

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Michigan Supreme Court No. _____

-v-

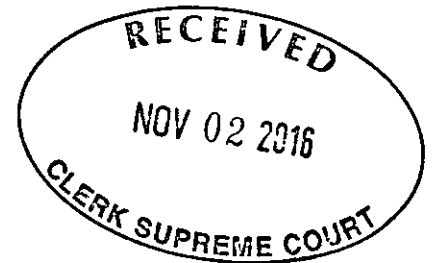
Court of Appeals No.325806

Kareem Swilley,
Defendant-Appellant.

Trial Court No. 14-039758-FJ

Saginaw County Prosecutor
Tenth Judicial Circuit Court Saginaw County
111 S. Michigan Ave.
Saginaw, Michigan 48802

Kareem Swilley #882619
Defendant in Pro Per
Bellamy Creek Correctional Facility
1727 West Bluewater Highway
Ionia, Michigan 48846



APPLICATION FOR LEAVE TO APPEAL IN PRO PER

NOW COMES, Defendant – Appellant, **Kareem Swilley,** and was found guilty of;

1. (7) counts; Felony Firearms MCL 750.227BA.
2. (3) counts; Assault to commit murder MCL 750.83
3. (1) count; Carrying weapon w/unlawful intent. 750.226
4. (1) count; Homicide-First Degree Murder- premeditated, 750.316A
5. (1) count; Homicide -Conspiracy to Commit Murder, 750.316A

The Circuit Court trial proceedings found Appellant – Defendant Guilty by Jury Trial and subsequently sentenced on 8-21-2013 by the Honorable Judge Fred L. Borchard of the Saginaw County Circuit Court to a sentence term of Life.

Defendant-Appellant is currently in prison at the Bellamy Creek Correctional Facility, 1727 West Bluewater Highway, Ionia, Michigan 48846. The Michigan Court of Appeals affirmed Defendant-Appellant's conviction and clarified that the sentence must be "with parole" on September 13th, 2016. A copy of the decision is attached. This application is filed within 56 days of the Court of Appeals decision.

STATEMENT OF FACTS

Defendant-Appellant Kareem Swilley, relies upon and incorporates the facts within his Michigan Court of Appeals Brief. See attached Michigan Court of Appeals Brief as well as his supplemental brief.

GROUND S - ISSUES RAISED IN THE COURT OF APPEALS

I want the Court to consider the issues as raised in my Court of Appeals brief and the additional information below.

DEFENDANT'S ISSUE I

THE PROSECUTION FAILED TO PRODUCE LEGALLY SUFFICIENT EVIDENCE TO IDENTIFY APPELLANT AS THE PERPETRATOR OR PROVE HIS GUILT BEYOND A REASONABLE DOUBT.

The Court should review the Court of Appeals decision on this issue because:

	The issue raises a serious question about the legality of a law passed by the legislature;
	The issue raises a legal principle which is very important to Michigan law;
X	The Court of Appeals decision is clearly wrong and will cause an important injustice to me;
X	The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

Arguments

Defendant-Appellant Kareem Swilley, relies upon and incorporates the facts and arguments within his Michigan Court of Appeals Brief. See attached Michigan Court of Appeals Brief.

This Court should grant leave to appeal the decision of the court of appeal.

GROUND - ISSUES RAISED IN THE COURT OF APPEALS

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DEFENDANT'S ISSUE II

THE TRIAL COURT ERRED BY ALLOWING THE PROSECUTION TO PRESENT EXTENSIVE EVIDENCE OF SAGINAW GANG TERRITORIES, GANG SIGNS AND OTHER SIMILAR EVIDENCE TO SUGGEST THAT THE SHOOTING WAS GANG RELATED WHERE THE ADMISSION OF THIS EVIDENCE UNDERMINED THE RELIABILITY OF THE VERDICT AND DENIED APPELLANT HIS RIGHT TO A FAIR TRIAL

The Court should review the Court of Appeals decision on this issue because:

	The issue raises a serious question about the legality of a law passed by the legislature;
X	The issue raises a legal principle which is very important to Michigan law;
X	The Court of Appeals decision is clearly wrong and will cause an important injustice to me;
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Argument

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GROUND - ISSUES RAISED IN THE COURT OF APPEALS

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DEFENDANT'S ISSUE III

THE TRIAL COURT ERRED IN ALLOWING "EXPERT" WITNESS TESTIMONY IN THE AREA OF SAGINAW GANG TERRITORY, GANG MEMBERSHIP AND INDICA OF GANG AFFILIATION" BY DETECTIVE OBERLY, WHOSE QUALIFICATIONS AND TESTIMONY DID NOT MEET THE REQUIREMENTS OF MRE 702

The Court should review the Court of Appeals decision on this issue because:

	The issue raises a serious question about the legality of a law passed by the legislature;
X	The issue raises a legal principle which is very important to Michigan law;
X	The Court of Appeals decision is clearly wrong and will cause an important injustice to me;
X	The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

Argument

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GROUND - ISSUES RAISED IN THE COURT OF APPEALS

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DEFENDANT'S ISSUE IV

THE TRIAL COURT REVERSIBLY ERRED IN OVERRULING APPELLANT'S OBJECTION TO TESTIMONY FROM TROOPER KAHN AS TO AN ALLEGED PRIOR CONSISTANT STATEMENT BY COMPLAINTANT YOUNGBLOOD A THAT EVIDENCE WAS INADMISSIBLE UNDER MRE 801(D)(1)(B), AND HIGHLY PREJUDICIAL TO APPELLANT AS IT IMPROPERLY BOLSTERED YOUNGBLOOD'S TESTIMONIAL CREDIBILITY.

The Court should review the Court of Appeals decision on this issue because:

	The issue raises a serious question about the legality of a law passed by the legislature;
X	The issue raises a legal principle which is very important to Michigan law;
X	The Court of Appeals decision is clearly wrong and will cause an important injustice to me;
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Argument

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GROUND - ISSUES RAISED IN THE COURT OF APPEALS

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DEFENDANT'S ISSUE V

THE COURT ABUSED ITS DISCRETION AND DENIED APPELLANT A FAIR TRIAL BY PERMITTING EXTENSIVE GANG RELATED TESTIMONY.

The Court should review the Court of Appeals decision on this issue because:

	The issue raises a serious question about the legality of a law passed by the legislature;
X	The issue raises a legal principle which is very important to Michigan law;
X	The Court of Appeals decision is clearly wrong and will cause an important injustice to me;
X	The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

Argument

Defendant-Appellant Kareem Swilley, relies upon and incorporates the facts and arguments within his Michigan Court of Appeals Brief. See attached Michigan Court of Appeals Brief.

This Court should grant leave to appeal the decision of the court of appeal.

SUPPLEMENTAL GROUNDS - ISSUES RAISED IN THE COURT OF APPEALS

I want the Court to consider the issues as raised in my Court of Appeals supplemental brief and the additional information below.

SUPPLEMENTAL - ISSUE I

THERE IS SUFFICIENT EVIDENCE TO SUPPORT MR. SWILLEY'S CONVICTIONS FOR CONSPIRACY TO COMMIT FIRST DEGREE MURDER, MCL 750.316A, AS REQUIRED BY DUE PROCESS. US CONST. AM. XIV.

The Court should review the Court of Appeals decision on this issue because:

	The issue raises a serious question about the legality of a law passed by the legislature;
X	The issue raises a legal principle which is very important to Michigan law;
X	The Court of Appeals decision is clearly wrong and will cause an important injustice to me;
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Argument

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This Court should grant leave to appeal the decision of the court of appeal.

SUPPLEMENTAL GROUNDS - ISSUES RAISED IN THE COURT OF APPEALS

I want the Court to consider the issues as raised in my Court of Appeals supplemental brief and the additional information below.

DEFENDANT'S SUPPLEMENTAL - ISSUE II

THE VERDICTS RENDERED BY THE JURY INVOLVING MR. SWILLEY ARE AGGAINST THE GREAT WEIGHT OF THE EVIDENCE FOR THEY WERE REACHED BY EXTRANEIOUS INFLUENCES IN VIOLATION OF MR. SWILLEY'S DUE PROCESS RIGHTS. US CONST. AM. XIV.

The Court should review the Court of Appeals decision on this issue because:

	The issue raises a serious question about the legality of a law passed by the legislature;
X	The issue raises a legal principle which is very important to Michigan law;
X	The Court of Appeals decision is clearly wrong and will cause an important injustice to me;
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Argument

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This Court should grant leave to appeal the decision of the court of appeal.

SUPPLEMENTAL GROUNDS - ISSUES RAISED IN THE COURT OF APPEALS

I want the Court to consider the issues as raised in my Court of Appeals supplemental brief and the additional information below.

DEFENDANT'S SUPPLEMENTAL - ISSUE III

MR. SWILLEY SHOULD HAVE GRANTED A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE PRESENTED AT TRIAL FOR IF IT WOULD HAVE BEEN PROVIDED TO THE JURY DIFFERNANT VERDICTS MAY HAVE BEEN RENDERED.

The Court should review the Court of Appeals decision on this issue because:

	The issue raises a serious question about the legality of a law passed by the legislature;
X	The issue raises a legal principle which is very important to Michigan law;
X	The Court of Appeals decision is clearly wrong and will cause an important injustice to me;
X	The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

Argument

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This Court should grant leave to appeal the decision of the court of appeal.

SUPPLEMENTAL GROUNDS - ISSUES RAISED IN THE COURT OF APPEALS

I want the Court to consider the issues as raised in my Court of Appeals supplemental brief and the additional information below.

DEFENDANT'S SUPPLEMENTAL - ISSUE IV

THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO ADHERE TO THE SENTENCING PROCEDURE REQUIRED UNDER MCL 769.25 AND SET FORTH IN MILLER V ALABAMA, 567 U.S. ____; 132 S.CT. 2455 (2012), THUS VIOLATING MR. SWILLEY'S CONSTITUTIONAL RIGHTS. U.S. CONST. AMS. VI; XIV.

The Court should review the Court of Appeals decision on this issue because:

	The issue raises a serious question about the legality of a law passed by the legislature;
X	The issue raises a legal principle which is very important to Michigan law;
X	The Court of Appeals decision is clearly wrong and will cause an important injustice to me;
X	The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

Argument

Defendant-Appellant Kareem Swilley, relies upon and incorporates the facts and arguments within his Michigan Court of Appeals supplemental Brief. See attached Michigan Court of Appeals supplemental Brief.

This Court should grant leave to appeal the decision of the court of appeal.

NEW GROUNDS - ISSUES RAISED IN THE COURT OF APPEALS

I want the Court to consider the issues as raised in my Court of Appeals brief and the additional information below.

DEFENDANT'S NEW ISSUE

TRIAL COURT ABUSE ITS DISCRETION WHEN IT DENIED HIS MOTION FOR A SPEEDY TRIAL, WHERE THE PROSECUTION INTENTIONALLY DELAYED A JUVINALE'S TRAIL TO GAIN TACTICAL ADVANTAGE AND FORCED THE DEFENDANT TO WAIT YEARS BEFORE BEING TRIED, ONLY AFTER THE DEFENDANT REACHED 18 YEARS OF AGE TO PREJUDICE AND PREVENT THE JURY FROM HAVING TO RENDER A VERDICT TO A JUVENILE, VIOLATED HIS CONSTITUTIONAL RIGHT (SIXTH AMENDMENT) TO A SPEEDY TRIAL AND DUE PROCESS.

The Court should review the Court of Appeals decision on this issue because:

	The issue raises a serious question about the legality of a law passed by the legislature;
X	The issue raises a legal principle which is very important to Michigan law;
X	The Court of Appeals decision is clearly wrong and will cause an important injustice to me;
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Argument

This Court should grant leave to appeal the decision of the court of appeal.

Standard of Review:

Preserved - When the constitutional right to a speedy trial is formally preserved in the record, the court will conduct a *de novo* review of the issue on appeal. *People v Cain*, 238 Mich App 95, 111 (1999). Since the speedy trial issue was preserved by oral and written defense motions, and because it implicates a constitutional right, the prosecution bears the burden of proving beyond a reasonable doubt that the error was harmless. *Chapman v California*, 386 US 1887 S Ct 824; 17 L Ed 2d 705 (1967); *People v Anderson* (After Remand), 446 Mich 392; 521 NW2d 538 (1994).

Discussion:

In this case, the defendant contends that the prosecution intentionally delayed the trial/prosecution strictly for the purposes to prevent the jury from rendering a verdict to a juvenile. Prosecution investigation must be reasonable and the subject matter be investigated must comport with the charges. Here, the prosecution investigated gang activity/theory's and solicited the police gang unit experts not related to the charges against the defendant as justification for the delay to trial.

This was nothing more than a way to hide the underlying prosecutions strategy to postpone the defendant's trial until he was over 18 years of age. The defendant looks very young for his age and by waiting and delaying prosecution against the objections and motions for a speedy trial by the defense counsel, the prosecution was able to directly prejudice the defendant's right to due process through trying him after he became an adult.

In *People v Bisard*, 114 Mich App 784; 319 NW2d 670 (1982);

"When a delay is deliberately undertaken to prejudice a defendant, little actual prejudice need be shown to establish a due process claim. Where, however, there is a justifiable reason for the delay, the defendant must show more - - that the prejudice resulting from the delay outweighs any reason provided by the state." [Id. at 790]

There can be no sense of fair play when the state takes deliberate measure to prolong, delay prosecution of the charged incarcerated defendant. It is widely known that a majority of criminal sexual conduct cases are routinely fast tracked to trial to ensure that memories and the emotional aspects of the victims pains are presented for a strong case before the jury. That strategy is clearly constitutional as it conforms with the speedy trial act. The opposite strategy where the evidence is readily available,

where witnesses and statements were secured prior to arrest cannot be considered reasonable delay. The prosecutor's claims that efforts to investigate gang affiliations' and gang territory was unreasonable as it had nothing to do with the actual crime charged or committed. This was a delay tactic designed to secure a tactical advantage in the defendant's trial were they would be able to present a full grown 18 year old defendant instead of a younger juvenile. The defendant request that the Supreme Court review and address this legal problem as it has wide-spread implications through-out the states handling of juvenile felony trials.

RELIEF REQUESTED

For the above reasons, I request that this Court GRANT leave to appeal, APPOINT a lawyer to represent me, and GRANT any other relief this Court decides that I am entitled to receive.

Respectfully Submitted,

/s/ Kareem Swilley
2016

Kareem Swilley, #882619
Defendant In Pro Per
Bellamy Creek Correctional Facility
1727 West Bluewater Highway
Ionia, Michigan 48846

Dated: October 20th,

**STATE OF MICHIGAN
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

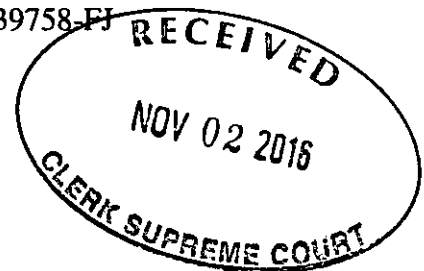
Michigan Supreme Court No. _____

-v-

Court of Appeals No.325806

KAREEM SWILLEY,
Defendant-Appellant.

Trial Court No. 14-039758-FJ



AFFIDAVIT OF INDIGENCY

My name is **Kareem Swilley**. I am currently in prison at the Bellamy Creek Correctional Facility, 1727 West Bluewater Highway, Ionia, Michigan 48846. My Prison number is 882619 My income and assets are:

	My only source of income is from my prison job.
✓	I have no income.
✓	I have no assets (stocks, bonds, property) which can be quickly changed into cash.
✓	I cannot pay the filing fees for the attached application.

I ask this Court to waive the filing fee in this matter. I declare that the statements above are true to the best of my knowledge, information and belief.

Respectfully Submitted,

/s/ Kareem Swilley

Dated: October 20th,

Kareem Swilley, #882619
Defendant In Pro Per
Bellamy Creek Correctional Facility
1727 West Bluewater Highway
Ionia, Michigan 48846

**STATE OF MICHIGAN
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Michigan Supreme Court No. _____

-v-

Court of Appeals No.325806

KAREEM SWILLEY,
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Trial Court No. 14-039758-FJ

_____ /

MOTION FOR WAIVER OF FEES AND COSTS

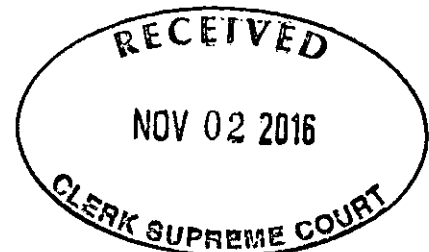
NOW COMES Plaintiff proceeding as his own attorney in propria persona, and respectfully moves this Honorable Court to waive the filing fees and costs required by law and court rule MCR 2.002(D) / MCR 7.319(7)(h) and MCL 600.2963 in the above-entitled matter for the reasons of Indigency as are more particularly set forth in the attached **Affidavit of Indigency**.

Respectfully Submitted,

1st Kareem Swilley
_____ /
2016

Kareem Swilley, #882619
Defendant In Pro Per
Bellamy Creek Correctional Facility
1727 West Bluewater Highway
Ionia, Michigan 48846

Dated: October 20th,



**STATE OF MICHIGAN
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,
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Court of Appeals No.325806

KAREEM SWILLEY,
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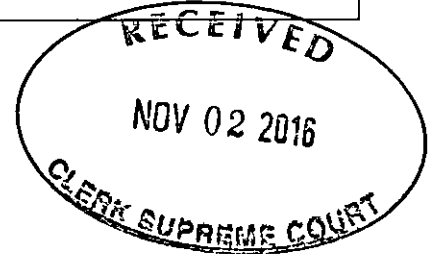
Trial Court No. 14-039758-FJ

PROOF OF SERVICE

On _____, 2016, I mailed by U.S. mail
one copy of the documents checked below:

✓	Affidavit of Indigency and Proof of Service
✓	Pro Per Application for Leave to Appeal
✓	Copy of Court of Appeals Decision
✓	Court of Appeals Brief
✓	Supplemental Court of Appeals Brief
	Other:

TO:
Saginaw County Prosecutor
Tenth Judicial Circuit Court Saginaw County
111 S. Michigan Ave.
Saginaw, Michigan 48802



I declare that the statements above are true to the best of my knowledge, information and belief.

Respectfully Submitted,

1st Kareem Swilley
2016

Dated: October 20th,

Kareem Swilley, #882619
Defendant In Pro Per
Bellamy Creek Correctional Facility
1727 West Bluewater Highway
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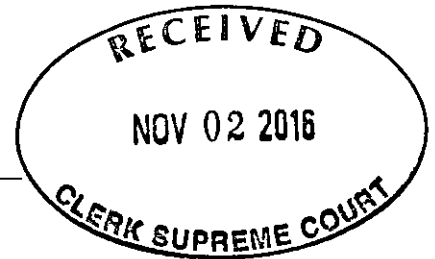
Kareem Swilley #882619

Bellamy Creek Correctional Facility
1727 West Bluewater Highway
Ionia, Michigan 48846

Dated: October 20th, 2016

Clerk of the Court

Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909



RE: PEOPLE v Kareem Swilley
Supreme Court No. _____
Court of Appeals No. 325806
Trial Court No. 14-039758-FJ

Dear Clerk:

Enclosed for filing in the above captioned case, please find the original of the pleadings checked below:

✓	Affidavit of Indigency and Proof of Service
✓	Pro Per Application for Leave to Appeal
✓	Court of Appeals Decision
✓	Court of Appeals Brief
✓	Supplemental Court of Appeals Brief
	Other (explain)

I am indigent and cannot provide the seven copies. Thank you.

Sincerely,

1st Kareem Swilley

Kareem Swilley, 882619
Appellant – Defendant In Pro Per
Bellamy Creek Correctional Facility
1727 West Bluewater Highway
Ionia, Michigan 48846

CC: County Prosecutor
Defendants File