

20-6704

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON D.C

Agustin Calderon ^{pro-se} PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS ET AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
TRIAL COURT 10TH DISTRICT COURT GALVESTON, COUNTY, TX
COURT OF APPEALS FIRST DISTRICT OF TEXAS
COURT OF CRIMINAL APPEALS AUSTIN, TEXAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Agustin Calderon
(Your Name)

2665 Prison Rd #1
(Address)

Love Lady Tx, 75851
(City, State, Zip Code)

0
(Phone Number)

FILED
NOV 13 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

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TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

In Texas the Confession Statute of the General
Voluntariness provision is the Code of Criminal Procedure
article 38.22 The wording in this article should be Fully
respected.

Code of Criminal Procedure article 38.23 Evidence not to
be used

Code of Criminal Procedure article 38.43 Biological Evidence

Code of Criminal Procedure 38.01 Texas Forensic Science
Commission.

OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

4. Amendment protections under the Texas Constitution provides greater protection than the United States Constitution see Flores v. State, 319 S.W. 3d 697, 702 n.8 (Tex. Crim. App. 2010) you can find this in Appendix E Pg# 16
5. Amendment against self incrimination Appendants win like to challenge the voluntariness of waiver of rights also the knowingly and Intelligently under the Texas Statutes 38.22 Section 2, 3, 6 see Moran v. Burbine 475 U.S. 412, 421-106 S.Ct 1135, 89 L.Ed 2d 410 (1986) you can find this in Appendix E Pg# 7

STATEMENT OF THE CASE

In Appellant Agustin Calderón Case the following events took place on December 28, 2015, Appellant was running for his life, when Nancy Shufflebeger saw Appellant flying over her fence she confronted him, asked Appellant if someone was chasing him and if Appellant wanted her to call the police Appellant said yes, here's where the dispute starts. When officers arrived Appellant asked officers for "help", "protection", and for their "advice". Instead of helping Appellant officers conducted a terry frisk search in search for weapons and drugs when here Appellant ask officers for "help". The area is not a high crime area or known for drug activity. The question is? If miss Nancy Shufflebeger didn't feel threaten, how come officers felt threaten?? Minutes later officer Best arrested Appellant for public intoxication, placed him in custody, officer Best failed to conduct a sobriety test officer Best misconduct created a 4th Amendment violation of the constitution of United States of America. Appellant was held in a holding cell for 8 hours, officers and detectives created a liberty interest Appellant was scared, confused and disoriented due to the officers misconduct, this resulted into a involuntary statement and inconsistent statement then charged with capital murder without any type of physical evidence, that would incriminate Appellant. The 10th District Court in Galveston County didn't consider none of the circumstances surrounding the interrogation. This resulted into a wrongful conviction, A product of a miscarriage of Justice. Pg 4

STATEMENT OF THE CASE

Appellant was charged by indictment with capital murder, murdering two or more individuals in the same criminal transaction. Appellant was arraigned and pled not guilty to the allegation on April 24, 2018. After hearing the evidence and argument of counsel the Jury returned a verdict of guilty to the charge of capital murder on April 27, 2018. As the State had announced that it did not intend to seek the "death penalty" Appellant was sentenced to an "automatic Life Sentence" in the Texas Department of Criminal Justice Institutional Division. Judgement and Sentence was entered and signed on April 27, 2018. Appellant timely filed notice of Appeal on May 14, 2018 with the Court of Appeals First District in Houston TX C.O.A. NO # 01-18-00422-CR. The Court of Appeals affirmed the trial court's judgment on December 19, 2019. Appellant timely filed a pro-se petition for discretionary review on March 27, 2020. Later refused on August 19, 2020. On October 18, 2020 Appellant filed motion for rehearing. Court of Criminal Appeals never answer such motion.

REASONS FOR GRANTING THE PETITION

Appellant Writ of certiorari should be granted for the following reasons.

The only evidence the 10th District Court has is a inconsistent statement, no type of physical evidence support's the alleged video recording interview. no type of Biological evidence incriminates Appellant. The 10th District Court in Galveston County used improper methods calculated to convict Appellant. The 10th District Court choose to proceed like criminals against Appellant knowing Appellant girl friend Stephanie Falcon was prostitudeing her self. The 10th Court had evidence in there possession of ms. Falcon misconduct knowing that ms. Falcon was haveing other encounters with "different ~~men~~" still chosse to prosecute Appellant. The 10th District Court Justice Center in Galveston County should not have an excuse there misconducts haveing high quality, technology in Poseession, "Other Detective's opinions", investigators in there command. AS you can see in my case their was 6 different prosecutors finally got convicted through Deception, prosecutors misguided the Jury all a long, over a simple piece of Paper a simple statement This should be consider as national importance no one in society should Face The Death Penalty and then, a life Sentence without Parole "only becvasse" the "Court has" the power. In Texas the Confession Statute, the general Voluntariness Provision is the Code of Criminal procedure Art: 38.22 When a statement may be used. The wording in this 196 Article is the rules, and Statute and should be highly

respected by courts. In Article 38.22 section 2-5 it reads. (he has the right to terminate the interview at any time.) At one point Appellant tried to leave Detective Walton told Appellant he had to finish and did not let Appellant leave. See section 3-A4 it reads (all voices on the recording are identified) see also section 3-d it reads - only voices that are material are identified, Appellant did not clearly confess in his own words to this criminal action. The first court of appeal is in the same position as the trial court to review the main video recording study the whole situation as the state has the burden to 'prove a preponderance of the evidence that Appellant's waiver of his constitutional rights was done knowingly, intelligently and voluntarily. The (trial) court and Appellant court erred in overruling Appellant's motion to suppress, as both courts failed to carry this burden. The video interview demonstrates that Appellant did not understand the waiver of rights form. At one point Detective Walton told Appellant that it is a simple piece of paper and a simple document. R.R. 11-14 - see Moran v. Burbine 475 U.S. 412, 421-106 S.Ct 1135, 89 L.Ed. 2d (1986) When determining whether an accused has knowingly, intelligently, and voluntarily waived his miranda rights courts are to consider the following, first, the relinquishment of the right must have been voluntary in the sense that it was the product of a 'free and deliberate' choice rather than intimidation, coercion or 'deception' second the waiver must have been made with 'full awareness' of both the nature of the rights being abandon it. 'only' if the totality of the circumstances surrounding the

interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the miranda right been waived 'Quoting' Fare v. Michael - 422 U.S. 707, 725 99 S.Ct. 2560, 61 L.Ed. 197 (1979) The totality of the circumstances approach requires the consideration of all the circumstances surrounding the interrogation including the defendant's experience, background, and conduct. Because the improper admission of statement in response to custodial interrogation implicates the constitutional rights against self incrimination - see - O'Neal v. State 999 S.W.2d 826, 832 (Tex. App. Tyler 1999) When a trial judge denies a motion to suppress the trial judge is the sole finder of all errors done and should apply the reasonable person's standard of review in determining custody circumstances custody is a 'fact specific inquiry'. The Appellate court is in the same position explained by the Supreme Court. The Supreme Court has described how an appellate court must decide whether a person in custody for purposes of applying miranda see Thompson v. Keohane, 516 U.S. 991, 112-116, Ct. 457, 133 L.Ed. 2d 383 (1995) see also SAENZ v. State 411 S.W.3d 488, 495 (2013 Tex. Crim. App. Lexis). An appellate court both (1) conducts a factual review in examining the circumstances surrounding the interrogation and (2) makes an ultimate legal determination whether a reasonable person would not feel at liberty to leave. Was there a formal arrest or restraint of freedom of movement of the degree associated with a formal arrest? The Fourth Amendment protections provides see Flores v. State 319 S.W.3d 697, 702 (Tex. Crim. App. 2010)

Evidence is found on the Body Cam of the arresting officer, Officer Best - See - R.R.IV-40-41, R.R.IV-41-42, R.R.IV-46, State's Ex.#3 is a copy of the interaction R.R.IV-56,57, , R.R.IV-79, St.Ex.#3 at 2:02 - 2:24 St.Ex.#3 at 2:46 - 2:57, St.Ex.# at 2:57 at 3:16, R.R.IV-168-169 The Texas Court of Criminal Appeals has suggested four scenarios in which a person might be considered in custody See *Dowthitt v. State* 931 S.W.2d 244, 254 (Tex. Crim. App. 1996)

As you can read in Appellant's case The decision of the Supreme Court creates a Big conflict with the decision made by trial court and Appellate court and other courts as well. The trial court along with Appellate court made poor decisions and several errors explained by the highest of Texas The Supreme Court.

For the reasons explained. In Appellate work I hope The Supreme Court of the United States Washington D.C. Looks into my case and makes the correct decisions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
ENTERED BY THE 10th JUDICIAL DISTRICT COURT
OF GALVESTON COUNTY, TEXAS. CAUSE NO: 15-CR-3346

On April 9, 2018 (and continued during trial) the trial court testimony and took evidence on the defendant's motion to suppress. IN the defendant's written motion the defendant relied upon Texas code of Criminal Procedure 38.22. The defendant claims that: The defendant did not knowingly, intelligently and voluntarily waive his rights,

Detective Harvey Walton of the Lamarque Police Department testified for the State.

1. Based upon the evidence, the court makes the following Findings of Fact: On December 28, 2015 Detective Harvey Walton arrived at the scene of a possible homicide at 1215 Spruce Lamarque, Texas
2. Detective Walton conducted an in custody interview with the Defendant later in the day of December 28, 2015
3. Before beginning the interview of the Defendant, Detective Harvey Walton read to him a waiver of rights document (State's Exhibit NO. 2).
4. During the course of reading that document to the Defendant, Detective Walton informed him of his right to remain silent.
5. During the course of reading that document to the Defendant, Detective Walton informed him that anything he said could be held against him.
6. During the course of reading that document to the Defendant, Detective Walton informed him of his right to have a lawyer.

7. During the course of reading that document to the Defendant, Detective Walton informed that a lawyer could be appointed if he could afford one.
8. During the course of reading that document, the Defendant actually took the document and read it for himself, out loud in English.
9. After Detective Walton read the document to the Defendant he read the document himself and signed the waiver indicating his desire to speak with Detective Walton.

Conclusions of Law

1. The Court concludes that Detective Walton read the Defendant his rights.
 2. Based on Detective Walton's reading and the Defendant's actions on video, the Court concludes that he knowingly, intelligently and voluntarily waived his rights.
 3. The Defendant voluntarily gave a statement to Detective Walton.
 4. The video recording was an accurate recording of the interview.
 5. Detective Walton is credible.
 6. The Defendant's video-taped statement is admissible.
- Therefore, the Defendant's motion to suppress the statement is denied.

Date Signed JAN. 23 2019

Kerry Neves
JUDGE PRESIDING
10th DISTRICT COURT

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Agustín Calderón

Date: November 9, 2020