

ORIGINAL

Supreme Court, U.S.
FILED

SEP 16 2021

OFFICE OF THE CLERK

21-5921
No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

SHIKISHA MONET TIDMORE -PETITIONER

VS.

JEREMY HOWARD-RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

**INMATE NO. 844786
HURON VALLEY CORRECTIONAL FACILITY
3201 BEMIS ROAD
YPSILANTI, MICHIGAN 48197**

NO PHONE

QUESTION(S) PRESENTED

Whether Petitioner's constitutional rights have been violated under the United States Constitution VI Amendment where Petitioner was denied due process and ineffective assistance of counsel. Trial counsel failed to conduct basic pre-trial investigation into the statements that Petitioner made to Officer Corstage and Detective Knight. Additionally, trial counsel failed to challenge the voluntariness, legality, and admissibility of those statements made.

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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**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 2020

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 A to the petition and is

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- ☐ is unpublished.

The opinion of the United States district court appears as Appendix C to the petition and is

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- ☐ is unpublished.

☒ For cases from **state court**:

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

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- ☒ is unpublished.

The opinion of the Michigan Court of Appeals court appears as Appendix B to the petition and is

- ☐ reported at _____; 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- ☒ is unpublished.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 _____

☐ 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: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. 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 18, 2021. A copy of that decision appears at Appendix A.

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

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A-_____.
_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION VI AMENDMENT

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

STATEMENT OF THE CASE

Petitioner was convicted of reckless driving causing death, MCL 257.262(4), and reckless driving causing serious impairment of a bodily function, MCL 257.262(3) by jury ~~or bench~~ trial on March 13, 2019 ~~April 15, 2019~~, in the Kalamazoo County Circuit Court, the Honorable Paul J. Bridenstine presiding.

Petitioner was sentenced to 10-35 years for the reckless driving causing death conviction and 2 to 15 years for the reckless driving causing impairment of a bodily function conviction in prison.

Petitioner filed an appeal of right to the Michigan Court of Appeals presenting the following issues:

ISSUE I

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO PROSECUTOR CALLING A REBUTTAL WITNESS TO IMPEACH THE TESTIMONY OF A WITNESS THE PROSECUTOR CALLED DURING HIS CASE-IN-CHIEF. ALTERNATIVELY, THIS CONSTITUTED PLAIN ERROR AFFECTING MS. TIDMORE'S SUBSTANTIAL RIGHT AND THIS COURT SHOULD EXERCISE ITS DISCRETION TO GRANT HER A NEW TRIAL.

ISSUE II

TRIAL COUNSEL WAS INEFFECTIVE FOR AGREEING TO A SPECIAL JURY INSTRUCTION THAT INVADED THE JURY'S AUTHORITY TO DETERMINE WHETHER MS. TIDMORE'S OPERATION OF HER MOTOR VEHICLE WAS A PROXIMATE CAUSE OF THE INJURIES INCURRED BY MS. MEVAY AND MR. CULVER.

ISSUE III

MS. TIDMORE'S SENTENCE FOR RECKLESS DRIVING CAUSING DEATH WAS DISPROPORTIONATE AND CONSTITUTED CRUEL OR UNUSUAL PUNISHMENT IN VIOLATION OF CONST 1963, AR. 1, § 16 WHERE SHE HAD NO INTENT TO CAUSE HARM, SHE WAS REMORSEFUL

**FOR THE INJRIES SHE HAD CAUSED, AND THE PRIOR
CONVICITONS USED TO SUPPORT HER HABITUAL
OFFENDER ENHANCEMENT WERE ALL NONVIOLENT
LOW-SEVERITY PROPERTY OFFENSES.**

Petitioner filed a Standard 4 brief in the Michigan Court of Appeals presenting the following

issues:

ISSUE I

**THE TRIAL COURT ERRED IN ALLOWING THE
TESTIMONRY OF GARY LETHAM AS AN EXPERT
WITNESS.**

ISSUE II

**THE TRIAL COURT ERRED IN ALLOWING THE
TESTIMONY OF JAMES CAMPBELL.**

ISSUE III

**THE TRIAL COURT ERROED IN ALLOWING THE
TESTIMONY OF BENEDICT KUSLIKIS AS AN EXPERT
WITNESS.**

ISSUE IV

**GARY LATHAMS ACCIDENT RECONSTRUCTIONIST
TESTIOMNY WAS INADMISSIBLE BECAUSE ITS
RELIABILITY WAS NOT VERIFIED AND THE TRIAL
COURT SHOULD HAVE HELD A DAUBERT HEARING TO
DETERMINE ITS RELIABILITY**

ISSUE V

**JAMES CAMPBELL'S CRASH RECONSTRUCTIONIST
TESTIMONY WAS INADMISSIBLE BECAUSE ITS
RELIABILITY WAS NOT VERIFIED AND THE TRIAL
COURT SHOULD HAVE HELD A DAUBERT HEARING TO
DETERMINE ITS RELIABILITY.**

ISSUE VI

BEDEDICT KUSLIKIS TOXICOLOGY AND ALSO THE ANALYZING OF CONTROLLED SUBSTANCES TESTIMONY WAS INADMISSIBLE BECAUSE ITS RELIABILITY WAS NOT VERIFIED AND THE TRIAL COURT SHOULD HAVE HELD A DAUBERT HEARING TO DETERMINE ITS RELIABILITY.

ISSUE VII

TRIAL COURT FAILED TO REPRESENT TIDMORE ADEQUATELY VIOLATING HER RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE U.S. CONST. AMS. VI AND XIV, AND CONST 1963, ART. 1, § 20. THE CUMULATIVE EFFECT OF THESE ISSUES DENIED TIDMORE A FAIR TRIAL.

A. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE THE LEGALITY AND ADMISSABILITY OF TIDMORE'S STATEMENT TO DETECTIVE KNIGHT.

B. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE THE LEGALITY AND ADMISSABILITY OF TIDMORE'S STATEMENT OT OFFICE CORSTANGE.

C. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE ADMISSION OF THE RESULTS OF THE DRUG SCREEN THAT WAS DONE ON TIDMORE'S BLOOD SAMPLE UNDER MRE 403.

D. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE THE UNDULY SUGGESTIVE IN-COURT IDENTIFICATION OF TIDMORE BY CORSTANGE, KNIGHT, AND HOWE.

E. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO PEOPLES EXHIBIT 19, WHICH WAS UNFAIRLY PREJUDICIAL.

F. TRIAL COUNSEL WAS INEFFECTIVE FOR FIALING TO PROPERLY INFORM TIDMORE OF THE CONSEQUENCES

OF PROCEEDING TO TRIAL AND THE POSSIBLE PENALTIES IF FOUND GUILTY.

G. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO REQUEST A JURY INSTRUCTION ON DURESS AS A DEFENSE AGAINST THE CHARGES WHEN THE EVIDENCE PRESENTED SUPPORTS SUCH A DEFENSE, AND IT WAS PART OF DEFENSE THEORY.

H. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CONSULT WITH OR SECURE AN EXPERT TO AID IN DEFENSE THEORY.

I. TRIAL COUNSEL WAS INEFFECTIVE FOR ALLOWING TIDMORE TO TESTIFY WHEN HE HAD KNOWLEDGE OF THREATS AND HARRASSMENT MADE TOWARDS TIDMORE.

J. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO INVESTIGATE INTO THE AFFIDAVIT USED FOR THE BLOOD DRAW WARRANT AND FAILURE TO FILE A MOTION TO SUPPRESS OR CHALLENGE THE VALIDITY AND ADMISSABILITY OF THE WARRANT AND THE EVIDENCE THAT RESULTED THERE FROM.

ISSUE 8

TIDMORE SHOULD BE GRANTED A NEW TRIAL AND/OR AN EVIDENTIARY HEARING BASE ON NEWLY DISCOVERED EVIDENCE IN THE FORM OF HER RECANTED TRIAL TESTIMONY.

On January 14, 2021 the Michigan Court of Appeals affirmed Petitioner's convictions and sentences.

Petitioner filed Leave to Appeal to the Michigan Supreme Court raising the following issues:

ISSUE I

TIDMORE SHOULD BE GRANTED A NEW TRIAL AND/OR EVIDENTIARY HEARING BASED ON NEWLY DISCOVERED EVIDENCE IN THE FORM OF HER RECANTED TRIAL TESTIMONY.

ISSUE II

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY INFORM TIDMORE OF THE CONSEQUENCES OF PROCEEDING TO TRIAL AND THE POSSIBLE PENALTIES IF FOUND GUILTY. THIS COURT SHOULD REMAND TO THE TRIAL COURT FOR AN EVIDENTIARY HEARING AND/OR REINSTATEMENT OF THE ORIGINAL PLEA OFFER.

ISSUE III

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO PEOPLE'S EXHIBIT 19 WHICH WAS UNFAIRLY PREJUDICIAL ENTITLING TIDMORE TO A NEW TRIAL.

ISSUE IV

THE TRIAL COURT ERRED IN ALLOWING THE EXPERT TESTIMONY OF GARY LATHAM, JAMES CAMPBELL, AND BENEDICT KUSLIKIS DUE TO PROSECUTION'S DISCOVERY VIOLATION, MCR 6.201. THIS ERROR WAS OUTCOME DETERMINATIVE REQUIRING THIS COURT TO REVERSE TIDMORE'S CONVICITON AND SENTENCE AND REMAND FOR A NEW TRIAL.

ISSUE V

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE TESTIMONY OF A WITNESS THE PROSECUTOR CALLED DURING HIS CASE-IN-CHIEF. ALTERNATIVELY, THE TRIAL COURT COMMITTED PLAIN ERROR AFFECTING TIDMORE'S SUBSTANTIAL RIGHTS BY ALLOWING THIS TESTIMONY REQUIRING THIS COURT TO EXERCISE ITS DISCRETION AND REVERS TIDMORE'S CONVICTION AND SENTENCE AND REMAN FOR A NEW TRIAL.

NEW ISSUE I

THE UNITED STATES OF AMERICA
DO hereby certify that
[Name] is a citizen of the United States
and is entitled to the rights and
privileges of citizenship.
[Signature]
[Date]

DECLARATION

I, [Name], do hereby declare that I am a citizen of the United States
and am entitled to the rights and privileges of citizenship.
I have taken the oath of citizenship and have complied with all
the requirements of the Naturalization Act.
I have no other allegiance and I am not a member of any
organization that advocates the overthrow of the Government.
I have no criminal record and I am not a person of bad
character.
I have no other citizenship and I am not a person of
disrepute.
I have no other allegiance and I am not a member of any
organization that advocates the overthrow of the Government.
I have no criminal record and I am not a person of bad
character.
I have no other citizenship and I am not a person of
disrepute.

THE UNITED STATES OF AMERICA
DO hereby certify that
[Name] is a citizen of the United States
and is entitled to the rights and
privileges of citizenship.
[Signature]
[Date]

THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING TIDMORE'S MOTION FOR A NEW TRIAL AND FAILING TO ORDER AN EVIDENTIARY HEARING TO INQUIRE INTO DEFENSE COUNSEL'S EFFORTS TO INVESTIGATE AND ATTEMPT TO SECURE SUITABLE EXPERT ASSISTANCE IN PREPARING AND PRESENTING TIDMORE'S CASE. THIS COURT SHOULD REVERSE TIDMORE'S CONVICITON AND SENTENCE AND REMAND FOR A NEW TRIAL AND/OR ORDER AN EVIDENTIARY HEARING.

NEW ISSUE II

TRIAL COUSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO BENEDICT KUSLIKIS EXPERT TESTIMONY BECAUSE- THE EHARSAY TESTIMONY VIOLATED TIDMORE'S RIGHTS UNDER THE CONFRONTATION CLAUSE. U.S. CONST. AM VI; CONST 1963, ART 1, § 20. THE ALLOWANCE OF THIS PREJUDICIAL TESTIMONY WAS USED TO CONVINCE THE JURY BEYOND A REASONABLE DOUBT AS TO TIDMORE'S GUILT. THIS COURT SHOULD EXERCISE ITS DISCRETION AND REVERSE TIDMORE'S CONVICTION AND SENTENCE AND REMAND FOR A NEW TRIAL AND/OR ORDER AN EVIDENTIARY HEARING.

On June 18, 3021, the Michigan Supreme Court denied Petitioner's Application For Leave To Appeal in a standard order.

Pursuant to Supreme Court Rule 13, Petitioner now files this Writ of Certiorari.

Petitioner asserts that her United States Constitutional VI Amendment right as a citizen of the United States has been violated. Petitioner was not afforded the right effective assistance of trial counsel as required by the United States Constitution VI Amendment where Trial counsel failed to conduct basic pre-trial investigation into the statements that Petitioner made to Officer Corstage and Detective Knight. Additionally, trial counsel failed to challenge the voluntariness, legality, and

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admissibility of those statements made. "The Fifth Amendment right against self-incrimination and the Due Process Clause of the Fifth and Fourteenth Amendments requires that a confession be voluntary to be admitted into evidence." *People v Borgne*, 483 Mich 178, 184, 168 NW2d 290 (2009). If prosecution seeks to introduce the defendant's statement, the court must first determine whether it was voluntary. *Jackson v Denno*, 378 U.S. 368, 377-78; 84 S.Ct. 1774; 12 Led2d 908. All the factors involved in a defendant making a statement to the police should be closely scrutinized. *Culombe v Connecticut*, 367 U.S. 568, 602, 81 S.Ct 1860, 6 LE2d 1037 (1961). The Michigan Supreme Court provided a non-exhaustive list of factors to consider in *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 78 (1988). In determining whether a statement is voluntary, the trial court should consider among other things the following factors:

The age of the accused, lack of education or intelligence level, extent of previous experience with police, repeated and prolonged nature of questioning, length of detention of the accused before he gave the statement in question, lack of any advice to the accused of his constitutional rights, whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession, whether the accused was injured, intoxicated, drugged, or in ill-health when he gave the statement, whether the accused was deprived of food, sleep, or medical attention, whether the accused was physically abused, and whether the suspect was threatened with abuse.

The Court clarified that the absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness, but the ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the statement indicates that it was freely and voluntarily made. Petitioner's medical condition at the time the statements were made needed to be investigated. At scene, Petitioner made it out of the vehicle with several bloody cuts/lacerations and a lot of broken glass on her face and arm. Petitioner was upset and had difficulty standing on her own. Her memory of the moments preceding the accident was incomplete. The statement made at

the scene to Officer Nicole Corstange was prior to medical treatment for her injuries; On July 12, 2018, six (6) days after the accident, Detective Timothy Knight asked Petitioner to come to KDPS Headquarters so he could speak with her about the accident. He used a promise to return her cell phone as an incentive to get her to come to headquarters. When Petitioner realized her phone would not be returned to her, she became angry and attempted to leave but the door was locked. Detective Knight unlocked the door and Petitioner left.

The test of voluntariness is whether considering the totality of surrounding circumstances the confession is the product of an essentially free and unconstrained choice by its maker or whether the accused has been overborne and his capacity for self-determination critically impaired. Petitioner was injured, upset, had difficulty standing on her own which interfered with her capacity for self-determination.

Trial counsel's failure to perform the bare minimum investigation necessary to discover whether or not Petitioner's statements were voluntary, legal, and admissible. The failure to adequately investigate is ineffective assistance of counsel if it undermines confidence in the trial's outcome. *Strickland v Washington*, 466 US 668, 690-91 (1984) ("counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.")

Petitioner requests this Court reverse the judgments of the Michigan Supreme Court and the Michigan Court of Appeals and to remand to the case for further proceedings.

REASONS FOR GRANTING THE PETITION

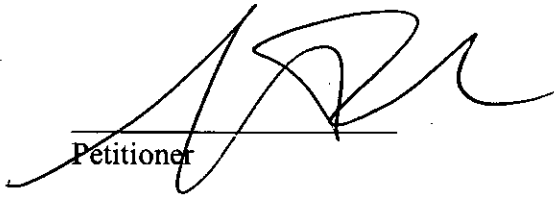
This petition should be granted because the Michigan Supreme Court issued an Order denying Ms. Tidmore's application for leave to appeal which was in error. The Petitioner has shown that her United States Constitutional rights have been violated and the decisions of the state courts resulted in a decision that was contrary to clearly established Federal law, as determined by the Supreme Court of the United States in their interpretation of the United States Constitution for fair and impartial, due process and equal protection in criminal trials.

Petitioner's conviction resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings where, in violation of Petitioner's Sixth Amendment right to effective assistance of counsel, trial counsel failed to conduct basic pre-trial investigation into the statements that Petitioner made to Officer Corstage and Detective Knight. Additionally, trial counsel failed to challenge the voluntariness, legality, and admissibility of those statements made.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Petitioner

Date: 9/15/21

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2020
SHIKISHA MONET TIDMORE-PETITIONER

VS.

JEREMY HOWARD

AFFIDAVIT

Pursuant to Federal Rules of Civil Procedure Rule 29.2; 28 U.S.C. § 1746, I Shikisha Monet Tidmore, being duly sworn, deposes and says that the following is true to the best of her information, knowledge and belief:

1. On June 18, 2021, a panel of Michigan Supreme Court judges of the Michigan Supreme Court issued an Order Denying Defendant-Appellant's Application for Leave to Appeal.

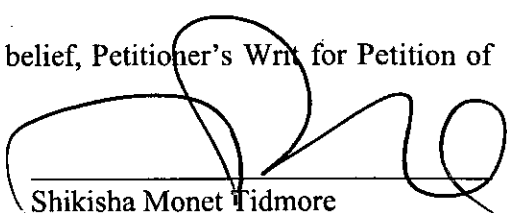
2. On 9/18/21 I affixed postage on two legal size envelopes and deposited them in the institution's internal mail system at the Huron Valley Correctional Facility for mailing.

3. That the envelopes were addressed to Clerk; Supreme Court of the United States; Washington, DC 20543; and Dana Nessel; Michigan Attorney General; P.O. Box 30212; Lansing, Michigan 48909.

4. That a Proof of Service sworn and dated for 9/18/21 was included in both of the above stated mailings.

5. That to the best of Petitioner knowledge and belief, Petitioner's Writ for Petition of Certiorari was mailed timely.

Subscribed and sworn to before me


Shikisha Monet Tidmore
Petitioner

this 18 day of SEPT, 2021


My Commission expires: 8/3/2024

JAMES M. HILL
NOTARY PUBLIC, STATE OF MI
COUNTY OF JACKSON
MY COMMISSION EXPIRES Aug 3, 2024
ACTING IN COUNTY OF UNSUBSTANT

