23-6194

NO:

IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

CHRISTOPHER ANDREW CANALES # 788118

Petitioner,

V

JEFF HOWARD (Warden)

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER ANDREW CANALES # 788118

Baraga Correctional Facility
13929 Wadaga Rd.
Baraga Michigan 49908

QUESTIONS PRESENTED

THE UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT, BUT SHOULD BE, SETTLED BY THIS COURT, AS TO: (1) WHETHER PETITIONER SHOULD BE ENTITLED TO FULL DISCOVERY (INCULPATORY AND EXCULPATORY) DURING THE PLEA BARGAINING PROCESS THAT MANDATES THAT PETITIONER VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY, WHEN MAKING A DECISION TO PLEAD GUILTY; AND/OR WHETHER PETITIONER'S COUNSEL WAS INEFFECTIVE IN ADVISING PETITIONER THAT HE COULD REVIEW ALL OF THE DISCOVERY BEFORE MAKING A DECISION AS TO WHETHER TO PLEAD GUILTY.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page

TABLE OF CONTENTS

INDEX TO APPENDIX:

A. The U.S. Court of Appeals Order denied Petitioner's Certificate of Appealability appeal, dated October 16, 2023;

B. The U.S. District Court Opinion denied Petitioner's appeal dated April 14, 2023

JURISDICTION

(1) The U.S. Court of Appeals Order denied Petitioner's Certificate of Appealability appeal, dated October 16, 2023;

INDEX OF AUTHORITIES

CASES:

MICHIGAN CONSTITUTION:

U.S. CONST. AMEND

NO:

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Petitioner,

V

JEFF HOWARD (Warden);

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On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

Petitioner respectfully prays that a Writ of Certiorari issue to review the Judgement below.

OPINIONS BELOW

A. The U.S. Court of Appeals Order denied Petitioner's Certificate of Appealability appeal, dated October 16, 2023;

B. The U.S. District Court Opinion denied Petitioner's appeal dated April 14, 2023

JURISDICTION

(1) The U.S. Court of Appeals Order denied Petitioner's Certificate of Appealability appeal, dated October 16, 2023;

(2) This petition for writ of certiorari is filed within 90 days of the Sixth Circuit Court of Appeals denial of his Petition for Rehearing.

(3) The Jurisdiction of this Court is invoked under 28 § USC 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 14: CITIZEN RIGHTS

> 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.

STATEMENT OF FACTS

At the March 29, 2019 Prelim before Judge Giles, Mr. Canales was present with counsel, Mr. Holler, and co-defendant Campbell and his counsel. (T 3-29-2019, p 4.)

Harvey Chavez was assaulted on March 6, 2019 when he was walking out of 1839 Elsmere in Detroit. (T 3-29-2019, p 7.) It was night, and he came into contact with defendants, and identifies them for the record. (T 3-29-2019, p 8-9.) He was pretty much all the way in the building, and they dragged him all the way in. They said he couldn't leave until they had their money. They took him to room number one. (T 329-2019, p 10.)

He knew some of the people in the apartment, including Dawn. He alleges that Mr. Canales started yelling saying he wanted his money back, punching and beating him and pushing him around. (T 3-29-2019, p 11.) Both defendants were searching him, and making him take things out of his pocket, including credit cards. They were in the living room, but there was a bed in there. (T 3-29-2019, p 12.)

They made him take off his clothes, and continued hitting him, and started clipping his hair and laughing. (T 3-29-2019, p 13.) They moved him to the bathroom and used electric clippers on his hair. (T 3-29-2019, p 14.) The other defendant was asking for his pin number, and using the phone. (T 3-29-2019, p 16.) They were hitting him with a stick that was 2 or 3 feet long in the living room. They ended up breaking it and each had a piece to hit him with. (T 3-29-2019, p 17.)

In the bathroom he ended up getting sprayed in the eye with something that smelled like hair spray. The next thing he knew his face was on fire. (T 3-29-2019, p 17-18.) He jumped in the tub to try to put the fire out with the curtain, and turned on the water to wash off the hair and blood. (T 3-29-2019, p 18-19.)

Mr. Canales turned the lights off, and he heard a knock on the door to the apartment. The police were there for a noise complaint. He yelled for help multiple times, and ultimately had contact with the police. (T 3-29-2019, p 22-23.) Before he opened the door, Mr. Canales said to keep his mouth shut or he would kill him. The police called EMS, and took Chavez to the hospital. (T 3-29-2019, p 23-24.)

On cross by Mr. Canales' counsel, it was night when he encountered the defendants, around midnight, but he's not sure. (T 3-29-2019, p 24.) Mr. Canales is his drug dealer. He was walking down the street. He had come out of the apartment building next door. (T 3-29-2019, p 25.)

On recross by Mr. Canales counsel, when asked why he didn't mention the choking during the prosecutor's direct examination, Chavez offered that his memory is fuzzy. "I'm trying to add detail to what I'm trying to remember." (T 3-29-2019, p 52.) He was not treated for any damage to his larynx or throat, but had a rope burn from the string. (T 3-29-2019, p 53.)

The Court bound over both defendants as charged. (T 3-29-19, p 61-62.) Mr. Canales was arraigned on April 5, 2019, before Judge Morrow. Defense counsel acknowledged receipt of the habitual offender notice, with the 25-year mandatory minimum sentence. (T 4-5-19, p 3-4.)

At the April 12, 2019 Calendar Conference before Judge Walker, Mr. Canales was present with counsel, Mr. Holler, along with the co-defendant and his counsel. (T 4-12-2019, p 3.) There were no offers, and the prelim transcript was due May 3. (T 4-12-2019, p 4.) Both defense counsel had discovery issues, they were seeking the names and phone numbers or other contact information of every person present when the alleged incident occurred. That includes the tenant, Dawn Gilson, and Augustine Cruz, who gave a statement. The prosecutor agreed to

arrange interviews at the courthouse, if the witnesses were not in agreement with provision of their contact information to defense counsel. (T 4-12-2019, p 5-6.)

At the May 29, 2019 Final Conference before Judge Walker, Mr. Canales was present with counsel, Mr. Holler, along with co-defendant and his counsel. (T 5-29-2019, p 3.) No offers had been made to the defendants. The prosecutor said she was still in the process of trying to contact the witnesses, including the complaining witness. (T 5-29-2019, p 3-4.)

At the June 17, 2019 Final Conference before Judge Walker, Mr. Canales was present with counsel, Mr. Holler. The prosecutor made an offer to Mr. Canales, that he plead to count one, torture, with a sentence agreement of 12 to 20 years. In exchange, the balance of the counts would be dismissed, including the habitual 4 th which carried a mandatory minimum 25-year sentence. (T 6-17-2019, p 3.) Defense counsel requested another week to consider the offer, and there was no objection. (T 6-17-19, p 4.)

At the June 24, 2019 Final Conference before Judge Walker, Mr. Canales was present with counsel, Mr. Holier. (T 6-24-19, p 3.) The offer placed on the record at the last hearing was still open, and the prosecutor offered to keep it open until 2 days before trial. Defense counsel noted that there were some medical records from the alleged victim that were now available, and that Mr. Canales placed a high degree of importance on examining those with counsel. (T 6-24-19, p 3-4.)

At the July 15, 2019 Pretrial before Judge Walker, Mr. Canales was present with counsel, Mr. Holler, and indicated they were proceeding to trial. (T 7-15-2019, p 3-4.) At the July 17, 2019 Jury Trial before Judge Callahan, a jury was selected, but not sworn. They were instructed to return the next day. (T 7-17-2019, p 28-74.)

At the July 18, 19 Jury Trial before Judge Callahan, Mr. Canales was present with

counsel, Mr. Holler. (T 7-18-19, p 4.) The jury came in, was sworn, and was addressed by the Court. (T 7-18-19, p 4-16.) The parties had opening statements. (T 7-18-19, p 16-19; 19-23.)

Harvey Chavez, age 24, was at 1839 Ellesmere in Detroit on March 6, 2019. He was beat up and unable to leave an apartment building he had been dragged into. (T 7-18-2019, p 23-24.) He was in the area with someone else, then the other person left and he was headed home. At some point he came in contact with Mr. Canales and another individual, asking where their money was. They were referring to $20 Chavez owed over a phone. They insisted that he had money and dragged him into the building. They took him to apartment one, where he has been previously to purchase drugs. He recognized some of the people there. (T 7-18-2019, p 25-27.)

There were 5 to 7 people in the apartment when he went in. The people who brought him in took his hoodie off and started checking his pockets to see if he had money. He kept telling them he did not have any money. They started beating him up, pushing him around and punching him. They pulled off his clothes to search them thoroughly because they thought he was hiding money. He claims Mr. Canales picked up a stick, and hit him with it. The stick broke, then the other person picked up part of it and they both continued to beat him with a stick. (T 7-18-2019, p 28-30.)

Later, maybe 10 minutes, they dragged him into the bathroom and started clipping his hair. They were cutting his hair with scissors, then they found a "buzzer" and started using that. (T 7-18-2019, p 30-31.)

He kept asking them to stop, and he was trying to put up his hands, and closed his eyes because hair was getting in his eyes. Suddenly he was being sprayed, and he could smell hair spray. Then someone, he's not sure who, said it's flammable. Then he heard a lighter, and had a burning feeling on his face. He opened his eyes and his face was on fire. The right side of his

face was burned. He panicked and tried to put the fire out using the shower curtain. He was able to put the fire out. Then Mr. Canales turned the water on, and Chavez tried to wash himself off. The water was hot, and he tried to turn it down, but they told him not to touch the handle. The water stayed hot, and eventually it was turned off. (T 7-18-19, p 32-34.) They wouldn't let him leave. He thought if he left, they would just drag him back inside. No one else in the apartment tried to stop this. (T 7-18-19, p 35.)

At some point Mr. Canales left the bathroom, and Chavez sat in the bathtub with the lights off. As he was sitting in the dark, he heard a knock on the door, and heard that it was the police department. He yelled for some help, and sat and waited. The police came in and asked what's going on. He told them he wasn't allowed to leave, and he was burned and needed help. (T 7-18-19, p 36-37.)

He spoke with police. He denies having a weapon on him, and denies using drugs "at that time." He used drugs the morning before. He denies being under the influence when he was in the apartment building. (T 7-18-19, p 38-39.)

He was taken to the hospital, and was there for about 3 days. (T 7-18-19, p 39.) The medical records were admitted without objection. (T 7-18-19, p 39-40.) Mr. Canales told him he was not leaving until he got his money. Right after the police knocked, he walked by the room and told Chavez to keep quiet or he was going to kill him. (T 7-18-19, p 40.) The prosecutor has him repeat the alleged threat, then the Court has him repeated again. (T 7-18-19, p 41.)

On cross, the apartment at 1839 Elsmere is in Southwest Detroit, and is not his neighborhood. He does not live in that building, but he was hanging out with some friends that live around there. He thinks it was around midnight "give or take." (T 7-18-19, p 42.) He wasn't hanging out in that apartment building, he was an apartment about 50 yards down the street. (T

7-18-19, p 43.) When he left his friends building, he was walking home. He lived about a mile away. He was walking down Ellesmere, and ran into Mr. Canales and his friend. (T 7-18-19, p 44.)

At some point they hustle him into the bathroom, and have some fun cutting off pieces of his hair. They kept telling him he was not leaving until they got paid. (T 7-18-19, p 50.) At some point he was lit on fire, and he put it out. He was on fire for 5 to 10 seconds, and no one was in the bathroom when he put it out. In order to smoke crack, you light it. He agrees that he had a lighter with him at some point that evening. He smokes cigarettes. (T 7-18-19, p 51.)

He did not call any friends or family members to bring money so he could leave because they would not allow that. "I did at one point call my sister." (T 7-18-19, p 52.)

He thinks it was about 20 hours prior to the incident when he last used drugs. He was not using drugs when he was hanging out with his friends down the street. At the hospital he admitted to being a drug user, but does not recall when he said he last used drugs. (T 7-18-19, p 56-57.)

He was taken to Dawn's apartment, and he knows her, and has previously purchased drugs there, but he did not talk to her that day. (T 7-18-19, p 58.) He does not remember whether he had a piece of brick in his hoodie. He did not get into an argument with Dawn. (T 7-18-19, p 59.)

The 5 or 6 people in the apartment did not intervene or do anything. Besides Dawn, he recognized a man named Carlos. He doesn't think he knew anybody else's name. (T 7-18-19, p 59-60.)

The jury is excused, and the Court indicates the prosecutor wants to admit some photographs she recently received, which show Mr. Chavez's injuries, and were taken at the

hospital. Defense counsel objects because he just received those photographs yesterday, and they have been in existence since March 7. There was a discovery order issued April 12, and the photographs were not made available until the first day of trial. Counsel argues that he needed to have these photographs in a timely fashion in order to properly represent his client, including the possibility of accepting a plea offer. He argued this was prejudicial. The Court determined to admit the photographs over counsel's objection. (T 7-18-19, p 62-64.)

On redirect, Chavez believes his face was on fire for 5 to 10 seconds. Someone came to the hospital and took pictures of him, Exhibits 4 through 10. The photographs accurately depict his injuries. (T 7-18-19, p 64-65.)

Mitchell Griggs, a Detroit police officer with the 4th precinct, was working March 6, 2019, and went to 1839 Elsmere, with his partner Brent Miller. The run was for an unknown person screaming for help. (T 7-18-19, p 69-70.) They went to the apartment and knocked on the door. They heard people moving around, and a woman answered the door. (T 7-18-19, p 71.) He heard someone inside the apartment yell help, really loud, more than once. He entered the apartment to see where the person might be, and observed multiple people inside the apartment. He and his partner were both wearing body cameras, and he has had a chance to review the body camera, and it accurately depicts what he saw on that date. Exhibits 1 and 2 are the body camera footage, and Exhibit 2 is shown to the jury. (T 7-18-19, p 72-75.)

Griggs arrested 2 people in this matter, and when asked if either were present in court, he responded "I think so." He identifies Mr. Canales on the record. (T 7-18-19, p 75-76.)

The complainant gave him a description, and indicated that the 2 offenders were still located in the residence. (T 7-18-19, p 76-77.)

On cross, he arrested 2 people and took them to the Detroit Detention Center. That was

the extent of his involvement in this case. The body cam footage came from his partner's body cam. (T 7-18-19, p 77-78.)

Michael Davis, of the DPD, is OIC of this case. (T 7-18-19, p 81.) Him during his investigation, he spoke to Dawn, and his partner spoke to Louise, who was her roommate. (T 7-18-19, p 83.)

The prosecutor waived the balance of her witnesses without objection, and rested. (T 7-18-19, p 85.)

Christopher Canales, called by his counsel, did not know Mr. Chavez, but knew who he was. (T 7-18-19, p 86.) Mr. Canales lives in Southwest Detroit. Dawn Gilson is a friend of his. If he had nowhere to go, he could spend the night at her place, on Ellesmere in the city of Detroit. (T 7-18-19, p 87.) On March 5, he was at the Elvasado Bar on Springwells, in Southwest Detroit, from midnight until 2 AM. He got a call from his daughter's grandmother, asking to borrow some money, He met her on Lawndale at around 2:15, gave her the money, and they walked towards Lawndale and Elsmere. He arrived around 2:30, knocked on the door, and Dawn Gilson let them in. There were about 6 other people there watching TV and talking. He went there because it was late, and he had left his house key at home, so he decided to spend the night there. (T 7-18-19, p 88-89.)

He was awake when Mr. Chavez arrived with a female named Alexis, at around 2:45. Mr. Canales was sitting on the bed when they came into the living room area. Chavez seemed real jittery and erratic. (T 7-18-19, p 89-90.) Chavez and Dawn got into an argument. Chavez reached into his pocket and pulled out half of brick and threatened Dawn with it. Mr. Canales thought he was going to hit her with the brick, or throw it at her. (T 7-18-19, p 91.) Mr. Canales got up and slammed Chavez to the floor, and they were wrestling a little bit. Mr. Canales

punched Chavez because they were fighting over the brick. (T 7-18-19, p 91-92.) Campbell got the brick out of his hand, and Mr. Canales held his arms down for a minute and told him to go clean up and sober up. He could tell Chavez was high on drugs. (T 7-18-19, p 93.) No one shoved Chavez, he went willingly to the bathroom. Mr. Canales continued to sit on the bed in the living room. He heard the shower go on, and assumed Chavez was taking a shower. Then Mr. Canales went to the bedroom off to the right to go to sleep. (T 7-18-19, p 94.)

Mr. Canales was woken by the officer, who walked into the room and put a flashlight in his face. He was told to come to the living room, and he complied. (T 7-18-19, p 95.) He denies that any of Mr. Chavez testimony about being grabbed and pulled into the apartment is true. He denies beating him with a stick. He denies stripping off Chavez clothing, and assumes he took his clothes off himself. He assumed Chavez burned his own face using a crack lighter, which is a lighter that has been altered so it will get real hot. (T 7-18-19, p 96-97.) He did not demand that Chavez give him money. (T 7-18-19, p 98.)

Mr. Canales acknowledges that he has a prior record for armed robbery and carjacking, and he was on parole when this happened. (T 7-18-19, p 98.) He did not cut Chavez' hair, and did not see anyone else in the apartment cut his hair. (T 7-18-19, p 99.)

On cross, he was trying to get Chavez away from Dawn, with the help of Campbell. He acknowledges that he spoke to the police several times. (T 7-18-19, p 100-101.) He does not recall telling police he lied about going to sleep. He doesn't know anyone named J Money or J Dog. He recalls writing out a statement for police. He knew Harvey Chavez as "Robin". Prior to this incident, he had sold Robin drugs on a couple of occasions. He acknowledges that in his statement he told police that Robin owed him money for a TV and drugs. (T 7-18-19, p 101-103.) He recalls telling the police that he did not have a physical altercation with anyone at the

apartment. (T 7-18-19, p 104.)

The prosecutor plays part of his interrogation, and Mr. Canales acknowledges that on the video he told police that he lied about being asleep. Also on the video he said that Campbell grabbed the stick. This is not his recollection of what happened. He made those statements after 2 hours of interrogation. (T 7-18-29, p 104-105.) He acknowledges that on the video he said that Robin owed money for a TV and drugs, and that Mr. Canales was dealing for someone who was locked up. Chavez was one of the people he was dealing to. In the statement he said that he was looking to collect some of the money for that person. (T 7-18-29, p 106-107.) In the statement he said that Campbell hit Chavez, and he heard Chavez moaning, but he didn't see the beating. He denies taking part in the beating. He acknowledges that Chavez did not owe him any money. (T 7-18-19, p 107-108.)

On cross, and when he said in the interrogation that he did not have an altercation, he meant an actual fight. He would characterize what he did with Chavez as restraining him. (T 7-18-19, p 109-110.) Seeing the interrogation did not refresh his recollection. He was arrested around 3 AM, and was interviewed the next afternoon, without having any sleep. (T 7-18-19, p 110-111.)

On cross, Mr. Canales initially told the police that he was sleeping and didn't know anything, and said the same thing during the first hour or so of his interrogation. At some point he acknowledges that he was not sleeping, and that he did hear some of what was going on. Mr. Canales characterizes this as telling the police what they wanted to hear. (T 7-18-19, p 111-113.)

The jury is excused for the day. (T 7-18-19, p 114.)

At the July 22, 2019 Jury Trial before Judge Callahan, Mr. Canales was present with counsel, Mr. Holler. (T 7-22-19, p 3.) The prosecutor had closing argument and rebuttal,

requesting that Mr. Canales be found guilty as charged (T 7-22-19, p 3-15; 28-31.) Defense counsel had closing argument. He pointed out the inconsistencies in Mr. Chavez testimony, and his prior statements. He testified that he was walking home, yet he told police he was walking to the apartment building. He testified that he last used drugs the morning of March 5, but the medical records show that he told the hospital that he had last taken drug s at 1 1 PM, just before he arrived at the apartment building. He denied having a brick, but the body cam video entered into evidence has someone yelling out that he had a brick. He argued that Chavez's story didn't make sense: why would you mistreat someone, trying to make them give you money, when you already knew they didn't have any money. (Counsel's argument is interrupted by a juror who has to use the bathroom. (T 7-22-19, p 23.)) There were 6 or 7 people in the apartment, and not one single witness corroborated anything Mr. Chavez said. He asked the jury to return a verdict of not guilty. (T 7-22-19, p 16-27.)

The Court instructed the jury. (T 7-22-19, p 32-47.) Alternates were selected, and the jury was sent to deliberate. The deputies were not sworn until later. Both counsel indicated satisfaction with the instructions and the verdict form. (T 7-22-19, p 47-48.) The jury found Mr. Canales guilty of torture, robbery unarmed, unlawful imprisonment, assault with intent to do great bodily harm less than murder, assault with a dangerous weapon, and assault and battery. (T 7-22-19, p 49-50.)

At the August 6, 2019 Sentencing before Judge Callahan, Mr. Canales was present with counsel, Mr. Holier. (T 8-6-19, p 3.) Defense counsel objected to the scores for OV 2, and OV 13. The prosecutor did not object. Defense counsel objected to the scoring for OV 14, but the prosecutor objected, and the Court kept the score of 10 points for OV 14. The prosecutor wanted OV 4 scored at 10 points, and the Court did so over the objection of counsel. (T 8-6-19, p 4-6.)

The guideline range was 270 to 900, as habitual 4 th . (T 8-6-2019, p 6-7.) Defense counsel noted that there was a mandatory minimum of 25 years, and he thought that was as high as the minimum should be. (T 8-6-2019, p 8-9.) Mr. Canales had allocution. (T 8-6-19, p 10.)

The Court sentenced him to 600 to 900 months for torture, 300 to 450 months for assault with a dangerous weapon, assault with intent to do great bodily harm, unlawful imprisonment and armed robbery, and 93 days for assault and battery, all concurrent. (T. 8-6-19, p 10-11.)

REASONS FOR GRANTING THE WRIT

THE UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT, BUT SHOULD BE, SETTLED BY THIS COURT, AS TO: (1) WHETHER PETITIONER SHOULD BE ENTITLED TO FULL DISCOVERY (INCULPATORY AND EXCULPATORY) DURING THE PLEA BARGAINING PROCESS THAT MANDATES THAT PETITIONER VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY, WHEN MAKING A DECISION TO PLEAD GUILTY; AND/OR WHETHER PETITIONER'S COUNSEL WAS INEFFECTIVE IN ADVISING PETITIONER THAT HE COULD REVIEW ALL OF THE DISCOVERY BEFORE MAKING A DECISION AS TO WHETHER TO PLEAD GUILTY.

This case presents a ***Conflict of Law*** that ***affects National importance*** between:

- When a person pleads guilty, the law mandates that it be made knowingly, voluntarily and intelligently pursuant to *Boykin*, v *Alabama*, 395 U.S. 238, 242 (1969); and

- Where there is no general constitutional right to discovery in criminal cases, however due process requires the prosecution to disclose evidence, in its possession that is exculpatory and material, irregardless of whether a defendant request the evidence. *Weatherford* v *Bursey*, 429 U.S. 545, 559 (1977); and

- Whether Petitioner received ineffective assistance of counsel when counsel misled Petitioner to believe that he could receive both inculpatory and exculpatory evidence before Petitioner makes a decision as to whether to plead guilty.

On October 16, 2023 the United States Supreme Court in case titled: Christopher Canales (Petitioner) v Jeff Howard (Acting Warden) case # 23-1457, denied Petitioner's Application For Certificate of Appealability, stating in pertinent part:

> **Page 4**: As the District Court explained, there is no general constitutional right to discovery in a criminal case, *Weatherford* v *Bursey*, 429 U.S. 545, 559. It acknowledged that the failure to disclose evidence favorable to the Defendant/Petitioner violates due process under *Brady* v *Maryland*, 373 U.S. 83, 87 (1963) but that the State Court reasonably rejected the *Brady* claim because Petitioner Canales failed to show that the photographs were exculpatory.
>
> The state court also reasonably rejected Canales argument that the failure to disclose the photographs prejudiced him at the plea bargaining stage. Canales had been provided with other photographs of the victim's injuries and medical record that described his injuries, and therefore knew the extent of the injuries at the time he decided to reject the states plea offer.
>
> **Page. 5**: Canales did not demonstrate that seeing the photographs of the victims burns prior to making a plea decision would have caused him to change his defense or that had counsel obtained the two photographs before expiration of the State's plea offer he would have pled guilty.

Analysis

The record is clear that Petitioner was in plea negotiations on May 28, 2019; June 17, 2019; June 24, 2019; July 15, 2019 up to the first day of trial on July 17, 2019, for which weighed heavily on the prosecutor's evidence.

The record shows that on June 17, 2019 at a final conference before Judge Walker, the prosecutor made an offer to Petitioner Canales, that if he pled guilty to the Torture charge, the balance of the counts, would be dismissed including the Habitual 4th, which carried a mandatory minimum 25-year sentence. As a result, the sentence agreement would be a 12 to 20-year sentence (T.T. June 17, 2019). Defense Counsel Hollar, requested another week to consider the offer and there was no objection. (T. T. June 17, 2019).

On June 24, 2019 at Final conference with Judge Walker, the offer placed on the record at

the last nearing was still open, and the prosecutor offered to keep it open until two days before trial. **Defense counsel noted that there were some medical records from the alleged victim that were now available, and that Petitioner placed a high degree of importance on examining them with counsel.** (T.T. 24, 2019, p. 4)

TAKE NOTICE that an order of discovery was ordered in this case on April 12, 19. On 17, 2019 a plea offer was placed the record and he open until 2 days before trial, to give Petitioner time to review discovery, including medical records prior to making his decision. (T.E. June 17, 19, p.4; T.T. June 24, 19, p.3-4). Petitioner rejected favorable offer at the prosecutor's expiration date, two days before trial, believing that Petitioner had seen all of the evidence in discovery in this case. (T. T. July 15, 19, p. 3-4), making Petitioner comfortable to proceed to trial.

On the 1st day of trial, the Prosecutor submitted six photos, for which two of them showing the extent and seriousness of the victim's injuries. On the 2nd day of trial, defense counsel objected to their admission, for which was overruled. The 2nd day of trial was the first day of testimony. As a result, that the prejudicial and inflammatory photos that highlighted the victims injuries, would be submitted, Petitioner wanted to plead guilty.

The record shows that defense counsel emailed the prosecutor seeking a plea, a reduced plea, but when the prosecutor refused to accept the plea by defense counsel, Defense counsel stated that he never addressed the issue with Petitioner to allow Petitioner to decide whether he would take the prior plea of 12 to 20 years. Petitioner asserts that was a violation of *Missouri* v *Frye*.

Petitioner was found guilty by the jury, where the Court sentenced Petitioner on the Torture charge, to 50 to 75 years, for which was more than four times greater than the plea

offer. T. T. August 6, 2019, p. 10-11).

Petitioner was led to believe that he was entitled to reviewing all of the prosecutor's evidence (inculpatory and exculpatory) evidence based on the record above. Defense counsel, the prosecutor and the court was aware that Petitioner wanted to see the prosecutors evidence before deciding whether to plead guilty. At no time prior to the final plea offer, that would have expired, 2 days before trial, Defense counsel, the Prosecutor or the Court, inform Petitioner that he is not entitled to receive inculpatory evidence.

Petitioner rejected the plea, clearly based on the erroneous advice, which is demonstrated by his words and actions noted above.

In *Lafler*, supra, the Court held that **where a defendant rejects a plea bargain upon erroneous advice of counsel and is convicted at trial**, the defendant must show that **but for** the ineffective advice of counsel, there is a reasonable probability that the plea offer would have been presented to the Court. (i.e. that the defendant would have accepted the plea, and the prosecutor would not have withdrawn it in light of intervening circumstances) that the Court would have accepted the terms that the conviction or sentence, or both, under the offer terms would have been less severe than under the judgement and sentence that were in fact were imposed.

If Petitioner did not have the right to full discovery of the prosecution's evidence, for which the Prosecutor nor the Court advised Defense Counsel, that he did not have such a right, when counsel asked for a continuance the plea offer, based on the fact that Petitioner wanted to see all of the prosecutor's evidence, to decide whether to plead guilty or go to trial. Defense counsel could have advised petitioner that he did not have a right to all of the prosecutor's evidence prior to making a decision to plead guilty or go to trial.

The United States Supreme Court in *Hinton* v *Alabama*, 571 U.S. 263, 274: 134 S Ct 1081; 188 LEd2d 1 (2014) the Court held: ("An attorneys ignorance on a point of the law that is fundamental to his case, combined with his failure to perform basic research on that point is a quintessential example of **UNREASONABLE** performance under *Strickland*) : *Bullock* v *Carver*, 297 F3d 1036, 1050 (2002) (In many cases, a lawyers unawareness of relevant law results in a finding that counsel performed in an objectively deficient manner.)

The likelihood of a different result only need be reasonable, a defendant need not prove prejudice by a preponderance of the evidence. *Id.* A single serious error, may support a claim of ineffective assistance counsel. *Kimmelman* v *Morrison*, 477 U.S. 365, 383 (1986). If the result of the proceeding is fundamentally unfair and unreliable due to counsel's deficient performance, then prejudice is presumed, regardless of whether the error can be shown as outcome determinative. *Lockhart* v *Fretwell*, 506 U.S. 364, 369-370 (1993).

The exclusion or omission of evidence contravenes the right to confrontation when it infringes upon a weighty interest of the accused or significantly undermines a fundamental element of the defense. *U.S* .v *Scheffer*, 523 U.S. 303; 118 S Ct 1261; 140 LEd2d 413 (1998).

Mr. Canales was prejudiced by the prosecutor's violation of the discovery order and the trial courts failure to enforce the same

The Respondent asserted that the Michigan Court of Appeals reasonably determined that there was no prejudice.

The Respondent acknowledged that **Petitioner argued that late disclosure of the two photographs prejudiced Petitioner, because had he known of the photographs at the time he was contemplating a plea agreement, Petitioner would have accepted the plea.**

The Respondent referred to the Michigan Court of Appeals opinion who rejected this argument, stating:

> As to actual prejudice to defendant, a review of the record indicates that defendant was aware of the extent of the victim injuries before the trial began, including the burn marks. Specifically, defendant received the victim's medical records and reviewed all **BUT TWO PHOTOGRAGHS** showing the victims injuries, indicating scratches, bruises, missing hair, and the body camera footage from the night of the incident. With this information, defendant rejected the plea offer and maintained the defense that the victim caused his own injuries by using crack lighter. In fact, trial counsel indicated the photographs would not have made a difference the strategy of trial. Accordingly, the trial courts finding that defendant did not establish actual prejudice from the prosecutor's late disclosure is supported by the record.

Petitioner asserts that the Court of Appeals is correct on one point, the two photographs would not have made a difference in the trial strategy of the trial if Petitioner maintained that the victim caused his own injuries by using a crack lighter, **BUT**, Petitioners argument is had he known of the photographs at the time, when he was contemplating plea agreement he would have pled guilty. If Petitioner would have pled guilty, he clearly could not have maintained the defense that the victim caused his own injuries and expect the Judge to accept his plea.

Petitioner asserts that he has demonstrated prejudice by the late disclosure of the two photographs, based on it deprived Petitioner of the right to proceed to trial or enter a plea, knowingly, voluntary and intelligently, based on he **DID NOT** know what all the evidence was, that would be used against him.

The Respondent citing the Court of Appeals decision asserted that Petitioner was not denied due process, based on Petitioner had the medical records, where the victim's injuries were well documented. The photographs only depicted what Petitioner already knew to be true, that the victim, Mr. Chavez had suffered burns to his face as a result of the assault.

Petitioner asserts that there is a great difference in **READING** about an injury and actually **SEEING THE VISIBLE EFFECTS** of injury. The photos had a gruesome and shocking effect to them and would have clearly influenced the trier of fact to find Petitioner guilty, as a result Petitioner wanted to plead guilty.

As the Respondent acknowledged, Petitioner had placed a high degree of importance on examining the discovery materials, before Petitioner made a decision as to whether he would proceed to trial or plead guilty.

The record reflects that the Prosecutor informed Petitioner that the plea offer would expire two days before trial. Petitioner asserts that when he did not receive the photos on the day **the plea expired**, Petitioner assumed that he had been provided full discovery and decided to reject the plea and proceed to trial.

The Respondent asserted that it appears that the two photos did not factor heavily onto Petitioners decision, as to whether to plead guilty, when Petitioners trial strategy was to claim the victim inflicted his own injuries.

Petitioner asserts that based on the fact that Petitioner was denied to plead guilty at trial ***AFTER*** the two photos was actually submitted, Petitioner had a right to maintain a defense inregardless of its validity.

Petitioner asserts that the State Courts unreasonably applied Supreme Court law that requires that a person knowingly, voluntarily and intelligently plead guilty.

Beyond the general requirement of **reasonableness**, Specific guidelines are not appropriate. *Id* at 688. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the **variety** of circumstances face by defense counsel or the range of legitimate decisions...*Id* at 688-689. It is rare that constitutionally competent representation will require any ***ONE*** technique or approach. *Cullen* v *Pinholster*, 513 U.S. 170 at 195 (2011) citing *Ritcher* 562 U.S. at 89. The United States Court has said that there **are countless ways to provide effective assistance in any given case, and that even the best criminal defense attorneys would not defend in a particular client in the same way**. *Strickland* 466 U.S. at 689.

The United States Supreme Court in *Simmons* v *U.S.*, 396 U.S. 377, 394; 88 S Ct 967; 19 LEd2d 1247 (1968) found that "**It is intolerable for a criminal defendant to surrender one constitutional right in order to assert another.**"

The Due Process Clause of the U.S. Const. Amend V, XIV protects a defendant in a criminal case from unfair surprise. *Wardius* v *Oregon*, 412 U.S. 470; 93 S Ct 2208; 37 LEd2d 82 (1973). Michigan's Constitution also guarantees due process. Mich. Coast. 1963, art 1, § 17; U.S. Const. Amend VI, also provides in part: A defendant has a right to be informed of the nature and cause of the accusation. Mich. Const. 1963, §20 similarly provides for the right to be informed of the nature of the accusation.

Petitioner asserts that this Court should order a new trial or order that Petitioner be reoffered the 12 to 20-year plea offer.

Mr. Canales was *prejudiced* by the prosecutor's violation of the discovery order and the trial courts failure to enforce the same

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Mr. Canales was denied effective assistance of counsel when counsel did give erroneous advice that he was able to review all relevant discovery prior to making a decision whether to accept the plea offer, that was not disputed by the court or the prosecutor not ensure that he was able to review all relevant discovery prior to making a decision whether to accept the plea offer,

It is true that under certain circumstances, even when counsel's performance is not intrinsically deficient, a defendant's right to the effective assistance of counsel ***may be denied by government action***. Bell v Cone, 535 U.S. 685, 696, n. 3; 122 S Ct 1843; 152 LEd2d 914 (2002) and that a defendant right to the effective assistance of counsel is violated in cases in which **the court or the state directly interferes with the attorney client relationship by preventing counsel from rendering assistance**. People v Mitchell, 454 Mich 145, 154 (1997).

The State Courts ruling were **contrary to**, and an **unreasonable application** of the law as determined by the Supreme Court of the United States. Strickland v Washington, 466 U.S. 668, 687; 104 S Ct 2052; 80 LEd2d 674 (1984); Harrington v Ritcher, 562 U.S. 86, 101; 131 S Ct 770, 785 (2011); *Williams* v Taylor, 529 U.S. 362; 120 S Ct 1495, 1521-1522; 146 LEd2d 389 (2000); see also Lewis v Wilkinson, 307 F3d 413, 418 (6th Cir 2002).

On habeas review, a prisoner must do more than show that he would have satisfied Strickland's test if he were being analyzed in the first instance. Bell v Cone, 535 U.S. 685, 698-699 (2002); Durr v Mitchell, 487 F3d 423, 435 (6th Cir 2007). The question on habeas review **is not whether** a federal court believes that state courts determination under the Strickland standard was incorrect, but *whether the determination was **unreasonable**, a substantially higher threshold.* Schripo v Langrigan, 550 U.S. 465, 473 (2007); accord Harrison v Richter, 562 U.S. 86, 101 (2011) (The pivotal question is whether the state courts application of the Strickland standard was **unreasonable.**

The Sixth Amendment to the federal constitution guarantees criminal defendants the right to the assistance of counsel during these proceedings. Strickland v Washington, 466 U.S. 669, 684-685; 104 S Ct 2052; 80 LEd2d 674 (1984). Sea also Mich. const. 1963, art 1, § 20. This right extends to the plea bargaining process, during which defendants are entitled to the effective

assistance of competent counse afler v Cooper, 566 U.S. 156; 132 S Ct 1376, 1384; 182 LEd2d 398 (2012). A defendant t show both deficient performance and resulting prejudice to be afforded on his claim. *Id* see) Kimmelman v Morrison, 477 U.S. 365; 106 S Ct 2574; 91 LEd2d 305 (1986). The test f: :ficient representation at the trial level applies to the plea bargaining process. see Hill v :hart, 474 U.S. 52, 58-59; 106 S Ct 366; 83 LEd2d 203 (1985); U.S. v Lee, 137 S Ct 1 198 LEd2d 476 (2017) see also Lafler, 132 S Ct at 1384; (Strickland analysis applies to ir ctive assistance of counsel stemming from pleas.)

In Lafler, supra, the Cor eld that **where a defendant rejects a plea bargain upon erroneous advice of counsel a s convicted at trial**, the defendant must show that **but for** the ineffective advice of counse :re is a reasonable probability that the plea offer would have been presented to the Court. (:hat the defendant would have accepted the plea, and the prosecutor would not have wit wn it in light of intervening circumstances) that the Court would have accepted the terms the conviction or sentence, or both, under the offer terms would have been less severe t under the judgement and sentence that were in fact were imposed.

If the sole advantage is tl ıe defendant would have received lesser sentence under the plea, the Court should have an lentiary hearing to determine whether the defendant would have accepted the plea. If so, Court may exercise discretion in determining whether the defendant should receive the ı offered in the plea, the sentence received at trial or something in between.

The record is clear that P)ner was in plea negotiations on May 28, 11019; June 17, 2019; June 24, 2019; July 15, 9 up to the first day of trial on July 17, 2019 for which weighed heavily ore the prosec evidence.

The record shows that on June 17, 2019 at a final conference before Judge walker, the prosecutor made an offer to Petitioner Canales, that if he pled guilty to the Torture charge, the balance of the counts, would be dismissed including the habitual 4th, which carried a mandatory minimum 25-year sentence. As a result, the sentence agreement would be a 12 to 20-year sentence (T.T. June 17, 2019). Defense Counsel Hollar requested another week to consider the offer and there was no objection. (T. T. June 17, 2019).

On June 24, 2019 at Final conference with Judge walker, the offer placed on the record at the last nearing was still open, and the prosecutor offered to keep it open until two days before trial. Defense counsel noted that there were some medical records from the alleged victim that were now available, and that petitioner placed a high degree of importance on examining them with counsel. (T.T. 24, 2019, p. 4)

TAKE NOTICE that an order of discovery was ordered in this case on April 12, 19. On 17, 2019 a plea offer was placed the record and he open until 2 days before trial, to give Petitioner time to review discovery, including medical records prior to making his decision. (T.E. June 17, 19, p.4; T.T. June 24, 19, p.3-4). Petitioner rejected favorable offer at the prosecutor's expiration date, two days before trial, believing that Petitioner had seen all of the evidence in discovery ire his case. (T. T. July 15, 19, p. 3-4), making Petitioner comfortable to proceed to trial.

On the 1st day of trial, the Prosecutor submitted six photos, for which two of them showing the extent and seriousness of the victim's injuries. On the 2nd day of trial, defense counsel objected to their admission, for which was overruled. The 2nd day of trial was the first day of testimony. As a result, that the prejudicial videos would be submitted, Petitioner wanted to plead guilty.

The record shows that defense counsel emailed the prosecutor seeking a plea, a reduced plea, but when the prosecutor refused to accept the plea by defense counsel, Defense counsel stated that he never addressed the issue with Petitioner to allow Petitioner to decide whether he would take the prior plea of 12 to 20 years. Petitioner asserts that was a violation of *Missouri* v *Frye*.

Petitioner was found guilty by the jury, where the Court sentenced Petitioner on the Torture charge, to 50 to 75 years, for which was more than four times greater than the plea offer. T. T. August 6, 2019, p. 10-11).

Following his conviction and sentence in the trial court, Petitioner, by way of counsel filed a claim of appeal into the Michigan Court of Appeals with an accompanying motion for remand for an evidentiary hearing. The Michigan Court of Appeals granted and remanded to the trial court, dated June 18, 2020.

Petitioner asserts that the trial court in its findings of fact, which led the Michigan Court of Appeals to deny the motion to remand in error. To support his argument, Petitioner contends that the court only addressed whether trial counsel provided effective assistance at trial without discussing the prejudice that resulted from the prosecutors alleged violation of the discovery order.

At the *Ginther* Hearing, Petitioner argued, in addition to ineffective assistance of counsel, that he was denied due process where the prosecutor withheld the Photos of the victims injuries **until after the plea expired**, and was prejudiced by the prosecutors violation of the discovery order and the trial courts failure to consider the order.

The Michigan Court of Appeals, on page 10 and 11 of its order, stated:

> The trial court concluded that based on the testimony and evidence, there was no violation of defendant's due process right on this record. Moreover, defendant reviewed all of the discovery and was given time to consider

> whether to accept the plea offer **before it expired**. Notably, after the prosecutor disclosed the two additional photos at trial, defendant did not express any desire to reconsider his decision to reject the plea offer to the trial court or prosecutor. Rather, the only noticeable effect the photos appeared to have on defendant was a request for an amended plea offer of 4 to 10 years' imprisonment, which was a significant reduction from the original 12 years' imprisonment sentence. On this basis, we concluded that the trial court addressed the prosecutor's disclosure of the photos on remand, even if briefly, finding that the disclosure did not affect defendants due process rights. As stated, defendant has not supported his argument that the prosecutor purposefully violated the discovery order, infringing on defendant's due process rights, nor did the trial court abuse its discretion or infringe on defendant's due process rights by admitting the photos of the victim's injuries at trial over defendants' objection. Further we note that the two photographs disclosed at trial were, at best cumulative of the victim's medical records and the previously disclosed photos, indicating that defendant had all the relevant information available to him when he decided to reject the plea offer. Therefore, the trial court did not err in its findings of fact, which led this Court to deny the motions to remand.

Petitioner asserts that the Respondent has admitted, probably, inadvertently, a **STRUCTURAL DEFECT** by arguing that the law only allows for the prosecutor to provide exculpatory information, but it is not a violation of *Brady* v *Maryland*, to withhold **INCULPATORY** information.

The United States Supreme Court has clearly established that the complete denial of counsel during a critical stage of a judicial proceeding mandates a presumption of prejudice. *U.S.* v *Cronic*, 466 U.S. 648, 659 (1984). The existence of certain **STRUCTURAL DEFECTS IN A TRAIL**, such as the deprivation of the right to counsel requires automatic reversal of the conviction because **IT INFECTS THE ENTIRE TRIAL PROCESS**. v Abrahamson, 507 US 619, 629-630 (1993). The United States Supreme Court has routinely found constitutional error without any specific showing of prejudice to a defendant when counsel is either, totally absent, **OR prevented from assisting the accused during a critical stage of the proceedings**. *Cronic*, 466 U.S. at 659, n, 25; *U.S.* v *Minsky*, 963 F2d 870, 874 (6th Cir 1992).

The United States Supreme Court identified three situations a defendant is entitled to this

presumption:

1. the complete denial of counsel, including situations where counsel was absent at a critical stage of the proceedings;

2. situations where defense counsel entirely fails co subject the prosecution's case to a meaningful tasting;

3. situations where the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small, that a presumption of prejudice is inappropriate.

Fuller v *Sherry*, 465 F.Appx 980, 985 (6th Cir 2010) citing *Cronic*, 466 U.S. at 659-660.

Petitioner asserts in the case at bar, that a Structural Defect was apparent where the Respondent asserted that the law allowed the Respondent to withhold **INCULPATORY** evidence. Petitioner asserts that:

- **INVADED THE PROVINCE** of the right to effective assistance of at all critical stages;
- **INVADED THE PROVINCE** of the right to a fair trial;
- **INVADED THE PROVINCE** of the right to effective assistance of counsel to subject the prosecution's case to the crucible of meaningful adversarial testing;
- **INVADED THE PROVINCE** of the right to present a meaningful defense;
- **INVADED THE PROVENCE** of the right to knowingly, voluntarily and intelligently plead guilty.

Petitioner asserts, taking the Respondents claim be true (**for which Petitioner does not concede)** Petitioner asserts that the Respondent had inadvertently admitted that Petitioner was denied effective assistance of counsel who gave Petitioner erroneous advice that he could see all of the prosecutor's evidence prior to deciding whether he would plead guilty or go to trial.

If Petitioner did not have the right to full discovery of the prosecution's evidence, for which the Prosecutor nor the Court advised Defense Counsel, that he did not have such a right,

when counsel asked for a continuance the plea offer, based on the fact that Petitioner wanted to see all of the prosecutor's evidence, to decide whether to plead guilty or go to trial. Defense counsel could have advised petitioner that he did not have a right to all of the prosecutor's evidence prior to making a decision to plead guilty or go to trial.

The United States Supreme Court in *Hinton* v *Alabama*, 571 U.S. 263, 274: 134 S Ct 1081; 188 LEd2d 1 (2014) the Court held: ("An attorneys ignorance on a point of the law that is fundamental to his case, combined with his failure to perform basic research on that point is a quintessential example of **UNREASONABLE** performance under *Strickland*) : *Bullock* v *Carver*, 297 F3d 1036, 1050 (2002) (In many cases, a lawyers unawareness of relevant law results in a finding that counsel performed in an objectively deficient manner.)

The likelihood of a different result only need be reasonable, a defendant need not prove prejudice by a preponderance of the evidence. *Id.* A single serious error, may support a claim of ineffective assistance counsel. *Kimmelman* v *Morrison*, 477 U.S. 365, 383 (1986). If the result of the proceeding is fundamentally unfair and unreliable due to counsel's deficient performance, then prejudice is presumed, regardless of whether the error can be shown as outcome determinative. *Lockhart* v *Fretwell*, 506 U.S. 364, 369-370 (1993).

The exclusion or omission of evidence contravenes the right to confrontation when it infringes upon a weighty interest of the accused or significantly undermines a fundamental element of the defense. *U.S* .v *Scheffer*, 523 U.S. 303; 118 S Ct 1261; 140 LEd2d 413 (1998).

It is more fair to say that if the Stata law determinations only violate due process, habeas corpus is still available where the ruling is so egregious that it results denial of fundamental fairness. *Bugh* v *Mitchell*, 329 G. 3d 496, 512 (6th 2003).

Wherefore, Petitioner asserts that he was denied effective assistance of counsel and is

entitled to a new trial, at the very least the reoffering of the 12 to 20-year plea

REQUESTED RELIEF

Wherefore, based upon the above reasons, Petitioner moves this court to grant his Writ of Certiorari.

Respectfully submitted,

Christopher Canales

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Dated: 11 / 29 /2023