IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF MARYLAND,	*	
Petitioner	*	
v.	*	No. 08-680
MICHAEL BLAINE SHATZER, SR.,	*	
Respondent	*	

* * * * * * * * * * * * *

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of December, 2008, three copies of the Brief in Opposition to Petition for Writ of Certiorari and Motion for Leave to Proceed *in Forma Pauperis* were delivered to:

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Celia Anderson Davis
Celia Anderson Davis

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF MARYLAND,	*	
Petitioner	*	
v.	*	No. 08-680
MICHAEL BLAINE SHATZER, SR.,	*	
Respondent	*	

* * * * * * * * * * * * *

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Respondent, Michael Blaine Shatzer, Sr, who is indigent, asks leave to file the attached Respondent's Brief in Opposition to Petition for Writ of Certiorari to the Court of Appeals of Maryland without prepayment of costs and to proceed *in forma pauperis* pursuant to Rule 39.

Respectfully submitted,

Celia Anderson Davis

Celia Anderson Davis
Assistant Public Defender
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6 Saint Paul Street, Suite 1302
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(410) 767-8527

Counsel for Respondent

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF MARYLAND, *

Petitioner *

v. * No. 08-680

MICHAEL BLAINE SHATZER, SR., *

Respondent *

* * * * * * * * * * * * *

AFFIDAVIT IN SUPPORT OF
MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, Michael Blaine Shatzer, Sr., am the respondent in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I swear that because of my poverty I am unable to pay the costs of this case. I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the costs of this proceeding are true.

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$ 20,00 ~~240~~	$_____	$_____	$_____
Self employment	$ 0	$_____	$_____	$_____

Income from real property (such as rental income)	$ 0	$	$	$
Interest and dividends	$ 0	$	$	$
Gifts	$ 0	$	$	$
Alimony	$ 0	$	$	$
Child Support	$ 0	$	$	$
Retirement (such as social security, pensions, annuities, insurance)	$ 0	$	$	$
Disability (such as social security, insurance payment)	$ 0	$	$	$
Unemployment Payments	$ 0	$	$	$
Public-assistance (such as welfare)	$ 0	$	$	$
Other (specify): _____	$ 0	$	$	$
Total monthly income:	$20	$	$	$

2. *List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of Employment	Gross monthly pay
DOC	18701 Roxbury Rd Hagerstown MD	Jan 03-Present	$ 20.00
			$
			$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of Employment	Gross monthly pay
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____

4. *How much cash do you and your spouse have?* $ 0

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.*

Home (Value)	Other real estate (Value)	Motor vehicle #1 (Value)
_____	_____	Make & Year: _____
_____	_____	Model: _____
_____	_____	Registration #: _____

Motor vehicle #2 (Value)	Other assets (Value)	Other assets (Value)
Make & Year: _____	_____	_____
Model: _____	_____	_____

Registration #: _____ _____ _____

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____

7. *State the persons who rely on you or your spouse for support.*

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real-estate taxes included? ☐Yes ☐No Is property insurance included? ☐Yes ☐No	$ 0	$_____
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$_____
Home maintenance (repairs and upkeep)	$ 0	$_____
Food & personal items	$ 20,00 ~~240,00~~	$_____

Clothing	$ 0	$
Laundry and dry-cleaning	$ 0	$
Medical and dental expenses	$ 0	$
Transportation (not including motor vehicle payments)	$ 0	$
Recreation, entertainment, newspapers, magazines, etc.	$ 0	$

Insurance (not deducted from wages or included in mortgage payments)

Homeowner's or renter's	$ 0	$
Life	$ 0	$
Health	$ 0	$
Motor Vehicle	$ 0	$
Other: _____	$ 0	$

Taxes (not deducted from wages or included in mortgage payments)

(specify): _____	$ 0	$

Installment payments

Motor Vehicle	$ 0	$
Credit card(s)	$ 0	$
Department store(s)	$ 0	$
Other: _____		

Alimony, maintenance, and support paid to others	$ 0	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$
Other (specify): _____	$ 0	$

Signed: Michael B. Shatzer

Date: Sept. 15, 08

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefore.

_____

JUSTICE

NO. 08-680

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2008

STATE OF MARYLAND,

Petitioner

v.

MICHAEL BLAINE SHATZER, SR.,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

NANCY S. FORSTER
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Counsel for Respondent

QUESTION PRESENTED

Was the prohibition against initiating further interrogation once a suspect has invoked the right to counsel as set forth in *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981), fully applicable to Mr. Shatzer, who was questioned twice about the same underlying investigation while in continuous custody, separated by a period of two years and seven months, and who was not provided with counsel, did not enter a plea, and did not receive a sentence in the interim?

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NO. 08-680

IN THE
SUPREME COURT OF THE UNITED STATES

SEPTEMBER TERM, 2008

STATE OF MARYLAND,

Petitioner

v.

MICHAEL BLAINE SHATZER, SR.,

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Michael Blaine Shatzer, Sr., by counsel, Nancy S. Forster, Public Defender of Maryland, and Celia Anderson Davis, Assistant Public Defender, Office of the Public Defender for the State of Maryland, respectfully requests that this Court deny the Petition for Writ of Certiorari filed by the State of Maryland because there has been no showing that the issue presented is an important question of federal law that merits consideration by this Court.

REASONS FOR DENYING THE WRIT

The State of Maryland, Petitioner in this case, asks this Court to re-examine its ruling in *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981), to determine whether a purported break in custody or the passage of two years and seven months between the time Mr. Shatzer was first questioned by a police detective and requested counsel and the time another detective re-interrogated him without providing counsel should terminate the protections of *Edwards*. This Court should decline review. First, this case does not involve a break in custody such as has been recognized by some courts as terminating the protections of *Edwards*. Second, the "bright-line" characteristics of the *Edwards* rule should be preserved to continue to provide clear guidance to those who conduct custodial interrogation, conserve judicial resources, and ensure that statements made by suspects while in police custody are not coerced. Third, Petitioner does not suggest a feasible alternative to the rule in *Edwards*.

The Fifth Amendment to the United States Constitution provides: "No person . . . shall be compelled in any criminal case to be a witness against himself[.]" In *Miranda v. Arizona*, 384 U.S. 436, 474, 86 S. Ct. 1602, 1628, 16 L. Ed. 2d 694, 723 (1966), this Court ruled that, when a suspect in custody asks for an attorney, interrogation "must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning."

In *Edwards v. Arizona*, 451 U.S. at 484-85, 101 S. Ct. at 1885, 68 L. Ed. 2d at 386, this Court held that a suspect, "having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." The rule in *Edwards* is a procedural safeguard, in addition to those found in *Miranda*, to ensure that the guarantee of the Fifth Amendment is honored: "It is inconsistent with *Miranda* and its progeny for the authorities, at their instance, to interrogate an accused in custody if he has clearly asserted his right to counsel." *Id.* In Mr. Shatzer's case, the Maryland Court of Appeals correctly concluded that the rule of *Edwards* was applicable to bar the use of a statement Mr. Shatzer made to police detectives two years and seven months after he first requested the assistance of an attorney, where counsel was not made available to him, there was no break in custody, and the renewed interrogation involved the same allegation.

I. THIS CASE DOES NOT PRESENT THE QUESTION OF WHETHER A BREAK IN CUSTODY CONSTITUTES AN EXCEPTION TO THE RULE SET FORTH IN *EDWARDS*.

The Maryland Court of Appeals correctly recognized that there was no break in custody in Mr. Shatzer's case because he was incarcerated in continuous government custody (App. 28a-29a)[1], and because the "two interrogations were

[1] "App." refers to the Appendix to the Petition for Writ of Certiorari.

separated *solely* by time; they involved the same underlying investigation and he did not enter a plea nor was he sentenced in the interim." (App. 34a).

The cases holding that a break in custody can create an exception to the rule in *Edwards* fall into three categories. First, under the reasoning of the United States Court of Appeals for the Eleventh Circuit in *Dunkins v. Thigpen*, 854 F. 2d 394, 397 (11th Cir. 1988), *cert. denied*, 489 U.S. 1059, 109 S. Ct. 1329, 103 L. Ed. 2d 597 (1989): "If the police release the defendant, and if the defendant has a reasonable opportunity to contact his attorney, then we see no reason why *Edwards* should bar the admission of any subsequent statements." *See also People v. Trujillo*, 773 P.2d 1086, 1092 (Colo. 1989)(en banc)(release from custody ends the need for the *Edwards* rule); *United States v. Skinner*, 667 F.2d 1306, 1309 (9th Cir. 1982), *cert. denied*, 463 U.S. 1229, 103 S. Ct. 3569, 77 L. Ed. 2d 1410 (1983)(suspect who left the police station and had the opportunity to contact a lawyer is not in continuous custody).

Second, some courts have recognized that an intervening conviction may constitute a break in custody. For example, in *Isaacs v. Head*, 300 F.3d 1232, 1263 (11th Cir. 2002), the United States Court of Appeals for the Eleventh Circuit recognized a break in custody under circumstances in which a suspect was questioned and invoked his right to counsel in 1973, and was convicted and sentenced to a term of incarceration in 1974. After making two attempts to escape from prison in 1980 and 1985, Isaacs was questioned by a law-enforcement officer and made statements. *Id.* at 1257-58. The statements were introduced by

prosecutors at a sentencing hearing following re-trial to show that Isaacs intended to escape from prison. *Id.* at 1258. The Court recognized that "incarceration following a conviction constitutes a break in *Miranda* custody, thereby ending the *Edwards* protections." *Id.* at 1267.

Third, other courts have determined that a suspect who has an opportunity to consult with counsel may be deemed to have had a break in custody. In *United States v. Arrington*, 215 F.3d 855, 856 (8th Cir. 2000), the suspect was arrested, advised of his *Miranda* rights, and requested counsel. While represented by counsel, he entered a guilty plea to one charge and began serving a prison sentence. *Id.* While incarcerated, he was arrested for a federal offense, was questioned by a federal agent, and made a statement. *Id.* The United States Court of Appeals for the Eighth Circuit held that *Edwards* did not apply "where, as here, the accused has entered a guilty plea and has begun serving his sentence." *Id.* at 856.

Even if this Court were to recognize that a break in custody following release into the community, a conviction, or consultation with an attorney could relax the *Edwards* rule, the facts in Mr. Shatzer's case are such that an exception would not apply to him. He was not released after he was questioned and invoked his right to counsel on August 7, 2003; he remained incarcerated in connection with an unrelated offense. (App. 2a). He was not provided with an attorney to assist him with the investigation conducted initially by Detective Blankenship. (App. 3a). Criminal charges were not filed against him at that time. *Id.* Unlike in

Clark v. State, 781 A.2d 913, 921 (Md. Ct. Spec. App. 2001), *cert. denied*, 796 A.2d 695 (2002), and *United States v. Green*, 592 A.2d 985, 986 (D.C. 1991), *cert. dismissed*, 504 U.S. 545, 113 S. Ct. 1835, 123 L. Ed. 2d 260 (1993), in this case, there was no intervening conviction involving consultation with an attorney. Mr. Shatzer did not initiate communication with the police after he requested an attorney. (App. 3a-4a). Detective Hoover resumed interrogation on March 2, 2006. *Id.* Mr. Shatzer seemed surprised, stating that he thought the investigation had been concluded. (App. 4a).

As in *Edwards*, 451 U.S. at 484-85, 101 S. Ct. at 1885, 68 L. Ed. 2d at 386, *Arizona v. Roberson*, 486 U.S. 675, 683, 108 S. Ct. 2093, 2099, 100 L. Ed. 2d 704, 715 (1988), and *Minnick v. Mississippi*, 498 U.S. 146, 154, 111 S. Ct. 486, 491, 112 L. Ed. 2d 489, 498 (1990), Mr. Shatzer was in the same position with respect to the police investigators when he first spoke with Detective Blankenship on April 7, 2003, and said that he would not talk about the case without having an attorney present, as he was when Detective Hoover resumed questioning on March 2, 2006, and when Detective Schultz did so on March 7, 2006: he was the subject of a criminal investigation; he had not been charged; he had not been provided with an attorney, and had not consulted with an attorney in connection with any other case. Nothing about Mr. Shatzer's circumstances had changed such that his original choice to deal with police investigators only through counsel should no longer have been honored. The Maryland Court of Appeals correctly determined that there was no break in custody in this case. (App. 41a).

II. THE *EDWARDS* RULE SHOULD NOT BE RELAXED MERELY BY THE PASSAGE OF TIME.

Prior to the ruling in *Edwards*, this Court favored an individual, case-by-case analysis of whether a waiver of the right to counsel by a person who had previously invoked it was knowing, voluntary, and intelligent. *Solem v. Stumes*, 465 U.S. 638, 647, 104 S. Ct. 1338, 1343-44, 79 L. Ed. 2d 579, 589 (1984). Since *Edwards* was decided, this Court has declined to recognize exceptions to the rule. In *Arizona v. Roberson*, 486 U.S. at 682, 108 S. Ct. at 2098, 100 L. Ed. 2d at 714, this Court agreed with the Arizona Court of Appeals that a statement made by Roberson about a crime different from the one for which he was in custody must be suppressed. If a suspect invoked his right to counsel in the first interrogation, then a law enforcement officer may not initiate a second interrogation unless the suspect has another opportunity to speak with counsel or is in the presence of counsel. *Id.* A statement made during a second interrogation could only be used if the suspect initiated contact with the police. *Id.* It is presumed that if the suspect did not want to speak the first time and stayed in custody until the second time, he still wants to speak to counsel before making a statement; to presume anything else would violate the prohibition against self-incrimination. *Id.* 486 U.S. at 683, 108 S. Ct. at 2099, 100 L. Ed. 2d at 715.

In *Minnick v. Mississippi*, 498 U.S. at 154, 111 S. Ct. at 491, 112 L. Ed. 2d at 498, this Court declined "to remove protection from police-initiated questioning based on isolated consultations with counsel who is absent when the interrogation

resumes." The dissenting Justices expressed the view that *Edwards* should not apply "when a criminal suspect has actually consulted with his attorney." *Id.* 498 U.S. at 156, 111 S. Ct. at 493, 112 L. Ed. 2d at 500. They noted: "In this case Minnick was reapproached by the police three days after he requested counsel, but the result would presumably be the same if it had been three months, or three years, or even three decades." *Id.* 498 U.S. at 163, 111 S. Ct. at 496, 112 L. Ed. 2d at 504. In *United States v. Green*, 592 A.2d at 985, the suspect was arrested for a drug offense; he filled out an advice of rights form, answering "No" to the question whether he was willing to answer questions without an attorney present. The District of Columbia Court of Appeals held that police-initiated questioning five months after the suspect first invoked his right to counsel, even after he consulted with an attorney and pled guilty in the case for which he was originally detained, cannot justify a departure from *Edwards*. *Id.* at 989-90.

Since *Edwards* was decided, this Court has not retreated from its clear holding. *See Smith v. Illinois*, 469 U.S. 91, 98, 105 S. Ct. 490, 494, 83 L. Ed. 2d 488, 495 (1984)(per curiam)("*Edwards* set forth a 'bright-line rule' that *all* questioning must cease after an accused requests counsel."); *Solem v. Stumes*, 465 U.S. at 646, 104 S. Ct. at 1343, 79 L. Ed. 2d at 589 ("*Edwards* established a bright-line rule to safeguard pre-existing rights."); *Michigan v. Jackson*, 475 U.S. 625, 634, 106 S. Ct. 1404, 1410, 89 L. Ed. 2d 631, 641 (1986)("one of the characteristics of *Edwards* is its clear, 'bright-line" quality."). *See also* Wayne R. LaFave, *Criminal Procedure*, Sec. 6.9(f) (3d ed. 2007)("*Edwards* is best viewed as

a *per se* rule proscribing any interrogation of a person held in custody who has invoked his right to counsel absent the individual's subsequent initiation of conversation.")(footnotes omitted).

One reason for preserving the *Edwards* rule with its bright-line quality, even after a lapse of time, is the difficulty in formulating a principled alternative. There is no logical point on a time line at which the right to counsel should diminish or expire. This point became clear during the oral argument in this Court in *United States v. Green*, No. 91-1521, 1992 WL 687878, at *17-18 (Nov. 30, 1992), when counsel for the Petitioner, the United States, argued that the passage of three months, two months, and one month between interrogations could excuse compliance with *Edwards*, but "2 days is probably not enough. Now, it isn't a bright line." There are countless variations in the circumstances of custody and the time periods over which a suspect in custody may be questioned, for example, one day (*Edwards*), three days (*Roberson*, *Minnick*), two years and seven months (Mr. Shatzer's case), or five years (*Clark v. State*). Petitioner, citing the dissenting opinion of the Maryland Court of Appeals in Mr. Shatzer's case, seems to advocate a return to an examination of voluntariness on a case-by-case basis. (Petition for Writ of Certiorari at 25-26).

It is not correct to assume, as Petitioner does, that coercive pressures lessen over time for people who are incarcerated. (Petition for Writ of Certiorari at 20). The isolation of a prison inmate may increase the coercive pressures felt, especially if the person is not free to refuse contact with law enforcement officers

who enter the correctional institution to speak with him or her. The Maryland Court of Appeals made note of this. (App. 41a). Other than by stating: "[a]fter a substantial period of time, however, the presumption that the defendant wishes to proceed only in the presence of counsel is not reasonable," Petitioner offers no concrete suggestion for determining how long the protections of *Edwards* should remain in effect. (Petition for Writ of Certiorari at 21).

According to Petitioner: "The concern and goal of *Edwards* is to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights." (Petition for Writ of Certiorari at 19-20). This is one goal of the rule of *Edwards*, but it is not the only one. As this Court recognized in *Minnick v. Mississippi*, 498 U.S. at 151, 111 S. Ct. at 489-90, 112 L. Ed. 2d at 496, a clear rule that all questioning must cease when a suspect in police custody asks for counsel - unless counsel is provided or the accused initiates further contact with the police – (1) provides clear guidance for those who conduct custodial interrogations, (2) frees trial courts from having to make voluntariness determinations on a case-by-case basis, and (3) helps to ensure that statements made by individuals in custody are free of coercion.

There is a fundamental difference between a person in police custody who says: "I don't want to talk to you," and a person who says: "I will not talk about this case without having an attorney present." The second statement indicates that the accused wants help in dealing with the agents of the government. Petitioner states that, in Mr. Shatzer's case, "the police have honored a suspect's request for

counsel for a significant period of time[.]" (Petition for Writ of Certiorari at 20). Also, the dissenting judges of the Maryland Court of Appeals in *Shatzer v. State*, declare that "Shatzer previously exercised his right to speak with an attorney." (App. 60a n. 18). Both assertions are incorrect. Mr. Shatzer's request for counsel was never honored; access to an attorney was never provided to Mr. Shatzer before he was questioned for the second and third times. (App. 3a-4a). The Maryland Court of Appeals correctly found that, after Mr. Shatzer stated that he would not talk about the case without having an attorney present, questioning him twice in 2006 without providing access to counsel violated the procedural safeguards of *Miranda* and *Edwards*. (App. 42a-44a).

A prior request for counsel prohibits further interrogation. Even if it did not, this Court should recognize, as other courts have, that a police officer who is resuming an investigation has a duty to determine, before questioning a suspect, if that person has previously requested an attorney. *United States v. Covington*, 783 F.2d 1052, 1055 (9th Cir. 1985), *cert. denied*, 479 U.S. 831, 107 S. Ct. 117, 93 L. Ed. 2d 64 (1986). *See also United States v. Webb*, 755 F.2d 382, 389 (5th Cir. 1985)(even an unintentional violation of *Edwards* must result in exclusion of a statement to police); *United States v. Scalf*, 708 F.2d 1540, 1544 (10th Cir. 1983)("once a suspect has invoked the right to counsel, knowledge of that right is imputed to all law enforcement officers who subsequently deal with the suspect."); *McCarthy v. State*, 65 S.W.3d 47, 52 (Tex. Crim. App. 2001)("courts impute

knowledge of the invocation of any *Miranda* rights to all representatives of the State.").

Here, Detective Blankenship had preserved the original "Waiver of Miranda Rights" form executed on August 7, 2003. (App. 3a). He prepared a report which stated: "When I attempted to again initiate the interview, he told me that he would not talk about this case without having an attorney present." (Transcript of Proceedings, Suppression, August 29, 2006 at 14). Detective Hoover was aware of the prior investigation before he met Mr. Shatzer. *Id.* Mr. Shatzer told him that he thought the investigation had been closed. (App. 4a). Under these circumstances, Detective Hoover was bound to take the steps of speaking with Detective Blankenship or looking in the case file to find out what happened during the prior interview before questioning Mr. Shatzer again.

Mr. Shatzer's case traces back to *Miranda*, in which two of this Court's concerns were: "the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime," and providing "concrete constitutional guidelines for law enforcement agencies and courts to follow." *Miranda v. Arizona*, 384 U.S. at 439, 442, 86 S. Ct. at 1610-11, 16 L. Ed. 2d at 704-05. "The merit of the *Edwards* decision lies in the clarity of its command and the certainty of its application." *Minnick v. Mississippi*, 498 U.S. at 151, 111 S. Ct. at 489-90, 112 L. Ed. 2d at 496. This clarity and certainty should be preserved.

III. THE *EDWARDS* RULE IS NOT DESIGNED TO FRUSTRATE LAW ENFORCEMENT EFFORTS.

Petitioner contends that the result of applying the *Edwards* rule in Mr. Shatzer's case "discourages police from investigating new leads and impedes resolution of dormant or 'cold cases.'" (Petition for Writ of Certiorari at 25). There are costs associated with a bright-line rule. As with *Miranda*, some reliable evidence will be excluded from evidence as a consequence of violating procedural safeguards. Strict adherence to the *Edwards* rule will result in some "question-proof" suspects. *See* Laurie Magid, *Questioning the Question-Proof Inmate: Defining Miranda Custody for Incarcerated Suspects*, 58 Ohio St. L.J. 883, 951 (1997)("some inmates are rendered question-proof - - unapproachable for any questioning - - based on an invocation of the right to counsel long ago in regard to charges resolved by the suspect's sentence to a period of incarceration."). But this is the result of honoring the constitutional mandate prohibiting self-incrimination, which is protected by the right to counsel. *Fare v. Michael C.*, 442 U. S. 707, 719, 99 S. Ct. 2650, 2668-69, 61 L. Ed. 2d 197, 208 (1979)("The rule in *Miranda*, however, was based on this Court's perception that the lawyer occupies a critical position in our legal system because of his unique ability to protect the Fifth Amendment rights of a client undergoing custodial interrogation.").

The rule in *Edwards* strikes an appropriate balance between the need to protect an individual's right to be free from compelled self-incrimination and the efforts of law enforcement officers. In *Davis v. United States*, 512 U.S. 452, 460-

61, 114 S. Ct. 2350, 2355-56, 129 L. Ed. 2d 362, 372 (1994), this Court stated: "The *Edwards* rule - questioning must cease if the suspect asks for a lawyer – provides a bright line that can be applied by officers in the real world of investigation and interrogation without unduly hampering the gathering of information." Enforcing the *Edwards* rule does not foreclose the use of all statements made to law enforcement officers. If a lawyer is provided to a suspect in custody, or if that person initiates communication with a police officer, then a resulting statement may be admissible. *Edwards v. Arizona*, 451 U. S. at 485, 101 S. Ct. at 1885, 68 L. Ed. 2d at 387. The right to seek assistance from an attorney while undergoing custodial interrogation should not disappear over time and should not be eroded by exceptions created on a case-by-case basis.

CONCLUSION

For the foregoing reasons, Mr. Shatzer respectfully requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

Nancy S. Forster
Public Defender

Celia Anderson Davis
Assistant Public Defender

Counsel for Respondent

Font: Times New Roman 13