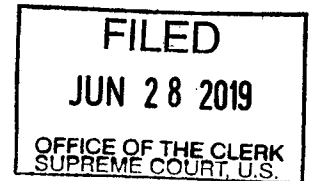


ORIGINAL

Juan Martinez, (presently confined)
#889536C
South Woods State Prison
215 Burlington Road South
Bridgeton, NJ 08302

19-5471



JUAN MARTINEZ,
(Petitioner-Defendant)

V.

STATE OF NEW JERSEY,
(Respondent-Plaintiff)

In the

Supreme Court of the United States

Supreme Court Docket No. _____

PETITION FOR WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF NEW JERSEY, APPELLATE
DIVISION DOCKET NO. A-0928-16T3

PETITION FOR WRIT OF CERTIORARI

QUESTIONS PRESENTED

1. Did the Appellate Division err by ignoring the fact that petitioner-defendant was denied his Fifth Amendment right to have counsel present during interrogation?
2. Did the Appellate Division err by blindly agreeing with the law division that the petitioner-defendant's invocation, "Uhm, yo puedo, ¿la corte me puede dar un abogado a mi?" ("Uhm, can I, the court can give me an attorney?") The officer stating "Si." (Yes). Then the petitioner-defendant exclaiming "Perfecto." (Perfect). Was an ambiguous request for counsel? (Pa 1)¹

¹ Petitioner's appendix

**LIST OF THE PARTIES TO THE PROCEEDING
PURSUANT TO RULE 14.1(b)**

Pursuant to Supreme Court Rule 14.1(b), Petitioner-defendant Juan Martinez, certifies that the names of all parties to this proceeding appear in the caption of this Petition for Writ of Certiorari.

TABLE OF CONTENTS

THE QUESTIONS PRESENTED	1
LIST OF PARTIES TO THE PROCEEDING PURSUANT TO RULE 14.1(b).....	2
TABLE OF JUDGMENTS, ORDERS AND RULINGS	4
INDEX TO APPENDIX	4
TABLE OF AUTHORITIES	5
BRIEF FOR PETITIONER	6
OPINIONS BELOW	6
JURISDICTION	6
RELEVANT CONSTITUTIONAL AND COMMON LAW PROVISIONS	7
STATEMENT OF THE CASE	7
SUMMARY OF ARGUMENT	9
ARGUMENT	
BECAUSE THE POLICE INTERROGATORS FAILED TO SCRUPULOUSLY HONOR OR CLARIFY PETITIONER'S REQUEST FOR AN ATTORNEY, THE LOWER COURT ERRED BY ADMITTING PETITIONER'S SUBSEQUENT STATEMENT AT TRIAL..	9
CONCLUSION	13
CERTIFICATION OF PRO SE PETITIONER.....	14
APPENDIX	15

TABLE OF ORDERS, JUDGMENTS AND RULINGS		
DOCUMENT NAME	DATE	APPENDIX PAGE(S)
APPELLATE DIVISION DECISION AFFIRMING THE DENIAL MOTION TO SUPPRESS STATEMENTS Docket No. <u>A-0928-16T3</u>	9/26/2018	Pa2-Pa10
SUPREME COURT OF NEW JERSEY ORDER DENYING DEFENDANT'S PETITION FOR CERTIFICATION	11/13/2018	Pa11

INDEX TO PETITIONER'S APPENDIX		
DOCUMENT/EXHIBIT TITLE OR DESCRIPTION	DATE	APPENDIX PAGE
Excerpt of Transcript of Custodial Interrogation	5/18/2013	Pa1
APPELLATE DIVISION DECISION AFFIRMING THE DENIAL MOTION TO SUPPRESS STATEMENTS Docket No. <u>A-0928-16T3</u>	9/26/2018	Pa2-Pa10
SUPREME COURT OF NEW JERSEY ORDER DENYING DEFENDANT'S PETITION FOR CERTIFICATION	11/13/2018	Pa11
STATE OF CONNECTICUT v. ROBERT JOHN PURCELL, SUPREME COURT DOCKET NO. <u>SC19980</u> , 203 <u>A.3d</u> 542 (2019)	3/29/2019	Pa12

TABLE OF AUTHORITIES

Constitutions:

United States Constitution, Amendments 5,	passim
New Jersey State Constitution of 1947	passim
Connecticut State Constitution	6, 13

United States Supreme Court Case Law:

<u>Arizona v. Roberson</u> , 486 U.S. 675 (1988)	11
<u>Davis v. United States</u> , 512 U.S. 452 (1994)	12
<u>Edwards v. Arizona</u> , 451 U.S. 477 (1981)	9
<u>Fare v. Michael C.</u> , 442 U.S. 707 (1979)	9, 10
<u>Michigan v. Mosley</u> , 423 U.S. 96 (1975)	11
<u>Michigan v. Tucker</u> , 417 U.S. 433 (1974)	7
<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)	7, 10, 11, 12

New Jersey Case Law:

<u>State v. J.A.M.</u> , N.J. Supreme Court Docket No. <u>081903</u> (2019) ..	6
<u>State v. J.A.M.</u> , N.J. App. Div. Docket No. <u>A-928-16T3</u> , (2018).Passim	
<u>State v. Chew</u> , 150 N.J. 30 (2012)	12

Connecticut Case Law:

<u>State v. Purcell</u> , 203 A.3d 542 (2019).....	6, 13
--	-------

BRIEF FOR PETITIONER

Petitioner Juan Martinez respectfully requests that this Court reverse the judgment of the New Jersey Superior Court Appellate Division.

OPINIONS BELOW

The Opinion of the New Jersey Supreme Court denying Certification is reported, but not yet published State v. J.A.M., Docket No. 081903, but is available in Petitioner's Appendix at Pa1. The New Jersey Superior Court Appellate Division opinion, State v. J.A.M., is unpublished but is available in Petitioner's Appendix at Pa2. The New Jersey Decision is in direct contravention to the Connecticut Supreme Court's opinion in State v. Purcell, 203 A.3d 542 (March 23, 2019)

JURISDICTION

The New Jersey Superior Court Appellate Division rendered its opinion on September 26, 2018, affirming the law division's denial of Petitioner's Motion to suppress his statement. The New Jersey Supreme Court issued its opinion on April 2, 2019 denying Certification. This Court has Jurisdiction pursuant to Supreme Court Rule 10(b) when a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.

RELEVANT CONSTITUTIONAL AND COMMON LAW PROVISIONS

The Fifth Amendment to the United States Constitution provides that:

No person shall[...]shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law[...]

The Miranda doctrine is based upon:

[p]rocedural safeguards [that] were not themselves rights protected by the Constitution but were instead measures to insure that the right against compulsory self-incrimination was protected[...]The suggested safeguards were not intended to 'create a constitutional straightjacket,' but rather to provide practical reinforcement for the right against compulsory self-incrimination. *Michigan v. Tucker*, 417 U.S. 433 (1974).

STATEMENT OF THE CASE

This case concerns the failure of police investigators to scrupulously honor an unambiguous request for counsel during a custodial interrogation. Juan Martinez, a foreign national who does not speak or understand English was interviewed by police concerning allegations by his daughters that he had sexually assaulted them. The police proffered Mr. Martinez his rights under Miranda v. Arrizona, 384 U.S. 436 (1966), in Spanish.

"Antes de hacerle cualquier pregunta usted debe de comprender sus derechos." (Before asking you any questions you should understand your rights.) After being advised that he has a right to have an attorney present, and if he cannot afford an attorney one would be provided, "Se le nombrará uno para que lo

represente o asista antes de hacerle preguntas si usted asi lo desea. ¿Entiende usted este derecho?" (Do you understand this right?) Mr. Martinez then asked, "Uhm, yo puedo, ¿la corte me puede dar un abogado a mi?" (Uhm, can I, the court can give me an attorney?) The investigator replied "Si." (yes). And Mr. Martinez exclaimed, "Perfecto" (emphasis added). At this point the investigator should have ceased all questions, but instead utilized investigative tactics to keep Mr. Martinez talking.

When a criminal suspect is charged with an offense, and in a custodial setting and specifically asks, "Uhm, can I, the court can give me an attorney?" and the police officer says "yes" and the suspect responds "Perfect." That is a clear and unambiguous assertion of the right to consult with an attorney prior to any further questioning. It is axiomatic that the legitimacy of any judicial proceeding, especially a criminal proceeding, rests upon the bedrock principle of fairness. A person charged with a criminal offense has the right not to be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. By denying Mr. Martinez his right to consult counsel after he specifically asked for one violates his rights as delineated by the Constitution, Supreme Court precedent, and fundamental fairness.

SUMMARY OF ARGUMENT

When a suspect unambiguously invokes his right to counsel during a custodial interrogation, no matter how informally, it is well settled that the interrogation must cease immediately. That principle was not followed in this case when Petitioner asked the police if the court could provide him with an attorney. The trial court, and the appellate division erred by not recognizing the police interrogator's failure to scrupulously honor Petitioner's assertion of his right to counsel during custodial interrogation, when he glossed over Petitioner's answer and continued questioning him.

LEGAL ARGUMENT

BECAUSE THE POLICE INTERROGATORS FAILED TO SCRUPULOUSLY HONOR OR CLARIFY PETITIONER'S REQUEST FOR AN ATTORNEY, THE LOWER COURT ERRED BY ADMITTING PETITIONER'S SUBSEQUENT STATEMENT AT TRIAL

Thirty-eight years ago, in Edwards V. Arizona, 451 U.S. 477, (1981), this Court held that "an accused [...] having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by authorities, until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with police," Edwards 451 U.S. at 484.

Edwards reflected the Court's consensus "that the lawyer occupies a critical position in our legal system," and that the right to have counsel "present at the interrogation is

indispensable to the protection of the Fifth Amendment privilege," because "the lawyer's presence helps guard against overreaching by the police," Fare v. Michael C., 442 U.S. 707, 719 (1979). Further, the Court reasoned that counsel's presence allows the accused "under otherwise compelling circumstances to tell his story without fear, effectively, and in a way that eliminates the evils in the interrogation process," Miranda v. Arizona, 384 U.S. 436, 466 (1966). As further elucidated, "[o]nce warnings have been given, the subsequent procedure is clear [...] If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have the opportunity to confer with the attorney and to have him present during any subsequent questioning," Miranda supra, at 473-474; see also, Fare v. Michael C., 442 U.S. 707, 719, ("The court fashioned in Miranda the rigid rule that an accused's request for an attorney is per se an invocation of his Fifth Amendment rights, requiring that all interrogation cease.")

The per se rule protects law enforcement's interests as well as the defendant's, because police know with utter clarity that once an accused asserts his right to counsel, the next step is to end the interrogation until counsel is available. This certainly means that police cannot be unfairly surprised when they act in contravention to the per se rule and the statement

is suppressed. Precedent holds that the "relatively rigid requirement that interrogation must cease upon the accused's request for an attorney [...] benefits the accused and the State alike [by] providing clear and unequivocal guidelines to the law enforcement profession," Arizona v. Roberson, 486 U.S. 675, 681-82 (1988). As common notions of fundamental fairness dictate, once a suspect invokes his right to counsel, police officers are obligated to scrupulously honor that request. This Court has made it clear, that if the invocation was not "scrupulously honored," an inculpatory statement is suppressed notwithstanding its voluntariness, Michigan v. Mosley, 423 U.S. 96, 104 (1975).

In this case, the Petitioner unambiguously invoked his right to counsel. The interrogating officer, Alfredo Beltran, asked the Petitioner to initial next to a statement on the Miranda form that said, "If you cannot afford to hire a lawyer...one will be appointed to represent you or assist you before any questioning, if you wish." Petitioner immediately replied by requesting, in Spanish, that he be so appointed an attorney: "Uhm, you puedo, ¿la corte me puede dar un abagado a mi?" The transcript provides a literal English translation, "Uhm, can I, the court can give me an attorney?" (Pa1). The officer confirmed that the Petitioner would be provided an attorney: "Si," (Pa1). The Petitioner then confirmed that he was invoking his right to counsel: "Perfecto," (Pa1).

The trial court and the Appellate Division, both completely missed the mark by ruling that "at no point did defendant ... ask for an attorney to be provided," (2T13-14 to 16). In fact, Petitioner explicitly asked that an attorney - "un abogado" - be given - "dar" - to him "me...a mi?" Petitioner's invocation of his right to counsel should have rendered the subsequent interrogation inadmissible, because Petitioner was not immediately given the opportunity to consult counsel after he invoked his Fifth Amendment right. As the Miranda doctrine makes clear, once the right to counsel is invoked, it assumes a constitutional status, and interrogation must cease; disregard of that claimed right violates the Fifth Amendment privilege.

Even if Petitioner's unambiguous assertion that he wanted "un abogado" to be given "dar" to him "a mi" did not "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," Davis v. United States, 512 U.S. 452, 459 (1994), the statement still should have been suppressed, because Petitioner's interrogators did not immediately ask petitioner to clarify his desire. New Jersey precedent mandates that upon an equivocal request for counsel, "questioning should cease and the police should inquire of the suspect about the correct interpretation of the statement," State v. Chew, 150 N.J. 30, 63 (1997); See also the recent

decision by the Connecticut Supreme Court, State v. Purcell, 203 A.3d 542 (2019).

By ignoring Petitioner's request for counsel rather than seeking clarification, the police violated his right to counsel.

CONCLUSION

Certiorari is being sought in this matter to address an issue of general public importance. The Law Division, and the Appellate Division have ignored the principle of fundamental fairness that has been in place for over 40 years. The public needs to be able to rely on the system functioning properly, especially on an issue as basic as the right to counsel upon request. The Petitioner is raising a constitutional challenge concerning his "right to be provided counsel" before being questioned by the police under the Fifth Amendment to the United States Constitution, and Miranda v. Arizona, 384 U.S. 436 (1966). This Court has consistently interpreted the Constitutional right to be provided legal counsel prior to questioning by the government as one of the paramount guarantees of the federal Constitution.

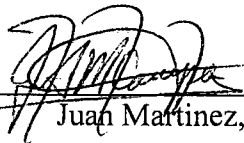
Perhaps more importantly, the public needs to be able to rely on the court system's ability to correct an error when one occurs, through the Appellate process. The legitimacy of any

judicial proceeding, especially a criminal proceeding, rests upon the bedrock principle of fairness.

CERTIFICATION OF PRO SE PETITIONER

I hereby certify that the petition for certiorari in this matter presents a substantial question and is filed in good faith and not for purposes of delay. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated:



Juan Martinez, Pro se