

19-7475

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Douglas Edwin Ball — PETITIONER
(Your Name)

vs.

STATE OF MICHIGAN — RESPONDENT(S)

Supreme Court, U.S.
FILED

JAN 17 2020

OFFICE OF THE CLERK

ON PETITION FOR A WRIT OF CERTIORARI TO

MICHIGAN COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

Douglas Edwin Ball # 268733
(Your Name)

ST. LOUIS CORRECTIONAL FACILITY 8585 N. CROSWELL RD.
(Address)

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

(Phone Number)

QUESTION(S) PRESENTED

I - PETITIONER'S DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT WERE VIOLATED BECAUSE IT IS IMPOSSIBLE TO DETERMINE WHETHER THE VERDICT WAS UNANIMOUS WHERE THERE IS INSUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION FOR TORTURE AND THE TRIAL COURT ALLOWED THE JURY TO RETURN A VERDICT OF GUILTY TO FIRST DEGREE MURDER IF THEY FOUND EITHER PREMEDITATED MURDER OR FELONY MURDER.

II - THE TRIAL COURT ERRED IN ADMITTING DNA EVIDENCE FOUND ON SHORTS WORN BY PETITIONER THE DAY THE VICTIM WENT MISSING WHERE THE PROSECUTING ATTORNEY CANNOT ESTABLISH A CHAIN OF CUSTODY OR LAY A FOUNDATION THAT WOULD ASSURE THE COURT THAT NO CROSS CONTAMINATION OCCURRED AND ADMISSION OF THE EVIDENCE WAS NOT HARMLESS ERROR.

LIST OF PARTIES

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

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

RELATED CASES

Brown V. Palmer, 441 F. 3d 347, 352 (6th Cir. 2006)

Parker V. Renico, 506 F. 3d 444, 452 (6th Cir. 2007)

Jells V. Mitchell, 538 F. 3d 478, 496 (6th Cir. 2008)

Newman V. Metrish, 543 F. 3d 793 (6th Cir. 2008)

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-10
REASONS FOR GRANTING THE WRIT	11-22
CONCLUSION.....	23

INDEX TO APPENDICES

APPENDIX A - *MICHIGAN COURT OF APPEALS OPINION*

APPENDIX B

APPENDIX C - *MICHIGAN SUPREME COURT ORDER DENYING REVIEW*

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Apodaca V. Oregon, 406 US 404, 92 S Ct 1628 (1972)	... 11
In re Winship, 397 US 358, 364, 90 S Ct 1068 25 L. Ed. 2d 368 (1970)	... 11, 12, 14
Jackson V. Virginia, 443 US 307, 99 S Ct 2781 (1979)	... 11, 12, 14
Johnson V. Louisiana, 406 US 356, 92 S Ct 1620 (1972)	... 11
Maryland V. King, US 133 S Ct 1958, 1972, 186 L. Ed 2d 1 (2013)	... 22
Mikes V. Borg, 947 F. 2d 353, 356 (9th Cir. 1991)	... 22

STATUTES AND RULES

Fifth Amendment, United States Constitution	... 3, 11, 12, 15, 22
Fourteenth Amendment, United States Constitution	... 3, 11, 12, 15, 22
MCL 750.85	... 14
MCL 750.85(2)(b)	... 16
MCR 6.420(c)	... 11
MCR 6.420(d)	... 11

OTHER

McCormic Evidence (2d ed) § 212 p. 527	... 19
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from **federal courts**:

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

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

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

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

For cases from **state courts**:

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

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

The opinion of the MICHIGAN COURT OF APPEALS court appears at Appendix A to the petition and is

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

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

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

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

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

The date on which the highest state court decided my case was OCTOBER 29, 2019. A copy of that decision appears at Appendix C.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

V Amendment United States Constitution

"No person Shall be held to answer for a Capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in Cases arising in the land or naval forces, or in the Militia, When in actual Service in time of War or public danger; nor Shall any person be Subject for the Same offence to be twice put in jeopardy of life or limb; nor Shall be Compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor Shall private property be taken for Public use, without just Compensation."

XIV Amendment United States Constitution

"All persons born or naturalized in the United States, and Subject to the jurisdiction thereof, are Citizens of the United States and of the State wherein they reside. No State Shall make or enforce any law which Shall abridge the privileges or immunities of Citizens of the United States; nor Shall any State deprive any person of life, liberty, or property, without due Process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On August 20, 2016 Ms. Jackson found the body of her daughter, Ms. Ball in the basement of their home in Port Huron Michigan. Ms. Jackson Called the police to report the discovery an hour after reporting Ms. Ball Missing.

Ms. Jackson had testified at the petitioners preliminary examination to the following Conditions when she discovered Ms. Ball's body. Ms. Jackson testified that, "he had a bag over her head," and observed "the feet and the hands bound behind her back." (Preliminary Examination Pg 62-63)

Ms. Jackson, now deceased, was very specific on her wording that "he had a bag over her head," haphazardly speaking, or speaking from some direct knowledge. Nonetheless, no restraints were ever found on the body of Ms. Ball to support this testimony for what it's worth.

On August 19, 2016 Ms. Ball reportedly went to Michigan Works to apply for a job and afterwards was going out with friends and had plans to spend the night. Ms. Ball was not missing for two days as Ms. and Mr. Jackson state. It is unknown if the police ever established if Ms. Ball did in fact apply for a job at Michigan Works. It was testified though that Ms. Ball never arrived at her friends place.

Ms. Jackson Said that she had received text messages which she stated appeared to be coming from Ms. Ball. While Ms. Jackson did note that the messages did not have the normal shortened words and emoji, she did not state at what frequency such

writing style was used, nor did the prosecution establish by proofs that this was abnormal. Ms. Ball and her husband, the petitioner also had text messages exchanged. The testimony from the officer in regards to the data extraction Confirmed other testimony and what was even reported to the police. (Trial Transcript, Vol II pg 1780-1808).

After Ms. and Mr. Jackson Came back to the property from picking Ms. Ball up from her friends house, to which she was not there due to a wrong address. Ms. Jackson had called the police to report Ms. Ball as missing, Mr. Jackson is heard in the background saying she been missing for two days, which is untrue. This phone call was at 3:13 PM.

Ms. Jackson Called 911 again at 4:16 PM reporting the discovery of Ms. Ball's body. Mr. Jackson had been gone for over an hour because he allegedly was going to the local store to get a pack of cigarettes. The local store was less than a mile away.

Mr. Jackson while away from the property during this time called his neighbor friend Mr. McWilliams and asked him to check on "his" house. Mr. McWilliams testified that this call was about ten minutes prior him seeing police speeding to the Jackson residence. (Trial Transcript, Vol IV pg 1058-1059).

Ms. Ball's brother, Mr. E. Jackson, had lived with the Balls and testified that he moved out because of a fight with his Sister Ms. Ball. (Trial Transcript, Vol V pg 1423). Mr. E. Jackson's whereabouts were never fully established by the police. One wonders if Ms. Jackson was referring to Ms. Ball's brother when she said "he had a bag over her head."

Officer Gilbert was the first to arrive following the dispatch regarding a dead body in the basement of the Jacksons residence. As he pulled up to the property officer Gilbert was met by Mr. Jackson, who was distraught and said that "Someone Killed her." Officer Gilbert testified as they reached the front entrance Mr. Jackson punched the glass door, shattering the glass and cutting his hand.

At the top of the basement stairs officer Gilbert took the lead, as he reached the basement and turned he saw a woman's body. Officer Gilbert testified that the woman was "obviously deceased" and that "She had her pants pulled down below her buttocks." Officer Gilbert also noticed "like someone had poured bleach on her."

Officer Gilbert took the Jacksons outside noticing that Mr. Jackson was leaving blood everywhere he walked. (Trial Transcript, VOL II pg 486-495). The Jacksons quickly implicated the petitioner although Mr. Jackson testified that he never heard the Bells have an argument any more serious than raised voices, no physical violence but failed to mention that his Son Mr. E. Jackson had a fight with his Sister, Ms. Ball, and moved out because of it.

Officer Gilbert Should have waited for back-up in this present case and kept the Jacksons outside as they secured the scene. This would have kept the area from being any more contaminated as there was already testimony from Ms. Jackson that she manipulated Ms. Ball's body.

The St. Clair County medical examiner, Dr. Spitz, testified to

his findings as follows. He determined that Ms. Ball had died from multiple blunt force injuries to the head. The injuries were consistent with a homemade welding hammer that the police had given him. That the homemade hammer or mallet was very consistent with the size of "that depressed fracture." (Trial Transcript, Vol II p 449-450, 461). It is important to note that this hammer was in fact testified to by Ms. Jackson as being her son's hammer, Mr. E. Jackson, (Preliminary Examination, p 64-65).

Dr. Spitz further testified that Ms. Ball's hands and feet were bagged, which was done to minimize any loss of evidence. Dr. Spitz did testify to other wounds sustained would be consistent to "defensive type wounds." There were "Scrapes on the first finger and some bruising on the back of the hand." (Trial Transcript, Vol II p 440, 442, 454-55, 458).

The petitioner was subjected to having his body photographed and no marks were found that would suggest or support that he was the offender. Mr. Jackson on the other hand punches through the glass on the front door cutting himself and removing any injury conditions that would be sustained as an offender.

Dr. Spitz testified to some markings, which directly challenges the torture charge in this present case. There was no evidence to say that Ms. Ball "was actively struggling against them" in regards to bindings. No bindings were ever recovered by police, and Dr. Spitz testified that he could not say on how application was, just that "no scraping of the skin that you might expect if these things are being applied while you're actively resisting." (Trial Transcript, Vol II p 460). Furthermore,

there was no evidence of anything wrapped around her throat or that she was gagged in anyway.

Due to the condition that Ms. Bell was found, namely with her pants pulled down past her buttocks Dr. Spitz believed that there was a sexual assault, and so trace evidence was collected at autopsy. What would be commonly known as a rape kit.

(Trial Transcript, Vol II p 477).

While there was much to do about the shorts and the inside waistband containing DNA linked to Ms. Bell, the prosecution could not confirm that it was a non tainted chain of custody nor could the prosecution confirm, more importantly, that any cross contamination took place. There was also a lot made out of a pair of shoes, which in the end forensics was unable to match the shoe to impressions in the basement.

The shorts mentioned above were in a bag which had blood. The blood was never tested to obtain a source. There were unknown DNA profiles that were obtained from testing and fingerprints of an unknown source as well. Ms. Mayfield from the Bridge Port forensic laboratory testified she was only allowed seven samples. Further testimony was there could have been sources of blood in the restricted walkway, but it was not collected. (Trial Transcript, Vol III p 796).

There was testimony of a bathroom whose toilet is full with long hair which was never collected either. (Trial Transcript, Vol III p 787). Oddly enough Mr. Jackson was the only resident with long hair and the police failed. What should have been investigated was not.

Ms. Scott from the Michigan State Police forensic laboratory did testify to the Medical examiner, Dr. Spitz, felt the need to collect a "Sexual assault kit or commonly referred to as a rape kit." Dr. Spitz, "felt there was some indication that there may have been an assault on her prior to, um, her dying." (Trial Transcript, vol IV p 910).

Where a due process violation on investigative procedures against the petitioner comes into play. Ms. Scott testified to the following in regards to a possible sexual assault. There was no testing done "for a possible sexual assault." Ms. Scott went on to testify that, "we felt that in this case that there may have -- there was probably not a sexual assault that occurred prior to the death of the decedent." (Trial Transcript, Vol IV p 911-912).

Ms. Ball was found with her pants pulled past her buttocks. There was no other testimony that even indicated that "there was probably not a sexual assault." Whether an individual is deceased or not is not a factor to if a sexual assault took place. Ms. Scott testified again that "we felt that it did not appear to us the Crime Scene team as well as the, the agency that, um, she had been sexually assaulted." (Trial Transcript, Vol IV p 952).

The rape kit was not ran because of this belief, contrary to conditions and what the Medical Examiner believed, using caution one was collected. Ms. Scott testified that they are allowed to send seven evidentiary samples for first round DNA testing. Partial support for reasoning on why also the full rape kit was not ran, only a mouth swab to establish a DNA profile.

More than Seven evidentiary Samples could have been allowed upon request, but in this present case Ms. Scott did not request additional testing.

VERDICT

The petitioner was Convicted of first-degree murder, MCL 750.316 under multiple theories: (a) premeditation, MCL 750.316(1)(a) and (b) felony murder, MCL 750.316 (1)(b) along with torture, MCL 750.85.

SENTENCE

The petitioner was sentenced as a second offense habitual offender under MCL 769.10, to life in prison without parole for the murder, and 19-30 years for the torture.

REASONS FOR GRANTING THE PETITION

The petitioner relies on the United States Constitution Due Process Clause, along with the following United States Supreme Court Cases in regards to the right to a Unanimous Verdict in a jury trial. *Johnson V. Louisiana*, 406 US 356 92 S Ct 1620 (1972); *Apodaca V. Oregon*, 406 US 404 92 S Ct 1628 (1972).

The petitioner also relies on the Winship doctrine and *Jackson V. Virginia*, 443 US 307 99 S Ct 2781 (1979), in regards to what is an irrational verdict in this present Case. This Case was a Circumstantial one and limited on the use, which was used well out of reason in the petitioners trial.

ISSUE I

- A. In this present Case the trial Court instructed the jury it could return a Verdict of first-degree murder under alternative theories. The jury was not asked to specify the theory of first-degree murder on which they based their decision.

There is no way of knowing if all the jurors agreed upon premeditated murder or felony murder as a poll of the jury was not conducted. Under the Michigan Court Rule 6.420 (D) the trial Court must have each juror polled. Further under the same Court Rule 6.420(c) for Several Counts, the Court should inquire if the jury reached a Unanimous Verdict on any of the charged Counts, either all or just one.

While there was evidence of a Cover-up and tampering with the evidence, the evidence linking the petitioner to this offense is merely Circumstantial. Further there is little evidence of how the fatal attack

actually occurred. The petitioner challenges the sufficiency of the evidence in this present case, and mostly on the torture theory. There was no evidence that the petitioner was "in custody" of the victim, nor "in control." No evidence is insufficient evidence to sustain a jury verdict.

The lower Courts were not reasonable in applying the evidence in this present case. The circumstances were limited and submitting the torture charge to the jury, then instructing the jury in regards to the theory of torture was not only improper but resulted in an unreliable verdict.

Some jurors may have relied upon the charge of torture to support a verdict of first-degree murder, which cannot stand without the underlying torture charge. Coupled with no evidence to support the theory of torture it shouldn't have been charged to the jury in the first place.

The lower Courts and this Court cannot determine that in fact a unanimous verdict was reached on the then remaining theory of premeditation. It then is reasonable that the jurors thought the crime was second-degree murder but relied on the felony murder by torture theory to find first-degree murder. Something we will never know.

Because of the error in the application of the protections contained within the United States Constitution, namely; the Fifth Amendment and Fourteenth Amendment and United States Supreme Court Cases, *In re Winship* and the Jackson Standards the charge of first-degree murder should, and must be vacated, and of course because of the no evidence to support the charge of torture, that

Conviction to Should have and must be vacated.

It is important to note in this present case that the petitioner from the start, and to this day has claimed and maintained his innocence. His actual innocence not probable innocence. The mistakes by the investigating agency and failure to test evidence seized which contains biological material, and failure to collect evidence clearly shows an agency neglect and a prosecution not acting as an administrator of justice, their Constitutional duty.

The petitioner would believe that this Court would find it Constitutionally Prudent to have a verdict in a felony case be unanimous, and to obtain that you poll the jury. This is important and as discussed, not done in this present case. This is not only important in this case but all felony cases national.

When the petitioners trial Counsel moved the trial Court for an instruction that the jury must agree unanimously to either premeditated murder or felony murder as it was not enough for 12 jurors to agree upon one theory or the other, the trial Court disagreed and declined to give the unanimity instruction. The jury was told it could find the petitioner guilty of first-degree murder under either theory.

The trial Courts abuse of discretion to decline to give the Unanimity instruction Constitutes reversible error and review by this Court. The instructions did not adequately inform the jury of their duty to make a unanimous finding. It is not only possible but reasonable that the jury arrived at a Compromised verdict. Such a verdict, that is not unanimous, could not convict the petitioner.

B. The petitioner has a claim of insufficient evidence to support his conviction in this present case. The standard for this type of claim was articulated by this Court in *Jackson v. Virginia*, 443 US 307 99 S Ct 2781 (1979). It is well known the sufficient evidence requirement is a part of every criminal defendants due process rights. It is an attempt to give "Concrete Substance" to those rights by precluding irrational jury verdicts. *Jackson*, 443 US at 315 99 S Ct at 2786.

As the Jackson Court explained: "The [In re Winship, 397 US 358, 90 S Ct 1068, 25 L. Ed. 2d 368 (1970)] doctrine [requiring proof of guilt beyond a reasonable doubt] requires more than simply a trial ritual. A doctrine establishing so fundamental a substantive constitutional standard must also require that the factfinder will rationally apply that standard to the facts in evidence. A 'reasonable doubt,' at a minimum, is one based upon 'reason.' Yet a properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt".... 443 US at 316-317 99 S Ct at 2788.

When this, applied to this present case namely on the torture charge, it is clear in the record that there was no evidence to support the theory or charge, and that if this was used to convict the petitioner the verdict would be irrational.

Inferences are not evidence, circumstantial evidence is limited and only valid when there are actual facts to support it, not refuted facts, but clear proven facts. We must look at the Michigan Statute for torture, MCL 750.85 and accordingly the Statute has three elements.

First, there must be an intent to cause "cruel or extreme" physical or mental pain and suffering. Second, the Statute requires the actor to actually inflict great bodily harm or severe mental pain or suffering. Third, requires that the victim be in the custody or physical control of the actor.

Two part argument, there was no evidence that the petitioner was the "actor" in this present case, which would have been needed to support not only an element for first-degree murder but an element to the torture Statute as well. Not proving that the petitioner was the "actor" in this present case makes the conviction rendered in violation of Constitutional Protections under the Fifth and Fourteenth Amendments.

It is speculation to state that the petitioner was in fact the "actor" to satisfy prongs to first-degree murder or torture. Considering actual biological material which was never collected or tested by the investigating agency supporting other prongs to the elements are further improper.

Other elements could be supported reasonably speaking but they all deal with the issue of an actor acting and it is only speculation in this present case to say the "actor" was in fact the petitioner as there was no evidence.

The prosecution knew this and presented a feeble argument regarding custody or control issue. The prosecution argued the crime occurred in the basement and that the victim did not survive. The prosecution's standard proposed was so broad that every murder victim becomes a torture victim.

The law requires much more than a finding that the victim couldn't get away when attacked. The Statute Contains the definition of "Custody or Physical Control," which provides: "(b) Custody or Physical Control means the forcible restriction of a persons movements or forcible Confinement of the person so as to interfere with that persons liberty, without that persons Consent or without lawful authority." MCL 750.85(2)(b).

The Statute requires forcible restriction or forcible Confinement and these elements must be Construed as Separate acts from the attack itself. To do otherwise broadens the Statute to include every murder and every felony murder, felony battery. That broad definition Cannot be Supported by the text of the Statute.

As there was no evidence in Support of Confinement or Control it is clear that the jury's verdict became irrational and so this Court must issue a writ to remand or vacate the Conviction.

C. If the basis for the felony murder theory is insufficient then the first-degree murder Conviction must be vacated because as discussed, it is impossible to determine whether the verdict was unanimous. Further there was no evidence linking the petitioner as the "actor" so because of the issue to determine if the verdict was unanimous there is no assurances that all of the jurors agreed on premeditated murder.

It is very Possible that Some jurors rejected the premeditation theory, which was not a Strong case, and relied on torture to find

felony murder. Absent the felony murder theory, if even one juror believed the petitioner did not premeditate the offense, then there is no unanimous verdict.

The Prosecutions theory was, for the theories of premeditation, that the petitioner in this present case had to get a hammer, or that the petitioner was spending the time between strikes deliberating and premeditating. There is no evidence that either occurred by the petitioner, Constitutionally needed to sustain the petitioners Conviction. The verdict in this present case is then not reasonable, and in fact a Compromised one. Both of the petitioners Convictions Should have and Must be vacated

ISSUE II

A. The trial Court erred in admitting evidence namely; DNA that was found on a pair of shorts, that were taken from a bloody bag. The Prosecution Could not establish a Chain of Custody, or lay a foundation that no Cross Contamination occurred. Is this reasonable to say this is fundamentally fair?

This then would also raise the question of one in regards to if the petitioners trial Counsel was in fact ineffective by not even attempting to move the Court to Suppress the evidence?

The testimony regarding how these shorts were handled, when they were actually discovered, and how they got into the police Custody is inconsistent and Contradictory. The petitioners preliminary examination testimony had to be used at the trial due to a witness passing away. The testimony did not reasonably line up to

Other Statements and testimony regarding these shorts. The Petitioners trial Counsel must have known that these shorts were going to be an issue at trial.

At some point the witness claims to have dug the shorts out of a box and put them into a bag. The Michigan State Police forensic investigator testified that she located a plastic bag next to the main door entrance. She stated the plastic bag had apparent blood staining. Inside the plastic bag she found three items including these shorts.

Testimony from the Michigan State Police latent print unit was that they did not process the bag for fingerprints. Further testimony from the Michigan State Police forensic division who handled the shorts which collected samples for testing for the presence of blood and for DNA testing. After several areas were tested a spot inside the waistband of the shorts were compared to samples of the victim and it was determined to be a match. The blood on the bag itself, as described, was not tested.

The shorts were not collected by trained investigators who gather and preserve evidence without cross contamination. The investigators in fact only became involved with the evidence namely the DNA on the waist band, after it was collected by the witness. The officers do not investigate this toy box it was reported where these shorts were found, and further there is no knowledge if these shorts were in contact with any other evidence in the house prior their arrival.

This Court will ask why is this important, the witness was in the basement where the victim was found prior to officers arriving. She testified she came to contact with the victim, her daughter in this present case. Then on the 911 calls she had already concluded that the petitioner committed the murder, so it is impossible to know whether by accident or by intention the shorts were contaminated. This critical break in the chain of custody was the basis for excluding the evidence.

The petitioners trial Counsel did not protect his clients interests. Trial Counsel was aware of this evidence and did nothing to challenge it. That's prejudice and ineffective.

While breaks in the chain of custody do not automatically require exclusion of the proffered evidence, to be admissible the prosecution must lay a foundation identifying the evidence as what they are purported to be and a showing that they are connected with the crime or the accused.

An adequate foundation requires testimony to start that an object or objects offered were involved with the incident, then further that the condition of the object is substantially unchanged. McCormic, Evidence (2d ed) s 212 p. 527.

A Court should then consider the nature of the article or articles, the circumstances surrounding the preservation and custody of it along with the possibility of intermeddlers tampering with it.

Only then if the trial Court is reasonably satisfied that the

article is the object involved in the incident or has not been changed in important respects, the Court may permit its introduction into evidence. This is the norm and how a party moves to introduce evidence at trial.

In this present case it would have been impossible to lay an adequate foundation because the witness was deceased and an adequate foundation was never made at the petitioners preliminary examination. Then the testimony according to the investigators was that the bag itself had blood on it.

It then becomes impossible to determine whether the bag contaminated the shorts, or the shorts, which had no doubt dried by then, somehow bloodied the bag. There is also the possibility of intermeddlers either tampering with or acting in a manner seen as foul play.

Either way the petitioners trial Counsel did not object to the admission of the evidence. The trial Court abused its discretion by allowing the admission of the evidence and when reasonably viewed it was the only evidence that had the victims blood on it which becomes outcome determinative to this present case.

This petitioner like many others face circumstantial evidence issues that cannot be used in replacement of the Constitutional protections of proof beyond a reasonable doubt. Further problems are that the circumstantial evidence is used to not only create falsehoods but then used to convict, and this is at clear odds with due process, fundamental fairness.

As discussed in the Statement of the Case. Where a due process violation on investigative Procedures comes into factor. A Criminal defendant is enjoys a due process, fundamental fairness for the Criminal proceedings. Should this not also be included Prior Criminal Proceedings?

In this present Case testimony at trial was that there were limited Samples that Could be tested for DNA, for the first round. Upon request though more Could be tested. This was not done in this present Case. Seven Samples to be exact.

The Victim here was in fact found with her pants pulled down past her buttocks. This is an undisputed fact. It is not a far reach then to Collect a, if you will, rape Kit for further testing. On the Side of Caution the petitioner would say most all investigative agencies would do so. This rape Kit was not ran in full, only a Mouth Swab to establish a DNA profile.

The Whole time at trial no one testified that there was no reasonable chance that the victim was not Sexually assaulted. The medical examiner believed so and requested one to be Collected. He Collected one at the autopsy.

One Michigan State Police forensic laboratory technician was the only one to testify to the fact that there was no testing done for a possible Sexual assault. Contrary to Conditions the victim was in she testified that there was probably not a Sexual assault that occurred prior to the death of the victim.

Whether, and whenever an individual is deceased is no factor to if a Sexual assault took place. The Conditions warranted the Kit

to be tested in full. Why the technician would support the reason to only send seven samples, yes seven samples, because of the "feeling" that the victim did not appear that she was sexually assaulted is contrary to the circumstances and in fact a poor one. Even more so when upon a simple request to run and test more samples could have been granted, and reasonably would have been.

No requests were made though to submit a second round of samples to test for DNA, not even one. There were unknown profiles that were obtained from other tests and even fingerprints of unknown individual or individuals.

What is fundamentally fair by not testing biological materials collected in an investigation? or even testing a full rape kit? The Fifth and Fourteenth Amendments protect from this very type of action. Yet here is the petitioner, like many others.

In *Mikes v. Borg*, 947 F 2d 353, 356 (9th Cir. 1991) and this Court in *Maryland v. King*, US 133 S Ct 1958, 1972 186 L Ed 2d 1 (2013) speaks about DNA usage and fingerprints at trial. The petitioner attaches a motion to this petition to order the lower court to obtain and test biological material.

With the items that were not tested, profiles that were obtained and what the prosecution relied on so heavily as proof is not legally sufficient to have convicted the petitioner. Because of the actions and non-actions due process protections were violated and the petitioner respectfully requests the attached motion and petition for a writ of certiorari to be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

George Bush

Date: January 17th 2020