No. 19-8919

IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

SCOTT CLEVENGER,

Petitioner,

v.

SHAWN P. PHILLIPS

Respondent.

On Petition for Writ of Certiorari to
the Sixth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Respectfully sumitted by,
Scott Clevenger, 399651
BCCX, Site 2, Unit 9
1045 Horsehead Rd.
Pikeville, TN. 37367

QUESTION PRESENTED

Whether Petitioner's self-incriminating statements that was given while he was in custodial interigation without him first being notified of his Miranda rights, violated his right to counsel, against self-incrimination, and should have been suppressed at trial?

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1. Trial Exhibits and page numbers are listed as (T.E. pg. #)
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PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT

The Petitioner, Scott Clevenger , respectfully prays that a Writ of Certiorari be issued to review the judgement and opinion of the Sixth Circuit Court of Appeals, rendered in these proceedings on May 14, 2020.

OPINION BELOW

The Sixth Circuit Court of Appeals affirmed petitioner's conviction in its Case no. 19-6356. The opinion is unpublished, and is reprinted in the appendix to this petition at 1a, infra.

JURISDICTION

The original opinion of the Sixth Circuit Court of Appeals was entered May 14, 2020.

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

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

U.S. CONST., AMEND. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONST., AMEND. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. §2254

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court only on grounds that he is in custody

in violation of the Constitution or laws or treaties of the United States.

(3)(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evdience presented in the State court proceeding.

STATEMENT OF CASE

On December 6, 2006, Scott Clevenger was convicted by a jury verdict of one count of aggravated sexual battery, one count of rape of a child and two counts of incest. At the sentencing hearing on January 29, 2007, he was sentenced to nine (9) years for aggravated sexual battery, for the charge of rape of a child he was sentenced to twenty-five (25) years as a range one offender, six (6) years as a range one offender on one count of incest, and ten (10) years as a range two offender on the last count of incest. All sentences were run consecutive for a net sentence of fifty (50) years. The fifty year sentence was consecutive to a six (6) year sentence for violation of community corrections.

On March 5, 2008, Petitioner was unsuccessful on appeal because he had failed to file a Motion for New trial and because the court determined that he was advised of his right under miranda and, therefore, a clear and unequivocal rule of law had not been breached in order to allow plain error review. State v. Clevenger, No. E2007-298-CCA-R3-CD, 2008 WL 588862 (Tenn.Crim. App., at Knoxville, March 5, 2008).

On May 2, 2011, after being granted a delayed appeal, appellant once again raised the issue that he was denied his right under miranda, which the court affirmed the judgment of the trial court. State v. Clevenger, 2010-00077-CCA-R3-CDm 2011 WL 1660580 (Tenn.Crim.App., at Knoxville, May 2, 2011).

On July 29, 2014, the Tennessee Court of Criminal Appeals affirmed the judgement of the postconviction court denying him

relief. Clevenger v. State, No. E2013-01786-CCA-R3-PC, 2014 WL 37442741 (Tenn.Crim.App., July 29, 2014). Then on November 21, 2014, the Tennessee Supreme Court denied Petitioner's Application for Permission to Appeal.

On November 4, 2019, the United States District court, Eastern District of Tennessee Southern Division, denied Petitioener's Federal Writ of Habeas Corpus with prejudice, and his COA. Clevenger v. Qualls, 1:13-cv-279-HSM-Skl, 2019 5698661 (November 4, 2019).

On May 14, 2020, the Sixth Circuit, Court of Appeals, affirmed the District Court's denial of Mr. Clevenger's Federal habeas Corpus.

REASONS FOR GRANTING THIS WRIT

ISSUE

Petitioner's self-incriminating statements that was given while he was in custodial interigation without him first being notified of his Miranda rights, violated his right to counsel, against self-incrimination, and should have been suppressed at trial.

INTRODUCTION

Back in 1966 in Miranda v. Arizona this honorable court set forth the controlling precedent governing the state's obligation to notify defendants of their right to counsel, and procedures on how to waive said right, prior to custodial interrogation.

This precedent has been used in over 135,500 cases, and overtime some lower courts have strayed from the principles set forth in Miranda, leading to over 250 negative treatments of such.

Hence, it is imperative for this the Supreme Court of the land to clarify that the U.S. Constitution's right to counsel, and right against self-incrimination, demands that the state follow the simple rules set forth in Miranda to assure that every defendant understands their rights prior to custodial interrogation.

In this case, it is clear that Petitioner was not notified of his Miranda rights prior to custodial interrogation. Further, even if Petitioner was notified of said right during or after these self-incriminating statements were made it would be a violation of Miranda, and those statements should have been suppressed at trial.

RELEVANT FACTS

On December 6, 2006, a hearing was held regarding the Motion to Supress as filed by Petitioner's counsel. The Trial Court heard the testimony of Petitioner where he stated that he was not notified of his Miranda rights prior his self-incriminating statements. (T.P. pg. 4, line 10). Further, Petitioner recalls signing all of the papers after questioning had taken place. (T.P. pg. 4, lines 14-18).

Officer Maness had recorded the interrogation on a tape. When questioned under oath, Officer Maness answered the question of "if the tape had been stopped and started back again" with "no sir." (T.P. pg 10, line 2). Officer Maness also testified that every time that he took a statement he would say, "now, Mr. Clevenger [Petitioner], do you understand these rights and that you do have a right to an attorney," but this statement does not appear in the entirety of the transcript of the tape. (T.P. pg. 8, lines 13-15).

The trial court did not choose to listen to the tape when requested by defense counsel. (T.P. pg. 10, lines 20-25). The tape was not played to the court. Both sides agreed that at the beginning of the tape, the Officer says you have been advised of your rights and that there is nothing on the tape that says what rights he was advised of, or if they were adequately explained to him.

The trial court even assumes that there was no acknowledgement by Petitioner on the tape of a statement by Officer Maness that

he had been advised of his Miranda rights. (T.P. pg. 13, lines 7-9). The tape does not seem to demonstrate the signing of the Miranda warning, or a waiver of those rights, before the Petitioner's self-incriminating statements.

The proof from Officer Maness's testimony at trial:

Officer Maness testified that he was called into assist Det. Robbi Rich in the investigation of sexual abuse of two children. Specifically, he was called in to do the interrogation of Petitioner. (T.P. pg. 59). Officer Maness testified that Petitioner was advised of his rights at the beginning of the interview. (T.P. pg. 61). According to Officer Maness's testimony, he stated he had informed Petitioner of his Miranda rights both orally and in writing. "Before I write a statement down, a statement of record, the back part of the form is filled out first. It has the Miranda rights that I just read to you. I have them intitial as a wavier of right that they understand." (T.P. pg. 61). Officer Maness further testified, "if they want to give me a statement, then I have them sign below that and date it." (T.P. pg. 62). The State entered Exhibits 2,3,4, and 5 through Officer Maness's testimony statements that were allegedly given by Petitioenr.

After the introduction of the statements, the prosecutor asked Officer Maness, "When Petitioner gave these statements that we have provided to the jury, did you go over the Miranda warning every time before he signed a new one"? Officer Maness responded, "yes, Ma'am." He wouldn't necessarily have to, and I stressed that because the Miranda warning was filled out first

before he gave his statment. I would go over the Miranda warning at least having Petitioner read the Miranda warning and go over it. Of course, he would be asked if he waived these rights. He would initial there and I would say, 'if you waive your rights, I need you to initial here,' and then would date it." (T.P. pg. 69).

On cross examination Officer Maness stated that Petitioner was prohibited from leaving and had a good idea that he was in custody. (T.P. pg. 84). According to Officer Maness, the interrogation began around noon. (T.P. pg. 86).

Also at the end of the interrogation officer Maness instructed Petitioner to "initial here and sign there." (T.P. pg 43, lines 9-10). Even though officer Maness attempted to explain this by saying it was to designate corrections; it is clear from the record, that this final initialing at the end of the tape was for Exhibit 5 and there is no corrections in that Exhibit, so the initialing had to be those found on the Miranda waiver. (T.E. pg 42-43).

The proof from Petitioner's testimony at trial:

Petitioner testified that he showed up at the Grainger County Sheriff's Department because on Sunday, February 25, his children were missing. He called the Sheriff's Department and ultimately was told to come to get the girls. (T.P. pg. 131, lines 1-21). When he showed up, he then was not allowed to leave, he was taken back and questioned by DCS and Officer Rich, and then by Officer Maness and Rich. (T.P. pg. 132). He further testified that for the next four and one half hours he was questioned and when he went to the resteroom he was accompanied by an officer.

(T.P. pg. 133, lines 11-16). Petitioner stated that he signed and initialed the part of the statment that had the Miranda warning on it after he signed the statements at the end of the interrogation, not at the beginning. (T.P. pg. 134, lines 5-20).

Further, Petitioner testified that he felt like he "... was already in custody and they wasn't going to let him leave out of the room until they got what they wanted." (T.P. pg. 137, lines 12-14). Petitioner also stated that he had been drinking the night before and he had not had anything to eat the entire day of the interrogation. (T.P. pg. 139-140). His mental state was, "it was not good, you know, just not real good at all. I was tired. My mental state was just distraught."

The District Court agreed with the State Appellate court, and the 6th Circuit affirmed their decision, accepting the Police Officers statement as true, that he did Marindize the Petitioner prior to the custodial interrogation, over the Petitioner's statement that he was not Mirandize, and even though the Officer's statements were inconsistant, and the evidence doesn't corroborate the Officer's testimony.

Since Petitioner is supposed to be considered innocent until proven guilty in a court of law one would assume both the Police Officer's and the Petitioner's credibility would be equal prior to the conviction, and with no evidence to corroborate the Polcie Officer's testimony, this evidence would have been suppressed. BUt that wasn't the case here, the Police Officer's statement was deemed more credible than Petitioner's because he was considered guilty from the time the allegation was made.

STANDARD OF REVIEW

As a practical matter, confessions obtained from ignorant persons [of law] without counsel are the product of skilled leading by trained prosecutors or investigators [or Police Officers]. See Judge Smith in U.S. v. Richmond, 197 Supp. 125 (1960).

Miranda v. Arizona, 384 U.S. 436 (1966), announced a constitutional rule with two components. First, before a police officer may interrogate a person who is in custody, he must inform the person of his rights -including his right to have counsel present during the interrogation - and must obtain a waiver of those rights before proceeding further. If the suspect asserts his right to remain silent or to have counsel present during the interrogation, the officer must honor that assertion. Second, if the police officer violates the rule-by failing to inform the person of his rights, by failing to obtain from the person a waiver of his rights, or by failing to honor an assertion of the person's rights - any statements resulting from the interrogation are not admissable to prove the person's guilt at trial. See Miranda v. Arizona, 384 U.S. 436 (1966).

In Miranda, the Supreme Court laid down "concrete constitutional guidelines for law enforcement agencies and courts to follow. Miranda, 384 U.S. at 442. Specifically, the Miranda court announced a rule that, before subjecting an individual to custodial interogation, the police must follow "procdeures

which assure that the individual is accorded his privilege under the 5th Amendment to the Constitution not to be compelled to incriminate himself." Id. at 439. The procedure must not only "inform accused persons of thier right of silence," but also must "assure a opportunity to exercise" the right. Id at 444

The police may satisfy these requirments by informing a suspect that he 1) "has a right to remain silent," 2) "that any statement he does make may be used as evdience against him," and 3) that he has a right to the presence of an attorney, either retained or appointed. id at 444. If the police do not inform an in-custody suspect of his rights, any statement that results from the interogation are inadmissible at trial. Id.

A Miranda advicement is required prior to custodial interrogation even if a suspect claims to know his rights, because a suspect's perceived awareness of his rights may be neither accurate nor complete. In addition, the delivery of the warning assures even one who knows his rights that "his interrogators are prepared to recognize his privilege should he choose to exercise it." Id. at 468. Moreover, the easily and quickly performed act of giving an advisement even to a suspect who claims to know his rights avoids subsequent disputes over what that knowledge, in fact, was. For this reason, courts will not pause to inquire in indivdiual cases whether the defendant was aware of his rights without a warning being given. Id at 468.

Indeed, in the Miranda case itself, [the U.S. Supreme Court] held that Ernesto Miranda's unwarned statement were inadmissible despite his having signed a written statement indicating that he had "full knowledge" of his "legal rights." Id at 492.

More than 30 years after Miranda was decided the court cleared up confusion that had arisen in the lower courts over whether Miranda announced a constitutional rule or merely a "judicially created rule of evidence or procedure." Dickerson v. U.S., 530 U.S. 428, 437 (2000). In Dickerson, the [U.S. Supreme Court] held that "Miranda announced a constitutional rule." Id at 444. As a matter of simple logic, if an act violates a constituional rule - a rule required by the constitution - the act violates the constitution. Id. at 439.

In addition, the court in Dickerson noted that it has allowed state prisoners to raise Miranda violations in federal habeas corpus proceedings, which are available only for persons in custody in violation of the constitution or laws or treates of the United States. Id at 439 (quoting 28 U.S.C. §2254 (a)). The court's further observation that the Miranda rule is not a law or treaty of the United States means that a violation of Miranda must be a violation of the Constitution. Id. at 439.

Miranda's warning requirement serves the important constitutional interest of preventing violations of the Fifth Amendment.

The Fifth Amendment provides in pertinent part that "no person shall be compelled in any criminal case to be a

witness against himself." U.S. Const. amnd V. A "criminal case" arises for Fifth Amendment purposes before the actual trial of the defendant. See U.S. v. Hubbell, 530 U.S. 27, 37 (2000). Indeed, a "criminal case" must arise even before judicial proceedings have been initiated against a suspect, given the difference in language between the text of the Fifth Amendment and the text of the Sixth Amendment. While the Fifth Amendment uses the phrase "criminal case," the Sixth Amendment uses the phrase "criminal prosecution[]" U.S. Const. amnd. VI. A "criminal prosecution" begins at the latest with the initation of judicial proceedings. Brewer v. Williams, 430 U.S. 387, 398 (1977). The phrase "criminal case" is broader than the phrase "criminal prosecution." See Counselman v. Hitchcock, 142 U.S. 547, 563 (1892). A "criminal case", therefore, must begin before a "criminal prosecution," and thus must include the stage of a case prior to the initiation of judicial proceedings. The Fifth Amendment prohibition of compelled self-incrimination in a "criminal case," therefore must apply to police interrogation." See Counselman v. Hitchcock, 142 U.S. 547, 563 (1892), and Chavez v. Martinez,123 S.Ct. 1994 (2003).

In Miranda, the court imposed a warning requirement designed to prevent violations of the Fifth Amendment's prohibition of compelled self-incrimination. Specifically, the court imposed a rule designed to prevent compelled self-incrimination in the inherently coercive setting of custodial interrogation. By requiring police to advise a suspect of his constitutional rights before custodial interrogation and to honor any invocation

of those rights. Miranda's warning requirements serves the exceedingly important interest in preventing violations of a celebrated provision in the Bill of Rights," the Fifth Amendment. See Chaver v. Martinez, 123 S.Ct. 1994 (2015).

Applying all the above to the facts in this case it is clear that the state court's adjudication, and the federal district Court's decision to affirm the state Court's decision, has "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court and constitution of the United States." Willimas v. Taylor, 529 U.S. 362 (2000), and 28 U.S.C. 2254.

Supportive Facts:

The evidence shows that Petitioner was not notified of his Miranda rights prior to custodial interrogation.

In the hearing regarding the Motion to Suppress, on the day of trial, defense counsel requested that the court listen to the tape of the interrogation. (T.P. pg. 10). The Trial Court declined the request to listen to the tape, and they denied said Motion based on the Officer's testimony, without considering the contradictions between his testimony and the tape.

Now, Officer Maness did testify at trial that the tape was not stopped during the questioning and started back (T.P. pg 10, line 2). In other words, it ran continuously.

The Court determined that the only mention of any rights ever being explained to the defendant was merely a statement by the

officer that "you have been advised of your rights". (T.P. pg. 15). There was no explaination of what those rights were, or even what rights he was referring to. Further, the Court assumed that the defedant did not give any kind of acknowledgement of this statement. (T.P. pg 13). All of which, demonstrates that Petitioner was not told of, or adequately notified of, his Miranda rights before making these self-incriminating statements.

Now, in this case, when questioned under oath, Officer Maness answered the question of if the tape had been stopped and started back again with "No Sir". (T.P. pg. 10, line 2).

However, Officer Maness testified at trial that every time that he took a statement he would say, "Now, Mr. Clevenger (Petitioner), do you understand these rights and that you do have a right to an attorney," but this statement does not appear in the entirety of the transcript of the tape, and according to Officer Maness the tape was not stopped and restarted. (T.P. pg. 8, lines 13-15.). This is probably why the trial Court assumes that there was no acknowledgement by Mr. Clevenger (Petitioner) on the tape of a statement by Officer Maness that he had been advised of his Miranda rights. (T.P. pg. 13, lines 7-9).

Hence, it is clear that according to the tape no one actually notified Petitioner, specifically, of his Miranda rights, nor did they explain what those rights were.

Further, the tape does not seem to demonstrate the signing of the Miranda warning before the statement was made, which is alleged by Officer Maness, due to the fact that at the

end of the multiple statements, after they had each been reduced to writting, Officer Maness would ask Mr. Clevenger (Petitioner) to "sign there...initial here" without any explanation of what he was signing. Logically, without explanation most lay-people would think they were just signing their statement, and not even notice the Miranda warning listed on the other side of it.

There are six different places where this kind of statement appears, "sign there...initial here", on the tape transcript as follows: page 38, lines 14-16; page 39, lines 6-7; page 41, lines 12-17; page 42, lines 18-19; and page 43, lines 4-10. In fact at the ending of the interrogation, Officer Maness was instructing Mr. Clevenger (Petitioner) to "Scott, again, I need you to initial here and sign there. Okay." (T.P. pg 43, lines 9-10). As the Court is well aware, the only portion of the form that calls for initialling is the front of the statement form under the waiver of Miranda rights paragraph. See Exhibit 2-5.

Officer Maness attempts to explain the request for initials by that one of the statements required Mr. Clevenger's initials for a correction in the statement. (T.P. pg. 97, lines 15-20. See Exhibit 4). However, the Court should note that Exhibit 4 was the only statement that had the initialing in the statement, and that the final initialing at the end of the tape transcript was for the statement of Exhibit Number 5. Hence, because the similar wording appears in the statement that Offiecr Maness is reading, and it did not require any initialing, but on the Miranda waiver, it is clear that Officer Maness had Petitioner sign

the statement and initial the Miranda waiver after the statement, and without any explaination of what he was initialing.

Through Miranda the United States Supreme Court opined that if interrogation continues without the presence of an attorney and a statement is taken, a heavy burden is on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. Escobedo v. Illinois, 378 U.S. 478, 490 (1964). The U.S. Supreme Court has a well set high standard of proof for the waiver of Constitutional rights. Johnson v. Zerst, 304 U.S. 458 (1938). The Court in Miranda, opined, "presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evdience which shows, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything else is not a waiver." See Miranda, 384 U.S. at 475.

The transcript of the tape shows at no time was Petitioner specifically notified of his Miranda rights, at no time did anyone explain those rights to him, and it would seem that after he had entered the self-incriminating statements and they had been reduced to writing that the Officers had Petitioner sign and initial them without explaining that he was also initailing a Miranda waiver. Hence, the government did not meet their burden of demonstrating that Petitioner knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel.

The state courts decision and the federal district court's decision is based on officer Maness's uncorriborated testimony, that he did explain Petitioner's Miranda rights to Petitioner before the interrogation and before each seperate statement, which contradicts the transcript of the interrogation tape, were there is no specific Miranda notice or explanation of Petitioner's rights given to Petitioner by Officer Maness, or anyone else, prior to the interrogation. Further, Officer Maness stated that the tape was not stopped and restarted, (T.P. pg 10, line 2). Hence, if Officer Maness notified Petitioner of his Miranda rights and explained them to him they would be on the tape, and they are NOT, so the evidence show that Petitioner was not notified or explained his Miranda rights. The trial court based their decision on Officer Maness's uncorrorated testiomny that was in direct contradiction of the evidence, the tape of those proceedings and Petitioner's testimony, and all of the courts thereafter erred in affirming the Trial Court's decision.

There is no question that Petitioenr was in custodial interrogation when the self-incriminating statements were given. Nothing on the tape of the interrogation demonstrates the Petitioner was ever read his Miranda rights, or that they were explained to him. He was never asked if he understood his Miranda rights, he was not given the time necessary to read the waiver of rights, nor did officer Maness explain that on the other side of the statement were he was initialing was his written Miranda rights, he was just told to sign and initial there by Officer Maness. The transcript of the tape clearly

demonstrates that Petitioner was not notified of his Miranda rights prior to interrogation.

In sum, Miranda v. Arizona, announced a constitutional rule with two components. First, before a police officer may interrogate a person who is in custody, he must inform the person of his rights - including his right to have counsel present during the interrogation - and must obtain a waiver of those rights before proceeding further. If the suspect asserts his right to remain silent or to have counsel present during the interrogation, the officer must honor that assertion. Second, if the police officer violates the rule -by failing to inform the person of his rights, by failing to obtain from the person a waiver of his rights, or by failing to honor an assertion of the person's rights - any statemenst resulting from the interrogation are not admissible to prove the person's guilt at trial.

In this case, the evdience shows that petitioner was not notified of his Miranda Rights, nor did he waive such rights prior to the interrogation, so the statements resulting from the interrogation are not admissible to prove the person's guilt at trail. Hence, the trial court's decision to allow such, and every court's decision to affirm such ruling, violates Petitioner Fifth Amendment right.

Further, Absent a clear and consistent application of the Miranda rule, the police will have an incentive to violate Miranda intentionally, in hopes of securing derivative evidence.

See : genreally David A. Wollin, Policing the Police: Should Mirand Violation Bear Fruit?, 53 Ohio.St.L.J. 805, 843-47 (1992) (describing the incentives). Indeed, in some jurisdictions, police are trained to violate Miranda to maximize their chances of obtaining ..... evdience that may prove ..... valuable. See State v. Seibert, 93 S.W.3d 700 (Mo. 2002), cert. granted, 123 S.Ct. 2091 (2003).

Some examples are: "a Missouri police officer admitted to having interrogated an in-custody murder suspect without first advising her of her Miranda rights, based on "a consious decision to withhold Miranda hopig to get an admission of guilt." Seibert, 93 S.W.3d at 702. He had been trained to do this, admitting at the suppression hearing that "an institute, from which he has received interrogation training, has promoted this type of interrogation 'numerous times' and that his current department, as well as those he was with previously, all subscribed to this training." Id. The tactic produced the desired results: the unwarned suspect first made an incriminating statement, then waived her Miranda rights, then repeated her initial statement. Id at 702. The second statement was admitted at trial, and the defendant was convicted. Id. at 701-02.

Police Officers in California have likewise been trained to violate Miranda in order to secure derivative evidence. One commentator notes a videotape in which a California prosecutor instructs police officers on how and why to violate Miranda deliberately in certain circumstances. See Charles D.

Weissenlberg, Saving Miranda, 84 Cornell.Rev. 109, 135, 189 (1996).

The Supreme Court of California, in Peoples v. Neal, took notes of the official encouragement of Miranda violations. In reversing a defendant's conviction due, in part, to the taking of a statement in deliberate violation of Miranda, the court stated that "at least until recently the employment of interrogation techniques in delibertae violation of Miranda as a "useful" but improper tool has not been isolated or limited... and worse yet has not been without widespread official encouragement. People v. Neal, 72 P.3d 280, 290n.5(Cal. 2003).

As the Missouri and California examples show, not to forbid Miranda violations, like in this case, will only invite the use of methods deemed "inconsistent with ethical standards and destructive to personal liberty." Nardone v. U.S., 308 U.S. 338, 340 (1939).

Further, Miranda is even more important tha ever with the U.S. Supreme Court's recent acknowledgement of their concerns about the "frightenly high percentage" of false confessions.

Hence, it is clear from the evidence, that reasonable jurist would disagree with the District Court's decision; instead, agreeing with Petitioner that his self-incriminating statements that was given while he was in custodial interrogation without him first being notified of his Miranda rights, violated his right against self-incrimination and should have been supressed at trial.

Lastly, the prejudice casued by this Miranda violation is,

so obvious, that it is known without saying it, in that anytime a confession, like in this case, is allowed into evidence during the trial the defendant's presumption of innocence is replaced with apresumption of guilt, and the burden of proof is changed from the state having to prove the defendant is guilty beyond a reasonable doubt to the defendant has to prove he is innocent.

Further, if the lower courts would have applied Miranda correctly to the facts of this case they would have concluded Petitioner is entitled to be told of his right to counsel and to have a meaningful consultation with such prior to an interrogation, not during, or afterwards. For "what use is a defendant's right to effective counsel at every stage of a criminal case if, [prior to trial], he can be questioned in absence of counsel until he confesses?" Justice Douglas, Black, and Brennon in Spano v. New York, 360 U.S. 315, 326 (1959).

Thus, all of the foregoing, demonstrates that petitioner was not notified of his Miranda rights prior to custodial interrogation, and he was indeed prejudiced by this constitutional violation.

CONCLUSION

For the reasons stated herein, Petitioner moves this court to Grant the Writ of Certiorari, thereby clarifying the use of, and need for Miranda in the modern, technilogical, society that we live in today.

Date: 6-18-2020

Respectfully submitted

Scott Clevenger

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CERTIFICATE OF COMPLIANCE

Pursuant to fed.R.App.P. 32 (a)(7)(A), the undersigned Certifies that he is a state petitioner, he typed this Application on the prison's typewriter, and the Application contains 30 pages or less applicable pages.

Scott Clevenger

Scott Clevenger, 399651

I declare under the penalty of perjury that the foregoing is true and correct.

Scott Clevenger

Scott Clevenger, 399651