counsel was ineffective for failing to discover and mover for suppression of evidence seized in a warrantless search of defendant's home). Counsel also failed to object to the admission of the statement on the grounds that it was likely an unlawful arrest, due to the prosecution suppression of the information surrounding it, and on the basis that the propriety of the arrest had yet to be established.

As pointed out above, on February 12, 2016, Petitioner received from the Detroit Police Department a report/order to arrest Petitioner for questioning per investigator Richard Ivy. (Appendix 22) This report/order shows that Petitioner was arrested without probable cause in violation of his Fourth Amendmen. Brown v, Illinois, 422 US 590,605; Dunaway v. New York, 442 US 200,217.

Defense counsel could have found this report and everything Petitioner has uncovered over the years in this case, and could have got the statement that is still being withheld by the prosecution/police, had he brought it to

the Court's attention before trial, or filed for a walking hearing as Appellate counsel pointed out in a letter to Petitioner stating:

> The Court Rule and the law permit you to attack, by way of a Walker hearing any statement that the police allege that you made. The time to do that is before trial. (See Appendix 13)

Rather than bring to the Court's attention that the prosecution is in violation of two discovery orders, and file a motion to suppress the statement, defense counsel get to trial and tell the Court and jury that Petitioner turned himself in. (Vol III p179; V p75) Appendix 9,11; As the prosecutor stated in closing arugment that there is not one piece of evidence on this record that indicates that Petitioner turned himself in. (Vol VI p121) Appendix 12; Petitioner never told counsel he turned himself, he stated in his affidavit that he was woke up by two officers stating to get up and put your hands behind your back, you wanted downtown. (Appendix 19)

The prosecutor relied heavily on this statement to convict Petitioner, no witness identified him as being there the night of the crime or a shooter, there was no fingerprint or DNA evidence to connect him to the crime. Without it, no reasonable jury would have him guilty.

B. COUNSEL FAILED TO INVESTIGATE EXCULPATORY EVIDENCE, RETAIN A EXPERT AND CROSS-EXAMINE THE PROSECUTION EXPERT WITNESS.

As established earlier in ISSUE II, The prosecutor knowingly presented perjured and misleading testimony through Firearm Expert David Pauch and Officer Donald Strawiasz. From the beginning of this case, trial counsel knew or should have known that the prosecution would be asserting at trial that Petitioner possessed and used an AK-47 to commit this crime. He had a copy of the arrest warrant that states; counts 14 and 15, "Defendant did carry or have in his/her possession a firearm, to-wit: AK-47, at the time he/she committed or attempted to commit a felony," (See Appendix 28) prior to Preliminary Examination. He also had a copy of the lab report in question. (Appendix 30) However, despite

the fact that the lab report did not mention anything about an AK-47 as being the probable make of weapon, but metion another weapon, defense counsel allowed this testimony to go before the judge and jury unchallenged.

At Preliminary Examination, Donald Strawiasz testified that he received all the test done on the bullets and shell casing from the scene, and received a phone call from the officer who did the scientific work, that it was determined that there were two weapon used and they both were AK's. (Pre.Exam p54,55) Appendix 33;

The prosecutor stated in opening statement that Mr. Bonner and Mr. Strawder take two AK-47, big guns serious guns, to the alley across the street, that the shell casing all are from AK-47s two different guns, that they executed anyone who happen to be within reaching distance of their AK-47. (Vol II p88,89,90) Appendix 32;

At trial, David Pauch testified that all the bullets on laboratory analysis sheet f95-0359, he microscopically compared them against each other for the lands and grooves and the striation left on the bullets once they pass through the barrel and it was determined that they were fired from the same weapon.
The prosecutor then ask:
(Prosecutor) And can you tell what kind a gun they were fired from?
(Pauch) I can give you probable make. It does not preclude any other make of weapon, but I give a probable make of a SKS and an AK-47 type weapon. (Vol IV p12,13) Appendix 7;

There was a discrepancy between the ballistice lab report and the testimony of the lead officer at Preliminary Examinary. Any reasonable competent attorney in counsel's postition would have at least filed an application for funds to hire an expert to examine the opinion of the expert witness lab report.

On August 14, 2016, Petitioner wrote a letter to Daniel O'Kelly at

International Firearm Academy concerning the cost for testing SKS and or AK-47 bullets, but first Petitioner ask some questioning concerning both guns and the lab report in question. On October 20, 2016, Daniel O'Kelly answered all of the questions about SKS and AK-47, specifically the lab report in question. Petitioner point to question 8 in which he ask: (Petitioner) "if a lab report states, Probable Make of Weapon 1.SKS 2.AKA", What do this mean? Expert O'Kelly response in answer 8 states:(O'Kelly) "if a lab report states "Probable Make of Weapon 1.SKS 2.AKA," that would mean that they believe the suspected gun to be an SKS rifle. See Appendices 30,31

This is exculpatory evidence, it show that an AK-47 was not used in this case and show that defense counsel would not have had to look far to find a firearm expert to provide critical testimony for the defense. The whole case was about Defendant using an AK-47 to commit this crime, but the report say it was an SKS rifle. It don't get no clearer than that. There was no cross-examination of this expert witness.

Prejudice is further established by the fact that counsel, rather than investigate and show that the expert gave false and misleading testimony, and that an SKS rifle was used to commit this crime. Defense counsel reinforced the prosecutor's false reference to AK-47 in his closing argument: (Counsel "We know for a fact that an AK-47 was shot back here and we know for a fact that an AK-47 expels the shell after the gun is fired and they find all the shells here. (Vol VI p117) See Appendix 35;

Trial counsel (Anthony Walton) has been the subject of several disipline orders in Michigan, and no longer a member of the State Bar due to among other things "neglect." (See Appendix 36).

But for trial counsel's errors, there is a reasonable probability the results of the proceeding would have been different.

CONCLUSION

The petition for a writ of certiorari should be granted. The statement of the Defendant should be held inadmissible as a product of illegal arrest without probable and remand back to Trial Court to hold an evidentiary hearing on these issues or rule on the merits of the case.

Respectively Submitted

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