No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Jovon C. Davis — PETITIONER
(Your Name)

VS.

Connie Horton — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Please check the appropriate boxes:

☐ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

_____

_____

☒ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____

_____, or

☐ a copy of the order of appointment is appended.

Jovon Davis
(Signature)

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Jevon Davis, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$ N/A	$ N/A	$ N/A	$ N/A
Self-employment	$ N/A	$ N/A	$ N/A	$ N/A
Income from real property (such as rental income)	$ N/A	$ N/A	$ N/A	$ N/A
Interest and dividends	$ N/A	$ N/A	$ N/A	$ N/A
Gifts	$ N/A	$ N/A	$ N/A	$ N/A
Alimony	$ N/A	$ N/A	$ N/A	$ N/A
Child Support	$ N/A	$ N/A	$ N/A	$ N/A
Retirement (such as social security, pensions, annuities, insurance)	$ N/A	$ N/A	$ N/A	$ N/A
Disability (such as social security, insurance payments)	$ N/A	$ N/A	$ N/A	$ N/A
Unemployment payments	$ N/A	$ N/A	$ N/A	$ N/A
Public-assistance (such as welfare)	$ N/A	$ N/A	$ N/A	$ N/A
Other (specify): _____	$ N/A	$ N/A	$ N/A	$ N/A
Total monthly income:	$ N/A	$ N/A	$ N/A	$ N/A

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	$ N/A
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	$ N/A
			$
			$

4. How much cash do you and your spouse have? $ N/A
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
N/A	$ N/A	$ N/A
	$	$
	$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value N/A

☐ Other real estate
Value N/A

☐ Motor Vehicle #1
Year, make & model N/A
Value _____

☐ Motor Vehicle #2
Year, make & model N/A
Value _____

☐ Other assets
Description N/A
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	$ N/A	$ N/A
	$	$
	$	$

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No	$ N/A	$ N/A
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ N/A	$ N/A
Home maintenance (repairs and upkeep)	$ N/A	$ N/A
Food	$ N/A	$ N/A
Clothing	$ N/A	$ N/A
Laundry and dry-cleaning	$ N/A	$ N/A
Medical and dental expenses	$ N/A	$ N/A

	You	Your spouse
Transportation (not including motor vehicle payments)	$ N/A	$ N/A
Recreation, entertainment, newspapers, magazines, etc.	$ N/A	$ N/A
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ N/A	$ N/A
Life	$ N/A	$ N/A
Health	$ N/A	$ N/A
Motor Vehicle	$ N/A	$ N/A
Other: _____	$ N/A	$ N/A
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	$ N/A	$ N/A
Installment payments		
Motor Vehicle	$ N/A	$ N/A
Credit card(s)	$ N/A	$ N/A
Department store(s)	$ N/A	$ N/A
Other: _____	$ N/A	$ N/A
Alimony, maintenance, and support paid to others	$ N/A	$ N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ N/A	$ N/A
Other (specify): _____	$ N/A	$ N/A
Total monthly expenses:	$ N/A	$ N/A

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☑ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

See Petitioners Motion to Proceed in Forma Pauperis, Further, Petitioner does not have an institutional Job.

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

Executed on: June 1, , 2020

Jovon Davis
(Signature)

IN THE SUPREME COURT OF THE UNITED STATES
WESTERN DISTRICT OF MICHIGAN

L.C. No.: 13-303-FC
CoA No: 370773
Mich S.Ct. No: 153924
Habeas Corpus No.: 2:18-CV-10391
U.S.C.O.A No: 19-1540

JOVON C. DAVIS,
Petitioners,

V.

CONNIE HORTON,
Respondent.

Petitioner for a Writ of Certiorari to the United States Court of Appeals for the 51Xth Circuit

PETITION FOR WRIT OF CERTIORARI

In care of:

JOVON C. DAVIS #591753
PRO SE
Chippewa Correctional Facility
4269 W. M-80
Kincheloe, MI 49788-1634

QUESTIONS PRESENTED

1. WHERE PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS GUARANTEED UNDER THE U.S. CONSTITUTION AS WELL AS MICHIGAN CONSTITUTION OF 1963, ART. I, § 20 DENIED, WHERE THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO HEAR PETITIONER'S MOTION FOR SUBSTITUTION OF APPELLATE COUNSEL?

2. WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION DENIED, WHERE THE TRIAL COURT REFUSED TO ADJOURN HIS CASE ONCE NEW COUNSEL WAS RETAINED?

3. WHERE PETITIONER'S SIXTH AND FOURTEENTH RIGHTS GUARANTEED UNDER U.S CONSTITUTION, TO A FAIR TRIAL AND DUE PROCESS DENIED, WHERE THE TRIAL COURT ABUSED ITS DISCRETION, WHEN ENDORSING A LATE WITNESS AND DENYING PETITIONER AN ADJOURNMENT TO PREPARE AN EFFECTIVE CROSS-EXAMINATION?

4. WHERE PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS, AND MICHIGAN CONSTITUTION OF 1963, ART. I, § 17, DENIED, WHERE THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING PETITIONER'S MOTION FOR DISQUALIFICATION/RECUSAL?

5. WHERE PETITIONER SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DENIED, WHERE COUNSEL FAILED TO INVESTIGATE SEVERAL ASPECTS OF THE CASE, AND INSTEAD, RELIED ON GOVERNMENT'S GOOD FAITH EFFORTS, WHICH IS CONTRARY TO STRICKLAND V WASHINGTON, AND ITS PROGENY?

6.) WHERE PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASISTANCE OF COUNSEL DENIED, WHERE COUNSEL DENIED PETITIONER A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE?

(a) WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE TO TRIAL COUNSEL DENIED, WHERE COUNSEL REFUSED TO CONDUCT A MEANINGFUL CONSULTATION WITH PETITIONER?

(b) WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE TO TRIAL COUNSEL DENIED, WHERE COUNSEL REFUSED TO CONDUCT A MEANINGFUL INVESTIGATION, TO WIT, WITNESSES CRIMINAL HISTORY, WHICH WAS MATERIAL TO THE CASE?

(c) WHERE PETITIONERS SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DENIED, WHERE COUNSEL FAILED TO INVESTIGATE KNOWN AND POTENTIAL KEY WITNESS. (Jail-House Witness)?

(d) WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DENIED, WHERE COUNSEL WAS INFIRM IN CRISS-EXAMINING PROSECUTION WITNESSES?

4(E) WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DENIED, WHERE COUNSEL FAILED TO OBJECT TO JONES' TESTIMONY?

4(F) WHERE PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DENIED, WHERE COUNSEL FAILED TO HIRE AN INVESTIGATOR OR EXPERT WITNESS FOR HIS DEFENSE?

4(G) WHERE PETITIONERS SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DENIED, WHERE COUNSEL FAILED TO OBJECT TO THE PROSECUTOR'S ADMITTANCE OF EVIDENCE NOT OF RECORD?

5) WHERE PETITIONERS SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL DENIED, WHERE COUNSEL OF RECORD FAILED TO PRESENT A DEFENSE AND PROPERLY INVESTIGATE ANY POTENTIAL WITNESSES FOR HIS DEFENSE?

6. WHERE PETITIONER'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS GUARANTEED UNDER THE U.S CONSTITUTION DENIED, WHERE HE WAS DENIED A FAIR-CROSS-SECTION OF JURY SELECTION AT TRIAL, THEREBY DENYING HIM DUE PROCESS AND EQUAL PROTECTION OF THE LAW?

9) WHERE PETITIONERS SIXTH AND FOURTEENTH AMENDMENT RIGHTS GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL AS OF RIGHT, DENIED. WHERE COUNSEL DENIED PETITIONER ACCESS TO THE COURTS AND JUDICIAL REVIEW?

PARTIES TO THE PROCEEDINGS

Jovon Davis #591753
Chippewa Correctional Facility
4269 W. M-80
Kincheloe, Michigan 49784

Pro Se Representation for Petitioner

Linus Banghart-Linn
Assistant Attorney General
Criminal Appellate Division
P.O Box 30217
Lansing, MI 48909

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CITATIONS OF OPINIONS AND ORDERS IN CASE

The original judgement of conviction of Petitioner in the Michigan Court of Appeals was reported and is attached hereto as Appendix "1".

The original judgement of conviction of Petitioner in the Michigan Supreme Court was affirmed and is attached hereto as Appendix "2"

The original judgement of conviction of Petitioner in the Western District of Michigan was reported and is attached hereto as Appendix "3".

The original judgement of conviction of Petitioner in the United States Court OF Appeals, For the Sixth Circuit was reported and is attached hereto as Appendix "4".

JURISDICTIONAL STATEMENT

The judgement of the United States Court Of Appeals for the 6th Circuit was entered on December 4, 2019. The jurisdiction of this Court is invoked under 28 U.S.C§ 1254(1).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

1. THE FOURTH AMENDMENT OF THE UNITED STATES PROVIDES:

> "The right of the people to be secure in their persons, houses, papers, and efforts, against unreasonable searchs and seizures, shall not be violated."

2. THE FIFTH AMENDMENT OF THE UNITED STATES PROVIDES:

> "No person shall be... deprived of life, liberty, or property, without due process of law."

3. THE SIXTH AMENDMENT OF THE UNITED STATES PROVIDES:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed... be informed of the nature and cause of the accusation; to be comforted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and to have the Assistence of Counsel for Defense."

4. THE FOURTEENTH AMENDMENT OF THE UNITED STATES:

> "All persons born or naturalized in United States... No State shall make or enforce any law which shall abrige the privilege 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 person within its jurisdiction, the equal protection of laws."

5, THE STATUTE UNDER WHICH PETITIONER SOUGHT HABEAS CORPUS RELIEF WAS 28 U.S.C. § 2254 WHICH STATES IN PERTINENT PART:

> § 2254 STATE CUSTODY; remedies in Federal Courts
>
> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim:
>
> resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

On 1-18-13, Petitioner was arrested, along with Co-defendent (Sister), who was later exonerated, due to false statement from Prosecution Key witness.

On 1-31-13, Petitioners Preliminary Examination was held, and adjourned.

On 4-25-13, Petitioner was scheduled Preliminary Examination, but the court adjourned the hearing.

On 5-23-13, Petitioners Preliminary Examination resumed, but adjourned once again.

On 5-28-13, Petitioner was bonded over on Second Degree Murder, Attempted Murder; Possession of Firearm; Felony Possession; Felony Firearm, and Domestic 3rd.

On 8-6-13, Petitioner charges was Amended, and the Courts bonded Petitioner back over on the charges of; open-murder, attempted murder; Possession of Firearm; Felony Possession, Felony Firearm, and Domestic 3rd.

On 8-14-13, an Hearing was held, due to Petitioners charges being amended, and Counsel was not prepared for trial, and Counsel had surgery scheduled, Trial was adjourned.

On 11-18-13, Petitioners Counsel Richard Sammis, was excused.

On 11-25-13, Petitionerr was assigned new Counsel, Ernest White.

On 12-13-13, an Hearing was held.

On 12-23-13, a Motion To Suppress Hearing was held, on Petitioners behalf, and denied.

On 1-8-14, Petitioners Status Conference was held.

On 1-14-14, Petitioners Trial began.

On 1-17-14, Petitioner was found guilty by Jury, on the Charges of, Second Degree Murder; Attempted Murder; Possession of Firearm Felony Firearm; Felony Possession, Domestic 3rd, and Supplement 4th.

On 2-24-17, Petitioner was sentenced 600 to 1200 months.

On 11-21-14, Petitioners Motion To Disqualify/recuse Judge, was denied.

On 6-11-15, Petitioners Motion For New Trial/Requesting Hearing Under People v Ginther, was held.

On 6-25-15, Petitioners Motion For New Trial/Requesting Hearing Under People v Ginther.

On 6-19-15, Petitioner filed Standard-4 Pro Per Brief, with Michigan Court of Appeals.

On 12-17-15, Petitioner amended/Consolidated Standard-4 Pro Per Brief, in the Michigan Court of Appeals.

On 3-22-16, Petitioners Conviction was affirmed, in the Michigan Court of Appeals.

On 1-31-2017, Petitioners Application For Leave to Appeal was denied, in the Michigan Supreme Court.

On 4-30-19, Petitioner's Habeas Corpus was denied, in the United States District Court.

On 12-4-19, Petitioner's Certificate Of Appealability was denied, in the United States Court of Appeals, for the Sixth Circuit.

On 1-15-20, Petitioner's Petition For Rehearing En Banc, was granted extension of time.

On 5-6-20, Petitioner's Petition For Rehearing En Banc was denied, in the United States Court of Appeals, for the Sixth Circuit

EXISTENCE OF JURISDICTION BELOW

Petitioner was convicted by way of a verdict of guilty, in the county of Berrien, St. Joseph, Michigan 49085, 2nd Judicial Circuit Court, for charges of, 2nd Degree Murder, M.C.L. 750.317; Assault with Intent To Commit Murder, M.C.L. 750.83; Felon In Possession of a firearm, M.C.L. 750.224f; Carrying a Concealed Weapon, M.C.L. 750.227; Possession of Firearm, M.C.L 227b; Domestic Assault 3rd, M.C.L. 750.61(4); and Fourth-Offense Habitual, M.C.L. 769.12. A Section 2254 Petition was filed in the United States District Court for the Eastern District of Michigan and subsequently denied. A timely appeal to the United States Court of Appeals, for Sixth Circuit was filed and subsequently denied as well.

REASONS FOR GRANTING WRIT

1. The 6th Circuit Panel Opinion Erred affirming the District Court denial of Petitioner's Sixth & Fourteenth Amendment Rights Guaranteed under the U.S. Const., as well as Mich. Const. Art. I § 20, Where Trial Court abused its discretion, by failing to hear Petitioners Motion For Substitution OF Appellate Counsel Claim. Petitioner and his Appellant Counsel relationship collasped, and by the refusal to hear, or substitute new Counsel, by Trial Court's, violates Petitioner's U.S. Const. Amend. VI Right to Effective Assistance of Counsel. The factors the U.S. Court of Appeals Consider's are the same as those the Court applies to determine if the District Court Erred in denying a Motion To Substitute Counsel. (Brown v Craven, 424 F.2d 1166, 170) Therefore, this court should exercise its supervisor powers over the lower Courts.

2. The 6th Circuit Panel's Opinion Erred affirming the District Court's denial of Petitioner's Sixth Amendment Right Guaranteed Under the U.S. Const., Where Trial Court refused to Adjourn his case once new counsel was obtained. Petitioner's attack the trial court's denial of that motion, Claiming it was abuse of discretion and violation of standards set down in People v Charles O. Williams, 386 Mich 565, 577-578. The Michigan Supreme Court in Williams found:

> " Thus, the desire of the Trial Courts to expedite court dockets is not a sufficient reason to deny an otherwise proper request for a Continuance."

1.) Petitioner asserted his constitutional right.

2) Petitioner had legitimate reason for asserting his right.

Also, the right to counsel of one's choice is personal to the accused and is protected in dependent of the courts concerns regarding the fairness of the proceeding (Flanagan v. United States, 465 U.S. 259, 268).

Therefore, this Court should exercise its supervisor powers over the lower courts.

3) The 6th Circuit Panel's Opinion Erred affirming the District Courts denial of Petitioner's Sixth and Fourteenth Amendment Rights Guaranteed under the U.S. Const. to a fair trial and due Process, where the trial Court abused its discretion when endorsing a late witness and denying Petitioner an adjournment to prepare an effective cross-examination. On the first day of trial, the prosecutor moved to endorse (Hear-say) witness, Arthur Jones (Jail-House Witness), Defense Counsel objected, requesting adjournment, thus preserving the issue for review. People v McGuffey, 251 Mich App. 155, 165-166 (2002). Here, although the prosecutor knew of Mr. Jones prior to trial, he failed to inform the Defense Counsel of his as a witness until the first day of trial. Arthur Jones testified on the fourth day of trial. Petitioner notes late additions to the list are permissible 'upon leave of the court and for good cause shown.' People v Wilson 397 Mich 76 (1976). However, in this case, good cause was not shown, and Petitioner was extremely prejudiced. The prosecution must advise the defense of all known witnesses and who among them the prosecution will not call and prepare a defense. People v. Burwick, 450 Mich. 281 (1995).

4) The 6th Circuit Panel's Opinion Erred affirming the District Court's denial of Petitioner's Fourth and Fourteenth Rights Guaranteed under the U.S. Const., Where Trial Court abused its discretion: when denying Petitioner's Motion For Disqualification / Recusal, (People v. Lowenstein, 118 Mich. App 475, 482), because its decision is in direct conflict with Ungar v Sarafite, 376 U.S. 575, 588, " the test is not whether or not actual bias exists, but also whether there was such a likelihood of bias or an appearance of bias that the judge personally believes himself to be unable to hold the balance between vindicating the interests of the Court and the interests of the accused, " Further, even though a judge personally believes himself to be unprejudiced, unbiased, and impartial; he should nevertheless certify his disqualification where the are circumstances of such a nature to cause doubt as to his partiality, bias or prejudice. " 118 Mich App. at 482.

SUPREME COURT NOTED SUCH SITUATION INCLUDES:

(1) Where the judge has a pecuniary interest in the outcome; (2) where the judge has been the subject of personal abuse or criticism from the party before him; (3) where the judge is enmeshed in other matters involving the complaining party; or (4) where the judge might have prejudged the case because of having previously acted as an accuser, fact-finder, or initial decision maker. (Crampton v. Dept. of State, 395 Mich. at 351)

Therefore, this Court should exercise its supervisor powers over the lower courts.

5) The 6th Circuit Panel's Opinion Erred affirming the District Court's denial of Petitioner's Sixth Amendment Right Guaranteed under the U.S. Const., to effective assistance of Trial Counsel, where counsel failed to Investigate several aspects of Petitioner's case, and instead, relied on Government's good faith EFFORTS, which is Contrary to Strickland v. Washington, and its progeny, claim.

The Courts relies on a two prong test, to determine whether a counsel's omissions and errors have deprived a criminal defendant of his/her right to Counsel under U.S. Const. Amend. VI. (1) A Defendant must demonstrate that Counsel's performance was so deficient, that Counsel was not functioning as the counsel guaranteed by the Sixth Amendment. (2) Requires the defendant to show that Counsel's errors were so serious as to deprive the defendant of a fair trial.

June 11, 2015, (Bin the Hearing) Petitioner's trial Counsel admitted to not doing the following basic pretrial investigations:

1. Did not take notes (pg. 74, Lines 19-20)
2. Went off police notes/reports, and notes from previous attorney (Richard Sammis).
3. Did not interview any witnesses for defendant nor prosecution. (pg. 22, Lines 22 and pg. 23 Lines 2)
4. Did not ask Petitioner to add lesser included offense (pg. 36, Lines 36, pg 46, Lines 2-23; pg 60, Lines 7, and pg 61, Lines 22)

6, Did not refreive Petition's Toxicology Report, before Petitioner's Motion To Sappress Hearing on Dec. 23, 2013. (pg. 43 Lines 1-18).

6. Did not object to Prosecution reading Police Report, to Refresh witness memory in front of jury (pg. 43, Lines 1, and pg 39, Line 23).

7. Did not hire a private investigator to follow leads to favor the Petitioner's defense, (pg 23. lines 3-4).

8. Did not check to see the offers of immunity that was offered to prosecution's witness, Awthur Jones (pg. 51, Lines 2-17).

9. Did not object to the Prosecutorial Misconduct, When Prosecutor used improper comments of knife planting, that was not admitted in evidence. (pg 66, line 17 and pg. 67, Lines 5).

10, Did not file psychiatric evaluation for Petitioner. (pg. 76, Lines 12 and pg. 79, Lines 22).

11. Did not investigate in the victims / deceased, martial arts career. (pg 40, Line 16 and pg. 42, Line 2)

12. Did not request / research prosecution's witnesses, criminal history, for impeachment purposes. (pg. 48, Lines 1-17, pg. 75, Lines 14, pg 76, Line 18, and pg. 50, Lines 12.-24).

13. Did not interview nor subpoena Petitioners only self-defense (eye) witness (pg, 48 Line 18 and pg. 50 Lines 1).

14. Did not file proper motion to exclude the specific charge of Petitioners prior felony conviction (pg 33, Lines 4 and pg. 35, Line 11).

15. Did not call / Subpoena any witnesses for defense. (pg 23, Lines 12-19)

16. Did not excuse / withdraw from Petitioners case, after irreconciliable differences, because he thought he knew the case

17. Did not investigate into jail records of (Jail-House Witness) Authur Jones, to see if he was ever connected / housed with Petitioner. (pg 65, Lines 12-14).

18. Did not comply comply with Judge Bruce orders, to visit Petitioner before trial. (pg 14, Line 4-10).

The above basic pretrial investigations was denied by Petitioners Trial Counsel, which infact affected and prejudiced Petitioner before and during trial and Petitioner was denied the effective assistance of Counsel, our constitution provides for the accuse to have an fair trial. Petitioner meets both prongs thats set forth in Strickland v Washington. Therefore, this Court should exercise its supervisor power over the lower courts.

6. The 6th Circuit Panel's Opinion Erred affirming the District Court's denial of Petitioner's Sixth and Fourteenth Rights Guaranteed under the U.S. Constitution to Effective Assistance of Counsel, where Petitioners Trial Counsel denied Petitioner a Meaningful Opportunity To Present a Complete Defense. Petitioner Trial Counsel did not properly argue an complete defense for Petitioner, nor present evidence, and witnesses, that was known to him prior to trial, to support the defense.

The defense attorney is duty bound to protect the legal rights of a client, to the best of his ability. Formost, to the Defense Attorney is the responsibility to communicate with the Client and let the client be the ultimate decision-maker even though the Defense Attorney will be far more experienced on matters of the law and strategy.

Petitioner's Counsel intentionally misrepresented Petitioner. Defense Counsel did not present an complete defense, due to his friendship with his work associate, that Petitioner wrote Complaints on, and excused from this case at hand, an month and a half, before trial. Also, Petitioners Trial Counsel has personal relationship/friendship, after 3 or more decades of practicing law, in the same venue. Petitioner filed complaint on Defense Counsel, an month before trial, as well.

Petitioner did not have fair opportunity to present a defense, due to Trial Counsel not Consulting with Petitioner about any possible defense theory, he was bringing forth, then decided to go forth with an defense, he did not have any evidence to support the theory and ignoring all possible leads Petitioner requested, including calling the only self-defense witness, that can contradict Prosecutions witness, (Crystal McKenzie). Therefore, this Court should exercise its supervisor power over the lower courts.

6.(A) The 6th Circuit Panel's Opinion Erred affirming the District Courts Denial of Petitioner's Sixth Amd. Rights Guaranteed under the U.S Constitution to Effective Assistance of Trial Counsel, where Counsel refused to conduct a meaningful consultation with Petitioner. Petitioner's Trial Counsel in-fact, did not consult with Petitioner, and totally avoided coming into reasonable grounds, with Petitioner. As the record reflects, Petitioners complained in many letters and the matters was addressed on the record, about Trial Counsel's behavior and not visiting Petitioner. Trial Counselor was totally ineffective to Petitioner. If he did not visit Petitioner, when ordered by Trial Court Judge, how did the Petitioner and Counsel consult/agree/discuss, trial Strategy or an proper defense?" Petitioner has demonstrated the deficiency that has resulted in prejudiced, to Petitioner and that in the absense of error, the result of the proceedings would have been different, Strickland, 466 U.S. at 694, and fundamentally unfair and unreliable. Lockhart, 113 S.Ct. at 842-83. Therefore, this Court should exercise its supervisor power over the lower courts.

6(B) The 6th Circuit Panel's Opinion Erred affirming the District Courts denial of Petitioners Sixth Amendment Right Guaranteed under the U.S. Constitution to effective assistance of trial counsel, where counsel refused to conduct a meaningful investigation, To-wit, witnesses Criminal history, which was material to the case. IT is the responsibility of the trial lawyer to obtain every document that would fall under the jurisdiction's discovery provisions. Counsel should examine the relevant discovery statutes and determine the discoverability of written / recorded statements, dispositions of witnesses, all prior testimony of witnesses, all police memorandum notes and forms prepared by the police, and all evidence and reports relating to the case. Trial Counsel did not review nor Comprehend all materials to the case. Counsel fail to use / ignored disclosure tools available, which assects a valid claim of ineffective assistance of counsel. Therefore, this Court should exercise its supervisor powers over lower courts.

6,(C) The 6th Circuit Panel's Opinion Erred affirming the District Court's denial of Petitioners Sixth Amendment Guaranteed under the U.S. Constitution to effective assistance of trial. Counsel, where counsel failed to investigate Known and Potential Key Witness (Jail-House Witness). Petitioner's trial counsel fell short of what a reasonably competent attorney would have, by failing to review investigative file of prosecuting attorney, or investigate seriousness of mental problems, from which the witnesses suffered (Crystal Mckenzie & Braxton Britt), which makes them incompetant. Petitioner's trial counsel did not interview victim to assess her version of facts, nor Crystal Mckenzie (Key-Witness for prosecution), nor interview first responding Police Officer's, that made Contact with Petitioner, and took his first statement, nor make contact with Petitioner's only self-defense witness (Ashley Davis), Where Petitioner and his mother, gave the attorney her name and Contact. (Thomas V Lockhart, 738 F.2d at 308) The representation afforded to Petitioner by his

Trial Counsel was inadequate. Therefore, this Court should exercise its supervisor powers over lower courts.

6.(D) The 6th Circuit Panel's Opinion Erred affirming the District Courts denial of Petitioners Sixth Amendment Right Guaranteed under the U.S. Constitution to effective assistance of trial counsel, where counsel was infirm in cross-examining prosecution witnesses. A Petitioner's right to cross-examine with the opportunity to impeach an adverse witness - a prosecution witness as well as a hostile defense witness (United States v. Stephenson, 887 F.2d 57, 60), "is the main and essential purpose" of the Confrontation Clause (Delaware v Van Arsdall). Therefore, this court should exercise its supervisor powers over lower courts.

6.(E) The 6th Circuit Panel's Opinion Erred affirming the District Court denial of Petitioners Sixth Amendment Right Guaranteed under the U.S. Constitution to effective assistance of Trial Counsel, where Counsel failed to object to Jones (Jail-House Witness) testimony. The prosecution did not meet second prong governed by Ohio v Roberts, 448 U.S. 56, when endorsing late witness the day of trial, therefore counsel should have objected and properly impeached witness, and/or take proper measurements to satisfy the Confrontation Clause. Therefore, this Court should exercise its supervisor powers over lower courts.

6.(F) The 6th Circuit Panel's Opinion Erred affirming the District Courts denial of Petitioners Sixth Amendment Right Guaranteed under the U.S. Constitution to effective assistance of trial counsel, where Counsel failed to hire an Investigator or Expert witness for his defense. The United States Supreme Court has held: (1) "Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland v Washington, 466 U.S. 668, 691; and (2) "Criminal cases will arise where the only reasonable and available defense strategy requires

Consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both." Harrington v Richter, 562 U.S. 86, 106; Petitioners Trial Counsel disregarded STandard 3(A.) Counsel shall conduct an independent investigation of the charges and offense as promptly as practicable; June 11, 2015 (Gunther Hearing), pg. 24 Line 8-10, Petitioner Trial Counsel admitted he took the prosecution word, went off police reports, and off the previous counsels notes. Petitioners Trial Counsel disregarded Standard 3(B) "When appropriate, counsel shall request funds to retain an investigator to assist with the client's defense. Reasonable requests must be founded as required by law. Petitioners Trial Counsel failed to comply with this standard as well. Therefore, this court should exercise its supervisor powers over the lower courts.

6.(G) The 6th Circuit Panel's Opinion Erred affirming the District Court's Denial of Petitioner's Sixth Amendment Right Guaranteed under the U.S Constitution to effective assistance of Trial Counsel, where Counsel failed to object to the Prosecutors Admittance of Evidence not of record. Petitioner's Trial Counsel's failure to object to remarks the prosecution made in closing argument, "that a knife was planted in victim/deceased pocket, (Gil. Pg 66, Line 17, Pg. 67, Lines 5), rendered Petitioner's trial fundamentally unfair. Jones v Estelle, 622 F.2d at 127. Therefore, the court should exercise its supervisor power over the lower court.

7. The 6th Circuit Court Panel's Opinion Erred affirming the District Courts denial of Petitioners Sixth Amendment Right Guaranteed under the U.S. Constitution to effective assistance of trial Counsel, where Counsel of record failed to present a defense and properly investigate and interview potential witnesses for his defense. The United States Supreme Court has specifically recognized

that there are few rights more fundamental than that of an accused to present witnesses in his own defense, Chambers v. Mississippi 410 U.S. 284 (1973). Counsel admitts he did not review material nor interview witnesses, for either party. An Attorney can not present a defense, if he did not conduct the proper investigation, that's guaranteed by our constitution. To be prepared for trial, Counsel should have put efforts in to Consult with Petitioner about the Strategy / defense, interview witnesses, take notes, retrieve all writtened statements, retrieve witnesses criminal history (impeachment purposes), investigate mental Health records (witnesses), visit crime scene, hire expert witness, hire private investigator, check the prosecution's file for immunity (witnesses), prepare Petitioner for testimony, interview first responding officers, subpoena Petitioners only self-defense witness, Contradict Officer's Statements, impeach witnesses for prior inConsistant Statements and visit Petitioner, when ordered by the courts. Whether trial Counsel's actions were sufficient to meet the standard of effective assistance is a mixed determination of law and fact that requires the application of legal principles to historical facts of this case. Cuyler v. Sullivan, 446 U.S. at 342; Cf. Brewer v. Williams, 430 U.S. 387, 397; Neil v. Biggers, 409 U.S. 188, 193 n3. The failure to interview prosecution's witnesses is a violation of Counsel's Constitutional Duty to render effective assistance. Morrow v Parratt, 574 F.2d 411; Thomas v. Wyrick, 535 F.2d 407, 413; McQueen v. Swenson, 498 F.2d 207, 216. Therefore, this Court shall exercise its supervisor powers over the lower courts.

8. The 6th Circuit Panel's Opinion Erred affirming the District Courts denial of Petitioners Fifth, Sixth, and Fourteenth Amendment Rights Guaranteed under the U.S. Constitution, where he was denied a fair cross-section of jury selection at trial, thereby denying

him Due Process and Equal Protection of the Law. The 6th Circuit Panel's decision was not contrary to Batson v. Kentucky, 476 U.S. 79. In Duncan v Louisana, 391 U.S. at 147-158, the court emphasized that a Petitioner's right to be tried by a jury of his peers is designed "to prevent oppression by the Government." Id., at 155, 156-157. For a jury to perform its intended function as a check on official power, it must be a body drawn from the community Id. at 156; Glasser v. United States, 315 U.S. 60, 86-88. By compromising. the representative quality of the jury, discriminatory Selection procedures make "juries ready weapons for officials to oppress those individuals who by chance are numbered among unpopular or inarticulate minorites." Akins v Texas, supra, at 408 (Murphy, J. dissenting). Racial discrimination in Selection of jurors harms not only the accused whose life or liberty, they are summoned to try. Grievant told Trial Counsel, that he was not satisfied with jury selection, because they was not jurors of his peers, nor of color, and counsel told Petitioner that its the best its going to get, due to the late starting of Petitioners trial, where Petitioner refused to to get dress. Therefore, this court should exercise its Supervisoe powers over lower courts.

9. The 6th Circuit Panel's Opinioned Erred affirming the District Courts denial of Petitioners Sixth and Fourteenth Amendment Rights Guaranteed under the U.S. Constitution to effective assistance of counsel, on appeal, as of right, where counsel denied Petitioner access to the courts and

Judicial Review, under Mich. Const. art. 1, § 20 requires that an indigent shall have the right to have an appeal as a matter of right; and in the Courts of record, when a trial court so orders, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal, An indigent's right to a free transcript on appeal is considered to be more basic than his right to Counsel on appeal. Griffin V. Illinois, 351 U.S. 12, reh. den. 351 U.S 958, which established the right of an indigent to be furnished with a transcript at public expense on appeal was decided seven years before Gideon V. Wainwright, 372 U.S. 335. Petitioner was sent trial and sentencing transcripts, from Trial Court Judge, due to the constant denial from Appellant Counsel, and Petitioner filing Grievance/Complaint through Attorney Grievance Commission and Trial Courts, which was not enough material, to establish errors and misConducts at Petitioners pre-trial hearings and motions: Petitioner appeared in court over 10 times, with two different attorney's, which Petitioner's Appellate Counsel neglected to familiarize himself with this case at hand, and failed to order the pretrial transcripts and motions, where possible rights and misconducts where violated, and could have been raised on Petitioners Direct Appeal. After many motions in trial court, Petitioner was GRANTED Production of Records/Transcripts, April 20, 2016, 16 months after Petitioners Direct Appeal Brief was filed by Appellant Counsel, in Michigan Court of Appeal. Therefore, this court should exercise its powers over the lower Courts.

ARGUMENTS AMPLIFYING REASON FOR WRIT

I. THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITION, AS WELL AS Mich. Const. OF ART. 1 § 20, WHERE NOT VIOLATED, WHERE TRIAL COURT ABUSED ITS DISCRETION, BY FAILING TO HEAR PETITIONERS MOTION FOR SUBSTITUTION OF APPELLANT COUNSEL.

Trial Court failed to assure that Petitioner affoarded his guaranteed right to appeal, where Petitioner asserted that his 6th Amd. Right to Counsel was being violated, where a Conflict, with Appointed Appellant Counsel, Daniel J. Rust, was so great as to render equivalent to "no representation at all." (Plumlee v. Mastro, 512 F.3d at 1205-1207) (See Wallace v. Kern, 392 F. SUPP 834).

On September 8, 2014, Petitioner sent a letter to appellant Counsel Daniel J. Rust, expressing his dissatisfaction with his performance, and requesting him to recuse himself, after recent visit. (See

On September 22, 2014, Petitioner filed Complaint through Attorney Grievance Commission (See Appendix-5)

On October 28, 2014, Attorney Grievance Commission replied back. (See Appendix-6)

On November 13, 2014, Petitioner forwarded the Grievance and and the Attorney Grievance response, attached with a copy of letters, to and from Attorney Daniel J. Rust, to Berrien County Trial Court Judge Bruce and Chief Judge Nelson, also, Petitioner was requesting substitution.

On November 26, 2014, Petitioner and Retained Counsel, Shaun P. Smith P.51431, was schedule for Motion To Disqualification Judge

Bruce, from all further proceedings and Motion For New Trial, Requesting Hearing Under People v Ginther. Attorney Shawn P Smith explained how he agreed/arranged to retrieve transcript through Appellant counsel, but he stop communicating with Attorney Shawn P. Smith, and Petitioner as well. (Trns; (Hearing) 11-26-14 P.11, Line 4-13 and Pg. 13, Lines 13-18).

There was more talk about the letters and complaints, which is not on record, and Trial Judge stated he did not receive the mail yet. Petitioners Motion To Disqualify, was denied, and Petitioners Motion For New Trial, was adjourned.

Appellant Counsel Daniel J. Rust filed Petitioners Direct Appeal Brief with Michigan Court Of Appeals, not waiting to after the conclusion of the Ginther Hearing, on December 8, 2014, and sent Petitioner a copy of the Brief, attached with letter, stating that Petitioner had an 84 day deadline, to file an Pro Per Standard-4 Brief, to raise issues Petitioner thought was violations.

Petitioner was scheduled for an tele-conference, on January 22, 2015. Trial Court Judge Bruce, states he called this Hearing an "My Motion". During this hearing, the Judge never mentioned anything concerning substitution, moreso, transcripts, Petitioner mentioned to the courts that to the best of his knowledge, he thought Appellant Counsel should have wait until after conclusion of Petitioners Motion for New Trial, Requesting Hearing under People v. Ginther, to file Direct Appeal Brief; but the Judge did not correct attorney's mistake.

On September 21, 2015, Petitioner filed another motion with the courts and they did not acknowledge / entertain the motion at all.

Thus, this Court should view/address this issue not only for the trial courts lack of inquiry into Petitioners's Complaints of his Appellate Attorney, Daniel J. Rust, in order for the trial court to have assessed whether counsel should have been substituted, but as well, whether the Trial Court abused its discretion in denying Petitioner's Constitutional Right to Counsel of Choice. Trial Court Judge Bruce Knew Petitioner RETAINED Attorney Shawn P. Smith, 4 days/eve of trial but the courts denied adjournment, for Petitioners Counsel could Properly prepare,

Appellant Counsel, Daniel J. Rust, Knew through Via text from Attorney Smith, and communication with Petitioner and family members of Petitioner, that Petitioner was schedule for a Evidentiary Hearing, that would be conducted by Attorney Shawn P. Smith, as Petitioner's legal Counsel, who also planned to represent Petitioner on appeal, after the conclusion of the hearing, so Petitioner could perfect his appeal, with an Complete record.

The United States Supreme Court in Strickland v Washington, 466 U.S. 668 (1954), and both the United States and Michigan Constitution, Guarantee Criminal defendants the right to the effective assistance of counsel. U.S. Const., Amd. VI; Mich. Const. 1963, Art. I, § 20.

The applicable standard of review for State Appellant Court's of a trial judge's alleged abuse of discretion is stated in Spalding v Spalding, 355 Mich. 382 (1959), in which, has been critcized, where the Michigan Supreme Court has recognized that a somewhat stricter standard must be observed in criminal cases People v Charles O. Williams, 386 Mich. 565, 573 (1972).

A defendant is entitled to have his assigned lawyer replaced upon a showing of adequate cause, provided that the substitution of counsel will not unreasonably disrupt the judicial process. People v. Meyers, (on Rem.), 124 Mich. App. 148, 165 and People v. Anglin, 111 Mich. App. 268, 275.

In the instant case, the trial court failed to address Petitioners request/motion for substitution of counsel, and where a lower court fails to exercise its discretion when called to do so in turn is an abuse of discretion. People v Stafford, 434 Mich. 125, 134 n4; Lowtts v. Lowtts, 298 Mich. App. 21, 24; and Rieth v Keeler, 230 Mich App 346, 348.

The U.S. Court of Appeals for the 6th Circuit recently addressed this issue in favor of the Petitioner, in United States v Powell, 847 F3d 760 (6th Cir. Feburary 6, 2017).

Powell v Bergh, 2015 U.S. Dist. LEXIS 48538, at p11, is more related to the instant case, in which the Petitioner in that case requested substitute counsel of choice, and due to this violation, ordered Petitioner's appeal of right to be reinstated and all other issues moot.

In the case at issue, there was a complete breakdown in communications with appellant counsel Mr. Rust, as he vigorously attempted to convince Petitioner there were no appealable issues. On February 22, 2016, Petitioner filed another Grievance on Appellate Attorney Daniel J. Rust, for filing Petitioners Reconsideration Motion in an untimely manner.

Petitioner claims that the trial court abused its discretion by denying not only to review/address Petitioner's request/motion for substitute counsel, but ultimately denying Petitioner his right to choice of counsel. [The need for fairness for prosecution nor demands of the courts calendar would have been disturbed.]

In-fact, the needs of fairness was deprived of Petitioner.

For the foregoing reasons, Petitioner believes he overcomes the good cause requirements as Petitioner's request / motion was filed within a timely manner; Petitioner was prejudice by the court's refusal to adequately make an inquiry into the matter; and the extent of the conflict between the attorney and Petitioner was serious / irreconcilable.

The United States Court of Appeals denial of Petitioners Certificate of Appealability and In Forma Pauperis, was not contrary to clearly established Federal Law. The decision was based on an unreasonable determination of facts, in light of the evidence presented. Thus, this Court should GRANT the appropriate relief in accordance with 28 USC § 2254 (d)(1) and (2).

II. THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT, GUARANTEED UNDER THE U.S. CONST, WHERE NOT VIOLATED, WHEN TRIAL COURT REFUSED TO ADJOURN HIS CASE ONCE NEW COUNSEL WAS OBTAINED.

Petitioner had a Sixth Amendment Right to Counsel. The United States Supreme Court held in United States v Gonzalez, 548 U.S. 140, 144; that the 6th Amendment Right to Counsel guarantee's a defendant who will represent him. The Supreme Court goes to say the erroneous deprivation of a criminal defendant's Counsel of choice is a structural error, which entitles the defendant a new trial.

The 6th Amend. right to counsel of choice commands not that a trial be fair, but rather that a particular guarantee of fairness be provided and that the accused be defended by the counsel he believes to be the best. Petitioner's right to counsel was violated when he was not allowed to have an adjournment by the trial court so he may have his newly Retained Counsel, Shawn P. Smith (P.51431), defend his case.

Furthermore, no showing of effectiveness of substitute counsel or prejudice is required to make the violation complete. The ruling by the trial court resulted in a "structual defect". Such a defect can never be viewed as harmless error as it effects the entire proceedings. These errors requires a new trial because it is the only to correct such errors. There are certain rights so essential to concept of Due Process that no lawyer can waive them for a defendant, such as the right to jury trial and right to counsel, where counsel Shawn P Smith (P.51431), was Petitioner's counsel of choice. People v. De Graffanreid, 173 NW2d 317 (1969).

The second factor for good cause for adjournment is that the Petitioner had a legitimate reason for asserting the right, where counsel needed time for preparation.

The United States Supreme Court held, Avery v. Alabama, 308 U.S. 444, 446 (1940), that the guarantee of counsel cannot be satisfied by mere formal appointment. This is exactly what the trial court did, when on 11/19/2013, it told the Petitioner's removed Counsel Sammis, that he had 24 hours to get a new lawyer for the Petitioner. What makes the matter more severe is the fact that, instead of the Trial Court appointing new counsel for the Petitioner,

Petitioner has also overcome any presumption of negligence as this would fall under the 3rd factor.

This case was adjourned once by Petitioner, on the date of 11/19/2013. The court excused Court Appointed Counsel, Richard Sammis, and new counsel, Ernest White was appointed on 11/25/2013.

The Court and Prosecution was caused for many of the adjournments and continuance, that prejudiced Petitioner:

1. 1/31/13 Adjourned (Court)
2. 4/25/13 Adjourned (Court)
3. 5/23/13 Adjourned (Court)
4. 8/06/13 Bindover (Amended Charges) (Court)
5. 8/14/13 Adjourned (Courts)
6. 11/25/13 Adjourned (Petitioner) (Substitution of Counsel).

The Court must weigh who deserves an adjournment and how much time spent on adjournments and what is just on the part of a Petitioner seeking justice.

In Flanagan v. United States, 465 U.S. 259 (1984) Justice O'Conner explained that:

> " The asserted right to counsel of ones choice is like for example the 6th Amendment right to represent ones self. Retaining reversal for violation of such a right does not require a showing of prejudice to the defense. Since the defendant's free choice independent of concerns for the objective fairness of the proceeding. Similarly post conviction review concededly effective to that extent that the petitioners asserted

right is like the 6th Amendment rights violated when trial court denies counsel request to be made to obtain reversal in these circumstances because prejudice to the defense is presumed."

Wherefore, Petitioner respectfully request this Court grant new trial, and/or any other relief deemed appropriate for this issue. The United States Court of Appeals affirming the District Court decision in this case, in denying Petitioner's Appeal of Right, is not contrary to clearly established Federal Law, as determined by the Supreme Court of the United States, and resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented. Thus, this Court should GRANT the appropriate relief in accordance with 28 U.S.C §2254(d)(1) and (2)

III THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHT, GUARANTEED UNDER THE U.S. CONSTITUTION, TO A FAIR TRIAL AND DUE PROCESS WHERE NOT VIOLATED, WHERE TRIAL COURT ABUSED ITS DISCRETION WHEN ENDORSING A LATE WITNESS AND DENYING PETITIONER AN ADJOURNMENT TO PREPARE AN EFFECTIVE CROSS-EXAMINATION.

February 6, 2015, Assistant Prosecuting Attorney Aaron, J. Head (P.49413), filed an Response Brief to Appellant's Direct Appeal Brief. The prosecutor has attempted to use unfair tactics against Petitioner at pp 7-8. First, where the prosecutor starts out in there response using a "RED HERRING" attempt at diverting

Where the removal was based on pre existing conflicts between the two. In which, Petitioner's removed counsel (A BIASED PARTY) chose to elect replacement counsel from the very firm, that he himself works for. In which, gives the appearance of impropriety. (Ginther Hearing 6-11-2015, p. 150, Lines 19, and p. 151, Line 7).

The United States Supreme Court held the presumption of prejudice standard addressed in U.S. v. Cronic, 466 U.S. 648 (1984), applies in cases involving current representation where conflict of interest was active and adversely affected counsel's performance. Cuyler v. Sullivan, 446 U.S. 335, 349-50 (1980). The 6th Amend. Guarantee's conflict free counsel, Smith v Anderson, 689 F.2d 59, 62-63 (6th Cir. 1982).

For purpose of brevity, these conflicts of interest as well as ineffective of counsel, will be shown / proven throughout Petitioner's Brief, outlined in ISSUES - V, VI. A. - VI. G., and VII. These conflicts of interest are best described throughout the Ginther Hearing held on 6-11-2015.

Even though the trial court knew inaction would violate Petitioner's 6th Amend. right to conflict free counsel they still refused to act. Robinson v. Stegall, 343 F. Supp. 2d 626, 634 (ED Mich, 2004).

Prejudice can also be presumed where a petitioner can demonstrate that a conflict of interest exists, and actual or constructive denial of counsel can never be found as harmless error, Arizona v Fulminate, 499 U.S. 279, 310-11 (1991).

the court from the actual issue, when interjecting in their response at p. 7. Defendant has failed to show that the trial Court Abused its Discretion in allowing the prosecution to present the testimony of Arthur Jones,... when in fact the issue is of surprise, and lack of preparation, in which violated Petitioner's right to effective cross-examination, where the trial court denied a continuance.

Secondly, where the prosecutor cites People v Lawton, 196 Mich. App. 341 (1992), in support of the denial to adjourn; where the prosecutor agrees Petitioner meets prongs 1 and 3 but relies on prongs 2 and 4 in presuading the courts that an adjournment was properly denied. The second prong is a legitimate reason for asserting the right; and the fourth prong deals with requests of previous adjournments. In which Petitioner must show prejudice from the denial.

The prosecutor is correct in that two (2) adjournments were granted prior to trial one being the courts Amending Petitioner's charges, and bonded Petitioner back to original charges of, "Open Murder" on the date off 8/6/13, due to change of charge, Trial Court Judge Bruce gave Petitioner's Counsel the option to adjourn, because Counsel was prepared for argument, for 2nd degree Murder Charge, and also, Defense Counsel had an schedule surgery, and the second one was the courts appointing new counsel.

Petitioner's granted adjournments cannot, nor have been in association to the denial of adjournment at issue herein, or has there been any implication that Petitioner abused a request for adjournment, nor has any prejudice to the prosecution been claimed or ruled.

The Petitioners position is that the defense was prepared to cross-examine all other witness known, along with maintaining the complexity of all other aspects of this murder case. Ultimately, the trial court and prosecution expected trial counsel to continue defending a murder trial and simultaneously interview and investigate on surprise witness, where counsel conducting cross-examinations on other witnesses, as well as preparing for states witnesses testimony for the Doblowing day. The purpose for such a requested adjournment was so, that counsel could focus on the new witness/evidence in order to articulate an effective examination of Jones' statement and contemplate an adjustment to an already prepared complex defense.

This argument must fail, where the mere fact that the trial court made the witness available or the court apprised counsel of the substance of testimony, has no bearing on counsel's ability to formulate an effected plan of defense for his client. As such, for the latter reasoning, the trial court Abused its Discretion in denying adjournment. In which, prejudiced Petitioner and counsel's workloaed stop him from even having time for an interview.

Permitting the late endorsement of a witness is within the discretion of the trial court. People v. Hodges, 34 Mich. App. 90 (1971); People v. Blue, 255 Mich. 575 (1931). However, the decision thus entrusted to the judge is unfettered; it must be exercised with due regard for the Petitioners right to a fair trial. People v. Larkin, 30 Mich. App. 441 (1971).

In People v. Wilson, 397 Mich. 76 (1976), the Michigan Supreme Court held that the trial court erred because it granted late endorsement. If as the prosecutor represented to the trial court in their motion to endorse,

the Witness was a surprise to prosecutor, then the Petitioner would have been equally surprised.

The case at issue herein is analogous, as on the day of trial, the prosecutor requested the endorsement of the states witness Author Jones. The prosecution represented to the Court; that Jones was not known to the state until the Detective in Charge notified the state, that four days prior to trial, Mr. Jones was a potential witness. She further states / presented to the judiciary that she did not receive a "formal report" from the Detective until that following Monday, the day prior to trial, and did not notify either the Trial Courts or Defense Counsel of the witness until one (1) hour prior to trial.

Not only did the prosecution know of Jones' statement the day prior to the endorsement the day of trial, but the Police Knew of this witness 4 days prior to informing the Prosecution, which establishes that witness was Known by the State 6 days prior to Petitioner's trial, leaving no doubt that the States argument is fruitless and without merit.

The State's misconduct is unexcuseable. The activity of the governmental agents of the Berrien County Police, as well as the prosecutor's offices, in order to reach conviction, violated "the fundamental fairness shocking to the universal sense of justice", mandated by the Due Process Clause of the Fifth, and Fourteenth Amendments. United States v. Russell, 411. U.S. 423, 431-32 (1973).

It is well settled that the propriety of granting trial day endorsement of witnesses rest in the sound discretion of the trial court. M.C.L 767.40; M.S.A. 28.980; People v. Davis, 343 Mich 348, 351 (1956); Blue Supra. Id 255 Mich. at 678. A motion for a continue also addresses itself to trial court discretion, Davis supra, Blue, supra...

The U.S. Court of Appeals also affirms Petitioner's Conviction on this claim as well. The Petitioner believes he is entitled to a new trial, because his fundamental Due Process Rights were violated when he was refused a continuance in order to prepare cross-examination of the states last minute Witness. See People v. Powell, 119 Mich. App. 47 (1982)

In reversing the trial court, the Michigan Supreme Court enumerated four factors the court considered important in finding that the trial court had Abused its Discretion in the case, in not granting the Continuance; As to the first prong, Petitioner is asserting his right to a fair trial. Second, the legitimate reason due to counsel and the court's denial of a fair trial is a misjustice, where Petitioner is now serving Fifty Two years. Third, Petitioner was not guilty of negligence. And Fourth, previous continuance were due to the courts binding-over Petitioner on original charges of open-murder, and Defense Counsel's medical needs, and the prejudice is due to ineffective assistance of counsel and his lack of trial preparation.

Wherefore, due to the trial court's endorsement of late witness, while denying a continuance was prejudicial to Petitioners's constitutional rights to a fair trial, Petitioner believes he is entitled to relief and prays this Honorable Court GRANT such requested relief.

IV. THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION, ON THE BASIS THAT PETITIONER'S FOURTH AND FOURTEENTH AMENDMENT RIGHTS, AND MICHIGAN CONSTITUTION OF 1963, ART I §17, WHERE NOT VIOLATED, WHEN THE TRIAL COURT ABUSED ITS DISCRETION, BY DENYING PETITIONER'S MOTION FOR DISQUALIFICATION/RECUSAL.

Petitioner has been denied, after many requests, for a copy of all pretrial hearings, especially the dates of 5-23-13, 12-13-13, and 4-1-15, in order to articulate an effective arguement by being accurate in referring to the record.

On March 22, 2016, the Michigan Court of Appeals ruled:

> " Although defendant provides law regarding disqualification, the issue is abandoned. In his argument, defendant does not articulate any grounds for why the trial court was disqualified from presiding over further proceedings. He has left it to this Court to discover the factual basis and rationlize the legal basis for the claim. See People v. Kelly, 231 Mich. App. 627, 640-41; 588 NW2d 480 (1995) (An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims; . . .)."

Which is baffling, where this same court ruled within this same opinion as follow:

> " Once a transcript has been provided to appellate counsel, the defendant is not entitled to additional copies of the transcripts."

As quoted verbatim, it is clear the lower courts Created and/or appellate counsel, this impediment, then faults the Petitioner, where the Petitioner has established an attempt to obtain, in order to prevent an abandonment, as well as reported appellate counsel's unprofessional handling Of this case.

This issue can be viewed in one of three ways, either the lower court bear responsibility by leading Petitioner into an ambush; or appellant counsel was at fault for refusing to afford Petitioner transcripts; or both share equal responsibility for wasting valuable judicial resources through their inactions. In any event, Petitioner Clearly affords this Court evidence that he was diligent, and the impediment was not of his aecord.

Petitioner asserts he was prejudiced by the trial court and thereby denied his State and Federal Constitutional Rights to Due Process and a fair trial.

The lower Courts have made sure that the lower court's have made sure that records from 5-7-13, 5-23-13, 12-13-13, and 4-1-15, has been erased from the record, which, are most important to this claim. Petitioner's Public Access Case Event Reort, shows on the date of 4-9-13, the STATE / COURT, filed Motion For Certificate Pursuant to Uniform Act To Secure Attendance of Witness, FROm Without State Signed By Prosecutor Patricia Ceresa, and filed with Berrien County Court, Order Requiring Witness To Appear, Order Directing Issurance Of Summons and Waiver of Hearing Placed In Court File PER PROS. OFFICE, Certificate of Judge, signed by Judge Bruce and Filed with Court. (SEE Appendix 7)

On 5-20-13, an Petition To Hold Material Witness To Bail, Order To Hold Material Witness To Bail After Hearing, Attachment to Bring Material Witness Before Court, was ordered. (See Appendix H)

On 5-23-13, Petitioner's Preliminary Examination was resumed, and State's witness, Charles Lee Marcus Davis Jr. took the stand, and Petitioner's Examination was adjourned again. The Court has purposely failed to fulfill the production of this record.

The lower Court has mislead the Michigan Court of Appeals, Michigan Supreme Court, United States District Court and also United States Court of Appeals, by hiding records from Petitioner and the Courts.

During the Preliminary Examination on 5-23-13, the Court came to the terms that the Material Witness, was not credible, due to his Miranda Rights being violated, and the Judge became very impartial and bias presumes. Judge Bruce also was Petitioner's co-defendant's Judge as well, pertaining to this case at hand.

Judge Bruce involvement, in this case at hand has altered and prejudiced Petitioner's case by his allowance of Prosecution's (Key/Eye) Witness, inconsistence, incompetant, and inadmissible statements under oath. Knowing (Key/Eye)

Witness, Crystal Mekenzie, was under the influence when she admitted lying to Detective's about the event that transpired, due to her being high. (Prelim. Exam. 1-31-13, Trans. pg 79, Lines 13-14). Petitioner was denied his Due Process and Equal Protected Rights.

Petitioner has shown 3 different reasons to disqualify his Trial Court Judge, who has personal Knowledge of disputed Evidentiary facts concerning the proceeding, due to him being the controling Official of the court proceedings.

Judicial bias is a structual error that can never be found harmless. Wallace v Bell, 387 F.Supp. 2d 728, 738 (ED Mich. 2005)(Citing Chapman v California, 386 U.S. 18, 23, n8 (1967)).

This test is not whether actual bias exists but also whether there was such a likelihood of bias or appearance of bias that the Judge was unable to hold the balance between vindicating the interest of the court and the interest of the court and the interest of the accused. Ungee v. Sarafite, 376 U.S. 575, 589 (1964); Bracey v. Gramley, 520 U.S. 899, 905 (1997) (citing Aetha Life Ins. Co. v. Lavtice, 475. U.S. 813, 828 (1986); Tuney v. Ohio, 273 U.S. 510, 523 (1927) (See Hurley v. Ryan, 650 F.3d 1301, 1314 (9th Cir. 2011).

In general terms the question of disqualification of a judge is one which concerns both the fact and the appearance of justice. Every effect should be made to insure that both parties maintain their fundamental

to impartial judge. See U.S. Const., Amendments V & XIV; Mich. Const. 1963, Art. 1 §17.

In Crampton v. Department of State, 395 Mich. 347, 351 (1973) held;

> "The judge may be prejudice or biased with the case or a party because of prior involvement as fact finder or decision maker. Morrissey v Brewer, 408 U.S. 471 (1972); Goldberg v. Kelly, 397 U.S. 254, 271 (1970).

In Clemmons v. Wolfe, 377 F.3d 322 (3d Cir. 2004), that Court states:

> "Alleged facts sufficient if given support to the challenge of a bent mind that may prevent or impede the impartiality of Judgement." See Berger v U.S., 255 US 22, 33-34 (1921). See also, People v. Cogburn, 2011 Mich. App. LEXIS 1730 * 2-4." (People v. Cheeks, 216 Mich. App. 470, 480 (1996)).

If this Court concurs with U.S. Court of Appeals and lower Court's and feel any issues not referencing the record, cannot be appropriately reviewed, the Petitioner respectfully request the Honorable Court GRANT relief in the form of a REMAND to the lower court with an order to provide Petitioner with the record/transcripts and further issue a continuance in order Petitioner may perfect a factual/legal basis to appropriately rationalize the basis for his claims. If not, the following argument pursues.

Wherefore: Petitioner requests this Court GRANT appropriate relief it deems necessary.

V. THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT Right GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, WHERE NOT VIOLATED, WHERE COUNSEL FAILED TO INVESTIGATE SEVERAL ASPECTS OF THIS CASE AND INSTEAD RELIED ON THE GOVERNMENT'S GOOD FAITH EFFORTS, WHICH IS CONTRARY TO STRICKLAND V WASHINGTON, AND ITS PROGENY.

To be effective, Defense Counsel must investigate, prepare and timely assert all substantial defenses. Kimmelman V. Morrison, 447 U.S. 365 (1986); Beasley v. U.S. 491 F.2d 687 (6th Cir. 1974).

Petitioner has made this claim on 6-11-15, at his Motion For New Trial, Requesting Hearing Under People v. Ginther, that his trial Counsel failed in these aspects outlined as follows, where Petitioners Counsel:

A. Neglected to investigate nor argue self-defense, as deceased was a Professional Mixed Martial Arts (MMA) fighter; (pg. 40, Lines 16, pg 23, Lines 2)

B. Neglected to request a psychiatric evaluation of Petitioner; (pg. 76, Lines 12, pg 79, Lines 22)

C. Failed to make crucial objections; (pg. 38, Lines 1, pg. 39, Lines 23)

D. Relayed to the jury in opening statements that Petitioner had a conviction for Delivery of Cocaine; (pg. 33, Lines 3; pg 35, Line 3)

E. Showed disinterest in the case; (pg. 227, Lines 2-3)

F. Failed to investigate and Communicate with Petitioner;

G. Expressed Contempt for Petitioner that he acted as a second Prosecutor as shown in his statement "That he thinks the defendants questions are stupid and that he wants the jury to see the case how he wants them to see it and if he did not like it he could represent himself, (pg. 240, Lines 12-17)

H. Trial Counsel told Petitioner he was guilty, pg. 137, Lines 17-21)

I. Trial Counsel informed Petitioner he was not allowed character witnesses. (pg. 137, Lines 3-16)

J. Refused to call witnesses whom would/could corroborate Petitioner's self-defense strategy. (pg. 176, Lines 17-21)

K. Lied to Petitioner, informing him that his sister (eye-witness), would not testify. (pg. 238, Lines 23-25)

L. States under oath," That no one in the World would ever please Mr. Davis (Petitioner) about anything. (pg 134, Lines 20-23)

M. Neglected to hire expert witness and private investigator. (pg 23, Lines 3-4)

N. Relied on Police Report and note's from previous Attorney's (pg. 24, Lines 8-10)

O. Neglected interviewing witnesses for defense nor prosecution, (pg. 22, Lines 22, pg. 23, Lines 2)

P. failed to impeach state's witnesses; (pg. 50, Lines 12-24).

Weighed under the Strickland standard, any of the above; if not individually, then cumulatively weights on the trial counsel's poor performance amounting to ineffective assistance of Counsel believed to establish counsel was constitutionally deficient, prejudicing Petitioner.

Under Martin v Rose, 744 F.2d 1245, 1249 (6th Cir. 1984), the Court held that deliberate trial tactics may constitute ineffective assistance of counsel if they fall outside the wide range of professionally

Competent assistance, Rickman V. Bell, 131 F.3d 1150 (6th Cir. 1997), 523 U.S. 1133 (1998), held that even where a defendant does not establish prejudice under "Strickland" where Counsel'd performance is deficient that it amounts to a constructive denial of counsel a presumption of prejudice applies.

Counsel relied on the state's good faith efforts in preparing Petitioners Case.

The United States Supreme Court has disapproved of this very conduct that a defense attorney's apparent willingness to accept the State's version of facts calls into question the adequacy of his representation. Strickland, supra, at 688; and Kimmelman V. Morrison, 477 U.S. 365, 385 (1986).

In Strickland, supra, the Court explicitly found that trial Counsel has a "duty to investigate," and that to discharge that "Counsel has a duty to make reasonable investigations or to make a reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." I.d., at 691; see also, Wiggins V. Smith, 528 U.S. 510, 512 (2003). Defense Counsel's failure to investigate his options and make a reasonable choice between them foreclose any "strategic decision" that might exist. Jackson V. Herring, 42 F.3d 1350 (11th Cir. 1995).

Here, Petitioner satisfied the first prong of the Strickland analysis i.e., Counsels decision not to investigate the States case "fell below an objective standard of reasonableness," and his actions and omissions were not the result of "reasonable professional judgement." Id., at 687-88. As to Strickland's prejudice prong, Clearly, Conducted even a minimum investigation, Counsel would have ultimately led to meritorious grounds for Counsel's ineffectiveness. Thus, it is reasonable probability of a different outcome, Id., at 691-92.

The likelihood of a different result only need be reasonable Petitioner "need not prove prejudice by a preponderance of the evidence;" Jemison V. Foltz, 672 F.Supp. 1002, 1007 (ED Mich. 1997). Here, Petitioner must show that there is a reasonable probability that, but for trial counsel's unprofessional errors, he would have been found not guilty at trial.

Courts have recognized that an unreasonable or harmful tactic is not protected solely because it is termed "strategy." See People V. Dalessandro, supra, at 577-88 (holding that counsel engage in "sound trial strategy"), Blackburn v. Foltz, 828 F.2d 1177 (CA. 6th 1987). Defense Counsel's numerous failures could not be viewed as trial strategy, "as it greatly harmed his client's chances of an acquital, contributed nothing to the defense in this case.

Defense Counsel must engage in a reasonable amount of pretrial investigation and "at a minimum, ... interview potential witnesses.... make an independent investigation of the facts and circumstances of the case," Nealy v Cubana, 764 F.2d 1173, 1177 (CA 5th, 1985), which Counsel has failed, "Failure to investigate can certainly constitute ineffective assistance," Washington v. Smith, 219 F.3d 620, 630 (CA 7th 2000)

Petitioner's Attorney could not have made a reasonable judgement about not conducting such investigations. See Sims v. Livesay, 970 F.2d 1575, 1580-81 (CA 6th 1992); and Workman v. Tate, 957 F.2d 1339, 1345-46 (CA 6th 1992).

It is not this Court, nor a trial judge at a hearing, to determine what a jury would not actually conclude. See Baker v. Yukins, 199 F.3d 867, 874 (CA 6th 1999). To do so would violate Petitioner's constitutional right to a trial by jury. U.S. Const. Amd.

VI; Const. 1963, Art I, §§ 14 and 20; See People v. Bearss, 463 Mich. 623, 630-31 (2001).

Counsel Must Act as an Advocate for the client and subject the prosecution's case to the "crucible of meaningful adversarial testing." United States v. Cronic, 466 U.S. 648, 656-57 (1984). People v Fisher, 119 Mich. App. 445 (1982).

A criminal defendant has a constitutional right to expect "that his Attorney will, at all times, support him, never desert him, and will perform with reasonable competance and diligence." Wiley v. Sowder, 647 F.2d 642, 651 (CA 6th 1981) cert den 454 U.S. 1091 (1981).

"A Lawyer should act with commitment and dedication to the interest of the client and with zeal in advocacy upon the client's behalf." Michigan Rules of Professional Conduct 1.3.

"The lawyers own interest should not be permitted to have adverse effect on representation of a client." Id. Rule 1.7, commentary.

The general remedy for a violation for the 6th Amd. right to effective assistance of counsel at trial, is a new trial. United States v. Morrison, 449 U.S. 361, 364-65 (1981).

Wherefore, Petitioner requests this Court GRANT appropriate relief it deem necessary.

VI. THE COURT OF APPEALS ERRED AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT, PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION, TO EFFECTIVE ASSISTANCE OF COUNSEL WHERE NOT VIOLATED, WHERE COUNSEL DENIED PETITIONER A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE.

The United States Court, in United States v Cronic, 466 U.S. 648 (1984), said that the right to be heard would be in most cases of little avail, if it did not comprehend the right to be heard by Counsel. Even intelligent and educated laymen have minimal or sometimes no skills in the science of law. If charged with a crime he is incapable generally of determing for himself that legal Strategies if any to formulate, where he is unfamiliar with the rules of evidence, and left without the aid of Counsel hey may be put on trial and convicted upon incompetent evidence or inadmissible evidence.

Petitioner lacks the skills and knowledge to adequately prepare his own defense even though he may have a perfect one. He requires the guiding hand of competent counsel within every step in the proceedings against him. Without it, though he may not be guilty, he faces the danger of conviction because he does not know how to establish his innocence.

However, the 6th Amd. right guarantees more than the appointment of competent counsel. By its term, one has the right to assistance of Counsel for his defense. Assistance begins with appointment of counsel but does not end there, in some cases the performance of counsel may be so inadequate that in effect, no assistance of counsel was provided. Clearly in such cases, as in this case, the Petitioner's 6th Amd. right to Counsel was denied as articulated in ISSUE's VI A. through III G., Infra. See United States v Decoster, 199 U.S. 99 (1977); Wainwright v. Sykes, 433 U.S. 72, 99 (1977); Parker v North Carolina, 397 U.S. 790, 798-99.

Thus, the Const. guarantee's a criminal defendant a meaningful opportunity to present a complete defense. Crane v. Kentucky, 476 U.S. 683, 690 (1986); California v Trombetta, 467 U.S. 479 (1984).

Wherefore, Petitioner requests this Court GRANTS appropriate relief it deems necessary.

VI. (A) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, WHERE NOT VIOLATED, WHERE COUNSEL REFUSED TO CONDUCT A MEANING CONSULTATION WITH PETITIONER.

The 6th Amend. institutes the right to consult with counsel during critical pretrial stages. The pretrial period of the proceedings for purposes of the 6th Amend. encompasses counsel's duty to investigate the case prior to trial. Mitchell v. Mamson, (on remand) 325 F.3d 732 (6th Cir. 2003); See also, Rothgery v Gillespie County Texas, 554 U.S. 191 (2008).

During this pretrial period, Petitioner's trial Attorney only came to see him twice, once on December 05, 2013, for no more than 10 minutes, (G.H. 6-11-15, pg. 119, Lines 25 - pg. 120, Lines 2) and then on December 18, 2013, for no more than 15 minutes. (G.H. 6-11-15, pg. 123, Lines 12-20).

Petitioner's trial Counsel's refusal to consult with him prior to trial on more than 2 occasions was so outlandish that 6 days before trial (January 08, 2014, Status Conference), the trial judge ORDERED trial counsel to to consult with Petitioner before trial. (G.H. 6-11-15, pg 80, Lines 10-21, p. 123, Lines 12-20). After the order from Judge Bruce, Petitioner's Trial Counsel still neglected to visit and consult with Petitioner, concerning his case, during these ORDERED visits.

On January 14, 2014, Petitioners Trial Day, Petitioner refused to get dress for trial, because his Trial Counsel, Ernest White fail to comply with Judge Bruce's ORDER to visit Petitioner. (Trial Trns. pg 3, Line 17 - pg. 4, Lines 9)

To the extent that ones strategy is simply not to prepare and not to investigate is believed to constitute a constitutional deficiency under clearly established Federal Law, Strickland v. Washington 466 U.S. 693, 696 (1984), and Strategy must be evaluated in the light of the thoroughness of trial counsel's pretrial investigation or the lack thereof, A lack of preparation is not deliberate informed trial strategy as a matter of law, White v McAninch,

235 F.3d 988 (6th Cir. 2000).

Furthermore, the trial Court Judge Bruce admits, that Petitioner's Trial Counsel, Ernest White, did not spend enough time preparing with Petitioner. (G.H. 6-11-15, pg. 57, Lines 17-22, pg 67, Lines 5-9). This willingness to spend time with Petitioner denied him ample time to present a meaningful defense that rises to the level of deficiency. Judge Bruce's ruling, in-and-of-itself supports Petitioners Claim.

The Court in Holmes v. South Carolina, 547 U.S. 319 (2006), stated, that a defendant has a right to have a meaningful opportunity to present a complete defense. Quoting, Crane v Kentucky, 476 U.S. 683, 690 (1986).

Therefore, Petitioner's Claim is Contrary to clear established State and Federal Law. Thus, this Court should GRANT the appropriate relief in accordance with 28 U.S.C. § 2254 (d)(1) and (2).

VI (B) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. Constitution TO EFFECTIVE ASSISTANCE TO TRIAL COUNSEL, WHERE NOT VIOLATED, WHERE COUNSEL REFUSED TO CONDUCT A MEANINGFUL INVESTIGATION, TO-WIT, WITNESSES CRIMINAL HISTORY, WHICH WAS MATERIAL TO THE CASE.

Petitioner's Counsel at trial refused to do any background investigations into criminal records of the prosecution witnesses, for impeachment purposes. (GH. 6-11-15, pg 48, Lines 1-17, pg. 75, Lines 14-20, pg. 139, Lines 5-16, pg. 23 Lines 10-15).

The duty to investigate derives from counsel's basic function which is to make the adversarial testing process work in the particular case. Bryant v Scott, 28 F.3d 1411, 1419 (1994). The pretrial constitutes a critical period of the proceedings for purposes of the 6th Amend., which encompasses counsel's constitutional duty to investigate the case prior to trial. Mitchell v Mason, 325 F.3d 732 (6th Circuit 2003) (on remand).

Also, Petitioner's Counsel, during trial, refused to interview witnesses in the case (G.H. 6-11-15, pg. 22, Lines 22-24, pg. 23, Lines 19-20, pg. 25, Lines 20-27, pg. 137, Lines 3-16, pg. 202, Lines 16-22, pg. 226, Lines 10-11, 23, pg. 227, Lines 3, and pg. 8, Lines 2-5), after Trial Court Judge Bruce denied adjournment and ordered counsel to interview witness, before witness take the stand. (See Trial TRNS. (1-14-14) pg. 10, Lines 25 - pg 11, Lines 19) In which, Counsel's duty includes but not limited to the obligation to interview witnesses who may have information concerning his client his client's guilt or innocense. Kimmelman v. Morrison, 477 U.S. 365, 386 (1986).

Petitioner trial Counsel went so far as to refuse to call Witness Ashley Davis, whom witness the events that Petitioner stands accused of, whom been VINDICATED in this case as well, due to Prosecution's (only) Key/eye witness false statements, which was critical to defense. Counsel failures to investigate an IMPORTANT Witness, was objectively unreasonable, and constitutes negligence, not trial strategy. Stewart v. Wolfenbarger, 468 F.3d 338 (6th Cir. 2006).

Even more egreous was the fact Trial Counsel lied to Petitioner Stating, Ashley Davis refused to testify (G.H. 6-11-15 + pg. 176, Lines 19-21). This was contested by Ashley Davis own testimony (G.H. 6-11-15, pg. 238, Lines 23-25).

Trial Counsel further neglected to investigate/interview promising witnesses (Travis Hagood, Timothy Lewis, and Jerry Blackwell), that could have contradicted prosecution witness Jones' (Jail-House Witness) testimony. (G.H. 6-11-15 pg. 34, Lines, pg. 135, Lines 16-25).

Where defense fails to investigate a promising witness, Counsel's actions or inactions constitutes negligence, not trial strategy. Workman v. Tate, 957 F.2d 1339, 1345 (6th Cir. 1992)

Trial Counsel for Petitioner refused to present witnesses favorable to the defense. (G.H. 6-11-15, pg. 202, Line 16, pg. 203, Lines 1-18, Jessica Baggett was one of the several witnesses not that could have corroborated Petitioner's defense. (G.H 6-11-15, pg. 139, Lines 17-20).

The 6th Cir. in Beasley v. U.S., 491 F.2d 687 (1974), held that the failure to produce and present witnesses favorable to the defense is not the exercise of reasonable trial strategy. It is a breach of an attorney's basic duty to prepare, investigate and present all substantial defenses, and not rely on the State's good faith efforts in preparing his case.

Therefore, Petitioner's claim is contrary to clear established State and Federal Law. Thus this Court should GRANT the appropriate relief in accordance with 28 U.S.C § 2254 (d) (1) and (2).

II (c) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, WAS NOT VIOLATED, WHERE COUNSEL FAILED TO INVESTIGATE KNOWN AND POTENTIAL KEY WITNESS.

Trial Counsel refused to interview Prosecution witness Jones (Jail-House Witness), the state produce the day of Petitioner's trial. (G.H. 6-11-15, pg. 39, Lines 9-14, pg. 50, Lines 12-16, pg. 105, Lines 20-25).

The 6th Circuit ruled in Towns v. Smith, 395 F.3d 251 (2005), that the failure to make contact with or investigate potentially important witnesses made known to Counsel prior to trial deemed ineffective. See English v Romanowiski, 602 F.3d 714 (6th Cir. 2010). Where failure to investigate witness prior to trial despite making claim in opening statements that witness would testify at trial deem counsel ineffective. Counsel deemed ineffective for failing to investigate known and potentially important witnesses. Avery v Prelusnik, 548 F.3d 424 (6th Cir. 2008); Ramonez v. Berghuis, 490 F.3d 482 (6th Cir. 2007); and Stewart v Wolfenbarger, 468 F3d 338, (6th Cir. 2006).

Furthermore, the court held in Lewis v Alexander, 11 F.3d 1349, 1352 (6th Cir. 1993), where counsel fails to investigate key evidence or to make reasonable decisions that make particular investigations unnecessary, it is not possible to discern strategy in counsel's ommissions, only negligence. See also, Matthews v Abramjtys, 319 F.3d 780 (6th Cir 2003); and Workman v. Tate, 957 F2d 1339 (6th Cir. 1992).

If Trial Counsel would have interviewed Key Witnesses, he would have found that Jones' trial testimony was perjurious (G.H. 6-11-15, pg. 135, Lines 5; pg.5, Lines 16-23). Also, Trial Counsel would have discovered that prosecution witness Arthur Jones (Jail-House Witness) received favorable treatment concerning his pending charges, in exchange for his testimony; which, Arthur Jones perjuried himself, when stating he received Unarmed Robbery for his testimony; but received, Larceny from the Person, and further, Counsel would have discovered/uncovered the fact that the prosecution used another Jail-House Witness on Petitioner's Sister/Co-Defendant, Ashley Davis (G.H. 6-11-15, pg. 247, Lines 8-15), in which, would have been fruitful in the overall preparation for cross-examination, thats more likely than not, lead the trial court deem Jones' testimony inadmissible where it is evident the state planted witnesses in order to elicit incriminating statements from

Petitioner, once Petitioner was formally charged with the offense, violating Petitioner's 5th, 6th, and 14th Amendment Rights, as Petitioner has a right not to self incriminate, and the right to communicate with the state through Counsel affording Due Process. See, Massiah v. United States, 377 U.S. 201 (1964), where the U.S. Supreme Court held that the Government had impaired Petitioner's 6th Amendment Right where informant had engaged in conversation with Petitioner and concluded that if by association, by general conversation, or both, the informant had developed a relationship of trust and confidence with Petitioner, such that Petitioner revealed incriminating information, this constituted interference with the right to assistance of Counsel under 6th Amendment.

The present case involves incriminating statements allegedly made by accused to an Undercover Government Informant while in custody after indictment. This subject matter applies under the 6th Amend. as it pertains to post indictment communication between the accused and agents of the Government. Massiah, supra...

Wherefore, establishing Jones was planted for the Purpose of seeking privileged information his entire testimony shall be stricken from the record as it is inadmissible for the reasoning outlined above. For this reason it is Petitioner's belief he is entitled to a new trial.

Thus, this Court should GRANT the appropriate relief in accordance with 28 U.S.C § 2254 (d)(1) and (2).

VI. (D) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION, TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, WAS NOT DENIED, WHERE COUNSEL WAS INFIRM IN CROSS-EXAMINING PROSECUTION WITNESSES.

Defense Counsel at trial, did not effectively Cross-examine the Prosecution witnesses' as established through testimonial evidence. (G.H. 6-11-15, Pg. 139, Lines 21; Pg. 140, Lines 8).

The court held in Smith v. Illinois, 390 U.S. 129, 131 (1968); and Brookhart v. Janis, 384 U.S. 1, 3 (1966), that to establish ineffective assistance of counsel, the burden rest on the accused to demonstrate a Constitutional violation. There are, however, circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified. The most obvious of course is the complete denial of counsel at critical stage of his trial. No specific showing of prejudice was required. Davis v. Alaska, 415 U.S. 304 (1974). Because Petitioner had been denied that right to effective Cross-examination which would be a Constitutional error, of no amount of showing of prejudice would cure it. Id. at 415 U.S. 318.

Attorney Shawn P. Smith, represented Petitioner during the Ginther Hearing of 6-11-15 pointed out the following facts to the court in support, stating as follows:

> " That he barely cross-examined the witness and when I say barely you read the record you where here you Honor I mean the prosecutor would go on for 20 30 pages of direct and he would ask a couple questions and say that's it. Some he didn't ask a question."

The Court held in Higgins v. Renico, 362 F.Supp2d 904 (ED. Mich. 2005), that trial counsel was Constitutionally ineffective for failing to Cross-examine Prosecution's key witness, because he was unprepared. Failure to subject the states case to meaningful adversarial testing on the ground of lack of preparation was not a reasonable strategical decision.

As Petitioner Brief, through ISSUES VI. B. and VI C., that Trial Counsel did not prepare for the Prosecutions key witnesses.

Petitioner respectfully requests that this Honorable Court GRANT appropriate relief deems fit and just.

VI. (E) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONERS CONVICTION, ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, WAS NOT VIOLATED, WHERE COUNSEL FAILED TO OBJECT TO JONES' TESTIMONY.

The Trial Counsel failed to object to Arthur Jones' (Jail-House Witness) testimony in violation of Petitioner's 6th Amend. Right to effective assistance of counsel.

The Court held in Massiah v. United States, 377 U.S. 201, at 206 (1964), that once a defendant's 6th Amend. right to Counsel has attached, he is denied that right when Federal Agents deliberately elicit incriminating statements from him in absence of his lawyer, Kuhlman v. Wilson, 477 U.S. 436, 457 (1984). The Concern in Massiah and a subsequent line of cases "is secret interrogation by investigatory techniques that are the equivalent of direct police interrogation." Id. at 459.

A Petitioner does not make out a violation of that right by showing that an informant either through prior arrangement or voluntarily reported his incriminating statements to the police and their informant took some action beyond merely listening that was deliberate to elicit incriminating remarks. Id.

Where the police had Petitioner moved from several locations, in weeks times, within the county jail, being from Dorm 1N to 1C, then from 1C to 1K, then from 1K to 1M, then back to 1N, within a weeks time, which now, the Jail-House Informant, Author Jones, appears in 1N.

In addition, as proofs, the record reveals that on or about 4-6-13, the police paired a Ms. Brook Vickery, a jail-house snitch, to record Petitioner's sister Ashley Davis, while she was in the same cell (County Jail), facing the same charges as Petitioner, in which, was prior to the police planting Jones and Petitioner together in cell/dorm 1N, January 8, 2014, 6 day before Petitioners trial, showing a pattern that the police and the Informant (Jones) had a meeting of minds (Police Corruption), with intent to elicit incriminating statements from Petitioner. (G.H. 6-11-15, pg. 247, Lines 8-15). Also, noting that Ms. Vickery's husband, Jason Vickery is and has been known informant's, in the Berrien County area, in several unrelated cases for the police.

Further, Jones received favorable treatment in his case in exchange for his testimony. (Appendix-9) Petitioner also had witnesses that would have corroborated the fact that Jones was personally seeking out information, showing signs, that he was acting as an agent of the state, (see Appendix - 10). Where on occasions, Jones was witnessed entering inmate's cell/room without permission or knowledge in order to seek out information relating to Petitioner's case. (GH. 6-11-15, pg. 135, Lines 5; pg. 136, Lines 16-23).

Furthermore, the fact that the State waited until the day of trial, specifically one hour prior to trial, before informing the defense or court of this "new" witness weights in favor that the strategy of the State in its secret investigatory techniques was to prejudice the defense, and weight the tables of justice in their favor, in which they succeeded. Especially where the witness is a critical one, providing an essential link in the prosecution's case, the important of full disclosure of possible bias is necessarily increased. Napue v. Illinois, 360 U.S. 264 (1959); People v. Wiese, 425 Mich. 448 (1986). Ct. Davis v Alaska, 415 U.S. 308 (1974); People v. Bell, 88 Mich. App. 345, 349 (1979)

Finally, any argument that the prosecutor was unaware of this late endorsed witness, does not excuse prejudice, nor the States misconduct. Any government entity that is directly related to the charge and conviction of Petitioner, is considered as the arm of prosecution." See Kyles v. Whitley, 514 U.S. 419, 437 (1995) (noting that "the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police"). See also People v Lester, 232 Mich. App. 626, (1998).

Thus, this Court should GRANT the appropiate relief in accordance with 28 U.S.C. §2254 (d)(1) and (2).

VI. (F) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION, ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED, UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, WHERE COUNSEL FAILED TO HIRE AN INVESTIGATOR OR EXPERT WITNESS FOR HIS DEFENSE.

Petitioner's Trial Counsel's performance fell below the norm, Constituting ineffective assistance, where counsel refused to hire an private investigator or expert witness, in a murder trial, to

Contradict the States Investigator's or expert witness (G.H. 6-11-15, pg 227, Lines 7-15; Pg. 24 Lines 8). Petitioner's trial Counsel relied on the State's "good faith" efforts.

IN RE REGULATIONS GOVERNING A SYS. FOR APPOINTMENT OF COUNSEL, 2016 Mich. LEXIS 1072 STATES:

STANDARD 3 "INVESTIGATION AND EXPERTS"

The United States Supreme Court has held: (1) "Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. "Strickland v. Washington, 466 U.S. 668, 691 (1984); and (2) "Criminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both." Harrington v Richter, 562 U.S. 86, 106 (2011). The MIDC Act authorizes "minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel..." M.C.L 780.985 (3).

The MIDC proposed a minimum standard for investigations and experts. The version conditionally approved by the Court is as follows:

A. Counsel shall conduct an independent investigation of the charges and offense as promptly as practicable.

B. When appropriate, Counsel shall request funds to assist with the client's defense and rebut the prosecution's case. Reasonable requests must be funded

C. Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution's case. Reasonable requests must be funded as required by law.

D. Counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance. Decisions to limit investigation must take into consideration the clients wishes and version of the facts.

Petitioner's 6th Amendment Right to effective assistance of counsel, through Due Process was violated, where it requires the appointment of an investigator or expense for an investigator, or expert for indigent defendant. Mason v. Arizona, 504 F.2d 1345, 1352-53 (9th Cir. 1994).

Wherefore, Petitioner request this Court GRANT relief in the form of a new trial, with stipulation that an investigator be appointed and expert witness.

VI. (G) THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, WAS NOT VIOLATED, WHERE COUNSEL FAILED TO OBJECT TO THE PROSECUTORS ADMITTANCE OF EVIDENCE, NOT OF RECORD.

The prosecutor argued in closing argument that a knife had been planted on the deceased when there was no evidence in support or to suggest such event occurred. (RT. 6-11-15, pg. 15, Lines 14-17.

It is a fundamental principle of the American criminal justice system that "deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with (the) rudimentary demands of justice." Giglio v. United States, 405 U.S. 150, 153, (1972). When the government obtains a criminal conviction and deprives an individual of his life or liberty on the basis of evidence that it knows to be false, it subverts its fundamental obligation, embodied in the Due Process Clauses of the Fifth and Fourteenth Amendments, to provide every criminal defendant with a fair and impartial trial.

The Supreme Court has accordingly held that the government may not knowingly suppress evidence that is exculpatory

[or capable of impeaching government witness, See Banks v Dretke, 540 U.S. 668, 691 (2004) (discussing Brady v. Maryland, 373 U.S. 83, (1963). Similarly it has held that the government is obligated to current any evidence introduced at trial that it knows to be false, regardless of whether or not the evidence was solicited by it. See Napue v. Illinois, 360 U.S. 264, 269 (1959); Alcorta v Texas, 355 U.S. 28 (1957); Pyle v. Kansas, 317 U.S. 213 (1942). These duties provide fundamental protections that are vital to the successful operation of an adversarial system of criminal justice; they embody the states' obligation not to obtain the accused's conviction at all costs, but rather to do justice by furthering the truth-finding function of the court and jury.

In the instant case, trial counsel failed to object to the prosecutions argument, constituting ineffective assistance of counsel. The Court held in Washington v. Hofbauer, 228 F.3d 689 (6th Cir. 2000), that failure to object to prosecutorial misconduct during closing arguements, constituted ineffective assistance of counsel, and further went on to say that, "Counsel's Silence was based on INCOMEPENCE and Ignorance of the LAW, rather then Reasonable TRIAL STRATEGY. See Also, Wade v. White, 368 F. Supp 2d 695 (ED. Mich. 2005). Petitioner believes as held in Washington, Supra, that it should also held here, that there wes a strong likelihood that the IMPROPER STATEMENTS PREJUDICED him.

Wherefore, Petitioner requests this Court GRANT appropriate relief it deem necessary.

VII. THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED UNDER THE U.S. CONSTITUTION, TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, WAS NOT DENIED, WHERE COUNSEL OF RECORD FAILED TO PRESENT A DEFENSE AND PROPERLY INVESTIGATE AND INTERVIEW ANY POTENTIAL WITNESSES FOR HIS DEFENSE.

In every criminal prosecution, the accused shall have the right to... have the assistance of counsel for his or her defense. Mich. Const. 1963, Art. 1, §17, as well as being a guarantee under the federal constitutions Sixth Amendment U.S. Const. Amend. VI. This guarantee includes the opportunity to present facts and mitigation of the offenses the Petitioner is charged with. People v. Theodorow, 10 Mich. App. 209 (1968). It has long been recognized that this right also includes the right to the effective assistance of counsel, Cuyler v. Sullivan, 446, U.S. 344 (1980).

It is the position of the Petitioner that within his appeal of right as well as his Standard-4 Briefs, he has shown not only counsel's deficient performance but the prejudice that was result. The Michigan Court of Appeals, on the other hand made a decision based upon an incomplete record; and a misapprehension of the facts and applicable law. This contention is made due to the court's unpublished opinion and the reliance of only on of the three prongs for determining the presumption of prejudice analysis enunciated in United States v. Cronic, 466 U.S. 648 (1984).

If a claim is governed by Strickland, a Petitioner must typically demonstrate that specific errors made by trial Counsel, affected the ability for the Petitioner to receive a fair trial. If a claim is government by Cronic, the Petitioner needs not demonstrate any prejudice resulting from the lack of effective assistance of Counsel, whereas, "in some cases, the Sixth Amendment violations are so likely to prejudice the accused that the cost of litigating their effect in particular case is unjustified." Cronic, Supra, Id. 466 U.S. at 658.

There are three types of cases that warrant Cronic's presumption of prejudice analysis, these being: First, a complete denial of counsel, in which the accused is denied the presence of counsel at a critical stage." See, Bell, Supra, 122 S.Ct. at 1851; Second, is when counsel "entirely fails to subject the prosecutions case to meaningful adverserial testimony." See Cronic, supra, 466 U.S at 659; and thirdly, is when counsel is placed in circumstances in which competent counsel very likely could not render assistance. Cronic,

Supra, at 459.

The Michigan Court of Appeals Considered the third prong of the analysis of Cronic, without giving credence to the position of the Petitioner that the reviewing Court could not properly give a factual basis for their opinion., as they were not in possession of the complete record at the time of review. This point is argued in ISSUE-III supra, as Petitioner was denied assistance by appellate counsel as well as trial counsel obtaining the necessary documentation for review.

The constitutional guarentee are also afforded to the Petitioner with the right to Consult with Counsel during critical Stages, such as in the pretrial phase, as well as trial preparation. The Supreme Court has held that the pretrial period of the proceedings encompasses counsel to dutifully investigate the particulars of the case prior to crucial proceedings. Rothgery v. Gillespie County, Texas, 554 U.S. 191 (2008), and the denial of effective assistance at a critical stage mandates automatic reversal. Benoit v. Buck, 237 F. Supp 2d 804 (ED. Mich 2003).

Without the benefit of counsel willing to properly investigate Petitioner's account of what transpired on the night of alleged offense, Petitioner could not have possibly presented the defense necessary to obtain a verdict that did not result in a miscarriage of justice. If counsel would have requested a subpoena for video recordings of the Berrien County Jail, it would have shown that the Jail-House Witness never had any contact, with Petitioners.

If Counsel would have provided the effective assistance and properly investigated Petitioner case, he would secured the security surveillance tape of the A & D Liquor Store, where Petitioner first bought alcohol with Crystal McKenzie, and the victim Gary Allovich.

Counsel should have also obtained the security footage of the Sunny Spot Gas station prior to going to home of Prosecution Witness, Crystal McKenzie, that would have shown

Petitioner, Crystal, and Gary had no animosity towards each other as they were all friends from the same neighborhood.

If counsel provided the effective assistance of Counsel, that our Constitution guaranteed, counsel had an duty to produce witness Ashley Davis, for Petitioner's self-defense claim/theory, and/or at least interview her, considering her being exonerated, in this case at hand, due to prosecution key/eye witness, Crystal McKenzie recanting her statement, which if the jury would have known, the outcome have been totally different.

These facts, as well as others, would have been brought to the light before the jury, or at the least, used to impeach the prosecutions witnesses, with the inconsistant statements made, in order to gain a Conviction.

In Kimmelman, supra, the Supreme Court found that in the absence of a complete investigan by defense Counsel of the prosecution's case, the adversarial testing process is prone to malfuction.

Counsel's failure to objectively prepare and obtain the assistance of video evidence is unreasonable and brings forth negligence, which can not be misconstrued as sound trial strategy. Stewart v. Wolfenbarger, 468 F.3d 338 (6th Cir. 2006).

The failure to produce and present a witness favorable to the defense of a criminal defendant is not the exercise of reasonableness. It is a breath of Counsel's duty to prepare, investigate and present all substantial defenses. Beasley v. United States, 491 F.2d 687 (6th Cir. 1974).

Our Constitution guarantees that a defendant will receive the effective assistance of Counsel. Mich. Const. 1963, Art I, § 20. However, in the case at bar, Counsel was so deficient as to render any so

called assistance non existent.

RELIEF REQUESTED

Wherefore, due to Counsel's ineffective assistance, Petitioner Respectfully requests that this Honorable Court GRANT this request for relief as he feels he is entitled, and REMAND this case to trial Court for an Evidentiary Hearing pursuant to Ginther, Supra, for 1st Counsel of record, being. Richard Sammis.

VIII. THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS THAT PETITIONER'S FIFTH, SIXTH, AND FOURTEENTH RIGHT UNDER THE U.S CONSTITUTION, WAS NOT VIOLATED, WHERE PETITIONER WAS DENIED A FAIR-CROSS-SECTION OF JURY SELECTION AT TRIAL, THEREBY DENYING HIM DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

It is the contention of the Petitioner, that his Trial consisted of an "all white jury, where Petitioner is an "African American" male, denied him of a fair trial and Due Process as is guaranteed under the Equal Protection Clause of the Federal Constitution. Accordingly, the component of the jury selection process at issues herein, is that the State's privilege to strike individual jurors through peremptory challenges, is subjected to the commands of the Equal Protection Clause. Batson v. Kentucky, 476 U.S. 79, 89 (1986).

The Equal Protection Clause also guarantees the Petitioner that the State will not exclude members of his race from the jury venire, on account of his race. Strauder v. West Virigina, 100 U.S. 303, 305 (1880), and the jury must be indifferently chosen, in order to secure the Petitioner's right under the Fourteenth Amendment to protect life and liberty against race or color discrimination. Id. at 309.

Racial discrimination in selection of jurors harms not only the accused, whose life or liberty they are summoned to judge, denying a person participation in jury service on account of his race, the State unconstitutionally discriminates against the excluded juror. See Thiel v. Southern Pacific Co., 328 U.S. 217, 223-224, (1946). The harm from discriminatory jury selection extends beyond that inflicted on the Petitioner and the excluded juror to touch the entire community. Selection procedures that purposefully exclude black persons from juries undermines public confidence in the fairness of our system of justice. See, McCray v New York,

461 U.S. 961, 968 (1983).

In Duren v. Missouri, 439 U.S. 357 (1979), the Supreme Court provided a test in order to establish a prima facie violation of the fair cross-section requirement.

Once a defendant establishes a prima facie violation of the fair cross-section requre, under the 6th Amd., requirement, the Petitioner must prove that the group neglected from representation in the jury selection is a cognizable group. As is mandated under the first prong of the Duren supra, test, "African-American are considered a constitutional cognizable group for 6th Amd. fair section purposes." Hubbard, supra, at 473. The 6th Amd. applies to the Due Process Clause of the Fourteenth Amd... Duncan v. Louisiana, 391 U.S. 145, 149 (1968). In addition, the Michigan Constitution guarantees the right to trial by jury. Mich. Const. 1963, Art. I §14.

Since Duren, the federal courts have applied three different tests to measure whether representation of a distinctive group in the jury pool is fair and reasonably; The absolute Disparity Test, the Comparative Disparity Test, and the Standard Deviation Test. People v Smith, 463 Mich. 199, 203 (2000).

Our Supreme Court has further held that:

> "We thus consider all the approaches to measure whether representation was fair and reasonable, and conclude that no individual method should be used exclusive of the others. Accordingly, we adopted a case-by-case approach. Provided that the parties proffer sufficient evidence, courts should consider the results of all the tests in determing whether representation was fair and reasonable." Id at 204.

Because the United States Supreme Court has not adopted a specific test to measure under representation of a specific group during jury selection, the Michigan State Court's were bound to follow the case-by-case approach articulated in Smith, supra...

The absolute-disparity test measures the difference between the percentage of the distinctive group in the population eligible for jury duty and the percentage of that group who actually appear in the venire. Ramseur v. Beyer, 983 F2d 1215, 1231 (CA 3 1992). The Michigan Court of Appeals has previously recognized that the absolute-disparity method of measuring underrepresentation is of questionable of the population. Hubbard, supra, 217 Mich. App. at 476-77, and in this case African-Americans who made up a percentage of the Berrien County population when the Petitioner's jury was selected.

The Comparate-Disparity Test "measures the diminished likelihood that members of an underrepresented group, when compared to the population as a whole, will be called for jury service." Ramsear, supra, at 1231-32. The diminished likelihood is calculated by dividing the absolute-disparity by the percentage of the population made up by the distinctive group in question.

In the case at bar, Petitioner could not have been afforded a fair trial, where jury consisted of "only" Caucasion members of society. It may be said that prejudice is of the past, but when twelve "White" members of society look at a "Black-African-American" man accused of murder, prejudice is guaranteed.

Therefore, Petitioner pray's this Honorable Court concludes that Absolute-Disparity Test, is the most appropriate test to measure underrepresentation in this case, As the city of Benton Harbor, is numberated as having a significent number of African-American population, for non or very few, to be placed upon the jury pool at the back, to be "available" constitutes an underrepresentation considering that the Petitioner is in fact African-American.

Thus, this Court should GRANT the appropriate relief in accordance with 28 U.S.C. § 2254 (d)(1) and (2).

IX. THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION, ON THE BASIS THAT PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS GUARANTEED UNDER THE U.S CONSTITUTION TO EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL, AS OF RIGHT, WHERE NOT DENIED / VIOLATED, WHERE COUNSEL DENIED PETITIONER ACCESS TO THE COURTS AND JUDICIAL REVIEW.

The issue raised before this Court is one of ineffective assistance of appellate counsel. Appellant Counsel of record, Daniel J. Rust, was ineffective by:

1) Denying the Petitioner access to the Courts by failing to secure the necessary transcripts for appellate review;

2) Failing to properly present a competent and complete appeal for review;

3) Failure to properly expand the record in the trial Court, by way of a Ginther Hearing, for validation of claims of ineffective assistance of trial Counsel; and

4) Filed Petitioner's Direct Appeal Brief, as of right, when the Michigan Court of Appeals, did not have Jurisdiction, due to Petitioner's, Motion For A New Trial, Requesting Hearing Under People v. Ginther, was scheduled, in the Circuit Court.

These actions and or inactions by Appellate Counsel, Daniel J. RUST, Combined, not only denied Petitioner of his Constitutional Right to Due Process, but the cumulative effect of errors denied Petitioner the opportunity to properly present to the Court's, an perfected appeal.

1. ACCESS TO THE COURT'S - TRANSCRIPTS

Where the denial of the necessary transcripts for appellate review are not procured by appellate counsel, the issues for review are abandoned due to counsel's negligence.

In the instant case, Petitioner and Retained Counsel, Shawn P. Smith, notified Appellate Counsel of the necessary transcripts, that were needed to substantiate his claims for appellate review.

However, Appellant's Counsel refused to obtain the needed transcripts, thereby denying Petitioner access to legal remedies within the Michigan Courts.

Where Petitioner requested that pretrial be secured for the use in the appellate arena, and appellate counsel ignored the request there was a breakdown in the attorney-client relationship.

The United States Court of Appeals states in-part:

> "Reasonable jurists could not disagree with district Courts' acceptance of the state court's decision that Davis had no constitutional right to represent himself on a direct appeal where he was already appointed counsel." (quoting Martinez v. Court of Appeal of Cal, 528 U.S. 152 163 (2000); Mc Means v. Brigano, 228 F.3d 674 (6th Cir. 2000).

The above statements, are not contrary to Griffin v. Illinois, 351 U.S. 12 (1956). The United States Supreme has consistently held that an indigent defendant has the right to transcripts on an appeal.

The United States Court of Appeals further states:

> "Moreover, Davis did receive a copy of the transcripts",

Which, Michigan Court Rules 6.425 (E) (2) (a) (iii) states:

> "such transcripts of other proceedings, not previously transcribed, that the courts directs or the parties request".

Petitioner was given the trial transcripts, 1-22-15, after complaining to the courts and filing grievance through Attorney Grievance Commission. Petitioner was sent Trial and Sentencing only, after Petitioner mentioned he had to meet an 84 day

deadline, after Appellate Counsel filed Petitioner's Direct Appeal Brief December 8, 2014.

Michigan has an Minimum Standard 6, which states:

"Counsel shall promptly REQUEST and REVIEW ALL TRANSCRIPTS and LOWER COURT RECORDS".

This standard is not only a requirement for adequate represent, but can be used to support a request for production of records. The requirement that assigned counsel REVIEW THE ENTIRE RECORD, including but not limited to the transcripts, carries with an OBLIGATION of the courts to provide reasonable access to that record.

Petitioner's Appellate Counsel failed to review the entire record and based Petitioner's Direct Appeal off "only" the trial and sentencing transcripts, which, Petitioner requested for Pretrial Hearings transcripts as well, and was denied. Petitioner's Due Process Rights was violated, and his Equal Protection Clause as well.

Petitioner was appointed Appellate Counsel, in the month of March, 2014. Petitioner's last Motion For Production of Transcripts And Court Records, on April 1, 2016; was granted on April 20, 2016, after constant denial. (See Appendix-K)

The Courts regards the lack of transcripts as affecting access to the courts or availiability of appeal, whereas the lack of counsel affects the quality of appeal.

When Petitioner requested that pretrial transcripts be secured for the use in the appellate arena, and appellate counsel ignored the request, there was a break-down, in the Attorney-Client Relationship.

The right to access to the courts finds support in several provisions of the Constitution, including the Due Process Clause, of the Fourteenth Amd... Wolff v. McDonnell, 448 US 539, 579 (1974), the

Equal Protection Clause, Pennsylvania v Finley, 481 U.S 551, 557 (1987), and the Privileges and Immunities Act of Artiele IV.

2. COMPLETE APPEALATE REVIEW – OMITTED ISSUES

An appellate attorney's primary concern is to ensure that their own performance best serves their client. Perez v. Wainwright 640 F.2d 596, 599 (CA 5, 1981); Entsminger v. Iowa, 386 U.S. 748 (1967) As guaranteed by the 6th Amd. of the U.S. Const., a Petitioner is entitled to representation by Conflict-free Counsel. Cuyler v Sullivan, 446 U.S. 335, at 348 (1980) and Conflict exist when there is dispute in the issues to be presented for review.

Where prejudice is proven on an attorney-client relationship, reversal is mandated. United States v Morrison, 499 U.S. 361 (1979), and Petitioner is surely prejudiced where the appellate issues are inadequate.

It is invidious discrimination for the Michigan Court's to consider the merits of an indigence First Appeal of Right, without the benefit of adequate counsel, Here, the only individuals examining an incomplete record for possible errors is the Petitioner, an indigent lay person untrained in law, with an appellate attorney, whom fail to obtain complete record for appellate review.

However, when appellate counsel either fails or blatantly refuses to secure the necessary transcipts of pretrial proceedings, so a petitioner could substantiate his claims, the action substantiates the depriviation of counsel at the initial review, and degrades the entire appellate process to a meaning less ritual. See, Mata v. Egelar, 383 F.Supp 1091, 1093-94 (ED Mich. 1974).

As the appellate review is for the case between the STATE OF MICHIGAN v DAVIS, Counsel is just that, "Counsel." Petitioner, as one, has the authority to act on his own behalf, as the proceedings are against him and not counsel, appellate attorney Danial J. Rust, must take the direction of Petitioner as his client.

However, When "ignored issues are clearly stonger then those presented [by appellate counsel], the prosumption of effective assistance of counsel [will] be overcome." See People v. Reed 449 Mich. 375, 404 (1995)

When Petitioner asserted his belief in his appeal and directed appellate counsel to act own his behalf to obtain the necessary transcripts and procure an adequate arguement on the issue as seen by Petition, is when the conflict between Petitioner and Counsel began.

3. FAILURE TO REQUEST GINTHER HEARING

Once Petitioner requested from Appellate Counsel that a Ginther Hearing must be held to verify Petitioner's claims of ineffective assistance of trial counsel, appellate counsel should have motioned the State Court's for an Evidentiary Hearing, in order to develop a testimonial record to support claims of ineffective of trial counsel as shown in arguments V, VI.A.-VI.G., and VII, for Attorney Richard Sammis, and Attorney Ernest White, See People v. Ginther, 390 Mich. 436 (1973) (the rules applies to claims of ineffective assistance of trial Counsel where the substance of the claimed errors is not Contained in the record).

The Professional judgement of a lawyer should be exercised within the bounds of the law, soiely for the benefit of his client and free of comparmising influences and loyalites. Neither his personal interest, the interests or desires of a third person should be permitted to dilute his loyality to his client. (ABA STANDARD'S, CODE OF PROFESSIONAL RESPONSIBILITIES, EC 5-1).

WHEREFORE, due to Appellate Counsel's ineffective assistance of, Petitioner respectfully requests for the relief as he feels he is entitled, and REMAND this case to the Trial Courts for an Evidentiary Hearing pursuant to Ginther, pertaining to appellate Counsel Daniel J. Rust.

CONCLUSION

Petitioner, Jovon C. Davis, has been deprived of basic fundamental rights guaranteed by the Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and seeks relief in this Court to relief in this Court to restore those rights. Based on the arguments and authories presented herein, Petitioner's Conviction was affirmed in violation of Equal Protection Clause and Due Process of law because Petitioner did not receive an fair trial that's Constituted by our U.S. Constitution as well as Michigan Constitutions. Petitioner was deprived of his right to effective assistance of trial and appellate counsel, in the state courts. Petitioner prays this Court will issue a Writ of Certiorari and reverse the judgement of the 6th Circuit Court of Appeals.

RELIEF REQUESTED

WHEREFORE, Petitioner, Jovon Charles Davis, prays this Honorable Court will GRANT this petition and order Petitioner's immediate release, or GRANT such other, further, and different relief as this Court may deem just and proper under the circumstances.

VERIFICATION / CERTIFICATION

Jovon Charles Davis, under penalty of perjury states that the foregoing is true and correct to the best of my information, knowledge, and belief.

Respectfully Submitted, on this 1 day of 2020

June 1, 2020

Jovon Davis #591753

JOVON CHARLES DAVIS #591753
Pro Se Representation
Chippewa Correctional Facility
4269 W. M-80
Kincheloe, Michigan 49788-1634

APPENDIX TO PETITION

Appendix (1) Michigan Court of Appeals Judgement

Appendix (2) Michigan Supreme Court Judgement

Appendix (3) United States District Court, In The Eastern District of Michigan Judgement

Appendix (4) United States Court of Appeals, In The Sixth Circuit Judgement

Appendix (5) Attorney Grievance Commission (Complaint)

Appendix (6) Attorney Grievance Commission (Response)

Appendix (7) Motion For Certificate Pursuant to Uniform Act to Secure Attendence of Witness, From Without State.

Appendix (8) Petition To Hold Material Witness To Bail, Order To Hold Meterial Witness To Bail After Hearing.

Appendix (9) Aurthur Jones plea-bargin

Appendix (10) Aurthur Jones Volunteering / Acting as an Agent Kite

Appendix (11) Petitioner's Motion For Production of Records and Judges Order Granting Petitioners Motion.

APPENDIX - 1

Michigan Court Of Appeals Judgement

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOVON CHARLES DAVIS,

Defendant-Appellant.

UNPUBLISHED
March 22, 2016

No. 320773
Berrien Circuit Court
LC No. 2013-000303-FC

Before: O'CONNELL, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317; assault with intent to commit murder, MCL 750.83; felon-in-possession of a firearm, MCL 750.224f; carrying a concealed weapon, MCL 750.227; possession of a firearm during the commission of a felony, MCL 750.227b; and domestic assault third offense, MCL 750.81(4). The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to concurrent terms of imprisonment of 600 months to 100 years for the murder conviction, 300 to 900 months for the assault conviction, 76 to 240 months for the felon-in-possession and carrying a concealed weapon convictions, and 46 to 180 months for the domestic assault conviction, preceded by two years for the felony-firearm conviction. Defendant appeals by right. We affirm defendant's convictions but remand for correction of the judgment of sentence to reflect that the sentence for carrying a concealed weapon is concurrent with the felony-firearm sentence.

Defendant's convictions arise out of the murder of Gary Alilovich and the assault of Heather Britt on January 18, 2013, at the house of Crystal McKenzie in Benton Harbor.

Defendant first argues that the trial court either erred in allowing the late endorsement of Robert Jones, who testified about statements that defendant made to him after defendant was placed in the same jail block as he, or for refusing to grant a continuance so that he could have time to prepare to challenge Jones's testimony. The trial court denied defendant's request for an adjournment. Thus, the issue whether the trial court erred in not adjourning trial as a remedy for the late endorsement is preserved. *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). But, because defendant never argued that the late endorsement was not supported by good cause, that issue is unpreserved. *Id.* We generally review a trial court's decision to permit the late endorsement of a witness for an abuse of discretion. *People v Callon*, 256 Mich App 312, 325-326; 662 NW2d 501 (2003). A trial court abuses its discretion when its

decision falls outside the range of reasonable and principled outcomes. *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). A trial court's decision on a motion for an adjournment is generally reviewed for an abuse of discretion. *People v Coy*, 258 Mich App 1, 17; 669 NW2d 831 (2003). We review unpreserved claims of error, however, for plain error affecting the defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

At least 30 days before trial, the prosecutor must send to defendant or defense counsel a list of the witnesses that she intends to produce at trial. MCR 767.40a(3). The prosecutor may add or delete witnesses from this list "at any time upon leave of the court and for good cause shown or by stipulation of the parties." MCL 767.40a(4).

The prosecutor did not learn about Jones and the possibility of his testifying until four days before trial. She sent a detective to interview Jones, and it was not until the day before trial that the prosecutor learned the details of Jones's proposed testimony. The late discovery of Jones provided good cause for the late endorsement. *People v Gadomski*, 232 Mich App 24, 37; 592 NW2d 75 (1998); *People v Canter*, 197 Mich App 550, 563; 496 NW2d 336 (1992).

"Ordinarily, late endorsement should be permitted and a continuance granted to obviate potential prejudice that might result. All that is necessary is that the objecting party have time to interview the witness before he is called to testify, and to investigate facts bearing on his credibility, when appropriate." *People v Harrison*, 44 Mich App 578, 586; 205 NW2d 900 (1973) (internal citations omitted). The prosecutor agreed not to call Jones as a witness until the end of trial, and there was no dispute that trial would last several days. Accordingly, defendant had the opportunity to interview Jones. This opportunity obviated any potential prejudice that might result from the late endorsement. *Id.*; see also *People v Lino*, 213 Mich App 89, 92-93; 539 NW2d 545 (1995), overruled on other grounds *People v Carson*, 220 Mich App 662 (1996). The trial court's decision to deny an adjournment fell within the range of reasonable and principled outcomes. *Unger*, 278 Mich App at 217.

Defendant next argues that the trial court erred when it ordered that his sentence for carrying a concealed weapon run consecutively to his sentence for felony-firearm. The prosecutor concedes error, and we agree: A conviction for carrying a concealed weapon, MCL 750.227, will not support a felony-firearm conviction, and thus cannot be ordered served consecutively to a felony-firearm sentence. See MCL 750.227b(3); *People v Bonham*, 182 Mich App 130, 137; 451 NW2d 530 (1989). We remand for correction of the judgment of sentence.

In a Standard 4 brief and in a supplemental Standard 4 brief, defendant argues that the trial court improperly denied him copies of transcripts and court records. A trial court's obligation to provide an indigent defendant with transcripts and court documents depends on whether the transcripts and documents are desired to pursue an appeal of right, an appeal by leave, or other post-conviction relief. MCR 6.433; *People v Caston*, 228 Mich App 291, 294; 579 NW2d 368 (1998). The present case involves an appeal by right. Thus, MCR 6.433(A) applies, and it provides:

> An indigent defendant may file a written request with the sentencing court for specified court documents or transcripts, indicating that they are required to

pursue an appeal of right. The court must order the clerk to provide the defendant with copies of documents without cost to the defendant, and, unless the transcript has already been ordered as provided in MCR 6.425, must order the preparation of the transcript.

After he was sentenced, defendant filed an affidavit of indigency and requested the appointment of appellate counsel. The trial court appointed appellate counsel for defendant. An appointment order must direct the court reporter to prepare and file the trial transcripts, the sentencing transcript, and transcripts of other proceedings that the court directs or the parties request. MCR 6.425(G)(2). "If the appointed lawyer timely requests additional transcripts, the trial court shall order such transcripts within 14 days after receiving the request." *Id.* Taken together, MCR 6.425(G)(2) and MCR 6.433(A) indicate that once a transcript has been provided to appellate counsel, the defendant is not entitled to additional copies of the transcript.

Appellate counsel requested a copy of each transcript. There is no claim that appellate counsel's request was not fulfilled. Thus, under the court rules, defendant was not entitled to his own copy of the transcripts. Additionally, in the court record, there is no written request filed by defendant for documents that are in the court record. Absent such a request, the trial court had no duty to give copies of any court documents to defendant. See MCR 6.433(A). Defendant was not improperly denied access to transcripts and court records.

Also in his Standard 4 brief and supplemental Standard 4 brief, defendant argues that the trial court erred in denying his motion for an adjournment after he retained counsel and that the denial of the adjournment resulted in a violation of his right to be represented by counsel of his own choice. We review a trial court's decision on a motion for an adjournment for abuse of discretion, *Coy*, 258 Mich App at 17, and review constitutional issues de novo, *Callon*, 256 Mich App at 315.

An adjournment must be based on good cause. *Coy*, 258 Mich App at 18. Factors to consider whether good cause exists include " 'whether defendant (1) asserted a constitutional right, (2) had a legitimate reason for asserting the right, (3) had been negligent, and (4) had requested previous adjournments.' " *Id.* (citation omitted). The Sixth Amendment right to counsel guarantees a defendant, who does not require appointed counsel, the right to choose who will represent him. *United States v Gonzalez*, 548 US 140, 144; 126 S Ct 2557; 165 L Ed 2d 409 (2006).

When a defendant seeks an adjournment to retain or replace counsel, a trial court must carefully balance the defendant's right to counsel of his own choice against the public's interest in the orderly administration of justice. *United States v Burton*, 584 F2d 485, 489 (DC Cir, 1978). A key consideration to the right of counsel is a reasonable opportunity to employ and consult with counsel. See *United States v Johnston*, 318 F2d 288, 291 (CA 6, 1963) ("But if a defendant in a criminal case desires to hire his own counsel, in order that the object of the Sixth Amendment be met, such defendant must have fair opportunity and reasonable time to employ counsel of his own choosing."). "Once a fair and reasonable initial opportunity to retain counsel has been provided, and adequate counsel obtained, the court, mindful of the accused's interest in having counsel in whom he has confidence, is free to deny a continuance to obtain additional

counsel if, upon evaluation of the totality of the circumstances, it reasonably concludes that the delay would be unreasonable in the context of the particular case." *Burton*, 584 F2d at 490.

> What is a reasonable delay necessarily depends on all the surrounding facts and circumstances. Some of the factors to be considered in the balance include: the length of the requested delay; whether other continuances have been requested and granted; the balanced convenience or inconvenience to the litigants, witnesses, counsel, and the court; whether the requested delay is for legitimate reasons, or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstances which gives rise to the request for a continuance; whether the defendant has other competent counsel prepared to try the case, including the consideration of whether the other counsel was retained as lead or associate counsel; whether denying the continuance will result in identifiable prejudice to defendant's case, and if so, whether this prejudice is of a material or substantial nature; the complexity of the case; and other relevant factors which may appear in the context of any particular case. [*Id.* at 490-491 (footnotes and citations omitted).]

The trial court's denial of defendant's request for an adjournment did not deny defendant a fair opportunity and reasonable time to retain counsel of his own choice. Defendant was arraigned on January 22, 2013, but he did not retain counsel until just before the trial that began January 14, 2014. Additionally, trial had already been adjourned twice. The second adjournment was because the trial court granted defendant's request to remove his first appointed counsel. Notably, defendant did not seek retained counsel after his first attorney withdrew. He waited seven weeks, until the eve of trial. Retained counsel then requested an adjournment of at least four months even though the case did not present any complex issues. While defendant did not want his appointed replacement defense counsel to represent him, he made no specific claim that this counsel was unprepared, incompetent to try the case, or that he and counsel had irreconcilable differences. Under these circumstances, the trial court's denial of an adjournment fell within the range of reasonable and principled outcomes. *Unger*, 278 Mich App at 217. Defendant was not denied his Sixth Amendment right to be represented by an attorney of his choice.

Defendant argues in his Standard 4 brief that he was denied effective assistance of counsel because defense counsel only had "mere weeks" to prepare for trial. In *United States v Cronic*, 466 US 648, 658-662; 104 S Ct 2039; 80 L Ed 2d 657 (1984), the United States Supreme Court identified three "rare" situations in which counsel's performance is so deficient that prejudice is presumed. One of these situations is where counsel is called upon to render assistance under circumstances where competent counsel very likely could not. *People v Frazier*, 478 Mich 231, 243 n 10; 733 NW2d 713 (2007). Circumstances "may be present on some occasions when although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate . . . ." *Cronic*, 466 US at 659.

Defense counsel represented defendant for at least seven weeks before trial began. In *Cronic*, 466 US at 663-665, the Supreme Court held that the defendant was not entitled to a presumption of prejudice where counsel represented the defendant for a shorter amount of time.

Additionally, defendant has not identified any circumstances that would likely have prohibited any attorney, even a fully competent one, from providing effective assistance of counsel. *Cronic*, 466 US at 658-662. Defendant's claim that he was denied effective assistance of counsel based on the length of defense counsel's representation is without merit.

Additionally, defendant argues in his Standard 4 brief that based on defense counsel's actual performance, he was denied effective assistance of counsel. To establish a claim for ineffective assistance of counsel, a defendant must show that counsel's performance fell below objective standards of reasonableness and that but for counsel's deficient performance, there is a reasonable probability that the result of the proceedings would have been different. *People v Uphaus (On Remand)*, 278 Mich App 174, 185; 748 NW2d 899 (2008).

Defendant claims that defense counsel was ineffective because he failed to object to Jones's testimony as a violation of defendant's Sixth Amendment right to counsel. In *Massiah v United States*, 377 US 201, 206; 84 S Ct 1199; 12 L Ed 2d 246 (1964), the United States Supreme Court held that "once a defendant's Sixth Amendment right to counsel has attached, he is denied that right when federal agents deliberately elicit incriminating statements from him in the absence of his lawyer." *Kuhlmann v Wilson*, 477 US 436, 457; 106 S Ct 2616; 91 L Ed 2d 364 (1986). The concern of *Massiah* and a subsequent line of cases "is secret interrogation by investigatory techniques that are the equivalent of direct police interrogation." *Id.* at 459. "[A] defendant does not make out a violation of that right simply by showing that an informant, either through prior arrangement or voluntarily, reported his incriminating statements to the police. Rather, the defendant must demonstrate that the police and their informant took some action, beyond merely listening, that was designed deliberately to elicit incriminating remarks." *Id.*

Jones testified that he came into contact with defendant after defendant was moved into the same jail block as he. There is no record evidence to indicate that the police purposely placed defendant in the same block as Jones or that the police and Jones had worked out a plan to gain incriminating statements from defendant. Nothing on the record refutes that Jones, on his own and without any instruction or encouragement from the police, brought defendant's statements to the attention of the prosecutor and police. So, an objection to Jones's testimony on the basis that it violated defendant's Sixth Amendment right to counsel would have been futile; failing to assert a futile objection is not ineffective assistance. *Unger*, 278 Mich App at 256.

Defendant also claims that defense counsel was ineffective because he failed to conduct an investigation, to impeach witnesses, to contact experts in self-defense and forensic pathology, to hire a private investigator, and to call character and alibi witnesses. These claims, to be successful, required a testimonial record. See *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Although the trial court held an evidentiary hearing on defendant's motion for a new trial, defendant wrote and submitted his Standard 4 brief before the hearing was held. In that brief, defendant leaves it to this Court to search for a factual basis to sustain his claims. As such,

the claims are abandoned. *People v Petri*, 279 Mich App 407, 413; 760 NW2d 882 (2008).[1] We have nevertheless reviewed them and find them to be without merit.

Defendant next argues in his Standard 4 brief that he was denied due process and a fair trial by misconduct of the police and the prosecutor. We review these unpreserved claims of error for plain error affecting substantial rights. *Carines*, 460 Mich at 763-764.

There is no merit to defendant's claim that he was denied due process because the police and the prosecutor failed to conduct a gunpowder residue test or failed to interview witnesses who would have provided evidence that he was not the perpetrator. We have previously held that because the police are not required to seek and find exculpatory evidence, a defendant is not denied due process when the police fail to test the defendant's hands for gunpowder residue. *People v Miller*, 211 Mich App 30, 43; 535 NW2d 518 (1995). Moreover, defendant bore the burden of furnishing the Court with a record to verify the factual basis of any argument. *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000). Nothing in the record indicates that any witness who had knowledge of the events on January 18, 2013, was not interviewed.

Defendant's next claim, that he was denied due process because the prosecutor failed to correct inconsistent or changed statements of witnesses, is abandoned. Defendant does not identify the alleged inconsistent or changed statements, nor does he state the witnesses who gave them. See *Petri*, 279 Mich App at 413 (holding an appellate court need not consider arguments unsupported by citations to the record). We additionally reject defendant's argument that he was denied due process because the prosecutor or the police coerced McKenzie into giving false testimony. There is no record evidence of any acts of intimidation by the police or the prosecutor. See *Elston*, 462 Mich at 762. We also reject defendant's argument that the prosecutor's use of other acts evidence denied him due process and a fair trial. No evidence of other acts by defendant was admitted at trial.[2]

Next, in his Standard 4 brief, defendant argues that he is entitled to a new trial because the trial court was biased against him. Because defendant never moved to disqualify the trial court from presiding over his trial, the issue is unpreserved. *People v Mixon*, 170 Mich App 508, 514; 429 NW2d 197 (1988), rev'd in part on other grounds 433 Mich 852 (1989). Our review is therefore limited to plain error affecting substantial rights. *Carines*, 460 Mich at 763.

Due process requires an unbiased and impartial decision-maker. *Cain v Dep't of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996). A judge is not impartial when the

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[1] Because defendant fails to establish that defense counsel's performance, in any manner, was deficient, his claim that he is entitled to a new trial based on the cumulative effect of the deficiencies in counsel's performance is without merit. See *People v Dobek*, 274 Mich App 58, 106; 732 NW2d 546 (2007).

[2] Because defendant fails to establish any misconduct by the police or the prosecutor, defendant's claim that he is entitled to a new trial based on the cumulative effect of the misconduct is also without merit. See *Dobek*, 274 Mich App at 106.

judge is personally biased or prejudiced for or against a party. MCR 2.003(C)(1)(a); *Cain*, 451 Mich at 494-495. There is a heavy presumption of judicial impartiality. *Cain*, 451 Mich at 497.

We reject defendant's claim that the trial court was biased against him because it refused his requests for his own separate copy of the transcripts and court records. As discussed *supra*, defendant was not entitled to his own copy of the transcripts and he filed no written request for court documents. Because the trial court was under no duty to provide defendant with copies of the transcripts and court documents, the trial court's failure to provide defendant with transcripts and court documents is not evidence of bias.

We also reject defendant's claim that the trial court was biased against him because it made several prejudicial and erroneous rulings. The only ruling referenced by defendant is the trial court's decision to deny an adjournment on the first day of trial. The mere fact that a judge rules against a litigant, even if the ruling is later determined to be erroneous, is not sufficient to show bias. *In re Contempt of Henry*, 282 Mich App 656, 680; 765 NW2d 44 (2009). "[J]udicial rulings, in and of themselves, almost never constitute a valid basis for a motion alleging bias, unless the judicial opinion displays a deep-seated favoritism or antagonism that would make fair judgment impossible." *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 597; 640 NW2d 321 (2001) (quotation omitted). The trial court's ruling does not display a deep-seated antagonism against defendant. The trial court denied the motion to adjourn because the motion was made on the eve of trial, the case was almost a year old, and had already been adjourned twice. Nothing in the trial court's ruling indicates that it wanted defendant to be represented by counsel who was unfit and ill-prepared to try the case. Defendant has failed to overcome the strong presumption of judicial impartiality. *Cain*, 451 Mich at 497.

Defendant further argues in his Standard 4 brief that his convictions are not supported by sufficient evidence. We review de novo a challenge to the sufficiency of the evidence. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). We view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the prosecution proved the elements of the crime beyond a reasonable doubt. *Id.*

The elements of second-degree murder are "(1) a death, (2) the death was caused by an act of the defendant, (3) the defendant acted with malice, and (4) the defendant did not have lawful justification or excuse for causing the death." *People v Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007). Malice is the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm. *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). The elements of assault with intent to murder are (1) an assault, (2) with the actual intent to kill, and (3) that if death results, would make the killing murder. *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005). The elements of domestic assault are (1) the commission of an assault or an assault and battery and (2) the defendant and the victim are spouses or former spouses, are in or had a dating relationship, have a child in common, or are residents of the same household. MCL 750.81(2); *People v Cameron*, 291 Mich App 599, 614; 806 NW2d 371 (2011); *People v Corbiere*, 220 Mich App 260, 266; 559 NW2d 666 (1996).

Britt testified that she and defendant had been dating "off and on" for six years and that they lived together. On January 18, 2013, Britt and Alilovich, whom Britt had previously dated,

were at McKenzie's house. McKenzie testified that after she and defendant arrived, defendant started to hit Britt in the face with his hands after she pushed him. Alilovich, using words only, tried to stop defendant. Defendant pushed Alilovich, and then started to hit Britt in the face with his fists. Alilovich tried to stop defendant again, telling defendant to "get the fuck back." McKenzie did not see Alilovich with a knife. According to McKenzie, while she was in the kitchen fighting with Ashley Davis, defendant's cousin, she heard a gunshot in a bedroom. She ran toward the bedroom, and saw defendant pointing a gun at Alilovich. Alilovich was on his knees and begging defendant not to shoot. McKenzie ran out of the bedroom after she saw defendant take a second shot at Alilovich. McKenzie heard a third gunshot when she was outside. Britt's young son, who was in another bedroom, testified that he heard two gunshots and then Alilovich say "please don't do this." He then heard two more gunshots. According to her son, Britt came into the bedroom; her left chest was bleeding. Defendant also came into the bedroom and started to hit Britt in the face. He then stomped on her face more than once.

Dr. Robert Clark, qualified as an expert in pathology, performed an autopsy on Alilovich. Clark testified that Alilovich had gunshot wounds to the back of his right elbow, the back of his right shoulder, and his head. Clark opined that the cause of death was exsanguination from a gunshot wound to the chest. Alilovich had no wounds that suggested he had been in a fight. Dr. Glen Hastings, qualified as an expert in general and trauma surgery, treated Britt in the emergency room. Hastings testified that Britt had a concussion, four or five fractured ribs on each side of her chest, fractures in the lumbar spine, a fracture of the right orbital bone, and five gunshot wounds, including one to her left breast.

Three bullets were recovered from Alilovich's body, and two were recovered from the bedroom where defendant had stomped on Britt's face. Lieutenant Jeff Crump, qualified as an expert in firearms and tool mark identification, testified that he compared the five bullets to test shots from the .32-caliber revolver that was found in the woods. Crump identified four of the five bullets as having been fired from the revolver, and he could not exclude the revolver as having fired the fifth bullet. The revolver was silver with a black handle, and Britt had previously seen defendant with a silver .32-caliber revolver with a black handle. In his interview, defendant told two detectives that he shot Alilovich two times. According to Jones, defendant said that after his family members arrived, he and Alilovich had more words. He then pulled out the gun and shot Alilovich twice and Britt once.

Viewing this evidence in a light most favorable to the prosecution, a rational trier of fact could have found that the prosecution proved the elements of second-degree murder, assault with intent to commit murder, and domestic assault beyond a reasonable doubt. *Cline*, 276 Mich App at 642. The convictions are supported by sufficient evidence.

The elements of felon-in-possession of a firearm (specified felony), MCL 750.224f(2), are (1) the defendant possessed a firearm, (2) the defendant was previously convicted of a specified felony, (3) less than five years have passed since the defendant successfully completed probation or parole, completed a term of imprisonment, and paid all fines with regard to the underlying felony, and (4) the defendant's right to possess a firearm has not been restored. M Crim JI 11.38a. The parties stipulated that defendant had previously been convicted of possession with intent to deliver cocaine, which is a specified felony, see MCL 750.224f(10)(b), and that defendant was on parole on January 18, 2013. Viewing this evidence, as well as the

evidence previously summarized, in a light most favorable to the prosecution, a rational trier of fact could have found that the prosecutor proved the elements of felon-in-possession of a firearm beyond a reasonable doubt. [3] The conviction is supported by sufficient evidence.

The elements of carrying a concealed weapon are (1) the defendant knowingly carried a firearm and (2) the firearm was concealed on the person. M Crim JI 11.1. A firearm is concealed if there is "some kind of withdrawal from observation so as to hide or secrete an object." *People v Kincade*, 61 Mich App 498, 504; 233 NW2d 54 (1975). McKenzie testified that she went to Britt's house to buy cocaine and defendant was there. Jones testified that defendant said he had a gun with him when he opened the door for McKenzie. According to McKenzie, she went to a store with defendant. McKenzie testified that she did not see a gun until after she heard the gunshot while she was fighting with Ashley. Viewing this evidence in a light most favorable to the prosecution, a rational trier of fact could have found that the prosecutor proved the elements of carrying a concealed weapon beyond a reasonable doubt *Cline*, 276 Mich App at 642. The conviction is supported by sufficient evidence.

The elements of felony-firearm are that "the defendant possessed a firearm during the commission of, or the attempt to commit, a felony." *People v Avant*, 235 Mich App 499; 597 NW2d 864 (1999); MCL 750.227b. Viewing the evidence that supports the convictions of second-degree murder, assault with intent to commit murder, domestic assault, and felon-in-possession of a firearm in a light most favorable the prosecution, a rational trier of fact could have found that the prosecutor proved the elements of felony-firearm beyond a reasonable doubt. *Cline*, 276 Mich App at 642. The conviction is supported by sufficient evidence.

Defendant next argues in his Standard 4 brief that he is entitled to a new trial because the cumulative effect of the errors identified in the brief that occurred during pretrial proceedings and at trial denied him a fair trial. "While it is possible that the cumulative effect of a number of errors may constitute error requiring reversal, only actual errors are aggregated to determine their cumulative effect." *People v Rice (On Remand)*, 235 Mich App 429, 448; 597 NW2d 843 (1999) (quotation marks and citations omitted). Because defendant has not established any actual errors, no cumulative effect of errors denied defendant a fair trial. *Id.*

In his Standard 4 brief, defendant also argues that he was denied effective assistance of appellate counsel because appellate counsel failed to raise the issues that he asserts in his Standard 4 brief.[4] The test for ineffective assistance of appellate counsel is the same as the test

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[3] "The prosecutor must prove that the defendant's right to possess a firearm has not been restored only if the defendant produces some evidence that his right has been restored." *People v Perkins*, 262 Mich App 267, 271; 686 NW2d 237 (2004), aff'd 473 Mich 626 (2005), and clarified on other grounds *People v Smith-Anthony*, 494 Mich 669, 682 (2013). Defendant did not present any evidence that his right to possess a firearm had been restored.

[4] In his supplemental Standard 4 brief, defendant repeats the argument that appellate counsel was ineffective for failing to raise the issue that the trial court's refusal to adjourn trial after he retained counsel resulted in a violation of his right to be represented by counsel of his own choice.

applicable to a claim of ineffective assistance of trial counsel. *Uphaus (On Remand)*, 278 Mich App at 186. None of the issues raised in defendant's Standard 4 brief entitles defendant to relief. Consequently, appellate counsel's failure to raise those issues did not fall below objective standards of reasonableness or result in prejudice. See *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000) (stating that counsel is not required to advocate a meritless position).

In his supplemental Standard 4 brief, defendant argues that he was denied due process because the trial court sat as both the district court and the circuit court. We review this unpreserved claim of error for plain error affecting substantial rights. *Carines*, 460 Mich at 763.

In 2003, pursuant to MCL 600.401, the Berrien County Trial Court adopted a plan of concurrent jurisdiction. See Administrative Order 2015-11 of the Berrien County trial court. Under this plan, each judge in the court is conferred with jurisdiction to act in all proceedings in which jurisdiction was in the circuit court, the probate court, or the district court. *Id.* Defendant has not provided any authority to suggest that this plan of concurrent jurisdiction violates a defendant's right to due process. Accordingly, defendant has failed to show plain error. *Carines*, 460 Mich at 763.

Defendant next argues in his supplemental Standard 4 brief that the trial court erred in refusing to recuse itself from proceedings regarding his motion for a new trial, which was based on claims of ineffective assistance of counsel. Although defendant provides law regarding disqualification, the issue is abandoned. In his argument, defendant does not articulate any ground for why the trial court was disqualified from presiding over further proceedings. He has left it to this Court to discover the factual basis and rationalize the legal basis for the claim. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . .").

Defendant also argues in his supplemental Standard 4 brief that the trial court erred in failing to address his request for substitute appellate counsel. In a November 2014 letter, defendant requested that he be appointed new appellate counsel. The trial court called a hearing, held on January 22, 2015, after it received a number of letters from defendant, in which defendant complained of appellate counsel's representation. At the hearing, the trial court recalled that one of defendant's complaints was that he did not have a copy of the transcripts. The trial court told defendant that it had asked its secretary to mail a copy of the transcripts to defendant. It then asked defendant if he had any other complaints. Defendant replied, "Basically that's really all." "It is settled that error requiring reversal may only be predicated on the trial court's actions and not upon alleged error to which the aggrieved party contributed by plan or negligence." *Lewis v LeGrow*, 258 Mich App 175, 210; 670 NW2d 675 (2003). By stating that he had no other complaints regarding appellate counsel, defendant contributed to any error that

the trial court made in not addressing his request for substitute appellate counsel. Accordingly, defendant is not entitled to any relief for the alleged error.[5]

Finally, in his supplemental Standard 4 brief, defendant argues that he was denied the right to be tried by a jury drawn from a fair cross section of the community. We review this unpreserved claim of error for plain error affecting substantial rights, *Carines*, 460 Mich at 763.

The Sixth Amendment right to jury includes the right to an impartial jury drawn from a fair cross section of the community. *People v Bryant*, 491 Mich 575, 595; 822 NW2d 124 (2012). To establish a prima facie violation of the fair-cross-section requirement, a defendant must establish the following:

> (1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process. [*Duren v Missouri*, 439 US 357, 364; 99 S Ct 664; 58 L Ed 2d 579 (1979).]

Defendant makes no argument that applies the three prongs of the *Duren* test to the present case. Accordingly, he fails to establish plain error. *Carines*, 460 Mich at 763.

We affirm defendant's convictions, but we remand for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Jane E. Markey
/s/ Christopher M. Murray

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[5] Defendant argues that he was denied a fair trial by the cumulative effect of the trial court's errors in acting as both the district court and the circuit court, denying his motion to recuse itself from further proceedings, refusing to provide defendant with copies of the transcripts and court documents, failing to hear his motion for substitute appellate counsel, and denying an adjournment after he retained counsel. However, because defendant fails to establish that any error occurred, the argument is without merit. See *Dobek*, 274 Mich App at 106.

APPENDIX - 2

Michigan Supreme Court Judgement

Order

Michigan Supreme Court
Lansing, Michigan

Stephen J. Markman,
Chief Justice

Robert P. Young, Jr.
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen,
Justices

January 31, 2017

153924

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 153924
COA: 320773
Berrien CC: 2013-000303-FC

JOVON CHARLES DAVIS,
Defendant-Appellant.

/

On order of the Court, the application for leave to appeal the March 22, 2016 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 31, 2017

Clerk

APPENDIX - 3

United States District Court, In the Eastern District of Michigan Judgement

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOVON C. DAVIS,

Petitioner,

v.

WILLIS CHAPMAN,

Respondent.

Case No. 18-10391

Hon. Terrence G. Berg

JUDGMENT

In accordance with the opinion and order issued on this date, DENYING the Petition for a Writ of Habeas Corpus;

It is ORDERED AND ADJUDGED that the case be dismissed and judgment entered in favor of Respondent.

Dated at Detroit, Michigan: April 30, 2019

DAVID J. WEAVER
CLERK OF THE COURT

s/A. Chubb
Case Manager and Deputy Clerk

APPENDIX - 4

United States Court of Appeals, For The Sixth Circuit Judgement

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: May 06, 2020

Jovon C. Davis
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, MI 48446

Re: Case No. 19-1540, *Jovon Davis v. Willis Chapman*
Originating Case No.: 2:18-cv-10391

Dear Mr. Davis,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Mr. Linus Richard Banghart-Linn

Enclosure

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
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Filed: December 04, 2019

Mr. Linus Richard Banghart-Linn
Office of the Attorney General
of Michigan
P.O. Box 30217
Lansing, MI 48116

Mr. Jovon C. Davis
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, MI 48446

Re: Case No. 19-1540, *Jovon Davis v. Willis Chapman*
Originating Case No. : 2:18-cv-10391

Mr. Davis and Counsel,

The Court issued the enclosed order today in this case.

Sincerely yours,

s/Cheryl Borkowski
Case Manager
Direct Dial No. 513-564-7035

cc: Mr. David J. Weaver

Enclosure

No mandate to issue

No. 19-1540

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOVON C. DAVIS,

Petitioner-Appellant,

v.

WILLIS CHAPMAN, Warden,

Respondent-Appellee.

ORDER

Jovon C. Davis, a Michigan state prisoner, moves for a certificate of appealability and in forma pauperis status on appeal from a district court decision denying his petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254.

In 2014, a jury convicted Davis of second-degree murder, assault with intent to murder, commission of a felony with a firearm, domestic violence, carrying a concealed weapon, and being a felon in possession of a firearm. He was sentenced to 52 to 102 years of imprisonment. His conviction was affirmed in the state courts.

In this petition for federal habeas corpus relief, Davis argued that the state court erred in failing to address his motion for substitution of appellate counsel, denying a continuance for him to retain an attorney of his choice, endorsing a witness the day before trial and denying a continuance on that ground, and refusing to recuse. He also raised numerous claims of ineffective assistance of counsel, complained that he was convicted by a jury containing no African Americans, and claimed that he had been denied transcripts to appeal. The district court examined each claim on the merits in a thorough opinion and denied the petition.

To obtain a certificate of appealability, Davis must show that reasonable jurists could debate whether the petition should have been resolved in a different manner. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Because the state court reviewed the claims on the merits, the district court reviewed that decision to determine whether it was contrary to or an unreasonable application of clearly established federal law. *See Renico v. Lett*, 559 U.S. 766, 773 (2010).

In his first claim, Davis argued that his motion for substitution of appellate counsel was not addressed. However, the record showed that the court held a hearing on the issue and determined that Davis would be satisfied if he was given a copy of the transcripts to file his own brief. Davis agreed with this resolution of the issue.

In his second claim, Davis argued that he was denied effective assistance of counsel when the trial court denied him a continuance to retain counsel of his choice. The district court found that the state court had properly applied pertinent factors in determining that the motion was correctly denied where it was made on the eve of trial, Davis and counsel had only differences of opinion and not a lack of communication, and he had previously received a continuance and a second appointed counsel. *See United States v. Sullivan*, 431 F.3d 976, 981-82 (6th Cir. 2005) (affirming denial where no conflict required substitution); *United States v. Trujillo*, 376 F.3d 593, 606-07 (6th Cir. 2004) (affirming denial of untimely motion). Moreover, the district court examined the record and determined that the second appointed attorney rendered effective assistance, and Davis therefore could not establish prejudice. *See United States v. Vasquez*, 560 F.3d 461, 468 (6th Cir. 2009).

The third claim was that the trial court should have granted an adjournment when the prosecutor learned of a new witness, a jail informant, four days before trial. The state court found that the parties resolved the matter by agreeing that the witness would not be called until the end of the several-day trial. The district court also reviewed the record and concluded that counsel effectively cross-examined the witness.

The fourth claim argued that the trial judge should have recused himself. However, the only arguments on this ground were that the judge ruled against Davis on several issues, so his claim did not represent the type of extreme case where disqualification would be constitutionally required. *See Getsy v. Mitchell*, 495 F.3d 295, 311 (6th Cir. 2007).

Several claims of ineffective assistance of counsel were raised, arguing that counsel failed to: 1) investigate issues such as the victim's expertise in martial arts and the jail informant's background; 2) present a complete defense by not consulting with Davis prior to trial and not investigating the witnesses; 3) call witnesses; 4) cross-examine witnesses; 5) object to testimony; 6) hire an investigator; and 7) object to the prosecutor's closing argument. Davis was required to show that counsel's performance was deficient and that the result of the trial was prejudiced. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). The district court concluded that the state court's finding that counsel actively represented Davis at trial was not contrary to or an unreasonable application of clearly established law. Counsel filed a motion to suppress the statement Davis made to police, engaged in plea negotiations, moved for a continuance, argued self-defense, and moved for a directed verdict. Counsel did introduce evidence that the murder victim was a martial arts fighter. Davis did not show how additional consultation with counsel could have altered the outcome of the trial. *See Bowling v. Parker*, 344 F.3d 487, 506 (6th Cir. 2003). Davis provided no affidavits from character witnesses that he alleged counsel should have called. His claim that counsel should have conducted further cross-examination was purely speculative. The district court found that the state court reasonably found that trial counsel's strategy of not repeatedly objecting to evidence where the court had already ruled against him was not ineffective assistance. The claim that an investigator should have been hired was also speculative. Finally, the prosecutor's closing argument was based on inferences supported by the evidence and an objection would have been meritless. Reasonable jurists therefore could not disagree with the district court's conclusion that the state court reasonably rejected conclusory allegations of ineffective assistance lacking in any evidentiary support. *See Workman v. Bell*, 178 F.3d 759, 771 (6th Cir. 1998).

Next, Davis argued that there were no African Americans on his jury. Reasonable jurists could not disagree with the district court's acceptance of the state court's decision that Davis made no showing of systemic exclusion under *Duren v. Missouri*, 439 U.S. 357, 364 (1979). The absence of African Americans on this particular jury was insufficient to grant habeas relief.

Lastly, Davis argued that he was denied transcripts needed to prepare his pro se brief on appeal. Reasonable jurists could not disagree with the district court's acceptance of the state court's decision that Davis had no constitutional right to represent himself on direct appeal where he was already appointed counsel. *See Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 163 (2000); *McMeans v. Brigano*, 228 F.3d 674, 684 (6th Cir. 2000). Moreover, Davis did receive a copy of the transcripts.

On this record, reasonable jurists would not debate the district court's conclusion that the state court's factual determinations were not unreasonable and that its decision was not contrary to or an unreasonable application of clearly established Supreme Court precedent. *See Schriro v. Landrigan*, 550 U.S. 465, 473 (2007); *Robins v. Fortner*, 698 F.3d 317, 328 (6th Cir. 2012).

The motion for a certificate of appealability is therefore **DENIED**. The motion for in forma pauperis status is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

No. 19-1540

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 06, 2020
DEBORAH S. HUNT, Clerk

JOVON C. DAVIS,

Petitioner-Appellant,

v.

WILLIS CHAPMAN, WARDEN,

Respondent-Appellee.

ORDER

Before: SUTTON, McKEAGUE, and NALBANDIAN, Circuit Judges.

Jovon C. Davis petitions for rehearing en banc of this court's order entered on December 4, 2019, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX - 5

Attorney Grievance Commission (Complaint)

535 Griswold, Suite 1700
Detroit, MI 48226

REQUEST FOR INVESTIGATION (R/I) FORM

Please fill out the entire form in ink – sign at the bottom – and provide a copy of any relevant information. In order to expedite the processing of your complaint, please provide 2 copies of any supporting documents.

Attorney information:

Name (one attorney per R/I form): Daniel J. Rust		
Address (number and street): P.O. Box 40089		
City: Redford	State: Michigan	Zip Code: 48240
Area code and Telephone Number: 313 837 7734	Date attorney was hired/appointed: 4-7-14	
Type of case (divorce, criminal, estate, etc): Criminal		
Name of court: Berrien County	Case #: 2013-000303	
Is this your first complaint to this office about this attorney? yes	Date of previous complaint (if applicable):	

STATEMENT OF FACTS

(Please provide details. You may attach additional pages.)

I am writing in regard to my appellate counsel, Daniel J. Rust(32856) The attorney is in violation of the Michigan Rules of Professional Conduct (MRPC). I asked Mr. Rust to obtain a number of transcripts to help adequately prepare the appellate brief. Also, he has not properly investigated my case which is contrary to (M.R.P.C.) rule 1.1(b)(c). There has been a lack of communication which may be the key to our destroyed relationship. When I requested to review Mr. Rust's briefs before he submit it, his response was, "Are you an Attorney?" The Failed communication violates (MRPC) 1.4(b). The attorney's failure to comply with my requests are contrary to (MRPC) rule 1.2(a) and rule 1.3. The attorney's performance makes me feel uneasy because I went through the same process with my trial counsel. Pursuant to (MRPC) rule 8.4(b), which states it is professional misconduct for the misrepresentation. I am in no way satisfied with Mr. Rust's performance. I humbly asked to be appointed a new counsel;

I request the Attorney Grievance Commission investigate the above attorney:

Your Name – print in ink: Jovon DAVIS	Mr☑ Mrs☐ Ms☐	
Your Signature – in ink: Jovon Davis		Date: 9-22-14
Address (number and street): 1342 West Main Street		
City: Ionia	State: Michigan	Zip Code: 48846
Area code and Telephone number:		

(AGC RI Form rev. May 31, 2011)

(00049917.DOC)

APPENDIX - 6

Attorney Grievance Commission (Response)

STATE OF MICHIGAN

ATTORNEY GRIEVANCE COMMISSION

BUHL BUILDING
535 GRISWOLD, SUITE 1700
DETROIT, MICHIGAN 48226
TELEPHONE (313) 961-6585
WWW.AGCMI.COM

October 28, 2014

PERSONAL AND CONFIDENTIAL

Mr. Jovon Davis #591753
Michigan Reformatory
1342 West Main Street
Ionia, MI 48846

RE: Jovon Davis as to Daniel J. Rust
AGC File No. 1920-14

Dear Mr. Davis:

This office received your Request for Investigation, however, the allegations in your complaint are insufficient to warrant review by the Commission. Accordingly, after careful review by the staff, this matter is being closed under the authority of the Grievance Administrator pursuant to Michigan Court Rule 9.112 (C)(1) (a).

The Attorney Grievance Commission has no authority to direct any attorney to take any action on your behalf. We also have no authority to remove an attorney from your case. If you are unable to resolve your differences by communicating directly with your attorney, you may consider asking the court to appoint a new attorney.

Mr. Rust has been provided with a copy of your Request for Investigation. If my staff or I can be of service to you in the future, please do not hesitate to contact us again.

Very truly yours,

Ruthann Stevens
Senior Associate Counsel

RS/bat
cc: Daniel J. Rust
Enclosure

{00244485.DOC}

APPENDIX- 7

Motion For Certificate Pursuant to Uniform Act TO Secure Attendence Of Witness, From Without State

STATE OF MICHIGAN

IN THE TRIAL COURT FOR THE COUNTY OF BERRIEN

THE PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,

-vs-

JOVON CHARLES DAVIS

Defendant.

File No. 2013000303-FY

MOTION FOR CERTIFICATE PURSUANT TO UNIFORM ACT TO SECURE ATTENDANCE OF WITNESS FROM WITHOUT STATE

/

NOW COME the People of the State of Michigan by their Attorney, Patricia T Ceresa, Assistant Prosecuting Attorney, in and for the County of Berrien and move this Court for the issuance of a certificate to secure the attendance of one Charles Lee Marcus Davis Jr, believed to be a resident or working in the City of Plymouth, County of Hennepin, State of Minnesota.

The People further state:

1. That the State of Michigan has enacted the Uniform Act to Secure the Attendance of Witnesses from Without a State in criminal proceedings, being MCLA 767.91 et. seq.; MSA 28.1023(191) et. seq.

2. That the State of Minnesota has also enacted the Uniform Act to Secure Attendance of Witnesses from Without the State in criminal proceedings, being M.S.A. §§ 634.06 to 634.09.

3. That the above named defendant is charged in Berrien County Trial Court with the offense of 750.316-C, Hom-Opn Mrdr-Stat Sht Frm; 750.83, Assault WI To Murder; 750.224F, Poss Firearm by Felon; 750.227, WPN-Carrying Concealed; 750.227B-A, Weapons-Felony Firearms.

4. That the Preliminary Examination in the above matter has been set for the 25th day of April, 2013, at 8:30 am in the Berrien County Courthouse, St. Joseph, Michigan and is scheduled for 1 day(s) of testimony.

5. That the People of the State of Michigan are required to produce all material witnesses upon the trial of this cause.

6. That Charles Lee Marcus Davis Jr is a material witness to this particular offense in that he/she has knowledge and information necessary to properly resolve the above entitled matter.

7. That said witness is required to testify in the Berrien County Trial Court in the above entitled matter pursuant to Michigan law and is, therefore, a material and necessary witness to the prosecution in this matter.

8. That attendance and testifying in the prosecution of this matter will not cause undue hardship to the witness.

9. That pursuant to MCLA 767.94; MSA 28.1023(193) said Charles Lee Marcus Davis Jr shall not, while in this state, pursuant to such summons as may be issued by the Courts of Berrien County be subject to arrest or the service of civil or criminal process in connection with matters which arose before his/her entrance into this State under said summons.

10. That statutory witness fees are being forwarded to the Court in Hennepin County, for the named witness.

WHEREFORE, the People pray that this court issue a certificate and forms attached hereto pursuant to the authority of MCLA 767.92 et. seq.; MSA 28.1023(191) et. seq.

Respectfully submitted,

Patricia T Ceresa
Assistant Prosecuting Attorney
Berrien County, Michigan

APPENDIX - 8

Petition To Hold Material Witness To Bail Order

To Hold Material Witness To Bail After Hearing

STATE OF MICHIGAN
IN THE TRIAL COURT FOR THE COUNTY OF BERRIEN

THE PEOPLE OF THE
STATE OF MICHIGAN

Plaintiff,

-vs-

JOVON CHARLES DAVIS,

Defendant.
_____/

File No. 2013-000303-FY

Judge Gary J. Bruce

ORDER TO HOLD MATERIAL WITNESS TO BAIL AFTER HEARING

FILED
MAY 20 2013
BERRIEN COUNTY
TRIAL COURT

Patricia T. Ceresa (P40251)
Assistant Prosecuting Atty
811 Port Street
St. Joseph, MI 49085
(616) 983-7111 Ext. 8311
_____/

Richard Sammis (P43777)
Attorney for Defendant
606 Main Street
St. Joseph, Mi 49085
616 983-1803
_____/

A Petition having been filed in this case by the People of the State of Michigan by and through Patricia T. Ceresa, Assistant Prosecuting Attorney, setting forth that Charles Lee Marcus Davis Jr. (a black male born 04/01/84) is a necessary and material witness in a criminal case in a Court in said County, and that there is danger of the loss of Charles Lee Marcus Davis Jr's testimony in said cause, or in default of bail that Charles Lee Marcus Davis Jr. be committed to the County Jail until the conclusion of said case, and as attachment having been issued thereon, and the said material witness having been before this Court, and, after hearing the proofs presented, it satisfactorily appearing that said person is a material and necessary

witness in said cause, and that there is danger of the loss of Charles Lee Marcus Davis Jr. testimony unless they furnish bail or are committed in default of bail, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that the said Charles Lee Marcus Davis Jr. furnish bail in the sum of 50,000 cash/surety conditioned upon his appearance in the Courts of this County, for all examinations, all hearings and trials in said cause, or, in default thereof, be committed to the custody of the Sheriff of this County until such bail be furnished, or until discharged by the further Order of this Court.

DATED: 5-17-13

Gary J. Bruce
Trial Court Judge

Attest:

Deputy Clerk

Bond - 50,000 d/s
No Contact w/ Jovon Davis

STATE OF MICHIGAN
IN THE TRIAL COURT FOR THE COUNTY OF BERRIEN

THE PEOPLE OF THE
STATE OF MICHIGAN

Plaintiff,

-vs-

JOVON CHARLES DAVIS,

Defendant.
_____/

File No. 2013-000303-FY

Judge Gary J. Bruce

PETITION TO HOLD MATERIAL WITNESS TO BAIL

ENTERED

PATRICIA T. CERESA (P40251)
Office of Prosecuting Attorney
811 Port Street
St. Joseph, MI 49085
(616) 983-7111 Ext. 8311
_____/

Richard Sammis (P43777)
Attorney for Defendant
606 Main Street
St. Joseph, Mi 49085
616 983-1803
_____/

FILED
MAY 21 2013
BERRIEN COUNTY
TRIAL COURT

STATE OF MICHIGAN)
)ss
COUNTY OF BERRIEN)

NOW COMES, the People of the State of Michigan by and through Patricia T. Ceresa, Assistant Prosecuting Attorney, and respectfully shows:

1. THAT there is a criminal case pending in the Trial Court for the County of Berrien, in which case the name of the Defendant is as shown above on this petition.

2. THAT Charles Lee Marcus Davis Jr. (a black male born 04/01/84) is a necessary and material witness in said criminal case, and there is danger of the loss of his/her testimony unless he be required to furnish bail or be committed in the event he fails to furnish such bail.

3. Charles Lee Marcus Davis Jr. served a subpoena on April 10, 2013 for a preliminary examination on April 25, 2013.

4. THAT Charles Lee Marcus Davis Jr. failed to appear on April 25, 2013, called the Assistant Prosecutor and was instructed come to the prosecutor's office on said date to discuss the case with the prosecutor

5. Charles Davis Jr. did not appear and the prosecutor has made numerous efforts to contact Charles Davis Jr. without success.

6. Police officers have attempted to locate Charles Davis Jr. to this date without success.

7. Charles Davis Jr. is an eye witness to the crime of murder and the shooting of Heather Poe and is material to the case.

WHEREFORE, your petitioner therefore prays that an attachment be issued pursuant to MCLA 767.35 (MSA 28.975) requiring said witness to be brought before this Court to show cause why Charles Lee Marcus Davis Jr. (a black male born 04/01/84) should not be required to enter into a recognizance to appear and give testimony in said cause.

DATED: May 17, 2013

Patricia T. Ceresa
Assistant Prosecuting Attorney

Subscribed and sworn to before me, a Notary Public in and for the County of Berrien, this 17th day of May, 2013.

Susanne Wagner, Notary Public
My Commission Expires: 7/22/2018

Additional material from this filing is available in the Clerk's Office.

IN THE SUPREME COURT OF THE UNITED STATES
FOR THE DISTRICT OF MICHIGAN

JOVON C. DAVIS
Petitioner,

VS.

UNITED STATES OF AMERICAN
Respondent

L.C.No.: 13-303-FC
C.O.A. No: 370773
Mich. S.ct. No: 153924
Habeas Corpus No: 2:18-cv-10391
U.S.C.O.A. No: 19-1540

PROOF OF SERVICE

I, JOVON DAVIS, do swear or declare that on this date May , 2020 as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS; PETITION FOR WRIT OF CERTIORARI and Appendix on each party to the above proceeding on that party's counsel, and on every other person required to be served, by depositing an envelope, containing the above documents, with an Authorized Legal-Mail Disbursement, to be processed, in the United States mail properly addressed to each of them, prepared as follows:

Mr. Linus Richard Banghart-Linn
Office of the Attorney General of Michigan
P.O. BOX 30217
Lansing, MI. 48116

May 1, 2020

Jovon Davis #591753
PRO SE REPRESENTATION
Chippewa Corr. Facility
4269 W. M-80
Kincheloe, Michigan 49784