NO: ____

IN The Supreme Court of
The United States
Term year ____

Steven B. Anderson
Petitioner,

v.

The State of Michigan
Respondent.

On Petition For Writ of Certiorari
To The United States Supreme Court

Petition For Writ of Certiorari

IN Pro Se.
Steven B. Anderson #44795
Oaks Correctional Facility
1500 Caberfae HWY
Manistee, M.I. 49660

Date 5/26/2020
Steven B. Anderson

Questions Presented For Review

I. Did The State Prosecutor Violate Petitioner's Constitutional Right To Due Process By Presenting Known False Testimony And By Using Inconsistent Theories In Co-Defendant's Trial And Petitioner's Trial? – Petitioner says: Yes – 6th circuit court says:

II. Did The 6th Circuit Court of Appeals Error In Adopting Michigan Appellate Court's Determination Of Facts?
– Petitioner says: Yes – 6th Circuit Court says: NO

III. Was Petitioner Denied VI Amend. Rights To Effective Assistance Of Counsel Under StrickLand Law, Where Trial Counsel Failed To Present Multiple (5) Availible Defenses?
– Petitioner says: Yes – 6th Circuit Court says: NO

IV. Did The Trial Court Abuse It's Discretion, Denying Petitioner's State And Federal Constitutional Rights to The Confrontation Clause, Allowing 3rd Party Testimonial Hearsay, Where Adverse witness was Availible? And Was Due Process Violated, Allowing Multiple Additional Jury Instruction Relieving The Prosecution Of It's Burden To Prove Every Element OF 1st Degree Murder Conviction Beyond A Reasonable Doubt?
– Petitioner says: Yes – 6th Circuit Court says: NO

V. Did The Prosecutor Perpetrate Fraud Upon The Court (Perjury), Denying Petitioner Due Process of Rights?
– Petitioner says: Yes – 6th Circuit Court says: NO

VI. Was Petitioner Denied Due Process Under Brady Law, Where The Prosecutor Suppressed multiple Exculpatory AND Impeachment Evidence ? — Petitioner says: Yes — 6^{th} Circuit Court says: NO

VII. Was Petitioner's Due Process Rights Violated, Where Trial Court Further Abused It's Discretion Failing To Estopp The Prosecutor's Prejudicial Actions ? — Petitioner says: Yes — 6^{th} Circuit Court says: N

VIII. Did The State court ILLEGAlly Obtain Jurisdiction depriving Liberty, Trying And Convicting Petitioner Violating 4^{th} & 14^{th} Amend., Where The Criminal Complaint Was Insufficient And NO Probable Cause Existed? And Was Petitioner Denied Counsel At Arraignment (Critical Stage) under Cronic Law And Did Counsel Render Ineffective under Strickland Law Once Appointed ?
— Petitioner says: Yes — 6^{th} Circuit Court says: NO

IX. Is The State Of Michigan Denying Equal Protection Rights XIV Amend., With "Open Murder" Statue? (FIRST IMPRESSIO
— Petitioner says: Yes — 6^{th} Circuit Court says: NO

X. Did Appellate Counsel Render Ineffective Assistance Of Counsel Under Strickland Law to Petitioner On His Appeal Of Rights
—Petitioner says: Yes — 6^{th} Circuit Court says: NO

List Of All Proceedings

1) 9th Judicial Circuit court in Kalamazoo county; The State of Michigan v. JaQuan Henderson - case No: LC-2012-000206-FC charged with Open Murder - convicted of 2ed degree murder 7/6/201

2) 9th Judicial Circuit court in Kalamazoo county; Joint Trials of The State of Michigan v. Steven B. Anderson - case No: LC-2012-000202-FC and The State of Michigan v. Robert Wright case no: LC-2012-000730-FC, Charged with Open Murder - convicte of 1st degree murder September, 8, 2012.

3) In unpublished joint Appeal of Right, Michigan Court of Appeals; People v. Steven B. Anderson, 2014 Mich. App. Lexis 1229; case no: 31302: People v. Robert Wright, 2014 Mich. App. Lexis 1229; case no. 313072 both convictions affirmed on June 26, 2014.

4) People v. Steven B. Anderson, 2015 Mich Lexis 134; Application for Leave to Appeal - case no: 149941, in the Michigan Supreme Court, Denied Feburary 3, 2015.

5) In the Michigan Supreme Court; Steven B. Anderson v. Attorney Grievance Commission, 2015 Mich Lexis 1518; case no: 150872, Denied June 30, 2015. Reconsideration - 2015 Mich Lexis 2072 Denied September 29, 2015.

6) 9th Judicial Circuit court Trial Division (unpublished); Motion For Relief of Judgement - The State of Michigan v. Steven B. Anderson;

case no: 2012-0202-FC, Denied June 2, 2016.

7) Application for Leave to Appeal to Michigan Court of Appeals; People Steven B. Anderson, 2017 Mich App. Lexis 2225; case no: 335589 - Granting page extension, Denying Remand and Leave to Appeal.

8) Leave to Appeal to Michigan Supreme Court; People v. Steven Anderson 2018 Mich Lexis 493; case no: 185810; Granting page Extension, Denying Leave to Appeal April 3, 2018.

9) In the United States District Court, Western Division; JaQuan Henderson v. Jackson, 2017 US. Dist. Lexis 221090 (W.D. Mich) - Report & Recommendation: Denying petition for Writ of Habeas Corpus and Certificate of Appealability (C.O.A) December 27, 2017.

10) In the United States District Court, Western Division; JaQuan Henderson v. Jackson, 2018 US. Dist. Lexis 90609 (W.D. Mich) Denying petition for Writ of Habeas Corpus and C.O.A. May 31, 2018.

11) In the United States District Court, Eastern Division; Steven B. Anderson v. Thomas Winn, (unpublished, no citation) case no: 2:18-cv-11133-TGB, Denying Evidentiary Hearing and Oral Arguments without Prejudice December 20, 2018.

12) In the United States District Court, Eastern Division; Steven B. Anderson v. Thomas Winn, 2019 U.S. Dist. Lexis 72381 case no: 2:18 cv-11133-TGB, Denying Petition for Writ of Habeas Corpus and C.O.A and Granting Permission to Appeal in Forma Pauperis, April 30, 2019.

13) In the United States Court of Appeals 6th circuit; JaQuan Henderson v. Jackson , is unpublished and unfound but is very relevant to this record.

14) In the United States Court of Appeals 6th circuit; Steven B. Anderson v. Thomas Winn, (unpublished, not cited) case no: 19-1611 Denying Application for C.O.A. October 31, 2019.

15) In the United States Court of Appeals 6th circuit; Steven B. Anderson v. Thomas Winn, 2020 U.S. App. Lexis 265 case no: 19-1616 Denying Motion for En Banc Rehearing January 6, 2020.

Table of Contents

Reference to Opinions Below

The October 31, 2020, opinion of the 6th circuit court of appeals is unpublished as, Steven B. Anderson, Petitioner v. Thomas Winn, Repondent - case No: 19-1616. The January 6, 2020, order by the 6th circuit court denying En Banc Rehearing is published as, Steven B. Anderson, Petitioner v. Thomas Winn, Respondent. - case No: 19-1616.

The April 30, 2019, order of the U.S. District Court (E.D Mich), Steven B. Anderson v. Thomas Winn; 2019 U.S. U.S. Dist. Lexis 72. case No: 2:18-cv-11133-TGB, Denying Petition for Writ of Habeas Corpus and Certificate of Appealability and Granting permission to appeal in Forma Pauperis.

The June 2, 2016, opinion, unpublished 9th Judicial circuit Court Trial Division; State of Michigan v. Steven B. Anderson case No: 2012-0202-FC, Motion for Relief of Judgement; Denied.

The June 26, 2014, opinion ~~[illegible]~~ Affirming conviction; Michigan court of Appeals, People v. Steven B. Anderson case No 313025; 2014 Mich. App. Lexis 1229.

These published and unpublished opinions are all reproduced in the appendix to this Petition.

TABLE OF AUTHORITIES

Michigan Cases

Statement of Jurisdiction

Petitioner seeks review of the October 31, 2019, opinion of the 6th circuit court of Appeals. On January 6, 2020 the 6th circuit court issued an order denying Petitioner's Motion for En Banc Rehearing of that opinion.

This COURT has jurisdiction pursuant to 28 U.S.C.S. § 1254

In addition, Order List: 589 U.S. of This Court on Thursday, March 19, 2020 extended filing deadline to 150 days from order denying a timely petition for rehearing.

Constitutional Provisions

U.S. Const, Am. IV - Unreasonable Searches and Seizures:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probabl cause, supported by Oath or Affirmation and particularly describi the place to be searched, and the person or things to be seized.

U.S. Const., Am. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces o in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., Am VI.:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the states 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 of cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and have the assistance of counsel for his defense.

U.S. Const., Am. XIV, sec. 1

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 stat shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of laws

Statement of Relevant Facts

Petitioner, Steven Anderson was charged with Open Murder and convicted under an aiding and abetting theory to 1st degree premeditated murder and other charges, on September 12, 2012. In a joint trial, separa juries co-defendant, Robert Wright (Principal) was also convicted of the same charges. JaQuan Henderson, (2cd co-defendant) was charged also, but was convicted of 2cd degree murder at his trial, prior to Petitioner on July 6, 2012. Petitioner was sentence to Life in Prison among other charges.

Pretrial Motions

On August 6, 2012 amongst other actions, Trial Counsel request funds for an expert. Trial Judge asked will the expert be ready for trial. Counsel says Yes and Judge grants $3,500 for work and testimony of an expert. (M.T. 8/6/12, pg 21-24, 32-34).

Trial

The case involves a shooting on January 8, 2012 in Kalamazoo, Michigan. Romney Hunter and Troy Whitfield were shot. Whitfield sustained one gunshot wound to his lower leg and Hunter died from a gun shot to his chest.

The defense admitted Anderson and Santrell Sandifer were together when they saw Hunter, Anderson phoned Wright. The plan was for Wright to confront Hunter about a prior December 17, 2011 beating to Wright by Hunter and others. The defense maintained there was only suppose to be a physical fight and Anderson was surprised when there was shooting. According to the defense, Anderson did not have a weapon at the time of the shooting and he did not aid and abet the shooting. When Anderson fled the scene, he dropped his cellphone

Physcial Evidence

When the police arrived to the scene they found several spent .38 Caliber casings and one empty shotgun shell (slug) in an open field. They found Anderson's motorola cellphone on the ground. Exhibit 67 was photographs taken from the phone displaying Anderson and others holdin firearms. (T.T. III, 567-568, IV, 928-929, 938-943, 968-969, VII, 163 The shotgun was found in the Kalamazoo River at the behest of JaQuan Henderson. Specialist Bombich testified there was an empty shell found in the chamber and two unfired shells found in the tube. He opined, they were consistent with cartridge found at the scene; but could not say for sure nor was he able to determine the shotgun's spread. (T.T. IV, 946, 959-96 1036-1037). The police secured clothing of Hunter and Whitfield. (T.T. III, 664-674). The police collected a gunshot residue Kit from Christopher Thompson (victim's friend), but it was never submitted for analysis. (T.T. V, 1009-1010).

Witnesses Testimony

Santrell Sandifer testified pursuant to a plea agreement, dismissing a drug case and HYTA probation for guilty plea to accessory after the fact. Sandifer was with Anderson on Rose street when Anderson saw Hunter. Anderson called Wright on speaker phone, telling him he see one of the guys that jumped him. They had a conversation about "Q" (Henderson) beating Hunter's ass. He never heard any plan to shoot anyone. After meetin up, Anderson exited the car and handed a .44 handgun to Wright. After they walked off, minutes later he heard gunshots and seen Anderson running through the field holding his hip. (T.T. VI, 1411-1434, 1481, 1492). When Sandifer and Anderson got to Wyatt's home, (Anderson's Girlfriend), he saw Anderson pull the shotgun out his pants and pull the .44 out his hoodie. Anderson said the "Plug went the fuck off"! Anderson also said he shot the

Shotgun and he lost his phone. Sandifer later went to Detroit with Anderson to pick up Anderson's children. While driving Anderson called Wyatt, telling her to have Josh take all guns to his sister's house. (T.T. VI, 1435-1442).

On Cross, Sandifer admitted he lied and left out information during police statements. He also admitted being given and reading Joshua Shoffner's police statements before giving his second Statement with the plea offers. (T.T. VI, 1448-1456, 1508-1512).

Joshua Shoffner testified, he and his brother Chris were friends with Anderson. He identified him, chris and Sandifer in a photo where Chris is holding the shotgun. In another photo Anderson is holding an AK-47 with a .44 handgun on the arm of the couch. (T.T. V, 1052-1077). Shoffner testified after the shooting Anderson and Sandifer woke him up to tell him what happen. One was holding the shotgun and the other holding the .44 handgun. Anderson told him, he was there he shot the Shotgun and it then jammed. Anderson said Henderson and Wright were with him, but at that time he did not say who got shot. (T.T. V, 1083 1088). Later, Wyatt told Shoffner, Anderson said take a big black garbage bag to Anderson's sister house. While doing so he saw a barrel poking out the bag. (T.T. V 1089-1095). On cross Shoffner testified that Anderson was upset with Sandifer for shooting the .44 handgun and upset with O'shae Wright for shooting and jamming the shotgun on New years 2012 at midnight. (T.T. V, 1106-1118).

Claudia Ford testified pursuant to plea agreement, dismissing drug charges and the promise of no charges in this case. Wright is her baby's father and Wright supplied drugs to Anderson. Earlier on Jan 8, 2012 she was present with Wright, when Henderson fought "Mike Mike". Wright possessed a handgun during the fight and gave it to

Henderson after the fight. (T. T. V, 1127-1137, 1186-1187, 1203).

Later that day, Ford was present when Anderson called Wright and Wright called Henderson. After meeting up she observed them walk off, she did not see any weapons. A few minutes later, Ford heard gunshots. (T. T. V, 1145-1153).

A few days later Ford and Wright picked up the barbage bag at Anderson's behest. Over counsel's hearsay objection, Ford testify, Wright told her they were shooting and Anderson' shot first. Ford says she can't recall when or what day Wright told her this. (T. T. V, 1159-1169, 11; 1208). On cross, Wright's attorney gets Ford to testify that Wright did not really say anything to her about the shooting and she only testifi to stay out of jail. (T. T. V, 1192-1193). However the next day she testified that was a lie and Wright did tell her. (T. T. VI, 1245-1246).

Ja Quan Henderson testified at his own trial and as the prosecution's witness at Anderson's trial. Over multiple objections and arguments between parties he is allowed to testify. (T. T. III 696 - IV 757). His testimony was consistent at both trials. He testified to a Duress Defense. That he was suppose to fight for Wright and Anderso said, "I ain't come to watch nobody fight. I'm fixin to body one of them niggers!" Anderson would not let him leave the scene, threaten to shoot him and made him shoot his own handgun. (T. T. III, 716-818). Henderson testified Anderson shot first, then he fired his .380 handgun in the air and then heard multiple shots in front of the house. He did not see Wright shoot Hunter, but Wright told him that he did and that Wright was the only person in front with a gun. (T. T. IV, 791-809)

On cross Henderson admitted to lying to the police on multiple occasions. (T. T. IV, 758-825). He had an ongoing relationship with

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detective Ghiringhelli as a paid informant and part of his informant duties included snitching on Wright. (T.T. III, 733-742, 789, 792-793). Henderson identified exhibit 29, photograph of multiple guns Wright brought him. He discarded the shotgun in the river and other weapons in other parts of the river. (T.T. IV, 797-799).

Detective Hecht testified to Anderson's news media interview (T.T. VII, 1681-1683, 1688-1692). Detective Beauchamp confirmed that the swabs from Christopher Thompson was not submitted for testing because it was expensive and he did not think it was necessary. (T.T. VIII, 1809-1810). Crime Lab Gary Latham testified Whitfield's jeans had several impact sites and holes was consistent with buckshot and .380 caliber weapon. (T.T. VII, 1653-1656, 1718-1723).

Defense only witness Christopher Wallace testified, while in the county jail July 26-30, 2012. He was in holding tank #2 with Sandifer, who told him "he just didn't understand why Anderson was even locked up because he hadn't did anything". (T.T. VIII, 1871).

Verdict and Sentencing

Anderson was convicted of 1st degree murder amongst other charges. On October 8, 2012, Anderson was sentenced to Life imprisonment amongst other sentences. (S.T. pg 23-24).

Apellate Proceedings

Anderson sought to supplement the record adding co-defendant Henderson's trial transcripts on April 29, 2013. After reconsideration, the motion was granted, make Vol. IV of co-defendant Henderson's transcripts apart of Anderson's record. On June 26, 2014, the Michigan Court of Appeals affirmed Anderson's conviction. On February 3, 2015, the

Michigan Supreme Court denied Anderson's Application for Leave to Appe
On April 25, 2016, Anderson filed a Motion to Relief from Judgment a
Motion to Extend the Page Limit. On June 2, 2016 Trial Judge Lightvo
denied Anderson's Motion. The Court of Appeals denied Leave to Appeal
April 4, 2017. The Michigan Supreme Court denied Leave to Appeal on
April 3, 2018. Anderson filed Petition for Writ of Habeas Corpus
Motion for Evidentiary Hearing and Oral Arguments. On December 20,
2018, both Motions were denied without Prejudice. On April 30, 2019
Anderson's petition for writ of habeas corpus was denied, certificate
of Appealability denied, but Granting permission to Appeal in Forma
Pauperis. On June 4, 2019, Anderson filed a Motion for Reconsideratio
and it was denied July, 25, 2019. Anderson's timely notice of
appeal was construed as his application for "COA". It was denied
October 31, 2019 by Deborah S. Hunt, the Clerk of the court.
Anderson petition the 6th circuit court for an En Banc rehearing
and that was denied January 6, 2020.

I. Petitioner Is Entitled To A New Trial Where He Was Denied Due Process Rights, Where His Conviction Was Obtained Through The Use Of False Testimony and Where The Prosecutor Presented Inconsistent Theories Of A Co-defendant's trial and Petitioner's Trial.

PRESENTATION OF KNOWN FALSE TESTIOMY

Prior to Petitioner's trial, Co-defendant JaQuan Henderson was tried and convicted of second degree murder in this incident. Henderson testified in his own defense, (a Duress Defense). He testified that Petitioner Anderson had a shotgun, that Anderson threatened him with the shotgun, made him stay at the scene, and that Anderson forced him to fire his .380 caliber weapon that he wielded. On a lengthy cross-examination prosecutor Michael Kanaby impeached, discreidited and caught Henderson lying during his testimony at his trial. During closing arguments and Rebuttal prosecutor Kanaby argued forcefull that Henderson claims were not credible and that he was a liar with, "lie after lie after lie;" "he was a chameleon"; "A master manipulator"; that he was "trying to spin up here his Hail Mary pass", and "Who Knows with Mr. Henderson what story pops out!" I.d. at (Volume V, 7/5/12, pgs. 928-932, 937, 950-952 of Henderson's Trial Transcript.) (Henderson's Trial Transcripts has been properly and legally attached to Petitioner Anderson's appeal process by the Michigan Court of Appeals.) (see appx 12)

A month and a half later Petitioner's trial was underway. The same Prosecutor Kanaby now wishes to add and call Henderson as a credible witness. Trial Counsel objects stating that, "It was very apparent to the prosecutor that Henderson was not truthful at his own trial." (T.T. volume III, 696-697). The trial judge allows the prosecutor to call Henderson to testify against Petitioner.

Henderson's testimony is exactly the same from his trial, irregards to what Petitioner Anderson made him do. On the fourth day of trial, defense counsel renewed her objection noting that Henderson had taken and failed a polygraph test also. Prosecutor Kanaby then states, "Let's be clear, I'm not putting up a witness who I believe who will lie intentionally about any material facts in this case." (T.T. IV, pgs 756-757). The prosecutor has knowingly and intentionally presented known false testimony.

The state and lower courts admits that prosecutor Kanaby had disbelief in Henderson's testimony, but only to an extent. Their determination of the facts are wrong. They are completely **circumventing** the facts. EXAMPLE - The 6th circuit court of appeals opinion, citing state court's opinion, "At Henderson's trial, the prosecutor had accused Henderson of lying about his belief that only a beating would take place,...". I.d (at pg 3 of 6th circuit's opinion Appx. But these lower courts fail to acknowledge the prosecutor vouching for Henderson for this very same reason in Petitioner's trial. "You heard Mr Henderson tell you about how it was - 'well, I was there for the beat down, and it was well, he wanted to do more' - shoot somebody". (T.T. IX, pg 1970). As the transcripts reflect there was no extent. At Henderson's trial Kanaby never expressed what he actually believed of Henderson's testimony at his trial. These courts has never pointed out a single page or reference from Henderson's transcripts acknowledging any belief in Henderson's testimony by the prosecutor. Nor have they pointed out a single page or reference showing the prosecutor corrected and caution Petitioner's jury of any particular testimony of Henderson that he believed was false. The prosecutor does not rectify the presentation of known false testimony by stating in closing arguments, "that Henderson was 'not clean' and had been involved in the offense", like the lower courts opinion trying to justify this constitutional violation. (I.d at pg 4 of 6th cir. opinion Appx 2). Henderson was a convicted co-defender the jury knew he was "not clean" and had been involved. What they did not know is that the prosecutor did not believe the testimony, "portions" of the testimony. These lower court's determination of the facts are bias and prejudice consider the record in front of them. Further proving bias and circumventing of the fact from the lower courts, Petitioner points to opinions from Henderson's Habeas Corpus review. Federal Judges of the Western District of Michigan set out the facts as they appear in the case. Magistrate Phillip J. Green opined, "The prosecutor argued that petitioner's version of the events was simply not credib I.d. (at pg4-5, Report and Recommendation of Henderson's habeas Corpus, dated 12/27/1 Then Hon. Paul L. Maloney concurred it and said, "Once again the trouble for Henderson is that the jury did not believe his version of the facts because it found him guilty." I.d. (at pg6 of Opinion of Henderson's habeas corpus, dated 5/31/18 These judges did not try to circumvent the facts. They reviewed the facts as they were. Also, Its only fair to conclude that if two Federal District Judges can opine to a set of facts opposite of Petitioner's Federal Judges, then at the very least reasonable jurists can find these facts, this issue, Debatable. With these known opinions in front of them, the 6th circuit Court of Appeals should have at the very least issued a certificate of appealability to Petitioner.

The lower court's ruling is an "unreasonable application" of clearly established law, in their opinion of the "portions" of Henderson's testimony that the prosecutor believed was false. Those "portions", they speak of was still elicited and left uncorrected to Petitioner's jury. This violates clearly established law, IN Foley v. Parker, 488 F.3d 377, 391-92 (6th cir. 2007) (citing Napue v. ILLinois 360 U.S. 264, 272 (1959)):

> "The knowing use of perjured testimony, including the failure to correct false testimony, constitutes a denial of due process if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." (citing Giglio v. U.S., 405 US 150, 153-54 (1972)),

"This includes the use of testimony, whether elicited or left uncorrected, that the prosecutor Knows or should Know is false." I.d. at 392.

In Giglio v. U.S., 405 US 150 (1972), the Supreme COURT reversed the conviction stating in part:

"As long ago as Mooney v. Holohan, 294 US 103, 112 55 S. Ct, 98 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of Known false evidence is incompatible with "rudimentary demands of justice." I.d. at 154-155.

Henderson's Duress claims: Petitioner threaten him, Petitioner pointed a shotgun at him made him stay at the scene and made him shoot is own gun, and that he only shot hi gun in the air. These are the **not** believed "portions" the lower court speaks of. These "portions" were elicited and left uncorrected, these claims were prejudicial and they maximized Petitioner's involvement. If there is **ANY** chance that the false testimony could have affected the judgment of the jury, due process is violated, thats what the law say. Henderson's false testimony affected the judgment of the jury, convicting Petitioner of the more serious charge of Open Murder, 1st degree **premeditated** murder.

INCONSISTEN Theories

In addition to the Knowingly use of false testimony. The prosecutor also violated Due Process, presenting inconsistent theories to Henderson's Jury and then to Petitioner's Jury. The lower court ruling is in direct conflict with decisions of earlier 6th circuit rulings and other circuit courts rulings on the same important matter. In Smith v. Groose, 205 F.3d 1045 (CA 8, 2000), the 8th circuit granted habeas relief in a murder case, the court held:

"that the use of inherently factual contradictory theories violates the principles of due process." Id. 1052

Similarly in Thompson v. Calderon, 120 F. 3d. 1045 (CA 9, 1997)(en banc) the 9th circuit analyzed the "bedrock principles" of our criminal justice system.

"When no new significant evidence comes to light a prosecutor cannot, in order to convict two defendants at separate trials, offer inconsistent theories and facts regarding the same crime." Id. at 1059.

The 6th circuit reached these same conclusions in Stumpf v. Mitchell, 367 F.3d 594 (CA 6, 2004), cert. granted sub nom. Mitchell v. Stumpf, 543 US 1042 (2005)

"Because inconsistent theories render convictions unreliable, they constitute a violation of the due process rights of any defendant in whose trial they are used." Id 613.

In the instant two cases Prosecutor Kanaby's case was of an "escalate circumstance", "A fight gone bad", "The beat down". At Henderson's trial the core of the prosecutor's case was to prove Henderson participated in the crime willfully and of his own free will. The Prosecutor was successful, out of Open murder, Henderson was convicted of 2cd degree murder. In Petitioner's case the theory was the same until Kanaby got overzealous and greedy, calling Henderson to testify to the "Duress claims". This testimony was inconsistent to the original theory. It was inconsistent to Kanaby's disbelief in Henderson's "Duress claim". And it was inconsistent to the culpability of Petitioner, that Kanaby argued at Henderson's trial. Vouching for Henderson's credibility in closing arguments, "There was no coloring of his story." "he's not trying to intentionally color something to make them look worse". This blatantly inconsistent from the previous case, where Henderson was a liar with, "lie after lie after lie". The prosecutor presented inconsistent - irreconciabl theories of culpability, unjustified by good faith. This is fundamentally unfair, for it necessarily creates the potential for - and, where prejudicial, actually achieves - a false conviction or increased punishment on a factual basis for one of the accused.

Therefore Petitioner request a new Trial for these Due Process Violations. Also a Remand has been requested throughout Petitioner's appea regarding these issues. If it be to please the court this request is being renewe

Ultimate Legal Conclusion

Throughout Petitioner's Appeal he has challenge the assertion o facts by Michigan Court of Appeals, this "overwhelming evidence of guilt," and adopted subsequently by the lower courts. This determination of facts was used to find harmless error in most of the issues here-in this petition. This opinion is an "unreasonable application" of clearly establishee law of Michigan and of this COURT. The 6th circuit cited Jackson v. Virginia, 443 US 307, (1979) and People v. Bennett, 802 N.W. 2d 627, 633 (Mich. Ct. App. 2010). In Bennett the court said:

> "that evidence does not negate the critical element of Bennett's Knowledge of Benson's specific intent to Kill the victim"!

That case had specific intent to Kill. A preplan, prescience preconceive state of mind to murder is "over whelming" evidence to premeditation. In Michigan; 1st degree murder has two essential elements 1) the intentional Killing of a person and 2) premeditation and deliberation. Circumstantial evidence and reasonable inferences arising therefrom may constitute satisfactory proof of the elements of the crime. May and satisfactory and, "In the light most favorable to the prosecution", is

Not "over whelming". This is a 1st degree murder conviction, not 2nd degree murder.

Here, the lower court unreasonably circumvented the facts First, the prosecution's theory of the crime was always, "escalated circumstances", - "In this case it was aiding and abetting allegedly an aggravated assault. That was the underlining premise. I think that beating someone's ass might constitute an aggravated assault mentality"! Id (motion T. pg 46). The facts relied on by lower courts are -multiple phone calls made and all those calls were testified to, (preparation of a fight only.) - Petitioner droped his cell phone at the scene. - In this phone was pictures of him in possession of multiple firearms. - Shell casings found at the scene. - Two witness testified petitioner told them he fired a shotgun. - The shotgun was recovered from the river. - And Petitioner's television interview stating he gave Mr. Wright a .44 caliber weapon for protection and he was told only a fight was going to happen No one testified to a preplan of a shooting. Now, these facts maybe satisfactory proof, but by no means should they be considered "over whelmingly" proof to premeditation and deliberation. The lower courts took the clearly established law defining the elements of 1st degree murder and "unreasonably" applied them to the facts concluding over whelming evidence. The prosecution's disbelief in Henderson's duress claims is the exact testimony that provided prejudicial and preplaned state-of-mind to take someone's life. Then to further opinion to a series of other errors and misconducts made are harmless, is absurd.

Therefore, Petitioner Request the GRANTING of Certiorari, A New Trial and any other remedies this Honorable COURT deems appropriate.

II. Petitioner Was Denied Federal Constitutional Right To Effective Assistance Of Counsel.

Trial counsel failed to protect Petitioner's guaranteed rights to effective assistance of counsel in multiple ways. Petitioner relies on the standards set forth in Strickland v. Washington, 466 U.S. 668 (1984), in weighing the performance of trial counsel. Petitioner raised a total of (5) claims, the lower court only reviewed two on the merits. Under Strickland, a criminal defendant is entitled to a complete and substantial defense if one is available. This makes the lower court's ruling "contrary to" Strickland's law in a number of ways.

PANTS EVIDENCE

Prior to trial the judge awarded $3,500 for the work and testimony of an Expert. Counsel Never hired an Expert to do the work Needed. The prosecution presented inflamtory pants, one of the victims wore, to the jury. There was over a half dozen flush holes in these pants, in which only one hole was the result from the victim's only injury, to his lower leg. Petitioner obtained an affidavit ~~and~~ from Expert David Balash and a correspondence from Counsel to him, in a Post trial, post Direct Appeal investigation. As dated in the exhibit, 1 Counsel talked to Mr. Balash in the middle of trial. Counsel tells Mr. Balash, "it may be best for you to personally observe the pants", but the inflamtory pants were already presented to the jury. This meeting was a cover-her-tail attempt after the trial was already in progress and Judge offered to help Counsel find an Expert, in which Counsel declined. Mr. Balash states in affidavit, "I never saw ballistics test from the police, if they did exist, since I was not asked to review them. I was not asked to review, nor did I review, any physical evidence, only documents and photographs".(exhibit 1, pgs 3-4.). This proves a deficient performance of counsel. All the fake bullet holes to substantiate that Petitioner fire a buckshot from a shotgun, where no other ~~evidence~~ physical evidence was presented, is prejudice. Further, the perfect opportunity to put disbelief and impeach a part of the prosecution's case was lost, making the deficient performance even more prejudicial to the defense. In Couch v. Booker, 632 F.3d 241 (6th cir. 2011) (citing Strickland, supra):

> "... an attorney cannot hire an expect, give him whatever evidence he happens to have on hand, [But not the evidence the client pointed to] and accept the report without further discussion...".

The most important evidence obtained through the newly discovered evidence is the agreed upon **mitigating defense** strategy. Trial Counsel outlines the details of our defense to Mr. Balash, "There was mention that someone in the victim's group had a gun. Our theory is that they drove off, disposed of their weapons, then returned to the scene and tried to avoid police. Again, part of our theory was that someone in the victim's group shot a gun". (exhibit 1, pg 4-5). Getting this theory infront of the jury, Counsel needed to subpoena members of the victim's group, Lanzy Moore and Kimberly Carter. They needed to testify to their police statements, that members of the victim's group had guns. (exhibit 2). Them admitting to or denying the voluntary police statements gives the Defense the prerequisite to present mitigating defense. Counsel even agreed to subpoena police officer Michael Tru who took the ~~[illegible]~~ statements, in case both witnesses denied their police statements. Then Christopher Thompson, (from victim's group) was to be subpoenaed for his police statement, to their flight pattern after the shooting, (exhibit 3, pg 2). The police statements has a ring of truth to them, because the victim's group would have no reason, no upside to revealing culpability from their group. See Washington v. Texas, 388 US 14 (1967), this COURT noted:

> "The right to offer the testimony of witnesses and compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecutions to the jury, so it may decide where the truth lies. Just as an accused has the right to confront the prosecutions witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This is a fundamental element of due process of law". Id at 19

Here, Counsel and Petitioner concluded this defense would be outcome determative. Presenting evidence, the victim's group had weapons, fled the scene, not to take second victim to the hospital, but to an unknown location in the opposite direction of the hospital, sit there a few minutes, and then return to the scene, is very suspicious. And it's very plausible that the jury would've concluded, at the very least the victim's group had something to hide. Counsel tried multiple times to get the police statements entered to pursue our mitigation defense, but the Judge did not allow it because Counsel failed the prerequisites requirement, (Subpoenaing the Declarants).

The lower courts never acknowledged this aspect of the newly discovered evidence. Petitioner has sustained his burden of proof showing a deficient performance and prejudice of Counsel under Strickland Law.

Further, the lower court's ruling is "contrary to" Strickland la which calls for the examination of the totality of the evidence, no c error need be determative rather multiple errors should be considered, "In the aggregates". Petitioner's next three claims were not considered in the lower court's determination of Petitioner's Ineffective Assistent of Counsel claims. Counsel failed to present substantial and available defenses that would have undermined the prosecutor's case and prevented the 1st degree murder conviction.

MEDIA STATEMENT

Petitioner gave a media statement to his involvement. The prosecution elicited to use this media statement, having a detective testify to it. To circumvent the truth, the detective testifies only to portions of statements in the media interview. Detective testified, Petitioner said he gave Robert Wright the .44 pistol. The detective don't remember and failed to recall when asked on cross-examination what else was said in that sentence. The complete sentence is, "I gave Mr. Wright the .44 pistol for protection." Throughout the detective's testimony on the media statement, he often said, "... I don't remember", "I don't recall", "I put a brief synopsis", "I would have to review the CD", and "There's a video of it." When counsel asks doesn't Petitioner say that he was only to watch out for the purpose of a fight. At points like this the detective had amnesia. At a bench conference the prosecution is willing to stipulate, the media interview does contain the handing off of the pistol was for protection. Because the prosecutor states, "... because there is no way I can part with this interview..." (Id. T.T. VII, pgs 1685-1690). The Judge makes an incorrect judgment that counsel can't bring in the complete media interview, but its only what the judge thinks and then the Judge covers herself by adding, "... there was no objections..." (Id. pg 1691) This placed all liability on counsel. M.R.E. 106: Remainder of or related writings or recorded statement - "When a writing or recorded statement or part thereof is introduced, by a party an adverse party may require the introduction at that time of any other part or any other writing or recor statements which ought in fairness to be considered contemporaneously with it". The prosecution open the door to use the media interview an counsel was incompetent not knowing the legal, successful way to gain the admittance to the complete interview, this is a deficient performance. The media interview in its entirety is reasonable doubt into the aidin and abetting theory and it also relieved the defense from having to call Petitioner to the stand and still get his thought, understanding and culpability to the jury, is the prejudicia effect.

EXEMPLIFICATION VIDEO

Counsel failed to use a reasonable and available defense to natural and probable consequence theory. This theory is not exact science or law. The prosecutor must prove what the defendant should have known or expected. Prior to the incident Mr. Wright paid Mr. Henderson to fight, "Mik mike". The fight, the payment, Mr. Wright in possession of a firearm and handing the firearm to Henderson, was all recorded. The firearm stayed concealed during the fight, no one was shot. Henderson wanted the firearm after the fight for protection, in fear that "Mike Mike" might have went to get a firearm after the fight. This video was presented in both of their trials. Mr. Wright was injured with a collapsed lung from an assault, in December 2011. This prompted paying Henderson to fight.

Here, the same action was to take place. The video is exemplary evidence that because Wright had a firearm, Petitioner should not have expected him to use it. Especially when Wright told Petitioner only a fight was to occur. The video was available evidence supporting Petitioner belief. It puts reasonable doubt in Natural and probable theory. Counsel representation was deficient and prejudice, where she once again failed to subject the prosecution's case to a meaningful adversarial testing. In Linstcadt v. Keane, 239 F. 3d 191, 199 (2001)

> "Strickland directs us to look at the totality of evidence before the judge or jury, keep in mind that 'some errors have a persuasive effect on the inference to be drawn from the evidence altering the entire evidentiary picture'. Id at 695-96, We therefore consider these errors in the aggregate".

BILL OF PARTICULAR

Petitioner was charged with Open Murder - Short form under State law. Mich. Ct. R. 6.112(E) - provides, upon motion by Defense, the court may order prosecution to furnish defendant a bill of particulars describing essential facts of the alleged offense. A defendent by short form information, (containing only the elements of the offense) has a right to a bill of particulars upon timely request. - M.C.L. § 17258. Once, Bill is ordered, defendent has the right to have the trial confined to particulars set up therein. see People v. Tanecowicz, 266 Mich 276, 287-88 (1934); People v. Ept, 299 Mich 324 (1941); People v. Missouri, 100 Mich App 310, 330 (1980); People v. Whitley, 2007 Mich App lexis 525.

The prosecution's theory was always of an "escalated circumstance" "fight gone bad". He relentlessly argued Natural and probable consequence under People v. Robinson, 475 Mich 1 (2006), a 2cd degree murder conviction. The requesting and ~~ordering~~ ordering of a bill of particular, a number of different outcomes would've resulted. Petitioner could have had his trial confined to "escalated circumstance" theory, (2[cd] degree murder charge). Dismissing 1st degree premeditated and felony murder charges. OR, the defense could have properly prepared for either of the higher charges, but Kept Robinson Natural and probable consequence instruction and "separate crime" instructions from trial and jury. This available defense also solves problems to other issues and stops the prosecutor from presenting multiple theories of the crime, once the trial has started. The face of Open murder charge was vague. Counsel deficient performance was in lost opportunity to defend a specific charge. The defense had nothing to lose, but everything to gain from a request to a bill. Including the dismissal of 1st degree premeditated murder.

Conclusion

The lower court's ruling is "Contrary to" Strickland law for not examining the cumulative effect of errors committed by counsel. U.S. v. Cronic, 466 U.S. 648 (1984), tell us, in evaluating an ineffective assistance of counsel claim, the Court must view trial in hindsight and evaluate the reasonableness of counsel's performance with in the context of the circumstances at the time of alleged errors.

Here, (1) Counsel should've conversed and hired an expect before trial not in the middle, where evidence we wanted Kept out was already admitted. (2) Failure to request bill of particulars is the Bed rock of the conviction. This error occured prior to trial, where anything was possible. From a more favorable plea offer to entering trial only on 2[cd] degree murder charge. Then (3) substantial and available defenses, one of which counsel pursued erroneously, by not subpoenaing the Declarers to our mitigation defense. Counsel's performance was deficient and out come determinative

Therefore, Petitioner request a new trial for this VI Amend. violation. Also a remand has been requested throughout appeal and this request continues to this COURT.

III. The Trial Court Abused Its Discretion By Admitting Testimonial Hearsay And By Allowing Additional Jury Instructions, Denying Petitioner Federal Due Process.

CONFRONTATION VIOLATION

The right to a defendant to cross-examine the witness against him is recognized under the US Constitution as being the most fundamental of rights. Crawford v. Washington, 541 US 36, 53-54 (2000); Lee v. Illinoi 476 US 530 (1986); Davis v. Alaska, 415 US 308 (1974); David v. Washington, 547 US 813 (2006). The trial court's ruling permitting testimonia hearsay denied Petitioner VI Amend. Constitutional Right to confrontational Clause. The lower court's ruling is an "unreasonable application" of clearly established laws, cited above, stating that Petitioner's, "claim is based on the state court's evidentiary rulings, it is not cognizable in this Federal habeas corpus matter." Id (6th cir. Appx 2, pg6). Petitioner has always argued this issue on Federal Constitutional level of Due Process violation of Confrontational rights, denying petitioner a fundamentally fair trial. And the lower courts has continued to make this impertinent point of law.

A motion hearing was held by Trial Judge Lightvoet prior to trial, on August 8, 2012. She discussed not allowing testimonial hearsay (Motion. Tr, pg 16-18). Avoiding the prejudicial hearsay was the reason she ruled to have joint trial with separate juries for Petitioner and Co-defendant Robert Wright.

At trial Claudia Ford presents testimonial hearsay. The adverse witness, (Robert Wrigt) was availible, literally. This testimonial hearsay violates VI Amend. right to confrontation. Defense counsel objects, The prosecutor states hearsay should be admitted under M.R.E. 801(D)(2)(E). The Judge abandon her previous precaution. Defense Counsel does not Contest M.R.E.

801(D)(2)(E), and the Judge states, "I thinks that's right." (T.T. V, 1160-
The judge overruled the objection, and Ms. Ford was allowed to testify abou
the third party hearsay, without the procedure to establish the exceptio
to the hearsay rule first.

M.R.E. 801(D)(2)(E) mimics F.R.E. 801(D)(2)(E) and they provid
that statements made by a non-testifying co-conspirator after the
conspiracy has ended are not admissible, if they are not made during an
infurtherance of the course of the conspiracy. In People v. Center, 141
Mich App 364 (1985) (citing Gruenewald v. U.S., 353 US 391, 401-02; 77
S. Ct. 963 (1957)) states:

"After the central criminal purpose of a conspiracy have been attained, a subsidiary conspiracy to conceal may not be implied from circumstantial evidence showing merely that the conspiracy was kept a secret and that the conspirators took care to cover up their crime in order to escape detection and punishment. As was there stated, allowing such a conspiracy to conceal to be inferred or implied from mere overt acts of concealment would result in a great widening of the scope of conspiracy prosecutions, since it would extend the life of a conspiracy indefinitely. Acts of covering up, even though done in the context of mutually understood need for secrecy, cannot themselves constitute proof that concealment of the crime after its commission was part of the ~~init~~ initial agreement among the conspirators."

"And again, every conspiracy will inevitably be followed by actions taken to cover the conspirators traces!!

The issue in Center is similar to the present case, Ms. Ford testified that Mr. Wright told her that, "B shot first." This statement of "B shot first" is contantly being mentioned in Ms. Ford's testimony. In direc examination, cross examination of Wright's attorney, who of which explored this line of testimony to benefit Wright's best intrest. Then cross examination of Petitioner's attorney, and then on redirect, re-cross, and re-cross, two days worth of testimony. (T.T. V 1160-1260). Ford testifies to no particular day the alleged statement was converse to her, "I can't recall when Mr. Wright told me the statement." (T.T. V 1191-1192). The statement allegedly converse to her was not made during or in furtherance of the crime, this violates Confrontation Clause. In Krulewitch v. U.S., 336 US 440; 69 S.ct, 716 (1949), this COURT states

"We cannot say that the erroneous admissions of the hearsay declaration may not have been the weight that tipped the scale against Petitioner."

The trial court's conclusion and the concurrence from the lower courts is "contrary to" clearly established laws." Here, the state trial cour in its decision rejecting Anderson's post-conviction petition, noted that Ford's testimony was based on statements made by Wright as Wright an others were disposing of guns used in committing the offense. The stat court determined that Ford's testimony was admissible under Michigan Rule of Evidence 801(d)(2) as a statement made during the course and in furtherance of a conspiracy. Thus, this claim is not valid and meritorious for purpose of meeting Anderson's burden under Dufresne' I.d. (at pg 6 - 6th cir. opinion APPX 2.) Once again they're circumventing the facts, Ford never testified that the statements were told to her as Wright and others were disposing the guns. Furthermore t controling law is clear. This COURT has stated on multiple occasions that the act of concealing the conspiracy can not support the rules to the exception to admissibility. "Every conspiracy will inevitably be followed by actions taken to cover the conspirators traces. That this would extend t life of a conspiracy indefinitely." Throughout Petitioner's appeal for this issue he has been arguing that all the lower courts agreeing with the trial court are giving "contrary to" opinions to this law. All these courts never argue or said nothing different in their explanation. Nor have they provided ANY case law that says different. Petitioner submits that his Federal Constitutional Right to the Confrontation Clause, U.S. Const. Amend. VI was violated. That this violation had a "substantial and injurious effe or influence" on the verdict. Ms. Ford's testimony was prejudice, inflammatory and drawn out for two days, raising Petitioner's culpability in this aiding & abetting, Open Murder case. The fact that this issue was discussed specifically prior to trial and ruled that it would be prevented. And when presented at trial and objected to, was still allowed because of ignorance or just ignoring the law, is prejudicial in itself. These details in a trial is the difference in not just an acquittal but a different outcome. A different outcome is the difference between Life without parole and a number of years with the possibility of parole. Petitioner request a new trial and any other remedies this COURT deems appropiate for this Constitutional violation.

Jury Instructions

The lower court's opinion is "contray to" clearly established law presented below. These court's did not apply presented case law or any other case law to the facts, to conclude, "Because this claim is based on a state court's evidentiary rulings, it is not cognizable in this federal habeas corp matter." Id. (6th cir opinion Appx 2).

Petitioner's V, VI, and XIV Amend. rights under the U.S. Constituti where denied where the court gave additional jury instructions, that relieve the prosecutor of its burden of proving each element of first degree murde beyond a reasonable doubt. Additional instructions of natural and probable consequences was added to the aiding and abetting instructions. Over objections, the prosecutor was allowed to use these erroneous additional instructions under People v. Robinson, 475 Mich 1, 6 (2006), a second degree charge and conviction. The addition to the instruction states in-part — a defendant is criminally liable for ... as well as those crimes that are th natural and probable consequences of the offense he intends to aid or abet. Robinson courts states:

> "The law is clear that under the natural and probable consequence theory, there is criminal responsibility for anything that is fairly within the common enterprise, and which might be expected to happen if the occasion should arise for any one to do it."

A natural and probable consequence is one which is within the normal range of outcome that may be reasonably expected to occur if nothing unusual has intervened. This element alone gives the jury multiple avenues to consider to convict. This element contradicts and relieved the prosecutor of his burden to prove premeditation and deliberation elements of 1st degree murder instruction. Petitioner was charged as the aider and abetting so this instruction with natural and probable consequence element was a focal point to the prosecutor's theory of a "Beat down." All 1st degree murder elements still must be proven beyond a reasonable doubt to convict. And it's impossible to find premeditation and deliberation while considering Natural and probable consequences. The two is astronomically contradictive. Petitioner is not argui the Robinson caselaw, but it being applied to the 1st degree premeditated murd conviction is whats being contended. The dissenting Judges in Robinson forseen the troubles in this 2cd degree murder opinion. Judge Cavanagh stat

"I believe that today's decision sets a dangerous precedent for how MCL 767.39 will be applied in the future, and it stretches aider and abettor liability beyond any defensible bounds. Accordingly I must respectfully dissent."

Judge Kelly adds saying:

"Natural and Probable Consequence Cannot Substitute For Requisite Intent Under an Aiding and Abetting Theory of Prosecution".

In Francis v. Franklin, 471 US 307; 105 S. Ct, 1965 (1984) this Supreme COURT States:

"Defendant was entitled to habeas relief following his murder conviction because two jury instruction created an unconstitutional burden-shifting presumption with respect to the dispositive issue of intent and violated the Due Process Clause. They instruct the jury that acts of a person of sound mind and discretion are presumed to be the product of the person's will and that a person is presumed to intend the natural and probable consequence of his acts'. These words carry precisely the message of the language condemned in Sandstorm, 442 US 510 at 515 (1979). The jurors were not told that they had a choice or that they might infer that conclusion, they were told only that the law presumed it. It is clear that a reasonable juror could easily have viewed such an instruction as mandatory. The portion of the jury charge challenged in this case directs the jury to presume essential elements of the offense -- intent to kill -- upon proof of other elements of the offense -- the act of slaying another. In this way the instructions undermine the fact finders responsibility at trial, based on evidence adduced by the state, to find the ultimate facts beyond a resonable doubt". (Id.) "Nothing in the specific sentence or in the charge as a whole that make clear to the jury that one of these contradictory instructions carries more weight than the other." (Id. 316-17).

In the present case natural and probable consequence was substituted for premeditated intent. As Judge Cavanagh warned in Robinson of the setting of "dangerous precedent", and its unconstitutional. The key words in the Robinson case law, "within the common enterprise" and "which might be expected to happen" are clear indications that this law cannot apply to a 1st degree murder conviction. The instruction could have been read as telling the jury that it was required to infer intent, premeditation and deliberation as a natural and probable consequence of the act.

Also, a second set of instructions was given, further confusing Petitioner's Jury relieving the prosecution of it's burden of proving premeditation and deliberation beyond a reasonable doubt. Instruction **CJI 2d 8.3: "Separate Crime Within the Scope of Common Unlawful Enterprise"**; see exhibit **4**. In the footnotes of this instruction it states, "Do not use this instruction for felony murder charge" and "It is not recommended for use when the new felony requires a specific intent". Premeditation is a specific intent. The separate crime, "The beat down" was the theory and mention throughou the entire trial. See Cabana v. Bulleck, 474 US 376 (1986); Gilmore v. Taylor, 508 US 333 (1993); Tyler v. Cain, 53 US 656 (2001); Cage v. Louisiana, 498 US 39 (1990); In California v. Brown, 479 US 538 (1987).

> "The jury was confronted with inconsistent instructions likely to create the type of confusion the state court viewed as probable in Bandhauer."

Two set of instructions telling the jury that Petitioner should have presumed premeditation. This COURT has clearly established over and over again that contradictory instructions violates Due Process Clause. The overzealousness of the prosecution denied Petitioner a Fair Trial.

Therefore Petitioner request this Honorable COURT to grant Petitioner a new Trial.

IV. Petitioner Is Entitled to A New Trial Where Prosecutor Perpetrated Fraud Upon the Court Denying Petitioner Due Process of Rights.

Discussion

This issue being raised separately, but in conjunction to the prosecutorial misconduct issue, False testimony / Inconsistent theories. The facts surrounding this issue has been mostly outlined in that issue. In efforts to sustain a conviction against Petitioner Anderson, prosecutor Kanaby PERJURIED himself in open court. But it seems as if the law does not recognize Prosecutorial perjury, so Fraud Upon the Court is the comparable offense. To constitute fraud upon the court, the alleged misconduct must be something more than fraud among the litigants. Instead the misconduct must be an assault on the integrity of the judicial process, which defiled the court itself or is perpetrated by officers of the court in such a manner that impartial system of justice fails to function. All five prerequisites have been met. The sixth circuit opinion in Carter v. Anderson, 585 F.3d 1007 (6th cir. 2009), (citing Demjanjuk v. Petrovsky, 10 F.3d 338 (6th cir. 1993)

> "Where the court ruled that the U.S. attorney and the Israel attorney submitted false presentations to gain the conviction of cold war villain, Ivan the Terrible. The court reversed the conviction based on the fraud perpetrated by both U.S. and Israel attorneys."

In the previous case co-defendant JaQuan Henderson testified on his own behalf. Prosecutor Kanaby argued forcefully to Henderson's jury that his claims were not credible and he was a liar with, "lie after lie after lie", ect. ect. Then in Petitioner's trial, after objections the prosecutor lies to the court stating, "Let's be clear, I'm not putting up a witness who I believe will lie intentionally about material facts in this case." This statement by Prosecutor Kanaby i clearly a lie. Not only do the facts prove that the prosecutor presented false testimony. But most importantly, for the purpose of this issue of this issue, the facts prove that Prosecutor Kanaby simply did not believe parts "portions", and/or any of Henderson's testimony. Then in all still chose to install to the court, to the jury, a witness that he believe would not lie abo any material fact. These actions by the prosecutor is a direct ~~~~ result of Fraud upon the court and Due Process violations.

The lower court's opinion is "Contrary to" clearly established law concluding that this issue was already decided from previous issue, so they won't decide on it. "Because Anderson was not prejudiced by this failure in that the claim lacks merit, reasonable jurists would not debate the district court's procedural ruling on this claim". (I.d. at pg1 App 2). This issue has different elements, a different criteria, and even serves for a higher purpose than just arguments between two parties. In Lisemba v. California, 314 US 214; 62 S. Ct. 250 (1940) states:

> "If by fraud, collusion, trickery, and subordination of perjury on the part of those representing the State, the trial of an accused results in his conviction he has been denied Due Process of law."

The lower courts further errored, because Petitioner does not have to prove false testimony. He only has to prove the five elements of Fraud upon the court. Was the prosecutor's lies, "intentionally false, willfully blind to the truth, or is in reckless disregard of the truth", and yes it was. The rest of the elements are self-explantory. Also prejudice is apparent, but prejudice should also be presumed under Arizona v. Fulminate, 499 US 279 (1991), Because errors of this are "Necessarily unquantifiable and indeterminate".

Therefore Petitioner request this Honorable COURT determine that Fraud upon the Court was committed and Due Process violated. And that this Honorable COURT issue out the appropriate remedy for this misconduct.

Petitioner also has requested an evidentiary hearing throughout this appeal, if it be to please the court to the prosecutor's actions.

V. Petitioner was Denied Due Process Under Brady Law Where Prosecution Suppressed EXCULPATORY And Impeachment Evidence.

The prosecutor withheld exculpatory evidence in violation of Brady v. Maryland, 373 US 83 (1963). A Brad violation has three elements; "1) the evidence at issue must be favorable to the accused, either because it i exculpatory, or because it is impeaching; 2) the evidence must have been suppressed by the State, either willfully or inadvertently; 3) and prejudi must have ensued." Stickler v. Greene, 527 US. 263, 281-82 (1999). In Kyles v. Whitley, 514 U.S. 419 (1995), this COURT used the third prominen case on the way to current Brady law, citing U.S. v. Bagley, 473 US 67; 10 S. Ct. 3375 (1985). This COURT disavowed any difference between exculpatory and impeachment evidence and it abandoned the distinction of the "specific-request" and "general-or-no request" situations for Brady purpose. Bagley held that regardless of request, favorable evidence is materi and Constitutional error results from its suppression by the government.

The Lower Court's ruling is "contrary to" Brady Law, stating; "Regarding the Henderson transcripts, the state court found that Anderson failed to show that these were unavailable to counsel." Id. (at pg 10 App 2 Regardless of availability or "general-or-no request", as cited above by this COURT. Those transcripts, in its entirety should have been given to the defense. This in of itself violates Brady Law. The lower Courts speaks nothing else to Petitioner's Brady claims.

Prosecutor Kanaby willfully suppressed Henderson's transcripts. His moti for the suppression are clear. It was already apparent he was in bad faith calling a witness he did not believe would be truthful. By suppressing the closing arguments of Henderson's trial he hides the crossing over the line of apparent -to-proven fact. The extra risk of disclosing that Henderson tells, "lie aft lie after lie!" And then to pitch, "I would not put a witness on the stand i belive would lie!" Might of cost him his witness and/or his conviction to Petitioner. This suppression hindered the defense from forming a more successf argument as to what exactly the Judge should be considering in this objecti The jury determining Henderson's credibility should not have been the focal point before taking into account prosecutorial misconduct, the bad faith endeavors being tried on the integrity of the court.

Next is the suppression of Henderson's failed polygraph results. In police reports and over objections, the state admits Henderson failed the polygraph. The mere fact the prosecutor admits Henderson was deceitful, make the polygraph examination exclupatory. The prosecutor stating it was only in relation to what gun Henderson had and shot, (T.T Volume IV 755-56), show the results was not given to the defense. The defense does not have to take the prosecutor's word for it. The defense was entitled to the undisputed failure of the polygraph. In Rafferty v. Carter, 484 US 101; 108 S. Ct. 711 (1988), this COURT stated:

> "Because jurors believe that polygraph examinations are accurate and that witnesses reveal the truth when undergoing the examination, prosecution committed material Brady violation by witholding statements given during polygraph test that was inconsistent with later statement at trial."

To consider what gun Henderson had and shot, is all the polygraph consisted of is hard to phathom, given the multiple inconsistent statements Henderson made. The results could entail great impeachment evidence and/or further reveal the prosecution's continuous attempts to provide false testimony to Petitioner's jury.

The prosecutor went through great lengths to conceal multipl exculpatory items concerning JaQuan Henderson. Throughout Petitioner entire appeal he has been arguing the prejudicial effect of Henderson's testimony to Petitioner's state of mind and actions. The suppression of al this exculpatory evidence hendered the defense from formulating bett objections and defenses to the prosecution's actions. Also hiding from the defense, impeachment evidence showing the prosecution further use o Known false testimony. These actions by the prosecutor clearly defiles _Brady_ Law, violating Petitioner's Due Process Rights. Petitioner request this Honorable COURT to Grant him a new trial.

Petitioner has requested remands throughout his Appeal regarding these _Brady_ claims. If it, to please this COURT, Petitioner is continuing this request regarding _Brady_ claims.

VI. Trial Court Abused Its Discretion, Violating Petitioner's Due Process Rights Where it failed to Estopp the Prosecutor's Prejudice Actions.

Discussion

This issue was raised separately, but in conjunction to first issue of prosecutorial misconduct issue, False Testimony/Inconsistent Theories. The facts surrounding this issue is mostly outlined in that issue. The facts to be add for the purpose of this abuse of discretion issue is that the Judge for JaQuan Henderson's case and Petitioner's case are the same. Judge Pamela Lightvoet had direct Knowledg and observation of how Prosecutor Kanaby attacked Henderson's entire testimony. she observed Kanaby's closing argument where he furthered detailed his disbelief in Henderson's testimony. In observing all this, judge Lightvoet still allowed Kanaby to call Henderson as a credible witness, over multiple objections in Petitioner's trial.

Trial Judge should have Judicial Estopp the prosecutor from calling Henderson as a witness, to prevent the unfair, bad faith tactics of the prosecution that adversel affected the proceedings. Doctrine judicial estoppel should have also been applied to prevent deliberate manipulation on the court. In Rochin v. California, 342 US 165, 169 (1952):

> "A criminal defendant is denied a fair trial where the prosecutor engages in overzealous and prejudicial behavior and the trial court fails to exercise any discretion in controlling the prosecution's conduct."

Law Doctrine Judicial Estoppel is clearly established law by this COURT. In Zender v. U.S.; 547 U.S. 489; 126 S.Ct. 1976 (2006), This COURT clearly states:

> "Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position he may not thereafter simply because his interest has change, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the

position formely taken by him."

All prerequisites of judicial estoppel have been met for Petitioner to adequately pursue this claim. Also multiple U.S. Circuit Courts has ruled in favor that Due Process is violated if all the terms of judicial estoppel are met. US v. Owens, 54 F.3d 271 (6th cir 1995); U.S. v. Turner, 602 F.3d 778 (6th cir 2012); Marcusse v. US, 785 F.supp2d 654 (2011); Whaley v. Belleque, 520 F.3d 997 (9th cir 2008) ("Doctrine of Judicial Estoppel applies to a party's legal as well as factual assertions.")

The trial courts as well as the lower courts are clearly wrong to conclude that this issue was already decided from the prosecutorial misconduct issue, so they won't decide on it. This issue is about the Judge's discretion. That if she made the right decision there would not have been an issue of presenting false testimony/inconsistent theories. This issue has different elements, to prove Due Process violation. Petitioner can not expect the courts to hear all claims, all mannerism of constitutional violation raised in one single context. Just as the same would hold true for an ineffective assistant of counsel claim. Raising just one instant of ineffectiveness does not preserve any other claims raised in future proceedings.

Further as argued previously in the prosecutorial misconduct issue, in calling Henderson as a credible witness. The substantial, injurious effect and influence Henderson's testimony had on the outcome of Petitioner's trial. The prejudice in Henderson's Duress claims, that gave the only **concret** indication to the disputed element of premeditation. Petitioner Anderson's Due Process rights to a fundamental fair trial was violated.

Therefore Petitioner request a new trial and any other remedies this COURT deems appropriate.

VII. Trial Counsel's Failure Rendered Ineffective Assistance of Counsel, Where Jurisdictional Defect Arose From an Insufficient and Invalid Complaint Violating State and Federal Constitutional Rights.

This COURT has clearly established, a complaint is insufficient where it merely recites the elements of the crime without disclosure regarding why the officer believes the defendant committed the offense see Spinelli v. U.S., 393 US 410 (1969); Aguilar v. Texas; 378 US 108 (1964); Giordenello v. U.S., 357 US 480 (1958); In Whitley v. Warden, Wyoming State Penitentiary, 401 US 560 (1971), this COURT made clear:

> "The decisions of this court concerning 4th Amend. probable cause requirements before a warrant for either arrest or search can issue, require that the judicial officer issuing such a warrant be supplied with sufficient information to support an independent judgement that probable cause exists for the warrant".

Here, Petitioner was arrested without a warrant on Jan. 25, 2012. There is no affidavit or probable cause determination of record before or immediately after arrest. The complaint has the same "bare bones" structure as cited in the ruling listed above, see exhibit 5, (the complaint and the request and denial of any probable cause of record). There was no information, no facts, no police reports, no insufficient affidavit like Whitely case. No personal Knowledge given to Judge Westra for a probable cause determination at arrignment. Warrantless arrests combines required probable cause determination with arraignment. Feb. 23, 2012 was preliminary examination, this was an unnecessary delay to deprive liberty to defendant. The complaint itself has missing requirements of Mich Ct. R's making it invaild. The complaint must be filed at or before arraignment. There is no time-stamp which is mandatory, to ensure this was done. None of the prerequisites was followed to establish Jurisdiction.

The lower court's opinion, "Anderson challenged ... it's a non-cognizable question of State law," is "Contrary to" clearly established law cite Federal question under 4th Amend. is applied to the states through 14th Amend. Whitley is a state case and remains valid precedent Law regarding insufficient complaints and probable cause requirements. The lower court then contradictory, acknowledge 4th Amend. claim but states, "... he failed to show that the state did not provide an opportunity to litigate"..., it. This is also "contrary to" controlling law. Jurisdictional Defect can be raised at any-time. Furthermore Petitioner raised this issue in state appeal and it was erroneously rejected on a unfounded procedure reason.

The rules and statutes concerning 4th and 14th Amend are plain and unambiguous on it's face. The failure to satisfy these requirements is a Jurisdictional Defect.

Therefore, Petitioner request a reversal and discharge from custody, as this COURT has already spoken on this matter concerning proper Jurisdiction.

VIII. Petitioner's EQual Protection Rights Were Violated By The State District and Circuit Court.

Petitioner request this issue be heard on First Impression under Teague v. Lane, 489 US 288 (1989). Like every new rule case law, it has to be raised to be considered.

EQual protection clause provides that no State 'shall' deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. Amend. XIV, sec. 1.

In Michigan a preponderance of evidence must be presented at preliminary examination or charges cannot be bind over to circuit court. However, under Open murder statute, some Mich. case law holds, no evidence of premeditation & deliberation has to be shown. These courts gives no reason for this exception and argues amongst themselves on this matter. In People v. Johnson, 427 Mich 98 (1986), the dissenting says:

> "None of the decisions cited in the lead opinion consider the question whether a person bound over on Open Murder can be tried and convicted of 1st degree murder absent of evidence at preliminary examination." "On further research the question is not controlled by any decision of this Court."

While, other Michigan cases opinion, Open murder speaks only to the form of the charging document, not to the prosecutor's burden at preliminary examination. see People v. Spells, 42 Mich App 243 (1972); People v. Veil, 393 Mich 460, 464 (1974). The corpus delict of 1st degree murder must be established by evidence.

Here, Petitioner was Charged with Open murder and convicted of 1st degree murder. The prosecutor's theory was the same and presented n evidence of premeditation & deliberation at preliminary examination. One witness testified, Sandifer, the testimony consisted of hearing an entire phone conversation about the "beatdown". He seen Petitioner give Wrigh a handgun, but at no time heard a plan to rob or murder anyone. At the end, the magistrate's comments did not indicate corpus delict was established. and defendant moved to quash 1st degree charge thereby preserving the issue.

The lower courts don't contest the absence of corpus delic of 1st degree murder and failed to compare treatment of Open murder charges to any other felony charges at preliminary examination. The fact is a bill of particulars, mandating a trial be confined to the specific nature of a charge in the bill, cancels out the "no proof" assertion in Open murder - short form. The right to a bill shows inconsistency and ~~unconstitutionality~~ unconstitutionality of statuory language that some michigan courts interpret.

This Open murder statue is being used out of context and unconstitutionally depriving defendants of EQual Protection.

There fore, Petitioner Request a Writ of Certiorari be granted.

IX. Petitioner Had INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.

A criminal defendant is entitled to effective assitance o counsel. This right extends to his direct appeal. Evitts v. Lucey, 469 US 387 (1985). US. CONST. AMEND. VI and XIV

Petitioner has shown that counsel omitted significant and obvious issues while pursuing weaker issues. On direct appeal, appel counsel raised (3) issues, two of which petitioner discontinued. Further without delay Petitioner filed Motion For Relief of Judgement (9) issues. Also Petitioner investigated and found newly discovered evidence. This COURT has ruled ineffective assistance of appellate counsel is "good cause" for failing to raise issues in appeal of rights. see Edwards v. Carpenter, 529 U.S. 446 (2000). Petitioner's arguements have been ignored or dismissed prematurely. The facts has been circumvented to appear worst than they are, to minimize prejudice in the issues. Petitioner has established outcome determinative prejudice by appellate counsel's failures.

Conclusion/Relief

Petitioner did not have adequate counsel and did not receive a fair trial. The lower courts has not been acting as a impartial arbitrator and has misapplied or ignored all together the Facts, Rules, Laws, Statutes, Constitutional Rights, and this COURTS rulings.

Petitioner therefore respectfully Request this COURT to GRANT Writ for Certiorari, to resolve the ignoring of Constitutional violations herein.

Petitioner also request ORAL arguments and evidentary hearing, forcing the state to explain why Constitutional Law & Rights should be ignored.