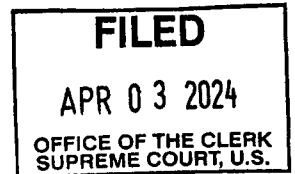


No. 23-7514

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER E. GLASS PETITIONER
(Your Name)

michael D. meltaneg et al
Judy Lynn Cates et al — RESPONDENT(S)
mark m. Boie

ON PETITION FOR A WRIT OF CERTIORARI TO

STATE OF ILLINOIS, FIFTH DISTRICT, APPELLATE COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER E. GLASS
(Your Name)

Menard C.C., P.O. Box 1000
(Address)

Menard, IL 62259
(City, State, Zip Code)

618-820-5071
(Phone Number)

QUESTION(S) PRESENTED

I. Did the Court err, by, allowing into evidence, Petitioner's statement where, interrogating Police told Petitioner he had to sign Miranda waiver form and engage in interrogation, (1) Cause Petitioner's Parole violation, (2) Petitioner is on Parole, and where, (3) Petitioner invoked his fifth amendment right to silence, and, one, of the multiple invocations, (4) the interrogating Police officers failed to scrupulously honor that right, (5) that the error was not harmless beyond a reasonable doubt?

II. Did the Court err, by, Petitioner's denied right to effective assistance of Counsel, where, (1) his trial attorney failed to object to the jury being able to see the portions of his interrogation video in which he sought to invoke his right to remain silent, where, he sought his Miranda rights, (2) where, trial Counsel failed to object to the State's nondisclosure of Government Witness Michelle Meyer's immunity for her cooperation in the conviction of the Petitioner, (3) where trial Counsel made prejudicial statement, to, veniremen, about undisclosed evidence in Petitioner's case, (4) where, trial Counsel made prejudicial statement, on, having sympathy for victims family / witness, (5) where trial Counsel failed to impeach Persured Police testimonies, (6) where, trial Counsel failed to object to State's nondisclosure of Petitioner's statement, in a timely manner, prior to the suppression of interrogation hearings on 12/7/2020, (7) where, trial Counsel failed to object to state's nondisclosure of the 12/7/2020 suppression hearings transcripts before the trials end, of, the second Pretrial suppression of interrogation hearings admitting these portions into evidence ran contrary to settled law, and by failing to object to them, by failing to impeach them, Counsel's performance fell below an objective standard of reasonableness and prejudiced Petitioner such that this Court should reverse and remand for a new trial?

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Michael SimcHaney et-al.
Judy Lynn Cates et al.
Mark M. Borte

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APPENDIX B	August 16, 2021 EFFINGHAM COUNTY CIRCUIT COURT OF JUDICIAL No. 20-CF-111 CIRCUIT #4, convicted Petitioner of first degree murder and concealment of Homicidal Death, for 55 years sentence in Illinois Department of Corrections
APPENDIX C	Supreme Court of Illinois denied the Petition for Leave to Appeal, In re: People State of Illinois, respondent, v. Christopher E. Glass, Petitioner. Leave to Appeal, Appellate Court, Fifth District, 130210
APPENDIX D	N/A
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from federal courts:

N/A

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix - C - to the petition and is

- ☒ reported at Glass v. Illinois, ILSC NO. 130210; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the APPELLATE, FIFTH DISTRICT court appears at Appendix A to the petition and is

- ☒ reported at People v. Glass, 2003 IL App. (5th) 210267-U; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

A1.

[Both sides]

JURISDICTION

☐ For cases from federal courts:

N/A The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was 11/24/2004.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in N/A Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

[Direct Critical Review]

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Fifth Amendment, U.S. Constitution Amendment
- Sixth Amendment, U.S. Constitution Amendment
- Fourteenth Amendment, U.S. Constitution Amendment
- Fed. R. Crim. P. 12(c)
- Illinois Constitution of 1970 article I §10
- 725 ILCS 5/114-11(d) (over)
- 720 ILCS 5/9.2(a)(1), (2)
- Illinois Constitution of 1970 article I §8

STATEMENT OF THE CASE

- January 24, 2004, Supreme Court of Illinois denied the Petition for Leave to Appeal the entitled Cause. In re People State of Illinois, respondent, v. Christopher E. Glass, Petitioner; Leave to appeal, Appellate Court, Fifth District, 130210
- October 17, 2003 the final judgement of said Appellate Court, Fifth District, AFFIRMED the Effingham County Circuit Court, Fourth Judicial Circuit's Conviction of Petitioner
- August 16, 2001 Petitioner was sentenced to 50 years and 5 years for the conviction of first degree murder and Concealment of Homicidal Death.
- APPELLATE COURT, FIFTH DISTRICT held: The trial Court did not err in denying Petitioner's motion to suppress where he failed to unambiguously and unequivocally invoke his right to remain silent. The APPELLATE COURT AFFIRMED the judgement of the trial Court and the Petitioner's Conviction.
- April 8, 2000, Jena Halbreck (decedent's mother) reported Kimberly Mattingly missing. (R453-R460)
- April 29, 2000, Illinois State Police executed a Search Warrant [2000-MR-61] on the Property owned by Philip and Janet Kaiser at 15852 N 1st Street, Beecher City, Illinois. During Search, the body of Kimberly Mattingly was discovered in a water filled burn pit.
- April 29, 2000 Warrant 2000-MR-64 was issued for the Phone number (618) 335-8391. The Warrant for Arrest [Petitioner] was issued by the Effingham County Circuit Fourth Judicial Court. Cause of the Warrant for Arrest, a Parole violation Warrant [INCC Warrant: VA200000000]. (Parole violation Report) That the Parole violation warrant was issued. "On 4/29/00, The Circuit Court of the Fourth Judicial Circuit, Effingham County, issued a Warrant on the offender for First Degree Murder and Concealment of Homicidal Death, which is a violation of MSR Rule 1." (Parole violation Report)
- April 29, 2000, Petitioner was arrested in Vigo County, Terre Haute, Indiana.
- Interrogating Police told Petitioner, he had to sign the Miranda Waiver Form, to say 'yes' to knowing his rights, he had to partake in interrogation. Cause, of a Parole Violation and, Cause, on Parole. (Page 2, Line 11-14, Glass Interrogation transcripts) 4/29/2000
- Petitioner told interrogating Police 'No', when asked if he was willing to talk to Police. (Page 12 Line 24, Page 13 Line 1-4 Glass interrogation transcript)
- Petitioner told interrogators "You can tell the story any way you want. Let's stop this whole conversation. I'm done with this conversation, sir." (R60-602) (P72 Lines 18-21, Glass interrogation transcript) Note: there are clear errors in written transcripts, as noted in suppression hearing, 12/7/2020. Request hearing this portion de novo.
- Twelve minutes later, Petitioner told interrogating Police, "Let's get this over with. Just fucking do it, Let's go." Before leaning back against the wall. When Agent Daniel Rossiter said 'Stop and listen', while holding his hand in the stop gesture, Rossiter said he wanted to hear (Petitioner's) version of events, Petitioner reiterated, "I'm done fucking talking." (R63-R64; M.E. 1, UTS-01-1, 821coto 83, 30, P.E. 18, 53; coto 54; 100, Glass interrogation transcript Page 86 Line 12-13) Petitioner stopped talking for 8 seconds while Agent Rossiter continued speaking.

STATEMENT OF THE CASE

- January 24, 2024, SUPREME COURT OF ILLINOIS denied the Petition for leave to Appeal the entitled case: Glass v. Illinois, ILSC NO. 130210.
- October 17, 2023, the Final Judgement of said Appellate Court, Fifth District Affirmed the Effingham County Circuit Court, Fourth Judicial Circuit Conviction of Petitioner.
- August 16, 2021 Petitioner was convicted of First Degree Murder and Concealment of Homicidal Death and sentenced to 50 years and 5 years.
- Appellate Court, Fifth District held: the trial court did not err in denying Petitioner's motion to suppress. where they claim he failed to unambiguously and unequivocally invoke his right to remain silent, The Appellate Court Affirmed the Judgement of trial court and Petitioner's Conviction.
- April 8, 2020, Jena Holbrook [Decedent's mother] reported Kimberly Mattingly missing. CR 453- R460
- April 29, 2020, Illinois State Police executed a search warrant [2020-MR-60] on the property at 15852 N. 1st. Street, Beecher City, Illinois. During the search the body of Kimberly Mattingly was discovered in a water filled burn pit.
- April 29, 2020, Warrant, 2020-MR-69, was issued for the Phone number (618)-335-8391. The warrant for [Petitioner's] Arrest, and then, a Parole Violation Warrant [ISOC Warrant: VA2002883] (Parole Violation Report) Parole Violation Warrant issued Cause: "On 4/19/20, The Circuit Court of the Fourth Judicial District, Effingham County issued a Warrant on the offender for First Degree Murder and Concealment of Homicidal Death, which is a violation of MSR Rule 1." (Parole Violation Report)
- April 29, 2020, Petitioner was arrested in Vigo County, Terre Haute, Indiana.
- Interrogation Police told Petitioner, he had to sign the Miranda Waiver form, to say 'yes' to knowing his rights, he had to partake in interrogation, Cause, of a 'Parole Violation', and Cause, 'on Parole'. (Page 2, 4/29/20 Glass interrogation transcript)
- Petitioner told interrogator's, "No", when asked if he was willing to talk to Police (Page 12 Line 24, Page 13, Line 1-4, 4/29/20 Glass interrogation transcript)
- Petitioner told Police, "You can tell the story any way you want, Let's stop this whole conversation. I am done with this conversation, sir," (R60-62) (Page 72 Line 18-21, 4/29/20 Glass interrogation transcript) Note: there are clear errors in the written transcripts as noted in suppression hearing on 12/7/20.
- 12 minutes later, petitioner told Police, "Let's get this over with, just fucking do it, let's go." Before leaning back against the wall, when Agent Daniel Rossiter said, "Stop and listen" while holding his hand into the 'stop' gesture. Rossiter said he wanted to hear Petitioner's version of events. Petitioner reiterated, "I'm done fucking talking," (R63-64; ME.1, VTS_01-1 82:00 to 83:30, P.E. 18-53:00 to 54:00, Glass interrogation transcripts Page 80 Line 12-13) Petitioner stopped talking for 8 seconds while Rossiter continued to speak.

STATEMENT OF THE CASE

• Agent Rossiter further testified that about two hours into the interrogation, Petitioner also said, "I don't know what's going on, I don't know if the evidence is against me or for me, I don't know what's going on. But I do know that I didn't fire more than one shot." (LR63-64, M.E. 1, UTS-01-a-8:30 to 9:00; P.E. 18, 71:00 to 70:00; Glass interrogation transcript Page 104 (lines 5-7)) Note: transcript has written errors.

• On cross-exam Agent Rossiter acknowledged that Chris was in handcuffs during the interrogation and had asked whether Miranda rights had to be signed for a Perle violation. (LR65-68)

• The Court denied the motion to suppress, announcing that it found Petitioners' invocations to be ambiguous and Petitioner continued speaking after these comments. (LR96-95) The Court referred in its oral ruling to a transcript of the interrogation even though the Court and defense counsel noted several instances of transcript errors. "There were some errors or misinterpretations of statements made by the various individuals." (R53-55, R94)

• Despite these errors, the Court quoted the transcript: "There is a discrepancy in the transcript that basically says, 'I'm done with this conversation.'" As argued by the State, that is an ambiguous statement. It is a statement where he then, immediately after that, continues to talk with the investigators. Doesn't stop, doesn't indicate, "I want to talk to an attorney, I want to stop, I want to leave, I want to do anything to invoke his [sic] right other than 'I'm done with the conversation.'" (LR93)

• (LR93) Regarding the next invocation, the Court again quoted the transcript: "On page 86 of the transcript I... the defendant indicates, 'Why do you need me to say this? Let's stop talking.'" Again that is a very ambiguous statement. It clearly could be interpreted by the officers to mean that he just wanted to change the subject, not stop the entire conversation. But the defendant himself immediately continues by making the statement, "Sounds like you already know what happened. Not to the effect, 'I want a lawyer. I want to stop. I want to go home.'" (LR93)

• (LR93) Regarding the last invocation, the Court quoted the transcript again: "The defendant says, 'I don't want to try anymore, I don't know if the evidence is against me or for me, I don't know what's going on, but I do know that I didn't fire more than one shot.'" The language, "I don't want to try anymore," is again ambiguous. It is not a clear statement that this defendant wants to terminate the interrogation invoke his right to remain silent. In fact, he goes on to clarify, "I know I didn't fire more than one shot," at this point in the conversation.

• (LR94) The Court continued by saying, "At no time is this Court finding that the defendant invoked his right to remain silent, his request to be represented by counsel, or any other right afforded to him under his Miranda rights." (LR94-95)

• Trial Counsel told veniremen, that "Though this is not a drug case, meth is involved," making a prejudicial statement, as well as, giving undisclosed pretrial evidence to potential jurors during voir dire.

• Trial Counsel told the Court, "I have sympathy for the victim's family." Where the decedent's mother was also a trial witness.

• Lead investigator Windy Westfall testified, "No gun was ever recovered", No other bullets were found except .44 casing rounds. (3 spent, 4 live) (LR493, Line 18-23; LR509, Line

STATEMENT OF FACTS

18-23)(R494 Line 2-17) That it was not able to have an idea of what caliber, other than 'much larger' caliber of bullet fragments found in the victim's body. (R493 Line 3-6) None of the bullet fragments were tested for ballistics or tool markings and no gun to see what gun they were fired out of. (509 Line 13-20) That the large fragment was 'too badly damaged' to have been forensically tested (571 Line 15-24) That it is not typical to forensically test bullet fragments found in victim's body without having a firearm. (R573 Line 12-15) 'Because most of the fragments were so small and minute our forensic lab would not examine them because we did not have the weapon used. And the larger bullet fragment was so mangled, I guess you would say, damaged, that they would not do any forensics on it because we did not have the weapon that we determined has been used.' (R573, Line 15-23)

- Interrogating Officer Daniel Rossiter told the Court, 'he only knew of the Parole Warrant.' That Petitioner's location was unknown at the time warrant was issued. That the 'Parole Warrant' was the only warrant that he [Rossiter] knew about.' (R64-70)

- State's Attorney Brian Kibler stated as to Petitioner's interrogation, "Would I confess to something where you don't even have the body," (R445, Line 8-9) Kibler also stated 'The story' began on April 12, 2020. That Jera Hulbrook had not seen or heard from [Kim] in a month. After, April 5th, she stopped hearing from her daughter, April 13 a day after the complaint was made [...]. (R445 Line 11-22)

- State's Attorney Kibler withheld Petitioner's interrogation transcripts until the morning of the suppression of interrogation hearings (R54 Line 15-18)

- State's Attorney Kibler never disclosed, Michelle Meyers, was given 'immunity' to work for the government for her help in the apprehension of the petitioner, and her trial testimony.

- State's Attorney Kibler never disclosed, 12/7/2020 suppression hearings transcripts before the trial's adjudication, for the second pretrial suppression hearings.

- That Associate Judge Christopher McDush failed to hear the second pretrial suppression of interrogation motion.

- The interrogation video was played before the court.

- Agent Rossiter testified Agent Jennifer Smit and himself interrogated Petitioner at the Vigo County Jail in Terre Haute, Indiana on April 29, 2020. (R528-29) The interrogation began around 11:30 P.M. and lasted a couple of hours. (R529-30)

- Rossiter testified that Petitioner initially said he last saw Mattingly on April 6, 2020, when she left Kaiser's property around noon. (R531)

- Petitioner told agents that he struggled with Mattingly over a backpack containing a loaded handgun. (R531-32)

- Petitioner stated the gun accidentally 'went off' and hit Mattingly in the hip or stomach. (R532; P.E. 18, 40:45-42:00)

- Petitioner stated he fled the property, assuming that other people there would call an ambulance. (R532)

STATEMENT OF FACTS

- Agent Rossiter testified Petitioner later said that while the first shot into Mattingly's hip or stomach was an accident, Petitioner stayed on the Property for several hours, then went back, checked Mattingly's Pulse, found no signs of life, and fired another round into her chest or head. (P.E. 18, 9:18 to 9:30)
- About noon on 4/16/2020, Michelle Meyer and Kimberly Mattingly arrived at the Kaiser Property. (P.E. 18, 9:18 to 9:30) Petitioner said Mattingly attacked him with a lock, wrapped in an hankchief when he got into the car. (P.E. 18, 9:45 to 10:00)
- Michelle Meyer testified that at no time, did Petitioner strike or even yell at the active aggressor (Mattingly). That Petitioner was "Just trying to get her to calm down and stop yelling." (R688 Line 8-24)
- Michelle Meyer testified "the last time she seen (decedent) was grabbing some sort of pipe on the front porch." (R639 Line 10-23)
- During interrogation Petitioner asked Agents, "Did she even die from a gunshot wound? I don't know." (P.E. 35:00 to 36:00)
- Petitioner mentioned the sun being in the backpack. The backpack being in his left hand, when the sun went off. Agent Rossiter misstated that Petitioner said the sun was in his left hand. (P.E. 18, 40:00 to 42:00)
- Petitioner denied that misstatement and stated Rossiter "was trying to put words in his mouth." (P.E. 40:00 to 42:00)
- Petitioner said, "You know what? Let's stop this whole conversation, How about that? I'm done with this conversation, Sir!" (P.E. 18, 41:30 to 42:30; M.E. 1, VTS 01-1, 70:00 to 71:15) [Defense Counsel did not object to the jury hearing this imprecation.]
- Rossiter spoke over Petitioner and held his hand in the "stop" gesture:
Rossiter: Stop, just, stop! Look, Chris this is important, okay?
Petitioner: Yeah, it's real important
Rossiter: This is the most important moment of your life!
Petitioner: Yeah, I don't got one anymore.
Rossiter: I know you! - STOP AND LISTEN!
(Screen / sound black with edit)
I understand that But this is a whole -
Petitioner: I don't know what the fuck you're (inaudible)
Rossiter: STOP AND LISTEN! This is a whole different balls game. IF you think you have any chance, this is it! To tell us what happened. Tell us -
Petitioner: I just told you
Rossiter: Tell us about this altercation and what caused the altercation, and what happened during the altercation, (P.E. 18, 41:30 to 43:00)
- After that Rossiter and Petitioner had more back and forth until Petitioner said, "It was a fucking accident, I told you, one shot! [holds up one index finger]. That's all I know about, I don't know there was more than one." (P.E. 18, 43:00 to 44:00) Rossiter asked, "Who might be responsible for the others?" Petitioner responded, "I don't know, I wasn't there." (P.E. 18, 43:00 to 44:15)

STATEMENT OF THE CASE

• Rossiter told Petitioner "the group put decadent out of her misery." They knew Callins an ambulance wouldn't fix everything, because of the drugs, and the panic. (P.E. 18, 52:40 to 53:00) Petitioner again stated, "I didn't do more than that." (P.E. 18, 53:00 to 53:10) Petitioner stated, he had not seen it with his own eyes, he didn't know who had done what. (P.E. 18, 53:45 to 53:55)

• Petitioner asked Agents, "Why do you need me to say this if you already know everything?" "You just want that sweet conviction for you?" (P.E. 18, 53:10 to 54:00)

• Petitioner stated, "Just fucking do it! Let's go" Leaned against the wall and turned away from interrogators, while saying, "I'm done fucking talking."

(P.E. 18, 53:00 to 54:00, M.E. 1, VTS - 01-1, 82:00 to 83:30) Note: During this invocation, Defense Counsel did not object to the jury hearing this invocation.

• Rossiter interjected, "Now Chris, Just STOP AND LISTEN! STOP AND LISTEN!" (P.E. 18, 53:00 to 54:00) Rossiter never ceased the conversation, never paused, or listened to anything Petitioner was saying.

• Rossiter told Petitioner he would "Put her out of her misery, so she doesn't suffer anymore, and hope she never gets found, That's what I would do." (P.E. 18, 60:00 to 66:00)

• Rossiter told Petitioner, "that was the most humane decision that you made after that accident." (P.E. 18, 63:00 to 64:00)

• Rossiter told Petitioner to talk about his "most humane moment."

• Petitioner folded his arms on the table and put his chin on his arms, said, "I'm sure you would. I didn't do nothing like that." (P.E. 18, 68:00 to 69:00)

• Rossiter reiterated his theory that the group had shot Mattingsly again to put her out of her misery and asked Petitioner, "Am I close?"

• Petitioner answered, after a hesitation, "I ain't, ... I don't want to talk anymore." (P.E. 18, 71:00 to 72:00; M.E. 1, VTS - 01-2, 83:30 to 9:30) Petitioner continued, "You know, I don't know whether the evidence is against me or for me, I don't know what's going on. I do know that I didn't fire more than one shot." (P.E. 18, 71:45 to 72:15) Note: During this final invocation, Defense Counsel did not object to the jury hearing this invocation.

• Rossiter said Mattingsly was dead when they found her. That the group decided to "give her a proper burial." (P.E. 18, 79:00 to 80:15)

• Rossiter asked, "Was she dead?"

• Petitioner replied, "Yeah, as far as I know," saying he could not feel a pulse and, "really shocked that no one actually, you know, gave her a ride to the hospital." (P.E. 18, 86:00 to 87:00)

• Rossiter said the Police knew the gun went off more than once.

• Petitioner said Mattingsly was dead before he left, again, insisted there was only one shot. (P.E. 97:00 to 98:00)

• Rossiter told Petitioner he made sure Mattingsly wasn't in pain anymore.

• Petitioner replied, "I didn't, that he didn't know who did, and he didn't want to get anyone else in trouble." (P.E. 18, 97:00 to 98:00)

STATEMENT OF THE CASE

• Rossiter demanded Chris to tell the Agents where the second shot landed on Mattingsly's body. Petitioner hesitated before saying, "maybe the head, maybe the chest, maybe both." (P.E. 18, 98:00 to 99:00)

• Rossiter stated, "To put her out of her misery!" Petitioner answered in a whisper "Yeah!" (P.E. 18, 99:00 to 100:00) Petitioner believed there was only two shots fired. (P.E. 18, 99:30 to 100:30)

• Forensic Pathologist Denton testified the decedent had multiple gun shot wounds. Mattingsly had methamphetamine in her liver tissue (LR616)

• Forensic Pathologist Denton claimed, "one gun shot entrance on the back right side of her neck just beneath the skull. That bullet severed the spinal cord. That bullet would have instantly stopped her breathing. It was the fatal shot. It exited the left jaw. (LR577-78)

• Forensic Pathologist Denton said there was seven gun shot wounds: right neck, left eye (graze), left arm, three in right arm, and one right hip. (LR586-87, R589)

• Forensic Pathologist said the severed spinal cord would have stopped the breathing, but not the heart from beating. Because of that, the other gun shot wounds could have continued to bleed after the severed spinal cord. (LR601-02)

• Denton recovered 4 metal fragments from the decedent's body. The 'Grain' fragment was the only one that could be determined came from a .40, 44, .45 caliber bullet. (LR589)

REASONS FOR GRANTING THE PETITION

I.1. On April 29, 2020 Petitioner was detained, as told by Police, for a Parole Violation. Upon arrest, Petitioner, was brought to Uiso County Police Department interrogation room. After he was Arrested in the rain and Kept outside until detainee transport arrived. Approximately one hour in waiting for transport. While awaiting in the tiny interrogation room, many factors combined to enable extreme duress, the Petitioner was forced to endure.

In this tiny room was three chairs and one table, Petitioner was Placed in the far corner, to which, Pinned him between the table and wall. Where the Petitioner could not even place his feet under the table. Petitioner, being soaked and wet from the time in the rain, was Placed in an air conditioned room. Petitioner was under the influence of methamphetamine for more than ninety-six hours straight. The entire duration of the interrogation, Petitioner was given an empty foam cup. It is no question that Petitioner was under serious and extreme duress before and during the interrogation.

Then, entered two masked interrogators. This serious and extreme duress, while physically confined and handcuffed, under, 'All' of these conditions was more than enough to compel the Petitioner to submission and involuntarily waiving his Miranda rights waiver form.

With these serious and extreme conditions of duress came the interrogators undue influence, forced by coercive deceptive tactics to surrender Petitioner's Miranda rights. Where Illinois State Police Sgt Daniel Rossiter told Petitioner - As Rossiter slid the Miranda waiver form in front of Petitioner - that Petitioner had to sign the form cause, Petitioner, (1) "For a Parole violation", (2) "on Parole." (Glass examination, Page 2 Line 11-19)

Rossiter: IF You could, what I would like you to do is sign here. So under, stating that I read you verbatim and you understand your rights.

Petitioner: Do I have to do this for a Parole violation?

Rossiter: What's that?

Petitioner: Do I have to do this for Parole?

Rossiter: [Yeah] Unfortunately, man anytime I talk to somebody on a warrant we have got to read that stuff. It's kind of silly.

After the involuntary signing, by force, Rossiter stated he wanted to get some demographic information. Petitioner showed early signs of confusion, by not knowing his address. (Page 3 Line 11-15, interrogation transcript) Petitioner refused to talk to Police after demographics. (Page 12 Line 24, Page 13 Line 1-4) Rossiter ignored the oral refusal. Rossiter forced Petitioner, by undue influence,

1) discrepancy in transcript. Cleared up in the suppression hearing Page 1.

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undue influence, inducing compelled and coerced inculpatory statements that condemned the Petitioner to his wrongful conviction. But for using undue influence, by, coercive deceptive tactics, both, written and oral portions of the miranda rights waiver form are involuntarily given to Police.

Rossiter: So you know, let's just kinda talk about that a little bit, you know, one, how do you know chasity? How did you get over here?

Petitioner: NO!

Rossiter: [MP continued questioning and ignoring the refusal] Where were you going this evening when you got arrested? Just all that kind of stuff.

At which time, Petitioner, while under serious and extreme duress and being coerced by, undue influence, was compelled to (1) sign the Miranda Rights Waiver form, (2) compelled to further converse with the interrogators, cause, as Petitioner was told he had to, cause, of (1) Parole violation, (2) on Parole. "IF the individual is alone and indicates in any manner that he does not wish to be interrogated, the Police may not question him," (Miranda v. Arizona, 384 U.S. 436 (1966)), (U.S.C.A. Const. Amend. 5, U.S.C.A. Const. Amend. 6, U.S.C.A. Const. Amend. 14) "Coercion can be mental as well as physical and blood of the accused is not the only hallmark of unconstitutional inducement," (Miranda v. Arizona, 384 U.S. 436 (1966)), (U.S.C.A. Const. Amend. 5) "Incommunicado interrogations of individuals may not, while not physical intimidation, is equally destructive of human dignity and current practice is at odds with principle that individual may not be compelled to incriminate himself," (Miranda v. Arizona, 384 U.S. 436 (1966)), (U.S.C.A. Const. Amend. 5)

When interrogator's denied Petitioner's Miranda rights, by, undue influence, the coercive nature created a compelled involuntary waiver of the miranda rights form, both, oral and written portions. The word 'waiver' does not carry the strict implication of an intentional relinquishment of a known right that precludes all appellate review. (Fed. R. Crim. P. 12(e)). The United States Court of Appeals for the Seventh Circuit reiterated, "that a true waiver only occurs through intentional relinquishment of an argument, while a forfeiture is the result of a neglectful failure to pursue an argument." (U.S. v. Clarke, 207 F.3d 874, 880-81 (7th Cir. 2000)) Rule 12(e), itself says that "for good cause, the court may grant relief from the waiver." As the record clearly indicates, Petitioner did not willfully, intentionally, and/or voluntarily abandon his miranda rights, for Petitioner was forced to sign the 'miranda rights waiver form.' Petitioner's oral portion was ignored by interrogators. "A defendant's statement is inadmissible at trial unless the prosecutor can establish that the accused in fact knowingly and voluntarily waived his rights when making the statement," (Berguis v. Thompson, 1560 U.S. 370, 382, 130 S.Ct. 2250, 176 L.Ed. 2d 1098 (2010))

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The government bears the burden of Proof in demonstrating the defendant's Miranda waiver and voluntariness of his confession. "U.S. v. Stewart 536 F.2d 714, 719 (7th Cir. 2008)" Opportunity to exercise these rights must be afforded, accused may intentionally and knowingly waive rights, and agree to answer questions or make statements, but until such warnings and waiver are demonstrated by prosecution at trial, no evidence obtained as a result of interrogation can be used against him. "Miranda v. Arizona, 384 U.S. 436 (1966), U.S. Const. Amend(s) 5, 6, 14)

"An interrogator who presses forward will eventually abandon the interview style and turn the interaction into a full-blown interrogation. The readings and waiver of Miranda rights typically signal the transition. The optimal point at which to advise a suspect of his constitutional rights and obtain a waiver is prior to the start of the accusatory part of the interrogation. The non-threatening interview format contributes to a suspect's decision to allow questioning to proceed up to this point. Police have portrayed a risk-free questioning. They have treated the suspect solitiously or in a businesslike manner, and they have not informed him that he is their prime suspect - all of which makes it easier for him to waive his rights to silence and counsel.

Neither an innocent nor a guilty party is likely to appreciate the full significance of the Miranda warnings. An innocent person will likely believe that he is not in jeopardy by waiving his rights and answering questions because police have sought out his help in solving the crime and, after all, he is innocent. He may also believe that Miranda warnings are merely a bureaucratic formality that are significant only for the guilty. "The decision to confess falsely: Rational choice and irrational action, 74 Den. U.L. Rev. 979, Richard J. Ofshe, Richard A. Leo.)

"Investigators tend to introduce the Miranda advisement in a manner that is to their advantage. They might do so by presenting it as a bureaucratic formality and deliver the warnings in a perfunctory manner, they might actively de-emphasize the significance [as they did in this case] or implications of Miranda and suggests that it is unimportant or something to be ignored, or they might try to persuade the suspect that it is in his best interest to waive Miranda altogether by telling him that if he does not consent to questioning, people will think him guilty. At this point, investigators encourage suspects to believe that answering their questioning is relatively risk-free.

Sometimes police questioning "outside Miranda" by ignoring a suspect's explicit invocation. The likely outcome of ignoring Miranda is exclusion of the improperly obtained admission into evidence at trial. The admission can, however, be used for impeachment if the defendant testifies. Therefore, interrogators have little to lose by ignoring a suspect's invocation of Miranda, but may gain incriminating information and possibly have it admitted at trial. "The decision to confess falsely: Rational choice and irrational action, 79 Den. U.L. Rev. 979, Richard J. Ofshe, Richard A. Leo.)

By the compelled waiver from undue influence, to sign the written portion, and ignoring the oral 'refused' portion of the Miranda Rights form, the interrogators violated every constitutional right afforded to him (petitioner) under

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'Miranda.' The Waiver has two distinct dimensions: "Waiver must be 'voluntarily' in the sense that it was produced of free and deliberate choice rather than intimidation, coercion or deception," and "made with full awareness of both the nature of the rights being abandoned and the consequences of the decision to abandon it." (Miranda v. Arizona, 475 U.S. 412, 427, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986))

By these standards of the 'Miranda Rule' the entire statement by Petitioner on April 29, 2020, was involuntarily made. "Therefore, the entire statement should be void and rendered inadmissible to use in court." Thus, if anything, our subsequent cases have reduced the impact of the 'Miranda rule' on legitimate law enforcement while reaffirming the decisions Core rulings that unwarned statements may not be used as evidence in the Prosecution's Case in Chief. (Dickerson v. U.S., 530 U.S. 428, 443-444, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000))

I.2. During the interrogation of Petitioner, Agent Rossiter shifted gears and demanded information about the murder of Kimberly Mattingly. When the demands grew accusatory, Petitioner invoked his right to silence by saying, "You know what? Let's stop this whole conversation. How about that? I'm done with the entire conversation, sir." (P.E. 18, 41:30 to 42:30, M.E.L. VTS-01-1, 70:00 to 72:00)

Agents did not suspend the interrogation, did not pause, did not even acknowledge Petitioner had invoked his right to silence. Instead, Rossiter spoke over Petitioner announcing his intentions to be "done with this entire conversation, sir." All while holding his hand in the 'stop' hand gesture to stop talking.

A little later, Rossiter told Petitioner the group "Put [Mattingly] out of her misery. They knew calling an ambulance wouldn't fix everything, because of the drugs, and because of the panic." (P.E. 18, 52:00 to 53:00)

Petitioner repeated continuously, "I didn't do anymore than that." (P.E. 18, 52:00 to 53:00) Petitioner had not "seen it with his own eyes, he didn't know who had done what." (P.E. 18, 52:45 to 53:15)

Petitioner asked the Agents, "Why do you need me to say this if you guys already know everything? You just want that sweet conviction for you." (P.E. 18, 53:00 to 54:00)

Petitioner, again, invoked his rights, "Just fucking do it. Let's go," right before leaning back against the wall and turning away from Police. Then said, "I'm done fucking talking." (P.E. 18, 53:00 to 54:00, M.E.L. VTS-01-1, 82:00 to 83:30)

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Rossiter interjected, "No, Chris, Just STOP AND LISTEN! STOP AND LISTEN!" (P.E. 18 53:00 to 54:00) Agents did not suspend interrogation, did not pause, or even acknowledge Petitioner's invocation.

Rossiter told Petitioner, he would have, "Put her out of her misery so she doesn't suffer anymore, and hope she never gets found, that's what I would do." (P.E. 18, 65:00 to 66:00)

Rossiter told Chris to talk about his "most humane moment," Petitioner folded his arms on the table and put his chin on his arms while saying, "I'm sure you would. I didn't do nothing like that," (P.E. 18, 68:00 to 69:00)

Rossiter reiterated his theory that the group had shot Mattingsly again to put her out of her misery and asked Petitioner, "Am I Close?"

Petitioner hesitated before invoking his right to silence a final time, "I ain't,,, I don't want to talk anymore," (P.E. 18, 71:00 to 72:00; M.E. 1, VTS-01-2, 8:30 to 9:30)

Defense Counsel moved, in Pretrial, to suppress the interrogation video for several reasons, including Petitioner's multiple invocations of Fifth Amendment right to silence. That Police completely ignored those invocations. Police stifled those invocations. (LR 148-55) After the first hearing the Court denied the motion to suppress. (LR 96-95) The Court found all of Chris' statements were ambiguous, such that he never 'clearly' invoked his right to remain silent, or 'asked for an attorney' (R94-95)

The Court's decision was based in part on a transcript that, as both the Court and defense Counsel acknowledged, was rife with inaccuracies - a transcript that does not appear in the record and that is at odds with what People Plainly say on the interrogation video. Judge Koester indicated the interrogation transcript is to be used as "more of an aid" to the video (the actual admitted evidence) The Court then used those inaccurate transcripts to make a ruling on the motion to suppress hearings. Reviewing de novo, this Court may assess for itself just what Petitioner said in the pertinent portions of the interrogation. One can not help but recognize Petitioner's true statements and how they were meant to invoke his Constitutional right to silence. That Police did not scrupulously honor those invocations. Petitioner's subsequent statements in the interrogation should have been suppressed. The trial Court's error in denying the suppression was not harmless beyond a reasonable probability.

On the specific issue of whether [Petitioner] invoked his right to remain silent. The video tape itself is determinative. As we have access to the same materials the trial Court considered in making its rulings, and neither the facts nor the credibility of witnesses is at issue, we review the trial Court's determination that [Petitioner] did not invoke his right to remain silent de novo.

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This Case's Factual Findings were entirely based on the video of Petitioner's interrogation rather than on the credibility and testimony of Agents Rossiter and Smit. (R90-95) None of the lower Courts were in any better position than this Court to make findings of facts as this Court has in the record the same evidence viewed the Court below ruling: the interrogation video. This Court should review all of Factual Findings and the ultimate suppression legal ruling de novo.

Even this Court uses the bifurcated standard of review and evaluates the Factual Findings under the manifest error standard. The trial Court's findings were manifestly erroneous, cause, they were based on inaccurate transcripts of the video, rather than, the video itself. (R90-95) To, the extent the trial Court's own auditory review, this Court should self-evidently trust its own ears over the previous Courts assessments based on erroneous transcript that doesn't even appear in the record, on Petition

I.3. Petitioner has a right to remain silent, and he invoked that right four separate times in his April 29, 2020, interrogation.

The United States and Illinois Constitution both enshrine 'an individual's rights not to be a witness against himself.' (U.S. Const. Amend. V and Ill. Const. 1970 art. I § 10. To protect that right and others, Police must warn a suspect at the beginning of a custodial interrogation that he "has the right to remain silent [] that anything he says can be used against him in a court of law [] that he has the right to the presence of an attorney [] and that if he can not afford one he will be appointed an attorney prior to any questioning if he so desires." (Miranda v. Arizona, 384 U.S. 436, 479 (1966)) The moment a suspect in a custodial interrogation invokes his right to remain silent, any statement obtained in violation of that right must be suppressed. (U.S. Const. Amends. V, XIV), (Miranda, 384 U.S. at 444-45; See also, Dickerson v. U.S., 530 U.S. 428, 442-444 (2000)) "Any statement taken after the person invokes his privilege can not be other than the product of compulsion, subtle or otherwise." (Miranda, 384 U.S. at 474).

A suspect need not "speak with the discrimination of an Oxford Don" in order to invoke his right to silence." (Davis v. U.S., 572 U.S. 452, 459 (1994) (Scuter, J., Concurring in the Judgment), and "No ritualistic formula is necessary in order to invoke the privilege." (Quinn v. U.S., 349 U.S. 155, 164 (1955)) His verbal request merely needs to be specific to invoke his right to silence.

If a suspect indicates his desire to cut off questioning, even by nonverbal conduct, that is sufficient. The test to determine whether a suspect has invoked his right to silence turns on how a reasonable police officer would perceive the suspect's words and conduct, not on how the officer at scene actually perceived them. (Davis v. U.S. at 459 (discussing invocation of right to counsel); (Berghuis v. Thompkins, 560 U.S. 370, 381-82 (2010)) same standard as counsel right since

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both Protect against Compulsory self-incrimination "by requiring an interrogation to cease when either right is invoked.")

The State bears the burden of proving that a confession was both voluntary and not obtained in violation of a suspect's Fifth Amendment rights. (705 ILCS 5/114-11(d) (2007))

In this case, Petitioner invoked his right to silence four separate times during the course of his interrogation, and each invocation was ignored by Agents Rossiter and Smith, who stifled Petitioner, while continuing to interrogate him in violation of United States and Illinois Constitutions.

1.) The First invocation

After the involuntary, signing, by, undue influence, Rossiter stated he wanted "to get some demographic information." Petitioner showed early signs of confusion by not knowing his address. (Page 3 Line 11-15, interrogation transcript) Petitioner refused to talk to investigators after demographics (Page 12, Line 24, Page 13 Line 1-4, interrogation transcript) Rossiter ignored oral refusal. Rossiter forced Petitioner, by, undue influence, inducing compelled and coerced inculpatory statements that condemned the Petitioner to his wrongful conviction. But for, using undue influence, by, coercive deceptive tactics, both, written and oral portions of the Miranda rights waiver form are involuntarily given to Police:

Rossiter: So you know, let's just kinda talk about that a little bit, you know one, how do you know Chasity? How did you get over here?

Petitioner: NO!

Rossiter: [He continued questioning and ignoring the refusal] Where were you going this evening when you got arrested? Just all that kind of stuff.

At this time, Petitioner, while under duress and being coerced by undue influence was compelled to (1) sign the Miranda rights waiver form, (2) compelled to further converse with the interrogators, cause, as Petitioner was told he had to, cause, (3) (1) Parole violation, (2) on Parole.

"If the individual is alone and indicates in any manner that he does not wish to be interrogated, the Police may not question him." (Miranda v. Arizona, 384 U.S. 436 (1966)), (U.S.C.A. Const. Amend. IV, U.S.C.A. Const. Amend. VI, U.S.C.A. Const. Amend. XIV)

2.) The Second invocation

Petitioner acknowledged Mattinslaw's first gun shot wound resulted from an accidental firing while fighting over a bag containing a gun. That the gun was in the backpack. That the backpack was in Petitioner's left hand. (P.E. 18, 23, 45 to 25, 15) Around one hour and ten minutes into the interrogation Rossiter erroneously accused Petitioner of having said the gun was in his hand when it went off. Petitioner invoked his right to silence:

Petitioner: No, you asked me which hand the bag was in. The bag was in my hand. The gun was never in my - (Rossiter interrupted Petitioner)

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Rossiter: Chris, we're going backwards here, man!

Petitioner: -hand, No, we're not. You're trying to put words in my fuckin' mouth, and I ain't doin' shit. I didn't do it. I didn't do nothing like that. Yeah, there was an accidental fuckin' gunshot wound, yes. You're trying to tell me I stayed there when I know I fuckin' well left. I came back.

Rossiter: Chris! Chris! Chris! Come On!

Petitioner: Don't put words in my mouth, man

Rossiter: I'm not, I'm allowing you to tell me the words that you want to tell me.

Petitioner: You sound like you're telling the story, and I'm just agreeing with you. You tell the story anyway you want.

Rossiter: JUST STOP! STOP! JUST STOP! (Besturing with his hand Palm outward - facing) Look Chris, this is important okay!

Petitioner: You know what? Let's stop this whole conversation. How about that? I'm done with this entire conversation, sir.

Rossiter: (Never pausing) Look Chris, this is important.

Petitioner: Yeah it's real important, (speaking on invoking his rights)

Rossiter: This is the most important moment of your life.

Petitioner: Yeah, I ain't sat one anymore

Rossiter: I know you! - STOP AND LISTEN! [...] I understand that, but this is a whole -

Petitioner: I don't know what the fuck you're (inaudible)

Rossiter: STOP AND LISTEN! This is a whole different balls game. IF think you have any chance, this is it! To tell us what truly happened, tell us -

Petitioner: I just told you

Rossiter: Tell us about this altercation and what caused the altercation, and what happened during the altercation

(P.E. 18, 41:30 to 42:30; M.E. 1, VTS-cl-1, 70:00 to 72:00)

When the trial court ruled on the motion to suppress at the hearing, the trial court relied on the inaccurate transcript, leading the court to misapprehend what Petitioner said:

Trial Court: This is one of the not exactly perfect transcribed statements, but the defendant says, "You sound like you're telling the story and I'm just agreeing with you. You can tell the story any way you want." And then, there is a discrepancy in the transcript that basically says, "I'm done with this conversation." As argued by the state, that is an ambiguous statement. It is a statement where, he then, immediately after that, continues to talk to the investigators. Doesn't stop. Doesn't indicate, "I want to talk to an attorney, I want to stop, I want to leave, I want to do anything to invoke his [sic] right other than I'm done with the conversation."

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(R.93) But the trial court's recitation does not reflect what happened on the video, which was very clear. Petitioner said both, "Let's stop the whole conversation," and, "I'm done with the entire conversation, sir." A reasonable person in a social situation would understand that if his or her interlocutor said, "Let's stop this conversation," and, "I'm done with this conversation," the interlocutor was terminating the interlocation. There was nothing ambiguous about Petitioner's words, especially when he conveyed the sentiment twice at that point, rather than one time as the transcript misinterpreted.

It was improper for the trial court to fault Petitioner for continuing to speak to the Agents after invoking his right to silence. Courts have long been clear on this point. There is no ambiguity in Petitioner answering "No" when Rossiter mirandized him and asked "If he would talk to him." The fact that the Petitioner kept speaking to further questions by the Agents, did nothing to erode the clarity of his initial, unequivocal "No!!"

The fact that Petitioner's oral response was not accompanied by a stronger oral statement or physical manifestation does not make his response of "No" any less decisive or clear. In fact, cause, the questioning continued without any passage of time, Petitioner was precluded from expanding on his response if he had any intention of doing so.

This reasoning traces back to the United States Supreme Court's ruling in *Smith v. Illinois*, 469 U.S. 91 (1984):

[*Smith*] considered whether a statement subsequent to his request for an attorney rendered the invocation ambiguous and equivocal. The Court held that "an accused's post-request responses to further interrogation may not be used to cast retrospective doubt on the clarity of the initial request itself. Such subsequent statements are relevant only to the distinct question of waiver." [*The Smith Court continued*,] "With respect to the waiver can not be established by showing only that the accused responded to further police-initiated custodial interrogation, while *Smith* considered subsequent statements in the context of request for counsel, this reasoning is equally applicable to a defendant's invocation of his right to remain silent." (*Smith*, 469 U.S. at 100, 98.)

All of that to say that whether Petitioner kept answering questions or engaging with the agents is irrelevant to whether he invoked his miranda right in the first instance.

That is especially true given that the things Rossiter said when speaking over Petitioner's invocation were calculated specifically to get him not to take refuge in the right. The Petitioner subsequently made incriminating statements, and his motion to suppress those statements was denied. Rather than terminating the interrogation immediately, which what miranda requires, the Agents told Petitioner to tell them about the altercation. This was obvious effort to persuade Petitioner to make a

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Statement.

When Petitioner said he was done with the conversation Rossiter held up his hand to shush Petitioner, told him to "STOP AND LISTEN", and told him that if he had "any chance" this was it. (P.E. 18, 41:30 to 42:30, M.E. 1, VTS-01-L, 70:00 to 72:00) It was every bit as calculated to get Petitioner to abandon his right to silence and proceed to incriminate himself. Just as Fourth Amendment jurisprudence does not excuse illegal disregard of a suspect's invocation of silence if that disregard happens to get lucky and cause an incriminating statement.

In ruling on the motion to suppress the trial court also erred when it improperly faulted Petitioner for not taking additional steps to stop his interrogation, saying Petitioner did not stop talking, request an attorney, or express a desire to leave. It is the Police Officer's job to cease the interrogation once Petitioner's rights were invoked, not the Petitioner's job. Petitioner was under duress while sitting, soaked and wet, in an air conditioned tiny room, handcuffed and under the influence of mind altering drugs. It is clear that Petitioner didn't have enough room to put his feet under the table, and he was 'sandwiched' between the table and wall. Anything Petitioner said after the Agents violated his rights by remaining in interrogation can not be deemed as 'watered down the clarity' of his invocation.

There has never been a requirement that in order for someone to invoke his right to silence and they must invoke the right to an attorney, as well. They are distinct rights. Petitioner unambiguously and unequivocally invoked his right to silence. It was nonsensical of the trial court to read some great importance into Petitioner's failure to say, "I want to leave," given Petitioner knew that he was lawfully under arrest for violating his Parole. Therefore, was not free to leave custody regardless of what happened in the Matthinsly investigation. Petitioner said two different ways back to back, that he wanted the interrogation to stop, that alone was sufficient to engage the Constitutional Protections.

3.) The Third invocation

Ten minutes after Petitioner's second invocation of his right to silence, Agent Rossiter began coercing a multiple shots theory, saying Petitioner "Put Edcadent out of her misery", "Tracked her like a wounded deer." When Petitioner came back after fleeing when Matthinsly was first shot. (P.E. 18, 50:00 to 53:15) Petitioner repeatedly insisted he was responsible for the first, accidental shot only and he didn't see anyone else do anything to Matthinsly. (P.E. 18, 52:00 to 53:15) Petitioner stated for the third time that he did not want to talk anymore:

Smita: You guys found her, come on Chris! Like, let's keep moving in the right direction. We know where we're at. We know where we're going.

Petitioner: What do you need me to say this if you guys know everything

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already? You just want that sweet conviction for you?

Rossiter: No man, that's not it!

Petitioner: That's what it sounds like

Rossiter: Chris, I ...

Petitioner: Just fucking do it, Let's go (Leans back against the wall and turns away from Felice)

Rossiter: NO, CHRIS! STOP! JUST STOP AND LISTEN!

Petitioner: (turns to face Rossiter) I'm done fucking talking!

Rossiter: STOP AND LISTEN!, okay? Look! Like we've told you, we want to know what actually happened, okay?

Petitioner: Sounds like you already know what happened

Rossiter: Look, everyone has a story to tell, whether it's true, whether it's half-true, whether it's bullshit, everyone has a story to tell, And you are the only one who knows exactly what happened. Everyone else is just filling in the blanks, And I would hate for you to be told that you are responsible for certain things that you didn't do because somebody else's story. Because you chose not to tell the story today, you chose to stay silent and not try and help yourself.

(P.E. 18, 53:00 to 56:15; M.E. 1, VTS-01-1, 81:30 to 84:30)

In ruling on the motion to suppress, the trial court again relied on the flawed transcript rather than on the interrogation video:

[ON] Page 86 of the transcript, E., the defendant indicates "Why do you need me to say this? Let's stop talking." Again, that's a very ambiguous statement. It clearly could be interpreted by the officers to mean that he just wanted to change the subject. Not stop the entire conversation. But the defendant himself immediately continues by making the statement, "Sounds like you already know what happened." Not to the effect, "I want a lawyer, I want to stop, I want to go home."

(R93-94)

Here as in the second invocation, the trial court missed the mark by finding significance in the facts that Petitioner did not ask for a lawyer, stop the interview, or say he wanted to go home. The trial court was led astray by using the flawed transcript, cause, Petitioner did not say, "Let's stop talking!" He said, "Just fucking do it, Let's go," and he leaned back against the wall. (P.E. 18, 53:00 to 56:15; M.E. 1, VTS-01-1, 81:30 to 84:30) Any reasonable person would know Petitioner was ready to be done with the interrogation and go to a cell, especially taking his nonverbal body language to account. IF there was any ambiguity, Petitioner dispelled it when saying, "I'm done fucking talking." (P.E. 18, 53:00 to 56:15; M.E. 1, VTS-01-1, 81:30 to 84:30)

The trial court was wrong when it said that Petitioner, "himself immediately continues by making the statement, 'Sounds like you already know what happened.'"

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(R93-94) Rather than making that statement immediately after saying he was done talking, Petitioner made the statement in response to Rossiter ignoring Petitioner's desire to stop the conversation and trying to talk him out of it. (P.E. 18, 53:00 to 56:15, M.E. 1, VTS-01-1, 81:30 to 84:30) Again, Petitioner's invocations were unambiguous and unequivocal attempts to avail himself of the Fifth Amendment, and the trial court's findings was error.

4. The Fourth Invocation.

Petitioner's fourth attempt to invoke his right to silence came about one hour and 40 minutes into the interrogation:

Rossiter: You made the best decision you could with circumstances in front of you and with the resources you had, and you did the best you could, And you actually had her feeling in mind, so she didn't feel pain anymore. Am I close?

Petitioner: I ain't, ... I don't want to talk anymore. You know, I don't know whether the evidence is against me or for me, I don't know what's going on. But I do know that I didn't (Rossiter cuts Chris off mid-sentence)

Rossiter: Chris, you know we did, ...

Petitioner: ... I didn't fire more than one shot, and I didn't, ...

Rossiter: Chris, you know we found her, you know we found her, okay?

Petitioner: obviously.

(P.E. 18, 71:00 to 72:00; M.E. 1, VTS-01-2, 8:30 to 9:30)

In ruling on the motion to suppress, the trial court yet again relied on the flawed transcript:

On page 104, E., the defendant says, "I don't want to try anymore, I don't know if the evidence is against me or for me, I don't know what's going on, but I do know that I didn't fire more than one shot." The language, "I don't want to try anymore," is again ambiguous. It is not a clear statement that this defendant wants to terminate the interrogation, invoke his right to remain silent. In fact, he goes on to clarify, "I know I didn't fire more than one shot," at this point in the conversation.

(R94)

This is the only time the trial court did not fault Petitioner for not asking for an attorney. The trial erred when it relied on the flawed transcript. Petitioner never said, "He didn't want to try anymore." He clearly said, "I don't want to talk anymore." Just like the other two invocations, this fourth invocation had ample perspicuity.

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The lower courts erred in finding Petitioner's invocations of silence were ambiguous by relying on the faulty interrogation transcripts. Those erroneous findings led directly to all lower courts equally erroneous legal conclusion that the motion to suppress should be denied.

I.4. Petitioner's right to remain silent was not scrupulously honored, and his video of his April 29, 2020, interrogation should have been suppressed.

Once a suspect invokes his right to remain silent, "interrogation may be resumed and any statement resulting from renewed questioning is admissible only if the suspect's right to remain silent was scrupulously honored." (Michigan v. Mosley, 423 U.S. 96, 103-04 (1975)) In evaluating whether a suspect's right to silence was scrupulously honored, courts consider multiple factors, including whether: (1) Police immediately halted the interrogation after the initial invocation; (2) a significant amount of time elapsed between the interrogations; (3) a fresh set of Miranda warnings was given before the second interrogation; (4) the second interrogation involved a different crime; (5) the second interrogation took place in a different location; (6) the second interrogation was conducted by different police officers. (Mosley, 423 U.S. at 105-06)

It is clear both agents did not scrupulously honor Petitioner's right to silence by applying these factors to this case. The first factor obviates the need to weigh the rest, cause, all the other factors depend on their having been some break in the interrogation after any of the invocations of silence were made. Rossiter spoke over Petitioner, held up his hand to silence Petitioner, and directly tried to talk Petitioner out of remaining silent: "I would hate for you to be told that you are responsible for certain things that you didn't do because of somebody else's story, because you chose not to tell the story today. You chose to stay silent and not try to help yourself." (P.F. 18, 53:00 to 56:15) Choosing to remain silent was what Petitioner had done. Rossiter was not scrupulously honoring that choice by trying to talk Petitioner out of it, or by ignoring the invocations altogether.

The interrogation never ceased, so there was no second interrogation. This rules out the second factor. The agents never re-mirandized Petitioner. Throughout the interrogation the factors were seen from it being about the same crime, same location, and same agents. None of these factors weighs in the state's favor. Once it is established that Petitioner invoked his right to silence, no reason exists to violate that right by permitting the state to use his post-invocation statements against him. The entire interrogation video should have been suppressed, and the trial court's ruling to the contrary was constitutional error.

I.5. The error in denying the motion to suppress and allowing the state to admit the interrogation video at the trial was not harmless.

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The state claims that any error in the admission of Petitioner's April 29, 2000 statement was harmless. This is a Constitutional error. The state bears the burden of proving 'beyond a reasonable doubt' that the error did not contribute to the verdict. (Chapman v. California 386 U.S. 18 (1967)). The Supreme Court said this:

Harmless error review looks ... to the basis on which "the jury actually rested its verdict. (Yates v. Evatt, 500 U.S. 391, 404 (1991) (emphasis added)) The inquiry in other words, is not whether, in a trial that occurred without the error, but whether the guilty verdict rendered in this trial was surely unattributable to the error. That must be so, because to hypothesize a guilty verdict that was never in fact rendered - would violate the jury trial guarantee.

(Sullivan v. Louisiana, 508 U.S. 275, 279 (1993) (emphasis in original)).

The focus should be upon the character and quality of the illegally obtained evidence as it relates to the other evidence bearing on the same issue, and the court should appraise the possible impact upon the jury of the wrongfully obtained evidence. United States Courts have considered the character and quality of illegally obtained confessions on countless occasions. Those courts recognize a confession constitutes the most powerful piece of evidence against a defendant. It is almost always prejudicial, because confessions frequently constitute the most persuasive evidence against a defendant. The admission of an unlawfully obtained confession rarely is harmless error. Confessions carry "extreme probative weight."

Petitioner's statements during the interrogation was not a substantial part of the state's case; they were the state's case. The portions of the statement that came after his invocations of silence were the state's only evidence that petitioner ever did anything wrong. He invoked his right to silence immediately after signing the Miranda waiver form, when he told agents, "No" to question of willingness to speak with them. (Page 12 Line 24, Page 13 Line 1-4, interrogation transcript)

The following two invocations, petitioner maintained his innocence other than one accidental shot during a struggle over a bag containing a gun. All the way until his final invocation around one hour and forty minutes into the interrogation he denied Rossiter's cajoled suggestion that petitioner "put Mattingly out of her misery" or was responsible for a second shot. (P.E. 18, 67:00 to 70:00; M.E. 1, VTS-01-2, 7:30 to 10:30)

Not until two hours into the interrogation, when Rossiter told petitioner that police knew the gun fired more than once, did petitioner ever acknowledge guilt of further violence to Mattingly. (P.E. 18, 96:00 to 101:00; M.E. 1, VTS-01-2, 33:00 to 38:00) It is also the case that about fifty minutes into the interrogation, petitioner never admitted to participate in concealing Mattingly's body. (P.E. 18, 80:00 to 85:00; M.E. 1, VTS-01-2, 18:00 to 23:00)

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The State never Presented any evidence that made Petitioner guilty of Possessing a gun that Fired an accidental shot. Michelle Meyer testified the last time she seen Mattingly, she (Mattingly) was picking up a pipe on Kaiser's Porch. (CR 628-29, 640) Petitioner never Confessed to Meyer that any harm to Mattingly occurred. In fact, Meyer testified that Petitioner kept showing concern and [] trying to figure out if Mattingly was okay. (CR 633) The State has No DNA, Fingerprints, hair, blood, or any biological evidence Connecting Petitioner to Mattingly's body, the tarp, the shovel, or any items found on Kaiser's Property. Nobody testified to Seeing Petitioner with a gun at any time. The State offered no motive other than a alleged domestic quarrel between "significant others." Meyer - the State's own witness - testified that Petitioner and Decadent were Just friends. (CR 619, 702)

The trial Court knew the grave significance of Petitioner's Confession. Defense Counsel requested Jury Instructions for Second degree murder, on the unreasonable belief in need for Self-defense and extreme Provocation. (CR 663-64) See. 720 ILCS 5/9-2(a)(1), (2). Defense Counsel noted evidence that Mattingly attacked Petitioner in the Presence of others - including a Padlock tied to a bandana that Mattingly had to be Subdued, and Meyer saw Mattingly pick up 'Some sort of Pipe' as Meyer was leaving the Kaiser Property. (CR 664) For the unreasonable belief in the need for Self-defense, Counsel noted the struggle over the bag that both Petitioner and Decadent knew contained a gun. (CR 664)

The trial Court said if the only wound had been the first shot, a Second degree instruction would have been given. (CR 664-65) The Court agreed with the State, noting that if the evidence showed that the first shot had been the Cause of death, it would of given the Second-degree murder instruction. (CR 665) The later denied defense Counsel's request for an involuntary manslaughter instruction "for the reasons previously ruled on with regard to the Second degree request." (CR 681) All Parties and Court recognized that the Confession was the Case.

The interrogation video carried additional prejudices other than Petitioner's verbal admissions that he "Put [Mattingly] out of her misery" after finding her in extremis after returning to the Kaiser Property. The jury got to see ignored rights while being Coaxed and Coerced into repeating Rossiter's suggested Criminal theories. For hours Rossiter and Smit repeated, and would not accept, any story other than the theories they suggested to Petitioner. They made the effect on the jury that Petitioner was guilty.

I.6. Conclusion

This issue is very simple. Petitioner invoked his Fifth amendment right to Silence, unambiguously and unequivocally, four times during his April 29, 2006, interrogation by Agents Rossiter and Smit. Those agents failed to scrupulously honor those invocations, or even honor them at all. It was not harmless error for the trial Court to admit at Petitioner's trial the video taped incalpatory statements Petitioner involuntarily made after the Agents

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ignored his invocations.

When Petitioner made his invocations, the agents talked over him and immediately set to dissuade him from remaining silent. There is no way that an 'involuntary' confession in a case like this was harmless. On the first point that Agents forced Petitioner to sign the Miranda rights waiver form ~~by~~ undue influence, Cause: (1) Per se violation, (2) on Per se, was never argued by trial counsel. Neither was the first invocation when Petitioner, directly after signing Miranda form, said "No" to talk to Agents outside of demographics. The following three invocations in question. The trial court's finding that Petitioner's statements were ambiguous and this insufficiently was entirely based on the court's ill-advised reliance on an inaccurate transcript, known to all parties. Reviewing de novo, this court must look at the relevant portions of the interrogation video. Doing so, this court must look at the relevant portions of the interrogation video. Doing so, this court will recognize Petitioner's invocations are unambiguous and unequivocal attempts to use his Constitutional right to cut off questioning. Everything else follows from that, as night follows the day, and this court should reverse and remand for a new trial absent the affront of an unconstitutionally obtained confession.

II. Ineffective Assistance of Counsel Standard

The Sixth and Fourteenth Amendments of the United States Constitution and Article I, and Section 8 of the Illinois State Constitution guarantee a defendant in any case the right to effective assistance of counsel. (*Strickland v. Washington*, 466 U.S. 668 (1984)). To establish ineffective assistance of counsel, a defendant must show that, (1) Counsel's performance was deficient, and (2) Counsel's deficient performance prejudiced the defendant. (*Strickland v. Washington*, 466 U.S. 668 (1984)) Prejudice exists where the reasonable probability that but for Counsel's deficient performance, the result of the proceedings would have been different. However, a reasonable probability is a probability sufficient to undermine confidence in the outcome. (*Strickland v. Washington*, 466 U.S. 668 (1984)) Reasonable probability standard is less demanding than the preponderance standard. (*Nix v. Whiteside*, 475 U.S. 157, 175, 89 L. Ed. 2d 123 (1986)) We do not require a defendant to show 'that Counsel's deficient conduct more likely than not altered the outcome' of his Penalty Proceeding. (*Porter v. McCallum*, 558 U.S. 30, 175 L. Ed. 2d 398, 409 (2009))

In *Cronic*, the Court held that, the principle that a defendant had the right to Counsel, was in fact the right to have effective assistance of counsel. The Court in *Cronic* made an attempt to show that the text of the Sixth Amendment suggested that the right to the effective assistance of counsel has always existed. The *Cronic* Court noted that the Sixth Amendment requires not only that Counsel be provided to criminal defendants, but that the 'assistance' of counsel 'for the defense' be provided. Therefore, the Court held that the purpose of the Sixth Amendment's Counsel guarantee

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is to assure that the defendant has that 'assistance' at trial, when the defendant is confronted with both standards of law he doesn't understand and the tenacity of a Professional Public Prosecutor, the Constitutional guarantee of "the assistance of Counsel for his defense" is violated when no actual assistance is provided.

The high Court, in *Cronic*, determined that the adversarial process, protected by the Sixth Amendment, requires that Counsel act as an advocate for the defendant. This determination established that the right to service the effective assistance of Counsel is the right to require that the government's case be able to service meaningful adversarial testing. When a true adversarial trial in a Criminal Court has been conducted, the right to the effective assistance of Counsel has been satisfied even if defense Counsel may have made mistakes that can be proven, and regardless of the defendant's satisfaction or dissatisfaction with Counsel's performance.

Bottom line, a defendant has a due process right to be heard in both State and Federal Courts, established by the Sixth and Fourteenth Amendments of the United States Constitution. A Criminal defendant has a right to the 'effective assistance of Counsel' to ensure that the due process right is fulfilled. (*U.S. v. Cronic*, 466 U.S. 648, 80 L.Ed. 2d 657, 104 S.Ct. 2039 (1984))

II.1. Petitioner was denied the effective assistance of Counsel, where his trial attorney failed to object to the jury being able to see the portions of his interrogation video in which he sought to invoke his right to remain silent. Admitting those portions into evidence ran contrary to settled law, and by failing to object to them, Counsel's performance fell below an objective standard of reasonableness and prejudiced Petitioner such that this Court should reverse and remand for a new trial.

As discussed supra, it was constitutional, reversible error for the trial Court to deny Petitioner's motion to suppress the video of his April 29, 2020, interrogation. Assuming for argument's sake that it was not error, it was still improper for the jury to hear Petitioner tell his interrogators that he didn't want to talk anymore. The state redacted other portions of the interrogation video, such as mentions of Petitioner's illicit drug activity and other bad acts. There is no indication that the state would have resisted a pretrial request by the defense to redact the portions of the video that were at issue in Argument I, involving Petitioner's invocations of silence.

When the tape was being played for the jury at trial, defense Counsel should have lodged objections when the video reached the offending portions. Counsel's failure to do so deprived Petitioner of his Sixth Amendment right to effective assistance of Counsel. No jury could of heard Petitioner repeatedly say he was done talking without surmising that he had something to hide, which is exactly what Rossiter and Smit insinuated.

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Failing to object to the jury hearing these invocations, the result of the trial would have been different. This Court should accordingly reverse.

Both Federal and Illinois Constitutions guarantee criminal defendants the right to effective assistance of counsel. (United States Constitution Amendments III, XIV; Illinois Constitution of 1970 article I, §8) (Strickland v. Washington, 466 U.S. 668, 687-89 (1984)) The right to counsel is fundamental, ensuring the fairness, and thus the legitimacy, of the adversarial process. (Gideon v. Wainwright, 372 U.S. 335, 344 (1963)) A defense attorney fails to provide effective assistance when his representation falls below an objective standard of reasonableness, and when the deficiencies in his performance undermine confidence in the outcome of the proceedings or deprive the defendant of a fair trial. (Strickland, 466 U.S. at 687-689) To meet the prejudice prong of Strickland, a defendant need not show that he would have been acquitted absent the ineffective assistance, only that a different outcome would be reasonable, and "prejudice may be found even when the chance that minimally competent counsel would have won an acquittal is significantly less than fifty percent. (Strickland, 466 U.S. at 693-94).

Defense Counsel must provide "assistance that appreciates and understands legal principles applicable to the case" and "assistance ready to provide an adversarial check. It is true that 'counsel's conduct is afforded a strong presumption that it falls within a range of reasonable professional assistance and that challenged actions constituted sound trial strategy comprehended by effective assistance of counsel'" embraces the use of established rules of evidence and procedure to avoid the admission of incriminating statements, harmful opinions, and prejudicial facts. (Strickland, 466 U.S. at 689)

A. By allowing the jury to hear petitioner's invocations of silence, defense counsel provided representation that fell below an objective standard of reasonableness.

"Every post-arrest silence is insolubly ambiguous because of what the state is required to advise the person arrested" in the Miranda warnings, and the fact that silence will not be used against him. (Doyle v. Ohio, 426 U.S. 610, 617-18 (1976)) The Supreme Court explained that "not only is evidence of silence at the time of arrest generally not very probative of a defendant's credibility, but it also has a significant potential for prejudice." because a "jury is likely to assign much more weight to the defendant's previous silence than is warranted" and draw a "strong negative inference [...] from the fact that the defendant remained silent at the time of his arrest." (United States v. Hale, 422 U.S. 171, 180 (1975)).

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That negative inference is liable to be drawn in spite of the fact that there may be any number of reasons for Post-arrest silence:

Innocent and guilty alike - perhaps particularly the innocent - may find the situation so intimidating that they may choose to stand mute. [An Arrestee] may have maintained silence out of fear or unwillingness to incriminate another. Or the arrestee may simply react with silence in response to the hostile and perhaps unfamiliar atmosphere surrounding his detention.

[Hale, 442 U.S. at 177.] With that in mind, "under Illinois law, a defendant's Post Arrest silence, with limited exceptions for impeachment that are not relevant here." [People v. Eubanks, 2017 IL App (1st) 140837, 46 (internal quotes and citations omitted)]

In this case, without following an accurate transcript or watching the video footage closely, there is barely an indication in People's exhibit 18 that anything has been redacted at all. As this Court will see when it watches the video, it would have been easy for the state to have redacted Petitioner's Portions after the invocations of silence, as well as the Police Questions that elicited them and Police threatened consequences that might ensue if he "chose to stay silent." But even if defense counsel had not already sought these redactions, he could have objected at trial and required the state to fast forward through the invocations of silence so that the jury did not hear them.

B. Counsel's Performance fell below an objective standard of reasonableness, because there is a reasonable probability that but for the error here, the result of the trial would have been different.

Recall that for the Prejudice Prong of Strickland, a defendant need only show that a different outcome would be reasonably likely absent the error, and "Prejudice may be found even when the chance minimally competent counsel would have won an acquittal is significantly less than 50 Percent." [People v. McCarter, 385 Ill. App. 3d 919, 935 (1st Dist. 2004)] [Strickland, 446 U.S. 693-94]. Although the state did not dwell on Petitioner's silence invocations in closing arguments, it was still prejudicial for the jury to hear them. The silence invocations in the video were not cumulative of any properly admitted evidence. So without the Portions after invocation of silence, the jury would have never heard Petitioner's inculpatory statements.

Moreover, hearing Petitioner try to stop Police questioning - especially right when Police were beginning forcefully to accuse him of murder - could have contributed directly to the guilty verdict. Hale said that the likelihood of prejudice from hearing about a defendant's silence was significant because juries are apt to draw a "strong negative inference" from that silence. [Hale, 442 U.S. at 180]. Petitioner's jury could hardly have done otherwise. Lawyers know that there are any number of reasons to

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to remain silent and/or to request an attorney when being questioned by Police, and that perhaps chief among those reasons is Pure Prudence. It is more than reasonably likely this error contributed to the guilty verdict.

II.2. Trial Counsel's deficient performance was shown, where he failed to challenge the state's nondisclosure of Michelle Meyer's cooperation in the apprehension and testimony of Petitioner for the government. 4/18/2020 Meyer interrogation. 1800-7:00 Where the State never disclosed this vital information before or during trial. Where trial Counsel never requested this vital information. Although the Meyer interrogation interview did, in fact, state government's issuance of 'immunity' to Meyer for her cooperation in the apprehension and conviction of Petitioner, Trial Counsel never requested and State never formally disclosed this information of 'immunity'. That a nondisclosure of 'immunity' is a due process violation. That a trial Counsel's failure to investigate and failure to challenge this information denied Petitioner his fundamental right to a fair trial. Prosecutors have an obligation to provide defense with exculpatory information even when no request has been made. (U.S. v. Agurs, 487 U.S. 97, 103 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976)) A lawyer who fails to adequately investigate, and to introduce evidence, records that demonstrate his client's factual innocence, or that raise sufficient doubt as to that question to undermine confidence in the verdict, renders deficient performance. (Hart v. Gomez, 174 F.3d 1067, 1070 (9th Cir. 1999)) Critical issue is whether, applying prevailing professional norms, trial Counsel conducted an objectively reasonable investigation for mitigating evidence. (Porter v. McCollum, 538 U.S. 30, 40, 130 S.Ct. 447, 452-53, 175 L.Ed.2d 398 (2009)) Trial Counsel was ineffective when investigation was limited to one day or less of interviewing witnesses. (Sears v. Upton, 561 U.S. 945, 130 S.Ct. 3259, 3064, 177 L.Ed.2d 1025 (2010))

The fact that written transcript of the 4/18/2020 interview has never been disclosed to defense nor Petitioner pretrial, during trial, or post trial. Thank the Lord for Petitioner's memory of the one time viewing of the interrogation video. This nondisclosure is of much substance, where Meyer was the only civilian witness for the government. Where the defense called no witness. The nondisclosure of the 'only' civilian witness in the trial, other than decedent's family, brings much light to the inference of an 'immunity deal' for Michelle Meyer. Therefore, no investigation and/or objection to the nondisclosure of the 'immunity deal' is a sound showing of trial Counsel's deficient performance, that violated Petitioner's due process right to a fair trial. Trial

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Counsel ineffective for failing to investigate evidence that would have impeached a government's key witness. (U.S. v. Mason, 481 Fed. Appx. 815, 819 (4th Cir. 1972)) Attorney's failure to prepare for and challenge the testimony of a critical witness may be so unreasonable as to violate both Process of the Strickland test. (Silva v. Woodford, 279 F.3d 825, 833 (9th Cir. 2002))

II.3. Where trial Counsel made Presudicial statements concerning Petitioner's case during voir dire to veniremen. That trial Counsel told Veniremen, in a Pretrial hearing, that "this is not a drug case but drugs are involved" (R 237) That the drug involved was methamphetamine. Where this is a Pretrial hearing, for voir dire, in a murder trial, the drug statements prejudiced Petitioner by giving Potential jurors Pretrial evidence that may not have been otherwise known to jurors in this trial. Where Portions of Petitioner's interrogation video that pertained to illicit drugs was removed from P.E. 18 before trial. The trial Counsel prejudiced Petitioner and tainted Veniremen, that otherwise would not have Preconceived biases before trial even began. But for, trial Counsel's deficient performance Petitioner's due Process right to a fair trial would not have been violated. Whether trial provided Constitutionally inadequate assistance is a mixed questions of law and fact which this court reviews under de novo. (Kens v. U.S., 639 F.3d 348, 351 (7th Cir. 2011)) It has long been recognized that the right to Counsel is the right to the effective assistance of Counsel. The text of U.S. Const. amend. ~~XI~~ itself suggests as much. The Sixth Amendment requires not merely the provision of Counsel to the accused, but assistance, which is to be for his defense. (U.S. v. Cranic, 466 U.S. 648, 180 L.Ed. 2d 657, 104 S.Ct. 2039 (1984)) The Sixth Amendment requires not merely the provision of Counsel to the accused in a Criminal Prosecution, but assistance which is to be for his defense, and thus, the core purpose of the Counsel guarantee is to assure assistance at trial when the accused is confronted with both the intricacies of the law and the advocacy of the Prosecutor. If no actual assistance for the accused's defense is provided, then the Constitutional guarantee has been violated. (U.S. v. Cranic, 466 U.S. 648 (1984))

II.4 Trial Counsel made Presudicial statements in open court as to "having sympathy for the victim's family." (R 738) That, by, making this statement, Trial Counsel showed bias against the defendant and shows cause for his purposeful deficient performance, which also shows trial Counsel working as a Prosecutor to guarantee not only his conviction but a stronger sentence above the mandatory minimum. Actual conflict exists "if defense Counsel was faced with a choice between advancing his own interests above those of his client" (Hall v. U.S., 371 F.3d 969, 973 (7th Cir. 2004))

But for, trial Counsel's Presudicial statement of having 'sympathy for the victim's family', Petitioner's right of due Process was violated. The very premise of our adversary system of criminal justice is that partisan advocacy

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on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." (Herrins v. New York, 402 U.S. 853, 862 (1975)) It is that "very premise" that underlies and gives meaning to the Sixth Amendment. (Herrins, 402 U.S. 853) It "is meant to assure fairness in the adversary criminal process." (U.S. v. Morrison, 449 U.S. 361, 364 (1981)) More specifically, the right to the assistance of counsel has been understood to mean that there can be no restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary fact-finding process that has been constitutionalized in the Sixth and Fourteenth Amendments" (Herrins, 402 U.S. at 857) Thus, trial counsel's deficient performance denied Petitioner's due process right to a fair trial.

II.5. Trial Counsel failed to impeach Lead investigator Sgt. Windy Westfall and Sgt. Daniel Rossiter's trial testimonies, where they both on record made knowing Persured testimonies. That trial counsel's failure to investigate mitigating and physical and forensic evidence to impeach these Persured testimonies that could have swung the case in Petitioner's favor. But for, trial counsel's deficient performance Petitioner had a 'reasonable probability' that is sufficient to undermine confidence in the outcome of the trial.

Where Lead Investigator Sgt. Windy Westfall knowingly made Persured testimony about 'not having found a gun', only rounds found were .44 Caliber (R493, 494, 509), That fragments were 'too badly damaged' to have been forensically tested (R571) 'Because most of the fragments were so small and minute our forensic lab would not examine them because we did not have the weapon used.' (R573) That [I.S.P.] didn't have the gun to compare but you did have these casings and live rounds (R574)

Upon F.O.I.A inquirer to Illinois State Police Crime Labs, while Petitioner incarcerated, Petitioner received newly discovered evidence to the fact, that Illinois State Police did find a gun during the search of property that the decedent's body was found. That in, fact, 140 Caliber rounds were found with the .40 Caliber Pistol found. That in, fact, DNA swabs were taken and forensic testing was conducted by Illinois State Police Crime Labs scientist Hali Carls-Miller on .44 casings, .40 Caliber rounds. All bullet fragments. (F.O.I.A Results included)

Where Sgt. Daniel Rossiter knowingly made Persured testimonies about 'not knowing of any warrant other than Parole Warrant', for the sole purpose to coerce a Miranda Form waiver and inculpatory statements.

That April 29, 2020 at 1:30 P.M., warrant 2020-MR-64 was issued for the information and Geo-locate of Christopher Glass's Cellular Phone. That Parole Violation Warrant was issued at that time. (Lead-145, Trooper Harrelty Report). That Parole Violation Warrant Report states: "On 4/29/2020, The Circuit Court of the Fourth Judicial Circuit, Effingham County, issued a Warrant on the offender for First degree murder and concealment of Homicidal Death, which is a Violation of MSR Rule 1. (Parole Violation Report included) That Daniel Rossiter

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, in fact, was a part of the executing team for all three warrants. (Lead 145, Harratty report) Where Rossiter's statement 'the only warrant known was the Parole Warrant from I.D.C.C. (R69) That Rossiter "did not find out about the first degree murder warrant until after the end of interrogation" (R69) (R70) Rossiter knowingly committed Perjury and defense trial Counsel failed to investigate and failed to impeach this evidence that in fact is a flagrant Constitutional violation of Petitioner's due process rights.

IF not for trial Counsel's deficient performance there is a 'reasonable Probability Sufficient to Undermine Confidence in the outcome' (Strickland, 466 U.S. 668) Counsel ineffective for failing to investigate forensic evidence. (Elmore v. Ozmint, 661 F3d 397, 407 (4th Cir 2011)) Trial Counsel ineffective for failing to investigate evidence that would impeach government's key witness' (Wis. v. Mason, 481 Fed. Appx 815, 819 (4th Cir 2012)) Thus, trial Counsel's failure to investigate impeaching evidence in both of these perjured testimonies is a deficient performance that was not only below the respectable standard, but fell below any standard of effective assistance of Counsel, that denied Petitioner a due process right to a fair trial.

II.6. Where trial Counsel failed to object to the Prosecutor's nondisclosure of Petitioner's written transcript of his 4/29/2020 interrogation in a timely manner before the 12/7/2020 suppression of interrogation hearing. That trial Counsel did not receive the written interrogation transcript until the morning of the hearing. That the transcript disclosure was received less than 8 hours before the hearing took place. (R 54) American Bar Association standards are to be used only as "guides" in reviewing whether an Attorney's performance is reasonable, reversing a finding of deficient performance where the lower courts treated the ABA's standards as "inexorable commands" that Attorneys must "fully comply with." (Bobby v. Van Hook, 558 U.S. 4, 175 L.Ed.2d 255, 259 (2009)) Counsel's inadequate presentation of motion to suppress evidence was ineffective assistance of Counsel. (Gwens v. U.S., 357 F3d 607 (7th Cir 2004))

Where Prosecution's nondisclosure is a 'Brady v. Maryland' violation of due process, trial Counsel's unwillingness to object to this clear Constitutional violation further prejudices the Petitioner's due process right to a fair trial. That, by, allowing the hearing to proceed after such violations, prejudiced the Petitioner beyond a reasonable probability that but for the excludable evidence the verdict would have been different. Reasonable probability is defined as one that is sufficient to undermine confidence in the outcome. (Blake v. U.S., 723 F3d 870, 879 (7th Cir 2013))

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II.7. Where Prosecution failed to disclose 12/7/2000 transcripts to the Court and defense prior to trial, Prior to Pretrial motion to Suppress interrogation of the Second hearing, That Associate Judge Christopher Matoush did not hear the Pretrial motion to Suppress interrogation after he was appointed as 'new' trial Judge, Cause, Prosecution's nondisclosure of the 12/7/2000 transcript for review, before the 'Second' motion to Suppress interrogation hearing. That in accordance, to this nondisclosure of 12/7/2000 transcripts, Judge Matoush heard the Pretrial hearing in a Post-trial Sentencing hearing setting, That trial Counsel failed to object to the judge hearing the Pretrial motion, Post trial, Trial Counsel ineffective for not conducting adequate investigation into mitigating circumstances. (Blystone v. Horn, 664 F.3d 397, 407 (3d Cir. 2011)) Describing defense Counsel's "Failure to have any meaningful adversarial Challenge" as especially appalling "in holding Attorney ineffective, (Groseclose v. Bell, 130 F.3d 1161, 1169-70 (6th Cir. 1997))

Where Prosecutor's nondisclosure of 12/7/2000 suppression hearing transcripts, Prior to trial, to the Court and defense, violated Petitioner's rights to due Process, Where Judge Matoush failed to hear the motion Pre-trial, violated Petitioner's right to due Process. That, by, trial Counsel not challenging these violations is a due Process violation of its own. That by these actions and deprivation of actions, Petitioner was Prejudiced by Clear Constitutional violations of his due Process right to a Fair trial. Moreover, because we presume that the lawyer is competent to provide that guiding hand that the defendant needs. (Michel v. Louisiana 350 U.S. 91, 100-101 (1955)) "The Proper Standard of materiality [of a Prosecutor's Failure to disclose exculpatory evidence] must reflect our overriding concern with the justice of the finding of guilt." (U.S. v. Agurs, 427 U.S. at 112) (Footnote omitted). "Whenever we are asked to consider a charge that counsel has failed to discharge his professional responsibilities, we start with a presumption that he was conscious of his duties to his clients and that he sought conscientiously to discharge those duties. The burden of demonstrating the contrary is on his former clients." (Matthews v. U.S., 578 F.2d 1245, 1246 (CA7 1975))

II.8. Therefore, this Court must initially decide whether trial Counsel's Performance was deficient, in, any, one, of, these cumulative errors. The question is whether Counsel's representation fell below an objective standard of reasonableness and considering all the circumstances under prevailing Professional norms. Petitioner contends that trial Counsel, in this case, abandoned his employment of any procedure safe-guards to which the Petitioner was entitled. A right to have a fair trial, A right to have 'all' discoveries rendered in a timely manner before trial, or motion to suppress

REASONS FOR GRANTING PETITIONS

hearings. A right to effective assistance of Counsel.

Petitioner has shown more than a reasonable probability that prejudice exists, and that, but for, Counsel's deficient performance, the result of the proceedings would have been different. Based on the record, that Petitioner was not given a fair trial, That Petitioner was denied effective assistance of Counsel, That Petitioner was denied 'full' disclosure of 'All' evidence in a timely manner, That Petitioner was prejudiced as, a result being that Petitioner was wrongfully convicted, by, unconstitutional standards. Moreover, Petitioner suffered prejudice as a result of his trial Counsel's cumulative deficient performances. Reasonableness Under Sixth and Fourteenth Amendments of the United States Constitution requires Petitioner given the right to effective assistance of Counsel, full disclosure of evidence in a timely manner before trial, and a fair trial.

RESPECTFULLY

REASONS FOR GRANTING THE PETITION

I.1. On April 29, 2020 Petitioner was detained, as told by Police, for a Parole violation. Upon arrest, Petitioner was brought to Vigo County Police Department interrogation room. After he was arrested in the rain and kept outside until the detainee transport arrived. Approximately one hour in waiting for transport, while awaiting in the tiny interrogation room, many factors combined to enable extreme duress, the Petitioner was forced to endure.

In this tiny room was three chairs and one table. Petitioner was placed in the far corner, to which, pinned him between the table and wall, where the Petitioner could not even place his feet under the table. Petitioner being soaked and wet from the time in the rain, was placed in an air conditioned room. Petitioner was under the influence of mind altering drugs, Petitioner had been under the influence of methamphetamine for more than ninety-six hours straight. The entire duration of the interrogation, the Petitioner was given an empty foam cup. It is no question that Petitioner was under serious and extreme duress before and during the interrogation.

Then, entered two masked interrogators. This serious and extreme duress, while physically confined and handcuffed, under 'ALL' of these conditions was more than enough to compel the Petitioner to submission and involuntarily waiving his Miranda Rights Waiver form.

With these serious and extreme conditions of duress came the interrogators undue influence forced by coercive deceptive tactics to surrender Petitioner's Miranda Rights. Where Illinois State Police Sgt. Daniel Rossiter told Petitioner [as Rossiter slid the Miranda Waiver form in front of Petitioner] that Petitioner had to sign the form, cause, Petitioner, (1) 'For a Parole Violation' (2) 'on Parole'. (Glass examination Page 2 Line 11-19).

Rossiter: IF you could, what I would like you to do is sign here. So under stating that I read this to you verbatim and you understand your rights?

Petitioner: Do I have to do this for a Parole violation?

Rossiter: What's that?

Petitioner: Do I have to do this for Parole?

Rossiter: [Yeah] Unfortunately, man anytime I talk to somebody on a warrant we have got to read that stuff. It's kind of silly.

After the involuntary signing, by force, Rossiter stated he wanted "to get some demographic information" Petitioner showed early signs of confusion by not knowing his address. (Page 3 Line 11-15, interrogation transcript)

Petitioner refused to talk to investigators after demographics (Page 12 Line 24, Page 13 Line 1-4) Rossiter ignored the oral refusal. Rossiter forced Petitioner, by

1) discrepancy in transcript. Cleared up in the suppression hearing page 1.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher E. Glass

Date: 3/21/2024

State of Illinois
County of Randolph
On this 21 day of March 2024
before me personally appeared
Christopher E. Glass
to me known to be the person who executed the
foregoing instrument, and acknowledged that he
executed the same as his free act and deed.
SEAL (signed) Trenton Lee Wagner
Notary Public

