

No. 18-8872

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE SAMUEL LEWIS SURLES, PETITIONER

VS.

RESPONDENT

MOTION FOR PETITION FOR REHEARING

IN RE SAMUEL LEWIS SURLES, PETITIONER
PURSUANT TO RULE 44, PETITION THIS
HONORABLE COURT FOR LEAVE TO FILE
MOTION FOR PETITION FOR REHEARING FOR
THE FOLLOWING REASONS:

1. THAT ON APRIL 3, 2019 PETITIONER
FILED HIS PETITION FOR WRIT OF HABEAS
CORPUS, WHICH EXCEEDED THE 40 PAGE
LIMIT PURSUANT TO RULE 33.2.(b).
2. PETITIONER HAND-PRINTED HIS PETITION
FOR EXTRAORDINARY WRIT OF HABEAS
CORPUS BECAUSE PRISON GUARD BROKE HIS

word prosson, which forced him to hand-print his writ.

3. I pray this Honorable Court will forgive my failure to comply with the Rules of this Court.

4. On May 28, 2019, Petitioner received a letter from the Clerk of the Supreme Court of the United States dated May 22, 2019 who advised me the case in question Petition for Extraordinary writ (habeas) in case No. 18-8872, exceeded the 40 page limit per the order in 18A1061.

5. In light of the fact this Court has not ruled on the merits of his claim, that grant Petition for Rehearing of the judgment or decision of the Court. to reconsider and reinstate Petitioner in forma pauperis under Rule 39.

6. See Memorandum of Law, Reason for Granting the Petition.

WHEREFORE, AS GUARDIAN OF THE SUPREME LAW OF THE LAND, THE CONSTITUTION OF THE UNITED STATES, Petitioner prays, this Court will grant Motion for Petition for Rehearing, Reinstate in forma pauperis and grant request for appointment of counsel to help Petitioner comply with the rules of the Court.

Date: May 10, 2019

Respectfully submitted,
Samuel Lewis Surles
Samuel Lewis Surles,
Petitioner

No. 18-8872

IN THE
SUPREME COURT OF THE UNITED STATES

IN Re Samuel Lewis Surles — PETITIONER
(Your Name)

vs.

_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Michigan Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Samuel Lewis Surles
(Your Name)

1728 W. Bluewater Hwy #A122260
(Address)

IONIA, MICHIGAN 48846
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

ARGUMENT I.

PETITIONER WAS DENIED HIS UNALIENABLE CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF LAW. THE MICHIGAN SUPREME COURT FAILED ITS OPPORTUNITY TO RULE ON THE MERITS OF PETITIONER'S APPLICATION FOR LEAVE TO APPEAL, AFFIRMING THE LOWER CIRCUIT COURT OF WAYNE COUNTY TO RECHARACTERIZED PETITIONER'S MOTION FOR NEW TRIAL FILED PURSUANT TO MCL 720.1; MSA 28.1098 BY CHANGING ITS "HEADING" TO A MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO MCR 6.500 WITHOUT PROVIDING PETITIONER WITH A WRITTEN NOTICE WAS CONTRARY TO UNITED STATES SUPREME COURT PRECEDENT OF CASTRO V. UNITED STATES, 540 U.S. 375; 124 S. CT. 786; 157 L. ED. 2D. 728 (2003); THE FAIR V. KOHLER DIE & SPECIMTY CO., 228 U.S. 22; 33 S. CT. 410 (1913); CHEESMAN V. TERTS, 354 U.S. 156 (1957)

ARGUMENT II.

PETITIONER WAS DENIED HIS UNALIENABLE SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF DUE PROCESS AND EQUAL PROTECTION

QUESTIONS PRESENTED-CONTINUES

OF THE LAW WHEN:

1. TRIAL Counsel HARRY Pliskow was CONSTITUTIONALLY INCOMPETENT AND INEFFECTIVE IN HIS FAILURE TO FILE PRE-TRIAL MOTIONS TO SUPPRESS AND/OR DISMISS THE CRIMINAL COMPLAINT DEFECTIVE, UNCONSTITUTIONAL FOR A LACK OF SUBJECT-MATTER JURISDICTION, THAT IT DID NOT DEFINE MURDER.
2. Counsel FAILED TO OBJECT PETITIONER WAS TOTALLY DENIED RIGHT TO Counsel IN PROTECTING HIS FOURTH AMENDMENT RIGHT TO NO WARRANT shall issue but UPON A PRE-TRIAL PROBABLE CAUSE DETERMINATION PROCESS OF FACTS AND CIRCUMSTANCES CONTAINED IN THE COMPLAINT.
3. Counsel FAILED TO OBJECT PETITIONER WAS DENIED RIGHT TO DISINTEREST AND NEUTRAL AND DETACHED MAGISTRATE FOR PURPOSE OF SIGNING THE COMPLAINT, WARRANT AND TRIAL JUDGE VIOLATED SIXTH AMENDMENT OF AN IMPARTIAL JUDGE.

Questions Presented - Continuous

4. The Criminal Complaint attached no Affidavit to support Probable Cause for issuance the warrant, Not based on personal knowledge by police.
5. Petitioner was denied his Fifth and Sixth Amendment to be informed of his Miranda rights to the presence and assistance of Counsel during police pre-trial March 21, 1968 Showup/Lineup identification, incommunicado interrogation, critical stages.
6. Counsel did not object Petitioner was his Sixth Amendment right to Counsel during Arraignment on the warrant of March 22, 1968, before Magistrate Judge Samuel H. Olsen.
7. Counsel did not file motion to suppress Petitioner's Fourth Amendment right was violated against unreasonable search and seizure of personal items from his home without a warrant

Questions Presented - Continues

8. TRIAL COUNSEL WAS INEFFECTIVE IN HIS FAILURE TO INVESTIGATE AND FILE MOTION TO DISMISS IN VIOLATION OF PETITIONER'S FOURTH AMENDMENT RIGHT, WHERE POLICE WITHOUT A SEARCH WARRANT ILLEGALLY SEIZED A WIPING CLOTH FROM PETITIONER'S PLACE OF EMPLOYMENT, OUTSIDE THE CURTILAGE OF HIS HOME.
9. TRIAL COUNSEL WAS INEFFECTIVE WHERE HE FAILED TO MOTION FOR DISMISSAL DURING THE APRIL 2, 1968, PRE-TRIAL PRELIMINARY EXAMINATION WHERE ASSISTANT PROSECUTOR ARTHUR J. KOSCIANSKI, IN-COURT IDENTIFICATION INTENTIONALLY DIRECTED WITNESS TO IDENTIFY PETITIONER VIOLATED HIS FIFTH AND SIXTH AMENDMENT RIGHT TO FAIR TRIAL, DUE PROCESS AND EQUAL PROTECTION OF THE LAW.
10. TRIAL COUNSEL WAS INEFFECTIVE WHERE PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO A JURY OF HIS PEERS FROM A CROSS SECTION OF HIS COMMUNITY.

QUESTIONS PRESENTED - CONTINUED

11. DEFENSE COUNSEL WAS INEFFECTIVE IN his failure to object that TRIAL Judge Samuel H. OLSEN exceeded his Authority the modification of the INFORMATION, charging, trying, convicting and sentencing PETITIONER without the ESSENTIAL ELEMENTS OF Felony-murder, ARMED ROBBERY, UNARMED ROBBERY, ATTEMPTED ROBBERY, AND SECOND-DEGREE MURDER violated his Fifth Amendment right of twice put in jeopardy without due process of law, Sixth Amendment right to be informed of the nature and cause of the accusation.
12. DEFENSE COUNSEL WAS INEFFECTIVE where he failed to object that TRIAL Judge structural error, erroneously instructing the jury that PETITIONER'S ALIBI WITNESS WAS A "DEFENSE EASY TO PROVE AND DIFFICULT TO DISPROVE", UNCONSTITUTIONALLY shifted the burden of proof beyond a reasonable doubt from the prosecution to the PETITIONER, denied him due process and equal protection to a fair trial.

QUESTIONS PRESENTED - CONTINUED

15. DEFENSE COUNSEL HARRY L. PLISKOW WAS INEFFECTIVE AND INCOMPETENT WHERE HE FAILED TO OBJECT TO TRIAL COURT LACK OF SUBJECT-MATTER JURISDICTION, STRUCTURAL ERRORS AFFECTING PETITIONER TRIAL FROM THE BEGINNING TO END WHERE HE WAS CHARGED UNDER AN UNCONSTITUTIONAL STATE STATUTE MCL 750.316; MSA 28.548 OF 1948 CONTRARY TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW; ART. I, SEC. 24, SEC. 25; ART. IV, SEC. 46 AND SEC. 46 OF STATE OF MICHIGAN CONSTITUTION OF 1963.
16. APPELLATE COUNSEL JAMES A. HATHAWAY WAS CONSTITUTIONALLY INEFFECTIVE AND INCOMPETENT WHERE HE FAILED TO CONDUCT A ROUTINE INVESTIGATION, FILE MOTION FOR EVIDENTIARY HEARING TO DEVELOP A FACTUAL TESTIMONY RECORD THAT TRIAL COUNSEL HARRY L. PLISKOW WAS INEFFECTIVE IN HIS FAILURE TO OBJECT TO STRUCTURAL ERRORS, WHERE PETITIONER WAS DENIED THE PRESENCE AND ASSISTANCE OF COUNSEL AT CRITICAL STAGES OF POLICE PRE-TRIAL SHOWUP IDENTIFICATION, INCOMMUNICADO, POLICE INITIATED INTERROGATION, ARRAIGNMENT ON THE WARRANT, FAILURE TO ADVISED PETITIONER OF HIS MIRANDA RIGHTS WITHOUT PROOF OF WAIVER, RADICAL JURISDICTIONAL DEFECTS IN THE COMPLAINT, WARRANT AND INFORMATION AND WHERE TRIAL JUDGE GAVE ERRONEOUS JURY INSTRUCTION VIOLATED THE FOURTH, FIFTH AND SIXTH AMENDMENT RIGHTS.

LIST OF PARTIES

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

DEWAYNE BURTON, WARDEN
IONIA, MICHIGAN

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

MICHIGAN COURT OF APPEALS
LANSING, MICHIGAN

DAVID A. GRONER, Judge
WAYNE COUNTY CIRCUIT COURT
DETROIT, MICHIGAN

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

STATUTES AND RULES

Rule 44

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

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

- ☒ reported at MICHIGAN SUPREME COURT; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the WAYNE COUNTY CIRCUIT court appears at Appendix A to the petition and is

- ☒ reported at DETROIT; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

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

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was June 27, 2017.
A copy of that decision appears at Appendix E.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I.

Congress shall make no law --- Abridging
The Freedom of Speech.

Amendment IV

The Right of the People to be secure in
their persons, houses, papers, and effects,
against unreasonable searches and seizures,
shall not be violated, and no warrants shall
issue, but upon probable cause, supported
by oath or affirmation, and particularly
describing the place to be searched, and
the persons or things to be seized.

Amendment V.

No person shall be held to answer for a
capital, or otherwise infamous crime,
unless on a presentment or indictment
of a Grand Jury --- Nor shall any person
be subject for the same offense to
be twice put in jeopardy of life --- 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 ---

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 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; 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 defense.

AMENDMENT VIII.

EXCESSIVE bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX.

THE ENUMERATION IN THE CONSTITUTION, OF CERTAIN RIGHTS, SHALL NOT BE CONSTRUED TO DENY OR DISPARAGE OTHERS RETAINED BY THE PEOPLE.

AMENDMENT XIV.

ALL PERSONS --- 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

1. ON MARCH 21, 1968, PETITIONER Samuel Lewis Sures was unlawfully charged with deliberated, premeditated killing and murder of ONE FRANCE ANCONA. Police officer not present along with Judge Samuel H. Olsen signed the Criminal Complaint with Detective Robert KANKA. [SEE EXHIBIT (A)]
2. ON MARCH 22, 1968, Judge Samuel A. Olsen signed the Criminal Warrant for PETITIONER'S ARREST AFTER he was taken to Police station.
3. ON MARCH 21, 1968, PETITIONER was taken AFTER being arrested while in his mother's home without an ARREST WARRANT by OFFICER Felix Nowak; that AROUND 11:12 a.m. OF MARCH 22, 1968 PETITIONER was forced INTO A Police Showup/Lineup without Counsel presence or assistance. PETITIONER did NOT learn until AFTER his conviction and sentence some 30 years or so later, that ARTHUR L. DOU OF 462 GRATIOT OF DETROIT was a "Standby Counsel." OFFICER Robert KANKA who both Robert Wilson were present at the Showup/Lineup never advised PETITIONER of his Sixth Amendment right to Counsel. [SEE EXHIBIT (M)]
4. ON MARCH 21, 1968 AT ABOUT 11:10 p.m. while at the DETROIT Police Station downtown, PETITIONER Samuel Lewis Sures was

STATEMENT OF FACTS - CONTINUES

Forced by OFFICER THOMAS McMANUS and EUGENE McBRIDE to OR did PARTICIPATE in POLICE incommunicado INTERROGATIONS without being advise of the right to the present, AND ASSISTANT OF COUNSEL prior to being, questioned by OFFICER McMANUS and McBRIDE while in the sub-basement of the POLICE station. OFFICER ROBERT KANKA TESTIFIED during trial, he took a STATEMENT from PETITIONER; THAT HE WAS NEVER TAKEN to the PROSECUTION OFFICE FOR A formal STATEMENT. [SEE EXHIBIT (L) and EXHIBIT (U)]

5. ON MARCH 22, 1968, OFFICER ROBERT KANKA PARTICIPATED during PETITIONER'S ARRAIGNMENT ON WARRANT, Judge SAMUEL A. OLSEN was Acting MAGISTRATE. PETITIONER was NOT REPRESENTED by COUNSEL during PRE-trial ARRAIGNMENT, Nor did Judge OLSEN adjourned for PETITIONER to be appointed COUNSEL to CONSULT with prior to a plea being ENTER for him by the COURT. [SEE EXHIBIT (F) AND (G)]

6. ON April 2, 1968, PETITIONER'S PRELIMINARY EXAMINATION was held before Judge GERALDINE BIRDSON FORD. ATTORNEY FOR PETITIONER, HARRY L. POLISKOW objected THAT ASSISTANT WAYNE County PROSECUTOR

STATEMENT OF FACTS - CONTINUES

ARTHUR J. KOSCINSKI directed the Peoples' only witness AARON WALKER where to locate PETITIONER SURLS in the COURTROOM, that PETITIONER was SEATED at the TABLE with his ATTORNEY [EXHIBIT (I)]

7. ON APRIL 2, 1968, PETITIONER SAMUEL LEWIS SURLS WAS bound over for trial in the Detroit Recorder's Court on the charges contained in the COMPLAINT and WARRANT. [SEE EXHIBIT (W)]
8. ON JANUARY 22, 1969, PETITIONER'S JURY TRIAL STARTED; AND ON JANUARY 29, 1969, PETITIONER WAS FOUND GUILTY AS CHARGED OF FIRST-DEGREE MURDER. ON FEBRUARY 14, 1969, PETITIONER WAS SENTENCED TO THE MICHIGAN CORRECTIONS COMMISSION, to a MANDATORY LIFE SENTENCE. [SEE EXHIBIT (D) AND (I)]
9. IN 1969, APPELLATE COUNSEL JAMES A. HATHAWAY FILED PETITIONER APPEAL OF RIGHT IN THE MICHIGAN COURT OF APPEALS. THE APPEAL COURT AFFIRMED PETITIONER'S CONVICTION. SEE PEOPLE V. SURLS, 29 MICH APP 132; 185 N.W.2d. 126 (1970).

STATEMENT OF FACTS - CONTINUES

10. THE MICHIGAN SUPREME COURT DENIED PETITIONER'S APPLICATION FOR LEAVE TO APPEAL. SEE People v. Surles, 385 MICH 764 (1971).
11. PETITIONER FILED AT LEAST TWO PRIOR FEDERAL HABEAS CORPUS ACTIONS WHICH WERE UNSUCCESSFUL. SEE Surles v. Johnson, No. 72-1329 (6th Cir. unpublished Order of October 4, 1972); Surles v. Mintzes, No. 82-1121 (6th Cir. unpublished Order of October 4, 1984).
12. ON AUGUST 18, 1981, THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DENIED PETITIONER'S APPLICATION FOR A CERTIFICATE OF PROBABLE CAUSE.
13. IN 2013, PETITIONER IN PROSE FILED PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. SEC. 2241, CHALLENGING HIS STATE COURT CONVICTION OF FIRST-DEGREE MURDER; HE DID NOT CHALLENGE HE WAS ILLEGALLY IN CUSTODY IN VIOLATION OF THE UNITED STATES CONSTITUTION. NO FEDERAL OR STATE COURTS EVER RULE ON THE MERITS OF HIS CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL.
14. ON MAY 7, 2013, UNITED STATES DISTRICT COURT JUDGE VICTORIA A. ROBERTS ISSUED HER ORDER TRANSFERRING PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS TO THE

STATEMENT OF FACTS - CONTINUES

SIXTH CIRCUIT COURT OF APPEALS, THAT PETITIONER WAS SEEKING A SECOND OR SUCCESSIVE HABEAS PETITION, BUT THE TRUTH OF THE MATTER PETITIONER WAS NOT PETITIONING THE COURT SEEKING A SECOND OR SUCCESSIVE HABEAS PETITION. PETITIONER OBJECTED TO JUDGE ROBERTS RECHARACTERIZING, CHANGING THE NARRATIVE OF HIS PETITION FOR WANT OF HABEAS CORPUS TO TREAT IT AS A 28 U.S.C. SEC. 2254 PETITION CONTRARY TO UNITED STATES SUPREME COURT PRECEDENT UNDER CASTRO V. UNITED STATES, 540 U.S. 375, 124 S. CT. 786, 157 L. ED. 2D 778 (2003); PLILEN V. FORD, 542 U.S. 234, 124 S. CT. 2441 (2004).

15.

ON MAY 26, 2014, THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ISSUED ITS ORDER DENYING PETITIONER'S APPLICATION. THIS DID NOT ADDRESS THE MERITS THAT THE COURT MADE SUBJECT-MATTER JURISDICTION TO TRY THIS CASE; THAT THE CLAIMANT COMPLAINED, UNARRAID AND INFORMATION WERE LONG FORTHCOMINGLY, JURISDICTIONALLY DEFECTIVE.

16.

ON JULY 25, 2016, PETITIONER FILED APPLICATION FOR LEAVE TO APPEAL IN THE MICHIGAN COURT OF APPEALS. ON OCTOBER 5, 2016 THIS

STATEMENT OF FACTS - CONTINUES

Application was denied.

17. ON NOVEMBER 15, 2016, PETITIONER FILED APPLICATION FOR LEAVE TO APPEAL IN THE MICHIGAN SUPREME COURT. ON JUNE 27, 2017, THIS APPLICATION WAS DENIED WITHOUT A RULING ON THE MERITS OF HIS CLAIM OF RECHARACTERIZATION AND INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSELS.

Memorandum of Law

REASONS FOR GRANTING THE PETITION

WAYNE COUNTY Circuit Court Judges decision of August 20, 2015 and June 30, 2016; AND THE MICHIGAN Supreme Court decision of June 27, 2017 to allow the RECHARACTERIZATION of PETITIONER'S MOTION FOR NEW TRIAL, changing its "heading" to a MOTION FOR RELIEF FROM JUDGMENT without providing PETITIONER with a WRITTEN NOTICE AND AN OPPORTUNITY TO CHALLENGE it violated PETITIONER'S CONSTITUTIONAL RIGHT OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW; AND WAS CONTRARY TO THE UNITED STATES Supreme Court PRECEDENT cited in CASTRO v. UNITED STATES, 540 U.S. 375; 124 S. CT. 786 (2003) and THE FAIR v. KOHLER DIE & SPECIALTY CO., 228 U.S. 22; 33 S. CT. 410 (1913) [SEE EXHIBIT (A), (B) (C) AND (E)]

ARGUMENT II.

PETITIONER WAS DENIED HIS UNALIENABLE SIXTH AMENDMENT RIGHTS DUE PROCESS AND EQUAL PROTECTION OF THE LAW, WHERE TRIAL COUNSEL HARRY L. PLISKOW WAS CONSTITUTIONALLY INCOMPETENT AND INEFFECTIVE WHERE HE FAILED TO FILE PRE-TRIAL MOTION TO SUPPRESS THE COMPLAINT OF MARCH 21, 1968 WAS DEFECTIVE, WHERE IT DID NOT DEFINE

MEMORANDUM OF LAW

MURDER AND DENIED THE TRIAL COURT SUBJECT-MATTER JURISDICTION. WAS CONTRARY TO SUPREME COURT PRECEDENT CITED IN GIORDENALLO V. UNITED STATES, 357 U.S. 480, 486, 2 L. ED. 2D. 1503 (1958); WONG SUN V. UNITED STATES, 371 U.S. 471, 481-482; 83 S. CT. 407; 9 L. ED. 441 (1963); WHITLEY V. WARDEN WYO STATE PENITENTIARY, 401 U.S. 560; 91 S. CT. 1031; 28 L. ED. 2D. 306 (1971); AQUILAR V. TEXAS, 378 U.S. 108, 112 N. 3; 84 S. CT. 1509 (1964)

(1). BOTH TRIAL AND APPELLATE COUNSELS FAILED TO OBJECT PETITIONER'S FOURTH AMENDMENT TO A PROBABLE CAUSE DETERMINATION ON THE COMPLAINT WITHOUT SUPPORTING AFFIDAVIT, A STRUCTURAL ERROR EFFECTING PETITIONER'S RIGHT TO FAIR TRIAL FROM THE BEGINNING TO OF HIS TRIAL. VIOLATED SUPREME COURT PRECEDENT CITED IN BECH V. OHIO, 329 U.S. 89, 91, 85 S. CT. 223 (1964); GERSTEIN V. PUGH, 420 U.S. 115; 95 S. CT. 854 (1975); AND FRANK V. DELAWARE, 438 U.S. 154; 98 S. CT. 2674 (1978); SPINELLI V. UNITED STATES, 89 S. CT. 584, 587; 393 U.S. 410 (1963) [SEE EXHIBIT (A)]

(2) THE PROCESS OF MICHIGAN LAW MCLA 764.1A WAS DEFECTIVE IN PROTECTION OF PETITIONER'S FOURTH AMENDMENT THAT NO WARRANT SHALL ISSUED BUT UPON PROBABLE CAUSE SUPPORTED

REASON FOR GRANTING THE PETITION

by OATH OR AFFIRMATION. THE COMPLAINT DID NOT SET FORTH THE RELEVANT CRIME IN GENERAL TERMS, IT REFERS TO OFFICER Robert KANKA, but NOWHERE DOES IT INDICATE HOW HE KNOWS OR WHY HE BELIEVES THAT PETITIONER SURLES COMMITTED THE CRIME. IN Giordenello v. UNITED STATES, 357 U.S. 480, 486; 78 S. CT. 1245 (1958); Whiteley v. WARDEN, WYO STATE PENITENTIARY, 401 U.S. 560; 90 91 S. CT. 1031 (1971), THIS SUPREME COURT HAS MADE IT CLEAR THAT A COMPLAINT OF THIS KIND DID NOT PROVIDE SUFFICIENT FACTS AND CIRCUMSTANCES TO SUPPORT FOR THE ISSUANCE OF AN ARREST WARRANT, DID NOT MEET THE PROBABLE CAUSE REQUIREMENT. [SEE EXHIBIT (A)]

THE COMPLAINT WAS ONLY A CONCLUSORY STATEMENT BY OFFICER KANKA IN ITSELF IS INSUFFICIENT TO SUPPORT A FINDING OF PROBABLE CAUSE CITING NO FACTS OR CIRCUMSTANCES, NO AFFIDAVIT THAT OFFICER KANKA SPOKE WITH PERSONAL KNOWLEDGE OR THE SOURCE FROM WHERE HE GOT HIS INFORMATION.

Memorandum of Law
REASON FOR GRANTING THE PETITION

- (3) Petitioners have a Sixth Amendment to be tried by an impartial Judge, disinterested, neutral and detached. Neither trial Counsel HARRY L. Pliskow objected nor file a motion for Judge Samuel H. OLSEN to recused himself, that he had an PECUNIARY INTEREST from the beginning to the end of Petitioner's case contrary to Supreme Court precedent cited in IN RE Murchison, 349 U.S. 133, 136; 75 S. CT. 623 (1955); Turney v. Ohio, 273 U.S. 510; 47 S. CT. 437; 71 L. ED 749 (1927).

Had trial Counsel reviewed the Criminal Complaint, and Warrant, and Appellate Counsel JAMES A. KATHAWAY conducted a routine investigation, both would have learned of Judge OLSEN biases, withholding information from Petitioner of receiving from Officer Robert Kanka, James Syfert, Eugene McBride, and Thomas McMann, and Wayne County Assistant Prosecutor Arthur J. Kosciuski and Prosecuting Attorney William L. CANNON of possible prejudicial information which could affect Petitioner's right to fair trial.

Judge OLSEN should have known the Complaint was not based on personal knowledge from Officer Robert Kanka,

Reason For Granting the Petition

Not supported by Affidavit, Not
Reporting the Source of his information
and Deloit was not in compliance
MCL 764.1, Due Process and Equal
Protection of the Law.

Judge Samuel H. Olson by signing the
Complaint of March 21, 1968 and the
Warrant for Arrest, became part of
the Police and Prosecution investigations.
Judge Olson's loyalty was no longer with
the Judicial Branch. See United States
v. Leon, 468 U.S. 897; 104 S. Ct. 3405;
83 L. Ed. 2d 677 (1982); Christofferson
v. Washington, 393 U.S. 1090; 89 S. Ct.
855 (1969).

Lastly, Recorder's Court Rule 8 is clear
that whenever any Judge shall have acted
as Examining Magistrate in any case
he shall not be assigned to the
trial of that case, except with
the expressed consent of Counsel for
all parties entered upon the Record
in Open Court. See People v. Ramsey,
385 Mich 221, 224 (1971) [See also Exhibit
(B) and (A)]. Coolidge v. New Hampshire,
403 U.S. 443, 453; 91 S. Ct. 2022; 29
L. Ed. 2d 564 (1971).

REASON FOR GRANTING THE PETITION

- (4) THE FOURTH AMENDMENT PROVIDES THAT "NO WARRANT SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION..."

MICHIGAN STATE STATUTE MC 2764.1, 2. (C) STATES IN-PART, THAT, THE FINDING OF PROBABLE CAUSE, COMPLAINANT, MUST AN AFFIDAVIT. AN INFORMATION SWORN TO ON INFORMATION AND BELIEF IS VOID IF THE STATUTE REQUIRES THE VERIFICATION BE BY SOMEONE WHO CAN TESTIFY TO THE FACTS. SWART V. KIMBALL, 43 MICH 444 (1880). SEE ALSO GIORDANOLLO V. UNITED STATES, 357 U.S. 480, 486; 78 S. CT. 1245 (1958); SPINELLI V. U.S., 89 S. CT. 584; 393 U.S. 410 (1963).

THERE IS NO OBJECTION BY DEFENSE PLISKOW CHALLENGING WHOM OR NOT AN AFFIDAVIT WAS SUBMITTED BY OFFICER ROBERT KANKA TO MAGISTRATE SAMUEL A. OLSON, WHO SHOULD SET ASIDE THE CONCLUSORY STATEMENT AND DISMISS THIS CASE AS OFFICER KANKA KNOWINGLY AND DELIBERATELY, IN A RECKLESS DISREGARD FOR THE TRUTH, MADE A FALSE STATEMENT. SEE FRANKS V. DELAWARE, 438 U.S. 154; 98 S. CT. 2674 (1978); UNITED STATES V. AGURS, 427 U.S. 97; 96 S. CT. 2392 (1976); NAPUE V. ILLINOIS, 360 U.S. 264; 79 S. CT. 1173 (1959)

REASON FOR GRANTING THE PETITION

(5) IN UNITED STATES v. WADE, 388 U.S. 218; 89 S. Ct. 1926 (1967); Gilbert v. California, 388 U.S. 263; 87 S. Ct. 1951; 18 L. Ed. 2d. 1178 (1967), The Supreme Court's precedent not only inadmissible witness testimony, they had identified the accused at the lineup; also rendering inadmissible the in-court identification by witnesses who observed him at the lineup. But the Court made clear Petitioner have a Constitutional right to the presence and assistance of right before and during pre-trial showup identification, which confrontation violated Sixth Amendment right, and Due Process and Equal Protection of law, of the Fourteenth Amendment.

Appellate Counsel James A. Hathaway failed to investigate and raise for the first time on Appeal, Petitioner was denied his Constitutional right to presence and assistance of counsel during police March 21, 1968 showup identification; that no court records exist of Petitioner had voluntarily, intelligently and knowingly waived his right, resulted in a miscarriage of justice. [See Exhibit (L) and (M)]

Memorandum of Law
REASON FOR GRANTING THE PETITION

IN UNITED STATES V. WADE, SUPRA, THE COURT HELD THAT VIOLATION OF ACCUSED'S SIXTH AMENDMENT RIGHT TO COUNSEL AT A LINEUP REQUIRED NOT ONLY THE EXCLUSION OF EVIDENCE OF IDENTIFICATION AT THAT LINEUP, BUT ALSO EXCLUSION OF A SUBSEQUENT IN-COURT IDENTIFICATION IF IT WAS THE FRUIT OF THE LINEUP IDENTIFICATION STANDARD FOR DETERMINATION WHETHER THE IN-COURT IDENTIFICATION WAS TAINTED. SEE ALSO MEMPA V. RAY, 389 U.S. 128 (1967) ABSENCE OF COUNSEL AT CRITICAL STAGES. MICHIGAN FAILED TO ESTABLISH A PROPER IDENTIFICATION PROCEDURE TO PROTECT PETITIONER'S DUE PROCESS RIGHT TO UNNECESSARILY SUGGESTIVE AND CONDUCTIVE LINEUP. SEE FOSTER V. CALIFORNIA, 394 U.S. 440, 442, 89 S. CT. 1127, 1128; 22 L. ED. 2D. 462 (1969)

DEFENSE COUNSEL ARNOLD L. PLISKOW FILED NO MOTION TO SUPPRESS THE LACK OF COUNSEL AT THE MARCH 21, 1968 SHOWUP IDENTIFICATION WAS UNCONSTITUTIONAL AND A MISCHANCE OF JUSTICE, ESPECIALLY WHEN ASSISTANT PROSECUTOR ARTHUR J. KOSCIANSKI INTENTIONALLY DIRECTED HIS WITNESS AREON WALKER WHERE TO LOOK FOR PETITIONER DURING THE APRIL 2, 1968 PRELIMINARY EXAMINATION. [SEE EXHIBIT (T)] A GROSS MISCHANCE OF JUSTICE. SEE STOVALL V. DENNO, 388 U.S. 293; 87 S. CT. 1967 (1967)

REASON FOR GRANTING THE PETITION

IT WAS CITED IN THE SUPREME COURT PRECEDENT Escobedo v. Illinois, 378 U.S. 478; 84 S. Ct. 1758 (1964) PETITIONER HAD A CONSTITUTIONAL RIGHT NOT TO BE FORCED BY POLICE FROM MAKING AN INCRIMINATING STATEMENT WITHOUT HIS LAWYER PRESENCE. [SEE EXHIBIT (Q)]

THE SUPREME COURT'S LAND MARK DECISION CITED IN MIRANDA V. ARIZONA, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612; 16 L. Ed. 2d. 694 (1966), PETITIONER HAD A CONSTITUTIONAL RIGHT TO THE PRESENCE AND ASSISTANCE OF COUNSEL [BEFORE] AND [DURING] POLICE CUSTODIAL INTERROGATION. NEITHER OFFICER ROBERT KANKA, EUGENE MCBRIDE, THOMAS McMAHON OR JAMES SYFERT ADVISED PETITIONER HE DID NOT HAVE TO ANSWER ANY QUESTIONS WITHOUT THE ASSISTANCE OR PRESENCE OF A LAWYER; NOR DID PETITIONER WAIVE SUCH RIGHTS. WHEN PETITIONER INFORMED HIS LAWYER MR. HARRY PLISKOW, THAT POLICE REFUSED TO ALLOW TO MAKE A PHONE CALL; HAND CUFFED HIM TO THE LEG OF A CHAIR AND THREATEN BEAT HIM, COUNSEL DID NOT FOLLOW UP ON THIS MATTER; NOR FILED A MOTION TO SUPPRESS OFFICER KANKA'S TESTIMONY OF PETITIONER ALLEGED STATEMENT. SEE JOHNSON V. ZENBST, 304 U.S. 458; 58 S. Ct. 1019; 82 L. Ed. 1461 (1938) OF VOLUNTARILY WAIVER OF CONSTITUTIONAL RIGHT AND ASSISTANCE OF

MEMORANDUM OF LAW

REASON FOR GRANTING THE PETITION

COUNSEL, AND LATER IN Escobedo v. Illinois, SUPRA. IN White v. Maryland, 373 U.S. 59 (1963), THE COURT HELD EARLIER RULED, THAT THIS PRE-INDICTMENT INTERROGATION WAS AS MUCH A CRITICAL STAGES AS THE PRELIMINARY HEARING IN THAT COULD AFFECT THE WHOLE TRIAL. ALSO IN Chapman v. California, 386 U.S. 18, 23 A N. 8; 87 S. CT. 824, 17 L. ED. 2D. 705 (1967), THE COURT HELD THE DENIAL OF COUNSEL AT A CRITICAL STAGE OF A CRIMINAL PROCEEDING IS ALWAYS CONSIDER PREJUDICE, AND A MISCARriage OF JUSTICE. DEFENSE COUNSEL HARRY L. PLISHOW NEVER CHALLENGED THE TESTIMONY OF OFFICER ROBERT KANKA BEFORE THAT THAT PETITIONER MADE A STATEMENT IN VIOLATION OF HIS FIFTH RIGHT OF SELF-INCRIMINATION, AND WHEN HE WAS DENIED HIS SIXTH AMENDMENT TO HAVE THE ASSISTANCE AND PRESENCE OF COUNSEL. POLICE HAD REPEATEDLY DENIED COUNSEL UNTIL HE ANSWERED THEIR QUESTIONS. YET, COUNSEL NEVER CHALLENGED THE PROSECUTION EVIDENCE SHOW POLICE HAD A VALID WAIVER, DENIAL OF

REASON FOR GRANTING THE PETITION

Counsel, AND LATER IN Escobedo v. Illinois,
SUPRA. IN White v. Maryland, 373 U.S.
59, 60; 83 S. Ct. 1050, 10 L. Ed. 2d 193 (1963),
held that the denial of Counsel at a
critical stage of a criminal proceeding
is always considered prejudicial. [See
Exhibit (L), (U)]

IN Power v. Alabama, 287 U.S. 45, 53
S. Ct. 55, 77 L. Ed. 158 (1932); Gideon v. Wain-
wright, 372 U.S. 335, 9 L. Ed. 2d 799; 83 S. Ct.
792 (1963), AND McMANN v. Richardson,
397 U.S. 759, 25 L. Ed. 2d 763; 90 S. Ct. 1441
(1970) THE SUPREME HAVE LONG RECOGNIZED
THAT THE RIGHT TO COUNSEL, MEANS THE
EFFECTIVE RIGHT OF COUNSEL.

Memorandum of Law

REASON FOR GRANTING THE PETITION

- (6) The STANDARD OF REVIEW FOR DENIAL OF Counsel during ARRAIGNMENT IS SET OUT IN POWELL v. ALABAMA, 287 U.S. 45; 53 S. Ct. 55; 27 L. Ed. 158 (1932); JOHNSON v. ZERBST, 304 U.S. 458, 468; 58 S. Ct. 1024, 82 L. Ed. 1461 (1938); WARDEN v. WILLIAMS, 430 U.S. 387; 97 S. Ct. 1232; 51 L. Ed. 2d. 424 (1977); ROTHGERTY v. GILLESPIE COUNTY TEXAS, 554 U.S. 191; 128 S. Ct. 2578; 171 L. Ed. 2d. 366 (2008)

ON March 22, 1968, PETITIONER WAS ARRAIGNED WITHOUT PRESENCE AND ASSISTANCE OF COUNSEL A CRITICAL STAGE. SEE WHITE v. MARYLAND, 373 U.S. 59; 83 S. Ct. 1650; 10 L. Ed. 2d. 193 (1963). DURING ARRAIGNMENT ON WARRANT BEFORE MAGISTRATE SAMUEL H. OLSEN. PETITIONER WAS NOT EVEN PROVIDED WITH A STAND-BY COUNSEL TO TO HIS SIXTH AMENDMENT RIGHT TO THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE. SEE HAMILTON v. ALABAMA, 368 U.S. 52; 82 S. Ct. 157, 158 (1961); FERGUSON v. GEORGIA, 365 U.S. 520; 81 S. Ct. 756 (1961)

DEFENSE COUNSEL HARRY L. PLISKOW DID FILE ANY MOTION OBJECTING THAT PETITIONER WAS DENIED RIGHT TO COUNSEL ARRAIGNMENT ON THE WARRANT TO PROTECT HIS FOURTH AMEND-

REASON FOR GRANTING THE PETITION

Appellate Counsel James A. Hathaway was ineffective where he did not raise on PETITIONER'S APPEAL OF RIGHT, TRIM Counsel NEVER Requested to Review PRE-TRIAL VEHATION RECORD OF ARRAIGNMENT ON WARRANT AFTER learning did not have Counsel presence and assistance to object and challenge that NO PROOF OF PROBABLE CAUSE was determined OF FACTS AND CIRCUMSTANCES FROM THE COMPLAINT FOR THE ISSUANCE OF ARREST WARRANT. [See Exhibit (B)]

Nor did Appellate Counsel raised on PETITIONER'S APPEAL OF RIGHT, TRIM Counsel did not object PETITIONER WAS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW by NOT following MCR 6.02, THAT THE COURT MUST ISSUE AN ARREST WARRANT IN ACCORDANCE WITH MCR 6.03 IF PRESENTED WITH A PROPER COMPLAINT, AND THE COURT FINDS PROBABLE CAUSE TO BELIEVE DEFENDANT (PETITIONER) COMMITTED THE ALLEGED OFFENSE.

TRIM Counsel was ineffective where he FAILED to object PETITIONER WAS DENIED HIS APPEAL OF RIGHT WITHIN 7 DAYS TO CHALLENGE

Memorandum of Law
REASON FOR GRANTING THE PETITION

The majority decision, MCLA 600.8515

- (7) The Standard for Review, against unreasonable Search and Seizure is cited in MAPP v. Ohio, 367 U.S. 643, 655; 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961); the Fourth Amendment Applicable to the States by way of the Fourteenth Amendment. Malloy v. Hogan, 378 U.S. 1; 84 S. Ct. 1489; 12 L. Ed. 2d 653 (1964).

Officer Theodore Zbikewski testified ON THE EVENING OR NIGHT OF March 21, 1968. Police were conducting a ROUTINE INVESTIGATION looking for a brown 1961 Dodge believed to have been used in a crime. That police located a car fitting that general description parked in a vacant lot on the northwest corner of Vernon and E Jos Campau. The license number was taken, and police learned the car was registered to Rose Surles.

Reason for Granting the Petition

Officer Robert CoFell testified he entered the home with Officer Eugene McBride, James SyFort and Felix Nowak by a person that identified herself as Catherine Surles, wife of Petitioner. Detective James SyFort testified he entered the home by a person identified herself as the daughter of Rose Surles. Defense was ineffective by not establishing that valid consent was not secured by police prior to their entry.

Officer Robert CoFell testified only after he asked Rose Surles had she allowed anyone to use her car, she told him to wait in the living room.

Officer Felix Nowak testified, while other officer was questioning Petitioner he looked into an open metal cabinet in the hallway leading to the living room, and observed a gray hooded sweatshirt with blood stains on the front. He also claimed to have on the top shelf he spotted a white handed steak knife with stains on the blade. Defense Counsel did not file motion to suppress the search and seizure of these items were not

Memorandum of Law
REASON FOR GRANTING THE PETITION

identified belonging to Petitioner; that the unlawful search and seizure of said items violated Petitioner and wife right of expectation to privacy of personal private items absence of a search warrant; that Police extending the search beyond that area of Petitioner's arrest. Chimel v. California 395 U.S. 752; 89 S. Ct. 2034; 23 L. Ed. 685 (1969). Police officers were neither armed with an arrest nor search warrant, and probable cause violated his Fourth Amendment right. It was never established by officers that Petitioner even had possession of any of the items seized unlawful. Contrary to Supreme Court precedent cited in Jones v. United States, 362 U.S. 257; 80 S. Ct. 725; 4 L. Ed. 2d. 697 (1960)

Petitioner Surles was arrested on mere suspicion, not on probable cause they knew he committed a crime. Not only did Police unwarranted intrusion violated Petitioner's expectation to privacy, but this unlawful intrusion violated Petitioner wife expectation of privacy when searched their metal cloth cabinets, gave Petitioner standing to object.

REASON FOR GRANTING THE PETITION

- 8 Standard of Review: illegal search and seizure outside the curtilage of Petitioner's home.

Defense Counsel ARAY L. Plishow did object to Judge Samuel A. Olson entering into evidence a wiping cloth OFFICER ROBERT KANKA TESTIMONY. HE WENT TO PETITIONER place of employment AT GARDEN COURT APARTMENT GARAGE WITHOUT A SEARCH WARRANT, AND UNREASONABLE seized the ABOVE MENTION WIPING CLOTH, CONTRARY TO THE STATE CONSTITUTION OF 1963, ART. I, SEC. II AND DUE PROCESS AND EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT. [SEE EXHIBIT (2)] SEE ALSO JOHNSON v. UNITED STATES, 373 U.S. 10; 68 S. CT. 367 (1948); MAPP v. OHIO, 367 U.S. 643, 655; 81 S. CT. 1684, 1691 (1961)

NEITHER did Defense Counsel object, NOR Appellate Counsel JAMES A. HATHAWAY RISE during PETITIONER appeal of right THAT HE DENIED A RIGHT TO FAIR TRIAL, DUE PROCESS AND EQUAL PROTECTION where POLICE OFFICER MARY JARRETT TESTIFYING AS AN EXPERT WITNESS of blood samples WITHOUT showing

REASON FOR GRANTING THE PETITION

PROOF OF HER TECHNIQUE OF SEROLOGICAL ELECTROPHORESIS ENJOYED GENERAL SCIENTIFIC ACCEPTANCE AMONG IMPARTIAL AND DISINTERESTED EXPERTS.

WHERE PETITIONER'S FOURTH AMENDMENT CLAIM IS NOT PRESERVED AS A RESULT OF COUNSEL'S INEFFECTIVENESS, FEDERAL HABEAS REVIEW IS ALWAYS AVAILABLE, ESPECIALLY WHERE THE STATE HAS FOREVER CLOSED ITS DOORS TO THEIR CONSTITUTIONAL OATH AND DUTY. SEE KIMMEL-MEN V. MORRISON, 477 U.S. 365; 106 S. CT. 2574; 91 L. ED. 2D. 305 (1986).

9. STANDARD OF REVIEW IN-COURT IDENTIFICATION
STRUCTURAL ERROR WHERE PROSECUTION WITNESS AARON WALKER TESTIFIED HE PARTICIPATED IN A POLICE SHOWUP IDENTIFICATION OF MARCH 21, 1968, THAT WAS NOT OBJECTED TO AS UNDULY INFLUENCED OR SUGGESTIVE BY POLICE WHERE PETITIONER WAS DENIED THE PRESENCE AND ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AMENDMENT. APPELLATE COUNSEL JAMES A. HATHAWAY DID NOT RAISE DURING PETITIONER FIRST MOTION OF RIGHT THAT TRIAL COUNSEL DID MOTION TO DISMISS THE CASE BASED ON MISTAKEN IDENTIFICATION AND WHERE ASSISTANT PROSECUTOR ARTHUR J. KOSECINSKI INTENTIONALLY DIRECTED THE WITNESS WHERE TO SEARCH ON FRED PETITIONER DURING THE APRIL 21, 1968 PRELIMINARY EXAMINATION WAS A GROSS MISCARriage OF JUSTICE.

REASON FOR GRANTING THE PETITION

THE IN-COURT PRELIMINARY EXAMINATION IDENTIFICATION WAS NOT FOUND OR DERIVED FROM AN INDEPENDENT SOURCE. SEE

KIMMELMAN v. MORRISON, 417 U.S. 365, 384, 106 S. CT. 2574, 91 L. ED. 2D. 305 (1986)

PETITIONER CAN ONLY CONCLUDE THAT THE PEOPLE'S WITNESS AARON WALKER WAS UNABLE TO IDENTIFY HIM DURING THE PRE-TRIAL IDENTIFICATION SHOWN ON MARCH 21, 1968. THIS SUPREME COURT CONCEDED IN UNITED STATES v. WADCO, 388 U.S. 218, 87 S. CT. 1926 (1967); GILBERT v. CALIFORNIA, 388 U.S. 263, 87 S. CT. 1951 (1967); AND STOVALL v. DENNO, 388 U.S. 1178, 87 S. CT. 1967 (1967), THAT PRE-TRIAL LINEUP IS A CRITICAL STAGE OF A CRIMINAL PROSECUTION, TO WHICH THE SIXTH AMENDMENT RIGHT TO COUNSEL ATTACHES.

A PRELIMINARY EXAMINATION IS A PRE-TRIAL CONFRONTATION WITHIN THE MEANING OF STOVALL v. DENNO, SUPRA., IN ASCERTAINING WHETHER A CONFRONTATION IS IMPROB-
ISSIBLY SUGGESTIVE, A COURT MUST LOOK TO THE TOTALITY OF CIRCUMSTANCES.

Memorandum of Law

REASON FOR GRANTING THE PETITION

10. DENIED JURY OF HIS PEERS: DEFENSE COUNSEL HARRY L. PLISKOW WAS INEFFECTIVE WHEN HE FAILED TO OBJECT AND CHALLENGE PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO A JURY OF HIS PEERS. FROM A CROSS SECTION OF HIS COMMUNITY.

ASSISTANT PROSECUTING ATTORNEY GARY LA BRET THROUGH THE USE OF PEREMPTORY CHALLENGES SYSTEMICALLY ELIMINATED ALL BLACK OR AFRICAN-AMERICAN JURORS.

DEFENSE COUNSEL FAILURE TO OBJECT PETITIONER ALL-WHITE JURORS NOT DRAWN FROM A CROSS-SECTION OF HIS COMMUNITY IN THE CITY OF DETROIT IN 1969.

THE THREE BLACK JURORS WERE SYSTEMATICALLY ELIMINATED FROM THE QUALIFIED JURY POOL OR POOL BASED SOLELY ON THEIR RACIAL STATUS IN VIOLATION OF PETITIONER'S FIFTH AND SIXTH AMENDMENT RIGHTS. OF DUE PROCESS AND EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT DENIED HIS RIGHT TO A FAIR TRIAL. SEE

SUPREME COURT PRECEDENT. BATSON V. KENTUCKY, 426 U.S. 79; 106 S. CT. 1712, 90 L. ED. 2D. 69 (1986); POWER V. OHIO, 429 U.S. 400; 111 S. CT. 1364, 113 L. ED. 2D. 411 (1991).

MEMORANDUM OF LAW
REASON FOR GRANTING THE PETITION

IN THE CITY OF DETROIT RECORDED'S COURT,
THE JURY POOL DID NOT REPRESENT A FAIR
CROSS-SECTION OF THE COMMUNITY WHICH
PETITIONER LIVED IN MARCH OF 1968-69.

IN SMITH V. TEXAS, 311 U.S. 128; 61 S. Ct. 164,
85 L. Ed. 2d. 84 (1940), THE SUPREME COURT
HELD, THAT A JURY MUST BE "A BODY
TRULY REPRESENTATIVE OF THE COMMUNITY.
THIS ISSUE WAS NEVER RAISED ON APPEAL
OF RIGHT, BY APPELLATE COUNSEL JAMES A.
ANTHAWAY.

IN TAYLOR V. LOUISIANA, 419 U.S. 522; 95
S. Ct. 692, 42 L. Ed. 2d. 680 (1975), THIS
COURT HELD, THAT "[THE PRESENCE OF A FAIR
CROSS-SECTION OF THE COMMUNITY ON
VENUES, PANELS, OR LISTS FROM WHICH
PETITIONER'S JURIES ARE DRAWN IS ESSENTIAL
TO THE FULFILLMENT OF THE SIXTH AMENDMENT
GUARANTEE OF AN IMPARTIAL JURY TRIAL
IN CRIMINAL PROSECUTION, IN WHICH
JURY WAS NOT. UNITED STATES V. DUVALLE,
136 F.3d. 1092, 1106 (6th Cir. 1998)

Memorandum of Law
REASON FOR GRANTING THE PETITION

- II CONSTRUCTIVE AMENDMENT: DEFENSE
- COUNSEL HARRY L. PLISKOW FAILED TO OBJECT THAT TRIAL JUDGE SAMUEL H. OLSEN EXCEEDED HIS AUTHORITY, A STRUCTURAL ERROR MADE TO THE INFORMATION OCCURRED DURING TRIAL WHERE THE COURT ERRONEOUSLY INSTRUCTING JURY ON THE NONEXISTING CHARGE OF FELONY-MURDER AND SECOND-DEGREE MURDER IN VIOLATION OF HIS FIFTH AMENDMENT THAT "NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL CRIME UNLESS ON A PRESENTMENT (INFORMATION) OF A GRAND JURY..."; IN VIOLATION OF HIS SIXTH AMENDMENT RIGHT: IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO...BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION..." DENIED PETITIONER DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

ON MARCH 21, 1968, PETITIONER WAS CHARGED UNDER A CRIMINAL COMPLAINT WITH DELIBERATE, PREMEDITATED MURDER. [SEE EXHIBIT (A)]

REASON FOR GRANTING THE PETITION

ON April 2, 1968, Magistrate Judge Bond
Petitioner to be tried only on first-degree
deliberate, premeditated murder. See
Exhibit (C)]

Defense Counsel HARRY L. Dlistow did
NOT file Motion to Quash the
INFORMATION. Nor did he object to the
Court's modification AT TRIAL in the
ELEMENTS of the crime charged, which
RESULTED in a CONSTRUCTIVE AMENDMENT.
Judge Olsen ERRONEOUSLY instructed
the jury to consider charging Petitioner
Armed Robbery, Unarmed Robbery
AND Attempted Robbery. Judge Olsen
further instructed the jury to find
Petitioner guilty of the UNDERLINE Felony
of first-degree murder "EVEN THOUGH
THEY FIND THAT THIS WAS NOT A deliberate,
PREMEDITATED KILLING." [See Exhibit (U)]

The SECOND CONSTRUCTIVE AMENDMENT
occurred when Judge Olsen ERRONEOUSLY
instructed the jury and modified the
INFORMATION for the jury to charge
and try Petitioner with Second-degree
murder. [See Exhibit (U)]

Memorandum of Law
REASON FOR GRANTING THE PETITION

The United States Supreme Court held back in United States v. Stinson, 361 U.S. 212, 217; 80 S. Ct. 220 (1960); United States v. Russell, 369 U.S. 749, 825; 82 S. Ct. 1038 (1962); then later in Jackson v. Virginia, 443 U.S. 306, 61 L. ed. 2d 560; 99 S. Ct. 2781 (1979); Cole v. Arkansas, 333 U.S. 196, 201; 68 S. Ct. 514, 517; 92 L. ed. 644 (). The held, a conviction upon a charge not made or upon a charge not tried constitutes a denial of due process, that a person cannot incur the loss of liberty for an offense without notice and a meaningful opportunity to defend.

The information of April 2, 1968 failed to charge petitioner with the elements Armed Robbery, Unarmed Robbery or Attempted Robbery; Nor were the elements of Second-degree murder noted in the information. [See Exhibit (C)] Petitioner have a due process and equal protection rights to know the elements of Armed Robbery, Second-degree murder, see Russell v. United States, supra.

MEMORANDUM OF LAW
REASON FOR GRANTING THE PETITION

THE SIXTH AMENDMENT REQUIRES, IN PART, THAT AN INFORMATION STATE ELEMENTS OF AN OFFENSE CHARGED WITH SUFFICIENT CLARITY TO APPRISE A PETITIONER OF WHAT HE MUST PREPARE TO DEFEND AGAINST. RUSSELL V. UNITED STATES, SUPRA.

THE INFORMATION OF APRIL 2, 1968 FILED BY WAYNE COUNTY PROSECUTING ATTORNEY WILLIAM L. CAHALAN DID NOT ALLEGE ANY ELEMENTS OF ARMED ROBBERY, UNARMED ROBBERY, ATTEMPTED ROBBERY OR SECOND-DEGREE MURDER. TO INFORM PETITIONER OF THE OFFENSE OF ESSENTIAL ELEMENTS OF THE CHARGE WAS NOT A MINOR OR TECHNICAL FLAW, BUT A FATAL FLAW REQUIRING DISMISSAL OF THE INFORMATION.

PETITIONER DID NOT WAIVE JURISDICTIONAL DEFECTS IN THE INFORMATION, AND HIS SUBSTANTIAL RIGHT TO BE TRIED ONLY ON CHARGES PRESENTED IN AN INFORMATION RETURNED BY THE EXAMINATION JUDGE. SEE STIRONE V. UNITED STATES, 361 U.S. 212, 217, 80 S. CT. 220, 4 L. ED 2D 252 (1960)

Memorandum of Law
REASON FOR GRANTING THE PETITION

12. DEFENSE COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO OBJECT THAT TRIAL COURT LACKED SUBJECT-MATTER JURISDICTION, A STRUCTURAL ERROR AFFECTING PETITIONER'S TRIAL FROM THE BEGINNING TO END, CHARGING HIM UNDER AN UNCONSTITUTIONALLY VAGUE STATUTE MCL 750.316; MSA 28.548 OF 1948, CONTRARY TO DUE PROCESS AND EQUAL PROTECTION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES; MICHIGAN STATE CONSTITUTION OF 1963, ART. 1, SEC. 17 AND SEC. 20; ART. 4, SEC. 24, SEC. 25, SEC. 45 AND SEC. 46

ON APRIL 2, 1968, PETITIONER WAS BOUNDED OVER ON THE CHARGE OF FIRST-DEGREE MURDER MCL 750.316; MSA 28.548 OF 1948. [SEE EXHIBIT (A) (D) (E) AND (J)]

DEFENSE COUNSEL FAILED TO INVESTIGATE AND OBJECT NOT ONLY THIS STATUTE FAILED TO DEFINE "MURDER", BUT VIOLATED THE STATE CONSTITUTION, ART. IV, SEC. 24, THAT "NO LAW SHALL EMBRACE MORE THAN ONE OBJECT, WHICH SHALL BE EXPRESSED IN ITS TITLE. [SEE EXHIBIT (2-4)]

WHILE THE ENUMERATED "FELONIES", ARSON, RAPE, ROBBERY, OR BURGLARY ARE

REASON FOR GRANTING THE PETITION

expressed in the body of the statute, First-degree murder and Felony-murder ARE SEPARATED CRIMES, ELEMENTS AND PUNISHMENT.

A PENAL STATUTE MAY BE UNCONSTITUTIONALLY VAGUE IF IT FAILS TO PROVIDE FAIR NOTICE OF THE CONDUCT PROSCRIBED. THIS STATUTE MCL 750.316 PERMITS ARBITRARY AND DISCRIMINARY ENFORCEMENT BY ALLOWING THE PROSECUTOR AND/OR POLICE TO DECIDE CHARGE OR ENUMERATED FELONY TO AND DEGREE TO CHARGE PETITIONER. THIS STATUTE DOES NOT DEFINE THE CRIME OF MURDER WITHIN THE STATUTORY LANGUAGE IS REPUGNANT TO THE DUE PROCESS AND EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, AND CONTRARY THE SIXTH AMENDMENT RIGHT TO proper NOTICE OF THE ACCUSATION AGAINST HIM. SEE UNITED STATES v. CRUIKSHANK, 92 U.S. 542 (1876).

IN UNITED STATES v. LANIER, 520 U.S. 259, 266; 117 S. CT. 1219; 137 L. ED. 2d. 432 (1997), DEFINED A VAGUE STATUTE AS ONE "WHICH EITHER FORBIDS OR REQUIRES THE DOING OF AN ACT IN TERM SO VAGUE THAT MEN OF COMMON INTELLIGENCE WITHIN THIS CON-

REASON FOR GRANTING THE PETITION

STITUTIONAL FRAMEWORK. MUST NECESSARILY
GUESS AT ITS MEANING AND DIFFER AS TO
ITS APPLICATION.

THE STATEMENT ANNOUNCED IN EX PARTE
Siebold, 100 U.S. 371, 376-377; 25 L. ED 717
(1879):

["THE CONSTITUTIONALLY OF A STATUTE]
AFFECTS THE FOUNDATION OF THE WHOLE
PROCEEDING. AN UNCONSTITUTIONAL
LAW IS VOID AND IS NO LAW. AN
OFFENSE CREATED BY IT IS NOT MERELY
ERRONEOUS, BUT IS ILLEGAL AND VOID,
AND CANNOT BE A LEGAL CAUSE OF
IMPRISONMENT."

SEE People v. Maki, 245 MICH 455, 492,
223 N.W. 20 (1929); People v. WESTERBERG,
274 MICH 647, 649; 265 N.W. 489 (1936).

MEMORANDUM OF LAW

REASON FOR GRANTING THE PETITION

13. PETITIONER'S SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL WHERE PETITIONER CLAIM COUNSEL JAMES A. ANTHONY FAILED TO CONDUCT ROUTINE PRE-TRIAL INVESTIGATIONS AND AS A RESULT, FAILED TO DISCOVER DEFENSE COUNSEL HARRY L. PLISKOW WAS INEFFECTIVE BEFORE AND DURING TRIAL THAT THE STATE POSSESSED CRITICAL EVIDENCE WHICH COUNSEL COULD HAVE TIMELY MOVED TO SUPPRESS PRIOR TO TRIAL; THAT WHERE TRIAL COUNSEL FAILED TO ADEQUATELY PREPARE AND PURSUE ALL AVENUES OF DEFENSE. APPELLATE COUNSEL FAILED TO FILED DURING PETITIONER APPEAL OF RIGHT AND MOVE FOR AN EVIDENTIARY HEARING TO MAKE A TESTIMONY RECORD TO ADDRESS TRIAL COUNSEL NUMEROUS DEFICIENCIES AMOUNTED TO CUMULATIVE PREJUDICE TO PETITIONER'S RIGHT TO A DUE PROCESS AND EQUAL PROTECTION TO A FAIR TRIAL. COUNSEL'S DEFICIENCIES INCLUDED:

- (1) FAILURE TO INVESTIGATE AND PREPARE ADEQUATELY FOR PRE-TRIAL PROCEEDINGS:
 - (A) DEFECTIVE CRIMINAL COMPLAINT
 - (B) FAILURE TO PROTECT PETITIONER FOURTH AMENDMENT RIGHT THAT NO WARRANT SHALL

Memorandum of Law

REASON FOR GRANTING THE PETITION

ISSUED, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION BY A NEUTRAL, DETACHED, DISINTERESTED MAGISTRATE THAT DETERMINED PROBABLE CAUSE EXISTS.

- (C) FAILURE TO CONSULT ADEQUATELY WITH PETITIONER,
- (D) FAILURE TO CHALLENGE THE ADMISSIBILITY OF PETITIONER PRE-TRIAL MIRANDA STATEMENT;
- (E) FAILURE TO CHALLENGE PRE-TRIAL POLICE SHOWUP IDENTIFICATION ABSENCE THE PRESENCE AND ASSISTANCE OF COUNSEL;
- (F) FAILURE TO CHALLENGE PRE-TRIAL INCOMMUNICADO INTERROGATION ABSENCE THE PRESENCE AND ASSISTANCE OF COUNSEL;
- (G) FAILURE TO CHALLENGE TOTAL DENIAL OF COUNSEL DURING ARRAIGNMENT ON THE WARRANT;
- (H) FAILURE TO CHALLENGE STRUCTURAL ERROR IN THE CRIMINAL COMPLAINT, WARRANT AND INFORMATION WHICH DENY THE COURT SUBJECT-MATTER JURISDICTION;
- (I) FAILURE TO CHALLENGE STRUCTURAL ERROR PETITIONER WAS CHARGED UNDER AN UNCONSTITUTIONALLY VAGUE STATE STATUTE MCL 750.316; MSA 28.548 OF 1948 WHICH DID NOT DEFINE MURDER AND ELEMENTS OF THE ENUMERATED FELONS: ARSON, RAPE, ROBBERY AND BURGLARY, VIOLATED STATE CONSTITUTION OF 1963, ART. I, SEC. 24, SEC. 25; ART. IV, SEC. 45 AND SEC. 46, DUE PROCESS AND EQUAL PROTECTION OF THE LAW;

Memorandum of Law

- (J) Failure of Counsel to file motion to suppress unlawful search and seizure of a gray hooded sweatshirt, white handled steak knife from Petitioner and wife Megan Cabaret without warrant, violating right of expectation of privacy of the Fourth Amendment
- (K) Failure of Counsel to file motion to suppress unlawful search and seizure of gray wiping cloth without warrant from Petitioner's place of employment violation of Fourth Amendment against unreasonable search and seizure;
- (L) Failure of Counsel to file motion to suppress Policewoman Mary Jarrett, testimony of wiping cloth, technique as a Serological Electrophoresis did not enjoy the general scientific acceptance among impartial and disinterested experts, denied Petitioner right to fair trial;
- (M) Appellate Counsel Failure to raise on Appeal of Right in-Court identification was unduly influenced and suggestive by Prosecuting Attorney Arthur J. Kosciowski was a miscarriage of justice;

(N)

Appellate Counsel did not raise on appeal of right petition was denied a jury of his peers from a cross-section of his community;

(O)

Appellate Counsel failed to raise during appeal of right that trial counsel was ineffective when he failed to file motion to dismiss when trial judge Samuel H. Olson excluded his authority by making a modification of trial constructive amendment of the information notwithstanding elements of felony-murder robbery and second-degree murder erroneously reversible doubt instructions.

(P)

Appellate Counsel failed to raise during petition appeal of right that counsel did not object to the Court erroneously misinterpreting instructions to jury to find petitioner guilty of robbery armed, unarmed robbery and attempted robbery in the first-degree murder without considering elements of deliberation premeditation, when he was not so charged.

Memorandum of Law

- (Q) Appellate Counsel failed to raise during appeal of right that trial Counsel was ineffective whose did not object to trial Judge erroneously, misleading instructions to the fact that Petitioner's Alibi witness is a de fense, easy to prove and difficult to disprove unconstitutionally shifted the burden of proof from the prosecution to Petitioner, a manifest error (structural) not corrected by the Court, prejudiced Petitioner's right to fair trial;
- (R) Appellate Counsel failed to investigate and challenged how officers determined Petitioner fit the desc description of the suspect to establish Probable Cause to arrest him at his mother's home;
- (S) Appellate Counsel failed to investigate and challenged how officers determined blood-stains on a sweatshirt and steak knife unlawfully seized from Petitioner and wife metal cabinet that was in a different room of the house to from where Petitioner was arrested fell in officers plain view, that police routine investigation does not establish Probable Cause to arrest.

Memorandum of Law

Under Michigan case law, Appellate Counsel should have known that unobjected to testimony or evidence admissible into trial are NOT preserved for appeal first time on appeal. People v. Lundberg, 364 Mich 596 (1961); People v. Camak, 5 Mich App 655 (1967); People v. Trent, 20 Mich App 176 (1969); People v. Jury, 3 Mich App 427 (1966)

In Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830, 83 L. Ed. 2d. 821 (1985) the Supreme Court settled the question whether a criminal defendant is entitled to the Sixth Amendment's guarantee of effective representation of counsel on a first appeals as of right.

Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d. 674, 104 S. Ct. 2052 (1984); Kimmelman v. Morrison, 477 U.S. 365, 106 S. Ct. 2574 (1986).

Trial Counsel Harry L. Pliskow and Appellate Counsel James A. Hamaway both failed to raise and object to Petitioner's Fourth Amendment claim is proof of ineffectiveness which caused him to lose his opportunity to litigate his Fourth Amendment claim, where the possibility that the verdict would have been different absent the excludable evidence to demonstrate actual prejudice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Samuel Lewis Surles

Date: May 10, 2019

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

IN Samuel Lewis Sunles — PETITIONER
(Your Name)

VS.

_____ — RESPONDENT(S)

PROOF OF SERVICE

I, Samuel Lewis Sunles, do swear or declare that on this date, May 10, 2019, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 10, 2019

Samuel Lewis Sunles
(Signature)