

19-6381

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ANTHONY TYRONE BROWN — PETITIONER
(Your Name)

vs.

MICHIGAN, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

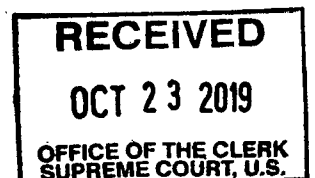
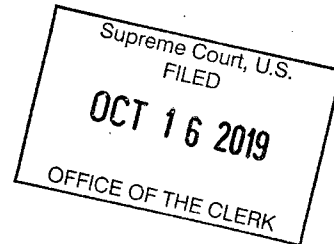
PETITION FOR WRIT OF CERTIORARI

ANTHONY TYRONE BROWN
(Your Name)

8585 NORTH CROSWELL ROAD
(Address)

ST. LOUIS, MI 48880
(City, State, Zip Code)

NA
(Phone Number)



QUESTION(S) PRESENTED

I. DID THE TRIAL JUDGE VIOLATE THE PETITIONER'S DUE PROCESS RIGHTS TO A FAIR TRIAL AND IMPARTIAL JUDGE. TO INSURE DUE PROCESS, AND FOR THE JUDGE TO AVOID BIAS AND THE APPEARANCE OF IMPROPRIETY, SHOULD THE JUDGE HAVE DISQUALIFIED HIMSELF FROM SITTING AS THE TRIER OF FACT OVER THE PETITIONER'S TRIAL, WHERE HE WORKED WITH THE PROSECUTOR IN THE CRIMINAL DIVISION OF THE STATE OF MICHIGAN AND ATTORNEY GENERAL'S OFFICE UNTIL HIS VERY RECENT APPOINTMENT TO THE BENCH.

II. DID THE TRIAL COURT VIOLATE THE PETITIONER'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL WHERE THERE WAS A BREAKDOWN IN THE ATTORNEY-CLIENT RELATIONSHIP AND THE COURT FAILED TO ALLOW SUBSTITUTION OF COUNSEL WHEN RETAINED COUNSEL FILED A MOTION TO WITHDRAW FROM THE PETITIONER'S CASE.

III. DID PROSECUTOR VIOLATE THE PETITIONER'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL UNDERTAKEN BY THE ADMISSION OF IMPROPER EVIDENCE WITH THE TESTIMONY OF AN ALLEGED HOTEL INCIDENT WHERE THEY FAILED TO ESTABLISH THAT A CRIME WAS COMMITTED.

Continue

IV. WERE THE PETITIONER'S CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND EFFECTIVE ASSISTANCE OF COUNSEL VIOLATED WHERE DEFENSE COUNSEL REFUSED TO INTERVIEW OR CALL ANY OF HIS CLIENT'S FOURTEEN WITNESSES TO TESTIFY ON HIS BEHALF, COUNSEL FAILED TO ENTER PICTURES OR ANY OTHER EVIDENCE ON HIS CLIENT'S BEHALF, FAILED TO IMPEACH THE COMPLAINANT WITH REPORTS AND TRANSCRIPTS, WHERE THE COMPLAINANT'S RECORD HAD TO BE WIPED CLEAN, AS WELL AS FAILED TO PROPERLY CHALLENGE PROSECUTION'S CASE IN ANY OTHER WAY.

V. WERE THE PETITIONER'S CONSTITUTIONAL RIGHTS TO A FAIR TRIAL VIOLATED WHERE THE RECORDING(S) OF ALLEGED EVIDENCE AGAINST HIM WERE ERASED, AND WHERE THE COURT ABUSED ITS DISCRETION BY REFUSING DEFENSE THE COMPLAINANT'S RECORDS OF SEXUAL ACTIVITY TO PROVE THE ORIGIN OF HER SEXUALLY TRANSMITTED DISEASE, SINCE NEITHER THE PETITIONER NOR HIS WIFE, THE COMPLAINANT'S MOTHER, HAVE NO HISTORY OF SAID DISEASES.

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:

THE MICHIGAN ATTORNEY GENERAL'S OFFICE

*THIS OFFICE PROSECUTED THE CASE FOR
THE WAYNE COUNTY'S PROSECUTOR, AND
IS SUBJECT TO BE THE WARDEN'S
COUNSEL WITH THE PETITIONER'S
FILING OF A WRIT OF HABEAS CORPUS
PURSUANT TO 28 USC § 2254*

THIS OFFICE IS LOCATED AT: THE

*G. MENNEN WILLIAMS BLDG. , 7TH FL.
525 W. OTTAWA , P.O. BOX 30212
LANSING , MI 48909*

WAYNE COUNTY PROSECUTOR'S OFFICE

*1441 ST. ANTOINE ST.
DETROIT, MI 48226*

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A *Decision of state Court of Appeals*

APPENDIX B *Decision of state Trial Court*

APPENDIX C *Decision of State Supreme Court Denying Review*

APPENDIX D *Order of State Supreme Court Denying Rehearing*

APPENDIX E *Certificate of prisoner Account Activity*

APPENDIX F *Register of Action Case No. 16-008996-01-FC*

APPENDIX G *Agent Karen fairley #212 Investigator for the Attorney
General's office, Report. (A-1) (A-2)*

APPENDIX H *Detroit Police Report of Devonna wesley and
alyssa wesley (A-1) (A2)*

Continue

INDEX TO APPENDICES

APPENDIX I - Sworn Statements of Naomi West, and Alecia Brown (A-1), (A-2).

APPENDIX J - Pictures of Complaint, the petitioner, Alyssa Wesley, Chenell Wesley, Alecia Brown, and the Grand baby Quincy Pace. (A1), (A2), (A3), (A4).

APPENDIX K - Father's day Cards from the Complaint and Alyssa Wesley (A-1), (A-2).

APPENDIX L - Obituary of the petitioner's Aunt's Homegoing and Guest List (A-1), (A-2).

APPENDIX M - MOTIVES from the transcripts of the Complaint and the witness Alyssa Wesley. (A1), (A2).

APPENDIX N - Statements that should have been challenged, and question that should have been asked by the petitioner's Attorney, but wasn't.

and the petitioner's statements and facts with (Witness List). (A-1), (A-2), (A-3)

Motion for an Evidentiary Hearing.

(A1) Decision of State Court of Appeal
1 of 8 pages.

(A2) A timely filed Rehearing Denied

TABLE OF AUTHORITIES CITED

CASES

PAGE #

Arizona V. Fulminate, 499 U.S. 279, 309-310; 111 Sct 1246; 113 L Ed 2d 302 (1991).	5,
Bracy V. Gramley 520 U.S. 899; 117 Sct 1793; 138 L Ed 2d, 107 (1997).	5,
Caperton V. Massey, 556 U.S. 868; 129 Sct 2252; 173 L Ed 1308 (2009).	7,
Chambers V. Mississippi, 410 U.S. 284; 93 Sct 1038; L Ed 2d 297 (1973).	24,
Colby V. Coughlin, 126 A.D. 2d 981, 511 N.Y.S. 2d 757, 758 (N.Y. App. Div. 1987).	3,
Crampton V. Dept of State, 395 mich 347, 235 N.W. 2d 352 (1975).	7,
Crawford V. Washington, 541 U.S. 36; 124 Sct 1354; 155 L Ed 2d 177 (2004).	24,
Farid V. Goord 200 F. Supp. 2d 220, 243-44 (W.D.N.Y. 2002).	37,
Francis V. Coughlin, 891 F.2d 43, 47 2d Cir 1989).	19,
French V. Jones, 41, F. Supp. 2d 726.	17, 29, 37,
Gaines V. Washington, 2018 U.S. Dist Lexis 12068.	5,
Gideon V. Wainwright, 372 U.S. 335; 83 Sct 792; 9 L Ed 2d 799 (1963).	11,
In re Murchison, 349 U.S. 133; 75 Sct 623; 99 L Ed 942 (1955).	5,
In re Winship 397 U.S. At 364.	31,
Kimmelman V. Morrison, 477 U.S. 365.	16,
McClellan V. Rapelje, 703 F 3d, 344.	16,
Mc Kaskie, 465 U.S. at 177 n.8, 104 Sct 944, 79 L Ed 2d 122.	20,
Mickens V. Taylor, 535 U.S. 162 (2002).	10, 16,
[omitted] Nelson V. Colorado, 137 Sct 1249, (2017).	31,
people V. Carpenter, 464 mich 223; 627 N.W. 2d 276 (2001).	24,
Palazzolo V Burt, 778 F Supp 2d 805 (Ed mich 2011).	12,
people V. Fackelman 489 mich 515; 802 N.W. 2d 552 (2011).	24,

continue

Cases

	Page #
Pepple V. Fields, 450 mich 94, 113-114 (1995)	31,
people V. Grant, 470 mich 477 (2004)	15,
people V. Hackett, 421 mich 338; 365 N.W. 2d 120 (1984)	26,
People V. Hill, 221 mich, App 391, 398; 561 N.W. 2d 262 (1997)	4,
People V. Williams, 386 mich 565; 194 N.W. 2d 337 (1972)	11,
Pino V. Dalsheim, 650 F. Supp. 1305, 1312 (S.D.N.Y. 1984)	22,
Ramonez V. Berghuis, 490 F.3d 422 (6th Cir mich 2009)	12,
Sheppard V. Maxwell, 384 U.S. 333; 86 Sct 1507; 16 L Ed 2d 600 (1966)	24,
Sira V. Morton, 380 F.3d 57, 74 (2d Cir 2004)	19,
Strickland V. Washington, 466 U.S. 668, 104 Sct 2052 80 L Ed 2d 674 (1984)	18, 19,
Tumey V. Ohio, 273 U.S. 510; 47 Sct 437, 71 Ed 749 (1927)	5,
Ungar V. Sarafits, 376 U.S. 575, 588, 84 Sct 841, 11 L Ed 2d 921 (1964)	32,
United States V. Cronie, 466 U.S. 648, 104 Sct 2039, 80 L Ed 2d 657 (1984)	18, 19,
United States V. Sciuto 531 F.2d 842 (CA 7 1976)	6,
United States V. Tredway 728 F.3d 878, 887 (al Cir (2003)	11,
Washington V. Texas, 388 U.S. 14, 19; 87 Sct 1920, 18 L Ed 2d 1091 (1967)	25,
Watkins 2010 mich App Lexis 1871 At * 17,	15,
Withrow V. Larken, 421 U.S. 35, 95 Sct 1456, 43 L Ed 2d 712 (1975)	8,
Wood, 450, U.S. at 273.	35,
Young V. KANN, 926 F.2d 1396, 1401-03 (3d Cir 1991)	19,

STATUTES AND RULES

MCL 750.520J	25,
MCL 768.27A	14, 15, 17,

Continue

CASES

PAGE 1 *

STATUTES AND RULES

MCL 750.520 (1)(A)	14, 17,
MCL 763.1	24,
MCL 2.003 (c)(1)(e)	1,
MCR 2.003 (c)(1)(b)	6,

OTHER

American Bar Association Model Code of Judicial Conduct, Canon 3 (E)	5,
McKeown, Don't Shoot the Cannon; Maintaining the Appearance of propriety stand, 73 App Practice and process 45 (2005)	6,
Michigan Code of Judicial Conduct, Canon 2 A	6, 7,
Const, 1963, Art, 1, § 17	8,
Const, 1963, Art, 1, § 20	11,

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

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

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

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

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

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

The opinion of the Michigan Supreme court appears at Appendix C 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 _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was April 30, 2019.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: July 29, 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).

U.S. Supreme Court has Jurisdiction where the petitioner
BROWN, Exhausted all State Remedies as of July 29, 2019 see Appendix D.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

PAGES

U. S. Const. amend. V

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 a Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence 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, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. 11, 20, 24

U. S. Const. amend. VI

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 witness against him; to have compulsory process for obtaining witnesses ~~against~~ in his favor, and to have the Assistance of Counsel for his defence. 17, 20, 24, 28

U. S. Const. amend. XIV § 1

All persons born or naturalized in the United States, and subject to the jurisdictions 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.

STATEMENT OF THE CASE

On 12/12/2016 A motion to disqualify Judge P. Cusick under MCL 2.003(c)(1)(F), which provides; that a Judge is disqualified from hearing a case if "[t]he Judge was a partner of a party, Attorney for a party, or a member of a Law firm Representing a party within the preceding two years."

On 12/14/2016 Judge Cusick Denied that motion, (M16-9)

the petitioner at that time off Record asked his Attorney to

file a motion with the Chief Judge, to have Judge Cusick

Removed. She Refused, stating to the petitioner that Judge

Cusick would just be "over seeing" the case, that's all. and

when asked by the prosecution for the Record, the petitioner's

Attorney stated on the Record "No your Honor," (M16-9).

but this was why the petitioner was there. So the Court

of Appeal stated that the petitioner's argument is unpreserved

MCR 2.003(D)(3)(A)(i); but the petitioner disagree, stating

that the error affected his Substantial Rights, further more

Preserve is Not Necessary the Appearance of Justice See C.S;

People v Hill 221 Mich App 391,398; NW2d 862 (1992).

Judge Cusick Previous Association with the Attorney General's office, the same office that was prosecuting the petitioner's case, raised sufficient suspicion of impropriety to mandate recusal in order to protect his right to due process under the federal and state constitutions, U.S. Const, Am, XIV; Const 1963, Art I, § 17, by Judge Cusick failure to recuse himself from sitting as trier of fact over the petitioner's case, where he worked with the prosecution in the same criminal division, also violated the petitioner's due process right under U.S. Const, Am XIV; to an impartial judge, see generally, *Tumey v. Ohio*, 273 U.S. 510; 47 Sct 437; 71 Ed 749 (1927); *In re Murchison*, 349 U.S. 133; 75 Sct 623; 99 L Ed 942 (1955); *Bracy v. Gramley*, 520 U.S. 899; 117 Sct 1793; 138 L Ed 2d 97, 107 (1997). The absence of an impartial judge is a "structural error," requiring automatic reversal, *Gaines v. Washington*, 2018 U.S. Dist Lexis 12068. also see *Arizona v. Fulminante*, 499 U.S. 279, 309-310; 111 Sct 1246; 113 L Ed 2d 302 (1991). also requiring automatic reversal, A judge must avoid all impropriety and appearance of impropriety Canon 3 (E) of the American Bar Association Model Code of

Judicial Conduct provides that A Judge should disqualify himself or herself in a proceeding "in which the Judge's impartiality might reasonably be questioned." THE right to A Fair Tribunal is a right grounded in due process, United States V Sciuto, 531 F2d 842 (CA 7, 1976) Ethical Standards governing the Judiciary also dictate that Judge Cusick should have disqualified himself in order to Avoid the Appearance of impropriety Canon 2 (A) of the Michigan Code of Judicial Conduct admonishes that [P]-ublic Confidence in the Judiciary is eroded by irresponsible and improper Conduct by Judges." Don't Shoot the Canons; Maintaining the Appearance of Propriety Standard, 73 App Practics and Process 45. 48-49 (2005) As A Corollary, Code of Judicial Conduct, Canon 2. instructs: "A Judge must Avoid all impropriety and Appearance of impropriety," MCR 2.003(c)(1)(b) likewise provides that disqualification is warranted if:

(B) The Judge base on objective and Reasonable Perceptions, has either (i) A Serious risk of Actual bias impacting the due process rights of A party as enunciated in Caperton V Massey, 556 U.S. 868; 129 Sct 2252; 173 L Ed 1208 (2009), or (ii) has failed to Adhere to the Appearance of impropriety Standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

Crampton V Dept of State, 395 Mich 347, 351, 2352d 352 (1975) is the leading Michigan Case addressing the Constitutional basis for disqualification, the Crampton Court Stated a showing of Actual bias is Not Necessary where "experience teaches us that the possibility of Actual bias is too high to be Constitutionally tolerable," Such as Where the Judge has a financial Stake in the outcome has been the target of personal abuse or criticism by A Party, is enmeshed in other legal matters involving a party, or may have prejudged the Case because of previous participation in the proceedings.

The Crampton Standard was Extracted from the United States Supreme Court decision in *Withrow v Larkin*, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975). Which states that "A fair trial in a fair tribunal is a basic Requirement of due process." *Id.* at 46. "Even though a Judge personally believes himself to be unprejudiced, unbiased and impartial, he should Nevertheless Certify his disqualification where there are Circumstance of such a Nature to Cause doubt as to his particlity, bias or prejudice," for all these reason, due process requires A New Trial with A different Judge. Const 1963, Art 1, § 17; U.S. Const. Am XIV. [T]he Due process clause Requires an unbiased and impartial decision-maker, on 10/12/2016 A Review of Pre-trial Services for bond was held, their Recommendation Was "Electronic Monitor" and his own Recarnes. on 12/14/2016 Judge Cusick Denied that Recommendation Even though the Alleged incident Supposely happen 12 years ago.

And the Accuser No Longer Live with the petitioner, Judge
Cusick also denied the motion to disqualify himself,
also motion for Rape Shield denied, motion to withdraw
as Counsel, who was Retained Denied. The Judge also
stated to the petitioner in the motion to withdraw
(on page 9 #4) in the transcripts And I quote "I don't
want to hear what she told you," which was changed
in the transcripts to "you don't have to tell me what
she told you," after I was just ask to be heard from
by the prosecution, I ask this Court If I may
challenge this statement "Verbatim with Audio
to show the Courts Error and there are others
as well, also motion for stay of proceeding was
denied. (see Register of Action in Appendix F).
Page 5 #2 of motion to withdraw the petitioners
Attorney stated; I just need to withdraw
your Honor... she also stated

on (page 6 *18-23) states; As I stated before it is a genuinely a significant Breakdown in Communication I would Not Come before this Court, "asking" to withdraw less than a week before trial particularly on a case that I've been Retain on if there were Not Some "Serious Issues". Why Was I forced to go to trial with an Attorney who clearly didn't have the clients best interest at hand and wanted off the petitioner's case, but was force to go to trial. "Automatic Reversal" is required *Mickens V Taylor* 535 U.S. 162 (2002). Instead of Addressing the merits of Counsel's Request the trial judge seemed more concerned about the timing of the Request, There was clearly a Breakdown of the Attorney-client Relationship, and the Judge abuse his discretion in denying the motion to withdraw as Counsel, the court also stated that this was a "delay tactic" because this was the petitioner's Fourth Attorney in this matter, but the Record is clear, that the first (3) three Attorneys was Fired, Retained and Quit,

and Appointed all on the same day of the Preliminary Examination, the first Attorney did not know about the Retain Attorney who who stated that he wasn't going to take the case, due to something with his License, and quit, that same day with-in that hour the Court Appointed Number (3) Attorney who after two months of No Communication my family Fired him and hired the Fourth Attorney. there was No "delay Tactic". The Right to Counsel is one of the most fundamental of all Constitutional Rights, Gideon V. Wainwright, 372 U.S. 335; 83 Sct 792; 9 L Ed 2d 799 1963, US Const, Am VI, XIV; Const 1963 Art 1, § 20, In protecting this Right. Michigan Courts are Careful to Ensure Substitution of Counsel where the Effective Assistance of Counsel is Rendered impossible due to A breakdown in the Attorney-Client Relationship People V Williams 386 Mich 565; 194 NW2d 337 (1972) The Sixth Amendment Prohibits A Court from unreasonably Denying a defendant his Counsel of choice U.S. V Tredway 728 F.3d 878, 887 Cal Cir (2003).

It was clear that the Counsel did Not have the best Interest for the Client, and the petitioner was dissatisfaction justifiable with his Counsel to warrenta Substitution, when the petitioner's Counsel would Not Introduce any of the petitioner Evidence, Call any witnesses and Scarring the petitioner Into Not taking the Stand on his own behalf, and Not Challengen all the Accuser Lies, Ramonez V Berghuis, 490 F3d 482 (6th Cir mich 2009) by Not Calling any witnesses; Constitutionally Effective Counsel must develop trial strategy in the true Sense, Not what bears a false label of Strategy base on what investigation Reveals witnesses will Actually testify to. Not base on what Counsel guesses what they might Say in the absence of a "full" investigation. (see APPENDIX N "Witness List") of Some of the witnesses who wanted to testify but Wasnt Called to do so on the petitioner's behalf, and most Wasnt Interviewed Appendix N.) failure to Contact and Interview witnesses/Trial Counsel's performance was deficient and prejudiced. Palazzolo V Burt, 778 Fsupp.2d 805 (E.D. mich 2010)

(A) The Supreme Court Applied an objective test in determining the Appearance of bias; The Judge Violated the XIV Am due process; "the due process Requires an objective inquiry into whether the Contributor's influence, on the Election under all Circumstance would offer A possible temptation to the Average Judge to lead him Not to hold the balance nice, clear and true... Justice Benjamin did undertake an extensive Search for Actual bias, but as we have indicated, that is just one step in the judicial process; objective standards may also Require recusal whether or Not actual bias exists or Can be proved. due process may Sometimes bar trial by Judges who have No Actual bias and who would do their Vest best to weigh the Scales of Justice equally between Contending parties [internal punctuation and Citations omitted].

It was clear this Judge Could Not Weigh the Scales of Justice Equally.

It was also Clear the petitioner's Attorney did Not have the client's Best Interest. the petitioner has Attached Some Exhibits and pictures, along with his Affidavit Statements and fact, that should have been Introduces See (Appendix J, K, L, N).

The petitioner has a due process Right to A fair Trial undeterred by the admission of improper Evidence, when the prosecution introduce the testimony of an allegedly Hotel incident In the City of Southfield, which is in OAKLAND County, and WAYNE County has Jurisdiction over the Case Citing; that the Hotel incident Pursuant MCL 768.27A. (In A Criminal Case in which the defendant is Accused of Committing a list offense against a minor, Evidence that the defendant committed another list offense against a minor is admissible, and may be Considered for its bearing on any matter to which it is relevant.)

But the petitioner disagree; Citing: MCL 750.520(1)(A) Provides; MCL 750.520(1)(A) "A person is guilty of Criminal sexual in the third degree, if the person engages in Sexual penetration with another person... [who] is at Least 13 years of age and under 16 years of age," as the Court of Appeal Explained, after E.W. turned 16 years old the Sex act described [***14] would No Longer Constitute a list offense admissible as other Act Evidence under MCL 768.27A.

Watkins 2010 mich, App Lexis 1871 at * 17, (on these grounds we ask this Court for a New trial under a New Judge). and Since the Complainant Stated on Record that She was 16 years of age when the alleged Incident happen. (See Ta page 69) MCL 768.27A Was only Introduced to tant the Jury. In the Arguement that the petitioner had Ineffective Assistance of Counsel, the petitioner States that he was also deprived of a Substantial defense, Id, People V. Grant 470 mich 477 (2004) defense Counsel failed to adequately interview members of the family who were present on the day of the Incident, The failure to interview and Investigate and Substantiate the primary defense was Not a Strategie decision; it was a fundamental abdication of the duty to Conduct a Complete investigation, and restricted his ability to make Reason Professional Judgments. (The Conviction

were Reversed and the Case Remanded for a New Trial.) In this Case was the Same, the petitioner's Attorney fail to do an full Investigation, Some witnesses would have told how the Complainant made many false statements (see; Sworn Statement of Naomi West in Appendix I) also when the "Counsel object to the Conflicting Representation and None the Less was forced to Continue The Representation, is an "Automatic Reversal" and is Required *Mickens V Taylor*, 535 US 162 (2002). also for federal habeas Relief, as Accused was Entitled to Assert a Sixth admendant Claim base on his Counsel's failure to move for Suppression of Evidence that should have been Excluded under the Fourth Am Claims. The Court Affirmed the Appellate Court decision because the Accused was Rendered ineffective Assistance of Counsel. *Kimmelman V Morrison*, 477 US 365. also failure to interview or call exonerating witness *McClellan V. Rapelje*, 703 F.3d 344.

the petitioner had Ineffective Assistance of Counsel, were the petitioner's Attorney did not properly challenge the

admissible testimony of an allegedly Hotel incident under

MCL 768.27a which is inadmissible under MCL 750.52a(1)(A).

The petitioner was deprived of the Sixth, Am, Right to Counsel during the Critical Stage of proceedings Requiring

Automatic Reversal, See French V. Jones, 41, F. Supp. 2d 726.

also when the petitioner's Attorney did not move to suppression

of all Agent Fairley Evidence of witnesses and Accuser statements,

because of Agent Fairley wiping all 30 to 40 Recording of

statements, which were not sign statements, also violated

the petitioner's Sixth Amendment Right to Effective Assistance

of Counsel. The Due process U.S. Const, Am, XIV.

The United States Constitution Sixth Amendment provides A
Criminally Accused the Right to Effective Assistance of Counsel.
When that Right is violated it is a Breach of Clearly Established
Federal law and precedent, The United States Supreme Court
Delineated the Right of an Accused to have Effective
Assistance of Counsel, An Accused is not Required to

Assert their Right to Effective Assistance it is a guarantee bestowed upon them by the United States Constitution and the Right to Due process U.S. Const, Am. XIV.

Sufficient Cause under Wainwright v. Sykes to Avoid the default of waived issues, these Cases rest firmly in the idea that the Attorney's Refusal to Comply with the Clients Reasonable wish to Raise a particular claim Breaches the agency Relationship between Attorney and Client, thereby making it unreasonable to impose upon the Client the Consequences of the Attorney procedural default. See e, g, people v. Centers, 141 Mich App 364, 367 NW 2d 397 (1985). See e, g, Smith v. South Carolina, 882 F2d 895, 898, (4th Cir 1989) Cert denied 493 U.S. 1046 (1990). also this case was "unprofessional Error," if the petitioner's Attorney would took a picture of the petitioner's penis, called any of the 14 witnesses, to testify, Interviewed all of the witnesses, Introduce Evidence, preserved the issues, challenged the Inadmissible Evidence, the Result of the proceeding would have been different, Strickland v. Washington, 466 U.S. 668, 694, 80 L Ed 2d 1045 at 2052.

also when the prosecution introduced pictures at the first day of the trial 01/24/2017 (Ta 39-46). "for the first time" violated the petitioner's Right to a fair trial. the petitioner also has a Right to be heard, If the Court or Committee Refuse to Listen to you they Violate due process, the petitioner also have a Right to hear - i.e, to be informed of the Evidence against him So he Can Respond to it, (Sira V. Morton 380 F3d 57, 74 (2d Cir 2004)). There must be 24 hour Notice in Writing because of possible defect in the Evidence (Francis V. Coughlin, 891 F2d 43, 47 2d Cir 1989). "holding Evidence must be disclosed at the hearing and Not after it." young V. Kann 926 F2d 1396 1401-1403 (3d Cir 1991). because A client's Autonomy, Not Counsel's Competence is in issue, We do [* 1511] Not Apply our ineffective - Assistance - of - Counsel Jurisprudence, Strickland V. Washington, 466 U.S. 668, 104 Sct 2052, 80 L Ed 2d 674 (1984). OR United States V. Cronin, 466 U.S. 648, 104 Sct 2039, 80 L Ed 2d 657 (1984) to McCoy (Sixth Amendant) Violation of A defendant Sixth Am.

Secured Autonomy, ranks as Error of the kind our decision have called "Structural" when present, such an error is not subject to harmless-error review, see *McKaskle* 456 U.S. at 177, n. 8, 104 S.Ct. 944, 79 L.2d 122.

By the petitioner's Attorney scarring him into not taking the stand on his own behalf, by not calling any witnesses by not introducing any of his evidence, violated the petitioner's U.S. Const. XIV due process right to be heard and offer testimony and also is "Structural Error."

Structural error "affect[s] the framework within which the trial proceeds," as distinguished from a lapse or flaw that is "simply an error in the trial process itself,"

Arizona v. Fulminante, 499 U.S. 279, 310. 111 S.Ct. 1246,

113 L. Ed. 2d 302 (1991). the Exclusion Violation U.S.

Const, Amend V guarantee against compelled testimony

because the right to testify in one's own behalf was

Necessary Corollary that guarantee.

when agent fairley stated on the stand that the Accuser stated to her that the petitioner's penis Had A pink Tip with Color Like him, She was Ask by the petitioner's Attorney did She take a picture to Collaborate it, She stated No (see Transcripts of Agent fairley testimony page 28-29). the petitioner's Attorney asked the witness Alyssa Wesley on the stand about the Shower in the House on 25th St, that does Not have a shower, Alyssa Stated that She said Tub, but the police wrote shower, and the police Asked her to Sign that Statement, but the petitioner's Attorney did Not mention that agent fairley, took A statement from the Accuser and the Accuser stated that the petitioner Called her into there Bedroom while her mother was in the Shower... this was another Critical Stage in the proceeding that the petitioner was deprived the Sixth Am Right to Counsel. (see agent fairley Report Appendix G). Neither did the prosecutor mention that Either. two mentions of A shower, two different agencies, two different witnesses,

one house and No Shower, the petitioner has a Right to A full investigation. Even though the petitioner Ask his Attorney to file a motion With the Chief Judge to have Judge Cusick Removed, "She did Not," but Stated on the Record when asked, the petitioner's Attorney Stated "No your Honor," (see motion to Recuse the Judge). Nor did the petitioner's Attorney perserve all of the Issues that Needed to be preserved, also deprived the petitioner Sixth Am, Right to Counsel during Critical Stage of proceeding Requiring Reversal, French V. Jones, 41 F. Supp. 2d 726. and the Judge Stated on Record that the petitioner's Attorney was outstanding Attorney Especially in these types of Cases, this Comment Raised "Serious question" about his Impartiality See Pino V. Dalsheim, 650 F. Supp. 1305, 1318 (S.D.N.Y. 1984). when the petitioner's wife took the stand for the prosecution "she was asked by the prosecutor, why did she start crying when the Accuser, "her child" described the petitioner Penis," the mother, because she got it wrong. (T2 194-196) (T2 221-223).

and when she was Asked, because the Accuser "got it wrong", you No Longer believed her, and the petitioner's wife stated "yes" (that and other things, but yes). (See the Transcripts of Alecia Brown testimony). This was another Very Critical stage of the proceeding, how do we Not ask what other things, I know why the prosecution didn't want to know. "the other things," but the petitioner's Attorney should have wanted to know, if she had the Best Interest for her client. "What Else would make you stop believing your child," but the petitioner's Attorney did Not Ask that Very Important question, she quickly move to something totally different, "why". the Accuser also Stated to her mother that the petitioner's penis had a mole on the Tip. (see Alecia Brown Testimony on page 228 #5-11), also the petitioner's Attorney did not challenge all the Accuser and witness Alyssa Wesley "motive" all throughout their testimony (see Appendix M.) for motive

The Sixth Amendment of the United States Constitution guarantees the Right of Confrontation and Cross-Examination as a fundamental requirement of a Criminal Trial U.S. Const Am VI;

Crawford V Washington, 541 US 36; 124 Sct 1354; 155 L Ed 2d 177 (2004) Sheppard V Maxwell, 384 US 333, 351; 86 Sct 1507; 16 L Ed 2d 600 (1966). The Michigan Constitution provides similar protection, Const 1963 Art 1, § 20; People V Fackelman, 489 Mich 515; 802 NW 2d 552 (2011) In addition to the Constitution Right to Confrontation MCL 763.1 States that "the party Accused shall be allowed to... meet the witnesses who are produced against him face to face," A defendant in a Criminal Case has a Constitutional right to present a defense under U.S. Const. Am V, VI, XIV; Const 1963 Art 1, § 17, Chamber V Mississippi, 410 U.S. 284, 294; 93 Sct 1038; 35 L Ed 2d 297 (1973); People V Carpenter, 464 Mich 223, 241-242; 627 NW 2d 276

(a)(i). This Right is fundamental to due process. "[T]he Right to present the defendant's Version of the facts as well as the prosecutors, to the jury, so it may decide where the truth lies" in fact at the very heart of the due process Right, Washington V. Texas, 388 U.S. 14, 19; 87 Sct 1920; 18 L Ed 2d 1091 (1967).

The Rape Shield Statute M.C.L. 750, 520j Provides (1) Evidence of specific instance of the victim's sexual conduct, and Reputation, Evidence of the victim's sexual conduct shall not be admitted under Section 520b to 520g1 unless and only to the extent that the judge finds that the following proposed Evidence is Material to a fact at issue in the case and that its inflammatory or prejudicial Nature does not outweigh its probative Value;

- (A) Evidence of the victim's past sexual conduct with the actor.
- (B) Evidence of specific instance of sexual activity showing the source or origin of semen, pregnancy, or disease.

If states evidentiary rules interfere with a defendant's Constitutional right to present a defense, they must yield. *Chambers v Mississippi*, *Supra*. Here the trial court erred by utilizing the Rape shield statute to refuse to admit evidence of Complainant's prior sexual activity, "We recognize that in certain limited situation, such evidence may not only be relevant, but its admission may be required to preserve a defendant's Constitutional Right to Confrontation." *People v Hackett*, 421 Mich 338, 348; 365 N.W 2d 120 (1984). This case presents such a situation, Petitioner's Constitutional Right to Confrontation and to present a defense was denied. The trial Court reversibly erred it precluded defense Counsel from offering Evidence regarding Complainant's Prior Sexual History. during the times in question, Complainant was treated for multiple Sexually Transmitted diseases. Neither the petitioner nor his wife, the Complainant's mother had any History of S.T.D.'s during that time.

and the wife stated that she and her husband had sex all the time. (see Heceta

Brown testimony). As a result, the petitioner was denied his constitutional

Right to Confrontation, and to present a defense and since the comp-

laint stated that she had sex with the petitioner "Every other day,"

unprotected. (see Ta page 21 #4), also when agent fairly, the In vest-

igator for the Michigan States Attorney General's office, claim she

she wiped all of her 30 to 40 Recording of Evidence clean, was a

Violation of the petitioner's Constitutional Right to Confrontation,

under the "Confrontation clause," he is therefore Entitled to a new

trial under a new judge.

I The petitioner was denied his fundamental due process protections to

A Fair Trial as guaranteed under both state and federal constitutions when

the trial prosecution fail to supervise Law Enforcement who destroyed

Exculpatory Evidence

II the petitioner was denied his fundamental and Constitutional Right to a fair

Trial as guaranteed under both state and federal constitutions, when trial

Counsel Refuse to prepare a defense strategy, Refuse to investigate witnesses,

Refuse to object to prosecutorial misconduct, all calculated to Sabotage.

When the petitioner's Attorney Scared the petitioner into Not taking the stand, by Not presenting the defense, and asking the question that the petitioner ask his Attorney to. The right to testify is also found in the Compulsary process clause of the U.S. Const amend. VI, which grants a defendant the Right to Call Witnesses in his favor, A Right that is guaranteed in the Criminal Courts of the states by the U.S. Const. amend ~~XIV~~.

III The U.S. Const amend VI grants to the accused personally the Right to make his defense, It is the Accused, Not Counsel, who must be Informed of the Nature and Cause of the Accusation, who must be Confronted with the witnesses against him, and who must be accorded Compulsary process for obtaining witnesses in his favor.

IV also petitioner's Constitutional due process Rights and Rights to Notice where Violated for the Length of time Cover by the Information (3) years and the Lack of

Specifically of when the Specific charged Events took Place as well as the fact that Five charges for Separate Crimes were tried together.

V Petitioner's Conviction should be overturned because there was Insufficient Credible Evidence at trial to prove "petitioner's Guilty of the Crimes.

VI Petitioner was denied his fundamental due process protections to a fair trial by trial as Guaranteed under Both State and Federal Constitutions when the trial Court Arraigned petitioner in Circuit Court without first having Acquired Subject-Matter Jurisdiction; Thus Creating a Jurisdictional defect which which Not only Void petitioner's Criminal Convictions, but which Demands Petitioner's Immediate Release from Custody. also on these VII Grounds the petitioner had Ineffective Assistance of Counsel. Petitioner was deprived of Sixth Am. Right to Counsel during Critical stages of proceeding Requiring Automatic Reversal, See French V. Jones, 41 F. Supp. 2d 726.

VII the Judge Abuse of discretion Violated the petitioner due process to A fair trial, by Continuing to Allow the Repeatedly testimony of Inadmissible testimony of an Allegedly Hotel Incident Under "Similar Acts" Testimony MRE 404(B) and MCL 768.27A; which the Court of Appeal Explains is Not admissible under MCL 750.520 (1) (A).

VIII Judge Cosick Violated the petitioner's Right of due process To an impartial Judge "Structural Error" and Judiciary Bias.

IX petitioner was Denied due process VI, Am, failure to Allow Substitution of Counsel where there clearly was a Conflict of Interest, An A breakdown in the Attorney-Client Relationship

X petitioner was Denied due process VI, XIV to have Effective Assistance of Counsel.

XI petitioner was Denied due process And Received Ineffective Assistance of Counsel, During the Critical Stages of the proceeding, by Not Calling Any of his Witnesses on his behalf, by Not Introducing Any Evidence.

On page (28-29) of Agent fairley testimony, she was Asked by the petitioner's Attorney did she take a picture of the petitioner's penis, after she stated No, the prosecution over talking the petitioner's Attorney stated, "If they wanted a picture they could have took one," It is improper for A prosecutor to Argue that the Burden of proof lies with the defense Regarding any element of A Criminal offense. People V. Fields 450 mich 94, 113-114 (1995). This prosecutorial misconduct Violated the due process Rights U.S. Const, Am, V, VI, XIV; In re Winship, 397 U.S. at 512 (1970) the petitioner Asked for an Evidentiary twice in the Michigan Court of Appeal and once in the Michigan Supreme Court, all Denied.

XII Petitioner was deprived of his Constitutional Right to A fair Trial by A Multiplicity of Error Having a Cumulative Effect on the outcome of Trial because it denied Fairness, due process And Equal protection.

REASONS FOR GRANTING THE PETITION

The Constitution and the Declaration of Independence, states that all men is guaranteed the unalienable rights of Life, Liberty, and the pursuit of happiness. These Constitutional Law's is what our Great Nation is Built on. The petitioner has a right to a fair tribunal this right is grounded in due process. United States V. Sciuto, 531 F2d 842 (CA7, 1976). and when these rights is violated it Rattle the Confidence and shakes the foundations of our Nation. Sadly this is when the United States Supreme Court must Step In, and make the wrongs, Right. No, 'one man', group, or Agency is Above the Law, and No Law is above the Constitutional Laws of the United States of America. An unjust Law is No Law! Injustice In our Decision-makers should Never Stand In this Great Nation, the people Depend upon, and this Country depend upon the Constitution of the United States of America, as the first, but more Importantly the Last Line of Defense against Injustice. No Matter what Color, Race, or gender. No one, absolutely

No one is suppose to be Guilty until proven Innocent In the United States of America, you Can Never have a fair Anything If you only have one side of the Story. When the System that Suppose to hold the Scale of Balance Equal, is Working against you to. When Blind Justice See it one Way. (This Injustice is Not just another Drop in a Empty Bucket, but A Drop In a Bucket That is Overflowing With Injustice). Judge Cusick Neglected his duty as a trial Judge, to the Courts, to the Constitution of the United States of America, to the Oath he took, but more importantly to the people of the United States of America, when he fail to Recuse himself from trier of fact In the petitioner's Criminal Case, where the Judge Very Recently worked In the Same Criminal Division of the Attorney General's office, who where prosecuting the petitioner's Case. How Can you have a fair tribunal where the Judge Cannot hold the Balance of Justice Equally Between Vindicating the interest of the Court, and the Interest of the Accused. *Ungar V. Sarafits*, 376, U.S. 575, 588, 84 Sct 841, 11 L Ed 2d 921 (1964)

This kind of Injustice is in Direct Conflict with the Constitution of the United States of America, we have a moral obligation and a duty to the Accused, to the Citizens of the States, of our Great Nation, to see that this Injustice Does Not Stand, Not in our Civil Courts, Not in our Trial Courts, Not in our Federal Courts, NOR in our United States Supreme Court. We must Not allow the Action of A few, Dictate How this Great Nation Courts are Ran. this kind of Action is A Threat to the Citizens of this Nation. If left unchecked will become a mole hill into a mountain of tremendously Hights. to Continue to Violate a Citizen Constitution Right, OR any kind of Right must Not Stand In the United States of America. So I humbly Ask this Great Court In all the Land to put a Stop to this Injustice, and Release the petitioner Immediately from Custody. for Violating of his Constitutional Rights, Rights of Due process under the VI, XIV; We must Not Ignore And DENY that this kind of Injustice does Not Exist.

A petitioner has a due process Right under U.S. Const, Am, XIV. to An impartial Judge. See Sheppard V. Maxwell, 231 F. Supp. 37. also Wright V. Lazaroff, 643 F. Supp. 2d 971. Judge Cusick took an oath to uphold the Constitution, he Broke that oath when he Refuse to disqualify himself from the petitioner's case, the way the Judge Spoke to the petitioner, In his Attorney's motion to withdraw was "terrorizing". On page 9 #4 Raised "Serious question" about his Impartiality. When the petitioner Was Just Asked by the prosecution If he Wanted to Say Something). the petitioner was just starting to say, "She told me," but the Judge Stop the petitioner shortly after "She told me," the Judge stated to the petitioner "I don't Want to hear what she told you." (With A Voicefulness), but that statement Was changed to "you don't have to tell me what she told you," See motion to withdraw page 8-9. If I may, I ask this Court to Challenge this statement Verbatim With Audio, to See this Courts Error. It was also Clear to see that there was an Conflict of Interest between the petitioner and Attorney and the petitioner Wanted her off the case and she Wanted off,

and did Not have the Clients best Interest at hand. and the petitioner was Clearly dissatisfied, there was Clearly a Conflict of Interest, and it Affected the Counsel's performance but "unambiguous rule" that where trial Judge Nelects A duty to inquire into a potential Conflict, the petitioner to obtain Reversal of the judgment, Need only Show his lawyer was Subject to a Conflict of Interest, and Need Not Show that the Conflict adversely affected Counsel's Preformance, Wood. 450, U.S. at 273, It was also Clear that the Judge and prosecutor did Not actual wanted to hear from the petitioner, they Just wanted it to Appear "they did," also the petitioner Still thinks that his Attorney is a good Attorney. But as I wanted to say at the motion to withdraw, If your Attorney does Not have your Best Interest at hand, then what good is she, who Interest does she has. who does that Benfit;

"The United States Constitution's Sixth Amendment provides a Criminally Accused the Right to

36

effective Assistance of Counsel, it is a guarantee bestowed upon them by the United States Constitution and the Right to due process U.S. Const, Am XIV.

The petitioner has had a hand In Raising 18 kids, 14 are girls, for what Reason would you Not put them on the Stand for the defense, If they had Something to say, (If they had Something Bad to say the prosecution would have force them to come and + testify.) Since It was all good, No one want's to hear from them. "why" — why Not Interview all the witnesses, why Not Introduce Evidence on the petitioner's Behalf, the petitioner has a Right to Call Witnesses in his favor, he has a Right to present a defense. and when these Rights are Violated it is in Direct conflict with the Constitution of the United States of America.

also the "due process clause" Requires A unbiased and impartial decision-maker. A petitioner is Entitled to a hearing before an impartial fact-finder, that is one whose mind is Not already made up and who Can give a fair hearing. The Action and Statement made by Judge Cusick at Trial Created an "unacceptable Risk of unfairness," Lonski on behalf of Colby V. Coughlin, 126 A.D.2d 981 511 N.Y.S.2d 757, 758. (N.Y. App. Div. 1987). (allegations of hearing officer Suppressed Evidence distorted testimony, and Never informed the petitioner of Evidence against him Raised A Meterial issue of lack of impartiality); Farid V. Goord 200 F.Supp.2d 220, 243-44 (W.D.N.Y. 2002). Judge Cusick failure to Recuse himself and his Action Was a Direct Conflict With the Constitution XIV, Am. the petitioner Attorney Was in Direct Conflict With the Constitution V, VI, XIV, Am. When she Refused to Call any Witnesses on the petitioner's behalf, Introduce Any Evidence, challenge the Accuser In the Critical moment of the trial, French V. Jones, 41 F.Supp.2d 726.

The petitioner Humbly ask this Court to grant this petition for a writ of Certiorari for the following Reasons; for the Reasons Stated In the Statement of Case, and Reason for Granting. But more Importantly In the United States of America, Every person is Entitled to A fair and Impartial Judge and Trial underterred by the admission of improper Evidence or an impartial Judge, The petitioner is also Entitled to Effective Assistance of Counsel. These Rights are protected by the U.S. Const, Am V, VI, XIV, and when Violated is a Direct Conflict With this Great Nation and what it is Built on, the United States Constitution of America and one's Life, Liberty and the pursuit of happiness."

CONCLUSION

For these Reason the petitioner Pray that you Grant this petition.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Anthony Tyson Brown

Date: _____