

No. **22-6930**

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

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

HACKNEY v. MICHIGAN

**ON PETITION FROM THE
STATE OF MICHIGAN
FOR A WRIT OF CERTIORARI**

**ROBERT EARL HACKNEY #319385
IONIA MAXIMUM CORRECTIONAL FACILITY
1576 W. BLUEWATER HIGHWAY
IONIA, MICHIGAN 48846**

ORIGINAL

CITATION OF OPINION BELOW

The Circuit Court for **Branch County** Michigan orders and opinions were issued by Chief Circuit Judge P. William O'Grady regarding the Petitioner's conviction and sentence out of **St. Joseph County** in case CC #02-11244-FC six months after he allegedly issued this orders on June 02, 2021, which wasn't sent to the Petitioner by **Branch County** Judge O'Grady until November 24, 2021. See Attached List of Appendixes A-D. The Court Orders and Opinions that are at issue in this Writ are those issued out of **Branch County**, that were considered and denied by the States of Michigan on a claim that these orders violated the Petitioner's Subject Matter Jurisdiction when Judge O'Grady transferred his case out of **St. Joseph County** and into **Branch County**. See Attached List of Appendixes E-F.

QUESTIONS PRESENTED FOR REVIEW

The questions before this Court is asked with impartialities on whether it can be presumed given the facts underlined in this writ, that if a petitioner presents evidence of a Constitutional Violation so strong that no state or federal court can have confidence in the outcome of a jury trial that was free of non-harmless constitutional error, by which a petitioner, will be allowed to pass through this Court's Writ of Certiorari gateway and argue the merits of his underlying Constitutional claim or questions raised that the State of Michigan have refused to so on the merits which constitutes, cruel and unusual punishment under both our Federal and State Constitutions, then balance and impartiality must exist when determining whether to grant or deny this writ? This Writ of Certiorari involves **only claim one** regarding subject matter jurisdiction and **two questions** raised therein:

1. Following an election and taking the office as a District Court Judge, did Judge Jeffrey C. Middleton violate the code of judicial misconduct by continuing his practice as an Attorney for the State of Michigan in the Petitioner's case? And;

2. What would establish a jury trial as being unconstitutionally assembled without the benefit of a prosecuting attorney from the State of Michigan, where Judge Jeffrey C. Middleton violate the code of judicial misconduct by representing himself as an attorney for the State of Michigan, at trial, in the Petitioner's case after being elected as a judge?

In sum, this type of injustice is one of great importance to our State and Federal Courts based on the interest of **avoiding an injustice** in the context of Due Process **which probably resulted in the conviction of an innocent person** has long been at the core of our criminal justice system, that it is far worse to convict an innocent person than to let a guilty person go free, or in the context of an injustice, it is better to let ninety nine prisoners escape than it is to allow one innocent prisoner to remain in prison unconstitutionally.

There is only one true case in Michigan for this type of violation, and none in this United States Supreme Court, which makes this Writ a first impression to this Court by which to avoid a manifest injustice in future cases in the United States. Therefore, the Petitioner in this case pray that this Court, will at the very least, address this type of injustice, rule on it, and if this court determines that a violation did occur, remand this case for further consideration in the State of Michigan as this Court deems just and fair.

JURISDICTION

This Petition for a Writ of Certiorari to reviewed a judgment of an Order issued out of the State of Michigan is being timely sought and filed with the Clerk of the USSC within 90-days after entry of the final judgment by the Michigan Supreme Court. See USSC R.

13.1.¹ However, the jurisdiction of this court is being filed under the all writs act 28 USCS §1651(a) which is meant to be used in exceptional cases where there is clear abuse of discretion of judicial power, especially in criminal case, and should be limited to exceptional cases amounting to judicial usurpation of power or assumption of another's position, office, or authority. See *La Buy v Howes Leather Co* 352 US 249; 77 SC 309 (1957). This Writ is also being filed pursuant to R. 20.1 and 28 USCS §1651 because adequate relief cannot be obtained in any other form or from any other court in these United States and the Petitioner is asked this Court to vacate the judgment entered and remand his case for new trial or for further consideration as this Court deems Just and Fair. An explanatory statement by this court may be found in *Hohn v United States* 524 US 236; 118 SC 1969 (1998).

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¹ This Court should also take into consideration any delays due to the Christmas and New Year's Holidays, COVIT-19 Protocol place on MDOC prisons, and Extreme Weather Conditions is causing distributions of mail deliveries throughout our States.

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ISSUE RAISED

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LIST OF PARTIES INVOLVED

1. Robert Earl Hackney #319385 The Petitioner.
2. Michigan Attorney General Dana Nessel the Respondent for the State.
3. The Solicitor General the Respondent for The United States.

CONSTITUTIONS, STATUTES, AND RULES INVOLVEMENT

USCS CONST. AMEND. 5

DUE PROCESS OF LAW

No person shall be held to answer for a capital, or otherwise infamous crime, unless on an indictment, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law.**

USCS CONST. AMEND. 6

RIGHTS OF THE ACCUSED

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

USCS CONST. AMEND. 14

CITIZENS OF THE UNITED STATES

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. **No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

MICHIGAN CONST. ART-I §12

CIRCUIT JUDGES; NOMINATION, ELECTION, & TERM

Circuit judges shall be nominated **and elected** at non-partisan elections in the circuit in which they reside, and **shall hold office for a term of six years and until their successors are elected** and qualified. In circuits having more than one circuit judge their terms of office shall be arranged by law to provide that not all terms will expire at the same time.

MICHIGAN CONST. ART-I §16

PROBATE JUDGES; NOMINATION, ELECTION, TERMS

One or more judges of probate as provided by law **shall be nominated and elected at nonpartisan elections** in the counties or the probate districts in which they reside and shall hold office for terms of six years and **until their successors are elected and qualified**. In counties or districts with more than one judge the terms of office shall be arranged by law to provide that not all terms will expire at the same time.

MICHIGAN COURT RULE 9.201(B)(1)

DEFINITION OF A JUDGE

A person who **is serving as a Judge of an Appellate or Trial Court by virtue of election, appointment, or assignment.**

MICHIGAN COMPILED LAW 168.467f

Except as otherwise provided in this section, **judges of the district court shall be elected in each judicial district and election division of a judicial district at the general election** to fill vacancies in office as of the following January 1.

MICHIGAN COMPILED LAW 168.467i

Except as otherwise provided by law, **the term of office for judge of the district court shall be 6 years, commencing at 12 noon on January 1 next following the judge's election and shall continue until a successor is elected and qualified**

MICHIGAN COMPILED LAW 600.8203

Upon taking office, a district judge shall not engage in the practice of law other than as a judge.

BLACK LAW DICTIONARY

Defines a judge as someone that is a public official appointed or elected to hear and decide legal matters in court.

SUBJECT-MATTER JURISDICTION

Jurisdiction is the power of a court to act and the authority of a court to hear and determine a case, and it is determined only by reference to the allegations listed in the complaint. **The focus is on whether the court has a legal right to hear a particular case.** If it is apparent from the allegations that the matter alleged is within the class of cases with regard to which the court has the power to act, then subject-matter jurisdiction exists. But subject-matter jurisdiction does not depend on whether the claim is true or false, but instead on the allegations pleaded and not the facts.

Lack of subject-matter jurisdiction may be raised as a defense by a party. But subject-matter jurisdiction is so critical to a court's authority that a court has an independent obligation to take notice when it lacks such jurisdiction, even when the parties do not raise the issue.

If a court erroneously exercises subject-matter jurisdiction, the court's acts and proceedings are of no force and validity and any order entered without subject-matter jurisdiction may be challenged collaterally and directly.

A claim of lack of subject-matter jurisdiction may be raised at any time, even if for the first time on appeal. Whether a court has subject-matter jurisdiction is a question of law subject to review de novo.

STATEMENT OF FACTS

The questions before this court has only been addressed by a few State Courts, and none by the Federal Courts or this Supreme Court, **consequently there is only one case citation or precedent for this type of Constitutional violation** that has ever been granted as a case citation, Cf. *In Re Ryman* 389 Mich 698 (1973), and thus, **it is a first impression** for this type of Constitutional Injustice in this Supreme Court by which to avoid a manifest injustice, therefore, the questions presented for review are as follows: (1) What legal perspective would violate the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution for both State and Federal Courts to declare a jury trial proceeding was unconstitutionally convened?; (2) Would an unconstitutionally assembled jury trial satisfy any true claim quantified as an Actual, Freestyle, or Factual Innocence claim that would satisfy this type of miscarriage of justice?; and (3) this Court should address whether there are only two proposition to a unconstitutionally assemble jury trial (a) something regarding a judge's term in office or (b) the attendance of a former prosecuting attorney in a criminal prosecution that was elected as a judge before assumption of his or her judicial office?

In the State of Michigan, while the charged conduct occurred after Judge Middleton was elected but before he assumed judicial office, was still misconduct in office. This literally violated the District Court Act which provides: **Upon taking office, a district judge shall not engage in the practice of law other than as a judge.** Ibid. *In re Ryman* 394 Mich. 637 (1972) discussing winding up practice and explained that neither the statutes nor the Code of Judicial Conduct preclude an attorney who has become a judge from discharging in a reasonable manner his responsibility to another attorney to complete the responsibilities entrusted to him or her and transfer his or her open files to another attorney for completion, he or she should not appear or undertake any task which might enable him or her to take advantage of or exploit his office, and winding up should be completed diligently. The State of Michigan has pacifically identified that an elected judge only requirement before assuming the office as a judge is to transfers their files to another attorney and shall not appear in court.

PETITIONER INCARCERATION INVOLVES TWO FACTS

(1) The Constitutional question currently before this Court involves (3)(a & b) above, where Prosecutor Jeffrey C. Middleton was nominated to become a District Court Judge, placed his name on the election ballot and campaign on August 02, 2002, took the office as an elected Judge on November 03, 2002, and thereafter, he officially became a former Prosecuting Attorney for the State of Michigan and was ineligible to perform any duties other than the judicial office as a District Court Judge for which he was elected. The questions presented to the State of Michigan involves Judge Jeffrey C. Middleton actions between November 05, 2002 thru January 01, 2003, where Judge Jeffrey C. Middleton activities representing the Prosecutor's Office at the Petitioner's unscheduled jury trial,

that was rescheduled by him, between December 17-19 of 2002 made his jury trial proceedings unconstitutionally assembled without a practicing Attorney from the State of Michigan's Prosecutor's Office before he assumed the office as a judge on January 01, 2003. And;

(2) The Petitioner's venue and jurisdiction over his conviction and sentence resides in St. Joseph County. For 20-years, 30-judges, 12-prosecutors, and the Michigan Attorney General's Office by term or assignment into St. Joseph County has refused to address Judge Jeffrey C. Middleton misconduct in office who was a sole practitioner as their Chief Prosecutor for the State of Michigan for many years, who knowingly, after being elected as a District Judge on November 05, 2002, should not have appeared at the Petitioner's jury trial on December 17-19 of 2002 or undertake any task which might enable him to take advantage or exploit his newly elected station as a district court judge, as an attorney for the State of Michigan, after being elected under the composition of two State of Michigan Statutes. See MCL 600.8203 (Upon taking office, a district judge shall not engage in the practice of law other than as a judge) and MCL 168.467i the term of office for a judge of the district court shall be 6 years following the judge's election and shall continue until a successor is elected and one Rule 9.201 is a person who is **serving as a Judge of an Appellate or Trial Court by virtue of election**, appointment, or assignment. These wrongful acts that should have constrained Judge Jeffrey C. Middleton were committed by him prior to assuming the bench on January 01, 2003 but was still conduct prejudicial to the administration of justice after taking the office as a District Court Judge following St. Joseph County election held on November 05, 2002. It does not matter that Judge Jeffrey C. Middleton conduct occurred **before assuming the**

office as a district court judge or otherwise is unrelated to his performance of judicial duties after assuming the office as a district court judge on January 01, 2003. These provisos, doesn't invalidate the fact that when a judge is known to have engaged in unprofessional conduct, is allowed without reproach, the integrity of the entire judiciary process is put in question, and its ability to perform is impaired. Sanctions in this case should have been based upon a number of factors: (1) The seriousness of the judge's conduct at issue; (2) the prejudice to the defendant; and (3) whether the conduct involved dishonesty and/or misrepresentation. This is no difference for our Presidential and Vice Presidential Offices where President Joe Biden and Vice President Kamala Harris both became elected to their offices by the People of the United States following the November 2020 election and **Upon taking their offices did not engage in any practice other than** the President and Vice President of these United States to fill in these offices in January 21, 2021.

PETITIONER INCARCERATION INVOLVES SUBJECT MATTER-JURISDICTION

Subject-matter jurisdiction is a legal term of art that concerns a court's authority to hear and determine a case. This authority is not dependent on the particular facts of the case, but instead, is dependent on the character, or class of the case pending. The courts do not have inherent subject-matter jurisdiction, it is derived instead from our Constitutional and Statutory provisions. Under Michigan's 1963 Constitution, **Circuit Courts have original jurisdiction in all matters not prohibited by law.** See Michigan Const. Art-VI §13. Likewise, MCR 6.008(B) provides that the Circuit Court has jurisdiction **over all felonies** from the **bind-over** from the **district court** unless otherwise provided by law. Branch County actions taken in the Petitioner's case was without subject-matter

jurisdiction, and therefore, is void and of no more value, as though it did not exist. Cf. *People v. Washington* 2021 Mich Lexis 1314 decided July 29, 2021 stating that subject-matter jurisdiction is a legal term of art **that concerns a court's authority to hear and determine a case**. Therefore, Branch County lacked subject-matter jurisdiction to determine the Defendant's Motion for Relief from Judgment became annulled the moment Judge O'Grady transferred the petitioner's case **out of** St. Joseph County **and into** his own County of Branch. See Accompanying List of Appendixes E-F.

How much more unreasonableness is needed in my case than that of Bill Crosby where this Supreme Court overturn his case base upon a broken promise of immunity not to prosecute him by the State.

ISSUE RAISED

THE PURPOSE OF A JUDGE IS TO DETERMINE THE LEGALITY OF A DEFENDANT'S IMPRISONMENT WHICH DEALS WITH RADICAL DEFECTS THAT RENDER A JUDGMENT OR CRIMINAL PROCEEDING ABSOLUTELY VOID WHERE RELIEF IS OPEN TO A CONVICTED DEFENDANT IN ONLY A FEW NARROW INSTANCES WHERE THE CONVICTING COURT WAS EITHER WITHOUT JURISDICTION TO TRY THE DEFENDANT OR WHERE THE CONVICTING COURT WAS UNCONSTITUTIONALLY ASSEMBLED WITHOUT A PROSECUTING ATTORNEY AND THESE DEFECTS MUST BE EXTREME RENDERING THE CONVICTION ABSOLUTELY VOID, HOWEVER, THE QUESTION BEFORE THIS COURT IS A FIRST IMPRESSION BECAUSE THERE IS NO PRECEDENT FOR THE PROPOSITION TO A UNCONSTITUTIONALLY ASSEMBLE CRIMINAL TRIAL WHERE AN ELECTED JUDGE ASSUMED THE AUTHORITY OF A PROSECUTOR BY USURPATION OR ASSUMPTION REQUIRES THE PETITIONER'S CONVICTION AND SENTENCE TO BE OVERTURN AND REMANDED FOR A NEW TRIAL.

STANDARD OF REVIEW

The Court of Appeals will not reverse a trial court's ruling on a motion for a mistrial absent an abuse of discretion. A defendant who moves for a new trial has the burden of persuading the trial court that during the trial an error was committed of sufficient magnitude to cause the trial court to grant a new trial in the exercise of its discretion. See

People v Jehnsen 183 Mich App 305 (1990) see also People v Powell 303 Mich App 271 (2013) (Post-Conviction Proceedings and Motions for a New Trial. Emphasis Added).

LEGAL ANALYSIS

As previously stated herein, there is no case citation nor any State or Federal precedent regarding this type of injustice where an elected judge **factually participated** in a **trial proceedings** following the **November 2002 election**. There is only the Petitioner's Constitutional Rights in the context of a Due Process Violation as required by the 5th, 6th, and 14th Amendments which probably resulted in the conviction of an innocent person **in criminal prosecutions**, Michigan's Constitutional Rights **in criminal prosecutions**, Michigan's Constitutional Rights **regarding judges and elections**, Michigan Court Rule on the definition **of a serving Judge** in Michigan, two state cases which supports these rules in the *AG v. Clarke 489 Mich. 61 (2011)* which was also a **case of first impressions** stating that the vacancies in a judicial office **shall be filled by the people at a general election** held in November, *In re Servaas 484 Mich 634 (2009)* discussing MCL 168.467f **that judges of the district court shall be elected in each judicial district and election division of a judicial district at the general election to fill vacancies in office**, and Black's Law Dictionary definition that **a judge as someone** that is a public official appointed **or elected by the people**. As such, all courts of these United States have an obligation to be fair and impartial, and to act in accordance with the important roles that they play in every criminal prosecution, however, a judge has an affirmative obligation to enter a recusal order when appropriate.

As it applies to this Application:

**A CONSTITUTIONALLY ASSEMBLED JURY TRIAL
CONSIST OF THE FOLLOWING CHARACTERS**

A Circuit Judge: Is a judge who sits in a Circuit Court for the of holding trial and deciding legal matters.

A State Prosecutor: Is a Prosecuting Attorney for the state in criminal prosecutions.

A Defense Attorney: Is a lawyer who represents a defendant in a civil or criminal on why the prosecutor has no valid case.

The Jurors: Are fact finders in a criminal trial whose duty is to hear testimony and to process evidence to determine the truth on factual issues as to guilt or innocence.

And a Court Report: A stenographer is a person who takes down in shorthand during the trial of a case the testimony of witnesses and the discussions between defense counsel, prosecuting attorney, or the judge, and prepares transcripts from such record.

All these personalities were present in the criminal prosecution of the Defendant with the exception of a prosecuting attorney from the St. Joseph County Prosecutor's Office.

There is no doubt about Judge Middleton's prestige's history in St. Joseph County Michigan criminal proceedings. Judge Middleton past his Bar Examination on November 13, 1981. Judge Middleton then became an Assistant Prosecuting Attorney for St. Joseph County and rose to become its Chief Prosecutor for many years. On August 02, 2002 Judge Middleton placed his name on St. Joseph County primary election ballot for the vacant office as a district judge. See MCL 168.467a-f, which clearly identifies in section-(f) that St. Joseph County election was held on November 05, 2002 where Mr. Middleton was elected as a District Court Judge and to fill in the office as a district judge on January 01, 2003.

Irrespective of Judge Middleton's outstanding background, trials are judicial examinations of evidence and determination of legal claims in an adversary proceeding which the drafters of our Constitution never intended as a blank check of governmental

immunity for exemption or cleanings, for forgiveness, regarding this type of judicial misconduct in criminal prosecutions. Therefore, the foregoing errors of injustice are attributable to former Prosecutor and now District Court Judge Jeffrey C. Middleton that seriously affected the fairness, integrity, and public reputation of a judicial and criminal prosecution, needs to be established as well. Thus, this case necessarily turns on judicial facts committed by Judge Middleton between November 05, 2002 and January 01, 2003 who had a personal stake in the Defendant's case and ask this Court to consider the following particulars in this case.

On December 13, 2002 a status hearing was held, with Judge Middleton and Defense Counsel John Bush, to advise them of the date when the Defendant's jury trial will be held, where Chief Circuit Judge James P. Noecker set that date for January 22 through January 24 of 2003, 23-days beyond the date Judge Middleton was scheduled to take office as a district judge. There is no written record anywhere on why this trial date was rescheduled and placed on Chief Judge Noecker's calendar for December 17 through December 19 of 2002, when the doctor was allegedly unavailable due to a schedule vacation², but an offer of proof can be determined from the Judicial Tenure Commissions Records regarding the Michigan Supreme Court case of *In Re Noecker 472 Mich 1 (2005)* where a public hearing was held in which Chief Circuit Judge James P. Noecker testified that Mr. Middleton scheduled his trials for him in 2002. Following this public hearing a Master Report was prepared by Master John N. Fields on April 30, 2004

² There is also no record evidence anywhere that this video deposition conformed to the requirements of MCR 2.315(E) the person who made the recording shall file the recording with the court under together with an affidavit identifying the recording, stating the total elapsed time, and attesting that no alterations, additions, or deletions other than those ordered by the court have been made.

regarding Chief Judge James P. Noecker's Formal Complaint #73, and as it applies herein, to the Judge's incompetence, neglect, and failure in the performance of his judicial duties as follows:

1. Chief Judge Noecker testified that his failure to file his speedy trial reports in 2000 was due the Chief Prosecutor Office who actually scheduled his criminal trial for him and that he did not have the means to prepare them himself.

2. In 2004 when this Master report was drafted, as it pertains to the years of 2002 through 2003, the judge additionally testified that the Chief Prosecutor's Office still continues to schedule his criminal trials for him during those years. And;

The only person that gained from the doctor's unavailability at trial in order to present to the jurors the doctor's false testimony via a videotape deposition, was newly elected Judge Middleton, who according to Chief Judge James P. Noecker, scheduled his criminal trials for him in 2002. Therefore, it was a conflict of interest and inappropriate for Judge Middleton to appear on the behalf of the prosecution at this pre-trial hearing and at the Defendant's rescheduled jury trial. I have repeated this statement to this Court because I want this Court to consider another pre-trial hearing held in 2003, where Chief Prosecutor Douglas Fisher by assignment, stated on record, that Mr. Middleton was assigned as a judge and he could no longer represent himself as a prosecutor in the Defendant's case. This fact becomes more sustainable because Judge Middleton knew he was schedule to sit on the bench on January 01, 2003, the same month, Chief Judge James P. Noecker scheduled the Defendant's jury trial to begin on January 22-24 of 2003. This Court cannot ignore the fact that Judge Middleton was present when this date was set by Chief Circuit Judge P. Noecker, and directly after this meeting, Judge Middleton immediately arraigned for the Doctor testimony to be taken that same day and

rescheduled Chief Judge Noecker's trial calendar to December 17-19 of 2002 and the state has never refuted facts, basically because, any objections should have been raised by Judge Middleton at this December 13, 2002 pretrial hearing, including the facts that (1) he was scheduled to sit on the bench on January 01, 2003 and (2) when the trial was rescheduled for December 17-19 of 2002 this made his key witness, Doctor Brian Bowditch, unavailable to testify on those dates, nonetheless, Judge Middleton never discussed this matter with Chief Circuit Judge James P. Noecker on December 13, 2002 that he was videotaping the Doctor's testimony after this meeting. This Court should also take notice of what Judge Middleton's intentions and motivations were at the Defendant's jury trial.

JUDGE MIDDLETON'S INJUSTICE AT JURY

Judge Middleton's witness list named the following witnesses for trial:

Keanna Davis

Angel Terry

Latansha Davis

Doctor Bowditch

Officer Studabaker,

A lab person to be named lab, and

Jim Henry.

Two names that were not on listed on Judge Middleton's witness list are: **Nurse Marcia Dorgan** and **Doctor Linda Evans**. The following portions of the Defendant's trial transcripts clear establish that (1) Victim lied under oath numerous times; (2) Judge Middleton allowed the victim to lied under oath uncorrected; (3) Judge Middleton coached the victim to lie under oath; and (4) Judge Middleton knew Doctor Bowditch videotaped

testimony was based on various lies. The following excerpts³ are from Mr. Middleton's on direct examination and Attorney John Bush on cross examination of the victim on December 17, 2002 which will support these facts:

FIRST LIE:

Q. Did he get his penis in you this time?

A. No.

Q. At least not all the way?

A. Oh, right.

Q. Did he get it even part way?

A. Yes.

Q. Did it hurt?

A. Yes.

Q. What did he do next?

A. He stuck his [finger] in me again.

Q. What happened after he struck his [finger(s)] in you again?

p-142 L 5-16

SECOND LIE:

Q. Did you talk to this man Studabaker?

A. Yes.

Q. Did you tell him what happened?

A. Yes.

p 151 L 1-4.

THIRD LIE:

Q. Have you ever been to the hospital before?

³ The transcripts stated below are all from December 17, 2002 and hereafter will only be identified by their page numbers.

A. The doctor.

Q. But not a hospital?

A. No.

Q. So they took you to the emergency room?

A. Yes.

_____ p 151 L 7-12.

FOURTH LIE:

Q. Did you see a doctor there?

A. Yes.

Q. And a nurse?

A. Yes.

Q. Did they do some sort of examination on you?

A. Yes.

Q. And into your vagina?

A. Yes.

Q. Did you tell the nurse what happened?

A. Yes.

Q. Did you tell the doctor what happened?

A. No.

Q. Did you tell him some it?

A. No.

_____ p 151 L 13-25; p 152 L 1-3.

Doctor Brian Bowditch videotape has never been transcribed and no written record of it was made when it was played to the jurors. Both state and federal courts had to determine the Doctor's testimony from pleadings presented to their individual courts. In this video the Doctor testified that the victim sustained superficial hairline abrasions between the vagina and anus, likely caused by fingernails. However, the Doctor testified he saw no evidence that an object went beyond the victim's vagina **but stated** that a

finger could have been inserted into the victim's vagina and that the victim's comments to him at the time of his examination are consistent with this fact. Cf. *Hackney v. LaFler* 2008 U.S. Dist. Lexis 55188 at *7 & 10. However, once again, Doctor Brian Bowditch medical report clearly indicates that the victim stated to other people that multiple fingers were inserted into her vagina, however, Doctor Brian Bowditch medical reported clearly indicated that her hymnal ring was grossly intact without any deformities, that there was no blood found deep in her vaginal vault, that her anus was not manipulated, that there were superficial hairline abrasions between her vaginal vault and anus, and superficial scabbing on her flank consistent a belt buckle, and due to these superficial abrasions, he called the police on the victim's mother for child abuse. Likewise, Doctor Brian Bowditch medical report clearly indicates that Doctor Linda Evans was the victim's primary physician at the Three Rivers Hospital. In 2003, under Judge Middleton's direct order, had Doctor Brian Bowditch videotape destroyed.

CROSS EXAMINATION:

FIFTH LIE:

Q. A lot of people asked you questions about what happen?

A. Yes.

Q. You gave some answers to the doctor?

A. No. He didn't ask me any questions.

Q. The doctor didn,t didn't ask you any questions?

A. No.

Q. You talked to the nurse?

A. Yes.

Q. Did you tell her the turth?

A Yes.

CLOSING SUMMARIES

Perjury is testifying falsely on a material matter while under oath and with intent to provide false testimony. Consider *Caraway v Jackson* 2008 US Dist Lexis 14627 *8-11 citing *U.S. v Dunnigan* 507 US 87, 94; 113 SC 1111 (1993); and *U.S. v Wells* 519 US 482; 117 SC 921 (1997). As long ago as *Mooney v Holohan* 294 US 103, 112; 55 SC 340 (1935) this United States Supreme Court made it clear that the deliberate deception of a court and jurors by the presentation of known false evidence is incomparable with rudimentary demands of justice **but how can any State Court, Federal Court, or the United States Supreme Court gage this deliberate deception that is supposed to be focus** on the prosecution's acts, **when this deception was committed** by a judge **inappropriately** and **knowingly representing himself** on behalf of the prosecution. The Petitioner would argue, just as the presentation of known false evidence is incomparable with rudimentary demands of justice regarding the prosecution is required, so is the presentation of known false evidence incomparable with rudimentary demands of justice when a judge clearly abuse of his or her discretion of judicial power, especially in criminal case, that amounts to judicial usurpation of power or assumption of another's position or authority. **In this instant case, District Court Judge Jeffrey C. Middleton committed usurpation when he knowingly assumed the role of a prosecutor attorney to obtain a contaminated conviction.**

The victim absolutely denied the fact that of any penile penetration to Doctor Bowditch and to Child Protective Services. The victim didn't just lie under oath, Judge Middleton allowed it to go uncorrected and coached her into lying under oath when he

stated to the victim [**at least not all the way**] with full knowledge that there was no proof to support this claim due to the fact that the victim's hymen ring was grossly intact.

This fact is absolute because during Judge Middleton's direct examination of the victim he attempted to coach the victim, who just testified that only a finger was inserted into her vagina, when he corrected her by saying [**multiple fingers**] when he asked her the following question: **What happened after he struck his fingers in you again?** This also supports the fact that Judge Middleton was aware that Doctor Bowditch testimony was a false statement, as well as the doctor's opinion (1) that marks on the victim was likely caused by fingernails (2) that a single finger could have been inserted into the victim's vagina and these facts were consistent with comments made to him at the time of the examination by the victim. Four cases decided by the State of Michigan pontificated on this type of diagnoses by an expert witness. Cf. *People v. Thorpe* 504 Mich. 230 Decided July 11, 2019; *People v. Del Cid* 331 Mich. App. 532 Decided February 27, 2020; (3) *People v. Uribe* 2021 Mich. Lexis 1457 Decided August 13, 2021; (4) *People v Rainbolt* 2021 Mich. Lexis 1858 decided October 20, 2021 where Michigan stated that: **Examining Physicians cannot testify that a complainant has been sexually assaulted** or has been diagnosed with sexual abuse **without physical evidence** that corroborates the **complainant's account of sexual assault** or abuse because such testimony **vouches** for the complainant's **veracity** and improperly **interferes** with **the role of the jury**, and therefore, **any testimony** about the truthfulness of a **victim's allegations against a defendant would be improper** because its underlying purpose would be to enhance the credibility of the victim, where all four of these cases were based on the analysis of (5) *People v Smith* 425 Mich 98 (1986)(Stating, this case was unanimous and has never

been called into question for over 35-years). As a former Prosecutor, Judge Middleton knew that these personal expressions under the exclusionary rule of Smith and subsequent cases under Smith were insufficient to establish a general recognition of a procedure or a degree of certainty **to warrant the admission of the Doctor Bowditch personal opinion into evidence** at the Defendant's jury trial because there is no evidence in Doctor Bowditch Medical Record indicating that the victim was actually and factually sexually assaulted. Likewise, in the *People v Beckley* 434 Mich 691 (1990) (Michigan stated that **an expert opinion must be from a recognized scientific, technical, and recognized discipline**) see also *People v Wesley* 103 Mich App 240, 244-47 (1981) (Where Michigan stated **fingernail identification is insufficient to establish that fingernail analysis's general scientific recognition or degree of certainty is not accepted as reliable by the scientific community**).

The victim also lied under oath when she testified that she had never been to the Three Rivers Hospital and that it was her first time at the Three Rivers Hospital. Judge Middleton allowed this statement to go uncorrected with full knowledge that on the very last page of Doctor Bowditch Medical Report, the Doctor reported that the victim may be rechecked by the victim's primary Doctor Linda Evans here at the Three Rivers Hospital and that the victim's mother should call Doctor Evans for an appointment. Judge Middleton was also fully aware that Doctor Evans name not only appears on the top of every page of Doctor Bowditch Medical Report but was also fully aware that Doctor Evans had been the victim's primary physician at the Three Rivers Hospital for several years and coached the victim to lie under oath that she had never been to hospital. Noteworthy is the fact that in 2002, the Defendant talked to Doctor Evans from the St. Joseph County

Jail because she was also the Defendant's family doctor for all of his nieces. During this conversation Doctor Evans advised the Defendant that she was willing to testified at the Defendant's jury trial about Ms. Davis child abuse problem with her children and the victim but she was strongly warned by the hospital not to get involved.

Noteworthy is the fact that the victim outright denied she had any conversation with Doctor Bowditch regarding her alleged assault and only gave a statement too Nurse Marcia Dorgan. The victim's trial statement not only contradicts Doctor Bowditch videotaped testimony but raises a more important question: **Why did Judge Middleton kept Nurse Dorgan medical records a secret for the past 20-years.** The only conclusion must be, **had this evidence been disclosed** to the Defendant prior to his jury trial, the result of his trial proceedings, more likely than not, would have been different?

Noteworthy is the fact that, immediately following the Defendant's jury trial, he filed 3-complaint: (1) To the Attorney Grievance Commission on Defense Counsel John Bush on December 27, 2002, (2) To the Attorney Grievance Commission on Chief Prosecutor Jeffrey C. Middleton on December 27, 2002, and (3) To the Judicial Tenure Commission on Chief Judge James P. Noecker **for being drunk and passed out** during the presentation of Doctor Bowditch video testimony to the jurors.

As it applies to this Writ of Certiorari, the Petitioner received a letter from Nancy R. Albert of the Attorney Grievance Commission as to **Re: Robert E. Hackney** regarding **Judge Jeffrey C. Middleton**, stating (4) on December 30, 2002 we received your correspondence, however, (5) Since the Judicial Tenure Commission has authority to investigate charges for judges I am forwarding this matter to them, and (6) On September 02, 2017 the Defendant sent a letter to the Judicial Tenure Commission, stating (7) this

document confirms that Judge Middleton was elected as a judge 45-days before my jury trial began which was mysteriously rescheduled for December of 2002 and Judge Middleton should have disqualified himself as a representative of the St. Joseph County Prosecutor's Office.

In closing, the Defendant states there has never been a case like this one in any State or Federal Criminal Prosecution where a judge actually assumed the position of authority as a prosecuting attorney in a criminal case after being elected as a judge. As such, to void this type of usurpation from reoccurring in the State or Federal Courts, rudimentary, fundamental, and elementary demands of justice, as determined by our Constitution, Statutes, and Rules requires this Court to do a full review of the Petitioner's Writ of Certiorari to prevent this type of deliberate deception, committed by an elected judge, in a court of law, from never happening again.

CONCLUSION

This case involves two questions: (1) Subject-matter jurisdiction regarding Branch County where the terms "power" and "authority" are generally used to refer to errors in the exercise of jurisdiction. The purpose of Subject-matter jurisdiction is to avoid the confusion of placing the same matter before two courts at the same time and preserve the integrity of the appeal process. In all matter regarding the Defendant's case Subject-matter jurisdiction derived instead from our constitutional and statutory, that the circuit in which the Defendant was convicted and sentence have original jurisdiction in all matters not prohibited by law, and (2) whether people who are serving as a judge of an appellate or trial court, became a judge, by virtue of an election, an appointment, or by assignment. If so, then the question this Court must address regards whether district

court judges in the State of Michigan becomes an elected judge in each judicial district and election division of a judicial district at the General November Election. If so, this court must then determine whether Judge Middleton became a judge by virtue of an election held on November 05, 2002 in St. Joseph County in order to grant this writ.

RELIEF SOUGHT

In closing, the Petitioner states that in lieu of granting his Writ, this Court should as a prerequisite consider (a) all documents entered out of Branch County without Subject Matter Jurisdiction to do so and (b) for Immediate Consideration and Reversal on the grounds that a judge is not an attorney for any party, group, or proceeding, within the Michigan's Court Rule and Statutes regarding disqualification of a judge, by virtue of his or her former employment as a Prosecuting Attorney in an action where the county is represented by other Prosecuting Attorney in the Prosecutor's Office, where Judge Middleton was elected as a judge on November 05, 2002, then on December 17, 2002 did appear personally and participate in the Petitioner's jury trial is an act that is thoroughly condemned by all Courts of these United States, or in the alternative, decide whether or not to overturn the Petitioner's conviction and sentence, and remand his case for a new trial, or grant such other relief as this court deems just and fair, under the circumstances of this case.

DECLARATION OF SERVICE

The petitioner certify under 28 USC 1746 that a copy of this document was served to all parties by U.S. Mail.

SUBMITTED BY:

Robert Earl Hackney

ROBERT EARL HACKNEY #319385

DATED: 1-3, 2023