No. 20-7630

ORIGINAL

FILED
MAR 16 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Scott Paul Madlock — PETITIONER
(Your Name)

vs.

Bobby Lumpkin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Scott Paul Madlock
(Your Name)

12071 FM 3522 Robertson Unit #2074132
(Address)

Abilene, Texas 79601
(City, State, Zip Code)

(325) 548 9035
(Phone Number)

QUESTION(S) PRESENTED

Petitioner strongly believes that the United States Court of Appeals for the Fifth Circuit's decision sanctioned such a departure from accepted and usual course of judicial proceedings by a lower court and calls this Court to exercise its supervisory power. Also, this issue, specifically, may not have been settled by this Court and the Petitioner seeks clarification by this Court.

The Petitioner, during interrogation, invoked his right for counsel and added "for the sake of my wife." He did further add that he did not want to speak when the decitive sought to confirm the Petitioner's request for counsel.

* Firstly, the Petitioner did want counsel for himself, as well, but does adding "for the sake of my wife" make his request for counsel equivocal?

* When the detective followed up Petitioner's request for counsel seeking clarification, the Petitioner stated that he did not want to speak. Was this or was it not a clear invocation of his Fifth Amendment Right?

* Lastly, in light of the first two questions, if this Court finds those to be clear invocations of the Petitioner's Fifth Amendment Right for counsel and to remain silent, then was it harmful to admit such evidence in the Petitioner's Trial, violating his Fourteenth Amendment right?

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:

RELATED CASES

Madlock v. Davis, No. 5:18-CV-1083-OLG, U.S. District Court for The Western District of Texas San Antonio Division, Judgment entered August 21st, 2019.

Madlock v. Lumpkin, No. 19-50826, U.S. Court of Appeals for The Fifth Circuit, Judgment entered January 26th, 2021.

Madlock v. The State of Texas, No. 13-16-00388-CR, Texas Court of Appeals for the 13th District, Corpus Christi-Edinburg, Judgment entered January 11th, 2018.

The State of Texas v. Madlock, No. CR2015-191, 207th District Court of Comal County, Texas, Judgment entered May 18th, 2016.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

STATUTES 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 A to the petition and is

[ ] reported at N/A; 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 N/A; 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 N/A to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Texas Thirteenth District Appellate court appears at Appendix C 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 January 25th, 2021.

[✓] 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A N/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 N/A. A copy of that decision appears at Appendix N/A.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V (1791)

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of Grand Jury, except cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; ... nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; ..."

Amendment XIV (1868)

Sec. 1 "... 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 with its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

In May of 2015, Petitioner was charged by indictment with four counts of aggrivated sexual assault of a child younger than six years of age and one count of indecency with a child by contact. A jury subsequently convicted Petitioner of each count alleged in the indictment and was sentenced by the trial court to five consecutive life sentences. State v. Madlock, No. CR2015-191 (207th District Court, Comal County, Tx. May 18th, 2016).

His convictions and sentences were affirmed on direct appeal, and the Texas Court of Criminal Appeals (TCCA) refused his petition for discretionary review (PDR) on May 2nd, 2018. Madlock v. State, No. 13-16-00388-CR (Tex. App. — Corpus Christi-Edinburg, Jan. 11th, 2018, pet. ref'd); Madlock v. State, No. PD-0174-18 (Tex. Crim. App.).

On July 16th, 2018, Petitioner filed a state habeas corpus application challenging the constitutionality of his state court convictions and sentences which was later denied by the TCCA without written order on September 26th, 2018. Ex Parte Madlock, No. 88,894-01 (Tex. Crim. App.).

Petitioner initiated his federal habeas corpus proceedings on October 4th, 2018, when he placed his form petition for federal habeas corpus relief pursuant to 28 U.S.C. § 2254 in the prison mailing system. In the petition and supplemental memorandum, Petitioner raised only one allegation: The court erred in admitting into evidence his incriminating statements to police in violation of Edwards v. Arizona, 451 U.S. 477 (1981) and Miranda v. Arizona, 384 U.S. 436 (1966). In her answer, Respondent relies exclusively on the state court's adjudication of this allegation on direct appeal and argues federal habeas relief is produced under the AEDPA's deferential standard. Petitioner's Habeas was denied relief and dismissed with prejudice on August 21st, 2019. Madlock v. Davis, Civil No. 5:18-cv-01083 (opinion by Orlando L. Garcia, Chief United States District Judge).

Petitioner timely filed his notice of appeal and subsequently submitted his application for certificate of appealability to the

Fifth Circuit Court of Appeals. The motion for his COA was denied on January 25th, 2021. Madlock v. Lumpkin, No. 19-50826.

And now the Petitioner file this, his petition for a writ of certiorari.

Relevant Facts:

The relevant facts surrounding Petitioner's confession to the police were accurately summarized by Thirteenth Court of Appeals of Texas during the direct appeal proceeding:

[Petitioner] was being held in a Bexar County Jail on a probation violation [after] his three children were taken into custody by the Department of Family and Protective Services (DFPS) [Petitioner was arrested for the probation violation on October 14th, 2014. His children were taken by DFPS August 1st, 2014]. The children had been living with [Petitioner]'s wife, but they were taken by DFPS due to unsanitary home conditions. While they were living in a shelter, [one - not two] of the children acted out in a sexual manner. [During a visit the children had with their mom, Petitioner's wife, the middle child, A.M., said his older brother, Z.M., touched him inappropriately, which is when the Petitioner and his wife demanded an investigation]. As a result, all three children stated that [Petitioner] had sexual contact with them.

On December 5th, 2014, Detective Danny Dufur questioned [Petitioner] at the Bexar County Jail about the children's statements and recorded the interview. [audio only because someone conveniently stopped the video during the interview]. Detective Dufur read [Petitioner] his Miranda warnings, and [Petitioner] acknowledged that he understood his rights and voluntarily waived them. After speaking for around forty-five minutes, [Petitioner] made the following statement:

> " I guess I do have issues, I ain't going to lie. And you're right, they do become even worse and worse and worse. As for as the details, I would like to have an attorney present please just for the sake of my wife because I don't want to put her or

Say something stupid that would put her in a position of being considered endangerment. She was never even around anyway so that's why I said she has nothing to do with this."

Detective Dufur sought clarification from [Petitioner] on whether he wanted to end the interview [He did not, please refer to the record for the correct details. Detective Dufur continues on to acknowledge that the Petitioner requested the assistance of counsel and that it is right and that the Detective cannot continue with hearing what the Petitioner, yet he asks for clarification] responded that he would continue to talk, [Petitioner] then made incriminating statements admitting to having sexual contact with his children. [After the Petitioner clarified that he did not wish to speak, the detective did not stop the interview and kept badgering the Petitioner]. He was subsequently indicted and brought to trial.

At trial, the state sought to introduce the audio recording of the interview and [Petitioner] objected to its admission. A hearing was held outside the presence of the jury, and the following exchange took place between the trial court and [Petitioner]'s trial counsel in regard to the objection:

[The Court]: "Well, don't you agree that the law – it has to be unequivocal invocation of his right to counsel?"

[Trial Counsel]: "And, of course, it's our position that it is. He said he wanted a lawyer before he went out and —"

[The Court]: "Said he would like —"

[Trial Counsel]: "— it had to do with his wife."

[The Court]: "I thought he said, for the sake of my wife, I would like to have an attorney present."

[Trial Counsel]: "Right, I think that's unequivocal, I don't think he has to state his reasons, even, for having a lawyer...."

[Trial Court]: "All right, well, in that case, just using plain rules of grammar and English and syntax, he qualified his request for an attorney for the sake of his wife, not for the sake of him – for his prosecution. And that's certainly not an unequivocal request for an attorney to protect his rights."

The Trial court overruled [Petitioner]'s objection and admitted the incriminating statements into evidence. [Petitioner]'s Trial Counsel then placed his objection on the record and stated:

"In regard to the legal issue... The defendant objects to the introduction of all incriminating statements concerning this case for the reason that the defendant requested a lawyer pursuant to Article 38.22* and to his rights pursuant to Miranda, the 6th and 5th Amendment[s] of the United States Constitution, and the corresponding amendments to the Texas Constitution. And we object to the Court's introduction, thereof, for reason that those rights were violated as well as his rights to due process of law and due course of law both with regard to the United States Constitution and the Texas Constitution."

The jury convicted [Petitioner] on all charges, and the Trial court sentenced him to life without parole for each count. See Tex. Penal Code Ann. §§ 12.42, 21.11, 22.021 (West, Westlaw through 2017 1st C.S.). Madlock v. State, 2018 WL 360044.

* See Texas Code of Criminal Procedure, Article 38.22

REASONS FOR GRANTING THE PETITION

The Petitioner strongly believes that the United States Court of Appeals for the Fifth Circuit's decision was to sanction such a departure from accepted and usual course of judicial proceedings by a lower court and calls this Court to exercise its supervisory power. Also, there is an issue that may not have been settled by this Court, and the Petitioner seeks for clarification by this Court when it comes to the rules of invocation for counsel during criminal interrogation.

The Petitioner did invoke his right to have counsel present and he further asserted, verbally, his desire (and right) to remain silent. The state courts erred by ignoring the precedents set forth in Miranda, Edwards, and Davis and violating the Petitioner's Fifth and Fourteenth Amendment rights.

The Petitioner will show where other circuit courts have different opinions that contrast that of the Fifth Circuit where it sanctioned the Petitioner's invocation for counsel as ambiguous and never took into consideration that the Petitioner did further invoke his right to remain silent.

This infamous precedent set under Miranda v. Arizona, 384 U.S. 436 (1966) states, "Even after a waiver, however, if the suspect requests counsel, all questioning must cease... unless the accused himself 'initiates' further communication, exchanges, or conversations with the police." Id. at 444-45.

Under Edwards v. Arizona, 451 U.S. 477 (1981), this Court determined that "waivers of counsel must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege or matter which depends in each case 'upon the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused,'" Id. at 482 (citing Johnson v. Zerbst, 304 U.S. 458, 464 (1938)). Also, this Court added in Edwards the precedent made in Rhode Island v. Innis, 446 U.S. 291: "And just last term, in a case where a suspect in custody had invoked

his Miranda right to counsel, the Court again referred to the 'undisputed right under Miranda to remain silent and to be free of interrogation until he had consulted with a lawyer,'" Id. at 485 (citing Rhode Island, U.S. at 298).

This Court has set the standard where an invocation of a person's Fifth Amendment right must be an unambiguous and unequivocal request where a reasonable police officer would understand the statement. Davis v. United States, 512 U.S. 452, 459 (1994). This means that the suspect cannot say "Well, maybe I'll need a lawyer," or "I don't know if I should get an attorney," or "should I get a lawyer?" The invocations considered by this Court are mere simple requests or assertions in comparison to the Petitioner's request.

However, under Davis, "Invocation of the Miranda right to counsel 'requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney." Id. at 459 (citing McNeil v. Wisconsin, 501 U.S., at 178).

The Petitioner stated during the interrogation between he and Detective Danny Dufur that he "would like to have an attorney present please..." and followed up after Detective Dufur kept trying to get more information out of him by saying, "I don't wish to speak, I don't want to go down that road again. I don't want to go there anymore."

Detective Dufur did clearly understand the Petitioner's request for counsel because immediately when the Petitioner stated "I would like to have an attorney present please...", Detective Dufur said:

> "Let me – let me cut you off real quick, okay, let me explain to you. You said you want an attorney present. That's your right. You have that right. And I want to make sure that you're clear, that if you want an attorney present, I can't talk to you anymore, okay. I... But in order to talk to you anymore, you know, once you bring up the attorney thing, I can't hear what you have to say unless you want me to, okay. But with that said, do you want to talk to me anymore, right now or do you want..."

The Petitioner, being a prisoner in Bexar County Jail, could not have just got up and left, he answereed Dufur, "I just don't know what else to say."

[Dufur]: "The biggest thing is — ... what do you, what do, what do you tell them? They just want to know?"

[Petitioner]: "But to hear the words of what they said coming out of my mouth makes me want to vomit."

[Dufur]: "I understand that."

[Petitioner]: "I don't wish to speak, I don't want to go down that road anymore."

Dufur was aware of Petitioner's invocation of counsel and was just told by the Petitioner that he did not want to talk anymore. Yet Dufur kept initiating dialog trying to get the Petitioner to keep talking and further asked, "Do you want to talk to me anymore?" Then the Petioner, seeing that Dectective Dufur was not just going to get up and leave the room without obtaining a confession, responded with, "Fine, I'll talk! I'll talk!"

This is a clear violation of the Petitioner's Fifth Amendment right and established precedents set by this High Court. And by admitting the Petitioner's statements into evidence at the Petitioner's trial, the Petitioner's Fourteenth Amendment Right was violated, as well.

Black and white, the Petitioner did state that he wanted an attorney present and Detective Dufur acknowledged that the Petitioner requested counsel and made sure that the Petitioner meant what he said and then the Petitioner reinforced his invocation by saying he did not want to speak.

Under Smith v. Illinois, 469 U.S. 91 (1984), this Court held that an accused's post request responses to further interrogation may not be used to cast retrospective doubt on the clarity of the initial request itself. Id. at 100.

The U.S.L.Ed Digest, under Criminal Law §§ 46.4 and 46.7, it states: "The rule that an accused in custody, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to

him, unless he validly waives his earlier request for the assistance of counsel, embodies two distinct inquiries. First, courts must determine whether the accused actually invoked his right to counsel, and second, if the accused invoked his right to counsel, courts may admit his responses to further questioning only on finding that he (a) initiated further discussions with police, and (b) knowingly and intelligently waived the right he had invoked."

§46.7 further adds: a valid waiver of an accused's right to counsel present during police interrogation cannot be established by showing that the accused responded to further police-initiated custodial interrogation.

The Petitioner here only continued the interrogation because Detective Dufur kept initiating further discussions, which the record plainly reveals.

Did the Petitioner invoke his right to have counsel? Did Detective Dufur overstep his bounds by not respecting the Rule of Law?

The State argued that the Petitioner's request for counsel was not unequivocal. The trial court's exact statement was:

"All right, well, in that case, just using plain rules of grammar and English and syntax, he qualified his request for an attorney for the sake of his wife, not for the sake of him - for his prosecution. And that's certainly not an unequivocal request for an attorney to protect his rights." The state and Federal District courts both affirmed.

The Petitioner did request an attorney. Yes, he did further add for the safe of his wife. This is where the Supreme Court's discretion is required: Does anyone who merely adds to his/her request for counsel, "for the sake of my wife/husband" revoke their right to counsel?

If such person said "I want a lawyer" and said nothing else but clarified by stating he did not want to speak, that is enough to invoke his Fifth Amendment right to be represented by counsel no matter what his intentions were for requesting a lawyer.

The Petitioner knew there was going to be some contentious issues arising from the detective seeing as how the detective was not interested in giving the Petitioner a polygraph test after he offered to take one and just passed one that he took at his own

expense. These, Too, are mentioned in the audio recording.

The Petitioner surely was going to need the assistance of counsel with what was being alleged and he also being on probation. Also, he was aware that detectives were subject to using anything he would say and did against him and those closest to him (for example: wife, children, friends, etc.). Hence, the reason why the Petitioner added his concern for his wife while invoking his right to have counsel present. The record will show that throughout the interview the Petitioner was deeply concerned about his wife and children.

Does a man's wife's status not includ himself? Are they not joint members? Peradventure that the Petitioner's sole purpose was to invoke counsel for protecting his wife, would that not be protected under the protections afforded under the Fifth Amendment and Miranda and Edwards? Whatever happens to the Petitioner's wife and children equally affects him, as well.

The Petitioner did mention that other Circuit Courts had different opinions than that of the Fifth Circuit in this matter regarding the Petitioner's invocation of his right to have counsel, here are some of those opinions:

Sessoms v. Grounds, 776 F.3d 615 (9th Cir. 2015) - "Yeah, That's what my dad asked me to ask you guys — uh, give me a lawyer," Id. at 619. McKeown, immediately in his opinion, states "An American poet wrote more than 100 years ago, 'when I see a bird that walks like a duck, and swims like a duck, and quacks like a duck, I call that bird a duck.' When a suspect says, 'give me a lawyer,' that request walks, swims, and quacks like a duck. It is an unambiguous request for a lawyer, no matter how you slice it. The statement is unequivocal - it is not a 'maybe' or a 'perhaps' - it is an invocation of the Fifth Amendment right to counsel." Id. at 617

Anderson v. Terhune, 516 F.3d 781 (9th Cir. 2008) - Here, The petitioner, Anderson, stated he did not want to talk about "This" anymore and further added after police continued to question him, "I plead the Fifth." The Ninth Circuit stated in its opinion: "It is not that context is unimportant, but it simply cannot be manufactured by straining to raise

a question regarding the intended scope of a facially unambiguous invocation of the right to silence. As the Supreme Court has observed, in invoking a Constitutional right, 'a suspect need not speak with the discrimination of an Oxford don.' " Id. at 787 (citing Davis v. U.S., 512 U.S. 452, 459 (1994)).

The Ninth Circuit further added, "Miranda requires only that the suspect 'indicate[] in any manner... that he wishes to remain silent' " Id. at 788 (citing Miranda, 384 U.S. 473-474). Continuing on with Anderson, "As we recently observed, 'neither the Supreme Court nor this Court has required that a suspect seeking to invoke his right to silence provide any statement more explicit or more technically-worded than "I have nothing to say," ' " Id. at 788 (citing Arnold v. Runnels, 421 F. 3d 859, 865 (9th Cir. 2005). Anderson concludes with this: "A statement taken after the suspect invoked his right to remain silent 'cannot be other than the product of compulsion, subtle or otherwise.' " Id. at 789-790 (citing Miranda, 384 U.S. at 474

Whether or not the Petitioner, herein this certiorari, was ambiguous with his request for counsel, when Detective Dufur was seeking for clarification, the Petitioner did say that he did not wish to speak.

The Second Court of Appeals for the U.S. also contrasts with the Fifth Circuit: Wood v. Ercole, 644 F.3d 83 (2nd Cir. 2011) "Binding precedent is clear: once a suspect requests counsel all interrogation must stop until an attorney is provided or the suspect reinitiated conversation. Davis v. U.S., 512 U.S. 452, 458 (1994)," Id. at 90.

"Thoug Wood may have used a few extra words, we refuse to require defendants to 'speak with the discrimination of an Oxford don.' Davis, 512 U.S. at 476 (Souter, J. concurring in judgment). in order to invoke their right to counsel." Id. at 91.

"The importance of keeping the two inquiries distinct is manifest. Edwards set forth a 'bright-line rule' that all questioning must cease after an accused requests counsel. Solem v. Stumes, 465 U.S. 638, 646 (1984). In the absence of such a bright-line prohibition, the authorities through 'badger[ing]' or 'overreaching'- explicit or subtle, diliberate or unintentional - might otherwise wear down the accused and persuade him

incriminate himself not withstanding his earlier request for counsel's assistance. Oregon v. Bradshaw, 462 U.S. 1039, 1044 (1983) ... A valid waiver 'cannot be established by showing only that [the accused] responded to further police-initiated custodial interrogation.' Edwards at 484." Id. at 98.

Wood v. Ercole concludes with the harmless analysis: "In assessing 'whether the erroneous admission of evidence had a substantial and injurious effect on the jury's decision, [we consider] the importance of the wrongly admitted [evidence], and the overall strength of the prosecution's case.' Wray v. Johnson, 202 F.3d 515, 526 (2nd Cir. 2000), citing Brecht, 507 U.S. at 639." Id. 94.

Which brings this petition to its closing argument, if the interrogation was not introduced what would the State have used to sway the jury to convict the Petitioner beyond a reasonable doubt? The Federal District Court in San Antonio believed that the state had "overwelming evidence." However, the Federal District Court selected very few highlights but when contrasted in light of the facts presented at trial without the incriminating statements, the jury may have been inclined to believe the Petitioner is innocent of the crimes he was indicted with prior to trial. The Petitioner is not wishing to raise a "Jackson" or "Stone" issue in this instance nor will they suffice because it ought to be up to the fact-finders to determine if the evidence is overwelming or not. Is that why there is no longer an actual standard of what "beyond a reasonable doubt" is? However, in light of what the Federal District stated that was overwelming, the court failed to perceive context and other contrasting statements and other facts introduced during trial:

The federal court said that the Petitioner made incriminating statements prior to his invocation of his right to counsel, such as:

> "I just want to say no contest to. I put my hands in the air. I'm not going to argue ..." and,
>
> "But to hear the words of what they said coming out of my mouth makes me want to vomit."

The Petitioner was informed by his defense counsel for his probation violation of what was being said against him in Comal County,

TX while he was there in San Antonio, TX. Thus, the Detective did mention a few specifics as well. Yet, none of the prior comments made before his request for counsel incriminated him. Sure, they can be used against him, anything can be construed and used against anybody when they speak to law enforcement (which is wrong). However, he never admitted to doing anything wrong, he only said "no contest." That is not an admission to guilt. He just was not going to argue with the detective and this into a battle against his own children, knowing that they, too, are innocent of any wrongdoing.

The statements are in the record. There was also a video recording but somebody in the Bexar County Jail conveniently turned off the camera just prior to the Petitioner's request for counsel. This was brought up during trial. And the Petitioner is seeking an investigator for what took place there in the interrogation room then, and was unaware of a video recording, which was missing, then found, then something was wrong with it— per Joseph Garcia, the Petitioner's child custody counsel at the time when he was in jail for this case. However, this argument is about what is on record. The Petitioner strongly believes that without the incriminating statements, he would have been aquitted, even after the Petitioner's son, Z.M., testified.

The Federal District only stated that Z.M. testified that the Petitioner performed sexual activities on him and his other two children, and had them do things sexual in nature to him. But the Federal District failed to mention where Z.M. was only reciting what he saw on T.V. (a recording of himself) just prior to coming to the courtroom. He also admitted to having no memory of the Petitioner and him doing anything and, thus, could not remember anything prior to the "hospital." Z.M. was referring to Laurel Ridge, a mental hospital in San Antonio that was investigated and found to drug people to the point where they have no memories or ended up with fulse ones. The Petitioner's son was a resident there when he was having trouble with the foster parents at a foster home he was at, the Department of Family and Protective Services thought it was best to put a seven year old in a mental institution because he was not going to be abused by the foster parents and tried

to defend himself.

The Petitioner's wife would had gladly testified to these statements and offered tangible proof; however, The Petitioner's Trial counsel did not call her as a witness, in spite of the Petitioner's request to do so.

As for the hearsay comments by forensic specialists and DFPS agents, they are only that — and ought to be sorted out by a jury. And Leesa Chapa, the Petitioner's former probation officer, stated a few damaging things that were harmful to the Petitioner, if they were not explained nor contested, but the Petitioner did explain why the probation officer said some of what she said: it was because if he didn't "talk about the offense" that he was charged with, he would have his probation revoked. He was not privy to these "lose / lose" terms of his probation at the time he accepted the nolo contendre offer. The records will reveal the terms that the Petitioner agreed to at the courthouse are not the same as what he had agreed to during his first probation visit. Even after consulting his attorney at the time, there was nothing else he could do to convince the Bexar County Judge that he did not agree to having to, in essence, confess to what he did not do. It was he either abide by his new terms or he goes back to jail and risk spending 10 years in prison. He had a wife and three small children at the time to take care of. They had a four-bedroom house and bills to pay for. The Petitioner ~~felt~~ he made the best decision he could. This was addressed to the jury of this here case.

The Petitioner took the deferred adjudication offer in hopes of not having to spend a year in jail and lose his house and his family end up homeless. He felt it would have been easy to abide by the previous terms of probation. The Petitioner loves his wife and children. He always worries about them. He would "fall on the sword" for them time and time again if it would spare them any hardship.

The Petitioner is innocent of this sick series of crimes. And Z.M., the Petitioner's son, is a great kid. He was raised to respect and listen to his elders and knows not to tell lies. Let the record reflect clearly what Z.M. said on record. Even how he could not even remember his

mother's name. It would only make sense to let a jury decide if the evidence is credible enough to convict the Petitioner beyond a reasonable doubt. In the State of Texas, under the Texas Code of Criminal Procedure, Article 38.07 states that the State need only the testimony of the alleged minor victim to present as evidence to try and persecute the defendant: that the Petitioner abused his children in a busy Walmart parking lot.

The State only offered weak and easily contestable hearsay testimonies from merely all of its witness, and Z.M. stated that he could not remember anything and was only repeated what he said in the children advocacy center (which, also, is skeptable according to the Petitioner's trial counsel but the C.A.C. video was never presented during trial).

It would only be fair for a petit jury determine if the Petitioner is guilty of the said offenses with the scant evidence without the incriminating statements made after invocation of counsel.

Wherefore premises considered, Petitioner prays this Court will make a ruling that finds that the Petitioner's request for counsel and to remain silent were unambiguous/unequivocal. And that the trial court did err by admitting the interrogation after the invocation of the Petitioner's right to have counsel and was harmful by doing so.

Also, if this Court does find these to be true, could this Court REMAND this case to the District Court with directions to the District Court to enter such orders as are appropriate and consistant with the Supreme Court's opinion, allowing the State a reasonable time in which to retry the prisoner?

* * *

In Blackburn v. Alabama, 361 U.S. 199 (1960), this Court determined "neither the likelihood that an involuntary confession is untrue nor the preservation of the individual's freedom of will is the sole interest at stake in excluding involuntary confessions from evidence, the abhorrance of society to the use of such confessions also turns on the deep-rooted feeling that the police

must obey the law while enforcing the law, and that in the end of life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from actual criminals themselves. See Spano v. New York, supra (360 U.S. 315, at 320, 321)" Id. at 207.

* **

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

S. [illegible]

Date: March 16th, 2021