No. _____

IN THE
# Supreme Court of the United States

JIMMIE L. BOWEN,

*Petitioner*,

v.

RICKY D. DIXON,
Secretary, Florida Department of Corrections,

*Respondent*.

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

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

Whether, under *Rhode Island v. Innis* and *J.D.B. v. North Carolina*, a detective's act of placing a juvenile suspect in an interview room with a juvenile co-suspect while secretly monitoring and recording the conversation, in order to obtain a confession after the juvenile has invoked his *Miranda* rights, violates the Fifth Amendment.

Whether, under 28 U.S.C. § 2254(d), and in light of *J.D.B. v. North Carolina*, a State adjudication of a claim results in a decision that is contrary to, or an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, when it fails to adequately consider a suspect's status as a juvenile, for Fifth Amendment purposes.

## PARTIES TO THE PROCEEDINGS

The petitioner, Jimmie Bowen, was the habeas petitioner in the district court and the appellee in the Eleventh Circuit. The respondent is the State of Florida.

## RELATED PROCEEDINGS

*Jimmie L. Bowen v. Ricky Dixon, Secretary, Florida Department of Corrections*, 92 F.4th 1328 (11th Cir. 2024).

*Jimmie L. Bowen v. Ricky Dixon, Secretary, Florida Department of Corrections*, Case No. 19-23952-CV-Williams (S.D. Fla. May 13, 2022) (Docket Entry No. 20) (order granting a new trial ).

State of Florida vs. Jimmie Bowen, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida; Circuit Court Case No. F08-46866B.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Jimmie L. Bowen petitions for a writ of certiorari to review the judgment of the United States court of Appeals for the Eleventh Circuit in this case.

## OPINIONS BELOW

The Eleventh Circuit's opinion in *Jimmie L. Bowen v. Ricky Dixon, Secretary, Florida Department of Corrections*, 92 F.4th 1328 (11th Cir. 2024) is reproduced in the Appendix. App. 7a. The relevant order of the District Court adopting the magistrate's recommendation is unreported but is reproduced at App. 26a. The Magistrate's Report and Recommendation is reproduced at App. 33a.

## JURISDICTION

On February 15, 2024, in *Jimmie Bowen v. Secretary of the Florida Department of Corrections*, No. 22-11744, the Eleventh Circuit reversed the United States District Court for the Southern District of Florida after the district court had granted Mr. Bowen's 28 U.S.C. § 2254(d) habeas petition based on a Fifth Amendment violation. Mr. Bowen then sought an en banc rehearing which was denied on April 5, 2024. This Court granted Petitioner's application for an extension of time to file the instant petition for certiorari on June 6, 2024. This Court has jurisdiction over this petition under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

28 U.S.C. § 2254(d):

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable

> application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

## STATEMENT OF THE CASE

### A. State Court Proceedings

On December 18, 2008, Jimmie Bowen ("Bowen" or "Mr. Bowen") was arrested at his home for a homicide. Mr. Bowen was only sixteen years old at the time of his arrest and at the time of the offense five days earlier. A second juvenile, Bernard Jones ("Jones" or "Mr. Jones"), was arrested as a co-suspect in the incident.

When Bowen was arrested, his mother advised the arresting officer that she would be exercising her right to be present for any questioning of her son. At the police station and with his mother present, Detective Solis initially questioned Bowen about his general education and his ability to read. The detective then advised Bowen of his *Miranda* rights per form and attempted to interrogate him. Bowen and his mother both told the detective that he was

invoking his right to remain silent and his right to counsel. At that time, Bowen's mother reiterated that she needed to be present for any further attempts to question her son. The detective assured her that he would not attempt any further questioning without her being present. However, shortly thereafter, in an effort to overcome Bowen's invocation of his *Miranda* rights after Bowen's mother had left the premises, police devised a scheme to place the juvenile in the same room with the juvenile co-Defendant (Jones) in order to draw an admission from Bowen while police secretly monitored and video-recorded the conversation.[1] During the conversation in the locked room, Bowen made incriminating statements.

On or about February 18, 2009, Bowen and co-defendant Jones were indicted in Miami-Dade County, Florida state court on two counts of First Degree Murder (Counts 1 and 2) and two counts of Attempted Premeditated Murder (Counts 3 and 4).[2]

On January 25, 2012, Bowen's trial counsel filed a motion to suppress Bowen's statements arguing that:

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[1] Co-defendant Jones had been arrested earlier and was at the same police station. Police knew at the time they placed the suspects in the room together, that Jones, unlike Bowen, had waived his *Miranda* rights and provided a statement. Furthermore, during questioning, Jones provided his cellular phone number to police and Bowen called Jones from his own cellular phone while Jones was being questioned.

[2] Co-defendant Jones was also charged with a fifth count of being an accessory to murder after the fact.

> [t]he videotaping of Bowen's conversation with his codefendant in the police interrogation room violated Bowen's Fifth Amendment right to remain silent and his Sixth Amendment right to counsel guaranteed under the United States Constitution. Additionally and independent of the Fifth and Sixth Amendment violations aforementioned, the videotaping of Bowen's conversation with his codefendant in the police interrogation room violated the Florida Constitution Art. I, §§ 12, 23 and § 934.03 F.S. [Florida's wiretap statute] and is inadmissible at trial pursuant to Florida Statute 934.06 [requirement of exclusion of wiretapped evidence] because police obtained neither consent nor court approval to monitor and/or record the conversation. Also independent of the Fifth and Sixth Amendment violations, the recorded statement violated Bowen's Constitutional protections under the Fourth Amendment.

On or about March 29, 2012, the State responded to the motion arguing that Bowen had not been subject to custodial interrogation because the statements were spontaneous and voluntary and not the subject of state action. On April 5, 2012, a judge from a different division than the one assigned held a hearing on the motion to suppress. On April 18, 2012, the motion to suppress was denied without a written

order.

On August 1, 2012, after an eight-day, joint jury trial[3] where the State used Bowen's statements against him, Defendant was convicted of all four counts as charged, with the gun and gang enhancements.[4] On October 15, 2013, the court sentenced Bowen to life in prison on each count, with the life sentences on Counts 2, 3, and 4 running consecutively to the life sentence on Count 1, but concurrently with each other. A 25-year minimum mandatory sentence was imposed on each count because of the discharging of a firearm.

On direct appeal, Bowen's appellate counsel challenged the denial of the motion to suppress, among other things, and the Third District Court of Appeal of Florida affirmed the denial of the motion without a written opinion on February 3, 2016. Mr. Bowen filed several other motions in State court, all of which were denied.

### B. U.S. District Court Proceedings

On September 24, 2019, Mr. Bowen filed a pro se federal habeas petition in the U.S. District Court for the Southern District of Florida based on the State

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[3] Bowen's counsel had moved to sever the defendants pursuant to *Bruton* because co-Defendant Jones made incriminating statements concerning Bowen, but the motion was denied.

[4] Co-defendant Jones was found guilty of Count 1, the first-degree murder of Pierre Roche, with the gang enhancement, but not guilty of the remaining charges.

court's denial of his motion to suppress. On November 20, 2019, the undersigned filed an amended habeas petition on Mr. Bowen's behalf, arguing in part that the placing of Bowen in a wired, police-station interview room with co-defendant Jones after Mr. Bowen had invoked his rights, and the surreptitious recording of their conversation, violated *Miranda* and federal guarantees of due process, and therefore, it was reversible error to deny his motion to suppress.

The State responded to the habeas petition on January 8, 2020, and Mr. Bowen filed a reply on January 27, 2020. On July 29, 2020, the Magistrate Judge issued a Report and Recommendation recommending that the amended petition be granted in part and denied in part. Specifically, the Magistrate recommended that the petition be granted as to Mr. Bowen's Fifth Amendment claim, stating "the state court's determination that Petitioner's incriminating statement was not acquired in violation of his Fifth Amendment rights was an unreasonable application of clearly established federal law." The Report recommended that the petition be denied as to the related Fourth Amendment, Sixth Amendment and state law claims.

On August 4, 2020, the State filed objections to the Magistrate's Report and Recommendation, where it took issue with (1) the Court's definition of "custodial interrogation"; (2) the Court's consideration of Mr. Bowen's age as a relevant factor; and (3) the harmless error analysis.

On May 13, 2022, the District Court Judge affirmed and adopted the Magistrate's Report and ordered a new trial for Mr. Bowen. The District Judge rejected the State's conclusion that there must be an identical fact pattern reflected in U.S. Supreme Court precedent in order for the Court to grant Mr. Bowen's petition. Instead, the Court cited *White v. Woodall*, 572 U.S. 415, 427 (2014), which had concluded that habeas relief is available "if it is so obvious that a clearly established rule applies to a given set of facts that there could be no 'fairminded disagreement' on the question." (*citing Harrington v. Richter*, 562 U.S. 86, 103 (2011)).

On May 24, 2022, the State filed a Notice of Appeal to the Eleventh Circuit. The Eleventh Circuit heard oral argument on the matter on August 24, 2023. On February 15, 2024, the panel issued an opinion reversing the district court. The panel opinion stated "A fairminded jurist, applying the *Innis-Mauro-Perkins* trio of cases, could conclude that [Detective] Solis's decision to place Bowen in an interrogation room with Jones was not a *Miranda* violation." Opinion at 14-15.

## REASONS FOR GRANTING THE PETITION

### UNDER *RHODE ISLAND V. INNIS* AND J.*D.B. V. NORTH CAROLINA*, A DETECTIVE'S ACT OF PLACING A JUVENILE SUSPECT IN AN INTERVIEW ROOM WITH A JUVENILE CO-SUSPECT WHILE SECRETLY MONITORING AND RECORDING THE CONVERSATION, IN ORDER TO OBTAIN A CONFESSION, AFTER THE JUVENILE HAS INVOKED HIS *MIRANDA* RIGHTS, VIOLATES THE FIFTH AMENDMENT

The Fifth Amendment to the U.S. Constitution provides in relevant part that: "No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." Mr. Bowen submits that the detective's act of placing him in a police interview room with Jones, the juvenile co-suspect, while secretly monitoring and recording the conversation, in order to obtain a confession, after he had invoked his *Miranda* rights, was a violation of the Fifth Amendment.

In *Miranda v. Arizona*, 384 U.S. 436, this Court held that once a defendant in custody asks to speak with an attorney, all interrogation must cease until an attorney is present. The question here is whether the juvenile Mr. Bowen was "interrogated" in violation of *Miranda*. In *Rhode Island v. Innis*, 446

U.S. 291 (1980), this Court concluded that:

> [T]the *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police . . .that the police should know are reasonably likely to elicit an incriminating response from the suspect.

*Id.* at 300-01.

The *Innis* Court went on to explain that in determining the likelihood that an officer's words or actions will elicit an incriminating response, the court should focus primarily on the perceptions of the suspect rather than the intent of the police. *Id.* at 301. Furthermore, "[a]ny knowledge the police may have had concerning the unusual susceptibility of a defendant to a particular form of persuasion might be an important factor in determining whether the police should have known that their words or actions were reasonably likely to elicit an incriminating response from the suspect." *Id.* at 302, n.8. "Thus, custodial interrogation for purposes of *Miranda* includes both express questioning, and also words or actions that, given the officer's knowledge of any special susceptibilities of the suspect, the officer knows or reasonably should know are likely to 'have . . . the

force of a question on the accused,' … and therefore be reasonably likely to elicit an incriminating response." *Pennsylvania v. Muniz*, 496 U.S. 582, 601 (1990) (internal citations omitted).

In the instant case, the detective knew that Bowen was unusually susceptible to deceptive interrogation techniques because of his age and because Bowen had attempted to contact the co-defendant, Jones, moments earlier. In addition, Bowen's mother repeatedly warned the detective against trying to question her son again. These admonitions put the detective on notice of Bowen's vulnerability to being duped.

Both the state and federal judges were obligated to adequately consider the age factor in ruling on Bowen's claim that he was subjected to custodial interrogation in violation of his *Miranda* rights. As the Magistrate Judge said in her report and recommendation, Bowen's young age presented "an 'acute' risk of coercion" as outlined in the U.S. Supreme Court's holding in *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011).

The district court correctly decided that the state court's determination that Appellee's incriminating statements were properly obtained was an unreasonable application of clearly established federal law. After being advised of his *Miranda* rights, Appellee made a clear and unequivocal invocation of those rights. At that point, any statement Appellee made is presumed to be the result of coercion and, therefore, inadmissible. The detective's actions in

putting Petitioner in the room with the co-defendant and monitoring the conversation were the "functional equivalent" of a custodial interrogation. When a law enforcement officer advises a suspect of his or her *Miranda* rights and the suspect invokes those rights, the officer must "scrupulously honor" those rights. *Michigan v. Mosley*, 423 U.S. 96 (1975).

The Eleventh Circuit concluded that "[a] fairminded jurist, applying the *Innis-Mauro-Perkins* trio of cases, could conclude that [Detective] Solis's decision to place Bowen in an interrogation room with Jones was not a *Miranda* violation." Opinion at 14-15. None of these cases involved a juvenile suspect. Judge Wilson's concurring opinion correctly emphasized "the heightened concern that should attach to cases involving juveniles." Opinion at 17.[5] And even if Bowen were an adult, none of the fact patterns presented in *Innis*, *Mauro* and *Perkins* would be comparable to the instant case.

In *Innis*, this Court determined that the officers' actions were not designed to elicit any response from the suspect, Thomas Innis. Rather, Mr. Innis simply overheard a conversation between the officers which prompted him to respond after his moral conscience began to affect him. There, the Court concluded: "it cannot be said that the officers should have known that their conversation was reasonably likely to elicit an incriminating response

[5] However, Judge Wilson concurred in the result, stating that *Miranda* rights are not implicated if "[t]he essential ingredients of a 'police-dominated atmosphere' and compulsion are not present." (*quoting Illinois v. Perkins*, 496 U.S. 292, 296 (1990)).

from respondent. There is nothing in the record to suggest that the officers were aware that respondent was peculiarly susceptible to an appeal to his conscience . . ." *Id.* at 292. By contrast, in the instant case, the detective admitted that he was well aware of the probability that Bowen would discuss the case with the co-defendant because Bowen had attempted to call co-defendant Jones just moments earlier. In other words, although the *Innis* Court set out the definition of interrogation, Mr. Innis himself did not benefit from that definition because, in his case, the police's actions were not designed to elicit a response from him.

The instant case should also be contrasted with the case of *Arizona v. Mauro*, 481 U.S 520 (1987). In *Mauro*, the defendant who was in custody for killing his son invoked his *Miranda* rights. All questioning then ceased and the defendant was placed in the police captain's office for security reasons. In the meantime, the defendant's wife was being questioned in another room. The wife then insisted that she be allowed to speak with her husband. Although reluctant at first, the police allowed the meeting in the office on the condition that an officer be present. Using a recorder placed in plain sight, the officer taped a brief conversation during which the wife expressed despair and the defendant told her not to answer questions until a lawyer was present. The prosecution later used the tape at trial to rebut the defendant's insanity defense and obtain a conviction. The Arizona Supreme Court reversed, finding that the police had impermissibly interrogated the defendant within the meaning of *Miranda*. In a 5-4

decision, this Court then reversed the Arizona Supreme Court, holding that the police's actions did not constitute interrogation or its functional equivalent under *Innis*. The Court explained that the purpose of *Miranda* was to prevent the government from "using the coercive nature of confinement to extract confessions that would not be given in an unrestrained environment." *Id.* at 529-30. The *Mauro* Court went on to find that the officers' actions did not implicate *Miranda*'s concerns because the defendant "was not subjected to compelling influences, psychological ploys, or direct questioning." *Id.* at 529. The majority saw no evidence that the meeting was allowed in order to obtain incriminating statements.

The instant case is distinguishable from *Mauro* in several ways.[6] First, unlike in *Mauro*, Petitioner Bowen did not request a conversation with the co-defendant. Notably, Mr. Mauro's wife not only requested a conversation but insisted on it after the police tried to discourage her. As to Mr. Bowen, the police exploited the "coercive nature of confinement to extract [a] confession that would not [have been] given in an unrestrained environment." *Cf. Mauro* at 530. The police used the pretext that Bowen and his co-defendant had to be placed in the same room to await transportation as a compelling influence upon him. As Justice Stevens pointed out in his dissent in

[6] The instant case is also similar in some ways to *United States v. Vazquez*, 857 F.2d 857 (1st. Cir. 1988), where customs officials brought two drug suspects together in an airport and it led to an incriminating statement. The Court stated that it was a difficult and close case but held that there was no evidence that the particular customs official engaged in a conscious design to create an "interrogation environment."

*Mauro*, "[i]t is undisputed that a police decision to place two suspects in the same room and then to listen to or record their conversation may constitute a form of interrogation even if no questions are asked by any police officers." *Mauro* at 535. Justice Stevens also correctly reasoned that even if the officers had other reasons for their actions besides attempting to get a statement from the defendant, their actions still amount to impermissible interrogation. Stevens stated "The State should not be permitted to set aside this conclusion with testimony that merely indicates that the evidence-gathering purpose of the police was mixed with other motives. For example, it is irrelevant to the inquiry whether the police had legitimate security reasons for having an officer present that were 'not related to securing incriminating statements.' " *Id.* at 536. The same reasoning applies here. Even if the officers were genuinely using the interview room as a holding room for Bowen and the co-defendant to await transport (whether that was the primary or secondary reason), their admitted effort to get a confession was still impermissible.

Second, this case is distinguishable from *Mauro* in that Mr. Bowen was not aware that he was being recorded. Therefore, he cannot be considered to have waived his rights. The fact that Bowen spoke in a hushed tone of voice shows that he did not waive his *Miranda* rights. Bowen's lowering of his voice was to avoid being overheard from officers outside the door, not because he suspected he was being recorded.

Third, Bowen is distinguishable from *Mauro* because he was a juvenile at the time of the secret

recording and cannot be held to a standard of adult sophistication that one can impute to the married couple in *Mauro*. Since the Mauro's were a married couple, it was not obvious what they would discuss, and in fact, they discussed nothing about the case.[7] Instead, they discussed the emotional aspect of the arrest.[8] Petitioner here, on the other hand, upon seeing his fellow suspect would be inclined to talk about the case and the evidence. What the police anticipated Bowen would do is exactly what he did—discuss the incident.

The *Mauro* Court found that the officers' actions did not implicate *Miranda*'s concerns because the defendant "was not subjected to compelling influences, psychological ploys, or direct questioning." *Id.* at 529. Just as in *Innis*, the *Mauro* majority saw no evidence of a deliberate attempt to overcome the suspect's rights. That is, the officers' actions were not a subterfuge to obtain incriminating statements.

In *Illinois v. Perkins*, 496 U.S. 292, 296 (1990), this Court held that *Miranda* only applies to

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[7] The *Mauro* case did not involve incriminating statements because the defendant did not make any admissions. The question was whether the statements made during the conversation could be used to rebut the insanity defense because the statements were evidence of a sound mind.

[8] Adults would be more inclined to understand what they were facing and know to avoid self-incrimination. In Mr. Bowen's case, his mother, who had insisted on him not speaking to police, had been removed from the equation so police knew they could take advantage of his mother's absence.

situations where police compulsion is present, and therefore, *Miranda* warnings were not required to be given by an officer posing as an inmate. However, the question in *Perkins* was whether a suspect's *Miranda* rights had to be given in the first place, not whether those rights could be violated after they have been instructed and invoked. *See Perkins* at 296. Bowen submits that once *Miranda* has been given and the suspect invokes those rights, law enforcement agents must "scrupulously honor" those rights as explained in *Michigan v. Mosley*, 423 U.S. 96 (1975). In other words, when *Miranda* rights are invoked, it changes the game. If police had decided not to try to question Bowen in the first place and to therefore not read him his rights, then his statements to Jones would have been admissible.

The second distinction between *Perkins* and the instant case is that Mr. Perkins was not in custody for the crime which was being investigated. In fact, it is not even clear if police had probable cause to arrest Mr. Perkins for the offense at the time of the jail interaction. The factual scenario presented in *Perkins* is no different from an undercover agent who approaches a suspect at a grocery store, for example. Since the suspect is still being investigated and not under arrest, *Miranda* would not apply. The *Perkins* Court did not have any reason to answer the question of what would happen if Mr. Perkins had already been given *Miranda* warnings and had invoked those warnings.

Finally, *Perkins* did not involve a "police-dominated atmosphere" because it did not occur at the

police station. Corrections officers, not police officers, control the jail facilities.

The *Perkins* case is not applicable here. However, the following language from Justice Brennan's concurring opinion in *Perkins* highlights the danger of using deceptive and manipulative methods to extract a confession:

> This is not to say that I believe the Constitution condones the method by which the police extracted the confession in this case. To the contrary, the deception and manipulation practiced on respondent raise a substantial claim that the confession was obtained in violation of the Due Process Clause…That the right is derived from the Due Process Clause "is significant because it reflects the Court's consistently held view that the admissibility of a confession turns as much on whether the techniques for extracting the statements, as applied to *this* suspect, are compatible with a system that presumes innocence and assures that a conviction will not be secured by inquisitorial means as on whether the defendant's will was in fact overborne." *Id.,* at 116,

496 U.S. at 301-302 (emphasis in original), *citing Miller v. Fenton*, 474 U.S. 104, 116 (1985).

The distinctions between the trio of cases that the Eleventh Circuit cites and the instant case are clear. However, the most significant distinction between Mr. Bowen's case and the trio of cases is the juvenile factor. Even if the detective's actions in this case would not have been coercive for an adult suspect, they became coercive under the Fifth Amendment because of the suspect's status as a juvenile. Once again, *Innis* instructs us that that "[a]ny knowledge the police may have had concerning the unusual susceptibility of a defendant to a particular form of persuasion might be an important factor in determining whether the police should have known that their words or actions were reasonably likely to elicit an incriminating response from the suspect." Id. at 302, n.8. "Thus, custodial interrogation for purposes of *Miranda* includes both express questioning, and also words or actions that, given the officer's knowledge of any special susceptibilities of the suspect, the officer knows or reasonably should know are likely to 'have . . . the force of a question on the accused,' … and therefore be reasonably likely to elicit an incriminating response." *Pennsylvania v. Muniz*, 496 U.S. 582, 601 (1990) (internal citations omitted).

Bowen's young age presented "an 'acute' risk of coercion" as outlined in this Court's holding in *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011). *See also, e.g. Haley v. Ohio*, 332 U.S. 596 (1948); *Withrow v. Williams*, 507 U.S. 680 (1993); *Fare v. Michael C.*, 442 U.S. 707 (1979); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *In re Gault*, 387 U.S. 1 (1967); and

*Gallegos v. Colorado*, 370 U.S. 49 (1962). In fact, the question of whether an officer's actions amounted to interrogation is a subjective inquiry, and therefore an even stronger case to consider a juvenile's age than the objective custody question at issue in *J.D.B.*. In *Yarborough v. Alvarado*, 541 U.S. 652, 667-68 (2004), this Court stated that

> the objective *Miranda* **custody inquiry** could reasonably be viewed as different from doctrinal tests that depend on the actual mindset of a particular suspect, where we do consider a subject's age and experience. For example, the voluntariness of a statement is often said to depend on whether "the defendant's will was overborne". . . a question that logically can depend on "the characteristics of the accused."

(emphasis added) (citations omitted). Judge Wilson's concurring opinion correctly recognizes that "the majority treats *J.D.B.* too lightly." Opinion at 19.

The United States Supreme Court has held that when an accused has invoked his right to counsel, all interrogation must cease immediately until counsel is made available, unless the accused reinitiates further communication with law enforcement. *Edwards v. Arizona*, 451 U.S. 477 (1981). Once a suspect invokes his rights, the police are required to "scrupulously honor" that decision and refrain from *any* further interrogation. *Michigan v. Mosley*, 423 U.S. 96, 104 (1975).

In the instant case, Mr. Bowen did invoke his rights, and did not reinitiate contact, but the police failed to scrupulously honor his invocation when they put him in a room under circumstances that were reasonably likely to lead to an incriminating conversation. At the suppression hearing, Detective Solis initially insisted that he only put Bowen in a room with Jones to await transportation to the jail, but Detective Solis eventually admitted several times on cross examination that he put Bowen in a wired, monitored interview room with Jones as a calculated effort to obtain incriminating statements. The following exchange took place on cross-examination:

**Q. Now, when you put them together in the interview room you did so for investigative purposes of course?**

**A. No. To transport them to JAC**

**Q. And now, that room happened to have a recording device?**

**A. Correct.**

**Q. That recording device was activated?**

**A. Correct.**

**Q. You were monitoring it, right?**

**A. Yes.**

Q. I'm going to ask a question again, do you put him in there for investigative purposes?

A. They were put in the room for me to transport them but when they were inside that specific room I was aware that there is a recording device too so I proceeded to activate the recording system, video, to see if they were going to say anything.

Q. Isn't that true that's the purpose you put them together?

A. No.

Q. Are you sure?

A. Yes.

Defense counsel then proceeded to impeach the detective with his deposition testimony, as follows:

Q. Do you remember being asked was there a particular reason that you put -- you kept them in the same room and do you remember being asked that question?

A. Yes.

Q. Do you remember responding "to see if they were going to talk about this investigation"?

A. Yes. But like I said before, the original reason to be put in the room was for transport. At no time were they ever together to see whether or not they were going to say anything. So that's also the reason why the record button was pressed.

After this contradictory double-talk from the detective, defense counsel continued:

Q. So there may have been another reason but certainly as I understand from your testimony back in January of 2010 that you put them in there to see if they were going to talk about this case?

A. Yes.

Q. Okay. And in fact you were right and they did talk about the case, correct?

A. Yes, they did.

Q. There were incriminating statements made?

A. Correct.

A few moments later, defense counsel reiterated:

Q. It's fair to say there was no accident they were in that room, that's something that you did on purpose?

A. Like I said they were going to be transported to JAC. It would be prudent. At no time they were together to see if they would say anything so I hit the record button, yes.

Q. You put them in there together, you wanted to see if they would talk about this case?

A. Correct.

On re-direct examination, the State attempted to rehabilitate the detective as follows:

Q. Sergeant Solis, when you placed these two defendants in this interrogation room did you have any idea they were going to talk to each other?

A. No.

Q. Did you ever tell them to talk to each other?

A. No.

Q. Did you know if they were going to talk about the girl?

A. Possibly.

Q. Whether - -

A. Possibly.

Q. Or the case?

A. Correct. Possibly.

Q. And as investigator you hoped that obviously they'll talk about the case?

A. Absolutely.

However, moments thereafter, the State shifted the detective's position again. The following exchange occurred between the State and the detective:

Q. When you placed these two defendants in the interrogation room together did you have any idea that they were – they would talk to each other?

A. No. None.

Solis gave no reason why the two juveniles needed to be in an interview room at all, much less the same one, to await transportation, or why he chose a wired room as opposed to an unwired room. In light of those omissions and the fact that Detective Solis immediately activated the recorder after placing the youths in the room together, it seems that Solis was using Jones to speak to Bowen in a way that he couldn't legally do himself. Moreover, the respective arrest affidavits indicate that the two juveniles were transported about three hours apart from each other.[9]

[9] Records show that Jones was transported about 8:35 A.M. while Bowen was transported about 11:24 A.M.

Under *Innis*, this was the unlawful functional equivalent of resuming Bowen's interrogation.

Jimmie Bowen refused to talk and invoked his rights. At the suppression hearing, Mr. Bowen's mother testified about how she persisted in admonishing the detective against any further efforts to obtain a statement from her son. This put the officer on notice that Bowen might eventually succumb to trickery. Detective Solis ostensibly honored that invocation by leaving the room, but the detective used Jones precisely because he knew Bowen would be more likely to speak to him. Detective Solis lied to Mr. Bowen (and possibly Mr. Jones) about the reason they were put together, which naturally fostered an expectation that they were speaking privately as they supposedly awaited transportation. And to the extent that the defendants appear to be speaking low so as not to be heard from outside the room, that would be natural during such a conversation, and certainly is not proof that they *knew* they were being recorded.

In state court and in the proceedings below, the State argued that the police officers' act of leaving Bowen in a monitored interviewing room with his co-defendant and secretly recording the conversation between them, could not be considered "custodial interrogation" and that it therefore did not violate Bowen's Fifth Amendment right to remain silent. This argument fails for several reasons.

As to whether the officers' actions amounted to "interrogation," the State quoted the following

language from *Innis*: "since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response." *Id.* at 301-02 (emphasis supplied). However, the inverse is also true. That is, the police should be held accountable for the foreseeable results of their words or actions that they should have known would elicit an incriminating response. The *Innis* Court stated this principle directly when it defined interrogation as "express questioning or its functional equivalent." At the suppression hearing, Detective Solis initially insisted that he only put Bowen in a room with Jones to await transportation to the jail, but he eventually admitted on cross examination that he put Bowen in the monitored interview room with Jones as a calculated effort to obtain incriminating statements.

Mr. Bowen asks the Court to intervene in this matter because the detective's actions violated his *Miranda* rights. The Court should establish that *Michigan v. Mosley* extends to the scenario where a law enforcement agent places a juvenile suspect in an interview room with the co-suspect in order to secretly obtain a confession, because law enforcement agents must "scrupulously honor" a suspect's *Miranda* rights. Finally, this Court should conclude that the Eleventh Circuit misapplied the *Innis-Mauro-Perkins* trio of cases, especially in light of Mr. Bowen's status as a juvenile.

## UNDER 28 U.S.C. § 2254(D), AND IN LIGHT OF *J.D.B. V. NORTH CAROLINA*, A STATE ADJUDICATION OF A CLAIM RESULTS IN A DECISION THAT WAS CONTRARY TO, OR AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES, WHEN IT FAILS TO ADEQUATELY CONSIDER A SUSPECT'S STATUS AS A JUVENILE, FOR FIFTH AMENDMENT PURPOSES

Under 28 U.S.C. § 2254(d), "[a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Under this section, the determination as to whether a claim was "adjudicated on the merits" is a per claim inquiry so that a federal circuit court owes no AEDPA deference to a state court's decision that adjudicated one or more of the petitioner's claims on the merits but did not adjudicate the claim on which

the district court granted relief, where the claim on which the district court granted relief was the claim that was subsequently presented to the circuit court. In the instant case, a footnote in the Eleventh Circuit's opinion stated that the Court would not accept Bowen's argument that his Fifth Amendment claim was not "adjudicated on the merits" since Bowen did not present that argument in his answer brief.

In *Williams v. Taylor*, 529 U.S. 362 (2000), this Court explained that in order to determine whether a particular decision is "contrary to" then-established law, a federal court must consider whether the decision "applies a rule that contradicts [such] law" and how the decision "confronts [the] set of facts" that were before the state court. If the state-court decision identifies the correct governing legal principle in existence at the time, a federal court must assess whether the decision "unreasonably applies that principle to the facts of the prisoner's case." That is, if the state decision is "contrary to" Supreme Court precedent, it does not have to also be "an unreasonable application" of Supreme Court precedent for the court to grant habeas corpus. The Court must give independent meaning to both the "contrary to" and "unreasonable application" clauses of 2254(d)(1). *See Taylor* (distinguishing the two separate categories of review in 2254(d)(1)).

Bowen's young age presented "an 'acute' risk of coercion" as outlined in this Court's holding in *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011). *See also, e.g. Haley v. Ohio*, 332 U.S. 596 (1948); *Withrow v.*

*Williams*, 507 U.S. 680 (1993); *Fare v. Michael C.*, 442 U.S. 707 (1979); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *In re Gault*, 387 U.S. 1 (1967); and *Gallegos v. Colorado*, 370 U.S. 49 (1962). In fact, the question of whether an officer's actions amounted to interrogation is a subjective inquiry, and therefore an even stronger case to consider a juvenile's age than the objective custody question at issue in *J.D.B.*. Judge Wilson's concurring opinion correctly recognizes that "the majority treats *J.D.B.* too lightly." Opinion at 19. Even if the detective's actions in this case would not have been coercive for an adult suspect, they became coercive under the Fifth Amendment because of the suspect's status as a juvenile.

In *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), this Court held that "a child's age properly informs the *Miranda* custody analysis." *Id.* at 265. Again, the question of whether an officer's actions amounted to interrogation is a subjective inquiry, and therefore an even stronger case to consider a juvenile's age than the objective custody question at issue in *J.D.B.*. *See Yarborough v. Alvarado*, 541 U.S. 652, 667-668 (2004).

Bowen submits that the district court decision should have been affirmed because the state court's decision was contrary to the decisions in *Rhode Island v. Innis*, 446 U.S. 291 (1980); *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011); and *Michigan v. Mosley*, 423 U.S. 96 (1975). Even assuming the state court adjudicated Bowen's Fifth Amendment claim on the merits, which Bowen disputes, the decision was

contrary to Supreme Court precedent. The requirement that there be "no fairminded disagreement" on the issue is not implicated here because the state court did not identify and apply the correct governing legal principle in the first place.

Mr. Bowen asks the Court to intervene in this matter by granting certiorari because the state court and the Eleventh Circuit failed to adequately consider Bowen's status as a juvenile and therefore those decisions were "contrary to" clearly established Supreme Court precedent. The Eleventh Circuit's reliance on the *Innis-Mauro-Perkins* trio of cases was erroneous because none of those cases involve the juvenile standard set forth in *J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

## CONCLUSION

For the foregoing reasons, this Honorable Court should grant the petition for a writ of certiorari in this case.

Respectfully submitted,

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