No. 22-7122

IN THE

SUPREME COURT OF THE UNITED STATES

QUINTEL ANDREW WEST - PETITIONER

VS.

CHRISTOPHER KING, ACTING WARDEN,

E.C. BROOKS CORRECTIONAL FACILITY - RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Quintel A. West
Petitioner In Pro Se
E.C. Brooks Correctional Facility
2500 S. Sheridan Dr.
Muskegon Heights, MI 49444

QUESTIONS PRESENTED

I Detective Doyle testified that petitioner was arrested without a warrant for reckless driving. The reckless driving allegation is not supported by a complaint nor by a prompt judicial probable cause determination. The question is:

> Whether the petitioner's warrantless arrest was consistent with the Fourth Amendment?
>
> And whether defense counsel failure to move to suppress evidence as fruit of an unlawful arrest was consistent with the Sixth Amendment right to effective assistance of counsel?

II. Petitioner was charged and tried for only one offense of Carrying a Dangerous Weapon, with unlawful intent (CDW) This offense was charged as being committed on the same date and time and at the same place as the homicide charge. Petitioner expressed to his lawyer his innocence and provided an alibi witness who provided evidence that petitioner couldn't have committed any of the crimes because he was home at the time the crimes were being committed. During closing arguments defense counsel told the jury, without petitioner's consent, that they were free to convict petitioner of the CDW charge The question is:

> Whether petitioner's Sixth Amendment right to assistance of counsel was violated by defence counsel's concession of guilt over petitioner's clearly expressed objective to maintain innocence?

III. Christopher S Boyd presided over this case, as district court judge, during preliminary examination. By virtue of his Oath of Office Boyd swore to guarantee the petitioner assurance of impartiality, the presumption of innocence, and to remain detached from the conflict. After binding petitioner over for trial, Boyd resigned to be appointed as chief assistant prosecuting attorney. During trial Boyd joins the prosecution in the conflict and called a witness The question is:

> Whether Boyd's service as district court judge and later as trial

prosecutor deprived the petitioner of his due process right to assurance that Boyd was an impartial judge?

IV As prosecutor Boyd presented Timothy Fink as a cell phone location expert for the prosecution Fink testified that the petitioner's cell phone was in the area of the crime various times during the timeframe of the home invasion The prosecution relied heavily on Fink's testimony during opening and closing arguments to discredit the alibi evidence. The Michigan Court of Appeals (MCOA) ruled that the trial court erred in allowing the prosecution to admit Fink as a expert witness under MRE 702, but called the error harmless. The question is:

Whether a false expert's opinion has a substantial and injurious effect on the juror's verdict, where it was heavily relied on by the prosecution during opening and closing arguments?

LIST OF PARTIES

The Petitioner, Quintel Andrew West, is a Michigan prisoner at E.C. Brooks Correctional Facility of Michigan Department of Correction.

The Respondent, Christopher King, is the acting warden at E.C. Brooks Correctional Facility (LRF) of the Michigan Department of Correctional Facility.

TABLE OF CONTENTS

INDEX TO APPENDICES

INDEX TO EXHIBITS

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

OTHER

OPINIONS BELOW

The Sixth Circuit's decision, (where three judges recused themselves from participation) West v Artis, No. 22-1148 (6th cir. Nov. 22, 2022), is reproduced at App. A. The Sixth Circuit's decision, West v. Artis, No. 22-1148 (6th cir. Nov. 7, 2022), is ~~reproduced~~ at App. B The Sixth Circuit's decision, West v. Artis, No. 22-1148;2022 U.S. App. 25628 (6th cir September 12, 2022), is reproduced at App C. The district court's decision, West v. Chapman, No. 18-13567; 2022 U.S. Dist. LEXIS 17543; 2022 WL 286548 (E.D Mich. Jan. 31, 2022), is reproduced at App. D. The Michigan Supreme Court (M.S.C.) decision, People v. West, 919 N.W. 2d 260 (Mich. Oct. 30, 2018) is ~~reproduced~~ at App. E The Michigan Court of Appeals (M.C.O.A.) decision, People v. West, No. 338903 Mich. Ct. App. Order (Jan. 3, 2018), is reproduced at App F. The Saginaw County Circuit Court decision, People v. West, No. 12-037699-FC, Saginaw County cir. ct. opinion opinion and order (June 1, 2017), is reproduce at App. G. The M S C. decision, People v. West,874 N.W 2d 692 (Mich. March 8, 2016), is ~~reproduced~~ at App. H. The M.S.C. decision. People v. West, 871 N.W. 2d 172 (Mich. Nov. 24, 2015), is reproduced at App. I. The M.C.O A. decision, People v. West, 2014 Mich. App LEXIS 2477 (Mich. Ct. App., Dec. 16, 2014), is reproduced at App. J.

JURISDICTION

The final judgement of the United states Court of Appeals for the Sixth Circuit was entered on November 22, 2022. This was a judgment denying En Banc rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. || 1254(1)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fourth Amendment, United States Constitution, provides:

"The right of people to be secure in their persons, house, papers, and effects, against unreasonable search and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, , and particularly describing the place to be search, and the person or thing to be seized "

2. The Fifth Amendment, United States Constitution, provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury..."

3. The Sixth Amendment, United States Constitution, provides:

"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 crimes 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 witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

4. The Fourteenth Amendment, United States Constitution, provides:

"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 "

"Section 3. No person shall [] hold any office [] under any State, who, having previously taken oath, [] as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same"

5. The Mich. Comp. Laws § 764.13 provides:

"[A] peace officer who has arrested a person for an offense without a warrant shall without unnecessary delay take the person arrested before a magistrate of the judicial district in which the offense is charged to have been committed, and shall present to the magistrate a complaint

stating the charge against the person arrested."

MCLS § 764 13 (2016).

6. The statute under which Petitioner was prosecuted, though nothing turns on its terms, was Count 1, first-degree felony murder, MCL 750.316; Count 3, assult with intent to murder, MCL 750 83; Count 5, first-degree home invasion, MCL 750.110a(2); Count 6, Conspiracy to commit first-degree home invasion, MCL 750.110a(2) and MCL 750.157a; Count 8, armed robbery, MCL 750.529; Count 9, Conspiracy to commit armed robbery, MCL 750.529 and MCL 750.157a; Count 11, carrying a dangerous weapon with unlawful intent, MCL 750.226; and five counts of use of a firearm in the commission of a felony, being counts 2, 4, 7, 10 and 12, MCL 750.227b. The State Of Michigan now has custody of Petitioner West in the Michigan Department of Corrections on a sentence of life without parole for count 1; 210 month to 40 years for counts 3, 8 and 9; 5 years to 20 years for count 5 and count 6; 24 months to 5 years for count 11; and 2 years, concurrently with eachother but consecutive to the other counts, for counts 2, 4, 7, 10 and 12.

7 The statute under which Petitioner sought post conviction was de novo and 28 U.S.C. §2255

RELEVANT FACTS

Petitioner incorporate all relevant facts from his Amended Reply, entered 09/11/2019, (Docket #19) in West v. Chapman, Case # 2:18-cv-13567-MAG-EAS See Exhibit A.

II. THE COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN AWAY THAT CONFLICTS WITH McCOY V. LOUISIANA AND FLORIDA V. NIXON BY DECIDING THAT PETITIONER'S TRIAL COUNSEL CONCEDING THAT PETITIONER IS GUILTY OF CDW (carrying a dangerous weapon, with unlawful intent): WAS NOT UNREASONABLE; WAS NOT A CONCESSION THAT PETITIONER COMMITTED THE CDW ON THE NIGHT OF THE SHOOTING; DID NOT RELIEVE THE STATE OF ITS BURDEN TO PROVE PETITIONER'S PRESENCE ON THE NIGHT OF THE SHOOTING; and PETITIONER FAILED TO SHOW HOW THE CONCESSION WAS PREJUDICE.

The Sixth Circuit Court Decision:

The Court of Appeals decided that petitioner has failed to make a substantial showing that, absent counsel's concession, the jury would have acquitted him of carrying-a-dangerous-weapon charge or believed his alibi defense and acquitted him of the other charges

Disscussion:

A. Autonomy Rights

The Sixth Amendment secured autonomy reserve the right for a client to: (1) insist that counsel refrain from admitting guilt; (2) decide on the objective of his defence; (3) to waive his right to jury trial; (4) chose whether to plead guilty; (5) chose whether he would testify in his own behalf; and (6) chose whether to forgo an appeal.

"Autonomy to decide that the objective of the defense is to assert innocence belongs in the category of decisions reserved for the client " McCoy v Louisiana, 138 S.Ct 1500, 1508 (2018).

B. West's Choice to Maintain His Innocence

In the instant case, Petitioner pled not guilty to all charges and presented his alibi witness, Jermaine Boose, whom testimony placed the petitioner at the petitioner's home on the night and time of the shooting. see (TT vol. 6, p. 216, 245). Thus, petitioner's has clearly expressed the objective of his defense was to maintain his innocence, by the presentment of an alibi.

C. "Presence", The Common Element Between Charged Offenses

The trial judge instructed the jury on the importance of presence stating:

> "You have heard evidence that the defendant could not have committed the alleged crimes because he was somewhere else when the crimes were committed. The prosecutor must prove beyond a reasonable doubt that the defendant was actually there when the crimes were committed. The defendant does not have prove he was somewhere else If after carefully considering all the alleged crimes were committed you must find him not guilty."

(TT vol. 7, p. 156). During the prosecutor's closing arguments he made it clear of what the elements for the CDW offense were:

> "That is he is guilty of home invasion in the first degree. Because he and at least one other co-defendant-- not co-defendant, conspirator--broke into the house at 2555 luella. Michael Kuhlman as well as others were lawfully within the house at the time of the breaking. At the time he broke in, at the time he was at the house, and at the time he left the house he was armed with a dangerous weapon.
>
> **********
>
> He is guilty of **carrying a dangerous weapon with unlawful intent**, because that night, May 29th, the morning of May 30th, he went armed with People's Exhibit 57 with the intent of harming another person. One way or the other "

(TT vol 7, p. 95-96). Thus, the elements of the CDW offense is clearly, (1)

presence at the scene of the shooting at the time of the shooting; (2) carrying the 9mm handgun; and (3) having the intent to harm another person

If the common element between all of the charges is presence, does the concession of one charge relieve the state of proving that element?

D. Trail Counsel's Concession Violates West's Autonomy Right

Without consent, trial counsel, Ms. Barbara Klimaszewski, during closing arguments conceded to the only Carrying a dangerous Weapon (CDW), with unlawful intent, offense that the petitioner was charged with stating:

> "If you are convinced in your mind that when he was stopped and he had that gun in the car that he was carrying a dangerous weapon with unlawful intent, then you're free to concluded that. And you're free to convict him of that charge. Because he was carrying a dangerous weapon We have conceded at least the first half of that If you think they have proven the second half of that, that he had an unlawful intent, and you think that was proven beyond a reasonable doubt, you can convict him of that "

(TT vol 7, p. 132) Here, trial counsel abandon her job to defend the petitioner of all charges and elect to give the jury the green light to convict the petitioner of the charged CDW with unlawful intent charge. The issue is "a defendant has the right to insist that counsel refrain from admitting guilt." McCoy, 138 S.Ct. 1500, 1505. "When a client expressly assert that the objective of his defence is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt. U.S. Const. amend VI." McCoy, 138 S.Ct. at 1509.

This Court has held that when, "a client's autonomy, not counsel's competence, is in issue, we do not apply our ineffective-assistance-of-counsel

jurisprudence, Strickland v. Washington, to [client's] claim To gain redress for attorney error, a defendant ordinarily must show prejudice. Here, however, the violation of [petitioner's] protected autonomy right was complete when the court allowed counsel to usurp control of an issue within [petitioner's] sole prerogative." Id. at 1510-1511

"Violation of a defendant's Sixth Amendment-secured autonomy ranks as error of the kind our decisions have called structural; when present, such an error is not subject to harmless-error review." Id. at 1511

E. Conflict With Supreme Court Decision

The Sixth Circuit Court of Appeals decided that trial counsel did not concede that West was carrying a dangerous weapon on the night of the shooting, because counsel said nothing about whether West was carrying a dangerous weapon on the night of the shooting and did not relieve the State of its burden to prove West was at the scene of the shooting. see West v. Artis, 2022 U.S. App. LEXIS 25628, 10-11 (6th. cir Sep. 12, 2022). Thus, the Court of appeals has decided that trial counsel may concede to the guilt of a charged offense, without consent, if counsel dress the concession up as it was for an offense that was not charged But his decision conflicts with U S. Supreme Court decisions: "A guilty plea is an admission of all elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts " Henderson v. Morgan, 426 U.S. 637, 641 (1976). "A guilty plea is more than a confession which admits that the accused did acts, it it a stipulation that no proof by the prosecutor need advance." Florida v. Nixon, 543 U.S. 175, 188 (2004).

Accordingly, trial counsel admission of Petitioner's guilt was an admission that petitioner was present at the shooting.

Counsel's admission of petitioner guilt over the client's expressed objective to maintain innocence was error structural in kind. "Such an admission blocks the defendant's right to make the fundamental choices about his own defense. And the effects of the admission would be immeasurable, because a jury would almost certainly be swayed by a lawyer's concession of his client's guilt. [Petitioner] must therefore be accorded a new trial without any need first to show prejudice." McCoy, 138 S.Ct. at 1511

III. THE SIXTH CIRCUIT DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH WILLIAMS V. PENNSYLVANIA, AND IS A DEPARTURE FROM NICODEMUS V. CHRYSLER CORP. AND ANDERSON V. SHEPPARD BY DECIDING THAT CHRISTOPHER BOYD'S SERVICE IN THIS CASE AS PRELIMINARY EXAMINATION JUDGE AND, LATER, AS PROSECUTOR, DURING TRIAL, DID NOT VIOLATE PETITIONER'S RIGHT TO ASSURANCE OF IMPARTIAL PROCEEDING, BECAUSE BOYD WAS NOT THE TRIAL JUDGE.

The Sixth Circuit Court of Appeals Decision:

The district court decided that the framework applicable for determining whether a defendant was denied his right to impartial judge, is inapplicable here because petitioner does not allege that the judge who presided over petitioner's trial was not biased. see West v. Chapman, 2022 U S Dist. LEXIS 17543, 25 (E.D. Mich. Jan 31, 2022). The Sixth Circuit agreed and decided that because Boyd was not the judge at trail, and there is no evidence that by presiding over the preliminary examination, Boyd became aware of privileged or otherwise unavailable information or evidence, Petitioner has failed to show that his due process rights were violated. see West v. Artis, 2022 U.S. App. LEXIS 25628, 12 (6th Cir. Sep. 12, 2022)

A. Definitions

Bias: "Inclination; prejudice; predilected." BLACK'S LAW DICTIONARY, 3rd ed.; "To incline to one side; to give a particular direction to; to influence; to prejudice; to prepossess." www.lawfulpath.com

Impartial: "unbiased; disinterested." BLACK'S LAW DICTIONARY, 3rd ed.; "Not partial; not favoring one more than another; treating all alike; unprejudiced;

unbiased; disinterested; equitable; fair; just." www.lawfulpath.com

Assurance: "1. Something that gives confidence; the state of being confident or secure." BLACK'S LAW DICTIONARY, 3rd ed.; "2 The state of being assured; firm persuasion; full confidence or trust; freedom from doubt; certainty." www.lawfulpath.com

B. Due Process Right to Assurance of Impartiality

"Due process entitles the defendant to a proceeding in which he may present his case with assurance that no member of the court is predisposed to find against him." Williams v. Pennsylvania, 579 U.S. 1, HN12 (2016). "A judge best serves the administration of justice by remaining detached from the conflict between the parties. Tribunals of the country shall not only be impartial in the controversies submitted to them but shall give assurance that they are impartial. When the judge joins sides, the public as well as the litigants become overawed, frightened and confused." Nicodemus v. Chrysler Corp., 596 F.2d 152, 156 (6th Cir. 1979). "At the end of a trial, although a litigant may be disappointed in the outcome, he should leave the courthouse felling that he has been treated fairly, and that his case had been decided by a neutral and impartial arbiter." Anderson v. Sheppard, 856 F.2d 741, 746-746 (6th Cir. 1988).

C. The Court As An Institution

"A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one

jurist, but of the larger institution of which he or she is a part. An insistence on the appearance of neutrality is not some artificial attempt to mask imperfection in the judicial process, but rather an essential means of ensuring the reality of a fair adjudication. Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself. When the objective risk of actual bias on the part of a judge rise to an unconstitutional level, the failure to recuse cannot be deemed harmless." Williams v. Pennsylvania, 579 U.S. at 15-16.

D. Boyd's Overpowering Bias

In this case Christopher S. Boyd served as, both, judge and prosecutor before a conviction. Boyd was the judge presiding over the preliminary examination, whom also bound the case over for trial. Also while presiding over this case as judge, Boyd was also nominated for chief assistant prosecuting attorney of the County Of Saginaw in the State Of Michigan. After binding the petitioner over for trial on August 30, 2012, John McColgan won the election for Saginaw County Prosecuting Attorney in November 2012, and Boyd left the bench to be appointed Saginaw County Chief Assistant Prosecuting Attorney in January 2013 see Bauer v. Saginaw, 2015 U.S. Dist. LEXIS 43098, 4-5, 11 (E.D. Mich., Feb. 23, 2015).

During petitioner's trial, on May 2, 2013, Boyd was introduced to the jury as Chief Assistant Prosecutor. (TT vol. 6, p. 20) As prosecutor, Boyd introduced maps the trial court wouldn't let the original prosecutor let in and called Timothy Fink as an expert witness on cellphone location. (TT vol. 6, p. 15, 20

26).

Accordingly, Boyd was clearly favored the side of the prosecution in this case, he was clearly inclined to the prosecutor's side, he was clearly bias, because he, shockingly, could not remain detached; and joined the controversy for the prosecution and against the petitioner. "If before a case is over, a judge's bias appears to have become overpowering. [the Sixth Circuit Court of Appeals] think is disqualifies him. It follows that the judgment must be reversed." Nicodemus, 596 F.2d at 156.

E. West's Assurance Of impartiality

Petitioner has no way of assuring himself that Boyd didn't possess his revealed bias when he bound the case over for trial. Under Michigan Constitution 1962 Art 6 § 21: Any Judge of the court record shall be ineligible to be nominated for or elected to an elective office other than a judicial office during the period of his service and for one year thereafter. This "provision ensures that judges will neither abuse their position nor neglect their duties because of aspirations for other political offices." Worthy v Michigan, 142 F. Supp.2d 806, 19-20 (E.D. Mich., 2000) See also Chisolm v. Transouth Fin. Corp., 2000 U.S. Dist LEXIS 8483, 12-13 (E.D Va., 2000).

F. Conflict With U.S. Supreme Court Decision

The U.S. Supreme Court's precedents set forth an objective standard that require recusal when the likelihood of bias on the part of the judge is to

high to be constitutionally tolerable William, 579 U.S. at 4. "An unconstitutional potential for bias exist when the same person serves as both accuser and adjudicator in a case. The objective risk of bias is reflected in the due process maxim that no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." Williams, 579 U.S. at 8-9.

Accordingly, the Sixth circuit decision that the same person serving as both Judge and prosecutor in a case does not violates the due process if in conflict with Williams

IV. BY DECIDING THAT REASONABLE JURISTS COULD NOT DISAGREE THAT WEST DID NOT SHOW THAT THE ADMISSION OF FINK'S TESTIMONY REGARDING THE LOCATION OF WEST'S CELL PHONE HAD A SUBSTANTIAL AND INJURIOUS EFFECT ON THE JURY'S VERDICT OR THAT THE STATE COURT'S HARMLESSNESS DETERMINATION WAS UNREASONABLE, THE SIXTH CIRCUIT HAS DECIDED A IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT.

Clearly Established Law:

The Fourteenth Amendment guarantee the due process right to a fair trial. See U.S. Const. Amend. XIV. The Standard for determining whether habeas relief must be granted if the error, "had substantial and injurious effect or influence in determining jury's verdict." Kotteakos v. United States, 328 U.S. 750, 776 (1946). "When a federal judge in a habeas proceeding is in grave doubt about whether a trial error or federal law had a substantial and injurious effect or influence in determining the jury's verdict, the error is not harmless. And, the petitioner must win." O'Neal v. McAnich, 513 U.S. 432, 435-436 (1995).

A. The Evidence

The State Courts has held the following evidence substantially proves that the petitioner committed 12 felonies, including murder: (1) testimony that the admitted handgun was consistent with firing shell casing found at the scene of the shooting, but not consistent with firing the bullets that were recovered from the victim and the wall (TT vol. 5, 213, 216); (2) testimony that the handgun was seized from petitioner's vehicle when he was pulled over, (TT vol. 4, p. 125); (3) testimony that petitioner had been to the victim's home,

earlier to sell drugs, (TT vol. 6, p. 212-214; vol. 3, p. 85-86); (4) testimony that a unknown man, found a cell phone, taken from the scene of the shooting, in a Rite Aid parking lot, (TT vol. 5, 50-51); (5) testimony that the man story about finding the phone in the parking lot was a lie, because his girlfriend later said she found the phone in her backyard (TT vol. 4, p. 73-75); (6) testimony that the girlfriend backyard butts of the other side of the fence of the petitioner's backyard, (TT vol. 4, P 75).

B. Alibi Evidence

Petitioner expressed his innocence to his attorney and provided an alibi that provided the following evidence: (1) that petitioner was home at the time of the shooting (TT vol. 6, p. 216-219); and (2) that the petitioner bought the admitted handgun some time after the shooting. (TT vol. 6, p. 219-225).

C. Erroneously Admitted Evidence

Formal judge Christopher S. Boyd presented erroneously fraudulent cellphone location expert Timothy Fink, who testified: (1) 8 minutes before the 9-1-1 call the petitioner's cell phone was traveling from petitioner's home towards the victims's home, (TT vol. 6, p. 86, 117-118); and (2) at the time of the shooting petitioner's cellphone was consistent with him being in the area of the victim's home but not consistent with being at the petitioner's home. (TT vol 6, p. 80-82, 85-86).

D. Prosecutor's Heavy Reliance On Erroneous Testimony

Relying on Fink's testimony, during defense motion for redirect verdict, and the prosecutor's opening and closing arguments, the prosecutor argued that: (1) 8 minutes before the 9-1-1 call petitioner's cell phone had traveled to the area of the shooting. (TT vol. 2, p. 72; Vol 6, p. 122); and (2) petitioner's cellphone was, not home when the first call after the shooting (12:13am) was made but was, consistent with being near the shooting (TT vol. 7, p. 93, 142; vol. 2, p. 73).

E. Substantial And Injurious Effect

(1) Boyd was the judge who this case was submitted to; (2) Boyd was an officer of the court who presented a false expert; (3) Fink was a misrepresentation legal assistance; (4) Fink's representation as an expert was willfully false or made in reckless disregard of the truth; and (5) Fink's misrepresentation was made to deceive the court and the jury.

Fink's testimony: was heavily relied on by the prosecutor throughout the trial; was not cumulative to any evidence; conflicts with the alibi evidence; and was significant to the prosecutor's case. Without Fink's testimony the prosecutor's case was nor substantial nor overwhelming.

Accordingly, Fink's testimony was like fraud on the court and had a substantial and injurious effect or influence on the jury's verdict

[**Note:** The Sixth Circuit's facts of the case are objected to fully. Petitioner was never named as a suspect, and petitioner was never in possession of any clothing that matched clothing wore by robbers.]

REASONS FOR GRANTING THE PETITION

I. BY DECIDING THAT PETITIONER'S TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO MOVE TO SUPPRESS EVIDENCE ON THE GROUND THAT POLICE LACKED PROBABLE CAUSE TO ARREST FOR RECKLESS DRIVING, THE COURT OF APPEALS HAS DECIDED A IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT.

The Sixth Circuit Court Decision:

The Court of Appeals decided that Whiteley v Warden does not apply to this case because the petitioner was arrested without a warrant. And ruled that reasonable jurists could not disagree with the district court's determination that a motion to challenge petitioner's arrest would have been meritless and that counsel therefore was not ineffective for failing to seek suppression of evidence on the ground that petitioner's warrantless arrest was not supported by probable casue.

Clearly Established Law:

A convicted defendant's claim that counsel's assistance was do defective as to require reversal of a conviction or death sentence has two componets. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made error so serious that counsel was not functioning as counsel guaranteed to the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires a showing that counsel's error was so serious as to deprive the defendant of a fair trial, a trial whose result is reliable

Strickland v. Washington, 466 U.S. 668, 687 (1984).

A. Whether Probable Cause To Make A Warrantless Arrest Shall Be Drawn From a Complaint By a Magistrate?

Petitioner would answer "Yes" but to get a clear understanding of the petitioner's answer, let us briefly take away the home invasion case and focus on the warrantless arrest

Saginaw Township Police Department (STPD) Det Jack Doyle testified, during petitioner's pretrial hearing, that the petitioner was arrested on May 31, 2012, for reckless driving (Hear Feb. 7, 2013, p 15-16). And stated, during preliminary examination, that pursuant to the arrest for reckless driving an inventory search of the vehicle, the petitioner was driving, was conducted. (Prelim Exam vol 4, p.11). Obtained from the vehicle was: (1) a 30 round magazine; (2) a bag of 12 prescription pills; and (3) a 9mm Sig Sauer handgun (T-T vol. 5, p 103, 119; Hear Feb. 7, 2013, p 31; Prelim. Exam vol 4, p. 47, 49-50).

Petitioner argue that the May 31st warrantless arrest was unlawful, because it was not consistent with the Fourth Amendment. And second, the evidence stated as being obtained incident to the arrest should have been suppressed as fruit of an unlawful arrest. The Fourth Amendment provides:

> "The right of people to be secure in their persons, house, papers, and effects, against unreasonable search and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, , and particularly describing the place to be search, and the person or thing to be seized "

(U S CONST. Amendment 4) What dose this mean? This Court makes a clear interpretation in Giordenello v United States:

The "U.S. Const. Amend. IV requires that arrest warrant be based upon probable cause supported by oath or affirmation that may be satisfied by an indictment returned by a grand jury, but not by mere filing of criminal charges in an unsworn information signed by the prosecutor." Kalina v. Fletcher, 522 U.S. 118, (1997). "[I]n the absence of an indictment, the issue of probable cause had to be determined by the Commissioner, and an adequate basis for such a finding had to appear on the face of the complaint." Giordenello v. United States, 357 U.S. 480, 487 (1958).

Thus, in the absence of an indictment probable cause, support by oath or affirmation, must be determined by a magistrate of the district and the finding must be drawn from the face of a affidavit/complaint

Now that we have addressed the procedures for a lawful arrest on a warrant we must now look to the procedures for lawful warrantless arrest.

The Sixth Circuit has also held that, "whatever procedures a State adopts, it must provide a fair and reliable determination of probable cause to arrest a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." Cox v City of Jackson, 811 Fed. Appx. 284, 286 (6th cir. 2020). ""Prompt" generally means within 48 hours of the warrantless arrest " Cty. Of Riverside v. McLaughlin, 500 U.S. 44, 56 (1991). The Michigan criminal law provides that, "[a] peace officer who has arrested a person for an offense without a warrant shall without unnecessary delay take a person arrested before a magistrate of the judicial district in which the offense is charged

to have been committed, and shall present to the magistrate a complaint stating the charge against the person arrest." Drogosch v. Metcalf, 557 F.3d 372, 379 (6th cir. 2009); MCL ll 764.13. "The purpose of a complaint is to enable the appropriate magistrate to determine whether the probable cause required to support a warrant exists " Giordenello v. United States, 357 U.S. 480, 486 (1958). "If the apparent facts set out in the affidavit are such that a reasonable discreet and prudent man would be led to believe that there was a commission of the offense charged, there is probable cause justifying the issuance of a warrant " Dumbra v. United States, 268 U.S. 435, (1925). "[A]n otherwise insufficient affidavit cannot be rehabilitated by testimony concerning information possessed by affiant when he sought the warrant but not disclosed to the issuing magistrate. A contrary rule would, of course, render the warrant requirement of the Fourth Amendment meaningless." Whiteley, 401 U.S. at 565.

Thus, "the standard applicable to the factual basis supporting an officer's probable cause assessment at the time of a warrantless arrest and search are at least as stringent as the standards applied with respect to a magistrate's assessment as a prelude to issuing an arrest or search warrant " Whiteley, 401 U.S. at 566.

Accordingly, the basic standards for assessing probable cause for an arrest, both, with and without a warrant, is the filing of a complaint and a judicial probable cause determination drawn from that complaint.

B. Whether Warrantless Arrest Is Unlawful, And The Evidence Obtained Incident Thereto Should Be Excluded, Where There Is No Complaint To Support A Probable

Cause Finding For The Arrest?

Petitioner would again answer "Yes"

This Court has established that, "[a]n accused's arrest violates his constitutional rights under the Fourth and Fourteenth Amendments, and the evidence secured as incident thereto should be excluded from his trial, where (1) the complaint on which an arrest warrant issued could not support a finding of probable cause by issuing magistrate," Whiteley, 401 U.S. 560; 28 L Ed. 2d 306, at LEdHN[8]. As discussed above, a complaint must be filed for both, warranted arrests and warrantless arrest. The complaint is what enables the magistrate's probable cause determination. see Giordenello, 357 U.S. at 486.

Thus, in applying Whiteley to the present case the question is, whether there is anything inside the homicide case complaint, dated June 12, 2012, that would support a finding of probable cause for reckless driving?

The complaint in the instant case does not stating anything about Petitioner's warrantless arrest and therefore there is nothing inside the complaint or any complaint, that would support a finding of probable cause for reckless driving. And as discussed previously a complaint is what enables the probable cause determination by a magistrate of the district.

This Court has established that, "[a] warrantless arrest of an individual in a public place for felony, or misdemeanor committed in the officer's presence, is consistent with the Fourth Amendment if the arrest is supported by probable

cause " Maryland v. Pringle, 540 U S. 366, (2003). Here, in the instant case, there is no complaint to support a finding of probable cause for reckless driving. Thus, the petitioner's warrantless arrest was not consistent with the Fourth Amendment and the evidence obtained incident to the arrest should have been excluded as fruit of an unlawful arrest. See Maryland v. Macon, 472 U.S. 463, 467-68 (1985) ("If publications were obtained by means of an unreasonable search or seizure, or were fruits of an unlawful arrest, the Fourth Amendment requires their exclusion from evidence.").

C. Whether Petitioner's Trial Counsel Was Ineffective For Failing to Move to Suppress Evidence On The Ground That Evidence Was Fruit Of An Unlawful Arrest?

Petitioner's answer again is, "Yes" trial counsel was ineffective under the Sixth Amendment.

First, Trial Counsel Knew, or should have known, that the evidence to be produce, of the reckless driving allegation, is "[a] copy of an indictment found or an affidavit made before a magistrate charging [reckless driving]." In re Strauss, 197 U.S. 324, 329 (1905). Trial counsel knew, or should have known, that the oral reckless driving allegation was Fraud and unsupported by evidence of probable cause.

Thus, Counsel's performance was deficient, because no competent attorney would allow her client to be held to answer to allegations that are not in the charging complaint and wouldn't have believed that a motion to suppress evidence, on the ground that the evidence was fruit of an unlawful arrest, would have faild

Second, Counsel's deficient performance prejudiced the defense, because there is a reasonable probability that had counsel made the motion (1) the 30 round magazine; (2) the bag of prescription pills; and (3) the 9mm Sig Sauer handgun, would have all been suppressed and the case would have been dismissed.

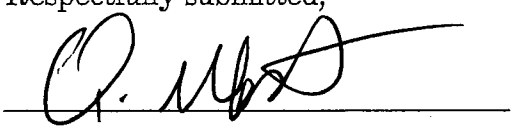
CONCLUSION:

Accordingly, the Sixth Circuit Court Of Appeals deciding that Whiteley v. Warden, is not applicable to cases involving warrantless arrest conflicts with Whiteley v Warden, 401 U.S. at 566. And because probable cause to support a warrantless arrest must also be determined from the face of a complaint by a magistrate of the district of the offense, the petitioner's warrantless arrest was unlawful under the Fourth and Fourteenth Amendment's, and the evidence secured as incident thereto should have been excluded from trial, because there is no complaint on which an arrest warrant for reckless driving issued could support a finding of probable cause by a issuing magistarte. And because there is a reasonable probability that had petitioner's trial counsel moved to suppress on this ground the motion would have been successful, trial counsel was ineffective under the Sixth Amendment

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 2/20/2023