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May 10, 2018

Clerk of the Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Re: *Jeffrey Montreal Curry v Paul Klee*
Case No. _____

Dear Clerk:

Enclosed please find the Motion For Leave To Proceed In Forma Pauperis, Petition For A Writ Of Certiorari and the Proof of Service for filing in the above-referenced cause.

Thank you for your attention to this matter.

Sincerely,

Desiree M. Ferguson
Assistant Defender

Enclosure

No. _____

In The
Supreme Court of the United States

JEFFREY MONTREAL CURRY
Petitioner,

v.

PAUL KLEE, Warden
Respondent

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Petitioner, JEFFREY MONTREAL CURRY, who is indigent, requests leave to file the attached Petition for a Writ of Certiorari to the United States Supreme Court without prepayment of costs, and to proceed *in forma pauperis* pursuant to rule 39.

The Petitioner was appointed counsel to represent at all levels of the courts of Michigan. The orders of appointment are attached hereto.

STATE APPELLATE DEFENDER OFFICE

Counsel for Petitioner

/s/ Desiree M. Ferguson

BY: _____

DESIREE M. FERGUSON (P34904)

Assistant Defender

645 Griswold, Suite 3300

Detroit, MI 48226

(313) 256-9833

dferguson@sado.org

Dated: May 9, 2018

25358

STATE OF MICHIGAN 10th JUDICIAL CIRCUIT SAGINAW COUNTY	CLAIM OF APPEAL AND ORDER APPOINTING COUNSEL	CASE NO. AND SUFFIX 06-27797 FC
--	---	------------------------------------

Court Address

111 S. MICHIGAN AVE. SAGINAW, MI 48602

Court Telephone No.

989-790-5207

People of THE STATE OF MICHIGAN

v

Date of Birth, Address, and inmate number (if known)

LAKELAND CORRECTIONAL FACILITY
141 FIRST STREET
COLDWATER MI 4903610-11-1977
283749

Defendant Name, Last	First	Middle
CURRY	JEFFREY	MONTREAL

Offense Information				Terms of Incarceration												Intermediate Sanctions											
Date	Description	PACC Code	H	C	A	S	Y	M	D	Y	M	D	K	P	J	Y	M	D	R	F	O						
07-13-2006	HOMICIDE/MURDER/2ND DEG	750.317					25					50			X												
07-13-2006	WEAPONS/FELONY FIREARM	750.227B-A					2					2			X												
07-13-2006	WEAPONS/CARRYING CONCE	750.227						40				5			X												
07-13-2006	POLICE OFFICER/ASSAULT/RI	750.8101					16					24			X												X

H=Habitual C=Conspiracy A=Attempt S=Solicitation Y=Year M=Month D=Day K=Consecutive P=Prison J=Jail R=Restitution F=Fine O=Other

The defendant claims an appeal from a final judgment or order entered on 06-13-2009 in the 10th Circuit Court, SAGINAW County, Michigan by Judge FRED BORCHARD 11003. Copies of the final judgment or order being appealed and docket entries are attached for the Court of Appeals, appointed counsel, and Michigan Appellate Assigned Counsel System.

On 10-22-2010 the defendant filed a request for appointment of counsel and a declaration of indigency.

IT IS ORDERED:

STATE APPELLATE DEFENDER OFFICE

Name of Appellate Counsel

DETROIT, MI 48226

City, State, Zip

645 GRISWOLD, PENOBSCOT BLDG. SUITE 3300

Address

313-256-9833

Telephone No.

1

Bar No.

is appointed counsel for the defendant in post-conviction proceedings. If appointed counsel cannot or will not accept this appointment, counsel shall notify the court immediately.

The court reporter(s)/recorder(s) shall file with the trial court clerk the transcripts indicated below and any other transcripts requested by counsel in this case not previously transcribed. Transcripts shall be filed within 28 days for pleas or 91 days for trials from the date ordered or requested [MCR 7.210(B)]. Reporter(s)/recorder(s) shall be paid as provided by law.

TRANSCRIPTS ORDERED	REPORTER/RECORDER NAME	OTHER DESCRIPTION	NUMBER	PROCEEDING DATE
OTHER	C. HARRISON	HEARING	4562	08-27-2010

The clerk shall immediately send to counsel a copy of the transcripts ordered above or requested by counsel as they become available. The clerk shall also forward documents upon request by counsel. [MCR 6.433]

Date

3-2-11

FRED L. BORCHARD
Judge

FRED L. BORCHARD

P11003

11003
Bar No.

CERTIFICATE OF MAILING

I certify that on this date I mailed a copy of this claim of appeal to appointed counsel, defendant, court reporter(s)/recorder(s), prosecutor, Court of Appeals, and Michigan Appellate Assigned Counsel System (MAACS). I also mailed a copy of the final judgment or order being appealed and docket entries to appointed counsel, the Court of Appeals, and MAACS. I also mailed a copy of the defendant's request for appointment of counsel to appointed counsel, the prosecutor, and MAACS.

Date

3-2-11

Signature

Priscilla R. Whaley

RECEIVED

MAR 04 2011

APPELLATE DEFENDER OFFICE

A TRUE COPY

Susan Kaltenbach, Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

JEFFREY MONTREAL CURRY,

Defendant.

Case No. 06-027797-FC
HON. FRED L. BORCHARD

MICHAEL D. THOMAS (P23539)
Prosecuting Attorney
111 South Michigan Avenue
Saginaw, MI 48602
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JEFFREY CURRY #283749
Defendant in Pro Per
Lakeland Correctional Facility
141 First Street
Coldwater, MI 49036

ORDER GRANTING APPOINTMENT OF APPELLATE COUNSEL

AT A SESSION OF SAID COURT HELD IN THE COURTHOUSE IN THE CITY AND COUNTY OF SAGINAW, STATE OF MICHIGAN, THIS 2nd DAY OF October, 2010.

PRESENT: THE HONORABLE FRED L. BORCHARD, CIRCUIT COURT JUDGE.

This matter is presently before the Court on the Defendant's request for Court-appointed appellate counsel. The Defendant was convicted of Second Degree Murder, CCW, Felony Firearm, and R/O - Police Officer before Judge Lynda Heathscott, now retired.

The Court, at the direction of the Michigan Supreme Court, held a *Ginther* hearing in order to make findings of fact on Defendant's Motion to Suppress. After hearing the testimony of several witnesses, the Court denied Defendant's Motion to Suppress and allowed his conviction to stand. Defendant now wishes to challenge the Court's ruling and has filed a motion asking for the Court to appoint the State Appellate Defender's Office (SADO) to represent him during his appeal. Defendant's Motion is hereby GRANTED.

THEREFORE, IT IS HEREBY ORDERED that Defendant's Petition for Court-Appointed Appellate Counsel is GRANTED. Further, it is ORDERED that the State Appellate Defender's Office be appointed to represent Defendant for any appeal that he may have in this matter.

IT IS SO ORDERED.



FRED L. BORCHARD
CIRCUIT COURT JUDGE

cc: Office of Assigned Counsel

/jma

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JEFFREY MONTREAL CURRY

Petitioner,

v.

PAUL KLEE, Warden

Respondent

PETITION FOR WRIT OF CERTIORARI

BY: DESIREE M. FERGUSON (P34904)
Assistant Defender
Attorney for Petitioner
STATE APPELLATE DEFENDER OFFICE
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STATEMENT OF QUESTIONS PRESENTED

- I. DID THE LOWER COURTS UNREASONABLY APPLY SUPREME COURT LAW AND DENY PETITIONER'S DUE PROCESS RIGHTS WHEN THEY FOUND THAT HIS CONFESSION WAS VOLUNTARY, WHERE THAT CONFESSION WAS TAKEN IMMEDIATELY AFTER DRUG AND ALCOHOL INTOXICATION, SLEEP DEPRIVATION, SERIOUS PHYSICAL INJURIES INFLICTED BY POLICE AND THE DELIBERATE WITHHOLDING OF MEDICAL TREATMENT?

State Courts answer, "No".

Federal District and Federal Circuit Courts answer, "No".

Petitioner answers, "Yes".

- II. DID THE COURTS BELOW UNREASONABLY APPLY SUPREME COURT LAW WHEN THEY FOUND THAT DETECTIVES' MID-STREAM RECITATION OF MIRANDA RIGHTS DID NOT VIOLATE PETITIONER'S FIFTH AMENDMENT RIGHT AGAINST COMPELLED SELF-INCRIMINATION?

State Courts answer, "No".

Federal District and Federal Circuit Courts answer, "No"

Petitioner answers, "Yes".

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REFERENCE TO OPINIONS BELOW

Before Petitioner Curry's trial, the trial court denied a motion to suppress his confession. The Michigan Court of Appeals affirmed, over challenge to the admission of the confession at trial, in a unpublished decision issued March 12, 2009. App. 1a-8a. . The Michigan Supreme Court remanded the matter back to the trial court, in a published Order issued October 7, 2009. *People v. Curry*, 485 Mich. 903, 773 N.W.2d 15 (Mich. S. Ct. 2009). App. 9a. On remand, the trial court conducted an evidentiary hearing then issued its order denying suppression of Mr. Curry's confession on September 1, 2010. App. 10a-11a. The May 31, 2012 Michigan Court of Appeals Opinion After Remand affirming that decision was unpublished. App. 12a-18a. The November 20, 2012 Michigan Supreme Court Order After Remand affirming is published as *People v. Curry*, 493 Mich. 893, 822 N.W.2d 567 (Mich. S. Ct. 2012). App. 19a. The District Court for the Eastern District of Michigan denied a writ of habeas corpus, in an unpublished Opinion and Order issued March 20, 2017, in *Curry v. Klee*. App. 20a-51a. The Sixth Circuit Court of Appeals affirmed, in an unpublished Opinion issued December 19, 2017, in *Curry v. Klee*, -- Fed App'x --. App. 52a-56a.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Amend. V

(Due Process Clause and Right Against Compelled Self-Incrimination):

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 ...

U. S. Const. Amend. XIV

(Due Process Clause):

No State shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of the law ...

STATEMENT OF THE CASE

On July 12, 2006, Petitioner Jeffrey Curry visited the home of Christopher Ray. (T1¹, 81) When Mr. Ray opened the door and greeted Mr. Curry, Mr. Ray's guest, Dedrick Jackson, "immediately jumped up and went for the door," rushing past Mr. Ray to confront Mr. Curry. (T2, 45) In a videotaped custodial statement that was admitted into evidence over defense objection and played for the jury, Mr. Curry said that Mr. Jackson had shot him in the past, and that when Mr. Jackson confronted him on the instant occasion, Mr. Jackson pointed a gun at Mr. Curry's stomach. (App. 56, 65, 67-68, 71-72) Mr. Curry said he was afraid, and that he struggled with Mr. Jackson over the gun and shot him in self-defense. (App. 56, 70, 73-74) Mr. Jackson died from gunshot wounds. (T3, 101)

After the shooting, Mr. Curry remained awake all night, without eating; he drank a half pint of brandy and ingested Vicodin and Soma pills and cocaine. (EH2², 5-6) Then the vehicle in which he rode as passenger was chased by police at high rates of speed. (T2 128, 136-138) Mr. Curry got out and fled on foot, and was struck by a police vehicle travelling at up to thirty miles per hour, causing his body to hit the hood and be knocked on the ground. (T2 149-150, 161, 169; EH1, 6-7; EH2, 7) Several officers beat him, including one who admittedly slammed his head against the concrete as many as ten times, "as hard as [he] could.". (T2, 143, 150, 171;

¹ "T1" through "T5" refer to the transcripts of the five-day trial held April 18, 2007, April 19, 2007, April 20, 2007, April 23, 2007 and April 24, 2007, respectively.

² "EH1" and "EH2" refer to the transcripts of the morning and afternoon portions of the evidentiary hearing held on February 22, 2007, pursuant to the pretrial suppression motion, respectively.

EH1, 11; EH2, 7) Mr. Curry's face and head were repeatedly slammed against the concrete. (W2³, 60) He sustained injuries to his face, back and leg. (W2, 60)

Once arrested, Mr. Curry was interrogated by detectives. Three times, Mr. Curry asked for medical treatment, but was told that that would occur after the detectives were finished interrogating him. Specifically, Detective Ruth told him:

- he would take him when he was "done with what [he] want[ed] to do." (W1, 31))
- "Yeah. We'll take ... we'll get you over to the hospital when we get done talking and we'll take some pictures of that. We'll get to the bottom of it." (App. 59)
- "We'll figure out what's going on with that." (App. 60)
- "Well, we're going to get this out of the way first." (T3, 40; W1, 76)

Mr. Curry's scars from being shot by Mr. Jackson eight years prior were visible to Detective Ruth, as his shirt had been torn off during the struggle with police. (T3, 41) Before reading Mr. Curry his *Miranda* rights, Detective Ruth asked at least four questions, including,

- "What happened to your stomach there anyway?"
- "You got shot?"
- "Is he the one that did that to you?"
- "... you shot in self defense is what you're saying?"

(App. 56)

In response to these questions -- that is, before being Mirandized -- Mr. Curry admitted shooting Mr. Jackson, albeit in self-defense. (App. 56)

After hearing this testimony about Mr. Curry's confession, the jury convicted Mr. Curry

³ "W1" and "W2" refer to the transcripts of the evidentiary hearing held pursuant to the post-conviction remand, on July 7, 2010 and August 27, 2010, respectively.

of second-degree murder⁴, carrying a concealed weapon⁵, resisting or obstructing a police officer⁶ and felony firearm⁷. (T5, 81) On May 22, 2007, the trial court sentenced him to 25 to 50 years' imprisonment for second-degree murder, 40 months to five years for carrying a concealed weapon and 16 to 24 months for resisting and obstructing a police officer, all consecutive to two years for felony-firearm. (S2⁸, 18-20)

In the Michigan Court of Appeals, Mr. Curry argued that: (1) the custodial confession and the waiver of rights were involuntary, and thus, the statement was inadmissible as a matter of due process; and (2) the pre-*Miranda* portion of the statement violated his Fifth Amendment rights to counsel and against compelled self-incrimination and, consequently, the entire statement must be suppressed. A divided panel rejected these arguments, and affirmed Mr. Curry's conviction. (App. 1a-8a)

The Michigan Supreme Court remanded to the trial court. (App. 9a). After conducting an evidentiary hearing, the trial court concluded that Mr. Curry's confession was properly admitted. (App. 10a-11a) The Michigan Court of Appeals affirmed, and the Michigan Supreme Court denied leave to appeal. (App. 12a-18a, 19a)

Mr. Curry sought a federal petition for writ of habeas corpus, which the District Court and the Circuit Court of Appeals denied. (App 20a-51a, 52a-55a)

⁴ Mich. Comp. Laws § 750.317

⁵ Mich. Comp. Laws § 750.227

⁶ Mich. Comp. Laws § 750.81d

⁷ Mich. Comp. Laws § 750.227b

⁸ "S1" and "S2" refer to the transcripts of Mr. Curry's sentencing proceedings held on May 15, 2007 and May 22, 2007, respectively.

REASONS FOR GRANTING THE WRIT

STANDARD OF REVIEW

A federal court must grant a petition for writ of habeas corpus where the state court ruling “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.” 28 U.S.C. §2254(d). A court acts “contrary to” clearly established law when it arrives at a conclusion opposite that reached by the Supreme Court on a question of law, or when it decides a case differently than the Supreme Court has on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 413 (2000). A court unreasonably applies clearly established law if it either (1) correctly identifies the governing legal principle from the Supreme Court’s decisions but then unreasonably applies that principle to the facts of the case, or (2) unreasonably extends, or unreasonably declines to extend, a clearly established legal principle to a new context. *Id.* at 412.

Habeas relief also is warranted where the state court ruling “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.” 28 U.S.C. § 2254(d)(2). Additionally, § 2254(e)(1) requires that this Court presume the correctness of state court factual determinations. A habeas petitioner may rebut this presumption of correctness only with clear and convincing evidence. *Warren v. Smith*, 161 F.3d 358, 360-61 (6th Cir. 1998), *cert. denied*, 527 U.S. 1040 (1999).

SUMMARY OF ARGUMENT

Mr. Curry submits that the decisions of the courts below are both “contrary to” and “an unreasonable application of” clearly established constitutional principles set forth in *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) and its progeny, including *Culombe v. Connecticut*, 367 U.S. 568, 602; 81 S. Ct. 1860; 6 L. Ed. 2d 1037 (1961) and *Oregon v. Elstad*, 470 U.S. 298, 317, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985), and that those opinions depended on an unreasonable determination of the facts in light of the evidence.

Mr. Curry’s condition during the interrogation, the detectives’ refusal of medical attention until he confessed; and the mid-stream recitation of his *Miranda* rights reveal, respectively, that his statement and *Miranda* waiver were involuntary under the Due Process clause, and that his Fifth Amendment rights against self-incrimination were violated. The resulting harm from the admission of Mr. Curry’s statement was that he was denied a fair trial, because the statement irreparably undermined his credibility, which was essential to the development and potential acceptance of his viable self-defense claim at trial.

I. THE LOWER COURTS UNREASONABLY APPLIED SUPREME COURT LAW AND DENIED PETITIONER'S DUE PROCESS RIGHTS WHEN THEY FOUND THAT HIS CONFESSION WAS VOLUNTARY, WHERE IT WAS TAKEN IMMEDIATELY AFTER DRUG AND ALCOHOL INTOXICATION, SLEEP DEPRIVATION, SERIOUS PHYSICAL INJURIES INFLICTED BY POLICE AND THE DELIBERATE WITHHOLDING OF MEDICAL TREATMENT.

It is undisputed that when Mr. Curry fled on foot, police chased him in a vehicle, which struck him while travelling up to thirty miles per hour; that his body hit the hood of the vehicle then fell onto the concrete; and that police officers then converged on his body and bashed his head against the concrete multiple times, inflicting pain and causing injury.

Most importantly, it is undisputed that when Mr. Curry begged for medical attention, interrogating detectives told him that he must talk to them first. He was completely at their mercy. This "objectively coercive state action" terrorized Mr. Curry, overbore his free will and forced him to succumb.

Our constitution does not permit the use of confessions which are extracted by such coercive means for any purpose, because they are inherently unreliable.

Mr. Curry's right to due process was denied when his involuntary statements were admitted at trial. The decisions of the courts below -- finding that the statements made by Mr. Curry to detectives during questioning following his arrest were voluntary -- is contrary to, and an unreasonable application of, the principles established by the United States Supreme Court in *Miranda v Arizona, supra*.

Under the federal due process clause, the use of involuntary or coerced confessions is barred at trial. US Const, Ams V and XIV; *Miranda v. Arizona, supra*. A defendant's constitutional rights are violated if a "conviction is based, in whole or in part, on an involuntary

confession, regardless of its truth or falsity.” *Miranda*, 384 U.S. at 465. Absent proper safeguards, the ordeal of custodial interrogation “contains inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely.” *Id.* at 467.

The ultimate test for constitutionally permissible interrogation pursuant to the Fourteenth Amendment is the test of voluntariness. *Culombe v. Connecticut*, 367 U.S. at 602. A confession may be used against a defendant if it is “the product of an essentially free and unconstrained choice by its maker.” *Id.* If a defendant’s will “has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process.” *Id.*

For a due process violation to exist, there must be some coercive state action that is causally related to the confession. *Colorado v. Connelly*, 479 U.S. 157, 164, 107 S. Ct. 515, 93 L. Ed. 2d 473 (1986). Additionally, a “totality of the circumstances” test is employed in evaluating voluntariness. See *e.g. Brown v. Illinois*, 422 U.S. 590, 614-615; 95 S. Ct. 2254, 2267; 45 L. Ed. 2d 416 (1975).

Mr. Curry’s free will was overcome by sleep deprivation, drug and alcohol intoxication and physical injuries caused by police, making his confession involuntary.

The lower courts unreasonably applied *Miranda* jurisprudence in finding the confession voluntary, given Mr. Curry’s impaired mental and physical condition as a result of sleep deprivation and alcohol and drug intoxication; after which he was first thrown around inside a fleeing vehicle; then hit by a police car; and finally beaten by several officers, including one who bashed his head against concrete several times. In that state, and after those incidents, Mr. Curry was irrefutably unable to freely choose to participate in a custodial police interrogation.

Miranda, 384 US at 467.

Mr. Curry had been significantly injured by police at the time that he gave his statement. He told detectives about the numerous reasons for his impaired condition at the time, repeatedly; they had witnessed and participated in the chase and beating; and they had seen him being flung around and hitting his head during the car pursuit. (App. 88; T2, 122, 128) Police hit with a patrol car, after which he rolled onto its hood, then hit the concrete. (W1, 46) Police beat him forcefully numerous times at the back of the head and against the concrete. (W1, 49-50; W2, 60; T2, 162-163, 171)

Additionally, Mr. Curry made it clear to detectives that he had not slept at all during the night, and that he had been looking for cocaine for much of the night. (W2, 46-48) He had consumed a half pint of brandy, numerous Vicodin and Soma pills, and cocaine; he acknowledged that he was “real drugged up” during the interview. (W2, 55, 63) When Mr. Curry told them he had gone to Mr. Ray’s house to buy cocaine, he also said, “I snort cocaine.” (App. 64) The interrogating officers, knowing that Mr. Curry was a drug abuser, that he had gone to Mr. Ray’s house seeking to purchase cocaine hours before, and that he appeared “hyper” and “animated” during the interrogation, did not ask him directly whether he was intoxicated or under the influence of drugs. (W2, 16, 46-50; T3, 40-41) Detective Ruth indicated awareness of Mr. Curry’s cocaine use, asking, “You’re not like a feign [*sic: fiend*] or anything like that are you?” (App. 66)

Mr. Curry’s incoherence and inability to appreciate the situation is evident in his unrelated and nonsensical comments like, “I just put 20 inch rims on that car. . . It was gold, I got it painted black.” Then immediately after, “Listen, when I came in . . . when he came to the door, that’s what they do. They snort cocaine all night.” (App. 69) When asked more about how he felt having been shot by Jackson previously, Mr. Curry again referenced his car, and then his

homes, saying, “I ride 20 inch rims, fresh paint. . . own houses.” (App. 119) Mr. Curry made several inconsistent and absurd statements. He first said no one was with him when he arrived at Ray’s house, then that his sister was with him, then that she was a woman named Tina. Statement (App. 80) When asked where she could be found, he answered, “Worldwide.” (App. 80) He said he shot in self-defense several times, then said that the man who was with him fired the shots. (App. 103)

Mr. Curry continually complained before and throughout the interrogation that his back was hurt and he wanted to go to the hospital. (W2, 60-61; App 56-59, 64) He complained of his leg and back pain, and made requests to be taken to the hospital, because of being struck by the patrol car and the blows to his head over concrete that Officer Rabideau had inflicted. (W2, 59-60; App. 56-59, 64) The detectives refused to take Mr. Curry to the hospital until after they secured a confession, and continued the questioning, and stated as much. (App. 56-59, 64) Though Detective Ruth witnessed Mr. Curry being hit by the patrol car, he justified his actions by testifying that during the interview he did not see any major injuries on Mr. Curry. (T3, 26) But Mr. Curry was complaining of injuries to his back and pain from the accident, injuries that cannot be “seen,” but that are expected after such events. (App. 57) Four years after the incident, Mr. Curry testified at the second evidentiary hearing that his back still hurt. (W2, 59)

The detectives coerced Mr. Curry by demanding a confession before he could be taken to the hospital, as a *quid pro quo* arrangement

“The voluntariness determination has nothing to do with the reliability of jury verdicts; rather, it is designed to determine the presence of police coercion.” *Colorado v. Connelly*, 479 U.S. at 164. The detectives in the instant case intimidated and coerced Mr. Curry while in his impaired state by proclaiming to Mr. Curry that he would not be taken to the hospital until he

provided the confession that they sought, in a *quid pro quo* arrangement.

Mr. Curry told the detectives on the second page of the statement transcript, “I want to go to the hospital.” (App. 57) Detective Ruth responded, “*Yeah, we’re going to take you when we get done here,*” implying that the interrogation was mandatory, and that it must be completed before Mr. Curry could be taken to the hospital. (App. 57)(emphasis added). Mr. Curry responded by saying, “... my leg ... my leg and my back. They ran me over hard man.” (App. 57) Detective Walny addressed Mr. Curry’s concern by stating, “That happened before we got there so I don’t know.” (App. 57) Detective Walny’s indifference to Mr. Curry’s anguish furthered Detective Ruth’s preceding statement that Mr. Curry would have to wait until after the interrogation to receive medical attention because the interrogation was inevitable and inescapable.

Following this, but still before the detectives read Mr. Curry his *Miranda* rights, Mr. Curry vividly described the injuries he had incurred from being hit by the car and beaten, saying, “That mother fucker hit me doing 40, knocked me out man and then whoever grabbed me they grabbed me by the head and they did like this ... I had put my hands behind my back. The mother fucker bam! bam! bam! on concrete man.” (App. 59) In response to Mr. Curry’s description of what he had just endured at the hands of Officer Rabideau, Detective Ruth stated unsympathetically, “Yeah. We’ll take ... *we’ll get you over to the hospital when we get done talking* and we’ll take some pictures of that. We’ll get to the bottom of it.” (App. 59) Yet again, Mr. Curry expressed that he was in pain, saying, “They fucked me up.” (App. 59) Detective Ruth again dismissed his complaint, stating, “We’ll figure out what’s going on with that. (App. 60) At that time, on the fourth page of the transcript, Detective Ruth read Mr. Curry his *Miranda* rights, and had him sign them. (App. 60) Lastly, Mr. Curry testified at the evidentiary hearing that he was

threatened with being choked when asking to be taken to the hospital (W2, 62), and that he was told he would be taken after the interrogation (W2, 13).

The detectives told Mr. Curry three separate times that they would not take him to the hospital until after the interrogation. (App. 58-59) This repeated statement's implication amounts to coercion under *Miranda*.

Mr. Curry's waiver of rights was involuntary

Like the statement itself, the waiver of Mr. Curry's *Miranda* rights was similarly involuntary. The Court in *Moran v. Burbine*, 475 U.S. 412, 421, 106 S.Ct. 1135, 89 L. Ed. 2d 410 (1986) delineated the criteria for assessing whether a waiver of rights is voluntary. "First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception." *Id.* "Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Id.* Finally, "[o]nly if the 'totality of the circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived." *Id.*

The courts below unreasonably applied these principles, ignoring the troubling circumstances surrounding Mr. Curry's interrogation, including Mr. Curry's impaired state as well as the police coercion before and during the interrogation.

Taken together, Mr. Curry's sleep deprivation, intoxication, denial of medical attention after having been hit by a car and beaten in the head and against concrete, all conspired to render him incapable of voluntarily waiving his rights.

II. THE COURTS BELOW UNREASONABLY APPLIED SUPREME COURT LAW WHEN THEY FOUND THAT DETECTIVES' MID-STREAM RECITATION OF MIRANDA RIGHTS DID NOT VIOLATE PETITIONER'S FIFTH AMENDMENT RIGHT AGAINST COMPELLED SELF-INCRIMINATION

Mr. Curry's confession was inadmissible because *Miranda* rights were not delivered until after he had fully confessed, and the mid-stream delivery of those warnings did not salvage the coerced nature of the interrogation and render the post-warning portion of the confession admissible.

The right against self-incrimination is guaranteed by the United States Constitution. US Const., Am V. Statements of an accused made during a custodial interrogation are inadmissible unless the accused voluntarily waives that right. *Miranda*, 384 US at 444. The Fifth and Fourteenth Amendments' prohibition against compelled self-incrimination requires that custodial interrogation be preceded by advice to the putative defendant that he has the right to remain silent and also the right to the presence of an attorney. *Id.* at 479. "[C]ustodial interrogation [means] questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* at 444. The Court affirmed in *Dickerson v. United States*, 530 U.S. 428, 120 S.Ct. 2326, 147 L. Ed. 2d 405 (2000) that the *Miranda* requirements are constitutionally-based.

Interrogation "under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response." *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980). "When police ask questions of a suspect in custody without administering the required warnings, *Miranda* dictates that the

answers received be presumed compelled and that they be excluded from evidence at trial in the State's case in chief." *Oregon v. Elstad*, 470 U.S. 298, 317, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985). These bedrock constitutional principles were violated when police began to interrogate Mr. Curry in custody without first administering *Miranda* rights, eliciting incriminating admissions as a result.

At the start of the recorded statement, Mr. Curry complains of being run over by the officers, saying in the first line, "They fucked me up," and then right after, "They ran me over like 30 mph man." (App. 56) He was not read his rights at that juncture. Instead, he was prompted to talk about the bullet scars on his stomach immediately after this, when Detective Ruth asked, "What happened to your stomach there anyway? You got shot?" (App. 56) Mr. Curry began to talk about Jackson in response to this question, saying, "That mother fucker shot me." Detective Ruth proceeded to ask whom Mr. Curry was referencing. Mr. Curry responds, confusedly, "That bitch shot at me yesterday?" (App. 56) Detective Ruth asks, "Oh did he?" and then states, "Okay. Well that's what we got to talk about." (App. 56)

Mr. Curry's admission to shooting Mr. Jackson followed Detective Ruth's pre-*Miranda* inquiry, "Yeah, what happened to your stomach there anyway? You got shot?" (App. 56) Mr. Curry's self-defense explanation also followed an unwarned inquiry by Detective Ruth, "And you shot in self defense is what you're saying?" Detective Ruth, a detective for twelve years (T3, 7), asked these direct questions that clearly were directed to "elicit an incriminating response." *Innis*, 446 U.S. at 301. *Miranda* dictates that Mr. Curry's unwarned answers be "presumed compelled and that they be excluded from evidence at trial ..." *Elstad*, 470 U.S. at 317.

It is clear that Detective Ruth's un-Mirandized questions did not constitute booking questions, which are excepted under of *Rhode Island v. Innis*, *supra*. The Court in *Innis*

explained that, “. . . the term ‘interrogation’ under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police.” *Rhode Island v. Innis*, 446 U.S. at 301.

Since it was obtained without the advice of rights, Mr. Curry’s initial confession to shooting Jackson in self-defense should have been suppressed on ground that it was coerced and obtained in violation of his rights against self-incrimination. The elaboration which ensued after he was advised of his rights should likewise have been suppressed as the fruit of the illegally obtained initial confession. As the Court noted in *United States v. Bayer*, 331 U.S. 532, 540-541, 67 S Ct 1394, 91 L Ed 1654 (1947), “[o]f course after an accused has once let the cat out of the bag, no matter what the inducement, he is never thereafter free of the psychological and practical disadvantages of having confessed. He can never get the cat back in the bag. The secret is out for good. In such a sense, a later confession always may be looked upon as the fruit of the first.”

The critical and sole inquiry is whether there was a “break in the stream of events” that was sufficient to insulate the subsequent confession from the inadmissible initial one. *Clewis v. Texas*, 386 U.S. 707, 710, 87 S. Ct. 1338, 18 L. Ed. 2d 423 (1967). If no such break occurs, then the reading of *Miranda* rights alone was insufficient to remove the taint of the earlier custodial confession made without *Miranda* warnings. *Brown v. Illinois*, 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975).

The lower courts unreasonably applied the caselaw in holding that the statement was admissible despite the failure to give *Miranda* warnings

The courts below unreasonably applied *Miranda*, *Elstad* and *Innis* in deeming Mr.

Curry's statement admissible even though he was not given *Miranda* warnings until after the detectives had extracted damning admissions from him.

The instant case is readily distinguishable from *Oregon v Elstad*, where the Court held that the circumstances of the pre-*Miranda* interrogation were sufficiently removed from those occurring after delivery of *Miranda* warnings to extinguish the taint of the pre-*Miranda* interrogation. There, the Court found that the initial questioning of the suspect, in his home and in the presence of his mother, possessed "none of the earmarks of coercion." *Id.* at 470 U.S. at 315-316. Under those circumstances, the Court held that "absent deliberately coercive or improper tactics in obtaining the initial statement, a subsequent administration of *Miranda* warnings "ordinarily should suffice to remove the conditions that precluded admission of the earlier statement." *Id.* at 314.

In deciding whether the warnings sufficiently purge the taint to permit admission of the post-warning statement, the *Elstad* Court looked at "the time that passes between confessions, the change in place and interrogations, and the change in identity of the interrogators. *Elstad*, 470 U.S. at 310. Here, there was no passage of time and no change of place of interrogators between the pre- and post-*Miranda* confessions. Thus, the attendant circumstances did nothing to cure the condition that rendered the pre-warning confession inadmissible.

These critical facts plainly distinguish Mr. Curry's situation from that in *Elstad*, bringing Mr. Curry's case squarely within the holding of *Elstad*. Unlike the defendant in *Elstad*, whose initial interrogation occurred in his home and in the presence of his mother, Mr. Curry was questioned continually, both before and after *Miranda* rights were delivered, in interrogation rooms at the police station, by the same detectives. Since the post-*Miranda* interrogation of Mr. Curry continued immediately, there no "break in the stream of events" which might have

removed the taint of the initial illegal interrogation. *Elstad*, 470 U.S. at 304.

Mr. Curry's circumstance closely resembles that in *Missouri v Siebert*, 542 U.S 600, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004), in which this Court implemented the ruling of *Elstad* by excluding the confession because there was no change in circumstances between the pre- and post-warning confessions. However, and contrary to the opinion of the Sixth Circuit Court of Appeals below (App. 55), Mr. Curry does not rely on *Siebert* to support his argument, since that case admittedly was a plurality decision that did not create binding authority for purposes of habeas review. *United States v. Ray*, 803 F. 3d 244, 272 (6th Cir. 2015).

The lower courts also failed to consider that after Mr. Curry was read his *Miranda* rights, he repeated back to detectives Ruth and Walny the information he had offered in answers to their pre-warning questioning. The detectives' questions to Mr. Curry about whether he had been shot in the past, whether it was Mr. Jackson who had shot him, and whether he had shot Mr. Jackson in self-defense, were answered before *Miranda* warnings were delivered, and were merely elaborated upon as the interview proceeded after *Miranda* warnings were eventually read. Thus, there was no discrepancy between the statements Mr. Curry made in the pre- and post-warning stages of questioning, because there was a "nexus" and "continuum" between the stages of questioning. *Bobby v. Dixon*, 565 U.S. 23, 132 S.Ct. 26, 31-32, 181 L.Ed.2d 328 (2011).

Harm resulting from the admission of Mr. Curry's confession

The admission of Mr. Curry's statements into evidence at trial amounts to a constitutional error which was not harmless beyond a reasonable doubt, *Chapman v California*, 386 U.S. 18, 87 S.Ct. 824, 17 L. Ed. 2d 705 (1967), and it had a "substantial and injurious effect or influence" on the verdict. *Brecht v. Abrahamson*, 507 U.S. 619, 113 S. Ct. 1710, 123 L Ed 2d 653 (1993). In

O'Neal v. McAninch, 513 U.S. 432, 434, 115 S.Ct. 992, 130 L. Ed 2d 947 (1995), the Court explained that the *Brecht* test requires that the writ be granted when the federal court is a state of “virtual equipoise” as to whether the constitutional error adversely affected the verdict.

The admission of the videotape of Mr. Curry’s statement was harmful because it irreparably undermined his credibility, which was essential to the development and acceptance of his self-defense claim for any reasonable jury. Mr. Curry arrived at Mr. Ray’s house, as he had on other occasions, to purchase cocaine, not expecting his neighborhood rival to be there – as the car parked at Mr. Ray’s house was not the car Mr. Jackson was known to drive (it belonged to a girlfriend). (T3, 11) Mr. Curry’s credibility and trustworthiness – both critical to his claim of self-defense in response to Mr. Jackson’s unexpected attack and presence in the house -- was undermined by the admission of the statement, in which he was depicted making markedly contradictory statements about who accompanied him and who shot Jackson, bearing a disheveled appearance, with slurred speech and erratic behavior.

Mr. Curry’s incoherence and unreliability were unveiled by his nonsensical and frivolous non sequiturs describing his many vehicles and houses, in response to direct questions about the circumstances of the incident. For example, when asked about his feelings regarding Mr. Jackson shooting him, Mr. Curry referenced his car, saying, “I ride 20 inch rims, fresh paint. . . own houses.” (App. 65) In the face of these trifling and irrelevant remarks, it became impossible for the jury to accept Mr. Curry’s self-defense claim. Such a claim, in this particularly grave case, would have required a considerable level of credibility to stand a chance of acceptance.

Mr. Curry made several inconsistent and absurd statements in his interrogation that portrayed him in a scandalous and disgraceful light, further eroding his credibility. For example, he was unable to clearly identify or locate his illusory female companion, first saying no one was

with him, then that his sister was with him, then that it was a woman named Tina, who was a “freaky hoe” who could be found “Worldwide.” (App. 80) He said he himself shot in self-defense several times, but at one time said that the man who was with him fired the shots. (App. 103) He first said he had slept the night before the interrogation, then that he was up all night and searching for drugs. (App. 80-82, 119)

Also in the statement, Mr. Curry made implausible assertions, such as that Mr. Jackson had crawled and reached for the gun after being shot. (App. 79) He also said that the man with him had been the shooter, contradicting his admission to shooting in self-defense, and expert testimony that all bullets fired were from the same weapon. (App. 103, 105, 112; T3, 77-78)

In sum, in a trial where his credibility was vital to his self-defense posture, Mr. Curry’s credibility was eviscerated by the admission of a videotaped confession which displayed his disheveled appearance, nonsensical statements, erratic behavior, and numerous inconsistent and implausible assertions. It ruled out any acceptance of his claim, and hampered the jury’s ability to get to the truth.

The rulings of the courts below are contrary to and an unreasonable application of precedent established by *Miranda* and its progeny, and thus deprived Mr. Curry of his rights to due process and against forced self-incrimination. Therefore, this Court should grant the petition for writ of certiorari, grant a writ of habeas corpus, and order Mr. Curry’s release from incarceration unless the State affords him a new trial.

CONCLUSION AND RELIEF SOUGHT

For the foregoing reasons, Petitioner asks that this Honorable Court grant him a writ of certiorari, grant a writ of habeas corpus, and order the State of Michigan to vacate his conviction and order a new trial.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

s/ Desiree M. Ferguson

BY: _____

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Dated: May 9, 2018

IN THE SUPREME COURT OF THE UNITED STATES

JEFFREY MONTREAL CURRY

Applicant,

v.

PAUL KLEE, Warden

Respondent

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

Rita Jajjoka, being first sworn, says that on May 10, 2018, she mailed one copy of an:

PETITION FOR A WRIT OF CERTIORARI

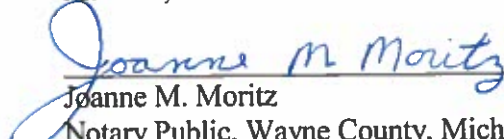
TO:
Clerk of the Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Raina I. Korbakis
Michigan Department of Attorney General
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525 W Ottawa, 4th Floor
Lansing, MI 48909



Rita Jajjoka

Subscribed and sworn to before me
March 8, 2018.



Joanne M. Moritz
Notary Public, Wayne County, Michigan
My commission expires: 9/2/2019
25358T-J/Desiree M. Ferguson