

21-5517  
No. \_\_\_\_\_

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

AUG 23 2021

OFFICE OF THE CLERK

Lonzie W. McQuirter — PETITIONER  
(Your Name)

vs.

Bryan Morrison, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Michigan Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lonzie Wayne McQuirter

(Your Name)

Lakeland Correctional Facility

141 First St.,

(Address)

Coldwater, MI. 49036

(City, State, Zip Code)

(Phone Number)

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AUG 26 2021

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SUPREME COURT, U.S.

STATEMENT OF QUESTIONS PRESENTED

I. WHETHER PETITIONER'S CLAIMS SHOULD BE HEARD ON THE MERITS UNDER THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION TO AVOID A MISCARRIAGE OF JUSTICE WHERE NEW EVIDENCE SHOWS THAT PETITIONER IS INNOCENT OF THE CRIME?

II. WHETHER PETITIONER WAS DENIED DUE PROCESS OF THE LAW AND A FAIR TRIAL WHERE THE PROSECUTOR KNOWINGLY USED FALSE EVIDENCE TO OBTAIN A TAINTED CONVICTION AND FAILED TO CORRECT FALSE TESTIMONY?

III. WHETHER PETITIONER WAS DENIED DUE PROCESS OF THE LAW AND A FAIR TRIAL WHERE THE PROSECUTION DESTROYED EXCULPATORY/IMPEACHING EVIDENCE IN BAD FAITH?

IV. WHETHER PETITIONER'S CONSTITUTIONAL RIGHT OF CONFRONTATION AS ENVISIONED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION WAS DENIED?

## LIST OF PARTIES

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

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CJI2d 4.15

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### REASONS FOR GRANTING THE WRIT:

I. PETITIONER'S CONSTITUTIONAL CLAIMS SHOULD BE ADDRESSED ON THE MERITS WHERE A CONSTITUTIONAL VIOLATION HAS PROBABLY RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT. U.S. CONST. AMENDS. 5TH, 6TH, 8TH AND 14TH. Page 9.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix N/A to the petition and is

- ☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix N/A to the petition and is

- ☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the Jackson County Circuit Court court appears at Appendix B to the petition and is

- ☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was N/A.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was June 01, 2021. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL PROVISIONS INVOLVED

### AMENDMENT 5

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

### AMENDMENT 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

### AMENDMENT 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

### AMENDMENT 14

Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On December 23, 1984, five black men broke into a house in Parma, MI., bound and gagged the two occupants and robbed them at gun point. (Trial Transcripts [Tr.t], pages 71-76.) After the robbers had left the LeFeres were able to free themselves and contact the police.

Upon being dispatched to the crime scene troopers Hallack and Bush made contact with the LeFeres at about 12:50 a.m., on the morning of December 24, 1984. An investigation of the crime scene was conducted and, as a result of that investigation, police reports were generated several hours later. A police report written by troopers Hallack and Bush states that "One Miller 12 ounce beer can was found out in the lawn on the west side of the house." (Appendix K. Hereinafter "App")

During the early morning hours of December 24, 1984, trooper LaRoue conducted a follow up investigation of the crime scene and, as a result, completed a police report stating the following:

"U/O searched the grounds for other possible leads, but no vehicle tracks or footprints were observed except for the area next to the house. U/O followed the two track road leading north from the outbuildings which subsequently turned west and led out to Hendershot Rd. Nothing was observed in that area."

"While checking the perimeter of the house U/O observed numerous footprints in the dirt next to the north and west sides of the house. The footprints were under the window of the pantry on the north side of the house and under the window of the 'puppy room' on the west side of the house next to the television antenna tower. The prints were made by Adidas Shoes with approximate size being 8 to 9. One partial print was also observed in the dirt near the point of entry. (Emphasis added.)

"U/O photographed (sic) the observable prints using a 35 MM Pentax camera and Sylvaite blue flash bulbs."

"U/O also made three castings of the prints under the pantry window with two prints being complete shoe prints and one being a partial print." (App L.)

During trial further testimony concerning the crime scene investigation

was given.

Trooper Halleck stated that upon arrival he and trooper Bush met the Lefares at the door of the home and then made a quick check outside the home (Tr.t, page 109, lines 4-7), but nothing was found outside. (Tr.t, page 130, lines 14-21.) After checking inside the home, trooper Halleck returned outside alone to check a second time (Tr.t, page 109, lines 10-12). On his second look outside trooper Halleck found snow footprints that he stated were "very easily seen." The footprints went west away from the residence (Tr.t, page 110, lines 5-13). Upon following the snow footprints trooper Halleck found a Miller 12 ounce beer can sitting on the "snow" next to the snow footprint trail (Tr.t, page 111, lines 3-7).

Trooper Lafawe also gave additional facts concerning his observations at the crime scene.

Trooper Lafawe took some photographs of some footprints in the dirt and snow near the residence (Tr.t, page 187, lines 15-17). The footprints were underneath two windows of the home -- one on the west side and one on the north side (Tr.t, page 189, lines 9-12). And that there were no other footprints at the scene (Tr.t, page 189, lines 17-18). Note here that during trial Trooper Lafawe omits the point of entry partial dirt footprint fact which he observed during his investigation of the crime scene according to his police report (App L). The partial dirt footprint was replaced by a trail of snow footprints (Tr.t, page 110, lines 5-13). The same snow footprint trail that police claim led them to the Miller Beer can.

In December of 1989, Defendant Lonzie Wayne McQuilter, was arrested for the crime and charged with five separate counts: armed robbery, MCL 750.529, MSA 28.797; kidnapping, MCL 750.349, MSA 28.581; breaking and entering an occupied dwelling with intent to commit larceny, MCL 750.110, MSA 28.305;

conspiracy to commit breaking and entering, MCL 750.157a, MSA 28.354(1); and felony firearm, MCL 750.227b, MSA 28.424(2). A supplemental information charging habitual offender status, was also filed.

After the interview of potential alibi witness Mr. Irving Marshall a notice of alibi defense was filed. (App I.) Mr. Marshall gave Attorney Kaigler a photograph taken of himself and Petitioner in Detroit on the night of the crime. Attorney Watts informed Petitioner that Mr. Marshall could not be located for trial.

During the first of two trials a mistrial was declared upon a motion to suppress evidence of identification of defendant by Robert LeFere. (App D.) During the trial Mr. LeFere admitted that he was unable to identify defendant as the perpetrator during the preliminary examination until the prosecutor walked over, stood behind defendant and pointed defendant out to Mr. LeFere.

The prosecutor filed an interlocutory appeal from the trial court's ruling suppressing identification testimony by Mr. LeFere. The prosecutor's appeal of this ruling was nothing more than a stall tactic to delay proceedings in this case, to await the retirement of Judge Noble. On September 17, 1991, the Michigan Court of Appeals affirmed the ruling by the trial court suppressing the identification of Defendant. (App E.) Judge Noble retired and was replaced by the Honorable Judge Schmucker before the September 17, 1991, Court of Appeals' decision.

During the second of two trials the sole evidence presented by the prosecution to tie defendant to the crime came in the form of fingerprints. As a result, a bulk of the trial testimony was focused on how and where the fingerprints were found. The prosecution's case, therefore, was dependent on the testimony of Five Michigan State Troopers (Douglas D. Halleck, David

William Bush, Thomas G. Finco, David B. LaRowe and Jerry Boyer) and Michael J. Sinke (Laboratory specialist in latent prints for the Michigan State Police in Lansing, Michigan).

Trial testimony from Mrs. LaFere was that she had "MillerLite" beer in the refrigerator (Tr.t, page 81, lines 3-8). That there were no beer cans observed in the kitchen after the breakin (Tr.t, page 83, lines 13-14). Directly following her trial testimony describing crime scene photographs showing the inside of the home (Tr.t, pages 84-92), Mrs. LaFere gave testimony concerning the authentication of People's Proposed Exhibits Numbers 21-26, photographs taken six (6) years following the crime in this matter (Tr.t, pages 92-95).

After trooper Halleck found snow footprints outside he asked trooper Bush to come outside so that he could show him the snow footprints (Tr.t, page 131, lines 11-15).

A second Miller 12 ounce beer can was found sitting on a kitchen counter (Tr.t, page 111, lines 17-18 and page 131, lines 19-20). This beer can had apparently been shown to Mrs. LaFere by Halleck and Bush (Tr.t, page 111, lines 15-20), but Mrs. LaFere didn't recall seeing it (Tr.t, page 83, lines 13-14). Troopers believed that the Miller beer cans were the same MillerLite beer cans that Mrs. LaFere stated were missing from her refrigerator (Tr.t, page 111, lines 10-12), two different brands of beer.

After being qualified as an expert in the area of latent print identification Mr. Sinke testified that he removed defendant's fingerprints from one of the two Miller beer cans (Tr.t, page 171, lines 15-21), but that he was unable to tell the court which beer can contained the fingerprints due to how he received both cans - the beer cans were unmarked in a single manila envelope (Tr.t, page 158, lines 5-6). None of the prints matched

consisted of a thumb print (Tr.t, page 169, lines 4-9).

Trooper Boyer testified that in November of 1990, six years after the crime, he took the photographs marked as People's Proposed Exhibits Numbers 21-26 that were used by the prosecutor as crime scene photographs (Tr.t, page 201, lines 15-25).

In closing argument the prosecutor argued that the beer cans were "MillerLite." (Tr.t, page 226, lines 5-25.)

On January 23, 1992, defendant was convicted by a jury on the counts of armed robbery, breaking and entering an occupied dwelling and conspiracy to commit armed robbery and breaking and entering. The jury found defendant not guilty on the kidnapping charge and the Court dismissed the felony firearm charge. Defendant plead guilty to being a second offender.

On March 18, 1992, defendant was sentenced to 40 to 80 years; 15½ to 22½ years and 40 to 80 years, respectively.

Without success defendant filed his appeal of right, along with many other appellate and post appeal attempts. (See App D. for a complete appellate history.)

On October 23, 2019, the Trial Court entered an Order denying defendant's Motion for Relief from Judgment and Request for an Evidentiary Hearing (Appendix B).

On March 24, 2020, The Michigan Court of Appeals entered an Order Dismissing defendant's Motion for Remand and Delayed Application for Leave to Appeal (Appendix A).

On June 01, 2021, the Michigan Supreme Court denied Leave to Appeal (Appendix C.)

"A claim of innocence must be based on reliable evidence not presented

to the AEDPA filing requirements.

(1995), i.e., it functions to satisfy the miscarriage of justice exception merits." Schlip v Delo, 513 US 298, 315; 115 S Ct 851; 130 L Ed 2d 808 must pass to have his otherwise barred constitutional claim(s) heard on the Actual Innocence Functions as a "gateway through which a [ ] petitioner

Schlip, 513 US at 314.

him the full panoply afforded to criminal defendants by the constitution." Arizona v Youngblood, 488 US 51; 109 S Ct 333; 102 L Ed 2d 281 (1988), denied 2d 104 (1971), and the destruction of exculpatory evidence in bad faith, see false evidence, see Giglio v United States, 405 US 450; 92 S Ct 763; 31 L Ed 2d 104 (1971), and the destruction of exculpatory evidence in bad faith, see independently consider Petitioner's "contention that the knowing use of Courts, the new evidence overcomes prior default and allows the Court to constitutional claim. Rather, consistent with procedure of the Federal 316-17. The new climatological data does not create or support a separate the merits of his otherwise defaulted constitutional error claims. Id. at -- supported by new climatological data -- provides an avenue for arguing Like in Schlip, Petitioner argues that his allegation of actual innocence gateway, allowing a habeas court to consider an otherwise defaulted claim. actual innocence -- regardless of its provenance or basis -- can serve as a 327; 115 S Ct 851; 130 L Ed 2d 808 (1995). In this manner, a showing of the conviction of one who is actually innocent." Schlip v Delo, 513 US 298, claim when he can show "a constitutional violation has probably resulted in Schlip allows a petitioner to revive a procedurally defaulted habeas

PETITIONER'S CONSTITUTIONAL CLAIMS SHOULD BE ADDRESSED ON THE MERITS WHERE A CONSTITUTIONAL VIOLATION HAS PROBABLY RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT. U.S. CONST. AMENDS. 5TH, 6TH, 8TH AND 14TH.

ARGUMENT I:

at trial. Calderon v Thompson, 523 US 538, 559; 118 S Ct 1489; 140 L Ed 2d 728 (1998). As the District Court held in Reasonover v Washington, 60 F.Supp.2d 938 (E.D. Mo., 1999), it is inappropriate to define new evidence of actual innocence as only evidence that could not have been discovered earlier in the exercise of reasonable diligence "because the actual innocence exception does permit a federal habeas court to review the merits of a constitutional claim, notwithstanding that the claim is abusive, successive, or otherwise procedurally barred." Id. at 947. In Schlup, the Court likewise stated that "a claim [of actual innocence] requires a petitioner to support his allegations ... with new reliable evidence ... that was not presented at trial." Schlup, 513 U.S. at 324 (emphasis added). In Sawyer v Whitley, 505 U.S. 333, 347-348; 112 S Ct 2514; 120 L Ed 2d 269 (1992), the Court considered evidence of an inmate's innocence of his death penalty specification which included mitigating evidence that could have been but was not raised at trial.

"To satisfy the 'actual innocence' standard, a petitioner 'must show that it is more likely than not that no reasonable juror would have found [the petitioner] guilty.'" Schlup, 513 US at 327. In House v Bell, the United States Supreme Court cautioned that a review of actual innocence requires consideration of "all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under rules of admissibility that would govern at trial." House v Bell, 547 US 518, 536-537; 126 S Ct 2064; 165 L Ed 2d 1 (2006). The standard does not require absolute certainty about the defendant's guilt or innocence, and less is required than would be to reverse on grounds of insufficient evidence. House, 547 US at 537-538. For example, in House, the Supreme Court reversed a conviction despite acknowledging that some evidence of guilt

remained:

This is not a case of conclusive exoneration. Some aspects of the State's evidence-Lora Muncey's memory of a deep voice, House's bizarre evening walk, his lie to law enforcement, his appearance near the body, and the blood on his pants-still support an inference of guilt. Yet the central forensic proof connecting House to the crime-the blood and semen-has been called into question, and House has put forward substantial evidence pointing to a different suspect. Accordingly, and although the issue is close, we conclude that this is the rare case where had the jury heard all the conflicting testimony-it is more likely than not that no reasonable juror viewing the record as a whole would lack reasonable doubt. [Id. at 554].

As stated by the House Court, the test balances the evidence of innocence against the reliability of the state's verdict to determine "whether it is more likely than not that no reasonable juror viewing the record as a whole would lack reasonable doubt." Schlup, 513 US at 314-315. In the instant case, the new climatological data (App J) does not make a showing of absolute certainty concerning Petitioner's innocence [House, 547 at 537-538], but when viewed with the whole record, makes a substantial showing of Petitioner's actual innocence. The Federal Courts, including the United States Supreme Court, have long considered weather data to be admissible as prima facie evidence. See *Evanston v Gurn*, 99 US 660; 25 L Ed 306 (1887) and *Anderson v Swift & Co.*, 380 F2d 988 (1967). And here the prima facie correctness of the weather reports has not been overcome by any substantial evidence to the contrary.

The climatological data reads that there wasn't any snow on the ground in Jackson County, Michigan, on both the 23rd and 24th of December 1984, the date of the crime and the date the investigation of the crime scene was conducted, respectively. (App J.) When viewing this documentary evidence with facts concerning the police' actions it becomes clear that the prosecution presented false evidence to the Petitioner to this crime. The most damning of which is the presentation of fake photographic trial court

exhibits 21-26. As stated above, the crime took place on December 23, 1984. The photographic trial court exhibits 21-26 were not taken until November of 1990, nearly Six (6) years after the crime. (Tr.T. page 201, lines 15-25.) While being totally aware that these were not crime scene photographs the prosecutor presented them to the jury as if they were crime scene photographs. During direct questioning of Mrs. LeFere the prosecutor allowed Mrs. LeFere to testify falsely to the effect that the fake photographic trial court exhibits were an accurate depiction of the scene (Tr.T. pages 92-95), undoubtedly leaving the jury to believe that the snow covered ground depicted at the LeFere residence was the crime scene and that Mrs. LeFere must be telling the truth about her own home.

To further convince the jury of Petitioner's involvement in this crime the prosecutor deliberately circumvented the discovery process. The discovery order directing that all photographs be presented was issued on April 23, 1990 (App G). After destroying the original crime scene photographs and other evidence, the prosecution waited until it snowed, went out to the LeFeres' residence and took the fake photographic trial court exhibits 21-26.

The prosecutor then allowed the police to change their original police report statements so that they would match the scene depicted in the fake photographs. The facts went from "dirt" footprints (App L) to "snow" footprints. (Tr.T. page 110, lines 5-13).

All of the false evidence and other misconduct (see issues I & II, arguments) was directly created to falsely identify Petitioner as the person that committed this crime. The fabricated snow evidence was used to persuade the jury into concluding that the police had followed snow footprints to a Miller beer can which may have contained the sole fingerprint evidence.

Without which there can be no connection made between Petitioner and the

crime.

And while the respondent could reasonably argue that there were two Miller beer cans found at the crime scene, and that even if the Miller beer can located outside is found to have been tainted by false evidence, the fact remains that the Petitioner's fingerprints "could" have been found on the Miller beer can located inside of the home.

Like in House this argument would not be sufficient to negate a showing of actual innocence for a number of reasons:

1. There is no direct evidence that Petitioner's fingerprints were found inside of the home. Testimony was that it could not be determined which beer can contained the Petitioner's fingerprints. (Tr. T. page 158, lines 5-6.)
2. The Miller beer can said to have been located inside the home is also tainted by the false evidence. Both beer cans were said to have been collected and placed into the same envelope (Tr. T. page 158, lines 5-6). But the facts show that this was not possible. No beer can was found outside on the snow and, thus, could not have been placed with something else.

It should also be noted that Mrs. LeFere testified that she did not recall seeing any beer cans in her kitchen following the crime. (Tr. T. page 83, lines 13-14.) This is odd because the troopers testified that upon discovering a Miller beer can in the kitchen they showed it to the LeFeres. (Tr. T. page 125, lines 9-14.)

3. Mrs. LeFere testified that the brand of beer that she purchased and placed inside her refrigerator was "Miller Lite." (Tr. T. page 81, lines 3-8.) The false evidence has the police finding "Miller" brand beer - close but not the same. And

4. The actions of the prosecutor and police show that they were intending to

mislead the jury with the false evidence into believing that Petitioner had committed this crime. A scheme that involved the bad faith destruction of original crime scene photographs which were replaced with fake photographs. And failure to preserve the sole partial dirt footprint so that it could be replaced by a trail of false snow footprints shows bad faith. This deliberate deceit was so elaborate that a reasonable juror might be inclined to disbelieve the police entirely.

As in House, although there exist some evidence presented at trial that could support an inference of guilt, it is vastly outweighed by the evidence of innocence, while not being supported by any true facts.

After the police changed their original statements, which are now directly contradicted by their trial testimony, the facts remain incomplete and appear to be made up without caring to fit the latest fabrication to the previous one. For example, the testimony from police has snow footprints leading away from the point of entry into the home but no footprints of any kind leading up to the point of entry (Tr.T. page 110, lines 5-13). Also, snow footprints under two windows but none leading up to or away from either of the two windows (Tr.T. page 189, lines 9-18). Police walked around the perimeter of the house on numerous occasions. Not only were there no footprints of any kind observed the police failed to make any footprints of their own (Tr.T. page 109, lines 4-7). This testimony is far fetched and clearly fabricated.

A newspaper photograph showing the actual crime scene shows the ground around the LeFere residence with no snow. (App M.)

A Jackson Citizen Patriot Newspaper article dated three (3) days after the crime has a quote from a Jackson County Official referring to Four inches of snowfall as the first. (App N.) The same amount is given in the weather

data for December 26, 1984. (App J.)

The climatological data (App J), Newspaper photograph (App M) and Newspaper article (App N), are all new evidence.

United States Supreme Court precedent supports the view that a "fundamental miscarriage of justice occurs when the defendant submits evidence that a constitutional violation has probably resulted in a conviction of one who is actually innocent." Schlup, 513 US at 324-325.

Indeed, concerns about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system. That concern is reflected, for example, in the "fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." In *Re Winship*, 397 US 358; 90 S Ct 1068; 25 L Ed 368 (1970)(Harlan, J., concurring).

In *Herrera v Collins*, 506 US 390; 113 S Ct 853; 122 L Ed 2d 203 (1993), the Supreme Court assumed that a truly persuasive post-trial demonstration of actual innocence renders the execution of a person unconstitutional. Mr. McQuirter urges this Court to apply the same law here because it is "fundamentally unfair" as a matter of procedural and substantive due process to punish an innocent person for a crime he did not commit, regardless of whether the person is sentenced to death, life in prison or [to a term of years]. *Herrera*, 506 US at 398(citations omitted)("[T]he central purpose of system of criminal justice is to convict the guilty and free the innocent.")

Mr. McQuirter is entitled to the relief because he is innocent. The prosecution presented fake crime scene photographs to further conceal Petitioner's innocence. This is not what the *Herrera* Court envisioned when stating what it believed the central purpose of a criminal justice system to be. *Id.* at 398.

Petitioner McQuirter contends that given the nature of his case and the importance of assessing witness credibility, this Court should remand the matter for an evidentiary hearing. Petitioner asserts that an evidentiary hearing will reveal facts and evidence that will show that it is more likely than not that no reasonable juror would have found him guilty. Schlup, 513 at 327. See also, Affidavit of Petitioner. (App P.)

## ARGUMENT II:

FAILURE TO CORRECT FALSE EVIDENCE DEPRIVED PETITIONER OF DUE PROCESS WHERE THE PROSECUTOR KNOWINGLY PARTICIPATED IN THE FABRICATED SCHEME TO MAKE IT APPEAR THAT PETITIONER HAD COMMITTED THE CRIME. 14TH AMEND.

Where the state court did not assess the merits of a claim properly raised in a habeas petition, the deference due under AEDPA does not apply. *Barnes v Elo*, 339 F.3d 496, 501 (6th Cir. 2003) (noting that "unusual circumstances" meant that the federal court had "no alternative but to conduct an independent review of the claim, because there is no foundation in the state court proceedings for AEDPA deference.") See also *McKenzie v Smith*, 326 F.3d 721, 727 (6th Cir. 2003).

Specifically, the prosecutor used false evidence in the form of fake crime scene photographs in furtherance of a scheme with the police to make the jury believe the false police testimony that the ground outside the crime scene was covered with snow, where snow footprints led police to a Miller 12 ounce beer can taken from the LeFere residence by the suspects, consumed and discarded on top of the snow directly next to the snow footprints. The jury was informed that either this beer can or a second beer can found inside the home contained Petitioner's fingerprints and, thus, Petitioner must have committed the crime. But because the snow facts, including the fake snow filled trial court photographic exhibits that were presented in support of the false snow evidence, the verdict must be overturned where the United States Supreme Court has stated that a conviction cannot be based on false evidence. *Napue v Illinois*, 360 US 264, 269; 79 S Ct 1173; 3 L Ed 2d 1217 (1959).

To prevail of a false testimony claim, Petitioner must show "(1) that the prosecutor presented false testimony; (2) that the prosecutor knew was false; and (3) that false testimony was material." *Abdus-Samad v Bell*, 420

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F.3d 614, 626 (6th Cir. 2005). In order to satisfy the first two prongs of this test, Petitioner need not demonstrate that the prosecution presented false testimony that at the time of presentation he knew to be false. Rather, it is sufficient that Petitioner show that the prosecutor used "testimony, whether elicited or left uncorrected, that the prosecutor knew or should have known is false." *Foley v Parker*, 488 F.3d 377, 392 (6th Cir. 2007).

(1) The Prosecutor Presented False Evidence:

Here, the prosecutor presented three forms of false evidence.

First, the prosecution presented photographs that were taken of the residence in question six (6) years after the crime was committed (Tr. t. page 201, lines 15-25).

Second, during direct the prosecutor allowed Mrs. LeFere to testify as to the authentication of the fake photographs as if they were true crime scene photographs. (Tr. t. pages 92-95.) Directly following Mrs. LeFere's false authentication of the fake photographs, the prosecution asked the trial court to admit the photographs, with no objection from trial counsel, into evidence. The trial court admitted these photographs (21-26) as trial court exhibits 2-26. (Tr. t. page 95, lines 4-8.)

It should be noted that the false testimony from Mrs. LeFere and the admittance of the fake photographs as trial court exhibits was done before the Trooper's testimony concerning when the photographs were taken. The jury could have decided that the snow in the photographs was part of the crime scene. After all, the prosecutor never informed the jury otherwise. Third, the police changed their prior police report statements that they had only observed dirt footprints (App. L) to claims matching the snow depicted in the fake photographs (Tr. t. pages 110 and 180).

(2) The Prosecutor knew, Or Should Have known, The Evidence Was False: As stated above, the prosecutor was informed about when photographic exhibits 21-26 were taken (Tr.t. page 201, lines 22-23). Which means that the prosecutor was aware that Mrs. LeFere's authentication of these photographs were false. (Tr.t. page 92-95.) The prosecutor should also have been aware that the police had changed their prior police report statements from lawn and dirt to snow and snow footprints during trial.

(3) The False Evidence Was Material:

The jury was shown the fake photographs that showed the ground around the LeFere residence completely covered with snow. Then the prosecutor made sure that the jury heard testimony from Mrs. LeFere that that was in fact her home in the photographs with all that snow on the ground. And finally, the jury was told by the police that they had followed snow footprints from the point of entry into the home directly to where a Miller beer can was found sitting on top of the snow next to the snow footprints.

The only thing left to do was to somehow tie the Petitioner to the crime. This was accomplished by saying that the Petitioner's fingerprints was lifted from one of the two beer cans, one of which was found on top of the snow depicted in the fake photographs.

The false evidence was material because it was the sole evidence that the jury could have considered to tie the Petitioner to the crime. After all, there were no beer cans or photographs of any beer cans presented. So the jury could only conclude that the police false testimony that a beer can was found sitting on top of the snow was true evidence.

In closing, the prosecutor said it himself:

"Who did it? Did the defendant commit this crime and what evidence do we

have to show it. That's essentially what this whole case is about, ladies

and gentlemen. (Tr.t. page 220, lines 6-9.)

"[I]t is established that a conviction obtained through use of false evidence, known to be such by the representatives of the [s]tate must fall .... The same result obtains when the [s]tate, although not soliciting false evidence, allows it to go uncorrected when it appears." *Napue v Illinois*, 360 US 264, 269; 79 S Ct 1173; 3 L Ed 2d 1217 (1959). The Supreme Court "has consistently held that a conviction obtained by the knowing [or uncorrected] use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." *United States v Agurs*, 427 US 97, 103; 96 S Ct 2392; 49 L Ed 2d 342 (1978).

In cases involving perjured testimony, the [Supreme] Court has applied a strict standard of materiality ... because they involve a corruption of the truth-seeking function of the trial process." *Agurs*, 427 US at 104. Thus, this type of violation "is said to amount to 'structural error' that demands relief to vindicate the integrity of the judicial process, irrespective of a showing of actual prejudice." *Akrewi v Booker*, 572 F.3d 252, 265 (6th Cir. 2009). Therefore, once the first two elements of a false testimony claim are satisfied, a petitioner's burden to demonstrate materiality "is less stringent than that for more general Brady withholding of evidence claims." *Rosencrantz v Lefler*, 568 F.3d 577, 584 (6th Cir. 2009). The petitioner need only show that there exist "any reasonable likelihood that the false testimony could have affected the judgment of the jury." *Id.* If the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt. *Agurs*, 427 US at 112-113.

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~~Without the false evidence the State had no case. In Michigan, where~~

the only evidence against a defendant is in the form of fingerprints, the prosecutor has a very specific burden. The prosecutor must establish that the fingerprints correspond to those of the accused and were found in the place that the crime was committed, and that they could only have been impressed at the time of the offense. People v Ware, 12 Mich App 512, 515; 163 NW2d 250 (1968); See also People v Cullens, 55 Mich App 272; 222 NW2d 315 (1974). CJ2d 4.15 provides as follows:

"The prosecutor has introduced evidence about fingerprints. You may consider this evidence when you decide whether the prosecutor has proved beyond a reasonable doubt that the defendant was the person who committed the alleged crime. However, fingerprints matching the defendant's must have been found in the place the crime was committed under such circumstances that they could only have been put there when the crime was committed."

The Use Note to CJ2d 4.15 states that the instruction "should be given only where the sole evidence of identity comes from fingerprints." (App H). It's interesting to note that the instruction is applicable to cases where the defendant has had no prior contact with the crime scene. See People v Willie, 60 Mich App 154, 159; 230 NW2d 353 (1975)(Willie testified that he had never been anywhere near the burglarized residence on the night of the crime or any other time. Footnote 9.)

The Federal Courts apply a similar test. In United States v Collon, 426 F.2d 939 (6th Cir. 1970), the United States Court of Appeals for the Sixth Circuit reversed a robbery conviction where the primary evidence against the defendant were his finger and palm prints on a map found in the getaway car.

Collon was decided on direct review of a Federal conviction. On Federal habeas corpus review, courts generally have denied relief where the petitioner claimed that fingerprint evidence was insufficient to support a conviction. See Gibson v Collins, 947 F.2d 780 (5th Cir. 1991) and Taylor v

Stainer, 31 F.3d 907 (9th Cir. 1994). However, in Taylor, the Ninth Circuit

Court of Appeals went on to state:

[t]he government is only required to rule out any hypotheses of innocence that are sufficient to create reasonable doubt.... In order to grant the habeas petition, we must find, after considering the evidence in the light most favorable to the government, that no rational jury could have found guilt beyond a reasonable doubt....

Id at 910.

Testimony was that it could not be determined where, whether inside the home or outside, Petitioner's fingerprints were found (Tr.t. page 159, lines 5-6). As a result, no evidence was presented placing Petitioner inside the home where the crime occurred. A reasonable jury, following the court's instruction, would have to return a verdict of not guilty. To make sure that the jury would not return a verdict of not guilty the prosecution fabricated a false scheme so that it could be argued that "it didn't matter where the fingerprints were found, the evidence show that the Miller beer cans where involved in the crime."

Petitioner was further deprived of his Federal Constitutional Rights to Due Process and a Fair Trial (US Const, Ams V, XIV) when the police gave a nonresponsive volunteered answer in which Petitioner's criminal past was mentioned in front of the jury. United States v Perry, 512 F.2d 805 (6th Cir. 1975); Michalson v United States, 335 US 469; 69 S Ct 213; 93 L Ed 168 (1948). (See also, Michigan Supreme Court dissenting opinion, App. F.) To cast even more doubt about the verdict in this case is the fact that the Miller beer cans said to have contained the Petitioner's fingerprints are not even the same beer cans that were purchased by Mrs. LeFere and involved in the crime. The brand of beer that Mrs. LeFere testified to purchasing and placing in her refrigerator was "Millerlite" (Tr.t. page 81, lines 3-8). The brand that police testified to finding was "Miller"

(Tr.t. page 111, lines 3-7). The police further stated that snow footprints led them to the "Miller" beer can which was sitting directly next to snow footprints (Tr.t. page 111, lines 3-7). Climatological data contradicts this testimony. (App. J.) The data reads that there was no snowfall or snow on the ground in Jackson County, Michigan on the date of the crime - December 23, 1984. This is why the police investigative reports do not mention the word "snow" in them anywhere. There wasn't any snow at the crime scene. The snow trial testimony is false.

A new trial is warranted where false evidence deprived Petitioner of his Due Process.

### ARGUMENT III.

PETITIONER WAS DEPRIVED OF DUE PROCESS WHERE POLICE FAILED TO PRESERVE EXCULPATORY/IMPEACHING EVIDENCE AND CHANGED THE FACTS RELATED TO THE DESTROYED EVIDENCE IN AN ATTEMPT TO HIDE THE IMPROPER CONDUCT. 14TH AMEND.

Where the state court did not access the merits of a claim properly raised in a habeas petition, the deference due under AEDPA does not apply. *Barnes v Elo*, 339 F.3d 496, 501 (6th Cir. 2003)(noting that "unusual circumstances" meant that the federal court had "no alternative but to conduct an independent review of the claim, because there is no foundation in the state court proceedings for AEDPA deference.") See also *McKenzie v Smith*, 326 F.3d 721, 727 (6th Cir. 2003).

The Supreme Court held in *Brady v Maryland*, 373 US 83, 87; 83 S Ct 1194; 10 L Ed 2d 215 (1963), "that the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good or bad faith of the prosecution." *Strickler v Greene*, 527 US 263, 280; 119 S Ct 1936; 144 L Ed 2d 266 (1989)(quoting *Brady*, 373 US at 87).

The same strict rule, however, does not apply to potentially exculpatory evidence. Because courts would "face the treacherous task of divining the import of material whose contents are unknown and, very often, disputed." The government's failure to preserve "potentially exculpatory evidence" does not raise a similar constitutional problem. *California v Trombetta*, 467 US 479, 486; 104 S Ct 2528; 81 L Ed 2d 413 (1984). So long as government officials do not destroy evidence "in a calculated effort to circumvent the disclosure requirements established by *Brady v Maryland* and its progeny," so long as they act "in good faith and in accord with their normal practice," and so long as "the record contains no allegation of official animus toward [the criminal defendant] or of a conscious effort to suppress exculpatory

~~climatological data which reads that there wasn't any snow on the ground~~

ground at the true crime scene. (See the following new evidence: Appendix I Issue II above.) The new evidence show that there wasn't any snow on the that it could be replaced by the false snow and snow footprint facts. (See The prosecution omitted the point of entry partial dirt footprint so footprint located near the point of entry. (Tr.t. page 189, lines 6-18.) footprints, while completely omitting the existence of the partial dirt Trooper Lawe changed the police report dirt footprints into snow other footprints were observed (App. L.) But while testifying at trial the point of entry. That he photographed these dirt footprints. And that no footprints in the dirt. One of which was a partial footprint in he dirt near The police report written by Trooper Lawe states that he observed outright destruction.

impairing evidence by either replacing it with fabricated evidence or by In the instant case the police failed to preserve exculpatory and/or available means").

defendant would be unable to obtain comparable evidence by other reasonably "destruction" and (3) whether "the nature of the evidence was such that the whether "the exculpatory value of the evidence was apparent before its the government's "bad faith in failing to preserve the evidence," (2) "preserve evidence whose exculpatory value is indeterminate" turns on (1) (6th Cir. 1996) (noting that the unconstitutionality of a failure to a denial of due process of law."); United States v. Johnson, 102 F.3d 214, 218 police, failure to preserve potentially useful evidence does not constitute (1985) ("Unless a criminal defendant can show bad faith on the part of the See Arizona v. Youngblood, 488 US 51, 56; 109 S Ct 333; 102 L Ed 2d 281 evidence," Id. at 488, their actions do not offend the Due Process Clause.

in Jackson County, MI. on December 23, 1984, the date of the crime; Appendix M - Jackson Citizen Patriot Newspaper Article covering the crime, showing the residence with no snow on the ground; and Appendix N - a Jackson Citizen Patriot Newspaper Article suggesting that the first snowfall did not occur until three (3) days following the crime on December 26, 1984.)

The prosecution failed to preserve the dirt footprints and original crime scene photographs that were taken of the dirt footprints (App. L) so that it could conceal the fact that there wasn't any snow on the ground at the crime scene. Doing so allowed the prosecution to falsely mislead the jury into concluding that Petitioner's fingerprints might have been removed from a Miller beer can related to the crime.

In furtherance of this fabricated scheme the prosecution suppressed the police report photographs taken of the dirt footprints and replaced them with snow filled photographs that weren't taken until six (6) years after the crime.

The Order of discovery was issued on April 23, 1990, and specifically Ordered that "all photographs be presented for viewing." (App. G.) The record clearly establishes that trial court photographic exhibits 21-26 did not exist at the time of discovery. So the prosecution waited until it snowed in Jackson County, Michigan, went out to the LeFare residence and took the fake photographs in November of 1990 (Tr. t. page 201, lines 22-23). Actions that make it clear that the prosecution intended to circumvent Brady's disclosure requirements. The prosecution then presented and used these fake photographs as crime scene photographs.

(1) The Government Acted In Bad Faith When It Failed To Preserve Evidence: The government's intentions were to destroy true crime scene evidence and replace it with false evidence. This shows bad faith.

It is not normal practice for any police agency to destroy true crime scene evidence and replace it with false evidence.

(2) The Exculpatory Value Of The Evidence Was Apparent Before Its Destruction:

The government created the false snow evidence so as to convince the jury that snow footprints led police to the sole fingerprint evidence. Any evidence tending to contradict the false snow facts would have created a reasonable doubt about the government's facts and, thus, Petitioner's guilt. So the true crime scene facts that are listed in the police report were destroyed. The government was aware that they would not be unable to meet its burden (People v Ware, supra) of placing Petitioner at the crime scene had it allowed the true crime scene evidence to remain to contradict the false snow facts. And

(3) The Nature Of The Evidence Was Such That The Defendant Would Be Unable To Obtain Comparable Evidence By Other Reasonably Available Means:

There was only one crime scene and one set of true facts. Once the prosecution decided to destroy and replace the true evidence, this evidence was forever lost. And while the police reports offer definitive proof of the existence of the contents described therein, the exculpatory value remains indeterminate. California v Trombetta, 467 US at 486.

A petitioner who proves a Brady violation demonstrates cause and prejudice to excuse procedural default of the Brady claim. Clerk v Nagy, 934 F.3d 483, 491 (6th Cir. 2019).

A new trial is required.

ARGUMENT IV:

THE PROSECUTORIAL MISCONDUCT IN THIS CASE PREVENTED CROSS-EXAMINATION OF THE PROSECUTION WITNESSES.

In the United State's Judicial System the right to cross-examination is more than a desirable rule of trial procedure. "It is implicit in the constitutional right of confrontation, and helps assure the 'accuracy of the truth determining process'." *Chambers v Mississippi*, 410 US 284, 295; 93 S Ct 1038; 35 L Ed 2d 297 (1973).

In the present case there exist multiple acts of intentional prosecutorial misconduct that thwarted Petitioner's ability to cross-examine the police witnesses:

- (1) The prosecutor introduced fake snow filled photographs to make it appear that the outside area of the crime scene was covered with snow;
- (2) The police changed their original police report facts from dirt footprints to snow footprints, so that their trial testimony would match the fake photographs;
- (3) Police failed to preserve a partial dirt footprint located near the point of entry to the home because it would have contradicted their trial testimony which substituted the loan partial dirt footprint for a trail of snow footprints said to be leading away from the point of entry for more than 491'. Police claimed that the snow footprints are what led them to a Miller 12 ounce beer can possibly containing the Petitioner's fingerprints;
- (4) The prosecutor failed to correct Mrs. LeFere's false testimony which was used to authenticate the fake snow filled photographs as depicting the crime scene; and
- (5) Original crime scene photographs which are mentioned in the police report were suppressed/destroyed and replaced by the fake photographs. The original police report photographs would have contradicted the fake

photographs and allowed Petitioner to impeach the prosecution witnesses trial testimony.

As a result of the above mentioned misconduct Petitioner was unable to show that the police never found a beer can of any type sitting on top of snow at the crime scene. A showing which would have supported the defenses' alternative theory that the sole fingerprint evidence was not found at the crime scene.

Petitioner earlier argued that exculpatory evidence was destroyed in bad faith by the prosecution and, thus, leaves the Petitioner without the Brady material which would have allowed him to establish his innocence or impeach the prosecution's witnesses. For this reason Petitioner respectfully request that his conviction be overturned and his immediate release ordered to avoid a miscarriage of justice.

RELIEF REQUESTED

WHEREFORE, Petitioner Lonzie Wayne McQuirter, respectfully request that this Honorable Court Grant the following relief: Grant Certiorari; Remand for an Evidentiary Hearing; Address the Issues on their Merits; Reverse Petitioner's conviction and Order the Immediate Release of Petitioner; or Order a New Trial; and Grant any other Relief the Court Deems Just and Proper under the circumstances.

Respectfully submitted,

Lonzie Wayne McQuirter  
LONZIE WAYNE McQUIRTER

Dated: August 20, 2021.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Loyie W. McQuinn

Date: August 20, 2021

APPENDIX

- A. COURT OF APPEALS ORDER - MARCH 24, 2020
- B. MOTION FOR RELIEF FROM JUDGEMENT ORDER - OCTOBER 23, 2019.
- C. MICHIGAN SUPREME COURT ORDER - JUNE 1, 2021.
- D. ORDER OF MISTRIAL - DECEMBER 6, 1990.
- E. COURT OF APPEALS MISTRIAL ORDER - SEPTEMBER 17, 1991.
- F. MICHIGAN SUPREME COURT ORDER - JULY 26, 1996.
- G. DISCOVERY ORDER - APRIL 23, 1990.
- H. CJ2d 4.15 - MICHIGAN JURY INSTRUCTION.
- I. NOTICE OF ALIBI DEFENSE - MARCH 2, 1990.
- J. CLIMATOLOGICAL DATA - DECEMBER 1984.
- K. POLICE REPORT BY TROOPERS HALLECK AND BUSH - DECEMBER 24, 1984.
- L. POLICE REPORT BY TROOPER LAROWE - DECEMBER 24, 1984.
- M. JACKSON CITIZEN PATRIOT NEWSPAPER PHOTOGRAPH - DECEMBER 24, 1984.
- N. JACKSON CITIZEN PATRIOT NEWSPAPER ARTICLE - DECEMBER 27, 1984.
- O. APPELLATE HISTORY
- P. AFFIDAVIT OF PETITIONER.
- Q. LETTER CONFIRMING LAWSUIT.
- R. MOTION FOR RELIEF FROM JUDGEMENT ORDER - DECEMBER 19, 2002.

