

No. _____

In The
Supreme Court of the United States

—◆—

LARRY DARNELL JONES, #146246,

Petitioner,

v.

STATE OF MICHIGAN,

Respondent.

—◆—

**On Petition For A Writ Of Certiorari
To The Court of Appeals of Michigan**

—◆—

PETITION FOR A WRIT OF CERTIORARI

—◆—

LARRY DARNELL JONES #146246

In Pro Per

OAKS CORRECTIONAL FACILITY

1500 Caberfae Highway

Manistee, Michigan 49660

Ph. 231-723-8272

Dated: January 5, 2017

QUESTION PRESENTED

Should the United States Supreme Court vacate in *People v. Larry Darnell Jones*, Case. No. 85-26846-FH, the December 10, 1985, Criminal Judgement of Sentence and the March 18, 2016 Opinion and Order denying defendant's Motion to Quash and Vacate Prosecution as Untimely for abuse of discretion when the prosecution knowingly used false and perjured identification testimony of Mr. Shahnawaz Alam to obtain an illegal criminal bindover and conviction that violated the Fourteenth Amendment and *Giglio v. United States*, 405 U.S. 150; 92 S.Ct. 763; 31 L.Ed.2d 104 (1972)?

The Petitioner answers the question, "yes."

The Respondent has not answered the question.

The Trial Court answers the question, "no."

LIST OF PARTIES

LARRY DARNELL JONES, #146246

In Propria Persona

Oaks Correctional Facility

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DALE J. HILSON (P57726)

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TABLE OF CONTENTS

	Page
Question Presented	i
List of Parties	ii
Table of Contents	iii-iv
Table of Authorities	v-vii
Opinions Below	1
Statement of Jurisdiction	5
Relevant Constitutional and Statutory Provisions Involved.....	6
Statement of the Case	10
Reasons for Granting the Writ	12
Question Presented	12
Should the United States Supreme Court vacate in <i>People v. Larry Darnell Jones</i> , Case No. 85-26846-FH, the December 10, 1985, Criminal Judgement of Sentence and the March 18, 2016 Opinion and Order denying defendant's Motion to Quash and Vacate Prosecution as Untimely for abuse of discretion when the prosecution knowingly used false and perjured identification testimony of Mr. Shahnawaz Alam to obtain an illegal criminal bindover and conviction that violated the Fourteenth Amendment and <i>Giglio v. United States</i> , 405 U.S. 150; 92 S.Ct. 763; 31 L.Ed.2d 104 (1972)?	
Conclusion.....	15

TABLE OF CONTENTS – Continued

	Page
APPENDIX	
Court of Appeals Order – May 2, 2016	App. 1
Circuit Court Opinion and Order – March 18, 2016	App. 2
Court of Appeals Order – June 6, 2016.....	App. 4
Supreme Court Order – April 19, 1988	App. 5
Court of Appeals Opinion – August 14, 1987	App. 7
Circuit Court Judgement of Sentence – Decem- ber 10, 1985	App. 12
Supreme Court Order – July 25, 1988.....	App. 15
Court of Appeals Order – October 6, 1988.....	App. 17
Circuit Court Order – November 1, 1985	App. 19
Circuit Court Opinion – October 28, 1985.....	App. 21
Circuit Court Felony Information – March 4, 1985	App. 36
Circuit Court Felony Return – February 25, 1985	App. 39
Supreme Court Order – November 30, 2016	App. 42
Circuit Court Affidavit of Darrell Jones – March 2, 2016	App. 43
Circuit Court Affidavit of Brenda Scott – March 2, 2016	App. 46

TABLE OF AUTHORITIES

	Page
UNITED STATES CONSTITUTION	
Fifth Amendment	6, 10, 12
Sixth Amendment.....	6, 10, 12
Fourteenth Amendment	7, 10, 12, 14
UNITED STATES SUPREME COURT CASES	
Giglio v. United States, 405 U.S. 150; 92 S.Ct. 763; 31 L.Ed.2d 104 (1972)	12, 14
Koon v. United States, 518 U.S. 81; 116 S.Ct. 2035; 135 L.Ed.2d 392 (1996)	13
Napue v. Illinois, 360 U.S. 264; 79 S.Ct. 1173; 3 L.Ed.2d 1217 (1959)	14
United States v. Jeffers, 342 U.S. 48; 72 S.Ct. 93; 96 L.Ed. 59 (1951)	13
United States v. Wade, 388 U.S. 218; 87 S.Ct. 1926; 18 L.Ed.2d 1149 (1967)	13
Wong. Sun v. United. States, 371 U.S. 471; 83 S.Ct. 407; 9 L.Ed.2d 441 (1963)	13
UNITED STATES STATUTE	
28 U.S.C. § 1257(a).....	5, 7

TABLE OF AUTHORITIES – Continued

	Page
UNITED STATES SUPREME COURT RULES	
S.Ct. R. 10(c)	12, 14
S.Ct. R. 13.1	5
S.Ct. R. 14.1	1, 7, 10, 15
MICHIGAN SUPREME COURT CASES	
Dacon v. Transue, 441 Mich 315; 490 N.W.2d 369 (1992).....	13
People v. Brown, 299 Mich 1; 299 N.W. 784 (1941)	13
People v. Jones, Docket No. 153998.....	4
MICHIGAN COURT OF APPEALS CASES	
People v. Aceval, 282 Mich App 379; 764 N.W.2d 285 (2009).....	13, 15
People v. Jones, Docket No. 332293.....	1, 2
People v. Mast, 128 Mich App 613; 341 N.W.2d 117 (1983).....	12
MICHIGAN STATUTES	
MCLA § 750.425; MSA § 28.667	7
MCLA § 750.505; MSA § 28.773	8
MCLA § 769.12; MSA § 28.1084	8

TABLE OF AUTHORITIES – Continued

Page

MUSKEGON COUNTY 14TH CIRCUIT COURT CASE

People v. Larry Darnell Jones, Case No. 85-
26846-FH.....*passim*

The Muskegon County prosecutor, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH, knowingly used false and perjured “identification testimony” from Mr. Shahnawaz Alam to testify that the Petitioner said: “I’m Larry Jones. ‘I called you last night.’” The Petitioner respectfully petitions for a Writ of Certiorari, pursuant to S.Ct. R. 14.1, to review the (R. No. 13 Order) (App. 1) of the Third District Court of Appeals of Michigan, that denied the Application for Leave to Appeal.



OPINIONS BELOW

On May 2, 2016, in *People v. Larry Darnell Jones*, Docket No. 332293, the Third District Court of Appeals of Michigan (R. No. 13 Order) the Court Orders that the motion to waive fees is granted and fees are waived for this case only. The Court further Orders that the Application for Leave to Appeal is denied for lack of merit in the grounds presented. The Orders of the Third District Court of Appeals of Michigan to review the merits appears at Appendix (App. 1) to the petition and is unpublished. App. 1.

On March 18, 2016, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH, the (R. No. 385 Opinion and Order) of the Muskegon County 14th Circuit Court denying Defendant’s motion to quash and vacate prosecution as untimely. The Opinion and Order of the merits appears at Appendix (App. 2) to the petition and is unpublished. App. 2.

On June 6, 2016, in *People v. Larry Darnell Jones*, Docket No. 332293, the Third District Court of Appeals of Michigan (R. No. 21 Order) the Court Orders that the motion for extension of time to file register of actions, the motion to file the April 25, 2016, register of actions, and the motion for reconsideration are denied. The Order of the Third District Court of Appeals of Michigan to review the merits appears at Appendix (App. 4) to the petition and is unpublished. App. 4.

On April 19, 1988, in *People v. Larry Darnell Jones*, Docket No. 81966, the Michigan Supreme Court on (R. No. 54 Order) of the Court the Delayed Application for Leave to Appeal and Request for Review under MCR 7.303, are considered. Since the defendant has applied for leave to appeal, the letter request is denied, as moot. The delayed application is denied because we are not persuaded that the questions presented should be reviewed by this Court. The Opinion of the highest state court to review the merits appears at Appendix (App. 5) to the petition and is unpublished. App. 5.

On August 14, 1987, in *People v. Larry Darnell Jones*, Docket No. 90059, the Third District Court of Appeals of Michigan (R. No. 41 Opinion) that Affirmed the Conviction and Sentence. The Opinion of the Third District Court of Appeals of Michigan to review the merits appears at Appendix (App. 7) to the petition and is unpublished. App 7.

On December 10, 1985, in *People v. Larry Darnell Jones*, Case No 85-26846-FH (R. No. 150 Judgement of Sentence) of the Muskegon County 14th Circuit Court.

The Judgement of Sentence of the Muskegon County 14th Circuit Court to review the merits appears at Appendix (App. 12) to the petition and is unpublished. App. 12.

On July 25, 1988, in *People v. Larry Darnell Jones*, Docket No. 81966, the Michigan Supreme Court on (R. No. 60 Order) of the Court the Motion for Reconsideration of this Court's Order of April 19, 1988, is considered, and it is denied, because it does not appear that the Order was entered erroneously. The Order of the highest state court to review the merits appears at Appendix (App. 15) to the Petition and is unpublished. App. 15.

On October 6, 1987, in *People v. Larry Darnell Jones*, Docket No. 90059, the Third District Court of Appeals of Michigan (R. No. 46 Order) in this cause a motion for rehearing is filed by defendant-appellant, and an answer in opposition thereto being filed, and due consideration thereof having been had by the Court, it is Ordered that the motion for rehearing be, and the same is hereby denied. The Order of the Third District Court of Appeals of Michigan to review the merits appears at Appendix (App. 17) to the petition and is unpublished. App. 17.

On November 1, 1985, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH, (R. No. 83 Order) of the Muskegon County 14th Circuit Court denying motion to disqualify judge and motion to suppress identification. The Order of the Muskegon County 14th Circuit

Court to review the merits appears at Appendix (App. 19) to the petition and is unpublished. App. 19.

On October 28, 1985, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH (R. No. 78 Opinion) of the Muskegon County 14th Circuit Court in response to defendant's motion to suppress identification. The Opinion of the Muskegon County 14th Circuit Court to review the merits appears at Appendix (App. 21) to the petition and is unpublished. App. 21.

On March 4, 1985, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH (R. No. 9 Felony Information) filed in the Muskegon County 14th Circuit Court. The felony information filed in the Muskegon County 14th Circuit Court to review the merits appears at Appendix (App. 36) to the petition and is unpublished. App. 36.

On February 25, 1985, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH (R. No. 3 Felony Return) to Muskegon County 14th Circuit Court to review the merits appears at Appendix (App. 39) to the petition and is unpublished. App. 39.

On November 30, 2016, in *People v. Larry Darnell Jones*, Docket No. 153998, the Michigan Supreme Court's (R. No. 32 Order) Denying Petition and Application for Leave to Appeal for Review The opinion of the highest state court to review the merits appears at Appendix (App. 42) to the petition and is unpublished. App. 42.

On March 2, 2016, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH (R. No. 381 Affidavit) filed in the Muskegon County 14th Circuit Court of Darrell Jones, proposed trial testimony. The affidavit filed in the Muskegon County 14th Circuit Court to review the merits appears at Appendix (App. 43) to the petition and is unpublished. App. 4.

On March 2, 2016, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH (R. No. 381 Affidavit) eyewitness account filed in the Muskegon County 14th Circuit Court of Brenda Scott, proposed trial testimony that was not presented at trial. The affidavit filed in the Muskegon County 14th Circuit Court to review the merits appears at Appendix (App. 46) to the petition and is unpublished. App. 46.



STATEMENT OF JURISDICTION

Under S.Ct. R 13.1, this Court has jurisdiction to review the May 2, 2016, (R. No. 13 Order) (App. 1) decision of the Third District Court of Appeals of Michigan, pursuant to 28 U.S.C. § 1257(a), as the Michigan Supreme Court has declined to accept criminal jurisdiction over the (R. No. 385 Opinion and Order) denying defendant's motion to quash and vacate as untimely. App. 2.



**RELEVANT CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

United States Constitution, Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentation or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time, of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be Compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due Process of law; nor shall private property be taken for public Use; without just compensation.

United States Constitution, Amendment VI.

In all criminal, prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district Wherein the crime- shall have been committed, Which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution, Amendment XIV, Sec.

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.

28 U.S.C. § 1257(a) provides:

Final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by Writ of Certiorari, S.Ct. R. 14.1, where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

MCLA § 750.425; MSA § 28.667 provides that:

Sec. 425. Any person Who shall endeavor to incite or procure any person to commit the crime of perjury, though no perjury be committed, shall be guilty of a felony, punishable by

imprisonment in the state prison not more than [5] years.

MCLA § 750.505; MSA § 28.773 provides that:

Sec. 505. Any person who shall commit any indictable offense at common law for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony, punishable by imprisonment in the state prison for not more than [5] years or by a fine of not more than [\$10,000.00] or both in the discretion of the court.

MCLA § 769.12; MSA § 28.1084 provides that:

Sec. 12.(1) If a person has been convicted of any combination of [3] or more felonies or attempts to commit felonies, whether the convictions occurred in this state or would have been for felonies or attempts to commit felonies in this state if obtained in this state, and that person commits a subsequent felony within this state, the person shall be punished upon conviction of the subsequent felony and sentencing under section [13] of this chapter as follows:

(a) If the subsequent felony is punishable, upon a first conviction by imprisonment for a maximum term of [5] years or more or for life, the court, except as otherwise provided in this section or section [1] of chapter XI, may sentence the person to imprisonment for life or for a lesser term.

(b) If the subsequent felony is punishable upon a first conviction by imprisonment for a maximum term that is less than [5] years, the court, except as otherwise provided in this section or section [1] of chapter XI, may sentence the person to imprisonment for the maximum term of not more than [5] years.

(c) If the subsequent felony is a major controlled substance Offense, the person shall be punished as provided by part 74 of the public health code 1978 PA 368, MCLA § 333.7401 to MCLA § 333.7461.

(2) If the court pursuant to this section imposes a sentence of imprisonment for any term of years, the court shall fix the length of both the minimum and maximum sentence within any specified limit in terms of years or a fraction of a year, and the sentence so imposed shall be considered an indeterminate sentence.

(3) A conviction shall not be used to enhance a sentence under a statute that prohibits use of the conviction for further enhancement under this section.

(4) An offender sentenced under this section or section [10] or [11] of this chapter for an offense other than a major controlled substance offense is not eligible for parole until the expiration of the following:

(a) For the prisoner other than a prisoner subject to disciplinary time, the minimum term fixed by the sentencing judge at

the time of sentence unless the sentencing judge or a successor gives written approval for parole at an earlier date authorized by law.

(b) For a prisoner subject to disciplinary time, the minimum term fixed by the sentencing judge.

(5) This section and sections [10] and [11] of this chapter are not in derogation of other provisions of law, that permit or direct imposition of a consecutive sentence for a subsequent felony.

(6) As used in this section, “prisoner, subject to disciplinary time,” means that term as defined in section [34] of 1893 PA 118, MCLA § 800.34.

◆

STATEMENT OF THE CASE

The Respondent, Muskegon County Prosecutor, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH, knowingly used false and perjured “identification testimony.” (R. No. 78 Opinion), (App. 21) of Mr. Shahnawaz Alam, to testify that Petitioner said: “I’m Larry Jones, ‘I called you last night.’” This violated Petitioner’s Fifth, Sixth, and Fourteenth Amendment rights to a fair trial and impartial trial, and to due process of law.

The Petitioner respectfully petitions for a writ of certiorari, pursuant to S.Ct. R. 14.1, to review the (R. No. 13 Order) of the Third District Court of Appeals of

Michigan that denied the application for leave to appeal. (App. 1).

On February 25, 1985, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH, the Respondent, Muskegon County Prosecutor, obtained the illegal and improper bindover that was entered into the court records on February 26, 1985, as (R. No. 3 Return to Circuit Court). (App. 39).

On March 4, 1985, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH, the Respondent, Muskegon County Prosecutor, then filed upon the court records as (R. No. 9 Felony Information). (App. 36).

On August 24, 1992, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH, the affidavit of Darrell Jones, proposed testimony, was entered into and upon the court records on March 2, 2016, as (R. No. 381 Affidavit of Darrell Jones) filed in the Muskegon County 14th Circuit Court, with the motion to quash and vacate prosecution. (App. 43).

On February 16, 2009, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH, the affidavit of eyewitness account of Brenda Scott proposed trial testimony that was not presented at trial, was entered into and upon the court records on March 2, 2016, as (R. No. 381 Affidavit of Eyewitness Account of Brenda Scott), filed in the Muskegon County 14th Circuit Court, with the motion to quash and vacate the prosecution. (App. 46).



REASONS FOR GRANTING THE WRIT

Question Presented

Should the United States Supreme Court vacate in *People v. Larry Darnell Jones*, Case No. 85-26846-FH, the December 10, 1985, Criminal Judgement of Sentence and the March 18, 2016, Opinion and Order denying defendant's motion to quash and vacate prosecution as untimely for abuse of discretion when the prosecution knowingly used false and perjured identification testimony of Mr. Shahnawaz Alam to obtain an illegal criminal bindover and conviction that violates the Fourteenth Amendment and *Giglio v. United States*, 405 U.S. 150; 92 S.Ct. 763; 31 L.Ed.2d 104 (1972)?

The Petitioner answers the question, "yes."

The Respondent has not yet answered the question.

The Trial Court answers the question, "no."

Should the United States Supreme Court, pursuant to S.Ct. R. 10(c), under the Fifth, Sixth, and Fourteenth Amendments, vacate in *People v. Larry Darnell Jones*, Case No. 85-26846-FH, the December 10, 1985, Criminal (R. No. 150 Judgement of Sentence) of the Muskegon County 14th Circuit Court and the March 18, 2016, the Muskegon County 14th Circuit Court Judge Timothy G. Hicks (P35198) issued (R. No. 385 Opinion and Order) denying defendant's motion to quash and vacate prosecution as untimely. See *People v. Mast*, 128 Mich App 613, 615; 341 N.W.2d 117 (1983). (App. 2).

On November 1, 1985, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH, Judge Michael E. Kobza (P16100) issued (R. No. 83 Order), of the Muskegon County 14th Circuit Court denying motion to disqualify judge and motion to suppress identification. See *United States v. Wade*, 388 U.S. 218, 239-243; 87 S.Ct. 1926, 1939-1940; 18 L.Ed.2d 1149 (1967) and *United States v. Jeffers*, 342 U.S. 48, 49-54; 72 S.Ct. 93, 94-96; 96 L.Ed. 59 (1951). This “identification testimony” of Mr. Shahnawaz Alam is tainted. See *Wong Sun v. United States*, 371 U.S. 471, 488; 83 S.Ct. 407, 417; 9 L.Ed.2d 441 (1963). (App. 19).

That was timely raised before the “jury was sworn.” See *People v. Brown*, 299 Mich 1, 2; 299 N.W. 784 (1941); *Mast*, *supra*, at 615, and vacate prosecution.

A state court . . . for abuse of discretion. See *Decon v. Transue*, 441 Mich 315, 329; 299 N.W.2d 369 (1992); *Koon v. United States*, 518 U.S. 81, 100; 116 S.Ct. 2035; 135 L.Ed.2d 392 (1996), when the prosecution knowingly used false and perjured, see *People v. Aceval*, 282 Mich App 379; 764 N.W.2d 285, 292 (2009), “identification testimony of Mr. Shahnawaz Alam.” *Wade*, *supra*, at 239-243.

On October 28, 1985, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH, Judge Michael E. Kobza (P16100) issued and entered on October 30, 1985 (R. No. 78 Opinion) of the Muskegon County 14th Circuit Court in response to defendant’s motion to suppress identification. To obtain an illegal criminal bindover,

on February 25, 1985, in *People v. Larry Darnell Jones*, Case No. 85-26846-FH, the Respondent, Muskegon County Prosecutor, obtained the illegal and improper bindover that was entered into the court records on February 26, 1985, as (R. No. 3 Return to Circuit Court) and a November 21, 1985, (R. No. 129 Judgement of Jury Conviction) that violated the Fourteenth Amendment and *Giglio v. United States*, 405 U.S. 150; 92 S.Ct. 763; 31 L.Ed.2d 104 (1972) and *Napue v. Illinois*, 360 U.S. 264, 265-269; 79 S.Ct. 1173, 1175-1179; 3 L.Ed.2d 1217 (1959), has decided an important federal question . . . on February 24, 1972, the United States Supreme Court decided *Giglio*, supra, at 153-154, which held that deliberate deception of a court and jurors by the presentation of . . . Mr. Shahnawaz Alam's . . . known false . . . "identification testimony," evidence is incompatible with rudimentary demands of justice. Whether the nondisclosure was a result of negligence or design it is the responsibility of the prosecutor. The same result obtains when the state, although not soliciting the evidence, allows it to go uncorrected when it appears . . . when the reliability of a given witness . . . Mr. Shahnawaz Alam . . . was determinative of guilt or innocence, nondisclosure of evidence affecting "credibility" falls within this general rule. *Giglio*, supra, at 154 . . . in a way that conflicts with the relevant decisions of this Court. See S.Ct. R. 10(C). (App. 21).



CONCLUSION

The writ of certiorari, pursuant to S.Ct. R. 14.1, should issue to vacate the Muskegon County 14th Circuit Court, March 18, 2016, Opinion and Order (App. 2) denying defendant's motion to quash and vacate prosecution due to the illegally obtained February 25, 1985, bindover and because the November 21, 1985, conviction was obtained through the knowing use of Mr. Shahnawaz Alam, perjured identification testimony it "must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgement of the jury. Aceval, supra 389.

Respectfully submitted,

/S/ LARRY DARNELL JONES, #146246

OAKS CORRECTIONAL FACILITY

1500 Caberfae Highway

Manistee, Michigan 49660 Dated: January 5, 2017

Ph. 231-723-8272

Court of Appeals, State of Michigan

ORDER

People of MI v Larry Darnell Jones	David H. Sawyer
Docket No. 332293	Presiding Judge
LC No. 85-026846-FH	Joel P. Hoekstra
	Jane E. Markey
	Judges

The Court orders that the motion to waive fees is GRANTED and fees are WAIVED for this case only.

The Court further orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

/s/ David H. Sawyer
Presiding Judge

[SEAL] A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 02 2016 /s/ Jerome W. Zimmer, Jr.
Date Chief Clerk

**STATE OF MICHIGAN
IN THE 14TH CIRCUIT COURT**

PEOPLE OF THE
STATE OF MICHIGAN,

v

LARRY DARNELL JONES
Defendant.

HON. TIMOTHY G. HICKS

File No. 85-26846-FH

Charles F. Justian (P35428)
Chief Appellate
Prosecuting Attorney
990 Terrace Street
Muskegon, MI 49442
(231) 724-6435

Larry Darnell Jones
#146246
Defendant In Pro Per
Bellamy Creek
Correctional Facility
1727 West
Bluewater Highway
/ Ionia, MI 48846

**OPINION AND ORDER DENYING
DEFENDANT'S MOTION TO QUASH
AND VACATE PROSECUTION**

The court **denies** Jones's motion to quash the 1985 charging information and bind over. The motion is untimely. *People v Mast*, 128 Mich App 613, 615-16; 341 NW2d 117 (1983), *citing* MCL 767.76.

IT IS SO ORDERED.

Date: March 18, 2016 /s/ Timothy G. Hicks
Timothy G. Hicks, P35198
Circuit Judge

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of March, 2016, I personally mailed copies of this order to the parties above named at their respective addresses, by ordinary mail.

/s/ Susan K. Orrison
Susan K. Orrison,
Circuit Court
Legal & Scheduling
Secretary

Court of Appeals, State of Michigan

ORDER

People of MI v Larry Darnell Jones	David H. Sawyer
Docket No. 332293	Presiding Judge
LC No. 85-026846-FH	Joel P. Hoekstra
	Jane E. Markey
	Judges

The Court orders that the motion for extension of time to file register of actions, the motion to file the April 25, 2016 register of actions, and the motion for reconsideration are DENIED.

/s/ David H. Sawyer
Presiding Judge

[SEAL] A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN -6 2016 /s/ Jerome W. Zimmer, Jr.
Date Chief Clerk

Order
Entered: April 19, 1988

Michigan Supreme Court
Lansing, Michigan

Dorothy Comstock Riley
Chief Justice

Charles L. Levin
James H. Brickley
Michael F. Cavanagh
Patricia J. Boyle
Dennis W. Archer
Robert P. Griffin
Associate Justices

81966

PEOPLE OF THE
STATE OF MICHIGAN

Plaintiff-Appellee,

SC: 81966

v

COA: 90059

LARRY DARNELL JONES,

LC: 85-26846-FH

Defendant-Appellant.

On order of the Court, the delayed application for leave to appeal and request for review under MCR 7.303, are considered. Since the defendant has applied for leave to appeal, the letter request is DENIED as moot. The delayed application is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

App. 6

[SEAL] I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

April 19, 1988 /s/ Corbin R. Davis

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff-Appellee,

AUG 14 1987

-v-

No. 90059

LARRY DARNELL JONES,

Defendant-Appellant. /

BEFORE: Sawyer, P.J., and G.R. McDonald and H.J.
Szymanski*, JJ.

PER CURIAM

After a jury trial, defendant was convicted of obstruction of justice by offering to bribe a witness, MCL 750.505; MSA 28.773, and inciting or procuring the commission of perjury, MCL 750.425; MSA 28.667. Thereafter, defendant was tried and convicted pursuant to a supplemental charge as a fourth-felony offender, MCL 769.12; MSA 28.1084. The circuit court sentenced defendant to a 30- to 50-year prison term. Defendant appeals as of right. We affirm.

On appeal, defendant claims that the conduct of the circuit court judge initially assigned to the case, acting in concert with the police and the prosecutor's office, resulted in the denial of a fair and impartial

* Circuit judge, sitting on the Court of Appeals by assignment.

trial. Defendant initially argues that judicial misconduct occurred in a bond revocation hearing and in a hearing to disqualify the judge. At the bond revocation hearing, the judge denied the prosecutor's motion to increase or revoke defendant's bond. At the later disqualification hearing, the judge disqualified himself, stating that he wanted to avoid any appearance of impropriety resulting from a brief ex parte contact with the prosecutor prior to the bond revocation hearing. We are unable to discern how defendant was prejudiced, given that the end result of both hearings was a decision favorable to defendant.

At the conclusion of the disqualification hearing, the judge indicated on the record that he was assigning another judge by selecting a blind-draw card. Although defendant's appellate counsel, who represented defendant at the hearing, did not object to this procedure, counsel now states on appeal that he witnessed the judge "flip" through the cards in an apparent effort to manipulate the selection of the judge that presided at defendant's trial. These allegations are not supported on the record. Defendant's factual representations on appeal do not merit our consideration because they amount to an impermissible attempt to enlarge the record. *People v Taylor*, 383 Mich 338, 362; 175 NW2d 715 (1970). Since defendant did not raise this issue or make an evidentiary record below, we decline to address it now. We conclude that defendant was not deprived of a fair trial by misconduct on the part of the court or the prosecutor.

Defendant claims that the judge who did preside at trial erred by not disqualifying himself. Defendant premised this contention upon the trial judge's participation as the judge conducting an unrelated civil matter brought by defendant's ex-wife. In that matter, a claim against an insurance company, it was alleged that defendant deliberately set a fire. We conclude that defendant has failed to demonstrate any actual bias on the part of the trial judge. MCR 2.003(B)(2). Accordingly, the judge's refusal to disqualify himself was proper. See *People v Armentero*, 148 Mich App 120, 134-135; 384 NW2d 98 (1986), lv den 425 Mich 883 (1986); *People v Denny*, 114 Mich App 320, 325-327; 319 NW2d 574 (1982), lv den 417 Mich 860 (1983).

Defendant urges that the trial court erred by denying his motion to quash the complaining witnesses' identification testimony. This motion was premised upon the allegedly defective procedure employed at the preliminary examination, which resulted in the witness' identification of defendant. Defendant also claims that the identification was so flawed as to be unreliable.

The magistrate conducting a preliminary examination has discretion to decide whether to order a lineup and to provide for the procedure to be used at the lineup. *People ex rel Ingham Co Prosecutor v East Lansing Municipal Judge*, 42 Mich App 32; 201 NW2d 318 (1972). We agree with the circuit court judge that the procedure used at the preliminary examination was not an abuse of discretion. We also conclude that the lineup was not so unduly suggestive that

defendant was denied due process of law. See *People v Horton*, 98 Mich App 62, 67-69; 296 NW2d 184 (1980). Any discrepancies in the testimony identifying defendant affecting the weight of that testimony were for the jury to consider and decide. *People v Pennington*, 113 Mich App 688, 693-694; 318 NW2d 542 (1982), lv den 417 Mich 983 (1983).

Defendant claims instructional error because the trial court did not give requested jury instructions regarding evidentiary problems of identification testimony. Since the trial judge gave instructions in accordance with CJI 7:7:01, we conclude that the jury was properly instructed as to the law. It was not necessary to give the supplemental instructions simply because they were more favorable to defendant. See *People v Young*, 146 Mich App 337, 338-339; 379 NW2d 491 (1985).

Defendant argues that the trial court imposed an illegal sentence. To the extent that defendant's argument is premised upon the court's failure to apply the sentencing guidelines, that argument is misplaced because the guidelines are inapplicable to an habitual offender conviction. *People v Thornsbury*, 148 Mich App 92, 98-99; 384 NW2d 88 (1985). We conclude that the sentence was not so excessive that it amounted to an abuse of discretion. Our judicial conscience is not shocked. *People v Coles*, 417 Mich App 523; 339 NW2d 440 (1983). Unlike *People v Curry*, 142 Mich App 724, 730-736; 371 NW2d 854 (1985), the court below did not give exclusive consideration to defendant's habitual offender status.

In his supplemental brief, defendant contends that his motion for a new trial should not have been denied when he allegedly discovered after trial that one of the jurors was acquainted with an attorney employed by the prosecutor's office, although that attorney was not the prosecutor at trial. Since defendant does not allege that the juror gave false answers during voir dire and since we do not perceive the undisclosed information to suggest that the juror was deprived of his capacity to act impartially, we conclude that the denial of the motion for a new trial was proper. See *People v Larry Smith (After Remand)*, 122 Mich App 202; 332 NW2d 401 (1981). See also *People v Graham*, 84 Mich App 663; 270 NW2d 673 (1978). The other factual allegations that defendant relies upon to establish an entitlement to a new trial were not raised below. Therefore, we do not consider them on appeal.

Because we find no merit to defendant's claims on appeal, we affirm the conviction and sentence.

Affirmed.

/s/ David H. Sawyer
/s/ Gary R. McDonald
/s/ Henry J. Szymanski

STATE OF MICHIGAN JUDICIAL CIRCUIT	JUDGMENT OF SENTENCE Commitment To Corrections Department	CASE NO. 85-26846 FH
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Court address **County Building** Court telephone no.
Muskegon, Michigan 724-6

THE PEOPLE OF THE STATE OF MICHIGAN	v.	Defendant name and address Larry D. Jones 355 E. River Rd.	
		SID	DOB 5-21-56

Prosecuting attorney name Harold Clozlll	Bar no.	Defendant attorney name Wm Jackson	Bar no.
--	---------	--	---------

- At a session on 12-10-85, Circuit Court Judge Michael E.
Date
Kobza, p. 16100 presiding:
Bar no.
- THE COURT FINDS** that the defendant, repre-
sented by counsel, was found guilty on 11-22-85
of the crime(s) as stated below. Date

Count	CONVICTED BY			CRIME
	Plea*	Court	Jury	
	J		X	Obstructing Justice Ct#1
	J		X	Procuring Perjury Ct#2
	J		X	Supplemental

CCH	MCL Specify section and sub section

*Plea: insert "G" for guilty plea; use "NC" for nolo contendere

IT IS ORDERED:

3. Defendant is sentenced to the custody of the Michigan Department of Corrections as stated below. This sentence shall be immediately executed.

Coun	SENTENCE DATE	MINIMUM			MAXIMUM	
		Years	Mos.	Days	Years	Mos.
	12-10	30			50	

DATE SENTENCE BEINGS	JAIL CREDIT		OTHER INFORMATION
	Mos.	Days	
12-10-85		35	

Court recommendation:

/s/ Michael E. Kobza
Circuit Court Judge

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL) /s/ Thomas K. Miller
 Deputy Court Clerk

Approved, State Court Administrator 4/84
Form No. CC219B

**JUDGMENT OF SENTENCE, COMMITMENT TO
CORRECTIONS DEPARTMENT**

Order **Michigan Supreme Court**
Entered: July 25, 1988 Lansing Michigan

Dorothy Comstock Riley
Chief Justice

Charles L. Levin
James H. Brickley
Michael F. Cavanagh
Patricia J. Boyle
Dennis W. Archer
Robert P. Griffin
Associate Justices

81966
(57)

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY DARNELL JONES,

Defendant-Appellant.

SC: 81966
CoA: 90059
LC: 85-26846-FH

On order of the Court, the motion for reconsideration of this Court's order of April 19, 1988, is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

0719

[SEAL] I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

July 25, 1988 /s/ Jacqueline B. McKinnon
[Deputy] Clerk

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Grand Rapids, on the 6th day of October in the year of our Lord one thousand nine hundred and eighty seven.

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

LARRY DARNELL JONES,

Defendant-Appellant.

Present the Honorable

David H. Sawyer

Presiding Judge

Gary R. McDonald

Henry J. Szymanski

Judges

No. 90059

L.C. No. 85-26846-FH

In this cause a motion for rehearing is filed by defendant-appellant, and an answer in opposition thereto being filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for rehearing be, and the same is hereby DENIED.

STATE OF MICHIGAN -- ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the seal of said
Court of Appeals at Lansing, this 12th day of
October in the year of our Lord one thousand
nine hundred and eighty seven

/s/ [Illegible] _____

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR
THE COUNTY OF MUSKEGON

THE PEOPLE OF THE) Circuit Court File:
STATE OF MICHIGAN) 85-26846-FH
vs.) ORDER DENYING
LARRY DARNELL JONES) MOTION TO DIS-
) QUALIFY JUDGE
Defendant.) and MOTION TO
) SUPPRESS
) IDENTIFICATION

ORDER

At a session of said Court held at the City
of Muskegon, County of Muskegon, State
of Michigan, on the 1st day of November,
1985.

PRESENT: MICHAEL E. KOBZA
Circuit Judge
P-16100

Defendant's Motion to Disqualify Judge and Mo-
tion to Suppress Identification having come for hear-
ing in open Court, and evidence having been presented,
and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that both aforesaid
Motions be, and the same are hereby DENIED.

App. 20

IT IS SO ORDERED.

/s/ Michael E. Kobza
Michael E. Kobza
Circuit Judge
P-16100

Countersigned:

/s/ Patricia M. Spellman
Deputy Clerk

STATE OF MICHIGAN IN THE CIRCUIT COURT
FOR THE COUNTY OF MUSKEGON

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

vs.

File No: 85-26846-FH

LARRY DARNELL JONES,

Defendant.

/

OPINION IN RESPONSE TO
DEFENDANT'S MOTION TO SUPPRESS
IDENTIFICATION

Defendant filed a motion for an evidentiary hearing, which this Court will treat as a motion to suppress identification made by the complainant Shahnawaz Alam. Hearing was held Friday, October 25, 1985, starting at 8:30 a.m., and continuing to 5:00 p.m., except for a lunch break. Defendant's contentions are a little vague and fuzzy since they weren't made specifically in the motion itself, and since he choose not to summarize his position at the conclusion of the evidentiary hearing, simply moving the Court to suppress the identification.

Prior to February 4, 1985, this complaining witness, Mr. Shahnawas Alam, hereinafter called Mr. Alam, was the victim of a robbery which allegedly was perpetrated by the brother of this Defendant, Mr. Darrel Jones. On February 3, 1985, the night prior to the

preliminary examination being held the following day, Mr. Alam received four phone calls initially promising money gradually deteriorating to threats being posed by the caller. The caller identified himself as Mr. Larry Jones, brother of the Defendant Darrel Jones. The gist of the calls, extending between 6:00 p.m. and 11:30 p.m. on the evening before the preliminary examination of Mr. Darrel Jones was to be held, was that the caller, identifying himself as Larry Jones, had a green van and would be willing to meet Mr. Alam at Denny's restaurant for the purpose of giving him money not to testify and identify his brother as the person who robbed him. The caller also indicated he owned a private business and was aware of the fact that the complaining witness was in private business as an accountant and would throw business his way from his own business. By the time of the last call being made in the evening prior to the preliminary examination of the brother, the caller began to threaten the complaining witness, indicating he knew where he lived and knew he had a family.

The following morning, February 4, 1985, Mr. Alam was waiting in the hallway leading to the courtroom prior to the preliminary examination of Darrel Jones for the robbery committed against him. While waiting there, a black male subject sat down next to him, indicating he was Larry Jones, that he was the person who telephoned him the night before, and if he would just go in and not identify his brother, he would take care of him in the parking lot after the preliminary examination was finished. Subsequently, Mr.

Alam saw the man who identified himself as Larry Jones talking to Detective Daniel Caulkins in the hallway a short distance away. At the time of his first conversation, the man who identified himself as Larry Jones, was seated one and a half feet away from him. When the detective proceeded to approach Mr. Alam he stood up and was instructed by the detective to remain seated there for awhile pending a conversation by the detective with the prosecuting attorney. The man who identified himself as Larry Jones resumed a position three or four feet away across the doorway separating the two men.

Mr. Alam then entered the conference room and informed the Detective Caulkins and prosecuting attorney of the nature of the previous evening's conversations on the phone and the fact that the man standing by the doorway, with whom the detective was earlier talking to in the hallway immediately preceding his coming into the conference room, was the man who identified himself as Larry Jones and had made the offer to him not to testify against his brother Darrel against whom he had charged Darrel with the commission of the robbery of his person. Incidentally, Mr. Alam also had testified that during the course of that robbery he had lost his wallet which contained his address and his unlisted phone number.

Upon learning this news, on February 4, 1985, the detective sought advice from the prosecutor present, asking if that was enough to arrest and was informed it was, whereupon Detective Caulkins went out and arrested Defendant Larry Jones. Mr. Alam did not go out

to the hallway and point out Larry Jones, but described him as the person in the hallway to whom he had just been talking and who was standing alone by the doorway leading to the courtroom. Detective Caulkins had went out he went out and found Larry Jones, whom he knew personally, standing alone by the doorway immediately outside the conference room into which Mr. Alam came.

A preliminary examination was held on February 25, 1985, prior to which a lineup was requested by defense counsel. Defense counsel had car trouble and was over an hour late, and consequently the lineup became aborted as it ran into the feeding time of the prisoners in the county jail. Subsequent to that, Defendant immediately left and met his attorney outside the county jail where both met the prosecutor to discuss what they would do next. Neither Defendant nor defense counsel requested the lineup. Immediately after lunch, however, defense attorney and the prosecutor did consult with the judge. Defense counsel DeBoer suggested a lineup in court, since the court was adamant to any suggestion of adjourning the preliminary examination, but would allow a lineup. The method of lineup, as this Court understands it, suggested by defense attorney to be an in-court audience lineup, wherein the complaining witness would be required to identify the person from the audience.

In the afternoon the complaining witness was separated so that he would not be in the courtroom when the Defendant entered the courtroom or anyone else entered the courtroom. At the appropriate time he

therefore was brought into the courtroom and sworn to testify and asked to pick out the Defendant who approached him in the hallway to make the statement, and he picked out the Defendant Larry Jones. Defendant Larry Jones was in the court with one other black male who it was testified to was Larry Jones' brother.

It is the contention of Larry Jones that he was standing in the hallway with his brother and it was easy to misidentify him with his brother and consequently the description he gave Detective Caulkins without pointing him out specifically at the time of the arrest could lead to a mistaken identification. Also, defense counsel here probed the possibility of any other preliminary examination meetings between the Defendant and the complaining witness, and it appears to this Court there were none.

In addition, Mr. Alam identified Larry Jones at the evidentiary hearing held October 25, 1985, as the man he distinctly recognized as the person who approached him in the hallway identifying himself as Larry Jones and as the man who talked to him on the phone the previous evening, and indicated again that he wished that he would not identify his brother as the robber of himself, and that after favorable testimony on behalf of his brother not identifying him, he would take care of him in the parking lot after the hearing.

It is the assumption of this Court that Defendant complained about the method of the pretrial identification procedures. In response to the motion, this Court denies the motion and allows the identification

made at the preliminary examination as being proper within the standards set by the Michigan Appellate Courts.

THE LAW

The law in Michigan is clear that there is no constitutional or statutory right to a pretrial lineup. See *People vs. Buchanan*, 107 MA 648(1981). In that case, arising out of the case from the Muskegon County Circuit Courts, the witness did not identify the Defendant until immediately prior to the preliminary examination. She saw the Defendant in a conference room before she went into the courtroom to testify. However, she positively identified the person.

If a lineup is requested, it is within the discretion of the trial judge to grant the request, and if granted, to determine the mode of handling the lineup. In our set of facts, with Mr. Jones, the defense counsel put a request to Judge Pasarela that his client be allowed to participate in an in-court audience type lineup to which the court assented. There was no request to have a standard lineup which was earlier arranged for the morning of that same day, but to which defense counsel DeBoer did not appear on time to conduct such lineup due to car failure that day. Therefore, in the afternoon, the court had indicated a willingness to conduct another lineup, and at which point defense counsel suggested the in-court audience lineup.

The mode of conducting the lineup and the power of the Magistrate was clearly set forth in *People vs.*

East Lansing Judge (Maire), 42 Mich App 32 (1972). The court set up an in-court lineup by the defendant mingling with two or three other persons from among whom the witness was to identify the proper defendant. In that case the prosecution objected to that form since there were fears the complaining witness could not identify the defendant and the court stated as follows:

“The Court is entitled, in its discretion and its inherent power, to require a procedure which assures the reliability of the identification process, especially in a case such as this, where there was a paucity of facts available to lend any reliability to the identification process.” (pg. 39)

In this case, there was a mass riot on the campus of Michigan State University and many people were arrested during the night who were in the process of breaking windows in the stores adjacent to the campus.

Likewise, in *People vs. Carrelley*, 99 Mich App 561, (1980) Defendant was the only person in the lineup and the court held that was not impermissibly suggestive.

In essence, the *People v Farley* case stands for the general proposition that holding the lineup in the first place is a matter of the discretion of the preliminary hearing magistrate, and in the case of *People vs. East Lansing Judge (Maire)*, the mode of the lineup is also within the discretion of the preliminary magistrate.

In addition, there is support for the mode of seating the defendant in the audience as a fair lineup procedure in the federal courts. See *Allen vs. Rhay*, 431 Fed 2d, 1160 – 9th Circuit (1970), and *U. S. vs. Moss*, 410 Fed 2d 386 (3rd Circuit – 1969).

An identification at the scene is perfectly acceptable in Michigan also. See *People v Starks*, 107 MA 377 (1981). This was an identification by a police officer an hour and a half after the officer saw defendant commit the crime. He was brought to him for an on-sight identification. This method is justified to eliminate the holding of innocent persons by police who suspect the person they caught could have committed the crime. It is one of the few exceptions to such non-lineup identification where the person is actually in custody.

The courts have even held, where there has been no lineup previous to the preliminary examination or trial, that the identification made at the time of the preliminary examination or the trial is acceptable and admissible in court as evidence. See particularly *People v Buchanan*, 107 MA 648 (1981), and *People v Emanuel*, 98 Mich App 163 (1980), where the witness saw the defendant for the first time while voir dire was being conducted in court at the date of trial. In the *Buchanan* case, the witness saw defendant in the same conference room as discussed in this case, immediately prior to the preliminary examination. She positively identified defendant at the prelim. Prior to that, however, counsel did not request a pretrial lineup.

Where there has been a lineup, the burden is on the defendant to show that any such lineup was impermissibly suggestive. See *People vs. Horton*, 98 Mich App 62 (1980). A lineup was held in that case where the defendant was the only person with a scar on his face. Likewise, in the case of *People vs. Barnes*, 107 Mich App 386 (1981), the burden is on the defendant to show the lineup procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. The court went on to say mere physical differences between a suspect and other lineup participants do not in and of themselves constitute such impermissible suggestiveness. In addition, even if the pretrial identification procedure was improper, the in-trial identification may still be allowed if the prosecution can show by clear and convincing evidence that the identification in-trials made on other grounds than the impermissible lineup procedure. In this case, the preliminary examination, at page 23, indicates that the witness was not shown mug shots prior to the pretrial identification. There was reference to mug shots that were shown to him after the unarmed robbery which Darrel Jones, brother of Larry Jones, was being charged by the complaining witness Mr. Alam. Therefore, as the Court sees the evidence in this case, it concludes that the identification of the Defendant Larry Jones was made on the basis of that being the person to whom Detective Caulkins had just talked to in the hallway on February 4, 1985, immediately preceding the preliminary examination in the case of *People vs. Darrel Jones*. Immediately thereafter Mr. Alam went into a conference room with

Detective Caulkins and indicated to him that the man to whom he had just been talking to, and who was now standing just outside the door by himself, was the same man who had talked to him just before Detective Caulkins came in, and had indicated that he was the person on the phone the night before, and identified himself as Larry Jones, and stated "you are here, but don't identify." Complaining witness then appeared subsequently at a preliminary examination lineup before the prelim was to be held on February 25, 1985, at 10:00 in the morning. However, due to the absence of defense counsel the original lineup was not held and counsel and the Court agreed to an in-court type lineup at which time the Defendant and another black male appeared in Court and the witness picked the Defendant out as the person he had talked to in the court hallway the morning of his brother's preliminary examination and from whom the offer not to testify was made.

Furthermore, at the evidentiary hearing, Mr. Alam picked out the Defendant again as the person who made the offer to him in the hallway February 4, 1985. He was asked whether he was sure whether or not the person he picked out at the prelim, was the person who talked to him in the hallway, and he indicated that he was "110%" sure, and particularly wanted to be sure because he was fearful of picking out the wrong man, because of the threats.

An attempt at the preliminary examination was made to attack the credibility of the witnesses statements by suggesting that when Larry Jones walked by

the conference room in which Mr. Alam was talking to Detective Caulkins, it was alleged by Defendant Jones that when he walked by, Detective Caulkins indicated "there goes Larry Jones." Both Detective Caulkins and the witness denied that statement was ever made. As a matter of fact, at the evidentiary hearing the prosecuting attorney, Mr. Tague, who was handling the preliminary examination of Larry Darnell Jones, indicated that the witness was separated and was not in a position to see the Defendant prior to the preliminary examination, a procedure which is over and above the standard set forth in the *People v Emanuel* case, and the *People v Buchanan*.

Furthermore, the Defendant placed a younger brother on the stand, Bernard Jones, who testified that he lied about his name when he sat down and talked to the witness Mr. Alam, not discussing anything important. Mr. Bernard Jones did corroborate that his brother Larry Jones and Detective Caulkins were seen talking together immediately prior to the preliminary examination of their brother, Darrel Jones, on February 4, 1985. However, he states the witness Mr. Alan, was not around having gone to another conference room immediately across from the benches in the hallway. This witness further stated that when he talked to Detective Caulkins later he again lied about his name and called himself Jack Jones. He says frequently uses other peoples names when he discusses things with other people, a matter which the Court would find a rare custom, but hardly lending credibility to any testimony in Court. Even if the Defendant's

brother's testimony were credible, he doesn't refute essential point, that is, that Detective Caulkins and his brother Larry Jones were talking together, *alone*, during most of the time he had seen them in the hallway, a fact that Mr. Alam had indicated. This Court would further find that his testimony does little to refute the essential elements of the identification process at that time.

Further, the in-court preliminary examination identification, at the request of defense counsel, with another person in the courtroom with the Defendant, has not been shown by the Defendant who has the burden to show that such mode of lineup was so impermissibly suggestive as to render such lineup improper. In fact, where the mode was suggested by defense counsel, if he feels such was improper he bears part of the responsibility for such impropriety as may have existed, as stated in the *Emanuel* case earlier cited. But this Court does not find such mode impermissibly suggestive, nor was any specific facts stated or proven that would support a finding of "impermissible suggestiveness". There were simply no facts attacking that other than the fact that there were only two people, one of whom was the Defendant in the courtroom at the time the identification was made. Had Defendant not requested a lineup, the in-court identification would have been perfectly appropriate. And in the totality of all the facts, this Court cannot say that the identification was suggested by anybody. The witness had a clear vision of the Defendant, he being seated a foot and a half away, and conversing with him on the bench in the

hallway. In addition, he identified himself as the person having earlier made the phone calls, a fact which the caller certainly would have been aware of, and was the only person who talked to Detective Caulkins in the hallway as testified by everyone. The identification was instantaneous or as quickly made after the crime occurred as can ever hope to be expected to have been made. The witness appears to be relatively intelligent, has two degrees, and appears to have reasonably accurate powers of observation and recollection. There is one glaring deficiency, however, that the Court cannot ignore, and that is that he did not know whether or not the Defendant had a mustache and could not describe what clothes he was wearing on the day of the alleged event. He did, however, testify that he was very frightened for himself and his family, having received three or four calls the night before, some of which were threatening in nature, and prompting him to call the police immediately after receiving the first call. Subsequently, the next day after being approached once more, shortly before he was to testify given the circumstances, he then immediately reported the alleged crime to the officer, Detective Caulkins. In his testimony at the evidentiary hearing, he recalled what the Defendant was wearing, a light brown jacket and blue jeans, at that hearing, he also recalled he had a mustache at that time, although he honestly could not recollect whether or not the Defendant had a mustache on February 4, 1985. He did not testify, as Detective Caulkins said he had heard Mr. Alam testify, that he did not have a mustache. The Court's recollection is that he testified he did not remember whether or not

the Defendant had a mustache February 4, 1985, but he did recollect that he had one at least by the time the preliminary examination was held February 25, 1985.

Defense counsel has only suggested an impermissible suggestive procedure was taken and has supplied this Court with not one shred of hard evidence to sustain his burden. Defense counsel did attack the witnesses powers of recollection in memory and powers to identify, but once again had laid no evidence before this Court that the lineup procedure upon which the in-court audience, was impermissibly suggested. That testimony will be allowed to stand and counsel may attempt to attack the credibility and powers of recollection at the time of trial.

Defense counsel also subpoenaed several prosecuting attorneys, as well as other individuals to whom Larry Jones had talked about this case. *Without objection*, a great deal of hearsay was produced, phone conversations between the prosecutors office and various people, including Defendant and the chairman of the ACLU of this region, Mr. James Brummell, indicating that they (the prosecutor's office), thought they had an identification problem. That was cleared up by the prosecutor's who testified indicating that they did not have an identification problem, but that all questions concerning identification emanated from the defense camp only. They did agree if there was a question that they would be willing to conduct the lineup, a perfectly appropriate procedure.

This Court will not allow testimony as to the strategy of the prosecuting attorney to be introduced at the trial as a waste of time and immaterial to the facts necessary to be elicited. It will allow defense counsel to impeach the credibility of the witnesses powers of recollection or observation, vis-a-vis his identification made at the preliminary examination in his attempt to ascertain the basis upon which such identification was made if he could not, in fact, recall specifics concerning the description of the Defendant at the time of the commission of the alleged crime February 4. In addition, reference to the phone calls made February 3, 1985, will be admitted as connected related testimony.

/s/ Michael E. Kobza
Michael E. Kobza P-16100
Circuit Judge

Dated: October 28, 1985

cc: Wm. E. Jackson – Defense Counsel
Leslie C. Bowen – Prosecutor

<p>STATE OF MICHIGAN 60th JUDICIAL DISTRICT 14th JUDICIAL CIRCUIT <input type="checkbox"/> RECORDERS COURT</p>	<p>INFORMATION FELONY</p>	<p>CASE NO. DISTRICT CT. 85-S-0271 CIRCUIT CT. 85-26846-FH</p>
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District Court ORI:

THE PEOPLE OF THE STATE OF MICHIGAN

V

LARRY DARNELL JONES, M/B – 05/21/56
355 E. River Rd.
Muskegon, MI

DOB: Defendant(s)

Charge

I-OBSTRUCT JUSTICE; II-PERJURY/INCITING OR PROCURING

Maximum penalty:

OFFENSE INFORMATION

<p>Date On or about February 3, 1985 & February 4, 1985</p>	<p>Police agency report no. 623-85</p>
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City/Twp./Village and County in Michigan
City of Muskegon
60th District Court

Victim or Complainant

MHPD

Complaining Witness Det. Daniel Calkins, MHPD

Witnesses

Daniel Calkins

Shahnaway Alam

Dan Royce

Representative of Circuit Court Records

STATE OF MICHIGAN, COUNTY OF MUSKEGON.

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: The Prosecuting Attorney for this County appears before the court and informs the court that on the date and at the location above described, the Defendant(s):

LARRY DARNELL JONES did with intent to obstruct the due course of justice, wilfully and unlawfully offer a bribe to Shahnaway Alam for the purpose of preventing Shahnaway Alam from testifying freely as a witness for the People in a cause then pending in the Muskegon County District Court between the People of the State of Michigan and Darrell Jones, 85-S-0202 wherein Darrell Jones was charged with Unarmed Robbery; Contrary to the Common Law of the State of Michigan and Contrary to Sec. 750.505 C.L. 1970.

COUNT I – OBSTRUCTING JUSTICE

FELONY: 5 years and/or \$10,000.00.

LARRY DARNELL JONES did endeavor to incite or procure a person, to-wit: Shahnaway Alam to commit

the crime of perjury on a material matter, to-wit: Identification of Defendant, as a witness in the case of People v. Darrell Jones, said case being Unarmed Robbery before the District Court for the County of Muskegon; Contrary to Sec. 750.425, C.L. 1970; MSA 28.667.

COUNT II – PERJURY – INCITING OR PROCURING, COURT PROCEEDING
FELONY: 5 years

P-36226

and against the peace and dignity of the State of Michigan.

I HEREBY CERTIFY this to be
a true and correct copy of the
original on file with the office of
COUNTY CLERK.
This Certified Copy VALID Only
When SEAL and RED
SIGNATURE Affixed.
/s/ [Illegible]
MUSKEGON COUNTY CLERK

Prosecuting Attorney

March 4, 1985
Date

By: _____
HAROLD F. CLOSZ III
P-28260

<p>STATE OF MICHIGAN 60th JUDICIAL DISTRICT 14th JUDICIAL CIRCUIT <input type="checkbox"/> RECORDERS COURT</p>	<p>RETURN TO CIRCUIT COURT FELONY</p>	<p>CASE NO. DISTRICT CT. 85-S-271 CIRCUIT CT.</p>
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District Court ORI:

THE PEOPLE OF THE STATE OF MICHIGAN

V

LARRY DARNELL JONES, M/B – 05/21/56
 355 E. River Rd.
 Muskegon, MI

DOB: Defendant(s)

Charge

I-OBSTRUCT JUSTICE; II-PERJURY/INCITING OR PROCURING

Maximum penalty:

OFFENSE INFORMATION

<p>Date On or about February 3, 1985 & February 4, 1985</p>	<p>Police agency report no. 623-85</p>
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City/Twp./Village and County in Michigan
 City of Muskegon
 60th District Court

Victim or Complainant

MHPD

Complaining Witness Det. Daniel Calkins, MHPD

EXAMINATION WAIVED

1. I, the Defendant, understand:
 - a. I have a right to employ an attorney,
 - b. I may request a court appointed attorney if I am financially unable to employ one.
 - c. I have a right to a preliminary examination where it must be proven that a crime was committed and probable cause exists to charge me with the crime.
2. I voluntarily waive my right to a preliminary examination and understand that I will be bound over to Circuit Court on the charges in the complaint and warrant (or as amended).

Attorney for Defendant Bar no Defendant

3. Examination having been waived, the Defendant is bound over to the Circuit Court for further proceedings.

EXAMINATION HELD

4. Upon examination of the matter I find that an offense not cognizable by a District Judge has been committed and there is probable cause for

charging the Defendant with the crime. I bind the Defendant over to the Circuit Court for further proceedings.

5. Date arraigned: 2/4/85 Defense Attorney: Kenneth G. DeBoer (P125970)
6. Examination held on: 2/25/85
Date
7. Witnesses called:

BIND OVER

8. Bound to Circuit Court to appear on March 4, 1985 at 9:00 Am., Courtroom no. ____ Date
9. Bond set in the amount of \$2,000.00 Type of bond: Furnished – Posted by Alice Rice 10% – Condition: No contact with Shahnaway Alam, his family or residence Direct or Indirect
10. Statute: MCL 750.505; MSA 28.773
750.425
MSA 28.667
11. Charge: Ct. I – Obstruct Justice Ct. II – Perjury – Inciting or Procuring Court Proceedings Complaint amended to read February 3rd & 4th.

February 25, 1985 /s/ Richard J. Pasarela
Date District Judge Richard J.
Pasarela

Order

November 30, 2016

**Michigan Supreme Court
Lansing Michigan**

Robert P. Young, Jr.
Chief Justice

Stephen J. Markman

Brian K. Zahra

Bridget M. McCormack

David F. Viviano

Richard H. Bernstein

Joan L. Larsen

Justices

153998 & (31)

PEOPLE OF THE
STATE OF MICHIGAN,
Plaintiff-Appellee,

v

LARRY DARNELL JONES,
Defendant-Appellant. /

SC: 153998
COA: 332293
Muskegon CC:
85-026846-FH

On order of the Court, the application for leave to appeal the May 2, 2016 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court. The motion to vacate is DENIED.

[SEAL] 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 30, 2016

/s/ Larry S. Royster
Clerk

STATE OF MICHIGAN
IN THE MUSKEGON COUNTY
14TH CIRCUIT COURT

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

Hon. Timothy G. Hicks

v.

Case No. 85-26846-FH

LARRY DARNELL JONES,

Defendant.

/

AFFIDAVIT OF DARRYL JONES
PROPOSED TRIAL TESTIMONY

I, Darryl Jones, being duly sworn, deposes and says:

1. While confined in Muskegon County Jail in 1985 all telephone calls had to be collect even to people living in the City of Muskegon.

2. On the night of February 3, 1985 I had made several collect calls to Brian Jones. I asked Brian to dial Shahnawaz Alam's resident to attempt to get him not to show up to testify against me the next day at my preliminary examination. I used the name of Larry Jones because I knew that if I used my own name Mr. Alam would probably hang up on me.

3. On the night of February 3, 1985, during my conversations with Mr. Alam, I tried to get him to come by a house where Brian Jones was at and where Alam's

wallet was. I told Mr. Alam that I would give him an address to come by but he did not want to. I then suggested that he should go to Denny's restaurant.

4. It was my attempt in all my conversations with Mr. Alam to get him to drop the charges against me. I was and had tried to get him to trust me by using my brother's name, Larry Jones, so that I could get him to drop the charges. This was also the reason I told him that I was a family and businessman that was working as a prison guard.

5. I had arranged with Brian Jones to take the wallet to where Mr. Alam wanted to meet. I had informed Mr. Alam to go to Denny's restaurant to look for a person in a green van who would have his wallet. The green van belonged to the ex-wife of Larry Jones.

6. The children that were heard in the background during the telephone conversations I had with Mr. Alam were at the resident where I had placed the three-way call through. I told Mr. Alam that these were my children so that he would feel more secure in dealing with me. The children belonged to Brian Jones' girlfriend.

7. During the telephone conversations I offered Mr. Alam a job at the L & L party store owned by Larry Jones' ex-wife, Alice Rice. I felt that this would aid him in not testifying against me at the preliminary examination.

8. I made several telephone calls to Mr. Alam's residence on February 3, 1985 posing as Larry Jones.

9. If I had been called to testify at my Larry Jones' trial I would have testified to the above along with Brian Jones.

/s/ Darrell Jones 169-048
DARRYL JONES 169048

Subscribed and sworn to before me
this August 24, 1992.

/s/ Paddy C. Malone
Notary Public

PADDY C. MALONE
Notary Public. Alger County Michigan
Acting in Marquette County Michigan
My Commission Expires February 3, 1993

STATE OF MICHIGAN
IN THE MUSKEGON COUNTY
14TH CIRCUIT COURT

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

Hon. Timothy G. Hicks

v.

Case No. 85-26846-FH

LARRY DARNELL JONES,
Defendant.

/

AFFIDAVIT

EYE WITNESS ACCOUNT OF BRENDA SCOTT
PROPOSED TRIAL TESTIMONY THAT
WAS NOT PRESENTED AT TRIAL

STATE OF MICHIGAN)
)
COUNTY OF MUSKEGON)

I, Brenda Scott, being duly sworn, under the penalty of perjury, deposes and says as follows:

1. If sworn as a witness I can testify competently to the facts contained within this affidavit.

2. On February 4, 1985, I arrived at the Muskegon County Building at approximately (8:30 a.m.) in the morning to attend the preliminary examination of Darryl Jones. After my arrival I parked in the main parking lot and walked to the county building up the steps into the main large lobby area, where there are elevators on both sides as you first walk into the

county building. I went straight to the police officer, sitting at the front desk, facing the doors, as you enter the building on the first floor, and asked him what courtroom the examination of Darryl Jones was being held in. He told me that it was being held in Magistrate Judge, Richard J. Pasarela's courtroom number 5. So the police officer at the front desk, directed me to my right, north down the hallway, as one would be walking down toward the Muskegon County Sheriff Department, down the hallway inside the county building.

3. On February 4, 1985, once I had reached courtroom number 5, there was a Muskegon County Sheriff Deputy (Jack Shutter) who wore a brown police uniform, standing right at the entrance doorway leading into courtroom number 5, where there is a conference room on your left and right as you walk into the courtroom number 5 area. I looked into the courtroom and no one was there yet. At that time I sat down on the bench outside courtroom number 5, where three (3) other white females and two (2) white males were sitting at the time, but there was about ten (10) or fifteen (15) other black and white people moving and walking down the hallway, because the Hunter and Smith, preliminary examinations was also going on for those two (2) black men who had been charged with armed robbery. While sitting there for about ten (10) minutes on the bench, I noticed (Vernard Jones), coming down the courthouse hallway at about (8:45 a.m.) that morning, with his children's mother (Martina Spencer), and their two (2) small children, at the time, between the ages of two and three. Vernard Jones was holding his

little girl and his girlfriend was carrying the little boy. They walked into the courtroom number 5, area and then came out and sat down on the bench too. I then next observed (Vernard Jones), get up off the bench, and talk for a few minutes with that Deputy Sheriff (Jack Schutter), in the brown police uniform. Then (Vernard Jones) sat back down on the bench. The Deputy Sheriff (Jack Schutter), then left the area. As I remember it, on February 4, 1985, (Vernard Jones) wore a black leather coat over a tan coat, with blue jeans on and white tennis shoes, but I do not remember seeing his shirt. His girlfriend wore a black leather coat, black pants, and black shoes. They sat on the bench with (Vernard Jones) sitting on the end of the bench closest to the entrance way that goes into courtroom number 5.

4. On February 4, 1985, few minutes later about (9:00 a.m.) an arab looking guy (Shahnawaz Alam) with black hair, clean shaved, wearing a black and white vested pinstriped suit, and black shoes walked up and (Vernard Jones) moved down a little bit on the bench, and allowed him (Shahnawaz Alam), to sit down on the bench, After I heard Alam say his name, I then observed (Vernard Jones), and (Shahnawaz Alam) talk for about five to ten minutes, but I was talking to (Bryant Jones), who died on December 9, 1988. See (Attached Certificate of death for Bryant Jones), when I heard (Vernard Jones) tell (Shahnawaz Alam), that his name was (Larry Jones). I then observed (Shahnawaz Alam) get up and walk into the entrance way as walking into the courtroom number 5, and I did not see him

again after that. But (Vernard Jones), did get up carrying his little girl, at about the same time (Shahnawaz Alam), did and walk down the courthouse hallway toward the main lobby area.

5. On February 4, 1985, while I still sat on the bench outside the courtroom number 5 area, at about (9:00 a.m.), that morning, (9:10 a.m.), I then observed (Larry Jones), who had a very short hair cut, and a (big mustache), in a gray jogging suit, with the inside of the hood light blue, and he (Larry Jones), had a short black leather coat on and white Nike tennis shoes and (Detective Daniel Calkins), coming down the courthouse hallway, toward courtroom number 5, and (Vernard Jones), was walking behind them at the time, and suddenly (Larry Jones), and (Detective Daniels Calkins), stopped for a minute talking him in the hallway (half-way down the hallway) then (Detective Daniels), came down the courthouse hallway and went into courtroom number 5, or one of the attached conference rooms as (Larry Jones and Vernard Jones), continued to talk while standing in the Muskegon County Building hallway, by the fire extinguisher (red box that is mounted into wall), right in front of the bench, on the opposite side of the hallway where (Larry Jones), stood to the left of (Vernard Jones), with their backs against the wall about one (1) foot apart from each other side by side in the hallway, and that deputy sheriff (Jack Schulter), came back and was standing once again up against the outside door of courtroom number 5, guarding it.

6. On February 4, 1985, as I sat on the bench, about five or six feet away, I observed (Detective Daniel Calkins), who wore a long black leather coat, that I had observed (Larry Jones), talking with in the courthouse hallway, come out of courtroom number 5, or one of the conference rooms with (police officer Ronald Rake), who wore a short brown leather coat, and the both of them then approached (Larry Jones and Vernard Jones), announced their name, and that they were Muskegon Heights Police Officers, and *arrested* (Larry Jones), in the courthouse hallway. They took (Larry Jones), through courtroom number 5 to the Muskegon County Jail. The arrest occurred about (10:45 a.m.).

7. After the February 4, 1985 arrest of (Larry Jones), I never saw (Larry Jones), again after he got *arrested*.

8. On February 4, 1985, I also never had a chance to talk to (Larry Jones), before he was *arrested*. I recently learned on November 27, 2008 that (Larry Jones), was imprisoned as a result of the February 4, 1985, police *arrest* because the police claimed (Larry Jones) had come and talked to the arab looking guy (Shahnawaz Alam), on the bench, outside courtroom number 5, but I am positive and can testify before any court that (Larry Jones), never sat on the bench, at all that before (Larry) was *arrested*. If I had of been contacted by his attorney, I would have appeared in court and provided the testimony, outlined in this affidavit.

9. On December 15, 2008, I then wrote (Larry Jones), at the Alger Maximum Correctional Facility,

(LMF) prison after finding out his address and provided (Larry Jones, this affidavit.

Further deponent saith not.

/s/ Brenda Scott
Brenda Scott

[ILLEGIBLE] A. MCCARTY
NOTARY PUBLIC, STATE OF MI
COUNTY OF MUSKEGON
MY COMMISSION EXPIRES Sept. 6, 2010
ACTING IN COUNTY OF MUSKEGON

Subscribed and sworn to before me this
16th day of February, 2009

/s/ [Illegible] A. McCarty
NOTARY PUBLIC

Muskegon County Michigan
Acting in Muskegon County, Michigan
My Commission Expires: 09/06/2010
