

No. _____

19-6166

IN THE
SUPREME COURT OF THE UNITED STATES

Sean Strandberg
(Your Name)

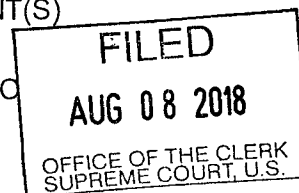
PETITIONER

vs.

Carmen Palmer

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



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

PETITION FOR WRIT OF CERTIORARI

Sean Strandberg # 807970

(Your Name)

Central Michigan Correctional
320 N. Hubbard St.

(Address)

St. Louis, Mi. 49880

(City, State, Zip Code)

(Phone Number)

Questions presented

I. Does the United States Court of Appeals for the Sixth Circuit decision on the important matter of whether the curative instruction was able to cure the error of the prejudicial admittance of polygraph evidence conflict with, or departs from, accepted and usual course of judicial proceedings with the United States Supreme Court's decision in *Simmons v. South Carolina* and the United States Court of Appeals decision in *United States v. Murray*?

Petitioner: yes

Respondant: No

II. Does the United States Court of Appeals for the Sixth Circuit decision on the important matter of whether the prosecutor changed specific testimony and used perjured testimony in summations conflict with the United States Supreme Court decision in *Miller v. Pate* and *Connelly v. DeChristoforo* and the United States Court of Appeals decision in *Cawis v. Zant* and *Rodriguez v. Florida*?

Petitioner: yes

Respondant: No

III. Does the United States court of Appeals for the sixth circuit decision on the important matter of prosecutive assistant of counsel conflict with the United States Supreme Court's decision in Strickland v. Washington and the United States court of Appeals decision in Washington v. Hofbauer?

petitioner: yes

respondent: no

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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:

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

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☒ is unpublished.

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

☒ reported at Standberg v. Palmer, 2017 US Dist. LEXIS 88978; 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 _____ to the petition and is

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

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

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 9 Jan 18.

☐ 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: 5 June 2018, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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).

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STATEMENT OF THE CASE

The United States court of appeals for the sixth circuit held in the petitioners case that, "we are aware of no federal court of appeals that has found a due process violation warranting a grant of Habeas relief." Yet the sixth circuit held in *United States v. Murray*, 784 F2d 188 (6th Cir. 1986), that "the mention of the words 'polygraph examination' warranted a mistrial" and therefore Habeas relief.

In the Prosecutor misconduct issue raised, the sixth circuit held "it is permissible for a prosecutor to argue reasonable inferences from the evidence." Yet *Davis v. Zant*, 36 F3d 1538 (11th Cir. 1994) held, "it is fundamentally tenet of the Law that attorney's may not make material misstatements of facts in Summations." Prosecutors can not change specific testimony, nor use false testimony in Summations in order to save there case.

Given the failure of the petitioners counsel to object to these prejudicial comments in Summations, he failed to rise to the level of effectiveness under the Constitution of the United States.

The Petitioner asks this Honorable Court to review these opinions as they conflict with opinions held by other appellate courts on these same issues.

Reason for Granting

in order for Petitioner to prevail on his petition for writ of certiorari, he must show how a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter, has decided an important federal question in a way that conflicts with a decision by a State court of last resort, or has so far departed from accepted and usual course of judicial proceedings as to call for an exercise of the United States Supreme Court's supervisory powers.

I. Polygraph

The United States District court and the United States court of Appeals for the Sixth circuit has decided:

"The supreme court has never held that statements implying the results of a polygraph or similar test render the defendant's trial fundamentally unfair, in violation of the Due Process clauses of the Fifth and Fourteenth Amendments. Further, we are aware of no federal court of appeals that has found a due process violation warranting a grant of habeas relief under these facts."

This decision is in conflict with United States v. Warren, 1995 US App. Lexis 36194 decision that:

"A recording was played to the jury containing the defendant talking to his lawyer about a polygraph test. The court held this reference amounted to an assertion that the defendant refused to submit to a polygraph examination.

This weighs in favor of vacating the defendant's conviction."

Also in United States v. Murray, 784 F.2d 188 (6th Cir. 1986):

"The prosecution's witness's mention of the words 'polygraph examination' before he was stopped by objection, constituted reversible error. Comment was introduced deliberately by an experienced FBI agent, therefore a mistrial should have been granted.

"We have also found circumstances where not even a curative instruction could 'unring the bell' of a prejudicial reference to a polygraph examination."

The Michigan Court of Appeals held that:

"On the whole, it can not be said the trial court erred in denying defendant's motion for mistrial. This conclusion is supported by the Trial Court's thorough

which informed the jury that polygraphs are

are the error. Ms. Matuz lied to the court when she stated "I never separately, specifically spoke to him", and that she heard from law enforcement about the polygraph offer. Affidavits provided show Mr. Matuz spoke to Mr. Strandberg on September 27, 2012 at court about taking a polygraph test. The Trial Judge denied the motion for a mistrial and issued a curative instruction. The curative instruction failed because it never informed the jury that a prosecutor is not bound by the results of a polygraph examination. A prosecutor may still prosecute a person even if they take and pass a polygraph. The jury was under the belief that had Mr. Strandberg taken and passed a polygraph he would not have been prosecuted.

This case was a credibility contest case. The prosecutor only provided testimony by Nicole that was uncorroborated. Mr. Strandberg, however, provided witnesses and physical evidence to disprove Nicole's testimony that would have caused the jury to discredit her testimony and leaving no other evidence to convict Mr. Strandberg. This shows how devastating the polygraph evidence had on this present case. The United States Supreme Court held in *United States v. Scheffer*, 523 US 303, 313 (1998) that "polygraph evidence may diminish the jury's role in making credibility determinations."

now this does not mean that simply mentioning a 'polygraph' automatically guarantees an appeal. It comes down to the specifics of each case. This case was about the defendant being offered a polygraph to prove his side of the story that lead the jury to believe he had failed it and thereby was guilty. The curative instruction failed to address this error and caused the defendant to be denied a fair trial.

in short the united States court of Appeals for the sixth Circuits decision is in conflict with United States v. Warren, United States v. Murray, Throckmorton v. Holt, Simmans v. South Carolina, United States v. Brown, and United States v. Scheffer. Thereby the Petitioner has meet his burden.

II. Prosecutor Misconduct

The united States District court held in their decision:

"The standard applied by the state court was entirely consistent with clearly established federal law. Moreover, the state court's factual determinations are entirely reasonable on this record."

The United States court of Appeals for the sixth circuit agreed with this and added:

"It is permissible for a prosecutor 'to argue reasonable inferences from the evidence.'"

This decision is in conflict with Davis v. Zant, 36 F3d 1538 (11th Cir. 1994) holding:

"It is fundamentally tenet of the law that Attorney's may not make material misstatements of fact in summations."

In Zant, the prosecutor changed key testimony and called defense counsel a liar. In United States v. Azubike, 504 F3d 30 (1st Cir. 2007) the court held:

"We have recognized that prejudicial statements made during closing arguments 'will take the form of reversal' because they are 'the last words spoken to the jury by the trial attorneys.'"

In the present case the prosecutor changed Nicole's specific testimony in closing arguments. The prosecutor asked Nicole specifically if she was bent over like doing an exercise, like touching your toes? in which Nicole replied 'yes'. The defense did not need to ask any clarifying questions because it was already done by the prosecutor. The defense showed that Nicole would have had her head under water and drowned in order for the events in the pool to happen. The prosecutor changed Nicole's specific testimony about this and called the defense Attorney a liar. This caused the jury to be misled

You cannot infer these statements. specific testimony was given by Nicole then changed in relative by the prosecutor because it proved Nicoles story to be faulted. The case at present is similar to Zant and shows reason for granting this petition.

The other part of this issue is the knowing use of perjured testimony by the prosecutor of Detective Faries. The detective took the stand and testified that during the interview with Mr. Strandberg, he stated he "got sexually aroused by a couple of the touches." This testimony is false and proven by the admitted evidence or the recording of this evidence. This recording clearly shows Mr. Strandberg never made this statement. Mr. Strandberg only ever denied all of the accusations against him. The prosecutor then used this false evidence in his closing arguments where he said 'according to the interview Mr. Strandberg stated he got sexually aroused by a couple of the touches.'

The 5th District Court of Appeals held in Rodriguez v. Florida, case no. 5D15-3622 that:

"The prosecutor told the jury during closing that Mr. Rodriguez admitted to several of the events he was accused of. Yet the record shows he only ever denied all accounts."

The court held he was denied his constitutional right

to a fair trial. This case is similar to the case at present. Mr. Strandberg never made that statement, he only ever denied all accounts. The United States Supreme Court held in Miller v. Pate, 386 US 1 (1967) that:

"The Fourteenth Amendment cannot tolerate a State criminal conviction obtained by the knowing use of false testimony."

The prosecutor in the case at present used known perjured testimony in his summations. The jury had an issue with this because they asked during deliberations to see the transcript of the recorded interview. The prosecutor, not the judge, decided they could not have it. This caused the jury to rely on what the prosecutor had said in his summations. This misled the jury to believe the perjured testimony. The United States Supreme Court held in Dannally v. Delchrislof, 416 US 137 (1974) that:

"Misrepresenting facts in evidence can amount to substantial error because doing so may profoundly impress a jury and may have significant impact on the jury's deliberations."

The Michigan Court of Appeals did hold the prosecutor misrepresented facts in evidence about the events of how long the children were gone from the house and about a friend of Nicoles being informed of the events. This shows the prosecutor already was

misrepresenting facts. You most definitely cannot infer these statements. They are specific testimony given and can not be changed. Therefore, the United States court of Appeals for the Sixth Circuits decision is in conflict with Davis v. Zant, United States v. Aruhike, Rodriguez v. Florida, Miller v. Pate, Donnelly v. DeChristoforo. Thereby the Petitioner has met his burden.

Also to be noted. Mr. Strandberg has requested a copy of, or a transcript of, the recorded interview that was played at the trial and admitted into evidence. Mr. Strandberg and his family have been denied this evidence. According to the Rule 5 the State was required to provide this to the reviewing court, yet failed to do so.

III. ineffective assistance of counsel

The United States District Court and the United States court of Appeals for the Sixth Circuit has decided that:

"The counsel for the defendant was not ineffective for failing to object to meritless improper comments by the prosecutor."

The improper comments made by the prosecutor during

Summations should have been objected to by defense counsel. Had counsel objected the Trial Judge would have admonished the prosecutor and the jury would not have relied upon the prejudicial improper comments.

The courts have held in Washington v. Hofbauer, 228 F3d 1689 (6th Cir. 2000); Gravely v. Mills, 87 F3d 119 (6th Cir. 1996); and Rachel v. Bordenkircher, 590 F2d 200 (6th Cir. 1978) that:

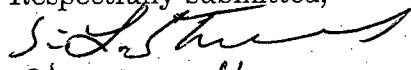
"This court has on several occasions found that a counsel's failure to object to prosecutorial misconduct constitutes derisive performance when failure is due to clear inexperience or lack of knowledge of controlling law, rather than reasonable trial strategy."

As stated in the previous claim the prosecutor committed misconduct when he changed specific testimony by Nicole and used perjured testimony in his summations. Therefore the United States District Court and the United States Court of Appeals for the Sixth Circuit's decision is in conflict with Strickland v. Washington, 466 US 668; Washington v. Hofbauer, Gravely v. Mills, and Rachel v. Bordenkircher. Therefore Petitioner has met this burden.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Sean Stuardberg

Date: 1 AUG 2018