

ORIGINAL

No. 25-7119

Supreme Court, U.S.  
FILED  
AUG 19 2025  
OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

SHANE N. ROSCOE,

Petitioner,

v.

STATE OF MICHIGAN,

Respondent.

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On Petition for Writ of Certiorari to the  
Court of Appeals of Michigan

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By:  
Shane N. Roscoe (177432)  
Thumb Correctional Facility  
3225 John Conley Dr.  
Lapeer, Michigan 48446

## QUESTIONS PRESENTED

### I.

Whether the Michigan Supreme Court's affirmation of Petitioner's conviction for first-degree felony murder, following an acquittal of first-degree premeditated murder, for a single killing, violates the Double Jeopardy Clause of the Fifth and Fourteenth Amendments to the United States Constitution, particularly in light of this Court's recent decision in *McElwrath v. Georgia*, 144 S. Ct. 651 (2024)

### II.

Whether Michigan's application of MCL 750.316(b) to allow a conviction for first-degree felony murder after an acquittal for first-degree premeditated murder for the same killing creates an unconstitutional presumption of premeditation, deliberation, or malice, or impermissibly shifts the burden of proof as to intent to the defendant, thereby violating the Due Process Clause of the Fourteenth Amendment to the United States Constitution as articulated in *Sandstrom v. Montana*, 442 U.S. 510 (1979)

### III.

Whether a state criminal conviction which is based on a jury verdict rendered via a defective verdict form that (1) fails to provide a clear option for a general verdict of not guilty on the charged offenses, and (2) is unaccompanied by any jury instructions, violates the Due Process Clause of the Fourteenth Amendment and the right to trial by jury guaranteed by the Sixth Amendment.

### IV.

Whether a criminal defendant's Sixth Amendment right to the effective assistance of counsel, as established in *Strickland v. Washington*, 446 U.S. 668 (1984), is violated when trial counsel fails to object to the admission of privileged marital communications, which constituted the sole evidence linking the defendant to the crime, in contravention of the marital communication privilege recognized under federal common law and incorporated by the states, particularly where such testimony comes from an estranged spouse with a clear motive to fabricate, and where an objection by counsel would have likely resulted in the exclusion of the testimony, thereby changing the outcome of the trial.

**LIST OF PARTIES**

Petitioner herein is:

**Shane N. Roscoe.**

The Respondents herein are:

**The State of Michigan**, Gretchen Whitmer is the Governor for said State of Michigan.

Respondent(s) are represented by:

Dana Nessel  
Michigan Attorney General  
G. Mennen Williams Building, 7<sup>th</sup> Floor  
525 W. Ottawa, P.O. Box 30212  
Lansing, Michigan 48909.

The Plaintiff-Appellee below is: The People of the State of Michigan,

The Defendant-Appellant below is: Shane N. Roscoe.

## TABLE OF CONTENTS

Question Presented.....	i
List of Parties .....	ii
Table of Authorities .....	iv
Opinions Below .....	1
Statement of Jurisdiction.....	2
Constitutional Provisions.....	3
Statement of the Case.....	4
Reasons for Granting the Writ .....	14
Relief requested .....	36

## Index of Appendices

Appendix A = Washtenaw County Circuit Court order denying Petitioners Motion for Relief from Judgment (Case No. 11-001321-FC), Dated December 29, 2023.

Appendix B = Michigan Court of Appeals Order denying leave to appeal (Case No. 371422). Dated November 8, 2024.

Appendix C = Michigan Supreme Court Order denying Leave to Appeal (Case No. 167970), Dated May 22, 2025

Appendix D = Michigan Supreme Court Order denying Leave to Appeal (Case No 148890),

Appendix E = Preliminary transcripts of (14 A) District Court Ann Arbor Michigan October 6, 2011.

Appendix F = Roscoe's defective jury verdict form

Appendix G = Police report authored by detective Craig Raisanen of phone conversation and September 2, 2011 interview of Kimberly Roscoe

Appendix H = Mr. Roscoe's numerous requests for discovery and documents

Appendix I = Copy of January 14, 2023 request for documents with Court's response

Appendix J = Prosecutor’s Brief in opposition to confidential marital communication claim. pg. 28

Appendix K = The Michigan Attorney General’s office oral argument *People v. Langston* Michigan Supreme Court 163968 beginning at 22:34 through 22:51

**TABLE OF AUTHORITIES**

*State Cases*

*People v. Butler*, 1996 Mich App LEXIS 1099 ..... 16

*People v. Carpentier*, 446 Mich 19, 47; NW2d 195 (1994) ..... 27

*People v Clark*, 295 Mich 704, 707 (1940) .....33

*People v. Crown*, 75 Mich App 830 (1977) .....17

*People v. Dykehouse*, 418 Mich 488 (1980) ..... 20

*People v Garcia*, 448 Mich 442, 445 (1995) .....28

*People v Hawthorne*, 474 Mich 174, 182 (2006) .....28

*People v. Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001) ..... 17

*People v. Johnson* 427 Mich 98, at 108 (1986) ..... 15

*People v. Langston Michigan Supreme Court 163968 oral arguments* .....23

*People v. Martin*, 398 Mich 303, 307-311, 313-314 ..... 16

*People v. Orlewicz*, 293 Mich App 96; 809 NW 2d 194; 2011 Mich App Lexis 1043 .....16

*People v Ray*, 119 Mich App 724, 728 (1982) .....28

*People v Rodriguez*, 251 Mich App 10, 24 (2002) .....33

*People v. Roscoe*, 303 Mich App 633, 846 NW 2d 402 (Jan 14, 2014) ..... 10

*People v. Stewart*, (on remand) 400 Mich 540, 547-550; 256 NW 2d 31 (1977) .....16

*People v. Wade*, 283 Mich App 462 (2009) .....25

<i>People v. White</i> , 81 Mich App 335, 339 (1978) .....	33
<i>People v. Williams</i> , 265 Mich App 68, 72; 692 NW 2d (2005) .....	16

*Federal Cases*

<i>Ashe v. Swenson</i> , 397 US 436; 90 S Ct 1189; 25 L Ed 2d 469 (1981) .....	18
<i>Boyde v. California</i> , 494 U.S. 370, 380 (1990) .....	28
<i>Blau v. United States</i> , 340 U.S. 332,333 (1951) .....	31
<i>Brauerman v. United States</i> , 317 U.S. 49, 52 (1942) .....	18
<i>Coleman v. Thompson</i> , 501 U.S. 722, 735 (1991) .....	30
<i>in RE: Windship</i> , 397 US 358 (1970) .....	24
<i>McElrath v. Georgia</i> , 144 S. Ct 651; 2024 US lexis 997.....	14
<i>North Carolina v. Pearce</i> , 395 U.S. 711, 717 (1969) .....	15
<i>Sandstrom v. Montana</i> , 442 US 510 (1979) .....	20
<i>Strickland v Washington</i> , 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984) .....	31
<i>Trammel v. United States</i> , 445 U.S. 40, 53 (1980) .....	31
<i>United States v. Olano</i> , 507 U.S. 725 (1993) .....	28
<i>Yeager v. United States</i> , 557 US 110 (2009) .....	19

**United States Constitutional and Statutory Provisions**

Sixth Amendment .....	2, 9, 12, 13, 14
Fourteenth Amendment .....	2, 13
28 U.S.C. § 1251 .....	2
28 U.S.C. § 1254.....	2
28 U.S.C. § 2101 .....	1

**Michigan Statutory Provisions**

MCL 750.316, [750.316-c].

MCL 750.531

MCL 750.110 MCL 750.81(D)

## **Petition for Writ of Certiorari**

Petitioner, Shane N. Roscoe, respectfully prays that a Writ of Certiorari is issued to review the judgment and order of the Washtenaw County Circuit Court entered on December 29, 2023, as presented below.

### **OPINIONS**

The Washtenaw County Circuit Court Order dated December 29, 2023 denying Mr. Roscoe's Motion for Relief from Judgment, MCR 6.500, (Case 11-001321-FC) is unreported. (*Appendix A*)

The Michigan Court of Appeals Order denying Application for Leave to Appeal dated November 8, 2024 (Case No 371422) is unreported. (*Appendix B*)

The Michigan Supreme Court Order denying Application for Leave to Appeal dated May 22, 2025 (Case 167970) is unreported. (*Appendix C*)

The Michigan Supreme Court Order denying Application for Leave to Appeal (Case 148890) denying application for leave to appeal. is unreported (*Appendix D*)

## JURISDICTION

The Washtenaw County Circuit Court entered its judgment on December 29, 2023. (*Appendix A*)

The Michigan Court of Appeals denied leave to appeal on November 8, 2024. (*Appendix B*) The

Michigan Supreme Court denied leave to appeal on May 22, 2025. (*Appendix C*)

This Petition for Writ of Certiorari is being filed within the time limits proscribed within Supreme Court Rule 13(1) and 28 U.S.C. § 2101. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISIONS INVOLVED

### **U.S. Const. Amend. VI**

In all prosecutions, the accused shall enjoy the right to be free from double jeopardy and the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed. The district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

### **U.S. Const. Amend. XIV § 1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty, or property, without due process of law. Nor deny to any person within its jurisdiction the equal protection of the laws.

### **U.S. Const., Ams VI, XIV**

In all prosecutions, the accused shall enjoy the right to effective assistance of counsel. U.S. Const., Ams VI, XIV; Const 1963, art 1, §20.

The **Sixth Amendment** to the United States Constitution provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury..."

The **Fourteenth Amendment** to the United States Constitution provides, in pertinent part: "...nor shall any State deprive any person of life, liberty, or property, without due process of law..."

## STATEMENT OF THE CASE

This case arose out of an incident at the former Jim Bradley Automobile Dealership, located in Ann Arbor, Michigan on August 18, 2006.

The People alleged that on August 18, 2006, Petitioner Shane N. Roscoe and his nephew broke into the dealership and stole paint and chemical hardeners. In the process, one of the night-time employees discovered the men. As a result of being discovered the men assaulted the victim by striking him in the head with a brick and ran him over with a vehicle.

In the early morning hours of August 18, 2006, Theodore Campbell, an employee of Jim Bradley Pontiac, arrived at work. As he was walking to the door he observed William Samuel Kenney stumbling out of the bushes and fall. According to Campbell, Mr. Kenney was asking for help.

Police and ambulance were summoned. Paramedics treated Mr. Kenney for his injuries at the scene and transported him to hospital. Detective John Scafasci was assigned as officer in charge. He processed the scene, where he found evidence of forced entry into the building. PE, 148-150. (Appendix E). Detective Scafasci began collecting finger and palm print impressions, blood, hair, fiber, footwear impressions, along with several hundred other items of evidence from the crime scene.

On August 24, 2006, as part of the investigation, the Washtenaw County Sheriff's Office conducted a search at the home of Shane Roscoe, (Petitioner) who was a former employee of the dealership. Police also searched Mr. Roscoe's pole barn / Auto repair shop at the rear of his property.<sup>1</sup> (PE 154-158) Police did not find any of the items stolen from the dealership in their

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<sup>1</sup> PE refers to the transcripts of the preliminary Examination of October 6, 2011. In the (14 A) district court Ann Arbor Michigan. The numbers that follow PE refer to the page where the citations are located. (Appendix E)

search of Mr. Roscoe's home or in the repair shop. Police did not recover any fingerprints belonging to Mr. Roscoe at the crime scene despite having found a multitude of forensic evidence. However, none of the DNA, hair, fibers, or shoe prints matched Shane Noel Roscoe.<sup>2</sup>

During the search of Mr. Roscoe's home, he was arrested and taken to the Washtenaw County Sheriff's Office for questioning. (without warrant). He denied any involvement in the incident and informed police, "he was at home with his wife and children at the time of the offense". Mr. Roscoe then requested an attorney. Police lodged Mr. Roscoe in the Washtenaw County Jail for 72 hours after which he was released without being charged.

Also on August 24, 2006, Mr. Roscoe's then wife Kimberly Roscoe was asked by Washtenaw County Sheriff's Detectives to report to the Pittsfield Township Police Department for an interview. She appeared and was interviewed by Washtenaw County Detectives. In her recorded interview<sup>3</sup> Kimberly Roscoe told police that petitioner was at home with her and the children at the time of the incident and he could not have left as she was a light sleeper. He was there when she went to sleep, and he was there when she woke up. Mr. Roscoe had to be there because it was he who watched the couple's children while Kimberly worked and she could not have gone to work if he wasn't there.

On August 25, 2006, while Mr. Roscoe was still in custody, police again went to the Roscoe residence and re-interviewed Kimberly Roscoe. They also played an audio recording of a 911 call for Kimberly Roscoe, Sheila Hatfield and Renee Chapman. Police asked Kimberly if the 911 caller

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<sup>2</sup> Michigan State Police crime lab forensic examination reports (Available upon request)

<sup>3</sup> First recorded statement from Kimberly Roscoe dated September 24, 2006. (Available upon request)

sounded like "Jonathon Aiden". Detectives also told Kimberly that if she cooperated, and said Shane was involved in the crime, that they would save her job at the U of M. Kimberly informed the detectives that she did not recognize the 911 caller's voice, and reiterated that Shane was home the entire night and early morning of August 17-18, 2006. (TT4, 87-118)<sup>4</sup>.

After Mr. Roscoe's release from custody, the Roscoe family received no further contact from investigators for 5 years.

### **Mr. Kenney's treatment and death**

At the hospital, Mr. Kenny underwent surgery to repair a serious head injury. He was recovering and doing well. He was scheduled to be released from the hospital on September 14, 2006. However, on the morning he was to be released and after participating in physical therapy, Mr. Kenney suffered coronary thrombosis. Resuscitation was unsuccessful and Mr. Kenney passed away.

### **Petitioner moves to Kentucky**

In July of 2007, the Roscoe family moved to Nicholasville, Kentucky where Mr. Roscoe gained employment in the construction field. In 2009, Mr. Roscoe went on to open his own construction company, Fayette Contracting.

In October of 2010 Kimberly began having an online relationship with another man. On November 11, 2010, Kimberly filed for a protection order to prevent Mr. Roscoe from residing in the marital home claiming that Mr. Roscoe threatened her. Once the restraining order was in place, she immediately moved her new boyfriend into the marital home.

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<sup>4</sup> TT-4 refers to volume 4 of the trial transcripts from the June 7, 2011 trial testimony in the Washtenaw County Circuit Court the numbers that follow TT-4 refer to the page number where the citation is located (available upon request)

In March of 2011, Mr. Roscoe made a complaint to Kimberly's attorney, Janet Humphreys, concerning Kimberly interfering with his court ordered visitation and that Kimberly's boyfriend, was yelling at, hitting the children and walking around the home in his boxer undershorts in front of the children. Kimberly became infuriated and started harassing Mr. Roscoe. First she made an anonymous call to Crime Stoppers. She then called police and said Mr. Roscoe was not going to show up for a traffic court appearance in an effort to get him arrested.

In June of 2011, Shane and Kimberly Roscoe divorced. Joint custody of their two daughters was ordered, with Kimberly being the custodial parent. However, Kimberly continued to harass Mr. Roscoe, constantly texting him, demanding money, and claiming Mr. Roscoe owed her back support despite the FOC hearing having yet to take place to determine support.

On August 26, 2011, after several months of receiving constant berating text messages from Kimberly, receiving e-mails from his children detailing abuse, along with Kimberly's blatant disregard for the custody order (TT- 4, 50), Mr. Roscoe filed a motion to enforce visitation. The motion sought to have Kimberly Roscoe held in contempt of court for failing to abide by the original child custody order. He also requested a restraining order to prevent Kimberly's live-in boyfriend Joseph Flamio from hitting the children or dressing inappropriately in front of them. He also sought an order for modification of the custody order to institute 50/50 custodial parenting time.

On August 30, 2011, Kimberly Roscoe was served with the motion along with an order to appear before the Jessamine County Family Court on September 6, 2011.

On that very afternoon Kimberly called the Washtenaw County Sheriff's Office leaving a voice message. <sup>5</sup>Detective Craig Raisanen called her back. During their conversation, Kimberly told Detective Raisanen the following:

**“She and Shane divorced in July and Shane is harassing her. Kimberly claimed she lied in 2006 about the Jim Bradley incident and now wanted to come forward, and that Shane was threatening her”.**

Based on the telephone conversation with Kimberly, Detectives Raisanen and Detective Sinks of the Washtenaw County Sheriff's office traveled to Kentucky to conduct an in-person interview with Kimberly Roscoe.

After the interview, police set out to locate and arrest Mr. Roscoe, and on September 6, 2011, the United States Marshals arrested Mr. Roscoe at his second home in Redford Township, Michigan. He was transported to and lodged in the Washtenaw County Jail pending charges.

Petitioner was charged with Open Murder under Michigan's Statutory-Short form. MCL 750.316, [750.316-c]. Safe Breaking MCL 750.531, Breaking and Entering with intent to commit larceny, MCL 750.110 and 2 counts of Police Officer, Assaulting/Resisting /Obstructing. MCL 750.81(D)

On June 8, 2012, a jury trial began. The case against Mr. Roscoe was weak. It was a true credibility contest. However, the theme of the prosecutor vouching for and rehabilitating its star witness, Kimberly Roscoe's credibility, was woven throughout the trial by the prosecutor, despite the constant objection from defense counsel. see (PE- 92-124) (*Appendix E*), and (TT-4, 42-118).

This case, unlike most criminal cases, had no physical or forensic evidence tying the Petitioner to the offense. There were no inculpatory statements by Mr. Roscoe for the prosecution

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<sup>5</sup> Police report dated September 1, 2011 by Washtenaw County Sheriff's Office detective Craig Raisanen (Appendix G)

to present other than those confidential marital communications Kimberly Roscoe alleged were made by Mr. Roscoe through her testimony.

There were no eyewitnesses whom place Mr. Roscoe at the crime scene. Police searched video surveillance from the dealership, area traffic cams, local gas stations and bars. Police were unable to find Mr. Roscoe or his vehicle in any of those videos.

At the Crime Scene Police found no evidence implicating Mr. Roscoe. During a search of Mr. Roscoe's home and pole barn, nothing was found that would link him to the crime.

There are no phone records placing Mr. Roscoe in the area of the crime scene. Ultimately, the entire case came down to whether the jury believed the testimony of Kimberly Roscoe, Mr. Roscoe's ex-wife. An admitted liar, who only contacted police and implicated Mr. Roscoe after being served with the custody motion. (PE-143) (*Appendix E*)

Police collected a magnitude of evidence at the crime scene. That evidence consists of blood, hairs, fibers, fingerprints, palm-prints, shoe impressions and tool mark impressions. These items were all sent to the Michigan State Police crime lab for testing. Each and every forensic test result showed the same thing "Shane Noel Roscoe (Petitioner) **was not** a contributor to any of the evidence".

According to the detective in charge of the case, John Scafasci, none of the items alleged to have been stolen from the dealership were found during the search of Mr. Roscoe's home, or in his auto repair shop. (PE 154- 158) (*Appendix E*), (TT-2, 322-332).<sup>6</sup> Nothing was found at either the dealership or Mr. Roscoe's home that would link him to the crime. "Not a single thing".

The only evidence the state had to offer implicating Mr. Roscoe was the questionable and contradictory statements and testimony of Mr. Roscoe's ex-wife Kimberly Roscoe, as is evidenced

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<sup>6</sup> TT2, 322-332 refers to June 5, 2012 trial transcripts from the Washtenaw County Circuit Court. the numbers that follow TT-2 refer to the page(s) where the cite is found. (Available Upon Request)

by Mr. Roscoe not being charged for 5 years until Kimberly Roscoe contacted the police and claimed Mr. Roscoe admitted to her that he was involved.

Ultimately, the entire case came down to whether the jury believed the testimony of Kimberly Roscoe, an admitted liar, (PE-143) (*Appendix E*) who on August 24, 2006, told police the Petitioner was at home with her and the kids the entire evening, and that he could not have left. And who two days later, while being interviewed by detectives at her home, again told investigators the petitioner was at home on the entire night in question, and she did not recognize the voice on the 911 tape.

At the end of trial and after jury instructions, the trial court announced it just realized the court had failed to prepare the jury verdict form in time for jury instruction. The form was hastily prepared by the court in chambers outside the presence of counsel and given to the jury. (TT-5, 280)<sup>7</sup>

After deliberations, the jury acquitted the Petitioner of first-degree premeditated murder and convicted him of first-degree felony murder.

On July 18, 2012, Judge Archie C. Brown sentenced Mr. Roscoe to the Michigan Department of Corrections to the terms of Life without parole for first degree murder, 19 to 50 years for safe breaking. 152 to 240 months for breaking and entering, and 1 to 2 years for police officer, assaulting /resisting/obstructing.<sup>8</sup>

### **Direct Appeal**

Appellate Counsel filed a timely brief on appeal in the Michigan Court of Appeals. In a published opinion *People V. Roscoe*, 303 Mich App 633, 846 NW 2d 402 (Jan 14, 2014) , the

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<sup>7</sup> TT-5 refers to the June 8, 2012 trial transcripts from the Washtenaw County Circuit Court. The numbers that follow refer to the page where the citation is located (Available upon request)

<sup>8</sup> Judgment of sentence dated July 18, 2012

Michigan Court of Appeals affirmed Mr. Roscoe's convictions and sentences. The Court held that the trial court violated Mr. Roscoe's right to confrontation. However, the court held that the violation was not outcome determinative with their reasoning strongly relying upon the testimony of "Kimberly Roscoe" together with inaccurate and prejudicial judicial fact finding as follows:

"Defendant told police he still had keys to the dealership, and notably, there was no evidence of forced entry."

The decision of the Michigan Court of appeals on direct appeal reveals two crucial points. Where the court found the violation of Mr. Roscoe's Confrontation rights violation was not outcome determinative. (1) it embellishes just how important Kimberly Roscoe's Confidential marital communication testimony against her ex-husband was to the state's case, and (2) The Courts false claim that that Mr. Roscoe had keys and notably there was no evidence of forced entry is contrary to the testimony at the preliminary examination by Detective John Scafasci who was the officer in charge of the case and the one who processed the crime scene and collected all the evidence. Detective Scafasci testified during the preliminary exam that he was assigned as an officer in charge of the case and processed the crime scene for evidence. He testified that he found evidence of forced entry into the building PE, 148-150. (Appendix E) in direct contravention of the Appeals court finding *People V. Roscoe*, 303 Mich App 633, 846 NW 2d 402 (Jan 14, 2014).

#### **Mr. Roscoe's efforts to obtain discovery**

Prior to the filing of the original appellate brief on direct appeal, Mr. Roscoe began a quest to obtain all discovery in his case, including every court document necessary to properly perfect his appeal of right and/or any post-conviction motions that may follow.

Mr. Roscoe is an inmate serving a life sentence. Michigan law prohibits him from being entitled to documents under FOIA. The Courts do not accept calls from prisoners. He is not at

liberty to go to the courthouse and obtain the documents in person. His only avenue of seeking information or documents from authorities is his sending requests to the various agencies.

That he did. Beginning on June 12, 2013, Mr. Roscoe began sending out requests to the trial court, prosecutor, Sheriff's Office and his trial attorneys, requesting copies of the court file, prosecutors' file, Sheriff's Office case file, and any other discovery each may have.<sup>9</sup> (Appendix H) Each and every one of his requests have been denied. Mr. Roscoe even sought assistance through the trial court administrator. He appealed the denials from the Sheriff's Office to the Washtenaw County Administrator. However, again he was denied. According to the court, they did not retain discovery and Mr. Roscoe's file was not available. The Sheriff's Office and Washtenaw County denied Mr. Roscoe's claim, stating because Mr. Roscoe is an inmate, he is not entitled to FOIA requests. The Prosecutor's Office has never replied to any of the numerous requests. The Washtenaw County Administrator upheld the FOIA denials on appeal. Mr. Roscoe's trial counsel is essentially holding his file and any discovery they may have as ransom by demanding that he pay a total of \$975.00 before they will furnish him the documents knowing Mr. Roscoe is indigent.

It is clear from the numerous requests made that Mr. Roscoe went far beyond the reasonable diligence required by court rule, and case law, in his efforts to obtain discovery and documents necessary to properly pursue his appeal of right and post-conviction relief.

Because the Prosecutor, Trial Court, Sheriff's Office, and Defense Counsel denied each and every request, it was absolutely impossible for Mr. Roscoe to have discovered and presented the issue related to the defective jury verdict form (issue III) in his earlier motions for relief from

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<sup>9</sup> Requests for discovery and case files to the trial court, sheriff's office, prosecutor and trial counsel and each of their prospective denials of those requests (Appendix-I).

judgment. It is clear that the Court withheld the jury verdict form. (suppressed it) until January 24, 2023, the date the trial court finally provided the documents to Mr. Roscoe.

In its opinion the trial court is claiming that Mr. Roscoe could have discovered the Jury verdict form earlier and presented his claim in his first Motion for relief from judgment. This despite the trial court's denial of access to the verdict form until January 24, 2023, the date in which the trial court finally provided (1) A copy of the Circuit Court register of actions, and (2) A copy of the jury verdict form. (*Appendix I*)<sup>10</sup>

After reviewing the verdict form for the first time, (*Appendix F*), it was obvious that the jury verdict form is defective. So defective that it denied Mr. Roscoe his right to trial by jury.

Mr. Roscoe also submitted the same jury verdict form as an offer of proof, for Issue I, showing Mr. Roscoe's right to be free from double jeopardy was violated where the jury both acquitted and convicted him of the single offense of first degree murder in the death of a single victim, in a single count, and where both verdicts turn on the very same issue of ultimate fact. Based on the newly discovered defective jury verdict form, Mr. Roscoe filed a Motion for Relief from Judgment in the trial court under MCR 6.502 (G) (2), which is the subject of this application for writ of certiorari. The trial court denied his motion in a written opinion and order dated May 29, 2024.<sup>11</sup>

In his Motion for relief from judgment, Mr. Roscoe argued (5) separate issues. **Issues I and II** of his motion each raise a claim of double jeopardy. However, under state Jurisprudence, double jeopardy claims amount to jurisdictional defect and are not subject to the constraints of

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<sup>10</sup> Letter from trial court showing they provided Verdict form on Jan 24, 2023 (*Appendix-I*)

<sup>11</sup> See (*Appendix A*)

MCR 6.500 et Seq, and those issues may be raised at any time. **Issue III** Mr. Roscoe argued that newly discovered evidence revealed that the trial court presented the jury with a jury verdict form so defective that it violated Mr. Roscoe's right to trial by jury. **Issue IV** Mr. Roscoe argued that his appellate counsel failed to provide him with effective assistance of counsel guaranteed by the United States Constitution where he failed to present the above first four issues on appeal.

On December 29, 2023, The Honorable Arianne E. Slay of the Washtenaw County Circuit Court denied the Motion for Relief from Judgment in a 9-page decision and order. (*Appendix A*). Her opinion was made without conducting the requested evidentiary hearing. That opinion and order are the subject of this Petition for Writ of Certiorari.

Following the Trial Court's denial, Mr. Roscoe filed an application for leave to appeal in the Michigan Court of Appeals. The Court of Appeals denied Defendant's application for leave to appeal in an order dated November 8, 2024 holding that Mr. Roscoe failed to show the trial court erred in denying the successive motion for relief. MCR 6.502(G) (*Appendix B*).

Mr. Roscoe then filed an application for leave to Appeal in the Michigan Supreme Court. That Court denied the Application for leave to appeal on May 22, 2025. (*Appendix C*). The Last Michigan Court to give a merit review was the Washtenaw County Circuit Court.

Mr. Roscoe now seeks a Writ of Certiorari in this honorable Court.

### **REASONS FOR GRANTING THE WRIT**

This petition should be granted for the following compelling reasons:

**I. The Michigan Supreme Court's affirmation of Petitioner's conviction for first-degree felony murder, following an acquittal of first-degree premeditated murder, for a single killing, violates the Double Jeopardy Clause of the Fifth and Fourteenth Amendments to the United States Constitution, particularly in light of this Court's recent decision in *McElwrath v. Georgia*, 144 S. Ct. 651 (2024).**

This case presents critical questions regarding the application of the Double Jeopardy and Due Process Clauses of the United States Constitution, particularly concerning Michigan's first-degree murder statute and its interpretation by state courts. The Michigan Courts decisions, as applied to Petitioner, conflict with established state and federal precedent and create a dangerous precedent for due process and double jeopardy protections. Mr. Roscoe raises important questions of federal law and the constitutionality of State law that can only be settled by this Honorable Court.

The Fifth Amendment to the United States Constitution, applied to the states through the Fourteenth Amendment, prohibits placing a person "twice in jeopardy" for the same offense. This protection encompasses three distinct guarantees: it protects against a second prosecution for the same offense after acquittal; it protects against a second prosecution for the same offense after conviction; and it protects against multiple punishments for the same offense. See *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969).

Mr. Roscoe was charged with Open Murder statutory short-form. MCL750.316 [MCL 767.71, MSA 28.1011. Michigan's Open Murder Statute MCL750.316 [MCL 767.71, MSA 28.1011, recognizes that murder is a single offense, see *People V. Johnson* 427 Mich 98, at 108 (1986).

In relevant part, after a 4-day trial, the jury acquitted Mr. Roscoe of first-degree premeditated murder and convicted him of first-degree felony murder.

The Michigan Supreme Court and the Michigan Court of Appeals have long held first degree premeditated murder and first degree felony murder is the same offense for double jeopardy purposes.

In *People V. Butler*, 1996 Mich App LEXIS 1099, the Michigan Court of Appeals held:

“the defendant’s convictions for both first degree premeditated murder and first degree felony murder based on a single killing constitute multiple punishments for the “same offense” in violation of the federal and state double jeopardy clauses”.

See also *People V. Orlewicz*, 293 Mich App 96; 809 NW 2d 194; 2011 Mich App Lexis 1043 (quoting *People V. Williams*, 265 Mich App 68, 72; 692 NW 2d (2005), *People V Stewart*, (on remand) 400 Mich 540, 547-550; 256 NW 2d 31 (1977) and *People V Martin*, 398 Mich 303, 307-311, 313-314.

In each of the cases cited above, as well as hundreds of others not listed, both the Michigan Court of Appeals and the Michigan Supreme Court have respectively held that first degree premeditated murder and first degree felony murder are the same offense for double jeopardy purposes.

Both of Michigan’s higher courts have also recognized that convictions for both first-degree premeditated murder and first-degree felony murder based on a single killing constitute multiple punishments for the “same offense” in violation of both federal and state double jeopardy clauses, *People v. Butler*, (1986) Mich App Lexis 1099. This principle extends to situations where an acquittal on one theory of murder precludes conviction on another theory if the ultimate facts are the same.

This principle applies to multiple prosecutions for the same offense as well as multiple punishments for the same offense. *People V. Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001). The Herron court reasoned that the hierarchical nature of homicide offenses evidences the legislature’s intent to prohibit dual convictions and punishments for the same action. *Id.* At 606.

Both of Michigan’s higher Courts have also affirmed the principle that murder is a single offense and acknowledged the importance of intent in murder cases. See *People v. Orlewicz*, 293

Mich App 96; 809 NW2d 194; 2011 Mich App Lexis 1043, quoting *People v. Williams*, 265 Mich App 68, 72; 692 NW2d (2005, citing *People v. Stewart* (on remand), 400 Mich 540, 547-550; 265 NW2d 31 (1977), and *People v. Martin*, 398 Mich 303, 307-311, 313-314.

Crucially the Michigan Court of Appeals held that when a defendant is acquitted of first-degree premeditated murder, it violates double jeopardy to convict him of first-degree felony murder where both verdicts turn on the very same issue of ultimate facts. *People v. Crown*, 75 Mich App 830 (1977). The situation in *Crown* is identical to Petitioner's case where the jury in *Crown* acquitted the defendant of premeditated murder and found him guilty of first degree felony murder. The Court of Appeals determined because the verdicts were inconsistent, the verdict for felony murder could not stand. The Court of Appeals vacated the conviction and sentence for felony murder on double jeopardy grounds. The Court of Appeal's decision was affirmed by The Michigan Supreme Court. See *People v. Crown*, 402 Mich 803 (1977). As of the date of this filing, *Crown* has not been overruled.

This Court's recent decision in *McElwrath V Georgia*, 144 S. Ct. 651; 2024 Lexis 997, further reinforces the sanctity of an acquittal for double jeopardy purposes particularly when the issue of ultimate fact is indistinguishable.

This Court in *McElwrath v. Georgia*, 144 S. Ct 651; 2024 US Lexis 997, held:

"The double jeopardy clause prohibits second-guessing an acquittal for any reason. An acquittal is an acquittal, even when the jury renders inconsistent verdicts, where both verdicts turn on the very same issue of ultimate fact".

The *McElwrath* court went on to explain that it is well established that whether an acquittal occurred for the purposes of the double jeopardy clause, is a question of federal, not state law. An acquittal occurs where there has been a ruling or verdict relating to the ultimate question of guilt or innocence.

In Petitioner's case, both the Prosecutor and the trial court agree that the jury rendered inconsistent verdicts as to count 1 by first acquitting Mr. Roscoe of First-degree premeditated murder and following that verdict with a verdict of guilty for first-degree felony murder.

Here, the prosecution did not present additional facts or evidence for the charge of first-degree felony murder. The jury relied on the same issue of ultimate fact in both inconsistent verdicts.

The obvious inconsistency in Mr. Roscoe's verdicts are the facts that the jury returned a not guilty verdict of first-degree premeditated murder and followed that verdict with a verdict of guilty of first-degree felony murder for that very same murder based on the same issue of ultimate fact. Essentially the jury was allowed to divide first degree murder into a series of temporal units with discrete liabilities not defined by statute.

The double jeopardy clause is not such a fragile guarantee that its limitations can be avoided by the simple expedient of dividing a single crime into a series of temporal or spatial units or into discrete liabilities not defined by the legislature. See *Brauerman V. United States*, 317 U.S. 49, 52 (1942).

Here, the prosecution did exactly what the *Brauerman* court says it cannot. Even though Mr. Roscoe was acquitted of first-degree premeditated murder, Michigan courts allowed the single offense of murder MCL 750.316 to be divided into temporal units and discrete liabilities that are not defined by the legislature in order to circumvent the double jeopardy clause despite having failed to prove the requisite mental state (premeditation and deliberation, malice or intent) in the initial verdict. That division is unconstitutional.

In determining whether an issue of ultimate fact has been necessarily decided, a reviewing court must consider what the jury necessarily determined in the first trial, a court must "examine the record of a prior proceeding *taking into account the pleadings, evidence, charge, and other*

*relevant matter*, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration. *Ashe, supra* at 443 (citations omitted) (emphasis added). Here the jury's verdict foreclosed any further consideration of the elements of first-degree murder. A jury's verdict of acquittal represents the community's collective judgment regarding "all" the evidence *and arguments presented to it.*" *Yeager v United States*, 557 US 110 (2009), *supra* at 122 (Emphasis added.)

In *Yeager*, the jury acquitted the defendant of the fraud offenses yet failed to reach a verdict on the insider-trading charges. This Court held that retrial on the insider-trading charges was barred by the Double Jeopardy Clause, because the acquittal on the fraud charges represented a jury determination that the defendant did not have any insider information. When a jury acquits on one count concerning the same issue of ultimate fact, the preclusive effect of the acquittal prevents the government from convicting the defendant on other. *Yeager, supra*.

Here Petitioner's acquittal of first-degree premeditated murder should have had a similar preclusive effect which prevented the state from convicting Mr. Roscoe of felony murder, as both verdicts relate to the same killing and the same issue of ultimate fact which were resolved by the acquittal.

This principle also aligns with the Collateral Estoppel component of the Double Jeopardy Clause, which "bars re-litigation of an issue of ultimate fact that has once been determined by a valid and final judgment." As this Court found in *Ashe v. Swensen*, 397 U.S. 436, 443 (1970).

Again, this Court's recent decision in *McElwrath* strongly reinforces petitioner's argument. In *McElwrath*, this Court held that an acquittal on a multi-count indictment like the one in Petitioner's case, is a final judgment for double jeopardy purposes, even if that acquittal is

inconsistent with other verdicts. The Court emphasized that “an acquittal is an acquittal, and it is final.” Id. at 657.

When a jury acquits a defendant of first-degree premeditated murder and then convicts him of first-degree felony murder for the same act where both verdicts turn on the same issue of ultimate fact, the conviction effectively negates the finality of the acquittal violating Double Jeopardy.

The Michigan Courts allowance of a first-degree felony murder conviction after an acquittal of first-degree premeditated murder, where both arise from a single killing and turning on the same issue of ultimate fact, directly conflicts with the principles of finality and protection against re-litigation of ultimate facts enshrined in *McElwrath*. This practice continues to allow the State of Michigan to circumvent a valid acquittal despite this court’s decision in *McElwrath*, and contrary to the state’s own precedent set in *Crown*, undermining the very purpose of the Double Jeopardy Clause.

For these reasons a writ of certiorari should be issued as to this claim.

**II. Michigan’s application of MCL 750.316(b) to allow a conviction for first-degree felony murder after an acquittal for first-degree premeditated murder for the same killing creates an unconstitutional presumption of premeditation, deliberation, or malice and impermissibly shifts the burden of proof as to intent to the defendant, thereby violating the Due Process Clause of the Fourteenth Amendment to the United States Constitution as articulated in *Sandstrom v. Montana*, 442 U.S. 510 (1979)**

The Fourteenth Amendment’s Due Process Clause requires the prosecution to prove every element of a criminal offense beyond a reasonable doubt. In *Re: Windship*, 397 U.S. 358 (1970). Furthermore, the Due Process Clause prohibits the use of presumptions that relieve the prosecution of its burden of proving every element of the crime charged. *Sandstrom v. Montana*, 442 U.S. 510 (1979).

“First degree murder” as defined in MCL 750.316 can be committed notwithstanding the lack of premeditation and deliberation. *People v. Dykhouse*, 418 Mich 488 (1980).

**Michigan’s first-degree murder statute MCL 750.316 reads as follows:**

(1) A person who commits any of the following is guilty of first degree murder and shall be punished by imprisonment for life.

(a) murder perpetrated by means of poisoning, lying in wait, or any other willful, deliberate, and premeditated killing.

(b) Murder committed in the perpetration of, or attempt to perpetrate, arson, criminal sexual conduct in the first, second or third degree, child abuse in the first degree, a major controlled substance offense, robbery, car-jacking, breaking and entering of a dwelling, home invasion in the first or second degree, larceny of any kind, extortion, and kidnapping.

**(End of statute)**

In this case, Petitioner was charged with Open Murder statutory short-form. Michigan’s Open Murder Statute MCL750.316 [MCL 767.71, MSA 28.1011, recognizes that murder is a single offense, see *People v. Johnson* 427 Mich 98, at 108 (1986).

After a 4-day trial, Mr. Roscoe was acquitted of first-degree murder and convicted of first-degree felony murder.

Those inconsistent verdicts violate both the state and federal double jeopardy clauses. However, the State of Michigan’s application of MCL 750.316 allows for a conviction of first-degree felony murder solely based upon the commission of one of the enumerated felonies, even after an acquittal of first-degree premeditated murder. The application is unconstitutional. Under the circumstances, the statute creates and allows for the presumption of premeditation,

deliberation, and or malice-(intent), even after an acquittal of first-degree premeditated murder based solely on the commission of a felony.

Michigan's application effectively eliminates intent (premeditation and deliberation) as elements the prosecution must prove to convict a defendant of first-degree murder and shifts that burden to the defendant.

Here the petitioner has been acquitted of premeditation and deliberation under Michigan's first-degree murder statute MCL 750.316, directly contravening the principles established in *Sandstrom v. Montana*, 442 US 510 (1979). The state court's decision reveals a critical due process flaw in the State of Michigan's jurisprudence.

When a defendant is acquitted of first-degree premeditated murder, the jury has necessarily found that the prosecution has failed to prove each of the requisite elements that being premeditation and deliberation (intent) beyond a reasonable doubt. However, following an acquittal of first degree premediated murder, if a conviction for first-degree felony murder can still be obtained for the same killing, it effectively allows for the "presumption of premeditation, and deliberation," based solely on the commission of one or more of the enumerated felonies.

This practice eliminates intent as a necessary issue for the prosecution to prove and it shifts the burden of proof as to intent to the defendant, both of which are unconstitutional. See *Sandstrom v. Montana*, 442 U.S. 510 (1979) (holding that a jury instruction that created a mandatory presumption of intent violated due process by shifting the burden of proof to the defendant). In Petitioner's case, the application of MCL 750.316(b), after an acquittal of first-degree premeditated murder, creates that very same unconstitutional presumption. It gives the prosecution a "second chance" to secure a conviction for first-degree murder, despite having failed to prove the requisite mental state (premeditation and deliberation, malice or intent) in the initial verdict.

This undermines the bedrock principle of due process where “the prosecution must prove every element of a crime beyond a reasonable doubt without shifting that burden to the defendant”.

Both the Michigan Court of Appeals and the Michigan Supreme Court have previously acknowledged the importance of intent in murder cases, quoting *People v. Williams*, 265 Mich App 68.72 (2005), and citing *People v. Stewart*, 400 Mich 540, 547-550 (1977), and *People v. Martin*, 398 Mich 303, 307-311, 3113-314 (1977).

In constructing the first-degree murder statute MCL 750.316, both (a) and (b) the Michigan legislature never included the words or terms, felony murder or malice in describing first degree murder and its elements.

However, Michigan Courts currently uses a Courts re-defined term of malice to infer intent and deliberation in murder cases under MCL 750.316(b).

According to Black’s Law Dictionary, Malice is defined as a state of mind, or wrongful intentions, i.e. (Intent). However, the term malice that is currently being used in Michigan case law is a term that has been re-defined by Michigan Supreme Court in *People V. Aaron* by contorting the word’s definition to fit an alleged crime or element of an alleged crime, essentially changing the plain meaning of the word. This was not done by the Michigan legislature.

Coincidentally, on December 11, 2025 the Michigan Attorney General’s office argued this exact argument in the case of *People V. Langston* Michigan Supreme Court 163968 beginning at 22:27 through 25:53 (*Appendix K*) as follows:

“Almost 50 years ago, this court and Arron re-defined malice and abrogated the old common law rule that equated intent to commit the underlying felony with malice as part of its authority to develop common law. Much like a legislative change. It applied this “new” definition to the cases before it”.

The Attorney General went on to argue that the mental element (of intent, deliberation Premeditation) for first degree murder is “satisfied” by proof of the intention to commit the underlying felony. Her argument is consistent with Mr. Roscoe argument that Michigan Courts and prosecutors are utilizing the so called felony murder rule to allow juries to presume the mental element of murder “intent and deliberation” by the mere proof of the intention to commit the underlying felony when the state has been unable to prove those necessary elements. This directly shifts the burden of proving the intent and deliberation elements of first degree murder from the prosecutor to the defendant. The term malice (re-defined) as now used by this state wrongfully allows for the presumption of the elements the prosecution must prove. The Attorney General’s office now argues as much but claims that this change is much like a legislative change. “It is not”. In Constructing Michigan’s first degree murder statute MCL 750.316 et seq. the legislature never implied that the elements of first degree murder may be presumed by the intention to commit an underlying felony.

In Mr. Roscoe’s case, the jury found that he did not have intent or deliberation to commit murder when they acquitted him of first degree premeditated murder. Allowing the Michigan Courts and prosecutors to continue this practice essentially eliminates intent, premeditation, and deliberation as necessary elements the prosecution must prove to convict a defendant of first degree murder. It shifts that burden of proof to the defendant, which is unconstitutional, just as this Court found in *Sandstrom V. Montana*, 442 US 510 (1979).

Because Michigan allows a conviction of the so-called first-degree felony murder based solely upon the commission of one of the enumerated felonies, even after an acquittal of first-degree premeditated murder, the first-degree murder statute, MCL 750.316 (B) as used by the State of Michigan, is unconstitutional.

Under the above-described circumstances, the State of Michigan allows for a presumption of premeditation and deliberation, which are the necessary elements the prosecution must prove in order to convict a defendant of first degree murder, even after the defendant is acquitted of that very murder just as Mr. Roscoe was.

It should be noted that First degree murder can be committed “notwithstanding the lack of premeditation and deliberation”. *Dykehouse supra. (Felony Murder is First degree murder)*

According to the trial court’s opinion, the enumerated felony allowed the jury to presume premeditation and deliberation (intent), even though Mr. Roscoe was acquitted of first-degree premeditated murder. This means in Mr. Roscoe’s case, the jury presumed premeditation, deliberation, and/or malice, based solely on the intent to commit a felony. That presumption had the direct effect of shifting the burden of proof of intent from the prosecution to Mr. Roscoe, and does so for those similarly situated. This violates due process under the rules set forth in *RE: Windship*, 397 US 358 (1970) ; *Sandstrom*, Id. at 523-524; 6211 F. Supp 294, 296 n.3 (1983).

Here, the jury acquitted Mr. Roscoe of First Degree Murder. The prosecutor clearly failed to prove the requisite elements of premeditation and deliberation. By allowing Mr. Roscoe to stand convicted of first degree murder after an acquittal, eliminates the state’s obligation of proof beyond a reasonable doubt. A historically grounded right of our system developed to safeguard defendants from dubious and unjust convictions. Proof beyond a reasonable doubt provides concrete substance for the presumption of innocence. The jury acquitted Mr. Roscoe. They were then allowed to presume the very elements the prosecutor failed to prove when they acquitted Mr. Roscoe of first degree premeditated murder. His conviction is unjust and violates Double jeopardy, the Due Process Clause of the Fourteenth Amendment to the United States Constitution as articulated in *Sandstrom v. Montana*, 442 U.S. 510 (1979). A Writ of Certiorari should issue in this matter.

**III. Mr. Roscoe's conviction was based upon a jury verdict rendered via a materially defective verdict form that fails to provide a clear option for a general verdict of not guilty on all charged offenses, violating the Due Process Clause of the Fourteenth Amendment and the right to a trial by an impartial jury guaranteed by the Sixth Amendment.**

Petitioner Shane Noel Roscoe's conviction was based on a jury verdict which utilized a verdict form that was structurally and substantively defective<sup>12</sup>, which the Petitioner argues coerced a verdict of guilty. The verdict form contained constitutional defects, including:

1. Failing to provide a clear option for a general verdict of not guilty on the charged offenses (first-degree felony murder, second-degree murder, voluntary manslaughter).
2. Limiting the "Not Guilty" option only to "first-degree premeditated murder" with a handwritten notation.
3. Listing subsequent options only as "Guilty of First Degree Felony Murder," "Guilty of Second Degree Murder," and "Guilty of Voluntary Manslaughter," effectively creating a false choice that required a guilty verdict on one of the lesser offenses if an acquittal occurred on the greater, in violation of Michigan state law precedent (e.g., *People v. Wade*, *People v. Ray*).
4. The materially defective verdict form being presented to the jury *unaccompanied by any jury instructions* on its use, having been hastily prepared outside the presence of counsel after the jury had retired to deliberate.

The constitutional defects of the verdict form remained unpreserved at trial or direct appeal because the form was not made available to Petitioner until 2023. Long after the trial. Petitioner

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<sup>12</sup> Defective Jury verdict form People V. Roscoe (*Appendix F*)

only discovered the form's defects upon receiving a copy on January 14, 2023, following numerous denials of his requests for discovery dating back to June 12, 2013, from multiple state agencies (*Appendix D*).

Upon discovering the verdict form, Petitioner promptly filed a motion for a new trial and an evidentiary hearing. The trial court denied both motions on December 29, 2023, refusing to recognize the verdict form as "new evidence" under Michigan Court Rules MCR 6.502(G)(2) and MCR 6.508(D)(3)(a), and barring the claim.

#### **A. The Verdict Form Violated Petitioner's Due Process Right to a Jury Trial**

The Sixth and Fourteenth Amendments guarantee a criminal defendant the right to a trial by jury, which includes the right to a fair and accurate determination of guilt or innocence by that jury. A verdict form that limits a jury's ability to return a not-guilty verdict on a charged offense and its lesser-included offenses is a direct assault on this constitutional right, compelling a conviction on *some* charge.

The Petitioner's verdict form was structurally and substantively defective because it:

- Limited the not-guilty option only to first-degree premeditated murder.
- Listed subsequent options only as "Guilty" for first-degree felony murder, second-degree murder, and voluntary manslaughter, creating a legally coercive structure.
- Effectively directed the jury that if they acquitted on the greater charge, First degree premeditated murder, they *must* convict on one of the other three.

Michigan state law, in line with federal principles, holds that verdict forms are "essentially, part of the package of jury instructions" and must provide a clear option of finding 'not guilty' with

respect to each offense charged. (*People v. Wade*, 283 Mich App 462, 464-468 (2009); *People v. Ray*, 119 Mich App 724, 728 (1982)). The form utilized in this case created a structural error that directly deprived the Petitioner of his right to a properly instructed and unconstrained jury, forcing a false choice that is more egregious than forms previously found unconstitutional by the Michigan Court of Appeals in *Wade* and *People v. Garcia* (cited at *Wade*, *supra* at 468).

This coercive effect on the jury's verdict violates the Due Process Clause of the Fourteenth Amendment, which protects against arbitrary deprivation of liberty, and the Sixth Amendment's guarantee of a fair trial by an impartial jury. An unconstitutional instruction or form that misleads or coerces a verdict requires reversal. See, e.g., *Boyd v. California*, 494 U.S. 370, 380 (1990) (regarding jury instructions) and *United States v. Olano*, 507 U.S. 725 (1993) (regarding errors affecting substantial rights).

#### **B. The Lack of Instructions Compounded the Fundamental Constitutional Error**

The constitutional error was further compounded by the complete absence of any jury instructions on how to use the patently defective form. The trial court's failure to prepare the form in time for presentation with the jury instructions meant the jury was left to interpret a coercive document without judicial guidance.<sup>13</sup>TT5,279-281.

A criminal defendant is entitled to have a properly instructed jury consider the evidence against him. *People v Hawthorne*, 474 Mich 174, 182 (2006), quoting *People v Rodriguez*, 463 Mich 466, 472 (2000).

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<sup>13</sup> TT5 refers to the trial transcript Volume 5 dated June 8, 2012 in the Washtenaw County Trial Court. More specifically the jury instructions. The numbers that follow are the page where the citation is located (Available upon request)

The Michigan Court of Appeals reversed the conviction in *Wade*, despite the trial court's attempt to clarify the defective form with oral instructions (*Wade*, 283 Mich App at 466-68). Here, there were *no* such clarifying instructions. There was no instruction at all. This complete breakdown ensured the jury was not merely confused but was actively misled into believing they were compelled to find Mr. Roscoe guilty of some form of homicide, resulting in a fundamental constitutional breakdown of the trial process that constitutes plain error affecting the integrity of the judicial proceedings.

The state court's application of its procedural bar to preclude review of a fundamental, unpreserved, structural constitutional error—specifically, “the use of a defective, uninstructed jury verdict form that coerced a verdict”—where the error was undiscoverable by the Petitioner until the court itself provided the form post-conviction, constitutes an independent and adequate state ground for judgment, or instead violates federal Due Process.

### **C. State Court's Procedural Bar Insulates a Federal Constitutional Violation from Review**

The Michigan court's refusal to address the fundamental constitutional violation on the merits — relying on procedural bars, raises a critical federal question.

The Petitioner could not have raised this issue earlier because the trial court, the prosecutor, and other Washtenaw County administrators denied his discovery requests for the verdict form for nearly a decade. (*Appendix H*) The form was only produced because of the Petitioner's diligent post-conviction efforts. The trial court then used its own blatant denials or withholding of the form as a shield, ruling that the form was not "new evidence" under MCR 6.502(G)(2) and MCR 6.508(D)(3)(a) and thus procedurally barred.

This Court has jurisdiction to review a state court's judgment if the state court relied on a state procedural rule that is not "independent and adequate" to support the judgment (*Coleman v. Thompson*, 501 U.S. 722, 735 (1991)). Where the state itself is the direct cause of the Petitioner's inability to preserve or raise the issue—by denying access to the dispositive document—the procedural bar is not adequate to prevent federal review of a Due Process violation. The application of state procedural rules to insulate a structural constitutional error that coerced a verdict, where the petitioner showed **extraordinary diligence** in discovery, is a matter of federal concern that warrants review to ensure that states do not use procedural technicalities to deny relief for fundamental violations of a defendant's federal constitutional rights.

For this reason, a Writ of Certiorari should be issued to review the judgment of the Michigan Courts.

**IV. A criminal defendant's Sixth Amendment right to the effective assistance of counsel, as established in *Strickland v. Washington*, 446 U.S. 668 (1984), is violated when trial counsel fails to object to the admission of privileged marital communications, which constituted the sole evidence linking the defendant to the crime, in contravention of the marital communication privilege recognized under federal common law and incorporated by the states, particularly where such testimony comes from an estranged spouse with a clear motive to fabricate, and where an objection by counsel would have likely resulted in the exclusion of the testimony, thereby changing the outcome of the trial**

**A. This case presents a fundamental question regarding the scope and application of the marital communications privilege and the Sixth Amendment right to Effective Assistance of Counsel, impacting the fairness of criminal proceedings nationwide.**

- Conflict with Federal Common Law and undermining of the Marital Communications Privilege:

The marital communications privilege is the cornerstone of American jurisprudence, designed to protect the privacy and sanctity of the marital relationship, thereby fostering open

communication between spouses *Blau v. United States*, 340 U.S. 332,333 (1951) (“the privilege against disclosure of confidential marital communication... is an ancient rule of common law.”). While *Trammel v. United States*, 445 U.S. 40, 53 (1980), modified the adverse spousal testimony privilege (allowing the testifying spouse to waive the privilege) it explicitly reaffirmed the separate and distinct confidential marital communications privilege, stating “The confidential Marital communications privilege, however, is not at issue here.” This privilege belongs to both spouses and protects communications made in confidence during the marriage, even after divorce.

This issue was raised by the petitioner for the first time in the Michigan Supreme Court, Case 148890, (Appendix D) under MCR 7.302(B)(1). The rule allows an issue to be raised for the first time in the Michigan Supreme Court if an issue involves a substantial question as to the validity of a legislative act. Mr. Roscoe argued that MCL 600.2162 impinges on the Confidential Marital Communication privilege enshrined in federal common law and is contrary to this court’s precedent set forth in *Trammel V. United States*, 445 U.S. 40, 53 (1980) *Id at 1241* where the defendant-spouse retains the right to foreclose the testimony regarding confidential marital communications. *Id.*

The prosecutor, in his opposing brief at pg. 28, simply argued:

“Even if this issue could invite review of the application of MCL 600.2162, it no way impugns on the validity of the statute. Finally, even a review of the applicability of the statute results in a conclusion that the decision of a spouse to testify rest solely on the testifying spouse, not the defendant.”

In essence, the prosecutor is claiming that Michigan statute supersedes the long established confidential marital communication privilege enshrined in Federal common law. See pg. 28 of Prosecutors brief in oppositions. (*Appendix J*)

The Petitioner and Kimberly Roscoe were legally married in 1997. The marriage lasted until July of 2011. Her testimony directly referred to the alleged conversations she and Mr. Roscoe had during the course of that marriage.

**The effect of Kimberly Roscoe's testimony**

Here, there was no physical or forensic evidence tying Mr. Roscoe to the offense, (Appendix F) there were no inculpatory statements by Mr. Roscoe for the prosecution to present. There are no eyewitnesses who place Mr. Roscoe at the crime scene. Mr. Roscoe is not found on any video surveillance, either at the dealership, or in the surrounding area. Police checked.

There was no physical evidence found in the searches of Mr. Roscoe's home and pole barn that would link him to the crime. There are no phone records placing Mr. Roscoe in the area of the crime scene (TT2-329-332) <sup>14</sup>

This was a cold case where for 5 years Mr. Roscoe was not charged. The only basis for charging Mr. Roscoe were the messages and testimony of Kimberly Roscoe, which were protected by the confidential marital communications rule. Kimberly who only came forward after receiving a custody motion, and right after receiving the motion called police claiming Mr. Roscoe confided in her by admitting to the crime.

Ultimately, the entire case came down to whether the jury believed the testimony of Kimberly Roscoe, an admitted liar,<sup>15</sup> who in 2006 told police Mr. Roscoe was at home with her and the kids the entire evening, and that Mr. Roscoe could not have left. The following day she also told police that she did not recognize the voice on the 911 tape. However, her statement and testimony at trial directly conflict with the statements she gave to police in 2006.

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<sup>14</sup> TT-2 refers to the Washtenaw County Trial Court Transcripts of June 5, 2012 The numbers that follow TT-2 refer to the page where the citation is located. (Available upon request)

<sup>15</sup> Preliminary transcripts dated 8-22-2011 Pg. 143 (Appendix E)

Kimberly testified at the Preliminary Examination (PE 103-123), and trial at (TT 4, 60-83). She testified about conversations she allegedly had with petitioner about his involvement in the crime. These conversations were alleged to have taken place in the privacy of the couple's bedroom, see<sup>16</sup>. (TT4-77), and (Appendix E).

**B. Counsel for Mr. Roscoe never objected to Kimberly Roscoe's testimony under either the state's marital privilege or the federal confidential marital communication rule, despite her testimony that the alleged confidential communications took place in the privacy of the couple's bedroom where no one else was present.**

Trial counsel's failure to object allowed testimony that directly contravened this well-established privilege. The State court's admission of this testimony, especially as the sole evidence of guilt, represents a significant departure from settled principles of evidentiary privilege.

**Violation of Sixth Amendment Right to Effective Assistance of Counsel:**

- Under Strickland v. Washington, a defendant must show (1) that counsel's performance was deficient, and (2) that the deficient performance prejudiced the defense.

**Deficient Performance:**

- Failure to object to the admission of the Privileged Confidential Marital Communications, particularly when such testimony is the only evidence linking the defendant to the crime, falls below an objective standard of reasonableness. A reasonable competent attorney would be versed in the law surrounding his case and aware of and assert such a critical privilege.

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<sup>16</sup> Second recorded statement of Kimberly Roscoe dated September 1, 2011 (available upon request)

- The privilege is fundamental, and its applicability here (confidential communication during marriage) is clear.

**Prejudice:**

- The prejudice prong is met in Petitioner's case because, had counsel objected to the testimony regarding Mr. Roscoe's alleged admissions under the confidential marital privilege, Kimberly's testimony would likely have been excluded. Without this testimony, there was absolutely no evidence linking Mr. Roscoe to the crime (as confirmed by Michigan State Police forensic reports, the testimony of Detective John Scafasci, and the lack of any physical evidence tying the petitioner to the offense.
- The fact that Mr. Roscoe was not charged until Kimberly Roscoe contacted police and only charged after she gave her new statements stands for itself. Without her testimony, Mr. Roscoe would not have been charged.
- Therefore, there is a reasonable probability that but for counsel's failure to object under the confidential marital communication privilege, the result of the proceedings would have been different i.e., Mr. Roscoe would not have been charged or convicted.

**C. The circumstances surrounding the ex-wife's testimony (admitted liar, her strong motive to fabricate, and the sole inculpatory evidence) exacerbate the prejudice and underscore the need for this court's review.**

- The record clearly indicates Kimberly Roscoe's shifting accounts and her motivation to implicate Mr. Roscoe only after he initiated legal action regarding child custody, visitation and restraining order, together with her previous statements exonerating the defendant. This context highlights the unreliability of her testimony and the critical nature of Counsel's failure to exclude it.

- The unique facts of this case, where the entire prosecution hinged on a single piece of inadmissible, privileged, and highly suspected testimony, presents an ideal vehicle for this court to clarify the interplay between the marital communication privilege, ineffective assistance of counsel, and due process concerns.

**D. Review is necessary to ensure uniform application of federal evidentiary privileges and to protect fundamental constitutional rights in state criminal proceedings.**

- State courts must adhere to constitutional standards concerning effective assistance of counsel, especially when such errors lead to convictions based on inadmissible evidence.
- This case provides an opportunity for the Court to reiterate the enduring vitality of the marital communications privilege and to ensure that defendants are not convicted based on evidence that should have been excluded.

For this reason, a Writ of Certiorari should be issued to review the judgment of the Michigan Courts.

**Conclusion**

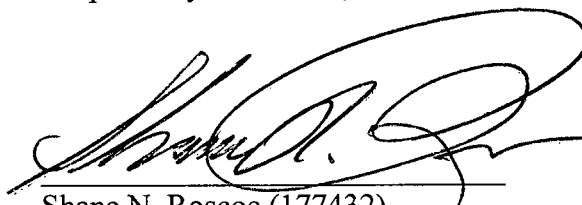
The decisions of Michigan Supreme Court as applied to Petitioner conflicts with established state and federal precedent which creates a dangerous precedent for due process, double jeopardy, marital communication protections, and the right to a trial by jury in the State of Michigan. Mr. Roscoe raises important questions of federal law and constitutionality of state law that can only be settled by this Honorable Court.

**RELIEF REQUESTED**

Therefore, for each of these reasons independently and collectively, Mr. Roscoe believes he is entitled to redress as he has shown that the State of Michigan has violated his constitutional rights as discussed above and if allowed to stand, the state court's decisions will cause manifest injustice. Therefore, a writ of habeas corpus should issue, or alternatively, Mr. Roscoe asks this Court to vacate the state court decisions and remand for further proceedings consistent with this Court's precedent.

Respectfully Submitted,

Dated: February 16, 2026

A handwritten signature in black ink, appearing to read "Shane N. Roscoe", written over a horizontal line.

Shane N. Roscoe (177432)  
Petitioner In Pro Per  
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