19-6365

No. 17A1424

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

DEONTAE T. DAVIS — PETITIONER
(Your Name)

vs.

DUNCUN McCLAREN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DEONTAE T. DAVIS
(Your Name)
LANKLAND CORRECTIONAL FACILITY
141 FIRST STREET
COLDWATER MI, 49036
(Address)

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I.

CAN THIS COURT EXTEND EXPERT WITNESS NEEDED BEYOND PSYCHIATRIST SPECIALIST, BECAUSE COURTS REFUSED OFFER HANDWRITING EXPERT TO ASSIST PETITIONER DEFENSE, IMPEACH AND SHOW PROSECUTION WITNESS HAS COMMITTED PERJURY UNDER OATH?

II.

CAN THIS COURT CLEARLY ESTABLISH FEDERAL LAW HOLDING THAT CROSS-EXAMINATION IS VIOLATED ONCE PROSECUTION WITNESS TESTIFIES AT TRIAL ON DIRECT-EXAMINATION, OFFERING COMPLETELY CONTRADICTORY TESTIMONY FROM THAT OF HIS PRELIMINARY EXAMINATION, IS IT A VIOLATION OF CONFRONTATION CLAUSE WHEN PETITIONER IS UNABLE TO CROSS-EXAMINE PROSECUTION WITNESS 44 MINUTE TRIAL TESTIMONY, WHICH NOW DOES NOT IDENTIFY PETITIONER?

III.

CAN THIS COURT ESTABLISH FEDERAL LAW HOLDING THAT CROSS-EXAMINATION AT PRELIMINARY-EXAMINATION HEARING IS INSUFFICIENT TO SATISFY CONFRONTATION CLAUSE, IS NOT CROSS-EXAMINATION "CONFRONTATION CLAUSE" BASICALLY A TRIAL RIGHT?

LIST OF PARTIES

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

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

TABLE OF AUTHORITIES CITED

CASES

STATUTES AND RULES

OTHER

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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

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

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

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[X] is unpublished.

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

[X] reported at 2:14-cv-11015-SFC-LJM; 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[ ] is unpublished.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

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

The date on which the United States Court of Appeals decided my case was April 3, 2018.

[X] 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 _____.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including August 31, 2018 (date) on June 27, 2018 (date) in Application No. 17 A 1424.

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

Petitioner timely filed his delayed application to the Michigan Supreme Court, On December 23, 2013 that delayed application was denied. On March 3, 2014, Petitioner filed and stay an abeyance to exhaust additional Constitutional Claims with the 10th Circuit Court for the County of Saginaw. Honorable Sean F. Cox, Granted the stay an Abeyance and ordered Petitioner to return to the Trial Courts by way of successive 6.500 motion within 90 days from said order. Petitioner timely exhausted claims in State Courts. Petitioner was denied by the Michigan Supreme Court on September 6, 2015. Petitioner filed Amended Habeas Corpus Petition and Motion to open and proceed the case with the United States District Court on October 12, 2016. The United States District Court denied Petitioner On April 10, 2017. Petitioner objected on May 5, 2017. The United States District Court ultimately denied Petitioner on August 23, 2017. Petitioner appealed to the United States Court Of Appeals For The Sixth Circuit on September 5, 2017. Whom denied Petitioner on April 3, 2018. On June 27, 2018, Petitioner was GRANTED a extension to file his Petition for Writ of Certiorari. On August 26, 2018, petitioner filed his Writ of Certiorari in this courts. On January 30, 2019, July 26, 2019, and August 20, 2019 this court returned Petitioner's Petition for writ of Certiorari for correction needed and gave Petitioner 60 days to fix needed changes each time. Petitioner timely met each 60 day deadline. Petitioner now wave review of ALL claims except ||3) which are raised in this Petition for Writ Of Certiorari. Claim V. Denial of Handwriting Expert, Denial of Defense, Claim XV. Confrontation Clause violations limiting Petitioner ability to cross-examine Mr. Crowleys trial testimony, Claim XVI. Confrontation Clause Petitioner not able to adequately cross-examine Travis Crowley at Preliminary-Examination.

REASONS FOR GRANTING THE PETITION

PETITIONER OBJECTION TO CLAIM I. DENIAL OF HANDWRITING EXPERT, DENIAL OF DEFENSE.

Petitioner argues to this Court "The Trial Court violated Petitioner's Fourteenth Amendment right to due process, as well abused its discretion, by ignoring or never addressing Petitioners request for handwriting expert. In doing so denied Petitioner right to present a defense, rendering Petitioners trial unfair." See Taylor V Illinois, 484 U.S. 400, 409 (1988), Chambers V Mississippi, 410 U.S. 284 (1972), and Holmes V South Carolina, 574 U.S. 319, 324 (2006). Taylor and Chambers involve due process violations in the State Court's exclusion of evidence that was critical to the Petitioner's defense. Holmes, at 324, says that the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. thus, Petitioner specifically invoked his Federal Constitutional rights and therefore raised a cognizable Federal Constitutional claim.

Petitioner trial counsel was ineffective and had no defense but to "wing" Petitioner's Trial. Furthermore, Petitioner was able to show Prosecution witness Hewitt (1) actually wrote this letter proclaiming his reasons (duress) for shifting blame on Petitioner aswell (2) He denied ever seeing this letter at Preliminary Examination, while sworn under oath, which means the Prosecution witness committed Perjury. Petitioner defense is born. Simply, because Petitioner has shown that the witness has lied under oath, which is a felony charge of perjury. Petitioner would simply argue to the Jury evidence

"The Prosecution Witness Hewitt is a liar, whom committed perjury right before you, his testimony can not be trusted."

Petitioner has shown that any fairminded and reasonable juror would argue with Petitioner and order Writ For Certiorari.

PETITIONER OBJECTION TO CLAIM II. CONFONTATION CLAUSE VIOLATIONS LIMITING PETITIONER ABILITY TO CROSS-EXAMINE MR. CROWLEYS TRIAL TESTIMONY.

The District Court states, Petitioner has not identified any clearly established Supreme Court precedent holding that Petitioner is entitled to Cross-Examine a witness who started testifying on direct-examination but then become unavailable by refusing to continue testifying." The District Court ignores the clear holding in Crawford V Washington, 541 U.S. 36 ||2004), and it progeny that a Petitioner is entitled to cross-examine the Witnesses against him. Crowley was allowed to testify on direct-examination for 44 minutes, and Petitioner was never permitted to cross-examine him on that testimony. Thus, the Confrontation Clause was violated.

> The standard was stated in general terms does not mean the application was reasonable AEDPA does not require State and Federal Courts to wait for some nearly identical factual pattern before a legal rule must be applied. Nor does AEDPA prohibit a Federal Court from finding an application of a principle unreasonable when it involves a set of facts different from those of the case in which the principle was announced. The statue recognizes, to the contrary, that even a general standard may be applied in an unreasonable manner. See, e.g., William V Taylor, 529 U.S. 362 (2000) ||finding a State-Court decision both contrary to and involving an unreasonable application of the standard set forth in Strickland V Washington, 446 U.S. 668 ||1984).

Panetti V Quarrterman, 551 U.S. 930, 953 ||2007)(quotation marks and citations omitted).

If Crowley's live Trial testimony had been the same as his Preliminary Examination testimony, then there might be no Confrontation Clause violation because Petitioner was permitted to cross-examine Crowley at the Preliminary-Examination ||but See Habeas Claim XVI. and the argument below). However, Crowley's Trial testimony was completely different from his Preliminary-Examination testimony, and Petitioner was never permitted to cross-examine him on his different

trial testimony.

The fact that Petitioner's ability to cross-examine Crowley was caused by Crowley himself is immaterial. Petitioner was still unable to cross-examine Crowley with respect to the 44 minutes of direct-examination testimony he gave at Petitioner's trial. Which was completely different from his Preliminary Examination testimony. Since Crowley's trial testimony was exculpatory and the opposite of his incriminating preliminary-examination testimony, Petitioner was deprived of a opportunity to question him about his reasons for, as he said at Trial, testify falsely at the preliminary examination and testify truthfully at trial, an thus of the opportunity to show that his Trial testimony was the more credible of the two. TT VOL III pg 136. Without Petitioner's cross-examination of Crowley's Trial testimony, the Jury was unable to hear why he testified falsely at the Preliminary-Examination. If, for example, that reason had been police intimidation, then Jury may also have inferred that the only other witness implicating Petitioner in this case, Hewitt, was also intimidated by Police. This would have been more sufficient reason for the Jury to find a reasonable doubt. Thus, the Confrontation Clause violation was not harmless.

Accordingly, Petitioner right's to cross-examination was violated, and Any fairminded, reasonable Juror beyond a reasonable doubt would agree.

PETITIONER OBJECTION TO CLAIM III. CONFRONTATION CLAUSE PETITIONER WAS NOT ABLE TO ADEQUATELY CROSS-EXAMINE TRAVIS CROWLEY AT PRELIMINARY-EXAMINATION.

The admission of Crowley's Preliminary-Examination testimony violated the Confrontation Clause because the purpose of the two proceedings were different and because defense counsel did not have the impeachment material at the Preliminary Examination that he had at Trial, that is, Crowley's prior criminal history and thus was not given a "complete and adequate opportunity to cross-examine him". Pointer V Texas, 380 U.S. 400, 407 ||1965). The District Court say that "there is no

clearly established Federal law on that subject. Rather, the law as it now stands is that the OPPORTUNITY for cross-examination is sufficient." See DOC #15, pg ID 295 (emphasis in original). But, as quoted above, the clearly established Federal Law is NOT that the mere "opportunity" for cross-examination is sufficient. It is that the "complete and adequate opportunity" is sufficient. Pointer, 380 U.S. at 407. See also California V Green, 399 U.S. 149, 158 (1970)("The Confrontation Clause is not violated by admitting a declarent's out-of-court statements, as long as the declarent is testifying as a witness and subject to FULL AND EFFECTIVE cross-examination.")(emphasis added); Barber v Page, 390 U.S. 719, 725-726 (1968)("The right to confrontation is basically a trial right... A Preliminary hearing is ordinarily a much less searching exploration into the merits of a case than a Trial").

It is true the Supreme Court has not explained what "complete and adequate" or "full and effective" opportunity for cross-examination entails at its outer limits. But that is no barrier to relief in this case because "complete and adequate" and "full and effective" undoubtedly require that a Defendant be given an opportunity to cross-examine the witness on a criminal record that seriously undermines his credibility.

In this case, Petitioner was never allowed to cross-examine Crowley on his credibility-damaging criminal history because that history only became known to counsel after Preliminary Examination. Therefore, the introdution of the Preliminary-Examination testimony at trial was insufficient to satisfy the Confrontation Clause as clearly established in Pointer, Green, and Barber.

Thus, according to clearly established Supreme Court precedent, admitting the Preliminary Examination transcript under the circumstances in this case was insufficient to vindicate Petitioner's Confrontation Clause right. Accordingly the Confrontation Clause was violated, Any fairminded, reasonable juror beyond a reasonable doubt would agree.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mr. Deontae T. Davis

Date: October 10th 2019