No. 07-10336

IN THE

SUPREME COURT OF THE UNITED STATES

Marquette E. Riley,

Petitioner,

VS.

United States,

Respondent.

On Petition for Writ of Certiorari to the
District of Columbia Court of Appeals
98-CF-1045

REPLY TO BRIEF OF THE UNITED STATES IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

MARQUETTE E. RILEY, **PETITIONER,** vs. **UNITED STATES,** **RESPONDENT.**	No. 07-10336 (98-CF-1045)

ARGUMENT

PETITIONER'S SIXTH AMENDMENT RIGHT TO COUNSEL ATTACHED BEFORE HIS ARREST

In its Opposition to Marquette E. Riley's Petition for Writ of Certiorari the government concedes that the Sixth Amendment right to counsel attaches when "the government has committed itself to prosecute, the adverse positions of government and defendant have solidified, and the accused finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law." Gov't Opp. to Cert., 9 (quoting *Rothgery v. Gillespie County*, ___ U.S. ___, 128 S. Ct. 2578, 2583, 171 L. Ed. 2d 366 (2008); *Kirby v. Illinois*, 406 U.S. 682, 689, 92 S. Ct. 1877, 32 L. Ed. 2d 411 (1972))(internal quotations omitted). It concedes as well that this state of opposition, marking the "initiation of adversary judicial proceedings," is triggered by the filing of a formal charge, the convening of a preliminary hearing, the return of an indictment or information, or by arraignment. Gov't Opp. to Cert., 9 (citing *McNeil v. Wisconsin*, 501 U.S. 171, 175, 111 S. Ct. 2204, 115 L. Ed. 2d 158 (1991)).

Although only two of the five methods for initiating adversary criminal proceedings require appearance before a judicial officer, relying on *Rothgery, supra*, at 2584 & n. 10, the government argues that "[t]his Court has [] repeatedly held that a defendant's 'initial appearance before a judicial officer' (normally at a 'preliminary arraignment' or 'arraignment on the complaint') 'marks the point at which the [Sixth Amendment] right attaches.' " The

government's heavy reliance on *Rothgery* is surprising because, if anything, that opinion, issued over two months after Mr. Riley petitioned this Court, supports his argument that he was deprived of his Sixth Amendment right to counsel when Prince George's County Det. Dwight DeLoach began his hours-long effort to subvert Petitioner's decision not to answer investigators' questions without counsel's assistance.

There can be no dispute that when a defendant appears before a judicial officer in a preliminary hearing or arraignment adversary judicial proceedings have begun.

> We [] reaffirm what we have held before and what an overwhelming majority of American jurisdictions understand in practice: a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.

Rothgery, supra, at 2592.

But nothing in *Rothgery* supports the government's assertion that in every case the Sixth Amendment right to counsel attaches no earlier than when the defendant first appears before a judicial officer. If that were the case *Kirby's* statement that adversary judicial proceedings may begin with the filing of a formal charge, information or indictment would be meaningless.

Furthermore, this Court held in *Rothgery, supra,* at 2589, that the filing by a police officer of a complaint accompanied by an affidavit of probable cause is sufficient, by itself, to institute adversary judicial proceedings against the defendant.[1] It rejected the argument that the Sixth Amendment right attaches only if a prosecutor made the charging decision, noting that, whether the policeman or prosecutor lodges the complaint, the government is no more or less committed to prosecution. In either case, the Court said, the government retains the option

> to change its official mind later. The State may rethink its commitment at any point: it

[1] Because in *Rothgery* the initial charging document, the complaint and affidavit of probable cause, were filed at the initial hearing this Court did not have occasion to decide the precise issue Mr. Riley raises, whether the filing of a statutorily-required complaint and affidavit, and a Judge's issuance of an arrest warrant founded on probable cause, signifies the start of adversary judicial proceedings, even though the defendant has not appeared before a judicial officer.

> may choose not to seek indictment in a felony case, say, or the prosecutor may enter *nolle prosequi* after the case gets to the jury room. But without a change of position, a defendant subject to accusation … is headed for trial and needs to get a lawyer working, whether to attempt to avoid that trial or to be ready with a defense when the trial date arrives.

Id. at 2590.[2]

This Court held in *Escobedo v. Illinois*, 378 U.S. 478, 490 – 2, 84 S. Ct. 1758, 12 L. Ed. 2[d] 977 (1964), that adversary judicial proceedings have clearly begun

> where … the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements….
> …
> [W]hen the process shifts from investigatory to accusatory — when its focus is on the accused and its purpose is to elicit a confession — our adversary system begins to operate, and, under the circumstances here, the accused must be permitted to consult with his lawyer.

The Court subsequently confined *Escobedo* to its facts and narrowed its constitutional holding to protection of the Fifth Amendment privilege against self-incrimination. *See, e.g. Kirby, supra*, at 689. But it has consistently applied *Escobedo's* enumeration of the characteristics of a criminal investigation that, when present, demonstrate that the person under interrogation is "faced with

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[2] In opposition to Mr. Riley's Petition for Rehearing and Suggestion of Rehearing *en Banc* in the D.C. Court of Appeals the government made a similar argument. It said the Record

> shows only that the prosecutor endorsed an affidavit written and executed by a police officer in support of the officer's application for an arrest warrant. The associated Complaint was executed only by the police officer, and it contained only the officer's sworn declaration that appellant had committed the offense described therein…. Further, the officer, not the prosecutor, presented the Complaint and affidavit to a Superior Court judge, and the officer, not the prosecutor, sought issuance of a warrant…. Moreover, the prosecutor's endorsement of the affidavit consisted only of a request, addressed to the Warrant Clerk, that a warrant, if applied for by the officer and approved by a judge, be issued for the offense specified by the prosecutor ….
>
> …
>
> A complaint, however — unlike an indictment or information — does not bind the prosecutor and commit "the prosecutorial forces of organized society" against the named individual; therefore, it does not trigger the protections afforded by the Sixth Amendment.

Gov't Opp. to Reh'r'g, 4 – 5. The government appears to have abandoned that argument in this Court, perhaps in light of the holding in *Rothgery*.

the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law," and, therefore, has a right to counsel under the Sixth Amendment. *Kirby, supra.*

Testimony by Metropolitan Police and Prince George's County investigators demonstrates that when police arrested Mr. Riley, that point had been reached. Det. DeLoach's goal the first time he entered the interrogation room was to elicit a confession.[3] At about the same time other detectives were questioning Petitioner's codefendants about the weapons used and taking the codefendants to retrieve those weapons.

Rather than abandoning *Escobedo*, in recognizing that the onset of adversary judicial proceedings must be determined by an objective standard *Rothgery, supra,* at 2588, embraced it.

Although in the D.C. Court of Appeals and in his Petition in this Court Mr. Riley strenuously argued that his Sixth Amendment right to counsel attached because a Judge had found probable cause and the character of the police investigation had become accusatory, the government argues that "Petitioner primarily relies on a D.C. statute of limitations that specifies the time within which a 'prosecution' may be brought…." Gov't Opp. to Cert., 11 (citing D.C. Code § 23-113). It asserts that § 23-113 "does not purport to define the start of 'adversary judicial criminal proceedings' for purposes of the Sixth Amendment right to counsel. In any event, the point at which a prosecution begins for Sixth Amendment purposes is 'an issue of federal law unaffected by' procedural labels in local statutes.' " Gov't Opp. to Cert., 12 (quoting *Rothgery, supra,* at 2588 – 9, 2584 n. 9).

The government correctly, though incompletely, quotes the *Rothgery* holding. The Court said "the constitutional significance of judicial proceedings cannot be allowed to founder on the

[3] The government hastens to state that Det. DeLoach also questioned Mr. Riley about another homicide that occurred in Suitland, Md., Gov't Opp. to Cert. 5. But, to the extent that they discussed that homicide the conversation occurred after 6:30 p.m., about the time Det. DeLoach escorted Petitioner to be booked in the Maryland case. The detective said his only interest on the three occasions he entered the interrogation room between 10:45 a.m. and 3 p.m. was the Littles homicides that occurred in Washington, which are the subject of this litigation.

vagaries of state criminal law…." *Id.* at 2584 n. 9. To ensure uniformity throughout the nation, the Court said,

> we must look to the specific circumstances of this case and the nature of the affidavit filed at Rothgery's appearance before the magistrate…. What counts is that the complaint filed with the magistrate judge accused Rothgery of committing a particular crime and prompted the judicial officer to take legal action in response….

Id. In *Rothgery* the judicial action was finding probable cause based on the content of the affidavit and setting bond at a hearing required by state statute. In Mr. Riley's case, pursuant to statute, the government filed a complaint in an *ex parte* proceeding accusing Petitioner and his codefendants of committing murder, the Judge issued an arrest warrant based on a finding of probable cause, and then police arrested Petitioner. The only difference is that police, rather than the judicial officer, apprised Mr. Riley of the charge against him.

The government argues that this Court has never specifically held that the Sixth Amendment right to counsel attaches upon the filing of a complaint under § 23-113 or similar statutes in other jurisdictions.[4] That is not entirely correct because, relying on *Kirby, supra*, the

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[4] It concedes that the Second Circuit, interpreting a New York statute similar to § 23-113, ruled in *United States ex rel. Robinson v. Zelker*, 468 F.2^{d} 159 (2^{d} Cir. 1972), *cert. denied*, 411 U.S. 939 (1973), that the Sixth Amendment right attached upon arrest. But it notes that the statute was later changed and the holding in *Zelker* was subsequently questioned. Gov't Opp. to Cert., 10 – 11. In doing so it cites *United States v. Duvall*, 537 F.2^{d} 15, 21 – 22 (2^{d} Cir.), *cert. denied*, 426 U.S. 950 (1976), which involved issuance of an arrest warrant pursuant to Fed. R. Crim. P. 4. The rule permits an application to be made by affidavit, unaccompanied by a criminal complaint. The *Duvall* Court did not question the correctness of *Zelker's* interpretation of the New York statute, nor did its *dicta* apply the objective analysis of *Rothgery, supra*. In *O'Hagan v. Soto*, 725 F.2^{d} 878, 879 (2^{d} Cir. 1984), also cited by the government, the Court noted that the statute at issue in *Zelker* was repealed in 1970 and replaced by a new statute providing that "a criminal action commenced 'by the filing of an accusatory instrument with a criminal court.' … Arguably the charging document underlying the warrant on which O'Hagan was arrested sufficed to trigger Sixth Amendment protection." The Court did not find it necessary to decide whether the *dicta* in *Duvall* regarding when the right attaches in federal cases had any bearing on attachment of the right under New York law. It should be noted that this Court's statement in *Rothgery, supra*, at 2589 n. 9, that the point at which the Sixth Amendment right attaches is a matter of federal constitutional law, rather than state criminal law, provides only a baseline standard of constitutional protection. It does not preclude jurisdictions, including New York and the District of Columbia, from enacting statutes like § 23-113 that establish a point before the defendant's

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Court held that "an accused's rights … attach to identifications conducted at or after the initiation of adversary judicial criminal proceedings, including proceedings instituted by way of formal charge [or] preliminary hearing…. The prosecution in this case was commenced under Illinois law when the victim's complaint was filed in court." *Moore v. Illinois*, 434 U.S. 220, 228, 98 S. Ct. 458, 54 L. Ed. 2d 424 (1977)(citations and internal quotations omitted). The government provides no sound reason why a defendant who has been charged by complaint, but has not been taken before a judicial officer, is in any less jeopardy than Rothgery, who was charged at his first court appearance.

The government's argument assumes, contrary to the unambiguous language of *Kirby*, that defendants indicted or charged by information who have not appeared before a judicial officer may not assert their Sixth Amendment right to counsel upon arrest. Due to time constraints imposed by the federal Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*, the vast majority of criminal cases in the U.S. District Court for the District of Columbia begin with return of an indictment and subsequent arrest on a warrant issued by a federal magistrate judge. A significant number of cases in the Superior Court of the District of Columbia each year begin with the return of a "Grand Jury Original" indictment on which the government applies for an arrest warrant.

Under *Kirby* there is no question that adversary judicial proceedings have begun against an individual who has been indicted, even if s/he has not yet been arrested. The government does not attempt to explain why this Court should conclude that a person in Mr. Riley's position should be treated differently merely because the charging document was labeled a "Complaint."

Under the objective standard reaffirmed in *Rothgery*, adversary judicial proceedings had

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first court appearance when adversary judicial proceedings have begun. *See, e.g., Mills v. Rogers*, 457 U.S. 291, 300, 102 S. Ct. 2442, 73 L. Ed. 2d 16 (1982)("Within our federal system the substantive rights provided by the Federal Constitution define only a minimum. State law may recognize liberty interests more extensive than those independently protected by the Federal Constitution…. If so, the broader state protections would define the actual substantive rights possessed by a person living within that State.").

begun against Mr. Riley and his Sixth Amendment right to counsel had vested before his arrest. It is true that Petitioner, like any criminal defendant, may choose not to assert that right and agree to answer investigators' questions. But, at his earliest opportunity Mr. Riley asserted both his Sixth Amendment right to counsel and his Fifth Amendment right to remain silent. Therefore, when Det. DeLoach entered the interrogation room at 10:30 a.m. and gave his monologue designed to elicit a confession later in the day he violated Petitioner's right to counsel.

The Court below said, "holding that . . . the issuance of an arrest warrant [pursuant to § 23-113] is akin to the initiation of adversary judicial proceedings would result in swinging the pendulum of criminal justice far too distant from society's interest in effective and meaningful criminal investigations." *Riley v. United States*, 923 A.2d 868, 881 (D.C. 2007)(quoting *State v. Beck*, 687 S.W.2d 155, 160 (Mo. 1985)). In reaching that conclusion the Court of Appeals ignored this Court's pronouncements in *Escobedo, supra*, at 488 – 9 ("We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on the 'confession' will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation."); and *Spano v. New York*, 360 U.S. 315, 320 – 1, 79 S. Ct. 1202, 3 L. Ed. 2d 1265 (1959)("The abhorrence of society to the use of involuntary confessions … turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.").

The government appears to have abandoned the D.C. Court of Appeals' rationale, which is not surprising in light of this Court's statement in *Rothgery*, supra, at 2590, that

> The County also tries to downplay the significance of the initial appearance by saying that an attachment rule unqualified by prosecutorial involvement would lead to the conclusion "that the State has statutorily committed to prosecute *every* suspect arrested by the police," given that "state law requires [an article 15.17[5] hearing] for every

[5] Tex. Code Crim. Proc. Ann. art. 15.17.

arrestee." … The answer, though, is that the State has done just that….

Similarly, the District of Columbia has statutorily committed to prosecute every person who is arrested on a warrant issued on a Complaint filed by the U.S. Attorney or law enforcement officers, subject to the government's right to change its mind.

It should be noted that the range of circumstances under which police in Texas may make warrantless arrests is much broader than in Washington, D.C., and Texas law requires Article 15.17 hearings whether the defendant is arrested with or without a warrant. A holding that the filing of a Complaint and issuance of an arrest warrant pursuant to § 23-113 or a similar state statute initiates adversary judicial proceedings will not affect the large percentage of investigations that begin with warrantless arrests, in which suspects may assert their right to counsel under the Fifth Amendment.

Whether this Court applies the objective analysis of *Brewer* v. *Williams*, 430 U.S. 387, 97 S. Ct. 1232, 51 L. Ed. 2d 424 (1977), and *Michigan* v. *Jackson*, 475 U.S. 625, 106 S. Ct. 1404, 89 L. Ed. 2d 631 (1986), as explained in *Rothgery, supra*, at 2588, or the clear language of § 23-113, adversarial judicial proceedings had begun before Mr. Riley's arrest. After he asserted his right to counsel and to remain silent when first advised of his rights by MPD detectives, any attempt to elicit a confession from him before he met with a lawyer violated his Sixth Amendment right to counsel. Because Det. DeLoach entered the interrogation room at 10:45 a.m. and several times later in the day intent on obtaining a confession, and police neither provided a lawyer nor informed Petitioner that a lawyer had been retained for him, his confession was inadmissible at trial, and his conviction must be vacated.

WHETHER VIEWED IN LIGHT OF THE FIFTH AMENDMENT OR THE SIXTH AMENDMENT PETITIONER ASSERTED HIS RIGHT TO COUNSEL AT HIS FIRST OPPORTUNITY

The government concedes that the Prince George's County rights waiver form is ambiguous, but relying on *Davis v. United States*, 512 U.S. 452, 459 – 62, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994), it argues that Mr. Riley invoked his right to remain silent but not his right to counsel when he signed it.

> The form asked petitioner whether he "want[ed] to make a statement at this time without a lawyer." … Petitioner's response did not unambiguously invoke his right to counsel because the question itself creates ambiguity by merging the separate questions of a suspect's willingness to speak with his willingness to speak without a lawyer.

Gov't Opp. to Cert., 14 – 15.

This court held in *Davis, supra* at 459, that

> Invocation of the *Miranda*[6] right to counsel "requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney." … But if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning.…
>
> Rather, the suspect must unambiguously request counsel. As we have observed, "a statement either is such an assertion of the right to counsel or it is not." … Although a suspect need not "speak with the discrimination of an Oxford don," … he must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, *Edwards*[7] does not require that the officers stop questioning the suspect.

In *Arizona v. Mauro*, 481 U.S. 520, 527, 107 S. Ct. 1931, 95 L. Ed. 2d 458 (1987), this Court found no ambiguity in a response virtually identical to Mr. Riley's. It said "[t]he officers gave Mauro the warnings required by *Miranda*. Mauro indicated that he did not wish to be questioned further without a lawyer present. Mauro never waived his right to have a lawyer present."

There is no question that the MPD detectives understood Mr. Riley's response on the rights waiver form and his subsequent answers to their clarifying questions as invoking both rights. After he said he was sure that he did not want to answer questions without a lawyer present they left the room, turned the waiver form over to a Prince George's County detective, and never returned. There is nothing in the record suggesting that they found Mr. Riley's responses to be ambiguous.

The government asks this Court to ignore the MPD detectives' reasonable understanding

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[6] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).
[7] *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981).

of the situation and look only at Det. DeLoach's actions, which are improbable at best. He admitted having talked to the D.C. detectives that morning, but the government asserts that he entered the interrogation room with instructions from his supervisor to question Mr. Riley about the D.C. homicides, unaware that Petitioner had asserted his rights. The government concedes that Det. DeLoach told Petitioner "that there were 'two sides to every story'; that he 'wanted to hear [petitioner's] side of the story'; and that others had implicated petitioner in the shootings." Gov't Opp. to Cert., 4. But it asks the Court to conclude that when Det. DeLoach again entered the interrogation room several hours later, Mr. Riley's blurted denials of involvement in the crime were a voluntary, knowing and intelligent waiver of his right to silence.

The government's entire argument flows from the assumption that Mr. Riley never asserted his right to counsel because he did not augment his statement that he did not wish to answer police questions without a lawyer present with a concrete demand to be provided a lawyer's assistance.

Marquette Riley was a 17-year-old who had not finished high school, who had been awakened by police at about 7 a.m. and arrested. Two hours later MPD detectives read the *Miranda* warnings to him, telling him he had a right to remain silent and a right to have a lawyer assist him. Using the Prince George's County waiver form, they then concatenated those two rights into a single question, including the word "lawyer." Under similar circumstances many better educated, more alert individuals would miss the subtle distinction the lower courts and the government see in that question.

As this Court stated in *Michigan v. Jackson supra*, at 633,

> [a]lthough judges and lawyers may understand and appreciate the subtle distinctions between the Fifth and Sixth Amendment rights to counsel, the average person does not. When an accused requests an attorney, either before a police officer or a magistrate, he does not know which constitutional right he is invoking, he therefore should not be expected to articulate exactly why or for what purposes he is seeking counsel.

Similarly, when asked "do you want to answer questions without a lawyer present," the average person cannot be expected to understand that a negative response asserts the right to silence but

not the right to counsel.

Furthermore, the government argues that criminal defendants should be held to a higher standard of legal knowledge than police officers. For example, the Court held in *United States v. Ventresca*, 380 U.S. 102, 108 – 9, 85 S. Ct 741, 13 L. Ed. 2d 684 (1965), that

> the Fourth Amendment's commands, like all constitutional requirements, are practical and not abstract. If the teachings of the Court's cases are to be followed and the constitutional policy served, affidavits for search warrants … must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion. They are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area.
> …
> [W]hen a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants.

If investigators who deal with these legal issues daily are to be accorded leeway because they are not lawyers, young and poorly-educated criminal defendants who have only sporadic contact with the criminal justice system cannot be deprived of their fundamental constitutional rights when asked "do you wish to answer questions without a lawyer present" and they fail to recognize the need to do more than respond "No."

The government concedes, as did the D.C. Court of Appeals, that it was improper for Det. DeLoach to enter the interrogation room at 10:45 a.m. and give his speech about wanting to hear Mr. Riley's side of the story and about codefendants implicating Petitioner in the crime. Gov't Opp. to Cert., 16. But it characterizes the detective's actions as "brief" and "isolated," and asserts that they "did not taint the voluntariness of petitioner's subsequent statements." *Id.* Again, this conclusion flows from the government's erroneous claim that Mr. Riley never asserted his right to counsel under the Fifth or Sixth Amendment.

Det. DeLoach's speech was no less intended to elicit a response than the monologues at issue in *Brewer, supra,* and *Rhode Island v. Innis*, 446 U.S. 291, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980). Mr. Riley had not been permitted to meet with a lawyer before that session and any

waiver of the right to counsel after that point was presumptively void.

One other meritless argument the government makes is worth noting. It says this Court should reject Mr. Riley's claim that he did not voluntarily waive his Fifth Amendment right to counsel because "[t]wo lower courts have reviewed that fact-intensive question and have correctly concluded, based on the totality of the circumstances, that petitionr's statements were voluntarily, knowingly, and intelligently made. Under this Court's two-court rule, further review of that fact-bound determination is unwarranted." *Id.* (citing *Exxon Co. v. Sofec, Inc.*, 517 U.S. 830, 841, 116 S. Ct. 1813, 135 L. Ed. 2d 113 (1996); *Graves Tank & Mfg. Co. v. Linde Air Prods. Co.*, 336 U.S. 271, 275, 69 S. Ct. 535, 93 L. Ed. 672 (1949); *Branti v. Finkel*, 445 U.S. 507, 512 n. 6, 100 S. Ct. 1287, 63 L. Ed. 2d 574 (1980)).

In *Graves Tank, supra*, at 275, the Court said,

> [T]he rule requires that an appellate court make allowance for the advantages possessed by the trial court in appraising the significance of conflicting testimony and reverse only "clearly erroneous" findings.… A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error.

At issue in that case was the patentability of an object, and two lower courts had determined that the object met the statutory requirement to be patentable. The Supreme Court saw no basis on which it could interfere with the intermediate court's conclusion regarding the trial court's factual findings and conclusions of law based on those findings that the object was patentable.

The so-called two-court rule has no applicability to review of legal conclusions reached by lower courts. Such conclusions do not depend on evaluation of conflicting evidence or the credibility of witnesses.

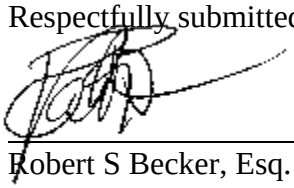
There are no significant factual disputes regarding what transpired after Mr. Riley's arrest. The main issues before this Court are whether the Sixth Amendment right to counsel attached, and whether Mr. Riley asserted his right to counsel under the Sixth and/or Fifth amendments. If the answer is that Petitioner had a Sixth Amendment right to counsel and he asserted it by saying he did not want to answer questions without a lawyer present, admission of

his confession at trial was a *per se* violation of his Sixth Amendment rights. If the answer is that he had only a Fifth Amendment right, which he asserted by answering that question, he is entitled to a new trial because Det. DeLoach coerced him to relinquish his rights to counsel and to remain silent. In either case, what occurred after the 10:45 a.m. session is irrelevant to this Court's inquiry.

CONCLUSION

For the reasons stated in the Petition for Writ of Certiorari and above, and any others that appear to the Court, Petitioner Marquette E. Riley respectfully requests that the Court grant his Petition, vacate his conviction, and remand the case for a new trial with instructions that all oral and written statements police obtained from him in this case must be suppressed.

Respectfully submitted,



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(*Appointed by the Court*)