No. 20-5272

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

JOMIAH WASHINGTON,

PETITIONER,

VS

WILLIS CHAPMAN,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Jomiah Washington#786873
Pro Se Litigant
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, MI 48446

QUESTIONS PRESENTED

Petitioner Jomiah Washington was arraigned at his initial appearance in front of a Detroit Magistrate Judge for first degree murder without counsel. At trial, the State relied on a third-party witness's coerced testimony that was manufactured by police under extreme torture and psychological tactics.

In affirming the denial of his federal habeas petition, the Court Of Appeals for the Sixth Circuit determined that under Michigan law, the assistance of counsel at the initial arraignment is not required. The court then avoided the question of whether the third-party witness' psychological coercion violated due process because the record did not support a factual basis of coercion.

The Questions presented are:

1. Whether The Sixth Circuit Court Of Appeals erred and made a decision that conflicts with this Court's holding in Rothgery v Gillespie, 128 Sct 2578 (2008) by concluding that under Michigan law, the Sixth Amendment right to counsel does not extend to the initial arraignment on the warrant?

2. Whether Mr. Washington's due process rights were violated when the State made use at trial of a pregnant witness's statement extracted by police through egregious torture-type-tactics and psychological coercion? And, Can the reviewing court on habeas review, rely on the existing trial court record as a factual basis to determine the coercion?

DISCLOSURE OF CORPORATE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner makes the following disclosure:

1. Is said party a subsidiary or affilitate of a publicly-owned corporation?

   No.

2. Is there a publicly-owned corporation, not a party to the appeal, that has financial interest in the outcome?

   No.

Respectfully submitted,

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OPINION BELOW

Petitioner prays that a writ of certiorari be issued to review the judgment below:

[x] For cases from Federal Courts:

The opinion of the United States Court Of Appeals for the Sixth Circuit appears at Appendix:A attached hereto and is unpublished.

The opinion of the United States District Court for the Southern District of Michigan appears at Appendix:B attached hereto and is unpublished.

JURISDICTION

On November 18, 2019, the United States District Court for the Eastern District of Michigan, Southern Division, Honorable Matthew F. Leitman, denied Petitioner Jomiah Washington's petition for a writ of habeas corpus under 28 USC § 2254. On April 24, 2020 the United States Court Of Appeals for the Sixth Circuit denied the timely motion for a certificate of appealability.

The instant petition for a writ of certiorari is timely filed within the 90-day time limitation from the Sixth Circuit's Order/ Opinion denying the motion for a certificate of appealability. Supreme Court Rule 13(3). Furthermore, this Court has jurisdiction to entertain this petition pursuant to 28 USC 1254(1) and Supreme Court Rule 10 to review the court of appeals for the Sixth Circuit decision by writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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 in his favor, and to have the assistance of counsel for his defence.

Amendment XIV

All person 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 it jurisdiction the equal protection of the laws.

Amendment V

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law".

STATEMENT OF THE CASE

In May 2011, the burned body of a woman named Daborah Young was found in a field. Young had been fatally shot in the head. At the time of Young's death, she was approximately 20 weeks pregnant.

Petitioner Jomiah Washington (hereinafter Washington) became a prime suspect in Young's murder because he was the father of her unborn child, and several witnesses said that Washington had threatened to kill Young if she did not have an abortion[1]. (II, 167-181). Another witness said that Washington had chocked Young on a prior occasion. (II, 183-197).

There was physical evidence presented by the prosecution but none linked Washington to the murder. (III, 90-108)(V, 168-207). The only witness to directly link Washington to Young's murder and the burning of her body was a woman named Amanda Baer. Baer is the mother of Washington's two children. On June 23, 2011, before the State filed charges against Washington, Baer appeared at an investigative subpoena hearing. During that hearing, Baer testified that Washington had told her that he shot and killed a girl, but the shooting was an accident.

Based on Baer's testimony from the investigative subpoena hearing (which was not subject to cross-examination) Washington was arrested and charged with Young's death. On June 30, 2011

1.

Trial Transcripts from April 1, 2013 through April 18, 2013. The transcripts are referenced from Volume I through XI.

Washington was arraigned in Michigan's 36th District Court on first degree murder charges (amongst other charges) and he was not represented by an attorney. Appendix: I .

The court appointed counsel in July 2011 and the preliminary examination hearing was held over four days in December 2011 and May and June 2012. At the preliminary hearing, Baer explained under oath that prior investigative hearing testimony implicating Washington was perjured and manufactured by detective Brian Bowser in exchange to be released from jail. Baer testified that Bowser arrested her without a warrant, denied her multiple request for an attorney, told that she would give birth to her child in jail and would spend the next 25 years in prison if she did not falsely implicate Washington in the murder. (V 98-110)

In a pre-trial motion to quash Baer's coerced testimony from being admitted at trial, trial counsel argued that the prosecutor should not be allowed to introduce Baer's admittedly perjured testimony because it was manufactured by Bowser. The trial court denied counsel's motion (over objection). September 21, 2012 pre-trial hearing.

At trial, counsel re-newed his objection regarding the inadmissiblity of Baer's testimony. Baer eventually invoked the fifth amendment right against self-incrimination due to her professed perjured testimony. (III, 29-57). In response, the state moved for the admission of Baer's false testimony to be read from the transcript as substantive evidence. The jury convicted on all

charges: first degree murder MCL 750.316, assault of a pregnant individual intentionally causing miscarriage/stillbirth/death MCL 750.90b(a), mutilation of a dead body MCL 750.160, and possession of a firearm during the commission of a felony MCL 750.227b. The jury return said verdict on April 18, 2013.

Washington appealed his convictions to the Michigan Court Of Appeals, and that court affirmed on September 16, 2014. People v Washington, 2014 Mich App LEXIS. Appendix:H. The Michigan Supreme Court thereafter denied leave to appeal. People v Washington, 497 Mich 1027 (Mich 2015). Appendix:G.

Washington then filed a post-conviction motion for relief from judgment in the state trial court, which was denied on May 25, 2016. Appendix:F. Washington then filed a timely application for leave to appeal in the Michigan Court Of Appeals, but relief was denied on November 23, 2016. People v Washington, Mich App Order No#334514. He then filed a timely application for leave to appeal in the Michigan Supreme Court which was denied by standard order. People v Washington, 908 NW2d 886 (Mich 2015)(unpublished. Appendix:D. A motion for reconsideration was subsequently denied also. People v Washington, 913 NW2d 313 (Mich 2015). Appendix:C.

Washington then filed a petition for a writ of habeas corpus under 28 USC 2254. On November 18, 2019, United States District Court Judge Matthew F. Leitman denied the petition, denied a certificate of appealability but granted permission to appeal in

forma pauperies. Washington v Chapman, 2019 US Dist Lexis 198972. Washington then filed a timely motion for a certificate of appealability in the United States Court Of Appeals for the Sixth Circuit which denied the motion on April 24, 2020. Washington v Chapman, No.19-2454. Appendix:A and Appendix:B.

Washington now seeks a writ of certiorari.

REASONS FOR GRANTING THE WRIT

I. **Petitioner Washington's Constitutional Rights Under The Sixth And Fourteenth Amendment Where Violated When Michigan State Courts Deprived Him Of Counsel At The Initial Arraignment Contrary To The Holdings Of Rothgery v Gillespie, 128 Sct 2578 (2008), And Then Required A Prejudice Analysis In Order To Rectify The Violation When Rothgery Had Never Established A Per Se Prejudice Requirement. This Court Should Vacate, Reverse And Remand, And/Or Settled The Conflict Between The Lower Circuit And District Courts.**

A) **This Court announced unambigously that the right to counsel guarenteed by the Sixth Amendment applies at the first appearance before a judicial officer at which a criminal defendant is told of the formal accusation against him and restrictions are imposed on his liberty.**

This Court has long set clearly established precedent that stood for the proposition that the right to counsel applies at the first appearance before a judicial officer at which a defendant is told of the formal accusations against him and restrictions are imposed on his liberty. Rothgery v Gillespie, 128 Sct 2578, 2581 (2008). This court made clear to Michigan courts in previous holdings that a defendant's initial appearance before a Magistrate Judge, marks the initial initiation of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel. See Michigan v Jackson, 106 Sct 1404 (1986)(overruled on other grounds), see also Brewer v Williams, 430 US 387, 398-399 (1977), and McNeil v Wisconsin, 501 US 171, 180-181 (1991). This court has never waivered in it's holdings that counsel should be afforded at arraingment. Hence, this Sixth Amendment rule is not mere formalism, but recognition of the point at which the government has committed itself to prosecute, and the accused finds himself faced with the prosecutorial forces of organized society, and immersed

in the intricacies of substantive and procedural criminal law. Rothgery, supra at 198.

In Jackson supra, this court was asked to revisit the precise question of whether the right to counsel attaches at the initial appearance and this court firmly had no trouble affirming its holding a second time around. Rothgery, 554 US 201. In response, Michigan Attorney General argued that in Michigan, any person charged with a felony, after arrest, must be brought before a Magistrate without unnecessary delay for his initial arraignment. Michigan explained . . . there is also a second arraignment in Michigan procedure at which time defendant has his first oportunity to enter a plea in a court with jurisdiction to render a final decision in a felony case. Michigan contended that only the latter proceeding, the arraignment on the information should trigger the Sixth Amendment right to counsel. But this court "flatly rejected the distinction between initial arraignment and arraignment on the indictment, the States argument being untenable in light of the clear language in our decisions about the significance of arraignment". Jackson, 475 US 625, Rothgery, 554 US 202.

In Brewer supra, the defendant surrendered to the police after a warrant was out for his arrest on a charge of abduction. He was arraigned before the Judge on the outstanding warrant without counsel. This court indicated that Brewer's initial arraignment required defendant's Sixth Amendment right to counsel.

And in McNeil supra, the Court reaffirmed that "[t]he Sixth Amendment right to counsel attaches at the first formal proceeding against an accused", the court also observed that in most states free counsel is made available at that time. McNeil, 501 US 180-181.

B) The Michigan state courts as well as the United States Court of Appeals for the Sixth Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court in regards to the right to counsel at the initial arraignment.

In his post-conviction motion for relief from judgment, Washington made a Sixth Amendment challenge arguing that he was entitled to relief because he was deprived of his right to counsel at his initial arraignment. The state trial court denied relief because the initial arraignment was not considered a critical stage where legal representation is required. Appendix: F. (State Court Opinion). Although Washington relied on this court's precedent in Rothgery supra, the state court relied on Michigan Court Rules to deprive counsel: "[T]he court rules are clear that a defendant may or may not be represented by counsel, and have laid procedures to deal with either scenario. Therefore, defendant's argument must fail". Opinion at 12.

Washington then filed his application for habeas relief in federal court under 28 USC 2254 (after first exhausting his claims throughout the state courts). In rejecting his claims, the federal district court erroneously applied a prejudice analysis as opposed to a review under the lens of 2254(d)(1) when it concluded that: "[E]ven assuming arguendo that Washington was

denied the assistance of counsel at his arraignment on the warrant, he is not entitled to federal habeas relief because he has not shown how the absence of counsel at that proceeding caused him prejudice". Appendix:B .

Washington then filed a timely motion for a certificate of appealability presenting the same claim and the Sixth Circuit Court Of Appeals determined that there was no Sixth Amendment violation because, under Michigan law, an arraignment is not a critical stage that requires counsel. Appendix:A .

1. The deprivation of counsel requires relief under the Sixth and Fourteenth Amendment absent a prejudice requirement.

In Rothgery supra, this court made clear that the Sixth Amendment right to counsel attaches at the initial arraignment and did not require a prejudice analysis nor did it necessarily require a critical stage showing in order to find a violation. The issue in Rothgery was whether Texas's article 15.17 hearing marks the point for counsel, and this court agreed that it was. Just like Texas's article 15.17 hearing, Michigan has an initial arraignment that initiates adversary judicial proceedings that trigger the Sixth Amendment right to counsel. **See** Jackson supra at 629. Again, there was no prejudice requirement.

This court's conclusions in Rothgery, Brewer, Jackson and McNeil are not vague regarding prejudice -- its absent: Brewer expressed "no doubt" that the right to counsel attached at the initial appearance. 430 US at 399. Jackson said that the opposite result would be "untenable". 475 US 629 n.3. McNeil reaffirm the

Sixth Amendment right to counsel attaches at the first formal proceeding. 501 US 173. And Rothgery clearly held defendants are entitled to counsel at the initial arraignment in front of a Magistrate. 554 US 201. In the fourteenth amendment context, this court said that an accused in a capital case requires the guiding hand of counsel at every step in the proceedings against him. See Powell v Alabama, 287 US 45, 69 (1973). Hence, this court did not necessarily mandate a prejudice showing in order to determine a Sixth Amendment violation.

Accordingly, this court is now faced with a similar question as that presented in Rothgery: whether the initial arraignment in Michigan triggers the Sixth Amendment right to counsel and whether a criminal defendant in that context must also demonstrate how he was prejudiced in order to establish relief under the Constitution? Fundamental fairness answers yes in part and no in part.

This court's conclusion in Jackson was driven by the same considerations the court had endorsed in Brewer: by the time a defendant is brought before a judicial officer, is informed of a formally lodged accusation, and has restrictions imposed on his liberty in aid of the prosecution, the State's relationship with the defendant has become solidly adversarial. This simply means that the Sixth Amendment attaches when the judicial proceedings commence (why should a defendant in a serious offense case have to stand before a judge without counsel?).

This court's holding in Rothgery was narrow and did not mandate a prejudice requirement so the lower courts that applied a per se prejudice analysis did so outside the parameters of Rothgery which was in error. Indeed, the deprivation of counsel stands as a jurisdictional bar to a valid conviction and hindges on life or liberty (due process), and therefore prejudice is presumed. Johnson v Zebst, 58 Sct 1019 (1938).

The Sixth Circuit for the United States Court Of Appeals and the Michigan state courts that decided this issue by requiring a prejudice requirement or a showing that the proceeding must be a critical stage conflicts with relevant decisions of this court.

2. The lower courts decisions regarding the right to counsel at the initial arraignment is contrary to this court's holdings. Thus, the issue should be settled by this court.

The state trial court denied relief under the assumption that Michigan Court Rules trumps clearly established precedent from this court. Appendix: F . The federal district court denied habeas relief because it determined that Washington could not demonstrate prejudice, and it came to that conclusions by relying only on district court cases, not holdings from this court. The district court cited Barron v Maclaren, 2015 WL 3464117 *1(ED Mich 2015) (Petitioner not entitled to relief because he did not allege harm by the absence of counsel at his initial arraignment); Meriweather v Burton, 2015 WL 7450068 *4(6th Cir Nov 24, 2015)(Petitioner not entitled to relief on his Sixth Amendment right to counsel claim because in Michigan initial arraignment do not require an attorney

to be present); Doyle v Scutt, 347 F Supp2d 474, 481(ED Mich 2004) (same). The Sixth Circuit relied on Lundberg v Buchkoe, 389 F2d 154, 158 (6th Cir 1968).

All these cases conflict with clearly announced decisions from this court. See Rothgery v Gillespie, Michigan v Jackson, Brewer v Williams and McNeil v Wisconsin. Neither of these holdings mandated a prejudice showing in order to be entitled to relief when counsel was not afforded at the arraignment. And since Washington specifically relied on the aforementioned precedent to support a basis for relief and the lower courts respectively made decisions that conflict with relevant precedent from this Court, certiorari should be granted. Supreme Court Rule 10(c).

3. The United States Court Of Appeals for the sixth circuit, and the Federal district court misapplied 28 USC 2254(d) (1) by failing to measure clearly established precedent from this court to determine whether the state court's adjudication ran contrary to it for purposes of granting habeas relief.

In reviewing his habeas corpus application and the motion for a COA, neither the federal district court nor the sixth circuit determined whether the state court's adjudication was contrary to Rothgery v Gillespie, supra when denying relief.

Indeed, Washington argued that the state court's decision ran contrary to clearly established federal law, namely, the Rothgery-holding, when he was denied counsel at the initial arraignment. There was no dispute that counsel was not afforded (Appendix:), so the only inquiry was whether the United States Supreme Court had clearly established that counsel should be

afforded, and if it was clearly established, whether the state court's adjudication was contrary to it, and if so whether, under 2254(d)(1) habeas relief should be granted. See Greene v Fisher, 132 Sct 38, 44 (2011)(a federal court reviewing habeas claims must first look at the clearly established law at the time of the constitutional violation), Cullen v Pinholster, 563 US 170, 182 (2011)(habeas court instructed to measure state court decisions against the Supreme Court's precedent as of the time the state court renders its decision).

Here, neither courts (Sixth Circuit or District court) even made reference to Rothgery when it rejected relief, instead it relied on other decisions from lower courts and never relied on precedent from this court to determine whether habeas relief was appropriate under 28 USC 2254(d)(1).

This court's holding in Rothgery supra, is not merely a generalized statement or dicta, but a clearly established requirement that specifically instructs courts to provide criminal defendants with counsel at the initial appearance. See Rothgery. There was nothing ambiguous about the holding in Rothgery, the lower courts simply failed to review the claim against the backdrop of Rothgery. Washington was not afforded counsel at the initial arraignment, Rothgery had clearly announced the sixth amendment right to counsel and the state court made a decision contrary to Rothgery.

Habeas relief may be available when the state court's merits

adjudication resulted in a decision that was contrary to, or involved an unreasonable application of clearly established federal law as determined by the United States Supreme Court. See Williams v Taylor, 529 US 362 (2000). Had the district court or the sixth circuit applied these AEDPA provisions, Washington would have been entitled to habeas corpus relief.

II. This Court Should Grant Certiorari Because Mr. Washington's Due Process Rights Were Violated When A Pregnant Witness Was Tortured And Coerced To Make False Statements By A Detroit Police Detective.

By erroneously concluding that Washington did not have a factual basis to support the argument that the witness was indeed coerced, the Sixth Circuit avoided the important question of whether under de novo review Washington's constitutional due process rights were violated.

While this Court has not expressly ruled that a state's use of coerced third-party statements is unconstitutional, this was irrelevant for purposes of Antiterrorism and Effective Death Penalty Act (AEDPA) because the state courts never adjudicated this claim on the merits, and under situations as such, de novo review was the appropriate standard to review the claim. Wiggins v Smith, 539 US 510, 534 (2003).

A) This case presents the best opportunity to expressly rule that a state's use of coerced third-party statements are unconstitutional as other circuits has already ackowledged, with only a split decision from one circuit.

This Court has repeatedly held that "a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession". Lego v Twomey, 404 US 477, 482-85 (1972); see also Crane v Kentucky, 476 US 683, 687-88 (1986). This is so for two primary reasons. First, confessions obtained through violence or threats are inherently unreliable. See Jackson v Denno, 378 US 368, 385-86 (1964)(noting that involuntary confessions are barred in part

because of the probable unreliability of confessions that are obtained in a manner deemed coercive). Second, and most importantly, the methods used to secure coerced confessions are repugnant to society and the Constitution and violate a sense of fundamental fairness. Rogers v Richmond, 365 US 534, 540-41(1961) (noting that the methods used to extract coerced confessions offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system, a system in which the State must establish guilt by evidence independently and freely secure); Lego, 404 US at 484-85(The use of coerced confessions, whether true or false, is forbidden because the method used to extract them offends constitutional principles); Blackburn v Alabama, 361 US 199, 206-07(1960)(In cases involving involuntary confessions, this Court enforces the strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will).

The rationales for banning the use of coerced confessions apply with equal, if not greater[2], force in the context of coerced

2. The risk of unreliability is arguably heightened when the coerced statements originates from a third-party: An accused who is subjected to third-degree interrogation will derive from his inherent sense of self-preservation some power to resist the coercion. But the witness who may not be accused of anything and has nothing to lose by his testimony. . . will be more inclined to lie to escape the pressure than will the accused himself. 57Nw. UL.Rev. 549, 552-53((1962).

third-party statements. As Chief Justice Warren recognized, it is simply not "relevant" that coercion is exerted against a witness rather than the accused. Bradford v Michigan, 394 US 1022, 1023 (1969)(Warren, CJ., dissenting from denial of certiorari); see also Malinski v New York, 324 US 401, 430-31 (1945)(Rutledge, J., dissenting)(Due process does not permit one to be convicted upon his own coerced confession. It should not allow him to be convicted upon a confession wrung from another by coercion. A conviction supported only by such a confession could be but a variation of trial by ordeal). In the words of the California Supreme Court:

> [A] [coerced] statement by a witness is no more trustworthy than one by a defendant, its admission in evidence to aid in conviction would be offensive to the community's sense of fair play and decency, and its exclusion, like the exclusion of involuntary statements of a defendant, would serve to discourage the use of improper pressures during the questioning of persons in regard to crimes.

See People v Underwood, 389 P2d 937, 943 (Cal. 1964); Dimmick v State, 473 P2d 616, 619-20 (Alaska 1970)(observing that the human values impinged upon by the use of coerced confessions may be as much involved and in need of protection when an involuntary statement is used to convict one not coerced into making it). Indeed, "methods offensive when used against an accused do not magically become any less so when exerted against a witness". LaFrance v Bohlinger, 499 F2d 29, 34 (1st Cir 1974). Consequently, due process will not tolerate the use of egregiously coerced third-party witness statements to secure a conviction at trial.

Numerous Courts Of Appeals have indicated as much. LaFrance, 499 F2d at 34-35 (deeming it 'unthinkable' that statements that are obtained through conduct belonging only in a police state should be admitted at the government's behest in order to bolster its case); United States v Fredricks, 586 F2d 470, 481(5th Cir 1978)(The use of statements derived through shocking and intentional police misconduct offends the fundamental fairness essential to due process of law); Bradford v Johnson, 354 F Supp 1331(ED Mich 1972), affirmed, 476 F2d 66 (6th Cir 1973)(affirming the grant of habeas relief where a defendant was convicted by a state's knowing use of coerced testimony obtained by torture, threats and abuse of a witness in custody); United States v Chiavola, 744 F2d 1271, 1273 (7th Cir 1984)(A violation of another person's fifth amendment rights may rise to the level of a violation of his rights to a fair trial); Douglas v Woodford, 316 F3d 1079, 1092 (9th Cir 2003)(Illegally obtained confessions may be less reliable than voluntary ones, and thus using a coerced confession at another's trial can violate due process); Wilcox v Ford, 813 F2d 1140, 1148 (11th Cir 1987)(The admission at trial of improperly obtained statements which results in a fundamentally unfair trial violates a defendant's Fifth Amendment right to a fair trial); and United States v Hodges, 208 F3d 227, at *1(10th Cir 2000)(A defendant's due process rights are violated where a witness is coerced into making false statements and those statements which are admitted at the defendant's trial).

Despite this extensive case law, the Seventh Circuit opined

that 'exclusion' of a coerced third-party statement would require the creation of new law rather than the application of an existing principle. Samuel v Frank, 525 F3d 566, 570 (7th Cir 2008). The Seventh Circuit observed that certain courts, "including ours, do not think that there is an exclusionary rule, as such, applicable to third party statements . . ." Id at 569(internal citations omitted). This view conflicts with the views of other courts of appeals and cannot be squared with this Court's decisions in Lego, Jackson, Rogers, and Blackburn.

This Court's coerced-confession jurisprudence necessitates the conclusion that use of a coerced witness statement violates a defendant's due process rights. This Court should grant certiorari to clarify that, contrary to the Seventh Circuit's holding in Samuel v Frank, supra.

B) The state court record demonstrates that Washington's due process rights were violated.

The Detroit Police secured an arrest warrant for Washington based solely on coerced statements obtained by Amanda Baer. Baer testified at an Investigative Subponea Hearing that Washington admitted to accidentally shooting a girl. However, when Baer got to a safe place, she admitted that Detective Brian Bowser had manufactured her statements and aiding her in giving false testimony under oath.

At the preliminary hearing, Baer informed the Magistrate Judge that she was illegally arrested, denied an attorney upon

request, pregnant, bleeding in pain, threaten into making false statements against Washington under oath, told that she would give birth in jail, and that she would spend 25 years in prison if she did not say what Bowser told her to say. (V 98-110). Appendix:J .

Bowser testified that he did not coerce or threatened Baer to testify. According to Bowser, he interviewed Beer twice: The first interview, Baer denied that Washington made incriminating statements to her, and although the interview lasted for 90 minutes, Bowser failed to take notes and the recording was allegedly no longer available. (VII 140-141). The second interview however, was recorded, but this interview is when Baer gave inculpatory statements against Washington. (V, 81-112, 122-159). Appendix: K .

Trial counsel filed a pre-trial motion to Quash the Information or either to suppress Baer's testimony from being admitted at the trial because it was coerced by Bowser. A hearing was held on September 21, 2012, the trial court heard respective arguments and denied the motion.

After his direct appeal, Washington filed a post-conviction motion arguing that his Constitutional due process rights were violated by the shockingly admission of Baer's coerced testimony. This Court should also keep in mind that Baer exercised her fifth amendment right not to testify at the trial because she had admitted that her under oath testimony at the investigative hearing where she falsely accused Washington of confessing was

manufactured by Bowser, so any further testimony in that regard at the trial would be perjury. The trial court appointed her counsel, and she invoked the fifth amendment. (III 29-57). Baer's testimony was therefore read to the jury from the prior transcript.

Nevertheless, the state trial court failed to adjudicate the claim on the merits. On habeas review, the federal district court failed to answer the question of whether Washington's due process rights were violated because there was no evidentiary hearing to support the factual contention that Baer was coerced. The district court went on to state:

> "[S]imply put, this Court cannot hold an evidentiary hearing because Washington did not exercise the required diligence in state court. And without holding an evidentiary hearing, the Court cannot resolve the disputed question of fact regarding Baer's testimony in Washington's favor. Washington is therefore not entitled to federal habeas relief on this claim".

Appendix: B, Opinion at *[17]-*[20].

The Sixth Circuit followed the district court's position and failed to specifically answer whether there was a due process violation because there was no record to support a factual basis. However, both the sixth circuit and the federal district court made fundamentally-flawed and incorrect factual findings when they opined that there was no state-court record to support the fact that Baer was coerced. To the contrary, Baer's testimony supports coercion. See attached Excerpts at Appendix: J. The court could have relied on the same record as it did when it reviewed the other claims presented on habeas review and if that was not reasonable, it should have remanded for an evidentiary hearing for additional facts.

Contrary to the Sixth Circuit's erroneous determination that there was no record to support that Baer was coerced (because there was no evidentiary hearing), the excerpts attached hereto proves otherwise. Accordingly, this Court should review the record on certiorari and address the question head-on: whether there is a due process violation when the police coerce a third-party to give perjured testimony.

In the alternative, this court should vacate, reverse and remand for a hearing if additional facts are necessary to make the ultimate decision regarding a violation of due process.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted. Alternatively, issue an order to vacate, reverse and remand for an evidentiary hearing.

Respectfully submitted,

6/26/20
Dated

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