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**STATE OF MICHIGAN**

**IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN No. 137830

*Plaintiff-Appellee*, COA No. 273407

V. Emmet CC No. 06-2597-FC

JOEL NATHAN DUFRESNE

*Defendant-Appellant.*

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## **BRIEF IN SUPPORT OF MOTION FOR REHEARING**

Each of the questions presented in Defendant's pro per application for leave to appeal should be reviewed by the Court, not only to correct a severe miscarriage of justice but also to serve diverse State interests and to explain several important areas of Michigan law.

## QUESTIONS PRESENTED IN APPLICATION

### A. Issue One

It was reversible error for two police witnesses to testify that Mr. Dufresne asked to speak to a lawyer during his interrogation- that he had “lawyered up” in the words of one of the officers- in violation of Mr. Dufresne’s United States and Michigan Constitutional rights.

This Court should review this question to explain the “inadvercence” component of *People vs. Dennis*, 464 Mich 567, 628 NW2d 502(2001), where the police testimony at issue is later repeated by another police witness, and where a total of six references (instead on one reference as in *Dennis*) occurred, much more like *People vs. Shafier*, 277 Mich App 137, 140 (2006), which differs from the instant case in that the refernces were not preserved by timely objection in *Shafier* but is otherwise similar

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### B. Issue Two

The trial court erred in admitting, the prosecution admitted misconduct by asking about, and counsel was ineffective for failing to object to prejudicial testimony regarding Mr. Dufresne’s character –that he has ties to a white supremacist group that was involved with the murder of a judge’s family in Chicago and that he was very scary and intimidating.

This Court should review this issue to address the effect on *People vs. Vaughn*, 186 Mich App 376; 465 NW2d 365 (1990), in which trial court credibility findings are to be followed by higher courts, of suppressed exculpatory credibility evidence known to the prosecution (see Attachment B). Furthermore, the testimony at issue created a false impression of Defendant’s character, in that the testifying officer was aware that the murders of the Chicago judge’s family were solved and the culprit thereof had no connection of any kind to Defendant or any group Defendant was tied to , in any way.

### C. Issue Three

Trooper Armstrong, impermissibly testified regarding the credibility of the Complainant’s allegations, prejudicing the defense by vouching for the veracity of the Complainant, depriving Defendant of his due process right to a fair trial, and trial counsel was ineffective for failing to object to the testimony.

This Court should review this issue to explain the caselaw upon which the Court of Appeals relied to addressing this issue, *People vs. Dobek*, 274 Mich App 58; 732 NW2d 546 (2007) and *People vs. Fike*, 228 Mich App 178; 577 NW2d 903 (1998), in application with *People vs. Bean*, 457 Mich 677, 682-83 (n. 11), where

1. The testifying officer (Trooper Armstrong, the co-officer-in-charge) has demonstrable material knowledge that the complainant is untruthful and has committed perjury;

2. That police reports necessary to effectively crossexamine prosecution witnesses, including complainant and the testifying officer, have been suppressed (see Attachment B, esp. Mich Dept. of State Police Incident Report No 78-519-06 (DS), Supp. Incident Report 3, written by the testifying officer and material to impeach complainant's testimony and bolster Defendant's testimony in several subjects, including prior false rape allegations by complainant against her ex-boyfriends; and indicating availability of additional witnesses to corroborated Defendant's testimony); and
3. The testifying officer testified nevertheless to vouch for the veracity of the complainant, and the perjury was, like the suppressed police reports, never disclosed to the court, defense, or jury; Mich Const. 1963, Amends. 6,14.

#### D. New Issue

The cumulative effect of counsels' errors is so great that the outcome of the proceedings is unreliable, where multiple egregious incidents of prosecutorial misconduct occurred without objection, counsel failed to investigate or to present a meaningful defense, sentencing was improperly enhanced, clearly stronger issues on appeal were neglected, and counsel deprived Defendant of his right to a lie detector test.

This Court should review this question to enforce minimum standards of counsels' performance, particularly in light of Defendant's very severe sentence (50 to 75 years in prison) under MCLA§769.12 was imposed contrary to MCR 6.112 (F) and the Plaintiff's non-compliance with MCR 6.201, resulting in the factually innocent Defendant being wrongfully convicted and illegally sentenced. This Court should also review this question to explain MCLA§776.21; MSA 28.1274, where the credibility of the defendant is central to resolution of the case (COA Opinion, pp. 2-3), the prosecution has suppressed evidence bolstering the credibility of the defendant, the defendant has been promised a polygraph examination by court, prosecutor, and counsel, defendant has not waived his "absolute right" to a lie detector test, and yet counsel has cancelled the test and refused to reschedule it; Mich. Const. 1963, Amend. 14.

This Court should also review this question because the State has no interest in continuing a miscarriage of justice and because the

prosecutorial misconduct in this case has been highly misleading to the jury and court, extremely extensive, entirely deliberate

and calculated, and concealed the weakness in this case from judicial scrutiny.

#### Conclusion

This Court must review these questions because this Court is responsible for the administration of justice in Michigan. The prosecutorial misconduct in this case is so boldly evident (see Attachment B) and decisive (COA Opinion, pp. 2-3, on credibility and exculpatory evidence) that granting a rehearing is the only right thing for this Court to do

Respectfully Submitted, ,

5/8/09

Date Joel Nathan Dufresne

Defendant-Appellant In Pro Per