No: 19-8577

IN THE SUPREME COURT OF THE UNITED STATES

SHANE ROSCOE, PETITIONER,

-VS-

CONNIE HORTON, RESPONDENT.

ORIGINAL

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

PETITION FOR WRIT OF CERTIORARI

By: Shane Roscoe #177432
Petitioner
Chippewa Correctional Facility
4269 West M-80
Kincheloe, MI. 49784

QUESTIONS PRESENTED:

I. Petitioner Shane Roscoe's conviction rested upon and was upheld by the State Appellate and Federal Habeas Courts based on the testimonial hearsay statements of the decedent given through police and admitted through an improper determination of forfeiture by wrongdoing that violated Mr. Roscoe's confrontation right, together with the dubious and impugned testimony of Kimberly Roscoe, the Petitioner's ex-wife, who's credibility was a large factor in the jury's determining the verdict.

The First Question Presented is:

Whether the Fourteenth Amendment guarantee of Due Process is violated when the prosecution withholds impeaching evidence that shows a key witness who's statement was used in part as the primary evidence against the Petitioner was lying.

II. Because Petitioner Shane Roscoe's conviction rests upon the improperly admitted testimonial statements that violated Mr. Roscoe's confrontation rights were used as the primary evidence at trial.

The Second Question Presented is:

Did the only evidence presented as direct evidence to implicate Petitioner's involvement in the crime have a substantial and injurious effect "or " influence in determining the jury's verdict under a full and complete Brecht Harmless Error analysis.

III. Because Petitioner's conviction rests on the primary evidence that in part consists of the testimonial hearsay statements admitted under the state forfeiture by wrongdoing rule were admitted in violation of Petitioner's right to confrontation.

The Third Question Presented is:

Whether the Sixth Amendment Guarantee to effective assistance of counsel is violated where defense counsel fails to object under confrontation grounds and does that failure prejudice the Petitioner.

IV. Before trial, Petitioner in a Pro Per Motion requested that the trial judge recuse himself due to bias upon the judge's pre-determination of Petitioner's guilt.

The Fourth Question Presented is:

Whether the Fourteenth Amendment Guarantee of Due Process is violated where a judge determines that a defendant is guilty of murdering a witness before trial on that very charge without any evidence being presented, without presiding over any of the prior proceedings and without being privy to any evidence or information in any prior judicial proceedings mostly because it is self evident to the judge?

V. Petitioner was represented by counsel who was married to the very prosecutor who initiated the charge against the Petitioner and was an active participant of the prosecution's team.

The Fifth and Final Question Presented is:

Whether the Sixth Amendment Guarantee to conflict free counsel is violated where counsel fails to inform her client of an actual conflict of interest in her marriage to the very prosecutor who authorized charges and an active member of the prosecution's team.

PARTIES TO THE PROCEEDINGS:

PETITIONER:

Mr. Shane N. Roscoe #177432
Chippewa Correctional Facility
4269 West M-80
Kincheloe, MI. 49784
Pro Se representation for Petitioner

RESPONDENT:

Connie Horton, Warden, Respondent
4269 West M-80
Kincheloe, MI. 49784

ATTORNEY FOR RESPONDENT:

Dana Nessel
Michigan Attorney General
Lansing, MI. 48909

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Petitioner, Shane Roscoe respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW:

The Washtenaw County (Michigan) Circuit Court's judgment is reproduced at (App.-1). The published opinion of the Michigan Court of Appeals affirming Petitioner's convictions is reproduced at (App.-2). The Michigan Supreme Court's orders denying Petitioner's Application For Leave to Appeal is reproduced at (App.-3). The Washtenaw County Circuit Court's written opinion denying Petitioner's Motion For Relief From Judgment is reproduced at (App.-4). The Michigan Court of Appeal's order denying Petitioner's Application for Leave to Appeal is reproduced at (App.-5). The Michigan Supreme Court's order denying Petitioner's Application For Leave to Appeal is reproduced at (App.-6). The United States District Court for the Eastern District of Michigan order and opinion denying Petitioner's Motion to Stay, denying the Amended Petition, declining to issue Certificate of Appealability and Granting Leave to Appeal in Forma Pauperis is reproduced at (App.-7). The Washtenaw County (Michigan) Circuit Court order denying Petitioner's Brady Motion is reproduced at (App.-8). The Sixth Circuit Court of Appeal's denial of Petitioner's Application for Certificate of Appealability is reproduced at (App.-9).

JURISDICTION:

The United States Court of Appeals for the Sixth Circuit issued its denial of Petitioner's Application for Certificate of Appealability on February 3, 2020. Mr. Roscoe has until May 3, 2020, in which to Petition this Court for Writ of Certiorari. This Court has jurisdiction under 28 U.S.C. §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> "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 ctitizens 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."

The Sixth Amendment to the United States Constitution provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, to have the assistance of counsel for his defense."

STATEMENT OF THE CASE:

1). In June of 2012, a jury convicted Petitioner Shane Roscoe of Felony Murder, Safe Breaking, Breaking and Entering, and One (1) Count of Resisting and Obstructing a Police Officer. The jury acquitted Mr. Roscoe of Premeditated Murder and one (1) Count of Resisting and Obstructing a Police Officer. On July 18, 2012, Mr. Roscoe was sentenced to life without parole.

2). The prosecutor theorized at trial, that on August 18, 2006, the Petitioner Shane Roscoe and his nephew Jonathan Aiden broke into Jim Bradley Pontiac, an automobile dealership located in Ann Arbor, Michigan, and during the course of that break-in, the pair was either confronted by or came across William Kenney, an employee. It is alleged that Mr. Kenney was assaulted and hospitalized. Mr.

Kenney later passed away from a complication that was attributed to his injuries and hospitalization.

3). The prosecution's theory rested squarely on the testimony of William Kenney, given through detectives and the testimony of Kimberly Roscoe, Petitioner's ex-wife.

4). It turns out that the testimony of William Kenney was inadmissible and violated Mr. Roscoe's right to confrontation, and new evidence revealed that Kimberly Roscoe was lying in her trial testimony and the prosecution knew it, yet they allowed her to lie to the jury. The evidence showing that Kimberly Roscoe was lying was withheld by the prosecution.

5). Had the jury "not" heard the inadmissible testimony of William Kenney and had counsel been able to impeach Kimberly Roscoe with "the withheld evidence," there is a reasonable probability that Mr. Roscoe would have been acquitted. This is particularly so, since the statement of William Kenney and the testimony of Kimberly Roscoe was the primary evidence against Mr. Roscoe, not only that it was the only evidence against Mr. Roscoe. The prosecution did not present any eye-witnesses, the prosecution "did" present fingerprints, palm prints, blood, hair, fibers and footwear impressions. However, each item was analyzed by the Michigan State Police Crime Lab, where they determined through analysis that the Petitioner Shane Roscoe was eliminated as a contributor to each and every item of evidence. (App.-10). Police also conducted an intensive search of Mr. Roscoe's home and pole barn, and after a six hour search, police did not find a single thing that would indicate that Mr. Roscoe had any involvement in this case. (TT. 2, Page 133,) App.-11.

6). During the course of the investigation, Detective John Scafasci was the

officer-in-charge of the case, and also lead investigator due to his experience in crime scene analysis, evidence collection, and phone record analysis. One of the investigative steps that he took was to analyze the home phone records of Shane Roscoe and the cell phone records of Jonathan Aiden. Based on his findings, Detective Scafasci prepared a sworn application for the installation of a pen register trap and trace of Jonathan Aiden's cell phone. In the articulable facts, Section-B, at (GG) of the application at Page 9, (App.-22), Detective Scafasci states the following:

> "At 05:27 Hrs. - (5:27 AM), approximately 75 minutes after the homicide," Jonathan Aiden's cell phone of 313-926-0290 made calls to Florida, that bounced off of the N. Maple cell tower in Ann Arbor, Michigan. This is the same tower that the 911 call bounced off of, indicating that Jonathan Aiden's cell phone was "in the vicinity" of the homicide.

That application was not included in the discovery provided to counsel and was withheld by the prosecution. (See Argument I).

7). In Kimberly Roscoe's statement to police on September 1, 2011, Kimberly tells her new story. During the course of the interview, Detective Raisanen pinpointed the time that Kimberly is claiming that Mr. Roscoe and Mr. Aiden arrive at the Roscoe family home. She sees them in the kitchen. Kimberly is adamant that it was from 5:15 AM - 5:30 AM when she left for work. Kimberly knows this because she arrived for work at 5:45 AM and it takes her a half hour "35 minutes" to get to work and she's a lead foot. According to Kimberly, Mr. Roscoe and Mr. Aiden came in the door, she was mad and left for work. Ironically, "Kimberly Roscoe also works in Ann Arbor, Michigan within 2 miles of the cell tower where Mr. Aiden's cell phone hit at 5:27 AM. (App.-15). (Kimberly Roscoe's statement to police on 9/01/11)."

8). Fast forward 5 years to July of 2011, at that time Shane Roscoe and

Kimberly Roscoe divorced. Prior to the divorce, Kimberly Roscoe met a guy on the internet and goes on one (1) date. The next day Kimberly moves this man into her house where Kimberly is raising her 2 daughters, Sheyna Roscoe and Sommer Roscoe, ages 11 and 9. On March 2, 2011, the girls inform the Petitioner Shane Roscoe that Kimberly's boyfriend is hitting them and that when Kimberly is at work, he is walking around the house in his boxer underwear and they were able to see his private parts. Mr. Roscoe first attempts to take action by contacting Kimberly's attorney and addressing the issue. When Kimberly ignored that attempt, Mr. Roscoe filed a Motion in the Jessamine County (Kentucky) Circuit Court on August 26, 2011, requesting among other things that the Court modify custody, as well as an order prohibiting Joseph Flamio (the boyfriend) from physically and verbally abusing the children. (App.-13).

9). On August 29, 2011, Kimberly Roscoe contacts Mr. Roscoe and threatened that if he didn't drop the Motion she is going to contact Michigan, where Kimberly knows Mr. Roscoe was a suspect and tell them that she lied in 2006. True to her word, on August 30, 2011, Kimberly Roscoe calls the Washtenaw County Sheriff's Office and left a message stating that she wanted to speak with Detective Scafasci. Detective Raisanen called Kimberly where she told him that she wanted to tell the truth about what she knew about Shane Roscoe, and William Samuel Kenney. (App.-14). On 9/01/2011, police travel to Kentucky and conduct a video and voice recorded interview of Kimberly Roscoe. (App.-15). In that interview, Kimberly Roscoe contradicts her statement made in 2006. (App.-16). Kimberly tells police that Mr. Roscoe left the family home on the night of the crime at around 10:30 PM and 11:00 PM together with Jonathan Aiden. The pair returned sometime before 5:30 AM. Kimberly saw them in the kitchen of the Roscoe family home as she was leaving for work at 5:15 AM to 5:30 AM (T4, 58-61, App.-17), and (App.-15, Page 7). After the interview, police set out to locate the Petitioner

Shane Roscoe. On 9/06/2011, Mr. Roscoe is located at a home that he owns in Redford Township, Michigan by the United States Marshals. Mr. Roscoe is arrested and turned over to the Washtenaw County detectives.

10). After Mr. Roscoe's arrest, but before trial, Mr. Roscoe's appointed counsel filed a Motion to Withdraw, citing conflict of interest. After presentation, the Court GRANTED the Motion and appointed replacement counsel. He appointed the Julington Law Firm, who's lead partner Erane Washington made a "Request For Discovery" and informed Mr. Roscoe that she and her assistant John Vella would be representing Mr. Roscoe in this case.

11). The following month, attorney Washington filed a Motion in Limine where Mr. Vella argued against the admission of the statements of William Kenney and other acts evidence. The Court denied the Motion in part by holding that there was a forfeiture by wrongdoing in this case because the Defendant murdered Mr. Kenney. The Court made that determination without any evidence being presented and in the absence of an Evidentiary Hearing.

12). At trial, the prosecution presented its primary evidence of the statements from William Kenney and the testimony of Kimberly Roscoe, together with the other acts evidence from Danielle Candella. After a 5 day trial, Mr. Roscoe was convicted of Felony Murder, Safe Breaking, Breaking and Entering, and Resisting and Obstructing a Police Officer. Mr. Roscoe was sentenced to the mandatory term of life without parole in accordance with Michigan Law.

13). On direct appeal, through counsel, Mr. Roscoe raised a confrontation claim as to William Kenney's statements, ineffective assistance of trial counsel for counsel's failure to object on confrontation grounds, and prosecutorial misconduct. In a Pro Se Supplemental Brief, Petitioner argued that the Trial

Court's failure to recuse was structural error, prosecutorial misconduct violated Mr. Roscoe's due process, and the Trial Court violated Mr. Roscoe's right to an impartial jury by pre-selecting the alternate jurors and then fraudulently conducting a fake random draw process. The Michigan Court of Appeals agreed that the statements violated Mr. Roscoe's right to confront the witnesses against him and the prosecutorial misconduct, the court rejected all other claims. The Court then found that the errors were not outcome determinative. People v. Roscoe, 303 Mich App 633 (2014). The Michigan Supreme Court denied Leave to Appeal. See People v. Roscoe, 497 Mich 946 (2014).

14). Since Mr. Roscoe's conviction and throughout the appeal of right process Mr. Roscoe made numerous requests for discovery and his case files, to the Trial Court, prosecutor, trial attorneys and sheriff's office. All of those requests were denied. (App.-16). Finally, on May 15, 2015, trial counsel Erane Washington finally sent Mr. Roscoe his entire case file. (App.-12). After careful review of that file, Mr. Roscoe discovered that his attorney also went by the name of Erane Washington-Kendrick, even though the Court always referred to her as Erane Washington. After locating documents with counsel's other name, Mr. Roscoe found a warrant and police report indicating that the 1st assistant prosecutor, Anthony Kendrick had been discussing the case with police since 2006, Anthony Kendrick was also the prosecutor to authorize charges in this case and later signed warrants for searches related to this case and was present in the courtroom during the entire trial, assisting Dianna Collins. (App.-14 and 17).

15). Based on those facts, Mr. Roscoe conducted an inquiry into the relationship of Erane Washington-Kendrick and Anthony Kendrick through County Vital Records and social media. It was learned that Erane Washington-Kendrick

is-and-was at all times relevant, the wife of Anthony Kendrick, the 1st assistant prosecutor for Washtenaw County Michigan.

16). On September 25, 2015, Petitioner filed a Motion For Relief From Judgment arguing that Erane Washington had an actual conflict of interest in her marriage to the prosecutor who authorized the charging of the Petitioner, and the Trial Court abused it's discretion by appointing Ms. Washington knowing that she had a conflict of interest and failing to inquire into or notify Petitioner of the known conflict.

17). While the Motion For Relief From Judgment was pending in the State Trial Court, Petitioner filed his Habeas Petition in the United States District Court for the Eastern District of Michigan, along with a Motion to Stay the Federal Proceeding while Petitioner continued to pursue State remedies. Case No: 2:16-CV-11133. On May 17, 2016, the District Court GRANTED Petitioner's Motion to Stay and held his petition in abeyance and administratively closed the case. (App.-7).

18). On July 18, 2016, the Washtenaw County (Michigan) Circuit Court denied Petitioner's Motion For Relief From Judgment holding that Plaintiff failed to show cause and prejudice by failing to raise his claim at trial or on direct appeal. (App.-4). On December 28, 2016, the Michigan Court of Appeals denied Mr. Roscoe's Application For Leave to Appeal. People v. Roscoe, No: 334281. (App.-5), on November 29, 2017, the Michigan Supreme Court denied the Application, People v. Roscoe, 501 Mich 929 (2017). (App.-6).

19). Petitioner returned to the Federal District Court with a Motion to Lift the Stay, Motion to Amend the Petition and an Amended Petition. On February 27, 2018, the Court GRANTED Petitioner's Motion to Lift the Stay and Amend the

Petition and ordered the respondent to answer. Respondent filed his response on June 14, 2018, Petitioner filed a reply on July 13, 2018.

20). On 6/20/2019, Mr. Roscoe's co-defendant Jonathan Aiden gave Petitioner a copy of an application for trap and trace, that Mr. Aiden received from a request that he made to the Washtenaw County (Michigan) Sheriff's Office. (App.-18). This was the first time that Petitioner saw this application as it was not included in the discovery that counsel provided to Mr. Roscoe in May of 2015, where counsel had informed Mr. Roscoe that the file contained every item she had regarding Mr. Roscoe's case. Based on the content of the application and it being withheld from discovery, Mr. Roscoe filed a Successive Motion raising a claim of Newly Discovered Evidence that is exculpatory and impeaching to the State's witness, Kimberly Roscoe.

21). Based on that Newly Discovered information, Mr. Roscoe filed a Successive Motion For Relief From Judgment in the Trial Court on July 16, 2019, raising the following claims: 1). Violation of Mr. Roscoe's right to disclosure of exculpatory information against him in violation of Brady v. Maryland; 2). Prosecutorial misconduct for the prosecutor presenting false testimony of Kimberly Roscoe where she knew or should have known that the testimony was false due to the information contained in the withheld evidence; and, 3). Actual innocence. Mr. Roscoe also filed a Motion in the Federal District Court to Stay Proceedings while Mr. Roscoe pursued State Court remedies.

22). On August 5, 2019, the Trial Court denied Mr. Roscoe's Motion, holding that the Motion does not have merit, and failed to meet the burden as required by MCR 6.502(G)(2), without explaining how Mr. Roscoe failed to meet that burden. (App.-8).

23). On August 28, 2019, before Mr. Roscoe could appeal the State Court's decision or file an Amended Petition, the U.S. District Court denied Mr. Roscoe's Motion to Stay by reaching a merit-based decision in the issues raised in the Trial Court, without the issues being presented to that Court. The Court went on to deny the Habeas Petition and Certificate of Appealability. The Court GRANTED Leave to Appeal in Forma Pauperis. App.-7).

24). On October 2, 2019, Mr. Roscoe filed an Application For Certificate of Appealability in the United States Court of Appeals for the Sixth Circuit, Case No: 19-2137. On February 2, 2020, the Sixth Circuit Court of Appeals denied Certificate of Appealability by deciding the merits of the appeal and justifying denial of the Certificate of Appealability on the basis of its adjudication of the actual merits, without considering the actual constitutional violation of Mr. Roscoe's rights, in essence the Court decided the appeal without jurisdiction. (App.-9).

25). The Sixth Circuit Court of Appeals denied Certificate of Appealability on Petitioner's claims holding that reasonable jurists would not find the District Court's denial of Mr. Roscoe's Motion debatable or wrong because a Motion to Stay that is plainly meritless should not be granted. The State Court's finding of harmless error was not unreasonable, and because the admission was harmless error, counsel was not ineffective in failing to challenge the admission of the victim's statement as a violation of the confrontation clause. The Trial Judge's statement that Mr. Roscoe was guilty of murder, before trial on that very charge, did not reveal the type of prejudice or animosity towards Mr. Roscoe that would require guilty even though the Court had no evidence presented to base such a conclusion, and in its final denial, the Court of Appeals denied Certificate of Appealability on Mr. Roscoe's claim of conflict of interest.

Where appointed counsel was married to the 1st Assistant Prosecutor with direct ties to the case, and where counsel and the Court failed to advise Mr. Roscoe of that known conflict or obtain a waiver of the conflict, even though Mr. Roscoe showed cause because of the State and officials denial of Discovery, Mr. Roscoe failed to show counsel acted out of a conflict of interest. Reasonable jurists would not debate whether the District Court was correct in its procedural ruling. Additionally, the Appeals Court held that because Mr. Roscoe didn't directly address his three other claims raised in the District Court in his Application For Certificate of Appealability, they are considered abandoned and not reviewable, the United States Court of Appeals finding was an unreasonable determination of the facts, and contradicts this Court's precedents.

REASONS FOR GRANTING CERTIORARI:

1). The United States Court of Appeals for the Sixth Circuit's denial of Certificate of Appealability in the District Court's denial of Petitioner's second Motion to Stay and Amend Petition, contradicts this Court's precedents and the factual premise was incorrect by clear and convincing evidence where Mr. Roscoe claimed the prosecution withheld evidence that the key witness was lying in her trial testimony and the prosecution knew it, yet allowed the lies to stand. The Court in Brady v. Maryland, 373 US 83; 83 S.Ct. 1194 (1963), held:

> "Suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." Id. at 87.

In this case, had the prosecution provided the suppressed evidence to counsel, counsel would have been able to destroy the credibility of the State's only witness who's direct testimony was used to tie Mr. Roscoe to the murder.

Kimberly Roscoe's credibility was already impugned by her other inconsistent statements to police and would have been further diminished, had the jury heard the facts revealed in the Newly Discovered suppressed evidence. The Sixth Circuit improperly evaluated the facts in light of the evidence.

The denial of the Certificate of Appealability and Mr. Roscoe's Brady claim runs up against settled constitutional principles, as the evidence was directly impeaching to the testimony of Kimberly Roscoe and therefore material.

2). Certiorari should be GRANTED because the Sixth Circuit's denial of Certificate of Appealability in the District Court's denial of Mr. Roscoe's claim that he was denied his rights to confront the witnesses against him contradicts this Court's precedents, the Court held in Crawford v. Washington, 541 US 36, 53-54, 68; 124 S.Ct. 1354 (2004). The confrontation clause presents an absolute bar to the admission of out-of-court testimonial statements, unless the person making them is unavailable to testify and the defendant had a prior opportunity to cross-examination. The Court also held in Brecht v. Abrahamson, 507 US 619, 637; 113 S.Ct 1710 (1993), the error is outcome determinative if it had a substantial and injurious effect "or" influence in determining "or" contributed to the conviction.

Here, the improperly admitted testimony was the primary evidence of the prosecution's case together with the dubious testimony of Kimberly Roscoe. The victim's statement directly incriminated Mr. Roscoe and took on a grave importance because it is the only direct evidence! The prosecution presented a magnitude of physical evidence, blood, DNA, fingerprints, palm prints, and shoe impressions, and each item of evidence eliminates Mr. Roscoe as a contributor. Without the statement, the prosecution was left with the dubious hearsay testimony of Kimberly Roscoe. The statement was an important part of the

prosecution's case as is evident by the prosecution's reference to it 15 times alone in her closing argument.

3). Certiorari should be GRANTED because the Sixth Circuit's denial of Certificate of Appealability on Mr. Roscoe's claim of ineffective assistance of counsel for counsel's failure to object on confrontation grounds flatly contradicts this Court's precedents. The Court held in Hinton v. Alabama, 571 US 263; 188 L.Ed 2d 1, 8-9; 134 S.Ct. 1081 (2014), the performance of counsel's inquiry is whether counsel's performance was reasonable considering all of the circumstances. Here, the State was attempting to admit out-of-court testimonial statements of an unavailable witness through police. Counsel objected on State hearsay grounds instead of raising a confrontation argument. Had counsel objected under confrontation grounds, it is likely that the Court would have sustained the objection, and excluded the devastating statements.

Counsel's failure to object on confrontation grounds fell below an objective standard of reasonableness. Counsel's objection would have required the Michigan Court of Appeals to consider the issue under a reasonable doubt standard, a much more difficult standard for the people to overcome than the prejudice standard required under Strickland.

It was unreasonable for trial counsel to fail to make a confrontation clause objection, and it allowed the prosecution to present the testimonial statements as direct substantive evidence against the Petitioner to the jury. Those statements were the primary evidence of the case and affected the juries verdict.

4). Certiorari should be GRANTED because the Sixth Circuit denial of Certificate of Appealability in the District Court's denial of Mr. Roscoe's

claim that the trial judge's failure to recuse himself was contrary to this Court's precedents. The Court in Caperton v. Massey, 556 US 868; 129 S.Ct 2252 (2009), recusal is required when the likelihood of bias on the part of a judge is too high to be constitutionally tolerable.

Here, the trial judge made a pre-trial determination that the Petitioner murdered the victim, not by a preponderance of evidence, but without any evidence being presented. The Court was able to determine Mr. Roscoe was guilty of the murder, without holding an evidentiary hearing, not reviewing any evidence, simply by the prosecution's statement. Doing so was repugnant to our constitutional systems of trial by jury and the right to be presented with the evidence against him. It is clear that the judge had a bias against Mr. Roscoe, the judge believed Mr. Roscoe was guilty, before any evidence was presented and before trial for that very murder. In this case, the Court went as far as to deny an evidentiary hearing because he already felt that he knew the Defendant was obviously guilty. It is clear there was a constitutional violation in this case. That violation was debatable and deserving of further review.

5). Certiorari should be GRANTED because the Sixth Circuit's denial of Certificate of Appealability for the District Court's denial of Mr. Roscoe's claim of conflict of interest flatly contradicts this Court's precedents. The Court held in Holloway v. Arkansas, 435 US 478; 98 S.Ct. 1173 (1978), that an attorney has an obligation upon discovering a conflict of interest, to advise the Court at once of the problem. Holloway, at 485-486. In cases that involve actual conflict of interest such as personal familial conflicts, prejudice must be presumed. Cuyler v. Sullivan, 466 US 355; 100 S.Ct. 1708 (1980).

Here it is undisputed that counsel suffered from conflict in her marriage to the very prosecutor who met with investigators repeatedly over a 5 year period

and eventually authorized charges in this case, and who was actively assisting and present in Court during the trial process.

Had counsel informed Petitioner of her conflict, Petitioner would have been able to seek alternate counsel. By continuing under her conflict without notice prejudiced the Petitioner.

Further, the rational behind the Cuyler presumption of prejudice is the high probability of prejudice arising from the conflict itself, and the difficulty of proving that prejudice. This Court has also held that such prejudice would be hard to prove because, the client could have been harmed by counsel's actions or inactions that are known only to the attorney. See Mickens v. Taylor, 535 US 162, 175; 122 S.Ct. 1237 (2002). It is contrary to the Sixth and Fourteenth Amendments and this Court's precedents to treat such a conflict as this as non prejudicial.

6). Finally, the Sixth Circuit's holding that three other claims are abandoned goes against it's own instructions that the Petitioner need not argue the claims and if not, the Court will review all issues rejected by the District Court. (See Notice, App.-19).

Here, Mr. Roscoe was clear in his Application For Certificate that he was not waiving his right to the above issues, Mr. Roscoe further requested the Court to review the issues without arguments. The Sixth Circuit went on to hold that the issues do not warrant a Certificate of Appealability without any explanation.

I. THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT'S VIEW THAT THE DISTRICT COURT'S ASSESSMENT OF MR. ROSCOE'S BRADY CLAIM COULD NOT BE DEBATABLE OR WRONG BECAUSE THE CLAIM WAS PLAINLY MERITLESS CONFLICTS WITH THIS COURT'S PRECEDENTS AND IS CONTRARY TO AND AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED AT TRIAL.

This Court's precedents impose a duty upon the prosecution to provide and disclose evidence that is favorable to the accused. The failure to turn over favorable material evidence violates due process where the evidence is material to guilt or punishment. Brady v. Maryland, 373 US 83; 83 S.Ct. 1194 (1963). This Court made clear in Kyles v. Whitley, 514 US 419, 437-438; 115 S.Ct. 1555 (1995), that the Brady rule applies equally to the suppression by police, even if the prosecutor who tries the case is unaware of the suppression.

Here, the primary evidence against Petitioner came from the testimony of Mr. Roscoe's ex-wife Kimberly Roscoe-Flamio and detectives who spoke to the murder victim in the hospital. Although there was a magnitude of physical evidence presented at trial, i.e. finger prints, palm prints, DNA, blood, hair, fibers and shoe impressions, each and every item presented was analyzed by the Michigan State Police Crime Lab, every finding eliminated Mr. Roscoe as a contributor to the evidence. App.-10).

Mr. Roscoe's home and pole barn were extensively searched and there was not a single thing found to indicate that Mr. Roscoe had any involvement in the crime. App.-11, Page-____.

In August of 2006, Kimberly Roscoe was interviewed by police, in Kimberly's recorded interview she told police that Mr. Roscoe was home the entire night in question, and gave details as to what her and Mr. Roscoe's activities were on that date. What is so unique about those details are that they match everything that Mr. Roscoe told police in a separate interview.

In 2011, Petitioner and Kimberly Roscoe divorced, on August 29th, Kimberly is served with a Motion to Modify Custody due to abuse allegations reported by the pairs 2 minor daughters, ages 9 and 11. It was alleged that Kimberly's live-in boyfriend was hitting the girls and walking around the house in his boxer-underwear while Kimberly was at work and the girls could see his genitals.

On August 30th Kimberly contacts Mr. Roscoe and threatens him that if he does not drop the Motion, she is going to contact police and say that Mr. Roscoe was involved in the present crime. App.-20.

True to Kimberly's word, she contacts the Washtenaw County Sheriff's Office and gives them another story. Police travel to Kentucky where the Roscoe's resided and conducted another taped and video-recorded interview. App.-15. This statement contradicts Kimberly's first story.

During the interview, Kimberly claims that Petitioner and Jonathan Aiden arrive together at the Roscoe family home in Pinckney, Michigan in the early morning hours. Detectives actually pinpoint the exact time that Kimberly is claiming the two arrive as follows: (App.-15, Page 6).

R: Well, what time do you think they showed up, if you have to say? Because you said -- what time do you have to leave for work? Maybe that might help you!

Page 7:

K: It takes me a good half hour, okay and I tend to be a lead foot okay? I'm not going to deny that, so it takes me about a half hour - 35 minutes. At that time of morning there is not much traffic so I would say probably a half hour. I got to work, "and I know this," I got there 15 minutes early.

R: And what time were you suppose to be at work?

K: 6:00 a.m. so I got there about 5:45 a.m.

R: So you probably left somewhere around 5:15 ish?

K: Ish.

R: And did it -- was it like when he had just come through the door?

K: It was when he had just go through the door -- through the door because I -- I was mad.

R: Okay, so you think it was -- he came home around 5:15 then?

K: Yeah.

R: Is that reasonable?

K: 5:15 -- 5 -- 5:30.

R: Okay -- okay.

What is so telling is, as Kimberly quotes the time, police are very concerned and want to pinpoint it, and they do. The time Kimberly claims Mr. Aiden was in Pinckney is 5:15 -- 5 -- 5:30. Now we know why, because they had already determined that Aiden was in Ann Arbor at 5:27.

Kimberly Roscoe testified at the preliminary examination, App.-21, at pages 102-103 as follows:

Q: Now we're talking about August 18, 2006, since we've gone past the midnight hour and at some point, then after you woke up, before you left for work, did you see the defendant on that morning?

A: Yes.

Q: And approximately what time was that?

A: It was about 5:30 in the morning.

Q: Was he alone?

A: No, Jonathan Aiden was with him.

Again, at the preliminary examination under oath Kimberly Roscoe testifies that Mr. Aiden and Mr. Roscoe arrived in Pinckney and she saw them in her kitchen at about 5:30 a.m.

At trial, Kimberly Roscoe-Flamio testified App.-17, page 61, as follows:

Q: What time would you say that was that they got to the house?

A: It was sometime before 5:30.

Q: And how long did Mr. Aiden stay when they returned to the house?

A: I couldn't say how long after I left, because I went to work I didn't want to be late.

Q: And about how long of a drive is it to work from Pinckney to Ann Arbor?

A: It was about a half hour.

Q: About what time do you normally leave to get to work?

A: Normally, I leave around a quarter after five (5:15 a.m.).

That testimony indicates again, that according to Kimberly, Mr. Roscoe and Mr. Aiden arrived sometime before 5:30 a.m.. Kimberly also says that Mr. Aiden was still there when she left and she normally leaves at 5:15 a.m.. According to Kimberly's statement to police and both of her testimonies, Kimberly Roscoe-Flamio is claiming that Mr. Aiden and Mr. Roscoe were together in her home in

Pinckney at 5:15 a.m. and that Mr. Aiden was there when she left for work.

After trial, Mr. Roscoe is convicted and according to the State Appellate Court and the U.S. District Court that conviction was based largely in part on Kimberly Roscoe's credibility.

On June 20, 2019, Mr. Aiden provided a copy of a document that he received from the Washtenaw County Sheriff's Office on June 16, 2019, to Petitioner. (See Affidavit of Jonathan Aiden, App.-18).

The document was an application for trap and trace of Jonathan Aiden's phone. In the articulable facts of the application, it was revealed that detective John Scafasci, conducted an investigation into the whereabouts of Mr. Aiden on the morning of 8/18/06, and his investigation revealed the following:

App.22, Page 9, Section (GG):

> "At 0527 hours (5:27 a.m.) approximately 75 minutes after the homicide, Jonathan Aiden's cell phone of (313)-926-0290 made calls to Florida that bounced off of the North Maple Rd. tower in Ann Arbor, Michigan. This is the same tower that the 911 call bounced off of, indicating that Jonathan Aiden's cell phone was in the vicinity of the homicide at that time."

After reading the document, Mr. Roscoe reviewed the Discovery that he received from his counsel Erane Washington-Kendrick, on May 17, 2015. The application was not part of the file. Mr. Roscoe then reviewed the trial transcripts and nothing is mentioned in regards to the facts revealed in the application. Counsel did not attempt to cross-examine Detective Scafasci, counsel did not impeach Kimberly Roscoe, both of which are indicators that counsel was unaware of this evidence. Further, through-out the trial, the prosecutor stated to the jury that phone records are consistent with Kimberly Roscoe's testimony. App.-23. Indicating that she was unaware that police had

determined that Aiden was in Ann Arbor at 5:27 a.m., contrary to what Kimberly Roscoe stated, or she intentionally withheld that fact.

Again, the application was not part of Discovery that counsel provided to Mr. Roscoe and counsel was clear that she turned over everything in her possession. App.-12. Before trial, counsel made a continuing demand for Discovery, including any exculpatory evidence that may negate the guilt of the Defendant on January 23, 2012. App.-24, signed by Erane Washington.

It is clear that the evidence contradicts the testimony of Kimberly Roscoe. Kimberly claimed that Mr. Roscoe and Mr. Aiden were in Pinckney, Michigan at 5:15 -- 5 -- 5:30 a.m.. Detective Scafasci's investigation, based on scientific facts, places Mr. Aiden in Ann Arbor at 5:27 a.m. According to Kimberly Roscoe, it takes 30 minutes to make the drive from the Roscoe family home to Ann Arbor. App.-17, Page 67.

That claim is supported by Google. An inquiry of Google Maps shows it to be exactly 18.7 miles between the Roscoe family home which is located at 2953 West M-36, Pinckney, Michigan and the cell tower of 2200 North Maple Rd. in Ann Arbor, Michigan. This is the same tower that Mr. Aiden's phone bounced off of at 5:27 a.m.. Google Maps confirms it to be a 30 minute drive from the Roscoe family home to Ann Arbor. App.-25.

The application of Detective Scafasci, unequivocally places Mr. Aiden in the area of 2200 North Maple Rd. at 5:27 a.m.. It is impossible for Mr. Aiden to have been in Pinckney at 5:15 -- 5 -- 5:30 a.m., therefore, Kimberly Roscoe was lying.

Detective Scafasci's investigation determination is further supported by the testimony of the cell phone expert called by the prosecutor. Mike Bosillo,

testified that in order for a phone to effect service on a particular tower in that area, it had to be within 1½ to 2 miles at most from that tower. App.-26, Page 207.

The application also reveals that Detective Scafacsi knew that Kimberly Roscoe was lying when she claimed that Mr. Aiden was in Pinckney at 5:15, yet he sat in the Courtroom and said nothing. Further, indicating that he or the prosecution intentionally suppressed the evidence.

It is clear that the withheld evidence was not provided to counsel, it is clear that the withheld evidence directly impeaches Kimberly Roscoe's testimony. According to Giglio v. United States, 405 US 150, 153-154; 92 S.Ct. 763 (1972), Brady applies to evidence undermining witness credibility, and according to United States v. Bagley, 473 US 667, 676; 105 S.Ct. 3375 (1985), Brady also extends to impeachment evidence.

The holding by the Sixth Circuit Court of Appeals that the evidence was in no way exculpatory as a reason that jurists would not find the District Court's denial of the Motion debatable is clearly unreasonable when you consider Brady also applies to impeaching evidence. Therefore, Mr. Roscoe's Brady claim was not merit-less. The facts show that Mr. Aiden could not have been in Pinckney as Kimberly claims, because the evidence shows beyond a doubt that Mr. Aiden could not have somehow left right after Kimberly did and arrive in Ann Arbor consistent with phone records, there simply was not enough time. That holding by the U.S. Court of Appeals is totally contradicted by the scientific and documentary facts.

At trial, Kimberly Roscoe acknowledged that she made prior inconsistent statements to police. Thus, Kimberly's credibility was already inpugned. In a

statement to police on August 23, 2006, Kimberly states that Mr. Roscoe was home with her the entire evening.

At trial, the evidence was like a house-of-cards that was built completely on the jury's crediting Kimberly Roscoe's account. Had the withheld evidence been presented to the jury that Kimberly Roscoe was lying, the additional impeaching evidence might have been sufficient to create a reasonable doubt. Especially since there was no physical evidence linking the Petitioner to the crime and since Kimberly Roscoe's testimony had already been impugned by her other inconsistent stories, had the jury been privy to the suppressed evidence, i.e. the investigation results by the officer-in-charge of the case, John Scafasci, Kimberly's credibility would have been further diminished and any juror who found Kimberly Roscoe credible, might have thought differently had they known that Kimberly Roscoe-Flamio was lying in her testimony at trial. Detective Scafacsi's determination that Mr. Aiden was in Ann Arbor is supported by phone records, cell tower information and expert testimony of Mike Bosillo unlike the claim made by the prosecutor at trial that phone records supported Kimberly Roscoe's testimony. App.-23, Page-____.

Here the Sixth Circuit's decision was contrary to Brady and Giglio, the evidence was clearly impeaching, and the Sixth Circuit's holding that Mr. Aiden could have been in Pinckney at 5:15 and still be in Ann Arbor at 5:27 a.m. is clearly an unreasonable determination of the facts in light of the evidence that was Newly Discovered and withheld and the evidence presented in the State Court proceeding.

It is evident that Kimberly Roscoe's testimony was one of two key components. It is referenced by every Court starting from the Michigan Court of Appeals all the way to the Sixth Circuit of Appeals as a key factor in Mr.

Roscoe's conviction.

The evidence was clearly withheld by police in an effort to cover the prosecution's distortion of the facts, why else would police be so focused on that particular time. App.-15. Why would the detective sit in Court and allow Kimberly Roscoe to lie when his own investigation contradicted what Kimberly said, and why would the prosecutor lie to the jury and claim that phone records supported Kimberly Roscoe's testimony when her lead investigator's investigation proves otherwise? It appears that they knew the evidence showing that those facts was not provided to the defense.

A Brady violation took place, the issue is not merit-less, and when presented with the facts, a reasonable jurist would find the District Court's denial of Petitioner's Motion debatable or wrong. The Petition For Writ of Certiorari should be GRANTED.

II. THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT'S VIEW THAT THE DISTRICT COURT'S CONCLUSION THAT THE STATE COURT'S FINDING OF HARMLESS ERROR WAS NOT UNREASONABLE CONFLICTS WITH DECISIONS OF THIS COURT AND 28 U.S.C. §2254(D)(2).

This Court's precedents impose a standard for courts to follow in making a harmless error analysis. In Brecht v. Abrahamson, 507 US 619, 637-638 (1993). The Court must determine whether the constitutional error had a substantial and injurious effect "or" influence in determining the jury's verdict, and whether the State Court's finding of harmlessness was unreasonable. Davis v. Ayala, 125 S.Ct. 2187, 2198-2199 (2015).

Here the District Court determined that there was a constitutional violation and the evidence introduced as a result was substantial against the Petitioner, that is where the analysis of the substance of the statement ended. The

District Court failed to consider the importance of the statement to the State's case, and here the statement was the primary evidence together with the statements of Kimberly Roscoe, (Issue I), and admittedly so.

This Court's precedents makes clear that in all criminal procedures the accused shall enjoy the right to be confronted with witnesses against him. Crawford v. Washington, 541 US 36, 53-54, 68; 124 S.Ct 1354 (2004). Further, in Brecht v. Abrahamson, 507 US 619, 637-638 (1993), the court explained that the Court must determine whether the constitutional error had a substantial and injurious effect or influence in determining the jury's verdict. In Brecht, the court explained that there are 3 specific instructions of what is required to determine whether an error is detrimental:

1). The importance of the testimony to the prosecution's case;

2). Whether or not the testimony was cumulative;

3). Presence of corroborating or contradictive evidence on material points.

Here, Mr. Roscoe presented ample photographic and Trial Court record evidence showing that the State and Habeas Court's determination of facts was unreasonable in light of the evidence presented at the State Court proceeding. However, the Sixth Circuit never considered that evidence and made a mere recitation of the Michigan Court of Appeal's findings. Additionally, the District Court never considered the importance of the testimony to the prosecution's case.

The testimony was the primary evidence of the State's case. The statements were the only direct evidence offered to link Mr. Roscoe to the crime. There was a magnitude of physical evidence that was collected at the crime scene.

i.e., hair, fibers, finger prints, palm prints, blood, DNA and shoe impressions. However, through forensic analysis by the Michigan State Police. Mr. Roscoe was eliminated as a contributor to all of the evidence. There were no eyewitnesses or any other witness that could place Mr. Roscoe at the scene. Police checked at bars, gas stations and restaurants, and Mr. Roscoe is not on any video and nobody claims to have seen Mr. Roscoe in the area.

Mr. Roscoe's home and auto repair facility were searched and not a single thing was found to indicate Mr. Rosoce had any involvement in the crime, "not a single thing." App.-11.

The only other evidence offered was the dubious hearsay evidence of the Petitioner's ex-wife Kimberly Roscoe, who in her dubious testimony claimed that she saw Mr. Roscoe and Mr. Aiden together on the morning of the crime and that later the Petitioner told her that he committed the crime. (Issue I).

Other Federal Courts have recognized that in cases such as this where there is an absence of physical evidence, improperly admitted statements that directly incriminate a defendant are held to be far more detrimental to a defendant's right to confrontation. Hicks v. Straub, 239 F.Supp 2d 697 N.19 (2002), and improperly admitted evidence takes on a grave importance when it is the only direct evidence. Hicks, N.20. The District Court's decision was based on an unreasonable determination of facts in light of the evidence presented in the State Court proceedings.

The District Court admits that the evidence was substantial evidence against the Petitioner. The Court admits that it was the primary evidence and the only direct evidence implicating the Petitioner.

Because the error had a serious impact and influence in the jury's verdict and the District Court's decision is debatable or wrong, a Writ of Habeas should issue.

III. THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT'S VIEW THAT COUNSEL WAS NOT INEFFECTIVE WAS NOT DEBATABLE CONFLICTS WITH THE DECISIONS OF THIS COURT.

This Court's precedents have long recognized that the right to counsel is the right to effective assistance of counsel. Strickland v. Washington, 466 US 688 (1994). The Court in Strickland held that in order to show that counsel's performance was deficient the defendant must show that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. The defendant must show that counsel's representation fell below an objective standard of reasonableness. Id. at 688.

During the Motion For Reconsideration Hearing counsel made clear that in his Motion in Limine, he was arguing that all of the statements by the victim were inadmissible under state hearsay grounds. App.-28. Counsel never argued that the statements were testimonial, counsel did not object under confrontation grounds, counsel did not cite Crawford or Davis in his Motion or orally at the hearing. Indeed counsel never mentioned Crawford, one of the most important confrontation clause cases ever decided by the Court. There is no satisfactory explanation for counsel's failure to object to the introduction of the primary evidence that was going to be used as substantive evidence against his client on confrontation grounds.

The District Court seems to hold counsel's objection on State hearsay grounds satisfactory. However, it is clear that an objection under confrontation grounds requires a completely different standard than mere hearsay objections.

Counsel's objection under confrontation grounds would have served a useful purpose of preserving the contention for appeal, even if the Trial Court overruled the objection, such an objection would have required the Appeals Court to consider the objection under the Chapman standard of reasonable doubt. A much more difficult standard for the People to overcome than the Strickland standard of prejudice.

Further, counsel's objection under confrontation grounds would have likely been sustained by the Trial Court, because the statements were testimonial and inadmissible under the Sixth Amendment.

Counsel's failure to object on confrontation grounds cannot be seen as sound trial strategy because the statements were the primary evidence of the case and the only direct evidence against the Petitioner.

The statements took on a grave importance to the prosecution's case, this is evident in the prosecution's reference to them 15 times alone in her closing argument. T-5.

While the District Court's determination claims that counsel only argued that the statement of August 23, 2006, were admissible. Counsel made clear and the Trial Court agreed that counsel's Motion was to include all statements made by the victim. App.-28, Page ____. The Court agreed and went on to hold that his earlier ruling applied to the other statements as well. App.-28, Page ____.

This Court has recently held, in Hinton v. Alabama, 571 US 263; 188 L.Ed 2d 1, 8-9; 134 S.Ct. 1081 (2014), in cases like this the inquiry must be whether counsel's performance was reasonable by considering all of the facts.

Counsel is required under the prevailing professional standards to know the state of the law applicable to issues in their case. Harris v. Thompson, 698 F.3d 606, 644 (7th Cir. 2012).

Here, it is clear that counsel Jon Vella, and supervisor and co-counsel were not versed in the law as it applies to out-of-court testimonial hearsay statements, otherwise counsel would have objected.

Because the statements were the primary evidence in the case and were the only direct evidence admitted against the Petitioner. The statements had an influence on the jury's verdict and counsel's failure to object was not reasonable under any standard and the error prejudiced the Petitioner. A Writ of Certiorari should issue.

IV. THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT'S VIEW THAT THE TRIAL JUDGE'S PRE-DETERMINATION OF THE PETITIONER'S GUILT PRIOR TO TRIAL AND WITHOUT EVIDENCE DID NOT REVEAL THE TYPE OF ANIMOSITY THAT REQUIRES RECUSAL CONFLICTS WITH DECISIONS OF THIS COURT AND SIDESTEPS THE APPROPRIATE PROCESS OF DETERMINING ENTITLEMENT TO A CERTIFICATE OF APPEALABILITY.

The Court's precedents in Bracey v. Gramley, 520 US 899, 904-905; 117 S.Ct. 1793 (1977), held that due process requires a fair trial in a fair tribunal before a judge with no actual bias against a defendant, or interest in the outcome of a particular case, and in Winthrow v. Larkin, 421 US 35, 47; 95 S.Ct. 1458 (1975), the Court explained that recusal is required where the probability of actual bias on the part of a judge or decision maker is too high to be considered constitutionally tolerable.

Here, the trial judge during the pre-trial Motion in Limine Hearing made a determination that the Petitioner was guilty of murdering the victim, not by a (preponderance of evidence) as is the norm, but without a single item of

evidence being presented. The judge denied the defense's request for an Evidentiary Hearing. The prosecution did not present any evidence, yet the Court was able to determine that there was a forfeiture by wrongdoing as follows:

> "I believe there is forfeiture by wrongdoing, I'm not sure I need to use the phrase self-evident! And nor is it a situation where the Court is going to hold an evidentiary hearing, the issue before the Court is whether or not the defendant has forfeited his right to confront Mr. Kenney. In this case because he murdered him. There is evidence of that which the jury is going to make a determination on it. (App.-27, Page _____).

The judge had no evidence presented to him, and did not participate in any of the previous proceedings. The preliminary transcripts had yet to be prepared or introduced into evidence. Yet the judge was able to find Mr. Roscoe guilty because, according to him it was self-evident that the Petitioner killed the victim.

The use of the term self-evident by the Court made it clear that it was obvious to the judge that Mr. Roscoe killed the victim. In his eye's Mr. Roscoe was guilty.

That holding does not sit well with this Court's concept of innocent until proven guilty or this Petitioner's asserted right to trial by jury. It is akin one might say to dispensing of the jury because the defendant's obviously guilty.

Normally, decisions such as this are based by the preponderance of evidence standard, however, in this case it was by the judge's "self-evident standard," a standard that had no place in the judicial process. Where is there a more prejudicial situation than to have a judge conclude that a defendant is guilty

of the very charge for which he is about to stand trial and making that conclusion without evidence.

In Giles v. California, 544 US 353; 128 S.Ct. 2678 (2008), the majority along with Justice Souter in his partial concurrence joined by Justice Ginsburg emphasized that in cases like this, where the defendant is on trial for murder of the unavailable witness, the judge should not be allowed to find the defendant guilty or not guilty of the same crime. Id. at 379.

Here, that is precisely what the judge did, however, unlike most cases where the normal process of determining guilt is by a preponderance of evidence, the judge made his decision because it was "self-evident" to him, and without any evidence.

It is certainly not the norm that the right to trial by jury be forfeited on the basis of a pre-determination of the defendant's guilt by the trial judge, but that is exactly what occurred in this case.

Here, the objective standards required recusal where the likelihood of bias on the part of the judge was too high to be constitutionally tolerable. Like in Giles, allowing that to happen is repugnant to our constitutional system of trial by jury. Giles, Id. at 374.

The fact that the judge felt that it was self-evident that Mr. Roscoe killed the victim, and making such a determination without any evidence to support his contention demonstrates bias and animosity towards the Petitioner.

Further, because of his animosity and bias, the judge improperly allowed the prosecutor to introduce to the jury statements that were testimonial in nature as substantive evidence against the Petitioner in violation of his right to

confrontation. All because it was "self-evident" to the judge that Mr. Roscoe was obviously guilty.

Additionally, the United States Court of Appeals failed to consider the District Court's decision by considering whether or not the issue would be debatable, instead that Court made it's determination based on the merits of the claim, sidestepping the appropriate process and justifying it's denial of Certificate of Appealability. based on it's adjudication of the actual merits, essentially deciding the appeal without jurisdiction. See Miller-El v. Cockrell, 537 US 322; 123 S.Ct. 1029 (2003). Unless a Certificate of Appealability is issued, the Court of Appeals lacks jurisdiction to rule on the merits of appeal from Habeas Petitioners. A Writ of Certiorari should Issue on this Claim.

V. THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT'S VIEW THAT REASONABLE JURISTS WOULD NOT DEBATE WHETHER THE DISTRICT COURT WAS CORRECT IN ITS HOLDING THAT MR. ROSCOE'S CONFLICT OF INTEREST CLAIM WAS PROCEDURALLY DEFAULTED FLATLY CONTRADICTS THIS COURT'S PRECEDENTS.

The Sixth Amendment to the United States Constitution, applied to the states through the Fourteenth Amendment, guarantees that in all criminal prosecutions the accused shall enjoy the right to have the effective assistance of counsel. This Court in Strickland v. Washington, 466 US 668, 686; 104 S.Ct. 2052 (1984), held that the Sixth Amendment guarantee also includes representation of counsel that is free from any conflict of interest. (quoting Cuyler v. Sullivan, 466 US at 335; 100 S.Ct. 1708 (1980).

THE CONFLICT:

From the time of Mr. Roscoe's first court appearance, Mr. Roscoe was represented by the Washtenaw County Public Defender's Office. As the case progressed to the Circuit Court, the prosecution added a witness to their list

that was previously represented by the Public Defender. Counsel moved to withdraw due to a conflict of interest. The Trial Court allowed counsel to withdraw and then appointed the Julington Law Firm to represent the Petitioner. "Erane Washington" was present to accept the appointment. (App.- 29). Ms. Washington introduced herself to Petitioner and informed him that she and her assistant Jon Vella would be representing the Petitioner in the future proceedings.

Erane Washington is the counsel of record for Mr. Roscoe. Ms. Washington filed Motions and was present at every hearing. (App.- 24). Ms. Washington and Jon Vella filed a Motion to Post-Pone the start of the trial because Ms. Washington could not be there because she was trying another case and could not litigate 2 cases at the same time and Jon Vella was not able to represent Mr. Roscoe without Ms. Washington, per Mr. Vella's contract and this being a capital case. (App.- 31). However, Erane Washington Re-Adjusted her schedule and was able to litigate for Mr. Roscoe.

At the beginning of trial, the prosecutor introduced her team sitting behind her. One of those people was Anthony Kendrick, her team was present throughout the trial. App.- 30).

After trial, upon conviction, Mr. Roscoe sent requests to his trial counsel, the court, the prosecutor's office and sheriff's office requesting discovery. All of those requests were denied. Mr. Roscoe even went as far as to appeal those denials to the State Court Administrator and the County Administrator. Those appeals were denied as well. (App.- 33). Mr. Roscoe continued to make requests throughout the appellate process. It wasn't until May 17, 2015, that counsel Erane Washington sent Mr. Roscoe her entire file, App.- 12 , which included several thousand pages of discovery.

It was in that discovery that Mr. Roscoe learned for the first time that Erane Washington also went by the hyphenated name of Erane Washington-Kendrick. As Mr. Roscoe reviewed the file, he came across a police report that detailed the process of the investigation, which included details of the investigator's meetings with Anthony Kendrick of the prosecutor's office. The report revealed that after a meeting on September 3, 2006, Anthony Kendrick authorized charging Mr. Roscoe. (App.- 14). In the discovery Mr. Roscoe also discovered search warrants that were signed by Anthony Kendrick. It became clear that Anthony Kendrick was the point person for the prosecutor's office in this case.

Realizing that counsel used the name of Kendrick, Mr. Roscoe employed family members to research County Vital Records and Social Media in an effort to learn, "what, if any," was the relationship between Anthony Kendrick and Erane Washington-Kendrick.

Through those venues, it was learned that Anthony Kendrick and Erane Washington-Kendrick were at all times relevant to this case, husband and wife.

This was actually shocking because during the course of the direct-appeal, in a response, the prosecutor's office was adamant that there was no familial relationships at issue in this case. It became evident that the prosecutor Mark Kneisel was lying when he stated that. App.-___).

Based on this New Evidence, Mr. Roscoe filed a Motion For Relief From Judgment, raising a claim of conflict of interest. App.- 14). The Trial Court denied the claim citing procedural default, because Mr. Roscoe failed to raise his claim at trial or on direct-appeal.

This Court's precedents held that a defendant may avoid procedural defaults by showing that there was good cause for the defendants not raising the issue,

and that he would suffer prejudice as a result of the default. Wainwright v. Sykes, 433 US 72 (1977). The Court also held in Murray v. Carrier, 477 US 478, 488; 108 S.Ct. 2639 (1986), that in order to show cause, a Habeas Petitioner must show that some objective factor external to the defense prevented Petitioner from compliance with the State Court Rule.

From the record, it is clear that Mr. Roscoe has met both the Wainwright and Murray standards for avoiding the procedural default. Mr. Roscoe made more than a diligent effort in his quest to obtain discovery. It is clear that Mr. Roscoe was denied discovery from authorities again-and-again. It is clear that counsel did not comply with Mr. Roscoe's requests until long after Mr. Roscoe's Appeal of Right was exhausted.

Based on the record it is clear that counsel had an actual conflict of interest. Mr. Roscoe was prevented from raising his claim. First, at trial by the court, counsel and prosecutions failure to inform Mr. Roscoe of the conflict or to make any inquiry. The Court held in Wheat v. United States, 486 US 153; 108 S.Ct. 1692, 1697 (1988), that in order to protect a defendant's right to conflict-free counsel, a trial court "must" initiate an inquiry, when the court knows or should have known of a possible conflict. See also Cuyler, at 347, and in Holloway v. Arkansas, 435 US 485, at 486; 98 S.Ct 1173 (1978). An attorney has an obligation upon discovering a conflict of interest to advise the court at once of the conflict.

The record shows that counsel, court and prosecutor were aware that the 1st Assistant Prosecutor and Erane Washington were married. That at a minimum should have triggered an inquiry. However, the Court did nothing.

Second, it's obvious, without the authorities informing Mr. Roscoe of the

marriage and the repeated denials of Mr. Roscoe's requests for discovery, Mr. Roscoe was prevented from raising these claims at trial or on direct-appeal. Murray, at 488.

The Trial Court's finding of procedural default was clearly wrong, and its denial of a Ginther (Evidentiary) Hearing denied Mr. Roscoe his right of due process of developing his claim.

Further, the District Court's enforcement of the procedural default was improper and contradicts this Court's precedents. The District Court's holding that Erane Washington did not actively represent Petitioner in pre-trial and at trial is flat-out contradicted by the record. See App.- 24 , and 31 .

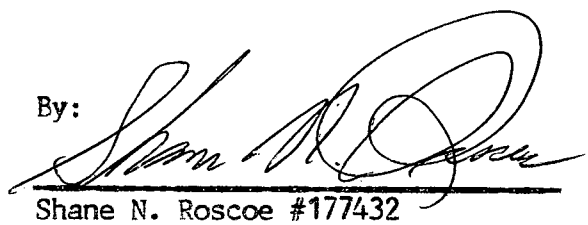
Finally, the Sixth Circuit's holding that reasonable jurists would not debate whether the District Court was correct in this procedural ruling is against this Court's precedents of Wainwright and Murray, and is contrary to the facts adduced in the record.

It is plainly obvious that an actual conflict of interest existed in this case, it is very clear that Anthony Kendrick was an active party to this case and an active member of the prosecution's team. Further, a grave importance in this case is the fact that Anthony Kendrick is the 1st Assistant Prosecutor for Washtenaw County and as such, he has direct supervisory authority over all other assistant prosecutors. The Trial Court claimed that Anthony Kendrick is not Diana Collins' direct supervisor. That is a true statement, her direct supervisor is the elected prosecuting attorney. However, when the elected prosecutor is absent, as was the case here, the 1st Assistant Prosecutor takes over. The statement by the prosecution that Anthony Kendrick was not Assistant Prosecutor Diana Collins' direct supervisor was nothing more than a play on words.

The Trial Court's attempt to minimize both Erane Washington and Anthony Kendrick's roles is at odds with the facts. Mr. Roscoe went to trial with an attorney who was literally in bed with the 1st Assistant Prosecutor who had supervisory authority within the Prosecutor's Office, was the initiator of the case, and an active member of the prosecution's team.

CONCLUSION:

For the reasons stated in Claims I through V, Mr. Roscoe requests a Writ of Certiorari to Issue.

By: 

Dated: 5/1/2020.

Shane N. Roscoe #177432
Chippewa Correctional Facility
4269 West M-80
Kincheloe, MI. 49784