

23-7673

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



FILED

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SUPREME COURT, U.S.

ORIGINAL

Aubrey Jiles Stanley Jr.,

Petitioner,

v.

MICHIGAN COURT OF APPEALS

Respondents,

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

PETITION FOR WRIT OF CERTIORARI
Brief for Petitioner

Aubrey Jiles Stanley Jr., #257143

In Pro Se

Lakeland Correctional Facility

141 First Street

Coldwater, MI 49036

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QUESTIONS PRESENTED

- 1.) **WAS TRIAL COUNSEL INEFFECTIVE FOR FAILURE TO MOVE FOR A MISTRIAL, OR FILE A SEVERANCE MOTION IN THE CIRCUIT COURT, WHICH PREJUDICE HIS DEFENSE? FOR FAILING TO PRESENT A COMPLETE AND ADEQUATE DEFENSE? AND FOR FAILING TO INVESTIGATE OR SUBPOENA A KEY DEFENSE WITNESS DESPITE HIM BEING ON THE WITNESS LIST?**
 - a.) Petitioner's co-defendant who is also his brother wanted to use a different defense than him and their defenses would have been completely inconsistent. And the juries would have had to decide which defendants to believe.
 - b.) The Key witness would have corroborating testimony of self-defense theory. The Ginther Hearing that was held in the trial court was misleading and an abuse of discretion of opinion. See; (**Affidavit**).
 - c.) Petitioner contends that, "but for trial counsel's unreasonable unforeseeable failures" in the advocating process which severely prejudice him and violated the VI, XIV, Amendment Rights of the United States Constitution. He would have had a likely chance of acquittal.
- 2.) **DID THE PROSECUTOR COMMIT MISCONDUCT DURING CLOSING ARGUMENTS BY APPEALING TO THE JURYS SYMPATHIES FOR THE VICTIMS?**
 - a.) It has long been settled that a prosecutor may not appeal to the jury or sympathize with the victim's. The prosecutor's actions prejudiced the petitioner and his counsel. The trial must be rendered fundamentally unfair.

PARTIES TO THE PROCEEDING

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

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari is issued to review the judgment below.

OPINIONS BELOW

☒ For cases from **State Courts**:

The opinion of the Michigan Supreme Court, to review the merits, appears at **Appendix C** to the petition, and is

☒ reported at **People v. Stanley, 2022 Mich. LEXIS 68**; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **Federal Courts**:

The opinion of the Federal Court of Appeals, for 6th Circuit of Michigan, appears at **Appendix E** to the petition, and is

☒ reported at **Stanley v. Morrison, 2024 U.S. App. LEXIS 4019**; or,
☐ has been designated for publication but is not yet reported; or
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals for the Sixth Circuit, gave an ORDER on my case was February 21, 2024.

A copy of that decision appears at **Appendix E**

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including, (date) on _____ in Application No.

The jurisdiction of this Court is invoked under **28 U. S. C. § 1257(a)**.

☒ For cases from **state courts**:

The date on which the Michigan Supreme Court gave an ORDER on my case was January 4, 2022.

A copy of that decision appears at **Appendix E**

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including, (date) on _____ in Application No.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitutional Amendment. VI [1791]

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

U.S. Constitutional Amendment. XIV § 1 [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Michigan. Compiled. Laws § 767.40a

Witnesses, list to be attached; res gestae witnesses; additional res gestae witnesses, disclosure; list of witnesses to defendant; time; witnesses, addition or deletion; service of process on witness; assistance to defendant; request in writing; time; objection; pretrial motion; hearing; impeachment or cross-examination of witnesses.

Sec. 40a (1) The prosecuting attorney shall attach to the field information a list of all witnesses known to the prosecuting attorney who might be called at trial and all res gestae witnesses known to the prosecuting attorney or investigating law enforcement officers.

Michigan. Compiled. Laws § 767.91

§ 767.91. Definitions.

Sec. 91. As used in sections 91 to 95 of this chapter:

(a) "Witness" includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

(b) "State" includes and territory of the United States and the District of Columbia.

(c) "Summons" includes a subpoena, order or other notice requiring the appearance of a witness.

STATEMENT OF THE CASE

This case involves a dispute between neighbors, which led to a shooting. Defendant Aubrey Stanley came to trial twice. At his first trial he was the only Defendant, Judge Vonda Evans declared a mistrial on the 4th day; Aubrey Stanley's trial counsel Evan Callahan had fallen asleep during the trial.

Since Mr. Callahan was dismissed as counsel when he fell asleep on the job, the trial court appointed new counsel Nicole Castka. Ms. Castka asked that her client be referred for a competency and criminal responsibility examination. He was found competent to stand trial, albeit only after being medicated.

Next, trial was adjourned in September because attorney McWilliams (representing Arthur Stanley) was too ill to try the case. The case was now being handled by Judge Kenny, the chief Judge. After several adjournments, final pretrial motions were heard by Judge Kenny on November 9, 2018. The fact that the co-defendants in this case are brothers was a complicating factor, as evidenced by the motions argued. Mr. McWilliams told Judge Kenny that Judge Evans had referred to the Stanley brothers in the first trial as "accomplices" *and, Judge Kenny ruled in limine that there would be no such statements by the new trial Judge* (Judge Evans had since been forced to resign.) Judge Kenny himself, however, could not try the case as he was leaving also to become chief Judge of the entire Wayne County Circuit.

Finally, Aubrey and Arthur's joint trial commenced with one jury for both co-defendant Stanley brothers January 28, 2019, visiting Judge Michael M. Hathaway presiding. Aubrey Stanley's attorney Ms. Castka told the court that her

investigator, from the court-appointed Iverson Agency, went to the last known address of Chris Taylor, a *res gestae* witness but did not go looking for Joseph Taylor, or for a woman named Daviae, similar *res gestae* witnesses.

Christopher Taylor testified next. He told the jury he too had lived at 20005 Schaefer 40 years ago. He had been there only to visit more recently, however. At the time of the shooting, his sister Alethia Taylor, and her boyfriend Adrian George were living at that address. Mr. Taylor believed Alex Stewart was living there as well, with his girlfriend, Destini Germany. (JT 2/1/19 p. 104) Mr. Taylor drove to that area around 6:40pm on April 9, 2017 because it was Alethia's birthday. Alethia and his other sister, Stephanie Taylor were there, Mr. Taylor said he talked to a man he knew as "Buck" (Aubrey Stanley), a neighbor who lived a couple of units down at 19993 Schaefer.

Buck told Taylor he had been trying to get in touch with him, because the folks at 20005 were getting "wild", and he wanted Taylor's help to calm things down. Taylor told the jury that Aubrey Stanley said that "the guys that was hanging out at 20005" (Louis and Alex), along with Adrian George ("Red") had broken into Buck's home. (JT 2/1/19 p. 111).

Taylor referred to Adrian George as both his "brother in law" or "a guy going with my sister Taylor told Aubrey Stanley that Red was a "drunk", but he was a good neighbor, according to Taylor. Taylor claims he told Aubrey Stanley that if they broke into his homes Aubrey should "beat their ass". (JT 2/1/19 p. 114)

Shortly after this, Christopher Taylor observed his brother Joseph Taylor pulling into the driveway. Christopher saw Aubrey Stanley approaching again, and Aubrey reportedly said "I respect you [Chris]. I respect your family." And "It's about

to go down". Chris believed this meant Aubrey was going to "beat his ass". Chris said he needed to move his sister out of that house because the situation with Red Adrian George was "kinda dysfunctional". (JT 2/1/19 p. 117 -118) At this point Chris got into his brother Joseph's car and they went to buy lottery tickets, driving Northbound on Schaefer. Chris observed Alex and his brother Louis walking south down Schafer towards 20005 Schaefer. (JT 2/1/19 p. 123) Aubrey Stanley was on his own porch with Arthur, his brother..

Then both Aubrey and Arthur ran into 19993 Schaefer and come out carrying guns. Chris Taylor, confused, said Aubrey had a rifle and Buck had a smaller gun but Aubrey and Buck are the same person. (JT 2/1/19 p. 132-133) Chris told the jury that he saw Alex and Louis face to face with Aubrey and Arthur. ***Chris had previously told the police that he observed this in the rearview mirror. but now he claimed he saw what happened directly.*** Aubrey was supposedly yelling "you all broke into my motherfucking house". Alex said "no we didn't" and then there were multiple gunshots. (JT 2/1/19 p. 135).

Louis fell right there by 20005 Schaefer, and Alex ran. (JT 2/1/19 p. 143) The Taylor brothers tried to do a U-turn to go back to the house at 20005 where their sisters were and they were reportedly side swiped.

Chris Taylor claimed he saw Aubrey standing by a smaller blue car parked in Aubrey's driveway, and he asked Aubrey "why did you do that" and Aubrey just put his hands up and smiled, then he got into the blue car by himself and drove off traveling south. (JT 2/1/19 p. 150)

On cross exam. Chris Taylor stated he had seen Arthur Stanley only once before the shooting, and he had known Aubrey for about three years. He claimed he

had no beef or problem with either man. (JT 2/1/19 p. 160) Taylor clarified that he had himself moved out of 20005 Schaefer 3 months prior to the shooting. He only saw Destini Germany on the scene 2-3 hours after the shooting. Both conversations Chris had with Aubrey before the shooting were outside of 20005 Schaefer, on the driveway.

Importantly, *Chris was impeached with his prior testimony*. He previously claimed he could not even hear what was said between Aubrey, Arthur, Alex and Louis because he was in the car with his brother Joseph, with the windows up. Chris *admitted that he never called 911* that day. (JT 2/1/19 p. 181-183) He admitted also that, although the police wrote out his statement that day, he refused to sign it because he did not want to be involved. (JT 2/1/19 p. 217).

Detroit Police Officer Nathan Johnson, an evidence technician, told the jury that he was dispatched to the scene of the shooting with his partner, technician Terri Light. (JT 2/4/19 p. 30) The photos taken by the techs were admitted into evidence. They photographed .9mm shell casings. (JT 2/4/19 p. 41) Johnson and his partner also found a firearm in the bed of a truck parked at the scene and a gun clip or magazine on the ground. (JT 2/4/19 p. 83).

The medical examiner, David Moons, told the jury that both victims died as a result of gunshot wounds. Louis Phillips had 8 gunshot wounds, while Alex Stewart had suffered 4 gunshot wounds. (JT 2/4/19 p. 100). At least one of Louis Phillips wounds could have been made by a "high-powered" weapon. (JT 2/4/19 p. 117) None of the wounds showed evidence of stippling, or close-range fire. (JT 2/4/19 p. 140-148).

Destini Germany came to the witness stand. She testified that on April 9, 2017 she had been living at Schaefer in Detroit with her boyfriend Alex Stewart. Adrian George (Red) and Alethia lived there also. On that day she was with Alex in the morning, and he left on foot around 2 pm. Destini's cousin Daviae, picked her up and they went out for food, and they went to her Grandmother's and to buy some marijuana.

They then went to a gas station and to Dollar General. Destini spoke with Alex at about the time she left Dollar General. (JT 2/4/19 p. 171) She and Daviae were about to pull up to 20005 Schaefer at about 7pm, but Alex called and told her not to. She felt something wasn't right. Daviae parked a short way down from 20005 because there were a lot of people around, at about 7:30pm or 8pm (JT 2/4/19 p. 177) She claims she observed Alex walking towards 20005 with Louis. She rolled down her window and tried to get his attention, but he blew her off, and looked mad.

She told the jury she saw her neighbor Buck (Aubrey), driving northbound on Schaefer in a blue car. and then she observed him make a U-turn and park in front of 19993 Schaefer. (JT 2/4/19 p. 30) She claims she observed Buck and another man get out of the car with weapons "already aimed" (JT 2/4/19 p. 187) Destini stated that Buck held an "AK" like rifle pointed at Alex. She believes the men were talking and maybe Louis said "we don't want to do that". She heard gunshots. (JT 2/4/19 p. 197). She saw Louis drop to the ground, and thought maybe Alex got away. She claims she saw Buck get back in the blue car and pull off, She and Daviae drove around the block, and she believes they passed Buck in the blue car, driving fast

She did not see where the other man went. Daviae dropped her off at the corner. Destini walked to 20005 and there were a lot of people there. She went to the hospital, but Alex had already died. She returned to 20005 and remembers speaking to police Sergeant May at the scene. (JT 2/4/19 p 207-209). She was shown a photo of Defendant Aubrey Stanley, and she identified him as the shooter.

On cross exam, ***Ms. Germany realized she had changed her testimony from the preliminary exam.*** She claims that she forgot about "the whole little part of him going in there to get another--- I don't know if they got the other gun from the inside or already had it". Destini now claimed that Aubrey and Arthur did not get out of the car with guns aimed-in fact they went into a house and came back out with guns (JT 2/4/19 p. 241). She stated she also did not see if both shooters got into the blue car and drove off. ***She was "told" the shooters were Arthur and Aubrey Stanley.*** (JT 2/4/19 p. 243).

The next day, Tuesday February 5th, 2019 (The transcript is mislabeled. February 5th was a Tuesday, not a Friday) Ms., Germany's testimony continued. She Identified Arthur Stanley at the prelim because someone else told her that he was the shooter, (JT 2/5/19 p. 16). She agreed that she had Alex Stewart's phone number stored in her phone, but she refused to give that number to the police. (JT 2/5/19 p.30) ***She also agreed that her original statements omitted any mention of the shooters going into a house and coming back out with guns.*** (JT 12, 2/5/19 p.33-37) ***Ms. Germany claimed her story has morphed over time because people kept telling her things.*** (JT 2/5/19 p.39).

Forensic technician Terri Light explained where .9mm shell casings were found. They also found 7.62 x 39 casings, (JT 2/5/19 p.48-90) A white LG cell phone was also found. (JT 2/5/19 p.91) Police Officer Timothy Nolan also testified. He arrived at the scene of the shooting on Schaefer with his partner Victoria Eschen. They walked around looking for evidence, and found a gun magazine or clip and an AK-style rifle in the front of 20005 Schaefer. (JT 2/5/19 p. 100).

Christopher Taylor told him that he observed the shots being fired at the victims in his rearview mirror. (JT 2/5/19 p. 134- 135). Similarly, Destini Germany never said anything to him about the shooters pulling up in a blue car and making a U-turn and jumping out with guns drawn. She only told him the shooters came out of a house with guns. In fact, she only talked about a blue vehicle used by the shooters to depart the scene. (JT 2/5/19 p. 143) Destini also told him that one of the cars parked at 19993, a white Lexus, belonged to one of the shooters, whom, she believed, lived there, (JT 2/5/19 p. 151).

Officer Louis Caban helped arrest Arthur Stanley, and took his cell phone into evidence, on May 2, 2017. Officer Christopher Deschenes explained to the jury that he analyzed the cell phones taken into evidence in this case. Various messages, contacts, and photos from the phone data were discussed. (JT 2/5/19 p. 14) Officer David Soli another evidence tech, took evidence from 8236 Northlawn in Detroit. A shotgun and two .22 rifles were found at that address, plus ammunition of other calibers, and a wristband, but no other obvious evidence, tying Arthur Stanley to that home. (JT 2/5/19 p. 228) Now, 911 operator Shawntee Jeffries identified four separate 911 calls from April 9, 2017.

Which were played for the jury. (JT 2/5/19 p. 252).

Stan Brue, cell phone data analyst, looked at the data for the phones associated with both defendants. (JT 2/6/19 p. 26). He told the jury that Defendant Aubrey Stanley's phone was hitting on cell tower near 20005 Schaefer at the time of the shooting, about 6:55 pm April 9, 2019. Eighteen minutes after the 911 call, the phone associated with Aubrey Stanley is still hitting off cell towers near 20005 Schaefer, about 4-50 minutes later, that phone is hitting off towers in another part of Detroit, near Lonyo and Michigan Avenue, (JT 2/5/19 p. 40) About two hours later, there were calls between Aubrey and Arthur Stanley.

Arthur Stanley's phone appears to be in about the same area of Southwest Detroit during this time. (JT 2/6/19 p. 46) After a series of stipulations, testimony continued with Eugene Fitzhugh. He helped conduct the search of 2180 Liddesdale, Detroit. (JT 2/6/19 p. 115) A wallet, with a driver's license for Aubrey Stanley, address, 19993 Schaefer, Detroit, was found there. (JT 2/6/19 p. 116) James England, a fingerprint technician, told the jury that he could not find any fingerprints on the guns retrieved in this case. (JT 2/6/19 p. 134).

The prosecutor, through Ki Sobol, phone evidence technician. then played several of Defendant Aubrey Stanley's jail calls. (JT 2/6/19 p. 151) State police evidence technician, Rebecca Smith was called by the prosecutor to tell the jury that the .9mm fired cartridges she examined from this crime scene all were fired by the same weapon. The 7.62 x39 casings from the scene she examined were similar but she could not say conclusively they were fired from the same weapon. (JT 2/6/19 p. 186-200).

The next trial day began with a discussion of jury instructions. (JT 2/7/19 p. 7-8) Northville State Police post scientist Andrea Young testified that she tested various pieces of evidence for DNA but she found no DNA that had evidentiary value. (JT 2/7/19 p. 10-42). When Defendant Aubrey Stanley was arrested, he was interrogated by Maye and signed his Miranda Rights Warning, not a statement. A video of his interrogation was admitted. (JT 2/7/19 p. 69) Maye characterized Aubrey Stanley as "cooperative". (JT 2/7/19 p. 71) Maye also told the jury that usually "the street" knew who the perpetrators were before law enforcement. Aubrey Stanley's attorney objected (and was sustained) as this testimony called for speculation. Maye lied and told Aubrey Stanley that they found DNA on a gun. At this point, the jury was allowed to hear that Aubrey requested an attorney and the interrogation stopped. (JT 2/7/19 p. 75)

Police Detective Antonio Carlisi, the officer in charge, testified. He told the jury that Destini Germany said the shooters came out of 19993 Schaefer. He looked up the address and found that Aubrey Stanley and Chantell Stanley (the Defendant's wife) lived there. (JT 2/6/19 p. 146). Germany was shown a lineup with Aubrey Stanley's picture and stated he was one of the shooters. (JT 2/7/19 p. 150) Detective Carlisi found a Facebook page associated with Defendant Aubrey Stanley - although the Facebook name of that individual was "Buck Johnson" (JT 2/7/19 p. 163).

Now the final days of the trial began. The prosecution rested and the defense made directed verdict motions, which were denied. (JT 2/8/19 p. 7-17) The defendants' waived their right to testify and remained silent. (JT 2/8/19 p. 16) Closing arguments were made. (JT 2/8/19 p. 27- 113).

The prosecutor referred many times to the jail calls as evidence supporting Aubrey's guilt. The jury was instructed, including an instruction about multiple defendants. (JT 2/8/19 p. 120). The jury returned their guilty verdict on February 11, 2019. Defendant was sentenced to, two concurrent Life sentences, and 2 years consecutive for firearm convictions.

Undersigned counsel filed a timely Motion for Post-Judgment relief, and Judge Hathaway ordered that a *Ginther* hearing be held. That hearing was held on February 18, 2020. Judge Hathaway denied the motion for new trial on the record that day.

REASONS FOR GRANTING THE PETITION

This petition should be granted for three compelling reasons. First, because the Michigan Court of Appeals erred in denying Petitioner relief on Ineffective Assistance of Counsel claims where Strickland v. Washington, has settled what prongs qualify in meeting this burden.

Second, because the Michigan Court of Appeals has decided an important federal question dealing with the Confrontation Clause of the Sixth Amendment in a way that conflicts with the holding of this court in Crawford v. Washington, 541 U.S. 36 (2004), the exercise of this Court's supervisory power is required.

Third, because granting the instant petition will provide this Court with a vehicle to settle a significant disparity among the lower Federal and State Courts as to what is required as evidence before a witness can be declared "unavailable." and what constitutes a 'prior opportunity to cross-examine witness' before testimonial statements from that witness can be presented at trial.

Fourth, to prevent a miscarriage of justice on behalf of the government. In denying Petitioner's his constitutional rights.

I. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILURE TO MOVE FOR A MISTRIAL, OR FILE A SEVERANCE MOTION IN THE CIRCUIT COURT, WHICH PREJUDICE HIS DEFENSE. FOR FAILING TO PRESENT A COMPLETE AND ADEQUATE DEFENSE? AND FOR FAILING TO INVESTIGATE OR SUBPOENA A KEY DEFENSE WITNESS DESPITE HIM BEING ON THE WITNESS LIST.

The Sixth Amendment to the U.S. Constitution states, “and to have the Assistance of Counsel for his defense.” Strickland v. Washington, 466 U.S. 668, 692 (1984), In order to obtain a new trial because of Ineffective Assistance of counsel, “a defendant must show that counsel’s assistance was ‘*objectively unreasonable, and deficient.*’”

Objective Standard of Reasonableness:

The first claim Petitioner Stanley raised in his petition for writ of habeas corpus, is that Trial Counsel, Nicole L. Castka did not move for a mistrial when phone calls from the jail were admitted at his joint trial. The recordings revealed Petitioner Stanley and his brother could have pursued conflicting defenses, but were prevented because that could compromise the jurors’ verdict in coming to a unanimous decision.

On motion of a defendant, severance is mandatory under **MCR 6.121 (C)** “if a severance is necessary to avoid prejudice to substantial rights of the defendant.” Under **Fed. R. Crim. P. 14**, “if it appears that a Defendant or the government is prejudiced by a joinder of defendants for trial together, the court may order an election or separate trials of counts, grant a severance of defendant’s or provide whatever other relief justice requires.” Sutton v. Bell, 2011 U.S. Dist. LEXIS 112263.

Petitioner and his brother’s defenses *would have been mutually exclusive* from each other. Petitioner wanted to raise the self-defense, defense. However, due to the

fact of having his brother at the same trial who was presenting misidentification, therefore, Petitioner was forced to present the same defense. The prosecution presented a theory of brothers killing rival brothers.

Severance:

Ms. Castka provided ineffective assistance of counsel by not requesting a severance, as this did not allow to present an adequate defense for Aubrey Stanley Jr., her client. *Shinn v. Ramirex*, 596 U.S. 366; *Davila v. Davis*, 582 U.S. 521.

If Ms. Castka, had of listened to Petitioner's jail calls or his request to present a different defense from his brother, she would've seen the absolute need to move to sever because they both were adamant in asserting different defenses. Ms. Castka was aware of the jail phone recordings and that Petitioner's cell phone placed him at the scene. So a reasonable attorney would have filed a Motion to Sever, then raised the Self-defense claim. However, petitioner was almost, if not completely, silenced by his brother being tried with him. A joint trial can lead to improper and ineffective defense. Petitioner also informed the court during his Ginther Hearing that he told Ms. Castka that he wanted to assert a self-defense, defense.

Ms. Castka claimed that her client Aubrey Stanley told her, "he did not want a self-defense claim." However, Ms. Castka did admit that the trial strategy of her predecessor in this case was self-defense. Knowing this, she should have listened to the jail phone recordings, where Mr. Aubrey Stanley elaborates when speaking to Felicia Stanley, Arthur's wife, "to tell him (Arthur) that my defense is going to be self-

defense.” “Failure to investigate defendant’s case in order to prove self-defense” is ineffective assistance. *Smith v. Dickerson*, 2024 U.S. Dist. LEXIS 24083.

Substantial Defense:

Ms. Castka was ineffective when failing to also present a complete and adequate defense. Defendants have a right to present a substantial defense. *People v Daniel*, 207 Mich App 47, 58 (1994). Defendant wanted to assert either **self-defense** and **not claim** that the witnesses were mistaken in their identification. Aubrey Stanley's attorney should have known that the jail calls were going to be admitted into evidence, and Defendant Aubrey Stanley stated in those calls that “he wanted to assert self-defense.” Since self-defense is inconsistent with misidentification as a defense, counsel was ineffective for pursuing misidentification instead of the defendants preferred defense.

Self-defense was an adequate defense because the testimony of witness **Christopher Taylor was impeached** and **Destini Germany's** as well. They both gave two conflicting accounts of what happened, and what they witnessed. Also, officers found two different sets of shell casings, but found only one gun. Fingerprints found on AK-47 were inconclusive due to numerous fingerprints. Police officers never performed any ballistics testing on the AK-47 found at scene to determine if victims were killed with that gun. As .9mm casings were also found, and next to where one victim crawled away a weapon was found next to vehicle. Mr. Aubrey Stanley Jr., states “*victims began shooting at him first, and he and his cousin returned fire killing them.*” Which shows Defendant’s motive. (JT 2/1/19 p. 181-183), (JT 2/4/19 p. 241,

243). Misidentification was a much simpler defense because the co-defendants are brothers with similar looks, and builds. Ms. Castka took the easier route for her representation of defendant as opposed to his claim of self-defense.

Failure to Investigate/Subpoena Key Witness:

Ms. Castka was also ineffective when failing to investigate or subpoena key res gestae witness Joseph Taylor. This witness testimony would have been used to show what he witnessed after Christopher Taylor and him returned to the scene after shots were fired. Defense could've questioned whether the victim who was crawling away had a gun, as Christopher testified he "tried to perform lifesaving aide on one victim." Which means Joseph Taylor was also at the crime scene when Christopher Taylor aided victim as the two men were in the same car.

Chris Taylor testified that Joseph Taylor, his brother, *was present before, during and after the shooting*. Given how Chris was impeached multiple times. The prosecution does not need to bring all witness to trial it has on witness list. Instead, the former rule has been replaced by a notice system whereby the prosecutor is charged with the duty of listing all known witnesses to the charged crime and listing the witnesses he or she intends to call at trial. Id. at 288-289; **MCL 767.40a (1)(a)**.

Although the prosecutor is no longer required to use due diligence to obtain the testimony of every res gestae witness, the prosecutor must, upon written request by the defendant, supply reasonable assistance, including investigative assistance, to assist in locating and serving process on witnesses. **MCL 767.40a (5)**.

The prosecution never did any investigation to find Joseph Taylor, the simply sent police officers to the address of his last known whereabouts. Chris Taylor is the one who lived at that address three months prior. A res gestae witness is someone who witnessed some event in the continuum of the criminal transaction and whose testimony would have aided in developing a full disclosure of the facts at trial. People v Long, 246 Mich App 582, 585 (2001).

In addition, a prosecutor who endorses a witness under MCL 767.40a (3) is obliged to exercise due diligence in producing that witness at trial. Here, the prosecutor listed Joseph Taylor on the list of witnesses to be called; therefore, the prosecution had a duty to exercise due diligence in obtaining his testimony. Trial attorney Ms. Castka, did not have an investigators report on what steps he took to locate witnesses. She claims that she verbally spoke with investigator, Mr. Iverson. Investigating entails, the investigation of defendant's case, finding or locating witnesses, preparing proper and adequate defense, gathering evidence.

Trial counsel in Defendant's second trial never Motioned the Court for funds to hire a private investigator. She only spoke with one she personally knew. Since this investigator wasn't being paid, then it is highly unlikely, Mr. Iverson (P.I.), would have fully dedicated himself to locating this witness. See; **Appendix -A (G.H. Trans. pgs. 38-47)**

There are no definitive guides to use when determining if a witness is "unavailable" or whether there has been a "prior opportunity to cross-examine the witness" that are uniform in federal and state courts and that are required before

testimonial statements can be presented at trial instead of live testimony. Subject to appropriate cross-examination.

“witness is unavailable”

This court has held that “...a witness is not ‘available’ for purpose of the foregoing exception to the confrontation requirement unless the prosecutorial authorities have made a good-faith effort to obtain his presence at trial.” Williams v. Illinois, 399 U.S. 235 ; 132 S. Ct. 2221, 2257; 133 L. Ed. 2d 89 (2012) (quoting Barber v. Page, 390 U.S. 719, 724-725; 88 S. Ct. 1318; 20 L. Ed. 2d 255 (1968) (defining a constitutional standard for whether a witness is “unavailable” for purposes of the Confrontation Clause) ; see also Ohio v. Roberts, 448 U.S. 56, 76; 100 S. Ct. 2531; 65 L. Ed. 2d 597 (1980) (recognizing that Barber “explored the issue of *constitutional unavailability*” (emphasis in original)).

“GOOD FAITH EFFORT”

The Barber Court did not define the term “good faith,” and so it is proper to turn to the dictionary for its ordinary and generally accepted meaning. Here, Black’s Law Dictionary provides that meaning:

Good faith is a state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one’s duty or obligation, (3) observance of reasonable commercial standards or fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage.

“The phrase ‘good faith’ is used in a variety of contexts and it’s meaning varies somewhat with the context. Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party;
(Black Law’s Dictionary 11th Edition, pg. 836, n. (18c))

This definition strongly suggests that tangible evidence is necessary beyond testimonial evidence or verbal protestations—solemn or earnest declaration or affirmation—which a reasoning mind would accept as sufficient to support a particular conclusion, i.e., substantial evidence. The Michigan Court Rules have a well-established procedure to subpoena a “witness to appear for the purpose of testifying in open court.” Michigan Court Rule **2.506(A) (1)**.

This procedure states that “(a) subpoena may also be served by mailing to a witness a copy of the subpoena and a postage-paid card acknowledging service and addressed to the party requesting service.” Michigan Court Rule **2.506(G) (2)**. This procedure, if the State of Michigan was required to abide by its tenants, would certainly suffice as tangible evidence that a witness was actually served a subpoena. Of course, there are several other elements to this request, and Petitioner leaves it up to this Court to fashion a “tangible evidence” requirement in support of any “unavailability” determination.

“prior opportunity to cross-examine”

“To state a violation of the Confrontation Clause, a defendant must show ‘that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness.’” *Sully v. Ayers*, 725 F.3d 1057 (HN10) (9th Cir.) quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679; 106 S. Ct. 1431; 89 L. Ed. 2d 674 (1986).

“The defendant has met his burden when he has shown that ‘(a) reasonable jury might have received a significantly different impression of a (witness’s) credibility had counsel been permitted to pursue his proposed line or cross-examination.’” *Slovik v. Yates*,

556 F.3d 747, 753 (9th Cir. 2009) (quoting Van Arsdall, 475 U.S. at 680; 106 S. Ct. 1431 (first altercation in original))

“Under the *Strickland* rule strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgment support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 690-691, 104 S. Ct. 2052, 80 L. Ed. 2d 674.

“An attorney’s ignorance of a point of 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.” See; e.g., Williams v. Taylor, 529 U.S. 362, 395, 120 S. Ct. 1495, 146 L. Ed. 389, (2000). With all of the above mentioned errors by Trial counsel Ms. Castka, “there is a reasonable probability that the outcome would have been different.” People v. Trakhtenberg, Trial Counsel was ineffective in her performance as guaranteed by the Sixth Amendment of the *U.S. Const. Am VI. Const 1963, art 1 § 20*, 493 Mich 38, 51 (2012).

II. THE PROSECUTOR COMMITTED MISCONDUCT DURING CLOSING ARGUMENTS BY APPEALING TO THE JURY'S SYMPATHIES FOR THE VICTIMS AND THEIR MOTHER.

The Fourteenth Amendment to the United States Constitution 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." The prosecution committed misconduct during closing arguments depriving Defendant of this right.

Prosecutorial Misconduct:

Defendant Aubrey Stanley Jr., contends the prosecution committed misconduct by seeking to admit obituary photos (*Respondents Answer in Opposition Brief states, (autopsy photographs)*, of deceased victims during closing arguments. The prosecution stated to the jury, "[The victims] "Louis Phillips and Alex Stewart can't tell us who killed them. They can't tell us. But the evidence left behind tells us," and by referencing "the unimaginable loss of the mother...who you heard from, who had lost both of her sons on the same night."

As the prosecution said this to the jurors he was pointing at the photo on the screen which depicted obituary photo of two deceased brothers faces in heaven. With a blue sky, and white clouds along with steps going up towards heaven. In the transcripts it states (indicating), as he pointed. **See Appendix –A (pg. 28, L-8-18).**

It has long been settled that a prosecutor may not appeal to the jury or sympathize with the victims. The prosecutors' actions severely prejudiced the petitioner and his trial must be rendered fundamentally unfair. Our Supreme Court has made clear that the

prosecutor must refrain from improper methods calculated to produce a wrongful conviction. When jurors' members saw the obituary photos' it had them so distraught, and one of the jurors was crying. This conduct must be impartial and unreasonably inappropriate. The conduct was "so egregious so as to render the entire trial fundamentally unfair." Byrd v. Collins, 209 F. 3d 486, 529 (6th Cir. 2000) (citations omitted).

A defendant's opportunity for a fair trial can be jeopardized when a prosecutor interjects issues broader than the guilt or innocence of the accused. The prosecutions comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.' Darden v. Wainwright, 477 U.S. 168, 181 (1986) (quoting Donnelly v. DeChristoforo, 416 U.S. 637, 643 (1974)).

The prosecutor committed [error] because he abandoned his responsibility to seek justice and, in doing so has denied the Petitioner a fair and impartial trial. "A petitioner's opportunity for a fair trial can be jeopardized when the prosecutor interjects issues broader than the defendant's guilt or innocence." People v. Dobek, 274 Mich App 58, 63-54; 732 NW2d 546 (2007). "Appealing to the jurors to sympathize with a victim constitute improper argument." People v. Watson, 245 Mich App 572, 591; 629 NW 2d 411 (2001).

The court gave a curative instruction, however, "they are sufficient to cure the prejudicial effect of most inappropriate statements." People v. Unger, 278 Mich App. 210, 235, 749 N.W. 2d (2008), but not the errors in this case as the emotions of the jurors cannot be cured. Once they have seen a photo, the bell can't be unrung. These

remarks were intended to" incite the passions and prejudices of the jurors." United States v. Solivan, 937 F.2d 1146, 1151 (6th Cir. 1991). The prosecutor improperly invoked the jurors' passions and emotions in this case, to garner more sympathy in order to make the verdict decision unbalanced and in the prosecutions favor.

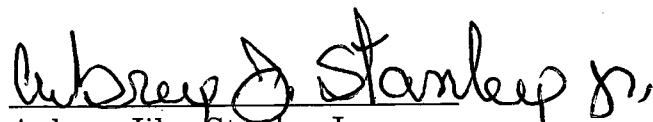
Procedurally Defaulted:

In Respondents Answer in Opposition to Petitioner's Habeas Corpus Petition its claimed that Mr. Stanley's claim is procedurally defaulted. However, the court is mistaken in the fact that Mr. Stanley raised this same issue in his Standard-4 Brief, which was filed timely within the allotted 84-days.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Aubrey Jiles Stanley Jr.

Date: April 24, 2024