

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

(October Term 2020-2021)

ROBERTO DEGOLLADO
Petitioner,

vs.

THE STATE OF TEXAS
Respondent.

**On Petition for Writ of Certiorari to
Texas Court of Appeals, Third District, at Austin**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Is a defendant's open plea of guilty to engaging in the knowing or intentional conduct required to prove a murder charge valid when the plea colloquy reflects that the defendant does not remember engaging in the conduct that resulted to the murder, or is it no longer required under the 14th Amendment Due Process Clause that the record affirmatively show that the Defendant's guilty plea was knowingly, intentionally, or voluntarily entered?

PARTIES TO PROCEEDING BELOW

All parties appear in the caption of the case on the cover page.

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IN THE SUPREME COURT OF THE UNITED STATES

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THE STATE OF TEXAS
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ON PETITION FOR WRIT OF CERTIORARI TO
TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

PETITION FOR WRIT OF CERTIORARI

Roberto Degollado petitions for a writ of certiorari to review the judgment of the Texas Court of Appeals, Third District, at Austin in this case.

OPINION BELOW

The unpublished order of the Texas Court of Appeals, Third District, at Austin denying leave to file an appeal is attached as Appendix 1.

JURISDICTION

This Court has jurisdiction to review these orders pursuant to its authority to issue writs of certiorari. 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the U.S. Constitution provides as follows: “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.”

STATEMENT OF THE CASE

The facts relating to the issue of whether Petitioner Roberto Degollado’s open plea of guilty to murder was validly waived and that said guilty plea was knowingly, intentionally, and voluntarily made are set out in the clerk’s record and reporter’s record of the guilty plea colloquy transcribed in this case. The clerk’s record indicates that before entering an open or blind plea of guilty to the murder charge, Degollado executed a set of plea documents that consisted of warnings, waivers, rights, and case specific information are in the English language and make no reference to a plea bargain agreement. CR 3-16. The written plea documents also incorporated a preprinted waiver of the right of appeal that is not crossed out or otherwise shown to be inapplicable. CR 7. In these plea documents, paragraph 10 (under the caption “WAIVERS”) stated in the English language: “After consulting with my attorney, I freely, knowingly, and voluntarily **WITHDRAW** my pretrial motions and **WAIVE** my right to appeal.” CR 7.

Subsequently, Degollado entered an open or blind plea of guilty to the offense of murder. 2 RR 1-44. The indictment contained three separate murder paragraphs. The first alleged that Degollado did “knowingly and intentionally cause the death of EMILY

MARTINEZ VILLAREAL, an individual, by by [sic] stabbing EMILY MARTINEZ VILLAREAL with a knife.” CR 3. Paragraph II alleged that Degollado “did then and there, with intent to cause serious bodily injury to an individual, namely EMILY MARTINEZ VILLARREAL, hereafter styled the complainant, commit an act clearly dangerous to human life that caused the death of the EMILY MARTINEZ VILLARREAL by stabbing EMILY MARTINEZ VILLARREAL with a knife.” CR 3. Paragraph III alleged that Degollado “did then and there intentionally and knowingly commit or attempt to commit an act clearly dangerous to human life, to-wit: stabbing a person with a knife, that caused the death of, EMILY MARTINEZ VILLARREAL, and the defendant was then and there in the course of intentionally and knowingly committing a felony, to wit: Aggravated Assault, and the death of EMILY MARTINEZ VILLARREAL was caused while the defendant was in the course of and in furtherance of, and immediate flight from the commission or attempt of the felony.” CR 3-4.

The guilty plea colloquy was performed with the aid of a Spanish interpreter identified as Maria Calderon. Near the start of the plea colloquy, the trial court judge directed the following question to Degollado: “You obviously, again, are here with an interpreter. So you do not read and write the English language. Is that correct?,” to which the question, Degollado answered, “Yes.” 2 RR 10.

During the plea colloquy that followed, when Degollado was asked by the trial court, “And do you believe that you’ve understood all of the conversations with your attorney?,”

and responded: “Yes, a little.” 2 RR 11. To the follow-up question, “Is there anything that you didn’t understand when you talked to your attorney?,” Degollado stated: “No, it’s fine.” 2 RR 11. Degollado’s trial counsel was also asked by the trial court whether he believed Degollado was competent to stand trial based on experts the trial court appears to have appointed. 2 RR 11. Without expressly asking trial counsel whether Degollado had been required to submit to a competency examination, the trial court commented that “assuming that [of] the experts [trial counsel] had examine him, not one had found him incompetent.” 2 RR 12. But the question of whether Degollado had been required to submit to a competency hearing was never asked of Degollado’s trial counsel. 2 RR 12.

The following exchange during the plea colloquy purports to set forth the reason Degollado chose to enter a guilty plea to the murder charge:

Trial Court: Are you pleading guilty because you are guilty? 2 RR 13.

Defendant: I don’t remember. But if the evidence is there that’s because something happened. 2 RR 13.

Trial Court: Sir, I understand your answer. However, I cannot accept your guilty plea unless you’re telling me that you are guilty of the crime of murder. 2 RR 13.

Defendant: Well, I am guilty because of the reason that the evidence is there. Like I said, I do not remember that moment. RR 13.

Trial Court: So let me ask you the question this way. You are pleading guilty. Is that correct? 2 RR 13.

Defendant: Yes. 2 RR 13.

Trial Court: Are you pleading guilty because you believe you’re guilty? 2 RR 13.

Defendant: I believe so. 2 RR 14.

A little further later, Degollado's trial counsel, Mr. Reposa, interjected the following comment to the trial court:

I did just want to ask one further question or ask the Court to direct this inquiry. The Court had appointed Willie Fabala as an investigator. I've worked with him. And I believe that neither of us in our conversations with Mr. Degollado were ever informed of any potential alternate perpetrator, that is was never suggested at any point that someone else may be responsible for this. So I want to make it very clear that Mr. Degollado, based our discussion, has conveyed to me that he doesn't have any reason to believe someone other than him committed these murders and that he believes as we stand here that it's true that he committed these murders and that he believes as we stand here that it's true that he committed these murders. Because if he doesn't believe that, then I cannot let him enter a guilty plea. My understanding was that he subjectively thought that. And through his conversations with Mr. Fabula and myself, never represented anything to the contrary. But I did want to be very clear because that is integral to our plea of guilty, is that we believe we [sic] committed the act, which I believe he believes. I thought I understand him to believe that. But if I'm wrong, I need to know that before we move forward. 2 RR 14-15.

After hearing this explanation from Degollado's trial counsel, the following exchange took place between the trial court and Degollado:

Trial Court: Mr. Degollado, do you understand what Mr. Reposa is saying?
2 RR 15.

Defendant: Yes. 2 RR 15.

Trial Court: And do you agree with what he is saying? 2 RR 15.

Defendant: Yes. 2 RR 16.

On September 23, 2019, the trial court sentenced Petitioner to life in prison on the murder

charge. 2 R 12-13. On October 23, 2019, the Petitioner filed a motion for new trial and complained that the waiver he had signed giving up his right to appeal was invalid. CR 31-39. The motion for new trial was heard by the trial court on December 2, 2019 and denied. On January 6, 2020, Petitioner filed with the Austin Court of Appeals a motion for leave to file notice of appeal and to invalidate the waiver he had signed giving up his right to appeal. Degollado argued that the guilty plea colloquy failed to affirmatively demonstrate that his guilty plea was knowingly waived, as required by precedent of the United States Supreme Court. On January 24, 2020, after the clerk's record and reporter's record were filed, the Austin Court of Appeals dismissed the appeal on jurisdictional grounds after determining in a *Memorandum Opinion* issued on January 24, 2020 that Degollado had waived his right of appeal and that the record of Degollado's plea-and-sentencing hearing supported the trial court's certification that Degollado did not have a right to appeal.

Thereafter, Degollado timely filed a petition for discretionary review with the Texas Court of Criminal Appeals. Again, Degollado complained that the guilty plea colloquy failed to demonstrate that this open or blind plea to the murder charge was not knowingly and voluntarily entered. On June 17, 2020, the Court of Criminal Appeals refused the petition for discretionary reviewed filed by Degollado.

REASONS FOR GRANTING CERTIORARI

- 1. By holding that the defendant's open plea of guilty to murder was knowing, intentionally, and voluntarily made even though the plea colloquy establishes that the defendant had no memory of the conduct that resulted in the murder, the Austin Court of Appeals has decided an important federal question in a way**

that conflicts with relevant decisions of the U.S. Supreme Court

The plea colloquy taken of Degollado's guilty plea to the murder charge reflects that his guilty plea was not knowingly, intentionally, and voluntarily made under the Due Process requirements set forth by the United States Supreme Court. This plea colloquy reflects that Degollado did not have any memory of how the indicted murder offense had occurred. While the trial court did secure an admission from Degollado that he believed he must have committed the murder because the evidence indicated that he had committed the murder, this admission did not suffice to prove that Degollado knowingly or intentionally committed or attempted to commit an act that was clearly dangerous to human life under the indicted charge. This was the murder charge the State has had to proven under the Texas Penal Code Section 19.03, the felony murder charge to which Degollado pled guilty.

The *mens re* "intentional" or "knowing" offense element was not proven up by Degollado's guilty plea since Degollado was very clear to explain to the trial court on more than one occasion that he only believed that he had committed murder because he had no memory of having engaging in the conduct that resulted in the death of the decedent. This admission by Degollado was not an admission to having engaged in "knowing" or "intentional" conduct. When pressed on this point, Degollado again indicated by his response that he had no memory of having knowingly or intentionally stabbing the decedent; at most, he would admit to the belief that he must have stabbed the defendant.

An agreement by a defendant to plead guilty to a charged offense entails a waiver of

three significant constitutional rights: The right against self incrimination; the right to confrontation; and the right to a trial by jury. *Boykin v. Alabama*, 395 U.S. 238, 243 (1969). Because such significant constitutional rights are at stake, due process requires that their relinquishment in the course of a guilty plea be undertaken voluntarily, with sufficient awareness of the consequences. *McCarthy v. United States*, 394 U.S. 459, 466 (1969). A defendant "must have sufficient awareness of the relevant circumstances," and must possess an understanding of the law in relation to the facts. *Id.* The Supreme Court in *Boykin v. Alabama* set forth the requirements that a record of a guilty plea must have before one could presume that the guilty plea was knowingly, intentionally, and voluntarily made:

The requirement that the prosecution spread on the record the prerequisites of a valid waiver is no constitutional innovation. In *Carnley v. Cochran*, 369 U.S. 506, 516, we dealt with a problem of waiver of the right to counsel, a Sixth Amendment right. We held: "Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver." *Boykin v. Alabama*, at 242.

We think that the same standard must be applied to determining whether a guilty plea is voluntarily made. For, as we have said, a plea of guilty is more than an admission of conduct; it is a conviction.[4] Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality. The question of an effective waiver of a federal constitutional right in a proceeding is of course governed by federal standards. *Id.*, at 242-243.

What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought. *Id.*, at 243-244.

The guilty plea received by the trial court in this case fails to comport with the Due Process requirements established by the above-cited decisions of the United States Supreme Court, particularly *Boykin v. Alabama*, supra. Based on the plea colloquy between Degollado and the trial court, it is evident that Degollado believed that he had no choice but to plead to guilty to the indicted murder charge because the evidence supported a finding that he had killed the decedent. Thus, even though Degollado was insistent that he could not remember having engaged in the conduct that killed the decedent, i.e. the act of stabbing the decedent multiple times, the record is clear that he believed the murder charge as alleged could be proved based on his mere belief that he must have committed the murder offense alleged in the indictment. More than once, Degollado unequivocally told the trial court during the plea colloquy that he believed he was guilty of murder simply because the evidence showed that he killed the decedent. He never once wavered or qualified his stance on this point.

The plea colloquy further establishes that Degollado believed that the State only had to prove that he killed the decedent to prove the murder charge. That is, Degollado was never informed by the trial court that there was a *mens re* element to the murder offense that had to be proven. Nothing in the plea colloquy reveals that the trial court or Degollado's trial counsel ever explained to Degollado that the State had to prove that Degollado's engaged in either "intentional" or "knowing" conduct. Degollado's failure to comprehend that "knowing" or "intentional" conduct were offense elements is further confirmed by Degollado's own trial counsel's comments. During the guilty plea colloquy, Degollado's

trial counsel divulged to the trial court that Degollado had never admitted to him that he had “knowingly” or “intentionally” engaged in the conduct that resulted in the decedent’s death:

But I did want to be very clear because that is integral to our plea of guilty, is that we believe we [sic] committed the act, which I believe he believes. I thought I understand him to believe that. But if I’m wrong, I need to know that before we move forward. (Plea Colloquy, p. 11).

Trial counsel’s comments reveal that Degollado never admitted to his trial counsel that he had killed the decedent, Emily Villareal, or that Degollado knew who killed the decedent. Trial counsel’s remarks to the trial court further corroborate Degollado’s claim that he did not remember anything about the incident that resulted in the decedent’s death. Trial counsel’s remarks reveal that Degollado only believed that he must have killed the decedent because of physical evidence found at the crime scene. The plea colloquy therefore establishes that neither the trial court nor Degollado’s trial counsel explained to Degollado that he could not be found guilty of the murder charge by a jury unless the evidence showed that the murder resulted from intentional or knowing conduct on Degollado’s part, no matter which paragraph of the indictment was relied on by the State to prove the indicted murder charge.

The clerk’s record and reporter’s record of the guilty plea, viewed together, therefore fail to affirmatively demonstrate that Degollado entered a guilty plea that was knowingly, intentionally, and voluntarily made. Such a showing must be made before a guilty plea is valid under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, as so held in *Boykin v. Alabama*, 395 U.S. 238 (1969). The guilty plea

paperwork was printed in English, when Degollado is a Spanish speaker who would not have been able to read the plea papers. The reporter's record of the plea colloquy establishes that Degollado only believed that he must have killed the decedent. But Degollado was always careful to state during the guilty plea colloquy that he could not be sure that he killed the decedent by explaining that he had no memory of the incident that resulted in the decedent's death. These facts fail to demonstrate that Degollado knowingly, intentionally, or voluntarily entered into the open plea of guilty to the offense of murder, as charged in the indictment.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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