No. 20-7664

USAP6 No. 20-1158

IN THE

SUPREME COURT OF THE UNITED STATES

JESSIE WILLIE GREEN — PETITIONER
(Your Name)

vs.

Willis Chapman, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES SIX CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JESSIE WILLIE GREEN
(Your Name)

3225 John Conley Drive
(Address)

Lapeer, MI. 48446
(City, State, Zip Code)

(Phone Number)

IN THE

SUPREME COURT OF THE UNITED STATES

JESSIE WILLIE GREEN,
Petitioner,
v.

WILLIS CHAPMAN, WARDEN,
Respondent
_____/

Case No.
USAP6 No. 20-1158

Dana Nessel - Michigan Attorney General
Attorney for Respondent

Jessie Willie Green
Petitioner appearing propria persona
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, MI. 48446
_____/

PETITION FOR WRIT OF CERTIORARI

Now comes Jessie Willie Green, respectfully a citizen layman at law, of the United States a resident of Wayne County, Michigan Indigent litigant, asks this honorable court to exercise its equitable, supervisory powers to grant me relief for the following reasons:

I am currently unconstitutionally detained and imprisoned by Respondent, Warden Willis Chapman at the Thumb Correctional Facility in Lapeer, Michigan serving 7-15 years for, Unlawful Imprisonment, MCL 750.349b; 3-5 years for, Assault by Strangulation, MCL 750.84(1)(b); 2-4 years for, Felonious Assault with a Dangerous Weapon, MCL 750.82; and 2 years for, Felony Firearm, MCL 750.227b, to be served preceding and consecutive to count 1, 2, and 3, with (97) days Jail credit goes toward the FF count only. I was convicted in the THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE, STATE OF MICHIGAN, before the honorable Michael M. Hataway Circuit Court No. 14-470 FH. On January 23, 2014 sessions began in the case People v Jessie Willie Green. The people were represented by Ms. Danielle Russo, p66492 assistant prosecutor; I

was represented by Mr. Ronald McDuffie, retained p34858. First, on 01/02/2014., the defense filed an adjournment in the 36th Judicial District Court where counsel moved the court to sequester the complainant because of identification issues where the complainant did not identify me in either police photographic-line-up display as she stated on the first line-up document Quote " It looks like number (4) i'm not sure." but I was in the number (6) position. Then the police did a second line-up where I was placed in the number (4) position where the first person was in the prior line-up, complainant wrote on the second line-up document Quote, " I Think he is the one who attacked me. " During this time and before the court denied the request the prosecutor already had the complainant siting in the back of the court room where she could view me outside of any posible subsequent corporal line-up that was being requested, At preliminary hearing 01/17/2014., counsel stated Quote " YOU HAVE A WITNESS HERE WHO REALLY HAS NOT IDENTIFIED MY CLIENT. " See Vol. PE. Id. at [48. 16-25]. The District Court bound me over for trial anyway! On 02/25/2014., counsel filed a Motion To Suppress the Identification. Counsel raised the identification issues and they were denied on 03/18/2014. Subsequently, I was convicted in a (3) day trial that began on 03/19/2014., I did not testify per counsel's advise that the state had not met its minimum burden to charge. On 03/20/2014., in trial counsel moved to have the governments endorsed police witness to testify but was arbitrarily denied the fundamental U.S. sixth amendment right to confront the witnesses against me and denied substantive due process of law specifically through the confrontation clause. See Vol. II. 03/20/2014., [122-129] Id. at 126-129. From these convictions I have exhausted all state remedies available to me with regard to the U.S. fourth, fifth, sixth, and fourteenth amendments by taking the following steps. I attempted to establish my meritorious claims not limited to the above violations that rendered trial counsel ineffective to

adequately prepare and present a defence because the prosecutor never although requested for impeachment purposes, never provided the defense with a copy of the exculpatory video-recorded evidence that omits any weapon being used in this case and shows contrary to complainant's testimony, she could not have seen her attackers face. In the video, that person had on a mask fully covering their face and never removed it from start of the video to finish. My efforts although diligent, in seeking to obtain my case files, materials, in-camera inspection and evidentiary hearings to establish my claims, were encumbered by state court arbitration and partly by appellate counsel Daniel J. Rust,p-32856 lack of basic investigations and deficient performance to raise the claims on direct appeal. Moreover, the trial court's failure to substitute his appointment when I moved the court and showed that the need was warranted because there was a major breakdown in communication between appellate counsel and myself damaging the relationship irreparably and counsel would not withdraw. (See Motion filed in the trial court 09/05/2014., Appendix (3)a.

(2). Pursuant to S. Ct. R. 10(a). where the United States Court of Appeals for the Sixth Circuit has so far departed from accepted and usual course of judicial proceedings, or sanctioned such a departure by the lower courts.

(3). The United States Court of Appeals for the Sixth Circuit has also decided an important federal question in a way that conflict with relevant decision of this court. And other Federal Circuit Courts.

(4). I was granted the right to proceed in Forma Pauperis on Appeal to the United States Sixth Circuit Court of Appeals from the United States District Court for the eastern District of Michigan on 01/31/2020., See ECF # 27.

TABLE OF CONTENTS

Argument:

I. I AM ENTITLED TO REVERSAL OF CONVICTION WHERE THE STATE COURT DENIED ME SUBSTANTIVE DUE PROCESS OF LAW SPECIFICALLY THROUGH THE CONFRONTATION CLAUSE BY NOT ALLOWING MY COUNSEL TO CALL THE GOVERNMENT'S ENDORSED POLICE WITNESS TO TESTIFY IN TRIAL AND;

(a). RENDERED TRIAL COUNSEL INEFFECTIVE TO ADEQUATELY PRESENT A DEFENSE AND;

(b). THE STATE COURTS UNREASONABLE DETERMINATION OF THE FACTS TO NOT FIND APPELLATE COUNSEL INEFFECTIVE FOR NOT RAISING THESE CLAIMS ON DIRECT APPEAL AND NOT ADEQUATELY COMMUNICATING WITH HIS CLIENT.

II. I AM ENTITLED TO RELIEF WHERE THE FEDERAL CIRCUIT COURT HAS SO FAR DEPARTED FROM ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, OR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT WHO'S DECISIONS CONFLICT WITH RELEVANT DECISION OF THIS COURT.

III. I AM ENTITLED TO RELIEF WHERE ALTHOUGH I HAD AN OPPORTUNITY TO RAISE MY FOURTH AND FOURTEENTH AMENDMENT CLAIMS OF THE RIGHT TO BE SECURE IN MY PERSON FREE FROM UNREASONABLE SEIZURE AND HAVE DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW, PRESENTATION OF THE CLAIMS WAS FRUSTRATED BY STATE COURTS MECHANISMS AND UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED THAT I WAS NOT POSITIVELY IDENTIFIED IN A POLICE LINE-UP DISPLAY NECESSARY TO THE FINDING OF PROBABLE CAUSE TO CHARGE.

(a). I AM ENTITLED TO RELIEF WHERE THE PROSECUTION DENIED ME DUE PROCESS OF LAW BY NOT PROVIDING ME WITH A COPY OF EXCULPATORY VIDEO-RECORDED EVIDENCE AND; UNTIMELY DISCLOSURE AND ;

(b). BY NOT PROVIDING ME WITH A COPY RENDERED MY COUNSEL INEFFECTIVE TO ADEQUATELY PREPARE AND PRESENT A DEFENCE.

QUESTIONS PRESENTED

I. IS THE PETITIONER ENTITLED TO REVERSAL OF CONVICTION WHERE THE STATE COURT ARBITRARILY DENIED ME SUBSTANTIVE DUE PROCESS OF LAW SPECIFICALLY THROUGH THE CONFRONTATION CLAUSE BY NOT ALLOWING DEFENSE COUNSEL TO CALL THE GOVERNMENT'S POLICE WITNESS TO TESTIFY IN TRIAL AND;

(a). DID THAT RENDER TRIAL COUNSEL INEFFECTIVE TO ADEQUATELY PRESENT A DEFENSE THAT WOULD PROVIDE A FAIR ADVERSARIAL TESTING PROCESS THAT CAN BE RELIED UPON TO PRODUCE JUST RESULTS AND;

(b). IS IT AN UNREASONABLE DETERMINATION OF THE FACTS FOR THE STATE COURT TO NOT FIND APPELLATE COUNSEL INEFFECTIVE FOR NOT RAISING THESE CLAIMS ON DIRECT APPEAL AND NOT ADEQUATELY COMMUNICATING WITH HIS CLIENT.

II. IS THE PETITIONER ENTITLED TO RELIEF WHERE THE FEDERAL CIRCUIT COURT HAS SO FAR DEPARTED FROM ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, OR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT WHO'S DECISION CONFLICTS WITH RELEVANT DECISION OF THIS COURT.

III. IS PETITIONER ENTITLED TO RELIEF WHERE ALTHOUGH I HAD AN OPPORTUNITY TO RAISE MY FOURTH AND FOURTEENTH AMENDMENT CLAIMS OF THE RIGHT TO BE FREE FROM UNREASONABLE SEIZURE, DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW, PRESENTATION OF THE CLAIMS WAS FRUSTRATED BY A FAILURE OF THE STATE COURTS MECHANISM AND UNREASONABLE DETERMINATION OF FACTS IN LIGHT OF THE EVIDENCE PRESENTED THAT I WAS NOT POSITIVELY IDENTIFIED IN A POLICE LINE-UP DISPLAY NECESSARY TO THE FINDING OF PROBABLE CAUSE FOR ARREST/SEIZURE.

(a). IS PETITIONER ENTITLED TO RELIEF WHERE THE PROSECUTION DENIED HIM DUE PROCESS OF LAW BY NOT PROVIDING HIM A COPY OF EXCULPATORY VIDEO-RECORDED EVIDENCE AND; UNTIMELY DISCLOSURE;

(b). BY NOT PROVIDING HIM A COPY DID THAT RENDER TRIAL COUNSEL INEFFECTIVE TO ADEQUATELY PREPARE AND PRESENT A DEFENCE.

TABLE OF AUTHORITIES

Cases PAGE

U.S. Constitutional Provisions

U.S. Fourth Amend...11,24,31,32
U.S. Sixth Amend...10,14,15,18,23,32,33
U.S. Fourteenth Amend..18,23,31,32,33

Mich. Const.
1963 Art.1. §11, 17, 20 ...

U.S. Federal Statutes
28 U.S.C. §2254 ... 24, 32

Michigan Statutes
M.C.L. 600.2123 ... 17, 18
M.C.L. 7.66 ... 17, 18
M.C.L. 7.664 ... 11
M.C.L. 750.82 ... 1
M.C.L. 750.84 ... 1
M.C.L. 750.227 ... 1
M.C.L. 750.349b ... 1
M.C.L. 767.37 ... 23
M.C.L. 775.16 ... 15, 23
M.C.L. 780.716 ... 12, 21

U.S. Supreme Court Rules
R. 10 ... 31

U.S. Federal Civ. Rules
R. 15 ... 26
R. 36 ... 29
R. 56 ... 27, 28

R. 59 ... 30

U.S. Federal Rules App. Proc
R. 4(a) 4A-iv... 30
R. 10 ... 31

U.S. Federal Crim. Rules
R. 4 ... 11

Michigan Court Rules
MCR 6.001 ... 18
MCR 6.104 ... 23
MCR 6.201 ... 17
MCR 6.433 ... 24
MCR 6.502 ... 24
MCR 6.508 ... 20, 24
MCR 7.203 ... 24
MCR 7.211 ... 22, 24
MCR 7.302 ... 24

STATEMENT OF JURISDICTION

I Petitioner Green, submits the United States Supreme Court basis for jurisdiction resides in Title 28 U.S.C. § 2101 and Supreme Court Rule 10., involving an appeal of a Writ of Habeas Corpus, Motion for Summary Judgment and Motion To Alter or Amend that judgment because I was convicted in a three day trial in the Third Judicial Circuit Court for the County of Wayne, in the State of Michigan on March 21, 2014., in violation of the U.S. Constitution.

The claim of appeal and request for Appellate counsel was filed with the trial court on April 28, 2014., Wayne County Circuit Court No. 14-470 FH.

The Michigan Court of Appeals affirmed September 10, 2015. Leave To Appeal to the Michigan Supreme Court was filed November 02, 2015., Court No. 321519., the Supreme Court was not persuaded that the questions presented should be reviewed by that court and denied leave on May 02, 2016.

On October 24, 2016., a Motion for Relief From Judgment was filed in the Third Judicial Circuit Court No. 152552, the trial court Summarily Denied relief November 28, 2016.,without adjudicating all claims or holding an Evidentiary Hearing. A Motion for Reconsideration was filed on December 15, 2016., it was denied Febuary 16, 2017.

On Febuary 02, 2017., the Application for Leave To Appeal in the Michigan Court of Appeals was filed, Wayne County Circuit Court No. 14-470 FH. The Court of Appeals delayed its filing until May 10, 2017., and denied leave July 13, 2017.

The Application for Leave to Appeal in the Michigan Supreme Court was filed on August 31, 2017., Court No. 337063. The court denied Leave on May, 29 2018., the Motion for Reconsideration was filed June 19 2018., Supreme Court No. 156396(27).And was denied on September 12, 2018. The Petition for Writ of

Habeas Corpus was filed in the Federal Eastern District Court of Michigan on November 02, 2018., Court No. 156396. A Motion for Summary Judgment was filed July 10, 2019., Federal District Court No. cv-18-13452., and denied July 25, 2019. The Motion To Alter or Amend that judgment and objections was filed on August 21, 2019. It was denied together with the Writ of Habeas Corpus and Certificate of Appealability January 31,2020., but granted Leave To Appeal in Forma Pauperis.

A Notice of Appeal and Certificate of Appealability was filed in the Eastern District Court of Michigan on February 09, 2020 but entered by the court February 19, 2020., (and denied June 29, 2020., by the United States Sixth Circuit Court.) On July 13, 2020., a Petition for Panel Rehearing was filed. It was denied on October 22, 2020. Court No. 20-1158

STATEMENT OF THE CASE

On March 19, 2014, before Honorable Michael M. Hathaway, Wayne County Circuit Court Judge, a jury trial was begun in the matter of the People of the State of Michigan v Jessie Willie Green, Wayne County Circuit Court No. 14-470 FH. I was charged in the information with Unlawful Imprisonment, MCL 750.349b; Assault by Strangulation, MCL 750.84(1)(b); Assault with a Dangerous weapon (Felonious Assault), MCL 750.82; Felony Firearm, MCL 750.227b. It was alleged that December 19, 2013, at or near 17151 Chandler Park Drive, Detroit, Michigan, I did assault Symphony Whitney while armed with a weapon.

The people were represented by Ms. Danielle Russo, p-66492 assistant prosecutor; I was represented by retained counsel Mr. Ronald McDuffie, p-34858.

The following witnesses were called: Symphony Whitney, Albert Whitney, Calvin Wright, Earl Jackson, Detroit Police Officers Charles Howard, Jeremiah Orvelo, Sergent Ron Gibson, Sergent Jose Ortiz, and Detroit Police Officer in charge, Jeffrey Manson.

Prior to trial, after hearing testimony from Sgt. Ortiz[1] (MH, 03/18/2014, 4-21) and Officer Manson (MH, 03/18/2014, 22-54), the court denied a motion to suppress a photographic identification.

After a jury was impaneled and preliminary instructed (I, 7-110), and opening arguments made prosecutor: (I, 114-123; defense: (I, 123-126), the following testimony was taken:

Ms. Symphony Whitney, was walking to school when she recalled walking by a vacant house and as she approached the house the defendant's green van was backed into the driveway partially blocking the sidewalk and she had to walk around the front of the van to get to the other side of the walkway in order

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[1] Transcript references are as follows: Volume I, 03/19/14; II, 03/20/14; MH, 03/18/14; BM, 03/11/14; ST, 04/04/14; PE, 01/17/14

to continue her path down the street, as she approached the passenger side, but before completely passing the van, she observed me kneeling down on the side of the van between the front bumper and front drivers side door, 03/19/2014, (I, 136. 2-25, 137. 1-23, 138. 1-16 and 161. 11-12), that she only saw my eyes, (I, 164. 4) with a ski-mask partially covering my face, and after I allowed her to see my face, jumped up ambushing her (I, 127-138). She fell into the snow and was scared, she was not sure if I had on a coat or not in the dead of the winter, (I, 146. 17-19), she was not sure if I had a mustache and beard, (I, 152. 2-18, 164. 14-25). At Preliminary exam 01/17/2014, she testified, at that time she was in shock, Id. at (41. 18-22), That I did not pull her towards the van, (I, 140. 15-16), she recall screaming as I tried to pull her up by her jacket not saying anything, but pulled her up by her neck, (I, 140. 3-14), then put her in a choke hold with my right arm but not squeezing so she was still able to scream for help. Then I pulled out an all black hand gun, pointed it at her head and told her to be quiet but she kept screaming and struggling to break free, (I, 166. 7-8). On direct exam she testified she did not know where I pointed the gun at on her, (I, 142. 23-24). As she was screaming, a white van was driving down the street, stoped, and someone got out. She maced me and was able to break free and run towards the white van for help.

She testified she never saw me exit or enter the van, (I, 145. 4-5). None of the witnesses saw anyone exit or enter my green van. She was able to get inside the white van, called her father, told him what happened and saw me go down the street wearing all black. She saw neighbors come out of their homes and was present when one of them called 911. She also was handed the phone so she could talk to the operator. She talked to the police and her father when they arrived at the scene. A sketch was prepared from the information she gave

to the police. She indicated the person was approximately 6 feet tall and skinny, around 30 years old. (I, 515). The same day, she was shown a photographic line-up at the station (I was # 6). She did not identify me, but tentatively picked out someone in the # 4 position. (I, 155).

The next day a Sergeant Ortiz visited her at home with a different set of photographs where I was then placed in the # 4 position where she tentatively identified me. (I, 157). She identified photographs of the van. (I, 145-163).

Mr. Calvin Wright was the first to witness the incident as he was driving to work in his white van, and testified he saw a young lady struggling with a man, 'like fighting'. the man was tall and skinny, wearing all black including a mask. They were fighting between a gate and the green van, she was on the ground and the person was trying to pull her up, he thought the person had his arm around her neck or 'something'. She did get up and he pulled her away from the green van, (I, 203. 6-8; 204. 10-14; 205. 12-14). As he was backing up, he got stuck in the snow. It appeared the man was pulling the girl up off the ground by her neck. He got out of his van, heard the young lady say 'Help, help,. The man let her go and she ran towards him, grabbed him, and when asked, said she did not know the person and he was trying to kidnap her. He told her to sit in his van and he went to the corner to see which way this person was going. The girls face was red and she was crying. He stayed with her until the police arrived. Someone else called the police. He gave a statement to Police. (I, 204-208). He told the police the person was 20-30 years old, between 5' 9" -6 . He never saw a weapon. As the man was leaving, he did not see his face or take his pants off. (I, 208-216).

Mr. Earl Jackson, was at his children's mother's house which was across the street from the vacant house, heard the screams but paid no attention because children would play and scream alot on the way to school. It continued so he

looked out a second floor window and saw a young lady being grabbed by a man and she was trying to get away. The man wore all black, the two people were struggling against the gate of the vacant house near the van, he did not see the person pull her towards the van, (I, 222. 17-25; 223. 4). None of the witnesses saw the person with a gun. Mr. Jackson ran downstairs, went outside the front door with his weapon drawn and observed the white van and a man running away. About three houses down he saw the man take off his pants as he was running away. He identified photographs of the interior of the van. He also gave statements to the police. He did not see a weapon. (I, 217-232). He saw a green van backed into the driveway of the vacant house. By the time he got outside, the young lady had gone to the white van and the person in it was helping her. He checked out the green van in the driveway: it was not running, a door was unlocked, and the keys in the ignition. He took the keys out and gave them to the police. He saw the person running around the corner going down Chandler Park Dr., and crossed the street (south bound) towards the East English High School, (I, 210. 16).

Officer Howard was working undercover on the day in question, responded to the location between 9:00-10:00am, after receiving information about a vehicle that was left behind by a possible suspect. It was my green van; the license plate was recorded. He received information it was registered to me in Harper Woods, Michigan. He and his partner made that location, in different vehicles. He noticed a black ford and a blue Buick in the driveway. He kept the house under survellance. The Ford was registered to a Henritta Barber with an adress of 6007 Farmbrook; the Buick was registered to a velvetann Jones and myself at 4111 Nottingham Rd. in Detroit. (II, 6-16).

At approximately 9:30am, he saw the Ford, driven by a female, go around the block a couple of times, about ten minutes later, he saw the Buick leave,

occupied by a male, they could not identify who was driving either vehicle. (II, 17-18; and was really not sure on the times. (II, 15-20. 1-9); 32-33. 1-11). He relayed the information to his superiors, later learned from his partner that both vehicles had made the address on Farmbrook. He responded to that location and saw both vehicles, unoccupied. The Farmbrook address was approximately eight blocks east and five blocks north from the incident. He stayed at that location for approximately half an hour, saw a male and a female leaving in the Buick around noon. A marked police vehicle was advised of the direction it went and he learned it was subsequently stopped. (II, 38-39). He arrived at the incident location at 8:20am. Other officers were present as were neighbors. (II, 26-33).

Officer Orvelo along with his partner made the traffic stop of the Buick at noon, driven by me; my passenger was my girlfriend, Vernell Fleming. My hand gun was recovered from my person. Officer Phillip Descamps was the contact officer. I was handcuffed and transported to their station at the order of Sergeant Ortiz. (II, 39-42).

Outside the presence of the jury, discussion was had regarding specific times. (II, 44-50).

Sergeant Ron Gibson, was assigned to the forensics team. On December 20, 2013, he responded to an address on Oldtown St. in Detroit, and was able to extract videos from two security cameras, which were played for the jury, after noting the time differential, because he enhanced the videos, which showed a green van pulling up and parking, showed a person in white walking, a person in black coming from the direction of the green van, and showed a white van arriving and someone getting out. (II, 52-69), juror #2, 3 and 4 wanted to see the video again but in real time for clarity, but was denied. (II, 67-68), the video showed the person in black with a ski-mask on from start to ending.

Sergeant Ortiz testified interview me on 12/19/2013, and noticed I looked younger than my three year old drivers license photograph, so he took a photograph which was sent to Officer Manson. During the interview I was in custody at that time. I was interviewed at 1:40pm for approximately 45 minutes, I refused to sign the statement nor did I write it, which was read into the record. (II, 69-87).

Officer Manson compiled the second photographic line-up and showed it to Ms Whitney on December 20, 2013, he was not aware that she had picked someone in the first line-up, because he never saw that line-up. He did not tell Ms. Whitney who to pic or give any hints. (II, 69-99).

Officer Manson was the Officer-in-charge. He obtained the information regarding the van, indicated the time the 911 call was made and officers made the scene. The green van had not been reported stolen. (II, 99-105).

He was involved in arranging the line-ups and randomly placed my photograph in the # 4 position. (II, 122-151). Ms. Whitney was showen the line-up at her home where she stated on the line-up document, " I Think he is the one who Attacked me ". It was signed by both her and her father.

The police called me to tell me I could come and pic up my green van, when I arrived, I was advised of my rights and another statement was taken. The statement was read to the jury with the exception of the last question and answer. (II, 112-122).

Prosecution rested as did defense. (II, 151).

Jury instructions were reviewed. On its own, the court reduced the second count to Attempt Strangulation. (II, 153-170). A motion for directed verdict was denied. (II, 170-172).

Closing arguments were made(prosecutor, II, 176-192,210-219; defense, II, 192-209).

The jury was instructed. (II, 219-238).

I was found guilty as amended. (III, 4).

On April 4, 2014, before Judge Michael M. Hathaway, the pre-sentence report and sentence guidelines were reviewed and corrected. (ST, 3-24).

ARGUMENT
CONFRONTATION

I. A defendant in a state criminal criminal prosecution is entitled to confront and cross-examine witnesses in his trial, U.S. Constitutional amendment Six. This fundamental right is made obligatory on the states guaranteed through the U.S. Constitutional amendment Fourteen.

I was denied the right to confrontation by a Michigan state court in trial 03/20/2014, that had cumulative effects when the judge deliberately confused the facts and precluded confrontation when defense counsel moved to call the governments endorsed police witness officer Phillip Descamps, #4474 to testify, see Appendix (46)a. who was the contact/arresting officer, by unreasonably determining that officer Descamps had previously testified when in fact he had not! The judge knew this or should have known because he had informed defense counsel that the officer on the stand Jerimah Orvelo, #3536 could not answer certain questions, that must be answered by his partner who was the contact/arresting officer, Phillip Descamps. See trial transcripts, 03/20/2014, Vol. II, [122-141]. Id. at [126-129]. also see [33-42].

I was arbitrarily deprived of testimony that would have been relevant, material and vital to my defense that could have established constitutional violations, by the court interfering with counsel's representation to make independent decisions about how to conduct the defense to develop a testimonial record. His absence was not harmless to the confrontation clause specifically, a denial of substantive due process of law. See Pointer v. Texas, 380 U.S. 400 (1965). Under these circumstances where the trial court abused it's discretion, I was not afforded a fair and impartial trial worthy of confidence and the conviction must be set aside. See Appendix (R8). Admissions, secured Id. [1. 1-2],[2. 3]. See Judicial Notice ECF # 22.

(a). A complete denial of counsel exists when the government actions deny a defendant the presence of counsel at a critical stage in the proceedings or where counsel entirely fails to subject the prosecutions case to meaningful adversarial testing, prejudice to the accused is presumed. U.S. v Cronic, 466 U.S. 648 (1984). Id. [659]. See Affidavit (1). Appendix (19)a.

Although counsel moved to call the above police witness and was denied arbitrarily, counsel's deficient performance in trial failing to object to the courts intrusion on his representation and abandoning the fourth amendment claim he raised in preliminary hearing, of the right to be free from unreasonable seizure was unreasonable representation constitutionally. He properly raised the argument that the state had not met its minimum burden to charge. See Vol. PE, 01/17/2014 Id. at [48-49]., because the identification of me was " SPECULATIVE. " The complainant stated on the line-up document, Quote, " I Think he is the one who attacked me." See Appendix(9)a(1.Peoples Exhibit (2)., signed and dated by complainant. The police provided in their complaint and affidavit/recommendation for warrant, that I was positively identified in their photographic line-up,. this was a flagrant misrepresentation of the facts and neglected to " set forth sufficient basis upon which a finding of probable cause could be made." For these reasons, the warrant issued here could not support a finding of probable cause by the issuing magistrate. See Overton v. Ohio, 534 U.S. 982(2001). Id. at [985-986]. See M.C.L. 766.13; Fed. Crim. R. 4; M.C.L. 766.4 See Appendix (30)a.

The doctrine of the U.S. IV. amendment apply to all invasions on the part of the government and its employees as a whole, of the sanctity of a man's home and privacies of life. It is the invasion of his indefeasible right of

personal security, personal liberty, and private property, and any intrusion is within the condemnation of the amendment, this extended to the states through the due process clause the right to be free against unreasonable seizures. See Mapp v. Ohio, 367 U.S. 643 (1961). Id. at [647]. Under these circumstances, a competent attorney would conduct basic pretrial investigations to advocate for his client as in Wong Sun v. United States, 371 U.S. 471 (1963)., Citing Giordenello v. United States, 357 U.S. 480,486;

> To challenge the arrset warrant procedure serves to insure that the deliberate, impartial judgment of a judicial officer will be interposed [482] between the citizen and the police, to assess [19] the weight and credibility of the information which the complaining officer adduces as as probable cause. To hold that an officer may act on his own, unchecked discretion upon information to vage and from too untested a source to permit a judicial officer to accept it as probable cause for an arrest warrant would , subvert this fundamental policy. See M.C.L. 780.716(b) (e)

In Jaben v. United States, 381 U.S. 214 (1965) The complaint must provide the answer: " What makes you think that the defendant committed the offense charged? " Id. at [224-225]., and so should be the case in a police conducted photographic line-up display procedure.

The complainant's statement on the photographic line-up document does not provide the police probable cause because it is not sufficient for the stricti juris of the amendment that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath and affirmation, and particularly describing the place to be searched, and the persons to be seized. As defined in (MERRIAM WEBSTERS DICTIONARY 11th ED.;) and is common knowledge; that the use of the word "Think" in the context as a directive for an identification in a photographic line-up conducted by Detroit Police Department on 12/20/2013, Appendix (9)a(1) peoples Exhibit (2). Articulated in a criminal accusation, as

applied ordinarily means uncertainty characterized by a lack of reaching a definite conclusion, with wavering and hesitation creating reasonable doubt, often suggest attainment of ideas-SPECULATIVE. The statement of the meaning of the word used in a word group or sign or symbol, is the action or power describing, explaining, or making definite and clear implies:

> An entrance of an idea into ones mind with or without deliberate consideration or reflection to conceive and suggest the forming and bringing forth and developing of an idea, plan or desire to IMAGINE: and FANCY that suggest an imagining often unrestrained by reality but spurred by DESIRES.

1. To consider something likely: SUSPECT imagine envision mean to form an idea.
2. To regard as CONSIDER: PONDER.
3. Not fully worked out or developed, hesitant, uncertain.
4. lacking in passion, force, or zest marked by an absence of enthusiam or conviction
5. To consider the suitability.
6. To have concern.
7. To form or have in the mind, SPECULATION.

none of the above definitions describes, SURE, CERTAIN or POSITIVE. It must be underscored, that even the trial judge concurred with his questioning of the methodology used by the police to distinguish the statement from the first photographic line-up display conducted 12/19/2013, where the complainant selected someone else and stated on the line-up document, Quote, " It looks like # (4) i'm not sure. " see Appendix (9)a. peoples Exhibit (1). and motion transcripts 03/18/2014, Vol. MH, Id. at [45. 25],[46. 3-25]. Also see trial transcripts 03/20/2014, Vol. II, Id. at [111. 20-25]. See U.S. v. Carter, 236 F. 3d 777,783 (6th Cir. 2001.) See Judicial Notice, 11/01/2019; ECF # 25

In Legenoff v. Steckel, 564 F. App'x 136,143 (6th Cir. 2014); The court holds:

> Where the witnesses Lyle Wipple and his wife, in that case was 80% positive that Legenoff was the person who robbed them was not used Id. at [143] because as the court directs, were not ideal, the court used Mr. Robert Temple and his wife's identifications because they were 100% SURE. Id. at [138],[5]. The Wipples warrant was denied for the larcenies, Wayne County Pros. Recommendation at pg. 3 Id. 1842., ultimately all charges were dismissed regarding the Wipples. (Citing Malley, 475 U.S. at [345].

Such should be the same in my case. Because the sixth amendment recognizes the right to the assistance of counsel, it envisions counsel playing a role that is critical to the ability of the adversarial system to produce just results, and plays the role necessary to ensure that the trial is fair. For that reason, this court has recognized that " the right to counsel is the right to effective assistance of counsel." It must be underscored, that the trial judge held that my case would rest entirely on the credibility of the complainant's identification. See Vol. BM, 03/11/2014., Id. at [7. 24-25],[8. 1]. Under Cronic, this court holds:

> The presumption that counsel's assistance is essential requires this court to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial. Similarly, if counsel fails to subject the prosecutions case to meaningful adversarial testing, then there has been a denial of rights under the U.S. Const. Amend. VI., that make the adversary process itself presumtively unreliable. No specific showing of prejudice is required because the petitioner has been denied the right of effective cross-examination which would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it. [659].

Under the circumstances in my case, likely prejudiced me so that the cost of litigating their effect is unjustified because " I was denied the right effective cross-examination " which is constitutional error of the first magnitude and no amount of showing of want of prejudice will cure it. Also by counsel not conducting basic pretrial

investigations, it was not established and preserved for appellate review, that I was arbitrarily denied by the state District Court of first instance, the U.S. Sixth Amendment right to counsel at my arraignment on the Complaint and Warrant on 12/23/2013., This honorable court holds in Rothgery v. Gillespie County, 544 U.S. 191; see M.C.L. 775.16 / See State District Court's Register of Actions Appendix (7)a 6.

> We have twice held that the right to counsel attaches at the initial appearance before a judicial officer, (Citing Jackson, 475 U.S. 625 at 629; Brewer, 430 U.S. 387 at 399., the first time before a court, also known as the " preliminary arraignment " or " arraignment on the Complaint," is generally the [375] hearing at which " the Magistrate informs the defendant of the charge in the complaint, and of the various rights in further proceedings," and determines the conditions for pretrial release." (Noting Brewer and Jackson controls.) See M.C.L. 775.16; M.C.L. 764.26 and MCR 6.104 (E).

Therefore, counsel's ignorance of a point of law that is fundamental to his clients case combined with his failure to coduct basic research on that point is a quintessential example of Strickland v. Washington, 466 U.S. 668 (1984); Id at [689-690]. Because counsel failed to properly investigate and challenge my unlawful arrset/seizure and or elicitation of photographic ID. evidence where I was under the assertion of police authority in violation of the constitution, it was not established and preserved for review, if he had, he would or should have discovered the court documents submitted here showing prima facie evidence of the unlawful arrest/seizure on 12/19/2013; see Appendixes; (11)a. Wayne County Circuit Court Conviction and Referral Slip, CIN/PROS. # 13725666-01. dated 01/24/14; (10)a. 36th Judicial District Court Pretrial and Release Form, dated 12/23/2013; (7)a. Wayne County Circuit Court Register of Actions and (12)a. Detroit Police witness statement 12/19/2013. I don't know if this court would deem it a

seizure, but as raised throughout my appeals where the police upon my arrest/seizure gave my passenger my vehicle keys (without consent) to her and instructed her to follow them to their station if she would make any statements. See MH, 03/18/2014; Id. at [12. 13-25],[14. 9-17]; and Appendix (31)a. my Affidavit of Arrest. In Miranda, this court holds:

> An interrogation is " custodial " when a person has been taken into custody or has been deprived of his or her freedom in any significant way, 384 U.S. at 436.

Next, trial counsel failed to object to the prosecutors withholding and untimely disclosure of exculpatory video-recorded evidence, Peoples exhibit (16), for its effective use in my evidentiary hearing on 03/18/2014; and for trial the next day for rebuttal or impeachment purposes. Any competent counsel would have moved for a continuance for adequate time to... if nothing else, " review and study " it, especially where the police Forensics team Sergeant Ron Gibson had extracted the video on 12/20/2013; see Vol. II, 03/20/2014; 51-69 Id. at [53. 19-25], and edited its contents. It must be underscored, that counsel did not even cross-examine! Gibson on his analysis of the video or procedures used to extract and edit it, see Vol. II, Id. at [69. 2-11]., especially when jurors # 2, 3 and 4 expressed concern about the videos visual quality and it not being in real time. But when the jurors asked to view it again in real-time, the request was not honored. Id. at Vol. II, [67. 6-25],[68. 1-25]. The defence was entitled to its own copy of the video timely before my pretrial hearing and trial to adequately prepare a defense because, (1). It requires not simply a cursory review of the recording, but to give it at lease a " real-study " of a kind that involves repeated viewing's, see U.S. v. Bagley, 473 U.S. 667 (1985).., of the incident similar to what one would expect in the course of

evaluating a lengthy written witness statement or interview transcript in the pursuit of truth and justice regarding the reliability of the allegations, as it is the best substance of those allegations to determine the credibility of the parties. Discovery in a Criminal case in Michigan is governed by Mich. Ct. R. 6.201. No statute including M.C.L. 600.2163a has any force or effect to the extent that it attempts to limit or contravene the court rule requiring mandatory discovery. The recorded video evidence used to corroborate the witness testimony and convict me should have been provided to the defense. By not providing the defence its own copy of exculpatory evidence that would have significantly undermined the testimony of an important prosecution witness is often found to be material, such suppression is frequently encountered in prosecutions involving eyewitness identification testimony. Here evidence demonstrating weakness or inconsistencies in the pre-trial identification process often figures prominently in the court's finding of materiality, see Smith v. Cain, 132 S. Ct. 627 (2012), and violates due process of law and renders trial counsel ineffective to adequately prepare a defense. There will be occasions such as mine where the prosecutor learns or should have known about the information contained in the video that omits any weapon, and shows it was not possible for the complainant to see her attackers face because the person was wearing a mask fully covering their face the entire time, that is potentially and materially exculpatory after conviction, and a prosecutors duty under Brady to disclose exculpatory information is " ongoing. " The rule protects a criminal defendant's right to a fair trial, and extends to all stages of the judicial process. See Michigan Rules of Professional Conduct 3.8 (d). But the prosecutor and court

continually denied my due process rights requests for the recording, see requests in Appendixes, (27)a-a(4); (36)a.; (37)a. See denials in Appendixes, (34)a.; (35)a. This is inconsistent with the statute and court rule plus, fundamentally unfair. See Appendix (R8)1. Admissions; Id. [4. 5] and M.C.L. 600.2163a; MCR 6.001(E). Also see Hinton v. Alabama, 571 U.S. 263 (2014); Id. at [274]. Kyles v. Whitely, 514 U.S. 419(1995).

As stated in the beginning of this argument I was arbitrarily denied the right to confront the government police witness officer Phillip Descamps, # 4474., in trial 03/20/2014, his absence was not harmless to the confrontation clause, specifically under substantive due process, this fundamental right is made obligatory on the states by the U.S. Const. Amend. VI, XIV. in a state criminal conviction. The judge deliberately confused the facts when defense counsel moved to call the governments endorsed witness to testify, see Appendix (46)a. and precluded confrontation by unreasonably determining that officer Descamps, had previously testified (and was allowed to leave the building,) when in fact he had not! And the judge knew or should have known better because he had continually informed defense counsel that the officer on the stand, Jerimah Orvelo, #3536 could not answer certain questions, that only his partner must answer who was the contact/arresting officer,(Descamps.) See trial, 03/20/2014; Vol. II, Id. at [33-42],[122-141]; Id. at [126-129].

I was arbitrarily deprived of testimony that would have been relevant, material and vital to my defense which could have establish constitutional violations and my innocence. The trial court abused its discretion to not afford me a fair and impartial trial worthy of confidence by interfering with counsel's ability to make independent decisions about how to conduct the defense and develop a testimonial record. See Pointer v. Texas, 380 U.S. 400 (1965). Under the circumstance in my case, the likely-hood that any defense

counsel could have performed as an effective adversary was so remote as to make my trial inherently unfair and likely prejudiced me so that the cost of litigating the effect is unjustified because " I was denied the right of effective cross-examination " which is constitutional error of the first magnitude and no amount of showing of want of prejudice will cure it.

By this honorable courts long standing precedent on this issue, I am entitled to have my conviction set aside. See Appendix (R8). Admissions; Id. at [2. 5-6],[3. 8],[4,5, 15]. See Judicial Notice ECF # 22. Also see Admissions in Appendixes (61)a; (62)a; (63). Dated: November 03, 2020.

(b). It is an unreasonable determination of the facts for the state and subsequent courts to not find Appellate counsel ineffective where he failed to raise the issues herein. Attorney Daniel J. Rust, p32856, was assigned to represent me in my appeal by the 3rd Judicial Circuit Court, Wayne County Michigan on 04/24/2014. see Appendix (39)a. These issues could have been raised on Appeal, Mich. Ct. R. 6.508 (D)(3), but I submit I am entitled to relief because I had " good cause " for failure to " properly " raise them on appeal, namely ineffective assistance of appellate counsel. To evaluate a claim of ineffective assistance of appellate counsel, the court must assess the strength of the claims counsel failed to raise. See Matthews v. Abramajtys, 92 F. Supp. 2d 615 (E.D. Mich. 2000). Counsel's failure to raise an issue on appeal amounts to ineffective assistance only if a reasonable probability exists that inclusion of the issue would have changed the result of the appeal. The herein claims that appellate counsel failed to raise, deserved encouragement to proceed further because I have demonstrated a denial of constitutional rights.

First, Appellate counsel's deficient performance fell below the objective standards of reasonableness. On my direct appeal, there was a substantial breakdown in communication between assigned appellate counsel and myself concerning the direction in which my appeal would go, where counsel refused to raise what I consider are meritorious issues of constitutional violations, namely ineffective assistance of trial counsel, the trial courts arbitrary denial of confrontation, Prosecutors withholding and untimely disclosure of exculpatory video-recorded evidence and Unlawful arrest/seizure perpetrated by " Extrinsic Fraud on the Court;" voiding procedural or in-personam jurisdiction where not conferred by legal process. Appellate counsel should investigate potentially meritorious issues when informed or have reason to believe that facts in support of such claims exist. When informed of these issues, counsel

dismissed them without investigation and immediately said, trial counsel was not ineffective. See letters to appellate counsel, Appendixes (40)a; (41a-a 1. and counsel's response, Appendix (6)a-a(7). See M.C.L. 780.716 (b),(e). At that time and before counsel could file the brief on appeal, I sought his replacement if he would not raise the issues or withdraw, so, I filed a motion for substitute appellate counsel because of the conflict on 09/05/2014, see Appendix (3)a., the court did not respond. Then I resubmitted it 10/20/2014, see Appendix (5)a. still no response. I then submitted a copy of the motion to the Michigan Court of Appeals requesting them to compel the lower court to respond. See Appendix (5)a(1). Neither court responded. See Appendix (42)a. Michigan Court of Appeals Docket Entry Record reflecting the filing. But the trial court however corresponded with assigned appellate counsel and a brief was filed on 11/11/2014., see Appendix (4)a. I was not comprised by counsel or the court and I was forced to proceed on appeal where the relationship was seriously irreparable, prejudicing my chances to present and preserve meritorious issues that has the likelyhood of success for acquittal. See Martel v. Clair supra, holds:

> Where there is a substantial conflict in the Attorney client relationship that actually affect counsel's representation, successor should be granted.

An indigent defendant, entitled to the appointment of counsel at public expense, is not entitled to choose his counsel. However, he may become entitled to have his assigned counsel replaced upon a showing of adequate cause for change in counsel. The court has a duty upon adequate cause such as this to inquire with both parties into the veracity of the allegations of the conflict because ignoring claims on appeal when a procedure exist for asserting them is the equivalent of failing to " investigate " all apparently substantial defenses at trial. See Beasley v. United States supra. This court has said that indigent defendant's must be afforded counsel to argue on appeal any of the

legal points arguable on their merits. Strickland, appellate counsel should have moved for an evidentiary hearing to develop a factual record required for appellate review. See MCR 7.211 (c)(1)(a)(ii). See People v. Ginther, 390 Mich. 436 (1973). I however, did move for numerous evidentiary hearings and was ignored in some and denied in others see request in my motion for Relief From Judgment 10/24/2016 Id. [5. 8]; Appendix (51)a. ; 12/20/2016; Appendix (15)a-a(8); Appendix (64)a. ,08/26/2017. Appellate counsel was ineffective for not adequately communicating with his client. On 08/21/2014, , I mailed Rust a letter with questions concerning his level of qualifications and experience, counsel did not respond. See Appendix (58)a. By not advocating his client's cause or withdrawing from the case, or comprising his client of important developments in his case, counsel was not competent to represent me and the breakdown in the relationship actually affected the adequacy of his representation and the presumption of prejudice applies.

Appellate counsel raised frivolous issues of sufficiency, these issues clearly were not stronger than the issues I alleged that are supported by the record. Considering all circumstances and prevailing norms of practice as reflected in the American Bar Association standards and the like, as to the constitutionally protected independence of his wide latitude in making tactical decisions, his were fundamentally ineffective, and the dereliction of knowledge to bring to bear such skill and performance that will provide reasonable representation by ABA Standards 4-8.4 (a)., creates an unreliable testing process that cannot be relied upon to produce just results. See Frankland v. Anderson, 434 F. 3d 412 (6th Cir. 2006). Due process entitled me to effective assistance of counsel in my first appeal of right. See Evitte v. Lucey, 469 U.S. 387 (1985). See Appendix (R8)2. Admissions. See Judicial Notice ECF # 25. And Affidavit (2) asserting ineffectiveness of appellate counsel Appendix (20)a.

U.S COURT OF APPEALS SANCTIONS > DEPARTURE > CONFLICT

II, The U.S. Sixth Circuit Court of Appeals has sanction the lower courts departure from the usual course of judicial proceedings that denied me due process and equal protection under both state and federal constitutions. And, has entered decisions in conflict with another U.S. Court of Appeals decision on the same important matter, and decided an important question in a way that conflicts with relevant decisions of this court.

The first departure was by the 36th Judicial District Court, Wayne County, Michigan on 12/23/2013., I was arraigned on the complaint and warrant for the above mentioned charges in violation of the U.S. Sixth Amendment right to counsel, substantive due process and equal protection under the law arbitrarily!

In Michigan, there are procedural rule-base and statutory provisions provided to guide the judicial process designed to protect the " concept of ordered liberty," but the state court judge failed to follow them and protect me as required by M.C.L. 775.16 (E). See MCR 6.104; M.C.L. 767.37a (4), where the state had not met its minimum burden to charge for lack of probable cause because I was not positively identified in any police line-ups, voiding procedural and in-personam jurisdiction where not conferred by legal process of law. By not providing me with counsel in the arraignment, this issue was not challenged leaving me to face the procedural forces of organized society alone immersed in the intricacies of substantive and procedural law. The Sixth Amendment attaches at the first appearance before a judicial officer at which the magistrate informs the defendant of the charges in the complaint, and of various rights in further proceedings, and determines the conditions for pretrial release. See Rothgery v. Gillespie County, 544 U.S. 191; Id. at [375]. (Noting Brewer and Jackson controls.) Next, to establish my fourth,

sixth and fourteenth amendment claims, I sought numerous times from the state, my case files and materials but was for the most part denied, then rule against throughout various proceedings where the state held that I had not established my claims and entitlement to relief. The state courts conduct constitutes a deprivation of a constitutionally protected liberty interest in my case files and materials, to which, the right to appellate review is a legitimate claim of entitlement. See Ryan v. Dedvukaj, 2009 U.S. DIST. LEXIS 106077. The right to the documents and materials for review of claims of error asserted, are of a ministerial nature that is prescribed by law where the state court has a clear legal duty incumbent on the state, and a clear legal right for me to the discharge of such duty, and the specific act sought to be compelled that is defined by law with such precision and certainty as to leave nothing to the exercise of discretion or judgment although, its execution may require some discretion to carry out the rule-based, statutory provisions of MCR 6.433. An indigent defendant is entitled not only to a transcript of trial court proceedings which led to his conviction, but also to case files of post-conviction proceedings, both direct and collateral, when he appealed from denials of his petitions in such post-conviction proceedings. I was denied numerous evidentiary hearings to develop a factual testimonial record for appellate review. See MCR 6.508; MCR 7.211. People v. Ginther, 390 Mich. 436 (1973).

Where there exist procedures to assert a right, due process provides equal protection of that right under both state and federal constitutions. On the following occasions, I sought my case files and materials to pursue my post-conviction remedies before both state and federal courts. See MCR 6.502; MCR 7.203; MCR 7.302; 28 U.S.C. § 2254 and was denied or not sent what was sought. See requests 09/29/2015; 08/24/2016; 08/29/2016; 09/22/2016, Appendix

(17)a ;11/10/2015, Apendix (34)a ;01/27/2016, Appendix (35)a ;12/20/2016, Appendix (17)a 1; ;02/01/2017, Appendix (57)a ;12/22/2017, Apendix (27)a-a(4) ;06/20/2018, Appendix (65)a. ;06/10/2019, Appendix (58)a. ; 06/12/2018, Appendix (66)a. ;08/09/2019, Appendix (ECF# 20) ;03/17/2020, Appendix (68)a. ;10/01/2020, Appendix (69)a. ;09/29/2017, Appendix (37)a.

Pursuant to Michigan Supreme Court Administrative Order 2004-6; Guides for assigned appellate counsels:

Standard 3.

> Counsel should raise those issues, recognized by a practitioner familiar with criminal law and procedures on current basis and who engages in diligent legal research, which offer reasonable prospects of meaningful post-conviction or appellate relief, in a form that protects where possible the defendant's option to pursue collateral attacks in state and federal courts. If a potentially meritorious issue involves a matter not reflected in the trial record, counsel should move for and conduct such evidentiary hearing as may be required.

Standard 4.

> Defendant's right to file supplemental pleadings in propria persona where counsel's duty to provide his client with procedural advise and clerical assistance.

Standard 7.

> Counsel must keep defendant apprised of the status of the appeal and promptly forward copies of pleadings filed and Opinions or Orders issued by a court

Next, in the state court some submitted pleadings were simply not answered, and when I requested the courts Docket Entry Record, for the second quarter forward in 2017, I was ignored. See requests 04/21/2017, Appendix (70)a. So, I filed in the

2

trial court a motion for statement by trial judge as to matters undecided, 04/26/2017, Appendixes (18)a.;05/09/2017, (18)a(1). They were denied, See Appendixes 05/02/2017.;(2)a(2),05/03/2017. I even filed a complaint with the Michigan state court administrator on 04/28/2017, Appendix (67)a. See Administrator's response 05/11/2017, Appendix (60)a. I was handicapped as it relates to obtaining my case files to pursue my state court remedies. Submitted requests for evidentiary hearings were simply ignored and not afforded to me for post-conviction proceedings in order to establish my claims. Motions for in-camera-inspections of exculpatory video-recorded evidence were also ignored and never answered. The state court departures were raised in the federal district court Habeas Corpus proceedings, there that court departed from accepted and usual course of judicial proceedings as well. First, on 05/31/2019, I filed a motion to correct/Amend the record pursuant to Fed. Civ. R. 15(a)(1)(b)., that the court re-characterized and granted in part as a motion to add a claim. There are required admonitions when a Federal court re-characterizes a petitioner's pleadings, it must provide NOTICE and OPPORTUNITY to withdrew or Amend it. See Castro v U.S. 540 U.S. 375,383 (2003).

The above rule authorizes a party to amend its pleadings as a matter of course within 21 days after a responsive pleading. After the Respondent's response to the petition, see ECF # 9., I timely filed the motion but the court re-characterized it so the right and purpose was defeated. See ECF # 11. "It must be

underscored, that prior to that, I[1] was transferred from one facility to another where some of my legal paperwork was lost by the department so, I could not reproduce the entire petition." And when I filed a motion for production of the missing documents from the court on 06/10/2019, entered by the court on 06/13/2019, ECF # 14. It was denied on 07/25/2019, ECF # 19., therefore, some of my listed Appendixes to this court are not enclosed and I respectfully refer this honorable court to the Appendixes listed in the habeas Petition ECF # 1., so that the court will have properly before it an adequate complete record for review.

Next, on 06/26/2019, I filed a motion for summary judgment, entered by the court on 07/02/2019, ECF # 17, with Admissions see Appendix (R7). Summary Judgment was denied on 07/25/2019, ECF # 19. In the Order, the judge held:

Respondent filed a response to petition for writ of Habeas Corpus, in which he urges that Petitioner's claims be denied. Upon review of the briefs, a genuine issue of fact exists as to whether or petitioner is entitled to relief.Id.at 1723-1724].

this holding is inconsistent with this courts holding in Celotex Corp. v. Catrett, 477 U.S. 317 (1986). Quoting Fed. Civ. R. 56. and holding:

(a). Motion for Summary Judgment or Partial Summary Judgment.

> A party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought. The court shall grant summary judgment if the

1 During transfer from one facility, my case files were lost, please refer to Habeas Petition for missing appendixes.

movant shows that there is no genuine disputes as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reason for granting or denying the motion.

In our view, the plain language of Rule 56 (c) mandatesthe entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, [323] there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

In cases like the instant one, where the nonmovingparty will bear the burden of proof at trial on a dispositive issue, a summary judgment [****15] motion may properly be made in reliance solely on the "pleadings, depositions, answers to interrogatories, and admissions on file." Such a motion, whether or not accompanied by affidavits, will be "made and supported as provided in this rule," and therefore requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial." We do not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment. Rule 56 (e) permits a proper summary judgment motion to be opposed by any kinds of evidentiary materials listed in Rule 56 (c), except the mere pleadings themselves, and it from this list that one would normally expect the nonmoving party to make the showing to which we have referred. [324]

> The last two sentences of Rule 56 (e) were added,as this court indicated in Adickes,to disapprove a line of cases allowing a party opposing Summary Judgment to resist a properly made motion by reference only to its pleadings. [326].

The summary judgment rule applies to habeas corpus proceedings and may be based on admitted matter. See Luick v. Graybar Electric Co., 473 F. 2d 1360 (8th Cir. 1973)., Id. at 1362; see Judicial Notice of Admissions ECF # 22, Appendix (R8); 08/05/2019. The presentation of the merits were subverted by the district courts abuse of discretion to not allow the admissions binding effect. See Henderson v. United States In-re Guardian Trust Co., 242 B. R. 608 also see 966 F. 2d 786 (1992).

In form and substance a Rule 36 admission is comparable to an admission in a pleading or stipulated draft by counsel for use at trial, rather than to an evidentiary admission of a party, see 2A Barron & Holtzoff Fed. Practice and Procedure § 838 (Wright ed. 1961) unless a petitioner securing an admission can depend on its binding effect, he cannot safely avoid the expense of preparing to prove the very matters on which he has secured the admission, and the purpose of the rule is defeated. See McSparran v Hanigan, 225 F. Supp. 628(1963) Id. 636-638 this provision emphasizes the importance of having the action resolved on the merits,while at the same time assuring each party that justified reliance on an admission in preparation for trial will not operate to his prejudice. See cf. Moosman v. Joseph P. Blitz Inc., 358 F. 2d 686 (2d Cir. 1966). This court in Walker v. Johnson, 312 U.S. 275 (1941), holds:

> There could be situations where " on the facts admitted, it may appear as a matter of law, the petitioner is entitled to the Writ and discharge;" and the Supreme Court and federal courts thereafter" have acknowledged the power of the federal district court to discharge a Habeas Corpus petitioner from State custody

without conducting an Evidentiary Hearing, when the facts are undisputed and establishes a denial of petitioner's constitutional rights.

See Clark v. Johnson, 202 F.3d 760 (5th Cir. 2000). Once summary judgment was denied, I filed a Rule 59 (e). Motion to Alter or Amend that judgment on 08/21/2019, ECF # 21. I submitted to the federal district court, that it should not be enough for Respondent to simply urge the court to deny my claims, because the very mission of the summary judgment procedure is to pierce the pleadings and assess the proof in order to see whether there is a genuine need for trial. The federal district courts use of the Third Circuit doctrine, which permits the pleadings themselves to stand in the way of granting an otherwise justified summary judgment, is incompatible with the basic purpose of the rule, especially when the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. Celotex, above. The motion tolled the time for taking an appeal until after the rule 59 motion is resolved pursuant to Fed. R. App. Proc. 4(a) 4A-iv., and is appealable as of right but I was not afforded an appeal because the district court denied the motion together with the denial of the Writ of Habeas Corpus Petition on 01/31/2020., ECF # 27. On 02/09/2020., I filed a Notice of appeal together with an application for certificate of appealability on my other claims, ECF # 27; Appendix (R11), but the court did not enter the Notice until 02/20/2020, ECF # 29. Next, on 03/09/2020, (entered by the court on 03/17/2020. I

filed a Notice of appeal together with an application for certificate of appealability on my other claims, **in U.S. six circuit 02/26/2020** but the court did not enter the Notice until 02/28/2020, JEC # 5. Next, on 03/09/2020, (entered by the court on 03/17/2020. I filed in the U.S. district court, a motion for evidence presented in district court proceedings; Motion to settle and or correct/amend the record on appeal with proposed statement of facts; ECF # 34, pursuant to Fed. R. App. Proc. 10 (b)(2);(e)(1), (2)(b); and 28 U.S.C. § 2254 (e)(1). The U.S. district court did not respond until after the U.S. Sixth Circuit Court of Appeals denied my Application for Certificate of Appealability(without even considering my application) on 06/29/2020, JEC # 09 ECF # 35, the court holds for this over-sight, that I had not enclosed the application with the Notice of Appeal. Id. foot note 1. However, the courts Docket Entry Record reflects the entry on 02/28/2020, with Certificate of service 02/26/2020. Id. [5].

The U.S. Court of Appeals decision conflicts with the decision of another U.S. Court of Appeals decision on my fourth and fourteenth amendment claims in, Monroe v. Davis, 712 F. 3d 1106 (7th Cir. 2013), that court holds:

> Our decision makes clear that it means more than just the opportunity to present one's fourth amendment claim to the state court. Id. 531-32 Hampton, 296 F. 3d at 563-64. A state court process that amounts to a sham would not constitute a full and fair hearing even though the petitioner had his day in court on the claim. Cabrera, 324 F. 3d at 531-32. Evaluating the adequacy of the hearing thus requires us to give at least " some attention to how the state court dealt with the merits" of the claim Id. at 564- (emphasis in original). But not to much attention as we added in

Cabrera, 324 F. 3d at 531 our role is not to second-guess the state court rather to assure ourselves that the state court heard the claim, looked to the right body of case law, and rendered an intellectually honest decision. Also see Miranda v. Leibach, 394 F. 3d at 984,997 (7th Cir. 2005).

Because of the fore-mentioned claims I was not afforded a full and fair hearing in the state courts because I was denied the right to counsel, the right to confront the witness in my case, denied evidentiary hearings for post-conviction proceedings, case files and exculpatory video-recorded evidence. And pursuant to 28 U.S.C. § 2254 (e)(1), I have rebutted the states determination of fact on the issue of my unlawful arrest/seizure with clear and convincing evidence that I was in fact in police custody 12/19/2013, during their unreliable interrogation when I had not been identified in any line-up. See Appendixes (12)a.; (11)a.; (10)a.; (7)a. and Peoples Exhibit (2). 9a 1. I have shown that the state courts mechanisim to which my fourth, sixth and fourteenth amendment claims could be raised, presentation of the claims were frustrated by the failure of the states mechcnisim, especially where the state court was misled and the judge misconceives my claims and states in his Opinion 11/28/2016, that he cannot pin point my claims. Also see Stone v. Powell,428 U.S. 465 each of these cases considers the exclusionary rule to unlawfully seized evidence and does not necessary apply to my case.

The fourth amendment claims in my case are cognizable in federal court because it was raised under the sixth amendment ineffective assistance of counsel standard for failing to

challenge..."and abandoning the fourth amendment claims at trial when he initially raised it in preliminary hearing," and under the fourth and fourteenth amendment right to not be convicted for challenging my right to be free from unlawful arrest/seizure, as opposed to an application of the exclusionary rule,) which allows me to seek relief for the constitutional violations in Federal habeas Corpus proceedings.

Therefore, I respectfully pray that if only this court would just methodically review the record in my case, it will see that I did not get a fair trial or adversarial process throughout in order to prove my innocence. And to grant Certiorari or any other remedies the court deems necessary and especially where the state court arbitrary actions violates the U.S. Constitution that this honorable court swore to uphold.

Respectfully submitted,

Jessie Willie Green

Date: Janurary 22, 2021