24-6449

Belinda Jones No. 967095
Women's Huron Valley Correctional Facility
3201 Bemis Road
Ypsilanti, MI 48197

Petitioner In Pro. Se.

ORIGINAL

No. 24A571

IN THE SUPREME COURT OF THE UNITED STATES

BELINDA JONES, Petitioner

vs.

JEREMY HOWARD, Warden, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Belinda Jones, Pro. Se. No. 967095
Women's Huron Valley Correctional Facility
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QUESTIONS PRESENTED

Petitioner Belinda D. Jones' second-degree murder conviction rests on false expert testimony from Pietrangelo, that the decedent, a stranger, received seven individual stab wounds caused by the hands of petitioner. There was no scientific foundation for this testimony - - it was false testimony. Had the prosecution not invited the jury to consider the falsity to find intent, petitioner would not have been found guilty of the crime charged - - - the prosecutor should have corrected the false testimony. Petitioner trial attorney also failed to perform a basic investigation into the decedent's actual injuries - - Such as reading the medical records of prepared by the emergency room doctor, Dr. Saad that show the actual injuries caused by petitioner - - counsel could have impeached the false testimony or at-the very-least had the false testimony corrected altogether.

The questions presented are:

Whether the Fourteenth Amendment is violated when the lower courts' legal standard as applied to false testimony claims conflicts with this Court's legal standard applicable to false testimony claims in ***Napue v. Illinois, 360 U.S. 264, 271 – 272 (1959).***

Whether this Court should resolve the conflict among the lower courts on which legal standard should be applied to all false testimony claims raise under the Due Process Clause of the Fourteenth Amendment.

Whether the Fair Trial Clause of the Sixth and Fourteenth Amendments allow a criminal conviction to stand when truthful testimony is mixed the uncorrected false medical testimony key to the element of intent to prove second-degree murder.

Whether the Fourteenth Amendment guarantee of Due Process of Law is violated when the legal standard for nondisclosure claims is used to affirm convictions arguing false evidence was used to convict.

Whether the Fourteenth Amendment guarantee of a fair trial is violated when the State admits the testimony used to convict was false ***(RE 8, Page ID # 3916)*** but, because the falsity was mixed with truthful testimony a United States citizen cannot show "materiality".

Whether the Sixth Amendment guarantee of effective assistance of counsel is violated when counsel fails to investigate and expose false testimony that sends his client to prison for any number of years.

APPENDIX

TABLE OF AUTHORITIES

CASES

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OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Belinda Jones respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Macomb County (Michigan) Circuit Court unpublished written opinion and order denying Petitioner's motion for relief from judgment is reproduced at Appendix A. The same court's unpublished order denying rehearing is reproduced at Appendix B. The unpublished order of the Michigan Court of Appeals denying leave to appeal is reproduced at Appendix C. The published order of the Michigan Supreme Court, 501 Mich. 1061, denying leave to appeal is reproduced at Appendix D. The same court's unpublished order denying rehearing is reproduced at Appendix E. The published decision of the United States Court of Appeals for the Sixth Circuit denying en banc is reproduced at Appendix F. The same court's published decision affirming the denial of habeas corpus relief is reproduced at Appendix G. The published decision of the United States District Court for the Eastern District of Michigan denying habeas corpus relief is reproduced at Appendix H. The Order in the Michigan Supreme Court denying leave to appeal from direct appeal, as Appendix I. And the Order in the Michigan Supreme Court reconsideration denying leave to appeal from direct appeal as Appendix J.

JURISDICTION

The Sixth Circuit Court of Appeals affirmed the Macomb County Circuit Court's denial of relief to Petitioner for rehearing en banc motion on September 23, 2024. (Appendix F) On July 23, 2024, the Sixth Circuit affirmed the Eastern District of Michigan's denial of the Petitioner's habeas petition on January 31, 2024. This Court has jurisdiction under 28 U.S.C.§ 1254(1). The Sixth Circuit 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.

The Michigan Trial Court has decided an important federal question in a way that conflicts with relevant decisions of this Court. This Court also has jurisdiction under Rule 10(a) of the Supreme court of the United States. Jurisdiction is also invoked under Rule 10(c) because a state court and a United States court of appeals has decided an important question of Federal law – that has not been, but should be, settled by this Court.

CONSTITUTIONAL AND STATURORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of Counsel for his defense.

The Fourteenth Amendment to the United States Constitution provides:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, . . . , without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2254(d); (d) (1) (2) of Title 28 of the United States Code provides:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim - - -

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

1. James Williams was injured, then prior to being released the following day, underwent an unnecessary exploratory surgery, had a massive heart attack during surgery and died 17 days later. After drinking alcohol and with high THC level, Mr. Williams had went on a combative rampage throughout the neighborhood, armed

with two knives, a large pole and threatened he had a gun. A distant neighbor called 911 on suspicious person swinging a bat at people, looking for trouble. After leaving two other homes down the street yelling and cursing, Mr. Williams furiously approached petitioner who was standing on the front porch of her own home as he hurled death threats at her. Petitioner did not know and had never seen Mr. James Williams until this horrifying incident. It was a scary night, as prosecutor's witness, Curtis Williams stated he was so afraid that he jumped off the porch and didn't know what to do as Mr. Williams furiously approached the porch with the knife and pole. Petitioner's son then tackled Mr. Williams to the ground, fearing for her safety. While on the ground, the much older and stronger Mr. Williams gained control over Petitioner's son. Reasonably frightened and stunned Petitioner caused three knife injuries to Mr. Williams body, i.e. – two stab wounds and one laceration. Mr. Williams was taken by EMS to the hospital emergency room and described as being "highly combative" with medical staff, he was then sedated to an unconscious state, and it was discovered by Dr. Saad that Mr. Williams suffered three non-life-threatening injuries. In response to a motion, trial court ruled that Mr. James Williams was not to be referred to as a "victim" and that the word victim could not be used, adding to not use the word "aggressor" either; although Prosecutor ignored and told jurors he was "the victim" anyway. (ECF No. 4-2, PageID.247; ECF No. 4-35, PageID.3960; ECF No 4-1, Page ID.134; ECF No. 4-2, PageID.251- 254; ECF No 4-2, Page ID.277 –

279; ECF No 4-2; Page ID.269, 271, 273, 275; ECF No. 4-25; PageId.2571-2572; ECF No. 4-33, PageID.3528, 3529, 3532; ECF No. 4-2, PageID.279; See DVD of 911 Call texted into records on 11/1/2023)

Petitioner originally denied having any involvement in the incident, but later that night while in police vehicle wrote a statement for detectives admitting to stabbing Mr. Williams, was let go, then arrested 7 days later on 11/22/2013, without any arrest warrant. Despite her self-defense claims, no warrant, and no prosecutor being present at warrant issuance, the prosecutor later decided to charge petitioner and her son with Assault with Intent to Murder. Then did a 'Motion To "Amend" And/Or Dismiss Complaint, actually doing a Warrant & signed Complaint for second-degree murder, after Mr. Williams died on 12/3/2013. (ECF No. 4-4, PageID.483; ECF No. 4-4, PageID.485; ECF No. 4-1, PageID.142; ECF No. 4-4, PageID.487 and ECF No. 4-3, PageID.330)

Petitioner's person, blouse and entire home was checked for blood and many items were sent to MSP and laboratory tested for blood and / or James Williams' DNA. However, nothing was a blood or DNA match from / to James Williams and Petitioner; despite co-defendant's Marquis Oneal and Donald Roberts having blood on hands and clothing, etc. (ECF No. 4-2, PageID.255-257; ECF No. 4-2, PageID.265 – 267; ECF No. 4-31, Page ID.3293-3342; ECF No. 4-32, Page ID.3343–3345)

2. From Opening to Closing the prosecution's case at trial centered on testimony from Macomb County Medical Examiner, Dr. Mary Pietrangelo to establish Petitioner's intent for second-degree murder. At Opening stating: "And she ends up stabbing James Williams 7 times and at least once in the back." (ECF No. 4-29, PageID.2904) Dr. Pietrangelo conducted the autopsy on Mr. Williams' body and told the jury she found seven individual stab wounds, which she itemized, that caused Mr. Williams' death, because they initiated a series of events that led to his death. (ECF No. 4-30, PageID.3104; (ECF No. 4-1, PageID.122 - 130; ECF No. 4-1, Page ID.132; ECF No.4-30, PageID.3096-3102; ECF No.4-25, PageID.2254 - 22559)

Two of the stab wounds, she explained to the jury, resulted in both of Mr. Williams' lungs collapsing, hitting a surface covering of the outer wall of the right lung. (ECF No. 4-30; PageId.3098, ECF No. 4-30, PageID.3100) Four other stab wounds, she explained to the jury caused significant damage to other vital internal body organs resulting in loss of blood. (Id.)

All the stab wounds required medical intervention and an extensive hospital stay where Mr. Williams later succumbed to the injuries, she said. (Id.) Dr. Pietrangelo proclaimed to the jury that the number of stab wounds meant, with medical certainty, that Mr. Willaims death was the result of "Anoxic Encephalopathy Status Post Cardiopulmonary Arrest with Resuscitation/Multiple Stab Wounds of the Torso (7)" leading to death". (ID.) From this, the prosecutor told the jury "you can consider

this in deciding what she intended." (Id.) (ECF No. 4-30, PageID.3133-3134; ECF No. 4-36, PageID.3790; ECF No. 4-29, Page ID.2904)

3. This, the prosecution retold the jury, "he was stabbed so many times in such horribly vital organs" and "the evidence showed is that she intended . . . because she took a knife and she plunged it into this man at least 7 times, in an area . . . you are intending to do great bodily harm when you stab someone in that area . . . The number of stab wounds, . . . she didn't stab once, she stabbed 7 times and then sliced on his wrist too. The location and number of stab wounds you can take into account when deciding what she was intending . . . decide what her intent . . . no self-defense or defense of others." (ECF No. 4-36, PageID.3790-3791) If Mr. Williams' torso had seven individual stab wounds and one laceration, the defense's theory of self-defense could not possibly be true. This was not self-defense. (See id.) She intended to do great bodily harm when she stabbed Mr. Williams seven times. (See id.) She plunged the knife into him "at least seven times", the prosecutor told the jury, because Dr. Pietrangelo discovered seven stab wounds on his torso and described the damage to his vital organs which caused his death. (See id.)

4. It was well known, prior to trial, that Mr. Williams arrived at the hospital alive with only three non-life-threatening injuries to his torso as discovered by Dr. Saad (ECF No. 4-17, PageID.1790; ECF No 4-2, Page ID.277 – 279; ECF No4-2; Page ID.269, 271, 273, 275;) Yet, Dr. Pietrangelo testified that she discovered seven individual

stab wounds to his torso. ((ECF No. 4-1, PageID.122 -130; ECF No. 4-1, Page ID.132; ECF No.4-30, PageID.3096-3106; ECF No.4-25, PageID.2254 - 22559) None of Mr. Williams' medical documents support that he arrived at the hospital with seven (7) individual knife injuries to his torso. (ECF No 4-2, Page ID.277 – 279; ECF No4-2; Page ID.269, 271, 273, 275)

The emergency room doctor, Dr. Saad, noted that Mr. Williams arrived at the hospital alive with only three (3) knife injuries. (See id.) And the State of Michigan has conceded during habeas corpus proceedings that, "the seven individual stab wounds testimony relied upon by Dr. Pietrangelo was false [.]" (ECF No. 8, Page ID. 3916)

5. The prosecutor made no correction of Dr. Pietrangelo's false testimony. The treating Physician or Doctor's medical testimony has credence and could have been used to counter, destroy or properly dispute the prosecution's false evidence, in the pursuit of justice. The importance of Dr. Ali Saad explaining his observations and hospital's medical records of 3 stab wound and treatment was discussed at district court preliminary exam and the court said wait until trial to ask Doctor's questions. However, prosecution chose to not add this important witness, Dr. Saad, to witness list. (ECF No 4-26, PageID.2626-2625)

Defense Counsel did not read the medical records and police report, despite having them in his possession before trial. (ECF No 4-2, Page ID.277 – 279; ECF No4-2; Page ID.269, 271, 273, 275). Thus, both Prosecution and Defense Attorney failed to move

to correct Dr. Pietrangelo's testimony before the jury, failed to challenge Dr. Pietrangelo's testimony during cross-examination, and failed their duty to protect Petitioner's right to a fair trial. (See id.)

6. With Dr. Pietrangelo's testimony left effectively uncorrected and unrebutted, the prosecution made the seven individual stab wounds testimony the centerpiece of its case. The prosecution referenced this testimony throughout trial and in its opening and closing arguments and told the jury multiple times that Dr. Pietrangelo's testimony showed "she intended to do great bodily harm "because she took a knife and she plunged it into this man at least 7 times, in an area of the torso . . . intending to do great bodily harm. (ECF No. 4-36; PageID.3790)

7. After hearing all the false expert evidence undisputed, the jury convicted Petitioner of second-degree murder. The trial court sentenced Petitioner to 16 to 35 years in prison, despite the court stating "It was clear that it was a very chaotic situation . . . the decedent did approach the home in a threatening manner. It is not clear what her state of mind was at the time. Obviously the jury spoke on the subject and they found her guilty of that charge". (ECF No. 4-3; PageID.381–385)

8. Following her direct appeals, Petitioner filed a motion for relief from judgment based on false testimony that went uncorrected and the jury was invited to use it to establish the intent element of second-degree murder, and ineffective assistance of counsel. (ECF No. 4-14, PageID.1333-1368) The prosecution argued

that Dr. Pietrangelo's false testimony did not affect the jury's verdict. The trial judge applying the legal standard for non-disclosure cases, concluded that a retrial was not necessary, because no proof that a correct statement regarding the number of stab wounds would have changed the outcome of her trial, therefore; "A difference which makes no difference is no difference at all." (ECF No.4-18; PageID.1794)

9. The Michigan trial judge denied Petitioner's presentation of false testimony claim on the merits during post-conviction review, holding "a difference that makes no difference is no difference at all." (See id.) There was no consideration given to what affect Dr. Pietrangelo's false testimony had on the jury verdict regarding the intent element to prove second-degree murder under Michigan's law. (See id.)

10. Ms. Jones trial counsel also admitted his error in post-conviction proceedings. He acknowledged in his affidavit that he was unaware of the difference in hospital medical records and Dr. Saad's number of injuries to Mr. Williams' torso, versus those of Dr. Pietrangelo. (ECF No. 4-3, PageID.444–445) Trial counsel also admitted that he would have raised another defense for Petitioner had he known of the actual injuries founded by Dr. Saad that differ from Dr. Pietrangelo's seven stab wound testimony. His admissions support that trial counsel did not read the medical records provided to him through discovery by Macomb County Prosecuting Attorney's Office. (See id.)

11. The Michigan trial court did not address the merits of Petitioner's ineffective assistance of counsel claim on post-conviction review. Petitioner sought

reconsideration of her post-conviction motion moving the trial court to review, inter alia, her ineffective assistance of counsel claim on the merits. Trial court denied reconsideration, holding that "This Court will not presume, without evidence to the contrary, that the prosecutor withheld information from the jury which was in Defendant's possession during her trial." (ECF No. 4-17, PageID.1790; ECF No. 16, PageID.7844–7854; ECF No. 4-29; PageID.2899). However, at the same time, the trial Court still made no determination of whether or not Strickland's second prong was met, when counsel possessed real evidence that contradicted the falsity and failed to present it, to counter and/or destroy the false evidence. The court adjudicated the claim contrary to Strickland, and did not enforce any procedural bar. (See id.) The Michigan Court of Appeals and Michigan Supreme Court thereafter denied leave to appeal. No petition for certiorari was sought at that time.

12. Petitioner filed a petition for a writ of habeas corpus with the United States District Court for the Eastern District of Michigan. The court unreasonably applied the legal standard for non-disclosure claims to Petitioner's failure to correct false testimony claim, and made a determination contrary to Stickland; holding that reasonable jurists would not disagree with the conclusion reached and denied a certificate of appealability. (App. H)

13. Petitioner appealed to the Sixth Circuit, but the court affirmed the denied habeas relief. (App. G) Rehearing en banc was also denied. (App. F)

REASONS FOR GRANTING CERTIORARI

Ms. Belinda Jones is sitting in prison for 16 to 25 years because the prosecutor and her trial lawyer both failed to correct false testimony. The State's expert Dr. Pietrangelo testified that, based on her review of the victim's body, he was stabbed seven individual times, plus one laceration. Saying Mr. Williams had multiple stab wounds (7) leading to both lungs collapsing, resulting in Anoxic Encephalopathy Status Post Cardiopulmonary Arrest with Resuscitation/Multiple Stab Wounds of the Torso (7). But the State admits during habeas corpus proceedings that, "Petitioner has shown that Dr. Pietrangelo's seven individual stab wounds testimony was false." (Respondent's Reply Brief at ECF No. 8, Page ID.3916). The State of Michigan here concedes that Dr. Pietrangelo's testimony was false on the number of stab wounds which went uncorrected and was argued by the State to the jury. Petitioner argued the falsity established intent to convict of second-degree murder under Michigan's law. But, the trial prosecutor and defense counsel both failed to correct false testimony and thus, Dr. Pietrangelo's falsity reached the jury effectively unchallenged. This was clear-cut "prosecutorial misconduct" under this Court's precedent, see ***Napue v. Illinois; Miller v. Pate, 386 U.S. 1, 4 (1967)***, and clear-cut "deficient performance" under this Court's precedent. See ***Strickland v Washington, 466 U.S. 668, 687-88 (1984); Rompilla v. Beard, 545 U.S. 374, 389-90 (2005).***

The State's failure to correct the false testimony was "material" to proving intent.

Miller, 386 U.S. at 4. Also defense counsel's failure to expose that false testimony "prejudiced" - - indeed devastated - - - Ms. Jones' defense. ***Strickland, 466 U.S. at 688***. Simply put, Dr. Pietrangelo's false testimony meant game-over for Ms. Jones. If Mr. Williams had been stabbed seven individual times and cut once, Ms. Jones' defense of self-defense could not possibly be true. The prosecutor told the jury multiple times during closing arguments that this testimony "can be considered" to show "her intent" to do great bodily harm. They were right. Left uncorrected, Dr. Pietrangelo's false testimony sunk Ms. Jones' defense. There is certainly a "reasonable likelihood" that the falsity had an impact on the jury judgment, which is all the false testimony legal standard requires. ***Napue, 360 U.S. at 271-72***.

With respect to defense counsel, there is certainly a "reasonable probability" that it did, which is all the Strickland standard requires. ***Strickland 466 U.S. at 694***.

The lower courts' conclusion to the contrary was not just unreasonable, it conflicts with legal standards of both Napue and Strickland. The only reasonable conclusion is that failure to correct Dr. Pietrangelo's false testimony is why Ms. Jones conviction of second-degree murder occurred.

Petitioner recognizes that this Court's jurisdiction is invoked to resolve conflicts in lower courts. There is a circuit split here, and the lower courts did break new legal ground in its published decision. Petitioner submits that this is an exceptional case that well warrants this Court's attention, through summary reversal or otherwise.

Michigan is not a death-penalty State but, Petitioner and others run the risk of having their false testimony claims analyzed under the wrong legal standard to affirm their convictions. The State has admitted that it used false testimony at trial but, argued that the false testimony was not material to proving the offense of second-degree-murder. The Trial Court found that only Curtis Williams and Petitioner testified "to Petitioner stabbing the victim". The record showed that Curits Williams did not say how many times and Curtis said: "And I'm thinking she punches him, either punching him or she was in a punching motion." (ECF No 4.33, PageID.3537) Petitioner said once. However, Dr. Pietrangelo expertly testified to Petitioner stabbing the victim (7) individual times. (ECF 4-17, PageID.1788; ECF No. 4-35, PageID.3780-3781; ECF No. 4-36, PageID.3790-3791). This was used as direct evidence to establish the Intent requirement for guilt of second-degree murder. The trial court held that it would not "fault" the prosecutor for information the defense [counsel] had, while also not faulting defense counsel, by remaining silent and with no comment or ruling about any failure on defense counsel's part. (ECF No.4-29, PageID.2899). So the reasonable conclusion for the record is that the reason Petitioner is sitting in a prison cell for 16 – 35 years is because the prosecutor and her defense lawyer failed to protect her from false evidence. These are legitimate federal questions. These are extraordinary circumstances and compelling reasons to grant certiorari, and to protect future citizens.

(Rule 10 of the Rules of the Supreme Court of the United States)

This Court's review in this case would also make clear to the lower courts that false testimony claims are analyzed under a different legal standard than nondisclosure claims in protecting ALL criminal defendants - - not just Ms. Jones - - from wrongful analysis and affirmance of convictions arguing false testimony that was used to convict. The Court discussed in Bagley the framework for analyzing non-disclosure and false testimony claims and emphasized that the "reasonable likelihood" standard applies in false testimony cases for analyzing materiality. ***See Bagley, 473 U. S. at 679 – 80***. See also ***Stephen A. Saltzburg, Perjury and False Testimony: Should the Difference Matter So Much?, 68 FORDHAM L. REV. 1537, note 13, at 1570-73***. The Court held that a defendant who demonstrates that false testimony was improperly used at trial is required only to show a "reasonable likelihood" that the falsity had an impact on the jury. ***260 U.S. at 271-72; United States v. Bagley, 473 U.S. 667, 682 (1985)***. Unlike a non-disclosure case, where a defendant must establish a "reasonable probability" that the result would have been different had the exculpatory evidence been disclosed, ***Bagley, 473 U.S. at 682***; in false testimony cases, the one critical question is the "impact the false testimony had on the convicting jury." Id. In this regard, this Court has held that false testimony claims are subject to a lower materiality standard than non-disclosure claims. Id. Prior to Bagley, the Court advanced in ***United States v. Agurs, 427 U.S. 97 (1976)***

three reasons for applying a less demanding materiality standard in false testimony cases. ***Agurs, 427 U.S. at 103-04***. For these reasons, the court committed itself to applying the lower standard when the defendant shows improper use of false testimony. This Court should grant review to confirm the critical role proper legal standards play to protect criminal defendants from convictions based on false testimony.

I.

Habeas Relief is Warranted When a Trial Prosecutor Fails to Correct False Testimony and Invites the Jury to Find Intent From the Falsity

A.

The Michigan courts applied the wrong standard from clearly established Federal law by holding that, because the manner of death remains the same, the false testimony regarding the number of stab wounds would not result in a different result on retrial.

The Fourteenth Amendment to the United States Constitution guarantee ALL criminal defendants the right to a fair trial. To establish a trial was unfair, a defendant must show that false testimony was presented by the State, the false testimony went to the jury uncorrected, the State invited the jury to consider the false testimony and that "there is a reasonable likelihood that the false testimony affected the jury's

judgment." ***Napue, 360 U.S. at 271-72; People v. Smith, 498 Mich. 466, 476-77: 870 NW2d 299 (2015)***.

The Court has made clear that "it is the effect of a prosecutor's failure to correct false testimony that is the crucial inquiry for due process purposes." ***Smith v Phillips 455 U.S. 209, 220 n.10 (1982)***. This includes an error "when the State invites the jury to consider the falsity" when arriving at it's verdict. ***Mooney v. Holohan, 294 U.S. 103, 112 (1935)***. In Mooney, the Court explained that "due process is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial which is truth is but used as a means of depriving a defendant of liberty through a "deliberate deception of court and jury by the presentation of testimony known to be false." ***294 U.S. at 112***.

Here, the trial prosecutor failed to correct Dr. Pietrangelo's false seven individual stab wounds testimony was clear-cut prosecutorial misconduct. Dr. Pietrangelo testified on direct examination that, based on her observation of Mr. Williams' body she found "seven individual stab wounds and one laceration".

(ECF No. 4-1, PageID.122 -130; ECF No. 4-1, Page ID.132; ECF No.4-30, PageID.3096-3106; ECF No.4-25, PageID.2254-2559)

But as the State now admits, Mr. Williams' medical records did not support that conclusion, admitting 'Jones has shown that the information presented during her trial was false.' (See Respondent's Brief at ECF 8, PageID.3916).

For a seasoned prosecutor, what to do next would have been an easy call. The trial prosecutor could have corrected Dr. Pietrangelo's medical testimony, or could have destroyed her testimony on impeachment **(See MRE 607 and its counterpart FRE 607)**. But it is undisputed here that the State did neither. Instead, the State chose to use the false testimony throughout saying "And she ends up stabbing James Williams 7 times and at least one in the back." "The medical examiner testified and she testified that Mr. Williams suffered from 7 stab wounds". "So there's like eight wounds on his body caused by a knife . . . safely assume that she is the one that caused all of these wounds". And "he was stabbed so many times in such horribly vital organs" you heard from Dr. Pietrangelo, "shows" what she "intended" no "self-defense"; because the State wanted to prove "intent" from the falsity. Prosecution also told the jury she had to prove petitioner had one of three states of mind, adding: "And what I believe the evidence showed is that she intended to do great bodily harm, because she took a knife and she plunged it into this man at least 7 times, in an area of the torso . . .You are intending to do great bodily harm . . . "The number of wounds, she didn't just stab once, she stabbed 7 times and then sliced . . . "The location and the number of stab wounds you can take into account when deciding what she was intending, . . . "then decide what her intent". Adding for jurors to listen to and consider only Dr. Pietrangelo's very confident diagnosis and testimony, and consider "there was no one here that would come here and tell, or come here

and tell you any differently than that." (ECF No. 4-36, PageID.3789 – 3791; ECF No. 4-35, PageID.3780 - 3781) This was prosecutorial misconduct: When a state prosecutor in a murder trial faces a choice between outright eliminating falsity or let it stand the "seven" stab wounds "shows you" what she "intended", on the one hand, versus correcting the falsity, on the other, it is never a fair trial to choose the latter over the former.

The jury was affected by the (7) seven stab wounds evidence and testimony, which mattered so much to them that they sent out notes with questions to the court, requesting to review again the evidence showing the 7 stab wounds supporting the testimony, saying they need "Autopsy paperwork", "Also Body Pic Showing Stab Wounds" and "Autopsy Report . . ." Several minutes thereafter they reached their verdict. (ECF No. 4-1, PageID.119; see also, Argument II B herein)

The Michigan courts misapplied ***Napue, Miller and Mooney v. Holohan, 294 U.S. 103, 112 (1935)*** by labeling the prosecutor's failure to correct Dr. Pietrangelo's false medical testimony, without analyzing the affect it had on Ms. Jones' jury. As this Court made clear in ***Napue***, "the State has a duty to correct false testimony", and "not capitalize on the falsity to obtain a conviction" to ensure a criminal defendant "receives a fair trial." ***360 U.S. at 269-70***. Any seasoned prosecutor would have corrected Dr. Pietrangelo's false testimony and not relied on it to convict. Because the prosecutor here failed to do this, and there is a "reasonable likelihood" the false

testimony "had an affect on the judgement of the jury." Id. at 271-72.

District court and likewise the Sixth Circuit court failed to follow Napue, concluding that Dr. Pietrangelo's testimony was "merely inconsistent" with the testimony she gave in Ms. Jones' son's trial, without analyzing "what affect" the falsity had on Ms. Jones' jury. This legal standard is critical to whether or not criminal defendants receive a fair trial under the Due Process Clause of the United States Constitutions. See ***Smith v. Phillips, 455 U.S. 209, 220, n.10 (1982)***.

Dr. Pietrangelo's testimony was the centerpiece of the State's case. The State built its whole not self-defense, its whole story, its whole theory of the case on Dr. Pietrangelo's testimony that there were seven individual stab wounds meant Ms. Jones did not act in self-defense. The State told the jury that, Ms. Jones "stabbed him so many times" "in such horribly vital organs", "shows what she was intending" "when she took a knife and she plunged it into this man at least 7 times, in an area . . . she didn't stab once, she stabbed 7 times and then sliced on his wrist too. (ECF No. 4-36, PageID.3790–3791)

The trier of facts knew only all of what the State repeatedly told the jury, because Dr. Pietrangelo told them about the injuries. The State told them - - - multiple times - - - with emphasis - - - was "Dr. Pietrangelo found he was stabbed seven times." (Id.) (ECF No. 4-35, PageID.3780) And that meant this was not self-defense - - - That's second-degree murder." And that "she was very confident in her diagnosis". They

never knew it was false, retracted testimony. (ECF No. 4-35, PageID.3780; ECF No. 4-36, PageID.3790–3791; ECF No. 4-29, PageID.2978; ECF No. 4-36, PageID.3789)

Had the State corrected the number of stab wounds testified to by Dr. Pietrangelo, the jury would not have used it to convict. A seasoned, prepared State prosecutor would have corrected Dr. Pietrangelo's false medical testimony, because it lacked the required evidence foundation, and that would have fundamentally given Ms. Jones a fair trial. Or she could have impeached Dr. Pietrangelo on direct-examination, also transforming the course of the trial.

Indeed, the State conceded during habeas corpus process that, "Jones has shown that the information presented during her trial was false", as the evidence supported only two individual stab wounds "2 thorax 1 L. forearm" incision, not seven. But, the State told the jury during closing argument that "Mr. Williams was stabbed seven times", and "you can consider what she [petitioner] was intending when she plunged knife into him so many times." (ECF No. 8, PageID.3916; ECF

The lower courts seem to have been confused about whether Ms. Jones was arguing false testimony under Napue, when evidence was well known by all the parties before trial, or arguing the false testimony claim as non-disclosure evidence claim under Brady? Clearly Petitioner argued and referenced the false testimony claim under Napue. The courts seemed to believe that, even though petitioner raised her false testimony claim during post-conviction, she might be arguing Brady

non-disclosure of the evidence. But this is just fundamentally wrong. (ECF No. 4-14, Page ID.1354 - 1356) Ms. Jones' post-conviction pleadings identified Mooney, Napue and Miller holdings as support for her false testimony claim.

(ECF No 4-2, Page ID.277–279; ECF No4-2; Page ID.269, 271, 273, 275)

Finally, the evidence of there being seven individual stab wounds just does not exist. There is no evidence in this case of that. The lower courts were therefore wrong to rely on Dr. Pietrangelo's truthful testimony as presented in Ms. Jones' son's trial, to deny Ms. Jones' false testimony claim. (Son/Co-defendant Deangelo Jones Transcript -ECF No.4-19, PageID.1892-1893; ECF No.4-19, PageID.1917; 1927; 1957-1958).

The lower courts were also wrong that the truthful testimony, as presented in Ms. Jones' son's trial warranted denying Ms. Jones' false testimony claim. If anything, what the truthful evidence highlights is just how powerfully the false testimony affected the jury judgment. After hearing Ms. Jones plunged the knife into him seven individual times. To hear seemingly medical finding, confidently announced, repeatedly emphasized in testimony from a County Medical Examiner, that as a matter of medical certainty, the victim was stabbed seven individual times and sliced once; so Ms. Jones did not act in self-defense. And given the State's failure to correct the false testimony and repeated concession that Dr. Pietrangelo's testimony "shows" what Ms. Jones "intended" when she "plunged" the knife into him over and over again. This was all correctable, had the State wanted to.

In the end, the State was right, that Dr. Pietrangelo's testimony "shows" what Ms. Jones was "intending". The State prosecutor neutralized all of the defense's self-defense evidence, by failing to correct the false testimony. That failure was textbook prosecutorial misconduct and materially destroyed - - - Ms. Jones' defense. By concluding otherwise, the lower courts unreasonably applied the legal standard of ***Brady v. Maryland, 373 U.S. 83, 87 (1963)*** to Ms. Jones' false testimony claim, and habeas relief is warranted under the legal standard of ***Napue, Miller and Mooney***.

II.

Habeas Relief Is Also Warranted When A Lawyer Fails to Investigate and Expose False Testimony Offered by the Prosecution's Key Expert Witness

A.

The Michigan courts unreasonably applied clearly established federal law by holding that trial counsel's failure to investigate and expose false testimony was effective assistance of counsel.

The Sixth Amendment to the United States Constitution guarantees all criminal defendants the effective assistance of counsel. To establish an ineffective-assistance claim, a defendant must show that counsel's performance was "deficient" - - it "fell below an objective standard of reasonableness" - - - and 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. at 687-88***.

This Court has made clear that "the right to effective assistance of counsel . . . may in a particular case be violated by even an isolated error of counsel if that error is sufficiently egregious and prejudicial." ***Murray v. Carrier, 477 U.S., 496 (1986)***. This includes an error in investigating the case: counsel has a duty "to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." ***Strickland, 466 U.S. at 691.*** In ***Rompilla***, the Court explained that this duty at a minimum requires trial counsel to perform basic investigation into obvious sources of key prosecution evidence. The Court explained that it "flouts prudence to deny that a defense lawyer should try to look at a file he knows the prosecution will cull for aggravating evidence, let alone when the file is sitting in the trial courthouse, open for the asking." ***545 U.S. at 389***. This is even more disturbing when the evidence is in defense counsel's own hands. (See e.g. ***United States v. Iverson, 648 F. 737, 738 (D.C. Cir. 1981)*** and the cases cited within.

Here, the trial counsel's failure to correct, exclude or impeach Dr. Pietrangelo's false testimony was clear-cut deficient performance. Dr. Pietrangelo testified on direct examination that, from her examination of the victim's body, she discovered "seven individual stab wounds and one laceration". ((ECF No. 4-1, PageID.122 -130; ECF No. 4-1, Page ID.132; ECF No.4-30, PageID.3096-3106; ECF No.4-25,)

But as the State now admits, their expert's medical findings were not supported by

the medical records. (ECF No. 8, Page ID.3916) "Jones has shown that the information presented during her trial was false[.]"

For a properly prepared lawyer, what to do next would have been an easy call. Defense counsel could have moved to have Dr Pietrangelo false testimony corrected altogether, or could have destroyed her testimony on cross-examination. Defense counsel didn't try to counter 7 stabs and/or inform jury there's a discrepancy in evidence on the number of stab wounds in Opening, as he reserved then waived his Opening Statement. (ECF No. 4-29, PageID.2919; ECF No. 4-35, PageID.3691; ECF No. 4-29, PageID.2978) It's undisputed here that defense counsel did neither. Instead, he just let the falsity stand, as the trial court put it "it was well established prior to trial that the victim had been stabbed three times." (ECF No. 4-17, PageID.1784 and 1790), and that it will not fault the prosecution for evidence that the defense had in its possession "during her trial." (ECF No. 4-17, PageID.1790;) This was ineffective assistance of counsel: When defense counsel in a murder trial faces a choice between correcting falsity or letting it go to the jury uncorrected, it is never reasonable trial strategy to choose the latter over the former. In this case, the trial judge found: "It was well established prior to trial that the victim had been stabbed three times . . . "stabbed 3 times. 2 thorax 1 L. forearm" . . .in both his admitting diagnoses and discharge diagnoses, "Stab in the chest and left arm, 3 lacerations total." Yet, counsel let the false seven individual stab wounds testimony

be considered by the jury as evidence "showing what she intended", and the lower court did not apply Strickland's 2nd prong to this set of facts. (ECF No.4-3, PageID.444; ECF 4-14, Page ID.1748-1790)

The Sixth Circuit, on de nova review, likewise failed to follow Strickland. The Sixth Circuit speculated that trial counsel challenged the falsity, since he conducted cross-examination. (ECF No. 16, PageID.7847 – 7849) Speculation that trial counsel may have questioned the witness on the number of stab wounds, but he had no knowledge of the evidence showing 3 stabs wounds. This does not excuse trial counsel's deficient performance - - - nor the prejudiced that follows - - - , it underlines it. Trial counsel admitted he was unaware that the evidence showed "that there were only 3 stab wounds, as opposed to the 7 she (the State's Expert Medical Examiner) testified to under oath previously" and that he would have presented a different defense for Ms. Jones had he known. (ECF No. 4-3, PageID.444 – 445) If trial counsel had indeed read the medical records purportedly supporting the actual number of stab wounds, he would have immediately realized that they did not say or support Dr. Pietrangelo's testimony in any way. And if read the medical records, yet chose to do nothing with the knowledge that Pietrangelo's testimony was false, this would not render his performance any better. It becomes worse.

Counsel's deficient performance "prejudiced the defense". Strickland, 466 U.S. at 687. To satisfy the prejudice standard, "a defendant must show that there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. This legal standard is only applicable to Ms. Jones' ineffective assistance of counsel claim, yet the lower courts applied it to her false testimony claim, without assessing Strickland's second prong. (ECF No. 4-17, PageID.1784-1793; ECF No. 4-18, PageID.1793–1794; ECF No. 17, PageID.7858, ECF No. 16, PageID.7844-7854)

Dr. Pietrangelo's testimony was the centerpiece of the prosecution's case. The prosecution built its whole case to show intent, its whole story, its whole theory of the case on Dr. Pietrangelo's testimony that the victim was stabbed seven individual times, showing Ms. Jones intended to do great bodily harm, that led to the victim's death. The prosecution told the jury that, Dr. Pietrangelo "was very confident in her diagnosis" and "found seven individual stab wounds on the victim's torso", "the number of stab wounds you can consider" when deciding "what she was intending". (ECF No. 4-36, PageID.3789–3790) She "plunged the knife into him so many times" and "damaged vital organs", that "caused both his lungs to collapse" and Dr. Pietrangelo's medical conclusion of "Anoxic Encephalopathy Status Post Cardio-pulmonary Arrest with Resuscitation/Multiple Stab Wounds of the Torso (7)". (Id.) (ECF No. 4-36, Page ID.3790–3791; ECF No. 4-35, PageID.3780–3782; ECF No. 4-29, PageID.2978)

Had defense counsel performed even a basic investigation into the medical record supposedly discrediting Dr. Pietrangelo's testimony, the jury would have heard only the truth. A minimally prepared counsel could have excluded Dr. Pietrangelo's false testimony because it lacked medical evidence support, and that would have fundamentally reshaped the trial. Or he could have destroyed Dr. Pietrangelo on cross-examination, also transforming the course of the trial. Counsel seems to have been winging it during trial, i.e. – to accomplish or execute something without sufficient preparation. e. g.-When time to for prosecutor's witness Curtis Williams to be examined, defense said "Judge, I'm going need to prepare." "Judge, only issue I wanted to bring up is my being prepared for him, of course." "And I need to view the videos prior to my cross-examination. "I want to reserve my cross-examination until I can review the videos again." Prosecutor objected saying "Two video statements on the night he was arrested. He has had ample time to look at them, process them, come up with his questions ... so now this late in the game, he can't say that he isn't prepared." Judge said "he's here now and you have had not had an opportunity, and I also did give you - - purposely didn't call him prior to lunch to give you an opportunity to go over at lunch to prepare for a cross-examination, so request is denied." Curtis was called to the stand, with defense attorney unprepared to properly cross-examine, impeach and get much-wanted DVD of his and his best friend Marquis Oneal's video interrogations admitted for jurors to see why big

change in testimony and how he was led to say what he's saying now, blaming all on Ms. Jones to keep his best friend Marquis free. (ECF No. 4-33, PageID.3512–3514).

Petitioner never knew if/when Mr. Williams was completely disarmed. The record showed that neither did Curtis Williams know if/when he was disarmed. Prosecutor asked "Is he disarmed at that point or does he still have the knife and the pole in his hand?" Curtis stated: "I guess they just took everything because he got up without anything in his hand." (ECF No. 4-33, PageID.3532; ECF No. 4-33, PageID.3529-3530)

Indeed, the trial court concluded in its opinion that, "it was well established prior to trial that the victim had been stabbed three times. The victim's hospital admission notes state "stabbed 3 times. 2 thorax 1 L forearm."" Prosecution conceded during habeas corpus proceedings, that Dr. Pietrangelo's seven individual stab wounds "information presented during her trial was false". (ECF No.4-17, PageID.1790; ECF No. 8, Page ID.3916) Petitioner's jury never heard any of this.

There is no evidence in this case - - or anywhere in the medical records - - that the victim was stabbed seven individual times by Ms. Jones, other than the Expert Medical Examiner's false evidence and testimony.

The lower courts seem to have been confused about whether there were questions put to Dr. Pietrangelo on this point of only 3 stab wounds showing in hospital admission through discharge medical records. The courts seemed to believe

that any questioning of Dr. Pietrangelo challenged or corrected the false testimony, but there's no support for that conclusion anywhere in the record. Not a single question was asked about could there have been 3 stab wounds, or anything other than her testimony and evidence of seven individual stab ones plus one incision. This was just fundamentally wrong. That court's evidence just does not exist. The lower courts were therefore wrong to rely on this nonexistent cross-examination questioning to deny Ms. Jones' claim.

The lower courts were also wrong when it concluded that Dr. Pietrangelo's false testimony was "misleading" or "mere inconsistencies[y]." (ECF No.16, Page ID # 19-20). Dr. Pietrangelo's false evidence and testimony presented to Ms. Jones' jury was much more than just "misleading" or merely inconsistencies.

If anything, what all of this hind-sight guessing shows, is what might have happened, if the truthful testimony was given during Ms. Jones' trial, and supports the fact that false medical evidence was presented to Ms. Jones' jury, without correction. The false, yet seemingly scientific, confidently proclaimed, repeatedly emphasized testimony from a Macomb County Medical Examiner, as being a matter of medical certainty, that there were seven individual stab wounds to the victim's torso; and the prosecution's repeated concession that Dr. Pietrangelo's seven individual stab wounds testimony "shows what she was intending" – was false testimony that was easy for defense to get around; had counsel reviewed the

medical documents prior to trial, rather than after trial swearing in an Affidavit: "I have recently come to know . . . that the evidence now shows that there were only 3 stab wounds, as opposed to the 7 she testified to under oath previously." And had "the sworn testimony by the medical examiner been 3 stab wounds rather than 7 stab wounds at the time of Belinda Jones' trial, I would have adjusted my trial argument . . . " (ECF No. 4-3, PageID.444–445; ECF No. 4-30, PageID.3133-3134)

In the end, left uncorrected, would make the prosecution right that Dr. Pietrangelo's false testimony used "shows what she was intending". Ms. Jones' trial counsel could have neutralized all of the prosecution's false evidence, but failed to challenge the falsities at all. That failure was textbook ineffective assistance of counsel and prejudiced - - indeed destroyed - - Ms. Jones' defense. If "cause" is satisfied, because "it was well established prior to trial that the victim had been stabbed three times." (ECF No. 4-17, PageID.1790) Then "prejudiced" is surely established when defense counsel possesses rebutted truthful evidence, but allows the prosecutor to invite the convicting jury to consider the false evidence or number of stab wounds to show what she was intending. (ECF No. 4-36, PageID.3789–3791; ECF No. 4-35, PageID.3780–3780; ECF No. 35, PageID.3781)

By concluding otherwise, the lower courts failed to apply Strickland's second prong to the facts of this case. Habeas relief should have been granted.

B.

Whether counsel's unreasonable failure to investigate and expose "false medical testimony" violates the Sixth Amendment right to counsel is a question of exceptional importance.

This Court's precedents show that reliability of convictions in the criminal justice system is of utmost importance. See e.g., **Strickland, 466 U.S. at 687; Napue, 360 U.S. at 265; Mooney, 294 U.S. at 112-13; Alcorta v. Texas, 355 U.S. 28, 31 (1957)**.

This Court has recognized the extraordinary force of scientific testimony from expert witnesses, "Unlike an ordinary witness . . . an expert is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or observation." **Daubert v. Merrel Dow Pharm., Inc., 509 U.S. 579, 592 (1993)**. Thus, "[e]xpert evidence can be both powerful and quite misleading[.]" Id. at 595. Given the extraordinary weight juries attribute to unchallenged expert-witness testimony, along with the reversal of convictions due to "false testimony", it is important that this Court clarifies the duties of counsel in cases with false expert testimony.

This Court has never offered an opinion that addresses counsel ineffectiveness in cases like Petitioner's, where "false testimony" was used to secure a conviction and defense counsel possesses evidence that discredits falsity, but does nothing. In Strickland, the Court was called upon to decide whether sentencing counsel has a

duty to investigate mitigating evidence that may have saved his client from the death-penalty. **Strickland, 466 U.S. 668 (1984)**. Some lower courts are reluctant to find a due process violation if the defendant's lawyer was aware of falsity at trial, but elects not to use it. See e.g. **Robinson v. Arvonio, 27 F.3d 877, 886 (3rd. Cir. 1994); United States v. O'Keefe, 128 F.3d 885, 894-94 (5th Cir. 1997)** (and the cases cited therein); **United States v. Iverson, 648 F.2d 737, 738 (D.C. Cir. 1981)**. While other lower courts have granted relief to the defendant despite his/her lawyer's knowledge of the falsity before trial. See e.g. **Belmontes v. Woodford, 350 F.3d 861, 881 (9th Cir. 2003); United States v. Mason, 293 F.3d 826, 829-30 (5th Cir. 2002); DeMarco v. United States, 928 F.2d 1074 (11th Cir. 1991)**.

Petitioner's case falls into the former line of cases. Yet, she was denied relief. This court should grant Certiorari to provide guidance to the lower courts on the proper application of Strickland, when false testimony is used to convict, and counsel does nothing. (Rule 10 (a) of the Rules of the Supreme Court of the United States)

Petitioner here received similarly ineffective assistance of counsel when her defense attorney possessed the medical records showing there were only three knife injuries total, but failed to read the medical records that purportedly supported the truth about the injuries, and failed to correct the false testimony on which her conviction rests. At least a cursory review of the medical records was necessary to effectively assist Petitioner, and would have transformed the course of this case.

Even Ms. Jones' defense attorney himself agreed to that. (ECF No. 4-3, PageID.444 – 445) By neglecting to read the medical records; trial counsel failed to undertake a reasonable investigation that would have corrected false testimony, repelled false intent evidence from going to the jury and protected Ms. Jones' right to a fair trial.

A review under Strickland's second prong was required, under the Sixth Amendment to the United States Constitution.

Given this Court's emphasis on Sixth amendment "right to counsel in one's defense" this Court should clarify counsel's duty to correct false testimony in prosecutions relying on false expert testimony. The Sixth Amendment and this Court's precedents suggest that failing to effectively correct readily disprovable "false testimony" incarcerates innocents and violates the right to counsel. This Court should grant review to bring c =uniformity to the critical role that the right to counsel plays to protect against convictions and incarcerations of innocent defendants by uncorrected false expert testimony.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Date: January 16, 2025

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