

No. 19-5281

ORIGINAL

IN THE

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SUPREME COURT U.S.

SUPREME COURT OF THE UNITED STATES

Ronald W. Jiles — PETITIONER  
(Your Name)

vs.

State of Michigan et al. — 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

RONALD WESLEY JILES

(Your Name)

3100 Cooper Street, Jackson, MI 49201  
(Address)

Jackson, Michigan 49201

(City, State, Zip Code)

(Phone Number)

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

RONALD WESLEY JILES

Petitioner,

-v-

PEOPLE OF THE STATE OF MICHIGAN,

Respondant,

On petition for Writ of Certiorari  
to the Sixth Circuit of Appeals

“PETITION FOR WRIT OF CERTIORARI”

Executed On: 5/30/2019

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QUESTION(S) PRESENTED

WHETHER A DEFENDANT'S RIGHT TO EXERCISE HIS FIFTH AMENDMENT RIGHT WHILE IN OPEN COURT, COMMENTED ON BY THE PROSECUTION TO THE JURY DURING CLOSING WAS ENOUGH TO TAINT THE JURIES DECISION TO CONVICT?

Petitioner says, YES!

REB

1351

WHETHER THE JUDGES DECISION TO ADMIT EVIDENCE IRRELEVANT TO THE CHARGE DAMAGED THE DEFENDANT'S IMAGE IN THE MINDS OF THE JURY, ULTIMATELY PREJUDICING THE DEFENDANT?

Petitioner says, YES!

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## 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:

**RONALD W. JILES,**

**Petitioner,**

-v-

**STATE ATTORNEY GENERAL, DANA NESSEL**

**DEPT. of CORR. WARDEN, JOSEPH BARRETT**

**BERRIEN COUNTY PROSECUTOR'S OFFICE**

**COUNTY OF BERRIEN COUNTY**

**MICHIGAN STATE POLICE, JOHN DOES'S**

**Defendant(s).**

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(Attached)

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Prosecution's Brief filed, Date: 4/18/2019

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

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

**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 A 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 Michigan Court of Appeals court appears at Appendix B to the petition and is

reported at M.C.O.A.; 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 March 7, 2019.  
A copy of that decision appears at Appendix A.

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).

PETITION FOR WRIT OF CERTIORARI

RONALD W. JILES, Petitioner for a Writ of Certiorari to review the  
Opinions below.

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OPINIONS BELOW

The ORDER of the State of Michigan Supreme Court, denying Petitioner's "Application for Leave to Appeal", dated March 7, 2019, and was timely filed within the 56 days allowed pursuant to MCR 7.305. Mr. Jiles filed a timely request for appointed appellate counsel in the trial courts and was appointed counsel on 4/3/17. The appellate counsel filed a timely "Appeal by Right" in the Michigan Court of Appeals by April 18, 2018, and was denied relief in an unpublished opinion on 9/18/2018.

Ultimately, this is filed within the 90 days required by U.S. Supreme Ct. R. 13; and 28 U.S.C.S. 2101.

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CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, (...), 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, (...)"

Article VI, Clause 2 of the United States Constitution provides:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The Fourteenth Amendment, Sec. 1 to the United States Constitution provides:

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

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QUESTION ONE

WHETHER A DEFENDANT'S RIGHT TO EXERCISE HIS FIFTH AMENDMENT RIGHT WHILE IN OPEN COURT, COMMENTED ON BY THE PROSECUTION TO THE JURY DURING CLOSING WAS ENOUGH TO TAINT THE JURIES DECISION TO CONVICT?

STATEMENT OF THE CASE

PETITIONER, RONALD JILES, was involved in an incident on May 26, 2016. Which he was later charged with thirteen different charges. (See, Statement in Briefs Attached). The Mr. Jiles was arrested and charged post 5/26/16, due to the fact he was taken to the Hospital for treatment. Mr. Jiles remained unconscious upon arrival for the better part of two days.

During the trial several government witnesses testified to their personal experiences of this incident along with Mr. Jiles. This is where this issue stems from. The Defense Counsel, Mr. Smith, called Mr. Jiles to testify as Mr. Jiles was willing to do so. (pg.800-863). So, the prosecution was performing cross; on re-cross, the prosecution asked a question where the defense counsel objected and the trial court sustained. (pg. 863) The prosecution then chose to ask any other question as an obvious strategy for his closing argument. This is where the issue stems from.

## QUESTION BEFORE THE STATE COURTS

MR. JILES WAS DENIED HIS FOURTEENTH AMENDMENT DUE PROCESS RIGHTS AND HIS FIFTH AMENDMENT RIGHT TO SILENCE DUE TO PROSECUTORIAL MISCONDUCT WHERE THE PROSECUTOR, IN CLOSING ARGUMENT, FLAUNTED THE TRIAL JUDGE'S SUSTAINING, A DEFENSE OBJECTION TO THE PROSECUTOR'S QUESTIONING ON PRE-TRIAL SILENCE?

### STANDARD OF REVIEW PRESENTED

The standard of review of prosecutorial misconduct is *de novo*. *People v. Bahoda*, 448 Mich 261 (1995). A reviewing court decides claims of prosecutorial misconduct on a case-by-case basis by examining the prosecutor's remarks in context. *People v. Thomas*, 260 Mich App 450, 454 (2004). The appellate court evaluates prosecutorial comments as a whole, in light of the defendant's arguments and the relationship such comments bear to the evidence admitted at trial. *People v. Brown*, 267 Mich App 141, 152 (2005).

The plain error rule applies to claims of unpreserved constitutional error. *People v. Carines*, 460 Mich 750, 765 (1999).

### BRIEF IN SUPPORT

The "case or controversy" requirement of Article III of the constitution governs all levels of judicial proceedings, including efforts to obtain Supreme Court review. In *Department of Commerce v. United States House of Representatives*, ; The Court concluded "to establish Article III standing," [A] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." The Petitioner must establish cognizable injury under the Fourteenth Amendment, and the case may be remanded with instruction to correct the matter.

It was improper for the prosecutor to flaunt the judge's ruling by arguing facts not supported by the record. Michigan law prohibits a prosecutor from

making comments relative to evidence that is not of the record. See, *People v. Woerterton*, 227 Mich App 72 (1997); *People v. Ellison*, 133 Mich App 814 (1984). Where the misconduct is flagrant and intentional, it can rise to the level of denial of the accused's constitutional right to due process of law. *Donnelly v. DeCristoforo*, 416 U.S. 637 (1974); *Washington v. Hofbauer*, 228 F3d 689 (CA 6, 2000); U.S. Const., Am. V, XIV.

When it comes to deprivation of one's constitutional rights, there is no set standard of review. In the United States Constitution, the sole reference to review mechanisms relate to suspension of the Writ of Habeas Corpus. See, U.S. Const., Art. 1, Sec. 9, cl. 2; referred to as the "Suspension Clause," provides that the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion, the public safety may require it. The Suspension Clause probably should not be taken to indicate that the Constitution itself establishes the writ.

The incorporation of the First Eight Amendment(s) protections are guaranteed by the Fourteenth Amendment guarantee of due process and continued unabated during the Warren Court era. Similarly, since the 1960's, the Court dramatically extended the federal Bill of Rights, particularly parts of the Fourth, Fifth, Sixth, and Eighth Amendments, as limitations on the states, all compulsory to one's Due Process.

When Appointed Appellate Counsel presented the prosecutorial misconduct to the State Appellate Courts. The Michigan Court of Appeals ruled that it does not effect a defendant's Fourteenth Amendment, when a prosecutor in closing comments on a defendant's right to exercise one's Fifth Amendment Right. When in all reality, Mr. Jiles was simply interrupted by the defense counsel's objection, and the prosecution abandoned the question, when the trial court sustained the objection; which he could have refrased the question if he was actually inquiring an answer. (pg. 863). In fact the

prosecution never asked Mr. Jiles another question. (pg. 863)

The Federal Courts have similar standards for review of claims of prosecutorial misconduct. "When reviewing claims of prosecutorial misconduct, we determine first whether the statements were improper." *United States v. Gardiner*, 463 F3d 445, 459 (CA 6, 2006) (citing *United States v. Francis*, 170 F3d 546, 549 (CA 6, 1999)); see also, *United States v. Carter*, 236 F3d 777, 783 (6th Cir 2001). "If they were improper, then we look to see if they were flagrant and warrant appeal." *Francis*, 170 F3d at 549; *Carter*, 236 F3d at 783. "To determine flagrancy, the standard set by this Court is: 1) whether the statement tended to mislead the jury or prejudice the defendant; 2) whether the statements were isolated or among a series of improper statements; 3) whether the statements were deliberately or accidentally before the jury; and 4) the total strength of the evidence against the accused." *Id.* In the prosecutor's response to the Mich. C.O.A. filing, the comments were not claimed to be accidental, but an effort was made to make the comments justifiable, and this becomes the issue herein. Therefore, the prosecutor's comments during that trial were not "isolated, accidental or insignificant." *Id.* Additionally, a prosecutor commits are considered misconduct of the most egregious nature by referencing evidence that has been suppressed or limited to a particular purpose, or never admitted at all. See, *People v. Hackney*, 183 Mich App 516, 531 (1990); *People v. Smith*, 158 Mich App 220 (1987).

The use of questionable material evidence, offends every notion of justice, fundamental fairness and due process. Anything less than the presentation by the government of fair and accurate evidence is abhorrent. The paramount issue on which to focus are knowledge and materiality. Michigan law prohibits a prosecutor from making comments relative to evidence

that is not of the record. See, *People v. Wolverton*, 227 Mich App 72 (1997); *People v. Ellison*, 133 Mich App 814 (1984). It is the rule in some circuits that it is the knowing prosecutorial use of questionable material evidence which triggers the due process violation necessary for habeas corpus relief. There is no logical reason to limit a due process violation to state action defined as prosecutorial knowledge of questionable material evidence or even an official's conduct with some affiliation with a government agency. Such a rule elevates form over substance.

The prosecutor, a party of the sovereign, yet shall be interested in achieving a courtroom victory and convincing the fact-finder of the strength of those facts presented. Even before the case of *Brady v. Maryland*, 373 U.S. 83, 87-89 (1963); prosecutorial misconduct was expanded on as a material standard, establishing a prosecutor's actions during the proceeding could put into question a defendant's right to Due Process. See, *Alcorta v. Texas*, 355 U.S. 28, 31-32 (1957); *Rosencrantz v. Lefler*, 568 F3d 577, 588 (2009).

The prosecutor's decision to begin his closing argument in this fashion was deliberate and intentional. He strategically focused his closing remarks on the temporal aspect of Mr. Jiles's alleged failure to come forth with an explanation of his actions prior to trial. In framing his closing around the ideas of the trial being the first time Mr. Jiles attempted to explain his actions, the prosecutor alleges, it was a simple effort seeking to impeach Mr. Jiles' credibility. The prosecution claimed that Mr. Jiles waited months in an effort to convince the jury that Mr. Jiles lied on the witness stand. In essence, the prosecution implied that if Mr. Jiles were telling the truth, he would have explained his actions long before trial. This allowed the prosecution to suggest to the jury that Mr. Jiles was being dishonest, when in fact Mr. Jiles had no legal obligation to incriminate himself to anyone prior to trial. These comments by the prosecution were

not "isolated, accidental, or insignificant." In doing so, the prosecutor flaunted the judge's ruling, and argued alleged facts off the record, thereby depriving Mr. Jiles of due process rights under the Fourteenth Amendment. The record is clear and this court can make a proper determination of the record to properly review this issue.

In *People v. Bobo*, 390 Mich 355 (1973), a State Supreme Ct. decision addressed; the precise issue on appeal was the government's comment on the accused's failure to come forward with his theory, establishing of a defense prior to trial. Bobo held; that his trial testimony could not be impeached with the fact that following his arrest he did not make a statement to the police outlining that defense theory. In the most quoted section of that opinion, the Court wrote:

"We will not condone conduct which directly or indirectly restricts the exercise of the constitutional right to remain silent in the face of accusation. 'Non-utterances' are not statements. The fact that a witness did not make a statement may be shown only to contradict his assertion that he did." 390 Mich at 359.

"[A] prosecutor may not imply in closing argument that a defendant must prove something or present a reasonable explanation for damaging evidence because such an argument tends to shift the burden of proof." *People v. Green*, 131 Mich App 232, 237 (1983) (emphasis added) (citing, *People v. Nabers*, 103 Mich App 354, 369, Affirmed in part and reversed in part; 411 Mich 1046 (1981)); See also, *United States v. Smith*, 500 F2d 293, 298 (CA 6, 1974); accord, *People v. Abraham*, 256 Mich App 265, 273 (2003). A fundamental pillar of our criminal justice system is that a person is presumed innocent until proven guilty. Accordingly, the prosecution needed to tarnish Mr. Jiles' testimony, to establish the Mens Rea needed to prove the defendant was guilty beyond a reasonable doubt. Ultimately, obligating the defendant to prove his innocence before the fact-finder. See, *People v. Rosales*, 160 Mich App 304, 312 (1987). Doing so violates the defendant's

due process rights and amounts to prosecutorial misconduct. U.S. Const.

Am. V, VI , XIV; Mich. Const. 1963, Art. 11, Sec. 17.

The appointed appellate counsel was correct in expanding that this failure to object during close was ineffective on Mr. Smith's part. Yet, failed to present an issue of ineffectiveness. The Mich. C.O.A., addressed the prosecutor's comment as permissible conduct. (M.C.O.A. decision pg. 3). It must be mentioned that if this was the prosecutions strategy, then why not clarify in Re-Cross, after Mr. Smith objected to the questioning. Why not extract more evidence to support the record? A true test of Mr. Jiles' credibility. When this issue could be enough all on its own to permit reversal, however, so is this issue before this court herein.

## QUESTION TWO

WHETHER THE JUDGES DECISION TO ADMIT EVIDENCE IRRELEVANT TO THE CHARGE, DAMAGED THE DEFENDANT'S IMAGE IN THE MINDS OF THE JURY, ULTIMATELY PREJUDICING THE DEFENDANT?

### STATEMENT OF THE CASE

Petitioner's counsel, Mr. Smith, filed a pretrial motion around August 2016, in an effort to prevent specific evidence irrelevant to the charges to be admitted before the jury, preventing any questionable prejudicial error(s) in an effort to protect Mr. Jiles' right to Due Process. The trial court denied the motion because it was presented that if Mr. Jiles chose not to testify, then this would allow the prosecution an opportunity to establish the knowing element of the Felony Firearm. However, Mr. Jiles was the sole owner of the vehicle, therefore, it was his responsibility of the entire vehicle.

The evidence presented was a receipt from walmart that had condoms and other irrelevant products purchased by Mr. Jiles in the same bag that a gun was found. None of this was relevant to any of the elements of any charge brought on Mr. Jiles. This was simply part of the prosecution's strategy to tarnish Mr. Jiles' character before the fact-finder; that by itself is questionable conduct, now this issue is presented to test if it tarnished Mr. Jiles' due process of a fair proceeding.

QUESTION BEFORE THE STATE COURT

THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING EVIDENCE OF CONDOMS FOUND DURING A SEARCH OF MR. JILES' SEMI-TRUCK, WHICH WAS IRRELEVANT TO THE CHARGES AND HIGHLY PREJUDICIAL?

STANDARD OF REVIEW PRESENTED

The standard of review of a trial court's decision whether to admit evidence is abuse of discretion. *People v. Lukity*, 460 Mich 484 (1999).

BRIEF IN SUPPORT

After a denial of the motion to preclude admittance of specific evidence during the trial, the prosecution admitted the condoms and evidence irrelevant to the elements of the charges. (685-86, 696). The condoms certainly should have been excluded from evidence since there was other means to establish the elements of the knowing the firearm was in the cab.

In reviewing a court's decision to admit evidence is usually presented when the courts deal with a defendant's "other crimes, wrongs, or acts" under Rule 404(b), we first review for clear error that court's factual determination that the evidence was admissible for a legitimate purpose. Finally, we review for abuse of discretion the district court's determination that the probative value of the other acts evidence is not substantially outweighed by its unfairly prejudicial effect. *United States v. Johnson*, 27 F3d 1186, 1190 (6th Cir 1994) (citing, *United States v. Gessa*, 971 F2d 1257, 1261-62 (6th Cir 1992) (en banc)), cert denied, 115 S.Ct. 910 (1995). Just because the evidence at issue was not scientific, therefore, the Daubert Standard would not apply. Any evidence admitted should not only be relevant but the trial court should pay close attention to whether or not it could be deemed prejudicial and possibly be considered to taint the conviction in any way.

"Relevant evidence" is defined by MRE 401, as "evidence having any

tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." However, not all logically relevant evidence is legally relevant. Even if relevant, evidence may be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." MRE 403. "The danger of diverting the trier of fact from an objective appraisal of the defendant's guilt or innocence is rarely outweighed by the probative value of such evidence." People v. Fisher, 77 Mich App 6, 110 (1977).

Rather, a reading of the companions to Federal Rule 403, adopted by the state sovereigns, which coincides with MRE 401, and of the commentaries that went with them to Congress, makes it clear that what counts as the Rule 403, "probative value" of an item of evidence as distinct from its Rule 401, "relevance," may be calculated by comparing evidentiary alternatives. The Committee Notes to Rule 401, explicitly say that a party's concession is pertinent to the court's decision to exclude evidence on the point conceded. Such a concession, according to the Notes, will sometimes "call for the exclusion of evidence offered to prove [the] point conceded by the opponent...." Advisory Committee's Notes on Fed. R. Evid. 401, 28 U.S.C. App., p. 859. As already mentioned, the Notes make it clear that such rulings should be made not on the basis of Rule 401, relevance but on "such considerations as waste of time and undue prejudice (see, Rule 403)...." Ibid. The Notes to Rule 403, then take up the point by stating that when a court considers "whether to exclude on grounds of unfair prejudice," the "availability of other means of proof may ... be an appropriate factor." Advisory Committee's Notes on Fed. R. Evid. 403, 28 U.S.C. App., p. 860. The point gets a reprise in the Notes to Rule 404(b), dealing with admissibility when a given evidentiary item has the dual nature

of legitimate evidence of an element and illegitimate evidence of character. "No mechanical solution is offered. The determination must be made whether the danger of undue prejudice outweighs the probative value of the evidence in view of the availability of other means of proof and other facts appropriate for making decision of this kind under 403." See, Old Chief v. United States, 519 U.S. 172 (1997); Rule of Evidence 403.

Unfair prejudice does not mean any prejudice, but "refers to the tendency of the proposed evidence to adversely affect the objecting party's position by injecting considerations extraneous to the merits of the lawsuit." People v. Pickens, 446 Mich 298, 337 (1994). Unfair prejudice exists when there is a "danger that marginally probative evidence will be given undue or preemptive weight by the jury." People v. Crawford, 458 Mich 376, 398 (1998).

Even if the condoms were somewhat relevant to Mr. Jiles' knowledge, Rule of Evidence 403, should have permitted the exclusion, because the prejudice that it caused to Mr. Jiles substantially outweighed any probative value they may have had. Since Mr. Jiles is a married man and his wife was across the country, the condoms allowed the jury to infer infidelity or a plan to engage in infidelity on the part of Mr. Jiles. They only served the purpose of tainting the jury's minds with bad character traits. The jury's perception of Mr. Jiles was thus impacted by evidence that was wholly irrelevant to the crimes that he was charged with. Since the condoms were irrelevant and highly prejudicial to Mr. Jiles, the evidence should not have been admitted at trial.

## REASONS FOR GRANTING THE PETITION

Mr. Jiles, understands that he is not entitled to a perfect proceeding, however, the deprivations of his compulsory rights put into question the outcome of the proceeding. It is this Courts duty to protect the Judicial economy, therefore, resolving any possible conflicts or order by the lower court systems.

## CONCLUSION

It is clear that errors were committed in this matter. The petitioner knows he is not entitled to a perfect proceeding, but rather one that does not deprive one of compulsory Constitutional Rights. Ultimately, Mr. Jiles should of not had a prosecutor who also was an attorney for him and instead of handling the double edge sword carefully to seek the just conviction. The Prosecution committed questionable conduct that deprived Mr. Jiles of a fair proceeding. The issue before this Court is to determine if the deprivation was enough to REMAND this matter back for a New Trial.