No. 19-5855

IN THE

SUPREME COURT OF THE UNITED STATES

FLENOID GREER — PETITIONER
(Your Name)

vs.

STATE OF MICHIGAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THIRD JUDICIAL CIRCUIT FOR WAYNE COUNTY
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FLENOID GREER #210718
(Your Name) LAKELAND CORRECTIONAL FACILITY
141 FIRST STREET
(Address)
COLDWATER, MICHIGAN
49036
(City, State, Zip Code)
(Phone Number)

QUESTION(S) PRESENTED

I.

WHETHER MICHIGAN PUBLIC OFFICIALS FAILED TO PERFORM THERE DUTIES AND DEPRIVED PETITIONER OF DUE PROCES OF LAW?

II.

WHETHER DUE PROCESS IS DENIED WHERE A STATE PROSECUTOR SUPPRESSES FAVORABLE EVIDENCE IN A CRIMINAL CASE AND PREVENTS FAVORABLE EVIDENCE FROM BEING PLACED ON THE RECORD?

LIST OF PARTIES

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

[X] 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:

DANA M. NESSEL
DEPARTMENT OF ATTORNEY GENERAL
CRIMINAL APPELLATE DIVISION
PO BOX 30212
LANSING, MICHIGAN 48909

WAYNE COUNTY PROSECUTOR'S OFFICE
FRANK MURPHY HALL OF JUSTICE
1441 ST. ANTOINE STREET F1 11
DETROIT, MICHIGAN 48226

TABLE OF AUTHORITIES

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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[ ] is unpublished.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[ ] is unpublished.

[X] 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 Court of Appeals; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Third Judicial Circuit court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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).

[x] For cases from **state courts**:

The date on which the highest state court decided my case was Feb 4, 2019. A copy of that decision appears at Appendix C.

[x] A timely petition for rehearing was thereafter denied on the following date: July 2, 2019, and a copy of the order denying rehearing appears at Appendix D.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment 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

.....17,19,23,24

STATEMENT OF THE CASE

A. Background and Trial Proceedings

On July 9, 1990, before the Honorable Michael Talbot (then presiding circuit judge), a jury trial was held in the matter of People v. Flenoid Greer and Anthony L. Nelson, Case No. 89-012514-02.

Petitioner Greer (hereinafter Petitioner) and Mr. Nelson (hereinafter codefendant), were tried in a joint trial with seperate juries. Both defendants were arrested and charged in the information with kidnapping, [1] and first degree murder; to wit, that both defendants did with premeditation and deliberation, kill and murder one Samuel T. White at Pembroke and Grandville Streets, City of Detroit, County of Wayne, State of Michigan on or about September 19, 1989, in violation of Mich Compiled Law §750.316.

The following witnesses were called by the prosecution: Cynthia A. Nelson; Edna White; Etta Hester; Jeffrey Hester; Anthony Hardy; Ronnie Robertson; Bill G. Brooks; Joe Tucker; Audie Harrison; Therdo Clark; Gerald Lee; Darlene Lis-Haddon; Ernest Wilson, Jr. Defense attorneys presented no witnesses. The following exhibits were introduced: photographs of a car, a photographic lineup, constitutional

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1. The 36th district court dismissed the kidnapping charge after a remand from Detroit Recorder's Court when defense counsel Craig Daly filed a motion to dismiss all charges for the state's failure to establish probable cause to believe Petitioner committed the crime.

rights forms for both defendants, statements from both defendants.

The juries were empaneled and preliminary instructions given. Trial Transcript ("TT") followed by Volume and page number, TT Vol I, 3-86.

Opening statements were made by the prosecutor (TT Vol I, 86-97), defense counsel reserved (TT Vol I, 97).

Cynthia A. Nelson testified. She identified codefendant as being her brother, that she was living in a foster home with Edna White, that she had been living there for the past six months, that she knew Samuel T. White as being the son of Ms. White, that witness's brother gave her something, that she did talk to the police approximately one week after her brother gave her a green shopping bag wrapped in rubberbands, that she did not know what was in the bag, that she put it under her bed, that the next day the bag was missing, that she told her girlfriend it was missing, that both looked for it and did not find it, that Ms. White and deceased denied taking the bag, that later deceased also looked in the room for the bag, that although witness denied knowing what was in the bag, the statement to the police indicated she was told by her brother there was ten thousand dollars in the bag, that her brother came by the next day and was informed that the bag was missing, that witness identified Petitioner, that when her brother was over they looked again and her brother then left, that both defendants returned later, that the statement given to the police was

incorrect as to the events that occurred, that she was not aware what was in the bag, that she called Jeffrey's house looking for deceased, that deceased called her back, that she moved out a few days later, that she did not talk to her brother again, that the police told her there was money in the bag (TT Vol I, 97-136).

Edna White testified she was living on Whitcomb with her son, the deceased and Ms. Nelson, that she knew codefendant, that Ms. Nelson had lived there for approximately seven months, that she had talked to codefendant on the telephone, that a few days previous to the date of the offense, she spoke to her son by telephone, that while on the telephone codefendant got on the line and threatened deceased if his money was not returned, that witness later talked to codefendant concerning the missing money, that she later went to the police, that when she returned home the next day there was a lot of glass over the house, that later she identified her son's body at the Oakland County Medical Examiner's Office (TT Vol I, 136-147). Cross-examination revealed witness only heard codefendant threaten her son once (TT Vol I, 147-148).

Etta Hester testified. She indicated she knew deceased through her brother, Jeffrey Hester, that she lived in a two family flat on Robson, that her brothers Jeffrey and Ronnie Robertson lived upstairs, that deceased came over to her house and spent the night a few days previous to the date of the offense, that deceased looked scared, hysterical, and

frightened, that later she saw decease leave the house in a blue Escort automobile, that she never saw decease again, that her brother told her something, that after that three black men came over and banged on her door, that she saw a black Dodge Daytona parked out front, that she wrote down the license plate number, that her brother talked to them, that she recognized one of the men as Petitioner, that Petitioner entered the house with the police, talked about finding a package which contained money, searched upstairs for the package, did not find it, that Petitioner talked on the telephone, that she did not see codefendant, that she did not know either defendant before this happened (TT Vol I, 148-165).

Cross-examination indicated witness only identified one of the men at the house, that it was the first time she ever sen him or the others, that the first time she knew the men were there was hearing the banging, that when Petitioner entered the house he did it with witness's permission and accompanied by the police, that she saw two police officers and told them about the money and that she believed deceased had been kidnapped, that the three men may have been involved, described what Petitioner had been wearing that day, that she went down to police headquarters and gave a statement to a homicide officer which was written down and signed by her, that she testified at the preliminary examination in the case, that she never saw the three men, nor the car again, that she could not recall if she were

ever asked about the conversation she had with Petitioner (TT Vol I, 165-185).

In violation of the sequester order, Edna White was recalled. She testified she had talked to Ms. Nelson inquiring where her son was, that Ms. Nelson indicated her brother and Petitioner had her son (TT Vol I, 186-189).

Jeffrey Hester testified that he had known the deceased for the past year, that he resided at the house on Robson, that decease arrived there o September 16, 1989, that later on that evening deceased received a telephone call, after which deceased was upset and frightened because he was being accused of something, that deceased left and returned, that witness talked by telephone to deceased's sister, that everyone in the house was frightened, that the next day deceased left the house with witness, who walked deceased to his car, that witness went back to the house, saw deceased leave, saw deceased stopped by two other individuals, recognized one as being codefendant, saw deceased being dragged out of the car and put into a Daytona, that witness told his sister what had happened, that later the car returned with three men who exited and began pounding on the door, that one of the men who exited was Petitioner, that the men left and later returned, that the police showed up, that Petitioner entered with the police, looked in witness's bedroom looking around for a package, that Petitioner made a telephone call indicating to the other party that the package was not there, that the police and Petitioner left,

that witness later received a telephone call from deceased, who indicated he was being burned up, that witness later talked to Ms. Nelson by telephone, that witness, because of threatening phone calls left the residence (TT Vol I, 189-214).

Cross-examination indicated witness was upstairs looking out the window when he saw deceased being taken from the car, that he saw the two males by way of a street light, which was the way he recognized codefendant, that deceased was being dragged by his arm, that he was not sure what side of the car deceased was placed in the car, that he did not give a statement to the police, that he never saw codefendant again until witness's appearance in court, that deceased was a friend of his, that witness did not call the police because he thought his sister was going to, that he was never asked to identify anyone by the police, that he never saw both defendants together, that he was upstairs when the knocking at the door happened, that witness was not sure who opened the door, but thought it was his brother Ronnie, that the door was not opened until the police arrived, that witness did not hear anything except Petitioner indicating on the telephone that the package was not there (TT Vol II, 3-26).

Anthony Hardy testified he was also staying with Mr. Hester and Mr. Robertson, that he knew deceased through Mr. Hester, that after deceased had received a telephone call from his (deceased's) sister, deceased appeared

frightened and shaken, that witness left the house with deceased to the gas station, returning home, saw deceased return to the house driving a blue Ford Escort, that witness saw three individuals, identified both defendants as approaching him just before he entered the house, questioning him as to the occupant of the blue Escort, entered the house, that a short while later saw the two leave, that he laid down, got up to take Ms. Hester's child to school at approximately 8:15 a.m. that deceased was not present, that he saw Petitioner later by a pay telephone, that next to Petitioner was a black Daytona automobile, that the car pulled up in front of the house, that Petitioner and two others got out, started banging on the door of the house, that they left, returned, described the search in the company of the police, that later witness left the house and noticed a car following him with two unrecognized persons inside, that in trying to lose the car became involved in an accident, for which he went to Mt. Carmel Hospital (TT Vol II, 28-43).

Cross-examination revealed deceased's car was parked a few houses down from witness's house, that witness suggested deceased leave the house after receiving the telephone call, that witness had talked with the other members of the household concerning the events (TT Vol II, 43-46).

Ronnie Robertson testified to the situation involving deceased receiving the telephone call, that Mr. Hester had indicated to witness that "they" got deceased, that witness

identified both defendants, including identifying Petitioner as one of the men who searched the house with the police, described the search, that when witness went to the hospital to visit Mr. Hardy, witness saw both defendants, that codefendant indicated deceased had gotten burned, that others would also die, that witness left the hospital by the back door, never seeing defendants again (TT Vol II, 46-61).

Cross-examination revealed witness saw the individuals outside of the house early in the morning, around dawn, that witness did not know who was calling the house except for Ms. Hester, described again what witness did when he entered the house after talking to defendants as well as the search of the house, that he made a written statement to the police, that he talked to others concerning the case (TT Vol II, 61-81).

Outside the presence of the jury, the court indicated counsel could not inquire as to why the next witness, former medical examiner of Oakland County resigned (TT Vol II, 81-86). Dr. Bill G. Brooks testified as an expert in forensic pathology, indicated he examined the body of deceased and determined the cause of death to be the first case he concluded to be neurogenic shock caused by multiple burns to the body (TT Vol II, 86-103).

Audie Harrison testified he resided in the downstairs portion of 8060 Robson, indicated the others who lived there, indicated he knew deceased, saw him at the house on September 17, 1989, that deceased indicated to him after

talking on the telephone that "they" were going to kill him, that he left, returned the next day, that he recognized a picture of the black Daytona parked outside the house, identified Petitioner as being one of the men who was there with the police who entered the house, that he was the one who permitted entry into the house to search, that codefendant was seen when they returned later, that codefendant indicated to him that there had to have been money in the house because of the level five of torture inflicted on deceased, that Petitioner did not say anything at that time, that the house was searched again, that later both defendants returned along with others in a blue van, held him down and searched the house again, removing the contents of the upstairs apartment, that he went to the police station to view a photographic lineup, identifying both defendants (TT Vol II, 108-118).

Cross-examination revealed witness could not identify the third male, that he was not offered to identify the third person (TT Vol II, 118-122).

In front of Petitioner's jury only, Detroit Police Homicide Investigator Therdo Clark testified he read Petitioner his Miranda rights and took a statement from him, which was read into the record (TT Vol II, 122-129).

In front of both juries, Detroit Police Officer Gerald Lee testified receiving a radio run to Grandville and Pembroke in the City of Detroit, described the location, that he saw deceased who appeared dead, that deceased had

multiple abrasions over his body, that an ambulance arrived and took deceased away to Providence Hospital, that his supervisor, Sergeant Tucker, arrived on the scene (TT Vol II, 129-133).

Detroit Police Officer Darlene Lis-Haddon testified she and her partner Rodney Jackson, in uniform, received a run to 8060 Robson, that Petitioner was standing on the front porch, saw a black Daytona parked on the street, indicated she and her partner entered with Petitioner to look for a package, that Petitioner made a telephone call while in the house, that she was unable to identify anyone in the black automobile (TT Vol II, 133-137).

Cross-examination revealed witness had confirmed there was no crime being committed, that she could not recall whether the persons were searched for offensive weapons, that witness stayed with Petitioner when he searched the room in the house (TT Vol II, 137-140).

Detroit Police Officer Ernest Wilson, Jr., testified he went to 8060 Robson as backup for another scout car on a radio run, that he was with his partner, Officer Richardson, met Officer Lis-Haddon and Officer Jackson, identified Petitioner as being present at the house, that witness did not enter the house, that Officer Haddon entered with Petitioner, that they let the black automobile go without identification because witness could not verify ownership with the Secretary of State, that Petitioner was patted down for weapons, finding none (TT Vol II, 140-145).

The people rested with respect to Petitioner (TT Vol II, 147). The court and counsel reviewed the exhibits (TT Vol II, 154-157). Counsel for Petitioner moved for a directed verdict which was denied by trial court (TT Vol II, 157-159).

The court reviewed the jury instructions, and defense counsel waived the production of other prosecution witnesses (TT Vol II, 159-165). Closing arguments were made before the jury for codefendant by the prosecutor (TT Vol III, 5-19; 31-37), and defense counsel (TT Vol III, 19-31).

Closing arguments were made before the jury for Petitioner by the prosecutor (TT Vol III, 46-57), defense counsel (TT Vol III, 57-67), with rebuttal by the prosecutor (TT Vol III, 68-75).

Both juries were instructed (TT Vol III, 75-93).

Counsel for Petitioner objected to several jury instructions (TT Vol III, 95-99).

The jury for Petitioner found him guilty of second degree murder (TT Vol III, 111-112).

The jury found codefendant guilty of first degree murder (TT Vol III, 116-117).

On July 27, 1990, before trial judge Michael Talbot, Petitioner's presentence report and sentencing guidelines were reviewed (TT Vol IV, 4-7), and allocution made (TT Vol IV, 7).

Petitioner was sentenced to incarceration of 60 to 90 years.

B. Motion for new trial, evidentiary hearing and Postconviction appeal proceedings.

In 2013, Petitioner filed a pro se motion for new trial in the Third Judicial Circuit Court for Wayne County, Michigan. Petitioner proffered newly presented evidence in the form of an affidavit by state witness Audie Harrison. Pet. App. at 32a.

Petitioner contended the state prosecutor failed to disclose significant impeachment evidence and to correct false testimony committed by this same witness, in violation of his right to due process under Giglio v. United States, 405 U.S. 150 (1972); and Napue v. Illinois, 360 U.S. 264 (1959).

On August 28, 2013, the Third Circuit Court granted Petitioner's motion for an evidentiary hearing and on November 14, 2013, the trial court held a hearing and sua sponte, informed both parties that prior to Mr. Harrison taking the stand, he would be appointing him counsel to advise him of his rights. That appointed counsel informed Mr. Harrison that the prosecutor would charge him with perjury if he testified that he gave false testimony against Petitioner during his criminal proceeding. During this advisement to Mr. Harrison, the prosecuting attorney then opposed any relief being granted to Petitioner, yet, the prosecuting attorney never denied the fact Mr. Harrison was out on an appeal bond during the relevant times he testified against Petitioner. Nor did the prosecutor state for the record that his office did provide this information to the defense

prior to trial. Nor did the prosecutor deny his office failed to correct the false testimony of this same witness. But in bad faith the prosecutor failed to seek immunity for a state witness that could place aliunde evidence on the record to demonstrate its duty to seek justice in a criminal case. With threats of perjury charges and the intimidating tactics coming from the prosecutor's office, Mr. Harrison fled the courtroom and never returned. The trial court then discussed several matters and noted for the record that he was unable to verify the notary public's seal on the signed affidavit. The trial court then denied the motion for new trial.

The successor prosecuting attorney at the aforementioned hearing never interviewed Mr. Harrison prior to the evidentiary hearing. However, he opposed any relief being granted without ensuring that justice shall be done. Berger v. United States, 295 U.S. 78, 88 (1935). Even under Michigan case authority, a prosecutor's failure to seek immunity for a witness may result in a denial of due process in one of two circumstances. See People v. Iaconnelli, 112 Mich. App. 725, 759 (1982).

The Iaconnelli court stated:

> Under these cases, due process requires that a defendant be entitled to the benefit of immunity for witnesses in two types of cases: first, where prosecutorial misconduct results in the suppression of testimony favorable to the defendant (as in United States v. Morrison, 535 F.2d 223 (CA 3, 1976) where the prosecutor successfully intimidated a key defense witness), and, second, where a defendant makes a substantial evidentiary showing that a grant of immunity is necessary in order to obtain exculpatory testimony that is important to the defendant's case.

Petitioner's case presents due process violations under either circumstance as outlined in the Iaconnelli decision. The first circumstance is shown where Mr. Harrison appeal bond status was suppressed by the state and definitely favorable to Petitioner. Second, Petitioner proffered the only aliunde evidence to support which testimony made by Mr. Harrison was falsely given. Petitioner's evidence was substantial and the prosecutor's failure to seek immunity resulted in a denial of equal protection and due process of law. U.S. Const Amend XIV: Berger, supra.

Even if there is no evidence of any quid pro quo between Mr. Harrison and the Wayne County Prosecutors Office, it is the fact that Harrison had a strong reason to lie, and to testify in a manner that would help the prosecutor, in the hopes of favorable treatment from their office. Mr. Harrison's appeal bond was reinstated immediately after Petitioner was convicted. The hopes of getting favorable treatment established the potential bias that would have been extremely compelling evidence. Davis v. Alaska, 415 U.S. 308 (1974). Thus, the jury was never informed of Harrison's false testimony, nor his appeal bond status, and could not appropriately draw inferences relating to the reliability of his testimony. Davis, 415 U.S. at 318.

It is now undisputed that the foregoing impeachment evidence was not disclosed to the defense before trial and after appeal by right proceedings. The trial record as appendiced hereto clearly shows the contradictory statements made under oath by

Harrison, were not corrected by the prosecuting attorney. The fact Harrison was willing to come forward and testify favorably for Petitioner, and , refusing to do so only after the appointed attorney and prosecutor's combined threats of perjury, strongly suggest their combined efforts discouraged Harrison to the point he refused to give testimony. Which effectively drove this sole witness for Petitioner away from the stand, and thus deprived Petitioner of due process of law under the Fourteenth Amendment. Cf. Webb v. Texas, 409 U.S. 95 (1972).

The right to offer the testimony of Harrison would have been the right to present a defense, the right to present a adversarial defense of the facts so the trial court could have decided where the truth lies. Which the trier of fact was never allowed to do at trial. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony at trial, Petitioner has a right to challenge their known false testimony at a postconviction hearing, after the said favorable evidence was suppressed by the state prosecutor. Which would have allowed Petitioner to present this same witness testimony on the record to set the record straight. This is a fundamental element of due process of law. Washington v. Texas, 388 U.S. 14, 19 (1967).

There can be little dispute that based upon the foregoing, the confidence in the outcome of Petitioner's case, has been undermined. There is surely a reasonable probability that, if the impeachment evidence had been disclosed to the defense,

and the false evidence corrected in the presence of the jury, the result of the proceeding would have been different. As stated in Banks v. Dretke, 540 U.S. 668 (2004) "A rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process. Ordinarily, we presume that public officials have properly discharged their official duties." id., at 696.

Petitioner submits the state officials in his case failed to perform their official duties and deprived him of due proces and the right to a fair trial. U.S. Const Amend XIV; Banks, supra.

C. Motion to vacate and appeal proceedings.

In 2017 Petitioner filed a pro se motion to vacate the orders of August 28, 2013 and November 14, 2013 and motion to amend and supplement his 2013 motion for relief from judgment. Petitioner requested of the Third Circuit Court to address two constitutional claims. The first claim involved whether Petitioner was denied due process and a fair trial where the prosecutor suppressed favorable evidence to him in violation of Brady v. Maryland, 373 U.S. 83 (1963). The second claim involved whether Petitioner was denied his Sixth Amendment right to confront witnesses where material evidence was not disclosed to the defense before trial, in violation of Davis v. Alaska, 415 U.S. 308 (1974). On February 7, 2018, the Third Circuit Court denied the motion to vacate and all other requested relief. Pet. App. 2a.

The Michigan Court of Appeals denied Petitioner's application for leave to appeal, motion to remand and motion for peremptory reversal. Pet. App. 1a. The Michigan Supreme Court denied Petitioner's application for leave to appeal, motion to remand and motion to stay. Pet. App. 4a.The Michigan Supreme Court denied the motion for reconsideration. Pet. App. 5a.

Petitioner now seeks review of his state court decisions. Petitioner relies on this Court's precedents which have interpreted rights secured by the United States Constitution. The public officials of Michigan have deprived Petitioner of said constitutional protections and no relief may be obtained in any other court.

SUMMARY OF ARGUMENT

This is the latest case in which the Wayne County Prosecutors Office has failed to disclose information material to a criminal defendant's guilt or punishment before trial, in violation of Petitioner's right to due process under Brady v. Maryland, 373 U.S. 83 (1963).

First, the State of Michigan's evidence used to bind Petitioner over to stand trial was based solely on the preliminary examination testimony of its key witness Audie Harrison. Second, the prosecution's case rested entirely on the testimony of Mr. Harrison and Ronnie Robertson, whose testimony provided the only evidence to establish the required intent for second degree murder.

Material information was discovered years after Petitioner's trial, which revealed Harrison had been out on an appeal bond during the relevant times he testified against Petitioner.

Harrison attest in his affidavit to the reasons why he gave false testimony against Petitioner. Harrison did discuss his preliminary examination testimony with Mr. Robertson prior to Petitioner's trial.

Harrison's testimony at Petitioner's trial totally failed to reflect the damaging testimony he gave at the preliminary examination proceeding. The inculpatory evidence missing from

Harrison's testimony at trial was the "essence of the State's case against Petitioner." Evidence that statements Petitioner made to him established the intent for murder. Mr. Robertson then provided the inculpatory evidence against Petitioner only after Harrison had changed the version of what he previously testified to. If the defense had been aware of Harrison's appeal bond status and the false testimony at the bindover, it surely would have used it on cross-examination to challenge his credibility and the prosecution's authority to even charge Petitioner.

REASONS FOR GRANTING THE PETITION

I. MICHIGAN PUBLIC OFFICIALS FAILED TO PERFORM THERE DUTIES AND DEPRIVED PETITIONER OF DUE PROCESS OF LAW PROTECTED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

In Berger v. United States, 295 U.S. 78, 88 (1935), the court stated the duties of the United States Attorney in prosecuting a criminal case is not that it shall win a case, but that justice shall be done. Based on these principles, this Court has long ago held it violates a defendant's right to due process for the state to withhold favorable evidence that is material to a defendant's guilt or punishment. Brady v. Maryland, 373 U.S. 83, 87 (1963), or knowingly to use false evidence to produce a conviction or sentence. Giglio v. United States, 405 U.S. 150, 153 (1972); Napue v. Illinois, 360 U.S. 264, 269 (1959).

This case involves the application of the Brady standard as extended by the Giglio decision. As the Court has explained, a defendant asserting a Brady claim must satisfy three requirements: first, that "the evidence at issue must be favorable to the accused", second, that the "evidence must have been suppressed by the State", and third, that "prejudice must have ensued." Strickler v. Greene, 527 U.S. 263, 281-282 (1999).

The Court has repeatedly made clear that the prosecutor's responsibility to disclose evidence under Brady extends to exculpatory and impeachment evidence alike, Giglio, supra; United States v. Bagley, 473 U.S. 667, 676-677 (1985). A criminal

defendant, moreover, need not demand favorable evidence before trial, instead, the prosecution has an"affirmative duty" to disclose any such evidence "regardless of request." Kyles v. Whitley, 514 U.S. 419, 432-433 (1995). And the rule of Brady encompasses evidence "known only to police investigators and not to the prosecutor," id., at 438, and applies "irrespective of the good faith or bad faith of the prosecution," Brady, 373 U.S. at 87.

Under Brady therefore, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police," and to disclose that evidence sua sponte to the defense. Kyles, 514 U.S. at 437.

During Petitioner's postconviction proceeding, the assistant prosecuting attorney did not dispute the fact Petitioner was never informed about Mr. Harrison's appeal bond status. Nor was any denial by the Wayne County assistant prosecutor that Harrison's false testimony was never corrected during any of Petitioner's criminal proceedings. Petitioner has satisfied the first two requirements of Brady, and this case comes to the Court to decide whether the failure to disclose key impeachment information, along with the prosecutor's failure to correct known false testimony was prejudicial and violated Petitioner's right to due process of law. U.S. Const Amend XIV; Giglio, supra; Napue, supra.

As the Court has repeatedly explained, evidence is

"material" within the meaning of Brady when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. Strickler, 527 U.S. at 280; Kyles, 514 U.S. at 433-434. Under Brady standards, a defendant need not demonstrate either that "disclosure of the suppresed evidence would have resulted ultimately in the defendant's acquittal," or that, "after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict." Kyles, 514 U.S. at 434-435. Instead, a "reasonable probability" of a different result exists when the prosecutor's suppression of evidence "undermines confidence in the outcome of the trial." Ibid.

In the early 2000's, Petitioner came in direct contact with the key witness (Harrison) on a prison yard. Harrison informed Petitioner that at all times during his testimony against Petitioner, he was out on an appeal bond for a drug conviction. In his notarized affidavit, Harrison attests he made false statements in Petitioner's case. Harrison attest that at the time he gave testimony, he was under the influence of heavy medication. He further attest to the fact the Detroit Police threatened him and informed him he would remain in custody until he agreed to cooperate in this case.

Vital to this claim, Harrison attest he wrongfully testified that he heard Petitioner state "that they should dump the body in the front lawn." Harrison states he gave these false statements to gain his release. Direct restriction on the scope

of cross-examination denied Petitioner "the right of effective cross-examination which would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it." Bagley, 473 U.S. at 677; Davis, 415 U.S. at 318.

During Petitioner's preliminary examination on October 24, 1989, Harrison testified that on the outside of his porch of his house Petitioner stated the following:

> Q. Excuse me. I'm sorry, sir. What did Mr. Greer say regarding Mr. White, if anything?
>
> A. On the way out Mr. Greer said, "That I should bring Sam and dump him in the front yard." Pet. App. at **42a.**

Contrary to the foregoing damaging testimony at the examination, during the trial, this same witness testified in response to the exact same question upon leaving his residence, Petitioner stated the following:

> Q. How about Mr. Greer,did he say anything to you? Mr. Greer is the person in the gray suit.
>
> A. No, Mr. Greer didn't say anything to me.
>
> Q. Was he present at the time when Mr. Nelson said this?
>
> A. Yes, he was. (TT Vol II, 115) Pet. App. at **45a.**

Harrison testified Petitioner came over to his house on three seperate occassions on this particular day. The above testimony from Harrison was concerning the evening when

Petitioner and codefendant were standing on the front porch speaking with him.

The prosecuting attorney failed to correct Harrison's false testimony during Petitioner's trial. The prosecution knew Harrison provided the only testimony during the preliminary examination to allow Petitioner to be held for trial on a murder charge. Petitioner ask the Court to consider why an experienced prosecutor wouldn't seek to present Harrison's inculpatory testimony from the preliminary examination to the jury. Petitioner believes the prosecution knew Mr. Harrison's testimony at the examination was false. Regardless as to whether he knew or not, once Harrison gave false testimony that truly contradicted his previously sworn testimony, the prosecutor's duty was to correct it during Petitioner's trial based upon this Court's precedents.

The prosecution knew that his case against Petitioner was weak. He had no tangible evidence linking Petitioner to the crime. No confession or other direct evidence. He also knew the bulk of the State's evidence was against the codefendant. Petitioner had no motive to kill or aid and abet in the killing of Mr. White. So the prosecuting attorney failed to perform his constitutional duties and remained silent as Harrison gave sworn testimony that clearly contradicted his prior sworn testimony. The prosecutor knew that if he corrected Harrison's testimonmy in the presence of the jury on such an important fact, it would have crippled his case against Petitioner.

Had the prosecution performed his duties and allowed the trier of fact to hear Harrison being corrected on such a critical fact to show the required intent for murder, the jury would reasonably have viewed Mr. Robertson's testimony with much skepticism. Defense counsel explored the possibility that someone else shared this particular information with Mr. Robertson (TT Vol. II, at 71-72; 74-81). Ironically, this very damaging inculpatory testimony by Mr. Robertson is totally absent from his statement given to homicide investigators shortly after the incident. Pet. App. at 47a.

Petitioner contends this new impeachment evidence makes a different result probable on retrial. Giglio, supra. Failure to correct false testimony requires reversal if the false testimony could in any reasonable likelihood have affected the judgment of the jury. Giglio, 405 U.S. at 154. Petitioner's jury did acquit him of first degree murder and returned with a compromised verdict of second degree murder. Had this suppressed evidence been disclosed to the defense, it is reasonably likely that the judgment of the jury would have been different.

SUPREME COURT RULE 10

Petitioner understands that certiorari review involves questions of exceptional importance. Petitioner submits that once this Court has interpreted a constitutional right secured by the United States Constitution, public officials cannot act under color of law in defiance of said rights. All citizens of the United States are entitled to redress for said failure of officials to uphold constitutional protections. In relation to Petitioner's prosecutorial misconduct claims, this petition involves questions of exceptional importance as to: 1) whether public officials of Michigan suppressed evidence favorable to Petitioner; 2) whether due process is violated where a state prosecutor suppresses favorable evidence in a criminal case and prevents said evidence from being placed on the record; and 3) what standards should determine whether the prosecutor knew or reasonably should have known the evidence to be favorable to the accused?

Under Supreme Court Rule 10 (c) it states in relevant part the reasons the Court considers for granting certiorari review. The state court decisions in Petitioner's case has resulted in ones which conflict with relevant precedents from this Court. Petitioner contends this Court should grant certiorari review and decide the federal questions presented herein.

Under Supreme Court Rule 10 (b) it states in relevant part the reasons the Court will grant certiorari review where a state

court has decided an important federal question in a way that conflicts with the decision of a United States court of appeals. Petitioner contends the decision reached by the last state court conflicts with the decision reached in Blackston v. Rapelje, 780 F.3d 340 (6th Cir. 2015), cert den __US__; 136 S.Ct. 388 (2015).

The Blackston case involved new evidence he discovered after his first trial. This evidence included statements from two state witnesses recanting there testimony from the first trial. Darlene P. Zantello's notarized statement said her earlier statement to police was true and that her trial testimony was untrue. Her statement revealed the state promised to drop an array of criminal charges pending against her and her boyfriend. The second statement by Guy C. Simpson said his trial testimony was false and he admits he perjured himself because of prosecutor pressure and Charles D. Lamp threatened him and his family. During Blackston's second trial, the trial judge overruled defense counsel's request to have Ms. Zantello and Mr. Simpson's recanting statements be read to the jury.

The Blackston court stated petitioner had a clearly established right to impeach the credibility of an adverse witness using the witness own inconsistent statements. The Blackston court relied on several Supreme Court decisions to conclude Blackston's right to confrontation was not constitutionally adequate, because "one of the important objects of the right of confrontation [is] guarantee that the fact

finder had an adequate opportunity to assess the credibility of witnesses." id., at 349. citing to Berger v. California, 393 U.S. 314, 315 (1969). The Blackston court stated "constitutionally adequate confrontation must include the meaningful opportunity to challenge the state's witnesses for 'prototypical form[s] of bias.'" Id. citing to Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986). "Such forms include the witness's criminal history or status as a parolee or probationer." Blackston, supra, citing to Davis v. Alaska, 415 U.S. 308, 316 (1974).

The Blackston court found his confrontational rights to be clearly established by Supreme Court precedent and concluded that the constitutional error was not harmless. The Blackston court affirmed the district court's conditional grant of the writ of habeas corpus.

During Petitioner's state postconviction hearing in November of 2013, the trial court did state Petitioner had the opportunity to cross-examine Mr. Harrison during the trial. However, the scope of the cross-examination was restricted based upon the prosecutor's suppression of Harrison's appeal bond status and the threats from Detroit Police officers. Petitioner's Sixth Amendment right to Confrontation was constitutionally inadequate. There was no physical evidence connecting Petitioner to this crime. The state's case against Petitioner depended entirely on the testimony of Mr. Harrison and Mr. Robertson. No witnesses could provide details about the actual participants

in the killing. Petitioner's jury was never able to properly assess the credibility of Mr. Harrison.

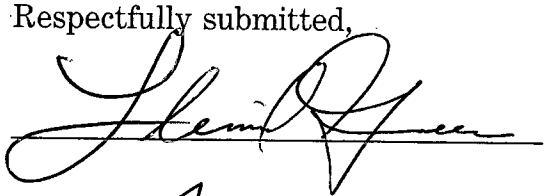
In relation to Petitioner's prosecutor misconduct claim, this petition involves a question of exceptional importance as to: 4) whether the prosecutor's suppression of favorable evidence did limit Petitioner's Sixth Amendment right to confront his accuser?

Petitioner contends he has satisfied Supreme Court Rule 10 requirements for certiorari review to be granted. Petitioner case is not one where the state court decision is merely a misapplication of a properly stated rule of law. Petitioner respectfully request of the Court to grant certiorari and appoint him counsel to represent him during his proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: August 21, 2019