

19-6730
No. _____

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

CAMERON A. HARINARAIN — PETITIONER
(Your Name)

vs.

SUPERINTENDENT HUNTINGDON SCI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Cameron Harinarain # HZ1483
(Your Name)

SCI Camp Hill, P.O. Box 200
(Address)

Camp Hill, P.A. 17001
(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. Is the conviction and sentence in violation to the Fifth Amendment to the United States Constitution
2. Is the conviction and sentence in violation to the Sixth Amendment to the United States Constitution.

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:

Pike County District Attorneys Office.

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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 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☒ is unpublished.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 B 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☒ is unpublished.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 _____ 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☐ is unpublished.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☐ is unpublished.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 August 2, 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: August 27, 2019, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

The Fifth Amendment to the United States Constitution states: (1) that a person shall not be required to answer for a capital or other infamous crime unless an indictment or presentment is first issued by a grand jury, (2) that no person will be placed in double jeopardy, (3) that no person may be required to testify against himself, (4) that neither life, liberty nor property may be taken without due process of law, and (5) that private property may not be taken for public use, without payment of just compensation.

The Sixth Amendment to the United States Constitution states: The accused in a criminal trial is entitled to the right to a speedy trial by an impartial jury, to be informed of the charges against him or her, to be confronted with witnesses against him or her, to have compulsory process for obtaining witnesses in his or her favor, and to have effective assistance of counsel.

STATEMENT OF THE CASE

The testimony of three Pennsylvania State Police were taken at a hearing for an Omnibus Motion to Suppress. Over the course of three days the following facts were revealed:

The eighteen year-old petitioner had been interviewed by the Pennsylvania state Police regarding the Rose murder on three different occasions prior to September 5, 2007, including the morning after the murder, N.T. 3/27/08 p. 45. Earlier in the day on September 5, 2007, Sergeant Cavallaro interviewed a Ms. McKenzie who had implicated the petitioner in the murder of Barry Rose, N.T. 3/27/08 p. 59. Sergeant Cavallaro then called the petitioner's cell phone and told him he needed to re-interview him and requested that he come to the police barracks. Approximately one hour later, the petitioner returned his call and stated that he could not come to the barracks, but that he could meet him at Fernwood Resort. On the way to the resort, Sergeant Cavallaro and Troopers Travis and VanLuvender met up with three other officers, N.T. 3/27/08 p. 8. Cavallaro, Travis and VanLuvender arrived at Fernwood in two unmarked police cars. They arrived at approximately 8:00 p.m., N.T. 3/27/08 p. 8. The petitioner received a ride to the resort from his friend Anthony,

N.T. 3/27/08 p. 73. Trooper VanLuvender entered the resort and obtained a room to conduct the interview from the staff, N.T. 3/27/08 p. 9. The room was an interior empty banquet room full of tables, N.T. 3/31/08 p. 12. On the way into the room, a trooper walked in front of and behind the petitioner, N.T. 3/31/08 p. 13. They sat at a table. Officers sat on either side of, and across the table from the petitioner, N.T. 3/27/08 p. 74. All of the officers were wearing weapons which were visible, N.T. 3/27/08 p. 51-54. Two of the officers were wearing badges, N.T. 3/27/08 p. 52-54. The doors to the room were closed, N.T. 3/27/08 p. 90. The petitioner was questioned for a total of three and a half hours, during which the petitioner spoke to no one other than the police officers. Initially, Sergeant Cavallaro and the petitioner had a heated ten minute conversation regarding how the Sergeant had obtained the Petitioner's cell phone number, N.T. 3/27/08 p. 72. Sergeant Cavallaro then went into the lobby and asked to speak to the Petitioner's friend Anthony. Sergeant Cavallaro questioned Anthony for approximately ten to twelve minutes on the other side of the banquet room while Troopers Travis and VanLuvender questioned the petitioner, N.T. 3/27/08 p. 20. Sergeant Cavallaro and Anthony then went out into the lobby. Sergeant Cavallaro later returned to the room to participate in the questioning of the petitioner. During the first hour and a half of the interview, the petitioner

never left the table. The petitioner was never told that he was free to leave. He was not issued Miranda warnings, N.T. 3/27/08 p. 47, 66. After questioning the petitioner for an hour and a half, the officers went out to the lobby and the petitioner remained in the room with the doors shut and wrote an exculpatory statement. The officers reviewed the exculpatory statement and then returned to the room and proceeded to question the petitioner for another two hours, N.T. 3/31/08 p. 34-36. During this two hour period Anthony remained in the lobby while the petitioner was questioned by the officers in the closed banquet room, N.T. 3/31/08 p. 14. During the two hour questioning, after the petitioner had written the exculpatory statement, the officers told the petitioner that he wasn't telling the truth, N.T. 3/27/08 p. 81-82, N.T. 3/31/08 p. 36. Sergeant Cavallaro told the petitioner, referencing the Rose shooting, "I believe you were there", N.T. 3/31/08 p. 38-39. Trooper VanLuvrenders notes from the interview reference Ms. McKenzie, N.T. 3/31/08 p. 72-73. The petitioner was never told that he was free to leave, N.T. 3/31/08 p. 20. He was never read his Miranda rights, N.T. 3/27/08 p. 44, 66. At the end of the two hour period, around 11:30 p.m., the petitioner wrote an inculpatory statement at the instruction of Trooper Travis, N.T. 3/31/08 p. 41. Five to ten minutes after the petitioner wrote the

inculpatory statement, he was handcuffed, placed in the back of Trooper Travis' car, and brought to the police barracks, N.T. 3/27/08 p. 92, 95. During the time period the petitioner was questioned, if all of the troopers were not in the room questioning him, they were in the lobby which was near the exit, N.T. 3/27/08 p. 28-30.

REASONS FOR GRANTING THE PETITION

1. Miranda Violation

The court should exercise its discretionary jurisdiction because it would clarify the Fifth Amendment and unify the courts. The Miranda court realized that police interrogations are no longer just physical but most are psychological. The Miranda court stated "an understanding of the nature and setting of an in custody interrogation is essential to its decision in *Miranda Id* at 445. Stressing that the modern practice of in custody interrogation is psychologically rather than physically oriented, *Miranda v. Arizona*, 384 U.S. 436, at 448 (1966). Since the Miranda court rendered its decision police tactics to questioning a suspect has evolved. The tell tale signs of police custody are becoming more difficult for courts to discern. Police tactics and forms of coercion are becoming more psychological. Psychological coercion is not a factor the courts give great weight to. Most courts lean on the physical surroundings and if there was physical deprivation, see *U.S. v. Willaman*, 437 F.3d at 359-60 (3d. Cir. 2006). Officers are aware that if they don't arrest or physically restrain a suspect they can circumvent giving Miranda warnings. Psychological coercion is just as, if not more effective, than physical restraints. It is also in the best interest of public safety for this court to rule on this issue. With the evolution of police

tactics moving from physical to psychological the court must decide what is acceptable and what is not, so this decision can guide courts in their review of Miranda violations. If this court refuses it will allow officers to continue to circumvent the Fifth Amendment, thus violating a citizens right to remain silent. The instant case is littered with psychological coercion. On September 5, 2007 the petitioner was questioned for 3½ hours by the Pennsylvania State Police, N.T. 3/27/08 at pg. 65. This was the fourth interrogation of petitioner related to this crime, N.T. 3/27/08 at pg. 45. The officers separated the petitioner and his companion Anthony Collichio, who drove and accompanied petitioner into the resort, N.T. 3/27/08 at pg. 73. The Miranda court stated "the principal psychological factor contributing to a successful interrogation was isolating the suspect in unfamiliar surroundings," Miranda at 457. The officers used a show of force by three officers questioning the petitioner and the visible display of weapons and badges, N.T. 3/27/08 at pg. 51-54. Before the interrogation commenced the officers knew Vernell McKenzie implicated the petitioner in the crime, N.T. 3/27/08 at pg. 59. During the first half of questioning the petitioners responses were consistent with a prior interview, N.T. 3/31/08 at pg. 30. After 1½ hours the petitioner wrote a exculpatory statement, N.T. 3/27/08 at pg. 70. Instead of the officers allowing the petitioner to leave they questioned him for two additional hours. It is at this time that the interrogation turned

accusatorial. The officers accused the petitioner of lying and being involved in the crime, N.T. 3/31/08 at pg. 36, 38, 39. "An officer's knowledge or beliefs may bear upon the custody issue if they are conveyed, by word or deed, to the individual being questioned," *Stansbury v. California*, 511 U.S. at 325 (1994). In response to these accusations the petitioner maintained his innocence by telling the officers "I have already told you the truth", N.T. 3/31/08 at pg. 45. Nevertheless the officers continued their accusations of petitioner because they wanted a confession. The officers also used questions designed to elicit a confession. "The term interrogation under *Miranda* refers to any words or actions on the part of the police, that the police should know are reasonably likely to elicit an incriminating response from the suspect", *Rhode Island v. Innis*, 446 U.S. at 301 (1980). The officers asked the petitioner, "This is your time to tell the truth, if you were there you need to tell me now", N.T. 3/31/08 at pg. 45-47. It is clear by the types of questions posed to the petitioner that the officers wanted a confession. It is also clear by the accusations of the officers that the questioning was not going to stop until the petitioner confessed. The officers also made intimidating statements to the petitioner. The officers stated "he was told that this is serious, that this is a homicide investigation, and that it was not going away", Refer to Trooper Travis Action Report documented as Ex. B at pg. 2. These statements coupled with the accusations, isolation, questions

posed, and the length of the interrogation, a reasonable person would not feel free to leave. What makes the custody issue more compelling is the fact that the officers never informed the petitioner that he was free to leave or not under arrest, N.T. 3/31/08 at pg. 19-21, which is part of a Miranda custody inquiry, see U.S. v. Willaman, 437 F.3d at 359-60 (3d Cir. 2006). To rule on what types of psychological coercion is acceptable and not would guide courts, protect citizens, and guide officers in their interrogations.

2. Sixth Amendment Violation

The Sixth Amendment ensures that a defendant receives competent and fair representation from counsel. The court in Batson did not articulate the evidence necessary to demonstrate a pattern, Batson v. Kentucky, 476 U.S. at 96 (1986). This court exercising its discretionary jurisdiction would bring clarity to Batson.

The petitioner was denied his Sixth Amendment right to the U.S. constitution. "In a federal habeas challenge to a state criminal judgment, a court conclusion that counsel rendered effective assistance is not a finding of fact binding on the federal court to the extent stated by 28 USC 2254 (d). Ineffective assistance is not a question of 'basic, primary, or historical fact... Rather, like the question whether multiple representation in a particular case

gave rise to a conflict of interest. It is a mixed question of law and fact...

Although state court findings of fact made in the course of deciding an ineffectiveness claim are subject to the deference requirement of 2254(d), and although District Court findings are subject to the deference of the clearly erroneous standard of Fed. R. Civil Procedure 52(a), both the performance and prejudice components of the ineffectiveness inquiry are mixed questions of law and fact." See *Strickland v. Washington*, 466 U.S. 668, 698 (1984). In order to prevail on an ineffective counsel claim the petitioner must show (1) counsel's performance fell below an objective standard of reasonableness, and (2) prejudice imputed to the petitioner, *Id.* at 694. The time for making a Batson challenge is during Voir Dire. Here trial counsel raised a Batson challenge on the first day of trial rather than Voir Dire, thus making the challenge untimely. The District Court agrees that the challenge was untimely, see R.E.R. at pg. 24. There is no justifiable or strategic reason for trial counsel to raise the challenge at the first day of trial rather than Voir Dire. Trial counsel's performance fell below an objective standard of reasonableness satisfying the first prong of *Strickland*. Trial counsel's ineffectiveness prejudiced the petitioner by the juror being excluded from the panel and barring the petitioner's Batson challenge from Appellate review. The Third Circuit has said "We have held that,

even in trials before the Supreme Court in *Batson*, a timely objection to the Prosecutors exercise of peremptory strikes is a prerequisite to raising a *Batson* claim on appeal", *Abu-Jamal v. Horn*, 520 F.3d 272, 284 (3d Cir. 2008). Also "Trial counsels ineffectiveness at trial by failing to preserve error, denied defendant just result on appeal, amounted to IAC", *Gov of Virgin Islands v. Forte*, 865 F.2d 59 (3d Cir. 1989). Here counsels ineffectiveness by raising the *Batson* challenge late, barred the petitioner from appellate review, thus causing petitioner prejudice, see *Commonwealth v. Harinarain*, No. 1422 EDA 2009 (Pa. Super. 2009). The challenge also has merit. The petitioner is African American. The juror in question is also African American. Of significant importance is the juror in question was the sole African American in the venire. The *Batson* court stated, "To establish a prima facie case a defendant first must show that he is a member of a cognizable racial group and that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendants race. Second, the defendant is entitled to rely on the fact, as to which there can be no dispute, that peremptory challenges constitute a jury selection practice that permits those to discriminate who are of a mind to discriminate", *Batson*, 476 U.S. at 96, Also, "The court in *Batson* did not articulate the evidence necessary to demonstrate a pattern, except to note, in cases involving the venire, this court has found a prima facie case on proof that members

of the defendants race were substantially underrepresented in the venire from which the jury was drawn", Id at 94. It is clear that the underrepresentation of African Americans in the venire, and the fact that the prosecutor used a peremptory strike on the sole African American, a prima facie case was made. With both prongs of Strickland satisfied, the state courts made an unreasonable application of clearly established federal law to the facts of this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cameron Harrison

Date: 11-1-19