18-8375

No. _____



TERM OF COURT YEAR

IN THE SUPREME COURT OF THE UNITED STATES

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ZEBADIAH HOLLAND,

Petitioner,

v.

STATE OF MICHIGAN,

Respondent(s).

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On Petition for Writ of Certiorari to the

Michigan Supreme Court

for the State of Michigan

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# PETITION FOR WRIT OF CERTIORARI

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BY: Zebadiah Holland #219424
In Properia Persona
Muskegon Correctional Facility
2400 S. Sheridan Drive
Muskegon, Mich 49442

ORIGINAL

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2.

WHETHER PETITIONER WAS DENIED A FAIR TRIAL WHEN THE PROSECUTOR COMMITTED A BRADY VIOLATION BY SUPPRESSING (A) A WITNESS STATEMENT AND (B) THE HOMICIDE SCENE INVESTIGATOR REPORT EVIDENCE WHICH WAS MATERIAL OR FAVORABLE TO THE DEFENSE WHICH VIOLATED HIS FEDERAL AND STATE CONSTITUTIONAL RIGHT UNDER THE 14TH AMENDMENT DUE PROCESS?

TABLE OF AUTHORITIES

## CONSTITUTIONS, STATUTES AND MISCELLANEOUS AUTHORITY

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The December 4, 2018, order of the Michigan Supreme Court is unpublished as People v. Zebadiah Holland, Docket No. 157894.

The April 26, 2018, opinion of the Michigan Court of Appeals is unpublished as People v. Zebadiah Holland, Docket No. 341130.

The October 13, 2017 opinion of the Third Judicial Circuit Court is unpublished as People v. Zebadiah Holland, Docket No. 91-0044698.

The Michigan Supreme Court's unpublished order, the Court of Appeals unpublished opinion and the Trial Court's unpublished opinion denying relief from judgment are all reproduced in the appendix to this petition.

## STATEMENT OF JURISDICTION

Petitioner seeks review of the December 4, 2018, Order of the Michigan Supreme Court, **People v. Zebadiah Holland**, Docket No. 157894, the Michigan Supreme Court issued a standard order denying Petitioner's application for leave to appeal the Michigan Court of Appeals decision in **People v. Zebadiah Holland**, Docket No. 341130.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

## CONSTITUTIONAL PROVISIONS

**Mich. Const. 1963, Art 1 § 17**

No person 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. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.

**United States Amendment XIV § 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.

## STATEMENT OF THE CASE

Petitioner Zebadiah Holland was convicted in the Third Judicial Circuit Court, Wayne County (Michigan) of Felony Murder and Felony Firearm counts, after the Prosecution's case concluded on April 30, 1991. The Michigan Court of Appeals affirmed in part and reversed in part on direct appeal.

August 28, 1995, the Michigan Supreme Court denied leave to appeal in a standard order.

Petitioner Holland filed a Second Motion for Relief from Judgment, which Judge Drain denied. The Court of Appeals dismissed the appeal, and the Michigan Supreme Court issued a standard order denying leave to appeal.

October 2013, Attorney Bradly R. Hall was appointed by Federal District Court to represent Petitioner Holland with his petition for writ of habeas corpus. In the process, Attorney Hall filed a Motion for Discovery and while combing through the file he discovered two "new material statements" the prosecutor withheld from the defense.

Hence, Petitioner maintains that Bernard Howard's affidavit stating "Marvin said they went over on Dickerson in Leon's car and kicked in the door and Leon start shooting a .30 caliber, I told Marvin if the Police came to his house looking for Leon about that shooting then they probably will be back looking for him, Marvin said they didn't know nothing about him because he was the only one that had on a ski mask; Marvin said he told Leon and Bekia to put on ski mask as well but they "dumb" ass did not listen to him." Executed on January 13, 2017. (Appendix A-X).

The statement that Danny Patterson collected was material to Petitioner Holland's innocence as well, where Patricia Craig stated: "She called me Friday morning about 8: a.m. And she said that Kiba and Leon killed Charles for

nothing. There wasn't no dope there, and there was only .86 cent there and that was hers," could have been used as impeachment evidence establishing actual innocence, or reasonable doubt. However, the Prosecutor never tiurned over the **Brady** material to defense attorney. (Appendix A-XII).

The Homicide Scene Investigator Report could'vd been used as impeachment to Ms. Craig claim to have identified Zebadiah Holland by his voice. (Appendix A-XXI - A-XXII). But in the Homicide Scene Investigator Report Ms. Craig claim to only recognize Beikba's voice. Detroit Homicide never turned over this statement to the Prosecutor. (Appendix A-XIV).

Nevertheless on October 13, 2017 the trial court denied Petitioner's Third Relief from Judgment by mixing the facts and determining petitioner's evidence does not meet the threshold of new evidence, his successive motion for relief from judgment is **DENIED.** (Appendix A-III).

Petitioner satisfied the second prong of MCR 6.502(G)(2) because he did not discover the new evidence and affidavit to establish the **Brady** claims before his second motion for relief from judgment.

The Court of Appeals dismissed the application for leave to appeal and concluded Petitioner has failed to demonstrate his entitlement to an application of any of the exceptions to the general rule that a movant may not appeal the denial of a successive motion for relief from judgment. MCR 6.502(G). (Appendix A-II)

Petitioner states the newly discovered evidence not only completely exonerates petitioner, but also sufficiently implicates the real perpetrators involved, even where the petitioner has raised a substantive **People v. Cress,** 465 Mich 174; 664 NW2d 174 (2003) claim. The interpretation is foreclosed by the plain text of the rule and the Michigan Court Rules as a whole, and it lacks any support from **Cress** itself or any other authority from this Court.

Because this interpretation will affect a large number of petitioner who, through no fault of their own, discover evidence of a violation under **Brady v. Maryland**, 83 S.Ct 1194 (1963), after a first motion for relief from judgment, this case is of major significance to this state's jurisprudence. MCR 7.302(B)(3).

The Court of Appeals dismissed Petitioner Holland's relief even after Habeas Counsel received the Prosecutor's file from Assistant Attorney General John Pallas, (Appendix A-XX). Both respective file(s) included documents that could have severely impeached the only eyewitness testimony presented against Petitioner Holland under **Smith v. Wiggins**, 539 U.S. 510 (2003). This issue of how Michigan courts should treat strong evidence of actual innocence has major significance to the state's jurisprudence, MCR 7.302(B)(3).

Subchapter 6.500 of the Michigan Court Rules outlines the procedures governing post-conviction relief for petitioners whose cases are no longer subject to appellate review. MCR 6.501. While 6.502(G) generally prohibits more than one motion for relief from judgment under this subchapter, a petitioner can file a second or subsequent motion if he meets one of the two exceptions stated in MCR 6.502(G)(2). The second exception, and the one on which Petitioner Holland relies here, is satisfied when the petitioner's claim is based on new evidence that had not been discovered prior to the first motion. A different section of the 6.500 rules provides the basis for relief from judgment once the gateway hurdle of MCR 6.502(G) is met. See **People v. Lorinda Irene Swain**, Mich. Docket No. 150994 (Appendix A-IX).

The Michigan Supreme Court denied leave to appeal and held petitioner has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D). (Appendix A-I).

## ARGUMENT 1.

ZEBADIAH HOLLAND IS ENTITLED TO NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE THAT NOT ONLY COMPLETELY EXONERATES HIM, BUT ALSO SPECIFICALLY IMPLICATES THE REAL PERPETRATORS.

This case presents a basic problem underlying much of this Court's Actual Innocence Jurisprudence. The Michigan Supreme Court assumed that the petitioner has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D). (Appendix A-I).

This Court has long held that an analysis of actual innocence "must incorporate the understanding that proof beyond a reasonable doubt marks the legal boundary between guilt and innocence." **Schlup v. Delo,** 513 US 298 at 328; 115 S.Ct 851; 150 L.Ed.2d 808 (1995). Because "the line between innocence and guilt is drawn with reference to a reasonable doubt," id., this Court should interpret the language "that the petitioner is innocent" to mean that a jury would not find guilt beyond a reasonable doubt based on the totality of the evidence.

In the face of all that, the prosecutor only had one possible piece of evidence. First, it had the testimony of Ms. Craig--who would be impeached with, among other things, her testimony at trial claiming to have recognized Petitioner Holland by his voice (Appendix A-XXI - A-XXII).

But in the Homicide Investigator Report, which the Prosecutor suppressed Ms. Craig claim to only recognize Beika (Holland's) voice set forth in (Argument 2) herein based on (Appendix A-XIV).

Petitioner states, MCR 6.502(G)(2) provides, in relevant part, that a petitioner "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." (Emphasis added). If the judge determines this exception has been met, then the motion may proceed. MCR 6.502(G). There is no ambiguity in

this provision. The Supreme Court has highlighted the importance of adhering to the plan language of unambiguous text: "If the language is unambiguous, we presume that the Legislature intended the meaning clearly expressed--no further judicial construction is required or permitted." **Gladych v. New Family Homes,** 468 Mich 594, 597; 664 NW2d 705 (2003)(emphasis added)(internal quotations and citations omitted).

Petitioner Holland submit, the United States Supreme Court in **Townsend v. Sain,** 372 US 293, 317; 83 S.Ct 745; 9 L.Ed.2d 770 (1963) defined newly discovered evidence as "evidence which could not reasonably have been discovered to the state trier of facts." Factor 1 Petitioner could not have presented the affidavit of Bernard Howard which was executed on January 13, 2017. See (Appendix A-X).

Factor 2 is that it was not merely cumulative. Petitioner meets this factor as well. No other witness identified Zebadiah Holland by his voice.

Factor 3 is that the evidence be of sufficient weight as to render a different result on retrial. Petitioner Holland submit the evidence is of sufficient weight to render a different result on retrial.

The reason for the rule permitting new trials for newly discovered evidence was discussed in **United States v. Devoe,** 493 F.2d 776, 781 (5th Cir. 1974). In **Devoe,** the Fifth Circuit held that the post-trial discovery by defense counsel of evidence "may serve, in appropriate circumstances, to call into question the fairness of the earlier trial ... Unfairness may have crept into the trial unexpectedly and should therefore be corrected in a new trial if the evidence was material to the outcome." See also **United States v. Barlow,** 693 F.2d 954 (6th Cir. 1982).

Petitioner Holland submit, in direct contradiction of the evidence presented at trial to Petitioner Holland's jury, the affidavit of Bernard

Howard has made stringent showing required by actual innocence exception to procedural bar rule MCR 6.502(G)(1) that had the jury heard all the conflicting testimony it is more likely than not that no reasonable juror viewing the evidence as a whole would find guilt beyond a reasonable doubt, where Petitioner called into question his conviction with newly discovered evidence which puts forward the stringent showing required by pointing to a different suspect. Id., **House v. Bell,** 126 S.Ct 2064 at 2065 (2006).

**"Is Innocence Irrelevant?"**

There are two historical unassailable answers to the question Judge Henry Friendly used as the title of his famous article on habeas corpus: "Is Innocence Irrelevant?" The first answer is "yes," innocence is indeed irrelevant. As Justice Powell stated - albeit in arguing that history should be contravened in this instance - "history reveals to exact tie of the writ of habeas corpus to a constitutional claim relating to innocence or guilt." **Schneckloth v. Bustamonte,** 412 US 218, 257 (1973); **Kimmelman v. Morrison,** 477 US 365, 380 (1986)('The constitutional rights of criminal petitioner are granted to the innocent and the guilty alike, and the "scope" of those rights is not altered ... simply because the[y are] asserted on federal habeas review rather than on direct review').

The second historical correct answer to Judge Friendly's question is that, "no," innocence is of course not "irrelevant." The fear that an innocent person's liberty or, worse, his life may be forfeited because of unfair proceedings has long been recognized as one, among other, circumstances that makes issuance of the writ most felicitous. **Bousely v. United States,** 118 S.Ct 1604, 1610 (1998); **Schlup v. Delo,** 531 US 298, 324-25 (1995)([T]he individual interest in avoiding injustice is most compelling in the context of actual

innocence. The quintessential miscarriage of justice is the execution of a person who is entirely innocence. Indeed, concern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system. (footnote omitted; citing numerous authorities)).

Incarceration of an innocent person violates Article 1, Section 17's guarantee that the state shall not deprive any person "life, liberty or property, without due process of law." Const 1963, art 1, § 17. "Under the aegis of [federal constitutional] substantial due process, individual liberty interests . . . have been protected against 'certain government actions regardless of the fairness of the procedures used to implement them.'" **People v. Suerb,** 456 Mich 519, 522-23; 581 NW2d 219 (1998)(quoting **Collins v. City of Harker Heights,** 503 US 115, 125; 112 S.Ct 1061; 117 L.Ed.2d 261 (1992)). The purpose of substantive due process is "to secure the individual from the arbitrary exercise of governmental power." Id. at 523.

The Michigan Supreme Court's ruling was based primarily on the absence of a written analysis where Petitioner Holland satisfied MCR 6.508(D)(3), which governs the trial court's authority to grant relief. MCR 6.508(D)(3) requires that the petitioner demonstrate that his claim could not have been raised on direct appeal or in a prior motion--unless he can show good cause for failure to raise the claim before and actual prejudice (a "reasonable likely chance of acquittal"). MCR 6.508(D)(3)(a) - (b)(i). A court may waive the good cause requirement "if it concludes that there is a significant possibility that the petitioner is innocent of the crime." MCR 6.508(D)(3). (Appendix A-I).

The distinction is important for defendants like Petitioner Holland because MCR 6.508(D)(3) permits the court to waive the "good cause" requirement if there is a significant possibility of the petitioner's innocence (and MCR 6.502(G)(2) presently has no such actual innocence exception). Thus, even if a

court were to find that Petitioner Holland lacked good cause for failure to raise his claim in a prior motion, MCR 6.508(D)(3) actual innocence exception would allow the trial court to bypass the procedural hurdle and hear the claim on the merits.

This court should apply the same standard whether actual innocence is being considered in the context of MCR 6.502(G)(2) or MCR 6.508(D). Any analysis of actual innocence "must incorporate the understanding that proof beyond a reasonable doubt marks the legal boundary between guilt and innocence." **Schlup,** 513 US at 328.

Petitioner Holland is entitled to a new trial based on newly discovered evidence that not only completely exonerates him, but also specifically implicates the real perpetrators. The Michigan Supreme Court concluded that Petitioner Holland fail to meet the burden of establishing entitlement to relief under MCR 6.508(D). The Michigan Supreme Court's Order is, contrary to most Circuit Court of Appeals's of the United States, and Supreme Court jurisprudence. (Appendix A-I).

Petitioner Holland therefore respectfully requests that this Court grant certiorari to resolve this split of authority and reaffirm the principles set forth in **Schlup, House** and **Bousely.**

## ARGUMENT 2.

PETITIONER WAS DENIED A FAIR TRIAL WHEN THE PROSECUTOR COMMITTED A BRADY VIOLATION BY SUPPRESSING (A) A WITNESS STATEMENT AND (B) THE HOMICIDE SCENE INVESTIGATOR REPORT EVIDENCE WHICH WAS MATERIAL OR FAVORABLE TO THE DEFENSE WHICH VIOLATED HIS FEDERAL AND STATE CONSTITUTIONAL RIGHT UNDER THE 14TH AMENDMENT DUE PROCESS.

Suppression by the police is imputed to the prosecution. **Kyles v. Whitley,** 514 US 419, 437; 115 S.Ct 1555; 131 L.Ed.2d 490 (1995).

In the case at bar, (A) Danny Petterson new evidence at issue is the Homicide Investigator Report where Ms. Craig claim to only recognize Beikba (Holland's) voice. (B) Detroit Homicide never turned over this statement to the Prosecutor, which was favorable to Petitioner Holland (Appendix A-XII - A-XIII).

If the petitioner discovered evidence suppressed by the prosecution before filing his first 6.500 motion, he would simply have to meet the three-part **Brady v. Maryland,** 83 S.Ct 1194 (1963) test. If, as in Petitioner Holland's case, the prosecution succeeded in suppressing the exculpatory evidence until after he filed his first 6.500 motion, then he would have to satisfy the very same diligence requirement the Michigan Supreme Court disavowed in **People v. Chenault,** 495 Mich 155 (2014). There is no justification for such a double standard; the petitioner in the second example is not at fault for the state's failure to turn over evidence but now has to make an additional showing that undermines the very purpose of **Brady.**

In fact, the **Brady** evidence at issue is the exculpatory investigative report interview between Detroit Homicide Investigator and Ms. Craig, the disclosure of which would have dramatically changed the trial of this case. Because the prosecutor did not turn over information regarding this exculpatory interview in violation of **Brady,** and because Prosecutor did not tell Petitioner

Holland about the interview until 2014 when his Habeas Attorney (Bradly H. Hall) was informed by Assistant District Attorney General John Pallas after requesting a copy of the Wayne County Prosecutor and Detroit Homicide file. A.G. Pallas sent the prosecutor's file and instructed Attorney Hall to file a motion in the District Court to order the police to turn over the homicide file, long after Petitioner Holland filed his first motion, the evidence is new and had not been discovered at the time prior to the first motion. MCR 6.502(G)(2) is therefore satisfied.

Thus, the Homicide Scene Investigator Report could've been used as impeachment to Ms. Craig claim to having identified Zevadiah Holland by his voice (Appendix A-XIV - A-XIX).

But in the Homicide Investigator Report, Ms. Craig claim to only recognize Beikba (Holland's) voice which the Detroit Homicide Investigator never turned over this statement to the Prosecutor. (Appendix A-XII).

However, all the lower court's erred when concluding that Danny Patterson's April 17, 1991 Police Statement and the Homicide Investigation Report, which reveals that Patricia Craig without ever mentioning she could identify Petitioner by his voice, initially identified Low aka Beikba Holland by his voice, was not new evidence that met the requirement of MCR 6.502(G)(2). See (Appendix A-III).

Herein, there is no question that Ms. Patricia Craig's testimony was the only evidence upon which the jury could consider when deliberating upon Zebadiah Holland's fate as revealed by the Prosecutor's closing argument and rebuttal at trial. The Prosecutor urged the jury to rely upon Patricia Craig's testimony as the basis for convicting petitioner (Appendix A-XXIII), and bolstered her testimony by stating: "Patricia Craig would not lie to you and accuse these three people of that for no reason at all. There's a reason why

she then got up here and tells the police about 11 o'clock the next morning, yes the three people that came in my house, I know who they were. They were the three defendants Beikba, Zebadiah, and Leon." (Appendix A-XXIV - A-XXV). Under these circumstances, there can be no dispute that the only testimony and evidence upon which Petitioner Holland was convicted has been undermined where the Prosecutor's willingly suppressed impeachment evidence.

In **Brady**, the exculpatory evidence was a confession by **Brady's** accomplice that he was the one who actually strangled the victim. 373 US at 86. **Brady** conceded he had conspired with the accomplice to rob the victim and was present during the robbery, but he consistently argued that he should not be sentenced to death because it was the accomplice who committed the killing. **Brady v. State,** 226 Md 422, 425; 174 A2d 167 (1961). Thus, even before the prosecution eventually turned over the accomplice's confession, **Brady** knew the accomplice had personal knowledge of the murder--knowledge that was exculpatory for **Brady** and supported his defense. In other words, he already knew the information (that **Brady** was not the killer) contained in the **Brady** material (the accomplice's confession), but the U.S. Supreme Court did not find that to be a barrier to concluding that the undisclosed confession was **Brady** material.

The Sixth Circuit has also held that a petitioner does not lose his **Brady** protection if he already has knowledge of the information contained in an exculpatory but undisclosed interview. In **United States v. Tavera,** 719 F.3d 705, 712 (CA 6, 2013), the defendant was charged with conspiracy after police found drugs in a truck in which he had been a passenger. 719 F3d at 708-09. **Tavera** denied knowing about the drugs and claimed he was told the trip was for a construction project. Id. at 790. **Tavera's** co-defendant (the driver of the truck) told the prosecutor that **Tavera** did not know about the drugs, but the government did not reveal this information before trial. Id. **Tavera**, of

course, already possessed this knowledge because he knew he was involved and that the co-defendant knew this. Still, the Sixth Circuit found a **Brady** violation and stated that "the government has no reasonable justification for withholding the [material] statements." Id. at 174.

The point from both **Brady** and **Tavera** is clear: it is one thing for the defendant merely to know when another person has exculpatory information, and it is an entirely different thing for the defendant to know that the other person has made a statement to the government confirming the exculpatory facts. In the former case, the defendant may have every reason to believe that he cannot prove the exculpatory facts because the other person will deny those facts if called to testify. Because the prosecutor in **Brady** withheld the accomplice's statement, **Brady** did not know that his accomplice would confirm that he, not **Brady**, had committed the killing. Because the government in **Tavera** withheld the co-defendant's statement, **Tavera** did not know that his co-defendant would confirm that **Tavera** had no knowledge of the drugs.

But if the defendant learns that the person with exculpatory knowledge has made a statement to the government confirming those facts, the calculus changes entirely. The defendant can then simply subpoena the witness to give the same exculpatory account he previously gave to the police, and he could use that prior exculpatory statement for impeachment if needed.

In the case at bar, Petitioner Holland was convicted on August 30, 1991, but did not learn that Danny Patterson collected statements that was material to his innocence until 2014, that the Wayne County Prosecutor failed to turn over to Defense Attorney, where Danny Patterson stated: "She called me Friday Morning about 8:a.m. And she said that Kiba and Leon killed Charles for nothing. There wasn't no dope there, and there was only .86 cent there and that was hers"; could have been used as impeachment evidence establishing

actual innocence. (Appendix A-XII - A-XIII).

Failure to turn over exculpatory information to the defense requires a new trial if there is a "reasonable probability" that the suppressed information could have lead to a different result. **Kyles v. Whitley,** 514 US 419, at 434 (1995). "[I]f the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt." **United States v. Agurs,** 427 US 97, 113; 96 S.Ct 2392; 49 L.Ed.2d 342 (1976).

The verdict here was of questionable validity. Not only was there no physical evidence or eyewitnesses to corroborate Patricia Craig's allegations, but Patricia Craig's testimony itself was highly questionable. Ms. Craig admitted at trial that she recognized only Zebadiah Holland's voice. (Appendix A-XXI - A-XXII). However, in the Homicide Investigator Report, which the Prosecutor suppressed, Ms. Craig claim to only recognize Beikba (Holland's) voice. (Appendix A-VII - A-VIII). Finding Craig's credibility at trial was "obviously tenuous."

Thus, when reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within rule that suppression of material evidence justifies a new trial irrespective of good faith or bad faith of the prosecution. **Giglio v. United States,** 405 US 150; 92 S.Ct 763.

Here, the Michigan Supreme Court DENIED new trial, assuming the petitioner has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D). (Appendix A-I).

In determining whether evidence not disclosed by state was "material," in violation of **Brady**, cumulative effect of all suppressed evidence favorable to the petitioner is considered, rather then considering each item of evidence

individually, and favorable evidence state failed to disclose to petitioner would have made a different result "reasonably probable" in capital murder prosecution, and thus, nondisclosure of evidence was **Brady** violation. **Kyles v. Whitley**, 514 US 419; 115 S.Ct 1555 (1995).

Hence, Petitioner was denied a fair trial when the prosecutor committed a **Brady** violation by suppressing (A) a witness statements and (B) the homicide scene investigator report evidence which was material or favorable to the defense that violated his Federal and State Constitutional right under the 14th Amendment Due Process.

The trial court further erred when concluding that the claims advanced below had been raised in a previous Motion for Relief from Judgment. See trial Court's Order Denying Relief from Judgment. Id. This, however, is wholly untrue. As a review of Petitioner's previously filed Motion for Relief from Judgments make clear that Petitioner has never advanced a **Brady** violation in any of his previously filed Motion, let alone presented any issues where the evidence supporting the claims contained in the relevant Motion for Relief from Judgment had been previously considered by the Trial Court. (Appendix A-III).

This Court should also conclude that Petitioner has demonstrated "actual prejudice" from the **Brady** violation, due process requires the state to disclose evidence in its possession to the petitioner provided that the evidence is favorable to the defense and material to the defendant's guilt or punishment. **Smith v. Cain**, ___ US ___; 132 S.Ct 627, 630; 181 L.Ed.2d 571 (2012).

Thus, the Michigan Supreme Court of last resort has decided an important federal question in a way that conflicts with the decision of United States Court of Appeals for the Sixth Circuit on **Brady, Giglio** and **Kyles** claim.

Petitioner therefore respectfully request that this Court grant certiorari to resolve the split of authority and to reaffirm the principles set forth in **Brady, Giglio** and **Kyles**.

## CONCLUSION

For these reasons, Petitioner Zebadiah Holland asks that this Court grant this petition for a writ of certiorari.

Respectfully submitted,

BY: Zebadiah Holland

Zebadiah Holland
MDOC No. 219424
Petitioner In Pro Per
Muskegon Corrections Facility
2400 S. Sheridan Drive
Muskegon, Mich 49442

Date: February 25, 2019