

24-5527
NO.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2024

ADRIAN MAHDEE AKRAM

Petitioner,

v.

JAMES CORRIGAN, WARDEN

Respondent,

Supreme Court, U.S.
FILED

SEP - 3 2024

OFFICE OF THE CLERK

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

PETITION FOR WRIT OF CERTIORARI

Adrian Mahdee Akram No. 488831

Petitioner in Pro. Per.

Chippewa Correctional Facility

4269 West M-80

Kincheloe, Michigan 49784

QUESTIONS PRESENTED FOR REVIEW

- 1.) Does Petitioner Adrian Akram's conviction rest on a violation of his Sixth Amendment rights announced in Strickland v. Washington? Where he was deprived of his constitutional right to trial counsel's duty to a complete and thorough investigation or to give a reasonable explanation why he did not? (A) and (B) Counsel's duty to present the available alibi evidence to substantiate petitioner's affirmative time line alibi defense after telling the jury he would present that evidence, where trial counsel gave no reasonable explanation why he did not present that evidence?
- 2.) Where there is no evidence in the record what so ever trial counsel did any investigation into Adonis Akram, does placing his name on the alibi notice/witness list constitute Strickland standard "complete" and "thorough investigation"?
- 3.) Where there is no evidence in the record, that during petitioner's third and final trial, defense counsel presented any of the available evidence, by any witness, including Rachel Akram, that petitioner was seen at the viewing services at the Swanson Funeral Home at 5:30 thru 5:40pm the time of Orlando Miller's shooting, does not presenting the available evidence constitute a violation of Strickland effective assistance of Counsel obligations? Where defense counsel himself told the jury he did not present any witness claiming to have seen petitioner there at the time of the murder, does this evidence contradict the United States Court of Appeals decision?
- 4.) Should the "Law of the Case" doctrine have Constitutional Protections?
- 5.) Does the "New Standard" set by the Sixth Circuit Court of Appeals, for No longer needing to interview witnesses for the defense, as long as defense counsel places their names on the notice of alibi comply with Strickland?

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PETITION FOR WRIT OF CERTIORARI

Petitioner ADRIAN MAHDEE AKRAM respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINION BELOW

The unpublished decision of the United States Court of Appeals for the Sixth Circuit affirming the denial of habeas relief is reported at Appendix A. The unpublished decision of the United States District Court for the Eastern District of Michigan denying habeas relief is reported at Appendix B. The order of the Michigan Supreme Court denying Petitioner's application for leave to appeal is published at 499 Mich. 861 and is reproduced at Appendix C. The published order of the Michigan Court of Appeals denying relief on direct review reproduced at Appendix D. The order of the Michigan Supreme Court denying leave to Appeal from the States appeals is unpublished at Appendix E. The order of the Michigan Court of Appeals remanding for an evidentiary hearing is unpublished at Appendix F. The order of the Michigan Court of Appeals granting a new trial is unpublished at Appendix G. The (Michigan) Wayne County Circuit Court's unpublished order denying Petitioner's Motion for New Trial is reproduced at Appendix H.

JURISDICTION

The Sixth Circuit Court of Appeals affirmed the Eastern District of Michigan's denial of the Petitioner's habeas petition on June 4, 2024. This Court has jurisdiction under 28 U.S.C. §1254 (1). The Sixth Circuit had jurisdiction under 28 U.S.C. had jurisdiction under 28 U.S.C. §2253 (c). The District Court had jurisdiction over the final judgment of the Michigan Supreme Court under 28 U.S.C. §2254.

Constitutional Provisions Involved

United States Constitution, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial, and public trial, by an impartial jury of the State and District wherein the crime shall have previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness 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, Amendment XIV:

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 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 law.

STATEMENT OF THE CASE

To obtain habeas relief for ineffective assistance of counsel, a petitioner must show that the state court's decision was contrary to, or an unreasonable application of, Supreme Court precedent, namely, Strickland v. Washington, 466 U.S. 668, 104 S.Ct 2052, 80 L.Ed.2d 674 (1984)." This Honorable Court made clear in Strickland, 466 U.S. at 690-691, then reaffirmed in Wiggins v. Smith, 539 U.S. 510, 521-522, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003), that the Sixth Amendment of the United States Constitution guarantees, that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." That this duty is not arbitrary. When trial counsel does not "complete" a "thorough investigation", a reasonable explanation why he did not complete the necessary investigation is required. Strickland 466 U.S. at 690-691; and Wiggins 539 U.S. at 521-522. This duty to investigate "includes the obligation to investigate all witnesses who may have information concerning his or her client's guilt or innocence."

Also, in Strickland, this Honorable and Wise Court understood and made clear that "a particular decision not to investigate must be assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Strickland, 466 U.S. at 691. "The relevant question is not whether counsel's choices were strategic, but whether they were reasonable." Roe v. Flores-Ortega, 528 U.S. 470, 481, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000). "A purported strategic decision is not objectively reasonable 'when the Attorney has failed to investigate his options and make reasonable choice between them.'"

The strickland test has two prongs: performance and prejudice. Applying the performance prong, a reviewing court must determine whether an attorney's performance failed to meet the constitutional minimum. See Hinton v. Alabama, 571 U.S. 263, 273, 134 S.Ct. 1081, 188 L.Ed.2d 1 (2014) "Prevailing professional

norns," not best practices" or "common custom," define this constitutional standard." Harrington v. Richter, 562 U.S. 86, 105. 131 S.Ct. 770, 178 L.Ed.2d 624 (2011)(quoting Strickland, 466 U.S. at 694). To demonstrate prejudice, a petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland 466 U.S. 694. A petitioner satisfies "reasonable probability" if he demonstrates "a probability sufficient to undermine confidence in the outcome." Id.

This case presents a question of whether counsel failed in his duty to investigate, then failed to present witnesses who supported his client's affirmative alibi defense and the lower Court's failure to assess counsel's decisions why he did not investigate or call witnesses, for reasonableness. Strickland supra. 466 U.S. 690-691, 80 L.Ed2d 674, 104 S.Ct. 2052 (1984)

THE ALIBI DEFENSE AND THE PROSECUTION'S CASE

On May 6, 2007, at 5:30 thru 5:40pm petitioner Adrian Akram was attending the viewing services of his deceased brother's body, surrounded by family and friends. On the other side of Detroit a black man walked up to Orlando Miller and Damia Johnson and shot Miller three times and walked away. During Mr. Akram's first trial, Johnson was asked a very simple question, was Mr. Akram's facial hair in court, the same as the shooter's facial hair on the day of the shooting? Ms. Johnson then repeatedly testified she did not see the shooter's face during the shooting. (TT1. Nov. 5, 2007 pgs. 173-241) The State's second witness Lawrence Archer, testified he knew Mr. Akram, but did not know who the shooter was at the crime scene. It was not until he was driving home on the freeway, that he convinced himself the shooter was Mr. Akram.;

"At the time, no. When I got in my car I realized who he was. At that time, no." (PE. Aug. 2, 2007, pg.43)

and

"When I got on the freeway it dawned -- I kept telling myself, I seen this guy, I seen this guy, I seen this guy before. And it dawned on me when I got

on the freeway right after the incident." (TT1. Nov. 6, 2007, pg.19)

Meanwhile, Mr. Akram was comforting friends and family, as they entered and exited the Swanson Funeral Home. (see appendix (D)). Mr. Akram was arrested nearly two months later. Mr. Akram informed his first defense counsel of his alibi. He went to trial without the alibi defense and the jury convicted Mr. Akram, after twice requesting to be released as a hung jury and the trial court's denials. (see TT1. Nov. 5th-9th, 2007.)

FIRST DIRECT APPEAL

On appeal Mr. Akram moved for an evidentiary hearing to expand the record, for ineffective assistance of counsel, citing Strickland's duty to investigate and present witnesses in his client's defense. The Michigan Court of Appeals granted remand and an evidentiary hearing was held pursuant to People v. Ginther 390 Mich 366 (1973). (see appendix (D)) During the hearing Mr. Akram only needed to call five witnesses from the funeral home to testify, plus his first defense counsel. (see appendix (B)) The funeral witnesses were never ask the common sense question, were they looking at Mr. Akram at 5:30 thru 5:40pm? (see GH. Feb. 11, 2009, pgs. 19-65) The prosecution's theme was to ask alibi witnesses; "Were you keeping tabs on the defendant the whole time?" (see GH., Feb. 11, 2009, pgs. 19-65) Defense counsel testified he knew about Mr. Akram's alibi witnesses but, he did not investigate them, he did not like alibi defenses, he should have investigated and if he could do it over again, he would investigate. (see GH., Feb 11, 2009, pgs. 5-19) All five witnesses from the hearing testified they saw Mr. Akram there. (GH., Feb 11, 2009, pgs. 19-65) The Trial Court denied Mr. Akram's motion for a new trial, citing witness credibility. (see appendix H,) The Michigan Court of Appeals resolved those credibility concerns and reversed Mr. Akram's convictions. Mandating;

"Defendant is entitled to a new trial, unimpeded by trial counsel's failure to present an alibi defense, where all the evidence is heard and weighed by the

trier of fact." (see appendix (D))

PETITIONER'S SECOND TRIAL¹

On retrial, Mr. Akram's new defense counsel read the trial and evidentiary hearing transcripts and the Court of Appeal's first panel's Opinion and Order. (see appendix (D)) He also received a list of names from his client and submitted them to the court as Mr. Akram's notice of alibi/witness list, but did not interview them before trial. Mr. Akram's second trial began and defense counsel called two witnesses from the twelve name witness list, that included Mr. Akram's nephew, Adonis Akram. Also, Rachel Akram, Mr. Akram's sister-in-law. She testified that at the time of the shooting, 5:30 thru 5:40pm, she was looking at Mr. Akram in the funeral home. Mr. Akram's second trial ended in a hung jury. (see appendix (B)) Defense Counsel did not present all of Mr. Akram's evidence as the Michigan Court of Appeals instructed.

PETITIONER'S THIRD TRIAL¹

Before Mr. Akram's third trial began, defense counsel submitted a new revised notice of alibi/witness list which also included Adonis Akram, who had still never testified. (see appendix (B)) Counsel deleted two names and added one name. Mr. Akram's third trial began, defense counsel told the jury during opening arguments he would present evidence Mr. Akram was present at the funeral home at 5:30 to 5:40pm, on May 6, 2007:

"You will hear from family and friends that attended the services at the Swanson Funeral Home that Adrian Akram was at the time of the shooting." TT3., May 9, 2012, pg. 136

and defense counsel called three witnesses from the revised eleven name witness list that he submitted. Defense Counsel recalled Rachel, but never questioned Rachel about where Mr. Akram was at the time of the shooting, because of Trial Court rulings. Then Defense counsel completely abandoned Mr. Akram's affirmative defense, first by not presenting a single witness to substantiate Mr. Akram's

alibi, then by telling the jury during closing arguments;

"No one tried to say or claim that they know he was there exactly at five thirty..."

and

"but no one ever said that he was there at five thirty." TT3. May 21, 2012, pg.138

Defense counsel refused to follow the Michigan Court of Appeals mandate and Mr. Akram was reconvicted.

SECOND DIRECT APPEAL

In the Michigan Court of Appeals, following Mr. Akram's reconviction, he moved for a second evidentiary hearing to expand the record, for ineffective assistance of counsel, citing Strickland's duty to investigate and present witnesses, pursuant to People v. Ginther, 390 Mich 436 (1973) and submitted four affidavits in support. (see appendix (B)).

Mr. Akram averred in his affidavit that he asked defense counsel to call witnesses to the stand before closing, to substantiate his affirmative alibi defense that he in funeral home at 5:30 thru 5:40 pm. and defense counsel refused, responding; "Why, you already won". (see Attachment (B)). Mr. Akram never agreed with defense counsel on not calling the remaining witnesses from his alibi witness list and Mr. Akram never waived any witnesses during the third trial record. Three affidavits were from witnesses on the alibi witness list, all claiming defense counsel never interviewed them, including Adonis Akram.

Adonis in his affidavit averred:

I Adonis Akram, first being sworn, deposed and says:

1. That I was at the viewing of my uncle AVERY AKRAM on May 6th, 2007, at the Swanson Funeral Home from 3:30pm to 7:00pm. On W. McNichles Rd., Detroit, Michigan.
2. That I saw my uncle there at 5:30pm thru 5:40pm the time of the murder he was convicted of, on the other side of the city.
3. That I wanted to testify at every trial and or hearing to tell anyone my uncle did not and could not have committed the murder of Orlando Miller.

4. That I was never interviewed by any of my Uncle[]s Attorney[']s.
5. That I finally was placed on the witness list to testify to the jury that my Uncle never left the funeral home, but I was never called to testify.
6. That if called to testify at any hearing or trial, I will testify my Uncle could not have committed the murder because I was looking at him at the time miles away.

VERIFICATION

I, Adonis Akram, declare that the above herein facts are true to the best of my knowledge, information and belief.

MICHIGAN COURT OF APPEALS AND SUPREME COURT DECISIONS

The Michigan Court of Appeals and the Michigan Supreme Courts denied Mr. Akram's second Appeal of Right, Leave to Appeal and motions to remand to expand the record. On appeal the Michigan Court of Appeals, mischaracterized petitioner's claim one;

"Defendant argues that defense counsel was ineffective for failing to call additional alibi witnesses at trial." (see appendix (D))

The Court then acknowledged;

"No witness testified to observing defendant at the exact time of the shooting i.e. 5:30 thru 5:40 p.m." (see appendix (D))

This includes, Rachel. There is absolutely no mention of the failure to investigate Adonis aspect of Mr. Akram's claim one. This issue has never had a full review in the State Court or Federal Court. All the Courts proclaimed;

"It is apparent that counsel was aware of those witnesses because counsel listed them on his notice of alibi that he filed before trial." (see appendix (A), (B), (C) and (D))

That is petitioner's evidence defense counsel's performance fell below reasonable, objective professional norms, where counsel knew of the evidence and did not investigate or use it. Defense counsel could not have known what Adonis' potential testimony would be. As Adonis averred;

4. "That I was never interviewed by any of my uncles attorneys."

Yet, this was not part of the State Court's or Federal Court's appellate review.
(see appendix (A), (B), (C) and (D))

As for the Michigan Court of Appeal's position on defense counsel's failure to present witnesses to support Mr. Akram's alibi for the exact time of the shooting. Defense counsel stated he was not trying to claim anyone saw Mr. Akram at the funeral home at 5:30 thru 5:40pm. The Michigan Court of Appeals opined;

"Counsel reasonably may have determined that the credibility issues that those witnesses would have presented would seriously undermined any progress defense counsel had made.." (see appendix (D))

and

"reasonably may have believed that if the four proposed witnesses, who all claimed to have observed defendant's whereabouts at exactly 5:30 p.m., were perceived to be lying, the jury was more likely to disregard the other alibi testimony." (see appendix (D))

and

"It was not objectively unreasonable for defense counsel to present those whom he believed were the strongest and most consistent alibi witnesses" (see appendix (D))

The Michigan Supreme Court denied Leave to Appeal.

THE U.S. DISTRICT COURT AND SIXTH CIRCUIT COURT OF APPEALS DECISIONS

Petitioner filed a writ for Habeas Corpus relief, in the United States District Court, in the Eastern District of Michigan, Southern Division pursuant to 28 U.S.C.S. §2254. Claim one of Petitioner's Supplemental Habeas Corpus brief stated;

I.) A WRIT OF HABEAS CORPUS SHOULD ISSUE WHERE TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE WHEN COUNSEL FAILED TO INVESTIGATE AND CALL ANY EXCULPATORY 5:30PM ALIBI WITNESSES OR ASK OF ANY ALIBI WITNESSES THE WHEREABOUTS OF PETITIONER AT 5:30PM, WHOS TESTIMONY WOULD HAVE COMPLETELY EXONERATED PETITIONER (see appendix (B))

After reciting Petitioner's claim one title, the District Court still mischaracterize Mr. Akram's claim one also;

"Petitioner's lead claim asserts that trial counsel was ineffective for failing to call four alibi witnesses -- Kamilah Hilton, Antonio Webb, James Hunter, and Adonis Akram -- at his third trial to elicit testimony that he was seen at the funeral home specifically at 5:30 p.m., the time of Miller's murder. He asserts that the three alibi witnesses who testified at his third trial were unable to testify that they saw him at the specific time of the

murder, creating a hole in the defense that the additional witnesses would have closed." (see appendix (B))

Notably missing, again, is petitioner's claim defense counsel did not investigate petitioner's witnesses before making the uninformed decision on which witnesses to call and which witnesses not to call. The District Court went on to cite key points from the affidavits submitted by uncalled alibi witnesses from the witness list.

"Defendant attached to his motion for remand affidavits of two of those three witnesses Helton and Hunter, as well as his own affidavit and the affidavit of his nephew, Adonis Akram. In her affidavit Helton averred that she was at the funeral home on May 6 and observed defendant at 5:30 p.m., which was the exact time of the shooting, she was able and willing to testify but was never contacted by defense counsel. Adonis averred in his affidavit that he observed defendant, his uncle, at the funeral home between 5:30 and 5:40 p.m. and was willing to testify that his uncle did not commit the murder. Hunter also averred that he observed defendant at the specifically from 5:30 to 5:40 p.m. and he wanted to testify at defendant trial, but was not interviewed by defense counsel." (see appendix (B))

Notably missing from these key points is the Court held Helton and Hunter were not contacted by Petitioner's defense counsel, but right in the middle, does not mention Adonis also averred he was not contacted by any of Mr. Akram's Lawyers, where it is clearly point four of Adonis's affidavit. The Court went on to state;

"It is apparent that counsel was aware of these witnesses because counsel listed them on his notice of alibi that he filed before trial." (see appendix (B))

Also,

"It would have been reasonable for counsel to anticipate that the prosecutor would question the credibility of those witnesses..." (see appendix (B))

These credibility issues the Court speaks of were resolved by the Michigan Court of Appeals first panel, before retrial, mandating "all of defendant's evidence be presented and weighed by the trier of fact". Again, Mr. Akram can not succeed on appeal for ineffective assistance of counsel, if defense counsel was unaware of the alibi witnesses before trial.

Petitioner claims counsel made an uninformed decision on which witnesses to

murder, creating a hole in the defense that the additional witnesses would have closed." (see appendix (B))

Notably missing, again, is petitioner's claim defense counsel did not investigate petitioner's witnesses before making the uninformed decision on which witnesses to call and which witnesses not to call. The District Court went on to cite key points from the affidavits submitted by uncalled alibi witnesses from the witness list.

"Defendant attached to his motion for remand affidavits of two of those three witnesses Helton and Hunter, as well as his own affidavit and the affidavit of his nephew, Adonis Akram. In her affidavit Helton averred that she was at the funeral home on May 6 and observed defendant at 5:30 p.m., which was the exact time of the shooting, she was able and willing to testify but was never contacted by defense counsel. Adonis averred in his affidavit that he observed defendant, his uncle, at the funeral home between 5:30 and 5:40 p.m. and was willing to testify that his uncle did not commit the murder. Hunter also averred that he observed defendant at the specifically from 5:30 to 5:40 p.m. and he wanted to testify at defendant trial, but was not interviewed by defense counsel." (see appendix (B))

Notably missing from these key points is the Court held Helton and Hunter were not contacted by Petitioner's defense counsel, but right in the middle, does not mention Adonis also averred he was not contacted by any of Mr. Akram's Lawyers, where it is clearly point four of Adonis's affidavit. The Court went on to state;

"It is apparent that counsel was aware of these witnesses because counsel listed them on his notice of alibi that he filed before trial." (see appendix (B))

Also,

"It would have been reasonable for counsel to anticipate that the prosecutor would question the credibility of those witnesses..." (see appendix (B))

These credibility issues the Court speaks of were resolved by the Michigan Court of Appeals first panel, before retrial, mandating "all of defendant's evidence be presented and weighed by the trier of fact". Again, Mr. Akram can not succeed on appeal for ineffective assistance of counsel, if defense counsel was unaware of the alibi witnesses before trial.

Petitioner claims counsel made an uninformed decision on which witnesses to

call or not to call because he did not do a "complete" and "thorough investigation" before deciding between his options. Which deprived the jury in this case of critical evidence they needed during deliberations.

The United States Court of Appeals, similarly mischaracterized petitioner's claim one, stating;

"Akram claimed that his attorney was ineffective for not calling four alibi witnesses ... who would have testified that he was attending his brother's funeral viewing at the time of the murder. Akram, 2015 Mich App Lexis 822, 2015 WL 1814038, at 2." (see appendix (A))

The U.S. Appeals Court went a step further, by stating;

"... Rachel Akram's testimony, which was the most specific testimony about the time of the murder," (see appendix (A))

Again, defense counsel never presented any witness for shooting time line. Counsel proclaimed during closing arguments, while abandoning Mr. Akram's substantial, affirmative defense, by stating;

"No one tried to say or claim that they knew he was there exactly at five thirty" (TT3., May 21, 2012, pg 138)

and

"but no one ever said that he was there at five thirty." TT3. May 21, 2012, pg 138.

Petitioner agrees with the U.S. Appeals Court on this point, when it stated;

"and because "strategic choices made after thorough investigation of law and fact relevant to plausible options are virtually unchallengeable," Strickland, 466 U.S. at 690, no reasonable jurist could debate the district court's resolution of Akram's ineffective-assistance claim." (see appendix (A))

Defense counsel did zero investigation of Adonis Akram, and no court claims otherwise. Listing the witnesses name on the notice of alibi/witness list does not constitute a complete or thorough investigation. The only investigation the Lower Courts claim defense counsel did of any witness, was to read the first trial and evidentiary hearing transcripts. Which Adonis did not testify during. Plus, alibi means (elsewhere). None of the witnesses were asked the common sense question on Mr. Akram's whereabouts at 5:30pm.

REASONS FOR GRANTING THE WRIT

The Sixth Circuit Court of Appeals Decision In This Case, Conflicts In The Following Ways With The U.S. Supreme Court And Other U.S. Court Of Appeal Decisions

THE U.S. COURT OF APPEALS SET NEW PRECEDENT WHEN IT'S DECISION THAT PETITIONER'S CONSTITUTIONAL RIGHTS UNDER THE SIXTH AMENDMENT WERE NOT VIOLATED WHEN PETITIONER'S DEFENSE COUNSEL FAILED TO INVESTIGATE AND PRESENT WITNESSES FOR PETITIONER'S ALIBI DEFENSE BECAUSE DEFENSE COUNSEL PLACED HIS WITNESSES NAMES ON THE WITNESS LIST SO COUNSEL DID NOT HAVE TO COMPLETE A THOROUGH INVESTIGATION, GOING AGAINST CONSTITUTIONAL PRECEDENT

By affirming the district court decision, the United States Court of Appeal's decision in this case conflicts with decisions from this Honorable United States Supreme Court in Strickland, 466 U.S. at 688-695, and Wiggins, 539 at 521-522. The decision entered in this case conflicts with the decisions Upshaw v. Stephenson, 97 F.4th 365 (6th. Cir. 2024) a decision from earlier this years and other U.S. Court of Appeals decision, in many ways.

First, This analysis comports with our precedent. see Ramonez v. Berghuis, 490 F.3d 482, 489 (6th Cir. 2007) (finding counsel's performance "objectively unreasonable" where he failed to interview three known potential alibi witnesses); Towns v. Smith, 395 F.3d 251, 258-60 (6th Cir. 2005) (holding that counsel's failure to investigate a potential witness was objectively unreasonable); Clinkscale v. Carter, 375 F.3d 430, 443 (6th Cir. 2004) (same) On these bases, the state court unreasonably applied Strickland, the district court incorrectly denied habeas relief and the U.S. Court of Appeals for the Sixth Circuit incorrectly affirmed.

Next, we consider prejudice "Strickland instructs that a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support," and that "the availability of willing alibi witnesses must also be considered in light of the weight of the other evidence supporting a petitioner's conviction." Avery v. Prelesnik, 548 F.3d 434,

439 (6th Cir. 2008) (quoting Strickland, 466 U.S. at 696 Put another way, "potential alibi witnesses coupled with an otherwise weak case renders the failure to investigate the testimony sufficient to 'undermine confidence' in the outcome of the jury verdict." Id. In Avery, we affirmed the principle that a record showing counsel "never personally attempted to contact any of the potential alibi witnesses" warrants habeas relief. Id.

Second, after telling the jury that he would present family and friends, to testify petitioner was in the funeral home at the time of the shooting, miles away, then without clearing it with his client, he refused to present the remaining witnesses from the names his client gave him to substantiate his defense. (see appendix (B)) He told the jury in closing arguments, in effect, no one saw petitioner in the funeral home at the time of the shooting, which is false. Following a trial where he was defense counsel, petitioner's sister-in-law testified she saw him there at the time, which triggered a mistrial and a hung jury. (see appendix (A)) Defense counsel never asked the common sense question during an interviews or during trial of Rachel or anyone else, "did you see petitioner at the funeral home, at time of the shooting?" Leaving the jury with only one choice and the prosecution capitalized on the absence of that evidence during the state's closing arguments. All of these actions conflicts with professional norms.

Third, when the the first Michigan Court of Appeals panel reversed petitioner's conviction and ordered a new trial, they foresaw just this possibility occurring. So, they mandated whoever defense counselor would be, to present all of petitioner's evidence. This was after evaluating whatever credibility issues the Trial Courts complained about. Creating an example, a "law of the case" doctrine. Which Federal Court's use at it's own convenience, but it has no constitutional protections and this decision leaves open a path for Lower Courts and trial

attorneys to ignore mandates from an appellate court or superior courts. This Honorable Court would do a great service to the country by put in place system giving constitutional clarification on the importance of lower courts adhering to the mandates of their superior courts.

Petitioner lastly argues that the Sixth Circuit has departed from the Strickland standard of counsel's duty to do a "complete" and "thorough investigation" and set new precedent. Defense counsel no longer has to interview the witnesses whos names their clients gave to them. Now, defence counsel has to do is place the names on the notice of alibi or witness list, demonstrating counsel knew of the existance of the witnesses and defense counsel's duty to investigate is complete. Which is clearly a departure from the Constitutional requirements, Supreme Court precedent, and Fellow Circuit Courts. supra.

CONCLUSION

This writ should issue to bring the Sixth Circuit "back" into comity with long standing, legally binding Constitutional Supreme and Federal Courts principles and prior decisions. supra.