NO. 21-6806

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ARMIN WAND, III, PETITIONER,

VS.

GARY BOUGHTON, RESPONDENT,

ON PETITION FOR A WRIT OF
CERTIORARI TO

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WISCONSIN

PETITION FOR WRIT OF CERTIORARI

Armin WandIII
Pro Se
W.S.P.F.-P.O. Box 1000
Boscobel, WI. 53805

QUESTIONS PRESENTED

1. SHOULD ARMIN WAND,III S SEPTEMBER 9,2012 STATEMENT HAVE BEEN SUPPRESSED?

2. DOES THE COERCED UNRELIABLE CONFESSION PROVIDE A MANIFEST INJUSTICE FOR WITHDRAWING ARMIN WAND,III S PLEAS?

3. SHOULD A CERTIFICATE OF APPEALABILITY HAVE BEEN ISSUED ON ALL ISSUES?

4. DOES NEWLY DOSCOVERED EVIDENCE PROVIDE A GOOD FAITH SHOWING TO STAY THE PROCEEDINGS TO INVESTIGATE,AND TO RAISE THE NEWLY DISCOVERED EVIDENCE IN STATE COURT?

&LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Wand V. Boughton,18-CV520,U.S. Distict Court for the Western District of Wisconsin. Judgment entered Aug. 11,2020.

Wand V. Boughton,NO. 20-2767,U.S. Court of Appeals for the Seventh Circuit. Judgment entered May 15,2021.

Wand V. Boughton,20-2767,U.S. Court of Appeals for the Seventh Circuit Rehearing and Rehearing En Banc. Judgment entered Apr. 16,2021.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION OF WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **FEDERAL COURTS**

The opinion of the United States Court of Appeals for the Seventh Circuit is unpublished. a copy appears at appendix A to this petition. The opinion of the United States District Court for the Western District of Wisconsin is unpublished,a copy appears at appendix B to this petition.

For cases from **STATE COURTS**

The opimions of the Wisconsin Court of Appeals is unpublished a copy appears at appendix D to the petition. The order of the Lafayette County Circuit court a copy appears at appendix E to this petition.

JURISDICTION

For cases fron **federal court:**

The judgment of the United State Court of Appeals for the Seventh Circuit was entered on May 15,2021. An order denying petition for rehearing and rehearing en banc was entered on April 16,2021,and a copy of that order appears at appendix C to this petition. The jurisdiction of this court is invoked under 28 U.S.C. §1254 (1).

For cases from **STATE COURTS:**

The judgment of the Wisconsin Court of Appeals was entered

on September 8,2016,and a copy of that decision appears at appendix C. The jurisdiction of this court is invoked under 28 U.S.C.§1257(a).

consitutional and statutory PROVISIONS INVOLVED

This case involves Amendments IV,V,AND XIV to the United States Consitution,which provides:

Exclusionary rule reaches not only primary evidence obtained as a direct result from illegal search and seizure but also evidence later discovered not found to be derivative of illigality or "fruit of the poisonous tree." and the rule extends aswell to the indirect as to the direct products of unconsitutional conduct.

Fifth Amendment rights against self-incrimination prohibits courts from admitting into evidence a defendants involuntary confession. Where the first involuntary confession induces a second confession,the second confession is also inadmissible.

The Due Process Clause of the Fourteenth Amendment to the United States Consitution and Article 1 Section 8,Wisconsin Consitution prohibits the admission at trial of involuntary statements. The due process test of voluntariness "takes into consideration the totality of all the surrounding circumstances- both the characteristics of the accused and and the details of the interrogation." These two factors are balanced each other to determine whether the defendant's statements were voluntary. A manifest injustice for purposes of a plea withdrawal can be found on the merits or in the process which led to conviction. One such flaw in the process is a confession given in violation of the defendant's constitutional rights.

STATEMENT OF THE CASE

About 3:10 a.m. on September 7,2012 a fire broke out at Petitioner's home. It was mainly in the living room where Petitioner,his wife Sharon,and their three year old son,Joseph, and in the bedroom,just off of the living room where son's Allen, age 7,and Jeffery,age 5,slept. Two year old J.W. was asleep in a second bedroom. All three of the Petitioner's son's died in the fire. Sharon who was pregnant,was severly injured,her fetus did not survive. Petitioner and his daughter J.W. were

uninjured. (dkt. no. 20:2:10).

Petitioner is cognatively disabled and legally blind when interviewed by police six times in three days period,following the fire. The first interview was conducted by a local police officer. The remaining five interviews were conducted by seven different special agents from the department of justice. In the first three interviews on September 7,2012 petitioner said he was awakened by his wife Sharon's screams.

There was a fire at the foot of the futon bed,Petitioner went to the kitchen four times to fill a cup with water that he tossed on the fire. He told his wife to get their daughter J.W. and then he went outside,where he broke the window to the boy's room. Sharon grabbed J.W. and went to the neighbors. Later on September 8,2012 the agents rejected Petitioner's claims of innocence. They offered him inducements to tell them about his involvement in the fire. Finally,Petitioner said he was complicit in with his brother Jeremy in starting the fire. P-etitioner said he did not want to talk anymore. The agents a-rrested Petitioner and read him his Miranda rights. Agents,then, told him that his brother Jeremy claimed petitioner kissed a woman other than his wife. Agent Montgomery also said,"I think it's kind of strange that you come in the night of the fire buddy-buddy with the guy that you know just murdered your family." On September 9,2012 special agents interrogated petitioner for 6.6 hours. Petitioner wanted to set them straight about them making comments after petitioner invoked his right to silence. Agent Fernandez admitted that petitioner had not called the agents in to talk about the fire,only about the comments. Then the agents asked him if they could ask him some questions Petitioner agreed. Again,Petitioner started out claiming that his brother Jeremy was not at his home at the time of the fire. The agents did not accept that story. After 18 hours questioning, nearly 7 hours of which happened while he was in custody,while incommunicado,petitioner,confessed colluding with his brother, Jeremy,to start the fire and kill his family. On the same day after 8 hours of interrogation over 5 while in custody,Jeremy Wand who had little sleep and little to eat gave a statement confessing to assisiting in starting the fire. (dkt. no. 20: 2:14).

Special Agent William Boswell filed a fire scene report concluding "that the fire was the result of an intentional human act" based on Petitioner's confession and boswell analysis of the fire scene. Boswell concluded that the fire had two seperate area of origin-the living room and in the northwest bedroom.

Petitioner moved to supress his statements,at the supression hearing petitioner testified to having about four or five hours of sleep and very little to eat when he gave his final statement on September 9,2012. (dkt. no. 20:2:15).

Dr. Kent M. Berney,a licensed psychologist,testified that he evaluated petitioner and administered a variety of psychological test.Dr. Berney found the petitioner's verbal comprehension index score was 72,placing him in the third percentile. He was in the impaired range with a perceptional reasoning of 65 and a processing index score of 56. He had a working memory score of 100,placing him in the 50th percentile. His full scale IQ was 67,placing him in the impaired range of the first percentile. (dkt. no. 20:2:15).

Dr. Berney opined that-taking petitioner's intellectual capacity,his limitations in deductive reasoning,and his visual impairment-that: (He) was substantially comprimised at the,of interrogation in terms of his ability to make a rational informed decision regarding proceeding with the interrogation. (dkt. no. 20:2:16).

The Circuit Court ruled that petitioner's statements given on September 8,2012 would be supressed because the agents induced him to give a statement with promises of leiency (dkt. no. 20:2:16),but that the statement given on September 9,2012, when he was in the custody of the Lafayette County jail was voluntary and would not be supressed. (dkt. no. 20:2:16).

Two day's later the petitioner pled guilty to the above charges. (dkt. no. 20:2:16).

Petitioner filed a post-conviction motion asking the Circuit Court to allow him to withdraw his plea. (dkt. no. 20:2:16).

With his motion,petitioner filed reports from Dr. Lawrence White,Dr. David Thompson,and Robert Paul Bieber. (dkt. no. 20:2:16).

Robert Paul Bieber,a fire and explosion investigator (CFEI) certified by the National Association of Fire and Explosion Investigators,reviewed the discovery file relative to the fire investigation (dkt. no. 20:2:16) and came to the following conclusion:

Due to the flash over full room-involvement conditions,fire investigator Boswell was unable to determine the area of origin of the fire in the living room.

Boswell's conclusion that the irregular burn patterns to the floor,and bedding in the bedroom consitutes a seperate and distinct area of origin does not withstand careful scrutiny. The burn pattern he referred to arer more likely to have been the result of radiant heat from a hot gas layer of smoke generated from a fully involved fire in the adjacent living room, typically burn damage from the melting and burning of combustion items found in the bedroom,or smoke combination of the two.

The presence of a nearly identical burn pattern on the floor of the dinning room-a burn pattern not found to be suspicious by fire investigator Boswell-provided further support that burn patterns of this type are a common occurrence in building fires where the hot smoke and gazes of combustion migrate to adjacent rooms.

Fire Investigator Boswell's conclusions were made several weeks prior to the interview of Sharon Wand,the first eyewitness to the fire and the only person to have seen the fire from inside the house at its earliest stages. During those interviews she said that the fire had only one area of origin in the (LIVING ROOM) and that the door between the living room and the bedroom was **OPEN**. Fire Investigator Boswell was unaware that the small burn pattern on the floor east of the plastic bed frame may have been predated to the fire in question and was possibly created during an earlier fire incident involving a child relative playing with a lighter.

As a result,Fire Investigator Boswell's conclusions had multiple areas of origin was based on an objective application of the scientific method,was not in compliance with NFPA 921, was not in keeping with generally accepted techniques and methodologies within the field of fire investigation,and is not supported by the evidence currently known.

Fire Investigator Boswell's final report fails to identify an ignition source or a first fuel ignited. His elimination of accidential ignition source fails to consider or analyze several common potential ignition source known to have been present at this first fire scene,specifically discarded smoking materials or children playing with matches or a lighter. The circumstances bringing the unknown ignition source in contact with the unidentified first fuel ignited are similarly absent.

Fire Investigator Boswell's ultimate conclusion that "this fire was the result of an intentional human act" was directly

basedon these two previous determinations-that the fire had multiple areaa of origin and that all accidential ignition sources in the living room had been examined and eliminated.

Additional examination and new evidence has shown that this conclusion of multiple area of origin was premature and incorrect, and his examination and elimination of potential ignition sources was insufficient.

Under circumstances described in the written report, photographs and witness statements,the only conclusion regarding origin,cause or classification of the cause of this fire which is in compliance with NFPA 921 and the standards of generally accepted techniques and methodologies within in the field of fire investigation is "undetermined."

The Court denied Petitioners post conviction motion,without a hearing,and the Petitioner appealed. (dkt. no. 20:2). The Wisconsin Court of Appeals affirmed the lower courts decision without an evidentiary hearing to allow petitioner to develop his arguments. Petitioner sought review from the Wisconsin Supreme Court. (dkt. no. 20:6). The Wisconsin Supreme Court denied petitioner's petition for review. (dkt. no. 20:8). Petitioner filed a writ of habeas corpus with the United States District Court from the Western District of Wisconsin. The United States District Court for the Western District of Wisconsin denied the writ of habeas corpus without an evidentiary hearing to allow petitioner to develop his arguments and declined to issue a certificate of appealability. (dkt. no. 51). Petitioner requested for a certificate of appealability and a motion to stay the proceedings with the Seventh Circuit. The Seventh Circuit denied Petitioner's request for a certificate of appealability and the motion to stay the proceedings. The Petitioner sought rehearing and rehearing en banc. No judge in regular active service had requested a vote on the petition for rehearing en banc,and all the judges on the original panal have voted to deny the petitioner for rehearing. Now the petitioner seeks a writ of certiorari to issue a certificate of appealability on all issues and to grant the Petitioner's motion to stay the proceedings.

On January 21,2021,after the District Court renerdered its judgment and before the Seventh Circuit made its decision on the certificate of appealability,the Petitioner received some new information that needs to be pursued. This new information would lead the investigation in a different direction and a new suspect.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the exclusionary of the Fourth Amendment,Self-incriminatiOn of the Fifth Amendment,and the Due Process Clause of the Fouereenth Amendment to the United States Consitution. The District Court had jurisdiction under the general federal question jurisdiction invoked by 28 U.S.C.§1331.

REASON FOR GRANTING THE WRIT

I. CERTIFICATE OF APPEALABILITY

Before a circuit court may rule on an appeal from a district court,a state prisoner seeking federal habeas corpus relief obtain a COA as a :jurisdictional pre-requisite" MILLER EL V. COCKERELL,537 U.S. 322,335,123 S.Ct. 1029,154 L.Ed. 2d 931 (2003) (citing 28 U.S.C.§2253(c)(1)). SLACK V. McDANIEL,interpreting §2253(c),clarifies that when district court denies a habeas petition on procedural grounds without reaching the merits of the underlying consitutional claim,as here,a COA may issue only if the petitioner shows that (1)"jurist of reason would find it debatable whether the district court was correct in its procedural ruling," (2)jurist of reason would find it debatable whether the petition states a valid claim of the denial of a consitutional right." 529 U.S. 473,478,120 S.Ct. 1595,146 L.Ed. 2d 542 (2000).

An appellate courts: "COA determination under §2253(c) requires an overview of the claims in the habeas petition and general assessment of their merits." Miller El, 537 U.S. at 336,123 S.Ct. 1029. There is a "limited," "threshold inquiry" that does not require a full consideration of the factual or legal basis adduced in support of the claims." Id. In Miller-El,the Supreme Court "reiterated that a prisoner seeking a COA NEEDS ONLY DEMONSTRATE" a substantial showing of the denial of a constitutional right." Id. at 327,123 S.Ct. 1029. (citing 28 U.S.C.§2253(c)(2)). "A petitioner satisfied this standard by demonstrating that jurist of reason could disagree with district court's resolution of his consitutional claims or jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Id. (citing Slack 529 U.S. at 448,120 S.Ct. 1595). While a state prisoner must show something more than that absent of frivolity or the existance

of more good faith on his or her part,he or she is not required to provide before the issuance of a COA,that some jurist would grant the petition for habeas corpus. Indeed,a claim can be debatable even though every jurist of reason might agree,after the COA has been granted and the case has received full consideration,that the petitioner will not prevail. Id. at 338,1235 S.Ct. 1029 (internal citations ommitted).

Pursuant to §2244(b)(2)(B),the movant must demonstrate (1) that "factual predicate for the claim could not have been discovered previously throughnthe exercise of due diligence," §2244(b)(2)(B)(i),and (2) that "the facts underlying the claim, if proved and viewed in light of the evidence as a whole,would be sufficient to establish by clear and convincing evidence that,but for consitutional error,no reasonable factfinder would have found the applicant guilty of the underlying offense.

SLACK V. McDANIEL,529 U.S. 473,484,120 S.Ct. 1595,146 L.Ed. 2d 542 (2000) (recognizing that,if the district court refused relief on procedural grounds,a COA should issue upon the applicant's showing "(1) "the petitioner states a valid claim of the denial of a consitutional right" and (2)the district court was correct in the procedural ruling).

In McCLESKEY V. ZANT,the Supreme Court recognized that,under the doctrines of abuse of the writ and procedural default,a prisoner seeking to have abusive or procedually defaulted heard is required to show either "cause and prejudice " on factual innocence implicating a "fundamental miscarriage of justice." See 499 U.S. 467,493-95,111 S.Ct. 1454,113 L.Ed. 2d 517 (1991). Of particular relevance here,the exception for a fundamental miscarriage of justice requires a showing that "a consitutional violation probably has caused the conviction of one innocent of the crime." Id. at 494,111 S.Ct. 1454 (reiterating standard spelled out in MURRAY V. CARRIER,477 U.S. 478,496,106 S.Ct. 2639,91 L.Ed. 2d 397 (1986)).

The district court determined that the jurist of reason would not debate that petitioner should not be denied relief, but it reached that conclusion only after essentially decided the case on the merits. Of course when a court properly applies the COA standard and determines a prisoner's claim is not even debatable,that necessarily means that prisoner has failed to show that his claim is meritous. But the converse is not true. That a prisoner has failed to make the ultimate showing that his claim is meritorious does not logically mean he failed to make a preliminary showing that his claim was debatable. Thus,

when a reviewing court inverts the statutory order of operations and "first decides the merits of an appeal,... the justifies the denial of a COA based on its judication of the actual merits." It has placed to heavey a burden on the prisoner at the COA stage. Miller-El,537 U.S. at 336-337,123 S.Ct. 1029. Miller-El flately prohibits such a departure from the procedure proscribed by §2253.

II. THE AGENTS DID NOT SCRUPULOUSLY HONOR PETITIONER"S INVOCATION OF RIGHTS TO SILENCE

A. CONFLICTS WITH DECISIONS OF THE COURTS

the holding of the courts below that when a suspect invokes his right to silence and that police still can make comments after the suspect invokes his right to silence. If the right to silence is not scrupulously honored then the confession is inadmissible is directly contrary to the holding of Five federal circuits. See GUIDRY V. DRETKE,397 F. 3d 306 (5th Cir. 2005); McGRAW V. HOLLAND,257 F. 3d 513 (6th Cir. 2001);UNITED STATES V. HUNTER,708 F. 3d 938 (7th Cir. 2013);JONES V. HARRINGTON, 829 F. 3d 1528,1137 (9th CIR. 2016);UNITED STATES V. GOMEZ,927 F. 2d 1530,1538 (11th Cir. 1991). The holding of the courts is also directly contrary to the holdings of the Supreme Court. See MIRANDA V. ARIZONA,384 U.S. 436 (1966);MICHIGAN V. MOSLEY, 423 U.S. 96 (1975). In addition the Supreme Court held in RHODE ISLAND V. INNIS,446 U.S. 291,100 S.Ct. 1682,64 L.Ed. 2d 297 (1980);that a law enforcement officer may thus be viewed as interrogating a suspect by a statement,without asking a single question,if the law enforcement officers conduct or speech could have the force of a question on a suspect. "Interrogation" must reflect a measure of complusion above and beyond that inherent in custody itself."

B. IMPORTANCE OF THE QUESTION PRESENTED

This case presents a fundamental question of the interpretation of this courts decision in RHODE ISLAND V. INNIS,446 U.S. 291,100 S.Ct. 1682,64 L.Ed. 2d 297 (1980). The question presented is of great public importance because the district court applied the wrong determination of Innis. When Agent Montgomery said "I think it's kind of strange that you come in

that night of the fire buddy-buddy with the guy that you know just murdered your family." The Petitioner understanding the agents words was an expected response,and thus the agents words were the functional equivalent of interrogation. Agent Fernandez testified that the only reason the petitioner contacted them was to respond to Agent Montgomery's comments and not about the fire. The district courts determination that the petitioner did not cite Innis in his state court's proceeding so he is barred from citing Innis in his habeas petition. The Petitioner is unaware of any Supreme Court precedent that says when a certain case must be cited otherwise it is barred from citing that case law. The petitioner was not arguing a new issue,he was simply making his current argument stronger.

The Court can not turn a blind eye to the fact that if the Petitioner did not invoke his right to silence there was no need for Agent Montgomery to make those comments. The agents intentionally ignored the petitioner's rquest to silence. Without the petitioners confession there is no evidence of the petitioner guilt,the evidence must be proved beyond a reasonable doubt, if the evidence at trial only raises a suspicion of guilt,even a strong one,then the evidence is insufficient evidence to convict.

As the Supreme Court subsequently explained in MICHIGAN V. MOSLEY,423 U.S. 96,103,96 S.Ct. 321,46 L.Ed. 2d 313 (1975), "a reasonable and faithful interpretation of the Miranda opinon must rest on the intention of the court in that case to adopt fully effective means... to notify the person of his rights to silence and to assure that the exercise of the right will be scrupulously honored..." (quoting Miranda,384 U.S. at 497, 86 S.Ct. 1602). (Emphasis supplied). Any reasonable police officer,knowing that exercise of the right to silence must be scrupulously honored," would have understood that when the petitioner said "I'm done talking" he should not have been told "I think its kind of strange that you come in that night of the fire buddy-buddy with the guy that you know just murdered your family." For the state court to hold otherwise,was objectively unreasonable.

The Supreme Court has held that a State Court's decision is an "unreasonable application of clearly established Federal Law if it is correctly identifies the governing legal rules but applies it unreasonably to the facts of a particular prisoner's case,or if it either unreasonably extends or unreasonably refuse to extend a legal principles from Supreme Court precedent to a new context."

"By it's very nature,custodial police interrogation entails inherently compelling pressures" that "can induce frighteningly high percentage of people to confess to crimes they never co-mmitted." J.D. V. NORTH CAROLINA,- U.S. -,131 S.Ct. 2394,2401, 180 L.Ed. 2d 310 (2011) (citations and internal quotation marks ommitted).

Any question that is "reasonably likely to elict an incri-minating response" and asked by a police officer after a suspect has umabigously invoked his right to silence constitutes pro-hibited interrogation. RHODE ISLAND V. INNIS,446 U.S. 291,300-01, 100 S.Ct. 1682,64 L.Ed. 2d 297 (1980). The statements from Agent Montgomery was "reasonably likely to elict an incriminating response." Not only was Agent Montgomery statements reasonably likely to elict an incriminating response,but it was also wholly unecessary. The Petitioner just endured a 3½ hour of an illegal interrogation with coercion and without Miranda warnings until after Petitioner said "I'm done talkin" without the confession there is no evidence to convict,so Agent Montgomery intentionally made two comments in hopes that the petitioner would iniate the contact because Agent Montgomery knew the unwarned invol-untary confession is inadmissible.

The Supreme Court has been clear on this point: When a s-uspect invokes his right to silence,the officers "interrogation must cease. Period. See MIRANDA V. ARIZONA,384 U.S. 436,444,86 S.Ct. 1602,46 L.Ed. 2d 694 (1966). By continuing to interrogate Petitioner after his invocation,the agents squarely violated Miranda. That means the government can not use against petitioner anything he said after his invocation. And that includes using Petitioner subsequent statements to "cast retrospective doubt on the clarity of (his) initial request itself." SMITH V. ILL-INOIS,465 U.S. 91,98-99,105 S.Ct. 490,83 L.Ed. 2d 488 (1984) (per curiam);See DAVIS V. UNITED STATES,512 U.S. 452,458,114 S.Ct. 2350,129 L.Ed. 2d 362 (1994);Miranda,384 U.S.at 444,865 S.Ct. 1602. Allowing the state to use petitioner's post-invoc-ation statements against him,even to argue that his initial invocation was ambiguous is thus is contrary to clearly esta-blished Supreme Court case law. Once petitioner said he wished to remain silent,even one question was one question too many. Any reasonable jurist would have to conclude that when petitioner said that he did not want to talk "no more" he meant it. The Court of Appeals decision is both contrary to and an unreasonable application of clearly established Supreme Court law,and it is based on an unreasonable determination of the facts.

A decision is "contrary to" Supreme Court precedent where "the state court arrives at a conclusion opposite to the one

reached by (the Supreme) COurt on a question of law or if the state court decides a case differently than (the Supreme) Court has on a set of materially indistinguishable facts." WILLIAMS V. TAYLOR,529 U.S. 362,413,120 S.Ct. 1495,146 L.Ed. 2d 64 (2000). The court may not grant habeas relief unless the state court's determination "was so lacking justification that there was an error well understood and comprehending in existing law beyond any possibility for fairminded disagreement. HARRINGTON V. RICHTER,562 U.S. 86,103,131 S.Ct. 1770,178 L.Ed. 64 (2011). "(A)n unreasonable application of federal law is different from an incorrect application of federal law." Williams,529 U.S. at 410,120 S.Ct. 1495. "A state court's determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurist could disagree on the correctness of the state court's decision." Richter,562 U.S. at 101,1312S.Ct. 770 (internal quotation marks ommitted).

The Supreme Court has made it clear once a person being questioned "indicates in any manner that he does not wish to be interrogated,the police may not question him." Miranda,384 U.S. at 445,86 S.Ct. 1602. The mere fact that he may answer some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries." Id. Any statement taken after the person invokes his privileges can not be other than the product of compulsion,subtle or otherwise. Id. at 474,86 S.Ct. 1602.

Here,there is no doubt the agents violated Miranda certainly, Petitioner saying "I'm done talkin" qualifies as "indicating in any manner that he does not wish to be interrogated." Miranda, 384 U.S. at 445 S.Ct. 1602 (emphasis added). Agents knew that Petitioner was invoking his right,but made two comments they knew that the 3½ hour confession would be supressed because it was inffected with coercion and promises of leinency and was not Mirandized and they could not get a conviction without a confession,so the agents intentionally made two comments to the Petitioner that they knew he would want to respond too. No fairminded jurist could reasonably interpret this statement to be "ceasing" the interrogation. Id. Miranda has said the suspects "right ro cuttoff questionong" must be "fully respected." Id. at 104,96 S.Ct. 321.

No fairminded jurist could determine that Petitioner's invocation was ambiguous. First,Petitioner's request to remain silent was unambiguous on its face,and nothing about the context of the statement made it ambiguous or equivalent. Petitioner stated: "I'm done talkin" in otherwords he did not want to talk anymore. See GARCIA V. LONG,808 F. 3d 771,773-74 (9th Cir. 2015)

(holding that a suspect answering "no" to the question "do you wish to talk to me?" was an unambiguous request to remain silent under Miranda). Petitioner did not equivocate by usong words such as "maybe" or "might" or "I think" see Anderson,516 F. 3d at 768;cf Smith,469 U.S. at 96-97,105 S.Ct. 409 (holding that nothing in the statement "Uh,yeah. I'd like to do that" suggestion equivocation). Nor did anything Petitioner said leading up to this statement made it ambiguous. During the interrogation up to this point,Petitioner spoke little,most of the interrogation consisted of agents repeatedly asking Petitioner questions and Petitioner giving short,often one-word answers. In any event, the fact that Petitioner spoke to agents awhile before invoking his right to remain silent makes no difference. The Court of Appeals decision is simply "contrary to" and "an unreasonable application" of Miranda,28 U.S.C.§2254(d)(1);Miranda,384 U.S. 473-74,86 S.Ct. 1602 (the right to remain silent can be invoked "any time prior to or during questioning").

Whether agents statements could constitute impermissible "badgering (of) a defendant in to waiving his previously asserted rights."

The law in this area is clear,once an accused invokes his right to silence,the agents can not question,discuss the case, or present the accused with possible sentences and the benefits of cooperation. Innis,100 S.Ct. at 1689;Johnson,812 F. 2d at 1331. Any information or discussion regarding the case should be addressed to the accused's attorney. Agent Montgomery's statements constitutes further interrogation and occurred immediately after Petitioner invoked his right to silence rendering suspects the voluntariness of Petitioner's "initiation" of the contacting the agents. The subsequent inculpatory statements by petitioner were there inadmissible.

The seminal case interpreting the meaning of interrogation under Miranda is RHODE ISLAND V. INNIS,446 U.S. 291,100 S.Ct. 1682,64 L.Ed. 2d (1980). The Supreme Court declared in Innis that "(t)he term" interrogayion" under Miranda refers not only to express questioning,"but also to the functional equivalent of express questioning" (sometimes refered to in the cases and the literature as the "functional equivalent of interrogation") means "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should have known are reasonably likely to elict an incriminating response." A law enforcement officer may thus be viewed as interrogating a suspect by a statement,without asking a single question,if the law enforcement officer's conduct of speech could have the force of a question on the suspect." i-

nterrogation" must reflect a measure of compulsion above and beyond of the intent of in custody itself."

The Innis test for interrogation was summerized in STATE V. CUNNINGHAM,144 Wis. 2d 272,278-79 N.W. 2d 862 (1988),as follows: (I)f an objective observer (with the same knowledge of the suspect as the police officer) could,on the sole basis of hearing the officer's remarks or observing the officer's conduct,conclude that the officer's conduct or words would be likely to elict an incriminating response,that is,could reasonably have had the force of a question on the suspect,then the conduct or words would have constitute interrogation. "The concept of interrogation thus reflects " both an objective foreseability standard and the police officer's specific knowledge of the suspects." The focus is primarily upon the perceptions of the suspects but the intent of the police is not ignored.

In interpreting and applying the Innis test of what constitutes interrogation,a court must keep in mind that the evils addressed by Miranda. As the Supreme Court explained in Cunningham,the purpose of Miranda and Innis is to prevent government officials from using the coercive nature of confinement to extract that would not be given an unstrained enviornment.

III. THE SEPTEMBER 9,2012, STATEMENT WAS INVOLUNTARY AND THE PRODUCT OF FRUIT OF THE POISONOUS TREE

A. CONFLICTS WITH DECISIONS OF OTHER COURTS

The holding of the courts below that when a first involuntary confession obtained through extracts a second confession is admissible if there is attenuation between confessions. A confession obtained through custodial interrogation after an illegal arrest is inadmissible as fruit of the poisonous tree is directly contrary to the holding of two federal circuits. See UNITED STATES V. BUTTS,704 F. 2d 701 (3d Cir. 1983);UNITED STATES V. WATSON,703 F. 3d 684 (4th Cir. 2013);UNITED STATES V. ESQUILIN,208 F. 3d 315,319-21 (1st Cir. 2000);UNITED STATES V. SWANSON,635 F. 3d 995 (7th Cir. 2011);UNITED STATES V. MAEZ, 872 F. 2d 1444 (10th Cir. 1989);UNITED STATES V. CARTER,884 F. 2d 368,373 (8th Cir. 1989);UNITED STATES V. ORSO,266 F. 3d

1030,1034-1039 (9th Cir. 2001);UNITED STATES V. CALE,952 F. 2d 1412,1418 (D.C. Cir. 1992);in addition the Supreme Court has held that there is no per se rule that Miranda warnings in and of themselves suffices to cure a Fourth Amendment violation involved in obtaining incalpatory statements during custodial interrogatin following a formal arrest. See DUNAWAY V. NEW YORK, 442 U.S. 200 (1979);WONG SUN V. UNITED STATES,371 U.S. 471 (1963);MISSOURI V. SEIBERT,542 U.S. 600 (2004).

B. IMPORTANCE OF THE QUESTION PRESENTED

This case presents a fundamental question of the interpretati of the courts decision in WONG SUN V. UNITED STATES,371 U.S. 471 (1963). The question presented is of great public importance. In BROWN V. ILLINOIS,1422 U.S. 590,95S.Ct. 2254,45 L.Ed. 2d 416 (1975),and DUNAWAY V. NEW YORK,1422 U.S. 200,99 S.Ct. 2248, 60 L.Ed. 2d 824 (1979),the police arrested without probable cause. The suspects were transported to police headquarters, advised of their Miranda rights and interrogated. They confessed within two hours of their arrest. The Supreme Court held that their were not admissible,reasoning that a confession obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events breaks the casual connection between the illegal arrest and the confession so that the confession is "sufficiently an act of free will to purge the primary taint." BROWN V. ILLINOIS,422 U.S. at 602,95 S.Ct. at 2261 (quoting Wong Sun v. United States,371 U.S. 471,486, 83 S.Ct. 407,461,91 L.Ed. 2d 1441 (1963),see also Dunaway V. New York,442 U.S. at 217,99 S.Ct. at 2259)). The Supreme Court identified several factors that should be considered in determining whether a confession,has been purged of the taint of the illegal arrest "temporal proximity of the arrest and the confession,the presence of intervening circumstances... and of the particularly the purpose and flagrancy of the official misconduct," BROWN V. ILLINOIS,422 U.S. at 603-04,95 S.Ct. at 2261-2262 (citations ommitted);DUNAWAY V. NEW YORK,442 U.S. at 218,99 S.Ct. at 2259.

Agent Fernandez testified at the Suppression Hearing and that admitted the Petitioner had contacted them to discuss the comments that the agents had made to him the night before after the Petitioner invoked his right to silence. (Jan. 17,2013, Sup. Hr.). The taint of Petitioner's illegal arrest and involuntary confession had been purged prior to the time of his second interrogation. Petitioner was sleep deprived throughout the three days and six interrogations. During a restless night in jail the Petitioner was being checked on every few minutes,

arrest. The Supreme Court long has held that an incriminating statement obtained by expoloitation of an illegal arrest may not be used against a criminal defendant. BROWN V. ILLINOIS, 422 U.S. 590,603,95 S.Ct. 2254,45 L.Ed. 2d 416 (1975);WONG SUN V. UNITED STATES,371 U.S. 471,484-86,83 S.Ct. 407,9 L.Ed. 2d 441 (1963);see also KAUPP V. TEXAS,538 U.S. 626,632-33,123 S.Ct. 1843,155 L.Ed. 2d 814 (2003) (per curiam) (vacting conviction on basis of admission of confession obtained as a result of an unlawful arrest).

The determination whether there was a "break" in the casual chain between an unlawful arrest and a defendants incriminating statements depends on the facts of each specific case. In analyzing the admissibility of such statements,the Courts consider several factors,including: (1)the "purpose and flagancy of the official misconduct",(2)whether Miranda Warnings were given to the defendant;(3)the "temporal proximity of the arrest and the confession";and (4)the presence of intervening circumstances.

The instance of Miranda Warnings does not automatically cure the taint of an illegal arrest. Brown,422 U.S. at 602,604, 95 S.Ct. 2254. The record also must satisfy the government's burden of showing a break in casual chain between the defendant's unlawful arrest and his incriminating statement. Brown,422 U.S. at 603-04,95 S.Ct. 2254. Here,this temporal proximity "factor weighs strongly in Petitioner's favor because he was not free from the officer's custody at any point between his initial arrest and the time he made his incriminating statement. Thus, in this respect,the casual connection between the illegality and the incriminating statement remained unbroken. No rational factfinder would have found Petitioner guilty absent the error "beyond a reasonable doubt." The only evidence that points to the Petitioner's guilt is the involuntary confession. Without the confession there would not be a conviction.

In reviewing a waiver of the Fifth Amendment rights is knowing and voluntary,a court must assess whether it was the product of intimidation,coercion,or deception,and was it made with full awareness of one's constitutional rights. See MORAN V. BURBINE,475 U.S. 412,421,1060 S.Ct. 1135,89 L.Ed. 2d 410 (1986). The Petitioner invoked his right to silence,then the agents made two comments to the Petitioner,at the Lafayette County Jail after a restless night,the jailor was intimidating the Petitioner by tapping the bars every few minutes when the Petitioner was being checked on. and being held incommunicado. All those events occurred after the petitioner invoked his right

to silence. Under these circumstances the Petitioner's confession was not voluntary and the State trial court erred by not suppressing it. Therefore pursuant to 28 U.S.C. § 2254(d)(2), the state court adjudication of the claim was based on an unreasonable determination of the facts.

The court held in Miranda that "(a)n understanding of the nature and setting of (an) in-custody interrogation is essential" to its decision. Id. at 445,586 S.Ct. 1602. Stressing that the modern practice of in-custody interrogation is psychologically rather than physically oriented," id. at 448,86 S.Ct. 1602, the court explained that the very fact of custodial interrogation exacts a heavey toll on individual liberty and trades on the weakness of the individuals. Id. at 455,86 S.Ct. 1602. The Court in Miranda presumed that interrogation in certain custodial circumstances is inherently coercive and... that statements made under those circumstances are inadmissible. Exculapatory and incriminating statements are entitled to the protection of the exclusionary rule apply to Brown analysis.

In asking to see the agents from last night the Petitioner had not indicated a waiver of his previously invoked right to silence. In McDOUGAL V. GEORGIA, 271 Ga. 493,591 S.E. 2d 788 (2004) held that detectives statements after Mcdougal invoked his right to counsel constituted interrogation, that McDougal had not reinitiate communication with law enforcement by his mere rerquest to see the detectives, and that McDougal's statements were responses to police interrogation after McDougal effectively invoked his Fifth Amendment Miranda right to counsel.

It is obvious such an interrogation is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is no physical intimidation, but it is equally destuctive of human dignity. The current practice of incommunicado interrogation is at odds with one of our nations most cherished principles-that the individual may not be compelled to incriminate himself.

Whatever the testimony of the authorities as to waiver of rights by an accused, the fact of lengthy interrogation or incommuncado incarceration before a statement is made is strong evidence that the accused did not validity waive his rights. In these circumstances the fact that the individual eventually made a statement is consistent with the conclusion that the compelling influences of the interrogation finally forced him to do so. It is inconsistent with any nation of a voluntary

relinguishment of the privilege. Moreover,any evidence that the accused was threatened,tricked,or cajoled into a waiver will,of course,show that the defendant did not voluntarily waive this privilege. The requirement of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privileges and not simply a preliminary ritual to existing methods of i-nterrogation. Miranda at 1629.

IN WESTOVER V. UNITED STATES,the court held that on the facts of this case we can not find knowingly and intelligently waived his rights to remain silent and his right to consult with counsel prior to the time he made his statement, at the time the FBI agents began questioning Westover,he had bee3n in custody for over 14 hours and had been interrogated at length during that period the FBI interrogation began immediately upon the conclusion of the interrogation by Kansas City police and was conducted in local police headquarters. Although the two law enforcement authorities are legally distinct and the crimes for which they interrogated Westover was different,The impact on him was that of a continous period of questioning. There is no evidence of any warning prior to the FBI interrogation nor is there any evidence of an articulated waiver of rights after the FBI commenced its iterrogation. The records shows that the defendant did in fact confess a short time after being turned over to the FBI following interrogation by local police. Despite the fact that the FBI agents gave warnings at the outset of their interview,from Westover's point of view the warnings came at the end of the interrogation process. In these circu-mstances an intelligent waiver of constitutional rights can not be assumed. The record shows that the Petitioner was not given Miranda warnings until after he invoked his right to silenc-e.. Furthermore,Petitioner steadfast denial of the alleged offense through five interrogations in two days before confessing, and during the sixth interrogation in three days the Petitioner recanted his statements and claiming his innocence,but the agents did not accept Petitioner's claims of innocence. Six interro-gations over a period of three days and eighteen hours of in-terrogation is subject to no other construction than that he was compelled by persistent interrogation to forgo Fifth Ame-ndment privileges.

The Miranda court held "whenever the testimony of the au-thorities as to waiver of rights by an accused,the fact of l-engthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights. In these circumstances that fact that the individual eventually made a statement is consistent with the conclusion that the compelling influence of the interrogation

as to waiver of rights by an accused,the fact of lengthy interrogation or incommunicado incarceration before a statement is made strong evidence that the accused did not validity waive his rights. In these circumstances the fact that the individual eventually made a statement is consistent with the conclusion that the compelling influence of the interrogation finally forced him to do so. It is inconsistent with any notion of a voluntary relinguishment of the privilege." Id. 384 U.S. at 476.

In addition to the claim that the agents questioning violated Miranda,Petitioner contends that the statement was the product of an illegal arrest,that the statement was inadmissible because he had not been taken before a judicial officer without unecessary delay,and that it had been obtained through trickery and psychological coercion these circumstances,either independently or in combination,requires the suppression of his confession. BROWN V. ILLINOIS,422 U.S. 590,95 S.Ct. 2254,45 L.Ed. 2d 416. Which held there is no per se rule that Miranda Warnings in and of themselves suffice to cure a fourth Amendment violation involved ib obtaining inculpatory statements during custodial interrogation following a formal arrest on less than probable cause,and that in order to use such statements,the prosecution must show not only that the statements meet the Fifth Amendment voluntariness standard,but also the casual connection between the statements and the illegal arrest in light of the distinct policies and interest of the Fourth Amendment.

Brown identifies several factore to the consideration "in determination whether the confession is obtained by exploitation of an illegal arrest: (t)he temporal proximity of the arrest and the confession,the presence of intervening circumstances,and particularity,the purpose and the flagrancy of the official misconduct... And the burden of showing admissibility rest,of course,on the prosecution. Id. at 603-04,95 S.Ct. at 2261-62.

The situation in this case is virtually a replica of the situation in Brown. The Petitioner was seized without a warrant after confessing without being given Miranda Warnings,the statement was involuntary due to it being the product of coercion and promises of leinancy. The agents knew the confession would b suppressed so the agents intentionally made two statements to th Petitioner after he invoked his right to silence in the hopes that the Petitioner would in fact contact them and reconfess with the proper Miranda Warnings. Without the confession they would not get a conviction. The Petitioner confessed without any intervening events of significance. Nevertheless, the Court purportedly to distinguish Brown on the grounds thatthe questioning on September 9,2012 was different and did not involve false promises of leinancy (putting aside his illegal arrest) and that

the police conduct was highly protective of the Petitioner's Fifth Amendment rights. This betrays a lingering confession between "voluntariness" for purpose of the Fifth Amendment and the "casual connection" established in Brown. Satisfying the Fifth Amendment is only the "threshold" condition of the fourth analysis required by Brown. No intervening events broke the connection between Petitioner's illegal arrest and his confession To admit Petitioner's statements in such a case would allow "law enforcement to violate the Fourth Amendment with immunity,safe in the knowledge that they can wash their hands in the "procedural safeguards" of the Fifth Amendment.

As subsequent cases have confirmed,the exclusionary sanction applies to any "fruits" of a constitutional violation-whether such evidence be tangible,physical material actually seized in an illegal search,items observered or words over heard in the course of illegal activity,or confessions or statements of the accused obtained during an illegal arrest and detention. In the typical "fruits of the poisonous tree" case,however,the challanged evidence was acquired by the police after some initial Fourth Amendment violation,and the question is whether the chain of cassetion proceeding from the unlawful has been so attenuated or has been interupted by some intervening circumstances so as to remove the "taint" imposed upon the evidence by the original illegality.

The process was effected by the Petitioner's illegal arrest. In the language of the "time-worn metophor" of the poisonous tree,the toxin in this case was injected only after the evidence entiary bud blossomed;the fruit served of the September 9,2012 would not have occurred if the agents on September 8,2012,wouldn't of made two comments after Petitioner invoked his right to silence. Agent Fernandez testified at the suppressing hearing that the Petitioner had contacted them regarding the comments from the agents on September 8,2012,and not about the fire.

The supression or exclusionary rule is a judicially proscribed remedial measure and as "with any remedial device,the application of the rule has been restricted to those areas where it's remedial objectives are thought most efficaiously served." UNITED STATES V. CALANDRA,414 U.S. 338,348,94 S.Ct. 613,620,38 L.Ed. 2d 56 (1974). Under the Supreme Courts holding, the exclusionary rule reaches not only primary evidence obtained as a direct result of an illegality or search and seizure,WEEKS V. UNITED STATES,332 U.S. 383,34 S.Ct. 341,58 L.Ed. 652 (1914), but also evidence later discovered and found to be derivation of an illegality or "fruit of the poisonous tree." NARDONE V. UNITED STATES,308 U.S. 338,341,60 S.Ct. 266,268,84 L.Ed. 307 (1939). It extends aswell to the indirect as the direct products

of unconstitutional product. WONG SUN V. UNITED STATES,371 U.S. 471,484,83 S.Ct. 407,416,9 L.Es. 2d 441 (1963). Evidence obtained as a direct result of an unconstitutional search and seizure is plainly subject to exclusion. The question to be resolved when it is claimed that evidence subsequently obtained is "tainted" or is "fruit" of a prior illegality is whether the challanged evidence was "come at the exploitation of (the initial) illegality or instead by means sufficiently distinguishable to be purged of the primary taint." Id. at 488,83 S.Ct. at 417 (citations ommitted;emphasises added). The Supreme Court clear that evidence will not be excluded as "fruit" unless the illeagality is at least the "but for" cause of the discovery of the evidence. Suppression is not justified unless "the challanged evidence is in some sense the product of of illegal government activity. UNITED STATES V. CREWS,445 U.S. at 471,100 S.Ct. at 1250. The Petitioner's case falls in line with the "but for" line of cases,the Petitioner would not have contacted the agents on September 9,2012,"but for" if the agents would not have made two statements after the Petitioner invoked his right to silence. The Petitioner contacted the agents ONLY to address the comments the agents made. Agent Fernandez testified that the reason why the Petitioner contacted them,and that was the only reason why the Petitioner contacted them. The "fruits" of the involuntary confession carried over to the September 9,2012, interrogation. This case would be entirely different if it was "but for" the agents statements after Petitioner invoked his right to silence.

Elstad doesnot authorize admission of a confession repeated the question-first strategy. The contrast between Elstad and this case reveals relevant facts bearing on whether midstream Miranda Warnings could be effective to accomplish their object: the completeness and detail of the questions and answers to the first round of questioning,the two statrmrnts overlapping content,the timing and setting of the first and secound rounds, the continuity of police personel,and the degree to which the interrogator's questions treated the second as continuous with the first. In Elstad,the station house questioning could sensibly be seen as a distinct experience from a short conversation at home,and thus the Miranda Warnings could have made sense as presenting a genuine choice whethre to follow upon the earlier admission. Here, however,the unwarned interrogation was conducted in the Burn Unit at the hospital,and the questioning was exhaustive and managed by coercive tactics with promises of leinency. The warned phase proceeded after the Petitioner had iniated the contact only to address statements that was made by the agents after the Petitioner invoked his right to silence. The Petitionerspent a restless night in jail and intimidated by

the jail staff by tapping the bars every few minutes when th-ey checked on the Petitioner. The agents did bot advise Petitioner that his prior statement could not be used against him. These circumstances challanged the comprehensibility and efficacyof the Miranda Warnings to the point that a reasonable person in the suspect's shoes could not have understood them to convey a message that the retained a choice about continuning to talk.

The Seibert Court held: This case test a police protocol for custodial interrogation that calls for giving no warnings of the rights to silence and counsel until interrogation has produced a confession. Although such a statement is generally inadmissible,since taken in violation of MIRANDA V. ARIZONA, 384 U.S. 438,86 S.Ct. 1602,16 L.Ed. 2d 694 (1966),the interrogating officer follows in with bMiranda Warnings and then leads the suspect to cover the same grounds a second time. MISSOURI V. SEIBERT,542 U.S. 600,124 S.Ct. 2601 (2004). The question here is the admissibilit of the repeated statement. Because this recitation of warnings after interrogation and unwarned confession could not effectively comply with Miranda's constitutional requirement,the Supreme Court has held that a statement repeated after a warning in such circumstances is inadmissible.

The Seibert Court further held: that the circumstances here, where the interrogation was nearly continuous... the second statement,clearly the product of the invalid first statement should have been suppressed. The Court distinguished Estad on the grounds that warnings had not been intentionally withheld there,and reasoned that "Officer Hanrahans intentional ommission of a Miranda Warning was intended to deprive Seibert of the opportunity knowingly and intelligently to waive her Miranda rights,id.,at 706. Since there was "no circumstances that could seem to dispel the effect of the Miranda violation," the Court held that the post warning confession was involuntary and there inadmissible. To allow the police to acheive an "end run" around, Miranda,the Court explained,would encourage Miranda violations and diminish Miranda's role in protecting the privilege against self-incrimination.

IV. PETITIONER"S CHARACTERISTICS AND POLICE TACTICS

A. CONFLICTS WITH DECISIONS OF OTHER COURTS

The holdings of the Courts below that a suspects intellectual disability does not play a part in the voluntariness of a confession is directly contrary to the holding of one Federal Circuit. See UNITED STATES V. PRESTON*,751 F. 3d 1008 (9th Cir. 2014). In addition,The Supreme Court has held that implementing the bedrock constitutional value,the focus is on whether the defendant's will was overbourne by the circumstances surrounding both the characteristics of the accised and the details of the interrogation. UNITED STATES V. DICKERSON,530 U.S. 428,434,120 S.Ct. 2326,146 L.Ed. 2d 405 (2000).

B. importance of the QUESTIONS PRESENTED

This case presents a fundamental question of the interpretation of this Courts decision in UNITED STATES V. DICKERSON, 530 U.S. 428,434,120 S.Ct. 2326,146 L.Ed. 2d 405 (2000),and in the American Bars Association's Criminal Iustice Mental Health Standards. The question presented is of great public importance because a suspect with a intellectual disability will is easily overbourne to give a false confession.

The issues importance is enhanced by the fact that the lower courts in this case did not consider the Petitioner's intellectual disability makes him more likely to give a false confession.

The Due Process Clause of the Fourteenth AMendment forbids the admission of an involuntary confession in a criminal prosecutgion. MILLER V. FENTON,474 U.S. 104,109,106 S.Ct. 445,88 L.Ed. 2d 405 (1988). In deciding whether a confession was voluntary,Courts assess 'the totality of all circumstances-both the characteristics of the accused and the details of the interrogation." SCHNECKLOTH V. BUSTAMONTE,412 U.S. 218,226,93 S.Ct. 2041,36 L.Ed. 2d 854 (1973);see also WITHROW V. WILLIAMS, 507 U.S. 680,693-94,113 S.Ct. 1745,123 L.Ed. 407 (1993)(collecting relevant factors).The purpose of this test is to determine whether "the defendant's will was in fact overbourne." Miller, 474 U.S. at 116,106 S.Ct. 445.

The Petitioner was 32 years old with an IQ of 67,his con-

fession was the product of an illegal arrest and should have been suppressed. With the Petitioners mental limitations made him particularly susceptile to this psychologically manipulative interrogation. Many of the officers tactics appear to be drawn from the "Reid Techniques."

Its essence is the requirement that the state which purpose to convict andpunish individual produce the evidence against him by the independent labor its officers,not by the simple, cruel expedient offering it from his own lips.

Implementing this bedrock constitutional value,or focus is on "whether (the) defendant's will was overbourne by the circumstances surrounding the given of (the) confession," an inquiry that "takes into consideration the totality of all the surrounding circumstances-both the characteristics of the accused and the details of the interrogation." UNITED STATES V. DICKERSON,530 U.S. 428,434,120 S.Ct. 2326,147 L.Ed. 2d 405 (2000) (quoting SCHNECKLOTH V. BUSTAMONTE,412 U.S. 218,226,93 S.Ct. 2041,36 L.Ed. 2d 854(1973)) (internal quotation marks ommitted) (emphasis added).

Each of these factors,in company with all of the surrounding circumstances-the duration and conditions of detention (if the confessor has been detained),the manifest attitude of the police toward him,his physical and mental state,the diverse pressures which sap or sustain his powers of resistance and self-control-is relevant." Colombe,367 U.S. at 602,18 S.Ct. 1860;see also WITHROW V. WILLIAMS,507 U.S. 680,693-94,113 S.Ct. 1745,123 L.Ed. 2d 407 (1993). Thus,voluntariness inquiry" is not limited to instances in which the claim is is that the police conduct was inherently coercive,MILLER V. FENTON,474 U.S. 104,110,106 S.Ct. 445,88 L.Ed. 2d 405 ((1985) (quoting Aschraft v. Tennessee,322 U.S. 143,154,64 S.Ct. 921,88 L.Ed. 1192 (1944)),but "applies equally when interrogation techniques were improper only because, in the particular circumstances of the case,the confession is unlikely to have been the product of a free and rational will." Id. (citing MINCEY V. ARIZONA,437 U.S. 385,401,98 S.Ct. 2408, 57 L.Ed. 2d 290 (1978)). Ultimately,the voluntariness "determination depends upon a weighing of the circumstances of pressure against the power of resistance of the person confessing." Dickerson,530 U.S. at 434,120 S.Ct. 2326 (quoting STEIN V. NEW - YORK,346 U.S. 156,185,73 S.Ct. 1077,97 L.Ed. 1522 (1953).

The principles have particular application where,as here,

The individual interrogated is of usually low intelligence." what would be over power to the weak of will or minded might be utterly ineffective against an experianced criminal." Stein, 346 U.S. at 185,73 S.Ct. 1077. So,although low intelligence does not categorially make a confession involuntary,it is " relevant in establishing a setting" in which pokice coercion may overcome the will of a suspect. PROCUNIER V. ATCHLEY,400 U.S. 446,453-54,91 S.Ct. 485,27 L.Ed. 254 (1971). The American Bar Associate's Iustice Mental Health Standards summerizes this point wll: Official conducts that does not constitute impermissible coercion when employed with non disabled persons may impair the voluntariness of the statements of persons who are mentally ill or cognatively disabled." ABA Criminal Iustice Mental Health Standards,standard 7-5.8(b). Similarly,the Seventh Circuit observed that "a finding of involuntariness cannot be predicated solely upon "the defendant's mental state,but "this mental state is relevant tothe extent it made him more susceptible to mentally coercive police tactics. SMITH V. DUCKWORTH,-01- F. 2d 1492,1497(7th Cir. 1990) (quoting internalquotation marks ommitted). In each case,the state courts and the district court did not consider the Petitioner's low intelligence when determining the voluntariness of his statements.

DOODY V. RYAN,649 F. 3d 986 (7 th Cir. 2011). (en banc),the Court provides guidance for carring out the multivariate inquiry essential to the voluntariness inquiry: The Courts may not "tick of the list circumstances rather than actually considering them in their totality." Id. at 1101. So it is not enough for Courts to "list the circumstances of an interrogation seperately on a piece-meal basis. Id. (internal quotation marks ommitted"). Courts must "weigh,rather than simply list,"the relevant circumstances,and weighn them not in the abstract but "against the power of resistance of the person confessing." Id. at 1015-16 (internal quotation marks ommitted).

In considering the Petitioner's reduced mental capacity, "a factor that is "critical because it may render him more susceptible to subtle forms of coercion. N. MARIANA ISLAND V. MENDIOLA,976 F. 2d 475,485 (9th Cir.1993),overruled on other grounds by GEORGIA V. CAMACHO,719 F. 3d 1393 (9th Cir. 1997) (en banc).

Petitioner was 32 years old,with an IQ of sixty-seven. The agents learned early in the investigation that Petitioner suffered from some sort of a cognative disability. Fire Marshal William Boswell requuested a Special Inspection Warrant be issued, Agent Boswell's reasoning for the Special Inspection Warrant

"consent was provided by the adult male to conduct the fire scene examination. However it was reported that the adult male may have cognative disabilities that may impair his abilityn to provide consent with a full understanding of his constitutional rights." The Special Inspection Warrant was issued on September 7,2012 9:15 a.m. This request was made and granted 2 days before his inculpatory statement following his illegal arrest. And now the state contends that the Petitioners confession is voluntary with a full understanding of his Miranda eights. The state can not have it both ways. The agents was aware of the Petitioner's intellectual disability so they took advantage of the Petitioner by coercing the Petitioner with promises of leinancy to get him to confess to a crime that he did not commit without Mirandizing hum until after he had invoked his right to silence. So then knowing about the Petitioner's intellectual disability the agents made two statements to the Petitioner knowing he would want to respond. The state should not profit from the police misconduct.

Dr. White pointed out in his report "Armin's school and test records document poor acheivement and low levels of intelligence from the begining and throughout his educational career. In November of 2012,licensed psychologist Kent Berney administered the Wechsler Adult Intelligence Scale IV (WAIS-IV) to Armin. The WAIS is a widely-used,standardized measureed of intelligence. Armin scored at the 3rd percentile on the verbal comprehension portion of the test. The portion measures one's ability to understand and use language,engage in abstract reasoning,and from concepts. A score at the 3rd percentile is borderline mentally retarded. Dr. Berney found that Armin's full scale IQ score on the WAIS was 67,3 points lower than the conventional cutt-off score for mentally retardation. He also concluded with Armin's limited psychological resources made it difficult for him to make "an informed decision regarding whether to voluntarily proceed with an interview." Dr. Thompson found that Armin scored very high on both the Gudjosson compliance scale. and the Gudjosson suggestibility score. Dr. Thompson also said in his report those high scores, "siggest that he possess a very high level of eagerness to please and tendacy to avoid conflict and confrontation in the pressence of authority figures,and suggest that under such circumstances he may be prone to comply with request and obey with instructions that he would ordinarily reject." Dr. Thompson further concluded that,"(Armin) is a very suggestible individual,appears to be quite qauiescent,and describes characteristics that are often with individuals who are very compliant withpersons in authority over them even when

when they are aware of the inaccuracy of statements that they make." Dr. White summed it up well. There is ample evidence that Armin Wand IIIpossesses low intelligence is borderline mentally retarded,is highly suggestible and acquiescent,and is usually compliant to authority.

Summerizing the evidence regarding how the intellectually impaired responded to contemporary police interrogation methods, several scholars have listed." Seven common characteristics " of such people,including (1)"unusual susceptibility to the p- erceived wishes of authority figures";(2)"a generlized desire to please";(3)difficulty "discern(ing) when they are in an a- dversial situation,especially with police officers,who they are generally are taught exist to provide help;(4)"incomplete or immature concepts of blameworthiness and culpability";(5) "(d)eficits in attenion or impulse control";(6)"inaccurate views of their own capacities";and (7)"a tendacy not to identify them- selves as disabled "and to "mask to their ilimitations."Morgan Clourt etal.,Words without meaning: The Constitution,Confessions and Mentally Retarded Suspects,69 U. Chi-L. Rev. 495,511-13 (2002) .These scholars pronounced it "now... beyond reasonable dispute" that the ABA was correct in stating "that the increased vulnerability of a mentally disabled suspect,and his or her naive,ignorance,confusion,suggestibility,delusional beliefs, extraordinary suggestibility to pressure,and simalar consider- ation may make it possible for law enforcement officers to i- nduce an involuntary statement by using techniques that would be accepted in cases involving mentally typical suspects. "Id. at 509 (internal quotation marks and citations ommitted). As a result of these trails,"mentally disabled individuals... are... long known to be vulnerable to coercion." Brandon L. Garrett. The substance of False Confessions,62 Stan L. Rev. 1051,1064 (2010). The Supreme Court has so long recognized,noting that "mental condition is surely relevant to an individuals susxe- ptibility to police coercion." Connelly,479 U.S. at 165,107 S.Ct. 515.

As the Supreme Court pointed out in Miranda,most police officers have been trained in psychologically techniques des- igned to induce confessions from reluctant suspects. 384 U.S. at 448-59,86 S.Ct. 1602. "As interrogators have turned to more subtle forms of psychological persuasion," and away from physical coercion, "Courts have found the mental condition of the defendan a more significant factor in the voluntariness calculus" Conn- elly,479 U.S. at 164,107 S.Ct. 515. It simply "takes less" in terms of sophisticated police interrogation techniques to "i- nterfere with the deliberative process of one whose capacity for rationale choice is limited that it takes too effect the deliberative process of one whose capacity is not so limited."

Smith,910 F. 2d at 1497. The Court must be mindful to protect the constitutional rights of all members of society,not just those of normal intelligence and cognative functioning.

V. PETITIONER"S CONFESSION IS NOT RELIABLE

A. CONFLICTS WITH DECISIONS OF OTHER COURTS

The holding of the Courts below that habeas relief cannot be granted on this claim because there is no controlling Supreme Court precedent condemning the interrogation techniques used by the agents or requiring that a confession's reliability be considered when deciding whether it must be dsuppressed under the Due Process Clause is directly contrary to the holding of One Federal Circuit. See PEA V. UNITED STATES,397 F. 2d 627 (D.C. Cir. 1968) (en banc). In addition the ABA Standards for Criminal Ilustice advise prosecutors the evidence presented at trial is worthy of reliability and credibility: Standard 3-5.6 Presentation of Evidence(a) A prosecutor should not knowingly offer false evidence,whether by dociments,tangible evidence, or the testimony of witnesses,of fail to seek withdrawal thereof upon its discovery of its falsity.

B. IMPORTANCE OF THE QUESTION PRESENTED

The case presents a fundamental question of the interpretation of this Court's decision in UNITED STATES V. DICKERSON, 530 U.S. 428,434120 S.Ct. 2326,146 L.Ed. 2d 405 (2000_..The question presented is of great public importance because it effects the judicial process in all 50 States. In view it says prosecutors can charge and convict a defendant based on his confession without any independent evidence to corroborate what the suspect confessed too,guidance on this question is of great importance to defendants,because it effects their ability to receive a thorougho investigation and a fair trial that may result in many innocent defendants being convicted based sole on their false and unreliable confessions.

Its essence is the requirement that the State which purpose to convict and punish an individual to produce the evidence against him by the independent labor of its officers,not by the simple,cruel expedient of forcing it from his own lips. The Petitioner argues that the evidence was constitutionally insufficient to establish essential elements of the crime charged. Specifically Petitioner contends that the government failed to introduce sufficient evidence to prove that he committed any crime. It is evident that a fire at Petitioner's home occurred but the lack of evidence of accellerant to prove that it was arson is insufficient.

The DOUBLE Jerpardy Clause of the Fourteenth Amendment provides that no person shall "be subject for the same offense to be twice put in jerpardy." "It has long be settled,however, that the double jerpardy Clauses general prohibitation against successive prosecutions does not prevent the government from retrying a defendant who succeeds getting his first conviction set aside,through direct appeal or collateral attack,because of some error in the proceedings leading to conviction." LOCKHART V. NELSON,488 U.S. 33,38,109 S.Ct. 285,102 L.Ed. 2d 265 (1988). But the Supreme Court has recognized an exception to the government's right to retry a defendant without offending the Double Jerpardy Clause where the conviction is overtutned for insufficient evidence. BURK V. UNITED STATES,437 U.S. 1, 11,98 S.Ct. 2141,57 L.Ed. 2d 1 (1978). This exception recognizes that the "Double Jerpardy Clause forbids a second trial for the purpose of affording the prosecutor another opportunity to supply evidence which it failed to muster in the first proceeding."

The Court held in pre-Miranda cases that a conviction can not rest on defendants oput-of-court statements made subsequent to the crime,whether inculpatory,unless the government produces substantial independent evidence which would tend to establish the trustworthyness of the statement. OPPER V. UNITED STATES, 348 U.S. 84,92-93,75 S.Ct. 158,99L.ed. 101 (1954);SMITH V. UNITED STATES,347 U.S. 147,155-56,75 S.Ct. 194,99 L.Ed. 192(1954); UNITED STATES V. CALDERON,348 U.S. 160,75 S.Ct. 186,99L.Ed. 202 (1954). The Court explained that the purpose of the rule, which stemmed from common law,is to prevent "errors in conviction s based upon untrue confessions alone,"Smith,348 U.S. at 153, 75S.Ct. 194 (quoting WARZOWER V. UNITED STATES,312 U.S. 342, 347,61 S.Ct. 603,85 L.Ed. 876 (1941)),and that the rule is supported by a "long history of judicial experience with confessions and (by) the realization that sound law enforcement

requires police investigations which extends beyond the words of the accused." Id. Confessions,it was thought,may be unreliable because of coercion or inducement and,although involuntary confessions are excluded from the jury,a seperate corroboration rule is still necessary. That's because voluntary statements may be unreliable if "extracted from one who is under the pressure of police investigation-whose words may reflect the strain and confession attending his predicament rather than a clear reflection of his past." The Court noted empirical evidence of "false confessions voluntarily made." Smith,348 U.S. at 153, 75 S.Ct. 194;Opper,348 U.S. at 88,75 S.Ct. 158.As the governing Supreme Court opinions,no defendant can be convicted on the basis of an uncorroborated out-of-court statement,whether the statement is used by the prosecution to prove a formal element of the crime charged or a fact subsidiary to proving an element of the crime. See Smith,348 U.S. at 155,75 S.Ct. 194.

It is axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is found,in whole or in part,upon an involuntary confession,with regard for the truth or falsity of the confession,ROGERS V. RICHMOND,365 U.S. 534,81S.Ct. 735,5 L.Ed. 2d 760.

The State argues that the Petitioners confession is corroborated by the confessions of Ieremy Wand,that's because Petitioner's and Ieremy Wand's confessions "interlock" on some points,the Petitioner's confession should be deemed trustworthy in its entirety. Obviously,when co-defendants confessions are identical in all material respects,the likelihood that they are accurate is significantly increased. But a confession is not necessarily rendered reliable simply because some of the facts it contains "interlock"with the facts in the defendants statements. See PARKER V. RANDOLPH,442 U.S. 62,79,99 S.Ct. 2132, 2142,60 L.Ed. 2d 713 (1979) (BLACKMAN,I.,concurring in part and concurring in judgment). The true danger inherent in this type of hearsayis,in fact,its selective reliability. As the Supreme COURT consistently recognized,a co-defendants confession is presumptively unreliable as to the passage dealing with the defendant's conduct or culpability between those passages may well be the product of the co-defendant's desire to shift or spread blame,curry favor,avenge himself,or divert attention to another. If those portions of the co-defendants purportedly "interlocking" statement which bear to any significant degree on the defendant's participation in the crime are not thorougly substantiated by the defendants own confession. The admission of the statement poses a threat to the accuracy of the verdict. In other words,when the descrepancies between the statements are not in significant,the defendant and co-defendant may not

be admitted.

In this case,the Petitioner's and Jeremy Wand's confession's are consistent only where they have been contaminated. However, Petitioner's and Jeremy Wand's confession's is inconsistent with each other and other evidence in major aspects.

A. To explain the time gap between the time Jeremy suspposedly first arrived at the house at around midnight,and the time of the fire around 3 a.m.,Petitioner said that he and Jeremy sat at the dining room table and talked about how they set fire. They talked until 3 a.m.

B. Jeremy said that when he arrives,he sat in the recliner in the living room and the Petitioner sat on the futon while Petitioner tried convincing him to start fire until around 2 a.m.

C. Petitioner said that Jeremy started the first fire between the futon and the T.V.,the second fire at the computer, Petitioner started a third fire on the futon and Jeremy started a fire on the couch. Petitioner said they moved the fire around with a stick taken from the fire pit outside. They passed the stick back and forth. Petitioner moved the fire from the T.V. to the futon with a stick.

D. Jeremy said the only fire he started were at the T.V. and the computer. He said the Petitioner might have started a fire near the chair and the table in the living room. He did not mention using any stick. He did not mention starting any fires on the couch or futon.

E. Neither men mentioned starting a fire in the northwest bedroom where fire inspector Boswell believed a second fire was started.

F. On September 9,2012,Petitioner confessed to try to put (J.W.) back in the house through the window in the northwest bedroom. During the first interviews Petitioner denied ever having(J.W.) special agents insisted he was lying because they said a neighbor saw him taking(J.W.) out of the wiodow in the northwest bedroom. Petitioner pointed out that(J.W.) had not been in that room. However,after agents kept insisting he did not have (J.W.) and suggested that he might be lying because he was really trying to put (J.W.) back in to the house,Petitione finally said that his wife,Sharon,handed (J.W.) to him and he handed her to a neighbor. During his last interview he said he tried to put (J.W.) into the window. However,On October 25,201 Sharon Wand said that she carried (J.W.) out of the house and handed her to the neifhbor,she denied that she ever gave (J.W.) to Petitioner.

Petitioner's and Jeremy's statements did not confirm each other. The subjects upon these two confessions do not "interlock" can not in any way be characterized as irrelevant. The descrepancies between the two to the very issues in dispute. The fact that there exist insufficient "indicta of reliability," following from either the circumstances surrounding the confession or the "interlocking" character of the confessions, to overcome the weighty presumption against the admission of such unreliable evidence that a co-defendants inculpating the accused inherently unreliable and, the convictions supported by such evidence the constitutional rights of the Petitioner.

A system of criminal law enforcement which comes to depend on the "confession" well, in the long run, be less reliable and more subject to abuse than a system relying on independent investigation. MICHIGAN V. TUCKER, supra, 417 U.S. at 448 n. 23, 94 S.Ct. at 2366 n. 23 (quoting ESCOBED V. ILLINOIS, 378 U.S. 478, 488-89, 84 S.Ct. 1758, 1763-64, 12L.Ed. 1977 (1964)). By bracing against "the possibility of in-custody interrogation," Miranda, servers to guard against "the use of unreliable statements JOHNSON V. NEW JERSEY, 384 U.S. 719, 730, 86 S.Ct. 1772, 1779, 16 L.Ed. 2d 882 (1966). see also Schneckloth, 412 U.S. at 240, 93 S.Ct. at 2054.

The Petitioner's due process rights were violated due to police misconduct when taking a false confession and the prosecutor knowingly introduced false evidence in violation of the Fifth and Fourteenth Amendment to the U.S. Constitution. The evidence was insufficient to convict the Petitioner because the state failed to show the existence of the Corpus Deliciti of the charged crimes outside the confession and failed to establish the trustworthiness of the confession in violation of the Fourteenth Amendment.

The Supreme Court, as long ago as MOONEY V. HOLOHAN, 294 U.S. 103, 112, 55 S.Ct. 340, 79 L.Ed. 793 (1935, stated that deliberate deception of a court by the presentation of false evidence is incompatible with "redimentary demands of justice." This was reaffirmed in PYLE V. KANSAS, 317 U.S. 713, 63 S.Ct. 177, 87 L.Ed. 214 (1942).

The descrepancies, along with the fact that the details of Petitioner's confession charged several times and Petitioner returned to his claims of innocence, but the agents refused to accept his claims of innocence, leaves questions about such a confession could be made, much less be considered reliable.

There are three important decision points in the interrogation process to analyse to understand the cause of a false confession. The first decision point in the police decision to classify someone as a suspect. This is important because police only interrogate individuals who they first classify as a suspect, police interview witnesses and victims. There is a big difference between interrogation and interviewing: unlike interviewing, interrogation is accusatory, involves the application of specialized psychological interrogation techniques, and the ultimate purpose of an interrogation is to get an incriminating statement from someone whom police believe to be guilty of the crime. **False confessions only occur when police misclassify an innocent suspect as guilty and then subject him to a custodial interrogation. This is one reason why interrogation training manuals implore detectives to adequately investigate their case before subjecting any potential suspect to an accusatorial interrogation.**

The second important decision point in the process occurs when the police interrogate the suspect. As mentioned above, the goal of police interrogation is to elict a voluntary incriminating statement from the suspect by moving him from denial to admission. To accomplish this, police use psychologically persuasive, manipulative and deceptive interrogation techniques. As described in detail in the previous section, police interrogators use these techniques to accuse the suspect of committing a crime, persuade him that he is caught and that the the case evidence overwhelmingly establishes his guilt, and the induce him to confess by suggesting it is the best course of action for him. **properly trained police interrogators do not use physical or psychologically coercive techniques because they may result in involuntary and/or unreliable incriminating statements, admissions and/or confessions.**

No investigation was done into the possibility of Petitioner being involved other than police taking as true the Petitioners and Jeremy Wand's confessions. Such lack of police investigation before the interrogations led to the corrupted investigation. Which nothing either defendants said was varified.

If the suspect is innocent, the detectives can use the suspect's post-admissions narratives to establish his lack of knowledge and thus demonstrates his likely or certain innocence. **Whereas a guilty suspect can corroborate his admission because because of hjis actual knowledge of the crime, the innocent suspect can not. The more information the interrogator seeks, the more frequently and clearly an innocent suspect will demonstr-**

ate his ignorance of the crime. His answers will turn out either to be wrong,to defy evaluation,or take of no value for discriminating between guilt and innocence.Assuming that neither the investigator nor the media have contaminated the suspect by transferring information about the crime facts,or that the extent of contamination is unkown,the liklihood that his answers will be correct should be no better than chance. Absent contamination,that only time an innocent person will contribute correct information is when he makes an unlucky guess. The liklihood for an unlucky guess diminishes as the number of possible answers to an investigators questions grows large. If, however,his answers about missing evidence are proven wrong, he can not supply varifable information that should be known to the perpertrator,his inaccuratelydescribes varifable crimes facts,the post-admission narrative provides evidence of innocence.

Law enforcement uncovered absolutely no evidence from the "confession" On September 8,2012,Jeremy Wand was being interrogated for several hours approximately 3:30 a.m.,the tape recorder was abruptly turned off by by Agent James Pertzborn,with no explanation of why or what will happen next. The tape recorder was off for approximately 1½ hours before it resurfaced in the middle of Jeremy Wand confessing to assisting in starting the fire. We can imagine what happened in that 1½ hours of darkness. In sum,a handful of interrogators put Jeremy Wand through the emotional wringer,intimidating him,pressured him,refused to accept his account (from he strays not all he seems to accept the possibility that he may have did something but doesn't remember). Jeremy Wand has not slept for nearly 24 hours. Apparently has eaten little or nothing. He says he's tired. One or two of his interrogators says Jeremy is tired. The interrogators appear to be frustrated,and they interrogate really intensly. One of the most psychologically coercive interrogaions i have heard. (quoting Dr. White's report). SA Pertzborn and Boswell in particular show signs of extreme tunnel vision,convinced that Jeremy is guilty and willing to wring it out of him.

The prosecution as a representative of the people,must zeoloisly prosecute cases while also upholding justice. BERGER V. UNITED STATES,295 U.S. 78,55 S.Ct. 629,79 L.Ed. 1314 (1935)/ In that endeavor,must not present evidence it knows to be false but must ensure that the record is corrected when a prosecutor learns the evidence is false. See NAPUE V. ILLINOIS,360 U.S. 264,79 S.Ct. 1173,3 L.Ed. 1217 (1954). The reason is to ensure a fair verdict from the factfinder,whether judge or jury;on worthy of reliability and finality."Alie is a lie no matter what its subject,and,if it is any way relevant to the case,the district attorney has the responsibility and duty to correct

what he knows to be false and elict the truth... that the district attorney's silence was not the result of guile or a desire to prejudice little,for itll impact with the same,preventing, as it did,a trial that could in a real sense be termed fair." Id. at 269-70,79 S.Ct. 1173. The district attorney's obligation is to ensure the evidence presented has indica of reliability. The source of that evidence is irrelevant if the evidence is wrong,even if that evidence is a confession. See FONTENOT V. ALLBAUGH,402 F. SUPP. 3d 110 (E.D. OK. 2019).

Here,the state failed to sufficiently independent evidence of the corpus delicti of the charged crime intentional homicide and arson in order to admit Petitioner's confession in to evidence.

VI. MOTION TO STAY PROCEEDINGS

On January 21,2021,Attorney Patricia Fitzgerald sent a letter to Petitioner,the letter states: "Few days ago,I got a call from Shannon,the sister of Sharon's current boyfriend. She said that Sharon and her boyfiend are living in Mauston. In November,there was a fire in there trailor while they were asleep. Everything was destroyed. Shannon is suspicious that Sharon set the fire." "Shannon also said just recently there was another fire at the apartment they are living in."

This new information would provide newly discovered evidence, and establish the Petitioner's actual innocence,and provide reasonable doubt if this new evidence is put in front of a jury with all the other evidence. On February 11,2021,the Petitioner sought to stay the proceedings to return to the state court with this new evidence after the district court rendered its decision and before the Seventh Circuit decision to deny a certificate of appealability. On March 15,2021,the Seventh Circuit denied to issue a certificate of appealabilityand denied the motion to stay the proceedings.

The newly discovered evidence undermines the prosecutor's case and provides solid proof of Petitioner's actual innocence. **"Actual innocence" is established if petitioner presents "new facts that that raise sufficient doubt about the the petitioner's guilt to undermine confindence in the result of trial..."** SCHLUP V. DELO,513 U,S, 298,317,115 S.Ct. 851,130 L.Ed. 2d 808 (1995) (emphasis added). To establish the requisite probility,the Petitioner must show that it is more likely than not no reasonable

juror would have convicted in light of the new evidence. Id. at 327 ,115 S.Ct. 851;see also HOUSE V. BELL,547 U.S. 518,538, 126 S.Ct. 2064,165 L.Ed. 2d 1 (2006) (a federal court presented with Schlup claim "must make "a probabilistic determination about what reasonable,properly instructed jurors would do.") Once a federal court makes such a finding,a gateway claim of innocence exist removing any procedural obstacles allowing the substantive review of Petitioner's claim. See House,547 U.S. at 536-537,126 S.Ct. 2064;CASE V. HATCH,731 F. 3d 1015,1036 (10th Cir. 2013). The newly discovered evidence establishes Petitioner's actual innocdnce and merits the removal of any procedural hurdals.

Numerous jurisdictions have found that to prevent a manifest injustice of continuing to incarcerate one who is actually innocent ,a number of procedural defects will be waived. See KEENEY V. TAMAYO-REYES,504 U.S. 1,11-12,112 S.Ct. 1715,118 L.Ed. 2d 318 (1992) (actual innocence trumph failure to develop facts in state court);LOPEZ V. TRANI,628 F. 3d 1228,1230-31 (10th Cir. 2010) (actual innocence is an exception to procedural barriers in a petitioner's case including statute of limitations) see also LEE V. LAMBERT,653 F. 3d 929,932 (9th Cir. 2011) (allowing actual innocence cases to receive substantive review despite being time-barred);JONES V. STATE,591 SO. 2d 911,915-16 (Fla. 1991) (permitting actual innocence based on new evidence in a writ of error coram nobis). In re Clark,5 Cal. 4th 750, 21 Cal. rptr. 2d 509,855 P. 2d 729,760 (1993) (claims of factual innocence based on newly discovered evidence permitted at any time regardless of delay or or failure to raise claim previously) SUMMERVILLE V. WARDEN,229 Conn. 397,442,641 A. 2d 1356 (Conn. 1994) (allowing state habeas corpus petition on newly discovered evidence of innocence even with other procedural problems);PEOPLE V. WASHINGTON,171 Ill. 2d 475,489,216 Ill. Dec. 773,665 N.E. 2d 1330 (Ill. 1996) (procedures due process allows newly discovered evidence of innocence at any time);exparte eltzondo, 947 S.W. 2d 202,205 (Tex. Crim. App. 1996) (permitting a claim of actual innocence action in the interest of justice). While Petitioner is pursuing his habeas corpus petition the Court of Appeals abused its descretion by denying to stay the proceedings to allow the Petitioner to pursue the newly discovered evidence,To constitute newly discovered evidence the movant must show that the evidence: (1) will probably produce a differer result or verdict,(2) has been discovered since trial and could have been discovered before trial by the exercise of due diligence,(3) is material to the issue,and (4) is not merely cumulative or impeaching.

Sharon Wand is connected to four residential fires,if this new evidence is presented to the jury no jury would convict

the petitioner beyond a reasonable doubt.

AEDPA does not deprive district courts of authority to stays that are proper exercise of that descretion,but it does circmscribe that descretion. Any solution to this problem therefore must be compatible with AEDPA's purpose. Staying a federal habeas petition frustrates AEDPA's objective of encouraging finality of state court judgments by allowing a petitioner to delay the resolution of the federal proceedings,and it undermines AWDPA's goal of streamlining federal habeas proceedings by decreasing a petitioner's incentive to exhaust all his claims in state court before filing his federal petition. Thus,stay and abeyance should be available only in limited circumstances. Because granting a stay effectively excuses a petitioner's failure to present his first to the state courts,stay and abeyance is only appropriate when the district court determines there was good cause for the petitioner's failure to exhaust his claims. Even if good cause existed,the district court would abuse its descretion if it granted a stay when the unexhausted claims are plainly meritless. Where stay and abeyance is appropriate the district court's descretion is still limited by AEDPA's timelines concerns. If a district court does not place reasonable time limits on a petitioner's trip to state court and back,Petitioner,especially capitol petitioners,could frustrate AEDPA"S finality goal by dragging out indefinitely their federal habeas review. And if a petitioner engages in abusive litiggtion tactics or intentionally delay,the district court should not grant a stay at all. On the other hand,it would likely be abusive of descretion for a district court to deny a stay and dismiss the a mixed petition if the petitioner had good cause for his failure to exhaust,his unexhausted claims are potentially meritious, and there is no indication that he engaged in intentionally dilatory litigation tactics. Such a petitioner's interest in obtaining federal review of his claims outweighs the competing interest finality and speedy resolution of federal petitions.

In attempt to resolve the problem,some circuits have adopted a version of the "stay and abeyance" under the procedure,rather than dismiss the mixed petition pursuant to Lundy,a district court might stay the petition and hold it an abeyance while the petitioner returns to state court to exhaust his previously unexhausted claims. Once the petitioner exhaust his state remedies. The district court will lift the stay and allow the petitioner to proceed in federal court.

The prosecutor's knowingly use of false confessions involves not "just" prosecutorial misconduct but "more importantly,(the) corruption of the truth sekking function of the trial process."

DOUGLAS V. WORKMAN,560 F. 3d at 1191 (citing UNITED STATES V. AGURS,427 U.S. 97,104,96 S.Ct. 2392,49 L.Ed. 2d 342 (1976). Further,it was the prosecutors conduct in this case in taking affirmative action.

VII EVIDENTIARY HEARING

To be entitled to evidentiary hearing,Petitioner must also demonstrate that the state courts,for reasons beyond his control, never considered his claims in a full and fair hearing. DAVIS V. LAMBERT,388 F. 3d 1052 (7th Cir. 2004). If a state routinely imposes a procedural bar on those claims which are being exhausted,the exhausted requirement may be bypassed. See DUCKWORTH V. SERRANO,454 U.S. 1,3,102 S.Ct. 18,70 L.Ed. 2d 1 (1981) ("An exception is made only if there is no opportunity to obtain redress in state court,or if the corrective process is so clearly deficient as to render futile an effort to obtain relief");COLEMAN V. THOMPSON,501 U.S. 722,735 n. 1,111 S.Ct. 2546,115 L.Ed. 2d 640 (1991);HARRIS V. REED,489 U.S. 255,269,109 S.Ct. 1038,103 L.Ed. 308 (1989). The issues not being fully perserved may have been because,despite the petitioner requesting an evidentiary hearing at every step in state court the petitioner was denied. The Supreme Court has held a federal habeas court must conduct an evidentiary hearing if: (1) the merits of the factual dispute were not resolved in the state hearing;(2) the state factual determination is not fairly supported by the record as a whole;(3)the fact-finder procedure employed by the state court was not adequate to afford a full and fair hearing;(4)there is a substantial allegation of newly discovered evidence;(5)the material facts were not adequately developed at the state court hearing;or (6)for any reason it appears that the state trier fact did not afford the habeas applicant a full and fair fact hearing.

An adequate and independent finding of procedural default will bar federal habeas review of the federal claim,unless the habeas petitioner can show cause for the default and prejudice attirbutable thereto,or demonstrate that failure to consider the federal claim will result in a fundamental misscarriage of justice. The Supreme Court has held that "a failure to develop the factual basis of a claim is not established unless there is a lack of diligence,or some greater fault,attributable to the prisoner or the prisoners counsel." WILLIAMS V. TAYLOR,527 U.S. at 432,120 S.Ct. 1479. "Diligence for purposes of the opening clause depends upom whether the prisoner made a reasonable attempt,in light of the information available at the time,to investiggte and pursue claims in state court;it does not depend.. upon whether those efforts could have been successful." Id.

at 435,120 S.Ct. 1479;BOYKO V. PARKE,259 F. 3d 781,791 (7th Cir. 2001) ("the court empasised that the focus ought to be on whether the petitioner was diligent in his efforts to develop the facts,not on whether the facts were discoverable."). The Court further explained that "(d)iligence will require in the usual case that the prisoner,at a minimun,seek an evidentiary hearing in state court in the manner prescribed by state law" Williams,529 U.S. at 437,120 S.Ct. 1479. In the Petitioner's post-conviction motion he had requested an evidentiary hearing to consider evidence that the petitioner presented with his post-conviction motion. On April 15,2015,a scheduling conference was held the Court asked Appellate Counsel what the defendant is asking for. "I have reviewed the motion and the supporting reports here from Mr. Beiver. From Mr. Thompson-or Dr. Thompson and Dr. White on one those issues,and are you asking for an evidentiary hearing that the Court would listen to those individuals directly as to their findings,or are you asking me to consider their reports? What are you requesting at this point?" Ms. Fitzgerald: "I would request a hearing so that the court could hear the experts expand on their reports and i assume that the state would would also want to cross-examine them." On May 26,2015,the court denied petitioner's post-conviction motion without an evidentiary hearing. The Petitioner appealed and again requested an evidentiary hearing and the Wisconsin Court of Appeals affirmed the trial courts decision without an evidentiary hearing. The Petitioner filed a petition for review with the Wisconsin Supreme Court,which denied the petition for review. The Petitioner is not responsible for failing "to develop the the factual basis of his claims in state court" under §2254 (e)(2). According to Williams,"the relevant inquiry is... not simply whether the petitioner theoretically could have discovered the evidence while he was still in the state forum,but whether he made appropriate efforts to locate and present the evidence to the state courts." Hampton,347 F. 3d at 240 (citing Williams, 529 U.S. AT 435,120 S.Ct. 1479). It is not reasonable to characterize Petitioner's efforts as less diligent. Petitioner repeatedly implored his trial attorney's the state trial court, the state post-conviction court to assist him in obtaining an evidentiary hearing,Petitioner's appellate counsel attempted to seek an evidentiary hearing in the Wisconsin Court of Appeals and was denied every step. As the Supreme Court previously observed,the requirements under §2254(e)(2) that a petitioner develop the factual basis of a claim should not bar him from obtaining an evidentiary hearing on habeas corpus review,when the basis of his claim his counsel's failure to develop the record below. See Matheney,253 F. 3d at 1039 ("Justice dictates that a hearing on whether counsel was constitutionally deficient in failing to establish Petitioner's competency to stand trial cannot be barred because by counsel's failure to secure a hearing and develop a record-the very product of the alleged ineffectiveness."). Indeed,it would defy logic to deny Petitioner an evidentiary hearing on whether the Petitioner's September

9,2012, statement should have been suppressed due to Petitioner's characteristics violated his constitutional rights that he did not fully present his claims in state courts.

The Petitioner has satisfied the first requirement for an evidentiary hearing under the pre-AEDPA standard.in that he has alleged facts which, if proved, would entitle him to relief. As to the second requirement.that "State Courts-for reasons bevond the control of the petitioner-never considered the claims in a full and fair hearing." Mathenev.225 F. 3d at 1039. Petitioner has met this requirement.as he never received a "full and fair hearing on his claims.the petitioner did everything he was able too to develop the factual basis of his claims in the court proceedings. As Petitioner adequately developed the material facts of his claims, he need not show cause and prejudice as a prerequisite for obtaining an evidentiary hearing. See Id. (requiring no showing of "cause and prejudice" as under pre-AEDPA standards for federal evidentiary hearings and finding §2254(e)(2) inapplicable because petitioner did not "fail to develop" his claim);cf. SPREITZER V. SCHOMIG, 219 F. 3d 639,648 (7th Cir. 2000) ("under pre-AEDPA law,if a petitioner has failed to adequately develop material facts in previous state court proceedings,the Courts apply the "cause and prejudice" standard to determine whether an evidentiary is warranted."). Rather, he must simply show that the Wisconsin Courts "never considered the claims in a full and fair hearing."

The record of the Wisconsin Courts decisions show that they did not conduct a "full and fair hearing" of Petitioners claims to withdraw his guilty pleas based on new evidence. On post-conviction review,dispensed with his claims by saying it is not new evidence,just evidence of importance. The Court acknowledged of defendants was requesting an evidentiary hearing/ The Wisconsin Court of Appeals affirmed the decision on procedural grounds. The cursory review did not constitute a "full and fair hearing." By ignoring petitioner's request for an evidentiary hearing and by rejecting his claims,the circuit court foreclosed development of the record on his claims. The Circuit Court also failed to provide "full and fair" review of Petitioner claims by imposing too high a bar for withdrawing his guilty plea based on new evidence. The Wisconsin Appellate Court did not correct this error in its post conviction review decision. The Appellate Court affirming on petitioner's claims on procedural grounds likewise denied Petitioner's a "full and fair hearing" on his claims.

Here,it is through no fault of Petitioner that the factual basis of his claims has not been developed. Petitioner diligently

sought an evidentiary hearing at every step in his state court proceedings,but those request were denied. §2254(e)(2) thus do not bar an evidentiary hearing for petitioner. ALLEN V. BUSS, *58 F. 3d657,664-65 (7th Cir. 2009) (§2254(e)(2) does not block evidentiary hearing where state court did not fully consider evidence petitioner had put forth);Davis,388 F. 3d at 1060(§2254 (e)(2) no bar where petitioner was "diligent in pursuing his opportunities to develop the necessary facts in state court."). See WARD V. JENKINS,613 F. 3d 692 (7th Cir. 2010).

CONCLUSION

For the foregoing reasons,certiori should be GRANTED in this case. In the alternative the Petitioner request an evidentiary hearing to see if there is a good faith showing to stay the proceedings to return to the state court with his newly discovered evidence.

Dated this 26th day of October, 2021

Respectfully Submitted,

Arvin Wand III

Arvin Wand III # 390113
Pro Se
W.S.P.F.-P.O. Box 1000
Boscobel,WI. 53805

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____ _____

ARMIN WAND III-PETITIONER

VS.

GARY BOUGHTON-RESPONDENT(s)

PROOF OF SERVICE

I,Armin Wand,III,do declare that on this date,October 26,2021 as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERISand PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel,and on every other person required to be served,by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid,or by delivery to a third-party commercial carrier for delivery within 3 calander days.

The names and addresses of those served are as follows:

Solicitor General of the United States
Department of Justice
950 Pennsylvania Ave. N.W. Room 5616
Washington,DC 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10.26.21

Armin Wand III
Signature

No._____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

ARMIN WAND III-PETITIONER

VS.

GARY BOUGHTON-RESPONDENT(s)

I am an inmate confined in an institution. Today, October 26, 2021 I am depositing the MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI in this case in the institiution's internal mail system. First-Class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct. Pursuant to 28 U.S.C. §1746.

Signed Armin Wand III

Dated 10-26-21

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ARMIN WAND III-PETITIONER.

vs.

GARY BOUGHTON-RESPONDENT.

DECLARATION OF ARMIN WAND III

Armin Wand III,a prisoner now being confined at the Wisconsin Secure Program Facility at the time of this Declaration was drafted and signed,hereby declares the following pursuant to 28 U.S.C.§1746:

1. My name is Armin Wand III,i am the plaintiff in the above captioned case.

2. I submit this declaration regarding the timeline of my petition for a writ of certiorari.

3. April 16,2021,the Seventh Circuit denied my request for a rehearing and rehearing en banc.

4. September 7,2021, i filed my petition for a writ of certiorari.

5. September 20,2021,the Clerk returned my petition to make corrections and re-submit within 60 days.

6. October 27,2021,i re-submitted my petition. (a copy of the receipt that i sent my petition by priority mail and authorized the institution to take payment from my trust account).

7. November 16,2021,the Clerk returned my motion for leave to proceed in forma pauperis.

8. November 26,2021,i sent a courtesy letter to the Clerk informing the Clerk i filed my petition for a writ of certiorari and affidavit and declaration in support of indigency seperately because i thought i had sent it all together when i realized i did not sent the motion for leave to proceed in forma pauperis i immediately sent it out.

9. December 17,2021,the Clerk returned my November 26,2021 letter and motion for leave to proceed in forma pauperis and informing me that the clerk has no record of receipt of my petition for a writ of certiorari.

10. Courts hold pro se pleadings to less stringent standards than formal pleadings drafted by an attorney and,moreover,liberally construe pro se pleadings when determining whether they state a cause of action. See HAINES v. KERNER,404 U.S. 519,520 (1972).

Pursuant to 28 U.S.C.§1746,i declare under penalty of perjury that this declaration is true and correct.

Executed on 12.30.21

Armin Ward III #380173

DEPARTMENT OF CORRECTIONS
Division of Adult Institutions
DOC-184 (Rev. 2/2017)

DISBURSEMENT REQUEST
SOLICITUD DE DESEMBOLSO

WISCONSIN
Administrative Code
Chapter DOC 309

OFFENDER REQUEST - To be completed by the offender. Please print or type all items except your signature
SOLICITUD DE OFENSOR - Debe ser completado por el ofensor. Por favor imprima todo excepto su firma

OFFENDER LAST NAME / *APELLIDO DEL OFENSOR*	OFFENDER FIRST NAME / *PRIMER NOMBRE DEL OFENSOR*	DOC NUMBER / *NUMERO*	FACILITY NAME (Abbreviate) / *NOMBRE-INSTALACION (Abrevie)*	HOUSING UNIT/FLOOR/CELL / *UNIDAD / PISO / CELDA*
Wa...	A...n	39015	WSR	B%

PAY TO NAME / *NOMBRE A QUIEN SE PAGUE*	STREET ADDRESS / *DIRECCION DE CALLE*	CITY / *CIUDAD*	STATE / *ESTADO*	ZIP / *CODIGO POSTAL*
Al A	110 Ma...n D...	Bo...	WI	53105

REQUEST FOR: *SOLICTUD PARA:*

- ☐ 1 – Copies / *Copias*
- ☐ 2 - Shipping/Freight *Envío /Carga*
- ☒ 3 – Postage *Posta de Correo*
- ☐ 4 – Photos *Fotos*
- ☐ 5 - State ID Photo / *ID con foto del Estado*
- ☐ 6 - Savings Bond Purchase / *Compra Bonos de Ahorro*
- ☐ 7 – Savings Deposit / *Deposito Ahorros*
- ☐ 8 - Savings Withdrawal / *Desembolso de Ahorros*
- ☐ 9 – Property Purchase (reason required)* / *Compra de Propiedad (requiere razón)**
- ☐ 10 – Other (reason required)* *Otro (requiere razón)**
- ☐ 11 – Route Check to: *Envíe cheque a:* _____

FUNDING SOURCE: *FUENTE DE FONDOS*
☐REG - Regular Account *Cuenta Regular* ☐WR - Work Release Account *Cuenta de Trabajo* ☐REL - Release Account *Cuenta de Liberación* ☐Legal Loan *Préstamo Legal*

*REASON FOR REQUEST (Must complete if you choose 9 or 10 above) *RAZON POR LA SOLICITUD (Debe completar si escoge casillas 9 o 10 arriba)	INDIVIDUAL ITEMS REQUESTED *Artículos Individuales Solicitados*	AMOUNT / *CANTIDAD*
Send via Certified Mail #7021 0950 0002 1512 9884 <2 oz	Clerk of Court, WI	$ 11.85
	Supreme Court of the United States	$
	Washington, DC 20543-0001	$ 3.75
		$

OFFENDER SIGNATURE / *FIRMA OFENSOR(A)*	DATE SIGNED / *FECHA DE FIRMA*	OFFENDER ID VERIFIED / *ID DE OFENSOR CONFIRMADA* Staff Initials:	Total Amount Requested / *Suma Total Solicitada:*
[signature]	10-6-21		$ 15.60

DECISION - To be Completed by Department Staff Only / *DECISION- Debe ser Completada por Empleados Solamente*

DISBURSEMENT APPROVED BY SIGNATURE:	DATE SIGNED	No Check: ☐ DMV Acct. ☐ Other: _____ Deliver Check to: _____ Release Date (if REL acct is requested):
[signature]	10-21-21	
SUPERVISOR APPROVAL SIGNATURE (If required)	DATE SIGNED	CHECK# / DATE PAID: UJPF10272IBS
REQUEST DENIED BY SIGNATURE	DATE SIGNED	REASON REQUEST WAS DENIED

DISTRIBUTION: Original (White) – Business Office; Copy (Yellow) - Inmate

7021 0950 0002 1512 9884