

No. 18-6653

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
AUG 03 2018
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ROLANDO CALDERIN – PETITIONER

(YOUR NAME)

VS.

ILLINOIS - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

APPELLATE COURT OF ILLINOIS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ROLANDO CALDERIN # R21835

(YOUR NAME)

P.O. BOX 1000

(ADDRESS)

MENARD, ILLINOIS 62259

(CITY, STATE, ZIP CODE)

N/A

(PHONE NUMBER)

QUESTION(S) PRESENTED

Whether Illinois Trial Court and Appellate Court erred when it failed to suppress Petitioner's inculpatory statements that were obtained after petitioner made several unequivocal and unambiguous requests for a lawyer in Violation of Petitioner's Constitutional Right to Counsel. And whether Illinois Supreme Court erred by refusing to review petitioners violations in this case.

LIST ALL PARTIES

All parties appear in the caption of the case on the cover page.

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STATUSES AND RULES

28 U.S.C 1257

725 ILCS 5/103-3 (a)

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at

Appendix C to the petition and is

Reported at In re: People v. Calderin, 123293; or

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

The opinion of the Illinois Appellate court

appears at Appendix A to the petition and is

reported at 2017 IL APP (1st) 150730-u; or

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

JURISDICTION

For cases from **state courts**:

The date on which the highest state court decided my case was May 30th, 2018.

A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied on the following date:

January 18th, 2018, and a copy of the order denying rehearing appears at Appendix B.

Appellate counsel did not move to file for an extension of time to file a writ of certiorari to this honorable court.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In *Miranda*, the U.S. Supreme court held that the inherently coercive circumstances of custodial interrogation required the government to meet the heavy burden of showing a knowing and intelligent waiver of the Fifth Amendment right against self-incrimination, including the right to counsel. Petitioner believes that U.S. Const., Amends. V, ~~XIV~~; Ill. Const. 1970, Art. I, and 10 are involved.

725 ILCS 5/103-3 (a) (West 2011) the purpose of the statute is to permit a person held in custody to notify his family of his whereabouts... So that arrangements may be made for bail, representation by counsel and other procedural safeguards that the defendant cannot be accomplished for himself while in custody.

STATEMENT OF THE CASE

Petitioner, Rolando Calderin was charged with the First Degree Murder of Mark Carney. After a Jury trial, he was found guilty and sentenced to a term of 51 years in prison.

Petitioner timely appealed the Judgment of Conviction to the Illinois Appellate Court, First district, which denied the appeal on November 15th, 2017. Petitioners counsel then moved to file a petition for rehearing on December 6th, 2017 which was denied by the Appellate Court on January 18th, 2018. Petitioner then asked counsel to file for an extension of time to file a petition for writ of certiorari. Counsel refused and instead filed a motion for leave to file petition for leave to appeal, to the Illinois Supreme Court February 23rd, 2018. PLA was denied by Illinois Supreme Court May 30th, 2018.

Prior to the trial, the defense filed a motion to suppress statements in which it alleged that Calderin's inculpatory statements were made after he had invoked his right to remain silent and his right to an attorney and, further, that the statements were made after the interrogating police made promises of leniency if Calderin made a statement.

REASONS FOR GRANTING THE PETITION

Compellable, in the Illinois Appellate Court decision, it agreed that petitioner made several unequivocal and unambiguous assertions of his right to counsel before he made an inculpatory statement to the police. *People v. Rolando Calderin*, 2017 IL App (1st) 150730-u, 26-28.

Not only did the Appellate Court ignore the fact that all questioning of Calderin should have stopped as soon as he made his first request for counsel, the court also did not address that detectives misconduct directly led to Calderin's waiver of his Miranda Rights and inculpatory statement. As such, Calderin did not make a knowing and intelligent waiver of his right to counsel. Indeed the Appellate Court's finding runs afoul of the bright line rule established in *Edwards v. Arizona*, 451 U.S. 477 (1981), barring any interrogation of a person in custody who has invoked his right to counsel "was designed to prevent police from badgering a defendant into waiving his previously asserted Miranda Rights." *Michigan v. Harvey*, 494 U.S. 344, 350 (1990); see also *Smith v. Illinois*, 469 U.S. 91, 98 (1984).

REASONS FOR GRANTING THE PETITION

Indeed, many defendants do not have a specific attorney and/or cannot afford one, which is why Miranda provides one that will be appointed to a defendant is necessary:

If an individual indicates that he wishes the assistance of counsel before any interrogation occurs, the authorities cannot rationally ignore or deny his request on the basis that the individual does not have or cannot afford a retained attorney. The financial ability of the individual has no relationship to the scope of the rights involved here. The privilege against self-incrimination secured by the Constitution applies to all individuals. The need for counsel in order to protect the privilege exists for the indigent as well as the affluent. *Miranda v. Arizona*, 384 U.S. 436, 472 (1966).

Here, Calderin's inculpatory statement was inadmissible because it was made after he unequivocally requested counsel. Contrary to the Appellate Court's decision, Calderin did not subsequently reinitiate communication with the police and knowingly waive his right to counsel because Calderin only did so after the detectives repeatedly badgered him and lied about the consequences of obtaining a lawyer. Guidance from this court is needed to clarify that all questioning must cease once a defendant invokes his right to counsel, that a subsequent waiver of counsel must be intelligently and knowingly made, and to ensure that a defendant's right to counsel is protected.

The failure to allow a defendant to have contact with his family, or to condition such contact on the defendant making a statement, can render any subsequent statement involuntary. *Haynes v. Washington*, 373 U.S. 503, 514 (1963). This is

especially true here where Calderin specified that the purpose of his phone call to his girlfriend was to "get a lawyer".

The United States Supreme Court has long held that certain interrogation techniques, either in isolation or as applied to the unique characteristic of a particular suspect, are so offensive to a civilized system of justice that they must be condemned under due process clause of the Fourteen Amendment. Miller v. Fenton, 474 U.S. 104, 109, 106 S.Ct. 445, 88 L. Ed. 2d 405 (1985) citing Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L. Ed. 2d 280 (1978); Dassey v. Dittmann, 201 E. Supp. 3d 963 (E.1.Wis. 2016).

The introduction of petitioner's inculpatory statement was not harmless error. The petitioner's statement was states major piece of evidence against him. The introduction of the petitioner's statement has a substantial and injurious effect on the verdict. The Illinois Appellate Court applied a standard contrary to Supreme Court precedent.

Therefore based on all the forgoing reasons petitioner's writ of certiorari should respectfully be considered/granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ramondo Calderon

Date: JULY, 31, 2018