

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIE YOUNGBLOOD - PETITIONER

VS.

SHERRY BURT - RESPONDENT(S)

ON APPEAL FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME THE COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Willie Youngblood #690575
In Properia Persona
Muskegon Correctional Facility
2400 S. Sheridan Drive
Muskegon, Michigan 49442

STATEMENT OF QUESTIONS PRESENTED

I.

IS A STATE PETITIONER ENTITLED TO RELIEF AND, REVERSAL OF PETITIONER'S CONVICTION FOR ASSAULT WITH INTENT TO MURDER IS REQUIRED WHERE THE PROSECUTION FAILED TO PROVE THAT CRIME BEYOND A REASONABLE DOUBT?

II.

IS A STATE HABEAS PETITIONER ENTITLED TO RELIEF WHERE, THE PROSECUTION SUBMITTED INSUFFICIENT EVIDENCE TO CONVICT PETITIONER OF CONSPIRACY TO COMMIT HOME INVASION AND CONSPIRACY TO COMMIT ASSAULT WITH INTENT TO COMMIT MURDER AND THOSE CONVICTIONS VIOLATE HIS FEDERAL CONSTITUTIONAL RIGHTS TO BE FREE OF CONVICTIONS IN THE ABSENCE OF PROOF BEYOND A REASONABLE DOUBT?

III.

IS A STATE PETITIONER ENTITLED TO RELIEF IN THE ALTERNATIVE, IN THE CONTEXT OF THIS CASE, WHERE EVIDENCE OF CONSPIRACIES WERE SATISFIED MERELY BY EVIDENCE OF THE SUBSTANTIVE OFFENSE, PETITIONER'S CONVICTION FOR BOTH CONSPIRACY TO COMMIT HOME INVASION AND HOME INVASION AND HIS CONVICTIONS FOR BOTH CONSPIRACY TO COMMIT ASSAULT WITH INTENT TO COMMIT MURDER AND ASSAULT WITH INTENT TO COMMIT MURDER VIOLATED HIS CONSTITUTIONAL RIGHT NOT TO BE TWICE PUT IN JEOPARDY?

IV.

IS A STATE HABEAS PETITIONER ENTITLED TO RELIEF WHERE, THE TRIAL COURT VIOLATED THE PETITIONER'S DUE PROCESS RIGHT TO PRESENT A DEFENSE BY EXCLUDING EVIDENCE OF A LETTER WRITTEN BY CO-DEFENDANT LISTER TO PETITIONER STATING THAT PETITIONER WAS NOT PRESENT AT THE HOME OF THE SHOOTING?

LIST OF PARTIES

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

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **Federal courts**:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is

☐ reported at _____; or
☐ has been designated for publication but is not yet reported; or
☒ is unpublished

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or
☐ has been designated for publication but is not yet reported; or
☒ is unpublished

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

☐ reported at _____; or
☐ has been designated for publication but is not yet reported; or
☒ is unpublished

The opinion of the Michigan Court of Appeals appears at Appendix D to the petition and is

☐ reported at _____; or
☐ has been designated for publication but not yet reported; or
☒ is unpublished

JURISDICTION

☒ For cases from **Federal courts:**

The date on which the United States Court of Appeals decided my case was September 12, 2017.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____.

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

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

☐ For cases from **state courts:**

The date on which the highest state court decided my case was March 3, 2015. A copy of that decision appears at Appendix C.

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

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

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

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT

The Sixth Amendment to the U.S. Constitution provide that no person shall be required to answer for a capital or otherwise infamous offense unless on indictment or presentation of a grand jury except in military cases; that no person will be compelled to be a witness against himself; that no person shall be deprived of life, liberty or property without due process of law and that private property will not be taken for public use without just compensation.

SIXTH AMENDMENT

The Sixth Amendment of the U.S. Constitution includes such rights as the right to speedy and public trial by an impartial jury, right to be informed of the nature of the accusation, the right to confront witnesses, the right to assistance of counsel and compulsory process.

FOURTEENTH AMENDMENT

The Fourteenth Amendment of the United States Constitution, ratified in 1868, creates or at least recognizes for the first time a citizenship of the United States, as distinct from that of the states; forbids the making or enforcement by any state of any law abridging the privileges and immunities of citizens of the United States; and secures all "persons" against any state action which results in either deprivation of life, liberty, or property without due process of law, or, in denial of the equal protection of the laws.

STATEMENT OF THE CASE

In a Thirteen Count Felony Complaint and Warrant, Petitioner Willie Gene Youngblood and Co-Defendant Derrick Lister were charged as follows: In Count I and II, Lister was charged with Felony in Possession of a Firearm, [MCL 750.224f] and Felony Firearm while committing or attempting to commit Felon in Possession of a Firearm [MCL 750.224b]. In Counts III and IV, both the Petitioner Youngblood and Co-Defendant Lister were charged with Conspiracy to commit First Degree Home Invasion [MCL 750.157a] and First Degree Home Invasion [MCL 750.110a(2)]. In Counts VII through IX both were charged with Conspiracy to commit Assault with Intent to Murder, Assault with Intent to Murder Ashley Williams [MCL 750.83] and Felony Firearm while committing or attempting to commit Assault with Intent to Murder. In Count X and XI, both were charged with carrying a dangerous weapon with unlawful intent [MCL 750.226] and Felony Firearm while committing or attempting to commit carrying a weapon with unlawful intent. In Counts XII and XIII, Petitioner was solely charged with Assault with intent to Murder Karen Williams and Felony Firearm while committing or attempting to commit Assault with Intent to Murder. The offenses were all alleged to have occurred November 24, 2011 at 3118 Birch Park in the City of Saginaw, Michigan. ("TT" - "T3" and "S" refer to transcripts of the January 29, 30, 31, 2013 jury trial and March 18, 2013 sentencing, all conducted in the Saginaw Circuit Court before the Hon. Darnell Jackson. Numbers following citations refer to specific page therein). (Emphasis added).

Counsel's January 28, 2013 motion to sever Petitioner from his Co-Defendant Lister, was granted. On January 28, 2013, Petitioner appeared for a jury trial. After preliminary matters, (T1 5-12; T2 4-6), jury selection, (T1 13-63), preliminary jury instructions (T1 63-78) and the prosecutor's opening

statement (T2 8-16), the following evidence was presented:

Saginaw County Police Officer Jonathon Beyerlein was dispatched to 3118 Birch Park on November 24, 2011 on a report from an hysterical woman that a male had entered the residence and shot her mother. (T2 17-18, 25). He arrived at or about 9:00 p.m. and was told the subjects were on the back porch. (T2 19). There he saw only a shattered sliding glass door and waited for Officer Teneyuque to arrive. Both officers checked the area for potential suspects but found none. He contacted witnesses, located several spent bullet castings inside and outside the premises and what appeared to be several bullet holes through the front window and screen. The casings and holes appeared fresh. The holes indicated that the bullets traveled from the outside into the premises. (T2 20-24).

Ashley Williams lived at 3118 Birch Park with her two children. Her mother Karen and cousin Chanquiece Moten stayed there temporarily. That evening, her sister Catherine was also present. (T2 30-33). She knew and was romantically involved with Lister, a/k/a "Notorious", and knew Petitioner through Lister. (T2 37-38, 59). The previous day, she and Lister argued. (T2 39-40). On the night in question, she was seated at her dining room table with her sister and cousin when she heard a knock on the door. (T2 41-43). Lister identified himself. She opened the door. He pointed a 9 mm handgun at her head and said he was there to kill her. She tried to close the door. He pushed it open and shot at her as she called 911 and ran to the kitchen. (T2 45-48, 54, 70-72). He followed her to the kitchen. She ran to the patio climbing over her mother, who was nearby in bed. She heard three more shots and saw glass break. She did not see anyone else and could not tell if it sounded like more than one gun was fired. (T2 49-51, 55-56, 58, 74-77, 80-84). Running from her apartment she saw brake lights and headed to the office, where

a security officer was in a truck, (T2 52-54), who walked her back. Police were already present. (T2 77-79). She gave the police pictures of Petitioner and Lister from Petitioner's Facebook page. (T2 61, 63, 80). Her access was later blocked. (T2 64). She did not know the age of the photograph or who blocked her. (T2 66).

Chanquiece Moten is Ashley Williams' cousin, and was staying at Ashley's apartment. (T2 86). She was familiar with Petitioner and Lister, whom she knew as "Notorious". (T2 87-89). She was present November 23, 2011 during a confrontation involving Ashley and Lister. (T2 89-91). The following evening there was a knock on the front door. Ashley opened the door and then tried to kick in closed. Lister came in with a gun, said to Ashley "I'm fittin' to kill you, bitch, for setting me up to get robbed. I'm fittin' to kill you." and fired the gun at Ashley, who ran through the apartment and out the patio. (T2 92-96). Petitioner stood outside the window. (T2 97). He shot twice into the apartment. He then entered, shot again and left. According to Moton, "It looked as if he was pointing at her as if he could have shoot her, but the direction of the way he had it, it was like he was just shooting on top of her." Petitioner was standing over Karen, but he was not touching her. Moton could not tell whether he was aiming at her. (T2 107-108, 113-116). Lister pointed a gun at Moton and said "I'm coming back to kill you - and these kids next". She did not hear Petitioner say anything. (T2 99-100, 123). She denied telling the police she could only identify Lister. (T2 122).

Karen Williams was declared unavailable due to health reasons. (T2 4-6). A transcript of her preliminary examination testimony was read to the jury. (T2 121-144). Karen stated she was asleep when a man came over her. He pointed a gun at her as he was trying to reload. He said nothing. When the other person left, he left too. She could not identify either man. (T2 131-135, 138-143).

Catherine Williams is Ashley's older sister. (T2 145). On the evening of November 24, 2011 she was at Ashley's apartment. (T2 147). At about 9:00, somebody knocked on the door. Ashley said it was Notorious, with who she had a dispute with the day before. She let him in. He pointed a handgun at her face. She tried to close the door and ran toward the back of the apartment. Catherine ran along with Ashley. As they turned, she saw the man's face and saw him shoot an indeterminate number of times. She identified the man as Notorious. (T2 149-159, 176). Ashley ran out of the patio door. (T2 160). Catherine looked up and saw Petitioner, who also shot at the patio. (T2 164-169).

Saginaw Police Officer Anythony Teneyuque was dispatched to the location at 9:01 p.m., minutes after the offense. (T2 193-194). He interviewed two persons and searched other locations. (T2 196). Ashley named only Derrick. She did not indicate more than one person was involved. (T2 200-201).

Saginaw Police Officer Blake Hiben also responded, arriving less than five minutes later. He searched inside and out the apartment for evidence, primarily for shell casings. (T2 203-205). Outside a window were two .380 caliber Winchester cartridge casings within eighteen inches of each other, eight feet from the building. (T2 205-206). The window directly in front of the location had two bullet holes. They appeared to go from the outside into the home. (T2 207-208). In the living room he found three more 380 caliber fired cartridges within two feet of each other. (T2 209). He placed them on evidence. (T2 206, 211). No other evidence was recovered inside the apartment or following a search of the area from where the shots were said to have been fired. (T2 214-215).

Saginaw Police Officer Jonathon Beyerlein was recalled and stated he spoke with a Trynae Lawson, who was present at the time of the shooting. She stated

there were three shooters, and identified Derrick, a/k/a/ Notorious, but was unable to identify either of the other two. (T3a 4-8).

Detective Sergeant Grel Rousseau is a firearms and toolmark examiner with the Michigan State Police, (T3a 18), and was qualified as an expert in that field, (T3a 28). Rousseau stated that he examined and compared five fired cartridge cases. He determined that they were all .380 auto caliber Winchester cases, and that all were fired and ejected from the same weapon. (T3a 28-33).

Petitioner waived his right to testify. (T2 219-220), and no further witnesses were produced. After closing arguments, (T3a 40-75) and final jury instructions, (T3a 75-98), the jury returned with a verdict finding Petitioner guilty as charged of Count III and IV (Felon in Possession of a Firearm and Felony Firearm while committing or attempting to commit Felony in Possession of a Firearm), Counts V and VI (Conspiracy to commit First Degree Home Invasion and First Degree Home Invasion); Counts VII through IX (Conspiracy to commit Assault with Intent to Murder, Assault with Intent to Murder Ashley Williams and Felony and Felony Firearm while committing or attempting to commit Assault with intent to Murder Williams and Felony Firearm while committing or attempting to commit Assault with intent to Murder Ashley Williams and Counts X and XI (Carrying a dangerous weapon with unlawful intent and felony firearm while committing or attempting to commit carrying a weapon with unlawful intent) but not guilty of Counts XII and XIII (Assault with intent to Murder Karen Williams and Felony Firearm while committing or attempting to commit Assault with intent to Murder as to Karen Williams). (T3b 3-6). The Petitioner was sentenced to serve concurrent terms of 5-10 years for counts III, 10-20 years for Counts V and VI, 30-50 years for Counts VII and VIII and 5-10 years for Count X, consecutive to concurrent terms of 2 years for Counts IV, IX and XI, (S 9-10). As a right the following claims were raised:

I.

REVERSAL OF PETITIONER'S CONVICTION FOR ASSAULT WITH INTENT TO MURDER IS REQUIRED WHERE THE PROSECUTION FAILED TO PROVE THAT CRIME BEYOND A REASONABLE DOUBT.

II.

THE PROSECUTION SUBMITTED INSUFFICIENT EVIDENCE TO CONVICT PETITIONER OF CONSPIRACY TO COMMIT HOME INVASION AND CONSPIRACY TO COMMIT ASSAULT WITH INTENT TO COMMIT MURDER AND THOSE CONVICTIONS VIOLATE HIS FEDERAL CONSTITUTIONAL RIGHTS TO BE FREE OF CONVICTIONS IN THE ABSENCE OF PROOF BEYOND A REASONABLE DOUBT.

III.

IN THE ALTERNATIVE, IN THE CONTEXT OF THIS CASE, WHERE EVIDENCE OF CONSPIRACIES WERE SATISFIED MERELY BY EVIDENCE OF THE SUBSTANTIVE OFFENSE, PETITIONER'S CONVICTION FOR BOTH CONSPIRACY TO COMMIT HOME INVASION AND HOME INVASION AND HIS CONVICTIONS FOR BOTH CONSPIRACY TO COMMIT ASSAULT WITH INTENT TO COMMIT MURDER AND ASSAULT WITH INTENT TO COMMIT MURDER VIOLATED HIS CONSTITUTIONAL RIGHT NOT TO BE TWICE PUT IN JEOPARDY.

IV.

THE TRIAL COURT VIOLATED THE PETITIONER'S DUE PROCESS RIGHT TO PRESENT A DEFENSE BY EXCLUDING EVIDENCE OF A LETTER WRITTEN BY CO-DEFENDANT LISTER TO PETITIONER STATING THAT PETITIONER WAS NOT PRESENT AT THE HOME OF THE SHOOTING.

On June 19, 2014, the Michigan Court of Appeals affirmed the Petitioner's convictions in an unpublished opinion. (Appendix D).

The Michigan Supreme Court eventually denied the application for leave to appeal because it was not persuaded that the questions presented should be reviewed by that Court. (Appendix C).

On March 7, 2017 the United States District Court, Eastern District of Michigan, Southern Division concluded "For the reasons stated above, the state courts' rejection of Petitioner's claims did not result in decisions that were contrary to Supreme Court precedent, an unreasonable application of Supreme Court precedent, or an unreasonable determination of the facts. Accordingly,

the petition is DENIED." (Appendix B)(Emphasis added).

Furthermore, reasonable jurists would not debate the Court's assessment of petitioner's claims, nor conclude that the issues deserve encouragement to proceed further. The Court therefore DECLINES to grant a certificate of appealability under 28 U.S.C. § 2253(c)(2). Slack v. McDaniel, 529 U.S. 473, 484 (2000). (Appendix B pgs 11-12).

On September 12, 2017, the United States Court of Appeals for the Sixth Circuit concluded "Accordingly, reasonable jurists would not debate the district court's conclusion that the Michigan Court of Appeals' resolution of Youngblood's sufficiency claims was not contrary to or an unreasonable application of Jackson, or based on an unreasonable determination of the facts. (Appendix A p 4).

The Sixth Circuit further concluded "Reasonable jurists would not debate the district court's resolution of the double jeopardy claim. See United States v. Felix, 503 U.S. 378, 389 (1992)(stating that "a substantive crime and a conspiracy to commit that crime are not the 'same offense' for double jeopardy purposes"). (Appendix A p 4).

REASONS FOR GRANTING THE WRIT

Pursuant to Supreme Court Rule number 10, this case presents the important questions of whether the Fifth, Sixth and Fourteenth Amendment's guarantee of Petitioner's double jeopardy right, and rights to present a defense were violated when Petitioner was convicted. The Sixth Circuit Court of Appeals has decided the important federal questions in a way that conflicts with relevant decisions of this court, and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

Mr. Youngblood's Fifth, Sixth and Fourteenth Amendment rights were violated over the course of his trial and appeal of his conviction(s). The State's Brief does little more than quote the opinions of the lower courts, and it fails to address Mr. Youngblood's constitutional arguments explaining why his rights were violated and why the trial court's errors therefore resulted in a decision that was either contrary to, or involved an objectively unreasonable application of, clearly established Supreme Court precedent. For these reasons, this Court should remand this action to the Sixth Circuit Court of Appeals with instructions to grant Mr. Youngblood's Writ of Habeas Corpus.

I.

A STATE HABEAS PETITIONER IS ENTITLED TO RELIEF AND, REVERSAL OF PETITIONER'S CONVICTION FOR ASSAULT WITH INTENT TO MURDER IS REQUIRED WHERE THE PROSECUTION FAILED TO PROVE THAT CRIME BEYOND A REASONABLE DOUBT.

The Due Process Clause of the Federal Constitution prohibit criminal conviction unless the prosecution establishes the essential elements of the charge beyond a reasonable doubt. U.S. Const, Ams V, XIV; In re Winship, 397 U.S. 358, 361-362; 90 S.Ct 1068; 25 L.Ed.2d 368 (1970). The reasonable-doubt requirement represents a safeguard designed to protect citizens from "dubious and unjust convictions, which result in improper forfeitures of life, liberty and property." Winship, supra., 397 U.S. at 362. The Winship doctrine requires more than simply a trial ritual. A doctrine establishing so fundamental a substantive constitutional standard must also require that the factfinder will rationally apply that standard to the facts in evidence. A "reasonable doubt," at a minimum, is one "based upon "reason," which arises from the evidence or lack of evidence." Johnson v. Louisiana, 406 U.S. 356, 360; 92 S.Ct 1620; 32 L.Ed.2d 152 (1972).

Due Process requires reversal if, after viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could conclude the evidence was insufficient to establish each element beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 316; 99 S.Ct 2781; 61 L.Ed.2d 560 (1970).

The District Court erroneously concluded the Court of Appeals' conclusion was reasonable. The evidence was sufficient for a rational trier of fact to conclude that Petitioner specifically intended to kill Ashley Williams or at least someone else in the house. Petitioner was armed with a firearm, discharged the firearm several times from outside the house and continued to chase after Ashley Williams inside the house while Lister was still in pursuit

of and threatening to kill her. Petitioner is not entitled to habeas relief on his first claim. (Appendix B pgs 6-7).

In this particular instance, in order to convict the Petitioner of the specific intent crime of Assault with Intent to Murder Ashley Williams, the state was required to prove beyond a reasonable doubt: (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. People v. Davis, 216 Mich App 47, 53 (1996); MCL 750.83. Assault with intent to Murder is specific intent crime and it requires a specific intent to kill. People v. Brown, 267 Mich App 141, 148 (2005).

On direct appeal the Michigan Court of Appeals refused to grant relief under this particular claim where they not only relied upon circumstantial evidence and inferences to sustain the jury's verdict, but also where the trial facts were mischaracterized in a manner that helped bolster the evidence beyond the scope of its capacity where the court indicated the following:

"Defendant was seen outside a window shooting into an apartment housing three adults and two children. A witness saw one bullet strike above the kitchen stove. Two spent shell casings were found in the area from which defendant was shooting and two bullet holes were found in the window. As the other assailant pursued Ashley Williams through the apartment while shooting and announcing his intention to kill her, defendant entered the apartment and joined that assailant at the patio door through which Ashley fled. Three spent shell casings from the same gun that was fired outside the window were recovered inside the apartment."

Saginaw Police Officer Jonathon Beyerlein was recalled and testified he spoke with a Trynae Lawson, who was present at the time of the shooting. She stated there were three shooters, and identified Derrick, a/k/a/ Notorious, but was unable to identify either of the other two. (T3a 4-8).

In analyzing the trial court record, the Michigan Court of Appeals decision was "an unreasonable determination of the facts in light of the

evidence presented in the state court proceeding." Respondent's counsel would like for this Court to assume that there wasn't an "unreasonable determination of the facts in light of the evidence presented," when clearly, there isn't any evidence to verify nor support the State Court's assumption that the Petitioner is guilty of asserting a specific intent to murder Ashely Williams. The record evidence cannot support such a conclusion beyond a reasonable doubt.

The victims older sister Catherine Williams, who was present during the incident, made mention of Derrick Lister, a/k/a/ "Notorious", firing the shot at Ashely where the bullet hit the side of the stove. (T2 59). But the Michigan Court of Appeals insisted that it was the Petitioner who done so. Also, the Michigan Court of Appeals further insisted that, "three spent shell casings from the same gun that was fired outside the window were recovered inside the apartment." Basically, assuming that it was the Petitioner who fired the three shots inside the residence as well without support.

Contrary to the Michigan Court of Appeals view of the evidence, it was Derrick Lister who fired those three shots. Testimony of the victim Ashley Williams testified and suggested that as well. (T2 74, Lines 2-4).

Chanquiece Moten, the victims cousin through marriage, whom was also present during the shooting, testified that Lister entered the apartment with a gun and said to Ashley "I'm fittin to kill you bitch, for setting me up to get robbed. I'm fittin' to kill you," and fired the gun at Ashley, (T2 92-96). She did not hear the Petitioner say anything, (T2 99-102, 123), and did not appear to be shooting at Ashely. The evidence does not support a conviction beyond a reasonable doubt that Petitioner assaulted Ashley with the specific intent to kill her.

The United States Court of Appeals for the Sixth Circuit denial of COA on Youngblood's first claim is an objectively unreasonable application of clearly

established federal law, as determined by the Supreme Court in light of the evidence presented.

II.

A STATE HABEAS PETITIONER IS ENTITLED TO RELIEF, THE PROSECUTION SUBMITTED INSUFFICIENT EVIDENCE TO CONVICT PETITIONER OF CONSPIRACY TO COMMIT HOME INVASION AND CONSPIRACY TO COMMIT ASSAULT WITH INTENT TO COMMIT MURDER AND THOSE CONVICTIONS VIOLATE HIS FEDERAL CONSTITUTIONAL RIGHTS TO BE FREE OF CONVICTIONS IN THE ABSENCE OF PROOF BEYOND A REASONABLE DOUBT.

Due Process is violated if a defendant is convicted on the basis of less than legally sufficient evidence. U.S. Const, Ams V; XIV; In re Winship, 397 U.S. 358; 90 S.Ct 1968; 25 L.Ed.2d 368 (1970). Due Process requires reversal if, after viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could conclude the evidence was insufficient to establish each element beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 316; 96 S.Ct 2781; 61 L.Ed.2d 560 (1970).

The Michigan Court decision in affirming the Petitioner's conviction under this particular claim was premised upon their contention that the evidence was sufficient enough to allow the conviction to stand. Again, there was an "unreasonable determination of the facts in light of the evidence presented in the state court proceeding," where the evidence is insufficient as to the conspiracy aspect of the charges as well as for the intent element for finding a specific intent to kill upon the victim Ashley Williams. All evidence in respect to the charges does not indicate "any" intent of the Petitioner to kill Ashley Williams. The sentiment of the State is that the Petitioner is guilty of Conspiracy to commit Home Invasion and Conspiracy to commit Assault with intent to Murder Ashley Williams, simply by the expressed intent of co-defendant Derrick Lister and his known association with Mr. Lister, as well as

unsupporting evidence.

Fortunately, the mandates controlling authority from the Supreme Court of the United States under both In re Winship, and Jackson, supra, does not embrace a "guilty by association" component, nor do these clearly established United States Supreme Court precedents serve to support criminal convictions where the evidence presented at trial doesn't comport with the intent elements of the charges under this particular claim.

The reasonable doubt requirement represents a safeguard designed to protect citizens from "dubious and unjust convictions, which results in improper forfeitures of life, liberty and property." In re Winship, supra, at 397 U.S. at 362. As the Winship Court stated, "The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt of his guilt." 397 U.S. at 363.

Clearly, the State would like for the Petitioner to be guilty of the charges under this particular claim, however, due process doesn't permit conviction where a defendant is convicted on the basis of less than legally sufficient evidence." Id.

Under State law, the elements of conspiracy are that defendant intended to combine with others and intended to accomplish an illegal objective. People v. Mass, 464 Mich 615, 629 (2001). The prosecution must prove that "the intended future conduct . . . agreed upon include(s) all the essential elements of the substantive crime." Id. at n 19. Thus, the prosecution had to prove that each

and every member of this conspiracy agreed to commit Home Invasion and Assault with intent to commit murder.

Moreover, Michigan Compiled Law 750.110a(2) defines the elements of first degree home invasion as follows:

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 exist: (a) The person is armed with a dangerous weapon. (b) Another person is lawfully present in the dwelling.

The elements of Assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. People v. Taylor, 422 Mich 554, 567 (1985); People v. Beard, 171 Mich App 538, 541 (1988); People v. Cochran, 155 Mich App 191, 193-194 (1986).

In the instant case, the United States District Court, Eastern District of Michigan, Southern Division unreasonable concluded the evidence was sufficient for a rational trier of fact to conclude that Petitioner conspired with Lister to commit the crimes of assault with intent to commit murder and home invasion is reasonable. Petitioner and Lister were known friends. Petitioner began shooting into the apartment from the back at the same time that Lister entered the apartment in front and began shooting. Petitioner entered into the house and continued chasing after Ashley Williams while Lister was attempting to shoot her. Both men left the residence together. As such, Petitioner is not entitled to relief on his second claim. (Appendix B pgs 7-8).

Conclusively, the evidence presented in State Court does not support a Conspiracy to commit a Home Invasion or Conspiracy to commit Assault with Intent to Murder upon Ashley William. There is no evidence of an explicit agreement to do either. Taking all of the testimony in the light most favorable to the prosecution, the prosecution failed to prove that Petitioner conspired to commit First Degree Home Invasion or that he conspired to Assault with Intent to Murder Ashley Williams. Wherefore, the State Court's decision was contrary to clearly established United States Supreme Court precedent and an unreasonable determination of the facts in light of the evidence presented and requires relief on this claim.

The United States Court of Appeals for the Sixth Circuit unreasonably applied clearly established federal law, as determined by the Supreme Court of the United States when claiming: "Youngblood's wanton firing a pistol into the apartment was sufficient evidence for the jury to conclude that he acted with intent to kill. See People v. Carines, 597 N.W.2d 130, 136-37 (Mich 1999)(holding that intent to kill can be inferred from the defendant's use of a deadly weapon in wanton and willful disregard of the possibility that death or great bodily harm would result). The coordinated assault on Williams by Youngblood and his co-defendant was sufficient for the jury to infer that there was an implied agreement between them to commit home invasion and assault with intent to murder. See People v. Cotton, 478 N.W.2d 681, 688-89 (Mich Ct. App 1991). Accordingly, reasonable jurists would not debate the district court's conclusion that the Michigan Court of Appeals' resolution of Youngblood's sufficiency claims was not contrary to or an unreasonable application of Jackson, or based on an unreasonable determination of the facts." (Emphasis added)(Appendix A p 4)

III.

A STATE HABEAS PETITIONER IS ENTITLED TO RELIEF IN THE ALTERNATIVE, IN THE CONTEXT OF THIS CASE, WHERE EVIDENCE OF CONSPIRACIES WERE SATISFIED MERELY BY EVIDENCE OF THE SUBSTANTIVE OFFENSE, PETITIONER'S CONVICTION FOR BOTH CONSPIRACY TO COMMIT HOME INVASION AND HOME INVASION AND HIS CONVICTIONS FOR BOTH CONSPIRACY TO COMMIT ASSAULT WITH INTENT TO COMMIT MURDER AND ASSAULT WITH INTENT TO COMMIT MURDER VIOLATED HIS CONSTITUTIONAL RIGHT NOT TO BE TWICE PUT IN JEOPARDY.

The Double Jeopardy Clause guarantees that no person shall be "subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. Amend. V. The Double Jeopardy Clause is applicable to the States through the Fourteenth Amendment's Due Process Clause. See Monge v. California, 524 U.S. 721, 727; 118 S.Ct 2246; 141 L.Ed.2d 615 (1998); Benton v. Maryland, 395 U.S. 784, 794; 89 S.Ct 2056; 23 L.Ed.2d 707 (1969). The Double Jeopardy Clause protects criminal defendants from: (1) re-prosecution for the same offense after an acquittal; (2) against prosecutions for the same offense after a conviction; and (3) against multiple punishments for the same offense. See Ohio v. Johnson, 467 U.S. 493; 104 S.Ct 2536; 81 L.Ed.2d 18 (1977).

"In both the multiple punishment and multiple prosecution contexts [the Supreme] Court has concluded that there were two offense for which the defendant is punished or tried cannot survive the 'same elements' test, the double jeopardy bar applies." United States v. Dixon, 509 U.S. 688, 696; 113 S.Ct 2849; 125 L.Ed.2d 556 (1993)(citing Blockburger v. United States, 284 U.S. 299, 304; 52 S.Ct 180; 76 L.Ed. 306 (1932)(multiple punishment) and Gaviers v. United States, 220 U.S. 338, 342; 31 S.Ct 421; 55 L.Ed. 489 (1911)(successive prosecutions).

In the case at bar, the Michigan Court of Appeals unreasonably applied binding Supreme Court precedent in rejecting the claim when claiming:

Defendant next argues that his convictions for conspiring to commit the offense underlying the conspiracies violate double jeopardy protections. We disagree. "It is 'black-letter law' that conspiracy and the underlying substantive offense are separate and distinct crimes." People v. Rodriguez, 251 Mich App 10, 18-18; 650 NW2d 96 (2002). It does not violate the double jeopardy clause to sentence a defendant to prison terms for conspiracy to commit an underlying substantive offense and conspiracy to commit that offense, even if committed in the same criminal transaction. People v. Denio, 454 Mich 691, 712; 564 NW.2d 13 (1997).

The United States District Court, Eastern District of Michigan, Southern Division unreasonably found the Court of appeals' conclusion is not unreasonable or contrary to Supreme Court precedent. Indeed, the Supreme Court has repeatedly held that the Double Jeopardy Clause does not bar prosecution for conspiracy and the separate substantive offense because the conspiracy charge and the substantive charge are distinct offenses. United States v. Felix, 503 U.S. 378, 388-90 (1992); Garrett v. United States, 471 U.S. 773, 793 (1985); United States v. Bayer, 331 U.S. 532, 542 (1947); Pinkerton v. United States, 328 U.S. 640, 643 (1946). Thus, Petitioner is not entitled to habeas relief on this ground. (Appendix B p 8)

"[W]hen the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offense or only one [for double jeopardy purposes] is whether each provision requires proof of an additional fact which the other does not." Blockburger, 284 U.S. at 304. "The same elements test, sometimes referred to as the 'blockburger' test, inquires whether each offense contains an element not present in the other; if not, they are the 'same offense' and double jeopardy bars additional punishment and successive prosecution." 509 U.S. at 696.

While it is clear that double jeopardy law permits dual convictions for conspiracy to commit a substantive offense and for the substantive offense

itself, that rule presumes legally sufficient evidence of the substantive offense as well as of the initial agreement has been presented. If the conspiracy can be proven by evidence of the substantive alone, without any other offense acts committed by the conspirators, the two crimes have equivalent elements, and thus would constitute the "same offense" for purposes of double jeopardy. Blockburger, 284. Petitioner maintains in Argument II, supra, that there was insufficient evidence of the conspiracies. In the alternative, in the context of this case, he maintains this Court should hold that dual convictions for conspiracy to commit Home Invasion and Home Invasion and that dual convictions for conspiracy to commit assault with intent to murder and assault with intent to commit murder violate the constitutional prohibition against placing him twice in jeopardy where evidence of the conspiracy is satisfied merely by evidence of the substantive offense.

The United States Court of Appeals for the Sixth Circuit unreasonably determined that District Court reasonably concluded that Youngblood's third claim was not contrary to or an unreasonable application of Supreme Court precedent. Reasonable jurists would not debate the district court's resolution of this claim. See United States v. Felix, 503 U.S. 378, 389 (1992)(stating that "a substantive crime and a conspiracy to commit that crime are not the 'same offense' for double jeopardy purposes"). (Appendix A p 4).

IV.

A STATE PETITIONER IS ENTITLED TO RELIEF WHERE, THE TRIAL COURT VIOLATED THE PETITIONER'S DUE PROCESS RIGHT TO PRESENT A DEFENSE BY EXCLUDING EVIDENCE OF A LETTER WRITTEN BY CO-DEFENDANT LISTER TO PETITIONER STATING THAT PETITIONER WAS NOT PRESENT AT THE HOME OF THE SHOOTING.

The Petitioner was denied the constitutional right to present a defense when the trial court disallowed testimony regarding a letter written to him by co-defendant Derrick Berete "Notorious" Lister stating "And you know that you

wasn't there, so we should be good." (T1 5). At that time, the letter only recently became known to Petitioner and Defense Counsel, and would have provided an alibi defense.

The Michigan Court of Appeals concluded the trial court did not abuse its discretion in excluding the note from evidence because it was a hearsay statement that lacked "circumstantial guarantees of trustworthiness." People v. Youngblood, 2014, WL 2795874, at 4 (Appendix D).

Petitioner states whether rooted directly in the Due Process Clause of the Fourteenth Amendment . . . or in the Compulsory Process or Confrontation Clause of the Sixth Amendment . . . the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." Crane v. Kentucky, 476 U.S. 683, 690; 106 S.Ct 2142; 90 L.Ed.2d 636 (1986); California v. Trombetta, 467 U.S. 479, 485; 104 S.Ct 2528; 81 L.Ed.2d 413 (1984); U.S. Const, Am VI, XIV.

The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law. Washington v. Texas, 388 U.S. 14, 19; 87 S.Ct 1920; 18 L.Ed.2d 1019 (1967).

In this regard, appellate courts have consistently held that evidentiary rules cannot be arbitrarily used to exclude evidence that is vital to the proffered defense. Thus, in Crane, supra, the Supreme Court held the trial court erred in excluding defense testimony on the unreliability of the defendant's confession. The Court stated "[i]n the absence of any valid state justification, exclusion of this kind of exculpatory evidence deprives a

defendant of the basic right to have the prosecutor's case encounter and 'survive the crucible of meaningful adversarial testing. Crane, supra, 476 U.S. at 691, citing United States v. Cronin, 466 U.S. 648, 656; 104 S.Ct 2039; 80 L.Ed.2d 657 (1984).

Similarly, in Chambers v. Mississippi, 410 U.S. 284, 294, 302; 93 S.Ct 1038; 35 L.Ed.2d 297 (1973), the Court deemed unconstitutional an evidentiary rule precluding a party from impeaching its own witness, where the rule had barred the defendant from offering exculpatory evidence in the form of that witness' repudiated confession. The Court held this violated the defendant's due-process right to confront and call witnesses, and to present a defense. Id. at 302. In reaching this conclusion, the Court stressed that "where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanically to defeat the ends of justice." Id., 410 U.S. at 302. In Washington v. Texas, supra, 388 U.S. at 19, the Court held that the defendant was deprived of the right to compulsory process by the trial court's invocation of an arbitrary rule disqualifying an alleged accomplice from testifying on his behalf. The Court likened that deprivation to any other interference with the defendant's efforts to present a defense:

The right to offer the testimony of witness, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so that it may decide where the truth lies. Just as an accused has a right to confront the prosecution's witness for purposes of challenging their testimony, he has the right to present his own testimony, he has the right to present his own witnesses to establish his defense. This right is a fundamental element of due process of law.

The United States Court of Appeals for the Sixth Circuit unreasonably concluded the Michigan Court of Appeals held that the trial court's exclusion

of the letter under the state's hearsay rules did not violate Youngblood's constitutional right to present a defense. See *Youngblood*, 2014 WL 2795874, at 4. The district court concluded that the state court's decision was not contrary to or an unreasonable application of Supreme Court precedent. Reasonable jurists would not debate the district court's resolution of this claim. See *Taylor v. Illinois*, 484 U.S. 400, 410 (1988) ("The accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence."). (Appendix A p 4).

Consider, the Court in *Davis v. Alaska*, 415 U.S. 308; 94 S.Ct 1105; 39 L.Ed.2d 347 (1974) held erroneous a ruling excluding evidence of a witness' probationary status, where this evidence tended to suggest the witness' motive for falsely accusing the defendant of burglary. In this same vein, the Supreme Court has affirmed in *Holmes v. South Carolina*, 547 U.S. 319, 327; 126 S.Ct 1727; 164 L.Ed.2d 503 (2006), that evidentiary rules cannot be arbitrarily used to exclude evidence which is vital to the proffered defense. Michigan courts have similarly recognized instances in which less significant evidentiary rules must succumb to the defendant's constitutional right to present a defense.

In the instant case, evidence of a letter written by co-defendant Lister, stating that Petitioner was elsewhere when the crime was committed would have directly rebutted the testimony of prosecution witnesses who identified Petitioner as the second shooter. It was therefore, essential to his defense because it struck at the very core of the charges.

In *Michigan v. Barrera*, 519 U.S. 945; 117 S.Ct 333; 136 L.Ed.2d 246 (1996), the United States Supreme Court denied certiorari to the prosecution, letting stand the Michigan Supreme Court's decision in *People v. Barrera* and

People v. Musall, 451 Mich 261 (1996), reversing their felony murder convictions. The Barrera majority found that the trial court erred reversibly in excluding the statement of a separately-tried co-defendant, Copeland, that he acted alone and spontaneously in stabbing the victim. It found the statement to be self-incriminating, as against the co-defendant's penal interest when made, and trustworthy under the totality of circumstances. Here, Copeland expressly denied that any deals had been made for his statement. Balancing the due process right to exculpatory evidence with the policy behind MRE 804(b)(3), the majority found less corroboration required where the statement against penal interest is crucial to the defense theory.

Moreover, the statement was admissible under MRE 803(24), the "catch-all" or residual exception to the hearsay rule. For a hearsay statement to be admitted under MRE 803(24), it must satisfy four elements: "(1) it must have circumstantial guarantees of trustworthiness equal to the categorical exceptions, (2) it must tend to establish a material fact, (3) it must be the most probative evidence on that fact that the offering party could produce through reasonable efforts, and (4) its admission must serve the interests of justice."

These requirements were met here. The statement was offered on a material fact - that being whether Petitioner was present at the time of the shooting. The letter was highly probative of that fact. The error in excluding it is a preserved, constitutional error, which was not harmless beyond a reasonable doubt. Chapman v. California, 386 U.S. 18; 87 S.Ct 824; 17 L.Ed.2d 705 (1967). An error is harmless beyond a reasonable doubt when it has had no effect on the verdict. Under the circumstances here, the error of excluding Lister's letter to Petitioner stating Petitioner Youngblood was elsewhere at the time of the shooting must have affected the verdict, as it denied the jury the

• opportunity to consider evidence which contradicted the testimony of the prosecution witnesses.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

/s/ 
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