IN THE

SUPREME COURT OF THE U.S.

WASHINGTON, D.C. 20543

19-6625

Samuel R. Jones - PETITIONER

VS.

PEOPLE OF THE STATE OF MICHIGAN - RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS - FOR SIXTH CIRCUIT -

PETITION FOR WRIT OF CERTIORARI

Samuel Jones #364868
MARQUETTE BRANCH PRISON
1960 U.S. HIGHWAY 41S
MARQUETTE, MI 49855

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TABLE OF REFERENCES

PEOPLE V. ACKAH-ESSIEN, 311 MICH APP. 13, 30; 874 NW2d 172 (2015)
PEOPLE V. BEGAY, 42 F.3d AT 502-503
PEOPLE V. CALLON, 256 MICH APP. 312, 329; 662 NW2d 501 (2003)
CARDINE V. COMMONWEALTH, 283 S.W. 3d 641
PEOPLE V. DROSSART, 99 MICH APP. 66, 80; 297 NW 2d 863 (1980)
SCHIRO V. FARLEY, 570 U.S. 222, 229 (1994)
PEOPLE V. FOMBY, 300 MICH APP. 46; 831 NW 2d 887
U.S. V. GREEN, 556 F.2d 71, 72 (D.C. CIR. 1977)
PEOPLE V. HERRON, 464 MICH 593, 599; 628 NW 2d (2001)
PEOPLE V. HUNTER, 336 U.S. 684, 688
PEOPLE V. LETT, 466 MICH 206
PEOPLE V. LUGO, 214 MICH APP, 99; 542 NW 2d 921 (1995)
BENTON V MARYLAND, 395 U.S. 784, 794 (1969)
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PEOPLE V. UNGER, 278 MICH APP. 210, 216; 749 NW 2d 272 (2008)
DOWNUM V. U.S., 372 U.S. 734 (1963)
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MCL 600.308
MCL 770.3
MCR 6.412(B)(F)
MCR 6.425(F)(3)
MCR 7.203(A)
MCR 7.204(A)(2)
MRE# 701
MRE# 801(d)(1)(B)
FRE# 701

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C. 20543

SAMUEL R. JONES, #364868

PETITIONER,

CASE#

V.

PEOPLE OF THE STATE OF MICHIGAN,

RESPONDENTS et.al.,

WRIT OF CERTIORARI

THIS IS A WRIT OF CERTIORARI FILED BY SAMUEL R. JONES, A MICHIGAN PRISONER PROCEEDING PRO PER, APPEALING THE SIXTH CIRCUIT COURT OF APPEALS DECISION. PETITIONER ASK THAT THIS COURT CONSIDER AND CONSTRUE HIS WRIT OF CERTIORARI LIBERALLY 28 USC § 2101(c).

KNOW ALL MEN AND WOMEN BY THESE PRESENTS THAT ON THIS 16 DAY OF SEPT 2019, IN THE COUNTY OF MARQUETTE, CITY OF MARQUETTE, AND THE STATE OF MICHIGAN DULY SWEAR UNDER PENALTY'S OF PERJURY TESTIFIES AS FOLLOWS:

JURISDICTIONAL GROUNDS

JURISDICTION WAS CONFERRED THROUGH CONST. 1963 ART I § 20 MCL 600.308(1); MCL 770.3; MCR 7.203(A) MCR 7.204(A)(2) AND MCR 6.425(F)(3) THE FINAL JUDGMENT WAS MARCH 17, 2016, PETITION FOR COUNSEL WAS MADE MARCH 17, 2016 AND PURSUANT TO MCR 6.425(F)(3) THE CLAIM OF APPEAL ISSUED MARCH 21, 2016 WAS DENIED ON SEPT. 14, 2017 see C.O.A #332238. A MICHIGAN SUPREME COURT OF APPEAL CLAIM WAS FILED AND DENIED MAY 1, 2018 see SC#156695. A CLAIM FOR HABEAS CORPUS PETITION WAS FILED MAY 21, 2018 AND DENIED MARCH 4, 2019 see; 2:18-CV-11587. A CLAIM IN IN THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT WAS FILED MARCH 28, 2019 AND DENIED JULY 30, 2019 see NO. 19-1335. A PETITION FOR REHEARING WAS FILED IN THE SIXTH CIRCUIT ON AUG. 6, 2019. THE DECISION HAS BEEN NON-RESPONSIVE.

QUESTIONS PRESENTED

I. MUST THE CONVICTIONS BE REVERSED WHERE THEY WERE OBTAINED IN A SECOND TRIAL IN VIOLATION OF THE DOUBLE JEOPARDY PROTECTIONS GUARANTEED MR. JONES THROUGH THE U.S. CONST., AM II AND CONST. 1963 ART. I § 15?

APPELLANT ANSWERS "YES"
APPELLEE WOULD ANSWER "NO"

II. DID JEOPARDY ATTACH IN MR. JONES SECOND TRIAL WHEN HIS JURY WAS EMPANELED AND SWORN TO TRY THE CASE WHICH RESULTED IN A DOUBLE JEOPARDY CONVICTION?

PETITIONER ANSWERS "YES"
RESPONDENTS WOULD ANSWER "NO"

III. DID THE PROSECUTION WISH TO PROCEED WITH THE SECOND TRIAL?

PETITIONER ANSWERS "NO"
RESPONDENTS WOULD ANSWER "YES"

IV. WAS DEFENSE COUNSEL UNAVOIDABLY DETAINED IN ANOTHER COURTROOM DURING THE INITIAL FIRST TRIAL PROCEEDINGS?

PETITIONER ANSWERS "NO"
RESPONDENTS WOULD ANSWER "YES"

V. DID THE TRIAL COURT ABUSE ITS DISCRETION ALLOWING AN INADMISSABLE TESTIMONY AS CLASSIC HEARSAY VIOLATING MR. JONES EFFECTIVE RIGHT TO CONFRONTATION AND CROSS-EXAMINE ALL EVIDENCE GUARANTEED THROUGH THE U.S. CONST. AM VI?

PETITIONER ANSWERS "YES"
RESPONDENTS WOULD ANSWER "NO"

CRIMINAL BACKROUND.

THIS IS A WRIT OF CERTIORARI BY SAMUEL R. JONES FOLLOWING JURY-TRIED CONVICTIONS OF CARRYING A CONCEALED WEAPON IN A MOTOR VEHICLE ["CCW MV"], MCL 750.227, FELON IN POSSESSION OF A FIREARM, MCL 750.224F ["FIP"], FELON IN POSSESSION OF AMMUNITION ["FIPA"], MCL 750.224F(6), AND FELONY FIREARM, MCL 750.227b (2/24/16 TT, VERDICT 4-5) PETITIONER WAS ACQUITTED OF CARRYING A CONCEALED WEAPON ON A PERSON.

MR. JONES WAS SENTENCED AS A FOURTH HABITUAL OFFENDER BY WAYNE COUNTY CIRCUIT JUDGE KEVIN J. COX TO PRISON TERMS TO FIVE YEARS FOR THE FELONY FIREARM (SECOND OFFENSE) CONVICTION, CONCURRENT WITH A TWO TO FIVE YEARS FOR THE CCW MOTOR VEHICLE CONVICTION. PRISON TERMS OF TWO TO FIVE YEARS FOR THE FEP AND FEPA CONVICTIONS - CONCURRENT TO EACH OTHER AND CONSECUTIVE TO THE FELONY FIREARM CONVICTION WERE IMPOSED WITH 300 DAYS OF SENTENCE CREDIT (see; 3/17/16 ST, 12-13)

STATEMENT OF FACTS

A. INITIAL FIRST TRIAL PROCEEDINGS

PETITIONER INITIAL CASE COMMENCED ON 10/19/15 AND PRELIMINARY INSTRUCTIONS AND OATH BEFORE SELECTION WAS GIVEN see; MCR 6.412(B) see also; JURY OATH TT 10/19/15 pp. 4 LINES 9-15 AND pp. 59 LINES 1-2; see; PRELIMINARY JUROR INSTRUCTIONS pp. 81 LINES 9-11. AFTER PRELIMINARY INSTRUCTIONS AND THE JURY OATH WAS GIVEN TO THE PROSPECTIVE JURORS, A VOIR DIRE WAS CONDUCTED AT TT 10/19/15 p. 7 FOLLOWED BY CONDUCT OF EXAMINATION, CHALLENGES FOR CAUSE AND INFORMATION CHARGES ID AT TT 10/19/15 pp. 12 LINES 8-25; pp. 13 LINES 1-8 AND pp. 59 LINES 19-25, DEFENSE COUNSEL THEN ASKED IF IT IS POSSIBLE THAT THE COURT CAN SWEAR THE JURY AND GIVE OPENING STATEMENTS AND COME BACK TOMORROW TO START WITH THE WITNESSES? TT 10/19/15 pp. 89 LINES 14-16. JUDGE MICHAEL CALLAHAN SAID NO, THAT HE HAD MORE IMPORTANT CASES TO ATTEND TO ID AT TT 10/19/15 pp. 89 LINES 17-18.

THE FOLLOWING DAY, THE COURT FALSELY STATED THAT SCHEDULING CONFLICTS PREVENTED TRIAL FROM PROCEEDING TT 10/20/15 p. 3. THE COURT ALSO FALSELY STATED THAT MR. JONES DEFENSE COUNSEL WAS UNAVOIDABLY DETAINED IN ANOTHER COURTROOM THE DAY BEFORE ON 10/19/15. JUDGE MICHAEL CALLAHAN SAID HE HAD TO START THE CASE OVER AND PICK ANOTHER JURY TT 10/20/19 p. 3 LINES 14-17. WHEN IN FACT, DEFENSE COUNSEL WAS NOT UNAVOIDABLY DETAINED IN ANOTHER COURTROOM THE DAY BEFORE ON 10/19/15, AND THERE WAS NEVER A SCHEDULING CONFLICT WITH MR. JONES COUNSEL. BECAUSE DEFENSE COUNSEL WAS PRESENT ON THE INITIAL TRIAL DATE CONDUCTING A VOIR DIRE AND REQUESTING THAT MR. JONES JURY BE SWORN IN ED AT TT 10/19/15 pp. 89 LINES 14-16. THE FACT THAT THE COURT HAD TO DISMISS THE REMAINDER OF PETITIONERS JURY ED AT TT 10/20/15 AND STATING THE REASONS WERE BECAUSE DEFENSE COUNSEL WAS UNAVOIDABLY DETAINED IN ANOTHER COURTROOM, WHEN IN FACT HE WAS NOT, HAS SERIOUSLY AFFECTED THE FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF THE JUDICIAL PROCEEDINGS IN THIS CASE.

THERE WERE NO OBJECTIONS MADE AS TO MR. JONES DOUBLE JEOPARDY CLAIM AT THE TIME TT 10/20/15 p. 8 LINES 19-20. MR. JONES WAS THEN RE-TRIED AND FURTHER ASKED THAT DEFENSE COUNSEL KAREEM JOHNSON BE REMOVED FROM HIS CASE AS ATTORNEY WHO WAS LATER REPLACED BY TERRY A. PRICE. ON JANUARY 12, 2016 DEFENSE COUNSEL TERRY A PRICE RAISED A DOUBLE JEOPARDY CHALLENGE ON BEHALF OF MR. JONES AT HIS 2ND PRE-TRIAL CONFERENCE, IN ORDER TO PRESERVE MR. JONES II AMENDENT RIGHT AGAINST DOUBLE JEOPARDY, BEFORE JUDGE DALTON ROBERSON, WHO STATED THAT THE 10/19/15 TRIAL TRANSCRIPTS WOULD BE SECURE TO RESOLVE THE PROCEDURAL ISSUES TT 1/12/16. JUDGE DALTON ROBERSON HAD ALSO STATED THAT HE WAS NOT GOING TO ALLOW

PROSECUTION WITNESSES TO TESTIFY TO A SURVEILLANCE THAT THE WITNESSES ONLY VIEWED, IF THE PROSECUTION DID NOT HAVE THE VIDEO SURVEILLANCE OF THE 13003 GRATIOT AND FAIRPORT INCIDENT TO ALLOW THE DEFENSE TO CROSS-EXAMINE AND CONFRONTATION TT 1/12/16. A MOTION FOR DISMISSAL WAS FILED BY DEFENSE COUNSEL TERRY A. PRICE AND DENIED BY JUDGE DALTON ROBERSON TT 1/12/16. see; (ATTACHED APPENDIX B REGISTER OF ACTION REQUESTING MOTION TO DISMISS)

B. SECOND TRIAL PROCEEDING

ON 2/18/16, PRIOR TO THE COMMENCEMENT OF THE SECOND TRIAL. DEFENSE COUNSEL MADE NUMEROUS OBJECTIONS TO TRIAL ERROR AND DOUBLE JEOPARDY OBJECTIONS AS FOLLOWS: JUDGE IN THE BEGINNING WE HAD REQUESTED A TRIAL TRANSCRIPT OF THE PRIOR TRIAL IN THIS MATTER, BECAUSE THE TRIAL HAD STOPPED FOR SOME REASON, IT REALLY ISN'T CLEAR ID AT TT 2/18/16 pp. 11 LINES 12-16.

> MR. PRICE: AND THAT TRANSCRIPT WAS SUPPOSE TO HAVE BEEN AVAILABLE BEFORE TODAY, AND IT'S NEVER BEEN MADE AVAILABLE ID AT TT 2/18/16 pp. 12 LINES 4-9

> MR. PRICE: AND WE, WOULD NOT WANT TO PROCEED IF, THERE'S INDEED, A DOUBLE JEOPARDY ARGUMENT IN THIS MATTER. WE ASKED FOR THE TRANSCRIPTS, AND IT HASN'T BEEN MADE AVAILABLE TO CLARIFY THE TRIAL ERROR(S) ID AT TT 2/18/16 pp. 14 LINES 6-12.

DEFENSE COUNSEL TERRY A. PRICE HAD THEN MADE NUMEROUS OBJECTIONS OF MR. JONES SIXTH AMENDMENT RIGHT TO CONFRONTATION AND EFFECTIVELY CROSS-EXAMINE ALL EVIDENCE WHICH DEFENSE HAD STATED AND OBJECTED TO!

> MR. PRICE: JUDGE ROBERSON HAD RULED AT THE SECOND PRE-TRIAL ON JAN 12, 2016 THAT, UNLESS THE PROSECUTION PRESENTED THE VIDEO SURVEILLANCE FROM THE 13003 GRATIOT AND FAIRPORT CRIME SCENE, JUDGE ROBERSON WAS NOT GONNA LET THE PROSECUTION WITNESS TESTIFY AS CLASSIC HEARSAY TO WHAT THE OFFICER HAD VIEWED ON THAT VIDEO ID AT TT 2/18/16 pp. 21 LINES 1-3.
>
> THE COURT: I DONT NEED TO HEAR WHAT JUDGE ROBERSON SAID ID AT TT 2/18/16 pp. 21 LINES 14-15. I'M GONNA MAKE MY DECISION BASED ON WHATEVER I'M PRESENTED WITH ID AT TT 2/18/16 pp. 21 LINES 16-17.

THE ISSUE HERE IN PETITIONERS SECOND TRIAL PROCEEDINGS IS 10/19/15 TRIAL ERROR, DOUBLE JEOPARDY PRESERVATION, ABUSE OF DISCRETION PRESERVATION AND SIXTH AMENDMENT RIGHT PRESERVATION TO CONFRONTATION AND CROSS-EXAMINE ALL EVIDENCE IN WHICH DEFENSE COUNSEL FURTHER OBJECTED TO AS FOLLOWS!

> MR. PRICE: WE, WOULD OBJECT TO THIS RECORDING IN THE COURT FILE AND THE PROSECUTIONS WITNESS RECOLLECTION, AS BEING THE RECORD. THATS WHAT THE TRANSCRIPTS ARE FOR ID AT 2/18/16 pp. 14 LINES 20-24

MR. PRICE: AND WE OBJECT TO THE POLICE OFFICERS TESTIFYING ABOUT SOMETHING THAT THEY HAD NEVER SEEN, IN TERMS OF HEARSAY. ID AT TT 2/18/16 pp. 15 LINES 19-21.

MR. PRICE: OUR OBJECTIONS JUDGE, IS TO ANY WITNESS TESTIFYING TO SOMETHING THAT THE DEFENSE HAS NOT HAD AN OPPORTUNITY TO SEE, OBSERVE, SO WE CAN EFFECTIVELY CROSS-EXAMINE SAID WITNESS, IT WOULD BE HEARSAY JUDGE. ID AT TT 2/18/16 pp. 16 LINES 19-23.

MR. PRICE: THE ISSUE IS A SIXTH AMENDMENT RIGHT TO CONFRONTATION FOR THE OFFICER TO ASSERT HIS OWN PERCEPTION THAT WAS MEMORIALIZED AS A VIDEO, AND THEN TESTIFY TO WHAT HE CLAIM HE SAW DENIES MY CLIENT AN EFFECTIVE RIGHT OF CROSS-EXAMINATION, BECAUSE WE (THE DEFENSE) HAVE NOT SEEN WHAT THIS OFFICER IS CLAIMING THAT HE SAW ID AT TT 2/18/16 pp. 16 LINES 9-17

MR. PRICE: AND THAT'S THE BASIS FOR OUR OBJECTION, JUDGE. IT DENIES MR. JONES HIS RIGHT OF CONFRONTATION. WE DONT KNOW WHAT THIS OFFICER IS CLAIMING WHAT HE SAW

, BECAUSE ITS NOT WHAT HE SAW WITH HIS OWN EYES, IN TERMS OF WHAT HAPPENED. HE SAW A RECORDING, OR AT LEAST IT'S ALLEGED THAT HE SAW A RECORDING, AND WE'VE NEVER SEEN IT, JUDGE. SO I DON'T THINK IT WOULD BE A FAIR TRIAL TO ALLOW - - - TT 2/18/16 p.19, 5-14

THE COURT: OKAY, YOU'VE WORN ME TT 2/18/16 p. 19 LINES 15-16

AT THAT TIME DURING DEFENSE COUNSELS OBJECTIONS TO VIOLATION OF MR. JONES SIXTH AMENDMENT RIGHT OF CONFRONTATION AND CROSS-EXAMINATION. PROSECUTING ATTORNEY DANIELLE STRACE STATED FOR THE RECORD:

MS. STRACE: THE PEOPLE WOULD NOT BE ABLE TO PROCEED WITH ANY TRIAL, (SHOWING NO INTEREST OF PROSECUTION) BECAUSE WE WERE NOT AT THE CRIME SCENE TO SEE WHAT HAPPENED, AND WHAT WAS THERE. ID AT TT 2/18/16 pp. 17 LINES 10-13

JUDGE KEVIN J. COX ERRED IN DECIDING TO PROCEED WITH THE SECOND TRIAL AFTER NUMEROUS OBJECTIONS OF MR. JONES PRESERVED ^DOUBLE JEOPARDY ISSUE AND NUMEROUS OBJECTIONS OF MR. JONES PRESERVED SIXTH AMENDMENT RIGHT OF CONFRONTATION. AN OATH BEFORE SELECTING THE JURY WAS GIVEN TO PETITIONERS PROSPECTIVE JURORS see; MCR 6.412(B), ALONG WITH PRELIMINARY JUROR INSTRUCTIONS, INFORMATION CHARGES, VOIR DIRE WAS CONDUCTED,

FOLLOWED BY CONDUCT OF EXAMINATION, CHALLENGES FOR CAUSE, AND OATH AFTER SELECTION WAS GIVEN TO JONES PROSPECTIVE JURORS see, MCR 6.412(F) AND TT 3/18/16. SO AT THAT TIME MR. JONES WAS WITHOUT A DOUBT, PLACED IN JEOPARDY FOLLOWING CRIMINAL CONVICTIONS. see also, (HABEAS CORPUS OPINION AND ORDER ECF NO. 14 PAGE ID. 502 CONFIRMING THAT MR. JONES WAS PLACED IN JEOPARDY AFTER PETITIONER SECOND JURY RECEIVED THE TRIAL OATH AFTER SELECTION TO TRY THE CASE)

C. STATEMENT OF THE CASE

ON 5/25/19, MR. JONES AND HIS GRANDMOTHER WERE TRANSPORTED BY HER FRIEND RICHARD TO A PHARMACY ON E. WARREN AND CADIEUX. AS A HOMECARE PROVIDER EMPLOYED BY THE STATE AT THE TIME, PETITIONER HAD TO MAKE SURE HIS GRANDMA WAS TAKEN CARE OF. AFTER LEAVING THE PHARMACY ON THE WAY BACK TO HIS GRAND-MOTHERS HOME, PETITIONER GRANDMA ASKED HER FRIEND RICHARD TO STOP AT A PARTY STORE LOCATED AT 13003 GRATIOT AND FAIRPORT SO THAT SHE CAN PURCHASE MONEY ORDERS TO PAY HER UTILETY BILLS, AND BEING THAT IT WAS THE CLOSEST PARTY STORE IN ROUTE.

AS HER HOMECARE PROVIDER PETITIONER WENT INTO THE STORE TO PURCHASE MONEY ORDERS FOR HIS GRANDMA, AND A LEMONADE BEVERAGE SO THAT SHE CAN TAKE HER HEART MEDICATION. WHEN JONES WENT INSIDE THE STORE THERE WAS ONLY ONE IN-DIVIDUAL INSIDE BESIDES THE STORE CLERK, AND THAT IN-DIVIDUAL WAS A PANDHANDLER WHO BEGGED MR. JONES FOR MONEY. PETITIONER WENT TO THE REAR OF THE STORE WHILE ON HIS CELL PHONE TO GET THE BEVERAGE FOR HIS GRANDMA. WHEN JONES RETURNED TO THE FRONT OF THE STORE TO PAY FOR HIS ITEM AND PURCHASE MONEY ORDERS.

JONES pulled out ALL of HIS MONEY TO PAY WITH CASH. THE PANDHANDLER RAISED HIS SHIRT FLASHING A REVOLVER HANDGUN IN HIS WAISTBAND AND DEMANDED THAT MR. JONES LAY HIS CASH AND CELL PHONE ON THE COUNTER. PETITIONER COMPLIED WITH THE ROBBERY DEMANDS, AND THE PANDHANDLER TOOK JONES PHONE AND CASH THEN FLED THE STORE. MR. JONES ASKED THE STORE CLERK TO CALL 9-1-1 WHO DEMANDED THAT JONES LEAVE HIS STORE. MR. JONES LEFT THE STORE AND USED HIS GRANDMOTHER CELL PHONE TO CALL 9-1-1 ID AT TT 2/22/16, 210-212 AND 2/23/16, 11 IN WHICH JONES WAS ON HOLD FOR 19 MINUTES AT THE SCENE OF THE INCIDENT STANDING AND WAITING OUTSIDE THE STORE, IN WHICH JONES TESTIFIED TO ID AT TT 2/22/16, 213-214 AND 2/23/16, 8-9

DURING TRIAL DPD OFFICERS TESTIFIED THAT THEY WERE ON PATROL WHEN THEY WERE FLAGGED DOWN. OFFICER THOMAS SAID THEY PULLED OVER TO A VEHICLE AND PARKED, AND MR. JONES EXHITED A HONDA AND TOLD THE OFFICERS HE WANTED TO MAKE A COMPLAINT TT 2/19/16, 78-79. THOMAS SAID MR. JONES TOLD HIM THAT PETITIONER LEFT AND GOTTEN A PISTOL AND RETURNED TO THE STORE TO FIND OUT WHO TOOK HIS CELL PHONE TT 2/19/16, 80-81. OFFICER J. WILLIAMS THEN SEARCHED A VEHICLE AND FOUND A PISTOL ID AT 81-82. OFFICER THOMAS SAID HE THOUGHT HIS CAR WAS EQUIPPED WITH SQUAD CAR SURVEILLANCE, BUT NO ONE ASKED HIM ABOUT THE VIDEO RECORDING.

ALSO, HE SAID HE HAD BEEN WEARING A BODY MIC WHEN JONES ALLEGEDLY TOLD HIM HE WAS GOING TO GET A GUN AND RETURN TO FIND OUT WHO TOOK HIS CELL PHONE FROM HIM, BUT THOMAS SAID HE DID NOT KNOW IF ANYONE LISTENED TO THE AUDIO RECORDING ID AT 86-87. OFFICER RAMONE GARCIA TESTIFIED AT TRIAL THAT HE WENT INSIDE THE PARTY STORE TO REVIEW THE STORE VIDEO AND SAW JONES BRANDISHING A WEAPON. ID AT 2/19/16, 101-102. GARCIA SAID HE DID NOT OBTAIN A COPY OF THE VIDEO AT THE TIME BUT RETURNED TO GET A COPY AND SAID HE WAS UNABLE TO GET A COPY ID AT 2/19/16, 107-108. A DISCOVERY DEMAND WAS FILED AUG 6, 2015 DEMANDING VIDEO SURVEILLANCE FROM ALL DPD SQUAD CARS WHO PARKED BEHIND A 2009 HONDA TO DETERMINE IF JONES HAD ACCESS TO THE VEHICLE A FIREARM WAS FOUND IN. AND VIDEO SURVEILLANCE FROM THE 13003 GRAFICT STORE THAT ONLY OFFICER RAMONE GARCIA VIEWED. (see; attached discovery demand denied) see; APPENDIX A

THE TRIAL COURT ABUSED ITS DISCRETION BY FMPROPERLY ADMITTING OFFICER RAMONE GARCIA TESTIMONY AS CLASSIC HEARSAY BASED ONLY ON GARCIA'S OWN PERCEPTION. THE TRIAL COURT VIOLATED PETITIONERS RIGHT OF CONFRONTATION BY DENYING THE DEFENSE AN OPPORTUNITY TO CROSS-EXAMINE A VIDEO SURVEILLANCE THAT ONLY GARCIA VIEWED. ALTHOUGH OFFICER THOMAS WAS PRESENT AT THE SCENE WHEN HE ALLEGELY PULLED OVER TO MR. JONES. THE PROSECUTION WAS UNABLE TO PRODUCE SURVEILLANCE FROM THREE FULLY MARKED DPD SQUAD CARS FOR THE DEFENSE TO CROSS-EXAMINE AND DETERMINE IF JONES HAD ANY CONNECTION TO THE VEHICLE. OFFICER J. WILLIAMS TESTIFIED THAT HE SEARCHED A VEHICLE (2009 HONDA) AND RECOVERED A LOADED, 38 REVOLVER WITH TWO(2) LIVE ROUNDS

UNDERNEATH THE PASSENGER SEAT TT 2/22/16, 139-141. J. WILLIAMS TESTIFIED THAT NO IDENTIFICATION OF MR. JONES WAS FOUND IN THAT VEHICLE TT 2/22/16, 153. THE CASE INVOLVED NO DIRECT EVIDENCE OF GUILTY; NO VIDEOS. SGT. MATT FULKS TESTIFIED THAT THE FIREARM WAS SENT TO A LAB FOR TESTING AND THE RESULTS WERE INCONCLUSIVE (ID AT TT 2/19/16, 178-179; (see also; ATTACHED JURY LETTER) THE INADMISSABLE TESTIMONY WAS FLAMMABLE EVIDENCE GIVEN BY RAMONE GARCIA TO THE JURY WHICH ALLOWED THE JURY TO CONVICT JONES UNDER A DOUBLE JEOPARDY CONVICTION.

ARGUMENT - I

THE SECOND TRIAL WAS A VIOLATION OF THE DOUBLE JEOPARDY PROTECTIONS GUARANTEED MR. JONES THROUGH THE U.S. CONST. AM FIVE AND CONST. 1963 ART 1 § 15 WHERE PETITIONERS SECOND JURY TRIAL WAS EMPANELED AND SWORN TO TRY THE CASE WHICH RESULTED IN A DOUBLE JEOPARDY CONVICTION.

STANDARD OF REVIEW AND PRESERVATION OF ISSUES

DOUBLE JEOPARDY CHALLENGES ARE SIGNIFECANTLY CONSTITUTIONAL QUESTIONS OF LAW REVIEWED DE NOVO PEOPLE V. NUTT, 469 MICH 565, 573; 677 NW 2d (2004); PEOPLE V. SMITH, 478 MICH 292, 298; 733 NW2d 351 (2007; PEOPLE V. HERRON, 464 MICH 593, 599; 628 NW2d 2001; PEOPLE V. LUGO, 214 MICH APP. 99; 542 NW2d 921 (1995) PEOPLE V. PRIBBLE, 409 MICH 902; 72 MICH APP. 219, 224-225. PEOPLE V. ACKAH-ESSIEN, 311 MICH APP. 13, 30; 874 NW2d 172 (2015) U.S. V. YOUNG, 657 F.3d 408, 416 (6th Cir. 2011) CITING SERFASS V. U.S 420 U.S 377, 388 see also DOWNUM V. U.S., 372 US 734 (1963 YEAGER V. U.S. 557 U.S. 110; 129 Sct 2360, 2365-66 PEOPLE V. LETT, 466 MICH 206

THE ISSUES WAS RAISED AT PRE-TRIAL ON 1/12/16 AND PRIOR TO COMMENCEMENT OF THE SECOND TRIAL ON 2/18/16, AND ALSO ON SEVERAL STATE APPEAL PROCEDURES.

DISCUSSION

THE DOUBLE JEOPARDY CLAUSE OF THE UNITED STATES AND MICHIGAN CONSTITUTION PROVIDE THAT A DEFENDANT MAY NOT BE PUT IN JEOPARDY OF LIFE OR LIMB TWICE FOR THE SAME OFFENSE U.S. CONST. AMEND V CONST. 1963 ART 1 § 15. DOUBLE JEOPARDY PROTECTIONS EMBODY TWO IMPORTANT CONSIDERATIONS: THE PRESERVATIONS OF THE FINALTY OF JUDGMENTS AND THAT THE STATE WITH ALL OF ITS RESOURCES AND POWER SHOULD NOT BE ALLOWED TO MAKE REPEATED ATTEMPTS TO CONVICT AN INDIVIDUAL FOR AN ALLEGED OFFENSE THEREBY SUBJECTING HIM TO EMBARRASSMENT, EXPENSE AND ORDEAL AND COMPELLING HIM TO LIVE IN A CONTINUING STATE OF ANXIETY AND INSECURITY, AS WELL AS ENHANCING THE POSSIBELITIES THAT EVEN THOUGH INNOCENT HE MAY BE FOUND GUILTY YEAGER V. US 557 U.S. 110; 129 S.Ct 2360, 2365-66 (2009)

AN ACCUSED IN A CRIMINAL CASE THUS IS PROTECTED FROM MULTIPLE PROSECUTIONS EVEN WHEN THERE IS NO DETERMINATION OF GUILT OR INNOCENCE PEOPLE V. LETT, 466 MICH 206, 215; 644 NW 2d 743 (2002) THE DOUBLE JEOPARDY CLAUSE PROTECTS AGAINST (1) A SECOND PROSECUTION OF THE SAME OFFENSE AFTER ACQUITTAL, (2) A SECOND PROSECUTION OF THE SAME OFFENSE FOLLOWING CONVICTION AND (3) MULTIPLE PUNISHMENTS FOR THE SAME OFFENSE BROWN V. OHIO, 432 U.S. 161, 165. THESE PROTECTIONS STEM FROM THE UNDERLYING PREMISE THAT A DEFENDANT SHOULD NOT BE TWICE TRIED OR PUNISHED FOR THE SAME OFFENSE SCHIRO V. FARLEY, 510 U.S. 222, 229 (1994)

SIMILARLY, IN THIS CURRENT CASE PETITIONER WAS FORCED TO ENDURE A SECOND TRIAL OF THE SAME OFFENSE FOLLOWING HIS CRIMINAL CONVICTION AS FOLLOWS! MR. JONES ENITIAL FIRST TRIAL PROCEEDINGS COMMENCED ON 10/19/15 AND OATH BEFORE SELECTING A JUROR WAS GIVEN see TT 10/19/15 p.4, 9-15; p.59, 1-2 see also MCR 6.412(B). PRELIMINARY JURY INSTRUCTIONS WAS GIVEN ID AT p.61, 9-11 FOLLOWED BY CONDUCTING A VOIR DIRE ID AT TT 10/19/15 p.7. ALONG WITH CONDUCT OF EXAMINATION, CHALLENGES FOR CAUSE AND INFORMATION CHARGES ID AT TT 10/19/15 p.12, 8-25; p.13, 1-8 AND p.59, 19-25. THE FOLLOWING DAY ON 10/20/15, THE COURT FALSELY STATED THAT SCHEDULING CONFLICTS PREVENTED TRIAL FROM PROCEEDING ID AT TT p.3. THE COURT ALSO FALSELY STATED SCHEDULING CONFLICTS WAS WITH MR. JONES DEFENSE COUNSEL AND THAT PETITIONER DEFENSE COUNSEL WAS UNAVOIDABLY DETAINED IN ANOTHER COURTROOM DURING JONES FIRST TRIAL PROCEEDINGS.

JUDGE MICHAEL CALLAHAN SAID HE HAD TO START THE CASE OVER AND PICK ANOTHER JURY TT 10/20/15 p.3, 14-17. WHEN IN FACT, DEFENSE COUNSEL WAS NOT UNAVOIDABLY DETAINED IN ANOTHER COURTROOM DURING JONES ENITIAL FIRST TRIAL PROCEEDINGS, AND THERE WAS NEVER A SCHEDULING CONFLICT WITH JONES COUNSEL. BECAUSE DEFENSE COUNSEL WAS PRESENT WITH THE COURT AND JONES ON THE ENITIAL TRIAL DATE PROCEDURE CONDUCTING A VOIR DIRE. JUDGE CALLAHAN STARTED THE CASE OVER TT 10/20/15, p. 3, 14-17 AND DEFENSE PICKED A NEW JURY ON TT 2/18/16. THE SECOND TRIAL PROCEDURE CONSISTED OF AN OATH BEFORE SELECTING THE JURY see MCR 6.412(B), ALONG WITH PRELIMINARY JURY INSTRUCTIONS, INFORMATION CHARGES, VOIR DIRE, FOLLOWED BY CONDUCT OF EXAMINATION, CHALLENGES FOR CAUSE, AND OATH AFTER SELECTION WAS GIVEN TO JONES PROSPECTIVE JURORS TO TRY THE CASE see; MCR 6.412(F) TT 2/18/16. SO AT THAT TIME JONES WAS PLACED IN JEOPARDY OF A CRIMINAL CONVICTION ID AT

HABEAS CORPUS OPINION AND ORDER ECF NO. 14 p.502

THE FIFTH AMENDMENT PROTECTION FROM DOUBLE JEOPARDY ATTACHED ONCE MR. JONES JURY AT HIS SECOND TRIAL WAS EMPANELED AND TOOK THE OATH. U.S. V. YOUNG, 657 F.3d 408, 416 (6th CIR. 2011) (CITING SERFASS V. U.S., 420 U.S 377, 388 (1975); see also DOWNUM V. U.S., 372 U.S 734 (1963)) AND OATH MEANS TRIAL OATH BECAUSE AT THAT POINT PETITIONER JURY WAS SWORN TO TRY THE CASE WHICH PUT JONES AT RISK OF A DOUBLE JEOPARDY CONVICTION U.S. V. GREEN, 556 F.2d 71, 72 (D.C. CIR. 1977) (AND SEE JONES HABEAS CORPUS OPINION AND ORDER ECF NO. 14 p.502). THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION PROVIDES NO PERSON SHALL BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB Ohio supra and Farley supra. THIS CLAUSE IS APPLICABLE TO THE STATES THROUGH THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT. BENTON V. MARYLAND, 395 U.S. 784, 794 (1969)

MICHIGAN'S DOUBLE JEOPARDY CLAUSE IS ESSENTIALLY IDENTICAL TO ITS FEDERAL COUNTERPART PEOPLE V. NUTT, 677 N.W. 2d (2004) 469 MICH 565, 573. THE TRADITIONAL RULE IS THAT JEOPARDY ATTACHES, FOR DOUBLE JEOPARDY ANALYSIS PURPOSES, WHEN A JURY IS SWORN Id. supra ID AT 215. THE MICHIGAN COURT OF APPEALS DETERMINED THAT PETITIONER CONSENTED TO A RETRIAL BY NOT OBJECTING TO DOUBLE JEOPARDY WHEN THE COURT INDICATED IT WOULD DISCHARGE THE FIVE REMAINING SEATED JURORS AND START A NEW MAY BE DEEMED WAIVED BY TRIAL COUNSEL. CONTRARY TO THE COMMONWEALTHS CLAIM, A DEFENDANT WERE NOT REQUIRED TO OBJECT TO A RETRIAL (MISTRIAL) TO PRESERVE HIS DOUBLE JEOPARDY ISSUE FOR REVIEW MAKING HIS CONVICTION A VIOLATION OF THE FIFTH AMENDMENT GUARANTEED THROUGH THE FOURTEENTH CARDINE V. COMMONWEALTH, 283 S.W. 3d 641 (where defendants conviction were reversed.)

ALTHOUGH PETITIONER DID NOT OBJECT TO DOUBLE JEOPARDY DURING HIS FIRST TRIAL, JONES DEFENSE COUNSEL DID OBJECT PRIOR TO THE COMMENCEMENT OF HIS SECOND TRIAL AND AT HIS SECOND PRE-TRIAL AS FOLLOWS:

> MR. PRICE: OBJECTING TO DOUBLE JEOPARDY IN AT PRE-TRIAL TRANSCRIPTS 1/12/16 BEFORE JUDGE DALTON ROBERSON
>
> MR. PRICE: AND WE, WOULD NOT WANT TO PROCEED IF, THERE'S INDEED, A DOUBLE JEOPARDY ISSUE IN THIS MATTER. WE ASKED FOR THE INITIAL FIRST TRIAL TRANSCRIPTS, AND IT HASN'T BEEN MADE AVAILABLE TO CLARIFY THE TRIAL ERRORS AND/OR DOUBLE JEOPARDY.

THE FACT THAT THE LOWER COURTS INDICATE THAT MR. JONES DID NOT OBJECT TO DOUBLE JEOPARDY DURING HIS INITIAL FIRST TRIAL, SHOWS THAT THERE IS IN FACT A DOUBLE JEOPARDY ISSUE. PETITIONER WAS NOT REQUIRED TO OBJECT TO A RETRIAL(MISTRIAL) ACCORDING TO COMMONWEALTH supra. WHICH WAS STILL OBJECTED AT THE TRIAL COURT LEVELS TO PRESERVE HIS DOUBLE JEOPARDY ISSUE WHICH IS EVIDENT IN THE EXISTING RECORD <u>PEOPLE V. GINTHER</u>, 390 MICH 436, 443; 212 NW 2d 922 (1973). IT IS CLEAR FOR THE RECORD THAT THE TRIAL COURT VIOLATED JONES FIFTH AMENDMENT AGAINST DOUBLE JEOPARDY GUARANTEED THROUGH THE FOURTEENTH AMENDMENT BY DECLARATION OF RETRIAL SO AS TO AFFORD THE PROSECUTION A MORE FAVORABLE OPPORTUNITY TO CONVICT JONES <u>WADE V. HUNTER</u>, 336 U.S. 684, 688; <u>MCCARTHY V. ZERBST</u>, 85 F.2d 640, 642; REVERSAL IS WARRANTED WHERE PLAIN-ERROR AFFECTING SUBSTANTIAL RIGHTS WHICH RESULTED IN THE DOUBLE JEOPARDY CONVICTION OF AN ACTUAL INNOCENT DEFENDANT SERIOUSLY

AFFECTS THE FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF THE LOWER COURT PROCEEDINGS OF THE THIRD JUDICIAL CIRCUIT. PEOPLE V. CALLON, 256 MICH APP. 312, 329; 662 NW 2d 501 (2003)

ARGUMENT - II

THE TRIAL COURT ABUSED ITS DISCRETION ALLOWING AN INADMISSABLE TESTIMONY AS CLASSIC HEARSAY WHICH RESULTED IN A GUILTY VERDICT VIOLATED MR. JONES EFFECTIVE RIGHT TO CONFRONTATION AND CROSS-EXAMINE ALL EVIDENCE GUARANTEED THROUGH THE U.S. CONST. AM VI. WHERE AN OFFICER TESTIMONY INVADED THE PROVINCE OF THE JURY.

STANDARD OF REVIEW AND PRESERVATION OF ISSUES

AN DENIAL OF A SIXTH AMENDMENT RIGHT OF CONFRONTATION AND CROSS-EXAMINE CHALLENGES ARE SIGNIFICANTLY CONSTITUTIONAL QUESTIONS OF LAW REVIEWED FOR ABUSE OF DISCRETION. PEOPLE V. FOMBY, 300 MICH APP. 46, 831 NW 2d 857 CITING PEOPLE V. UNGER, 278 MICH APP. 210, 216; 749 NW 2d 272 (2008) PEOPLE V. BEGAY, 42 F. 3d AT 502-503; U.S. V. RODRIQUEZ-ADJORNO, 695 F.3d 32, 40 (2012); PEOPLE V. YOST, 278 MICH APP 341, 355, 749 NW 2d 753 (2008) PEOPLE V. DROSSART, 99 MICH APP. 66, 80; 297 NW 2d 863 (1980)

DISCUSSION

AN ABUSE OF DISCRETION OCCURRS WHEN THE COURT CHOOSES AN OUTCOME THAT FALLS OUTSIDE THE RANGE OF REASONAND PRINCIPLED OUTCOMES PEOPLE V. FOMBY, 300 MICH APP. 46 CITING PEOPLE V. YOST, 278 MICH APP. 341, 345; 749 NW 2d AT 217, 272. GENERALLY, ALL RELEVANT EVIDENCE IS ADMISSABLE EXCEPT AS OTHERWISE PROVIDED BY EITHER THE STATE OR THE FEDERAL CONSTITUTION OR BY COURT RULE Yost supra, . EVEN IF THE EVIDENCE IS RELEVANT, IT MAY BE EXCLUDED IF ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE. THE QUESTION IS WHETHER OFFICER RAMONE GARCIA TESTIMONY WAS INADMISSABLE CLASSIC HEARSAY EVIDENCE. FIRST, MICHIGAN RULES OF EVIDENCE #801(d)(1)(B) HEARSAY EXCLUSION PROVIDES THAT IF A DECLARANT TESTIFIES AT TRIAL OR HEARING AND IS SUBJECT TO CROSS-EXAMINATION CONCERNING THE STATEMENT,

AND THE STATEMENT IS CONSISTENT WITH THE DECLARANT TESTIMONY AND IS OFFERED TO REBUT AN EXPRESSION OR IMPLIED CHARGE AGAINST THE DECLARANT OF RECENT FABRICATION OR IMPROPER INFLUENCE OR MOTIVE, PRIOR TO THE COMMENCEMENT OF MR. JONES SECOND TRIAL. DEFENSE COUNSEL HAD MADE NUMEROUS OBJECTIONS TO PETITIONERS SIXTH AMENDMENT RIGHT OF CONFRONTATION AND EFFECTIVELY CROSS-EXAMINE A VIDEO SURVEILLANCE THAT ONLY GARCIA VIEWED AS STATED:

> MR. PRICE: WE WOULD OBJECT TO THIS RECORDING IN THE COURT FILE AND THE PROSECUTIONS WITNESS RECOLLECTION AS BEING THE RECORD TT 2/18/16 p. 14; 20-24

MR. PRICE: AND WE OBJECT TO THE POLICE OFFICERS TESTIFYING ABOUT SOMETHING THAT THEY HAD NEVER SEEN IN TERMS OF HEARSAY TT 2/18/16 p. 15; 19-21

MR. PRICE: OUR OBJECTION JUDGE, IS TO ANY WITNESS TESTIFYING TO SOMETHING THAT THE DEFENSE HAS NOT HAD AN OPPORTUNITY TO SEE, OBSERVE, SO WE CAN EFFECTIVELY CROSS-EXAMINE SAID WITNESS, IT WOULD BE HEARSAY JUDGE TT 2/18/16 p. 16 LINES 19-23.

MR. PRICE: THE ISSUE IS A SIXTH AMENDMENT RIGHT OF CONFRONTATION FOR THE OFFICER TO ASSERT HIS OWN PERCEPTION THAT WAS MEMORIALIZED AS A VIDEO AND THEN TESTIFY TO WHAT HE CLAIM DENIES MY CLIENT AN EFFECTIVE RIGHT OF CROSS-EXAMINATION TT 2/18/16 p. 18, 9-17.

SECONDLY, MICHIGAN RULES OF EVIDENCE #701 PERMITS THE ADMISSION OF OPINIONATED TESTIMONIES WHICH IS VIRTUALLY IDENTICAL TO FEDERAL RULES OF EVIDENCE #701 AND PROVIDES: IF THE WITNESS IS NOT TESTIFYING AS AN EXPERT, THE WITNESS TESTIMONY IN THE FORM OF OPINIONS OR INFERENCES IS LIMITED WHICH ARE RATIONALLY BASED ON THE PERCEPTION OF THE WITNESS. GARCIA TESTIMONY WAS NOT CONSISTENT WITH THE EVIDENCE see MRE #801(d)(1)(B). BECAUSE THE TRIAL COURT AND/OR PROSECUTION DID NOT PRESENT THE VIDEO FROM THE 13003 GRATIOT LOCATION

WHERE AN ALLEGED OFFENSE WAS COMITTED, FOR THE DEFENSE TO CROSS-EXAMINE A VIDEO THAT ONLY GARCIA OBSERVED AND TESTIFIED TO BASED ONLY TO HIS OWN PERCEPTION FOMBY, 300 MICH. APP. 46, 50; 831 NW 2d 887 (2013) CITING PEOPLE V. BEGAY, 42 F,3d AT 502-503. AFTER SEVERAL OBJECTIONS WERE MADE BY DEFENSE COUNSEL. THE PROSECUTION DANIELE STRACE HAD DECIDED NOT TO PROCEED WITH THE CASE AS STATED.

> MS. STRACE; THE people WOULD NOT BE ABLE TO PROCEED WITH ANY TRIAL, BECAUSE WE WERE NOT AT THE CRIME SCENE TO SEE WHAT HAPPENED, AND WHAT WAS THERE. ID AT TT 2/18/16 P. 17, 10-13

JUDGE KEVIN J. COX ERRED IN DECIDING TO PROCEED WITH TRIAL AND MAKE A DECISION BASED ON WHATEVER HE WAS PRESENTED WITH BY ABUSING HIS DISCRETION AND ADMITTING GARCIA CLASSIC HEARSAY TESTIMONY AS EVIDENCE WAS NOT HARMLESS ERROR IT WAS INTENTIONAL ID AT 2/18/16 TT P. 21 LINES 16-17. THIS TYPE OF PREJUDICE DENIED JONES AN OPPORTUNITY TO CROSS-EXAMINE A VIDEO THAT ONLY GARCIA VIEWED. BECAUSE IN A JURY TRIAL IT IS NOT THE JUDGE DUTY TO MAKE A DECISION BASED ON WHATEVER IT WAS PRESENTED WITH. IT IS THE JURY DUTY TO DECIDE THE CASE BASED ON WHAT THEY ARE PRESENTED WITH. IT IS EVIDENT FOR THE COURT RECORD THAT GARCIA TESTIMONY WAS RATIONALLY BASED ON HIS OWN PERCEPTION AND THAT THE TRIAL COURT HAD A MOTIVE IN DENYING JONES THE OPPORTUNITY TO CROSS-EXAMINE A VIDEO THAT ONLY GARCIA HIMSELF VIEWED.

GARCIA WAS NOT AT THE SCENE WHILE THE VIDEO FOOTAGE WAS BEING RECORDED AND DID NOT OBSERVE FIRST HAND THE EVENTS DEPICTED ON THE VIDEO. Begay supra.

> DEFENSE COUNSEL: IT DENIES MR. JONES HIS RIGHT OF CONFRONTATION. WE DON'T KNOW WHAT THIS OFFICER IS CLAIMING WHAT HE SAW BECAUSE ITS NOT WHAT HE SAW WITH HIS OWN EYES, IN TERMS OF WHAT HAPPENED. HE SAW A RECORDING, OR AT LEAST ITS ALLEGED THAT HE SAW A RECORDING, AND THE DEFENSE NEVER SEEN IT, JUDGE. SO I DON'T THINK IT WOULD BE FAIR TO ALLOW ---
> TT 2/18/16 p.19, 5-14.

AT PETITIONERS SECOND TRIAL, GARCIA PROVIDED HIS OWN PERCEPTION REGARDING WHAT HAPPENED ON THE VIDEO. A WITNESS IS IN NO BETTER POSITION THAN THE JURY TO MAKE AN IDENTIFICATION FROM A VIDEO, GARCIA TESTIMONY IS INADMISSABLE UNDER MRE #701 WHICH IS VIRTUALLY IDENTICAL TO FRE # 701 see; U.S. RODRIGUEZ-ADJORNO, 695 F.3d 32, 40. A JURY IS AS CAPABLE AS ANYONE ELSE OF REACHING A CONCLUSION ON CERTAIN FACTS. IT IS ERROR TO PERMIT A WITNESS TO GIVE HIS OWN PERCEPTION OR INTERPRETATION OF THE FACTS BECAUSE IT INVADES THE PROVINCE OF THE JURORS ABILITY TO INTERPRET EVIDENCE THEMSELVES DEPICTED IN THE VIDEO JONES WAS DENIED CROSS-EXAMINATION PEOPLE V. DROSSART, 99 MICH App. 66, 80; 297 NW 2d 863 (1980)

ABUSE OF DISCRETION IN THE TRIAL COURTS EVIDENTIARY RECORD IS PROPERLY PRESERVED ginther supra, . THIS IS EVIDENCED BY THE TRIAL COURTS OWN STATEMENT OF MAKING A DECISION BASED ON WHATEVER JUDGE COX WAS PRESENTED WITH DURING DEFENSE COUNSELS SIXTH AMENDMENT RIGHT OF CONFRONTATION AND CROSS EXAMINATION OBJECTIONS, AND ITS PROBATIVE VALUE ES OUTWEIGHED BY THE DANGER OF THE TRIAL COURTS UNFAIR PREJUDICE PEOPLE V. UNGER, 278 MICH APP. 210, 216 749 NW 2d 272 (2008) THE NINTH CIRCUIT CONCLUDED THAT THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING THIS TYPE OF TESTIMONY AND REMANDED THE CASE yost supra.

CONCLUSION

IN CLOSING, THE MICHIGAN COURT OF APPEALS DETERMINED THAT JONES FIRST TRIAL WAS DISMISSED AFTER IT HAD BEEN EMPANELED see C.O.A #333238 UNPUBLISHED OPINION SEPT 14, 2017. AND ADJUDICATED JONES DOUBLE JEOPARDY CLAIM ON THE MERITS. see also, 2017 WL 4077 963 at 2-3. ALTHOUGH THE STATE COURT CONCLUDED THAT JONES VOIR DIRE JURY OATH WAS NOT THE SAME AS THE TRIAL OATH. AND OATH MEANS TRIAL OATH BECAUSE ONLY AT THAT POINT IS A JURY SWORN TO TRY THE CASE, AND ONLY AT THAT POINT WAS PETITIONER AT RISK OF A CRIMINAL CONVICTION AT HIS SECOND TRIAL Green supra. JEOPARDY DID INDEED ATTACH WHEN JONES SECOND JURY RECEIVED THE TRIAL OATH DURING JONES SECOND TRIAL ON TT 2/18/16 TO TT 2/23/16. SO AT THAT TIME JONES WAS PLACED IN JEOPARDY OF A CRIMINAL CONVICTION ID AT ECF NO. 14 PAGE ID. 502 OF PETITIONER'S HABEAS CORPUS OPINION AND ORDER. MR. JONES DOUBLE JEOPARDY CONVICTION IS EVIDENCE IN THE TRIAL COURT RECORD Ginther supra WHEN JONES SECOND JURY RECEIVED THE TRIAL OATH TO TRY THE CASE FOLLOWING JONES CONVICTION. Ohio supra Farley supra of DOUBLE JEOPARDY.

RELIEF

FOR THE REASONS STATED ABOVE, THIS COURT SHOULD GRANT PETITIONERS WRIT OF CERTIORARI ISSUE(S) OF DOUBLE JEOPARDY CLAIM etc. BY VACATING HIS CONVICTIONS AND IMMEDIATE RELEASE FROM CUSTODY.

Samuel Jones #364868
1960 U.S. Highway 41S
Marquette, MI 49855

SEPTEMBER 16, 2019

CERTIFICATE OF COMPLIANCE

Samuel R. Jones

v.

PEOPLE OF THE STATE OF MICHIGAN

AS REQUIRED BY SUPREME COURT RULE 33.1(h), I CERTIFY THAT THE PETITION FOR WRIT OF CERTIORARI CONTAINS 3,787 WORDS, EXCLUDING THE PARTS OF THE PETITION THAT ARE EXEMPTED BY SUPREME COURT RULE 33.1(d)

I DECLARE UNDER 28 USC § 1746(1) AND PENALTY'S OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON SEPT 16, 2019

#364868
Samuel Jones
1960 U.S. Highway 41S
Marquette, MI 49855