No. 19-6534

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

SAAD A. BAHODA,

Petitioner,

v.

SHERMAN CAMPBELL, Warden,

Respondent.

ON PETITION FOR WRIT OF CERTIORARY
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Submitted by:

Saad A. Bahoda, #215121
In Propria Persona
Gus Harrison Correction Facility
2727 E. Beecher Street
Adrian, Michigan 49221

QUESTIONS PRESENTED FOR REVIEW

I. Petitioner was denied his Sixth Amendment Right to the effective assistance of counsel at trial due to counsel's failure to request a self-defense instruction although the evidence supported it and was available under Michigan law.

II. The Court of Appeals committed plain error, contrary to Bunkley v Florida, 538, US 835, 123 S. Ct 2020 (2002) because it denied Petitioner the benefit of People v Triplett, 499 Mich 52 878; NW2d 811 (2016) which clarified the affirmative defense of self-defense to the crime of CCW while his case was on direct appeal.

III. Whether Petitioner denied effective assistance of pre-trial counsel when counsel submitted forged affidavits to the trial court in support of his pretrial motion without investigating them?

IV. Whether Petitioner denied effective assistance of trial counsel for failing to make a mandatory disclosure of a prosecution witness's attorney that had an actual conflict of interest?

V. Whether Petitioner denied effective assistance of appellate counsel for abandoning an evidentiary hearing on Bahoda's motion for new trial?

STATEMENT UNDER RULE 29.6

Disclosure of Corporation affiliation and Financial interest.

Pursuant to Rule 29, Saad A. Bahoda makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? No.

If the answer is "yes," list below the identity of the parent corporation or affiliate and the relationship between it and the named party.

2. Is there a publicly owned corporation, not a party to the case, that has a financial interest in the outcome? No.

If the answer is "yes," list below the identity of the corporation and the nature of the financial interest.

/s/ Saad Bahoda
In Propria Persona

October 31, 2019

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PETITION FOR WRIT OF CERTIORARI

Petitioner Saad A. Bahoda, respectfully prays that a Writ of Certiorari issue to review the Opinion of the Court of Appeals for the Sixth Circuit entered on June 17, 2019, denying a Certificate of Appealability (COA).

OPINION AND ORDERS BELOW

The Sixth Circuit Court of Appeals' June 17, 2019 Order denying Bahoda's application for COA, is Appendix A. App. 1-4, to this petition.

The United States District Court for the Eastern District of Michigan's February 27, 2019, Opinion and Order denying Bahoda's Petition for Writ of Habeas Corpus is Appendix B, 5-27, to this petition.

The Sixth Circuit's August 6, 2019, Order denying panel rehearing is Appendix C, App. 28-29 to this petition.

The Sixth Circuit's August 21, 2019, Order denying rehearing en banc is Appendix D, App. 30-31, to this petition.

STATEMENT OF JURISDICTION

28 U.S.C. § 1257 confers juirsidiction of this Court to review on writ of certiorari judgment of the Supreme Court of Michigan.

On June 17, 2019, the Sixth Circuit Court of Appeals issued an Order bearing no Judge's name, denying Bahoda's application for COA. A panel of the Sixth Circuit issued on August 6, 2019 Order declining to rehear Bahoda's application for COA. On August 21, 2019, the Sixth Circuit issued an Order denying Bahoda's petition for rehearing en banc on his COA. This Court has jurisdiction over this case as an application for a 28 U.S.C. §2253(c) COA because the petition involving Bahoda's 28 U.S.C. §2254 claims meet the description which confers the Supreme Court's certiorari jurisdiction under 1254(1) to cases in the Court of Appeals.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

United States Constitution, Amendment VI,XIV:

The Sixth Amendment to the Constitution of the United Sates provides:

> 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 in his favor, and to have the Assistance of Counsel for his defense.

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part:

> ...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, liberity, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...

28 U.S.C. § 1257 provides, in pertinent part:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a ststute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right privilege, or immunity is specially set up or claimed under the constitution or treaties or statutes of, or any commission held or authority exercised under, the United States.

FEDERAL STATUTES, SUPREME COURT RULES AND MICHIGAN COURT RULE

28 U.S.C. § 1257

28 U.S.C. § 2244

28 U.S.C. § 2253

28 U.S.C. § 2254

Supreme Court Rules 12, and 29.6

Michigan Court Rules (MCR) 7.203(A)(1)

STATEMENT OF FACTS

State-Post Convicxtion Proceedings - Motion For New Trial

In August 27, 2011, Petitioner Saad Bahoda was charged in one-count information of assault with intent to commit murder, MCL 750.83. Petitioner Bahoda was acquitted after a jury trial of the count of assault with intent to commit murder, but was convicted on April 11, 2013 of assault with intent to commit great bodily harm less than murder, MCL 750.84. He was sentenced on May 21, 2013 to a term of 3 to 15 years in prison. (ST 14). This case arises from an altercation between some young men and Mr. Bahoda at a hookah lounge called Sweet Jane's in Shelby Township.

On December 4, 2013, Petitioner's first appellate counsel, Ms. Jessica Zimbelman of SADO had moved for a new trial and an evidentiary heairng, claiming Mr. Bahoda had received ineffective assistance of trial counsel for failing to request an instruction on self-defense. See Appendix E. ¶¶ 1-17. Petitioner Bahoda subsequently filed a pro per motion to amend his motion for new trial incorporating additional constitutional issues: (a) misadvising him of the laws and rules applicable to his case; (b) failure to file motions on his behalf; (c) failure to make a mandatory disclosure of a conflict of interest between him, attorney Brian Legghio, Natalie Allie, and Steve Kaplan, (Bahoda's trial attorney); (d) failure to move for disqualification of witness Natalie Allie, and her attorney Brain Legghio due to Legghio's conflict of interest; (e) waiving an pre-trial evidentiary hearing that was requested by Bahoda in his pro per motion; (f) attorney Kaplan presented a mens rea defense although his actual defense in reality was self-defense, because of the non-disclosure of the conflict of interest. See Appendix F. ¶¶ 1-20

The prosecutor had not filed a response to SADO's 2013 Motion for New Trial and request for a Ginther Hearing, and instead informed Bahoda's appellate counsel

(at that time, Jessica Zimbelman of SADO) that **it would stipulate to a Ginther hearing** to develop a factual basis for a claim of ineffective assistance of counsel at trial, a necessary predicate to the trial, and appellate court's ability to reach the merits of the underlining claims.

This case remained on post conviction status for two years, for reasons not attributable to Petitioner. For example, Petitioner has had a succession of MAACS attorneys appointed to represent him, but at least 5 simply declined appointment. But at all times since this appeal has been pending, all parties have always assumed that an evidentiary hearing would be held to address Petitioner's claims of ineffective assistance of pre-trial and trial counsel, conflict of interest pertaining to attorney Brian Legghio, and non-record issues pertaining to the grant of immunity (quid pro quo promise) to a prosecutions witness.

In various correspondence between the Court of Appeals and Petitioner's counsel, the parties agreed that an evidentiary hearing would be held, See Appendix G. ¶1-1, letter to and from the Court of Appeals and Petitioner's counsel referencing the scheduling of the evidentiary heairng.

Thus, as mid-2015 approched, Petitioner's motions for new trial and Ginther hearing had still not been ruled on by the trial court. Petitioner's last appointed attorney was Daniel Rust. On June 30, 2015, Mr. Rust had rescheduled the Ginther Hearing to be held before the trial court. He had informed MAACS administrator Bradley Hall that he intended to treat the June 30, 2015 hearing as a status conference. And just prior to entering the courtroom on June 30, 2015, Mr. Rust told Petitioner that he intended to have the Ginther hearing scheduled for sometime during the next 3 weeks.

However, Rust adandoned the Ginther hearing and asked that the trial court simply rule on the motions for new trial on thebasis of the papers in front of the court-with no testimony taken!

The court of appeal's erroneously determined that "the parties ultimately agreed to have the trial court determine whether a hearing was necessary to resolve the issues raised in the motions and the trial court determined that they lacked merit, and tacitly concluded that a Ginther hearing was not necessary" which is not true. But ultimately denied petitioner's moiton for new trial as a result of an incomplete record.

Federal Habeas Corpus Proceedings

On October 26, 2017 Bahoda filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of Michigan asserting, inter alis, that he received ineffective assistance of trial counsel for failing to request self-defense instructions, and failure to make a mandatory disclosure that a prosecution witness's attorney had an actual conflict of interest, he received ineffective assistance of pre-trial counsel when attorney Rober Berg submitted forged affidavits to the trial court in support of a pretrial motion without investigating them, he received ineffective assistance of appellate counsel when counsel abandoned an evidentiary hearing on Bahoda's motion for new trial, and his sentence was based on impermissible fact-finding

The District Court rulings

On February 27, 2019, the Federal District Court (1) denied Mr. Bahoda's petition for a writ of habeas corpus; (2) denied a certificate of appealability; and (3) granted leave to proceed in forma pauperis.

The Sixth Circuit Court of Appeals rulings

On June 17, 2019, the Sixth Circuit Court of Appeals denied the certificate of appealability. On August 6, 2019, the Sixth Circuit Court of Appeal denied panel rehearing. On August 21, 2019, the Sixth Circuit Court of Appeals denied Rehearing En Banc.

The Court of Appeals rulings

On February 1, 2016, the Michigan Court of Appeals denied the Motion to Remand. On June 14, 2016, The Court denied relief on all claims. People v Bahoda, unpublished opinion per curiam of the Michigan Court of Appeals.

The Michigan Supreme Court rulings

Mr. Bahoda filed a timely appeal with the Michigan Supreme Court, raising the same federal constitutional claims made in the Court of Appeals. On April 4, 2017, the Michigan Supreme Court denied leave to appeal without analysis. People v Saad Bahoda, No 154212.

Facts of The case

There is no doubt that on August 27, 2011, Mr. Bahoda got into an altercation with the complainant, Nadeem Edwards, at Sweet jane's hookah lounge in Shelby Township; that Mr. Bahoda drew a utility knife that he used for work at some point during the altercation; and Mr. Edward was cut (TI 123). However, this matter turns on the details of the altercation, and whether Mr. Bahoda was entitled to a self-defense jury instruction.

Trial Proceedings

The theory of the defense was that Mr. Bahoda did not have the requisite intent to be guilty of assault to murder, as there was a "mutual fight" between Mr. Edward and Mr. Bahoda (TI 124-25)

The Defense Witnesses

Mr. Bahoda testified in his own defense about the mutual fight. At the time of the incident, he was an independent contractor for Comerica Bank (T II 150). He arrived at Sahara restaurant after work for his niece's 17 year old birthday party

on the night of the incident (T II 150-151). Mr. Bahoda was sitting in the restaurant when a friend of his nephew, Dylan Elias, came into the restaurant and said "Uncle Saad, Dylan needs you outside" (T II 152). Mr. Bahoda went outside and asked a crowed of people where his nephew Mr. Elias was, and then went over towards the hookah lounge (Sweet Jane's) across the parking lot (T II 153). People were yelling and told Mr. Bahoda there was a fight (T II 154). He found Mr. Elias by the door of Sweet Jane's engaged in a fight with Mr. Edward, and Mr. Bahoda tried to break it up (T II 154). While he was breaking up the fight, Mr. Bahoda was pulled inside Sweet Jane's by the complainant Mr. Edward (T I 155).

Once inside, Mr. Edward put Mr. Bahoda in a headlock, and Mr. Bahoda managed to push him off (T II 155). Mr. Edward's friends became involved, "coming and grabbing" Mr. Bahoda (T II 155). Mr. Bahoda described this part of the altercation:

> [N]ow I'm trying to get away. Now I've got-I don't know how many guys. At least two guys, at least, I didn't see, you know, anyone else. But I know that his friends are all in there. So I see another guy grabbing on me also. And then I noticed my sister jumping in the middle of it with her purse [(T II 155-156).]

He pushed his sister out of the way (T II 156). Mr. Bahoda saw "them coming at me," and then pulled a "small, three-inch utility knife" he used for work out of his pocket (T II 156-157). The fight subsided after he pulled out the knife (T II 157). Mr. Bahoda put the knife in his pocket and was walking towards the door to leave (T II 158-159). He saw Mr. Edward, along with two of his friends, when he opened the door (T II 159). One of Mr. Edward's friends "was a lot taller guy, you know, with a heard and long hair" (T II 159). Mr. Edward said, "what's up now, motherfucker?" and lunged at Mr. Bahoda (T II 159). Mr. Bahoda punched him and reached for his knife in self-defense (T II 159-160). Mr. Bahoda testified there were ' three guys in front on me and I'm trying to keep them at

bay because they're not letting me leave" (T II 160). Mr. Bahoda saw the taller friend move, and then Mr. Edward lunged at him (T II 160). Mr. Bahoda was moving his arm around, with the pocket knife in hand, to keep them back (T II 160). When Mr. Edward lunged, Mr. Bahoda made a striking motion and the pocket knife made contact with Mr. Edward, near his face (T II 161). Mr. Bahoda heard people yelling "get that Mfer, get that Mfer" (T II 161).

Mr. Bahoda ran away and got into a vehicle with his sister (T II 161). Mr. Bahoda then met up with Ms. Allie, who took him home (T II 162). Mr. Bahoda specifically stated that his intention in pulling the utility knife was "[t]o stop the attack against my sister and myself" (T II 163). Mr. Bahoda, panicked, disposed of the knife (T II 163). He was "afraid for [his] nephew and [his] sister" (T II 169).

The Prosecution's Witnesses

The complainant, Mr. Edward, testified about the earlier altercation between himself and Mr. Elias regarding Mr. Elias's hat (T I 174-178). Mr. Elias left after the altercation, but returned to Sweet Jane's about five minutes later (T I 179). Mr. Edward was inside by the door, Mr. Elias approached him and tried to "[p]unch [him] in the face," and Mr. Edward tried to hit Mr. Elias (T I 180-183).

During this exchange, Mr. Bahoda was between the two men (T I 183-184). Mr. Edward testified further: "He [Mr. Bahoda] was swearing at me. It was like you're fucking with my family. And then he was coming at me. He was trying to hit me and everything. But I caught him in a lock and then after I let him go, he pulled out a knife and was trying to stab me" (T I 185).

Mr. Edward testified that Mr. Bahoda tried to tackle him, so he put Mr. Bahoda in a headlock, and then Mr. Bahoda "pulled out a knife" (T I 185). Mr. Edward then grabbed Mr. Bahoda's wrist (T I 186). Mr. Edward testified that they

"kept fighting and everything," and then Mr. Bahoda's sister became involved and Mr. Bahoda pushed her out of the way (T I 186-187). The fight between Mr. Bahoda and Mr. Edward moved outside (T I 187). Mr. Bahoda was hitting Mr. Edward and Mr. Edward was holding Mr. Bahoda's wrist (T I 187). Mr. Bahoda broke away from Mr. Edward's grasp and Mr. Bahoda made contact with Mr. Edward's neck with the pocket knife (T I 188). Mr. Edward did not realize that he had been cut (T I 189). On cross-examination, Mr. Edward testified he was "grabbing his [Mr. Bahoda's] wrist the whole time" (T I 198), and that he never called out to anyone to call the police or ask for help (T I 198).

David Sulamman, Ms. Packard's boyfriend, also testified as a prosecution eyewitness. He said that Mr. Edward and Mr. Elias "got into it" (T II 50). Mr. Elias left, and a woman came to Sweet Jane's as did "[t]he uncle" (T II 50-52). Mr. Sulamaan did not see the uncle in the courtroom during trial (T II 52). The uncle and Mr. Edward were "pushing each other" inside and outside of Sweet Jane's (T II 53). He did not see Mr. Edward get stabbed (T II 53). Ms. Packard wrote Mr. Sulammaan's statement to the police (T II 62).

Haitham Kenaya also testified as an eyewitness. He saw Mr. Bahoda and Mr. Edward "fighting" and saw Mr. Bahoda slash Mr. Edward (T I 153-169)

Closing Arguments

In the prosecutor's closing argument, he summarized Mr. Bahoda's testimony, and stated that Mr. Bahoda "tried ... to portray it that his family was in danger. He had to run over there and rescue his sister Kim, right? Isn't that the way he described it? He tried to mitigate his actions as to why he was doing it" (T II 187). **Trial counsel also acknowledged that Mr. Bahoda reacted. He was there to help his nephew" (T II 203).**

REASON FOR GRANTING THE WRIT

I. **Petitioner was denied his Sixth Amendment Right to the effective assistance of counsel at trial due to counsel's failure to request a self-defense instruction although the evidence supported it and was available under Michigan law.**

Petitioner diligently attempted to develop the factual basis of this claim. His timely motion for New Trial and Reconsideration were denied by the Trial Court, and his timely motion to remand was denied by the Michigan Court of Appeals. Mr. Bahoda requested an evidentiary (Ginther) hearing to develop the record for his claim of ineffectiveness of counsel. The ineffectiveness of counsel, if proven, would entitle petitioner to a new trial. See Appendix H. Motion for Remand 1-4.

In this case Petitioner was denied effective assistance of counsel at trial because trial counsel failed to request a self-defense instruction although the evidence supported it, and was always available under Michigan's common-law affirmative defense of self-defense, and under the self-defense act (SDA) codified in 2006 pursuant to MCL 780.971. The state court's application of federal law to the facts of this case was **in error.** Because the Moiton for New Trial, Motion for reconsideration, and Motion to Remand were all denied, so the Michigan Court of Appelas relied on the existing record when it determined that Mr. Bahoda's represntation was not ineffective.

The Constitutional right to counsel entitles a criminal defendant to the effective assistance of counsel. U.S. Const. Am. VI; Powell v Alabama 287 U.S. 45 (1932). The United States Supreme Court's standard for reviewing ineffective assistance claims is set forth in Strickland v Washington, 466 U.S. 668 (1984). The Strickland standard for judging ineffective assistance of counsel has two components: performance and prejudice. The Strickland Court held that there was

no more specific standard of performance than whether counsel's assistance was "deficient, failing below an objective standard of reasonableness." Id. The second component of an ineffective assistance of counsel claim is prejudice.

Petitioner's motions for new trial have a lengthy and tortuous history, given that Mr. Bahoda was appointed a number of appellate attorneys after State Appellate Defenders Office (SADO) withdrew, many of whom simply declined to accept the appointment, and only 2 of whom withdrew due to disagreements with Mr. Bahoda as to how to proceed. Thus, an actual ruling on the motions filed in December 16, 2013 by SADO was not made until August 2015, nearly two years after it had been filed.

Retired visiting Judge Thomas Brookover presided over Bahoda's trial after Judge Viviano was appointed to the Michigan Supreme Court. It was newly appointed Judge Faunce who heard the motions for new trial on December 16, 2013 and took them under advisment. An evidentiary (Ginther) hearing was scheduled to be heard on March 5, 2014. See Appendix I. ¶¶ 1-9, Hearing Tr. of March 5, 2014, prosecutor Fedorak conceded that a Ginther hearing had been scheduled and having made arrangements with attorney Kaplan. However, March 5, 2014 passed without the hearing being held, SADO withdrew from representing Mr. Bahoda, and the long series of MAACS appointed counsel began. Thus, the Motion for New Trial (and Pro Per Motion) were not actually ruled on until August 11, 2015. By this time, the Hon. Thomas Brookover was replaced by Jennifer Faunce. On August 11, 2015, Judge Faunce denied the motions for new trial (both SADO's and Petitioner's Pro Per motion) and on October 1, 2015, the court denied reconsideration.

In the Motion for New Trial, appellate counsel argued that trial counsel was ineffective in failing to request an instruction on self-defense. In its August 11, 2015 and October 1, 2015 Opinions, (Attached as Appendix J. ¶¶ 1-5, and K. ¶¶ 1-3), the trial court rejected this contention, saying there was no basis for such an instruction.

"[T]he evidence established that the initial altercation between the victim and defendant's nephew had ended and the parties had gone their separate ways leaving no more danger to any party. Defendant started a new fight between himself and the victim; defendant was the aggressor, and he fled the scene after he stabbed the victim and disposed of the weapon somewhere in Oakland County. Further, the evidence indicates that defendant's testimony was in contravention to other witness terstimony prior to his own, including those testifying on his behalf. A defense of self-defense would have been disingenuous given the fact that at the time of the infliction of injury, defendant was the aggressor."

A. **There was support for the defense of self-defense. the trial court misread the facts and both the Federal District Court and the Sixth Circuit Court of Appeals agreed.**

There was substantial support for a defense of self-defense, and for an instruction of self-defense. According to Haitham Kenaya, there was an initial confrontation between Nadeem Edward and Dylan Elias in the parking lot of Sweet Jane's Hookah lounge involving a hat being "flicked" off someone's head. Then Kenaya witnessed a second confrontation between Nadeem Edward and Mr. Bahoda "outside when he got stabbed, like by the door." (Tr I. 150). (Also see Tr I, 152, the confrontation occurred "by the door.")

Rachel Packard said that she saw fighting between Mr. Bahoda and Nadeem inside Sweet Jane's by the bathroom. (Tr. II, 20). She saw Saad with a knife when they were at the bathroom. (Tr. II, 22). People began yelling that the police were coming and the fight continued towards the door. (Tr. II, 25). Nadeem Edward said that the incident whith Dylan involved pushing. He said Dylan came back inside the cafe and tried to hit him (Nadeem). (Tr. I, 179-180). a fistfight ensued between Nadeem and Dylan. (Tr. I, 182-183). Mr. Bahoda then came between Nadeem and Dylan. (Tr. I, 185). Nadeem then admitted that he

"caught [Petitioner] in a [head]lock and then after i let him go, he pulled out a knife and was trying to stab me." (Tr. I, 185). Nadeem said that the fight continued as they got outside. Nadeem admitted that he was outside with a couple of his friends when the injury occurred. (Tr. I, 189-190). Nadeem testified that as he continued to hold Mr. Bahoda by the wrist and "all of the sudden we got outside." (Tr. I, 202). At that time, Nadeem was slashed.

According to Nadeem, the fight between Mr. Bahoda and himself was continuous, and occurred the whole time -- there was not one fight inside, and then a second fight outside, but only one fight that "lasted the whole time." (Tr. I, 204-205). If the prosecution's complaining witness, Nadeem Edward's testimony is credited, the fight had not ended, as the trial court said, nor had the parties "gone their separate ways." Opinion, ¶4.

Mr. Bahoda's testimony also supported the defense of self-defense. Mr. Bahoda said that when he arrived at Sweet Jane's, Dylan and Nadeem were still fighting, and he broke it up. (Tr. II, 154). He said that Nadeem pulled him inside the Hookah lounge and put him in a headlock. (Tr. II, 155). Nadeem's own testimony confirms the "headlock." As the fight (now between Mr. Bahoda and Nadeem) continued back towards the cash register, two (or more) of Nadeem's frinds got involved and "were coming and grabbing me, also." (Tr. II, 155). He reached into his pocket and pulled out his pocket knife when he "still seen then coming at [him]." (Tr. II, 156). Things "calmed down" and Nadeem's friends left. (Tr. II, 157). Mr. Bahoda saw people leaving and put his knife back into his pocket and was walking out, but once he got to the door, he was confronted by Nadeem and two other men (Tr. II, 159-160, 175). At this time, he was beset by Nadeem and his friends. "I seen Nadeem lunging at me. And when I seen Nadeem lunging at me, I made a striking motion." (Tr. II, 161).

Finally, all of the witnesses said that Mr. Bahoda's motions with the knife were horizontal, side to side, fully consitant with his testimony that he was simply trying to keep people at bay." (Tr. II, 163). See, e.g. Tr. I, 165, 168 - Kenaya: "Yes, like a slash"; Tr. I, 186, Prosecutor Fedorak described Nadeem Edward's motion, "[T]he witness with his right arm was lunging at his waist level in a round-house motion towards my abdomen on the left-hand side." tr. I, 188 - Prosecutor Fedorak again described the motion as a slashing motion. Tr. I, 197, Nadeem Edward: "A stab, a slash, the same thing ... It's a slash. I told you it's the same thing." Tr. II, 39 - Rachel Packard - agrees it was a slash.

Given this testimony, both conflicting and harmonious, that there was a fight that began inside and continued outside, that Mr. Bahoda moved his hand in a slashing (not stabbing) motion, given Nadeem Edward's testimony that he was beset by Edward's and two of his friends when they were outside, Mr. Bahoda was entitled to an instruction on self-defense. Ther trial court's conclusion that Mr. Bahoda was the aggressor after the fight had ended, and that he re-started it, is simply in contravention of the bulk of the witness testimony.

The Due Process Clause requires the trial court to instruct the jury on every essential element of the charged offense. US Const, Am XIV; Berrier v Egeler, 583 F2d 515 (CA 6, 1978), cert den 439 US 955; 99 S. Ct. 354; 58 L Ed 347 (1978). A defendant also has a due process right to present a recognized defense to a criminal charge. See generally, Holmes v South Carolina, 547 US 319; 126 S. Ct. 1727; 164 L Ed 2d 503 (2006). People v Reed stated: "[t]he instruction to the jury must include all elements of the crime charged ... and must not exclude from the jury consideration material issues, defenses or theories if there is evidence to support them." 393 Mich 342, 349-350; 224 NW2d 867 (1975) (internal citation omitted).

"A criminal defendant is entitled to have a properly instructed jury consider the evidence against him," People v Armstrong, 305 Mich app 230, 239; 851 NW2d 856 (2014), including material issues and defenses. Id. at 240. A successful claim of self-defense "requires a finding that the defendant acted intentionally, but that the circumstances justified [her] actions." People v Dupree, 486 Mich 693, 707; 788 NW2d 399 (2010).

Although it is true that "[a]n act committed in self-defense but with excessive force...does not meet the elements of lawful self-defense," People v Heflin, 434 Mich 482, 509; 456 NW2d 10 (1990), it becomes a jury question whether, in this case, Mr. Bahoda's use of a pocket knife in a slashing motion "to keep people at bay" was justified if: (1) he honestly and reasonably believed that he was in danger (being beset by three young men at once), (2) the danger which the defendant feared was serious bodily harm or death (being beat up by three men), and (3) the action taken by the defendant appeared at the time to be immediately necessary, i.e. the defendant is only entitled to use the amount of force necessary to defend himself (using a pocket knife in a slashing motion to keep people at bay). The question of credibility of Mr. Bahoda's testimony was for the jury to decide, People v Kanaan, 278 Mich App 594, 619 (2008), and the lower Court wrongly usurped the jury's role by claiming that he was "the aggressor' in a new fight.

B. The Self-Defense Act and Michigan Supreme Court Precedent Entitled Mr. Bahoda to a Self-Defense Jury Instruction

The Self-defense Act of 2006 made substantial changes to the right to self-defense, specifically by altering the duty to retreat. It provides:

> (1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if either of the following applies:

(a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent bodily harm to himself or herself or to another individual.

(b) The individual honestly and reasonably believes that the use of deadly force in necessary to prevent the imminent sexual assault of himself or herself or another individual.

The Act describes the circumstances in which a defendant is justified in using deadly force in self-defense or in defense of another person without having the duty to retreat. MCL 780.971 et seq. Under the statute, a person may use deadly force if he "honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent bodily harm to himself or herself or to another individual. "MCL 780.972. Petitioner contended below that he was justified in possessing and using a pocket knife because he "honestly and reasonably believe[d] that the use of deadly force [was] necessary to prevent the imminent death of or the imminent bodily harm" to himself. MCL 780.972.

In People v Dupree, 486 Mich 693, 709-10; 788 NW2d 399 (2010), this Court held that self-defense was available to those charged with felon in possession of a firearm and restated that once the issue of self-defense had been raised, the prosecution was required to disprove it beyond a reasonable doubt. Importantly, the court noted that "[w]ith the enactment of the Self-Defense Act...the Legislature codified the circumstances in which a person may use deadly force in slef-defense or in defense of another person without having the duty to retreat." Id. at 780.

The Court of Appeals committed plain error when it ruled that Mr. Bahdoa was not entitled to claim self-defense at all. First, the Court said he could not have claimed self-defense under the common-law because he could have

retreated back into the lounge. The Court then erroneously ruled that Mr. Bahoda was not entitled to a self-defense jury instruction under the SDA. Petitioner contends that the Self-Defense Act, and not the traditional common-law doctrine of self-defense, governs here because the incident that gave rise to this case occurred on August 27, 2011, well after the self-defense act became effective on October 1, 2006. See Appendix L. ¶¶ 1-9 also attached Michigan Supreme Court Order denying leave to appeal

On February 27, 2019, the Federal District Court issued a written opinion stating: "the state court rejected Bahoda's self-defense claim on the basis that the evidence indicated that Bahoda was the initial aggressor, and therefore, was not entitled to claim self-defense on that basis." (People v Dupree, 486 Mich 693, 788 NW2d 399 (2010) (a person who acts as the initial aggressor does not act in justifiable self-defense). The Federal District Court rejected the Court of Appeals conclusion, but denied Mr. Bahoda's Petition of Writ of Habeas Corpus on a different basis, See Appendix B. ¶. 3:

> "...Bahoda correctly notes that while the prosecutor's witnesses testified that Bahoda was the aggressor during the altercation, Bahoda's own testimony indicates that Edward and his two friends confronted him when he exited the hookah lounge, 'thus, creating a question of fact for a jury as to whether Bahoda was the initial aggressor. Nevertheless, while it may be true that the trial court erroneously determined that the trial record conclusively showed that Bahoda was the initial aggressor, the, Michigan Court of Appeals relied on a different basis for rejecting Bahoda's ineffective-assistance of counsel claim on direct appeal.

Mr. Bahoda's ineffective-assistance of counsel claim now rest entirely on the misapprehension of fact that Mr. Bahoda was not entitled to claim self-defense because he was engaged in the commission of a crime, i.e. carrying a concealed weapon, and thus, his trial counsel, attorney Kaplan, was not ineffective in failing to request a self-defense instruction, citing People v Townsel, 13 Mich App 600; 164 NW2d 776 (1968). This issue will be fully discussed below, also in issue II.

In People v Vaines, 310 Mich. 500, 17 NW2d 729 (1945), this Court explained that "pocket knives, razors, hammers, hatchets, wrenches, cutting tools, and other articles which are manufactured and generally used for peaceful and proper purposes, would fall within the category of dangerous weapon if used for or carried for purpose of assaulting or defense. Whether or not such articles are dangerous weapons, within the meaning of that term as used in section 227, would depend upon the use which the carrier made of them." "The burden is on the prosecution to prove that the instrument was used, or intended for use, as a weapon for bodily assault or defense." People v Brown, 406 Mich 215, 222, 277 NW2d 155, 158 (1979). In this case, Mr. Bahoda testified without dispute, that he carried the pocket knife for work (to cut zip-teis), an innocent purpose. He was not "carrying a concealed weapon" simply by vertue of having a pocket knife in his pocket so long as his intent was innocent.

The whole point of Vines and Brown is that whether something is prohibited under MCL 750.227a as a "weapon" depends on the intent with which it is carried and used. Mr. Bahoda claimed-without dispute-that the purpose of him having a knife on his person was work-relate. That he managed to utilized a work-related knife in self-defense does not imply that he is "engaged in the commission of a crime," Importantly, the cases relied upon by the Court of Appeals, Federal District Court, and the Sixth Circuit Court of Appeals on this point are inapt and misplaced because **(1) Mr. Bahoda was never charged or convicted of CCW under MCL 750.227(1), and the Prosecutor never claimed that he was illegally carrying a weapon specifically identified in the statute; (2) In a well reasoned and thorough opinion, issued is 2016. The Michigan Supreme Court determined that the Court of Appeals reliance on People v Townsel was misplaced.**

See Appendix M. ¶¶ 4-5

People v Triplett, 499 Mich 52; 878 NW2d 811; (2016)) Stated:

"...we have not explicitly addressed whether as individual charged with CCW can assert the common-law affirmative defense of self-defense to justify his or her carrying of an instrument that becomes a dangerous weapon when he or she uses it as such. And MCL 750.227 does not address whether the common-law affirmative defense of self-defense is available for the crime of CCW. But the absence of a clear statutory recognition of the defense does not necessarily bar a defendant from relying on the defense to justify his violation of the statute. See Dupree, 486 Mich at 705. **To the contrary, in Dupree we clearly held that self-defense was an available affirmative defense to a felon-in-possession charge under MCL 750.227f when the felon's temporary possession of a firearm was the result of an attempt to repel an imminent threat.** Id. at 706. We did not read that statute's silence as to self-defense to indicate a legislative intent to make the defense unavailable; rather, we concluded that "[a]bsent some clear indication" in the statute that the Legislature abrogated the firmly embedded common-law affirmative defense of self-defense the defense remains available to a defendant "if supported by sufficient evidence." Id. at 706.

In this case, there is no "clear indication" that the Legislature abrogated or modified the common-law affirmative defense of self-defense in the CCW statute, such that defendant would be precluded from asserting it to justify his action. Thus, we conclude that the defendant should have been allowed to present self-defense as an affirmative defense to his CCW charge. The actions that resulted in the defendant's violation of the CCW statute were the same as those that resulted in his charge of assault which he explained were justified because he acted in lawful self-defense. Unless the prosecution disproved beyond a reasonable doubt his claim of self-defense, the defendant was justified in violating the CCW statute as well as the assault statute.

"...more importantly, the Court of Appeals' reliance on People v Townsel, 13 Mich App 600; 164 NW2d 776 (1968), which held that carrying a concealed weapon for "self-defense" is not a defense to a CCW charge, was misplaced. Townsel is distinguishable because it does not appear that it involved a claim of self-defense. See Appendix M. ¶ 5 footnote 4).

Likewise, this was a question for a jury to decide whether Mr. Bahoda was engaged in illegal activity by vertue of having a utility knife on his person, or rather whether he was entitled to claim self-defense by virtue of an innocent reason for having the knife.

II. **The Court of Appeals committed plain error, contrary to Bunkley v Florida 538, US 835, 123 S. Ct 2020 (2002), because it denied Petitioner the benefit of People v Triplett, 499, Mich 52, 878; NW2d 811 (2016) which clarified the affirmative defense of self-defense to the crime of the CCW, while his case was on direct appeal.**

In 2016, while petitioner's right to appeal was pending in the Court of Appeals. **The Michigan Supreme Court clarified the affirmative defense of self-defense to the crime of CCW.** People v Triplett, 499 Mich 52, 878 NW2d 811 (2016). Petitioner contends that he was entitled to the benefit of that decision, given that his case was on direct review. Triplett is exactly on point, as it involves an accused lawfully carrying a utility knife, and using it in self-defense. The Court of Appeals acknowledged Triplett in Bahoda's case only in Footnote 4, but did not recognize that Triplett fully applies to Mr. Bahoda's case.

The United States Supreme Court case law supports the conclusion that Mr. Bahoda (Petitioner) was entitled to the benefit of the clarification in the law (CCW statute) before his decision became final. Bunkley v Florida, 538 U.S. 835, 123 S. Ct. 2020, 155 L. Ed 2d 1046 (2003). also See Fernandex v Smith 558 F. Supp 2d 480 (2008).

> Bunkley states: HN 4...Fiore v White involved a Pennsylvanian criminal statute that the Pennsylvania Supreme Court interpreted for the first time after the defendant Fiore's conviction became final. See 531 US, at 226, 148 L Ed 2d 629, 121 S Ct 712. Under The Pennsylvania Supreme Court's interpretation of the criminal statute, Fiore could not have been guilty of the crime for which he was convicted. see Id. at 227-228, 148 L Ed 2d 629, 121 S Ct 712. We originally granted certiorari in Fiore to consider "when, or whether, the Federal Due Process Clause requires a State to apply a new interpretation of a state criminal statute retroactively to cases on collateral review." Id. at 226, 148 L Ed 2d 629, 121 S Ct 712. "Because we were uncertain whether the Pennsylvania Supreme Court's decision...represented a change in the law," we certified a question to the Pennsylvania Supreme Court. Id. at 228, 148 L Ed 2d 629, 121 S Ct 712. This question asked whether the Pennsylvania Supreme Court's interpretation of the statute "'stated the correct interpretation of the law of Pennsylvania at the date Fiore's conviction became final.'"Ibid

When the Pennsylvania Supreme Court replied that the ruling "'merely clarified the plain language of the statute,'"ibid., the question on which we originally granted certiorari disappeared. Pennsylvania's answer revealed the "simple, inevitable conclusion" that Fiore's conviction violated due process. Id., at 229, 148 L Ed 2d 629, 121 S Ct 712. It has long been established by this Court that "the Due Process Clause... forbids a State to convict a person of a crime without proving the elements of that crime beyond a reasonable doubt." Id., at 228-229, 148 L Ed 2d 629, 121 S Ct 712.. Because Pennsylvania law--as interpreted by the later Supreme Court decision--made clear that Fiore's conduct did not violate an element of the statute, his conviction did not satisfy the strictures of the Due Process Clause. Consequently, "retroactivity [was] not at issue." Id., at 226, 148 L Ed 2d 629, 121 S Ct 712.

Fernandez v. Smith, 558 f. Supp. 2d 480

...The United States Supreme Court granted certiorari and remanded the case for a determination of the state of law on the date Bunkley's conviction became final. Id. at 842. The Court noted that the Florida Supreme Court had not clarified where in the "century-long evolutionary process" the law was when Bunkley's conviction became final in 1989. at 841-42. The Court held that if the law set forth in the L.B. decision in 1997 was the same as the law in effect when Bunkley's conviction became final in 1989, then Bunkely was entitled to the benefit of that law.

On June 17, 2019, the Sixth Circuit Court of Appeals Judge issued an Order, although, agreed with the Federal District Court, that the State Court's erroneously determined that the trial record conclusively showed that Mr. Bahoda was the initial aggressor, this was a question of fact for a jury to decide. The single Judge denied Petitioner's certificate of appealability concluding that

(1) Mr. Bahoda did not have a legally viable claim of self-defense since he was committing a crime by carrying a concealed weapon and acting in self-defense was not a defense to carrying a concealed weapon. Bahoda, 2016 WL 3267081, at *4. Although the Michigan Supreme Court held in People v Triplett (citation omitted), that a defendant can assert self-defense to the charge of carrying a concealed weapon, at the time of Bahoda's trial, acting in self-defense was not a defense to carrying a concealed weapon. Citing People v Townsel, 164 NW2d 776, 777 (Mich Ct. App 1968) (per curiam).

(2) Because Bahoda did not have a legally viable claim of self-defense on the date of his trial and because counsel does not have an obligation to predict developments in new law, counsel's failure to request a self-defense instruction was not unreasonable. see Snider v United States. 908 F.3d 183, 192 (6th Cir 2018) cert. denied, 139 S Ct 1573 (2019) (mem).

(3) Additionally, to the extent that Bahoda asserts that he was entitled to the self-defense instruction because he was never charged or convicted of carrying a concealed weapon, he has failed to offer any evidence rebutting the state court's determination that he had a concealed pocketknife, which he used as a dangerous weapon. See 28 U.S.C. § 2254(e)(1). Also see Appendix A. ¶ 3. Sixth Circuit Court of Appeals Order

Petitioner contends that the State Court's, Federal District Court's, and Sixth Circuit Court of Appeals' basis for this conclusion is fatally flawed for the following reasons:

(1) "...the Court of Appeals reliance on People v Townsel (citation omitted), which held that carrying a concealed weapon for self-defense in not a defense to a CCW charge was misplaced. Townsel is distinguishable because it does not appear that it involved a claim of self-defense. See App. M. ¶.5. & FN. 4.

(2) "...Since the Legislature never abrogated or modified the common-law affirmative defense of self-defense in carrying a concealed weapon statute when the Self-Defense Act codified the circumstances in which a person may use deadly force in self-defense without having the duty to retreat. Mr. Bahoda's counsel "Did Not" have to predict any new developments in the law. The affirmative defense of Self-defense to a charge of CCW was [A]lways available as a defense. Therefore, Mr. Bahoda's trial counsel's failure to request a self-defense instruction was not only unreasonable it fell below the Strickland standard. See App. M. ¶. 5.

United States v Morris, 917 F3d 818, states: ...In applying Strickland's performance prong, our "scrutiny of counsel's performance [is] highly deferential," Strickland, 466 U.S. at 689, and we start with "a strong presumption that counsel's representation was within the wide range of reasonable professional assistance," Harrington v Richter, 562 U.S. 86, 104, 131 S Ct 770, 178 L Ed. 2d 624 (2011) (internal quotation marks omitted). To avoid the distorting effects of hindsight, claims under Strickland's performance prong are "evaluated in light of the available authority at the time of counsel's allegedly deficient performance." Carthorne, 878 F3d at 466. A lawyer does not perform deficiently by failing to raise novel arguments that are unsupported by then-existing precedent. See United States v Mason, 774 F3d 824, 830 (4th Cir. 2014) ("We have consistently made clear that we do not penalize attorneys for failing to bring novel or long-shot contentions." Nor does counsel fall below Strickland's standard of reasonableness by failing to anticipate changes in the law, or to argue for extension of precedent. See, e.g. United States v Dyess, 730 f3d 354, 363 (4th Cir. 2013); Honeycutt v Mahoney, 698 F2d 213, 217 (4th Cir 1983).

At the same time, however, as we clarified in United States v Carthorne, counsel sometimes will be required to make arguments "even in the absence of decisive precedent." 878 F3d at 465-66 (distinguishing Strickland standard from "plain error" standard". Even where the law is unsettled, that is, counsel must raise a material objection or argument if "there is relevant authority strongly suggesting" that it is warranted. Id. at 466; see also id at 469 (describing obligation of counsel to object to

sentencing enhancement where then-existing precedent provides a "strong basis" for the objection). While defense attorneys need not predict every new development in the law, "they are obligated to make arguments that are sufficiently foreshadowed in existing case law." Shaw v Wilson, 721 F3d 908, 916-17 (7th Cir 2013; see also Snider v United States, 908 F3d 183, 192 (6th Cir 2018) ("We have repeatedly held that counsel is not ineffective for failing to predict developments in the law, unless they were clearly foreshadowed by existing decisions.").

(3) In criminal cases, the burden of proof is on the government to establish each and every element of the crime charged beyond a reasonable doubt, United States v Gaudin, 515 U.S. 506 (1995); Jackson v virginia, 443 U.S. 307, 329 (1979); In re Winship. 397 U.S. 358 364 (1970); Davis v United States, 160 U.S. 469 (1895); United States, Clark, 740 F3d 808 (2d cir 2014). Likewise, the State cannot convict a defendant for criminal conduct that its "Statute, as properly interpreted does not prohibit." Fiore v White, 538 U.S. 835 (2003). The burden never shifts to the defendant. The defendant maintains his presumption of innocence throughout the trial. Wilbur v Mullaney, 496 F3d 1303, 1307 (1st cir 1974), affd 421 U.S. 684 (1975).

III. Whether Petitioner denied effective assistance of pre-trial counsel when counsel submitted forged affidavits to the trial court in support of his pretrial motion without investigating them?

Mr. Bahoda's first trial level attorney, Rober Berg, had filed a motion for a corporeal lineup. In support of this motion, attorney Berg presented two affidavits ostensibly signed by David Salamaan and Yousif Damman. These affidavits had been obtained by Mr. Bahoda's then girlfriend, Natalie Allie, and represented that Salamaan and Damman had been present at the fight at Sweet Jane's and that Mr. Bahoda did not meet the description of the person who allegedly stabbed Nadeem Edward. They were submitted to Judge Viviano's court by attorney Berg at the hearing held on December 9, 2011 respecting Berg's Motion for the Court to Order a Lineup. Appendix N. Motion for lineup ¶¶ 1-7. It soon was discovered that these affidavits were forged, and the prosecutor contended that Mr. Bahoda was involved in soliciting / procuring these forged affidavits. Mr. Bahoda adamantly denied knowing anything about the Affidavits. A polygraph showed that Mr. Bahoda was being truthful in denying and knowledge of these affidavits or attempts to intimidate witnesses. (See Appendix N. ¶¶ 1-3) The

reason these Affidavits are significant is that the prosecutor suspected that Mr. Bahoda was engaged in witness tampering, and threatened to utilize this information at trial. Which explains the prosecutors decision to grant Natalie Allie a quid pro quo promise to avoid prosecution in return for her testimony against Mr. Bahoda. (See Issue IV).

The truth is that Mr. Bahoda had nothing whatsoever to do with the drafting of these affidavits, and had no knowledge of them. However, the damage had been done to his defense. Attorney Berg, without having done the least investigation into these "affidavits" had presented them to the court and vouched for their authenticity. When the fraud was invariably revealed, Mr. Bahoda was investigated for witness tampering and obstruction. These fraudulent affidavits led the prosection to threaten charges of witness tampering and obstruction, and finally, led the prosecution to offer a quid pro quo promise to Natalie Allie in exchange for her testimony against Mr. Bahoda, which forced attorney Kaplan to raise only an "intent" defense, dictated by the prosecution.

Mr. Bahoda filed a pro per motion for an evidentiary hearing while he was in the county jail as to the allegations of witness tampering to address the issues raised by the forged affidavits. (See April 9, 2013 Trial Tr. ¶ 95 as App. Mr. Bahoda's request for an evidentiary hearing). A motion in limine to exclude any such evidence was argued on March 4, 2013 and the motion was denied so no evidentiary hearing was ever held. Issue will be discussed further below.

The Court of Appeals agreed that "defense counsel can be ineffective if he settles on a defense strategy without any prior investigation of the case," but then concluded that Mr. Bahoda had not shown any prejudice. Petitioner submitted that attorney Berg performed deficiently by failing to investigate these Affidavits before submitting them to the court. He should have spoken to these supposedly promising witnesses. He had a duty to investigate them and to

interview them before presenting their Affidavits to the Court in support of the motion for a lineup. His decision to **recklessly submit** these Affidavits to the trial court cannot be termed strategic, since he had not investigated them or spoken to the individuals who purportedly signed them. Wiggins v Smith, 539 U.S. 510, 527, 123 S Ct. 2527, 156 L. Ed 2d 471 (2003). There is no real question that for an attorney to proffer forged Affidavits to a court of record in a capital felony case is a grossly deficient and incompetent act. Attorneys **must** interview potential witnesses and make an independent examination of facts and circumstances. People v Grant, 470 Mich 477 (2003).

Mr. Bahoda was severely prejudiced by attorney Berg's reckless action. Without speaking with Defendant about his defense or about the affidavits or gaining his approval to submit them to the court, attorney Berg posited a defense of misidentification by filing the motion for a corporal lineup. The real defense, however, was self-defense, which by his rash actions attorney Berg severely compromised. Going forward, this case became completely tainted by the forged affidavits.

The Court of Appeals said that Mr. Bahoda was not prejudiced because "he was able to proceed with his chosen defense at trial." **This statement shows a fundamental misunderstanding by the State Court's as to how the forged affidavits prejudiced Mr. Bahoda.** His entire defense was tainted by the suspicion that he had engaged in witness tampering, which lead attorney Kaplan to limit the defense to one of "intent" due to the prosecution's threat to use the forged affidavits against him. An "intent" defense was most definitely NOT Mr. Bahoda's chosen defense, rather, it was attorney Kaplan's choice because he said that Mr. Bahoda could not raise self-defense because the prosecutor will introduce the obstruction and forged affidavits allegation using Ms. Allie's testimony under a quid pro quo promise.

The Court of Appeals also said, "...while Berg revealed the existence of the affidavits by using them to support his motion for a lineup, defendant do not contend and has not shown that but for Berg's actions, the false affidavits scheme would not have been discovered." This assertion is misplaced because it has always been Mr. Bahoda's contention that **had attorney Berg conducted a reasonable investigation, he would have discovered the falsity of the affidavits before introducing them into his criminal proceeding.** Moreover, the prosecution would never have been in the position to limit the ultimate defense to one of "intent."

Petitioner agrees with the state court's that the record does not show these facts, but that is why a Ginther hearing was and is necessary. **Because the evidentiary hearing that the prosecutor stipulated to was sabotaged by his appellate counsel Daniel Rust, thus, was unable to develop the factual record. See Issue V, below.**

IV. **Whether Petitioner denied effective assistance of trial counsel for failing to make a mandatory disclosure of a prosecution witness's attorney that had an actual conflict of interest?**

This issue involves the interplay between an actual conflict of interest by an attoreny with whom Mr. Bahoda had a confidential attorney-client relationship (Brian Legghio as to Mr. Bahoda) and ineffective assistance of trial counsel, Steven Kaplan. Attorney Legghio certainly "switched sides" by agreeing to represent Natalie Allie in this case, but he did not represent Mr. Bahoda at trial. Attorney Kaplan should have objected to the conflict of interest posed by Legghio's representation of Ms. Allie and by the testimony (obtained through attorney Legghio's agency) she was going to offer **if Mr. Bahoda did not agree with the "Intent" defence. Kaplan should have advised the court of this conflict of interest and asked if Ms. Allie had been promised any sort of quid pro quo promise with respect to the prosecution of Mr. Bahoda.**

1. **Conflict of Interest-attorney Legghio.**

This case presents an instance of an actual conflict of interest by attorney Legghio. Prosecution witness Allie was represented by Brian Legghio after he had consulted with Mr. Bahoda. Which explains the prosecutor's decision to grant Ms. Allie a quid pro quo promise in exchange for her to testify against Mr. Bahoda, and Mr. Bahoda has repeatedly requested an evidentiary hearing to explore the issue of witness tampering and Mr. Legghio's involvement with Ms. Allie. Mr. Bahoda filed a grievance with the Attorney Grievance Commission as to attorney Legghio's conduct. See Appendix O. ¶¶ 1-7, Although the AGC found "no conflict" and declined to impose discipline, it did find that the issue should have been first dealt with at the trial court level. See Appendix P. ¶ 1-1,

Attorney Legghio visited Mr. Bahoda at the Macomb County Jail on November 21, 2012. Mr. Bahoda was advised by attorney Legghio that he had already spoken with APA Jurij Fedorak about his case and the pending investigation of witness tampering and obstruction, and that Kim Attisha (Bahoda's sister), Natalie Allie and others were implicated. Attorney Legghio had been referred to Mr. Bahoda by then Wayne County Assistant Prosecutor Steven Kaplan. Mr. Bahoda had a lengthy conversation with attorney Legghio, discussing, among other things, the specific information about Ms. Allie's role, role in the incident, defense strategies with respect to the "so-called" recorded coded jail phone conversations that Mr. Bahoda was being investigated for.

Legghio was ultimately not retained. Attorney Azhar Sheikh was appointed to represent Mr. Bahoda after he had consulted with attorney Legghio. Mr. Bahoda informed him that due to Berg's egregious acts he was now being investigated for witness tampering and obstruction, even though he Mr. Bahoda, had no role in procuring the forged affidavits, and had passed a polygraph.

Attorney Sheikh informed Mr. Bahoda that the prosecutor had amended its

witness list and added Natalie Allie, the person who allegedly assisted in procuring the forged affidavits. In fact this was confirmed by prosecutor Fedorak at a motion hearing held on March 4, 2013. (See Appendix Q. ¶ 1-8, 3-13-2013 Tr, 3-4; See also Appendix R. ¶ 1-2, Record, March 1, 2013 Amended People's List of Known Witnesses). Thus, it appeared that the issue of witness tampering was in fact going to be raised by the prosecutor. Mr. Sheikh then informed Mr. Bahoda that the prosecutor had granted Ms. Allie immunity, and that attorney Brian Legghio was Ms. Allie's attorney of record, whereupon Mr. Bahoda replied that this was an unethical conflict of interest.

Attorney Shiekh filed a Motion in Limine requesting an evidentiary hearing as to the allegations of witness tampering. See Hearing Tr, March 4, 2013, ¶¶ 3-4. this motion was denied. Petitioner filed his own Motion for an Evidentiary Hearing as to those allegations on March 26, 2013 (apparently not docketed until April 11, 2013. See Register of Action as Appendix S ¶¶ 1-21). **Mr. Fedorak responded that the prosecution had done its own investigation, and that as a result Natalie Allie would be added as a witness. See, Appendix Q., March 4, Tr, 4.**

Attorney Legghio's representation of Ms. Allie had devastating consequences for Mr. Bahoda's defense, even though he was not Mr. Bahoda's actual trial attorney. Recall, Ms. Allie was suspected of having a role in the fabrication of the Affidavits and the prosecution had threatened to prosecute her for witness tampering and obstruction of justice. It is fair to conclude that Mr. Legghio was able to obtain a quid pro quo promise agreement for her for those suspected crimes in return for her testimony against Bahoda, **(if Bahoda refused to agree with the "intent" defense).** This would explain the fairly quick amendment of the prosecution's amended witness list-March 2013-only 3 months after Mr. Legghio had visited with Mr. Bahoda in the jail, and after Mr. Bahoda

had sought to retain him.

Although Mr. Bahoda has no actual "smoking gun" in writing that attorney Legghio obtained a grant of immunity for witness Allie. However, an "informal agreement" for immunity was referenced by SADO attorney Jessica Zimbelman at the hearing on the motion for new trial. See Appendix I. March 5, 2014 Tr, 5-6. Further, the circumstantial evidence and Mr. Legghio's own admission creates a strong inference that an agreement for immunity was actually given.

Legghio's letter to the AGC tacitly admits as much. Ms. Allie's arrangements with the prosecution (whatever they were) were secured through the agency of attorney Legghio. Further, attorney Legghio **had consulted with the prosecutor before even meeting with Mr. Bahoda at the jail.** At that meeting, Mr. legghio learned that APA Fedorak was "considering instituting [charges relating to witness tampering] against Mr. Bahoda, his sister, Kim Attisha, **and his then girlfriend Natalie Allie."** See Appendix T, letter to AGC, ¶ 2.). Mr. Legghio then admits that APA Fedorak explained to him that the prosecution believed that Mr. Bahoda, Kim Attisha, and Natalie Allie were "conspiratorially involved in attempting to bribe the complainant ... and/or prepared false affidavits." Id., ¶ 3. In his statement to the Attorney Grievance Commission, Legghio admits that he "represent[ed] her at an interview with Shelby Township Police department and the Macomb County prosecutor's Office." Id., ¶ 5. Thus, Mr. Legghio certainly was in a position to have obtained information in favor of his ultimate client, Natalie Allie.

Finally, Mr. Legghio says that no witness tampering charges were ever actually instituted against Nataile Allie. **That may be true, but why? Petitioner submits that Natalie Allie fulfilled her promise as she appeared in court and was prepared to testify against Mr. Bahoda implicating him, herself, and others in the forged affidavits scheme under a quid pro quo promise if he (Mr. Bahoda)**

decided at the last minute to reject the prosecutors "intent" defense. Consequently, Mr. Bahoda was forced by the prosecution and his trial counsel Kaplan to go with the "intent" defense to keep the damaging testimony out of his trial. WHICH CLEARLY EXPLAINS WHY MS. ALLIE'S TESTIMONY ONLY AMOUNTED TO "CORROBORATING MR. BAHODA'S TESTIMONY."

> Mr. Bahoda's Sixth Amendment Right to conflict-free counsel was violated by attorney Legghio's actions. Both the Michigan and United States Constitutions guarantee a criminal defendant the right to the effective assistance of counsel and to due process. US Const, Amends VI, XIV; Mich Const 1963, art 1 §§ 17, 20; Mickens v Taylor 535 US 162, 166 (2002); Cuyler v Sullivan, 466 US 335 (1980); Stricklan v Washington, 466 US (1984). The courts have recognized that an accused can be deprived of his Sixth Amendment Rights to effective and conflict free counsel in certain contexts, without a showing of factual prejudice. Thus, in certain Sixth Amendment context, the court will **presume** prejudice to an accused. One of those is when a lawyer is representing actually representing conflicting interest. Meckens, 535 US at 166 (2002); Sullivan, 466 US at 345-350. See also Strickland, 466 US at 692 ("prejudice is presumed when counsel is burdened by an actual conflict of interest').
>
> In most cases, however, a defendant claiming a conflict of interest must show actual prejudice: "[i]n order to demonstrate a violation of his Sixth Amendment rights, a defendant must establish that an actual conflict of interest adversely affected his lawyer's performance." Cuyler v Sullivan, 466 US at 350.

The fact that attorney Legghio was never actually retained **for trial** does not bar this Court from reviewing this claim. Michigan Rules of Professional Conduct 1.9 governs conflict of interest between current and former clients. Factory Mut Ins Co v AP Compower, Inc. 662 F Supp 2d 896, 898-900 (WD Mich 2009). **That rule prohibits a lawyer who has had a discussion with a prospective client from utilizing information learned in that consultation.** Attorney Legghio learned information pertaining to Mr. Bahoda's case, about Ms. Allie's role and was able to leverage how he planned to defend against the charges for the benefit of Ms. Allie. Which also created a violation of "Intrusion" by the prosecutor in this case.

Legghio had a duty of loyalty and confidentiality to Mr. Bahoda, even

though he was not actually retained. In fact, he had a duty to actively avoid future representation that would compromise the relationship he had had- however, brief - with Mr. Bahoda. See Alpha Capital Mgmt. Inc. v Rentenbach, 287 Mich App 589, 603, 792 NW2d 344, 355 (2010) citing the Sixth Circuit case of United States v Bishop, 90 F2d (CA6, 1937): "it is 'well settled that an attorney who has acted for one party cannot render professional services in the same matters to the other party, and makes no difference in this respect whether the relation itself has terminated, for the obligation of fidelity still continues.'" See also, Perillo v Johnson, 205 F3d 775, 797-799 (C.A.5 2000); Freund v Butterworth, 165 F3d 839, 858-860 (CA11 1999); Mannhalt v Reed, 847 F2d 576, 580 (CA9 1988); United States v Young, 644 F2d 1008, 1013 (CA4 1981). All these cases discuss the conflicts created by attorneys who current representation are severely compromised by their duties to **former clients.** In Perillo, the court held that the defendant was entitled to an evidentiary hearing as to allegations bearing on her former attorney's conflicting representation.

There is no question that Mr. Legghio created a conflict of interest even though the AGC found "no conflict," did not impose any discipline and simply warned him. **Keep in mind, that was only because Ms. Allie did not have to implicate Mr. Bahoda in the forged affidavit scheme under a quid pro quo promise because Mr. Bahoda was forced to accept the prosecutor's "intent" defense or face additional charges and more time if convicted.**

There is no question that Mr. Bahoda did not consent to his switching sides to represent Ms. Allie. His objection was placed on the record when counsel finally informed the court of the conflict of interest. Second, Mr. Legghio's obtaining for Ms. Allie a favorable deal surely involved discussions with the prosecution of matters he had discussed with Mr. Bahoda while

consulting with him in the jail.

Petitioner submits that attorney Legghio's representation of Natalie Allie in interviews with the Macomb County prosecutor's office, and continuing through trial, created an actual conflict of interest which prejudiced Mr. Bahoda, in that attorney Kaplan, when he became Mr. Bahoda's trial counsel, was faced with the fait accompli-witness Allie had been granted immunity with respect to the suspected witness tampering in return for her testimony against Mr. Bahoda. The prosecutor was then able to leverage attorney Kaplan into limiting the defense which Mr. Bahoda would be allowed to raise at trial to the "intent" defense only.

ARGUMENT

2. Ineffective assistance of attorney Kaplan for failing to object to Legghio's conflict of interest.

Attorney Kaplan certainly knew that a conflict of interest had occurred between attorney Legghio and Mr. Bahoda, since it was Mr. Kaplan who referred attorney Legghio to Mr. Bahoda, and certainly knew that attorney Legghio was now representing Natalie Allie. Attorney Kaplan had an obligation to bring this issue to the trial court's attention. Cuyler v Sullivan, supra. In Holloway v Arkansas, 435 US 475, 485-486, 98 S Ct 1173, 55 L Ed 2d 426 (1978), the Supreme Court stated that defense counsel is in the best position to determine when a conflict of interest exists and "so defense attorneys have the obligation, upon discovering a conflict of interest, to advise the court that attorney Legghio had spoken to the prosecutor about Mr. Bahoda's case, then consulted with Mr. Bahoda, then arranged for his new client Ms. Allie to testify against Mr. Bahoda.

Attorney Kaplan was also ineffective for failing to object when it became evident that key prosecution witness Natalie Allie had been represented in her dealings with the prosecution by Brian Legghio in the very case in which Mr.

Bahoda was now standing trial. In other words, attorney Legghio had not only left Mr. Bahoda's cause but was now aiding the prosecution to convict him, and his replacement lawyer did nothing about it. The prosecutor was able to "leverage" the knowledge it had gained from conversations with attorney Legghio and Ms. Allie (supported by a quid pro quo promise to Ms. Allie) against Mr. Bahoda by threatening to bring up the issue of the false affidavits and to prosecute him for witness tampering/obstruction unless he limited his trial defense. There is record support for this contention. When attorney Kaplan was presented with the fait accompli, he stated on the record at trial:

MR. KAPLAN: That's fine. And Your honor, if I may, in light of our defense in this case, the prosecution will not be introducing any evidence regarding the alleged witness tampering and intimidation.

THE COURT: Okay.

MR. FEDORAK: Your Honor, correct. I think was had made a record last Thursday at the final pretrial and that the statement by the defense are still accurate today, and it's going to be yes, we did it, or yes, I did it. it's just the level of intent that they're attacking rather than who did.

April 9, 2013, Trial Tr I, 97-98. See Appendix U.

Petitioner submits that prejudice should be presumed in this case; at a minimum, an evidentiary hearing is required. In Moss v United States, 323 F 3d 445 (CA 6 2003) the Sixth Circuit explained that Sullivan's presumption of prejudice should be applied in cases of "successive representation" where the alleging party demonstrates that: (1) counsel's earlier representation of the witness or co-defendant was substantially and particularly related to counsel's later representation of defendant; or (2) counsel actually learned particular confidential information during the prior representation of the witness or co-defendant that was relevant to defendant's later case." Moss, 323 F3d at 462, citing cases. As the court explained in Moss, "the probability of prejudice drastically increased in circumstances where the attorney represented a co-

defendant during the pre-indictment phase of the same proceeding." Although this is not, strictly speaking, a case of "successive" representation by attorney Legghio, since he did not represent Mr. Bahoda at trial, the logic of a presumption of prejudice still applies, since he later represented an adverse witness using information he had gained in a confidential setting from Mr. Bahoda.

The same dangers described in Moss existed. Mr. Bahoda was convicted of assault with intent to do great bodily harm. His defense was fatally compromised by attorney Kaplan who failed to request a self-defense instruction, although Mr. Bahoda was clearly entitled to it.

Attorney Kaplan performed deficiently by not objecting to attorney Legghio's role in representing Ms. Allie, one of the prosecution's chief witnesses. Attorney Legghio's assistance to the prosecution is a clear example of "switching sides" and it was clearly improper for him to help prosecute his former client, Mr. Bahoda. "A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person's interest are materially adverse to the interest of the former client unless the former client consents after consultation." Michigan Rules of Professional Conduct, Rule 1.9. Having consulted with Mr. Bahoda, Legghio should not have represented "another person," Allie, in the "same...matter in which [Allie's] interest [were] materially adverse to the interest of [Bahoda] unless [Bahoda] consent[ed] after consultation." Not only does the record not show Mr. Bahoda's consent, but he vigorously opposed Mr. Legghio's "switching sides" once he became aware of it. He filed a grievance against Mr. Legghio and included this conflict of interest in his Pro Per Motion to /amend for New Trial etc.

Attorney Kaplan is the one who should have pointed out to the court the

conflict of interest with Legghio and Ms. Allie. He should have sought to eliminate the threat of Ms. Allie's testimony to implicate Mr. Bahoda in the forged affidavit scheme and disqualify the prosecutor's office from prosecuting Mr. Bahoda. see People v Davenport, 280 Mich App 464, 468 (2008)(finding deficient performance where successor counsel failed to challenge potential conflict of interest caused by predecessor counsel's move to prosecutor's office), leave denied 483 Mich 906 (2009), after remand 286 Mich App 191 (2009)(holding no prejudice where remand hearing established measures taken to ensure no communication between new prosecutor and those prosecuting former client). In Davenport, supra, this Court held it a matter of deficient performance for trial counsel not to challenge a conflict of interest between an accused's attorney who later joined the prosecutor's office. At a minimum, attorney Kaplan should have requested an evidentiary hearing as to the confidence / information exchanged between attorney Legghio and the prosecutor, especially as to Ms. Allie's proffered testimony and Mr. Bahoda's consultation with Legghio in the jail.

Nor can there have been a legitimate strategic reason for attorney Kaplan not to raise this issue before trial and not to seek exclusion of Allie's harmful testimony. Electing not to make a motion that would shot-circuit the prosecution could not have been a legitimate strategy. See People v Carrick, 220 Mich App 17, 22 (1996) (holding that counsel's failure to raise outcome determinative motion meant counsel performed deficiently, without need for inquiry about counsel's motives); also see People v Stubli, 163 Mich App 376, 380 (1987)(deficient performance where no conceivable legitimate trial strategy could explain counsel's failure to invoke privilege to protect defendant from wife's damaging testimony).

Moreover, Mr. Bahoda was prejudices because he suffered the additional

harm that the individual who he sought to retain as his counsel actually switched sides! See Mickens v Taylor, 535 US 162, 171; 122 S. Ct. 1237, 1243; 152 L Ed 2d 291 (2002)(actual conflict-that is, "conflict that affected counsel's performance" suffices to show Strickland prejudice). Here, unlike Davenport, the conflict was not cured by any measures taken to insulate Mr. Bahoda's former prospective lawyer from any involvement in the prosecution. Legghio was unquestionably involved in helping to arrange for his new client to testify against his old one by securing her a very favorable quid pro quo promise in return for her to implicate Mr. Bahoda in the forged affidavit scheme, should Mr. Bahoda refuse to be forced by the prosecutor and his own trial counsel to agree with the "intent" defense.

Attorney Kaplan was ineffective for not pointing this out seeking redress for Legghio's improper role in the prosecution of Mr. Bahoda. Attorney Kaplan had various avenues of redress that he could have sought. Petitioner provided a perfect opportunity for Kaplan to explore this issue before settling on the prosecutors "Intent" defense by filing a handwritten pro per motion from jail requesting an evidentiary hearing on March 26, 2013, since his own trial attorney refused to it on his behalf. However, Kaplan waived any recourse that could have prevented the devastating consequences that conflict of interest has caused:

MR. FEDORAK: **Secondly, I received in the mail on Monday, Judge, an amended witness list from the defendant directly. I also the week prior received a motion regarding an evidentiary hearing. I mentioned that to Mr. Kaplan, and I'll defer to Mr. Kaplan regarding those two issues.**

MR. KAPLAN: **Your Honor in light of our defense, we will not need to call witnesses on the supplemental witness list, and we also will not need an evidentiary hearing.**

THE COURT: OKAY.

See Appendix U. Trial Tr. I, 95-96

Consequently, APA Fedorak was able to secure information from Ms. Allie

and to arrange for he not to be prosecuted for the forged affidavits and witness tampering, then use that to leverage attorney Kaplan into limiting the defense which Petitioner would be allowed to raise at trial to the "intent" defense only.

In this case, the prosecutor's office, or at least APA Fedorak himself would have been disqualified due to Legghio's conflict of interest had attorney Kaplan requested it. Davenport, suprs; People v Doyle, 159 Mich App 632, 406 NW2d 893 (1987). Second, Kaplan should have requested that Natalie Allie be excluded as a prosecution witness. The remedy for improper conflict of interest, and for the instance of ineffective assistance of trial counsel is to remand for retrial by a different prosecutor.

The Court of Appeals said petitioner could not show any prejudice arising from attorney Kaplan's failure to raise Legghio's conflict of interest. Petitioner contends below that an evidentiary hearing is needed to discover whether Allie was in fact granted immunity from prosecution in exchange to implicate Mr. Bahoda in the forged affidavit scheme due to Legghio's involvement.

V. Whether Petitioner denied effective assistance of appellate counsel for abandoning an evidentiary hearing on Bahoda's motion for new trial?

The prosecutor had not filed a response to SADO's 2013 Motion for New Trial and request for a Ginther hearing, and instead informed Mr. Bahoda's appellate counsel (at that time, Jessica Zimbelman of SADO) that **it would stipulate to a Ginther hearing.** This stipulation -- understood by Petitioner's prior appellate counsel -- was not formally put on the record until the hearing held on June 30, 2015. But both the prosecution and Mr. Bahoda's attorney had long agreed that there would be a Ginther hearing, and all the parties were simply waiting for it to be scheduled. The request for an evidentiary hearing had never been withdrawn nor had the lower court ever indicated that an

evidentiary hearing would not be held. All during the succession of appointed appellate counsel, none of those attorneys indicated that Mr. Bahoda would not receive an evidentiary hearing. It was only on June 30, 2015 (See Appendix V., ¶¶ 1-12, Tr. of hearing held that day), when appellate attorney Rust waived the evidentiary hearing by requesting that the trial court decide the motions for new trial **simply on the basis of the papers filed** did Bahoda have any inkling that the factual record would never be developed and would be truncated by the actions of his own counsel. Attorney Rust's waived of Bahoda's Ginther hearing on June 30, 2015, flabbergasted Bahoda, because Mr. Rust told him at the courthouse prior to entering the courtroom that he was just using this hearing as a status conference and that he was going to actually schedule his Ginther hearing within 3 weeks.

Prior to the June 30th hearing, Mr. Bahoda contacted MAACS Administrator Bradley Hall requesting his assistance because Daniel Rust refused to communicate with him regarding his assistance and the status of his Ginther hearing. Mr. Hall directly contacted Rust and told him that he expected Mr. Rust to handle this matter expeditiously and carefully, and to conduct a thorough fact investigation in advance of a prompt evidentiary hearing. Mr. Rust assured Mr. Hall as he did his client Mr. Bahoda that **"although the Ginther hearing has been scheduled for June 30, 2015, Mr. Rust informed me that he plans to treat the June 30 hearing as a status conference." (See Appendix W. ¶. 1, as MAACS Administrator Bradley Hall's June 19, 2015 letter to Mr. Bahoda).**

However, contrary to his assurances to Mr. Hall, attorney Rust essentially walked his client (Mr. Bahoda) into an ambush once they stepped into the courtroom.

JUNE 30, 2015 Hearing Transcripts
See Appendix V.

MR. RUST: ...I would ask the Court -- and prior to that, the prosecutor never responded to either of the motions. I would ask the Court to request from the prosecutor to respond to the motion and ask the Court to issue a decision on the motion.

THE COURT: Raise your right hand. Do you swear to tell the truth, the whole truth, nothing but the truth, so help you God.

MR. BAHODA: Yes I do.

SAAD A. BAHODA

after having first been duly sworn by the Court to tell the truth, testified as follows:

THE COURT: State your name.

MR. BAHODA: Saad Bahoda.

THE COURT: Okay. And you're in agreement with your counsel that you're looking for a decision on those motions; is that correct?

MR. BAHODA: decision on the motions?

THE COURT: Your motions for new trial on ineffective assistance of counsel and raising a defense issue. Is that correct?

MR. BAHODA: prior to the Ginther hearing that was stipulated or...?

Mr. Bahoda was trying to prevent the Court from deciding on the moitons prior to conducting the Ginther heairng that had already been agreed to. However, attorney Rust acted on behalf of the people as a second prosecutor against his own client by responding as follows:

MR. RUST: It's my understanding there was no stipulation --

THE COURT: No.

MR. RUST: -- from the prosecutor as to the Ginther Hearing.

THE COURT: Correct. first, there's got to be a determinations as to whether you're entitled to a Ginther Hearing.

MR. BAHODA: Can I talk to my counsel for one second.

THE COURT: Go ahead.

(at about 9:56 a.m., Discussion off the record)

MR. RUST: Your Honor, Mr. Bahoda indicates that there was a stipulation from the prosecutor as to the Ginther hearing.

The hearing was briefly adjourned. Shortly after the above colloquy, SADO attorney Valerie Newman -- who coincidentally happened to be in the Court on another matter and who had been involved in Mr. Bahoda's appeal with attorney Zimbelman -- spoke with Rust and APA Fedorak, and after going through the history of the case. APA Fedorak and Rust both admitted that there **was** a prior stipulation to conduct a Ginther hearing. See Appendix X. Ms. Newman[l]s July 23, 2015 letter.

(At about 10:42 a.m., Proceedings were Resumed)

THE COURT: People versus Bahoda.

MR. FEDORAK: Again, good morning, your Honor. Jurij Fedorak for the People.

MR. RUST: And once again, good morning, your Honor, Daniel Rust appearing without Mr. Bahoda. I would waive his presence--

THE COURT: Okay.

MR. RUST: -- for this brief announcement.

MR. FEDORAK: Your Honor, we just wanted to go on record. we had the unexpected benefit of Ms. Newman in the courtroom today and, **the bottom line is, I did stipulate to the prior Ginther Hearing with Ms. Jessica Zimbelman. (Emphasis added).**

Attorney Rust stood mute during the prosecutor's admission about his prior stipulation/agreement to the Ginther hearing, instead of rescheduling the hearing for a later date (as he had assured MAACS Administrator Hall he would do). This resulted in the Trial Court erroneously denying the motions for new trial on an incomplete file as opposed to the issues that could have been developed during a properly held Ginther hearing. **Such issues would have included Legghio's involvement with Ms. Allie and the prosecution, Attorney Kaplan's agreement to limit the defense to one of "intent" and his failure to request a self-defense instruction, and Attorney Berg's reasons to forgo any reasonable investigation of the affidavits before introducing them into Bahoda's criminal proceedings.**

CONCLUSION

Petitioner Saad A. Bahoda, for the reasons stated above, respectfully prays for this Court to Grant certiorari or Reverse the Sixth Circuit Court of Appeals' June 17, 2019 order denying a certificate of appealability, it's August 6, 2019 order denying panel rehearing, and it's August 21, 2109 order denying rehearing en banc, and issue a certificate of appealability.

Respectfully submitted,

Saad A. Bahoda #215121
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