19-5375

ORIGINAL

No.

FILED
DEC 19 2018
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

SEAN D. DANIELS — PETITIONER

vs.

PEOPLE OF THE STATE OF MIHIGAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SIXTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

SEAN D. DANIELS, #335991
(Your Name)

In Pro Se

2500 S. Sheridan Drive
(Address)

Muskegon Heights, Michigan 49444
(City, State, Zip Code)

QUESTION(S) PRESENTED

CLAIM ONE

WAS MR. DANIELS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL WHERE DEFENSE COUNSEL HAD TO BE REPEATEDLY REPRIMANDED BY THE TRIAL COURT FOR FAILING TO EXAMINE WITNESSES PROPERLY AND FOR ARGUING WITH THE COURT?

CLAIM TWO

WAS MR. DANIELS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL WHERE COUNSEL FAILED TO PRESENT AN OPENING STATEMENT, COMPLETE HIS CLOSING ARGUMENT, WHEN ADVISED OF A TIME LIMIT, BASED ON THE FACT COUNSEL HAD NOT YET ADDRESSED THE EVIDENCE, THEREBY FAILING TO EVER INFORM THE JURY OF MR. DANIELS THEORY OF THE CASE?

CLAIM THREE

WAS MR. DANIELS DENIED HIS STATE AND FEDERAL FIFTH AMENDMENT DUE PROCESS RIGHTS, BY THE ACTIONS OF THE WAYNE COUNTY PROSECUTOR AND DETROIT POLICE DEPARTMENT WITHHOLDING EXCULPATORY EVDENCE AND OBTAINED HIS CONVICTION THROUGH THE KNOWING USE OF FALSE TESTIMONY AND MANUFACTURED EVIDENCE BY THE PROSECUTOR, MEDICAL EXAMINER, DETROIT POLICE DEPARTMENT, AND COMPLAINING WITNESS MR. DANIELS MAINTAINS HIS CLAIM THAT HE IS ACTUALLY AND LEGALLY INNOCENT?

CLAIM FOUR

THE TRIAL JUDGE DEMONSTRATED JUDICIAL MISCONDUCT WHEN HE: OPENLY ARGUED WITH DEFENSE COUNSEL; IMPOSED AN EXACT TIME LIMIT ON DEFENSE COUNSEL'S CLOSING ARGUMENT; WALKED OFF THE BENCH DURING DEFENSE COUNSEL'S ARGUMENTS; AND FAILED TO RECOMMEND DEFENSE COUNSEL CONTINUE REPRESENTING PETITIONER DURING CLOSING ARGUMENTS, VIOLATING HIS FIFTH AMENDMENT RIGHT TO A FAIR TRIAL AND SIXTH AMENDMENT RIGHT TO HAVE COUNSEL FOR HIS DEFENSE?

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 all parties to the proceeding in the court whose judgment is the subject of this

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STATUTES AND RULES

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

The opinion of the United States court of appeals appears at Appendix H to the petition and is unpublished.

The opinion of the United States district court appears at Appendix G to the petition and is unpublished.

The opinion of the highest state court to review the post-conviction merits appears at Appendixes B & F to the petition and is reported at 486 Mich. 1048; 783 N.W.2d 376; 2010 Mich. LEXIS 1298; and 495 Mich. 1006; 846 N.W.2d 548; 2014 Mich. LEXIS 939.

The opinion of the state trial court appears at Appendix C to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided Petitioner Daniels' case was July 17, 2018, and a copy of the order denying a Certificate of Appealability appears at Appendix H.

A timely petition for rehearing or rehearing en banc was denied by the United States Court of Appeals on September 25, 2018, and a copy of the order denying rehearing appears at Appendix I. The jurisdiction of this Court is invoked under **28 U.S.C. § 1254(1)**.

The date on which the highest state court [Michigan Supreme Court] decided my case was June 28, 2010.

A copy of that decision appears at Appendix B. The jurisdiction of this Court is invoked under **28 U.S.C. § 1257(a)**.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendments V and VI to the United States Constitution, which provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, or property, without due process of law; nor shall private property be taken for public use, without just compensation. ***U.S. Const. Amend. V*** – *Grand jury indictment for capital crimes; double jeopardy; self-incrimination; due process of law; just compensation for property.*
>
> * * * * * *
>
> 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; to 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. ***U.S. Const. Amend. VI***

STATEMENT OF THE CASE

During the trial of Sean Daniels, the assistant prosecutor began her closing argument at 9:31 a.m., and concluded at 10:05 a.m. on March 20, 2008. Defense counsel began his closing at 10:05 a.m. He spoke until 10:17 a.m. about general principles of trials at which time the court informed him that he had twenty more minutes. Defense counsel objected stating that he was unaware of a time limit. He asked, "twenty minutes from what?"

Defense counsel then sat down and did not argue any longer. The jury was excused at 10:19 a.m. the trial judge asked defense counsel to inform him when he was ready to continue. Defense counsel refused to argue. Nothing occurred from 10:20 a.m. until 10:40 a.m. The jury was brought back into the courtroom at 10:40 a.m. The People did not present a rebuttal argument and the court then instructed the jury.

At the conclusion of the instructions the jury was sent into the jury room. Defense counsel objected to the court's instruction on first degree murder stating that it was wrong but that it favored the defense. He objected to the second degree murder instructions. The assistant prosecutor then informed the court that she was appalled by defense counsel's behavior. She stated that he was obligated to protect the defendant's rights. She characterized defense counsel's actions as a deliberate effort to create an appellate parachute.

The jury began deliberating at 11:10 a.m. the court responded to a jury note that it was at an impasse at 2:16 p.m. by giving an instruction on being hung. Defense counsel objected to the court's instruction. At 3:24 p.m. the jury returned with its verdicts of guilty as charged on all three counts, i.e. first degree murder (Mich. Comp. Law §750.316); assault with intent to commit murder (Mich. Comp. Law §750.83); and possession of a firearm in the commission of a felony (Mich. Comp. Law §750.227).

Petitioner Sean Daniels was sentenced by the Honorable Bruce Morrow to life imprisonment for the murder conviction, twenty to forty years for the assault with intent to commit murder, and two years for the possession of a firearm in commission of a felony. Petitioner, through appointed appellate counsel Michael McCarthy filed an appeal of right to the Michigan Court of Appeals. The state Court of Appeals affirmed Petitioner's conviction on December 8, 2010. **(APPENDIX A).**

The state Court of Appeals did note with respect to **Issue II** *supra* *"Based on our review of the record, we note that the trial court made it extremely difficult for both sides to try their cases and repeatedly made sua sponte rulings, some of which were inconsistent and confusing, if not in error. We believe that when defense counsel refused to continue with his closing, the proper course of action for the trial court would have been to adjourn briefly and inform counsel on the record, out of the presence of the jury, that he was required to make the best argument that counsel could on his*

client. []"

Petitioner Daniels subsequently filed a *pro se* application for leave to appeal in the Michigan Supreme Court. The state Supreme Court denied leave on June 28, 2010. **(APPENDIX B).** A *pro se* petition for writ of habeas corpus was filed by Petitioner Daniels within the United States District Court for the Eastern District of Michigan. The habeas petition was held in abeyance pending the resolution of additional claims raised by Petitioner Daniels in a state post-conviction motion for relief from judgment.

In effort to buttress the issues raised in the post-conviction motion, Petitioner Daniels requested numerous medical and court documents which were necessary to support his claims. Petitioner Daniels wrote to the Wayne County Clerk of the Court as prescribed by Michigan Court Rule 6.433. this communication was met with an answer from the clerk that "prisoners are not permitted to obtain records under the freedom of information act."

Petitioner Daniels ultimately filed a motion for production of documents. The motion was granted and an order was issued by the Honorable Judge Morrow, Third Judicial Circuit Court Judge for the County of Wayne. Unfortunately, none of the documents ordered disclosed were nor provided to Petitioner Daniels. Petitioner Daniels subsequently filed a motion to show cause why the prosecutor should not be held in contempt for failure to obey the court's order.

Additionally, as instructed by the federal court order, Petitioner Daniels filed a post-conviction Motion for relief from Judgement. Petitioner Daniels assumed that the Third Judicial Circuit Court would hear and resolve the Show Cause issue, and provide the documents necessary to advance Petitioner Daniel's appeal. Unfortunately, the show cause motion was intentionally withheld from being filed by the clerk of the court, the order issuing the record was removed from the docket and the Motion for Relief from Judgment was filed.

Apparently, Judge Morrow saw the motion to show cause because in a letter to petitioner Daniels, the judge explained "I have done all I will do." The judge decided the motion for relief from judgment on January 23, 2013 by denying relief; and the subsequent request for reconsideration while the evidence necessary to support Petitioner Daniels' innocence was not provided. **(APPENDIX C).** A request for reconsideration was also denied February 23, 2103. **(APPENDIX D).**

Petitioner Daniels appealed the decision of February 23, 2013, and the February 23, 2013 denial of reconsideration to the Michigan Court of Appeals. The Court of Appeals denied leave on October 9, 2013 in a standard order as having "failed to meet the burden of establishing entitlement to relief under Mich. Ct. R. 6.508(D). **(APPENDIX E).**

The Michigan Supreme Court did the on May 24, 2014. **(APPENDIX F).**

On June 24, 2014, Petitioner Daniels filed an amended petition for writ of habeas corpus and a request to reinstate his case. On October 31, 2014, the federal district court reopened Petitioner Daniels' case to the court's active docket, amended the caption, permitted Petitioner Daniels to file an amended habeas petition, and ordered Respondent to file an answer to the claim five (5) raised in the amended habeas petition.

Respondent filed a motion to dismiss Petitioner Daniels' new prosecutorial misconduct claims raised in the amended petition, arguing that they were untimely because they were filed more than one year after Petitioner Daniels' conviction became final. Petitioner Daniels filed a response to the motion to dismiss, as well as a motion to hold Respondent in contempt of court.

On October 23, 2015, the federal district court denied Respondent's motion to dismiss, stating "*Petitioner contends that his fifth claim is not time-barred because it is based on newly discovered evidence that he was prevented from receiving by the prosecutor and other parties. Petitioner claims he only obtained the information to support this claim after making a motion for discovery in the Wayne County Circuit Court. Petitioner argues that, at the very least, the limitations period should be equitably tolled for the time spent attempting to obtain the documents that would support his fifth claim.*"

The district court further opined, *"Petitioner's amended petition and his response brief raise genuine questions concerning whether state action prevented Petitioner from discovering the evidence in support of his fifth claim, whether this evidence is truly newly discovered, and/or whether he is entitled to equitable tolling. Moreover, as mentioned before, it appears as though several of Petitioner's amended claims share a common core of operative facts with at least one claim raised in the original petition."* In light of this analysis, Respondent was ordered to file an answer.

Respondent filed an answer to the habeas petition and on March 13, 2018 the federal district court issued an opinion and order denying the petition for writ of habeas corpus. **(APPENDIX G).** Petitioner Daniels subsequently filed a motion for Certificate of Appealability in the Sixth Circuit Court of Appeals, which was denied on July 17, 2018. **(APPENDIX H).**

Petitioner Daniels the filed a motion for rehearing or rehearing en banc which was denied on September 25, 2018. **(APPENDIX I).**

Petitioner Daniels now petitions this Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

CLAIM ONE

The Michigan Court of Appeals and the federal district court never determined whether counsel's failure to examine witnesses properly, arguing with the judge, and overall aggressive style was reasonable trial strategy; ruling it was "strategic" because the record reflects that the trial lawyer said he is like some baseball manager, and that there is no evidence that counsel's decision was strategic. See *Wood v. Allen,* 130 S. Ct. 841, 852 n. 1 853 (2010) (Stevens, J. dissenting, joined by Kennedy, J.) (distinguishing between question "whether counsel's decision was a product of strategy [which] is a question of fact for purposes of 28 U.S.C. 2254(d)(2)" and question "whether a practitioner's strategic decision is reasonable or not [which] is the *Strickland* question we would address . . . under 2254 (d)(1)".

Counsel's decision cannot be fairly characterized as "strategic" unless it is a conscious choice between two legitimate and rational alternatives. It must be borne of deliberation and not happenstance, inattention, or neglect. Although the U.S. Supreme Court afford deference to counsel's strategic decisions, *Strickland*, 466 U.S. At 690-691, for this deference to apply there must be some evidence that the decision was just that strategic.

The state appellate court's decision on this claim should not have been owed any deference, the federal district and appellate courts overlooked the law and this claim is a substantial showing of the denial of a constitutional right. 28 U.S.C. 2253(c)(2). And Jurists of reason could disagree with the district

court's resolution of Petitioner's constitutional claims or that Jurists could conclude the claims presented are adequate to deserve encouragement to proceed further. *Miller-El v. Lockrell,* 537 U.S. 322, 327 (2003).

Petitioner would point out that the state appellate courts never determined that defense counsel's act of engaging in an argument with the trial court regarding a 20-minute time limitation on closing arguments, was either sound or reasonable trial strategy; nor did the district court.

Petitioner demonstrated prejudice in the state court by showing that defense counsel had another option. The state court completely ignored the fact that defense counsel failed to properly impeach the complaining witness (the state's only witness), after laying the proper foundation. See (T. 3-19-08, p. 194). Had defense counsel properly impeached the state's only identification witness, Petitioner would have been acquitted.

The principal case in Michigan determining whether counsel was ineffective is *People v. Pickens,* 446 Mich. 298; 521 NW2d 797 (1994). That case held that under the Michigan Constitution, an evaluation of the ineffectiveness of counsel does not require a more restrictive standard than that adopted in *Strickland supra.* Thus, in Michigan the burden is on the Petitioner to show that counsel's performance was so deficient as to deprive him of his Sixth Amendment right to counsel as guaranteed by both the United States and Michigan Constitution. U.S. Const. Am VI; Mich. Const. 1963, art 1, § 20; *Meeks v Bergen,* 749 F.2d 322, 327 (6th Cir. 1984) (quoting *Strickland v Washington,* 446 U.S. at 687; 104 S. Ct. at 2052).

In the case now before this Honorable Court, it is beyond question or doubt that Petitioner's defense attorney's assistance was totally inadequate, constitutionally deficient, and that counsel did not use reasonable professional judgment in making significant decisions. *Strickland,* supra. Defense counsel's Sixth Amendment duty is not simply to stand beside the Petitioner in court. An attorney must "subject the prosecution's case to meaningful adversarial testing." *United States v Cronic,* 466 U.S. 648, 659; 104 S. Ct. 2039; 80 L. Ed. 2d. 657 (1984). Defense counsel must also counsel the Petitioner, be an advocate for the Petitioner, and assist the Petitioner in understanding the proceedings against him. *Id.* 466 U.S. at 654, fn. 8; 104 S. Ct. 2039 (quoting, *Powell v Alabama,* 287 U.S. 45, 68-69; 53 S. Ct. 55; 77 L. Ed. 2d 158 (1932)). Unquestionably, this Sixth Amendment standard was not followed in this case.

A criminal Petitioner can overcome the presumption of sound trial strategy by showing that defense counsel failed to perform an essential duty and that the failure to do so was prejudicial to the Petitioner or by showing a failure to meet a minimum level of competence, Strickland *v Washington,* 446 U.S. at 687; 104 S. Ct. at 2052.

Throughout the trial, defense counsel chose to be in almost constant disagreement with the trial judge. The actions of defense counsel caused him to be reprimanded repeatedly both in and outside the presence of the jury. Counsel also failed to follow the court's directions regarding the proper examination and impeachment of the complaining witness. Instead, counsel chose to further aggravate the court. That led to the trial court telling counsel

that counsel was out of control. (T, 3/18/07, 102). The court also characterized defense counsel's cross examination as redundant, repetitive, and argumentative. (T, 3/18/07, p. 101).

The Michigan Court of Appeals however, in adjudicating this claim, again defended counsel's actions as strategic. It held:

> A review of the testimony discloses that trial counsel was aggressive and thorough in his examination of the witnesses. His style was calculated. During closing argument, he explained that his role was similar to that of a manager of a baseball team, and he explained; "Now I'm not Sparky Anderson. That's not my style. I'm Billy Martin." Thus, the record discloses that defense counsel's aggressive style was strategic. *People v Daniels,* No. 287769, *2 (Mich. App., February 18, 2010).

Here, the state appellate court failed to take into account that counsel's courtroom antics and arguments with the trial judge alienated the jury. Likewise, counsel had another option regarding the closing argument. Counsel could have effectively made an argument based on the weakness in the prosecution's case. There was only one witness who identified Petitioner. No one else even testified to identity. There was no physical evidence that linked Mr. Daniels to either crime. There is a report that Land told police investigators that two unidentified men had done the shooting. Physical evidence, bullets recovered during the autopsy, had been lost by the police.

It is important to note that the jury informed the court during deliberations that they were at an impasse. (T, 3/20/08, p. 74-79). Thus, at least one member of the panel was not convinced of Petitioner's guilt at that

point. Had defense counsel bothered to present a coherent closing argument, counsel could have given the jury a rational basis upon which to find reasonable doubt. However, counsel failed to do so because counsel chose instead to argue with the trial court about a time limit. This was a mistake of serious proportion that affected the outcome of the trial.

CLAIM TWO

Here, trial counsel's decision to abort his closing argument cannot be considered sound trial strategy, as the federal district court found; and the fact that the Michigan Court of Appeals and district court ignored that Petitioner had alleged facts sufficient to satisfy the prejudice prong of *Strickland v. Washington* and U.S. *v. Cronic supra.* Based on the facts, defense counsel never addressed the evidence and applicable law. The constitutional right of a defendant to be heard through counsel necessarily includes his right to have his attorney make a proper argument on the evidence and applicable law in his favor, unless Petitioner has waived his right to such argument. *Herrings v. New York,* 95 S. Ct. 2550.

It is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversary's positions. For the defense, closing argument is the last clear chance to persuade the trier of facts that there may be reasonable doubt as to the defendant's guilt. *Herring v. New York,* 95 S. Ct. 2550.

In this instance, defense counsel never addressed the only issue at trial, identification, or the law, which came back hung. Even after defense counsel refused to continue. (T 3/20/07, p. 45-49). In *Strickland supra,* "the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result."

Defense counsel's refusal to continue with his closing argument cannot be considered sound trial strategy as the district court found in its opinion, stating "Defense counsel's refusal to abort his closing argument was an unusual circumstance, thereby depriving Petitioner his right to be heard and right to a fair trial. Prejudice is presumed. Therefore, the Michigan Court of Appeals decision was contrary to and unreasonable application of *Strickland v Washington, supra* and *U.S. v Cronic*, supra.

The closing argument for the defense is a basic element of the adversary fact-finding process in a criminal trial and is guaranteed under the Sixth and Fourteenth Amendments to the United States Constitution. Consequently, as a general rule, denial of arguments is held to be prejudicial in a criminal case. *Herring v. New York,* 95 S. Ct. 2550.

In most cases, this rule has been cited against a trial court's denial of an argument to counsel, but, this rule is no less applicable if the Petitioner's own counsel fails to or abandons the Petitioner's right to be heard. The question of reasonableness and under a prevailing professional norm as articulated in

Strickland v Washington, 668 U.S. 668; 104 S. Ct. 2052; 80 L. Ed. 2D 674 (1984).

The role of defense counsel is to choose the [b]est defense for the Petitioner under the circumstances. *Strickland* permits the defense attorney to do so because, unless the attorney abandons a defense that a reasonable probability of affecting the jury's verdict, the attorney may choose the best defense. *Pickens,* supra at 325. In the case at bar, a Strickland standard may be less applicable, and the standard as articulated in *United States v Cronic,* supra, should be applied. In *Cronic,* the U.S. Supreme Court held that there are "circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is justified." *Id.* at 658. In these circumstances, prejudice is presumed "without inquiry into counsel's actual performance at trial." *Id* at 622

The legal foundation for Petitioner's *Cronic* claim is elucidated in *United States v Walls, supra* and *People v Thomas,* supra. ". . . Denial of arguments is held to be prejudicial in criminal cases." Denial as defined in Black's Law: "[a refusal or rejection; esp., a court's refusal to grant a request presented in a motion or petition. 2. A Petitioner's response contravening the facts that a plaintiff has alleged in a complaint; a reputation. 3. A refusal or rejection. 4. A deprivation or withholding. Cf, Demurrer: Traverse).

In *Cronic,* the Court identified three specific circumstances that warrant the presumption. See *Cronic* supra. at 659-662. The first and "most obvious" is a "complete denial of counsel . . . at a critical stage." *Id.* at 659. The second

occurs "if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing." *Id.* And, the third occurs when circumstances are such that "even a fully competent [attorney], could [not] provide effective assistance of counsel." *Id.* 659-660.

With respect to claims Three and Four (Prosecutorial and Judicial Misconduct), the lower state courts and federal district and appellate court rulings on these two claims conflicts with Miller v. Cockrell and Murphy v. Ohio and was not given full consideration to the evidence in support of claims raised and 2253(c)(2). The Petitioner only had to make a substantial showing of the denial of a constitutional claim or could conclude the claims were adequate to deserve encouragement to proceed further. Wood v. Allen, 130 S. Ct. 841, 852 & n. 1, 853 (2010).

The ruling in this case is contrary to Miller-El v. Crockrell, 537 U.S. 322, 123 S. Ct. 1029. The court said Petitioner's *Batson* claim was debatable among Jurists of reason. And the U.S. Court of Appeals should have issued a certificate of Appealability and should have reviewed on the merits the district court and state court of appeals' denial of Petitioner's claims; where the district court and the state court of appeals did not give full consideration to the substantial evidence which the accused had put forth in support of his prima facie case. Petitioner asserts that the record in the state court proceedings, in the district court, and now this Court, was and is inadequately developed depriving Petitioner of substance of prosecutorial misconduct *Brady* claims.

CLAIM THREE

In this instance, the state trial court granted Petitioner's motion to have medical records of the deceased released to support Petitioner's prosecutorial misconduct claim of error. Petitioner however, has never received those medical records. Hence, it was the result of state interference which prevented Petitioner from obtaining the evidence in support of his claim; in which the district court even opined raised genuine questions of material fact when denying Respondent's motion to dismiss prosecutorial misconduct claim.

Moreover, the lower state and appellate courts completely ignored these critical facts in their opinion. Petitioner has been denied an opportunity to put forth a complete defense. Furthermore, Petitioner asserts that his request for the documents (medical records of the deceased) will establish that fraudulent evidence was used at his trial and that this is not speculation or conjecture, but rather an empirical fact.

The lower state and appellate courts also completely ignored another crucial fact; that the Wayne County Medical Examiner's report which stated that the deceased sustained "MGSW" (multiple gunshot wounds) to the body without mentioning a head wound with brain matter. (Ex. 1 to Petition, pg. 1098 Dkt. #22-1). In support of Petitioner's prosecutorial misconduct claim, lead to the discovery of additional admissible evidence (i.e. medical records) that could have resulted in a different result at trial, but was overlooked by the lower state and appellate court.

The United States Supreme Court has held that the principle that the "ends of criminal justice would be defeated if judgments were to be founded on

a partial or speculative presentation of the facts. *Taylor v. Illinois,* 484 U.S. 400, 411; 108 v S. Ct. 646; 98 L. Ed. 2D 798 (1988).

Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, criminal prosecutions must comport with prevailing notions of fundamental fairness. The U.S. Supreme Court has interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. *California v Trombetta,* 467 U.S. 479; 104 S. Ct. 2528; 81 L. Ed. 2d 413, 419 (1984). To safeguard that right, the Court has developed constitutionally guaranteed access to evidence. *United States v Valenzuela-Bernal,* 458 U.S. 858; 102 S. Ct. 3440.

Petitioner has previously requested to expand the record by way of an evidentiary hearing concerning the decedent's medical records, in the trial court, both state appellate courts, and the federal district court; each time having been denied. The medical records requested were not provided; defense counsel was unable to effectively, competently, and properly represent Petitioner in this case, contrary to Petitioner's right to effective assistance of counsel under the Federal and Michigan Constitutions. U.S. Const. Am. VI; Mich. Const. 1963, art 1, sec. 20.

Petitioner showed due diligence and entitlement to relief, because the state refused to turn over the medical records in support of Petitioner's prosecutorial misconduct claim, ordered by the trial court, or an evidentiary hearing to establish and prove Petitioner's claim of prosecutorial misconduct,

Brady violations, and ineffective assistance of counsel; these claims if proven would entitle Petitioner to relief and the preceding courts overlooked this fact.

To trained law personnel, it would be apparent that the medical records of the deceased possessed exculpatory value. The evidence is of such a nature that the Petitioner was unable to obtain comparable evidence by other comparable means available to the defense. Petitioner had no other means of duplicating the requested documents, letters to Detroit Receiving Hospital, and Detroit EMS. Petitioner referred all requests to the Wayne County Prosecutors Office.

CLAIM FOUR

The preceding federal district and appellate courts likewise overlooked crucial facts found by the state appellate court in its opinion, and also did not defer to the facts found and stated by the state appellate court. The presumption of correctness extends to any facts stated or found by the state appellate courts based on their review of the trial court record. See *Brumley v Wingard,* 269 F.3d 629, 637 (6th Cir. 2001) (citing *Summer v Mata,* 449 U.S. 539). Regarding the proper conduct of the trial, and the trial judge, the state appellate court noted:

> Based on our review of the record, we note that the trial court made it extremely difficult for both sides to try their cases and repeatedly made sue sponte rulings, some of which were inconsistent and confusing, if not in error. We believe that when defense counsel refused to continue with his closing, the proper course of action for the

> trial court would have been to adjourn briefly and inform counsel on the record, out of the presence of the jury that he was required to make the best argument that he could on behalf of his client. (Mich. Ct. of App. Decision p. 3).

The trial court's improper actions violated Petitioner's due process right to a fair trial and right to have counsel for his defense; by the trial court interfering with trial counsel's independent decision making process on how to present a defense by repeatedly arguing with counsel in front of the jury. The trial judge then placed an unreasonable 20-minute time limit on closing arguments to recap over forty hours of testimony.

The judge walked off the benched at the beginning of defense counsel's closing argument causing defense counsel to stop his argument. Upon returning, the judge failed to order that counsel continue representing Petitioner.

Pursuant to *Strickland v Washington,* 466 U.S. 668, 104 S. Ct. 2054 (1984), the court explained "government violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct a defense." It is without question, that a defendant "requires the guiding hand of counsel at every step in the proceedings against him." *Gideon v Wainwright,* 372 U.S. 335, 345 (1963), quoting *Powell v Alabama,* 287 U.S. 45, 49 (1932). A defendant has the constitutional right to the assistance of counsel at every "critical stage" of the proceedings against him, or whenever his "substantial rights may be affected." *Mempa v Rhay,* 389 U.S. 128, 134 (1967).

The United States Supreme Court has clearly established that "the complete denial of counsel during a critical stage of a judicial proceeding mandates a presumption" of prejudice. *Roe v Flores-Ortega,* 528 U.S. 470, 483 (2000). In *Williams,* supra, the Supreme Court confirmed the vitality of this *"per se"* approach. In this case, Petitioner suffered the complete denial of counsel at critical stages of the criminal proceedings, closing arguments. Petitioner had not waived his right to counsel. The trial judge, removing himself from the court room, without calling a recess, or excusing the jury, in the middle of defense counsel's closing arguments is a clear case of interfering with Petitioner's right to counsel. Counsel could not continue.

During a jury trial "the judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct. *Quercia v. U.S.* 289 U.S. 466, 469, 53 S. Ct. 698, 77 L. Ed. 1321 (1933). Clearly, the record reflects that Petitioner's trial was not conducted properly as noted by the state court of appeals, and overlooked by the federal district and appellate courts; and that the trial judge interfered with trial counsel's closing arguments. "Any interference with defense counsel's function in accord with the traditions of the adversary fact finding process is a violation of the Sixth Amendment". *U.S. v. Westerfelder,* 70 Fed. Appx. 302.

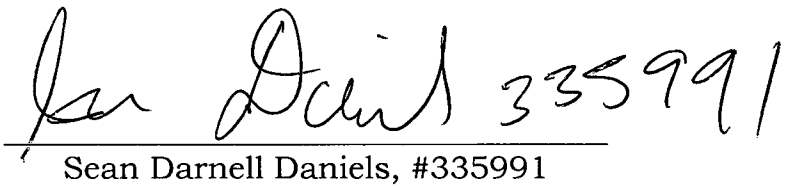
for the Sixth Circuit also concerns itself with the appearance of Judicial bias. To state a due process claim that a judge was biased, a [petitioner] must show either that actual bias existed, or that an appearance of bias created a conclusive presumption of actual bias. Generally, a showing of actual bias is

required, but this Court also concerns itself with the appearance of judicial bias. *Anderson v. Sheppard,* 856 F.2d 741; *Lewis v. Robinson,* 67 Fed. Appx. 914.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Sean Darnell Daniels, #335991

Date: December 03, 2018