

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JORDAN RAWLS,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition For A Writ Of Certiorari
To The Supreme Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Mr. Rawls asks the Court to address the question left open by this Court's holding in *Patterson v. Illinois*, 487 U.S. 285 (1985) – whether something more than *Miranda* warnings are required for a person already subject to formal criminal prosecution but never made aware of that fact. The question presented is:

1. WHETHER POLICE, TO PROTECT A PERSON'S SIXTH AMENDMENT RIGHTS, MUST DO MORE THAN ADMINISTER *MIRANDA* WARNINGS WHEN THE INDIVIDUAL IS SUBJECT TO POLICE CUSTODIAL INTERROGATION AND POLICE DELIBERATELY FAIL TO DISCLOSE THAT CRIMINAL CHARGES HAVE ALREADY BEEN FILED?

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**PETITION FOR WRIT OF CERTIORARI TO THE
PENNSYLVANIA SUPREME COURT**

Petitioner, Jordan Rawls, by and through his undersigned attorney,
respectfully petitions for a writ of certiorari to review the judgment entered
in this case by the Pennsylvania Supreme Court.

OPINION BELOW

The majority and dissenting opinions of the Pennsylvania Supreme Court appear in the Appendix.

JURISDICTION

On August 17, 2021, the Pennsylvania Supreme Court entered its Judgment affirming the conviction and sentence. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1257(a). This petition is timely filed within 90 days of the decision below under Rule 13.1 of this Court.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides that:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury . . . 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

The Sixth Amendment to the United States Constitution provides, in pertinent part:

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, . . . and to have the assistance of counsel for his defence.

The Fourteenth Amendment to the United States Constitution provides:

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 laws.

The pertinent statutory provisions include 28 U.S.C. § 2106.

STATEMENT OF THE FACTS

On October 31, 2016, Shane Wright and Kristine Kibler were killed in their residence in Williamsport, Pennsylvania. According to the police, information was developed that Casey Wilson was seen in the area around the time of the incident. Mr. Wilson was apprehended and interrogated. He admitted that he drove Joseph Coleman and a second unknown African-American male to the Wright-Kibler residence for the purpose of conducting a robbery of Mr. Wright's drugs and money. Through their investigation, on November 9, 2016, the police came to believe that the second person was Petitioner, Jordan Rawls. On November 10, 2016, Mr. Rawls was criminally charged with, *inter alia*, two open counts of Criminal Homicide.

The next day, on November 11, 2016, after hearing on social media that he was a person of interest, but without being aware that he was already charged, Mr. Rawls voluntarily arrived at the Williamsport Police Department with his girlfriend. Agent Trent Peacock placed him under arrest. He was taken in shackles and handcuffs to a windowless interrogation room, containing several chairs and a desk, illuminated only by artificial light. Before the interrogation began, Agent Peacock advised Mr. Rawls that he was under arrest and not free to go, but failed to tell him the reason why he was under arrest or that formal charges had already been initiated.

Agent Peacock read Mr. Rawls his *Miranda* rights. Peacock asked Mr. Rawls if he wished to speak to them. Mr. Rawls did not immediately answer and

did not initially agree to speak to the police stating he was “confused” and “that’s why [he] really came in.” Agent Peacock then explained that they were merely *investigating* a homicide. He further advised Mr. Rawls that “there may be some middle ground” and “that he may not be the guy that did it.”

In addition, during the course of attempting to gain a *Miranda* waiver, Agent Peacock again asked Mr. Rawls if he wanted to talk to the police in order to give “his side of the story” because “I don’t suspect that you would have come bouncing in here if you were the guy responsible for this.” Mr. Rawls finally relented and signed the *Miranda* waiver form.

During the next 5 ½ hours, Mr. Rawls was interrogated by two armed officers. Throughout the course of the videotaped interrogation, the police took three off-tape breaks. Ultimately, according to the police, after hours of denials and being fed false information, at approximately 7:40 p.m., Mr. Rawls purportedly acknowledged his involvement in the robbery, but stated he never actually went into the residence and did not kill anyone.

At no point in time during the 5 ½ hour interrogation was Mr. Rawls ever advised that he had already been criminally charged with the murder of Wright and Kibler. Only after the interrogation was completed was Mr. Rawls taken before the district magistrate for his preliminary arraignment on the charges previously filed.

During the course of the litigation, a variety of pre-trial motions were filed, including a motion to suppress the confession. On August 13, 2018, the trial

court denied suppression. Trial commenced on April 1, 2019. Mr. Rawls' interrogation was introduced as proof of his guilt during trial and was emphasized as key evidence in the Commonwealth's closing argument. On April 5, 2019, after approximately 7 ½ hours of deliberation, the jury found Mr. Rawls guilty of first-degree murder of Shane Wright, not guilty of first-degree murder but guilty of second-degree murder of Kristine Kibler. The jury acquitted on both counts of third-degree murder but rendered guilty verdicts on the remaining charges. Mr. Rawls was immediately sentenced to two life sentences based upon the first and second-degree murder verdicts.

A timely direct appeal was filed to the Superior Court of Pennsylvania. On January 10, 2020, a three-judge panel of the Superior Court affirmed in a nonprecedential opinion. *See Commonwealth v. Rawls*, No. 720 MDA 2020, 2020 WL 119659, at *1 (Pa. Super. Ct. Jan. 10, 2020).

A timely petition for allowance of appeal was filed to the Pennsylvania Supreme Court and that court granted allowance of appeal on August 17, 2020 limited to the issue presented herein.

On August 17, 2021, a divided (five to two) Pennsylvania Supreme Court affirmed the three-judge panel of the superior court. The case produced two dissenting opinions. *See Commonwealth v. Rawls*, 256 A.3d 1226 (Pa. 2021).

REASONS FOR GRANTING THE PETITION

- I. CERTIORARI SHOULD BE GRANTED TO RESOLVE THE QUESTION LEFT OPEN BY THIS COURT IN *PATTERSON v. ILLINOIS*, WHETHER POLICE, TO PROTECT AN INDIVIDUAL'S SIXTH AMENDMENT RIGHTS, MUST DO MORE THAN ADMINISTER *MIRANDA* WARNINGS WHEN THE PERSON IS SUBJECT TO POLICE CUSTODIAL INTERROGATION AND POLICE DELIBERATELY FAIL TO DISCLOSE THAT CRIMINAL CHARGES HAVE ALREADY BEEN FILED.

This Court has long recognized that the pre-trial right to counsel is a necessary prerequisite to a fair trial. *See Powell v. Alabama*, 287 U.S. 45, 57 (1932). Indeed, the need for “the guiding hand of counsel at every step of the proceedings” is essential. *Id.* at 69. This Court has held that at the interrogation stage of a criminal prosecution the legal aid and advice are the most critical to an accused. *See Massiah v. United States*, 377 U.S. 201, 204 (1964). To that end, under the federal constitution, the Sixth Amendment right to counsel attaches at the initiation of criminal proceedings, “by way of formal charge, preliminary hearing, indictment, information, or arraignment.” *Kirby v. Illinois*, 406 U.S. 682, 689 (1972).

Here, unlike most arrestees subject to custodial interrogation for whom the Sixth Amendment right to counsel has not yet attached, Mr. Rawls had already been formally charged with criminal homicide, cloaking him with Sixth Amendment protections. No one informed him of the filed charges. Indeed, the police actively misled him, stating that the interrogation was nothing more than an “investigation,” that “there may be some middle ground” and that “[you] may not be the guy that did it.” Thus, at the time of his confession, although Mr. Rawls had been formally charged, he was uncounseled. The only warnings he received

regarded his Fifth Amendment-related *Miranda* rights, which he purportedly waived.¹ That was inadequate to protect or permit a concurrent waiver of his indisputably attached Sixth Amendment rights.

Thirty-six years ago, this Court held in *Patterson v. Illinois*, 487 U.S. 285 (1985) that under most circumstances a person who knew that charges had already been initiated could be interrogated with only *Miranda* warnings as the necessary protection of the right to counsel. But the Court flatly rejected a blanket rule that providing *Miranda* warnings under the Fifth Amendment will always suffice. The Court stated “[t]his does not mean, of course, that all Sixth Amendment challenges to the conduct of postindictment questioning will fail whenever the challenged practice would pass constitutional muster under *Miranda*.” *Id.* at 296 n.9. The Court reasoned that this is because the Sixth Amendment right to counsel is broader than that provided by *Miranda*. The *Patterson* court stated:

[t]hus, because the Sixth Amendment’s protection of the attorney-client relationship – “the right to rely on counsel as a ‘medium’ between [the accused] and the State” - - extends beyond *Miranda*’s protection of the Fifth Amendment right to counsel, there will be cases where a waiver which would be valid under *Miranda* will not suffice for Sixth Amendment purposes.

Id.

Notably, in *Patterson*, the Court held “because, in this case, petitioner concedes that he was so informed... we do not address the question whether or not an accused must be told that he has been indicted before a postindictment Sixth Amendment waiver will be valid.” *Patterson*, 487 U.S. at 295 n.8.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

Thus, *Patterson* specifically left open the question raised here – whether *Miranda* warnings suffice if the person subject to custodial interrogation is never made aware that formal charges have been initiated. Mr. Rawls’ case will provide this Court with the opportunity to address this important question that remained unresolved by the *Patterson* decision.

Importantly, in *Patterson* the Court recognized that the Sixth and Fifth Amendments serve different purposes. *See id.* at 297 (“[O]ur cases have recognized a difference between the Fifth Amendment and the Sixth Amendment rights to counsel . . .”). The Sixth Amendment is broad, applies to every phase of the adversarial process, including pre-trial interrogations, and automatically attaches. *See Powell*, 287 U.S. at 69-71; *Brewer v. Williams*, 430 U.S. 387, 404-05 (1977) (Sixth Amendment right to counsel does not depend on a request by an accused). As the *Patterson* court stated, by virtue of obtaining the indictment in the first place, the government represents that it has sufficient evidence to establish a prima facie case against an individual. *See Patterson*, 487 U.S. at 306.² “The initiation of judicial criminal proceedings is far from a mere formalism. It is the starting point of our whole system of adversary criminal justice. For it is only then that the government has committed itself to prosecute, and only then that the adverse positions of government and defendant have solidified.” *Kirby v. Illinois*, 406 U.S. 682, 689-90 (1977). From the moment of filing, an adversarial relationship is created between the defendant and the

² Unlike here, the defendant in *Patterson* was aware of his indictment. *See Patterson*, 487 U.S. at 295 n.8.

police. Without knowledge that criminal charges have been filed, an individual cannot appreciate the magnitude of his or her legal predicament, the potential for prejudice to his or her rights and eventual defenses, the scope of those rights, or the importance of a lawyer's assistance and guidance. A waiver of that important right to counsel is valid only when it reflects "an intentional relinquishment or abandonment of a known right or privilege." *Patterson*, 487 U.S. at 292. In order to establish such a waiver, the government must meet the heavy burden showing that the accused understood his or her right to counsel and knowingly relinquished it. *See Brewer v. Williams*, 430 U.S. 387, 404 (1977). The "courts indulge every reasonable presumption against waiver of fundamental constitutional rights." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

Furthermore, *Miranda's* import is undermined when the police intentionally fail to tell a defendant that charges have already been filed since regardless of what he or she says at that juncture it will not make a difference. As such, when the police obtain a confession without advising a defendant that charges have already been initiated against them, it is obtained in a manner incompatible with *Miranda*.

Given the enormous import of the Sixth Amendment, its distinction in purpose from its *Miranda* counterpart, and significant change of a defendant's status after criminal charges have been filed, something more should be required in order to achieve a valid waiver from a criminal defendant when the person is unaware that charges have been laid and thus, regardless of what is said during

interrogation, the criminal process will continue. This Court understood those critical distinctions in *Patterson*. The *Patterson* court acknowledged that “there will be cases where a waiver which would be valid under *Miranda* will not suffice for Sixth Amendment purposes.” *Patterson*, 487 U.S. at 296 n.9 (internal citations omitted). This is such a case.

The willful and deliberate failure by law enforcement to disclose to an accused that criminal charges have already been filed at the time of interrogation, brings to fruition the questions left unresolved in *Patterson*. Moreover, compounding that failure were the blatant falsehoods provided by law enforcement about Mr. Rawls’ situation. Because this Court has yet to address whether *Patterson* applies to an individual who is unaware that the charging process is complete and the case will continue with criminal charges, this Petition for Writ of Certiorari should be granted.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities, this Court should grant the petition for writ of certiorari.

Dated: November 11, 2021

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CERTIFICATE OF SERVICE

I, Edward J. Rymsza, hereby certify that on this 11th day of November 2021, I served copies of the Motion for Leave to Proceed in Forma Pauperis and the Petition for a Writ of Certiorari in the above-captioned case were mailed, first class postage prepaid to the following:

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I certify that all parties required to be served have been served.

Dated: November 11, 2021

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CERTIFICATIONS

I, Edward J. Rymsza, Esq., hereby certify that:

1. I am a member of the bar of the Supreme Court of the United States,
2. the text of the electronic brief e-mailed to the Court is identical to the text of the other paper copies mailed to the Court,
3. the attached brief has been automatically scanned during preparation and upon sending by Avast anti-virus detection program and no virus was detected,
4. on the date below, one copy of the foregoing Petition for Writ of Certiorari was placed in the United States mail, first class, postage pre-paid addressed to:

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5. on the date below, ten copies of the same were placed in the United States mail, first class, postage pre-paid, addressed to:

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Dated: November 11, 2021

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