No. 21-6999

IN THE

SUPREME COURT OF THE UNITED STATES

SHAROC RICHARDSON — PETITIONER
(Your Name)

SHERMAN CAMPBELL vs.

CONNIE HORTON — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

SHAROC RICHARDSON
(Your Name)

CHIPPEWA CORRECTIONAL FACILITY (Inmate #207069)
(Address)

4269 WEST M-80, Kincheloe, Michigan 49784
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

QUESTION ONE: DID THE TRIAL COURT ERR IN FAILING TO INSTRUCT THE JURY ON INVOLUNTARY MANSLAUGHTER IN THIS CASE?

QUESTION TWO: WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO CROSS-EXAMINE WITNESSES ABOUT THE VIOLENT NATURE OF THE DECEDENT?

QUESTION THREE: WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO INVESTIGATE, PREPARE AND CALL DEFENSE WITNESSES FOR TRIAL?

QUESTION FOUR: WAS THERE PROSECUTORIAL MISCONDUCT IN WITHHOLDING EVIDENCE FAVORABLE TO THE DEFENDANT-PETITIONER?

LIST OF PARTIES

XX[X] 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:

RELATED CASES

#1. People v Sharoc Richardson, No. 13-009830-01-FC, Wayne County Circuit Court (Detroit). Judgment entered April 9, 2014.

#2. People v Sharoc Richardson, No. 322195, Michigan Court of Appeals. Judgment entered May 26, 2016

#3. People v Sharoc Richardson, No. 154108, Michigan Supreme Court. Judgment entered May 2, 2017 (Rehearing was denied on September 12, 2017).

#4. Sharoc Richardson v Thomas Winn, (U.S.D.C. later amended case caption to SHERMAN CAMPBELL, and then later to CONNIE HORTON to reflect change of wardens), No. 2:17-CV-13396, U.S. District Court for the Eastern District of Michigan. Judgment entered March 24, 2021.

#5. Sharoc Richardson v Sherman Campbell, (later, Connie Horton), U.S. Court of Appeals for the Sixth Circuit. Judgment entered November 2, 2021. COA NO. 21-3421

#6. Sharoc Richardson v Sherman Campbell, COA No. 21-3421, Motion for Rehearing for a Certificate of Appealability was denied. Judgment entered December 21, 2021.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

STATUTES AND RULES

OTHER

None

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

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

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

[XXXX] reported at 2021 U.S. App. LEXIS 32652; 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 B to the petition and is

[XXXX] reported at 2021 U.S. Dist. LEXIS 55596; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

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

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

[XXXX] reported at 500 Mich. 980 and 501 Mich. 866; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the Michigan Court of Appeals court appears at Appendix D to the petition and is

[XXXX] reported at 2016 Mich. App. LEXIS 1080; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was November 2, 2021.

[ ] 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: December 21, 2021, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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).

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

The date on which the highest state court decided my case was May 2, 2017. A copy of that decision appears at Appendix C.

[X] A timely petition for rehearing was thereafter denied on the following date: September 12, 2017, and a copy of the order denying rehearing appears at Appendix D.

[ ] 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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Fifth Amendment of the United States Constitution, for Due Process of Law

2. Sixth Amendment of the United States Constitution, for guaranteed right of effective assistance of an attorney when charged with a crime.

3. Fourteenth Amendment of the United States Constitution, for Equal Protection under law.

STATUTORY PROVISIONS

1. 28 U.S.C.A. 2243

STATEMENT OF THE CASE

On October 4, 2013, Sharoc Richardson was arrested and charged with: Count 1, Premeditated Murder of Joyce Ann Merritt. Following a jury trial, on April 9, 2014, Richardson was convicted of Voluntary Manslaughter. On April 29, 2014, Richardson was sentenced to 150 to 360 months imprisonment, and at a Resentencing Hearing on August 5, 2015, Richardson was sentenced to 129 months to 30 years imprisonment.

The Michigan Court of Appeals affirmed the conviction on May 26, 2016, but vacated and remanded a portion of the sentence dealing with restitution. After numerous request, on April 3, 2019, the trial court finally set forth an order vacating the erroneously imposed restitution.

The Michigan Supreme Court denied leave to appeal on May 2, 2017, and denied Rehearing on September 12, 2017.

Timely Habeas Corpus relief was sought in the U.S. District Court for the Eastern District of Michigan, and was Dismissed with Prejudice on March 24, 2021. A Certificate of Appealability was denied, but the U.S. District Court allowed Richardson to appeal in Forma Pauperis.

On November 2, 2021, the U.S. Court of Appeals for the Sixth Circuit denied a Certificate of Appealability, and held that Richardson's two Requests for Appointment of Counsel were Moot. A timely Petition for Rehearing En Banc was denied on December 21, 2021.

REASONS FOR GRANTING THE PETITION

There are conflicts with case law from the Sixth Circuit and other Federal Circuit Court of Appeals, as well as conflicts with case law rulings from this Court, which have been overlooked by the lower courts, and will adversely effect similarly situated cases in the future.

Secondly, there are prejudicial factual errors in the record that Petitioner has demonstrated to be inaccurate, but are repeatedly side-stepped by the lower courts, perhaps due to comity.

For example, no "Special Investigator", as ordered by the Trial Court, has ever interviewed or contacted Petitioner at all, and such assistance would have been very helpful in gathering witnesses and evidence for trial. (See: Attached Trial Court Order).

Petitioner does not believe that a more affluent person would have been rushed to trial facing life imprisonment on a murder charge, for defending himself from a highly intoxicated woman who attacked him in his sleep, with a substitute defense lawyer appointed 10 days earlier, because the previous court-appointed attorney was too preoccupied with his invitation to the Presidential White House in Washington, DC., to investigate, or interview witnesses and consult with Petitioner in pre-trial confinement for 170 days.

Under the broad equitable powers of Habeas Corpus law, pursuant to 28 U.S.C. 2243, and U.S. Supreme Court Rule 24, where this Court may consider plain error, Petitioner sets forth the following four assignments of error for this Court's review:

QUESTION ONE: DID THE TRIAL COURT ERR IN FAILING TO INSTRUCT THE JURY ON INVOLUNTARY MANSLAUGHTER IN THIS CASE?

Bagby v. Sowders, 894 F.2d 792, 795-97 (6th Cir. 1990) (en banc), suggested that habeas relief would be warranted only if the failure to give the requested instruction was "likely to have resulted in the conviction of an innocent person". Id. at 795.

Foremost, Petitioner Richardson asserts that he is in fact an innocent person, because under law, he had a right to defend himself when being attacked with a knife.

Further, petitioner testified that he had no intent to kill, and he was swinging the knife as a "REFLEX ACTION" while under attack and cornered in the living room in order to keep his friend's attacking sister away from him. (See: Trial Transcript, page 101).

It should be noted that Petitioner Richardson testified that he eventually passed out from alcohol intoxication while he was looking for his working cell phone that was found later by police in a rear bedroom where Petitioner Richardson had been sleeping earlier. (See: Trial Transcript, Pages 32 and 158, April 8, 2014).

Petitioner Richardson believes that there is a conflict between the Bagby Court and the Federal Court of Appeals in United States v. Browner, 889 F.2d 549 (5th Cir. 1989), where habeas relief was granted with a voluntary manslaughter conviction where the wife of a U.S. Army private stabbed her husband once (as with the instant case), and maintained that she did not intend to injure him. The Browner Court above held that the defendant was entitled to a lesser instruction of involuntary manslaughter.

Lastly, as a sub-claim, Petitioner Richardson has contended that his trial attorney was ineffective for agreeing to the jury instructions and failing to request an involuntary manslaughter instruction in light of the evidence and circumstances.

Petitioner Richardson believes that similarly situated cases such as this will no doubt take place in the future across America.

QUESTION TWO: WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO CROSS-EXAMINE WITNESSES ABOUT THE VIOLENT NATURE OF THE DECEDENT?

Petitioner Richardson believes that his ineffective assistance of counsel claims are the stronger grounds for relief, in accord with the standards of Strickland v. Washington, 104 S.Ct. 2054 (1984).

In a self defense case such as this one, especially with no witnesses to the actual fight, it is logical and equitable that a defense lawyer makes sure that the jury is informed about the violent nature of the person defendant asserts attacked him in his sleep then cornered him in living room with a knife.

Petitioner Richardson believes there is a conflict with another case from the Sixth Circuit, where it was discovered that the deceased woman was intoxicated, had a violent nature, and would likely use her knife on a man. (See: Bennett v. Scroggy, 793 F.2d 772 (6th Cir. 1986).

Similar to the defendant in the Bennett case, Petitioner Richardson was the only person who testified about the violent nature of the decedent. Yet the Michigan Court of Appeals erroneously held several people testified to the violent nature of Joyce Merritt. This is not true, and both lower Federal Habeas Corpus Courts gave the State Appellate Court ruling the presumption of correctness.

The Trial Court record shows that the brother of the deceased, Danny Merritt, and his neighbor, Robert Brown, only testified about verbal "fights", and nothing about Joyce Merritt attacking other people in the community.

The Bennett Court found that the testimony of others was critical to Bennett's defense, not cumulative, and that his defense counsel was ineffective.

The Michigan Court of Appeals ruling relied on by both lower Federal Habeas Corpus Courts, held that Petitioner Richardson could have "obtained affidavits from the two living witnesses", Danny Merritt and Robert Brown mentioned above, after trial for his direct appeal as of right. However, it should be plain that the witnesses should have been cross-examined about the violent nature of Joyce Merritt while they were testifying in the courtroom at the jury trial.

The outcome of Petitioner Richardson's trial would have been more favorable to him had defense counsel properly cross-examined the witnesses before the jury, and there is also a conflict with the following two cases from the Federal Court of Appeals for the Fifth Circuit.

In Smith v. Dretke, 417 F.3d 438 (5th Cir. 2005), the Court held defense counsel was ineffective for failing to present testimony by witnesses who could have supported the self-defense theory by corroborating defendant's testimony about the decedent's violent nature. (See also: Tenny v. Dretke, 416 F.3d 404 (5th Cir. 2005) (Holding counsel failed to investigate and present the self-defense claim properly.).

Interestingly, the Seventh Circuit Federal Court of Appeals in Stanley v. Bartley, 465 F.3d 810 (7th Cir. 2006), granted habeas corpus relief, finding that with regard to the prosecution's key witness, "if the lawyer had interviewed him before trial, he might have told the lawyer things that would have enabled effective cross-examination. (emphasis added).

The Stanley Court ruling is on point with Petitioner Richardson's situation, and is in conflict with the Sixth Circuit Court's decision.

QUESTION THREE: WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO INVESTIGATE, PREPARE AND CALL WITNESSES FOR TRIAL?

With the de novo review provision of Strickland v. Washington, 466 U.S. 668 (1984), Petitioner Richardson believes that reasonable jurist will deduce that he demonstrated where he had counsel in form, but not substance.

Foremost, no court has addressed Petitioner's complaint that no "Special Investigator" has ever interviewed Petitioner in jail as ordered by the Trial Court. (See: Attached Order dated 11/6/2013 from Trial Court.)

The Trial Court record will support that the first defense attorney withdrew from Petitioner's case because he was too preoccupied with his invitation to the Presidential White House in Washington, DC., and a substitute attorney was appointed approximately 10 days before the murder trial began.

Petitioner Richardson submits that the substitute defense attorney did not have enough time to investigate, interview witnesses and prepare for trial, especially with other clients. Substitute defense counsel did not have time to inquire about the missing "Special Investigator", who could have gathered a host of different people in the neighborhood to testify about the violent nature of the decedent.

This is plain where Petitioner's employer, Richard Truchan, set forth an affidavit asserting that one of his former employees, David Johnson, also knew about the decedent's violent reputation. However, neither witness was interviewed by substitute defense counsel or a "Special Investigator".

There is a conflict of case law where in Ramonez v. Berguis, 490 F.3d 482 (6th Cir. 2007) held counsel was ineffective due to "guessing what witnesses might say" in absence of a full investigation.

In a self-defense murder trial, it is important that the jury be made aware of the violent nature of the decedent, and contrary to the Michigan Court of Appeals ruling, petitioner was the only person to testify about Joyce Merritt's violent nature.

Now, the lower State and Federal Courts have set forth that Petitioner Richardson should have gathered affidavits from witnesses concerning Joyce Merritt's violent nature and reputation for appeals after trial.

This is Petitioner Richardson's main complaint, that substitute defense counsel was ineffective for failing to gather many people from the neighborhood who could testify about the violent nature and reputation of Joyce Merritt.

There is a conflict with a number of other cases from Federal Circuit Courts, such as in Groseclose v. Bell, 130 F.3d 1161 (1997), where habeas corpus relief was granted due to counsel's failure to investigate, prepare a defense and call witnesses.

Defense counsel in McClellan v. Rapelje, 703 F.3d 344 (6th Cir. 2013), was found to be "grossly deficient" in his failure to interview numerous eyewitnesses, and the Court in Stanley v. Bartley, 465 F.3d 810 (7th Cir. 2006), granted habeas relief where counsel's failure to interview any witnesses or prospective witnesses was "a shocking dereliction of duty".

It should be noted that in this short murder trial where Petitioner was facing life imprisonment for defending himself against his friend's sister who, according to the Medical Examiner, was found to be 4½ times the legal limit of alcohol intoxication, but still able to function, substitute defense counsel did not interview anyone other than Petitioner in jail.

With no eyewitnesses to the attack, Petitioner's employer, Richard Truchan, the only witness he could contact from confinement, was just as valuable of a witness as Danny Merritt and Robert Brown, and in Hodgson v. Warren, 622 F.3d 591 (6th Cir. 2010), the Court held counsel's failure to call exculpatory witnesses could not be defended as a strategic decision.

Petitioner testified he was sleeping and still drunk when attacked, then passed out while looking for his cell phone. Police reported an additional cell phone was found later by officers in a rear bedroom where Petitioner was sleeping earlier.

The above facts prove substitute defense counsel did not investigate, as a lawyer of average skill would have first questioned Petitioner in jail as to why he did not call for help with the cell phone on the table in the living room. Then counsel would see the above mentioned police report.

The State Appellate Court wrongly slanted it's opinion towards the prosecution's theory of the case, in that inter alia, Petitioner never testified he "easily" pushed Merritt off of him during the encounter, and yet, even with proof in the trial transcripts, the lower Federal Courts afforded the Michigan Court of Appeals decision "the presumption of correctness". The State Appellate Court fails to mention anything concerning the decedent was 4½ times the legal limit of alcohol intoxication at the autopsy, but was still able to travel around the block.

Lastly, the lower Courts hold a "Catch 22" that Petitioner had no duty to retreat, but affirmed his conviction when he testified defending himself with a "reflex action". Under the facts of the case, substitute defense counsel's "reasonable trial strategy" should have been to show the jury by living room photos or a floor plan that his client had no escape from the cornering attack, supporting Petitioner's self-defense claim.

QUESTION FOUR: WAS THERE PROSECUTORIAL MISCONDUCT IN WITHHOLDING EVIDENCE FAVORABLE TO THE DEFENDANT-PETITIONER?

Contrary to this Court's ruling in Brady v. Maryland, 373 U.S. 83 (1963), the prosecution violated due process of law by withholding favorable evidence from the defense and jury.

Petitioner Richardson asserts that the outcome of the trial would have been "exculpatory" had the jury heard the truth about the decedent's 5 or 6 pending arrest warrants, and the jail-recorded telephone calls of petitioner trying to gather witnesses who had been assaulted with knives by the decedent.

This information to the triers of fact would have shown that Petitioner was lawfully defending himself from a knife-welding woman wanted by police for prostitution and street fights.

The prosecution mentioned the jail-recorded phone calls in open court, but upon reviewing the calls later, the prosecution did not want the jury to hear such "exculpatory" information. (See: Trial Transcript, Page 9, April 7, 2014).

Exculpatory information should be presented to the jury, in accord with Kyles v. Whitley, 115 S.Ct. 1555 (1995). As held by this Court in Kyles, there was "a reasonable probability" of a different result at trial, had this favorable and "exculpatory" information been disclosed to the jury.

Petitioner Richardson contends that he has met the 3-factor test of Strickler v. Green, 119 S.Ct. 1936 (1999), in that, (1) The prosecution suppressed evidence; (2) The evidence was favorable to the accused, and (3) The evidence was material.

There is also a conflict of case law with United States v. Agurs, 96 S.Ct. 2392 (1976), where this Court held that the prosecution must disclose favorable evidence whether or not it is requested.

It should be noted that the favorable information (in this case, pending arrest warrants and jail-recorded telephone calls), were "wholly...in the sole control of the government", as held in Coe v. Bell, 161 F.3d 320, 344 (6th Cir. 1998).

Lastly, it can be seen here where substitute defense counsel, who was appointed only 10 days before this murder trial began, and rushed to trial without investigating, was ineffective for failing to follow-up with the jail-recorded calls that the prosecution mentioned briefly in open court when the jury was not present. In Raygoza v. Hulick, 474 F.3d 958 (7th Cir. 2007), it was held that defense counsel was ineffective for failing to offer telephone records that would have corroborated Raygoza's defense.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sharon Richardson

Date: January 20, 2022