No. 24-7269

IN THE

SUPREME COURT OF THE UNITED STATES

Jacob John WELD — PETITIONER
(Your Name)

vs.

Michigan Court of Appeals "et al" — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jacob John WELD
(Your Name)

1728 Blue water Hwy
(Address)

Idnia MI, 48846
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1) Did the Circumstance surrounding Petitioners interrogation by Det. Voss and Michigan State trooper Werner become Custodial when Voss entered the room at 31:31 minutes and blocked the only exit by placing his Chair in front of the closed door?

2) Did the prescribed tactic employed by Det. Voss to elicit and obtain a confession from interview, Constitute the impermissible "two-step" interrogation" technique used in (Missouri V. Seibert 542 U.S. 600) and if Miranda Warnings are found to be effective would this Honorable Court evalvate for "Volontariness" of Confession Coregon V. Elstad 420 U.S. 248?

3) Did the trial Counsel's performance, A) not filing a motion to suppress Confession, B) Did not go through insanity framework for "Automatism Defense" fall below an objective standard of reasonableness and did the Deficient performance render the trial fundamentally unfair?

LIST OF PARTIES

[X] 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:

RELATED CASES

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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

[X] For cases from **federal courts**:

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

[X] reported at United States Court of Appeals 6th Circuit; 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[ ] is unpublished.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[ ] is unpublished.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 _____ 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 _____ 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.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was Nov 12, 2024.

[X] 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 _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Statement of Case

Jacob weld was convicted at a jury trial in Emmet Circuit Court, Judge Geoffery L. Neithercut presiding by Appointment of two counts of First Degree Sexual Conduct (CSC 1), MCL 750.5206 (person under 13). Weld was Sentenced to mandatory minimum of 25 years in Prison.

Background

Weld had two daughters, one of them was the nine year old JW. He had been honorably discharged from the Army and recently moved to his parents house in Petosky, MI. Sometime later the children were removed from his care after allegation of physical abuse. Julie Stager, a foster parent, took JW and her sister.

The Disclosure

Stager testified that about four days after JW came to live with her, She said that the petitioner had sexually abused her. According to Stager JW said " I don't want my dad to go to jail, but when i was about 4 or 5 he put his in mine." Stager contacted C.P.S at their direction Stager took Jw for a forensic interview and later Physical examination.

The Physical Examination

Dr. Lindsay Mcmorrow a Pediatrician with Northern Michigan Child Advocacy Center, conducted the physical exam of JW. JW had indicated that her father had put his penis in her vagina and afterward it stung when she used the bathroom.

McMarrow examined JW's genitals and classified them as "normal". As she explained " A normal physical exam in regards to genitals-for a kid that means that there is no-that their hymen has no deep clefts, no absent or missing tissue; no scar tissue; and essentially what it means is the child is healthy and that their body

is healthy. "According to McMorrow, an absence that the genitals of a pre-pubescent girl are "very elastic" and "heal very quickly" without leaving scars".

The Allegation

JW testified that Weld "put his private in hers" on multiple occasions while they were living with Weld's Mother in Petosky. As she remembers "He would call me and tell me to pull down my pants, and he would take out his and put it in mine." JW claimed that Weld was awake during these incident's " because he seemed like he knew what he was doing and his eyes were open, and he was talking to her." JW also claimed that Weld told her not to tell anyone.

Asked how many times this happened in Petoskey, JW answered "like thirty or something." she also alleged that the abuse had happend when the Family lived in Texas, Oklahoma, and Las Vegas. In fact jw claimed that the abuse had been going on since she was four or five years old but on Cross- Examination, she admitted that Weld had been in the military until she was six years old.

The Police Interrogation

After observing JW's forensic interview, Trooper Daniel Werner of the Michigan State Police called Weld and asked him if "he would be willing to come into the post for an interview" and he obliged to do so.

A video recording of the interview was played to the Jury. The interview takes place in a small room. Werner initially inquires about Weld's background, including his army service. Werner then asks Weld whether JW would ever accuse him of sexual assault. Weld says that he" may have accidentlly had sexual contact with JW while he was asleep." He says that he 'had unintentionally had sex with his ex-wife while he was asleep. Overall, Werner conducts this portion of the video was

non-aggressive, non accusatory manner. After half an hour the two take a break from the interview.

After they return to the interview room they are joined by detective Jamie Voss. He's older and more experienced then Werner. At trial Voss testified extensivly about how he used the 'Reid technique' on Weld, which involves developing rapport, suggesting "themes", Calling the suspect out if he thinks they're lying and minimizing the suspect's offences.

In the video Voss closes the door and places his chair in front of the door. He takes over the interview. he initially tells Weld that "he's not in trouble, but soon after Voss says that he believes Weld had sex with JW and not while he was sleeping. Voss tells Weld that he is going to have to go on a "journey" with him and that he'll feel better when it's done. Voss begins asking deeply personal questions about Weld's sexual history such as whether he was sexually abused as a child and whether he watches pornography. Weld dutifully answers Voss's questions.

Voss rejects Weld's assertion that any sexual contact he had with JW happens while he was asleep. Voss says that Weld is never going to get the help he needs unless he tells the truth. Voss says that He's Weld's friend and that he's there to help him. Voss also says that he knows what really happened. Eventually Weld relents, admitting to what Voss wants to hear. He says that he intentionally and consciously had sex with JW on multiple occasions.

Afterwards Weld asks for a ciggarette and Voss says that Weld can have a ciggarette but that he's under arrest. Werner reads Weld his miranda warnings for the first time but Voss says nothing has changed and that they're going to keep talking. Weld agree's to continue talking with them after he's had a cigarette. The three of them take a

break of five minutes and return to the interview room. Voss then has Weld repeat and elaborate on his confession. After he convinces Weld to waive his miranda rights and continue talking. Voss's Interrogation lasted approximately an hour. The defense maintained at trial and continued to maintain in appeal that Weld gave a false confession after being psychologically manipulated by Voss.

After the interview, Weld consented to a search of his phone. Weld's internet search history revealed some of the pornographic videos he had watched titles of the videos included "Dirty daddy fucks daughter" Sleep walking dad fucks daughter" and "step dad fucks daughter" There was no allegations that the videos were child pornography.

Weld's Jail Calls

Six recordings of Jail calls that Weld made after he was arrested were played for the jury. The calls were made by Weld to his parents.

In the first recording Weld admits to having sexual contact with JW but says that he was sleeping.

In the second recording Weld says that the incidents happened more then once and that he's "probably going to do time".

In the third recording, Weld continues to say that the sexual contact happened while he was sleeping, although he says that's not an excuse. He also says that he is going to trial that he wishes he wouldn't have said anything until he got a lawyer. He adds that there was penetration every time.

In the fourth recording, he says that he would plead to two CSC-2 offenses. He says that otherwise he'll take it to trial because he is guilty either way. He also says that people will see how much JW loves him and misses him, which might change some of there minds.

In the fifth recording, Weld says that he admitted everything, which he shouldn't have. He says he was honest during the

interrogation. He says that he'll take the case to trial because he has nothing to lose, but he also says "it sucks that no one believes him". He says he would be happy with a sentence of 5 to 10 years.

Finally in the sixth recording Weld alludes to Larry Nasser, saying Nasser molested hundreds of girls and that Nasser was liable for 25 years mandatory minimum sentence contrasting his situation Weld says that Nasser "did the crime" while he only "did it once".

Question 1

1) Did the Circumstances surrounding petitioners interrogation by Def. Sgt. Voss and Michigan State Trooper Werner become "Custodial" when Voss entered the room at 31:31 minutes and blocked the only exit by placing his chair in front of the closed door?

The United States Court of Appeals of the SIxth Circuit concluded the Michigan Court of Appeals reasonably determined that Weld was not in Custody during the interview with Law Enforcement officers until he was placed under arrest after making admissions about sexually penetrating the victim-at which point he was given miranda warnings-and therefore was not entitled to suppression of his confession. Weld 2020 WL 6110637 at 5. The objective circumstances indicated that the pre-arrest portion of the interview was not custodial: Weld made an appointment for the interview was not under arrest and that he was free to leave at any time; Weld was not physically restrained during the interview; Weld left the interview to use the bathroom and voluntarily returned to the room; the officers service weapons remained holstered and the door remained unlocked during the interview; and although Weld claimed that a detective's questioning was accusatorial and coercive, the record showed that the detective did not yell or raise his voice. ID at 4-5

In Thompson V. Keohane, 516 U.S.99, 133L Ed. 2d 383 116 S. Ct. 457 (1995) the Court offered the following description of the miranda custody test: first, what were the circumstances surrounding the interrogation; and second, given the circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players lines and actions are constructed, the Court must apply an objective

test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement to the degree associated with a formal arrest. Id 516 VS. at 112.133L Ed 2d 116 S. Ct. 457

In this present case the sixth Circuit concluded "Weld was not in custody during his interview with law enforcement officers until he was placed under arrest" Miranda Custody's ultimate inquiry: was there a formal arrest. This honorable Court can see from this ruling of the Sixth Circuit Court there was a formal arrest. And Michigan Court of Appeals used the freedom of movement test and coercive environment, which involves five prong test: 1)the location of the interview 2) the duration of the questioning 3) The Statements made during the interview 4) the presence or absence of physical restraints during the interview 5) whether the defendant was released after the questioning.

The Defense had established with trooper Werner which was the first half-hour interview was non-custodial. However has emphasized that when Det. Voss came into the room how the dynamic of the interview changed. Statements that are on record including continually accusing the petitioner was explaining he was asleep during the alleged incident. Confronting the petitioner with what Det. Voss already "knew" what has happened. Said statements like "you're going to have to take this journey with me to get you where you need to be" among many other coercive and acusitory statements. When he first entered the room he placed his chair in front of the door. the Michigan Court of Appeals didn't even address the fifth prong on whether the petitioner was arrested. It was the Sixth Circuit Court that made it clear petitioner was placed under arrest.

The Michigan Court of Appeals also gave a synopsis of the interview on page 4 first paragraph. At the end of the paragraph

the Court said "As a result defendant argues that the Troopers were required to inform him of his Miranda Rights. The defense argued on page 32 and page 33 of defendants Appellate's brief on appeal "Voss testified that he had been a Police officer for approximately 24 years (Trl,160) He testified that he had received both basic and advanced training on interregation techniques (Trl,161) and the video shows him to be a skilled and experienced interrogator. Surely Voss was aware that Miranda warnings were necessary once he came into the room, blocked the door and began to accusitrily interrogate Weld but hew didn't mirandize Weld. Instead he waited until Weld asked for a Cigeratte break "Rhode Island V. Innis, 446 U.S. 241,301,100 S.Ct. 1682, 64C Ed. 2d. 297 (1980) (Defining "interrogation" as "expressed questioning or its functional equivalent which includes "words or actions on the part of the Police should know are reasonably likely to elicit an incriminating response from subject) which Det. Voss did achieve that incriminating response from the petitioner.

In the interview video between (56:19-1:00:11) Voss is questioning the petitioner about the details of the alleged incident which included the clothes both parties were wearing, how the clothes came off, positioning of the sex, how deep the penetration was. Voss even went as far as drawing a penis on a piece of paper and has the petitioner draw a line indicating how far the penetration was. (1:00:11-1:01:37), that is reasomnable likely to elicit an incriminating response. the interview went on for another 8 minutes before miranda warnings were read. Voss waiting until the petitiner asked for a cigarette. Voss came into the room, placed his chair in front of the door, continued to tell the petitioner that he "knew" that he was guilty rejecting the petitioners expinations. No reasonable

person in the defendant's position would have felt at liberty to end the interrogation and leave. This Honoranble Court should find the defendant was subject to Custodial interrogation. This is the same Coercive environment completed by Miranda. The record shows that Voss deliberately used the "two-step" interrogation technique because he waited until the petitioner had confessed to what Voss said he "knew" to read the petitioner his Miranda warnings. This lends to the next question.

2) Did the tactic employed by Det. Voss to obtain a confession from petitioner constitute the impermissible "two-step" interrogation technique used in (Missouri V. Seibert 542 U.S. 600) and if Miranda warnings are found effective would this Honorable Court evaluate for "voluntariness" of confession (Oregon V. Elstad 420, U.S. 298)?

The Michigan Court of Appeals made no ruling on this issue as the United Sates Sixth Circuit Court did not rule on this issue. The petitioner requests this Honorable Court to resolve this issue.

Background of Law

The fifth Amendment of the United Sates Constitution and Article I,17 of the Michigan Constitution provide every person with the right against self-incrimination. US Const IV; Const .1963, Act 1,17. to protect that right this Honorable Court ruled on Miranda V. Arizona, 384 V.S. 432,444;84 SCT 1602; 16L Ed 2d 694 (1966).

If the Sate established that Miranda warning was given and the accused made a uncoercd Statement, this showing, standing alone, is insufficient to demonstrate "it Valid Waiver" of Miranda rights. Id at 475 86 S.Ct. 1603 16L ed. 2d 694.

If the prior unwarned statement was voluntary however,

"A careful and thorough administration of miranda warnings serve to core the condition that rendered the unwarned statement inadmissible" and a subsequent warned statement will be admissible unless it was involuntary. (Oregon V. Elstad 470, U.S. 298 at 311) In this present case the Courts expressed that the statement that was made before Miranda was rendered was voluntary however the Court did not address ~~the courts did not address~~ the effectiveness of the miranda warnings. The State Courts ruled that Miranda warnings are not required. However even if miranda warnings are not required a confession cannot be used if it is involuntary. United States V. Washington 431,vs,181,186-87,521 Ed 2d 238,97 S.Ct. 1814(1977); Michigan V.Tucker, 417 U.S. 433, 440-41. 41L Ed 2d 182 94, s Ct 2357 (1974). In Elstad " A simple failure to administer the warnings unaccompanied by actual coercion or other circumstances calculated to undermine the suspects ability to exercise his freewill "did not so taint" the investigory process that a subsequent voluntary and informed waiver is ineffective for some indeterminate period. Though Miranda requires that the unwarned admission must be suppressed, the admissibilty of any subsequent statement should turn in these circumstances solely on whether it is knowingly and voluntarily made. Elstad, 470 US. at 309,84L ed 2d 222 105 S. Ct. A85.

The Courts ruled the 'in custody' test for miranda and found that the petitioner was not subject to suppression of the Confession before miranda. However once miranda is read that requires that the unwarned admission must be suppressed. Then Elstad suggested the focus should be after the miranda was read to check the admissibility of those statements.

According to the Seibert plurality, the Relevent

factors for determining whether a midstream miranda warning could be effective are 1) the completeness and detail involved in the first round of questioning. 2) the overlapping content of the statements made before and after the warnings, 3)the timing and setting of the interrogation; 5) the degree to which the interrogators questions treated the second round as continuous with the first. Seibert, 542 U.S. At 615. The results of effectivness inquiry inform the subsequent analysis: "If yes (to the question of effective warning) a court can take up the Standard issue of voluntary waiver and voluntary statement is inadmissible for want of adequate miranda warnings, because the earlier and later statements are realistically seen as parts of a single unwarned sequence of questioning. Seibert, 542 U.S At 612.

Application of 5 factors

The existing record shows Det. Voss deliberately used the midstream miranda to circumvent the miranda warnings. Ford V. United States, 931 A. 2d 1035 (D.C. App 2007) (Court found that the consensus of courts that have reviewed the issue have concluded that Seibert only apply to deliberate use of the "two step" interrogation process that was Condemned by the court.) Let's examine the content and statements made before and after Miranda was read.

The defendant confessed and asked for a cigarette break. Det. Voss said that Trooper Werner was going to read the petitioner his miranda warnings "and then we're going to talk some more, Nothing's changed. (1:10:10-1:10:20) After about three minute break, Det Voss, Trooper Werner, and the petitioner, return to the same room, to continue the interview. When the interrogation resumed Det. Voss said "the only thing that's changed now is that you're under arrest, you're not free to leave, and then when you leave here you'll

be going over to Emmet County jail. (1:13:05-1:13:20) Det. Voss then tried to confirm that the petitioner was waiving his rights and responded "You guys said you have more questions for me"(1:13:35-1:13:35) Det. Voss asks if the petitioner is willing to continue talking and petitioner responds "Is it going to like-obviously it is going to be put on record and everything. (1:13:35-1:14:00) Det. Voss says "yeah yeah we're going to document everything, we want to try to get you where you need to be, get you the help you need and continue to talk. (1:14:00-1:14:10)

The petitioner says that he's willing to cooperate (1:14:10-1:14:12) Det. Voss then has the petitioner reaffirm that he admitted-with Voss's leading-having conscious "penis-vagina, intercourse with the victim. Det. Voss probes further into detail (1:14:12-1:24:10). At the conclusion of the interview by going over some of the more mundane details of the petitioners statements and having him provide the written statement.

This post-mirandized statement of the interrogation covers much of the same ground as the first. Det. Voss's intent here is to make the miranda warnings ineffective by the statements that were made. He told the petitioner before confirming the waiver "the only things that has changed is you're under arrest, you're not free to leave" when a confession so obtained is offered and challenged attention must be paid to the conflicting objects of miranda and question first. Miranda addressed "Interrogation practices likely to disable (an individual) from making a "free and rational choice" about speaking. Miranda V. Arizona 384 us at 464-465, 161 Ed 2d 694, 86, S.C.t. 1602, and held that a suspect must be " adequately and effectivley" advised of the choise the constitution guarantees. Id at 497, 161 Ed 2d 694 86 S.Ct. 1602. the truth of the matter is things did

change after the warnings where read, the previous statement were ijnadmissibly. This rendered the petitioner to make only one choice that was what Det. Voss wanted as we see in the next statement.

Det. Voss says after miranda warnings where read "yeah yeah we're going to document everything we want to try to get you where you need to be, get you the help you need and continue to talk. (1:14:00-1:14:100) Det. Voss said " continue to talk" this was not a free choice it was what Det. Voss says. Det. Voss was deliberately trying to prevent the petitioner from invoking his rights. "unless the warnings could place a suspect who has just been interrogated in a position to make an informed choice there is no practical justification for accepting the formal warnings as compliance with miranda or for treating the second stage of interrogation as distinct from the first unwarned and inadmissible segment. Seibert 542 U.S. At 612. The same officers did the first and second segment of the interrogation with only a three minute break. These objective facts show ineffective warnings, the third, the fourth and fifth factors of the interrogation. The first and second factors of the plurality test also favor ineffective warnings. The questions and statements not have been the same but the post miranda statements were a continuation from the knowledge all five factors favor the miranda warnings were ineffective under the Seibert plurality test time or change in circumstances "Seibert 542. U.S. at 628 (citing elstad, 470 U.S at 310) Elstad thus requires that when a prior statement is actually coerced, the time that passes between confessions, the chsange in place of interrogations and the change in identity of the interrogators all near on whether the coercion has carried over into the second confession. Elstad, 470 U.s at 310. Further, when determining voluntariness and the finder of fact must examine the surrounding

circumstances and the entire course of police conduct with respect to the entire course of police conduct with respect to the suspect in evaluating the voluntariness of his statements. Elstad at 318. All three factors favor involuntariness, for in the first question it was established as coerced confession. The time that passes between confession was about three minutes, the change in place of interrogators did not change, Det. Voss and Trooper Werner continued after miranda was read , so the identity of interrogators remained the same. All three factors favor the coercion has carried over. "The finder of fact must examine the surrounding circumstances and the entire course of police conduct with respect to the suspect in evaluating the voluntariness of his statements. Elstad 470, at 318- Here in this present case the record shows that Det. Voss lead the petitioner "where he needed to go to get the help he needed" as Det. Voss put it and producting what Det. Voss said he "knew". The circumstances surrounding the interrogation suggests that the second confession was seperate from the first confession. Under the Seibert test all 5 factors favor the miranda warnings were ineffective. Under Elstad all three factors favor involuntariness of the statements. Therefore the petitioners confession should have been suppressed. the petitioners trial counsel should have filed a motion to suppress, the coerced confession. Since the trial counsel did not, the inadmissible portion of the confession and the post-miranda part of the confession was played in front of the jury. All the while the defense theory was that any of these alleged incidences occured while the petitioner was asleep. This moves us to the next question.

Question 3

Did the trial councel's performance, A) not filing a motion to suppress confession, B)Did not go through insanity framework

for "Automatism defense" fall below an objective standard of reasonableness and did the deficient performance render the trial fundamentally unfair?

Background of Law

The Sixth Amendment of the United States Constitution of Article 1,38.20 of Michigan Constitution gaurentee the right to effective assistance of counsel for Criminal defendants. Strickland V. Washington. 466 U.S 688, 686, 104 S.Ct. 2052; 80L Ed. @d. 674 (1984): requiring him to demonstrate 1) "That the Counsels performance was deficient and 2) that Counsel's "deficient performance prejudiced the defense" to establish deficient performance the defendant must show that counsels representation fell below an objective standard of reasonableness". Id at 688. to establish prejudice "the defendant must show that theirs a reasonable probability that " counsels unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. At 694. But the "prejudice prong at the Strickland test focuses on the question whether Counsels deficient performance renders the result of the trial unreliable or the proceeding fundamentally unfair. Lockhart V. Fretwell 506, U.S 364, Id at 687; see Kimmelman 477 U.S. at 393.

Here in this present case the trial counsel preformed deficiently by not moving to suppress the statements the petitioner made during custodial interrogation. At the very least should have objected to the pre-miranda statement (which is inadmissible) in front of the jury. Voss deliberatly used the "two-step" interrogation tactic this Honorable Court had condemned, furthermore it is clearly seen in the objective circumstances surrounding the interrogation the involuntariness of the confession using the Elstad pluarity. Simply put there is no legitimate strategic reason to not at least object to the inadmissible portion of the confession.

The Michigan Court of Appeals on Page 6 in the last paragraph states "In this case if defendants confession was suppressed, there is still overwhelming evidence to convict defendant on two counts of CSC 1 against the victim. This Honorable Court stated "but any criminal trial used against the defendant of his involuntary statement is a denial of his due process of law "even thought there is ample evidence aside from the confession to support the conviction" Hughs V. Washington, 373 U.S. 503, 518; Lyhumn V. Illinois 372. U.S 528, 537; Troble V. California 343, U.S. 181, 190. Then the Michigan Court of Appeals went on to use the confession that should have been suppressed, then the courts used the telephone calls the petitioner made to his mother.

But without the confession the evidentary picture would still remain any of the contact that allegedy occured happened while the petitioner was asleep, also known as "sexsomnia"

The Michigan Court of appeals states on page 8 beginning of the paragraph : However, even viewing defendants claim as one involving an involuntary act committed during sleep we concluded the defendant has not demonstrated that counsel's performance was deficient, and even if he had shown that there is a reasonable probability of a different outcome "everything after this was based on the confession that should have been supressed, in the phone calls the petitioner contained and maintained he was asleep during these alleged incidents. This Honorable Court stated "on direct review, the governments Commission of a constitutional error requires reversal of the conviction unless the government proves "beyond

a reasonable doubt that the error complained of did not contribute to the verdict obtained. United States V. Garibav, 143 F. 3d 534 (9th cir 1998) (quoting Chapman V. California, 386 U.S 18, 24, 87 S. Ct. 824 17L Ed @d 705 (1967) up to this point every position the Michigan Court of Appeals has held goes back to first suppressed because it was involuntary. This Honorable Court stated "the admission of an Involuntary confession at trial is subject to harmless error analysis. Arizona V. Fulminte 499 U.S. the Sixth Circuit ruled in Eddleman v McKee 471 F. #d 576 (6thcir) we hold that when a state court has found an error to be harmless, we should ask on collatoral review whether the State Courts harmless error decision was contrary to, or unreasonable Application of, clearly established federal rule that a trial error is harmless only if it is harmless beyond a reasonable doubt. Thus the petitioners trial counsel preformed in effective assistance of Counsel by not suppressing the confession or at least not objecting to the inadmissible portion of the confession before miranda because the confession not being suppressed has changed the evidentary picture. With the suppression of confession this would have been a different outcome. This Honorable Court Stated in Arizona V Fulminate, 499 U.S. 279, 306-12, 111, S,Ct. 1246 1137 Ed 2d 302 (1991) the Supreme Court has however acknowledged that: A COnfession is like no other evidence. Indeed, the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him...Certainly, confessions have profound impact on jury so much so that we may justifully doubt it;s ability to put them out of mind even if told to do so. At 296 (quoting

Brunton V. United States, 391 U.S 123 139-40, 88 S.Ct. 1620, 20L Ed, 2d. 476 (1968)

Trial Counsels failure to suppress confession prejudiced the petitioner. In this present case the confession was the heart of the evidence to exclude the confession would have had a significant impact on the trial. Altering the entire evidentary picture. "Strickland, 466 U.S. at 696.

A foundational priciple of criminal law is that a person cannot be held liable criminally for an act that was involuntary. 1 Lafave, substative criminal Law (3ded) 6.1 (c); Pressler, understanding criminal law (Sth ed) 9.02(A) also see Lafave 6.1 (c) for further articulating the justification for the voluntary- act requirement. When the involunteriness defense is raised (also referred to as the " Automatism defense:, the burden is on the prosecution to rebut it. If an act is committed involuntarily, this negates the "actus reus", an essential element of any criminal offense. The prosecution must disprove beyond a reasonable doubt that the act was committed involuntary. Dressler, 9. 02 (E) Citing Baird V. State, 604 NE 2d 1170, 1176 (1992) Dressler, 16.02 'simiarly' federal title 10 Automatism has been reasonable raised by evidence, military judges should instruct panel that the automatism may serve to negate Actus Reus of Criminal Offenses, United States V, Torres 74 M.J. 154, 2015 Caaf lexis 454 (C.A.A.F May 12, 2015)

An example of how this works in a sexual assault case. Federal title 10 Armed forces 920 Act 120 Rape and Assault generally "Evidence was sufficient to show that service member was concious when service member committed sexual acts

despite service members personal history of sleep walking since episodes of "prasomia or "sexsomia" were inconsistant with service members complex activity of undressing fully clothed victim and committed sexual acts upon stranger, and service members sleepwalking experiences were distant in time and different conduct. United States V. Clayston, 2017 CCA lexis 43 (N-M. C.C.A Jan 31, 2017)

In this present case the trial counsel defense theory was that any of the sexual assaults upon the victim were committed while petitioner was asleep. The defense of "Automatism" or "unconsciousness" which is related to the defense of insanity but which eliminates one of the basic elements of the crime-either mental state or the voluntary nature of the act is not recognized in Michigan, and the non-recognition of the Automatism defense in michigan does not constitute a denial of due process. Haskell V.. Berghuis 695 F. Supp 2d 534 (E.d. Mich 2010) People V. Sudz, 2023 Mich Applexis 2031 "for the notion that an "Automatism defense" must be raised within that statuary work of an insanity defense, Haskell V. Berghuis fed Appx 538, 545 (C.A 6,2013) In this case Haskell states that 12 states recognize a defense of Automatism; only five of these states place the Burden of proof on the prosecution. Letter Brat 3 (Identifying California, Indiana, South Dakota, Washington, and West Virginia) we have only identified expertly separete Automatism and insanity defense. The petitioner acknowledges the defense in the state of Michigan.

In this present case the Defense did not go through the insanity defense as Michigan Law has prescribed in Haskell

py 538, 545 (CA6 2013); also see People v sudz 2023 mich app lexi 2031. Because trial counsel cannot be faulted for failing to advance a meritless position. In other words if the trial counsel doesnt use the established crane work of the insanity defense for "Automatism" the trial counsel can be held accountable. "to establish prejudice the defendant must show that their is a reasonable probability that, but for counsels unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S at 694. The trial counsel prejudice against the petitioner rendered the trial fundamentally unfair. The trial counsel allowed the jury to hear an inadmissible confession before miranda warnings were given. The trial counsel should have moved to suppress the post-miranda confession because the miranda warnings were ineffective to accomplish their purpose. So it can reasonable taken as a single unwarned sequence of questioning. the trial counsels defense theory "Automatism" could only be accomplish through the insanity defenses established in Haskell V. Berghuis, Fed Appx 538, 545 (CA.6 2013) these professional errors rendered the trial fundamentally unfair. It prejudiced the petitioner because it violated his Con. Amend 5 and Cons. Amend 6 the petitioner is requesting the suppression of the confession to reverse and remand for a retrial or any other relief this Court sees Appropriate.

REASONS FOR GRANTING THE PETITION

Supreme Court Rule 10(c) A state Court or a united States Court of Appeals has decided an important question of federal law that has been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

1) the Michigan Court of Appeals and the Sixth Circuit Court ruled petitioner was "not in Custody," therefore not entitled to Miranda. It wasn't until the petitioner Confessed, was placed under arrest, then was read Miranda warnings. The ruling of the Courts by saying Miranda wasn't required makes the Confession, the Miranda waiver and reconfession appear Voluntary.

even if Miranda is not required a Confession cannot be used if it is involuntary. United states V. Washington 431 U.S. 181, 186-87; Michigan V. tucker 417 U.S. 433 at 440-41. It was The ruling of "not in custody" that the Courts did not evaluate to see if Confession was either Voluntary or

Was in Voluntary. The Courts did not evalvate to see if it was "a valid waiver." If the State established that Miranda warning was given and the accused made a uncoerced statement, this showing, standing alone, is insufficent to demonstrate "A valid waiver" of Miranda rights. Miranda V. Arizona, 384 U.S. at 475. the Courts did not evaluate the "two-step" impermissible technique used in Missouri V. Seibert 542 US. 600.

2) In Michigan there is no binding Precedent on "Automatism defense" or "unconsciousness defense." In Michigan the "Automatism defense" is within the statutory framework of "insanity defense." (Haskell V. Berghuis 695 F. Supp 2d 534 [Ed Mich 2010]) There is no "clear" precedent that shows if the trial Counsel is ineffective by not going through the Statutory framework of "Insanity defense."

Other Concerns are States other than Michigan seperate the "Automatism defense" with "Insanity defense." Some States place the burden of proof on prosecutor while others on defense. Federaly this is found in Federal title 10 United States Code SUC. § 928 Artical 128 "Assault"

(10 VSCS §928) and title 10 United States Code SUC. §920 Armed Forces Artical 120 "Rape and Assault Gen" (10USCS §920). If it is reasonably raised it serves to Negate actus revs. which follows Lafave, "Substantive Criminal Law" §6.1(L) and Dressler, "Understanding Criminal Law" 9.02[A].

Cases that this "Automatism Defense" has effect on is Haskell V. Berghuis 695 F. Supp 2d 534 (ed Mich 2010); People V. Sudz 2023 mich app lexis 2031; Moffat V. Wolfenbarger 2011 V.S. Dist lexis 112342; Shannon V. thacker 2023 V.S. Dist lexis 221727; this present case. among many more in other states. Again there is no binding Precedent on this matter in this Honorable Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

Date: _____