CASE NO. 22-6007

IN THE
SUPREME COURT OF THE UNITED STATES

JERRY WORD,
Petitioner,

v.

JOHN CHRISTIANSEN/WARDEN,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI AND PRESEENTATION OF AN INDEPENDANT ACTION TO QUESTION FRAUD UPON THE COURT PURSUANT TO FEDERAL RULES OF CIVIL PROCD. (60)(d)(3)

PETITIONER:
Jerry Word
8100 E. Jefferson, Apt. B-102
Detroit, Mich. 48214
(313) 407-9725

RESSPONDENT:
Dana Nessel
Michigan Attorney General
Fadwa A. Hammoud (P74185)
Solicitor General
Criminal Trials Division
P.O. Box 30217
Lansing, Mich. 48909
(517) 335-7650

I. QUESTIONS PRESENTED

I

Whether the lower courts may reject a claims of fraud upon the court without addressing that issue or remanding the case to the lower courts where clear and convincing evidence exist in their records to establish such a claim and the matter can be proven or dis-proven upon remand and evidentiary hearing in the lower courts

II

May the Sixth Circuit Court of Appeals refuse to remand and deny an appellant's request for evidentiary hearing to the lower courts where evidence exist in such courts that will resolve each issue or controversy within the case and to establish a firm claim of fraud upon the court made by a Petitioner

III

May a Petitioner present his claim of fraud upon the court to the United States Supreme Court where lower courts refuse to address the claim as presented in the litigation brought in those courts

IV

May a Jury in a criminal trial decide a claim of fraud upon the court when such a claim is not before that body for resolution in the Jury Instructions nor was it predicated on testimony provided before the Jury during trial

V

May a claim of ineffective assistance of counsel be established where counsel failed to properly prepare and execute a clients Fourth Amendment right to be free from illegal search and seizure and fraud upon the court

VI

May a defendant establish prosecutorial misconduct by presenting conclusive evidence which shows the Prosecutor solicited false testimony and evidence during the Preliminary Examination and Trial without correcting the substance in question and using this evidence and testimony without bringing to the attention of the Court that the substance was indeed false and was used by the Court's in it's decision to deny the motion to suppress evidence

II. LIST OF PARTIES

Dana Nessel
Attorney General
State of Michigan

John Christiansen (Warden)
Michigan Department of Corrections
State of Michigan

III.RELATED CASES

Jerrry v. John Christiansen, (Warden), Case No. Case No. 21-14001 (6th Cir. 2022)

Jerry Word v. John Christiansen, (Warden), Case No. 2:20-cv-10352 (E.D. Mich. 2020)

People of the State of Michigan v. Jerry Word, Case N0. 15-S-00465 (46th Dist. Mich 2015)

People of the State of Michigan v. Jerry Word, Case No. 15-254122-FH (6th Cir. Court of Mich. 2015)

People of the State of Michigan v. Jerry Word, Case No. 334970 (Mich. App. 2018)

People of the State of Michigan v. Jerry Word Case No. 157345 (Mich. 2018)

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SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

IX. PETITION FOR WRRIT OF CERTIORARI

Jerry Word, the Petitioner in the above cited case; who is currently free after completing a prison term in the case of controversy presented in this Petition now before this Court. Whereby, Petitioner respectfully move before this Court to grant a Petition for Writ of Certiorari to review the conduct and judgments of the lower courts and the parties involved in the prosecutions in their respective jurisdictions. The alleged conviction having been obtained in the 6th Circuit Court for the County of Oakland County Michigan. Wherefore, Petition for Writ of Habeas Corpus was sought in the United States District Court for the Eastern District of Michigan and appealed to the Sixth Circuit Court of Appeals to review an alleged FRAUD UPON THE COURT.

X. OPINIONS BELOW

FEDERAL COURT CASES:

The opinion of the United States Court of Appeals for the Sixth Circuit appears at Appendix-A to the petition and is not a published opinion and was no designated for publication. Jerry Word v. John Christiansen, (Warden), Case No. 21-1401. (July 07, 2022). Appeal was denied by that Court and Motion to Remand for Evidentiary Hearing. was denied.

The Opinion of the United States District Court for the Eastern District of Michigan appears at Appendix-B and was not reported or designated for publication. Jerry Word v. John Christiansen (Warden), Case No. 2:20-CV-10352 (May 05, 2021). Petition for Writ of Habeas Corpus was denied and Motion for Evidentiary Hearing was denied.

STATE COURT CASES:

The Opinion of the Michigan Supreme Court appears at Appendix-C and was unpublished with leave to appeal being denied. People of the State of Michigan v. Jerry Word, Case No. 157345 (July 27, 2018). Leave to Appeal was denied.

State Court cases Cont:

The Opinion of the Michigan Court of Appeals appears at Appendix-D and was an unpublished opinion. People of the States of Michigan v. Jerry Word, Case No. 334970 (December 19, 2017). Appeal was denied and Motion to Remand for Hearing was denied.

Trial was held on May 23, 2016 and May 24, 2016 in the 6th Circuit Court for Oakland County Michigan. Case No.2015-254122-FH. Petitioner found guilty on all counts.

The crux of the issue in this case derives from the Preliminary Examination held within the 46th District Court for the State of Michigan, Case No. 15-S-00465, which will be cited as Appendix-E and the Motion to Suppress Evidence cited as Appendix-F in this proceeding. Petitioner bound over to Circuit for trial on all counts.

The case is structured around the conclusive fraud perpetuated during this hearing, here; the arresting officers and the prosecution provided fraudulent and perjurious testimony which was later used to uphold and substantiate the search and seizure of the Petitioner's hotel suite. Between the time of this hearing and the criminal trial, there were no other proceedings held in the case that had any affects on the case itself or the relevancy to the search and seizure.

IX. JURISDICTION

Petitioner filed a Petition for Writ of Habeas Corpus in the United States District Court for the Eastern District of Michigan pursuant to 28 U.S.C. § 2254; which was denied on May 05, 2021. Appeal was submitted to the United States Court of Appeals for the Sixth Circuit which was denied on July 07, 2022, and no re-hearing was sought. Therefore, this Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1251, 1651, Federal Rules of Civil Procedure, Rule 60(b)(3); Rule 60(b)(4) and Rule 60(d)(3); which encompass the underlying question of Fraud Upon the Court and thereby invoking the Court's authority to entertain such question as an Independent Action in Equity.

X. STATEMENT OF THE CASE

FRAUD UPON THE COURT

The Petitioner was residing at the Holiday Inn Express Hotel in Southfield Michigan on April 02, 2015. Occupation and residence was totally legal and legitimate during the time the Southfield Department and their officers entered the Suite occupied by the Petitioner on this date. The police was summoned to the hotel; by the evening clerk who testified that she observed the Petitioner through a window from another occupant's room waiving a handgun in his suite; this observation took place through the Petitioner's Hotel Suite window as well.

The police came to the occupant's suite, the officers testified that they observed the same thing the events as the evening clerk, the officers stated that the petitioner was jumping around and acting jittery. The officers went from the other occupant's room to the Petitioner's suite and knocked on the door and advised that it was the Police and requested the Petitioner to open the door so they could speak with him.

Petitioner did as requested and the officers immediately apprehended the Petitioner and forcefully dragged the Petitioner into the hallway and handcuffed him. Thereafter, the Petitioner was arrested, searched and taken to the Police Precinct. Once at the Precinct, the Petitioner was searched again and $4946,00 was confiscated from his paints pocket. The Petitioner was booked and transferred to the Oakland County Jail. The arrest, search and seizure were all conducted without permission or a valid search warrant in this particular case.

On September 16, 2015, Petitioner appeared before the 46th District Court for the City of Southfield Michigan where a Preliminary Examination was conducted. Id. At (Appx.-D). During this hearing the arresting officers testified regarding the arrest and the alleged probable cause for entering the Petitioner's Hotel Suite without a search warrant. Their primary reasoning was when the Petitioner opened his hotel suite door, in plain view; they witnessed from outside the door of the suite, on a table, a crack pipe, some chore boy and a corner tie with a white powdery substance in it believed to be cocaine. (Appx.-D, pgs. 16, 19-20, 24-25, 29, 30-34). The three items mentioned above, are the only items claim to have been seen on the table from outside the hotel suite. The officers stated that chore boy is a steel wool type of substance used to smoke crack cocaine, also the crack pipe and cocaine were incriminating items that gave them probable cause to enter the suite and make an arrest based upon exigent circumstances.

Once the officers entered the hotel suite, in the rear bedroom which could not be seen from the outside front entrance; the officers discovered a small amount of cocaine, heroin, a crack pipe and a firearm. The Petitioner was the only occupant in the suite at the time of this search.

During the progression of the criminal proceeding, the Petitioner was appointed several court appointed attorneys; the last of which was Michael J. McCarthy who conducted the pretrial motion aspect of proceeding and the actual trial itself. Each of the attorneys whom were appointed prior to McCarthy, resigned from the case when the Petitioner advised them that their had been some misconduct perpetrated by the prosecution and the Southfield Police involved in the case. They all stated that thy did not want have any part of that conduct as explained by the Petitioner.

When McCarthy was appointed, the Petitioner advised McCarthy that the Prosecution and

the Police had committed perjury during the Preliminary Examination, that the testimony regarding what was alleged to have been seen through the front door entrance of the hotel suite; did not exist and all this testimony regarding this matter was untrue and there was absolutely no physical evidence to substantiate these claims. Id. (Appx.-E).

McCarthy submitted a Motion to Suppress Evidence, however; even after discussing the fraudulent conduct perpetrated by the Prosecution and the Police Officers, McCarthy flat refused to investigate this alleged conduct and intentionally omitted it from the Motion to Suppress Evidence. Id. (Appendix-F). As it relate to the Motion to Suppress Evidence, unknown to the Petitioner; McCarthy even refused to request an Evidentiary Hearing on the motion and allowed the Trial Court to rule on the issue based upon the fraudulent testimony provided by the officers during the Preliminary Examination. Id. (Appendix-E).

In the Trial Court's ruling on the Motion to Suppress, the Court alluded directly to the testimony provided by the officers as to what they witnessed from outside the doorway entrance to established the exigent circumstances which gave rise to the probable cause to search the hotel suite without a search warrant, that being; the "crack pipe, the chore boy and the white powdery substance in the corner tie suspected to be cocaine." Id. (Appendix-I). These three items were the only incriminating items alleged to have been seen.

In the Prosecution's Response, this same argument was made even though she knew that there was no physical evidence to support this conclusion and the testimony was false. McCarthy allowed this conduct to stand without making any objections or challenges to this submission, both parties failed to advise the Court of the false and perjurious nature of this contention. Id. (Appendix-G).

In the Trial Court's ruling on this Motion, the Court immediately alluded the alleged incriminating items claim to have been seen in the doorway entrance on the table as the primary reason that there was no Fourth Amendment violation in the officers entering l the hotel suite without a search warrant, that being; the chore boy, the crack pipe and the corner tie with the white powdery substance believed to be cocaine. Id. (Appendix-B).

On May 23, 2016, Petitioner commenced the criminal trial, both Officers Raby and Rochon testified as the Prosecution's key witnesses on this subject matter. Id. (Appendix-J and K, at Pgs. 165-180 and 208-221).
Within the testimony given by Officer Raby in the above colloquy, he continues his previous statements that when the Petitioner's hotel suite door opened, he observed a crack pipe, some chore boy and a corner tie with a white powdery substance that appeared to be cocaine. The Prosecution never corrected this testimony even though everyone in the courtroom saw that none of the items being identified actually existed in the photographs. Id. (Appendix-J Pgs. 168-175);.

Petitioner's Court Appointed Attorney McCarthy also refused to object to this testimony and allowed it to go into the record uncorrected as well. As an evidentiary note, as shown on page 3 of Appendix-J, the list of Exhibits; there are no physical items submitted to coincide with this testimony; only the photographs of that scene were used. Id. (Appendix-L).

However, when it came to the testimony of Officer Rochon on this subject matter, who was the Evidence Technician that collected and logged all the evidence in the case. The Prosecution attempted to rehabilitate Rochon's previous testimony from the Preliminary Examination to coincide with what is being testified to during the trial. Id. (Appendix-E and Appendix-K).

To compare the two instances of testimony, during the Preliminary Examination, Rochon was 100% sure that he collected from the front doorway table, chore boy, a crack pipe and a corner tie with a white powdery substance thought to be cocaine.(Id. Appendix-E at Pgs. 26-34). During the Trial, that testimony changed; now Rochon says he only collected cell phones and a scale, also the defendant's I.D. (Appendix-K, Pgs. 214-218).

Again, to examine the list of Exhibits collected at Pg. 3 of this Appendix, the items of evidence testified to by Officer Raby are not found anywhere in the record, and now; the testimony when compared by the two officers, it no longer match when Officer Rochon is required to identify each item of evidence he as Evidence Technician collected. Petitioner's Court Appointed Attorney refused to object to this testimony as well; and neither party brought this contradiction of fact to the attention of the Court.

Throughout the presentation of the search and seizure issue in all the Courts and proceedings form the point it was presented in the trial court, through the Habeas Corpus proceeding in the Federal District Court; the search was upheld due to the fraudulent testimony and presentation of the officers contention that they saw chore boy, a crack pipe and a corner tie with a white powdery substance in it on a table in the doorway entrance of the Petitioner's Hotel Suite in plain view. Id. (Appendix-A, B, D, and I).

Petitioner contend that both the Federal District in the Eastern District of Michigan and the United States Court of Appeals for the Sixth Circuit were both in error when the Courts failed to address the Petitioner's claim of "Fraud Upon the Court;" Being that this allegation is the most egregious conduct to be perpetrated upon a Court. This conduct, if true; causes a judgment to be voided in Ab Initio. Under this concept, the Petitioner in this case, has been directed to serve the terms of a judgment without having the legal process required by Due Process of Law under the Fifth and Fourteenth Amendments of the Constitutions. **Hazel Atlas Glass Co. v. Hartford Empire Co.,** 322 U.S. 238, 244-245 (1944). The Sixth Circuit Court of Appeals had absolute authority to consider the

Petitioner's allegation of fraud upon the court.

Under the circumstances of this case, this court is also obligated delve into the facts of the case to see if fraud exist, and especially; to see if fraud upon the courts exist. Petitioner submits, as in this case; if the opposing party knew or thought that an important part of the case was fatally flawed, and proceeded on with the progression of the prosecution without revealing the facts of the matter to the Court or opposing party; would this be the beginning of the infraction of a fraud.

In this case, at the earliest part of of the case; the Preliminary Examination, is where the fraud took place. The Prosecution knew that the case would not survive where the officers entered the Petitioners hotel suite without a search warrant. Thereafter, a scheme was concocted to claim that there were incriminating items in plain view at the doorway entrance of the hotel suite to allow the officers to enter without a warrant. Petitioner urge the Court to question, why is this particular evidence the only evidence that cannot be traced or found in the record?

If in fact this alleged missing evidence, is the evidence on which each and every court have substantiated its conclusion that the search was legitimate under the law; and used this rational to support the underlying decision, is this fraud upon the court?

As the Sixth Circuit Court of Appeals has set out the rational to establish "Fraud Upon the Court" (1) On the part of an officer of the court; (2) That is directed to "judicial machinery" itself; (3) That is intentionally false, wilfully blind to the truth, or is in reckless disregard for the truth; (4) That is a positive averment or is concealment when one is under the duty to disclose and (5) That deceives the court. **Demjanjuk v. Petrovsky,** 10 F. 3d 338, 348 (6th Cir. 1993) and **Workman v. Bell,** 245 F. 3d 849, 852 (6th Cir. 2001).
Here, both parties are officers of the Court and their actions are directed directly at the Courts to obtain a favorable ruling on the Prosecution's behalf. The conduct in and of itself, defiles the judicial machinery to it core and violates Petitioner rights under the **Fifth** and **Fourteenth Amendments of the Constitution of the United States.**

The Prosecution remains under the duty to advise the Court, if in fact; this allegation is grounded in truth. **Giglio v. United States,** 405 U.S. 150, 153 (1972). Here, the statements are (1) actually false, (2) the statement is directly material to the rulings on the search and seizure issue, and (3)the Prosecution knows that these statements are untrue and there is absolutely no evidence to support them. **Napue v. Illinois,** 360 U.S. 264, 269 (1959), and **Coe v. Bell,** 161 F. 3d 320, 343 (6th Cir. 1998).

Petitioner, reiterate, being that the conduct used in this case obtained a fraudulent judgment in a court of law; the decisions and everything that derives from that conduct is void due to fraud. **Hazel Atlas Glass Co. v. Hartford Empire Co.,** 322 U.S. 238, 244-

245 (1944); **Workman v. Bell,** 245 F. 3d 849, 852 (6th Cir. 2001), and **Demjanjuk v. Petrovsky,** 10 F. 3d 338, 348 (6th Cir. 1993). See also, **United States v. Throckmorton,** 98 U.S. 61, 25 L Ed 93 (1878). Petitioner contend that no case can rest on fraud, especially; where such fraud was perpetrated upon the Court.

Even though, the fraud in this case was not perpetrated upon this particular Court; this Court is still obligated to correct this impediment under "Principles of Equity." Where fraud upon the court exist, the case can never be finalized; where pursuant provisions of **Federal Rules of Civil Procedure, Rule 60(b)** and **60(d)(3)**, the case cannot close until the fraud aspect of the case is rectified. **Chambers v. NASCO, Inc.**, 501 U.S. 32, 111 S. Ct. 2123 (1991). Petitioner would still be open to file an Independent Action in Equity. The Court may use its inherent powers in cases such as this. **Universal Oil Products Co. v. Root Refining Co.,** 328 U.S. 575 and 328 U.S. 580 (1946); see also **H.K. Porter v. Goodyear Tire & Rubber Co.,** 536 F. 2d 1115, 1118 (6th Cir. 1976).

THE SEARCH AND SEIZURE ISSUE

In this case, where the Prosecution and the Petitioner's Court Appointed Attorney conspire and confederate to deny the client of his due constitutional rights, resorts to actual prejudice resulting from the alleged constitutional violation, which is also a fundamental miscarriage of justice. **Coleman v. Thompson,** 501 U.S. 722, 748-750 (1991) and **Sutton v. Carpenter,** 745 F. 3d 787, 789-790 (6th Cir. 2014). The circumstances of this case also rise to the miscarriage of justice mentioned in Derkt v. Haley, 541 U.S. 386, 388 (2004). The Court must further consider, each of the lower courts in this case; were under extreme fraud in this case because both the Petitioner's Court Appointed Attorney and the Prosecution were involved in perpetrating the fraud in this case. **Schulp v.Delo,** 513 U.S. 513 U.S. 298, 324 (1995).

The conduct by the Prosecution solidifies the Petitioner's position that there is a case of "Prosecutorial Misconduct" in this case. The Prosecution provided each of the Lower Courts with fraudulent information that caused the courts to rule in its favor on the Motion to Suppress Evidence. That being, that there were incriminating items in plain view in the doorway entrance of the Petitioner's Hotel Suite that allow the officers to enter the suite without a search warrant.

The cause of this entire fiasco was an internal impediment that frustrated the ability of both the Courts and the Petitioner to comply with any requirements of procedural rules. **Murray v. Carrier,** 477 U.S. 478, 488(1986); **Halim v.Mitchell,** 492 F. 3d 680, 690-691 (6th Cir. 2007). In the instant case, the Prosecution must be defeated in their claim that Petitioner was procedurally barred from bringing his claims in the Habeas Petition. However, it was the Prosecution who implemented the fraud in the case; and it is also the

Prosecution who must suffer the detriment for its action. The fraud aspect of the case, outweighs any claim of procedural default, even though; there is no grounds to implement such a sanction. **McCleskey v. Zannt,** 499 U.S. 467, 493494 (1991); and **Edwards v. Carpenter,** 529 U.S. 446, 451-452 (2000).

As each of the Courts who considered the issue of the search and seizure, they all alluded to the allegation that the officers witnessed in "plain view" incriminating items on the table in the front doorway entrance which presented "exigent circumstances" to warrant searching the hotel suite without a search warrant. Thereby grounding their decisions in the "Plain View Doctrine." Id. (Appendix-A; B; D and I)

With regard to the Michigan State Courts Rulings; each of these Courts were not privy to the photographs of the doorway entrance upon making their decisions, because the Prosecution never provided these documents for discovery. Where in itself, was a violation of, **Brady v. Maryland,** 373 U.S. 83 (1963). However, Petitioner's Court Appointed Trial Counsel refused to request this documentation as well.

The photos were not retrieved until the Petitioner was released from custody and got them through the Freedom of Information Act. The first time the actual photos were used in a collateral proceeding, was in the Habeas Corpus Proceeding in the Federal District Court. Id. (Appendix-B and L). As demonstrated in Appendix-B, the Federal District Court Denied the Petitioner's Habeas Petition; and even she could not identify the three items said to have been on the table in the doorway entrance that were incriminating. However, Appendix-B also being a exact copy of Appendix-L, the Court still claimed that several of the items were unidentifiable. The trial Court even went as far as to allege that there was a scale in the photo, even though the officers never said they saw a scale. Id. (Appendix-B).

If a good look is taken at the photo in Appendix-L, it is easily demonstrated that there is no chore boy, no crack pipe, and no corner tie with a white powdery substance in which was thought to be cocaine. Id. (Appendix-L).

IN each of the proceedings from the direct appeal in the state court, through the Direct Appeal in the Sixth Circuit Court of Appeals; Petitioner has consistently asked the Courts to remand the case back to the trial court for an Evidentiary Hearing. All the Courts denied this request, even though this avenue would have been the best option in this particular case.

In both the Federal District Court's ruling and the Sixth Circuit Court of Appeals ruling, it baffles the Petitioner as to why the lower courts alluded to the fact that the Jury saw the officers when they were testifying and could see that none of what they pointing out in

the photographs actually existed, this being part of the reasoning for denying the petitions.

However, the Courts reasoning in this regard is totally flawed; because the Jury was not part of the tier of fact finding during the Motion to Suppress Evidence, and further; it was not part of their province to rule on the search and seizure issue during the trial anyway. Id. (Appendix-A and B). Certainly, the Jury was not at the Preliminary Examination to know what was said in that proceeding. The Prosecution did correct Officer Rochon's testimony. Id. (Appendix-K); But for some strange reason she did not correct Officer Raby's testimony. Id. (Appendix-J). Petitioner surmise it was because there was no physical evidence for Officer Rochon to identify outside pointing to the photograph; there was no chore boy, no crack pipe and no corner tie with a white powdery substance in that was believe to be cocaine.

As noted prior, the Petitioner's Court Appointed Attorney refused to object to the facts of this incident, nor did he bring it to the attention of the Court.

Where the District Court found "Moreover, even if Petitioner successfully undermined the plain view rational, the Michigan Court of Appeals also found the warrant less search was justified by the exigent-circumstances exception." **Kirk v. Louisiana,** 536 U.S. 635, 638 (2002). The Court was in error in this regard, had there not been the plain view doctrine cited; the Officers were still not allowed to enter the Hotel Suite without a search warrant. Therefore, the "Exigent Circumstances" could never have been put into effect, the officers entered suite upon the Plain View sighting and that led to an entire search of the Hotel Suite.

Petitioner was already in custody, there was no eminent threat to the officers, there were no other individuals in the Hotel Suite and there was no chance the Petitioner would escape or destroy any evidence; there is no exigent circumstances.
The Officers entered the Hotel Suite and found incriminating items in the rear bedroom where they could not see from the front door entrance. The Fourth Amendment was already violated at the point the items in the rear bedroom were found. Petitioner's Hotel Suite is covered under the Fourth Amendment. **Payton v. New York,** 445 U.S. 473, 590 (1980); **Kentucky v. King,** 131 S. Ct. 1849, 1856 (2011); **Brigham City v. Stuart,** 547 U.S. 398, 403 (2006) and **Stoner v. California,** 376 U.S. 483, 489-490 (1964).

The Lower Courts have expanded the meaning of both "Exigent Circumstances" and the "Plain View Doctrine." The Lower Courts are finding that exigent circumstances exist when after the fact there is nothing to indicate and emergency, a pressing or demanding situation. On the other hand, the plain view that is cited in this case, took place after the officers had entered the Hotel Suite and ended up in the rear bedroom. Id. (Appendix-M). **Horton v. California,** 496 U.S. 128 (1990). However, the officers must be lawfully in position from which they view the items, and if the item's incriminating character is

immediately apparent it is a good case. Probable cause alone is insufficient to justify a warrantless entry into a person's home. **Payton v. New York,** 445 U.S. 573, 590 (1980).

When exigent circumstances are used, they must come out with something that closely resemble what the alleged exigencies was all about. **Mincey v. Arizona,** 437 U.S. 385, 393-394 (1978) and **Kentuck v. King,** 131 S. Ct. 1849, 1856 (2011) also **Warden v. Hayden,** 378 U.S. 294, 298-299 (1967). No such presentation was presented in this case; thus violating, **Fourth, Fifth** and **Fourteenth Amendments of U.S. Constitution.**

This Case presents the classic example of fraud upon the court as described in the cited cases: **Hazel Atlas Glass Co. v. Hartford Empire Co.,** 322 U.S. 238, 244-245 (19440; **Workman v. Bell,** 245 F. 3d 849, 852 (6th Cir. 2001); **Demjanjuk v. Petrovsky,** 10 F. 3d 338, 348 (6th United Cir. 1993); **H.K. Porter v. Goodyear Tire & Rubber Co.,** 536 F. 2d 1115, 1118 (6th Cir. 1976) and **United States v. Throckmorton,** 98 U.S. 61, 25 L. Ed 93 (1878); see also **Chambers v. NASCO, Inc.,** 501 U.S. 32 (1991). Petitioner would surmise that the Court has three options in the instant case, (1). Grant Certiorari, (2). Remand the case back to the lower Courts with instructions to conduct an Evidentiary Hearing pursuant to the Court's Inherent Powers and (3). Allow the case to stand as is and violate every principle that this judicial system stands for, where the Petitioner is convicted on a void judgment that violates every Constitutional protection provided.

PROSECUTORIAL MISCONDUCT

Petitioner further contend that the conduct presented by the Prosecution is clearly a case of Prosecutorial Misconduct where the Prosecutor perpetrates fraud upon the court, allow their witnesses to come before the Court and commit perjury; and use that perjury to obtain a ruling in their favor without divulging the facts of the matter to the Court.

In this case, the Prosecutor had a duty to inform the Court of the misconduct in this case. However, she chose to correct the testimony of one witness and allow the testimony of the other witness to stand. Id. (Appendix-J; Appendix-K and Appendix-E). As it relate to this perjured testimony, the Prosecution further enjoyed the benefit of obtaining a favorable ruling on the Motion to Suppress Evidence in this regard. Id. (Appendix-I; Appendix-A; Appendix-B; Appendix-D). She used this fraudulent testimony in each of the responses to the search and seizure issue. Id. (Appendix-G).
The particular physical evidence was withheld from the Petitioner until it was presented at the criminal trial. Id. (Appendix-J and Appendix-K), see also (Appendix-L). Thereby creating a **Brady** violation. The "Duty to Reveal" still exist at this current juncture. **Kottekos v. United States,** 328 U.S. 750, 776 (1946); **Brecht v. Abrahamson,** 507 U.S. 619, 637 (1993); **Coe v. Bell,** 161 F. 3d 320, 343 (6th Cir. 1998) and **Tackett v. Trierweiler,** 956 F. 3d 358, 375 (6th Cir. 2020). Being that the Prosecution still have the duty to divulge, the Court may Order the Prosecution to provide an Affidavit on this subject matter and

get an answer under oath that which gives some indication of what really transpired. This maneuver will be of great assistance to both the Court and the Petitioner. **Mooney v. Holohan,** 294 U.S. 103, 112 (1935) and **Napue v. Illinois,** 360 U.S. 264, 269 (1959) and **Giglio v. United States,** 405 U.S. 150, 153 (1972).

The Prosecution knew that the testimony of the officers was false, because she corrected that of officer Rochon's during trial. Id. (Appendix-K). Surely, the facts of this case demonstrates a clear case of Prosecutorial Misconduct where she failed to correct that of Officer Raby. Id. (Appendix-J). Each officer's testimony was identical during the Preliminary Examination but is completely different during trial. Id. (Appendix-E).

Petitioner carries his burden which establishes his claim of Prosecutorial Misconduct. However, the Lower Courts were in error to reject this claim. It is urged that this Court allow the fraud upon the court aspect of the case take precedent of the underlying violations, because; that aspect is the cause and reasons for all the other violations. As indicated through the facts of the case, the Lower Courts were so engrossed by the fraud; it violated Petitioner's, **Fifth** and **Fourteenth Amendment Rights** under the **U.S. Constitution.**

INEFFECTIVE ASSISTANCE OF COUNSEL

The Ineffective Assistance of Counsel claim must also take a back seat to the Fraud Upon the Court issue, because; the case is permeated and infested with fraud. The fraud was perpetrated upon the Courts, the Petitioner and the judicial system as a whole. However; being that the Petitioner's Court Appointed Attorney was an intricate part of the fraud and in collusion with the Prosecution; Petitioner must make this claim in order to justify the Fraud Upon the Court aspect of the case.

First off, the question of whether or not Court Appointed Trial Counsel, Michael J. McCarthy knew about the conduct of the Prosecution and the Officers; surely he did because he and the Petitioner discussed the matter on several occasions, prior to trial and during trial. The matter was certainly discussed when Officer Raby gave his trial testimony and Officer Rochon recanted his testimony during trial. Id. (Appendix-J and K). The matter was further discussed prior to filing the Motion to Suppress Evidence where the Petitioner requested McCarthy to provide the photos of the hotel scene and the front doorway entrance. McCarthy refused to allow the Petitioner to review this evidence prior to trial and never requested this documentation from the Prosecution. At any rate, McCarthy was fully aware of the situation and had full knowledge of the fraud and perjury being perpetrated by the Prosecution and the Officers involved.

Petitioner assume that McCarthy's reasoning for withholding the evidence and failing to conduct a full evidentiary hearing on the Motion to Suppress Evidence, was because if called as a witness; the Petitioner would reveal the truth of the matter. Further, the Officers

and the Prosecution would be unable to produce the items alleged to have been seen on the table in the doorway entrance. Id. (Appendix-L and Appendix-J&K, Pg.3). However, ineffective assistance of counsel would still extend to McCarthy's failure to ascertain the facts of the fraud or his active participation in the fraud himself.

Petitioner would surmise that under any logical concept, an attorney advocating for his client would have objected to the conduct of both the officers and the prosecution. That attorney would have provided the documentation of the crime scene to his client once it was requested; 466upon arguing the Motion to Suppress Evidence, the attorney would have conducted an evidentiary hearing on the matter; he would have produced the photographic evidence of the front doorway entrance; called the client as a witness; cross examined the witnesses, and made a steadfast effort to succeed on the Motion to Suppress Evidence.

It is long settled in law that a criminal defendant has the fundamental right to effective assistance of counsel as stated in, **United States v. Cronic,** 466 U.S. 648, 654 (1984); and the right is ingrained in the **Sixth and Fourteenth Amendments,** and therefore enforced upon the states, **Powell v. Alabama,** 287 U.S. 45, 69 (1932) **and Cuyler v. Sullivan,** 446 U.S. 335, 344-345 (1980).

It has also so been accepted that this right can be constructively denied where the actual, physical absence of a lawyer is not the issue; because attending the proceeding, but in essence, he is not emotionally in the courtroom. Eg. **United States v. Cronic,** 466 U.S. 648 (1994), citing **Holloway v. Arkansas,** 435 U.S. 475 (1978).

In this case, Petitioner meets the standard set forth in **Strickland v. Washington,** 466 U.S. 668, 687-688 91984), that: (1) counsel's performance was deficient, and (2) that the deficiency prejudiced the defense. See also, **Towns v. Smith,** 395 Fed. 251, 258 (6th Cir. 2005). Counsel's failure to reasonably investigate ... or present mitigating evidence ... can constitute ineffective assistance. **Eley v. Bagley,** 604 F. 3d 958, 968-969 (6th Cir. 2010); **Wiggins v. Smith,** 539 U.S. 510, 522-523 (2003). Accordingly, "the deference owed to counsel's strategic judgment about mitigating is directly proportional to the adequacy of the investigation supporting such judgment." **Jells v. Mitchell,** 538 F. 3d 478, 492 (6th Cir. 2008).

In asserting the reasonableness of (Attorney's) investigation, however, a court must not only consider the quantum of evidence already known to counsel, but also whether the known evidence would lead ... a reasonable attorney to investigate further." **Wiggins,** supra. 539 U.S. At 527. It is well settled that a petitioner may not raise a Fourth Amendment search and seizure issue in a habeas proceeding; however, ineffective assistance of counsel claims, may be granted where trial and appellate counsels, failed to

raise meritorious Fourth Amendment claims, or mishandled a Fourth Amendment objection. **Kemmelman v. Morrison,** 477 U.S. 365, 382-383 (1986) and **Joshua v. DeWitt,** 341 F. 3d 430, 449-450 (6th Cir. 2003).

A finding that a state court, "made an unreasonable determination of facts" does not suffice to warrant habeas relief under §2254(d)(2); rather, habeas relief may be afforded to a state prisoner only if his confinement also "violated federal law." **Wilson v. Crocran,** 131 S. Ct. 13, 17 (2010); see also **Rice v. Collins,** 546 U.S. 333, 338-339 (2006).

Within the context of this case, the Petitioner was constructively rendered without having any counsel at all in his criminal process. Counsel's deficient performance prejudiced the Petitioner by allowing a trial to take place that (1) never should have taken place, and (2) never should have had the evidence used in the case to convict the Petitioner. Therefore, rendering the proceeding and its results unreliable or fundamentally unfair. **Glover v. United States,** 531 U.S. 198, 201, 204 (2001) and **Johnson v. Mitchell,** 585 F. 3d 923, 937-943 (6th Cir. 2009).

Finally, McCarthy's conduct deprived the Petitioner of a fair hearing; and but for the error, the results of the proceeding would have been different. Petitioner would strongly urge that an unbiased mind would conclude that if McCarthy had stood up and objected to the conduct of Prosecuting Attorney Jacobs, when she allowed her witnesses to testify falsely regarding what was seen on the table in the doorway entrance of Petitioner's Hotel Suite; the case would never have went to trial, and if so, it would have been without the evidence seized from the Petitioner's Hotel Suite. See (Appendix-J; K, and L). **Higgins v. Rencio,** 470 F. 3d 624, 631-635 (6th Cir. 2005).

Petitioner further carries his burden which establishes his claim of ineffective Assistance of Counsel, and thereby exemplifying violations of the **Sixth Amendment of the Constitution of the United States; Fifth and Fourteenth Amendment's Due Process Clauses,** see **Strickland v. Washington,** 466 U.S. 668 (1984) and **United States v. Cronic,** 466 U.S. 648 (1984).

REASONS FOR GRANTING THE PETITION

Petitioner urge that this Court either grant Certiorari or implement its Inherit Powers of Supervisory Control over the Lower Courts, to correct the impeding errors which took place in the underlying proceedings. Being that the crux of this case is grounded in an egregious and profound case of "Fraud Upon the Courts;" it would be in the interest of justice that some action is taken to bring the case to a close.

As the case stand, absolutely no case within the American Judicial Jurisprudence can end on the premise of "Fraud Upon the Court." The Court should take action in this matter because there is very little direction or case law which instructs Lower Courts on how to handle cases that are permeated with fraud upon the courts and the Prosecution and Court Appointed Counsel are involved. The instant case presents an unusual set of facts which blame is placed in the laps of both the Prosecution and the Petitioner's Court Appointed Attorney.

Being that each of the Lower Courts chose to avoid the Fraud Upon the Court issue, this Court must resolve this issue in the interest of justice and to uphold the integrity of the Courts and the judicial system as a whole. Where it is the system that is in question in the instant case, this Court cannot allow the system to be in doubt.

The case can be resolved through Affidavits, Remand for Evidentiary Hearing, or full briefing on Writ of Certiorari; that authority is provided within **Federal Rules Civil Procedure, Rule 60(d)(3) et. al.**

Petitioner is of the mindset that no matter what persuasion the Court leans, whether it be liberal or conservative; each persuasion would still have keeping the integrity of the Court above all else. Petitioner would urge that some action be taken to rectify the egregious and defiling conduct which took place in this case. Further, that no other case will come before this Court in a posture such as the case in point.

CONCLUSION

First and foremost, it appears that each and every Court that have considered this particular case; has overlooked and failed to consider one important fact in the case, that being, Officer Rochon who was the Evidence Technician and the person who collected all the evidence in the case recanted his testimony during trial. Id. (Appendix-E, Pgs. 212-217). This officer admits that he only saw two items on the table in the doorway entrance of the

Hotel Suite, the items he saw were; a lighter and a cigarette. When compared to his testimony at Appendix-E, Pgs. 26-34 it is conclusive and supports the theory that none of the items claim to have been seen by Officer Raby actually existed on the table in the doorway entrance.

Petitioner urge that the Court either Remand the case for Evidentiary Hearing in the Lower Courts, order that the case be resolve upon Affidavits on the issue of Fraud Upon the Court; or Grant Certiorari for full Briefing on the matter of Fraud Upon the Court as this Court see fit.

Respectfully Submitted

Jerry Word
8100 E. Jefferson Ave. Apt. B-102
Detroit, Mich. 48214

Date: September 26, 2022

Case No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JERRY WORD, Petitioner,

v.

JOHN CHRISTIANSEN (WARDEN); Respondent.

PROOF OF SERVICE

I Jerry Word, do hereby swear or declare that on this date, September 26, 2022, as required by Supreme Court Rule 29, I have served the enclosed Motion for Leave to Proceed In Forma Pauperis and Petition for a Writ of Certiorari on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States Mail properly addressed to each of them and with first-class postage being prepaid, or by delivery to a third party commercial carrier for delivery within 3 calendar days.

The names and addresses of those are as followed:

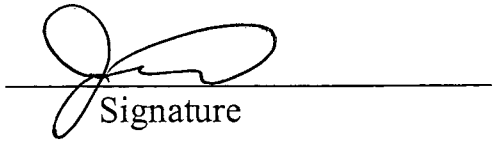
Dana Nessel
Michigan Attorney General

Fadwa A. Hammoud (P74185)
Solicitor General

Eric R. Jenkins (P77863)
Assistant Attorney General
Attorney for Respondent
Criminal Trials and Appeals Division
P.O. Box 30217
Lansing, Michigan. 48909

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 26, 2022



Signature

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