No. _____

In The
Supreme Court of the United States

ETHAN JOHNSON SPRUILL,

Petitioner,

v.

JEORLD BRAGGS, JR.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the admission at trial, over objection, of Petitioner's statement error that lies beyond any possible fairminded disagreement when: (1) the Petitioner was in custody; (2) the Petitioner requested counsel; (3) the Petitioner requested counsel repeatedly; (4) in spite of Petitioner's repeated requests for counsel, no counsel was provided; (5) the Petitioner was never, at any point, given *Miranda* warnings; (6) the Petitioner was interrogated by law enforcement without the benefit of *Miranda* warnings; (7) the Petitioner was interrogated by law enforcement without the benefit of counsel, when the state court ruling that is contrary to, or involving an unreasonable application of, clearly established Federal Law, as determined by the Supreme Court of the United States?

PARTIES

The caption of the case accurately reflects all parties to the proceedings before this Court.

RELATED CASES

Spruill v. State, No. F-2016-629, Published in 425 P.3d 753, 2018 OK CR 25 (decided – July 19, 2018) in the Oklahoma Court of Criminal Appeals.

Spruill v. Braggs, CV-19-442-D (decided – December 27, 2019) in the United States District Court for the Western District of Oklahoma.

Spruill v. Braggs, 20-6009 (decided – October 1, 2020, rehearing denied, October 28, 2020) in the United States Court of Appeals for the Tenth Circuit.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

OPINIONS AND ORDERS BELOW

(1) The order and judgment of the United States Court of Appeals for the Tenth Circuit affirming the district court was entered on October 1, 2020 and the petition for rehearing and for consideration *En Banc* was denied on October 28, 2020. It is available at *Spruill v. Braggs*, 20-6009.

(2) The order and judgment of the United States District Court for the Western District of Oklahoma denying Petitioner's Petition for Writ of Habeas Corpus was entered on December 27, 2019. It is available at *Spruill v. Braggs*, CV-19-442-D.

(3) The opinion of the Oklahoma Court of Criminal Appeals affirming Petitioner's conviction was entered on July 19, 2018. It is available at *Spruill v. State*, 425 P.3d 753, 2018 OK CR 25 (Ok. Cr. 2018)

JURISDICTIONAL STATEMENT

Pursuant to Title 28, United States Code, Section 1254(1), any party to a criminal or civil case may seek review by petitioning for a writ of certiorari after rendition of judgment by a court of appeals. The provisions of Supreme Court Rule 29.4(b) and (c) are inapposite in this case. The State of Oklahoma is a party to this action and service is being affected in accordance with Supreme Court Rule 29.5.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

U.S. Constitution Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a 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 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.

U.S. 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 the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATUTORY PROVISIONS

28 U.S.C. § 2255(d)(1):

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;. . . .

INTRODUCTION AND STATEMENT OF THE CASE

On February 18, 2014, Ethan Spruill, Petitioner, was charged in Cleveland County District Court, State of Oklahoma with First Degree Murder, in violation of Okla. Stat. tit. 21, § 701.7, in the shooting death of Aaron McCray, Jr., which occurred on February 15, 2014. Jury trial was held April 12-20, 2016, before the Honorable Tracy Schumacher, District Judge. The jury convicted Mr. Spruill of the lesser offense of First Degree Manslaughter, Okla. Stat. tit. 21, § 711, and recommended a sentence of twenty-three (23) years imprisonment in the Oklahoma Department of Corrections. On July 13, 2016, the trial court formally entered judgment and sentence in Petitioner's case in accordance with the jury's verdict.

Petitioner sought timely appeal of his conviction to the Oklahoma Court of Criminal Appeals, which affirmed his conviction on July 19, 2018. Thereafter, Petitioner timely filed his Petition for Writ of Habeas Corpus in the United States District Court for the Western District of Oklahoma. On December 27, 2019, the district court denied his Petition for Writ of Habeas Corpus and entered an order and judgment, also denying a certificate of appealability.

Petitioner sought a certificate of appealability, and timely filed his brief in the United States Court of Appeals for the Tenth Circuit. The Tenth Circuit on June 17, 2020, entered an order granting in part Petitioner's certificate of appealability, relating to his Fifth Amendment self-incrimination claim. Thereafter, the Tenth Circuit affirmed the district court's order denying Petitioner's Petition for Writ of Habeas Corpus on October 1, 2020. Petitioner sought rehearing and *En Banc* consideration, which was denied on October 28, 2020.

From those proceedings, Petitioner is before this Court seeking his Petition for Writ of Certiorari.

Petitioner, Ethan Spruill, moved to the Cherrystone Apartments in Norman, Oklahoma, in January 2014. Petitioner's apartment was above the apartment where Aaron McCray and Stephanie Grantham lived with their two young children. A disagreement began, almost immediately, over Petitioner's alleged movements in his apartment making noise and waking the McCray children. After Petitioner was told that Mr. McCray had complained to the apartment management, he

discussed the issue with Mr. McCray and Ms. Grantham, assuring them he had not made noise, as he had been asleep most of the day they claimed he had awakened their children. Petitioner further asked them to talk to him directly if they had a noise complaint. They agreed to do so. It was a relatively civil discussion with no hostility expressed by either Mr. McCray or Petitioner.

On February 15, 2016, Petitioner worked at his job at the Butchers Block Meat Market in Newcastle, Oklahoma, until 7:00 p.m. Although he was a recovering alcoholic, Petitioner spent the evening drinking beer and vodka and smoking marijuana with his upstairs neighbors. That evening, Ms. Grantham went upstairs and confronted Petitioner on the outside landing, complaining of him stomping on the floor of his apartment and waking the children. Petitioner became angry, told her he had not been stomping in his apartment, told her he heard her yelling at her children and accused her of abusing her children. After she left, Petitioner, in his intoxicated state, went downstairs to the McCray apartment to confront them. He pounded on their door, yelling obscenities, and threatened to call DHS (Department of Human Services). He also said "I'm not going to shoot you, or am I." He did not try to enter the apartment.

Unbeknownst to Petitioner, inside the apartment, after Ms. Grantham told Mr. McCray about Petitioner's response to her complaints, Mr. McCray was very angry and prepared for battle. He had dressed, put on steel-toed boots, grabbed a knife, and headed for the

door; however, Ms. Grantham took the knife from him before he reached the door. Mr. McCray opened the door, he grabbed Petitioner by the throat, pulled him inside the apartment, took him to the ground, got on top of him, pinned him to the floor between a love seat and a wall, and choked him to a point where Petitioner began to intermittently lose consciousness. Ms. Grantham testified Mr. McCray was very strong and weighed 326 pounds. Petitioner weighed approximately 200 pounds.

Petitioner initially tried to free himself from Mr. McCray's chokehold. He then realized Mr. McCray was not going to stop choking him, and he was pinned down and couldn't escape. Petitioner believed Mr. McCray was going to kill him. He pulled his handgun from his waist holster, and fired it repeatedly, not realizing he had emptied it of bullets, until Mr. McCray released his grip and Petitioner was able to scramble free. Bullets struck Mr. McCray four times in the chest, and he was pronounced dead shortly thereafter. Petitioner ran from McCray's apartment upstairs to his apartment.

During the struggle, Ms. Grantham called 911, and Norman police officers were immediately dispatched to the Cherrystone Apartments. When law enforcement arrived, Petitioner voluntarily came out of his apartment, surrendered his weapon, and was taken into custody without incident.

When Petitioner was taken into custody, he immediately and repeatedly requested an attorney, including a request for a specific attorney by name. He could

not remember how many times he requested an attorney. He requested an attorney from virtually every law enforcement officer he came in contact with that evening. First, Officer Livingston at Cherrystone Apartments when taken into custody; second, Supervisor Lehenbauer at the scene, while Petitioner was being handcuffed; third, Officer Osterling (1) during the transportation from Cherrystone Apartments to Norman Police Department and (2) while at the police department; fourth, Detective Goins at the Norman Police Department during his collection of evidence from Petitioner; fifth and sixth, Detectives Hopkins and Lambrecht at the Norman Police Department interrogation room. It was undisputed that all of those requests fell upon deaf ears. Not only was an attorney never provided to Petitioner, he was not advised of his *Miranda* rights by any of the police officers at the scene or at the police department.

Although Petitioner unequivocally and repeatedly requested an attorney, he was still transported to the Norman Police Department and placed in an interrogation room for questioning. While waiting on the detectives to arrive to interrogate Petitioner, Officer Osterling was placed in the interrogation room with Petitioner with a hidden recording device. During the wait, Petitioner requested an attorney numerous times in Officer Osterling's presence; however, Osterling ignored those requests and did nothing to ensure Petitioner was provided counsel.

Still waiting on the detectives to arrive, Detective Goins took custody of Petitioner for collection of

evidence and photographs. During this process, Petitioner again requested the assistance of an attorney from Detective Goins. As with every other officer, Detective Goins ignored the request and did nothing to assist Petitioner in obtaining the assistance of counsel.

When the two Norman Police Department Detectives arrived at the Norman Police Department to interrogate Petitioner, they engaged in over twenty (20) minutes of conversation/interrogation before either detective even attempted to *Mirandize* Petitioner.

The detectives introduced themselves and immediately began asking Petitioner questions to engage him in conversation.

After approximately twenty (20) minutes of questioning, prodding, conversation, and rapport building techniques, Detective Lambrecht finally attempted to obtain a *Miranda* rights waiver from Petitioner. Before he could complete the warning, Petitioner interrupted and told Detective Lambrecht that he had requested an attorney from numerous officers and refused to sign a waiver and stated, "I need a lawyer." At that point, Detective Lambrecht denied knowing that Petitioner had ever requested an attorney. Detective Lambrecht never read the *Miranda* warnings or advised Petitioner of his rights. Rather, Lambrecht spontaneously advised Petitioner, that, "Well no, no. You have a right to refuse a lawyer and waive your *Miranda* rights." To which Petitioner responded, "I ain't gonna do that. I ain't gonna do that."

Instead of discontinuing the interrogation, Detective Lambrecht continued to engage Petitioner. Detective Lambrecht told Petitioner (twice) that he "needed a few more details" and even offered advice: "[I]f it were me and I'd shot someone claiming to be self-defense, and I don't know I wasn't there and claiming to know anything. But if it were me and totally one hundred percent self-defense, I'd be wanting to talk to everyone." That advice and statement by Detective Lambrecht was designed to, and did, generate a response by Petitioner.

During the hearing on Petitioner's Motion to Suppress, the following occurred:

> Q. (By Petitioner's counsel) Now, after a short time of talking to him, that's when you, I'll characterize it as attempted to give him the written Miranda warning, right?
>
> A. (By Detective Lambrecht) Yes.
>
> Q. You never got through it?
>
> A. Correct.
>
> Q. And the reason you didn't get through it is because he told you, "I've already told many other people I've asked for a lawyer," right?
>
> A. That's correct.
>
> Q. And you stopped and said, "Let me get you a phone and a phone book so you can call him," didn't you, sir?
>
> A. No.

Q. You didn't stop the interview at that point?

A. No.

Q. Okay. Did you offer to get him an attorney?

A. No.

Q. Why didn't you offer to get him an attorney?

A. I never have. Most detectives don't. We simply try to give them the Miranda warning and let them make their decision on their own. I have never called for an attorney on any suspect in a case.

Q. When somebody invokes their right to counsel, what is your policy, sir? What do you do?

A. We don't question them about the crime.

Q. You don't question them about the crime?

A. Correct.

Q. But you continue to question them?

A. The questions weren't about the crime. But, yes, I did continue – further questions were asked.

Q. Okay.

A. So the answer is yes.

Q. But you didn't ask him any questions about the crime?

A. Correct.

Q. Okay. Did you tell him anything that might cause him to want to talk to you more?

A. No.

Q. Didn't you tell my client, after he invoked his right to counsel to you, "I told Ethan that if this were me and if it were truly a self-defense situation, I personally would talk to anyone"? Didn't you say that, sir?

A. Certainly. Absolutely.

Q. After he's invoked his right to counsel, you make a statement to him, that, I, a law enforcement officer with a gun and badge, would talk to anyone if it was self-defense; is that right?

A. Correct.

After the detective offered the advice, "I would be talking to everyone," the interrogation of Petitioner continued for approximately 20 more minutes.

Further, during the hearing at the trial court on the Petitioner's Motion to Suppress statements, the following occurred during the examination of Detective Lambrecht:

Q: (By Petitioner's counsel) My question is this, sir: After you told him if it was you, you would be talking, right?

A: (By Detective Lambrecht) Correct.

> Q: Okay. So you're encouraging him to talk to you, even though you haven't asked him a question. You agree with that?
>
> A: Sure. I want him to tell me his side of the story. That's my goal.
>
> Q: In violation of his right to counsel?
>
> A: That's not correct.
>
> Q: Did you ever tell – did you ever take any steps to see that my client got a lawyer that night before you continued any further attempts to talk to him?
>
> A: Nope.

Throughout the entire time that Petitioner was with law enforcement, in spite of his numerous requests, no attempts were made to provide an attorney or permit Petitioner to contact an attorney.

Prior to trial, Petitioner sought the suppression of the illegally obtained statements. The denial of the Motion to Suppress was argued through the appellate and writ process and forms the basis of this Petition for Writ of Certiorari before this Court.

REASONS FOR GRANTING THE PETITION

The Oklahoma Court of Criminal Appeals ruling is contrary to, or involved an unreasonable application of clearly established Federal law, as determined by this court and lies beyond any possibility for fairminded disagreement when: (1) the Petitioner was in custody; (2) the Petitioner requested counsel; (3) the Petitioner requested counsel repeatedly; (4) in spite of Petitioner's repeated requests for counsel, no counsel was provided; (5) the Petitioner was never, at any point, given *Miranda* warnings; (6) the Petitioner was interrogated by law enforcement without the benefit of *Miranda* warnings; and (7) the Petitioner was interrogated by law enforcement without the benefit of counsel.

The provisions of the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA") govern this review of Petitioner's case. Under the AEDPA, an application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State Court shall not be granted with respect to any claim that was adjudicated on the merits in State Court proceedings, unless the adjudication of the claim:

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; . . . . 28 U.S.C. § 2254(d)

As noted in *Harrington v. Richer*, 562 U.S. 86, at 100, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011), this Court held:

> Federal habeas relief may not be granted for claims subject to § 2254(d) unless it is shown that the earlier state court's decision "was contrary to" Federal law then clearly established in the holdings of this Court, § 2254(d)(1); *Williams v. Taylor*, 529 U.S. 362, 412, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000); or that it "involved an unreasonable application of" such law, § 2254(d)(1).

This Court has held that the state court's decision, based on existing Federal law, must be so lacking in justification to be understood to be in error beyond any possible fairminded disagreement. "As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." 562 U.S. at 103, 131 S.Ct. at 786, 787, 178 L.Ed.2d 624.

The pivotal question is whether the state court's application of clearly established Federal law, as determined by this Court, was unreasonable beyond any possible fairminded disagreement, relating to Petitioner's numerous requests for counsel and law enforcement's persistent interrogation of Petitioner, without benefit of any *Miranda* warnings and without benefit of counsel.

The Oklahoma Court of Criminal Appeals, in denying Petitioner's *Miranda* issue and right to counsel issue, held:

> ¶ 3 The trial court did not abuse its discretion in denying the motion to suppress Appellant's statements. *Johnson v. State*, 2012 OK CR 5, ¶ 11, 272 P.3d 720, 726 (reciting standard of review for motion to suppress); *Mitchell v. State*, 2011 OK CR 26, ¶ 13, 270 P.3d 160, 169 (same). "The Fifth Amendment right [to counsel] arises when one who is in custody is interrogated." *Taylor v. State*, 2018 OK CR 6, ¶ 6, 419 P.3d 265 (citing *Miranda v. Arizona*, 384 U.S. 436, 469-70, 86 S.Ct. 1602, 1625-26, 16 L.Ed. 2d 694 (1966)). "Under *Miranda*, no statement obtained through custodial interrogation may be used against a defendant without a knowing and voluntary waiver of those rights." *Taylor*, 2018 OK CR 6, ¶ 6, 419 P.3d 265 (citing *Miranda*, 384 U.S. at 444, 86 S.Ct. at 1612). ¶ 4 The record shows that Appellant was in custody at the time of his various recorded statements; that Appellant requested the presence of counsel repeatedly starting at the moment he was arrested in front of his apartment; that Appellant's statements were unwarned – that is, authorities never read him the warning mandated by *Miranda*, 384 U.S. at 479, 86 S.Ct. at 1630; and that Appellant refused to sign any waiver indicating that he understood his rights. However, the record also shows that Appellant's statements were not made in response to interrogation from authorities. See *Rhode Island v. Innis*, 446

U.S. 291, 300-01, 100 S.Ct. 1682, 1689-90, 64 L.Ed. 2d 297 (1980) (the term "interrogation" for *Miranda* purposes "refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."). Rather, Appellant's statements were volunteered to virtually anyone who would listen while he was at the police department. Volunteered statements of any kind are not barred by the Fifth Amendment. *Miranda*, 384 U.S. at 478, 86 S.Ct. at 1630. ¶ 5 "Once a suspect in custody has asserted his right to speak only through counsel, all attempts at interrogation must cease. A suspect can, however, change his mind and decide to speak to police without counsel." *Underwood v. State*, 2011 OK CR 12, ¶ 31, 252 P.3d 221, 238 (internal citation omitted). Here, the State met its burden to prove that Appellant's statements were the product of an essentially free and unconstrained choice by Appellant. Id., 2011 OK CR 12, ¶ 33, 252 P.3d at 238. There is no constitutional prohibition to admission of these statements at trial despite Appellant's requests for counsel, see *Frederick v. State*, 2001 OK CR 34, ¶¶ 92-93, 37 P.3d 908, 934, or his intoxication. *Coddington v. State*, 2006 OK CR 34, ¶ 38, 142 P.3d 437, 448. Appellant's argument that he was uninformed of his rights and fearful of authorities when he made these statements is also not

> supported by the record. Proposition I is denied.

Spruill v. State, 425 P.3d at 755, 2018 OK CR 25 (Okla. Crim. App. 2018)

There appears to be no possibility of fairminded disagreement that Petitioner was in custody; that he repeatedly requested counsel; that in spite of his repeated requests for counsel, none was provided; that he was never given *Miranda* warnings; that he was interrogated without benefit of *Miranda* warnings; and finally, that he was interrogated without benefit of the counsel he had repeatedly requested.

The state court decision is undeniably contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States and in particular the Supreme Court's decisions in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966); *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981); *Smith v. Illinois*, 469 U.S. 91, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984); *Rhode Island v. Innis*, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980); and *Davis v. United States*, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994). Certiorari is clearly appropriate and necessary to secure and maintain uniformity of this court's decisions and justified due to the unreasonable application of clearly established Federal law, which lies beyond any possible fairminded disagreement.

Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) set the groundwork for the minimum standards for law enforcement when attempting to interrogate a suspect in custody. Those standards were further refined with subsequent case law.

In *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the United States Supreme Court adopted mandatory warnings to protect a suspect's Fifth Amendment right from the "inherently compelling pressures" of custodial interrogation. *Id.* at 467. The Court observed that, "incommunicado interrogation" in an "unfamiliar," "police-dominated atmosphere," *Id.* at 456-57, involves psychological pressures, "which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Id.* at 467. Consequently, the Court reasoned, "[u]nless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice." *Id.* at 458. See also *Dickerson v. United States*, 530 U.S. 428, 120 S.Ct. 2326, 2333, 147 L.Ed.2d 405 (2000) (reaffirming *Miranda*).

Subsequent to *Miranda*, this Court in *Edwards* held, "if a suspect invokes that right [right to counsel] at any time, the police must immediately cease questioning him until an attorney is present." *Edwards v. Arizona*, 451 U.S. 477 at 484-85, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). This rule was further refined in *Davis v. United States*, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994), holding that, "**after** a knowing

and voluntary waiver of the *Miranda* rights, law enforcement officers may continue questioning **until and unless** the suspect clearly requests an attorney." 512 U.S. at 461. (Emphasis added)

Unlike the facts of *Davis*, Petitioner, while in custody, was never *Mirandized* and therefore law enforcement had no authority to initiate questioning. As was noted in *Edwards v. Arizona*, 451 U.S. 477, 484, 101 S.Ct. 1880, 1884-85, 68 L.Ed.2d 378 (1981), this Court requires great safeguards against a waiver of the right to counsel.

> [W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation [or its functional equivalent] *even if* he has been advised of his rights. *Edwards v. Arizona*, 451 U.S. 477, 484, 101 S.Ct. 1880, 1884-85, 68 L.Ed.2d 378 (1981) (parenthetical added).

All Petitioner requested, numerous times, was that he obtain counsel. He clearly desired counseled advice under the circumstances. Unfortunately, in Petitioner's case, the detectives introduced themselves and immediately began asking Petitioner questions to engage him in conversation, contrary to *Davis v. United States*, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994). This Court held, "[n]evertheless, we held in *Miranda v. Arizona*, 384 U.S. 436, 469-73, 86 S.Ct. 1602, 1625-27, 16 L.Ed.2d 694 (1966), that a

suspect subject to custodial interrogation has the right to consult with an attorney and to have counsel present during questioning, and that the police must explain this right to him before questioning begins."

As noted, Petitioner was not *Mirandized*; he was not allowed to consult with counsel; and counsel was not present during the questioning. There were continual and persistent efforts by Detective Lambrecht to get Petitioner to talk to him about the shooting, after Petitioner refused to sign the *Miranda* warning and requested counsel from every police officer he came in contact with, including Detective Lambrecht.

The Federal law is clear as established by this Court in *Smith v. Illinois*, 469 U.S. 91, at 99, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984):

> No authority, and no logic, permits the interrogator to proceed . . . on his own terms and as if the defendant had requested nothing, in the hope that the defendant might be induced to say something casting retrospective doubt on his initial statement that he wished to speak through an attorney or not at all.

469 U.S. at 99.

No fairminded jurist could disagree that this conduct by the Norman Police Department was clearly an unreasonable application of clearly established Federal law, as determined by this Court.

> But if a suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been

> made available or the suspect himself reinitiates conversation. *Edwards v. Arizona*, supra, 451 U.S., at 484-85, 101 S.Ct., at 1884-85. This "second layer of prophylaxis for the *Miranda* right to counsel," *McNeil v. Wisconsin*, 501 U.S. 171, 176, 111 S.Ct. 2204, 2208, 115 L.Ed.2d 158 (1991), is "designed to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights," *Michigan v. Harvey*, 494 U.S. 344, 350, 110 S.Ct. 1176, 1180, 108 L.Ed.2d 293 (1990). ***To that end, we have held that a suspect who has invoked the right to counsel cannot be questioned regarding any offense unless an attorney is actually present***. (Emphasis added)

Davis v. United States, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994)

In spite of repeatedly ignoring Petitioner's request for counsel, and providing no *Miranda* warnings, Detective Lambrecht continued to engage Petitioner in questioning that can best be characterized as the functional equivalent of express questioning. As Detective Lambrecht testified at the Motion to Suppress hearing before the trial court, after Petitioner requested counsel, and Petitioner refused to waive *Miranda*, and after receiving no formal *Miranda* warning, the Detective advised Petitioner that, if this was him and it was truly self-defense, that the Detective would be talking to everyone. The Detective testified that he encouraged Petitioner to talk because he wanted to hear Petitioner's side of the story. "That's my goal."

Detective Lambrecht, rather than discontinuing the interrogation when he learned Petitioner had requested an attorney, continued the interrogation or its functional equivalent. Detective Lambrecht told the Petitioner (twice) that he "needed a few more details" and offered the advice: "[I]f it were me and I'd shot someone claiming to be self-defense, and I don't know I wasn't there and claiming to know anything. But if it were me and totally one hundred percent self-defense, I'd be wanting to talk to everyone." That advice and statement by Detective Lambrecht was designed to, and did, generate a response by Petitioner.

Detective Lambrecht's continued interrogation or functional equivalent was therefore a violation of the continuing line of clearly established Federal law relating to the re-initiation of an interrogation once counsel has been requested.

> "Preserving the integrity of an accused's choice to communicate with police only through counsel is the essence of *Edwards* and its progeny." *Patterson v. Illinois*, 487 U.S. 285, 291, 108 S.Ct. 2389, 2394, 101 L.Ed.2d 261 (1988). In our view, a fair reading of *Edwards* and subsequent cases demonstrates that we have interpreted the rule to bar police-initiated interrogation unless the accused has counsel with him at the time of questioning. Whatever the ambiguities of our earlier cases on this point, we now hold that when counsel is requested, interrogation must cease, and officials may not reinitiate interrogation without

> counsel present, whether or not the accused has consulted with his attorney.

Minnick v. Mississippi, 498 U.S. 146, at 153, 112 L.Ed.2d 489, 111 S.Ct. 486 (1990)

The functional equivalent of interrogation includes "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police knew or should have known were reasonably likely to elicit an incriminating response." *Pennsylvania v. Muniz*, 496 U.S. 582, 600-01, 110 S.Ct. 2638, 2650, 110 L.Ed.2d 528 (1990)*, quoting Innis*, 446 U.S. at 302. The record is clear that the officers and detectives in Petitioner's case chose not to administer *Miranda* warnings, and ignored Mr. Spruill's invocation of his right to counsel, while recording his incriminating statements, obtained through questioning or the functional equivalent thereof, without warnings or waiver.

In *Miranda*, this Court recognized that law enforcement officers were trained in interrogation techniques that employed psychological factors to increase the chances of success in the interrogation. The psychological factors the Court recognized included, among others, "[t]he officers are instructed to minimize the moral seriousness of the offense, ***to cast blame on the victims*** or on society." (Emphasis added) *Miranda*, 384 U.S. at 450. Furthermore, the opinion in *Innis* clearly defines the type of statements and circumstances that qualify for the "functional equivalent" to interrogation. They include "the guilty of the suspect," to "minimize

the moral seriousness of the offense," and to "***cast blame on the victim*** or society." (Emphasis added) *Innis*, 446 U.S. at 299.

Detective Lambrecht's statement, "if it was truly self-defense," obviously casts blame on the criminal conduct of the deceased for attempting to kill Petitioner, and thereby justifying the self-defense shooting. This is the textbook psychological factor that was quoted by the *Miranda* and *Innis* courts.

> This passage and other references throughout the opinion to "questioning" might suggest that the *Miranda* rules were to apply only to those police interrogation practices that involve express questioning of a defendant while in custody.
>
> We do not, however, construe the *Miranda* opinion so narrowly. The concern of the Court in *Miranda* was that the "interrogation environment" created by the interplay of interrogation and custody would "subjugate the individual to the will of his examiner" and thereby undermine the privilege against compulsory self-incrimination. *Id*. at 457-58, 86 S.Ct., at 1619. The police practices that evoked this concern included several that did not involve express questioning. For example, one of the practices discussed in *Miranda* was the use of line-ups in which a coached witness would pick the defendant as the perpetrator. This was designed to establish that the defendant was in fact guilty as a predicate for further interrogation. *Id*. at 453, 86 S.Ct., at

> 1602. A variation on this theme discussed in *Miranda* was the so-called "reverse line-up" in which a defendant would be identified by coached witnesses as the perpetrator of a fictitious crime, with the object of inducing him to confess to the actual crime of which he was suspected in order to escape the false prosecution. *Ibid*. The Court in *Miranda* also included in its survey of interrogation practices ***the use of psychological ploys, such as to "posi[t]"*** "the guilt of the subject," to "minimize the moral seriousness of the offense," and "***to cast blame on the victim or on society***." *Id*. at 450, 86 S.Ct., at 1615. It is clear that these techniques of persuasion, no less than express questioning, were thought, in a custodial setting, to amount to interrogation.

Rhode Island v. Innis, 446 U.S. 291, at 298-99, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980)

There can hardly be a better psychological ploy than to cast blame on the victim (Mr. McCray) by contending that if this were truly self-defense, the detective would be wanting to talk to everyone. This technique, according to *Miranda* and *Innis*, "amount[s] to interrogation." See *Innis*, 446 U.S. at 299.

The psychological ploy and functional equivalent in Petitioner's case is supported by the testimony of Detective Lambrecht, that it was his goal to obtain a statement from Petitioner, even if it was an un-*Mirandized* statement. "I want him to tell me his side of the story. That's my goal."

Innis also makes clear that the words and actions of law enforcement are to be viewed from the perception of the suspect, rather than the intentions of the police. Knowing that Petitioner was claiming self-defense, Detective Lambrecht was armed with a persuasive psychological ploy to obtain an incriminating response.

> That is to say, the term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. ***The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police.*** This focus reflects the fact that the *Miranda* safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. (Emphasis added)

Rhode Island v. Innis, 446 U.S. 291, at 301, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980)

Detective Lambrecht's statement endorsed and adopted Petitioner's self-defense claim. Based on Detective Lambrecht's statement to Petitioner, he was the

victim and Mr. McCray was the criminal, and Mr. McCray was to blame for what occurred at the apartment complex.

There can be no more unreasonable application of clearly established Federal law, as determined by this Court, and applied by the state court, than when the statement of Detective Lambrecht to Petitioner is a virtual verbatim quote (cast blame on the victim) of the type of conduct condemned by this Court in *Miranda*, *Innis*, and others.

The misconduct of law enforcement was continuous and ongoing; the interrogation of Petitioner never ceased; it did not even slow down; there was no break in the taint of continued illegal interrogation. This was clearly an unreasonable application of, clearly established Federal law, as determined by this Court. This factor was further evidenced at the hearing on the Petitioner's Motion to Suppress at the trial court level.

> Q. (By Petitioner's counsel) So after he refuses to sign your form, you tell him you would talk to anyone if it was self-defense. Is that accurate?
>
> A. (By Detective Lambrecht) Correct.
>
> Q. Okay. And y'all continue to talk some more about the case?
>
> A. He did. He continued to tell me more information about the case, including, "If this were truly self-defense, it would have been him banging on my door. That's where I fucked up. I went looking for" –

> Q. My question is this, sir: After you told him if it was you, you would sure be talking, right?
>
> A. Correct.
>
> Q. Okay. So you're encouraging him to talk to you, even though you haven't asked him a question. You agree with that?
>
> A. ***Sure. I want him to tell me his side of the story. That's my goal.***

(Emphasis added)

The warnings established in *Miranda* ensure that an accused is advised of and understands the right to remain silent and the right to counsel. See *Berghuis v. Thompkins*, 560 U.S. 370, 383, 130 S.Ct. 2250, 2261, 176 L.Ed.2d 1098 (2010). Both these rights protect the privilege against compulsory self-incrimination, by requiring an interrogation to cease when *either* right is invoked. *Id.* at 381. The failure to give *Miranda* warnings requires suppression of a custodial defendant's extra-judicial statements. *Miranda*, 384 U.S., at 444, 86 S.Ct. 1612; *Oregon v. Elstad*, 470 U.S. 298, 317, 105 S.Ct. 1285, 1297, 84 L.Ed.2d 222 (1985) ("When police ask questions of a suspect in custody without administering the required warnings, *Miranda* dictates that the answers received be presumed compelled and that they be excluded from evidence at trial in the State's case in chief.").

Reviewing the totality of the circumstances, Petitioner did not knowingly "decide to forgo his rights to remain silent and to have the assistance of counsel."

Miranda, 384 U.S. at 475-77, 86 S.Ct. at 1628-29. The state court's decision was an unreasonable application of, clearly established Federal law, as determined by this Court, as the state court assumes that you can knowingly forgo a right you were never informed of by law enforcement and one you requested and that was repeatedly ignored.

The state court below found that there was a waiver by Petitioner. To establish a waiver, the State must show that the waiver was knowingly, intelligently, and voluntarily made, under the high standard of proof for the waiver of a Constitutional right set out in *Johnson v. Zerbst*, 304 U.S. 458, 464-65, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461 (1938). However, Petitioner was never advised of his Constitutional rights, in order to permit him to make an informed decision to waive, either the right to remain silent or the right to counsel. It was an unreasonable application of clearly established Federal law, as determined by this Court for the Oklahoma Court of Criminal Appeals to find a waiver by Petitioner. One would assume that it is a clearly established Federal law, as determined by this Court, that Petitioner cannot knowingly, intelligently, and voluntarily waive, abandon, or relinquish an *un*known and *un*informed Constitutional right.

The purpose of the warnings was to advise a custodial suspect of his rights. *Miranda*, 384 U.S. at 475. A suspect who has *not* been advised of his *Miranda* rights cannot knowingly, intelligently, and voluntarily waive those rights. *Miranda*, 384 U.S. at 470. "No effective waiver of the right to counsel during interrogation

can be recognized unless specifically made after the warnings . . . have been given." The warnings were never given to Petitioner. Additionally, in the context of the right to counsel, this Court requires greater safeguards against waiver:

> [W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation [or its functional equivalent] *even if* he has been advised of his rights.

Edwards v. Arizona, 451 U.S. 477, 484, 101 S.Ct. 1880, 1884-85, 68 L.Ed.2d 378 (1981) (parenthetical added).

Here, Petitioner was not advised of the right to counsel, or any specific constitutional protections. Without such advisements, Petitioner cannot be found to have waived the right to counsel by responding to the officers' improper attempts to re-engage him each time he requested counsel and refused to sign the *Miranda* waiver.

CONCLUSION

WHEREFORE, to preserve the Constitutional integrity of the right to counsel, as outlined by the continuing line of cases dating back to *Miranda*, Petitioner

respectfully requests this Honorable Court grant this Petition for Writ of Certiorari.

Respectfully submitted,

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