

ORIGINAL

20-5171

NO. 19-6026

Supreme Court, U.S.
FILED

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IN THE SUPREME COURT OF THE UNITED STATES

CEDRIC WATKINS

Petitioner

v.

SHAWN PHILLIPS

Respondent

**ON PETITION FOR WRIT OF CERTIORARI TO
THE SIXTH CIRCUIT OF APPEALS
PETITION FOR WRIT IF CERTIORARI**

Respectfully Submitted by,

Cedric Watkins
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SUPREME COURT, U.S.

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QUESTION(S) PRESENTED

This case presents two important nationwide issues. The first issue concerns an inappropriate application of a U.S. Supreme Court precedent and whether this court has the authority to enforce the supreme law of the land the U.S. Constitution when the lower Courts have failed to properly apply it to the facts of a case, and the second concerns an issue this Court has yet to set a controlling precedent for. This petition represented an opportunity for the Supreme Court to reestablish our Constitution, the best document ever written, as the supreme law of the land.

- (1) Whether the evidence was sufficient to sustain his conviction, specifically, there was no physical evidence connecting Mr. Watkins to the crime scene and many of the witnesses were not credible. *Jackson v. Virginia*
- (2) Whether Mr. Watkins was denied due process of law under the Fourteenth Amendment when the trial court limited the testimony of Deborah Cox, a defense witness?
- (3) Whether Mr. Watkins was denied effective assistance of counsel when trial counsel failed to adequately investigate the case, failed to interview witnesses who could have provided testimony favorable to his defense, trial counsel failed to: (1) call Clifford Parrish to testify, (2) properly cross-examine Deborah Cox, (3) object to detective Corey Wall's hearsay statement (4) call Lasohona Wooten to testify, and, (5) failed to consult and prepare him to testify at trial, denying him of his sixth and fourteenth amendment of The United States Constitution.

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**PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT**

The petitioner, Cedric Watkins, respectfully prays that a writ of certiorari be issued to review judgment and opinion of the Sixth Circuit Court of Appeals, rendered in these proceedings on April 03, 2020.

Opinion Below

The Sixth Circuit Court of Appeals affirmed petitioner's conviction in its Case No. 19-6026. The opinion is unpublished, and is reprinted in the Appendix to this petition at 1a, *Infra*.

Jurisdiction

The original opinion of the Sixth Circuit Court of Appeals was entered April 03, 2020.

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

U.S. CONST., AMEND VI

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, and to have the Assistance of Counsel for his defense.

U.S. CONST., AMEND XIV

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

28 U.S.C. §2254

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that –

(A) the applicant has exhausted the remedies available in the courts or the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

II. STATEMENT OF THE CASE

On March 20, 2013, a Davidson County jury convicted petitioner of first degree murder, and the trial court imposed a life sentence. (D.E. 1, Page ID# 1.) Petitioner's conviction was affirmed on appeal. *State v. Watkins*, M2013-01268-CCA-R3-CD, 2014 WL 2547719 (Tenn. Crim App. June 4, 2014), *perm. app. denied* (Tenn. Aug. 18, 2016.) No application for permission to appeal was filed at the conclusion of his direct appeal.

On January 20, 2015, petitioner filed a timely pro se petition for post-conviction relief. (D.E. 9-11, Page ID# 783-806.) On June 22, 2015, petitioner filed an amended petition through counsel. (D.E. 9-11, Page ID# 816-826.) Following an evidentiary hearing, the post-conviction court denied relief on April 4, 2016. (D.E. 9-11, Page ID# 830-859.) The post-conviction court simultaneously granted petitioner permission to file a delayed Rule 11 application for his direct appeal, due to counsel's failure to do so. (*Id.* at Page ID# 830.) Petitioner's delayed Rule 11 application for his direct appeal was denied on August 18, 2016. (D.E. 9-10.)

Petitioner appealed the denial of his post-conviction petition and the Tennessee Court of Criminal Appeals affirmed on March 20, 2017. *Watkins v. State*, No. M2016-00681-CCA-R3-PC, 2017 WL 1048130 (Tenn. Crim. App. March 20, 2017), *perm. app. denied* (Tenn. May 18, 2017). The Tennessee Supreme Court denied petitioner's Rule 11 application for permission to appeal on May 18, 2017.

On September 27, 2017, petitioner filed a pro se petition for writ of habeas corpus in this Court. (D.E. 1.) On October 12, 2017, this Court ordered respondent to respond to petitioner's petition. (D.E. 5.)

On April 3, 2020, the U.S. Court of Appeals 6th Circuit affirmed the U.S. District Court's decision denying petitioner's habeas corpus.

REASONS FOR GRANTING THIS WRIT

RELEVANT FACTS

Petitioner was indicted for the premeditated murder of Thomas Turner, which occurred between July 23, 2009, and July 28, 2009. Turner was a fifty-two year old man at the time of his death, and he lived at the InnTown Suites in Nashville. Turner had been in the Air Force and always had an interest in computers. His brother testified at trial that Turner had an ongoing drug habit since at least 1995. *Watkins*, 2014 WL 2547710, at * 1.

On July 28, 2009, William Ogden, an employee of InnTown Suites who knew Turner as “Bill”, found his body in his room. The manager of the InnTown Suites was present as well and he corroborated Ogden's testimony at trial. The medical examiner testified that Turner was shot three times in the front of the head. *Id.* at *4.

Briana Stanton, petitioner's girlfriend at the time of the trial, testified that she had a drug problem and that she lived in hotels with petitioner and others, including Stephanie Littlejohn. She knew the victim, whose nickname was “Bill Gates”. She identified a number of individuals she associated with, whose common interest was money and drugs. Turner did not hang out with this “group” all the time, but purchased drugs from them. Stanton recalled a time when, after two members of the group had been arrested on drug charges, there were suspicions within the group that Turner was a snitch. *Id.* at * 1.

After she found out that Turner had been murdered, Stanton recalled that, two or three days prior to his death one of the members of the group, William Carter, drove petitioner somewhere, and when they returned that acted differently. Upon his return to the hotel room that same day, petitioner commented that they, would “take this to the grave.” Stanton did not know what he was talking about. After Turner's body was discovered, Stanton heard that Carter was “running around talking about” what petitioner had done. Petitioner called Carter to his hotel room and smacked him for “running his

mouth”. Stanton admitted to concealing her knowledge from detectives the first time they spoke to her, but she later admitted it to them after she'd been incarcerated. *Id.* at *2.

The State introduced recordings of two telephone conversations between Stanton and petitioner while Stanton was in prison. In the first recording, Stanton told petitioner that she hoped “everybody does what they said they were going to do”, to which petitioner asked whether she had heard from anyone “with a badge”. Stanton testified that they were speaking of the murder in that conversation. In the second recording, petitioner told her to “stick to the script” and that they would “fight this s*** to the end.” *Id.* at *2.

Stephanie Littlejohn testified that in July 2009 she lived with petitioner and Stanton in hotel rooms, where she often engaged in drug use and prostitution. Like Stanton, she was acquainted with the same “group” of people, including the victim. Turner was known as “Bill Gates” because he was smart and knew how to fix computers. *Id.* She recalled giving her laptop to him on July 23, 2009, after the two went to buy marijuana together, so that he could work on it. Littlejohn testified that, like Stanton, she was present for the conversation later that same day about whether Turner was a snitch. *Id.* Littlejohn testified that after the conversation, she saw petitioner and Carter leave the hotel room to visit the victim. She asked them to pick up her laptop for her while they were there. She said that she “had a feeling” about their going to see Turner but that “it was kind of one of those things that was left unsaid.” *Id.*

Littlejohn testified that when petitioner and Carter returned thirty to forty-five minutes later, petitioner was in tears. Petitioner was in possession of Littlejohn's laptop but would not give it back to her. Littlejohn testified that petitioner confessed to her that he killed Turner by shooting him three times. Littlejohn corroborated Stanton's testimony that weeks after the murder, Petitioner smacked Carter when he found out that Carter had been talking about the murder. *Id.*

William Carter testified at trial that he has worked as a barber in Nashville for nearly twenty years. He knew Petitioner, Littlejohn, and Stanton, and other members of their group. He knew of

Turner as someone who bought drugs from this group, and he had heard rumors that Turner was perhaps a snitch. On July 23, 2009, Carter went to Petitioner's hotel room to cut his hair. After he finished, Petitioner asked him to drive him to pick something up. Petitioner directed Carter to drive him to the InnTown Suites. When they arrived, Petitioner spotted Turner's car in the parking lot, and Petitioner got out of the car. By the time Carter turned his car around, Petitioner was running back in his direction, carrying a laptop computer. *Id.* at *3.

Once in the car, Petitioner told Carter, "two shots to the head, he ain't talking no more." *Id.* Carter testified that he did not see Petitioner with a gun on that day. Carter corroborated Stanton and Littlejohn's testimony that weeks after the murder Petitioner confronted Carter about "running his mouth". Petitioner smacked Carter and threatened to kill him and his family if he ever said anything. *Id.*

Deborah Cox ("Cox") testified for the defense for the purpose of impeaching Littlejohn's testimony. She testified that in July 2009, Littlejohn had come to live with her and that she confessed to having killed Turner. *Id.* At *5.

IV. ISSUES PRESENTED FOR RELIEF

In his petition for writ of habeas corpus, Petitioner asserts the following claims:

Claim 1: Petitioner's convictions are not supported by sufficient evidence because there was no physical evidence connecting him to the crime scene and because many of the witnesses were not credible. (D.E. 1, PageID# 5.)

Claim 2: Petitioner was denied due process of law when the trial court erred by limiting the testimony of a defense witness, Deborah Cox (D.E. 1, Page ID# 7.)

Claim 3: Petitioner was denied effective assistance of counsel when trial counsel failed to adequately investigate the case, specifically in failing to call Lashona Wooten to testify, and failed to adequately consult with Petitioner prior to trial (D.E. 1, Page ID# 8-9.). Petitioner was denied effective assistance of counsel when trial counsel

failed to, 1.) call Clifford Parrish to testify, 2.) properly cross-examine Deborah Cox, 3.) object to Detective Cory Wall's hearsay statements, and 4.) call Loshana Wooten to testify (D.E. 1. Page ID# 9 & 11.)

ISSUE 1.

The evidence was insufficient to sustain his conviction, specifically, there was no physical evidence connecting Mr. Watkins to the crime scene and many of the witnesses were not credible.

STANDARD OF REVIEW

Mr. Watkins raised this claim on direct appeal (Doc. No. 9, attach.6 at Page ID# 672). Therefore, this county must presume the correctness of the State Court's factual determinations. 28 U.S.C. 2254 (e) (1). Mr. Watkins may rebut this presumption only with clear and convincing evidence. *Warren v. Smith*, 161 F-3D 358, 360-61 (6th Cir. 1998).

The standard for review of a claim challenging the sufficiency of the State's evidence is, “Whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt,” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 Ct. 2781, 61 L. ED 2D 560 (1979) Citing *Johnson v. Louisiana*, 406 U.S. 356, 362, 92 S. Ct. 1620, 32L. Ed. 2D, 152 (1972); see Tenn. R. App. P. 13 (e); *State v. Davis*, 354 S.W. ED 718, 729 (Tenn. 2011). To obtain relief on a claim of insufficient evidence, appellant must demonstrate that no trier of fact could have found the essential elements of the offense beyond a reasonable doubt. See *Jackson*, 443 US. At 319. This standard of review is identical whether the conviction is predicated on direct or circumstantial evidence, or a combination of both. *State v. Dorantes*, 331 S.W. 3D 370, 379 (Tenn. 2011); *State V. Brown*, 551 S.W. 2D 329, 331 (Tenn. 1977).

The court next considered the definition of the crime for which Mr. Watkins was convicted:

Tennessee code annotated section 39-13-202(a) defines the category of first degree murder as “[a] premeditated and intentional killing of another.”

“Premeditation” is an act done after the exercise of reflection and judgment. “Premeditation”

means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

ID § 39-13-202 (D)

Watkins, 2014 WL 2547710, At 6.

When applying the standard to the below argument it is clear relief should be granted.

In his first claim, Petitioner alleges that the argument was insufficient to sustain his conversion. (Doc. No. 1 at page ID# 5.) Specifically, petitioner argues that “there was no physical evidence connecting him to the crime scene and that many of the witnesses were not credible [sic].” (*ID.*) In his Answer, respondent contends that the determination by the Tennessee Court of Criminal Appeals that the evidence is legally sufficient to support Petitioner’s conviction was not contrary to, or an unreasonable application of clearly established Supreme Court precedent, nor was it based on an unreasonable determination of the facts, in light of the evidence presented at trial.

The state’s witnesses misled the jury, in that they said, Petitioner’s believed the victim to be a “snitch” went into the victim’s hotel room and shot him three times in the head. *Id.* Stephanie Littlejohn and Briana Stanton both testified that petitioner was concerned that the victim had given information to the police. William Carter testified that he drove petitioner to the victim’s hotel room, petitioner left the car briefly, and when he returned, he commented, “[T]wo shots to the head [:] he ain’t talking no more.” *Id.* Mr. Carter’s testimony was corroborated in part by Ms. Littlejohn’s testimony. Ms. Littlejohn testified that the victim had her laptop and, because she knew petitioner was going to visit the victim, she asked him to bring her laptop back when he returned. When petitioner returned from his outing with Mr. Carter, he had her laptop in his possession. Ms. Littlejohn also testified that petitioner said a prayer for the victim and told her that he had shot victim three times in

the head. The medical examiner confirmed that the victim had three gunshot wounds to the front of his head. All of which contradicts the evidence.

In challenging the sufficiency of the evidence used to convict him, petitioner argues that the witnesses' testimonies were not credible. The Tennessee Court of Criminal Appeals found that his argument was without merit because all witnesses had been thoroughly cross-examined, and the jury assessed the testimony of the witnesses as evidence at trial. *Id.* At *7. The court ultimately concluded that the evidence was sufficient for a reasonable juror to find that petitioner committed first-degree murder. *Id.*

Here, the decision of the Tennessee Court of Criminal Appeals was an unreasonable application of the facts or contrary to law, there was no physical evidence linking petitioner to the crime scene.

The State Appellate Court's finding that the State established that petitioner committed the intentional and premeditated killing of the victim beyond a reasonable doubt was unreasonable. A defendant's "state of mind crucial to the establishment of the elements of the offense," *State v. Brown*, 836 S.W.2d 530, 541 (Tenn. 1992); thus, the State may prove premeditation by circumstantial evidence. Several factors support the existence of premeditation, including: "the use of deadly weapon upon an unarmed victim; the particular cruelty of the killing; declarations by the defendant of an intent to kill; evidence of procurement of a weapon; preparations before the killing for concealment of the crime, and calmness immediately after the killing." *State v. Bland*, 958 S.W.2d 651, 660 (Tenn. 1997). (citing *Brown*, 836 S.W.2d at 541-42; *State v. West*, 844 S.W.2d 144, 148 (Tenn. 1992)). The State claimed that petitioner went inside the victim's hotel room concerned the victim he given information to the police about Chaz Ellis and Bobby Gurley. When he returned from the hotel room, petitioner told Mr. Carter, "[T]wo shots to the head [:] he ain't talking no more" and discarded the shirt petitioner had worn into the hotel room. Petitioner told Ms. Littlejohn that he had shot the victim three times and said a prayer for him. The court supported the State Appellate Court's finding that the evidence was sufficient to support petitioner's conviction for first-degree premeditated murder.

Although petitioner urges here, as he did on direct appeal, that the witnesses were not credible, Mr. Carter, Ms. Stanton, and Ms. Littlejohn all testified that petitioner threatened Mr. Carter after learning that Mr. Carter told his girlfriend about taking petitioner to the victim's hotel. In addition, Ms. Stanton testified that the victim's murder was the subject of the telephone conversations she had with petitioner. Detective Wall testified that ms. Littlejohn, Ms. Stanton, and Mr. Carter each gave statements during the investigation that were consistent with each other. A reviewing court does not reweigh the evidence or redetermine the credibility of the witnesses, whose demeanor has been observed by the trial court. *Marshall v. Lonberger*, 459 U.S. 422, 434 (1983). It is the role of the fact finder to weigh the probative value of the evidence and resolve any conflicts in testimony. *Neal v. Morris*, 972 F.2d 675, 679 (6th Cir. 1992). This Court will not second guess the jury's credibility determinations. See, *Boyle v. Sherry*, No. 2:06-cv-12207, 2008 WL 4793412, at *12 (E.D. Mich. Oct. 31, 2008)(reiterating that, on habeas review, the court must defer to the jury's findings.)

The Court found that the decision of the Tennessee Court of Criminal Appeals was not based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceedings. Furthermore, given the evidence and testimony adduced at trial, the Court found that the State Court's decision to reject petitioner's sufficiency of evidence claim was not an unreasonable application of the law. Petitioner therefore was not entitled to habeas relief on his claim.

In addition to the foregoing, trial counsel was ineffective for not having Mr. Watkins testify, were he would have contended that he was innocent of this crime, and he would have provided a rendition of this crime, and he would prejudiced these proceedings and all those thereafter by not presenting this argument as a claim, which violated petitioner's constitutional right to due process.

ISSUE 2.

Mr. Watkins was denied due process of law under the fourteenth Amendment when the trial court limited the testimony of Deborah Cox, a defense witness. (Doc. No. 1 at Page ID# 7.)

STANDARD OF REVIEW

Respondent contends that, because petitioner did not raise a constitutional claim of due process on direct appeal, this claim is barred by procedural default. (Doc. No. 11 at Page ID# 13.)

To reserve a federal constitutional claim for presentation in habeas corpus. The claim must be “fairly presented” to the state courts in a way that provides them with an opportunity to remedy the asserted constitutional violation, including presenting both the legal and factual basis of the claim. *Williams v. Anderson*, 460 F.3d. 789, 806 (6th Cir. 2006); *Levine v. Torvik*, 986 F.2d. 1506, (6th Cir.), cert. denied, 509 U.S. 907 (1983), overruled in part on other grounds by *Thompson v. Keohane*, 516 U.S. 99 (1998); *Riggins v. McMackin*, 935 F.2. 790 (6th Cir. 1991). The claim must be fairly presented at every stage of the State Appellate process. *Wagner v. Smith*, 581 F.3d. 410, (6th Cir. 2009.) in reviewing the state court proceedings to determine whether a petitioner has “fairly presented” a claim to the State Courts, courts look to the petitioner’s: “(1) reliance upon federal cases employing constitutional analysis; (2) reliance upon state cases employing federal constitutional analysis; (3) phrasing the claim in terms of constitutional law or in terms sufficiently particular to allege a denial of a specific constitutional right; or (4) alleging facts well within the mainstream of constitutional law.” “*Slaughter v. Parker*, 450 F.3d. 224, 236 (6th Cir. 2006) (quoting *Whiting v. Burt*, 395 F.3d. 602, 613 (6th Cir. 2005.)

“While a petitioner need not cite ‘chapter and verse’ of constitutional law, ‘general allegations of the denial of right to a ‘fair trial’ and ‘due process’ do not ‘fairly present claims’ that specific constitutional rights were violated.” *Slaughter*, 450 F.3d. at 236 (quoting *Blackmon v. Booker*, 394 F.3d. 399, 400 (6th Cir. 2004).” A lawyer need not develop a constitutional argument at length, but he

must make one; the words 'due process' are not an argument." *Riggins v. McGinnis*, 50 F.3d. 492, 494 (7th Cir. 1995). If a petitioner's claim in federal habeas rest on different theories that those presented to the state courts, they are procedurally defaulted. *Williams v. Anderson*, 460 F.3d. 789, 806 (6th Cir. 2006).

ARGUMENT

Here, petitioner raised on direct appeal a claim that the trial court improperly limited the testimony of Deborah Cox regarding a prior inconsistent statement made to her by Stephanie Littlejohn. He made the claim on state law evidentiary grounds, arguing that Ms. Littlejohn's prior inconsistent statement should have been admitted to impeach the credibility of the witness. (doc. No. 9 Attach. 6 at Page ID#673). The brief relied on State Court cases and did not cite a single federal case. (*Id.*) in reviewing this claim, the Tennessee Court of Criminal Appeals cited Tennessee Rule of Civil Procedure 36(a) and found that petitioner had waived the claim because his counsel acquiesced to the trial court's ruling that only the first part of Ms. Cox's testimony was admissible. *Watkins*, 2014 WL 2547710, at *8. the court therefore denied relief on this claim. *Id.* In issuing its ruling, the court made no reference to federal law and did not treat petitioner's claim as one brought under federal law. (*Id.*)

Consequently, the Court finds that petitioner did not fairly present his federal due process claim to the State Courts. The claim is now barred from presentation to the State Courts by Tennessee Code Annotated § 40-30-102(a), and the "one petition" limitation of § 40-30-102 (c). As a result, the claim is deemed to be exhausted (because no avenue for raising the claim in State Appellate Court remains) but procedurally defaulted for the purpose of federal habeas review.

It's clear from the above that Direct Appeal Counsel was ineffective for not federalizing this claim, which led to the procedural default, this ineffectiveness should have been excused pursuant to *Martinez*, and the claim ruled on its merits. The merits of said claim shows that Mr. Watson is innocent of this crime.

ISSUE 3

Mr. Watkins was denied effective assistance of counsel when trial counsel failed to adequately investigate the case, failed to interview witnesses who could have provided testimony favorable to his defense, trial counsel failed to: (1) call Clifford Parrish to testify, (2) properly cross-examine Deborah Cox, (3) object to detective Corey Wall's hearsay statement, (4) call Lashona Wooten to testify and, (5) failed to consult and prepare him to testify at trial, denying him of his sixth and fourteenth amendment of The United States Constitution.

The Sixth Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment, guarantees the right of a person accused of a crime to the effective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, a petitioner must show (1) deficient performance of counsel and (2) prejudice to the defendant. See *Bell v. Cone*, 535 U.S. 685, 694-95 (2002.) trial counsel's performance is deficient when it falls below an objective standard of reasonableness. See *Strickland v. Washington*, 466 U.S. 668, 686-87 (1984); *Combs v. Coyle*, 205 F.3d. 269, 278 (6th Cir. 2000), *cert denied*, 531 U.S. 1035 (2000). In assessing performance, "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. At 690-91. Reasonable attorneys may disagree on the appropriate strategy for defending a client. *Bigelow v. Williams*, 367 F.3d 562, 570 (6th Cir. 2004). The prejudice element requires a petitioner to show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

A court hearing an ineffective assistance of counsel claim must consider the totality of the evidence. *Strickland*, 466 U.S. at 695. “The determinative issues is not whether petitioner’s counsel was ineffective but whether he was so thoroughly ineffective that defeat was “snatched from the jaws of victory.” *West v. Seabold*, 73 F.3d 81, 84 (6th Cir, 1996)(quoting *United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992)(en banc)). Judicial scrutiny of counsel’s performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel’s assistance after it has proved or adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was reasonable.” *Strickland*, 466 U.S. at 689.

As discussed above, however, federal habeas relief may not be granted under U.S. § 2254 unless a petitioner shows that the earlier State Court’s decision “was contrary to” federal law then clearly established in the holding of the United States Supreme Court, § 2254 (d)(1); that it “involved an reasonable application of” such law; or that it “was based on an unreasonable determination of the facts” in light of the record before the State Court, 28 U.S.C. § 2254 (d)(1), (2). Thus , when a claim of ineffective assistance of counsel is raised in a federal habeas petition, such as here, the question to be resolved is not whether the petitioner’s counsel was ineffective, rather, “the pivotal question is whether the State Court’s application of the *Strickland* standard was unreasonable.” *Harrington v. Richter*, 562 U.S. 86, 101 (2011). As the Supreme Court clarified in *Harrington*:

This is different from asking whether defense counsel’s performance fell below *Strickland*’s standard. Were that the inquiry, the analysis would be no different than if, for example, this Court were adjudicating a *Strickland* claim on direct review of a criminal conviction in a United States District Court. Under AEDPA, though, it is necessary premise that the two questions are different. For purposes of § 2254(d)(1), an unreasonable application of federal law is different from an incorrect application of federal law. A State

Court must be granted a deference and latitude that are not in operation when

The case involves review under the *Strickland* standard itself.

Harrington, 562 U.S. at 101 (internal quotation marks and citation omitted).

ARGUMENT

1. Pre-Trial Investigation and Preparation

Petitioner contends that trial counsel was ineffective for failing to adequately investigate, failing to interview who could have provided testimony favorable to petitioner, and failing to consult with petitioner prior to trial including preparing petitioner for testifying at trial. (Doc. No. 1 at Page ID# 8-9). In particular, petitioner argues that counsel failed to interview a potential witness, Lashona Wooten, who testified at petitioner's first trial. Petitioner believes that "she could have identified an unidentified person" and "would have raised a doubt as to petitioner's presence at the location where the victim was killed." (*Id.* at Page ID# 9).

Petitioner raised these claims in his petition for post-conviction relief. (Doc. No. 9, Attach. 11 at Page ID# 817-18). He argues that counsel should have interviewed Ms. Wooten, who testified at petitioner's first trial, because her testimony would have raised a doubt as to petitioner's presence at the location where the victim was killed." (*Id.* at 818). He also argued that, before trial, trial counsel only met with petitioner twice for less than thirty minutes each time and did not prepare petitioner for testifying at trial in his own defense. (*Id.*). According to petitioner, he waived his right to testify due to being unprepared and, had he testified, he would have told the jury he was not guilty, pointed out discrepancies in witness testimony, and the result of his trial would have been different. (*Id.*)

During his post-conviction evidentiary hearing, petitioner testified that trial counsel only met with petitioner twice for less than thirty minutes each time and did not prepare petitioner for testifying at trial in his own defense. (Doc. No. 9, Attach. 12 at Page ID# 902). He testified that they did not discuss whether petitioner would testify at trial. (*Id.* At Page #903). When asked what he would have

said had he been called as a witness, petitioner responded that he would have told the jury that he did not kill Thomas Turner. (*Id.*)

At petitioner's evidentiary hearing, trial counsel testified that, in preparing for trial, he reviewed the transcript for the first trial, visited the crime scene, and spent approximately eight hours reviewing record, exhibits, and photographs. (Doc. No. 9, Attach. 12 at Page ID# 923-27). He enlisted the help of a nurse who helped him interpret the medical records and who provided insight on the photographs of the deceased victim; counsel filed a motion in limine to exclude those photographs. (Doc. No. 9 Attach. 12 at Page ID# 925). He worked with prior counsel's investigator and hired his own investigator. (*Id.* at 933-34). He interviewed all of these witnesses himself, including Ms. Wooten (*Id.* at 927-28). Counsel also testified that he advised petitioner that it would be to his advantage to testify if he could do so truthfully, but he felt anything may go wrong or that he may get crossed up, then to "think twice" about taking the stand. (*Id.* at 928-29). Trial counsel emphasized that the decision to testify or not was left to petitioner. (*Id.* at 938-39).

With respect to trial counsel's strategic decision not to call Ms. Wooten as a witness, it is a "longstanding and sound principle that matters of trial strategy are left to counsel's discretion. "*Dixon v. Houk*, 737 F.3. 1003, 1012 (6th Cir. 2013). In order to fairly assess an attorney's performance, "every effort must be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at that time." *Strickland*, 466 U.S. at 689. "Strategic choices made after a thorough investigation of the law and facts relevant to plausible options are virtually unchallengeable." (*Id.* at 690.) counsel made an uninformed strategic decision not to call Ms. Wooten because her testimony as to his innocence superseded her demeanor. This decision was outside of the professional norms for criminal defense attorneys.

Petitioner not only established that counsel's failure to call Ms. Wooten as a witness was deficient, he also established that he was prejudiced by it. Consequently, petitioner has shown that he is entitled to relief on this claim because the Appellate Court's determination was contrary to

Strickland. Both the Federal and the Appellate Court's determination was based on an unreasonable determination of the facts or an unreasonable application of *Strickland's* standards to those facts.

The post-conviction court denied relief, explicitly accrediting trial counsel's testimony at the post-conviction hearing, finding that "petitioner has not met his burden of established by clear and convincing evidence that Trial Counsel was ineffective in this trial preparation or that petitioner was prejudiced by any alleged deficiency." (Doc. No. 9, Attach. 11 at Page ID# 848-49). The court found that "nothing in the record indicates that the Trial Counsel failed to meet with the prosecutor and keep him informed of the proceedings." (*Id.*)

On appeal of the denial of post-conviction relief, the Tennessee Court of Criminal Appeals set forth the governing legal standard for claims of ineffective assistance of counsel. (*Id.* at *5). Applying *Strickland* to the facts of petitioner's case, the Tennessee Court of Criminal Appeals agreed with the post-conviction court that trial counsel's performance was not deficient or prejudicial, finding that "trial counsel was a very experienced trial attorney who conducted a thorough investigation of the facts, reviewed the record from first trial, and communicated with the petitioner about the facts, defense theories, and pros and cons of testifying in his own defense." (*Id.* at *6). The Court specifically accredited the testimony of trial counsel over that of the petitioner, finding that trial transcript and the facts of the case, and effectively communicated with the petitioner about the case, including his options regarding testifying at trial. *Id.* at *5.

These findings were unreasonable. With regard petitioner's claim that trial counsel failed to adequately investigate and prepare for trial, trial counsel's experience of practicing law in the State of Tennessee for about thirty-nine years and roughly half of his practice had been dedicated to criminal defense work did not prove he was effective in this case. Further, trial counsel testified that, despite having been hired by petitioner's family only three weeks prior to his second trial, counsel was able to devote himself entirely to petitioner's case from the date he was retained until the trial; (Doc. No. 9, Attach. 12 at Page ID# 922-23). Counsel felt that the meetings were "very productive" and that he and petitioner "had no problems communicating." (*Id.* at Page ID# 924). Counsel filed three motions in

limine on petitioner's behalf and visited the crime scene before the trial as part of his preparation. (*Id.* at Page ID# 926). He spent approximately eight hours reviewing records and exhibits. (*Id.*) He enlisted the assistance of a nurse who provided insight on the photographs of the deceased and filed a motion in limine to exclude photographs. (*Id.*) In addition to working with prior counsel's investigator, trial counsel retained the services of his own investigator. However, none of this proves counsel actually conducted a full investigation of the facts in this case.

With regard to petitioner's allegation that trial counsel failed to interview Lashona Wooten, trial counsel testified that he interviewed all of the defense witnesses whose demeanor has been observed by this court, unless petitioner demonstrates the state credibility determinations are not supported by record. See *Rice v. Collins*, 546 U.S. 333, 339 (2006) ("Reasonable mind reviewing the record might disagree about the prosecutor's credibility, but on habeas review that does not suffice to supersede the trial court's credibility determinations; *Bennett v. Mills*, No. 1:06-cv-254, 2007 WL 2823324, at *6 (E.D. Tenn. Sept. 27, 2007). (in determining whether petitioner had submitted credible new evidence of actual innocence, deferring to the State Court's credibility determinations). However, petitioner has demonstrated that the State Court's credibility determinations are supported by the record.

With respect to petitioner's allegation that trial counsel failed to consult with him prior to trial, the Tennessee Court of Criminal Appeals credited trial counsel's testimony at the post-conviction evidentiary hearing that he met with petitioner three times for an hour each and that those meetings were very productive.

The constitutional right of a defendant to testify at trial is well established had subject only a knowing and voluntary waiver by the defendant. *Rocky v. Arkansas*, 483 U.S. 44, 49 (1987). Defense counsel's role is to advise the defendant whether to take the stand; ultimately, the defendant must decide for himself. See *Pelzer v. United States*, No. 96-1195, 1997 WL 12125, at *2 (6th Cir. Jan. 13, 1997) (citation omitted). To the extent that petitioner argues that trial counsel's failure to consult with him prior to trial resulted in petitioner being unprepared to testify in his own defense, counsel testified

at the evidentiary hearing that he had extensive conversations with petitioner about the possibility of testifying. (Doc. No. 9, Attach. At PageID# 928). Trial counsel testified that he advised petitioner that it would be to his advantage to testify at trial if he could do truthfully, but if he felt anything may go wrong or he may get crossed up, then to “think twice” about taking the stand. Trial counsel emphasized that the decision whether to testify was left to petitioner, who made his decision after being advised of his rights by the court and executing a *Moman* waiver. However, trial counsel’s version of what took place is not logical when the facts are considered.

It’s clear petitioner has established that counsel’s performance was deficient as alleged and petitioner has established that he was prejudiced by it. Petitioner has shown how better preparation for trial would have resulted in a reasonable probability of a different trial outcome considering the evidence against him. Furthermore, petitioner does provide specifics as to, had he chosen to testify in his own defense that he was innocent, would have caused the jury to make a different conclusion.

All the above allegations of ineffective assistance based on counsel’s pre-trial investigation and preparation, the Court should find that petitioner has shown he is entitled to relief because the State Appellate Court’s determinations were contrary to *Strickland*. And they were an unreasonable application of the facts or an unreasonable application of *Strickland’s* standard to those facts. Thus, petitioner is entitled to relief on those claims.

2. During Trial

Petitioner also claims that trial counsel provided ineffective assistance of counsel during petitioner’s second trial. In particular, petitioner alleges that trial counsel (1) failed to call Clifford Parish to testify; (2) failed to properly cross-examine Deborah Cox; (3) failed to object to Detective Corey Wall’s alleged hearsay statements; and (4) failed to call Lashona Wooten to testify. (Doc. No. 1 at Page ID# 9, 11). According to respondent, the State Court’s rejection of petitioner’s claims that he was denied effective assistance of counsel was not contrary to, or an unreasonable application of

Strickland, or based on an unreasonable determination of the facts in light of the evidence before the State Court. (Doc. No. 11 at Page ID# 16).

a. Failure to call Clifford Parrish to testify

First, petitioner alleges that trial counsel was ineffectual in failing to call Clifford Parrish to testify at trial. (Doc. No. 1 at Page ID# 18). According to petitioner, Mr. Parrish “Would have testified that Stephanie Littlejohn confessed to him that she committed the murder for which petitioner was charged.” (*Id.*)

In his Post-conviction petition, petitioner argues that trial counsel had provided ineffective assistance by failing to locate Mr. Parrish as a witness. (Doc. No. 9, Attach. 11 at Page ID# 819). Petitioner’s positive that Mr. Parrish would have been a beneficial defense witness because he could testify that Ms. Littlejohn had confessed to murdering Thomas Turner.

Mr. Parrish testified at petitioner’s post-conviction hearing that he had known petitioner for over thirty years, (*Id.* at 877); and that Ms. Littlejohn had told him that she had committed the murder, not petitioner. (Doc. No. 9, Attach. 12 at Page ID# 880). Mr. Parrish testified that he was unaware petitioner had been tried twice and stated on direct examination that he had not relayed Ms. Littlejohn’s confession to the police or defense counsel. (*Id.* at 881-82). On cross-examination, Mr. Parrish indicated it is possible he was confused about the time frame when he conveyed Ms. Littlejohn’s statement to petitioner. (*Id.* at 882-83).

Trial counsel testified at petitioner’s post-conviction evidentiary hearing that he and petitioner had discussed the witnesses he wanted to call and that petitioner did not mention Mr. Parrish. In fact, counsel testified that he had never heard of Mr. Parrish. (*Id.* at Page ID# 925). The post-conviction court denied relief, accrediting counsel’s testimony that he had never heard of Mr. Parrish as a potential witness. (Doc. No. 9, Attach. 11 at Page ID# 852).

Petitioner raised this claim on appeal of the denial of his post-conviction petition. The Tennessee Court of Criminal Appeals affirmed the denial of relief, agreeing with the post-conviction court that trial counsel “was a very experienced attorney who conducted a thorough investigation of the facts, reviewed the record from the first trial, and communicated with the petitioner about the facts, defense theories, and pros and cons of testifying in his own defense,” *Watkins*, 2017 WL 1048130, at *6. The Tennessee Court of Criminal Appeals applied *Strickland* and affirmed, concluding that the evidence in the record supported the post-conviction court’s conclusion that trial counsel’s performance was not deficient or prejudicial. (*Id.* at *8.)

The State Court’s findings were unreasonable. In that petitioner has shown prejudice resulting from trial counsel’s failure to offer Mr. Parrish’s testimony. The record reflects that Mr. Parrish had some credibility issues. In addition, Mr. Parrish’s testimony regarding Ms. Littlejohn’s confession would have been cumulative to the testimony of Deborah Cox, who testified that Ms. Littlejohn confessed to here that Ms. Littlejohn - not petitioner - killed the victim. (Doc. No. 9, Attach. 3 at Page ID# 460) Prejudice was accrued to petitioner when his attorney failed to offer this evidence.

Accordingly, the State Court’s decision was not based on a reasonable determination of the facts and that the State Court’s application of the *Strickland* factors was not reasonable. Petitioner therefore is entitled to relief on the basis of this claim.

b. Failure to effectively cross-examine Deborah Cox

Next, petitioner alleges that trial counsel failed to effectively cross-examine Deborah Cox, a defense witness. Specifically, petitioner alleges that trial counsel should have pointed out “discrepancies in her testimony between the first and second trial[s].” (Doc. No. 1 at Page ID# 11).

The petitioner raised this claim in his petition for post-conviction relief. (Doc. No. 9, Attach. 11 at Page ID# 819). He argued that trial counsel should have brought to light the discrepancies in Ms. Cox’s testimony between the first and second trials. (*Id.*) During petitioner’s post-conviction hearing, counsel testified that he would have liked “a little more latitude in ... developing Ms. Cox’s testimony”

but was limited by the trial court's rulings. (Id. at Page ID# 937). On appeal of the denial of post-conviction relief, Tennessee Court of Criminal Appeals deferred to the post-conviction court's accreditation of counsel's testimony that he developed her testimony to the best of his ability given the trial court's rulings and found that counsel had not provided ineffective assistance in this regard. *Watkins*, 2017 WL 1048130, at *5. The State Court's findings were unreasonable in that cross-examination is the "principal means by which believability of a witness and the truth of [her] testimony are tested." *Davis v. Alaska*, 415 U.S. 308, 316 (1974).

Counsel's performance did constitute ineffective assistance of counsel. The record shows that trial counsel questioned Ms. Cox, who was his own witness, and testified that he would have liked to have asked more questions of her but was limited by the trial court's rulings. And, petitioner showed both the deficient performance as required by the first prong of the *Strickland* test, and the prejudice required by the second prong. Petitioner's claims related to these tactical matters support a claim on ineffective assistance of counsel.

The Court found that the State Court's determination was not contrary to *Strickland*. Neither was the Court's ineffective assistance determination based on an unreasonable determination of the facts or an unreasonable application of *Strickland's* standards to those facts. Thus, petitioner was not entitled to relief on his claim.

c. Failure to object to the testimony of Detective Wall

Petitioner alleges that trial counsel was ineffective by failing to object to the testimony of Detective Wall, petitioner claims Detective Wall gave hearsay testimony during the trial which "gave the impression to the jury that these witnesses had information that incriminated petitioner and that this hearsay improperly bolstered their testimony at trial" (Doc. No. 9, Attach. 11 at Page ID# 819-20). He alleged that trial counsel failed to object to hearsay testimony by Detective Wall as follows:

Specifically, Detective Wall testified to what Stevie Downs told him, which led to his contacting another person, Chaz Ellis. Detective Wall then testified as to what Mr. Ellis told him, specifically that he should contact Stephanie Littlejohn and Briana Stanton. Detective Wall then testified, without objection by trial counsel, to what Ms. Littlejohn told him.

(*Id.*) Similar to his current argument, petitioner asserted that the substance of these multiple hearsay statements "gave the impression to the jury that these witnesses had information that incriminated petitioner, and that this hearsay improperly bolstered their testimony at trial" and, "had this hearsay not been admitted, he would not have been convicted and the result of his case would have been different." (*Id.* at 820).

Petitioner testified at his post-conviction evidentiary hearing that trial counsel allowed hearsay through witnesses which created a negative inference that petitioner had confessed. (Doc. No. 9, Attach. 12 at Page ID# 908-09). The record does not provide any explanation as to why defense counsel did not object to this testimony and petitioner failed to question defense counsel about the issue during the post-conviction hearing.

The post-conviction court denied relief, noting from its review of the trial transcript that "the majority of the testimony concerned how Detective Wall found individuals' names in the deceased's phone and went to speak to each one who directed him to the next individual." (Doc. No. 9, Attach. 11 at Page ID# 856-57). The court further noted that the detective gave "general" testimony and did not testify as to what each defendant told him, but instead as to what actions he took based on what each individual said. (*Id.* at Page ID# 857). The court, therefore, concluded that there was "no evidentiary error" in Detective Wall's testimony and that petitioner had not established by clear and convincing evidence that trial counsel was ineffective or that petitioner was prejudiced by the alleged deficiency. (*Id.*)

On direct appeal of the denial of post-conviction relief on this claim, the Tennessee Court of Criminal Appeals affirmed, finding that "the record fully supports the findings and conclusions of the post-conviction court." *Watkins*, 2017 WL 1048130, at *6. The State Court's findings were not unreasonable. The jury heard directly from nearly all of the witnesses who were mentioned by

Detective Wall in his testimony. Petitioner has not established that, had counsel objected to Detective Walls' testimony, the court would have granted the objection. Neither has petitioner established, even if counsel was deficient in failing to object to Detective Wall's testimony, petitioner was prejudiced and that the outcome would have been different in light of the overwhelming evidence against petitioner.

The Court found that the State Court's determination was not contrary to *Strickland*. Neither was the Court's ineffective assistance determination based on an unreasonable determination of the facts or an unreasonable application of Strickland's standards to those facts. Thus, petitioner was not entitled to relief on his claim.

d. Failure to call Lashona Wooten to testify

In his claim of ineffective assistance of trial counsel, petitioner argues that counsel failed to call Lashona Wooten, who testified at petitioner's first trial. (Doc. No. 1 at Page ID# 9). Petitioner believes that "she could have identified an unidentified person" and "would have raised a doubt to petitioner's presence at the location where the victim was killed." (*Id.*).

Petitioner challenged the effectiveness of his trial counsel on this same ground during his state post-conviction proceedings. (Doc. No. 9, Attach. 11 at Page ID# 85). He argued that Ms. Wooten would have testified that she did not see petitioner at the scene of the crime and instead saw "another individual she could identify and an unidentified person." *Watkins*, 2017 WL 1048130, at *2. In denying relief, the post-conviction court found that trial counsel made a strategic decision not to call Ms. Wooten at the second trial and petitioner had not established by clear and convincing evidence that trial counsel was ineffective or that petitioner was prejudiced by the alleged deficiency. The post-conviction court therefore denied relief. (Doc. No. 9, Attach. at Page ID# 88-89).

On appeal of the denial of post-conviction relief, the Tennessee Court of Criminal Appeals affirmed, agreeing with the post-conviction court that trial counsel had made a strategic decision not to call Ms. Wooten based

on her demeanor and attitude on the day of the trial. *Watkins*, 2017 WL 1048130, at *6. The court found that trial counsel "offered a reasonable explanation for why he did not call Ms. Wooten as a witness" and that petitioner had not met his burden of demonstrating any deficiencies in counsel's performance or any prejudice to his case. *Id.*

The State Court's findings were unreasonable. The evidence clearly demonstrates that the content of Ms. Wooten's testimony was more important, in that it supported petitioner's actual innocence, than her demeanor. Thus, the State Court's findings were unreasonable.

CONCLUSION

- The state's witnesses, none of which witnessed the victim's murder, were drug addicts. A couple were prostitutes with criminal records and had more than questionable motives for their testimony.
- T.B.I Agent Alex Brodhag testified as an expert in forensic firearms examination and stated he could not determine how many weapons were used, which would have raised more questions as to Mr. Watkins's guilt.
- Detective Wall stated on record that there were no fingerprints, DNA, or anything like that, that tied Cedric Watkins to the crime scene.
- Ms. Wooten's testimony would have raised a doubt as to petitioner's presence at the location where the victim was killed.
- The courts should have ruled that counsel was ineffective by not utilizing Mr. Parrish's testimony to impeach the State's witness, Stephanie Littlejohn, by providing a motive for her unfavorable testimony and raised a reasonable doubt as to petitioner's guilt.
- The courts erred by not granting petitioner's habeas corpus relief when weighing the collective number of harmful errors committed.
- For the reasons stated herein, petitioner moves this court to grant the Writ of Certiorari thereby clarifying the use of, and need of, Miranda in the modern technological society that we live in today.

Date June 30, 2020

Respectfully Submitted

pro se

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(A), the undersigned certifies that he is a State Petitioner, he typed this application on the prison's computer, and the application contains 30 pages of less applicable pages.

Cedric Watkins

Cedric Watkins, 162011

I declare under the penalty of perjury that the foregoing is true and correct,

Cedric Watkins

Cedric Watkins, 162011