

No.

20-5896

IN THE SUPREME COURT OF THE UNITED STATES

IN RE: DOUGLAS WEISSERT, Petitioner

vs

MICHIGAN, Respondent.

ORIGINAL

Supreme Court, U.S.
FILED

AUG 20 2020

OFFICE OF THE CLERK

PETITION FOR WRIT OF HABEAS CORPUS TO STATE OF MICHIGAN
FROM MUSKEGON COUNTY CIRCUIT COURT, THE LAST
COURT TO RULE ON THE MERITS OF THIS CASE.

PETITION FOR WRIT OF HABEAS CORPUS

Douglas Weissert, #632314
LAKELAND CORRECTIONAL FACILITY
141 First Street
Coldwater Michigan
49036-8600

QUESTIONS PRESENTED

WHETHER STATE TRIAL COURT VIOLATED SIXTH AMENDMENT RIGHTS WHEN IT FORBADE CROSS EXAMINING ANGLE LEWIS ON MENTAL HEALTH HISTORY AND USE OF PRESCRIPTION MEDICATION, PROHIBITING ANY EVIDENCE ABOUT HER MENTAL HEALTH ISSUES.

LIST OF PARTIES

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

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

TABLE OF CONTENTS

Opinions Below.....	V
Jurisdiction.....	VI
Constitutional Provisions.....	VII
Statement of The Case.....	VIII
Argument.....	1

INDEX OF APPENDICES

APPENDIX A - TRIAL COURT DECISION

APPENDIX B - TRAIL COURT RECONSIDERATION

APPENDIX C - MICHIGAN COURT OF APPEALS ORDER

APPENDIX D - MICHIGAN COURT OF APPEALS RECONSIDERATION

APPENDIX E - MICHIGAN SUPREME COURT ORDER

APPENDIX F - FEDERAL CIRCUIT COURT ORDER

TABLE OF AUTHORITIES

DAVIS v. ALASKA, 94 Sct 1105 (1974)	2, 3, 4
DELAWARE v. FENSTERER, 106 Sct 292 (1985)	3
GORDON v. UNITED STATES, 73 Sct 369 (1953)	4
GREENE v. WAINWRIGHT, 634 F2d 272 (5th. Cir. 1981)	4
HARGRAVE v. MCKEE, 248 Fed. Appx. 718 (6th. Cir. 2007)	3, 4
KOON v. UNITED STATES 116 Sct 2035 (1996)	2
POINTERv. TEXAS, 85 Sct 1065 (1965)	2
UNITED STATES v. LINDSTROM, 698 F.3d 1154 (11th. Cir. 1983)	4
UNITED STATES v. ROBINSON, 583 F3d 1265 (10th. Cir. 2009)	5

CONSTITUTIONS

U.S. Const. Amend. VI.....	1,3,4,5
----------------------------	---------

IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF HABEAS CORPUS
PETITIONER RESPECTFULLY PRAYS FOR A WRIT OF HABEAS CORPUS

TO REVIEW JUDGMENT BELOW

OPINIONS BELOW

FROM STATE COURTS:

THE OPINION OF THE HIGHEST STATE COURT TO REVIEW THE MERITS
APPEARS AT APPENDIX-A AND IS UNPUBLISHED.

THE OPINION OF THE MICHIGAN SUPREME COURT APPEARS AT APPENDIX-E
AND IS UNPUBLISHED.

JURISDICTION

FROM STATE COURTS:

THE DATE ON WHICH THE HIGHEST STATE COURT DECIDED THIS CASE WAS
12/23/2019. A COPY APPEARS AT APPENDIX-E.

THE FEDERAL: CIRCUIT COURT DENIED APPEALABILITY ON 05/29/2020,
AFTER TRANSFER FROM DISTRICT COURT, ORDER APPEARS AT APPENDIX-E.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER Title 28 USC
§1651(a)

RELEVANCE TO RULE 20.1

Various federal circuit courts (5th, 6th, 10th, 11th) have ruled limiting or prohibiting evidence of witness's mental health history and use of prescription medications violated the sixth amendment of The United States Constitution. The petitioners circuit, the sixth, has specifically ruled Michigan violated the Sixth Amendment rights under the confrontation clause and was unreasonable application of United States Supreme Court precedent for limiting cross-examination regarding a witness's psychiatric condition. Even with these United States Circuit Court opinions to the contrary, **State Courts continue to ignore these rulings because the United States Supreme Court has never decided this issue.** This is the very type of claim that creates exceptional circumstances that warrant this courts discretionary powers. Without this Court Ruling on this matter constitutional rights of defendants will continue to be violated. If this issue is decided formally by this court **it will aid in this courts appellate jurisdiction**, by using its legal power to hear and decide this case it will set an official precedent for state courts and lower federal courts to follow. (See also page VIII, and Page 5).

The Michigan State Courts denied petitioner leave to appeal. As noted on page v the federal district court transferred to the circuit court which denied appealability via a Motion For Relief From Judgement or a second Habeas Petition. **This court is now the only relief available.** (See also appendix C,D,E, and F.)

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. VI:

The Confrontation Clause guarantees the right of an accused in a criminal prosecution "to be confronted with the witnesses against him."

STATEMENT OF THE CASE

The Michigan Courts failed to apply clearly established Federal law in a reasonable manner when it held that Petitioner could not CROSS EXAMINE Angie Lewis on her mental health history and use of prescription medications, prohibiting any evidence about her mental health issues, violating Petitioners Sixth Amendment Rights.

The State charged and convicted Petitioner of FELONY MURDER and lesser included offenses on the theory he aided and abetted Ed Lewis's crimes. The Petitioner was sentenced to LIFE WITHOUT PAROLE in prison. The State failed to produce any physical evidence linking Petitioner to Lewis's crimes, and instead primarily relied on: 1) Angie Lewis hearsay testimony in which defense was forbade from addressing her mental health issues: 2) And Ed Lewis's Preliminary Exam testimony, which was played for the jury, as Ed Lewis refused to testify at trial.

The same trial court and presiding Judge allowed this exact confrontation at co-defendants trial as to Angie Lewis's mental health issues. Yet did not allow it at Petitioners trial. Petitioner seeks justice for his Constitutional claim that merits relief from this Honorable Court.

Even though the Sixth Circuit Court of Appeals has ruled Michigan violated Sixth Amendment Rights under the confrontation clause and was unreasonable application of United States Supreme Court precedent for limiting cross examination regarding Psychiatric condition, as has the Fifth, Tenth and Eleventh Circuit Courts, State Courts continue to ignore those rulings BECAUSE THE UNITED STATES SUPREME COURT HAS NEVER DECIDED THIS ISSUE.

Had this confrontation of been allowed, it is more likely than not the outcome of the proceedings would of been different. This writ would aid this Courts appellate jurisdiction and settle this issue completely. The exceptional circumstances warrant the exercise of this Courts discretionary powers. Adequate relief cannot be obtained in any other form, or from any other Court. Now, Petitioner asks the United States Supreme Court to allow him to proceed with his Petition for Writ of Habeas Corpus

ARGUMENT

STATE TRIAL COURT VIOLATED SIXTH AMENDMENT RIGHTS WHEN IT FORBADE CROSS - EXAMINING ANGIE LEWIS ON HER MENTAL HEALTH HISTORY AND USE OF PRESCRIPTION MEDICATIONS, PROHIBITING ANY EVIDENCE ABOUT HER MENTAL HEALTH ISSUES.

A COURT "BY DEFINITION ABUSES ITS DISCRETION WHEN IT MAKES AN ERROR OF LAW". KOON V UNITED STATES, 518 US 81, 100(1996). A DEFENDANT'S SIXTH AMENDMENT RIGHT "TO BE CONFRONTED WITH THE WITNESS'S AGAINST HIM" APPLIES TO DEFENDANTS IN STATE TRIALS AS WELL AS FEDERAL. POINTER V TEXAS, 393 US 490, 497(1965). "THE MAIN AND ESSENTIAL PURPOSE OF CONFRONTATION IS TO SECURE FOR THE OPPONENT THE OPPORTUNITY OF CROSS-EXAMINATION." DAVIS V ALASKA, 415 US 308, 315-16(1974).

THE PROSECUTION FILED A MOTION TO PRECLUDE TESTIMONY REGARDING THE MENTAL HEALTH STATUS OF ANGIE LEWIS. ANGIE LEWIS HAD PREVIOUSLY ADMITTED SHE TOOK MEDICATION FOR MENTAL HEALTH ISSUES, SHE HAD PREVIOUSLY BEEN IN A MENTAL HOSPITAL FOR PSYCHIATRIC TREATMENT, AND HAD ATTEMPTED SUICIDE. HER HUSBAND, ED LEWIS IN INTERVIEW STATED "MY WIFE'S ON A PILL, THIS MEDICATION AND IF SHE DOESN'T TAKE IT SHE'S CRAZY."

IN DEFENSE RESPONSE TO PROSECUTION MOTION IT ARGUED IT SHOULD BE ABLE TO CONFRONT ANGIE LEWIS ON HER MENTAL HEALTH ISSUES AND HOW IT EFFECTS HER CREDIBILITY AND MEMORY OF EVENTS. ALSO WHAT MEDICATION SHE IS TAKING, IF SHE'S TAKING IT AS PRESCRIBED, IF IT EFFECTS HER MEMORY, WHAT SHE WAS DIAGNOSED WITH AT MENTAL HOSPITAL DURING HER STAY, AND REGARDING HER SUICIDE ATTEMPT WHICH IS A WRONGFUL AND CRIMINAL ACT IN THE STATE OF MICHIGAN. COUNSEL ARGUED DEFENSE SHOULD NOT BE LIMITED TO PUT FORTH FACTS TO THE JURY WHICH AN INFERENCE OF BIAS, PREJUDICE, OR LACK OF CREDIBILITY CAN BE BASED. AT NOVEMBER 9TH, 2006 MOTION HEARING(PG. 78-95) COUNSEL IN ADDITION TO SUPPORTING EARLIER ARGUMENTS FROM RESPONSE BRIEF, ASKED TO GET AND REVIEW ANGIE LEWIS'S MENTAL HEALTH RECORDS.

ON NOVEMBER 28, 2006 A TRIAL COURT ORDER GRANTED PROSECUTOR'S MOTION PROHIBITING ANY EVIDENCE ABOUT ANGIE LEWIS'S MENTAL HEALTH ISSUES.

"CROSS-EXAMINATION IS THE PRINCIPAL MEANS BY WHICH THE BELIEVABILITY OF A WITNESS AND THE TRUTH OF THE TESTIMONY ARE TESTED." DAVIS, Id. AT 315. IN CASES SUCH AS THIS ONE, "INVOLVING TRIAL COURT RESTRICTION ON THE SCOPE OF CROSS-EXAMINATION, THE SUPREME COURT HAS RECOGNIZED THAT CONFRONTATION CLAUSE QUESTIONS WILL ARISE

BECAUSE SUCH RESTRICTIONS MAY EFFECTIVELY. . . EMASCULATE THE RIGHT OF CROSS-EXAMINATION ITSELF," DELAWARE V FENSTERER, 474 US 15, 19(1985).

DAVIS REQUIRES THAT A DEFENDANT BE ALLOWED TO TEST A WITNESS'S PERCEPTION AND MEMORY VIA INDIRECT MEANS, SUCH AS FLAWS IN THE WITNESS'S STORY OR IMPEACHMENT EVIDENCE. DEFENDANT SOUGHT TO ATTACK DIRECTLY ANGIE LEWIS'S PERCEPTIONS AND MEMORY OF THE VERY EVENTS AT ISSUE, ARGUING HER ONGOING PSYCHIATRIC CONDITION CALLED INTO QUESTION HER ACCOUNT OF EVENTS AND WAS MORE SIMILAR TO THE POSSIBILITY OF UNRELIABILITY RAISED BY QUESTIONS OF MOTIVE OR BIAS THAN TO THAT RAISED BY QUESTION OF GENERAL TRUTHFULNESS.

ANY REASONABLE APPLICATION OF DAVIS TO DEFENDANT'S CASE WOULD SIMILARLY PERMIT DEFENDANT TO DEVELOP, VIA CROSS-EXAMINATION, FACTS THRU WHICH THE JURORS COULD ADEQUATELY JUDGE ANGIE LEWIS'S RELIABILITY. PROHIBITING ANY CROSS-EXAMINATION OR EVIDENCE PERIOD ABOUT ANGIE LEWIS'S MENTAL HEALTH ISSUES WAS CONTRARY TO UNITED STATES SUPREME COURT PRECEDENT AND VIOLATED RIGHTS UNDER THE CONFRONTATION CLAUSE.

THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT HAS ALREADY RULED THAT THE MICHIGAN COURTS VIOLATED THE SIXTH AMENDMENT AS TO THIS VERY ISSUE DEFENDANT ARGUES. IN HARGRAVE V MCKEE, 248 FED APPX. 718(6TH CIR. 2007), THE COURT FOUND LIMITATION OF CROSS-EXAMINATION REGARDING PSYCHIATRIC CONDITION BY THE MICHIGAN TRIAL COURT VIOLATED DEFENDANT'S SIXTH AMENDMENT RIGHTS UNDER THE CONFRONTATION CLAUSE, AND WAS UNREASONABLE APPLICATION OF SUPREME COURT PRECEDENT, AND THE ERROR WAS NOT HARMLESS.

HARGRAVE HAS THE RIGHT TO CROSS-EXAMINE WARNER REGARDING MENTAL LIMITATIONS AFFECTING HER ABILITY ACCURATELY TO PERCEIVE AND RECALL EVENTS AT ISSUE. HARGRAVE'S PROPOSED CROSS-EXAMINATION, RAISED A STRONG POSSIBILITY THAT WARNER'S PSYCHIATRIC CONDITION RENDERED HER TESTIMONY UNRELIABLE REGARDING THE VERY EVENTS AT ISSUE, AND, ACCORDINGLY WAS MORE SIMILAR TO THE POSSIBILITY OF UNRELIABILITY RAISED BY QUESTIONS OF MOTIVE OR BIAS THAN THAT RAISED BY QUESTIONS OF GENERAL CHARACTER FOR

TRUTHFULNESS.

WHERE, AS HERE, THE GOVERNMENT'S CASE MAY STAND OR FALL ON THE JURY'S BELIEF OR DISBELIEF OF ONE WITNESS, HER CREDIBILITY IS SUBJECT TO CLOSE SCRUTINY. GORDON V U.S., 73 SCt 369(1953).

DAVIS REQUIRES THAT A DEFENDANT BE ALLOWED TO TEST A WITNESS'S PERCEPTIONS AND MEMORY VIA INDIRECT MEANS, SUCH AS FLAWS IN THE WITNESS'S STORY OR IMPEACHMENT EVIDENCE, AND HARGRAVE SOUGHT TO DIRECTLY ATTACK WARNER'S PERCEPTIONS AND MEMORY OF THE VERY EVENTS AT ISSUE, ARGUING THAT HER ONGOING PSYCHIATRIC CONDITION, CALLED INTO QUESTION HER ACCOUNT OF EVENTS.

ANY REASONABLE APPLICATION OF DAVIS TO THE CASE BEFORE US WOULD SIMILARLY PERMIT HARGRAVE TO DEVELOP, VIA CROSS-EXAMINATION, FACTS THROUGH WHICH THE JURORS COULD ADEQUATELY JUDGE WARNER'S RELIABILITY.

PRIOR TO HARGRAVE THE FIFTH CIRCUIT COURT OF APPEALS IN GREENE V WAINWRIGHT, 634 F2d 272(5th Cir. 1981) DECIDED PETITIONER'S RIGHTS WERE VIOLATED BECAUSE HE WAS DENIED THE OPPORTUNITY TO PRESENT EVIDENCE OF ANY SORT INCLUDING BY CROSS-EXAMINATION, REGARDING RECENT HISTORY OF MENTAL INSTABILITY. THE ABSOLUTE PROHIBITION EXCEEDS ANY POSSIBLE TRIAL COURT DISCRETION. THIS COMPLETE BAR VIOLATES THE SIXTH AMENDMENT OF THE CONSTITUTION. THE POINT IS THAT IT WAS FOR THE JURY TO MAKE THE DETERMINATION TO BELIEVE OR DISBELIEVE THE WITNESS. THE ORDER FROM THE TRIAL COURT PREVENTED THEM FROM DOING SO.

IN AN IDENTICAL DECISION THE ELEVENTH CIRCUIT COURT OF APPEALS IN UNITED STATES V LINDSTROM, 698 F3d 1154(11th Cir. 1983) CONCLUDED TRIAL COURTS RESTRICTION OF ACCESS TO A KEY WITNESS'S MEDICAL RECORDS AND LIMITATION ON CROSS-EXAMINATION AS TO WITNESS'S HISTORY OF MENTAL ILLNESS VIOLATED THERE RIGHT OF CONFRONTATION UNDER THE SIXTH AMENDMENT. THE COURT COMMITTED REVERSIBLE ERROR IN UNCONSTITUTIONALLY DEPRIVING APPELLANT OF HIS SIXTH AMENDMENT GUARANTEE OF THE RIGHT OF CONFRONTATION AND CROSS-EXAMINATION.

AFTER HARGRAVE THE TENTH CIRCUIT COURT OF APPEALS GAVE A SIMILAR DECISION IN

UNITED STATES V ROBINSON, 583 F3d 1265 (10th Cir. 2009) FINDING THE COURT VIOLATED THE CONFRONTATION CLAUSE WHEN IT FORBADE DEFENDANT FROM CROSS-EXAMINING CONFIDENTIAL INFORMANT ON HIS MENTAL HEALTH HISTORY AND HIS USE OF PRESCRIPTION MEDICATION, AND COURTS ERROR WAS NOT HARMLESS. REFUSAL TO PERMIT ANY INQUIRY VIOLATED THE SIXTH AMENDMENT. ROBINSON WAS PROHIBITED FROM QUESTIONING THE WITNESS ON TWO HIGHLY RELEVANT TOPICS: THE WITNESS'S MENTAL HEALTH AND HIS PRESCRIPTION MEDICATION USE. WE HOLD BOTH LIMITATIONS CONSTITUTE REVERSIBLE ERROR.

CLEARLY THE COMPLETE BAR ON ANY CROSS-EXAMINATION OR EVIDENCE OF ANGIE LEWIS'S MENTAL HEALTH ISSUES WAS CONTRARY TO UNITED STATES SUPREME COURT PRECEDENT AND VIOLATED THE CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT.

ANGIE LEWIS WAS THE MOST IMPORTANT PROSECUTION WITNESS WHO GAVE LIVE TESTIMONY TO THE JURY. ANGIE LEWIS WAS CONSIDERED RELIABLE ENOUGH TO TESTIFY TO HIGHLY PREJUDICIAL HEARSAY, YET HER VERY RELIABILITY COULD NOT BE ADEQUATELY TESTED BECAUSE OF TRIAL COURTS LIMITATIONS ON EVIDENCE, THIS SHOULD OF BEEN FOR THE JURY TO DECIDE. THERE WAS A VERY GOOD POSSIBILITY THAT ANGIE LEWIS MENTAL CONDITION AND MEDICATION DID AFFECT HER MEMORY AND HER ABILITY TO ACCURATELY PERCEIVE AND RECALL EVENTS AT ISSUE, AS SHE GAVE CONFLICTING STATEMENTS EACH TIME SHE WAS INTERVIEWED, INCLUDING PERJURY UNDER OATH. IT IS VERY LIKELY THE JURY WOULD OF FOUND ANGIE LEWIS UNRELIABLE, AND HAD THE JURY FOUND HER UNRELIABLE THE DEFENDANT LIKELY WOULD OF BEEN ACQUITTED.

The fifth circuit, tenth circuit, eleventh circuit, and the sixth circuit court of appeals have all ruled limiting or prohibiting all together evidence of witness's mental health history and use of prescription medications violated the sixth amendment of the United States constitution. The sixth circuit specifically ruled Michigan violated defendants sixth amendment rights under the confrontation clause, and was unreasonable application of United States supreme court precedent for limiting cross - examination regarding psychiatric condition. Even with these United States circuit court opinions to the contrary, state courts continue to ignore these rulings because **The United States Supreme Court has never decided this issue.** This is the very type of claim the United States Supreme Court needs to use its valuable and limited time to address, and decide the issue precisely once and for all.

SUMMARY AND CONCLUSION

In the trial courts opinion it claims prejudice was not met because the prosecution presented Ed Lewis also. Ed Lewis's standing alone would not of been sufficient. He simply was not credible. Ed Lewis claimed three different people actually killed Frank Sibson, and his preliminary exam statement was littered with dozens of inconsistent statements. Ed Lewis also claimed at Prelim: "It wasn't supposed to be a robbery"..."It was just

supposed to be a cash pick up." (PE 61) "Door was open, lights were on, it was like we were expected." (PE 80) and (PE 105). "I thought she (Danielle Sibson) opened the slider, but the slider was open when we went there, Ed Lewis earlier claimed Danielle Sibson opened the door and let him in. With Ed Lewis's testimony there was no robbery, no home invasion, and no felony murder. Ed Lewis later refused to testify at Petitioners trial, making Angie Lewis the most important prosecution witness who gave live testimony by far. Prejudice was absolutely shown. Without Angie Lewis the Petitioner more likely than not would of been acquitted. The error in no way was harmless. In its opinion for reconsideration, the trial Court also added that Angie Lewis's mental health is not relevant unless it bears on some specific factor. Many relevant factors are argued in brief, including her credibility, memory of events, motive bias, and prejudice. Her mental health bears on all these relevant factors. A new trial is requested.

CONCLUSION

The Petition for Writ of Habeas Corpus should be granted.

DATED: 8/20, 2020

Respectfully Submitted,



Douglas Weissert, #632314
In Pro Se

DECLARATION

I, Douglas Weissert, Declare under Penalty of Perjury that the foregoing is true to the best of his Knowledge, Information and Belief.

DATED: 8/20, 2020



Douglas Weissert, #632314
Petitioner In Forma Pauperis

RELEVANCE TO RULE 20.1

Various federal circuit courts (5th, 6th, 10th, 11th) have ruled limiting or prohibiting evidence of witness's mental health history and use of prescription medications violated the sixth amendment of The United States Constitution. The petitioners circuit, the sixth, has specifically ruled Michigan violated the Sixth Amendment rights under the confrontation clause and was unreasonable application of United States Supreme Court precedent for limiting cross-examination regarding a witness's psychiatric condition. Even with these United States Circuit Court opinions to the contrary, State Courts continue to ignore these rulings because the United States Supreme Court has never decided this issue. This is the very type of claim that creates exceptional circumstances that warrant this courts discretionary powers. Without this Court Ruling on this matter constitutional rights of defendants will continue to be violated. If this issue is decided formally by this court it will aid in this courts appellate jurisdiction, by using its legal power to hear and decide this case it will set an official precedent for state courts and lower federal courts to follow. (See also page VIII, and Page 5).

The Michigan State Courts denied petitioner leave to appeal. As noted on page v the federal district court transferred to the circuit court which denied appealability via a Motion For Relief From Judgement or a second Habeas Petition. **This court is now the only relief available.** (See also appendix C,D,E, and F.)