

No.

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN CAMMALLERI,
Petitioner,
v.

STATE OF FLORIDA,
Respondent.

**On Petition for Writ of Certiorari
to the Florida Fourth District Court of Appeal**

PETITION FOR WRIT OF CERTIORARI

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A. QUESTION PRESENTED FOR REVIEW

Whether a “specific” and “direct” promise of leniency by a law enforcement official renders a defendant’s confession involuntary pursuant to the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment.

B. PARTIES INVOLVED

The parties involved are identified in the style of
the case.

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43 Duke L.J. 947 (1994). 22

The Petitioner, JOHN CAMMALLERI, requests that the Court issue its writ of certiorari to review the judgment of the Florida Fourth District Court of Appeal entered in this case on November 29, 2018 (A-6)¹ (opinion granting rehearing, in part, entered on January 23, 2019). (A-8).²

D. CITATION TO OPINION BELOW

Cammalleri v. State, – So. 3d –, 44 Fla. L. Weekly D270, 2019 WL 318453 (Fla. 4th DCA Jan. 23, 2019).

¹ References to the appendix to this petition will be made by the designation “A” followed by the appropriate page number.

² Because the district court did not address the issue that is the subject of this petition in its written opinion, the Petitioner was not permitted to seek review in the Florida Supreme Court.

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257 to review the final judgment of the Florida Fourth District Court of Appeal.

F. CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the Constitution provides that no person “shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V.

The Due Process Clause of the Fourteenth Amendment to the Constitution forbids the admission of an involuntary confession in evidence in a criminal prosecution. *See Miller v. Fenton*, 474 U.S. 104, 109 (1985).

**G. STATEMENT OF THE CASE AND
STATEMENT OF THE FACTS**

1. Statement of the case.

The Petitioner was charged in Florida state court (Indian River County) with one count of capital sexual battery. The offense allegedly occurred between January 1, 2013, and December 27, 2013. M.K.³ – the alleged victim of the offense – is the Petitioner's granddaughter.

Prior to trial, the Petitioner filed a motion to suppress his statements to law enforcement officials. The trial court denied the motion and the prosecution subsequently utilized the statements during the trial.

The case proceeded to trial in September of 2016. At the conclusion of the trial, the jury found the Petitioner guilty as charged.

³ Only the initials of the alleged victim will be used in this petition.

The Petitioner was sentenced following the trial.

The trial court sentenced the Petitioner to life imprisonment. (A-20). On direct appeal, the Florida Fourth District Court of Appeal *per curiam* affirmed the Petitioner's conviction without discussion. (A-6, 7).

2. Statement of the facts.

Prior to trial, the Petitioner filed a motion to suppress the statements he made on January 14, 2014 (i.e., statements made to law enforcement officers and during a "controlled call"). (A-24). In the motion, the Petitioner explained that his January 14, 2014, statements were not "voluntary." A hearing on the motion to suppress was held on June 30, 2015. Following the suppression hearing, the trial court entered an order denying the motion to suppress. (A-81).

a. The December 27, 2013, initial interview at the Petitioner's residence.

On December 27, 2013, Detective Partee and Detective Garrison went to the Petitioner's residence and conducted a face-to-face interview. During the interview, the Petitioner denied ever touching his granddaughter in an inappropriate or illegal manner. Nevertheless, Detective Partee – on numerous occasions – stated that in order for the alleged victim and the family to heal, the Petitioner could not call the alleged victim a liar and that he had to apologize. Detective Partee made this statement despite the Petitioner denying he had done anything wrong. Detective Garrison stated, toward the end of the initial interview at the residence, that the only purpose for them being there was to get help for the family and the alleged victim. Specifically, Detective Garrison stated

the following:

The family needs you to help her recover. I mean, they're gonna feel awkward bringing her over here. They're not getting us involved – they want the healing process, they want the counseling. That's what we're reaching out for. I mean, that's what we're trying to do. This is a traumatic event for everyone. So the quicker we get past it to get into the healing process, is the best for everyone.

(A-55). Despite these initial pleas to get the child and her family help and the implication that if he “told the truth” he might just get counseling, the Petitioner maintained his denials. At the end of the interview, Detective Partee requested that the Petitioner come to the sheriff’s office and partake in a Computerized Voice Stress Analysis (“CVSA”) and the Petitioner agreed.

b. The December 27, 2013, interview and voice stress analysis at the Indian River County Sheriff’s Office.

Following the interview at his residence, the

Petitioner followed the detectives to the sheriff's office and was subjected to another lengthy interview, the CVSA, and another interrogation following the CVSA. During the CVSA, the Petitioner was asked the following question: “[h]ave you ever placed any of your fingers inside of M.K.” (A-56). The Petitioner answered “no” to this question (A-56) and the CVSA result was that there was “no deception.”

After the CVSA, Detective Partee and Detective Garrison became more aggressive in their interrogation. Detective Garrison began telling the Petitioner that if he insisted on saying M.K. was lying and persisting in his denials that it was going to be extremely difficult on her and “they’re gonna put her on meds” because she is hallucinating. (A-60). Detective Partee, in an attempt to coerce an admission, then lied to the Petitioner regarding the results of the

CVSA. Notwithstanding that the test showed “no deception,” Detective Partee told the Petitioner, “I wanna make sure that you and I are on the same page on all of this[c]ause the results of the test aren’t – aren’t looking to [sic] good.” (A-58). Later in the interview, Detective Partee infused religion into the interrogation:

DETECTIVE PARTEE: I’m sure you would [remember]. I would remember if I did anything like that.

JOHN CAMMALLERI: Yeah.

DETECTIVE PARTEE: But like I told you, people forgive. Everybody is forgiven, Jesus forgives, but let me – I mean –

JOHN CAMMALLERI: But this is what they believe now. I mean, –

DETECTIVE PARTEE: You can’t – you can’t – you can’t be forgiven until you repent.

JOHN CAMMALLERI: Yeah.

I don't know what to tell you. I really don't. Again, I'm not gonna say I touched her and I showed myself to her when it didn't happen.

DETECTIVE PARTEE: And I don't want you to tell me that it didn't happen.

(A-61-62). Detective Partee ultimately ended the interview by implying that the prosecutor will be more lenient on him if he makes an admission:

JOHN CAMMALLERI: But if she's implying something about sexual abuse, I don't know what that is. I honestly do not. Not any more than I know what this is all about.

DETECTIVE PARTEE: Right. Well, yeah, I just – I just really hope there's nothing else you haven't told us.

JOHN CAMMALLERI: There isn't. I mean, –

DETECTIVE PARTEE: Because this is – this is – this is literally the time. This is the last opportunity.

JOHN CAMMALLERI: I understand you.

DETECTIVE PARTEE: Because I am not – you know, –

JOHN CAMMALLERI: And as much as I don't want her to go through whatever kind of stuff you're talking about, psychiatric and psychological type stuff, –

DETECTIVE PARTEE: Well this is – this is the time. After today I'm gonna document everything and I'm gonna give it to the State Attorney's Office –

JOHN CAMMALLERI: All right.

DETECTIVE PARTEE: – and they're gonna have to make their decision.

JOHN CAMMALLERI: Yeah. Yeah.

DETECTIVE PARTEE: And their decision is based on all – everything that's done – that's been done – everything that's been said. So, you know, there is always something to tell people when it comes down to that time they're

gonna see somebody that's remorseful and wants to make everybody better, wants forgiveness, or they're gonna see somebody that is completely just, you know, the opposite, a cold-hearted criminal that doesn't care about anybody but himself.

(A-63-65). In summary, the detectives collectively sought to overcome the Petitioner's will and get him to make a statement by expressly and implicitly stating that his granddaughter would be punished for lying if he did not agree to the allegation. They further infused religion and implied leniency, and lied about the results of the CVSA – all in order to get him to make an inculpatory statement. Despite the detectives' tactics, the Petitioner continued to deny the allegations during the December 27, 2013, interrogation at the sheriff's office.

c. The January 14, 2014, interview at the Petitioner's residence.

On January 4, 2014, Detective Partee submitted a warrant affidavit for the Petitioner. The prosecutor denied the warrant for the following reasons:

In evaluating the warrant affidavit, there was not sufficient information to establish probable cause that the crime was committed. Specifically, the accusations against the defendant arise from a young child, and there exists no corroborating physical evidence, or statements, to confirm the victim's allegations. As such, the warrant cannot be approved. If further investigation yields additional information, an amended warrant would be reconsidered at that time.

The alleged victim's parents were informed of the denial of an arrest warrant. On January 7, 2014, the alleged victim's parents made a video of their daughter making an additional allegation of sexual abuse. The video was shown to Detective Partee, and another copy

of the video was given to the Petitioner's wife, who in turn showed the video to the Petitioner.

On January 14, 2014, Detective Garrison and Detective Partee again went to the Petitioner's residence for the purpose of trying to obtain an admission (so that the admission could be presented to the prosecutor for approval of an amended warrant).

At the outset of the January 14, 2014, interview, the detectives confirmed that the Petitioner had seen the videotaped allegations made by the alleged victim. The detectives then engaged in a lengthy discussion with the Petitioner repeatedly implying leniency or outright lack of prosecution if he "told the truth" to his family – and specifically his daughter. The detectives further told the Petitioner that the family did not want to prosecute him, but rather only wanted the truth, and that the detectives' involvement was only to

facilitate that process:

And nobody – at this point, I mean, even removing us, nobody wants to see him go to jail, and including his own family. The issue is without him coming forward and admitting what he's done, we're gonna keep fighting our case over here because that's – the family wants that 'cause he's not admitting anything. .
..

(A-68). Detective Garrison and Detective Partee then stated that the family is in charge of the prosecution:

JOHN CAMMALLERI: And what happens then with you guys?

DETECTIVE PARTEE: If you're honest with your family? . . .

.....

DETECTIVE GARRISON: They're the victim's [sic] in this. *It's their choice.*

JOHN CAMMALLERI: That's my concern is I wanna talk to them.

DETECTIVE GARRISON: And right now, talking to them, they've never wanted anything to happen to you. But we take that away when we start doing

our physical stuff. That's what we're saying. So if you wanna –

JOHN CAMMALLERI: So if we can work – we can –

DETECTIVE GARRISON: Yeah.

JOHN CAMMALLERI: What I'm saying is, we can clear this up and work it out?

DETECTIVE GARRISON: Yeah if you talk to them –

JOHN CAMMALLERI: Well, I mean –

DETECTIVE GARRISON: Yeah. Yeah.

JOHN CAMMALLERI: –
(indiscernible) saying.

DETECTIVE PARTEE: If your honest with your family then –

JOHN CAMMALLERI: And then you're okay?

DETECTIVE PARTEE: Well, yeah. I mean, but it depends – it depends on –

JOHN CAMMALLERI: On what they say.

DETECTIVE PARTEE: Yeah.

(A-69-71) (emphasis added). The detectives proceeded to tell the Petitioner that if he confessed to his family, then they (the detectives) would be removed (i.e., the Petitioner would not be prosecuted):

DETECTIVE GARRISON: Yeah, they [the family] keep pushing forward now because there is no remorse. . . .

. . . .

DETECTIVE GARRISON: They don't see any ending so they're still using us.

JOHN CAMMALLERI: Yeah.

DETECTIVE GARRISON: *Where if you came clean and said this and allowed to heal together, we probably wouldn't even be here. We'd be removed* (indiscernible).

(A-71-72) (emphasis added). When the Petitioner indicates a willingness to call his daughter, the

detectives stated the following:

DETECTIVE GARRISON: That's what she needs to see. If you want us to go away, she needs to be able to see that and know, he's human, you know, and he messed up but he is my dad. I love him no matter what. She'll tell you that. She told me that.

....

DETECTIVE PARTEE: We all screw up.

JOHN CAMMALLERI: I hear you guys.

DETECTIVE GARRISON: Everything can be fixed. It is not the end of the world.

....

DETECTIVE PARTEE: Okay, well I'm saying, if you are [scared about the judicial side of things], okay, the court shows mercy to people that are honest and men about these things.

DETECTIVE GARRISON: *If it even goes to court.*

DETECTIVE PARTEE: *If it gets*

that far. He's exactly right.

DETECTIVE GARRISON: A lot of this stuff doesn't even go there. The family creates the healing process. They do it here. They don't want that getting out. They don't want your name in the paper. They don't want any of that stuff. That is not what they want.

JOHN CAMMALLERI: And she [Appellant Cammalleri's daughter] can – and she can fix that?

DETECTIVE GARRISON: Fix what?

JOHN CAMMALLERI: I mean, make that happen?

DETECTIVE GARRISON: *Yeah, she tells us we're not involved. Yeah, that's all.*

(A-73-78).⁴ Moments after the January 14, 2014, interview ended, the detectives set up a “controlled call” between the Petitioner and his daughter for the

⁴ Detective Garrison also told the Petitioner that his “family has the power to” offer leniency. (A-79).

purpose of eliciting an inculpatory statement from the Petitioner. The Petitioner's daughter was briefed by law enforcement officers prior to the call. During the call, the Petitioner made admissions that were consistent with the allegations that had been previously shown to him.

H. REASON FOR GRANTING THE WRIT

The question presented is important.

A statement is involuntary under the Fifth Amendment if it is “involuntary” within the meaning of the Due Process Clause. *See Oregon v. Elstad*, 470 U.S. 298, 304 (1985) (citing *Haynes v. Washington*, 373 U.S. 503 (1963); *Chambers v. Florida*, 309 U.S. 227 (1940)). The test for determining whether a statement is voluntary under the Due Process Clause “is whether the confession was ‘extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] by the exertion of any improper influence.’” *Hutto v. Ross*, 429 U.S. 28, 30 (1976) (quoting *Bram v. United States*, 168 U.S. 532, 542-543 (1897)). In deciding whether a confession was voluntary, courts assess “the totality of all the surrounding circumstances – both the characteristics

of the accused and the details of the interrogation.”

Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973).

The purpose of this test is to determine whether “the defendant’s will was in fact overborne.” *Miller v. Fenton*, 474 U.S. 104, 116 (1985).

Recently, in *Dassey v. Dittmann*, 877 F.3d 297, 303-304 (7th Cir. 2017), the Seventh Circuit Court of Appeals reviewed this Court’s precedents regarding interrogation tactics and coercion and the Seventh Circuit stated the following about “false promises”:

The Supreme Court’s many cases applying the voluntariness test have not distilled the doctrine into a comprehensive set of hard rules, though prohibitions on physical coercion are absolute. *See Mincey v. Arizona*, 437 U.S. 385, 401 (1978) (statements resulted from “virtually continuous questioning of a seriously and painfully wounded man on the edge of consciousness”); *Brown v. Mississippi*, 297 U.S. 278, 279 (1936) (confessions extracted by “brutality and

violence"). . . .

. . .

. . . False promises to a suspect have similarly not been seen as *per se* coercion, *at least if they are not quite specific*. See *Arizona v. Fulminante*, 499 U.S. 279, 285 (1991) (rejecting language in *Bram v. United States*, 168 U.S. 532 (1897), stating that a confession could not be obtained by “any direct or implied promises,” *id.* at 542-543, but finding promise to protect suspect from threatened violence by others rendered confession involuntary); Welsh S. White, *Confessions Induced by Broken Government Promises*, 43 Duke L.J. 947, 953 (1994).

False promises may be evidence of involuntariness, at least when paired with more coercive practices or especially vulnerable defendants as part of the totality of the circumstances. *E.g.*, *Lynumn v. Illinois*, 372 U.S. 528, 534 (1963) (pre-*Miranda* confession found involuntary based on false promise of leniency to indigent mother with young children, combined with threats to remove her children and to terminate welfare benefits, along with other factors). But the Supreme Court allows police interrogators to tell a suspect that “a cooperative attitude” would be to his benefit. *Fare v. Michael C.*, 442 U.S. 707,

727 (1979) (reversing finding that confession was involuntary). *Supreme Court precedents do not draw bright lines on this subject.*

(Emphasis added). The Petitioner submits that a “bright line” should be drawn for those promises of leniency that are both “specific” and “direct.”

Based on the totality of circumstances of the instant case, the actions of the detectives rendered the Petitioner’s confession involuntary. The detectives engaged in a systematic approach over multiple interviews to overcome the Petitioner’s free will. The promises of leniency and lack of prosecution began in the first meeting on December 27, 2013. At that time, the detectives indicated that their focus was only to get the alleged victim help and they implied that if the Petitioner “just told the truth” he could get the whole family to heal. Later in the day, after the Petitioner

had maintained his denials of any wrongdoing and had agreed to take a voice stress test analysis, the detectives became more aggressive in their questioning. The detectives lied about the results of the CVSA, telling the Petitioner that – despite a showing of “no deception” – that the results “did not look good.” The detectives also (1) threatened harm to the alleged victim – who is the Petitioner’s granddaughter – in the form of intrusive psychological testing and psychotropic drugs; (2) the detectives infused religion into the interrogation;⁵ and (3) and the detectives made implied promises of leniency with the prosecutor if the Petitioner changed his story and confessed. After being denied a warrant in the case and being pushed by the alleged victim’s parents to file

⁵ When law enforcement officials inject Christianity or any other religion into an interrogation, the potential for coercion is enhanced.

charges, the detectives made another attempt to obtain a confession on January 14, 2014.

Most notably, during the January 14, 2014, interrogation, the detectives told the Petitioner that if he “came clean” and “allowed [his family] to heal together,” then the detectives would “be removed”:

Where if you came clean and said this and allowed to heal together, we probably wouldn’t even be here. *We’d be removed.*

(A-72) (emphasis added). *This was a specific and direct promise for leniency.*

Moments after the improper “we’d be removed” promise was made to the Petitioner by the detectives,⁶

⁶ In addition to the improper “we’d be removed” promise, when the Petitioner asked if his daughter can “fix this,” the detectives responded, “Yeah, she tells us [then] we’re not involved” – a promise that was clearly beyond the detectives’ authority. (A-78).

the Petitioner called his daughter and confessed.⁷ The detectives' impermissibly-coercive interview techniques ultimately overcame the Petitioner's free will, causing him to make coerced inculpatory statements.

By accepting review of this case, the Court will have the opportunity to address the question of whether a "specific" and "direct" promise of leniency by law enforcement officials renders a defendant's confession involuntary. Accordingly, the Petitioner respectfully requests the Court to grant the instant petition.

⁷ When the Petitioner confessed to his daughter, he merely recited the allegations that had been presented to him earlier in the day.

I. CONCLUSION

The Petitioner requests that the Court grant the petition for writ of certiorari.

Respectfully Submitted,

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