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STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY MONTREAL CURRY,

Defendant-Appellant.

UNPUBLISHED

March 12, 2009

No. 279254

Saginaw Circuit Court

LC No. 06-027797-FC

Before: Gleicher, P.J., and Kelly and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317, carrying a concealed weapon (CCW), MCL 750.227, resisting or obstructing a police officer, MCL 750.81d(1), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to serve concurrent prison terms of two years for the felony-firearm conviction, 40 to 60 months for the CCW conviction, and 16 to 24 months for the resisting or obstructing conviction, plus a consecutive term of 25 to 50 years for the murder conviction. We affirm defendant's convictions, but remand for correction of the judgment of sentence.

I. Facts

Defendant was convicted of fatally shooting Dedrick Jackson. A witness testified that he was at home with Jackson and others when defendant came to the door in the company of an unknown person, loudly identified himself, and demanded to know where the Jackson was located. Jackson left the house and confronted defendant on the porch. Defendant then pulled a gun out, at which point the eyewitness fled, and gunshots rang out. When the witness returned, Jackson was lying on the porch.

The police found defendant the following afternoon and a car chase ensued. Defendant ran from his vehicle and was struck by a police car moving at approximately 25 to 30 miles an hour. Defendant rolled over the hood of the car and fell to the pavement, where he struggled with the police. One officer repeatedly struck defendant on the head in order to subdue him.

Appendix A

When interviewed by the police shortly thereafter, defendant spoke of a desire to obtain medical attention for his injuries, but the police deferred taking him to the hospital until after the interview. Defendant stated, without having received any *Miranda*¹ warnings, that he went to a house where the victim, who was armed with a gun, confronted him. Defendant then said that a struggle ensued during which defendant seized the gun and shot it in self-defense. At this point, the police informed defendant of his *Miranda* rights and the interview continued, during which defendant elaborated upon his previous statements. After the police interview, defendant resisted going to the hospital, but the police took him regardless. Defendant then resisted treatment, but was examined even so. The medical personnel found nothing of concern in defendant's condition. Over defendant's objection, a video recording of defendant's police statement was played for the jury.

II. Standards of Review

On appeal, defendant argues that the trial court erred when it denied his motion to suppress his police interview at an evidentiary hearing and by denying his request for an instruction on manslaughter. We may not disturb a trial court's ruling at a suppression hearing unless that ruling is clearly erroneous. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). In reviewing a trial court's determination whether a defendant knowingly and intelligently waived his or her *Miranda* rights, this Court reviews the trial court's factual findings for clear error, but reviews the legal conclusions de novo. *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999). Further, "[we] review[] jury instructions in their entirety to determine if there is error requiring reversal." *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994). Instructions must cover each element of each offense charged, along with all material issues, defenses, and theories that have evidentiary support. *Id.* Conversely, an instruction should not be given that is without evidentiary support. *People v Johnson*, 171 Mich App 801, 804; 430 NW2d 828 (1988).

III. Admissibility of Defendant's Police Statement

Defendant argues that the police extracted a confession before being given his *Miranda* warnings, which in turn tainted the elaboration of his statement that followed the warning. Defendant additionally argues that police coercion, along with his injuries, sleep deprivation, and intoxication rendered his waiver of his right to remain silent ineffective. We disagree. The admission of defendant's statements made after the being read his *Miranda* warnings did not violate defendant's Fifth Amendment right against self-incrimination.

"Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waives his Fifth Amendment rights." *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (1997). According to defendant, all of his custodial statements to the police violated his Fifth Amendment right against self-incrimination: in particular, defendant argues that because his preliminary statement was made

¹ *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

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prior to his *Miranda* warnings, both that statement and his subsequent statement made after he received the warnings are inadmissible because there was no break in time between the two statements, citing *Clewis v Texas*, 386 US 707; 87 S Ct 1338; 18 L Ed 2d 423 (1967) and *Brown v Illinois*, 422 US 590; 95 S Ct 2254; 45 L Ed 2d 416 (1975).

Contrary to defendant's argument, neither *Clewis* nor *Brown* are applicable. Rather, *Oregon v Elstad*, 470 US 298; 105 S Ct 1285; 84 L Ed2d 222 (1985), is the controlling authority. In *Elstad*, the Court held that if an unwarned first statement was voluntary, the second statement is admissible if also voluntary and provided after *Miranda* warnings. *Elstad, supra* at 318.² This holds true because, "[o]nce warned, the suspect is free to exercise his own volition in deciding whether or not to make a statement to the authorities." *Id.* at 308. The Supreme Court's ultimate holding was clear and concise:

We must conclude that, absent deliberately coercive or improper tactics in obtaining the initial statement, the mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion. A subsequent administration of *Miranda* warnings to a suspect who has given a voluntary but unwarned statement ordinarily should suffice to remove the conditions that precluded admission of the earlier statement. In such circumstances, the finder of fact may reasonably conclude that the suspect made a rational and intelligent choice whether to waive or invoke his rights. [*Id.*, at 314.]

The Court also rejected any suggestion that defendant's lack of knowledge that the initial statement would not be used against him would cause his second, warned statement to not be knowing or voluntary. *Id.*, at 316-317. And, just as importantly, the Court concluded that it would not impute any "taint" to subsequent statements obtained pursuant to a voluntary and knowing waiver." *Id.*, at 318.

In order to determine voluntariness, we look to such factors as defendant's age, education, prior police interactions with the police, whether *Miranda* warnings were given, and whether defendant suffered physical punishment. *United States v Craft*, 495 F3d 259, 263 (CA 6, 2007). Here the video tape and transcript reveal that defendant had an 11th grade education, was familiar with the police, and was fully cognizant of his rights and the consequences of waiving those rights. The interviewing police officer testified that defendant was coherent and showed no signs of serious injury, and that the interview took place with no force, coercion, trickery, deceit, or promises. Nothing in the first six pages of the transcript reveals any of the "earmarks of coercion." *Oregon, supra* at 316. By the second page of the interview transcript defendant was informed that he needed to have his rights read to him, by the fourth page he was being read his rights, and by the sixth page he waived those rights. Neither before nor after

² *Missouri v Seibert*, 542 US 600; 124 S Ct 2601; 159 L Ed 2d 643 (2004), a plurality opinion, does not impact this case because there is no suggestion that the police deliberately obtained statements from defendant prior to giving him *Miranda* warnings. See *United States v Stewart*, 536 F3d 714, 718-719 (CA 7, 2008).

defendant received his *Miranda* warnings did he appear ill, confused or unsure of what his rights were. Because these facts indicate that defendant was not under duress when he spoke to the police, the trial court properly allowed the interview into evidence. Consequently, the first statement was voluntary, and the second *Mirandized* statements (which in fact contained much more detail than the pre-*Mirandized* statements) were also voluntary, and therefore admissible in defendant's prosecution. See *Elstad, supra* at 314 ("A subsequent administration of *Miranda* warnings to a suspect who has given a voluntary but unwarned statement ordinarily should suffice to remove the conditions that precluded admission of the earlier statement."). Thus, even accepting defendant's argument that the statements made in the first five pages of the transcript were not admissible, the remaining ones made on the next 76 were. The trial court properly allowed the interview into evidence.

IV. Manslaughter Instruction

The trial court instructed the jury on second-degree murder as a lesser offense to first-degree murder, but denied defendant's request for an instruction on manslaughter. Defendant argues that this was error requiring reversal. We disagree.

"[A] requested instruction on a necessarily included lesser offense is proper if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it." *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002). Manslaughter is a lesser included offense of murder. *People v Mendoza*, 468 Mich 527, 533; 664 NW2d 685 (2003). A homicide constitutes voluntary manslaughter instead of murder when the killing was accomplished without malice. *Id.* at 534. "Thus, to show voluntary manslaughter, one must show that the defendant killed in the heat of passion, the passion was caused by adequate provocation, and there was not a lapse of time during which a reasonable person could control his passions." *Id.* at 535. Further, where a person kills in self-defense, but he initiated non-lethal aggression that escalated to lethal aggression as the result of the victim's reaction, the defense is downgraded to imperfect self-defense and the homicide may be mitigated from murder to manslaughter. *People v Butler*, 193 Mich App 63, 67; 483 NW2d 430 (1992).

In this case, the jury had before it the witness's account depicting defendant as the aggressor, with apparent homicidal intentions from the start, and defendant's account that he acted in self-defense. Defendant attempts to discredit the witness's account of defendant's arrival at the premises with a gun and his expression of aggressive intentions for the victim and, citing his own account as presented in his police interview, argues that the deceased's sudden aggression against him satisfied the heat-of-passion element for manslaughter. However, lethal violence offered in reasonable response to sudden and severe aggression invokes the privilege of self-defense, not mitigation from murder to manslaughter. See *James, supra* at 677. Further, no witness provided an account showing that defendant initiated nonlethal aggression, to which the deceased reacted in a sufficiently life threatening manner as to cause defendant to resort to lethal force. Had such evidence been presented, then a theory of imperfect self-defense would have justified a manslaughter instruction. Because the manslaughter theory comported with neither account actually presented to the jury, the trial court did not err in refusing to give a manslaughter instruction. *Johnson, supra* at 804. The trial court duly instructed the jury on perfect self-defense, which well covered defendant's theory of the case. *Daniel, supra* at 53. No alternative theory of the case suggested the possibility of manslaughter.

IV. Consecutive Sentencing

Although not raised below or presented on appeal, we take this opportunity to correct a sentencing error. The judgment of sentence indicates that defendant's sentences for CCW and second-degree murder are to be served consecutively. "[C]oncurrent sentencing is the norm." *People v Brown*, 220 Mich App 680, 682; 560 NW2d 80 (1996). Consecutive sentences may be imposed only when statutorily authorized. *Id.* No statutory authority supports consecutive sentencing for defendant's second-degree murder and CCW sentences. Accordingly, pursuant to MCR 7.216(A)(7), we remand this case to the trial court for the purpose of correcting the judgment of sentence to provide that defendant's sentences for CCW and second-degree murder are to be served concurrently.

Affirmed and remanded for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY MONTREAL CURRY,

Defendant-Appellant.

UNPUBLISHED

March 12, 2009

No. 279254

Saginaw Circuit Court

LC No. 06-027797-FC

Before: Gleicher, P.J., and K. F. Kelly and Murray, JJ.

GLEICHER, J. (*concurring*).

I concur with the majority in result, but write separately to express my disagreement with one aspect of the majority opinion.

The majority holds that defendant's "first statement was voluntary, and the second Mirandized statements (which in fact contained much more detail than the pre-Mirandized statements) were also voluntary, and therefore admissible in defendant's prosecution." *Ante* at 5. According to the majority, *Oregon v Elstad*, 470 US 298; 105 S Ct 1285; 84 L Ed 2d 222 (1985), constitutes the "controlling authority" in this regard. *Ante* at 4. Because the police initially questioned defendant in a custodial setting without providing the *Miranda*¹ warnings, I disagree that defendant's first statements qualified as admissible substantive evidence pursuant to *Elstad*, *supra*.

The interrogation conducted in the instant case bears no resemblance to that conducted in *Elstad*. There, the police went to suspect Elstad's home with a warrant for his arrest. Elstad's mother admitted the officers into the family home. *Id.* at 300-301. One of the officers spoke to Elstad in the home's living room, and inquired whether he had been involved in the burglary of a neighbor's house. Elstad acknowledged having participated in the crime. *Id.* at 301. At the police station, Elstad offered a full written confession. *Id.* at 301-302. After his conviction, Elstad challenged the admission at trial of both statements. *Id.* at 302-303. In an opinion affirming Elstad's conviction, the United States Supreme Court observed that the police

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

conversation with Elstad in the living room “was not to interrogate the suspect but to notify his mother of the reason for his arrest,” and viewed the event as possessing “none of the earmarks of coercion.” *Id.* at 315-316. The Supreme Court concluded that the officer’s failure to give *Miranda* warnings was an “oversight,” possibly resulting from “confusion as to whether the brief exchange qualified as ‘custodial interrogation’ . . .” *Id.* Despite that the first statement arose from noncoercive questioning, the Supreme Court forbade its use as substantive evidence, finding that “the dictates of *Miranda* and the goals of the Fifth Amendment proscription against use of compelled testimony are fully satisfied in the circumstances of this case by barring use of the unwarned statement in the case in chief.” *Id.* at 318.

In contrast with the facts presented in *Elstad*, defendant’s first round of statements resulted from custodial interrogation that required the preliminary administration of *Miranda* warnings. The transcript reflects that a detective questioned defendant regarding a previous shooting encounter with the victim, and then inquired, “And you shot in self defense is what you’re saying?” Defendant answered affirmatively. Following additional discussion regarding the injuries defendant sustained during his arrest, a detective finally expressed, “Now I know you’re saying that it was self defense, and like I say I got questions for you, you got questions for me obviously. Okay we got to get this straight. You are in custody right now so I have to read you your rights okay?”

The police interrogation conducted before a detective read defendant his rights violated *Miranda*. The police must provide the *Miranda* warnings before interrogating a suspect in custody. *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). *Miranda* teaches that “without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime 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. “[T]he *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent.” *Rhode Island v Innis*, 446 US 291, 300-301; 100 S Ct 1682; 64 L Ed 2d 297 (1980). The inherent coercion accompanying custodial interrogation “blurs the line between voluntary and involuntary statements, and thus heightens the risk that an individual will not be accorded his privilege under the Fifth Amendment... not to be compelled to incriminate himself.” *Dickerson v United States*, 530 US 428, 435; 120 S Ct 2326; 147 L Ed 2d 405 (2000) (internal quotation omitted). Consequently, defendant’s initial responses are “presumed compelled,” and should have been “excluded from evidence at trial in the State’s case in chief.” *Elstad, supra* at 317.

However, despite my disagreement with the majority opinion, I concur in affirming defendant’s convictions. The preponderance of defendant’s statements followed his acknowledgement and voluntary waiver of his *Miranda* rights. The initial questioning was brief, superficial, and included only a fraction of the subject matter covered in the second round. During the post-*Miranda* interrogation, defendant elaborated considerably regarding his self-defense claim, and supplied information far more detailed than the answers he gave to the initial questions. No evidence supports that during the first round the police deliberately utilized an interrogation technique “calculated ... to undermine the *Miranda* warning.” *Missouri v Seibert*,

Appendix A

542 US 600, 622 (Kennedy J., concurring); 124 S Ct 2601; 159 L Ed 2d 643 (2004). Accordingly, I would hold that the admission of defendant's initial statements constituted harmless error. *Arizona v Fulminante*, 499 US 279; 111 S Ct 1246; 113 L Ed 2d 302 (1991).

/s/ Elizabeth L. Gleicher

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Order

Michigan Supreme Court
Lansing, Michigan

October 7, 2009

Marilyn Kelly,
Chief Justice

138818

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

JEFFREY MONTREAL CURRY,
Defendant-Appellant.

SC: 138818
COA: 279254
Saginaw CC: 06-027797-FC

On order of the Court, the application for leave to appeal the March 12, 2009 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals and we REMAND this case to the Saginaw Circuit Court for the court to make factual findings on the defendant's motion to suppress his statement to police. Although it denied defendant's motion by order of April 11, 2007, the circuit court failed to make factual findings or set forth its reasons for denying the motion. As a consequence, the Court of Appeals lacked a factual basis for considering whether the circuit court properly admitted the defendant's statement.

We do not retain jurisdiction.

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APPELLATE DEFENDER OFFICE



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 7, 2009

Corbin R. Davis

Clerk

Appendix C

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN

vs

Case No. 06-027797-FC1

JEFFREY MONTREAL CURRY

Defendant

HON. FRED L. BORCHARD

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Prosecuting Attorney

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APPELLATE DEFENDER OFFICE

ORDER DENYING DEFENDANT'S MOTION
TO SUPPRESS STATEMENT

At a session of said Court, held at the Courthouse in the City of Saginaw, County of Saginaw, State of Michigan, this 15 day of September, 2010:

PRESENT: HONORABLE FRED L. BORCHARD, Circuit Judge

This matter is before the court on order of the Michigan Supreme Court, dated October 7, 2009, directing that this court make factual findings relating to the denial of Defendant's Motion

Appendix C

to Suppress Statement by order of April 11, 2007. Subsequent to the remand, Defendant filed a Motion for a New Trial and this court ordered an entirely new *Walker* hearing be conducted. The Court, after conducting said hearing and listening to arguments of counsel in open court, placed its findings of fact and conclusions of law on the record at the conclusion of the hearing:

IT IS THEREFORE ORDERED that the Defendant's Motion to Suppress Statement is DENIED.

Priscilla R. Whaley

DEPUTY CLERK


FRED L. BORCHARD
Circuit Judge
10th Judicial Circuit

Prepared by:

JEFFREY D. STROUD
Chief Assistant Prosecuting Attorney
Saginaw County, Michigan

Approved as to form and content:


DESIREE M. FERGUSON *up permission*
Assistant Defender
State Appellate Defender Office

Order

November 20, 2012

145545

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

JEFFREY MONTREAL CURRY,
Defendant-Appellant.

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DMF

Michigan Supreme Court
Lansing, Michigan

Robert P. Young, Jr.,
Chief Justice

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

SC: 145545
COA: 302821
Saginaw CC: 06-027797-FC

On order of the Court, the application for leave to appeal the May 31, 2012 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

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APPELLATE DEFENDER OFFICE



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 20, 2012

Corbin R. Davis

Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY CURRY,

Petitioner,

v.

Case Number 14-10747

Honorable David M. Lawson

PAUL KLEE,

Respondent.

OPINION AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Jeffrey Curry shot Dedrick Jackson on the front porch of a house in Saginaw, Michigan in July 2006. Jackson died of his wounds. Curry confessed to shooting Jackson, insisting that it was done in self-defense. Curry's statement was admitted at his trial, and a jury convicted him of second-degree murder and related crimes. After failing to obtain relief in the Michigan appellate courts, Curry filed this habeas corpus action challenging the admission of his confession, which, he claims, violated his rights under the Fifth Amendment's proscription against self-incrimination. The Michigan Court of Appeals held that Curry's confession was voluntary, his waiver of his *Miranda* rights was voluntary, the "midstream" administration of *Miranda* warnings did not violate Supreme Court precedent, and the admission of the confession was constitutional. Those determinations, save one, reasonably applied Fifth Amendment jurisprudence as established by the Supreme Court. The state courts' admission of Curry's pre-warning statement was contrary to the clearly-established rule of *Miranda v. Arizona*, 384 U.S. 436 (1966), but the resulting error did not have a substantial and injurious effect or influence on the jury's verdict. Therefore, the Court will deny Curry's petition.

I.

The shooting took place at a house on South 11th Street in Saginaw, Michigan, where Christopher Ray lived with his girlfriend and her parents. Ray testified that on July 13, 2006, in the early morning hours just after midnight, he was in the living room along with Jackson and his girlfriend's parents, Wayne and Donna Molda, when he heard a knock on the door. As he went to answer the door, he asked who was there and someone replied, "Jeff." He opened the door and saw the petitioner, whom he knew from school, and another, unknown man.

Ray turned on a porch light. The petitioner asked him where Jackson was. Jackson came to the door and went out on the porch. Ray then noticed that the petitioner and the unknown man were armed with guns. The petitioner had a black revolver in one hand crossed under his other arm. The unknown man pulled out a semiautomatic and cocked it. The petitioner said to Jackson, "You're going around telling people you're going to kill me because I pulled a gun on you. This time you're going to lay down." Ray thought that meant there was going to be trouble and said, "Please don't do this." He shut the front door and ran out the back door. Within a few seconds, he heard gunshots fired one after another, but he did not see the shooting.

When he got outside, he laid down in tall grass until the shooting stopped. Ray returned to the house through the back door and went to the porch. Jackson was shot and lying on his back. There were bullet holes in the front doors and in a wall and bedroom door inside the house. Ray guessed that he heard 10 gunshots and thought they came from two guns.

Jackson suffered two gunshot wounds to the right leg and a fatal gunshot wound to the back of the head. He apparently died at the scene. His body was transported to a hospital, where bullets were recovered from his sock and his pants. At autopsy, another bullet was recovered from

Jackson's brain. Police technicians also recovered bullets and fragments from the scene. A ballistics expert testified that five separate bullets were fired from one gun, likely a revolver, due to the lack of shell casings at the scene. It was his opinion that the shooter was on the porch when he fired. The medical examiner testified that he did not believe that the shot to the head was inflicted during a struggle.

Saginaw police officers responded to the scene and learned that the petitioner was a suspect in the shooting. Using a Crime Stoppers tip and cell phone triangulation, they located a vehicle carrying someone in the passenger seat fitting the petitioner's description. The police followed the vehicle and called for back-up. After the vehicle stopped, they approached it to apprehend the occupants, but the vehicle sped away. A chase ensued.

When the vehicle finally stopped, the two occupants exited and ran. One officer stopped his car, got out, and ran toward the passenger, who was later identified as the petitioner. Marked patrol cars arrived, and the petitioner darted in front of one of them. The car struck the petitioner, who rolled up on the hood and then fell to the ground. Another officer caught up to him, two others were on top of him, and he was yelling and resisting. Officer Allen Rabideau struck the petitioner several times on the back of the head with his open hand. The petitioner continued to struggle as he was handcuffed.

The petitioner continued to thrash about, which resulted in his shirt being torn and his gold chain being broken. Officers put him in the back of a patrol car and took him to the police station, where he was interviewed by detectives. Officer Rabideau said that the petitioner complained about back pain when they first got into the patrol car. He later asked the petitioner if he wanted to go to the hospital, but the petitioner declined, then vacillated about whether to go. After the interview,

Officer Rabideau took the petitioner to the hospital where he was examined and released. Officer Rabideau then took the petitioner to the jail.

At the police station, Detective Robert Ruth spoke with the petitioner for a few minutes before he informed him of his *Miranda* rights, had him sign a waiver form, and questioned him further. The interview was recorded and transcribed. The interview was played for the jury and the transcript was admitted into evidence. In that interview, the petitioner admitted being at the house and shooting Jackson, but claimed it was in self-defense. He said that Jackson had shot at him the day before the incident and that Jackson had shot him in 1998, leaving scars on his stomach. The petitioner said that he went to Ray's house to buy cocaine, but he did not know Jackson was there, and that Jackson came to the door, put a gun to his stomach, and threatened to kill him. They struggled over the gun. The petitioner got the gun and shot Jackson. He fired the gun until it was empty. He knew that he shot Jackson in the leg because Jackson fell to the ground. The petitioner dropped the gun on the porch and left. The petitioner initially stated that he went to the house alone, then with a woman, then with a man. He ultimately claimed that the man who was with him shot Jackson in the head.

Before trial, defense counsel moved to suppress the petitioner's police statements, asserting that they were involuntary due to police coercion and the petitioner's alcohol and drug usage. The trial court conducted a hearing, reviewed a video of the petitioner's interview, and denied the motion.

At the conclusion of the trial, the jury convicted the petitioner of second-degree murder, Mich. Comp. Laws § 750.317, carrying a concealed weapon, Mich. Comp. Laws § 750.227, resisting or obstructing a police officer, Mich. Comp. Laws § 750.81d(1), and possession of a firearm during

the commission of a felony (felony firearm), Mich. Comp. Laws § 750.227b. He was sentenced to concurrent prison terms totaling 25 to 50 years for all crimes except the felony firearm conviction, for which he was given a consecutive, two-year sentence.

The petitioner filed a direct appeal in which he challenged the admissibility of his confession. The Michigan Court of Appeals affirmed his convictions, but remanded for correction of the judgment of sentence. *People v. Curry*, No. 279254, 2009 WL 638202 (Mich. Ct. App. March 12, 2009) (unpublished). The petitioner filed an application for leave to appeal in the Michigan Supreme Court, which, in lieu of granting leave to appeal, vacated the Michigan Court of Appeals's judgment and remanded the case to the trial court for factual findings on the suppression motion. *People v. Curry*, 485 Mich. 903, 773 N.W.2d 15 (2009).

On remand, the trial court conducted a new evidentiary hearing and denied the suppression motion, finding that the petitioner's pre-*Miranda* and post-*Miranda* statements to the police were knowing, intelligent, and voluntary and that the delay in advising him of his *Miranda* rights did not render his statements inadmissible. In the ensuing appeal, the Michigan Court of Appeals again affirmed the convictions, *People v. Curry*, No. 302821, 2012 WL 1959630 (Mich. Ct. App. May 31, 2012), and the state supreme court denied leave to appeal, *People v. Curry*, 493 Mich. 893, 822 N.W.2d 567 (2012).

The petitioner, through counsel, thereafter filed his federal habeas petition. He raises the following claims:

- I. The Michigan Court of Appeals unreasonably applied Supreme Court law and denied Petitioner's due process rights when it found that a 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.

- II. The Michigan Court of Appeals unreasonably applied Supreme Court law when it found that detectives' mid-stream recitation of *Miranda* rights did not violate Petitioner's Fifth Amendment right against compelled self-incrimination.

The respondent opposes the petition contending that the claims lack merit and do not warrant federal habeas relief.

II.

The provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214 (Apr. 24, 1996), which govern this case, "circumscribe[d]" the standard of review federal courts must apply when considering an application for a writ of habeas corpus raising constitutional claims, including claims of ineffective assistance of counsel. *See Wiggins v. Smith*, 539 U.S. 510, 520 (2003). Because Curry filed his petition after the AEDPA's effective date, its standard of review applies. Under that statute, if a claim was adjudicated on the merits in state court, a federal court may grant relief only if the state court's adjudication "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 if the adjudication "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)(1)-(2). "Clearly established Federal law for purposes of § 2254(d)(1) includes only the holdings, as opposed to the *dicta*, of [the Supreme] Court's decisions." *White v. Woodall*, --- U.S. ---, 134 S. Ct. 1697, 1702 (2014) (internal quotation marks and citations omitted). "As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in

existing law beyond any possibility for fairminded disagreement.” *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

The distinction between mere error and an objectively unreasonable application of Supreme Court precedent creates a substantially higher threshold for obtaining relief than *de novo* review. The AEDPA thus imposes a highly deferential standard for evaluating state-court rulings, and demands that state-court decisions be “given the benefit of the doubt.” *Renico v. Lett*, 559 U.S. 766, 773 (2010) (finding that the state court’s rapid declaration of a mistrial on grounds of jury deadlock was not unreasonable even where “the jury only deliberated for four hours, its notes were arguably ambiguous, the trial judge’s initial question to the foreperson was imprecise, and the judge neither asked for elaboration of the foreperson’s answers nor took any other measures to confirm the foreperson’s prediction that a unanimous verdict would not be reached” (internal quotation marks and citations omitted)); *see also Dewald v. Wriggelsworth*, 748 F.3d 295, 298-99 (6th Cir. 2014); *Bray v. Andrews*, 640 F.3d 731, 737-39 (6th Cir. 2011); *Phillips v. Bradshaw*, 607 F.3d 199, 205 (6th Cir. 2010); *Murphy v. Ohio*, 551 F.3d 485, 493-94 (6th Cir. 2009); *Eady v. Morgan*, 515 F.3d 587, 594-95 (6th Cir. 2008); *Davis v. Coyle*, 475 F.3d 761, 766-67 (6th Cir. 2007); *Rockwell v. Yukins*, 341 F.3d 507, 511 (6th Cir. 2003) (en banc). Moreover, habeas review is “limited to the record that was before the state court.” *Cullen v. Pinholster*, 563 U.S. 170, 180 (2011).

A.

The petitioner’s first issue focuses on the voluntariness of the confession itself. The petitioner contends that at the time he made his statement, he was under the influence of drugs and alcohol, he had been struck by a police car, beaten by officers, and his requests to go to the hospital were refused. These allegations were explored at the post-remand evidentiary hearing.

At that hearing, Saginaw Police Officer Barry Dobis testified that he participated in the pursuit of the petitioner's vehicle in his marked patrol car. When he saw the vehicle stop and the petitioner running away, he followed the petitioner in his patrol car. At one point, the petitioner ran into the front of his patrol car, rolled on top of the car, and fell to the ground as he applied the brakes. Dobis estimated that he was going 10 to 15 miles per hour when he hit the petitioner. Other officers were involved in handcuffing the petitioner and taking him into custody.

Officer Matthew Ward testified that he participated in the pursuit of the petitioner's vehicle in his marked patrol car. He was the lead patrol car. When the petitioner's vehicle stopped, he saw the petitioner run into Officer Dobis's patrol car, roll onto the hood, and fall to the ground. Officer Ward ran up to him as other officers were pushing him face down and yelling at him to put his hands behind his back, but he was not complying. He saw Officer Rabideau strike the petitioner on the back of the head three or four times as he was yelling at him to put his hands behind his back. He did not see the petitioner's head bounce off the ground. After a few moments, officers were able to get his hands behind his back and handcuff him. The petitioner did not appear to be injured from the collision with the car.

Officer Allen Rabideau testified that he participated in the pursuit of the petitioner's vehicle. He saw the petitioner flee from the vehicle, get hit by Officer Dobis's patrol car, roll onto the hood, and fall to the ground. He guessed that Dobis's car was going 25 miles per hour, but was unsure of the speed. Rabideau ran to the petitioner, pushed him to the ground, and yelled at him to put his hands behind his back. The petitioner had his hands in front of him and was not complying. The petitioner kept yelling that he was not the driver. Rabideau then struck the petitioner on the back of head five or six times with an open hand and again yelled at him to put his hands behind his back.

Rabideau did not see the petitioner's head bounce on the ground. He thought the struggle lasted one or two minutes before the officers forced the petitioner's hands behind his back and handcuffed him. The petitioner continued to struggle after he was handcuffed and on his feet, which is when his shirt was torn and his gold chain was broken, before being put in his patrol car. Rabideau drove the petitioner to the police station and put him in an interview room for the detectives. During that time, the petitioner did not say he was injured nor ask to go to the hospital. Rabideau noticed an abrasion on the petitioner's cheek, but did not feel that emergency services were needed. Rabideau saw no indication that the petitioner was intoxicated or under the influence of drugs. The petitioner had no trouble walking. The petitioner wanted to talk with someone, but Rabideau told him to wait for the investigators. Rabideau testified that he stood outside the door during the petitioner's interview. The petitioner requested medical attention after the interview, then vacillated about whether he wanted to go to the hospital. Rabideau decided to take him to the hospital to make sure that there were no medical issues. The petitioner was examined at the hospital and released. Rabideau then drove him to the jail.

Detective Robert Ruth testified that he investigated the scene of the shooting and gathered information about the petitioner and his location. He and Detective Walny also followed the pursuit of the petitioner and Ruth saw the petitioner get struck by the patrol car, roll onto the hood, and fall to the ground. By the time he approached, the petitioner was in custody.

Ruth and Walny interviewed the petitioner at the police station. That interview lasted about 1.5 hours and was recorded. Ruth recalled that the petitioner mentioned going to the hospital and he told him that they would take him when they were done. Ruth saw a mark on the petitioner's face, but did not think that he needed immediate medical attention. At the end of the interview, the

petitioner said he did not want to go to the hospital, but Ruth told an officer to take him to make sure that he was okay. Ruth testified that there was no indication that the petitioner was intoxicated or high during the interview and he never said that he was under the influence at that time, although he indicated that he had used cocaine sometime previously. Ruth said that the petitioner gave cogent answers, was alert and active, moved around during the interview, listened to the questions, and did not complain about being in pain. Ruth recalled advising the petitioner of his *Miranda* rights and having him sign a waiver form. He also recalled asking the petitioner about the old wound on his stomach and being surprised by the petitioner's response indicating that the deceased victim had shot him in the past. He asked the petitioner if he shot the victim in self-defense. The petitioner did not complain about how he was treated during the interview and seemed to like him. Ruth did not deceive the petitioner nor promise him anything during the interview.

The petitioner testified that he was 28 years old at the time of the incident and that he had a ninth grade education. He claimed that he had been up all night after the shooting, had drunk a half pint of brandy, had taken eight Soma and eight Vicodin pills, and had snorted cocaine, but had not eaten. During the car chase, he was in the back seat being tossed around and hitting his head. He recalled running from the vehicle after the driver stopped and claimed that the patrol car was doing 30 miles per hour when it struck him and he fell to the ground. He tried to stand up, but officers beat him. He said that one officer hit him in the head with his fists and bashed his head on the cement. He believed that more than one officer hit him. The petitioner said that he hurt his back and one of his legs. He asked to be taken to the hospital, but the police ignored him. When he told Officer Rabideau that he wanted to go to the hospital, Rabideau told him to be quiet before he choked him. He recalled telling Detective Ruth that he wanted to go the hospital and Ruth saying

that he could go when they were done with him. The petitioner also testified that he had been shot in the back in 1998 and the bullet exited his stomach, which required surgeries and left him in a coma for 3.5 months, and that he had been shot in the head four times. The petitioner claimed that those injuries caused him to be forgetful and to have memory loss. The petitioner did not remember making his statement at the police station or going to the hospital. His next memory was waking up in jail two days later and being in pain, although he did not complain to jail personnel. The petitioner acknowledged that he had a prior felony conviction for carrying a firearm and other arrests, but said that he had never previously been advised of his *Miranda* rights; he learned about them while in prison.

The petitioner's hospital records and the transcript and video of the petitioner's police interview were admitted into evidence. The hospital records indicated that the petitioner had a facial abrasion, and pain and bruising on his left leg, right forearm, and back. He had no broken bones, internal injuries, or neurological damage. He was alert, oriented, and calm with normal vital signs. He was discharged about four hours after arrival.

At the conclusion of the hearing, the trial court denied the suppression motion finding, among other things, that the petitioner's statements were voluntary, paying particular attention to the videotape of the confession. The court found that the petitioner was "coherent, did not appear to be in any distress at all," and that there was "no evidence of any force or coercion. Nobody tried to trick him by deceit or by promises. He didn't appear to be ill, confused, sleepy, stoned from drugs or medication or illegal substances." The court also noted that "[t]here was other testimony that there was no smelling of alcohol by the officers, no appearance of intoxication, no signs of drugs, never said he took drugs, didn't need assistance in walking, appeared to be okay."

The Michigan Court of Appeals affirmed that ruling, affording “deference to the trial court’s determinations as to the relative weight and credibility of the evidence.” *People v. Curry*, No. 302821, 2012 WL 1959630, at *3 (Mich. Ct. App. May 31, 2012). The court stated that the trial court weighed the appropriate factors — the petitioner’s age, education and intelligence level, previous experience with the police, nature and length of the questioning; the length of the pre-statement detention, advice of constitutional rights, unnecessary delay (if any) in bringing him before a magistrate, the petitioner’s injuries, his level of intoxication, his need for food, sleep, or medical attention, whether any physical abuse occurred, and whether the suspect was threatened with abuse — and concluded that in “the totality of the circumstances, we are not convinced that a mistake was made in denying [the petitioner’s] motion to suppress his statement.” *Ibid*.

These determinations reasonably applied — and do not contravene — federal constitutional law as established by the Supreme Court. Certainly, the Fifth Amendment privilege against compulsory self-incrimination bars the admission of involuntary confessions. *Colorado v. Connelly*, 479 U.S. 157, 163-64 (1986). But under federal law, a confession is not considered involuntary unless (1) the police extorted the confession by means of coercive activity; (2) the coercion in question was sufficient to overbear the will of the accused; and (3) the will of the accused was in fact overborne “because of the coercive police activity in question.” *McCall v. Dutton*, 863 F.2d 454, 459 (6th Cir. 1988) (emphasis in original). The ultimate question is “whether, under the totality of the circumstances, the challenged confession was obtained in a manner compatible with the requirements of the Constitution.” *Miller v. Fenton*, 474 U.S. 104, 112 (1985). Factors to consider include many of those considered by the state courts: the presence or absence of police coercion (a “crucial element”), length of interrogation, location of interrogation, continuity of interrogation, the

suspect's maturity and education, the suspect's physical condition and mental health, and whether the suspect was advised of his or her *Miranda* rights. *Withrow v. Williams*, 507 U.S. 680, 693-94 (1993). Without coercive police activity, however, a confession should not be deemed involuntary. *Connelly*, 479 U.S. at 167 (stating that "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause"). The burden of proving that a confession was given involuntarily rests with the petitioner. *Boles v. Foltz*, 816 F.2d 1132, 1136 (6th Cir. 1987). Voluntariness need only be established by a preponderance of the evidence. *Ibid*.

The state courts faithfully applied these principles, and for several reasons this Court cannot disagree with their conclusions. *First*, there is no evidence that the police coerced the petitioner through force, threats, promises, deceit, or any other means into making a statement. The Court's own review of the transcript and the video reveals that the petitioner was eager to speak with the police and tell his side of the story.

The petitioner contends that the police engaged in coercion by intentionally withholding medical care as a *quid pro quo* for him providing a statement. The intentional withholding of medical care for a serious injury or medical condition can be coercive. *See, e.g., Mincey v. Arizona*, 437 U.S. 385, 397-401 (1978) (holding that a *Miranda* waiver and statement were coerced and involuntary where defendant was seriously wounded a few hours before the interrogation, was in intensive care, was depressed, complained of unbearable pain, appeared confused, responded incoherently to some questions, said that he was confused and could not think clearly, and asked the police to stop the interrogation, which lasted for four hours); *Beecher v. Alabama*, 389 U.S. 35, 36-38 (1967) (coercion found where the defendant's first confession was made after he had been shot

in the leg and an officer ordered him at gunpoint to confess or be killed, and his second written confession was made a week later in a prison hospital while he was on morphine, left alone with police, and a medical assistant warned him to cooperate and told the police to let him know if he did not tell them what they wanted to know); *Reck v. Pate*, 367 U.S. 433, 441-42 (1961) (confession was involuntary where officers held the defendant for four days with inadequate food and medical attention). But no such coercive activity occurred in this case. Although the petitioner had been struck by a patrol car while fleeing the police and hit several times in the head by a police officer during the struggle to handcuff him, he did not suffer serious injuries. The medical records disclosed that he had no broken bones, internal injuries, or neurological impairment and he only suffered an abrasion on his cheek and pain and soreness on his leg, arm, and back. He had no difficulty walking, moving around, speaking, or responding coherently to questions.

Although the petitioner initially said that he wanted to go to the hospital, he did not object when he was told that he would be taken to the hospital when he was finished at the police station, nor did he complain of significant pain or say that he was unable to speak with the police due to his injuries during the interview. The video record does not suggest that his physical condition distracted him in any way during the interview. And at the end of the interview, he even vacillated about his desire for medical care, but was taken to the hospital to ensure his well-being. The investigating officers, who did not cause the petitioner's injuries, never said that his medical care was contingent upon him providing a statement or waiving his *Miranda* rights. Rather, they assured him that they would look into what happened during his arrest, take pictures, and get him medical care when they were done at the police station. They advised him of his rights and further informed him that he was under no pressure to talk to them and that they would stop anytime he did not want

to continue talking to them. The record simply does not support the petitioner's argument that the police engaged in coercive activity which overcame his will or that his medical condition interfered with his ability to waive his rights and speak with police.

Second, the other circumstances surrounding the interview support the state court's determination that the petitioner's police statement was voluntary, knowing, and intelligent. The interview was conducted in an air-conditioned interview room at the police station. It took place shortly after the petitioner's arrest and only lasted for about 90 minutes. The petitioner was 28 years old at the time, had at least a ninth-grade education, and was familiar with the criminal justice system through a prior felony conviction (and possibly other arrests). There is no evidence that the petitioner suffered from a mental disability or was otherwise unable to understand the nature and severity of his situation.

The petitioner asserts that he was under the influence of alcohol, a copious amount of prescription drugs and cocaine, and that he was sleep-deprived at the time of the interview. The police officers, however, testified that there was no indication that the petitioner was under the influence of alcohol or drugs at the time of his arrest and interview and that he was alert, active, and responsive during the interrogation. The state courts found the officers' testimony to be credible. That credibility determination is entitled to deference and presumed correct on federal habeas review. *Miller*, 474 U.S. at 112. The video record presents a high hurdle for the petitioner to overcome that presumption: there is no indication that the petitioner was under the influence of alcohol or drugs to any significant degree, he did not exhibit signs of sleep-deprivation or exhaustion while being questioned, and he was alert and able to participate in the interview without any difficulty. The hospital records, compiled just after the interview was over, do not contain any

notation that the petitioner was under the influence of alcohol or drugs, or was otherwise incoherent or impaired.

Third, the petitioner was advised of his *Miranda* rights verbally and in writing (albeit a few minutes into the interview), indicated that he understood each of those rights, waived those rights, and signed a written waiver form. He was also told that he could stop the interview at any time. Considering the totality of the circumstances, the Court finds that the petitioner's police statements were voluntary, knowing, and intelligent. Habeas relief therefore is not warranted on the claim that the confession was inadmissible because it was involuntary.

B.

The petitioner also argues that the confession was inadmissible because the *Miranda* warnings were not given until the conversation with the police officer was underway. Those "midstream" warnings, the petitioner contends, rendered his *Miranda* waiver involuntary and violated a constitutional rule established by Supreme Court precedent. To assess that claim, it is useful to consider the full part of the statement dealing with the rights advice and waiver. Two detectives were present: Robert Ruth ("Q") and J. Walny (Q2). The following statement is taken from the transcript.

A They fucked me up.

Q Who did? The officers?

A They ran me over man like 30 mph man.

Q We'll talk about that too.

A Sir, I wasn't even driving man. (Inaudible).

Q Yeah. What happened to your stomach there anyway? You got shot?

A That mother fucker shot me.

Q Oh Frank Nitty?

A The dude.

Q Who?

A That's dead.

Q Oh the one now? Is he the one that did that to you?

A That bitch shot at me yesterday.

Q Oh did he? Okay. Well that's what we got to talk about.

A Listen . . . listen, I went to a house. I didn't even fucking go . . . I didn't even know he was in there. The mother fucker came outside and put a gun to my stomach and I took it. We tussled for it.

Q Okay. And you shot in self defense is what you're saying?

A Sir . . . but I . . . I . . . I guess so.

Q Okay.

A The mother fucker. . . the mother fucker he had been picking with me forever man cause the mother fucker know I got this . . . I got this. I been in Covenant three and a half months man.

Q Yep.

A I been fucked up right.

Q Okay. This is my partner Det. Walny.

Q2 How you doing?

Q I think . . . I know he talked to you out there (inaudible).

Q2 I was the one in the back seat talking to you. You remember that?

A Who ran me over man?

Q2 I didn't see . . . I honest to God I did not see it.

A I want to go to the hospital.

Q2 What's that?

Q Yeah, we're gonna take you when we get done here.

A . . . my leg . . . my leg and my back. They ran me over hard man.

Q2 That happened before we got there so I don't know.

A But I wasn't even driving sir.

Q2 Okay.

Q Okay.

A (Inaudible). (Inaudible) and that's my kids and shit man.

Q Exactly. Now I know you're saying that it was self defense, and like I say I got questions for you, you got questions for me obviously. Okay we got to get this straight. You are in custody right now so I have to read you your rights okay?

A Yes sir.

Q Okay. Um

A I know you man. I know you too.

Q Where you know me from?

A The streets.

Q Oh yeah.

A And Mata . . . and Mata. I know Mata. Mata's a good dude.

Q If you mess with him or you do something wrong he's on you.

A You know what, a mother fucker told him I was a gun runner and a drug dealer. Listen, he caught me two times.

Q Um huh.

A He ain't find shit. He left me alone man. I ain't got shit to say about Mata now. He straight.

Q Yeah. He's straight.

Q2 Yeah. He's honest and he's fair.

A Who fucking ran me over?

Q I don't know.

A 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 the concrete man.

Q 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.

A They fucked me up.

Q We'll figure out what's going on with that. Um okay what I'm gonna do here . . . I already filled this out. At the top here it says your rights. Do you know . . . I don't want to be facetious or nothing, but do you know how to read and write?

A Yes sir.

Q How far did you make it in school?

A Eleventh.

Q Eleventh grade? Okay. I'll read this to you okay and you just follow along. Up here is the case number. It's 06-6566. It's ah we're at the Saginaw Police Department. Today's date is 7-13-06. Now I put down 1550 hours. And what that means is Military time for ten to four okay? Um before we question you you must be aware of your rights you have the right to remain silent. Anything you say will taken down in writing and used against you in court. You have the right to talk to an Attorney before we talk to you and have him present during questioning. If you cannot afford an Attorney one will be appointed for you by the court at no cost to you. If you decide to answer any questions without the presence or advice of an Attorney, you may stop at any time you wish and request an Attorney before continuing. I'm not gonna pressure you to talk to us. We're gonna talk like men.

A Yes sir.

Q And you know that's how we're gonna do it. All right?

A I understand that.

Q I have read, have had read to me the statement of my rights shown above. I understand my rights. You understand what your rights are? You can just sign that right there.

A I man y'all the goodest cops man today.

Q Well we're here just to ah . . .

A Them other guys fucked me up.

Q Yeah. I called you in the middle of the night and left a message for you.

A (Inaudible).

Q I know you're scared

A I mean I ain't scared man, it's just the mother fucker that dude . . .

Q Well before we get into that let's

Q2 We'll get into that, but we want to do everything by the book here okay?

A I understand you sir. I ain't disrespecting y'all or nothing.

Q2 No . . . and it's not . . . we just want to make sure that you're not . . . your rights are taking care of.

Q And then down here on the waiver portion, it's I'm willing to answer questions or make a statement without conferring with an Attorney or having an Attorney present. No promises or threats have been made to me in regards to this statement. I do not want an Attorney at this time. I'm not gonna threaten you. Anytime you want to quit talking, we're gonna quit talking. I'm not gonna pressure you to talk.

A Read it for me one more time for me sir.

Q Okay. Yeah. It's the waiver portion. I am willing to answer questions or make a statement without conferring with an Attorney or having an Attorney present. No promises or threats, I'm not promising you anything and I'm not gonna threaten you.

A Yes sir.

Q No promises or threats have been made to me in regards to this statement.

A I understand.

Q I do not want an Attorney at this time. Do you understand that?

A I understand that sir.

Q2 So it's up to you if you want to talk to us.

A I'm a talk to y'all (inaudible).

Q Okay. Well there's always two sides to a story.

A I ain't gonna hang myself. I know what I'm doing.

Q Okay.

A And I'm gonna let y'all know the real fucking truth cause that mother fucker tried to kill me.

Q Yep. Well we got to know . . . we got to know the truth to what's going on. And I'll sign down here.

Q2 And see and the thing is we know there's two sides to every story. We want to get both sides here, but it doesn't help your side if you try to run or you try to avoid us.

The trial court, announcing its decision from the bench, found that giving the petitioner *Miranda* warnings after the interrogation was underway did not undermine the voluntariness of the waiver of rights, and it did not render the statement — both before and after the warnings were given — inadmissible. In arriving at the decision, the court found that *Oregon v. Elstad*, 470 U.S. 298 (1985), was “controlling authority.” The court denied the motion to suppress the petitioner’s statement.

The Michigan Court of Appeals affirmed. *People v. Curry*, No. 302821, 2012 WL 1959630 (Mich. Ct. App. May 31, 2012). That court also relied heavily on *Elstad* and distinguished the case

of *Missouri v. Seibert*, 542 U.S. 600 (2004), finding that “no evidence supports that during the initial questioning the police deliberately utilized an interrogation technique ‘calculated . . . to undermine the *Miranda* warning.’” *Curry*, 2012 WL 1959630, at *2 (quoting *Seibert*, 542 U.S. at 622 (Kennedy, J., concurring)).

Oregon v. Elstad and *Missouri v. Seibert* are the Supreme Court cases that establish the boundaries for the propriety of confessions obtained when *Miranda* warnings are not given until the interrogation is underway. In *Elstad*, the police went to Elstad’s home to arrest him for a neighborhood burglary. When an officer said that he thought Elstad was involved, Elstad admitted that he was present. The police took Elstad to the police station where he was advised of his rights and made a written confession. Elstad moved to suppress both statements, arguing that his first unwarned statement “let the cat out of the bag” and tainted his subsequent, warned confession. The trial court suppressed the first statement but admitted the second one. The state appellate court reversed and the state’s highest court declined review. The Supreme Court reversed, rejecting the notion that an initial, unwarned statement inherently taints a subsequent, warned statement and renders it inadmissible. The Court held that “a suspect who has once responded to unwarned yet uncoerced questioning is not thereby disabled from waiving his rights and confessing after he has been given the requisite *Miranda* warnings.” *Elstad*, 470 U.S. at 318. The Court explained:

[A]bsent deliberately coercive or improper tactics in obtaining the initial statement, the mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion. A subsequent administration of *Miranda* warnings to a suspect who has given a voluntary but unwarned statement ordinarily should suffice to remove the conditions that precluded admission of the earlier statement. In such circumstances, the finder of fact may reasonably conclude that the suspect made a rational and intelligent choice whether to waive or invoke his rights.

Elstad, 470 U.S. at 314. The rule established is that although an unwarned, uncoerced statement “must be suppressed,” the admissibility of a subsequent statement depends “solely on whether it is knowingly and voluntarily made.” *Id.* at 309. But where the initial statement is coerced, “the time that passes between confessions, the change in place of interrogation, and the change in the identity of the interrogators all bear on whether that coercion has carried over into the second confession.” *Id.* at 310.

The Court considered the midstream warnings practice with a different twist in *Seibert*. There, the police arrested Seibert as a suspect in a deadly fire at her home. When her son with cerebral palsy died in his sleep, she feared neglect charges so she arranged a fire to conceal the circumstances of his death. She also left an unrelated mentally ill houseguest to die in the fire to avoid the appearance that her son had been left alone. At the police station, the police questioned her for 30 to 40 minutes until she confessed that she intended for the houseguest to die in the fire. After a 20-minute break, an officer gave her *Miranda* warnings, obtained a waiver, questioned her a second time and confronted her with her initial statement until she repeated her previous admissions. Seibert sought to suppress both statements. The interrogating officer admitted that he intentionally engaged in a two-step interrogation technique to withhold *Miranda* warnings, obtain a confession, then give the warnings and obtain the same information. The trial court suppressed the initial statement but admitted the second one. The state appellate court affirmed, but the state supreme court reversed finding that both statements should have been suppressed.

A plurality of the Supreme Court affirmed. The Court focused on whether the *Miranda* warnings “could reasonably be found effective” in advising the suspect that she had a “real choice about giving an admissible statement at that juncture.” *Seibert*, 540 U.S. at 612 n.4. The Court

discussed five factors relevant for determining the effectiveness of mid-stream *Miranda* warnings: “the completeness and detail of the questions and answers in the first round of interrogation, the overlapping content of the two statements, the timing and setting of the first and second [statements], the continuity of police personnel, and the degree to which the interrogator’s questions treated the second round as a continuation of the first.” *Id.* at 615.

In a concurring opinion, Justice Kennedy stated that *Elstad* should govern the admissibility of post-warning statements unless a deliberate “two-step interrogation technique was used in a calculated way to undermine the *Miranda* warning.” *Id.* at 622 (Kennedy, J. concurring). If a deliberate two-step strategy was used, then the post-warning statements must be excluded absent curative measures “designed to ensure that a reasonable person in the suspect’s situation would understand the import and effect of the *Miranda* warning and of the *Miranda* waiver.” *Ibid.*

The Michigan Court of Appeals did not discuss those factors in detail, but it did find that *Elstad* controlled over *Seibert*, because there was no evidence that the administration of the *Miranda* warnings to the petitioner after he already had made incriminating statements was part of a deliberate attempt “‘to undermine the *Miranda* warning.’” *Curry*, 2012 WL 1959630, at *2 (quoting *Seibert*, 542 U.S. at 622 (Kennedy, J., concurring). Fairminded jurists may disagree with that conclusion, but the state court must be “given the benefit of the doubt” by a federal habeas court. *Renico v. Lett*, 559 U.S. at 773; *see also Harrington*, 562 U.S. at 101 (holding that federal habeas courts must review state court decisions with “deference and latitude,” and that “[a] state court’s determination that a claim lacks merit precludes habeas relief so long as ‘fairminded jurists could disagree’ on the correctness of the state court’s decision”) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004).

The federal circuit courts have not reached consensus on *Siebert*'s rule. See *United States v. Wooten*, 602 F. App'x 267, 271-72 (6th Cir. 2015) (discussing the cases conflicting on whether *Siebert*'s plurality or concurring opinion controls). Generally, when there is no majority opinion in a Supreme Court decision, the narrowest holding agreed upon by at least five justices controls. *Marks v. United States*, 530 U.S. 188, 193 (1977); see also *Panetti v. Quarterman*, 551 U.S. 930, 949 (2007) (citing *Marks*). The circuit courts, however, have not agreed on which opinion constitutes the narrower holding. See *Wooten*, 602 F. App'x at 271-72. Many courts have avoided the question by finding that the result is the same under either analysis. *Id.* at 272; see also *United States v. McConer*, 530 F.3d 484, 496-98 (6th Cir. 2008). The Sixth Circuit has concluded that *Seibert* did not announce a binding rule of law with respect to the admissibility standards for statements given after midstream *Miranda* warnings, and adopted the multi-factor test of the *Seibert* plurality as precedent in this Circuit. *United States v. Ray*, 803 F.3d 244, 272-73 (6th Cir. 2015). That does not mean, however, that the state court unreasonably applied *Siebert* by looking to the concurring opinion.

Moreover, *Elstad* makes clear that the petitioner's post-warning statements were not automatically tainted by his pre-warning statements because his initial statements, although given before *Miranda* warnings were given, were not coerced, and the post-warning statements were voluntary. And unlike *Seibert*, in this case there is no evidence that the police deliberately used a two-step interrogation technique to circumvent *Miranda*. To the contrary, Detective Ruth and the petitioner were discussing the circumstances of the petitioner's arrest and his old stomach wound when the conversation turned to victim Dedrick Jackson and the petitioner's claim of self-defense. Detective Ruth testified that he was "surprised" when the petitioner told him that Jackson was the

person who inflicted the old wound. After the petitioner responded that he acted in self-defense, Detective Ruth rather quickly told the petitioner that he had to advise him of his rights because he was in custody, gave the *Miranda* warnings in textbook fashion, and obtained a written waiver before continuing with the interview. Detective Ruth did not intentionally delay *Miranda* warnings or engage in any type of planned or systematic questioning before advising the petitioner of his rights and securing a waiver of those rights. His conduct resembles that of the police officer in *Elstad* much more than that of the police officer in *Seibert*.

Finally, applying the *Seibert* plurality's multi-factor test leads to the same result. *First*, the "first round of interrogation" did not produce much about the shooting. It is true that the petitioner admitted he went to the house and was surprised that Jackson was there, and that Jackson put a gun to his stomach, and they tussled for it. But when Detective Ruth asked him if he acted in self-defense, and the petitioner responded affirmatively, no further discussion about the incident occurred before the petitioner was advised of his rights and waived those rights. This factor weighs in favor of a finding that the *Miranda* waiver was effective.

Second, the record indicates that although the self-defense theme was present in both statements, the petitioner provided only a brief description of the incident in his pre-warning statement, but discussed the events leading up to the shooting, the shooting, and its aftermath, in much greater, and varying, detail in his lengthy post-warning statement. This factor weighs in favor of a finding that the *Miranda* waiver was effective.

Third, the record indicates that the first and second statements were relatively continuous and both occurred in the same interview room at the police station. This factor weighs against a finding that the *Miranda* waiver was effective.

Fourth, the record indicates that Detective Ruth was present for the pre-warning statement and that Detective Walny entered the interview room and was present with Detective Ruth when the petitioner was advised of his rights, waived those rights, and provided his post-warning statement. This factor is neutral in that Detective Ruth was present for both statements, but the addition of Detective Walny could be seen as change from small talk or preliminary discussions to a more formal interrogation.

Fifth, it can be said that Detective Ruth did not treat the second round of questions “as continuous with the first.” Detective Ruth specifically assured the petitioner that he did not have to speak with the police, that it was his choice, and that he could stop the interview at any time. In response, the petitioner stated that he wanted to talk, that he knew what he was doing, and that he was not going to “hang himself.” Although the self-defense claim was a central issue throughout the interview, Detective’s Ruth’s post-warning questions were more extensive, systematic, and thorough than his brief, more conversational initial inquiry. Detective Ruth challenged the petitioner’s version of events and confronted him with details of the ongoing police investigation. Although reasonable arguments can be made about the import of this factor, on balance, it weighs in favor of a finding that the *Miranda* waiver was effective.

Considering all of the factors, a reasonable person in the petitioner’s shoes would have understood that the midstream *Miranda* warnings meant that he retained a choice about whether to continue speaking with the police. To be sure, the petitioner’s own declarations that he wanted to speak with the detectives, that he knew what he was doing, and that he was not going to hang himself demonstrate that he was fully aware of his rights and voluntarily elected to waive those rights and continue with the interview. The Michigan Court of Appeals reasonably applied the rule

stated in *Elstad*, and its conclusion that the post-warning statement was admissible is neither contrary to, nor an unreasonable application of, the plurality opinion in *Seibert*.

C.

The admission of the petitioner's pre-warning statement, however, is another matter. The Supreme Court plainly has held that before a criminal defendant's statements made during custodial interrogation may be admitted at trial, the familiar warnings must precede those statements. *Miranda v. Arizona*, 384 U.S. 436 (1966); *see also Elstad*, 470 U.S. at 307 (confirming that "unwarned statements that are otherwise voluntary within the meaning of the Fifth Amendment must nevertheless be excluded from evidence under *Miranda*"). *Miranda* was a "constitutional decision of [the Supreme] Court," and the warnings are required by the Fifth Amendment. *Dickerson v. United States*, 530 U.S. 428, 432 (2000) (holding that "*Miranda* and its progeny in this Court govern the admissibility of statements made during custodial interrogation in both state and federal courts"). The command of those cases is clear, and, although periodically invited to do so, the Supreme Court has declined to alter it. *See, e.g., Rhode Island v. Innis*, 446 U.S. 291, 304 (1980) (Burger, C. J., concurring in judgment) ("The meaning of *Miranda* has become reasonably clear and law enforcement practices have adjusted to its strictures; I would neither overrule *Miranda*, disparage it, nor extend it at this late date"); *Dickerson*, 530 U.S. at 432. The state courts' decision to admit the petitioner's pre-warning statement was contrary to "*Miranda* and its progeny in [the Supreme] Court."

Although this error is patent, the petitioner cannot win habeas relief unless he also can show that the constitutional error had a "substantial and injurious effect or influence in determining the jury's verdict." *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993); *see also Fry v. Pliler*, 551 U.S.

112, 117-18 (2007) (confirming that *Brecht* standard applies in “virtually all” habeas cases); *Ruelas v. Wolfenbarger*, 580 F.3d 403 (6th Cir. 2009) (ruling that *Brecht* is “always the test” in this circuit). He cannot do so here.

It cannot be disputed that “[a] confession is like no other evidence.” *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991). That is because “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 the jury. . . .” *Ibid.* (citations omitted). Here, however, the petitioner’s pre-warning statement was a mere trailer to the main event of his second, properly-admitted statement. Whatever influence the first statement had on the jury, it certainly was eclipsed by the fullness of his second statement.

And there was other evidence that established the petitioner’s guilt, including the dramatic account of Christopher Ray, the ballistic evidence — which contradicted the petitioner’s contention that more than one shooter was involved — and the medical examiner’s testimony that the fatal shot most likely was not fired during a struggle. All this adds up to the conclusion that the pre-warning statement did not influence the jury in a “substantial and injurious” way. Therefore, no habeas relief can be based on this constitutional violation.

III.

The state courts’ decisions in this case were not contrary to federal law, an unreasonable application of federal law, or an unreasonable determination of the facts. The petitioner has not established that he is presently in custody in violation of the Constitution or laws of the United States.

Appendix E

2:14-cv-10747-DML-DRG Doc # 10 Filed 03/20/17 Pg 30 of 30 Pg ID 1473

Accordingly, it is **ORDERED** that the petition for a writ of habeas corpus [dkt #1] is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: March 20, 2017

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 20, 2017.

s/Susan Pinkowski
SUSAN PINKOWSKI

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 17a0696n.06

No. 17-1422

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED

Dec 19, 2017

DEBORAH S. HUNT, Clerk

JEFFREY MONTREAL CURRY,

Petitioner-Appellant,

V.

PAUL KLEE, Warden,

Respondent-Appellee.

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF MICHIGAN

Before: SILER, KETHLEDGE, and THAPAR, Circuit Judges.

KETHLEDGE, Circuit Judge. Jeffrey Curry appeals the district court's denial of his petition for a writ of habeas corpus, arguing that the state courts violated his Fifth Amendment rights when they admitted his confession at trial. We reject his arguments and affirm.

Curry shot Dedrick Jackson at the house of their mutual friend, Christopher Ray. According to Curry, he stayed up the rest of the night drinking and getting high on cocaine and other drugs. The police arrested Curry later that day—but only after a chase, which ended when a squad car struck Curry as he ran through a parking lot. That left Curry with a scratch on his cheek and bruises on his back, arm, and leg. An officer took Curry to the police station, where (according to Curry) he asked the officer to take him to the hospital. Curry says the officer refused.

No. 17-1422

Curry v. Klee

Detective Robert Ruth then arrived to interview Curry. The two spoke for a few minutes, during which time Ruth asked Curry about an old scar on his stomach. Curry said that Jackson had given him the scar. Curry added that he had gone to Ray's house without knowing that Jackson was there and that Jackson "came outside and put a gun to [Curry's] stomach and [Curry] took it." Ruth then asked, "you shot in self defense is what you're saying?" Curry responded, "I guess so."

Another detective then joined the interview. Curry asked the two detectives if he could go to the hospital; they said they would take him when they "got done here." Ruth then read Curry his *Miranda* rights, which he waived. See *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966). Curry thereafter described how he shot Jackson in self-defense. After the interview, the police took Curry to the hospital, where doctors examined him and found that he had no major injuries.

Before trial in state court, Curry moved to suppress his confession, arguing it was involuntary because the officers had refused to take him to the hospital first. The court denied Curry's motion, and a jury later found him guilty of second-degree murder and other related crimes. The court sentenced him to 25-50 years' imprisonment. Curry appealed the suppression issue to the Michigan Supreme Court, which remanded for factual findings. The trial court thereafter conducted an evidentiary hearing and determined that Curry's waiver and confession were voluntary. The Michigan Court of Appeals affirmed, and the state supreme court denied review.

Curry thereafter filed a petition for federal habeas relief, again raising the suppression issue. The district court denied the petition. We review that decision de novo. See *Wheeler v. Simpson*, 852 F.3d 509, 514 (6th Cir. 2017).

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To obtain habeas relief, Curry must show that the state courts' decision was contrary to, or an unreasonable application of, clearly established Supreme Court precedent. See 28 U.S.C. § 2254(d)(1). An application of established precedent is unreasonable if no "fairminded jurists" could agree with the state court's decision. *Harrington v. Richter*, 562 U.S. 86, 101 (2011).

Curry claims that his *Miranda* waiver and confession were involuntary and thus violated the Fifth Amendment. Coercive police conduct "is a necessary predicate" to establishing that claim. *Colorado v. Connelly*, 479 U.S. 157, 167, 169-70 (1986). Curry argues that the detectives coerced him when they refused to take him to the hospital until he first explained why he had shot Jackson. After the evidentiary hearing, however, the trial court specifically found that Curry's injuries were not serious and that the detectives had not withheld medical care to force him to talk. We presume those findings correct absent clear and convincing evidence to the contrary. See 28 U.S.C. § 2254(e)(1). There is no such evidence here: the detectives testified (credibly, in the trial court's view) that they told Curry he could stop talking to them whenever he wanted. And once Curry got to the hospital, his treaters found that he had no major injuries. The record thus supports the trial court's findings.

Curry also argues that his waiver and confession were involuntary because he was drunk, high on cocaine, and sleep-deprived when he gave them. But Curry cites no Supreme Court precedent that would have made clear to the state courts that these circumstances rendered his statements involuntary. And as a factual matter the trial court found that Curry was alert during the interview and not drunk or high. So this argument fails.

Curry next argues that his confession should have been excluded because the detectives did not read him his *Miranda* rights until after the interrogation had begun. As an initial matter, the state agrees that the trial court should not have admitted the statements that Curry made

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before he received his *Miranda* warnings. The parties dispute, however, whether that error warrants relief and whether Curry's post-warning statements were properly admitted. We address first whether Curry's post-warning statements were properly admitted, because, if they were, then his pre-warning statements were cumulative and thus less prejudicial.

Curry contends that his post-warning statements—namely his admission that he shot Jackson “in self defense”—were involuntary because he had already said the same thing before he received his *Miranda* warnings. The usual rule in these circumstances is that the defendant's post-warning statements are admissible so long as the defendant was not coerced before or after he received the warnings. See *Oregon v. Elstad*, 470 U.S. 298, 307, 318 (1985). But Curry says that his post-warning statements were inadmissible because his interrogation was continuous, without any break between his pre-warning statements and his post-warning ones. For support, Curry cites the Court's plurality opinion in *Missouri v. Seibert*, 542 U.S. 600, 615 (2004). But we have already held that *Seibert* did not create a binding rule for purposes of habeas review. See *United States v. Ray*, 803 F.3d 244, 272 (6th Cir. 2015). We therefore lack authority to hold that the state court unreasonably admitted Curry's post-warning statements at trial. And that means the court's admission of his pre-warning statements was largely cumulative and thus not a basis for habeas relief. See *Ruelas v. Wolfenbarger*, 580 F.3d 403, 413 (6th Cir. 2009).

The district court's judgment is affirmed.

Appendix G

Tape# 13406
Statement of Jeff Curry
Case# 06-6566
Detective R. Ruth & J. Walny
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Q = Det. Ruth Q2 = Det. Walny A = Jeff Curry

A They fucked me up.

Q Who did? The officers?

A They ran me over man like 30 mph man.

Q We'll talk about that too.

A Sir, I wasn't even driving man. (Inaudible).

Q Yeah. What happened to your stomach there anyway? You got shot?

A That mother fucker shot me.

Q Oh Frank Nitty?

A The dude.

Q Who?

A That's dead.

Q Oh the one now? Is he the one that did that to you?

A That bitch shot at me yesterday?

Q Oh did he? Okay. Well that's what we got to talk about.

A Listen...listen, I went to a house. I didn't even fucking go...I didn't even know he was in there. The mother fucker came outside and put a gun to my stomach and I took it. We tussled for it.

Q Okay. And you shot in self defense is what you're saying?

A Sir....but I..I...I guess so.

Q Okay.

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Statement of Jeff Curry
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A The mother fucker...the mother fucker he had been picking with me forever man cause the mother fucker know I got this...I got this. I been in Covenant three and a half months man.

Q Yep.

A I been fucked up right.

Q Okay. This is my partner Det. Walny.

Q2 How you doing?

Q I think...I know he talked to you out there (inaudible).

Q2 I was the one in the back seat talking to you. You remember that?

A Who ran me over man?

Q2 I didn't see...I honest to God I did not see it.

A I want to go to the hospital.

Q2 What's that?

Q Yeah, we're gonna take you when we get done here.

Amy leg....my leg and my back. They ran me over hard man.

Q2 That happened before we got there so I don't know.

A But I wasn't even driving sir.

Q2 Okay.

Q Okay.

A (Inaudible). (Inaudible) and that's my kids and shit man.

Q Exactly. Now I know you're saying that it was self defense, and like I say I got questions for you, you got questions for me obviously. Okay we got to get this straight. You are in custody right now so I have to read you your rights okay?

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Statement of Jeff Curry
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Detective R. Ruth & J. Walny
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A Yes sir.

Q Okay. Um....

A I know you man. I know you too.

Q Where you know me from?

A The streets.

Q Oh yeah.

A And Mata...and Mata. I know Mata. Mata's a good dude.

Q If you mess with him or you do something wrong he's on you.

A You know what, a mother fucker told him I was a gun runner and a drug dealer. Listen, he caught me two times.

Q Um huh.

A He ain't find shit. He left me alone man. I ain't got shit to say about Mata now. He straight.

Q Yeah. He's straight.

Q2 Yeah. He's honest and he's fair.

A Who fucking ran me over.

Q I don't know.

A 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 the concrete man.

Q 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.

A They fucked me up.

Tape# 13406
Statement of Jeff Curry
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Detective R. Ruth & J. Walny
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Q We'll figure out what's going on with that. Um okay what I'm gonna do here...I already filled this out. At the top here it say's your rights. Do you know...I don't want to be facetious or nothing, but do you know how to read and write?

A Yes sir.

Q How far did you make it in school?

A Eleventh.

Q Eleventh grade? Okay. I'll read this to you okay and you just follow along. Up here is the case number. It's 06-6566. It's ah we're at the Saginaw Police Department. Today's date is 7-13-06. Now I put down 1550 hours. And what that means is Military time for ten to four okay? Um before we question you you must be aware of your rights you have the right to remain silent. Anything you say will taken down in writing and used against you in court. You have the right to talk to an Attorney before we talk to you and have him present during questioning. If you cannot afford an Attorney one will be appointed for you by the court at no cost to you. If you decide to answer any questions without the presence or advice of an Attorney, you may stop at any time you wish and request an Attorney before continuing. I'm not gonna pressure you to talk to us. We're gonna talk like men.

A Yes sir.

Q And you know that's how we're gonna do it. All right?

A I understand that.

Q I have read, have had read to me the statement of my rights shown above. I understand my rights. You understand what your rights are? You can just sign that right there.

A I man y'all the goodest cops man today.

Q Well we're here just to ah...

A Them other guys fucked me up.

Q Yeah. I called you in the middle of the night and left a message for you.

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Statement of Jeff Curry
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A (Inaudible).

Q I know you're scared....

A I mean I ain't scared man, it's just the mother fucker that dude...

Q Well before we get into that let's....

Q2 We'll get into that, but we want to do everything by the book here okay?

A I understand you sir. I ain't disrespecting y'all or nothing.

Q2 No...and it's not...we just want to make sure that you're not...your rights are taking care of.

Q And then down here on the waiver portion, it's I'm willing to answer questions or make a statement without conferring with an Attorney or having an Attorney present. No promises or threats have been made to me in regards to this statement. I do not want an Attorney at this time. I'm not gonna threaten you. Anytime you want to quit talking, we're gonna quit talking. I'm not gonna pressure you to talk.

A Read it for me one more time for me sir.

Q Okay. Yeah. It's the waiver portion. I am willing to answer questions or make a statement without conferring with an Attorney or having an Attorney present. No promises or threats, I'm not promising you anything and I'm not gonna threaten you.

A Yes sir.

Q No promises or threats have been made to me in regards to this statement.

A I understand.

Q I do not want an Attorney at this time. Do you understand that?

A I understand that sir.

Q2 So it's up to you if you want to talk to us.

A I'm a talk to y'all (inaudible).

Appendix G

Tape# 13406
Statement of Jeff Curry
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Q Okay. Well there's always two sides to a story.

A I ain't gonna hang myself. I know what I'm doing.

Q Okay.

A And I'm gonna let y'all know the real fucking truth cause that mother fucker tried to kill me.

Q Yep. Well we got to know...we got to know the truth to what's going on. And I'll sign down here.

Q2 And see and the thing is we know there's two sides to every story. We want to get both sides here, but it doesn't help your side if you try to run or you try to avoid us.

A I didn't.

Q2 Okay.

A If I would have ran sir, I would have hit that highway. You hear me?

Q2 Well I don't know who was driving that truck, but man....

A That mother fucker....

Q2 That's crazy.

A I wasn't driving. I was in the back seat, but you know what? Listen you know what? I felt you guys the whole time you know I was in that house. Listen, I'm from the east side.

Q Um huh.

A That's the north side.

Q Um huh.

A That's not my business over there.

Q Oh I know it's not. I'm surprised you were up there.

A But you got to what you got to do.

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Statement of Jeff Curry
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Q That's true. And I'll tell you how we were, I'll be straight up and honest with you how we were tracking you?

A Um huh.

Q Just so you'll know.

A Um huh.

Q I was...you had your cell phone on you.

A That's (inaudible).

Q I had a little a warrant there to search your phone. We were tracking your phone the whole way.

A I knew y'all was.

Q Okay. So that's what it was, we were going through your Boost phone. We were tracking you all the way.

A (Inaudible). Nextel.

Q At ah 11:53 we knew you were on Norman.

A (Inaudible).

Q No. This morning. It sat...excuse me at 12:53 this afternoon...12:53 this afternoon.

A Norman is the west side.

Q No. Norman is up in the projects. You remember the old projects.

Q2 (Inaudible) north side.

Q So you were up there.

A Yes I was.

Q Yeah. We knew right where you were because of your cell phone.

A And I seen that blue Impala.

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Detective R. Ruth & J. Walny
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Q Um huh. Earlier.

A And when that mother fucker got on us, I told my man I said, "Stop the car."

Q Um huh.

A I said, "I'll get the fuck out." Right?

Q Um huh.

A You know what I mean.

Q He wouldn't stop.

A No. Cause he...you know he stabbed his self like he...he....he...on ah Prozac's and shit. That mother fucker turned that bitch around on Genesee, I said, "Man just please stop." My mother fucking head (inaudible), but what was wrong sir...sirs, what was wrong...when I had my hands behind my back, ah honestly right? That mother fucker whoever the fuck it was, the police bust my mother fucking head to the ground like ten times and then another mother fucker, maybe it was you. It wasn't you?

Q No. I don't think he was there. He was with me.

A A guy that look like you, that mother fucker bust my shit like bam, bam, bam. I'm like man I can't do shit else. I'm handcuffed.

Q Well we'll get through it.

A I understand your job, but you know man I had ten surgeries man. I've been in 3 ½ comas man.

Q I see that.

A That nigga that fucking shot me dog. You hear me?

Q2 When did you get shot?

A In like '98.

Q Who shot you?

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A That dude.

Q Who the one that got shot last night?

A That's right.

Q This dude right here?

A That bitch right there.

Q Okay.

A But you know what?

Q Explain to us what the story is? What happened?

A Okay. I went to score some cocaine.

Q Last night?

A Last night.

Q Who's house did you go to do that?

A Chris.

Q Chris? Okay.

A He got a white girlfriend.

Q Yep.

A I went to score some cocaine right?

Q Who'd you go with? Did you go with somebody or by yourself?

A I was by myself.

Q What was you driving?

A My wife's car.

Q Okay.

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A A black Impala.

Q Where's that black Impala right now?

A She probably got it.

Q You give it back to her?

A Yeah man cause I don't want her in this shit.

Q Well that's what I say, I don't want to take her car from her.

A She honest man. She work every day of her life man.

Q She seem pretty nice you know we talk to her earlier.

A She so sad man. My mother fucking kids man so sad.

Q So you went over there the earlier morning hours this morning to score some dope? What were you gonna do cocaine?

A Yeah.

Q Powder?

A I snort cocaine yeah.

Q How much were you looking to get?

A Twenty.

Q Just a little bit, just for yourself?

A Yeah. (Inaudible) you know I don't get high like (inaudible).

Q You're not like a feign or anything like that are you?

A Naw man cause I mean I was fend to start the plant this week man.

Q Okay.

A What happened man, the dude that I deal with I went to school with all my life.

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Q Who's that?

A Chris.

Q Chris. Okay.

A This mother fucker nigga that shot me back in the day, he ran out the house on me man with gun.

Q2 What kind of gun did he have?

A A big mother fucker, I don't know what it was.

Q2 Was it a revolver or semi-automatic.

A It was a revolver.

Q Well let's go through what happened? You're talking about this morning right?

A I'm talking about when he got out.

Q Let's talk about what happened this morning, what happened? You went over there to score some cocaine?

A Yes sir.

Q You knocked on the door?

A I knocked on the door.

Q Okay.

A Chris said, "Who is it? I said, "Short" That's what he call me in the street.

Q "Show"?

A "Short".

Q Oh "Short".

A Cause I was little Jeff but I had a son now I'm B.J.

Appendix G

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Q Okay.

A So I knocked on the door and Chris said, "Who is it?" I say...I say it's B.J. He didn't know me by that cause my son's six months old. I said, Little Jeff man right? This mother fucking came barging outside man and he shot at me.

Q Who? Now hold on, let's go real slow okay? Chris opened the door first?

A Yeah.

Q Did you talk to Chris?

A For a second.

Q2 Was it the front door?

A Yes sir.

Q2 Right there on the porch?

A Yes sir.

Q2 Okay.

A He pushed, that dude, he pushed Chris out the way.

Q Okay.

A With a big ass gun.

Q What was you...wait hold on slow down just a little.

A Okay.

Q When...I want to take it just step by step....little baby steps you know?

A Okay. I'm a take it...

Q You were on the porch, you knock on the door and Chris comes out and I think....let me see here.

A He didn't come out.

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Q That's a picture of Chris?

A That's him.

Q Did you guys talk through the screen door or something?

A Nope. He opened the door, but he didn't come out.

Q Okay.

A But by the time he....

Q So you're conversating with Chris now?

A Yeah. Cause he's a friend of mine's. We went to school together.

Q Sure. You guys knew each other...yeah.

A You know what sir, if I wanted to commit a murder, I wouldn't have went in my girl car.

Q Yep.

A I just put 20" rims on that car.

Q Yep.

A It was Gold, I got it painted Black.

Q Um huh.

A Listen, when I came in...when he came to the door, that's what they do. They snort cocaine all night.

Q Yep.

A The dude that's dead, they stay like this all day.

Q Um huh.

A He pushed him out the way like and he pulled it out and I said, "Damn!" I said, "Man please man." I said, "Please man I say I just come to get me a little powder dog."

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Q Um huh.

A That mother fucker said, "Nigga, I'll kill you nigga." I say man, "Why dog you shot me once man?" That mother fucker, we tussled for his gun, I end up with it. His shit okay.

Q Where is the gun at now so we can get prints off it if it's his gun?

A I left it.

Q Where did you leave it?

A On the porch.

Q Oh at the scene?

A Of the scene.

Q After you shot him?

A I shot his ass.

Q Um huh.

A With his shit.

Q Okay. So you guys were, if I can just slow you down a little bit, you were on the porch and you're talking with Chris...

A Yeah.

Q And what were you talking to Chris about? Scoring some dope?

A He got it?

Q Yep.

A The nigga that's that's dead?

Q Yep.

A He's a user.

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Q He the dope man?

A Dope fiend.

Q Oh okay. He uses.

A He a dope fiend.

Q Okay.

A He pushed Chris out the way and grabbed me.

Q Yep, but what I'm saying is you were asking for some dope and just on your own...minding your own business trying to get some...get some powder?

A You know what sir, if I was gonna kill that mother fucker...

Q Um huh.

A And y'all know y'all Officers. I'm a tell y'all the truth. If I wanted to kill that mother fucker, which I fuck with some raw mother fuckers around here.

Q Um huh. Sounds like it.

A I would have walked.

Q Um huh.

A My shit was in front of his house.

Q I know.

A Running.

Q Yeah.

A The car was running.

Q Yep. Parked right in front of the ride? That's that black car right?

A Yes sir. He pushed that nigga out the way and did this to me dog.

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Q Um huh.

A I can't take it. My doctor told me...I was in a coma three and a half months man.

Q Um huh.

A When I woke up I ain't know who the fuck I was.

Q Was that when you were shot the last time?

A Yeah. And I was on my way to prison then. I got jumped in a house party. I did some shit, but anyway that mother fucker came outside with a shot...that long ass...maybe a .357...maybe a .38.

Q Yeah.

A So I say, "Damn!" I'm scared cause I ain't have shit.

Q Um huh.

A No gun.

Q Was it a revolver?

A Revolver.

Q What did it look like? Was it black, silver, chrome?

A Black.

Q Black? How big was it?

A A big mother fucker.

Q Do you know what model it was? Like a make?

A Huh?

Q Do you know what make it was like Smith & Wesson or Reuger or anything like that?

A No sir.

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Q You don't know?

A No sir. I wouldn't lie to you.

Q You don't know guns that much?

A Yes I did.

Q Okay. But you knew it was a revolver?

A And it wasn't no little mother fucker. That bitch was the size of....from here to there.

Q Okay. So it was a big gun?

A A big mother fucker. I was scared.

Q Was it black?

A Black.

Q Okay.

A I was scared for my life.

Q Wooden handle or black handle?

A Sir his hands so big I couldn't see the handle.

Q2 What was it in your hands? Did you notice?

A Huh?

Q2 Once you got it when it was in your hand....in your hands....

A I was scared for my life.

Q2 You didn't pay attention to what (inaudible).

A Hell naw!

Q2 How many times did you fire that gun?

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A I don't know. Till it was empty.

Q Where did hit him at? Do you know.

A Don't know.

Q You don't know?

A Cause that mother fucker had...he tall as y'all.

Q Um huh.

Q2 He big. He's a big guy. We seen him.

A That mother fucker choked me....

Q Around your neck?

A Choked the shit out of me. I was just slobbering. Then I say damn I got to get this gun from this dude.

Q You got any marks on your neck where he was choking you?

A He scratched the fuck out me or something. I don't know if it's still there, but he did.

Q I don't see any scratch. I see a mark on your face from when you was running.

A That ain't no shit...that ain't nothing.

Q2 Why would he come out last night with that? And why did he shoot you the first time? What is that all about? What's.... He shot you the first now he threatening to...shooting at you?

A A lot of guys in my neighborhood they don't like me at all. Cause I fuck with the Burt Street. They don't like me at all.

Q2 Okay.

A Here me. He was the dope man and he started using; fell off.

Q2 So he had a fall from grace when he became...

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A He hate everybody now. That bitch came outside....Chris didn't come outside cause he was like, "Shit you mother fuckers, I don't know about this shit." You know what I mean? I'm sober as hell.

Q Um huh.

A He came outside and the mother fucker up the bitch and stuck that bitch right in my stomach.

Q Um huh.

A Like this and I'm tussling with the mother fucker, tussling with the nigga right? And I fuck around and got it.

Q What did Chris do when you guys were tussling?

A He closed his door.

Q Did he close it?

A He closed his door.

Q Okay.

A He closed his fucking door.

Q Just left you out there all alone?

A Left him all alone.

Q Um huh.

A And the mother fucker grabbed me and we tussled and I happen to get my hands on it.

Q Um huh.

A Sir, I'm sorry.

Q2 How long did you fight for it? Was it quick? Was it long?

A It....he...it was...it was...it was quick.

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Q2 It probably seemed like forever didn't it?

A It seem like it was forever, but it was quick.

Q2 Okay.

A You know to be honest, it was quick.

Q Yeah.

A But that mother fucker was big. I couldn't do nothing with him. That mother fucker put that bitch in my stomach and said, "Nigga I'll blow your mother fucking belly out nigga like I did last time."

Q So now he shot you back in '98?

A Yes sir.

Q When you got shot. Did you report that to the police?

A No sir.

Q Why not?

A Cause you know why? Cause the street rule, the guys I fuck with?

Q Um huh.

A If I'd told somebody you'd a found me dead a long time ago.

Q Um huh.

A I'm just telling y'all the truth.

Q2 We want you to be honest.

Q Well that's what we want. We want the truth.

A If I'd told...called y'all and been like, "Well a mother fucker just...."
They...they'd a shot at me.

Q Um huh.

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A (Inaudible).

Q (Inaudible).

A Before that shit happened...

Q Um huh.

A I had never known him to be there.

Q Um huh.

A Answer the door...he barges outside with his shit out. He was meant to kill me.

Q Um huh. Why did he...do you think he just seized the opportunity when you were there knocking on the door?

A He was like, (inaudible).

Q How often do you go there to get your powder?

A Not often.

Q Not often?

A Not often.

Q2 So it wouldn't have been like he was there waiting for you cause you don't go there very often and...

A Nope. Nope. He wasn't waiting for me.

Q2 And you didn't know he was gonna be there.

A I don't even know what he drive.

Q2 Okay.

A It wasn't like he was waiting on me....

Q2 Right. You just crossed paths at the wrong time.

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- A It was just like this... Damn right. It was just like this, he came outside...he came outside he was like this. That cocaine have you like this.
- Q Um huh.
- A And the nigga, I seen his face, he was fenda kill me.
- Q Um huh.
- A Fuck that.
- Q Yep.
- A If you look in my wallet sir I got pictures of my babies and I love them.
- Q Yep.
- A And that's only why I'm hurt.
- Q And you had that with Nash right? Is that who your babies mama?
- A Yeah. That's the only one...that's the only reason why I'm paranoid and scared cause I'm gotta leave them man.
- Q So what happened after this happened? You guys fought...what you say happened to the gun?
- A I left it on the porch.
- Q Okay. Did you just drop it, through it down?
- A I dropped it.
- Q Okay.
- A No blood's on the shit.
- Q And what'd you do? Where did you go?
- A I left.
- Q Okay.

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A I didn't even know if the dude was dead.

Q You got in your car?

A I didn't know he was dead.

Q Okay.

A Cause he was still....

Q Where did you ah....

Q2 Did you know if you had hit him when you shot?

A He was hit.

Q2 You knew that?

A In the leg.

Q2 Okay.

A He was hit in the leg.

Q Yep. Where else was he hit? Do you know?

A Don't know.

Q Okay.

A You know what I mean?

Q Um huh.

A The mother fucker was hit. I knew he was hit cause he fell.

Q Um huh.

A And he was like, "Ahhhh".

Q He was talking at that point, yelling?

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- A But when I got...to go into my car when I dropped the gun to go into my car, the mother fucker was still trying to get the gun.
- Q Oh was he? So did you have to shoot him again or?
- A It wasn't nothing left.
- Q No more bullets left in the gun?
- A He ran trying to run back to the car, but his leg it wouldn't allow him to sir.
- Q Yep.
- A That bitch was trying to ki....I got witnesses and ain't nobody got to lie for me.
- Q Who's your witness that was with you? We know somebody was with you.
- A Wasn't nobody was with me.
- Q We know somebody was with you.
- A Wasn't nobody was with me sir.
- Q No man, I don't know. See we got to...you got to...we have to know the truth. We need him to back up and verify that you're telling the truth.
- A Un uh. You know what? It wasn't a guy, it was a bitch.
- Q Oh who was with you?
- A A bitch.
- Q Who's the girl?
- A My sister.
- Q Okay. What's your sister's name?
- A We'll talk about that later. Is that all right?
- Q Well me need to make sure she can corroborate your story.

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A Well.....

Q2 And we're gonna need to talk to her.

Q We're gonna need to talk to her.

A Okay.

Q2 She was there and if she...

Q Yeah. I mean if she can corroborate your story we're good.

A Listen, this sister, you know how a mother fucker, I don't know if y'all like black people is or whatever, you know how a bitch be your sister?

Q Um huh.

A Say you her sister and all the time you fucking her?

Q Yeah. So it's not your sister it's your girlfriend?

Q2 You're not blood sisters?

A Fuck naw. Bitch wanted to get high.

Q What's her name?

A Tina.

Q What's her name?

A Don't know.

Q Don't know her last name huh?

A Never tried to fucking get together you know what I mean?

Q Sure.

A That powder make you horny.

Q Oh I know it man.

A You know what I mean?

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Q So you left there with Tina.

A I left there with a bitch.

Q Okay.

A She was scared. She was like, first she was steady telling me to come on, come on, come on.

Q Okay.

A I was like, "Bitch listen, I'm fenda get this shit, but when I seen Chris..."

Q Where do I find Tina at?

A World-wide.

Q World-wide?

A Anywhere that bitch can get a blow from.

Q She just anywhere huh?

A It...I wouldn't lie to you sir, anywhere that bitch can get some dope from, she'll get that dope. She like a trick.

Q So what did you do? You left?

A I left sir.

Q Where did you go from there?

A I went to the west side.

Q Okay. And what did you do over there?

A I went to sleep.

Q Where did you go over there?

A I was sick. My stomach was sick.

Q Um huh. It should be after something like this.

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A I'm talking about no, after this right here.

Q Did you call the police at all or?

A No.

Q No. Okay.

A Cause I feel like they wasn't gone try to be on my side no kind of way.

Q Okay.

A So I mean like I said ah the guys I deal with, it's like the police ah they...y'all good guys and everything, y'all protect the neighborhood. Yeah I appreciate y'all and everything right, but I would be a dead mother fucker if I'd a call the police and they'd a came where I was at.

Q Yep.

A Mother fucker would have blew my brains out. (Inaudible).

Q Where did you go on the west side?

A I went on Cleveland.

Q Cleveland Street?

A Yes sir.

Q Whereabouts?

A Cleveland and ah....it's on Madison. Madison and then it's Cleveland. I don't know the address sir.

Q Okay. Whose house is it? Do you know?

A It's ah you know a person that get high too. A bunch of freaky ho's that wanted get high.

Q Okay.

A And I was fenda get the dude and go straight there. I usually go in the house man at 8 o'clock.

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Q Um huh.

A But wasn't nobody around with the dope.

Q So you went over there, it could have been Cleveland and Granger area?

A Cleveland and Granger.

Q Does that sound a little bit like it?

A Anyway.

Q You need to ah blow your nose or anything?

A (Inaudible).

Q So ah where did you go from there? When did you wake up?

A I woke up this morning and said, "Damn I fucked up."

Q Yeah.

A But you know what? I could have been fucked up. My cousin, I know y'all know everything, my cousin Woody Douglas, south side niggas killed him. Burnt his truck up. He fried in that mother fucker.

Q Yep. I worked that case. We both did.

A We couldn't see that body. That's my fucking blood cousin. My other cousin, his brother, fucking stabbed his brother in his heart and killed him.

Q Yep. (inaudible) his own brother and killed him, that's right. Were you there when that happened?

A No. I wasn't there, but you know what? Three of them bitches just had jumped me.

Q Um huh. Why they jump you?

A Cause I'm from the east side, they from the north side. I don't look at it like that.

Q Yeah they're all a bunch of....

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A I look at it like family is family.

Q That's right. You know.

A You understand what I'm saying?

Q Oh yeah. I know that.

A Oh I get the bad end of the stick all the time. (Inaudible) all the time.

Q Where were you gonna go once you left from Granger Street? Is that when you went up in the north side?

A Yeah.

Q Why did you got to north side.

A Cause ah they're my enemies and they wouldn't expect me over there.

Q Yep. So you figured it a be a good place to hide out?

A I wasn't trying to hide out. I was just trying to relax myself....(inaudible) mind man, my kids.

Q Okay.

A I went over there, but I know I felt it. I seen that blue Impala. I said, "Shit." My auntie them...my auntie them don't have nothing to do with it.

Q Yeah. Who came and ah...is that where your auntie lives over there in the north side?

A Yeah.

Q Okay. Is that her vehicle that you were

A No.

Q ...we were chasing you in?

A No. She don't own a vehicle. She weigh about 600 lbs.

Q All right.

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A She don't drive.

Q All right. Where do your auntie live at do you know?

A Ah fucking....you know I don't go over there. It was one of them new houses.

Q Okay. So you were over there then somebody come to pick you up?

A Yep.

Q And you got in that vehicle? What kind of vehicle was that?

A In the back seat.

Q2 Mountaineer.

Q Mountaineer. You were in the back seat?

A Yeah. When I seen that blue...

Q And then you rolled in front of that blue vehicle.

A I seen...naw I seen a blue...(inaudible).

Q Um huh.

A I took a lot of bullets. My cousin shot me four times in the back of the head and I got....and I got...he hit me in my stomach. (Inaudible). The mother fucker. They steady telling me to stay, to stay. I said naw. I don't want nobody in trouble. I'm a take my own rap. I'm a soldier. I been doing this shit for years.

Q Um huh.

A You know what I mean? I don't fuck with nobody. Ask my neighbors...I keep my yard up.

Q Um huh.

A I take care of my business.

Q Um huh.

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- A I'm trying to get a job at the plant.... It's over now, but you know what?
That nigga was fend to kill me man.
- Q So where were you going when we come across you in that Mountaineer?
- A I was trying to get the fuck (inaudible).
- Q Okay. Where were you gonna go?
- A I don't know. I told that mother fucker to just drop me off anywhere.
- Q Who was it that was driving?
- A Dave.
- Q Dave who?
- A I don't know him he go with my auntie. That ain't even his truck.
- Q He goes with your auntie?
- A That ain't even his truck.
- Q Okay. Yeah. It's your aunts truck.
- A He was trying to get me the fuck away and I was telling him bro' just stop
the car, cause he was making them turns...he did that "U" turn in
Genesee, I said, "Man stop." I hit my head like three four times, "I'm like
stop." I ain't have my seat beat on.
- Q He was hauling ass man.
- A Cause people (inaudible).
- Q Um huh.
- A Right. I said, "Bro' just pull over the truck man. They all ready got us bro'.
They coming from everywhere." It's like Nextel's two ways man.
- Q Um huh.
- A If you want a mother fucker dead, hit a nigga on that Nextel, he'll be a
dead mother fucker.

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Q Um huh.

A Just like y'all shit.

Q Yep.

A Right?

Q Right. So obviously the chase was on and we end up getting you here and then now we're sitting here right now so that basically runs us through the whole day. Let's go back to 1998, where were you at when he shot you at in the stomach? You say he shot you six times?

A Naw. I been shot six times all together.

Q You been shot six times.

A My cousin shot me four times in the head.

Q In the back of the head?

A In the back of the fucking head.

Q What they bounce off or? Oh yeah. I see that....they must have ricocheted huh?

A .32. He shot at an angle.

Q Okay.

A And they (inaudible).

Q So obviously nothing happened with that right?

A Well my head swole up.

Q Yep. But you didn't prosecute or anything? Did you call the police?

A I ain't catch....nope.

Q Did you go to any hospital?

A No.

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Q Okay. Where did you go (inaudible).

A Naw, you know what? I ain't go to the hospital. You know what happened?

Q Um huh.

A I woke...I was drunk. I woke up in oranges.

Q And that was it huh?

A I don't even remember what happened. I was just drunk.

Q So what ah...and then how your stomach...how did that shot?

Q2 That's when he did it right?

A Yeah. He shot me.

Q And that you're saying was Dedrick?

Q2 That was in '98?

A That was in....naw he shot me...he shot me in '98. Why? Cause that mother fucker right there call himself slapping my mama dog and that's what happened.

Q So he slapped your mama back in '98?

A And that....I had...I owned guns....

Q So you were going after him or what?

A No. He seen me again. Tough mother fucker...fucking tough guy man.

Q So he used to date your mama?

A No. My mama and his mama had words.

Q Oh okay. I gotcha.

A He walked up and slapped the fuck out of my mama.

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Q Oh.

A (Inaudible).

Q Now I'm catching on.

A Send me to the electric chair. Don't you fucking do that.

Q Um huh.

A But after the words, I walked away. The bitch hit me in the back. Mother fucking guts on this side came out. Like fish guts.

Q So he shot you?

A Like fish guts. Hit me with a .38.

Q As you were walking away.

A I'm a show you....I'm a show you.

Q I see the whole right there. Yep. Shot you in the back and that's where it come out.

A He shot me.

Q And that's how the stomach come out afterwards.

A Yeah. It blew that out. It blew that out.

Q Yep.

A I let it slide. I ain't no problem maker.

Q (Inaudible).

A I ain't no problem maker right? Okay so I (inaudible)...that cocaine have that mother fucker like....you know what? I'm driving one day and he....I'm madder than a mother fucker. Like, "Errr"....like, "B what the fuck is you doing?"

Q Is this the first time you've seen him since '98? I mean you've had to seen him before?

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A I see him every day. It's...it's....same area.

Q Um huh.

A This my area. Burt Street area.

Q Why now would he all of a sudden come after you like that?

A High. I'm trying to get high.

Q Yep.

A He like this already.

Q All stoned huh?

A That ain't even his house. He pushed the house man out the way and came out like this.

Q Yep. What did he tell you when he come out?

A He said, "Nigga." He said, "Nigga, bitch ass nigga I'll kill you right now." I'm just like...I ain't got no gun. I say....I say man just (inaudible) it ain't...I ain't come for that man.

Q Okay.

A I just come for some shit man. I'm trying to leave. That mother fucker said...

Q Yeah. He stuck the gun right in your guts right?

A Right. Because he already know what he did with the gut.

Q So now how did you wrestle it away from him?

A He did it and he was too close and I snatched that bitch.

Q Yep.

A He a big man. We was like this right here...we was like this right here and the bitch went off.

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Q Okay.

A The revolver went off and he was like, "Ahhh."

Q Um huh. So he must have got shot in the leg?

A He had to.

Q Okay. So he falls to the ground and then you say when you were walking away (tape ended).

A (Side B of tape). He was on the ground like this, but he was steady trying to...

Q He was trying to go after the gun?

A He was trying to get the gun.

Q Okay.

A This was like after firing a sixth shot.

Q Yeah. And it was empty.

A He was trying to kill me.

Q Did you empty the gun out on him?

A I think so.

Q And then you threw it down cause it was empty? Did you click a few times after...

A You knew why I threw it down?

Q Un uh.

A I said I would have a better case if I left the weapon. Somebody in that house got that weapon.

Q Yep.

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A That white woman...(inaudible) cause they buddies. I left it with my prints on it.

Q Yep.

A No lie. I didn't ride away with it. No sir I didn't.

Q When you left, he was on the porch trying to go after the gun?

A He was still alive.

Q Yep. Okay. So then you left and went on down the road?

A I left. Cause I was like damn, I don't know I hope this mother fucker live, but then again I hope he don't live cause this bitch is gone get me cause he gone call the police.

Q Yep.

A I fucked up sir.

Q I tell you what man it don't look good. Who's that guy right there?

A He shot at my car too.

Q Who? Donald Isom did?

A He shot at my auntie car last night.

Q Oh did he? Why did he shoot at your auntie's car?

A Cause my nephew fucking this bitch that don't want him no more.

Q Um huh.

A He shot at....

Q Why would (inaudible) shoot at your car?

A He shot at my car cause don't nobody like me man.

Q Um huh.

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A He shot over some bull shit.

Q I heard you and him are tight?

A No! We got the same tattoos.

Q Okay.

A And we grew up together. But that bitch right there, he snitched on a murder.

Q Oh did he?

A My home boy doing 14 years now. He tote a fucking .40 caliber with 30 rounds...31 rounds in that bitch extended clip every day. (Inaudible) mother fuckers parked on the side of the house.

Q Who's that joker?

A He ain't nobody.

Q He ain't nobody? You know Johnnie Lee? Did you see him yesterday?

A Who?

Q Johnnie Lee?

A Him?

Q Yeah.

A Probably ah during the day.

Q What about last night about 9:30...10 o'clock in front of his crib?

A Naw. I ain't seen him in front of his crib.

Q You ain't see him?

A Naw. I ain't see him. You know what? They always be out you know I see mother fuckers and I don't see them. I mean if he ain't work shit, what the shit I'm dealing with you for.

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Q Exactly.

A He the type of dude he get drunk.

Q And you get high. Now you were sitting...or excuse me, you didn't see him yesterday at all?

A Who?

Q Lee.

A Who is Lee?

Q Johnnie Lee. The guy that I just showed you that picture. Remember you said he was always out in front of the crib.

A I seen him.

Q Did you threaten him with a gun?

A No.

Q You didn't threaten him with a gun?

A No sir. No I....

Q Who was in the ride with you when you saw him?

A Wasn't nobody in the ride with me sir.

Q They said it was. They said that there was some dude in there.

A (Inaudible)...you know what they trying to do to me?

Q Um.

A I bought some cocaine from them right?

Q Yeah.

A They gave me some fucking roach powder.

Q Oh did they? The (inaudible) around (inaudible).

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- A And you know what? His mama know I'm a good person, she sent my money back.
- Q Did she.
- A His ass ain't got nothing to do with nothing. I ain't never threatened....if I threaten a mother fucker, I'll get rid of him. Just like I'm all shot up and shit.
- Q Well I tell you what? I tell you what? When you go to a scene, see I been doing this for a while.
- A I know you have, I can tell.
- Q Why you go to a scene okay? There's something what they call physical evidence. The physical evidence corroborates whether you're telling the truth or not.
- A Um huh.
- Q Physical evidence is shell casings, stuff like that. We knew a revolver was used cause there ain't no shell casings.
- A You know but they got...well I'm a tell you something what else they got that y'all didn't know about. You know they got AK's with shell casings.
- Q Oh them jokers were everywhere. Oh yeah.
- A Silencers and everything.
- Q But there weren't no AK's used last night.
- A No sir.
- Q Naw an AK wasn't used.
- A I'm not gonna lie to you.
- Q Oh yeah.
- A Cause I know I'm gonna (inaudible).
- Q We know that it was a revolve that was used last night.

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A Yes sir. His revolver.

Q And from talking with the witnesses there were other people up and down the street that saw two people walk up to the porch....you and another guy.

A No.

Q People sat out on there porches (inaudible).

A No.

Q Okay. Another fact too....

A It was a bitch with me.

Q Um huh.

A It was a chick.

Q Now here's another thing, when you go to a scene and people are shot in certain places.

A Um huh.

Q Okay.

A Um...

Q Some times when people are shot in certain place, lights are out.

A Where he get shot at?

Q Ain't no more talking, there ain't no more nothing.

A Can I ask you a question?

Q I think you know where he got shot?

A No I don't sir.

Q Oh you were there when he got shot. You shot him.

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A I shot him. Yeah I shot him. Fucking aye I shot him, with his gun.

Q Yeah. Well I don't....

A Cause I'm saying where he get shot at though. I'm talking about between me and you. I'm talking about where he get shot at that killed him?

Q I believe he got....I believe you shot him okay. Here's what I don't believe, I don't believe that you left the gun there. You took the gun with you okay?

A No.

Q Cause we've had too many people tell us that you still have the gun okay?

A If I just hurt a man, why would I keep the gun?

Q Well a lot of times, people do that to get rid of the evidence you know. That's why people run and try to hide it. You know they don't come forward and tell the police.

A I ain't burn rubber or nothing.

Q You know I called you in the middle of the night. All you had to do is call me back.

A But I....listen, listen I turned my phone off. But you know what? There was so many people calling me.

Q Your phone was being used. I was tracking it.

A All night?

Q Not all night, but it was being used.

A You know what? I got people using my phone...(inaudible).

Q Um huh. Okay.

A I mean people get my voice off of it.

Q Here's the ticket why I don't believe everything you're telling me okay. And here's what I tell you I don't believe; you got to clear up okay?

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Somebody else was there with you in the vehicle all right? And they had a gun that other person in the vehicle okay? And as far as him getting shot, I think you were mad at him and I think you did shoot him, but when he was shot in the back of the head and when he was shot, the lights went out.

A He got shot in the back of the head?

Q There wasn't no more crawling, no more walking, no more chasing after a gun....

A He was moving sir.

Q It couldn't have happened.

A Sir he was moving sir.

Q Where he was shot in the back of the brain it went right through his brain. Lights were out.

A Sir...

Q The minute that bullet hit him.

A Sir....

Q And here's the problem okay?

A Um huh.

Q When you get shot in the back of the head....

A I know that.

Q That corroborates that he's running away.

A When it go through your skull you're done.

Q That he's running away. He was shot in the back of the head.

A He wasn't running away.

Q It's not defensive when you're running away.

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A We was tussling the whole time.

Q Um huh.

A He...I didn't know I shot him in the back of the head.

Q How did he get popped in the back of the head?

A I don't know.

Q You don't know?

A I went to shooting like I told you before.

Q Yep.

A I know I hit him in the leg and I know he fell.

Q Um huh. Why didn't you call the police at that point and say there's a guy there hurt and shot and he tried killing you?

A They in the house. It was they job. The mother fucker Chris, he know the whole play, but since that's his home boy.

Q Um huh.

A What the fuck I look like telling on somebody I fuck with? You know what a rat is?

Q Oh I know and that's why you don't want to tell me who was with you okay? Now like I said, I been doing this a long time.

A I know. I can look in your eyes man.

Q I know somebody was with you. I know they were. You just don't want to tell me. All right. You just don't want to tell me all right? I know it. You just don't want to give him up.

A You know what you know.

Q And that shit about Tina, that's not true, it's fake. I can tell cause first you said it was your sister, then you can't tell me who Tina is. I get this all the time. All the time. People only want to tell me a little bit of the truth.

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Okay? But I need all the truth on this one. I need all the truth. Somebody's got to corroborate that it was an accident or it was self defense. The guy who can corroborate that is the other guy that was with you. The reason you don't want to tell me who that guy is is because he probably won't corroborate that it was self defense, but if he's gonna corroborate it's self defense, I got to talk to him. I got to talk to him so I know you telling me the truth.

A I'm telling you the truth, but if you feel like it was a guy with me....

Q I think it was.

A Listen, I'll give you (inaudible). Ain't no problem. You know what? Them mother fuckers tried to kill me sir. Do it look like I can take another....

Q Well we need him....

A Listen, do it look like I can take another shot to you?

Q No, you can't. You can't at all.

A My doctor told me when I left the hospital, when I come out the coma in three in a half months, you bet not even get stabbed.

Q How do I get him on the horn? How do we talk to him?

A Well he probably gone.

Q What do you mean he's gone?

A Fled.

Q Where would he be?

A Mississippi.

Q Well who is he? We're gonna find out eventually. It just shows more corroboration that you're telling the truth if you tell us now.

A Sir let me tell you one thing about (inaudible).

Q Yep.

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A I'm not trying to...I know you do your job.

Q Yep.

A Sir, I did not tell you that. Just give me what's coming to me.

Q Yep. Yep. And see that's all we want is the solid truth okay?

A Just give me what's coming to me. I can not say it.

Q You can tell...I can tell when somebody's lying and when they're not lying.

A I know.

Q Because of the physical evidence and the corroboration of the physical evidence. You know I talked to Chris and you know I talked to the white people in that house over there and what they tell me....

A Did they tell you that he pushed him out the way?

Q And what they tell me makes sense...it makes sense.

A Did he tell you he pushed him out the way? Did they tell you he shoved me earlier that day?

Q Nope. They didn't say that. I don't think they knew about that.

A Shit. They shot of that porch.

Q Where did that happen at?

A They shot off that porch.

Q In that house?

A Off that porch.

Q Okay.

A It was a .22 or something. It was like, "Pap, pap, pap, pap." And I turned my radio down and was like...and they was like, "Mother fucker just shot at you."

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- Q Let's start over again? And let's go through what happened okay?
- A Okay. Let's do it...let's do it...let's do it.
- Q You showed up with this other guy that you don't want to tell me who he is. You guys went up to the porch.
- A To score powder.
- Q Okay. Cause there were two of you on the porch right?
- A It was three. Including him.
- Q Okay.
- A Including the dead guy.
- Q And it was you and this other guy that you won't tell me about, Chris was at the door and the dead guy right?
- A And his white girlfriend (inaudible).
- Q They were in the house, but Chris slammed the door eventually and ran inside right?
- A Yep.
- Q Okay. What did your buddy do when the dead guy started pulling the gun out?
- A Shot him.
- Q Who shot him? Your buddy?
- A Yes sir.
- Q Okay. What did your buddy shoot him with?
- A I don't know, but he told me. It was big.
- Q Big? Was it a semi auto?
- A No.

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Q Revolver?

A It don't leave shells.

Q Huh?

A It don't leave no shells.

Q Oh. It don't leave no shells?

A Um huh.

Q Okay.

A Revolver.

Q So it was a revolver? What kind of revolver was it? Was it chrome?
Black?

A Black.

Q Black?

A (Inaudible).

Q Big?

A Big mother fucker.

Q What was it? A .44 cause that's big.

A Let me tell you what it is.

Q Um huh.

A This bitch turned a 9mm to a .357. Changed the fucking middle part.
That's all I can tell you.

Q So he took a 9mm and changed it to a .357?

A He got the middle section to do that.

Q So it's like a revolver...I mean a semi auto an he turned it into a revolver?

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A No. It's a fucking...it's a fucking .357.

Q Yep. A revolver.

A You know how the ball pops out.

Q Yeah.

A You pull the thing out and pop the ball out.

Q Yeah. The round thing the bullets go in.

A And he put a 9 in there.

Q Okay. So he's got a revolver that you put 9....

A No. Two different guns. It's like one gun in two.

Q I see. It's harder to trace.

A But when the mother fucker put the gun in my stomach.

Q Um huh.

A My people shot him.

Q Okay. Your buddy shot him. And then you wrestled the gun away from him and...

A Cause he had it in my belly and he...and he know how my shit is.

Q Now see what I mean? we're getting a little bit closer to the truth.

A Well I'm a tell you the truth.

Q And I'm talking about corroboration evidence.

A I understand.

Q Your buddy here is gone. It would really help if we knew who he was and he's got to corroborate what happened.

A I can't do nothing.

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Q You can't.

A No.

Q Okay.

A I mean just give it to me.

Q Well we're getting a little closer to the truth.

A Give it to me.

Q Okay.

A Cause you know what? My kids can't grow up like.

Q Do you want to know what I think happened?

A What?

Q I think you and your buddy went up there acting like you're score some dope okay? Now just tell me if I'm wrong or not, but this is just what I think.

A Um huh.

Q You know? Ey I been doing this for awhile. Sometimes I take a shot at it you know?

A Yeah, try to tell me.

Q Yeah. So I think you guys went up there and you acted like you wanted to score some dope, but really you're pissed off with him for some reason and I don't know why. I haven't figured out. I can figure out maybe you're pissed cause he shot you in the guts you know in '98. That'd piss me off, but this a long time. You've seen him since then.

A Naw, he been picking.

Q I figured there had to be something going on.

A He been picking.

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Q He's picking at you?

A They shot at me the same day.

Q Yesterday? He just keep picking at you?

A I told you he took his big ass van and did my car like this man.

Q Yeah. Yesterday?

A No, not yesterday.

Q Oh just every...that was a while back?

A Yeah.

Q But I thought you said he shot at you yesterday?

A He shot at me yesterday, but I'm talking about (inaudible).

Q From that house?

Aoff the porch.

Q Okay.

A And it was Chris, that white chick....

Q Yep.

A And three more other guys.

Q Yep. See now we're getting a little more of the truth because I know why you went back. You went back cause you're pissed cause he's been picking on you and he shot at you.

A Look, he didn't see...I didn't see none of his vehicles.

Q Yeah.

A That mean he was wrong.

Q Oh yeah. Big time.

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A He hid his shit.

Q But see you didn't go back there...you didn't go back to get dope; you were pissed at him.

A No I wasn't.

Q You were mad at him. That's why you went up there and you knocked on the door....

A You know what?

Qyou brought your buddy with you with his gun and you said, "Bring your...bring his ass out here" because you're mad at him.

A No, no, no, no, no sir. We gone talk right.

Q Okay.

A We gone talk right.

Q Okay. I wasn't there so I don't know.

A I know you're a detective.

Q Um huh.

A I know you're a smart man.

Q Um huh.

A That nigga car wasn't there.

Q Um huh.

A That's how you identify a person.

Q Um huh.

A His vehicle.

Q It was right in the driveway. When we got there you know it was right in the driveway.

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A It was right in the driveway?

Q It was in the driveway.

A It wasn't.

Q It was right in the driveway.

A It wasn't there. It wasn't there.

Q That's what I figured earlier this morning is that you saw it and figured that some of a bitch is there so you're gonna get his ass.

A Un uh. It wasn't....they must have made a store run. When they fuck with that cocaine a lot.

Q Um huh.

A They drink a lot.

Q Yep.

A It wasn't there.

Q Yep.

A Sir I swear to god it wasn't there.

Q Um huh.

A I fuck with Chris for years.

Q Um huh.

A If I'd a seen his car, it's plenty of powder houses.

Q Um huh.

A I wouldn't have even stopped. That bitch shot at me broad daylight.

Q But that's what I say, I think that if you got shot at yesterday, let's think common sense now okay? You got shot at yesterday by him when you

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drove by that house, why would you go back there at night to score some coke and bring your buddy who got a gun?

A People tote. Everybody....people get killed.

Q I mean it don't make no sense man. Like I said, I think what happened is you guys went there and you got so pissed off, cause I'll be honest with you straight up, nobody leaves their car in front of the house if they go there to do that shit.

A I'd a walked.

Q The shit don't happen....that's right you walked up. You got out there and you got mad. You saw him....you got pissed you went up there and the shit was on.

A You know what it was? Know what it was? That bitch pushed the house man out the way and came out on me.

Q Um huh.

A I said, "Damn! Where this nigga car at?"

Q You know what? I need to know who your buddy is that was with you so that we can get the truth.

A I can't tell you that man.

Q That's the only way we can get the truth.

A It's gone fuck everything up for me man.

Q Oh yeah it's gonna fuck it up I think. You know why I think? Cause I'll be honest with you. I don't think you're telling me all the truth.

A Sir...

Q I don't believe the part about you going there and him rushing you. I don't think he rushed you. I don't think he rushed you.

A Yes the fuck he did!

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Q I think you went there to shoot him because you're pissed off at him. Dude...if....Jeff, he shot me in the guts...if he shot me in the guts and if he shot at me yesterday when I rode by I'm gonna be pissed.

A I'm 28. Go look at my wallet...go look at my wallet. I love my children.

Q Oh I know you love your children. Everybody loves....

A No. Me as a young man.

Q Jeff, you're not an animal. You're not. Good people make mistakes every now and then. You're not an animal. I know you're not. You're sitting here and you're talking civilized...we're getting down to the bottom line. We're finally getting the truth about what happened.

A But they ain't telling....

Q We're that close, but you're still not telling me everything.

A They not telling you the truth over there though.

Q Well that's why I need to know how to corroborate the truth.

A It's two sides of the story.

Q Okay? Number one, I need the gun. I know you left with the gun okay? You left with the gun. The gun was not left there. It wasn't left there. The white people are too cooperative. They would have held the gun there for us. They wouldn't have gotten rid of the gun.

A You think so?

Q Oh I do.

A Fuck that! The sell dope out that house every day, all day.

Q And I don't believe that the gun, you didn't leave, you took it with you. You brought the gun to the scene with you. You brought the gun. You brought it with you. I know you did.

A (Inaudible).

Q You brought that with you.

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A You just...that's just some homework for you.

Q Oh no, you brought the...

A My people from Mississippi always have it.

Q Um huh.

A Why should I have it.

Q Is that where you was gonna go is Mississippi?

A No. I was going to fucking Mexico.

Q Who is this guy? Is he related to you? This other guy you want tell me who he is.

A A good buddy of mine's.

Q Good buddy? Is he from Saginaw or from somewhere else?

A He from Mississippi.

Q Mississippi?

A He dangerous.

Q Sounds like it. Everybody said he's a nasty looking bugger man.

A Mother fucking dangerous.

Q That's what everybody said. Even your boy over there ah Lee. He said when you guys showed up yesterday, you got out the ride and confronted him and he said he thought you were a little high. You were acting a little crazy and your boy was sitting in the ride. You know he was scared? He was scared shitless. You know it was about 9:30.

A Who is Lee?

Q The guy I showed you earlier.

A The coward?

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Q Huh?

A The coward.

Q Well you call him a coward?

A Yeah.

Q Johnnie. Johnnie Lee.

A I saved that bitch life before.

Q Did you?

A That bitch got shot by the north side....

Q But the key is you were over there yesterday. Why did you go over and threaten him with a gun?

A I didn't!

Q You didn't?

A Fuck naw!

Q Okay.

A I didn't!

Q All right.

A Ask his mama. His mama treat me better than they treat them. They sell dope...fake dope over they mama head all day. His mama will hug and kiss me man and God is my witness we could call her up right now.

Q Okay.

A They fucking disrespect they mama every day.

Q You tell me right now how do you prove to me that this was self defense?
How do we prove it?

A How do we prove it?

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Q Yep. How do we prove it? Who do we have that can tell me this was self defense? Sounds like the only guy is this guy that fled and went to Mississippi?

A He ain't fled.

Q He still around?

A Yeah.

Q Well?

A Well sir I can't do certain shit. I'll be dead. I'll get killed in prison you know? (Inaudible)...this shit you know people get involved in certain shit.

Q Yeah. Oh I know. Is that your oath to the gang in a sense?

A I got that shit when I was like 18. I'm 28.

Q Um huh.

A It's forever there.

Q So in a sense you'll go down...

A I got (Inaudible)...

Q ...you'll go down for this whole thing? Even though your buddy was there with you?

A I can't fucking tell on him.

Q Yep.

A And if y'all give it to me, give it to me. You know what? I feel safer that way...

Q Jeff all I do is want the truth. We're that close.

A I'm telling you...I'm telling you the truth, but they're not telling the truth over there though.

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- Q Yeah, but the only way I can corroborate whether they're telling the truth versus you're telling the truth is if I get the truth out of you. What you're telling me is not matching the physical evidence. We're a little bit off. Just a little bit off.
- A How we off?
- Q We're off from the stand point of he got shot. He got knocked down in the leg okay?
- A Um huh.
- Q Then he got shot in the back of the head.
- A In the back of the fucking head?
- Q Who shot him in the back of the head?
- A I thought the nigga got shot in the body?
- Q How did he get shot in the back of the head?
- A Can't tell you.
- Q Couldn't tell me?
- A No, but I'm gonna tell you.
- Q Um huh.
- A The bitch as nigga got shot in the leg and he was still fighting.
- Q Um huh.
- Agetting his gun back.
- Q Um huh.
- A I don't care what you say sir that was his shit!
- Q Um huh.

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A Cause ain't no mother fucking way a mother fucker gone shoot at you broad daylight and come outside naked.

Q Yeah.

A That motherfucker came out with his shit and we was wrestling with it.

Q Yep.

A And I got it.

Q Yep.

A I used to go hunting. I got that mother fucker.

Q Um huh.

A And I be God Damn if I be a concrete mother fucking soul laying in that casket.

Q Yep.

A Fuck him. God forgive me.

Q Well here's the thing I don't want to see. You're not that bad of a guy. Good people make mistakes. You got kids. You got your girlfriend okay. I don't want you to go down for this whole thing.

A That bitch right there...that bitch right there.

Q Yep.

A He tried to kill me dog.

Q Oh yeah.

A That bitch shot at me ten times.

Q He wasn't with you last night?

A I don't fuck with him no more!

Q You stay away from him huh?

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A He shot my auntie shit up last night.

Q Okay.

A She made a police report yet?

Q And that's Donald Isom?

A She made a police...

Q How you know he shot your auntie's stuff up last night?

A Cause his bitch getting fucked by my nephew.

Q Um huh.

A My nephew that shot me.

Q Um huh. Okay. So it's all an internal type thing?

A He ah...that bitch shot at my mother fucking black Impala, my wife Impala. He shot, I was driving, he shot at that mother fucker ten times. I got wholes all in my mother fucking top of my car.

Q Um huh.

A That could have been head wounds.

Q Okay.

A But you know what? That nigga there?

Q Um huh.

A Is a dirty mother fucker. Y'all want his ass don't y'all?

Q Um no. I want the truth about what happened today. What I want to know is I need to know who this other guy was that was with you so that we can corroborate that you're telling the truth. That's all. I just want the truth.

A I'm fenda to get life huh?

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Q I tell you what? I'm gonna be straight up honest with you, this is your point and time to make your destiny as to what you're gonna do. It's all in your hands okay? We have to make a determination. There's a first degree murder, which is life no parole. There's a second degree murder; you're gonna get out some day. Some day you're gonna get out on second degree murder. I can't make any promises. There's a manslaughter out there too. That's fifteen years, but like I say I can't make any promises. That's something that the Prosecutors all determine. But you know how they determine that? By what I tell them. By what I go in there and tell them you told me. Right now, with what you're telling me, I'll be straight up honest with you, that look like a first degree murder to me. Cold blood.

A No shit?

Q Cold blood. That's what I'm seeing. Okay. That's what I'm seeing. I need to have the whole truth about what happened.

A Sir, he barged out that door and that mother fucking Chris that live there? He ain't nothing but 90 pounds soaking wet.

Q Yeah. I know. He a little guy.

A He pushed his little ass out the way and pulled that bitch out and rushed me.

Q Yep.

A I almost fell over the rail.

Q What do you think a guy should get for something like this?

A Sir, give me what you got to give me.

Q What do you think a guy should get?

A Mother fucker....look at what that nigga did to me? Look at what the nigga did to me? Do what you got to do to me man.

Q Is that what it's all about? I mean were you pissed at him cause he's fucked you over the years?

A No.

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Q He shot you?

A No.

Q Man I'd be mad as hell.

A I ride by him everyday. That mother fucking broke ass nigga.

Q Um huh.

A I ride 20" rims, fresh paint.

Q Yep.

A Own houses.

Q Um huh.

A Fuck that! No! It was not.

Q Okay.

A I was trying to get high.

Q I don't...here's what I say...think. I don't believe that he come at you with a gun. I don't really believe that he shot at you yesterday. I just don't see it.

A I don't believe that?

Q I don't believe it. It just don't make sense.

A Get my phone.

Q What you got on your phone?

A A witness.

Q Who's the witness?

A My uncle.

Q Okay.

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A And he work at the plant, Delphi for 20 years.

Q Okay.

A Get my Nextel.

Q What's his name?

A Baldie Goodman.

Q Baldie?

A Goodman. He...he was on the same block we was on. That bitch shot at me six...seven times.

Q How do I get a hold of Baldie?

A I fenda...get my Nextel up and give you his number.

Q All right. That'll work. I'll give him a call and he'll tell me he shot at you huh?

A Damn right.

Q Was he with you?

A Was he with me?

Q Yeah.

A Baldie?

Q Yeah.

A Naw. Baldie wasn't with me, but he was on that block.

Q Well how you know if he was on that he....what's the number?

A His...Baldie number fucking 9-8-0....(inaudible) fuck! I hate to make a call man....2-3-2...you know that Nextel is like your brain.

Q Oh yeah. You keep all your numbers stored in there.

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A 2-3-3.....

Q Think about it for a minute. I'll be right back okay?

A All right.

Q I'll be right back just give me a minute. Yeah you know what? I think your phone may still be in the vehicle. There were two phones in the vehicle.

A Where is it at?

Q That Mountaineer? That's over at Mike's Wrecker. I'll have to go over there tomorrow and get it. Can you remember?

A Yeah. I got the number in my head now.

Q Okay. Go head.

A 9-8-0....

Q Yep.

A 2-3-4-5.

Q4-5. Okay. I'll call Booty and...Baldie and check into that.

A And I ain't got to say shit. He gone tell you whatever happened. He a old cat. He ain't got nothing to do with nothing.

Q All right. What else do you think I need to know? Something I forgot to ask you? I know we been going over this for quiet some time.

A Let me see all them pictures I got sir?

Q Huh?

A Let me see all them pictures you got?

Q Picture of what man? I ain't gonna show you everything I got. I can't show my whole hand brother.

A (Inaudible).

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Q I can't be doing that. This the dead guys.

A That nigga dead?

Q I got a picture of you. Huh?

A He dead.

Q Oh he dead as hell.

A (Inaudible).

Q There's your boy Chris and there's ah...there's your boy I already to talk with him and I got a picture of you in there.

A Let me see me?

Q That's you man. It was almost gonna say "Wanted" up there for murder.

A It was gonna fenda say "Wanted"?

Q Oh yeah. It was gonna. Hell you were all over the T.V. today. Didn't you see yourself on T.V.? I mean you knew we wanted you. It was put right on T.V. Wanted for murder.

A Wanted for murder. I never thought I'd be there.

Q Yeah, it ah...I'm surprised you stuff around this long. I'm surprised you didn't take off in the middle of the night.

A People was telling me to, but I ain't wanna go.

Q Yeah.

A You end up...you running and running and shit. I'm like un uh.

Q Yep.

A They get you ass...they got your ass.

Q Gone get you eventually anyway. The truth always come out in the end.

A You damn right. You can't hid.

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Q Yep.

A (Inaudible).

Q Yep. The truth always comes out in the end.

A Sir, can you do me a favor?

Q What's that?

A Can you tie my shirt up in a knot? I don't like mother fuckers seeing my shit like this.

Q We'll get it straight. We'll put your shirt back on you.

A He tore it off me.

Q Oh yeah.

A And beat my ass.

Q We'll get it back on you. We got to turn them cuffs around and put them on the back of you?

A Ah just a minute.

Q (Inaudible).

A Just tie it in a knot.

Q Yeah. He's can tie that in a knot on the top. (Inaudible) reach around there like that.

A Damn! I'm wanted for murder.

Q Yep. Well that's what happens you know when we go to a house and find a guy dead and you're the guy that ran you know?

A That bitch shot me. Was he fucked up in the back of the head you said?

Q Oh yeah. You got him good.

A How you know I got him good?

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Q (Inaudible).

A Get out of here man. You a good guy, but get that out of here.

Q Come on man!

A I ain't shoot that bitch in his head.

Q You got him good. I betcha what happened was you hit him in the leg and that mother fucker is down on the ground crying like a little bitch and then you walked up behind...you walked up behind him...

A Naw we was tussling...I'm a tell you...my people hit him to get him off me....he...we had...I had...we was wrestling for his gun.

Q Um huh.

A My people knocked his ass down with that .44.

Q Yep.

A God damn it. Right?

Q Unnnn....

A And I grabbed it.

Q I think....somebody knocked him down. Somebody hit him in the head and took him down.

A I tell you my people knocked him down cause he had me.

Q But then somebody walked up behind that mug and (inaudible).

A How many times he got hit?

Q Lights out.

A How many times he got hit?

Q How many times you think?

A I'm asking you sir?

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Q Oh I'm just curious.

A I mean cause you can shoot a gun...I was a hunter with my granddaddy.
He could hit a mother fucker and he a police officer.

Q Um huh.

A He could hit a mother fucker and that bitch would jump and miss a mother fucker.

Q Um huh. Oh you can miss easily. You missed a few times.

A How many times he got hit?

Q You only hit him three times?

A Where?

Q I told you earlier. He was hit in the legs and right in the head.

A That's two.

Q No. He was hit twice in the leg.

A Twice in the leg?

Q Um huh. That's why he went down...that's why he went down so quick.

A Yeah. Cause that nigga had that gun in my shit like this.

Q See the one that took him out though is that shot to the back of the head.

A Blow his brains out.

Q A back of the head....well you did a pretty good job. Didn't blow a whole out the front.

A Why you saying I did a pretty good....

Q It didn't do ah....

A You trying to make me frame my self.

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Q It didn't come out the front.

A It didn't come out the front. It stuff in the middle though.

Q Oh yeah. Yeah you took him out good.

A Look at my shit though. What the fuck?

Q Yeah I know. It took him out good. He had a pretty thick skull, ah but yeah that's ah that's the ticket. I'm a keep your card. You a good guy. I try. I try.

A Bob Ruth.

Q So ah we'll come over tomorrow and ah we'll come over tomorrow and ah we got to talk to the Prosecutor...

A Take me to jail man.

Q Yeah. We gonna talk to the Prosecutor a little bit. We'll come over there tomorrow and see what we're gonna do.

A You're gonna take me to jail?

Q Yeah. Have a seat just for a minute okay?

A Sir, I'm ready to go to jail.

Q And we're gonna...we'll take you over there. Just have a seat for minute okay? I'll be right back with you.

A (Inaudible).

Q They'll get you one over there. Ah what's your address dude? Where you lay your head? Over your girlfriends house? 445 or 449 ah....

A No.

Q Where's your crib at?

A Where they raided at last night?

Q Fourteen ah...

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A My mama's house.

Q Your mama's house?

A 1416 S. 15th.

Q 1416 S. 15th.

A That's where they raided at last night. And they went in there last night and everybody....

Q We was there looking for you.

A Huh?

Q We was there looking for you. I was there.

A I know you was (inaudible).

Q I called you man. I was just one step behind you.

A If...if...I was fucking...if I had a fucking knew you called me man. I would have called you back.

Q I called you man. I left a message man. It's right on your phone.

A I was fucking paranoid.

Q You should have called me man, we could of got it straight. Steve, I forgot to ask what were you wearing last night or this morning?

A Steve? Jeff.

Q What's that?

A I'm Jeff.

Q You Jeff. I'm sorry. Steve? Jesus Christ. I'm tired. I've been up all night man. See you got to sleep. I didn't get to sleep.

A I wasn't sleep man.

Q I been up all damn night. What were you wearing?

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A You looking for me?

Q Huh? I was looking for you all night man.

A You was?

Q Hell I was tracking your cell phone man. I was one step behind ya.

A Fuck a Nextel. I ain't getting no more. Y'all made them mother fuckers.

Q I was that damn close to your ass.

A I'm getting fucking ah a minute phone.

Q And hey, when you were over on Granger and Cleveland, I missed you by one second. I just missed your ass.

A You were over there?

Q I just missed your ass.

A You was over there? How you know I was over there?

Q Damn straight. I got ways. I got ways.

A Bitches been snitching on me huh.?

Q I got ways.

A A bitch been snitching on me? Tell me the truth.

Q Naw, naw, this...I can't tell you who told me?

A I ain't say tell no name. I said was it a bitch?

Q No. No. It wasn't a bitch. I'll be straight up honest with you on that. It was a guy. I'll tell you that much, but you were seen over there on Granger and ah Granger and Cleveland. You were seen...I just missed your ass and then I got with the phone company and just about a half hour later you were up on...up in the Norman area...you were right up in the Norman area. I mean I was just a step behind the whole way. And we actually got lucky see (inaudible) in the vehicle.

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A How y'all see me in the back seat?

Q We been watching your family vehicles?

A Y'all have?

Q Yeah.

A I didn't know that.

Q We were watching your family vehicles.

A You know what my favorite show is?

Q Huh?

A You know what my favorite show is?

Q What is it?

A Channel 69. When they be figuring out all these murders (inaudible).

Q Oh yeah.

A 48 hours....24 hours....

Q Yep.

A You be the murderer.

Q Exactly.

A But if I was to go and kill that man, I'd a have a mask on...I'd a fucking been leathered up and I'd a went to kill that....

Q That don't happen though like that. I've been doing this a long time. People don't do it like that. They go....they're so pissed off when they go to do it, they just go do it cause they're mad and they don't even give a shit who's standing there watching. That's rage.

A I wasn't pissed.

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Q That's rage. That's all. You were pissed. I know you were. You was mad as hell I bet when you walked off that porch, you and your buddy got in that ride, you was mad as a mother fucker when you cruised away from there.

A I wasn't pissed.

Q You were mad at him. And you probably got satisfaction after you did it. What were you wearing las...this morning?

A You telling me the truth like you know me. I wasn't pissed.

Q I bet that's the truth though isn't it?

A I wasn't pissed.

Q Oh yeah.

A Naw.

Q Oh okay.

A Cause you know what? I'd rather for his mother fucking family be riding in that long, black mother fucker (inaudible).

Q Um huh.

A My mama crying.

Q Um huh.

A I'll go do what I got to do.

Q Um huh.

A I ain't no bad mother fucker.

Q Yep. I think that's what happened. I think you were mad at him and you got his ass for some reason.

A Call that number and see didn't that bitch shot at me broad daylight.

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Q Okay. I know that's why you went back and shot him. That's probably why.

A You saying I shot the mother fucker. You just gone tell me...

Q What were you wearing ah wearing this morning?

A This morning or last night?

Q Well when it happened....when the incident occurred?

A Jogging pants.

Q Jogging pants. What kind of shirt?

A A hoodie.

Q What color were they?

A Black.

Q What kind of shoes were you wearing?

A Ah Reeboks like these.

Q They're not those though that you're now?

A No.

Q Where are those clothes at?

A Gone.

Q Where did you put them?

A Burned them.

Q Burned them? Why the hell did you burn them?

A Cause I killed the mother fucker. I'm telling you the truth.

Q Obviously. And that's what we want is the truth. That's what we want.

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A I burned them.

Q I understand. Where did you burn them at?

A B.V.

Q In B.V.? Where at? Out in the woods or?

A Yeah.

Q Dumpster?

A B.V. In a 50 gallon drum.

Q Oh yeah. At somebody's crib?

A Just at an abandoned house. Burnt that shit up with gas.

Q Yeah. Cause see most people don't take the time to burn clothes cause it attracts attention. They generally go and...

A Naw cause B.V. them mother fuckers burn wood all day.

Q Oh do they? All the time?

A Hell yeah!

Q All right. So what about the gun? Where did you dump that?

A How you figure I dumped it?

Q Because I know you dumped it. Guns...away after a murder like that, it's just like you burned your clothes. It part of the planning process after the fact. You got to plan after too you know? You got to get rid of the clothes...

A You sound so fucking outrageous. You sound so outrageous that...that....that ah you said...you said I was so outrageous I couldn't thing and it wasn't his gun. You told me that. Wrong. That mother fucker tote a gun every day.

Q I still think you brought this gun to the scene yesterday.

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A Naw, but my people had one, I didn't.

Q Yeah. I think you brought the gun to the scene.

A Naw, not for him.

Q That's what it sounds like. So the clothes are gone; you burned them up. What else ah did you have any doo rag in your head or anything or just like you are right now?

A I don't wear a doo rag.

Q Did your buddy burn his clothes too?

A He split.

Q He split right after that?

A He split. Ain't no sense in hanging around.

Q Naw. Hell no.

A Mother fucker gone...fuck ah...shit he would have never shot that mother fucker wouldn't have put that gun to my stomach. You ain't see that. I know y'all smart mother fuckers, but you ain't see that mother fucker put that gun to my stomach.

Q Um huh.

A I don't give a fuck who did what, that bitch put that gun to my stomach and was fenda to pop that bitch. His boy closed his door before it went down.

Q Um huh.

A And he was steady saying, "Dex." "Dex." Naw bro'...naw bro'. I said, "Hey bro' please man? Please...." I beg for my mother fucking like man.

Q Um huh.

A Look, hey man, I lost a family man.

Q Yeah it is. You know things happen and all we can do now is get through it...get through it the best we can. Good people make mistakes man.

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A They fend to give me life.

Q Well probably. Probably.

A I don't give a fuck.

Q I'll be honest with you probably.

A They fend to give me life huh?

Q Yeah. I would almost think so unless you can work a deal out with the Prosecutor and your Attorney and maybe he can work a deal out for a second and maybe get a term of years.

A Like what?

Q Oh I don't know. Sometimes if you plead guilty....

A They got people doing 18, 20, 25.

Q Exactly. You know some people do. They do a shorter term. At least they see end. They can maybe get out.

A Well listen, I'd rather be....I'd rather...you know what? I ain't gone lie to you Officer.

Q Um huh.

A I'd rather be in there than out here. Mother fuckers die for nothing.

Q Yeah they do. Absolutely nothing. Yep.

A That little mother fucker got hit...that little mother fucker got hit on 10th, that mother fucker got shot 28 times.

Q Um huh.

A And he was 19 years old.

Q Yep.

A And that shit really hurt me.

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- Q Yep. A lot of the stuff going on in the street is just wrong.
- A Man you know the streets is the streets.
- Q Yep.
- A You got a Glock don't you?
- Q Oh yeah. Sure do.
- A .40?
- Q Oh yeah.
- A (Inaudible).
- Q Yep. .40.
- A Bad mother fucker.
- Q Oh yeah. Forty is a bad gun man.
- A Young boys it with the 31 shot clip though.
- Q Oh yeah. I know they do. They got tons of bullets out there.
- A They got clips though.
- Q They got tons of bullets.
- A They can't shoot like you though.
- Q Oh no. We get trained. That's the problem.
- A Mother fucker hit yo' ass in the back of yo' shit....bop!
- Q We train to shoot straight man. Sit tight. We'll be back with you in a minute okay?
- A Man I'm ready to go to jail.
- Q Yeah. We're gonna take you there in a minute. Let me see your shoes there bud real quick. Just hold it up.

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A I got like 10 pair of these.

Q You got about 10 pairs of them? What kind were you wearing last night...this morning?

A White.

Q White ones? What were they? What make?

A Same Reeboks.

Q Reeboks huh?