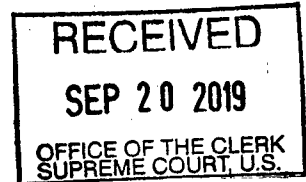


No 19-6456

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

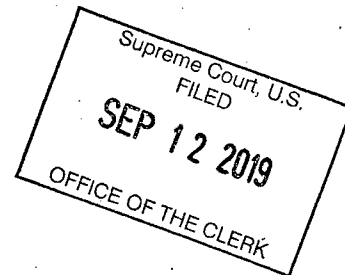
GEOFFREY BAGGETT
(Your Name)

— PETITIONER

vs.

M.E. SPEARMAN, Warden

— RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

U.S NINTH Circuit COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

GEOFFREY BAGGETT

(Your Name)

CDOR# AW3035

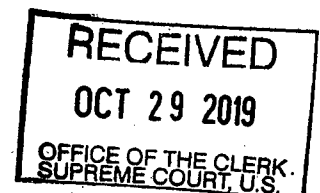
HIGH DESERT STATE PRISON

(Address)

P.O. BOX 3030 Susanville, CA 96127

(City, State, Zip Code) N/A

(Phone Number)



QUESTION(S) PRESENTED

PETITIONERS CONFESSION SHOULD HAVE BEEN EXCLUDED FROM EVIDENCE BECAUSE PETITIONER WAS THE VICTIM. OF MISLEADING TACTICS LEADING UP TO BEING ADVISED OF HIS MIRANDA RIGHTS AND DID NOT WAIVED HIS RIGHT TO COUNSEL; MOREOVER, HE CONTINUED TO BE QUESTIONED AFTER INVOKING HIS RIGHT TO COUNSEL

- A. Petitioner moved to exclude his confession, and that motion was denied.
- B. The police improperly delayed giving Petitioner Miranda warning in order to "Soften him up" and this resulted in Petitioner's decision to speak in the officers after Warnings was given
- C. Petitioner invoked his right to counsel, but was ignored and deflected..
- D. Admission of the confession was prejudicial

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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STATUTE AND RULES

OTHER

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 the _____ to
petition and is

☐ reported at _____ Case No.: 18-17041 ;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unpublished.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 the _____
petition and is

☐ reported at _____ Case No.: 3:17-cv-06805-VC ;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 _____ 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 _____ court
appears at Appendix _____ to the petition and is

☐ reported at _____ ;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 June 27, 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: _____, 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. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____
A copy of that decision appears at Appendix _____

☐ 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

Fourteenth Amendment

Sixth Amendment

STATEMENT OF THE CASE

On July 23rd, 2014, an amended Information was filed accusing petitioner of a number of sex crimes against "Courtney Doe" (Born 5/12/1993) plus one allegation of child molestation against "Nadia Doe".(2 CT 349)

REASONS FOR GRANTING THE PETITION

Review is necessary to settle important questions of law likely to recur regarding (1) The Outrages *Miranda v. Arizona* Violation.

The right to counsel [A]fter invocation of Miranda Rights is an inseparable and inalienable part of the right to due process, guaranteed by the Constitution; also a conviction based on a lesser Constitutional Standard "Unquestionably" qualifies as a Structural Error and a serious violation of The Due Process of Law.

ARGUMENT

I

PETITIONER'S CONFESSION SHOULD HAVE BEEN EXCLUDED FROM EVIDENCE BECAUSE PETITIONER WAS THE VICTIM OF MISLEADING TACTICS LEADING UP TO BEING ADVISED OF HIS MIRANDA RIGHTS AND DID NOT WAIVE OF HIS RIGHT TO COUNSEL; MOREOVER, HE CONTINUED TO BE QUESTIONED AFTER INVOKING HIS RIGHT TO COUNSEL

A. Petitioner moved to exclude his confession and that motion was denied.

Before trial, petitioner moved in limine to exclude his police interrogation on the ground that his admissions were taken in violation of *Miranda v. Arizona* (1966) 384 U.S. 436, and subsequent cases interpreting *Miranda* (1 CT 211).

It was not disputed that petitioner that... petitioner was in custody when he was interrogated at the police station. It was true that *Miranda* warnings were read to petitioner.

But the rights were read only after a considerable period of "softening up". Moreover, petitioner was not asked if he actually waived his rights.

After the rights were read the detective jumped right into questioning about the alleged crimes. Under the circumstances, an implied waiver could not be found (1 CT 207-208).

Moreover, when his rights were read, petitioner became aware that he was charged with serious sex crimes, and told the detective,

"So... Now this is very serious matter. Should I have my attorney present or an attorney present?

Instead of treating this as an invocation of his Miranda rights, and without asking petitioner if he now wanted an attorney, the detective deflected the question by asking if petitioner has an attorney, Petitioner replied,

"NO I don't I should I get one because we're pretty' deep into questioning and so, I just, you know:" The detective deflected this, too, by explaining he was just looking for the facts. and kept asking questions. (1 CT 216, 217, 218-224, see transcript, ACT 27).

The People filed a written response, asserting that Miranda did not apply. 1-2, to innocuous conversations, that once the warning were given, answering questions about the alleged crimes constituted a waiver, and a mere remark,

"[S]hould I have an attorney?"

did not constitute an invocation of Miranda rights (1 CT 228-235). The motion was argued, and although the trial judge recognized that the defense might have a very good case on appeal, he denied the motion based on *Davis v. United States* (1994) 512 U.S. 452 (1 CT 227A, 1 P RT 1-21, 13, 21).

B. The police improperly delayed giving petitioner Miranda warnings in order to "softening him up", and this resulted in petitioner's decision to speak to the officers after the warnings were given.

In *People v. Honeycutt* (1977) 20 Cal.3d 150 California Supreme Court condemned the practice of talking to a suspect in custody about innocuous subjects in order to persuade him to talk once the required warnings were given.

Where a suspect has already been persuaded to talk to the police before being advised of his rights, any subsequent waiver of Miranda rights is invalid, even though in the "softening-up" period no direct questions were asked about the crime (Id. at pp. 158-160).

Here, there was no question that petitioner was in custody from the moment of his arrest. He came into the interrogation room in handcuffs (ACT 27) He knew he was under arrest,

but did not know why (ACT 3). At first he thought he was under arrest for something to do with marijuana (ACT 10). Finally, he knew was under the arrest for some sort of warrant, because the police officer who transported him had told him "that (ACT 11).

Yet after taking off petitioner's handcuffs, the detectives did not tell petitioner why he was in custody, nor did he give him a Miranda advisement. Instead, he asked petitioner, "So let's start with why do you think you're here?" When petitioner mentioned "weed" in his car, the detective asked about weapons in the car (ACT 3). The detective then chatted with petitioner about his love of shooting and asked where he did his target practice (ACT 4).

He asked about petitioner's military service, and learned petitioner a "military brad"; had been rejected by all branches of the service, because of a motorcycle accident.

This turn led to a description of the motorcycle that had caused the injury (ACT 4-5). After obtaining petitioner's phone number, petitioner told the detective he was "shaking like a tree", and had already made it clear he was anxious to know the charges against him; "We'll get to it in a second." (ACT 6, 5).

But he did not, instead he asked about petitioner's work phone number, his work address

(Palo Alto) and history (17 years for the same employer') and finally his family (ACT 7)..

Petitioner said he was divorced "with two kids, one still living with him (ACT 7).

Asked criminal history, petitioner said he had never been, interviewed by the police before. The detectives still did not get the point, but again discussed guns and shooting, and revealed that he went to the range a lot for "SWAT"; and petitioner volunteered he had buddy who was on SWAT team bud did not like guns (ACT 8): The detective replied; "there's a position for everyone in the police department."

Petitioner described an officer he met at the Shooting range who was such a bad shot it was scary (ACT 9).

The subject turned to marijuana and petitioner said he never got a marijuana card but used to use it to help him sleep (ACT 9).

Finally, after more small talk, the detective said, "So you: have no idea why you're here."

There was more discussion about petitioner's health, and how petitioner was "freaked out" by being there (ACT 10-11).

Finally, the detective said, "Freaked out about being here? I just have a few questions for you. I have to read you this though because you are under arrest.

[Y]au have the right to remain silent" (ACT 11), followed by the remaining rights, where petit-joiner said he understood the rights,

Petitioner was asked about Courtney, and he wondered if he got. "busted with some weed." (ACT 12). There was further discussion about "weed" and petitioner's history as someone who, after the divorce with Courtney's mother had eventually been part of her extended family (ACT 13-14).

Only after petitioner asked, "So what can you tell me what's going on?" did the detective say, "the warrant that you're under arrest for is, for providing marijuana to a minor - and, sexual assault, sexual molestation" (ACT 15).

The interrogation proceeded from there, but by then, petitioner, who had never expressly waived his rights, had already answered many questions. He had been successfully "softened up" and began to discuss whether he gave Courtney marijuana. He was soon confronted with his pretext call (ACT 37). This caused him to break down and admit, "I did molested Courtney"

(ACT 38).

We submit that this entire process was designed to make petitioner waive his rights: even though he never expressly waived his rights, for it is now well-known that if a mirandized suspect answers questions, no express waiver of rights is necessary for them to be admissible (Berghuis v. Thompson (2010) 560 U.S. 370). He went through the same softening-up process condemned 1 in People v. Honeycutt, supra. Accordingly, his confession should have been suppressed.

C. Petitioner invoked his right to counsel, but was ignored and deflected.

Before petitioner made any substantial admission of guilt, he denied having ever had any sexual contact with Courtney (ACT 22). The detective finally disclosed that Courtney had accused him, and he knew petitioner was lying because he had heard the pretext calls (ACT 22) Then the following exchange occurred:

DET: ***So what, Pm trying to understand is why would you; as you call it your step-half - daughter, come in here, you know, crying, hysterical urn, sitting here for an hour before she would even be able to talk to me, and tell F me-and tell me in such detail uh, things that have happened ***Why would she do that?

PET: I don't know. I don't know. I mean she's.-. Always been a little, a little troubled. Urn, and we do have a close relationship. There's no doubt about that'. And I just trying to get my head around why; she would say that: Um, and as far as why she would come here hysterical, I have no idea, She's been acting hysterical font the last year and a half since her mother basically kicked her out of the house.

She's lived with the boyfriend. Urn, so I'm not, I'm not too sure why..

I mean I love her like she's my own flesh and blood. and I'd do anything for her, for the whole family for that matter. and I do the best that I can, too, for the whole family. But I don't know why that she would be hysterical corning in here talking to you guys.

So... now this is a very serious matter. Should I have my attorney present or an Attorney present?

DET: Should you have one present? **PET:** [Y]es.

DET: Do you have one,?

PET: No. I don't. But should I get one because we're pretty deep into questioning and so I just, you know...

DET: Well, this is all, what can I say, that's all up to you Uh, because what you're telling me is that nothing happened. Urn, and what I'm trying to figure out is, you know, with all the stuff that's going on, what what's going on. Uh. so if there's something you're not telling me, you know, I'm trying to see if there's some kind of misunderstanding like, you know, she's laying in bed, you said she fell asleep like maybe three times, you know?(ACT 28-29).

The interrogation went right ahead as if petitioner had never said he needed an attorney. Soon, petitioner was confronted with the pretext tape and gave a full confession to having molested Courtney, at least after she started high school.

Here, petitioner's words made it clear - that he was requesting counsel before being asked further questions. All he needed to do was to 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 u. United States*, Supra, 512 U.S. at p. 452).

The Miranda right to stop questioning until an attorney is present was invoked because the petitioners words were "reasonably inconsistent with a present willingness to discuss the case freely and completely" (*People v. Cittenden* (1994) 9 Cal.4th 83, 129).

All that is required is "at a minimum, some statement that can reasonably be construed to expression of a desire for the assistance of an attorney in dealing with custodial interrogation by the police" (*McNeil v. Wisconsin* (1991) 501 U.S. 171, 178).

It is perfectly obvious from the transcript that Detective Sealy knew that petitioner was asking for counsel. Had there been any question in the detective's mind, he would have asked clarifying questions.

He did not, instead deflecting the invocation by asking, "Do you have [an attorney]?"

Then the petitioner answered, "No I don't. But should I get one because we're pretty deep into questioning and so, I just, you know..." Sealy did not even attempt to answer the question and went back to the standard interrogation technique of claiming he just needed to find out what the facts were.

The trial court appears to have taken the position that *Davis v. United States*, supra,

gave the detective carte blanche to continue questioning, simply because' petitioner did not speak in the declarative mood and flatly say he wanted a lawyer. But the facts in Davis stand in sharp contrast to the facts in this case.

In Davis, the detectives told the suspect that they would stop questioning him if he wanted a lawyer and would not continue questioning until he clarified whether he wanted one.

When he told them he was not asking for a lawyer and would not continue questioning until he clarified whether he wanted one.

When he told them he was not asking for a lawyer, questioning resumed.- Similarly, in People v. Suff (2014) 58 Cal.4th 1013, 1064-1070, a statement by suspect that he needed a lawyer if he was being charged was not an unambiguous invocation of his right to counsel during questioning where the detectives responded by clarifying the difference between being arrested and being charged, "thus providing him with an opportunity to clarify his meaning" (MD. at p. 1069).

Before Davis, it was quite clear that in California, a question such as "do I need a lawyer?" constituted an invocation of the Miranda rights,

requiring questioning to stop or at least requiring clarifying questions from the interrogator See, e.g., People v. Superior Court (Zolnay) 1975) 15 C1.3d 729, 735-736); People v. Russo (1983) 148 Cal.App.3d 1172; People v. Munoz (1978) 83 Cal.App.3d 993, see generally People v. Johnson (1993) 6 Cal.4th 1, 25-33). After Davis, the question is, would an interrogator reasonably have understood the suspect words as indicating a desire to have counsel present before further questions were asked.

The interrogator is not required to ask clarifying questions, but if he does not, he proceeds at his peril. Here, Petitioner clearly wanted to have counsel, and Detective Sealy knew it, but deflected the discussion and then resumed questioning. The confession should have been suppressed.

D. Admission of the confession was prejudicial.

Because the Miranda right is based on Due Process Clause of the 14th Amendment, error in admitting a defendant's statement requires reversal unless the People can show beyond a

a reasonable doubt that the error did not affected the verdict (*Chapman v. California* (1967) 386 U.S. 18).

It can hardly be denied that this is the case.

Petitioner's confession demonstrated that, at least as to the many acts occurring after Courtney turned 14, her accusations about events that occurred when she was between the ages of 14 and 17. Admission of the confession was prejudicial on all counts.

CONCLUSION

Petitioner Geoffrey Baggett respectfully requests the for the Supreme Court of the United States, review this case to address the important issues presented.

The petition for writ of certiorari should be
granted. Respectfully submitted,

DATE: *Sep 12th, 2019*

Geoffrey Baggett
J. M. M.