

SUPREME COURT OF THE UNITED STATES

Washington, DC 20543-0001

AURELIAS MARSHALL

Case No. 25-5386

Petitioner

v.

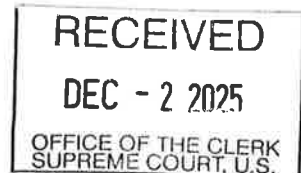
ADAM DOUGLAS

Warden

PETITION FOR REHEARING

Comes now petitione, pro se, requesting a rehearing for a writ of certiorari.

The Federal Court of Appeals did not review the Federal District Court's procedural default ruling de novo as required by 28 U.S.C. § 2254. No state court raised, argued, imposed or enforced a procedural rule that was adequate, or an independent state ground or judgment that could deny or foreclose review of Federal Constitutional claims. Coleman v. Thompson, 501 U.S. 722, 729, 111 S.Ct. 2546, 115 L.Ed 2d 640 (1991). The Federal District Court stated that claims were unexhausted, procedurally defaulted or meritless because petitioner failed to present claims to the Michigan Supreme Court. Petitioner presented (13) thirteen claims to the **Michigan Supreme Court**, See; (Appendix Exhibits (A) and (B), on direct appeal Order No. 155865 Michigan Supreme Court's Chief Justice, Honorable Stephen J. Markman, on order of the Court, the application for leave to appeal the April 11, 2017 judgment of the Court of Appeals was considered and denied, dated November 29, 2017. On post conviction Michigan Supreme Court's Chief Justice Honorable Bridget M. McCormack's Order No. 161370, on order of the Court, the application for leave to appeal the March 31, 2020 order of the Court of Appeals is considered and denied, dated October 27, 2020.



The District Court's record evidence See; (Appendix Exhibit (C)(bottom left corner) of page 10 of the Federal District Court's Judgment and Opinion, Marshall v. Winn, 2023 U.S. Dist. LEXIS 199895 from Sixth Circuit's Federal District Judge Honorable Laurie J. Michelson states verbatim;

"The Warden argues that these claims are procedurally defaulted because they were never raised before the Michigan Courts. (ECF No. 14, PageID. 341-342.) It is true that these claims were stricken and thus never considered by the appellate courts on direct appeals. But Marshall did raise these claims, as well as his prosecutorial misconduct claims, in his post-conviction motion for relief from judgment. (See ECF No. 15-15, PageID. 1574, 1576, 1579-1580, 1591-1595.) Therefore these claims are not procedurally defaulted."

A procedural default does not bar consideration of a Federal Claim on direct Habeas review unless the last state court rendering a judgment in the case 'clearly and expressly' states that its opinion rests on a State Procedural Bar. Caldwell v. Mississippi, 472 US 320.

The issues presented were adequate to deserved encouragement to proceed further, reasonable jurists would find it debatable whether the District Court resolved the claims correctly under the Antiterrorism and Effective Death Penalty Act of 1996. Miller-El v. Cockrell, 537 US 322, 336 (2003), Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Petitioner's claim of Actual Innocence, and Ineffective Assistance of Trial and Appellate Counsel are not freestanding, but are Sixth Amendment violations, which are of Constitutional dimensions.

The Brady claims submitted to the post-conviction Trial Court for Relief from Judgment were side-stepped or evaded, claims were mentioned, but not reviewed on the merits. The Circuit Court did not decide Federal Constitutional Claims even by reference so claims were never adjudicated, these claims should not be entitled to AEDPA deferential review for purposes of 28 U.S.C. § 2254(b). Brady v. Maryland, 373 U.S. 83, 10 L.Ed 2d 215, 83 S.Ct. 1194 (1963).

Petitioner asserts counsel was not functioning as counsel guaranteed by the Sixth Amendment. Strickland v. Washington, 466 U.S. 668, 80 L.Ed 2d 674, 104 S.Ct. 2052 (1984). The Court of Appeals on direct appeal failed to review the claim of Ineffective Assistance under the correct standard Strickland Standard, Nix v. Whiteside, 475 U.S 157, 175, 89 L.Ed 2d 123, 106 S.Ct. 988 (1986).

The review of Improper Jury Instructions, by the lower court was done piecemeal and did not come close to the model instructions the Supreme Court approved. In Allen v. United States, 164 US 492; 17 S.Ct. 154; 41 L.Ed 528 (1896), the Supreme Court approved the charges that may be used for instructing a jury during deliberations, however the Michigan Supreme Court "disapproved use of the Allen charge, and adopted the American Bar Association Standard Jury Instruction 5.4 codified M Crim JI 3.12 as the charge to be given in situations where a jury may be deadlocked, emphasizing that "any substantial departure" from the ABA STANDARD JURY INSTRUCTION "shall be grounds for reversible error." The Trial Court's improper departure deprived petitioner of his Constitutional right to a properly instructed jury verdict. Lowenfield v. Phelps, 484 US 231, 108 S Ct. 546 98 L Ed 2d 568 (1988).

There was insufficient evidence regarding malice or robbery to sustain a conviction of First Degree Felony Murder. The due process clause entitles petitioner to relief because the state has obtained his conviction without proving the essential elements of this crime beyond a reasonable doubt, causing this conviction to be Constitutionally infirm. Clark v. Arizona, 548 US 735, 766, 126 S Ct. 2709, 165 L Ed. 2d 842 (2006), See also Jackson v. Virginia, 443 US 307, 316-318, 99 S Ct. 2781, 61 L. E 2d 560 (1979); In re Winship, 397 US 358, 362, 90 S Ct. 1068, 25 L. Ed 2d 368 (1970). Proof beyond a reasonable doubt is Constitutionally required.

On direct appeal the Court of Appeals impermissibly substituted prosecution witness Acey Marshall as a participant in the assault on Joel. Malcom Jeffries was supposedly the other conspiritor in an unpremeditated spontaneous fist fight, there is no record evidence of Appellant or Malcom indicating a planned assault or purported robbery or a shared common plan.

The record is utterly devoid of evidence of a felonious taking of property, there is no evidence that Joel wore jewelry or possessed a wallet on the evening in question.

For the purposes of 28 U.S.C. § 2254 larceny is an intent crime, Supreme Court Precedent states that a specific or general intent to steal or carry away must be proven Morrisette v. United States, 342 U.S. 246 (1952), and when a certain intent is a necessary element, the crime cannot have been committed when the intent did not exist. Carter v. United States, 530 U.S. 255 (2000).

A mere intent to injure falls short of malice, the record evidence fails to prove that petitioner participated or actually took or help take property from Joel, resulting in petitioner being denied due process of law guaranteed by the Fourteenth Amendment, Duncan v. Henry, 513 US 364, 366, 115 S Ct. 887, L.Ed 2d 865 (1995).

CONCLUSION

Failure to review the District and Appellate Court's decision will result in a miscarriage of justice.

Petitioner respectfully requests that this Court hold a rehearing on this cause number, and for any appropriate relief. respectfully submitted this 20th day of November, 2025

A. Marshall

Petitioner, pro se

November 20, 2025

APPENDIX

Aurelias Marshall

v. Adam Douglas, Warden

Case No. 25-5386

- (1) **Exhibit (A)** Michigan Supreme Court Order No. 155865
- (2) **Exhibit (B)** Michigan Supreme Court Order No. 161370
- (3) **Exhibit (C)** Federal District Judge Laurie J. Michelson's Opinion
- (4) Denial Order of writ of certiorari

Order

Michigan Supreme Court
Lansing, Michigan

November 29, 2017

Stephen J. Markman,
Chief Justice

155865

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 155865
COA: 329362
Kent CC: 15-000706-FC

AURELIAS JUALIOUS MARSHALL,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the April 11, 2017 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

WILDER, J., did not participate because he was on the Court of Appeals panel.

CLEMENT, J., did not participate.



tl120s

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 29, 2017

Clerk

Order

Michigan Supreme Court
Lansing, Michigan

October 27, 2020

Bridget M. McCormack,
Chief Justice

161370

David F. Viviano,
Chief Justice Pro Tem

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 161370
COA: 351587
Kent CC: 15-000706-FC

AURELIAS JUALIOUS MARSHALL,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the March 31, 2020 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 27, 2020

Clerk

C. Witness Intimidation

Next, Marshall argues that his due process rights were violated because the police and prosecutor coerced Sheila Reed and his brother Acey Marshall into testifying against him by charging them with perjury after they testified at an investigative subpoena hearing.² (ECF No. 2, PageID.243-244.) Marshall also alleges the police or prosecutor intimidated Brenda Thompson by threatening to charge her with perjury if she did not change her testimony from the investigative subpoena hearing and testify favorably for the prosecutor at the trial. (*Id.* at PageID.241.) [*30] Marshall further claims that the prosecutors paid several witnesses for their testimony. (*Id.* at PageID.248.)

Ordinarily, the *Fifth Amendment* right against compelled incrimination is a personal right and may not be asserted on another's behalf. See *United States v. Nobles*, 422 U.S. 225, 234, 95 S. Ct. 2160, 45 L. Ed. 2d 141 (1975). The *Sixth Amendment* right to counsel is also personal and cannot be asserted vicariously. See *Texas v. Cobb*, 532 U.S. 162, 172 n.2, 121 S. Ct. 1335, 149 L. Ed. 2d 321 (2001). Marshall, therefore, would lack standing to challenge the alleged violations of these witness's constitutional rights. But Marshall makes a slightly different argument. Indeed, the Sixth Circuit has held that use of another person's coerced testimony may violate a defendant's rights under the *Due Process Clause of the Fourteenth Amendment*. See *Bradford v. Johnson*, 354 F. Supp. 1331 (E.D. Mich. 1972) *aff'd* by 476 F.2d 66 (6th Cir. 1973). Marshall, nonetheless, is not entitled to habeas relief on his claim for several reasons.

First, the Sixth Circuit's decision in *Bradford* does not clearly establish the law for purposes of this Court's habeas review. A habeas court may only look at the holdings of the United States Supreme Court to determine whether the state court decision was contrary to, or an unreasonable application of, clearly established federal law. See *Bergman v. Howard*, 54 F.4th 950, 957

(6th Cir. 2022) ("To qualify as 'clearly established,' a principle must originate from an actual Supreme Court holding, not from its passing dicta.")

Here, "[t]he [*31] Supreme Court has not decided whether the admission of a coerced third-party statement [against a criminal defendant] is unconstitutional." *Samuel v. Frank*, 525 F.3d 566, 569 (7th Cir. 2008) (concluding that sexual assault victim's out of court statements to the police were admissible even though the police told the victim she would not get her baby back if she did not cooperate). Moreover, "the concern with coerced statements is a concern with confessions or other self-incriminating statements, rather than the coercion itself." *Id.* A witness's coerced testimony is different from a defendant's coerced statement as "confessions tend to be devastating evidence in a jury trial because jurors find it difficult to imagine someone confessing to a crime if he is not guilty, unless the pressures exerted on him to confess were overwhelming." *Id.* The fact that the case for exclusion of a third party's coerced statement "is so much weaker . . . than in the case of a defendant's coerced confession is a further clue that exclusion would require the creation of new law rather than the application of an existing principle." *Id.*

Therefore, in the absence of a Supreme Court decision requiring the suppression of a nondefendant witness' coerced testimony, [*32] the federal law is not clearly established for purposes of this Court's review. In turn, a state court's allowance of such testimony can be neither contrary to nor an unreasonable application of clearly established federal law. See, e.g., *id.* at 571 (explaining that, regardless of whether a state court is "right or wrong to refuse to extend the bar against the use of a defendant's coerced statement to that of a nondefendant witness," a state court would not be "unreasonable in refusing to do so"). As such, Marshall is not entitled to habeas relief on these claims.

Moreover, even where police conduct in obtaining a statement from a witness is inappropriate, a habeas petitioner's due process rights are not violated if the conduct is "not so extreme that it violates a sense of fundamental fairness, shocking to universal justice" and as long as the petitioner is able to cross-examine the witness regarding the circumstances surrounding the police interrogation. *Wilcox v. Ford*, 813 F.2d 1140, 1149 (11th Cir. 1987) (internal quotation marks omitted). The opportunity for cross examination allows the jury "adequate opportunity to assess the proper weight to be accorded to the challenged evidence." *Id.*

*

² The Warden argues that these claims are procedurally defaulted because they were never raised before the Michigan courts. (ECF No. 14, PageID.341-342.) It is true that these claims were raised in appeal briefs that were ultimately stricken and thus never considered by the appellate courts on direct appeal. But Marshall did raise these claims, as well as his prosecutorial misconduct claims, in his post-conviction motion for relief from judgment. (See ECF No. 15-15, PageID.1574, 1576, 1579-1580, 1591-1595.) Therefore, these claims are not procedurally defaulted.

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 6, 2025

Mr. Aurelias Marshall
Prisoner ID #222775
Saginaw Regional Correctional Facility
9625 Pierce Road
Freeland, MI 48623

Re: Aurelias Marshall
v. Adam Douglas, Warden
No. 25-5386

Dear Mr. Marshall:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in dark ink, appearing to read "Scott S. Harris", written in a cursive style.

Scott S. Harris, Clerk