SUPREME COURT OF THE UNITED STATES

BELINDA DENISE JONES
Petitioner-Appellant,

Supreme Court Case No: 24-6449

-vs-

JEREMY HOWARD, WARDEN
Respondent-Appellee,

Case # 24-1164
EDM No: 2:22-cv-11237

Petition for Rehearing of Writ of Certiorari to consider substantial grounds not previously presented in the request for Certiorari and to consider intervening controlling authority from the Michigan Supreme Court

Now comes petitioner, Belinda Jones, in pro per, pursuant to Supreme Court Rule 44.2, requests and says in support thereof that:

1) Due to word limitation, petitioner was unable to present the following substantial ground before this court: Miranda rights and rule violations.

2) The Michigan Supreme court has recently issued a controlling case of People v. Allen, MSC No: 161605, which addresses this court's standard announced in Stickland v. Washington which has an intervening controlling effect over petitioner's ineffective assistance of counsel claims, raised in this case. This case affects many different people. Rulings in lower courts are interpreting the law in different ways, adding their own separate additional standard for an important legal issue, requiring their added standard. Therefore, there are inconsistencies. Holding Petitioner to this more rigorous standard is contrary to clearly established Supreme Court precedent. Id.; see also *United States v. Day, 969 F.2d 39, 45 n. 8 (5th Cir. 1992)* (holding Strickland's prejudice prong "does not require certainty or even a preponderance of the evidence", but only a "reasonable probability" that the results would have been different.). The Supreme Court of Michigan agrees. – *See People v. Allen, MSC 161605.* This is clearly a higher standard than Strickland's "reasonable probability" standard. See

See Magana v. Hofbauer, 263 F.3d,542, 550 (6th Circuit 2001)

A WRIT OF HABEAS CORPUS SHOULD ISSUE WHERE THE HEARING COURT SHOULD HAVE GRANTED PETITIONER'S MOTION TO SUPPRESS HER OUT OF COURT STATEMENT TO DETECTIVES. WHERE A REASONABLE PERSON IN PETITIONER'S SHOES, TAKING ACCOUNT OF PETITIONER'S MENTAL RETARDATION WOULD NOT HAVE FELT HERSELF FREE TO TERMINATE QUESTIONING BY THE POLICE DETECTIVES.

The Claim Involves Clearly Established Federal Law

The United States Supreme Court has long held that the 5th, 6th and 14th Amendments protects the rights of persons in custody of the police be advised of the constitutional right to remain silent or have the assistance of counsel. *Miranda v. Arizona, 384 US 436; 86 S.Ct. 1602; 16 L.Ed.2d 694 (1966)*. Miranda qualifies as "clearly established Federal law" under 28 U.S.C. § 2254 (d) (1) for purposes of advising a person of their rights to remain silent claims on habeas review.

Petitioner claims that her rights to due process and a fair trial as guaranteed by the Fifth, Sixth and Fourteenth Amendments, as determined by the United States Supreme Court, 28 U.S.C. § 21254(d), were violated when the police detectives failed to at any point advise her of her rights during custodial questioning, and then, thereafter, using her custodial statements against her at trial. Additionally, the totality of the circumstances for a person with Petitioner's low intelligence. would have believed that she was not allowed to leave. *Miranda v. Arizona, 384 US 436; J.D.B. v. North Carolina, 564 US 261, 271; 131 S.Ct., 2394, 2402; 180 L.Ed.2d 310 (2011).*

The Constitutional Violation

Because the totality of circumstances show Petitioner was "in custody" when police detectives interviewed, hours after the incident for which she would later stand trial, and because the detectives admittedly did not advise her of her Miranda rights before taking her statement, the hearing judge should have granted the defense motion to suppress that statement which the State used to support

the conviction. *[ECF No. 4- 15, Page ID.1470 – 1538]* Before questioning a person in custody the police must advise the person of their constitutional rights to remain silent or to have the assistance of counsel. *U.S. Const, Amendments V, VI, XIV; Miranda v. Arizona.* Whether a criminal defendant is in custody for purposes of Miranda is determined by looking at the totality of the circumstances, with the key question being whether the accused reasonably could have believed that he or she was not free to leave. *People v. Jones, 301 Mich. App. 566, 580 (2013); People v. Roark, 214 Mich. App. 421, 423 (1995).* The test is an objective one intended to relieve the police of "the task of anticipating the idiosyncrasies of every individual suspect and deciding how those particular traits affect each person's subjective state of mind." *J.D.B v. North Carolina, 564 US at 271; 131 S.Ct. at 2402.* But the police are not free to ignore readily discernible characteristics that make the person being interviewed objectively more likely than an average adult to feel herself compelled to submit to police questioning. If, for example the person being interviewed is a child (or suffers from mild mental retardation which the police knows), the custody determination is made by asking not whether a reasonable adult would have believed herself free to leave, but whether a reasonable child (or retarded person) would have so believed. *J.D.B. v. North Carolina 564 US at 272.*

By parity of reasoning, the reasonable-person test must also take account of intellectual disability. Intellectual disability is a characteristic that, like chronological age, bears an "objectively discernible relationship to a reasonable person's understanding of his freedom of action." *J.D.B. v. North Carolina, 564 US at 275; see also id. at 291 (Alito, J., dissenting)* (recognizing similarity between chronological age and intellectual capability as factors). Just as it is commonly understood that children are more likely than adults to be "overawed and overwhelmed" by interactions with police that would leave an adult "cold and unimpressed," id. at *272 (quoting Haley v. Ohio, 332 US 596, 599; 68 S.Ct. 302; 92 L.Ed.2d 224 91948) (plurality opinion)*, it is commonly understood that persons with intellectual disabilities are more likely than average adults to feel compelled to acquiesces to police requests. [C]ommon and well-known psychological characteristics" of the

intellectually disabled include "unusual susceptibility to the perceived wishes of authority figures"; "a generalized desire to please"; and difficulty "discerning when they are in an adversarial situation, especially with police officers, who they generally are taught exist to provide help." Police met a second time to interrogate as suspect. A person of average intelligence wouldn't have kept answering police phone calls, to follow their command that they must meet again, wherever they are now. Morgan Cloud et al., Words Without Meaning: The Constitution, Confessions, and Mentally Retarded Suspects, *69 U. Chi. L. rev. 495, 511-13 (2002) cited in United States v. Preston, 751 F3d 1008, 1022 (CA 9, 2014) (enbanc)*. As observed by L. Entzeroth, Putting the Mentally Retarded Criminal Defendant to Death; *Charting the Development of a National Consensus to Exempt the Mentally Retarded from the Death Penalty, 52 Ala. L.Rev. 911, 917 (2001):*

> [M]ental retardation may have a significant impact on an individual who finds himself involved with the criminal justice system, particularly in the context of confession and interrogations. * * * Many mentally retarded people may be less likely to withstand police coercion or pressure due to their limited communication skills, their predisposition to answer questions so as to please the questioner rather than to answer the question accurately, and their tendency to be submissive.

See also P. Hourihan, Earl Washington's Confession: Mental Retardation and the Law of Confessions, 1 Va. L. Rev. 1471, 1743 (1995) ("Mentally retarded persons are more susceptible to coercion, more likely to confess falsely, and less likely to understand their rights than people of normal intellectual ability"). And just as they are more susceptible to police coercion during a custodial interrogation, the mentally retarded are also more susceptible to the impression that they are, in fact, in custody in the first instance." *People v. Braggs, 209 III 2d 492, 510-11; 810 NE.2d 472, 484 (2003), as modified on denial of reh'g (Apr. 15, 2004).*

In this case, Petitioner asked the Michigan Courts to adopt the view of its neighboring state, Illinois, to protect its mentally retarded citizen constitutional rights against police coercion and pressure that produces custodial statements. To this date, the Michigan appellate courts have not

decided the question. The Illinois Supreme Court has ruled that intellectual disability, like chronological age, must inform the Miranda-custody reasonable person standard. As the Illinois Court explained, "[i]f . . . we are concerned with what a reasonable person 'in the defendant's shoes' . . . would have thought about his or her freedom of action, the reasonable person we envision must at least wear comparable footwear." *People v. Braggs, 209 III 2d at 508*; accord In re *D.LH., Jr., 2015 II 117341, ¶ 51, 32 NE 3d 1075, 1088 (2015)*. Michigan courts failure to take the same view "involves an unreasonable application" of *Miranda v. Arizona. See Williams v. Taylor, 529 US at 407-408; 28 U.S.C. § 2254 (d) (1)*.

The totality of the circumstances here include that Petitioner had already been questioned hours earlier. Then while driving her injured son to/from the hospital, she received two phone calls from a police officer, then a detective-lieutenant, to meet with her again. Two detectives driving an unmarked SUV met her at a McDonalds restaurant and pressed her again for her version of events. One of them told her he'd spoken to three others who were there, and asked her to revise her version of events in light of those conversations. The circumstances made clear their accusation: She was a liar, and it was time to change her story. She was isolated, not free or allowed to even briefly answer her ringing cell phone call, nor roll down window nor say a word to her half-sister Ahronda who tried to approach her, while in back seat of detectives' car.

True, she was not in a police station, and (at least according to the police version) she was never told she was not free to leave. But also never told that she was free to leave; and when her sister tried to get her police even yelled loudly at her and didn't let petitioner out, until they were done. Indeed, once she had given the police what they wanted, they opened the car door and then let her go. A reasonable person of average intellect might not have thought herself in custody. But a reasonable person in Petitioner's shoes, with a comparable intellectual disability would have viewed things very differently. "Unusual susceptibility to the perceived wishes of authority figures," and more susceptibility not only to police coercion but "to the impression that they are, in fact, in

custody in the first instance" - - - these common attributes of the intellectually disabled, when factored into the totality of circumstances presented here, strongly suggest that a reasonable person of Petitioner's intellectual; limitations "could have believed herself not free to leave," *People v. Jones, 301 Mich App at 580.* She was therefore in custody. Detectives Emerson and Gilbert came back for specific purpose of getting her to change her story/interview and they should have advised her of her Miranda rights. Detectives Emerson and Gilbert said they had no audio or video recording of any portion of the interview. Therefore, nothing to memorialize who all was there, what was actually said and done, other than their "average" memory, as Detective Emerson stated. No independent proof of how it actually happened, to accurately preserve their and petitioner's verbal statements, actions or instructions. However, as Earnessa tried to tell the court, McDonald's restaurant manager said that they do have a recording of entire incident, but can only release it to Police; which petitioner and her family told attorneys and family immediately told police, including Clinton-Township Police Captain; but Emerson said they never requested this very relevant video, because "there was nothing really to show", even after they failed to record it at all, even from their smart phones. *[Exh I - ECF No. 4-1, Page ID.163–164; 225–227] [Exh J - ECF No.4-33, PageID.3481, 3494]*

The state trial court ruled against suppressing the statement ruling, in part:

> "I recognize, the Court recognizes that there is significant pressure placed on defendants when they are in the presence of police officers to comply with orders, with their commands, and **it would have preferable at that point to have her waive her rights via a Miranda warning**; however, under the totality of the circumstances, I don't find that Miss Jones was in custody for the purposes of the statute and for the purposes of cases law, and therefore, her statements would come in."
> *[See Suppression Hearing Transcript dated March 13, 2015, at pg. 79]*

The Michigan Court of Appeals let stand the trial court ruling that the police should have given Petitioner her Miranda warning but, never-the-less, affirmed Petitioner's conviction:

> Both the United States Constitution and the Michigan Constitution guarantee the right against self-incrimination. *US Const, Am V; Const 1963; art 1,*

> *§ 17; People v. Bassage, 274 Mich App 321, 324; 733 NW2d 398 (2007).* "Miranda warnings are not required unless an individual is subjected to custodial interrogation." (citations omitted). A person is in custody where the "person has been formally arrested or subjected to restraint on freedom of movement of the degree associated with a formal arrest." "Whether an individual is effectively 'in custody' is based on the totality of the circumstances," and "depends on the objective circumstances of the interrogation rather than the subjective views harbored by either the interrogating officers or the person being questioned."

See Exh C - Unpublished Opinion of the Michigan Court of Appeals, Case No. 330113, dated 8-22-2017, pg 1-4, accompanying these pleadings in the Exhibit. The factual findings by the Michigan Court of Appeals is "an unreasonable determination of facts" in light of the evidence presented. *See Miller-El v. Dretke, 545 US 231 (2005); 28 U.S.C. § 2254 (d) (2).*

In this case, The Michigan Court of Appeals "unreasonably" blames Petitioner for not presenting evidence "to show that her mental disability impaired her ability to understand the circumstances surrounding the giving of her statement" but, it was the Hearing Court that prevented the development of the record of her mental retardation with the testimony of her other sister, Earnessa Bennett. See Hearing Transcripts dated March 13, 2015, at p. 64 – 65. Ms. Bennett had all the information related to Petitioner's mental retardation and attempted to give testimony related to it. The court dismissed her testimony as irrelevant. Petitioner has a "limited intellectual capacity," she has "been diagnosed with "mental retardation," and had a "low IQ score". These factual predicates were put before the Michigan Court of Appeals during their de novo review of this claim, yet, the Court affirmed Petitioner's conviction. *[Exh E - ECF No.4-4, PageID.492–495; ECF No.4-3 Page ID.387 & 408] [See COA Appeal # 330113 Filed 7-27-2016; ECF No. 4-15, Page ID.1470–1497; ECF No. 4-15, PageID.1517-1521]*

Petitioner requests that his court should issue a conditional writ on this constitutional ground and order a retrial in this matter without the use of Petitioner's custodial statement.

PETTIONER RAISED HER INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS WITH THE STATE COURTS, EASTERN DISTRICT OF MICHIGAN, 6TH CIRCUIT COURT and WITH THIS COURT Claim III.(A), (C)
See Habbeas Corpus Claims III (A), (C) and Conclusion at pages 38 – 43 and 45

Recently the Michigan Supreme Court in People v. Allen, SC No. 161605, reversed and ordered a rehearing for Allen on the claim of ineffective assistance of counsel holding: "The Court of Appeals erred in holding that "[b]ecause Allen was not deprived of a substantial defense . . ." and that "The defendant was not required to show, in order to obtain relief for ineffective assistance of counsel, that trial counsel's failure to call witnesses deprived him of a substantial defense." *[See Exh B – People v. Allen, Michigan SC: 161605; People v Allen, ___ Mich App ___ (2020), slip op p 10.]* In denying Petitioners writ of habeas corpus, district court held that the state court's legal determination was not contrary to this court's clearly established law in Strickland. *[See Exh D – Dist Ct denial of Writ at pg 27, ECF No. 16, PageID.7850]* Michigan COA denying petitioner's post-conviction relief, held that "defendant has not presented any exculpatory evidence or shown that she was denied a substantial defense." *[Exh C - MI COA Opinion 8/22/17 at pg 7]* However, in Allen, Michigan Supreme Court held that the burden of establishing deprivation of a substantial defense was not required and is not within the parameters of Strickland's 2 prong test. Also, 'defendant need not present exculpatory evidence in order to meet the *Strikland prongs'. (Id.) Strickland v. Washington, 466 US 668; 104 S. Ct 2052; 80 L Ed 2d 674 (1984) and People v. Trakhtenberg, 493 Mich 38, 51; 826 NW2d 136 (2012)*. The state court decision denying petitioner relief, because she didn't present exculpatory evidence or show she was denied a substantial defense is contrary to the 2 prong test announced by this court in Strickland. In Strickland, this court held that defendant only need to establish that counsel acted unreasonable and that unreasonable performance prejudiced the defense. (Id.) See Strickland.

Without the correct number of stab wounds and the non-life-threatening affect of those injuries,

the jury was left with the false medical testimony and records provided by Dr. Pietrangelo only. The Michigan Court of Appeals decision respecting the prejudice prong is contrary to Strickland. The State court although not specifically citing Strickland, again cited some cases that correctly cited the Strickland standard. Ultimately, the Michigan Court of Appeals found no prejudice, because 'petitioner failed to show that but for counsel error she was denied a substantial defense'. *[Exh C – MI COA Opinion, pg 5-8]* Thus, the State court required petitioner to show not a reasonable probability, but an absolute certainty that the outcome of the proceedings would have been different. This is clearly a higher standard than Strickland's "reasonable probability" standard. *See Magana v. Hofbauer, 263 F.3d 542, 550 (6th Circuit 2001)*

Counsel's failure to investigate potential defenses or discover expert forensic evidence may amount to ineffective assistance of counsel – *See Strickland v. Washington 466 U.S. 687 – 688 (1984); Rompilla v. Beard, 545 U S 374 and 389 – 390 (2005); Melendez-Viaz v. Massachusetts 557 U S 305 at 319 (2009)*. The court recognized that invalid forensic testimony contributed to convictions in 60 percent of cases. Petitioner's case adds to this 60 percent and was required to show that she was deprived of a substantial defense. *[Exh C -COA Order, dated 8-22-2017, pg 5-6]* In the case at bar, trial counsel admitted he did not know that there were only 3 stab wounds, despite having the information in his hand. *[Exh F-Affidavit of Larry Polk, ECF No.4-3, PageID.444-445]* In this 2nd Degree Murder prosecution, it was critical for the fact finders to hear that there were only three stab wounds and they were deemed non-life-threatening, in helping to determine the reasonableness of her actions to defend her son; in their determination of truth and if guilty of 2nd Degree Murder, or a lesser offense. *Strickland 466 U. S., 695.*

In *Strickland 466 U.S. at 694*, the Supreme Court of Michigan has re-established this court's Strickland standard on January 27, 2021 – *See People v. Allen, MSC 161605*. The Supreme Court of Michigan decision in Allen applies to Petitioner's case retrospectively, as petitioner was still appealing her state court conviction throughout the state courts. *(Circuit Case # 2014-3317-FC)*

The Supreme Court of Michigan overturned the Court of Appeals' holding that a criminal defendant 'must show under Strickland that he was deprived of a substantial defense by his trial counsel before he is entitled to a new trial under the Sixth Amendment' - *People v. Allen, MSC 161605,*

Petitioner raised the claim of ineffective assistance of counsel, for counsel's failure to present medical professional Dr. Saad as a defense expert witness on the number of stab wounds to the victim and that those injuries were on his left side and non-life threatening. *[Exh G - ECF No. 4-2, PageID.269 – 279] [Exh H – Dr. Saad Order to Show Cause, ECF No. 4-3, PageID.417]* Because the Michigan SC decision in Allen, came after petitioner's direct appeal, this intervening case law in the Allen decision by the Michigan Supreme Court qualifies petitioner to file a petition for rehearing under Rule 44.2. *[ECF No. 4-18, PageID.1805 -1813]* While the Allen case was tracking its way through the appellate courts, Petitioners case was also tracking its way through the Michigan appellate system as well. and became final on January 27,2021 in the Michigan Supreme Court controlling authority. People v. Allen fits the requirements of rule 44.2 as intervening, controlling effect on petitioners ineffective assistance of counsel claim. Had the Allen Opinion been published during petitioner's direct appeal, it's controlling effect could have led to reversal of her conviction.

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Relief Requested

Petitioner, Belinda Jones, hereby humbly requests this court to grant rehearing to consider the above mentioned substantial ground not previously presented to this court due to word limitation; and to rehear this matter in light of the new intervening case law controlling case ruling, by the Michigan Supreme Court in *People v. Allen, SC 161605* or remand to the 6th Circuit Court for proceedings consistent with *People v. Allen.*

After due consideration on rehearing, to grant petitioner an unconditional writ and remand back to the 6th Circuit Court of Appeals for a certificate of appealability, or a conditional writ and order remand for a new trial in this matter. Or remand back to the 6th Circuit Court of Appeals for granting of a certificate of appealability on this issue. Or to grant the writ and remand back for a new trial, or REMAND this case to that court for reconsideration of the defendant's ineffective assistance of counsel claim, based on trial counsel's failure to call witnesses, under the correct standard, and or grant any other relief this court finds just under these circumstances.

Respectfully submitted,

Dated: 4-21-2025

Belinda Jones

Belinda Jones - # 967095
Petitioner in Pro. Se.
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No. 24-6449

IN THE SUPREME COURT OF THE UNITED STATES

BELINDA JONES, Petitioner

vs.

JEREMY HOWARD, Warden, Respondent

ON PETITION FOR REHEARING OF A WRIT OF CERTIORARI

APPENDIX COVER SHEET

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APPENDIX

Additional material from this filing is available in the Clerk's Office.