

22-5409

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

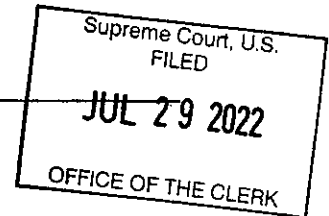
JAMAL A BOWMAN,  
Petitioner,

L.C.No. 12-006429-FC

U.S. Supreme No. \_\_\_\_\_

- VS -

THE STATE OF MICHIGAN,  
Respondent.



PETITION FOR WRIT OF CERTIORARI

Last Court Rule:

THE MICHIGAN SUPREME COURT

JAMAL A BOWMAN #246714  
KINROSS CORRECTIONAL FACILITY  
4533 WEST INDUSTRIAL PARK DRIVE  
KINCHELOE, MICHIGAN 49788-1638

QUESTION PRESENTED

WHETHER THE STATE COURT OF MICHIGAN GAVE DUE  
RECOGNITION TO PETITIONER'S FEDERAL CLAIM AFTER A  
JURY FOUND PETITIONER ACTUAL INNOCENT

LIST OF PARTIES

Pursuant to Supreme Court Rule 14.1 (b), the Petitioner  
Jamal A. Bowman certifies that the names of all parties to this  
proceedings/ Certiorari appears in the caption of this petition  
for Writ of Certiorari.

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## TABLE OF AUTHORITIES

### CASES:

*Henry v Mississippi*, 379 U.S. 443; 85 S.Ct. 564; 13 L.Ed. 2d 408 (1965). . . . .

*Lee v Kemna*, 534 U.S. 362; 122 S.Ct. 877 (2002) . . . . .

*Schlup v Delo*, 513 U.S. 298; 115 S.Ct. 851; 130 L.Ed.2d 808 (1995) . . . . .

*United States v Frost*, 125 F.3d 346 (1997) . . . . .

### RULES:

Federal Rules of Evidence 301 . . . . .

Michigan Court Rule 6.508(D) . . . . .

Michigan Rules of Evidence 803(4). . . . .

CONSTITUTIONAL PROVISION

United States Constitution, First Amendment . . . . .

United States Constitution, Sixth Amendment . . . . .

United States Constitution, Fourteenth Amendment . . . . .

PETITION FOR WRIT OF CERTIORARI

Petitioner, JAMAL A BOWMAN, respectfully petition this Court for a writ of Certiorari to review the order from the Michigan Supreme Court determining:

1. The Petitioner failed to meet the burden of establishing entitlement to relief under M.C.R. 6.508(D).

REPORTED DECISIONS

The following decisions and opinions in this case, directly relating to the question presented, have been reported and are included in the designated Appendix:

People v. Bowman, Michigan Supreme Court (2022)

(Defendant has failed to meet the burden of establishing entitlement to relief under M.C.R. 6.508(D)) - Appendix C.

People v. Bowman, Michigan Court of Appeals (2021)  
(Application Granted, Appeal Denied) - Appendix B.

People v. Bowman, Michigan Circuit Court (4-5-2021)  
County of Kent. ("Defendant cannot establish that he  
could not, using reasonable diligence, have discovered  
and produced the evidence at trial") - Appendix A.

The state court's decision in this case have  
been reported and are not relevant to a legitimate  
state interest concerning the facts in this case.

#### STATEMENT OF JURISDICTION

Petitioner seeks review of an order from  
the Michigan Supreme Court issued May 3, 2022.

This Honorable Court has jurisdiction under Federal  
Procedural and rules Rule 10(c).

## CONSTITUTIONAL PROVISION INVOLVED

The following constitutional provisions that are involved in this case:

UNITED STATES CONSTITUTION, FIRST AMENDMENT:

the right to petition the Government for a redress of grievances.

UNITED STATES CONSTITUTION, SIXTH AMENDMENT:

The right to present a defense (a substantial defense).

UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT:

No state shall 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

In this case the Petitioner was originally accused of kidnapping Amber Podbregar, a 34 year old female, choking and beating her before forcefully removing her clothes, and raping her several times inside the bedroom of a friend's apartment. It was later admitted by Amber that she was not kidnapped and dragged into this bedroom before the filing of any charges. After a scant investigation the state charged the Petitioner with one count of C.S.C. 1st degree, causing personal injury for vaginal rape. After the filing of this charge Amber admits at Petitioner's preliminary examination to removing her own clothes to engage in consensual vaginal sex with the Petitioner in this bedroom. At Petitioner's trial Amber testified to the Petitioner forcing her to perform oral sex at the same time she and the Petitioner was engaged in consensual vaginal sex. She further testified to the Petitioner returning to vaginal sex, "regular sex" and to telling Petitioner "no" and "stop".

The Petitioner presented testimony from eye witness Amanda Johnson, the arresting officer in Amber's domestic violence offense, to defend against the allegation of oral rape.

Ms. Johnson testified at trial to arresting Amber hours after

the alleged rape for domestic violence, and to, not seeing any visual marks or injuries to Amber's face and neck when she arrested Amber and transported Amber to the Kent County jail.

Petitioner presented Amber's prior inconsistent statements as impeachment evidence to attack Amber's credibility to defend against the allegation of vaginal rape. The statements were concerning how Amber received her vaginal injuries. She originally, testifying at Petitioner's preliminary examination to not knowing when she received the injury, during consensual or non-consensual sex, yet testifying at the Petitioner's trial to knowing when she received the injury, during non-consensual sex.

The Petitioner was found guilty of vaginal rape and found not guilty of oral rape (which allegedly initiated the offense).

## SUMMARY OF ARGUMENT

Petitioner presented new evidence in a motion for Relief From Judgment in this case. This new evidence, scientific research, explaining that vaginal injury can not be use to determine non-consensual or consensual penetration, was barred by the state court where the state court determined that Petitioner failed to exercise due diligence in presenting this evidence at trial.

Petitioner contends that where his trial counsel attempted to elicit this evidence at trial make this bar inapplicable in this case and a violation of his right to have access to the Court under the first Amendment. See: *United States v Frost*, 125 F.3d 346, 392 (1997). Further, Petitioner contends that the state has legally waived the right to apply a state bar to his case because a state bar is not evidence and only evidence showing that Petitioner is not innocent can rebut the presumption of Petitioner being actually innocent. See: Federal and Michigan Rules of Evidence 301.

The trial record in this case shows that not only Petitioner's trial counsel but also the state's prosecutor Ms. Brinkman attempted to elicit this same evidence at trial.

Ms. Brinkman (State Prosecutor):

"He wanted you to talk about whether you could tell if it was consensual or non-consensual penetration as it relates to these injuries, the internal injury to the vaginal canal and vaginal injuries."

"Do you have an opinion based on reasonable medical certainty as to these injuries being more consistent with consensual or non-consensual penetration?"

Teresa Kinney (Expert Witness):

"They're more consistent with non-consensual penetration."

According to the medical community scientific research the expert witness provided the state's prosecutor with false and misleading information based on medical certainty. Petitioner's trial counsel made a second attempt to elicit this evidence.

Thomas Parker (Trial Counsel):

"But you can't tell medically why though?"

See: Exhibit #1 Trial Transcript (T.T.) Vol. 3 pg. 71-72.

Petitioner argues that the trial record demonstrates that due diligence was exercised in presenting his new evidence at trial. Trial counsel satisfied the standard of due diligence when he attempted to elicit the information at trial from a reasonable source. See: *United States v. Frost*, 125 F.3d 346, 392 (1997). Teresa Kinney was a reasonable source where this information was apart of her medical field of sexual assault.

Further, Petitioner argues that the lower court records demonstrates a strong presumption that petitioner is actually innocent. And that the state beginning their prosecution on false and misleading information is facts and evidence establishing the [REDACTED] presumption that Petitioner is actually innocent, and this presumption cannot be rebuttal with a state bar because a state bar is not evidence, nor sufficient to demonstrate Petitioner is not innocent. State and Federal Rule of Evidence 301 states the following:

"In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes

on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast.

The actual innocent doctrine clearly expresses that new evidence demonstrates a presumption of innocence, and the doctrine itself only serves as a gateway into the courts after finality. See: *Schlup v. Delo*, 513 U.S. 298; 115 S.Ct. 851; 130 L.Ed.2d 808 (1995). The doctrine is based on a presumption of actual innocence by a criminal defendant persuading the court he or she is actually innocent by way of evidence. Although the court expresses this evidence must be new this doctrine still legally supports Petitioner argument that the state created a presumption that Petitioner might be actually innocent when the state decided to begin their prosecution using known false and misleading information, putting an possible innocent man at risk of losing his liberty and life. The

lower court record demonstrates that the complainant Amber Podbregar gave false and misleading information to 1. A Reporting Officer, Susan Clare; 2. A Sexual Assault Nurse Examiner, Teresa Kinney; 3. A detective, Pete Kemme. Amber admitted to information being false and misleading at Petitioner's Preliminary Examination. Amber admitted at this Pre-lim hearing to having consensual sex with the Petitioner, removing her own clothes for the Petitioner, to not being sexually and physically assaulted on a couch by the Petitioner, and not being physically force to smoke marijuana. The total opposite information was given to Susan Clare, Teresa Kinney and Detective Pete Kemme, which the state's prosecutor discovered at Petitioner's Pre-lim hearing. See: Exhibit #2 (Susan Clare, Pete Kemme and Teresa Kinney reports). The state's prosecutor's response after learning their prosecution begin on false and misleading information was:

Ms. Brinkman: (the state's prosecutor):

"I'm only concern with the non-consensual allegation."

See: Exhibit #3 Preliminary Examination Report pg. 19-20

The prosecutor moving forward to try the Petitioner after learning false and misleading information was given by the complainant without re-investigating the complaint was not short of criminal deliberate indifference and malicious.

In this case the lower court record serves as a fact and as evidence supporting the presumption that the Petitioner is actually innocent. Where the state begin its prosecution with false and misleading information knowingly the state should not be allow to bar relevant evidence that can change the outcome not heard by the trier of fact, or evidence that demonstrate that a criminal defendant's trial was unfair. Under these circumstances neither this Court nor the state court can say that a criminal defendant's guaranteed right to a fair trial was not violated without adjudicating all relevant evidence never heard by the trier of fact on its merits. This is the only way to assure a criminal defendant the guaranteed right to a fair trial before applying a legitimate state bar. And the state should be restricted to this before applying a state bar where the above circumstances exist.



## REASON FOR GRANTING WRIT

The question presented is relevant not just to a legitimate state bar, but also to our system of jurisprudence where the guaranteed right to a fair trial is concerned, and also the actual innocent doctrine.

Petitioner is aware that this Court review is limited to whether the state's procedural bar is a legit and applicable one in this case, See: *Lee v Kemna* 534 U.S. 362 (2002). Petitioner is also aware that there is an exception to this review that allows this Court to review a case in good faith of its primary objectives of moving our system of jurisprudence towards perfection. . . As this would be justice for all. See: *Henry v Mississippi*, 379 U.S. 443 (1965).

And this good faith is necessary here because this case is extraordinary. Petitioner's right to present a substantial defense was violated where the Expert witness in this case testified under Michigan Rules of Evidence 803(4) STATEMENT MADE FOR PURPOSE OF MEDICAL TREATMENT an exception to the hearsay rule. this hearsay

exception went to the truth of the matter thus being substantive evidence, yet using the false and misleading information to justify an indicia of reliability to support the substantiveness. If a criminal defendant cannot use the false statements given during medical treatment because the false statements becomes 1. The truth, and 2. Corroborated by the medical official, as it did in this case, how is a criminal defendant who has been accused of sexual assaulting the woman he just had consensual sex with defend himself if his impeachment evidence, prior inconsistent statements, given to medical official during medical treatment is trumped because the false statement was given during medical treatment. The complainant in this made an allegation to a medical official then made a whole entirely new allegation the medical official never heard, yet the Petitioner's conviction is corroborated by the medical official and it was the new allegation that the Petitioner went to trial on. See: Petitioner's first

Appeal of Right decision. Appendix D

CONCLUSION

The state courts erroneously barred the Petitioner's new and relevant evidence under lack of due diligence, and by law has waived the right to rely on a legitimate state bar where the state court knowingly begin their prosecution on false and misleading information in disregard of the risk of putting an innocent man on trial.

FOR EACH OF THE REASONS SET FORTH ABOVE,  
THIS COURT SHOULD GRANT A WRIT OF CERTIORARI.

Respectfully Submitted,

Dated: 7 / 29 / 2022

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