

MAY 17 2022

OFFICE OF THE CLERK

22-5251

NO. 21A655

IN THE SUPREME COURT OF THE UNITED STATES

LEVONNE GREER # 882133

Petitioner,

v

KRIS TASKILA (Warden)
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Levonne Greer
LEVONNE GREER # 882133Baraga Correctional Facility
13929 Wadaga Rd.
Baraga Michigan 49908

July 13, 2022**ORIGINAL**

QUESTIONS PRESENTED

DID THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN AND THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRONEOUSLY DENIED MR. GREER REQUEST FOR A CERTIFICATE OF APPEALABILITY IN THIS HABEAS CASE WHERE JURISTS OF REASON COULD CLEARLY DEBATE WHETHER THE OFFICERS IN THIS CASE USED SHAM PLEA BARGAINING TACTICS, PRETENDING THAT THEY CAN AND WILL OBTAIN LENIENT SENTENCES OR A REDUCTION OR OUTRIGHT DISMISSAL OF THE CHARGES IN RETURN FOR A CONFESSION?

TABLE OF CONTENTS

Questions Presented	_____
Table of Contents	_____
Table of Authorities	_____
Opinions Below	_____
Statement of Jurisdiction	_____
Statutory Provisions Involved	_____
Statement of The Case	_____
Reasons for Granting the Writ	_____

THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN AND THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRONEOUSLY DENIED MR. GREER REQUEST FOR A CERTIFICATE OF APPEALABILITY IN THIS HABEAS CASE WHERE JURISTS OF REASON COULD CLEARLY DEBATE WHETHER THE OFFICERS IN THIS CASE USED SHAM PLEA BARGAINING TACTICS, PRETENDING THAT THEY CAN AND WILL OBTAIN LENIENT SENTENCES OR A REDUCTION OR OUTRIGHT DISMISSAL OF THE CHARGES IN RETURN FOR A CONFESSION?

CONCLUSION

APPENDIX I

- Appendix A:** Sixth Circuits Order denying certificate of appealability
- Appendix B:** District Courts opinion and order dismissing petition for writ of habeas corpus and denying certificate of appealability
- Appendix C:** Michigan Supreme Court denying leave to appeal on collateral review of state court judgement
- Appendix D:** Michigan Court of Appeals order denying leave to appeal on col lateral review if state court judgement
- Appendix E:** Saginaw County Circuit Court opinion and order denying collateral post-conviction relief from state court judgement.
- Appendix F:** Michigan Supreme Court denying leave to appeal on the direct appeal
- Appendix G:** On direct appeal the Michigan Court of Appeals remanded for correction of Greer's sentence for the conspiracy count to indicate the possibility of parole and otherwise affirmed.

APPENDIX II

- Appendix A: Confession to police

TABLE OF AUTHORITIES

<u>Commonwealth v Magee</u> , 668 NW2d 339(MASS 1996)	8
<u>Greer v Lesatz</u> , 2021 U.S. Dist. Lexis 50646.....	1
<u>Greer v Taskila</u> , 2022 U.S App Lexis, 1297.....	1
<u>Lynumn v Illinois</u> , 375 U.S. 528; 83 S Ct 917; 9 LEd2d 922 (1963).....	6
<u>Miller-El v Cockrell</u> , 537 U.S. 322; 123 S Ct 1029; 154 LEd2d 931 (2003).....	5
<u>People v Greer</u> , 2015 Mich App Lexis 92.....	2
<u>People v Greer</u> , 2018 Mich App Lexis 3927.	2
<u>People v Greer</u> , 498 Mich 855 (2015).....	1
<u>People v Greer</u> , 503 Mich 885 (2018).....	1
<u>Schneckloth v Bustamonte</u> , 412 U.S. 218; 93 S Ct 2041; 36 LEd2d 854 (1973).....	6
<u>State v Howard</u> , 825 NW 2d 32 (IOWA 2012).....	8
<u>U.S. v Binford</u> , 818 F3d 261 (6th Cir 2016)	6
<u>U.S. v Delaney</u> , 443 F Appx 122 (6th 2011).....	6
<u>U.S. v Hohn</u> , 524 U.S. 236 (1998).....	2
<u>U.S. v Johnson</u> , 351 F3d 254 (6th 2003).....	6,8
U.S.C. 1254(1);.....	2
28 U.S.C 2253(c)(2).	2, 5

LIST OF PARTIES

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

No: 24A655

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the Judgement below.

OPINIONS BELOW

The United States Court of Appeals for the Sixth Circuit denied Mr. Greer a certificate of appealability see *Greer v Taskila*, 2022 U.S App Lexis, 1297 dated January 18, 2022. This order is reproduced in the Appendix to this petition as Appendix A

The United States District Court for the Eastern District of Michigan denied Mr. Greer's petition for writ of habeas corpus on March 18, 2021. The Court went on to deny Mr. Greer a certificate of appealability as to all issues in the petition in the same opinion and order. This Opinion and Order is reproduced in the Appendix to this petition as Appendix B, and is cited as *Greer v Lesatz*, 2021 U.S. Dist. Lexis 50646.

The Michigan Supreme Court denied Mr. Greer leave to appeal on collateral review of his state court judgement This order is reproduced in the Appendix to this petition as Appendix C and is cited as *People v Greer*, 503 Mich 885 (2018).

The Michigan Court of Appeals denied Mr. Greer leave to appeal on a collateral review of his state court judgement in an order cited at *People v Greer*, 2018 Mich App Lexis 3927. This order is reproduced in the appendix to this appendix as Appendix D.

The Saginaw County Circuit Court denied Mr. Greer Motion for relief from judgement. This opinion and order is reproduced in the appendix to this petition as Appendix E.

The Michigan Supreme Court denied Mr. Greer leave to appeal on collateral review of his state court judgement on direct review. This order is reproduced in the appendix to this petition as Appendix F, cited as *People v Greer*, 498 Mich 855 (2015).

On the direct appeal, the Michigan Court of Appeals remanded for correction of Mr. Greer sentence for the conspiracy count to indicate the possibility of parole and otherwise affirmed. This order is reproduced in the appendix to this petition as Appendix G cited as *People v Greer*, 2015 Mich App Lexis 92.

STATEMENT OF JURISDICTION

The final judgement dismissing Mr. Greer's habeas petition in this case was entered by the United States District Court for the Eastern District of Michigan on March 18, 2021. The District Courts order is reproduced in the appendix to this petition as Appendix B. On the same date, the district court denied a certificate of appealability with respect to all of the grounds raised in the habeas petition. In the same opinion and order that it issued denying the writ. The Petitioner filed a timely Notice of Appeal. The united States Court of Appeals for the Sixth Circuit subsequently issued an order denying a certificate of appealability on January 18, 2022. See Appendix A.

The jurisdiction of this Court is invoked pursuant to U.S.C. 1254(1); *U.S. v Hohn*, 524 U.S. 236 (1998)

STATUTORY PROVISIONS INVOLVED

28 U.S.C. §1254(1):

Cases in the court of appeals may be reviewed by the Supreme Court by...writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgement or decree

28 U.S.C. § 2253(c):

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from-

- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State Court; or
- (B) the final order in a proceeding under section 2255;

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

STATEMENT OF THE CASE

In 2013, Mr. Greer was convicted by Jury of:

- First degree premeditated murder;
- Conspiracy to commit first degree murder;
- Eight counts of felony firearm;
- Five counts of assault with intent to commit murder;
- One count each of carrying a concealed weapon (CCW);
- Carrying a dangerous weapon with unlawful intent;
- Discharging a firearm from a vehicle.

This case arises out of a shooting that resulted in the death of a six year Layla Jones. Jones was shot as she prepared to get into the backseat of her grandmothers car after spending the evening with friends and family at her aunt's house at 1115 Essling Street in Saginaw Michigan. She died shortly thereafter at a local hospital emergency room.

Mr. Greer, Rico Saldana, Julian Ruiz, and Michael Lawrence spent the day of August 29, 2012, drinking rum and smoking marijuana at Saldana's house on Harold Street in Saginaw. At some point, they learned that Bobby Bailey, one of Mr. Greer's childhood friends, had been murdered earlier that day. Apparently another of Mr. Greer's friends, Chriss Diggs, had been killed two years earlier. Saldana asked Ruiz to see if he could borrow his sisters Buick Skylark. After Ruiz picked up the car, he followed Saldana and Mr. Greer to a house on 19th Street where Saldana parked the Dodge Avenger he was driving. The four men then got into the Skylark, with

Saldana driving, Mr. Greer in the seat behind him, Ruiz next to Mr. Greer in the backseat, and Lawrence next to Saldana in the front passengers seat. Mr. Greer had a 40 caliber gun and Lawrence a 45 caliber gun.

After turning onto Essling Street, when one of the men in the car said, "there go somebody". Lawrence then reached across Saldana, who slowed the car to a roll as it approached the bottom of the driveway at 1115 Essling Street, and began firing out of the drivers side front window. Mr. Greer fired out of the driver's side back window. The two men fired approximately 12 shots before Saldana accelerated down Essling. Ruiz testified that the Skylark was shot at. Although he was not certain if Lawrence and Mr. Greer shot before the Skylark was fired upon, he thought the latter was return fire as the Skylark accelerated down the street. Layla Jones was fatally injured.

After leaving the scene of the shooting, Saldana drove back to 19th Street, where he and Mr. Greer got back into the Avenger, and Ruiz and Lawrence drove the Skylark back to Saldana's house. Ruiz and Lawrence collected three shell casings from inside the Skylark and threw them into the sewer in front of Saldana's house. Later that evening, after Ruiz had returned the Skylark to his sister, Mr. Greer spoke with him on the telephone to make sure that he had cleaned the car; when he said that he had not, Mr. Greer told him to clean the car with baby wipes. The day, Saldana gave Ruiz a can of disinfectant and told him to use it to clean the car. Ruiz hid the disinfectant and towel he used in doghouse behind his house.

Two days after the shooting, the police arrested Mr. Greer and Saldana at a motel. Later that night, a videotaped interview with Saginaw Police Department Detective Andrew Carlson, Mr. Greer confessed to his involvement in the shooting. The videotape of Mr. Greer's interview was played for the jury. The videotape also included several telephone conversations between Mr. Greer and his girlfriend and members which he admitted that he shot Layla Jones.

On appeal Mr. Greer contends that the trial courts admission of his statements to Detective Andrew Carlson violated his right to due process because his statements were involuntary **based on he relied on Detective Carlson's unfulfilled promises leniency before he cooperated.**

The Michigan Court of Appeals determined that after reviewing the totality of the circumstances, Mr. Greer's confession was voluntary. The Court asserted in pertinent part: It is true that some of the statements Detective Carlson made could be interpreted promises of leniency, suggesting Mr. Greer would achieve more favorable outcome if he cooperated than otherwise. That Mr. Greer hoped for the Detectives help is indisputable; that he confessed in reliance on it, is not. Detective Carlson made no specific promises regarding charges or sentencing, For these reasons, we conclude that MT Greer's confession was voluntary, and affirm the trial courts admission of the taped confession into evidence.

That ruling was thus quoted in the lower Courts decisions for denying Mr. Greer a certificate of appealability.

Mr. Greer asserts that he is entitled to proceed to the United States Court of Appeals for the Sixth Circuit with respect to the issue raised in this petition, and he petitions this Court for permission to do so.

REASONS FOR GRANTING THE WRIT

THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN AND THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRONEOUSLY DENIED MR. GREER REQUEST FOR A CERTIFICATE OF APPEALABILITY IN THIS HABEAS CASE WHERE JURISTS OF REASON COULD CLEARLY DEBATE WHETHER THE OFFICERS IN THIS CASE USED SHAM PLEA BARGAINING TACTICS, PRETENDING THAT THEY CAN AND WILL OBTAIN LENIENT SENTENCES OR A REDUCTION

OR OUTRIGHT DISMISSAL OF THE CHARGES IN RETURN FOR A CONFESSION

To obtain a certificate of appealability, Greer must make a substantial showing of the denial of a constitutional right 28 U.S.C 2253(c)(2). Greer satisfies this standard by demonstrating that jurists of reason could disagree with the districts courts resolution of his constitutional claim that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further *Miller-El v Cockrell*, 537 U.S. 322 327; 123 S Ct 1029; 154 LEd2d 931 (2003)

Mr. Greer strongly urge that the decisions of the United States District Court and the United States Court of Appeals for the Sixth Circuit in declining to issue a certificate of appealability in relation to this particular habeas claim under the facts of this case was such a departure from the accepted and usual course of judicial proceedings as to call for this Courts supervisory power to Intervene in the latter, because the issue in this case is clearly unequivocally debatable among reasonable jurists, a court could resolve the issue in this case in a different the issue is not lacking any factual basis in the record and ultimately, the issue deserves encouragement to proceed further.

The issue this case is that, Mr. Greer argues that his confession was involuntary because Detective Carlson violated his right to due process because Mr. Greer's statements was involuntary where Detective Carlson did not fulfill his promises of leniency after Mr. Greer cooperated and gave a confession.

In determining whether a confession was voluntary or coerced, the question is whether the defendants will was overbourne at the time he confessed. *Lynumn v Illinois*, 375 U.S. 528, 534; 83 S Ct 917; 9 LEd2d 922 (1963). In determining whether defendants will is overbourne, courts assess the totality of all the surrounding 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 LEd2d 854 (1973). Promises of leniency may be coercive if they are broken or

illusory. *U.S. v Johnson*, 351 F3d 254, 262 (6th Cir 2003), But promises to recommend leniency and speculation that cooperation will have a positive effect do not make subsequent statements involuntary. *U.S. v Binford*, 818 F3d 261, 271 (6th Cir 2016) quoting *U.S. v Delaney*, 443 F Appx 122 129 (6th 2011).

The lower courts referred to the Michigan Court of Appeals decision, who determined that, after reviewing the totality of the circumstances, Greer's confession was voluntary:

At the time he made the challenged statements, defendant was 22 years old, of at least average intelligence, and, by his own admission experienced with the police. After being apprised of his Miranda rights, defendant voluntarily waived them, and although the interview lasted over three hours the length was not per se unreasonable. There is no evidence he was injured, intoxicated, drugged, or in ill health. He had something to eat at the police station prior to the interview, was not denied sleep or medical attention, and at no time was he physically abused or threatened with abuse. The record simply does not support the conclusion that defendant's will was over borne or his self-determination critically impaired.

It is true that some of the statements Detective Carlson made could be interpreted as promises of leniency, suggesting defendant would achieve a more favorable outcome if he cooperated than otherwise. That defendant hoped for the detective's help is indisputable; that he confessed in reliance on it is not. Detective Carlson made no specific promises regarding charges or sentencing. For these reasons, we conclude that defendant's confession was voluntary, and affirm the trial court's admission of the taped confession.

The lower courts made reference to the Michigan Court of Appeals quotation of a portion of Mr. Greer's statement:

A: I won't have to do no years?

Q: Yeah I told you I'd help you. I told you I'd help you, and all I can say is examples for you. You got to make a decision. What happened?

A: I'm just saying could you get me out of prison for sure Andy?

Q: If you're honest with me and you help me, all I can do is tell you that I can help you and cite you examples, and think that you're smart enough to take it from there.

The lower courts asserts that Jurists of reason would not debate the district courts conclusion that the Michigan Court of Appeals reasonably determined that Detective Carlson's **VAGUE** statements about helping Greer did not render the confession involuntary.

Mr. Greer asserts that there was nothing **VAGUE** about Detective Carlson's statements. Mr. Greer did not come UP with that perception himself, that he would not have to do any time. When Mr. Greer asked Detective "**I WONT HAVE TO DO NO YEARS**", Detective Carlson stated "**YEAH**". Then Mr. Greer asked Detective Carlson "**I'M JUST SAYING, COULD YOU GET ME OUT OF PRISON FOR SURE, ANDY?**" Detective Carlson, responded "**If your honest with and help me**".

Promises of leniency may be coercive if they are broken or illusory *U.S. v Johnson*, 351 F3d 254, 262 (6th 2003).

In the case at bar reasonable jurists could debate whether Detective Carlson's remarks in response to Mr. Greer's questions was illusory. Despite the fact that Mr. Greer was charged with first degree murder, Detective Carlson effectively led Mr. Greer to believe that he did not have to do any time if gave a confession. **That was a sham.**

Sham plea bargaining is a form of lying about the law-in that context, lying about the legal authority of the police, who claim to be able to do things only prosecutors or judges can do. For example, police officers who pretend that they can and will obtain lenient sentences or outright dismissal of the charges, In return for confessions. See e.g.: *State v Howard*, 825 NW 2d 32, 41 (IOWA 2012); *Commonwealth v Magee*, 668 NW2d 339, 344-345 (MASS 1996).

For the above reason, the denial of a certificate of appealability would effectively preclude appellate review on his claim as to whether his confession was involuntary, despite the fact this particular claim deserves encouragement to proceed further on appeal. The requirement of a certificate of appealability is designed to bar frivolous appeals. not to preclude appellate review

of cases involving substantial issues. See *Moore's Federal Practice* (2nd Ed) § 220.03 Nonetheless, that is just what happened here; a substantial issue is being passed upon without the benefit of full appellate review. A fair of the record in this case clearly demonstrates that a certificate of appealability should issue with respect to this particular claim and that the decisions of the lower courts declining to issue the same were an extraordinary departure from the accepted and usual of judicial proceedings in these type of cases.

Both the federal and state constitutional due process clauses bar the use of involuntary or coerced confessions at trial. US Const. Amends V and XIV; Mich. Const. 1963, Art. I §17; *Miranda v Arizona*, 384 U.S 436 (1966); *People v Conte*, 421 Mich 704 (1985). See also *Mincey v Arizona*, 437 U.S. 385, 398 (1978). In *Mincey*, the United States Supreme Court held the Fourteenth Amendment prohibits the prosecution from using a defendant's involuntary statements in anyway, including impeachment. 437 U.S. at 398. A confession is involuntary if three requirements are met: (1) the police activity was objectively coercive; (2) the coercion in question was sufficient to overbear the defendant's will; and (3) the alleged police misconduct was the crucial motivating factor in the defendant's decision to offer the statement. *United States v Mahan*, 190 F.3d 416 at 422 (6th Cir. 1999). The question on voluntariness turns on whether the defendant's will was overborne. *Lynum v Illinois*, 372 U.S. 528, 534 (1963); *People v Cipriano*, 431 Mich 315, 334 (1988). If it was, the confession cannot be deemed "the product of a rational intellect and a free will." *Lynum*, 372 U.S. at 534 (quoting *Blackburn v Alabama*, 361 U.S. 199, 208 (1960). In order for a confession to be involuntary under the Fourteenth Amendment, it must be the product of police misconduct. *Colorado v Connelly*, 479 U.S. 157, 164 (1986); *People v Wells*, 238 Mich App 383, 388 (2000). While considering whether a confession was voluntary, courts must evaluate the "totality of the surrounding circumstances concerning whether a defendant's will was overborne in

a particular case." *Mahan*, 190 F.3d at 422; *Cipirano*, 431 Mich at 333; see also *Arizona v Fulminante*, 449 U.S. 279 (1991).

Whether a defendant's confession was voluntary is a subjective inquiry. See *People v Robinson*, 386 Mich 551, 559 (1972).

Offers of leniency made during a police interrogation have a coercive effect, *Williams v Withrow*, 944 F.2d 284, 289 (6th Cir. 1991), rev'd on other grounds, 113 S. Ct. 1745 (1993) In general, police promise's of leniency and threats of prosecution may be coercive if they are "broken or illusory." *United States v Johnson*, 351 F.3d 254, 262 (6th Cir. 2003). "When a defendant claims that a confession was coerced, the government bears the burden of proving by a preponderance of the evidence that the confession was in fact voluntary. "*Johnson*, 351 F.3dat 260.

Petitioner Greer gave a recorded statement to Detective Carlson, which was transcribed and given to the jury in this matter. Petitioner Greer had not slept for days before giving his statement. (Plaintiffs Trial Ex. 65-B, Transcript of Defendant's Statement p. 134-135) Repeatedly Andrew Carlson told Mr. Greer about how he would help him during his statement. He clearly stated that he was guaranteeing that he could get Mr. Greer out of jail if he cooperated as opposed to doing LIFE if he didn't cooperate:

"... what do you think? You sit in the county for a couple of days while **I put things in motion or you sitting in there and you wait to go to trial, catch a life sentence...**"

(Plaintiff's Trial Ex. 65-B, Transcript of Defendant's Statement p. 89)

• * *

Q: And I'm willing to help you, and I'm going help you . . .

A: **You gonna get me out of here?**

Q: **Yeah, but you got - - you got to be willing to help, ...**

A: You gonna get me out of here?

Q: Yeah.

A: No bullshit?

Q: No bullshit . . .”

(Plaintiffs Trial Ex. 65-B, Transcript of Defendant's Statement p. 9)

A: I won't have to do no years”

Q: Yeah, I told you I'd help you . . .

(Plaintiff's Trial Ex. 65-B, Transcript of Defendant's Statement p. 99-100)

•

*

*

A: How long you think I'll be here for?

Q: I don't know how long you're going to be here for. You've got my help . . .

A: How long you — do you know how long?

Q: I guarantee it's not going to be long, but, you know, I've explained to you before. I mean I don't know how much more I can explain to ya.

•

*

*

A: Just give me an estimate or something.

Q: Right I -- I don't know. A week?

A: A real estimate.

Q: Maybe a week.

•

*

*

A: I just want to get the fuck outta jail. If you leave me in there --

Q: I won't leave you in there if you're honest with me.

(Plaintiff's Trial Ex. 65-B, Transcript of Defendant's Statement p. 103-104)

* * *

A: I'm still gonna go to prison.

Q: Not if you're honest with me . . . "

(Plaintiff's Trial Ex. 65-B, Transcript of Defendant's Statement p.120)

Detective Carlson also actually wrote out that "**If Rio helps me, I will help him.**" (T 7/2/13 p. 24). "Rio" refers to Petitioner Greer, as a nickname formed from his middle name, "Jomarrio". Julian clarified this when he testified at trial that he knows Mr. Greer as "Rio". (T. 6/28/13 p.61).

Petitioner Greer obviously relied on Detective Carlson's promises because he said in a telephone conversation after the statement (in a conversation that Detective Carlson had represented to him wasn't being recorded):

"I don't know what's going to happen. **I just hope the detective sticks to his word.** He's telling me about shit, to get my time cut or shit, to get me out of here . . ."

(Plaintiff's Trial Ex. 65-B, Transcript of Defendant's Statement p.152)

During the hearing held March 11, 2013 on Mr. Greer's motion to suppress his statement to Detective Carlson, the trial court stated:

"Well I would agree with Mr. Scorsone, after watching four hours of tape, that in fact, there were promises made to the defendant. I also agree with Mr. Best that perhaps the entire confession should not be dismissed because of that, but clearly, anyone who watches those tapes, there were promises made that I think the defendant relied upon . . ."

(T. 3/11/13 p. 12, Emphasis supplied)

Regarding the second and third Mahan factors, it is evident that the detective's coercive statements overbore Petitioner Greer's will and were the crucial motivating factors in his decision

to confess. During the interviews, Mr. Greer was very focused on what the detective was promising him regarding leniency, and Greer exhibited serious concern about making incriminating statements.

The decision of the Michigan Court of Appeals on this issue, in relevant part, is as follows:

It is true that some of the statements Detective Carlson made could be interpreted as promises of leniency, suggesting defendant would achieve a more favorable outcome if he cooperated than otherwise. That defendant hoped for the detective's help is indisputable; that he confessed in reliance on it is not. Detective Carlson made no specific promises regarding charges or sentencing.

The decision of the Michigan Court of Appeals on this issue, was clearly unreasonable, as that court stated "that he confessed in reliance on it is not" indisputable (even though Petitioner presented evidence of the above recorded conversation made right after Detective Carlson's promises, and the Government on the other hand, did not present one iota of proof otherwise). The Government can certainly not be found to have met their burden to prove by a preponderance of the evidence that the confession was in fact voluntary, Johnson, 351 F.3d at 260, where they presented nothing whatsoever to contradict Mr. Greer's assertion and proof that he confessed in reliance on the detective's promises.

A further problem with the appellate court's rationale is that, while Detective Carlson may not have made any promises which that court would categorize as having been "specific" to sentencing . . . Detective Carlson did clearly speak in terms of sentencing when he repeatedly referenced a substantially earlier release from custody, which included a "guarantee" that Mr. Greer would not be incarcerated for "long", and which he thereafter defined the term of "long" as being a time period of approximately one single week. Mr. Greer relied on Detective Carlson's promised "guarantee", and there is proof of that in the recording thereafter (in a phone conversation

that Mr. Greer was told was not being recorded) where Mr. Greer was recorded as saying, "I just hope the detective stick to his word. He telling me about shit, get my time cut or shit, to get me out of here..."(Plaintiff's Trial Ex. 65-B, Transcript of Defendant's Statement p. 152) Detective Carlson obviously did not line up his promises to help Mr. Greer only after the fact of Mr. Greer's cooperation (which the court of appeals irrationally indicated as having been a real possibility), as such an assumption is a stretch beyond rational and logical reasoning.

Mr. Greer obviously relied on the unfulfilled guarantee of leniency, before he cooperated. Mr. Greer's conviction must be reversed.

The Problem with the Decision from the U.S. District Court for the Eastern District of Michigan.

In concluding that Petitioner's confession was not involuntary, the District Court relied on a week case from the 8th Circuit, *United States v. LeBrun*, 363 F.3d 715, 724-26 (8th Cir. 2004) which had a four judge dissent. That case held that where the offender was specifically told that he was free to leave and "not in custody" (Id. at 724); and it was represented to him that it was only "possible" that he would not be prosecuted (Id at 725); and he was a sophisticated 50 year-old man who had gone to law school for one year, then under the totality of the circumstances, that defendant Mr. LeBrun's confession was not involuntary.

The instant case, however, is highly distinguishable from that matter, where Petitioner Greer was "in custody" and not free to leave; and the interviewing detective used wording that he "guaranteed" he would substantially assist Mr. Greer; and Mr. Greer was only 22 years old and had neither gone to law school or ever been in trouble like this before; as well as the fact that Mr. Greer had not slept in days prior to his being misled by the detective to give a statement. The detective's repetitive promises were sufficient to spur a defendant, even one with experience with the criminal justice system, to make a confession and certainly were not good investigative work. The

circumstances of Mr. Greer's case were a world-apart from the circumstances of the LeBrun case, and the decision in the LeBrun case specifically indicated that it was only applicable under the totality of the very unique circumstances in that case where amongst other things, the offender had gone to law school. There is no rationale way to apply the ruling in the LeBrun case to the instant matter under the totality of the circumstances relevant to the instant case, which were on the other end of the spectrum in regard to the guarantee-given and offender's sophistication. Furthermore the Sixth Circuit Court has held, contrary to the Eighth Circuit, that a given promise (like the "guarantee" given in the instant matter) would be illusory if it "lacks substance . . . [and] does not actually commit the police to undertake or refrain from any particular course of action." *Johnson* 351 F.3d at 262 n. 1.

The District Court's denial also relied on *United States v. Charlton*, 737 Fed. Appx. 257, 261 (6th Cir. 2018), where that court held that the confession given in that case was not made involuntary by unfulfilled non-committal offers, (which were also non-fact specific) to "attempt" to help the offender. Again, that case is highly distinguishable from the instant matter, where, in the instant matter the interviewing detective was about as far as possible from being non-committal he repeatedly indicated (not that he would "attempt", but rather) that he would achieve a significantly beneficial result for Mr. Greer, and he stated that he "guaranteed" it.

These two cases, which the District Court judge cited to support denial of Mr. Greer's petition, were completely off point and not relevant to the highly distinguishable facts of the instant case, under the totality of the circumstances. Under the relevant applicable law, Mr. Greer should have been granted relief on this petition.

HARMLESS ERROR ANALYSIS.

A court evaluating harmless error must ask "whether the constitutional violation had substantial and injurious effect or influence in determining the jury's verdict." *Vasquez v. Jones*, 496 F.3d 564, 575 (6th Cir. 2007) (citing *Brecht v. Abrahamson*, 507 U.S. 619, 623, 113 S. Ct. 1710 (1993)) (quotation marks omitted). "If the matter is so evenly balanced that this Court has grave doubt as to the harmlessness of the error, it should treat the error, not as if it were harmless, but as if it affected the verdict (i.e., as if it had a substantial and injurious effect or influence in determining the jury's verdict)." Id. (citing *Stapleton v. Wolfe*, 288 F.3d 863, 867 (6th Cir.2002)) (quotation marks and internal citations omitted).

Allowing the jury to hear Mr. Greer's statement was not harmless error. The United States Supreme Court established that although the admission of an involuntary statement is subject to the harmless error rule, "a confession **is like no other evidence**. Indeed a defendant's own confession is probably the most probative and damaging evidence that can be admitted against him.", *Fulminante*, 449 US at 280. (Emphasis supplied).

In concluding that, even if the confession was involuntary, it was harmless error, the District Court judge reasoned that there was sufficient other evidence to convict Petitioner even without use of the confession, because his co-defendant testified against him that he observed Petitioner shooting a gun out the window. However, that, **the only significant evidence against Petitioner, came from codefendant Ruiz, who was allowed to plead to accessory after the fact, (T. 6/28/13 p.58-60), in a sweetheart deal in exchange for his testimony, where such a deal creates substantial doubt about Mr. Ruiz's intent and credibility. Before Ruiz cooperated with the police they threatened to charge him and his sister with murder and conspiracy to commit murder.** (T. 6/28/13 p. 93-94).

Furthermore, for first degree murder to be found, the essential element of premeditation must be found to exist by viewing the totality of the circumstances, and finding sufficient proof of

either direct or circumstantial evidence, and cannot be arrived at by mere speculation. In no way does shooting a gun alone establish an intent to kill, as the gun may have intentionally been shot off-target as a warning or other reason (such as to make his co-defendant think that the unwilling Petitioner was a willing participant).

The coerced confession was extremely important to proving the facts of this case as being what the prosecution asserted. That testimony was not cumulative. The partially corroborating testimony was from a highly questionable source, and did not in any way even try to establish proof of intent. The overall strength of the prosecution's case was otherwise extremely weak. None of the usual reasons normally used to justify finding harmless error, were relevantly applicable to the instant matter. The error in this matter was not harmless.

CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner Greer respectfully asks this Court to grant certiorari in this case and remand this matter to the U.S. Court of Appeals for the Sixth Circuit for full appellate review of the issue that was raised.

Respectfully Submitted

LEVONNE GREER # 882133

Baraga correctional facility

13924 Wadaga rd.

Baraga Michigan 49908

Leonne Greer
July 13, 2022