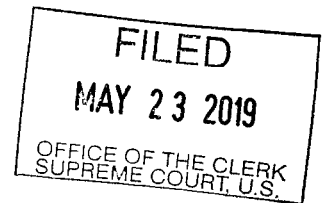


19 - 5048 ORIGINAL
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Mark Anthony Dolph — PETITIONER
(Your Name)

vs.

Lori DAVIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals 5th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

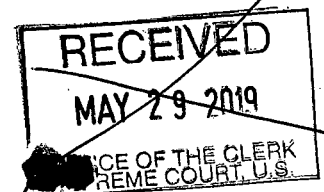
PETITION FOR WRIT OF CERTIORARI

Mark Dolph 1842999
(Your Name)

B. Clements Unit 9601 Spur 591
(Address)

Amarillo, Texas 79107
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

Custody: 1. Why does reasoned opinions of jurist throughout the federal system demonstrate that fairminded jurist can disagree as to whether the use of handcuffs, without more, transforms an otherwise non-custodial traffic stop into a custodial interrogation?

2. Would a "reasonable person" in Petitioner's "Position" have felt he was "At liberty to terminate the traffic stop interrogation and leave in handcuffs"?

3. Can fairminded jurist disagree over whether Petitioner "being handcuffed," was not in custody?

Statement: 1. Does Petitioner have the privilege of 5th Amendment rights, not to be a witness against himself?

2. How can a court make a determination; Petitioner was not in custody when he made the statement, without watching the video DVD of the traffic stop?

3. When was Petitioner's statement obtained by officer Dial?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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APPENDIX C	Petitioner's (COA) Brief, Respondants Brief, Petitioner's Petition for (COA).
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APPENDIX E	Magistrate Judges Report And Recommendation (In Part) Miranda Error
APPENDIX F	Petitioner's Trial transcripts, Picture of States (in part) Exhibit # 5 Video DVD, Petitioners other proceedings
Appendix G	Opinion Court of Criminal Appeals, "White Card"
Appendix H	6th Court of Appeals, Texarkana, Texas. Do Not have a copy

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Dunaway v. New York 442 U.S. 200 (1979)	6
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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 **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix G to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the 6th Court of Appeals, Texarkana, TX court appears at Appendix H to the petition and is

☒ reported at 440 S.W. 3d 898; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 19, 2019.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 4-22-2019, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 11-26-14.
A copy of that decision appears at Appendix G.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment V

STATEMENT OF THE CASE

On April 9, 2011 Mark Dolph was arrested and charged with unlawful possession of firearm by felon. Following a jury trial on February 7, 2013, Dolph was convicted and sentenced to 58 years in the Department of Criminal Justice.

Officer Dial testified against Petitioner at trial. He stated he observed a vehicle pull into the parking lot of a store at night. One of the occupants of the vehicle made a hand-to-hand transaction with a person in the parking lot. The vehicle then left the parking lot without any of the occupants entering the store. Suspecting drug activity, Officer Dial noticed the vehicle had an expired tag and made a traffic stop. Petitioner was a passenger in the rear of the vehicle. Officer Dial testified the driver of the vehicle consented to a search and said there might be some crack cocaine in a towel in the backseat. After being asked to exit the vehicle, Petitioner told Officer Dial there was a pistol on the back seat that Petitioner was holding for a friend. Petitioner did not tell Officer Dial, "he was holding the gun for a friend." It's not on the video DVD of the traffic stop.

Inmates Declaration.

I Mark Dolph, declare under penalty of perjury this is true and correct.

5-19-19

4. signature Mark Dolph

REASONS FOR GRANTING THE PETITION

Custody: Circuit courts disagree on the use of handcuffs necessarily renders a criminal suspect in custody for Miranda purposes, in a (lopsided) split. See *United States v. Davis*, 773 F.3d 334. Fairminded jurists can and do disagree as to whether the use of handcuffs, without more, transforms an otherwise non-custodial traffic stop into a custodial interrogation. The opinion of the Appeals Court left out the relevant facts. The driver of the vehicle told officers that there might be some crack cocaine in the tavel, ROA 327, ROA 365. "Custody" is the deprivation of "freedom of action in any significant way," which is determined by whether, under the totality of the circumstances, a reasonable person would not feel to end the encounter and leave. *Yarborough v. Alvarado*, 541 U.S. 652, 660 (2004). In *Miranda*, the Supreme Court held that "when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way," he must receive warnings to inform him of his right to remain silent to protect "the privilege against self-incrimination" in the Fifth Amendment. *Miranda v. Arizona* 384 U.S. 436, at 478-79. Petitioner was being interrogated about some crack cocaine and was questioned. Wheres the crack? Whats in the car? This was functional equivalent of an interrogation, in which petitioner felt he

was not at liberty to terminate the interrogation and leave. I was not able to leave with the officer's handcuffs on. *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980). The Appeals court did not apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.

In *Newton*, the District Court here recognized, the handcuffs are the problematic factor in this set of circumstances. Handcuffs are generally recognized as a hallmark of a formal arrest. See *New York v. Quarles* 467 U.S. at 655, 104 S.Ct. 2626. (holding that under *Beheler*, handcuffed defendant was in custody for *Miranda* purposes); *Dunaway v. New York*, 442 U.S. 200, 215 n.17, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979) (listing handcuffs as a "trapping[]" of a technical formal arrest"). See also *United States v. Maguire*, 359 F.3d 71, 79 (1st Cir. 2004). Telling ~~a suspect~~ (The use of handcuffs [is] one of the most recognizable indicia of traditional arrest" (internal quotation marks omitted)). See *United States v. Newton*, 369 F.3d 659, 671 (2d Cir. 2004). (Telling a suspect that he is not under arrest does not carry the same weight in determining custody when he is in handcuffs as it does when he is unrestrained. Compare *United States v. Henly* 984 F.2d 1040, 1042 (9th Cir. 1993). In *United States v. Cecilio Antonio Broca Martinez*, 162 F.Supp.3d 565 570 (2016) (The "use of physical restraints on a suspect is

A key factor in determining whether the defendant's freedom of movement was restricted to the degree associated with a formal arrest. Compare, *United States v. Ross*, 400 F. Supp 2d 939, 945 (W.D. Tex. 2005). (finding defendant was not in Miranda custody where he was detained after a traffic violation until Border Patrol Agents arrived and was placed in the patrol car but was never handcuffed or removed from the scene") with, *United States v. Duheart*, No. Crim. A. 11-67-BA, 2011 U.S. Dist. Lexis 134082, 2011 WL 5854942 at *6 (M.D. LA. Nov 21, 2011) (finding defendant was in Miranda custody where "[d]efendant was handcuffed, placed in the backseat of a patrol car, and had his shoes removed"). In Mr. Broca Martinez's case this factor is not present. The unique circumstances presented in petitioner's case is officer's were searching for crack because the driver told them that there might be some crack cocaine in the towel in the backseat. The 'length' of the detention was not brief. Petitioner was handcuffed and frisked, not free to leave the interrogation of the traffic stop. A reasonable jurist could disagree with the appeals court decision, Petitioner was not in custody. Statement: Petitioner statement, "he was holding the gun for a friend," is not on the video DVD of the traffic stop. The opinion of the Appeals court made a determination; Dolph was not in custody for Miranda purposes when he told officer Dial he was holding the gun for a friend. See page 8 of the opinion. This determination was made without the video DVD of the traffic stop. See page 5 footnote 2. Petitioner's statement (if any) had to come after the traffic stop's formal arrest.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mark Dolph

Date: MAY 21, 2019