No. 23-6932

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IN THE

SUPREME COURT OF THE UNITED STATES

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TREMOND THOMAS — PETITIONER

vs.

TIM HOOPER, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

TREMOND THOMAS
624530, CAMP C BEAR—3
LOUISIANA STATE PENITENTIARY
ANGOLA LOUISIANA 70712

QUESTIONS PRESENTED

1. During an interrogation, Thomas, fifteen-years-old at the time, began to make inculpatory statements. After hearing the statements, Thomas' mother tried to stop the interview. Instead of stopping, the detective coaxed Thomas' mother into allowing her to continue:

   A. Is a juvenile's right to stop an interrogation violated when the interrogator refuses and insists that the questioning continues?

   B. Did the detective violate Thomas' right, asserted through his mother, to stop the police officer's interrogation?

2. Trial counsel filed a motion to suppress statements arguing that Thomas' confession was the product of fear, duress, intimidation, menaces, threats, inducements and/or promises. Counsel did not argue that Thomas' right to cut off questioning was contravened.

   A. Did counsel render ineffective assistance when he failed to inform the trial court of the police officer's failure to end the interrogation when asked?

3. Appellate counsel argued the trial court should have granted his motion to suppress because Thomas' confession was the product of fear, duress, intimidation, menaces, threats, inducements and/or promises. Counsel did not brief the appellate court about his failure to argue the violation of Thomas' right to cut off questioning in the trial court.

   A. Did appellate counsel render ineffective assistance when he failed to argue that Thomas' right to cut off questioning was not scrupulously honored?

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Tremond Thomas ("Thomas") respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Fifth Circuit denying a Certificate of Appealability (COA) on his claim under the Fifth Amendment to the United States Constitution, as interpreted by *Michigan v. Mosley*, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975).

Thomas is the defendant and defendant-petitioner in the courts below. The respondent is Warden Tim Hooper of the Louisiana State Penitentiary via the State of Louisiana.

OPINIONS BELOW

The order of the Court of Appeals, No. 23-30404, denying a COA appears at Appendix A to the petition and has not been designated for publication. The District Court's order and the Magistrate Judge's report and recommendation appear in Appendices B and C, and are published at *Thomas v. Vannoy*, 2023 WL 3874315 (W.D. La. 6/7/23); *Thomas v. Vannoy*, 2023 WL 3881073 (W.D. La. 4/18/23). The various state court opinions underlying the federal proceedings appear in Appendix D-H.

JURISDICTION

The Court of Appeals entered final judgment against Petitioner on November 14, 2023. As such, this Court has jurisdiction under 28 U.S.C. § 1254(1) and Rule 13.1 of the Rules of the Supreme Court of the United States. See *Hohn v. United States*, 524 U.S. 236,253 (1998) (holding denial of COA reviewable).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person ... shall be compelled in any criminal case to be a witness against himself ... without due process of law.

The Sixth Amendment to the United Sates Constitution provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense.

The Fourteenth Amendment to the United Sates Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I § 2 of the Louisiana Constitution:

> No person shall be deprived of life, liberty, or property, except by due process of law.

Article I § 3 of the Louisiana Constitution:

> No person shall be denied the equal protection of the laws.

Article I § 13 of the Louisiana Constitution:

> When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of ... his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel.

STATEMENT OF THE CASE

On December 10, 2012, the State filed a bill of indictment charging Thomas with one count of first-degree murder in the shooting death of Iesha Winbush. On December 18, 2012, Thomas pled not guilty to the offense. The charge was later amended to second-degree murder. On April 5, 2013, Thomas' trial counsel filed a motion to suppress and argued Thomas's statements were not the product of a knowing, intelligent, or voluntary waiver instead of arguing Thomas' right to cut questioning was not scrupulously honored. The trial court conducted a hearing on the motion over a three-day span—April 23rd to the 25th. On May 2, 2013, the trial court denied the motion. On May 8, 2015, Thomas was found guilty of second-degree murder and aggravated burglary. The state appellate court affirmed Thomas' conviction and sentence for second degree murder but vacated his conviction and sentence for aggravated burglary. Thomas unsuccessfully sought a rehearing with the appellate court and the Louisiana Supreme Court denied his writ application. *State v. Thomas*, 52,929 (La. App. 2 Cir. 8/10/2016); 201 So.3d 263; *writ denied*, 2016-1642 (La. 9/6/17); 224 So.3d 980.

On February 25, 2017, Thomas filed a timely Application for post-conviction relief ("APCR") with a Request for Documents under Particularized Need. On October 25, 2017, the trial court granted his request. On November 6, 2017, Thomas filed a Motion for Extension of Time and explained he had been transferred to the Louisiana State Penitentiary after he was granted a copy of the documents he requested. On December 14, 2017, the court granted Thomas' request and gave him an additional thirty days to file his supplemental claims.

On January 5, 2018, Thomas, through the Classification Officer assigned to his unit, filed his supplemental APCR ("SAPCR"). Thomas also mailed a copy to the Bossier Parish District Attorney's Office. On June 22, 2018, Thomas filed an Objection to any Further Continuances and Motion to Schedule Evidentiary Hearing because the assistant district attorney responded to the initial APCR and claimed to have not received a copy of Thomas' SAPCR. Thomas was later informed that the court had denied his SAPCR; however, the Bossier Parish Clerk's Office did not provide proof of denial upon request. Thomas then filed a Motion for Production of Documents requesting a copy of the criminal case minutes. On January 25, 2019, Thomas received a copy of the trial court's January 18, 2019 Order denying his

request for documents. On January 15, 2019, the trial court denied Thomas' SAPCR. On January 24, 2019, Thomas gave the trial court notice of his intent to seek writs and requested an extension of time.

On January 29, 2019, Thomas timely filed an application for supervisory writ of review to the appellate court. On April 18, 2019, citing *La. C. Cr. P. art.* 930.4, the appellate court denied Thomas' writ application on the showing made. On April 29, 2019, Thomas filed an application for a writ of certiorari to the Louisiana Supreme Court. The state supreme court denied his writ application January 22, 2020.

Thomas then filed a timely petition for a writ of habeas corpus that was denied and dismissed with prejudice on June 7, 2023. The district court also denied Thomas's request for a Certificate of Appealability. Thomas also unsuccessfully sought a Certificate of Appealability in the Fifth Circuit Court of Appeal. This petition for a writ of certiorari timely follows.

REASONS FOR GRANTING THE WRIT

Under Rule 10, the Louisiana courts and the United States Court of Appeals for the Fifth Circuit has contrarily decided an important question of federal law that has been settled by this Court and has decided an important

federal question in a way that conflicts with relevant decisions of this Court as set forth below:

1. **[Question 1] This Court should decide if Thomas' right to bring the investigating detective's questioning to an end was scrupulously honored or if his right to cut off questioning was violated.**

   A. *Thomas' right to cutoff questioning was not scrupulously honored when his mother unambiguously said she wanted the interview to end. Thomas was 15-years-old when the Detective conducting the interview itemized the choices Thomas' mother could make but failed to mention—or respect—the right to bring the questioning to an end.*

Without debate, it is understood that when a person being questioned by police "indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." *Miranda v. Arizona*, 384 U.S. 436,473-474, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Relying on *Miranda*, the Fifth Circuit Court of Appeals reiterated that "[t]he admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his right to cut off questioning was 'scrupulously honored.'" *U.S. v. Alvarado-Saldivar*, 62 F.3d 697,699 (C.A. 5 (Tex.) 1995); *Michigan v. Mosley*, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975). Likewise, the Louisiana Supreme Court, relying on *Michigan v. Mosley* said: "When a defendant exercises his privilege against self-incrimination the validity of any subsequent waiver depends upon

whether police have 'scrupulously honored' his right to remain silent." *State v. Taylor*, 2001-1638 (La. 1/14/03); 838 So.2d 729,739; *Michigan v. Mosley*, supra. The process of determining if "the police have scrupulously honored a defendant's right to cut off questioning is a determination made on a case-by-case basis under the totality of the circumstances." *Charles v. Smith*, 894 F.2d 718,725-26 (5th Cir. 1990).

In this case, Thomas, who was fifteen-years-old, was being questioned by a homicide detective for his involvement in a burglary; however, as the investigation continued, the detective began to suspect Thomas was involved in the murder of Iesha Winbush. Sensing the shift in the interrogation, Thomas' mother tried to end the interrogation. It is worth noting that Thomas' mother, contrary to Thomas' appointed counsel and the lower courts, did not request counsel. She simply tried to stopped the questioning. Instead of immediately concluding the interview, the detective talked Thomas' mother into allowing her to finish her questioning:

Mother: Excuse me.
Detective: Yes ma'am.
Mother: Is he fixing to go to jail?
Detective: I can't answer that question.
Mother: Cause I can't stand to hear anymore of this.
Detective: Can I continue to talk to him?

Mother: I need to help him (crying).

Detective: Can I continue to talk to him?

Mother: If he's going to jail, **can he go?**

Detective: I don't have that answer yet for you ma'am. Mrs. Thomas, I, I'm being honest with you. I don't have that answer because—

Mother: **I don't want to hear anymore of this.** It's—

Detective: Can I, okay, can I continue to talk to him?

Mother: **I'm ready to go and get away from here** if he's going to jail. **Can he go?**

Detective: I, **I just need you to tell me if I can keep talking to him.**

Mother: Unintelligible.

Detective: He is by far being extremely helpful and that is what I need right now okay.

Mother: And I understand, it's just that, I mean I understand your job, but for me as a parent or brother or sister, I don't want to hear this.

Detective: I, I am, as a mother I can appreciate what you're saying. Okay, I would like to continue to talk—

Mother: **I was sitting here trying to hold back so he could finish** but I just, I mean I—

Detective: I, I tell you what, can I put you right outside the door? That way you're still here, but you're not sitting right here? And, and if you'll let me continue to talk to him

Mother: **I just want it to be over with** so I can, I can be done. I mean I need to, **I need to be through with this and gone.** I, just, this is too much. **I don't want to stand outside the door when I want it to be over with.**

Detective: But, but, I, I still need to get a few, I need, I, I need some more from him. Mrs. Thomas, I need some more from him please. And that's why I'm saying, if you want to sit right outside my door then, then you're still—

Mother: **I don't want to sit outside the door.**

Detective: Okay then I, I **don't know what other choice, because I still need to talk to him**. I, I get where you're coming from as a mom I do, I do because I, I can't imagine. My heart goes out to you. And I mean that sincerely. And I don't care how old they are, they will always be our babies. But, but **what comes out of his mouth right now is gonna determine a lot** Mrs. Thomas, it's gonna determine a lot. Which road we go down from here because he's either gonna be an accomplice or he's gonna be a witness. And it all depends on what comes out of his mouth right now, okay. So you may, **those are your choices**. I, I can have you, if you want to sit outside my door you can. If you want to sit in here. But I, **please, please let me talk to him. Please let him finish his story**.

Mother: Okay.

Appendix D, pp. 44-45 to Original Habeas Petition (emphasis added).

The detective used evasive tactics, and lied, so she could continue her interrogation contrary to this Court's reminder that justice frowns upon the cruel and simple expedience of compelling evidence against Thomas from his own mouth. *Miranda v. Arizona*, 384 U.S. at 460. She told Ms. Thomas she did not know if Thomas was going to jail or not. She invited her to leave the room if she did not want to hear what Thomas would say. The detective also played on Ms. Thomas's emotions and ignorance when she told her that what came out of Thomas's mouth would determine if "he's either gonna be an accomplice or he's gonna be a witness." Appendix D, p. 45 to Original Habeas Petition. This could be construed as "psychology." Cf. *Charles v.*

Smith, 894 F.2d at 726. According to this Court's clearly established jurisprudence, the detective's decision to talk Ms. Thomas into allowing her to continue her interrogation undeniably undermined Thomas's "right to cut off questioning." *Michigan v. Mosley*, 423 U.S., at 103, 96 S.Ct., at 326; quoting *Miranda v. Arizona*, 384 U.S., at 474, 86 S.Ct., at 1627.

Ms. Thomas told the detective she wanted the interview to be over with so she and Thomas could leave. The detective stonewalled and made Ms. Thomas feel like Thomas had to cooperate. Whether Thomas was going to be arrested or not was in the detective's discretion; however, the decision not to end the interview was not—especially after Ms. Thomas clearly said she wanted it to end. Had the detective ended the interrogation, as prescribed by law, Ms. Thomas could have consulted with an attorney to advise her and Thomas throughout the remainder of the investigation. Because the detective failed to scrupulously honor Thomas' right to cut off questioning, as asserted by his mother, his constitutional right against self-incrimination was violated.

There are five important factors the Court must consider in deciding if Thomas' right to cut off questioning was scrupulously honored:

> (1) whether the suspect was advised prior to initial interrogation that he was under no obligation to answer question; (2) whether the

> suspect was advised of his right to remain silent prior to the reinterrogation; (3) the length of time between the two interrogations; (4) whether the second interrogation was restricted to a crime that had not been the subject of earlier interrogation; and (5) whether the suspect's first invocation of rights was honored.

U.S. v. Alvarado-Saldivar, 62 F.3d. at 699; citing *Michigan v. Mosley*, 423 U.S. at 104-105, 96 S.Ct. at 327.

The only factor that weighs in the State's favor is that Thomas and his mother were informed of their rights under *Miranda* prior to the interview. As for the second factor, there was no second interrogation because the detective did not stop the first one when asked. She talked Ms. Thomas into allowing her to "continue to talk to him." Appendix D, p. 44 to Original Habeas Petition. The second factor weighs in Thomas' favor. The third factor also weighs in Thomas' favor. The detective refused to end the interview and pleaded with Ms. Thomas to let her continue her interrogation so Thomas could "finish his story." Appendix D, p. 45 to Original Habeas Petition. In considering the fourth factor, the Court is tasked with deciding if the subject matter of the second interrogation had changed. This factor, too, weighs in Thomas' favor. The detective's initial reason for interviewing Thomas was "to verify Andrew's statement of how they came into possession of the PS3." Appendix D, p. 8 to Original Habeas Petition. However, after "further review of the statements provided by Andrew and Tremond Thomas, [she] began to

notice inconsistencies, not only within their own statements, but when compared to each other[.]" Appendix D, p. 9 to Original Habeas Petition.

The detective questioned Thomas while another detective questioned Randy Andrew; and, as they "continued to compare their statements [they] became increasingly inconsistent. The focus began to shift from an independent burglary that may have occurred several days before the homicide, to the juveniles' direct involvement in the home invasion and homicide." Appendix D, p. 10 to Original Habeas Petition. In fact, the detective told Ms. Thomas her son was going to be an accomplice or a witness and that it depended on what came out of his mouth. Appendix D, p. 45 to Original Habeas Petition. The detective's statement indicates a shift from a burglary to a murder investigation; and, contrary to controlling jurisprudence, the detective made the statement to talk Ms. Thomas into letting her finish the interrogation. In her own words, Detective Brinkman said she told Thomas: "They will try to pin this on you. They will try to say that you are the one that did this murder, if you can't tell me when for sure you had burglarized this house." She testified that in response, Thomas asked: "Just me?" According to Detective Brinkman's trial testimony, she said she "felt there was way more to their involvement—that they may have been involved in

the—in the actual homicide. And at that point, I hit record." Trial Transcript Vol. II of III, p. 344. This was the shift in the investigation and when Thomas' mother tried to end the interview.

Finally, in considering the fifth factor, the Court must decide if the first invocation of Thomas' right to cut off questioning was honored. The detective failed to end the interrogation when asked—instead she pleaded with Ms. Thomas to allow her to finish the interrogation; thus the first invocation was not honored.

Although the Fifth Circuit Court of Appeals have a five prong test to determine if a criminal defendant's right to remain silent—or to cut off questioning—was scrupulously honored, the Nebraska Supreme Court believes *Michigan v. Mosely* claims require a three-factor analysis in determining whether the police scrupulously honored the right to remain silent. Those factors are (1) whether the police immediately ceased the interrogation once the defendant invoked his right to remain silent; (2) whether the police resumed the interrogation after a significant time and a renewal of the *Miranda* warnings; and (3) whether the police restricted the renewed interrogation to content not covered by the first interrogation. *Nebraska v. Bauldwin*, 283

Neb. 678, 811 N.W.2d 267 (Ne. 2012). Under either tests, it is apparent Thomas' right to cut off questioning was not scrupulously honored.

B. The Right to Cut Off Questioning is not the same as an Involuntary Waiver.

Applying *La. C. Cr. P. art.* 930.4, the state courts declined to review this issue allegedly because it was raised and litigated on appeal. Appendix C, p. 6 to Original Habeas Petition. To the contrary, the claim raised in Thomas's SAPCR was that his right to cut off questioning was not honored —which is not the same as a waiver of the right to remain silent. *State v. Thomas*, 201 So.3d at 280-83. The trial court also claimed the State addressed whether Thomas' right to cut off questioning was honored. That assertion is not true: when the State filed its response, the state's attorney responded to the claims filed in Thomas' initial APCR which was a request for supporting documents under *State ex rel Bernard v. Orleans Criminal District Court Section J*, 94-2247 (La. 4/28/95); 653 So.2d 1174. When Thomas filed his SAPCR, he informed the trial court that he was not pursuing the claims filed in his initial APCR. The state courts alleged adjudications of this claim are: contrary to clearly established law as interpreted by this Court; and an erroneous application of *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Although the motion to suppress was raised on direct appeal, the issue raised in Thomas' SAPCR was not litigated. On appeal, the appellate court concluded:

> The state demonstrated that Defendant's statements were free and voluntary and were not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. Through the forms for interrogation of juveniles and the recorded statements in which Ofc. Brinkman recited the *Miranda* rights, the state established that Defendant and his mother were informed of his rights, that they both understood his rights and that they voluntarily waived those rights without coercion. We find that the trial court did not err in determining that Defendant's confession was admissible and, therefore, did not err in denying his motion to suppress. Accordingly, this assignment of error lacks merit.

State v. Thomas, 201 So.3d at 284.

Thus the issue presented here was not resolved by the appellate court on appeal. The law of the case doctrine did not preclude the state courts from revisiting the initial denial of Thomas' motion to suppress. Cf. *State v. Matthews*, 50, 838 (La. App. 2 Cir. 8/10/16); 200 So.3d 895, 908; *State v. Cage*, 87-2778 (La. 2/4/94); 637 So.2d 89. Thomas' counsel and the state courts danced around the issue of Thomas' right to cut off questioning instead of tackling it head-on. Accordingly, Thomas is entitled to habeas relief on this claim. See *Charles v. Smith*, 894 F.2d 718,725-26.

2. **[Question 2] Thomas' trial counsel rendered ineffective assistance —and caused actual prejudice—when he argued an involuntary and coerced waiver instead of arguing that Thomas' right to cut off questioning was not scrupulously honored.**

The state courts denied this claim without reaching the merits of Thomas' argument. In denying this claim, the trial court relied on the State's misplaced response to Thomas' APCR. The federal district court essentially agreed with the state courts and opined—in error—that counsel briefed and argued Thomas' right to cut off questioning was not scrupulously honored. Because this claim, if established, would entitle Thomas to relief, he had a right to an evidentiary hearing to resolve the question of why his attorney argued a coerced waiver of the right to remain silent instead of the violation of his right to cut off questioning. See *La. C. Cr. P. art.* 927 et seq; *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). The state district court opined that any "related ineffective assistance of counsel argument" is eliminated because of the appellate court's ruling on appeal concerning the motion to suppress. Appendix C, p. 6 to Original Habeas Petition. The state courts decisions, to deny relief on this claim, are wrong.

Thomas' right to the "effective assistance of counsel is mandated by the Sixth Amendment to the United States Constitution." A claim of ineffective assistance of counsel "is analyzed under the two prong test

developed by the" Supreme Court in *Strickland. State v. Birklett*, 32, 261 (La. 2 Cir. 12/8/99); 749 So.2d 817,821 (citation omitted); *Strickland v. Washington*, supra; also see *Hughes v. Vannoy*, 7 F.4th 380,386-92 (5th Cir. 2021). The Louisiana Supreme Court has said "there is no precise definition of reasonably effective assistance of counsel [and] any inquiry into the effectiveness of counsel must be individualized and fact-driven." The state high court concluded that for a lawyer to be considered reasonably effective, he or she must possess and apply adequate skill and knowledge when defending clients. *State v. Peart*, 621 So.2d 780 (La.1993). The Fifth Circuit Court of Appeals said that ignorance of relevant law is "an identifiable lapse" in constitutionally adequate representation. *U.S. v. Williamson*, 183 F.3d 458, 464 (C.A. 5 1999); (quoting *Trass v. Maggio*, 731 F.2d 288, 293 (C.A. 5 1984)). One reasonable minded jurist said that "knowledge of the very basic rules of evidence is essential to any competent representation in a criminal trial." *Gochicoa v. Johnson*, 238 F.3d 278, 292 (C.A. 5 2000) (Dennis, J., dissenting).

Attorney Harville failed to properly argue his motion to suppress Thomas' inculpatory statements. He failed to brief the trial court on how the detective failed to scrupulously honor Thomas's right to cut off questioning

when his mother tried to end the custodial interview. To reduce redundancy, Thomas respectfully asks the Court to consider this claim in the light of claim one. Out of an abundance of caution, however, Thomas will brief the Court of how his counsel's deficient performance prejudiced him at trial. After having reviewed this claim in the light of the laws applicable, Thomas humbly asks the Court to determine if the statement he made to Detective Brinkman, after she failed to honor his right to cut-off questioning, was admissible over his objection at trial. Cf. *Michigan v. Mosely*, 423 U.S. 96,99-100, 96 S.Ct. 321,324-25.

Thomas was not a murder suspect when the detective first contacted him. Her first interview with Thomas took place at Calvary Ball Fields. The next day, the detective wanted to talk with Thomas again but learned he was in court for an unrelated matter. She decided to make contact with him and his mother there. What happened during that custodial interrogation tainted the statements that were later used against Thomas at trial. Had counsel argued that Detective Brinkman contravened Thomas' right to cut off questioning, contrary to clearly established federal law, there is a real possibility the trial court would have granted the motion to suppress. During her testimony, Officer Brinkman said she was frustrated with Thomas

"because he was going back and forth on when this actually happened. And [she] finally told him, if you aren't sure you are going to become the perfect suspect in this murder." Officer Brinkman testified that she told Thomas:

> They will try to pin this on you. They will try to say that you are the one that did this murder, if you can't tell me when for sure you had burglarized this house. And his response to me at that time was, just me? And after he said just me, I felt there was way more to their involvement—that they may have been involved in the—in the actual homicide. And at that point, I hit record.

Trial Transcript Vol. II of III, p. 344.

Although interrogators have a wide margin to operate in, there are bright lines that mark when they are traversing out of bounds. Thomas's counsel alluded to how Officer Brinkman contravened Thomas's right during cross-examination; however, the following colloquy shows how he failed to expose Officer Brinkman's unlawful action for what it was:

Q: When Tremond Thomas' mother was advised of the rights that she had and the rights that her son had, one of those was that they could refuse to answer questions, correct?

A: That's correct.

Q: They—and they can stop at any time, correct?

A: That's correct.

Q: This is State's Exhibit 89, a juvenile rights form that you filled out on October 12th when you were questioning Mr. Thomas at the Bossier City Police Department?

A: Yes, sir.

Q: In your office?

A: In my office, yes, sir.

Q: Also advises Tremond Thomas and his mother that they have the right to stop answering questions at any time, correct?

A: That's correct.

Q: And when you were questioning Tremond Thomas and his mother, his mother repeatedly asked for the questioning to stop, did she not, during that second interview?

A: Can you be more specific as to which second interview? The second interview overall or the second interview the—the next day?

Q: I understand. Sorry about that. There is con—the second inter—I'm sorry, the second interview or the first interview on October 12th?

A: The one in my office?

Q: Yes, ma'am.

A: She said she couldn't listen to anymore. She didn't want to hear anymore.

Q: Do you have your police report with you?

A: No, sir, I don't.

Trial Transcript Vol. II of III, pp. 355-356.

Thomas' trial counsel's performance here was deficient because it fell below an objective standard of reasonableness under prevailing professional norms. See *Strickland v. Washington, supra*; *State v. Matthis*, 2007-0691 (La. 11/2/07); 970 So.2d 505,509; *State v. Leger*, 2005-0011 (La. 7/10/06); 936 So.2d 108, 143. Counsel highlighted some of the things Ms. Thomas said to indicate she wanted the interview to end; however, he still failed to

Thomas' counsel failed to expose the lie in Officer Brinkman's statement as shown above:

Mother:	If he's going to jail, can he go?
Detective:	I don't have that answer yet for you ma'am. Mrs. Thomas, I, I'm being honest with you. I don't have that answer because
Mother:	I don't want to hear anymore of this. It's
Detective:	Can I, okay, can I continue to talk to him?
Mother:	I'm ready to go and get away from here if he's going to jail. Can he go?
Detective:	I, I just need you to tell me if I can keep talking to him.

***

Detective:	I, I tell you what, can I put you right outside the door? That way you're still here, but you're not sitting right here? And, and if you'll let me continue to talk to him
Mother:	I just want it to be over with so I can, I can be done. I mean I need to, I need to be through with this and gone. I, just, this is too much. I don't want to stand outside the door when I want it to be over with.

Appendix D, pp. 44, 45 to Original Habeas Petition.

The state appellate court noted that Ms. Thomas asked the detective was her son going to jail and said "she did not want to hear any more questioning." The court also noted the detective's claim that she did not know if Thomas was going to jail or not and, instead of respecting Ms. Thomas's request to end the interview, "explained the importance of finishing the interview. She also asked Ms. Thomas if she would like to sit

outside the room, but stressed that she would need her permission to continue interviewing Defendant if she chose to leave the room. Thereafter, Ms. Thomas agreed that Defendant could finish telling his story, and she remained in the room during the interview." *State v. Thomas*, 201 So.3d at 282-83. Contrary to clearly established federal law, Thomas' trial counsel failed in his duty to argue the deprivation of the right to cut off questioning.

3. **[Question 3] Thomas' appellate counsel rendered ineffective assistance—and caused actual prejudice—when he argued an involuntary and coerced waiver instead of arguing that Thomas' right to cut off questioning was not scrupulously honored.**

Like his claim of ineffective assistance of trial counsel, the state courts denied Thomas' claim of ineffective assistance of appellate counsel without reaching the merits of his argument. Again, the trial court relied on the State's misplaced response to Thomas' SAPCR to deny this claim. However, because this claim, if established, would also entitle Thomas to relief, he had a right to an evidentiary hearing to resolve the question of why his attorney decided to argue a coerced waiver instead of the claim raised in his SAPCR—a violation of the right to cut of questioning. See *La. C. Cr. P. art.* 927 et seq; see *McCoy v. Court of Appeals Wisconsin, Dist. 1*, 486 U.S. 429, 444, 108 S.Ct. 1895, 100 L.Ed.2d 440, 56 USLW 4520 (1988). The trial court opined that any "related ineffective assistance of counsel argument" is

eliminated because of the appellate court's ruling concerning the motion to suppress on appeal. Appendix C, p. 6 to Original Habeas Petition. The decisions of the Louisiana courts are wrong.

A counsel's performance on appeal is judged under *Strickland's* two-prong test. *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985); *Strickland v. Washington, supra*. On appeal, effective assistance of counsel does not mean counsel who will raise every non-frivolous ground for appeal available. Rather, it means, as it does at trial, counsel performing in a reasonably effective manner. *See Evitts*, 105 S.Ct. at 835. "The appellate lawyer must master the trial record, thoroughly research the law, and exercise judgment in identifying the arguments that may be advanced on appeal." *McCoy v. Court of Appeals of Wisconsin, Dist. 1*, 486 U.S., at 438. "In searching for the strongest arguments available, the attorney must be zealous and must resolve all doubts and ambiguous legal questions in favor of his or her client." *McCoy v. Court of Appeals of Wisconsin, Dist. 1*, 486 U.S., at 444. Of course, "knowledge of the very basic rules of evidence is essential to any competent representation[.]" *Gochicoa v. Johnson*, 238 F.3d at 292.

Thomas' appellate counsel, who was also his trial counsel, rendered ineffective assistance for failing to point out to the appellate court that the

police failed to scrupulously honor Thomas' right to cut off questioning. Counsel's performance was deficient on direct appeal because he argued Thomas' confession should have been suppressed because it "was the product of fear, duress, intimidation, menaces, threats, inducements and/or promises." *State v. Thomas*, 201 So.3d at 280. Counsel failed in his duty to make the appellate court aware of the detective's failure to scrupulously honor Thomas'—and by extension his mother's—right to bring the interrogation to an end. In challenging Harville's performance on appeal, Thomas is tasked with showing "that with effective counsel, there was a reasonable probability that he would have won on appeal." *Moreno v. Dretke*, 450 F.3d 158,168 (C.A. 5 2006) (citing *Smith v. Robbins*, 528 U.S. 259,285, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000)). He has met his burden. Had counsel first shown the trial court that the detective failed to scrupulously honor Thomas's right to stop the interrogation, the confession would not have been admitted at trial; also, had counsel realized his failure and briefed it on appeal, there is a possibility he would have prevailed.

The state appellate court denied Thomas' writ application on the showing made and cited *La. C. Cr. P. art.* 930.4. However, Thomas did not present a repetitive claim. Thomas made it clear to the state courts that he

was not presenting the same claim his appellate counsel urged on appeal; however, where the motion to suppress Thomas' confession would be the appropriate corrective action for both claims, in their respective postures, the state courts are wrong about the claim being repetitive.

In his supplemented application for post-conviction relief ("SAPCR") Thomas argued that his right to cut off questioning was not scrupulously honored by Detective Brinkman. The claim Harville raised on appeal—and pre-trial in the original motion to suppress—was a coerced waiver of the right to remain silent. See *State v. Thomas*, supra. Harville represented Thomas on appeal and was also his trial counsel.

The state courts have decided the outcome of this case contrary to the way this Court deals with a defendant's right to cut-off questioning after an initial valid waiver of the right to remain silent. The state courts treatment of this claim is contrary to and involves an unreasonable application of clearly established law as determined by this Court. This honorable Court has said if a person being questioned by police "indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." *Miranda v. Arizona*, 384 U.S. 436, 473-474, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The Fifth Circuit, relying on this Court's

decision in *Miranda*, reiterated that "[t]he admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his right to cut off questioning was 'scrupulously honored.'" *U.S. v. Alvarado-Saldivar*, 62 F.3d 697, 699 (C.A. 5 (Tex.) 1995); *Michigan v. Mosley*, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975).

Relying on *Michigan v. Mosley*, the state supreme court said: "When a defendant exercises his privilege against self-incrimination the validity of any subsequent waiver depends upon whether police have 'scrupulously honored' his right to remain silent." *State v. Taylor*, 838 So.2d at 739; *Michigan v. Mosley*, supra. "Whether the police have scrupulously honored a defendant's right to cut off questioning is a determination made on a case-by-case basis under the totality of the circumstances." *State v. Odums*, 50,969 (La. App. 2 Cir. 11/30/16); 210 So.3d 850, 860. A proper inquiry into the facts of this case will reveal: (1) that Thomas—who was fifteen-year-old at the time—initially waived his right to remain silent; (2) through his mother's adamant pleading, begged for the interrogation to cease; and (3) the detective conducting the interrogation refused to scrupulously honor Thomas' right to cut off questioning.

CONCLUSION

For the foregoing reasons Thomas's petition for a writ of certiorari should be granted.

Respectfully submitted,

Tremond Thomas

Date: January 10, 2024