No. _____

In the
Supreme Court of the United States

CIDNEY BOWDEAN INGRAM,
Petitioner,

v.

FREDEANE ARTIS, WARDEN,
Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

John F. Royal
Counsel of Record
P.O. Box 393
Boyne City, MI 49712
Phone: (313) 962-3738
E-mail: jfroyal2000@gmail.com

Counsel for Petitioner

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

I. A CERTIFICATE OF APPEALABILITY (COA) SHOULD BE ISSUED WHERE THE DISTRICT COURT DECIDED THAT TRIAL COUNSEL'S FAILURE TO REQUEST A JURY INSTRUCTION THAT DEFINED THE PORCH, CONSISTENT WITH MICHIGAN LAW, AS PART OF THE HOME FROM WHICH MR. INGRAM HAD NO DUTY TO RETREAT, DID NOT DEPRIVE PETITIONER OF EFFECTIVE ASSISTANCE OF COUNSEL, OR DUE PROCESS; REASONABLE JURISTS WOULD FIND THIS HOLDING TO BE DEBATABLE, OR WOULD FIND THAT THIS ISSUE DESERVES ENCOURAGEMENT TO PROCEED FURTHER.

II. A COA SHOULD BE ISSUED WHERE THE DISTRICT COURT DECIDED THAT TRIAL COUNSEL'S FAILURE TO OBJECT TO A JURY INSTRUCTION THAT IT WAS FOR THE JURY TO DECIDE WHETHER MR. INGRAM HAD A DUTY TO RETREAT; AND FAILURE TO REQUEST A JURY INSTRUCTION THAT, IN LIGHT OF THE UNDISPUTED EVIDENCE IN THIS CASE, MR. INGRAM HAD NO DUTY TO RETREAT; DID NOT DEPRIVE PETITIONER OF EFFECTIVE ASSISTANCE OF COUNSEL, OR DUE PROCESS. REASONABLE JURISTS WOULD FIND THESE HOLDINGS TO BE DEBATABLE, OR WOULD FIND THAT THESE ISSUES DESERVE ENCOURAGEMENT TO PROCEED FURTHER.

PARTIES TO THE PROCEEDINGS

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

STATEMENT OF RELATED PROCEEDINGS

1. People of the State of Michigan v Cidney Bowdean Ingram; Michigan 31st (St. Clair) Circuit Court; Case No. 12-001654-FC; Jury Trial; Judgment entered February 8, 2013.

2. People of the State of Michigan v Cidney Bowdean Ingram; Michigan Court of Appeals, Case No. 315078; direct appeal; Judgment entered June 5, 2014.

3. People of the State of Michigan v Cidney Bowdean Ingram; Michigan Supreme Court, Case No. 149676; 497 Mich 1010, 861 NW2d 891; direct appeal; Judgment entered April 28, 2015.

4. People of the State of Michigan v Cidney Bowdean Ingram; Michigan 31st (St. Clair) Circuit Court; Case No. 12-001654-FC; Opinion denying Motion for Relief From Judgment; Opinion issued June 19, 2017. Judgment issued August 30, 2017.

5. People of the State of Michigan v Cidney Bowdean Ingram; Michigan 31st (St. Clair) Circuit Court; Case No. 12-001654-FC; Order denying Motion for Reconsideration of Opinion Denying Motion for Relief from Judgment issued August 30, 2017; Judgment issued August 30, 2017.

6. People of the State of Michigan v Cidney Bowdean Ingram; Michigan Court of Appeals, Case No. 342589; Appeal from denial of Motion for Relief From Judgment; Judgment issued August 1, 2018.

7. People of the State of Michigan v Cidney Bowdean Ingram; Michigan Supreme Court, Case No.158449, 503 Mich 1018, 925 NW2d 859; Judgment entered September 10, 2019.

8. People of the State of Michigan v Cidney Bowdean Ingram; Michigan Supreme Court, Case No.158449, 504 Mich 960; Order Denying Motion for Reconsideration and Judgment entered September 10, 2019.

9. Cidney Bowdean Ingram v Fredeane Artis, United States District Court for the Eastern District of Michigan, Case No. 19-cv-12169; Opinion and Order Denying Petition for Writ of Habeas Corpus; Judgment entered March 21, 2023.

10. Cidney Bowdean Ingram v Fredeane Artis, United States Court of Appeals for the Sixth Circuit, Case No. 23-1363; Order Denying Certificate of Appealability; Judgment entered August 29, 2023.

11. Cidney Bowdean Ingram v Fredeane Artis, United States Court of Appeals for the Sixth Circuit, Case No. 23-1363; Order Denying Petition for Rehearing; November 17, 2023; Judgment entered November 17, 2023.

12. Cidney Bowdean Ingram v Fredeane Artis, Warden; Case No. _____; Petition for Writ of Certiorari filed in the United States Supreme Court on February 15, 2024. Judgment not yet entered.

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PETITION FOR WRIT OF CERTIORARI

Petitioner prays a writ of certiorari be issued to review the judgment below, and that this case be remanded to the United States Court of Appeals for the Sixth Circuit with directions to issue a Certificate of Appealability (hereinafter: "COA") and to hear Petitioner's appeal on the merits with respect to those issues for which a COA is issued.

REFERENCE TO OPINIONS BELOW

On March 21, 2023, the United States District Court for the Eastern District of Michigan (hereinafter: "District Court") issued its Opinion and Order Denying the Petition for Writ of Habeas Corpus, and Denying a Certificate of Appealability (hereinafter "COA"). This document denied all of Petitioner's claims for relief. (Apx.C), Ingram v Artis, U.S. District Court for the Eastern District of Michigan, Case No.19-12169,(ECF No. 12, PageID.1810-1830).

On review, Judge Eric L. Clay of the U.S. Court of Appeals for the Sixth Circuit ("Sixth Circuit") issued an Order denying a COA. (Apx.A) Ingram v Artis, unpublished Order of the Sixth Circuit, Case No 23-1363, August 29, 2023, (Document No.6).

On November 17, 2023, a panel of Judges of the Sixth Circuit issued an Order denying Petitioner's timely filed Motion for Rehearing. (Apx.E)(Document No. 11). From this last Order, the Petitioner files the instant Petition for a Writ of Certiorari.

With respect to Mr. Ingram's appeal of right, on June 5, 2014, the Michigan Court of Appeals

(hereinafter: "MCOA") issued an unpublished, per curiam Opinion affirming Petitioner's convictions in all respects. (Apx.G) People v Ingram, Unpublished disposition of the MCOA, Case No. 315078, 2014 WL 2538495, June 5, 2014. Ingram v Artis, Case 5:19-cv-12169-JEL-RSW, (ECF No. 7-19, PageID.1302-1307. The issues raised in the direct appeal were not addressed in Mr. Ingram's habeas petition, and are not addressed in the instant Petition.

On June 19, 2017, the St. Clair Circuit Court issued an Opinion and Order denying in full Petitioner's Motion for Relief From Judgment and Motion for Evidentiary Hearing. (Apx. I). Ingram v Artis, Case 5:19-cv-12169-JEL-RSW, (ECF No. 7-16, PageID.1266-1269). On August 30, 2017, the St. Clair Circuit Court issued an Order denying Mr. Ingram's timely filed Motion for Reconsideration of Opinion and Order Denying Mr. Ingram's Motion for Relief from Judgment. (Apx. J) Ingram v Artis, Case 5:19-cv-12169-JEL-RSW, (ECF No. 7-18, PageID.1300-1301).

STATEMENT OF JURISDICTION

The District Court had subject matter jurisdiction over this habeas corpus case through its federal question jurisdiction. 18 USC Secs 1331, 1343, 2201, and 2202. This action was brought under 28 USC Sec.2254, and alleged that, at the time the habeas petition was filed, the Petitioner was incarcerated in a Michigan prison, and was therefore "in custody" for purposes of 28 USC §2254.

The Sixth Circuit had jurisdiction to entertain the Petitioner's Notice of Appeal pursuant to 28 USC Sec

1291, which provides jurisdiction for appeals from a final decision of the district courts, and 28 USC Sec 2253, which provides jurisdiction for appeals in habeas corpus cases. The Sixth Circuit properly treated Petitioner's Notice of Appeal as an application for a Certificate of Appealability, pursuant to Fed.R.App.Proc.22 (b).

The jurisdiction of this Court is invoked under 28 USC §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Am. V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation**.**

United States Constitution, Am. VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,

which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution, Am. XIV

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 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.

MCL 750.110a Definitions; home invasion; first degree; second degree; third degree; penalties.

(1) As used in this section:

(a) "Dwelling" means a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter….

(c) "Without permission" means without having obtained permission to enter from the owner or lessee of the dwelling or from any other person lawfully in possession or control of the dwelling.

(2) A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:

(a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling.

….

STATEMENT OF THE CASE AND RELEVANT FACTS

Summary of Legal Proceedings

Petitioner Cidney Ingram filed a Petition for a Writ of Habeas Corpus in the U.S. District Court as a person convicted in a state court in violation of the U.S. Constitution, who was "in custody" in violation of federal law per 28 USC Sec. 2254. On March 21, 2023, The District Court issued an Opinion and Order denying the Habeas Petition and denying a Certificate of Appealability (hereinafter "COA") as to all claims for relief. (Apx.C),Ingram v Artis, U.S.District Court for the Eastern District of Michigan, Case No.19-12169,

(ECF No.12, PageID.1810-1830). The District Court's Judgment was issued simultaneously. (Apx.D),Id., (ECF No.13, PageID.1831). Petitioner timely filed a Notice of Appeal. (Apx.F), Id., (ECF No.14, PageID.1832).

On review, Judge Eric Clay of the U.S. Court of Appeals for the Sixth Circuit ("Sixth Circuit") issued an Order denying a COA. (Apx.A),Ingram v Artis, unpublished Order of the Sixth Circuit, Case No 23-1363, August 29, 2023, (Document No. 6). The Sixth Circuit Judgment was issued simultaneously. (Apx.B),Id., (Document No. 7). On November 17, 2023, a panel of Judges of the Sixth Circuit issued an Order denying Petitioner's timely filed Motion for Rehearing. (Apx.E),Id.,(Document No. 11). From this last Order, the Petitioner files the instant Petition for a Writ of Certiorari.

Petitioner was jury tried in Michigan's 31st (St. Clair) Circuit Court. He was convicted of First Degree Premeditated Murder, contrary to MCL 750.316, and Possession of a Felony in the Commission of a Felony, contrary to MCL 750.227b. The complete jury charge is attached. (Apx.N). He was sentenced to consecutive non-paroleable prison terms of two years followed by life in prison. He remains incarcerated.

On direct appeal, Mr. Ingram's case was affirmed in all respects by the Michigan Court of Appeals (hereinafter "MCOA"). (Apx.G), People v Ingram, per curiam opinion, 2014 WL 2538495, Case No. 315078 (MCOA, June 5, 2014), Ingram v Artis, E.D. Michigan, Case 5:19-cv-12169-JEL-RSW, (ECF No. 7-19, PageID.1302-1307). On April 28, 2015, the Michigan

Supreme Court (hereinafter: "MSC") issued a standard form Order denying Petitioner's timely filed Application for Leave to Appeal. (Apx.H) People v Ingram, 497 Mich 1010, 861 NW2d 891 (MSC No. 149676, 2015), Ingram v Artis, E.D.Michigan, Case 5:19-cv-12169-JEL-RSW, (ECF No.7-20, PageID.1424). The issues raised in the direct appeal were not addressed in Mr. Ingram's habeas petition, and are not addressed in the instant Petition.

On June 19, 2017, the St. Clair Circuit Court issued an Opinion and Order denying in full Petitioner's Motion for Relief From Judgment and Motion for Evidentiary Hearing. (Apx.I). Ingram v Artis, E.D.Michigan, Case 5:19-cv-12169-JEL-RSW, (ECF No.7-16, PageID.1266-1269). On August 30, 2017, the St. Clair Circuit Court issued an Order denying Mr. Ingram's timely filed Motion for Reconsideration of Opinion and Order Denying Mr. Ingram's Motion for Relief from Judgment. (Apx.J), Ingram v Artis, E.D. Michigan, Case 5:19-cv-12169-JEL-RSW, (ECF No. 7-18, PageID.1300-1301).

On August 1, 2018, the MCOA issued a standard form Order denying Mr. Ingram's timely filed application for leave to appeal from the circuit court's denial of his Motion for Relief From Judgment. (Apx.K), People v Ingram, No.342589, (MCOA, August 1, 2018), Ingram v Artis, E.D. Michigan, Case 5:19-cv-12169-JEL-RSW, (ECF No.7-21, PageID.1491).

On April 30, 2019, the Michigan Supreme Court issued a standard form Order denying Mr. Ingram's timely filed application for leave to appeal from the MCOA Order. (Apx.L) People v Ingram, 503 Mich 1018,

925 NW2d 859 (2019), Ingram v Artis, E.D.Michigan, Case 5:19-cv-12169-JEL-RSW, (ECF No.7-22, PageID.1619). The Michigan Supreme Court subsequently issued an order denying Mr. Ingram's timely filed Motion for Reconsideration of the Michigan Supreme Court order. (Apx.M), People v Ingram, 504 Mich 960 (2019), Ingram v Artis, E.D. Michigan, Case 5:19-cv-12169-JEL-RSW, (ECF No.7-22, PageID.1763).

Summary of Relevant Facts

The Sixth Circuit Order which denied Mr. Ingram a certificate of appealability summarized the facts of the case:

> A jury found Ingram guilty of first-degree murder and possessing a firearm during the commission of a felony. The convictions arose from an incident in which Ingram engaged in a verbal confrontation with several men near his apartment, then shot one of them to death. Ingram claimed that he shot the man because he feared for the safety of himself and his family when the man entered his apartment.

(Apx. A). Ingram v Artis, Order of the Sixth Circuit, Case No 23-1363, August 29, 2023, p. 1, (Document No. 6).

The testimony at trial established the following. Mr. Ingram and his girlfriend returned to their apartment in the early morning hours of June 15, 2012. After they had entered the apartment, the girlfriend remembered she had left something in the car. When she went to the car, one of a group of three men in the parking lot made a sexual remark to her. When she returned to the

apartment, she told Mr. Ingram what had been said. Mr. Ingram got upset. Ingram v Artis, Case 5:19-cv-12169-JEL-RSW, (ECF No.7-04, PageID.613-615, 619-622, 636-638), (transcript of November 28, at 476-478, 482-485, 499-501). /1/

> /1/ Mr. Ingram's jury trial lasted five days, November 27, 28, 29, 30, and December 4, 2012. The transcripts for these five days were marked Volumes I through V. People v Cidney Ingram, St. Clair Circuit Case No. 12-1654. The citations to the trial record used herein are taken from the trial transcripts which are part of the Rule 5 materials submitted by the Michigan Attorney General to the Federal District Court which presided over the Habeas Corpus proceedings. The Rule 5 materials are identified as Document 7 in the District Court's Register of Actions for this case. Ingram v Artis, E.D. Michigan, Case 5:19-cv-12169-JEL-RSW, (ECF Nos. 7-03--7-07, PageID.305-1070, Filed 09/20/2020). Citations to the transcripts filed as part of the Rule 5 materials will be used in this Petition. The trial transcripts were designated sequentially in the Rule 5 materials, so that the first day of trial was designated as ECF No. 7-03 and the fifth day was designated as ECF No. 7-07.

Mr. Ingram then went to the door of the apartment and got into an argument with the three men outside, and asked them to leave. Two of the men in the parking lot walked towards the porch and the door of the apartment. Mr. Ingram then obtained possession of a shotgun and returned to the door. (ECF No.7-04,

PageID.639-645), (November 28, at 502-508); (ECF No.7-05, PageID.714)(November 29, 2012, at 577). One of the two men coming towards the door was the decedent, who suddenly ran up on the porch. Ingram v Artis, Case 5:19-cv-12169-JEL-RSW, (ECF No.7-03, PageID.348, 349, 352) (November 27, at 176, 178, 192). The third man agreed that the decedent stepped up on the porch, and might have reached into his own waistband as he did so. (ECF No.7-04, PageID.406, 434, 446-451)(November 28, at 269, 297, 309-314).

Mr. Ingram's girlfriend testified that Mr. Ingram asked the decedent and his friends to "please leave," but the decedent was obviously intent on entering the home even after Mr. Ingram racked the shotgun. (ECF No.7-05, PageID.699-706, 714)(November 29, at 562-569, 577).All witnesses agreed that the decedent was on the porch when shots were fired, and Mr. Ingram was either inside the apartment, or was on the porch. (ECF No.7-03, PageID.341-342, 348-350)(November 27, at 148-150, 176-177, 180-181); (ECF No.7-04, PageID.397-399, 403-410, 647-656)(November 28, at 260-262, 266-273, 510-519); (ECF No.7-05, PageID.705)(November 29, at 568); (ECF No.7-07, PageID.965-968)(December 4, at 828-831).

Mr. Ingram fired a warning shot through the apartment door, but the decedent kept coming. (ECF No.7-04, PageID.643, 649, 670)(November 28, at 506, 512, 533); (ECF No.7-05, PageID.701)(November 29, at 564). Mr. Ingram then fired two more shots, which hit the decedent, who fell three or four feet from Mr. Ingram. (ECF No.7-05, PageID.707)(November 29, at 570).

A disinterested neighbor testified that one of the men who had been with the decedent bent over the body of the decedent for a few minutes and then ran off. (ECF No.7-03, PageID.342)(November 27, at 151-152). Both men who had been with the decedent denied taking a gun off his person after he was shot. (ECF No.7-03, PageID.350)(November 27, at 183); (ECF No.7-04, PageID.414)(November 28, at 277).

A Police Officer confirmed that there was a shotgun blast that went through the door of Mr. Ingram's home, (ECF No.7-05, PageID.805)(November 29, at 668), supporting the testimony of Mr. Ingram and his girlfriend that he fired a warning shot through the door before shooting in the direction of the decedent.

The Medical Examiner testified that two shotgun rounds hit the decedent, one from the front (fired from within two to five feet), and one from the back (fired from within three to six feet). It could not be determined from the autopsy which shot hit the decedent first, but they would have come in close succession. It would have been possible for the decedent to have made some purposeful movement after being hit with the first shot, but he would have fallen near where he was shot. (ECF No.7-06, PageID.907, 911, 924-926)(November 30, at 770, 774, 787-789).

Mr. Ingram and his girlfriend testified that he first went to the door without the gun and got into an argument with the men outside. He then asked them to leave. (ECF No.7-04, PageID.641, 644)(November 28, at 504, 507); (ECF No.7-05, PageID.699)(November 29, at

562); (ECF No.7-07, PageID.964-966)(December 4, at 827-829).

Mr. Ingram testified that he fired a warning shot, but the decedent kept coming towards him and the apartment. The decedent actually stepped inside the door of the apartment before Mr. Ingram fired at him. (ECF No.7-07, PageID.966-967)(December 4, at 829-830). Mr. Ingram testified that at the time he fired the gun at the decedent, he reasonably and honestly feared that the decedent intended to enter the apartment to harm him or the other occupants. (ECF No.7-07, PageID.969)(December 4, at 832).

Further proceedings and facts will be discussed as necessary, infra.

SUMMARY OF ARGUMENTS

The Sixth Circuit Order summarized Mr. Ingram's claims for relief:

> Ingram filed a § 2254 petition, claiming that his trial counsel rendered ineffective assistance by (1) not objecting when the trial court instructed the jury that Ingram had a duty to retreat, (2) not requesting a jury instruction that Ingram's porch was part of his home from which he had no duty to retreat, and (3) not requesting a jury instruction setting forth the elements of breaking and entering and home invasion, which were relevant to his claims of self-defense and defense of others. Ingram also claimed that his appellate counsel rendered ineffective assistance by failing to raise on direct appeal his issues concerning the jury instructions and trial

> counsel's ineffectiveness. The district court denied the petition on the merits and declined to issue a certificate of appealability.

(Apx.A), Ingram v Artis, Order of the Sixth Circuit, Case No 23-1363, August 29, 2023, pp. 1-2, (Document No. 6).

Mr. Ingram contends that reasonable jurists would find the District Court's decision to deny his Petition for a Writ of Habeas Corpus was either "debatable or wrong," or that "the issues presented are adequate to deserve encouragement to proceed further." Miller-El v Cockrell, 537 U.S. 322, 327, 338 (2003), quoting Slack v McDaniel, 529 U.S. 473, 484 (2000). Mr. Ingram contends that his trial attorney was constitutionally ineffective by failing to request the trial court to give appropriate instructions relating to his defense of self-defense, and by failing to object to inappropriate instructions, depriving Mr. Ingram of his right to the effective assistance of counsel and his right to due process of law. U.S. Const., Ams. V, VI, XIV. The following issues qualify for a certificate of appealability:

Issue I. Where, in a case where Mr. Ingram was asserting a defense of self-defense, and in which all witnesses testified that Mr. Ingram was either inside the home, or on the porch, when he fired two gunshots at the decedent, Mr. Ingram's trial attorney was prejudicially ineffective in failing to request a jury instruction that the porch is, under Michigan law, considered part of the house from which Mr. Ingram did not have a duty to retreat.

Issue II. Where, in a case where Mr. Ingram was asserting a defense of self-defense, and in which all witnesses testified that Mr. Ingram was either inside the home, or on the porch, when he fired two gunshots at the decedent, Mr. Ingram's trial attorney was prejudicially ineffective in failing to object to a jury instruction that it was the duty of the jury to determine whether or not Mr. Ingram had a duty to retreat; and in failing to request a jury instruction that Mr. Ingram had no duty to retreat under the facts of this case.

Issue III. Where, in a case where Mr. Ingram was asserting a defense of self-defense, Mr. Ingram's trial attorney was prejudicially ineffective in failing to request a jury instruction which, for purposes of explaining the duty to retreat, defined the offense of Home Invasion as an offense that included the element of "Entering" which could be established under Michigan law by the entry of any part of a person's body into the dwelling, where the commission of this offense by the decedent created a presumption that Mr. Ingram was acting out of fear of death or great bodily harm when he fired two gunshots at the decedent.

Issue IV. Mr. Ingram contends that reasonable jurists would conclude that he has met the requirements for the issuance of the Writ by demonstrating that his trial attorney was prejudicially ineffective with respect to the above jury instruction issues, and, as a result, the jury was unable to fully and accurately consider Mr. Ingram's defense of self defense, which resulted in actual prejudice to his right to a fair trial; and that Mr. Ingram's first appellate attorney was prejudicially ineffective by failing to raise

the meritorious jury instruction issues in this case, making it impossible for the Michigan appellate courts to properly consider whether Mr. Ingram received a fair trial.

ARGUMENTS

I. A CERTIFICATE OF APPEALABILITY (COA) SHOULD BE ISSUED WHERE THE DISTRICT COURT DECIDED THAT TRIAL COUNSEL'S FAILURE TO REQUEST A JURY INSTRUCTION THAT DEFINED THE PORCH, CONSISTENT WITH MICHIGAN LAW, AS PART OF THE HOME FROM WHICH MR INGRAM HAD NO DUTY TO RETREAT, DID NOT DEPRIVE PETITIONER OF EFFECTIVE ASSISTANCE OF COUNSEL, OR DUE PROCESS; REASONABLE JURISTS WOULD FIND THIS HOLDING TO BE DEBATABLE, OR WOULD FIND THAT THIS ISSUE DESERVES ENCOURAGEMENT TO PROCEED FURTHER.

A Certificate of Appealability (hereinafter "COA"), should issue in this case because the Habeas Petition presented one or more claims as to which "reasonable jurists would find the District Court's assessment of the constitutional claims debatable or wrong," or where "the issues presented are adequate to deserve encouragement to proceed further." Miller-El v Cockrell, 537 U.S. 322, 327, 338, 123 SCt 1029, 154 LEd2d 931 (2003), quoting Slack v McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

This standard, which requires only that the claim be "debatable," does

> ….. not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.

Miller-El, supra, at 338.

Under these standards, the district court's denial of relief on the issues addressed in this appeal must be seen as being at least "debatable," and a certificate of appealability should therefore be issued. Mr. Ingram requests that the Court grant Certiorari, and remand this matter to the Sixth Circuit for issuance of a COA and review on the merits, with respect to some or all of the issues described herein.

The issues as to which the district court denied a certificate of appealability are described in the following four sections of this petition.

It will be easier to follow Mr. Ingram's arguments in this case if this Court first reviews the issue that the Sixth Circuit Order denying a certificate of appealability addressed second. The Sixth Circuit Order stated as follows in this regard:

> Ingram next claimed that his trial counsel rendered ineffective assistance by not requesting a jury instruction that Ingram's porch was part of his home from which he had no duty to

> retreat. Reasonable jurists would not debate the district court's determination that the state courts reasonably rejected this claim because Ingram has not shown prejudice resulting from counsel's alleged error. It is unlikely that giving the additional instruction would have affected the jury's verdict because the instructions that were given effectively informed the jury that Ingram was not required to retreat.

(Apx. A). Ingram v Artis, unpublished Order of the Sixth Circuit, Case No 23 -1363, August 29, 2023, Document No. 6, pp. 2-3.

The court's statement that the jury instructions "effectively informed the jury that Ingram was not required to retreat" is incorrect. In fact, the instructions informed the jury that it was up to them to decide if Mr. Ingram had a duty to retreat or not, and the instructions failed to give the jury the information it would necessarily need to make such a determination.

In the leading case of Bollenback v United States, 326 US 607, 613-614, 66 S Ct 402, 90 Led 350 (1946), this court proclaimed that the trial judge has a legal duty to guide the jury with clear instructions. In this case, the jury was not provided accurate instructions on the Duty to Retreat.

Mr. Ingram had a constitutional right to present to the jury any defense which was supported by the evidence, and he was entitled to jury instructions that accurately defined any such defense. Matthews v United States, 485 U.S. 58, 63-64,108 S. Ct. 883, 99 L.

Ed.2d 54 (1988). Even if the supporting evidence was weak, which it was not in this case, he was entitled to accurate instructions on his defense. United States v Newcomb, 6 F.3d 1129 (6th Cir 1993).

In this case, Mr. Ingram relied exclusively on the defense of self-defense, which generally includes a duty to retreat if a person can safely do so. But Michigan has long accepted the "castle doctrine" which holds that a person does not have a duty to retreat if he/she is being attacked in his home. But the "castle doctrine" contains the question: what constitutes the part of the home from which there is no duty to retreat? Both the Michigan Supreme Court and the Michigan Court of Appeals have unequivocally answered this question with respect to a porch: the porch is part of the home from which there is no duty to retreat. People v Riddle, 467 Mich 116, 138; 649 NW2d 30 (2002); People v Canales, 243 Mich App 571, 574; 624 NW2d 439, 441-442 (2000) Lv. Den. Therefore, it was essential for the jury in Mr. Ingram's case to be instructed that the porch of the home is considered part of the "castle" from which Mr. Ingram had no duty to retreat, under any circumstances.

But the jury instructions which addressed the duty to retreat in this case instead said:

> A person can use deadly force in self-defense only where it is necessary to do so. If the Defendant could have safely retreated but did not do so, you may consider that fact in deciding whether the Defendant honestly and reasonably believed he needed to use deadly force in self-defense.

> However, a person is never to retreat if attacked in his own home, nor if the person believes that an attacker is about to use a deadly weapon, nor if the person is subject to a sudden, fierce, and violent attack.
>
> Further, a person is not required to retreat if the person has not or is not engaged in the commission of a crime at the time that the deadly force is used, and has a legal right to be where the person is at that time, and has an honest and reasonable belief that the use of deadly force is necessary to prevent imminent death or great bodily harm to the person or another.

(Apx. N), Ingram v Artis, E.D. Michigan, Case 5:19-cv-12169-JEL-RSW, (ECF No.7-07, PageID.1054-1055); People v Cidney Ingram, St. Clair Circuit Case No. 12-1654, December 4, 2012, pp. 917-918.

This instruction that was given was based on MI CJI2d, 7.16. But defense counsel failed to request the trial court to instruct the jury that the porch was part of the home from which Mr. Ingram had no duty to retreat. And the trial court never instructed the jury that the porch was part of the home from which there was no duty to retreat. A plain reading of the instructions given does not indicate in any way that the porch is part of the house from which a person is not required to retreat. (Apx. N is the complete jury charge).

Every witness who testified to having seen the shooting testified that Mr. Ingram was either inside

the house or was on the porch when he fired the shots that killed the decedent. Witness John Collins (shots fired from inside the apartment), Ingram v Artis, Case 5:19-cv-12169-JEL-RSW, (ECF No. 7-03, PageID.342)(November 27, 2012, at 150); Witness Antonio Billy (Decedent ran up on the porch and gunshots came from inside), Ingram v Artis, Case 5:19-cv-12169-JEL-RSW, (ECF No. 7-03, PageID.348-349, 349-350)(November 27, 2012, at 176-177, 180-181); Witness Detrik Diggins (Said there were two shots; the first shot came from inside the dwelling; second shot was fired by Mr. Ingram after he stepped out of the apartment onto the porch), Ingram v Artis, Case 5:19-cv-12169-JEL-RSW, (ECF No. 7-04, PageID.403-410)(November 28, 2012, at 266-273); Witness Alicia Belcher (Mr. Ingram's girlfriend) (shots fired from inside the house), Ingram v Artis, Case 5:19-cv-12169-JEL-RSW, (ECF No. 7-04, PageID.647-656)(November 28, 2012, at 510-519); Mr. Ingram's testimony (Mr. Ingram was inside the apartment when he fired all three shots) Case 5:19-cv-12169-JEL-RSW, (ECF No. 7-07, PageID.965-968) (December 4, 2012, at 828-831).

It cannot be reasonably assumed that the jury would know that the porch is part of the home from which there is no duty to retreat, especially in light of the trial prosecutor's continuing argument that Mr. Ingram must have been outside the house when he fired the gun. The prosecutor intentionally confused the jury on this crucial point in her closing argument, to make it seem that if the jury decided that Mr. Ingram was on the porch, he had a duty to retreat. The prosecutor repeatedly emphasized her contention that

Mr. Ingram was outside at the time he fired the shotgun. She argued:

> Now there's no dispute, ladies and gentlemen, you have no duty to retreat in your house, but this Defendant's own actions are the reason why we're here today. Not because of Jason Williams. Because if that Defendant would have just kept the door shut after the first go around, the first exchange, Jason Williams would be here today.
> (Case 5:19-cv-12169-JEL-RSW, ECF No. 7-07, PageID.1008) (Trial Transcript, Vol 5, page 871).
>
> If he's such -- in such fear that he needs to protect himself with a 20 gauge pump shotgun, why did he leave the door open? Why didn't he just let it go? Because he can't.
> (Case 5:19-cv-12169-JEL-RSW, ECF No. 7-07, PageID.1013-1014)(Trial Transcript, Vol 5, pages 876-77).
>
> Physical evidence, ladies and gentlemen, can't lie. That Defendant was not inside his house when he pulled the trigger and shot and killed Jason Williams. There's no physical way that could have happened. It's not going to bounce off the furniture here, come around to the door and land on the ground. How's that possible? It's not.
> (Case 5:19-cv-12169-JEL-RSW, ECF No. 7-07, PageID.1016) (Trial Transcript, Vol 5, page 879).
>
> The only thing that makes sense in this case, ladies and gentlemen, is that this Defendant was angry that Jason Williams disrespected him

> and he shot him. Dead. Not because Jason Williams is coming in his house, but because Jason Williams might have been walking up to the door. This Defendant walked right outside. (Case 5:19-cv-12169-JEL-RSW, ECF No. 7-07, PageID.1017-1018) (Trial Transcript, Vol 5, pages 880-881).
>
> Look at the physical evidence, ladies and gentlemen. Look at where those cartridges are at. If those cartridges eject to the right, that Defendant is walking out of the -- his house, period. That's what the physical evidence shows. It doesn't lie. It speaks for itself, ladies and gentlemen. It speaks for itself.
> (Case 5:19-cv-12169-JEL-RSW, ECF No. 7-07, PageID.1034) (Trial Transcript, Vol 5, page 897).

The trial prosecutor, who obviously knows that the court is not going to instruct the jury that the porch is part of the house from which Mr. Ingram had no duty to retreat, is deceptively communicating to the jury that if Mr. Ingram had remained in the house, he would not have had a duty to retreat, but since he went outside (onto the porch) he had a duty to retreat. The prosecutor misled the jury to believe that Mr. Ingram had a duty to retreat if he was outside, on the porch, and the jury instructions, as given, did not contradict this erroneous argument.

The only place Mr. Ingram could have been if he stepped outside was on the porch, from which he had no duty to retreat. The prosecutor argued in a way to mislead the jury, in conjunction with the inadequate jury instructions, into believing that Mr. Ingram did

not have a duty to retreat once he stepped out onto the porch.

The trial defense attorney never informed the jury that Mr. Ingram had no duty to retreat if he was on the porch. (Case 5:19-cv-12169-JEL-RSW, ECF No. 7-07, PageID.1018-1033) (Trial Transcript, Vol 5, pages 881-896). The fact that trial counsel never argued that Mr. Ingram had no duty to retreat if he was on the porch, and did not ask for the jury to be instructed that if Mr. Ingram was on the porch he had no duty to retreat, strongly suggests that trial counsel was not aware of the Michigan case law that firmly holds that the porch is part of the home from which there is no duty to retreat. And if trial counsel is not aware of the law, how can it reasonably be assumed that the jury is aware of it?

Trial counsel's failure to request a jury instruction that the porch was a part of the home from which Mr. Ingram had no duty to retreat left an opening in the case for the trial prosecutor to make the misleading argument that if Mr. Ingram fired one or more shots while on the porch, he cannot claim self-defense, because if he was on the porch, he had a duty to retreat back inside his home and close the door, in which case he would not have had any reason to fire his weapon at the decedent. Based on this misleading argument, the prosecutor hoped to convince the jury that because Mr. Ingram must have been on the porch when he fired his weapon, he failed to retreat and therefore the defense of self-defense was not available to him.

Here, trial counsel's failure to request an adequate jury instruction on Mr. Ingram's defense of self-

defense, and the trial court's failure to adequately instruct the jury on the duty to retreat violated Mr. Ingram's constitutional right to present his defense of self-defense. Here, the inadequate instruction on the issue of self-defense was both erroneous, and, taken as a whole, the instructions had a substantial and injurious effect or influence on the verdict such that they rendered Mr. Ingram's trial fundamentally unfair. Waddington v Sarausad, 555 U.S. 179, 831-832, 129 SCt. 823, 172 LEd2d 532 (2009).

A persuasive precedent is the similar case of Barker v Yukins, 199 F.3d 867 (6th Cir 1999). In that case, the Michigan Supreme Court had found that the instructions which had been given on self-defense were erroneous, but found the error harmless. The Sixth Circuit reversed, and ordered the Writ granted, stating:

> This panel also finds that the Michigan Supreme Court's finding of harmless error in this matter substantially impaired Petitioner's due process right to present a full defense. The Supreme Court has stated that "[w]e have long interpreted this standard of [fundamental] fairness [guaranteed by the Sixth Amendment and the Due Process Clause] to require that criminal defendants be afforded a meaningful opportunity to present a complete defense." California v. Trombetta, 467 U.S. 479, 485, 104 SCt 2528, 81 LEd2d 413 (1984) ….

Barker, supra, at 875 (emphasis in original).

Further, Mr. Ingram's first appellate counsel committed a seriously deficient performance in failing to raise this issue in Mr. Ingram's appeal of right. This issue presented herein is a "dead-bang winner," which appellate counsel failed to raise, while presenting weaker issues instead, which were unsuccessful.

Trial counsel's failure to request a jury instruction that the porch was part of the house from which Mr. Ingram had no duty to retreat was a prejudicial, deficient performance that very likely influenced the jury to decide that Mr. Ingram fired the fatal shots while standing on the porch, and therefore he had a duty to retreat, which he should have done instead of firing at the decedent. This explains why the jury rejected the defense of self-defense, and convicted Mr. Ingram of First Degree Murder. This issue is such that reasonable jurists would clearly find the district court's assessment of Mr. Ingram's constitutional claim debatable. Therefore, this case should be remanded to the Circuit Court with instructions that a certificate of appealability should be issued.

II. A COA SHOULD BE ISSUED WHERE THE DISTRICT COURT DECIDED THAT TRIAL COUNSEL'S FAILURE TO OBJECT TO A JURY INSTRUCTION THAT IT WAS FOR THE JURY TO DECIDE WHETHER MR. INGRAM HAD A DUTY TO RETREAT; AND FAILURE TO REQUEST A JURY INSTRUCTION THAT, IN LIGHT OF THE UNDISPUTED EVIDENCE IN THIS CASE, MR. INGRAM HAD NO DUTY TO RETREAT; DID NOT DEPRIVE PETITIONER OF EFFECTIVE ASSISTANCE OF COUNSEL, OR DUE PROCESS; REASONABLE JURISTS WOULD FIND THESE HOLDINGS TO BE DEBATABLE, OR WOULD FIND THAT THESE ISSUES DESERVE ENCOURAGEMENT TO PROCEED FURTHER.

Mr. Ingram's trial attorney also rendered ineffective assistance of counsel by failing to object to the trial court's instructing the jury that it was for the jury to decide whether or not Mr. Ingram had a duty to retreat; and failing to request an instruction that, because of the undisputed facts in this case, Mr. Ingram did not have a duty to retreat. The Sixth Circuit Order denying Mr. Ingram a Certificate of Appealability addressed these issues first, as follows:

> Ingram first claimed that his trial counsel rendered ineffective assistance by not objecting when the trial court instructed the jury that Ingram had a duty to retreat because he was not

> required to retreat from his home or porch under Michigan law. Reasonable jurists would not debate the district court's determination that the state courts reasonably rejected this claim because the trial court did not instruct the jury that Ingram had a duty to retreat. Instead, the court instructed the jury that Ingram was not required to retreat in various circumstances, including if he was attacked in his own home or if he had a legal right to be where he was and he had not and was not engaged in the commission of a crime at the time deadly force was used. Thus, Ingram has not shown prejudice resulting from counsel's alleged error.

(Apx. A). Ingram v Artis, unpublished Order of the Sixth Circuit, Case No 23-1363, August 29, 2023, Document No. 6, p. 2.

Mr. Ingram contends that this statement misconstrues the argument he has made in his Petition. The accurate issues here are that trial counsel rendered ineffective assistance of counsel by failing to object to a jury instruction that informed the jury that it was for them to decide if Mr. Ingram had a duty to retreat; and by failing to request a jury instruction that, based on the undisputed evidence at trial, Mr. Ingram did not have a duty to retreat.

The instructions given the jury regarding self-defense and the duty to retreat are set forth in Issue I, supra, at pp. 18-19. (The complete jury charge is attached as Apx. N).

These instructions did not adequately instruct the jury as to the law of self defense applicable to this case. Under the facts of this case, Mr. Ingram had no duty to retreat no matter which testimony the jury accepted. As set forth in detail in Issue I, supra, every single witness agreed that, at the time he fired the shotgun, Mr. Ingram was either inside his dwelling, or on the porch As set forth, supra, for purposes of the law of self-defense in Michigan, the porch is considered part of Mr. Ingram's "castle" from which he had no duty to retreat. So Mr. Ingram had no duty to retreat under Michigan law, no matter which testimony was accepted by the jury, and the jury should have been so instructed. But the jury instructions, as set forth above, left the issue of a duty to retreat open for the jury to decide.

The trial court first told the jury that Mr. Ingram had a duty to retreat if he could have safely done so. The instruction then goes onto say that he does not have to retreat if he is in his home. But the scope of the "home" was never defined for the jury. Importantly, as argued in Issue I, supra, the jury was never told that the porch is considered part of the home for purposes of the duty to retreat.

It was constitutional error to tell the jury that Mr. Ingram had a duty to retreat if he could have safely done so. Trial counsel should have requested that the jury be instructed that, under the undisputed facts of this case, Mr. Ingram had no duty to retreat. The jury instruction on the duty to retreat was constitutionally erroneous because it informed the jury that whether Mr. Ingram had a duty to retreat was an issue for the

jury to decide. Logically, the jury would have looked at this issue as a decision based on its decision on where Mr. Ingram was located when he fired the fatal shots; whether he was inside his home or on the porch. And logically the jury accepted the prosecutor's argument that Mr. Ingram was on the porch when he fired. Therefore, the jury decided that he had no duty to retreat, because it was never told that he had no duty to retreat if he was on the porch. In light of the evidence that was presented at trial, this instruction on duty to retreat was error. Since there was no evidence placing Mr. Ingram in a location from which he had a duty to retreat, it was legal error to instruct the jury that it was for it to decide whether or not Mr. Ingram had a duty to retreat. This was especially true since the jury was never instructed that the porch is legally considered part of the dwelling from which there is no duty to retreat.

The jury instructions as given did not contradict the argument implied by the prosecutor that Mr. Ingram had a duty to retreat if he was on the porch when he fired his weapon. The prosecutor's argument effectively told the jury that it had to decide if Mr. Ingram was inside the house or on the porch at the time of he fired his weapon, and, if he was on the porch, he had a duty to retreat. This is contrary to controlling Michigan law. The jury should have been instructed that Mr. Ingram had no duty to retreat under any interpretation of the evidence.

Further, Mr. Ingram's first appellate counsel committed a seriously deficient performance in failing to raise these issues in Mr. Ingram's appeal of right.

These issues are "dead-bang winners," which appellate counsel failed to raise, while presenting weaker issues instead, which were unsuccessful.

Trial counsel's failure to request that the jury be instructed that Mr. Ingram had no duty to retreat no matter where he was standing when he fired his weapon, and the failure to object to the trial court instruction that it was up to the jury to decide if Mr. Ingram had a duty to retreat deprived Mr. Ingram of a fair trial and was constitutional error. These issues are such that reasonable jurists would clearly find the district court's assessment of Mr. Ingram's constitutional claims debatable. Therefore, this case should be remanded to the Circuit Court for the issuance of a certificate of appealability.

III. A COA SHOULD BE GRANTED WHERE THE DISTRICT COURT DECIDED THAT TRIAL COUNSEL'S FAILURE TO REQUEST A JURY INSTRUCTION WHICH, FOR PURPOSES OF EXPLAINING THE DUTY TO RETREAT, DEFINED THE OFFENSE OF HOME INVASION AS AN OFFENSE THAT INCLUDED THE ELEMENT OF "ENTERING," WHICH COULD BE ESTABLISHED BY THE ENTRY OF ANY PART OF A PERSON'S BODY INTO THE DWELLING, DID NOT DEPRIVE PETITIONER OF EFFECTIVE ASSISTANCE OF COUNSEL, OR DUE PROCESS OF LAW; REASONABLE JURISTS WOULD FIND THIS RULING TO BE DEBATABLE, OR WOULD FIND THAT THIS ISSUE DESERVES ENCOURAGEMENT TO PROCEED FURTHER.

The Sixth Circuit Judge's Order denying a certificate of appealability states the following with respect to Mr. Ingram's next issue:

> Ingram next claimed that his trial counsel rendered ineffective assistance by not requesting a jury instruction setting forth the elements of breaking and entering and home invasion, which were relevant to his claims of self-defense and defense of others. Under Michigan law, there is a rebuttable presumption that an individual who uses deadly force has an honest and reasonable belief that imminent death or great bodily harm

will occur if the individual honestly and reasonably believes that the person against whom the force is used is in the process of breaking and entering a dwelling or committing a home invasion or has broken and entered a dwelling or committed a home invasion and is still in the dwelling. See Mich. Comp. Laws § 780.951(1). The trial court instructed the jury about the presumption, but Ingram contended that trial counsel should have requested an additional instruction that putting any part of one's body into a building is sufficient to establish the entry required for breaking and entering and home invasion based on Ingram's testimony that he shot the victim after he stepped into Ingram's home. Reasonable jurists would not debate the district court's determination that the state courts reasonably rejected this claim. Ingram has not shown a reasonable likelihood of a different verdict if the additional instruction was given because (1) he has not identified anything in the record suggesting that the jury was misled about the elements of breaking and entering or home invasion or that the jury concluded that the decedent's alleged entry into Ingram's apartment did not constitute one of those crimes, and (2) there was significant evidence undermining Ingram's testimony that the decedent was entering his home and so close that he was touching the gun when the shooting occurred, including that the cartridges ejected from Ingram's shotgun were in the grass next to the porch and the medical examiner testified

> that the decedent was probably two to six feet from the gun when shot. See Ingram, 2014 WL 2538495, at *2.

(Apx. A). Ingram v Artis, unpublished Order of the Sixth Circuit, Case No 23-1363, August 29, 2023, Document No. 6, pp. 3.

The Sixth Circuit Judge's Order assumes that the jury would know or be able to figure out that the offense home of invasion is completed by the entry of any part of the perpetrator's body into the home. This is not a reasonable conclusion. The average person is going to believe that in order to commit one of these offenses, the perpetrator's whole or a substantial part of his/her body must enter into the home. The fact that under Michigan law the entry of any part of the perpetrator's body into the home is sufficient to establish entry into the home and constitutes the completed offense is good law, but it is not something that the average citizen is going to be aware of unless the judge instructs them on it.

This issue involves the trial court's instruction to the jury regarding the law that there is a presumption regarding fear of death or great bodily harm if the decedent is committing Home Invasion First Degree. MCL 750.110a. The jury was instructed about this presumption as follows:

> If you find that the decedent was breaking and entering a dwelling or business, or committing home invasion, or had broke and entered or committed home invasion and was still present in the dwelling or business, or is

> unlawfully attempting to remove a person from a dwelling, business, or vehicle against the person's will, or the Defendant honestly and reasonably believed the decedent was engaged in any of the conduct just described, then you must presume that the Defendant had an honest and reasonable belief that imminent death or great bodily harm would occur

(Apx. N), Ingram v Artis, E.D. Michigan, Case 5:19-cv-12169-JEL-RSW, (ECF No. 7-7, PageID.1055; People v Cidney Ingram, St. Clair Circuit Case No. 12-1654, December 4, 2012, p. 918.

This instruction was correct as far as it went, but without also being given the elements of Home Invasion First Degree, the jury could not evaluate the application of this instruction. Without the elements of this offense the jury would not have been aware that, according to Mr. Ingram's testimony, the decedent had actually committed this crime by placing his foot inside the premises of Mr. Ingram's apartment. This instruction was appropriately given. However, it was incomplete in the circumstances of this case. Mr. Ingram repeatedly testified that the decedent took a step inside Mr. Ingram's doorstep. (Decedent: "stepped a foot inside my door." The decedent: "Stepped in my house."; The decedent: "steps foot in my house....he stepped a foot right in my house...." Case 5:19-cv-12169-JEL-RSW, (ECF No. 7-07, PageID.967, 969, 985) (transcript of December 4, 2012, at 830, 832, 848). However, the jury was never instructed that the decedent's act of stepping a foot inside Mr. Ingram's door was sufficient to establish the entry requirement

for purposes of Home Invasion. The jury instructions for this offense makes this clear. MI CJI2d 25.2a, parg. (3), reads:

> Second, that the defendant entered the building. It does not matter whether the defendant got his entire body inside. If the defendant put any part of his body into the building after the breaking, that is enough to count as an entry.

But Mr. Ingram's jury had no way of knowing this because it was not instructed with the elements of this offense. While Mr. Ingram contends that the complete instruction of this offense should have been read to the jury, he was severely prejudiced by the failure to inform the jury of paragraph (3), supra. The jury had no way of knowing that, if it credited Mr. Ingram's testimony in this regard, that the decedent had committed the offense of Home Invasion. This finding would have entitled Mr. Ingram to the presumption that he: "had an honest and reasonable belief that imminent death or great bodily harm would occur" if the decedent gained access to the interior of the dwelling.

The Sixth Circuit Order which denied Mr. Ingram a COA did so in part because there is some contrary evidence to Mr. Ingram's testimony on this point. This is not a reason to deny a COA. Mr. Ingram was testifying about the circumstances as they appeared to him. The jury instructions on self-defense correctly informed the jury: "Remember to judge the Defendant's conduct according to how the circumstances appeared to him at the time he acted." (Apx. N), Ingram v Artis,

E.D. Michigan, Case 5:19-cv-12169-JEL-RSW, (ECF No.7-07, PageID.1053); People v Cidney Ingram, St. Clair Circuit Case No. 12-1654, December 4, 2012, pp. 916. The jury could only decide how much weight to give Mr. Ingram's testimony if it had been properly instructed, which it was not.

Mr. Ingram's jury should have been informed that if it found that the decedent had in fact stepped foot inside Mr. Ingram's home just before Mr. Ingram fired the gun, as testified by Mr. Ingram, then the decedent had committed the offense of Home Invasion. The jury was thus never instructed that, if it credited Mr. Ingram's testimony, then he was entitled to the rebuttable presumption that he in fact had an honest and reasonable belief that imminent death or great bodily harm would occur unless he immediately acted to defend himself and his family. Accurate instructions on the issue of self-defense and defense of others were essential for the jury to be able to accurately assess Mr. Ingram's defense to the charged crime of First Degree Murder.

Further, Mr. Ingram's first appellate counsel committed a seriously deficient performance in failing to raise this issue in Mr. Ingram's appeal of right. This issue is a "dead-bang winner," which appellate counsel failed to raise, while presenting weaker issues instead, which were unsuccessful.

This issue is such that reasonable jurists would clearly find the district court's assessment of Mr. Ingram's constitutional claims debatable. Therefore, this case should be remanded to the Circuit Court for the issuance of a certificate of appealability.

IV. A COA SHOULD BE GRANTED WHERE THE DISTRICT COURT DECIDED THAT PETITIONER FAILED TO MEET THE REQUIREMENTS FOR THE ISSUANCE OF THE WRIT, BY FAILING TO DEMONSTRATE THAT BOTH HIS TRIAL ATTORNEY AND HIS FIRST APPELLATE ATTORNEY WERE INEFFECTIVE, AND AS A RESULT, HE FAILED TO SHOW HE SUFFERED ACTUAL PREJUDICE; REASONABLE JURISTS WOULD FIND THIS RULING TO BE DEBATABLE, OR WOULD FIND THE ISSUE RAISED HEREIN TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER.

Finally, the Sixth Circuit Judge's Order states the following with respect to Mr. Ingram's contention that his first appellate attorney rendered ineffective assistance:

> Finally, Ingram claimed that his appellate counsel rendered ineffective assistance by failing to raise on direct appeal his issues concerning the jury instructions and trial counsel's ineffectiveness. Reasonable jurists would not debate the district court's determination that the state courts reasonably rejected these claims because, for the reasons discussed, Ingram has not shown prejudice resulting from counsel's alleged errors. (citations omitted).

Clerk's Order (Case: 23-1363, Document 6, Filed: 8/29/2023, Page: 4).

Mr. Ingram contends that a jury properly instructed on the Michigan law of self-defense and the duty to retreat, would have been able to properly evaluate his self-defense claim. In light of the instructions given, the jury could not do this. Thus, appellate counsel's failure to raise the issues addressed herein in the direct appeal was constitutionally deficient representation. This issue is such that reasonable jurists would clearly find the district court's assessment of Mr. Ingram's constitutional claims debatable. Therefore, this case should be remanded to the Circuit Court for the issuance of a certificate of appealability.

CONCLUSION

WHEREFORE, for the reasons stated above, the Petition for a Writ of Certiorari should be granted; this matter should be remanded to the Sixth Circuit with instructions to issue a Certificate of Appealability with respect to all or some of the issues raised in original Petition for a Writ of Habeas Corpus, and to then consider those issues on the merits.

Respectfully submitted,

John F. Royal
Counsel of Record
P.O. Box 393
Boyne City, MI 49712
Phone: (313) 962-3738
E-mail: jfroyal2000@gmail.com

Counsel for Petitioner

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