No. _____

19-5263

IN THE

SUPREME COURT OF THE UNITED STATES

_____

ORIGINAL

MIAH DANIELLE STROUD

(Your Name) — PETITIONER

FILED
JUL 01 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

SHAWN BREWER — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

MIAH DANIELLE STROUD #936182

(Your Name)

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(City, State, Zip Code)

734-572-9900

(Phone Number)

QUESTIONS PRESENTED

I. DID THE COURTS ERRONEOUSLY DENY MS. STROUD'S CONSTITUTIONAL RIGHT TO DUE PROCESS WHEN SHE WAS CONVICTED OF SECOND DEGREE MURDER AND THREE COUNTS OF FELONIOUS ASSAULT WHERE THE EVIDENCE WAS LEGALLY INSUFFICIENT AND VIOLATIVE OF DUE PROCESS WHERE THE PROSECUTOR FAILED TO PROVE THAT HER ACTS OR ENCOURAGEMENT CAUSED THE DEATH OR THE ASSAULTS?

II. DID THE COURTS ERRONEOUSLY DENY MS. STROUD'S CONSTITUTIONAL RIGHT TO DUE PROCESS BY REFUSING TO SUPPRESS COMPLAINANT LATASHA BARGAINEER'S MISIDENTIFICATION OF HER THAT WAS INFECTED BY IMPROPER POLICE INFLUENCE AND SHOULD A NEW TRIAL BE GRANTED?

III. COULD JURISTS OF REASON HAVE ACQUITTED MS. STROUD OF ALL CHARGES IF SHE WAS NOT DEPRIVED OF HER CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE WHEN THE COURTS FAILED TO QUALIFY DR. TERRENCE CAMPBELL AS AN EXPERT WITNESS FOR HER ONLY DEFENSE OF MISIDENTIFICATION WHO'S TESTIMONY WAS RELEVANT AND RELIABLE?

LIST OF PARTIES

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

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

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 USC 2253(c)(2)

A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 USC 2254(d)(e)

Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) Pub. L. No. 104-132, 110 Stat 1214

U.S. Const, Amends. V, VI. XIV;

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 A 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 B 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 C 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 _____ 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.

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 2, 2019.

[✓] 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 September 27, 16. A copy of that decision appears at Appendix C.

[ ] 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).

STATEMENT OF THE CASE

Defendant-Petitioner Miah Danielle Stroud (hereinafter "Stroud") and co-defendant Tamarris Louis Aldridge (hereinafter "Aldridge") were both charged with first degree murder [MCL 750.316] in the death of Antoine Holley and felonious assault [MCL 750.82] as to Terrell Johnson, Latasha Bargaineer and Antoine Holley, Jr. The three assault convictions are attributed to the treatment of the three witness's of the shooting. Further, Stroud was convicted of second degree murder [MCL 750.317] and the assaults as an aider and abettor and claimed misidentification through the use of police tainted suggestive identification procedures.

An evidentiary hearing was conducted April 25,2014 and May 2,2014, suppression of Bargaineer's photo array identification of Stroud was denied. On May 14, 2014 Stroud and Aldridge appeared for a joint trial.

Francisco Diaz is an assistant Wayne County Medical Examiner and an expert in forensic pathology. On August 12, 2013 he performed and autopsy on Antoine Holley. He determined that the cause of death was a gunshot wound to the head and that the manner of death was homicide.

Detroit Police Officer Raymond Diaz is an evidence technician. At 1:50a.m. August 12, 2013, he was called to 19931 Archdale, and arrived at 1:50a.m. Using the photograghs and sketch he described the scene to the jury.

Detroit Police Officer Edward Davis stated that he and his partner, Officer Daniel Sitarski, were dispatched to the house at about midnight and arrived about five minutes later. They were the first responders. Inside the house was dimly lit. Neither occupant made any reference to a female intruder.

Petitioner states that the record partly supports the Court of Appeals summary.

For instance, Latasha and Antoine had been in a on again off again relationship for almost three years and that they resided together with his son, Antoine Holley, Jr. and his father, Terrell Johnson.

In July of 2013, one of Stroud's half-sisters, Candy Simpson moved into their residence and worked for Antoine as a prostitute. Latasha and Antoine met her over the internet website Mocospace. The living situation was highly unstable, and Latasha fought Candy and Antoine, even at one point pouring lighter fluid on Antoine. On August 10, 2013, Antoine physically assaulted Candy and ordered her to leave. The next day in the early afternoon, a group of people: Stroud, Joezetta Harper, Aldridge and another male went to Antoine's house inquiring of Candy's whereabouts The group left after being told Candy was not there.

Later that night, Johnson answered a knock at the door to the house and saw a person he later identifies at trial as Stroud; outside, apparently alone. SHe asked for Candy and when told she was not there, she asked for Antoine. Antoine came to the door and let her in. Three men, two armed with weapons, (one with a handgun and one with a rifle), entered behind her. The woman went upstairs and confronted Latasha in a bedroom asking

about her sister. The record testimony of Bargineer and Johnson completely conflicts as to who joined the woman upstairs and ordered Bargaineer downstairs with the child. Aldrigde with an Ak47 rifle, according to Bargaineer, or the third man without a weapon, while Antoine stayed downstairs with the Ak47 and ordered Antoine and Johnson to sit on the floor, according to Johnson. The unidentified man with a handgun began stomping Antoine. One of the men shot Antoine and the people left.

Stroud was identified at trial by both Bargaineer and Johnson. Neither made mention of a female when they initially made a statement to the police. During the first photo array, Bargaineer and Johnson identified Stroud's sister Maria. During the second photo array containing Stroud's photo, Bargaineer identified Stroud after Investigator Weaver told her the perpetrator was the sister of the person she had selected. Johnson made no identification. Both witnesses identified Aldridge ad the man who shot Antoine.

Maria Stroud stated she is Stroud's sister and Aldridge is a long time family friend. On August 14, 2013 she told the police she last saw him the previous Friday at her father's house. She denied looking for her sister Candy at the hospital.

Joezetta Harper stated that Stroud, Candy Simpson and Maria Stroud are her sisters. She has known Aldridge all her life. Harper learned that Simpson had been residing on Archdale, that she was possibly injured, and set out with Stroud, other family members and possibly Aldridge to locate her. Two men and a woman were at the house but not Simpson. They were there about ten

minutes and left. She did not return.

Detroit Police Officer Theopolis Williams interviwed Harper on August 14, 2013. According to Williams, Harper denied going over to the Archdale residence.

Detroit Police Investigator Charles Weaver stated he is the officer in charge of the case but did not respond to the scene, direct evidence collection or take statements. He did review the documents and a follow-up interview with Johnson, and began to investigate siblings of Candy Simpson and assembled photogragh of them, which were then presented to Bargaineer and Johnson. Maria Stroud was selected by both Bagaineer and Johnson. She was located, intervied and eliminated. Harper was also interviewed. He then focused on Stroud and Aldridge, obtained their photos and had additional show-ups conducted. From the new female array, Bargaineer selected Stroud but Johnson again selected no one. They both identified Aldridge from the male photo array. The parties stipulated that Antoine Holley, Jr. was unable to make any identification.

The People rested. Stroud presented Candy Simpson. She stated that she is Stroud's sister. She met Antoine and Bargaineer on a internet website. She late met them in person and went to their Archdale home where they physically abused her and forced her to engage in prostitution. She stated that she never spoke with Stroud about the abuse.

Stroud submits that the above statement of the case, accurately reflects the statement of this case. That review of the "Trial Facts" citing volume and page directly support and are consistent with record, showing that Stroud has overcome the presumption of correctness under 28 USC 2254(e).

REASONS FOR GRANTING THE WRIT

I. DID THE COURTS ERRONEOUSLY DENY MS. STROUD'S CONSTITUTIONAL RIGHT TO DUE PROCESS WHEN SHE WAS CONVICTED OF SECOND DEGREE MURDER AND THREE COUNTS OF FELONIOUS ASSAULT WHERE THE EVIDENCE WAS LEGALLY INSUFFICIENT AND VIOLATIVE OF DUE PROCESS WHERE THE PROSECUTOR FAILED TO PROVE THAT HER ACTS OR ENCOURAGEMENT CAUSED THE DEATH OR THE ASSAULTS?

Ms. Stroud raised three grounds for relief in her petition for writ of habeas corpus in the district court. Ms. Stroud has made a substantial showing of the denial of a constitutional right as required by 28 U.S.C. 2253(c)(2), with respect to ground one of her habeas petition, which alleges that the trial court denied Stroud right to due process when she was convicted of second-degree murder and three counts of felonious assault where the prosecutor failed to prove that her acts or encouragement caused the death or the assaults.

Prior to the effective date of the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. NO. 104-132, 110 Stat 1214, a certificate of probable cause was required before an appeal from a Federal district court order could be taken in habeas cases. In order to obtain a certificate of probable cause a petitioner was required to make a "substantial showing of the denial of a Federal right" Barefoot v. Estelle, 463 U.S. 880, 103 S. Ct. 3383, 77 L. Ed, 2d 1090 (1983). Under Barefoot, all doubts are to be resolved in favor of the petitioner in making this determination. Barefoot, under supra, 463 U.S. at 893 n. 4. The probable cause standard in this context

was intended to be a law hurdle to surmount, and has been noted to require only "something more than the absence of frivolity." Barefoot, supra, 463 U.S. at 893. Obviously Ms. Stroud is not required to show that she should prevail on the merits as in every case where certificate of appealability is requested the district court has made a determination against the petitioner or the merits.

Under Barefoot, this court has instructed that the certificate should be issued when a petitioner shows that "the issues are debateable among jurists of reason, or "a court could resolve the issues in a different manner,' or "the issues are adequate to deserve encourgement to proceed further," or the issues are not "squarely foreclosed by statute, rule or authoritative court decision or (not) lacking any factual basis in the record." Barefoot,supra, 463 U.S. at 894.

While Barefoot, supra, was obviously issued when the required certificate was one of probable cause, this court, along with several circuits, has held that there is no real change from showing required for a certificate of probable cause now that the required certificate is one of appealability under (AEDPA). Slack v. McDaniels, 529 U.S. 473, 483-484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000). See also Reyes v. Keane, 90 F. 2d 676 (2nd Cir. 1996). In fact, the intent of Congress in this respect when passing the (AEDPA) was to codify the Barefoot standard. Slack v. McDaniels, supra, 120 S. Ct. at 1603; Lennox v. Evans, 87 F. 3d 431 (10th Cir. 1996); Lyons v. Ohio Adult Parole Authority, 105 F. 3d 1063 (6th Cir. 1997) noting that "the AEDPA merely codifies the Barefoot standard" and that the

only difference in the statutory language is an applicant seeking a certificate of appealability must make "a substantial showing of the denial of a constutuional right. (emphasis added)

In **Miller-El v. Cockrail, 537 U.S. 322, 336, 340 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003),** this court reaffirmed it's prior holding in **Slack** when it stressed, announced in **Barefoot v. Estelle,** for determining what constitutes the requisite showing for obtaining leave to appeal a district court's denial of habeas corpus relief. Under the controlling standard, a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented adequate to deserve encouragement to proceed further. **Miller-El, supra.** This court further stressed in **Miller-El** that the standard for a certificate of appealability is "much less stingent" than the standard for success on the merits, and that petitioners need not show that they are likely to succeed on appeal or that any reasonable jurist would, after hearing the appeal, rule in their favor. Id, rather the petitioner need only show that reasonable jurists' would find the district courts assessment of the constituitonal claims debatable or wrong.

A review of the issue that Ms. Stroud raised in ground one of the habeas petition confirms the conclusion that this particular issue is substantial. Ms. Stroud argued in ground one of the petition for writ of habeas corpus that she was denied her right to due process when the prosecutor fialed to prove that her acts or encouragement caused the death or the assaults. Ms. Stroud asserts that she is innocnet even if, for the sake

of argument, the prosecutor presented a plausible theory, but no solid evidence to prove Ms. Stroud is guilty of her acts or encourgament causing the death or assaults. In order to be guilty of aiding and abetting, under Michigan law, the accused must take some conscious action designed to make the criminal venture succeed. Fuller v. Anderson, 662 F.2d 420, 424 (6th Cir. 1981) Michigan law provides that the elements of second-degree murder are:

> **(1) a death, (2) caused by an act of the defendant, (3) with malice and (4) without justification or excuse.**

Stewart, 595 F. 3d 654 (citing People v. Goecke, 579 N.W. 2d 868, 878 (Mich 1998). Malice includes "the intention to kill, the intention to do great bodily harm, or wanton and willful disregard of the likelihood that the natural tendency of defendants behavior is to cause death or great bodily harm. Daniels v. Lafler, 501 F. 3d 735, 740 (6th Cir, 2007) quoting People v. Aaron, 299 N.W. 2d 304, 326 (Mich. 1980). The court concluded that a jury could infer from all the facts and circumstances that Ms. Stroud "either intended the commission of the crimes or knew that the crimes were intended by the armed individuals, or that (Holley's) murder was a natural and probable consequence of the offenses (Ms. Stroud) intended to aid or abet."

Ms. Stroud, had no way of knowing three men were going to follow her into that house nor did she know that they were armed. Just because someone is angry and armed does not mean that they are going to kill someone. The courts most telling sentence regarding a lack of intent states, "pointing a loaded gun at someone is almost per se an intent to kill (emphasis added). Almost is certainly not concrete evidence and malice (intent) can not be presumed from the use of a deadly weapon.

People v. Richardson, 409 Mich 126, 143-144 (1980). There is no testimony stating that petitioner possessed a weapon of her own. Whether Ms. Stroud deceived the occupants into thinking she was entering into the house alone, is sheer speculation and conjecture. The record shows that Ms. Stroud's sole purpose to be at that house was to locate her sister (Candy Simpson). There is no testimony stating that Ms. Stroud or the three men held conversation showing that anything was planned out beforehand. For example, "go kill him or beat him up etc. etc.". In fact, there's no testimony stating that Ms. Stroud held any conversation with the men at all. All testimony states is that Ms. Stroud was looking for her sister, that's all.

Fransico Diaz is an assistant Wayne County Medical Examiner and an expert forensic pathology. On August 12, 2013 he performed an autopsy on Antoine Holley. He determined that the cause of death was a gunshot wound to the head and that there was no bruising indicating a beating took place.

Review of the record evidence cannot support the convictions even under the alternative, "natural and probable consequences theory" of accomplice liability. "Under the natural and probable consequences theory, there can be no criminal responsibility for anything not fairly within the common enterprise, and which might be expected to happen if the occassion should arise to do it. People v. Robinson, 475 Mich 1, 9 (2006) quoting, People v. Knapp, 26 Mich 112, 114 (1872). A victim's death is within the "common enterprise" to constitute aiding and abetting of a homocide where defendants share a plan to assault someone, since one of the actors may escalate the assault to murder. Robinson, at 11.

It is fundamentally unfair and in violation of basic principle's of individual criminal culpability to hold one person liable for an unseen death that did not result from actions agreed upon by the participants. **Hill v. Hofbauer, 337 F. 3d 706** quoting **People v. Turner, 540 N.W. 2d at 733.** The prosecutor failed to meet it's burden of proof beyond a reasonable doubt. **In Re Winship, 397 U.S. 358 (1970)**, " lest there remain any doubt about the constitutional stature of the reasonable doubt standard, we explicitly hold that the due process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." **at 364** (emphasis added)

Ms. Stroud was charged with first degree murder **MCL 750.316**, but was found guilty of the lesser offense second-degree murder **MCL 750.317**, because the jury did not find the intent element defined as premeditation or deliberation. The evidence makes no showing that the shooter had "intended" or "thought out beforehand" that he was going to seek vengenance". She did not provide the kind of "moral support" that the Sixth Circuit discussed in **Sanford v. Yurkins, 288 F.3d 858, 862 (CA 6th 2002).** Even if the petitioner knew that the alleged crimes were planned or was being committed, the mere fact that she was present when it was committed is not enough to prove that she assisted in committing it.

Ms. Stroud should not have been convicted as an aider and abetter to either second-degree murder or felonious assault. The evidence did not support an inference that she intended the commission of any of the crimes charged or knew the intent

of the armed men who entered the house after her. There is no evidence of any plan, scheme, or conversation to show that the female who entered the house looking for her sister was there to seek vengence. The evidence at trial is legally insufficient and violative of due process even when viewed in the light most favorable to the prosecution, Jackson, supra. The essential element on intent is lacking, In Re Winship review of the trial record evidence demonstrates that the Michigan Court of Appeals decision is either contrary to or an unreasonable application of Jackson and the decision is based on an unreasonable determination of facts "in light of the evidence presented at the state court proceedings". 28 USC 2254(d). The convictions must be vacated.

II. DID THE COURTS ERRONEOUSLY DENY MS. STROUD'S CONSTITUTIONAL RIGHT TO DUE PROCESS BY REFUSING TO SUPPRESS COMPLAINANT LATASHA BARGAINEER'S MISIDENTIFICATION OF HER THAT WAS INFECTED BY IMPROPER POLICE INFLUENCE AND SHOULD A NEW TRIAL BE GRANTED?

Ms. Stroud has made a substantial showing of the denial of a constitutional right, as required by 28USC 2253(c)(2), with respect to ground two of her habeas petition, which alleges that the trial court denied Ms. Stroud's constitutional due process right by refusing to suppress complainant Latasha Bargaineer's identification of her and a new trial should be granted.

Ms. Stroud, adopts by reference paragraphs 2-4 of pages 7-9. A review of the issue that Ms. Stroud raised in ground

two of the habeas petition confirms the conclusion that this particular issue is substantial. Ms. Stroud argued in ground two of the petition for writ of habeas corpus that the trial court denied her constitutional due process rights by refusing to suppress cpmplainant Latasha Bargaineer's identification of her and a new trial should be granted.

Ms, Stroud asserts that the United States District Court for the Eastern District of Michigan and the United States Court of Appeals for the Sixth Circuit erred in denying her a certificate of appealabiltiy because the investigator in charge used unduly suggestive pretrail identification procedure and the trial court erred in failing to suppress Latasha Bargaineer's identification of her as one of the perpetrator's of the crime which violated the petitioner's due process rights. Due process protects the accused against the introduction of evidence which results from an unreliable identification obtained through unnecessarily suggestive procedures. **Moore v. Illinois, 434 U.S. 220, 227 (1977).**

Investigator Charles Weaver was the officer in charge of the police investigation. Based on information provided by Johnson and Bargaineer in their initial and supplemental statements to police, Weaver identified an individual by the name of Maria Stroud, Ms. Stroud's sister, as the suspect. Weaver obtained a photograph of Maria and complied a photographic array to show Johnson and Bargaineer. Ms. Stroud, was not included in this photo array. On August 13, 2013, Johnson and Bargaineer viewed photographic arrays, and both identified Maria as the perpetrator immediately. Bargaineer the provided Weaver with

Maria's address to help further locate her. The court stated that after speaking with Maria and Joezetta Harper the petitioner other sister, that investigators identified petitioner and Aldridge as suspects. This is not true. When investigators interrogated both Maria and Joezetta they both denied looking for their sister Candy Simpson or being at the residence on Archdale. No statement implicates the petitioner in the crime. Weaver prepared a new photo array with the petitioner as well as Arianna Stroud another one of the petitioner's sisters to show Johnson and Bargaineer. If the Investigator -after speaking with Joezetta and Maria- identified petitioner as the suspect there would have been no need to compile a photo array with Arianna in one as well. Weaver was targeting the Stroud sisters. It is safe to say that Weaver was just going down the line of sisters until he got one of them. No where in Maria or Joezetta's statements mention the petitioner as part of this crime or a crime period.

After the first photo array and before the second array with the petitioner in it Weaver informed Bargaineer that "the initial photo array identification was not the person, it was another sister." "It was not a good pick." Johnson was never provided with this information. Both Johnson and Bargaineer were provided with second photo array's with the petitioner in them. Johnson failed to pick out petitioner. Bargaineer- after given aide- picked petitioner out.

An identification infected by improper police influence will be set aside if there is a very substantial likelihood of misidentification. Perry v. New Hampshire, 565 U.S.; 132

S. Ct 716; 181 L Ed 2d 694 (2012); Simmons v. United States, 390 U.S. 377, 384; 88 S Ct. 967, 19 L Ed. 2d 1247 (1968); Neil v. Biggers, 409 U.S. 188, 198 93 S. Ct. 375, 94 L. Ed. 2d 407 (1972). "The court is obligated to review every potential encounter, accidential or otherwise, in order to ensure that the circumstances of the particular encounter have not been suggestive as to undermine the realibility of the witness subsequent identification: Id.(quoting Green v. Logging, 614 F. 2d 219, 223 (9th Cir 1980). "Unnecessary suggestiveness depends upon whether the witness's attentiton was directed to a suspect because of police conduct." Haliym v. Mitchell, 492 F. 3d 680 704 (6th Cir. 2007). quoting Howard v. Bouchard, 405, F. 3d 459, 469 (6th Cir 2006). Suggestive identification procedures "increase the likelihood of misidentification,' and "it is the likelihood of misidentification which violates a defendant's rights to due process." Neil v. Biggers, 409 U.S. at 198' See generally Simmons v. United States, 390 U.S. 377, 384, 19 L. Ed. 2d 1247, 88 S. Ct. 967 (1968) Examining whether procedure was "so unnecessarily suggestive and conducive to irreparable mistaken identification that petitioner was denied due process of law)."; Wary v. Johnson, 202 F. 3d 515, 524 (2nd Cir 2000); United States v. Maldonado-Rivera, 922 F. 2d 934, 973 (2nd Cir. 1990), cert denied, 501 U.S. 1233 (1991).

Petitioner argues that the lineup procedure was unduly suggestive. To determine whether an allegedly suggestive pre-trial identification violated a defendant's due process rights, the following two step inquiry applies: (1) the court must determine whether the pre-trial identification was unduly suggestive; and (2) if the court finds that it was, then it must "eval-

uate the totality of the circumstances to determine whether the identification was nevertheless reliable." **Mills v. Cason, 575 F. 3d 246, 251 (6th Cir. 2009) quoting Ledbetter v. Edwards, 35 F. 3d 1062, 1071 (6th Cir. 1994).**

The court explained that the photos of the two individuals who Bargaineer identified did not look particulary similiar and there was nothing in the record to suggest that Bargaineer selected petitioner Stroud in the second lineup based on any similiarty to the first. This is not true. Bargaineer testified at the evidentiary hearing that was conducted pursuant to counsel's motion to suppress petitioner Stroud's identification, that she had previously selected a photo of petitioner Stroud's sister as the person she thought was in her house, because "they look just alike." The court further notes that Bargaineer's first identification".....based on either her perception that the person she selected looked similiar to the female assailant who came to her home, or her perception that she looked like (Simpson)." The court just admits that she selected them because they looked similiar to each other in the above statement. Furthermore, Bargaineer admits herself that she picked them both out because they looked just alike. She mentions nothing about Simpson period. I fail to see how the court can deem the highly improper identification procedures employed by the police as "general discussion about the status of the case." When Bargaineer admits picking the two individuals out from similarities, when Johnson who provided with the same opportunities to view petitioner Stroud and given the same photo array's minus the improper procedures, failed to pick Ms.Stroud out. The definition of reversible eror state:

An error that affects a party's substantive rights or the case's outcome, and thus is grounds for reversal if the party properly objected at trial. Black Law Dictionary (Tenth Edition) p.660

The definition of substantial error states:

An error that affects a party's substantive rights or the outcome of the case. Black Law Dicitonary (Tenth Edition) p.660

The United States court in **United States v. Wade, 388 U.S. 218; 87 S. Ct. 1926; 18 L. Ed 2d 1149 (1967),** discussed at great lenght the unreliability of eye witness law are proverbially untrustworthy...the influence of improper suggestion upon identifying witness probably accounts for more miscarriages of justice than any other single factor... suggestion can be created intentionally or unintentionally and the dangers for the suspect are particularly grave when the witness opportunity for observation was unsubstantial. **Wade, supra, 388 U.S. at 228, 229, 87 S. Ct. 1926.**

Johnson and Bargaineer are strangers to petitioner Stroud. According to the police of Raymond Diaz he describes "the lighting conditions to be poor...and that even if the lights that he knew of were on, he would still consider the lighting conditions to be poor in the living room. Police officer Edward Davis describes inside the house as being "dimly lit". This was also an extreme emotional stress situation. Supporting the **Ledbetter v. Edwards, 35 F. 3d 1062, 1070-71 (6th Cir. 1994)** test. The court stated "..it is the likelihood of misidentification that violates the defendant's right to due process...409 U.S., at 198.

III. Could jurists of reason have aquitted Ms. Stroud of all charges if she was not deprived of her constutional right to present a defense when the courts failed to qualify Dr. Terrence Campbell as an expert witness for her only defense of misidentification who's testimony was relevant and reliable?

Petitioner Stroud asserts that she was denied of her right to present a defense when the trial court refused to qualify Dr. Terrence Campbell as an expert witness on eyewitness identification and admit his testimony into evidence.

Petitioner Stroud adopts by reference paragraphs 2-4 of pages 7-9. Fed. R. Evid. 702 allows the admission of expert testimony where the witness is sufficiently qualified to assist the trier of fact, and his testimony is relevant to the task at hand and rests on a reliable basis.

Here, Dr. Terrence Campbell a psychologist specializing in forensic psychology, testified at an evidentiary hearing, that he is board certified in forensic psychology by the American Board of Professional Psychology, regulary attends conferences and is the author or co-author of fifty-five different peer reviewed articles which have appeared in various scientific and professional journals. He was involved in a 2001 study of general acceptance of eyewitness testimony, in which he was recognized as one of many experts in the field. He was offered to provide testimony about generally recognized myths and mistaken assumptions about human memory as they relate to the stages of memory, the relationship between stress and eyewitness recall the effects of instructions prior to lineups the effects on the identifying witness, simultaneous versus sequential lineups, the differences between relative discrimination and absolute discrimination in eyewitness accuracy, the relationship between eyewitness confidence and eyewitness accuracy and the general acceptance of eyewitness testimony. He reviewed the materials in this case, and was prepared to testify as to these matters.

Campbell offered reasons why he was qualified as an expert to testify in this area and why his testimony would be helpful to the jury. He had previously qualified as an expert in eye-witness identification over one hundred times, including three which did not involve children or repressed memory. The trial court denied Dr. Campbell qualification as an expert in eye-witness identification.

A defendant has a due process right to present a recognized defense to a criminal charge. U.S. Const, Amends. V, VI. XIV; see generally, Chambers v. Mississippi, 410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973); Holmes v. South Carolina, 547 U.S. 319, 126 S. Ct. 1727, 164 L. Ed 2d 503 (2006); Washington v. Texas, 388 U.S. 14, 19, 87 S. Ct. 1920 L. Ed. 2d 1019 (1967). This right is fundamental to due process. "The right to present the defendant's version of the facts as well as the prosecutor's to the jury so it may decide where the truth lies". is in fact at the very heart of the due process right. Washington v. Texas, supra. "Whether rooted directly in the due process clause of the Fourteenth Amendment...or in the complusory process of confrontation clause of the Sixth Amendment../ the constitution gurantees criminal defendant a meaningful opportunity to present a complete defense." Crane v. Kentucky, 476 U.S. 683, 690 106 S. Ct. 2142, 90 L. Ed 2d 636 (1986), citing California v. Trombetta, 467 U.S. 479, 485, 104 S, Ct. 2528, 81 L. Ed. 2d 413 (1984).

The majority of the state's case was presented through evidence whose relevance and weight turned entirely on the strength of the eyewitness identifications. Latasha Bargaineer and Terell Johnson were the only witness who directly implicated

petitioner Stroud in the death of Holley and the assaults on Bargaineer, Johnson and Holley Jr. Yet, both initially identified someone other than petitioner Stroud as the female involved. When provided with the chance to pick out petitioner Stroud, Bargaineer's identification was based on police influence. Johnson wasn't and never picked out Stroud. These charges were substantiated almost entirely by two eyewitnesses whose view of the perpetrators were compromised by stress and dim light and whose memory was contaminated by a variety of procedural factors and drugs. Under these circumstances, it was vital that the jury have a proper understanding of the pitfalls of eyewitness identification. Stroud was deprived of due process when the trial court denied her request to present an expert who could assist the jury in this regard.

Expert testimomy regarding eyewitness identification aids a jury where special circumstances exist, such as where an identification is made after a long delay or under conditions of extreme stress, where a witness faculities were impaired at the time of the identification, or where no independent evidence corrobates the defendant's guilt. See United States v. Stokes, 388 F. 3d 21 11/05/2004. In a case in which the sole testimony is the casual eyewitness identification, expert testimony regarding the accuracy of that identification is admissible and properly may be encouraged. See United States v. Smithers, 212 F. 3d 306. ("While science has firmly established the inherent unreliability of human perception and memory...this reality is outside the jury's common knowledge, and often contradicts jurors common sense understandings.") (Internal citations marks ommitted); Smithers, 212 F. 3d at 316.

("Today there is no question that many aspects of perception and memory are not within common experience of most jurors, and in fact, many factors that affect memory are counter-intuitive".); Downing, 753 F. 2d at 1231-32 ("Most people, and hence most jury members, probably believe that stress increases the accuracy of one's perception"). ('Moreover, cross examination of the eyewitness will have little affect on jurors if they analyze the evidence through their common-sense, often incorrect assumptions. For example, if jurors incorrectly assume that in general, high levels of stress enhance a witness's ability to remember a suspect, they will not be persuaded by defense counsel's efforts to establish that the witness was under a high level stress during an encounter with the suspect. Therefore background information regarding the areas of perception and memory would give jurors the tools more accurately to determine the credibility of an eyewitness"). See United States v. Jones, 762 F. Supp 2d 270.

Johnson v. City of Detroit, 79 Mich App 295, 299 (1977). articulated a three part test for admission of expert testimony (1) there must be an expert, (2) there must be facts in evidence which require or are subject to examination and analysis by a competent expert, and (3) there must be knowledge in a particular area that belongs more to an expert than the commom man (in other words, the testimony must relate to a recognized area of expertise.) Id at 300

(1) Here, Dr. Terrence Campbell, is a psychologist specializing in forensic psychology that is board certified in forensic psychology by the American Board of Professional Psychology. (2) On August 20, 2013 Bargaineer identified petitioner Stroud

from a photo array after having identifying a different person in August 13, 2013 photo array. She identified petitoner Stroud after investigator Weaver told her he picked up the person she had initially selected, but that the perpetrator was the sister of that person. She admitted to picking petitoner Stroud out because her and the person she originally selected 'looks just alike', at the evidentiary hearing. On August 13, 2013 Johnson viewed male and female photo arrays, identifying Aldridge and a woman other than petitioner Stroud. On August 20, 2013 he viewed another female array which contained a photo of petitoner Stroud but made no identification. Johnson initially described the male assaliant to the police as being dark complected but at the trial conceeded that Aldridge is a medium light comp-plected. (3) Petitoner Stroud adopts by reference paragraphs 3 of page 19.

Our justice system relies on the adversial process to ensure that all relevant facts are presented, within the framework of the rules of evidence, so that the trier of facts can ascertion the truth. Expert testimony serves as both a source of factual information and as an aid in understanding factual evidence introduced by others. Judge Bazeton's concurring opinion in United States v. Brown, 461 F. 2d 134; 149 U.S. App DC 43 (DC Cir 1971) speaks persuasively to the unity of expert testimony in helping evaluate identification evidence:

> **We need more information about the reliability of the identification process and about the jury's ability to cope with it's responsiblity For it should be obvious that we cannot strike a reasonable and**

> **intelligent balance if we take pains to remain in ignorance of the pitfalls of the identification process. The empirical data now available indicates that the problem is far from fanciful but for a variety of reasons we have been unwilling to face up to the doubts to which this date gives rise...We have developed a reluctance that is almost taboo against even acknowledging the question much less providing the jury with all of the available information. Much information is needed to assist the jury's resolution of identification issues, [and] our doubts will not disappear merely because we run away from the problem.**

Expert witness are the necessary conduit for providing this vital information to the trier of fact in cases involving eyewitness testimony. In it's most recent opinion concerning eyewitness's identification evidence, the U.S. Supreme Court identified the safeguards against eyewitness misidentification avaiable to criminal defendant's, including "expert testimony on the hazards of eyewitness identification evidence. Perry v. NewHampshire, 565 U.S. ; 132 S. Ct. 716; 181 L. Ed 2d 694 (2012). The court cuted with approval the holding of State v. Clopten, 223 P 3d 1103,1113 (Utah 2009). "We expect...that in cases involving eyewitness identification of strangers or near-strangers, trial courts will routinely admit expert testimony (on the dangers of such evidence).

The most complete examples of judicial recognition of the scientific research can be found in State v. Henderson, 208 NJ 208, 27 A 3d 872 (2011) holding mod by State v. Chen, 208 NJ 397 (2011) and State v. Lawson, 352 Or 724; 291 P 3d 673 (2012

In these cases, the state supreme courts of New Jersey and Oregon conducted exhaustive reviews of the scientific literature concerning eyewitness memory and perception. The Oregon Supreme court summarized the research findings in an appendix to the Lawson decision. Upon review of the research, the Henderson court declared it the "gold standard interms of the applicability

of social science research to the law, " explaining that experimental methods and findings have been tested and retested, subjected to scientific scrunity through peer-reviewed journals, evaluated through the lens of metor analyses, and replicated at times in real-world settings. As reflected above, consensus exists among the experts who testified on remand and within the broader research community." Henderson, 208 NJ at 233; 27 A 3d at 916. Accord Lawson, 352 OR at 739-40; 291 P 3rd at 685.

Both courts found if incumbent upon trial courts to provide juries with sufficient information and guidance to allow them to complete the complex task of evaluating eyewitness identification evidence. See e.g., Lawson, 392 Or at 761; 291 P 3rd at 696 ("Because many of the system and estimator variables are either unknown to the average juror or contrary to common assumptions, expert testimony is one method by which the parties can educate the trier of fact concerning variables that can affect the reliability of eyewitness identification"). Accord Henderson, 208 NJ at 274; 27 A 3d at 911 ("there is a need to promote greater juror understanding of these issues".)

Factors shown to negativity affect the reliability of eyewitness identification are present in this case.

Scientist have decided into two categories the variables that are most likely to lead to a mistaken identification: estimator variables-factors not affected by law enforcement, such as the circumstances of the event and system variables factors that are under the control of law enforcement. Id at 236 n. 11 (citing G. Walls, "Applied Eyewitness-Testimony Research: System Variables and Estimator Variables, "36 S. Personality & Soc. psychol. 1546, 1548 (1978).

The following estimator and system variables present in this case have been shown through peer reviewed scientific research to undermine the reliability of an identification:

* High levels of stress have a negative effect on memory, reduce identification accuracy, and increase the risk of mistaken identification.

* Low illumination- even to the degree occuring at the twilight decrease witness recall and identification accuracy.

* A very short exposure duration of only a few seconds generally reduces accuracy. This problem is compounded by the fact that witnesses genrally overestimate short durations of time, particularly when they are under stress.

* The use of simultaneous lineups has been shown to increase the risk of misidentification over sequential lineups, particularly where, as here, the defendant most resembled the person who had been previously seen. This disparity is linked to the phenomenon known as "relative judgment" in essence the tendency to pick the "best choice" among those available when all options are presented at the same time (i.e. simultaneously). In effect, the witness says, "relative to the other lineups members (or photograhs), this person looks the most like the perpetrator.

* Post-event information received by witnesses both before and after an identification can affect their memory for the event as well as increase their confidence in their selection. Confirming feed back can come from sources other than police, including prosecutors, other eyewitnesses, friends, family, the media, as well as from routine occurences in the course of a criminal case, such as learning of the arrest and prosecution of the suspect, seeing the suspect sitting at defense counsel's table and meeting with prosecutors in preparation for testimony...

Other factors relating to the identifications may also provide indication of unreliability that jurors should be made aware of:

* A witness' confidence bears at best, a weak relationship to accuracy. **Lawson, 352 OR at 777; 291 P 3d at 704 (2012)** ("Despite widespread reliance...on the certainty of an eyewitness's identification, studies show that, under most circumstances, witness confidence or certainty not a good indicator or identification accuracy.") This finding is particularly troublesome in light of the finding that jurors are most persuaded by a witness" confidence.

* Non-identifications can be diagnostic of the suspect's innocence. As researchers explain, "identifications are not merely 'failures' to identify the suspect, but rather carry important information whose value should not be overlooked.

As the New Jersey Supreme Court summarized, "everyone knows, for instance, that bad lighting conditions make it more difficult to perceive the details of a person's face. Some findings are less obvious. Although many may beleive that witnesses to a highly stressful, threatening event will never forget a face". State v. Henderson, 208 NJ 208, 272; 27 A3d 872, 910 (2011) holding mod by State v Chen, 208 NJ 307 (2011).

As a result of the substatial degree of acceptance within the scientific community concerning data on the reliability of eye-witness identifications, federal and state courts around the country have recognized that traditional methods of informing factfinders of the pitfalls of eyewitness identification-cross-examination, closing argument, and generalized jury instructions-frequently are not adequate to inform factfinders of the factors affecting the reliability of such identifications. State v Lawson, 352 Or 724-60 291 P3d 673 (2012)

The need is particularly urgent in a case such as this one, where the witness post-identification confidence is high. Research shows that the level of confidence expressed by the witness is what most affects jurors assement of a particular eyewitness identification. See, e.g., State v. Clopten, 223 P3d 1103 (Utah 2009). ("Cross examination will often expose a lie or half-truth, but may be far less effective when witness, although mistaken, believe that what they say is true.") In other words, eye witness identification expert testimony is generally only permitted in cases exactly like this one, where the only issue in the case is accuracy of an eyewitness identification made by a stranger and the prosecution has no other significant evidence implicating the defendants in the crime.

Skepticism about eyewitness identification expert testimony is especially unwarranted in a case such as this, where the primary evidence is the eyewitness identification and both the identifiers previously identified a photo of a person other than the petitioner as the female involved.

In light of facts of this case, where charges are substantiated almost entirely by two eyewitnesses whose view of the perpetrators were compromised by stress and dim light and whose memory may have been contaminated by a variety of perocedural factors, expert testimony was necessary to ensure that petitioner was able to present a complete defense and that the factfinder was able to intelligently evaluate and weigh the evidence before her.

Expert testimony on eyewitness issues has been shown to improve juror knowledge about influences on eyewitness reports. A 1989 study by Dr. Steven Penrod and others tested a large sample of college students and experienced jurors using a videotape of an armed robbery trial and various witnessing and identification conditions. Expert testimony was found to increase juror sensitivity to both types of conditions: without expert testimony, the number of guilty verdicts was the same for both good and poor conditions, but, with expert testimony, guilty verdicts were significantly higher when conditions were good than when they were poor. A later study also demonstrated that expert testimony results in fewer guilty verdicts when viewing conditions are poor, suggesting that the effect is not simply skepticism, but appropriate skepticism. In another study, mock jurors rated an eyewitness identification that was flawed as

more unfair and the petitioner as less culpable when there was expert testimony. Given the prior identification of a different person, the deficiency cannot be said to not have prejudiced petitioner. Had trial counsel been able to present Dr. Terrence Campbell's testimony, there is a reasonable probability petitioner would have been acquitted.

Reasonable jurists could debate the Unites States Court of Appeals for the Sixth Circuit and the District Court for the Eastern District of Michigan denial of relief on this claim. This claim involved an unreasonable application of Jackson or was based on an unreasonable determination of the facts See **28 U.S.C. 2224(d): Miller-El, 537 U.S. at 327.**

CONCLUSION

Wherefore, for the foregoing reasons, Petitioner Stroud respectfully asks this Honorable Court to grant certiorari in this case and remand these matters to the United States Court of Appeals for the Sixth Circuit for full appellate review of the issues that were raised in Stroud's petition for writ of habeas corpus.

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Respectfully submitted,

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