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22-5739

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

LaTausha Simmons — PETITIONER  
(Your Name)

vs.

People of the State of Michigan — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MICHIGAN SUPREME COURT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LaTausha Simmons  
(Your Name)

20500 Dean Street  
(Address)

Detroit, Michigan 48234  
(City, State, Zip Code)

N/A  
(Phone Number)

## QUESTION(S) PRESENTED

- I. WHETHER THE MICHIGAN SUPREME COURT ERRED IN CONCLUDING THAT THE PROHIBITION AGAINST DOUBLE JEOPARDY (see **US Const, Am V and Const 1963, art 1§ 15**) DID NOT APPLY IN THIS CASE TO PROTECT THE DEFENDANT AGAINST A SECOND PROSECUTION FOR THE SAME OFFENSE AFTER THE CIRCUIT COURT INITIALLY DECLARED THE DEFENDANT INNOCENT AND ENTERED AN ORDER OF ACQUITTAL ON THE GROUNDS OF INSUFFICIENT EVIDENCE AND AFTER THE MICHIGAN COURT OF APPEALS TWICE AFFIRMED THE ACQUITTAL UNDER THE DOUBLE JEOPARDY CLAUSE?
- II. WHETHER THE MICHIGAN SUPREME COURT ERRED IN CONCLUDING THAT THE PROHIBITION AGAINST DOUBLE JEOPARDY (see **US Const, Am V and Const 1963, art 1§ 15**) WHICH ALSO INCLUDED SUPPLEMENTAL FINDINGS BARRED FOLLOWING A REVERSAL, DID NOT APPLY TO THIS CASE FOR WHETHER THE CIRCUIT COURT DETERMINED THAT THE PROSECUTION FAILED TO PUT FORWARD EVIDENCE OF A LAWFUL ARREST AFTER THE CIRCUIT COURT INITIALLY DECLARED THE DEFENDANT INNOCENT AND ENTERED AN ORDER OF ACQUITTAL ON THE GROUNDS OF INSUFFICIENT EVIDENCE AND AFTER THE MICHIGAN COURT OF APPEALS TWICE AFFIRMED THE ACQUITTAL UNDER THE DOUBLE JEOPARDY CLAUSE?
- III. WHETHER THE MICHIGAN SUPREME COURT ERRED IN CONCLUDING THAT THE CIRCUIT COURT'S ACQUITTAL CAN BE APPEALED OR OVERTURNED ON A MOTION FOR RECONSIDERATION UNDER MCR 7.114(D) AND MCR 2.119(F) WHEN THE PROHIBITION AGAINST DOUBLE JEOPARDY (SEE **US CONST, AM V AND CONST 1963, ART 1§ 15**) APPLIES IN THIS CASE AND CURRENTLY PROHIBITS APPEALS OF ACQUITTALS BY A HIGHER COURT ON APPEAL OR ON RECONSIDERATION BY THE SAME COURT WHICH ISSUED IT FOR PURPOSES OF THE DOUBLE JEOPARDY CLAUSE?
- IV. WHETHER THE MICHIGAN SUPREME COURT ERRED IN CONCLUDING THAT THE CIRCUIT COURT PROPERLY EXERCISED ITS AUTHORITY UNDER MCR 7.114(D) AND MCR 2.119(F), WHEN IT RECONSIDERED AND REVERSED ITS OWN ORDER OF ACQUITTAL, THUS ELIMINATING DOUBLE JEOPARDY CONCERN RELATED TO ITS PRIOR DETERMINATION OF THE DEFENDANT'S INNOCENCE IN ITS DECEMBER 26, 2018 ACQUITTAL ON THE GROUNDS OF INSUFFICIENT EVIDENCE FOR PURPOSES OF THE DOUBLE JEOPARDY CLAUSE?

## **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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**APPENDIX E** September 23, 2020 - Order of State Supreme Court directing prosecuting attorney answer the application for leave to appeal the July 30, 2019 order of the Court of Appeals; in lieu of granting application for leave to appeal Remanded case to Michigan Court of Appeals; granting stay of proceedings in state trial court.

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**APPENDIX G** July 30, 2019 - Order of Michigan Court of Appeals Denying Leave to Appeal.

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**APPENDIX I** December 26, 2018 - Order of Acquittal in State Circuit Court Entering Order of Acquittal on grounds of insufficient evidence and declaring defendant innocent.

**APPENDIX J** June 5, 2019 - Order of State Circuit Court on late motion for reconsideration by prosecuting attorney, reversing its December 26, 2018 Order of Acquittal on grounds of insufficient evidence, and remanding for a new trial.

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## **CONSTITUTIONAL AND STATUTORY AUTHORITIES AND RULES**

The Fourteenth Amendment to the US Constitution

The Fifth Amendment to the US Constitution

The Fourth Amendment to the US Constitution

Article I § 2 to the 1963 to the Michigan Constitution

Article I § 15 to the 1963 to the Michigan Constitution

Article I § 17 to the 1963 to the Michigan Constitution

MCR 7.104(B)

MCR 7.104(3)(A)(a)

MCR 7.104(D)(9)

MCR 2.119(F)

MCR 2.107(C)(3)

## **OTHER**

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 \_\_\_\_\_ 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 at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

**[X] 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 \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[X] is unpublished.

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

[X] reported at 506 Mich 912 (2020); 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 4-1-22. A copy of that decision appears at Appendix B.

[X] A timely petition for rehearing was thereafter denied on the following date: 6-28-22, 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. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law." *Id.* amend. XIV. Under this doctrine, the U.S. Supreme Court has ruled in a series of cases that the Due Process and Equal Protection Clauses of the Fourteenth Amendment guarantee to the citizens of every state the right to exercise certain fundamental liberties. These liberties include (but aren't limited to) every liberty set forth in the Bill of Rights.

A citizen's right to due process in state court, guaranteed by the Fourteenth Amendment to the United States Constitution, includes the immunity from double jeopardy guaranteed by the Fifth Amendment.

The prohibition against double jeopardy (see US Const, Am V and Const 1963, art 1,§15) protects the defendant against a second prosecution for the same offense. The U.S. Constitution's Fifth Amendment contains a Double Jeopardy Clause, which says that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." State constitutions similarly protect individuals from being tried twice for the same crime. Even in states that don't expressly guarantee this right in their laws, the protection against double jeopardy must still be afforded to criminal defendants because the Fifth Amendment's Double Jeopardy Clause has been made applicable to state proceedings via the doctrine of incorporation. For criminal defendants, this is a crucial constitutional right. The prosecution is constitutionally barred from re-trying him for the same offense. The U.S. Supreme Court has said that protections against re-prosecution for the same crime extend to all felonies, misdemeanors and juvenile delinquency adjudications, regardless of the potential punishment. Supplemental findings are also barred following a reversal because of insufficient evidence.., or [following] a mistrial ruling not prompted by manifest necessity.

## STATEMENT OF THE CASE

This case presents recurring questions from areas of constitutional rights upon which the Michigan Supreme Court has recently denied as applicable to this case: The Fourteenth Amendment's right under the Due Process and Equal Protection Clauses as defined under this doctrine, which includes the immunity from double jeopardy guaranteed by the Fifth Amendment. And the Fifth Amendment's rights under the Double Jeopardy Clause, as described under this doctrine, which includes finality of a case upon acquittal and bars supplemental findings following a reversal because of insufficient evidence.

Petitioners brought this case to vindicate her constitutional rights under the Fourteenth Amendment's due process and equal protection which protects Petitioner citizen's right to due process in state court, guaranteed by the Fourteenth Amendment to the United States Constitution, which includes the immunity from double jeopardy guaranteed by the Fifth Amendment. And under the Fifth Amendment's prohibition against double jeopardy (see **US Const, Am V and Const 1963, art 1§15**) which protects the defendant against a second prosecution for the same offense, finalizes the case and bars supplemental findings in the same case.

This case was significantly, grounded on violations of Petitioner's Fourth Amendment, Fifth Amendment and Fourteenth Amendment rights. For these reasons, this Honorable Court should exercise its authority to review this pending application, to stay the Michigan Supreme Court decision pending disposition of the forthcoming petition for writ of certiorari and to allow Petitioner a full and fair opportunity to be heard.

### **INSIDE THE GROCERY STORE**

Petitioner was subjected to a series of violations of her constitutional rights and consequently maliciously prosecuted for exercising her protected constitutional rights. In a city known for racism, racist acts, and racial discrimination against minorities, Petitioner was told she had no constitutional rights. On May 24, 2016, Petitioner, an African American female, was harassed and racially profiled inside of a grocery store, “grocery shopping while black in the City of Warren, Michigan” by a white male police officer Sean Sullivan. Petitioner had purchased groceries and was leaving the sales floor of the store, headed for the exit. Officer Sean Sullivan intentionally walked in front of Petitioner, made direct eye contact with her, then turned directly in front of her, with his back and rear-end facing her. And intentionally started to slow his pace of walk, significantly more and more to intentionally block Petitioner from exiting the sales floor and path to doors.

Petitioner had to stop walking altogether, to prevent from walking directly into the back of the police officer, as he continued to block her from leaving the sales floor. Officer Sullivan used his physical body to prevent Petitioner from exiting the sales floor of the grocery store, without any justification and against her will, after she wish to leave after conducting her business. Petitioner had to wait until Officer Sullivan exited the store first, because he continued to block her from exiting at the time in which she had wished to do so. Petitioner then exited the store through the next closest, nearest to her vehicle. Officer Sullivan was nowhere in Petitioner's sight upon her exit, however his police vehicle was parked near Petitioner's vehicle.

### **OUTSIDE OF THE GROCERY STORE IN THE PARKING LOT**

Officer Sullivan blatantly lied in his police report and gave false testimony in court. To cover up the fact that he had approached Petitioner inside of the grocery store and multiple times outside of the grocery store, while Petitioner was in her vehicle in the private grocery store parking lot. Where Officer Sullivan never had probable cause nor reasonable suspicion to approach Petitioner at all.

After Petitioner had entered her vehicle and proceeded to drive off, Officer Sullivan walked in front of her vehicle and to prevent from running into him, she had to stop her vehicle. Sullivan asked her name and Petitioner invoked the peaceful right to exercise and invoke one's protected constitutional rights, in particular her Fifth Amendment rights. The officer then subjected Petitioner to further harassment, threats, coercion, intimidation and commenced a series of violations of Petitioner's constitutional rights, thereafter.

Among other things, Officer Sullivan told Petitioner "she look suspicious", he will get her name off her license plate and walked behind Petitioner's vehicle, got her license plate number, went to his vehicle, input her license plate through the police LEIN Data System, to gather Petitioner's personal info. Then seconds later, went running back towards Petitioner's car, calling her name three times. As Petitioner sat still in her vehicle exercising her constitutional rights and remaining quiet. Sullivan told Petitioner, "I will get your name, I will get it, when you get out on the road"..."I got until 8 'clock tonight to wait for you".... "you gonna have to leave this parking and I will get it then."

Sullivan planned to cover up his unlawful approach of Petitioner in the grocery store parking lot and the running of Petitioner's license plate number into the police database, by staging a random traffic stop of Petitioner on the city street, once she left the parking lot. Sullivan then moved his vehicle into a different area of the grocery store parking lot to wait on Petitioner to drive off. Within 3 minutes or less, Sullivan came back again after Petitioner, with his vehicle dash cam recording and vest audio recording and made it seem as if he is going by the book and then started demanding Petitioner to give him her driver's license. Petitioner continued to invoke her protected constitutional rights, in particular her Fifth Amendment rights. Sullivan, then accused Petitioner of having stole something from the store, without any probable cause or reasonable suspicion. His attempts failed as no one from the grocery store, ever accused Petitioner of any crime or theft.

Sullivan then dispatched Officer Horlocker, and upon his arrival, both officers conspired and decided to illegally arrest Petitioner and gave testimony that “we decide that we were going to arrest her for not cooperating.” Officer Horlocker arrived and among other things, told Plaintiff she did not have any constitutional rights “what constitutional rights....you don’t have any constitutional rights...” while Petitioner sat in her vehicle, exercising her constitutional rights. Officer Scuillo arrived and told Petitioner she is being charged with felony resisting, and told Horlocker to break Petitioner's vehicle window out.

Officer Horlocker, shattered Petitioner's passenger window, busted out the shattered glass, reached inside of the vehicle, unlocked all of the doors and opened the passenger door. Officers Sullivan and Scuillo opened the driver's door pulled Petitioner out of the vehicle, threw Petitioner to the ground, pushed Petitioner's face and head to the ground even harder, and placed all of their weight on Petitioner's neck and back and handcuffed her. The police officers subjected Petitioner to unprovoked, unsubstantiated violence and excessive force on the private property of the grocery store in the parking lot. And unlawfully arrested, unlawfully searched, seized and jailed her, without probable cause or reasonable suspicion. But for, Petitioner use of discretion to exercise her protected constitutional rights and remain silent.

Officer Sullivan concocted the story that Petitioner was peeking around the corner of the grocery store, with just her head, and then running to her vehicle. To cover up his police misconduct inside of the grocery store and outside of the grocery store multiple times prior to turning on his video and audio. Petitioner also delineated in other pleadings that if Sullivan supposedly saw just her head at the end of a building and no other part of her body, therefore it is clearly impossible to see her body in a running motion. Neither of the police officers nor the Prosecution ever ascertained any video from the grocery store.

The Michigan State Police also withheld *Brady* exculpatory evidence of the LEIN data. Wherein they hold that information for at least 5 years or more, wherein it would show the exact time Sullivan entered Petitioner's license plate number into that computer system. In comparsion to the time in which Sullivan entered it upon his approach of Petitioner outside of the grocery store, prior to turning on his video recording. Petitioner was subsequently charged with Misdemeanor Attempted Resisting and Obstructing (MCL 750.81d(1) and not giving DNA (MCL 28.173A).

*Terry v. Ohio* 392 U.S. 1 (1968) supports that Petitioner's constitutional rights were violated: (1) this was private property. (2) This encounter was not a traffic stop. (3) No ticket was issued. (4) Plaintiff was not parked illegally. (5) The door Plaintiff exited was not marked "employees only". (6) Plaintiff was not loitering. She was a long-time customer who purchased groceries on May 24, 2016, which were in Dave's Marketplace bags, and for which she had a receipt.

For these reasons, this Honorable Court should exercise its authority to review this pending application, to stay the Michigan Supreme Court decision pending disposition of the forthcoming petition for writ of certiorari and to allow Petitioner a full and fair opportunity to be heard.

### THE TRIAL

On May 1, 2018, based on the insufficiency of evidence presented to the jury, Plaintiff was wrongfully convicted of Attempted Opposing a police officer under MCL 750.81(d)(1) and the charge of not giving DNA (MCL 28.173A), was dismissed, as no officer could give testimony regarding such. Petitioner was given an unfair trial grounded on insufficient evidence to support a guilty verdict. Wherein the trial was grounded on prosecution and police misconduct wherein although witnesses were identified, no witnesses were ever called to give testimony on Petitioner's behalf. And wherein evidence was withheld, suppressed, destroyed, edited, falsified and exculpatory evidence failed to be preserved, to cover up the police officers' misconduct to secure a wrongful conviction.

Petitioner was tried by an predominately all white male jury who were friends with the police or had family members that were police officers and who were affilitaed with the Warren police. The judge prevented defense counsel from arguing the third element of the crime of Resisting and Obstructing, the illegality of the arrest, and prevented the jury from being presented with, hearing and deliberating on all of the elements of the crime, creating a sufficiency of evidence error. On or around June 12, 2018, the state trial court denied Petitioner her request for court appointed counsel on appeal.

**APPEAL OF THE CONVICTION AND ACQUITTAL ON THE GROUNDS OF DOUBLE JEOPARDY**

On June 26, 2018 Petitioner appealed her conviction, pro se and indigent. On July 9, 2018, she was later granted court appointed counsel. On December 26, 2018, Petitioner prevailed on appeal. The verdict was overturned because of evidentiary insufficiency to support the verdict of guilty not because of instructional error. The state circuit court reviewed all of the evidence of the record, deemed the evidence insufficient to support the conviction including the legality of the arrest, declared the Petitioner innocent and entered an order of acquittal, December 26, 2018. (**Appendix J, 12-26-18 Order**). A finality of this case once the order of acquittal was entered on December 26, 2018, based on insufficient evidence to support a guilty verdict under Michigan law and the laws of the United States governing double jeopardy. (**Appendix K, 12-26-18 Excerpts from State Circuit Court Appeal Transcript, December 26, 2018**).

On January 18, 2019, 24-days after the order of acquittal, the Prosecution filed an untimely frivolous motion for reconsideration based with the misled argument and misled contention that the Prosecution was not served with the Petitioner's claim of appeal. The Prosecution deceptively and disingenuously stated, "it was not until after the circuit court entered its initial opinion and order did our office truly become aware of the appeal"..."the People were completely blindsided by the ruling."

The Prosecution **failed** to refute the overwhelming evidence presented by Petitioner to support the fact that the Prosecution was served with the claim of appeal and other appeal related documents. The Prosecution was in fact apprised of the appeal by the state district court several months prior to the acquittal. By the state 37<sup>th</sup> District Court on August 9, 2018, some 4 ½ months prior to the December 26, 2018 order of acquittal and less than 30 days later. And fully apprised of the appeal with the service of process of the 400 page trial transcript served on the Prosecution on September 2, 2019, some 3 ½ months prior to the December 26, 2018 order of acquittal. The Prosecution failed to provide any argument or documentation to refute or dispute Petitioner's proofs of service of the claim of appeal, appeal related documents, the notarized sworn affidavit of mailing as evidence of the brief on appeal and all other evidence of the record.

Due to the overwhelming evidence, the Prosecution had shifted gears as to service of process of the claim of appeal because it cannot by any means whatsoever, refute the overwhelming proofs of service of the claim of appeal and other evidence of the record regarding service of process. To the misled contention of never being served with the brief on appeal, as the reason for wanting to set aside the order of acquittal. The Prosecution was clearly disingenuous and made material misrepresentation on the record in a court of law and its motion. Where the Prosecution later within this case, conceded to those misled and false statements made in its motion. And to date have not been held liable for its blatant material misrepresentations to reverse the acquittal.

On February 4, 2019, the state circuit court improperly allowed the Prosecution's motion for reconsideration, improperly allowed oral argument for the Prosecution's motion, when the court rules do not permit oral argument, and usurped Petitioner's appeal as of right. The state circuit court then erroneously concluded Petitioner failed to serve her claim of appeal, despite the evidence of the record of service of process and required Petitioner to file a delayed claim of appeal. The Circuit had erred when it refused to acknowledge Petitioner's proofs of service of her appeal and all other appeal related documents and unlawfully usurped Petitioner of her appeal as of right and of her acquittal.

On June 5, 2019, the state circuit reversed its order of acquittal in light of the evidence of record and remanded for a retrial in the state district court. (**Appendix J, 6-5-19 Order**). Petitioner's requests for court appointed counsel to appeal the June 5, 2019 Order to the Michigan Court of Appeals, were denied. Petitioner filed her application for leave to appeal, in the Michigan Court of Appeals, pro se and indigent. Petitioner was later given court appointed counsel, who was never given any opportunity to gather records of the case. Petitioner was denied leave to appeal by the Michigan Court of Appeals (**Appendix G, 7-30-19 Order**). Petitioner's court appointed counsel, was then denied motion for reconsideration. (**Appendix H, 9-17-19 Order**).

On November 12, 2019, Petitioner timely filed her application for leave to appeal in the Michigan Supreme Court (**Appendix D, 10-2-18 Order**), and served a copy upon the Prosecution. The Michigan Supreme Court on November 15, 2019 served notice on the Prosecution and that a response was due by December 10, 2019. The Prosecution ignored the notice of service of the application and instead continued to prosecute Petitioner. The Prosecution even rigged a bogus retrial on December 2, 2019, to convict Petitioner a second time for the same offense, some 8 days before a response was due on December 10, 2019. Petitioner never received notice of any retrial and the Prosecution had her jailed for 40 days in the Macomb County Jail, until about January 30, 2020.

Then Supreme Court on March 3, 2020, had to DIRECT the Prosecution to ANSWER Petitioner's application for leave to appeal, 4 months after the Petitioner's application had been filed, in particular, the Prosecution had to address: (1) whether the circuit court erred in concluding that the defendant failed to serve her claim of appeal in light of the proofs of service and other evidence of the record; (2) whether service of process of the claim of appeal was required to vest the circuit court with jurisdiction to enter an order of acquittal; and (3) whether the prohibition against double jeopardy (see **US Const, Am V and Const 1963, art 1,§15**) applies in this case to protect the defendant against a second prosecution for the same offense after the circuit court initially declared the defendant innocent and entered an order of acquittal. (**Appendix F, 3-3-20 Order**)

The Prosecution's answer to the application conceded to the fact that service of process of the claim of appeal was not required to vest the state circuit court with jurisdiction to enter an order of acquittal; that the Prosecution was never precluded from the appeal; and that the jurisdiction of the circuit court to enter an order of acquittal on appeal was governed by MCR 7.104(B).

On September 23, 2020, the Michigan Supreme Court, after having received the prosecution answer to Petitioner's application for leave to appeal, Petitioner's application was again considered. And pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal the Michigan Supreme Court remanded this case to the Michigan Court of Appeals for consideration as on leave granted.

**(Appendix E, 9-23-20 Order).** The Michigan Supreme Court granted Petitioner's motion for immediate consideration and stay of proceedings in the trial court. **(Appendix E, 9-30-20 Order)**

On April 29, 2021, the Michigan Court of Appeals reversed the state circuit court's June 5, 2019 Order and affirmed the December 26, 2018 Order of Acquittal on the grounds of double jeopardy laws. The Prosecution filed a motion for reconsideration, and the Michigan Court of Appeals considered the Prosecution's motion. The Michigan Court of Appeals reversed its April 29, 2021 Order **(Appendix D, 4-29-21 Order)** and issued in its July 1, 2021 Order, which included additional language again affirming the December 26, 2018 Order of Acquittal on the grounds of double jeopardy laws, **(Appendix C, 7-1-21 Order)**.

The Prosecution filed an application for leave to appeal with the Michigan Supreme Court. On April, 1, 2022, The Michigan Supreme Court indicated that Fifth Amendment's rights to the U.S. Constitution prohibition Double Jeopardy Clause did not apply to this case despite that fact Petitioner had received an order of acquittal on the grounds of insufficient evidence **(Appendix A, 4-1-22 Order).** And despite that the Michigan Court of Appeals had already reversed the state circuit court's June 2019 Order, twice affirming the December 26, 2018 acquittal. **(Appendix D, 4-29-21 Order)** and **(Appendix C, 7-1-21 Order).**

The Michigan Supreme Court, in lieu of granting leave to appeal, erroneously the Court REVERSED part of the Court of Appeals judgment holding that double jeopardy would bar a retrial. because the Macomb County Circuit Court entered an order of acquittal; and that it was subject to appellate review or reconsideration; and that the circuit court properly exercised its authority when it reconsidered and reversed its own order of acquittal. (**Appendix A, 4-1-22 Order**).

The Michigan Supreme Court also indicated that the circuit court appears to acknowledge that the prosecution had failed to put forward sufficient evidence that the defendant's arrest was lawful, HOWEVER, required supplemental findings barred following a reversal because of insufficient evidence, for the Court of Appeals to consider whether the circuit court found that the prosecution had failed to put forward sufficient evidence that the defendant's arrest was lawful, whether double jeopardy bars retrial, but where the circuit court has determined insufficient evidence to convict, in its June 5, 2019 opinion and order, based on insufficiency from trial court's error. (**Appendix A, 4-1-22 Order**). Petitioner timely filed her Motion for Reconsideration and was then denied by the Michigan Supreme Court (**Appendix B, 6-28-22 Order**).

The Framers intended the Double Jeopardy Clause to bar precisely the issues presented in this case. And the *Brady* violations denied Petitioner due process of law at trial. For these reasons, this Honorable Court should exercise its authority to review this pending application, to stay the Michigan Supreme Court decision pending disposition of the forthcoming petition for writ of certiorari and to allow Petitioner a full and fair opportunity to be heard.

In short, this is not a borderline case on which reasonable jurists can disagree. This is precisely the sort of overwhelmingly faulty prosecution, plagued by misconduct and due process violations, for which the double jeopardy remedy exists. Under a reasonable application of this Court's precedents, Petitioner would succeed on her double jeopardy claims on writ of certiorari.

This Court should grant certiorari and reverse the Michigan Supreme Court's decision below.

## REASONS FOR GRANTING THE PETITION

- I. THE MICHIGAN SUPREME COURT ERRED IN CONCLUDING THAT THE PROHIBITION AGAINST DOUBLE JEOPARDY (see US Const, Am V and Const 1963, art 1§ 15) DID NOT APPLY IN THIS CASE TO PROTECT THE DEFENDANT AGAINST A SECOND PROSECUTION FOR THE SAME OFFENSE AFTER THE CIRCUIT COURT INITIALLY DECLARED THE DEFENDANT INNOCENT AND ENTERED AN ORDER OF ACQUITTAL ON THE GROUNDS OF INSUFFICIENT EVIDENCE AND THAT THE AND AFTER THE MICHIGAN COURT OF APPEALS TWICE AFFIRMED THE ACQUITTAL UNDER THE DOUBLE JEOPARDY CLAUSE

### STANDARD OF REVIEW

The Court reviews de novo whether the prohibition against double jeopardy (see US Const, Am V and Const 1963, art 1§ 15) applies in this case to protect the Defendant against a second prosecution for the same offense after the state circuit court initially declared the Defendant INNOCENT and entered an Order of Acquittal. When a reviewing court reverses a conviction because evidence presented was legally insufficient to sustain a conviction, double jeopardy bars retrial. *People v. Bruno* (1982) 322 N.W.2d 176, 115 Mich. App. 656

A citizen's right to due process in state court, guaranteed by the Fourteenth Amendment to the United States Constitution, includes the immunity from Double Jeopardy guaranteed by the Fifth Amendment. *Ex parte Thomas*, 828 So. 2d 952, 954 (Ala., 2001). In *People v. Sierb*, 456 Mich. 519, 525 n. 13, 581 N.W.2d 219 (1998). The prohibition against double jeopardy (see US Const, Am V And Const 1963, Art 1§15) protects the defendant against a second prosecution for the same offense. The United States Supreme Court held that Supplemental Findings are also barred following a reversal "Because of Insufficient Evidence..," *Sivisher v. Brady*, 438 u.s. 204, 218 (1978) (*internal citation omitted*).

The Michigan Supreme Court erred wherein it concluded that the prohibition against Double Jeopardy did not apply to Petitioner's case. (See Appendix A). Indeed, in Petitioner's case, the prohibition against double jeopardy and supplemental findings (see US Const, Am V And Const 1963, Art 1§ 15) does apply in this case to protect the defendant against a second prosecution for the same offense after the circuit court initially declared the defendant innocent and entered an order of acquittal. Wherein double jeopardy prohibits retrial when there is a reversal on appeal on the grounds of insufficient evidence and also bars supplemental findings following a reversal because of insufficient evidence for purposes of the double jeopardy clause.

Where error in the proceedings leading to conviction because of the insufficiency of the evidence to support the verdict, retrial is precluded, and the case must be dismissed. The grounds that the evidence is "legally insufficient" to support a conviction, the Supreme Court ruled that a defendant whose conviction is overturned on that basis may not be tried again. The distinction between trial error and sufficiency of evidence error is essential because of the consequences which the Constitution attaches to an evidence error is essential because of the consequences which the Constitution attaches to a finding of insufficiency. *People v. Moreno*, 491 Mich. 38 (2012).

In Petitioner's case, the state circuit court determined that as a matter of law the evidence was legally insufficient to sustain the conviction and entered an order of acquittal on those grounds, declaring Defendant innocent, invoking double jeopardy, barring retrial. (See Appendix I). The acquittal was final. The state circuit court reached a finding as to Petitioner's innocence. (See Appendix K). This U.S. Supreme Court has long held that an acquittal is final and cannot be reviewed without violating a defendant's constitutional right to be protected against double jeopardy. The rule of double jeopardy is absolute and the rule accords "absolute finality" to judgments of acquittal. A ruling is called an acquittal because it is treated as final. Therefore, in Petitioner's case, the December 26, 2018 Order of Acquittal was final, thus retrial is barred. When a reviewing court reverses a conviction because evidence presented was legally insufficient to sustain a conviction, double jeopardy bars retrial. *People v. Bruno* (1982) 322 N.W.2d 176, 115 Mich. App. 656

The U.S. Constitution's Fifth Amendment contains a Double Jeopardy Clause, which says that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." State constitutions similarly protect individuals from being tried twice for the same crime. For criminal defendants, this is a crucial constitutional right. The prosecution is constitutionally barred from re-trying him for the same offense. The U.S. Supreme Court has said that protections against re-prosecution for the same crime extend to all felonies, misdemeanors and juvenile delinquency adjudications, regardless of the potential punishment.

The evidence was insufficient to support a verdict of guilty, see appeal transcript from December 26, 2018, wherein the circuit trial court stated, "Even if the instructions had, been correct, I see no way that you could have been or should have been convicted on this evidence." (See Appendix K).

"You're an innocent person, Finally the record caught up with that." "Even if somebody on behalf of the State of Michigan or the City of Warren did appear, on the merits, you win." (See Appendix K).

When the appellate court determines that the evidence is insufficient to support the conviction, the double clause prevents retrial, the defendant must be acquitted. The Supreme Court has deemed it irrelevant that a reviewing court rather than a trial court determine the evidence to be inadequate. "If the District Court had so held in the first instance, as the reviewing court said it should have done, a judgment of acquittal would have been entered and, of course, petitioner could not be retried for the same offense." Double jeopardy also prevent retrial for lesser included offenses. *People v. Moreno*, 491 Mich. 38 (2012).

The Prosecution conceded to the fact that a determination by the state circuit court declaring that the evidence was insufficient to establish the crime, invokes double jeopardy and would bar retrial. There was no question that the trial court omitted the third element and even omitted the proper definition of obstruct. The trial court also precluded defense counsel from arguing the element of probable cause and reasonable suspicion and the legality and unlawfulness of the stop and arrest. The trial court even stated, "I don't know that I heard any testimony that she used physical threat"...."there was no testimony to threatened or physical force." The Prosecution conceded to the insufficiency of evidence in the case wherein the unlawful conduct of the officer was omitted by the trial court.

Michigan Supreme Court law is well established, concerning the unlawful conduct of an officer in *People v. Moreno*, 491 Mich. 38 (2012), warranting dismissal of the charges. In *People v. Moreno*, 491 Mich. 38 (2012), the Supreme Court instructed the quashing of the charges on the basis of its ruling that the officer's conduct was unlawful. The Michigan Supreme Court held that MCL 750.81 did not abrogate the common-law right to resist illegal police conduct, including unlawful arrests, unlawful invasions of private rights and unlawful entries into constitutionally protected areas.

The policies of judicial economy and fairness to the prosecutor stands a clear constitutional mandate: a person acquitted of an offense may not be tried again for the same offense. The verdict was overturned because of evidentiary insufficiency to support the verdict of guilty not because of instructional error. The fundamental guarantee of the double jeopardy clause is that when the state has failed to adduce sufficient evidence to convict a defendant, retrial of the defendant on the same charge is barred. That guarantee should not be vitiated when the cause of the evidentiary insufficiency is trial error.

In cases presenting both trial error and evidentiary insufficiency, the insufficient evidence claim should prevail, and the retrial of the defendant be barred, after an appellate reversal on the grounds of evidentiary insufficiency.

The Michigan Supreme Court, in *Vasquez*, dismissed the charges against the defendant reasoning that the defendant's conduct did not violate the resisting and obstruction statute because it did not constitute threatened and actual physical interference with the officer. The Court in the opinion noted that a person could not be prosecuted or convicted under an "resisting and obstructing" statute because he merely refused to answer questions posed to him by the police, citing as authority of the case of *City of Pontiac v. Baldwin*, 163 Mich. App. 147 (1987).

Most significantly, in the trial court, the Prosecution neglected to mention that the Prosecution intentionally suppressed and withheld *Brady* material evidence of other police dash cam video and audio, the Lien license plate data and witnesses who hold *Brady* information that would have exonerated Petitioner. The Lien Data is exculpatory evidence stored in the Michigan State Police's system for 5 years and stored in the City of Warren's police department system for a number of years. This is evidence establishes several exonerating factors including, the time frame of the officer's unlawful approach of Petitioner. That evidence was intentionally suppressed and withheld from Petitioner, her attorneys, from the jury and ongoing thus far throughout this appellate process.

In *Brady V. Maryland* 373 U.S. 83 (1963) the Supreme Court held that the government's withholding of evidence that is material to the determination of either guilt or punishment of a criminal defendant violates the defendant's constitutional right to due process. The Supreme Court also held that the suppression by the prosecution of evidence favorable to an accused who has requested it violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

Further, the Michigan Supreme Court erred, where it failed to acknowledge that the Court of Appeals, in a line of case precedence, had in fact considered and rendered determinations consistent with the decisions of the United States Supreme Court on the matter of prosecution insufficiency of the evidence, reversal of a conviction based on insufficiency of the evidence, and the double jeopardy clause that barred retrial, including in the instant case. Where in the United States Supreme Court held in *Burk v. United States*, 437 US 1, 18; 98 S Ct 2141; 57 L Ed 2 d 1 (1978) ("[T]he Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally

insufficient...."); *Tibbs v Florida*, 457 US 31, 41; 102 S Ct 2211; 72 L Ed 2d 652 (1982) ("A verdict of not guilty, whether rendered by the jury or directed by the trial judge, absolutely shields the defendant from retrial. A reversal based on the insufficiency of the evidence has the same effect because it means that no rational fact-finder could have voted to convict the defendant.") (footnote omitted); *Lockhart v. Nelson*, 488 US 33, 39; 109 S Ct 285; 102 L Ed 2d 265 (1988) ("Because the Double Jeopardy Clause affords the defendant who obtains a judgment of acquittal at the trial level absolute immunity from further prosecution for the same offense, it ought to do the same for the defendant who obtains an appellate determination that the trial court should have entered a judgment of acquittal.") (emphasis in original); *Monge v. California*, 524 US 721; 118 S Ct 2246; 141 L Ed 2d 615 (1998) ("We have held that where an appeals court overturns a conviction on the grounds that the prosecution proffered insufficient evidence of guilt, that finding is comparable to an acquittal, and the Double Jeopardy Clause precludes a second trial."); *Bravo-Fernandez v. United States*, \_ US \_\_; 137 S Ct 352, 364; 196 L Ed 2d 242 (2016) ("Bravo and Martinez could not be tried on the bribery counts, of course, if the Court of Appeals had vacated their § 666 convictions because there was insufficient evidence to support those convictions. For double jeopardy purposes, a court's evaluation of the evidence as insufficient to convict is equivalent to an acquittal and therefore bars a second prosecution from the same offense.")

The Michigan Court of Appeals had acknowledged that the cases concerned mid-trial judgments of acquittal, whereas this case concerns a post-trial order of acquittal, however found them persuasive and believed that barring retrial here is consistent with the overarching general rule that acquittals cannot be set aside. *See Smith*, 543 US at 467. And, further concluded, that indeed it would be a peculiar outcome if a judgment and order of acquittal as a result of a trial could not be set aside by a higher court on appeal,... but could be set aside on reconsideration by the same court which issued it.

The Supreme Court erred where it, failed to acknowledge that the Court of Appeals' already rendered the decisions that the circuit court's December 26, 2018 order of acquittal based on insufficient evidence to support the conviction, barred retrial and that the circuit court's June 5, 2019 order **cannot supersede** its earlier order of acquittal for purposes of the double jeopardy clause.

Holding the United States Supreme Court's decision in *United States v. Blount*, 34 F3D 865, 868 (CA 9, 1994). (holding that the federal district court could not reverse its earlier ruling of acquittal because "there is no suggestion in this case that the district court's oral grant of the motion for acquittal was tentative or subject to reconsideration"); *United States v. Thompson*, 690 F3d 977, 996 (CA 8, 2012) (When the district court initially granted Thompson's motion for judgment of acquittal, it did so unequivocally, without making any indication of any availability of reconsideration.... Once Thompson had rested his case, relying at least in part on the district court's judgment of acquittal, double jeopardy attached and the reversal of that judgment was a constitutional violation.")

The Michigan Court of Appeals opinion had further dealt with the state circuit court in determining the order of acquittal based on insufficiency of evidence error had in fact encompassed the supplemental finding of prosecution evidence error raised by this Court's order. Where, the Michigan Court of Appeal concluded and held that in this case, the order of acquittal provided that it was granted "[f]or the reasons stated on the record." And the state circuit court stated on the record that "even if the instructions had been correct, I see no way that [defendant] could have been or should have been convicted on this evidence." (See Appendix K). The Court of Appeals concluded that the order of acquittal was an "acquittal" for purposes of the Double Jeopardy Clause, retrial is barred. *See Fong Foo*, 369 US at 143; *Szalma*, 487 Mich at 717-718. The order "precludes reexamination of guilt" in all cases except "a prosecution appeal to reinstate the...verdict of guilt." *Smith*, 543 US at 467.

Here, however, the Prosecution does not seek to reinstate the jury's verdict because it has acknowledged, as it must under the factual and procedural history here, that the underlying **instructional error would require a new trial**, not the reinstatement of a guilty verdict. Thus, the Fifth Amendment's Double Jeopardy Clause applies here and bars defendant's retrial as the prosecution seeks to do. We do not find the prosecution's citation to *People v. Reed*, unpublished per curiam opinion of the Court of Appeals, issued November 21. 2013, persuasive.

“Jeopardy attaches when a jury is selected and sworn....” *People v. Grace*, 258 Mich App 274, 279; 671 NW2d 554 (2003). The retrial following an acquittal enhances the probability of conviction by allowing the prosecutor “to reexamine the weaknesses in his first presentation in order to strengthen the second.” *Wilson*, 420 U.S. at 352.

The remedy arising from a double jeopardy violation, a bar to retrial, is specifically tailored to the nature of the harm that the Double Jeopardy Clause is intended to prevent, which is the embarrassment, expense and ordeal of living in a continuing state of anxiety and insecurity that arises from being twice placed in jeopardy. *People v. Aceval* (2009) 764 N.W.2d 285, 282 Mich. App. 379...The underlying idea, is that the State with all its resources and power **should not be** allowed to make repeated attempted to convict an individual for an alleged offense enhancing the possibility that even though innocent, he may be found guilty.

In short, if the Michigan Supreme Court's April 2022 view and the Prosecution's view are allowed to stand, prosecutors would have an incentive to hide evidence long enough to outlast the direct appeal. Such a rule, is not tenable in a system constitutionally bound to accord defendants due process. The *Brady* violations denied Petitioner due process of law at trial. That standard is plainly met where, as here, the case features a violation of the Double Jeopardy Clause and a series of *Brady* violations.

**II. THE MICHIGAN SUPREME COURT ERRED IN CONCLUDING THAT THE PROHIBITION AGAINST DOUBLE JEOPARDY (see US Const, Am V and Const 1963, art 1§ 15) WHICH ALSO INCLUDED SUPPLEMENTAL FINDINGS BARRED FOLLOWING A REVERSAL DID NOT APPLY TO THIS CASE FOR WHETHER THE CIRCUIT COURT DETERMINED THAT THE PROSECUTION FAILED TO PUT FORWARD EVIDENCE OF A LAWFUL ARREST AFTER THE CIRCUIT COURT INITIALLY DECLARED THE DEFENDANT INNOCENT AND ENTERED AN ORDER OF ACQUITTAL ON THE GROUNDS OF INSUFFICIENT EVIDENCE AND AFTER THE MICHIGAN COURT OF APPEALS TWICE AFFIRMED THE ACQUITTAL UNDER THE DOUBLE JEOPARDY CLAUSE**

This Michigan Supreme Court erred, where it requires that supplemental findings are to be made by the Court of Appeals to consider whether the circuit court found that the prosecution had failed to put forward sufficient evidence of lawfulness of arrest, whether double jeopardy bars retrial where it was previously determined there was insufficient evidence to convict. Where the Prosecution sought reversal of the acquittal in the June 5, 2019 circuit court's order on the basis of trial error versus insufficiency of evidence error of its December 26, 2018 order.

To consider, the supplemental finding, as to whether the circuit court found that the prosecution had failed to put forward sufficient evidence that the arrest was lawful, after an acquittal the December 26, 2018, based on insufficiency of evidence, is barred for double jeopardy purposes. The Court of Appeals' opinions clearly dealt with both the Double Jeopardy clause and the acquittals based on insufficient evidence versus trial error. The Michigan Supreme Court erred when it failed to acknowledge that, as a threshold to appeal, a prosecutor must demonstrate that the putative error is a legal holding, and not a factual finding. Double jeopardy currently prohibits appeals of acquittals. The United States Supreme Court held that Supplemental Findings are also barred following a reversal "Because of Insufficient Evidence.," *Sivisher V. Brady*, 438 U.S. 204, 218 (1978) (internal citation omitted). In other words, defendants may appeal guilty verdicts while prosecutors may not appeal adverse rulings after jeopardy has attached. The criminal appellate process is asymmetrical.

The Prosecution conceded to the insufficiency of evidence in the case wherein the unlawful conduct of the officer was omitted by the trial court. Michigan Supreme Court law is well established, concerning the unlawful conduct of an officer in *People v. Moreno*, 491 Mich. 38 (2012), warranting dismissal of the charges.

In *People v. Moreno*, 491 Mich. 38 (2012), the Supreme Court instructed the quashing of the charges on the basis of its ruling that the officer's conduct was unlawful. The Michigan Supreme Court held that MCL 750.81 did not abrogate the common-law right to resist illegal police conduct, including unlawful arrests, unlawful invasions of private rights and unlawful entries into constitutionally protected areas.

The Prosecution conceded to the fact that the Michigan Court of Appeals ruled that the circuit court had jurisdiction to hear the case to enter the order of acquittal and did not contest that ruling. Indeed, the Court of Appeals opinion and order had further dealt with the circuit court in determining the order of acquittal based on insufficiency of evidence error had in fact encompassed the supplemental finding of prosecution evidence error raised by the the Michigan Supreme Court's order. Where, the Court of Appeal concluded and held that in this case, the order of acquittal provided that it was granted "[f]or the reasons stated on the record."

And the circuit court stated on the record that "even if the instructions had been correct, I see no way that [defendant] could have been or should have been convicted on this evidence." (See Appendix K). Thus, based on the above, in Petitioner's case, the Michigan Court of Appeals opinions and orders had in fact considered whether the circuit court found the prosecution failed to forward sufficient evidence not only as to lawful arrest. The Court also determined that the evidence was insufficient to establish all the elements of resisting or obstructing a police officer, which of course, encompassed the element of lawful arrest. The Michigan Court of Appeals concluded and held that the state circuit court's action on the record constituted an acquittal and was an unequivocal determination that the evidence was insufficient to establish all the elements of resisting or obstructing a police officer beyond a reasonable doubt. *Anderson, Id.*, such determinations were consistent with opinions set out in a number of cases held the Michigan Supreme Court and the Michigan Court of Appeals.

Significantly, consistent with the Michigan Supreme Court law that is well established, concerning the unlawful conduct of an officer in *People v. Moreno*, 491 Mich. 38 (2012), warranting dismissal of the charges. The Michigan Supreme Court held that MCL 750.81 did not abrogate the common-law right to resist illegal police conduct, including unlawful arrests, unlawful invasions of private rights and unlawful entries into constitutionally protected areas.

And further consistent with insufficiency of evidence in the Michigan Court of Appeals' decision in *City of Pontiac v. Baldwin*, 163 Mich. App 147 (1987), where it reversed a defendant's conviction for obstructing and hindering a police officer in the discharge of the officers duties 16-95 under City Ordinance when it held that a person who merely refuses to answer questions during an investigative stop by the police cannot be prosecuted for obstructing or hindering a police officer in the discharge of his duties.

The Prosecution conceded to the fact that a determination by the state circuit court declaring that the evidence was insufficient to establish the crime, invokes double jeopardy and would bar retrial. There was no question that the trial court omitted the third element and even omitted the proper definition of obstruct. The trial court also precluded defense counsel from arguing the element of probable cause and reasonable suspicion and the legality and unlawfulness of the stop and arrest. The trial court even stated, "I don't know that I heard any testimony that she used physical threat"...."there was no testimony to threatened or physical force."

The Prosecution conceded to the insufficiency of evidence in the case wherein the unlawful conduct of the officer was omitted by the trial court. In Petitioner's case by no means was there ever any traffic stop nor any crime reported whatsoever. Petitioner use of discretion to exercise her constitutional rights, including the right to remain silent during, the officer(s) approach, Petitioner cannot be prosecuted for assaulting, resisting, obstructing or hindering or opposing a police officer, for that exercise, warranting dismissal of the case and barring retrial. There is no such thing as failure to identify. The claim and exercise of Constitutional Rights cannot be converted into a crime. *Miller v. Kansas*, 230 F 2<sup>nd</sup> 286, 489. *Kolender v. Lawson* (461 U.S. 352, 1983) in which the United States Supreme Court ruled that a police officer could not arrest a citizen merely for refusing to present identification.

To that end, supplemental finding as to prosecution evidence error as to lawful arrest, is barred for the purpose of the Double Jeopardy Clause. Essentially, the Michigan Supreme Court erred contrary to the laws of the Double Jeopardy Clause attached to state circuit court's December 26, 2018 order of acquittal, where retrial and supplemental findings are barred.

**III. THE MICHIGAN SUPREME COURT ERRED IN CONCLUDING THAT THE CIRCUIT COURT'S ACQUITTAL WAS NOT FINAL AND CAN BE APPEALED OR EVEN OVERTURNED ON A MOTION FOR RECONSIDERATION UNDER MCR 7.114(D) AND MCR 2.119(F) WHEN THE PROHIBITION AGAINST DOUBLE JEOPARDY (See US Const, Am V and Const 1963, art 1§ 15) APPLIES IN THIS CASE AND CURRENTLY PROHIBITS APPEALS OF ACQUITTALS BY A HIGHER COURT ON APPEAL OR ON RECONSIDERATION BY THE SAME COURT WHICH ISSUED IT FOR PURPOSES OF THE DOUBLE JEOPARDY CLAUSE.**

This U.S. Supreme Court has long held that an acquittal is final and cannot be reviewed without violating a defendant's constitutional right to be protected against double jeopardy. The rule of double jeopardy is absolute and the rule accords "absolute finality" to judgments of acquittal. A ruling is called an acquittal because it is treated as final. Therefore, the December 26, 2018 Order of Acquittal was final, thus retrial is barred. (See Appendix I). When a reviewing court reverses a conviction because evidence presented was legally insufficient to sustain a conviction, double jeopardy bars retrial. *People v. Bruno* (1982) 322 N.W.2d 176, 115 Mich. App. 656.

Holding the United States Supreme Court's decision in *United States v. Blount*, 34 F3D 865, 868 (CA 9, 1994). (holding that the federal district court could not reverse its earlier ruling of acquittal because "there is no suggestion in this case that the district court's oral grant of the motion for acquittal was tentative or subject to reconsideration"); *United States v. Thompson*, 690 F3d 977, 996 (CA 8, 2012) (When the district court initially granted Thompson's motion for judgment of acquittal, it did so unequivocally, without making any indication of any availability of reconsideration. Once Thompson had rested his case, relying at least in part on the district court's judgment of acquittal, double jeopardy attached and the reversal of that judgment was a constitutional violation.)

The Court of Appeals concluded that the order of acquittal was an "acquittal" for purposes of the Double Jeopardy Clause, retrial is barred. *See Fong Foo*, 369 US at 143; *Szalma*, 487 Mich at 717-718. The order "precludes reexamination of guilt" in all cases except "a prosecution appeal to reinstate the...verdict of guilt." *Smith*, 543 US at 467. Here, however, the prosecution does not seek to reinstate the jury's verdict because it has acknowledged, as it must under the factual and procedural history of its pleadings, that the underlying **instructional error would require a new trial**, not the reinstatement of a guilty verdict. Thus, the Fifth Amendment's Double Jeopardy Clause applies here and bars defendant's retrial as the prosecution seeks to do. We do not find the prosecution's citation to *People v. Reed*, unpublished per curiam opinion of the Court of Appeals, issued November 21, 2013, persuasive. "Jeopardy attaches when a jury is selected and sworn...." *People v. Grace*, 258 Mich App 274, 279; 671 NW2d 554 (2003).

The retrial following an acquittal enhances the probability of conviction by allowing the prosecutor "to reexamine the weaknesses in his first presentation in order to strengthen the second." *Wilson*, 420 U.S. at 352. The remedy arising from a double jeopardy violation, a bar to retrial, is specifically tailored to the nature of the harm that the Double Jeopardy Clause is intended to prevent, which is the embarrassment, expense and ordeal of living in a continuing state of anxiety and insecurity that arises from being twice placed in jeopardy. *People v. Aceval* (2009) 764 N.W.2d 285, 282 Mich. App. 379...The underlying idea, is that the State with all its resources and power **should not be allowed** to make repeated attempted to convict an individual for an alleged offense enhancing the possibility that even though innocent, he may be found guilty.

The Michigan Court of Appeals, in Petitioner's case, acknowledged that this case concerns a post-trial order of acquittal, however found the above cases persuasive and believed that barring retrial here is consistent with the overarching general rule that acquittals cannot be set aside. *See Smith, 543 US at 467.* The circuit court's reversal of its December 26, 2018 order cannot be superseded by its June 5, 2019 order for purposes of the Double Jeopardy Clause. *See United States V. Blount, 34 F3d 865, 868 (ca 9, 1994).*

**The Michigan Court of Appeals, further concluded, that indeed it would be a peculiar outcome if a judgment and order of acquittal as a result of a trial could not be set aside by a higher court on appeal,... but could be set aside on reconsideration by the same court which issued it. *Simmons, 506 Mich. 912, (2020).*** In short, if the Michigan Supreme Court's view in its April 2022 Order is allowed to stand, prosecutors would have an incentive to hide evidence long enough to outlast the direct appeal. Such a rule, is not tenable in a system constitutionally bound to accord defendants due process. The Framers intended the Double Jeopardy Clause to bar precisely the prosecutorial issues raises in this case. The *Brady* violations denied Petitioner due process of law at trial. Under a reasonable application of this Court's precedents, Petitioner would succeed on her double jeopardy claims on writ of certiorari.

**IV. THE MICHIGAN SUPREME COURT ERRED IN CONCLUDING THAT THE CIRCUIT COURT PROPERLY EXERCISED ITS AUTHORITY UNDER MCR 7.114(D) AND MCR 2.119(F), WHEN IT RECONSIDERED AND REVERSED ITS OWN ORDER OF ACQUITTAL, THUS ELIMINATING DOUBLE JEOPARDY CONCERNS RELATED TO ITS PRIOR DETERMINATION OF THE DEFENDANT'S INNOCENCE IN ITS DECEMBER 26, 2018 ACQUITTAL**

The Michigan Supreme Court erred when it concluded that the state circuit court properly exercised its authority when it reconsidered and reversed its own order of acquittal, eliminated double jeopardy concerns in its prior determination of Petitioner's innocence. To uphold the circuit court's reversal of the acquittal, would open the door to all manner of unpredictable double jeopardy exceptions.

The wide range of evidentiary errors in the trial court foreclosing retrial should reflects this Court's hesitation to withhold double jeopardy protection from Petitioner whom the circuit court have already declared innocent. The circuit court's reversal of its December 26, 2018 order cannot be superseded by its June 5, 2019 order for purposes of the Double Jeopardy Clause. *See United States V. Blount, 34 F3d 865, 868 (ca 9, 1994)*. The United States Supreme Court also held, in *Monge V. California, 524 Us 721; 118 S Ct 2246; 141 L Ed 2d 615 (1998)*("We have held that where an appeals court overturns a conviction on the grounds that the prosecution proffered insufficient evidence of guilt, that finding is comparable to an acquittal, and the double jeopardy clause precludes a second trial.").

Holding the United States Supreme Court's decision in *United States v. Blount, 34 F3D 865, 868 (CA 9, 1994)*. (holding that the federal district court could not reverse its earlier ruling of acquittal because "there is no suggestion in this case that the district court's oral grant of the motion for acquittal was tentative or subject to reconsideration"); *United States v. Thompson, 690 F3d 977, 996 (CA 8, 2012)* (When the district court initially granted Thompson's motion for judgment of acquittal, it did so unequivocally, without making any indication of any availability of reconsideration.... Once Thompson had rested his case, relying at least in part on the district court's judgment of acquittal, double jeopardy attached and the reversal of that judgment was a constitutional violation.") This was an unequivocal determination that the evidence was insufficient to establish all the elements of resisting or obstructing a police officer beyond a reasonable doubt and therefore the circuit court's action constituted an acquittal. *See Anderson, 409 Mich at 486, quoting Martin Linen, 430 US at 572* (explaining that an acquittal occurs "when the judge 'evaluated the government's evidence and determined that it was legally insufficient to sustain a conviction' ").

Further, the state circuit court also stated that defendant was "an innocent person." Such an express finding of innocence also constitutes an acquittal. *See Evans, 568 US at 319*. Simply put, the circuit court's statements on the record may only be reasonably understood to be an acquittal for purposes of the Double Jeopardy Clause. Therefore, the state circuit court did not properly exercise its authority in reversing the acquittal which was on the grounds of evidentiary insufficiency error and remanding the case for retrial on the grounds of trial error based on the Prosecution's misled contentions that they were never served with the claim of appeal. Based on the Prosecution's misled remedy of a retrial for trial error over an acquittal and dismissal for insufficient evidence error, the state circuit court's errs violated the laws of double jeopardy.

The Prosecution conceded, that in fact the state circuit court held that the acquittal of December 26, 2018, was on the grounds of insufficient evidence based on the unlawful conduct of the police as delineated above and in the record. It is obvious that when an appellate court reverses a jury verdict for errors in taking of evidence, the giving of instructions, or the conduct of the trial, it is not acting as a trier of fact, it is not usurping the jury's fact-finding role. However, the circuit court's reversal of the acquittal after declaring Petitioner innocent was a usurping of Petitioner's appeal as of right and a usurping and violation of the protected constitutional laws of double jeopardy. Thus, double jeopardy does bar retrial.

The fundamental guarantee of the double jeopardy clause is that when the state has failed to adduce sufficient evidence to convict a defendant, retrial of the defendant on the same charge is barred. That guarantee should not be vitiated when the cause of the evidentiary insufficiency is trial error. In cases presenting both trial error and evidentiary insufficiency, the insufficient evidence claim should prevail, and the retrial of the defendant be barred, after an appellate reversal on the grounds of evidentiary insufficiency. Therefore, the circuit court erred in reversing the acquittal which was on the grounds of evidentiary insufficiency error and remanding the case for retrial on the grounds of trial error, violated the laws of double jeopardy.

**A. THE STATE CIRCUIT COURT WAS DIVESTED OF JURISDICTION PURSUANT TO MCR 2.119(F)(3), AFTER 21 DAYS OF ENTERING THE ACQUITTAL AND ERRED WHEN IT PERMITTED THE PROSECUTION'S LATE MOTION FOR RECONSIDERATION FILED 24 DAYS AFTER ENTERING THE AQUITTAL**

The Michigan Court Rules govern motions for rehearing or reconsideration of a decision on a motion. A motion for reconsideration must be filed within 21 days after the date of the order or the date stamped on an opinion. The clerk shall refuse to accept for filing a late-filed motion for reconsideration. MCR 7.311(5)(G). Motions for reconsideration are subject to the restrictions contained in MCR 2.119(F), MCR 7.114(D). A motion for rehearing or reconsideration of the decision on a motion must be served and **filed not later than 21 days** after entry of an order deciding the motion. MCR 2.119(F)(1), and (2) No response to the motion may be filed, and there is no oral argument. MCR 2.119.

It is also axiomatic that the state circuit court violated MCR 2.119(F) which governs motions for reconsideration and that the state circuit court did not have jurisdiction to consider nor hear orally the Prosecution's motion for reconsideration after 21 days of entering the December 26, 2018 Order of Acquittal. The circuit court was divested of jurisdiction, abused its discretion and violated MCR 2.119(F) when it allowed the Prosecution's late filed motion for reconsideration. Moreover, the state circuit court ignored service of process, usurped Petitioner's appeal as of right and reversed its own order of acquittal based on the false and material misrepresentations made by the Prosecution. MCR 2.119(F)(1) and (2).

The "court rules do not provide for 'delayed' motions for rehearing." *Ramsey v. City of Pontiac*, 164 Mich. App 527,538; 417 NW2d 489 (1987). Because motions for reconsideration must be filed within twenty one days of the order, MCR 2.119(F)(1), the motion for reconsideration was not timely, nor was it ever pending. The circuit trial court lacked jurisdiction under MCR 2.119(F)(1). *Baitinger v. Brisson*, 230 Mich. App 112, 113; 583 NW2d 481 (1998) (We dismiss motion for reconsideration for lack of jurisdiction.....because it was not filed within the period provided).

In this case, the Michigan Supreme Court did not deal with the fact that for limitation purposes the **relevant date** is the date of receipt, of the Prosecution's motion for reconsideration with the state circuit court, because the "court rules do not provide for 'delayed' motions for rehearing." *Ramsey, supra*. And in the instant case, that relevant date of receipt, was the electronically filed date with the state circuit court, the e-filed date. However, the Michigan Supreme Court did not consider the convincing articulation of available evidence of the state circuit court's Register of Action. Showing the exact date of **January 18, 2019**, as when the Prosecution's motion for reconsideration was e-filed with the state circuit court, under the Michigan Court Rules, where e-filing of the document was mandatory. But instead, the Michigan Supreme Court erroneously ignored the materially misrepresented and misled information of and misconstrued by the 'handwritten' date on the Prosecution's motion praecipe, and/or the type-written date on its motion for reconsideration, as the date filed with the state circuit court. It is erroneous to have considered either date on the documents as the filing date with the state circuit court, where the dates are distinct from the electronically filed date, with a minimum of an 8-10 day difference.

A motion for reconsideration filed **24-days** after the order of acquittal was entered, is in fact, not filed timely, pursuant to MCR 7.114(D) and MCR 2.119(F). The Prosecution's motion for reconsideration was not e-filed until January 18, 2019, **24-days** after the order of acquittal, thus not filed timely, as evidenced by the state circuit court's register of action. In short, the state circuit court **did not** properly exercise its authority to hear the Prosecution's motion for reconsideration, orally or otherwise, because the circuit court was divested of jurisdiction to hear the motion for reconsideration after 21 days. Thus, the Michigan Supreme Court erred when it rendered that the circuit court properly exercised its authority under MCR 7.114(D) and MCR 2.119(F), when it reconsidered and reversed its own order of acquittal, thus eliminating double jeopardy concerns related to its prior determination of the defendant's innocence.

**B. THE PROSECUTION CONCEDED TO THE FACT THAT SERVICE OF PROCESS OF THE CLAIM OF APPEAL UPON APPELLEE WAS NOT REQUIRED TO VEST THE STATE CIRCUIT COURT WITH JURISDICTION TO ENTER AN ORDER OF ACQUITTAL, JURISDICTION IS GOVERNED PURSUANT TO MCR 7.104(B), THEREFORE THE PROSECUTION'S MOTION FOR RECONSIDERATION IN THE STATE CIRCUIT COURT WAS MOOT.**

The Prosecution conceded to the fact that the Michigan Court of Appeals ruled that the state circuit court had jurisdiction to hear the case to enter the order of acquittal and did not contest that ruling. The Prosecution conceded to the fact that service of process of the claim of appeal was not required to vest the circuit court with jurisdiction to enter an order of acquittal. The Prosecution was never precluded from the appeal due to service of process of the claim of appeal because service of process was not required to vest the circuit court with jurisdiction to enter an order of acquittal. The jurisdiction of the state circuit court to enter an order of acquittal on appeal was governed by MCR 7.104(B). Pursuant to MCR 7.104(B) the circuit court, in fact, had jurisdiction to enter the order of acquittal.

The Prosecution's attempt to usurp the jurisdiction of the state circuit court over the service of the claim of appeal has failed. The Prosecution's misrepresented arguments raised in its late filed motion for reconsideration in the state circuit court concerning Petitioner's Acquittal are all therefore, MOOT and the Prosecution's appeals of the acquittal must end.

The order of acquittal on appeal was adjudicated properly under the jurisdiction of the circuit court and the Prosecution has no valid argument in law or logic to reverse the December 26, 2018 Order of Acquittal. (Appendix I ). Therefore, state circuit court **did not** properly exercise its authority to hear the Prosecution's motion for reconsideration, orally or otherwise, because the circuit court was divested of jurisdiction after 21 days. Thus, the Michigan Supreme Court erred when it concluded that the state circuit court properly exercised its authority under MCR 7.114(D) and MCR 2.119(F), when it reconsidered and reversed its own order of acquittal, thus eliminating double jeopardy concerns related to its prior determination of the defendant's innocence.

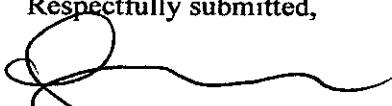
In short, this is not a borderline case on which reasonable jurists can disagree. The Framers intended the Double Jeopardy Clause to bar precisely the prosecutorial issues raises in this case. This is precisely the sort of overwhelmingly faulty prosecution, plagued by prosecution and police misconduct and corruption and due process violations, for which the double jeopardy remedy exists. Under a reasonable application of this Court's precedents, Petitioner would succeed on her double jeopardy claims on writ of certiorari. For these reasons, this Honorable Court should exercise its authority to review this pending application, to stay the Michigan Supreme Court decision pending disposition of the forthcoming petition for writ of certiorari and to allow Petitioner a full and fair opportunity to be heard.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Date: September 28, 2022

Respectfully submitted,



LaTasha Simmons