

No. 19-7890

IN THE
SUPREME COURT OF THE UNITED STATES

KEVIN RICHARDS

(Your Name)

— PETITIONER

vs.

PEOPLE OF MICHIGAN

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI

FILED
FEB 12 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

MICHIGAN COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

KEVIN RICHARDS

(Your Name)

1780 EAST PARNALL RD

(Address)

JACKSON MI 49201

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

I. Did The Trial Court Abuse Its Discretion When It Denied Plea Withdrawal Under MCR 6.310(B); Mr. Richards Has A Due Process Right To Plea Withdrawal Where He Was Denied His Right To The Effective Assistance Of Counsel, The Plea Was Not Understanding, And the Plea Was Coerced ?

Trial Court (presumably) answered, "NO".

Court of Appeals answered, "NO".

Supreme Court answered, "N.A.".

Defendant-Appellant answers, "Yes".

II. Does Mr. Richards Have A Due Process Right To Plea Withdrawal When He Was Denied His Right To The Effective Assistance Of Counsel, The Plea Was Not Understanding, And The Plea Was Coerced ?

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:

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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☐ is unpublished.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☐ is unpublished.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 A to the petition and is

- ☒ reported at PEOPLE v Richards 2019 Mich App. LEXIS 4576; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the MICHIGAN SUPREME court appears at Appendix C to the petition and is

- ☒ reported at People v Richards, 2019 Mich-LEXIS 2241; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

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

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

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was November 26, 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

MCR 6.302(A)

MCR 6.310(B)

Rules of Professional Conduct, Rule 1.2(a)

STATEMENT OF THE CASE

Statement of the case

On June 14, 2018, in the midst of trial, Kevin Richards pled no contest to one count of domestic violence third offense as a habitual fourth offender and one count of resisting and obstructing a police officer as a habitual fourth offender in the Macomb County Circuit Court before the Honorable Michael E. Servitto. (6/14/18). On July 30, 2018, Judge Servitto sentenced Mr. Richards to 39 months to 20 years for domestic violence third offense and 39 months to 15 years for resisting and obstructing a police officer. (7/30/18); J.O.S. The trial court provided a Cobbs evaluation for a minimum sentence not to exceed the bottom two-thirds of his guidelines range as calculated on the date of sentencing. ST.

The charges resulted from an alleged domestic dispute between Mr. Richards and his wife of six years, Jenny Ann Richards, with whom he shares four children. Mrs. Richards testified at preliminary examination that on November 2, 2017, she and Mr. Richards became involved in an all-day long argument that eventually turned physical when he hit her in the face twice and kicked her in her leg while inside of their home. They then went outside and they "got physical with each other" with Mr. Jennings pulling her back inside of the house. PET 17-18. Specifically, Mrs. Richards testified that at eight o'clock in the morning, she and Mr. Richards were fighting when he shoved her into a window. PET 19. From that point on, she testified, they argued all day until approximately 9 or 10 p.m. when he hit her in the face giving her a black eye. PET 20-21. She and Mr. Richards then agreed to go to the police station together. She walked out of the house first then he shut the door. PET 21-22. Mrs. Richards went back inside the house and went into the bathroom to take a shower. PET 23-24. She was in the bathroom for five or ten minutes and was putting on make-up when the police rushed in. PET 26

Mrs. Richards heard a loud crash. Mr. Richards was in the living room and the police "were beating the crap out of him" while he laid "screaming on the floor." Mrs. Richards told them repeatedly that nothing had happened. PE T 26. She later changed her story to the police. PE T 27. Trial counsel attempted to question Mrs. Richards as to whether it was true she previously lied to police in an earlier incident about Mr. Richards putting his hands on her. PE T 27. The assistant prosecutor objected, and trial counsel was forced to abandon the line of questioning when that objection was sustained. PE T 27.

Warren police officer Corey Martin testified that he and four other officers arrived at the Richards' home after receiving a domestic violence call from a third party. PE T 50. The police never obtained a written statement from that third party. PE T 50. "All the lights inside the house were off" and no one responded to knocks on the doors and windows. An officer observed a white female in the bathroom putting on make-up and attempting to cover up something. PE T 33-34. A male voice called out from inside the home and eventually a white male (later determined to be Mr. Richards) opened the door. The officers never asked Mr. Richards to step outside or identify himself. PE T 44.

They could see a white female (later identified as Mrs. Richards). She was not asking for help and they did not ask her to step outside of the house. The five officers entered the home, without invitation. They grabbed Mr. Richards by the wrists, he pulled away and sat down on the couch, approximately three feet away. PE T 36-37. When officers attempted to place his hands behind his back, Mr. Richards began to "wiggle back and forth." PE T 37. All five officers used physical force and pepper spray to drag Mr. Richards from the couch to the floor and pin him there. PE T 39. Mrs. Richards testified that at this point the police were "beating the crap out of him" while he lay "screaming on the floor." At the conclusion of the preliminary examination, the case was bound over and Mr. Richards was remanded to jail.

On December 4, 2017 the parties appeared for arraignment on the information and pretrial conference. First trial counsel withdrew due to a breakdown in attorney-client communication and Mr. Richards told the court he would like a further hearing.

The trial court informed him the Ginther hearing could be requested once his new appointed counsel was present. (12/4/17).

On December 18, 2017, Mr. Richards appeared with his second appointed counsel. The parties agreed to secure transcripts from the preliminary examination. Trial counsel informed the trial court he intended to file a motion to quash and for additional discovery. The trial court set a trial date for February 6, 2018. A pre-trial motion date was set for January 23, 2018. Mr. Richards objected to the trial and pre-trial motion date, informing the trial court that it was not enough time to prepare the necessary motions, especially since discovery was still outstanding and he had not been able to view potentially exculpatory dash cam and body cam recordings. Mr. Richards also asserted that while the police had smashed his phone, thereby depriving him of that evidence, he believed his wife's phone still contained video evidence that he wished to request. The trial court noted that Mr. Richards had previously requested the same items, and Mr. Richards presented the trial court with a formal motion that had been previously filed. (12/18/17)

On January 10, 2018 the parties again appeared on the record. The trial court was confused about the purpose of the hearing and asked the parties why they were there. The assistant prosecutor informed the trial court that Mr. Richards was there for a Cobbs evaluation. Mr. Richards stated that was "not true at all;" he expressed his surprise about the hearing, informing the trial court "I had no idea about this hearing." When the trial court attempted to adjourn, Mr. Richards informed the trial court that it had still never had a hearing on his motion for preservation and for the discovery (including potentially exculpatory information) and had never really acknowledged the motion. Trial counsel indicated there were dash cam videos but no body cam videos. Mr. Richards still had not been shown the videos although trial counsel committed to bringing them to the jail at the previous hearing, pursuant to an order from the court. The trial court informed Mr. Richards that it was in the middle of a trial and that a Brady or discovery hearing could be set at a later date. The court then adjourned until the next date, which had already been scheduled (for January 23, 2018).

On January 23, 2018 the parties convened for a discovery hearing. The prosecutor averred that she did not have possession of Mrs. Richards' cell phone and therefore did not have her text messages, which Mr. Richards was seeking. Mr. Richards sought the Warren police department's protocol for handling domestic violence cases; that request was denied. Mr. Richards (who had previously alleged that his wife filed a false police report against him for domestic violence) requested copies of all police reports made by her against him for domestic violence; the prosecutor indicated she had provided some police reports, but not all. Mr. Richards had not had a chance to review the reports that were provided. The court told Mr. Richards he could FOIA any other reports that he was seeking. Mr. Richards requested the personnel files of the officers involved as to alleged abuse and assaults upon criminal defendants. The trial court denied the request, without prejudice. Mr. Richards requested the criminal history of the witnesses the prosecution planned to call at trial. The prosecutor said she did not have access to the information. The trial court disagreed, but still refused to order the prosecutor to provide it to Mr. Richards. Mr. Richards requested unedited body cam and car camera police footage of the incidents. The prosecutor seemed to argue that the tape provided was not edited but did contain blank spots. Trial counsel agreed that the recording contained blank spots and also asserted that the recording appeared only to include police car footage and not footage from inside of the house. The prosecutor acknowledged that Mr. Richards had also requested the recording of the 911 call prompting the police to come to his home, but that it had never been provided to him. Mr. Richards also requested a copy of his booking video, but that had never been provided. Mr. Richards requested a copy of dispatch records; those had not been provided. Finally, he requested any medical records related to his wife, which the trial court denied. At the end of the hearing, Mr. Richards' second trial counsel moved to withdraw from the case citing a breakdown in attorney-client relationship. That request was granted.

On February 6, 2018, Mr. Richards appeared in court. He informed the trial court that he had found replacement counsel but needed thirty days to come up with the retainer fee. The trial court gave him three weeks.

On March 13, 2018, Mr. Richards appeared with his third appointed counsel. He informed the trial court that he was trying to retain counsel, but the trial court left appointed counsel in place. Appointed counsel stated that he had not received or had a chance to review the discovery at that point. The trial court set a pre-trial date 30 days out.

On April 19, 2018, Mr. Richards appeared again. Trial counsel stated that he had still not received or reviewed discovery. The trial court expressed frustration, asking "has anything been done" since his appointment to the case.

On June 7, 2018 the parties again appeared and a motion to quash was finally presented on Mr. Richards' behalf. Trial counsel asserted that the police had unconstitutionally entered Mr. Richards' home. The prosecutor asserted that an evidentiary hearing was necessary. The trial court ruled that all motions would be set for the date of trial. The trial court would hear and decide the motions prior to picking a jury.

On June 12, 2018 the parties appeared for evidentiary hearing. The trial court first ruled on the motion to quash, finding that the district court had not abused its discretion in binding the case over. Turning to the motion to suppress, the trial court stated that it had provided both attorneys with a factually similar case, wherein this court had decided the police had unconstitutionally entered the defendant's home. The trial court advised the prosecutor that it had allowed her additional time to produce a police officer to testify at the evidentiary hearing, but she failed to do so. The prosecutor moved for an adjournment and trial counsel moved for dismissal of the charges. The trial court declined to rule on the suppression motion or dismissal of the charges at that time. Instead, it heard a bond forfeiture motion that the prosecutor had served upon defense counsel at

approximately 9:30 pm. the previous night and he had not had the chance to review. The prosecutor alleged that Mr. Richards had physically assaulted his wife during the pendency of the proceedings and asked that his bond be revoked. Following testimony on the matter, the trial court ordered Mr. Richards into custody and set bond at \$250,000.00

The following day on June 13, 2018, the trial court heard testimony related to the motion to suppress. The trial court stated the case presented a "close call" but ultimately denied the motion to suppress. Trial counsel requested a stay to file an interlocutory appeal to this court. The trial court stated that an interlocutory appeal would only stall the proceedings and the lawfulness of the police officers' entry would be presented to the jury at trial at any rate. The trial court commenced trial almost immediately thereafter. The trial court heard testimony from Mrs. Richards before adjourning for the day.

The following day June 14, 2018, the parties appeared for the second day of trial, but instead a plea was entered. The trial court provided a Cobbs evaluation to the bottom two-thirds of the guidelines. After significant equivocation, Mr. Richards agreed to the no contest plea.

On July 30, 2018, Mr. Richards moved for plea withdrawal prior to the imposition of sentence. Trial counsel argued on Mr. Richards' behalf, stating that he felt coerced into the plea given that substantive motions were not heard until the day trial commenced and because the trial court refused a stay for him to file an interlocutory appeal, but had not done so. The trial court noted that trial counsel could have filed an interlocutory appeal, but had not done so. Mr. Richards testified that trial counsel told him he was not familiar with the interlocutory appeal process and did not want to sabotage his future if he filed it wrong. Mr. Richards also asserted that he had asked trial counsel to call an exculpatory witness, which he failed to do. Trial counsel agreed that the request had been made of him shortly before the commencement of the trial. Mr. Richards further asserted that he had not

10.

had the effective assistance of counsel because trial counsel had failed to adequately prepare and assert his defense. Trial counsel urged the trial court to allow plea withdrawal in the interests of justice, especially since all of the witnesses were still available to the prosecution and no evidence had been destroyed. Finally, Mr. Richards asserted his innocence. The trial court accused him of manipulation and denied the motion for plea withdrawal.

Mr. Richards was then sentenced on that same day July 30, 2018. The judgement of sentence was signed on July 30, 2018.

Mr. Richards requested the appointment of Appellate Counsel on July 30, 2018.

The State Appellate Defender Office was appointed on August 7, 2018; the transcripts were filed on October 5, 2018.

On January 23, 2019 Malaika D. Ramsey-Heath (P68114) filed a delayed application for leave to appeal on Mr. Richards' behalf.

On March 22, 2019 the Michigan Court of Appeals denied the delayed application for leave to appeal for lack of merit and the grounds presented.

Mr. Richards was not made aware of the denied application for leave to appeal by appellate counsel until May 23, 2019, further Mr. Richards was not aware of the date of the denial for the delayed application for leave of appeal until June 25, 2019.

On July 11, 2019 Mr. Richards filed a motion for reissuance of judgment in the Michigan Court of Appeals.

On August 12, 2019 the Michigan Court of Appeals re-issued its order denying the delayed application for leave of appeal for lack of merit and the grounds presented.

On August 14, 2019 Malaika Ramsey-Heath (P68114) filed an

application for leave to appeal, the Michigan Court of Appeals decision, in the Michigan Supreme Court.

On November 26, 2019 the application for leave to appeal the August 12, 2019 order of the court of appeals was considered, and DENIED, by the Michigan Supreme Court, because they were not persuaded that the question presented should be reviewed by that court.

I. The Trial Court Abused Its Discretion When It Denied Plea Withdrawal Under MCR 6.310(B); Mr. Richards Has A Due Process Right To Plea Withdrawal Where He Was Denied His Right To The Effective Assistance Of Counsel, The Plea Was Not Understanding, And the Plea was Coerced

Issue Preservation and standard of review:

Trial counsel preserved this issue through a motion for plea withdrawal, which was filed in the trial court prior to sentencing and denied by the trial court judge on the record.

A trial court's ruling on a motion to withdraw plea is reviewed for an abuse of discretion. *People v. Brown*, 492 Mich 684, 688, 822, NW 2d 673 (2012). A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes. *People v. Young*, 276 Mich App 446, 448; 740 NW 2d 347 (2007). Whether counsel was ineffective involves a mixed question of fact and constitutional law. *People v. Solloway*, 316 Mich App 174, 187; 891 NW 2d 255 (2016). "Generally, a trial court's findings of fact, if any, are reviewed for clear error, and questions of law are reviewed de novo." *Id.* at 188.

Argument:

A. Applicable Court Rules

Mr. Richards moved for plea withdrawal before sentencing under MCR 6.310(B), which states in relevant part:

(B) Withdrawal after acceptance but Before Sentence. Except as provided in subsection (3), after acceptance but before sentence.

(1) a plea may be withdrawn on the defendant's motion or with the defendant's consent only in the interest of justice, and may not be withdrawn if withdrawal of the plea would substantially prejudice the prosecutor because of reliance of the plea. If the defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by sub rule (C).

(2) The defendant is entitled to withdraw plea if

(a) the plea involves an agreement for a sentence for a specified term or within a specified range, and the court states that it is unable to follow the agreement; the trial court shall then state the sentence it intends to impose, and provide the defendant the opportunity to affirm or withdraw the plea; or

(b) the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated; the trial court shall provide the defendant the opportunity to affirm or withdraw the plea, but shall not state the sentence it intends to impose.

MCR 6.302(A) requires that a plea be voluntary, and states in relevant part:

(A) Plea Requirements. The court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understanding, voluntary, and accurate...

B. A guilty plea entered without the effective assistance of counsel is invalid; further to be valid a plea must be voluntary and free from coercion.

A guilty plea operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently. *Brady v United States*, 397 US 742, 748, 90 S Ct 1463 (1970) "The plea should be entirely voluntary..., and should not be induced by fear...." *People v Merhige*, 212 Mich 601, 612, 180 NW 418 (1920). A conviction on a [coerced] plea of guilty... is no more consistent with due process than a conviction supported by a coerced confession." *Waley v Johnston*, 316 US 101, 104; 62 S Ct 964 (1942). "If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it." *Laffer v Cooper*, 132 S Ct 1376, 182 L. Ed. 2d 398 (2012).

C. The interest of justice standard (for plea withdrawal under MCR 6.310(B)) is met where the record supports allegations of innocence, coercion, or ineffective assistance.

Michigan Courts have interpreted "in the interest of justice" (as described in MCR 6.310(B)) to mean "a fair and just reason for withdrawal of the plea." *Jackson, supra*, 203 Mich App at 611-612, citing; *People v Spencer*, 192 Mich

App 146, 150, 480 NW 2d 308 (1991). See also, *People v Thew*, 201 Mich App 78, 80-81, 506 NW 2d 547 (1993).

Plea withdrawal is in the "interests of justice" if the "proofs... [show], by a preponderance of credible evidence that the plea was the product of fraud, duress or coercion." *People v Taylor*, 383 Mich 338, 361, 175 NWd 715 (1970). Additionally, fair and just reasons include reasons like a claim of actual innocence or a valid defense to the charge. *Thew*, supra, 201 Mich App 78 (1993). A claim of innocence, supported by the record, constitutes a potential basis for withdrawing a guilty plea. *Id.* "[I]n effective assistance of counsel or a defendant's claim of innocence, provided that the record establishes these claims [;]" "will demonstrate an error in the plea proceeding." *People v Montrose (After remand)*, 201 Mich App 378, 380, 506 NW 2d 565 (1993).

"The ultimate decision to plead guilty is the defendant's, and a lawyer must abide by that decision. See Michigan Rules of Professional Conduct, Rule 1.2(a)." *People v Effinger*, 212 Mich App, 67, 71, 536 NW 2d 809 (1995)². "Counsel's responsibility is to provide the defendant the requisite information to allow the defendant to make an informed decision whether to plead guilty". *Id.*

Where a defendant requests plea withdrawal prior to sentencing based upon a claim of innocence or the existence of a valid defense, doubts concerning substantiation of defendant's reasons for withdrawal are to be resolved in defendant's favor. *People v Lewis*, 176 Mich App 690, 693-694, 440 NW 2d 12 (1989). "The issue is not whether the trial court believes the defendant's asserted defense, but rather, whether defendant has a valid defense to the charge... even if he might be guilty of other offenses." *People v Jackson* 203 Mich App 607 (1994); citing *Thew*, supra.

Here, Mr. Richards essentially asserted five grounds for plea withdrawal: 1) The timing of receipt of discovery and decisions on substantive motions coerced him into entering a plea;

2) The trial court's refusal to stay the case even after calling it a "close call" so that Mr. Richards could file an interlocutory appeal to this Court, coerced the plea; 3) Trial counsel failure to file an interlocutory appeal resulting from his inexperience and lack of knowledge was ineffective of counsel; 4) Trial counsel's failure to contact an exculpatory witness was a failure to prepare his defense, which constituted ineffective assistance and coerced the plea; and 5) He is actually innocent of the charges. ST.

1. Here, a no contest plea, combined with assertions of innocence, coercion, and ineffective assistance of counsel compel plea withdrawal in the interests of justice.

In *Spencer*, supra, the defendant pled guilty with the factual basis taken from preliminary examination testimony because he was unable to articulate the facts. 192 Mich App at 147. The factual basis created a close question. *Id.* at 148. Evidence of innocence, combined with the defendant's confusion about his legal options at the plea stage or ineffective assistance of counsel, led the court to hold that plea withdrawal was required in the interest of justice. *Id.* at 151.

In *Thew*, supra, the Court of Appeals again held that an assertion of innocence supported by the record is a reason for plea withdrawal founded in the interests of justice. There, the factual basis provided by the defendant at the time of the plea left open the possibility that defendant was innocent of the crime to which he pled or had a valid defense. 201 Mich App at 96. The Court of Appeals remanded for a hearing, emphasizing that the question was whether there was record support for defendant's claim of innocence, not whether the trial court believed the claim. *Id.* at 80.

In *Jackson*, *supra* the defendant pled guilty, but within days he wrote to the court and subsequently filed a formal motion requesting plea withdrawal, asserting that defense counsel exerted undue pressure to plead and asserting his innocence to the charges. 203 Mich App at 610. The Court of Appeals held that ineffective assistance of counsel, combined with the assertion of innocence, constituted a reason for plea withdrawal in the interest of justice, and remanded the case for an evidentiary hearing. *Id.* at 609.

In *People v Lewis*, 176 Mich App 690, 440 NW2d 12 (1989) the Court of Appeals held that where defendant sent a letter requesting plea withdrawal, the presentence report contained statements asserting innocence, and defendant alleged that the factual basis to support his plea was coerced, the record was sufficient to support plea withdrawal.

Here, Mr. Richards spent almost seven months attempting to get discovery and prepare for trial. He repeatedly asked the trial court for assistance in getting discovery that went to the core of the resisting and obstructing charges in his case. And, trial counsel admitted that just before trial, Mr. Richards had made him aware of potentially exculpatory witness whom he had not called. Mr. Richards advised the trial court, in seeking plea withdrawal, that he had testimonial and video evidence that Mrs. Richards had previously falsely accused him of domestic violence - resulting in her admission to a mental hospital. Mr. Richards' repeated requests for discovery went unanswered for long periods of time or were ultimately denied. The substantive motion (to suppress), which went to the heart of his defense was left until the day of trial. Faced with a denial of that motion and the trial court's refusal to grant a stay of the trial, he entered a no contest plea.

The reason for the no contest plea was stated as civil liability. But, it should be noted that Mr. Richards was the one suing the police department (or so it appears from the record), not the other way around. The trial court opined that with respect to the motion to suppress this case created a "close call" citing to a case from this Court, which it had pulled and presented to both attorneys. Yet, it deprived Mr. Richards the ability to present the issue to this Court, before the start of his trial. Instead, it denied the motion to suppress at the last possible minute, leaving Mr. Richards feeling that he had no choice but to enter a plea. Perhaps even more concerning are the trial court's statements indicating that Mr. Richards could file an interlocutory appeal of the denial of the suppression motion after entering a guilty plea. PT 13-14. This is not true, as a plea generally waives appeal of evidentiary issues. Allowing Mr. Richards to withdraw his plea is in the interests of justice, as it would place him back in the position of being able to file the interlocutory Appeal he was adamant that he wanted to file.

2. The prosecution cannot show prejudice here.

MCR 6.310 (B) provides the trial court discretion to grant plea withdrawal in the interest of justice... unless withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea.

Having to take a case to trial does not constitute prejudice. "Prejudice may be established if the prosecution shows, for example, that vital physical evidence has been discarded, that a chief government witness has died, or that fifty-two witnesses who have come from all over the United States and from overseas naval bases have been dismissed". Spencer, *supra* 192 Mich App at 150.

Here, trial counsel argued that there was no prejudice, especially since all of the witnesses were still present in the courtroom. The prosecutor never asserted prejudice and the trial court found it unnecessary to address that factor. There is no prejudice here that should outweigh Mr. Richards' right to voluntarily waive his right to trial and enter a voluntary plea. He respectfully requests this Court remand for plea withdrawal.

REASONS FOR GRANTING THE PETITION

The United States Constitution affords all citizens of the United States the protections that it provides. Defendants that are being accused of a crime have basic rights protected by the constitution. Among these rights are the right to due process, the right to the effective assistance of counsel, the right to a fair trial, the right to be free from coercion, the right to present a defense and be made aware of defenses, the right to discovery information etc... If any of these basic rights are infringed upon then defendants are afforded the right to a new trial. This right should not be based upon the defendant's ability to articulate specific violations with ~~the~~ veracity of a skilled and educated attorney, but instead a claim that defendants rights were violated and record indicates such claim is possible should be enough to allow a defendant to exercise his right to trial.

It is important that this court articulate that plea withdrawal is a right when accompanied by claims of violation of due process and claims of innocence, it is this court's duty to protect the rights of the accused and send a clear message to the lower courts that they cannot sugar coat any infringement thereof based on presumptions, impartiality or bipartisan.

WHEREFORE, for the forgoing reasons, Mr. Richards asks that this Honorable Court remand for plea withdrawal, grant him leave to appeal, or provide any other relief that this Court deems appropriate.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kevin Richards

Date: _____